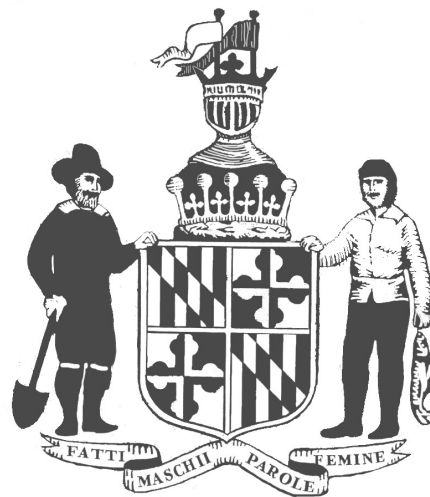


Implementation of the Smart Growth Areas Act, Fiscal Year 2022



Maryland Smart Growth Subcabinet

FY22 Implementation of the Smart Growth Areas Act

The Smart Growth Subcabinet

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and Education (ex officio)

The Maryland Smart Growth Subcabinet’s Fiscal Year (FY) 2022 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 FY22 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 (General Services)
- Maryland Department of Housing and Community Development (Housing)
- Maryland Department of the Environment (Environment)
- Maryland Department of Transportation (Transportation)

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

Introduction

The State of Maryland, through the Governor’s 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 increased the availability of funding to spend on roads, schools, and infrastructure to sustain Maryland towns, cities, and rural areas.

In FY22, 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 Works³ (BPW) or the Smart Growth Coordinating Committee⁴ (SGCC). The Subcabinet is required to report annually on those exemptions.⁵

Six new projects were granted exceptions by the Subcabinet in FY22 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 two exceptions sought by Transportation from BPW (see Appendix B, page 21). Appendix C notes that no programs and policies were reviewed or revised to ensure compliance with the state’s policy. Projects funded under Chapter 759, § 2 of the Acts of 1997 can be found in Appendix D (page 20).

1 Maryland Annotated Code, State Finance and Procurement Article, § 5-7B-01.

2 Code of Maryland Regulations, 23.03.02.03(c).

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 Planning 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).

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.

FY22 Expenditures

FY22 growth-related spending on PFA-restricted projects and programs totaled \$1,755,750,359, as reported to the Planning by Housing, General Services, Commerce, Environment, and Transportation.

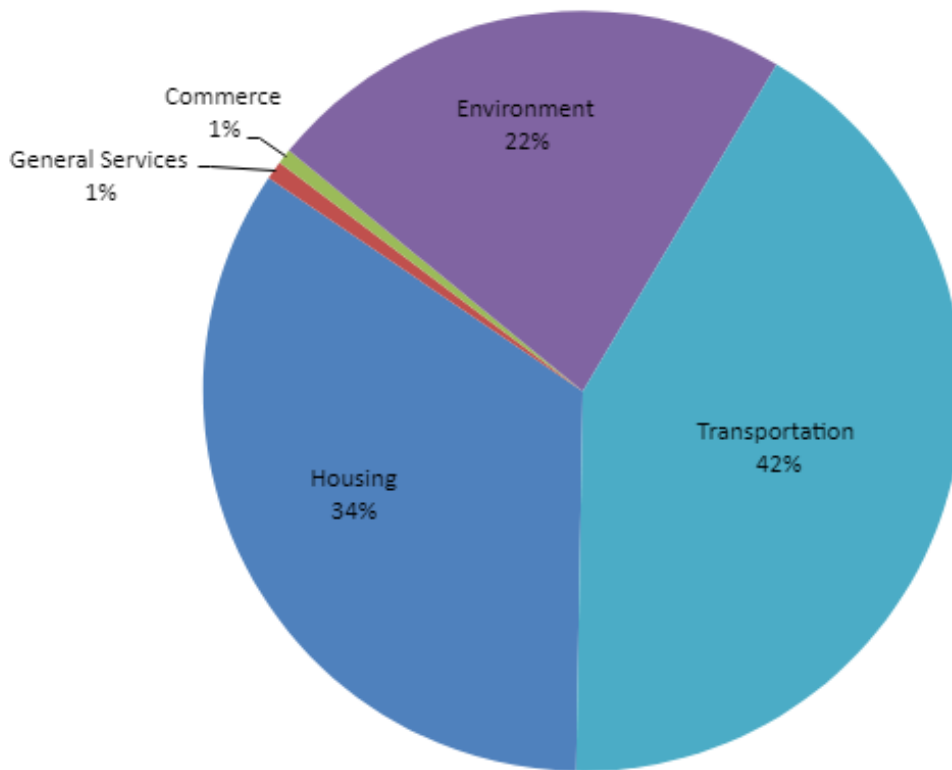
Of that amount, \$1,115,113,253, or 64%, of growth-related spending was devoted to projects and programs within PFAs; \$22,341,622, or 1%, was devoted to projects outside PFAs; and \$618,295,484, or 35%, was devoted to Transportation projects that were not place-specific.

It should be noted that \$17.8 million (79.6%) of the \$22.34 million spent outside PFAs was associated with Transportation projects that were exempt, or grandfathered, from the PFA requirements or met the criteria for granting exceptions to the law, as reported by Transportation. The remaining \$4.2 million (20.4%) spent outside PFAs were devoted to two Environment projects and three Housing projects, which are detailed in their respective sections.

FY22 Expenditures by Agency for Growth-Related Programs

Program	Total	PFA Funding	Funding Outside PFA	Not Place Specific Funding
Housing	\$ 518,684,486	\$ 518,346,355	\$ 338,131	\$ 0
General Services	\$ 20,179,818	\$ 20,179,818	\$ 0	\$ 0
Commerce	\$ 15,576,672	\$ 15,576,672	\$ 0	\$ 0
Environment	\$ 48,338,207	\$ 44,128,083	\$ 4,210,124	\$ 0
Transportation	\$ 1,152,971,176	\$ 516,882,325	\$ 17,793,367	\$ 618,295,484
Total	\$ 1,755,750,359	\$ 1,115,113,253	\$ 22,341,622	\$ 618,295,484
		64%	1%	35%

Agency Percentage of Total Funding



The Department of Housing and Community Development

Housing 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).

Housing spending outside the PFA in FY22 of \$338,131 represents one MMP and two CITC projects. The MMP project was listed as an existing property by the lender; however, upon review, it was determined that the project is new construction covered under the 1997 Smart Growth Areas Act. Program staff have advised the lenders of the error and are working closely with our lender partners to assure future compliance. In addition, staff will be running weekly reports before loans move through the pipeline to correct all errors prior to disbursement of funds. Two awards were made under the CITC program for projects outside the PFA; 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, Housing 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 FY22 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	137	\$ 51,361,197	136	\$ 51,048,066	1	\$ 313,131	0	\$ 0
NMRH	16	\$ 422,015,762	16	\$ 422,015,762	0	\$ 0	0	\$ 0
CL	59	\$ 6,020,000	59	\$ 6,020,000	0	\$ 0	0	\$ 0
CITC	65	\$ 1,750,000	63	\$ 1,725,000	2	\$ 25,000	0	\$ 0
NBW	22	\$ 9,283,517	22	\$ 9,283,517	0	\$ 0	0	\$ 0
SGIF	40	\$ 28,254,010	40	\$ 28,254,010	0	\$ 0	0	\$ 0
Total	339	\$ 518,684,486	336	\$ 518,346,355	3	\$ 338,131	0	\$ 0

The Department of General Services

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

General Services sends every lease and project to Planning’s State Clearinghouse for Intergovernmental Assistance to ensure compliance with the Smart Growth Areas Act.

Maryland Department of General Services FY22 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	85	\$ 20,179,818	85	\$ 20,179,818	0	\$ 0
Land Acquisition	0	\$ 0	0	\$ 0	0	\$ 0
Total	85	\$ 20,179,818	85	\$ 20,179,818	0	\$ 0

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

The Department of Commerce

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 FY22 Expenditures by Growth Related Program

Program	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
MSBDFA	14	\$ 4,968,172	14	\$ 4,968,172	0	\$ 0
MEDAAF	12	\$ 5,063,500	12	\$ 5,063,500	0	\$ 0
SDF	1	\$ 5,000,000	1	\$ 5,000,000	0	\$ 0
MEAF	1	\$ 545,000	1	\$ 545,000	0	\$ 0
Total	28	\$ 15,576,672	28	\$ 15,576,672	0	\$ 0

The Maryland Department of the Environment

The following 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. Two projects were funded outside of the PFA in FY22, and both received categorical exclusions due to being upgrade/improvement to existing infrastructure without capacity expansion.

Maryland Department of the Environment FY22 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	2	\$17,911,646	2	\$ 17,911,646	0	\$ 0	0	\$ 0
DWSFAP	2	\$ 1,920,163	2	\$ 1,920,163	0	\$ 0	0	\$ 0
SAP	2	\$ 533,005	2	\$ 533,005	0	\$ 0	0	\$ 0
MDWRLF	7	\$ 27,973,393	5	\$ 23,763,269	2	\$ 4,210,124	0	\$ 0
Total	13	\$ 48,338,207	11	\$ 44,128,083	2	\$ 4,210,124	0	\$ 0

The Maryland Department of Transportation

For Transportation, growth-related projects include all major capital projects defined as “any new, expanded, or significantly improved facility or service that involves planning, environmental studies, design, right-of-way, construction, or purchase of essential equipment related to the facility or service.”⁷ Transportation lists such projects in its Consolidated Transportation Program (CTP) as major projects and details the PFA status of each project as part of the annual report. The modal administrations of Transportation for which major capital projects are subject to PFA restrictions include:

- The State Highway Administration (Highways)
- The Maryland Transit Administration (Transit)
- The Maryland Aviation Administration (Aviation)
- The Maryland Port Administration (Port Administration)
- The Motor Vehicle Administration (Motor Vehicles)
- The Secretary’s Office
- Payments to Washington Metro Area Transit Authority (WMATA)

Transportation projects that are excluded from the Smart Growth Areas Act include those pertaining to existing Maryland Transportation Authority facilities, studies currently in the project planning phase (pre-decisional), minor capital projects, and projects that preserve or rehabilitate existing facilities or services without increasing capacity.⁸ Forty-one of Transportation’s major capital projects are not location-specific, meaning that they involve system-wide improvements, such as the bus communications system upgrade and Maryland Area Regional Commuter (MARC) improvements program for Transit, the CIP for WMATA, information technology improvements for Motor Vehicles, the dredged material management program for the Port Administration, the regional aviation assistance program for Aviation, and the Coordinated Highway Action Response Team and highway user revenue program for Highways.

There are three Highways 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; and 3) MD 413 (Crisfield Highway) Trail Construction from Marion Station to Westover.

Of the 152 major capital projects in Transportation’s capital program for FY22, 13 were considered to be outside the PFA. Of these, three had received final review before the Smart Growth Areas Act was enacted and are exempt (grandfathered). These include a Port Administration project for dredge disposal at Hart Miller Island and two Highways projects for corridor upgrades/widening on the MD 5 (Point Lookout Road), and US 50.

7 Maryland Annotated Code, Transportation, § 2-103.1(a)(4).

8 Maryland Annotated Code, State Finance and Procurement, § 5-7B-01(c)(1)(i).

Of the remaining projects outside of the PFA, six have been granted exceptions in compliance with statute. This category includes Port Administration projects for ecosystem restoration and dredge disposal approved under an exception in 2022⁹ for: 1) Mid-Chesapeake Bay Island Project and 2) Paul S. Sarbanes at Poplar Island Project, and Highways 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, 5) MD 24 slope failure project, and 6) US 40 over the Little Gunpowder Falls/Big Gunpowder Falls bridge replacement projects. There are four additional Highways projects have been identified as outside of the PFA, and will require an exception - 1) I-97 (US 50 to MD 32) for traffic relief, 2) MD 214 (Central Avenue) for safety, 3) MD 90 (Ocean City Expressway) for operation improvement, and 4) US 219 (Chestnut Ridge Road) for enhancing accessibility and supporting the economy.

**FY22 Maryland Department of Transportation
Major Transportation Projects¹⁰**

Program	Total	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA	Not Place Specific Projects	Not Place Specific Funding
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
Total	151	\$ 1,152,971,176	93	\$ 516,882,325	13	\$ 17,793,367	45	\$ 618,295,484

⁹ Further information on the exception process of these projects can be found in Appendix B.

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

Maryland Historical Trust Programs

MHT, a division of Planning, limits certain programs related to the PFAs to further the goals 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 FY22 Expenditures

Program ¹¹	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
HRTC Residential	151	\$ 1,491,132	144	\$ 1,416,934	7	\$ 74,198
HRTC Commercial	6	\$ 8,836,152	6	\$ 8,836,152	0	\$ 0
HRTC Small Commercial	23	\$ 950,000	23	\$ 950,000	0	\$ 0
Total	180	\$ 11,277,284	173	\$ 11,203,086	7	\$ 74,198

¹¹ Commercial, small commercial, and residential HRTC figures represent Part 2 approvals for FY22.

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 FY22 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 FY22, 98% 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 FY22
Expenditures by Project Type**

Project Categories	Total Projects	Total Funding	Projects Inside PFA	Funding Inside PFA	Projects Outside PFA	Funding Outside PFA
New Schools	12	\$ 323,075,910	12	\$ 323,075,910	0	\$ 0
Replacement/ Addition Projects that add capacity	51	\$ 664,653,765	48	\$ 639,925,765	3	\$ 24,728,000
Major Renovations that do not add capacity	5	\$ 20,503,951	5	\$ 20,503,951	0	\$ 0
Systemic Projects	55	\$ 111,602,515	51	\$ 108,529,502	4	\$ 3,073,013
Total	123	\$ 1,119,836,141	116	\$ 1,092,035,128	7	\$ 27,801,013

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

Appendix A

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

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

In FY22, the Coordinating Committee approved six PFA exceptions. PFA exception approval alone, however, does not ensure that projects will be funded. Specific details regarding the PFA exception approvals are as follows:

July 2021 – 14000 Crest Hill Lane, Silver Spring (Montgomery County)

Environment requested a PFA exception to allow state funding to be used to connect 14000 Crest Hill Lane, Silver Spring with a failing onsite septic system to the existing adjacent sewer main. An April 2, 2021 letter from the Montgomery County Department of Permitting Services confirmed that an inspection of the site found “the existing septic system is failing - both drywells are at failure and completely saturated.” The subject property is located within Montgomery County’s planned community sewer service area. Several nearby properties along the street are already connected to the community sewerage system. Because of the adjacent existing sewer main and being within the planned sewer service area, Montgomery County Department of Environmental Protection requires the owners to connect the property to community sewer service and will not concur with the use of a replacement septic system. The PFA exception was granted for 14000 Crest Hill Lane, Silver Spring due to the necessity to protect public health or safety.

Agency Submitting Request
Grounds for Exception
Funding

Environment
Public health or safety
Bay Restoration Fund (BRF) – Septic Connections Program, 1 BRF Connection – up to \$20,000 per existing property or actual cost whichever is lower; maximum of \$20,000

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

October 2021 – Greensboro Expansion and Extension to MHPs and Harman Subdivision in North Caroline County

Environment requested a PFA exception to allow state funding for the partial expansion of the Greensboro wastewater treatment plant and to connect three non-PFA areas as part of a larger regional public sewer service project for the towns in the north Caroline County. Due to the regional problem of failing septic systems, the project involves the expansion of the existing enhanced nitrogen removal (ENR) regional wastewater treatment plant (WWTP) constructed in the Town of Greensboro, which currently only serves the towns of Greensboro and Goldsboro, and the extension of the regional sewer system to serve the towns of Henderson, Marydel, and Templeville, which are all within a PFA area. As part of that WWTP expansion and sewer extension project, three non-PFAs have been identified needing public sewer service to address documented public health and safety concerns. These non-PFAs are two Mobile Home Parks (MHPs), the Marydel MHP and the Caroline Acres MHP, and a residential subdivision, known as Harman Subdivision.

A Caroline County Department of Health letter dated September 1, 2021 reports:

“Based upon time-series data collected from various State and local governing agencies including this office, the continued use of existing sewage treatment and disposal facilities at these sites present undue risk to public health and the environment. It is the opinion of this office that public sewerage service provision is the most adequate alternative to alleviate realized and potential risk factors.”

The PFA exception was granted with the following conditions:

1. The Caroline County Comprehensive Water and Sewer Master Plan must be updated to include the proposed WWTP expansion, the denied-access sewer line extension to the north Caroline County towns, and the sewer service area expansion to the towns of Henderson, Marydel, and Templeville, and the three non-PFAs, and
2. The WWTP allocation of EDUs to the non-PFAs shall be as stipulated as noted in the approval letter.

Agency Submitting Request

Environment

Grounds for Exception

Public health or safety

Funding

Water Quality Revolving Loan Fund (WQRLF) and BRF Wastewater Grant.

\$2.87 Million Expansion of WWTP + \$5.96 million Extension of the Sewer System

March 2022 – 2209 Queensbury Drive, Fallston (Harford County)

Environment requested a PFA exception to allow state funding for a sewer connection of an existing single-family dwelling with a failing septic system located at 2209 Queensbury Drive, in Harford County.

The Harford County Health Department evaluated the property on April 21, 2021, and determined the existing onsite sewage disposal system was failing, limited available repair area, small overall lot size, and poor soil conditions were unsatisfactory precluding repair of the septic system, and the presence of numerous drinking water wells in close proximity to this property further limited the possibility of an onsite septic repair. A Harford County Health Department letter on February 24, 2022 states, “As a result of the newly accessible public sewer, the Health Department’s only allowable repair consideration according to COMAR 26.04.02.02B is to require that the property connect to public sewer which is in the best interest of public health and the protection of the environment as well as the best resolution for the property owner and the Health Department.” The PFA exception was granted for 2209 Queensbury Drive, Fallston due to the necessity to protect public health or safety.

Agency Submitting Request

Environment

Grounds for Exception

Public health or safety

Funding

BRF – Septic Connections Program, 1 BRF Connection
– up to \$20,000 per existing property or actual cost
whichever is lower; maximum of \$20,000

March 2022 – Three Properties on Ferry Bridge Road (Talbot County)

Environment requested a PFA exception to allow state funding to extend a sewer main from Unionville Road along Ferry Bridge Road to connect with three existing single-family dwellings at the end of Ferry Bridge Road in Talbot County.

The Talbot County Health Department concluded in its letter, “From the information provided by the Livingston Septic Service, this office has therefore determined that the septic system is not adequate to accommodate the wastewater flows from the property and is therefore in need of replacement.”

The PFA exception was granted for the three properties on Ferry Bridge Road due to the necessity to protect public health or safety, with the following conditions:

1. Talbot County Health Department shall submit an updated letter for the PFA Exception file recommending connection of all three properties based on public health/safety concerns, and
2. The construction of the sewer main from Unionville Road along Ferry Bridge Road shall serve only the three properties (27413, 27441 and 27458 Ferry Bridge Road) and would be denied access along the rest of Ferry Bridge Road, and any subsequent sewer connection on this sewer main would require a modification to this PFA exception.

Agency Submitting Request

Environment

Grounds for Exception

Public health or safety

Funding

BRF – Septic Connections Program, 3 BRF Connections – up to \$20,000 per existing property or actual cost whichever is lower; maximum of \$60,000

April 2022 – 19989 Piney Point Road, Callaway (St. Mary’s County)

Environment requested a PFA exception to allow state funding to be used for a sewer connection of 19989 Piney Point Road in St. Mary’s County due to the failure of the existing onsite septic system. The subject property is in an area where soils are classified as moderate to well-drained but with shallow groundwater levels. Additionally, the property is limited on where an onsite septic disposal system (OSDS) can be installed due to topography, drainage ways and waterways, making it not conducive for installation of an OSDS. The only available area to install an OSDS does not meet conventional standards and would require installation of an inadequately sized innovative system or holding tank.

The St. Mary’s County Health Department, Environmental Health Division, in its March 7, 2022 letter states, “The existing onsite sewage disposal system (OSDS) is in failure and specific limiting factors are preventing the installation of a conventional system.” The letter goes on to say that “[C]onnecting this property to the public sewer system is the most feasible and logical method of sewage disposal. This will contribute to the protection of public health and the waters of the State as well as giving the property owner the funding to do so.” The PFA exception was granted for 19989 Piney Point Road, Callaway due to the necessity to protect public health or safety.

Agency Submitting Request

Environment

Grounds for Exception

Public health or safety

Funding

Bay Restoration Fund (BRF) – Septic Connections Program, 1 BRF Connection – up to \$20,000 per existing property or actual cost whichever is lower; maximum of \$20,000

May 2022 – 44316 Tall Timbers Road, Tall Timbers (St. Mary’s County)

Environment requested a PFA exception to allow state funding to be used for a sewer connection of an existing single-family dwelling located at 44316 Tall Timbers Road, in St. Mary’s County due to the failure of the existing onsite sewage disposal system (OSDS) which cannot be replaced with an OSDS due to the Comprehensive Water and Sewer Plan (CWSP) designation of RS-E (Rural Service – Environmental hazard). The subject property is in an area with soils that are classified as moderate to well-drained but with shallow groundwater levels in some areas. This particular property has soils that are classified as poorly drained with shallow groundwater levels. The area has been deemed as an environmental hazard in the St. Mary’s County CWSP, which requires that this property connect to the public sewer system.

The St. Mary’s County Health Department, Environmental Health Division, in its March 16, 2022 letter stated the department “supports and recommends the approval of the PFA Exception request for the property located at 44316 Tall Timbers Road. The existing onsite sewage disposal system (OSDS) is in failure and cannot be replaced with an OSDS due to the Comprehensive Water and Sewer Plan designation of RS-E.” The letter goes on to say that “[C]onnecting this property to the public sewer system falls in line with the intent and requirement of the CWSP as well as to the protection of public health and the waters of the State.” The PFA exception was granted for 44316 Tall Timbers Road, Tall Timbers due to the necessity to protect public health or safety.

Agency Submitting Request

Environment

Grounds for Exception

Public health or safety

Funding

Bay Restoration Fund (BRF) – Septic Connections Program, 1 BRF Connection – up to \$20,000 per existing property or actual cost whichever is lower; maximum of \$20,000

Appendix B

Exceptions to the PFA Law Approved by BPW in FY22

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 FY22, there were two Transportation projects submitted to BPW for exceptions to the Smart Growth Areas Act. Both projects were approved by the BPW at its regular meeting on June 8, 2022.

February 2022 – Mid-Chesapeake Bay Island Ecosystem Restoration Project (Dorchester County)

In February 2022, Transportation and the Port Administration requested the Smart Growth Coordinating Committee and Subcabinet recommend the Mid-Chesapeake Bay Island Ecosystem Restoration project for an exception to the PFA law. This major transportation project is outside of the PFA. The project constitutes an international model of beneficial use of dredge material to restore remote habitat in the Chesapeake Bay. In accordance with the State Finance and Procurement Article, §5-7B-05 (a)(1) (ii); and §5-7B-05 (a)(3)(iv), a PFA exception was requested on the grounds that this is a transportation project that “due to its operational or physical characteristics, must be located away from other development.” The Smart Growth Coordinating Committee and Smart Growth Subcabinet both favorably reviewed this request and recommended the project to BPW for the PFA exception. BPW voted to approve the exception on June 8, 2022.

Agency Submitting Request

Transportation

Grounds for Exception

Transportation project that must be located away from other development due to its operational nature

Funding

Maryland Consolidated Transportation Program and US Army Corps of Engineers State Investment: \$76.3 Million

February 2022 – Poplar Island Ecosystem Restoration Project (Talbot County)

In February 2022, Transportation and the Port Administration requested the Smart Growth Coordinating Committee and Subcabinet recommend the Poplar Island Ecosystem Restoration project for an exception to the PFA law. This major transportation project is outside of the PFA. The project constitutes an international model of beneficial use of dredge material to restore remote habitat in the Chesapeake Bay. In accordance with the State Finance and Procurement Article, §5-7B-05 (a)(1) (ii); and §5-7B-05 (a)(3)(iv), a PFA exception was requested on the grounds that this is a transportation project that “due to its operational or physical characteristics, must be located away from other development.” The Smart Growth Coordinating Committee and Smart Growth Subcabinet both favorably reviewed this request and recommended the project to BPW for the PFA exception. The BPW voted to approve the PFA exception on June 8, 2022.

Agency Submitting Request

Transportation

Grounds for Exception

Transportation project that must be located away from other development due to its operational nature

Funding

Maryland Consolidated Transportation Program and US Army Corps of Engineers State Investment: \$76 Million

Appendix C

Listing of Programs and Policies Reviewed and Changed To Ensure Compliance with the State’s Smart Growth Policy in FY22

The Smart Growth Subcabinet, through its Smart Growth Coordinating Committee, meets monthly to discuss opportunities for state agencies to collaborate and improve the effectiveness of Maryland’s Smart Growth policy.¹³ In FY22, no specific programs or policies were identified that required review and change to ensure compliance with the state’s policy

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

Appendix D

List of Projects or Programs Approved and Funded Under Chapter 759, § 2 of the Acts of 1997 in FY22¹⁴

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.

In FY22, Transportation reported that three projects had received final review before the Smart Growth Areas Act was enacted and are thus exempt. This includes a Port Administration project for dredge disposal at Hart Miller Island and two Highways projects for corridor upgrades/widening on the MD 5 (Point Lookout Road), and US 50 (Ocean Gateway). Other than Transportation's projects, no other projects or programs were approved and funded under Chapter 759, § 2 of the Acts of 1997.

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



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DEPARTMENT OF PLANNING

Maryland Department of Planning

Sandy Schrader, Acting Secretary

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