

# **Findings from Case Studies of Local Adequate Public Facilities Ordinance Implementation in N. Central Maryland**

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# Outline

- A. Definition of APFO
- B. Purpose of case studies
- C. APFO use in Maryland
- D. Characterization of N. Central MD county APFOs
- E. Maryland planning mandates relevant to APFOs
- F. Criteria for evaluation of county APFOs; Findings
- G. Conclusions from case studies

## **A. Definition of Adequate Public Facilities Ordinances (APFOs)**

A growth management tool that attempts to link the timing of new development to the availability of facilities needed to service it.

- Development approval is conditional on whether the project meets level of service / capacity standards
- If a jurisdiction's schedule of capital improvement provision isn't timely for the developer's purposes, the development may not proceed unless the developer chooses to build / fund the needed facilities / services to the level required by the APFO

## **B. Purpose of the Study; Information Sources**

### Purpose

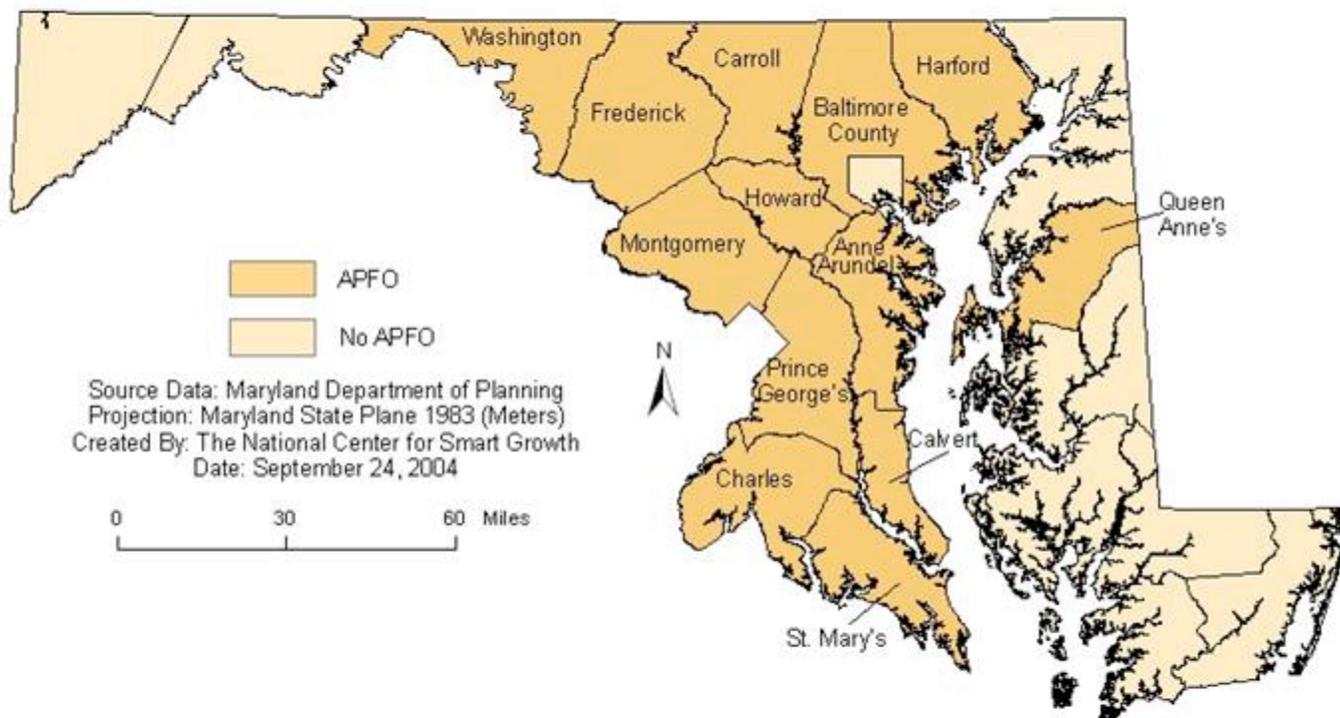
Through case studies of counties in north central Maryland that have APFOs, determine the degree to which, and the reasons why, APFOs complement or frustrate development in Maryland's Priority Funding Areas

## Information Sources

- Literature on APFOs, nearly all of which is related to Florida “concurrency” and does not rely on empirical research
- Review of local comprehensive plans and other relevant planning documents (such as the APFO, impact tax regulations, etc.)
- Interviews with planners and building industry professionals

## **C. APFO Use in Maryland**

## Maryland Counties With Adequate Public Facilities Ordinances (APFO)



# APFO Implementation in N. Central MD Counties

	<b>County</b>			
	Anne Arundel	Baltimore	Carroll	Harford
<b>Year</b>	1978	1979	1998	1991
<b>Services/ Facilities Included</b>	<ul style="list-style-type: none"> <li>•Schools</li> <li>•Roads</li> <li>•Water</li> <li>•Sewer</li> <li>•Water for fire sup- pression</li> </ul>	<ul style="list-style-type: none"> <li>•Schools</li> <li>•Roads</li> <li>•Water</li> <li>•Sewer</li> <li>•Recreation</li> </ul>	<ul style="list-style-type: none"> <li>•Schools</li> <li>•Roads</li> <li>•Water</li> <li>•Sewer</li> <li>•Fire/rescue</li> </ul>	<ul style="list-style-type: none"> <li>•Schools</li> <li>•Roads</li> <li>•Water</li> <li>•Sewer</li> </ul>

# APFO Implementation in N. Central MD Counties (cont.)

	<b>County</b>			
	Howard	Queen Anne's		
<b>Year</b>	1992	2001		
<b>Services/ Facilities Included</b>	<ul style="list-style-type: none"> <li>•Schools</li> <li>•Roads</li> </ul>	<ul style="list-style-type: none"> <li>•Schools</li> <li>•Roads</li> <li>•Water</li> <li>•Sewer</li> </ul>		

# APFOs in Maryland

*Maryland would seem to be a state well-suited to incorporate APFOs into local planning (Avin 2004). . . .*

- Major power for land use planning rests with 23 counties and a relatively small number of cities
- Local govts are required to prepare 6-yr. CIPs that are updated annually
- Counties must prepare 10-yr. water and sewer plans that include their cities & towns
- School districts are coterminous with county boundaries, and county elected officials have final approval over school budgets

## **D. Characterization of APFO, by County**

N. Central MD county APFOs can be characterized by:

1. The degree of strictness of school APFO standards

*“Strict”*

- a) define acceptable threshold as  $\leq 105\%$  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 enrollment projections

## The degree of strictness of school AFFO standards (cont.)

### *“Flexible”*

- a) define acceptable threshold as  $\geq 110\%$  of state-rated capacity;
- b) allow relocatable classrooms to be considered as acceptable to prevent moratorium; and/or
- c) allow for borrowing capacity from adjacent school districts to relieve otherwise moratorium-inducing enrollment projections

## Characterization of APFO, by County (cont.)

2. The degree to which the county uses impact fees, excise taxes or other mechanisms to augment the CIP

*“Resource limiting”*

- a) Have imposed lower than recommended impact fees / taxes;
- b) Lack other taxes dedicated for schools; and/or
- c) Have a property tax cap

## Augment the CIP? (cont.)

*“Resource expansive”*

- a) Have raised impact fees / taxes; and/or
- b) Have implemented a “pay-and-go” type of system

## Characterization of APFO, by County (cont.)

3. Whether the county has a defined waiting period and the maximum length of that period
  - a) *“Indefinite” waiting period* (no mandated time limit);
  - b) *“Long” waiting period*, w/ wait >5 yrs.;
  - c) *“Short” waiting period*, w/ wait < 5 yrs.;
  - d) *“No” waiting period* (distinct from “indefinite”)

## Characterization (cont.)

*Anne Arundel:* Strict school APFO county; resource-limiting; long waiting period.

*Baltimore:* Flexible school APFO county; resource generating; allow relocatables as solution; no waiting period (due to APFO, that is).

*Carroll:* Somewhat flexible school APFO county; resource-limiting; indefinite waiting period.

## Characterization (cont.)

*Harford*: Strict school APFO county; less resource-limiting than last year due to new impact fee; indefinite waiting period.

*Howard*: Flexible school APFO county; resource generating; short waiting period (once applicant has a growth allocation, that is)

*Queen Anne's*: Flexible school APFO county; resource limited; no school-based waiting period but has other growth-limiting issues.

## **E. Maryland Planning Mandates Relevant to APFOs**

Five of the 8 “visions” emanating from the 1992 Economic Growth, Resource Protection and Planning Act are relevant to 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

## **Maryland Planning Mandates (cont.)**

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

The 1992 Act also mandated that zoning and other regulations be consistent with the local comprehensive plan and with the visions.

The Smart Growth Network website ([www.smartgrowth.org](http://www.smartgrowth.org)) enumerates ten smart growth principles, two of which are:

- “strengthen and direct development towards existing communities”; and
- “make development decisions predictable, fair and cost effective”.

## **F. Criteria for Evaluation of APFOs; Findings**

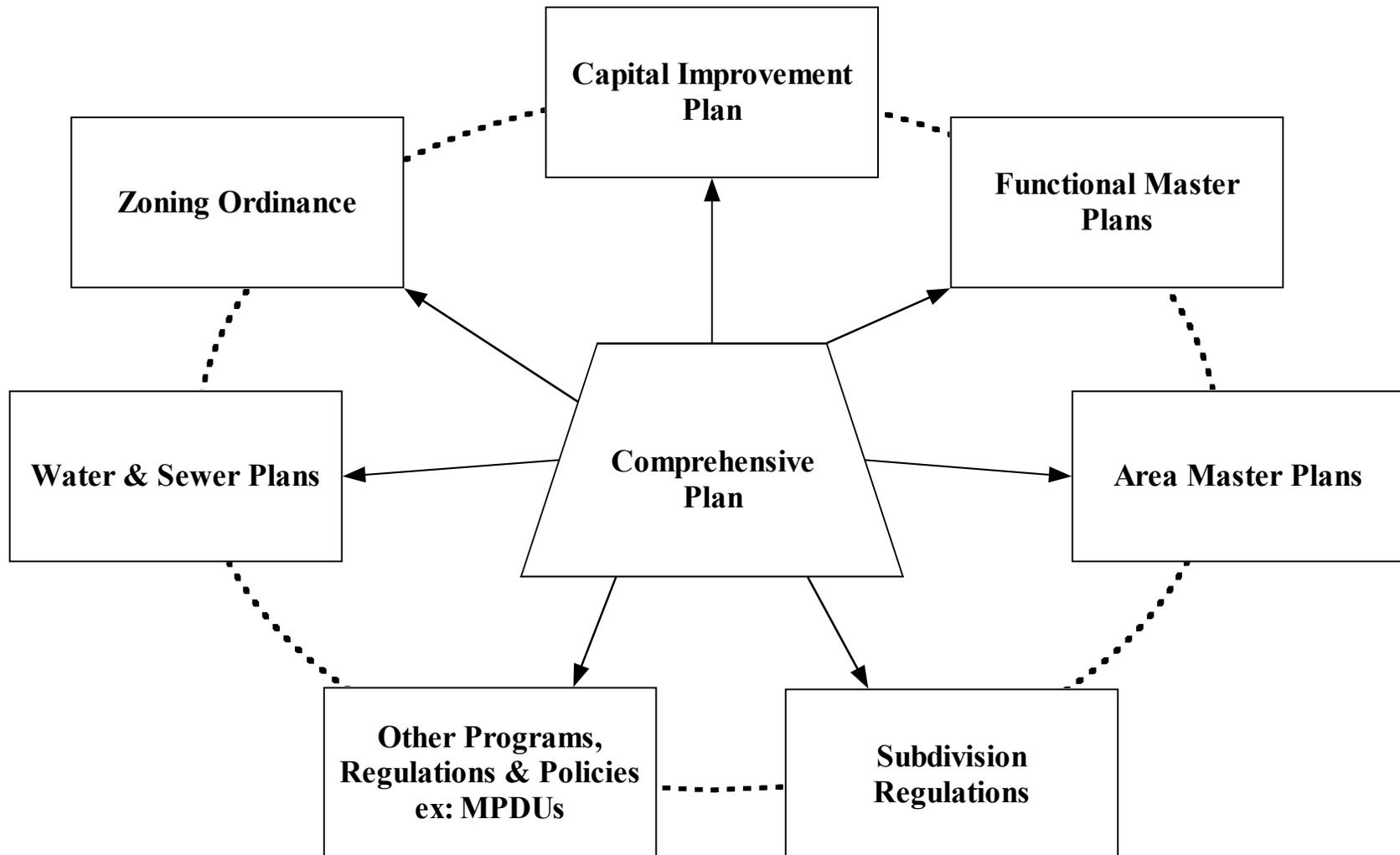
From these sources, 7 criteria are used herein to summarize data from the county case studies. The summary highlights the degree to which county APFO design and implementation is complimentary to smart growth and reflect planning principles consistent with Maryland planning mandates. For purposes of this discussion, the criteria will be referred to as “good planning”. Many of the criteria are based on Avin (2004).

## Criteria (cont.)

The criteria are:

1. The local comprehensive plan provides guidance for planning regulations, including the APFO. Accordingly, the APFO favors growth within PFAs rather than outside.
2. The APFO standards are reasonable.
3. The APFO is justly administered.
4. The APFO feedback informs the Capital Improvement Program.

# Under Good Planning: Relationship of Plans / Regulations in a Maryland County



## **Criteria (cont.)**

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.

## Under good planning . . .

1. The local comprehensive plan provides guidance for planning regulations, including the APFO, and the APFO favors growth within PFAs rather than outside?

### Findings:

- On paper, all north central MD county APFOs seem to favor growth inside PFAs rather than outside to some degree (especially with regard to road Level of Service (LOS) standards).

- Baltimore County uses its APFO to facilitate growth inside the Urban/Rural Demarcation Line
- Howard County ties APFO implementation to a growth allocation process tied to the county's comp. plan

However . . .

- APFO consistency with the comp. plan is not possible if there is inadequate funding to provide the necessary infrastructure inside the plan's designated growth areas.

## 2. The APFO standards are reasonable?

- Even within its PFA, Carroll County considers a road LOS of “D” or lower as “inadequate”

## 3. The APFO is justly administered?

There is a lot of skepticism regarding the way that school administrators determine school capacities so that a given school is classified as “full”.

- In 2003, Winchester Homes won the right to build new homes when Anne Arundel County officials admitted in court they knowingly used incorrect enrollment figures as basis for development denial.

## Under good planning . . . (cont.)

- Largely to prevent more lawsuits, Anne Arundel County amended its APFO to stipulate that no school district can be in moratorium for more than 6 years. After that, development can occur.
- By September 2004, 27 (35%) of county's 77 elementary school districts and 5 (42%) of the 12 high schools were closed to development.

## Under good planning . . . (cont.)

4. APFO feedback informs the Capital Improvement Program? Not always . . .
  - In Harford Co., even though school capacity increases were needed in Bel Air (within the development envelope), CIP priority was placed on a school district outside of the development envelope.
  - On the other hand, Baltimore County is example of tight connection between APFO and CIP.

**5. APFO contributes to development decisions that are predictable, fair and cost-effective?**

- a) Determine capacity surpluses or deficits at concept (sketch level) of review?
- b) Enable developer to mitigate for capacity shortfalls by constructing improvements or paying in-lieu fees?
- c) Arrange reimbursement to a developer who pays for improvements that expand capacity that benefits developers of future projects?
- d) Specify the extent of the denial period – and limit the denial period– so developers know if and when they can proceed with a project?

*Make development decisions predictable . . (cont.)*

a) Make capacity determinations at the concept level of review?

*Findings:*

- All N. Central MD counties do except for Carroll, where testing is required at the concept, preliminary plan *and* final site plan levels.

*Make development decisions predictable . . .(cont.)*

b) Enable developer to mitigate for capacity shortfalls

*Findings:*

- Counties usually allow for road mitigation but often not for schools (outside of impact fees).

*Make development decisions predictable . . .(cont.)*

b) Enable developer to mitigate for capacity shortfalls by constructing improvements or paying in-lieu fees?

*Finding:* Depends on the type of facility

- All counties allow developers to mitigate or pay in lieu payments for roads
- Other than impact fees, none of the N. Central MD counties allow developers to mitigate for schools

*Make development decisions predictable . . .(cont.)*

- b) Arrange reimbursement for a developer who pays for improvements that expand capacity that benefits developers of future projects?

*Finding:* None of the counties has this policy

- c) Specify extent of denial period so developers know if and when they can proceed with project

*Finding:*

- Some counties do; others don't. Anne Arundel has a maximum 6-year delay. In Howard the delay can be as long as 9 yrs. Projects can be delayed indefinitely in Carroll and Harford counties.

## Under good planning . . . (cont.)

6. There is tight coordination between planning dept. and the board of education?
  - Some counties do not redistrict schools even when such decisions make good planning sense. (Anne Arundel did not redistrict, even with 10,000 empty seats.)
  - Except for Baltimore County and a couple of others, planners and building industry stakeholders interviewed report poor coordination. One observer in Queen Anne's Co. said that the two entities “don't like each other and don't trust the numbers they get from each other”.

## Under good planning . . .

6. Reasonable alternative funding options, aside from CIP, available to provide needed facilities / services in designated growth areas?
  - School funding options are limited in most counties, to impact taxes and fees on new construction. In 2003-4 Howard Co. was unsuccessful in getting special state enabling legislation allowing it to get a real estate transfer tax to pay for schools. Instead, the state allowed the county to levy a school excise tax of \$1.00 per sq. ft. for new houses only.

## Under good planning . . . (cont.)

### 6. Reasonable alternative funding options? (cont.)

- Planners for Ann Arundel County note that the actual impact fees being charged are much lower than what their consultant has recommended.
- A jurisdictions with a property tax cap (such as Anne Arundel) has additional limitations in using tax monies for infrastructure provision.
- None of the N. Central MD counties dedicates a portion of its real estate transfer tax for school construction.

## **G. Conclusions: Challenges to Smart Growth / APFO Compatibility**

1. APFOs are designed, implemented and altered in a political environment.
  - Sometimes, this means that APFOs become the controlling land use tool in a given jurisdiction, an outcome that can frustrate smart growth objectives.
  - While the above can be problematic, is there any other land use decision making process that is preferable (or politically feasible) in Maryland?

## G. Conclusions (cont.)

2. *Raising sufficient revenue to fund the provision of facilities and services in designated growth areas.* Some counties are gambling that, through use of impact fees, sufficient \$ will be available to fund infrastructure for promised development when delay time limits expire.

*But if the \$ isn't available at that time . . .*

- Continue moratoria?
- Lower or ignore the standards?
- Raise taxes / impact fees?
- Revise comprehensive plan and zoning?

## **Conclusions: Challenges . . . (cont.)**

- 3. Determining how to raise funding for infrastructure capacity upgrades in a fair and progressive way.*

In some counties, an increment of the real estate transfer tax is a sensible way to fund needed infrastructure. Howard Co. planners argue that a real estate transfer tax there could be applied in a progressive way and would raise more funding for schools than an excise tax on new homes.

## Conclusions: Challenges . . . (cont.)

4. *Using school re-districting to prevent building moratoria caused by school overcapacity appeases developers but angers parents. What should a jurisdiction do?*
  - a) redistrict almost annually (as Howard Co. does)?
  - b) respond to parents' complaints and maintain moratoria (as Anne Arundel Co. does)?
  - c) raise taxes / fees sufficiently to pay for new schools?
  - d) loosen capacity standards?
  - e) none of the above?

## **Conclusions: Challenges . . . (cont.)**

5. *Improving local databases, analytical methodology, forecasting and capital facilities planning & funding to better assist local officials to balance new growth with needed infrastructure.*
6. *Educating the public on the fiscal and environmental consequences of alternative APFO standards.*

## Conclusions: Challenges . . . (cont.)

7. *Administering a county APFO when the municipalities in the county do not have their own APFOs*
  - On one hand, some key informants say this encourages growth in municipalities, consistent with Smart Growth.
  - On the other hand, the inconsistencies in APFO implementation put strains on county infrastructure and can hamper growth within the county's own PFAs.

## **Conclusions: Challenges . . . (cont.)**

It is worth noting that, in its 1999 annual report, the MD Economic Growth, Resource Protection and Planning Commission had a number of recommendations.

One was creation of state infrastructure financing program for growth areas that would be used for infrastructure improvement in PFAs.

## Conclusions: Challenges . . . (cont.)

Some recommended features of the fund were:

- all projects funded, including schools, must be within a PFA and be identified in the local government's CIP
- a local match would be required
- specific priority would be given to projects that
  - remove APFO restrictions or other moratoria that stop or retard development in PFAs, or
  - Involve the renovation or rehabilitation of existing infrastructure

## **Conclusions: Challenges . . . (cont.)**

Two special categories of the fund infrastructure fund were to be:

- 1.0% of State monies allocated for fund each year set aside for a public education campaign focused on cost of sprawl, the need to provide adequate facilities in growth areas, and benefits of Smart Growth
- a special fund to assist with improvements need to meet APFO requirements related to State facilities, which would be a required element of the Consolidated Transportation Program. Fund would be used to “reward jurisdictions for measurable achievements to control sprawl and encourage Smart Growth”

## **Conclusions: Challenges . . . (cont.)**

Among the other highly-ranked recommendations of the Commission's workgroup were:

- Broad-base tax resources (property, sales or income) should provide the fiscal resources necessary to fund APFs in growth areas. The state needs to diversify broad-base revenue sources available to local governments to reduce dependence on the property tax.
- The Interagency Committee for School Construction (IAC) should increase its square footage funding allowance for the renovation of school facilities located in, or serving students residing in, PFAs
- A coordinated plan should be prepared, detailing State and local actions necessary for the provision of adequate infrastructure

## **Conclusions: Challenges . . . (cont.)**

Another Commission recommendation would have amended APFO enabling legislation to add the following local governmental powers:

- Establish Special Tax Districts or TIF districts to raise funds for needed facilities; and
- Establish other mechanisms, such as infrastructure funding “banking” programs, that accumulate developer contributions to be used to fund needed improvements

## Conclusions: Challenges . . . (cont.)

Article 66-B would be amended to clarify that local governments would have the following responsibilities:

- establish a limit on length of APFO-based moratorium or delay on a development proposal in a PFA;
- waive APFO requirements on certain infill or revitalization projects within PFAs; and
- every 2 years, prepare and publish a report identifying facilities within PFAs that that don't meet local APFO standards, and any improvements to those facilities that have been scheduled / proposed in the CIP.

## **Conclusions: Challenges . . . (cont.)**

The Commission concluded:

“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.”