

**MEMORANDUM**

TO: Planning, Housing and Economic Development Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** MCPB Regulation 11-01, White Flint Staging Allocation

This regulation, submitted by the Planning Board on July 5, implements the Subdivision Staging Policy amendment that the Council approved on June 28 in Resolution 17-185 (see ©10-13). That amendment authorized the Planning Board to adopt an Alternative Review Procedure to allocate staging capacity in the White Flint sector plan area. The primary effect of the Alternative Review Procedure is to move the timing of the staging allocation from adoption of the preliminary subdivision plan to issuance of a building permit.

In Council staff's view, this regulation, with minor stylistic changes drafted by Council and Planning staff which were incorporated in the regulation on ©3-9, is consistent with the approved SSP amendment. **Council staff recommendation:** approve the regulation.

This packet contains:	<u>Circle #</u>
Planning Board memo	1
Planning Board regulation	2
Subdivision Staging Policy amendment	10
Resolution to approve Planning Board regulation	14

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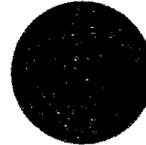
**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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July 5, 2011

The Honorable Nancy Floreen, Chair, PHED Committee  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

**063828**



RECEIVED  
MONTGOMERY COUNTY  
ADMINISTRATION

JUL - 6 PM 3:24

Dear Councilmember Floreen:

On behalf of the Planning Board, I am pleased to transmit regulations for implementing Resolution 17-185 (Subdivision Staging Policy White Flint staging allocation). These regulations establish the rules under which the Planning Board will allocate and manage staging capacity in White Flint. These proposed regulations were originally developed as Planning Board guidelines; instead, in response to an informal request by the PHED Committee, we are transmitting them to you for Council approval as if under method two.

The Subdivision Staging Policy amendments approved by the Council on June 28, 2011 establish a framework under which the Planning Board can allocate transportation capacity prior to the application for a building permit, rather than at preliminary plan or site plan. Delaying the commitment of staging capacity will prevent property owners from hoarding the finite amount of transportation capacity available under the White Flint Sector Plan. The attached regulations will establish the rules under which capacity will be allocated just prior to the application for building permit.

Through our extensive discussions with stakeholders we have achieved a tremendous amount of support for the substance of these regulations. We are hopeful that this support will be reflected when the PHED Committee begins its work on the regulations in the coming weeks. We look forward to working with you to finalize these important regulations prior to the August recess.

Sincerely,

Françoise M. Carrier  
Chair

Cc: Mike Faden  
Glenn Orlin



# MONTGOMERY COUNTY PLANNING BOARD REGULATION

M-NCPPC • 8787 Georgia Avenue • Silver Spring, Maryland 20910

Subject White Flint Staging Allocation	Number 11-01
Originating Department Office of the Planning Director	Effective Date July 13, 2011

## Montgomery County Planning Board Regulation on Implementing the Subdivision Staging Policy's White Flint Alternative Review Procedure

Issued by: Montgomery County Planning Board  
Regulation No. 11-01

Authority: Sec. 50-35(k) of the County Code and Resolution 17-185

Supersedes: NA

Council Review: As if under Method 2

Register Vol. No. NA

Comment Deadline: NA

Effective Date: Later of July 13, 2011 or date of Council approval

Sunset Date: None

**SUMMARY:** On June 16, 2011, following numerous work sessions, the Planning Board approved transmittal to the County Council of regulations implementing the Subdivision Staging Policy's White Flint Alternative Review Procedure (referred to in the White Flint Sector Plan as the "Transportation Approval Mechanism"). The regulations:

- i. Establish standards and procedures for submission and review of staging allocation requests;
- ii. Establish standards and procedures for preventing applicants from hoarding capacity;
- iii. Establish the Planning Board's procedure for managing a staging queue; and
- iv. Provide general guidance to applicants and the public about the relationships between this Transportation Approval Mechanism and other transportation related processes and requirements.

**ADDRESS:** Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

**STAFF CONTACT:** Rollin Stanley, Planning Director

**BACKGROUND INFORMATION:** The Regulations are intended to implement the Subdivision Staging Policy's White Flint Alternative Review Procedure, and are designed, *inter alia*, to fulfill the intent of the White Flint Sector Plan, which directed the Planning Board to develop a transportation approval mechanism as an alternative to traditional Policy Area Mobility Review.

**COMCOR 50.35.02 Implementing the Subdivision Staging Policy’s White Flint Alternative Review Procedure**

\* \* \*

**50.35.02.01 Transportation Approval Mechanism**

**A. Staging Allocation Request Process**

1. General

Within the White Flint Sector Plan boundary, the Planning Board must allocate staging capacity based on the order in which requests for capacity are received and in a manner that is consistent with these regulations.

2. Staging Allocation Request

A Staging Allocation Request is a request for staging capacity under the Approved and Adopted 2010 White Flint Sector Plan. The contents of a Staging Allocation Request and the effect of submitting a completed Staging Allocation Request will be governed by these regulations.

3. Contents of Staging Allocation Request

A Staging Allocation Request must include a statement by the applicant that the applicant has received any necessary sketch plan approvals, preliminary plan approvals, or site plan approvals. The request must indicate the number of buildings proposed as well as the amount of residential and non-residential staging capacity requested, the gross amount of new development, and the net amount of new development if there will be demolition of existing structures. An applicant that demolished space after the adoption of the White Flint Sector Plan must provide, as part of any Staging Allocation Request, evidence of the date of demolition and the number of square feet or residential units demolished. Each Staging Allocation Request must include any Staging Allocation Request Form required by the Planning Board.

4. Planning Board Review of Staging Allocation Request

The Planning Board must approve the Staging Allocation Request if sufficient staging capacity remains available, under the White Flint Sector Plan, to accommodate the applicant’s entire request. If sufficient capacity is not available to accommodate the applicant’s entire request, the Planning Department staff must place the Staging Allocation Request in a queue, and the Planning Board must schedule the Request on the Planning Board’s agenda when capacity becomes available.

5. Effect of Staging Allocation Request

In order to be deemed complete by Planning Department staff, a Staging Allocation Request must contain any information required under the Subdivision Staging Policy (Section TA6, Alternative Review Procedure for the White Flint Policy Area), and must comply with these regulations. Once a Staging Allocation Request has been deemed complete by Planning

Department staff, the staff must place the capacity requested in reserve. The Planning Board must not allocate the reserved capacity to any other applicant unless the Staging Allocation Request is rejected due to insufficient capacity or withdrawn by the applicant or the Staging Allocation Approval becomes void or expires under these regulations.

## 6. Joint Staging Allocation Requests

Multiple property owners may submit a Joint Staging Allocation Request if those property owners also submitted a joint sketch plan application, which was approved by the Planning Board, and which included conditions establishing a phasing schedule for demolition and construction on all subject properties.

### **B. Staging Allocation Approval Process**

#### 1. Contents of Staging Allocation Approval

In a Staging Allocation Approval, the Planning Board must incorporate all information included in the Staging Allocation Request. The Staging Allocation Approval must also specify, as established in these regulations, the deadline for completion and acceptance of a building permit application under B.2, and the Staging Allocation Approval expiration date under B.5.

#### 2. Requirement to obtain timely acceptance of building permit applications

##### *a. Applicants with a Staging Allocation Approval for a single building*

An applicant who has received a Staging Allocation Approval for a single building must have building permit applications accepted by the Department of Permitting Services for at least core and shell by close of business on the 90<sup>th</sup> day after the date of the Planning Board's resolution granting the Staging Allocation Approval.

##### *b. Applicants with a Staging Allocation Approval for multiple buildings*

An applicant who has received a Staging Allocation Approval for multiple buildings must have all building permit applications accepted by the Department of Permitting Services for at least core and shell by close of business on the 180<sup>th</sup> day after the date of the Planning Board's resolution granting the Staging Allocation Approval.

#### 3. Reporting Requirement

The applicant must present evidence of acceptance to the Planning Board within 15 business days after the Department of Permitting Services accepts a building permit application.

#### 4. Effect of failure to obtain timely acceptance

An applicant who fails to obtain timely acceptance of a building permit application loses any staging capacity allocated for which no building permit application has been accepted. The portion of the Staging Allocation Approval that is not perfected by obtaining timely acceptance by the Department of Permitting Services is thereafter void.

## 5. Validity

### *a. Applicants with a Staging Allocation Approval for a single building*

Any Staging Allocation Approval for a single building that has not become void due to failure to obtain timely acceptance of a building permit application remains valid for 2 years from the date of the Planning Board's Resolution granting the Staging Allocation Approval. All core and shell building permits necessary to construct the capacity allocated by the Planning Board must be issued within that 2-year validity period. Any applicant whose building permits are not issued within the 2-year validity period loses any allocated but unused capacity.

### *b. Applicants with a Staging Allocation Approval for multiple buildings*

A Staging Allocation Approval for multiple buildings that has not become void due to failure to obtain timely acceptance of a building permit application remains valid for 3 years from the date of the Planning Board's Resolution granting the Staging Allocation Approval. All core and shell building permits necessary to construct the capacity allocated by the Planning Board must be issued within that 3-year validity period. Any applicant whose building permits are not issued within the 3-year validity period loses any allocated but unused capacity.

## 6. Staff approval of Staging Allocation Requests for zero net staging capacity

### *a. No net draw on capacity*

A Staging Allocation Request must always be approved, regardless of available staging capacity, if the Request is for an amount equal to or less than any development being removed. In that case, Planning Department staff may grant the Staging Allocation Approval.

### *b. Development approvals that pre-date the approval of the Sector Plan*

A Staging Allocation Request must always be approved, regardless of available staging capacity, for any project that has a valid Adequate Public Facilities approval or development plan approval that predates the approval of the White Flint Sector Plan. In that case, Planning Department staff may grant the Staging Allocation Approval.

### *c. Procedures for staff approval of Staging Allocation Requests*

Any Staging Allocation Request that can be approved by Planning Department staff under subsection (a) or subsection (b) must be approved by the Planning Director or designee. Each staff approval must be included in the Biennial Monitoring Report.

### *d. Projects approved by staff under this section not subject to certain provisions of these regulations*

A Staging Allocation Approval that can be issued by staff under section 6 is not subject to the requirements of the following sections: B.1 (Contents of Staging Allocation Approval); B.2 (Requirement to obtain timely acceptance of building permit applications); B.3 (Reporting requirement); B.4 (Effect of failure to obtain timely acceptance); and B.5 (Validity).

## **C. Staging queue management**

The Planning Department must maintain a White Flint Sector Plan staging queue.

- Any Staging Allocation Request for which there is not sufficient capacity must be placed in the queue.
- For each Staging Allocation Request placed in the queue, the Planning Department must track the submission date and the date on which the Staging Allocation Request is deemed complete by Planning Department staff.
- Queue position is based on the order in which projects are placed in the queue. The Planning Department must place the oldest eligible application(s) in the queue on the Planning Board’s consent agenda calendar when staging capacity exists for the full development proposed in the application, both residential and commercial.
- Adjustments to queue position may be granted by the Planning Board upon receipt of a proposal jointly submitted by all applicants whose positions in the queue would be affected. The Planning Board is not a party to any negotiations between applicants who agree to change queue positions.

**D. Exemptions from Staging Allocation Request Process**

1. Development approvals predating approval of the Sector Plan

The White Flint Sector Plan states:

“Any development approvals that predate the approval of this Sector Plan are considered to be in conformance with this Plan. For such approvals, only the difference between the amount of the prior approval and any requested increase would be subject to the phasing caps.”

Projects with development approvals that predate the approval of this Sector Plan are not subject to either the phasing caps specifically or to the staging capacity allocation process generally. Staff approval of a Staging Allocation Request remains an option for such property owners, however, such approvals are not subject to the other requirements or limitations set forth in these Regulations.

On December 9, 2010 the Planning Board confirmed its intent that four specific projects should not be subject to the phasing caps up to the amount of development approval that predated the adoption of the Sector Plan.

- 1) North Bethesda Center (LCOR)
  - 1,350 dwelling units
  - 1.14 million square feet of office
  - 202,037 square feet of commercial
  - Zone: TSM
- 2) North Bethesda Market (JBG)
  - 440 dwelling units
  - 223,000 square feet of non-residential
  - Zone: TSM
- 3) White Flint View (Quantum/Noland Plumbing)
  - 183 dwelling units
  - 29,500 square feet of non-residential

Zone: C-2

- 4) Metro Pike (BF Saul)
  - 247 dwelling units
  - 201,822 square feet of non-residential
  - Zone: TSM

## 2. Affordable housing units

Affordable housing units that are in addition to those required by Chapter 25A, and which are provided under the CR Zone incentives, must not be counted against the total available capacity as established under the White Flint Sector Plan.

## 3. Public facilities and staging

A public facility is one that is owned or operated by a governmental body or an instrumentality of a governmental body and which serves a public purpose.

### *a. Public facilities subject to mandatory referral are exempt from staging*

A public facility that is subject to the mandatory referral provisions of Article 28, section 7-112 is not subject to these regulations.

### *b. Public facilities provided as a proffer are exempt from staging*

A public facility that is to be owned or operated by a public entity and that is provided in a private project as a proffer (e.g. in exchange for a density award) is not subject to these regulations, if the public facility will be conveyed to the public entity in fee simple, by perpetual exclusive easement, or by a long-term lease in excess of fifty years. The terms and method of any conveyance must be accepted by the public entity that will own or lease the facility before the Planning Board approves the Staging Allocation Request for the private elements of the project. The private elements of a project that includes a public facility are subject to the staging allocation requirements.

\* \* \*

## **50.35.02.02 Relationship of Transportation Approval Mechanism to other transportation related processes and requirements**

### **A. General**

The Subdivision Staging Policy exempts properties in the White Flint Special Taxing District from the requirements of Local Area Transportation Review and Policy Area Mobility Review. Consequently, individual applicants need not prepare transportation studies to satisfy the requirements of the LATR and PAMR Guidelines.

### **B. Comprehensive Local Area Transportation Review**

#### 1. General

The Planning Department must perform a biennial Comprehensive Local Area Transportation Review (CLATR) to review and assess transportation capacity in White Flint. CLATR must analyze traffic conditions throughout the policy area and at individual intersections. The Planning Board must use CLATR to identify specific capital projects and services necessary to promote adequate transportation service.

## 2. Effect of CLATR

The Planning Board must provide guidance on trip generation and distribution assumptions as part of the CLATR. Applicants outside the White Flint Special Taxing District who must submit transportation studies in order to satisfy the requirements of the LATR and PAMR Guidelines must use the trip generation and distribution assumptions established as part of CLATR when accounting for trips generated within the White Flint Special Taxing District.

### **C. Transportation information required from applicants inside the Special Taxing District**

Individual applicants exempted from LATR and PAMR under the Subdivision Staging Policy need not submit transportation studies to satisfy requirements of the LATR and PAMR Guidelines.

Applicants must still provide information to State or County agencies as needed to fulfill other legal requirements. This information may include, but is not limited to:

- Parking space requirements; and
- Sight distance evaluations.

### **D. Development outside the special taxing district**

#### 1. Generally

Applicants whose property is located inside and outside of the White Flint Special Taxing District are responsible only for improvements on their side of the Special Taxing District boundary. Applicants whose property is located outside of the White Flint Special Taxing District must be tested for APF compliance, if applicable, and required to provide intersection improvements as appropriate outside of the Special Taxing District boundary.

#### 2. Trips generated in the White Flint Special Taxing District

Applicants whose property is located outside the Special Taxing District who must submit transportation studies to satisfy the requirements of the LATR and PAMR Guidelines must include traffic attributable to development in the White Flint Special Taxing District as part of their background traffic, but only if the approved development in the White Flint Special Taxing District has a valid Staging Allocation Approval.

#### 3. Trips generated by public facilities in the White Flint Special Taxing District

Applicants whose property is located outside the White Flint Special Taxing District who must submit transportation studies to satisfy requirements of the LATR and PAMR Guidelines must

include as background traffic any traffic attributable to public facilities in the White Flint Special Taxing District.

4. Traffic assignment consistent with CLATR

Applicants whose property is located outside the White Flint Special Taxing District who must submit transportation studies to satisfy the requirements of the LATR and PAMR Guidelines must conduct traffic assignment consistent with the CLATR.

5. Improvements and mitigation

Applicants whose property is located outside the White Flint Special Taxing District must be responsible only for transportation improvements outside the White Flint Special Taxing District.

**E. Conditions attached to development inside the Special Taxing District**

1. General

Individual applicants in the White Flint Special Taxing District must be responsible only for improvements required by County Code Section 50-24, such as streets interior or adjacent to the site, making any additional improvements necessary for safe access and circulation, and providing the funds for shared projects identified through the White Flint Special Taxing District and any District implementing resolution.

2. Privatization of traffic-carrying streets

The White Flint Sector Plan (page 51) identifies four specific business street segments that are required to be open to general vehicular use as part of the robust street grid needed to disperse traffic. Each of these four specific streets may be implemented as private streets only if eight conditions have been satisfied. Those eight conditions are listed in the White Flint Sector Plan (page 52). All eight conditions must be incorporated within the Planning Board's subdivision approval opinion for any project that proposes such a private street.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

Resolution No.: 17-185  
Introduced: June 28, 2011  
Adopted: June 28, 2011

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Council President at the Request of the Planning Board

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**SUBJECT:** Amendment to County Subdivision Staging Policy regarding the White Flint Metro Station Policy Area

**Background**

1. Under County Code §33A-15(f), the County Council may amend an adopted County Subdivision Staging Policy by resolution after holding a public hearing.
2. A public hearing was held on this resolution on June 14, 2011.
3. This amendment is necessary to implement staging of the approved White Flint Sector Plan.

**Action**

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

The 2009-2011 County Subdivision Staging Policy, as adopted by Resolution 16-1187 and amended by Resolution 16-1324, is amended as follows:

\* \* \*

**Guidelines for Transportation Facilities**

\* \* \*

**TP2.2.1 Geographic Areas**

\* \* \*

[Any proposed development located in the White Flint Metro Station Policy Area is exempt from Policy Area Mobility Review if that development, as a condition of approval of a preliminary

plan of subdivision, will be required to provide substantial funds to a new development district, new impact tax or special taxing district, or another comprehensive financing mechanism, to finance transportation improvements for that Policy Area. However, the traffic impact of any development in that Policy Area must be considered in any Policy Area Mobility Review calculation for any development that is not exempt under this paragraph.]

## **TL 2 Metro Station Policy Area LATR Standards**

\* \* \*

[Any proposed development located in the White Flint Metro Station Policy Area is exempt from Local Area Transportation Review if the development will be required to provide substantial funds to new development district or new impact tax district to finance master-planned public improvements in that Policy Area. However, the traffic impact of any development in that Policy Area must be considered in any Local Area Transportation Review calculation for any development elsewhere.]

## **[[TA 6 Alternative Review Procedure for the White Flint Policy Area**

### **TA 6.1 Exemption from PAMR and LATR**

Effective July 1, 2011, an applicant for APF for any development that will be built within the White Flint Special Taxing District established under County Code Chapter 68C is exempt from TP Policy Area Mobility Review and TL Local Area Transportation Review.

### **TA 6.2 Effect on development outside of the White Flint Special Taxing District**

The traffic impact of such development within the White Flint Special Taxing District must be considered in any TP Policy Area Mobility Review or TL Local Area Transportation Review calculations for any development outside the White Flint Special Taxing District.

### **TA 6.3 Planning Board to establish staging allocation guidelines**

The Planning Board will approve guidelines establishing the protocol for allocating staging capacity under the White Flint Sector Plan.

### **TA 6.4 Staging Allocation Approval**

A Staging Allocation Approval is a resolution from the Planning Board granting an applicant staging capacity under the White Flint Sector Plan. The contents of a Staging Allocation Approval, the effect of a Staging Allocation Approval, and any associated protocols will be established in Planning Board guidelines.

**TA 6.5 Relationship to adequate public facilities in White Flint Policy Area**

An applicant within the White Flint Policy Area must obtain a Staging Allocation Approval from the Planning Board. The applicant must submit a valid Staging Allocation Approval to the Department of Permitting Services with any application for a footing to grade or core and shell building permit. A Staging Allocation Approval and an APF approval have separate validity periods, and the expiration of one does not affect the validity of the other.

**TA 6.5.1 Relationship to adequate public facilities in White Flint Special Taxing District**

To the extent that the Department of Permitting Services is required under law to validate adequate public facilities for transportation, the Staging Allocation Approval shall satisfy this determination in the White Flint Special Taxing District.]]

**TP 2.2.1 Geographic Areas**

\* \* \*

Any proposed development that will be located in the White Flint Metro Station Policy Area but not located in the White Flint Special Taxing District created under County Code Chapter 68C is subject to both TP Policy Area Mobility Review and TA 6 Alternative Review Procedure for the White Flint Policy Area. Any proposed development that will be located in the White Flint Special Taxing District is exempt from TP Policy Area Mobility Review and must proceed under TA 6 Alternative Review Procedure for the White Flint Policy Area. The traffic impact of any development that will be located in the White Flint Special Taxing District must be considered in any TP Policy Area Mobility Review calculation for any development that will be located outside the White Flint Special Taxing District.

**TL 2 Metro Station Policy Area LATR Standards**

\* \* \*

Any proposed development that will be located in the White Flint Metro Station Policy Area but not located in the White Flint Special Taxing District created under County Code Chapter 68C is subject to both TL Local Area Transportation Review and TA 6 Alternative Review Procedure for the White Flint Policy Area. Any proposed development that will be located in the White Flint Special Taxing District is exempt from TL Local Area Transportation Review and must proceed under TA 6 Alternative Review Procedure for the White Flint Policy Area. The traffic impact of any development that will be located in the White Flint Special Taxing District must be considered in any TL Local Area Transportation Review calculation for any development that will be located outside the White Flint Special Taxing District.

**TA 6 Alternative Review Procedure for the White Flint Metro Station Policy Area**

**TA 6.1 Staging Allocation Regulations**

The Planning Board must adopt regulations, subject to Council review as if they were adopted under method 2, to specify the criteria and procedures that the Planning Board must apply to allocate staging capacity under the White Flint Sector Plan. The Planning Board must allocate capacity on a first-come-first-served basis before the applicant submits an application for a building permit.

**TA 6.2 Staging Allocation Approval**

A Staging Allocation Approval is a resolution adopted by the Planning Board granting an applicant a certain amount of staging capacity under the White Flint Sector Plan. The content and effect of a Staging Allocation Approval and any associated criteria and procedures must be specified in the regulation adopted under TA 6.1.

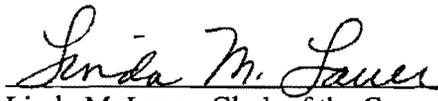
**TA 6.3 Relationship to adequate public facilities finding for schools**

A Staging Allocation Approval and a finding by the Planning Board that certain school facilities are adequate to serve a proposed development have separate validity periods, and the expiration of one does not affect the validity of the other.

**TA 6.4 Relationship to adequate public facilities for transportation**

For a development that will be located in the White Flint Special Taxing District, a Staging Allocation Approval is a finding that transportation facilities are adequate for purposes of issuing a building permit under County Code Chapter 8.

This is a correct copy of Council action.

  
\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

Resolution No. \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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By: Council President at the request of the Planning Board

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**SUBJECT:** Approval of Planning Board Regulation 11-01, White Flint Staging Allocation

**Background**

1. This regulation was submitted by the Planning Board on July 5 to implement the Subdivision Staging Policy amendment approved on June 28 in Resolution 17-185.
2. The Council reviewed the regulation as if it were submitted under method (2) of County Code §2A-15.
3. Under method (2), if the Council does not approve or disapprove a regulation within 60 days after the Council receives the regulation, the regulation automatically takes effect.
4. On July 18, 2011, the Planning, Housing, and Economic Development Committee reviewed Planning Board Regulation 11-01, and recommended approval.

**Action**

*The County Council for Montgomery County Maryland approves the following resolution:*

The Council approves Planning Board Regulation 11-01, White Flint Staging Allocation.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

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