



*Managing
Maryland's Growth*
Models and Guidelines

Adequate Public Facilities

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

The Maryland Economic Growth,
Resource Protection, and Planning Act of 1992

The Maryland Office of Planning

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I. INTRODUCTION

What is APF ?

Another angle on the same old problem.

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 ballfields are available for recreational leagues, and water rationing becomes necessary during dry summer months.

Adequate Public Facilities laws are an effort to rein in ‘runaway’ development until facilities can be made adequate. APF, an adequate public facilities law, bases development approvals under zoning and subdivision laws on specifically defined public facility capacity standards. They are designed to curtail development in areas where public facilities are inadequate, and to delay development in planned growth areas until adequate service levels are in place or reasonably assured.

*In plain English, APF laws say 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.*

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 these “needs”. However, the crisis occurs in those growing jurisdictions, usually suburban counties, where there is a visible and sudden decline in the availability of various public facilities.

In the context of various means of responding to this problem, APF laws are more structured than specifically enacted legislative **moratoriums** which are generally last ditch efforts to control conditions where there are serious deficiencies. **Impact fees**, on the other hand, provide a means to raise additional funds for capital projects, but do not guarantee that sufficient funds will be available, and meanwhile have no effect on the pace of development.

Adequate public facilities laws can be important growth management tools for rapidly growing counties and municipalities. APF laws are also an important and valuable tool for implementing the Visions of the Planning Act of 1992, particularly the first vision, which calls for concentrating growth in suitable areas. The premise of APFOs is that growth should be directed to *suitable* areas where the facilities are adequate, by

restricting it in areas where certain public facilities are inadequate. There is a particularly strong State interest in this issue, because considerable amounts of State funds are directed to constructing school, sewer and water facilities, roads, and parks.

Why is it needed? Is anyone paying attention?

Many citizens attribute congestion and facility inadequacy to “lack of planning” or “poor planning”. In most situations the planning is definitely there, but the ability to target facility investment to the appropriate location at the appropriate time is hampered by two factors:

- Very few jurisdictions can afford to build facilities in advance of the need.
- Local zoning and development regulations rarely provide exact control over the locations and rates of construction from year to year.

Adequate public facilities efforts become necessary when a local government’s coordination of development and public facility construction fails. 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 laws are frequently thrown 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.

Achieving the Visions

II. APF AND THE PLANNING ACT OF 1992

A carefully designed APF program applied in an appropriate setting can contribute significantly to meeting the Visions of the Planning Act.

An APF law can back up a land use plan that **concentrates growth in suitable areas**, by restricting growth in areas where facility development is not programmed.

An APF law can promote the **conservation of resources** by avoiding expenditures for redundant facilities.

An APF law that is carefully crafted as part of a larger growth management program can **promote economic growth and regulatory streamlining** by providing a clear and dependable schedule of capital investment and facility capacity.

An APF law **addresses funding mechanisms** by maximizing the efficient use of capital investment dollars.



*Look before
you leap.*

III. IS AN APF LAW THE RIGHT TOOL FOR YOUR JURISDICTION?

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

- Can the standards for adequacy be justified under the law, and can it be sustained in Court that there would be serious public health, or threat to public health, safety, and welfare if the standard were to be exceeded?
- Does your jurisdiction's growth management program provide a coherent context for an APF program? That is to say, do you have a clear idea of what facilities are needed at what locations 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 (and in some cases, affordable) level of service for various public facilities? Are you satisfied to aim for '*adequate*' levels of service or do you need to identify the '*optimal*' level?
- Can APF laws 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 APF law based on road capacity could have the unintentional effect of pushing growth out of planned growth areas into rural/agricultural areas. Similarly, an APF law that is based on road safety standards (to address width, sight distance, shoulder obstruction problems in rural areas) may pose problems when applied county-wide.
- Can APF laws be designed to be consistent with local and State capital improvement programs and funding mechanisms? Another example is that school funding from the State for additional capacity is generally not available unless overcrowding exists or is projected within five years of a request for funding; an APF law that kicks in prematurely or uses unwise standards could have the unintentional effect of preventing the funding of school construction to provide capacity in planned growth areas.
- Can the APF law be administered without unintentionally complicating the development review and approval process, and

without delaying development unnecessarily in areas where economic development is being promoted?

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

IV. LEGAL FRAMEWORK AND BACKGROUND

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 public 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 public services and facilities. In either situation, the requirements must be reasonably and rationally related to a valid governmental interest. Approval 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 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 agree-

ments with facility providers may be necessary to ensure consistency with overall community growth objectives. (Rathkopf, *The Law of Zoning and Planning*, §13.06 (4th edition))

Keep both oars in the water.

V. INTEGRATING APF WITH THE LOCAL GROWTH MANAGEMENT PROGRAM

A thorough and comprehensive growth management program should function so that land use planning and facility planning are linked and interdependent from beginning to end. Long-range planning for growth should be conducted to ensure that a jurisdiction's financial ability to provide necessary facility improvements is not exceeded; and also that the capital facility plans are sufficient to accommodate the projected growth, and are consistent with the policies for locating future growth.

While an APFO can be an extremely valuable planning tool, it must be applied in combination with many other planning tools, and in the context of a broader, comprehensive growth management program. Integration of facility planning with land use planning can be viewed in an ideal sequence of four stages of the development planning process to understand the context of APF laws.

1. **Master Plan stage:** A long range look at the location of anticipated growth and the public facility infrastructure necessary to support it. A land use plan that describes the location and intensity of growth must be followed by a community facilities plan which describes the existing facilities, and a list of new and upgraded/expanded facilities which will be required to provide the services which the community requires (or aspires to) over the subsequent 10-20 years. The list and price tag for the facilities which are generated by this process are usually staggering to local officials, but it is important not to ignore the reality of the fiscal demands that will be made by growth. Failure to confront this reality leads to the crisis situations that cause the demand for APF laws.
2. **Zoning and Capital Improvement Programming:** Zoning should be phased with existing capacity and with the short term capital improvement program. A thorough and clear community facilities plan can provide a reasonable basis for making these zoning decisions. The community's zoning ordinance should address facility adequacy for both piecemeal and comprehensive rezoning requests, ensuring that adequacy standards are achievable within a reasonable time. The annual Capital Improvement Program (CIP) should be based on the community facilities plan, existing deficiencies, and synchronized with the zoning.
3. **Development approval stage:** APF laws are generally enacted at this stage to regulate approvals of subdivisions or site plans. They can be seen as a safety mechanism for unexpected growth spurts.

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4. **Building permit stage:** Actions to halt building permits are usually in the form of a legislative moratorium that is based on evidence of serious deficiencies with no immediate solution. In the case of water and sewer facilities, administrative, rather than legislative action can halt the approval process.

Interjurisdictional Coordination and Communication

VI. MUNICIPAL APPLICATIONS OF APFOs

While APFOs are most applicable for growing counties with growth management programs, municipalities should consider whether some circumstances may warrant their use.

For instance:

- Annexation petitions must consider the availability and extension of public services. An APF law could provide a set of specific standards and conditions for approval of an annexation petition.
- Municipalities that are located in counties with APF laws may consider similar APF standards to promote interjurisdictional coordination particularly where facilities such as roads and schools are not constrained by jurisdictional boundaries.



VII. EVALUATION

Advantages and Disadvantages

An APFO can be an important addition to a local government's regulatory toolbox that will help ensure a high quality of public facilities and services by providing a mechanism to “calm” the effects of volatile cycles of development and construction.

An APF law can help maintain the fiscal integrity of a government by helping to reduce the demands for excessive borrowing to finance new facilities which are demanded by unexpected growth. Fiscal stability and high bond ratings are important factors to businesses considering new locations.

An APF law can help direct growth to suitable areas where there is capacity for growth and thereby contribute to the fiscal stability of the government as well as support the revitalization of older urban areas where facilities have the ability to absorb growth.

An APF law 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 service areas.
- A policy for conserving rural areas for agricultural use and natural resource protection.
- A policy for directing resources to revitalize existing communities.

While APFOs are often seen as anti-growth mechanisms, a properly designed program will in fact facilitate economic growth and serve to streamline regulatory mechanisms.

- A coherent APF law, especially in combination with a thorough growth management program provides clear guidance to developers on when and where development will be allowed, avoiding unexpected delays.
- Annual reporting and evaluation creates accountability on the part of local government officials by highlighting facility inadequacies, and imposing development moratoria.
- APFOs must be accompanied by a plan and a commitment by the local government to providing the facilities to support growth in a reasonable manner; otherwise, the ordinance will undoubtedly be

perceived as anti-growth, and an attempt to force developers to pay the cost of off-site facility improvements.

Adequate Public Facility ordinances work best where the volume of development far exceeds the ability of a local government to keep up with the demand for public facilities.

Otherwise, the complexity and administrative costs of enacting and maintaining the APF program might not be justified. An APF law requires considerable work:

- To integrate with the existing zoning and subdivision regulations in a functional manner;
- To create a fair process for stopping development approvals (subdivision or building permit?);
- To determine what will be grandfathered, and for how long;
- To establish a 'waiting list', or pipeline, for developments that could be approved when the APF standards are met;
- To establish a process to ensure there will be sufficient data collection, development monitoring and projections, and facility capacity.

VIII. STEPS IN DESIGNING AN APF PROGRAM

A. Initial Assessment

1. *Does the disease justify the cure?*

Carefully examine the nature and severity of the problem before embarking on what will undoubtedly be an arduous and controversial effort. Ask yourselves, 'can it wait?'. Are there other, simpler means to achieve the same result? You might consider updating the facilities plan and inventory, and possibly the development regulations: also, adding staff, and/or improving the collection and analysis of data on existing and projected facility capacity

2. *Is the overall growth management plan in order?*

If you don't have a clear idea of the facility demands of the projected growth in your jurisdiction, and further, if you don't have any plan or policy for meeting those demands, then an APFO is probably a premature response.

3. *Do you have community support for this effort?*

It is important that the effort involve citizens, developers, and other community business and civic leaders to maintain a balanced approach and a clear understanding of the objectives and probable outcomes of the effort. It will be particularly valuable to involve a variety of people with technical expertise, such as engineers, bankers, school administrators.... Elected officials have a dismaying tendency to lose heart when the legislative process gets complicated by various confusing claims about the impact and outcomes.

4. *Can you afford the staff effort?*

Develop a clear work program and schedule, and determine the staff resources available for preparing, enacting, and especially, implementing the APF law. It may be appropriate to develop the law incrementally, i.e. one facility at a time.

5. *Can you afford the results?*

Take the time to test the outcomes of proposed regulations on different types of developments (e.g. residential, commercial, institutional), in a variety of specific areas around your jurisdic-

tion. Make sure it is achieving your objectives, and make sure you can afford the results. As previously mentioned, an APFO can have the inadvertent effect of making it easier to develop in rural areas. Also, it will definitely be the case that an APF law may stall or prevent an economic development project that is otherwise attractive and desirable.

B. Guidelines for Modifying the Comprehensive Plan

1. Assess existing and future facility needs based on projected growth.

This should include an analysis of the optimal level of service, as well as the minimum adequate level of service.

2. Establish policies on facility adequacy to guide zoning and capital improvement program decisions.

3. Establish implementation procedures

- Standards for comprehensive and piecemeal rezonings.
- Linkage between the Plan and the Capital Improvement Program.
- APF standards in the subdivision and zoning laws.

C. Setting Up an APF Ordinance

1. Facility priorities

Water and sewer facilities: Adequacy standards are based on very clear engineering standards and physical limitations, and as a result are the easiest to justify. However, ensuring a regular and clear reporting of capacity and utilization, and estimating the impacts of particular developments, or development scenarios, can open a can of worms if you are not prepared to provide this information.

Schools: Generally the easiest facility to reach a consensus and to have strong public support. State standards on school capacities (which are the foundation for funding priorities), provide a good basis for the adequacy standards. Since funding priorities, school

district boundaries, and enrollment projections are made by the Board of Education, not the county or municipal government, it is imperative that school department staff be involved, and committed to working cooperatively with the County in pursuing the growth management policies.

Roads: One of the primary reasons for APF laws to be enacted, but the most difficult to reach agreement on adequacy standards, fairness of application, and impact of the regulation. Allow plenty of time for technical review, public review, and analysis of the impacts.

Police: The level of service is more a function of the number of uniformed officers available, than it is of the availability of particular facilities. Administrative buildings and detention facilities clearly must be analyzed in any facility planning effort.

Fire and Emergency Services: Approach to this depends on whether there is a volunteer or professional department. Availability of services within certain response times is a function of the location of stations. Insurance companies have standards for response times that can be of assistance.

Parks and Recreation Facilities: In the first place, there are **never** enough. It might be better to look at on-site provision of facilities as a subdivision approval requirement, or impact fees.

Solid Waste: It is difficult to assign the impact of new developments to solid waste facility inadequacies.

2. Establish a thorough public review process

Include broad representation from the community, particularly lawyers, bankers, engineers, and land planners who are familiar with the intricacies of the development process, and the unique characteristics of the development regulations in your jurisdiction.

3. Address the linkage of County and Municipal regulations.

Coordination of efforts between the County and municipalities can help avoid development and annexation occurring to circumvent the APF law.

4. *Components of an APF law*

- Establish a process for collecting the information on facility use, capacity standards and projected growth.
- Set the standards for adequacy.
- Determine the stage of development approval where this will apply.
- Determine applicability (residential/ non-residential), exemptions (e.g. elderly housing).
- Determine appeals process (if not already covered by zoning or subdivision provisions).
- Establish a queing process, or a 'waiting list' for developments that could be approved if the APF standards were met.



IX. ADEQUATE PUBLIC FACILITIES ORDINANCES IN MARYLAND

The purpose of this Section is to provide an overview of the use of Adequate Public Facilities Ordinances (APFOs) by local jurisdictions in Maryland. The summary will focus primarily on counties, identifying those which have adopted APFOs and highlighting different approaches taken on several key components of an APFO including: type of facilities evaluated; level of service standards; timing; mitigation; exemptions; and expiration. The final portion of this Section will highlight major features of municipal APFOs. The information contained in this chapter was derived from a survey of local jurisdictions conducted by staff of the Maryland Office of Planning.

Identification of APFO Counties

As of December, 1995, twelve counties have adopted some type of APFO. These counties, generally located in the Baltimore-Washington metropolitan area, include Anne Arundel, Baltimore, Calvert, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, St. Mary's and Washington Counties (see Map on page 20.) The counties are experiencing significant growth pressure and public services and facilities are straining to keep up with the demand.

Types of Facilities

The types of facilities examined for adequacy in APFOs vary according to the jurisdiction and its public facility needs. Ten of Maryland's twelve APFO counties test for adequacy in four areas including roads, schools, water and sewer facilities. Other public facilities tested, but to a lesser extent, include: police and fire protection, stormwater drainage, health care, and solid waste disposal. The table on page 29 identifies facilities which are tested for adequacy by each county.

Level of Service Standards

Most of Maryland's APFO counties have established specific level of service standards for determining facility adequacy. These standards, which have become more complex over time, are generally based on existing service levels or service levels counties are striving to achieve. Level of service standards appearing in county APFOs are discussed generally below. More detailed information relating to specific standards and administrative provisions is provided in tables on pages 30 to 38.

Schools

Twelve counties have established level of service standards for school adequacy. School adequacy is generally determined by comparing the capacity of the school with existing and projected school enrollments. However, the counties have varying standards for determining school capacity and identifying overcrowding or adequacy.

Most counties utilize various thresholds of the State Rated Capacity, as established by the Interagency Committee on School Construction (IAC), as the basis for determining school adequacy. The State Rated Capacity is defined as the maximum number of students that reasonably can be accommodated in a facility without significantly hampering delivery of the educational program. The IAC has established a State Rated Capacity for each public school facility in the State by multiplying the number of classrooms/teaching stations by the State approved capacity:

Prekindergarten Classrooms	x 20
Kindergarten Classrooms	x 22
Grades 1 - 5/6 Classrooms	x 25
Grades 6-12 Teaching Stations	x 25 x 90%
Special Education Classrooms (self-contained)	x 10

Adding these totals will yield the State Rated Capacity for the particular school.

The majority of counties utilize the State rated capacity as the basis for establishing their own thresholds of adequacy. For example, Washington County considers a school to be adequate if student enrollment does not exceed 105% of the State Rated Capacity. Other counties such as Charles and Harford, allow school enrollment to reach 110% and 120%, respectively, of the State Rated Capacity before a school is considered inadequate. Frederick County has established different thresholds of adequacy, based on the State Rated Capacity, for elementary schools (105%) and for secondary schools (110%).

Special APFO provisions relating to the adequacy of schools are noteworthy. For example, the State Rated Capacity standard in Anne Arundel County can be exceeded if the Board of Education determines that the quality of the curriculum and programs will not be adversely affected. Also, several counties include an option for the Board of Education to consider redistricting if a school in an adjacent district is under capacity. This option permits the excess capacity at the adjacent school to be counted as available capacity.

Roads

Road capacity is another major consideration when evaluating the impact of a proposed development on a county's infrastructure. All of the counties with APFOs evaluate road capacities in the vicinity of proposed developments to some degree. Most generally rate components of their transportation network by assigning "levels of service" (LOS) to their roads and intersections. These "levels of service", which are generally based on the Highway Capacity Manual published by the Transportation Research Board, are indicated by letters ranging from "A" (free flowing) to "E" (heavily congested). Most county APFOs require that levels be no worse than level "C" or "D" or that appropriate improvements are planned in the Capital Improvements Program (CIP) to bring these roads and intersections up to the desired level of service. For example, Howard County specifies a minimum LOS of "D" for County roads and "E" for State roads.

From a growth management perspective, a number of counties allow a higher level of congestion (lower level of service) in designated growth areas in an effort to accommodate new development or redevelopment in these areas. For example, Montgomery County has adopted a policy allowing higher levels of traffic congestion around transit stations. In Harford County, intersections outside planned growth areas must maintain a LOS "C" while intersections within planned growth areas are allowed to drop to LOS "D". Another example is Calvert County, which requires a LOS "C" for roads and intersections, except in town centers where LOS "D" is permitted.

Most counties surveyed require the developer to submit a traffic impact study for the proposed project. This study attempts to predict the off-site impacts of a proposed development on the surrounding highway network. These studies have tended to become more complicated as APFO standards have grown in sophistication.

Water and Sewer

Ten counties evaluate the adequacy of both water and sewer facilities. Most of the counties require the proposed development to be served by adequate water and sewer facilities, which are either existing or planned in the near future. However, the method of evaluating adequacy varies from jurisdiction to jurisdiction. Some counties test for adequacy by examining the comprehensive water and sewer plan while other jurisdictions rely on the CIP or a general review and approval by the appropriate county and State agencies.

Montgomery County, for example, requires that a subdivision be located where water and sewer service is available, under construction or desig-

nated within the first two years of a current approved water and sewer plan. On the other hand, Frederick County, relates the adequacy test for water and sewer facilities to the CIP and considers water and sewer facilities adequate if improvements are scheduled in the first three years.

Washington County requires the Planning Commission to determine the adequacy of water and sewer systems after reviewing the evaluations and recommendations of the appropriate city, county and State review agencies. In Washington County, the entire sewerage system, including laterals, interceptors, pumping stations, treatment plants, points of discharge, is evaluated to ensure it is not overburdened by a proposed development.

Stormwater Drainage

Only Anne Arundel, Prince George's and St. Mary's Counties assess the adequacy of stormwater management. Anne Arundel and St. Mary's Counties evaluate the adequacy of both the on-site drainage systems and off-site downstream drainage systems. Both storm drainage systems are considered adequate if contracts have been awarded and construction is expected to be completed before the first building permit is issued.

Health Care

Montgomery County is the only county which evaluates the adequacy of health care facilities. It requires that the tract or area to be subdivided should be situated so as to not involve danger or injury to health, safety or general welfare. Such danger or injury is deemed not to exist when physical facilities such as health clinics, police stations and fire houses in the service area at the time of preliminary subdivision are adequate or are scheduled in the CIP.

Fire

Six counties have established fire protection standards. These standards vary from detailed standards relating to response time and fire station equipment capacity in Prince George's County, to more general standards relating to the adequacy of the water distribution system or sprinkler systems in Anne Arundel and St. Mary's Counties, respectively.

Washington County's ordinance requires adequate interim fire protection systems in new commercial and industrial development which are located in designated urban or town growth areas where public water service is not anticipated within two years. This interim fire protection system must be capable of providing the same level of fire protection as if it were connected to the public water system.

Police

Prince George's and Montgomery Counties evaluate the adequacy of police facilities as part of their APFO review process. Prince George's County has developed a detailed methodology for determining the number of additional police officers needed and the capacity of each police station in the County. The provisions in Montgomery County's APFO relating to the adequacy of police facilities are the same as those previously stated under the health care section.

Solid Waste Disposal

Carroll County addresses the adequacy of solid waste disposal facilities in its APFO. Solid waste management facilities are certified as adequate to serve a proposed development if there is at least ten years of land space designated, approved and licensed by the Maryland Department of Environment (MDE) for use as a Sanitary Landfill within the County. In addition, the following conditions must also be met: (1) a licensed, active cell with no less than two years of capacity, or (2) a future cell of no less than four years of capacity which will be operational within one year, or (3) an alternative method of solid waste management which has been approved by MDE and implemented which provides for the collection and disposal of solid waste materials for a period of no less than two years.

Timing of the APFO Tests

An important issue in determining the adequacy of public facilities is the timing of the review. Nine of twelve APFO counties apply the various tests for adequacy at the time of the filing of the preliminary subdivision plat. Anne Arundel and Baltimore Counties require compliance with the required adequacy tests before final subdivision plat approval. Howard County tests for adequacy at the sketch plan stage. (See table on page 37.)

Mitigation

Mitigation refers to actions a developer may take to improve deficient facilities to obtain compliance with the adequacy tests. A developer may select this option to accelerate the approval process. The only other recourse is to wait until the County makes the needed improvements.

Direct cash contributions or the actual construction of the necessary improvements are the most common types of mitigating actions found in the APFOs. For example, Anne Arundel, Calvert and St. Mary's Counties permit developers to make the improvements needed to meet the APFO test for schools and roads or contribute to the financing of these improvements. Another example is Montgomery County, which allows a variety of mitigating actions, including ride sharing programs, developer contributions for road improvements or construction of improve-

ments and funding of transit. In Charles County, mitigation may include the dedication of property to the County, payment of impact fees, fees-in-lieu of an improvement payment to an escrow account, participation in private/public partnerships, developer agreements, off-site improvements or other mechanisms as may be determined by the Planning Commission. In Howard County, modest mitigation requirements are offset by an excise tax which funds road improvements.

Exemptions

Five counties exempt minor residential subdivisions from one or more of the APFO tests. These counties include: Frederick, Prince George's, Charles, Baltimore and Howard. In Howard County, for example, minor subdivisions are exempt from the adequate road facilities test, but they are required to pass the tests for adequate public school facilities.

Harford, Charles and Washington Counties exempt housing for the elderly from compliance with the APFO school adequacy test. Montgomery County exempts places of worship and residences for staff, parish halls and additions to schools associated with places of worship. In addition, a partial exemption from the roads test is allowed for selected affordable housing, small scale development and some small health care facilities. In Frederick County, developments which generate less than 25 peak hour trips are exempt from the roads test. Baltimore County exempts industrial development, hospitals and grandfathered lots. Charles County exempts a development that does not generate more than 25 students from the school adequacy test. A number of counties also exempt family conveyances.

From a growth management perspective, it is interesting to note that Washington County exempts proposed detached or semi-detached residences in designated Urban Growth Areas or Town Growth Areas from the school adequacy test. Another example is provided by Baltimore County, which exempts any development in a town center or community center for which an official site plan has been approved by the Planning Board.

Expiration of APFO Approval

The validity period for an Adequate Public Facility (APF) approval varies greatly depending on the county. In Frederick County, APF approvals are valid from three to ten years from the time of preliminary subdivision approval depending on the size of the project. APF approvals for residential subdivisions with less than 100 units are valid for 3 years, while approvals for subdivisions of more than 500 units are valid for 10 years. In Anne Arundel County, the APF test is applied at final plat approval

and is valid for as long as the plat is valid. Furthermore, if a public works agreement is entered into within two years the approval is valid indefinitely.

Municipal APFOs

Eleven municipalities in Maryland have APFOs¹. Included is the City of Rockville, which uses both administrative and technical guidelines to assess traffic impacts of proposed development as part of the City's decision-making process. The Rockville guidelines require a standardized methodology for traffic studies which must be prepared by the developer. The other municipalities use APFOs to address a broader range of public facilities, much in the same manner that counties use APFOs. These APFOs typically address schools, roads, water, sewer, stormwater drainage, police, and fire safety.

In some areas, the municipalities' approach to APFOs is to model the process after the county, including adoption of county standards. This is the case for certain towns in both Carroll and Frederick Counties. Another common practice is to use language in the zoning ordinance and subdivision regulations to address APFO reviews, rather than create a separate APFO ordinance.

As a model for the State's larger municipal jurisdictions, the APFO process in the City of Laurel is noteworthy. Laurel has formal administrative procedures and criteria to guide APFO reviews as part of subdivision and site plan reviews. The City's APFO is a thorough and formal approach that touches upon several issues.

One important issue for municipalities is that some of the facilities deserving an adequacy review are beyond the control of the municipality. Laurel's APFO authorizes the City to consider impacts of proposed development on facilities beyond the immediate control or jurisdiction of the City. This provision allows Laurel to protect the adequacy of nearby schools used by City residents, and the adequacy of highways serving City residents and providing linkages between the City and other locales.

Interjurisdictional issues are also important to municipalities. Laurel's APFO calls for notification to, and requests participation by, non-City agencies. The APFO mentions the Maryland-National Capital Park and Planning Commission; Prince George's, Anne Arundel, Howard, Mont-

¹Indian Head, Westminster, Manchester, New Windsor, Hampstead, Sykesville, Poolesville, Thurmont, Rockville, Boonsboro, and Laurel.

gomery, and Howard Counties; the Washington Suburban Sanitary Commission and Metropolitan Transit Authority; private utility companies, and the State Departments of Transportation and Environment and the Maryland Office of Planning.

Laurel's APFO also requires formal staff recommendations and findings of fact, and contains special procedures for floating zones, annexation proceedings, and other special zones within the City.



APPENDIX A:
COUNTY APFO SUMMARY TABLES

APPENDIX B: DIRECTORY OF PLANNING AGENCY CONTACTS

This directory is provided for persons wanting more detailed information about the Adequate Public Facilities Ordinances cited in this report. All county planning agencies in Maryland which contributed to the information provided in this report are listed.

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