Adequate Public Facilities Ordinances in Maryland:

Inappropriate Use ❖ Inconsistent Standards ❖ Unintended Consequences

A Report by

The National Center for Smart Growth Research and Education

University of Maryland

for the

Home Builders Association of Maryland

and the

Maryland National Capital Building Industry Association

April 20, 2006

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The purpose of this study is to examine the implementation and effects of APFOs and the relationship between APFOs and Maryland's Smart Growth policy. Thirteen counties and 12 incorporated municipalities in Maryland have enacted ordinances designed to assure that infrastructure necessary to support proposed new development is built concurrently with, or prior to, that new development. These Adequate Public Facilities Ordinances, or APFOs as they are commonly called, are designed to assure that public schools, roads, sewers, water for fire fighting, police and rescue response times and/or other infrastructure or services are "adequate" to support proposed new development. APFOs are timing devices that can be a useful tool for managing urban growth. When properly used, they can help ensure that needed facilities and services are available for new development and can signal to planners and elected officials what types of infrastructure, in which particular growth areas, are in need of additional capital improvement spending. They are intended to provide the rationale for prioritizing infrastructure investment decisions.

As of April 2005, 13 counties and 12 municipalities had implemented APFO ordinances. In terms of categories of services included in the 12 county APFOs, all cover schools and roads. While two counties limit their APFOs to those two service categories, nine others include water and sewage capacity; three include water for fire suppression in rural areas, two include police/fire/rescue services; and one includes recreation. Not only do categories of services included in the APFOs vary, but so do a) the standards used to gauge adequacy, and b) the approaches taken by the counties when a development proposal is judged as leading to service or facility inadequacy. Moreover, APFO standards in a given jurisdiction can and do change over time as local elected officials respond to the concerns of constituents, other stakeholders and changing public policy objectives.

This study finds that APFOs in Maryland are often poorly linked to capital improvement plans, and moratoria can last for indefinite periods of time. Further, the consequences of APFOs in Maryland are often unintended and their effects frequently contrary to the broader land use policies of the state. In many

counties that employ APFOs, they have become *the* dominant planning tool rather than just one of many tools a county might use to manage its growth.

When roads, schools or other infrastructure are judged to be insufficient to meet the standards established within APFOs, the result is often a moratorium on building until the infrastructure is ready to come on line. Often, the only way these moratoria can only be lifted is through the payment of impact fees by developers. These fees are, in turn, passed through to new home buyers. While this practice is justified by some observers as being consistent with the "benefit standard" (i.e., those who benefit from a particular service or facility should be the ones to pay for it), it ignores the benefits that accrue to the community from new development. Another perspective is that it places a disproportionate burden for the cost of new infrastructure on new home buyers. Under the latter perspective, if new development is consistent with a jurisdiction's comprehensive plan, then it is appropriate for the funding for needed services and services be borne by the jurisdiction as a whole.

The study also finds that APFOs are applied in ways that often deflect development away from the very areas designated for growth in county comprehensive plans to rural areas never intended for growth, to neighboring counties, or even to adjacent states. An analysis of the effects of APFOs on housing in Harford, Howard, and Montgomery counties found that over a three-year period, APFOs deflected as much as 10 percent of the new home development that otherwise would have been built within the PFAs of those counties. It is likely that the cumulative effect is that the amount of housing available in those counties is reduced, housing prices are inflated, and the growth simply moves elsewhere.

APFO consistency with a local comprehensive plan is possible only if adequate funding is allocated to provide necessary infrastructure in the plan's designated areas. That, however, is often not the case. In short, APFOs appear to be fueling the same pattern of development the state's Smart Growth policy is intended to curtail. This result appears to be at odds with both the intent underlying the enactment of local Adequate Public Facilities Ordinances and the land use goals of the state.

PART I – OVERVIEW

The purpose of this study is to examine the implementation and effects of APFOs and the relationship between APFOs and Maryland's Smart Growth policy. The overall goal is to determine whether, the degree to which, and reasons why, APFOs complement or frustrate development within Maryland's Priority Funding Areas, which are growth areas eligible for state financial assistance under Smart Growth.

GROWTH MANAGEMENT IN MARYLAND

For the past 40 years or more, Maryland has developed a reputation as a leader in efforts to manage growth and development. From the creation of the State Planning Act a half century ago through the enactment of various measures to protect the Chesapeake Bay and the state's natural areas, state and local elected leaders have consistently demonstrated a desire for orderly and environmentally sensitive growth.

Through the Maryland Economic Growth, Resource Protection and Planning Act of 1992, the Smart Growth and Neighborhood Conservation initiative of 1997, and the Priority Places initiative of 2003, Maryland governors and legislative leaders have set a statewide framework for balanced growth. These initiatives have consistently supported the concept of targeting new growth, whenever possible, to existing communities – to build within the existing development footprint, rather than on a "green field" site, whenever possible. The 1992 "Growth Act" and subsequent legislation, for example, established eight "visions" for how growth should be managed in Maryland and required these "visions" to be addressed in local comprehensive plans. Five of those eight are particularly relevant to the implementation of APFOs:

1 – Development is concentrated in suitable areas;

3 – In rural areas, growth is directed to existing population centers and rural resource areas are protected;

6 – To assure achievement of visions (1) through (5), economic growth is encouraged and regulatory mechanisms are streamlined;

7 – Adequate public facilities and infrastructure under the control of the county or municipality are available or planned in areas where growth is to occur;

8 – Funding mechanisms are addressed to achieve these visions.

Building on these "visions," the Smart Growth Areas Act of 1997 created a regime in which state spending on infrastructure and other growth related expenditures are restricted to geographic areas specifically designated for urban growth called "Priority Funding Areas" (PFAs). By statute, PFAs include the traditional urban areas of the State: All 157 incorporated municipalities in the State, including Baltimore City; the heavily developed areas inside the Baltimore and Washington beltways; neighborhoods that have been designated by the Maryland Department of Housing and Community Development for revitalization; Enterprise Zones; and Heritage areas. In addition, counties may designate other areas as PFAs as long as those areas meet minimum state criteria for density, provision of water and sewer services, and the county's overall PFA plan is consistent with the county's 20-year growth projections.

To accomplish the goal of targeting new growth to existing communities, the state and many jurisdictions have offered financial incentives, attempted to expedite permitting or other approvals, and/or made roads, schools or other infrastructure available to support proposed new growth in designated areas.

ADEQUATE PUBLIC FACILITIES ORDINANCES

Since the late 1960s, jurisdictions in several states have adopted Adequate Public Facilities Ordinances, a growth management tool that attempts to link the timing of a new development to the availability of facilities needed to service it. In jurisdictions with APFOs, approval for a development project depends on whether the project meets certain standards regarding adequacy of selected facilities and services needed to support that development. If the jurisdiction's schedule for providing capital improvements is not adequate for the proposed development, the project may not proceed unless the developer chooses to build and/or finance the needed facilities or services to meet the required standards.[1]

In 1969, Ramapo, N.Y., became one of the first municipalities in the United States to implement an APFO, and New York's highest court upheld the constitutionality of the strategy in *Golden vs. Planning Board of the Town of Ramapo*.[2] By 1991,

[1] Porter, Douglas R. 1997. *Managing Growth in America's Communities.* Washington, DC: Island Press. . White, S. Mark. 1996. *Adequate Public Facilities and Transportation Management*. Planning Advisory Service Report 465. Chicago: American Planning Association.
[2] 324 N.Y.S. 2d 178 (N.Y. 1971)

more than one-third of California's municipalities had APFOs.[3] Local APFOs are required under the state growth management systems of Washington and Florida, and are currently used by 13 of Maryland's 23 counties and by 12 of its municipalities.

APFOs in Maryland

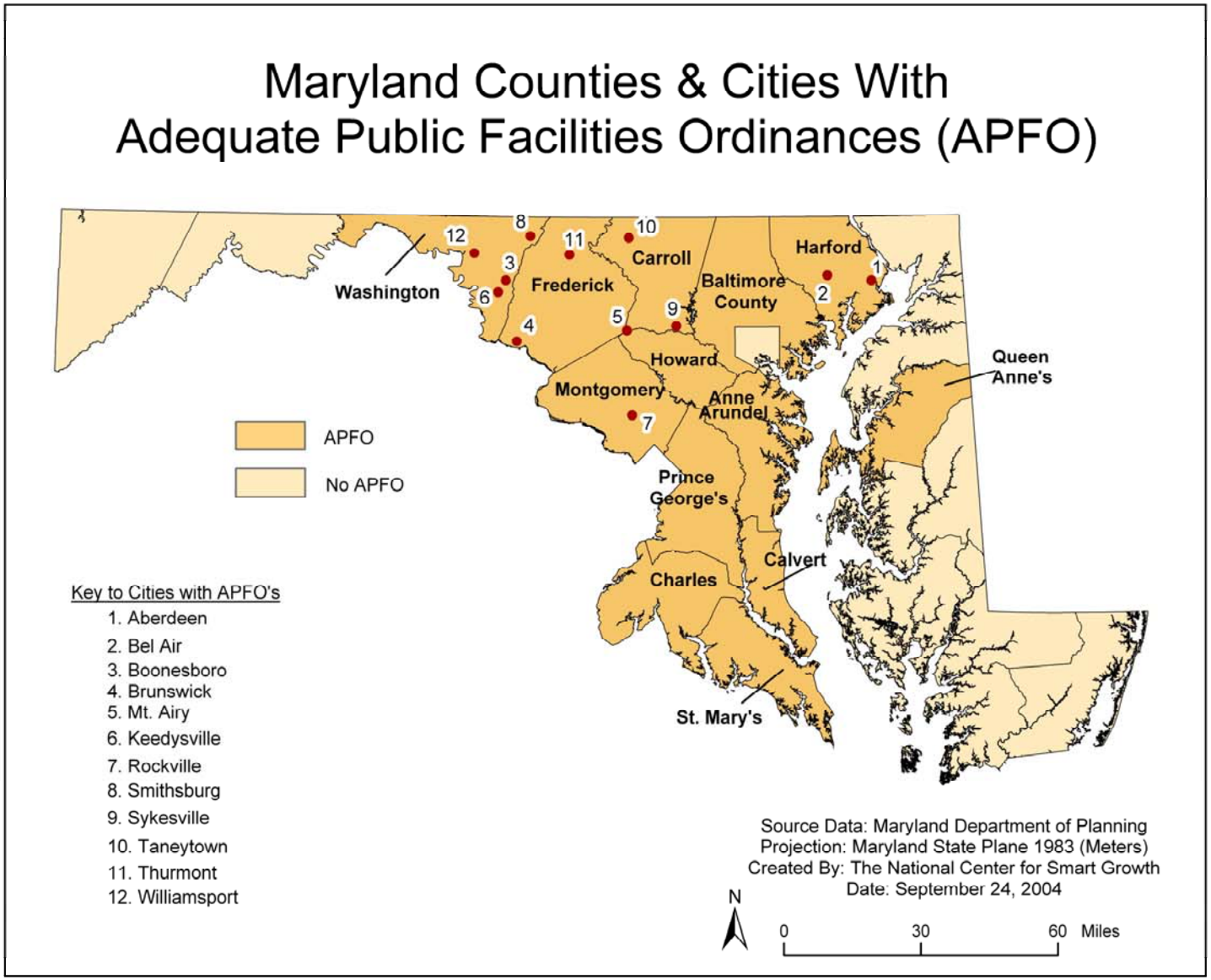
For a number of reasons, Maryland is a state well-suited to incorporate APFOs into local planning. First, major responsibility for land use planning rests with the state's 23 counties and Baltimore City. While there are 157 cities and towns in the state, a relatively small number of them exercise planning and zoning authority. Thus, unlike many other states, the number of jurisdictions with land use authority in Maryland is relatively small. Second, local governments in Maryland are required to prepare six-year capital improvement programs that are updated annually and also to revise their comprehensive plans every six years. Counties must prepare 10-year water and sewer plans that include the needs and plans for cities/towns within their boundaries. School districts are coterminous with county boundaries, county elected officials have final approval over all school budgets, and county revenues help fund schools.[4] Thus, also unlike many other states, counties have the capacity to coordinate infrastructure and school funding so that development in Smart Growth areas is provided with needed services and facilities.

By 2005, 13 Maryland counties and 12 municipalities in Maryland had adopted APFOs; the location of those cities and counties is shown in Figure 1 on the following page.

[3] Porter 1997, ibid.

[4] Avin, Uri. 2004. "On the Trail of the Holy Grail: Maryland's APFO Lessons." Presentation to the American Planning Association National Conference. April.

Figure 1


Maryland Counties & Cities With
Adequate Public Facilities Ordinances (APFO)
Washington
Frederick
Carroll
Baltimore County
Harford
Howard
Montgomery
Anne Arundel
Queen Anne's
Prince George's
Calvert
Charles
St. Mary's
APFO
No APFO
Key to Cities with APFO's
1. Aberdeen
2. Bel Air
3. Boonesboro
4. Brunswick
5. Mt. Airy
6. Keedysville
7. Rockville
8. Smithsburg
9. Sykesville
10. Taneytown
11. Thurmont
12. Williamsport
Source Data: Maryland Department of Planning
Projection: Maryland State Plane 1983 (Meters)
Created By: The National Center for Smart Growth
Date: September 24, 2004
N
0
30
60 Miles

The Maryland jurisdictions with APFOs are listed in Table 1, below. The first APFO was adopted in Montgomery County in 1973, and the most recent APFO was adopted by three Washington County municipalities in 2005. All counties that have APFOs include schools and roads and 10 of the 13 counties include water and sewer facilities. The table shows that of the 12 municipalities with APFOs, three are located in Washington County and the other nine are located in four counties – Carroll, Frederick, Harford and Montgomery.

Table 1. Jurisdictions with Adequate Public Facilities Ordinances in Maryland: First Year of Implementation and Facilities / Services Included, as of September 2005

Jurisdiction	Year	Facilities / Services Included	Jurisdiction	Year	Facilities / Services Included
Counties			**Municipalities (& County)**		
Anne Arundel	1978	Schools, roads, water, sewer, water for fire fighting	Aberdeen (Harford)	1999	Schools, roads, water, sewer
Baltimore	1979	Schools, roads, water, sewer, storm water, recreation	Bel Air (Harford)	1998	Schools
Calvert	1988	Schools, roads	Boonesboro (Wash.)	1993	Schools
Carroll	1998	Schools, roads, water, sewer, police, fire/rescue	Brunswick (Frederick)	1998	Schools, roads, water, sewer
Charles	1992	Schools, roads, fire suppression in rural areas	Keedysville (Wash.)	2005	Schools
Frederick	1991	Schools, roads, water, sewer	Mt. Airy (Fred., Carr.)	1989	Schools, roads, water, sewer, fire/rescue
Harford	1991	Schools, roads, water, sewer	Rockville (Montgomery)	2003	Schools, roads, water, sewer, fire/rescue
Howard	1992	Schools and roads	Smithsburg (Washington)	2005	Schools
Montgomery	1973	Schools, roads, water, sewer, fire, health services	Sykesville (Carroll)	1988	Schools, roads, water, sewer, police/fire/rescue, health services, solid waste disposal, storm drainage
Prince George's	1981	Schools, roads, water, sewer, police/fire/rescue	Taneytown (Carroll)	1995	Schools, roads, water, sewer, storm drainage
Queen Anne's	2001	Schools, roads, water, sewer	Thurmont (Frederick)	1995	Schools, roads, water, sewer
St. Mary's	1990	Schools, roads, water, sewer, fire supp., storm drain.	Williamsport (Wash.)	2005	Schools
Washington					

Table 2, below, compares Maryland counties that have APFOs with those counties that do not, in terms of population size and decennial population growth rates since 1960. As would be expected, the 11 counties with the largest populations in 2000 all have APFOs. In addition, counties with the largest population growth rates during at least two of the decennial periods are more likely to have APFOs. Thus, while Queen Anne's County has smaller population than four counties without APFOs, that county's growth rate exceeded all of the non-APFO counties in the 1970s and 1980s, and was lower than only three non-APFO counties in the 1990s.

Table 2. Maryland Counties with and without APFOs in 2005: Population in 2000 and Decennial Growth Rates Since 1960

		Growth Rate						Growth Rate			
Location	**2000 Pop.**	**1960 - 1970**	**1970 - 1980**	**1980 - 1990**	**1990 - 2000**	**Location**	**2000 Pop.**	**1960 - 1970**	**1970 - 1980**	**1980 - 1990**	**1990 - 2000**
Maryland	5,296,486	26.5%	7.5%	13.4%	10.8%	**Without APFOS**					
						Allegany County	74,930	26.5%	7.5%	13.4%	10.8
With APFOs						Caroline County	29,772	1.6%	17.0%	16.8%	10.1%
Anne Arundel Co.	489,656	44.0%	24.6%	15.2%	14.6%	Cecil County	85,951	10.1%	13.4%	18.1%	20.5%
Baltimore County	754,297	26.1%	5.6%	5.6%	9.0%	Dorchester County	30,674	-0.9%	4.1%	-1.3%	1.4%
Calvert County	74,563	30.7%	67.5%	48.3%	45.1%	Garrett County	29,846	5.2%	23.4%	6.2%	6.1%
Carroll County	150,897	30.7%	39.6%	28.8%	22.3%	Kent County	19,197	4.3%	3.4%	6.9%	7.6%
Charles County	120,546	46.4%	52.6%	39.0%	19.2%	Somerset County	24,747	-3.6%	1.4%	22.2%	267.8%
Frederick County	195,277	18.1%	35.2%	30.9%	30.0%	Talbot County	33,812	9.8%	8.1%	19.3%	10.7%
Harford County	218,590	50.4%	26.5%	24.8%	20.0%	Wicomico County	84,644	10.6%	19.0%	15.2%	13.9%
Howard County	247,842	71.3%	91.5%	58.0%	32.3%	Worcester County	46,543	3.0%	26.4%	13.4%	32.9%
Montgomery County	873,341	53.3%	10.8%	30.7%	15.4%						
Prince George's County	801,515	84.8%	0.7%	9.5%	10.0%						
Queen Anne's County	40,563	11.2%	38.5%	33.1%	19.5%						
St. Mary's County	86,211	21.8%	26.4%	26.8%	13.5%						
Washington County	131,923	13.8%	8.9%	7.3%	8.7%						

RESEARCH OBJECTIVES AND APPROACH

The research reported here includes the results of specific case studies in 12 of the 13 counties with APFOs (all except Washington County), six in the Baltimore metropolitan region (Anne Arundel, Baltimore, Carroll, Harford, Howard and Queen Anne's) and six in the Washington, D.C., metropolitan region (Calvert, Charles, Frederick, Montgomery, Prince George's, and St. Mary's). The analysis includes for each of these 12 counties a review of APFO implementation, impact fee or excise tax policies (if any), and the APFO's relationship to the local comprehensive plan. This review was augmented by dozens of interviews with county planners and with building industry professionals familiar with the county's APFO.[5]

The report also includes the results of a quantitative assessment of the effects APFOs have on the construction of new housing in three counties, Harford, Howard, and Montgomery. This assessment includes a characterization of the location of moratoria under APFOs, relative to PFAs, and an estimate of the extent to which moratoria deflect growth out of Priority Funding Areas. The estimate of growth reflection is based on a method of "statistical matching." In such a method, school districts or "growth policy" areas are matched using statistical techniques. Statistically matched pairs are then classified into "treatment" and "control" areas, where treatment areas experience building moratoria and control areas do not. Because the statistical matching controls for all other pertinent factors that influence the rate of growth, the difference in the rate of housing construction between the treatment and control areas can be attributed to the effect of the building moratoria. Extrapolating these effects over all areas in moratoria for a given time period yields the total effects of moratoria under APFOs.[6]

[5] Each jurisdiction, however, has its own APFO story. The case studies for each of the 12 counties provide extensive detail on the particular historical context of each jurisdiction's APFO, the specific services and/or facilities included in its APFO, and how the facilities and service categories -- and the applicable "adequacy" standards -- have changed over time, and why. See, Cohen, James. 2006, "Adequate Public Facilities Ordinances in Maryland: An Analysis on their Implementation and Effects on Development in the Washington Metropolitan Area," National Center for Smart Growth Working Paper, available at www.smartgrowth.umd.edu, and see, Cohen, James. 2006, "Adequate Public Facilities Ordinances in Maryland: An Analysis on their Implementation and Effects on Development in the Baltimore Metropolitan Area," National Center for Smart Growth Working Paper, available at www.smartgrowth.umd.edu

[6] More on the overlap between moratoria areas and on the extent to which APFOS deflect growth can be found in Bento, Antonio, 2006, "The Effects of Moratoria on Residential Development: Evidence from Harford, Howard, and Montgomery County", National Center for Smart Growth Working Paper, available at www.smartgrowth.umd.edu

PART II – APFOS IN PRACTICE

GENERAL RESULTS:

The application of APFOs differs from jurisdiction to jurisdiction in terms of the following: what facilities or standards are covered; what constitutes "adequacy" with regard to facilities or services; what approaches are taken when a development proposal is judged as leading to service or facility inadequacy; and the degree to which various jurisdictions link their APFOs to their capital improvement plans to assure that infrastructure and services are put in place in a timely fashion to support development in areas designated for growth in county comprehensive plans.

Case studies of 12 of the 13 counties in Maryland with APFOs show divergence in APFO design and implementation, and in the effort taken by the counties in generating funding for infrastructure needed to support growth in PFAs. The 12 counties can each be characterized by 1) the degree of strictness of the school APFO standards (since it is school adequacy that has caused most moratoria in growth areas); and 2) the degree to which the county is proactive in generating funding to increase school capacity or other major, local growth-limiting factors; and c) whether the county has a defined waiting period after which a given delayed development may proceed, and the length of the waiting period.

For purposes of the typology, "strict" school APFO counties are those that either a) define acceptable enrollment thresholds at less than 105% of state-rated capacity; b) prevent relocatable classrooms from being considered as potential classrooms; and/or c) do not allow for borrowing capacity from adjacent school districts to relieve otherwise moratorium-inducing "overcrowding" in a given district. "Flexible" school APFO counties are those that either a) define acceptable, projected enrollment thresholds above 110% of state-rated capacity); b) allow relocatable classrooms to be considered as acceptable to prevent development moratorium; and c) allow for borrowing of school capacity from adjacent school districts to relieve otherwise moratorium-inducing enrollment projections.

In terms of the degree to which each of the counties is proactive in generating funding for needed infrastructure, "resource-limiting" APFO counties are those in which APFO capacity shortfalls do not appear to inform the CIP directly; infrastructure funding sources are relatively limited because of low- or non-existent impact fees or excise taxes and a lack of other taxes dedicated for schools (such as from the real estate transfer tax); and/or a property tax cap that limits available resources. "Resource-expansive" APFO counties are those in which the CIP is directly responsive to APFO capacity shortfalls; and elected officials have generated additional funding sources dedicated for infrastructure, and/or have implemented "pay-and-go" systems or development rights and responsibilities agreements to help pay for otherwise growth-limiting infrastructure.

In terms of waiting periods, "Indefinite waiting period" counties are those in which the APFO allows for a development proposal to be in moratorium for an unspecified period of time. "Long" waiting period counties are those in which the waiting period is more than 5 years after initial, APFO-induced subdivision denial. "Short" waiting period counties are those in which the waiting period is less than 5 years after initial, APFO-induced subdivision denial. "No" waiting period means that the county does not specify a waiting period and is experiencing no APFO-induced moratoria.

The case studies show that the "strict" school APFO counties that are resource-limiting and have indefinite or long waiting periods are much more likely to be undergoing building moratoria in October 2005 than are "flexible' school APFO counties that are resource expansive and have no waiting periods. The following list classifies the 12 counties into the categories based on the case studies.

Anne Arundel: Strict School APFO County; Resource-Limiting, Long Waiting Period.

Baltimore: Flexible APFO School County; Resource Expansive; No Waiting Period.

Carroll: Somewhat Flexible APFO School County; Resource Limiting; Indefinite Waiting Period.

Calvert: Strict School APFO County; Somewhat Resource-Limiting; Long Waiting Period.

Charles: Somewhat Flexible APFO School County; Resource Generating; Indefinite Waiting Period (unless the developer uses a "pay-and-go" option discussed in the case study).

Frederick: Inflexible APFO School County; Somewhat Resource Limited; No Waiting Period.

Harford: Strict School APFO County; Resource Limiting; Indefinite Waiting Period

Howard: Flexible School APFO County; Resource Limited, Short Waiting Period (once project has a Growth Allocation, a term explained in the case study).

Montgomery. Strict School APFO County; Resource Generating; No Waiting Period.

Prince George's: Flexible School APFO County; Somewhat Resource Limited; No Waiting Period.

Queen Anne's: Flexible School APFO County; Resource Limited; No Waiting Period.

St. Mary's: Somewhat Inflexible School APFO County; Resource Limited; No Waiting Period (but have moratoria).

More detail on the counties' APFO design and implementation is contained in the individual case studies.

In general, we found that while there are some positive aspects of APFO implementation in many of the 12 counties, that overall there are problems with: (1) inappropriate use (i.e. over-reliance on the APFO as a planning tool), (2) inconsistent standards, and (3) unintended consequences. More specifically, we found:

<u>Inappropriate use.</u>

- In many counties, APFOs have become *the* controlling planning tool rather than just one of many tools a county might use to manage growth.
- Adequate funding for infrastructure or services often is neither linked to nor provided for projects within the

development envelope identified in comprehensive plans, periodically leading to building moratoria that last for years and, in some counties, last indefinitely.

Inconsistent Standards.

- Standards for school and road adequacy vary extensively between counties and in some cases within counties over time. In some instances, these varied standards reflect the different level of development within an area, i.e., urban vs. rural, and sometimes were specifically requested by the building industry. This is sometimes true, for example, with regard to level of service standards for roads or response time standards for emergency services in urban areas vs. rural areas.
- Some counties respond to school capacity limitations, and avoid moratoria, by drawing new school service-area boundaries. Others impose moratoria in some school service areas even when there is more than adequate capacity in adjacent schools districts. Others, such as Baltimore and Charles Counties allow for relocatable classrooms to be counted in capacity determinations in order to avoid a school-based moratorium in a given area.

Unintended consequences.

- A common problem with APFOs across the country is that excess public service capacity often exists in places unintended for urban growth. APFO-induced moratoria in Priority Funding Areas exacerbate this problem.
- APFOs are being applied in ways that often deflect development away from the very areas designated for growth in county plans to other counties, other states, and often to rural areas never intended for growth.
- These consequences appear to be at odds with both the intent underlying the enactment of local Adequate Public Facilities Ordinances and the land use goals of the state as expressed in the 1992 Growth Act, the 1997 Smart Growth Areas Act, and other state land use measures.

APFOs vs. "Good Planning"

Because APFO implementation differs so greatly from county to county, we compared the APFO performance in each of the subject counties against a series of criteria for "good planning." For example, in a county practicing "good planning," an APFO implementation would exhibit the following characteristics:

1. The local comprehensive plan provides guidance for planning regulations, including the APFO. Accordingly, the APFO favors growth within PFAs rather than outside.
2. APFO standards are reasonable.
3. APFOs are justly administered.
4. The APFO feedback informs the Capital Improvement Program.
5. The APFO contributes to development decisions that are predictable, fair and cost-effective.
6. There is tight coordination between the planning department and the board of education, so that school-related decisions are consistent with the APFO and the comprehensive plan.
7. There are reasonable funding options, aside from the CIP, available to provide needed facilities/services in PFAs.

We found that of the six counties studied from the Baltimore region, only Baltimore County tested well against the criteria for "good planning." This is largely attributable to the county's consistent adherence to its long-established growth boundary, known as the Urban-Rural Demarcation Line (URDL), and the County's commitment to fund infrastructure to support growth inside the URDL.

In the Washington region, there is more variation in the degree to which comprehensive plans guide APFO and CIP implementation, and to which APFOs favor growth inside PFAs. Every county, for example, has relaxed road standards in its designated growth areas or town centers than in rural areas. Montgomery and Prince George's both charge lower impact fees within key growth areas. However, unless there is adequate infrastructure/services capacity within PFAs and the school districts serving them, large portions of designated growth areas will be in moratoria (as is the case in Calvert and St. Mary's counties and, until recently, in Montgomery and Prince George's).

Like counties in the Baltimore region, some counties in the Washington region too frequently allow APFOs to become *the* controlling planning tool in the jurisdiction. Prince George's County offers just one example of why this can be a problem. Prince George's restricts growth in its "Rural Tier" by making its APFO standards for schools, roads and public safety more favorable for new development within its "Developed Tier." But when the county tightened the standard for emergency response time under its APFO, ostensibly in reaction to resident safety concerns, the whole county was shut down to residential subdivision review for more than eight months.

APFOs and Infrastructure Funding

APFO consistency with comprehensive plans only works if adequate funding is allocated to provide the infrastructure needed to support development in the plan's growth areas. Counties that have fallen short in doing so, such as Anne Arundel, Carroll and Harford in the Baltimore region, and in Calvert, St. Mary's, Montgomery and Prince George's in the D.C. region, were more likely to see building moratoria applied to their growth areas.

Problems of infrastructure funding are compounded by uncertainty about when, if ever, a moratorium will be lifted. Of the six counties studied in the Baltimore region, only two – Anne Arundel and Howard – have a provision that limits the length of a moratorium: Anne Arundel's wait period is six years; Howard's can be as long as nine. In Carroll and Harford counties, residential projects can be delayed. The time limit on moratoria in Anne Arundel County was not put into effect until July 2004, and then only after the county lost a court case in which school officials admitted in court that they knowingly used incorrect enrollment figures as the basis for denial of subdivision approval.

In the Washington region, the requirements are more complex and varied. A moratorium based on lack of school capacity can last up to seven years in Calvert County and indefinitely in Charles County. A developer in Charles County may attempt to lift a moratoria by choosing to participate in a "Pay-and-Go" arrangement, but the county is under no obligation to accept such an agreement and it does not relieve the applicant of the requirement to comply with the code. Proposed developments in Frederick County can be held up indefinitely. In Frederick,

developers will do a "pre-test" for school capacity and, if they fail, they will not even apply for review.

In Montgomery County, one way a building moratoria can be lifted is by having developers pay school impact fees: $8,000 to $12,000 for a single family home depending on size and $12,500 per student for a "school facilities payment" if projected enrollment is above the county standard (100% of capacity for high schools, 105% for elementary and middle schools) but below 110%.

St. Mary's County charges a school impact fee of $4,500 and has no waiting period, yet the Leonardtown school area has been in moratorium since December 2004.

When infrastructure is insufficient, county rules often make it difficult for developers to pay for the infrastructure themselves. Eleven of the 12 counties studied (all except Charles) allow for developers to mitigate or pay in-lieu of fees for roads. In the Baltimore region, none of the six counties allows developers to mitigate for schools – other than by paying impact fees – unless the developers agree to pay for construction of the entire school.

In the Washington region, other than through the use of impact fees only Charles and Prince George's Counties allow developers to mitigate for schools. In Charles County this is done through its "Pay-and-Go" system. In Prince George's County, it is done through a development surcharge (see below). Frederick County's APFO allows for developers to construct new schools, but does not allow the developer to pay the county an amount proportionally equal to the school building space needed for the number of students generated by his/her residential project.

When roads, schools or other infrastructure are judged to be insufficient to meet the standards established within APFOs, the result is often a moratorium on building until the infrastructure is ready to come on line. Often, the only way these moratoria can be lifted is through the payment of impact fees by developers. But these fees are, in turn, passed through to new home buyers. While this practice is justified by some observers as being consistent with the "benefit standard" (i.e.

those who benefit from a particular service or facility should be the ones to pay for it), this view ignores the benefits that accrue to the community from the new development. Another perspective is that it places a disproportionate burden for the cost of new infrastructure on new home buyers. Under the latter perspective, if new development is consistent with a jurisdiction's comprehensive plan, then it is appropriate for the funding for needed services and services be borne by the jurisdiction as a whole.

APFOs and CIPs

Finally, there is little evidence in either the Washington region or the Baltimore region that counties are using the APFOs to inform decisions about which projects should receive priority funding in county capital improvement programs. Harford County, for example, expanded the capacity of a school district outside the county's building envelope despite the need for school capacity increases in the city of Bel Air, which is in the heart of the county's designated growth area. Among the six Baltimore area counties, only Baltimore County appeared to respond directly to shortfalls identified by their APFO by realigning the projects within their construction program.

APFOS AND SCHOOL FUNDING

County efforts to assure that school facilities are adequate to meet the needs of new development appear to be the most politically difficult, pitting school boards against county councils and educators and parents against builders and developers. The standard that defines "at capacity" varies from county-to-county. Schools in Calvert, Carroll, Frederick and Montgomery (for high schools) are "adequate" only if enrollment is under 100% of their rated capacity; in St. Mary's it is 107%; in Baltimore and Howard counties, it is 115%; in Queen Anne's County it is 120%. Charles County uses a calculation whereby schools can be judged to be at capacity between 100% and 120% of the state-rated capacity.

Few of the counties reported having excellent communication between the planning department and the school board. In computing whether schools are under or over capacity, only two of the 12 counties studied, Baltimore County and Charles County, allow potential space from the use of relocatable classrooms to be counted as available capacity. Prince George's County employs AFPO capacity tests only for planning purposes and charges a school surcharge of either

$7,412 or $12,706 depending on location of development. The amount of the Prince George's County surcharge is adjusted every July 1 based on changes in the Consumer Price Index for urban areas and has increased every year since it was first imposed.

APFOs and School Redistricting

The most volatile school adequacy issue involves the question of whether schools should be redistricted to even out enrollment by shifting students from high enrollment schools to schools that are at least temporarily under capacity. This would avert moratoria and accommodate growth, but usually angers parents, who often move to areas so their children can attend certain schools. As a result, local officials are usually left to choose between three alternatives, none politically appealing: 1) redistrict their schools on an almost annual basis; 2) respond to the complaints of parents by imposing a building moratoria; or 3) raise taxes and fees to pay for the additional necessary capacity.

Howard County has resorted to redistricting its schools in recent years to deal with capacity imbalances, but Anne Arundel County has steadfastly refused even though there are several thousand empty school seats. By refusing to redistrict, Anne Arundel County has had to impose a building moratoria in 35 percent of its elementary school districts and nearly 42 percent of its high school districts. This unwillingness to redistrict has become a major factor in shaping the county's growth.

Growth Deflection in Harford, Howard and Montgomery

In looking specifically at the effect APFOs have had on residential housing in Harford, Howard and Montgomery counties, we concluded that over a three-year period, APFOs were responsible for deflecting as much as 10 percent of the new homes that would have been constructed within the PFAs of those counties.

It is impossible to say precisely where this deflected growth moved, but it is safe to assume that most if not all of the deflected growth was simply built elsewhere. The cumulative effects are that the amount of available housing stock in those three counties was reduced; prices for the remaining housing

stock increased; and growth simply moved elsewhere, perhaps to exurban counties in Maryland or across state borders into West Virginia, Pennsylvania or Delaware.

The cause of this deflection in all three of the studied counties is the substantial overlap between the areas affected by the county's APFO policies and the county's Priority Funding Areas. The intentional high growth characteristics of a PFA make them precisely the type of areas where APFOs are most likely to be applied.

In Harford County, for example, 15% of the area under moratoria in 1995 was within the county's Priority Funding Area, but represented only 8% of the entire county. Even when the area under moratoria was reduced by 1997, the percentage overlapping the PFAs remained relatively high. Similarly, in Howard County, the area under moratoria in 1995 represented 25% of the county's PFA . Similar results were found in Montgomery County (See figures 2, 3, and 4 on the following pages). It is difficult to generalize about the amount of deflection in other counties with APFOs because there is such a broad variance in how long moratoria in each county are likely to last.

This key finding, however, demonstrates the lack of coordination between the state's Priority Funding Area policy and moratoria policies, at least in these three counties. While the first aims to promote growth in designated areas, the second serves to deflect it elsewhere.

Figure 2

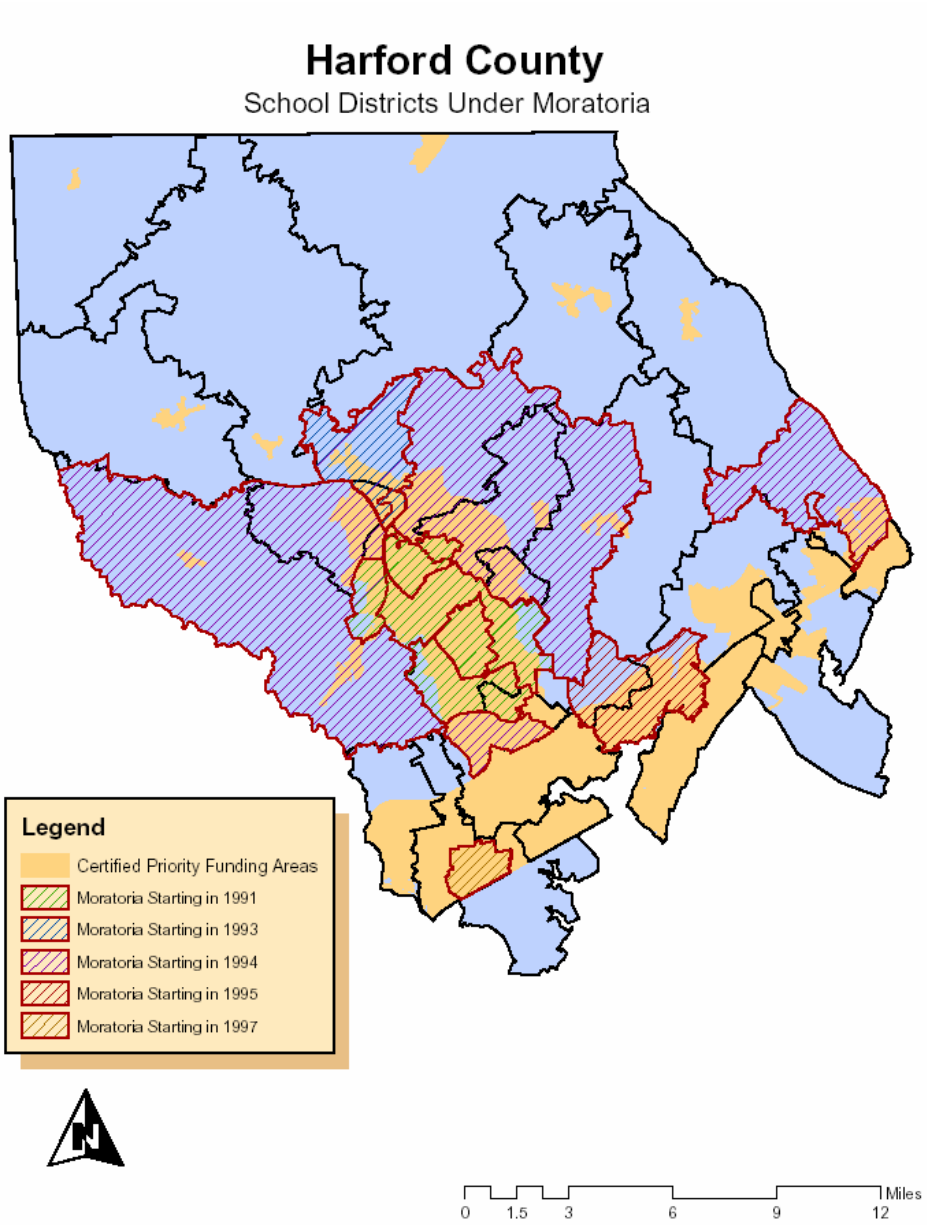

Harford County
School Districts Under Moratoria
Legend
Certified Priority Funding Areas
Moratoria Starting in 1991
Moratoria Starting in 1993
Moratoria Starting in 1994
Moratoria Starting in 1995
Moratoria Starting in 1997
N
0 1.5 3 6 9 12
Miles

Figure 3

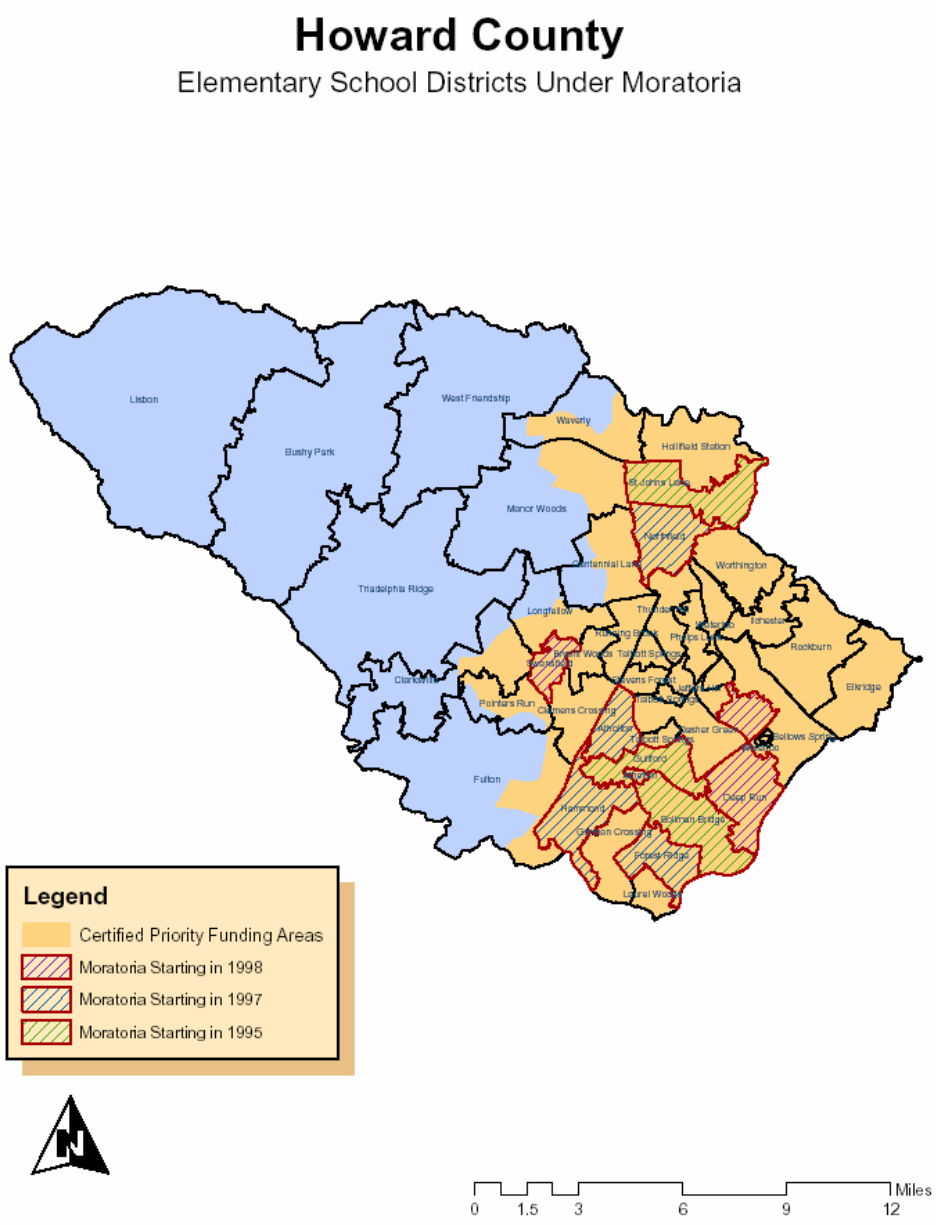
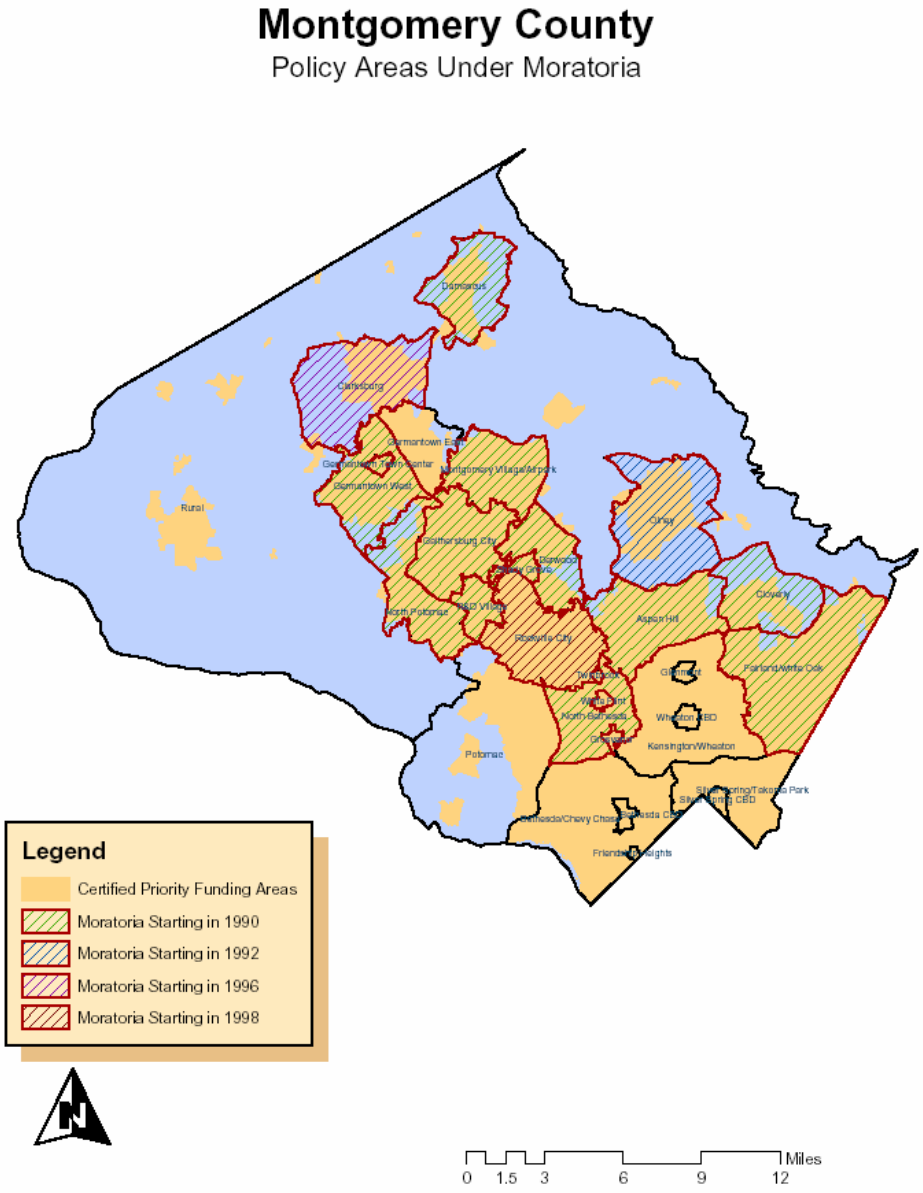

Howard County
Elementary School Districts Under Moratoria
Lisbon
Bushy Park
West Friendship
Waverly
Hollifield Station
Manor Woods
Worthington
Triadelphia Ridge
Longfellow
Rockburn
Elkridge
Pointers Run
Fulton
Deep Run
Legend
Certified Priority Funding Areas
Moratoria Starting in 1998
Moratoria Starting in 1997
Moratoria Starting in 1995
0
1.5
3
6
9
12
Miles

Figure 4


Montgomery County
Policy Areas Under Moratoria
Legend
Certified Priority Funding Areas
Moratoria Starting in 1990
Moratoria Starting in 1992
Moratoria Starting in 1996
Moratoria Starting in 1998
N
0 1.5 3 6 9 12
Miles

PART III – CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

APFOs should only be *one* of the tools used by jurisdictions to manage growth, not the *primary* tool. If areas are designated for growth in the comprehensive plan, it is the jurisdiction's responsibility to ensure that new development and revitalization in those areas is served with adequate infrastructure and facilities. While APFOs have often resulted in slowing growth to maintain level of service standards, when sufficiently funded they can also be used to guide development consistent with Smart Growth principles.

To accomplish that will take political will, public discussion of what 'adequate' means for a given service or facility and how those standards can be achieved, continuous monitoring of growth and public service capacity, and thoughtful financing that incorporates social equity concerns.

RECOMMENDATIONS

Adequate Public Facilities Ordinances have been in use in Maryland for 33 years. They are not a new growth management tool, although the way they are implemented has evolved over time and their use has gradually spread to about half of Maryland's counties. Yet, APFOs in many counties are being used as more of a development delay or prevention device than a timing tool. Rather than consistently supporting growth areas by assuring that necessary infrastructure is funded and built, APFOs are too often used to justify building moratoria that deflect growth to rural areas or even to other states. The result is often contrary to the goals of local comprehensive plans and the smart growth goals of the state.

In 1999, the Maryland Economic Growth, Resource Protection and Planning Commission studied APFOs and developed a series of recommendations that seem even more valid today than they did seven years ago. Many of them are reflected in the recommendations below. Given the way APFOs have come to be administered in Maryland, we recommend the following:

1. The General Assembly should consider amending APFO enabling legislation to add the following local governmental powers:
   a) Permit local governments to establish Special Tax Districts or TIF districts to raise funds for needed facilities; and
   b) Permit local governments to establish other mechanisms, such as infrastructure funding "banking" programs, that accumulate developer contributions to be used to fund needed improvements.

2. The General Assembly should also consider amending Article 66-B to clarify that local governments must:
   a) Establish a limit on the length of time allowed for an APFO-based moratorium or delay in a development proposal within a PFA;
   b) Waive APFO requirements on certain workforce housing and affordable housing, infill or revitalization projects within PFAs; and
   c) Prepare and publish a report every two years identifying facilities within PFAs that do not meet local APFO standards, and any improvements to those facilities that have been scheduled and/or proposed in the jurisdiction's Capital Improvement Program.

3. The State of Maryland should create an infrastructure financing program for growth areas that would be used for infrastructure improvements within PFAs. All projects financed through this fund, including schools, must be within a PFA and be identified in the local government's Capital Improvement Plan. Moreover, a match from the local government would be required. Specific priority from the fund would be given to projects that
   a) Remove APFO restrictions or other moratoria that stop or retard development within PFAs (as long as the capacity standards that led to the moratorium are considered reasonable by the State); and,
   b) Involve the renovation or rehabilitation of existing infrastructure. The fund would be used to "reward jurisdictions for measurable

achievements to control sprawl and encourage Smart Growth.

4. If a new state infrastructure fund is created according to Recommendation 3 above, a portion of the monies allocated for the fund each year – perhaps 1 percent – should be set aside for a public education campaign focused on the cost of sprawl, the need to provide adequate facilities in growth areas, and the benefits of Smart Growth; and, a portion of the money should be set aside as a special fund to assist with improvements needed to meet APFO requirements related to State facilities. This latter requirement should become a required element of the Consolidated Transportation Program.

5. The State needs to identify broad-base tax resources (e.g., property, sales or income tax revenue) to provide the fiscal resources necessary to fund Adequate Public Facilities in growth areas. This will enable local governments to reduce their dependence on impact fees and the local property tax, thereby preventing new home buyers from bearing a disproportionate share of the costs of new infrastructure.

6. The Interagency Committee for School Construction should increase its square footage funding allowance for the renovation of school facilities located in, or serving students residing in, PFAs.

7. A coordinated plan should be prepared, detailing State and local actions necessary for the provision of adequate infrastructure.

In its 1999 report, the Economic Growth, Resource Protection and Planning Commission concluded with the following:

"APFOs are an important tool for ensuring that the necessary public facilities exist in growth areas. Nevertheless, without alternative financing structures to address facility needs in those areas, APFOs can push development away from the very locations where growth is most appropriate. . . Therefore, enabling legislation should be broadened, or at least clarified, so that local governments can adopt other

techniques which would address the need for additional infrastructure funding sources."[7]

BACKGROUND REPORTS

Additional information and details on the case study and estimation methods can be found in Cohen, James, "Adequate Public Facilities Ordinances in Maryland: An Analysis on their Implementation and Effects on Development in the Washington Metropolitan Area" and Cohen, James, "Adequate Public Facilities Ordinances in Maryland: An Analysis on their Implementation and Effects on Development in the Baltimore Metropolitan Area" and Bento, Antonio, "The Effects of Moratoria on Residential Development: Evidence from Harford, Howard, and Montgomery Counties" all of which are available at www.smartgrowth.umd.edu.

[7] *Making Smart Growth Work*, 1999.