

State Agency Spending Under Maryland's Smart Growth Areas Act: Who's Tracking, Who's Spending, How Much, and Where?

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Introduction

In 1997, the Maryland General Assembly enacted the Smart Growth and Neighborhood Conservation initiative, an attempt by state government to use the state budget to concentrate urban development in certain areas. The primary vehicle for this approach was embodied in the Smart Growth Areas Act, which required that all “growth-related” funding by state agencies occur in locally designated “Priority Funding Areas” (PFAs) that met certain state criteria. The intent of the Act was to restrict state spending so it became easier for local governments and private developers to concentrate urban development within the PFAs, while at the same time, discourage development outside PFAs.

Data recently released by the Maryland Department of Planning, however, reveal that the Act is not having its intended effect. Although approximately three-fourths of all residential permits issued from 1990 to 2004 were for development inside PFAs, approximately three-fourths of the land developed for residential use over the same period was developed outside PFAs. Furthermore, the share of permits issued for residential development outside PFAs has risen from approximately 28.6 percent in 1998 to 31.6 percent in 2004, while the share of acres developed for residential use outside PFAs has risen from 76.7 percent in 1998 to 77.2 percent in 2004.¹ These data suggest that the Smart Growth Areas Act has not concentrated growth inside PFAs as intended.

To gain insights into why the Smart Growth Areas Act is not having its intended effect, the National Center for Smart Growth Research and Education sought to answer two interrelated questions:

1. How much of the state's spending, since 1998, is “growth-related” and thus subject to PFA review? And,
2. How much of the state's spending, since 1998, that is subject to PFA review, was in fact spent within PFAs?

Under the Smart Growth Areas Act, selected programs and projects of five departments of state government are defined as “growth-related.”² These five agencies are: the Department of Transportation, the Department of Housing and Community Development, the Department of Business and Economic Development, the Department of Environment, and the Department of General Services. The Maryland Department of Planning oversees the establishment and

mapping of PFAs, which include by statute all areas inside the Baltimore and Washington beltways, all areas within the state's 157 incorporated municipalities, and other areas designated by the 23 counties based on density, sewer service capacity, intended use, zoning, and other factors.³ All exceptions, according to criteria defined in the law, must be approved by the Smart Growth Coordinating Committee, the Smart Growth Subcabinet, or the Board of Public Works.⁴ Only exceptions for "extraordinary circumstances"⁵ and specific types of transportation projects⁶ are heard by the Board of Public Works. Projects meeting categorical criteria specified in the law do not need approval from the Board of Public Works.⁷

The Smart Growth Areas Act also required that each agency submit an annual report to the Maryland Department of Planning on the implementation of the legislation.⁸ This reporting requirement was bolstered by Governor Parris N. Glendening's 1998 Executive Order and in the codification of the Smart Growth Subcabinet in 2001, both of which spelled out specific reporting procedures.⁹

Summary of Findings

Our findings can be summarized as follows:¹⁰

- State agencies have not fully and consistently complied with the reporting requirements under the Act and the companion Executive Order. Assessing the extent to which state spending supports development inside PFAs or discourages development outside PFAs is always difficult, but without timely and accurate reporting, it is nearly impossible.
- We were not able to ascertain the amount of funds subject to PFA review that are financed by bonds, fees, tax credits, or other sources that do not appear in the appropriated state budget, such as housing revenue bonds issued by the Department of Housing and Community Development.
- The total amount of state money that is earmarked for projects within PFAs is a relatively small portion of the overall appropriated state budget and most of that consists of spending on transportation projects. Total appropriated capital and transportation funds by state agencies subject to PFA review since 1998 averages approximately \$1.1 billion per year, which represents approximately five percent of the annual state budget over the same period. Spending by the Maryland Department of Transportation (MDOT) constitutes approximately 85 percent of all capital and transportation appropriations subject to PFA review.
- Of the total appropriations subject to PFA review by MDOT, approximately 60 percent were for specific projects inside PFAs over the nine-year period. The remaining appropriations were for projects "grandfathered" when the legislation went into effect in 1998, for projects in the transportation budget that had no single specific location, or for projects that were granted exceptions.
- Since 1998, at least 62 projects were granted exceptions to PFA restrictions by the Smart Growth Coordinating Committee. For some exceptions, spending data are not provided. At least four projects were granted exceptions by the Board of Public Works; three were MDOT projects during the Ehrlich Administration, and the fourth project, also an MDOT project – the Manchester Bypass – was granted by the Board of Public Works but did not receive funding in Governor Glendening's budget.

State Clearinghouse for Intergovernmental Assistance

The State Clearinghouse for Intergovernmental Assistance at the Maryland Department of Planning serves as the single point of contact for entities seeking federal and state financial assistance and direct development project reviews. Grant applications received are reviewed for consistency with all pertinent state and federal laws, including the Smart Growth Areas Act and the 1992 State Economic Growth, Resource Protection and Planning Policy Act.¹¹ On the application, applicants are asked to identify whether a project is within a PFA. Upon reviewing the application and receiving comments from relevant state agencies and local governments, the Clearinghouse shares with the funding agency and the applicant the comments received.

Since October 2002, the Clearinghouse has maintained a database of requests that can identify whether the project was found consistent with the Smart Growth Areas Act and the 1992 State Economic Growth, Resource Protection and Planning Policy Act. This data does not, however, reveal whether the application was for projects inside or outside of PFAs, or whether the project actually received funding. Though applicants and the funding agency are asked to inform the Clearinghouse whether a project received funding, the Clearinghouse reports only about 50 percent do so. The Clearinghouse is not required to ensure that only projects deemed consistent with laws and regulations under Intergovernmental Review receive funding. Neither are state agencies required to assure that proposals receive a favorable review by the Clearinghouse before funding a project.

Reporting Requirements

The Smart Growth Areas Act requires that each agency report annually to Maryland Department of Planning regarding the implementation of the Act in a form explicated by Maryland Department of Planning.¹² This reporting requirement was bolstered by former Gov. Parris N. Glendening in Executive Order No. 01.01.1998.04, Section F, Smart Growth and Neighborhood Conservation Policy. In 2001, when the Office of Smart Growth was established and the Smart Growth Subcabinet was codified, responsibility for receiving reports from state agencies and issuing an annual report was assigned to the Smart Growth Subcabinet.¹³ Specifically, Executive Order 01.01.1998.04, states:

F. Procedures for Annual Reports. *The Office of Planning,¹⁴ with the assistance of all affected State agencies, will evaluate and report annually to the Governor, the General Assembly, and the State Economic Growth, Resource Protection, and Planning Commission¹⁵ on the implementation of the Smart Growth Policy.*

(1) *Agencies will provide an annual report to the Office of Planning on the implementation of the Smart Growth Areas Act. The Annual Report should include the following:*

- (a) *A description of projects/programs and costs of activities located in Priority Funding Areas;*
- (b) *A description of projects/programs and costs of activities funded under the exceptions allowed in §5-7B-06 of the State Finance and Procurement Article;*
- (c) *Projects submitted to the Board of Public Works for funding outside Priority Funding Areas under the extraordinary circumstances exception in accordance with §5-7B-05, of the State Finance and Procurement Article and the impact of these projects upon this policy;*
- (d) *A list of programs and policies reviewed and changed to ensure compliance with the Policy; and*
- (e) *A list of projects or programs approved and funded under Section 2 of Chapter 759 of the Acts of 1997.¹⁶*

Compliance with reporting requirements under the Act and subsequent executive order varied extensively over time. During the Glendening administration there was a clear attempt by several agencies to provide the required information to the Maryland Department of Planning and a clear attempt by the Maryland Department of Planning to forward the information in a comprehensive report. Agency reports were filed with the Maryland Department of Planning in 1999 and 2000. The most complete report was prepared for FY2002 by the Office of Smart Growth on behalf of the Smart Growth Subcabinet. Even this report, however, did not contain a full accounting of how much spending was subject to PFA review and how much in fact was spent inside PFAs. During the Ehrlich administration, Office of Smart Growth annual reports contained no data on agency funding and little data on exceptions. Because reporting requirements were never fully met, it is impossible to assess whether or how much state agencies restricted their spending in conformance with the Smart Growth Areas Act or the extent to which state agency spending serves to contain urban growth.

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“Growth-Related” Appropriations

Although state agencies did not consistently file reports required under the Smart Growth Areas Act and Executive Order No. 01.01.1998.04, it is possible to estimate total “growth-related” appropriations in the capital and transportation budgets each year and thus gain some insights regarding how much spending by state agencies is subject to PFA review. Specifically, information on “growth-related” appropriations is available from the following documents:

- The Department of Management and Budget’s “White Book” of capital appropriations;
- The Maryland Department of Transportation’s Consolidated Transportation Program; and
- Budget of State Government Appropriations Summary obtained from the Maryland State Archives.

According to the Smart Growth Areas Act, the state will not fund “growth-related” projects outside of PFAs, with few exceptions. Funding is defined as “any form of assurance, guarantee, grant payment, credit, tax credit, or other assistance, including a loan, loan guarantee, or reduction in the principal obligation of, or rate of interest payable on, a loan or a portion of a loan.”¹⁷ The data we present on “growth-related” appropriations includes only funds appropriated by the General Assembly in the capital budget and major projects in the construction program in the Consolidated Transportation Program. The data presented in Figures 1 and 2 do not include tax credits, operating appropriations or bonds issued directly by agencies which are separate from budget appropriations.

Based on data from these sources, total “growth-related” capital and transportation appropriations by state agency by year are presented in Figure 1. “Growth-related”

Project spending by MDOT represents about 85 percent of all “growth-related” capital and transportation appropriations that are legislatively targeted to PFAs under the Smart Growth initiative.

appropriations include capital appropriations to Maryland Department of Environment, Department of Housing and Community Development, and Department of Business and Economic Development, and transportation appropriations by the Maryland Department of Transportation.¹⁸ Because the Department of General Services is listed solely in the operating budget, and provides support to other agencies for real estate, procurement and facilities, we do not attempt to determine the percentage of projects

and programs administered by General Services that were subject to PFA review. Thus, we exclude the Department of General Services from our analysis.

As shown, project spending by MDOT represents about 85 percent of all “growth-related” capital and transportation appropriations that are legislatively targeted to PFAs under the Smart Growth initiative. Further, while transportation appropriations have nearly doubled over the study period (without adjusting for inflation), capital appropriations to all other agencies has remained relatively constant (also without adjusting for inflation).

Over the period from 1998 to 2007, “growth-related” capital and transportation appropriations averaged approximately \$1.1 billion per year. On average, transportation comprised approximately \$940 million per year, while all other agencies combined total \$160 million per year.

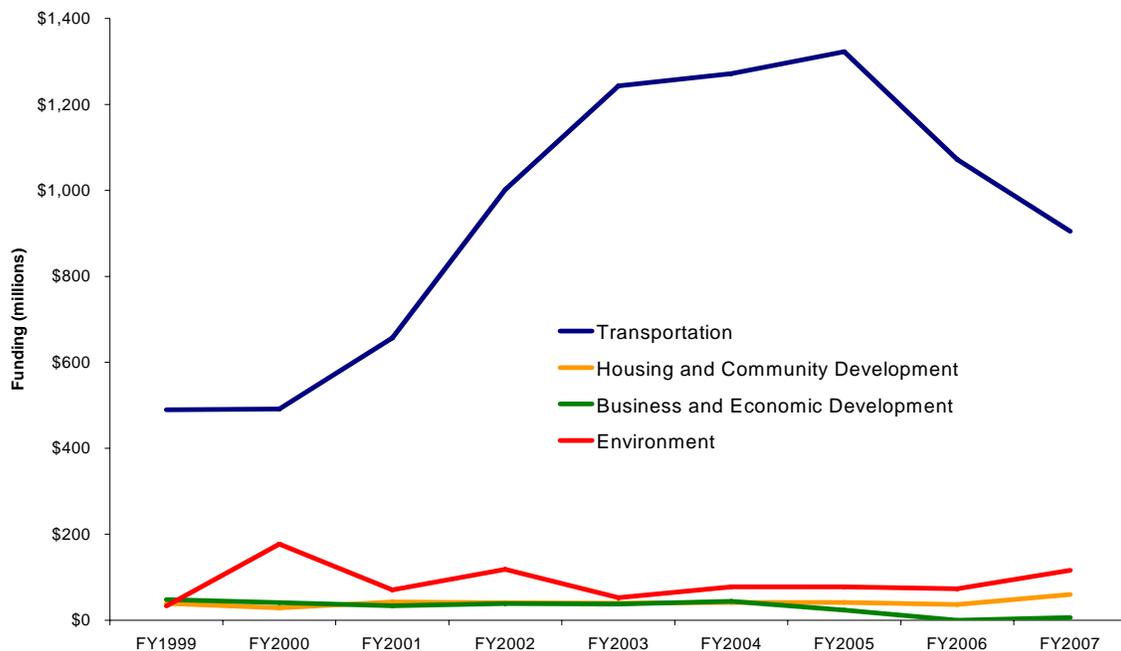


Figure 1: Total Growth-Related Capital and Transportation Appropriations by Agency FY1999-2007.

Appropriations to MDOT represent the largest share (85 percent) of “growth-related” capital and transportation spending over the nine-year period and rose steadily until FY2005. All other agencies combined represent only 15% of “growth-related” capital and transportation appropriations which have remained relatively constant. (The Department of General Services is omitted because all appropriations are listed under the operating budget.)

Sources: Maryland Consolidated Transportation Program (FY1999-2007); Capital Improvements Authorized by the General Assembly 1997 through 2006, Maryland Department of Management and Budget, July 2006.

Capital appropriations subject to PFA review since 1998 equal approximately \$160 million per year, which represents approximately 14 percent of annual capital budgets over the same period.¹⁹ Total transportation appropriations subject to PFA review equal approximately \$940 million per year, which represents approximately 53 percent of annual transportation spending.²⁰ Transportation appropriations by MDOT represent 85 percent of all restricted “growth-related” capital and transportation appropriations over the same period. “Growth-related” capital and transportation appropriations represent approximately five percent of the annual state budget.²¹

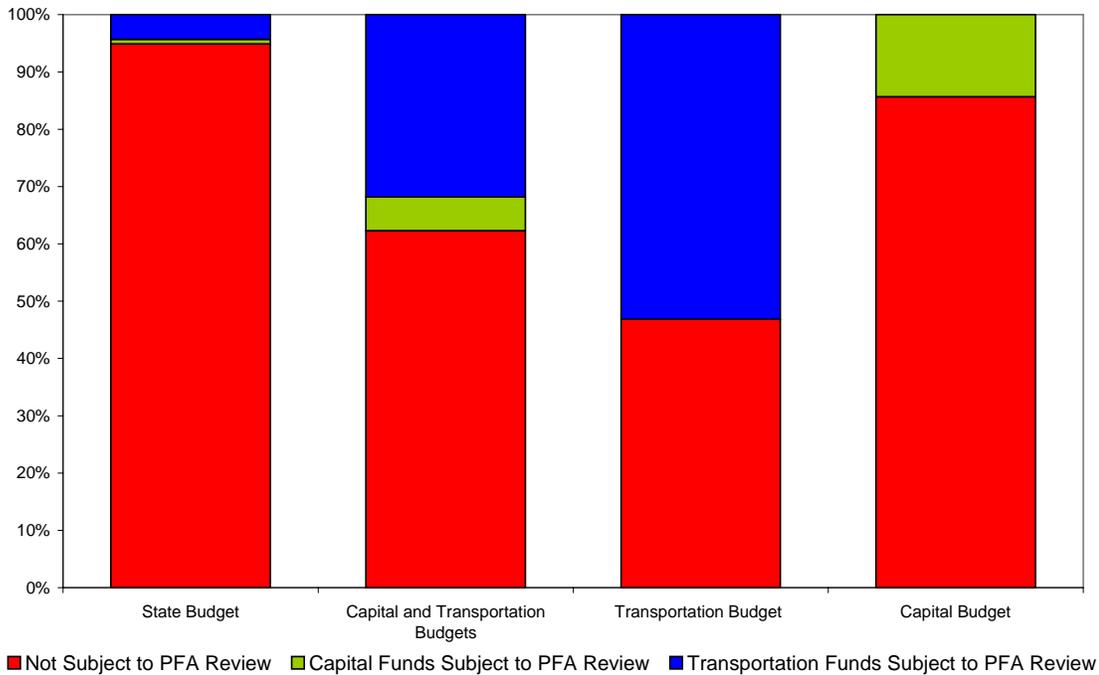


Figure 2: Average Percent of Funds Subject to PFA Review FY 1999-2007. “Growth-related” appropriations equal, on average, 14% of the capital budget, 53% of the transportation budget, 38% of the capital and transportation budgets combined, and 5% of the total state budget.

Sources: Maryland Consolidated Transportation Program (FY1999-2007); Capital Improvements Authorized by the General Assembly 1997 through 2006, Maryland Department of Management and Budget, July 2006; Maryland State Archives Budget of State Government Appropriations Summary (FY1999-2007).

Funding by the Maryland Department of Housing and Community Development

“Growth-related” projects for the Department of Housing and Community Development (DHCD) are defined as construction or purchase of new single-family homes, new multi-family homes, and neighborhood revitalization programs. Six programs funded by the DHCD undergo PFA review. From DHCD, we obtained data indicating how much money had been spent on all six of these programs since the Smart Growth Areas Act was enacted, or in some cases, since the program began. These data are summarized in Table 1.

Community Legacy Program	
Dates:	FY2002 – FY2007
Funding:	\$42,193,000 (grants)
Description:	Community Legacy Areas are designated neighborhoods that, by definition, are inside PFAs. The program provides funding to local governments and community development organizations for projects that strengthen communities like business retention and attraction, encouraging homeownership and commercial revitalization. The program began in 2003.
Neighborhood Business Development Program (Neighborhood BusinessWorks)	
Dates:	July 1, 1995 – September 25, 2007
Funding:	\$65,370,992 (loans and grants)
Description:	The program provides financing to new or expanding small businesses and nonprofit organizations in neighborhoods. Eligible neighborhoods are "Designated Neighborhoods" which are all inside PFAs.
Community Development Block Grant	
Dates:	FY2001 – FY2007
Funding:	\$65,505,530 (grants)
Description:	Grants are awarded for housing, public facilities, and economic development projects in non-entitlement jurisdictions ²² for services provided inside PFAs. (Entitlement jurisdictions receive funding directly from U.S. Department of Housing and Urban Development.) This money is awarded to communities directly, who then fund specific projects.
Community Investment Tax Credit (CITC)	
Dates:	FY1997 – FY2006
Funding:	\$9,933,769 (tax credits)
Description:	Tax credits are awarded to the sponsoring organizations to use as incentives for business contributions. Businesses may reduce tax liability by contributing cash, goods, or real property to Community Investment Tax Credit projects. The services provided, while not linked to any specific address, must be provided inside PFAs.
Community Development Administration Multi-Family Projects	
Dates:	January 1, 2002 – June 22, 2007
Funding:	\$582,613,298* (loans) \$93,449,016 (tax credits)
Description:	DHCD provides low-interest loans and tax credits to fund affordable multi-family and rental housing projects. New construction must be inside PFAs. The funding for these loans comes from both state appropriated money and housing revenue bonds, which do not appear in the State Budget, but are administered by DHCD.
Community Development Administration Maryland Mortgage Program (More House 4 Less)	
Dates:	January 1, 2003 – August 29, 2007
Funding:	\$1,419,944,234* (loans)
Description:	DHCD provides low-interest mortgages for single-family homes. New construction must be inside PFAs. The funding for these loans comes from both state appropriated money and housing revenue bonds, which do not appear in the State Budget, but are administered by DHCD.

Table 1: DHCD Programs Subject to PFA Review.

Source: Maryland Department of Housing and Community Development.

* Multi-family Projects and Maryland Mortgage Program are partially funded through the proceeds of the sale of housing revenue bonds, which are not included in state budget appropriations. Thus, the amount of money awarded through these programs is significantly greater than funding through the capital budget alone.

Maps obtained from DHCD indicate where projects were funded. Some DHCD programs, by their nature, are difficult to pinpoint on a map because they do not occur at a single point but are granted to communities and businesses to provide services. Pinpointing specific locations of housing loans, however, is straightforward. As Figure 3 indicates, 97 percent of all loans funded through the Maryland Mortgage Program from 2003 to 2007 were for projects inside PFAs. While these data include both new and existing home loans, only new construction is identified as “growth-related.”

From appropriations figures obtained from the capital and transportation budgets, it appears that the amount of spending by DHCD that is subject to PFA review is small relative to MDOT. The figures for DHCD, however, are understated in the capital budget because they do not include tax credits or bonds directly administered by DHCD. To fund single-family and multi-family housing loans, DHCD uses the proceeds of housing revenue bonds. Between 2003 and 2007, DHCD received \$30 million dollars for homeownership programs in the capital budget, but using housing revenue bonds and capital budget dollars, granted \$1.4 billion dollars in loans in the Maryland Mortgage Program.

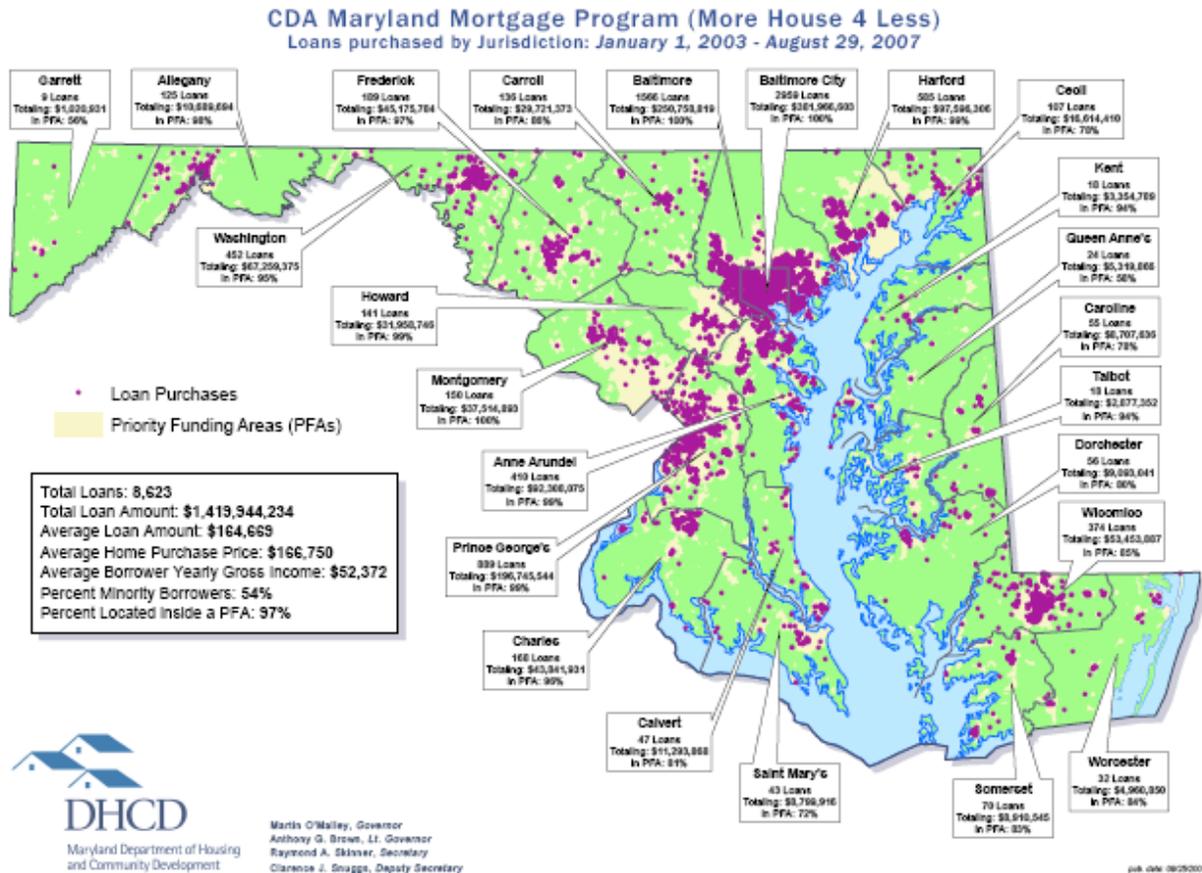


Figure 3: DHCD Maryland Mortgage Program. Of all loans granted through the Maryland Mortgage Program from 2003 to 2007, 97% were inside Priority Funding Areas. Percentages varied extensively across counties, however. In Montgomery County and Baltimore County, 100% of loans were inside PFAs; in Garrett County, only 56% and in Queen Anne's County, only 58%. It is important to note that only loans for new construction must be in PFAs, not existing construction.

Source: Maryland Department of Housing and Community Development

Spending by the Maryland Department of Transportation

Of state agencies subject to PFA review, MDOT is the only agency that publishes an annual document including the location of projects relative to PFAs. The Consolidated Transportation Program indicates PFA status for each project funded by MDOT. From these reports, it is possible to estimate how much has been spent inside and outside of PFAs by MDOT. Spending by the Maryland Transportation Authority, which oversees the state's toll facilities, has been specifically exempted from PFA review since the legislation was enacted.

The Smart Growth Areas Act explicitly exempts all existing toll facilities, such as the Chesapeake Bay Bridge or the Fort McHenry Tunnel, from the requirements of PFA review²³ Total appropriations by Maryland Transportation Authority have increased over time relative to other transportation agencies. As seen in Figure 4 this trend is particularly striking from FY2006-2007 when the Intercounty Connector (ICC) moved from the State Highway Administration budget to the Maryland Transportation Authority.²⁴ Spending for Maryland Transportation Authority construction projects equaled approximately six percent of total transportation spending subject to PFA Review in FY1999, but rose to equal about 50 percent in FY2007. The exemption of Maryland Transportation Authority projects represents a potentially large omission from the Smart Growth Areas Act, particularly in FY2007, when spending by

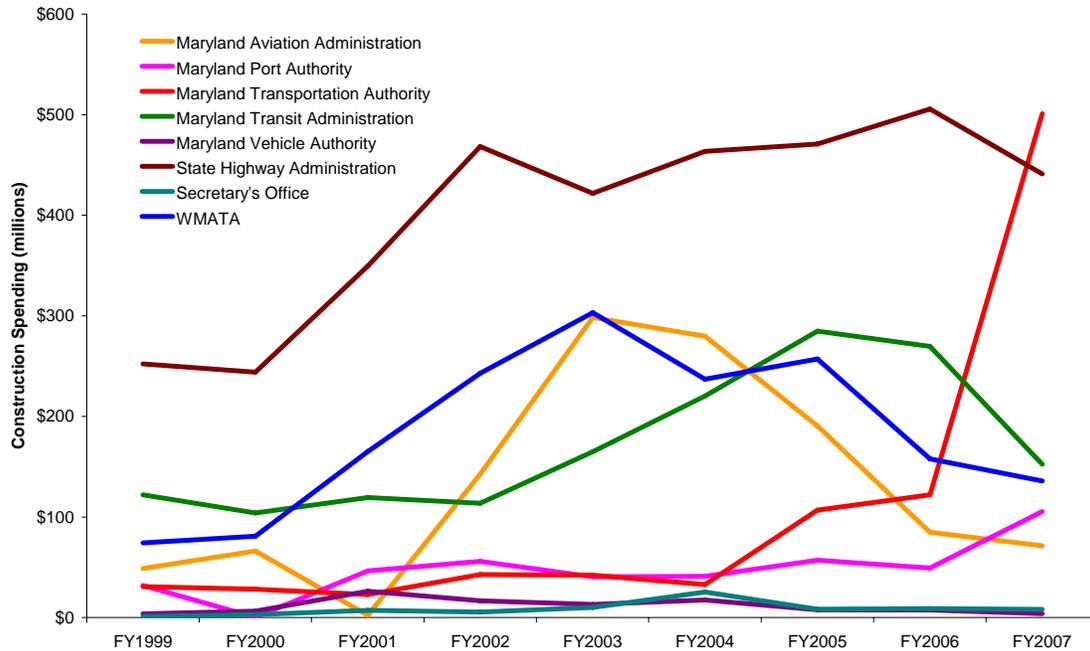


Figure 4: MDOT Construction Spending by Agency FY1999-2007. While appropriations of most agencies have fluctuated over time, spending by the Maryland Transportation Authority has risen, particularly from FY2006-2007, when the Intercounty Connector project was placed in the Maryland Transportation Authority budget. While appropriations by Maryland Transportation Authority spiked in FY2007, appropriations by all other agencies, with the exception of Maryland Port Authority, declined.

Source: Maryland Consolidated Transportation Program FY 1999-2007.

Maryland Transportation Authority represented the largest share of total transportation appropriations.

Spending by MDOT is presented in Figure 5 for each year for the following categories: (1) Inside PFA;²⁵ (2) Grandfathered; (3) Outside PFA and Subject to Exception; (4) Exception Approved by MDOT/BPW; (5) Not Location Specific or Not Determined. Also shown are appropriations for two large transportation projects: the Addison Road Metro Extension and Woodrow Wilson Bridge.

Over the nine-year period, spending on transportation projects identified as inside PFAs averaged 60 percent. As shown in Figure 5, however, the share of spending inside PFAs rose then fell over time. The low share at the beginning of the study period reflects a low share of appropriations for road projects and a large share of grandfathered projects in the period immediately after the passage of the Act. From FY1999 to FY2003, the share of road spending inside PFAs increased and spending increased on the Addison Road Metrorail Extension, projects at Baltimore-Washington International (BWI) Airport and the Woodrow Wilson Bridge, all of which are inside PFAs. After FY2003, the share of spending inside PFAs began to decline because spending on the Addison Road project and BWI airport projects diminished while spending on not-location-specific transit projects increased.

Over the past nine years, the share of grandfathered transportation projects declined from 53 percent to 28 percent. Approximately two and a half percent of “growth-related” spending by MDOT was provided for projects outside PFAs with exceptions approved or pending approval by the Board of Public Works.

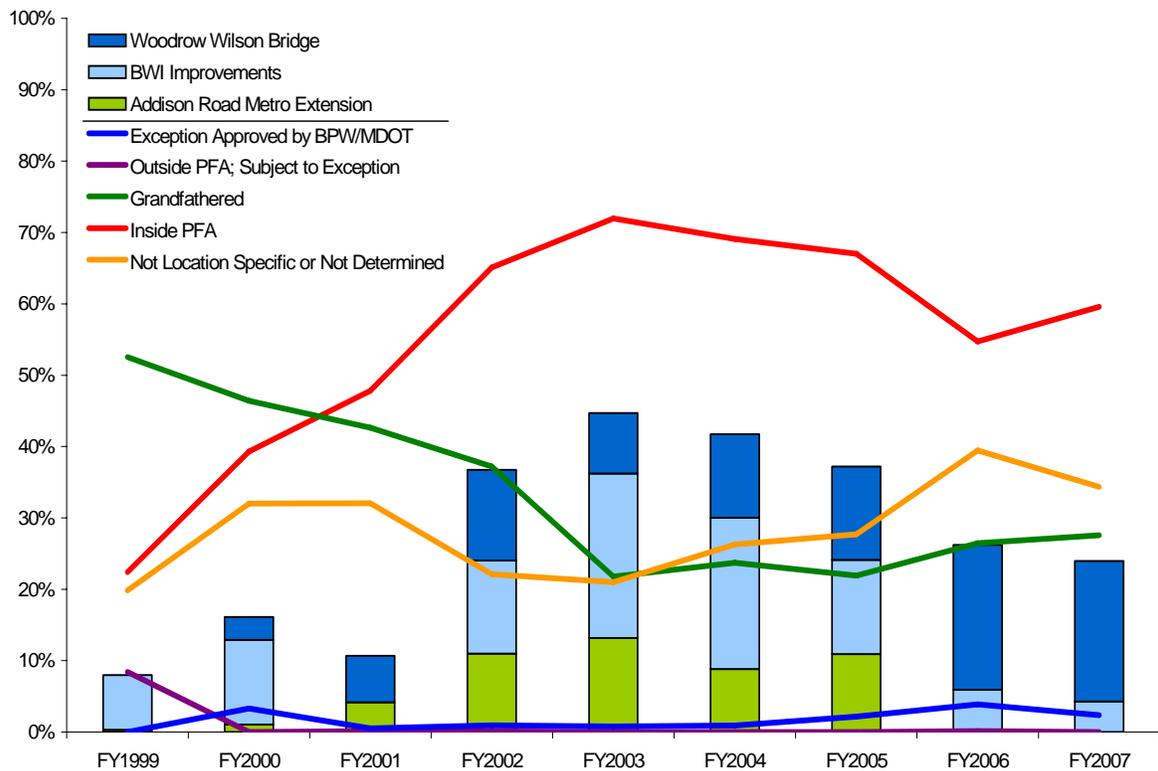


Figure 5: MDOT Spending by Smart Growth Status FY 1999-2007. As shown, MDOT spending within Priority Funding Areas increased over time and then declined. This trend is explained, in part, by investment in large transit and aviation projects inside Priority Funding Areas from FY1999-2003. As would be expected, the number of grandfathered projects has declined over time. The amount of spending on projects outside Priority Funding Areas and excepted projects remained relatively low over the entire study period. NOTE: PFA status categories are not mutually exclusive. Some projects fall in multiple categories.

Source: Maryland Consolidated Transportation Program FY 1999-2007.

Exceptions

Data on exceptions granted by the Smart Growth Coordinating Committee are available from the Maryland Department of Planning. The data on exceptions, however, do not consistently include explicit expenditure amounts, identify the amount of money requested, or the amount of money awarded. Over the nine-year period, all 62 projects reviewed by the Coordinating Committee have been granted exceptions to the Smart Growth Areas Act, according to staff of the Maryland Department of Planning. The Maryland Department of Planning does not maintain records of exceptions granted by the Smart Growth Subcabinet or the Board of Public Works. From Board of Public Works meeting minutes,²⁶ we determined that at least four projects related to the Smart Growth Areas Act have been reviewed by the Board of Public Works. These four projects were MDOT projects: the Manchester Bypass, the ICC, MD 32, and the Lusby Connector. All four of these exceptions were approved. The exception to fund the Manchester Bypass because of “extraordinary circumstances,” passed, but Governor Glendening used his control over the state budget to refuse to fund the project.²⁷ Of exceptions reviewed by the Smart Growth Coordinating Committee, exceptions for Department of Business and Economic Development projects are most common, representing 39 of the 62 projects approved. Department of Housing and Community Development and Department of General

Services have not been granted any exceptions. Most of the exceptions for Maryland Department of Environment appear to be for studies or for water or sewer extension outside of PFAs and justified for “health” reasons.²⁸ Only three exceptions reviewed by the Coordinating Committee were for transportation projects. Many of the exceptions granted by the Coordinating Committee were for loans, grants or studies.

Conclusions

To gain insights into why Maryland's Smart Growth Areas Act has not effectively served to contain urban growth within PFAs, we sought to identify how much spending by state agencies was subject to PFA review and how much of that spending was, in fact, for projects inside PFAs. We had only limited success. Based on our research, it appears that state officials have never adequately reported how much money was subject to PFA review under the Smart Growth law or tracked where that money was actually spent.

Perhaps our most important finding was the lack of consistent reporting by state agencies as required by the Smart Growth Areas Act and the 1998 Executive Order by Governor Glendening. Due to the lack of reporting, it is impossible to determine the share of “growth-related” spending that was spent for projects within PFAs for any year since the Act was passed. As a result it is impossible to assess what, if any, effect state spending has had on urban development patterns.

Staff of each of the state agencies subject to the PFA law insist that every project was appropriately reviewed and funded only under the conditions specified under the Smart Growth Areas Act but there is insufficient documentation available to substantiate the claim. Given limited budgets, ever increasing demands for services, and regular staff turnover and reductions, it is understandable why reports sometimes are not completed or filed. But when required reports are not filed and state objectives are not met, it is impossible to track the reasons why. That is the case here.

The lack of consistent reporting as required under the Smart Growth Areas Act, though surprising, is not inexplicable. Reporting is often not high among priorities among state agencies. Each has more fundamental missions to pursue. What's more, identifying the location of projects and programs funded in part by state agencies is not simple to embed in agency budgeting processes. Attempts made to do so by the Glendening administration reveal that this is a difficult administrative challenge, especially to complete in a short period. Further, responsibility for performing this task of financial accounting, belongs to the Maryland Department of Planning, a task for which the Maryland Department of Planning is not obviously best suited. The most complete report on “growth-related” spending was prepared by the Office of Smart Growth on behalf of the Smart Growth Subcabinet for FY2002.²⁹ The need to extract and report information from multiple state agencies is one reason for placing the Office of Smart Growth under the Governor's office and not within the Maryland Department of Planning.

Grant applicants that submit proposals to the State Clearinghouse are asked to indicate PFA status on applications for funds from “growth-related” programs. The Clearinghouse receives comments from reviewers on grant applications and forwards its findings to the state agencies and the applicants. Such review is mandatory, but the Clearinghouse has an incomplete record of which grant applications were subsequently funded.

Data from the Maryland Department of Planning indicate that few projects were funded through the exception process, though all projects for which we have data were approved, both by the Smart Growth Coordinating Committee and the Board of Public Works.

These findings suggest there is substantial potential for improving the administration of the Smart Growth Areas Act. Such improvement might begin with a reevaluation of the process of financial accounting of growth-related spending and the respective roles of the State Clearinghouse, the Office of Smart Growth, and the Smart Growth Subcabinet.

Over the past ten years, the Maryland Department of Planning reports, growth has not been contained within PFAs. The share of state appropriations subject to PFA review is not large, in relative terms, and is dominated by appropriations to the Maryland Department Transportation. "Growth-related" appropriations by state agencies subject to PFA review averaged five percent of the state budget per year for the nine-year period since 1998. Of the approximately \$1.1 billion growth-related spending per year and subject to PFA review, approximately \$940 million or 85 percent is spending by MDOT. Of the \$940 million in spending by MDOT, approximately \$560 million or 60 percent was spent on projects identified as within PFAs. The remainder was spent on projects grandfathered, not location specific, or granted an exception. Spending by the Maryland Transportation Authority is rising faster than any other agency and is not subject to PFA review. This could result in fewer transportation projects becoming subject to PFA review as tolling becomes more prevalent. Approximately 40 percent of MDOT appropriations subject to PFA review are for projects not identified as inside PFAs – and for legitimate reasons. That may be the case for other state agencies as well. Unfortunately, there are insufficient data available to tell.

Given the large share of spending subject to PFA review by MDOT, a major effect of the Smart Growth Areas Act is to impose additional administrative requirements on MDOT. A significant proportion of growth-related spending by MDOT, as recognized in the statute, is difficult to allocate to PFAs because of the linear features and multiple locations of transportation projects. This raises doubt about the logic of constraining spending by a state transportation agency to areas defined by population density, sewer and water service capacity, and development capacity. Perhaps it would be better to constrain spending by MDOT to be consistent with a spatially explicit state transportation plan.

Recommendations

Given the lack of compliance with existing reporting requirements it seems natural to recommend that such requirements be strictly followed. But such a recommendation presumes that the Smart Growth Areas Act represents an otherwise sound approach to Smart Growth. We don't think so. In other papers, we have identified several other weaknesses of the PFA approach to urban growth management.³⁰ These include:

- The statutory criteria for drawing PFAs are based on existing densities, infrastructure capacities, and municipal boundaries, not on careful plans that consider where future growth should occur.
- The process through which the existing PFAs were constructed was completed too quickly and without public participation.
- PFAs are not required elements in local comprehensive plans. In some existing comprehensive plans, PFAs are not even mentioned.

- The agency most affected by PFA requirements is MDOT, the agency for which spending restrictions to areas defined by existing density and sewer service capacity makes the least sense.

Based on these limitations of the Smart Growth Areas Act, we recommend that the governor and the General Assembly initiate a comprehensive reexamination of the how PFAs are drawn and used to guide state and local land use decisions. Specifically, we recommend that legislation be passed that achieves the following:

- Authorize the Maryland Department of Planning to review and recertify PFAs along with comprehensive plans on the current six-year cycle.
- Make growth-related grants from state agencies to local governments contingent upon having their comprehensive plans certified by the Maryland Department of Planning.
- Require that PFAs are coterminous with growth areas in local comprehensive plans.
- Require local governments to complete a public participation process and a development capacity analysis before the Maryland Department of Planning recertifies their PFAs.
- Make funds for transportation and wastewater infrastructure projects contingent upon consistency with a carefully considered state development plan, not existing PFAs.³¹
- Make grants for projects from all other state agencies contingent upon certification by the State Clearinghouse that the project is consistent with local plans as per the 1992 State Economic Growth, Resource Protection, and Planning Policy Act.³²

Given the lack of compliance with existing reporting requirements it seems natural to recommend that such requirements be strictly followed. But such a recommendation presumes that the Smart Growth Areas Act represents an otherwise sound approach to Smart Growth. We don't think so.

If consensus in the General Assembly on the above recommendations cannot be achieved, we are not optimistic that current development trends will change. Even then, however, we believe the use of PFAs to guide state spending can be vastly improved without legislative action. Specifically, we recommend that the O'Malley administration issue an executive order that requires the Smart Growth Subcabinet to complete the following:

- A review and clarification of the set of programs that are subject to PFA review.
- A reevaluation of the procedure through which projects are screened for meeting PFA requirements. In particular, consider a requirement that state agency funds for local projects be contingent upon certification by the State Clearinghouse.
- Improve the process of accounting for appropriations inside and outside PFAs by each of the state agencies.
- Faithfully meet the reporting requirements established in state law.

¹ Maryland Department of Planning: PFAs and Residential Single-Family Development in Maryland, 1990 – 2004, http://www.mdp.state.md.us/msdc/Priority_Funding_Area/Resid_Growth/residentialDevpSummary_2004.pdf.

² Maryland Code Annotated, State Finance and Procurement Article §§ 5-7B-01 to -10 (LexisNexis 2007)

³ “Smart Growth: Designating PFAs,” *Managing Maryland's Growth: Models and Guidelines*, Maryland Department of Planning. <http://www.mdp.state.md.us/smartgrowth/pdf/PFA.PDF>

⁴ The Board of Public Works is composed of the Governor, the State Treasurer, and the Comptroller.

⁵ Maryland Code Annotated, State Finance and Procurement Article §§ 5-7B-05 defines extraordinary circumstances as:

“(i) the failure to fund the project in question creates an extreme inequity, hardship, or disadvantage that clearly outweighs the benefits from locating a project in a priority funding area; and (ii) there is no reasonable alternative for the project in a priority funding area in another location within the county or an adjacent county.”

⁶ According to Maryland Code Annotated, State Finance and Procurement Article §§ 5-7B-05, the Board of Public Works can grant exceptions for transportation projects if the project: (i) maintains the existing transportation system, if the Department of Transportation and the Department of Planning determine the project does not serve to significantly increase highway capacity; (ii) serves to connect priority funding areas, if: 1. the Department of Transportation and the Department of Planning determine that adequate access control or other measures are in place to: A. prevent development that is inconsistent with § 5-7A-01(1), (2), and (3) of this title; and B. maintain the viability of the project while concomitantly constraining development which potentially detracts from main street business areas; and 2. the Department of Transportation and the Department of Planning have first determined whether alternative transportation modes, such as mass transit and transportation demand management, provide a reasonable alternative to the project and that no reasonable alternative exists; (iii) has the sole purpose of providing control of access by the Department of Transportation along an existing highway corridor; or (iv) due to its operational or physical characteristics, must be located away from other development.

⁷ The Smart Growth Coordinating Committee provides the initial review, then the applications must be reviewed by the Smart Growth Subcabinet before appearing before the Board of Public Works.

⁸ Maryland Code Annotated, State Finance and Procurement Article §§ 5-7B-09.

⁹ Exec. Order No. 01.01.1998.04, Smart Growth and Neighborhood Conservation Policy, (Jan. 23, 1998); <http://www.dnr.state.md.us/education/growfromhere/LESSON15/mdp/EXECORDER.HTM>.

¹⁰ Details of these findings are found in a separate technical appendix, available upon request.

¹¹ The 1992 State Economic Growth, Resource Protection, and Planning Policy Act (Maryland Code Annotated, State Finance and Procurement Article §§ 5-7A-02) requires that grants provided by state agencies are consistent with local comprehensive plans.

¹² The Smart Growth Areas Act requires: (f) Annual report. - Each State agency subject to this subtitle shall report annually to the Department of Planning on the implementation of this subtitle in a form approved by the Department of Planning. (Maryland Code Annotated, State Finance and Procurement Article §§ 5-7B-09 (LexisNexis 2007))

¹³ Maryland Code Annotated, State Government Article §§ 9-1406.

¹⁴ The Office of Planning is now the Department of Planning. We refer to the agency as Maryland Department of Planning throughout the report.

¹⁵ The State Economic Growth, Resource Protection, and Planning Commission was dissolved in 2002.

¹⁶ Executive Order No. 01.01.1998.04, Section F, Smart Growth and Neighborhood Conservation Policy.

¹⁷ Maryland Code Annotated, State Finance and Procurement Article §§ 5-7B-01.

¹⁸ Note: our numbers describing “growth-related” appropriations include only capital budget appropriations, not operating budget appropriations.

¹⁹ Of the large components of the Capital Budget, roughly 25 percent is spent on environment and natural resources, 15 percent is spent on public and secondary school construction, and 15 percent on higher education, leaving 45 percent to other appropriations.

²⁰ Note that total transportation budget sum is obtained from Consolidated Transportation Program. This number does not include county and municipal funds allocated directly to local governments or debt service requirements.

²¹ Of the large components of the total State Budget, roughly 25 percent is spent on health, 20 percent on elementary and secondary education, 15 percent on higher education, and 14 percent on transportation, leaving approximately 25 percent to all other appropriations.

²² Entitlement jurisdictions receive money directly from the federal Department of Housing and Urban Development. These jurisdictions include: Anne Arundel County, Baltimore County, Baltimore City, Harford County, Howard County, Montgomery County, and Prince George's County.

²³ Maryland Code Annotated, State Finance and Procurement Article §§ 5-7B-01 says that all existing toll facilities are not to be considered “growth-related” and thus not subject to PFA review. According to Transportation Article §§ 4-101 (i) this includes: (1) The Susquehanna River Bridge, the Harry W. Nice Memorial Potomac River Bridge, the William Preston Lane, Jr. Memorial Chesapeake Bay Bridge and parallel Chesapeake Bay Bridge, the Baltimore Harbor Tunnel, the Fort McHenry Tunnel, the Francis Scott Key Bridge, and the John F. Kennedy Memorial Highway, together with their appurtenant causeways, approaches, interchanges, entrance plazas, toll stations, and service facilities; (2) A vehicle parking facility located in a priority funding area as defined in § 5-7B-02 of the State Finance and Procurement Article; (3) Any other project for transportation facilities that the Authority authorizes to be acquired or constructed; and (4) Any additions, improvements, or enlargements to any of these projects, whenever authorized.

²⁴ Maryland Code Annotated, Transportation Article §§ 4-101 (i) includes all new projects authorized by the Maryland Transportation Authority as well. The Intercounty Connector, since FY2004, has been listed under the Maryland Transportation Authority. Nevertheless, in August, 2005, MDOT sought an exception from the Smart Growth Areas Act on the basis of section 7B-06, "which allows exceptions for a "growth-related" project related to a commercial or industrial activity which, due to its operational or physical characteristics, shall be located away from other development."

²⁵ According to the Maryland Code of Regulations, regarding the "smart growth status" classification of State Highway Administration projects: "A. After consultation with the Maryland Department of Planning, the Administration may deem a transportation project to be a priority funding area, even if segments of the project are outside the priority funding area, if: (1) Each segment: (a) Standing alone would be exempt under State Finance and Procurement Article, §5-7B-06, Annotated Code of Maryland; (b) Is necessary to eliminate or reduce the number of access points to a highway; (c) Is necessary to avoid denying access to a property owner with existing access; (d) Improves or maintains an existing roadway without significantly increasing capacity; or (e) Comprises less than 5 percent of the lane mileage of the total project length; and (2) The total lane mileage of segments described in §A(1)(a), (b), (c), and (e) of this regulation, does not exceed 20 percent of the total lane mileage of the project. B. If a highway or roadway serves as a boundary of a priority funding area, all portions of that highway or roadway immediately adjacent to the priority funding area, such as ramps, bridges, and overpasses, shall be deemed to be the priority funding area for purposes of State Finance and Procurement Article, §5-7B-04(a), Annotated Code of Maryland" COMAR 11.04.13.03 (<http://www.dsd.state.md.us/comar/>).

²⁶ Board of Public Works Minutes 3/24/99, 5/5/99, 7/21/04, 8/31/05, 2/15/06. Available at <http://www.bpw.state.md.us/>.

²⁷ Board of Public Works Transcript from 3/24/99 and 5/5/99 regarding "Request from Carroll County to reconsider the decision of the State Department of Transportation to delete the Manchester Bypass project from the Consolidated Transportation Program."

²⁸ In most instances in which sewer or water lines outside of PFAs were approved, conditions were attached to limit future hookups in an attempt to limit the unintended development potential of these exempted projects.

²⁹ The report completed by Office of Smart Growth on behalf of the Smart Growth Subcabinet for FY2002 identified a number of challenges faced by agencies in implementing the Act. Under the Ehrlich Administration, comprehensive reports were not published and the Office of Smart Growth was placed within the Maryland Department of Planning. Challenges identified in FY2002 were never addressed.

³⁰ See: Knaap, Gerrit-Jan and John W. Frece, 2007, Smart Growth in Maryland: Looking Forward and Looking Back, *Idaho Law Review*, 43: 445-473.; Knaap, Gerrit-Jan, 2005, A Requiem for Smart Growth? In *Planning Reform in the New Century*, Daniel R. Mandelker, ed., Chicago, IL: American Planning Association.

³¹ Maryland Code Annotated, State Finance and Procurement Article §§ 5-6: State Development Plan.

³² According to the 1992 State Economic Growth, Resource Protection and Planning Policy, "(1) Except as provided in paragraph (2) of this subsection, with respect to a State public works, transportation, or major capital improvement project funded through State or federal funds, the State may not provide State funding for the project if the project is not consistent with: (i) the State Economic Growth, Resource Protection, and Planning Policy Act established in § 5-7A-01 of this subtitle; or (ii) the local plan of the jurisdiction in which the project is located. (2) The State may provide State funding for a State public works, transportation, or major capital improvement project funded through State or federal funds which is not consistent with the policy or plan under paragraph (1) of this subsection if the State determines that extraordinary circumstances exist that warrant proceeding with the project and that no reasonably feasible alternative exists." (Maryland Code Annotated, State Finance and Procurement Article §§ 5-7A-02) In many respects, this requirement has a more compelling logic than the 1997 Smart Growth Areas Act which appears to have de facto superseded it.