



**Maryland**

DEPARTMENT OF PLANNING

**Fiscal Year 2023**

**Implementation of the  
Smart Growth Areas Act**

**Value Our Shared Heritage**

**Shape Places Where All Have the Opportunity to Thrive**

**Inform Decisions for Sustainable Growth**



# Maryland Smart Growth Subcabinet

## FY 2023 Implementation of the Smart Growth Areas Act

### The Smart Growth Subcabinet

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Secretary Helene T. Grady, Maryland Department of Budget and Management

Secretary Kevin A. Anderson, Maryland Department of Commerce

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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 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 with 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 FY 2023 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. More recently, at the public forum during the 2023 MACo summer conference, the subcabinet reported on its current work evaluating its shared priorities and progress on 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 we build in addition to WHERE we build by advancing growth that balances economic, equity and environmental values. Next year’s annual report will include a report on these initiatives.

The Maryland Smart Growth Subcabinet’s Fiscal Year (FY) 2023 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 FY 2023 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.”<sup>1</sup> 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.<sup>2</sup> MHT voluntarily seeks to fund projects in PFAs when possible. Expenditures are included separately for informational purposes only.

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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 FY 2023, 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<sup>3</sup> (BPW) or the Smart Growth Coordinating Committee<sup>4</sup> (SGCC).

The subcabinet is required to report annually on those exemptions.<sup>5</sup>

Nine new projects were granted exceptions by the subcabinet in FY 2023 in accordance with the procedures prescribed in the Smart Growth Areas Act (see Appendix A, page 15), 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.

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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).



## FY 2023 Expenditures

FY 2023 growth-related spending on PFA-restricted projects and programs totaled \$2,099,617,362, as reported to the Maryland Department of Planning (MDP) by the Departments of Housing and Community Development, General Services, Commerce, Environment, and Transportation.

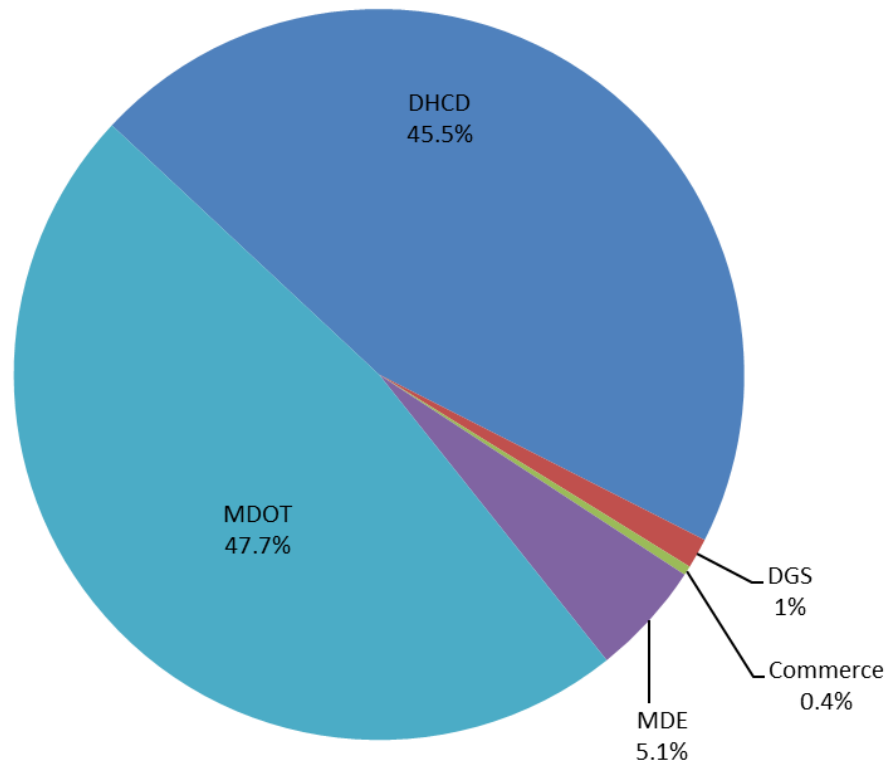
Of that amount, \$1,360,275,495, or 65%, of growth-related spending was devoted to projects and programs within PFAs; \$15,547,805, or 1%, was devoted to projects outside PFAs; and \$723,794,063, or 34%, was devoted to MDOT and MDE projects that were not place-specific.

It should be noted that \$15.5 million (99.7%) of the \$15.55 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 \$35,000 (0.2%) spent outside PFAs were devoted to two DHCD projects, which are detailed in its section of the report.

### FY 2023 Expenditures by Agency for Growth-Related Programs

Program	Total	PFA Funding	Funding Outside PFA	Not Place Specific Funding
DHCD	\$ 955,998,497	\$ 955,963,497	\$ 35,000	\$ 0
DGS	\$ 28,079,449	\$ 28,079,449	\$ 0	\$ 0
Commerce	\$ 8,636,877	\$ 8,636,877	\$ 0	\$ 0
MDE	\$ 106,254,320	\$ 36,433,320	\$ 0	\$ 69,821,000
MDOT	\$ 1,000,648,220	\$ 331,162,352	\$ 15,512,805	\$ 653,973,063
<b>Total</b>	<b>\$ 2,099,617,362</b>	<b>\$ 1,360,275,495</b>	<b>\$ 15,547,805</b>	<b>\$ 723,794,063</b>
		65%	1%	34%

### 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 FY 2023 of \$35,000 were for two CITC projects; however, these projects are not required to be located within a PFA so long as they provide services to a PFA, which has been confirmed.

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 FY 2023 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	46	\$18,101,820	46	\$18,101,820	0	\$ 0	0	\$ 0
NMRH	28	\$862,247,911	28	\$862,247,911	0	\$ 0	0	\$ 0
CL	65	\$8,100,000	65	\$8,100,000	0	\$ 0	0	\$ 0
CITC	67	\$1,730,000	65	\$1,695,000	2	\$35,000	0	\$ 0
NBW	28	\$34,618,766	28	\$34,618,766	0	\$ 0	0	\$ 0
SGIF	54	\$31,200,000	54	\$31,200,000	0	\$ 0	0	\$ 0
<b>Total</b>	<b>288</b>	<b>\$955,998,497</b>	<b>286</b>	<b>\$955,963,497</b>	<b>2</b>	<b>\$35,000</b>	<b>0</b>	<b>\$ 0</b>

## 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.”<sup>6</sup>

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 FY 2023 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	53	\$ 24,879,449	53	\$ 24,879,449	0	\$ 0
Land Acquisition	1	\$ 3,200,000	1	\$ 3,200,000	0	\$ 0
<b>Total</b>	<b>54</b>	<b>\$ 28,079,449</b>	<b>54</b>	<b>\$ 28,079,449</b>	<b>0</b>	<b>\$ 0</b>

<sup>6</sup> 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 FY 2023 Expenditures by Growth Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
MSBDFA	22	\$ 6,237,905	22	\$ 6,237,905	0	\$ 0
MEDAAF	10	\$ 2,348,972	10	\$ 2,348,972	0	\$ 0
SDF	0	\$ 0	0	\$ 0	0	\$ 0
MEAF	1	\$ 50,000	1	\$ 50,000	0	\$ 0
<b>Total</b>	<b>33</b>	<b>\$ 8,636,877</b>	<b>33</b>	<b>\$ 8,636,877</b>	<b>0</b>	<b>\$ 0</b>

## 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. No projects were funded outside of the PFA in FY 2023. MDE did fund two not place specific projects in FY 2023. These were both nonpoint source/stormwater programmatic loans funding projects throughout Prince George’s and Montgomery Counties.

### Maryland Department of the Environment FY 2023 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	5	\$ 100,120,104	3	\$30,299,104	0	\$ 0	2	\$ 69,821,000
DWSFAP	3	\$ 1,197,397	3	\$ 1,197,397	0	\$ 0	0	\$ 0
SAP	2	\$ 2,639,457	2	\$2,639,457	0	\$ 0	0	\$ 0
MDWRLF	2	\$ 2,297,362	2	\$ 2,297,362	0	\$ 0	0	\$ 0
<b>Total</b>	<b>12</b>	<b>\$ 106,254,320</b>	<b>10</b>	<b>\$36,433,320</b>	<b>2</b>	<b>\$ 0</b>	<b>2</b>	<b>\$ 69,821,000</b>

## 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.”<sup>7</sup> 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.<sup>8</sup> Forty-two 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 four SHA projects for which the PFA status has yet to be determined: 1) I-270 (Eisenhower Memorial Highway) and I-495 (Capital Beltway) Phase 1; 2) MD 2 (Ritchie Highway) Safety/Congestion Relief from US 50 to Arnold Road; 3) MD 26 (Liberty Road) Operational and Safety Improvements between Liberty Reservoir and MD 32; and 4) I-70 (MD 32 to I-695) Information Technology and Geometric Improvements within TSMO System 1.

Of the 170 major capital projects in the MDOT’s capital program for FY 2023, 11 were considered outside the PFA. Of these, five projects outside of the PFA have been granted exceptions in compliance with statute.<sup>9</sup> This category includes MPA projects for ecosystem restoration and dredged material placement for 1) Mid-Chesapeake Bay Island Project, 2) Paul S. Sarbanes at Poplar Island Project, and for SHA projects previously approved for PFA exception for 3) MD 32 (Patuxent Freeway) Safety and Capacity Improvements in Howard County, 4) MD 97 (Georgia Avenue) Project at Brookeville (currently open to traffic), and 5) MD 24 (Rocks Road) Slope Failure Project. There are four additional SHA projects have been identified as outside the PFA status and will require an exception – 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.

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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.

**FY 2023 MDOT Major Transportation Projects Funding  
Expended by Priority Funding Area (PFA)<sup>10</sup>**

<b>Program</b>	<b>Total Projects</b>	<b>Total Funding</b>	<b>Projects Inside PFA</b>	<b>Funding Inside PFA</b>	<b>Projects Outside PFA</b>	<b>Funding Outside PFA</b>	<b>Not Place Specific Projects</b>	<b>Not Place Specific Funding</b>
Highways	64	\$ 335,677,978	48	\$ 29,721,024	10	\$ 10,349,967	6	\$ 295,606,987
Transit	51	\$ 500,550,219	24	\$ 425,922,441	0	\$ 0	27	\$ 74,627,778
Aviation	13	\$ 20,439,559	12	\$ 18,223,193	0	\$ 0	1	\$ 2,216,366
Port Admin	14	\$ 56,207,384	9	\$ 43,015,667	3	\$ 7,443,400	2	\$ 5,748,317
Motor Vehicles	2	\$ 15,494,523	0	\$ 0	0	\$ 0	2	\$ 15,494,523
Secretary's Office	2	\$ 8,182,781	0	\$ 0	0	\$ 0	2	\$ 8,182,781
WMATA	5	\$ 216,418,732	0	\$ 0	0	\$ 0	5	\$ 216,418,732
<b>Total</b>	<b>151</b>	<b>\$ 1,152,971,176</b>	<b>93</b>	<b>\$ 516,882,325</b>	<b>13</b>	<b>\$ 17,793,367</b>	<b>45</b>	<b>\$ 618,295,484</b>

<sup>10</sup> 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 FY 2023 Expenditures

Program <sup>11</sup>	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
HRTC Residential	124	\$1,136,496	119	\$1,039,096	5	\$97,400
HRTC Commercial	18	\$22,129,329	16	\$21,546,865	2	\$582,464
HRTC Small Commercial	0	\$0	0	\$0	0	\$0
<b>Total</b>	<b>142</b>	<b>\$23,265,825</b>		<b>\$22,585,961</b>	<b>7</b>	<b>\$679,864</b>

<sup>11</sup> Commercial, small commercial, and residential HRTC figures represent Part 2 approvals for FY 2023.

## 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 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 FY 2023 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 FY 2023, 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 FY 2023 Expenditures by Project Type

Project Categories	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
New Schools	6	\$ 32,463,513	6	\$ 32,463,513	0	\$ 0
Replacement/ Addition Projects that add capacity	26	\$ 343,858,973	25	\$ 333,639,473	1	\$ 10,229,500
Major Renovations that do not add capacity	11	\$ 57,940,062	7	\$ 22,072,062	4	\$ 35,868,000
Systemic Projects	80	\$ 186,380,950	73	\$ 167,521,561	7	\$ 18,859,389
<b>Total</b>	<b>123</b>	<b>\$ 620,643,498</b>	<b>111</b>	<b>\$ 555,686,609</b>	<b>12</b>	<b>\$64,956,889</b>

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.”<sup>12</sup> 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 FY 2023, the Coordinating Committee approved nine 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 2022 – Three Existing Single-Family Homes in Brandywine and Upper Marlboro (Prince George’s County)

MDE requested a PFA exception to allow state funding to be used to connect three Prince George’s County single-family homes with failing onsite septic systems to the existing adjacent sewer main. MDE reported the three properties are located within the county’s sewer service area with existing service mains and sewer service readily available. Due to the service being available, connection to the public sewer system is required by the Prince George’s County Adopted 2018 Water and Sewer Plan Chapter 5, Section 5.2.5, which requires the property owner to connect to the public sewer system if it is available. No other option is available. A June 9, 2022 letter from the Prince George’s County Health Department stated, “Approval of the PFA Exception will provide the funding needed to address the public health and safety issue of the failing systems.”

<b>Agency Submitting Request</b>	MDE
<b>Grounds for Exception</b>	Public health or safety
<b>Funding</b>	Bay Restoration Fund (BRF) – Septic Connections Program, Up to \$20,000 each for 3 residential connections; \$60,000 max total or actual cost whichever is lower

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

### **August 2022 – Two Existing Single-Family Homes in La Plata (Charles County)**

MDE requested a PFA exception to allow state funding for sewer service connection of the two existing single-family dwellings located in La Plata, Charles County. Charles County Health Department, Division of Environmental Services, reported in its March 30, 2022 reports for both properties that “The existing septic system has failed and repair percolation tests were completed on the property and all of the tests were unsatisfactory.” The reports go on to state, “The Charles County Environmental Health Director will certify this as an area of public concern.” For both properties the sewer line is located nearby but will need small extensions. No other properties will connect to the small extensions as part of this funding. The properties will connect to the Town of La Plata Treatment Plant.

<b>Agency Submitting Request</b>	MDE
<b>Grounds for Exception</b>	Public health or safety
<b>Funding</b>	Bay Restoration Fund (BRF) – Septic Connections Program, Up to \$20,000 each for 2 residential connections; \$40,000 max total or actual cost whichever is lower

### **October 2022 – One Existing Single-Family Home in Waldorf (Charles County)**

MDE requested a PFA exception to allow state funding for a sewer connection of an existing single-family dwelling in Charles County. The Charles County Health Department, Division of Environmental Services, reported in its January 18, 2022 assessment the failing onsite septic systems, which existed as of 1900, appears to be a “homemade septic system” and does not comply with approved design standards. Additionally, Charles County will not allow a replacement due to sewer availability. The report states, “The Charles County Environmental Health Director will certify this as an area of public concern. This is already designated as S1, and all the surrounding houses are connected to public sewer as well.” The property will connect to the Mattawoman Treatment Plant.

<b>Agency Submitting Request</b>	MDE
<b>Grounds for Exception</b>	Public health or safety
<b>Funding</b>	BRF – Septic Connections Program, 1 BRF Connection – up to \$25,000 per existing property or actual cost whichever is lower; maximum of \$25,000

### **November 2022 – One Existing Single-Family Home in Princess Anne (Somerset County)**

MDE requested a PFA exception to allow state funding for a sewer connection of an existing single-family dwelling in Somerset County. An evaluation of the property by the Somerset County Health Department indicated that the property has a failing septic system, which cannot meet the groundwater separation requirements as specified in the Somerset County Groundwater Protection Report, and, therefore, a replacement conventional septic system cannot be installed on this property. The Somerset County Health Department’s September 29, 2022 letter concludes with the statement “connection to public sewer would alleviate the public health risk of the current failing OSDS and provide a permanent solution for this property.” The property will connect to the Princess Anne Wastewater Treatment Plant.

<b>Agency Submitting Request</b>	MDE
<b>Grounds for Exception</b>	Public health or safety
<b>Funding</b>	BRF – Septic Connections Program, 1 BRF Connection – up to \$25,000 per existing property or actual cost whichever is lower; maximum of \$25,000

## February 2023 – Naylor Mill Mobile Home Park (Wicomico County)

MDE requested a PFA exception to allow state funding for a public water connection of the Naylor Mill Mobile Home Park, located at 7850 Dublin Rd, Salisbury in Wicomico County, to the Salisbury public water system.

MDE reported that the Naylor Mill Mobile Home Park (MHP) has 52 sites, currently 42 are occupied, and has two drinking water wells that are privately owned and operated by TBH, Inc., the owner of the MHP property. In the analysis of samples collected by the MDE, well #1 of the MHP’s two-well system indicated a combined concentration of 100.5 ppt of PFOS and PFOA, which is 30.5 ppt (43.6%) above the EPA’s Health Advisory Limit (HAL) of 70 ppt. This well was promptly taken out of service, leaving the MHP with one usable well and no alternative water source if that well should require repair or also tests high for PFAS chemicals in the future. Well #2 was also tested and while not above the 70 ppt HAL, the sample did contain PFOS and PFOA exceeding MDE’s established 35 ppt threshold for additional future monitoring by a system.

Due to the health risks associated with this emerging contaminate, Salisbury is applying for funding to connect the MHP to public water. The connection to public water would alleviate the public health risk of the PFAS-contaminated private water source and would provide a permanent solution for the MHP property. MDE’s letter of October 28, 2022 from Diana Kremer of the Water Supply Program documents the public health and safety concerns of the department.

<b>Agency Submitting Request</b>	MDE
<b>Grounds for Exception</b>	Public health or safety
<b>Funding</b>	Drinking Water Revolving Loan Fund \$ 4,870,000

## February 2023 – Bethany United Church in Berlin (Worcester County)

MDE requested a PFA exception to allow state funding for a sewer connection for the Bethany United Church at 8648 Stephen Decatur Highway, Berlin in Worcester County. Worcester County Department of Environmental Programs (DEP) reported in its December 30, 2022 letter that the “Bethany United septic system dates to 1982, is currently in a state of failure and the church is utilizing their septic tank as a holding tank and pumping-and-hauling their sewage until they can get a connection to public sewer.” DEP also states, “This system was installed before Worcester’s Groundwater Protection Report (GPR) was prepared, and it is very doubtful that the design of a conventional replacement system that would provide the minimum groundwater separation would be possible in this location.” Robert Mitchell, DEP Director states, “As the local Approval Authority for individual on-site sewage disposal systems and water systems for Worcester County, it is my professional opinion that the continued use of this failed conventional system is not a permanent wastewater solution that is protective of public health and the environment.” The DEP letter concludes with “In summary, the Department of Environmental Programs considers the public sewer as the long-term vision for providing adequate waste disposal for this property and will be a protective measure for public health and the environment.”

MDE reported the proposed connection is consistent with the Worcester County Master Water and Sewer Plan and the property has a planning designation of S-1. Worcester County has traditionally worked with properties with similar public health concerns to connect the property to either public water and/or sewer whenever the county is able to do so.

<b>Agency Submitting Request</b>	MDE
<b>Grounds for Exception</b>	Public health or safety
<b>Funding</b>	BRF – Septic Connections Program, 1 BRF Connection – up to \$25,000 per existing property or actual cost whichever is lower; maximum of \$25,000

### **March 2023 – DeHaven/Mason Road Water Project (Allegany County)**

MDE requested a PFA exception to allow state funding to install a water line along DeHaven Road northward to Mason Road in Allegany County, connecting 32 properties in the project area (22 not in the PFA and 10 in the PFA) to the Cumberland water system and replacing the existing service water lines to the customers' homes.

MDE reported two private drinking water companies in Allegany County, north of Cumberland, provide water to two areas along DeHaven Road and Mason Road. Due to the age of the infrastructure, breaks and leaks are a common occurrence cutting off service to these homes. The County has been requested to take over these utilities and provide safe, reliable and adequate supply of potable water. This area has a mix of both PFA and non-PFA properties. In 2016, a separate PFA Exception was requested and granted for "roughly 12 homes" for the Mason Road utility area. This new PFA Exception request is a separate but complementary project to provide water service to additional properties on Mason Road and to provide water service to properties within the DeHaven Road utility that were not part of the original request. This newly defined project involves 32 properties, 22 are not PFA and 10 are PFA.

Brian Dicken, Director of the Environmental Health Division for the Allegany County Health Department reported in his letter dated January 25, 2022 that water lines serving DeHaven Road and Mason Road "suffer from multiple breaks, affecting multiple families along the heavily wooded area with limited access. This limited access makes it difficult for existing water companies to maintain the aged and constantly breaking lines. Both systems are losing water, and neither is sized for fire protection." Mr. Dicken further states "public health and public safety of the residents in this area will be greatly improved by addressing these two public water transmission lines."

<b>Agency Submitting Request</b>	MDE
<b>Grounds for Exception</b>	Public health or safety
<b>Funding</b>	Drinking Water Revolving Loan Fund \$ 1,500,000

### **April 2023 – One Existing Single-Family Home in Rockville (Montgomery County)**

MDE requested a PFA exception to allow state funding for a sewer connection of an existing single-family dwelling in Montgomery County. The Montgomery County Department of Permitting Services (DPS), Well and Septic Section, confirmed that the existing septic system has reached the point of failure and is failing to the surface. The Montgomery County Department of Environmental Protection (DEP) has indicated that the failure of an existing septic system is justification in the County's Water and Sewer Plan for connection to the community sewerage system within this neighborhood. DEP has directed Washington Suburban Sanitary Commission to expedite the provision of community sewer service to this property because of the septic failure reported by DPS. A sewer main abuts the property and no extension is needed. The sewer will ultimately be conveyed to and treated at the Blue Plains wastewater treatment plant.

<b>Agency Submitting Request</b>	MDE
<b>Grounds for Exception</b>	Public health or safety
<b>Funding</b>	BRF – Septic Connections Program, 1 BRF Connection – up to \$25,000 per existing property or actual cost whichever is lower; maximum of \$25,000

## May 2023 – Commercial Property in Callaway (St. Mary’s County)

MDE requested a PFA exception to allow state funding to be used for a sewer connection of the existing commercial property located at 20294 Piney Point Road, Callaway. The St. Mary’s County Health Department, Environmental Health Division, confirmed in a letter dated March 24, 2023 that the on-site septic system has failed, and the property is currently served by a holding tank system. The soils surrounding the property do not support installation of a new system and connecting the existing commercial property to the public sewer system will significantly reduce the risk of sewage being discharged onto the ground surface, causing public and environmental health issues.

MDE reported that a sewer main abuts the property and no extension is needed. The sewerage will ultimately be conveyed to and treated at the Marley-Taylor Water Reclamation wastewater treatment plant. Due to prior PFA funding exceptions limiting connection to the Piney Point Road sewer line, MDE staff reported subsequent sewer connections either need to be for properties within the PFA or receive a PFA exception.

**Agency Submitting Request**

MDE

**Grounds for Exception**

Public health or safety

**Funding**

Bay Restoration Fund (BRF) – Septic Connections Program,  
1 BRF Connection – up to \$18,750 or actual prorated  
sewer connection cost, whichever is lower.

# Appendix B

## Exceptions to the PFA Law Approved by BPW in FY 2023

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 FY 2023, 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 FY 2023**

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.<sup>13</sup> In FY 2023, no specific programs or policies were identified that required review and change to ensure compliance with the state’s policy.

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<sup>13</sup> 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 FY 2023<sup>14</sup>

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

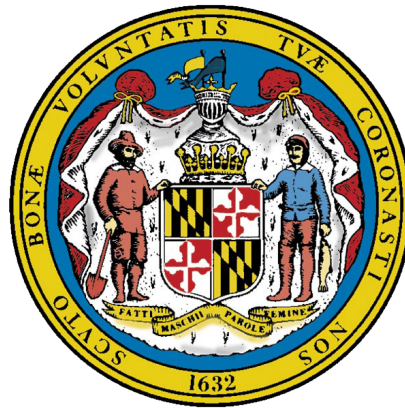
- (a) Approval has been granted or a commitment made before October 1, 1998;
- (b) A valid permit has been issued;
- (c) A commitment for a grant, loan, loan guarantee, or insurance for a capital project has been granted;
- (d) Final review under the National Environmental Policy Act or the Maryland Environmental Policy Act is completed by October 1, 1998;
- (e) Final review through the State Clearinghouse for Intergovernmental Assistance is completed by January 1, 1999; or
- (f) An appropriation has been included by October 1, 1998 in the development and evaluation portion of the Consolidated Transportation Program.

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

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





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State of Maryland  
Wes Moore, Governor  
Aruna Miller, Lt. Governor

Maryland Department of Planning  
Rebecca L. Flora, AICP, LEED ND / BD+C, Secretary  
Kristin Fleckenstein, Deputy Secretary