

Policy for Interpretation of §1-16-106 of Subdivision Regulations

Regulatory Intent

Enable the progression of development on public water and/or sanitary sewer in a logical, uninterrupted manner, in accordance with §1-16-106 of the Frederick County Code and with § 9-512 of the Environment Article, Annotated Code of Maryland.

Compliance with the requirements of State law requires routine analysis of the County's water, wastewater, and solid waste systems, including proposed expansions and increased utilization of these services.

Adequacy requirements for water supply and sewerage systems appear to be prospective for the recordation of lots, e.g., in §9-512, the term "would be" is used. By contrast, the adequacy requirements for the issuance of a building permit appear to require a definitive determination, as §9-512 uses the term "is adequate".

The County Subdivision Regulations §1-16-106 requires that, prior to recordation of a subdivision plat:

1. The subdivider and the Board of County Commissioners make a written public works agreement or performance agreement that provides for the construction and installation of water [sewer] lines and facilities;
2. All necessary off site land, easements and rights-of-way required for the construction and installation of water [sewer] facilities have been conveyed to the Board of County Commissioners and recorded in the land records;
3. All contracts funded by developers or the county for the construction of public water [sewer] lines or facilities to provide service up to the site have been executed; and
4. The Division of Utilities and Solid Waste Management certify that all such off site lines and facilities shall be operational within 90 days of final plat recordation.

"Off site" is not a defined term in the Subdivision Regulations. Historically, "provide service up to the site" in 3 above, and "certify that all such off site lines and facilities shall be operational..." in 4 above, have been interpreted to apply to service to the individual lot(s) within the (proposed) subdivision and these same lines are considered, for the purposes of these requirements, as "off site" meaning this infrastructure must be operational within 90 days of final plat recordation.

Proposed Revised Interpretation of §1-16-106

A valid alternative interpretation is to consider the entire subdivision as the "site" and the "off-site lines and facilities" as infrastructure that is off-site to the entire subdivision. Additionally, it is not uncommon that the water and sewer lines for one subdivision that is separate from

another subdivision altogether. In these instances, DUSWM would need to apply certain specific rules. For example, DUSWM could not approve the recordation of the plat for the proposed subdivision if the necessary sanitary sewer lines in an existing (adjacent) subdivision were not completed (or only partially completed), preventing the proposed subdivision's sanitary sewer lines from becoming operational within 90 days. This type of (dependent) expansion of water and/or sewer infrastructure is not uncommon and is not always associated with an adjacent property. In some cases, off-site lines may need to be extended great distances to serve a new subdivision or additional infrastructure facility capacities have to be in place before the adequacy of such off site lines can be certified by DUSWM.

For an example of how this alternative policy interpretation could work, using sanitary sewer as an example, please see the drawing in Attachment 1. The plat for Phase I of the Proposed New Subdivision could be recorded if the off-site sanitary sewer line easement is acquired, construction is completed within 90 days (shown in the color [cyan](#)), operational, and contiguous to the proposed subdivision. If additional off-site sewerage system improvements are also needed, such as additional pumping capacity or treatment capacity, plats for Phase I of the Proposed New Subdivision could **not** be recorded until all off-site improvements are within 90 days of completion in accordance with §§1-16-106(E)(1,2,3&4). This ensures that the infrastructure which is off-site of the subdivision, and which may not be under the developer's control, is within 90 days of being available to serve the subdivision. Furthermore, as long as §§1-16-106(E)(1,2&3) also applies to the on-site lines within Phases 2 (shown in the color [red](#)), 3 (shown in the color [magenta](#)) or 4 (shown in the color [blue](#)), respectively, of the Proposed New Subdivision, the County would have the ability to certify that the infrastructure will be completed based on the established utility construction contract duration.

As an additional example, if Phase 4 of the Proposed New Development was considered a **separate** development, but relied on the completion of the Phase 2 sanitary sewer, the 90-day timeframe would need to become cumulative. In this example, because the completion of off-site sanitary sewer in Phase 1 may be within 90 days and enable plat recordation of Phase 1 lots, depending on the start of Phase 2 improvements, it is possible that Phase 4 plats could not be recorded until the Phase 2 improvements were within 90 days of completion.

Each of these examples could become more complex if certain Phases trigger the need for an improvement of the off-site interceptor at the existing sewage pump station (off-site) or the existing waste water treatment plant (off-site).

Table 1 illustrates several scenarios whereby off-site infrastructure capacity constraints create critical policy interpretations of these two regulations.

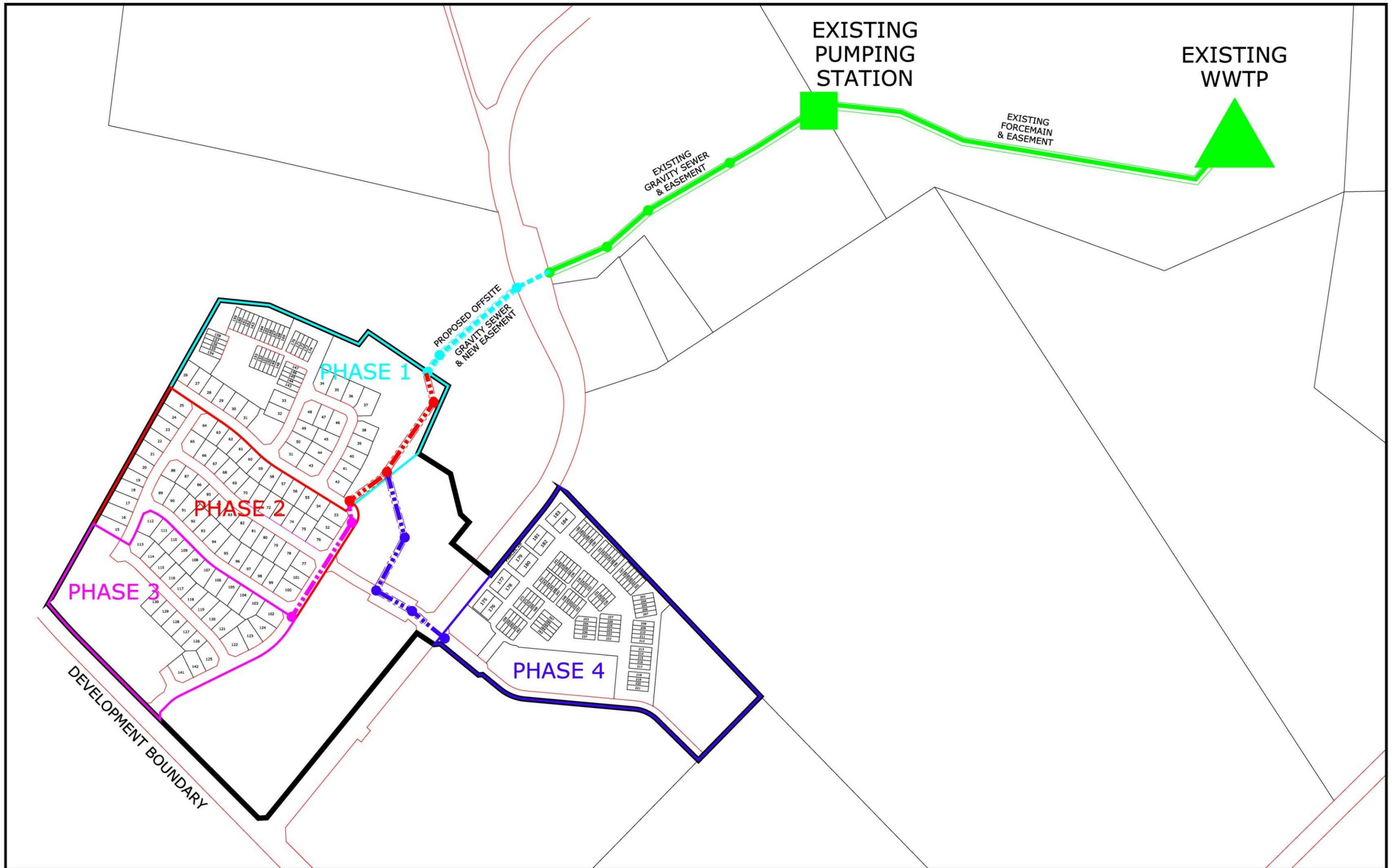
Scenario	Offsite Infrastructure (Remaining Capacity)			Potential Lots															
	Interceptor	Sewage Pump Station	WWTP	Phase 1	INT.	SPS	WWTP	Phase 2	INT.	SPS	WWTP	Phase 3	INT.	SPS	WWTP	Phase 4	INT.	SPS	WWTP
A	250	250	250	58	Y	Y	Y	61	Y	Y	Y	31	Y	Y	Y	98	Y	Y	Y
B1	110	140	225	58	Y	Y	Y												
B2	110	140	225	58	Y	Y	Y	61	N	Y	Y								
B3	110	140	225	58	Y	Y	Y	61	N	Y	Y	31	N	N	Y				
B4	110	140	225	58	Y	Y	Y	61	N	Y	Y	31	N	N	Y	98	N	N	N
C1	110	140	225												98	Y	Y	Y	
C2	110	140	225	58	N	N	Y								98	Y	Y	Y	
C3	110	140	225	58	N	N	Y	61	N	N	Y				98	Y	Y	Y	
C4	110	140	225	58	N	N	Y	61	N	N	Y	31	N	N	N	98	Y	Y	Y

Scenario A contemplates a holistic development, simply being constructed in phases, without any off-site infrastructure constraints. Platting of this development would follow a typical policy interpretation using the 90-day timeframe.

Scenario B1 contemplates the *order* of the development beginning with Phase 1, which does not trigger any off-site improvements prior to plat recordation. However, in Scenario B2, before Phase 2 can be platted, improvements to the off-site Interceptor (shown in green) are required, because the remaining capacity of 110 units is exceeded. Scenario B3 assumes that Phase 3 started concurrently with Phase 2, which triggers improvements to the Interceptor **and** the Sewage Pumping Station. Lastly, Scenario B4 assumes concurrent starts of Phases 2, 3 & 4, which triggers improvements to the Interceptor, Sewage Pump Station and the Wastewater Treatment Plant.

Scenario C1 reverses the *order* of development phasing progression and considers Phase 4 first, followed by Phase 1 in Scenarios C2, C3 and C4 respectively.

R:\DIRECTOR\Kevin\Developer Projects\Final Policy for 1-16-106.docx



***Current through all chapters of the 2011 Special Session of the General Assembly ***

ENVIRONMENT
TITLE 9. WATER, ICE, AND SANITARY FACILITIES
SUBTITLE 5. COUNTY WATER AND SEWERAGE PLANS

Md. ENVIRONMENT Code Ann. §9-512 (2011)

§ 9-512. Removal of solid waste acceptance facilities – Building permits; subdivision plats

(a) "Building permit" defined. – In this section, "building permit" means any permit that allows any building construction and is issued by any State or local authority.

(b) Building permits – Conformity with county plan; issuance of building permits. –

(1) A State or local authority may not issue a building permit unless:

(i) The water supply system, sewerage system, or solid waste acceptance facility is adequate to serve the proposed construction, taking into account all existing and approved developments in the service area;

(ii) Any water supply system, sewerage system, or solid waste acceptance facility described in the application will not overload any present facility for conveying, pumping, storing, or treating water, sewage, or solid waste;

(iii) Except for essential public services, after January 1, 1992, the county in which the proposed construction is located has an approved recycling plan under § 9-505 of this subtitle and § 9-1703 of this title; and

(iv) Except for essential public services, after January 1, 1994, the county in which the proposed construction is located has met the recycling reductions submitted in an approved recycling plan under § 9-505 of this subtitle and § 9-1703 of this title.

(2) A water supply system, sewerage system, or solid waste acceptance facility referenced in a subdivision plat shall conform to the applicable county plan.

(3) If an allocation of water or wastewater is needed, and before a State or local authority may issue a building permit, the State shall:

(i) Have an allocation of water and wastewater from the county whose facilities are affected by the proposed building construction; or

(ii) Show evidence of being able to provide an acceptable on-site sewage disposal system or well system until an allocation becomes available, or on a permanent basis if the State elects.

(4) The county shall timely review any State request for an allocation of water or wastewater, and report its findings to the State within 45 days from the date of such request.

(5) The Department may grant a waiver from the sanctions of subsection (b)(1)(iii) and (iv) of this section if the county demonstrates to the satisfaction of the Secretary that it cannot achieve the recycling goal due to unforeseen or emergency circumstances beyond the county's control.

(6) (i) In the event that sanctions are imposed under this subsection, and the county submits an application for removing the sanctions, the Secretary shall promptly approve or deny the application.

(ii) In the event that the Secretary has neither approved nor denied the application within 30 days of its submission, the application shall be deemed approved and the sanctions shall be removed.

(c) Building permits -- Applications. -- To apply for a building permit, an applicant shall:

- (1) Submit an application to a State or local authority on the form that the authority requires; and
- (2) Provide any information that the authority reasonably requires to comply with subsection (b) of this section.

(d) Subdivision plats -- Conformity with county plan; recording or approving subdivision plats. --

(1) A State or local authority may not record or approve a subdivision plat unless any approved facility for conveying, pumping, storing, or treating water, sewage, or solid waste to serve the proposed development would be:

- (i) Completed in time to serve the proposed development; and
- (ii) Adequate to serve the proposed development, once completed, without overloading any water supply system, sewerage system, or solid waste acceptance facility.

(2) Each water supply system, sewerage system, and solid waste acceptance facility in a subdivision shall:

- (i) Conform to the applicable county plan; and
- (ii) Take into consideration all present and approved subdivision plats and building permits in the service area.

(3) If an allocation of water or wastewater is needed, and before a State or local authority may record or approve a subdivision plat, the State shall:

- (i) Have an allocation of water and wastewater from the county whose facilities are affected by the proposed development; or
- (ii) Show evidence of being able to provide an acceptable on-site sewage disposal system or well system until an allocation becomes available, or on a permanent basis if the State elects.

(4) The county shall timely review any State request for an allocation of water or wastewater, and report its findings to the State within 45 days from the date of such request.

(e) Subdivision plats -- Applications. -- To apply for approval of a subdivision plat, an applicant shall:

- (1) Submit an application to the appropriate State or local authority on the form that the authority requires; and
- (2) Provide any information that the authority reasonably requires to comply with subsection (d) of this section.

HISTORY: 1983, ch. 542, § 2; 1984, ch. 762; 1988, ch. 536

§ 1-16-106. WATER AND SEWER FACILITIES.

(A) *In general.* A proposed final plat shall be disapproved unless the facilities for conveying, pumping, storing, or treating water or sewage to serve the proposed subdivision would be completed in time to serve the proposed subdivision.

(B) *Individual sewerage systems.* In the case of a proposed subdivision otherwise approved for individual sewerage systems, a presumption shall exist that the sewerage facilities for the proposed subdivision will be completed in time to serve the proposed subdivision if the health authority tests and approves all lots in the proposed subdivision for individual sewerage systems.

(C) *Individual water supply systems.* In the case of a proposed subdivision otherwise approved for individual water supply systems, a presumption shall exist that the water facilities for the proposed subdivision will be completed in time to serve the proposed subdivision if all lots in the proposed subdivision have wells that yield water of sufficient quantity to comply with all applicable laws and regulations.

(D) *Community sewerage system.* In the case of a proposed subdivision otherwise approved for a community sewerage system, a presumption shall exist that the sewer facilities for the proposed subdivision will be completed in time to serve the proposed subdivision upon the occurrence of all of the following events:

(1) The subdivider and the Board of County Commissioners make a written public works agreement or performance agreement that provides for the construction and installation of sewer lines and facilities;

(2) All necessary off site land, easements and rights-of-way required for the construction and installation of sewer facilities have been conveyed to the Board of County Commissioners and recorded in the land records;

(3) All contracts funded by developers or the county for the construction of public sewer lines or facilities to provide service up to the site have been executed; and

(4) The Division of Utilities and Solid Waste Management certify that all such off site lines and facilities shall be operational within 90 days of final plat recordation.

(E) *Community water supply system.* In the case of a proposed subdivision otherwise approved for a community water supply system, a presumption shall exist that the water facilities for the proposed subdivision will be completed in time to serve the proposed subdivision upon the occurrence of all of the following events:

(1) The subdivider and the Board of County Commissioners make a written public works agreement or performance agreement that provides for the construction and installation of water lines and facilities;

(2) All necessary off site land, easements and rights-of-way required for the construction and installation of water facilities have been conveyed to the Board of County Commissioners and recorded in the land records;

(3) All contracts funded by developers or the county for the construction of public water lines or facilities to provide service up to the site have been executed; and

(4) The Division of Utilities and Solid Waste Management certify that all such off site lines and facilities shall be operational within 90 days of final plat recordation.

(F) *Water and/or sewer easement extensions.* Water and/or sewer easement extensions to service adjoining properties within the service area shall be extended to the boundary line as determined by the Division of Utilities and Solid Waste Management.

(1959 Code, § 38A-52) (Ord. 8-4-156, 2-13-1980; Ord. 00-24-266, 7-27-2000; Ord. 10-23-558, 10-19-2010)