

**Planning Commissioner,  
Planning Board and  
Board of Appeals  
Education Course Material**

# Planning Commission, Planning Board and Board of Appeals Education Course

Developed pursuant to the Smart Green and Growing Act of 2009 - SB280/HB297, Chapters 180, 181 of the Laws of Maryland, 2009.



*Maryland Department of Planning*

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# Planning Commission, Planning Board and Board of Appeals Education Course

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## *Welcome!*

I am pleased to welcome you to the first version of the online Planning Commission, Planning Board and Board of Appeals Education Course, which has been developed by the Maryland Department of Planning pursuant to Chapters 180 and 181 of the Laws of Maryland. This came about as a result of the passage of Senate Bill 280 and House Bill 297 in the 2009 Session of the Maryland General Assembly, which requires members of a local jurisdiction's planning board or commission and board of appeals to complete an education course on or before July 1, 2010.

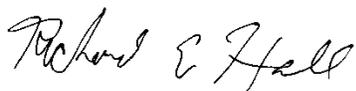
This new requirement applies to the non-charter counties and municipalities who exercise planning and zoning authority under Article 66B and charter counties including Montgomery and Prince George's counties. The law says that the course must include education on the role of the comprehensive plan, proper standards for special exceptions and variances, if applicable, and the jurisdictions zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations and other land use ordinances and regulations.

This will be an on-going educational requirement for all planning commissions, planning boards and board of appeals throughout the State, as membership on these bodies changes from time to time.

The course was developed with input from the Governor's Task Force on the Future of Growth and Development, and your partners in planning policy and implementation including MaCo, MML, MPCA and others. This joint effort has resulted in the course you are about to take, and we hope you find it informative, useful and beneficial in your important role as a planning official.

Our goal is to provide good information to help you make even better informed planning decisions for your city, town or county. I welcome and encourage your feedback on this course and if you have any suggestions after completing it, please feel free to pass them along.

Enjoy the course!



Richard E. Hall, AICP, Secretary,

Maryland Department of Planning

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# Planning Commission, Planning Board and Board of Appeals Education Course

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## Overview

Before we get started, you might be interested in knowing that Maryland is joining a number of states that require training or education for planning commission, planning board and board of appeals members. Some are more stringent than others, and some are even rather costly. We looked at programs in several states, notably Virginia, New York, New Jersey, South Carolina, Kentucky, Tennessee and Alabama. We looked at training offered by the American Planning Association, and the planning website *Planetizen*, along with a few offerings from local jurisdictions. While it never occurred to us to charge anyone for taking a course, we thought that our own course would be more specific for those of you working as planning board, planning commissioners and board of appeals members here in Maryland.

This course covers a broad range of topics, from basic planning and smart growth concepts, the comprehensive plan, growth management tools, environmental laws and regulations, to the role of a planning commissioner, planning board member and board of appeals member. This course will provide a certificate to each member when they have completed it.

While each jurisdiction is authorized under the law to create its own education course, we wanted to give local jurisdictions the option of using this course or preparing their own course. Taking this particular course will satisfy the statutory requirements in the legislation.

# Module One: Introduction to Planning 101

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## **What is planning?**

- Introduction to planning
- Values of planning
- What planners do
- Smart growth
- 12 visions
- Planning and zoning terms and definitions
- Priority Funding Areas, appeals, variances, ordinances and vesting
- State planning laws/charter v. commissioner forms of government

# Module One: Introduction to Planning 101

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## Introduction

We begin with an introduction to the basic concepts of planning in the context of the following perspectives: *Social values and issues, legal framework and the historical context.*

## What is planning?

Planning is concerned with setting a course of action that will shape the future in terms of how land is used. Planning is basically a function of the following:

## The Community's Vision of the Future

The vision is oftentimes expressed as a statement of what the community will be in the future, if all goes as planned. For example, some communities envision economic growth in the form of new businesses and industry, while others see retaining their current scale and role as a place for small town living; some communities' vision is to retain their rural heritage in locations outside of population and economic centers and to protect and enhance the natural environment.

## Accounting for the Past and Present

Plans for the future should consider what has happened in the past. Thus, knowledge about past and present trends in terms of the mixture of land uses, the rate of population growth, the loss of forest and agricultural lands, the extraction of mineral resources, and the quality of the environment is a necessary step in the planning process.

## Goals, Objectives, Policies: Tools to Realize the Vision

Planning should adhere to some rational framework in order to make progress towards the vision. Planning requires a description of the manner in which the vision will be pursued. It does this by establishing formal goals (a desired end that is established for a range of topics, from the environment to the economy), objectives (specific steps and products that reflect the goals and topics), and policies (specific decision-making rules and guidelines).

The importance of establishing this framework of goals, objectives and policies is to formalize expectations and predictability for stakeholders (property owners, developers, residents, appointed and elected officials) and to have a rational basis -- in the form of an officially adopted document, such as a Master Plan, Comprehensive Plan, Small Area Plan, Sector Plan or other approved statement of policy -- for making planning decisions. Having this basis can help avoid decisions that may otherwise be construed to be arbitrary.

## What are some of the values of planning?

While there are numerous social values that are reflected by planning, the most fundamental is the protection of public health, safety, and welfare. This is the over-arching purpose of planning. Because land use planning and regulation are an exercise of the local police power, all planning and related regulations must be justified on the basis of promoting public health, safety, or welfare.

Over time, additional values have been incorporated into the planning process. These include the following:

### Conservation of Resources

This value aims at conserving important natural resources such as farmland, forest land, and mineral resources, but also energy resources.

### Protection of the Natural Environment

This value seeks to protect the quality of land, air and water resources, such as rural open space and greenways, wetlands, floodplains, potable water supplies and critical wildlife habitat.

### Efficiency, Orderliness, and Rationality in the Built Environment

The overall objective of land use planning is to ensure that future growth is orderly and that a hodge-podge or scattered pattern of development is discouraged. The public benefits that accrue involve preservation or creation of community character; cost-effective provision of roads, schools, and other facilities; efficiency in the transport of goods and services, and the preservation and viability of resource-based economies such as agriculture, forestry, mining, and fisheries.

### Predictability

Planning is about stating how and when land will be used in the future. Predictability is important to all stakeholders including developers, the environmental community, residents, farmers, and neighboring jurisdictions.

### Public Participation

Planning cannot be successful unless plans represent the values and desires of the public in general. While it is not possible to satisfy all things important to all people, public participation is important for allowing each person to have a voice and a role in the process.

## What do planners do?

Planners often operate and make recommendations and decisions in the context of many varied and sometimes competing interests. The following illustrates the difficult decisions that planners face in both day-to-day work as well as in long-range planning.

A county might designate a certain area to be agricultural, whereas a municipality might decide that the same land be part of its annexation plan.

### **The Distant Goal v. the Immediate Decision**

A jurisdiction might want to preserve a structure for preservation, but it might be deemed a public health hazard and eligible for demolition by neglect. However, if such a structure is a protected or a designated historic resource, then consultation with the preservation commission, landmarks commission, planning department and local and state preservation agencies should occur.

### **Incrementalism v. Comprehensive Planning**

A long range plan sets out the goals, but the here and now decisions are almost always incremental. Planners must weigh whether the incremental process decision point maintains or compromises the comprehensive goal.

### **Public Sector Planning and Private Sector Decisions**

There are often differences that separate private sector motivation from public sector policy. It helps if the two understand each other and learn to work together for the public good.

### **Local, Regional, and State Perspectives**

Local plans, regional plans and state policies might not always be in concert with one another. Good working relationships are important, and consensus is often attainable.

### **The United States Constitution**

From free speech (signage, adult entertainment) to due process, equal protection, and property rights (the takings clause), planners must pay particular attention to and always be especially cognizant of the 1<sup>st</sup>, 5<sup>th</sup>, 9<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution. The 10<sup>th</sup> Amendment, incidentally, is the one that grants the states the power to regulate land use.

## **An Annotated History of Planning in America**

Planning in America has existed for centuries, and was evident with some of the first settlements occupying land from New England to Florida. Beginning with the Spanish model for development of new communities in the 1500's and up to the birth of the United States, planning often followed fairly regimented rules for the layout of towns which mirrored European precedents.

Early American settlements were often located along waterways where ships could bring goods and materials for use by town residents as well as for transport to outlying areas. Towns and cities were frequently designed with a grid pattern of streets, with central squares used as marketplaces. Other features of the grid included public buildings such as courthouses where people conducted legal and other business transactions.

The Northwest Ordinance of 1785, which divided the American frontier into uniform mile square divisions of land, continued the grid pattern of planning and development, but on a much larger scale. From Ohio westward to the Great Plains, land speculation became generally unconcerned by the constraints of geography, as you can see from looking at a county map of the U.S. today.

Planning in the United States blossomed in the late 19<sup>th</sup> and the 20<sup>th</sup> century as immigration, the move away from an agrarian economy, and the advent of industrialism helped populate towns and cities. Planning and zoning laws came into effect during this period as concern for the public's health, safety and welfare grew with the concentration of sometimes incompatible uses in close proximity to one another.

Perhaps the most significant change in planning and development in the United States occurred after World War II. Prosperity after the war, the advent of the National Highway System, (connecting heretofore disparate parts of states and the nation), and greater use and ownership of the automobile, all contributed to the spread of development and massive suburbanization of the country.

More recently, planning in the U.S. and in Maryland has focused on addressing some of the ill effects of this past suburbanization and growth outside of suburban areas. More emphasis is placed today on developing in areas where infrastructure exists or is planned and on revitalizing and redeveloping existing communities.

## Milestones in Planning

Here are some selected milestones in the history of American planning, with a few from Maryland.

- The Plan for Washington, D.C., Detroit, New York (1790-1810)
- Purchase of Central Park, New York (1856)
- Tenement House Laws, New York (c. 1867)
- Munn v. Illinois, 94 U.S.113, 126 (1877 Supreme Court Case)
- Birth of the New Town Movement (Ebenezer Howard, 1898)
- The Harford Commission on a City Plan (1907)
- Burnham's Plan for Chicago (1909)
- Hadacheck v. Sebastian, 239 U.S. 394, 408 (1915)
- Adoption of New York City Zoning Code (1916)
- Cincinnati Comprehensive Plan (1925)
- Village of Euclid v. Ambler Realty Company, 272 U.S. 365 (1926)
- Standard City Planning Enabling Act (1928)
- The Quiet Revolution (1970's)
- The State Land Use Act of 1974 (Maryland)
- The Critical Area Law, 1984 (Maryland)
- The Economic Growth, Resource Protection, and Planning Act of 1992 (Maryland)
- The Smart Growth Areas Act of 1997 (Maryland - Priority Funding Areas)
- Traditional Neighborhood Development, New Urbanism, Transit-Oriented Development, and other new planning models (1990's)
- Smart Codes Legislation, 2000 (Maryland)
- House Bill 1141 requiring municipal growth and water resources elements in comprehensive plans, 2006 (Maryland)

- Smart, Green and Growing Act of 2009 (Maryland)

We will explore more of the concepts of planning, the legal framework, and the fundamentals of the planning process and day to day administration later on. But let's move on to the concept of Smart Growth as we begin our focus on planning in Maryland today.

## What is smart growth?

Most people in Maryland planning and development circles have heard the term "Smart Growth" bandied about for more than 10 years or so since the passage of the Smart Growth and Neighborhood Conservation Act of 1997, better known to planners as the 'Smart Growth Law'.

## What does it do, and what is it trying to achieve?

Smart Growth is a term that includes three conceptual dimensions: the ultimate goals for land use planning, characteristics of smart development that address those goals, and the process of good land use planning. Maryland has emerged a leader in smart growth planning and implementation, not just since the 1997 Smart Growth law<sup>1</sup> was passed, but since the formation of the Maryland State Planning Commission in 1933. To get at the details, let's examine these three dimensions in a bit more detail.

## Goals of Smart Growth Planning

Smart Growth promotes livability, sustainability, well managed development, and a high quality of life for all Marylanders. What this really gets at is how smart development patterns make our day-to-day lives better by encouraging shorter drive times, locating housing closer to work, minimizing shopping trips, and giving our kids real options to walk and ride bikes to school, parks and playgrounds. It's really more about where and how development occurs, and less about what it looks like, although, good community design is an important part of smart growth.

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### <sup>1</sup> 1997 Priority Funding Areas Act

The 1997 Priority Funding Areas Act directs State funding for growth related infrastructure to Priority Funding Areas (PFAs), providing a geographic focus for State investment in growth. PFAs are existing communities and places where local governments want State funding for future growth. Growth-related projects include most State programs that encourage growth and development such as highways, sewer and water construction, economic development assistance, and State leases or construction of new office facilities. The Act legislatively designated certain areas as PFAs - municipalities (as they existed on January 1, 1997), Baltimore City, areas inside the Baltimore and Capital Beltways, State Empowerment Zones, Department of Housing and Community Development Designated Neighborhoods - and established criteria for locally designated PFAs. The criteria include permitted density, water and sewer availability, and designation as a growth area in the comprehensive plan.

The PFA Act is codified in §5-7B of the State Finance and Procurement Article of the Annotated Code of Maryland.

## Characteristics of Smart Development

Smart Growth minimizes the human footprint by directing new development to existing population and business centers, growth areas adjacent to those centers, and/or strategically-selected new centers. In other words, it means building more compactly, and in places that already are developed, where infrastructure like roads, electric, natural gas, water and sewer lines already exist. Alternately, it means planning compact new communities in areas that the jurisdiction has identified as a good location for new growth, preferably within Priority Funding Areas (PFAs).

Smart growth development is characterized by mixed uses, walkability, a range of employment and transportation options, equitable distribution of costs and benefits, diverse housing choices for citizens of varying incomes and life cycle stages, and a strong sense of community and place. These design features and components vary in order to reflect the character of a given area. A smart growth planning policy promotes vitality in cities and small towns while preserving rural areas.

At the local level, it is wise to tailor your smart growth policy to the particular character of your town or county. Density goals and multimodal transit suited for city neighborhoods are not going to work in a small town or village. That doesn't mean that smart growth can't work in these places.

## The Process of Smart Land Use Planning

The Smart Growth planning process features active participation by an aware and knowledgeable citizenry, and collaboration between government, businesses and citizens in crafting plans to achieve Smart Growth goals. The resulting policies, strategies, programs and funding for growth and development, for natural resource conservation, and for transportation and other infrastructure, are integrated across local, regional, state and interstate levels.

According to the Smart Growth Network (a national partnership of non-profit, academic and governmental organizations), there is growing concern that current development patterns are no longer in the long-term interest of our cities, existing suburbs, small towns, rural communities, or wilderness areas. Though supportive of growth, communities are questioning the economic costs of abandoning infrastructure in the city, only to rebuild it further out.

Smart growth is about more than fiscal responsibility regarding infrastructure. It's also about quality of life. Living closer to our jobs means less time in our cars and more time spent with our families.

## Smart growth laws

The 1997 Smart Growth law laid the groundwork for a new set of policies, procedures and requirements related to growth area allocation in the state. One such requirement established density minimums in PFA's for existing communities and undeveloped areas.

"Existing communities" means the built environment as of January 1, 1997, and, in particular, existing residential and mixed use development and associated support activities and land uses. An existing

community may be designated as a PFA provided it is served by a public or community sewer system and is within a locally designated growth area. The portion of the community designated for residential use or development must have an average density of at least 2 units per acre.

While existing communities with water but no sewer service were subject to similar criteria, the new law also allowed counties to certify areas "beyond the periphery" of the developed portion of existing communities as long as they had existing or planned sewer service, and as long as the area was within the locally designated growth area. However, the permitted average residential density must be at least 3.5 units per acre to qualify.

For more in depth information on density requirements, please refer to:

<http://planning.maryland.gov/PDF/OurProducts/Publications/ModelsGuidelines/pfa.pdf>.

# The Twelve Visions

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During the 2009 Legislative session, Maryland's eight existing planning visions were replaced with 12 new visions to address a broader spectrum of significant issues of relevance to all Marylanders. These new planning visions are the State's land use policy, and a local jurisdiction is required to include the visions in the local comprehensive plan and implement them through zoning ordinances and other regulations.

The 12 visions address the following:

- quality of life and sustainability
- public participation
- growth areas
- community design
- infrastructure
- transportation
- housing
- economic development
- environmental protection
- resource conservation
- stewardship, and
- implementation approaches

# Trends, Statistics and Current Growth Patterns

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Maryland is experiencing growth. We project that 1 million new residents, 400,000 additional households and 600,000 new jobs will come to Maryland over the next 20 years. What are these trends, what do the numbers mean and what will it look like on the ground? Why does this matter? What can we do about it?

## **Improve quality of life with more sustainable development**

Total acreage of developed land in Maryland nearly doubled in the past three decades, resulting in large losses of farms and forests. It took three centuries to develop the first 650,000 acres of land in Maryland and a mere 30 years to develop the next 650,000. In 1973, 6,900 square feet of land were needed to support each person (for homes, jobs, schools, etc.). This increased to 10,400 square feet by 2002, a 50 percent increase.

Marylanders live in larger homes on larger lots, shop in larger stores, and park in larger parking lots than ever before, but the consequence is more time spent getting to those places, more public dollars needed to support that dispersion, more loss of natural resources, and more pollution into the bay and fewer affordable housing options.

## **Develop land at a pace consistent with growth**

Since the late 1960s, the nature of residential development (with an increasing share of homes built on large lots), combined with declining household size, has resulted in an increase in developed acres that far exceeds growth in either population or housing units. Since 1950, developed acres for single-family residential units has increased by 455 percent, nearly twice the rate of increase for housing units (234 percent) and more than triple the growth in population (139 percent).

## **Strengthen existing cities and communities**

Sprawl has become an unrelenting cycle in which one malady feeds the next. Outmigration from existing communities leads to disinvestment in those communities, resulting in greater need for new roads and schools which helps drive up the cost of land and housing. These are contributing factors driving young families further out into suburban areas.

While Maryland is near the midpoint of state growth nationwide, it has experienced enormous churn from within, with tens of thousands of residents journeying from city to suburb to exurb and beyond. Nearly 40,000 Maryland workers relocated to Pennsylvania since 1980, with many trading lower housing

costs for longer commutes. Development patterns fuel an income stratification that creates uneven schools and impoverished communities.

## **Protect farmland**

Maryland has a long history of agricultural productivity that continues today, as evidenced by the more than 2 million acres of farmland within the state. Maryland has worked to preserve nearly 700,000 acres of land under conservation easement, protecting this land from development in perpetuity. Despite this legacy of conservation efforts, 500,000 acres of farmland were lost to development between 1982 and 2007— or one-fifth of the 1982 acreage. Sprawling development patterns have placed increasing value on these lands for development, pressuring Maryland farmers to remove their farms from agricultural productivity.

## **Preserve natural resources**

In rural areas where community water and wastewater systems are not available or planned, development relies on septic systems. About 430,000 septic systems operated in Maryland in 2007, with thousands more being installed each year. The drain fields for septic systems require houses to be built on larger lots, exacerbating the effects of suburban sprawl development. To make matters worse, traditional septic systems do not provide effective treatment for nitrogen, the pollutant most pivotal to the health of the Chesapeake Bay.

## **Reduce automobile dependency**

As a result of increasing population and continued sprawl development patterns, vehicle miles traveled are projected to increase by 28 percent between 2005 and 2020. Although new Federal fuel efficiency standards will help, current patterns will result in an increase in greenhouse gas emissions from mobile sources unless we reduce our dependency on automobiles to reach jobs, schools, stores, cafes and groceries.

## **Increase access to transit options**

As population and jobs have become less concentrated, providing transit services to Maryland residents has become increasingly challenging. Nearly three-quarters of all workers in Maryland drive alone to work. And, though transit services are available to many (almost 80 percent of the state's population live within a 10- minute drive of a commuter service such as the Maryland Transit Administration's MARC and commuter bus services), development patterns make it difficult to take transit to non-work destinations, such as shopping and recreation.

## **Concentrate jobs in existing cities and communities**

Maryland's economy continues to be strong, but along with trends in housing, employment locations are becoming increasingly dispersed. This is important because it means that employees can live in far flung suburban or even rural locations and still have reasonable access to jobs. This is important from a land use perspective because the movement of jobs outside the urban core and inner-suburban areas is contributing to sprawl development patterns.

## **Increase housing affordability**

As land is consumed by larger houses, stores, and office parks, the supply of affordable housing and business space shrinks, increasing the cost of living and doing business in Maryland. Many moderate income workers, not to mention lower income workers, cannot afford to live in the communities or even in the counties where they work. In much of Central Maryland, housing and transportation costs are unaffordable when compared against standard benchmarks. For example, the percent of home sales in Maryland that were affordable to the State's teachers declined from 41 to 26 percent between 2002 and 2008.

## **Minimize land consumption outside of existing communities**

Despite state programs to reverse them, sprawling land use trends have continued in Maryland. Programs over the last several decades were designed to protect farms and forests, to limit development along the shoreline of the Chesapeake and its tidal tributaries, and to foster growth generally within the boundaries of existing settlements.

Priority Funding Areas (PFAs) were created in 1997 to encourage development in and around existing towns and cities by concentrating public investment for new infrastructure such as roads and schools in those areas. Despite these efforts, since 1990, 75 percent of statewide acres associated with residential development have been outside of PFAs. PFAs are discussed in greater detail in the next section.

# Priority Funding Areas

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## Priority Funding Areas (PFAs) Defined

PFAs are geographic growth areas defined under State law and designated by local jurisdictions to provide for targeting State investment in infrastructure. The law directs the use of state funding for roads, water and sewer plants, economic development and other growth-related needs to PFAs, recognizing that these investments are the most important tool the State has to influence growth and development.

Priority Funding Areas were established to meet three key goals:

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

## Priority Funding Areas Established by Law

The 1997 Smart Growth Act legislation designated certain areas as Priority Funding Areas. These areas are the traditional core of Maryland's urban development and are areas targeted for economic development. These include:

- Municipalities as of January 1, 1997 (areas annexed after this date must meet additional requirements);
- Baltimore City;
- Areas inside the Baltimore and Washington Beltways;
- Neighborhoods designated for revitalization by the Department of Housing and Community Development ("Designated Neighborhoods");
- Enterprise and Empowerment Zones; and
- Certified Heritage Areas within locally designated growth areas.

## Consistency and PFAs

For the purposes of adopting local zoning ordinances in PFAs, the new consistency definition does not include land uses and densities or intensities within PFAs so as not to interfere with ordinances and regulations that allow for mixed uses and bonus densities beyond those specified in the comprehensive plan.

## Locally-Designated Priority Funding Areas

Local governments play a strong role in determining the location of development. The Smart Growth Act authorizes counties and municipalities to designate areas appropriate for growth as PFAs. Since October

1, 2006, municipalities must follow the same criteria as counties. Locally designated PFAs are evaluated by MDP against criteria in §5-7B-02 and §5-7B-03. Areas eligible for designation include:

Communities within locally designated growth areas prior to January 1, 1997 that:

- Had existing public or community sewer systems; and
- Had an average density of at least 2.0 units per acre in residential areas.

Areas beyond the periphery of an existing community that:

- Are served by public or community sewer systems; and
- Have an average permitted density of at least 3.5 units per acre.

Areas other than communities within locally designated growth areas that:

- Are within a locally designated growth area of the local government;
- Are planned to be served under the approved 10-year water and sewer plan;
- Have an average permitted density of at least 3.5 units per acre in the parts designated by the local government for residential use or development;
- Reflect a long-term policy for promoting an orderly expansion of growth and an efficient use of land and public services;
- Are areas with industrial zoning (areas zoned after January 1, 1997 must be in a locally designated growth area and served by a sewer system);
- Are areas with employment as the principal use which are served by, or planned for, a sewer system (areas zoned after January 1, 1997 must be in a locally designated growth area);
- Are existing communities (as of January 1, 1997) within locally designated growth areas which are served by a sewer or water system and which have an average density of two or more dwelling units per acre; and
- Are rural Villages designated in the Comprehensive Plan as of July 1, 1998.

Areas designated as PFAs must also be based on:

- An analysis of the capacity of land areas available for development, including in-fill and redevelopment; and
- An analysis of the land area needed to satisfy demand for development at densities consistent with the master plan.

In communities with water service but no sewer system and in Rural Villages, State funding is restricted to projects which maintain the character of the community. The projects must not increase the growth capacity of the village or community except for limited peripheral and infill development.

Locally designated PFAs that do not meet all of the State requirements are “PFA Comment Areas”. Because of the demand for State funding of infrastructure exceeds available resources the State has established a process to evaluate funding requests in comment areas.

## State Funding Subject to the PFA Law

### Department of Housing and Community Development (DHCD)

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 the Community Legacy program, the Community Investment Tax Credit, and the Neighborhood Business Works program.

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

### Department of General Services (DGS)

While it has no capital budget itself, the Department of 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 leases of property by the state, and land acquisition.

### Department of Business and Economic Development (DBED)

Programs defined by the Smart Growth Areas Act as “growth related” have all subsequently been renamed and/or consolidated. Currently the programs subject to the law’s restrictions are:

- The Maryland Small Business Development Financing Authority (MSBDFA), which provides financing for small businesses that are not able to qualify for financing from private lending institutions or owned by socially and economically disadvantaged persons.
- The Maryland Economic Development Assistance Authority Fund (MEDAAF), which provides both loans and grants to businesses and local jurisdictions.
- The Economic Development Opportunities Fund (Sunny Day Fund), 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 Priority Funding Areas.
- Maryland Economic Adjustment Fund (MEAF), which assists business entities in the state with modernization of manufacturing operations, the development of commercial applications for technology, and exploring and entering new markets.

### Maryland Department of the Environment (MDE)

The following programs are subject to PFA restrictions:

- The Maryland Water Quality Revolving Loan Fund (MWQRLF), which provides financial assistance to local governments and private citizens for a wide variety of projects to protect or improve the quality of Maryland's rivers, streams, lakes, the Chesapeake Bay and other water resources.
- The Drinking Water Supply Financial Assistance Program, which provides financial assistance to local governments for the acquisition, construction, rehabilitation, and improvement of publicly owned water supply facilities throughout the State.
- The Supplemental Assistance Program, which provides grants to local governments for planning, design, and construction of needed wastewater facilities.
- Maryland Drinking Water Revolving Loan Fund (MDWRLF) which provides financial assistance to local governments and private citizens to protect or improve the quality of community water systems and ensure their compliance with national primary drinking water standards.

### **Maryland Department of Transportation (MDOT)**

For MDOT, “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.” MDOT lists such projects in its Consolidated Transportation Program (CTP) as “Major Projects” and details the PFA status of each project as part of that report.

The modal administrations of MDOT for which major capital projects are subject to PFA restrictions include the State Highway Administration (SHA), the Maryland Transit Administration (MTA), the Maryland Aviation Administration, the Maryland Port Administration, the Motor Vehicle Administration (MVA), The Secretary’s Office (TSO), and payments to the Washington Metro Area Transit Authority (WMATA).

Transportation projects that are explicitly excluded from the Smart Growth Areas Act are: existing Maryland Transportation Authority (MDTA) facilities projects, project planning, initial project planning, and “Minor Capital Projects”, projects for the preservation and rehabilitation of existing facilities or services that do not increase capacity.

It should also be noted that a number of MDOT’s capital projects are not location-specific, meaning that they involve system-wide improvements, such as local transit assistance programs and transit vehicle acquisition by MTA, and facility management system improvements by MVA.

### **Maryland Historical Trust (MHT)**

MHT programs are voluntarily restricted to PFAs. While they are not required to do so by the Smart Growth Areas Act or any other law, the Maryland Historical Trust, a division of the Maryland Department of Planning, voluntarily limits certain programs to Priority Funding Areas in order to further the aims of Smart Growth.

## **Growth Related Projects NOT Subject to the PFA Law**

The Smart Growth Act allows for growth-related projects located outside the Priority Funding Areas to receive state funding if: “it is required to protect public health or safety”; the project involves federal funds and if 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”.

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.”

# Planning Law

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## Legal Authority – Zoning Law

This course element will examine the following topics:

- Sources of land use law in the U.S.
- Legal and constitutional constraints on land regulation
- Basic concepts, tools and procedures in zoning
- State law including variances, ordinances and vesting

## Five Sources of Law in the U.S.

- Constitutions
- Statutes and ordinances
- Case law
- Administrative regulations
- Administrative cases

In land use planning; constitutions, statutes and ordinances and case laws are the most important sources of law.

## Constitutional Enabling Authority for Land Use Regulation and Limitations on Powers

### The U.S. Constitution

- **10<sup>th</sup> Amendment to the U.S. Constitution:** “Powers not delegated to the U.S. by the Constitution or prohibited to it by the States, are reserved by the States respectively, or to the people.” Included in these powers are:
  - Police Power: governmental authority to regulate in order to protect public health, safety, and welfare. Police power is the basis for zoning and other land use regulations. This power is reserved by the States under the 10th Amendment but can be delegated to local governments through their constitution and through statutes. The Maryland General Assembly has delegated the power to plan and zone, to local jurisdictions through Article 66B, Article 25A, and Article 28 of the Annotated Code of Maryland.
  - Eminent Domain: governmental authority to take land for public use, subject to provisions of the 5th and 14th Amendment of the U.S. Constitution (see below), and to provisions of state constitutions.

- **5<sup>th</sup> Amendment to the U.S. Constitution:** “. . . nor shall any person be deprived of . . . property without due process of law; nor shall private property be taken without just compensation.”
  - A continually controversial issue is when a regulation under the police power becomes so onerous to the property owner that it amounts to a “taking” of the property. Even though the property title remains with the owner, the owner believes that regulation deprives him/her of so much value that it is as if the government had taken the property. This is a subject of federal and state court cases and state legislation.
  
- **Due process** consists of substantive due process and procedural due process.
  - Substantive due process: government action must pass a three-fold test: 1) be for a valid police power purpose; 2) have a rational connection between the goals of government action and the means used to achieve those goals; and 3) not be confiscatory (see discussion of “takings”, below.)
  - Procedural due process: Citizens have the right to: notice of pending government action; public hearing, cross examination, creation of a record; a written determination; and appeal. The kind of procedural due process required varies with the nature of the government action. Lesser degrees of procedural due process are required in legislative proceedings such as comprehensive plan creation, comprehensive zoning, and zoning text amendments. Higher degrees of procedural due process are required for actions that are more site specific, such as zoning variances, special exceptions, subdivision and site plan approvals, and permit appeals.
  
- **14<sup>th</sup> Amendment:** “. . . nor shall any State deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” This amendment extends the requirements of the 5<sup>th</sup> Amendment to state governments.
  - The equal protection standard requires that any distinctions or classifications made by regulations between groups or individuals must give similar treatment to persons in similar situations with respect to the purposes of the law. Differing classifications are permitted if they are rational, non-arbitrary, and reasonable in relation to the objectives of the law or regulation. Classifications based on suspect classes (race, national origin, ancestry) or fundamental rights (First Amendment rights, right to vote, right to interstate travel, etc) are subject to strict scrutiny by the court and are unlikely to be upheld. In a zoning context, for example, it is constitutional for a government to place land within its jurisdiction into different zoning categories so that some owners have fewer development options than others, but owners whose properties are in the same zoning category are to be subject to exactly the same regulation.

## State Constitutions

- Example of state constitution language regarding eminent domain. In Maryland's Constitution, Article II, Section 40: Eminent domain – "The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation."
- Each state constitution has a bill of rights that is subject to interpretation by its state courts.

## Statutes (Maryland Examples of Enabling Authority)

- MD Code, Article 25A – enables charter counties to enact local planning and zoning laws.
- MD Code, Article 28 – created Bi-county, Maryland-National Capital Park and Planning Commission for Montgomery and Prince George's Counties to implement planning, zoning and subdivision.
- MD Code, Article 66B – Enables jurisdictions not covered by Article 25A and Article 28 to implement planning, zoning and subdivision.
- Article 66B Covers charter counties, including Montgomery and Prince George's counties, in specific areas such as required and optional elements for comprehensive plans. A section in Article 66B lists all of the sections in that Article that apply to charter counties.
- Other planning-related state legislation relates to required water and sewer planning, smart growth, stormwater management, forest conservation, non-tidal wetlands, tidal wetlands, endangered species, floodplain management, etc.

## Federal and State Court Rulings with Respect to Key Land Use Planning Issues

### Is zoning a Constitutional use of police power?

In the first U.S. Supreme Court test of the constitutionality of zoning, *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), the court ruled that zoning is a valid use of the police power and does not constitute a taking when it is not done in an arbitrary and capricious manner.

### What constitutes legitimate use of eminent domain power?

Eminent domain is usually thought of in terms of government taking private property to build a road or government building (i.e. public use). But in a 1954 U.S. Supreme Court case, *Berman vs. Parker* 348 U.S. 26 (1954) the court established aesthetics and redevelopment as valid public purposes under eminent domain.

- In 1981, the Michigan Supreme Court ruled in *Poletown Neighborhood Council v. City of Detroit* 410 Mich 616 (1981); 304 NC.2d 455 (1981) that the City of Detroit could use eminent domain to condemn hundreds of properties (including 1,300 homes, 140 businesses, 6 churches and a hospital), tear them down and convey the land to General Motors for construction of a Cadillac plant. The court determined that such action was a "public use" for constitutional takings purposes because the company's operations would contribute to the health of the city's economy.
- But in August 2004, the Michigan Supreme Court reversed itself in the case of *Wayne County v. Hathcock*. The case involved the taking of private property for construction of a proposed high

technology park. The court asserted that the Poletown decision was wrong in that seizing private land for private sector economic development violated the state's constitution.

- In June 2005 the U.S. Supreme Court rendered an important ruling in *Kelo v. New London Conn.*, a case in which a group of New London, CT residents challenged that city's use of eminent domain to seize their homes to make way for a hotel-office-retail complex. The property was not blighted, but the city claimed that the land could be put to a much better use, with widely-shared benefits. In a 5-4 decision, the court ruled that economic development was a legitimate public purpose for local government use of eminent domain power.

### **When is a regulation under the police power so onerous that a "regulatory taking" has occurred?**

In *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922), the court ruled that a regulation "that goes too far" will be considered a taking. However, the court did not define what "going too far" meant, leaving lower federal courts and state courts to rely on federal court precedents, to use their own rationales in deciding takings cases until the 1992 Lucas decision (see below).

- In a 1987 U.S. Supreme Court case, *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), the court ruled that the just compensation clause of the 5th Amendment, as applied to the states through the 14th Amendment, entitles a landowner to recover monetary damages (rather than simply an invalidation of the regulation) when a court finds the regulation was a "taking".
- In *Lucas v. the South Carolina Coastal Council*, 112 U.S. 2886 (1992), the U.S. Supreme Court ruled that a taking occurs when a regulation removes all economic value, but that even such a total taking is constitutional if allowed by the state's common law of nuisance.
- In a 2002 case, *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002) the court ruled that a moratorium on development imposed in order to give a local government time to prepare a comprehensive plan, is not a taking per se. This case also established that the question of whether a "taking" has occurred requires looking at the whole tract, not simply a portion of it.

### **When is an exaction or dedication as a condition of permit approval, a taking?**

- In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) the court ruled that there must be a "rational nexus" between the exaction required for permit approval and the legitimate government purpose to be served by the exaction. In this case the court ruled that there was not a rational nexus between the Coastal Commission's requirements for a beachfront easement on the Nollans' property, to achieve the Commission's objective to provide "visual access" to the beach for the public.
- In *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the U.S. Supreme Court ruled that there must a "rough proportionality" in nature and degree between the impacts of a proposed development and the impact-related exactions imposed by government on the landowner as a condition of development approval.

## What is an example of how Maryland courts have interpreted “takings” with regard to the Maryland constitution?

In *City of Annapolis v. Waterman* 357 Md. 484, 745 A.2d 100 (2000), the court established two, two-part takings tests. For regulatory takings, the test is whether the regulation a) is for a valid public purpose; and b) leaves the owner with some viable use of the parcel (as in the *Lucas* case). For exactions the test is whether a) there is an essential nexus (per *Dolan*); and b) rough proportionality (as in *Nollan*).

## Basic Concepts and Tools of Zoning

### Authority for zoning

Prior to zoning, land use control had been limited to common law concepts of nuisance and restrictive covenants (voluntary agreements). New York City was the first big city to introduce city-wide zoning (1916). In 1924 the U.S. Department of Commerce issued a Standard State Zoning Enabling Act, as a template for state governments to use to enable local governments to zone. The U.S. Supreme Court decision in the 1926 *Euclid v. Ambler* case led to the proliferation of local zoning.

### The zoning ordinance

A zoning ordinance consists of text and maps. Traditionally, ordinances relied on “Euclidean zones” that segregated land uses in order to separate incompatible land uses and to protect property values. Current ordinances will often allow some mixing of uses through floating zones, performance zoning, and planned unit developments.

### By right

Uses in a given zone are “by right” and others are conditional (or by special exception). The ordinance also regulates density, building height, and bulk of building on the land.

### Rezoning

A comprehensive re-zoning is a legislative act, while “piecemeal” or individual rezoning is a quasi-judicial or quasi-legislative act.

### Change or Mistake Rule

Piecemeal or individual rezoning (in Euclidean or traditional zones) is governed by a “change-mistake” rule in Maryland. Zoning done on a piecemeal or individual basis can only be changed when there is a mistake in the zone or a change in the character of a neighborhood. The burden of proof is on the applicant. In such cases, Maryland law permits, but does not require the local government to rezone (unless not doing so would be “confiscatory”).

### Special Exceptions

Special exceptions or conditional use is the granting of a specific use that would not be appropriate generally within a given zone. The requested use must be compatible with the existing neighborhood, and must be consistent with or have consistency with the zoning ordinance. (Note: the terms “special exception” and “conditional use” are terms used similarly in Maryland, per *Schultz v. Pritts* (291 Md. 1, 432 A2d. 1319 [1981])). Such uses are part of the comprehensive zoning plan and listed in the text for each zone. Certain conditions and criteria must be met by the applicant. A special exception for a non-

charter counties and municipalities is defined in Article 66B which requires the special exception to be consistent with the local comprehensive plan. For charter counties, special exceptions are generally defined in the charter or an ordinance and the ordinance may or may not require consistency with the local comprehensive plan. Case law has interpreted the standards for granting special exceptions.

### **Variances**

As defined in Article 66B, for non-charter counties and municipalities, variances are modifications of density, bulk or area requirements. These can be requested due to “conditions peculiar to the property” and may not be contrary to the public interest. The “peculiar conditions” cannot be the result of any actions taken by the applicant. They are granted in cases in which literal enforcement would result in either unnecessary hardship or practical difficulty.

Variances in charter counties are generally defined in the charter or an ordinance. Case law has interpreted the standards for granting variances.

### **Hearing Procedure**

Procedural aspects of hearings and decision-making are critical. Procedural due process requirements must be met, including testimony and evidence at hearing. Administrative agencies are not bound by the technical rules of evidence and procedures applicable to judicial proceedings, but decisions must be based on “substantial evidence” presented at hearing.

### **Appeals**

Appeals are allowed from adverse decisions, with appeals procedure established in Article 66B for non-charter counties and municipalities and in local charter or ordinance for charter counties. Doctrine of “exhaustion of administrative remedies” applies when a property owner seeks an appeal in court. The party must have “standing” to appeal, meaning that the “aggrieved” landowner must be affected by the decision in a way different from the general public (see Article 66B, §4.08(a)). Some charter counties, through an ordinance, allow parties, other than those that have standing, to appeal certain decisions. Standard for review is the “fairly debatable” or “clearly erroneous” test - - the court will not set aside the decision unless it is illegal, arbitrary or capricious (*Anne Arundel County v. 2020C West Street*, 656 A.2d 341, 104 Md.app. 320 [1994]).

### **Subdivision**

In non-charter counties and municipalities, authority for subdivision approval is with the planning commission. In charter counties, the person/body responsible for subdivision approval is set by ordinance. Subdivision regulations must conform to relevant provisions of the comprehensive plan.

### **Vesting**

A property owner is permitted to move forward with a development proposal even though a change in the applicable law would currently prevent such development if the development proposal is vested. Cases on vesting in Maryland include: *Pemberton v. Montgomery County*, 275 Md. 363, 340 A.2d (1975) and *Prince George’s County v. Sunrise Development L.P.*, 330 Md. 296, 623 A.2d 1296 (1993). To claim a vested right in Maryland, a property owner must meet a two-part test:

- The property owner must have followed existing procedures and laws or representations of government (generally this means spending money to progress through the development process); and
- The property owner must have made changes on the property that can be discerned as a manifestation of the commencement of work, thereby giving notice to the public. Generally this means that some kind of construction has occurred on the property, such as digging and the pouring of footings.

# Module One: Review Questions

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1. Over the next twenty years (2010 - 2030) it is expected that Maryland will grow by:
  - A. 1 million new residents.
  - B. 400,000 additional households.
  - C. 600,000 new jobs.
  - D. All of the Above.
  
2. Maryland's new (as of 2009) twelve planning visions include which of the following?
  - A. Housing, public participation and economic development.
  - B. Growth Areas, adequate shopping and resource conservation.
  - C. Environmental protection, community design and safe beaches.
  - D. Right to Farm, transportation and planning implementation.
  
3. Eminent Domain is best defined as?
  - A. A land use law that's about to be enforced.
  - B. The government right to taxation.
  - C. Government taking private property to build a road, government building or other valid public purpose.
  - D. When private lands are lost due to flooding or erosion.
  
4. In Maryland for non-charter counties and municipalities, authority for subdivision approval rests with:
  - A. Subdivisions are not approved.
  - B. The planning commission.
  - C. Independent Board of Subdivision Review.
  - D. Zoning Appeals Board.
  
5. The purpose of Euclidian zoning is to:
  - A. Divide a community into equal amounts of land uses.
  - B. Create concentric rings of land uses around the community core.
  - C. Segregate land use in order to separate incompatible land use and protect property values.
  - D. All of the above.

# Module Two: The Comprehensive Plan

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## What is a comprehensive plan?

- Required comprehensive plan elements/ Relationship to the 12 visions
- State, local and citizen roles in the development of a comprehensive plan
- County/municipal planning relationship (i.e. Schools, public safety, transportation, water and sewer planning, etc.)
- Reading maps/PFAs, understanding comment areas
- Municipal Growth Element

# Module Two: The Comprehensive Plan

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## What is a comprehensive plan?

Comprehensive plans, also known as master plans, capture how people want their communities to function and grow. In Maryland, local jurisdictions are required to review and, if necessary, to update their comprehensive plans every six years. The Maryland Department of Planning offers technical assistance for these updates. Local planning commissions must review and, if necessary, reverse or amend their comprehensive plans every six years. Article 66B outlines different elements, or subjects (for example, sensitive areas), that the comprehensive plan must address and gives the planning commission the authority to include elements not required by Article 66B, such as a housing element. Generally speaking, comprehensive plans should incorporate all of the elements that are necessary to provide a thorough assessment of issues and a well-planned course of action.

The Maryland Department of Planning has published two documents on comprehensive plans: *Preparing a Comprehensive Plan* (#13 in the Models & Guidelines Series) and *Revisiting the Comprehensive Plan: the Six Year Review* (#20 in the Models & Guidelines Series)

## Comprehensive Plan Checklist

There are required elements and additional elements that may be added if applicable to a particular jurisdiction. All comprehensive plans must relate to the 12 visions of smart growth, described as follows:

### The Twelve Visions of Smart Growth

1. **Quality of Life and Sustainability:** A high quality of life is achieved through universal stewardship of the land, water and air resulting in sustainable communities and protection of the environment.
2. **Public Participation:** Citizens are active partners in the planning and implementation of community initiatives and are sensitive to their responsibilities in achieving community goals.
3. **Growth Areas:** Growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers.
4. **Community Design:** Compact, mixed-use, walkable design consistent with existing community character and located near available or planned transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archeological resources.
5. **Infrastructure:** Growth areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sustainable manner.

6. **Transportation:** A well-maintained, multimodal transportation system facilitates the safe, convenient, affordable and efficient movement of people, goods and services within and between population and business centers.
7. **Housing:** A range of housing densities, types, and sizes provide residential options for citizens of all ages and incomes.
8. **Economic Development:** Economic development and natural resource-based businesses that promote employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities is encouraged.
9. **Environmental Protection:** Land and water resources, including the Chesapeake Bay and its coastal bays, are carefully managed to restore and maintain healthy air and water, natural systems and living resources.
10. **Resource Conservation:** Waterways, forests, agricultural areas, open space, natural systems and scenic areas are conserved.
11. **Stewardship:** Government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection.
12. **Implementation:** Strategies, policies, programs and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, State and interstate levels to achieve these visions.

## Required Comprehensive Plan Elements for Non-Charter Counties and Municipalities

All comprehensive plan elements must bear a relationship to the 12 visions.

For non-charter counties and municipalities, state agencies review and analyze the required elements of the draft plan for content, accuracy, consistency, and compliance with the stated regulatory requirements of Article 66B. In non-charter counties and municipalities, a local comprehensive plan must have the following elements:

- Statement of Goals, Objectives, Principles, Policies and Standards
- Transportation Plan Element
- Mineral Resources Plan Element (if applicable)
- Water Resources Plan Element
- Sensitive Areas Plan Element
- Land Use Plan Element
- Community Facilities Plan Element
- Areas of Critical State Concern (within the County)
- Municipal Growth Element (only for municipalities)
- Recommendation for Land Development Regulations to Implement the Plan

## **Additional Comprehensive Plan Elements for Non-Charter Counties and Municipalities**

Article 66B allows optional elements to be adopted in comprehensive plans. These optional elements include the following:

- Community Renewal Elements
- Housing Elements
- Flood Control
- Pollution Control
- Conservation
- Fisheries (if located on tidal waters of the State)
- Natural Resources
- Priority Preservation Areas
- General Local and Extent of Public Utilities
- Workforce Housing Plan Element

## **Comprehensive Plan Elements for Charter Counties**

Article 66B requires a local comprehensive plan in charter counties to have the following elements:

- Transportation Plan Element
- Mineral Resources Plan Element (if applicable)
- Water Resources Plan Element
- Sensitive Areas Plan Element
- Land Use Plan Element

## **Additional Comprehensive Plan Elements for Charter Counties**

When developing a comprehensive plan for a charter county, a planning commission may include a priority preservation area element that is developed in accordance with Section 2-518 of the Agriculture Article.

# Developing the Comprehensive Plan

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## How is it prepared?

Comprehensive plan preparation should include citizens, business persons, environmental interests, land owners, farmers, foresters, community groups, and affected governmental agencies. With respect to governmental agencies, participation should be encouraged from adjoining jurisdictions, and officials from relevant State agencies.

State, local, and citizen roles in the development of a comprehensive plan are described as follows:

## The Role of State Government

In drafting a local comprehensive plan, counties and municipalities may seek information and technical assistance from various State agencies to assist with the development of the plan. For example, MDP has developed a Models & Guidelines (M&G's) series to assist local governments and citizens with planning related matters. Among the M&G's relevant to the comprehensive plan processes are

M&G #13, *Preparing a Comprehensive Plan*

<http://planning.maryland.gov/PDF/OurProducts/Publications/ModelsGuidelines/mg13a.pdf>

and M&G #20, *Revisiting the Comprehensive Plan: The Six-Year Review*.

<http://planning.maryland.gov/PDF/OurProducts/Publications/ModelsGuidelines/mg20.pdf>

## Plan submittal

For non-charter counties and municipalities, upon completion of the draft plan, counties and municipalities, via their respective Planning Commissions, are required to submit the draft document to the State Clearinghouse at least 60 days prior to the Planning Commission's scheduled public hearing. Charter counties are encouraged to voluntarily submit their draft documents to the Clearinghouse for review.

The State Clearinghouse, located within MDP, is responsible for the distribution of draft plans to all State agencies for review and comment, to include the Maryland Historical Trust, and the Departments of Transportation, Environment, Natural Resources, Business and Economic Development, Housing and Community Development, and Agriculture.

## Plan Review

MDP is responsible for the consolidation of all State agency review comments and suggested revisions, and to provide these review comments to the jurisdiction for its consideration by the public hearing date. State review comments should be introduced at the public hearing and be made part of the public hearing record.

State agency representatives may also elect to attend the public hearing and provide testimony on the draft plan.

State agencies are available to answer questions about specific State review comments and /or to provide additional information to assist with any revisions to the draft plan.

MDP's website [planning.maryland.gov](http://planning.maryland.gov) contains comprehensive plans on-line which provides a copy of draft and adopted plans for each jurisdiction with State agency comments for public view and reference.

## **The Role of Local Government in preparing the plan**

### **The Planning Commission or Planning Board**

The planning commission or planning board has both formal and informal roles. Formal decision-making and advisory roles, such as preparing the comprehensive plan and implementing the plan through local ordinances, are designated by State and local laws, or through planning commission or planning board by-laws. In addition, the planning commission or board takes on more informal roles such as negotiator, mediator, unofficial advisor, researcher, and coordinator.

For a full explanation, please refer to the Roles and Responsibilities module of this course. But for specifics pertaining to the comprehensive plan, read on.

In non-charter counties and municipalities, a major responsibility and formal role of planning commissions, as outlined in Article 66B, is to prepare a comprehensive plan. Once the planning commission is created, the planning commission has the function and duty to prepare a comprehensive plan for its jurisdiction, and to present this plan to the local legislative body or governing body for its consideration and adoption.

In charter counties, the planning board's role in preparing a comprehensive plan will be outlined in an ordinance.

### **Taking ownership of the plan**

As caretakers of the comprehensive plan, planning commissions/boards are charged with helping a community achieve its full potential, as outlined by the overall vision of the plan. Planning commission/board members accept the civic responsibility of helping residents, businesses, and property owners develop and implement a vision for how the community is to look and function in the future.

The development of a comprehensive plan is not often an easy task. Planning commissions/boards are required to grapple with different viewpoints and, above all, to represent the overall public interest over the long-term. As such, it is appropriate to engage local staff, create advisory groups or task forces, and/or hire outside technical advisors (consultants) to assist in the development of the comprehensive plan.

## **Work sessions**

Planning commissions/boards typically hold open work sessions when developing the comprehensive plan and such sessions are usually in addition to the planning commission regular monthly meeting. These sessions are open to the public, but are generally limited to discussion among planning commission or planning board members, staff and consultants and not for public input. During these work sessions, planning commission or planning board members discuss information that has been gathered, review background studies, evaluate existing conditions, identify key issues, and review the existing plan for necessary revisions.

## **Public input**

At any point in the process, the planning commission/board may elect to identify and solicit input from affected citizens, community leaders, and various community groups and associations. The planning commission/board can also elect to form a citizen's advisory committee to gain public input in the development of an overall community vision.

Although not required, it is recommended that the planning commission board engage the public in the early stages of the plan development process to include opportunities such as public workshops, open forums, community surveys, and public outreach (i.e. community newsletters, flyers, community blogs and email).

## **Taking other plans into account**

It is also strongly recommended that the planning commission make every effort to include neighboring jurisdictions and other levels of government (federal and State) in the plan development process. The plan will be more viable with participation across jurisdictions. Furthermore, coordinated planning can create supportive linkages between local land use policy and other government programs for technical assistance, funding, and regulatory permits.

## **Public Hearing Date**

Once a draft of the comprehensive plan has been prepared, the planning commission/board schedules a public hearing date to obtain community input. The required public hearing must be scheduled beyond the 60-day review period for State Clearinghouse review, as previously mentioned under the Role of State Government section.

## **Comments**

At the planning commission/board public hearing, all comments, including those from the public and local and state officials are considered. Once the public hearing is closed, the planning commission or board may opt to accept additional written comments for a designated period of time.

## **Incorporating comments and making revisions**

Upon completion of the comment period, the planning commission/board decides what, if any, revisions need to be made to the draft document based upon all of the review comments received.

## **Final Draft and Adoption**

A final draft of the comprehensive plan is prepared and, during a regular planning commission meeting, a recommendation for adoption is made to the local legislative or governing body.

## **Consistency**

The Smart and Sustainable Growth Act of 2009 (codified in Article 66B and applicable to all jurisdictions) clarifies “consistency” between the local comprehensive plan and the local zoning ordinances and regulations as actions that further, and are not contrary to, the policies, timing of implementation of the plan, timing of rezoning, timing of development, development patterns, land uses, and densities or intensities. In order to implement the 12 planning visions, the 1992 Economic Growth, Resource Protection, and Planning Act required all jurisdictions to adopt ordinances and regulations (this includes rezoning ordinances), planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are “consistent” with the plan. This new definition applies to special exceptions (for non-charter counties and municipalities only), water and sewer amendments and critical area growth allocations (codified in the critical area law).

In order not to interfere with ordinances that allow planned unit developments in zones and density bonuses, a modified version of the definition of consistency applies. In Priority Funding Areas, “consistency” between the local comprehensive plan and the local zoning ordinances and regulations are actions that further, and are not contrary to, the policies, timing of implementation of the plan, timing of rezoning, timing of development and development patterns. Land uses and densities or intensities are not included in “consistency” in order to provide flexibility in adopting ordinances that encourage mixed use developments and density bonuses,

## **Six Year review**

Article 66B also contains a requirement, for both charter counties and non-charter counties and municipalities, that each jurisdiction review and, if necessary, update its comprehensive plan every six years. Reviewing and updating comprehensive plans is intended to reflect any social, economic and physical changes in communities’ circumstances and goals over time.

## **Board of Appeals**

The Board of Appeals is not typically involved in the development of the comprehensive plan, but rather in the implementation of the plan through regulatory ordinances.

One exception may be a jurisdiction’s decision to appoint a task force or citizen’s advisory committee to assist the planning commission with plan development. Such committees could include the appointment of a Board of Appeals representative(s), which would involve the Board of Appeals, to some extent, in the comprehensive plan development process.

## **The Citizen’s Role**

Although it is not a legal requirement to engage the public in the comprehensive plan process in Maryland, it is in the planning commission’s/board’s best interest to do so because public interest in,

and understanding of, the plan helps to establish public trust and support for the comprehensive plan, and ultimately makes implementation of the plan easier.

At a minimum, public input is helpful to identify problem areas, generate ideas, and build support for development of the comprehensive plan. It is essential for the public to be stakeholders in the process.

The comprehensive plan should be prepared with broad public input and participation, so that all interests are represented, and the participation process should be based on a “vision” for the jurisdiction.

Plan preparation should include citizens, business persons, environmental interests, land owners, farmers and foresters, community groups, and affected governmental agencies.

A number of participation techniques are possible, such as advisory groups, focus groups, open forums, and visioning workshops. Advisory and focus groups, open forums, and workshops help citizens gain a better understanding of the planning process; and help everyone to gain a better understanding of who and what the community is and how residents see the community today and into the future.

Public participation provides an opportunity for consensus building among all interested parties and stakeholders in the development of the comprehensive plan.

It is important that the comprehensive plan be developed through an open and good faith process and including the public in the process of developing the plan will create an “ownership mentality” in the plan and forge community support for implementing its goals and recommendations.

As mentioned earlier, MDPs Models and Guidelines #13, *“Preparing a Comprehensive Plan”* provides information on forming a citizen’s advisory group, selecting its members, and putting the group to work. M&G #13 also provides sample case studies from other Maryland jurisdictions.

# County – Municipal Interjurisdictional Coordination

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The State of Maryland recognizes and encourages counties and municipalities to develop and implement solutions to growth management concerns, to develop plans for land located within their respective jurisdictions and to achieve land use, environmental, transportation, and staging objectives consistent with duly adopted general plans, master plans and the 1992 Economic Development, Resource Protection and Planning Act.

## Why coordinate?

Plans cannot completely achieve their goals and objectives without coordination with surrounding jurisdictions.

Maryland statute defines inter-jurisdictional coordination as “...the act of establishing a regular means of communication among officials of two or more political jurisdictions for the purpose of addressing and resolving issues of mutual interest related to the operations, and the future physical, economic and social development of the jurisdictions.”

In addition, the State further defines the comprehensive planning process as the cornerstone of interjurisdictional coordination through the mutual development of policies, goals, and strategies. The formalization of interjurisdictional coordination can be effected through agreements, committees, and other means.

## Potential coordination issues

The following are examples of potential issues that cooperative agreements between jurisdictions might support:

- A pledge to work cooperatively on planning, regulatory, environmental and infrastructure issues having interjurisdictional implications and solutions. In Maryland, each jurisdiction must notify adjacent jurisdictions of proposed changes in general plans, master plans, regulatory policies, staging, zoning or capital improvement programs having interjurisdictional implications to assure well planned regional development.
- Make use of the notification guidelines that have been developed within Article 66B for reviewing respective land use, regulatory and infrastructure related policies, plans and programs that affect neighboring jurisdictions.
- Repositories could be established within each jurisdiction to allow interested citizens and officials the opportunity to review the plans and proposals of adjacent areas.
- Every effort should be made to develop common approaches to data collection, analysis, and mapping formats (GIS). For example, the Metropolitan Washington Council of Governments and

the Baltimore Metropolitan Council might use common methodology in order to provide statistically relevant reports.

- Regularly scheduled meetings of planning department representatives from each jurisdiction should be held to discuss planning issues of mutual concern and to provide ongoing communication to implement the recommendations for coordinated planning of future growth. Regular meetings can be augmented by less formal, ad hoc meeting of staff to discuss specific issues when deemed necessary.

## **The Comprehensive Plan and water and sewer plans**

The Comprehensive Plan informs future land use decisions. The water and sewer plan implements the land use decisions by directing water and sewer infrastructure to lands designated for development in the comprehensive plan. A water and sewer plan and any amendments to the plan is required to be consistent with the comprehensive plan.

Guided by Maryland State Law and COMAR, each county and Baltimore City is required to prepare, adopt, and annually maintain, a 10-year forecasted Water and Sewer Plan to demonstrate how safe and adequate water and sewerage facilities will be provided to support planned redevelopment and new growth, outlined in adopted Comprehensive land use plans.

The water and sewer plan must be approved by the Maryland Department of the Environment. MDP is mandated to advise the MDE concerning the consistency of these water and sewer plans and plan amendments with local comprehensive plans and other development related policies and programs.

More recently, HB 1141 added significantly to the importance of water resource management and growth related impacts to the efforts of preserving Maryland's waterways and the Chesapeake Bay through the requirement of new Comprehensive plan elements.

## **The Comprehensive Plan and schools**

Through coordination with municipalities, counties provide educational public facilities to school aged children in Maryland based on state-wide measures. Counties implement and maintain mechanisms designed to closely coordinate with the school board in order to provide consistency between the local Comprehensive plan and local Board of Education public school facilities programs.

Consistency between the Comprehensive plan and local school facility master plans support the following:

- Greater efficiency for the School Board and the County by the placement of schools to take advantage of existing and planned roads, water, sewer, parks, and drainage systems;
- Improved student access and safety by coordinating the construction of new and expanded schools with road and sidewalk construction programs;
- The location and design of schools with parks, ball fields, libraries, and other community facilities to take advantage of shared use opportunities; and,
- The expansion or rehabilitation of existing schools so as to support neighborhoods.

## **The Comprehensive Plan and Transportation Planning**

The link between land use planning and transportation planning is inextricable. The integration of transportation and comprehensive land use planning is critical in achieving smarter growth in that such planning can result in increased travel efficiency and convenience of getting to activities, improving returns on infrastructure investment, and reducing automobile-related greenhouse gas emissions.

In coordination with other state, regional, local and federal agencies and engaging with the public, MDP strives to integrate transportation and land use planning that result in a multimodal transportation system that supports Smart Growth opportunities for Maryland communities.

# Reading Maps

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The planning commissioner, planning board member or board of appeals member should be familiar with basic aspects of map reading.

## Basic principles

Knowledge of the basic principles of map reading are necessary to help establish a strong foundation in order to be able to interpret all varieties of map products that may be presented in the course of your tenure.

## Map coordinates

Coordinates help the user establish location on the map. Basic types to learn are latitude and longitude, alpha and numeric.

## Scale

Learn how to read the scale on the map, the different ways it might be displayed, how to measure with the scale, and why maps use different scales.

## Legend

Become familiar with what the legend shows and why. Learn about the north arrow and why no map should be without one.

## Maps that planners use

### Federal

Federal agencies provide a plethora of maps. For example, the U.S. Geological Survey (USGS) provide topographic maps showing cultural features and elevation of the entire U.S. landmass.

The U.S. Census Bureau provides decennial census maps showing boundaries of census tracts and block groups for the entire U.S.

### State

Many state agencies produce mapping products, but the main ones are SHA, DNR and MDP.

The State Highway Administration (SHA) issues base maps that show more detailed cultural information for each political jurisdiction.

The Department of Natural Resources (DNR) produces base maps which show wetlands, rural legacy areas and other physical features for each political jurisdiction.

MDP provides base maps showing planning related information including land use, land cover and census characteristics. MDP also produces maps showing electoral redistricting, historic preservation and archaeological sites, and Priority Funding Areas.

## Local

Local jurisdictions might typically provide comprehensive plan maps and local town plan maps.

## Digital maps and Geographic Information Systems (GIS)

Most entities and organizations involved in developing and maintaining maps have computerized their mapping efforts. As these systems proliferate, the cost of these systems goes down and become more affordable and user friendly for more people to take advantage of all they can offer.

### Advantages

- GIS systems are more cost effective to store maps electronically and prepare paper map products as needed.
- Revisions and corrections can be introduced easily.
- Data sharing between jurisdictions, organizations and other entities can be more easily accommodated.

### Advantages to planners and other end users of these products

- Maps produced at various scales can be combined
- Data from other sources can be utilized, such as satellite imagery and field data collected from global positioning system (GPS) units.
- Maps and mapping software become dynamic tools that assist in the decision making process.

# Municipal Growth Element

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## Purpose of the MGE

The Municipal Growth Element (MGE) is a required element for municipalities of the Comprehensive Plan under Article 66B (per House Bill 1141). The element requires a detailed and quantitative analysis of a municipality's anticipated expansion over the next twenty years based on a capacity analysis of the areas identified for growth. The element helps counties and municipalities to fully consider the capacity of land use, public services and infrastructure, and costs and financing associated with growth before committing resources. The legislation requires coordination between counties and municipalities to attempt to reach consensus on the character, intensity and timing of growth at the local level. The ultimate goal of the legislation is to help direct future growth at the local level in a rational, predictable manner.

## MDP Role and Responsibilities

MDP is responsible for providing technical assistance for the development of the MGE to local municipalities upon request. To aid municipal planners, MDP prepared a Models and Guidelines document, hosted a series of informational workshops, reviewed early drafts of the element, and also provided development capacity analysis and official population projections.

MDP has coordinated mediation services between counties and municipalities to attempt to resolve growth disputes. According to the law, all municipalities were required to adopt MGEs by October 1, 2009, however, MDP is authorized to review and grant requests for up to two 6-month extensions for municipalities showing good cause for extending this time limit.

## What the MGE should contain

For a municipal corporation that exercises zoning authority, the comprehensive plan shall contain a growth element, which shall include consideration of:

- Anticipated future municipal growth areas outside the existing corporate limits of the municipal corporation;
- Past growth patterns of the municipal corporation;
- The capacity of land areas available for development within the municipal corporation, including in-fill and redevelopment;
- The land area needed to satisfy demand for development at densities consistent with the long-term development policy;
- Public services and infrastructure needed to accommodate growth within the proposed municipal growth areas, including those necessary for:

- Public schools, sufficient to accommodate student population consistent with state rated capacity standards established by the interagency committee on school construction;
  - Libraries;
  - Public safety, including emergency medical response;
  - Water and sewerage facilities;
  - Stormwater management systems, sufficient to assure water quality both inside and outside the proposed municipal growth area; and
  - Recreation;
- Anticipated financing mechanisms to support necessary public services and infrastructure;
  - Rural buffers and transition areas;
  - Any burden on services and infrastructure for which the municipal corporation would be responsible for development in areas proximate to and outside the proposed municipal growth area;
  - Protection of sensitive areas, as defined in Article 66B, § 1(j) of the code, that could be impacted by development planned within the proposed municipal growth area;
  - The relationship of the long-term development policy to a vision of the municipal corporation's future character.

# Module Two: Review Questions

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1. The Municipal Growth element (MGE) should do which of the following?
  - A. Provide a detailed and quantitative analysis of a municipalities anticipated annexations over the next twenty years.
  - B. Should be based on a capacity analysis of the areas identified for growth.
  - C. Provide for coordination between municipalities and counties.
  - D. All of the Above
  
2. Resource Conservation is one of the Twelve Visions of Smart Growth. It states the following:
  - A. No net loss of wetlands or forest.
  - B. Undeveloped fields should be preserved.
  - C. Waterways, forests, agricultural areas, open space, natural systems and scenic areas are conserved.
  - D. Beaches and boating areas must be kept clean.
  
3. Which of the following are ways that Planning Commissions can seek public input into comprehensive plans?
  - A. Public workshops and open forums.
  - B. Community surveys.
  - C. Newsletters, flyers and internet.
  - D. All of the Above
  
4. Every six years each jurisdiction must do what with their Comprehensive Plan?
  - A. Hold a special public hearing.
  - B. Take the plan off the shelf and vacuum any dust.
  - C. Review and, if necessary, update the plan.
  - D. Update the title page and the maps.
  
5. The planning commission has as a primary function and duty to:
  - A. To present the comprehensive plan to the local legislative body or governing body for its consideration and adoption.
  - B. To hear appeals regarding building permit denials.
  - C. Prepare an open space plan for its jurisdiction.
  - D. Respond to plans developed by adjacent communities.

# Module Three: Planning 201: Growth Management Tools

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## **Growth Management Tools**

- Adequate public facilities
- Land Preservation, Open Space, and Recreation
- Water and sewer infrastructure and master plans, and water resource elements
- Capital improvement programs
- Developer's rights and responsibilities agreements
- Annexation laws and agreements

# Adequate Public Facilities

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## What are Adequate Public Facilities?

The phrase “adequate public facilities” has an appealing ring to residents, public officials, and developers in many fast-growing suburban areas where schools are chronically overcrowded, long delays occur at congested intersections, not enough ball fields are available for recreational leagues, and water rationing becomes necessary during dry summer months.

## What are APFOs?

Adequate Public Facilities Ordinances (APFOs) are an effort to phase the provision of public facilities consistent with a locally adopted comprehensive plan. An APFO ties development approvals under zoning and subdivision ordinances to specifically defined public facility standards. They are designed to slow the pace of development, or in extreme cases to delay development approvals in an area until adequate service levels are in place or reasonably assured.

## What do they do?

In plain English, an APFO says that if the roads are too congested, if the school classrooms are too crowded, if the water system cannot provide enough water, if the sewer pipes or treatment plant are full, or if there are not enough playing fields for recreational use, then development cannot be approved until the problem is corrected. The application of an APFO must be associated with a funding source to remedy whatever the constraint on development might be.

Almost any county or city will find that its citizens feel that more services and facilities are desirable, and public officials are always pressing against the affordability barrier to meet those needs. An APFO is not the only tool available to local government to tie development approvals to infrastructure. In the context of various means of responding to the problem, APFOs are more structured than specifically enacted development moratoriums, which place a “hold” on new development when serious deficiencies exist.

On the other hand, impact fees, which are often confused with APFOs, provide a means to raise additional funds for capital projects, but do not guarantee that sufficient funds will be available to meet a particular need, and will have no effect on the pace of development.

## Growth Management Tools

Adequate Public Facilities Ordinances can be important growth management tools for rapidly growing counties and municipalities. APFOs are also an important and valuable tool for implementing the 12 Visions that are included in every local comprehensive plan and are established in State law as Maryland’s development policy.

In 2000 the Maryland General Assembly incorporated the goal of adequate public facilities (though not a requirement that local governments adopt an APFO) into the Visions. APFOs are particularly relevant to the Vision which calls for concentrating growth in existing and planned growth centers, areas adjacent to these centers and areas designated as future growth centers. The premise of an APFO is that growth should be directed to suitable areas where facilities are adequate.

There is a particularly strong State interest in this issue, because considerable amounts of State funds are directed to constructing schools, sewer and water facilities, roads and parks. Since the passage of the Smart Growth initiatives in 1997, funding for growth-related projects is prohibited outside of areas identified by local governments as their highest priority areas (Priority Funding Areas) for new growth.

### **Why it should matter?**

In 1999 a subcommittee of the Economic Growth, Resource Protection, and Planning Commission issued a report on meeting public facility needs in growth areas. The introduction to that report stated:

“Costly demands and inefficient growth patterns, combined with public reluctance to increase taxes, severely hamper State and local government’s ability to provide adequate facilities. Governments have responded with efforts to control or tax new growth, hoping both to reduce the growth in infrastructure need and to fund that which already exists.

To do this, many communities have adopted adequate public facility ordinances. These require that sufficient schools, roads and other facilities be available before housing or other development can be built. Many times, however, the areas of a jurisdiction designated for growth are the very areas with existing overcrowding of public facilities, while excess capacity is located in more rural locations.

The overcrowding of public infrastructure acts as a flashpoint for citizen opposition to new and infill development in all areas. When schools, roads and other public facilities serving an area designated to receive new growth are already overcrowded and congested, public reaction to new residential and commercial developments, even those consistent with Smart Growth, is frequently negative.

In the face of well founded public concerns about the ability of over-burdened local infrastructure to absorb additional users, government officials may either attach additional financial costs to a new development or discourage its construction altogether.

If not permitted in a designated growth area, the demand which the new housing or commercial development is intended to meet will be met elsewhere, outside a designated growth area or even outside the State.”

### **Appropriate use of APFOs**

Adequate public facilities efforts become necessary when a local government’s coordination of development and public facility construction results in lack of facilities or improvements timed to coincide with development approvals. Fast-growing suburban jurisdictions, in particular, find themselves suddenly in situations where intersections are congested, school classrooms are overcrowded,

inadequate water supply is available during summer drought periods, or sewer pumping stations are overflowing during peak periods. Adequate public facilities ordinances are frequently put in place as stopgap measures after problems have already manifested, but, when designed and enacted in a timely manner, they can provide a valuable means of ensuring wise and efficient investment in capital facilities.

The premise that adequate public facilities should be available for new growth seems obvious. But the experience in Maryland (as well as other States) has been that implementing an effective, consistent, and fair set of regulations is not as easy as it might seem. For instance:

- Can the standards you adopt for adequacy be justified?
- Would failure to meet those standards cause serious public harm or a threat to public health, safety and welfare?

Remember that adoption of an APFO is an exercise of the police power and must be broadly based on protecting public welfare. The place to decide that your community should grow fast or slow is in the comprehensive plan. The APFO is a tool, along with zoning and subdivision regulations, to implement that plan and it must be accompanied by a mechanism to bring facilities up to an adequate level.

- Does your jurisdiction's growth management program provide a coherent context for an APFO program?
- Do you have a clear idea of what facilities are needed to accommodate planned growth?
- Is there a facilities plan or capital improvement program that indicates a commitment to investing in the needed facilities?
- Can agreement be reached in your community as to what is an adequate level of service for various public facilities?

Standards in an APFO must be applied fairly and be established through a public review process.

- Can your APFO be integrated into a growth management program to provide a consistent result? For instance, roads in rural areas tend to have more capacity for growth because the volume of traffic using them is so much less.

An APFO based on road capacity could have the unintentional effect of pushing growth out of planned growth areas into rural / agricultural areas.

The purpose of an APFO is to assure adequate capacity within growth areas consistent with a comprehensive plan. Standards and measures should be designed to accomplish that purpose.

- Can you provide sufficient staff resources and data to monitor growth trends and facility capacity?

## **Advantages of APFOs**

An APFO can be an important addition to a local government's regulatory tool box that will help to ensure a high quality of public facilities and services. An ordinance can help to maintain the fiscal

integrity of a government by helping to reduce the demands of excessive borrowing to finance new facilities that are demanded by unexpected growth.

Fiscal stability and high bond ratings are important factors to businesses considering new locations. An APFO can be an extremely valuable planning tool when applied in combination with other planning tools, and in the context of a broader, comprehensive growth management program that includes:

- A policy for concentrating growth into designated growth areas;
- A policy for conserving rural areas for agricultural use and natural resource protection;
- A policy for directing resources to revitalize existing communities.

A properly designed program will facilitate economic growth and serve to streamline regulatory mechanisms.

- A coherent APFO in combination with a thorough growth management program will provide clear guidance to developers on when and where development will be allowed, avoiding unexpected delays.
- An APFO must be accompanied by a plan and a commitment to provide the facilities to support growth in a reasonable manner.

An APFO is not a substitute for a coherent growth management policy based upon an adopted comprehensive plan.

- The comprehensive planning process is the appropriate place for a community to regulate the amount of growth it will accommodate over the span of the planning period.

Facility adequacy can be affected by factors other than growth subjected to the APFO.

- Growth outside of the jurisdiction that adopted the APFO can affect the capacity of systems, particularly for roads and schools.
- In water and sewer systems, environmental standards can change and affect capacity.

Nutrient caps and Total Maximum Daily Loads (TMDLs) can affect approvals even though these are not normally expressed as standards in an adopted APFO.

APFO standards can vary from jurisdiction to jurisdiction sometimes drawing growth away from areas in which it is otherwise planned.

- Standards must be written with an understanding of community goals and how they relate to standards in neighboring jurisdictions.
- An APFO should be written to provide local flexibility to deal with issues that arise that are not related to the projects subject to an APFO test.

## Legal Framework of APFOs

Whether considering or rejecting the idea of implementing an APFO, it is important to consider the legal background and framework.

In 1978, the Maryland General Assembly passed Article 66B, §10.01, specifically enabling municipalities and non-charter counties to adopt adequate public facilities ordinances. Even prior to that date, Maryland courts upheld the ability of local jurisdictions to adopt ordinances that condition development approval on a finding that infrastructure exists to sustain a project's anticipated impacts.

In *Malmar Associates v. Prince George's County*, 272 A.2d 6 (1971), the Court of Appeals sustained an ordinance requiring an applicant to show that adequate educational facilities were in place. In the early cases, authority to enact an adequate facilities ordinance was usually implied, based upon the general authority to promote public health, safety and welfare that underlies zoning, planning, and subdivision regulations. In 1992, the scope of §10.01 was expanded to enable all local jurisdictions in Maryland, including charter counties, to enact a variety of growth management tools.

Adequate public facilities ordinances can be either a response to a crisis in existing capacity or the financial overburden on services required for new development, or part of a comprehensive review of the long - range demand for services and facilities. In either situation, the requirements must be reasonably and rationally related to a valid governmental interest.

Approval of development under an APFO can be made contingent on the local government's ability to provide services, or on a developer's agreement to furnish or finance the needed improvements. The standard in Maryland requires that adequate facilities be reasonably probable of fruition in the foreseeable future. (*Montgomery County v. Greater Colesville Citizen's Association*, 70 Md. App. 374, 521 A.2d 770 (1987)) APFOs should set quantifiable levels of service for public facilities and services, since these standards provide a basis for the evaluation of the proposed projects in relation to existing or planned facilities.

Lack of identifiable standards can lead to invalidation of the regulations or conditions as applied, as in the case of *Rosenberg v. Maryland-National Capital Park and Planning Commission*, 269 Md. 520, 307 A.2d 704 (1973). In that case approval of a subdivision had been denied based on inadequate educational facilities. The regulation in question required adequate schools "within a reasonable distance." However, the Court of Appeals found that this standard was so general that the Planning Commission was required to consider the school capacity within a mile and one-half of the proposed development, not just the capacity of the nearest elementary school.

One unresolved legal issue is the ability of a local jurisdiction to disapprove development based upon the inadequacy of facilities outside the control of the local government. One legal treatise suggests that agreements with facility providers may be necessary to ensure consistency with overall community growth objectives. (Rathkopf, *The Law of Planning and Zoning*, §13.06 (4th edition))

## Where are APFOs used in Maryland?<sup>2</sup>

The following list of municipalities and counties with APFOs is provided courtesy of the Maryland Municipal League (MML).

### Counties (13)

- Anne Arundel, Baltimore, Calvert, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Queen Anne's, St. Mary's, Washington

### Municipalities (23)

- Aberdeen, Bel Air, Boonesboro, Brunswick, Cumberland, Frederick, Hagerstown, Hampstead, Indian Head, Keedysville, La Plata, Manchester, Mt. Airy, Ridgely, Rockville, Smithsburg, Sykesville, Taneytown, Thurmont, Union Bridge, Walkersville, Westminster, Williamsport

## APFO Reporting

A new law requires local jurisdictions to submit a report to MDP every two years if an Adequate Public Facility Ordinance (APFO) results in a restriction in a Priority Funding Area (PFA). The first such report will be submitted by July 1, 2010. MDP, subsequently, is required to submit a report by January 1st every two years on the statewide impacts of APFOs.

Local jurisdiction reports on PFAs and APFOs must include information about the location of the restriction; infrastructure affected by the restriction; the proposed resolution of the restriction, if available; estimated date for resolving the restriction, if available; date a restriction was lifted, as applicable; and terms of the resolution that removed the restriction. A local jurisdiction's first report is due July 1, 2010.

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

This has been a brief introduction. For more information on designing the right APFO for your jurisdiction, please refer to MDP Models and Guidelines publication #24 Adequate Public Facilities Ordinances.

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<sup>2</sup> Maryland Municipal League, 2006

# Land Preservation, Open Space and Recreation

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## Why preserve lands?

Smart Growth has two main goals: concentrating development in growth areas, and preserving agricultural and natural resource land. Just as planners have many tools for creating good places, so too they have many tools for preserving agricultural and natural resource land. The reasons for doing so are many:

- Providing food and fiber for the citizens of Maryland;
- Protecting the resource on which resource-based businesses depend;
- Safeguarding our water supply;
- Protecting the habitat of rare, threatened, and endangered species;
- Reducing sediment and polluted runoff into Chesapeake Bay and other state waters;
- Providing recreational opportunities for the citizens of Maryland;
- Creating an environment that attracts residents, businesses, and visitors; and
- Cleaning the air.

As time goes on, the preservation of agricultural and natural resource land becomes important for even more reasons, among them carbon sequestration and the growing interest in safe and humanely raised local food.

## Land Conservation Tools

All of the tools in this primer are used successfully in one or more Maryland counties, and many counties successfully use more than one of the following:

- Restrictive zoning;
- Mandatory clustering (combined with protective zoning);
- County easement programs;
- Revolving funds, Critical Farms;
- Installment purchase agreements;
- Adequate Public Facilities Ordinances;
- Revenue sources;
- Other easement programs and financial incentives; and
- Easement donations, tax benefits.

## Types of Tools

When considering preservation tools, the two main types are land use management tools and easement acquisition tools. Other tools that support preservation are dedicated revenue sources, leveraging tools, and various incentive or assistance programs for preservation.

### Land Use Management Tools

Land use management tools include favorable planning and regulatory processes that protect land and resources; creation of desirable communities inside PFAs and control of development impacts on the working landscape. Examples might include:

- Protective zoning to limit on-site development;
- Subdivision/ development rules to limit the impacts of development in rural areas;
- Transfer of development rights from rural to urban zones; and
- Adequate Public Facilities process –an orderly, efficient process for development where you want it.

Protective zoning is used to limit on-site development (e.g., 1 lot or fewer per 25 acres, or equivalent).

Examples in Maryland include:

- Baltimore County: parcels 2-100 acres receive 2 lots, then 1:50 (County also has a 1:25 environmental zone).
- Calvert: 1:20, with mandatory clustering on maximum 20% of land. (Note: Clustering as a land preservation tool works better when accompanied by protective zoning such as Calvert's.)
- Caroline: Four lots from original parcel as of December 1, 1972.
- Three units per parcel, plus 1:50, plus one for the remainder, from original parcel as of August 18, 1976. Mandatory cluster for lots after the first three.
- Montgomery: 1:25.
- Worcester: A maximum 5 lots out of what was a single parcel of land as of July 25, 1967.
- In Cecil County, the Southern Ag Reserve is zoned 1:20 (the Northern Ag reserve is just 1:10).

Subdivision/development rules can be used to limit the impacts of development in rural areas. Benefits of this include:

- Instead of siting the houses first and leaving open whatever land is left, delineate the most important resource land first and place the houses on what is left.
- Cluster the houses on as little land as possible (though clustering works better when the base zoning allows relatively few houses, say 1 per 25 acres).
- Require new subdivisions to plant buffers of 100+ feet between the new development and the edge of the adjacent farm.

Transfer of Development Rights (TDR) transfer of development rights from rural to urban zones have been successful not only in Maryland, but in other states as well.

- A Transfer of Development Rights (TDR) program is a procedure, prescribed by local ordinance, whereby the owner of a parcel in a “sending area”—i.e., rural or environmentally sensitive land that is planned for preservation—may convey development rights to the owner of a parcel in a “receiving” district—i.e., where development is desired and planned for—so that the development rights are extinguished on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing.
- TDR programs are very useful because they preserve land using private rather than public funds. However, one drawback of a TDR program is that landowners do not always want to sell their development rights at a price developers are willing to pay...and vice-versa.
- A good report that summarizes and evaluates many TDR programs in Maryland was written by H. Grant Dehart and Rob Etgen. Report: The Feasibility of Successful TDR Programs for Maryland’s Eastern Shore. The Maryland Center for Agro-Ecology, Inc.: January 2007. It can be downloaded from:  
<http://www.agroecol.umd.edu/files/Dehart%20Full%20Report%20HRHCAE%20Pub-2007-01.pdf>. Pages 11 through 15 can be used for a checklist by jurisdictions creating or evaluating a local TDR program.

Adequate Public Facilities Ordinance (APFO)—an orderly, efficient process for putting development where you want it:

- An APFO is a growth management tool that attempts to link the timing of a new development to the availability of facilities needed to service it.
- The APFO is designed to provide an orderly allocation of public resources and an orderly development pattern in growth areas, in fulfillment of the County’s comprehensive plan.
- An APFO is NOT a tool to limit development in rural areas.

There are questions to consider when creating an APFO:

- Can you decide what facilities need to be upgraded to accommodate development? Most APFOs in Maryland include road capacity, schools, water supply, and sewer service. Other facilities and services that are sometimes considered include parks and recreation facilities, fire and police protection, and emergency medical services.
- What is an adequate level of service for the various public facilities? A lack of quantifiable, identifiable standards can lead to invalidation of the APFO.
- Would failure to meet the standards pose a threat to public health, safety, and welfare? Remember: adoption of an APFO is an exercise of the police power and must be broadly based on protecting public health, safety, and welfare.
- Does the County have a capital improvements plan or program that indicates a commitment to investing in the needed facilities?

- What is the maximum time period, if any, of the denial period for new development that fails to meet the APFO test?

## Easement Acquisition Tools

State, county, and Federal funds can be used to purchase permanent preservation (also called conservation) easements. Permanent preservation protects working landscapes from zoning and government policy by placing restrictions and requirements in land records that are in effect in perpetuity.

### Types of conservation easements

- Purchase of development rights (PDRs): State (MALPF/ Rural Legacy), County, Federal programs;
- Federal CREP (Conservation Reserve Enhancement Program) easements for sensitive areas;
- Local land trusts;
- National/ regional conservation organizations;
- Local clustering regulations—combined with protective zoning—that permanently preserve the open space remaining from the subdivision process;
- Transfer of development rights (TDRs); and
- Easement donations to MET (Maryland Environmental Trust) and land trusts.

## Revenue/ Leveraging Tools

These tools utilize public and private dollars to fund easement acquisition and the administration of easement and related land use management programs. These include real estate and agricultural land transfer taxes, capital revenue sources, bond funds, impact fees and impact and excise taxes.

Installment purchase agreements require less up-front funding than traditional easement purchases, while TDRs use private rather than public funds to buy easements.

Revolving [loan] funds are another option. The county loans money to a land trust to buy land for preservation. The land trust later reimburses the County, perhaps after selling the land with preservation easements attached. Then the county again has funds to lend for another preservation transaction.

## Other Incentive/ Assistance Programs

Other incentives can encourage rural landowners to preserve their land by stressing the variety of benefits, help them practice good stewardship and facilitate the critical mass of agricultural land that is necessary to facilitate rural business economies. These may include:

- Property tax credits for preservation;
- Income tax credits for easement donation and for easement sales below full easement value;
- Tax-free interest earned from Installment Purchase Agreements (IPAs) ;
- Wetland Reserve Program;
- Wildlife Habitat Incentives Program; and
- Financial, production, distribution, & marketing programs.

# Water and Sewer Infrastructure and Master Plans, and Water Resources Elements

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## The County Water and Sewer Plan

The county water and sewer plan is an implementing tool of the comprehensive plan. It identifies areas to be served with public sewer and water, including those areas where the highest density of growth is planned, (i.e., municipalities) and those areas of the county where commercial, industrial and PFA residential density exist or is planned.

Water and Sewer Plans are required by state law to be kept current every 3 years and amended as needed between the 3 year updates. State law also provides direction on the type of information to be included in such plans to be used as a basis for the county to make informed decisions about growth.

This information can be found at the following link:

<http://www.michie.com/maryland/lpExt.dll?f=templates&eMail=Y&fn=main-h.htm&cp=mdcode/e046/ed6f/f0d0>

The County water and sewer plan serves as the consolidated infrastructure planning document for all municipal subsidiary plans and the County at large, for at least the next 10 years, with a broader 20 year projected need, in a manner which:

- Protects Public Health and Water Quality;
- Ensures Sustainable Water Supply and Wastewater Management Capacities;
- Supports/implements Local Comprehensive Plans; and
- Provides systems information for monitoring surface water qualities to meet TMDLs for the State's waters and Chesapeake Bay.

## Incorporating Smart Growth Goals

Water and sewer plans incorporate smart growth by giving the highest priority to maintaining and improving systems in existing service areas. In this way, use of existing infrastructure is maximized. The plans also place an emphasis on coordinating growth areas of municipalities and surrounding or adjacent counties, focusing on serving areas that are within PFAs, and those areas planned for future growth by establishing service areas and expansions of water and sewer systems that are based upon:

- Local comprehensive plans;
- Realistic population projections derived from demographic analysis;
- An orderly infill and contiguous development pattern;

- Documented need for residential densities of 2 units/acre or greater and averaging 3.5 units/acre that are in line with the population projections; and
- Sufficient land to accommodate employment and commerce centers.

Understanding the relationship between the goals of the local land use plan and the influences that centralized water and sewer offer to the development of any area is paramount to determining consistency between all of the planning documents.

## **Functions of the Water and Sewer Plan**

The County Water and Sewer Plan incorporates subsidiary water and sewer plans (i.e. municipalities), sanitary districts, and private entities, as well as any multi-county plans of which it may be a part. Incorporating these various elements helps coordinate the regulatory functions of the plan and bring it into in accord with applicable State and County permitting practices.

Water and Sewer plans provide a legal and policy basis for the issuance of permits to create, operate, or expand water supply or wastewater handling facilities that otherwise may not be obtainable from the permitting agency, be it local, County, or State. This same legal and policy function applies to land development practices and approvals, including subdivisions, rezoning and in some cases site development plans.

Other important elements of water and sewer plans are the financial statements of operations and capital improvement projects and tables. These elements of the plan are used to identify projects and costs necessary for maintaining fiscally sustainable systems that support the use of State funding in priority funding areas.

Water and sewer plans are sometimes amended to add new areas of service or indicate upgrades and expansions to water supply or wastewater treatment facilities. These changes are reviewed by MDP and MDE for consistency with State laws and with local comprehensive plans. Changes that serve existing or planned population and employment centers identified in local comprehensive plans are looked upon more favorably than proposed extensions of service areas that would provide infrastructure to outlying and less densely developed areas.

## **Water Resources Elements**

With the more recent legislation for Counties and municipalities to include a Water Resources Element in their comprehensive plans, local, County and regional planning efforts are even more focused on ensuring a sustainable growth pattern based on available water supplies. New water resource element requirements also include consideration of nutrient impacts from wastewater generated, both from the existing development and potential land use changes.

Per House Bill 1141, Article 66B was amended to require that a new Water Resource Element be included in all comprehensive plans adopted on or before October 1, 2009. The element requires a technical analysis by Towns and Counties of potable and wastewater resources, constraints, capacity

and the impact of future growth on water resources. The element helps counties and municipalities to fully integrate future land use planning with source water protection and the needed future water infrastructure improvements. The element helps protect state land and water resources, public health, safety and welfare, and advances local Smart Growth. The ultimate goal of the legislation is to use the integration of land use and water resource planning to protect future resource availability.

### **MDP/MDE Role and Responsibilities**

Both MDP and MDE share responsibility for providing technical assistance for the development of the WRE to local counties and municipalities. To aid municipal planners, MDP prepared a Models and Guidelines document and reviewed early drafts of the element. MDE has provided water data modeling and support for counties and municipalities. MDE and MDP have together coordinated technical training sessions. According to the law, all municipalities were required to adopt WREs by October 1, 2009, however MDP is authorized to review and grant requests for up to two 6-month extensions for municipalities showing good cause for extending this time limit.

### **WRE Impacts**

An assessment of the WRE requirement to date has resulted in:

- Greater consideration of existing and future water resources in land use planning;
- Documentation of constraints to existing and future water and sewer infrastructure; and
- Re-enforced good Smart Growth principles such as considering environmental protection for land and water resources, encouraging resource conservation, and supporting good community design.

The assessment has identified issues with some WREs including:

- “Drop-in” WREs which may or may not be consistent with other required elements of the local Comprehensive Plans;
- A lack of available water resource data at suitable scales for local planning; and
- Inconsistent or lack of TMDL development to guide identification of suitable source water.

The assessment has highlighted some next steps including:

- Updating local zoning and subdivision ordinances to be consistent with the WRE;
- Incorporating the WRE into the overall comprehensive plan for each municipality; and
- Ensuring that future changes and growth are incorporated into the WRE to maintain consistency.

# Capital Improvement Programs

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The details of capital improvement programs (CIP) will differ from jurisdiction to jurisdiction. This section will describe some of the common elements of CIPs and the CIP process that will be useful to most jurisdictions in Maryland.

## What is a capital improvement program?

A capital improvement program is a blueprint for planning a community's capital expenditures and is one of the most important responsibilities of local government officials. It coordinates community planning, financial capacity and physical development.

Capital improvement programs are composed of two parts -- **a capital budget** and **a capital program**. The capital budget is the upcoming year's spending plan for capital items (generally consisting of tangible assets or projects that have a useful life of at least five years). The capital program is a plan for capital expenditures that typically extends five or six years beyond the capital budget.

Development of a CIP that will insure sound fiscal and capital planning requires effective leadership and the involvement and cooperation of all municipal departments. A complete, properly developed CIP has the following benefits:

- Facilitates coordination between capital needs and the operating budgets;
- Enhances the community's credit rating, control of its tax rate, and avoids sudden changes in its debt service requirements;
- Identifies the most economical means of financing capital projects;
- Increases opportunities for obtaining federal and state aid;
- Relates public facilities to other public and private development and redevelopment policies and plans;
- Focuses attention on community objectives and fiscal capacity;
- Keeps the public informed about future needs and projects;
- Coordinates the activities of neighboring and overlapping units of local government to reduce duplication; and
- Encourages careful project planning and design to avoid costly mistakes and help a community reach desired goals.

## Legal Basis

In charter counties, established procedures for the preparation of the jurisdiction's budget and other fiscal matters specific to a capital improvement program may be found in the Charter. For municipalities and commission and code counties, while there is not specific language pertinent to CIPs in Article 23A, Article 25 or Article 25B, there is authority to build roads, buildings and other infrastructure, and a means by which to finance it.

## Sources of Funds

County funding might include, but is not limited to, the following sources:

**General Funds:** These funds are derived from tax revenues and are included in both the current expense budget and the capital budget.

**Reallocated General Funds:** These are General Funds reallocated from one project to another due to schedule changes, changes in priorities, or projects coming in under budget.

**General Obligation Bonds:** Bonds are borrowed funds. "General Obligation" means that the redemption of bonds and payment of interest is guaranteed by the full faith and credit and unlimited taxing power of the County. Before these bonds may be issued, they must be approved at a referendum held in each election year, approved by the County Council as a funding source in the budget year and further approved at the time of actual issuance by a bond ordinance. Bonds are the primary source of capital financing.

## Outside Funding Sources

**CDBG (Community Development Block Grants):** Federal legislation enacted in 1974 combines six previous grant programs (urban renewal, model cities, neighborhood facilities, open space, historical preservation, and water and sewer) into a single block grant. The block grant can be used at the discretion of the local government for broad community development programs, with priorities and funding levels established by the local governments.

**POS (Program Open Space):** These funds are used to support open space and recreation opportunities and come from the State of Maryland through the collection of the State Transfer Tax on real property.

**State Waterway Improvement Fund:** Funds provided by Department of Natural Resources for improvements related to storm water and waterways.

**State Aid:** State funds to assist the county in the financing of various capital projects.

**Developer's Responsibility:** Developer contributions that are applied to projects that provide facilities in approved developments. These contributions represent the developer's portion of the cost of the project.

**Petitioner's Responsibility:** This fund consists of the contributions made by the petitioner who requests a project be done by the county.

**County Agricultural Preservation Tax:** If applicable, the county's shares of the state agricultural transfer tax that is assessed on an agriculturally used property when the use is changed to non-agricultural.

**Local Open Space Waiver Fees:** Fees paid by developers to the county during the development process when the amount of required open space is less than 1/2 an acre and not adjacent to existing parkland.

**Other:** There are various other outside funding sources which may become available from time to time. When amounts are material, identifiable, and predictable, they will be cited as sources of funding in the capital budget.

## CIP Process

### Inventory of Existing Facilities

A CIP may include a complete inventory of all local capital assets. At a minimum, the inventory should include all buildings and equipment. It is desirable for the inventory to include utilities, roads and sewers as well. The inventory should include documentation on the need for renewal, replacement, expansion or retirement of all physical assets. The inventory should also include information on the year the facility was built or acquired, the date of last improvement, its condition, the extent of use, and the scheduled date for rebuilding or expansion.

### Analysis of Previously Approved Projects

A CIP usually indicates which projects are underway, so as to be able to determine whether additional funds are required, and to determine the amount of unspent funds available from completed and discontinued projects. The benefit of this update is that officials involved in the budget process will be kept informed of the progress of projects approved in prior years.

The results of this analysis should be reduced to a written report which should be included with presentation of the capital budget and program. This financial analysis will permit the scheduling of funding sources to:

- Keep the tax rate stable;
- Balance debt service and operating expenditures;
- Determine available debt capacity and acceptable debt service levels; and
- Maximize intergovernmental aid for capital expenditures.

### Solicit, compile and evaluate project requests

Some jurisdictions establish a CIP committee to review annual funding requests for current and new projects. The CIP Committee solicits departmental recommendations for CIP projects. Each department submits requests which include a clear statement of the need and justification for the project, its costs, its net effect on the operating budget, and an implementation schedule. The Committee then evaluates each request by reviewing the project information provided and meeting with the requesting department head or planning commission/planning board member, if necessary.

### Capital Project Evaluation Criteria

In evaluating the merit of a capital project request, the following questions should be asked:

- Does this project fit within the guidelines of the comprehensive plan and its amendments?
- Does this project fit within the guidelines of the State's Smart Growth initiative?
- Is this project necessary to continue or improve public safety and the health of the jurisdiction's residents?
- Will the impacted community be supportive of this project?
- Does this project serve to protect or enhance the environment?
- Is the timing for this project appropriate?

- Will this project help to leverage non-County funds, thus increasing the efficiency of local government services?
- Is this project necessary to comply with federal and State mandates?
- Does this project enhance or strengthen communities and neighborhoods?
- Does this project serve to repair or replace an existing deteriorated facility?
- Is this project part of a systematic replacement strategy that will provide a long-term upgrade of public facilities?
- Will this project improve the operating efficiency of a jurisdictional agency, perhaps by reducing future operating budgets?
- Is this project coordinated in its scheduling with other related capital projects?
- Does this project support or strengthen the jurisdiction's economy?

Based on its review, the Committee summarizes its findings in preparation for establishing project priorities.

### **Establish Project Priority**

Proposed projects should be ranked in priority order as objectively as possible. This is perhaps the most difficult aspect of the Committee's duties, so it would be extremely useful to have a set of adopted debt policies available. In addition to adopted policies, a rating sheet also encourages objectivity and can assist the Committee in the development of numerical ranking of projects and help in the setting of project priorities.

Whether or not a rating sheet is used, the CIP Committee should review each project utilizing a consistent set of criteria. The Committee should evaluate each project in relation to other projects and determine their relative importance. This will permit the Committee to establish project priorities based on both the community's goals and objective analysis.

### **CIP Approval process**

Once projects have been identified and priorities established for a CIP, the Committee (or other applicable review/recommendation mechanism) makes its recommendations to the Planning Commission/Board and/or governing body. The CIP is usually considered as part of an overall budget package by the governing body, including the jurisdiction's operating budget. Ultimately, decisions on CIP projects are based on these identified priorities as well as resources available to fund the projects.

### **Monitoring approved projects**

Once project implementation begins, procedures should be in place to monitor the efforts of the departments. Periodic reports should indicate changes in the targeted completion dates, identify serious problems, and document the financial status of each project. Those reports may be based on project updates provided by the responsible departments on a quarterly or other regular basis. These updates should provide the information necessary to determine the status of approved projects, and will help in the ongoing annual preparation of the CIP.

# Development Rights and Responsibilities Agreements

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## What are DRRAs?

Development rights and responsibilities agreements (DRRA's)<sup>3</sup> are agreements between a local government and a developer under which site specific conditions may be imposed with the right to develop in compliance with the DRRA being vested for a certain period of time. DRRA's attempt to accommodate a developer's desire for certainty and stability in land use regulation relating to a project with the authority of a local government to revise its land use regulations in the public interest.

Under Maryland law, a developer's ability to pursue development of a proposed use of a landowner's property is generally subject to future changes in local land use laws unless the landowner has commenced visible work on the land under a validly-issued building permit and intends to continue that construction to completion.

In the past decade or so, concern arose that developers of long term projects were sometimes disadvantaged in that local government could change its land use regulations in the midst of such a project to the detriment of the developer.

In 1995, the Maryland Legislature passed a bill authorizing local governing bodies to pass ordinances creating procedures for the adoption of development rights and responsibilities agreements (Article 66B, §13.01). The statute defines a DRRA as an agreement made between a governmental body of a jurisdiction and a person having a legal or equitable interest in real property for the purpose of establishing conditions under which the development may proceed for a specified time.

## What else does the DRRA's statute do?

The statute sets forth the basic aspects of such an agreement. A DRRA is to be recorded in the land records and contain detailed information concerning the property, the regulations governing the property, and the persons with interests in the property. It can include provisions for dedication of a portion of the property for public use, preservation and restoration of historic structures, and other matters. The DRRA can also fix a time frame and conditions for the development of the property.

A key element of a DRRA is that the laws and regulations concerning the use of the property, and the density and intensity of development in effect at the time of execution of the agreement ordinarily remain in effect. That is, the property is not subject to subsequent changes in planning and zoning

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<sup>3</sup> Also known as Developer's Rights and Responsibilities Agreements in some jurisdictions

unless the local jurisdiction determines that compliance with later-enacted laws is essential to ensure the health, safety, and welfare of its residents.

The statute further authorizes a local governing body to designate a “public principal” to execute a DRRRA on behalf of the jurisdiction. State law also requires that the local DRRRA ordinance contain certain basic procedures. For example, to commence the process for the adoption of the DRRRA, a person with a legal or equitable interest in the property must file a petition with the public principal and a public hearing must then be held.

It is important to note the voluntary nature of DRRRA’s, as outlined in Article 66B, §13.01(b), (c), and (m), where the statute contemplates that the developer initiates the process leading to a DRRRA, that the public principal “may” execute a DRRRA, and that DRRRA’s exist only when a local government and developer have come to terms. A petition shall be entirely voluntary on the part of the petitioner and shall not be required by the jurisdiction as a condition of any land use classification, designation, permit, or approval.

It is also important to note that the public principal may not enter into a DRRRA unless the planning commission of the local jurisdiction determines whether the proposed DRRRA is consistent with the comprehensive plan of the local jurisdiction.

### **Can DRRAs be amended?**

Similarly, a DRRRA may only be amended upon a determination of the planning commission that an amendment is consistent with the local land use plan.

### **When do they expire?**

DRRRA’s last for five years, unless the parties specify otherwise. A DRRRA may be terminated earlier by mutual agreement. In addition, the public principal or local governing body may suspend or terminate a DRRRA if, after a public hearing, it determines that the public health, safety, or welfare requires suspension or termination.

# Annexation laws and agreements

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## What is Municipal Annexation?

Municipal annexation is the process of legally including an unincorporated area that is outside the municipality within the corporate limits of a city or town. For many cities and towns in Maryland, annexation of surrounding areas plays an important role in the economic growth, environmental protection, quality of life, and municipal fiscal well-being of their communities.

## Legal Basis

The authority to annex land in Maryland comes from Article 23A, Section 19 of the Annotated Code of Maryland. This is the primary source of Maryland law concerning annexation. Section 9 of Article 23A addresses changes in zoning classifications of newly annexed land.

## What are the advantages of annexation?

- To extend municipal services to communities that are adjacent to existing city/town corporate limits and that may not have such services.
- To expand the size, population base, property tax assessable base, and—in some cases—the political influence of a city or town.
- To ensure local input into and control over future development around the periphery of existing municipal corporate boundaries and to facilitate implementation of the Maryland Growth Management Act which focuses future growth in and around existing urban centers.
- Through legal agreements with developers, to exact concessions that will meet adequate public facility requirements and provide added amenities (for example: roads, parks, affordable housing) that are beneficial to the community.
- To support economic and community development goals by negotiating annexation agreements to attract business, industry and housing development.
- To unify currently incorporated and fringe unincorporated areas that share common sociological, economic, cultural, and geographic characteristics.
- To provide residents of areas adjacent to cities and towns a direct role in local community affairs through access to municipal election voting rights and the opportunity to serve in municipal elected and appointed offices.
- To achieve logical city/town growth and boundaries.

## What are the possible drawbacks to annexation?

- The city or town may lack adequate financial, personnel or infrastructure resources to extend public services to the area to be annexed.

- Annexation of an area may prove to be a fiscal drain on the city or town where potential revenues to be raised from the area to be annexed do not meet the costs of providing municipal services to the area.
- Residents in a potential area to be annexed may wish to maintain a separate community identity rather than having their identity subsumed within that of the existing city or town.
- Residents in an area to be annexed may consider municipal government to be unneeded, undesirable, or duplicative and may not wish to pay added taxes or fees to pay for the costs of municipal public services.
- There are difficulties set forth in law in achieving a successful annexation, including the ability of the county to veto for five years significant changes in zoning classifications in an area to be annexed and the ability of various parties to petition an annexation to referendum where it can be potentially voted down.

## **Annexation Zoning - The Five-Year Rule**

Cities and towns exercising planning and zoning powers under Article 66B have exclusive authority over planning and zoning in newly annexed areas. However, Article 23A, Section 9 of the Code provides that no city or town may for five years following an annexation allow development of property within an annexed area if the development would be substantially different than the use authorized under county zoning at the time of the annexation.

Also, for five years following an annexation, development density of newly annexed property may not be greater than 50% higher than would have been permitted under county zoning at the time of annexation. A county governing body may waive this requirement if its members so desire.

As a practical matter, the impact of this provision of law is to give county governments a major role in municipal annexations where substantial changes in land use are anticipated. Development projects dependent upon annexation and annexations themselves can not only be delayed, but derailed by action (or inaction) of the county to withhold approval of land use changes in some circumstances. It is recommended therefore that municipal and county planners and their respective elected officials work together early in the annexation process to negotiate these issues when the possibility of such changes is under consideration.

## **Annexation Procedures**

### **Minimum Prerequisites**

In order to be annexed into an existing municipality, an area must be contiguous and adjoining to the existing municipal corporate area and may not be located within another incorporated municipality.

Also, annexation of the area may not create an enclave of unincorporated area that would be completely surrounded on all sides by land within the municipality upon completion of the annexation.

## **Annexation Petition/Consent**

An annexation petition signed by at least 25% of the qualified voters along with the owners of 25% of total assessed property in the area to be annexed may be filed with the municipal legislative body. Alternatively, the legislative body may initiate an annexation by obtaining the consent of a like percentage of qualified voters and property owners.

## **Annexation Resolution**

Upon verification that the annexation petition signatures meet the requirements of law and that all other prerequisites of the law have been met, the elected body should promptly introduce a resolution proposing the annexation. Similarly the elected body may initiate the resolution upon receipt of the consent of the required percentage of voters and property owners. The resolution should describe the area to be annexed together with any conditions or circumstances applicable to the proposed annexation.

## **Annexation Plan**

A municipal governing body must prepare, adopt and make available to the public a plan detailing the following:

- The proposed land use or uses in the area to be annexed;
- Available land that could be used for anticipated public facilities that may be needed ;
- A schedule for extending municipal services to the area to be annexed, and
- Anticipated means of financing the extension of services.

The plan must be provided to the county in which the municipality is located as well as to the Maryland Department of Planning and any regional and state planning agencies having jurisdiction within the county at least 30 days prior to holding the public hearing required by law for an annexation.

## **HB 1141 Provisions**

As referred to earlier in this course, House Bill 1141 and the requirement for inclusion of a Municipal Growth Element in local comprehensive plans has a significant effect on the required level of detail of an annexation plan for most cities and towns. The element requires a detailed and quantitative analysis of a municipality's anticipated expansion over the next twenty years based on a capacity analysis of the areas identified for growth, including those areas anticipated for annexation. The element helps counties and municipalities to fully consider the capacity of land use, public services and infrastructure, costs and financing associated with growth before committing resources. The legislation requires coordination between counties and municipalities to attempt to reach consensus on the character, intensity and timing of growth at the local level. The ultimate goal of the legislation is to help direct future growth at the local level in a rational, predictable manner.

## Other steps in the annexation process

After introduction of the resolution, a municipality must publish in one or more newspapers of general circulation a notice of the proposed annexation, and a place and time of public hearing. After conducting the required hearing, the municipal elected body may pass (or reject) the resolution which becomes effective 45 days after its passage unless it is petitioned to referendum.

Any of three groups may petition the annexation resolution to referendum. At least 20% of the registered voters in the existing municipality or in the area to be annexed may petition the resolution to referendum. Alternatively, a minimum of two-thirds of the county governing board may call for a referendum on the annexation question. The annexation referendum may be held from 15 to 90 days following newspaper publication. Should the referendum pass, the annexation will become effective.

## Registration of Resolution and Boundaries

Regardless of whether or not the annexation is brought to referendum, the annexation resolution and the new municipal boundaries of the municipality must be promptly sent to:

- The county clerk of courts in the county in which the annexation occurred;
- The Maryland Department of Legislative Services; and
- The Maryland-National Capital Park and Planning Commission, if applicable.

## Annexation Agreements

An annexation agreement is a contract typically made between a city or town and the owner or owners of land or private developers of land in an area to be annexed. An agreement is used to overcome obstacles to potential annexations by exacting concessions from one or more of the parties involved prior to consenting to annexation. It normally sets out the terms and conditions under which an annexation is to occur as well as any special obligations of the parties relating to a proposed annexation.

Provisions included in annexation agreements frequently address the following:

- The intent of the parties to enter into a contract;
- On-site and off-site public improvements to be provided by the developer of land in the area to be annexed;
- Financial terms such as temporary or phased municipal property tax abatements or service fee reductions;
- Timetables for the extension and provision of public utilities and other services;
- Land use stipulations (Note however that "contract zoning" or offering to guarantee a specified zoning classification as a precondition for annexation is prohibited in Maryland.) ;
- Construction and environmental protection requirements;
- Agreement enforcement provisions; and
- Conditions for terminating the agreement under specified circumstances.

Given the legal complexities involved, it is strongly recommended that professional legal counsel be employed throughout the process of negotiating, drafting, and carrying out the provisions of any annexation agreement.

*--Source: Maryland Municipal League Annexation Handbook.*

# Module Three: Review Questions

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1. Which of the following is not land conservation tool?
  - A. Mandatory clustering (combined with protective zoning).
  - B. Right to farm laws.
  - C. Restrictive zoning.
  - D. Installment purchase agreements.
  
2. According to state law, the county water and sewer plan should be kept current every:
  - A. Year.
  - B. 6 years, just like the comprehensive master plan.
  - C. 3 years.
  - D. Whenever the county sees the need.
  
3. Sources of funds for capital improvement funds can include which of the following:
  - A. General funds.
  - B. General obligation funds.
  - C. Block grant (CDBG) funds.
  - D. All of the Above.
  
4. Unless the original agreement is amended or extended by the local approving body, how long do Development rights and responsibilities agreements last?
  - A. Sorry, after all that work they only last two years.
  - B. Five years.
  - C. Ten to twenty years.
  - D. Forever.
  
5. Provisions included in annexation agreements typically do not address the following:
  - A. Timetables for the extension and provision of public utilities and other services.
  - B. The name for the new subdivision and streets.
  - C. Construction and environmental protection requirements.
  - D. On-site and off-site public improvements to be provided by the developer of land in the area to be annexed.

# Module Four: Planning 201: Environment, Green Development, Housing and Transportation

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## **Environment, Green Development, Housing and Transportation**

- Environmental laws and regulations
- Critical Area law, storm water management regulations
- Green Development, Sustainability and Preservation
- Housing issues
- Transportation and land use issues

# Critical Areas, Stormwater Management & Forest Conservation

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## Critical Area Law

The following information is excerpted from BaySmart: A Citizen's Guide to Maryland's Critical Area Program, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, December 2008. To download the publication, go to: <http://www.dnr.state.md.us/criticalarea/>

## Purpose

The Critical Area Law and Criteria were developed in 1984 in response to serious and far-reaching problems affecting Maryland's water resources. Like any law or regulation directed towards "solving" a complicated problem, the Critical Area Law and Criteria are a comprehensive, complex and detailed body of legislation and regulations.

The Law and Criteria were designed to foster more sensitive land use and development activity along the shoreline of the Chesapeake Bay, Atlantic Coastal Bays, their tributaries, and tidal wetlands and to ensure the implementation of appropriate long-term conservation measures to protect important habitats (BaySmart: A Citizen's Guide to Maryland's Critical Area Program, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, December 2008, p. 11).

## Defining the Critical Area

The drafters of the law recognized that the land immediately surrounding the Chesapeake and Atlantic Coastal Bays and their tributaries has the greatest potential to affect the water quality and wildlife habitat of these resources.

Therefore, all lands within 1,000 feet of the edge of tidal waters, or from the landward edge of adjacent tidal wetlands, and all tidal waters and lands under those waters and wetlands were designated as a "Critical Area" (BaySmart: A Citizen's Guide to Maryland's Critical Area Program, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, December 2008, p. 14).

## Goals

The law stated that each local jurisdiction had the responsibility for developing and implementing its own Critical Area program that would be sufficiently comprehensive to accomplish the following overall goals for the State:

- Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands.
- Conserve fish, wildlife, and plant habitat in the Critical Area.
- Establish land use policies for development in the Chesapeake and Atlantic Coastal Bays Critical Area which accommodate growth and also address the fact that even if pollution is controlled,

the number, movement, and activities of persons in an area can create adverse environmental impacts (BaySmart: A Citizen's Guide to Maryland's Critical Area Program, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, December 2008, p. 15).

- These original goals are included in every jurisdiction's Critical Area program and function as the cornerstone of the Critical Area Criteria and all related regulations. These goals also serve to guide Critical Area decision-makers, including the Critical Area Commission, local government officials, and State regulatory agencies, to ensure that the Program is effectively implemented (BaySmart: A Citizen's Guide to Maryland's Critical Area Program, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, December 2008, p. 15).

## Local Critical Area Program Implementation

In general, for all Critical Area development activities on private lands or lands owned by a local government, the local planning and zoning department is the primary agency responsible for reviewing and approving building permits, site plans, and subdivision plans. The local governments review these plans for consistency with their ordinances and regulations. Before approvals may be issued, the local permitting authority must ensure compliance with requirements for impervious surfaces, forest clearing, habitat protection and stormwater management, among other factors.

Many local jurisdictions have streamlined review processes for minor development activities. The Critical Area Commission performs an oversight role with respect to local review of projects. Subdivision plans, site plans, variance applications, requests for special exceptions, conditional use permits, and rezoning requests are forwarded by local governments to the Critical Area Commission for review and comment by the Commission's staff. Comments and recommendations on these projects are provided to the local government by the Commission in order to aid the local government in the decision-making process (BaySmart: A Citizen's Guide to Maryland's Critical Area Program, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, December 2008, p. 23).

Many Critical Area development proposals involve significant disturbance to water and forest resources and can require considerable time to review. The Commission works cooperatively with local enforcement officials to assist them in effectively administering and implementing their local Critical Area regulations. In certain instances, local governments or a citizen may request assistance from the Commission in determining if a particular situation is a violation or in pursuing a violation. The Commission's staff of natural resource planners is available to provide the assistance necessary to ensure that local programs are properly, fairly, and effectively enforced.

In 2004, the Critical Area Law was amended to allow local governments to request assistance from the Office of the Attorney General through the Critical Area Commission to provide assistance in pursuing and remediating serious violations (BaySmart: A Citizen's Guide to Maryland's Critical Area Program, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, December 2008, p. 23).

## Maps as a Basic Component of Local Programs

To implement the Law, each local jurisdiction was required to map its Critical Area boundaries and to designate existing land uses as one of three classifications. Except for land owned by the State or federal government, all land areas within the Critical Area were designated as Intensely Developed Areas (IDAs), Limited Development Areas (LDAs), or Resource Conservation Areas (RCAs).

These designations were based on land uses existing on December 1, 1985. Local governments worked closely with the Commission to refine and finalize their maps. These maps were reviewed and approved by each local government through a local public hearing process, and subsequently the Critical Area Commission approved the maps. It should be noted that these maps are considered an element of a local jurisdiction's Critical Area program.

Any local changes to these maps are considered amendments to that jurisdiction's program and must receive formal approval by the Critical Area Commission (BaySmart: A Citizen's Guide to Maryland's Critical Area Program, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, December 2008, p. 25).

## Stormwater Management

The following information is excerpted from the Maryland Department of Environment's *Approval Fact Sheets*. For additional information on stormwater approvals, including the steps for the approval process, State agency contacts, and additional requirements, go to the Water Management Administration section of the *Approval Fact Sheets* at:  
<http://www.mde.state.md.us/Permits/factsheets/index.asp>

## Erosion/Sediment Control and Stormwater Management Plan Approvals

The purpose of Maryland's erosion/sediment control and stormwater management programs is to reduce stream channel erosion, pollution, siltation, and local flooding caused by land use changes associated with urbanization.

Erosion/sediment control plan approval is required, before construction, to prevent siltation due to releases of sediment (soil) from active construction sites. For example, before a housing development begins, land needs to be cleared and graded. Erosion/sediment control plan implementation is needed to control the exposed soil from washing away into the storm drains, streams, rivers, and the bay.

Plan approval is required for any construction activity that disturbs 5,000 square feet or more of soil, or results in the excavation of 100 cubic yards or more of soil. Stormwater management plan approval is required to prevent stream bank erosion by controlling the rate of stormwater runoff from newly developed areas by using infiltration practices, shallow marshes, retention, and detention ponds.

For example, prior to construction, land is typically covered with grass and trees, which help slow down the rate of stormwater runoff and promotes infiltration. This reduces flooding and soil from being washed away. After construction, stormwater runoff typically increases due to the loss of ground cover

and the increase of impervious surfaces such as roofs, sidewalks, roads, and parking lots. Stormwater management is needed to control runoff to the same rate prior to construction. This approval is required for any new development project that disturbs 5,000 square feet or more of land. It can be obtained at the same time as the erosion and sediment control approval.

### **Permit for Stormwater Associated with Construction Activity**

The purpose of the federal National Pollutant Discharge Elimination system (NPDES) stormwater program is to control pollution generated from runoff associated with industrial activity, including construction, and municipal separate storm sewer systems. This permit is required for all construction activity in Maryland with a planned total disturbance of 1 acre or more. Conditions of the permit include compliance with approved erosion/sediment control and stormwater management plans, compliance with water quality standards and TMDLs, self-monitoring and record keeping.

### **Municipal Separate Storm Sewer Permit**

The purpose of the NPDES stormwater program is to control pollution discharged from municipal separate storm sewer systems (MS4). This permit is required for owners of municipal separate storm sewer systems serving large, medium and small municipalities.

- A large municipality is one that serves a population of 250,000 or more.
- A medium municipality is one that serves a population between 100,000 and 250,000.
- A small municipality is one that serves a population less than 100,000.

The following jurisdictions in Maryland are considered large municipalities for NPDES purposes: Anne Arundel, Baltimore, Montgomery, and Prince George's Counties and Baltimore City. Carroll, Charles, Frederick, Harford and Howard Counties are considered medium municipalities. All other jurisdictions within these places are considered small municipalities for NPDES stormwater purposes.

### **What is the approval process?**

The application process consists of two parts:

Part 1 requires the local government to gather information regarding various existing programs to control storm drain system pollution, such as existing ordinances to control discharges into the local storm drain system, programs to control illegal system connections, and existing financing options. The application also includes extensive storm drain system mapping and monitoring under dry weather flow conditions.

Part 2 requires proposals for management programs, such as dumping and spill response, public education, and watershed studies. This part also includes monitoring of storm water flows during rain events. After a completed application is submitted, there are opportunities for informational meetings and public hearings to allow input from interested parties.

The application requirements are the same for both large and medium municipalities; only the deadlines for the applications are different. The application process is a 2-year task where local governments collect data regarding legal authority, pollutant source identification and mapping, discharge

monitoring, pollutant management program development, and financing NPDES programs. MDE has issued two general permits to cover small municipalities under the NPDES requirements. One general permit is designed for affected local governments and the other is designed for State and federally owned storm drain systems. Both permits require six minimum control measures to be implemented. These control measures include public participation, public education, illicit discharge control, erosion and sediment control, stormwater management, and good housekeeping.

## **Forest Conservation Act**

The following information is excerpted from the Maryland Department of Natural Resources *Forest Conservation Act* webpage. Additional information, including applications, worksheets, exemptions, and State agency contacts, can be found at: <http://www.dnr.state.md.us/forests/programapps/newFCA.asp>.

The main purpose of the Maryland Forest Conservation Act (FCA) (Natural Resources Article Section 5-1601 through 5-1613) enacted in 1991 was to minimize the loss of Maryland's forest resources during land development by making the identification and protection of forests and other sensitive areas an integral part of the site planning process. Identification of priority areas prior to development makes their retention possible. Of primary interest are areas adjacent to streams or wetlands, those on steep or erodible soils or those within or adjacent to large contiguous blocks of forest or wildlife corridors.

Although the Maryland DNR Forest Service administers the FCA, it is implemented on a local level. Gaining approval of the required Forest Conservation Plan (development of more than one acre) may require long term protection of included priority areas or planting/replanting (afforestation or reforestation) a sensitive area off-site.

### **What does the FCA require?**

Any person making application for a subdivision, grading permit, or sediment control plan on a tract of 40,000 square feet or more must submit a Forest Stand Delineation (FSD) and a Forest Conservation Plan (FCP). FSD includes the identification of existing forest cover and the environmental features of a proposed development site. It consists of an application, map, and summary of specific field data collected.

FCP includes a map and narrative describing the limits of disturbance for the proposed project and how the existing forested and sensitive areas will be protected during and after development. It includes an application form and worksheet showing the calculation of forest disturbed and retained and whether replanting trees will be required and a plan for the long-term maintenance or protection of these trees.

# Green Development

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## Climate Change

Climate change is underway and is projected to increase in intensity in the next decades. The vast majority of scientists and governments worldwide agree that transportation, energy production and energy usage are generating greenhouse gases – including carbon dioxide, methane, and nitrous oxides – which contribute to the warming of the global climate by trapping radiation from the sun.

Though some regions may profit from climate change, most countries – including the United States – are expected to experience severe droughts and storms in southern regions, flooding and snow hazards in northern regions, and sea level rise along the coast lines. In Maryland, sea level rise in the Chesapeake Bay, coupled with subsidence of the land, is already occurring.

The U.S. economy increasingly depends on finite energy resources for production of all goods, energy generation and transportation. Though there is disagreement on the time span and the amount of undiscovered fossil resources, there is a general consensus that energy resources such as oil, natural gas and uranium eventually will run out, possibly within this century. The discovery of new oil reserves is now growing at a much slower rate than the rate which oil is being consumed.

It is likely that non-renewable resources will become increasingly expensive and scarce, mandating lifestyle change and the need to develop renewable energy sources. Currently, there is no alternative energy infrastructure that can fully replace conventional petroleum affordably. If climate change concerns are to be addressed, it will be essential to reduce the current use of remaining petroleum while investing in alternative transportation options, renewable energy infrastructure and local agricultural resources.

This chapter focuses on sustainable development since the concept holistically addresses factors that cause climate change while preparing for a post-petroleum future.

## What is Sustainable Development?

Sustainability is a complex term that has been defined and interpreted in many ways since it was first introduced in the 1987 Report of the World Commission on Environment and Development. Widely known as the Brundtland definition, the Report defined sustainability as a development process that aims to meet “the needs of the present without compromising the ability of future generations to meet their own needs”<sup>4</sup>.

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<sup>4</sup> World Commission on Environment and Development, *Our Common Future*, New York: Oxford University Press, 1987, p. 8

Some U.S. cities have already embraced the concept of sustainability in the field of regional and city planning. Examples of local applications are Sustainable Seattle, Burlington Legacy Project, the Minnesota Sustainable Development Initiative, and the Baltimore Sustainability Plan. The most innovative and detailed application in the United States to date, however, is the Sustainable Community Development Code developed by the Rocky Mountain Land Institute which aims to become a blueprint for regional and local codes across the U.S.<sup>5</sup>

### **U.S. Green Building Council**

Sustainability has a champion in the U.S. Green Building Council (USGBC). This national non-profit organization has emerged over the past 20 years as the leader in the promotion of sustainable, or Green development practices, first for buildings, now for sites and whole neighborhoods and in the future for whole new towns and retrofitting existing communities. USGBC consists of a community of leaders working to transform the way buildings and communities are designed, built and operated. They envision an environmentally responsible, healthy and prosperous environment that improves the quality of life.<sup>6</sup>

The USGBC developed a rating system called LEED (Leadership in Energy and Environmental Design) which is a voluntary, consensus-based system for the design, construction, and operation of high performance green buildings. LEED can be applied to every building type and phase of building lifecycle, and coming out in 2010 – to Neighborhood Development (LEED ND).

There is a Maryland chapter of the USGBC, which advocates for more than 600 member businesses to expand the state’s green building initiatives.

### **Maryland Green Building Council**

The General Assembly created the Maryland Green Building Council in 2007 to report annually to the Governor and the legislature on implementation and progress related to the states high performance building program. The council continues its work to provide recommendations about how to expand green building in the state beyond schools and those specifically owned by the state.

### **Sustainability and the Planning Commission/Planning Board**

In Maryland, sustainability means that development, infrastructure, public transportation and resource conservation are strategically planned and implemented to minimize the consumption of fossil fuels, greenhouse gas emissions, overuse of water supplies, production of waste, and pollution of water resources; and to retain the economic, ecological, and scenic values of the countryside.

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<sup>5</sup> Draft of the Sustainable Community Development Code Beta 2.0:  
<http://law.du.edu/index.php/rmlui/programs/sustainable-community-development-code/sustainable-community-development-code-beta-version-12>

<sup>6</sup> USGBC

The planning commission/board is a key player in comprehensive planning and implementation and therefore has an influence on the degree to which a county or community can achieve sustainable development goals.

The following is an overview of the relationship between the planning commission/board and sustainable development, and specific strategies that can be implemented.

## **Comprehensive Plans**

The planning commission/board is responsible for advising the local legislative body on long-term comprehensive planning consistent with Maryland's state visions. The commission/board works with the community to craft a comprehensive plan that defines a vision for how the community will look and function in the future.

The planning commission/board has the opportunity to lead a proactive role in a jurisdiction, by recognizing and seizing opportunities to affect growth and development consistent with the comprehensive plan.

## **Implementation Tools**

The planning commission/board can help implement comprehensive plans by recommending appropriate tools such as zoning regulations and boundaries, subdivision and development regulations, capital programs and a range of innovative tools to the local legislative body. Adopting these implementation tools can be significant in helping a community to reach its sustainability goals..

## **Zoning and Subdivision Regulations**

The planning commission/board acts as formal advisor to the legislative body for a jurisdiction's zoning maps and regulations and subdivision requirements and for subsequent revisions to these regulations. Zoning is one of the most powerful tools to influence energy and land consumption of a community, its livability, density and land use.

Traditional zoning and subdivision regulations that separate land use uses and allow large lot development have contributed to sprawling and costly developments with sometimes adverse impacts on local environments, especially streams, air quality and wildlife habitat. Sustainable zoning codes place an emphasis on smaller lots, allow complimentary mixed-uses, preserve historic structures and positively influence community design. Innovative subdivision regulations require clustered developments (same number of units on smaller lots leaving a larger percentage of the subdivision in a natural state).

## **Development Regulations**

The planning commission/board also serves as formal advisor to the legislative body on development regulations that supplement zoning and subdivision regulations with additional requirements for sidewalks, bike trails, pervious pavement, natural storm water systems (e.g. dry swells) and tree preservation/ planting.

## **Innovative Tools**

The planning commission/board may have opportunities, from time to time, to consider and propose to the local legislative body implementation tools associated with sustainability, such as transfer of development rights programs to protect open space and agricultural lands while fostering desired development in established communities. Other sustainability related tools include moderately priced dwelling unit ordinances, design guidelines, form-based zoning codes and transit oriented development (TOD).

## **Programs for Public Improvement, Land Acquisition and Financing**

The planning commission/board recommends programs and financing for public structures, improvements and land acquisition to appropriate public officials. Capital expenditures such as strategic physical improvements can advance the quality of life in communities, support desired economic development and revitalization, and provide parks and recreation opportunities to underserved communities. Furthermore, a planning commission/board can serve as an advisor on which development rights of sensitive lands to acquire to protect rural or farming activities.

## **Strategies for Achieving Sustainable Development**

### **Low Impact Development and Green Infrastructure**

Rain that falls on undeveloped land is filtered through the soil and recharges aquifers or eventually flows into nearby streams, ponds, wetlands and lakes. Rain that falls on impervious surfaces such as roofs, streets or parking lots, however, accumulates on the hard plane and runs-off into a sewer or nearby waterway carrying trash and chemical substances such as fertilizer and oil with it. The run-off prevents aquifers from recharging and pollutes surface water, and may lead to a decline in drinking water quality and quantity, sedimentation and disturbance of ecosystems.

Low impact development (LID) is a technique designed to reduce the negative effects of drainage-based development practices. The concept is based on an integrated planning, design, and construction process that seeks to reduce runoff volume by allowing precipitation to filter through the soil close to where runoff is generated and often includes detention or retention ponds to store excess water.

### **Water Conservation**

Reliable access to clean water is an essential part of life, fulfilling basic human and economic needs including drinking, bathing, irrigation and commercial processing. Maryland has experienced worsening droughts and population growth in recent years, highlighting the need for more efficient water conservation. In addition, reducing demand on the water supply system helps to lengthen the life of existing infrastructure, and reduce or delay the need for system capacity upgrades for treatment, distribution, and storage.

Water efficient landscaping with native plants, rain water harvesting in rain barrels and ponds for private and agricultural use, non-industrial waste water recycling, and reducing water consumption

through efficient plumbing fixtures are just a few possible approaches towards efficient water conservation. The goals of water conservation are to allow communities to meet future water needs of their growing populations at all times, decrease community per capita water use while preserving attractive landscapes, protect ground and surface water supplies from unsustainable depletion; and reduce wastewater treatment volume and related public expenditure.

## **Solid Waste and Recycling**

Current lifestyles not only draw heavily on natural resources but also create large volumes of waste that either end up in landfills or are recycled for further reuse. Popular slogans such as “Reduce, Reuse, Recycle” express the need for salvaging of natural and man-made material and products for further use but also the need for lower waste production in the first place. Recycling and reusing some of this waste makes economic sense and helps protect the environment and scarce natural resources.

Domestic, commercial, and non-hazardous industrial solid waste that cannot be reused or recycled has to be disposed in carefully engineered and safe landfills. Improper handling of these wastes can pose direct threats to both public health and natural resources, particular risks are the pollution of ground and surface water.

## **Natural Hazards**

### **Floodplain Management**

As the climate changes, floods may become more frequent or more severe in some regions. Floods can affect human life and health, cause property damage, and have a negative effect on water supply, sanitary sewage disposal and natural drainage. The prevention of unwise development in areas subject to flooding through effective floodplain management reduces financial burdens to the community and the state, and will prevent future displacement and suffering of its residents. This protection is achieved through the review of all activities proposed within identified floodplains and by the issuance of permits for those activities that comply with the objectives of floodplain management.

The Maryland Model Floodplain Management Ordinance of 1991 emphasizes that floodplains are an important asset to the community. “They perform vital natural functions such as temporary storage of floodwaters, moderation of peak flood flows, maintenance of water quality, groundwater recharge, prevention of erosion, habitat for diverse natural wildlife populations, recreational opportunities, and aesthetic quality. These functions are best served if floodplains are kept in their natural state. Wherever possible, the natural characteristics of floodplains and their associated wetlands and water bodies should be preserved and enhanced.”<sup>7</sup>

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<sup>7</sup> Maryland Model Floodplain Management Ordinance,  
[http://www.mde.state.md.us/assets/document/flood\\_hazards/revordinance2004.pdf](http://www.mde.state.md.us/assets/document/flood_hazards/revordinance2004.pdf)

## Coastal Hazards

Maryland's 7000 miles of shoreline are highly vulnerable to hazards. Shoreline erosion, coastal flooding and bluff failure are the most frequently occurring coastal hazards along the State's shoreline. These hazards are the consequence of both weather-related events, such as hurricanes and Nor'easters, and geological forces, like erosion.

The rising sea level complicates the coastal hazard scenario in the State, which as a causal force intensifies and prolongs on-going coastal processes and extreme events. Throughout coastal Maryland, coastal hazards pose a significant threat to infrastructure, natural resources, and communities. However, the hazards vulnerability varies regionally because of the State's mixture of coastal environments.

Numerous federal and state agencies work together with local governments to coordinate hazard preparedness, response, recovery and mitigation efforts in Maryland. The Coastal Zone Program, for example, provides a considerable amount of technology, data and research support, as well as local government assistance and public outreach.<sup>8</sup> Shoreline developments can be protected through engineering solutions such as levees and canals or natural solutions such as dunes or wetlands.

## Steep Slopes

Steep slopes are hillsides that have a 15% slope or greater. Though often developed in areas with high land values, steep slopes are unsuitable areas for development due to the difficulty of building on steep grades and the threat of erosion, flooding, stream sedimentation, and slope instability after development. Even so, these slopes can provide wildlife habitat, recreational opportunities, and scenic views. Various ways to keep development off of steep slopes is to protect them through land use regulations, and/or by creating greenways, wildlife habitat preservation areas, or conservation areas.<sup>9</sup>

## Urban Form and Density

Historically, movements within cities tended to be restricted to walking, thus, urban forms tended to be compact and human-scaled. Many cities have inherited this compact urban form, even though transportation technology now allows towns to spread out further. Still, the dense historic city centers of many European, Japanese and Chinese cities allow residents to walk or cycle to work, shop and play.

In contrast, most Australian, Canadian and American cities were built in relatively recent times in a dispersed urban form based on the availability of an abundant amount of land and low transportation costs. The combination of sprawling urban form, lack of public transportation options and Euclidian zoning which separates land uses also promotes car dependency. Though there are planning movements

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<sup>8</sup> Maryland Coastal Program, Maryland Department of Natural Resources, [http://dnr.maryland.gov/bay/czm/hazards\\_06\\_04.pdf](http://dnr.maryland.gov/bay/czm/hazards_06_04.pdf)

<sup>9</sup> Nashua Regional Planning Commission

that favor more compact, walkable, mixed-use environments with transit access, built up areas of most towns and cities grow at a faster rate than their population.<sup>10</sup> U.S. Census data from 1970 to 1990 reveals that, in Baltimore, there was 16% increase in population and a corresponding 60% increase in per capita land consumption. Phoenix, Arizona on the other hand experienced a 132.4% increase in population, but decreased the per capita land consumption by 17.7%.<sup>11</sup>

The dispersed land use pattern in Maryland and other States comes with a high cost to local and State economies and budgets. It generally costs much more to accommodate growth by building new roads, electrical lines, sewer and water infrastructure, schools and parks for residential and commercial in greenfield developments, than by integrating people and businesses into existing communities. Further, other costs associated with low density development that are sometimes not considered are negative impacts on the environment and on public health.<sup>12</sup>

## Historic Preservation

Within the past decades, historic preservation has evolved from a limited and rather narrow pursuit into a broad based popular movement with wide support. For some, historic places provide a tangible sense of permanence and community and contribute to a community's unique identity and character. To others, the preservation of historic properties is seen as an inter-generational responsibility to be stewards of a shared heritage. For still others, historic places have economic value as unique real estate holdings, attractive tourist destinations, or distinct community icons. Whatever the individual or community motivation or values associated with historic places, the retention, revitalization, and continued use of older and historic building stock is an integral part of sustainable development.<sup>13</sup>

Following the ethos "the greenest building is the one that already exists", historic preservation has emerged as a key tool in the sustainable development continuum. At the community level, historic buildings help to define a place's identity and distinguish communities from each other. These distinctions often positively influence property values and other quality of life factors and contribute to a community's attractiveness. As it becomes apparent that long commutes from outlying low density areas is unsustainable, local jurisdictions that were established before the advent of the automobile will find themselves at an advantage over those who were not. Local municipalities will need to start now to prepare for the future by changing zoning codes to allow denser and mixed-use development within all

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<sup>10</sup> The Geography of Transport Systems, <http://people.hofstra.edu/geotrans/eng/ch6en/conc6en/ch6c1en.html>

<sup>11</sup> Sprawl City, <http://www.sprawlcity.org/cgpg/index.html>

<sup>12</sup> Sprawl City, <http://www.davidsuzuki.org/files/Climate/Ontario/sprawlfacts.pdf>

<sup>13</sup> Advisory Council on Historic Preservation, <http://www.achp.gov/overview.html>

existing residential areas and by investing in alternative transportation options and telecommunication centers. In other words, we knew how to do this once before.

At the building level, historic properties represent enormous quantities of embodied energy, including building materials and human energy expended during the construction process. Additionally, many historic buildings, particularly those built before 1940 were designed to be more responsive to the environment by incorporating passive ventilation and lighting in an era before wide-spread availability of electricity and air-conditioning. Many of these systems are still in place, or can be restored as part of a retrofit process that both protects the unique character-defining features of a property while helping to address energy and green-building goals.

The conservation and upgrading of the existing built environment, including the preservation and re-use of historic and older structures, the greening of existing buildings, and reinvestment in older and historic communities, are crucial strategies to lower natural resource depletion, energy consumption and greenhouse gas emissions while providing communities with a sense of place and economic opportunities.<sup>14</sup> Historic buildings are a finite resource and their loss can have economic, visual, emotional, and environmental impacts. While the unique conditions and requirements of individual historic buildings vary widely, historic preservation should be viewed as a broader public policy goal, particularly in places that seek to maintain their unique identity and grow in a sustainable manner. The demolition of a single building represents an enormous volume of debris deposited in landfills, which have limited capacity. Even with the largest and most aggressive building material recycling program, the volume of material that results from demolition and new construction will still exceed the amount of construction waste generated by rehabilitation.

Planning Commissions play a critical role in preserving historic places. In communities where there are local historic preservation ordinances, Planning Commissions should play a role in the designation process for new historic districts and individual landmarks. The role of the Planning Commission in designation proceedings is to review and comment on the consistency of the proposed district boundaries with the jurisdiction's Comprehensive Plan and other broad considerations that are beyond the specific purview of the Historic Preservation Commission. The Planning Commission's comments should accompany the Historic Preservation Commission's recommendations to the City or County Council to help that body make a full and well-informed decision.

## **Mobility Systems**

### **Complete Streets, Pedestrian and Bicycle Systems, and Public Transit**

During the second half of the 20<sup>th</sup> century, the automobile was widely perceived as the most reliable and most practical mobility mode. Urban form was designed around the car, assuring the safe accommodation of automobiles on streets, the availability of ample parking spaces near retail, services,

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<sup>14</sup> National Trust for Historic Preservation, <http://www.preservationnation.org/issues/sustainability/>

schools, recreation and residences, and public investment in highway infrastructure that sometimes severely impacted urban communities and city life for the benefit of suburban commuters. Nowadays there is a growing public desire for so-called “complete streets”, pedestrian and bicycle systems and more public transit options.

Complete streets are “designed and operated to enable safe access for all users. Pedestrians, bicyclists, motorists and bus riders of all ages and abilities are able to safely move along and across a complete street”<sup>15</sup>. A complete street design usually includes wide sidewalks, clearly marked bicycle lanes, frequent pedestrian crossings and bus service. Motorists are required to be further attentive towards more vulnerable users of the street, therefore reducing accidents. Complete streets in combination with well-planned citywide pedestrian and bicycle systems and transit options increase access to amenities, employment and housing choices for the non-driving population, allow for additional mobility options, save energy through more efficient ways of travel, improve physical activity levels, and foster community interaction.

### **Parking**

Large surface parking facilities are prolific in many urban and suburban communities. The minimum size of these lots is determined by local zoning codes that are mostly based on worst case demand assumptions (i.e. how many spots are needed on the busiest day of the year). This calculation results in under-utilized and over-designed parking lots throughout a good part of the year. Parking lots are large impervious surfaces that contribute to the urban heat islands effect, can be esthetically unpleasant and are a major source of urban run-off.

Changes in zoning codes and design can make parking lots more sustainable. Zoning for a maximum number of parking spaces instead of a minimum is an effective approach to curb the excessive size of parking lots. Though more expensive than surface parking, structured, underground, rooftop or robotic parking solutions are more space efficient and reduce the size of the impervious surface and allow the remainder of the land to be put to more valuable use. Another more sustainable practice is using pervious asphalt or gravel for surface parking lots or rain gardens throughout and along the edge of the parking lot to prevent run-off and allow rainwater to soak into the soil to recharge aquifers.

### **Renewable Energy**

Renewable energy refers to energy that is naturally generated by wind, water, the earth and the sun. The energy can be collected through existing technologies such as solar panels, wind mills or water turbines. Though the initial cost and energy use of the production of those technologies is comparatively high; energy generation does not emit any greenhouse gasses, is free and unlimited.

Municipalities and counties that invest in renewable energy production and allow and encourage renewable energy structures such as solar panels and wind mills on private property can support

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<sup>15</sup> [Completestreets.org](http://Completestreets.org)

households in becoming less dependent on nonrenewable energy sources such as oil and coal. This technology is changing all the time, and becoming less obtrusive and costly in the process.

## Energy Efficiency and Conservation

As climate change moves onto the public agenda, and nonrenewable energy becomes increasingly expensive while cheaper alternatives are not yet fully available, the focus of unlimited energy consumption is shifting towards energy efficiency and conservation.

A widely recognized energy efficiency standard is Leadership in Energy and Environmental Design (LEED) certification for sustainable businesses, homes, hospitals, schools, and neighborhoods. LEED, was developed by the US Green Building Council, a non-profit organization committed to changing the way buildings and communities are designed, built and operated.

## Quality of Life

While sustainable development promotes healthy living, some local codes and development standards have not made adjustments necessary to bring about positive change. Noise and lighting standards are two examples.

## Noise

People living in urban and suburban areas are enduring increased levels of noise from various sources, including traffic, emergency vehicles, airplanes, crowds and electronics. Noise can have adverse health effects including hearing loss, sleep disturbances, cardiovascular and psychophysiological problems, performance reduction, annoyance responses, and adverse social behavior.<sup>16</sup>

Healthy communities should actively reduce noise pollution and protect the public from health problems. For example, municipalities can require building codes that sound-proof windows in apartment buildings near major roads, to erect noise walls along highways, plant tall hedges and trees in the right-of-way along streets, outlaw unnecessary horn sounding, and provide natural sources of soothing white noise such as water fountains and streams.

## Lighting

The loss of nighttime darkness in urban areas is becoming a serious concern. Outdoor lighting is needed for safety, security and utility, but only about half of the produced light actually fulfills those purposes. Municipalities can cut light pollution by reducing the number of street lights and by installing full cut-off street light fixtures that prevent light from going up into the air where it is wasted, and instead direct it back down onto the ground requiring lower wattage bulbs to light the same amount of area.

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<sup>16</sup> Department of Health and Human Services, Center for Disease Control and Prevention, <http://www.cdc.gov/nceh/hsb/noise/>

## Developing a Green Building Program or Ordinance

Some jurisdictions have created their own green building programs and regulations. Other who are considering doing so may want to consider the following:

- Assess the direction desired by the local council, commission or board. Without strong political backing, gaining support for the funding, staffing and other resources will prove more difficult.
- Consider the pros and cons of a mandatory versus voluntary program and choose the one most appropriate for the jurisdiction. Consider the use of development agreements as an option to introduce green building features into the local process one step at a time.
- Research local municipal and county green programs and ordinances for possible use as models.
- Consider a working group approach consisting of a balanced mix of stakeholders including elected officials, government officials, developers and builders, and the public at large.
- Engage the planning commission or board by using meetings as a platform for workshops and public input.
- Conduct 'sustainability workshops' to illustrate how green building is connected to a host of related issues and help garner support from special interest groups.
- Select green building guidelines or standards that are appropriate for your jurisdiction and when possible, are already used in the region.
- Consult with legal counsel to ensure that proposed guidelines or standards that do not conflict with other state or local regulations. In the case of an ordinance, be sure that it is legally defensible.
- Consider the use of outside resources for green building plan check and inspection services.
- Keep compliance thresholds realistic and try not to address them until the end of the development process.
- Keep the triple bottom line – environment, economy and social equity - in mind to ensure a sense of fairness for all parties.
- Determine how the program or ordinance provisions will be staffed and funded.
- Provide education about green building principles and practices, and your jurisdiction's program or ordinance to staff, developers, builders and citizens.

# Housing Issues

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This segment will examine the following elements:

- Provide an overview of affordable housing needs in Maryland.
- Promote discussion of how the affordable housing issue is related to economic development and to Smart Growth / Priority Places.
- Provide an introduction to key federal and state housing responsibilities and programs.
- Introduce an array of tools to assist in the provision of affordable housing.

## **Affordable Housing Needs/Conditions in Maryland**

During the past 20 years the gap between market price of housing and purchase power has increased. These trends have hit low income families especially hard. Although the homeownership rate in Maryland is over 71% (higher than the national homeownership rate of 68%), there are significant numbers of renter households who have “housing problems”. Housing problems are defined as paying more than 30% of income in rent and/or living in substandard or overcrowded housing.

A 2004 interim report provides the following data computed by the Maryland Department of Housing and Community Development (DHCD):

- Statewide, 33% of all households cannot afford the median rent in their county of residence.
- There is an acute shortage of rental housing for workforce and low-income families, seniors and individuals with disabilities in Maryland. For workforce and low-income families, Maryland had a deficit of about 125,000 workforce units in the year 2000. This shortage is projected to grow to approximately 157,000 units by the year 2014.
- The projected shortage of affordable and available rental housing for the year 2014 is highest in Montgomery County followed by Prince George’s County, Baltimore County, Baltimore City, Anne Arundel County, and Howard County. With the exception of Garrett County, jurisdictions with the smallest projected shortage are located on the Eastern Shore, and include Somerset, Caroline, Kent, Dorchester, Queen Anne’s and Talbot counties.
- For rental households with incomes below 30 percent of their area’s median household income, 73% reported at least one housing problem in 2000, and 54% of these households paid more than half of their incomes for rent and utilities.
- For rental households with incomes between 31 and 50% of their area’s median income, 68% reported at least one housing problem and 13% paid more than half of their incomes for rent and utilities.
- Of rental households earning between 51 and 80% of their area’s median income, 32% reported at least one housing problem and 2% indicated they paid over half of their incomes in rent.
- The homeownership rate for minority households in Maryland is 53%. While the state’s minority homeownership rate is higher than the national average (giving the state the 14<sup>th</sup>

highest minority homeownership rate), this rate is much lower than the white homeowner rate of 77%.

- A concern expressed by the Governor’s Commission on Workforce Housing is that only housing projects targeted in Smart Growth and Priority Funding Areas are eligible for state housing grants. This creates problems in a rural county such as Garrett County, where only 2% of the land area is within a PFA.

## **Relationship of Affordable Housing to Economic Development**

Traditionally, people of all income ranges have lived throughout Maryland’s communities. Although some neighborhoods had concentrations of families with similar incomes, low and moderate income residents were often scattered throughout the community in a variety of residential styles. Over the past forty years much has happened to change that pattern.

For a variety of reasons (such as low profit margins in affordable housing, NIMBYism, and a jurisdiction’s interest in maintaining the tax rate by favoring “high ratables” such as commercial / workplace development over affordable housing), there is a shortage of workforce housing located in close proximity to employment and to middle- and high-income housing. This pattern leads to several concerns, such as:

- Fairness/social justice. (the notion that school teachers, state and local government employees, fire fighters and police personnel should have some opportunity to live in the jurisdictions they serve.)
- Workers who are increasingly forced to find housing that is far from their jobs. This leads to loss of productivity, potential decrease of the available labor pool for a given employer, and higher rates of unemployment.
- Lengthier commutes to work and essential services also have environmental consequences (e.g. more gasoline consumption leading to more air pollution and more dead zones in the Chesapeake Bay).

Another housing-related policy concern is to stabilize and revitalize our existing neighborhoods so that middle- and higher income households will want to remain, thereby maintaining an income mix and supporting existing businesses. Smart Growth programs can assist in neighborhood stabilization/revitalization.

## **Overview of Federal and State Housing Laws and Programs**

Major federal roles include the following:

- Stimulate home ownership by allowing home owners to deduct home mortgage interest and local property taxes from their taxable incomes. These tax deductions totaled \$106.9 billion in 2002, according to the National Low Income Housing Coalition.
- Assist investors in rental housing through various kinds of tax deductions (totaling \$15.2 billion in 2002).
- Sacrifice taxes (from tax deductions) for owners and investors totaled \$122.1 billion in 2002 (compared to \$1 trillion in taxes that were actually paid in 2002).
- Enforce laws against discrimination in housing lending, buying and renting through such acts as: the Civil Rights Act; the Federal Fair Housing Act and Amendments; The Americans with Disabilities Act; the Federal Equal Credit Opportunity Act; lead paint laws that combat childhood lead poisoning; the Community Reinvestment Act and the Home Mortgage Disclosure Act.
- Require state and local planning for the receipt of federal grants for low-income housing creation and rehabilitation. The Consolidated Plan submitted by state and "entitlement" local governments consolidates the planning and application documents of HUD block grants, the Community Development Block Grant (CDBG), the HOME partnership Investment Program (HOME), and the Emergency Shelter Grant Program). In addition to making the State eligible to receive block grants, the Plan also serves as a planning tool for how block grants will be distributed. The Plan develops policies and procedures to provide decent housing, a suitable living environment and economic opportunities where State funds are needed most. Also administers the HOPE VI program (replacement of older public housing with new, low-rise, mixed-income and mixed-use housing).
- Grant funds for rental assistance (HUD Section 8).
- Stimulate low-income housing creation by allocating Low-Income Housing Tax Credits (LIHTC) to states.

At the state level, DHCD conducts a number of activities which promote affordable housing throughout the State. An inventory of DHCD housing programs can be accessed at [www.dhcd.state.md.us](http://www.dhcd.state.md.us). From 1999 through 2003, DHCD facilitated the creation of an annual average of 2,700 workforce/affordable rental opportunities for families, individuals with disabilities and senior citizens. In addition, over the same period DHCD facilitated the average, annual creation of 1,700 affordable ownership units. DHCD also:

- Administers some federally-funded programs. For example, the state establishes criteria and does selection of projects receiving LIHTCs, and administers a lead paint reduction / elimination program with HUD funding.
- Prepares a Consolidated Plan for non-entitlement jurisdictions.
- Stimulates workforce home ownership with below-market interest rate loans and down payment and settlement assistance.
- Provides loans and grants for low-income housing providers, some through the sale of tax-exempt revenue bonds.

## Local Strategies and Tools to Increase Affordable Housing

### Planning

Planning and zoning can have the unintended consequences of acting as a barrier to affordable housing. Tools exist which can help counter balance those effects, as well as examples of model ordinances, and legal decisions, which can be used to guide decisions which will affect the provision of affordable housing.

Housing-related planning should include:

- Studying housing needs for persons of varying incomes and stages in the life cycle; and
- Making housing an element in the comprehensive plan (declaring affordable housing a priority and outlining housing goals, objectives and priorities)

### Creating designated tax sources for affordable housing

For example, a jurisdiction could use a portion of revenues for real estate transfer taxes to capitalize a housing trust fund.

### Zoning and other regulatory programs

- Upzoning – allowing for additional units of housing to be built in some residential zones;
- Inclusionary zoning - requires a certain percentage of affordable units to be built along with new market rate housing;
- Altering zoning to allow for accessory housing (granny flats) and/or apartments above garages and stores in new developments;
- Allowing manufactured housing in residential zones; and
- Favoring affordable housing in impact fee administration.

### Partnering with, and providing support for, non-profit housing providers

The role of nonprofit organizations in developing, financing, and managing affordable housing has greatly expanded in many communities. Nonprofits are playing significant roles in community revitalization, refinancing and stabilizing troubled projects. Local governments can donate government-owned land and buildings, and loans and grants, for non-profit projects.

### Other Strategies

- Linking home-ownership counseling to receipt of homeownership assistance; and
- Countering NIMBYism through use of design standards, responding to legitimate community concerns, and incorporating historic preservation whenever possible to help reduce opposition to affordable housing developments

## Smart Growth and Affordability

It takes political will and creative entrepreneurship to create housing opportunities for low and moderate income households. There is no single fix for the problem - - local governments using the full range of their powers. Careful documentation of needs will lead to better intervention.

Some critics assert that smart growth raises housing prices by restricting the supply of buildable land. But a 2002 Brookings Institution study found that:

- Market demand, not land constraints, is the primary determinant of housing prices;
- Both traditional land use regulation and growth management policies can raise the price of housing; and
- If housing prices can increase in any land use environment, then the decision is between good and bad regulation to improve housing affordability.

# Transportation Planning

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## Federal, State, Regional and Local Roles in Transportation Planning

This course segment covers Federal transportation policy, the Maryland state transportation planning process, the regional (MPO) and local roles in transportation planning.

## Planning Tools Affecting the Local Transportation Plan

How transportation planning enables Smart Growth using these basic concepts:

- Federal, state, regional, and local roles
- Land use and transportation planning
- Information to be included in Transportation element of the plan
- Local planning tools that affect transportation planning

## The Federal Role in Transportation Planning

### SAFETEA-LU

Federal transportation policy is an important factor influencing local transportation planning and access, development patterns, and quality of life of local communities through its significant highway, transit, pedestrian and bicycle facility, air quality improvement, and other investment programs.

The current federal transportation law, the 2005 Safe Accountable Flexible Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU) presents the largest surface transportation investment in the nation's history totaling \$244.1 billion for highways, highway safety, transit, and other transportation facilities and services.

SAFETEA-LU builds on the foundation of the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) and the 1998 Transportation Equity Act for the 21st Century (TEA-21). These acts transformed the federal surface transportation programs by emphasizing a more balanced transportation system through investment in multi-modal transportation – highways, public transit, pedestrian and bicycle facilities, and High-Occupancy Vehicle travel. They also placed a greater emphasis on the environmental and social consequence of transportation investment, involving the public in the decision process, and supporting livable communities.

SAFETEA-LU focuses on significant national transportation issues. These include improving safety and efficiency, reducing congestion, increasing intermodal connectivity and increasing environmental stewardship. The act strives to give State and local transportation decision makers more flexibility for solving transportation problems in their communities. For instance, in addressing environmental stewardship, SAFETEA-LU increases funding for environmental programs and adds new programs, such as Safe Routes to School. In improving metropolitan transportation planning efficiency, SAFETEA-LU

promotes consistency between transportation improvements and State and local planning AND growth and economic development patterns.

In 2009, SAFETEA-LU is due for reauthorization. As the federal government is crafting its next transportation bill, SAFETEA-LU programs are temporarily extended for 18 months. The next transportation reauthorization is expected to address emerging issues, such as climate change, energy efficiency, sustainable funding sources, and other variables to support sustainable communities.

## **Maryland State Transportation Planning Process**

### **MTP**

The Maryland Transportation Plan (MTP) is the state's transportation vision with specific goals and policy objectives to carry out this vision. The MTP guides state transportation investment programs and development of transportation element plans, including the transit master plan, the freight plan and pedestrian, and bicycle and trails plans.

The MTP, along with the Annual Attainment Report on Transportation System Performance and the Maryland Consolidated Transportation Program, presents Maryland's policies, programs, projects and investment outcomes on State transportation facilities and services.

### **CTP**

The Consolidated Transportation Program (CTP) is the state's six-year capital budget for transportation. The CTP includes major and minor transportation projects and programs for all state transportation modes. The CTP is submitted to the General Assembly for approval as part of the State's budget.

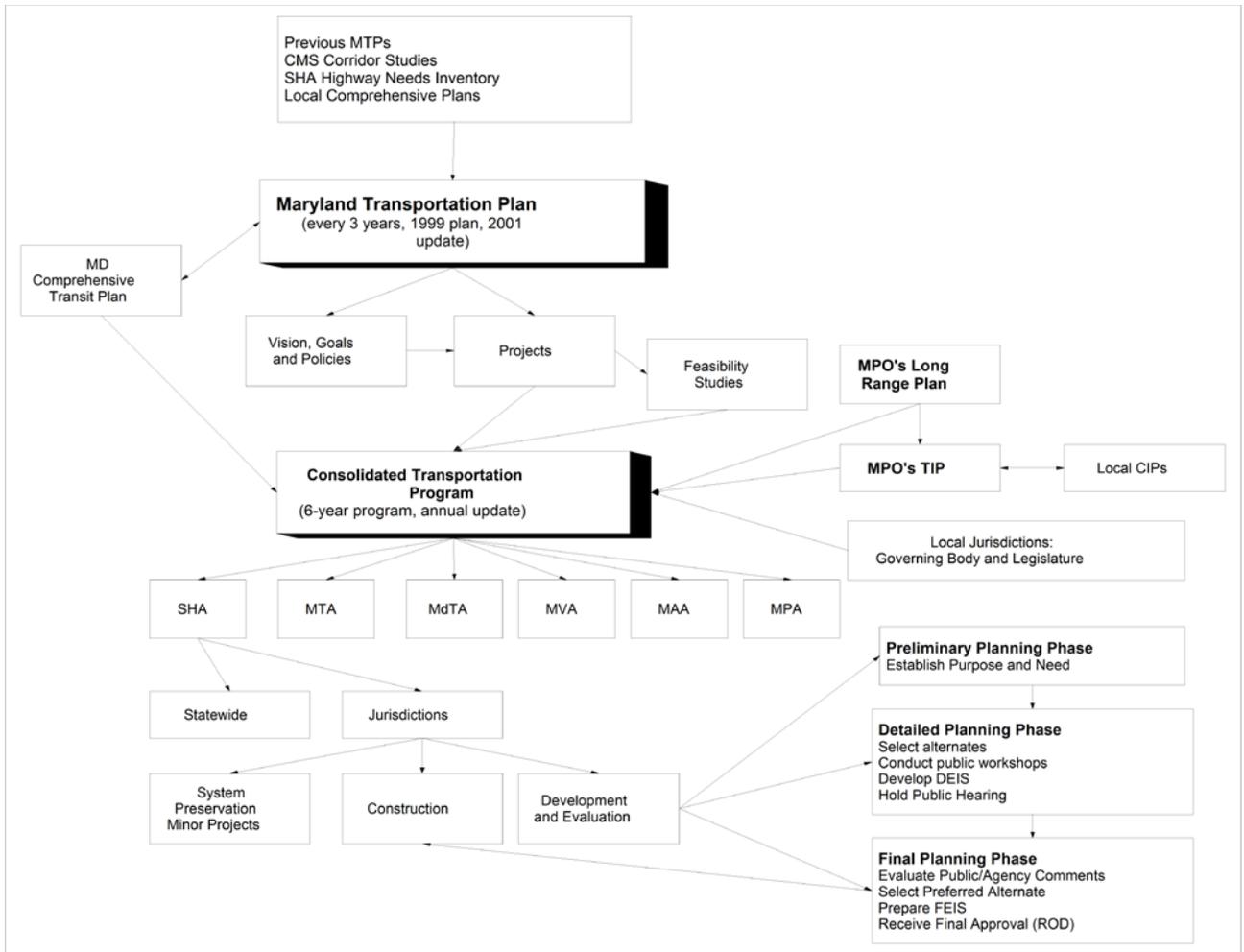
### **HNI**

The Highway Needs Inventory (HNI) is a list of state highway improvement needs to be evaluated. HNI is a framework for planning and investment on state highways in the future.

### **TTF**

The Transportation Trust Fund (TTF) is separate from the rest of the state budget. It addresses state revenues and expenditures on transportation, and includes funding sources for highway, transit, and other modes of transportation.

The following illustration describes the State transportation planning and investment processes.



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## PFA Law

“Growth-related” major transportation projects are required to be located inside PFAs unless an exception is approved according to the PFA law. The intent of the State Smart Growth Act is to provide adequate transportation facilities and services to strengthen existing communities and support development in PFAs.

Since the inception of the 1992 Maryland Economic Growth, Resource Protection, and Planning Act and the 1997 Smart Growth and Neighborhood Conservation Act, MDOT addresses transportation policies and programs to support Smart Growth. MDOT programs, such as Community Safety and Enhancement, and Streetscape, Sidewalk and Bicycle Facility Retrofits, support local efforts in Smart Growth, Complete Streets and community sustainability.

## 12 Visions

The State’s 12 Planning Visions provide clear direction on integrating transportation with land use to encourage TOD and smart growth land use patterns. They also call for investing multimodal transportation system facilities to enhance movement of people, goods and services within and

between population and business centers. Implementation of the new planning visions will be accomplished at all state, regional, local and interstate levels.

## **Regional/MPOs Roles in Transportation Planning Process**

For any urbanized area with population greater than 50,000, a metropolitan planning structure is required to ensure transportation investments are based on a continuing, collaborative, and comprehensive planning process. The process is led by Metropolitan Planning Organizations (MPOs) made up primarily of representatives from local governments and transportation authorities.

Other federal, state, and local agencies whose missions are influenced by transportation planning are encouraged to participate in the metropolitan planning process. Increasing funding levels for MPOs through SAFETEA-LU has enhanced the metropolitan planning process, required consultation with MPOs, and promoted consistency between metropolitan area transportation improvements and State and local growth policies and economic development patterns.

### **Other MPOs**

Other MPOs in Maryland include the National Capital Region Transportation Planning Board (TPB), the Baltimore Regional Transportation Board (BRTB), the Cumberland MPO, the Hagerstown-Eastern Panhandle MPO (HEPMPO), Salisbury/Wicomico Area MPO, and Wilmington Metropolitan Planning and Coordinating Council (WILMAPCO). The State and MPOs work collaboratively in preparing a number of transportation documents, including:

### **Regional Long Range Plan**

A regional transportation plan is a plan covering at least 20 years' horizon and including the preferred and financially-constrained multimodal transportation projects and strategies to achieve the identified regional transportation goals and policies. The Long Range Plan must meet the applicable federal and state requirements.

### **Transportation Improvement Program (TIP)**

A TIP is a short range fiscally-constrained transportation program produced annually to include the region's federal funded multimodal projects and serves as the implementation arm of the long-range plan.

### **Statewide Transportation Improvement Program (STIP)**

A STIP is a 5-year fiscally-constrained, prioritized set of federally funded projects plus regionally significant State and local projects compiled from local and MPOs plans/TIPs. STIP is required to obtain federal funding.

### **The Clean Air Act Amendments of 1990**

The Baltimore and Washington metropolitan regions and some counties in other MPO regions in Maryland fall in a Non-Attainment category. Regions in non-attainment of federal air quality standards must evaluate their long and short range plans for conformity with the 1990 Clean Air Act, which

stipulates that transportation projects in a TIP cannot lead to further degradation in a region's air quality, but should begin to improve the air quality and meet the region's emission budget.

## **Regional plans and Smart Growth**

The state's Smart Growth legislation, 1992 Planning Act, local comprehensive plans, and regional transportation plans and programs should be considered together for consistency with SAFETEA-LU.

## **Local Role in Transportation Planning**

Local jurisdictions play a major role in local transportation planning and investment. Required by Article 66B, a local comprehensive plan must include a transportation element in which planning and improvement on roads, transit, pedestrian and bicycle facilities and other applicable modes of transportation should be addressed. A local transportation plan or element of the comprehensive plan should address transportation goals, policies, and improvement needs for both local and State facilities and services. Project recommendations from a local plan feed into regional and State transportation plans and programs.

The authority for planning and regulating land use and development gives local jurisdictions a critical role in better coordinating transportation with land use at local, State, regional as well as federal levels of transportation planning. Better coordinated transportation and land use planning is essential for producing an efficient multimodal transportation system and achieving smart growth outcomes.

Local Smart Growth land use patterns and community design foster more balanced, efficient, and sustainable multimodal transportation systems while strategically planned and invested transportation systems reinforce livable community objectives and Smart Growth.

Local jurisdiction's buy-in for better land use and transportation planning is vital for the success of State and regional Smart Growth policies and the federal livability initiative. The State holds a particular interest in the relationship between transportation and land use. Required by the Smart Growth Act, Maryland began a concerted effort to direct transportation improvements to Priority Funding Areas in support of viability of existing communities and sustainable growth in PFAs. This is in recognition that the transportation infrastructure required to support dispersed low density patterns of development is no longer affordable. Without supportive land use planning and development at the local level, regional transportation, land use, and Smart Growth visions won't be realized. This also applies to the success of any future federal sustainable and livable initiatives.

## What to consider when preparing the local transportation plan

### Article 66B Requirements

Article 66B includes broad requirements for the transportation element of a local comprehensive plan. The requirements address facility types, patterns, locations, time frame, and improvements. The transportation element, generally, should address:

- proposals for the most appropriate and desirable patterns for the general location, character and extent of the channels, routes and terminals for transportation facilities, and for the circulation of persons and goods at specified times as far into the future as is reasonable;
- bicycle and pedestrian access and travelways; and
- an estimate of the probable utilization of any proposed improvements.”

The Transportation element may include all types of highways and streets, bicycle ways, sidewalks, railways, waterways, airways, routings for mass transit, and terminals for people, goods, and vehicles related to highways, airways, waterways and railways.

### Basic information for a transportation element

Existing facility inventory: roads, a roadway classification system, traffic data, bridges, sidewalks and bikeways, transit routes and service frequency, transit ridership, stations and bus stops, car-pooling, telework, airports, rail freight lines, ports and marinas, parking and associated maps.

Issues and problems: roadway safety and operation issues, inadequate transit service, missing sidewalks and bikeways, incompatible land uses with airports, current State’s CTP projects and their issues, and inter-jurisdiction issues if any

Policies (goals and objectives): support for other elements of the comprehensive plan, consistency with the State’s Smart Growth policies, preserving existing systems, multi-modal system (policies for each modes); inter-modal connection and system linkages, and etc.

Recommendations: Include capital projects and/or recommended studies for each mode, new programs and services, reasons and purposes of those recommendations.

Implementation: identify priorities, State, Federal and local and developer funding sources, standards and codes, and implementation timeframes and procedures

### Important Policy Issues to Consider

A transportation plan element should coordinate transportation and land use planning to support Smart Growth and Smart Transportation by:

- Defining different transportation policies and recommendations for designated growth areas/Priority Funding Areas and for rural areas (How does the transportation element support development and redevelopment in growth areas? Determine also how the element helps to protect rural areas.

- Focusing transportation investments within defined growth areas to improve the areas' transportation accessibility. Such accessibility includes all forms of transportation. The transportation plan should promote equal access by pedestrians, cyclists, public transportation and cars. This should create an interconnected system that provides not only car connections but also sidewalks, bike lanes, trails and bus lines between residential areas and schools, commercial facilities, recreational areas, and employment centers. Known as **Complete Streets**, this strategy is gaining acceptance across the country because it addresses fair and equitable treatment to all segments of society, not just those who are driving cars.
- Limiting highway investment outside of growth areas to those that address health and safety concerns. Wise transportation investments can assist in the preservation of farmland, environmentally sensitive areas and historical/cultural landscapes by limiting unnecessary road widening investments, limiting access to adjacent properties along highways, employing appropriate development standards at interchange areas, and linking policies for highway capacity investments to areas within PFA's or directly connecting PFA's. In rural areas, also consider the needs of public transportation for elderly, disabled and economically disadvantaged.
- Planning for mixed-use, transit-oriented land use patterns and pedestrian friendly design options and supporting them with adequate pedestrian/bicycle and transit facilities and cost-effective roadway network to create livable communities. Taken together, all of these initiatives should increase transportation choices and reduce VMT.
- Considering potential impacts of proposed bypasses of Main Streets and recognizing that a bypass may not be an appropriate solution to traffic congestion. It may be that congestion is precisely what Main Street businesses need in order to remain economically viable. Consider innovative ways to address circulation, e.g., building interconnected local roadway network, access management, coordinated land use planning along a major highway.
- Coordinating land use with highway access management to prevent strip developments along highways. Some strategies to be considered include:
  - Developing access management policies for major highways by consolidating and limiting access points to certain strategic locations.
  - Building interconnected local roadway network systems along both sides of a major highway to channel local traffic and protect capacity and safety of the major highway.
  - Strategically planning more intense land uses at major intersections and protecting environmentally sensitive areas and rural open spaces along the highway corridor.

## Planning Tools Affecting the Transportation Plan

### Zoning Regulations

Low density dispersed development drives up roadway and transit costs. Driving becomes the only viable means of transportation. Trips from rural areas significantly add to the congestion in urban areas.

TOD, mixed-uses, compact and high density zoning regulations support transit, bicycle travel, walkable communities.

### **Subdivision and Site Plan Requirements**

The provision of sidewalks, bikeways, trails, transit amenities, and roadway circulation are key elements of subdivision and site plan submittals that can be addressed in local subdivision and site plan ordinances. Interconnecting these transportation facilities can make communities more livable.

### **Linking Transportation with Land use planning**

Mixed-use development lessens the demand for trip generation. Transit oriented land uses produce fewer car trips. Parking regulations can be improved by instituting maximum parking requirements, shared parking and incorporating automobile and transit usages. Parking lots can be integrated with the pedestrian environment in such ways that increase pedestrian safety and improve aesthetics.

Site Plan and other development regulations can be modified to require plans for walkable and bikeable communities using complete streets principles and techniques. Access management regulations and transportation operation/safety should be taken into consideration. Small area roadway networks should prioritize grid patterns over cul-de-sacs to provide better linkages and circulation networks for the community.

### **Road Design Standards**

Road design standards have a profound effect on the levels of safety and utility for all users, from the size of the roads, curb radii, and the resultant effect it has on speed and safety for cars and people. Road design must consider auto sight distance, and pedestrian and bicycle movements, but also parking, landscaping, stormwater management and drainage.

### **Adequate Public Facility Ordinances (APFOs)**

Examine the pros and cons of APFO's, as discussed earlier in a separate section. As for transportation planning, a jurisdiction should consider a higher APFO standard for rural areas and a lower and flexible standard for designated growth areas. Implementation of APFOs with targeted infrastructure investments to improve transportation facilities in growth areas can help accomplish smart growth objectives. APFOs should consider multimodal transportation facilities to address adequacy issues. Local APFOs can be written to allow for developers to be given credit for the provision of bicycle, pedestrian and transit improvements and other TDM improvements. This approach will help local jurisdictions to start building walkable, bicycle friendly, and transit accessible communities while reducing the need for widening intersections and roadways as the only transportation solution for supporting growth.

### **Local Capital Improvement Program**

The local CIP should prioritize investment in recommended transportation projects by including roads, sidewalk and bikeway retrofits, parking, including bicycle parking facilities and transit amenities, if applicable.

## **Traffic Impact Study**

Requiring a traffic impact study for a proposed development ensures that needed roadway and other transportation facility improvements will be identified along with any necessary planning and funding to support the development. A traffic impact study requirement can be structured to give credits for mixed-use, transit, and pedestrian and bicycle facilities to encourage multimodal solutions and increase transportation choices for residents and businesses.

## **Other Transportation Planning Tools**

Impact fees and excise taxes are two types of tools that may be considered when discussing potential funding sources for transportation projects. Formulas for funding can be based on the impacts measured by the number of trips generated by the development.

Other tools for consideration include Overlay Zones, such as transit district overlay zones, where special guidelines, zoning controls and design requirements can be used to encourage Transit Oriented Development. Similarly, highway corridor overlay zones protect corridor view sheds, signage and building design features, and provide compatible land use options to enhance and protect area character.

# Module Four: Review Questions

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1. In the State of Maryland, the Critical Area is found :
  - A. In the areas most important to each jurisdiction.
  - B. The coastal areas originally mapped by staff at DNR in 1987.
  - C. All lands within 1,000 feet of the edge of tidal waters, or from the landward edge of adjacent tidal wetlands.
  - D. Wetlands of critical state concern.
  
2. Which of the following is not a purpose of Maryland's erosion/sediment control and stormwater management programs?
  - A. Reduce stream channel erosion.
  - B. Reduce pollution and siltation.
  - C. Reduce local flooding caused by land use changes.
  - D. All are goals of the Stormwater program.
  
3. What triggers the Forest Conservation Act requirements?
  - A. Application for a subdivision permit on a tract of 40,000 square feet or more.
  - B. Application for a grading permit on a tract of 40,000 square feet or more
  - C. Application for a sediment control plan on a tract of 40,000 square feet or more
  - D. All of the Above.
  
4. Federal transportation legislation funds which of the following?
  - A. Highways.
  - B. Transit.
  - C. Pedestrian and bicycle facilities.
  - D. All of the Above.
  
5. Complete streets are:
  - A. Streets that connect to other parts of the road network.
  - B. Paved with curb and gutter.
  - C. Streets that every segment of the population can utilize safely and effectively.
  - D. Not practical in auto dependent areas.

# Module Five: Maryland's Smart Growth Vision for the Future

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## **Maryland's Smart Growth Vision for the Future: Smart Green & Growing**

Maryland has long been a national leader in progressive land use, from the creation of the first state planning commission in 1933 to the well-known Smart Growth legislation of 1997. More than a decade after the advent of Smart Growth, however, we continue to face significant land use challenges.

Maryland is a wonderful place to live, and is expected to experience a rapid population growth in the coming years. This growth promises increased pressure on farmlands, forests, and waterways, including our precious Chesapeake Bay and the window of opportunity to confront and solve these challenges is shrinking.

*Smart, Green & Growing* is Maryland's long-range, multi-agency initiative focused on protecting Maryland's precious, yet limited, air, water and land resources in every region of our State, so our families and children will someday be able share these natural treasures with their own kids in the same way that our parents and grandparents shared them with us. Sound land use planning, from State smart growth programs to local government and citizen actions, is a critical piece in this *Smart, Green & Growing* strategy. By reducing sprawl development and concentrating new housing in our existing communities, we will protect irreplaceable forests and farmland and continue to improve the health of Maryland's Chesapeake and Coastal Bays.

## **Smart, Green & Growing Planning Laws**

The Smart, Green and Growing legislative package from the 2009 Maryland General Assembly session strengthens and reinvigorates the fundamental tools of smart growth. The three planning bills enacted into law comprise the most significant achievements in smart growth in more than a decade.

The most far-reaching achievement of these new laws is the *Planning Visions* act which resulted in 12 modernized Planning Visions that will impact the future growth in Maryland for generations to come. The new Planning Visions express the State's vision for sound growth and development and will enhance local comprehensive plans by reflecting a greater connectedness between where we live, where we work, and the quality of life we enjoy.

The *Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions* act established a statewide smart growth goal for Maryland first time in history. Local governments must also develop their own smart growth goals. Consistent with the Governor's Stat approach, Maryland jurisdictions will now report on a uniform set of indicators in order to provide better information to influence better planning policy decisions.

The *Smart and Sustainable Growth Act of 2009* clarified that local jurisdictions must implement and follow the comprehensive plans they adopt. This law protects the investment that citizens make in their comprehensive plans and thereby enhancing the role of these plans for smart growth. This bill also established this course for planning commissioners.

## **The Seven Themes of Smart Green & Growing**

Smart, Green & Growing is an initiative that advances the State's shared vision for a healthy environment and healthy natural resources that support a strong economy and an exceptional quality of life. Today State agencies are actively working with local governments, legislators, grassroots organizations and businesses large and small to protect our air, our land, our water and our people. Smart, Green & Growing brings the State's sustainability efforts together under seven themes. These are:

- Restoring the Bay
- Preserving Land
- Revitalizing Communities
- Green Jobs
- Improving Transit
- Conserving Energy
- Climate Change

# Smart, Green & Growing Themes

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## **Theme: Restoring the Bay**

From recycling to carpooling, from properly disposing of pet waste to planting a tree, every Marylander has a role in – and responsibility for -- improving water quality in Maryland's rivers, streams and creeks, and the Chesapeake and Coastal Bays.

## **Tools for Local Governments**

### **The Chesapeake and Coastal Bays Trust Fund**

The Chesapeake and Coastal Bays Trust Fund provides financial assistance to local governments to for pollution control projects, such as reducing stormwater runoff.

Maryland's Coastal Program, established by executive order and approved in 1978, is a network of state laws and policies designed to protect coastal and marine resources. The program strives to achieve a balance between development and protection in the coastal zone. Maryland's coastal zone includes the Chesapeake Bay, coastal bays, and Atlantic Ocean, as well as, the towns, cities and counties that contain and help govern the coastline. It encompasses two-thirds of the state's land area and is home to 67.83% of Maryland's residents. Through partnerships and funding to local governments, state agencies, non-profit organizations, and universities, the Coastal Program addresses a variety of coastal issues including provision of public access, nonpoint source pollution reduction, coastal hazards mitigation, habitat and living resources protection and growth management. The Department of Natural Resources is the lead agency for this program.

[For further information on the Chesapeake and Coastal Bays Trust Fund, please visit the Maryland Department of Natural Resources website.](#)

### **National Coastal Zone Management Program**

In 1972, Congress recognized that planning and management were needed to conserve coastal resources while accommodating growth. To help do this, Congress enacted the Coastal Zone Management Act to "preserve, protect, develop and, where possible, to restore and enhance the resources of the nation's coastal zone for this and succeeding generations." The key feature of the Act is the creation of a partnership among federal, state, and local governments that assures consultation and cooperation as they seek solutions to problems caused by competing coastal pressures. Congress realized that the best way to meet these goals was to encourage states to exercise their full authority over their own lands and waters. It provided two incentives: funding to allow state and local governments to manage coastal resources, and a promise to carry out federal activities, or actions authorized by a federal permit in a manner consistent with a state's plan. These two features help coastal states bring competing coastal users into a cooperative arrangement.

[For further information on the National Coastal Zone Management Program, please visit the National Oceanographic and Atmospheric Administration website.](#)

### **Water Quality Grants and Loans**

Water quality grants and loans are available to help local governments fund access to safe and plentiful drinking water, upgrades to wastewater treatment plants, improvements to stormwater systems, and local stream and wetland restoration projects.

### **Maryland's Stormwater Management Program**

Maryland's [new stormwater program](#) and regulations will help counties, communities, and individuals reduce runoff of trash and pollution that occurs during rainstorms.

### **Opportunities for Citizens**

#### **Cover Crops and other on-farm best management practices**

Cover Crops and other on-farm best management practices (BMPs) prevent soil erosion, manage nutrients and safeguard water quality in streams, rivers and the Chesapeake Bay.

#### **Marylanders Grow Oysters**

Through Marylanders Grow Oysters, waterfront property owners are growing oysters that will eventually become part of local oyster reefs.

#### **Maryland Tributary Team**

Maryland Tributary Team volunteers are addressing pollution at the local level in 10 major tributary basins of the Chesapeake Bay watershed.

#### **Bay Restoration Fund**

Through the Bay Restoration Fund, Marylanders with septic systems can receive a free upgrade and five years of free maintenance to reduce nutrient pollution loads.

#### **Marylanders Plant Trees**

Plant and be counted with this \$25 coupon from Marylanders Plant Trees.

### **Theme: Preserving Land**

By redirecting our growth patterns and preserving our open space, we are protecting human health and well being along with the very foundation of Maryland's social and economic prosperity: productive farm land, critical habitat for fish and wildlife, opportunities for recreation and tourism, our culture and our history.

## Land Conservation Programs

### GreenPrint

Through the cutting edge GIS technology of [GreenPrint](#), every Marylander can now track land conservation progress across the state and identify ecologically significant lands within their own communities.

### Maryland Agricultural Land Preservation Foundation

The [Maryland Agricultural Land Preservation Foundation](#) permanently preserves farm land through purchase of development rights to protect the environment and local food supply, strengthen rural communities and help direct development into areas with existing built infrastructure.

## Planning Tools for Local Governments

### Smart Growth Listening Sessions

Over 600 Marylanders came out to nine [Smart Growth Listening Sessions](#) held throughout the state by MDP and the Task Force on the Future for Growth and Development to get citizen input on the future of sustainable growth in Maryland.

### Task Force on the Future for Growth and Development

The 21-member Task Force on the Future for Growth and Development released its report entitled “Where Do We Grow from Here?” on January 12, 2009.

### Transit Oriented Development

The State of Maryland is working closely with local governments to realize [Transit Oriented Development](#) (TOD) at key rail transit stations across the State.

### Statewide Freight Plan

Maryland will release its first [Statewide freight plan](#) in 2009 that will be one of the first freight plans to include a Smart Growth component.

### U. S. Census

In partnership with the U. S. Census Bureau, the State of Maryland is working to achieve a complete count of Maryland’s citizens in the [decennial census taking place next year](#).

### Building Coast-Smart Communities

To protect Maryland’s people, infrastructure, and investments from the impacts of climate change, we are taking action now to ensure that our [coastal communities](#) are ready, adaptive and resilient.

## Theme: Revitalizing Communities

What does it mean to live in a revitalized community? Of course, we believe that everyone deserves the opportunity to live and work in prosperous and secure communities. We want to provide access to affordable housing, job opportunities, community services and transit.

Preventing sprawl, promoting economic development, and protecting our environment means that future generations of Marylanders will have an improved quality of life. By combining affordable housing, business assistance, downtown beautification, green building, and transit-oriented development initiatives, we can ensure that Maryland's communities not only survive, but grow and thrive, ensuring a better future for our children and families.

## **Tools to Assist Maryland Communities**

### **Community Legacy**

[Community Legacy](#) provides funding for local economic development activities that stimulate reinvestment and strengthen neighborhoods throughout Maryland.

### **Neighborhood BusinessWorks**

[Neighborhood BusinessWorks](#) provides below market loans to small business that locate or expand in target revitalization areas, bringing new services, jobs and vitality to their surrounding communities.

### **Community Development Block Grants**

[Community Development Block Grant](#) funds help strengthen Maryland's communities by expanding affordable housing opportunities, creating jobs, stabilizing neighborhoods and improving overall quality of life.

### **Community Investment Tax Credits**

[Community Investment Tax Credits](#) support 501(c)(3) nonprofit organizations by awarding allocations of state tax credits to use as incentives for business contributions.

### **Main Street Maryland**

[Main Street Maryland](#) helps strengthen the economic potential of the state's traditional downtown business districts by helping them improve the economy, appearance and image using the principles of Smart Growth and sustainability.

### **Transportation Enhancement Program**

The [Transportation Enhancement Program](#) (TEP) supports communities in developing transportation projects that improve the quality of life in the community.

### **Context Sensitive Design**

[Context sensitive design](#) is a collaborative approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic, and environmental resources.

## **Theme: Green Jobs**

Maryland is looking ahead by designing and implementing a strategic plan to promote green jobs and better position Maryland for long-term sustainability. Key initiatives include attracting and growing

green businesses, fostering green job creation; growing Maryland's green workforce; promoting green practices and encouraging energy & resource efficiency.

## **What are Green Jobs?**

A Green Job is any job that helps promote sustainability and grow the green economy in Maryland. This includes a wide range of jobs in energy efficiency, energy conservation, renewable energy production, alternative energy production, waste management or environmental stewardship.

Many of the jobs that will contribute to the green economy already exist, such as engineers, HVAC mechanics, and construction workers. Others have yet to emerge.

## **Theme: Improving Transit**

When people choose to ride public transportation, transit puts Families First by decreasing the number of cars on the road, reducing emissions in the air and creating a healthier environment. The state is committed to addressing the growing demand for public transit and is dedicated to making this highly cost-effective and environmentally-conscious mode of transportation as readily available as possible to the people of Maryland.

## **Getting There Smarter**

### **Transit-Oriented Development**

[Transit-Oriented Development \(TOD\)](#) leverages transit investments by bringing to life dense, mixed-use development near rail transit stations across the State. This approach promotes transportation choices and can provide a major resource for accommodating future growth in the state. TOD is Smart Growth, as it can help cut the costs associated with the ownership and operation of cars, reduce sprawl by providing development opportunities in areas that are walkable, and take advantage of existing infrastructure. A number of TOD projects are expected to break ground during the next two to three years.

### **Maryland's Next Generation of Transit**

[Maryland's Next Generation of Transit](#) is the state's aggressive approach to creating new transit initiatives designed to meet current and future demand in both the Washington and Baltimore regions. These projects include the Purple Line and the Corridor Cities Transitway in the Washington region and the Red Line in the Baltimore region. The transit initiatives are now in the planning stage and represent Maryland's next generation of transit.

### **MARC Growth and Investment Plan**

[MARC Growth and Investment Plan](#) is a multi-phased, multi-year plan to triple the capacity of MARC, Maryland's commuter rail system. MARC is a key component of Maryland's commuter network providing rail service for more than 30,000 commuters a day traveling between Washington's Union Station and northern, central and western Maryland. The MARC Growth and Investment plan establishes a series of improvement milestones for 2008, 2010, 2015, 2020 and 2035.

## **Learn More about Smart, Green & Growing**

You are encouraged to learn more about Maryland's Smart, Green & Growing initiative and the seven themes by visiting the website: <http://green.maryland.gov>. The Smart, Green & Growing website includes a number of important tools to help Maryland communities grow and develop smarter in the future:

# Important Links and Resources

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## Links to Websites

### Maryland Association of Counties

[www.mdcounties.org](http://www.mdcounties.org)

### Maryland Municipal League

[www.mdmunicipal.org](http://www.mdmunicipal.org)

### Maryland.gov

[Maryland.gov](http://Maryland.gov)

### Smart, Green & Growing

[green.maryland.gov](http://green.maryland.gov)

### Maryland Department of Planning

[Planning.Maryland.gov](http://Planning.Maryland.gov)

[Other smart growth related web links](#)

### Maryland Department of the Environment

[Maryland Department of the Environment](#)

### Maryland Department of Transportation

[mdot.maryland.gov](http://mdot.maryland.gov)

### Maryland Department of Housing and Community Development

[dhcd.maryland.gov](http://dhcd.maryland.gov)

### Maryland Department of Agriculture

<http://www.mda.state.md.us>

### Maryland Department of Natural Resources

[dnr.maryland.gov](http://dnr.maryland.gov)

### Maryland Energy Administration

[energy.maryland.gov](http://energy.maryland.gov)

## **Links to Resources**

### **Smart, Green & Growing Planning Guide**

[http://planning.maryland.gov/PDF/OurProducts/Publications/otherPublications/SGG\\_Guide\\_09\\_Web.pdf](http://planning.maryland.gov/PDF/OurProducts/Publications/otherPublications/SGG_Guide_09_Web.pdf)

### **Where Do We Grow From Here? - A Report of the Task Force on the Future for Growth and Development**

<http://planning.maryland.gov/PDF/Yourpart/773/773TaskForceReport.pdf>

### **PFA's How to Revise and Update**

[http://planning.maryland.gov/PDF/OurProducts/Publications/OtherPublications/PFA\\_Update\\_Revise\\_09.pdf](http://planning.maryland.gov/PDF/OurProducts/Publications/OtherPublications/PFA_Update_Revise_09.pdf)

### **Planning Commission Duties and Responsibilities**

<http://planning.maryland.gov/PDF/OurProducts/Publications/OtherPublications/PlanningCommissionDuties.pdf>

### **Models & Guidelines #27- Smart Growth, Community Planning and Public School Construction**

<http://planning.maryland.gov/PDF/OurProducts/Publications/ModelsGuidelines/mg27.pdf>

### **Smart Growth and Neighborhood Conservation Initiatives**

<http://planning.maryland.gov/PDF/OurProducts/Publications/OtherPublications/smartgro.pdf>

### **This is Smart Growth (A Service of the Smart Growth Network)**

[http://www.smartgrowth.org/pdf/this\\_is\\_smart\\_growth.pdf](http://www.smartgrowth.org/pdf/this_is_smart_growth.pdf)

### **Going Green Downtown: A Sustainability Guide for Maryland's Main Streets**

[http://www.dhcd.state.md.us/Website/documents/green\\_guide.pdf](http://www.dhcd.state.md.us/Website/documents/green_guide.pdf)

# Module Five: Review Questions

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1. The Planning Vision Act of 2009 updated the State's planning visions to:
  - A. Eight modern Visions.
  - B. Negotiable visions selected by local governments.
  - C. Twelve modern visions.
  - D. Ten new visions and a couple of optional ones.
  
2. The Chesapeake and Coastal Bays Trust Fund does which of the following?
  - A. Provides financial assistance to local governments to for pollution control projects.
  - B. Is a voluntary fund that has no restriction for use by trusted local governments?
  - C. Is to be used strictly to restore bay grasses or oysters.
  - D. None of the above.
  
3. The Maryland Coast-Smart Communities program is aimed at?
  - A. Increasing school test scores in coastal counties.
  - B. Protecting Maryland's people, infrastructure, and investments from the impacts of climate change through assisting our coastal counties to be ready, adaptive and resilient.
  - C. Stopping all development along Maryland's coast except where subdivisions were approved prior to 1997.
  - D. None of the above.
  
4. The Maryland Main street program goals are to:
  - A. Strengthen the economic potential of the state's traditional downtown business districts.
  - B. Helping downtown business districts improve their economy.
  - C. Improve the appearance and image of downtown business districts using the principles of Smart Growth and sustainability.
  - D. All of the above.
  
5. With the "The Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions act" for the first time local governments:
  - A. Must also develop their own smart growth goals.
  - B. Develop their planning maps at the same scale.
  - C. Are required to report on a uniform set of indicators in order to provide better information to support better planning policy decisions.
  - D. A and C.

# Module Six: The Roles and Responsibilities of a Planning Commissioner/Board member

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## Roles

The planning commissioner/board member has both formal and informal roles in the course of their work. Formal decision-making and advisory roles, such as preparing the comprehensive plan and implementing the plan through local ordinances, are designated by State and local laws, or through planning commission/board by-laws. In addition, in the course of carrying out formal roles, the planning commissioner takes on more informal roles such as negotiator, mediator, unofficial advisor, researcher, and coordinator.

Ultimately, it is up to the local jurisdiction to determine the role of the planning commission/board. In some, the planning commission/board may serve a formal, but advisory role, making recommendations to the board of appeals. In others, the commission plays a much larger role with greater responsibilities. However it is structured, the planning commission/board will have both formal and informal roles in the course of its work.

Formal roles are designated by state or local laws, or through planning commission/board bylaws. The primary formal roles of the planning commission are decision-making and advisory roles. Informal roles evolve as a result of the nature of the planning commission's work.

## Responsibilities

Responsibilities are defined as the "sphere or extent of activities." In charter counties, the responsibilities of the planning commission/board are established in the charter or by ordinance. In general, a charter county planning commission/board does the following:

- The planning commission/board works with the community to craft a comprehensive plan;
- The planning commission/board recommends ordinances and regulations to implement the 12 visions and the plan;
- The planning commission/board executes the plan by creating and applying appropriate implementation tools; and
- The planning commission/board implements the 12 visions for economic growth and resource protection as amended.

None of these tasks are to be taken lightly. They require the planning commission to grapple with different viewpoints and, above all, to represent and work for the greater good of the public interest first and foremost.

For non-charter counties and municipalities Article 66B defines these responsibilities broadly and empowers the planning commission/board to engage in a variety of activities to achieve the visions. For example, planning commissions/boards have the ability to initiate reports on specific issues, hold workshops on the plan for public officials, and craft new mechanisms to achieve the goals of the plan.

## **The Work of the Planning Commission/Board**

The planning commission/board has a basic decision to make in carrying out its responsibilities – it can choose to operate in either an active or reactive mode. In the reactive mode, the planning commission/board addresses items as needed; in this way, the planning commission/board is fulfilling its legal responsibilities. But by working actively, the planning commission/board recognizes and seizes opportunities to affect growth and development consistent with the comprehensive plan. A planning commission/board working actively more often fulfills its legal responsibilities as well as its mission.

In addition to the role of the planning commission/board as an entity, planning commissioners/boards should be aware of their individual responsibility. In order to be an effective member of a planning commission/board, each member should become familiar with the jurisdiction's plans and ordinances, as well as applicable Maryland law. Similarly, commissioners/board members should be familiar with the details on each matter that comes before the planning commission/board.

## **Developing a Comprehensive Plan**

As discussed elsewhere in this course, a major responsibility and formal role of planning commissions/boards as outlined in Article 66B and for charter counties, is to prepare a comprehensive plan. Article 66B states that once the planning commission/board is created, it has the responsibility to prepare a comprehensive plan for its jurisdiction and to present this plan to the local legislative body or governing body for consideration and adoption.

As caretakers of the comprehensive plan, planning commissions are charged with helping a community achieve its full potential, as outlined by the overall vision of the plan. Planning commission members accept the civic responsibility of helping residents, businesses, and property owners develop and implement a vision for how the community is to look and function in the future.

The development of a comprehensive plan is not often an easy task. Planning commissions are required to grapple with different viewpoints and, above all, to represent the overall public interest over the long-term. As such, it is appropriate to engage local staff, create advisory groups or task forces, and /or hire outside technical advisors (consultants) to assist in the development of the comprehensive plan.

## **Commission Work Sessions**

Planning commission/boards typically hold open work sessions when developing the comprehensive plan and such sessions are usually in addition to the planning commission regular monthly meeting. These sessions are open to the public to attend and listen to the discussion, but, at this point, are designed for planning commission/board input only. During these work sessions, the planning

commission/board members discuss information that has been gathered, review background studies, evaluate existing conditions, identify key issues, and review the existing plan for necessary revisions.

### **Public Input into Planning Commission Decisions**

At any point in the process, the planning commission/board may elect to identify and solicit input from affected citizens, community leaders, and various community groups and associations. The planning commission/board can also elect to form a citizen’s advisory committee to gain public input in the development of an overall community vision.

It is recommended that the planning commission/board attempt to engage the public in the forefront of the plan development process to include opportunities such as public workshops, open forums, community surveys, and public outreach in the form of community newsletters and flyers.

However, public participation is not guaranteed. Whether public input is or is not sought, the 1977 Maryland Open Meetings Act is the governing law, codified in Article 10, Subtitle 5 of the State Government Article of Annotated Code of Maryland.

### **Other Plans**

It is also strongly recommended that the planning commission/board make every effort to including neighboring jurisdictions and other levels of government (Federal and State) in the plan development process. The plan will be more viable if important inter-jurisdictional relationships are indentified. Furthermore, coordinated planning can create supportive linkages between local land use policy and other government programs for technical assistance, funding, and regulatory permits.

### **Public Hearings**

Once the planning commission has prepared a draft of the comprehensive plan, a public hearing date must be scheduled to allow community input. For non-charter counties and municipalities, the required public hearing must be scheduled beyond the 60-day review period for State Clearinghouse review, as previously mentioned under the State Government Role section.

### **Comments**

At the planning commission/board public hearing, the planning commission/board hears and considers all State comments, local government comments, and public comments. Once the public hearing is closed, the planning commission/board may opt to accept additional written comments for a designated period of time. Upon completion of the comment period, the planning commission/board decides what, if any, revisions need to be made to the draft document based upon all of the review comments received.

### **Adoption**

A final draft of the comprehensive plan is prepared and, during a regular planning commission/board meeting, a recommendation for adoption is made to the local legislative body or governing body. In charter counties, an ordinance may specifically outline procedures for the process of comprehensive plan adoption.

## The Six Year Review

Article 66B requires all jurisdictions to implement the 12 planning visions through the adoption of ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are “consistent” with the local comprehensive plan.

## Implementation Tools

Implementation tools are laws, regulations, guidelines, and budgets that are designed to help execute the plan. Article 66B requires all local jurisdictions to enact, but it does require local jurisdictions to ensure that implementation tools are closely tied to the vision, goals, objectives, and policies outlined in the plan.

## Consistency

The relationship between comprehensive plans, implementation tools, and decisions is critically important. When crafting implementation tools, planning commissions/boards should give careful consideration to whether or not the tool in question will help to achieve these goals and objectives.

Without such an analysis, the comprehensive plan will remain a list of good ideas, rather than an instrument to help the community achieve its goals. In order for these tools to carry the weight of law, the local legislative body must adopt them. The planning commission/board acts in a formal, advisory role, making recommendations to the local legislative body.

The Smart and Sustainable Growth Act of 2009 (codified in Article 66B and applicable to all jurisdictions) clarifies “consistency” between the local comprehensive plan and the local zoning ordinances and regulations as actions that further, and are not contrary to, the policies, timing of implementation of the plan, timing of rezoning, timing of development, development patterns, land uses, and densities or intensities. In order to implement the 12 planning visions, the 1992 Economic Growth, Resource Protection, and Planning Act required all jurisdictions to adopt ordinances and regulations (this includes rezoning ordinances), planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are “consistent” with the plan. This new definition applies to special exceptions (for non-charter counties and municipalities only), water and sewer amendments and critical area growth allocations (codified in the critical area law).

In order not to interfere with ordinances that allow planned unit developments in zones and density bonuses, a modified version of the definition of consistency applies. In Priority Funding Areas, “consistency” between the local comprehensive plan and the local zoning ordinances and regulations are actions that further, and are not contrary to, the policies, timing of implementation of the plan, timing of rezoning, timing of development and development patterns. Land uses and densities or intensities are not included in “consistency” in order to provide flexibility in adopting ordinances that encourage mixed use developments and density bonuses,

## Zoning Ordinance and Map

Zoning is the most fundamental planning implementation tool. The zoning ordinance establishes regulations for the use of land and some standards for development within identified zoning district boundaries. The related zoning map identifies properties that fall within different zoning categories. Zoning regulations must be uniform for each class or kind of development throughout each district, but regulations usually differ between districts.

Each jurisdiction should maintain a single, official zoning map, and it should be signed and dated. This is a legal document and it should be current at all times. If copies of the zoning map are requested, the copies should be dated and include a disclaimer identifying the copy as “unofficial.” This will ensure that people will not rely on outdated maps for important zoning information.

Jurisdictions may also want to keep archival record of previous maps for historical purposes. Article 66B does not require jurisdictions to have zoning, but if the jurisdiction does enact zoning, the planning commission/board is required to make recommendations to the local legislative body when the initial zoning is being considered. Most charter county planning commissions/boards also make these recommendations. After the initial zoning is enacted, the planning commission continues in a formal, advisory role, and makes recommendations to the local legislative body regarding any changes to the zoning regulations or map (4.05.a.2.5). The local legislative body makes the final decision (4.05).

Changes to the zoning regulations can take place in the form of zoning text amendments. This method allows the regulations to change without necessitating a complete overhaul of the ordinance.

Property owners, others with a proprietary interest in land, and the elected governing body can request changes to the zoning designation of a particular parcel or parcels of land. “Comprehensive rezoning” occurs due to a policy change and is usually associated with a comprehensive plan amendment. This is the preferred rezoning process. Even if it only results in the rezoning of a single piece of property, it is called “comprehensive” because it is based on a thorough, comprehensive assessment of the area under consideration.

## The Change or Mistake Rule

The “change or mistake” rule puts a difficult burden of proof on the applicant for piecemeal rezoning. In certain cases, however, there may be cause to look at rezoning based on the merits of an individual case. Maryland case law outlines the findings that are required for this type of rezoning, called “piecemeal rezoning,” to take place. In non-charter counties and municipalities, the legislative body shall find that the rezoning is consistent with the comprehensive plan and that the current zoning was applied in error, or that a change in the neighborhood has occurred in the time since the current zoning was applied. In charter counties, the body that reviews piecemeal zoning is determined by ordinance.

It is important to understand that mere fruition of the comprehensive plan does not constitute “change,” because this change was foreseen. Even if change is proven, the local government does not have to grant the request to rezone. The courts do not consider a less-than-ideal decision, or a decision

that does not reflect the best economic value, a “mistake.” The courts also do not consider a factual error a “mistake” if it was readily knowable.

## **Subdivision and Development Regulations**

In non-charter counties and municipalities Article 66B also empowers the planning commission/board to prepare and present to the governing body subdivision and development regulations. In charter counties, the responsibility for subdivision and development regulations is established by ordinance.

Subdivision regulations govern the division of a parcel or parcels of land and may also include additional requirements for development. Development regulations supplement zoning and subdivision regulations with additional requirements for development, such as roads and sidewalks.

It is important to note that non-charter counties and municipalities do not have subdivision plat approval without adopted subdivision regulations.

## **Other Tools**

In addition to zoning, subdivision, and development regulations, Article 66B gives a non-charter county and municipal planning commission/board the authority to prepare and present to the governing body any other implementation tool that it deems appropriate.

Article 66B specifically encourages the planning commission to consider use of innovative tools. Tools listed in Article 66B include transfer of development rights, mixed use development, adequate public facilities, moderately priced dwelling unit ordinances, and others (§10.01).

Other tools not specifically mentioned in Article 66B include things like rural development guidelines, capital improvement programs, and housing and building codes. Regardless of the tool in question, the planning commission acts in its formal, advisory role and the local legislative body has decision-making authority.

## **Programs and Financing for Public Structures, Improvements, and Land Acquisition**

In a non-charter county or municipality the planning commission/board/board is also required to recommend to appropriate public official programs and financing for public structures, improvements, and land acquisition (§3.05.d.2.i). This requirement refers to capital expenditures (money spent on physical improvements to things like sidewalks, parks, roads, and lights).

Ideally, the planning commission/board should prepare a capital improvement plan that outlines capital expenditures for a period of five years, and it would include new construction, acquisition, repairs, and maintenance. At the very least, the planning commission/board should review proposed expenditures to ensure consistency with the comprehensive plan.

## **Implementation Authority of the Planning Commission**

In addition to creating and amending implementation tools, the planning commission/board also implements the comprehensive plan by administering many of these tools. The relationship between

comprehensive plans, implementation tools, and decisions is critically important. Decisions must be consistent with the regulations, which in turn must be consistent with the comprehensive plan.

If the jurisdiction, through a hearing officer, the board of appeals or planning commission/board, is granting frequent relief to certain provisions in the zoning, subdivision, or development regulations, this may indicate that the regulations are not consistent with the goals of the comprehensive plan or are otherwise inappropriate.

For example, if many citizens are seeking and receiving special exceptions for rather benign home occupations – such as computer-based work – then maybe the jurisdiction should permit this use by right. If people want to build new homes in an area designated for infill development, but they need front setback variances in order to be able to build the homes close to the street, like the existing homes, then maybe the jurisdiction should revise the setback requirements. The planning commission/board should be aware of these trends, evaluate the need to revise regulations, and be prepared to make changes accordingly.

In administering these tools, the planning commission/board typically acts in a formal, decision-making role or as formal advisors to the Board of Appeals or to the local legislative body.

In contemplating the rendering of any decision described below and otherwise, it is important to remember that decisions must be consistent with the regulations, which in turn must be consistent with the comprehensive plan.

## Variances

Applicants can request a variance from certain development standards such as setbacks, building height, and lot size, which can be found in the zoning or development regulations. If a variance is necessary, the applicant must submit information to support the application, whether it is a subdivision, site plan review, plot plan, or building permit. In some jurisdictions, in the course of its review, the planning commission may make a recommendation regarding the variance to the Board of Appeals. The Board of Appeals makes the final decision regarding the variance in non-charter counties and municipalities. In charter counties, variances are often decided by a hearing officer/zoning commissioner and the appealed to the Board of Appeals.

Maryland Courts have defined the conditions under which a variance may be granted. A variance may be granted for cases in which the applicant faces a hardship due to features or circumstances that are unique and not generally shared by other property owners in the same zoning district. The unique circumstances must not be self-imposed or self-created by the applicant, and the granting of the variance must not confer special privileges that would be denied to other property owners in the same zoning district. The granting of the variance must confer only the minimum relief needed.

## Administrative Adjustments

In order to streamline the development process, in non-charter counties and municipalities Article 66B permits the legislative body to authorize the planning director or another designee to grant

administrative adjustments from certain requirements in the zoning ordinance, such as height; setbacks; bulk; parking; loading, dimensional, and area requirements; and similar local requirements (§4.05.D). In order to do this, however, the legislative body must develop criteria and procedures for, and limitations to, these administrative adjustments, working in consultation with both the planning commission and the board of appeals.

## **Special Exceptions**

Zoning categories generally include uses permitted by right and uses permitted by special exception. A special exception is a land use that is permitted subject to specific conditions in the ordinance. This makes it possible to allow uses where they are reasonable, but deny them where the specific conditions cannot be met. For non-charter counties and municipalities Article 66B states that the Board of Appeals makes the final decision on special exception requests. For special exceptions in non-charter counties and municipalities, the new consistency definition applies and must be met before a special exception is granted.

In charter counties, special exceptions are often decided by a hearing officer/zoning commissioner and then appealed to the Board of Appeals.

## **Site Plans and Subdivision Requests**

In non-charter counties and municipalities the planning commission/board also reviews and makes decisions on subdivision requests and site plans, and it has the power to approve, deny, or approve with conditions, basing the decision on applicable zoning codes, subdivision regulations and development regulations.

In this case, the planning commission functions in a formal, decision-making role. Although the decisions made by the planning Commission/board are final and do not go through a further process with the local legislative body, they can be appealed. In charter counties, the body that approves site plans and subdivision requests will be set by ordinance.

In non-charter counties and municipalities the planning commission does have the authority to delegate this responsibility to an administrative officer; however, in order to do this, the planning commission must first prepare non-discretionary review criteria for adoption by the local legislative body.

## **Building Permits and Plot Plans**

The role of the planning commission/board with respect to building permits and plot plans varies by jurisdiction. Plot plans show the physical location and dimensions of buildings and are one way to make sure that what is approved is the same thing as what is built. The planning commission/board can serve as a formal advisor to another approving authority; it can make the final decision; or it may have no role at all.

## **Use of Land for Public Purposes**

In non-charter counties and municipalities the planning commission/board has authority over the use of land for public purposes, and these decisions should also be made within the context of the plan.

Specifically, the planning commission/board is charged with approving the location, character, and extent of publicly or privately owned streets, squares, parks, or other public way, ground, or open space. This occurs through the subdivision or site plan process; the planning commission/board has the authority, in the course of its review of subdivisions and site plans, to require the development to include public facilities.

However, there must be a rational nexus between the comprehensive plan and the requirement for public land. This means that the government must be able to point to a logical connection between the proposed action and a stated goal in the comprehensive plan, and that the burden borne by the property owner is comparable to the public benefit.

# Module Six: Review Questions

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1. Subdivision regulations do which of the following?
  - A. Subdivision regulations govern the division of a parcel or parcels of land and may also include additional requirements for development.
  - B. Subdivision regulations govern what land uses are allowed in each zone.
  - C. Subdivision regulations are used to protect sensitive lands such as floodplains.
  - D. Subdivision regulations control the design of how a development will look.
  
2. According to Article 66B, which of the following is a responsibility of the Planning Commission for non-charter counties and municipalities in Maryland?
  - A. The planning commission/board works with the community to craft a comprehensive plan.
  - B. The planning commission/board executes the plan by creating and applying appropriate implementation tools.
  - C. The planning commission/board implements the 12 visions for economic growth and resource protection as amended.
  - D. All of the above.
  
3. When a planning Commission is engaged in the development of a local comprehensive plan, which of the following is not appropriate?
  - A. Engage local staff fully in the development of the plan.
  - B. Create advisory groups or task forces to inform the development of the document.
  - C. Hire outside consultants or technical advisors.
  - D. All of the above are appropriate.
  
4. What typically takes place at a Planning Commission comprehensive plan work session?
  - A. The planning commission/board drafts the plan using computers or notebooks.
  - B. The planning commission/board members discuss information that has been gathered, review background studies, evaluate existing conditions, identify key issues, and review the existing plan for necessary revisions.
  - C. These are always closed to the public and the commission should always craft a vision for the plan without public input.
  - D. None of the Above

5. Every six years, each jurisdiction must do what with their Comprehensive Plan?
  - A. Hold a special public hearing.
  - B. Take the plan off the shelf and vacuum any dust.
  - C. Review and, if necessary, update the plan.
  - D. Update the title page and the maps.

# Module Seven: The Roles and Responsibilities of the Board of Appeals

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Depending upon the authority under which your Board of Appeals is created, certain roles and responsibilities apply. But before we get to that, Maryland law sets out very different authority for board of appeals depending on the jurisdiction.

## Non-Charter Counties and Municipalities

A board of appeals is required for non-charter counties and municipalities under Article 66B sec. 4.07. ("66B Boards")

## Charter Counties

A board of appeals is authorized for charter counties under Article 25A sec. 5(u) ("25A Boards"). While charter counties are not required to have a board of appeals, all of the charter counties have established them.

## Board Membership under Article 66B

- A board of appeals consists of at least three members.
- The terms of office of the members of a board of appeals are 3 years.
- A member of a board of appeals shall be appointed by the local executive and confirmed by the local legislative body.

## Board Membership under Article 25A

For Article 25A Boards, the number of members of a board of appeals is not specified and is generally set by ordinance. The members are appointed by the local legislative body and not subject to the appointment authority of the local legislative body.

## Jurisdiction

The jurisdiction (or scope of duty) of a board of appeals depends on whether they are an Article 66B board or an Article 25A board.

For a Article 66B board, the jurisdiction of the board is to:

- Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of this article or of any ordinance adopted under this article;

- Hear and decide special exceptions to the terms of an ordinance on which the board is required to pass under the ordinance; and
- Authorize on appeal in specific cases a variance from the terms of an ordinance.

Article 66B boards can only hear the above types of cases authorized under 66B and that arise under Article 66B.

For Article 25A board, the jurisdiction of the board is to hear:

- An application for a zoning variation or exception or amendment of a zoning ordinance map;
- the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and
- the assessment of any special benefit tax.
- Because the language authorizing 25A boards is broader, they typically hear other non-zoning cases such as retirement issues, animal control cases, etc. Other types of 25A cases are often detailed in a local ordinance adopted by the charter county.

## Quasi-judicial rules of procedure

Unlike a planning commission which recommends and decides policy issues such as recommending zoning ordinances, a board of appeals acts in a “quasi-judicial” capacity hearing cases that may be appealed to the circuit court in the jurisdiction in which the board is located.

Because a board of appeals functions in this unique quasi-judicial capacity, the rules of procedure that will be followed by a board are very different than those followed by a planning board or commission. Each board of appeals is likely to have rules of procedure that carefully spell out the procedure that must be followed when hearing a case. Each board member should be very familiar with those rules of procedure.

## Testimony

All witnesses testifying in a board of appeals hearing must testify under oath.

## For the record

Because it is a quasi-judicial hearing, all of the proceedings of the Board are recorded. A board of appeals shall make a transcript of all proceedings, showing the vote of each member on each question or the member’s absence or failure to vote.

The record of the board's proceedings is important in an appeal to a circuit court from the decision of a board of appeals, and shall be decided by the circuit court on the record transmitted by the board of appeals. It may not be heard de novo.

## Open Meetings Act procedure

Hearings of board of appeals are subject to the Maryland Open Meetings Act (OMA). While at a planning board or commission hearing members of the public are generally invited to testify, a person can testify at a Board of Appeals hearing only if they are a witness in the case. In other words, the public does not have the right to testify at a board of appeals hearing.

Like any other public body, a board of appeals can conduct a closed session of the body for specified reasons under the Open Meetings Act. For example, a board could go into closed session to seek legal advice on the proper legal standard for a special exception. A board of appeals must deliberate on a case that has been heard in open session. Most boards will deliberate in open directly after a case has been heard.

## Variations

Applicants can request a variance from certain development standards such as setbacks, building height, and lot size, which can be found in the zoning or development regulations. If a variance is necessary, the applicant must submit information to support the application, whether it is a subdivision, site plan review, plot plan, or building permit. In some jurisdictions, in the course of its review, the planning commission may make a recommendation regarding the variance to the Board of Appeals. The Board of Appeals makes the final decision regarding the variance in non-charter counties and municipalities. In charter counties, variances are often decided by a hearing officer/zoning commissioner and the appealed to the Board of Appeals.

Maryland Courts have defined the conditions under which a variance may be granted. A variance may be granted for cases in which the applicant faces a hardship due to features or circumstances that are unique and not generally shared by other property owners in the same zoning district. The unique circumstances must not be self-imposed or self-created by the applicant, and the granting of the variance must not confer special privileges that would be denied to other property owners in the same zoning district. The granting of the variance must confer only the minimum relief needed.

## Administrative Adjustments

In order to streamline the development process, in non-charter counties and municipalities Article 66B permits the legislative body to authorize the planning director or another designee to grant administrative adjustments from certain requirements in the zoning ordinance, such as height; setbacks; bulk; parking; loading, dimensional, and area requirements; and similar local requirements (§4.05.D). In order to do this, however, the legislative body must develop criteria and procedures for, and limitations to, these administrative adjustments, working in consultation with both the planning commission and the board of appeals.

## Special Exceptions

Zoning categories generally include uses permitted by right and uses permitted by special exception. A special exception is a land use that is permitted subject to specific conditions in the ordinance. This makes it possible to allow uses where they are reasonable, but deny them where the specific conditions cannot be met. For non-charter counties and municipalities Article 66B states that the Board of Appeals makes the final decision on special exception requests. For special exceptions in non-charter counties and municipalities, the new consistency definition applies and must be met before a special exception is granted.

In charter counties, special exceptions are often decided by a hearing officer/zoning commissioner and then appealed to the Board of Appeals.

## Deliberation

Some boards will schedule a later time to deliberate on a case. If a later time is scheduled for deliberation, the board must give notice of that deliberation time and date. Some board of appeals cases can last for several days and are often scheduled over a period of weeks or months.

In some charter counties, a hearing officer hears a case before it goes to the board of appeals. For example, a hearing officer may hear a special exception case. If parties to that case are unsatisfied by the decision in that case, a party can appeal that decision to the board of appeals. In charter counties where a board of appeals is hearing a case on appeals, a party must file for an appeal within a certain period of time after a hearing officer rules.

Because of the quasi-judicial nature of the proceedings, a member of a board of appeals should not engage in ex-parte conversation with any litigant in a case or any witness in the case. This means that a member should not discuss the case with a party or a witness outside of the actual board of appeals proceeding. Ex-parte conversation could result in the case being overturned by a circuit court.

At the end of the case at a board of appeals, a member of the board, board staff or board counsel will prepare an opinion of the board which evidences the board's decision in the case and the reasons behind the decision. It is important that this opinion outline the factual basis for the board's decision so that the circuit court can properly evaluate the case if it is appealed.

# Module Seven: Review Questions

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1. In regards to Boards of Appeals, in Maryland, Charter Counties are:
  - A. All required to have Board of Appeals.
  - B. Not required to have Board of Appeals.
  - C. Are not required to have Board of Appeals but all have established them.
  - D. None of the Above
  
2. Because it is a quasi-judicial hearing, all of the proceedings of the Board of Appeals :
  - A. Are recorded.
  - B. Shall have a transcript of all proceedings.
  - C. Record the vote of each member on each question or the member's absence or failure to vote.
  - D. All of the Above.
  
3. In terms of Maryland Open Meetings Act (OMA) and Boards of Appeals, which of the following is not true?
  - A. Like any other public body, a board of appeals can conduct a closed session of the body for specified reasons under the Open Meetings Act.
  - B. A board of appeals must deliberate on a case that has been heard in open session.
  - C. Hearings of board of appeals are not subject to the Maryland Open Meetings Act (OMA).
  - D. The public does not have the right to testify at a board of appeals hearing.
  
4. The number of Board of Appeals members is specified for:
  - A. Article 66B Boards.
  - B. Article 25A Boards.
  - C. Article 43F Boards.
  - D. Both A & B.
  
5. When testimony is given by a witness before a Board of Appeals:
  - A. They must bring photos or other substantial evidence.
  - B. The witnesses must testify under oath.
  - C. Must have standing in the case being heard.
  - D. The witnesses cannot be related to anyone involved in the case.

# Frequently asked questions

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## **Why are we doing this?**

The Smart Green and Growing – Smart and Sustainable Growth Act of 2009 requires that all members of a local jurisdiction’s planning commission or planning board and board of appeals to complete an education course by July 1, 2010.

## **Why is MDP involved?**

The Maryland Department of Planning was charged by the General Assembly to develop an online education course to make compliance easier. MDP is required to have the course available by January 1, 2010.

The course builds on prior efforts by MDP to provide professional education to planning commissioners, planning board and board of appeals members in conjunction with the University of Maryland.

## **What meaning of planning commission/board applies?**

For the purposes of this requirement, a planning commission, planning board includes a planning commission or planning board established under Article 66B, Article 25A or Article 28 of the Annotated Code of Maryland. In other words, if you sit on a commission or board in a jurisdiction that has planning and zoning authority, you must fulfill your education requirement.

## **What meaning of board of appeals applies?**

For the purposes of this requirement, a board of zoning appeals or a board of appeals or zoning board of appeals means a board established under Article 66B, Article 25A or Article 28 of the Annotated Code of Maryland.

## **How long do I have to complete the course?**

Incumbent or sitting planning commission/board and boards of appeals members have 6 months to complete the education course, or until July 1, 2010. Planning commission/board and board of appeals members appointed after January 1, 2010 shall complete education course within 6 months after the date of appointment.

## **Do I have to take the MDP course?**

No. A local jurisdiction may develop an education course for members of the local jurisdictions’ planning commission/board and board of appeals members in lieu of the Department’s education course.

## **Do I have to take this course each time I'm appointed?**

No. You only have to take this course or a local course once, but there will be other supplemental courses and education opportunities available to you.

## **What topics are covered?**

The Bills (SB 280 and HB 297) stipulated that certain topics be covered, specifically the role of the comprehensive plan, standards for special exceptions and variances, and zoning, planned development and subdivision ordinances, and other ordinances and their respective regulations as may apply.

## **How was the course developed?**

The Bill directed the Task Force on the Future for Growth and Development in Maryland to provide recommendations on the education course by July 1, 2009. These recommendations are included in the curriculum. The course will also include links to additional websites for further study and recommendations for learning more about your local programs that may have an impact on your deliberations as a planning commissioner, planning board member or board of appeals member.

## **How long is the course?**

The course is designed to take approximately 6 hours to complete.

## **How much will it cost?**

There is no charge for the MDP course.

## **What if I don't want to, or cannot take the online course?**

All the materials can be downloaded from the website. However, we will mail one hardcopy package per commission or board upon request.

## **Can I take a course through the Maryland Planning Commissioners Association (MPCA)?**

MPCA has collaborated in offering education courses in the past, and may develop any education course or program it wants. If a local jurisdiction wants to partner with MPCA to develop its own education course, that's okay. For the time being however, only local jurisdictions can offer their own versions of the course, in lieu of this course.

### **What happens if I don't take the course, or if I start it and don't finish?**

While the law states that failure to complete the course may not invalidate a decision of the commission, or be construed to create a private cause of action by any person, you still must complete the course within the allotted time as prescribed by the law.

### **Doesn't this just make it more difficult to attract people to serve on planning commissions/boards and boards of appeals?**

Education enhances the importance of serving on a planning commission/board and board of appeals. Maryland joins 9 other states that already require training or education for planning commissioners: New Hampshire, New York, Massachusetts, Tennessee, South Carolina, Virginia, New Jersey, Kentucky and Louisiana.

### **Is there a passing or failing grade?**

No. There is a review at the end of each section on the education website, but the results are not graded or collected.

### **Do I get a certificate?**

Yes. A graduation 'certificate' will be e-mailed or mailed to you upon completion of the online course. If you do not use the online course, we request a letter from you on jurisdiction letterhead that states that you have completed the course.

### **If I have any other questions, who can I ask?**

Contact Steve Allan by phone at 410-767-4500, or by email at:

[EducationCourse@mdp.state.md.us](mailto:EducationCourse@mdp.state.md.us).

### **How do I get started?**

Go to: <http://planning.maryland.gov/YourPart/EducationWelcome.shtml>

# Answer Key

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## Module One - Introduction to Planning

1. D - More about this can be found in "Trends, statistics and current growth patterns."
2. A - Details about the 2009 Planning Visions can be found in the section "The 12 Visions."
3. C - See "Planning Law" for more details.
4. B - The answer is found in "Basic Concepts and Tools of Zoning."
5. C - More details found in "Basic Concepts and Tools of Zoning."

## Module Two - What is a Comprehensive Plan?

1. D - More details found in "Municipal Growth Element."
2. C - For more information please see the "The Twelve Visions of Smart Growth."
3. D - The answer is found in the section on "Public input."
4. C - For more details see "Developing the Comprehensive Plan."
5. A - This is explained in "The Role of Local Government in preparing the plan."

## Module Three - Growth Management Tools

1. B - You can find more about this subject at "Land Preservation, open space and recreation."
2. C - For more information please see "The County Water and Sewer Plan."
3. D - More can be found at "Capital Improvement Programs."
4. B - Much more information can be found at "Development Rights and Responsibilities Agreements."
5. B - For more information please see "Annexation laws and agreements."

## Module Four - Environment, Green Development, Housing and Transportation

1. C - Further information is found in "Defining the Critical Area."
2. D - For more information please see "Erosion/Sediment Control and Stormwater Management Plan Approvals"
3. D - You can find more information in "Forest Conservation Act."
4. D - The section, "The Federal Role in Transportation Planning" provides more detail on this subject.
5. C - The answer can be found in the "Transportation and Land Use" section.

## **Module Five - Smart, Green and Growing**

1. C - To learn more please see "Smart, Green & Growing Planning Laws."
2. A - This fund is explained in detail in "Tools for Local Governments."
3. B - More can be found in "Planning Tools for Local Governments."
4. D - There is more at "Tools to Assist Maryland Communities."
5. D - Please see "Smart, Green & Growing Planning Laws" for more details.

## **Module Six - The Role of the Planning Commissioner**

1. A - You can review this in "Subdivision and Development Regulations."
2. D - More about these responsibilities can be found in "The Roles and Responsibilities of a Planning Commissioner/Board member."
3. D - You can review this in "The Roles and Responsibilities of a Planning Commissioner/Board member."
4. B - See "Work Sessions" under the "The Roles and Responsibilities of a Planning Commissioner/Board member."
5. C - For more details see "Developing the Comprehensive Plan."

## **Module Seven - Role of a Board of Appeals Member**

1. C - Please see "Board of Appeals Roles and Responsibilities" for more information.
2. D - This is explained in "For the record" under "Board of Appeals Roles and Responsibilities."
3. C - More information can be found in "Open Meetings Act procedure."
4. A - You can review this in "Board of Appeals Roles and Responsibilities."
5. B - See "Testimony" and related sections.



Martin O'Malley, *Governor*

Anthony G. Brown, *Lt. Governor*



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