



APFO Workgroup Interim Report

May 13, 2013

To: Jon Laria, Chair, Maryland Sustainable Growth Commission  
Maryland Sustainable Growth Commissioners

From: Frank Hertsch, Chair, APFO Workgroup

Subject: Report on MSGC APFO Workgroup Review of 2012 APFO Reports

**Workgroup Participants:** Frank Hertsch, Chair, Greg Bowen, and David Dahlstrom.

The APFO Workgroup submitted a Discussion Draft APFO Report for the March 21, 2013 meeting of the MSGC. It was recommended by the MSGC to submit the draft report to MACo, MML and other interested parties for comment.

The APFO Workgroup appreciates the written comments received from MACo and initial comments received from MDOT. In addition, MACo has posted the draft report on its website for additional member comment. The APFO Workgroup is considering the comments which have been received and will conduct follow-up conference calls each organization to clarify and confirm any revisions and adjustments made to the draft report. The APFO Workgroup will work to complete these tasks within the next 30 days and forward a final report to the MSGC.

Attachment:  
MACo comments



## MEMORANDUM

TO: David Dahlstrom, MDP Staff Coordinator for APFO Workgroup

FROM: Leslie Knapp Jr., MACo Legal and Policy Counsel

DATE: May 7, 2013

RE: MACo Comments on Draft APFO Report

This memo contains MACo's initial thoughts and comments regarding the April 17, 2013, draft report on Adequate Public Facilities Ordinances (APFOs) in Maryland. The draft report was prepared by the APFO Workgroup of the Maryland Sustainable Growth Commission. MACo's comments include feedback provided by certain counties.

### *MACo General Comments:*

- (1) The general consensus from MACo and counties who provided comments to MACo was that the background section report was well researched and accurate.
- (2) While MACo understands the intent of focusing the school construction capital improvement program (CIP) on capacity problems, it should be noted in the report that there are other issues that may limit the ability to focus funding, including building deterioration, maintenance, and new programmatic requirements that require alteration of school facilities. It should also be noted that the geography of school districts does not nicely overlay with that of growth areas.
- (3) The report should briefly acknowledge in the conclusion and recommendations section that some of the recommendations and discussion items may have political as well as policy implications.

*MACo Comments on Specific Recommendations:*

- (1) *Recommendation #1:* While APFO model guidelines can be helpful, the State should avoid imposing a “one-size-fits-all” solution on local governments. Counties may only need APFOs for specific services or circumstances and should be able to craft an APFO that meets their local needs.
- (2) *Recommendation #2:* Establishing minimum level of service (LOS) standards in PFAs is meaningless if the funding necessary to establish and maintain the LOS standards is lacking. Additionally, there is a potential “one-size-fits-all” problem.
- (3) *Recommendations #3:* Additional reporting requirements would impose further burdens on local governments and it should be noted that some of the proposed reporting information could prove sensitive or controversial.
- (4) *Recommendation #4:* While it should not become a habit to have extended moratoria under an APFO, setting a time limit on an APFO moratorium is meaningless if there is a capacity problem and no funding to solve the capacity problem. In fact, the capacity situation could be exacerbated if the APFO is waived without addressing the underlying capacity issue. Education on solutions, rather than a hard mandate, should be used to address overuse of extended moratoria.
- (5) *Recommendation #5:* Language should be added to the mitigation recommendation that acknowledges that mitigation is only effective if there is a commitment and actual follow-through from the developer. Many infrastructure issues cannot be partially mitigated (*i.e.*, a county cannot build half a traffic signal or half a classroom).

*Errata:*

- (1) Frederick County raised a concern about the statement in the report that the County’s APFO allows for developers to construct new schools but does not allow the developer to pay the county an amount proportionally equal to the school building space needed for the number of students generated by the developer’s residential project. The Frederick County Board of County Commissioners enacted a school construction fee option in 2011 that would essentially allow for a proportionate payment. The County ordinance is attached.
- (2) Howard County noted that the report does not include the “housing allocation test” that is part of the County’s APFO. The test was created to guide planning and budgeting for all other infrastructure and capacity needs. The County limits the

number of housing units that can be authorized to move beyond the initial plan submission stage each year to match growth projections from the County's comprehensive plan. The growth projections are used by all County agencies to plan for expanded facility and service needs.

MACo appreciates the chance to provide feedback on the APFO report and looks forward to being part of the Commission's future discussions on the issue. If you have any questions or concerns, please contact me at [lnapp@mdcounties.org](mailto:lnapp@mdcounties.org) / 410.269.0043.