

TOWN OF DELMAR
DELAWARE AND MARYLAND

DRAFT
Adequate Public Facilities Standards

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Adopted by Delaware Ordinance #183

By

Delmar, Delaware - Mayor and Council
Delmar, Maryland - Mayor and Commission
Town of Delmar - Planning and Zoning Commission
Town of Delmar – Utility Commission

Table of Contents

Introduction	2
I. Process	3
<i>I.A. Development Projects and Capacity Schedules</i>	<i>4</i>
<i>I.B. Approved, Not-Completed Development Projects</i>	<i>4</i>
<i>I.C. Waiver Provisions</i>	<i>5</i>
II. Levels of Service	5
<i>II.A. Water and Wastewater Services</i>	<i>5</i>
III. Sources	6
1. Planning & Zoning Regulations - Town of Delmar (2015)	
2. Comprehensive Plan - Town of Delmar DE/MD (2009)	
3. Comprehensive Plan - Town of Delmar, Delaware (2021)	
4. Comprehensive Plan - Town of Delmar, Maryland – (<i>Pending</i>)	
5. Town of Delmar Municipal Sewage Capacity Management Plan (Updated January 2024)	
6. Town of Delmar (DE/MD) Approved and Pending Development List (Updated January 2024)	
IV. Appendices	
Appendix A: Definitions	<i>7</i>
Appendix B: Planning & Zoning Regulations - Town of Delmar (2015)	
Appendix C: Comprehensive Plan - Town of Delmar DE/MD (2009)	
Appendix D: Comprehensive Plan - Town of Delmar, Delaware (2021)	
Appendix E: Delmar Municipal Sewage Capacity Management Plan (Updated January 2024)	

Introduction

These Adequate Public Facility Standards are meant to work in conjunction with the Town Planning and Zoning Regulations and the Adequate Public Facilities Ordinance (APFO) to be adopted by the Town of Delmar DE/MD elected officials.

The APFO (*currently being drafted*) establishes procedures and standards necessary to ensure that adequate public facilities and services are provided concurrent with new development and redevelopment, and tests the capacity of public facilities based on current and projected data available at the time of development application, as outlined in Table 1. Net available system capacity is the total amount of capacity minus all existing background development, development with building permits, and development approved but not yet permitted. Net available system capacities will change as 1) new projects come into the system, 2) other projects are completed, 3) some projects are abandoned, and 4) new facilities are programmed in capital budgets. The net available system capacity for the water and wastewater systems may also change as a result of other unforeseen environmental factors.

APFO provisions are integrated into the development review process to establish a benchmark for the availability of capacity at the time of project review. Once a development project is approved, capacity of public facilities required by that project is reserved, throughout its project schedule, as determined by the Public Works Agreement (PWA) at the time of project approval, including any extensions.

The Mayor and Council (DE) and Mayor and Commission (MD) has developed the following mission statement to guide administration of the APFO:

The Town of Delmar is experiencing substantial interest in redevelopment of certain areas into residential and commercial areas. This pressure has raised concerns regarding public infrastructure capacity because of the expected increase in commercial activity and residential dwelling units. The Mayor and Council have expressly stated that they want to provide opportunities to revitalize certain areas of downtown and ensure that all attributes needed for modern urban living are provided. Additionally, they want to provide for sustainable economic development of the RT 13, RT 675, and RT 54 corridors.

The Mayor and Council (DE) and Mayor and Commission (MD) have adopted an APFO ordinance to ensure that the necessary public Water and Wastewater facilities will be available to serve new development and redevelopment. Developers may be permitted to mitigate the impact of their development projects. The Mayor and Council (DE) and Mayor and Commission (MD) will periodically review the adequate public facilities standards and modify them as deemed necessary.

The APFO will be applied to all development projects. Adequacy shall first be considered at the earliest stage in the application process so as to assure adequacy of public facilities for the project and to provide guidance to the applicant as to how the APFO requirements can be met if deficiencies are identified.

The Development Review Process for the Town of Delmar currently includes reviews or recommendations by the parties listed below, each of which will review and make

recommendations to the respective Approving Authority. The Approving Authority in Delaware is the elected Mayor and Council, while the Approving Authority in Maryland is the elected Mayor and Commissioners.

- Delmar Planning and Zoning Commission (recommendation to the Approving Authority)
- Delmar Town Engineering Consultant (recommendations to the Approving Authority)
- Delmar Public Works Department (recommendations to the Approving Authority)
- Delmar Utility Commission (recommendations to the Approving Authority)
- Delmar Delaware - Mayor and Council (**Approving Authority** in Delaware)
- Delmar Maryland - Mayor and Commissioners (**Approving Authority** in Maryland)

TABLE 1: APFO Approval Types

Type	Application	Scope of Review
Initial	Project Concept Plans and Data, Special Exceptions	General Water and Wastewater Impacts (may exclude some site- specific design review that requires more detailed design).
Detailed	Site Plan, Preliminary Subdivision Plans, Major and Minor Site Plan Amendments	Requirements of Initial Approval (if not previously approved) plus water and wastewater analyses that require detailed site-specific design, and evaluation of water supply, treatment, storage, and distribution; and wastewater collection, transmission, treatment and discharge systems.
Final	Building Permit	Water and Wastewater capacity may be re-evaluated to determine if reserved capacity remains available. Other detailed approval elements are not retested.

All new development applications filed after the effective date of the Ordinance are subject to its provisions. Any development applications filed prior to the effective date will be reviewed based on the policies and requirements in effect at that time.

I. PROCESS

Determining whether or not a development project provides “adequate” public facilities is dependent on the Town’s standard level of performance of a public facility, which is referred to as a Level of Service (LOS). The impacts of a development project must not be so great that they negatively impact citizens’ quality of life beyond certain thresholds. The thresholds, or standards, have been established for various public facilities. Water and wastewater utilities and systems are established by the Town and are outlined in detail in the following sections.

The following are procedures used by the Town to ensure that adequate public facility systems exist during and after a development project:

- a) During review of any development project, including annexation, the Town will check to ensure that capacities of public water and wastewater systems are adequate, as defined in this document, through all phases, including at the completion of the development.
- b) To ensure that approved but not yet built development does not use all of the available capacity required to maintain adequate LOS, the Town will approve firm schedules for the implementation of multi-phase development projects. In other cases, the expiration dates established in the Planning and Zoning Regulations for the particular type of development application will determine the service commitment.
- c) If a development project does not provide adequate public facilities, it will either be denied or approved with special conditions.

This general framework is described in further detail in the body of this document.

I.A. Development Projects and Capacity Schedules

Table 2 outlines the stages at which different public facilities are evaluated against prior approvals and when capacity is reserved. If a developer fails to meet the predetermined service commitment for use of reserved capacity, APFO approval lapses.

TABLE 2: Facility Capacity Schedules

Facility Type	Capacity Schedule
Water/ Wastewater	For development projects utilizing Delmar services, Project Plan approval, Preliminary Subdivision Plan approval, Site Plan Approval and PWA execution reserves the capacity; at the building permit stage capacity may be re-evaluated and if available, is moved from the reserved to the used category.

A Public Works Agreement (PWA) or other binding service commitment attached to the Project Schedule, as defined in the Zoning Ordinance or as approved for multi-phase projects, is a critical component of the system for reserving capacity for proposed projects. The consequence of failure to comply with the Project Schedule or service commitment is that the developer is required to reapply for that capacity before proceeding with the project or with the uncompleted phases/portions of the project.

For a multi-phase project, the service commitment allocates the capacity for a set period of time for specific phases. Capacity allocations expire automatically according to the service commitment unless the original Approving Authority determines that an extension is warranted.

I.B. Approved, Not-Completed Development Projects

There are several projects in the Town that have received development approvals prior to this APFO. At the time these projects were approved, there was no requirement for a completion schedule, beyond what is agreed to in the PWA.

Development projects approved within Town limits, or served by Town Water/Wastewater utilities, are subject to review and implementation of adequate public facilities as specified in the following provisions. The length of time for which facilities are deemed adequate under these approvals may vary for each development. The Project Schedule for determining the adequacy of public facilities is as follows:

- a. The number of years specified in the original approved PWA or project schedule, if explicitly stated; or
- b. If the original approval does not specify the number of years that public facilities are deemed adequate, the expiration date ends five (5) years from the date of approval if all required public infrastructure has not been provided. The Approving Authority may approve an extension to implement the approved development project if/when the applicant demonstrates that development has proceeded with due diligence but that factors beyond the control of the developer (such as economic conditions or change in governmental regulations) have precluded development of the property within the approved time frame, or that the project is substantially complete.

If the adequate public facility approval is no longer valid, then the development must resubmit the relevant public facilities schedule, with credit for provided facilities, prior to approval of subsequent detailed applications, permit submissions, or final record plats.

I.C. Waiver Provisions

All developments having an impact of (1) EDU (250 GPD) or more on water or wastewater infrastructure shall be held to the APFO review process. Any development that has no impact on public utilities may be granted a waiver by the Approving Authority.

II. LEVELS OF SERVICE

II.A. Water and Wastewater Services

Public Utilities including water and wastewater (sewer) are defined as essential services by the Town of Delmar Planning and Zoning Regulations. The water and wastewater level of service (LOS) is as established by this document and the respective Approving Authority. For properties served by the Town the LOS is established in Chapter 25, Section 26 of the Delmar Planning and Zoning Regulations (Development Plan).

Applicants are required to obtain a written adequacy determination from the Approving Authority with the Town. Per Tables 1 and 2 of this document the adequate public facilities determination for water and wastewater service may be reevaluated prior to the issuance of a building permit. If the LOS is not met, the approving authority will state the conditions that must be met as part of their APFO approval.

In order to meet the desired LOS, the Town will periodically review the real cost of providing water and wastewater utility services to its users, including operation, maintenance and new connections.

The Approving Authority will make revisions to water and sewer rates, connection fees, and EDU costs, as required to meet their fiduciary responsibility to the utility customers and Town residents.

The calculation required to determine that the desired level of service is being met, and adequate public water and sewer facilities are being provided shall include calculations of the available capacity of the water and wastewater facilities. In general, the Town will utilize the States rule that when a utility’s calculated capacity (as described below) meets or exceeds 80% of its permitted capacity, the Town will begin planning efforts for increasing the utility's available capacity. Similarly, when a utility’s calculated capacity (as described below) meets or exceeds 90% of its permitted capacity, the Town will begin construction efforts for increasing the utility's available capacity. The Approving Authority will determine if these planning and construction efforts will be achieved through infrastructure equipment capacity increases, or through other system improvements, such as water conservation methods, inflow and infiltration improvements, or other infrastructure improvements.

For Wastewater, these calculations shall be based on the available capacity at the Delmar Wastewater Treatment Plant (WWTP) based on the 3-year average flow rate, or the current year-to-date, whichever is higher. The calculation will account for approved developments as listed on the *Approved and Pending Development List* (latest update) as well as an EDU reserve for infill lots and potential failed septic systems.

For Water, these calculations shall be based on the available production capacity at the Delmar Water Treatment Plant (including wells, treatment systems, and storage capacities) based on the 3-year average flow rate, or the current year-to-date, whichever is higher. The calculation will account for approved developments as listed on the *Approved and Pending Development List* (latest update) as well as an EDU reserve for infill lots and potential failed private water wells.

These Infill and failed utility reserves will be updated annually and stated on the *Approved and Pending Development List*. The Town of Delmar reviewing parties and Approving Authority reserve the right to adjust these numbers as circumstances change or new information becomes available.

III. SOURCES

1. Planning & Zoning Regulations - Town of Delmar (2015)
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IV. APPENDICES

Appendix A: Definitions (IN PROCESS)

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(Appendices available upon request)