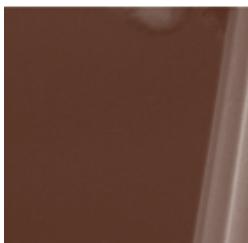
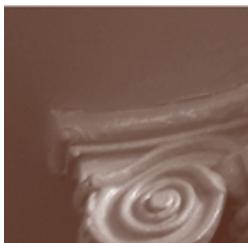
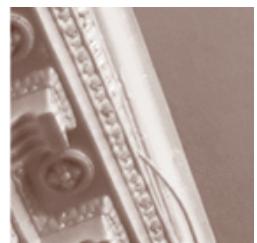


# MANAGING GROWTH: THE USE OF DEVELOPMENT IMPACT FEES AND BUILDING EXCISE TAXES IN MARYLAND



DEPARTMENT OF LEGISLATIVE SERVICES 2008

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# **Managing Growth: The Use of Development Impact Fees and Building Excise Taxes in Maryland**

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**Department of Legislative Services  
Office of Policy Analysis  
Annapolis, Maryland**

**January 2008**

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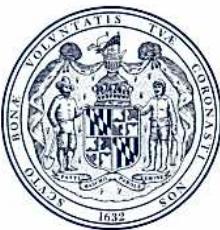
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**DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF THE EXECUTIVE DIRECTOR  
MARYLAND GENERAL ASSEMBLY**

**Karl S. Aro**  
Executive Director

January 2008

The Honorable Thomas V. Mike Miller, Jr., President of the Senate  
The Honorable Michael E. Busch, Speaker of the House of Delegates  
Honorable Members of the General Assembly

Ladies and Gentlemen:

One of the major issues facing local governments in Maryland is managing growth. In order to better manage growth, local governments have several tools which they may use including imposing development impact fees and building excise taxes to raise revenues to fund public facilities or by adopting adequate public facilities ordinances (APFOs) to ensure that the provision of public facilities is sufficient to meet the demands of a growing population.

This report reviews the use of development impact fees and excise taxes among local governments in Maryland, differentiates an impact fee from an excise tax, examines the use of impact fees and excise taxes in other States, and summarizes the implementation of APFOs in Maryland. A profile summarizing the uses and history of impact fees and excise taxes in each jurisdiction where such measures are imposed is also provided.

The report was prepared by Scott Kennedy, Joshua Loh, and Stanford Ward of the Office of Policy Analysis and reviewed by Joshua Watters, Hiram Burch, and Laura McCarty. Mary LaValley prepared the manuscript. The Department of Legislative Services trusts that the study will be useful to members of the General Assembly and to other persons interested in matters relating to managing local growth in Maryland.

Sincerely,

**Karl S. Aro**  
Executive Director

KSA/mll



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# Executive Summary

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Development impact fees and building excise taxes enable local governments to collect revenue from builders for public facilities necessitated by new residential or commercial development. As a result of these development charges, local governments are able to shift the costs of financing new public facilities from existing taxpayers to individuals responsible for the development.

In many situations, the use of such development charges may eliminate the need for jurisdiction-wide tax increases. Another benefit of development charges is that local officials can collect the needed revenue for the expansion or construction of new public facilities prior to the construction of any new residential development.

In this manner, payment of an impact fee or excise tax may be required by local officials before the issuance of a building permit or approval of a subdivision plat. Development impact fees and building excise taxes are imposed in 16 counties (with one county imposing both an impact fee and an excise tax), generating \$123.4 million in revenue in fiscal 2007.

## Development Impact Fees

A development impact fee is a regulatory measure designed to fund facilities specifically required by new development projects in order to mitigate the impact of such development on infrastructure or public facilities. However, there must be a reasonable connection between the amount of the impact fee imposed and the actual cost of providing

facilities to the properties assessed. In order to justify the imposition of an impact fee, a jurisdiction must conduct a study that measures the effects that new development will have on public facilities.

Such fees are imposed on development in eight counties – Anne Arundel, Carroll, Frederick, Harford, Queen Anne’s, St. Mary’s, Talbot, and Wicomico. Frederick County imposes both an impact fee and an excise tax on development. In fiscal 2007, the impact fees in these jurisdictions generated approximately \$32.8 million in revenue.

## Building Excise Taxes

A building excise tax is another means of raising revenue from new development. Unlike an impact fee, the amount of an excise tax does not have to be closely related to the actual cost of providing public facilities to serve new development. In addition, excise tax revenue does not have to be spent to specifically benefit the properties that are taxed, but can generally be spent throughout the county.

Building excise taxes are imposed on development in nine counties – Calvert, Caroline, Charles, Dorchester, Frederick, Howard, Montgomery, Prince George’s, and Washington. In fiscal 2007, the excise taxes in these jurisdictions generated almost \$90.7 million in revenue.

## **Adequate Public Facilities Ordinances (APFOs)**

APFOs ensure adequate public facilities are provided by tying the development approval process to specifically defined public facilities standards – such as adequate roads and schools facilities necessary to serve the additional population generated by development. Although generally APFOs are intended to slow the pace of development (or delay it in extreme cases) until adequate service levels are in place or are reasonably assured, they are not meant to

stop growth that is otherwise consistent with local zoning plans. Thus, the application of APFOs is generally associated with a funding source (usually either the local government or a developer) to address the constraint on growth.

APFOs have been adopted by 13 counties and over 20 municipalities and address a range of issues including school facilities, transportation infrastructure, water and wastewater services, parks, and public safety.

# Chapter 1. Use of Development Impact Fees/Excise Taxes in Maryland

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## Impact Fees and Excise Taxes

Development impact fees and building excise taxes enable local governments to collect revenue from builders for public facilities necessitated by new residential or commercial development. While both excise taxes and impact fees are charges intended to offset the cost of government services necessitated by new development, there are important differences between them. The crucial distinction is whether the primary purpose of the charge is to regulate development or to raise revenue. Different legal standards apply to each type of charge.

An impact fee is a regulatory measure intended to mitigate the impact of development on infrastructure or public facilities. Therefore, an impact fee must be designed to fund facilities specifically required by new development projects. An impact fee may not be imposed simply to raise revenue to fund facilities for the general public since such a fee would be a tax. There must be a reasonable connection between the amount of the impact fee imposed and the actual cost of providing facilities to the properties assessed. Moreover, the revenue from the fee must be dedicated to substantially benefit those properties. Thus, a county cannot collect an impact fee in one geographic area and spend the funds in another area. In order to justify the imposition of an impact fee, a jurisdiction must conduct a study that measures the effects that new development will have on public facilities. The amount of an impact fee is subject to judicial review.

An excise tax, unlike an impact fee, is not a regulatory measure, but simply a means of raising revenue from new development. The amount of an excise tax does not have to be closely related to the actual cost of providing public facilities to serve new development, and excise tax revenue does not have to be spent to specifically benefit the properties that are taxed. Therefore, excise taxes collected in one geographic area may be spent in another area. The amount of an excise tax, like any other tax, is not subject to judicial review.

The prevailing standard for distinguishing an impact fee from an excise tax is known as the “rational nexus test.” 89 *Opinions of the Attorney General* 212 (2004). Under the rational nexus test, a charge is considered an impact fee only if the government can show that the amount of the fee is proportional to the cost of providing facilities to new development, and the revenue from the fee is earmarked for the substantial benefit of the properties charged.

The Court of Appeals utilized the elements of this test in *Eastern Diversified Properties, Inc. v. Montgomery County*, 319 Md. 45, 570 A.2d 850 (1990), the primary case in Maryland distinguishing impact fees from taxes. In that case, the Court of Appeals invalidated a “development impact fee” imposed by Montgomery County. The court held that the fee was really a tax because its primary purpose was not to regulate the impact of development but to raise revenue for the general purpose of improving the road network over a wide area. The court

considered several factors in reaching this conclusion. First, the fee amount was not based solely on the cost of building roads to serve new development. Second, the large amount of revenue generated by the fee indicated that the fee was primarily a revenue raising measure. And third, the fee was not a part of a larger scheme to regulate development but was imposed without any additional regulatory requirements.

In striking down the Montgomery County impact fee, the court held that the county's impact fee program was an invalid tax without legislative authority. In response to the court's decision, the General Assembly considered impact fee legislation relating to seven counties at the 1990 legislative session. The Montgomery County Delegation introduced legislation to clarify and confirm the county's authority to impose development impact taxes. The legislation was amended to limit its authority to transportation projects and was approved by the General Assembly. Subsequently, the Court of Appeals in *Waters Landing Limited Partnership v. Montgomery County* (1994) held that the county's development impact tax was valid as enacted by the county council in 1990. This decision validated the collection of impact taxes and fees back to 1986. The Court of Appeals held that the county council had the authority to impose the development impact tax under Chapter 808, Laws of Maryland 1963.

## **Prevalence of Development Impact Fees and Excise Taxes**

Local governments in Maryland must have authority from the General Assembly before imposing a development impact fee or excise tax. One exception to this restriction applies to code home rule counties, which have already received authority from the General Assembly to impose such charges. Sixteen counties currently impose either a development impact fee or excise tax, generating approximately \$123.4 million in fiscal 2007. Services funded by these charges include public school construction, transportation, public safety, and parks and recreation. **Exhibit 1.1** shows the counties that impose either a development impact fee or excise tax and the revenues generated by such charges.

**Exhibit 1.1**  
**Maryland Counties with Development Impact Fees or Excise Taxes**

<b><u>County</u></b>	<b><u>Type</u></b>	<b><u>FY 2008</u></b> <b><u>Rate Per Dwelling<sup>1</sup></u></b>	<b><u>FY 2007</u></b> <b><u>Revenues</u></b>
Anne Arundel	Impact Fee	\$4,904	\$9,235,359
Calvert	Excise Tax	12,950	3,990,000
Caroline <sup>2</sup>	Excise Tax	5,000	351,178
Carroll	Impact Fee	6,836	1,547,977
Charles	Excise Tax	11,400	2,469,035*
Dorchester <sup>3</sup>	Excise Tax	3,671	1,007,908
Frederick <sup>4</sup>	Both	13,121	11,159,465
Harford	Impact Fee	8,269	4,700,428
Howard <sup>5</sup>	Excise Tax	See note	13,107,941
Montgomery <sup>6</sup>	Excise Tax	31,105	20,718,825
Prince George's <sup>7</sup>	Excise Tax	19,864	41,994,549*
Queen Anne's	Impact Fee	\$3.93/sq. ft.	1,599,957
St. Mary's	Impact Fee	4,500	3,794,275*
Talbot <sup>8</sup>	Impact Fee	5,513	1,919,972
Washington	Excise Tax	13,000	4,817,695
Wicomico	Impact Fee	5,231	<u>1,017,662</u>
<b>Total</b>			<b>\$123,432,226</b>

<sup>1</sup> Rates listed are generally those applicable to single-family detached dwellings.

<sup>2</sup> A \$750 development excise tax for agricultural land preservation is also imposed on single-family residential lots created by subdivision in a "rural district."

<sup>3</sup> A slightly higher rate, \$3,765 per dwelling, applies outside of the Cambridge and Hurlock areas.

<sup>4</sup> The fiscal 2008 rate shown reflects the public school and library impact fee total. The roads tax is \$0.10/sq. ft. or \$0.25/sq. ft. (depending on the square footage), with the first 700 square feet not taxed.

<sup>5</sup> Roads tax is \$0.88/sq. ft. School surcharge is \$1.09/sq. ft.

<sup>6</sup> Amount represents \$10,649 for transportation and \$20,456 for schools. The school excise tax is increased by \$2 for each square foot between 3,500 and 8,500 gross square feet. Different transportation rates apply in the Metro Station and Clarksburg impact tax districts. The rates reflect increases adopted by the county council on November 13, 2007, that took effect December 1, 2007.

<sup>7</sup> Amount represents \$13,493 for school facilities and \$6,371 for public safety. A lower school facilities rate (\$7,870) applies inside the beltway and a lower public safety rate (\$2,124) applies inside the "developed tier" as defined in the 2002 Prince George's County Approved General Plan.

<sup>8</sup> A lower rate (\$4,764) applies to "in-town" development.

\* Revenue figure identified by county as recorded revenues prior to being audited for that fiscal year.

Note: Due to the timing of the survey from which the fiscal 2007 revenue numbers were collected, revenues reported by counties other than those specifically identified may also be unaudited.

Source: Department of Legislative Services

## **Implementation of Impact Fees and Excise Taxes**

### **Fee/Tax Aspects and Adjustment**

While some counties impose a single impact fee or excise tax that may fund more than one category of public facilities or services, others have specifically designated fees or taxes. The fees or rates are generally set by county ordinance or resolution, often varying by type of residential or nonresidential land use and sometimes by geographic area. Impact fees or excise taxes imposed on residential development are usually (with some exceptions) assessed per dwelling unit, and charges on nonresidential development are generally assessed based on square footage.

In certain cases, builders may have the option of conducting an independent impact analysis to determine the amount that should be paid to account for the impact of that specific development on public services. This is most often available when the proposed use does not fit within the uses for which the county has set fees or rates.

Most county impact fee ordinances require that an annual review of the impact fee program be conducted. The county governing body may take any such review into account when making any changes to the program. County excise tax ordinances often require annual reports to be prepared that provide information such as the amount of revenue generated and how the revenue was spent. Several counties' rates are automatically adjusted each year to account for inflation or changing construction costs.

### **Application**

Development impact fees or excise taxes generally apply to new development or additions to existing buildings that will have an impact on public facilities. The fees or taxes applied to mixed-use or phased developments are typically calculated at the rates applicable to each land use type according to the dwellings or square footage committed to each land use type. Building replacements are generally not subject to impact fees or excise taxes if they are built within a certain time frame of the previous building's demolition and to the extent they do not add dwelling units or gross square footage. In a number of counties, the fees or taxes apply if a change in use would result in a higher impact fee or excise tax being levied than would be levied for the previous use. Generally the amount due for a change in use is the difference between the fee applicable to the new use and the fee applicable to the old use.

On the whole, impact fees or excise taxes do not apply to local, State, or federal government development. Some counties grant an exemption to the fee or tax for certain types of development or alterations to existing buildings that generally will not have an impact on public facilities (such as nonoccupiable structures or elderly housing with respect to school impact fees). Counties also grant waivers or establish exemptions for specific types of development that may impact public facilities but are exempted presumably as a matter of policy

(such as agricultural or affordable housing development). In some cases, the county ordinance requires that other county funds in the amount of the waived or exempted fees or taxes be transferred into the appropriate account, so that the county in effect pays the impact fee or excise tax for the exempted development.

## **Payment and Credits**

Most impact fees and excise taxes are due prior to a building permit or zoning certificate being issued. A number of counties offer credits against development charges for contributing construction or land for public facilities that meet the same needs the development charge would. Some county ordinances also specifically state that the ordinance does not limit the county's ability to enter into independent development agreements with builders which may include land or construction contributions or other payments in lieu of the fees or taxes.

## **Revenues**

Revenues from the impact fees or excise taxes are generally held in or credited to a specific fund or account or multiple accounts dedicated to different public facilities, services, or geographic areas. The county ordinances or public laws specify the permissible uses of the revenue collected from the impact fees or excise taxes and often emphasize using the funds for creation or expansion of public facilities rather than for maintenance or operations of existing facilities. Some counties also indicate that the impact fee or excise tax revenues are intended to supplement and not replace other funding for public facilities or services.

In some jurisdictions, refunds are available for varying reasons such as a building permit being revoked, cancelled, or expiring; construction being abandoned; an error having been made in the calculation of the fee or tax; or if a development project is altered in a way that would reduce the amount of impact fees or excise taxes due. In addition, some counties refund charges if the funds are not spent or scheduled to be spent within a certain amount of time, though exceptions can apply that allow the county additional time to use the funding.



## Chapter 2. County Profiles

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Sixteen counties in Maryland currently impose development impact fees or excise taxes. The following are brief descriptions, based primarily on applicable county ordinances and public local laws, of the development impact fee and building excise tax programs in these jurisdictions.

The descriptions highlight the legislative authority under which the development charge is imposed; what land uses are subject to the charges; the rates applicable to residential, single-family development; notable exemptions; the permissible uses of the revenue collected from the charges; and other notable or relatively unique aspects of the programs. The profiles, by way of example, provide the fees or rates applicable to single-family homes in each jurisdiction for fiscal 2008. The impact fee or excise tax rate schedule for each county can be found in the referenced appendix.

### Anne Arundel County

*Authority: § 17-11-215, 2005 Anne Arundel County Code (originally enacted under Chapter 350 of 1986)*

Anne Arundel County imposes development impact fees on new residential and nonresidential development, or a change of use or improvement to an existing use, that impacts public schools, transportation, or public safety facilities. The total impact fee (school, transportation, and public safety) required to be paid for a single-family, detached home is \$4,904 (see **Appendix 1** for fee schedule). A fee payer may choose to use an independent impact analysis to determine the amount of the fee regardless of whether a set fee applies to the land use type.

Impact fee revenue can only be used to expand the capacity of public schools, roads, and public safety facilities and not for replacement, maintenance, or operations. The county is divided into districts for the collection and use of school and transportation impact fees; however, the county as a whole is treated as one district for public safety impact fees. Fees collected from a district generally must be used for capital improvements within the district, but the fees can be used outside the district if the planning and zoning officer finds that the capital improvements will directly benefit the district from which the fees were collected.

Anne Arundel County first imposed development impact fees in fiscal 1988. The county council amended the development impact fee ordinance in 2001 (effective in fiscal 2003) to bring the fees in line with inflation and at the same time provided for yearly adjustments by the county controller to keep up with inflation. Revenues decreased from \$10.5 million in fiscal 2006 to \$9.2 million in fiscal 2007, reflecting reduced revenue from the school fee, possibly due, at least in part, to an increase in new “age-restricted” housing development (which is exempted from the school fee), in lieu of typical housing development.

## Calvert County

*Authority: Article 25, § 9G, Annotated Code of Maryland (enacted by Chapter 232 of 2001)*

Calvert County imposes a building excise tax on new residential and nonresidential building construction as well as building construction that results in a change in use from any other use to residential use. The tax revenue is used for solid waste services, recreation, roads, and schools. The total excise tax required to be paid for a single-family, detached home is \$12,950 (see **Appendix 2** for rate schedule). The building excise tax is generally paid when the building permit is issued, though in the case of new residential construction or a change in use to residential use, the tax may be paid in three installments. The board of county commissioners is authorized to grant a full or partial waiver of the tax for affordable housing that is either government subsidized or constructed by a nonprofit organization.

Revenue generated by commercial, industrial, or institutional construction and \$350 of each residential assessment is credited to the county's solid waste enterprise fund and used in accordance with the mandates of that fund. The remainder of the revenue generated from residential construction is divided among use for recreation, roads, and school facilities.

Under the county ordinance, revenues collected for recreation and school facilities generally must be spent in specified districts from which they were collected, yet the funds may be used outside of the district in which they were collected under certain circumstances. Funds designated for recreational use may also be borrowed between districts, and recreational funds collected within a municipality must be spent in that jurisdiction unless the governing body of the municipality approves the use of the funds elsewhere.

The use of funds within the recreation, roads, and school public facility categories and within applicable districts (also within municipalities in the case of recreational revenue) is relatively unrestricted. Revenues for school facilities, for example, are required to be used to finance capital improvements and infrastructure; replace, expand, and maintain existing facilities; and for any other lawful purpose as determined by the board of county commissioners.

The building excise tax became effective in fiscal 2002, replacing the previous collection of impact fees and giving the county more flexibility in the use of revenues generated. The excise tax rates were increased in May 2003 – for a single-family detached home the rate increased from \$3,950 to \$12,950 per unit. The county ordinance does not provide for automatic annual adjustment of rates, and the tax rates have not changed since 2003. In that year, Calvert County collected \$3.4 million in excise tax revenues. In fiscal 2007, the county collected \$4.0 million, down from a high of \$6.0 million in fiscal 2005.

## Caroline County

*Authority: Article 25B, §§ 13F and 13G, Annotated Code of Maryland (originally enacted under Chapters 565 and 566 of 1993 and amended under Chapter 538 of 2004)*

Caroline County imposes development excise taxes on lots created by subdivision for school construction and agricultural land preservation. The development excise tax for school construction is imposed on residential subdivision development, while the tax for agricultural land preservation applies to subdivision development in a “rural district” (a district identified in the county zoning ordinance that is intended to protect and preserve rural or agricultural areas of the county). The school construction excise tax rate is \$5,000 per lot (or per unit per lot in the case of other than single-family residential development) and the agricultural land preservation excise tax rate is \$750 per lot (see **Appendix 3** for rate schedule). The taxes are due at the time a lot is initially sold or transferred, prior to recordation of the deed.

The development excise taxes do not apply when a subdivision modifies existing lots and generally does not create new lots or dwellings, or when lots are transferred to or from the county or municipal corporations within the county. The taxes also do not apply to residual lots of at least 20 acres left remaining after subdivision. The agricultural land preservation excise tax does not apply to lots created within municipal corporations and lots subject to specified agricultural land preservation easements. The county ordinance also provides for nonprofit or governmental organizations or agencies to be able to request an exemption from the school construction excise tax.

Revenue collected from the development excise tax for school construction may only be used for capital projects, for debt incurred for capital projects, or for additional or expanded public school facilities or improvements. Revenue collected from the development excise tax for agricultural land development may only be used for the purchase of development rights on agricultural land through the purchase of agricultural land preservation easements by the Maryland Agricultural Land Preservation Foundation.

In fiscal 2006, the county collected \$966,000 from excise tax revenues, up from \$398,000 in fiscal 2005. This can largely be attributed to both increased development and the possible anticipation by builders of the rate increase effective in fiscal 2007 when the rate increased from \$3,736 to \$5,000 per lot for single-family residential development. Consequently, the amount of revenue collected in fiscal 2007 dropped to \$351,000.

## Carroll County

*Authority: Article 25, § 9F, Annotated Code of Maryland, (enacted by Chapter 108 of 1987)*

Carroll County imposes a development impact fee on new residential development or a change in use that creates at least one new residential unit, to be used for expansion of schools and parks. The fees are set by a resolution of the county commissioners. The fee required to be paid for a single-family home is \$6,836 (see **Appendix 4** for fee schedule). A person has the option to pay a development fee calculated through an independent impact analysis instead of the standard fee.

Revenue collected from the development impact fee may only be used for expansion of the capacity of public facilities. Revenues cannot be used for facility replacement or maintenance or for operating expenditures. Thus, the revenue is primarily used for the expansion of school facilities, but it can also be used for parks. The amount of fee revenue applied to a capital improvement is limited to the portion of the cost reasonably attributable to the need generated by new development or benefit conferred upon new development.

The county first adopted an impact fee schedule in 1989. Since then, fee amounts were adjusted in 1995, 1998, and 2003. The impact fee for a single-family residential unit was initially set at \$2,700 per unit in 1989 and was increased in fiscal 2004 to its current level. Consistent with a general weakness in the housing market and certain municipalities in the county being under consent orders with the Maryland Department of the Environment (due to water deficits) that have inhibited development, revenues dropped from \$3.4 million in fiscal 2006 to \$1.5 million in fiscal 2007.

## Charles County

*Authority: Article 66B, § 14.05(f), Annotated Code of Maryland (originally enacted under Chapters 476/586 of 2002)*

Charles County imposes a “fair share school construction excise tax” on new residential development to fund debt service associated with new school construction. Unlike most development charges that are due before a building permit is issued, the excise tax is collected annually over a period of 10 years at level, amortized payments of principal and interest. Charles County is authorized under State law to issue 10-year “new school capacity construction bonds” to fund all county costs in providing new school capacity. The revenues from the fair share school construction excise tax are used to pay the principal and interest on such bonds. The excise tax required to be paid for a single-family home is \$11,400 (see **Appendix 5** for rate schedule).

The interest rate applicable to the excise tax payments is set in the first payment year at the rate of interest paid by the county on the new school capacity construction bonds in that year. The tax is assessed to the property when the use and occupancy permit is issued, then collected over 10 years along with applicable county property taxes. There is no penalty for early payment. A seller of property that has been improved by new residential development is required to give notice to the buyer of the excise tax.

The excise tax became effective in fiscal 2004 and took the place of previously imposed impact fees. At the time the enabling legislation for the excise tax was enacted, the previous impact fees were under a statutory rate limit that only allowed the county to fund a little more than half of the cost of new school facility construction needed to accommodate residential growth with the impact fee revenue. The excise tax, in the long run, allows the county to generate more revenue per lot than was generated by the impact fees, and the funding generated by the new school capacity construction bonds can be used for all county costs associated with school expansion. The excise tax rates are adjusted each year to account for changing construction costs. The revenues collected by the county have been steadily increasing (from \$306,000 in fiscal 2005 to \$2.5 million in fiscal 2007) reflecting ongoing payments from development completed in previous years as well as payments from new development each year. The county issued approximately \$81 million in new school capacity construction bonds from fiscal 2003 through 2007.

## Dorchester County

*Authority: Article 24, § 9-1002, Annotated Code of Maryland (enacted by Chapter 401 of 2004)*

Dorchester County imposes a building excise tax on all new construction and additions to fund capital improvements to schools, public safety communication systems, and the sheriff's office. Rates are set by a resolution of the county council. The excise tax rates differ for development within Cambridge and Hurlock and elsewhere due to the portion of the excise tax associated with funding sheriff services. The total excise tax required to be paid for a single-family home in Cambridge or Hurlock is \$3,671, while the total excise tax required to be paid for a single-family home elsewhere in the county is \$3,765 (see **Appendix 6** for rate schedule).

Revenue collected from the building excise tax may only be used for capital improvements – any public facility acquisition; architectural, engineering, or site design; site development; equipment; facilities; or other construction activity; and associated costs related to schools, public safety communication systems, and the sheriff's office (including sheriff's office vehicles and equipment).

Dorchester County began imposing a building excise tax in fiscal 2005. Revenues increased from \$0.8 million in fiscal 2005 to \$1.3 million in fiscal 2006, but decreased to \$1.0 million in fiscal 2007.

## **Frederick County**

Frederick County imposes development impact fees and a building excise tax on new development. The development impact fees are imposed on residential development and are used for improvements to public schools and libraries. The building excise tax, however, is imposed on residential and nonresidential development and is used for the addition and expansion of public road facilities.

### **Impact Fee**

*Authority: Article 25, § 9J, Annotated Code of Maryland (enacted by Chapter 468 of 1990)*

Public school and library development impact fees are imposed on all new residential development creating a new dwelling unit, but the public school development impact fee does not apply to certain age-restricted adult or senior citizen housing. The public school and library development impact fees required to be paid for a single-family, detached home are \$12,298 and \$823, respectively for a total fee of \$13,121 (see **Appendix 7** for fee schedule). Impact fees for specified affordable housing may be deferred under the county's Affordable Housing Building Fee Deferral Program.

Revenues collected from the development impact fees generally must be used for new or expanded facilities or services and not for maintenance, repair, operational, or personnel expenditures. Fee revenue must be used for the same purpose for which it was collected.

The county first imposed an impact fee in fiscal 1994. Since then, the impact fee ordinance was reorganized and updated in 2000, adding the library impact fee and providing for the impact fees to be adjusted annually to account for inflation beginning July 1, 2002. The fees, however, have since been increased twice by ordinance when calculations done by the county as part of an annual study showed that the impact fee amounts needed to meet the need for school and library facilities had increased faster than the annual adjustments. In fiscal 2007, the county collected \$9.0 million in impact fee revenues, down from \$12.1 million in the previous year.

## Excise Tax

*Authority: § 2-7-131, Frederick County Code (originally enacted under Chapter 690 of 2001)*

The building excise tax for additional or expanded public road facilities generally applies to all new residential and nonresidential construction and certain changes in use. The tax is assessed on the basis of the gross square footage of the construction. For residential construction, the first 700 square feet are not taxed, the second 700 square feet are taxed at a rate of \$0.10 per square foot, and square footage over 1,400 square feet is taxed at a rate of \$0.25 per square foot (see Appendix 7 for rate schedule). Farm construction is not subject to the tax as long as the construction continues to be actively used for farm or agricultural use. Residential addition construction that does not exceed 100 percent of the original square footage and non-habitable residential accessory structures is not subject to the tax.

Building excise tax revenues may only be used to pay for capital road projects, or indebtedness incurred for capital road projects, that expand public road facilities. The county must provide matching funding for any expenditure made with building excise tax revenues. When revenues are used for a road project on a State highway, the same amount of funds must be obtained for the project from other sources.

Frederick County has imposed a building excise tax since fiscal 2002, and the tax rates have not changed since the tax was first imposed. The county collected \$2.2 million in excise tax revenues in fiscal 2007, down from \$3.0 million the previous year.

## Harford County

*Authority: Article 24, § 9-10A-01, Annotated Code of Maryland (enacted by Chapter 389 of 2004)*

Harford County began imposing a public school development impact fee in fiscal 2006. The development impact fee is imposed on new residential development not including renovations, additions, or modifications to an existing residential structure. The fiscal 2008 fee for a single-family, detached home is \$8,269 (see **Appendix 8** for fee schedule). Certain types of development are exempt from the impact fee, including housing for the elderly; continuing care retirement communities; specified transient housing; and affordable housing that is government subsidized, constructed by a nonprofit corporation, and owned by a low-income family.

Revenue collected from the impact fee must be used for school site acquisition, construction, renovation, debt reduction, or capital expenses.

Pursuant to the county impact fee ordinance, the fee amounts increased in fiscal 2007 and 2008. The county collected \$4.7 million from the impact fees in fiscal 2007, up from \$3.4 million in fiscal 2006.

## **Howard County**

Howard County imposes a public school facilities surcharge on new residential construction to pay for additional or expanded public school facilities and a building excise tax on all new and addition construction to finance capital projects for additional or expanded public road facilities.

### **Public School Facilities Surcharge**

*Authority: § 20.142, Howard County Code (enacted by Chapter 420 of 2004)*

First imposed in fiscal 2005, the public school facilities surcharge is levied on new residential construction. However, owners of properties that are sold for, or are initially valued at, less than a certain amount are entitled to a rebate of the surcharge. In fiscal 2005, the rebate cap was set at \$200,000. This amount is adjusted annually to account for inflation, and the fiscal 2008 cap is \$219,000. The surcharge rate for fiscal 2008 is \$1.09 per square foot.

Surcharge revenue may only be used for additional or expanded public school facilities, or for debt service on bonds issued for school construction.

Initially imposed at \$1.00 per square foot of occupiable area in new residential construction in fiscal 2005, the surcharge rate is adjusted annually to account for inflation. Revenues increased from \$5.9 million in fiscal 2005 to \$6.8 million and \$6.7 million in fiscal 2006 and 2007, respectively.

### **Building Excise Tax**

*Authority: § 20.500, Howard County Code (originally enacted under Chapter 285 of 1992)*

The building excise tax is imposed on new and addition residential and nonresidential construction to fund public road facilities. The rates are calculated per square foot, varying by type of development. The tax required to be paid for residential property is \$440 for the first 500 square feet of development and \$0.88 per square foot thereafter (see **Appendix 9** for rate schedule).

Building excise tax revenue can only be used for capital projects or indebtedness incurred for capital projects for additional or expanded public road facilities. The revenue generally may

not be used to substitute for State funding, except where a delay in State funding would have a significant adverse impact on the local road network in the county. The revenue also may not be used for any portion of a project for which funds have not already been appropriated and which is eligible for federal aid within the completion schedule of the project.

The building excise tax rates were increased moderately in fiscal 2008, but prior to that had not changed since they were first imposed in fiscal 1993. The county collected \$6.4 million in excise tax revenues in fiscal 2007, down from \$6.8 million in fiscal 2006.

## **Montgomery County**

*Authority: § 52-17, Montgomery County Code (originally enacted under Chapter 808 of 1963)*

Montgomery County imposes “development impact taxes” on new development to help pay for transportation and public school improvements necessitated by new development. The county’s authority to impose the taxes comes from a general grant of authority (Chapter 808 of 1963) from the General Assembly to the county to impose taxes within the county limit to the same extent the State could do so. The development impact taxes are imposed at different rates depending on the type of land use. The transportation development impact tax rates also vary depending on the geographic location of the development, and the public school development impact tax is limited to residential development.

The development impact tax for transportation improvements required to be paid for a single-family, detached home in fiscal 2008 in the “general” impact tax district is \$10,649 (see **Appendix 10** for rate schedule). Other rates are applicable for development in the Metro Station or Clarksburg policy areas. The development impact tax for public school improvements required to be paid for a single-family, detached home, regardless of geographic location, is \$20,456 plus \$2.00 for each square foot of gross floor area that exceeds 3,500 square feet, up to 8,500 square feet. The county code also provides for a “school facilities payment” to be imposed in addition to the development impact tax under specified circumstances, though school capacity has so far remained within limits set to trigger these payments.

The development impact taxes do not apply to specified affordable and moderately priced housing or development in either an enterprise zone designated by the State or an area previously designated as an enterprise zone. In developments in which at least 30 percent of the dwelling units are exempt (due to being affordable or moderately priced housing), the remaining units only must pay 50 percent of the applicable public school development impact tax rate. Lower transportation and public school development impact tax rates also apply to projects in which a percentage of the development is dedicated to households with income below the area-wide median income. A development that undergoes an alternative review procedure (described in the County Growth Policy) is subject to specified higher transportation development impact tax

rates, while buildings located within one-half mile of certain MARC stations pay lower transportation rates.

Revenues collected from the transportation development impact tax must be used for county or municipal transportation improvements. The revenues collected in the cities of Gaithersburg and Rockville are accounted for separately and must be used either for transportation improvements listed in a memorandum of understanding between the county and the respective city or, in the absence of a memorandum of understanding, for improvements consistent with the city's master plan. Revenues collected in the Clarksburg policy area must be used for impact transportation improvements located in, or that directly benefit, the policy area.

Public school development impact tax revenues may be used to fund construction of new public elementary or secondary schools or additions or modernizations that add one or more teaching stations. The revenues may be spent anywhere in the county.

Montgomery County has imposed development impact taxes since 1986 (though the public school development impact tax became effective more recently in March 2004). In December 2007, both the transportation and public school rates were increased significantly. The transportation rate for a single-family, detached home in the "general" impact tax district, for example, increased from \$6,264 to \$10,649. The public school rate for a single-family, detached home increased from \$9,111 to \$20,456. Both the transportation and public school development impact tax rates are adjusted in every odd-numbered year to account for inflation.

County revenues from the transportation development impact tax have generally increased from fiscal 2003, when \$1.8 million was collected, to fiscal 2007, when \$11.4 million was collected. Revenues from the public school development impact tax were \$7.7 million in fiscal 2005, \$7.0 million in fiscal 2006, and \$9.3 million in fiscal 2007.

## Prince George's County

*Authority: § 10-192.01, Public Local Laws of Prince George's County (originally enacted under Chapter 66 of 1995); § 10-192.11, Public Local Laws of Prince George's County (enacted by Chapter 594 of 2005)*

Prince George's County imposes public safety and school facilities surcharges on new residential construction. The rates vary depending on whether the development is inside or outside of the beltway for the school facilities surcharge and inside or outside of the "developed tier," as defined in the county's 2002 General Plan, for the public safety surcharge. The fiscal 2008 school facilities surcharge is \$7,870 per unit (inside the beltway) and \$13,493 per unit (outside the beltway). The public safety surcharge is \$2,124 per unit (inside the developed tier) and \$6,371 per unit (outside the developed tier). See **Appendix 11** for the surcharge schedule.

Both the public safety and school facilities surcharges do not apply to single-family detached dwellings built or subcontracted by an individual owner in a minor subdivision that are intended to be used as the owner's personal residence. The school facilities surcharge also does not apply to mixed retirement development or elderly housing, specified multi-family housing, or property located in an infrastructure finance district approved before January 1, 2000. The county council may waive the public safety surcharge for development within the developed tier.

Revenue collected from the school facilities surcharge may only be used for additional or expanded school facilities or debt service on bonds issued for school facilities or new school construction. Revenue collected from the public safety surcharge is directed toward police, fire, and emergency medical services and may only be used for construction or rehabilitation of facilities or the purchase of equipment or communications devices used in connection with public safety services. At least 12 percent (Chapter 632 of 2007, effective July 1, 2008, increases this to 25 percent) of public safety revenue collected in a municipality that maintains a police department must be distributed to the municipal corporation's police department. Fifty percent of public safety revenue collected in the City of Laurel must be distributed to the Laurel Police Department, and 50 percent must be directed toward county fire and rescue services.

The school facilities surcharge was enacted in State law in 1995, and the county council was authorized to impose the surcharge on building permits applied for on or after July 1, 1996. The public safety surcharge became effective in fiscal 2006. The rates for both surcharges are currently adjusted annually to account for inflation.

The county collected \$43.1 million in fiscal 2006 and \$42.0 million in fiscal 2007 from the school facilities surcharge.

No public safety surcharge revenues were collected in fiscal 2006 and only \$30,000 was collected in fiscal 2007. The public safety surcharge only applies to construction for which a preliminary plan has been approved on or after July 1, 2005, and there is a delay between the time a preliminary plan is approved and a building permit is issued (when the surcharge is paid). Consequently, revenues are expected to increase in future years as developments for which preliminary plans were approved on or after July 1, 2005 are issued building permits.

## Queen Anne's County

*Authority: Article 25B, § 13D, Annotated Code of Maryland (enacted by Chapter 532 of 1992; Chapter 532 repealed a 1988 grant of authority to Queen Anne's County to impose impact fees)*

Queen Anne's County imposes development impact fees on new development to fund capital improvements and public school, fire protection and emergency medical services, and parks and recreational facilities needed to serve new growth and development activity. The public schools and parks and recreational impact fees only apply to new residential development

and the fire protection/emergency medical services fee is reduced according to specified percentages for nonresidential development (50 percent for nonresidential development within a designated growth area or municipality and 25 percent for nonresidential development outside of a designated growth area or municipality). The total impact fee required to be paid for residential development is \$3.93 per square foot (see **Appendix 12** for fee schedule). Impact fees can be paid prior to the building permit or zoning certificate being issued. Otherwise, an applicant for a building permit or zoning certificate may execute a promissory note obligating payment of the impact fees upon the earlier of the issuance of the certificate of occupancy or 18 months after the issuance of the building permit or zoning certificate.

Types of development that are exempt from the impact fees include nonresidential development on a farm, government subsidized low-income housing, certain farm employee dwellings, and age-restricted adult or senior citizen housing (only exempt from the public school impact fee).

Development impact fee revenues may only be used to finance the cost to construct public facilities. The revenues may not be used for maintenance, repair, operational, or personnel expenses, and they must only be appropriated for the category of public facilities for which they were collected. The county is divided into impact fee subareas for purposes of the fire protection/emergency medical services impact fee. Revenues collected in a subarea must be spent within that subarea, unless the new development will benefit from and has generated demand for a public facility outside of the subarea. The fire protection/emergency medical services impact fee revenues also must be appropriated through the county's volunteer fire and emergency medical districts.

Queen Anne's County has imposed impact fees since fiscal 1992. The residential fees were recently changed to be based on square footage rather than a per unit cost, and the parks and recreational impact fee was added. Since fiscal 2005, the fees have been adjusted annually by the county finance director to account for inflation. In fiscal 2006 and 2007, revenues collected were \$2.5 million and \$1.6 million, respectively.

## **St. Mary's County**

*Authority: Article 25, § 10D-1, Annotated Code of Maryland (originally enacted under Chapter 814 of 1974)*

St. Mary's County imposes a development impact fee on new residential construction to finance, defray, or reimburse all or a portion of county costs for education, roads, and parks and recreation facilities. The fee required to be paid for residential dwelling units is \$4,500. Certain subdivided lots that are transferred to children (natural or legally adopted) or grandchildren are exempt from the fee.

The amount of the impact fee revenue directed toward each public facility or service is clearly defined by the county ordinance. Of the \$4,500 impact fee, \$3,375 is to be used for schools, \$450 for roads, and \$675 for parks and recreation. The revenue is generally used for expansion of public facilities and capital improvement projects.

Impact fees were first imposed in St. Mary's County in 1974. The impact fee amount was most recently increased from \$2,000 to \$4,500 in June 2000. Revenues collected have been relatively stable over the past three fiscal years, with \$3.5 million collected in fiscal 2005, \$3.9 million collected in fiscal 2006, and \$3.8 million collected in fiscal 2007.

## Talbot County

*Authority: Chapter 642 of 1991*

Talbot County imposes development impact fees on new residential and nonresidential development to fund capital improvements for a variety of public facilities and services. The fee amounts vary depending on whether the development is inside or outside of a municipality. The fee required to be paid for a single-family home inside of a municipality is \$4,764, while the fee required to be paid outside of a municipality is \$5,513 (see **Appendix 13** for fee schedule).

Under the county impact fee ordinance, buildings or structures used for agricultural purposes, as well as housing constructed by a public housing authority or a nonprofit organization whose primary purpose is to provide affordable housing, can be exempt from the impact fees. The ordinance also makes affordable housing (defined as any residential dwelling unit sold for less than the maximum acquisition cost), in general, eligible to have the impact fees deferred until the unit is sold, transferred, or conveyed after having been initially occupied, to the extent funding is available to account for the deferrals. Fifteen percent of the original fee amount is forgiven for each year of deferral, and no more than 20 percent of a subdivision, or phase within a subdivision, may qualify for deferral. Small businesses can be eligible to pay reduced fees if the total floor area of the new construction (including existing floor area) is less than 5,000 square feet, provided funding is available to account for the reductions.

Development impact fee revenues may only be used to finance the cost to construct public facilities. The revenues may not be used for maintenance, repair, operational, or personnel expenses, and they must only be appropriated for the category of public facilities for which they were collected. The revenues are directed toward general government, transportation, public schools, community college facilities, libraries, and parks and recreation. The county is divided into four subareas (the towns of Easton and Trappe, the remainder of the county east of Route 50, and the remainder of the county west of Route 50) for purposes of collection and spending of the impact fees. Revenues collected in a subarea must be spent within the subarea unless the new development will benefit from, or has generated demand for, a public facility outside of the subarea and benefits to new development outside the subarea would be incidental.

The impact fees were first imposed in the second half of fiscal 2005. The county ordinance provides for the fees to be adjusted annually to account for changing construction costs provided the county council does not otherwise adjust the fees or retain the existing fees. The county collected \$1.4 million in revenue in fiscal 2006 and \$1.9 million in fiscal 2007.

## Washington County

*Authority: § 2-701, Public Local Laws of Washington County (originally enacted under Chapter 468 of 2003 and amended under Chapter 598 of 2005)*

Washington County imposes a building excise tax on residential and nonresidential building construction and changes in use to fund capital improvements for public services and facilities. The tax required to be paid for a single-family home is \$13,000 per unit, though the rate for a non-apartment, residential dwelling less than 1,500 square feet in area is \$1.00 per square foot (see **Appendix 14** for rate schedule). Residential rates increase in specified instances for large developments of more than 25 units.

Exemptions from the building excise tax include farm construction (as long as it is actively used for nonresidential farm or agricultural use); public or private elementary or secondary schools; construction in a redevelopment area; nonresidential construction in an enterprise zone; the first 5,000 square feet of new, nonretail, nonresidential development; the first 50,000 square feet of nonresidential addition construction; structures owned by religious corporations and primarily used for religious, educational, and community purposes; and specified elderly housing (exempt from tax attributable to schools). The excise tax ordinance provides for credit against the tax to be available for constructing single-family or multi-family residential units as workforce housing (housing for which households may qualify with an income greater than 50 percent, but not exceeding 120 percent, of the average family median household income in the county). The county commissioners may also waive the building excise tax on specific projects meeting criteria established by the board.

Revenues collected from nonresidential building types may only be used for primary, secondary, or higher education capital expenditures; public safety capital expenditures; public infrastructure projects; and debt reduction related to capital improvements expenditures. Revenues collected from residential building types must be used according to the following percentages: 70 percent for schools; 23 percent for roads; 2 percent for public libraries; and 5 percent for parks and recreational facilities, public safety, water and sewer infrastructure, and agricultural land preservation. Revenues collected from residential building types and used for schools must be used for capital costs that primarily provide additional capacity. Residential revenues used for public libraries, water and sewer infrastructure, and parks and recreation must be used for capital costs of public works, improvements, and facilities.

Municipal corporations assist the county in collecting the building excise tax revenues. Those that have APFOs – adequate public facilities ordinances – with school adequacy tests

substantially similar to or more stringent than the county's APFO are allowed to retain a portion of the tax revenue to be used for specified capital costs associated with the expansion of public facilities.

Washington County first imposed a building excise tax in fiscal 2004 after receiving authorization from the General Assembly in 2003. This authorization was amended in 2005 (Chapter 598 of 2005); this legislation increased the limits on the excise tax rates. The county subsequently increased the excise tax rates in fiscal 2006, and revenues increased from \$3.5 million in fiscal 2005 to \$7.7 million in fiscal 2006. Revenues decreased in fiscal 2007 to \$4.8 million, likely due to the general downturn in the housing market. The General Assembly suspended, for fiscal 2008, the building excise tax rate caps previously established (Chapter 277 of 2007). The county commissioners, however, did not increase the excise tax rates in fiscal 2008. Chapter 277 also required the county commissioners to appoint a task force to study and make recommendations concerning the excise tax rates and structure for residential development. The task force, at the direction of the county commissioners, undertook an expanded scope of study, addressing the entire building excise tax ordinance. The task force submitted its findings and recommendations to the county delegation and commissioners in September 2007. The recommendations included imposing the excise tax on residential construction based on construction activity (defined by square footage) and assessing the excise tax on all residential additions (but at a rate equivalent to 50 percent of the rate for new construction).

## Wicomico County

*Authority: § 203-22, Wicomico County Code (enacted by Chapter 399 of 1992)*

Wicomico County imposes a development impact fee on new residential development to fund expansion of public schools. The fee required to be paid for a single-family, detached home is \$5,231 (see **Appendix 15** for fee schedule).

Types of development exempt from the development impact fee include buildings or structures used for agricultural purposes, housing constructed by a public housing authority, housing constructed by a public or private organization under a binding agreement that directly benefits households with income not exceeding 80 percent of the county median income (adjusted for household size), and certain age-restricted adult or senior-citizen housing.

Revenues collected from the development impact fee must be used solely for the purpose of capital improvements for school facilities to increase the capacity of public schools or for financing costs associated with such improvements. The revenues may not be used for maintenance, repair, operational, or personnel expenses associated with the provision of a public facility.

The development impact fee was implemented by county ordinance in June 2006. The county ordinance provides for the fee amounts to be adjusted annually to account for changing

construction costs provided the county council has not determined an alternate adjustment or elected to retain the existing fee. Fiscal 2007 was the first full fiscal year the fee was levied, and \$1.0 million in revenue was collected.

## Chapter 3. Population Growth

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Development impact fees and building excise taxes are dependent on new development to generate revenue, and in most cases, are intended to account (at least partially) for expanded public facilities needs caused by new development. Thus, population and development trends can give some indication of the potential importance of impact fees and excise taxes in the future. Toward that end, this section provides an overview of historical and projected growth in population and the number of households for the State and individual jurisdictions. In addition, it provides information on housing unit authorization trends and projected public school enrollment.

### Population and Number of Households

According to the U.S. Census Bureau, Maryland's population grew by 319,000 people between 2000 and 2006, a 6.0 percent increase in the State's population. For purposes of comparison, the overall U.S. population increased by 6.4 percent during that period. From 1990 to 2000, the State's population grew by 10.8 percent, while the U.S. population grew by 13.2 percent.

Population growth throughout Maryland has not been uniform. From 1990 to 2006, the largest percentage growth occurred in Southern Maryland, the Eastern Shore, and the north-central region of the State. The largest numeric population growth occurred in the suburban Washington region (specifically Montgomery and Prince George's counties). Baltimore City and some rural counties realized either marginal growth or continued reductions in population.

Calvert County led the State in percentage population growth between 1990 and 2000 with a growth rate of 45 percent, while Worcester, Howard, and Frederick counties had growth rates at or above 30 percent. In contrast, Baltimore City and Allegany County were the only jurisdictions that lost population during the 1990s. From 2000 to 2006, Calvert County continued to lead the State in percentage population growth, followed by Charles, Cecil, and St. Mary's counties. Baltimore City and Allegany County continued to experience population losses. **Exhibit 3.1** shows the changes in the population of the State and local jurisdictions from 1990-2000 and from 2000-2006 and ranks the counties from highest to lowest population growth rates.

The State's overall population growth rate has slowed somewhat in recent years, with the annual growth rate declining from 1.3 percent between July 1, 2000 and July 1, 2001 to 0.5 percent between July 1, 2005 and July 1, 2006. The Baltimore and suburban Washington regions as a whole exhibited stronger growth in the earlier part of the decade but have experienced declining growth rates in recent years as have counties in Southern Maryland, a region which has had the highest percentage of growth in the State so far in this decade. Growth

on the Eastern Shore has been relatively consistent. In Western Maryland, Washington County has experienced relatively consistent growth recently, while Allegany and Garrett counties have generally shown either limited growth or a decreasing population from year to year.

**Exhibits 3.2 and 3.3** show historical and projected population and household numbers for the State and local jurisdictions. The State's population is expected to increase to almost 6.2 million in 2015, a 15.9 percent increase over the State's population recorded in the 2000 census. Likewise, by 2015 the number of households is expected to increase to 2.4 million, a 19.2 percent increase over the number of households in Maryland recorded in the 2000 census.

## **New Housing Units Authorized for Construction**

The number of new housing units authorized for construction statewide each year since 2000 has been relatively stable at around 30,000 new units authorized annually. In 2006, however, the number of authorized housing units notably decreased by 22.9 percent (from 30,180 in 2005 to 23,262). While most counties experienced a decrease in the number of housing units authorized for construction from 2005 to 2006, six experienced decreases exceeding 40 percent (Anne Arundel, Caroline, Cecil, Harford, and Washington counties and Baltimore City). In five jurisdictions – Baltimore, Charles, Queen Anne's, Wicomico, and Worcester counties – the number of new housing units authorized in 2006 was similar to or greater than the number in 2005. Montgomery and Prince George's counties, which had the most new housing units authorized in both 2005 and 2006, experienced decreases of 15.6 and 11.4 percent, respectively. **Exhibit 3.4** shows the number of new housing units authorized for construction each year from 2000 to 2006 for the State and local jurisdictions.

The Baltimore and suburban Washington regions account for the majority of home building activity in the State (64.8 percent of authorized new housing units in 2006) – followed by the Lower Eastern Shore (11.6 percent), Southern Maryland (10.3 percent), Upper Eastern Shore (7.7 percent) regions, and Western Maryland (5.7 percent).

## **Public School Enrollment**

According to a Maryland Department of Planning (MDP) report, *Public School Enrollment Projections, 2007-2016*, State public school enrollment had increased annually for 18 consecutive years from 1986 to 2003. Beginning in 2004, however, the number of pupils in Maryland public schools began to decline. In 2001, the number of public school enrollees statewide was 840,329; by 2006 this number had decreased to 825,966, a 1.7 percent decline. According to the report, factors behind the declining enrollment over this period include a phase-in of raised kindergarten age eligibility requirements (which reduced the number of eligible students between the 2003-2004 and 2005-2006 school years), decreasing cumulative birth totals, an overall moderate decline in the percentage of students enrolled in public schools,

and trends in population migration. While the State overall experienced a decline in the number of public school enrollees between 2001 and 2006, some jurisdictions such as Charles (11.1 percent) and Washington (7.8 percent) counties experienced growth. **Exhibit 3.5** shows historical and projected school enrollment by county (at five-year intervals) from 2001 through 2016.

As shown in Exhibit 3.5, the decline in the number of public school enrollees is expected to continue, and between 2006 and 2011 the State is expected to experience another 0.8 percent decline in the number of public school enrollees. Again, this decline is not universal; while some counties will experience a decline in the number of public school enrollees, others will experience growth. In any event, MDP projects that, by 2016, the number of public school enrollees in the State will have increased to 858,940 – an increase of 4.8 percent from 2011 and 2.2 percent from 2001.

**Exhibit 3.1**  
**Population Growth by County**

County	1990	2000	2006	Percent Change		Highest to Lowest Growth 1990 to 2000	Highest to Lowest Growth 2000 to 2006
				1990-2000	2000-2006		
Allegany	74,946	74,930	72,831	0.0%	-2.8%	1. Calvert	45.1%
Anne Arundel	427,239	489,656	509,300	14.6%	4.0%	2. Worcester	32.9%
Baltimore City	736,014	651,154	631,366	-11.5%	-3.0%	3. Howard	32.3%
Baltimore	692,134	754,292	787,384	9.0%	4.4%	4. Frederick	30.0%
Calvert	51,372	74,563	88,804	45.1%	19.1%	5. Carroll	22.3%
Caroline	27,035	29,772	32,617	10.1%	9.6%	6. Cecil	20.5%
Carroll	123,372	150,897	170,260	22.3%	12.8%	7. Harford	20.0%
Cecil	71,347	85,951	99,506	20.5%	15.8%	8. Queen Anne's	19.5%
Charles	101,154	120,546	140,416	19.2%	16.5%	9. Charles	19.2%
Dorchester	30,236	30,674	31,631	1.4%	3.1%	10. Anne Arundel	14.6%
Frederick	150,208	195,277	222,938	30.0%	14.2%	11. Montgomery	14.5%
Garrett	28,138	29,846	29,859	6.1%	0.0%	12. Wicomico	13.9%
Harford	182,132	218,590	241,402	20.0%	10.4%	13. St. Mary's	13.5%
Howard	187,328	247,842	272,452	32.3%	9.9%	14. Prince George's	10.9%
Kent	17,842	19,197	19,983	7.6%	4.1%	15. Talbot	10.7%
Montgomery	762,875	873,341	932,131	14.5%	6.7%	16. Caroline	10.1%
Prince George's	722,705	801,515	841,315	10.9%	5.0%	17. Baltimore	9.0%
Queen Anne's	33,953	40,563	46,241	19.5%	14.0%	18. Washington	8.7%
St. Mary's	75,974	86,211	98,854	13.5%	14.7%	19. Kent	7.6%
Somerset	23,440	24,747	25,774	5.6%	4.1%	20. Garrett	6.1%
Talbot	30,549	33,812	36,062	10.7%	6.7%	21. Somerset	5.6%
Washington	121,393	131,923	143,748	8.7%	9.0%	22. Dorchester	1.4%
Wicomico	74,339	84,644	91,987	13.9%	8.7%	23. Allegany	0.0%
Worcester	35,028	46,543	48,866	32.9%	5.0%	24. Baltimore City	-11.5%
<b>Maryland</b>	<b>4,780,753</b>	<b>5,296,486</b>	<b>5,615,727</b>	<b>10.8%</b>	<b>6.0%</b>		

Source: Maryland Department of Planning; U.S. Census Bureau

**Exhibit 3.2**  
**Historical and Projected Population by County**

<b>County</b>	<b>2000</b>	<b>2005</b>	<b>2010</b>	<b>2015</b>	<b>Percent Change</b>		
					<b>2000-2005</b>	<b>2005-2010</b>	<b>2010-2015</b>
Allegany	74,930	73,400	73,600	73,800	-2.0%	0.3%	0.3%
Anne Arundel	489,656	509,000	528,950	545,000	4.0%	3.9%	3.0%
Baltimore City*	651,154	640,900	651,400	661,600	-1.6%	1.6%	1.6%
Baltimore	754,292	782,550	814,850	832,900	3.7%	4.1%	2.2%
Calvert	74,563	87,250	95,450	98,650	17.0%	9.4%	3.4%
Caroline	29,772	31,600	34,200	37,300	6.1%	8.2%	9.1%
Carroll	150,897	167,850	182,800	195,000	11.2%	8.9%	6.7%
Cecil	85,951	96,950	108,100	121,650	12.8%	11.5%	12.5%
Charles	120,546	137,400	147,400	162,300	14.0%	7.3%	10.1%
Dorchester	30,674	31,250	33,000	34,975	1.9%	5.6%	6.0%
Frederick	195,277	219,600	243,200	265,600	12.5%	10.7%	9.2%
Garrett	29,846	29,900	30,300	31,050	0.2%	1.3%	2.5%
Harford	218,590	237,900	257,000	274,300	8.8%	8.0%	6.7%
Howard	247,842	268,500	286,950	304,000	8.3%	6.9%	5.9%
Kent	19,197	19,850	20,650	21,450	3.4%	4.0%	3.9%
Montgomery	873,341	932,050	987,000	1,035,000	6.7%	5.9%	4.9%
Prince George's	801,515	841,550	883,750	925,550	5.0%	5.0%	4.7%
Queen Anne's	40,563	45,350	49,200	52,750	11.8%	8.5%	7.2%
St. Mary's	86,211	96,350	107,700	119,450	11.8%	11.8%	10.9%
Somerset	24,747	25,700	27,150	28,100	3.9%	5.6%	3.5%
Talbot	33,812	35,500	37,050	38,600	5.0%	4.4%	4.2%
Washington	131,923	140,950	150,950	161,400	6.8%	7.1%	6.9%
Wicomico	84,644	89,800	95,150	100,650	6.1%	6.0%	5.8%
Worcester	46,543	48,650	51,800	55,000	4.5%	6.5%	6.2%
<b>Maryland</b>	<b>5,296,486</b>	<b>5,589,800</b>	<b>5,897,600</b>	<b>6,176,075</b>	<b>5.5%</b>	<b>5.5%</b>	<b>4.7%</b>

Source: Maryland Department of Planning, October 2007; U.S. Census Bureau

**Exhibit 3.3**  
**Historical and Projected Number of Households by County**

<b>County</b>	<b>2000</b>	<b>2005</b>	<b>2010</b>	<b>2015</b>	<b>Percent Change</b>		
					<b>2000-2005</b>	<b>2005-2010</b>	<b>2010-2015</b>
Allegany	29,322	29,150	29,225	29,425	-0.6%	0.3%	0.7%
Anne Arundel	178,670	189,925	201,450	210,500	6.3%	6.1%	4.5%
Baltimore City	257,996	255,825	262,850	270,150	-0.8%	2.7%	2.8%
Baltimore	299,877	312,500	327,575	337,425	4.2%	4.8%	3.0%
Calvert	25,447	30,175	33,350	35,050	18.6%	10.5%	5.1%
Caroline	11,097	11,950	13,125	14,525	7.7%	9.8%	10.7%
Carroll	52,503	58,500	64,675	69,900	11.4%	10.6%	8.1%
Cecil	31,223	35,125	39,875	45,625	12.5%	13.5%	14.4%
Charles	41,668	47,700	51,975	57,975	14.5%	9.0%	11.5%
Dorchester	12,706	13,200	14,125	15,175	3.9%	7.0%	7.4%
Frederick	70,060	79,075	87,875	97,000	12.9%	11.1%	10.4%
Garrett	11,476	11,825	12,100	12,575	3.0%	2.3%	3.9%
Harford	79,667	87,125	97,000	105,600	9.4%	11.3%	8.9%
Howard	90,043	97,625	107,400	117,225	8.4%	10.0%	9.1%
Kent	7,666	8,100	8,500	8,925	5.7%	4.9%	5.0%
Montgomery	324,565	347,625	368,875	390,000	7.1%	6.1%	5.7%
Prince George's	286,610	303,225	320,350	339,200	5.8%	5.6%	5.9%
Queen Anne's	15,315	17,300	19,050	20,700	13.0%	10.1%	8.7%
St. Mary's	30,642	35,000	39,825	44,975	14.2%	13.8%	12.9%
Somerset	8,361	8,725	9,100	9,475	4.4%	4.3%	4.1%
Talbot	14,307	15,575	16,275	17,125	8.9%	4.5%	5.2%
Washington	49,726	54,125	57,800	62,425	8.8%	6.8%	8.0%
Wicomico	32,218	34,900	37,100	39,575	8.3%	6.3%	6.7%
Worcester	19,694	21,175	22,725	24,425	7.5%	7.3%	7.5%
<b>Maryland</b>	<b>1,980,859</b>	<b>2,105,450</b>	<b>2,242,200</b>	<b>2,374,975</b>	<b>6.3%</b>	<b>6.5%</b>	<b>5.9%</b>

Source: Maryland Department of Planning, October 2007; U.S. Census Bureau

**Exhibit 3.4**  
**New Housing Units Authorized for Construction**

<b>County</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Allegany	79	80	103	107	120	114	120
Anne Arundel	3,078	2,492	2,359	3,001	2,364	2,495	1,414
Baltimore City	257	195	293	695	740	1,256	649
Baltimore	2,707	3,153	2,706	2,599	2,103	1,936	2,217
Calvert	931	886	928	791	525	488	305
Caroline	154	176	174	260	316	362	194
Carroll	1,459	1,390	1,654	1,065	1,040	809	511
Cecil	768	940	968	1,089	811	743	405
Charles	1,233	1,368	1,470	1,244	1,000	1,309	1,327
Dorchester	109	117	179	287	423	490	400
Frederick	2,747	1,983	1,578	1,837	1,773	1,872	1,300
Garrett	253	286	333	334	355	334	287
Harford	1,702	1,844	1,883	1,976	1,836	2,659	1,344
Howard	2,182	1,327	1,547	1,479	1,837	1,778	1,567
Kent	334	347	394	429	221	206	194
Montgomery	4,950	5,249	5,013	4,428	3,821	3,591	3,031
Prince George's	3,456	3,049	2,563	2,938	1,948	3,425	3,033
Queen Anne's	419	507	549	318	362	394	431
St. Mary's	1,163	549	914	1,094	1,384	993	759
Somerset	27	45	74	230	185	209	135
Talbot	339	365	387	522	625	648	578
Washington	721	986	1,235	1,105	1,368	1,945	908
Wicomico	480	871	841	1,068	1,000	1,003	1,082
Worcester	810	854	1,148	1,018	1,225	1,121	1,071
<b>Maryland</b>	<b>30,358</b>	<b>29,059</b>	<b>29,293</b>	<b>29,914</b>	<b>27,382</b>	<b>30,180</b>	<b>23,262</b>

Source: U.S. Census Bureau; Maryland Department of Planning, Planning Data Services, 2006

**Exhibit 3.5**  
**Historical and Projected Public School Enrollment by County**

County	2001	2006	2011	2016	Percent Change		
					2001-2006	2006-2011	2011-2016
Allegany	9,891	9,087	8,200	8,080	-8.1%	-9.8%	-1.5%
Anne Arundel	74,063	71,800	71,270	73,520	-3.1%	-0.7%	3.2%
Baltimore City	94,430	81,012	71,690	72,020	-14.2%	-11.5%	0.5%
Baltimore	104,071	101,915	100,080	105,100	-2.1%	-1.8%	5.0%
Calvert	16,315	17,112	17,240	18,400	4.9%	0.7%	6.7%
Caroline	5,392	5,309	5,580	6,490	-1.5%	5.1%	16.3%
Carroll	27,918	28,346	28,110	29,320	1.5%	-0.8%	4.3%
Cecil	15,615	15,924	16,590	18,790	2.0%	4.2%	13.3%
Charles	23,237	25,822	27,120	29,170	11.1%	5.0%	7.6%
Dorchester	4,636	4,472	4,410	5,060	-3.5%	-1.4%	14.7%
Frederick	37,331	39,493	41,920	45,400	5.8%	6.1%	8.3%
Garrett	4,739	4,530	4,070	3,840	-4.4%	-10.2%	-5.7%
Harford	39,062	38,666	38,630	41,560	-1.0%	-0.1%	7.6%
Howard	45,650	48,148	48,770	50,320	5.5%	1.3%	3.2%
Kent	2,578	2,226	1,940	2,010	-13.7%	-12.8%	3.6%
Montgomery	134,417	134,787	137,580	145,340	0.3%	2.1%	5.6%
Prince George's	132,088	125,396	121,420	123,530	-5.1%	-3.2%	1.7%
Queen Anne's	7,004	7,460	7,900	8,740	6.5%	5.9%	10.6%
St. Mary's	14,822	15,911	16,820	18,450	7.3%	5.7%	9.7%
Somerset	2,904	2,772	2,750	2,920	-4.5%	-0.8%	6.2%
Talbot	4,360	4,224	4,080	4,170	-3.1%	-3.4%	2.2%
Washington	19,561	21,080	22,770	25,300	7.8%	8.0%	11.1%
Wicomico	13,585	13,988	14,180	15,180	3.0%	1.4%	7.1%
Worcester	6,660	6,486	6,280	6,260	-2.6%	-3.2%	-0.3%
<b>Maryland</b>	<b>840,329</b>	<b>825,966</b>	<b>819,370</b>	<b>858,940</b>	<b>-1.7%</b>	<b>-0.8%</b>	<b>4.8%</b>

Source: Maryland Department of Planning, September 2007

## Chapter 4. Adequate Public Facilities Ordinances

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### Background

APFOs – adequate public facilities ordinances – are another tool for a local government to manage development – particularly as it relates to the ability of the jurisdiction to provide adequate public facilities (such as schools and roads) to serve the additional population. APFOs have been adopted in 13 counties and over 20 municipalities. **Exhibit 4.1** lists the counties that have adopted APFOs, while **Exhibit 4.2** lists the municipalities that have done so. **Exhibit 4.3** describes how the APFOs are used in each county.

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#### **Exhibit 4.1** **Counties with Adequate Public Facilities Ordinances**

Anne Arundel	Frederick	Queen Anne's
Baltimore	Harford	St. Mary's
Calvert	Howard	Washington
Carroll	Montgomery	
Charles	Prince George's	

Source: Maryland Association of Counties; Department of Legislative Services

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#### **Exhibit 4.2** **Municipalities in Maryland with Adequate Public Facilities Ordinances**

<b>Allegany County</b>	
Cumberland	
<b>Caroline County</b>	
Ridgely	
<b>Carroll County</b>	
Hampstead	
Manchester	
Mount Airy (also in Frederick County)	
New Windsor	
Sykesville	
Taneytown	
Union Bridge	
Westminster	
<b>Charles County</b>	
Indian Head	
La Plata	
	<b>Frederick County</b>
	Brunswick
	Frederick
	Mount Airy (also in Carroll County)
	Thurmont
	Walkersville
	<b>Harford County</b>
	Aberdeen
	Bel Air
	<b>Montgomery County</b>
	Rockville
	<b>Washington County</b>
	Boonsboro
	Hagerstown
	Keedysville
	Smithsburg
	Williamsport

Source: Maryland Municipal League

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**Exhibit 4.3**  
**Maryland Counties with Adequate Public Facilities Ordinances**

<b>County</b>	<b>Facilities or Services Included</b>
Anne Arundel	fire suppression, roads, schools, sewerage, storm drainage, and water supply
Baltimore	schools, transportation, water, sewers, stormwater management, and recreational space
Calvert	roads and schools
Carroll	schools, roads, water, sewer, police, and fire and rescue
Charles	roads, schools, water supply, and fire suppression
Frederick	roads, water, sewerage, and schools
Harford	schools, sewerage, water, and roads (intersections)
Howard	roads and schools (the capital improvement master plan must also define necessary solid waste and water and sewerage infrastructure)
Montgomery	transportation facilities; sewerage and water services; schools; and police, fire, and health services
Prince George's	water and sewerage, police facilities, fire and rescue, and schools
Queen Anne's	water, sewer, transportation facilities, and schools
St. Mary's	roads, sewerage, water, fire suppression, storm drainage, and schools
Washington	roads, sewerage disposal systems, schools, water supply and distribution systems, and interim fire protection systems meeting established minimum standards

Source: Department of Legislative Services

Ideally, APFOs ensure public facilities are provided, consistent with a local comprehensive plan. In practice, APFOs tie the development approval process under zoning and subdivision ordinances to specifically defined public facilities standards. They are intended to slow the pace of development, or in extreme cases, to delay development approvals until adequate service levels are in place or are reasonably assured. However, APFOs are not intended to stop growth that is otherwise consistent with local zoning. Accordingly, the application of an APFO is usually associated with a funding source to address whatever the constraint on growth approval might be. That funding source is usually either the local government or the developer.

## Adoption of APFOs

Maryland case law from the 1970s upheld the ability of a local jurisdiction to enact adequate facilities ordinances as implied in its general authority to promote public health, safety, and welfare within its zoning, planning, and subdivision regulations. In 1978, Section 10.01 was added to Article 66B of the Annotated Code of Maryland (Chapter 596 of 1978) under which local governments were given express authority to adopt ordinances regarding adequate public facilities. This provision currently is applicable to all counties, Baltimore City, and municipal corporations that exercise their own planning and zoning powers.

In addition, statute (Article 28, Section 7-120(a)) authorizes Montgomery and Prince George's counties to adopt APFOs regarding transportation, water, sewer facilities, drainage, schools, or other public facilities. Further, statute expressly requires the Prince George's County Council to impose adequate public facilities and standards with respect to schools.

While some counties adopted ordinances dealing with adequate public facilities starting in the 1970s and 1980s (*e.g.*, Montgomery County in 1973, Anne Arundel County in 1978, Baltimore County in 1979, Prince George's County in 1981, and Calvert County in 1988), the Article 66B provision of law took on significant importance in 1992 when it was greatly expanded (Chapter 436 of 1992) as part of the package of proposals enacted to facilitate, as well as encourage, local governments to actively participate in the State's goals as identified in the Economic Growth, Resource Protection, and Planning Act (Chapter 437 of 1992).

In addition to the statutory revisions, uncodified sections of Chapter 436 provide guidance to the local governments regarding the enactment of ordinances to encourage and facilitate the preservation of natural resources, the provision of affordable housing, and the orderly development and growth of the jurisdiction. Specifically, the law suggests that the term "adequate public facilities" be construed to mean public facilities determined by the county or municipal corporation to be adequate to service a development, including but not limited to water supply, sewers, roads, public schools, police, fire and rescue services, storm drainage, and utilities. Since the 1992 revisions, and other subsequent revisions in the past decade, the local jurisdictions have greatly expanded their consideration and utilization of APFOs.

As shown in Exhibit 4.3, county APFOs generally cover schools and transportation infrastructure; and in a number of cases, water and sewer facilities and fire protection services. Stormwater management, police services, recreational space, and health services are other types of public facilities covered in certain counties.

## APFO Effects on Development

The effects of adequate public facility requirements vary considerably across the State. Certain counties indicated the existence or possibility of varying lengths of waiting periods for

development if certain facilities do not meet APFO standards in a given area. Howard County indicated that if developers go through a waiting period, it is generally only for one or two years, while Calvert County indicated it had standards that allowed developments to be postponed for a maximum of seven years. In this jurisdiction, approximately 70 percent of the county is closed to development.

Some counties indicated that developers may avoid the APFO requirements through payments, construction of facilities, or other mitigation of the development's impact on public facilities. Washington County noted, however, that a mitigation process available for developers was difficult to get through and seemed to not alleviate the deterrent effect the county's school capacity standards had on development.

A question was also posed to those counties that impose development charges and also have APFOs of whether the development charges and the APFO requirements had generally been effective in aligning new development with adequate facilities. A planning official in Howard County indicated that APFOs had been effective and that adequate schools and roads are not a big obstacle to development. Conversely, an official in Washington County noted that the APFO requirements had been restricting development and consequently limiting excise tax revenues, highlighting the potential interdependence of development charges and APFO requirements in accommodating growth. Other responses signified the role a local board of education can play in accommodating growth, independent of the funding available for new facilities and adequate public facilities requirements. A planning official in Calvert County indicated the board of education had helped in accommodating growth by balancing out schools through redistricting to keep schools at or below adequate public facility capacity requirements. In Prince George's County, it was noted that the fact that capital decisions by the board of education may be program driven as well as the result of new growth, which can cause capital decisions to lag behind new residential growth.

## **Recent Legislative Action**

No bills relating to APFOs were introduced during the 2007 session. Senate Bill 1024 and House Bill 1683 of 2006 (neither of which passed) would have required a municipality to be governed by the county APFO until the municipality adopts an ordinance that meets minimum specified standards and requirements. Specified standards and requirements included provisions for the impact of any development or growth within the municipality that affects public schools, libraries, and roadways located in the county. This legislation addressed the concerns that county governments had with developers circumventing county APFO requirements by locating proposed developments in municipalities without or with less stringent APFO requirements.

## Chapter 5. National Perspective

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### Nationwide Prevalence of Impact Fees and Excise Taxes

Impact fees are a prevalent land use planning tool that local governments in many states are authorized to use. Twenty-eight states have passed general enabling legislation authorizing the use of impact fees. Maryland, like several other states, has adopted local legislation authorizing particular jurisdictions to impose impact fees but has not enacted general legislation. In addition, local governments in several states have imposed impact fees without explicit state enabling legislation.

#### Impact Fees

In the absence of state enabling legislation, beginning in the 1950s and 1960s, local governments began to use impact fees on their own. Local governments originally defended the practice as an exercise of their broad police powers to protect the health, safety, and welfare of their communities. Gradually, the courts began to develop case law to provide guidelines for the constitutionality of impact fees, based on an “essential nexus” and “rough proportionality” that must exist between the impact fee and the development.

In the early phases, impact fees were used to recover expenses for water and wastewater. Later, with decreasing assistance to local governments from federal and state resources, the use of revenue from impact fees expanded to include roads, parks, and schools. The use of impact fees did not become prevalent, however, until the early 1980s. In 1987, Texas became the first state to adopt statewide enabling legislation for impact fees. Since that time, the majority of states have adopted such legislation. State statutes generally reflect the principles developed by the courts governing the use of impact fees.

According to a national survey of state impact fee laws conducted by Duncan Associates, a planning consulting firm, most impact fee enabling acts restrict the types of facilities for which impact fee revenues may be used. Only nine states permit impact fees to pay for schools. Most of the jurisdictions that impose school impact fees are located in California, Florida, Washington, and Maryland. Maryland has the fourth highest number of jurisdictions with school impact fees in the nation. Few states permit school impact fees because they tend to be high and generate political opposition. All states with enabling legislation authorize the use of impact fees for roads and other transportation costs. Most states allow impact fees to be used to pay for water, sewer, and storm water facilities. In addition, most states authorize the use of impact fees for fire and police services. While impact fees to pay for parks are common, only a few states permit impact fees for library and solid waste facilities.

## **Excise Taxes**

Based on a survey of other states' laws, Maryland is one of a handful of states to have adopted development excise tax enabling legislation through the enactment of local legislation. Two other examples of states with enabling legislation are Tennessee and Oregon. In Tennessee, high growth counties are authorized to impose a "school facilities tax" on residential development, subject to restrictions. Oregon enacted legislation in 2007 authorizing school districts to impose "construction taxes" on new or expanded residential and nonresidential structures. In some states, local jurisdictions have imposed development excise taxes without explicit enabling legislation, including Boulder, Colorado; Overland Park, Kansas; and Napa, California.

## **Surrounding States**

### **Delaware**

Delaware has statewide enabling legislation authorizing its three counties to impose impact fees. Newcastle County imposes impact fees on new developments and had done so before the passage of statewide legislation. Some towns in Newcastle County impose a building permit surcharge, which is similar to an impact fee. In addition, Newcastle County has adopted a voluntary school assessment that is similar to an APFO (adequate public facilities ordinance) – if a development is planned in an area served by schools that are operating at or above capacity, a developer can either wait to develop until there is adequate school capacity or pay a fee to move forward with the planned development. Kent County has adopted an APFO that is tied to emergency medical services. In March and May 2007, Kent County adopted another set of APFO legislation tied to water, roads, and schools. This APFO legislation has been challenged in court, and litigation is ongoing. Sussex County does not impose impact fees or development building excise taxes, nor does it employ APFOs.

### **Pennsylvania**

In Pennsylvania, impact fees are generally limited to pay for transportation and recreation improvements.

Currently, transportation impact fees can be implemented under two statutes – the Transportation Partnership Act (TPA) and Article V-A of the Pennsylvania Municipalities Planning Code (MPC). The TPA enables municipalities, acting separately or in cooperation with other municipalities and the private sector, to provide transportation funding where facilities and the levels of service are inadequate or have not kept pace with the development of the surrounding area. Under Article V-A, a municipality may impose transportation impact fees on new development in order to generate revenue for funding the costs of capital improvements necessitated by and attributable to new development. However, implementation of the TPA and

Article V-A is reportedly difficult and cumbersome. Evidently, the TPA has been used by only a few municipalities in Pennsylvania, and Article V-A has been employed by approximately three dozen municipalities.

In addition to statutory provisions for transportation impact fees, the MPC provides for payment of fees in lieu of construction of recreational facilities associated with new subdivisions or land developments. Also, the commonwealth's Municipality Authorities Act, respective municipal codes (e.g., Borough Code, Second Class Township Code), and Public Utility Code provide for water and sewer impact fees.

In addition, some municipalities, including Philadelphia and Pittsburgh, have adopted APFOs. No local governments in Pennsylvania impose building excise taxes.

## Virginia

Virginia enacted sweeping reforms in 2007 that dramatically enhanced the power of local governments to manage growth, including a major expansion of local authority to impose development charges. Before 2007, just eight counties in Northern Virginia had the authority to impose impact fees, for roads only. Now 57 of 95 counties are authorized to charge road impact fees, and several more counties are expected to do so within the next few years. In addition, five counties in Northern Virginia will have broad authority to impose impact fees to pay for most public facilities, on the condition that the counties agree to take over the responsibility for maintaining county roads. Nevertheless, only Stafford County currently imposes an impact fee.

Virginia also reformed its unique system of voluntary cash proffers, which share some of the characteristics of impact fees. Cash proffers are a form of conditional zoning under which a developer or property owner offers a local government certain concessions that limit or qualify how a property will be used or developed in exchange for a rezoning. In many instances, the concessions offered by the developer or property owner include land dedications, capital improvements, or negotiated cash contributions to a local government. Cash payments are usually used to offset the impacts of development by providing funding for new roads, schools, or other public facilities and services. However, cash proffers technically are voluntary on the part of the developer or property owner whereas impact fees are mandatory. In addition, unlike an impact fee, a cash proffer may be collected without a study to determine the actual impact of a development.

Prior to 2007, most counties in Virginia had authority to accept cash proffers, but only six counties, mostly in Northern Virginia, had broad authority to spend cash proffers to mitigate the general effects of growth in a jurisdiction. All other counties were required to spend a cash proffer only on facilities related to the specific project at issue. Now nearly every county is authorized to accept "Northern Virginia style" cash proffers that may be spent to address virtually any development related problem in a jurisdiction. The Virginia Commission on Local Government reported that, in fiscal 2006, 30 percent of eligible local governments in the state collected cash proffers. Most of the funds collected were spent on transportation and school

improvements. The greater flexibility local governments now have in spending cash proffers may prompt more jurisdictions to begin collecting them.

Local governments in Virginia do not employ APFOs or impose building excise taxes.

## **West Virginia**

West Virginia has adopted legislation authorizing counties to impose impact fees for development approval and issuance of building permits or certificates of occupancy. The impact fee revenue may be used for water, sewer, and storm water infrastructure, roads, parks and recreational facilities, public schools, and public safety facilities. The statutory requirements for impact fee authority are complex and include a requirement of an average of at least 1 percent growth in population over a five-year period; the adoption of a comprehensive plan with revisions and updates every five years; the enactment of ordinances governing subdivisions, zoning, and building code permits; and the approval of an improvement plan. Only Jefferson County, which is part of the Washington, DC Metropolitan Statistical Area, has adopted an impact fee ordinance.

Local governments in West Virginia do not employ APFOs or impose building excise taxes.

## Appendix 1

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### Impact Fees in Anne Arundel County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>School</u>	<u>Transportation</u>	<u>Public Safety</u>	<u>Total</u>
Residential					
One-family detached	per unit	\$3,810	\$969	\$125	\$4,904
One-family attached	per unit	2,407	882	96	3,385
Two family	per unit	3,382	773	119	4,274
Three and four family	per unit	2,254	756	87	3,097
Five or more family	per unit	1,727	693	72	2,492
Manufactured home	per unit	3,097	691	116	3,904
Hotel/Motel	per room	0	1,202	41	1,243
Amusement, rec., place of assembly	per parking space	0	196	10	206
Industrial and warehouse	per 1,000 gross sq. ft.	0	451	20	471
Self-storage	per 1,000 gross sq. ft.	0	394	27	421
Hospital	per bed	0	1,736	70	1,806
Nursing home	per bed	0	329	48	377
Office space					
Less than 100,000 sq. ft.	per 1,000 gross sq. ft.	0	2,015	141	2,156
100,000-199,999 sq. ft.	per 1,000 gross sq. ft.	0	1,628	118	1,746
200,000 sq. ft. or more	per 1,000 gross sq. ft.	0	1,241	93	1,334
Marinas (except community marinas)	per berth	0	378	18	396
Mercantile	per 1,000 gross sq. ft.	0	2,568	453	3,021

Source: Anne Arundel County



## Appendix 2

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### Excise Taxes in Calvert County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Schools</u>	<u>Recreation</u>	<u>Roads</u>	<u>Solid Waste</u>	<u>Total Excise Tax</u>
Single-family detached	per unit	\$7,800	\$1,300	\$3,500	\$350	\$12,950
Single-family attached	per unit	5,175	1,300	3,500	350	10,325
Manufactured home	per unit	3,900	1,300	3,500	350	9,050
Apartment	per unit	2,600	1,300	3,500	350	7,750
Bona fide elderly unit	per unit	N/A	1,300	3,500	350	5,150
Commercial, industrial, or institutional	per sq. ft.	N/A	N/A	N/A	0.11	0.11

Source: Calvert County



## Appendix 3

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### Excise Taxes in Caroline County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>School Construction</u>	<u>Agricultural Land Preservation</u>
Residential subdivision			
Single-family development (including manufactured homes)	per lot	\$5,000	N/A
Other residential	per unit per lot	5,000	N/A
Subdivision of land in a rural district	per lot	N/A	750

Source: Caroline County



## Appendix 4

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### Impact Fees in Carroll County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Impact Fee</u>
Residential		
Single-family	per unit	\$6,836
Manufactured home	per unit	3,599
Townhouse	per unit	7,610
Multi-family	per unit	2,787

Source: Carroll County



## Appendix 5

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### Excise Taxes in Charles County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Excise Tax</u>
Single-family	per unit	\$11,400
Townhouses	per unit	10,812
Multi-family (including manufactured homes)	per unit	8,227

Source: Charles County



## Appendix 6

### Excise Taxes in Dorchester County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Cambridge/Hurlock</u>			<u>Total Excise Tax</u>
		<u>Schools</u>	<u>Communication Systems</u>	<u>Sheriff</u>	
Residential					
Single-family	per unit	\$3,555	\$87	\$29	\$3,671
Multi-family	per unit	2,510	72	22	2,604
Nonresidential					
Commercial/shop. ctr.*	per sq. ft.		0.029-0.044		0.029-0.044
Office*	per sq. ft.		0.047-0.057		0.047-0.057
Business park	per sq. ft.		0.041		0.041
Manufacturing	per sq. ft.		0.024		0.024
Warehousing	per sq. ft.		0.017		0.017

### Other Municipalities/Unincorporated

<u>Land Use Type</u>	<u>Levy</u>	<u>Other Municipalities/Unincorporated</u>			<u>Total Excise Tax</u>
		<u>Schools</u>	<u>Communication Systems</u>	<u>Sheriff</u>	
Residential					
Single-family	per unit	\$3,555	\$87	\$123	\$3,765
Multi-family	per unit	2,510	72	108	2,690
Nonresidential					
Commercial/shop. ctr.*	per sq. ft.		0.029-0.044	0.502-0.725	0.531-0.769
Office*	per sq. ft.		0.047-0.057	0.085-0.333	0.242-0.390
Business park	per sq. ft.		0.041	0.188	0.229
Manufacturing	per sq. ft.		0.024	0.056	0.080
Warehousing	per sq. ft.		0.017	0.073	0.090

\* Rates vary according to the total square footage of the development.

Note: Additional rates exist for day care, hospital, light industrial, lodging, medical/dental office building, mini-warehouse, and nursing home land uses.

Source: Dorchester County



## Appendix 7

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### Impact Fees and Excise Taxes in Frederick County Fiscal 2008

<b>Impact Fees</b>				
<b><u>Land Use Type</u></b>	<b><u>Levy</u></b>	<b><u>Public School</u></b>	<b><u>Library</u></b>	<b>Total <u>Impact Fee</u></b>
Single-family detached	per unit	\$12,298	\$823	\$13,121
Townhouse/duplex	per unit	10,064	768	10,832
All other residential (including manufactured homes)	per unit	1,963	517	2,480

<b>Excise Taxes</b>		
<b><u>Land Use Type</u></b>	<b><u>Levy</u></b>	<b><u>Tax</u></b>
Residential <sup>1</sup>		
First 700 gross sq. ft.	per sq. ft.	\$0.00
701 sq. ft.-1,400 sq. ft.	per sq. ft.	0.10
In excess of 1,400 sq. ft.	per sq. ft.	0.25
Nonresidential	per sq. ft.	0.75

<sup>1</sup>Any gross square footage of multi-family residential construction not within a dwelling unit is allocated on a pro rata basis to each dwelling unit within the building.

Source: Frederick County



## Appendix 8

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### Impact Fees in Harford County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Impact Fee</u>
Residential		
Single-family detached	per unit	\$8,269
Townhouse/duplex	per unit	5,720
All other residential (including manufactured homes)	per unit	1,637

Source: Harford County



## Appendix 9

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### Excise Taxes in Howard County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Excise Tax</u>
Residential		
First 500 sq. ft.	per unit	\$440
In excess of 500 sq. ft.	per sq. ft.	0.88
Office/retail	per sq. ft.	0.88
Distribution/manufacturing	per sq. ft.	0.44
Institutional/other	per sq. ft.	0.44

Note: A \$1.09 per sq. ft. public school facilities surcharge is imposed on all residential development, regardless of its size.

Source: Howard County



## Appendix 10

### Impact Taxes in Montgomery County Fiscal 2008<sup>1</sup>

<u>Land Use Type</u>	<u>Levy</u>	<u>General</u>	<u>Transportation<sup>2</sup></u>		
			<u>Metro Station</u>	<u>Clarksburg</u>	<u>Public Schools<sup>3</sup></u>
Residential					
Single-family detached	per unit	\$10,649	\$5,325	\$15,973	\$20,456
Single-family attached	per unit	8,713	4,357	13,070	15,401
Multi-family residential (except high rise)	per unit	6,776	3,388	10,164	9,734
High-rise residential	per unit	4,840	2,420	7,261	4,127
Multi-family senior residential	per unit	1,936	968	2,904	0
Nonresidential					
Office	per sq. ft.	9.69	4.85	11.65	N/A
Industrial	per sq. ft.	4.85	2.43	5.78	N/A
Bioscience facility	per sq. ft.	0.00	0.00	0.00	N/A
Retail	per sq. ft.	8.67	4.34	10.46	N/A
Place of worship	per sq. ft.	0.51	0.26	0.68	N/A
Private elementary and secondary school	per sq. ft.	0.77	0.39	1.02	N/A
Hospital	per sq. ft.	0.00	0.00	0.00	N/A
Social service provider	per sq. ft.	0.00	0.00	0.00	N/A
Other nonresidential	per sq. ft.	4.85	2.43	5.78	N/A

<sup>1</sup>The impact tax rates reflect increases adopted by the county council on November 13, 2007, that took effect December 1, 2007.

<sup>2</sup>The transportation impact tax is imposed on each property according to which of the three subcategories in which it is classified.

<sup>3</sup>The public school impact tax on any single-family detached or attached dwelling unit is increased by \$2 for each square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet.

Source: Montgomery County



## Appendix 11

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### Surcharges in Prince George's County Fiscal 2008

<u>Location of Development</u>	<u>Levy</u>	<u>School Facilities</u>	<u>Public Safety</u>
Outside of the Capital Beltway <sup>1</sup>	per unit	\$13,493	\$0
Inside of the Capital Beltway	per unit	7,870	0
Outside of the developed tier	per unit	0	6,371
Inside of the developed tier	per unit	0	2,124

<sup>1</sup>The construction surcharge for certain developments that abut an existing or planned mass transit rail station site is \$7,870.

Source: Prince George's County



## Appendix 12

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### Impact Fees in Queen Anne's County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Public Schools</u>	<u>Fire/EMS</u>	<u>Parks and Recreation</u>	<u>Total Impact Fee</u>
Residential					
All residential	per sq. ft.	\$3.21	\$0.37	\$0.35	\$3.93
Nonresidential					
Commercial/shop. ctr.*	per sq. ft.	N/A	0.87-1.25	N/A	0.87-1.25
Office*	per sq. ft.	N/A	1.46-1.75	N/A	1.46-1.75
Business Park	per sq. ft.	N/A	1.37	N/A	1.37
Light industrial	per sq. ft.	N/A	1.00	N/A	1.00
Warehousing	per sq. ft.	N/A	0.55	N/A	0.55
Institutional	per sq. ft.	N/A	0.34	N/A	0.34

\* Rates vary according to the total square footage of the development.

Note: There is a 50 percent reduction on development impact fees imposed on nonresidential development within a designated growth area or within an incorporated municipality. The impact fees on all other nonresidential development are reduced by 25 percent.

EMS = Emergency Medical Services.

Source: Queen Anne's County



## Appendix 13

### Impact Fees in Talbot County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Library</u>	Outside Municipalities					<u>Total Impact Fee</u>
			<u>Parks and Recreation</u>	<u>Public Schools</u>	<u>Community College</u>	<u>General Government</u>	<u>Transportation</u>	
Residential								
Single-family detached	per unit	\$450	\$872	\$2,446	\$95	\$914	\$736	\$5,513
Other residential	per unit	344	669	1,714	73	701	507	4,008
Nonresidential								
Commercial/shop. ctr.*	per sq. ft.	N/A	N/A	N/A	N/A	0.27-0.38	2.08-3.20	2.35-3.58
Office*	per sq. ft.	N/A	N/A	N/A	N/A	0.45-0.55	0.95-1.61	1.40-2.16
Business park	per sq. ft.	N/A	N/A	N/A	N/A	0.41	0.91	1.32
Light industrial	per sq. ft.	N/A	N/A	N/A	N/A	0.31	0.49	0.80
Manufacturing	per sq. ft.	N/A	N/A	N/A	N/A	0.25	0.27	0.52
Warehousing	per sq. ft.	N/A	N/A	N/A	N/A	0.18	0.35	0.53
Inside Municipalities								
<u>Land Use Type</u>	<u>Levy</u>	<u>Library</u>	<u>Parks and Recreation</u>	<u>Public Schools</u>	<u>Community College</u>	<u>General Government</u>	<u>Transportation</u>	<u>Total Impact Fee</u>
Residential								
Single-family detached	per sq. ft.	461	295	2,446	97	729	736	4,764
Other residential	per sq. ft.	346	222	1,714	73	547	507	3,409
Nonresidential								
Commercial/shop. ctr.*	per sq. ft.	N/A	N/A	N/A	N/A	0.18-0.25	2.07-3.20	2.25-3.45
Office*	per sq. ft.	N/A	N/A	N/A	N/A	0.28-0.34	0.95-1.61	1.23-1.95
Business park	per sq. ft.	N/A	N/A	N/A	N/A	0.26	0.91	1.17
Light industrial	per sq. ft.	N/A	N/A	N/A	N/A	0.20	0.49	0.69
Manufacturing	per sq. ft.	N/A	N/A	N/A	N/A	0.15	0.27	0.42
Warehousing	per sq. ft.	N/A	N/A	N/A	N/A	0.10	0.35	0.45

\* Rates vary according to the total square footage of the development.

Source: Talbot County



## Appendix 14

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### Excise Taxes in Washington County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Excise Tax</u>
Residential development (units 1-25)		
Small residential <sup>1</sup>	per sq. ft.	\$1.00
Single-family	per unit	13,000
Multi-family	per unit	15,500
Large residential development (over 25 units)		
Single-family <sup>2</sup>	per unit	26,000
Multi-family <sup>2</sup>	per unit	31,000
Retail <sup>3</sup>	per sq. ft.	3.00-4.00
Industrial <sup>3</sup>	per sq. ft.	0.20-2.00
Warehouse/distribution <sup>3</sup>	per sq. ft.	0.70-2.50
Office <sup>3</sup>	per sq. ft.	0.50-1.50
Hotels/motels <sup>3</sup>	per sq. ft.	1.00-3.00

<sup>1</sup>Less than 1,500 gross sq. ft.

<sup>2</sup>Excise tax imposed beginning with the twenty-sixth unit and only under specified circumstances.

<sup>3</sup>Rates vary according to the total square footage of the development.

Source: Washington County



## Appendix 15

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### Impact Fees in Wicomico County Fiscal 2008

<u>Land Use Type</u>	<u>Levy</u>	<u>Impact Fee</u>
Single-family detached (including manufactured homes)	per unit	\$5,231
Other residential	per unit	1,524

Source: Wicomico County