

**M E M O R A N D U M**

October 2, 2009

TO: Planning, Housing, and Economic Development Committee  
FROM:  Glenn Orlin, Deputy Council Staff Director  
SUBJECT: 2009-2011 Growth Policy

**Committee members: Please bring to the worksession your copies of the Growth Policy document “Reducing Our Footprint” and its Technical Appendix.**

The Planning Board transmitted its Final Draft of the 2009-2011 Growth Policy this summer. Both the County Executive and the Board of Education (BOE) sent comments on the Final Draft to the Council by the statutory deadline of September 15 (©1-7 and ©8-14, respectively). The Council held its public hearing on the Growth Policy on September 22.

This worksession will begin with a 15-minute overview of the Final Draft by the Planning staff. This will be followed by an exploration of recommendations regarding the public school capacity test, policy area boundaries, and trip generation rates for Metro Station Policy Areas. This packet will also lay out the several changes to Policy Area Mobility Review (PAMR)—and alternatives to it—suggested in the Final Draft or in the hearing testimony; Councilmembers will be asked what options should be further explored. The intent is to return at a future worksession with analysis and recommendations on the surviving options. Finally, a few related issues raised in testimony will be addressed.

**I. PUBLIC SCHOOL CAPACITY TEST (pp. 46-48)**

The school test examines the projected five-year forecast of enrollment by high school cluster and by level (ES, MS, and HS) to the respective program capacity by cluster and level five years from now. Relocatable classrooms are not counted in calculating program capacity. The enrollment forecast is produced by MCPS staff, and the capacity is determined by the teaching stations programmed by the Council in the CIP and the programs in teaching stations determined by the BOE.

If a cluster exceeds 120% of program capacity at any level, no more residential units may be approved at subdivision, except for senior housing and de minimus subdivisions of three or fewer units. If a cluster exceeds 105% of program capacity at any level—but does not exceed 120%—then residential units may be approved conditioned on payment of a School Facilities Payment (SFP) at the

time of building permit issuance; senior housing is exempt. (The current SFP schedule, as prescribed by law, is \$19,515 for each ES student generated, \$25,411 per MS student, and \$28,501 per HS student.) A queue of potential approvals is kept for each cluster and level; new residential subdivisions are limited up to the 120% cap, and any development that would bring a cluster-and-level above 105% has to pay a SFP for the units above 105%.

**1. Interpretation of the moratorium and SFP thresholds.** According to the Planning Board and BOE, there are three clusters in moratorium (B-CC, Seneca Valley, and Clarksburg) and nine clusters within the SFP range. This was determined by dividing the five-year enrollment forecast at each cluster and level by the respective five-year program capacity at each cluster and level, rounding to the nearest full percentage, and then determining whether the result exceeds 120% or 105%.

However, the Growth Policy says nothing about rounding. This is a key point, because the Northwest Cluster is actually over 120% at the ES level: with a projected enrollment of 4,178 students and a projected program capacity of 3,478, its ratio is 120.13%. Furthermore, if the Council were to change the SFP threshold from 105% to 110%, the Whitman Cluster would remain in the SFP range for ES students: with a projected enrollment of 2,272 students and a projected program capacity of 2,061, its ratio is 110.24%. Continuing to allow rounding would drop the Whitman Cluster out of this range.

The Growth Policy is a regulatory tool, and boundaries must be very precisely administered. There are precise geographic boundaries for clusters and policy areas: whether on one side of the line or the other often determines whether a subdivision can be approved or not. A subdivision will fail if one of its affected intersections falls 1 CLV short of the LATR standard. By rounding the results for the school test, the effect is actually that the moratorium threshold is 120.499...%, not 120%, and that the SFP threshold is 105.499...%, not 105%.

**Council staff recommends a finding that the Northwest Cluster is in moratorium, and that the Council clarify that in the calculation of enrollment-to-capacity for the school test, the results are not to be rounded.**

**2. Setting the moratorium threshold.** The Planning Board, BOE, the Executive, the Montgomery County Council of Parent-Teacher Associations (MCCPTA), the Montgomery County Civic Federation (MCCF), and a host of individual PTAs and civic organizations all recommend continuation of the 120% threshold for moratorium.

The Montgomery County Chamber of Commerce and the Maryland-National Capital Building Industry Association (MNCBIA) recommends raising this threshold to 135%, which had been recommended by the Planning Board and BOE in 2007. They note that raising the threshold would allow more subdivisions to be approved that would pay the SFP, thus raising more funds for school capacity. They also point out that a large majority of enrollment growth in a cluster is due to factors other than additional dwelling units. MNCBIA and the Greater B-CC Chamber propose an exemption to the school test for residential development in Central Business Districts and Metro Station Policy Areas (MSPAs), noting that such developments produce very few students and that smart growth development is currently thwarted by the policy, at least in Bethesda and Friendship Heights.

**Council staff recommends retaining the current 120% threshold for moratorium.** The current level indicates that sufficient overcrowding will exist to warrant a temporary moratorium. Any moratorium is likely to be temporary, anyway—only one or two years, at the most—because history has shown that the Council has responded readily to school overcrowding by programming hundreds of millions of dollars for new schools and additions, even when State aid is insufficient. This is in direct contrast to the transportation adequacy tests; a moratorium under PAMR can take many years to dig out from, considering the long lead-time to plan, design, and build transportation projects, and their considerable cost.

The Council can eliminate these moratoria in the short term by programming funds in the CIP so that new capacity in the affected clusters and levels will open by August 2014, and to allow the Planning Board to make a mid-cycle finding on adequacy if there is an amendment to the CIP that changes capacity. On ©15-18 are project description forms (PDFs) that would program funds to add sufficient capacity within five years in the four moratorium clusters (including Northwest) to bring them out of moratoria. The cost estimates were developed by MCPS staff at Council staff’s request. The total cost of these projects is \$31,890,000, but there are sufficient funds in the CIP reserve to absorb the cost:

**G.O. Bond Reserve in the FY09-14 CIP (\$ millions)**

	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>Beyond FY14</b>
<b>G.O. Bond reserve</b>	<b>13,828</b>	<b>19,872</b>	<b>20,474</b>	<b>62,342</b>	<b>51,251</b>	-
B-CC ES Solution	-	-	(719)	(4,586)	(6,925)	(2,360)
Clarksburg MS Solution	-	-	(315)	(1,667)	(1,974)	(444)
Northwest ES Solution	-	-	(466)	(3,023)	(3,068)	(4,543)
Seneca Valley ES Solution	-	-	-	(173)	(876)	(751)
<b>Reserve balance</b>	<b>13,828</b>	<b>19,872</b>	<b>18,974</b>	<b>52,893</b>	<b>38,408</b>	-

There is precedent for this. The model is the Upcounty Solution PDF approved in the FY01-06 CIP, which programmed—but did not appropriate—26 more classrooms in the Upcounty (20 for Northwest HS and 16 at Gaithersburg HS). This was done, as noted on the PDF, to prevent the Damascus and Watkins Mill Clusters from going into residential moratoria. The PDF also noted that “alternative solutions to meet the capacity requirements in the up-county may be considered in future years” so as not to bind the BOE to these specific additions. In effect, it was a funding placeholder to be used for whatever the BOE ultimately would propose. During the next two years, based on BOE requests, the funds were shifted—and appropriated—to the Northwest HS Addition and Gaithersburg HS Addition projects, and also to the Clarksburg HS (Rocky Hill Conversion) project.

**Council staff recommends approving the following language that would allow the Planning Board to make a mid-cycle finding of adequacy based on additional capacity:**

**S3 Determination of Adequacy**

Each year, not later than July 1, the Planning Board must evaluate available capacity in each high school cluster and compare enrollment projected by Montgomery County Public Schools for each fiscal year with projected school capacity in 5 years. If after July 1 the County Council notifies the Planning Board of any material change in the Montgomery County Public Schools Capital Improvements Program, the Planning Board may revise its evaluation to reflect that change.

#### **S4 Moratorium on Residential Subdivision Approvals**

In considering whether a moratorium on residential subdivisions must be imposed, the Planning Board must use 120% of Montgomery County Public Schools program capacity as its measure of adequate school capacity. This [capacity] utilization measure must not count relocatable classrooms in computing a school's permanent capacity. If projected enrollment at any grade level in that cluster will exceed 120% [of capacity] utilization, the Board must not approve any residential subdivision in that cluster during the next fiscal year. If the Planning Board revises its measure of utilization during a fiscal year because of a material change in projected school capacity, that revision must be used during the rest of that fiscal year in reviewing residential subdivisions.

\* \* \*

#### **S5 Imposition of School Facilities Payment**

In considering whether a School Facilities Payment must be imposed on a residential subdivision, the Planning Board must use 105% of Montgomery County Public Schools' program capacity as its measure of adequate school capacity. This [capacity] utilization measure must not count relocatable classrooms in computing a school's permanent capacity. If projected enrollment at any grade level in that cluster will exceed 105% [of capacity] utilization but not exceed 120% utilization, the Board may approve a residential subdivision in that cluster during the next fiscal year if the applicant commits to pay a School Facilities Payment as provided in County law before receiving a building permit for any building in that subdivision. If the Planning Board revises its measure of utilization during a fiscal year because of a material change in projected school capacity, that revision must be used during the rest of that fiscal year in reviewing residential subdivisions.

**Council staff also recommends introducing and adopting the four CIP amendments on ©15-18.** Within the next two years the BOE is likely to request new CIP projects that would program at least this much money (and possibly on an accelerated schedule) from which the funds in these PDFs could be transferred.

MCCF, and some individual PTAs and civic organizations recommend applying the 120% test at each ES, rather than in the cluster as a whole. (MCCPTA recommends studying this.) They note that a cluster may average under 120%, but individual schools within that cluster are sometimes much higher than 120%. But there is a cost-conscious solution to such a problem: a boundary change among ES service areas within the cluster.

**3. Setting the SFP threshold.** The Planning Board and BOE recommend changing the threshold from 105% to 110%. Three clusters would fall out of the SFP range this fiscal year: Walter Johnson, Paint Branch, and Quince Orchard, all at the ES level. (As noted above, the Whitman Cluster would remain in the SFP range at the ES level.) The Superintendent has noted:

In reviewing clusters that exceed 105 percent utilization, cases can be found where space deficits at schools in a cluster that is over 105 percent utilization are not sufficient to require that additional capacity be requested. Use of a 110 percent threshold would more accurately identify clusters in which school capacity projects are needed.

The Executive, MCCPTA, MCCF, the Town of Chevy Chase, and a host of individual PTAs and civic organizations all recommend retaining the 105% threshold for the SFP, citing the potential revenue lost from the clusters in the 105-110% range.

**Council staff concurs with the Planning Board and BOE to change the threshold to 110%.** The BOE’s position is the key here. If it does not find the need to request capital funding for new schools or additions until 110% is reached, then there is no justification for this exaction until the enrollment/capacity ratio reaches this level.

Several groups and individuals made the point that the SFP, which is based on 60% of the pro-rated capital cost of adding space for a student, should be increased. However, this does not take into account that all new residential development also pays a school impact tax, which is set at about 90% of the pro-rated cost. Since there is no credit between the impact tax and the SFP, effectively developers electing to pay the SFP are spending 50% more than what is necessary for the capacity of each added student the development generates.

**4. Grandfathering development applications.** The Planning Board recommends allowing a residential subdivision to proceed in a moratorium cluster if a completed development application was made within 12 months of when the moratorium went into effect. The Board makes the point that new residential development is but a small factor in whether or not a cluster exceeds the 120% threshold, and that much expense goes into a development application before it is submitted. The BOE supports the Planning Board’s recommendation; the Superintendent notes that “this is a reasonable concession when seen in conjunction with the relatively tight threshold for a moratorium at 120 percent.” The Executive also supports it, since it “allows for more certainty when artificial blips occur from presumably temporary changes in the economy and unanticipated demographic changes.”

The MCCPTA, MCCF, and several individual PTAs and civic associations oppose the grandfathering. They argue that a finding of insufficient capacity should result in no more development approvals until the ratio falls below the 120% threshold.

The Planning staff estimates that the developments that would be grandfathered would generate 34 more students countywide:

<b>Cluster (grandfathered developments)</b>	<b>ES students</b>	<b>MS students</b>	<b>HS students</b>	<b>Total students</b>
B-CC (2)	6	5	5	<b>16</b>
Clarksburg (1)	4	2	2	<b>8</b>
Northwest (1)	5	2	3	<b>10</b>
Seneca Valley (0)	0	0	0	<b>0</b>
<b>Total</b>	<b>15</b>	<b>9</b>	<b>10</b>	<b>34</b>

**Council staff recommends the grandfathering proposed by the Planning Board.** The effect on school enrollment would only a few students countywide. Furthermore, these developments would not be entirely off the hook: they would still have to pay SFPs to proceed.

**5. Transferring school capacity.** The Planning Board proposes allowing the developer of an approved residential subdivision that is not proceeding to construction to sell its school capacity to

another potential subdivision in the same cluster. The Executive concurs, but he has “some concerns about the administration of this process and that we are creating value in unviable projects.”

The BOE opposes trading of subdivision approvals in clusters that are in moratorium, noting that while today there might be “paper” overcrowding projected by dormant subdivisions that will not materialize, trading may result in actual overcrowding from subdivisions that will be built. MCCF disapproves of such trading unless it is within the same ES service area.

**Council staff recommends against such transfers.** The BOE is right that paper overcrowding is better than real overcrowding. Furthermore, Council staff opposes creating a private marketplace for subdivision approvals. Rather than APF approvals being sold to the highest bidder, it would be better if the dormant subdivisions are allowed to expire, opening up new capacity (except in moratorium areas) for other subdivisions highest in the development queue.

**6. Use of the SFP.** In the past two years nearly 1,400 residential units have been approved as part of subdivisions where an SFP is required. If all these units proceed to building permit, almost \$2 million would ultimately be collected to fund capacity-adding projects for the clusters in which the subdivisions were approved.

The use to which SFP revenue can be applied is specified in Section 52-94(e) of the County Code, not in the Growth Policy. The law states:

The Department of Finance must retain funds collected under this Section in an account to be appropriated for MCPS capital improvements that result in added student capacity for the school cluster, or if no cluster is established, another geographic administrative area, where the development for which the funds were paid is located.

The BOE recommends allowing SFP revenue to be expended on any project within the county that adds student capacity. It argues that the funds are likely to accumulate in small amounts by cluster, not enough to fund any single capacity improvement in that cluster. MCCPTA disagrees: “Decoupling the facilities payment from the area where the facilities are needed would bring the development but would not bring the relief to our students.” MCCPTA does agree that SFP revenue should be used in an adjacent cluster, however, if an improvement there ameliorates overcrowding in the home cluster. It mentions schools that have split-articulation.

**Council staff recommends no change in the law.** The current law allows funding of improvements that result in added student capacity *for* the school cluster (*emphasis, mine*). This should cover additions to schools with split-articulation. For example, the BOE is studying the potential of expanding Bradley Hills ES in the Whitman Cluster; if coupled with split-articulation and/or a full boundary change, this would relieve overcrowding in the B-CC Cluster. Should the BOE decide to do this, SFP revenue generated in the B-CC Cluster could help fund a Bradley Hills ES addition.

The law actually allows more flexibility than it might. If an SFP payment is made due to a shortage in ES space in a cluster, it can be used towards funding more space for that cluster at *any* level: ES, MS, or HS.

## II. POLICY AREA BOUNDARIES (pp. 45-46 and Appendix H)

1. *Gaithersburg, Rockville, and neighboring policy areas.* The Gaithersburg and Rockville Policy Areas were created in the mid-1990s to segregate them from surrounding areas which are under the County's land use authority. Therefore, periodically the boundaries of the Gaithersburg and Rockville Policy Areas must be amended to have them conform more closely to changes in municipal boundaries. The Final Draft recommends such changes. Most are minor. The exception is the incorporation of the Crown Farm within the Gaithersburg City Policy Area; it has been part of the R&D Village Policy Area. Maps showing the proposed changes to the Rockville and Gaithersburg Policy Area boundaries are on ©19-20. **Council staff recommends concurrence with the Planning Board.**

2. *Twinbrook Metro Station Policy Area.* When the Twinbrook Sector Plan was adopted last winter, the Council tentatively agreed that the Twinbrook MSPA boundary would be expanded to match the boundary of the Twinbrook Sector Plan when the Growth Policy was next taken up. The expansion includes the so-called Northeast Parklawn Property. Anne Martin, representing Fishers Lane LLC, reminded the Council of this in her testimony (see ©21-26). Planning staff and Council staff concurs with Ms. Martin's account. **Council staff recommends concurrence with the Planning Board.**

3. *Germantown Town Center Policy Area.* Similarly, the recently approved Germantown Employment Area Sector Plan recommended that, as part of the Growth Policy, the Germantown Town Center Policy Area should be expanded eastwardly to include the area generally bounded by I-270, MD 118, Aircraft Drive, and a tributary that flows west into Lake Churchill, as shown on ©27. **Council staff recommends concurrence with the Planning Board.**

Council staff has requested Planning staff to examine the effect of combining the Germantown East and Germantown West Policy Areas into a single Germantown Policy Area. This will be discussed at a future worksession once the Planning staff has completed its analysis.

4. *White Flint Metro Station Policy Area.* Much of the testimony at the public hearing was about issues that overlap between the Final Draft White Flint Sector Plan and the Growth Policy, especially the implications of a proposal that would have the Sector Plan's staging replace any transportation tests in the Growth Policy. The discussion of such a carve-out is better addressed once the Committee takes up the Sector Plan itself. Council staff suggests that there be a Growth Policy amendment that would be introduced soon and could be acted upon either simultaneously with, or shortly after, the approval of the Sector Plan.

A separable issue, however, is what should be the boundary of the White Flint MSPA. Note that there are currently three consequences of including an area within an MSPA:

- The intersections within an MSPA have a Local Area Transportation Review (LATR) standard of 1,800 CLV, which is more tolerant of congestion than in the surrounding policy area.
- The transportation impact tax rate is half that of the surrounding policy area.
- Street improvements are to be built to the "urban" standards according to the Road Construction Code, generally requiring narrower lanes and more pedestrian-friendly design than in the surrounding policy area.

Four years ago, in worksessions on the 2005-2007 Growth Policy, the Council tentatively approved expanding the size of the policy area to nearly the same boundary now proposed. However, when the Council ultimately decided not to approve that Growth Policy, the boundary did not change.

In reviewing this issue now, Council staff has discovered an error made in the 2007-2009 Growth Policy resolution adopted two years ago. In preparing the policy area maps that were part of that resolution, the wrong boundary map for the White Flint MSPA was inserted. Map 32 of that resolution (©28) shows the MSPA including five traffic zones (TZs), but the Council in 2007 never discussed expanding the area, which had previously consisted of only TZs 136 and 137. Because it is included in a Council-approved resolution, however, the official boundary now includes TZs 123 (Mid-Pike Plaza, plus properties on Maple Avenue and along the north end of Nebel Street), 125 (White Flint Mall and White Flint Plaza), and 127 (properties in the block roughly bounded by Rockville Pike, Edson Lane, Woodglenn Drive, and Security Lane). Needless to say, all staffs contributing to this oversight express deep regret for this error. Fortunately, however, there have been no negative consequences. No subdivisions have been reviewed in TZs 123, 125, or 127 have been reviewed in the past two years, and no impact taxes have been paid within any of these three TZs during this period.

Therefore, in reviewing this matter, the Council should focus its attention on two options: either returning the official boundary to include only old TZs 136 and 137, or expanding it to the Sector Plan boundary. The Sector Plan boundary includes not only the old TZs 123, 125, and 127 from the 2007-2009 Growth Policy, but also some property further south and east, and a fragment in the northwest corner (©29).

Federal Realty Investment Trust, the Holladay Corporation, and the Action Committee for Transit recommend expanding the boundary to match the Sector Plan boundary. The Garrett Park Estates-White Flint Park Citizens' Association and the Coalition for Kensington Communities oppose its expansion. The opponents point especially to the fact that the LATR standard for the Rockville Pike intersections at Security Lane and at Edson Lane would be raised from 1,550 CLV to 1,800 CLV, meaning that every intersection on the Pike between the Beltway and the City of Rockville would have an 1,800 CLV standard.

The maps on ©30-38 show the boundaries for the other nine MSPAs, with overlays showing the ¼-mile and ½-mile distances from their respective Metro Stations. Scanning these maps it is clear that while the other MSPAs include substantial land between ¼-mile and ½-mile of the station, with several MSPAs having some land even beyond ½ mile, a White Flint MSPA consisting only of old TZs 136 and 137 is much smaller (©39). Expanding the boundary to that of the Sector Plan would make it consistent with the others (©40). **Council staff recommends concurrence with the Planning Board.**

**5. Life Sciences Center Policy Area.** The Planning Board is recommending carving out the LSC Central, LSC West, and LSC Belward portions of the Gaithersburg West Master Plan area from the existing R&D Village Policy Area. This new policy area would be similar to the Germantown Town Center Policy Area, with an LATR standard of 1,600 CLV (more tolerant of congestion than the R&D Village's 1,450 CLV standard).

Council staff recommends postponing a decision on this policy area until the PHED Committee and Council address how Gaithersburg West's development will be staged; i.e., how much will be in the

master plan, and how much in the Growth Policy. Hopefully this discussion will be completed in time for the November Growth Policy action. But if not, it can be incorporated with a Growth Policy amendment for White Flint.

In this subsequent discussion some issues to be addressed are:

- Is a 1,600 CLV standard justified now, since the Corridor Cities Transitway is not programmed within the next four years? If so, then why not apply the same logic to Purple Line station areas and other CCT station areas?
- If an LSC Policy Area is carved out of R&D Village, what remains of R&D Village is four unconnected pods of development (©41). Is there a more coherent solution?
- If an LSC Policy Area is to be like the Germantown Town Center Policy Area, should it instead be the “LSC Town Center Policy Area” so “urban” design standards in the Road Code would be utilized?

### **III. ADJUSTING TRIP GENERATION RATES IN MSPAs (pp. 43-45)**

The Planning Board proposes reflecting in its LATR/PAMR Guidelines that residential vehicle trip generation rates in MSPAs be set about 18% lower—4.6 trips/day rather than 5.6 trips/day—based on the results of a comprehensive study conducted in 2007 and 2008 by the Council of Governments. The Executive generally supports the Board’s recommendations, but adds that the new approach should use graduated trip generation rates based on actual distance to the Metro Station within the MSPA.

It is laudable that the Board is sharing this information with the Council, but it does not have to ask the Council’s permission to make this change. The LATR/PAMR Guidelines spells out a myriad of technical data that Planning staff needs to be able to conduct traffic studies consistently from one development to the next, from trip generation rates (for all types of developments in all types of areas) to how critical lane volume analysis and other capacity analyses are to be conducted. The guidelines are updated frequently to reflect the state of the practice.

### **IV. POLICY AREA TRANSPORTATION REVIEW OPTIONS (pp. 45-46 and Appendix H)**

The Planning Board recommends several changes to PAMR, including:

- Changing the “stair steps” in the PAMR chart so that if Relative Arterial Mobility is Level of Service (LOS) E, then development can proceed if Relative Transit Mobility is LOS B or better, and that if Relative Arterial Mobility is LOS F, then development can proceed if Relative Transit Mobility is LOS A.
- Creating an Alternative PAMR Review allowing developments to bypass the PAMR test if the development: (1) is within ½-mile of a bus or rail line that has at least 15-minute service in peak hours; (2) is mixed-use with a minimum of 50% residential use; (3) achieves at least 75% of the density allowed in the master/sector plan; (4) exceeds energy efficiency standards by 17.5% for new buildings or 10.5% for existing renovations, or has on-site energy production such that 2.5% of annual building energy cost is offset by a renewable production system; and (5) has at least 25% of it applied to increasing affordable housing above the levels normally required.

- Applying PAMR mitigation costs as follows: (1) 50% for public transit improvements; (2) 25% for affordable housing; and (3) 25% retained by the developer.
- Setting the value of each vehicle trip mitigated at \$11,000.
- Permitting transfer of approved APF trips to MSPAs from within the same PAMR Policy Area (e.g., from North Bethesda to Twinbrook).

The Executive has expressed his dissatisfaction with PAMR and has hired a consultant to develop alternatives to PAMR. (Council staff has asked for copies of the contract and scope of work for this effort, but at this writing they have not yet been transmitted.) This study will take several months, so if there is an Executive recommendation, it would come as a proposed Growth Policy amendment sometime next year.

MCCF has several recommendations, among which are: splitting PAMR into two separate tests that would have to be met—a Policy Area Roads Test and a Policy Area Transit Test—along with LATR; changing the Policy Area Transit Test, perhaps by switching to test travel times for the same point-to-point transit and auto commute trips; applying the Policy Area Roads Test to either the morning or evening peak period, whichever is worse, rather than automatically to the evening peak period; and reinstating capacity ceilings (©42-45).

Several business groups have recommended the outright elimination of PAMR, or at least its suspension until the next Growth Policy update. Some recommend replacing the transportation tests with an annual impact fee for twenty years to pay for infrastructure (the letter on ©46-48 from Steve Elmendorf, representing Percontee, is an example).

Council staff would like direction as to which options—these or others—to explore with Planning Board staff in the next week.

## **V. SCOPE AND FREQUENCY OF THE GROWTH POLICY**

A large proportion of the Growth Policy testimony reacted to proposals in the White Flint Sector Plan. The Planning Board’s Alternative Review Procedure for PAMR would allow some more congestion to achieve higher energy efficiency and affordable housing. Mr. Elmendorf’s suggested a quadrennial review of the Growth Policy. These points raise two fundamental questions: What should be the scope of the Growth Policy? How often should its rules be revised?

Since the Growth Policy was established in 1986, there has been much public confusion as to its purpose. Part of it stems from the global reach that its name projects. Members of the public often testify or write to the Council about the Growth Policy, confusing its purpose to what master plans do, what zoning does, what economic development efforts do, what impact taxes do (or don't do), what affordable housing programs do, etc. The purpose clause in the Growth Policy law contributes to this confusion. Section 33A-15(a) states:

- (1) The purpose of this article is to establish a process by which the County Council can give policy guidance to agencies of government and the public on matters concerning:
  - (A) land use development;
  - (B) growth management; and
  - (C) related environmental, economic, and social issues.

- (2) The policy guidance will be provided through the adoption by the County Council of a growth policy, which is intended to be an instrument that facilitates and coordinates the use of the powers of government to limit or encourage growth and development in a manner that best enhances the general health, welfare, and safety of the residents of the county.

However, since 1986 the Growth Policy has served a singular purpose: to set the policy rules for the administration of the Subdivision Ordinance's adequate public facilities tests; in other words, the staging of subdivision approvals such that development would likely not occur before adequate schools, roads and transit, and other public facilities (water and sewer, police, fire, and health) are in place. **Council staff recommends amending Section 33A-15 so that the law addresses subdivision staging exclusively, and that the policy be re-named the "Subdivision Staging Policy."** This is a boring name to be sure, but that is exactly what it is, and that is all it is.

**We also recommend changing the schedule of the Subdivision Staging Policy so that its rules are regularly updated on a quadrennial schedule. We believe this should occur in the fall in the second year of a Council term, i.e., the fall of 2012, 2016, etc.** The calculation of the results from Policy Area Transportation Review and the Schools Adequacy Test would continue to be updated annually to reflect changes in demand and in capital improvements programs. The ability for off-cycle amendments for specific purposes would also continue. Going to a quadrennial cycle would allow each Council to make its substantial mark on how subdivision staging is managed. This schedule also would save considerable staff time and funding that would be more productively assigned to master plans and other special studies by the Planning staff.



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
*County Executive*

MEMORANDUM

September 15, 2009

To: Phil Andrews, Council President

From: Isiah Leggett, County Executive

Subject: 2009 Growth Policy

I am writing to transmit my comments on the Planning Board Draft 2009 Growth Policy pursuant to the requirements of Montgomery County Code section 33A-15(d). A key concern that I raised two years ago is that the test for transportation capacity, "Policy Area Mobility Review" or "PAMR" is fundamentally flawed. Despite Planning Board review of PAMR, they did not recommend an alternative to PAMR.

I do not think that the version of the Growth Policy proposed by the Planning Board addresses the fundamental flaws of the test. I have therefore directed the Department of Transportation to come up with an alternative test for Policy Area Review. The basic elements of the new policy should include: simplicity to understand and monitor; close balance between the acceptable levels of congestion in an Approved Sector or Master Plan area, the levels of development approved and the remaining transportation infrastructure to be programmed, operated and built in the Plan; ensuring that transportation assumptions such as modal share in a given planning area are being met; and mechanisms to ensure the continued economic development of the County without jeopardizing the quality of life of our residents. The current economic slowdown, when there is little growth, and consequently little application of the growth policy, will allow us the opportunity to develop in a systematic and clear way a rational approach to testing transportation capacity. I intend to submit the alternative to the County Council and the Montgomery County Planning Board for review as an amendment to the 2009 Growth Policy.

Montgomery County needs a Growth Policy that results in achieving balance in the timing of private development and public infrastructure to avoid failure of or transportation system, overburdening of schools or economic stagnation through moratoria. The importance of a sound Growth Policy is even more compelling with the recent action of the Council removing staging from the Germantown Employment Center Sector Plan. If staging of development is not to be included in Master Plans, then the role of the Growth Policy remains a key mechanism to ensure that there will be adequate public facilities to support new development.

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The proposed 2009 Growth Policy includes assumptions and directions that I believe could significantly impair the quality of life in Montgomery County. While I agree that focus needs to be on mass transit, I think it is untenable to intentionally impose congestion upon the residents and businesses of Montgomery County with the expectation that the strain of congestion will force people out of their vehicles. It would be a mistake to accept a level of service ("LOS") E for our arterial roads.

It is well established that increased congestion directly results in increased emission rates for NOx and VOCs which negatively affects air quality in the region. It would be ill-advised to intentionally create a situation that will result in increased pollution levels with the hope that discomfort will force some of the approximately 85% of commuters that drive to switch to transit, or that the trading of transportation improvements payments for affordable housing near Metro will result in fewer trips.

To facilitate Council review of the comments of the Executive Branch, the comments are set out below and correspond to the table of changes provide in the draft 2009 Growth Policy.

#### **Smart Growth Criteria: Transit Proximity**

The proposed 2009 Growth Policy pays homage to important policy matters such as increasing the production of affordable housing and reducing carbon footprints. However, as required by Montgomery County Code section 33A-15(b) the document must provide policy guidelines for the Planning Board and other agencies for their administration of Section 50-35(k) and other laws and regulations which affect growth and development. Thus, the policy must have as a key focus the adequacy of public facilities to handle the output of growth. The public is not likely to be patient with a shift in focus if congestion on our roads and overcrowding in our schools is overlooked in favor of these other objectives.

However, housing and sustainability issues must not be overlooked. These issues should be dealt with directly through appropriate regulatory and legislative mechanisms so that these objectives can be more widely achieved. The Growth Policy should continue to be our primary tool for insuring that we have adequate public facilities.

The Planning Board has recommended that projects that meet certain Smart Growth Criteria allow redistribution of payments for transportation improvements. The draft Policy provides for portions of transportation payments to be dedicated to transit improvements, affordable housing, and retained by the developer as an incentive to locate near transit. Dedication of funds in this manner restricts the policy choices and options of elected officials before all of the eligible and competing uses can be identified and evaluated as to their merits and disadvantages. It also raises questions as to the nexus of the required payment. In these trying budgetary times we should not be imposing such restrictions. Affordable housing is an important objective, but the County is pursuing this objective on a number of fronts and I believe that transportation resources should be retained for transportation needs. Development can be directed to transit areas through other incentives such as density bonuses.

As proposed, the Smart Growth Criteria could allow Alternative PAMR Review for projects outside of Metro Station Policy Areas. The draft Growth Policy includes a definition of "high-quality transit corridor" which does not meet the standard typically used in urban areas. This should be corrected to reflect the definition provided in the Transit Capacity and Quality of Service Manual which requires intervals of ten minutes or less for at least six buses per hour and offer service at least 18 hours per day.

**APFO Transportation: Balance Between Land Use and Transportation**

The draft Growth Policy is a significant and troubling departure from the 2007 Growth Policy which dictates that arterial level of service should not drop below LOS D. The draft Policy allows relative arterial mobility of LOS E where the relative transit mobility is LOS B. This recommendation moves lines on charts to conclude that greater levels of congestion are acceptable, when in fact they are not. With a focus on sustainability, the congestion resulting from LOS E would lead to greater air pollution due to increased NOx and VOCs resulting from increased commute times attributable to congestion.

I continue to think it was a mistake to eliminate Policy Area Transportation Review in 2003. Policy Area Review is a key tool to realize balance between actual development and infrastructure necessary to support the development. Without such review the balance envisioned in our Master Plans is both elusive and illusive. The 2007 Growth Policy introduced PAMR as a test for mobility. However, as a model, it was redefined for Growth Policy purposes. A significant problem with PAMR is that it provides results that do not accurately reflect transportation reality. It is difficult to understand and is not transparent to County residents or businesses. We need an approach that is understandable, that will yield results that truly model the impact of proposed development on our transportation system, and that reflects actual transportation policies of the County. We need an alternative to PAMR. The Planning Board in its review of PAMR did not propose an alternative approach. I therefore have directed the Department of Transportation to hire a consultant who will work to develop a workable alternative to PAMR. Through that effort, which will include outreach to Planning Board and Council staffs, specific stakeholders and the general public, I expect we will have a series of policy discussions that should lead to a more transparent and easily understood Policy Area Review.

**APFO Transportation: Non-auto Facility Values**

I support the Planning Board's recommendation to set the fees for trip mitigation at \$11,000 per trip. This standardizes the cost of trip mitigation and is a fairer standard that will provide for more equity for mitigation among development projects. This will also allow resources to be directed to concrete transportation improvements that are based on area transportation needs rather than the lowest cost improvements, and as noted by the Planning Board will improve predictability for applicants and the County.

**APFO Transportation: APF Transferability**

The Planning Board's recommendation that would allow vested APF rights to be transferred into a Metro Station Policy Area from an adjacent Policy Area may have promise; however I do have concerns about it. The draft 2009 Growth Policy is unclear as to whether this transfer can occur between Policy Areas or within the same Policy Area. I believe that any transfer must occur within the same Policy Area. This may encourage the APF pipeline to be cleaned out and perhaps encourage projects close to transit, thus encouraging greater utilization of existing transportation capacity. For areas that may be in, or approaching moratorium, this could provide a release valve while cleaning out older projects. A downside of this though is that the value that could be created in unviable projects could diminish the capacity of a newly proposed project to absorb other costs associated with development impacts or policies. I also am concerned that these transfers may be difficult to effectively validate and administer. However, I think this recommendation is worth exploring and refining.

#### **APFO Transportation: TOD Trip Generation Rates**

I support the Planning Board's recommendation that trip generation rates be updated to reflect more recent research, particularly for transit oriented development. This will allow our transportation analysis to be more accurate and should demonstrate that development near transit has less impact on congestion than in other areas. I urge caution however, that in view of changing the geographic area of the MSPAs, the new approach should use graduated trip generation rates based on actual distances from a development to the Metro Station itself (i.e. ¼ mi., ½ mi., farther than ½ mi.).

#### **APFO Transportation: White Flint APF Approval Process**

It is premature to change the White Flint APF approval process before the Council has acted on the White Flint Sector Plan. The mechanism(s) for the funding of improvements in White Flint has yet to be determined. This is a determination that should not be part of the master plan or the Growth Policy. The funding tools may be determined in connection with the master plan process, but should not be included in the plan itself. Public infrastructure, even though paid for via some form of development district funding or special assessment, must still be included in the CIP. Therefore, the Growth Policy can continue to look to the CIP in determining the adequacy of public facilities. While the transportation improvements recommended in the Sector Plan may meet the requirements for mitigating transportation needs at the Policy Area level, development projects could still cause localized congestion issues. These issues should be identified through LATR and requirements should be placed on projects to mitigate this congestion. Failure to implement LATR tests could result in very high levels of congestion on Major Arterials that serve not only the specific MSPA but also serve large volumes of thru traffic to fulfill other economic and quality of life objectives in the County.

#### **APFO Other: Policy Area Boundary Changes**

The Planning Board has recommended the creation of new Policy Areas and changes to the boundaries of Policy Areas based on recommendations in several Master Plans that will be reviewed over the next several months. This decision should be made in the review

of the appropriate Master Plans. Once the Master Plans are adopted, the Policy Area boundaries can be amended by resolution just as SMAs are made for zoning changes recommended in Master Plans.

#### **APFO for Schools: School Facility Payment Threshold**

The Planning Board has recommended that the school facility payment threshold be raised from 105% of projected program capacity to 110% at any school level by cluster. At this point, no school facility payments have been collected. We anticipate that this will have limited impact on revenue collections; however, this change seems unnecessary and could reduce future revenue collections which will help alleviate school over-crowding if the economy rebounds.

#### **APFO for Schools: Moratorium Threshold**

The current threshold for a moratorium on residential subdivision is 120% of projected program capacity at any school level by cluster. I agree that this threshold level should be retained, but would recommend that Student Yield Factors be reevaluated and updated to determine if student projections should be refined for different areas, markets and types of units.

#### **APFO for Schools: Grandfather Completed APFO Applications**

The economy appears to have caused movement of some students from private schools into public schools. Such a swing may well be temporary. It is important to make adjustments for temporary circumstances particularly given the hardship that such a temporary shift poses on pending development applications and the economy. I therefore support the Planning Board's recommendation that applications for development that have been completed 12 months prior to the imposition of a moratorium on residential subdivision be grandfathered. Development of a project plan application is a significant investment. This change would allow projects that had a completed application to move forward through the review process. This allows for more certainty when artificial blips occur from presumably temporary changes in the economy and unanticipated demographic changes.

#### **APFO for Schools: APF Transferability**

Similar to the APF transfer recommended for transportation, the Planning Board has recommended transferability of vested APF rights for school capacity. This would allow school capacity tied up on projects that may not move forward to be used by more viable projects in the same cluster. As with transportation capacity transfer, I think the proposal has merit, but I have some concerns about the administration of this process and that we are creating value in unviable projects. If this policy is pursued consideration should be limited to transfer of approvals within the same school cluster.

#### **Issues Carried Forward from the 2007 Growth Policy**

There were several issues carried forward from the 2007 Growth Policy that the Council asked to be reviewed.

#### **F4 Investigation into the Use of Carbon Offsets**

Carbon offsets would not mitigate auto trips in terms of congestion. Based on recent history, carbon emissions will be reduced more by technological changes in automobiles and trucks. Congestion on the other hand, will increase regardless of emissions. The resulting traffic delays, irritability, irrational driver behavior, accidents and quality of life would still be negatively affected. Allowing carbon offsets in lieu of traffic mitigation does not address APFO requirements.

#### **F5 Dedicated Transit Revenue**

PAMR mitigation fees should be dedicated to transportation improvements and not necessarily dedicated to transit improvements so we have the flexibility to put resources where there is the greatest need and where they would be most effective.

#### **F9 Impact Tax Issues**

The County Council directed that the County Executive, with the aid of the Planning Board and the Board of Education, address impact tax issues noted in the long-term infrastructure financing recommendations in the Planning Board's *2007-2009 Growth Policy*, including further refinement of land use categories and consideration of charging impact taxes for additional public facilities or purposes or charging "linkage" fees to non-residential development for affordable housing. The Council also asked that the Executive and the interagency group review credits granted under the impact tax and develop recommendations to retain, modify, or repeal credit provisions in the law.

In response to item F9, and following coordination and meetings with Planning Board staff and MCPS staff, it was generally agreed that under current economic conditions linkage fees for affordable housing and impact taxes for additional public facilities would not be advisable. These are items that can be revisited in the future when economic conditions have significantly improved.

As a result of our review of transportation impact fee credits and the process around these credits, I am recommending changes to Chapter 52 of the County Code which I have attached to this Memorandum. My staff has discussed these proposed changes with both civic and development industry representatives.

One noteworthy suggestion that I am *not* making is for the County to issue tax credits for improvements to state roads. Other than for transit or trip reduction programs, credits for improvements to state roads are currently precluded in the law, and should remain that way. Impact tax rates are determined by a complicated process estimating the costs to build-out County roads. If State roads are eligible for credits, the rate schedule would have to be revised and the tax rate would be considerably higher. Executive staff is available to prepare draft

Phil Andrews, Council President  
September 15, 2009  
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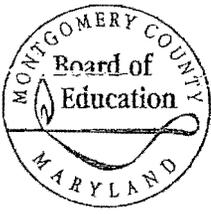
legislation reflecting my recommendations for changes to transportation impact fees for Council consideration.

### **Conclusion**

I commend the Planning Board for addressing important development issues and concerns in its draft of the 2009 Growth Policy. All of the issues raised in the draft 2009 Growth Policy are critically important to Montgomery County. The fact that I question the forum for addressing these issues does not mean that they do not need to be addressed. My overriding concern is that by using the Growth Policy instead of other available tools for addressing some of these development concerns we will have the consequence of unabated gridlock with the accompanying degradation of the environment and quality of life in Montgomery County. The Growth Policy should be chiefly used to address adequacy of public facilities while we continue to work through other important policy issues.

DSJ:jw

Attachment: Suggested Revisions to County Code – Chapter 52



# MONTGOMERY COUNTY BOARD OF EDUCATION

850 Hungerford Drive ♦ Rockville, Maryland 20850

September 8, 2009

The Honorable Phil Andrews, President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

051150



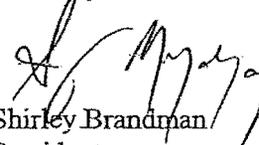
Dear Mr. Andrews:

On August 27, 2009, the Montgomery County Board of Education reviewed the Montgomery County Planning Board (Planning Board) draft 2009 County Growth Policy, including the school adequacy test. The enclosed resolutions provide the Board of Education's official comments on the Planning Board recommendations for the school test. We hope you will carefully consider this input during your review and action on the growth policy this fall.

The current growth policy school test has placed three Montgomery County Public Schools (MCPS) clusters in moratorium for FY 2010. These clusters are Bethesda-Chevy Chase, Clarksburg, and Seneca Valley. As the FY 2011-2016 Capital Improvements Program (CIP) is developed this fall, capital projects that will take these clusters out of moratorium will be an important consideration. Keeping MCPS clusters out of moratorium at a time of large enrollment increases will require significant capital investments. In order to address space deficits that are placing MCPS clusters in moratorium, the school system will need the County Council's support in funding the upcoming CIP request.

The Board of Education believes this is an opportune time to plan and construct capital projects. The recession has eased school construction costs as builders seek work. In addition, the bond market has favorable interest rates at this time. Once the economy recovers, we can expect a return to higher construction costs. Inflationary pressures also will result in higher costs for borrowing in the bond market. Consequently, we urge the County Council to seize the opportunity presented at this time by significantly raising the Spending Affordability Guidelines this fall and by supporting our CIP request later this year.

Sincerely,

  
Shirley Brandman  
President

SB:vnb  
Enclosure  
Copy to:  
Members of the Board of Education  
Dr. Weast  
Mr. Bowers  
Dr. Lacey  
Mr. Crispell  
Mr. Lavorgna

2009 SEP 14 AM 9:26

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

8

Office of the Superintendent of Schools  
MONTGOMERY COUNTY PUBLIC SCHOOLS  
Rockville, Maryland

August, 27, 2009

MEMORANDUM

To: Members of the Board of Education

From: Jerry D. Weast, Superintendent of Schools 

Subject: 2009 County Growth Policy Review

**Background**

On August 1, 2009, the Montgomery County Planning Board (Planning Board) transmitted to the County Council a draft 2009 County Growth Policy. The County Growth Policy is a biennial policy and is, therefore, reviewed every two years. For this reason, the policy is no longer called the "annual growth policy" or "AGP." The county executive and the Board of Education are required to comment on the Planning Board-recommended growth policy by October 1, 2009.

This memorandum includes a review of the Planning Board recommendations for the school test portion of the growth policy and proposed resolutions for Board of Education consideration. The County Council will review the growth policy this fall and is scheduled to act on the policy on November 10, 2009.

The current growth policy was adopted by the County Council on November 13, 2007. At that time, the County Council significantly tightened the school test by switching to the use of Montgomery County Public Schools' (MCPS) program capacity, instead of the previous use of "growth policy" capacity. The County Council also set lower thresholds for triggering school facility payments and moratoria than existed previously. In addition, in adopting the 2007 County Growth Policy, the County Council significantly increased charges for the school facility payment.

Although the County Growth Policy is a biennial document, the school test that it includes is conducted annually. Currently, the FY 2010 school test is in effect using guidelines adopted by the County Council in the 2007 County Growth Policy. Concern has been expressed over the school test results this year, wherein three MCPS clusters have been placed in moratorium (Bethesda-Chevy Chase, Clarksburg, and Seneca Valley clusters). Efforts being made to lift the moratoria by amending the FY 2009-2014 Capital Improvements Program (CIP) have ceased, and it appears the moratoria will remain in effect for FY 2010. A new school test will be conducted after the FY 2011-2016 CIP is approved by the County Council in May for FY 2011.

## Montgomery County Planning Board Recommendations

The Planning Board recommended maintaining most of the existing provisions of the school test. A few new provisions have been added to provide some flexibility to developers facing moratoria. The following is a brief summary of the Planning Board recommendations. Recommendations that are new or are changed from the current test are underlined. (See Attachment A for a more detailed description of school test elements.) The Planning Board recommended school test would take effect with the FY 2011 test.

### School Test

- Continue with the current five-year timeframe for the school test.
- Continue with the testing of school adequacy at the cluster level—for elementary school, middle school, and high school adequacy.
- Continue use of MCPS program capacity in the school test.
- Set the following two-tiered thresholds in the school test:
  - In clusters in which projected enrollment is above 110 percent of program capacity, require a school facilities payment to be paid before development approvals are made. This is an increase from the current 105 percent threshold for the school facility payment. Attachment B shows how this provision would affect the school test had it been in effect for the FY 2010 test.
  - In clusters in which projected enrollment is above 120 percent of program capacity, place the area in a residential development moratorium. This is the same as the current threshold for moratorium.
- Provide a new “grandfathering” mechanism in the school test. This would allow subdivisions that have been filed and completed (in terms of Planning Board staff reviews) within the 12-month period prior to a cluster going into moratorium, to obtain Planning Board approval.
- Provide developers with the ability to trade subdivision approvals. This would apply in an area in moratorium in which an older plan has received approval previously, but the developer is not ready to move forward. This developer could then trade his approval to a developer who is halted in the moratorium. The trading would be controlled so that the number of students generated by the new subdivision could not exceed the number that would have been generated by the existing approved subdivision.
- Continue with the current provision to calculate school impacts of subdivision approvals during the year, sometimes referred to as “metering.” This provision has Planning Board staff calculating the number of students generated from new subdivision approvals and adding these to the school test figures. If a cluster is close to one of the two thresholds when the test is adopted on July 1, then at some point during the year it may begin exceeding that threshold if additional subdivisions are approved. The approval would then trigger the need to start charging the school facility payment or placement of the cluster in moratorium.
- Continue with the *de minimis* exemption for subdivisions of three or fewer housing units.

### School Facility Payment Calculation

- Although the Planning Board recommended raising the threshold for charging the school facility payment from the 105 percent to 110 percent utilization level, the Planning Board continues to support the current approach to calculate this payment. School facilities payment figures are based on a calculation of the current per-student cost to construct (or modernize) elementary schools, middle schools, and high schools. Developers desiring subdivision approval in a cluster exceeding 110 percent utilization must make the school facility payment for the school-level(s) that are over this threshold. Under the current approach, school facility payments made by developers are targeted to capacity projects in the cluster in which the payment is required. Affordable housing is exempt from the school facility payment. The school facility payment is based on 60 percent of the cost of school construction for each student generated by a new subdivision. Attachment C shows how the school facility payment is calculated.

### Superintendent Recommendations

#### School Test

I recommend the Board of Education support the recommendations of the Planning Board concerning the school test. I am especially pleased that the Planning Board continues to support the use of MCPS program capacity in the school test.

In regard to the school test thresholds, I believe that increasing the threshold for the school facility payment from 105 percent to 110 percent utilization is consistent with my 2007 recommendation. In reviewing clusters that exceed 105 percent utilization, cases can be found where space deficits at schools in a cluster that is over 105 percent utilization are not sufficient to require that additional capacity be requested. Use of a 110 percent threshold would more accurately identify clusters in which school capacity projects are needed. When the 2007 growth policy was being developed, the Planning Board recommended the 110 percent threshold for the school facility payment, and the Board of Education supported it at that time. The County Council reduced this threshold to 105 percent when it took action on the current growth policy on November 13, 2007.

In regard to the threshold for moratorium, I support the Planning Board recommendation to maintain the current 120 percent threshold. In 2007, the Planning Board recommended, and the Board of Education supported, a threshold of 135 percent for moratorium. The 135 percent threshold was selected by the Planning Board since it was comparable to the threshold for moratorium that was set when the school test used "growth policy" capacity. However, when the County Council took action on the current growth policy on November 13, 2007, it reduced this threshold to 120 percent. During discussion of the threshold for moratorium, County Council members expressed the view that previous school test methodologies were too lax since no cluster had ever "failed the test" and been placed in moratorium. The County Council believed the school test should be tighter and, when necessary, result in moratoria.

In supporting the 135 percent threshold for moratorium during the 2007 review of the growth policy, I believed that this threshold would allow the county to collect more revenue. This would be the case since there would be a high threshold before moratorium was enacted, and up to that point the school facility payment would be collected when clusters exceeded the 110 percent utilization level. Although I continue to believe there is merit to this argument, evidence has shown that revenues attributed to the school facility payment have been extremely modest. In addition, the recent experience of the three clusters currently in moratorium demonstrates the power of this condition in leveraging capital funds to address space shortages. I now believe that the 120 percent threshold is a better way to achieve our objective of providing adequate school capacity for our students. Therefore, I recommend the Board of Education support the 120 percent threshold for a moratorium.

I recommend the Board of Education support the “grandfathering” of subdivisions that have completed applications within one year of a cluster going into moratorium. This provision adds flexibility for developers who would otherwise be stuck in moratorium after expending significant time and funds in the review process. I believe this is a reasonable concession when seen in conjunction with the relatively tight threshold for a moratorium at 120 percent.

I recommend the Board of Education support the ongoing monitoring of subdivision approvals during the year so that the school test can be continually updated. This provision allows the school test to initiate either school facility payments or a moratorium, as more units are approved during the year. I also recommend the Board of Education support the *de minimis* provision of three housing units. This provision is a reasonable way to exempt very small subdivisions that have minimal impact on school enrollments.

I recommend the Board of Education support the school facility payment—with one caveat. I do not support continuing the reservation of the school facility payment revenue to the cluster in which it is collected. I believe the school system needs the flexibility to apply these funds more broadly. In addition, the very small amount of revenue collected in a given cluster is insufficient to construct a capacity project.

Finally, I recommend the Board of Education oppose the “trading” of subdivision approvals in a cluster that is in moratorium. This provision has been recommended by the Planning Board because of the large pipeline of approved subdivisions. The current pipeline has approximately 30,000 approved units. However, many of these approved subdivision plans are quite old and developers may have no intention of proceeding in the foreseeable future. The trading approach supposes that developers with old plan approvals would be interested in trading them for more viable projects that are halted by a moratorium. I believe this provision would further exacerbate space deficits in affected clusters by allowing subdivisions to get under way in overutilized clusters.

The following resolution is provided for the Board's consideration:

WHEREAS, A comprehensive review of the County Growth Policy has been conducted over the past several months and this review has included consideration of alternative approaches to the role of the growth policy as it pertains to schools; and

WHEREAS, The Montgomery County Planning Board's recommended 2009 County Growth Policy school test continues to incorporate the use of the Montgomery County Public Schools' program capacity as the appropriate measure of school adequacy that aligns with Montgomery County Public Schools facility planning and capital programming; and

WHEREAS, The Montgomery County Planning Board's recommended 2009 County Growth Policy school test establishes a school facilities payment in cases in which cluster school utilizations exceed 110 percent and creates a residential moratorium where cluster school utilizations exceed 120 percent; now therefore be it

Resolved, That the Board of Education supports the Planning Board recommendations for the Growth Policy school test, including the use of Montgomery County Public Schools' program capacity as the basis for calculations used for imposition of the school facilities payment (when cluster facility utilization exceeds 110 percent) and imposition of a moratorium (when cluster facility utilization exceeds 120 percent); and be it further

Resolved, That the Board of Education supports the Planning Board recommendations for calculation of the school facilities payment; and be it further

Resolved, That the Board of Education requests the County Council place the school facility payment revenue in the general fund and not in separate funds that apply to the cluster in which it is collected; and be it further

Resolved, That the Board of Education supports the Planning Board recommendation for "grandfathering" completed subdivision applications for one year prior to a cluster going into moratorium; and be it further

Resolved, That the Board of Education supports the Planning Board recommendation for a *de minimis* exemption from the school test of three or fewer housing units; and be it further

Resolved, That the Board of Education opposes the Planning Board recommendation for the trading of subdivision approvals in clusters that are in moratorium; and be it further

Resolved, That a copy of this resolution be forwarded to the County Council, the county executive, and the Planning Board; and be it further

Resolved, That a copy of this resolution be forwarded to mayors and councils of Montgomery County municipalities.

Resolved, That a copy of this resolution be forwarded to mayors and councils of Montgomery County municipalities.

~~Present at the Board table for today's discussion~~ are Mr. Bruce Crispell, director, Division of Long-range Planning, and Mr. Joseph Lavorgna, acting director, Department of Facilities Management.

JDW:LAB:JIL:jlc

Attachments-

## BCC Cluster ES Solution -- No. (TBD)

Category	Montgomery County Public Schools	Date Last Modified	October 2, 2009
Subcategory	Individual Schools	Required Adequate Public Facility	Yes
Administering Agency	MCPS	Relocation Impact	None
Planning Area	Bethesda-Chevy Chase	Status	

### EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY08	6 Yr. Total	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 Years
Planning, Design, and Supervision	1,416	0	1,348	0	0	0	719	365	264	68
Land	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	2,014	0	2,014	0	0	0	0	1,828	186	0
Construction	10,423	0	8,518	0	0	0	0	2,393	6,125	1,905
Other	737	0	350	0	0	0	0	0	350	387
<b>Total</b>	<b>14,590</b>	<b>0</b>	<b>12,230</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>719</b>	<b>4,586</b>	<b>6,925</b>	<b>2,360</b>

### FUNDING SCHEDULE (\$000)

G.O. Bonds	14,590	0	12,230	0	0	0	719	4,586	6,925	2,360
<b>Total</b>	<b>14,590</b>	<b>0</b>	<b>12,230</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>719</b>	<b>4,586</b>	<b>6,925</b>	<b>2,360</b>

#### DESCRIPTION

Due to increasing enrollment growth, this project includes funds to design and construct 20 permanent elementary school classrooms in the Bethesda-Chevy Chase high school cluster. These additional classrooms would meet capacity requirements under the Growth Policy, ending a residential moratorium in the B-CC cluster. The County Council anticipates that ultimately the Board of Education will request one or more specific projects that will add these classrooms by the start of the 2014-2015 school year, and that these funds would be used for that purpose.

#### CAPACITY

Teaching Stations Added: 20

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP
Date First Appropriation      FY	Mandatory Referral - M-NCPPC	See Map on Next Page
First Cost Estimate	Department of Environmental Protection	
Current Scope                      FY10      14,590	Protection	
Last FY's Cost Estimate              0	Building Permits:	
	Code Review	
Appropriation Request              FY09      0	Fire Marshal	
Appropriation Request Est.        FY10      0	Department of Transportation	
Supplemental Appropriation Request      0	Inspections	
Transfer                                      0	Sediment Control	
	Stormwater Management	
Cumulative Appropriation              0	WSSC Permits	
Expenditures/Encumbrances        0		
Unencumbered Balance                0		
Partial Closeout Thru              FY06      0		
New Partial Closeout              FY07      0		
Total Partial Closeout                0		

## Clarksburg Cluster MS Solution -- No. (TBD)

Category	Montgomery County Public Schools	Date Last Modified	October 2, 2009
Subcategory	Individual Schools	Required Adequate Public Facility	Yes
Administering Agency	MCPS	Relocation Impact	None
Planning Area	Clarksburg	Status	

### EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY08	6 Yr. Total	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 Years
Planning, Design, and Supervision	420	0	420	0	0	0	315	84	21	0
Land	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	678	0	678	0	0	0	0	678	0	0
Construction	3,018	0	2,716	0	0	0	0	905	1,811	302
Other	97	0	142	0	0	0	0	0	142	142
<b>Total</b>	<b>4,400</b>	<b>0</b>	<b>3,956</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>315</b>	<b>1,667</b>	<b>1,974</b>	<b>444</b>

### FUNDING SCHEDULE (\$000)

G.O. Bonds	4,400	0	3,956	0	0	0	315	1,667	1,974	444
<b>Total</b>	<b>4,400</b>	<b>0</b>	<b>3,956</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>315</b>	<b>1,667</b>	<b>1,974</b>	<b>444</b>

#### DESCRIPTION

Due to increasing enrollment growth, this project includes funds to design and construct ten permanent middle school classrooms in the Clarksburg high school cluster. These additional classrooms would meet capacity requirements under the Growth Policy, ending a residential moratorium in the Clarksburg cluster. The County Council anticipates that ultimately the Board of Education will request one or more specific projects that will add these classrooms by the start of the 2014-2015 school year, and that these funds would be used for that purpose.

#### CAPACITY

Teaching Stations Added: 10

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP
Date First Appropriation      FY	Mandatory Referral - M-NCPPC	
First Cost Estimate	Department of Environmental Protection	
Current Scope                      FY10      4,400	Protection	
Last FY's Cost Estimate              0	Building Permits:	
	Code Review	
Appropriation Request              FY09      0	Fire Marshal	
Appropriation Request Est.      FY10      0	Department of Transportation	
Supplemental Appropriation Request      0	Inspections	
Transfer                                      0	Sediment Control	
	Stormwater Management	
Cumulative Appropriation              0	WSSC Permits	
Expenditures/Encumbrances              0		
Unencumbered Balance                      0		
Partial Closeout Thru                      FY06      0		
New Partial Closeout                      FY07      0		
Total Partial Closeout                      0		

See Map on Next Page

## Northwest Cluster ES Solution -- No. (TBD)

Category	Montgomery County Public Schools	Date Last Modified	October 2, 2009
Subcategory	Individual Schools	Required Adequate Public Facility	Yes
Administering Agency	MCPS	Relocation Impact	None
Planning Area	Germantown	Status	

### EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY08	6 Yr. Total	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 Years
Planning, Design, and Supervision	932	0	932	0	0	0	466	280	186	0
Land	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	1,307	0	1,307	0	0	0	0	1,046	261	0
Construction	8,486	0	4,243	0	0	0	0	1,697	2,546	4,243
Other	375	0	75	0	0	0	0	0	75	300
<b>Total</b>	<b>11,100</b>	<b>0</b>	<b>6,557</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>466</b>	<b>3,023</b>	<b>3,068</b>	<b>4,543</b>

### FUNDING SCHEDULE (\$000)

G.O. Bonds	11,100	0	6,557	0	0	0	466	3,023	3,068	4,543
<b>Total</b>	<b>11,100</b>	<b>0</b>	<b>6,557</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>466</b>	<b>3,023</b>	<b>3,068</b>	<b>4,543</b>

#### DESCRIPTION

Due to increasing enrollment growth, this project includes funds to design and construct eight permanent elementary school classrooms in the Northwest high school cluster. These additional classrooms would meet capacity requirements under the Growth Policy, ending a residential moratorium in the Northwest cluster. The County Council anticipates that ultimately the Board of Education will request one or more specific projects that will add these classrooms by the start of the 2014-2015 school year, and that these funds would be used for that purpose.

#### CAPACITY

Teaching Stations Added: 8

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP
Date First Appropriation      FY	Mandatory Referral - M-NCPPC	See Map on Next Page
First Cost Estimate	Department of Environmental Protection	
Current Scope                      FY10      11,100	Protection	
Last FY's Cost Estimate              0	Building Permits:	
	Code Review	
Appropriation Request              FY09      0	Fire Marshal	
Appropriation Request Est.        FY10      0	Department of Transportation	
Supplemental Appropriation Request      0	Inspections	
Transfer                                      0	Sediment Control	
	Stormwater Management	
Cumulative Appropriation              0	WSSC Permits	
Expenditures/Encumbrances              0		
Unencumbered Balance                      0		
Partial Closeout Thru                  FY06      0		
New Partial Closeout                  FY07      0		
Total Partial Closeout                      0		

## Seneca Valley Cluster ES Solution -- No. (TBD)

Category	Montgomery County Public Schools	Date Last Modified	October 2, 2009
Subcategory	Individual Schools	Required Adequate Public Facility	Yes
Administering Agency	MCPS	Relocation Impact	None
Planning Area	Germantown	Status	

### EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY08	6 Yr. Total	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 Years
Planning, Design, and Supervision	231	0	219	0	0	0	0	173	46	11
Land	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	186	0	186	0	0	0	0	0	186	0
Construction	1,287	0	644	0	0	0	0	0	644	643
Other	97	0	0	0	0	0	0	0	0	97
<b>Total</b>	<b>1,800</b>	<b>0</b>	<b>1,049</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>173</b>	<b>876</b>	<b>751</b>

### FUNDING SCHEDULE (\$000)

G.O. Bonds	1,800	0	1,049	0	0	0	0	173	876	751
<b>Total</b>	<b>1,800</b>	<b>0</b>	<b>1,049</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>173</b>	<b>876</b>	<b>751</b>

#### DESCRIPTION

Due to increasing enrollment growth, this project includes funds to design and construct four permanent elementary school classrooms in the Seneca Valley high school cluster. These additional classrooms would meet capacity requirements under the Growth Policy, ending a residential moratorium in the Seneca Valley cluster. The County Council anticipates that ultimately the Board of Education will request one or more specific projects that will add these classrooms by the start of the 2014-2015 school year, and that these funds would be used for that purpose.

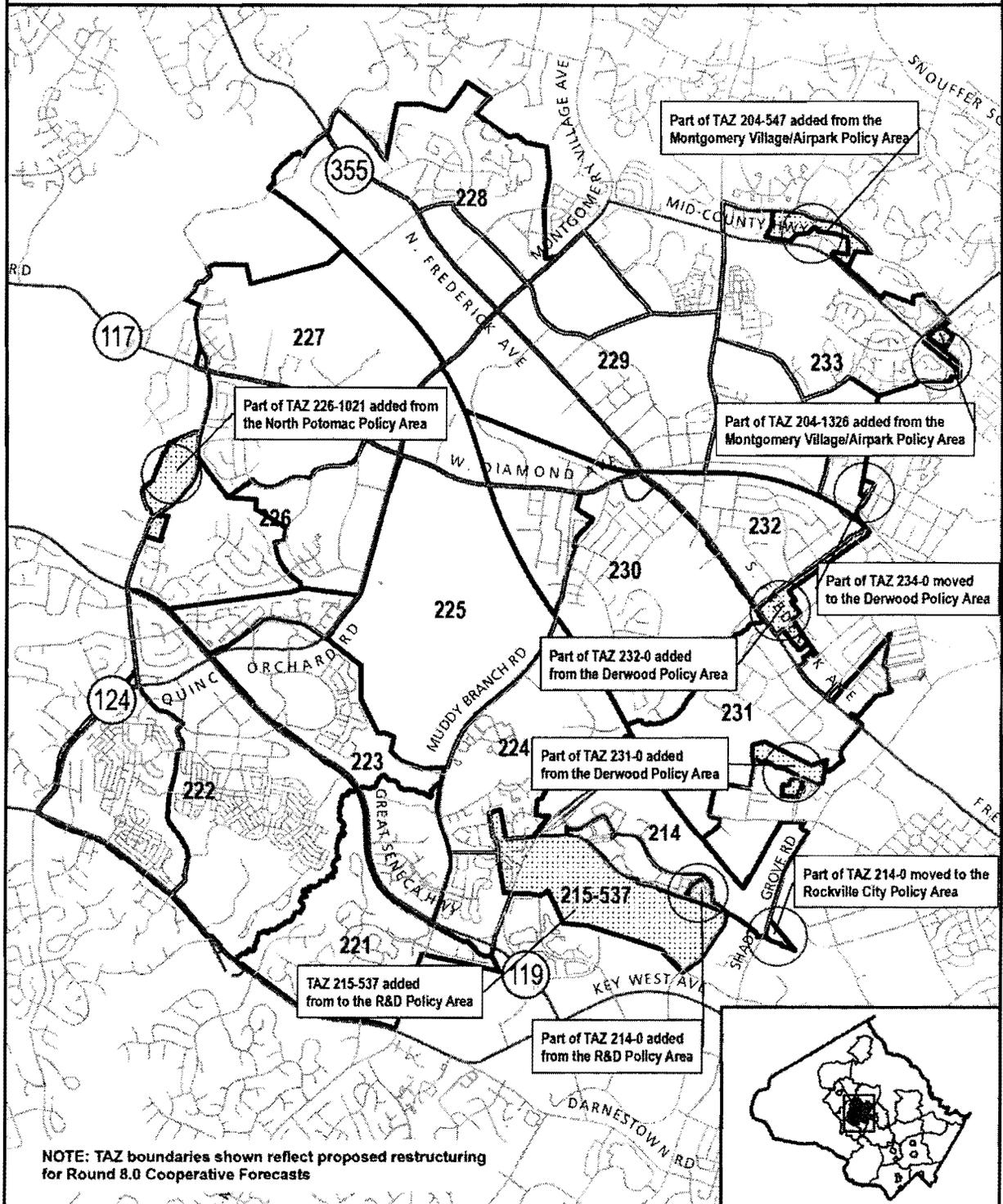
#### CAPACITY

Teaching Stations Added: 4

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP																																																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Date First Appropriation</td> <td style="text-align: center;">FY</td> <td></td> </tr> <tr> <td>First Cost Estimate</td> <td></td> <td></td> </tr> <tr> <td>Current Scope</td> <td style="text-align: center;">FY10</td> <td style="text-align: right;">1,800</td> </tr> <tr> <td>Last FY's Cost Estimate</td> <td></td> <td style="text-align: right;">0</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Appropriation Request</td> <td style="text-align: center;">FY09</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Appropriation Request Est.</td> <td style="text-align: center;">FY10</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Supplemental Appropriation Request</td> <td></td> <td style="text-align: right;">0</td> </tr> <tr> <td>Transfer</td> <td></td> <td style="text-align: right;">0</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Cumulative Appropriation</td> <td></td> <td style="text-align: right;">0</td> </tr> <tr> <td>Expenditures/Encumbrances</td> <td></td> <td style="text-align: right;">0</td> </tr> <tr> <td>Unencumbered Balance</td> <td></td> <td style="text-align: right;">0</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Partial Closeout Thru</td> <td style="text-align: center;">FY06</td> <td style="text-align: right;">0</td> </tr> <tr> <td>New Partial Closeout</td> <td style="text-align: center;">FY07</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Total Partial Closeout</td> <td></td> <td style="text-align: right;">0</td> </tr> </table>	Date First Appropriation	FY		First Cost Estimate			Current Scope	FY10	1,800	Last FY's Cost Estimate		0				Appropriation Request	FY09	0	Appropriation Request Est.	FY10	0	Supplemental Appropriation Request		0	Transfer		0				Cumulative Appropriation		0	Expenditures/Encumbrances		0	Unencumbered Balance		0				Partial Closeout Thru	FY06	0	New Partial Closeout	FY07	0	Total Partial Closeout		0	<p>Mandatory Referral - M-NCPPC                      Department of Environmental Protection                      Protection                      Building Permits:                      Code Review                      Fire Marshal                      Department of Transportation                      Inspections                      Sediment Control                      Stormwater Management                      WSSC Permits</p>	<p>See Map on Next Page</p>
Date First Appropriation	FY																																																				
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Total Partial Closeout		0																																																			

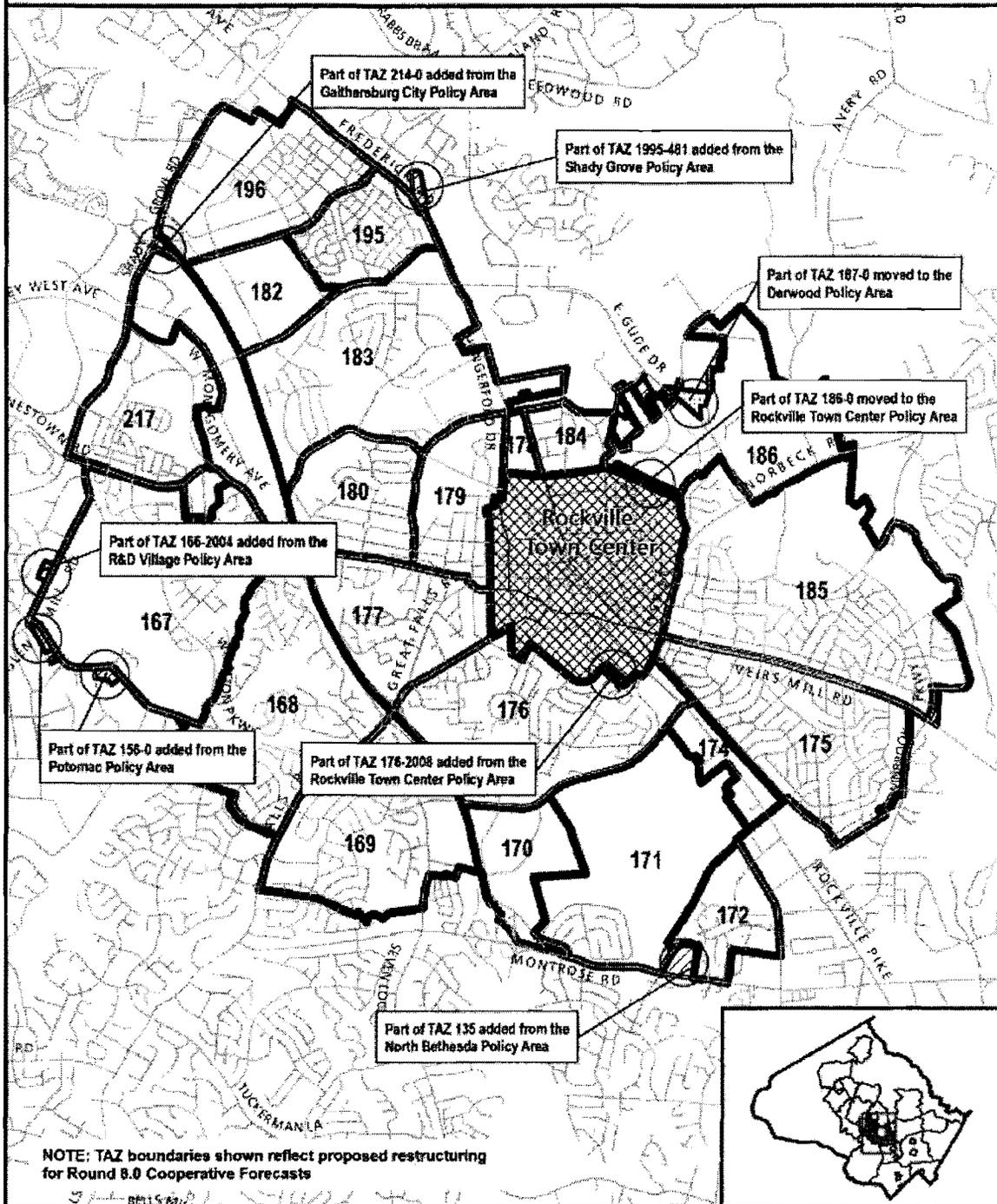
# Gaithersburg City Policy Area with Traffic Zones

## MAP 10



# Rockville City Policy Area with Traffic Zones

# MAP 24



**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

September 22, 2009

**C. Robert Dalrymple**  
301.961.5208  
[bdalrymple@linowes-law.com](mailto:bdalrymple@linowes-law.com)  
**Anne C. Martin**  
301.961.5127  
[amartin@linowes-law.com](mailto:amartin@linowes-law.com)

The Honorable Phil Andrews, President  
Montgomery County Council  
100 Maryland Avenue, 6th Floor  
Rockville, Maryland 20850

Hand Delivered

Re: 2009-2011 Planning Board Draft Growth Policy ("Growth Policy");  
Twinbrook Metro Station Policy Area Boundary

Dear Council President Andrews and Members of the County Council:

On behalf of Fishers Lane LLC and its affiliate entities, the owners of 22+/- acres in the Twinbrook Sector Plan area, including the Parklawn Building and the associated surface parking lot areas (the "Parklawn Properties"), we respectfully request that the County Council, sitting as the District Council (the "Council"), include the Twinbrook Sector Plan area (including the Parklawn Properties) in the policy area boundary changes included in Recommendation No. 7 of the Growth Policy (Page 45 of Growth Policy). After recently recognizing and questioning the omission of the adjustment to the Twinbrook Metro Station Policy Area (the "Twinbrook MSPA") along with the boundary adjustments for other pending or recently approved Sector Plan amendments in the Growth Policy, we understand that it was omitted because the adjustment was not specifically referenced in the recently adopted Twinbrook Sector Plan. However, the Council intentionally did not reference the boundary adjustment in the Twinbrook Sector Plan because it was intended to be addressed solely as part of the Growth Policy. Therefore, we request that the Council, now as part of the Growth Policy, adjust the Twinbrook MSPA boundary to include the portion of the Parklawn Properties that was added to the new Twinbrook Sector Plan boundary and included in the TMX-2 zoning recommendations of the Twinbrook Sector Plan. As explained in detail below, the requested boundary adjustment to include all of the Parklawn Properties in the Twinbrook MSPA is consistent with both the Twinbrook Sector Plan recommendations and the Growth Policy objectives.

The new Twinbrook Sector Plan, adopted and approved on January 21, 2009, expanded the 1992 Twinbrook Sector Plan boundary and recognized the expanded area as a "Transit Station Development Area" based on the proximity to the Metro Station. For reference, an excerpt of the Twinbrook Sector Plan showing the new Sector Plan boundary is attached as Exhibit "A".

(21)

The Honorable Phil Andrews, President  
September 22, 2009  
Page 2

This expansion included a 8.4± acre portion of the Parklawn Properties known as the north parking lot that was in the R-200 zone, as well as a 1.59± acre portion of the Parklawn Properties immediately east of the Parklawn Building with surface parking and a daycare center that was in the R-90 and R-200 zone (combined, the “Northeast Parklawn Property”). A copy of the Twinbrook Sector Plan excerpt referenced above with the Northeast Parklawn Property highlighted is attached as Exhibit “B”. The Parklawn Properties, including the Northeast Parklawn Property, are in the “Technology and Employment Area” of the Twinbrook Sector Plan and were rezoned by the Council on June 23, 2009, to the new TMX-2 (Transit-Oriented Mixed Use) zone as recommended. The recommendations for the Technology Employment Area note the proximity to the Metro Station, the significant development potential, and the high-quality urban environment with improved pedestrian and vehicle connections and public spaces. The Twinbrook Sector Plan further specifically references the benefit of the addition of the Northeast Parklawn Property to create incentives for redevelopment, including significant public improvements of public spaces and pedestrian and vehicle connections, and to keep the existing Parklawn Building viable, with a renovation and extension of the GSA lease or with a new mix of uses.

The Planning Board Staff and Council Staff were supportive of adjusting the Twinbrook MSPA boundary at the time of the Twinbrook Sector Plan review and provided the Council with “a heads-up and put that recommendation on the record;” however, the Council was advised that the adjustment was not appropriate to be considered at the time of the Twinbrook Sector Plan. Instead, the Council agreed that the proposed Twinbrook MSPA boundary adjustment would be considered at the time of the Growth Policy. We have confirmed this with both Council Staff and Planning Board Staff.

Therefore, we request that the Council adjust the Twinbrook MSPA boundary as part of the Growth Policy to include this Northeast Parklawn Property portion of the Parklawn Properties that is part of the “Technology Employment Area” of the Twinbrook Sector Plan and in the TMX-2 zone. A copy of the Twinbrook Policy Area Map with the Northeast Parklawn Property highlighted and the adjusted boundary shown is attached as Exhibit “C”. This adjustment will make the MSPA boundary consistent with the boundary of the Parklawn Properties and will remove the haphazard line bifurcating the various parcels under single ownership. Further, the adjustment will eliminate any uncertainty with respect to the applicable policy area designations, and thus maintain the incentive and viability for the desired transit-oriented redevelopment of this important site. The Twinbrook MSPA boundary adjustment is consistent with the transit-oriented vision of the Twinbrook Sector Plan, the specific employment and redevelopment recommendations for the Parklawn Properties (including pedestrian and vehicular connections

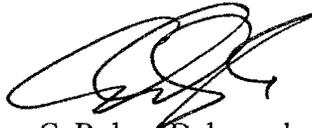
The Honorable Phil Andrews, President  
September 22, 2009  
Page 3

between Parklawn Drive, Fishers Lane and Twinbrook Parkway), and the Growth Policy vision and specific recommendation to adjust boundaries to be consistent with pending (or recently approved) Sector Plans.

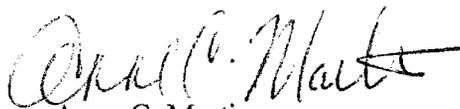
Thank you for your consideration of our request to adjust the Twinbrook MSPA boundary to be consistent with the Twinbrook Sector Plan and include this Northeast Parklawn Property portion of the Parklawn Properties.

Very truly yours,

**LINOWES AND BLOCHER LLP**



C. Robert Dalrymple

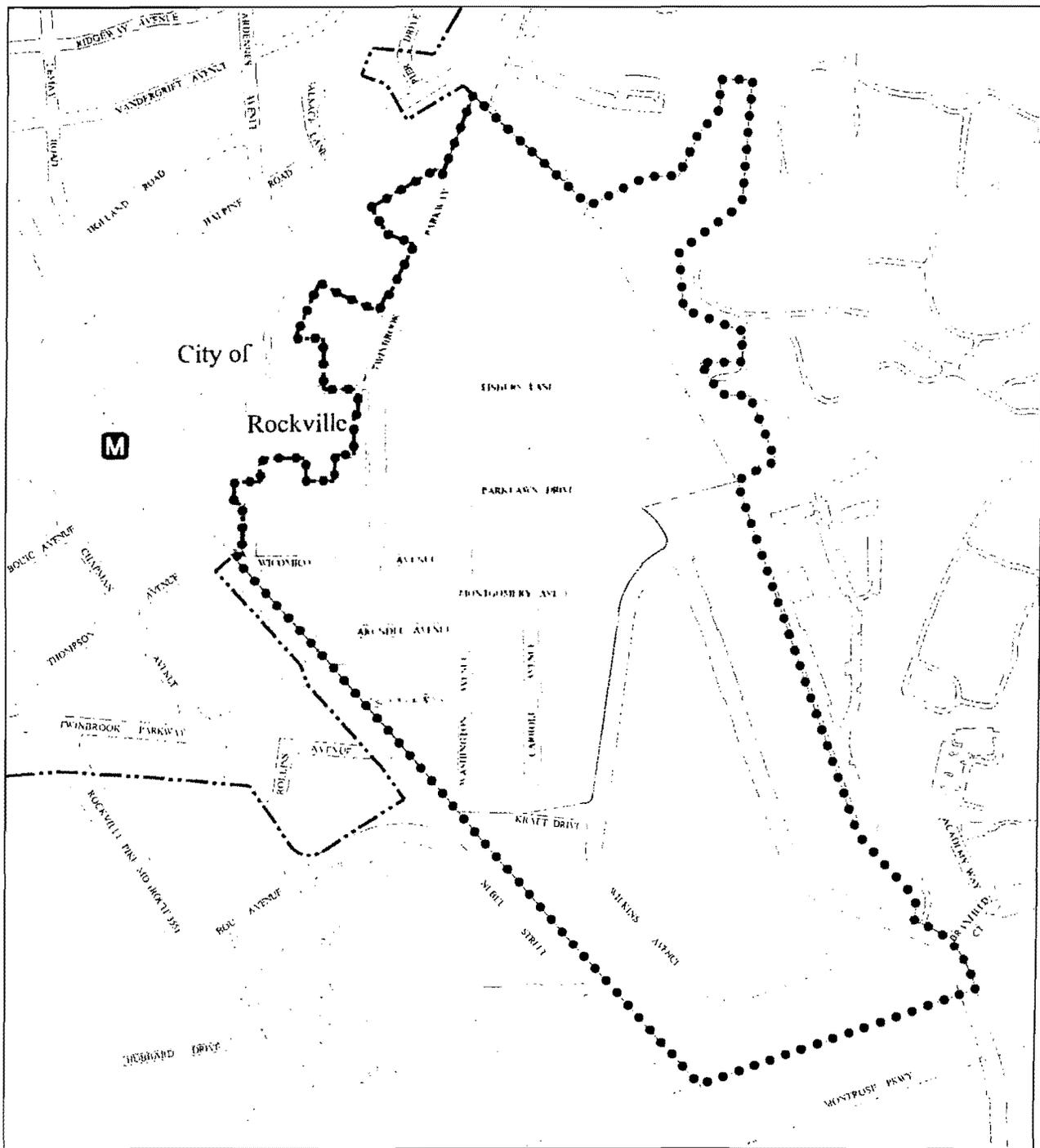


Anne C. Martin

Enclosures

cc: County Council Members  
The Honorable Isiah Leggett  
The Honorable Royce Hanson  
Dr. Glenn Orlin  
John Carter  
Kristin O'Connor  
Dan Hardy  
Mordy Schron

# Sector Plan Boundaries



V:\A2.TWINBROOK\_TB-handlines\1992 and 2007.dwg(TB-monochrome.ctb)

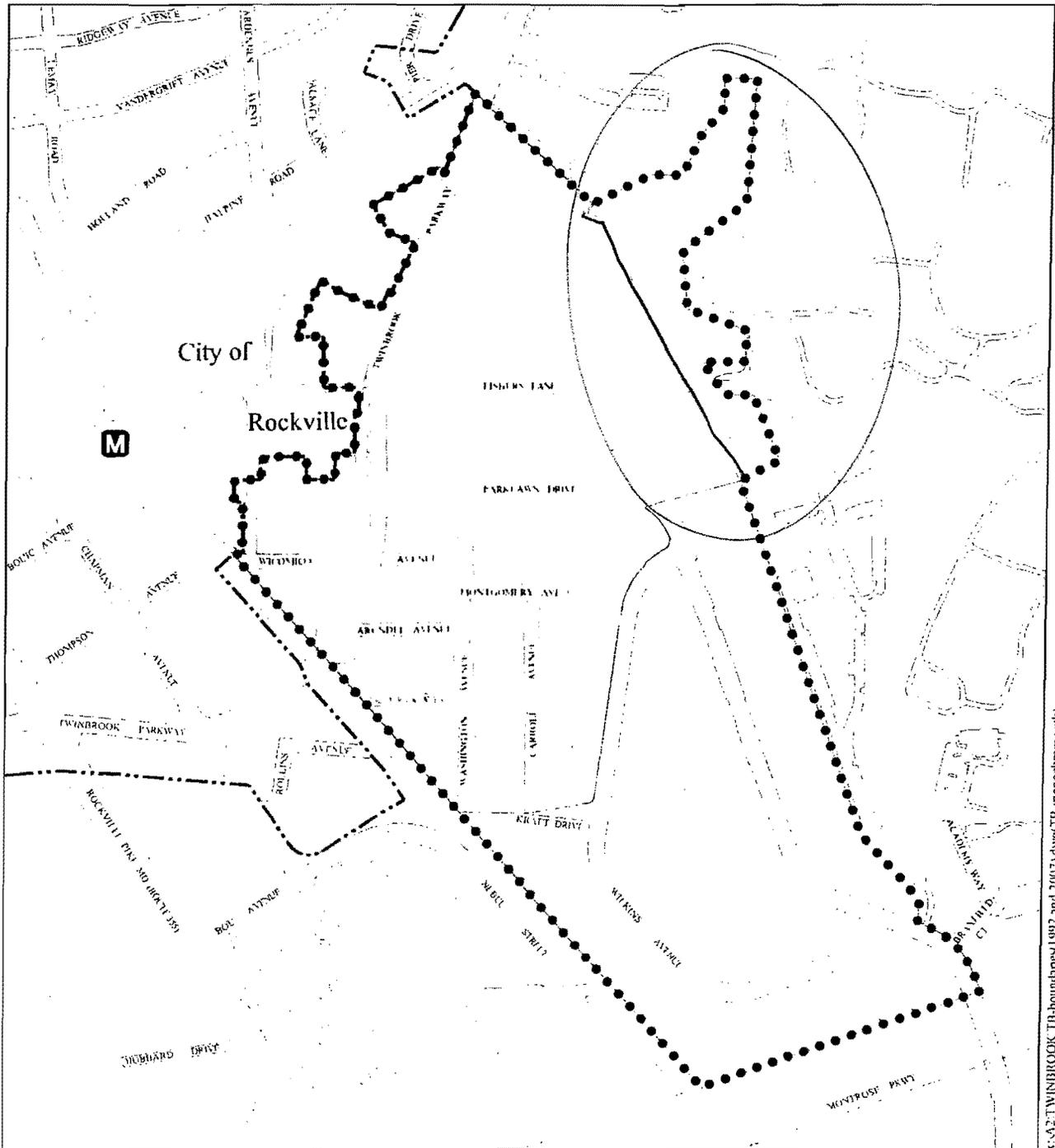
- M** Metro Station
- City of Rockville
- - - - - 1992 Sector Plan Boundary
- 2008 Sector Plan Boundary

24

## EXHIBIT A



# Sector Plan Boundaries



V:\32-TWINBROOK TB-boundaries\1992 and 2007\dwg\TB-monoctheme.dwg

- M** Metro Station
- City of Rockville
- - - 1992 Sector Plan Boundary
- 2008 Sector Plan Boundary

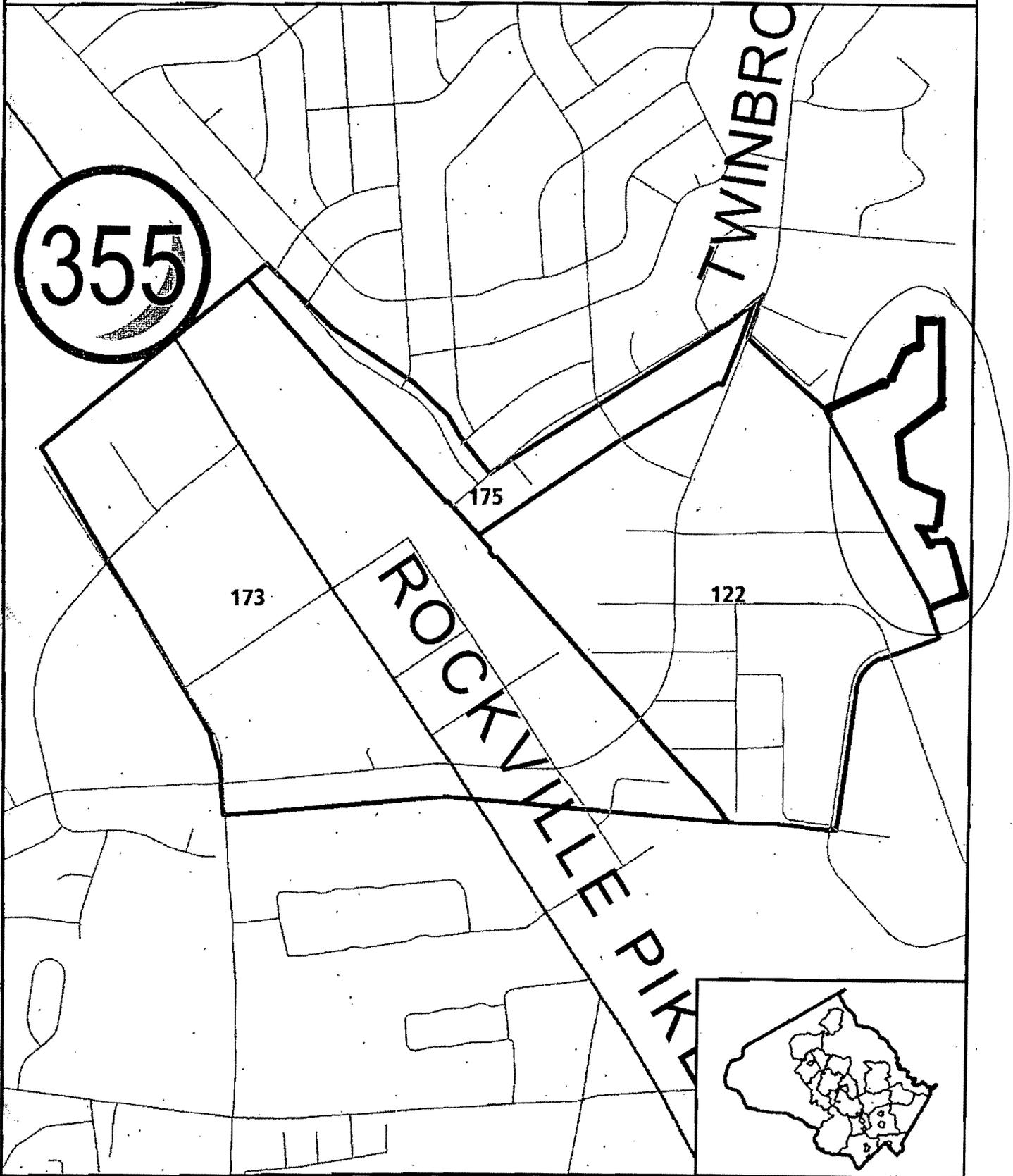
25

## EXHIBIT B



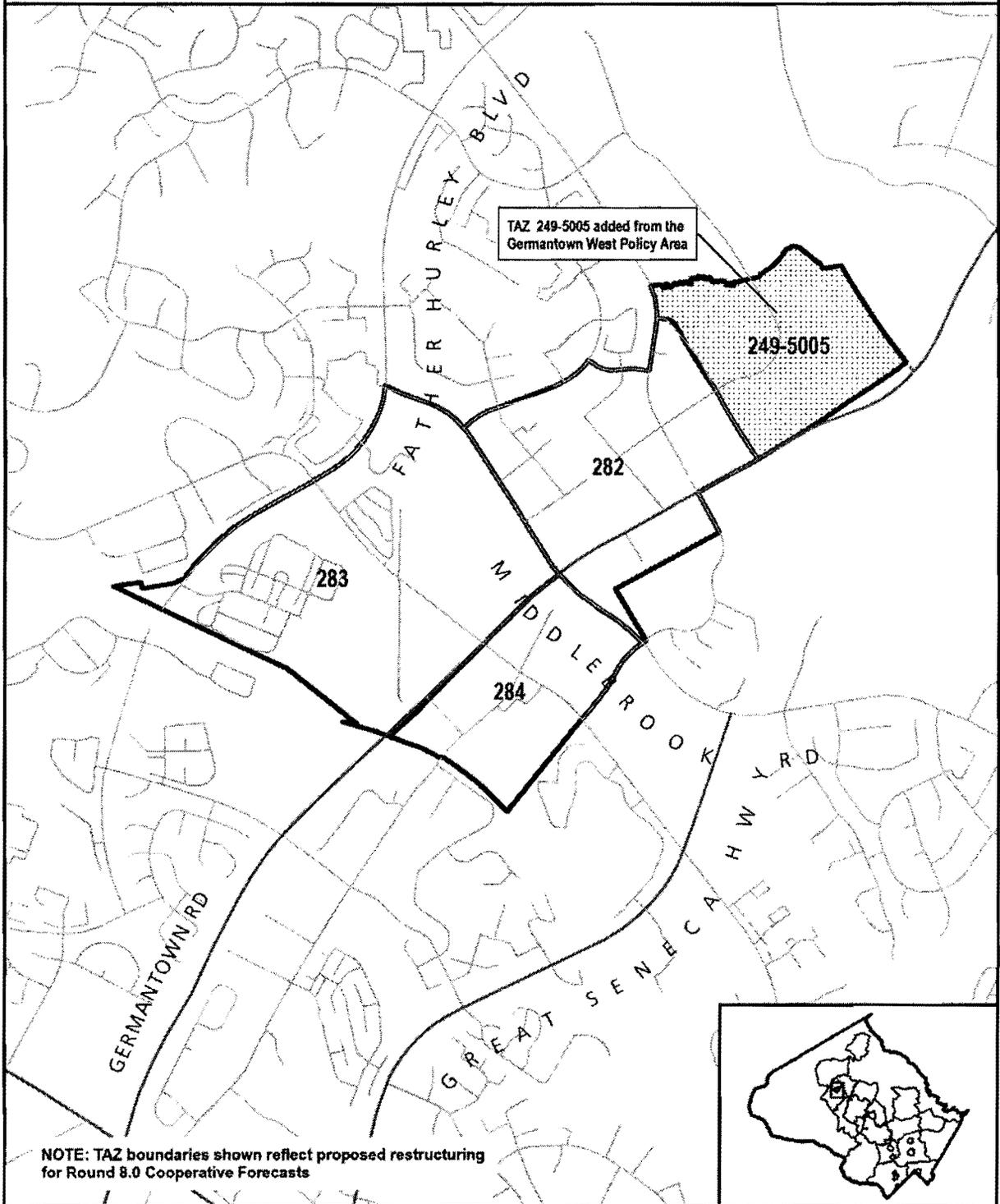
# Twinbrook Policy Area with Traffic Zones

MONTGOMERY COUNTY DEPARTMENT OF PARKS & PLANNING  
THE SPARKS CENTER, 20000 ROCKVILLE PIKE, SUITE 200, ROCKVILLE, MD 20850  
1000 Parkway Avenue, 4th Floor, Silver Spring, MD 20910



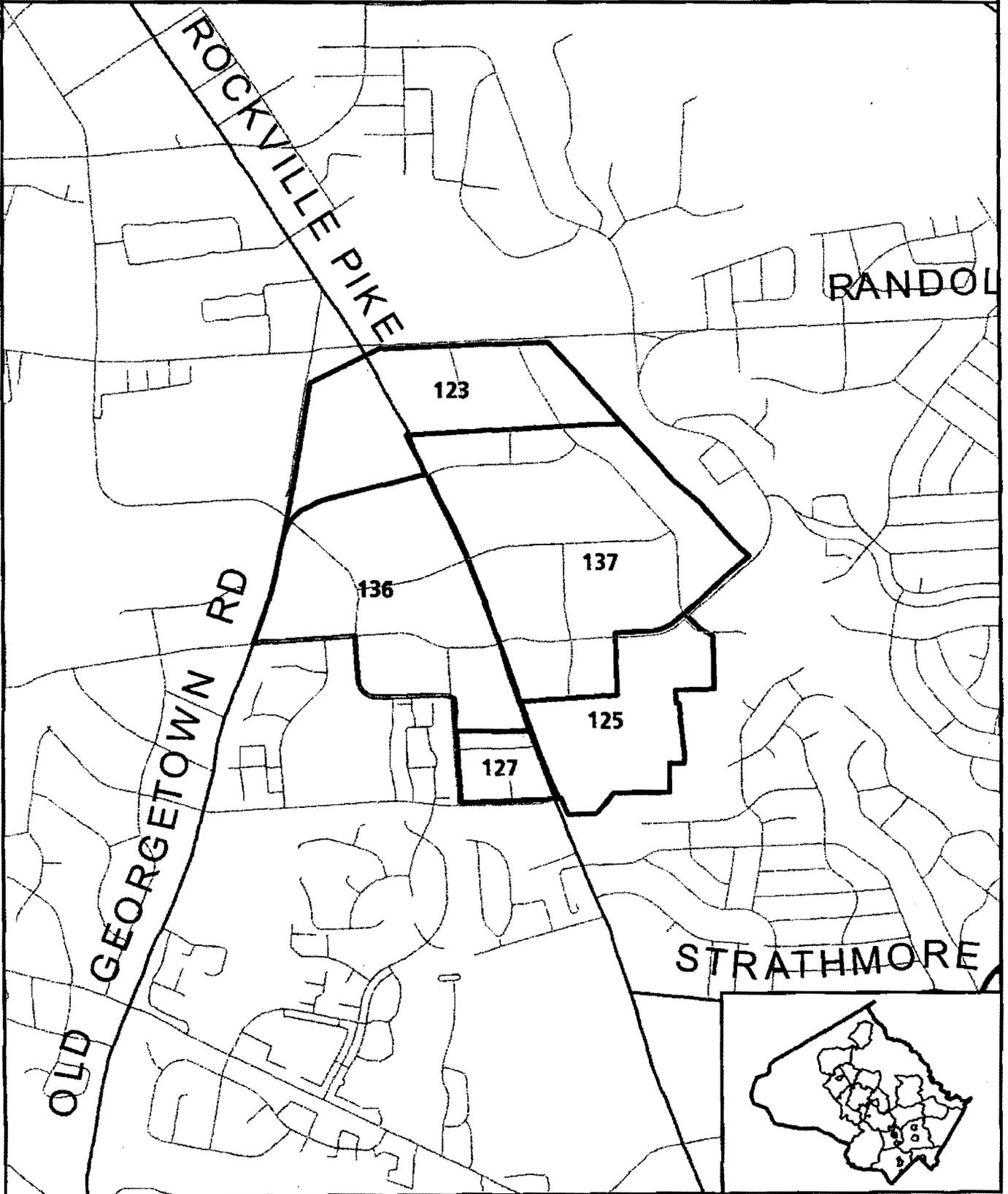
# Germantown Town Center Policy Area with Traffic Zones

## MAP 12



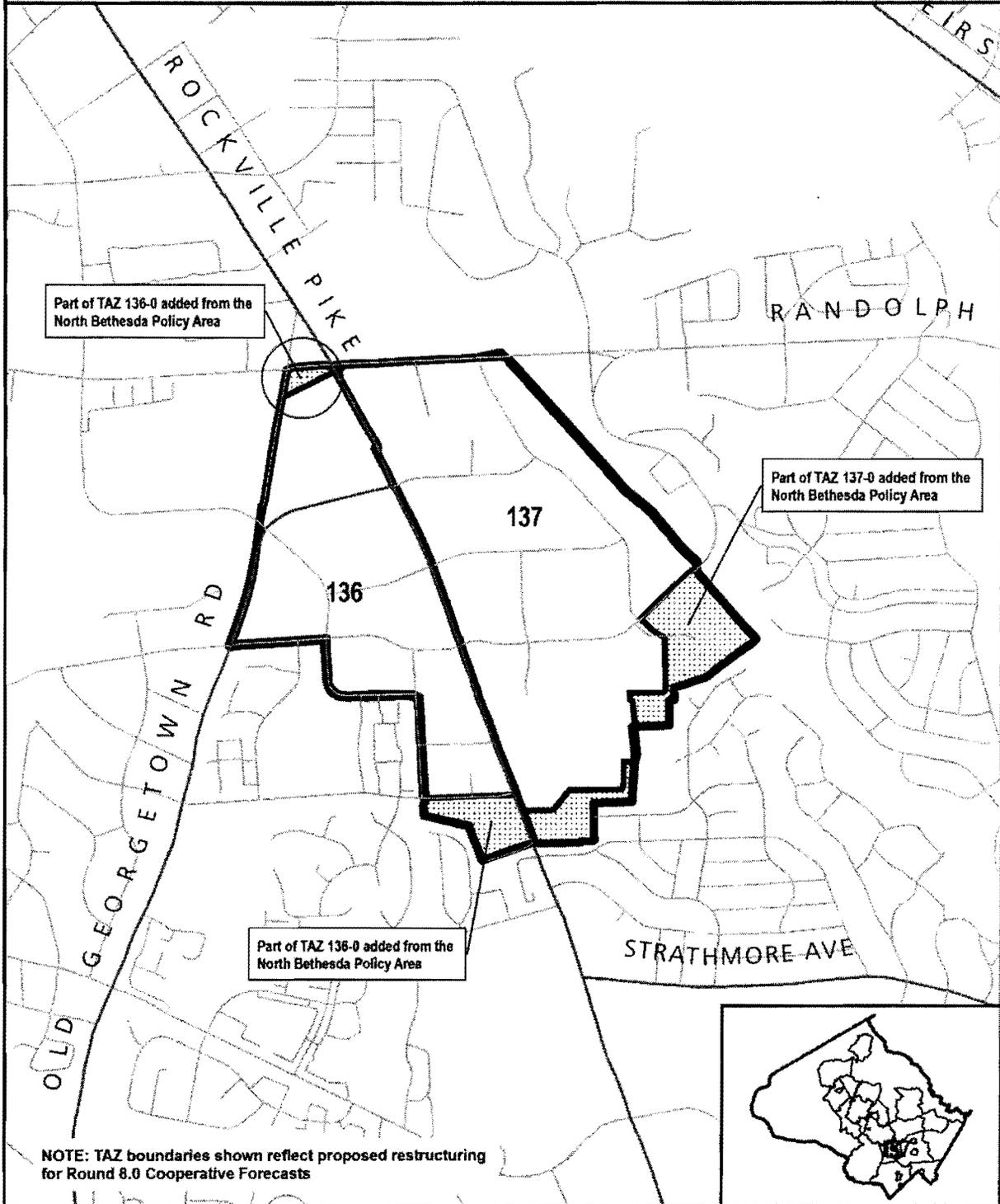
# White Flint Policy Area with Traffic Zones

MONTEGOMERY COUNTY DEPARTMENT OF PARKS & PLANNING  
441 EAST WOLF CREEK DRIVE, ROCKVILLE, MARYLAND 20850  
301-791-1000



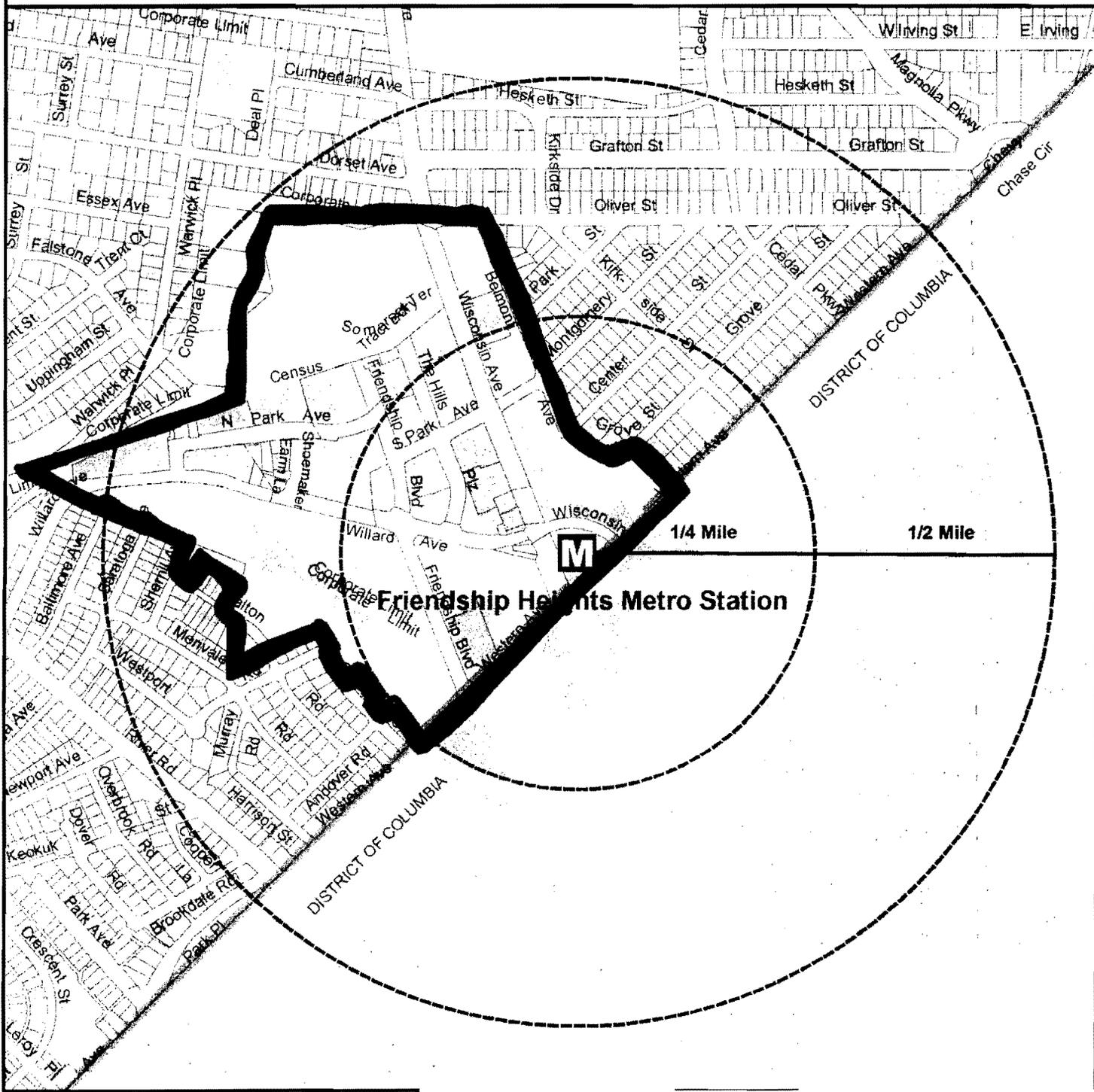
# White Flint Policy Area with Traffic Zones

## MAP 33

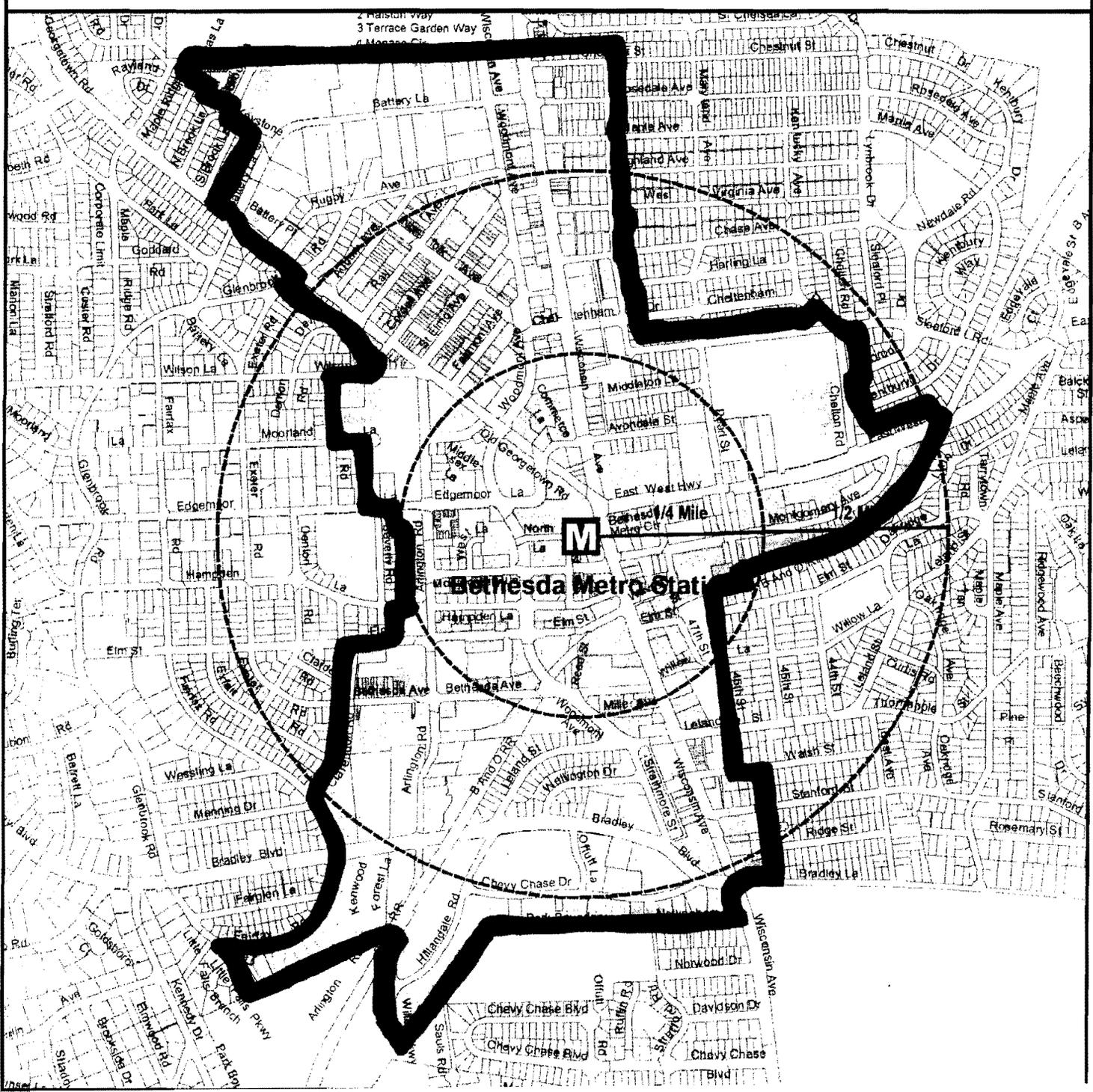


NOTE: TAZ boundaries shown reflect proposed restructuring for Round 8.0 Cooperative Forecasts

# Friendship Heights CBD Metro Station Policy Area

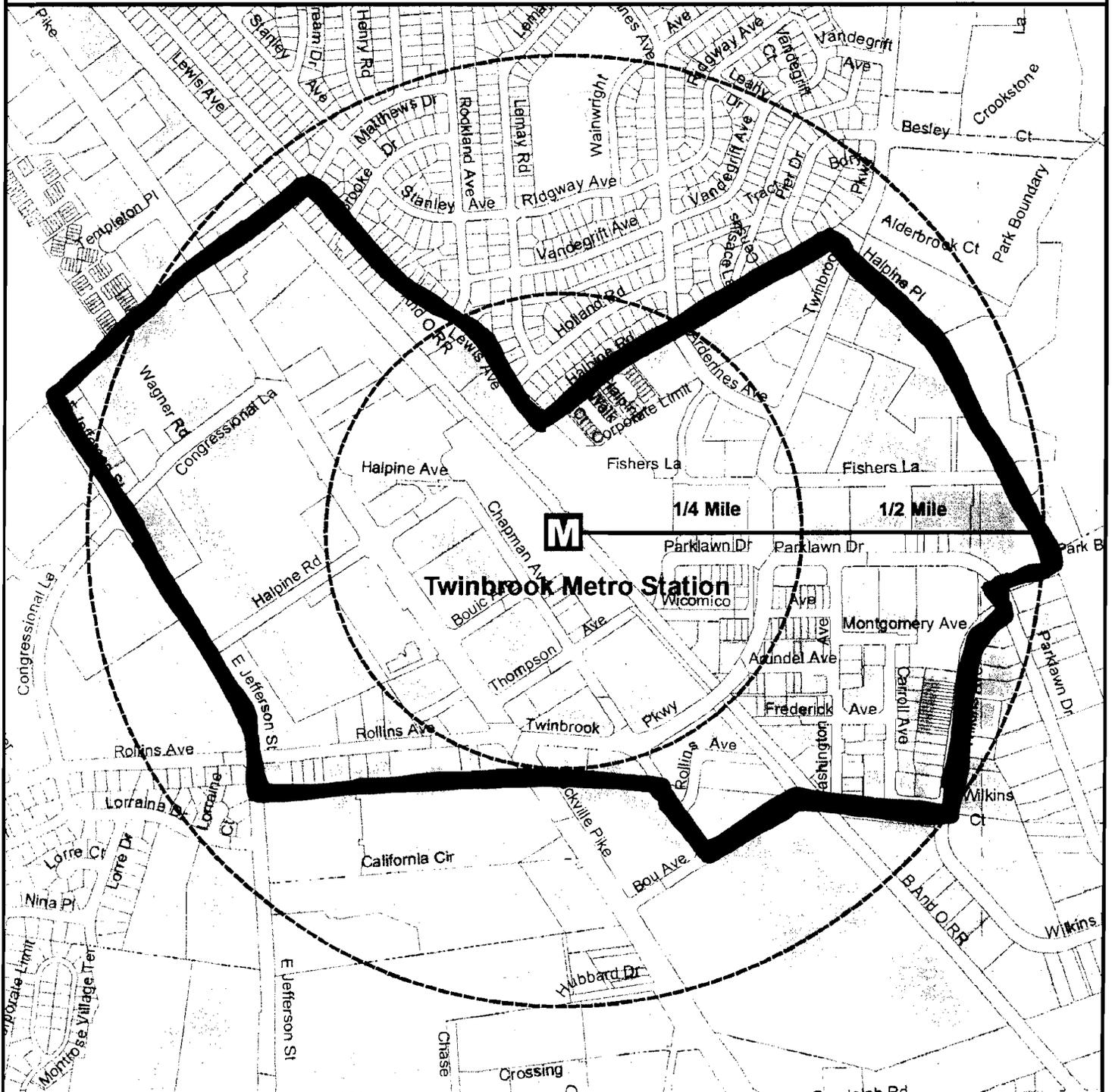


# Bethesda CBD Metro Station Policy Area

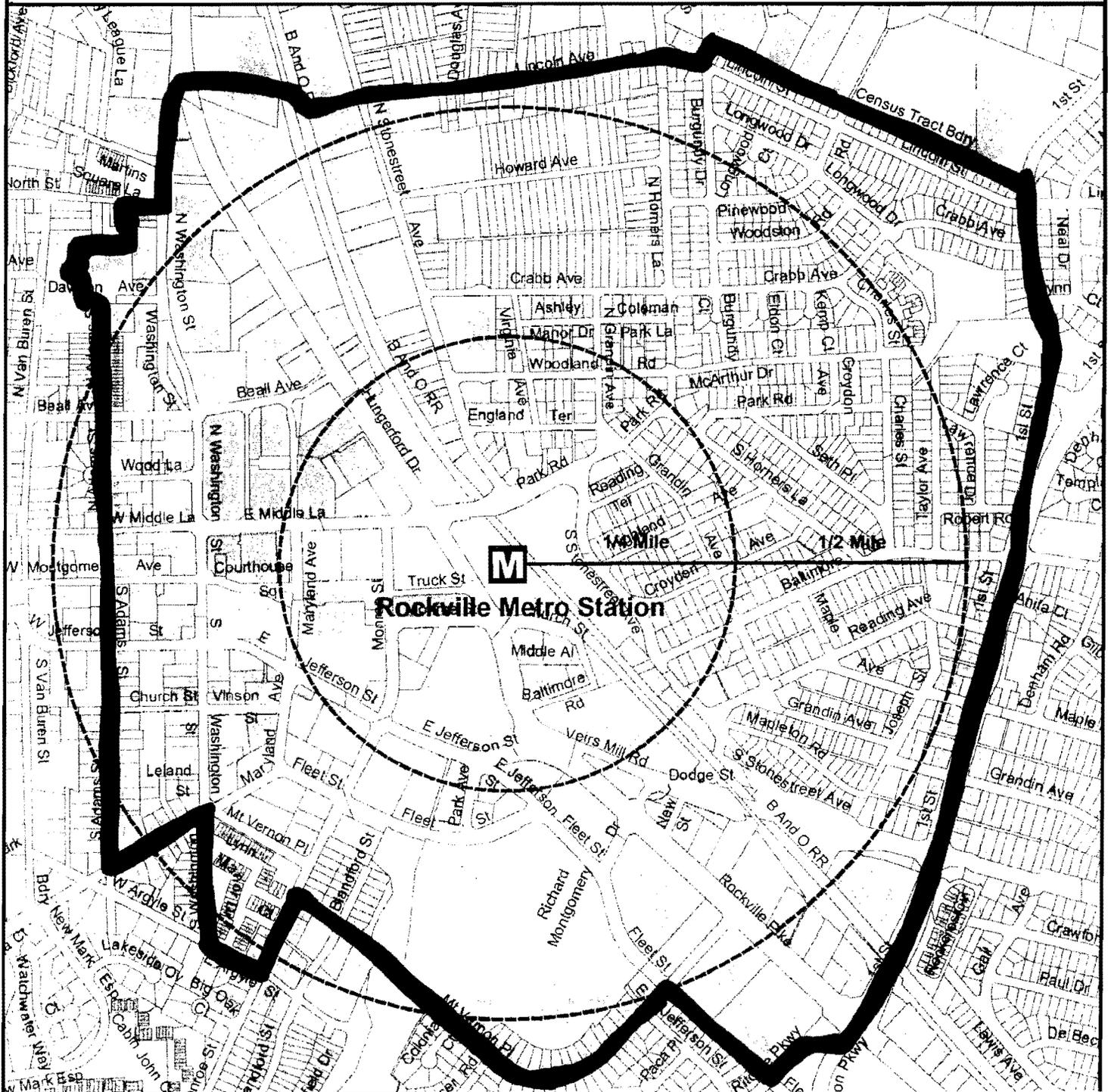




# Twinbrook Metro Station Policy Area

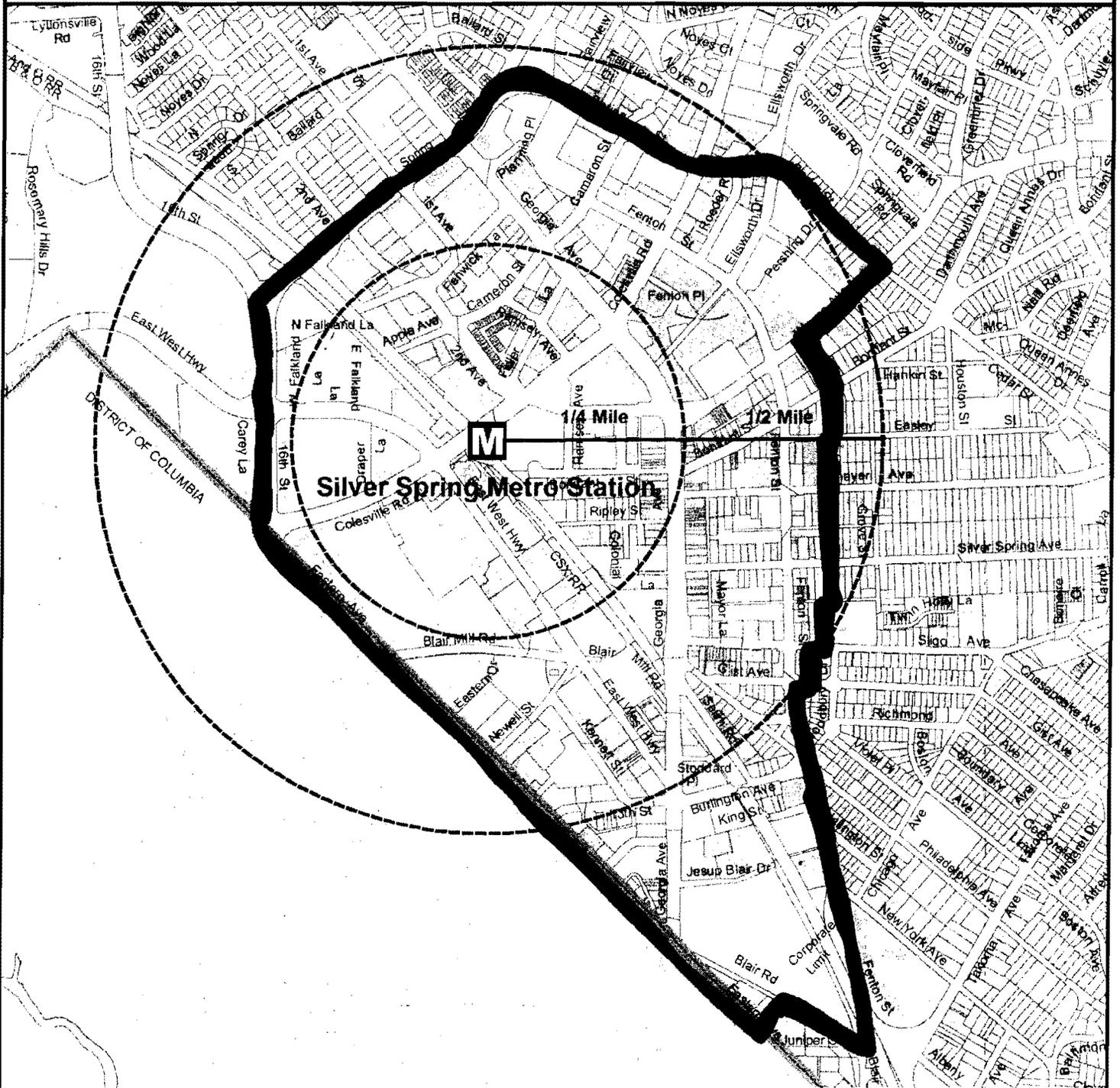


# Rockville Town Center Metro Station Policy Area

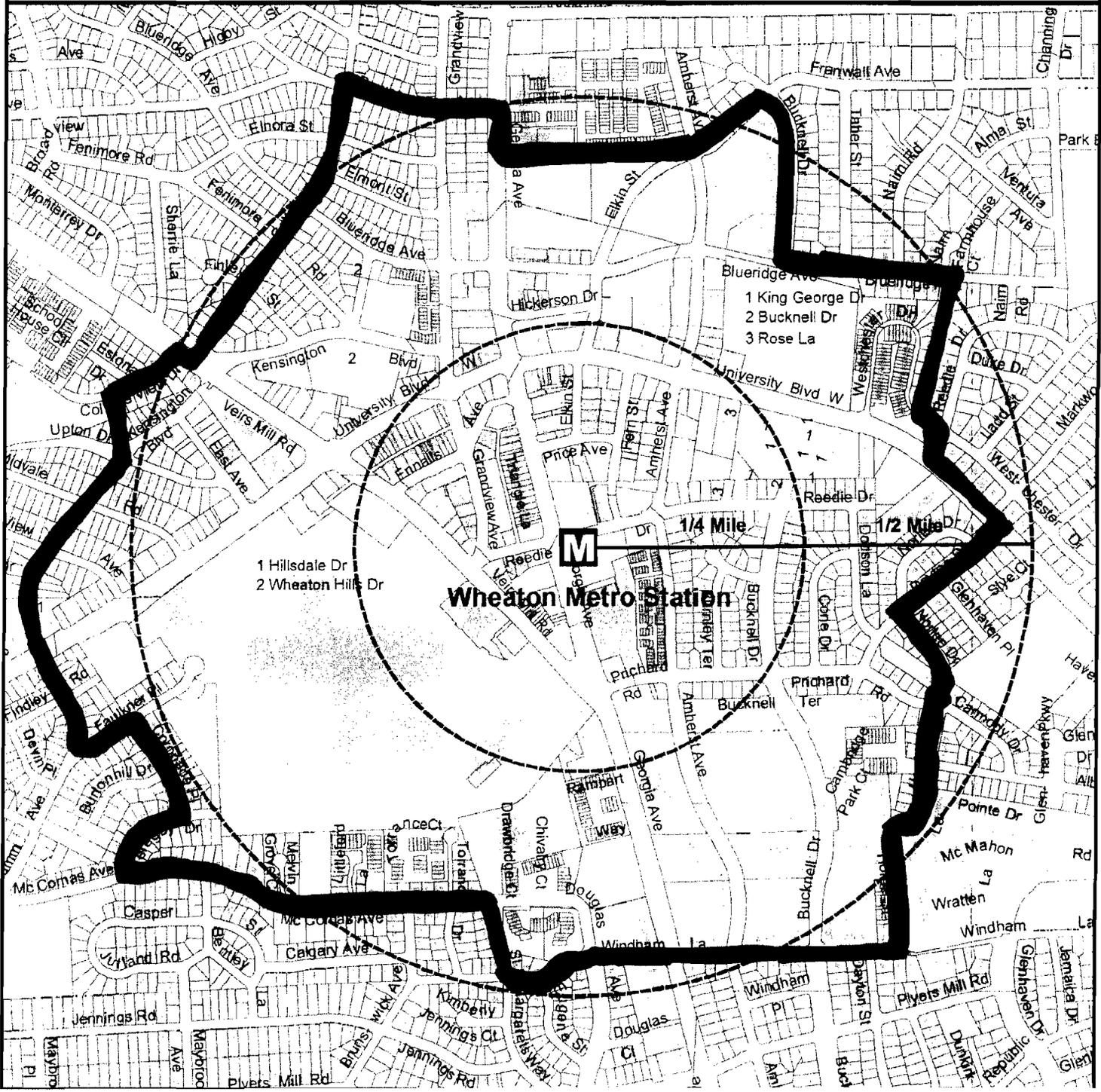




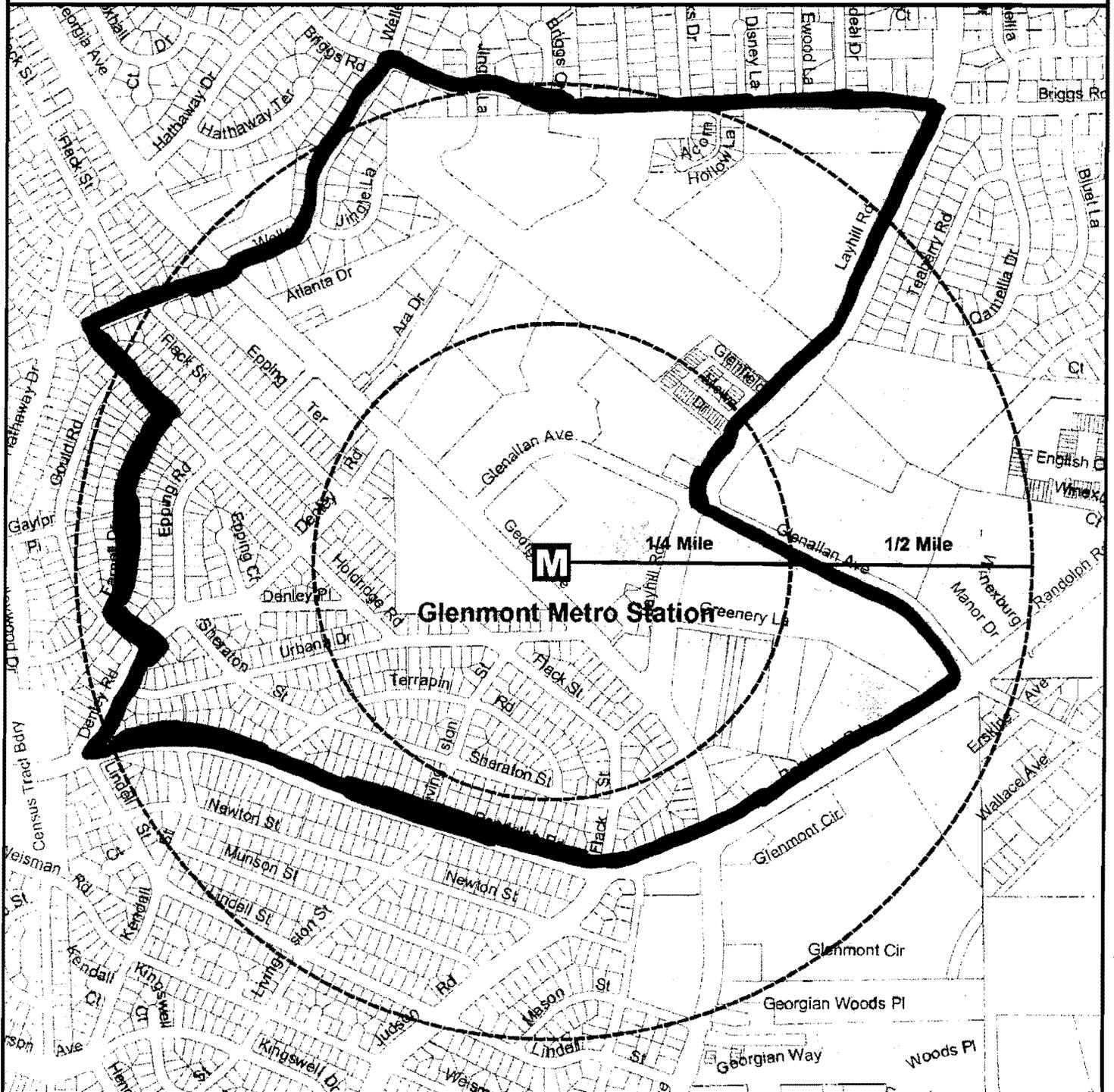
# Silver Spring Metro Station Policy Area



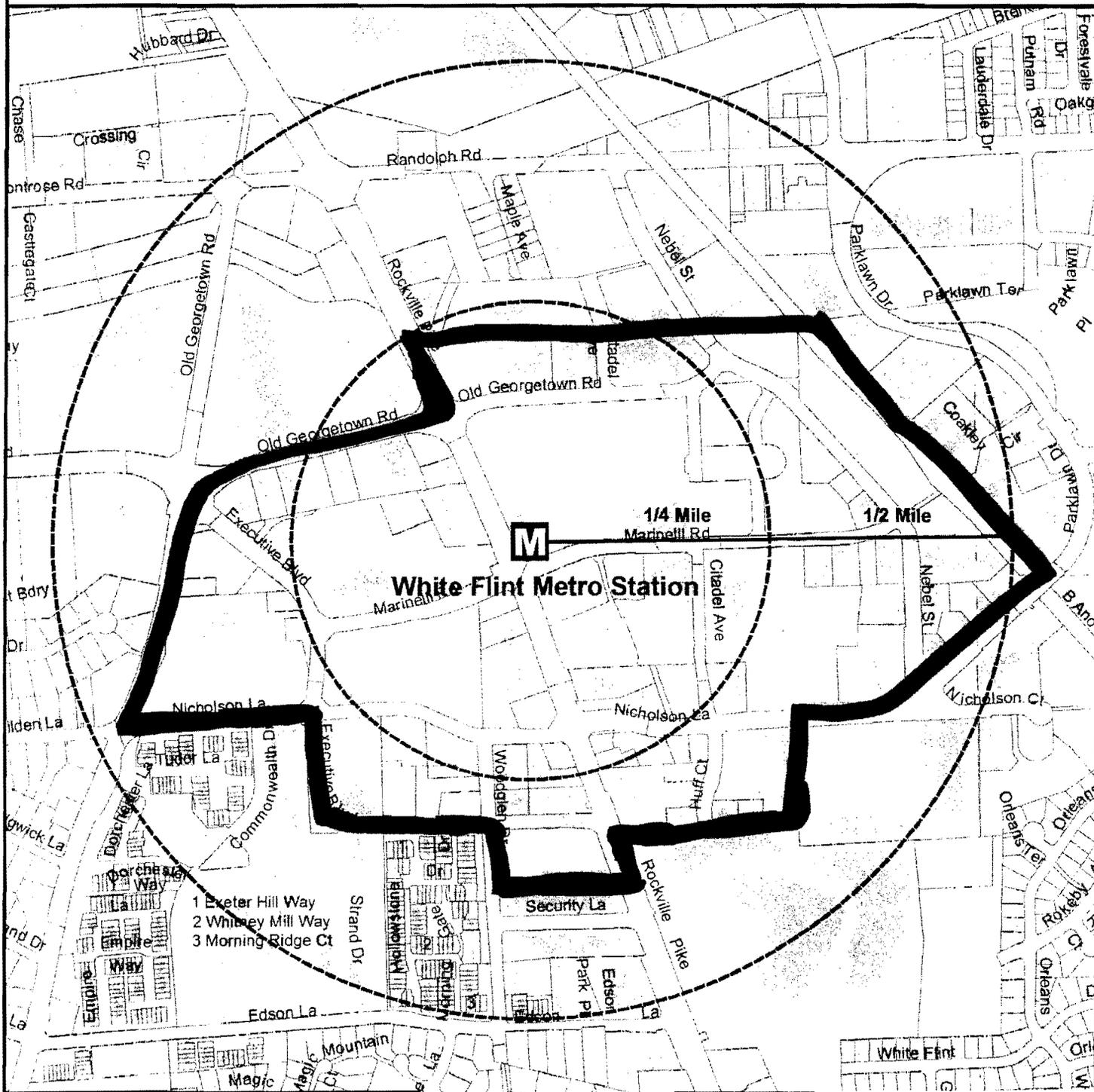
# Wheaton CBD Metro Station Policy Area



# Glenmont Metro Station Policy Area



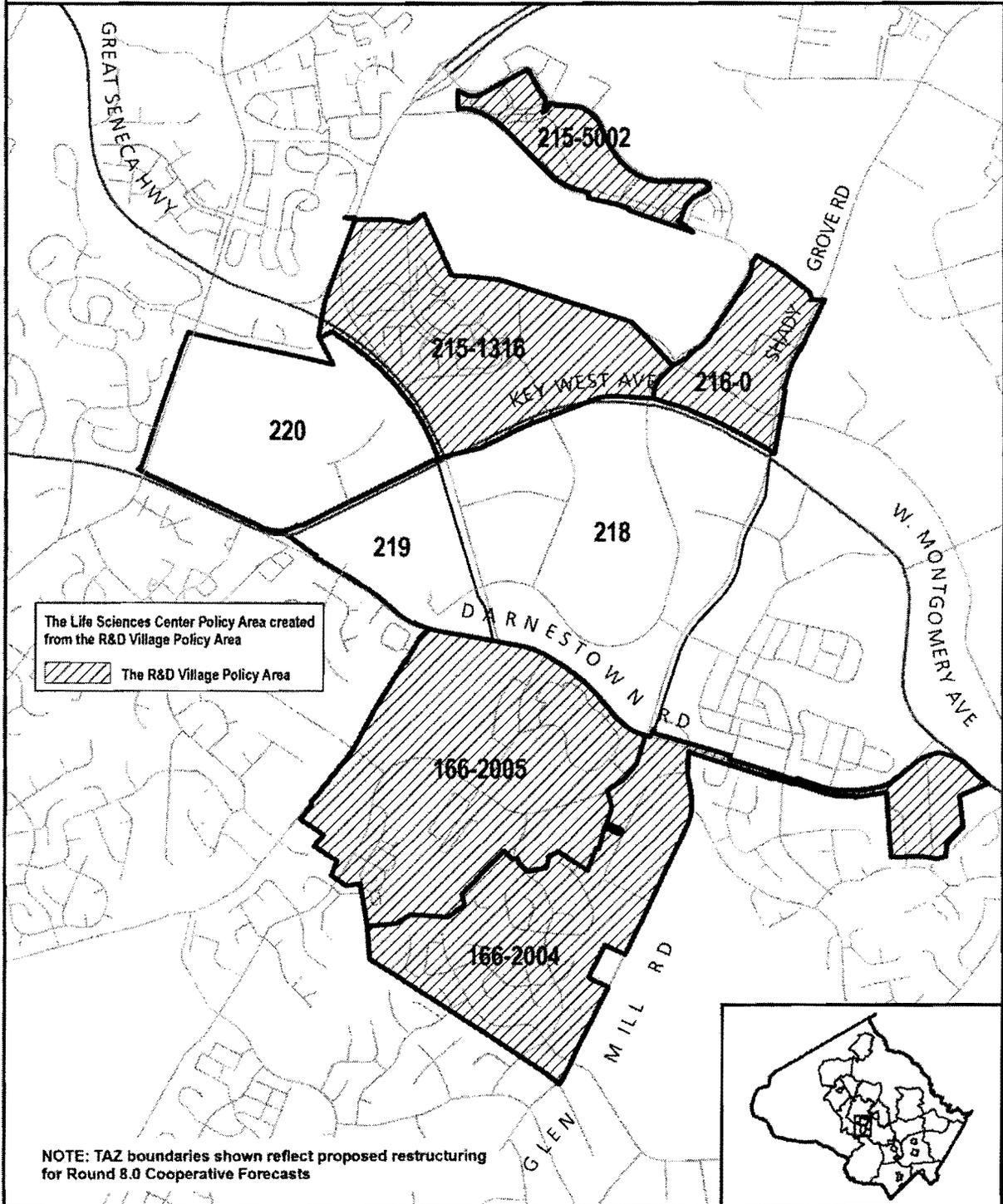
# 2003 White Flint Metro Station Policy Area





# Life Sciences Center Policy Area with Traffic Zones

## MAP 17



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## II. CIVIC FEDERATION RECOMMENDED CHANGES TO THE GROWTH POLICY

In addition to addressing the recommendations of the Planning Board in the preceding section, the Civic Federation offers the following additional suggestions for your consideration.

### Separate the 2 Policy Area Mobility Review (PAMR) Tests

MCCF1. MCCF strongly recommends the current PAMR test be split in two. We believe the separation of the current PAMR test into two stand-alone tests, a Policy Area Roads Test and a Policy Area Transit Test, would be more useful and appropriate to the implementation of the Adequate Public Facilities Ordinance (APFO). The current PAMR test balances adequacy of roads level of service against adequacy of transit level of service within each county policy area. This implies that the adequacy of one of these public facilities somehow substitutes for the inadequacy of the other. Yet the APFO states the Planning Board must find an area's roads and transit facilities are adequate before approving the preliminary plan for a project in that area. It reads:

*Sec.50-35(k). Adequate Public Facilities. The Planning Board must not approve a preliminary plan of subdivision unless the Board finds that public facilities will be adequate to support and service the area of the proposed subdivision. Public facilities and services to be examined for adequacy include roads and public transportation facilities, sewerage and water services, schools, police stations, firehouses, and health clinics.*

The Federation does not believe it is any more appropriate to assert that it is acceptable for an area to have inadequate roads level of service if it has more than adequate transit facilities than it would be to assert that an area could have inadequate sewerage facilities so long as it has more than adequate water service.

If the PAMR tests were separated, there would then be 3 primary growth policy tests (i.e.; for schools, roads and transit), in addition to Local Area Transportation Review. At present, if there is inadequate school capacity in an area where a developer wants to build, then they can still get Preliminary Plan approval by paying a School Facilities Payment in addition to the School Impact Tax. Similarly, under the MCCF recommendation, if there is inadequate road capacity, a developer could still get Preliminary Plan approval to build by paying a Road Facilities Payment in addition to the Transportation Impact Tax. Or if transit is found to be inadequate, they could proceed by paying a Transit Facilities Payment.

### Improve Tests for Roads and Transit Level of Service

MCCF2. We believe the Council should make a commitment to change as soon as possible to use of the latest generation software to model traffic capacity for the Policy Area Roads Test (SYNCHRO, and SimTraffic and/or CORSIM). However, we understand that, due to time constraints, you may opt to employ existing PAMR arterial LOS data in the initial creation of a stand-alone roads test.

MCCF3. We believe the Council should make a commitment to improving the Policy Area Transit Test as soon as possible, for instance by comparing the time for point-to-point commute trips by transit to the time for the same point-to-point trips by car. However, we understand that, due to time constraints, you may opt to employ existing PAMR transit LOS data in the initial creation of a stand-alone transit test.

Stand-Alone Policy Area Roads Test

MCCF4. Whatever roads test is approved, MCCF recommends using the poorer level of service from either AM or PM weekday peak hours. The current PAMR arterial test looks at PM peak hours only, but the 2008 Highway Mobility Report showed 46% of the 81 failing intersections in the county failed in AM peak hours only (indicating inadequate level of service in AM on roads in these areas that is not reflected in the current PAMR analysis). MCCF believes a roads test should analyze weekend congestion levels, as well.

MCCF5. POLICY AREA ROADS TEST--recommendation using 2013 PAMR data

If actual speed is-

85% free-flow speed or faster	A	(no policy areas)
70 - 84% of free-flow speed	B	Damascus, Cloverly
55 - 69% of free-flow speed	C	Rural West, Clarksburg, Germantown W, R&D Village, Rural East
40 - 54% of free-flow speed	D	Montgomery Village/Airpark, North Potomac, Olney, Germantown E, Kensington/Wheaton, Silver Spring/Takoma Park, Aspen Hill, Rockville, Derwood, Bethesda-Chevy Chase, North Bethesda, Fairland/White Oak, Potomac, Gaithersburg City
25 - 39% of free-flow speed	E	(no policy areas)
less than 25% of free-flow speed	F	(no policy areas)

Road Facilities Payment is imposed equal to \$11,000 x [% of trips generated by a project]. For levels A or B no payment is imposed, for level C a payment is imposed on 10% of trips generated, for level D a payment is imposed on 25% of trips generated, for level E a payment is imposed on 50% of trips generated, and for level F a payment is imposed on 100% of trips generated by a project. Payments to be used for road improvements only.

MCCF6. In policy areas where a percentage remediation based on trips generated by a project is required, if a development is calculated to generate a lower number of trips than the countywide rate due to proximity to Metro station or transit center, the percentage should be applied to that lower number of trips. Current calculation used by Planning staff lowers or eliminates trips needing to be mitigated in Metro Station Policy Areas.

Stand-Alone Policy Area Transit Test

MCCF7. POLICY AREA TRANSIT TEST--recommendation using 2013 PAMR data

If transit commute time is-

70% of time by car or less	A	(no policy areas)
71 - 100% of time by car	B	(no policy areas)
101 - 130% of time by car	C	(no policy areas)
131 - 160% of time by car	D	Bethesda/Chevy Chase, Silver Spring/ Takoma Park, Kensington/Wheaton, Derwood, North Bethesda, Aspen Hill, Olney, Rural East, Potomac, Rockville
161 - 190% of time by car	E	Montgomery Village/Airpark, Cloverly, North Potomac, Germantown W, Fairland/White Oak, Rural West, Gaithersburg City, Germantown E, R&D Village
more than 190% of time by car	F	Clarksburg, Damascus

Transit Facilities Payment is imposed equal to \$11,000 x [% of the total of non-auto mode dwelling units and jobs in a project]. For levels A and B no payment is imposed, for level C a payment is imposed on 10% of non-auto mode dwelling units and jobs, for level D a payment is imposed on 25%, for level E a payment is imposed on 50%, and for level F a payment is imposed on 100% of non-auto mode dwelling units and jobs in a project. Payments to be used for transit improvements only.

Impact Taxes

MCCF8. Eliminate 50% reduction in impact tax rate for Metro Station Policy Areas (MSPAs) and repeal the separate Clarksburg impact tax district, and apply a single County-wide rate. In the May 2007 Staff Draft Growth Policy, planning staff recommended doing away with the 50% impact tax rate in MSPAs, stating that "our Metro Station Policy Areas have matured as development land has become more scarce, so that financial incentives to encourage redevelopment in MSPAs are of decreasing value to the county." [emphasis added] MCCF believes the additional new funds derived from collecting the countywide transportation impact tax rate from development projects in MSPAs could be put to good use, to fund projects that would improve roads level of service or to fund projects which would further improve transit service or increase capacity of the transit systems in these areas. In addition, we believe the imposition of an impact tax rate for Clarksburg which is higher than the County-wide rate is no longer needed.

### School Facilities Payment and School Capacity

MCCF9. Retain imposition of School Facilities Payment when cluster exceeds 105% of capacity on middle or high school level, and retain cessation of new residential project Preliminary Plans when cluster exceeds 120% of capacity on middle or high school level.

MCCF10. Calculate capacity on individual school basis on elementary school level, and apply the same percentage limits for requiring School Facilities Payment and cessation of approvals as those applied on a cluster basis on the middle school and high school levels. This will prevent student enrollment from grossly exceeding capacity at any individual elementary school. This gross exceeding of capacity at an individual school can occur under the existing cluster capacity calculation if an elementary school is the primary receiver of new students generated by nearby development or redevelopment projects, while enrollment at other elementary schools in the cluster may be below capacity.

MCCF11. A School Facilities Payment received due to inadequate capacity of an individual elementary school, as recommended in MCCF10, should be used solely for increasing the classroom capacity of the affected elementary school.

### CAPACITY CEILINGS

MCCF12. Reinstate capacity ceilings as part of growth policy. Set a maximum total number of dwelling units and jobs for each policy area which the Planning Board can approve in projects located there over the ensuing two years. If reinstated, capacity ceilings can be used to correct the jobs-housing imbalance within specific areas or in the county as a whole. Council staff has the in-depth knowledge on this issue to suggest an appropriate method for calculating and assigning capacity ceilings for each of the County's policy areas.

### CONTACT:

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**LINOWES**  
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September 22, 2009

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The Honorable Phil M. Andrews, President  
Montgomery County Council  
Council Office Building  
100 Maryland Avenue  
Rockville, MD 20850

Re: 2009 – 2011 Growth Policy

Dear Council President Andrews:

The law firm represents Percontee, Inc. On behalf of our client, I am submitting this written testimony in response to the recommendations contained in the Planning Board Draft of the 2009 – 2011 Growth Policy.

Given the fact that other groups and individuals from the business/development community will be addressing specific Growth Policy issues relating to Local Area Transportation Review (LATR), the parameters of the school capacity test and other elements of the draft Growth Policy, I am confining my testimony to the following five recommendations:

**1. Policy Area Mobility Review (PAMR)**

The current PAMR test should be eliminated. This APFO “test” is far too complicated and unpredictable. In application, PAMR has shown itself to be subject to wild unexplainable swings in its results. Since its inception, PAMR has produced results that seem to contradict what is experienced “on the ground” when it comes to traffic congestion. PAMR mitigation solutions remain largely unattainable and do not appear to produce measurable congestion relief.

The solution, contrary to the County Executive’s recommendation, is not to try and fashion yet another workable policy area traffic test. PAMR does not work. Its predecessor, Policy Area Transportation Review (PATR) never worked and only produced endless development moratoria in many areas of the County. According to information provided by Planning Board Staff the last time it was asked this question by the County Council, Montgomery County is the only local government jurisdiction in the county that uses any form of regional (as opposed to localized) traffic test to measure and then regulate the traffic impact of individual new development proposals. Perhaps the rest of the country knows something that this County has

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yet to learn – regional traffic tests (like PAMR and its ancestor, PATR) do not work, for all of the reasons that PATR and PAMR have demonstrated time and time again.

In place of PAMR, the County Council should adopt legislation assessing an annual fee on new development. This annual fee, similar to a front-foot benefit charge, should be assessed and paid to the County over an extended period of time (20-30 years) and should be based upon the number of peak-hour trips that a new development proposal is projected to generate. The Council should set this fee at a reasonable, factually supportable level, recognizing that all new development in the County will pay this fee, not just development located in policy areas that would otherwise require full or partial mitigation under the current PAMR test. The Council should also provide for a reduced fee rate for development taking place in smart growth areas that, at a minimum, should include the Metro Station Policy Areas.

## **2. Transportation Revenue Bonds**

The County should leverage the revenue stream from this development fee to support the issuance of transportation revenue bonds. The County should use those revenue bonds to fund the transportation improvements called for in the County's master plans and its capital budget.

## **3. Credits for LATR Improvements**

The legislation that establishes this development fee should provide for a credit when a developer provides an LATR improvement that increases transportation capacity. This is similar to current law allowing credits against the transportation impact tax.

## **4. Comprehensive Review of Growth Policy**

Along with its adoption of the 2009 – 2011 Growth Policy, the County Council should direct the Planning Board and its Staff to immediately begin a comprehensive review and rewrite of the County's entire Growth Policy. The current practice of having the Planning Board and its Staff consider incremental changes every two years to the Growth Policy and then having the County Council hurriedly react to those proposed incremental changes in the span of 6-8 weeks is unworkable and incredibly inefficient. The adoption of PAMR and the problems it has created are a direct result of the current Growth Policy review system.

The Council's directive to the Planning Board should make clear that no part of the current Growth Policy is beyond the Planning Board's professional review.

## **5. Bi-Annual Growth Policy Review**

In conjunction with the preceding recommendation, the County Council should amend the County Code to eliminate the entire bi-annual Growth Policy review/adoption process. A

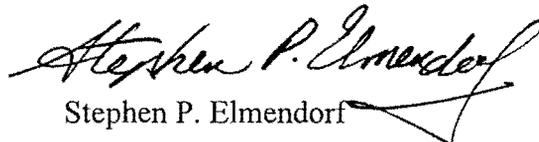
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sensible, workable, sophisticated Growth Policy for this County should not be a document that the County Council, the County Executive, the Planning Board and the School Board are required to re-examine every two years. The only reason for a bi-annual review in the past has been because prior growth policies, including the current one, were almost entirely centered upon "tests" for transportation and schools. A test-based Growth Policy, with the tests as imperfect as the Growth Policy's tests have been, requires, almost invites, constant tinkering with the test parameters by the Council. It is my hope that the Planning Board and its professional staff, at the conclusion of a top-to-bottom review of the Growth Policy, will recommend to the County Council a Growth Policy for the 21<sup>st</sup> century that does not require, or even encourage, the Council to continuously reexamine and adjust its provisions every two years.

Given the amount of written and oral testimony the Council will receive on the Growth Policy, I have consciously kept the length of my written testimony to a minimum. I will be testifying at the public hearing, however, and will be happy to answer any questions you have at that time regarding this testimony.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Stephen P. Elmendorf

SPE:rmg

cc: Montgomery County Councilmembers  
Jonathan Genn, Esquire

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