PHED Item 1
June 14, 2010
Worksession 2

MEMORANDUM

TO: Planning, Housing and Economic Development Committee

FROM: Michael Faden, Senior Legislative Attorney
Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Worksession 2:** Bill 38-09, Growth Policy - Amendments

Bill 38-09, Growth Policy - Amendments, sponsored by Councilmembers Floreen and Knapp, was introduced on November 3, 2009. A Planning, Housing and Economic Development Committee worksession was held on January 21, at which the Committee discussed the issues presented with Planning Board members but did not take any action.

Summary Bill 38-09 would:

- rename the Growth Policy as the Subdivision Staging Policy to better reflect its actual primary function;
- repeal unused scope provisions in the current Growth Policy enabling law which mislead observers into concluding that the Growth Policy serves broader functions than it actually has;
- reduce the duties required of the Washington Suburban Sanitary Commission, which has not actively participated in the Growth Policy development; and
- change the current biennial review process to a quadrennial review, to be held in the second year of each Council's term. Amendments could still be considered at any time, as is now allowed.

The Bill also makes conforming changes to related laws.

Public hearing At the public hearing, held on December 1, Gary Stith, representing the County Executive, supported the Bill but did not agree with changing the Growth Policy's name to Subdivision Staging Policy. Planning Board Chair Royce Hanson endorsed the change to a 4-year schedule but would retain the broad scope and purpose language which the Bill would delete. Natalie Goldberg, representing the County Civic Federation, said Council consideration of the Bill should be postponed until the Executive submits his recommended alternative to Policy Area Mobility Review (PAMR). Civic activist Stan Schiff urged that the Growth Policy take a more "holistic" approach, including greater reliance on economic research and analysis. See each speaker's testimony on ©11-22.

Fiscal impact: positive. The shift to a 4-year review schedule would save staff time and resources. (See OMB Fiscal impact statement, ©10.) **Economic impact: unmeasurable.**

Issues

1) Name Should the Growth Policy be renamed the Subdivision Staging Policy?

For years Council staff has observed people who see the term "Growth Policy" and confuse it with what master plans do, what zoning does, what economic development programs do, what impact taxes do (or don't do), what affordable housing programs do, etc. In our view, greater clarity in the policy's label would lead to less public confusion and distraction. If the Growth Policy remains focused on implementation of the adequate public facilities ordinance, then Subdivision Staging Policy is a more accurate title. If its scope is broadened (as the next issue discusses), then the current title may be appropriate.

Other possible titles have been mentioned: "Jobs, Housing and Infrastructure Policy" for a more expansive approach; "Adequate Public Facilities Implementation Policy" for a wordier but slightly more substantive description. While the Executive supports maintaining the Growth Policy's focus on "the implementation of the adequate public facilities ordinance, "historically its primary focus", he does not support changing its name. **Council staff recommends** either Adequate Public Facilities Implementation Policy or, as this Bill proposes, Subdivision Staging Policy.

2) Scope Should the Growth Policy's broad scope be limited?

The Growth Policy law's purpose clause, which has been there since the law was enacted in 1986, is shown on ©2, lines 4-15. It allows the Growth Policy to cover "land use development", "growth management", and "related environmental, economic, and social issues", and describes the Growth Policy as "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." Taken literally, very little that County government can do would fall outside the scope of this provision.[1]

In reality, the Growth Policy since its inception in the mid-1980's has been concerned exclusively with subdivision staging. Planning Board Chair Hanson, in urging the Council to retain the law's sweeping language, stressed (see testimony, ©13-14) that the Policy should reflect the County's "vision of sustainability", and that federal laws will soon demand a "broader perspective on sustainable growth". In his view, the Growth Policy should serve as "an intermediate level of policy" between master/sector plans and the review of proposed projects.

[1]The breadth of this language reminds Council staff of the oft-repeated anecdote that the staff of the U.S. House of Representatives then-Committee on Energy and Commerce, chaired by Congressman John Dingell, when asked to describe the limits of the Committee's jurisdiction, pointed to a photo of the Earth taken from outer space.

In Council staff's view, the Board's most recent proposed Growth Policy contained elements of the "visionary" approach that Chairman Hanson referred to. The Council, in adopting the 2009-11 Growth Policy last fall, declined to follow that path, instead retaining the Policy's traditional focus on adequate public facilities implementation. **This tells us that, whatever mechanism the County will ultimately use to integrate broader "smart growth" concerns, the Growth Policy is not it.** The Planning staff (see staff memo to the Board, ©16) explained succinctly that:

- master plans define where growth should occur;
- zoning and subdivision regulations define how growth should occur; and
- growth policy, as it has been defined to date, defines when growth may occur.

The Planning staff noted that the County's growth policy is not an every-two-year process. Rather, the "Council amends their comprehensive growth policy each time they adopt a master plan, zoning text amendment change, or subdivision regulation." However, the Planning staff recommended continuing the law's broad purpose clause as a way to "consider how all the growth management tools work in context.

The County Civic Federation supported defining the Growth Policy "in accordance with its intended use as a mechanism to implement the County's adequate public facilities requirement and to provide a balance between density and infrastructure." However, the Federation urged the Council to wait until the Executive submits his PAMR alternative to the Council (which was submitted some weeks ago). Civic activist Stan Schiff, emphasizing detailed economic analysis, would seem to support a broader Growth Policy focus.

Most recently, Planning Board chair Hanson submitted an alternative proposal (see ©23-27), in which the Planning Board would propose a regulation to administer the adequate public facilities law every 4 years and prepare a biennial report on County sustainability, "which focuses on how the County is addressing environmental and economic issues." If the Council wants the Board to prepare a sustainability report on any particular schedule, the Council can amend the Board's work program to require one. But the sustainability report would not be a regulatory document, as the Growth Policy now is and always has been. Converting the Growth Policy to a Planning Board regulation would cede the Council's primary policy-making role to the Board, since technically the Council could only approve or disapprove whatever regulation the Board submits. *Council staff does not recommend either element of the Board's alternative proposal.*

Council staff recommendation: reduce public confusion by limiting the Growth Policy's focus to adequate public facilities implementation.

3) Schedule Should the Planning Board and Council review the Growth Policy biennially or quadrennially?

Both the Planning staff and Executive endorsed the Bill's proposed change to a 4-year review cycle. Council staff notes that, at least for the last 2 cycles, the Council's 3rd-year review produced little if any substantive change in the Growth Policy adopted in that Council's first year. While the review as proposed in this Bill would coincide with the fall of a Presidential

election year, Council staff believes that should not be a distraction since the Council itself is not elected then.

The Bill does not restrict the Council's, Board's, or Executive's ability to propose out-of-cycle amendments as necessary. **Council staff recommendation:** reschedule the required periodic Policy review to the second year of each Council's term.

4) WSSC role The current Growth Policy law assigns essentially the same duties to the Washington Suburban Sanitary Commission (WSSC) as it does to the Planning Board, County Executive, and Board of Education. Historically the WSSC has not been involved in the Growth Policy process to any significant degree. Reflecting that reality, this Bill would repeal the specific duties assigned to the WSSC (see ©5, lines 86-99). WSSC could still choose to comment, propose amendments, or otherwise involve itself to the extent it desires in each Growth Policy review. The Planning Board would retain WSSC's duties. WSSC itself did not comment. **Council staff recommendation:** repeal WSSC's specific duties.

5) Planning Board studies Planning staff has commented that the most recent (2009-11) adopted Growth Policy did not direct the Board to perform any studies to prepare for the next Growth Policy iteration, as the Council normally does. See Planning staff list of proposed studies on ©28. **Council staff recommendation:** this Committee should review the potential studies and recommend to the Council, in time for the next review of the Board's work program, which should have highest priority and which could be optional.

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Bill No. 38-09
Concerning: Growth Policy - Amendments
Revised: 10-30-09 Draft No. 2
Introduced: November 3, 2009
Expires: May 3, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Floreen and Knapp

AN ACT to:

(1) rename the County Growth Policy and modify its purposes; and
(2) revise the process to adopt and amend the County Growth Policy, and conform related laws.

By amending
Montgomery County Code
Chapter 33A, Planning Procedures.
Section 33A-15, Growth Policy

Chapter 52, Taxation
Sections 52-47, 52-49, and 52-94

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33A-15 is amended as follows:

33A-15. [Growth] Subdivision Staging Policy.

(a) *Purpose.*

[(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.]

[(b) *Simplified description.*]

The County Council must adopt a [growth] subdivision staging policy [must be adopted] every [2] 4 years [by the County Council]. [It consists of policy] The policy must include guidelines for the Planning Board, and other agencies as appropriate, for their administration of Section 50-35(k) and other laws and regulations which affect the adequacy and timing of public facilities needed to support growth and development. This policy is the growth policy referred to in Article 28 of the Maryland Code and in Section 50-35(k) and elsewhere in the County Code.

[(c)] (b) *Duties of the County Planning Board.*

Every [odd-numbered] fourth year, in the second year of a Council

term, the Planning Board must produce a recommended [growth] subdivision staging policy.

(1) By June 15, the [Planning] Board must send to the [County] Council a staff draft [growth] subdivision staging policy which includes:

(A) a status report on general land use conditions in the county, including the remaining growth capacity of zoned land, recent trends in real estate transactions, the level of service conditions of major public facilities and environmentally sensitive areas, and other relevant monitoring measures;

(B) a forecast of the most probable trends in population, households, and employment for the next 10 years, including key factors that may affect the trends;

(C) a recommended set of [policy] guidelines for the [Planning] Board, and other agencies as appropriate, with respect to subdivision staging and administration of related laws and regulations which affect growth and development; and

(D) any other information or recommendations relevant to [growth] subdivision staging policy, or requested by the [County] Council in the course of adopting the [growth] subdivision staging policy or by a later resolution.

(2) By August 1, the Board must [produce] approve and send to the Council a recommended [growth] subdivision staging policy [which reflects the Planning Board's views].

(3) The [Planning] Board must promptly make available to the County Executive, other agencies (including the Office of Zoning

55 and Administrative Hearings and the People's Counsel), and the
56 public copies of the staff draft and the Board's recommended
57 [growth] subdivision staging policy.

58 [(d)] (c) *Duties of the County Executive.*

59 (1) Every [odd-numbered] fourth year, in the second year of a
60 Council term, the [County] Executive must send to the [County]
61 Council by September 15 any revisions to the [growth]
62 subdivision staging policy recommended by the Planning Board
63 in the form of specific additions and deletions.

64 (2) The [County] Executive must promptly make available to the
65 Planning Board, other agencies, and the public copies of the
66 [County] Executive's recommendations.

67 (3) The [County] Executive must assist the Planning Board to
68 compile its status report for the recommended [growth]
69 subdivision staging policy by making available monitoring data
70 which is routinely collected by executive branch departments.

71 [(e)] (d) *Duties of the County Board of Education.*

72 (1) Every [odd-numbered] fourth year, in the second year of a
73 Council term, the Board of Education must send to the [County]
74 Council by [October 1] September 15 any comments on the
75 recommended [growth] subdivision staging policy submitted by
76 the Planning Board and the Executive's recommendations,
77 including any proposed revisions in the form of specific additions
78 or deletions.

79 (2) The Board of Education must promptly make available to the
80 Planning Board, the [County] Executive, and the public copies of
81 these comments and revisions.

82 (3) The Board of Education must assist the Planning Board to
83 compile its status report for the [growth] subdivision staging
84 policy by making available monitoring data which is routinely
85 collected by Montgomery County Public Schools staff.

86 [(f) *Duties of the Washington Suburban Sanitary Commission.*

87 (1) Every odd-numbered year, the Washington Suburban Sanitary
88 Commission must send to the County Council by October 1 any
89 comments on the recommended growth policy submitted by the
90 Planning Board and the Executive's recommendations, including
91 any proposed revisions in the form of specific additions or
92 deletions.

93 (2) The Commission must promptly make available to the Planning
94 Board, the County Executive, and the public copies of these
95 comments and revisions.

96 (3) During the year, the Commission must assist the Planning Board
97 to compile its status report for the growth policy by making
98 available monitoring data which is routinely collected by
99 Commission staff.]

100 [(g)] (e) *Duties of the County Council.*

101 (1) After receiving the recommended [growth] subdivision staging
102 policy, the recommendations of the [County] Executive, and any
103 other agency comments, the [County] Council must hold a public
104 hearing on the recommendations and comments.

105 (2) Every [odd-numbered] fourth year, in the second year of a
106 Council term, the [County] Council must adopt by November 15
107 a [growth] subdivision staging policy to be effective until
108 November 15 [two] four years later. If the [County] Council

does not adopt a new [growth] subdivision staging policy, the [growth] subdivision staging policy adopted most recently remains in effect.

[(h)] (f) *Amending the [growth] subdivision staging policy.*

(1) The County Council, the County Executive, or the Planning Board may initiate an amendment to the [growth] subdivision staging policy.

(2) If the Executive initiates an amendment:

(A) the Executive must send it to the Council, the Planning Board, and other agencies, and make copies available to the public;

(B) the Planning Board must send any comments on the proposed amendment to the Council and the other agencies within 45 days after receiving the amendment (unless the Council requests an earlier response), and must make copies of any comments available to the public; and

(C) the Council may amend the [growth] subdivision staging policy after giving the Planning Board and Board of Education an opportunity to comment and holding a public hearing.

(3) If the Planning Board initiates an amendment:

(A) the Planning Board must send it to the Council, the Executive, and other agencies, and make copies available to the public;

(B) the Executive must send any comments on the proposed amendment to the Council and other agencies within 45 days after receiving the amendment (unless the Council

136 requests an earlier response), and must make copies of any
137 comments available to the public; and
138 (C) the Council may amend the [growth] subdivision staging
139 policy after giving the Executive and Board of Education
140 an opportunity to comment and holding a public hearing.
141 (4) If the [County] Council initiates an amendment:
142 (A) the Council must send it to the Executive, the Planning
143 Board, and other agencies, and make copies available to
144 the public;
145 (B) the Executive and the Planning Board must send any
146 comments on the proposed amendment to the Council and
147 other agencies within 45 days after receiving the
148 amendment (unless the Council requests an earlier
149 response), and must make copies of any comments
150 available to the public; and
151 (C) the [County] Council may amend the [growth] subdivision
152 staging policy after a public hearing.
153 (5) If it finds that an emergency so requires, the [County] Council
154 may hold the public hearing and adopt an amendment before
155 receiving comments under subparagraphs (2)(B), (3)(B), or
156 (4)(B).
157 **Sec. 2. Sections 52-47, 52-49, and 52-94 are amended as follows:**
158 **52-47. Definitions.**
159 * * *
160 *Growth policy* means the [annual growth] subdivision staging policy most
161 recently adopted under Chapter 33A to provide guidelines for the
162 administration of the Adequate Public Facilities Ordinance.

163 * * *

164 [*Planning policy*] *Policy area* means any geographic area designated as a
165 transportation policy area in the growth policy.

166 * * *

167 **52-49. Imposition and applicability of development impact taxes.**

168 * * *

169 (c) The following impact tax districts are established, consisting of the
170 listed [Planning] Policy Areas as defined in the Growth Policy:

171 * * *

172 (3) General: Any part of the County, including any municipality, not
173 located in a listed [planning] policy area.

174 * * *

175 **52-94. School Facilities Payment.**

176 (a) In addition to the tax due under this Article, an applicant for a building
177 permit for any building on which a tax is imposed under this Article
178 must pay to the Department of Finance a School Facilities Payment if
179 that building was included in a preliminary plan of subdivision that was
180 approved under the School Facilities Payment provisions in the County
181 [Growth] Subdivision Staging Policy.

182 (b) The amount of the Payment for each building must be calculated by
183 multiplying the Payment rate by the latest per-unit student yield ratio for
184 any level of school found to be inadequate for the purposes of imposing
185 the School Facilities Payment in the applicable [Growth] Subdivision
186 Staging Policy and for that type of dwelling unit and geographic area
187 issued by MCPS.

188 * * *

LEGISLATIVE REQUEST REPORT

Bill 38-09
Growth Policy – Amendments

DESCRIPTION:	Renames the County Growth Policy and modifies its purposes. Converts the current biennial review to a quadrennial process. Reduces the duties required of the Washington Suburban Sanitary Commission, which has not actively participated in the Growth Policy development.
PROBLEM:	Because of its name, many people perceive the Growth Policy as more sweeping and extensive than it actually has been – i.e. essentially a mechanism to implement the County's adequate public facilities requirement. Review every 2 years has proven less necessary but takes valuable time of Councilmembers, Planning Board members, and staff. The Council which approves a Growth Policy in its first year is often reluctant to consider major changes in its third year.
GOALS AND OBJECTIVES:	To rename the Growth Policy and redefine its purposes to better reflect its actual function. To avoid unnecessary but time-consuming reconsideration of an adopted Growth Policy every 2 years by converting the current biennial review process to a quadrennial review.
COORDINATION:	Planning Board, County Executive, Council
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	Minimal.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905; Glenn Orlin, Deputy Council Staff Director, 240-777-7936.
APPLICATION IN MUNICIPALITIES:	Applies only to County Growth Policy.
PENALTIES:	Not applicable.

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2009 NOV 25 AM 8:15

MEMORANDUM

November 18, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 38-09, Growth Policy - Amendments

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The Bill renames the County Growth Policy and modifies its purposes. The Bill changes the current biennial review to a quadrennial process and reduces the duties required of the Washington Suburban Sanitary Commission.

FISCAL AND ECONOMIC SUMMARY

The proposed amendment, as drafted, would have no fiscal impact. However, by changing the review period from biennial to quadrennial it would reduce staff time and resources necessary for reviewing and approving the policy and would allow these resources to be redirected to other projects.

The Department of Finance confirmed there is no economic impact that can be measured.

The following contributed to and concurred with this analysis: Amy Wilson, Office of Management and Budget; Gary Stith, Department of General Services; and Mike Coveyou, Department of Finance.

JFB:aw

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Gary Stith, Department of General Services
Mike Coveyou, Department of Finance
Amy Wilson, Office of Management and Budget
John Cuff, Office of Management and Budget

(10)

TESTIMONY OF COUNTY EXECUTIVE ISIAH LEGGETT
ON COUNCIL BILL 38–09
December 1, 2009

Good afternoon Council President Floreen and members of the County Council. My name is Gary Stith and I am pleased to provide testimony on behalf of County Executive Isiah Leggett in support of Council Bill 38-09. This bill clarifies that the Growth Policy is intended to address the staging of subdivision development and it proposes two very important procedural changes.

First, it relieves the Council, the County Executive and the Planning Board of the very time intensive and expensive requirement of providing a Growth Policy every two years. Rather, it requires that the policy on growth -- which the Bill refers to as a Subdivision Staging Policy -- be adopted every fourth year. This will have many benefits. The Planning Board, the Council and the Executive and their respective staffs will have time to focus on important development issues. The four year cycle will save time and expense and will create greater certainty and reliability in the development process allowing property owners and their lenders greater certainty in their development and funding decisions. Bill 38-09 will allow the Council, the Executive and the Planning Board the opportunity to determine the effectiveness of previously adopted policies – a condition that simply does not exist with the current biennial approach. If a mid-cycle amendment is needed, County law will still allow for such an amendment.

The second important thing that this legislation does is that it directs the consideration of the policy on growth in the second year of a Council term which gives a newly elected Council one year under its belt to understand and review development issues before pursuing changes on development policies that shape the landscape and economic welfare of the County. It then allows two years of the remainder of the term for the implementation of this policy. Overall, this will be a far more efficient approach to setting development policy.

This bill maintains the focus of the Growth Policy on the implementation of the Adequate Public Facilities Ordinance, historically its primary focus. Other policy objectives are important, but the Growth Policy should stay focused on the timing and location of development to ensure that public facilities are adequate to

support the development and maintain the level of primary services that are critical to the quality of life in the County.

While Mr. Leggett supports the substantive changes proposed by Bill 38-09, he does not think that it is necessary to change the name of the Bill from Growth Policy to Subdivision Staging Policy. Additionally, the County Executive recommends that the Bill be revised to require that the Planning Board Draft of the Growth Policy be submitted to the County Executive at the same time that it is submitted to the County Council.

The proposed legislation to amend Section 33A-15 will have multiple beneficial impacts. Mr. Leggett supports the proposed amendments and urges the County Council to adopt the legislation. Thank you for the opportunity to testify on Bill 38-09.

Statement of the Montgomery County Planning Board on Bill 38-09

Royce Hanson, Chairman

1. The Planning Board supports the change from a biennial review to a quadrennial review of growth policy, to occur in the second year of each Council term. This change will provide more stability for stakeholders and allow adequate time for the effects of newly enacted policies to be identified prior to considering additional policy changes.

2. The Planning Board believes it is important to retain a broad scope for Growth Policy, reflected in the current purpose clause. We think it is critically important for the County Council to regularly review and refresh its guidance on policies concerning land use development, growth management, and related environmental, economic and social issues. This broader perspective on sustainable growth will become increasingly important in the coordination and compliance with state and federal smart growth legislation. The federal government is embracing the efforts of communities that integrate land use, environment, energy, transportation, and other community-building goals. This trend is prominently evidenced by the Interagency Partnership for Sustainable Communities among EPA, USDOT, and HUD. We expect that emerging legislation like the Climate Change bill and the next federal surface transportation bill will direct federal funding toward communities that demonstrate smart growth principles in both planning and implementing land use. The Council should not pass on its opportunity to be a leader rather than a follower in such policies. Narrowing the scope of growth policy to the mechanics of subdivision review is not a recipe for leadership.

3. Growth Policy provides two valuable functions. One is a visionary. It evaluates how the County has grown, forces that will affect future growth, and establishes a framework for managing that growth within the context of long term sustainability. The second component connects this vision of sustainability to the staging of development through the subdivision process. Historically, this has focused on administration of the Adequate Public Facilities Ordinance (APFO). The APFO has played an important role in concert with master plans and sector plans in coordinating growth with essential infrastructure required to serve and support it. As the county

moves toward redevelopment and infill as the dominant pattern for new growth, in contrast with development of large subdivisions on vacant land, and toward management of higher density development in strategic corridor locations, traditional approaches to the balance of certain facilities, such as roads, with development will need to be changed. This should be done in the context of a broad and rigorous policy discussion. Growth policy provides that context and an intermediate level of policy between the General Plan and both specific master plans and the review of proposed projects.

Renaming the Growth Policy as a Subdivision Staging policy would be a mistake. It would focus your attention on a limited review of APFO mechanics that is divorced from any broader vision of sustainability and smart growth. Clarifying terminology used in the Growth Policy can appropriately demarcate its visionary and mechanical components. That is a worthy objective. Stripping it of meaning will doubtless produce a demand to reinvent the broader policy making process.

4. The Planning Board would like to retain the specific duties of the Washington Suburban Sanitary Commission. Although the involvement of WSSC in the Growth Policy process has recently been minimal, water and sewer infrastructure needs are significant and may become a more focused adequacy concern. It is estimated that by 2025, fifty percent of all WSSC water distribution components will exceed their useful age.

The two components of the Growth Policy are vital to its function as a policy document: (1) analysis of past development practice, foreseeable economic, demographic, and technological forces and trends, and emerging international, national, and state policy frameworks to establish a vision that guides growth within a context of sustainability; and (2) establishment of rules for operation of the Adequate Public Facilities Ordinance and newer means of managing and staging growth. This broader assessment of growth and development is essential for such goals as the development of greener technology and infrastructure, more sustainable transportation corridors, and healthier communities.

MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 10
11/19/09

MEMORANDUM **November 13, 2009**

TO: **Montgomery County Planning Board**

FROM: **Rollin Stanley, Director, Montgomery County Planning Department** RS
Dan Hardy, Chief, Transportation Planning DKH
Pamela Dunn, Planner Coordinator, Research & Technology Center PD

SUBJECT: **Montgomery County Bill 38-09 Growth Policy Amendments**

STAFF RECOMMENDATION: Approval to transmit the following comments.

The Planning Board:

- concurs with the proposal to rename the Growth Policy as the Subdivision Staging Policy;
- does not concur with the elimination of the current purpose clause of the Growth Policy, but suggests a minor revision to this clause;
- does not concur with reducing the duties of the Washington Suburban Sanitary Commission which has not played a significant role in Growth Policy to date, but whose involvement should be retained;
- concurs with the recommendation to change from a biennial review process to a quadrennial review process, to be held in the second year of each Council term, provided that the Board's annual updates for Policy Area Mobility Review (PAMR) and school adequacy be retained.

Background:

On November 3, 2009 Councilmembers Floreen and Knapp sponsored the introduction of Bill 38-09, Growth Policy Amendments. A public hearing on the bill is tentatively scheduled for December 1, 2009 at 1:30 p.m.

Bill 38-09 would rename the County Growth Policy as the Subdivision Staging Policy and modify its purpose by eliminating the current purpose clause of the Growth Policy.

(15)

Bill 38-09 proposes a new purpose clause that is a modification of a simplified description currently in the County code. The proposed purpose clause does not explain the purpose of the Subdivision Staging Policy as much as it states when the policy should be adopted, and what should be included in the policy document.

Bill 38-09 is attached; note that boldface type indicates a heading or defined term, underlined text is text that is being added to the existing law by the original bill, and single boldface brackets indicate text to be deleted from the existing law by original bill.

Discussion:

Planning staff supports two components of Bill 38-09; renaming the County Growth Policy as the Subdivision Staging Policy, and changing the process under which the growth policy is carried out, from a biennial review to a quadrennial review. We concur with Council staff that WSSC has not been an active participant in recent Growth Policy reviews, but that we need to better integrate their work into our growth management thinking as the need to consider both infrastructure financing and public health is of increasing importance.

We concur that the term "Growth Policy" is misleading as it is currently applied to subdivision staging. One of our explanatory messages during the past year has been that:

- master plans define where growth should occur
- zoning and subdivision regulations define how growth should occur, and
- growth policy, as it has been defined to date, defines when growth may occur

To the extent that the term Growth Policy connotes a comprehensive vision for growth direction and management the current law suggests that revisions only occur biennially. In fact, the County Council amends their comprehensive growth policy each time they adopt a master plan, zoning text amendment change, or subdivision regulation. Growth Policy is also affected, although only subtly, by other Council actions in the operating arena such as budget adoption or enforcement mechanisms. Growth Policy is also affected through coordination of the County's role in both state and regional growth plans and requirements. Renaming the biennial (or quadrennial) review and action on subdivision staging would clarify the focus of the review on the definition of adequacy and the staging or timing of growth.

We find, however, that the current purpose clause in Section 33A-15 remains appropriate for the regular review of Subdivision Staging Policy, as it is the only time that all of the growth mechanisms are considered holistically and in tandem. Each master plan amendment considers only specific geographies or functional elements. Each zoning text amendment (with the exception of the current comprehensive review) considers only certain types of land uses. The periodic review currently called Growth Policy is the appropriate time to consider how all the growth management tools work in concert. Even after the review is renamed Subdivision Staging Policy, it is important that the County Council continue to:

Give policy guidance to agencies of government and the public on matters concerning land use development and growth management, while considering related environmental, economic, and social issues.

This appropriate statement reflects just a minor edit to the existing purpose clause in Section 33A-15. In fact, the last three words, "environmental, economic, and social", comprise the triple-bottom line cited in most definitions of sustainability. These considerations have truly global impacts, as increasingly recognized and reflected by federal, state, and local plans and regulations. Removing them from the County Council's purpose clause would be a mistake.

The last two iterations of the biennial growth policy have increased the integration of environmental, economic, and social considerations into the subdivision staging process. The County Council is increasingly interested in how broader definitions of health and welfare should be applied to planning and zoning decisions. Removing these considerations from the purpose clause of the Subdivision Staging Policy would result in a return to a more narrow focus on road, school, and sewer capacity; contrary to the progressive direction that both the Planning Board and County Council are heading in.

The Planning Department staff looks forward to discussing the details of these changes at a future Council Committee worksession.

December 1, 2009
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RE: Bill 3809 Growth Policy Amendment

Members of the County Council, I am Natalie Goldberg and I am pleased to be here today to testify for the Montgomery County Civic Federation (MCCF) expressing concerns regarding this Growth Policy Amendment.

We fully support the intended effort to define the Growth Policy in accordance with its intended use as a mechanism to implement the County's adequate public facilities requirement and to provide a balance between density and infrastructure.

Our concerns lie with the review process.

There appears to be general consensus among the Council members and the many civic leaders who participated in the Growth Policy process that the current PAMR does not adequately measure mobility. While there also seems to be hope that the County Executive study will produce criteria for evaluating mobility which will satisfy the stakeholders and the Council, at this point in time there is no knowledge of what that process will be, when that process will be enacted, and how frequently that process will require review. It makes good sense to tie the Growth Policy amendment to the adoption of an agreed upon PAMR substitute.

On November 9, 2009 the MCCF delegates unanimously approved the following resolution:

MCCF Resolution on Bill 38-09, Growth Policy Amendments

Whereas oversight of land use activities is one of the primary responsibilities of the County Council, and its review of the growth policy, which has already been changed from an annual to a biennial cycle, is proposed in Bill 38-09 to occur only once every four years; and,

Whereas the Council plans in 2010 to consider an alternative to the existing Policy Area Mobility Review (PAMR), at which time members could determine the appropriate timetable for analysis of, and possible adjustments to, the agreed-upon test(s); and,

Whereas the Council must also consider the appropriate cycle for receipt of the studies now submitted to it as part of the growth policy, such as the Highway Mobility/Transit Usage/Pedestrian Activity Report and an [illegible] development activity report for at least one policy area required to be submitted as part of the Biennial Growth Policy, by a provision in the Council Resolution on the Sector Plan Amendment for that area[1]);

Therefore, the Montgomery County Civic Federation strongly urges the Council to postpone action on Bill 38-09 and consider it in the context of the analysis of a PAMR alternative.

Thank you for considering our opinions.

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[1] Resolution 15-1316, Approval of Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan, which was adopted by the County Council on January 31, 2006, includes the following section on page 16:

"Monitoring Jobs and Housing. As part of each of the Planning Board's biennial Final Draft Growth Policy reports, the Planning Board must prepare an update of development activity in the Bethesda Central Business District. The update must include a review of approved development plans as well as development completed during the reporting period. Each report must also indicate if the approved or completed development in that area has exceeded the projections in the most recent master plan, and if so, must indicate if the change is significant enough to impact public facilities and whether any change in staging or zoning is required to address the unanticipated increases in development potential."

Growth Policy Statement

BILL 38-09

Stanley D. Schiff Dec 2, 2009

Bill 38-09 would perpetuate a failure on the part of this Council and its predecessors to follow its own guidance on growth policy which was supposed to have allowed government to limit or encourage development. As the Planning Board stated, "the policy has had no visible impact on the total amount of growth. The policy has directed where growth will occur." The magnitude and pace of growth are the most critical policy issues and yet they have been ignored. Instead the whole emphasis has been on land use and on two particular items – roads and schools. Both important, but the larger forces which shape the road and school problems have not received the kind of attention they merit.

What kinds of forces? Critical to the whole enterprise is an understanding of what growth is all about. It is the product of an economic process in which job creation is the driving force. Job growth brings with it more people and the demand for more housing, schools, transportation and other infrastructure, more retail establishments and more services. Chief among the forces which have been ignored – economics.

For example. Underlying the Planning Board's recommended 2009-2011 growth policy is a forecast of a population increase of 195,000 and a job increase of 166,000 in the next 25 years. The Board also underlines the fact that we have little buildable land. These two factors together with their emphasis on energy efficiency lead them to conclude the only way to accommodate the prospective increase in jobs and people is to build higher and more densely. But are these forecasted numbers – population, jobs, buildable land sacrosanct? They can be altered by policy measures. That is an example of the kind of issue growth policy should be dealing with.

Another example. The Planning Board suggests that 70% of the forecast population increase and 81% of job growth will be channeled into the already heavily congested 355 corridor which will also have to absorb the additional traffic to be generated by the BRAC. On the other hand, the development needs of the eastern part of the county are totally ignored. Does that make sense?

One further example which illustrates the macro dimensions of some

of these problems. For years, until the current recession, the county enjoyed a phenomenal rate of growth (reflected in our extremely low rate of unemployment.) The county's labor supply was insufficient to fill the demand; county business firms had to recruit labor from outside the county. And they came – as commuters –because many couldn't afford housing here. The numbers are impressive. The unintended consequences :more stress on the transportation system, more gas consumption and more air pollution. The Planning Board had nothing to say on this problem even though its own policy prescription puts great stress on increasing energy efficiency and reducing air pollution.

To my knowledge these problems, which are of major importance to the county, were not discussed either by Planning Board or Council. Yet they are exactly the kinds of problems which need serious attention. I have a few suggestions to remedy this situation:

1) The approach to growth policy should be holistic.To reflect that the Council should assemble an interagency task force, including representatives from the civic and business communities, to prepare a new growth policy. If it performs well. it could continue with that responsibility. The Planning Board should of course be a member of the task force.
2) It's imperative to incorporate economics into the county's policy making process The council should give serious consideration to the establishment of an interagency group with responsibility for economic research, analysis and policy formulation. This group should be directed to prepare a county-wide economic development plan including both eastern and western sections of the county.
3) I have a few suggestions for additional studies which are appended to a copy of my remarks.

Suggested studies:

Examine the alternative costs and benefits of a full employment policy with over full employment (with 4-1/2—5% unemployment rate representing full employment) Also, the economic and environmental consequences of a growing dependence on in commuting labor from surrounding jurisdictions;

Assess the cumulative impact of the jobs and housing projected in the Gaithersburg West, Germantown and White flint master plans and BRAC as well

as Gaithersburg and Rockville city master plans on the 355 Corridor transportation system and likely impact on housing prices in these same areas.

An appraisal of the degree of real diversity in the housing mix in the three 355 corridor master plans;

An analysis of the attractiveness and financial affordability for families with young children of high rise apartments in dense metro center developments;

An evaluation of changes in the agricultural reserve over time to serve a couple of important purposes: 1)to give the public an opportunity to weigh these changes and determine whether the benefits it is getting from a changed agricultural reserve offset the price being paid in the form of higher land and housing costs as well as the proposed new urban form of high rise, dense development. These changes to include: 1)product and commodity mix; 2)age of farmers – are younger farmers getting into the business; 3)size and number of farms and 4) number of 25 acre residential lots; Also, an evaluation of what kind of county growth rate is compatible with maintaining the integrity of the reserve

An analysis of the impact of new investment not only on the tax base but on county revenues.

Given the prospects of both a general population increase and an increasingly aging population, explore the need for additional medical facilities and identify possible locations for them.

MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

February 2, 2010

The Honorable Michael Knapp
Chair, Planning, Housing & Economic Development Committee
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mr. Knapp:

When the Planning Board met with the Planning, Housing and Economic Development Committee (PHED) on January 21, 2010, to discuss Bill 38-09, Growth Policy – Amendments we proposed a slightly different approach. After weighing the merits of establishing a review that focuses solely upon the Adequate Public Facilities Ordinance (APFO), the Planning Board suggested the creation of two reviews: one dedicated to administration of the APFO, the other more broadly focused on change and sustainability. Responding to the request of the PHED Committee, the Planning Board proposes the following comprehensive change to the way growth management policies are linked in Section 33A-15 of the County Code.

The Planning Board recommends establishing a regular review of two elements related to managing growth in Montgomery County:

1. A quadrennial update to **Adequate Public Facilities Administration,** which may propose changes to the administrative regulations by which the County implements the APF elements described in Section 7-120(a) of Article 28 and Section 50-35(k) of the subdivision regulations. The Planning Board would propose quadrennial amendments for Council adoption as a Method (2) regulation. This achieves the result sought in Bill 38-09, but offers more stability to the regulatory regime.

2. A biennial report on **County Sustainability**, which focuses on how the County is addressing environmental and economic issues. This biennial report should include information on current and anticipated trends for development, infrastructure, and services in the County across the full range of related programs. The report also should demonstrate how County policies are integrated with regional, state, and federal sustainability initiatives. The report would contain a summary of how all the initiatives affecting sustainability are related, ranging from the rules and regulations of development review to the general plan. This report is produced in the summer of odd numbered years to inform the subsequent CIP cycle and to provide guidance on needed changes in county policies and/or planning work programs that should be implemented over the next two years. The County Council could take any action on this report it deems appropriate, but no particular form of action would be required.

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The Board recommends amending Section 33A-15 of the County Code to implement the two cyclical reviews described above with greater detail as indicated in Attachment A.

This proposal addresses the County Council concerns with current growth policy as follows:

- It improves public clarity by removing the term "growth policy" from any single County Council initiative or document, reflecting that a number of related Council actions, including master plans, zoning text amendments, and budgetary decisions, affect growth policy in the County.

- The **Adequate Public Facilities Regulation** every four years becomes a more focused discussion on APF mechanics, using guidance from the prior County Sustainability report.

- The **County Sustainability** report provides the County Council with a comprehensive report that facilitates strategic Council guidance to all agencies as they initiate CIP development. This informational report will suggest thematic directions that allow the Council to guide subsequent work program initiatives. Since the report is informational, the public discussion on sustainability can guide subsequent efforts without becoming overwhelmed by details; a challenge with past growth policy discussions.

Both the policy and mechanical components described above are needed to guide growth and development in Montgomery County. The emerging international, national, and state frameworks for evaluating growth is changing in terms of economic, demographic, and environmental variables. This broader assessment of growth and development is essential for such goals as the development of greener technology and infrastructure, more sustainable transportation corridors, and healthier communities.

Sincerely,

Royce Hanson
Chairman

Attachment A: New language for Section 33A-15:

33A-15. Adequate Public Facilities Regulation and Sustainable Communities Policies.

(a) *Purpose.* It is the purpose of this Section to promote sustainable development in Montgomery County by establishing policies for ensuring the concurrent provision of adequate public facilities and services with new development; monitoring and measuring the sustainability of established and newly developed communities; and providing the Council with a framework of information sufficient to guide the development of policies that further county and state goals of sustainable growth and development.

(b) *Duties of the Montgomery County Planning Board.*

i. The Planning Board must adopt administrative regulations under Method 2 for administration of Section 50-35(k) and other requirements of county and state law that affect the adequacy and timing of public facilities needed to support proposed subdivisions. When these administrative regulations have been approved by the Council, they shall replace those provisions of Council Resolution 16-1187 that provide guidelines for administration of Section 50-35(k).

ii. No later than June 15, 2012 and every fourth year thereafter, the Planning Board must submit to the Council a report on the administration of the Adequate Public Facilities Ordinance during the previous four years together with any recommendations for amendment to the administrative regulations. This requirement does not prohibit the Planning Board from submitting amendments to the administrative regulations at any time.

iii. No later than June 15, 2011 and every second year thereafter, the Planning Board must submit to the Council and County Executive a Report on County Sustainability containing:

a. current trends in and forecasts of the county's demography, housing stock, employment, economy, environment, pace and patterns of development and land use;

b. The status of implementation of land uses and public facilities recommended by approved master plans, sector plans, or functional master plans;

c. Analysis of factors affecting these trends and conditions and the critical policy, planning, budgetary, economic, and environmental issues arising from them;

d. Recommendations regarding policies and priorities for the planning work program, capital budgets, and other fiscal or regulatory measures to address existing needs and those forecast for the ensuing 10 to 15 years; and

(c) *Duties of the County Executive.*

i. The County Executive must send to the Council any recommendations regarding the administrative regulations proposed by the Planning Board within 30 days of their submission.

ii. The County Executive must promptly make available to the Planning Board monitoring data, indicators of change, and other information routinely collected by executive branch departments that can assist it in preparing the biennial Report on County Sustainability, and the County Executive must provide any comments or recommendations regarding the report to the Council within 30 days of its submission.

(d) *Duties of the Board of Education.*

i. The Board of Education must provide the Planning Board, County Council, and County Executive with its annual forecasts of enrollment and school capacity and any interim adjustments to the forecasts resulting from amendments to its CIP or program changes.

ii. The Board of Education must send to the Council any comments or recommendations regarding the administrative regulations proposed by the Planning Board and the biennial Report on County Sustainability to the Council within 30 days of their respective submissions.

(e) *Duties of the Washington Suburban Sanitary Commission.*

i. The Washington Suburban Sanitary Commission must assist the Planning Board in preparing the administrative regulations and the Report on County Sustainability by providing monitoring information and data it routinely collects on the condition and capacity of its facilities.

ii. The Commission must provide the Council with any comments or recommendations regarding the administrative regulations proposed by the Planning Board and the biennial Report on County Sustainability to the Council within 30 days of their respective submissions.

(f) *Duties of the County Council.*

i. The Council must hold a public hearing within 60 days after receiving the proposed administrative regulations, or any amendments thereto, and comments and recommendations of other agencies, prior to acting under Method 2.

ii. The Council must hold a public hearing on the biennial Report on County Sustainability and, following this hearing, provide any policy guidance it deems appropriate to the Planning Board or other agencies.

Attachment D - May 2010 Status of Proposed Future Studies in July 2009 Planning Board Draft 2009-2011 Growth Policy

Study	Lead Agency	Objectives	Current/Proposed Status
F1 – Biennial Growth Policy Report	Planning	Inform both CIP and APF recommendations: - pace/pattern of growth - master plan implementation report - highway mobility report - priority facilities for CIP - recommendations for other public actions or policy area boundary changes	Convert to Report on County Sustainability for purposes of CIP and Council direction on FY 12 development of APF Administration. Defer policy area boundary changes to FY 12, retain other elements Recognize that full Highway Mobility Report data collection funding unavailable; report will rely more heavily on data available from external sources
F2 – Compact Subdivision Development	Planning	Propose Low Impact Design (LID) techniques for subdivision regulations	Deferred to FY 12 development of APF Administration
F3 – LEED Classification as a component of Growth Policy	Planning	Revisit basic services element of LEED; linking proximity and accessibility to VMT reduction	Deferred to FY 12 development of APF Administration
F4 – Carbon Offsets	Planning	Develop revised carbon accounting proposal as an APF measure	Deferred to FY 12 development of APF Administration
F5 – Dedicated Transit Revenue	Executive	Report on PAMR funding and transit system implementation	To be determined; discussions expected as part of TPAR review
F6 – Land Use Impact on VMT	Planning	Develop proposal for greater detail on locational correlation with APF transportation requirements	Deferred to FY 12 development of APF Administration
F7 – Retail Impacts on VMT	Planning	Determine whether LATR retail trip generation rates should be adjusted for proximity to transit	Study funded through MWCOG Transportation Land Use Connections grant; results available summer 2010
F8 – Impact Tax Issues	Executive	Complete 2007 Growth Policy recommendation to evaluate relationship between impact fees and mitigation, including the economic feasibility of a linkage fee for affordable housing.	To be determined, discussions expected as part of TPAR review
F9 – Highway Mobility Report Funding	Planning	Expand data collection efforts per T&E Committee direction summer 2009	Deferred. Report will rely more heavily on external data sources.
F10 – Fiscally Sustainable Development	Executive	Consider relationship between impact taxes and other revenue generation during a development's life-cycle.	To be determined, discussions initiated as part of White Flint and Great Seneca Science Corridor plan fiscal impact analyses.
F11 – Options to LATR	Planning	Consider revisions to LATR to improve multimodalism and alternative analysis tools.	Deferred. Consideration in FY 12 subject to requested consultant funding.