

BARRIERS TO DEVELOPMENT INSIDE MARYLAND'S PRIORITY FUNDING AREAS

**PERSPECTIVES OF PLANNERS, DEVELOPERS, AND
ADVOCATES**

**A REPORT BY THE
HOUSING STRATEGIES GROUP
AT THE
NATIONAL CENTER FOR SMART GROWTH
RESEARCH AND EDUCATION**



JANUARY 18, 2012

EXECUTIVE SUMMARY

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Passed in 1997, Maryland's Smart Growth and Neighborhood Conservation Initiative took a novel approach to growth management, utilizing the power of the purse to encourage sustainable development. The initiative seeks to discourage suburban sprawl through a targeted spending approach, while also allowing local governments to retain their land use decision-making authority. It required local governments to designate Priority Funding Areas (PFAs) where state infrastructure funding would be focused. Through this tool, the State aimed to promote development and revitalization within Maryland's urbanized areas, while limiting the urbanization of Maryland's rural areas and green spaces.¹

Data from the Maryland Department of Planning, however, suggests that PFAs are having limited impacts. The percent of single-family acres developed outside of PFAs has risen steadily over time.² Development densities have declined in PFAs, with the average parcel size inside PFAs increasing from 0.25 acres in 1990 to 0.28 acres in 2004.³ Despite their disappointing performance, PFAs are anticipated to play key roles in future policies regarding development on septic systems and in PlanMaryland, the state development plan.

Given their growing prominence but questionable efficacy, PFAs warrant further examination. That is the purpose of this study, conducted by the Housing Strategies Group of the National Center for Smart Growth Research and Education at the University of Maryland (HSG), and funded by the Maryland State Builders Association and the NAIOP Maryland chapters. The study relies upon responses to a telephone survey of forty-seven representatives from three key stakeholder groups—planners, policy advocates and consultants, and developers. HSG made every effort to obtain the perspectives of a variety of sources but it is important to note that the survey respondents could not be said to be randomly selected and the sample size is too small for rigorous statistical analysis.

While not presenting new empirical analysis of the influence of PFAs on development patterns across the State, the study does produce new information on how critical stakeholders view the efficacy of PFAs and the barriers to development inside PFAs:

- ***Most respondents think PFAs are only somewhat effective or not effective at all.*** Of those responding to the question, “To what extent have PFAs been an effective urban growth management tool?” 78 percent responded either “not at all effective” or “somewhat effective.” When asked to comment on the effectiveness of PFAs, respondents from each of the three groups interviewed mentioned inconsistencies between state and local planning objectives as contributing to the ineffectiveness of PFAs. In theory, PFAs can provide the opportunity to reduce uncertainty and development costs by coordinating state and local infrastructure investments. There have also been examples of local

governments reducing impact fees and providing expedited review processes within their PFAs, but these cases are generally more the exception than the rule. Most suggested that PFAs are either ignored in the local planning process or create additional impediments to local planning, because existing land use patterns and development rights predated the establishment of PFAs. In one jurisdiction, local growth areas are intentionally drawn to be larger than PFAs to create a “buffer” between existing urbanized areas and areas planned for future growth. In explaining continued growth outside PFAs, planners in particular pointed to legacy zoning and grandfathered permits. Others pointed to consumer preferences and the relative ease of development outside PFAs from the regulatory and community opposition perspectives. When development does occur within PFAs, state policy is often less a factor than the strength of the local market for PFA development.

- ***Most respondents think it's more difficult to develop land inside than outside PFAs.*** When asked, “Holding other things constant, do you believe it is more difficult to develop land inside or outside PFAs?” respondents citing “inside” PFAs outnumbered those citing “outside” by almost four to one. A large percentage (29 percent) also indicated that designation inside or outside a PFA had no impact on the difficulty of development. Several indicated that the difficulties arise not from spatial differences in regulations but in how they are applied. Citizen opposition, for example, can be more severe within PFAs, because the higher density of development implies satisfying a larger number of constituencies. The difficulty of assembling multiple parcels of land makes “staging” of development inherently more difficult. Parking must often be built as structured parking below-grade, increasing construction costs. Utility easement requirements (i.e. 10-foot right of way requirements) often inherently favor suburban development. Environmental regulations, while not directly designed to discourage development within PFAs, may be more difficult to satisfy due to the higher probability of soil contamination combined with additional requirements to achieve LEED certification. Satisfying APFO requirements can also be more difficult within PFAs where roads, schools, and other facilities are more burdened.
- ***Citizen opposition, consumer preferences, APFOs, scarcity of zoned land, lack of infrastructure, and stormwater management regulations are the most commonly-cited constraints to developing inside PFAs.*** Respondents were asked to identify from a list of conditions, which were impediments to development or redevelopment inside PFAs and which were among the top three impediments. The most frequently cited impediments include stormwater management regulations and citizen opposition. Respondents from all categories suggested that recent changes in the State's stormwater mitigation requirements make redevelopment within existing urban areas more difficult. When asked to prioritize the impediments, the most frequently cited items included citizen opposition, APFOs, scarcity of zoned land, and lack of infrastructure. Combined, these suggest that local regulatory processes requiring substantial citizen review, which are also tied to local

infrastructure capacity constraints through APFOs, or ad-hoc moratoria can impose significant constraints to development within PFAs. Respondents also identified quality-of-life considerations, particularly schools and crime, as influencing market demand within PFAs. Developers remarked that inconsistencies between current soft-market realities combined with stringent regulatory constraints limit the feasibility of development within many PFAs. Inappropriate requirements for ground-level retail square footage, parking, stormwater management, and environmental standards are some examples of such inconsistencies.

- ***High rise apartments and mixed use developments are viewed as the most difficult products to develop within PFAs.*** All three groups indicate that while the market for multifamily and mixed-use projects is strongest within many PFAs, these development types are also the most difficult to capitalize and bring to completion. When asked to elaborate, citizen opposition, land availability, economic return and infrastructure capacity were all frequently-cited constraints facing developers of these project types. Several respondents also pointed to a general lack of understanding among the public about mixed-use developments and their potentially beneficial community impacts.
- ***Zoning and the adequacy of infrastructure are viewed as the most influential public policy tools.*** When asked, “Which of the following planning tools is the most important determinant of whether or not a development or redevelopment projects will be approved on a given parcel of land?” a parcel’s status vis-à-vis the PFA made little difference, according to the three groups interviewed. The most important determinants of development approval are the parcel’s zoning and the existence of adequate infrastructure. Policy advocates also point to the importance of local public support and political leadership.

Survey respondents identified a number of ways to improve development conditions in PFAs, ranging from limiting the length of APFO restrictions to reducing impact fees and lowering level of service requirements for certain types of infrastructure inside PFAs. Other recommendations included expediting the state agency review processes and lessening stormwater management and other environmental protection requirements for projects inside PFAs.

Based on the findings of this and previous studies, HSG offers the following recommendations:

- Require that PFAs be consistent with growth areas, incorporated into comprehensive plans and be reviewed as part of the comprehensive plan review process every ten years. Currently, PFAs are not required in comprehensive plans, which are reviewed every six years.
- Require that PFAs contain sufficient development capacity for 20 years of residential, institutional, commercial, and industrial growth. Currently, PFA capacity criteria include only residential development.

- Provide local governments with greater flexibility in constructing PFAs if they place greater restrictions on development outside PFAs. This recognizes that “one size does not fit all” when it comes to PFAs across the State and would provide local governments some flexibility on the size of PFAs if they restrict development outside PFAs.
- Require local governments to include a housing element in their comprehensive plans that permits, but does not require, high density and mixed use development.
- Establish minimum zoned density requirements that vary for urban, suburban, and rural PFA communities.
- Enable local governments to reduce regulatory restrictions (e.g., road service standards, stormwater management and forest preservation requirements) inside PFAs, especially in transit station areas.
- Limit development moratoria from adequate public facilities ordinances to four years. If moratoria cannot be lifted in four years, require local governments to increase development capacity elsewhere.
- Target state infrastructure spending in areas within PFAs under adequate public facilities ordinances moratoria.
- The State should work with local governments and other development stakeholders to further identify barriers to growth specific to the PFAs within each jurisdiction. Collectively they should work to identify options for overcoming these barriers.
- The State should work with local governments to periodically conduct a statewide infrastructure needs assessment as well as a review of growth related capital funding approved and planned by the state and local governments.

¹ Knaap, Gerrit-Jan, and John W. Frece (2007). “Smart Growth in Maryland: Looking Forward and Looking Back.” *Idaho Law Review* 43, 445-473.

² Sartori, Jason, Terry Moore, and Gerrit Knaap. *Indicators of Smart Growth in Maryland*. National Center for Smart Growth Research and Education, January 2011.

³ Lewis, Rebecca, Gerrit-Jan Knaap, and Jungyul Sohn (2009). “Managing Growth With Priority Funding Areas: A Good Idea Whose Time Has Yet to Come.” *Journal of the American Planning Association* 75:4, 457-478.