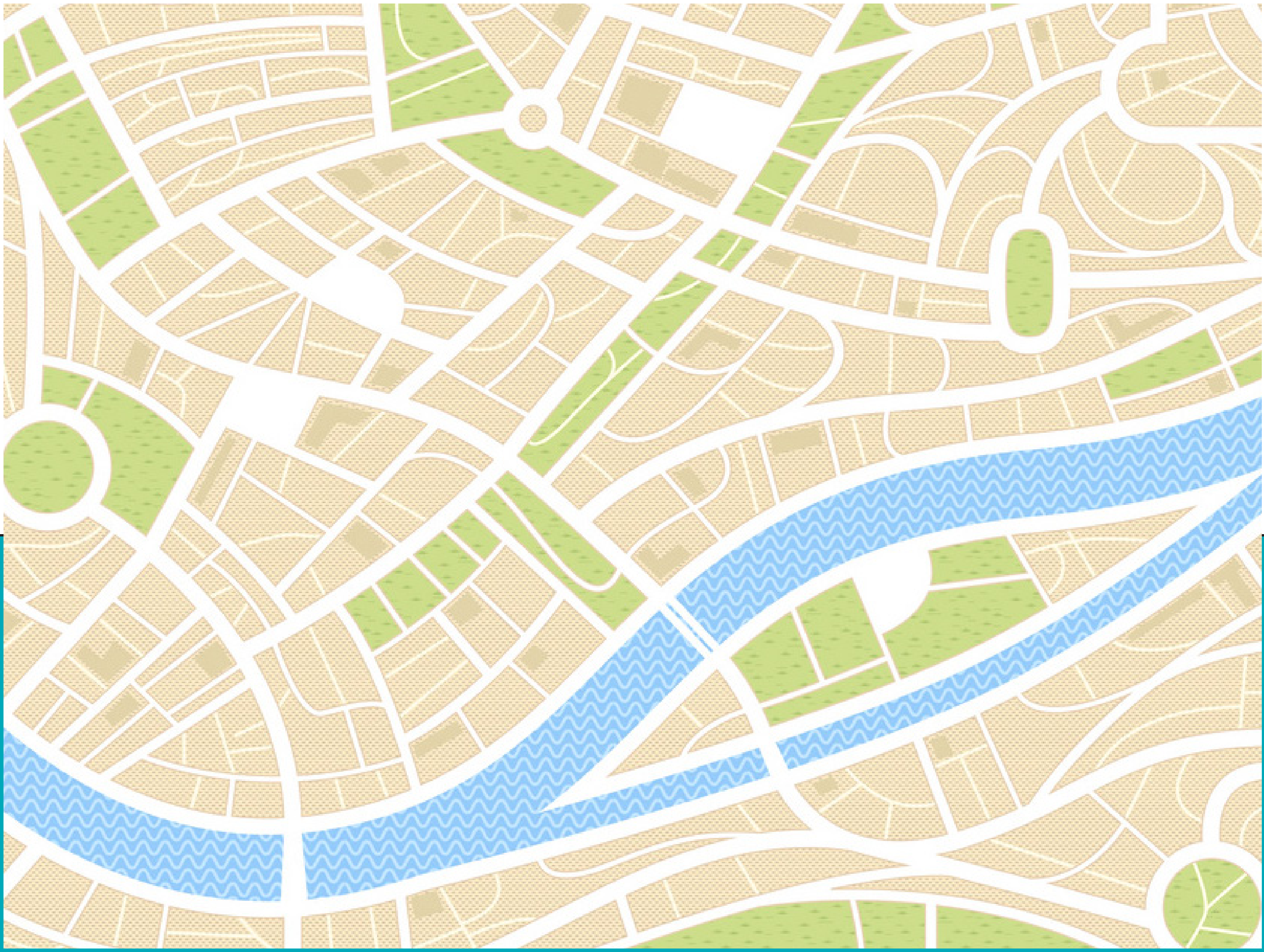
Implementation of the Smart Growth Areas Act

Fiscal Year 2024 Annual Report



Value Our Shared Heritage
Shape Places Where All Have the Opportunity to Thrive
Inform Decisions for Sustainable Growth

December 2024

Maryland Smart Growth Subcabinet
FY24 Implementation of the Smart Growth Areas Act

The Smart Growth Subcabinet

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Executive Director Kathryn Howell Ph.D., National Center for Smart Growth Research and Education (ex officio)

The Smart Growth Subcabinet (subcabinet), per §9–1406(h)(1), is a select group of state agency heads or their designees charged to:

- provide a forum for discussion of interdepartmental issues relating to activities that affect growth, development, neighborhood conservation, and resource management,
- work together using all available resources to promote the understanding of smart growth, and
- work together to create, enhance, support, and revitalize sustainable communities across the state.

The Moore-Miller Administration is committed to fulfilling this responsibility and to ensure the subcabinet is not only dedicated to interdepartmental collaboration to advance sustainable growth in Maryland, but also serve as a forum for the discussion and collaboration among state agencies and local governments to address the numerous challenges facing our communities and to help shape and enhance the built environment. The subcabinet is uniquely positioned to advance growth and development that generates economic opportunity in balance with our responsibilities of natural resources stewardship and fostering healthy, thriving communities for all Marylanders.

In addition to the state agencies mandated reporting on the implementation of the state's smart growth policy that follows, the subcabinet held two public forums in FY24 for county and municipal elected leaders and planning officials to discuss local government issues relating to activities that affect smart growth, development, neighborhood conservation, and resource management. At the 2023 MACo summer conference, the subcabinet reported on its current work evaluating its shared priorities and progress on the 2023 legislative directives. At the December 2023 virtual public forum, the subcabinet updated elected leaders and planning officials on the 2024 action plan that will consider HOW and WHY we build in addition to WHERE we build by advancing growth that balances economic, equity and environmental values.

In December 2023, the subcabinet submitted to the Governor, Senate President, and Speaker of the House of Delegates its recommendation report on Preservation and Disposition of Maryland's Historic Complexes, in response to the requirements of SB-783 from the 2023 Session of the Maryland General Assembly.

The Maryland the Beautiful Act (SB 470/CH 546) required the Smart Growth Subcabinet to develop and publish the first five-year plan by July 1, 2024 to outline how to meet the goals in the legislation. An annual report on the state's progress is due December 1 of each year and the plan will be updated at least every five years. MDP's Maryland Protected Lands Dashboard shows our achievement of the 30% by 2030 land preservation goal and our progress towards the 40% by 2040 goal.

The Equitable and Inclusive TOD Enhancement Act of 2023 (HB12/CH 512) establishes the TOD Capital Grant and Revolving Loan Fund to promote the equitable and inclusive development of transit-oriented developments (TOD) and authorizes the Maryland Department of Transportation to use the Fund to provide financial assistance to local jurisdictions. The subcabinet is charged with designating TODs and has established designation eligibility requirements and objective scoring standards for the review of financial assistance applications, which have been posted on MDOT's TOD website.

HB225/SB309, Smart Growth Subcabinet and Repeal of the Office of Smart Growth, adopted during the 2024 legislative session and effective October 1, 2024, recommits the subcabinet to collaboratively advancing sustainable growth through the designation of MDP Secretary as Chair and DHCD Secretary as Vice Chair, adding the Secretary of the Department of Emergency Management to the subcabinet, adding "equitable and resilient growth" as new values, and replacing Neighborhood "Conservation" with "Vitality". This legislation is the first phase of the subcabinet's sustainable growth strategy to grow Maryland's economy in a more sustainable, resilient, and equitable manner.

The Maryland Smart Growth Subcabinet's FY24 report on the Implementation of the Smart Growth Areas Act is submitted in accordance with Annotated Code of Maryland, State Government Article § 9-1406(i). The report summarizes growth-related program commitments of the following state agencies for FY24 to fulfill the requirements of The Smart Growth Areas Act (Annotated Code of Maryland, State Government Article § 9-1406).

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

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

1 Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-01.
2 Code of Maryland Regulations, 14.39.02.03(c).

Introduction

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

In FY24, the statutory framework set out in the Smart Growth Areas Act was met by the subcabinet agencies whose programs are subject to PFA restrictions. The Smart Growth Areas Act allows agencies to seek exceptions to the law for individual projects through one of two avenues – the Board of Public Works[3] (BPW) or the Smart Growth Coordinating Committee[4] (SGCC).

The subcabinet is required to report annually on those exemptions.[5]

Six new projects were granted exceptions by the subcabinet in FY24 in accordance with the procedures prescribed in the Smart Growth Areas Act (see Appendix A, page 14), and did not violate the intent of the law. There were no exception requests submitted to the BPW as noted in Appendix B.

Appendix C notes that no programs and policies were reviewed or revised to ensure compliance with the state's policy. No projects were funded under Chapter 759, § 2 of the Acts of 1997 as noted in Appendix D.

Priority Funding Areas

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

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

The PFAs and schools regulation was approved in 2011 as an amendment to COMAR 23.03.02, regulations for the administration of the IAC. Local Educational Agencies (LEAs) seeking state funding to construct new schools and replacement schools that increase capacity outside of a PFA must undergo a PFA review. A waiver option is available to LEAs as part of this review process. The 2011 regulations are restricted to school construction projects seeking school site, planning, and funding approvals in the Capital Improvement Program (CIP) for FY13, and beyond.

3 Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-05.

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

5 Maryland Annotated Code, State Government Article, § 9-1406(h)(1).

FY24 Expenditures

FY24 growth-related spending on PFA-restricted projects and programs totaled $1,971,832,444, as reported to the Maryland Department of Planning (MDP) by the Departments of Housing and Community Development, General Services, Commerce, Environment, and Transportation.

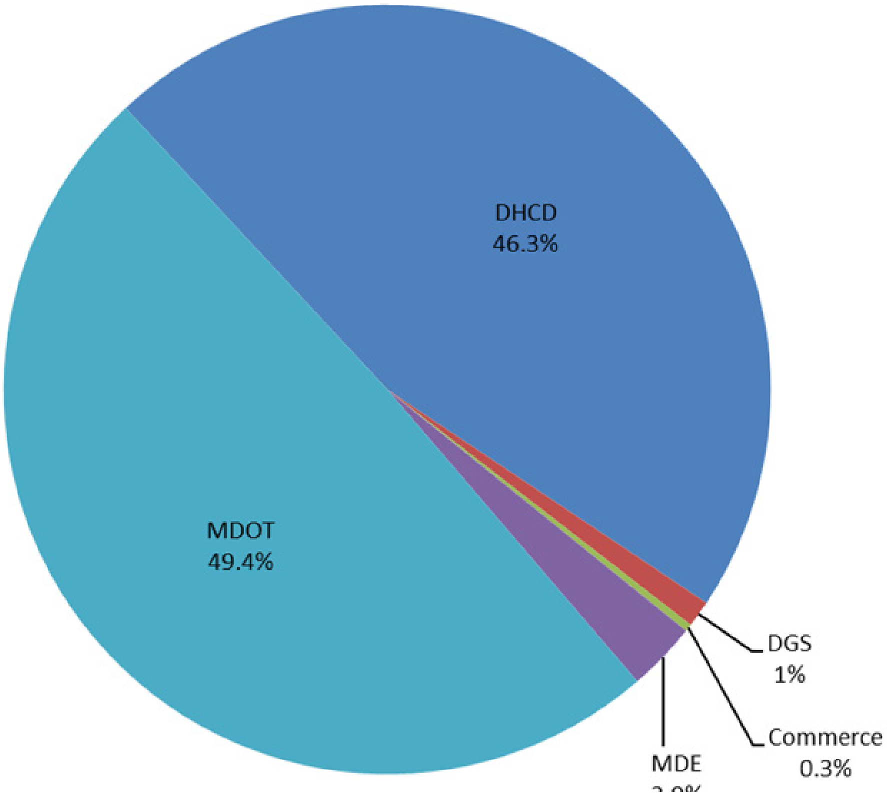
Of that amount, $1,298,542,144, or 66%, of growth-related spending was devoted to projects and programs within PFAs; $35,316,411, or 2%, was devoted to projects outside PFAs; and $637,973,889, or 32%, was devoted to MDOT projects that were not place-specific.

It should be noted that $31.7 million (89.9%) of the $35.3 million spent outside PFAs was associated with MDOT projects that were exempt or grandfathered from the PFA requirements or met the criteria for granting exceptions to the law, as reported by MDOT. The remaining $3.57 million (10.1%) spent outside PFAs were devoted to two DHCD and two MDE projects, which are detailed in their sections of the report.

FY24 Expenditures by Agency for Growth-Related Programs

Program	Total	PFA Funding	Funding Outside PFA	Not Place Specific Funding
DHCD	$ 913,003,661	$ 910,706,453	$ 2,297,208	$ 0
DGS	$ 22,089,104	$ 22,089,104	$ 0	$ 0
Commerce	$ 6,151,785	$ 6,151,785	$ 0	$ 0
MDE	$ 57,448,308	$ 56,177,130	$ 1,271,178	$ 0
MDOT	$ 973,139,586	$ 303,417,672	$ 31,748,025	$ 637,973,889
Total	$ 1,971,832,444	$ 1,298,542,144	$ 35,316,411	$ 637,973,889
		66%	2%	32%

Agency Percentage of Total Funding



The Department of Housing and Community Development

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

DHCD spending outside the PFA in FY24 of $2,297,200 was for three CITC and two NBW projects. The CITC projects are not required to be located within a PFA so long as they provide services to a PFA, which has been confirmed. The two NBW projects totaling $2,237,208 have addresses outside the PFA. However, both are covered by other program requirements. Lee Banks & Associates, 1046 Conowingo Road, is a Key Bridge Recovery recipient and NBW regulations do not apply, as this was awarded under a Governor's Executive Order. City First Enterprises Inc., 1 Thomas Circle NW Suite 700 is a CDFI lending to small businesses in Maryland through the federal SSBCI program. PFA restrictions do not apply as this is a federal program.

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

Maryland Department Housing and Community Development
FY24 Expenditures by Growth-Related Program

Program	Total Projects	Total Funding	PFA Projects	PFA Funding	Outside PFA Projects	Outside PFA Funding	Not Place Specific Projects	Not Place Specific Funding
MMP	90	$ 35,055,913	90	$ 35,055,913	0	$ 0	0	$ 0
NMRH	18	$ 830,148,962	18	$ 830,148,962	0	$ 0	0	$ 0
CL	54	$ 6,040,000	54	$ 6,040,000	0	$ 0	0	$ 0
CITC	71	$ 1,750,000	68	$ 1,690,000	2	$ 60,000	0	$ 0
NBW	22	$ 13,383,786	20	$ 11,146,578	0	$ 2,237,208	0	$ 0
SGIF	55	$ 26,625,000	55	$ 26,625,000	0	$ 0	0	$ 0
Total	**310**	**$ 913,003,661**	**305**	**$ 910,706,453**	**2**	**$ 2,297,208**	**0**	**$ 0**

The Department of General Services

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

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

Maryland Department of General Services
FY24 Expenditures by Growth-Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
Leases of Property	31	$ 17,509,104	31	$ 17,509,104	0	$ 0
Land Acquisition	2	$ 4,580,000	2	$ 4,580,000	0	$ 0
Total	**33**	**$ 22,089,104**	**33**	**$ 22,089,104**	**0**	**$ 0**

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

The Department of Commerce

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

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

Maryland Department of Commerce
FY24 Expenditures by Growth Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
MSBDFA	12	$ 4,089,437	12	$ 4,089,437	0	$ 0
MEDAAF	7	$ 1,912,348	7	$ 1,912,348	0	$ 0
SDF	0	$ 0	0	$ 0	0	$ 0
MEAF	1	$ 150,000	1	$ 150,000	0	$ 0
Total	**20**	**$ 6,151,785**	**20**	**$ 6,151,785**	**0**	**$ 0**

The Maryland Department of the Environment

The following Department of the Environment programs are subject to PFA restrictions:

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

A PFA exception is required if any part of the project or area served by the project is outside the PFA. MDE funded two projects outside of the PFA. The McKeil Point Bermed Infiltration Ponds connection project was granted a PFA exception and is connecting a failing Bermed Infiltration Pond to the Cambridge Enhanced Nutrient Removal WWTP. The Martingham Coop Well Replacement is replacement of existing infrastructure (replacing existing well and equipment with new well and equipment) and received a categorical exception.

Maryland Department of the Environment
FY24 Expenditures by Growth Related Program

Program	Total Projects	Total Funding	PFA Projects	PFA Funding	Outside PFA Projects	Outside PFA Funding	Not Place Specific Projects	Not Place Specific Funding
MWQRLF	4	$ 52,567,776	3	$ 51,448,552	1	$ 1,119,224	0	$ 0
DWSFAP	5	$ 2,460,077	5	$ 2,460,077	0	$ 0	0	$ 0
SAP	2	$ 1,364,947	2	$ 1,364,947	0	$ 0	0	$ 0
MDWRLF	4	$ 1,055,508	3	$ 903,554	1	$ 151,954	0	$ 0
Total	**15**	**$ 57,448,308**	**13**	**$ 56,177,130**	**2**	**$ 1,271,178**	**0**	**$ 0**

The Maryland Department of Transportation

For the Maryland Department of Transportation (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."[7] MDOT lists such projects as "Major Projects" in its Consolidated Transportation Program (CTP) and provides detail of the Priority Funding Area (PFA) status of each in this document. The modal administrations of MDOT whose major capital projects are subject to PFA law include:

- The State Highway Administration (SHA);
- The Maryland Transit Administration (MTA);
- The Maryland Aviation Administration (MAA);
- The Maryland Port Administration (MPA);
- The Maryland Motor Vehicle Administration (MVA);
- The Secretary's Office (MDOT TSO); and
- Payments to the Washington Metro Area Transit Authority (WMATA)

Transportation projects that are explicitly excluded from the Smart Growth Areas Act include those pertaining to existing Maryland Transportation Authority (MDTA) facilities, studies currently in the project planning phase (pre-decisional), "Minor Capital Projects," and projects that preserve or rehabilitate existing facilities or services without increasing capacity.[8] Forty-four of MDOT's major capital projects are not location-specific, meaning that they involve system-wide improvements, such as MTA's programmatic investments in the zero-emission bus transition, MARC improvements, and core service vehicles (bus, light rail, and metro), the capital improvement program of WMATA, information technology improvements by MVA, the dredged material management program of MPA, and the general aviation "Grants-in-Aid" program administered by MAA. For SHA, the category includes the Coordinated Highway Action Response Team (CHART) and the Highway User Revenue programs.

There are two SHA projects for which the PFA status has yet to be determined: 1) MD 2 (Ritchie Highway) Safety/Congestion Relief from U.S. 50 to Arnold Road; and 2) I-70 (MD 32 to I-695) Information Technology and Geometric Improvements within TSMO System 1.

Of the 157 major capital projects in the MDOT's capital program for FY24, 11 were considered outside the PFA. Of these, six projects outside of the PFA have been granted exceptions or grandfathered in compliance with statute.[9] This category includes MPA projects for ecosystem restoration and dredged material placement for: 1) the Mid-Chesapeake Bay Island Project, 2) the Paul S. Sarbanes at Poplar Island Project, 3) the Hart-Miller Island Related Projects, and for SHA projects previously approved for PFA exception or grandfathered, 4) MD 32 (Patuxent Freeway) Safety and Capacity Improvements in Howard County, 5) MD 24 (Rocks Road) Slope Failure Project, and 6) MD 5 (Point Lookout Road) Project. There are five projects identified as outside the PFA and will require an exception. This category includes four additional SHA projects outside the PFA that will require an exception including 1) I-97 (US 50 To MD 32) Traffic Relief/TSMO, 2) MD 214 (Central Avenue) Safety Improvements, 3) MD 90 (Ocean City Expressway) Operational Improvements, and 4) US 219 (Chestnut Ridge Road) Enhancing Accessibility and Supporting the Economy, and one MTA project outside the PFA that requires an exception – 5) Southern Maryland Rapid Transit.

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7 Maryland Annotated Code, Transportation, § 2-103.1(a)(4).
8 Maryland Annotated Code, State Finance and Procurement, § 5-7B-01(c)(1)(i).
9 Further information on the exception process of these projects can be found in Appendix B.

FY24 MDOT Major Transportation Projects Funding Expended by Priority Funding Area (PFA)[10]

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA	Not Place Specific Projects	Not Place Specific Funding
MAA	26	38,085,683	25	35,415,137	0	0	1	2,670,545
MPA	23	91,040,124	17	53,975,733	3	29,176,000	3	7,888,391
MTA	61	258,386,828	31	185,764,658	1	254,272	29	72,367,898
MVA	2	7,478,411	1	1,440,439	0	0	1	6,037,972
SHA	37	309,400,925	28	26,821,705	7	2,317,753	2	280,261,468
TSO	3	10,022,489	0	0	0	0	3	10,022,489
WMATA	5	258,725,126	0	0	0	0	5	258,725,126
Total	**157**	**$ 973,139,586**	**102**	**$ 303,417,672**	**11**	**$ 31,748,025**	**44**	**$ 637,973,889**

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

Maryland Historical Trust Programs

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

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

**Maryland Historical Trust
FY24 Expenditures**

Program [11]	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
HRTC Residential	171	$ 1,651,639	159	$ 1,491,745	12	$ 159,894
HRTC Commercial	10	$ 20,361,860	10	$ 20,361,860	0	$ 0
HRTC Small Commercial	36	$ 1,491,757	35	$ 1,483,557	1	$ 8,200
Total	**217**	**$ 23,505,256**	**204**	**$ 23,337,162**	**13**	**$ 168,094**

11 Commercial, small commercial, and residential HRTC figures represent Part 2 approvals for FY24.

Interagency Commission on School Construction

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

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

The IAC considers several factors when evaluating proposed capital improvement projects, including how the projects align with local board of education priorities, state construction procedures and procurement practices, and state and local planning and growth policies. School site approval is a prerequisite for planning approval and is valid for 5 years. Planning approval is required prior to funding approval for most major projects.

Information on expenditures for major public school construction projects in FY24 is shown on the chart below, which includes the annual CIP funding and the Built To Learn (BTL) Act funding. Generally, the amount of major construction expenditures inside PFAs is far greater than outside. For FY24, 90% of the total funds for major construction projects were spent within PFAs. The number of requests for projects in and out of PFAs varies from year-to-year, and funding allocations on most major projects are carried out over several years.

Public School Construction Program FY24
Expenditures by Project Type

Project Categories	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
New Schools	2	$ 52,508,500	2	$ 52,508,500	0	$ 0
Replacement/ Addition Projects that add capacity	29	$ 361,876,344	27	$ 335,115,132	2	$ 26,761,212
Major Renovations that do not add capacity	11	$ 73,266,716	7	$ 43,884,361	4	$ 29,382,355
Systemic Projects	155	$ 333,011,232	138	$ 305,132,705	17	$ 27,878,527
Total	**197**	**$ 820,662,792**	**174**	**$ 736,640,698**	**23**	**$ 84,022,094**

The figures do not include design review funds which are not assigned to a specific project.

Appendix A

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

The Smart Growth Areas Act allows for growth-related projects located outside the PFAs to receive state funding if: “it is required to protect public health or safety;” the project involves federal funds and “compliance with [the Smart Growth Areas Act] would conflict or be inconsistent with federal law;” or it is a “growth-related project related to a commercial or industrial activity, which, due to its operational or physical characteristics, shall be located away from other development.”[12] The Smart Growth Coordinating Committee, or Coordinating Committee, the staff level working group of the Smart Growth Subcabinet is tasked with approving exceptions based on these criteria.

In FY24, the Coordinating Committee approved six PFA exceptions. PFA exception approval alone, however, does not ensure that projects will be funded. Specific details regarding the PFA exception approvals are as follows:

July 2023 – One Commercial Property in Leonardtown (St. Mary’s County)

MDE requested a PFA exception to allow state funding to be used to connect an existing commercial property with the sewer flow of two equivalent dwelling units (2 EDUs) in the Leonardtown area. The St. Mary’s County Health Department, Environmental Health Division stated in a letter dated June 6, 2023, that “the existing onsite sewage disposal system (OSDS) is in a state of failure that requires continuous pump outs to prevent sewage from leaching onto the ground surface. The only means from a replacement system would be an innovative sand mound system that may not be adequately sized or a holding tank system. Neither provide the safeguards to protect public health nor provide the necessary treatment that can be achieved through discharge of sewer effluent into a wastewater treatment plant.” MDE’s report notes the “soils on the property do not support installation of a new system. Connection to the public sewer system will reduce the risk significantly of sewage being discharged onto the ground surface causing public and environmental health issues. The sewer will ultimately be conveyed to and treated at the Leonardtown wastewater treatment plant.”

Agency Submitting Request	MDE
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund (BRF) – Septic Connections Program, Up to $37,500 or actual cost, whichever is lower

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

November 2023 – One Existing Single-Family Home in Loveville (St. Mary's County)

MDE requested a PFA exception to allow state funding for sewer service connection of an existing single-family dwelling in Loveville. The St. Mary's County Health Department, Environmental Health Division stated in a letter dated August 28, 2023, that "the existing onsite sewage disposal system (OSDS) is currently in failure and the available onsite options are limited to a holding tank system. This is not the most logical solution due to the high cost to maintain this type of system and due to the flooding that regularly occurs during a storm event." MDE's report notes the "soils on the property do not support installation of a new system. Connection to the public sewer system will reduce the risk significantly of sewage being discharged onto the ground surface causing public and environmental health issues. A small extension is needed to connect the home to the sewer line. No other properties will be able to connect to the line. The sewer will ultimately be conveyed to and treated at the Leonardtown wastewater treatment plant."

Agency Submitting Request	MDE
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund (BRF) – Septic Connections Program, Up to $25,000 or actual cost, whichever is lower

December 2023 – One Existing Single-Family Home in North East (Cecil County)

MDE requested a PFA exception to allow state funding for a sewer connection of an existing single-family dwelling in the North East area. The Cecil County Division of Water & Sewer Planning, which serves as the environmental agency for the county, reported in its letter dated August 30, 2023, that the subject property was developed between 1955 and 1965 and the onsite septic system "would be difficult to repair due to the high-water table and size of the lot. This property is within the Chesapeake Bay Critical Area. This parcel is in the S-1 (served) Sanitary Sewer service area on the County's Master Water & Sewer Map. A public health concern is created because of the sewage failure and potential discharge of the existing septic system's effluent into the groundwater." MDE reported if connected sewerage will ultimately be conveyed to and treated at the North East Advanced WWTP.

Agency Submitting Request	MDE
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund (BRF) – Septic Connections Program, up to $25,000 or actual cost, whichever is lower

March 2024 – One Existing Single-Family Home in Callaway (St. Mary's County)

MDE requested a PFA exception to allow state funding for a sewer connection of an existing single-family dwelling in Callaway. St. Mary's County Health Department, Environmental Health Division stated in its December 11, 2023 memo, "The existing onsite sewage disposal system (OSDS) is currently in hydraulic failure. The soils on this property do not support a conventional OSDS due to poor soils, existing streams and large swales. Connection to the public sewer system is the best solution for eliminating future public and environmental health concerns." MDE reported if connected sewerage will ultimately be conveyed to and treated at the Marley-Taylor Wastewater Reclamation Facility.

Agency Submitting Request	MDE
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund (BRF) – Septic Connections Program, Up to $25,000 or actual cost, whichever is lower

March 2024 – McKeil Point BIPs #2 & #3 (Dorchester County)

MDE requested a PFA exception to allow state funding to remove sewage connections for the 17 developed properties and one undeveloped lot from the current two bermed infiltration ponds (BIPs), specifically McKeil Point BIPs #2 and #3, that provide onsite sewage disposal for the properties and connect them to the public sewer system, noting that state funding cannot be used to connect any future home built on the one vacant lot. The sewage will be conveyed to the Cambridge WWTP.

The Dorchester County Health Department stated in its January 12, 2024 letter, "This project is required to protect public health and safety." The health department reported the BIPs have been operating with inadequate freeboard and are at risk of hydraulic failure. Renovation of the shared BIPs is not feasible and is untested. Construction of individual septic systems to serve each lot is also problematic. The land is at very low elevation, flat and predominantly very poorly drained. The high spots are no more than 3 feet above sea level.

Agency Submitting Request	MDE
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund (BRF) & Water Quality State Revolving Fund (WQSRF), $3.2 Million

March 2024 – Highlands Community, Chesapeake Beach (Calvert County)

MDE requested a PFA exception to allow state funding to take the Highlands Community off the existing onsite sewage disposal systems and connect them to the public sewer system. This project involves the installation of sewer mains, pumping stations, and connection to the 229 existing residences. The wastewater will be conveyed to the Chesapeake Beach Wastewater Treatment Plant.

The Highlands community is in northern Calvert County, partially in the Town of Chesapeake Beach. Most of the properties were developed in the mid 1980's to early 1990's. There currently are 233 lots in the community, 229 are developed with homes. Of the developed properties, 190 are not in the PFA and would require a PFA Exception. There are also four undeveloped lots, three of which are not in the PFA and while state funding cannot be used to connect the home once developed, any future homes should be allowed to connect to the sewer system. The area has existing soil conditions and high groundwater on some of the lots which will limit future replacement. The Calvert County Health Department has provided the following information about the existing onsite sewage disposal systems (OSDS):

- 2 properties already have holding tanks.
- 12 residencies are on a second replacement OSDS; 4 residencies are on the third replacement OSDS.
- 93% of the systems do not conform to current regulations.
- 32% of the existing systems in The Highlands will require the use of sewage holding tanks when their existing system fails with no potential for conventional or nonconventional systems.

The Calvert County Health Department states in its September 19, 2019 regarding the Highlands Community, "The functional exhaustion of many on-site disposal systems (septic systems) in the Highlands is producing harmful escape of sewage onto property and the surrounding waters of the region. From a public health perspective, this increases risks to human safety due to surfacing pathogenic bacteria and degrades the environment. Ultimately, all runoff from failing systems enters the waters flowing through and around our county. The nutrients from oversaturated septic fields and leaking tanks increase algae blooms and threaten the fish, oysters, and crabs in our creeks, rivers, and the Bay."

Agency Submitting Request	MDE
Grounds for Exception	Public health or safety
Funding	Bay Restoration Fund (BRF) & Water Quality State Revolving Fund (WQSRF), $9.3 Million

Appendix B

Exceptions to the PFA Law Approved by BPW in FY24

The Maryland Board of Public Works (BPW) may grant an exception to the Priority Funding Area Act in specific circumstances. As defined in statute, such exceptions can be granted where there is an "extraordinary circumstance," such that "the failure to fund the project in question creates an extreme inequity, hardship, or disadvantage that clearly outweighs the benefits from locating a project in a priority funding area." For transportation projects, an exception can also be granted for a project that maintains the existing system, serves to connect two PFAs, or has as its sole purpose of providing control of access on existing highways. Finally, BPW can approve an exception for a project that "due to its operational or physical characteristics, must be located away from other development."

In FY24, there were no projects submitted to BPW for exceptions to the Smart Growth Areas Act.

Appendix C

Listing of Programs and Policies Reviewed and Changed To Ensure Compliance with the State's Smart Growth Policy in FY24

The Smart Growth Subcabinet, through its Smart Growth Coordinating Committee, meets monthly to discuss opportunities for state agencies to collaborate and improve the effectiveness of Maryland's Smart Growth policy.[13] In FY24, no specific programs or policies were identified that required review and change to ensure compliance with the state's policy.

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

Appendix D

List of Projects or Programs Approved and Funded Under Chapter 759, § 2 of the Acts of 1997 in FY24[14]

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

(d) Approval has been granted or a commitment made before October 1, 1998;

(e) A valid permit has been issued;

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

(g) Final review under the National Environmental Policy Act or the Maryland Environmental Policy Act is completed by October 1, 1998;

(h) Final review through the State Clearinghouse for Intergovernmental Assistance is completed by January 1, 1999; or

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

No projects or programs were approved and funded under Chapter 759, § 2 of the Acts of 1997.

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

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