



Smart, Green & Growing

PLANNING GUIDE

Including 2009 Legislation

MDP

Maryland Department of Planning





Message from Governor Martin O'Malley

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

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

Smart, Green & Growing is our long-range, multi-agency initiative focused on protecting Maryland's precious, yet limited, air, water and land resources in every region of our State, so our families and children will someday be able share these natural treasures with their own kids in the same way that our parents and grandparents shared them with us. It's time to move from 20 years of treading water to 20 years of cleaner water, healthier communities and more sustainable growth.

Sound land use planning, from State smart growth programs to local government and citizen actions, is a critical piece in this *Smart, Green & Growing* strategy. By reducing sprawl development and concentrating new housing in our existing communities, we will protect irreplaceable forests and farmland and continue to improve the health of Maryland's Chesapeake and Coastal Bays.

I invite you to read this *Smart, Green & Growing Planning Guide*. Secretary Hall and his department have put together a great resource that lays out the basics. But I encourage you to learn more and to become involved in the process of creating *One Maryland, Smart, Green & Growing*. Maryland's planning history is one of its people working together, as good stewards, to leave a better state for its successors than the one they inherited.

A handwritten signature in black ink, appearing to read "Martin O'Malley". The signature is fluid and cursive, with a large initial "M" and "O".

Martin O'Malley, Governor



Message from Secretary Richard E. Hall, AICP

This publication is in response to the many requests from State and local government officials, smart growth advocates and interested citizens for me and my staff to produce a concise reference to planning and smart growth in Maryland. For this reason, the Maryland Department of Planning (MDP) created this *Smart, Green & Growing Planning Guide*. This guide provides you with a brief introduction to planning in Maryland, emphasizing key planning laws and tools that guide smart, sustainable growth.

While not designed to be an exhaustive reference, this booklet presents an overview of land use planning in Maryland, providing background on the State's enabling legislation and significant laws governing planning. This includes the 1992 Planning Act, the 1997 Priority Funding Areas Act and the 2006 laws expanding the scope of local comprehensive plans. This is followed by summaries of Governor O'Malley's *Smart, Green & Growing* legislative package, which was passed in the 2009 session of the General Assembly and signed into law.

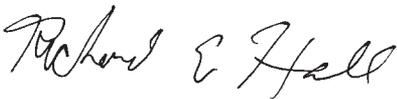
MDP played the lead role in the passage of Governor Martin O'Malley's 2009 *Smart, Green and Growing* legislative package by working closely with our stakeholders – local governments, municipalities, and the environmental community – to strengthen and reinvigorate the fundamental tools of smart growth. The three planning bills enacted into law comprise the most significant achievements in smart growth in more than a decade.

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

For the first time in history, Maryland now has a statewide smart growth goal and local governments must develop their own goals. Consistent with the Governor's Stat approach, Maryland jurisdictions will now report on a uniform set of indicators in order to provide better information to influence better planning policy decisions.

Finally, we responded decisively to the 2008 Terrapin Run ruling by passing legislation to protect the investment that citizens make in their comprehensive plans, and by enhancing the role of these plans for smart growth.

I invite you to read the sections of this guide that describe this package of successes in more detail and, as always, contact MDP or visit our website for more information on these and other matters.

A handwritten signature in black ink that reads "Richard E. Hall". The signature is written in a cursive style with a large, prominent "R" and "H".

Richard Eberhart Hall, AICP, Secretary



Introduction

As a service to the citizens of Maryland, MDP created the following overview of recent trends and key planning tools that help keep our State *Smart, Green & Growing*.

This booklet provides the context for land use planning in Maryland, explaining the legal authority enjoyed by local jurisdictions that fall under Article 66B, Article 25A or Article 28 of the Maryland Annotated Code. Background on important Maryland planning law is covered, including the 1992 Planning Act, the 1997 Priority Funding Areas Act and key planning legislation passed in 2006 (House Bills 2 and 1141).

A section is devoted to planning legislation passed by the 2009 Maryland General Assembly and signed into law by Governor O'Malley, the most significant planning enhancements in over a decade. This booklet summarizes these three most recent key laws and clarifies their importance to Maryland's smart growth programs. These are important changes and this guidebook is designed to help local decision-makers and interested citizens better understand the new planning requirements.

The remainder of the booklet explains a few of the major land use planning tools employed throughout Maryland. They include: the comprehensive plan; the zoning ordinance; development capacity analysis; transfer of development rights (TDRs) and adequate public facility ordinances (APFOs).

Finally, this booklet contains a glossary of commonly used planning terms and a list of *Models & Guidelines* publications available from MDP (www.mdp.state.md.us).

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Why Plan?



Jurisdictions throughout Maryland face a range of important issues that are intimately related to land use, including economic development, community revitalization, historic preservation, infrastructure, housing, transportation, environmental protection,

and land preservation. Through land use planning, jurisdictions work with residents and other stakeholders through a collaborative process to articulate the way they want their community to look and function in the future. To help achieve this vision, jurisdictions establish goals and priorities to guide development, revitalization, and preservation, and they institute policies and regulations to govern decision-making.

The creation of a vision, goals, and priorities can be complicated, but it makes planning for a community easier in the long run. In fact, the visioning process is one of the basic requirements of the 1992 Planning Act.

- The planning process gives the jurisdiction the opportunity to show how a community proposes to achieve a variety of competing goals.
- This process gives the jurisdiction the opportunity to involve the public, to work through competing goals of different stakeholders, and to achieve consensus before receiving specific development proposals.
- Though certain things are beyond the control of local government, such as the economy, state and federal laws, and private landowner choices, local governments gain greater control over their own future if they articulate their goals and objectives, and map their policies, to guide decision-making.

- Further, local governments need to plan if they want to take advantage of certain State funds, programs, and privileges bestowed on local government by the State.
- Through this process, local governments can communicate their interests and concerns with neighboring jurisdictions, potentially leading to more effective regional solutions for some of the issues they face.

Authority for Planning



The State of Maryland entrusts local jurisdictions with land use planning authority. Article 66B of the Maryland Annotated Code delegates planning and land use regulatory authority to all non-charter counties and all incorporated municipalities outside of Montgomery

and Prince George's Counties, as well as specifically identified towns within these two jurisdictions (Barnesville, Brookeville, Gaithersburg, Laytonsville, Poolesville, Rockville, Washington Grove, and Laurel). This statute enables local government to guide growth and development; outlines the responsibilities, roles, and functions of the planning commission; and sets the "ground rules" for operations. Many sections of Article 66B apply to all jurisdictions in the State that exercise planning and zoning powers. Article 25A delegates planning and land use powers to six charter counties (Anne Arundel, Baltimore, Harford, Howard, Talbot, and Wicomico). Article 28 applies to Montgomery and Prince George's Counties and to all incorporated towns within those two counties not covered by Article 66B.

Key Maryland Laws Governing Smart Growth



In addition to becoming familiar with Article 66B, local government officials should be aware of three key Maryland statutes that govern land use planning.

1992 Planning Act

The 1992 Economic Growth, Resource Protection, and Planning Act articulates the State's growth policy through seven visions (the General Assembly added an eighth vision in 2000 and updated the visions in 2009) centered on concentrating development in suitable areas, protecting sensitive areas, and establishing funding mechanisms to achieve the visions. The Act also requires local jurisdictions to address these same visions in their comprehensive plans. All local jurisdictions, with few exceptions, incorporated these visions into their comprehensive plans on or before July 1, 1997. Under the Act, local governments are required to review, and if necessary, update their plans once every six years.

The eight visions from the 1992 Planning Act evolved from the Chesapeake Bay program and centered on preservation of the Bay.

The 1992 Planning Act also established the link between the comprehensive plan and planning and zoning ordinances and regulations. Specifically, the Act requires all local jurisdictions to adopt ordinances and regulations that implement the planning visions and are consistent with the local comprehensive plan.

1997 Priority Funding Areas Act

The 1997 Priority Funding Areas Act directs State funding for growth-related infrastructure to Priority Funding Areas (PFAs), providing a geographic focus for State investment in growth. PFAs are existing communities and places where local governments want State funding for future growth. Growth-related projects include most State programs that encourage growth and development such as highways, sewer and water construction, economic development assistance, and State leases or construction of new office facilities.

The Act legislatively designated certain areas as PFAs - municipalities (as they existed on January 1, 1997), Baltimore City, areas inside the Baltimore and Washington Beltways, Department of Housing and Community Development Designated Neighborhoods

- and established criteria for locally designated PFAs. The criteria include permitted density, water and sewer availability, and designation as a growth area in the comprehensive plan.



House Bill 1141 and House Bill 2 from the 2006 Maryland General Assembly

Two successful bills from the 2006 session of the Maryland Assembly, House Bill 1141 and House Bill 2, significantly affected comprehensive plans, annexations and land preservation programs. HB 1141 requires that three new elements (i.e., chapters) now be included in local comprehensive plans. HB 1141 requires that all county and municipal governments include a Water Resources Plan Element (WRE) and that all municipalities include a Municipal Growth Element

(MGE). The WRE addresses the relationship of planned growth to water resources for both waste disposal and safe drinking water. The MGE requires a municipality to identify areas for future growth consistent with a long-range vision for its future. Both the Water Resources and Municipal Growth Elements must be included in all comprehensive plans no later than October 1, 2009.

The Agricultural Stewardship Act of 2006, HB 2, adds a Priority Preservation Element (PPE) to the list of additional plan elements that a county may include in its comprehensive plan. However, for counties with certified agricultural land preservation programs, the element became mandatory as of July 1, 2008. Requirements for certified counties under this element are described in Section 2-518 of the Agricultural Article and §5-408 of the State Finance and Procurement Article.

House Bill 1160 in the 2006 session also established a Workforce Housing Element to be included in comprehensive plans that must assess workforce housing needs and contain goals, objectives and policies that preserve or develop workforce housing. This element is necessary for a local government to qualify for participation in a Workforce Housing Grant Program.

HB 1141 also established the Task Force on the Future for Growth and Development in Maryland to study current trends and challenges as they relate to population and growth, to analyze the impact of current local policies on infrastructure and the environment, and to make recommendations to implement law or regulations that further best management practices as they relate to future growth and development in the State. In 2007, Senate Bill 773 amended the Task Force provision in order to expand its membership and to extend its life through 2010. The report of the Task Force was presented to Governor O'Malley on January 12, 2009.

Smart, Green & Growing Planning Legislation Enacted by the 2009 Maryland General Assembly



Governor Martin O'Malley introduced his *Smart, Green, & Growing* legislative package in the 2009 General Assembly to protect Maryland's environment and natural resources and to promote sustainable growth in Maryland. As part of this package, three

planning bills were passed that brought tremendous improvements to Maryland's already strong smart growth foundation. MDP played the lead role in the passage of these new laws by working closely with our stakeholders – local governments, municipalities, and the environmental community – to strengthen and reinvigorate the fundamental tools of smart growth. The General Assembly passed these significant planning bills and Governor O'Malley signed them into law on May 7, 2009.

The Planning Visions

Highlights

- Twelve new planning visions have been established for the State of Maryland.
- Local jurisdictions must submit a biannual Adequate Public Facilities Ordinance (APFO) report if an APFO results in a restriction in a PFA.
- MDP is required to submit a biannual report to the General Assembly on the statewide impacts of APFOs.
- Local jurisdictions are authorized to establish Transfer of Development Rights (TDR) programs within PFAs.

Key Dates

- October 1, 2009 – Effective date of the Planning Visions law.
- July 1, 2010 – Local jurisdictions' first APFO reports are due, then every two years thereafter.
- January 1, 2011 – MDP's first statewide impact of APFOs report is due, then every two years thereafter.

Summary

The new Planning Visions law modernizes the State's eight existing planning visions with 12 new visions that reflect more accurately Maryland's ongoing aspiration to develop and implement sound growth and development policy. The visions address: quality of life and sustainability; public participation; growth areas; community design; infrastructure; transportation; housing; economic development; environmental protection; resource conservation;



stewardship; and implementation approaches. Local jurisdictions are required to include the visions in the local comprehensive plan and implement them through zoning ordinances and regulations.

The bill also requires local jurisdictions to submit a report to the Maryland Department of Planning (MDP) every two years if an Adequate Public Facility Ordinance (APFO) results in a restriction in a Priority Funding Area (PFA), i.e.,

there is not adequate infrastructure to support such public facilities as new schools, recreational or transportation facilities, and transit oriented development. The first such report will be submitted by July 1, 2010. MDP,

subsequently, is required to submit a report by January 1st every two years on the statewide impacts of APFOs.



Local jurisdiction reports on PFAs and APFOs must include information about the nature of the restriction and if available, information about the proposed resolution of the restriction. A local jurisdiction's first report is due July 1, 2010. The APFO report, if applicable, may be included as part of the local jurisdictions annual report required under §3.09 of Article 66B.

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

The bill also authorizes local jurisdictions to establish TDR programs within PFAs and to assist a local jurisdiction in the purchase of land or the construction of public facilities in PFAs. Proceeds from the sale of these development rights must be used for land acquisition and public facility construction in the PFA. When developments rights are sold from land purchased for a school facility, the proceeds can only be used to off-set the cost of the land. Developments rights may only be sold on land purchased by a local government on or after October 1, 2009.

Why is the law important?

The Planning Visions provide the foundation and framework for a community's comprehensive plan. They give direction to local subdivision and zoning ordinances, which directly impacts people's lives.

What does it mean for Maryland citizens?

- Quality of life is enhanced through sustainable communities and healthy environments, which are created by controlling growth and protecting the land, water, and air.
- Citizens are empowered as active partners in the planning and visioning of their community's goals.
- Transportation alternatives, employment, and a variety of residential options become more available to citizens of all ages and incomes.
- Land and water, including the Chesapeake Bay, forests, agricultural land, open spaces, and scenic areas are preserved and conserved for future generations.



Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions

Highlights

- Local planning commissions or boards are required to submit annual reports to local legislative bodies.
- The annual reports must state which ordinances or regulations were adopted to implement the State's Planning Visions, as well as changes in development patterns
- These reports must include smart growth information on growth and net density of growth both inside and outside PFAs, newly-created lots, residential and commercial building permits, development capacity analysis, and the amount of preserved acreage using local agricultural preservation funding.
- The report must also include local goals to increase growth within the PFA and decrease growth outside the PFA, a timeframe for reaching that goal, and any incremental progress towards the local goal.

Key Dates

- July 1, 2009 – Beginning date on which planning boards in charter counties are required to submit annual reports to local legislative bodies (non-charter counties and municipalities are already required to submit annual reports).
- July 1, 2009 – Deadline for Task Force on the Future for Growth and Development to make

recommendations on additional measures and indicators to be collected.

- July 1, 2011 – Beginning date on which local jurisdictions are required to include smart growth measures and indicators and the local growth goal in the annual report.

Summary

In order to enhance Maryland's ability to conduct statewide analysis, the Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions law requires local planning commissions or boards to submit annual reports on a uniform set of smart growth measures and indicators. The law also



establishes for the first time a statewide land use goal with the specific intention of increasing the current percentage of growth within the PFA and decreasing the percentage of growth outside the PFA.

Because the 12 Planning Visions are not likely to be realized unless local jurisdictions set their own goals, the General Assembly required local jurisdictions to develop a percentage goal towards achieving the statewide goal. Charter counties are now also required to submit an annual report.

In addition to other planning and development information required under current law, the annual report must state which ordinances or regulations were adopted or changed to implement the State's planning visions. With the exception of jurisdictions that issue less than 50 building permits per year, the required measures and indicators are the following:

- amount and share of growth that is being located inside and outside the PFA;
- net density of growth that is being located inside and outside the PFA;

- creation of new lots and the issuance of residential and commercial building permits inside and outside the PFA;
- development capacity analysis, updated once every 3 years or when there is a significant zoning or land use change; and
- Amount of acreage preserved using local agricultural land preservation funding.

The annual report filed by local jurisdictions must also include a time frame for achieving the local goal, the resources necessary for infrastructure inside the PFA and land preservation outside the PFA; and any incremental progress made towards achieving the local goal.

MDP is required to develop and collect certain measures and indicators, and determine which measures will be collected by the National Center for Smart Growth Research and Education. MDP is also authorized to adopt regulations concerning the transmission and submission of the measures and indicators. The Task



Force on the Future for Growth and Development must recommend by July 1, 2009 additional measures and indicator information to be collected.

Why is the law important?

Smart policy options are only possible with reliable information. The advancement of public policy objectives like smart and sustainable growth will be aided greatly by the application and analysis of a uniform set of indicators that will provide accepted statewide information about goals, indicators, trends, and forecasts.

What does it mean for Maryland citizens?

- Smarter planning will reduce the capital expenditures for unnecessary or avoidable infrastructure, which will result in both tax savings and increased property values.
- Community groups can monitor the actual performance of the local comprehensive plan, and hold government more accountable because of greater transparency.
- Through the regular review and reporting of benchmarks, local governments and citizens can participate in an ongoing and interactive process that creates a stronger sense of community involvement.



The Smart and Sustainable Growth Act of 2009 Highlights

- Clarifies “consistency” between a local comprehensive plan and local zoning ordinance as actions that further, and are not contrary to, various parts of plan.
- The definition of consistency applies to special exceptions, the adoption of zoning ordinances and regulations and other sections of state law, including municipal annexations, water and sewer amendments, and Critical Area growth allocation;
- For the purposes of adopting local zoning ordinances in PFAs, the definition does not include land uses and densities or intensities

so as not to interfere with ordinances and regulations that allow for mixed uses and bonus densities beyond those specified in the comprehensive plan;

- The new law requires all members of planning commissions and boards of appeals to complete an education course before July 1, 2010 and new members to complete a course within 6 months of appointment. A local jurisdiction may create its own education course. MDP is required to make an on-line course available by January 1, 2010.

Key Dates

- July 1, 2009 – Effective date of the law.
- January 1, 2010 – MDP is required to develop an on-line course to be made available for local jurisdictions.
- July 1, 2010 – All planning board/commission members are required to take education course.

Summary

The Smart and Sustainable Growth Act of 2009 legislation overturns the Maryland Court of Appeals ruling that substantially weakened the connection between local comprehensive plans and zoning in a case entitled *David Trail v. Terrapin Run, LLC* where the Court stated that local comprehensive plans were merely advisory. The new law clarifies and reiterates that local jurisdictions must implement and follow the comprehensive plan each adopts by clarifying the link between local comprehensive plans and local land use ordinances.

It also further defines the current requirement of “consistency.” Actions that are “consistent with” or have “consistency with” a comprehensive plan are actions that further, and are not contrary to, the policies, timing of implementation of the plan, timing of development, timing of rezoning, development patterns, land uses, and densities or intensities.

This definition applies to special exceptions and the adoption of local ordinances and regulations. It also applies to other sections of state law when an action is required to be “consistent with” or have “consistency with” a local plan. These include municipal annexations, water and sewer amendments and Critical Area growth allocation. In PFAs, consistency, for the purpose of adoption of local ordinances and regulations, does not include land uses and densities or intensities. The General Assembly excluded those terms in PFAs to encourage, and not interfere with, ordinances and regulations, which allow mixed uses and bonus densities beyond those specified in the local comprehensive plan.

Recognizing that citizens deserve well-informed representation on planning commissions and boards of appeal, the law requires members to complete an education course before July 1, 2010.

The Task Force on the Future for Growth and Development is required to develop recommendations on the educational course for local jurisdictions by July 1, 2009, and MDP is required to develop an online planning education course for



local jurisdictions by January 1, 2010. Local jurisdictions are authorized to develop their own educational course.

Why is the law important?

The advantages of basing zoning ordinances on comprehensive plans are the reason why the General Assembly back in 1992 required zoning ordinances and regulations that implement the planning visions be consistent with the comprehensive plan. First, the comprehensive plan is prepared by professionals

along with the planning commission or board, who are able to objectively analyze and evaluate population projections, economic factors, resource limitations, and environmental protection. Second, the process involves numerous stakeholders and is open to the public. Third, although the plan can be revised more frequently, its six-year lifetime virtually assures that it will survive through changes of administration and the membership of the local legislative body.



What does it mean for Maryland citizens?

- A well-thought out plan takes into account every aspect of a community – its people, neighborhoods, downtowns, parks, schools, farmland, fire stations, transportation, and public services.
- Comprehensive plans enhance the quality of life for families by providing the framework for the resolution of immediate concerns that affect people's lives on a daily basis – clean drinking water, traffic congestion, reduced commuting distances, and less gas consumption – to name a few.
- Public participation is at the heart of a comprehensive plan. Citizens often devote many hours to the development of the plan with the expectation that their work will not be ignored. The law protects the significant public investment in local comprehensive plans.

Timeline for Implementation

2009

June 1, 2009	Smart Growth Measures, Indicators, and Goals Bill effective
July 1, 2009	Task Force to recommend other Smart Growth measures and indicators
July 1, 2009	Task Force to recommend educational course
July 1, 2009	Smart and Sustainable Growth Act effective
July 1, 2009	Annual report (without measures and indicators) due from charter and non-charter counties and municipalities
October 1, 2009	Planning Visions Bill effective
October 1, 2009	Municipal Growth and Water Resources Elements due

2010

January 1, 2010	MDP to develop on-line education course
January 1, 2010	MDP report due on Smart Growth measures and indicators (will not include locally collected indicators)
April 1, 2010	First extension on Municipal Growth and Water Resources Element ends

July 1, 2010	Annual report (without measures and indicators) due from charter and non-charter counties, and municipalities
July 1, 2010	Local jurisdictions report on APFO restrictions due, if applicable
July 1, 2010	Planning Commission and Board of Appeals members must have completed education course
October 1, 2010	Second extension on Municipal Growth and Water Resources Element ends
2011	
January 1, 2011	MDP APFO restriction report due
January 1, 2011	MDP report due on Smart Growth measures and indicators (will not include locally collected indicators)
July 1, 2011	Annual report (with measures and indicators and local growth goal) due from charter and non-charter counties, and municipalities
2012	
January 1, 2012	MDP report due on Smart Growth measures and indicators (will include locally collected indicators and local growth goals)

Selected Planning Tools Used in Maryland

The Comprehensive Plan and Zoning Ordinance

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



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

The most fundamental planning implementation tool is zoning. A zoning ordinance establishes regulations for the use of land and some standards for development within identified zoning district boundaries. A related

zoning map identifies properties that fall within different zoning categories. Zoning regulations must be uniform for each class or kind of development throughout each district, but regulations usually differ between districts.

Adequate Public Facilities Ordinance (APFO)

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

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

Without such a funding source, an APFO can simply serve as an impediment to planned development that may serve to divert growth to areas where it is not desirable.

Adequate Public Facility Ordinances can be important growth management tools for rapidly growing counties and municipalities. APFOs also have been an important and valuable tool for implementing the Visions that are included in every local comprehensive plan and are established in State law as Maryland's development policy prior to the passage of the new Planning Visions law. The premise of an APFO is that growth should be

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

Development Capacity Analysis

A development capacity analysis, sometimes also referred to as “build-out analysis” or “buildable lot inventory,” is an estimate of the total amount of development that may be built in an area under a certain set of assumptions, including applicable land-use laws, policies (e.g., zoning) and environmental constraints. While this analysis is mostly focused on estimating capacity for new residential development, there is also value in estimating a jurisdiction’s capacity to meet commercial and industrial needs, recreational needs or other land use goals.

It is important to have an estimate of the development supply (location, size, density, etc.) in a jurisdiction in order to assure it is adequately planning for future growth. These estimates can be used to evaluate policy considerations and help in making important planning decisions such as infrastructure planning, facilities planning, and assessments of whether or not a jurisdiction has an adequate supply of land for future residential growth. At a minimum, comprehensive plans should include the following development capacity related information:

- An estimate of development capacity,
- A clear methodology,
- A list and explanation of data sources used in the analysis, including information about “zoning yield”, and

- A list of assumptions and caveats related to the capacity analysis.

(For more information, refer to “*Estimating Residential Development Capacity, A Guidebook for Analysis and Implementation in Maryland*” published by the Maryland Department of Planning)

Transferable Development Rights (TDR)

The concept of transferable development rights, or TDRs, is not difficult to grasp. But for those completely unfamiliar with TDRs it may be necessary to think about property rights in an unaccustomed way. Ownership of a parcel of land confers upon its owner a number of rights: the right to use the property for one or more purposes, the right to cover a certain percentage of the site with buildings, the right to develop a certain number of dwelling units, as well as mineral, water and air rights. Under certain circumstances it is possible to transfer land development rights to another property. When this occurs it is referred to as a transfer of development rights and the rights themselves are transferable development rights or TDRs.

Owners of property are generally not free to transfer development rights among themselves at will. Normally, the transfer of development rights takes place within the context of a TDR program or system set up by local government. Eleven local governments in Maryland have established TDR programs and a number of programs exist in other states. They have also been established for bi-state and sub-state regions.

TDRs have been transferred across property lines, county lines and even state lines. Some TDR programs are voluntary and others mandatory.

In a sense, all TDR programs are voluntary because property owners are not legally compelled to transfer the rights. Under so called mandatory programs, however, the development rights available for use on the property may be very few, compared with the number of rights available for transfer. A distinction should be made

between TDR programs and “clustering.” In a cluster subdivision the development rights pertaining to the parent parcel (the original tract being subdivided) are gathered and used in one particular area but never leave the confines of the parent parcel. With TDRs the development rights are completely severed from the parent parcel and moved to a different geographic area. TDRs always cross property lines, whereas “cluster” development rights never leave the site of the parent parcel.

The details of the operation of TDR programs vary from one jurisdiction to the next, but the basic principle is the same. When rights are transferred from a parcel (called the sending parcel) an easement or other notation is recorded in the land records to indicate that the development rights cannot be exercised any longer on that parcel. The parcel to which the development rights are transferred (called the receiving parcel) is now eligible to exercise additional development rights. Proof of eligibility may take the form of a certificate issued to the purchaser of the development rights, a notation on a subdivision plat, a zoning certificate or some other instrument.

TDR programs are used to preserve agricultural land and historic landmarks, to achieve efficient, concentrated growth patterns, to protect sensitive natural environments, to protect water quality, or simply to provide a convenience to property owners. When TDRs are used to protect a resource, the resource area is officially described (by maps or words) and this becomes a “sending area” where development rights may be transferred to another property in a designated “receiving area.” The easements recorded in the sending area when rights are transferred serve to permanently protect the resource from development.

(For a more extensive overview of TDRs, please see the Maryland Department of Planning’s Models and Guidelines publication, *“Transferable Development Rights”*).

Commonly Used Planning Terms



Adequate Public Facilities Ordinance

(APFO): Adequate Public Facilities Ordinances (APFOs) are an effort to phase the provision of public facilities consistent with a locally adopted comprehensive plan. An APFO ties development

approvals under zoning and subdivision ordinances to specifically defined public facility standards. They are designed to stage the pace of development or in extreme cases to slow or delay development approvals in an area until adequate service levels are in place or reasonably assured.

Build-Out: A theoretical measure of “full development” taking into account all land that is zoned and capable of being developed with or without public facilities.

Capital Improvement Program (CIP): A six-year comprehensive statement of the objectives of capital programs with cost estimates and proposed construction schedules for specific projects. The CIP is submitted annually to the local executive and governing body.

Charrette: A design workshop aimed to gather input from stakeholders, which results in clear guidance about the future development of a particular project or place.

Chesapeake Bay Critical Area: All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetlands maps, and all land and water areas within 1,000 feet beyond the landward boundaries of and heads of tides as indicated on approved Chesapeake Bay Critical Area Overlay Zoning Map Amendments.

Cluster Development: An alternative development technique under zoning and subdivision regulations. A cluster subdivision is basically one in which a number of residential lots are grouped or clustered, leaving some land undivided for common use. Generally the same number of lots or dwelling units permitted under conventional subdivision procedures is clustered on smaller-than-usual lots. The land remaining from lot reduction is left undivided and is available as common area or open space.

Comprehensive Plan: Also called a general plan or master plan, this is a plan for development, preservation, and provision of community facilities that recognizes the physical, economic, social, political, aesthetic, and related factors of the community.

Comprehensive Water and Sewerage Plan: A plan required by the state and adopted annually that describes policy related to water and sewerage planning and delineates geographic areas to be serviced within the next ten years and those areas that are not planned for service.

Conservation Agreement: A formal agreement that commits a grading or building permit applicant to the execution of various approved elements of a Conservation Plan, such as a stormwater management concept plan, an erosion and sedimentation concept plan, and a vegetation management plan.

Conservation Easement: A nonpossessory interest in land that restricts the manner in which the land may be used or developed in an effort to preserve natural resources for future use.

Development Regulations: Regulations that limit the size, bulk, or siting conditions of particular types of buildings or uses located within any designated district.

Density: The number of dwelling units or persons per acre of land usually expressed in units per gross acre.

Downzoning: A term for an action that changes a property to a lower density, in effect, limiting development to a less-intense use than permitted under the prior zoning of a property.

Environmental Impact Statement (EIS): A document that assesses the environmental impact of actions, such as development or infrastructure projects, that significantly affect the quality of the man-made or natural environment. Environmental Impact Statements are used as tools for decision-making and are required by the National Environmental Policy Act. Similar environmental analyses are undertaken by state and local agencies.



Euclidean Zones: Zoning districts that specify particular uses that normally range from less intense to more intense uses as the zoning districts become more permissive. Euclidean zones are usually characterized by regulations that encourage separation of uses and more restrictive requirements for more intense uses in less intense zones.

Floating Zone: A zone that is described in a zoning ordinance with specific requirements for uses but not mapped until applied for by a property owner or placed on a map through a comprehensive zoning process; floating zones provide a more flexible approach in terms of permissible densities, intensities and land uses and overall development design opportunities.

Floodplain: a relatively flat or lowland area adjoining a river, stream, or watercourse, which is subject to periodic, partial or complete inundation.

Geographic Information System (GIS): An organized collection of computer hardware, software and geographic data designed to efficiently capture, store, update, manipulate, analyze and display all forms of geographically referenced information, such as land uses, roads, public facilities, natural features, and topography.

Green Area: An undeveloped area of land usually associated with, and located on the same parcel of land as, a building for which it serves to provide light and air, or scenic, open space, recreational, or similar purposes.

Green Building: Practices that consider the impacts of buildings on the local, regional, and global environment, which strive to conserve energy and water use, reduce operation and maintenance costs, minimize construction waste, and reduce/eliminate the use of non-sustainable building materials.

Green Infrastructure: A network of large undisturbed land areas (hubs) connected by designated pathways for the movement of wildlife and humans (green corridors).

Greenways: Areas of protected open space that follow natural and manmade linear features for recreation, transportation and conservation purposes and link ecological, cultural and recreational amenities.

Historic District: A group of historic resources comprised of two or more properties that are united historically or aesthetically by plan or physical development and contribute to the area's historical, architectural, archeological, or cultural significance. Historic districts

may be listed in the National Register of Historic Places and/or designated under a local historic area zoning ordinance and are afforded different levels of protection based upon the type of designation.



Historic Resource: A building, site, district, structure or object that has historical, architectural, archeological, or cultural significance. Historic resources may include: individual buildings; landscapes; archeological sites; structures, such as bridges or roads; or objects such as statues or monuments. Historic resources may be listed in the National Register of Historic Places and/or designated under a local historic area zoning ordinance and are afforded different levels of protection based upon the type of designation.

Infill Development: Development that takes place on vacant or underutilized parcels within an area that is already characterized by urban development and has access to urban services.

Infrastructure: The built facilities, generally publicly funded, that are required in order to serve a community's developmental and operational needs. The infrastructure includes such things as roads, water and sewer systems and schools.



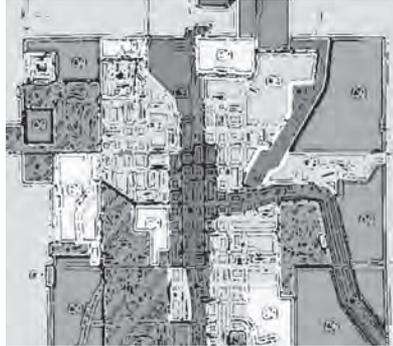
Intensity: A term referring to the gross (total) floor area and/or the degree to which commercial and industrial land uses generate traffic, noise, air pollution and other potential impacts, for commercial and industrial uses.

Land Use: The types of buildings and activities existing in an area or on a specific site. Land use is to be distinguished from zoning, the latter being the regulation of existing and future land uses.

Master Plan: A document that guides the way an area should be developed. It includes a compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present, and future trends of a particular area including, but not limited to, its

population, housing, economics, social patterns, land use, water resources and their use, transportation facilities, and public facilities.

Mixed-Use Zoning: Zoning that permits a combination of uses within a single development. Many zoning districts specify permitted combinations of residential and office/commercial uses. The term has also been applied to major developments, often with several high-rise buildings, that may contain offices, shops, hotels, apartments and related uses.



Open Space: Areas of land not covered by structures, driveways, or parking lots. Open space may include homeowners' association common areas, parks, lakes, streams and ponds, etc.

Pedestrian-Oriented Design: Land use activities that are designed and arranged in a way that emphasizes travel on foot rather than by car. Elements include compact, mixed-use development patterns with facilities and design that enhance the environment for pedestrians in terms of safety, walking distances, comfort, and the visual appeal of the surroundings. Pedestrian-friendly environments can be created by locating buildings close to the sidewalk, by lining the street with trees, and by buffering the sidewalk with planting strips or parked cars, small shops, street-level lighting and signs, and public art or displays.

Plot Plan: A plat of a lot, drawn to scale, showing the actual measurements, the size and location of any existing structures or structures to be erected, the location of the lot in relation to abutting streets, and other such information.

Record Plat: An official plat of subdivision usually approved and signed by a local government planning official and public works official and recorded in the land records of the local governing body.

Sensitive Environmental Features: These features include streams, stream valleys, and their associated features; the habitats of state-listed species that are rare, threatened, and endangered; 100-year floodplains; and certain high-priority forests.

Setback: The distance between a building or structure (not including ground-level parking lots or other paved surfaces) and property lines or from other buildings.

Site Plan: A plan, to scale, showing uses and structures proposed for a parcel of land, usually required by local development regulations. A site plan includes lot lines, streets, building sites, reserved open space, buildings, major landscape features both natural and manmade, depending on requirements, the locations of proposed utility lines. Note: Site plans are also often required to show wells, septic fields, and easements.



Special Exception: A land use that would not be appropriate generally or without restrictions within a particular zoning district but which, if controlled as to intensity, area, location, or relation to the neighborhood, would be compatible with the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted with specific conditions and through a special approval process.

Subdivision: The division by plat or deed of a piece of property into two or more lots, plots, sites, tracts, parcels, or other land divisions in accordance with local county code.

Subdivision Regulations: The control of the division of a tract of land into individual lots by requiring development according to specific design standards and procedures adopted by local ordinance.

Transfer of Development Rights (TDR): A land use/growth management tool normally used to protect designated rural and environmentally sensitive areas by allowing development rights to be transferred from areas to be protected or preserved to properties in areas where development is encouraged.

Transit-oriented Development (TOD):

Land uses that are sited, designed and combined adjacent to or in close proximity to transit stations to maximize use of transit, particularly rail ridership.



Transportation Improvement Program (TIP):

A six-year regional schedule for the study, acquisition, upgrading, or development of major highway, transit, bike and pedestrian facilities, and services.

Urban Design: The process of giving form, shape and character to the arrangement of buildings to whole neighborhoods, or the city with an emphasis on compact, mixed-use development with good pedestrian and public transportation access. Urban design blends architecture, landscaping and city planning concepts together to make an urban area accessible, attractive and functional.

Variance: A departure from any provision of the zoning requirements for a specific parcel, except use, without changing the zoning ordinance or the underlying zoning of the parcel. A variance is usually granted only upon demonstration of hardship based on the peculiarity of the property in relation to other properties in the same zoning district.

Visioning: A method for defining, sharing and communicating a community's future through intensive public participation.

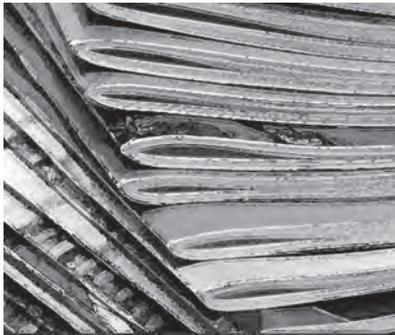
Zoning: Land development regulations of a city or county where areas, or zones, are created, which specify allowable uses for real property and size restrictions for buildings within these zoning districts.. Zoning is a key implementation tool of a Comprehensive Plan.

Zoning Text Amendment: A change in the wording, context, or substance of a zoning ordinance.

Zoning Map: A map that graphically shows all zoning district boundaries and classifications within a local jurisdiction, and which is revised and adopted on a regular basis by the local governing body.

Zoning Map Amendment: A change in the zoning or district boundaries of the official zoning map.

Selected Maryland Department of Planning Publications



MDP publishes materials that provide planning information and general guidance to local jurisdictions. The titles listed below may be of interest to readers of this planning guide. These publications can be accessed at:

http://www.mdp.state.md.us/order_publications.htm.

Where Do We Grow From Here? A Report of the Task Force on the Future for Growth and Development in Maryland

December 1, 2008

The 21-member Task Force on the Future for Growth and Development began meeting in January 2008 with 13 specific charges to fulfill. This 89-page report, entitled “Where Do We Grow from Here?” presents an assessment of the growth and development conditions and issues in Maryland. It makes 52 specific recommendations for furthering smart and sustainable growth in the state.

The Task Force continues an aggressive work plan in its duty as an advisory board to the Governor’s Smart Growth Subcabinet through December 31, 2010.

M&G #5 Achieving Consistency Under the Planning Act

April 1994

This booklet describes the consistency requirements of the 1992 Planning Act and recommends immediate and longer-term actions that will help achieve consistency of land use decisions with the comprehensive plan and the Planning Act.

M&G #17 Smart Growth: Designating Priority Funding Areas

November 1997

This publication features strategies and methodologies to determine the boundaries of Priority Funding Areas in response to the “Smart Growth” Areas Act of 1997. It includes models for calculating residential density, land capacity and future land needs, guidelines for designating rural villages, and a format and procedure for submitting PFAs to the Maryland Department of Planning.

M&G #24 Adequate Public Facilities Ordinances (APFOs)

June 2006

This Models & Guidelines publication offers guidance and direction to local jurisdictions that are considering the adoption or refinement of an Adequate Public Facilities Ordinance (APFO), including how to determine whether an APFO program is appropriate, how to design a program, legal issues, and municipal applications.

M&G #25 Writing the Municipal Growth Element to the Comprehensive Plan

May 2007

Managing Maryland's Growth: Writing the Municipal Growth Element provides technical guidance to those local governments that are preparing the municipal growth element that House Bill (HB 1141) requires in all municipal comprehensive plans by October 1, 2009.

M&G #26 The Water Resources Element: Planning for Water Supply and Wastewater and Stormwater Management

June 2007

This Models & Guidelines document provides counties and municipalities guidance in writing their water resources element to comprehensive plans.

M&G #27 Smart Growth, Community Planning and Public School Construction

July 2008

This publication examines smart growth, energy efficiency, and community centered public schools in Maryland. It provides a model process for use in site selection to ensure quality smart growth for schools and communities across the State. It is ideal for everyone involved in planning public school facilities as well as the general public.

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Smart, Green & Growing

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor



Maryland Department of Planning

Richard Eberhart Hall, AICP, Secretary
Matthew J. Power, Deputy Secretary