SUBTITLE 11

ADEQUATE PUBLIC FACILITIES ORDINANCE

FIRST EDITION ..... JANUARY 1, 1993

FIRST AMENDMENT ..... APRIL 8, 1996

SECOND AMENDMENT ..... AUGUST 19, 1999

AMENDED ..... NOVEMBER, 2010

AMENDED ..... SEPTEMBER, 2011

SUBTITLE 11
ADEQUATE PUBLIC FACILITIES

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Section 16.1100. Short Title; Background; Purpose; Organization.

(a) ***Short Title:*** This Subtitle shall be known as the Adequate Public Facilities Act of Howard County.

(b) ***Background:***

(1) *Growth management process:* Underlying this Subtitle is the need to provide a growth management process that will enable the County to provide adequate public roads, schools, and other facilities in a timely manner and achieve General Plan growth objectives. This process is designed to direct growth to areas where adequate infrastructure exists or will exist.

(2) *Basis of growth management process:* The growth management process is based on the following assumptions:

(i) The General Plan and zoning plan define land use and the distribution and pace of development.

(ii) The government has a responsibility to fund and construct adequate public facilities in a timely and coordinated manner.

(iii) A growth management process will result in more predictable residential and commercial development.

(iv) A commitment from government and the community to the growth management process is fundamental to achieving adequate public facilities.

(3) *Elements of the growth management process:* This Subtitle is one of five interconnected elements that constitute the growth management process. Each element has a part to play in providing the predictability required for planning and implementing adequate public facilities.

(i) *Establishing policy:* The General Plan, the zoning plan, and the standards in this Subtitle constitute the policy base for the growth management process. This common base is the platform from which data are generated and planning documents written.

(ii) *Capital planning:* Capital improvement master plans define the necessary public school, road, solid waste, and water and sewerage infrastructure which supports the land use and growth policies established in the General Plan. Capital improvement master plans will minimally contain planning assumptions, standards of service, descriptions of additions and improvements, justification and priorities for additions and improvements, and budget projections for each of the next 10 years. The plans will be reviewed and approved annually.

(iii) *Revenue allocation:* Limited resources will require coordinated allocation of funds for roads, schools and other facilities. The Planning Board, the County Executive, the County Council, and participating agencies and departments will work together to review priorities and budget projections included in the capital improvement master plans. The County Council will conduct a public hearing and, through adoption of the capital budget and capital improvement program, will approve the distribution of funds across capital improvement master plans.

The building excise tax (see Title 20, Subtitle 5 of the Howard County Code) enhances the County's ability to provide adequate public road facilities.

(iv) *Adequate public facilities:* The General Plan guides where and when growth occurs. The adequate public facilities process and standards will manage growth so that facilities can be constructed in a timely manner.

(v) *Monitoring growth:* The Department of Planning and Zoning will develop statistics and other pertinent data which will be continually used to assess the growth management process so that status reports can be prepared and adjustments recommended regarding the growth management process.

(c) ***Purpose:*** The purpose of this Subtitle is to provide a predictable planning environment for the provision of adequate road facilities and adequate public schools facilities by requiring residential and non-residential projects to pass certain tests as a condition of subdivision or site development plan approval.

(d) ***Organization and Contents of This Subtitle:***

(1) *Definitions:* The meanings of certain words and phrases used in this Subtitle are found in Section 16.1110, “Definitions,” of this Subtitle.

(2) *Adequate road facilities:* This Subtitle requires residential and nonresidential projects to be tested for adequate road facilities. Section 16.1101 deals with this test and its implementation.

(3) *Housing unit allocation concept:* The housing unit allocation concept underlies the tests for adequate public facilities. Section 16.1102 deals with this concept.

(4) *Adequate school facilities:* This Subtitle requires residential projects to be tested for adequate public school facilities. Section 16.1103 deals with these tests.

(5) *Housing unit allocation process:* Residential projects are granted housing unit allocations. Section 16.1104 deals with the process for granting these allocations.

(6) *Processing plans:* Section 16.1105 deals with the process by which the test for adequate road facilities and the tests for adequate public school facilities are incorporated into the subdivision and site development plan review and approval process.

(7) *Milestones:* Section 16.1106 deals with milestones, an additional tool to provide a predictable planning environment and assure that housing unit allocations are utilized.

(8) *Exemptions:* Certain projects are exempted, partly or wholly, from the test for allocations and/or the test for adequate road facilities and/or the tests for adequate school facilities. Section 16.1107 lists the exemptions.

(9) *Development monitoring system:* A development monitoring system provides information on the County's employment and residential growth. Section 16.1108 mandates the creation of a development monitoring system.

(10) *Appeals:* Section 16.1109 deals with appeals made in connection with this Subtitle.

(C.B. 39, 1995; C.B. 5, 2000; C.B. 50, 2000)

Section 16.1101. Adequate Road Facilities.

(a) ***Requirement to be Tested for Adequate Road Transportation Facilities:*** Each final development plan proposing Downtown Revitalization and each subdivision and site development plan, except those listed in Section 16.1107, "Exemptions," shall pass the test for adequate road facilities. In Downtown Columbia, testing for the adequacy of pedestrian and bicycle facilities is also required, as well as a queuing analysis and transportation demand management statement as specified in Section 16.1101(f).

[C.B. 47-2010]

(b) ***The Test for Adequate Road Facilities:*** A project or a phase of a project will pass the test for adequate road facilities if, in the scheduled completion year of the project or the phase of the project:

(1) The road facilities in the impact area of the proposed project will operate at or above the minimum level of service after including the traffic generated by the project; or

(2) The road facilities in the impact area of the proposed project will operate below the minimum level of service after including the traffic generated by the project but the developer proposes a mitigation plan, subject to approval by the Director of Planning and Zoning, after consultation with the Director of Public Works, as provided in Subsection (f) below.

(c) ***Traffic Study:*** A traffic study, as specified in the Howard County Design Manual, shall be submitted with each application for approval of a subdivision or site development plan under the Subdivision and Land Development Regulations and with each application for approval of a final development plan proposing Downtown Revitalization. For projects which will not produce additional traffic, an affidavit stating that the project will not produce additional traffic may be submitted in lieu of a traffic study.

[C.B. 47-2010]

(d) ***Road Facilities to be Included in Determining Adequacy:*** In determining whether a proposed project passes the test for adequate road facilities, the following road facilities shall be considered as existing in the scheduled completion year of the project:

(1) Road facilities in existence as of the date the developer submits the application for approval of the project;

(2) New road facilities or improvements to existing road facilities for which sufficient funds have been included in the Howard County Capital Program or Extended Capital Program as defined in Title 22 of the Howard County Code or the Maryland Consolidated Transportation Program so that the facilities will be substantially completed before or during the scheduled completion year of the project, unless the Director of Planning and Zoning, after consultation with the Director of Public Works, demonstrates that such facilities or improvements are not likely to be completed by that time.

(3) New road facilities or improvements to existing road facilities which:

(i) Have been included in developers' mitigation plans submitted for approval to the Department of Planning and Zoning before the project which is being tested; and

(ii) Which are scheduled to be substantially completed before or during the scheduled completion year of the proposed project.

(4) The mitigation proposed by the developer.

(e) ***Traffic to be Considered in Determining Adequacy:*** In determining whether a project passes the test for adequate road facilities, the following traffic shall be considered as existing when the subdivision or land development is completed:

(1) Traffic existing at the time of application.

(2) Background traffic growth.

(3) Traffic generated by proposed subdivisions which have passed the test for adequate road facilities prior to submission of the application for approval of the project but have not yet been recorded.

(4) Traffic generated by proposed site developments which passed the test for adequate road facilities prior to submission of the application for approval of the project but have not yet received site development plan approval.

(5) Traffic generated by subdivisions or site development plans which passed the test for adequate road facilities and were recorded or approved prior to submission of the application for approval of the project and which are scheduled to be completed before or during the scheduled completion year of the proposed project.

(6) Traffic generated by the proposed project.

(f) ***Testing Provisions Applicable to Downtown Columbia***

(1) For all final development plan applications proposing Downtown Revitalization and all subdivision and site development plan applications in Downtown Columbia, the intersection standard is up to 1,600 clv for all intersections as specified in the Howard County Design Manual. A queuing analysis is also required for the same intersections.

(2) The County will conduct independent traffic monitoring studies every five years in order to assess the validity of traffic study assumptions and whether recalibration of projections should be required for future traffic studies.

(3) Downtown Revitalization is also subject to a pedestrian and bicycle level of service test as specified in the Howard County Design Manual.

[C.B. 47-2010]

(g) ***Extent of the Mitigation:***

(1) Mitigation means the construction and/or the funding of improvements to road facilities by a developer or developers, as approved by the Director of Planning and Zoning, after consultation with the Director of Public Works. Mitigation measures may include any intersection capacity improvements except grade separation of the roadways and ramps within the intersection or improvements to the through lanes of intermediate arterials and higher classified roads.

(2) Except as otherwise provided in (3) and (4) below, mitigation necessary to pass the test for adequate road facilities shall increase capacity on each road facility below the minimum level of service in the impact area so that the level of service on each road facility in the impact area after construction of the project would be equal to the level of service if the project had not been constructed but not more than the minimum level of service.

(3) Except as otherwise provided in (5) below, in the event that mitigation to an intersection pursuant to (2) above would require the construction of improvements to interchanges or grade-separated intersections or improvements to the through lanes of intermediate arterials and higher classified roads, mitigation necessary to pass the test for adequate road facilities shall increase the capacity of the intersection to the fullest extent possible without constructing such improvements.

(4) In circumstances where mitigation pursuant to (2) above would have a negative impact on the characteristic(s) (historic or environmental) which served as the basis for declaring an intersection constrained, mitigation needed to pass the test for adequate road facilities on a constrained road facility shall increase the capacity on the constrained facility to the fullest extent possible without negatively impacting the characteristic(s) which caused the road facility to be declared constrained.

(5) *Mitigation Provisions Applicable to Downtown Columbia:*

(i) All intersections serving a project located within Downtown Columbia are subject to potential mitigation, including modification of traffic signal equipment, timing, phasing and/or coordination; construction of new side street through lanes; extension of existing turn lanes; construction of new turn lanes; re-alignment; and similar improvements.

(ii) When grade-separated roadways or arterial through lane improvement are the only viable mitigation alternatives, full mitigation will not be required by the developer, but may be provided in accordance with the Howard County Design Manual.

(iii) Mitigation requirements to meet the pedestrian and bicycle level of service are specified in the Howard County Design Manual.

[C.B. 47-2010]

(h) ***Mitigation Involving Funding of Capital Projects:***

(1) If the Director of Planning and Zoning, after consultation with the Director of Public Works, determines that the timing of capital projects or the need to ensure continuity in the transportation network makes it more efficient to delay the construction of all or part of proposed mitigation, the director shall require that the developer:

(i) Delay the construction of all or part of the improvements to a date certain and sign a major facilities agreement guaranteeing the construction of the delayed improvements; or

(ii) Sign a major facilities agreement to pay the County the current estimated cost of the mitigation, which money shall be used by the County to fund all or part of a capital project to improve the road facility which was to have been mitigated by the developer.

(2) If a proposed mitigation would be temporary because of other proposed improvement plans impacting the road facility, the Director of Planning and Zoning, after consultation with the Director of Public Works, may waive construction of the mitigation, provided that the waiver will not create traffic safety problems. In such event the developer will be required to enter into a major facilities agreement to pay the County the current estimated cost of the mitigation, which moneys shall be used to help fund the costs of a capital project to improve the road facility which was to have been mitigated by the developer.

(3) If the Director of Planning and Zoning, after consultation with the Director of Public Works, determines that a road facility is subject to mitigation plans from multiple projects, the director may apportion the mitigation requirements among the developers of the projects, assigning to each project its prorated share of the construction costs. If timing of the mitigation plans is not concurrent or presents other practical difficulties, the director shall require each developer to enter into a major facilities agreement to make a payment in lieu of mitigation. The moneys collected shall be used to fund the costs of a capital project to improve the road facility sufficiently to mitigate the traffic generated by the multiple projects.

(4) The developers of multiple projects may jointly propose a mitigation plan for purposes of meeting the adequate transportation facilities requirement. Each mitigation plan proposed under this Subsection (4) shall indicate the participants in the plan; which participant(s) will be responsible for implementing the plan and constructing any required transportation improvements; and how the transportation capacity to be created will be apportioned among the plan participants.

[C.B. 47-2010]

(i) ***Planning Board Use of Capacity and Mitigation Standards in Determination of Adequacy for Certain Development Plans:*** The Planning Board shall apply the capacity and mitigation standards of this Subtitle for determining the adequate capacity of roads or schools when

considering those development plans for which adequate capacity of roads or schools is a standard for approval as provided in the zoning regulations.

(C.B. 16, 1995; C.B. 39, 1995)

Section 16.1102. Housing Unit Allocation Concept; Housing Unit Allocation Chart.

(a) ***Underlying Logic; Purpose:***

(1) Fiscal studies performed in connection with preparation of the General Plan analyzed various levels of population and housing unit growth. As a result of those studies, which included cost/revenue and cost/benefit analyses, the General Plan included annual targets for residential completions.

(2) The purpose of the housing unit allocation concept is to achieve but not, on the average, exceed the General Plan annual targets for residential completions and, in so doing, to provide an orderly and predictable planning environment for schools and other public facilities.

(3) The housing unit allocation concept has been implemented in this Subtitle through the housing unit allocation test and underlies the housing unit allocation chart used in connection with that test. Use of the housing unit allocation concept and the embodiment of that concept in the housing unit allocation chart will allow the County to develop in a manner consistent with the General Plan.

(4) Because the need for school capacity fluctuates over time, long-term planning and programming predictability and the efficient use of public funds demands that the adequate school facilities test be linked with the housing unit allocation chart. Use of the housing unit allocation chart is required even when all schools are adequate in order to provide a predictable planning environment for the continuation of that adequacy.

(b) ***Housing Unit Allocation Chart:***

(1) *Description:* The housing unit allocation chart is a chart indicating the projected number of housing unit allocations available to be granted in the County each year for a ten-year period. The chart is designed to specify housing unit allocations for the scheduled completion year of a project or any phase of a project. The chart divides the available housing unit allocations into planning regions and may provide for a set aside of housing unit, allocations for the revitalization of the US Route 1 Corridor, senior housing units, affordable housing units, green neighborhood and Downtown Columbia units. The set aside for senior housing units and affordable housing units may be assigned to a specific planning region, selected regions or countywide.

(C.B. 34, 2003; C.B. 38, 2005) **[C.B. 47-2010]**

(2) *Basis:* The basis of the housing unit allocation chart is the General Plan targets for residential growth by planning region. However, if the General Plan Monitoring Report indicates that General Plan policies for agricultural preservation, environmental protection and affordable housing are not being met, the housing unit allocation chart may be adjusted to more effectively achieve these policies.

(C.B. 38, 2005; C.B. 48, 2007)

(3) *Preparation and adoption:* The Department of Planning and Zoning shall prepare and update the housing unit allocation chart for consideration and adoption by the County Council. Once each year, and more often if the Council determines that amendments are appropriate, the County Council shall adopt the housing unit allocation chart by resolution, after a public hearing. Whenever the housing unit allocation chart is adopted or amended, the open/closed chart shall be adopted or amended concurrently to be consistent.

(4) *Amendments for economic development; grants, etc.:* From time to time, the County may be presented with opportunities for economic development or availabilities of state or federal grant moneys which require increasing the number of housing unit allocations for distribution for a given year. In order to take advantage of these opportunities, the County Council may, at any time, amend the housing unit allocation chart for a certain year or years. If the Council makes such an amendment, it shall use the rolling average (see Section 16.1110, "Definitions") to amend the number and/or regional distribution of allocations for subsequent years.

(C.B. 20, 1995; C.B. 39, 1995; C.B. 50, 2000)

(5) *Route 1 Revitalization Allocations:* To encourage revitalization along the US Route 1 corridor, the number of housing unit allocations shall be increased by 250 additional allocations each year, beginning in Fiscal Year 2004. The Route 1 revitalization housing unit allocations are to be used solely for revitalization purposes in multi-use developments that include residential and office or retail uses. Only projects east of US Interstate 95 shall be eligible to receive Route 1 revitalization allocations. No more than 50% of the allocations shall be granted to a single project. A project or development utilizing Route 1 revitalization allocations must also satisfy the remaining applicable provisions of the Adequate Public Facilities Ordinance, including the Open/Closed Schools Test and the Adequate Road Facilities Test.

(CB 34-2003; C.B. 39-2008)

(6) *Moderate Income Housing Allocations:* To encourage the construction of more moderate income housing and to create units that are more affordable to young workers, first-time homebuyers, and retirees, beginning in Fiscal Year 2007 the number of housing unit allocations shall be increased by 100 moderate income housing unit allocations each year as follows:

(i) Except as provided in Subsection (iv), the moderate income housing unit allocations shall be used for moderate income housing units that satisfy the moderate income housing unit provisions of Title 13 of this Code;

(ii) A development may only receive moderate income housing unit allocations for the number of moderate income housing units that are required by the Zoning Regulations, except that if a developer proffers more moderate income housing units than is required by the Zoning Regulations, the development may receive additional moderate income housing unit allocations for the proffered units;

(iii) No more than one-third of all of the units in a development may receive moderate income housing unit allocations;

(iv) Moderate income housing unit allocations may be used for market rate housing units if:

a. The development is a multi-year phased project; and
b. In each phase of construction, the percentage of moderate income housing units is not less than that required by the Zoning Regulations; and

(v) The subdivision or site development plan, including the moderate income housing units, is subject to the tests for adequate road facilities and adequate public school facilities as provided in Sections 16.1101 and 16.1103 of this Code.

(C.B. 23, 2006; C.B. 62-2008)

(7) *Green Neighborhood Allocations:* To encourage sustainable residential planning and design, to minimize adverse impacts on natural resources, and to promote energy efficiency, beginning in Fiscal Year 2008:

(i) The annual housing unit allocation chart may move up to 100 allocations per year from other housing allocation categories to be used solely for housing that meets green neighborhood standards adopted by resolution of the County Council;

(ii) A development using green neighborhood allocations shall satisfy the remaining applicable provisions of this Subtitle; and

(iii) No more than 50% of the green neighborhood allocations shall be granted in a given region per year.

(C.B. 48, 2007)

(8) *Downtown Columbia Housing Allocations:* To encourage the revitalization of Downtown Columbia, beginning in Fiscal Year 2011 the number of housing unit allocations shall be increased to provide allocations consistent with the phasing progression in the adopted Downtown Columbia Plan as follows:

(i) For Downtown Columbia revitalization, the housing unit allocation chart adopted each year by the County Council shall include the total number of residential units allowed in the current phase of the Downtown revitalization phasing progression, and shall also include the total number of units allowed in the Downtown revitalization phasing progression for all subsequent phases of Downtown revitalization.

(ii) The annual distribution of allocations within each phase shall ensure that sufficient allocations are available at the beginning of each phase to take advantage of mixed-use market opportunities and ensure timely achievement of phasing progression and CEPPA requirements.

(iii) The granting of allocations for Downtown Revitalization is made independent of and without reference to the number of allocations for the planning region of Columbia. The granting of allocations for development under New Town Zoning

that is not subject to the Downtown Revitalization phasing progression continues to be based on the allocations for the Columbia Planning Region.

(iv) Development in Downtown Columbia may not use Senior East, MIHU, Columbia, or Green Neighborhood allocations.

(v) If the total number of residential units proposed in a final development plan application exceeds the number of available allocations for the scheduled completion year of either the initial phase or any additional phase(s), the developer may request and the Department of Planning and Zoning shall authorize the advancing of allocations from future years needed to complete a comprehensive final development plan provided that:

a. The plan complies with phasing progression requirements;
b. All necessary CEPPA requirements have been met;
c. All Adequate Public Facilities transportation tests have been passed; and
d. The Adequate Public Facilities schools tests have been passed.

(vi) Allocations will become permanent upon the recordation of the approved final development plan, and will remain valid provided the developer continues to meet all required milestones.

[C.B. 47-2010]

Section 16.1103. Adequate School Facilities.

(a) Requirement to be Tested for Adequate Public School Facilities: As a condition of subdivision or site development plan approval, all residential subdivisions and site development plans, except those listed in Section 16.1107, "Exemptions," are required to pass the tests for adequate public school facilities.

(b) The Tests for Adequate Public Schools: A proposed residential project will pass the tests for adequate public schools if the open/closed chart (see Subsection (c), "Open/Closed Chart," below) indicates that:

(1) The elementary school region where the proposed project will be located will be open for new residential development during the scheduled completion year of the project and any phase of a project; and

(2) The elementary and middle schools which will serve the proposed project will be open for new residential development during the scheduled completion year of the project and any phase of a project.

(c) ***Open/Closed Chart Preparation and Adoption:***

(1) *Definition:* The open/closed chart is a chart indicating which elementary school regions and which elementary schools and middle schools are open for new residential development and which are closed each year for each of the following ten years.

(2) *Basis of chart:* The basis of the open/closed chart is the assumptions used by the Department of Education in predicting enrollment, such as school capacity, current enrollment, demographic and growth trends, and the housing unit allocation chart.

(3) *Preparation and adoption of open/closed chart:* The open/closed chart is designed to work in conjunction with the housing unit allocation chart in order to provide consistency and predictability in the planning process for schools. For that reason, the open/closed chart shall be revised for consistency concurrent with any amendments to the housing unit allocation chart.

The Department of Planning and Zoning shall receive the open/closed chart, from the Department of Education. The open/closed chart shall be submitted to the County Council for adoption by resolution after a public hearing. Whenever the County Council adopts, amends, or updates the housing unit allocation chart, it shall concurrently adopt the open/closed chart.

(C.B. 39, 1995; C.B. 50, 2000)

Section 16.1104. Housing Unit Allocation Process

(a) ***Granting of Housing Unit Allocations:***

(1) This Subsection deals with the granting of housing unit allocations to conventional projects. Upon signature approval of a sketch plan, preliminary equivalent sketch plan or decision and order of the Planning Board for projects requiring Planning Board approval, tentative housing unit allocations shall be granted if available. Tentative housing unit allocations remain valid, provided the developer continues to meet all required milestones and become permanent upon recordation of the subdivision, except as provided in Section 16.1106(h)(2). Projects not requiring subdivision shall be granted tentative housing unit allocations, if available, upon determination that the site development plan is technically complete. Tentative housing unit allocations become permanent upon signature approval of the site development plan.

(2) This Subsection deals with the granting of housing unit allocations to comprehensive projects. Upon initial application of sketch plan, preliminary equivalent sketch plan, or site development plan for comprehensive projects that do not require subdivision, tentative housing unit allocations shall be granted if available. Tentative housing unit allocations remain valid, provided the developer continues to meet all required milestones and become permanent upon recordation of the subdivision or signature approval of the site development plan, except as provided in Section 16.1106(H)(2) of this Subtitle.

(3) Because the time required for projects to pass through the plan review and construction process is approximately three years, the housing unit allocation chart is organized so that housing unit allocations granted in any given year are for proposed build-out three years later, unless the project is phased. For this reason, the scheduled completion year of all unphased projects and the scheduled completion year of the initial phase of phased conventional projects and comprehensive projects is the third year following the year the project passes the housing unit allocation test.

(b) ***Phasing:*** (See Section 16.1110, "Definitions," for definition of "Phasing," "Unphased Projects," and "Phased Projects.")

(1) *Changing phasing schedule:* The schedule for completion of the phases of a phased project may be revised by the developer no more than once every four years during the subdivision plan approval process.

(2) *Additional change to phasing schedule:* In addition to a change to the phasing schedule in Subsection (b)(1) above, the schedule for completion of the phases of a project having allocations may be revised one time through June 30, 2010 provided that the amended phase or phases are moved to later years in the schedule. In addition, a plan that has allocations and that was not previously phased may also request a phasing schedule from the Department of Planning and Zoning one time through June 30, 2010.

(3) *Comprehensive projects:* Comprehensive residential projects may be phased at the option of the developer, provided that housing unit allocations are available for the scheduled completion year of the initial phase of the project and for the scheduled completion years of each additional phase of the project, except as provided below.

If no allocations are available for the initial phase of a comprehensive project, or if too few allocations are available to make the initial phase viable, the developer has the option to receive all tentative allocations in future years. However, except for final development plan phased projects in Downtown Columbia which are subject to Section 16.1102(b)(8) and that meet the phasing progression and CEPPA requirements of the Downtown Columbia plan, the Department of Planning and Zoning shall not grant more than 50% of the total allocations available within any region for any future year for all projects choosing this option.

[C.B. 47-2010]

(4) *Conventional projects:* Conventional residential projects may be phased if there are sufficient housing unit allocations available for the scheduled completion year of the initial phase of the project and for the scheduled completion years of each additional phase of the project.

(c) ***Year of Allocation; Category of Allocation:*** Except as provided in Subsection (h) of this Section, the Department of Planning and Zoning shall grant housing unit allocations from the housing unit allocation chart as follows:

(1) *Unphased projects:* Unphased projects shall be granted housing unit allocations for the scheduled completion years of the project.

(2) *Phased projects:* Phased projects shall be granted housing unit allocations for the scheduled completion years of each phase of the project.

(3) *Comprehensive projects:* Comprehensive projects shall receive allocations for the scheduled completion year of the project or phases of the project.

(d) ***Additional Allocations May Be Granted:*** Frequently, the number of housing units proposed to be included in the project at the time the project is tested for adequate school facilities is greater than the number of housing units which will actually be approved when the plan is finally

recorded. For this reason, as it processes subdivision and site development plans, the Department of Planning and Zoning shall grant more tentative allocations that the total planning region housing unit allocations available for the initial year on the housing unit allocation chart. The County Council shall set by resolution, after public hearing, the percentage by which the Department of Planning and Zoning may exceed the regional housing unit allocations on the housing unit allocation chart. The percentage shall be based on historical data regarding the number of housing completions in relation to the number of housing unit allocations so as to meet the General Plan targets.

(e) ***Special Affordable Housing Opportunities:***

(1) From time to time, the County may be presented with a special affordable housing opportunity for development of either:

(i) An assisted multifamily project that:

a. Cannot generate school children, such as senior housing or age-restricted housing;
b. Is funded in whole or in part with local, State or Federal loan or grant funds or other governmental financial assistance; and
c. May lose the loan or grant or other assistance if the development is delayed; or

(ii) An innovative moderate income housing unit development, including, without limitation, multiplexes, stacked units, or accessory apartments, that has been determined by the Department of Housing and Community Development and the Department of Planning and Zoning to:

a. Demonstrate a new housing product that is more affordable than existing housing products; and
b. Have the potential to promote housing diversity and the construction of a broader range of affordable housing.

(2) If allocations are not currently available the County Council may, by resolution, after public hearing, authorize a special affordable housing project to proceed subject to all other provisions of this Subtitle.

(3) If the County Council approves such a resolution, the Department of Planning and Zoning shall process the project as if allocations were granted. However, the Department of Planning and Zoning shall carry the project on the list of project applications waiting for housing unit allocations.

(4) When housing unit allocations become available to serve the project, the Director of Planning and Zoning shall assign allocations to the project. In calculating the rolling average, the project shall not be exempt and its allocations shall be included in the year in which they are assigned.

(5) A development using allocations under this subsection shall satisfy the remaining applicable provisions of this Subtitle.

(C.B. 23, 2006)

(f) ***Limit on Allocations in a School District:*** Except for projects exempt under Section 16.1107(b) of this Subtitle, the Department of Planning and Zoning may not grant more than 300 allocations in one year in a single elementary school district if the elementary school region within which the district is located exceeds 100% of capacity.

(C.B. 39, 1995; C.B. 5, 2000; C.B. 50, 2000)

(g) ***Order of Granting Allocations; Multiple Categories***

(1) Except as provided in paragraph (2) of this subsection, if a project is eligible for allocations from more than one category, an allocation granted under this subtitle shall generally be granted from the following types of allocations in the following order:

(i) Route 1;
(ii) Senior East;
(iii) Planning Region; and
(iv) Affordable East.

(2) The Department may grant allocations to a project in a different sequence if the grant more equitably distributes allocations among all projects waiting for allocations.

(C.B. 38, 2005)

(h) ***Advancing of Route 1 Revitalization Allocations:*** Provided that the total number of Route 1 revitalization allocations advanced into any given year shall not exceed 250 allocations, and the project is located outside of the portion of the Elkridge region that is bordered to the northwest by Interstate 95 and southwest by an unnamed tributary of Deep Run located at the Howard County/Anne Arundel county line, approximately 100 feet southwest of Hanover Road, the Department of Planning and Zoning may advance Route 1 revitalization allocations as follows:

(1) A project that is eligible for Route 1 revitalization allocations may receive up to 125 allocations per year from future allocation years for the Route 1 revitalization allocation region.

(2) A project is not eligible for advanced Route 1 revitalization allocations if it has more than a total of 150 allocations in the year to which allocations are to be advanced, regardless of whether the allocations for the year are advanced or current or made up of a combination of allocation types.

(3) If Route 1 revitalization allocations are not available in the current year, the Department of Planning and Zoning shall process the project as if Route 1 revitalization allocations were granted. However, the Department of Planning and Zoning shall carry the project on the list of project applications waiting for Route 1 revitalization allocations.

(4) When Route 1 revitalization allocations become available to serve the project, the Director of Planning and Zoning shall assign Route 1 revitalization allocations to the project. In calculating the rolling average, the project shall not be exempt and its allocations shall be included in the year in which they become available and are assigned.

(5) A development using advanced Route 1 revitalization allocations under this subsection shall satisfy the remaining applicable provisions of the Adequate Public Facilities Ordinance, including the Open/Closed Schools Test and the Adequate Road Facilities Test.

(i) ***Advancing of Route 1 Allocations, Route 1 Public Facility Contribution:*** Any developer electing to utilize advanced Route 1 allocations shall contribute real property for public facilities serving the portion of Route 1 corridor in which advanced allocations are permitted, including but not limited to, schools, libraries, fire stations and community centers.

Contributions of real property shall:

(1) Be suitable for the construction of public amenities in the Route 1 corridor; and

(2) Be acceptable to Howard County Government or the Board of Education of Howard County for a public facility needed by the community; and

(3) Constitute real property that is not already required to be dedicated to the County pursuant to Title 16, Subtitle 1 of the Howard County Code.

(C.B. 39, 2008)

Section 16.1105. Processing Of Plans Subject to Test for Adequate Transportation Facilities and/or Tests for Adequate School Facilities and/or Test for Housing Unit Allocations.

(a) ***When Projects Are Tested:*** Unless otherwise provided in this Subtitle, a project is tested at the initial plan stage, except that:

(1) Applications for sketch plan approval which are pending as of the effective date of this Subtitle April 10, 1992, shall be tested at the sketch plan stage; and

(2) Applications for preliminary plan approval which are pending as of the effective date of this Subtitle and which did not have sketch plan approval prior to the effective date of this Subtitle, shall be tested at the preliminary plan stage.

(b) ***Processing Applications for Approval of Non-Residential Projects:***

(1) *Review of application by Subdivision Review Committee:* Upon receipt of a complete application for approval of a non-residential project, the Department of Planning and Zoning shall distribute the application to the Subdivision Review Committee for recommendations as to whether the project meets the requirements of the Subdivision Regulations and passes the test for adequate transportation facilities.

(2) *Approval:* If the non-residential project meets the requirements of the Subdivision Regulations and passes the test for adequate transportation facilities, the Director of Planning and Zoning shall approve the project for adequate transportation facilities (see (d) below).

(c) ***Processing Applications for Approval of Residential Projects and Projects Containing Residential and Non-Residential Uses:***

(1) *Adequate transportation facilities test:* Upon receipt of a complete application for approval of a residential project or a project containing residential and non-residential uses, the project shall be tested for adequate transportation facilities.

(2) *Test for allocations:*

(i) *Conventional residential projects:* If the conventional residential project meets the requirements of the Subdivision Regulations and passes the test for adequate transportation facilities, the project will then be tested for availability of housing unit allocations.

a. *Allocations available:* If housing unit allocations are available for the scheduled completion year for unphased projects or for the scheduled completion year for the initial and future phases for phased projects, the Director of Planning and Zoning shall assign tentative housing unit allocations.

b. *Allocations not available:* If housing unit allocations are not available for the scheduled completion year for unphased projects or for the scheduled completion year for the initial or future phases for phased projects, the application shall be placed on the bottom of a list of applications waiting for housing unit allocations.

c. *Revised housing unit allocation chart adopted:* Whenever a revised housing unit allocation chart is adopted, the Department of Planning and Zoning shall test projects on the list of applications waiting for housing unit allocations. When housing unit allocations become available to serve a project, the Director of Planning and Zoning shall assign tentative allocations.

(ii) *Comprehensive projects:* Upon receipt of a complete initial plan stage application for approval of a comprehensive project, the Department of Planning and Zoning shall test the project for housing unit allocations.

a. *Allocations available:* If housing unit allocations are available for the scheduled completion year for unphased projects or for the scheduled completion year for the initial and future phases for phased comprehensive projects, the Director of Planning and Zoning shall assign tentative housing unit allocations.

b. *Allocations not available:* Subject to Section 16.1104(b)(2), if housing unit allocations are not available for the scheduled completion year for unphased projects or for the scheduled completion year for the initial or future phases for phased comprehensive projects, the application shall be placed on the bottom of a list of applications waiting for housing unit allocations.

c. *Revised housing unit allocation chart adopted:* Whenever a revised housing unit allocation chart is adopted, the Director of Planning and Zoning shall test projects on the list of applications waiting for housing unit allocations. When housing unit allocations become available to serve a project, or phase of a project, the Director of Planning and Zoning shall assign tentative allocations.

(3) *Open/closed test:* Upon assignment of tentative housing unit allocations, the project shall be tested for adequate public schools.

(i) *Projects passing open/closed test:* Once a project has passed the open/closed test, no further approval for adequate public facilities for that project is required during the subdivision or site development plan approval process, except as provided in Section 16.1105(d).

(ii) *Projects failing open/closed test:* If a project fails one or more components of the open/closed test for the scheduled completion year for unphased projects or for the scheduled completion year for the initial or future phases for phased projects, the project or phase of the project failing the open/closed test shall be retested for each of the next three consecutive years. If the project or phase of the project passes the test in any of those years it shall be permitted to proceed with processing three years prior to the year in which it passes the open/closed test. If the project or phase of the project fails the test for each of the next three consecutive years, it shall be deemed to have passed the open/closed test in the fourth year and shall be permitted to proceed with processing three years prior to the year it is deemed to have passed the test.

(iii) *Projects failing open/closed test due to incorrect advisory comments:* If a project has failed the November 6, 2001 open closed test due to reliance on incorrect Department of Planning and Zoning advisory comments regarding that project's elementary school region prior to a determination by the Board of Education, the project may be permitted to retake the schools test once retroactively to November 6, 2001 based on an amended subdivision sketch plan without losing its allocations. (CB 18-2003)

(4) *Revised open/closed chart adopted:* Whenever a revised open/closed chart is adopted, the Department of Planning and Zoning shall test projects which have previously failed the open/closed test. If a project or phase of a project passes the open/closed test in an earlier year than provided in Subsection (c)(3)(ii) above, the project shall be permitted to proceed with processing three years prior to the year in which it passes the open/closed test.

(5) *Wait on processing:* Any project not passing the test for allocations and the open/closed test shall complete the initial plan stage, but shall not proceed further through the subdivision or site development plan process until housing unit allocations are granted and the open/closed test is passed. Once allocations are granted and the open/closed test is passed, the project shall be permitted to proceed with processing three years prior to the year in which it passes the open/closed test.

(6) *Extension of milestone dates:* The Director of Planning and Zoning shall extend the next milestone for projects failing the allocations test or open/closed test to correspond to the delay in processing of the project. The Department of Planning and Zoning shall notify the applicant, in writing, of the next milestone prior to the starting date of the milestone.

[C.B. 47-2010]

(d) ***Approvals:***

(1) *Transportation facilities - subdivision:* Once a subdivision has been approved for adequate transportation facilities, no further approval for adequate transportation facilities for that project is required during the subdivision or site development plan approval process, with the exception of provisions in the Howard County Design Manual pertaining to five year monitoring studies, provided that:

(i) The developer continues to meet all required milestones;

(ii) The developer executes a major facilities agreement for any proposed mitigation;

(iii) The subdivision project proceeds to recordation and is recorded; and

(iv) The project's traffic volume in the site development plan traffic study does not exceed the project's traffic volume in the traffic study which formed the basis for passing the test for adequate transportation facilities during the subdivision plan approval process. If the traffic volume in the site development plan traffic study exceeds the traffic volume in the subdivision traffic study, the site development plan will be tested for the excess traffic only.

(2) *Transportation facilities - site development plan:* Once a site development plan has been approved for adequate transportation facilities, no further approval for adequate transportation facilities is required, provided that the developer executes a major facilities agreement for any proposed mitigation.

(3) *Allocations and public school facilities:* Once a residential subdivision or site development plan has received tentative allocations and has been approved for adequate public schools, no further approval for allocations and adequate public schools is required during the subdivision or site development plan approval process, provided that:

(i) The developer continues to meet all required milestones; and

(ii) The subdivision project proceeds to recordation and is recorded.

(4) Projects which must wait on processing pursuant to (c)(5) above and which proposed to mitigate in order to pass the test for adequate road facilities may be required, at the discretion of the Director of Planning and Zoning, after consultation with the Director of Public Works, to:

(i) Update their traffic studies, pursuant to the Design Manual; and/or

(ii) Modify their approved mitigation plan to provide for a monetary payment in lieu of construction of some or all of the mitigation, provided that the total cost of the revised mitigation plan shall not exceed the total cost of the originally approved mitigation plan.

(C.B. 16, 1995; C.B. 39, 1995; C.B. 50, 2000)
[C.B. 47-2010]

Section 16.1106. Milestones

(a) ***Purpose and Description:***

(1) Milestones are designed to assist in the process of planning for adequate public schools and adequate road facilities and to assure that housing unit allocations are utilized.

(2) Milestone means the date, unless delayed by governmental action, by which a developer must submit the next plan stage of a subdivision to the Department of Planning and Zoning for approval.

(3) To submit the next plan stage means to file a complete preliminary plan application, final plan application or site development plan application with the Department of Planning and Zoning and to pay the required fees.

(b) ***Applicability: Milestones apply only to:***

(1) Projects which are required, as a condition of project approval, to pass the test for adequate road facilities and/or the tests for allocations or for adequate public school facilities; and

(2) Projects which are conditionally exempt (see Section 16.1107, "Exemptions") from the requirements to pass the test for adequate road facilities and/or the tests for allocations or for adequate school facilities.

(c) ***Calculating Milestones:*** The starting date for computing the next milestone is the date the developer receives written authorization from the County to proceed to the next plan stage; except that for subdivisions with conditional exemptions, the starting date for computing the initial milestone is the effective date of this Subtitle, April 10, 1992.

(d) ***Timing for Residential Projects:*** For residential projects, each milestone occurs:

50 or fewer housing units	4 months after starting date
51 - 100 housing units	6 months after starting date
101 + housing units	9 months after starting date

(e) ***Timing for Non-Residential Projects and Downtown Columbia Revitalization:*** For non-residential and all Downtown Columbia revitalization projects, each milestone occurs nine months after the starting date.

[C.B. 47-2010]

(f) ***Status of Projects Which Meet Milestones:***

(1) *Projects with approval for adequate public facilities:* Proposed subdivisions with approval for adequate facilities and tentative housing unit allocations may continue through the subdivision process only if they meet milestones.

(2) *Projects with conditional exemption from test(s) for adequate public facilities:* Plans which have a conditional exemption from tests for adequate road facilities or adequate public school facilities can only maintain that exemption by meeting milestones.

(g) ***Status of Projects Which Miss Milestones:***

(1) *Projects with approval for adequate facilities:* A subdivision plan with approval for adequate facilities which misses a milestone shall be voided, and its tentative housing unit allocations shall be voided. If there has been no change in the requirements of the Subdivision Regulations since the first submission of this subdivision plan, the plan may be resubmitted for approval at the last plan stage which had been approved before the milestone was missed. Otherwise, the plan may be resubmitted for approval at the sketch plan stage.

(2) *Projects with conditional exemption:*

(i) A proposed subdivision with conditional exemption from the test(s) for adequate facilities which misses the milestone for submission of a preliminary plan shall be voided. The plan may be resubmitted for approval at the sketch plan stage.

(ii) A proposed subdivision with conditional exemption from the test(s) for adequate facilities which has preliminary plan approval and misses the milestone for submission of a final plan shall be voided unless it has approval for adequate facilities and housing unit allocations while the preliminary plan approval is still valid pursuant to the Subdivision Regulations in place at the time the preliminary plan approval was granted. A voided plan may be resubmitted for approval at the sketch plan stage.

(3) The Department of Planning and Zoning shall notify the developer whenever it voids plans or voids housing unit allocations pursuant to this Subsection.

(h) ***Voided Allocations:***

(1) *Circumstances for voiding tentative allocations:* Tentative housing unit allocations shall be voided by the Department of Planning and Zoning when:

(i) A subdivision plan with tentative housing unit allocations fails to meet a milestone (see (g) above);

(ii) The number of dwelling units to be built in a subdivision is reduced between initial plan stage approval and recordation; or

(iii) The requirements for Green Neighborhood allocations established under Section 16.1102(b)(7) of this Subtitle are not met by projects that have received Green Neighborhood allocations at subsequent plan submission stages.

(C.B. 48, 2007)

(2) *Bulk parcels:* When a residential subdivision project includes a bulk parcel(s) for apartment, single-family attached or mobile home development, the tentative housing unit allocations assigned during the subdivision process shall become permanent as set forth below and tentative allocations shall be voided under the following conditions:

(i) If a bulk parcel for apartment, single-family attached or mobile home development is recorded and tentative allocations have been assigned, the project must proceed with a site development plan for the project in accordance with the milestones provided for in Section 16.1106(d). Upon approval of the site development plan the tentative allocations become permanent. Failure to meet a milestone will result in the voiding of allocations. Prior to development of a bulk parcel where allocations have been voided, the project must pass the test for granting housing unit allocations as provided in Section 16.1104 and pass the test for adequate school facilities as provided in Section 16.1103, or

(ii) If a bulk parcel for single-family attached or mobile home units is recorded and tentative allocations have been assigned and the bulk parcel is to be resubdivided to provide individual lots for housing units, the project must proceed with a sketch plan or preliminary equivalent sketch plan in accordance with the milestones provided for in Section 16.1106(d) and continue to meet milestones until the resubdivision plat is recorded. Upon recordation of the resubdivision plat, the tentative allocations become permanent. Failure to meet milestones will result in the voiding of allocations. Prior to development of a bulk parcel where allocations have been voided, the project must pass the test for granting housing unit allocations as provided in Section 16.1104 and pass the test for adequate school facilities as provided in Section 16.1103.

(iii) The provisions for voiding tentative allocations pursuant to Subsection (h)(2) above, shall not apply to any project which received sketch plan or preliminary equivalent sketch plan approval prior to the effective date of this amendment, July 1, 1995.

(3) *Number of housing unit allocations voided:* If a milestone or Green Neighborhood requirements are not met, all of the tentative housing unit allocations granted to the subdivision shall be voided. If the number of dwelling units in the subdivision is reduced, only the excess tentative allocations shall be voided. In either case, the Department of Planning and Zoning shall reassign the voided allocations to another project only as provided in (4) below.

(C.B. 48, 2007)

(4) *Reassignment of voided allocations:* Whenever the Department of Planning and Zoning has voided allocations, it shall reassign them by granting the allocations to projects waiting for allocations pursuant to Section 16.1105(c)(2). Reassigned allocations shall be granted to projects waiting longest for allocations. Even though the Department of Planning and Zoning, pursuant to Section 16.1104(d), may have initially granted more

than 100% of the allocations available on the housing unit allocation chart for the current year, the Department of Planning and Zoning shall only reassign allocations until the total number of new and reassigned allocations granted for the current year equals 100% of the projected number of allocations available for the appropriate region of the housing unit allocation chart for that year.

(C.B. 39, 1995)

Section 16.1107. Exemptions

(a) ***Nonresidential Projects:***

(1) *Exempt nonresidential subdivision plans:* The following nonresidential subdivisions are exempt from the requirement to pass the test for adequate road facilities as a condition of subdivision approval:

(i) A nonresidential resubdivision (see Subdivision Regulations).

(ii) An exempt governmental facility.

(iii) A nonresidential final subdivision plan pending on the effective date of this Subtitle, April 10, 1992, provided that the plan proceeds to recordation in accordance with the Subdivision Regulations.

(iv) A subdivision that does not generate additional traffic.

(2) *Exempt nonresidential site development plans:*

(i) A site development plan for an exempt government facility is exempt from the requirement to pass the test for adequate road facilities as a condition of site development plan approval.

(ii) A site development plan which does not generate additional traffic is exempt from the requirement to pass the test for adequate road facilities as a condition of site development plan approval.

(iii) If the project is on a parcel which was zoned nonresidential on the effective date of this Subtitle and has not previously passed the roads test during the subdivision process, a nonresidential site development plan submitted within seven years after the effective date of this Subtitle, April 10, 1992 is exempt from the requirement to pass the test for adequate road facilities as a condition of site development plan approval. However, if the floor area ratio on the lot exceeds the following:

Industrial/manufacturing/warehousing	0.45
Office/research and development	0.35
Retail/service	0.25
New Town/Town Center village	1.0

The site development plan shall be required to pass the test for adequate road facilities for the excess floor area.

(3) *Conditionally exempt nonresidential subdivision plans:* Nonresidential subdivision plans are conditionally exempt from the requirement to pass the test for adequate road facilities as a condition of plan approval, provided that the sketch plan was approved before the effective date of this Subtitle, April 10, 1992. This exemption is conditional upon the project continuing to meet required milestones (see Section 16.1106, "Milestones").

(b) ***Residential Projects:***

(1) *Exempt residential plans:* The following residential subdivisions and site development plans are exempt from the requirement to pass the test for adequate road facilities and the requirement to pass the tests for allocations and adequate public school facilities as a condition of approval:

(i) Parcel divisions (see Subdivision Regulations Subtitle 1 of this Title).

(ii) Subdivisions in agricultural preservation easements for dwellings of the owner or the owner's children or other dwelling lots permitted on agricultural preservation easements.

(iii) Residential resubdivisions (see Subdivision Regulations) which do not increase the number of housing units allowed.

(iv) Residential final subdivision plans pending on the effective date of this Subtitle, provided that the plan proceeds to recordation in accordance with the Subdivision Regulations.

(v) Minor subdivision plans and resubdivisions, located in RC and RR zoning districts outside of the Planned Service Area Boundary for Water and Sewer, which create the potential for only 1 additional dwelling unit from a lot existing on April 10, 1992.

(vi) Minor subdivision plans and resubdivisions which create the potential of only one additional dwelling unit to be conveyed to an immediate family member or members from a lot existing on April 10, 1992, provided that the following conditions are met:

a. The property owner must have owned the property for a minimum of three years before requesting subdivision; and
b. The family member must either be a parent, child, or sibling. The term immediate family member does not include step-parents, step-children, or step-siblings; and
c. The property owner shall not seek further subdivision of the property or another family member exemption for a period of three years; and
d. The granting of this family member exemption shall prohibit the property owner from seeking a hardship exemption.

A maximum of three family member exemptions per year per planning area may be granted by the Department of Planning and Zoning. The Department of Planning and Zoning shall annually prepare a home ownership report on this exemption for the Council.

(vii) Minor subdivision plans and resubdivisions, which create the potential of only one additional dwelling unit from an adjoining lot existing before April 10, 1992, for property owners with economic hardships. Upon the property owner's written request to the Department of Planning and Zoning, the County Council may approve by resolution a hardship exemption. The property owner shall state in the request to the Department of Planning and Zoning the severe economic hardship that the property owner is sustaining and provide the following evidence, which shall be forwarded by the Department to the County Council with a recommendation concerning the exemption:

a. Verification of ownership of the property to be subdivided for at least three years before the submittal of the economic hardship exemption request; and
b. A recent financial statement that shows the property owner's complete assets and liabilities supported by an Affidavit of the property owner; and
c. Other information regarding the severe economic hardship that the property owner is sustaining, including but not limited to information from lenders, lien holders, creditors, attorneys, tax collectors or other third parties who have knowledge as to the economic condition of the property owner; and
d. Any notice of foreclosure on the property; and
e. Any medical bills that are not covered by health insurance for a medical condition/treatment of the property owner or immediate family member of the property owner. For purposes of this section, the immediate family member shall be either a spouse, parent, child or sibling but shall not include step-parents, step-children or step-siblings; and
f. Any other evidence that the property owner has no other reasonable means of relieving that economic hardship.

The granting of this hardship exemption shall prohibit the property owner from seeking a family member exemption.

(C.B. 45, 2003)

(2) *Partially exempt residential subdivision plans:* Minor subdivision plans are exempt from the requirement to pass the test for adequate road facilities as a condition of plan approval. However, minor subdivision plans are required to pass the tests for allocations and adequate public school facilities as a condition of subdivision approval.

(3) *Exempt residential site development plans:* Residential site development plans for single-family attached and detached housing on recorded lots that existed on April 10, 1992, are exempt from the requirement to pass the test for adequate road facilities and the tests for allocations and adequate public school facilities as a condition of site development plan approval.

(4) *Partially exempt mobile home park site development plans:*

(i) Residential site development plans for mobile home parks are exempt from the requirement to pass the test for allocations to the extent that the mobile home park site development plan is replacing units from a mobile home park abandoned or

permanently closed after January 1, 2000. If the number of units in a mobile home park site development plan exceeds the number of replacement units available, the number of units exceeding the available replacement units shall be tested for allocations in accordance with Section 16.1104 of this Subtitle. The Department of Planning and Zoning shall keep a record of the number of mobile home park units abandoned and replaced and shall reassign the replacement units to projects, at the time of site development plan approval, in the order of site plan approval dates.

(ii) Residential site development plans for mobile home parks to which replacement units have been reassigned in accordance with (i) above are exempt from the adequate public school facilities test for the number of replacement units reassigned if the site development plan for the mobile home park is located in the same elementary and middle school districts as the abandoned or permanently closed mobile home park from which the units were reassigned. If the number of units proposed on the site development plan exceeds the number of reassigned units available, or if the site development plan includes reassigned units from a different elementary and/or middle school district, the excess units receiving allocations as required in (i) above, and the reassigned units from a different elementary and/or middle school district, as the case may be, shall be subject to the adequate public facilities tests. If the proposed mobile home park is located in a different elementary and/or middle school district, the site development plan must pass the appropriate adequate public school facility test(s) for all units approved on the site development plan.

(CB 51-2002)

(5) *Partially exempt multifamily residential site development plans:*

(i) *Exemption from tests for adequate public schools:* Residential site development plans for multifamily projects which cannot generate children, such as age-restricted adult housing, are exempt from the requirement to pass the tests for adequate school facilities as a condition of site development plan approval. Except as provided in subparagraph (iii) of this paragraph, these plans are required to pass the test for allocations and for adequate road facilities as a condition of site development plan approval.

(ii) *Exemption from tests for allocations and adequate public schools:* Nursing and residential care facilities are exempt from the requirement to pass tests for allocations and for adequate public schools as a condition of site development plan approval. These plans are required to pass the adequate road facilities test as a condition of site development plan approval.

(6) *Conditionally exempt residential subdivision plans:* Residential subdivision plans are conditionally exempt from the requirement to pass the test for adequate road facilities and the tests for allocations and for adequate school facilities as a condition of plan approval, provided that the sketch plan was approved before the effective date of this Subtitle, this exemption is conditional upon the project continuing to meet required milestones (see Section 16.1106, “Milestones”).

(C.B. 6, 1994; C.B. 39, 1995; C.B. 50, 2000; C.B. 51, 2001)

(7) *Partially exempt residential development plans:* Residential redevelopment involving a subdivision plan or site development plan is exempt from the allocations. Adequate public schools, and roads tests to the extent that the redevelopment will not increase:

(i) The number of existing housing units on the site;
(ii) The number of housing units allowed under Paragraph (3) of this Subsection; or
(iii) If the redevelopment is of a mobile home park licensed under Subtitle 5 of this Title, the number of mobile home sites permitted under the license.

Existing units being replaced must have been occupied on a full-time basis for at least thirty days in the year prior to submission of the subdivision or site development plan for redevelopment of the site. If the number of units on the redevelopment plan exceeds the number of existing units, the additional units shall pass the allocations, adequate public schools and roads tests as a condition of plan approval.

(C.B. 45, 2003)

Section 16.1108. Development Monitoring System

The Department of Planning and Zoning shall monitor the growth of housing and employment in Howard County and shall issue reports which indicate:

(a) Subdivision plans and site development plans approved during the last several years, including the number of residences or the number of new employees projected for the approved subdivisions and land developments.

(b) Subdivision plans and site development plans in process at the time of the report, including the number of housing unit allocations or the number of new employees projected for the proposed subdivisions and land development.

(c) Building permits and certificates of occupancy issued during the last several years, indicating the number of dwelling units and the projected number of new employees for which building permits or certificates of occupancy were issued.

(C.B. 39, 1995)

Section 16.1109. Appeals

A person, specially aggrieved as defined by Section 16.103(b) of the Howard County Code, by a decision of the Director of Planning and Zoning in relation to this Subtitle may appeal the decision to the Board of Appeals pursuant to its Rules of Procedure.

(C.B. 16, 1995; C.B. 39, 1995)

Section 16.1110. Definitions

(a) ***Affordable housing unit*** means a moderate or middle income housing unit as defined in the Howard County Zoning Regulations.

(a-1) ***Available housing unit allocations*** are the number of housing unit allocations that the Department of Planning and Zoning may grant in any [calendar] year, based on the housing unit allocation chart adopted by the County Council less housing unit allocations already granted for that year.

(b) ***Background traffic growth*** is the traffic, other than traffic existing at the time of application, which will be generated by:

(1) Regional pass-through users; and
(2) Projects which are not subject to the test for adequate road facilities.

(c) ***Bulk parcel - residential*** means a residential parcel recorded for the purpose of development of apartments, single-family attached, single-family detached or mobile home units on a single lot where tentative housing unit allocations have been granted.

(d) ***Capacity*** means when used in relation to road facilities, "capacity" means the total number of vehicles that can be accommodated by a road facility during a specified time period under prevailing roadway operating conditions.

(e) ***Comprehensive project*** means a project in the following zoning districts:

(1) New Town (NT)
(2) Planned Golf Course Community (PGCC)
(3) Mixed Use (MXD)
(4) Residential: Apartments (R-A-15)

(f) ***Constrained road facility*** means in the planned service area for water and sewerage, a "constrained road facility" means the intersection of a major collector or higher classified road with a major collector or higher classified road which has historic or environmental value which would be adversely affected by certain road improvements.

In the no-planned service area for water and sewerage, a "constrained road facility" means the intersection of a minor collector or higher classified road with a minor collector or higher classified road which has historic or environmental value which would be adversely affected by certain road improvements.

The County Council, by resolution, declares a road facility constrained and identifies the feature(s) which form the basis for its decision to declare the road facility constrained.

(g) ***Conventional project*** means a project other than a comprehensive project.

(h) **Downtown Columbia** means the geographic area defined as Downtown Columbia in Section 103.A.41 of the Howard County Zoning Regulations.

(i) ***Exempt governmental facility*** means:

(1) A facility to be owned or operated by the Federal government, State government, Howard County public schools, or any agency thereof;

(2) A facility owned by Howard County or any agency thereof where essential County government services are provided, including police services, fire prevention and suppression services, emergency medical services, highway maintenance, detention facilities, water treatment and supply, sewage disposal and treatment and solid waste disposal.

(j) **Final Development Plan proposing Downtown Columbia revitalization** means a drawing or series of drawings, at an appropriate scale, and related text covering all or a portion of Downtown Columbia that proposes development pursuant to Section 125.E of the Zoning Regulations.

(k) ***Floor area ratio*** means the ratio of the floor area of a structure to the lot area, where:

(1) The floor area is calculated by measuring the exterior faces of the walls of the structure minus any area within the structure devoted to parking, driveways, atria, enclosed malls and similar areas; and

(2) The lot area is calculated including any adjoining lots used for required parking for the structure.

(l) ***General Plan target; General Plan residential growth target*** means for the purposes of this Subtitle, the General Plan target and General Plan residential growth target mean the housing unit projections established in the General Plan for each planning area including the Senior East set aside, and in addition 250 housing units per year for Route 1 revitalization. (C.B. 34, 2003)

(m) ***Governmental action*** means the action or inaction of a governmental agency in relation to a timely filed action by a developer. For the purposes of this Subtitle, "governmental agency" means an agency of the Federal, State, or local government, including, but not limited to, the U.S. Corps of Engineers, the Maryland Department of the Environment, the Zoning Board, and the Board of Appeals.

(n) ***Housing unit allocation or allocation*** means an approval to build a housing unit.

(1) Tentative housing unit allocation or tentative allocation means the temporary approval, granted during the subdivision plan process, to build a housing unit in a project which requires housing unit allocations as a condition of project approval.

(2) Permanent housing unit allocation or permanent allocation means a permanent approval, granted at recordation of a subdivision or at site development plan approval, to build a housing unit in a project which requires housing unit allocations as a condition of project approval.

(o) ***Housing unit allocation chart*** means a chart indicating the projected number of housing unit allocations available to be granted in the County each year for a ten-year period. The chart divides the available housing unit allocations into school regions and includes separate categories for comprehensive projects and conventional projects. The number of housing unit allocations on the chart shall be as follows:

(1) In the first year after the effective date of this Subtitle the number of housing unit allocations on the chart for that year and each of the next two years shall equal the General Plan annual target for residential completions for those years.

(2) In the second year after the effective date of this Subtitle, the number of housing unit allocations on the chart for that year and for each of the next two years, based on the

rolling average, shall be the General Plan target for residential completions for the year in question minus one-third of the difference between:

(i) The number of housing unit allocations granted during the prior year plus the number of housing units in projects approved during the prior year which were exempt from the provisions of this Subtitle pursuant to Section 16.1107(b)(1) and (5) of this Subtitle; and

(ii) The prior year's General Plan target.

(3) In the third and later years after the effective date of this Subtitle, the number of housing unit allocations on the chart for the current year and for each of the next two years, based on the rolling average, shall be the General Plan target for residential completions for the year in question minus one-third of the difference between:

(i) The housing unit allocations granted during the two preceding years plus the housing units in projects approved during two preceding years which were exempt from the provisions of this Subtitle pursuant to Section 16.1107(b)(1) and (5) of this Subtitle; and

(ii) The sum of the General Plan targets for the two preceding years.

(p) ***Howard County Design Manual*** means Chapter 4 of Volume III (Roads and Bridges) of the Howard County Design Manual which specifies requirements for adequate transportation facilities.

(q) ***Impact Area:***

(1) In Planned Service Area for Public Water and Sewer: In that portion of the County in the Planned Service Area for Public Water and Sewer, excluding Downtown Columbia, an "impact area" means an area up to one and one-half road miles in all directions from the entrance to the project on an existing County or State road or a planned roadway or intersection identified in the capital budget or capital program, but not beyond the intersection of a major collector or higher classified road with a major collector or higher classified road. For Downtown Columbia, the impact area shall be determined in accordance with the Howard County Design Manual.

(2) In No-Planned Service Area for Public Water and Sewer: In that portion of the County in the No-Planned Service Area for Public Water and Sewer, an "impact area" means an area up to two road miles in all directions from the entrance to a project on an existing County or state road or a planned roadway or intersection identified in the capital budget or capital program, but not beyond the intersection of a minor collector or higher classified road with a minor collector or higher classified road.

(r) ***Initial plan stage:*** An initial plan stage means either (1) a sketch plan or preliminary equivalent sketch plan under the Subdivision and Land Development Regulations; (2) a final development plan proposing Downtown revitalization under the Zoning Regulations; or (3) a site development plan if subdivision is not required.

(s) ***Major collector; major collector highway*** means a road classified as a major collector highway on the Howard County General Plan, except that in determining the impact area for site development plans, "major collector" also means a road, not classified as a major collector highway on the Howard County General Plan, but constructed to the physical specifications set forth in the Design Manual for construction of a road so classified.

(t) ***Major facilities agreement*** means an agreement between the County, the State, if appropriate, and the developer of a project incorporating the developer's approved mitigation plan and covering the developer's financial obligations for mitigation.

(u) ***Milestone*** means the date, unless delayed by governmental action, by which a developer must submit the next plan stage of a subdivision to the Department of Planning and Zoning for approval.

(v) ***Minimum Level of Service for Howard County Road Facilities***, excluding Downtown Columbia, means level of service D. Minimum level of service of a State road facility means level of service E. For Downtown Columbia, the intersection standard is established in the Howard County Design Manual.

(w) ***Minor collector or minor collector highway*** means a road classified as a minor collector highway on the Howard County General Plan.

(x) ***Mitigation*** means the construction or the funding of improvements to off-site road facilities by a developer, as approved by the Director of Planning and Zoning, after consultation with the Director of Public Works.

(y) ***Open:***

(1) *School region:* "Open" means that the projected enrollment of a school region is below 115% of the program capacity of the elementary schools within the region.

(2) *Elementary school:* "Open" means that the projected enrollment of the elementary school is below 115% of the program capacity of the school.

(3) *Middle school:* "Open" means that the projected enrollment of the middle school is below 115% of the program capacity of the school.

(z) ***Open/Closed chart*** means a chart indicating which elementary school regions and which elementary and middle schools are open to new residential development and which are closed to new residential development for the each of the following ten years.

(aa) ***Open/Closed test*** means a test to determine whether the elementary school region and elementary school and middle school serving a proposed project are open to new residential development in the scheduled completion year of the project or the phases of the project.

(ab) ***Phased project*** means a project utilizing phasing.

(ac) ***Phasing*** means the sequential development of portions of a subdivision pursuant to a sketch plan which includes a schedule for submission of preliminary and final plan applications for the various phases of the project and a schedule for completion of these phases.

(ad) ***Plan stage*** means one of the three levels of a subdivision plan -- sketch plan, preliminary plan, and final plan.

(ae) ***Planning region*** means a geographic area of the County identified in the General Plan that is used for forecasting housing growth.

(af) ***Program capacity*** means the capacity, as defined by the Howard County Board of Education, for grades kindergarten through grade 8. Program capacity does not include special education and relocatable capacity.

(ag) ***Road facilities:***

(1) In Planned Service Area for Public Water and Sewer. In that portion of the County in the Planned Service Area for Public Water and Sewer, “road facilities” means at grade intersections of major collectors or higher classified roads which are beyond the boundaries of the proposed project.

(2) In No-Planned Service Area for Public Water and Sewer. In that portion of the County in the No-Planned Service Area for Public Water and Sewer, “road facilities” means at grade intersections of minor collectors or higher classified roads which are beyond the boundaries of the proposed project.

(3) “Road facilities” does not include road improvements which a developer is required to provide pursuant to the provisions of Section 16.119, “Highways, Streets, and Roads,” of the Subdivision Regulations.

(ah) ***Rolling average*** means to recalculate the number of available housing unit allocations for a given year in order to maintain and achieve the General Plan residential growth targets.

(ai) ***Scheduled Completion Year:***

(1) *Road facilities:*

(i) *Nonresidential Projects:* When used in relation to road facilities serving nonresidential projects, “scheduled completion year” means the year as approved on the subdivision or site development plan, for scheduled completion of the project or phases of the project.

(ii) *Residential projects:*

a. When used in relation to road facilities serving unphased residential projects, "scheduled completion year" means the third year following the year the application is submitted.

b. When used in relation to road facilities serving phased conventional residential projects, "scheduled completion year" of the initial phase of the project means the third year following the year the application is submitted. The scheduled completion year of subsequent phases of the

project are the years indicated for scheduled completion of the phases of the project as approved on the subdivision or site development plan.

c. When used in relation to road facilities serving phased comprehensive residential projects, "scheduled completion year" of the phases of the project means the years indicated for scheduled completion of the phases of the project as approved on the subdivision or site development plan.

(2) *Schools:*

(i) When used in relation to schools, “scheduled completion year” of an unphased project means the third year following approval of the project for adequate school facilities.

(ii) When used in relation to schools, “scheduled completion year” of the initial phase of a phased conventional project means the third year following approval of the project for adequate school facilities.

(iii) When used in relation to schools, “scheduled completion year” of a phase of a phased conventional project beyond the initial phase means the year for completion of the phase, as shown in the application for sketch plan approval of the project.

(iv) When used in relation to schools, “scheduled completion year” of a phase of a comprehensive project, means the year, at least three years following the year the sketch plan application is submitted, for completion of the phase, as shown in the application for sketch plan approval of the project.

(aj) ***School region*** means a geographic area, determined by the Howard County Board of Education, containing a group of contiguous elementary school service areas.

(ak) ***Unphased project*** means a project which does not utilize phasing.