

Memorandum

**To: Jon Laria, Chair
Task Force on the Future of Growth and Development**
**From: Gerrit Knaap, Chair
Workgroup on Priority Funding Areas**
Re: Workgroup report
Date: October 27, 2008

During a meeting of the Task Force on the Future of Growth and Development, you asked me to lead a workgroup charged with reviewing the performance of priority funding areas and offering recommendations. This memorandum presents our response to that charge. It contains three parts: (1) a description of our proceedings, (2) a set of recommendations, and (3) a list of subgroup members.

Proceedings.

The subgroup met seven times: September 17 in Annapolis, September 29 in Baltimore, October 14 in Annapolis, October 8 in Baltimore, October 17 in Crownsville, October 22 by conference call, and October 24 in Annapolis. At the first meeting the subgroup reviewed its charge, agreed on procedures, heard from representatives of MACO, MML, MDP, and the environmental community. At the second meeting the group heard from a representative of the development community and the University of Maryland. At the end of the second meeting, the subgroup unanimously agreed that PFAs did not work as well as everyone had hoped and agreed to further dialog on how they might be improved. In the third, fourth and fifth meetings, the workgroup heard and considered alternative strategies for reforming PFAs and at the last meeting the group considered each alternative and assessed the degree to which there was consensus for each idea.

A list of ideas for revising PFAs considered by the workgroup is listed below. Along with each idea is an indication of whether there was consensus support for the idea. In some cases, the workgroup agreed only that an idea was worthy of further consideration. This option was deemed important given the prominence of the PFAs in Maryland's land use framework, the difficulty of reaching consensus, and the very short time the group had to complete its work. It is also important to note that the very last meeting, at which the critical assessments were made only four group members were in attendance: Marty Baker, Sandy Coyman, Peter Conrad, Les Knapp, and Gerrit Knaap. Notably absent was a representative of the building industry.

Discussion Items and Recommendations.

1. Priority Funding Areas (PFAs) as they are currently established and used to manage growth fail to effectively minimize sprawl.

There is no consensus on this point.

2. PFAs should be coterminous with “growth areas” in local comprehensive plans. As such they should be certified by local governments, following standard local procedures for local public participation, and reviewed by the Maryland Department of Planning (MDP) as part of the comprehensive plan comment process. (An elaboration of this idea is contained in Appendix A.)

There is no consensus on this issue.

3. Comment on PFAs by MDP, during the comprehensive plan review process should be based on measureable criteria for designating PFAs that promote the (12) visions.

There is no consensus on this issue.

4. The designation of PFAs should be based in part on analysis of anticipated population and employment growth and the jurisdiction’s build-out potential.

There is no consensus on this issue.

5. A number or factors in the administration of PFAs should be reexamined. These factors involve the application of PFA restrictions to facilities and their service areas, the criteria that trigger exceptions, the timing of funding restrictions and the expansion of PFAs, and the specific funding streams that are subject to PFA review.

There is consensus on the merits of a review, but perspectives vary as to the appropriate scope of such a review.

6. State and local policies should promote development inside PFAs and discourage development outside PFAs, recognizing the relationship to infrastructure.

There is consensus support for this goal, but there is no consensus on any specific approach to achieve the goal.

- a. PFAs should be tiered (or containerized) to include (1) priority preservation areas outside existing PFAs, and (2) priority development areas and (3) priority revitalization areas inside PFAs. (An elaboration of this idea is contained in Appendix B)

There is no consensus on this idea.

- b. Development outside PFAs should be assessed a pollution tax (on impervious surfaces, nutrient loadings, (An elaboration of this idea is contained in Appendix C)

There is consensus support for further exploration of this idea, although a representative of the development community was not at the meeting when the degree of consensus was assessed.

- c. Developments on septics outside PFAs should be required to adopt Enhance Nutrient Removal (ENR) technology. (An elaboration of this idea is contained in Appendix C.)

As above, there is consensus support for further exploration of this idea, although a representative of the development community was not at the meeting when the degree of consensus was assessed.

- 7. Growth-related state spending should promote projects that meet certain performance standards for development inside PFAs.

There is not consensus support for this idea.

- 8. Local jurisdictions should be provided with broader revenue-generating authority for use within PFA's and the relief of APFO moratoria.

There is consensus support for this concept, although there was little discussion on the details of the concept.

Workgroup Members

Gerrit Knaap, chair
Candace Donaho
Marty Baker
Carol Gilbert
Anne Roane
David Carey
Les Knapp
Kurt Sommer
Peter Conrad
Shelley Wasserman
Karen McJunkin
Zoe Johnson
Rhonda Ray
Paul Johnson
Alan Girard
Brad Heavner
Sandy Coyman

Appendix A

Drafted by Les Knapp

Proposed Growth Area Recommendation Language

Priority Funding Areas (PFAs) should be coterminus with a local jurisdiction's growth areas. In recognition that the current PFA criteria represents a "one size fits all" approach and does not take into account the geographical and demographic differences within the State, the existing PFA criteria should be repealed and the locally defined growth areas should be considered as PFAs for State and local planning purposes.

Existing PFAs should be "grandfathered" and should assumed to be growth areas/PFAs unless a jurisdiction voluntarily decides to subject them to the proposed criteria.

When determining their growth areas, jurisdictions that exercise zoning authority should consider:

- (1) For a municipal corporation, anticipated future growth areas outside the existing corporate limits of the municipal corporation;
- (2) past growth patterns;
- (3) the capacity of land areas available for development within the jurisdiction's existing growth area, including in-fill and redevelopment;
- (4) the land area needed to satisfy demand for development at densities consistent with the county or municipal corporation's long-term development policy;
- (5) adequate drinking water resources and suitable receiving waters for predicted stormwater management and wastewater treatment and disposal needs;
- (6) public services and infrastructure needed to accommodate growth within the proposed growth area, including those necessary for:
 - a. public schools, sufficient to accommodate student population with State rated capacity standards established by the Interagency Committee on School Construction;
 - b. libraries;
 - c. public safety, including emergency medical response;
 - d. water and sewerage facilities;
 - e. stormwater management systems, sufficient to assure water quality both inside and outside the proposed growth area;
 - f. transportation, including roads, and where applicable highways and transit systems; and
 - g. recreation;
- (7) anticipated financing mechanisms to support necessary public services and infrastructure;
- (8) rural buffers and transition areas;
- (9) protection of sensitive areas, as defined in Article 66B, § 1(j) of the Code, that could be impacted by development planned within the proposed growth area;
- (10) population and employment growth projections; and
- (11) the relationship of the long-term development policy to a vision of the county or municipal corporation's future character.

Deleted: county or municipal corporation's

The appropriate level of consideration that a county or municipal corporation should give to the factors listed above should be contingent on its individual characteristics and demographics. Thus, the analysis performed by rural counties or municipalities will be different from that of an urban county or large municipality.

The Maryland Department of Planning should retain its current authority to comment on the local PFA designations, but should allow for the unique needs and circumstances of each local government when performing its analysis.

Appendix B

Drafted by Marty Baker and Carol Gilbert

DRAFT – Discussion Document for PFA Workgroup

Overview

The PFA Workgroup of the Task Force has engaged in a series of meetings about the effectiveness of the Priority Funding Area (PFA) Framework. This paper begins with a summary of some of the differing viewpoints of group members about PFA effectiveness and then proposes a framework for refining PFAs, offered for further discussion. Group members include MACO, MML, State agencies, the University of Maryland Center for Smart Growth and the Chesapeake Bay Foundation.

The original intention behind the establishment of PFAs in 19xx, was to define where certain “growth-related” State funding would be allowed to go so that State funding would contribute to growth in appropriate areas *and so* that certain State funds would no longer contribute *to* existing and future sprawl outside the designated PFAs.

Data presented to the Task Force on Future Growth and Development by the University of Maryland (NCSG) and State agencies led by the Maryland Department of Planning have documented limitations of existing PFA legislation. The PFA boundaries, and state programs associated with them have proven to be largely insufficient to prevent a large number of private developments that consume large tracts of land outside of agreed upon PFA areas. The group felt that more specific information, however, outlining the specific location and nature of sprawl that has occurred, including a map of color-coded map illustrating numbers of dwelling units (DUs) per acre would assist immeasurably with the effort to identify problem areas and the measures to address them.

Presentations made to the PFA Group suggest that the following key conditions contribute to the apparent preference shown by developers for Greenfield developments outside of PFAs: a) lack of sufficient state funding to support needed infrastructure within PFAs, b) market preferences favoring large tracts of rural land, c) relative ease in attaining community acceptance for new development, and d) relative lack of risk and expense compared to established communities and urban areas. It is acknowledged that these conditions have effectively dwarfed efforts of public agencies (state and local) and environmental/smart growth advocates to more effectively guide the development patterns in the state.

According to Smart Growth advocates, the PFA framework should function as more than just a boundary for State funding and instead should function as an “urban growth boundary.” Sprawl has continued beyond the PFA borders in the last ten years. Privately-funded development has not required and has, in fact, dwarfed available Smart Growth funding; local zoning regulations in many areas have not adequately preserved valuable land from sprawling development in the face of financial and market forces to develop these lands.

According to County and municipal governments (as indicated through MACO and MML surveys), the PFA Framework generally works (with exceptions noted below) and is well understood by local government as a “container” for where certain growth-related State funding is permitted. In particular, MML is concerned that PFAs not be eliminated and, instead, that refinements build from the existing framework. As for what does not work about PFAs, rural counties expressed an interest in:

- More flexibility with respect to establishing long-term growth areas that can qualify to become PFAs. Rural communities want more flexibility with respect to the minimum density criteria of 3.5 DUs per acre.
- More flexibility with respect to allowing “connecting roads” between PFAs to be eligible for State funding. The “exception” process managed by the Smart Growth Coordinating Committee reviews and (largely?) approves these cases.
- More flexibility with respect to State funding for water and sewer plants that a locality wants to locate outside of PFAs but that will largely/totally serve communities within the PFAs

This “exceptions” process which is managed by the Maryland Department of Planning, and entails deliberations by the Smart Growth Coordinating Committee or in some cases the Board of Public Works has resulted in a large number of reasonable exceptions to the existing legislation, particularly where such exceptions prove warranted on the basis of public health and safety. In the view of most state agencies, this process is an effective way to ensure that such facilities do not inadvertently contribute to sprawl outside of PFA’s, while ensuring that such critical needs are met. Others in the group, however, contend that the process has become too cumbersome. The group determined that although further discussion may be needed to address differing opinions and perceived inefficiencies of the process, short term effort should be devoted more specifically towards measures to address the problem of proliferating growth.

Points of Consensus:

All members of the PFA workgroup support the following two principles:

- State and local policies and resources (incentives and disincentives) should better promote growth within PFAs, particularly with respect to new infrastructure investment.
- State and local policies and resources (incentives and disincentives) should better discourage growth outside PFAs, particularly with respect to new land preservation investment.

The group generally agreed that major new funds for infrastructure and land preservation are needed for Smart Growth policies to succeed: – funds that could incentivize growth within PFAs and conserve land outside of PFAs. Current fiscal and economic conditions, however, make it all the more critical that both state and local decision-makers think strategically about where they invest their limited resources to ensure they meet mutually desired ends. As part of this process, it was also suggested that a public awareness campaign be waged to influence consumer choice in favor of “smarter” areas and more sustainable lifestyles, homes and neighborhoods.

While eligibility for state level infrastructure funds might still be usefully delimited by existing or improved PFA boundaries, additional consideration of special needs both within and outside such areas can provide a stronger framework for coordinated planning and investment to better meet state and local development goals.

It should also be clear that even in this economic downturn, the private sector's financial capacity for sprawling new development and its supporting infrastructure will continue to be far greater than available public incentives to discourage such development. Therefore, in the absence of adequate or even increased Smart Growth funding, regulatory approaches to discouraging growth in inappropriate areas need to be discussed. As such, one approach to address the shortcomings of PFA legislation is that we build from what works in this can build from what is working to identify new and feasible incentives and disincentives for appropriate growth management.

Although the workgroup did not reach consensus on specific mechanisms, several approaches to discourage further development were deemed worthy of further discussion. The idea of imposing stricter environmental regulations for any future septic installations that are outside of and not serving PFAs, for example was an idea that the group suggested might be usefully explored in greater depth.

Framework for Refining PFAs

In parts of Maryland the private market is working well and contributes to growing smart and in compact ways. In certain areas outside of PFAs, however, the market is working too well such that forest and agricultural land is being converted to commercial and residential development in patterns make inefficient and unsustainable use of infrastructure and public services. And, in certain areas within PFAs – namely the oldest of Maryland's existing communities – the market is not working well enough to encourage private investment.

A framework for coordinated effort, such as outlined below would build from a recognition that to achieve mutual goals of existing residents, developers and agencies, market forces can be encouraged (in older existing communities) and discouraged (in existing agricultural and forest lands), but must in any case be an integral factor in decisions about land use and infrastructure investment. In addition, it is important to maintain a "line" for containing growth investments.

Several existing state and local programs have specific criteria that help delimit areas in which a particular kind of intervention might be most effective. Such programs include DHCD's Designated Neighborhoods and Community Legacy areas, to name a few. In addition, however, state and local agencies both embark on targeted planning and capital investments to promote policy initiatives like Transit-Oriented Development or preservation easements – in ways that leverage other state and local resources and regulatory mechanisms, to ensure coordinated progress towards mutually identified goals.

(It would be counterproductive for example, for a state or local agency to invest in access management or preservation investments, for example, in areas where sufficient land use controls are not in place to ensure that those measures will ultimately prove to be effective in achieving desired ends.)

Criteria to outline such areas would need to be developed through a coordinated conversation between state, county and municipal agencies to evaluate existing and proposed land use and investment strategies. This process would need to unfold over several months to ensure adequate input from state and local agencies, and to ensure that the categories identified are appropriately matched with appropriate programmatic and/or policy interventions.

Sample criteria to inform this process could include:

- Established local plans, zoning ordinances, and capital programs
- Policy interventions and financial incentive programs to promote or discourage particular forms of growth.
- Population and employment figures: Current and projected
- Market Strength and Weakness
- Housing Prices and Affordability
- Jobs/Housing Balance
- Local receptivity and preparedness to accommodate or discourage future growth.

A three part framework that springs from and organizes existing growth policies and programs could emerge from an extended evaluation of such criteria. This framework could assist immeasurably with cross-agency coordination of investment and policy by articulating providing a framework and point of consolidation for existing efforts, and highlighting areas in which policy goals might otherwise come into conflict.

Following are some preliminary ideas as to how this effort might be organized and what it might entail:

1. Priority Preservation Areas

– Areas of critical concern for land and critical areas preservation (whether inside or outside of PFAs). This area of investment has been articulated in HB0002.

Potential Criteria:

- Areas of high agricultural value and production.
- Areas of strong environmental value from a wildlife, water resource or other perspective. (See House Bill 2)
- Critical preservation areas at risk for development
- Areas where local decision-making suggests further support for conservation measures.

Potential Actions:

- Corridor level planning to define access management strategy for state roadways and the strategic purchase of easements
- Strengthened planning and coordination to heighten awareness and ensure that appropriate programs are identified towards appropriate ends.

Potential Outcome/Return on Investment:

- Save time and money, help minimize risks for potential developers
- Save time and money for agencies in development and review of alternatives (eg. for roadway alignments).
- Create framework for stronger, more integrated planning between state, county and municipal levels.
- Stronger investment decision making that reflects common will of state and local agencies.

2. Priority Revitalization Areas

– Areas within PFAs that are of critical concern for catalytic investments that encourage the private market to reinvest in the State’s traditional core communities (through such tools as the MD rehab tax credit, Community Legacy, A&E Districts, MainStreets, and Neighborhood BusinessWorks).

Potential Criteria:

- Existing revitalization investment and need
- Market demand
- Historic preservation
- Extenuating circumstances and natural disasters
- Land use policy supports:

Potential Actions:

- Program prioritization.
- Development of coordinated State-Local funding mechanisms/programs
- Clarification of planning goals to ensure consistency across agencies.

Potential Return on Investment:

- Leveraged program investment and infrastructure
- Sustainable development

3. Priority Growth Areas

– Areas that include current PFAs and may include additional growth areas that have or should be planned for adequate infrastructure and density to accommodate projected population growth.

Potential Criteria

- Areas where existing infrastructure and resources could and should accommodate a proportion of the population growth projected for the State of Maryland.
- Areas where existing state and local investments should be supported with appropriate investment and land use protections to ensure that growth occurs in an orderly and mutually beneficial way.
- Transit and other transportation infrastructure
- Higher density zoning,
- Water resources/Sewer Capacity
- Development Capacity (based on existing occupancy rates and amount allowed by zoning).

Potential Actions:

- Pre-Development Planning to address potential NIMBY issues, minimize risk for developers and maximize benefits for existing/proposed residents..
- Coordinated efforts towards:
Land Assembly
- Brownfields remediation (?)
- Infrastructure Finance/Subsidy
- Program Funding
- Joint Development Opportunities: (Public-Private Partnerships for State, Local, Private Investors)

Potential Return on Investment:

- Strategic deployment of state technical assistance and planning expertise towards realization of mutually defined goals.

#1: Priority Preservation Areas – As noted in HB002...

11 (A) IN THIS SECTION, "AREA" MEANS A PRIORITY PRESERVATION AREA.

12 (B) A COUNTY SHALL MAY INCLUDE A PRIORITY PRESERVATION AREA

13 ELEMENT IN THE COUNTY'S COMPREHENSIVE PLAN.

14 (C) AN AREA SHALL:

15 (1) (I) CONTAIN PRODUCTIVE AGRICULTURAL OR FOREST SOILS; OR

16 (II) BE CAPABLE OF SUPPORTING PROFITABLE AGRICULTURAL

17 AND FORESTRY ENTERPRISES WHERE PRODUCTIVE SOILS ARE LACKING;

18 (2) BE GOVERNED BY LOCAL POLICIES THAT STABILIZE THE

19 AGRICULTURAL AND FOREST LAND BASE SO THAT DEVELOPMENT DOES NOT

20 CONVERT OR COMPROMISE AGRICULTURAL OR FOREST RESOURCES; AND

21 (3) BE LARGE ENOUGH TO SUPPORT THE KIND OF AGRICULTURAL

22 OPERATIONS THAT THE COUNTY SEEKS TO PRESERVE, AS REPRESENTED IN ITS

23 ADOPTED COMPREHENSIVE PLAN.

24 (D) AN AREA MAY:

25 (1) CONSIST OF A SINGLE PARCEL OF LAND, MULTIPLE CONNECTED

26 PARCELS OF LAND, OR MULTIPLE UNCONNECTED PARCELS OF LAND; AND

27 (2) INCLUDE RURAL LEGACY AREAS.

28 (E) A COUNTY'S ACREAGE GOAL FOR LAND TO BE PRESERVED THROUGH

29 EASEMENTS AND ZONING WITHIN AN AREA SHALL BE EQUAL TO AT LEAST 80% OF

30 THE REMAINING UNDEVELOPED AREAS OF LAND IN THE AREA, AS CALCULATED AT

31 THE TIME OF APPLICATION FOR STATE CERTIFICATION OF AN AREA.

Priority Preservation Areas (sometimes referred to in meetings as Priority Conservation Areas) require incentives for establishing and disincentives to private development.

#2: Priority Funding Areas / Priority Growth Areas (PGAs)....Areas where the private market is working reasonably well and that have sufficient density and infrastructure. PFAs are State approved growth areas. PGAs are locally designated growth areas. It is anticipated that State and local governments will continue to work to align PFAs with PGAs.

#3: Priority Revitalization Areas: Revitalization investment in target communities has been modest but effective in leveraging private investment over the last 10 years. The tools needed to encourage reinvestment in older communities (rehab tax credit, flexible Community Legacy grants, flexible Neighborhood BusinessWorks loans, A&E tax incentives, etc.), are different from those that preserve land and sustain new growth in marketable areas. Therefore, it should be affirmed that the State intends to sustain its revitalization tools to the extent that resources allow.

Incentives / Disincentives
(for Alan and Sandy to do...)

Appendix C
Drafted by Alan Girard and Sandy Coyman

State and local policies should promote development inside PFAs and discourage development outside PFAs, recognizing the relationship to infrastructure.

- a. Inside PFAs, a Community Investment Fund should be established that is supported by a pollution fee on new development located outside PFAs.
 - i. Local government should be eligible to apply to use Fund monies in accordance with criteria related to:
 1. Whether funding is being sought for:
 - a. Infrastructure that alleviates APFO moratoria;
 - b. Rail and bus transit projects within and between Priority Funding Areas;
 - c. Upgraded or retrofitted centralized waste water treatment infrastructure;
 - d. Upgraded or retrofitted stormwater management facilities;
 - e. “Main Street” enhancements and urban revitalization;
 - f. Local street grid connectivity improvements;
 - g. Creation and enhancement of local parks and locally conserved land;
 - h. Pedestrian and bicycle transportation;
 - i. Public facilities, including education, health care, and emergency service infrastructure; and
 - j. Local government planning grants, including staff;
 2. The relationship of the funding application to advancing smart growth in the community;
 3. The extent of need;
 4. The extent of local financial investment and buy-in;
 5. The ability of the requested amount of Fund resources to meet the need expressed or enable a project to succeed; and
 6. The long-term prospects and plans for local support and funding beyond an initial Fund investment.
 - ii. A statewide Community Investment Fund Committee comprised of appointed state and local officials and several interested citizens should review local government applications twice yearly for use of Fund monies in accordance with the above criteria.
- b. Outside PFAs, market forces should be leveraged to support a pollution fee on new development that recovers the costs to communities and natural resources of harmful, sprawling development patterns.
 - i. The pollution fee is calibrated with appropriate indicators, including but not limited to nitrogen and carbon pollution.
 - ii. The pollution indicators are associated with known pollution loading rates and are measured on a pounds-per-mile, pounds-per-acre, and pounds-per-gallon basis.
 - iii. The pollution fee is charged in accordance with the cost-per-pound of pollution generated by the project estimated over a fifty-year period.

- iv. The fee is one-time, collected along with other applicable impact fees during the development approval process.
 - c. Outside PFAs, newly created on-site sewage disposal systems must be equipped and operated with enhanced nutrient removal technology (ENR).
 - i. Owners of newly created on-site sewage disposal systems must record a standard Maryland Department of Environment operations and maintenance agreement with the local jurisdiction's lands records agency.
 - ii. Owners of newly created on-site sewage disposal systems must certify systems are maintained twice-annually.
 - iii. A disclosure statement related to the presence and operational needs of ENR on-site sewage disposal systems must be signed by new property owners prior to the time of property transfer.