

AGENDA ITEM #12  
September 22, 2009

**Public Hearing**

**MEMORANDUM**

September 18, 2009

TO: County Council

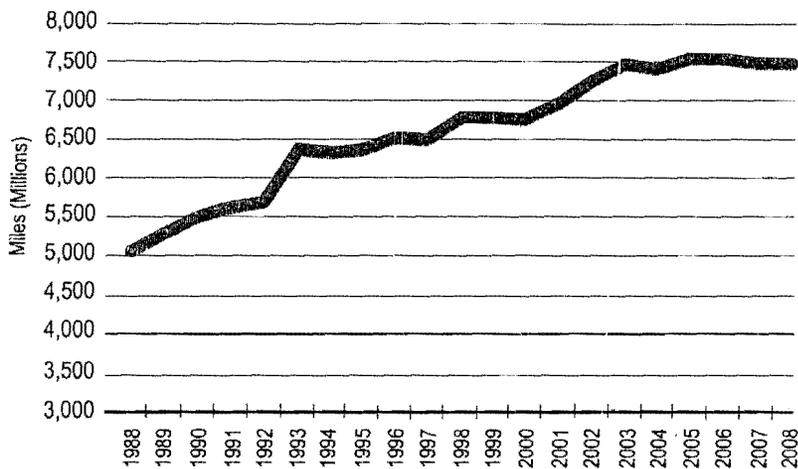
FROM: <sup>GO</sup> Glenn Orlin, Deputy Council Staff Director  
<sup>MK</sup> Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing**—2009-2011 Growth Policy

The Planning Board transmitted its Final Draft 2009-2011 Growth Policy, which recommends several changes to the adequate public facility tests for transportation and for public schools, as well as some other related matters. An excerpt from the Final Draft that summarizes the Planning Board's recommendations is on ©1-16. A draft resolution incorporating these changes is on ©17-46. Also attached are the recommendations from the County Executive (©47-58) and the Board of Education (©59-65).

The Planning, Housing, and Economic Development (PHED) Committee has scheduled worksessions on the Growth Policy for the afternoons of October 6, 13, 19, and 20. If members of the public wish to bring further information to the Council in time so that it can be duly considered, such information should be transmitted to the Council no later than the close of business on September 25. Once the PHED Committee has completed its work, its recommendations will be brought to the full Council. By law the Council must adopt a 2009-2011 Growth Policy by November 15; final action is tentatively scheduled for November 10.

**total vehicle miles traveled (vmt) on state highway in montgomery county, md**



Source: Maryland State Highway Administration

The total vehicle miles traveled in the County has leveled off in the past three years but still remains high. The average commuter in the D.C. area wastes 42 gallons of gas in traffic jams per year, second highest in the nation. Our development pattern of cul-de-sacs channels traffic to choke points.

**recommendations**

The proposed Growth Policy makes 11 recommendations for changes that would take effect January 1, 2010, plus a twelfth recommendation for future studies to inform the 2011-2013 Growth Policy.

The first eight recommendations are primarily related to transportation; recommendations 9-11 relate to schools.

More specifically, the PAMR mitigation process should improve the provision and application of transportation services to areas with the greatest need.

- Adopting **symmetrical level of service standards** for arterial and transit mobility will provide more realistic expectations for mobility across County land uses. Metro station areas like Bethesda, Silver Spring, White Flint, and Wheaton are planned to function in a more urban manner with slower roadway speeds as transit quality of service improves. Suburban communities will require greater roadway mobility where development densities limit the effectiveness of transit service.
- Establishing a **fixed value for non-auto facilities**, at \$11,000 per vehicle trip, will improve both the type and effectiveness of transportation mitigation associated with PAMR.
- Providing for the **transfer of APF approvals into Metro Station Policy Areas** will promote development where transit and community services are most robust as well as reduce the backlog of approved but unbuilt projects in parts of a policy area less well served by transit.

These recommendations will result in a net increase in resources for transportation system mitigation, as the increase in per-vehicle trip mitigation values will offset the reduction in the number of development cases requiring mitigation.

**transportation and land use-related recommendations**

1. **Provide an alternative review procedure for policy area mobility review (PAMR) within Metro Station Policy Areas, based on incentives to direct growth to areas served by regular public transit that meets the Smart Growth Criteria** (table, next page).

For projects meeting the Smart Growth Criteria, the PAMR mitigation costs should be allocated as follows:

- 50% applied to providing public transit improvements
- 25% applied to providing affordable housing near transit within the development, where the number of units provided may vary, provided the funding value is met, allowing for cost

differentials for providing the units in high rise construction vs. low rise

- 25% retained by the developer.

Fifty percent of the transportation impact tax required of a development should be applied toward the implementation of capital facilities that improve transit capacity or the quality of transit service, including the purchase of new (but not replacement) buses, the expansion of maintenance yards and facilities, bus shelters, or the installation of real time information systems. These improvements are to be directed toward benefiting riders within the PAMR policy area in which the development is located.

The best way to reduce traffic congestion is to reduce VMT. If VMT are reduced, congestion drops. In addition, development is much greener through less carbon emissions that benefits everyone.

② The Growth Policy can be used to reduce VMT through incentives for smart development that locates in areas of higher infrastructure including transit service. Rather than building far out where capacity exists and commutes are longer, the growth policy can work in synch with master plans and zoning, to bring development into our existing urban areas.

The recommendation is based on five principles:

- housing near transit reduces VMT
- substituting housing capacity for commercial capacity reduces VMT
- providing funding for transit can help improve the transit system
- building to a minimum density helps reduce VMT by ensuring strategic sites near transit are not underutilized
- providing energy efficient buildings reduces carbon emissions.

## Montgomery County - Smart Growth Criteria

All projects must meet the following criteria to be considered for an Alternative PAMR Review and 100% PAMR offset:

- Project must be located within ½ mile of an existing or planned major transit stop or high-quality transit corridor. A high-quality transit corridor means a corridor with fixed route bus service where service intervals are no longer than 15 minute during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop if all parcels within the project have no more than 25% of their area farther than one-half mile from a transit stop or corridor and if not more than 10% of the residential units in the project are farther than one-half mile from the stop or corridor. A planned transit stop or corridor is one that is funded for construction within the first four years of the Consolidated Transportation Program and/or the Capital Improvement Program.
- Project must be mixed-use with a minimum 50% residential use.
- Project must seek to achieve the maximum density of the site using 75% or more of the maximum density allowed in the zone (including all applicable bonuses) subject to the limits specified in the master/sector plan.
- Building(s) exceeds energy efficiency standards by 17.5% for new buildings or by 10.5% for existing building renovation. Or, building(s) has on-site energy production such that 2.5% of the annual building energy cost is off-set by the renewable production system (*LEED New Construction/Major Renovation*).
- The project must provide additional affordable housing, either workforce housing or moderately-priced dwelling units, above and beyond that required for plan approval such that 25 percent of the PAMR mitigation resource being offset is applied to this obligation.

## The PAMR offset will be directed as follows:

- Fifty percent of the PAMR mitigation resource being offset must be directed to transit infrastructure.
- Twenty-five percent of the PAMR mitigation resource being offset must be applied to the provision of additional affordable housing, either workforce housing or moderately-priced dwelling units, above and beyond that required for plan approval.
- And, the remaining twenty-five percent of the PAMR mitigation resource will be retained by the developer.

The Smart Growth Criteria alternate review procedure for Policy Area Mobility Review is recommended as an incentive to development within one-half mile of a transit station or bus line with high frequency service.

**transit proximity**

"The most effective strategy to increase ridership is to increase development densities in close proximity to transit." (tcrp report 128)

This approach is based on pioneering sustainability initiatives:

- proximity to transit is the cornerstone of new California legislation to reduce vehicle trips, stunt sprawl, reduce carbon emissions, and incentivize development close to transit facilities
- LEED for Buildings encourages energy efficiency standards in new development
- the Montgomery County MPDU requirement and Workforce Housing can be used to improve transit access and lower the combined household costs of housing, transportation and utilities
- creating area based transit funding sources, where development contributes funding to improve transit service and facilities within the area.

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**car ownership and transit proximity**

People living near transit typically own fewer cars, live in smaller houses and take advantage of the transit. (tcrp report 128)

The eligibility for a development to use the Smart Growth alternative review procedure (offset) borrows criteria from each of these strategies, to create minimum requirements that must be met to make use of the alternative review procedure.

**metro station policy areas**



**Smart Growth Alternative Review Procedure Areas**

Development in the areas shown on the map would currently be eligible for the alternative review procedure, if the criteria noted were met.

For projects electing to use the Smart Growth alternative review procedure, the PAMR calculation would still be made. However, the required value of the mitigation would be directed primarily to public transit and affordable housing and some could be retained by the developer.

**Smart Growth alternative review mitigation**

The PAMR mitigation fee determined for a specific development would be split up so that 50% would be directed to transit funding; 25% for affordable housing; while the remaining funds would be available for the owner to help offset the costs meeting the basic requirements as noted above. Also, 75 percent of the transportation impact tax should be dedicated to improving public transit.

The policy encourages housing instead of more office space. Pending master plans may establish limits for both the overall density as well as how much of that total can be allocated for housing or commercial uses.

**trip generation: housing vs. office**

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Housing generates fewer trips than commercial development. A hundred high rise residential units take about the same amount of space as a 100,000 square foot office building, but generate just 28 percent of the peak hour vehicle trips. At the PAMR level, the recommendations reflect this reduction.

The goal is to achieve a more balanced jobs-housing ratio. In addition, the PAMR incentive to build closer to transit promotes strategic growth that results in fewer VMT, particularly beyond intersections near the development.

This offset approach will still require the school impact tax for residential uses and the LATR traffic calculation for local trip generation. Over time, capacity frees up as people shift from longer commutes through neighborhoods to transit and people close to the transit shift their travel patterns.

Whether builders take advantage of the alternate method will depend on costs and savings. Targeting transit payments is something several builders have indicated would be a positive influence on their decisions.

**demand for mixed use neighborhoods:**

"Because the demand is greater than the current supply, the price per square foot values of houses in mixed-use neighborhoods show price premiums ranging from 40% to 100%, compared to houses in nearby single use subdivisions". (C. Leinberger)

Appendix N contains additional details and describes how the alternate procedure would apply to a hypothetical project.

**2. Establish symmetrical treatment for level of service standards for transit and arterial mobility, allowing LOS for urban roadways to be assessed at LOS E, rather than LOS D.**

Policy Area Mobility Review establishes criteria for Relative Transit Mobility and Relative Arterial Mobility that are based on Level of Service (LOS) criteria published by the Transportation Research Board. The details of the PAMR process are contained in the Planning Board's LATR/PAMR Guidelines.

Requirements for area wide arterial LOS and transit LOS reflect County policy that transportation mobility should be multimodal. Areas with better transit service are not as reliant on auto travel; consequently, lower levels of service on arterial roads can be accepted as transit service improves.

The relationship between Transit LOS and Arterial LOS in the PAMR process should be symmetrical as shown below to provide an equitable level of multimodal transportation service across the County.

<b>If Transit LOS is</b>	<b>Then Arterial LOS Must Be</b>
F	A
E	B
D	C
C	D
B	E
A	F

PAMR symmetrical LOS standards relate arterial traffic levels to good transit service. Areas with better transit service that allow people to take transit rather than drive can function with higher levels of congestion.

The symmetrical LOS standards would change current County policy that states the area wide Arterial LOS should never fall below LOS D. A LOS E is recommended for two reasons:

- At LOS E the movement of cars on a road is maximized. For drivers, LOS A represents the least delay, and therefore the best level of service. However, this level is not practical from fiscal or community-building perspectives. Most jurisdictions require conditions ranging from LOS C to LOS E.
- The County's current requirement for LOS D creates pressure to add turn lanes and widen roads in areas where this is not possible or desirable. In urban areas especially, the pedestrian environment should not be compromised to provide better access for cars.

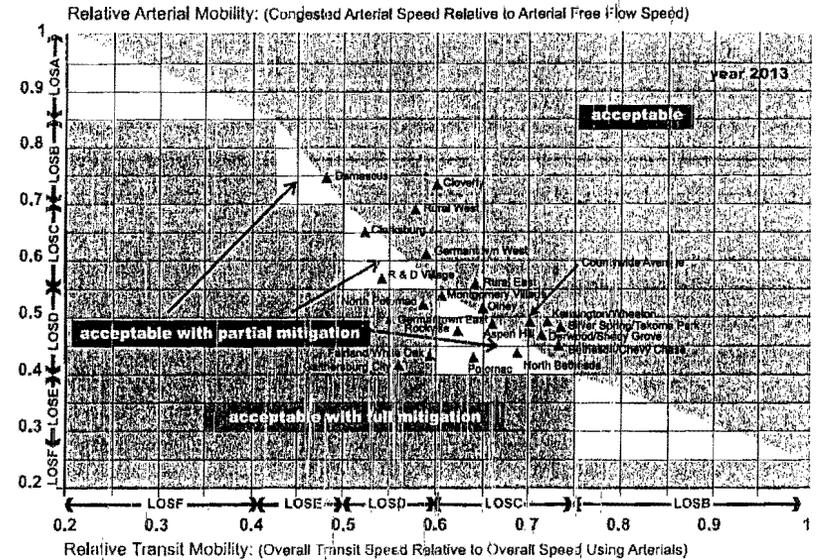
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**PAMR charts**

The recommendation would shift the line delineating areas that are "acceptable" to a roadway level of service E. Those areas that would move from "partial mitigation" to "acceptable" are shown. Shifting the line would move the Bethesda/Chevy Chase, Derwood/Shady Grove, Kensington/Wheaton, Olney, and Silver Spring/Takoma Park PAMR mitigation areas from a partial mitigation requirement to an acceptable level. These are areas where new growth should be encouraged.

**year 2013 PAMR chart with "symmetrical" level of services standards**

Year 2013 PAMR chart with "symmetrical" level of service standards

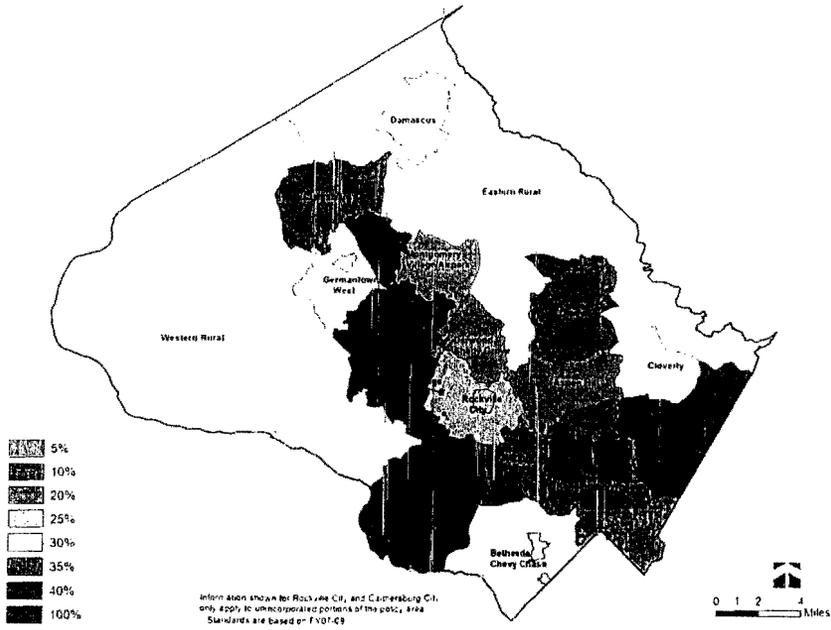


**How slow is LOS E?**

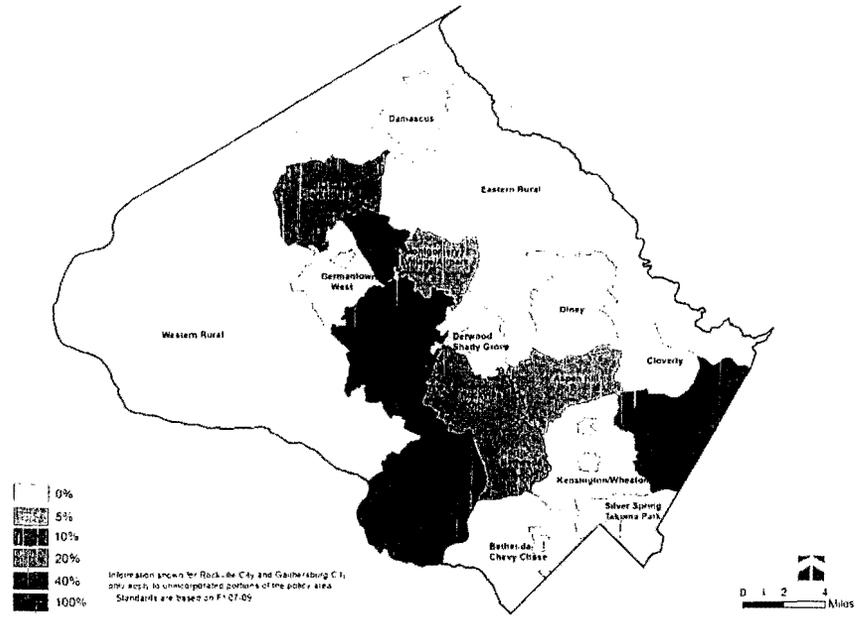
The Rockville Pike segment between the Capital Beltway and White Flint is 1.5 miles long. The time to drive this distance is:

- 2 minutes at LOS A or LOS B
- 3 minutes at LOS C
- 4 minutes at LOS D
- 5 minutes at LOS E

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The 2007-2009 Growth Policy requires PAMR mitigation in 16 of 21 policy areas.



The proposed 2009-2011 Growth Policy requires PAMR mitigation in 11 of 21 policy areas.

### 3. Set the value of each vehicle trip mitigated at \$11,000.

The Planning Board's LATR/PAMR Guidelines allow for facilities such as sidewalks, bike lockers, and bus shelters to offset car trips by improving alternatives such as walking or cycling. This practice has been used for over 10 years.

The LATR and PAMR Guidelines do not include a wide enough range of potential traffic mitigation solutions and the mitigation actions are not appropriately priced. For example, Montgomery General Hospital mitigated their PAMR impacts with a transit center that will ultimately serve the Georgia Avenue busway. This solution will provide service far beyond the specific development at the hospital to serve a broader community of bus riders. The facility however, was not on the pre-approved list of mitigation facilities.

An improvement to this approach would be to assess a uniform mitigation fee based on the capital value of the improvements. This solution ensures all applicants are treated fairly and directs the mitigation toward solutions that best benefit the community.

In October 2008, the Planning Board revised the LATR/PAMR Guidelines to allow applicants to pay the County an \$11,000 per vehicle trip mitigation fee where fewer than 30 peak hour vehicle trips needed to be mitigated. The \$11,000 value should be retained as the basis for mitigation with one exception. The cost of construction of offsite sidewalk and bike paths is a known quantity and should continue as an option for mitigation.

#### How much is a vehicle trip worth?

The Planning Board recommendation for \$11,000 per vehicle trip is based on average County costs and is in the middle of a wide range of mitigation examples:

- < \$1,000: Wheaton Hills mitigation
- \$3,000: City of San Jose policy
- \$6,500: Washington Adventist Hospital mitigation

- \$11,000: Cost of Montgomery County responsibility within regional plan
- \$21,000: Montgomery General Hospital mitigation
- > \$50,000: National Naval Medical Campus BRAC mitigation

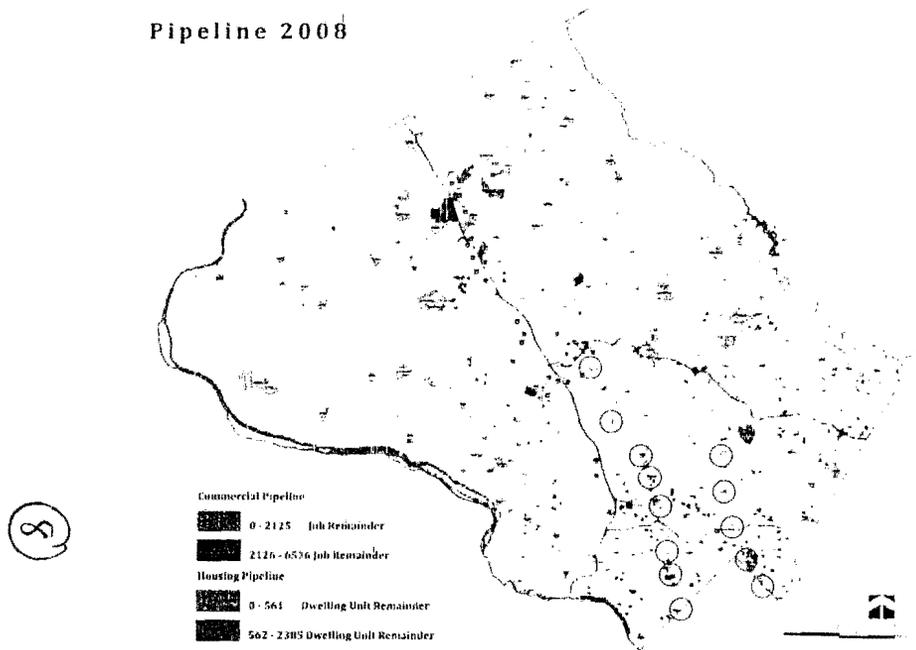
### 4. Permit the transfer of approved APF trips to Metro Station Policy Areas from within the same PAMR policy area.

The current pipeline of approved but unbuilt projects in the County includes 33 million square feet of commercial development and 29,000 housing units. Most of these projects are outside the County's Metro Station Policy Areas. When these projects were approved, the potential vehicle trips these developments could generate were included in the PAMR mitigation calculation. This means that any modeling for a new development application would include these hypothetical trips in the calculations. As a result, new development may have higher mitigation costs because of the unbuilt development which may or may not go forward.

The hypothetical trips are scattered throughout areas of the county less served by transit. They have the potential to create more and longer trips as people travel farther to job centers. If a portion of these trips could be shifted to the Metro Station areas, the same number of vehicle trips would, due to higher transit mode shares and shorter driving distances, have less of an impact on the road system. Vehicle trips are shorter in urban areas that have more destinations.

This recommendation would allow an applicant to meet his/her APF transportation requirement by acquiring previously approved capacity from another project in the adjacent or "parent" PAMR policy area. The "sending" project would then be unable to move forward.

**Pipeline 2008**



*There are many approved but unbuilt projects in the development pipeline. Trading approved approvals to more dense areas would result in greater sustainability.*

**Where are the approved but unbuilt projects?**

The 33 million square feet of approved but unbuilt commercial development is scattered around the County;

- only 13% is in Metro Station Policy Areas
- 27% is in the incorporated cities of Rockville or Gaithersburg
- 60% is elsewhere in the County.

The County has 16 urban areas in the Road Code. These urban areas have streets designed for a pedestrian environment, including wider sidewalks and slower travel speeds. Each of the urban areas already has a base of commercial development that provides some basic

services and a level of transit service higher than the surrounding suburban development.

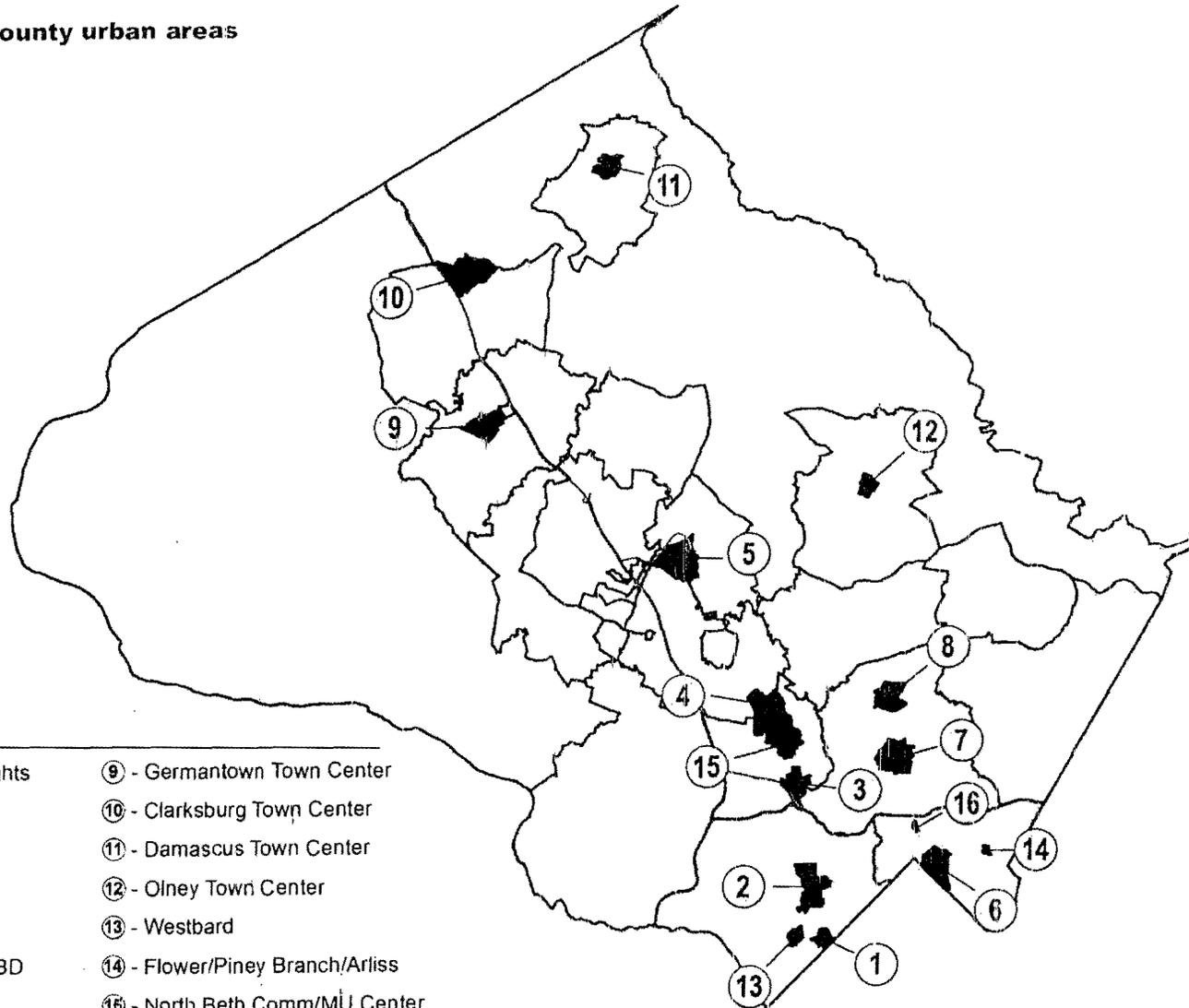
**5. Adjust the residential trip generation rates by 18 percent in Metro Station Policy Areas only.**

The LATR trip generation rates are based primarily on data collection efforts for developments County wide during the 1980s. Separate trip generation rates were developed for the Silver Spring, Bethesda, and Friendship Heights CBDs as sector plans for those areas were adopted in the 1990s. A discounting factor is available for offices near Metrorail stations to reflect the higher transit mode share at those locations.

Two recent studies add to the data on the value of transit-oriented development and proximity to basic services in reducing the reliance on auto travel. The Transit Cooperative Research Project (TRCP) Report 128, *Effects of Transit Oriented Development on Housing, Parking, and Travel*, released by the Transportation Research Board in fall 2008, contains data collected at 17 transit-oriented developments nationwide. Two of those sites are in Montgomery County (the Avalon at Grosvenor Station and the Lenox Apartments in the Silver Spring CBD), and create trip generation relationships that are similar to those already incorporated in our LATR/PAMR Guidelines.

The Metropolitan Washington Council of Governments conducted a survey of 11,000 households between February 2007 and March 2008 to identify area wide travel patterns. The survey compares vehicle trip generation and VMT comparisons between residents in the region's Regional Activity Centers and Clusters compared to those who reside outside of the activity center areas.

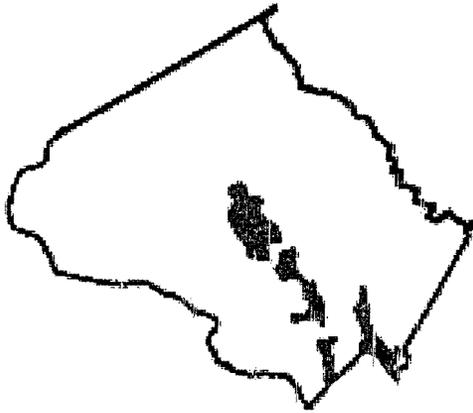
**montgomery county urban areas**



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**Urban Areas**

- |                        |   |
|------------------------|---|
| ① - Friendship Heights | ⑨ - Germantown Town Center                |
| ② - Bethesda CBD       | ⑩ - Clarksburg Town Center                |
| ③ - Grosvenor          | ⑪ - Damascus Town Center                  |
| ④ - Twinbrook          | ⑫ - Olney Town Center                     |
| ⑤ - Shady Grove        | ⑬ - Westbard                              |
| ⑥ - Silver Spring CBD  | ⑭ - Flower/Piney Branch/Artiss            |
| ⑦ - Wheaton CBD        | ⑮ - North Beth Comm/MJ Center             |
| ⑧ - Glenmont           | ⑯ - Montgomery Hills Parking Lot District |



Residents in Regional Activity Centers and Clusters generate fewer VMT, 18% fewer auto trips (4.6 per day as compared to 5.6 per day) and 33% less VMT (19.6 per day as compared to 29.3 per day). Source: mwcog report 2009

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The study concluded that residents in these areas generate fewer vehicle trips and VMT than residents elsewhere in the region. This tendency is greatest in areas with the best transit service. The Planning Board proposes to reflect this finding in the LATR and PAMR Guidelines by establishing a residential vehicle trip generation rate for MSPAs that is 18 percent lower than County wide rates, a factor similar to the existing transit proximity reduction available for office uses in Metro Station Policy Areas.

Much of this difference in trips is due to demographic differences. Residents in Regional Activity Centers and Clusters have different household characteristics.

- fewer persons per household (24% of center/cluster households have three or more residents compared to 45% of households outside these areas)
- fewer workers per household (37% of center/cluster households have two or more workers compared to 51% of households outside these areas)

- fewer autos per household (18% of center/cluster households do not own a vehicle, compared to 3% of households outside these areas).

**6. For the White Flint area, replace the LATR and PAMR mitigation with designated public entities and other funding mechanisms.**

The White Flint Adequate Public Facilities (APF) approval process should be related to Council action on the *White Flint Sector Plan*. The Plan recommends replacing LATR and PAMR with a more coordinated approach to financing and building the street grid and transit facilities needed to support the planned growth. The *White Flint Sector Plan* includes a transportation staging ceiling and a detailed network of capital transportation projects, including the reconstruction of Rockville Pike into a multimodal boulevard.

Implementing these projects requires a comprehensive phasing plan to ensure the local street grid is in place to support Pike reconstruction. The implementation plan includes an alternative APF review procedure with an exaction process based on the proportional contribution of new development to the cost of planned transportation infrastructure. This process will improve the efficiency of both the development review process and infrastructure delivery by avoiding a piecemeal implementation of the transportation network.

**7. Amend the policy area boundaries as recommended in sector plans, including the Life Sciences Center recommended in the Gaithersburg West Plan; the revision to the White Flint policy area; and the boundaries defined for Germantown Town Center**

Three draft Sector Plans recommend changes to Policy Area boundaries that affect transportation APF review.

- The *Germantown Sector Plan* expands the Germantown Town Center Policy Area to be consistent with the Plan's Town Center neighborhood.
- The *White Flint Sector Plan* recommends expanding the White Flint Policy Area to be consistent with the White Flint Sector Plan boundary.

- The *Gaithersburg West Master Plan* for the Life Sciences Center recommends defining a new Life Sciences Policy Area to support the three new proposed Corridor Cities Transitway stations at the LSC Central, West, and Belward neighborhoods. This new Policy Area will have characteristics consistent with the Germantown Town Center Policy Area along the CCT.

These boundary changes:

- reflect the need for more urban, transit-oriented mobility and connectivity solutions at these transit stations
- incorporate municipal boundary changes and a more refined regional transportation analysis zone structure developed in coordination with MWCOG.

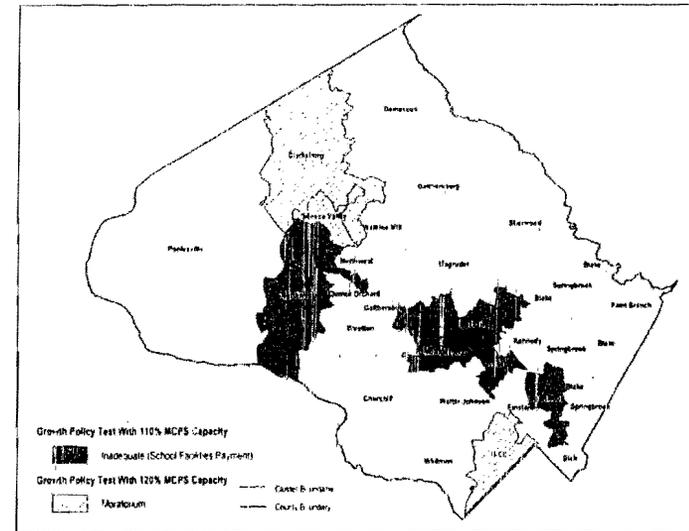
### **school capacity related changes**

**8. Set the threshold for application of a school facility payment at projected enrollment greater than 110 percent of projected program capacity at any school level by cluster.**

The Planning Board recommends that the test for the adequacy of public school facilities be revised so that the threshold that triggers a School Facilities Payment is enrollment greater than 110 percent of MCPS program capacity.

Given periodic shifts in enrollment trends within clusters, either through new development, changes in neighborhood demographics or changes in the birthrate, it is fairly common to have utilization rates between five and 10 percent over or under capacity. Facility planning occurs in response to individual school capacity; the level at which an individual school requires additional infrastructure is an approximately six classroom deficit. For the average high school (1,600 student capacity) this would be equivalent to approximately 150 students over capacity; a utilization rate of 109.4 percent.

### **fy10 school test results at 110 percent**



**9. Retain the threshold for school moratorium on new residential subdivisions at projected enrollment greater than 120 percent of projected capacity at any school level by school cluster.**

In moving to a stricter test on capacity during the 2007-2009 Growth Policy, the Planning Board and the School Board recommended increasing the threshold at which a school facility payment is required as well as increasing the threshold for moratorium.

The recommendation was to equate the capacity level at which a school facility payment would be required or a moratorium triggered under the prior (growth policy) capacity level to an equivalent threshold at the new (program) capacity level. Thus, the recommendation for the school facility payment threshold moved from 100 percent of "growth policy capacity" to 110 percent of "program capacity" and the moratorium threshold increased from 110 percent of "growth policy capacity" to 135 percent of "program capacity."

The County Council supported the switch from Growth Policy capacity to program capacity but did not agree with the school facility payment threshold or the threshold for moratorium. The Council's concern with the moratorium threshold was that at its equivalent level under Growth Policy capacity, the test was rarely failed. After committee and Council debate, the eventual compromise landed the threshold at 120 percent. The Board does not have any reason to recommend a change in the threshold for moratorium at this time, and recognizes that the choice of such a parameter is as much art as science.

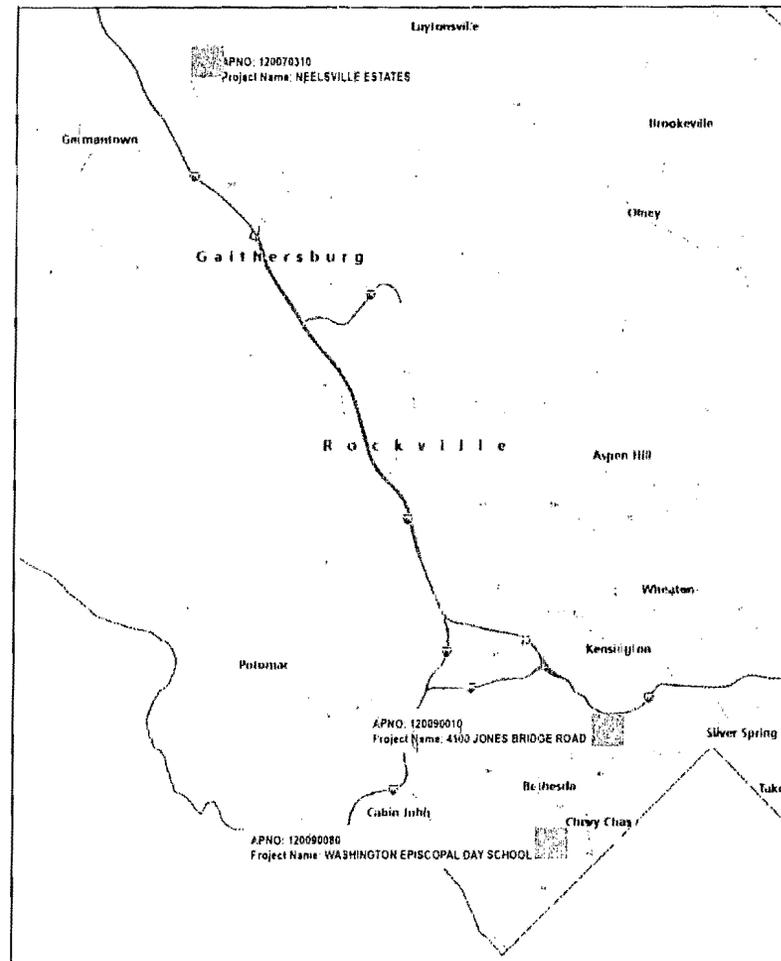
Until recently, the threshold for imposition of a moratorium had rarely been exceeded, but when it was, new school facilities were promptly programmed. This suggests that there is some utility to retaining a standard that serves an alarm function when enrollment and capacity are out of balance. If this trigger is set relatively low, 120 percent compared to 135 percent then one could argue that programming to overcome capacity deficits may occur sooner.

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**10. Allow residential subdivision applications that are complete within the 12 months prior to imposition of a moratorium but have not been acted upon to proceed.**

The most recent school test placed three school clusters into moratorium for residential subdivision approvals. Within these clusters,

**applications subject to fy10 grandfathering**



development applications were submitted and reviewed over the past few months to a year. A school queue was instituted as a result the last Growth Policy; it was meant to monitor school clusters as development applications were completed to gauge how quickly any one cluster was approaching either a School Facility Payment

threshold or a moratorium. The school queue did not predict the moratorium placed on the B-CC and Seneca Valley clusters.

One significant reason for this is that new development contributes only a small fraction of the enrollment changes occurring in most school clusters. In the Bethesda-Chevy Chase cluster, most of the over-crowding has been attributed to the unexpected rise in kindergarten enrollment. This is due, in part to the recent shift to all-day kindergarten, changes in the neighborhood demographics, and partly due to an increase in households choosing public education over private school, a reflection of the economy.

The APFO directs the Planning Board to approve preliminary plans of subdivision only after finding that public facilities will be adequate to serve the subdivision. For applicants who have completed their application and have engaged in discussions with Planning Staff about requirements to proceed to Board approval, the imposition of a moratorium near the end of this process can be costly and unpredictable.

The Board heard testimony that, on average, only 20 percent of the changes in enrollment are due to new development. Even though its contribution to change in enrollment is relatively small, the consequence of reaching a moratorium is placed completely on new development. To address this disparity, the Planning Board recommends grandfathering submitted applications that are completed up to 12 months prior to the moratorium.

For the three clusters now in moratorium, this would allow three projects to proceed to the Board: two projects in the Bethesda-Chevy Chase cluster (generating approximately six elementary, five middle and four high school students in total) and one in Clarksburg (generating two elementary, one middle, and one high school student). Grandfathering applicants that are within months of Board review provides predictability to the development community without significantly reducing the intent of a moratorium.

**11. Allow any approved school capacity for a specific development to be transferable to another development within the same school cluster.**

The Planning Board recommends extending to schools the same concept proposed for transferring transportation APF approvals for projects in Metro Station Policy areas. For schools, APF transfers should be limited to projects within the same school cluster. This approach can reduce unused potential school capacity and make room for students generated by "live" projects.

**future studies**

The recommendations of the 2009-2011 Growth Policy begin a discussion that has already started around the country. Communities are beginning to assess development in terms of sustainability with a much broader definition of quality of place than measuring just traffic congestion. In Montgomery County, the discussion has focused on three general areas.

First, how can compact development reduce travel demand? We have already incorporated some tools for assessing density, proximity to transit, and mixed uses into the APFO calculations. We need better information on how the provision of the right basic services in the right locations can be tailored to reduce, rather than increase, vehicle travel.

Second, how should we measure our expectations for connectivity? The LATR tools are focused on capacity. The introduction of PAMR in 2007 began a shift toward measuring mobility. Many feel that the PAMR tool still rewards car-centric development, while others feel that the assessment of forecasted improvements in transit level of service is too optimistic. However, in 2007 the PAMR test was found to provide the best combination of relevance, coherence, reliability, and availability of seven alternatives examined for thinking beyond the limited scope of the LATR process. Further consideration of changes to the LATR process that better reflect multimodal mobility was desired.

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but not funded, in 2007 or 2008. These changes still need to be examined.

Finally, the discussion of APFO needs to keep pace with the discussion on climate change at both the national and local levels. We determined that our constituency is not ready for a total shift from the adequacy of transportation or schools to a broader analysis of carbon emissions or greenhouse gas impacts. However, the 2009-2011 Growth Policy recommendations begin to move the discussion in this direction. This is supported by the County's Climate Protection Plan. The 2011-2013 Growth Policy should continue this discussion.

The 2011-2013 Growth Policy should be informed by the following studies.

**12. Submit the following studies to the County Council prior to August 1, 2011.**

(H)

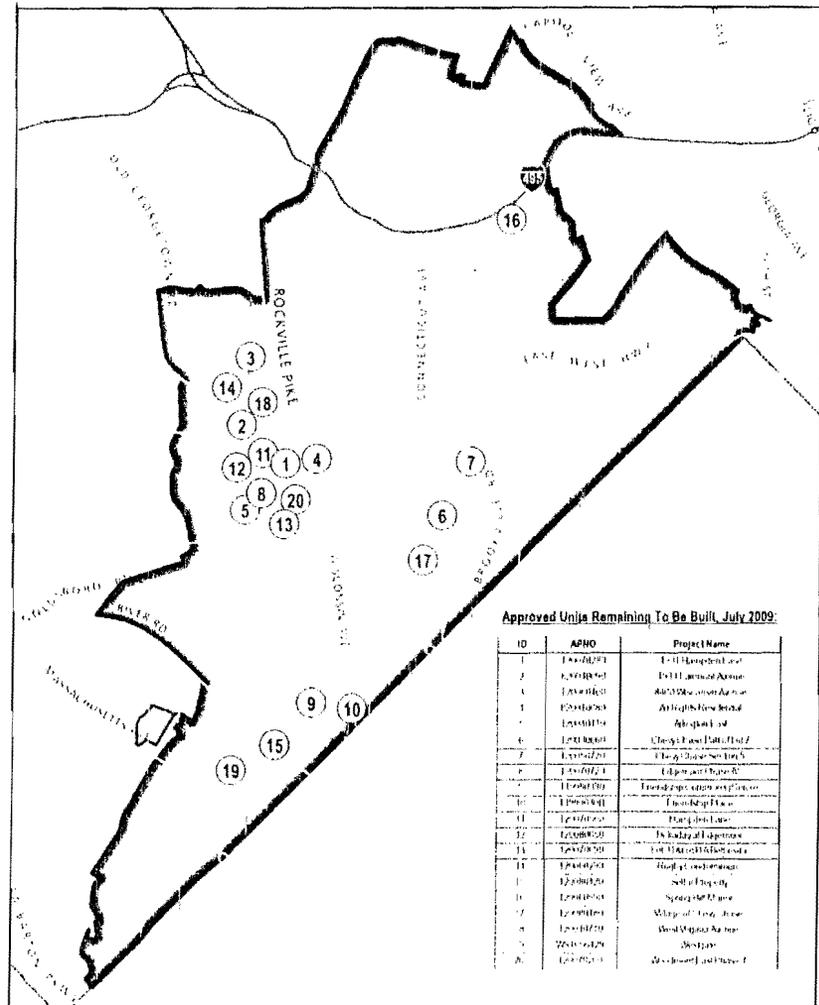
**F1. biennial growth policy report**

The Planning Board must submit a recommended Growth Policy by August 1st in two year periods. Starting in 2009, the Growth Policy must include:

- an analysis of current and future pace and pattern of growth and their factors in established communities
- an update on the success in meeting a set of indicators as developed under study F10 of the current Growth Policy
- an implementation status report for each master and sector plan including how development is proceeding and whether the public actions and facilities in the plan are occurring in a timely way
- summary of the Highway Mobility Report
- comprehensive list of priority facilities that are recommended for addition to the Capital Improvements Program
- recommendations on other public actions needed to achieve master plan objectives or improve the performance on adopted quality of life indicators

- recommendations on any policy area boundary changes to be consistent with the adopted master plans or sector plans or municipal boundaries.

**bethesda/chevy chase cluster residential pipeline**



**F2: compact subdivision development**

The recent water quality issue with the Clarksburg Stage 4 development raises the need to rethink sustainability factors in how land is developed. The 2011-2013 Growth Policy should build on the information from the Clarksburg Stage 4 master plan study as it relates to how land can be subdivided in more sustainable ways, reducing impacts on water quality, use of land, and green house gas emissions.

Future subdivision will be within urban areas as infill development and achieving low impact growth is an important element of defining how and where growth should occur. Planning staff will report on how state-of-the-art low impact design can be part of smarter growth policy.

**F3: LEED Classification as a component of the Growth Policy**

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Planning staff will report on including elements of both the LEED for Neighborhood and New Construction or Major Renovation classification systems into the growth policy. Staff did recommend that the basic services element of the LEED Neighborhood system should be used as an alternative method for PAMR, however the Planning Board requested further study.

Staff recommended that a PAMR offset of 50 percent should be applied if new development provided or was within one half mile of ten basic services such as grocery stores, libraries, etc. Proximity to a critical mass of services will reduce VMT.

**F4: using carbon offsets as an element of sustainable growth**

Planning staff has started looking at the potential to use carbon offsets to mitigate the carbon created through vehicle trips by creating an equivalency between the carbon reduction achieved through a smart location, VMT reduction strategies, and energy efficient buildings to lower the carbon footprint created by a development.

For example, a building located near transit will generate fewer VMT and higher pedestrian activity; as well as provide walkable access to services. Coupled with energy efficient HVAC techniques, this building would emit far less carbon.

There is an emerging industry in "carbon accounting" that assesses the overall impact of an activity such as an office building, in terms of carbon emitted. Staff will consider the merits of assessing lower carbon emissions through buildings and the activity they create. For example, so many car trips over a year period would emit a measurable amount of carbon. If a building included methods for reducing an equivalent amount of carbon emissions, the development could occur. In effect, the lower building carbon emissions would be traded for the car emissions and rather than mitigating traffic impact, the offset would be mitigating carbon impacts.

This alternative review procedure would be limited to urban areas where there are transit alternatives to driving. Encouraging planned development in areas where increased congestion is supported by County policy would result in a higher proportion of people taking transit or walking while encouraging buildings that generate fewer emissions.

**F5: dedicated transit revenue**

The Smart Growth alternate review method recommends that 75 percent of the PAMR mitigation offset be used to fund transit serving the PAMR area. The Planning Board also recommends that 75 percent of the transportation impact tax be dedicated to transit projects. County Executive staff should be requested to develop a funding allocation and reporting process to monitor and report on how the resources directed to transit are being effectively implemented.

**F6: land use impact on vehicle miles travelled**

Planning staff should work with the County Executive to consider whether the impact of VMT vary for specific land uses by their location. For example, does a fast food restaurant in a Metro Station Policy Area

generate fewer VMT than the same use in a suburban location? How should that impact be weighed in the Growth Policy?

**F7. retail impacts on vmt**

Planning staff should work with the Executive to consider whether chain retail outlets generate higher VMT and parking demand than local retailers in the same business. If there is a difference, the report should consider different impact fee and mitigation requirements for different types of retail. The impact on small business growth should be considered.

**F8. impact tax issues**

The County Executive should complete the study requested as part of the 2007-2009 Growth Policy, which was to have reported on the collection and use of mitigation fees. That request should be made again as it is an important element in assessing the value of certain Growth Policy requirements.

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This study should also look at the potential for including linkage fees between nonresidential uses and affordable housing. Currently nonresidential uses are not assessed to provide affordable housing, unlike many jurisdictions around the country. The County Executive should report on the economic feasibility of such a linkage fee.

**F9. highway mobility report funding**

Planning staff should complete the scheduled revision to the Highway Mobility Report in 2011 with data collection resources incorporated in the Planning Department budget, following coordination with the Executive on methods to improve data collection and reporting techniques that better address daily variability in traveler behavior. The 2011 report will continue to examine transit and pedestrian system performance as well as highway mobility.

**F10. fiscally sustainable development**

New development creates revenue through impact taxes, as well as the revenue created through the use of the building over its lifespan.

The County Executive should be requested to report on two issues linked to impact fees and revenue generation:

- does new development create more revenue through the taxes associated with the use of the building over its life-cycle than it creates through the one time taxes paid at permitting?
- should development impact taxes be reduced if tax revenue generated by the new development over the building's or project's life-cycle, exceed the cost of the County services provided to that development?

**F11. options to latr**

Planning staff should, with the aid of the Executive, study options to revise the LATR test including:

- using proximity to various levels of transit service and pedestrian connectivity as a basis for mitigation requirements
- developing a multimodal quality of service requirement to provide a more seamless integration of pedestrian, bicycle, transit, and auto modes
- considering feasible revisions of or alternatives to the Critical Lane Volume method to measure intersection performance.

*For examples that illustrate the impact of the recommendations, see Appendix N.*

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:** [2007-2009] 2009-2011 Growth Policy

**Background**

1. County Code §33A-15 requires that no later than November 15 of each odd-numbered year, the County Council must adopt a Growth Policy to be effective until November 15 of the next odd-numbered year, to provide policy guidance to the agencies of government and the general public on matters concerning land use development, growth management and related environmental, economic and social issues.
- [2. On December 12, 2006, the County Council adopted Resolution 16-17, directing the Planning Board to prepare growth policy recommendations by May 21, 2007.]
- [3] 2. On [May 21, 2007] August 1, 2009, [as required by Resolution 16-17] and in accordance with §33A-15, the Planning Board transmitted to the County Council its recommendations on the [2007-2009] 2009-2011 Growth Policy. The Final Draft Growth Policy as submitted by the Planning Board contained supporting and explanatory materials.
- [4] 3. On [June 19 and June 26, 2007] September 22, 2009, the County Council held public hearings on the Growth Policy [and related items].
- [5] 4. On [October 1, 8, 15, 16, and 22, 2007] (dates), the Council's Planning, Housing, and Economic Development Committee conducted worksessions on the recommended Growth Policy.
- [6] 5. On [October 23 and 30, and November 6, 2007] (dates), the Council conducted worksessions on the Growth Policy, at which careful consideration was given to the public hearing testimony, updated information, recommended revisions and comments of the County Executive and Planning Board, and the comments and concerns of other interested parties.

**Action**

*The County Council for Montgomery County, Maryland, approves the following Resolution:*

The Growth Policy is approved as follows:

**Applicability; transition**

**AP1 Effective dates**

This resolution takes effect on [November 15, 2007] January 1, 2010 and applies to any application for a preliminary plan of subdivision filed on or after that date. [In accordance with County Code §50-35B, any preliminary plan of subdivision for which a completed application was filed on or after January 1, 2007 and which the Planning Board did not approve before November 13, 2007, is subject to this resolution.]

**AP2 Clarksburg effective dates**

This resolution does not apply to any amendment or extension of a preliminary plan of subdivision in the Clarksburg policy area that was approved before this resolution took effect if the amendment or extension does not increase the amount of housing units or non-residential development previously approved.

**Guidelines for the Administration of the Adequate Public Facilities Ordinance**

County Code Section 50-35(k) ("the Adequate Public Facilities Ordinance or APFO") directs the Montgomery County Planning Board to approve preliminary plans of subdivision only after finding that public facilities will be adequate to serve the subdivision. This involves predicting future demand from private development and comparing it to the capacity of existing and programmed public facilities. The following guidelines describe the methods and criteria that the Planning Board and its staff must use in determining the adequacy of public facilities. These guidelines supersede all previous ones adopted by the County Council.

The Council accepts the definitions of terms and the assignment of values to key measurement variables that were used by the Planning Board and its staff in developing the recommended Growth Policy. The Council delegates to the Planning Board and its staff all other necessary administrative decisions not covered by the guidelines outlined below. In its administration of the APFO, the Planning Board must consider the recommendations of the County Executive and other agencies in determining the adequacy of public facilities.

The findings and directives described in this Growth Policy are based primarily on the public facilities in the amended FY [2007-12] 2009-14 Capital Improvements Program (CIP) and the Maryland Department of Transportation FY [2007-12] 2009-14 Consolidated Transportation Program (CTP). The Council also reviewed related County and State funding decisions, master plan guidance and zoning where relevant, and related legislative actions. These findings and directives and their supporting

planning and measurement process have been the subject of a public hearing and review during worksessions by the County Council. Approval of the findings and directives reflects a legislative judgment that, all things considered, these findings and procedures constitute a reasonable, appropriate, and desirable set of growth limits, which properly relate to the ability of the County to program and construct facilities necessary to accommodate growth. These growth limits will substantially advance County land use objectives by providing for coordinated and orderly development.

These guidelines are not intended to be used as a means for government to avoid its responsibility to provide adequate public facilities. Biennial review and oversight allows the Council to identify problems and initiate solutions that will serve to avoid or limit the duration of any moratorium on new subdivision approvals in a specific policy area. Further, alternatives may be available for developers who wish to proceed in advance of the adopted public facilities program, through the provision of additional public facility capacity beyond that contained in the approved Capital Improvements Program, or through other measures that accomplish an equivalent effect.

The administration of the Adequate Public Facilities Ordinance must at all times be consistent with adopted master plans and sector plans. Where development staging guidelines in adopted master plans or sector plans are more restrictive than Growth Policy guidelines, the guidelines in the adopted master plan or sector plan must be used to the extent that they are more restrictive. The Growth Policy does not require the Planning Board to base its analysis and recommendations for any new or revised master or sector plan on the public facility adequacy standards in this resolution.

### **Guidelines for Transportation Facilities**

#### **TP Policy Areas**

#### **TP1 Policy Area Boundaries and Definitions**

For the purposes of transportation analysis, the County has been divided into [313] 376 areas called traffic zones. Based upon their transportation characteristics, these areas are grouped into transportation policy areas, as shown on Map 1. In many cases, transportation policy areas have the same boundaries as planning areas, sector plan areas, or master plan analysis (or special study) areas. The policy areas in effect for [2007-2009] 2009-2011 are: Aspen Hill, Bethesda CBD, Bethesda-Chevy Chase, Clarksburg, Cloverly, Damascus, Derwood, Fairland/White Oak, Friendship Heights, Gaithersburg City, Germantown East, Germantown Town Center, Germantown West, Glenmont, Grosvenor, Kensington/Wheaton, Life Sciences Center, Montgomery Village/Airpark, North Bethesda, North Potomac, Olney, Potomac, R&D Village, Rockville City, Rockville Town Center, Rural East, Rural West, Shady Grove, Silver Spring CBD, Silver Spring/Takoma Park, Twinbrook, Wheaton CBD, and White Flint. The following are Metro Station Policy Areas: Bethesda CBD, Friendship Heights, Glenmont, Grosvenor, Rockville Town Center, Shady Grove, Silver Spring CBD, Twinbrook, Wheaton CBD, and White Flint. Boundaries of the policy areas are shown on maps [3] 2-34.

The boundaries of the Gaithersburg City and Rockville City policy areas reflect existing municipal boundaries, except where County-regulated land is surrounded by city-regulated land. The boundaries of these municipal policy areas do not automatically reflect any change in municipal boundaries; any change in a policy area boundary requires affirmative Council action.

**TP2 Policy Area Mobility Review**

**TP2.1 Components of Policy Area Mobility Review**

There are two components to Policy Area Mobility Review: *Relative Arterial Mobility* and *Relative Transit Mobility* for each policy area.

**TP2.1.1 Relative Arterial Mobility**

*Relative Arterial Mobility* is a measure of congestion on the County’s arterial roadway network. It is based on the *urban street delay level of service* in the 2000 Highway Capacity Manual, published by the Transportation Research Board. This concept measures congestion by comparing modeled (congested) speeds to free-flow speeds on arterial roadways. It then assigns letter grades to the various levels of roadway congestion, with letter A assigned to the best levels of service and letter F assigned to the worst levels of service. For a trip along an urban street that has a free-flow speed (generally akin to posted speed) of 40 MPH, LOS A conditions exist when the actual travel speed is at least 34 MPH, including delays experienced at traffic signals. At the other end of the spectrum, LOS F conditions exist when the actual travel speed is below 10 MPH.

**Relative Arterial Mobility and Arterial LOS**

<i>If the actual urban street travel speed is</i>	<i>PAMR Arterial LOS is</i>
At least 85% of the free-flow speed	A
At least 70% of the highway speed	B
At least 55% of the highway speed	C
At least 40% of the highway speed	D
At least 25% of the highway speed	E
Less than 25% of the highway speed	F

Any policy area with an actual urban street travel speed equal to or less than 40 percent of the highway speed must be considered acceptable with full mitigation for transportation.

The PAMR evaluates conditions only on the arterial roadway network. Freeway level of service is not directly measured because County development contributes a relatively modest proportion of freeway travel, and because the County has limited influence over the design and operations of the freeway system. However, because arterial travel is a substitute for some freeway travel, PAMR indirectly measures freeway congestion to the extent that travelers choose local roadways over congested freeways.

**TP2.1.2 Relative Transit Mobility**

*Relative transit mobility* is based on the Transit/Auto Travel Time level of service concept in the 2003 *Transit Capacity and Quality of Service Manual* published by the Transportation Research Board. It is defined as the relative speed by which journey to work trips can be made by transit, as opposed to by auto. This concept assigns letter grades to various levels of transit service, so that LOS A conditions

exist for transit when a trip can be made more quickly by transit (including walk-access/drive-access and wait times) than by single-occupant auto. This LOS A condition exists in the Washington region for certain rail transit trips with short walk times at both ends of the trip and some bus trips in HOV corridors. LOS F conditions exist when a trip takes more than an hour longer to make by transit than by single-occupant auto.

This ratio between auto and transit travel times can also be expressed in an inverse relationship, defined by modal speed. If a trip can be made in less time by transit than by auto, the effective transit speed is greater than the effective auto speed. Based on the typical roadway network speed during the AM peak period, the Planning Board established the following relationship between auto and transit trips:

**Relative Transit Mobility and Transit LOS**

<i>If the effective transit speed is</i>	<i>PAMR Transit LOS is</i>
100% or more (e.g., faster) than the highway speed	A
At least 75% of the highway speed	B
At least 60% of the highway speed	C
At least 50% of the highway speed	D
At least 42.5% of the highway speed	E
Less than 42.5% of the highway speed	F

Any policy area with an effective transit speed equal to or less than 42.5 percent of the highway speed must be considered acceptable with full mitigation for transportation.

**TP2.1.3 Relationship Between Relative Arterial Mobility and Relative Transit Mobility**

The PAMR Arterial LOS and the PAMR Transit LOS standards are inversely related, reflecting the County’s long-standing policy to encourage concentrations of development near high-quality transit. To accomplish this policy, greater levels of roadway congestion should be tolerated in areas where high-quality transit options are available. The PAMR uses the following equivalency:

**Equivalency Between Transit LOS and Arterial LOS**

<i>If the forecasted PAMR Transit LOS is</i>	<i>The minimum acceptable PAMR Arterial LOS standard is</i>
A	[D] <u>F</u>
B	[D] <u>E</u>
C	D
D	C
E	B
F	A

[This chart reflects a policy decision that the PAMR Arterial LOS standard should not fall below LOS D, even when the PAMR Transit LOS standard is A.]

**TP2.2 Conducting Policy Area Mobility Review**

### TP2.2.1 Geographic Areas

In conducting Policy Area Mobility Reviews, each Metro station policy area is included in its larger parent policy area, so that:

- the Bethesda CBD, Friendship Heights, and Bethesda-Chevy Chase policy areas are treated as a single policy area;
- the Grosvenor, White Flint, Twinbrook, and North Bethesda policy areas are treated as a single policy area;
- the Rockville Town Center and Rockville City policy areas are treated as a single policy area;
- the Shady Grove and Derwood policy areas are treated as a single policy area;
- the Silver Spring CBD and Silver Spring-Takoma Park policy areas are treated as a single policy area; and
- the Wheaton CBD, Glenmont, and Kensington-Wheaton policy areas are treated as a single policy area.

The Rural East policy area consists of all area east of I-270 that is not located in another [planning] policy area. The Rural West policy area consists of all area west of I-270 that is not located in another [planning] policy area.

### TP2.2.2 Determination of Adequacy

Using a transportation planning model, the Planning staff has computed the relationship between a programmed set of transportation facilities and the geographic pattern of existing and approved jobs and housing units. The traffic model tests this future land use pattern for its traffic impact, comparing the resulting traffic volume and distribution to the arterial level of service standard for each policy area.

This analysis results in a finding of acceptable with full mitigation for a policy area if:

- (a) the level of service on local roads in the policy area is expected to exceed the arterial level of service standard, or
- (b) the magnitude of the hypothetical future land use patterns in that policy area will cause the level of service on local roads in any other policy area to exceed the arterial level of service standard for that policy area.

If this annual analysis results in a finding of acceptable with full mitigation for a policy area for a fiscal year, the Planning Board must not approve any more subdivisions in that policy area in that fiscal year, except as provided below. For [FY2008] FY2010, the Planning Board must consider the Fairland/White Oak, Germantown East, [and] Gaithersburg City, and North Potomac Policy Areas to be acceptable with full mitigation for transportation.

When this annual analysis results in a finding of acceptable with partial mitigation for a policy area for a fiscal year, the Planning Board must not approve any more subdivisions in that policy area in that fiscal year except under certain special circumstances outlined below. For [FY2008] FY2010, the Planning Board must consider the following policy areas to be acceptable with partial mitigation for transportation at the policy area level:

Policy Area	Trip Mitigation Required
Aspen Hill	[40%]5%
[Bethesda/Chevy Chase]	[30%]
<u>Clarksburg</u>	10%
[Damascus]	[5%]
[Derwood]	[5%]
[Fairland/White Oak]	[45%]
[Kensington/Wheaton]	[10%]
<u>Montgomery Village/Airpark</u>	5%
North Bethesda	[25%]20%
[Olney]	[25%]
Potomac	40%
<u>Rockville City</u>	20%
<u>R&amp;D Village</u>	40%
[Rural East]	[5%]
[Silver Spring/Takoma Park]	[15%]
[Rockville]	[25%]

An applicant for a preliminary plan of subdivision need not take any action under TP Policy Area Mobility Review if the proposed development will generate 3 or fewer peak-hour trips.

The Planning Board may adopt Policy Area Mobility Review guidelines and other technical materials to further specify standards and procedures for its adoption of findings of policy area adequacy or inadequacy or of acceptable with full or partial mitigation.

The transportation planning model considers all existing and approved development and all eligible programmed transportation CIP projects. For these purposes, "approved development" includes all approved preliminary plans of subdivision and is also known as the "pipeline of approved development." "Eligible programmed transportation CIP projects" include all County CIP, State Transportation Program, and City of Rockville or Gaithersburg projects for which 100 percent of the expenditures for construction are estimated to occur in the first 4 years of the applicable program.

Because of the unique nature of the Purple Line, the Corridor Cities Transitway, and the North Bethesda Transitway compared to other transportation systems which are normally used in calculating development capacity, it is prudent to approach the additional capacity from these systems conservatively, particularly with respect to the timing of capacity and the amount of the capacity recognized. Therefore, the capacity from any operable segment of any of these transit systems must not be counted until that segment is fully funded in the first 4 years of the County or State capital improvements program.

To discourage sprawl development, no capacity for new development may be counted outside the boundary of the Town of Brookeville as of March 9, 1999, as a result of relocating MD 97 around Brookeville.

Planning staff must keep a record of all previously approved preliminary plans and other data about the status of development projects, and must continuously update the pipeline number of approved preliminary plans. The updated pipeline must be the basis for the annual PAMR.

**TP3 Mitigation for Applications in Policy Areas with Inadequate PAMR**

The Planning Board, after considering any recommendation of the County Executive, may approve a preliminary plan application in a policy area found by Policy Area Mobility Review to be acceptable with full mitigation or acceptable with partial mitigation, as provided in this section. In approving plans in acceptable with full mitigation policy areas, the Board should ensure that the average level of service for the relevant policy area is not adversely affected. Except as otherwise expressly stated in **TP4**, the same level of service criteria must be used in evaluating an application under this section.

The following options to mitigate the traffic impacts of development approved in a preliminary plan may be used, individually or in combination:

- *Trip Mitigation.* An applicant may sign a binding Trip Mitigation Agreement under which up to 100% of the projected peak hour vehicle trips would be removed from the roadway by using Transportation Demand Management techniques to reduce trips generated by the applicant's development or by other sites, so that an applicant could still generate a certain number of trips if the mitigation program removes an equal number of trips from other sites in the same policy area.
- *Trip Reduction by Providing Non-Auto Facilities.* An applicant may mitigate a limited number of trips by providing non-auto facilities that would make alternative modes of transit, walking, and bicycling safer and more attractive. The Planning Board must specify in its *LATR Guidelines* the allowable actions and number of trips associated with them, as well as the maximum number of trip credits allowable for each action, which will partly depend on the congestion standards for the policy area where the proposed development is located. For any preliminary plan approved in FY2010, the Planning Board may accept construction of Non-Auto Facilities at a value of \$11,000 for each new peak hour vehicle trip for construction and right-of-way costs.
- *Adding Roadway Capacity.* An applicant may mitigate trips by building link-based roadway network capacity. The conversion rate between vehicle trips and lane miles of roadway is shown in Table 2. The values in that table are derived from regional estimates of vehicle trip length by trip purposes and uniform per-lane capacities for roadway functional classes that should be applied countywide. Several conditions apply:
  - The number of lane miles in Table 2 reflects total capacity provided, so that if an applicant widens a roadway by one lane in each direction, the total minimum project length would be half the length listed in the table.
  - The roadway construction or widening must have logical termini, for instance connecting two intersections.
  - The roadway construction must occur in the same Policy Area as the proposed development.
  - The roadway construction must be recommended in a master plan.

- *Adding Transit Capacity.* An applicant may mitigate inadequate PAMR conditions by buying 40-foot long hybrid electric fleet vehicles for the Ride-On system, and guaranteeing 12 years of operations funding, at the rate of 30 peak hour vehicle-trips per fleet vehicle. To qualify as mitigation under this provision, a bus must add to the Ride-On fleet and not replace a bus taken out of service.
- *Payment instead of construction.* The Planning Board may accept payment to the County of a fee commensurate with the cost of a required improvement if the applicant has made a good faith effort to implement an acceptable improvement and the Board finds that a desirable improvement cannot feasibly be implemented by the applicant, but the same improvement or an acceptable alternative can be implemented by a public agency within 4 years after the subdivision is approved. The Planning Board may accept a payment to the County instead of identification or construction of any specific improvement for any preliminary plan application that requires PAMR mitigation of fewer than 30 peak hour vehicle trips. In FY2010, the payment must not be less than \$11,000 per new peak hour vehicle trip. The Board must index the minimum payment according to construction costs in each later fiscal year.

In general, each mitigation measure or combination of measures must be scheduled for completion or otherwise be operational at the same time or before the proposed development is scheduled to be completed. The nature, design, and scale of any additional facility or program must receive prior approval from any government agency that would construct or maintain the facility or program, and the applicant and the public agency must execute an appropriate public works agreement before the Board approves a record plat. The application must also be approved under TL Local Area Transportation Review.

Both the subdivision plan and all necessary mitigation measures must be consistent with an adopted master plan or other relevant land use policy statement. For the Planning Board to accept a roadway capacity improvement as a mitigation measure, the applicant must show that alternative non-auto mitigation measures are not feasible or desirable. In evaluating mitigation measures proposed by an applicant, the Board must place a high priority on design excellence to create a safe, comfortable, and attractive public realm for all users, with particular focus on high-quality pedestrian and transit access to schools, libraries, recreation centers, and other neighborhood facilities.

#### **TP4 Development District Participation**

Under Chapter 14 of the County Code, the County Council may create development districts as a funding mechanism for needed infrastructure in areas of the County where substantial development is expected or encouraged. The Planning Board may approve subdivision plans in accordance with the terms of the development district's provisional adequate public facilities approval (PAPF).

##### **TP4.1 Preparation of a PAPF**

The development district's PAPF must be prepared in the following manner:

One or more property owners in the proposed district may submit to the Planning Board an application for provisional adequate public facilities approval for the entire district. In addition to explaining how each development located in the district will comply with all applicable zoning and subdivision requirements, this application must:

- show the number and type of housing units and square footage and type of the non-residential space to be developed, as well as a schedule of proposed buildout in five-year increments;
- identify any infrastructure improvements necessary to satisfy the adequate public facilities requirements for development districts; and
- estimate the cost to provide these improvements.

#### **TP4.2 Planning Board Review**

The Planning Board must then review all developments within the proposed development district as if they are a single development for compliance with the Adequate Public Facilities Ordinance. The Planning Board must identify the public facilities needed to support the buildout of the development district after considering the results of the following tests for facility adequacy:

- Transportation tests for development districts are identical to those for Local Area Transportation Review. Planning Department staff must prepare a list of transportation infrastructure needed to maintain public facility adequacy.
- The PAPF application must be referred to Montgomery County Public Schools staff for recommendations for each stage of development in the proposed district. MCPS staff must calculate the extent to which the development district will add to MCPS's current enrollment projections. MCPS staff must apply the existing school adequacy test to the projections with the additional enrollment and prepare a list of public school infrastructure needed to maintain public facility adequacy.
- The PAPF application must be referred to the Washington Suburban Sanitary Commission for recommendations for each stage of development in the proposed district. Wastewater conveyance and water transmission facilities must be considered adequate if existing or programmed (fully-funded within the first 5 years of the approved WSSC capital improvements program) facilities can accommodate (as defined by WSSC) all existing authorizations plus the growth in the development district. Adequacy of water and wastewater treatment facilities must be evaluated using the intermediate or "most probable" forecasts of future growth plus development district growth, but only to the extent that development district growth exceeds the forecast for any time period. If a test is not met, WSSC must prepare a list of water and sewer system infrastructure needed to maintain public facility adequacy.
- The PAPF application must be referred to the County Executive for recommendations for each stage of development in the proposed district regarding police, fire, and health facilities. Adequacy of police, fire, and health facilities must be evaluated using the intermediate or most probable forecasts of future growth plus development district growth, but only to the extent that development district growth exceeds the forecast for any time period. Any facility capacity that remains is available to be used by the development district. If any facility capacity deficits exist, the County Executive must prepare a list of infrastructure needed to maintain public facility adequacy.

#### **TP4.3 Planning Board Approval**

The Board may conditionally approve the PAPF application if it will meet all of the requirements of the APFO and Growth Policy. The Board may condition its approval on, among other things, the creation and funding of the district and the building of no more than the maximum number of housing units and the maximum nonresidential space listed in the petition.

For an application to be approved, the applicants must commit to produce the infrastructure improvements needed to meet APF requirements in the proposed district as well as any added requirements specified by the Planning Board. The Planning Board must list these required infrastructure improvements in its approval. The infrastructure improvements may be funded through the development district or otherwise. The development district's PAPF must be prepared in the following manner:

The Planning Board must not approve a PAPF application unless public facilities adequacy is maintained throughout the life of the plan. The timing of infrastructure delivery may be accomplished by withholding the release of building permits until needed public facilities are available to be "counted," or by another similar mechanism.

Infrastructure may be counted for public facilities adequacy, for infrastructure provided by the district, when construction has begun on the facility and funds have been identified and committed to its completion, and, for infrastructure provided by the public sector, when:

- for Local Area Transportation Review, the project is fully-funded within the first 4 years of the approved County, state, or municipal capital improvements program;
- for water and sewer facilities, the project is fully-funded within the first 5 years of the approved WSSC capital improvements program;
- for public school facilities, the project is fully-funded within the first 5 years of the approved Montgomery County Public Schools capital improvements program; and
- for police, fire, and health facilities, the project is fully-funded within the first 6 years of the relevant approved capital improvements program.

#### **TP4.4 Additional Facilities Recommended for Funding**

The County Executive and Planning Board may also recommend to the County Council additional facilities to be provided by the development district or by the public sector to support development within the district. These facilities may include, but are not limited to libraries, health centers, local parks, social services, greenways, and major recreation facilities.

#### **TP4.5 Satisfaction of APF Requirements**

As provided in Chapter 14 of the County Code, once the development district is created and the financing of all required infrastructure is arranged, the development in the district is considered to have satisfied all APF requirements, any additional requirements that apply to development districts in the Growth Policy, and any other requirement to provide infrastructure which the County adopts within 12 years after the district is created.

#### **TP5 Transfer of APF Development Rights**

To encourage development in areas with higher levels of transit and basic services, two owners may transfer APF approval for Policy Area Mobility Review trips from a sending area in any Policy Area to a receiving area, which is any site located in an urban area in the same Policy Area. An urban area is any Metro Station Policy Area, Town Center Policy Area, or other urban area expressly identified in a Council resolution implementing County Code §49-32(c).

This APF transfer process requires the owners of both sending and receiving sites to submit preliminary plan applications which simultaneously terminate the APF approval from the sending site and grant the equivalent APF approval for the receiving site. A validity period of the transferred APF may be extended as part of the transfer as necessary to support development on the receiving site, but for not more than 5 years including any validity period that remains on the sending site.

**TL Local Area Transportation Review (LATR)**

**TL1 Standards and Procedures**

To achieve an approximately equivalent transportation level of service in all areas of the County, greater congestion is permitted in policy areas with greater transit accessibility and usage. Table 1 shows the intersection level of service standards by policy area. Local Area Transportation Review must at all times be consistent with the standards and staging mechanisms of adopted master and sector plans.

Local area transportation review must be completed for any subdivision that would generate 30 or more peak-hour automobile trips. For any subdivision that would generate 30-49 peak-hour automobile trips, the Planning Board after receiving a traffic study must require that either:

- all LATR requirements are met; or
- the applicant must make an additional payment to the County equal to 50% of the applicable transportation impact tax before it receives any building permit in the subdivision.

In administering Local Area Transportation Review, the Planning Board must not approve a subdivision if it finds that an unacceptable peak hour level of service will result after considering existing roads, programmed roads, available or programmed mass transportation, and improvements to be provided by the applicant. If the subdivision will affect an intersection or roadway link for which congestion is already unacceptable, then the subdivision may only be approved if the applicant agrees to mitigate either:

- a sufficient number of trips to bring the intersection or link to acceptable levels of congestion, or
- a number of trips equal to 150 percent of the CLV impact attributable to the development.

The nature of the LATR test is such that a traffic study is necessary if local congestion is likely to occur. The Planning Board and staff must examine the applicant's traffic study to determine whether adjustments are necessary to assure that the traffic study is a reasonable and appropriate reflection of the traffic impact of the proposed subdivision after considering all approved development and programmed transportation projects.

If use and occupancy permits for at least 75% of the originally approved development were issued more than 12 years before the LATR study scope request, the number of signalized intersections in the study must be based on the increased number of peak hour trips rather than the total number of peak hour trips. In these cases, LATR is not required for any expansion that generates 5 or fewer additional peak hour trips.

For Local Area Transportation Review purposes, the programmed transportation projects to be considered are those fully funded for construction in the first 4 years of the current approved Capital Improvements Program, the state's Consolidated Transportation Program, or any municipal capital improvements program. For these purposes, any road required under Section 302 of the County Charter to be authorized by law is not programmed until the time for petition to referendum has expired without a valid petition or the authorizing law has been approved by referendum.

If an applicant is participating in a traffic mitigation program or one or more intersection improvements to meet Local Area Transportation Review requirements, that applicant must be considered to have met Local Area Transportation Review for any other intersection where the volume of trips generated is less than 5 Critical Lane Movements.

Any traffic study required for Local Area Transportation Review must be submitted by a registered Professional Engineer, certified Professional Traffic Operations Engineer, or certified Professional Transportation Planner.

Each traffic study must examine, at a minimum, the number of signalized intersections in the following table, unless the Planning Board affirmatively finds that special circumstances warrant a more limited study.

Maximum Peak-Hour Trips Generated	Minimum Signalized Intersections in Each Direction
< 250	1
250 – 749	2
750 – 1,249	3
1,250 – 1,750	4
1,750-2,249	5
2,250 – 2749	6
>2,750	7

At the Planning Board's discretion, each traffic mitigation program must be required to operate for at least 12 years but no longer than 15 years. The Planning Board may select either trip reduction measures or road improvements, or a combination of both, as the required means of traffic mitigation.

The Planning Board has adopted guidelines to administer Local Area Transportation Review. To the extent that they are consistent with this Policy, the Planning Board guidelines may continue to apply or may be amended as the Planning Board finds necessary.

After consulting the Council, the Planning Board may adopt administrative guidelines that allow use of a "delay" or queuing analysis, different critical lane volume standards, or other methodologies, to determine the level of congestion in any area the Planning Board finds appropriate.

In administering Local Area Transportation Review, the Planning Board must carefully consider the recommendations of the County Executive concerning the applicant's traffic study and proposed improvements or any other aspect of the review.

To achieve safe and convenient pedestrian travel, the Planning Board may adopt administrative guidelines requiring construction of off-site sidewalk improvements consistent with County Code §50-25. To support creating facilities that encourage transit use, walking, and bicycling, to maintain an approximately equivalent level of service at the local level for both auto and non-auto modes, the Board may allow the applicant to use peak hour vehicle trip credits for providing non-auto facilities. Before approving credits for non-auto facilities to reduce Local Area Transportation Review impacts, the Board should first consider the applicability and desirability of traffic mitigation agreement measures. The Board's *LATR Guidelines* must identify applicable facilities in terms of actions that can be given trip credits and the maximum number of trips that can be credited. If the Board approves any credits, it must specify mechanisms to monitor the construction of any required facility. During each biennial Growth Policy the Board must report on the number of credits issued and confirm the construction of any required facility.

In general, any mitigation measure or combination of mitigation measures must be scheduled for completion or otherwise operational either before or at the same time as the proposed development is scheduled to be completed. The nature, design, and scale of any additional facility or program must receive prior approval from any government agency that would construct or maintain the facility or program, and the applicant and the public agency must execute an appropriate public works agreement before the Planning Board approves a record plat.

Both the subdivision plan and the necessary mitigation measures must be consistent with an adopted master plan or other relevant land use policy statement. For the Planning Board to accept a intersection improvement as a mitigation measure, the applicant must show that alternative non-auto mitigation measures are not feasible or desirable. In evaluating mitigation measures proposed by an applicant, the Board must place a high priority on design excellence to create a safe, comfortable, and attractive public realm for all users, with particular focus on high-quality pedestrian and transit access to schools, libraries, recreation centers, and other neighborhood facilities.

### **TL2 Metro Station Policy Area LATR Standards**

In each Metro Station Policy Area, the Planning Board, in consultation with the Department of Public Works and Transportation, must prepare performance evaluation criteria for its Local Area Transportation Review. These criteria must be used to accomplish: (a) safety for pedestrians and vehicles; (b) access to buildings and sites; and (c) traffic flow within the vicinity, at levels which are tolerable in an urban situation. The County Executive also must publish a Silver Spring Traffic Management Program after receiving public comment and a recommendation from the Planning Board. This program must list those actions to be taken by government to maintain traffic flow at tolerable levels in the Silver Spring CBD and protect the surrounding residential area.

### **TL3 Potomac LATR Standards**

In the Potomac Policy Area, only the areas contributing traffic to the following intersections must be subject to Local Area Transportation Review: (a) Montrose Road at Seven Locks Road; (b) Democracy Boulevard at Seven Locks Road; (c) Tuckerman Lane at Seven Locks Road; (d) Democracy Boulevard at Westlake Drive; (e) Westlake Drive at Westlake Terrace; (f) Westlake Drive at Tuckerman Lane; (g) Bradley Boulevard at Seven Locks Road; (h) River Road at Bradley Boulevard; (i) River Road at Piney Meetinghouse Road; and (j) River Road at Seven Locks Road.

#### **TL4 Unique Policy Area Issues**

The Local Area Review for the Silver Spring CBD policy area must use the following assumptions and guidelines:

- Each traffic limit is derived from the heaviest traffic demand period in Silver Spring's case, the p.m. peak hour outbound traffic.
- When tested during a comprehensive circulation analysis, the critical lane volumes for intersections in the surrounding Silver Spring/Takoma Park policy area must not be worse than the adopted level of service standards shown in Table 1 unless the Planning Board finds that the impact of improving the intersection is more burdensome than the increased congestion.
- The Planning Board and the Department of Public Works and Transportation must implement Transportation Systems Management for the Silver Spring CBD. The goal of this program must be to achieve the commuting goals for transit use and auto occupancy rates set out below.
- The County Government, through the Silver Spring Parking Lot District, must constrain the amount of public and private long term parking spaces.

The parking constraints and commuting goals needed to achieve satisfactory traffic conditions with these staging ceilings are:

**Parking constraint:** A maximum of 17,500 public and private long-term spaces when all nonresidential development is built; this maximum assumes a peak accumulation factor of 0.9, which requires verification in Silver Spring and may be subject to revision. Interim long-term parking constraints must be imposed in accordance with the amount of interim development. Long-term public parking spaces must be priced to reflect the market value of constrained parking spaces.

**Commuting goals:** For employers with 25 or more employees, attain 25 percent mass transit use and auto occupancy rates of 1.3 persons per vehicle during the peak periods, or attain any combination of employee mode choice that results in at least 46% non-drivers during the peak periods. For new nonresidential development, attain 30 percent mass transit use and auto occupancy rates of 1.3 persons per vehicle during the peak periods, or attain any combination of employee mode choice that results in at least 50% non-drivers during the peak periods.

Progress towards achieving these goals should be measured annually by scientific, statistically valid surveys.

To achieve these goals it will be necessary to require developers of new development in Silver Spring to enter into traffic mitigation agreements and the employers and certain owners to submit transportation mitigation plans under County Code Chapter 42A.

In accordance with the amendment to the Silver Spring Sector Plan, subdivision applications for nonresidential standard method projects throughout the CBD may be approved for development or additions of not more than 5,000 square feet of gross floor area. However, if, for a particular use the addition of 5 peak hour trips yields a floor area greater than 5,000 square feet, that additional area may be approved for that particular use.

In the North Bethesda Transportation Management District, the goal is 39 percent non-driver mode share for workers in the peak hour. In the Bethesda Transportation Management District, the goal is 37 percent non-driver mode share for workers. In the Friendship Heights Transportation Management District, the goal is 39 percent non-driver mode share for workers.

## **TA Alternative Review Procedures**

### **TA1 Metro Station Policy Areas**

An applicant for a subdivision which will be built completely within a Metro station policy area need not take any action under **TP Policy Area Mobility Review** or **TL Local Area Transportation Review** if the applicant agrees in a contract with the Planning Board and the County Department of Public Works and Transportation to:

- submit an application containing all information, including a traffic study, that would normally be required for Local Area Transportation Review;
- meet trip reduction goals set by the Planning Board as a condition of approving that subdivision, which must require the applicant to reduce at least 50% of the number of trips attributable to the subdivision, either by reducing trips from the subdivision itself or from other occupants of that policy area;
- participate in programs operated by, and take actions specified by, a transportation management organization (TMO) to be established by County law for that policy area (or a group of policy areas including that policy area) to meet the mode share goals established under the preceding paragraph;
- pay an ongoing annual contribution or tax to fund the TMO's operating expenses, including minor capital items such as busses, as established by County law; and
- pay 75% of the applicable General District development impact tax without claiming any credits for transportation improvements.

### **TA2 Expiration of Approvals Under Previous Alternative Review Procedures**

Annual Growth Policy resolutions in effect between 1995 and 2001 contained Alternative Review Procedures that required any development approved under those procedures to receive each building permit no later than 4 years after the Planning Board approved the preliminary plan of subdivision for that development. Any outstanding development project approved under an Alternative Review Procedure is subject to the expiration dates in effect when that development project was approved, with the following 2 exceptions.

#### **TA2.1 Certain multi-phased projects**

A multi-phased project located in the R&D or Life Sciences Center zone may receive some of its building permits later than 4 years after its preliminary plan of subdivision is approved if:

- when the Planning Board approves or amends a site plan for the development, it also approves a phasing schedule that allows an extended validity period, but not longer than 12 years after the preliminary plan of subdivision was approved; and
- the applicant receives the first building permit for a building in the development no later than 4 years after the Planning Board approves the preliminary plan of subdivision for the development.

**TA2.2 Certain developments in I-3 zone**

Similarly, if the development is located in the I-3 zone, and a previously approved subdivision plan and site plan contains more than 900,000 square feet of office space and at least 40% of that space has been constructed by November 1, 2001, the Planning Board may approve an amendment to its site plan which allows an extended validity period, but not longer than 12 years after the preliminary plan of subdivision was approved.

**TA3 Golf Course Community**

An applicant for a planned unit development in the Fairland-White Oak policy area that includes a golf course or other major amenity which is developed on a public/private partnership basis need not take any action under **TL Local Area Transportation Review** if the applicant pays to the County a Development Approval Payment, established by County law, before the building permit is issued. However, the applicant must include in its application for preliminary plan approval all information that would have been necessary if the requirements for Local Area Transportation Review applied.

The Planning Board may approve the application if:

- not more than 100 units, in addition to Moderately Priced Dwelling Units (MPDUs), are built in the first fiscal year after construction of the development begins, and
- not more than 100 units, in addition to MPDUs and the unbuilt remaining portion of all prior years' approved units, are built in any later fiscal year.

**TA3.1 MPDU Requirements**

Any applicant for a subdivision under **TA3** must agree, as part of the application, that it will build the same number of MPDUs among the first 100 units that it would be required to construct at that location if the subdivision consisted of only 100 units, or a pro rata lower number of MPDUs if the subdivision will include fewer than 100 units.

**TA3.2 Requirement to Begin Construction**

Any applicant for a subdivision approval under **TA3** must agree, as part of the application, that it will not begin to construct any residential unit approved in the application later than 3 years after the plat is recorded or the site plan is approved (whichever occurs later).

**TA4 Corporate Headquarters Facility**

**TA4.1 LATR**

An applicant for a preliminary plan of subdivision need not take any action under Local Area Transportation Review if the applicant meets the following conditions:

**TA4.1.1 Jobs/Location**

The applicant must have employed an average of at least 500 employees in the County for the 2 years before the application was filed, and the applicant must seek to build or expand a corporate headquarters located in the North Bethesda Policy Area.

**TA4.1.2 Size/Use**

Any new or expanded building approved under this Procedure must not exceed 900,000 square feet, and must be intended primarily for use by the applicant and the applicant's affiliates or business partners.

**TA4.1.3 Traffic Information**

Each application must include all information that would be necessary if the requirements for Local Area Transportation Review applied.

**TA4.1.4 Mode Share Goals**

Each applicant must commit to make its best efforts to meet mode share goals set by the Planning Board as a condition of approving the subdivision.

**TA4.1.5 TMO Participation**

Each applicant must participate in programs operated by, and take actions specified by, the transportation management organization (TMO), if any, established by County law for that policy area to meet the mode share goals set by the Planning Board.

**TA4.1.6 TMO Payment**

If an applicant is located in a transportation management district, the applicant must pay an annual contribution or tax, set by County law, to fund the TMO's operating expenses, including minor capital items such as busses.

**TA4.1.7 Development Approval Payment Limits**

The applicant must pay the applicable Development Approval Payment (DAP) as provided in County Code §8-37 through 8-42, but not more than the DAP in effect on July 1, 2001.

**TA4.1.8 Eligibility**

An applicant may use this Procedure only if it met the criteria in **TA4.1.1** for number of employees and site location on November 1, 2003.

**TA5 Strategic Economic Development Projects**

An applicant for a preliminary plan of subdivision need not take any action under **TL Local Area Transportation Review** if all of the following conditions are met.

**TA5.1 Traffic information**

The applicant files a complete application for a preliminary plan of subdivision which includes all information that would be necessary if the requirements for LATR applied.

**TA5.2 Designation**

The County Council has approved the County Executive's designation of the development as a strategic economic development project under procedures adopted by law or Council resolution.

**TA5.3 Transportation Impact Tax Payments**

The applicant must pay double the applicable transportation impact tax without claiming any credits for transportation improvements.

**TA6. White Flint**

An applicant for a preliminary plan of subdivision located entirely in the White Flint Policy Area need not take any action under TP Policy Area Mobility Review or TL Local Area Transportation Review after a White Flint Transportation Approval Mechanism and all associated public entities and financing mechanisms have been established, as authorized in the White Flint Sector Plan adopted after this resolution takes effect.

**TA7. Smart Growth Criteria for Transit Proximity**

An applicant for a preliminary plan of subdivision located entirely within one-half mile of a Metrorail station or entirely within one-half mile of a transit route with average peak period service headways of 15 minutes or less may satisfy 100% of the applicant's fiduciary requirements under TP Policy Area Mobility Review by meeting the following conditions:

**TA7.1 Diversity**

The applicant must dedicate at least 50 percent of the project floor area to residential use.

**TA7.2 Density**

The applicant must apply for 75 percent of the achievable on-site density permitted under Chapter 59, subject to any lower limit imposed in a Master or Sector Plan and applied under Chapter 59.

**TA7.3 Energy Efficiency**

The development must meet energy efficiency standards of 17.5 percent for new construction and 10.5 percent for renovation, or produce 2.5 percent of its annual building energy cost on site.

**TA7.4 Transit Service Funding**

The applicant must apply 50 percent of the fiduciary requirements otherwise dedicated to meeting TP Policy Area Mobility Review toward improving any transit system which serves the policy area where the development is located.

**TA7.5 Affordable Housing Component**

The applicant must apply 25 percent of the fiduciary requirements otherwise dedicated to meeting TP Policy Area Mobility Review toward providing additional MPDUs or workforce housing units above that required for approval of the subdivision plan.

**Public School Facilities**

**S1 Geographic Areas**

For the purposes of public school analysis and local area review of school facilities at time of subdivision, the County has been divided into 25 areas called high school clusters. These areas coincide with the cluster boundaries used by the Montgomery County Public School system.

The groupings used are only to administer the Adequate Public Facilities Ordinance and do not require any action by the Board of Education in exercising its power to designate school service boundaries.

**S2 Grade Levels**

Each cluster must be assessed separately at each of the 3 grade levels -- elementary, intermediate/middle, and high school.

**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.

**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 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, the Board must not approve any residential subdivision in that cluster during the next fiscal year.

Table 3 shows the result of this test for [November 15, 2007] July 1, 2009, to July 1, [2008] 2010. Table 3 also shows the remaining capacity, in students, at each grade level in each cluster. Using average student generation rates developed from the most recent Census Update Survey, the Planning Board must limit residential subdivision approvals in any cluster during the fiscal year so that the students generated by the housing units approved do not exceed the remaining capacity for students at any grade level in that cluster.

**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] 110% of Montgomery County Public Schools' program capacity as its measure of adequate school capacity. This capacity 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] 110% of capacity but not exceed 120%, 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.

Table 4 shows the result of this test for [November 15, 2007] July 1, 2009, to July 1, [2008] 2010. Table 4 also shows the remaining capacity, in students, at each grade level in each cluster. Using average student generation rates developed from the most recent Census Update Survey, the Planning Board must limit residential subdivision approvals in any cluster during the fiscal year so that the students generated by the housing units approved do not exceed the remaining capacity for students at any grade level in that cluster.

### **S6 Senior Housing**

If public school capacity is inadequate in any cluster, the Planning Board may nevertheless approve a subdivision in that cluster if the subdivision consists solely of multifamily housing and related facilities for elderly or handicapped persons or multifamily housing units located in the age-restricted section of a planned retirement community.

### **S7 De Minimis Development**

If public school capacity is inadequate in any cluster, the Planning Board may nevertheless approve a subdivision in that cluster if the subdivision consists of no more than 3 housing units and the applicant commits to pay a School Facilities Payment as otherwise required before receiving a building permit for any building in that subdivision.

### **S8 Development District Participants**

The Planning Board may require any development district for which it approves a provisional adequate public facilities approval (PAPF) to produce or contribute to infrastructure improvements needed to address inadequate school capacity.

### **S9 Allocation of Staging Ceiling to Preliminary Plans of Subdivision**

The Planning Board must allocate available staging ceiling capacity in a high school cluster based on the queue date of an application for preliminary plan of subdivision approval.

#### **S9.1 Assignment of queue date**

The queue date of a preliminary plan of subdivision is the date:

- a complete application is filed with the Planning Board; or
- 6 months after the prior queue date if the prior queue date expires under S9.4.

#### **S9.2 Calculation of available staging ceiling capacity**

The Planning Board must determine whether adequate staging ceiling capacity is available for a project by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 3 as updated periodically. Based on this calculation, the Planning Board may:

- approve a project for which there is sufficient capacity;
- approve part of a project for which there is sufficient capacity, leaving the remainder of the project in the queue until additional capacity becomes available;
- deny an application for a project for which there is insufficient capacity; or
- defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. If insufficient capacity is available, the Board must not schedule a hearing on the application unless the applicant requests one.

If sufficient capacity is available for a project based on the queue date, the Planning Board must not deny an application based on pipeline (but not staging ceiling) changes while the queue date is in effect.

### **S9.3 Applicability of School Facilities Payment**

The Planning Board must determine whether a project is required to pay a School Facilities Payment by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 4 as updated periodically. Based on this calculation, the Planning Board may:

- approve a project for which there is sufficient capacity;
- approve part of a project for which there is sufficient capacity, requiring the remainder of the project to pay the applicable School Facilities Payment until additional capacity becomes available; or
- defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. If insufficient capacity is available, the Board must not schedule a hearing on the application unless the applicant requests one.

If a project must pay a School Facilities Payment, the Planning Board must not deny an application based on pipeline (but not staging ceiling) changes while the Payment requirement is in effect.

### **S9.4 Expiration of queue date**

A queue date for an application for preliminary plan of subdivision approval expires:

- 6 months after the queue date if sufficient staging ceiling capacity was available for the entire project on the queue date and the Planning Board has not approved the application or granted an extension of the queue date; or
- 6 months after sufficient capacity becomes available for the entire project.

The Planning Board may grant one or more 6-month extensions of a queue date if the applicant demonstrates that a queue date expired or will expire because of governmental delay beyond the applicant's control.

### **S10 Grandfathering of Completed Applications**

The Planning Board may approve a subdivision that would otherwise be denied or deferred under S9.2 in a school cluster that is in moratorium under S4 if a complete subdivision application was filed with

the Board within 12 months before the moratorium was established. A completed application is an application for a preliminary subdivision plan that contains the original application form and all supporting documents in the appropriate numbers, has been submitted and reviewed by Planning staff for accuracy and completeness, and for which the applicant has addressed all staff comments made on the initial application.

**S11      APF Transferability of School Capacity**

To streamline the provision of school capacity and reduce the unused backlog of approved residential capacity, two owners may transfer APF approval for school capacity between two sites in the same school cluster for an equivalent number of students by school level.

This APF transfer process requires the owners of both sending and receiving sites to submit preliminary plan applications which simultaneously terminate the APF approval from the sending site and grant the equivalent APF approval for the receiving site. A validity period of the transferred APF may be extended as part of the transfer as necessary to support development on the receiving site, but for not more than 5 years including any validity period that remains on the sending site.

**Guidelines for Water and Sewerage Facilities**

In accordance with the Adequate Public Facilities Ordinance, applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available, is under construction, is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (i.e., categories I, II, and III), or if the applicant either provides a community water and/or sewerage system or meets Department of Permitting Services requirements for septic and/or well systems, as outlined in the Adequate Public Facilities Ordinance. These requirements are determined either by reference to the Water and Sewerage Plan, adopted by the Council, or by obtaining a satisfactory percolation test from the Department of Permitting Services.

Applications must only be accepted for further Planning staff and Board consideration if they present evidence of meeting the appropriate requirements.

**Guidelines for Police, Fire and Health Services**

The Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated. Such a problem is one which cannot be overcome within the context of the approved Capital Improvements Program and operating budgets of the relevant agencies. Where such evidence exists, either through agency response to the Subdivision Review committee clearinghouse, or through public commentary or Planning staff consideration, a Local Area Review must be undertaken. The Board must seek a written opinion from the relevant agency, and require, if necessary, additional data from the applicant, to facilitate the completion of the Planning staff recommendation within the statutory time frame for Planning Board action. In performing this Local Area Review, the facility capacity at the end of the sixth year of the approved CIP must be compared to the demand generated by the "most probable" forecast for the same year prepared by the Planning Department.

**Guidelines for Resubdivisions**

An application to amend a previously approved preliminary plan of subdivision does not require a new test for adequacy of public facilities if:

- Revisions to a preliminary plan have not been recorded, the preliminary plan has not expired, and the number of trips which will be produced by the revised plan is not greater than the number of trips produced by the original plan.
- Resubdivision of a recorded lot involves the sale or exchange of parcels of land (not to exceed a total of 2,000 square feet or one percent of the combined area, whichever is greater) between owners of adjoining properties to make small adjustments in boundaries.
- Resubdivision of a recorded lot involves more than 2,000 square feet or one percent of the lot area and the number of trips which will be produced by the revised plan is not greater than the number of trips produced by the original plan.

**Timely Adequate Public Facilities Determination and Local Area Transportation Review under Chapter 8.**

**APF1 General.**

Except as otherwise provided by law, an adequate public facilities determination or local area transportation review conducted under Article IV of Chapter 8 must use the standards and criteria applicable under this Resolution when evaluating the adequacy of public facilities to serve the proposed development.

**APF2 Traffic Mitigation Goals.**

Any proposed development that is subject to requirements for a traffic mitigation agreement under Article IV of Chapter 8 and §42A-9A of the County Code must meet the traffic mitigation goals specified in paragraphs (1) or (4), as appropriate.

- (1) Subject to paragraph (2), the portion of peak-period nondriver trips by employees of a proposed development must be at least the following percentage greater than the prevailing nondriver mode share of comparable nearby land use:

<b>In Policy Areas With LATR CLV Standard of</b>	<b>Required Percentage Greater Than Prevailing Nondriver Mode Share</b>
1800 and 1600	100%
1550	80%
1500	60%
1475 and 1450	40%

LATR CLV standards for each policy area are shown on Table 1.

- (2) The portion of peak-period nondriver trips by employees calculated under paragraph (1) must not be less than 15% nor higher than 55%.
- (3) The applicant for a proposed development in a policy area specified under paragraph (1) is responsible for reviewing existing studies of nondriver mode share; conducting new studies, as necessary, of nondriver mode share; and identifying the prevailing base nondriver mode share of comparable land uses within the area identified for the traffic study. Comparable land uses are improved sites within the area identified for the traffic study for the proposed development that have similar existing land use and trip generation characteristics. As with other aspects of the traffic study required by Article IV of Chapter 8, selection of the comparable studies and land uses to be analyzed and determination of the prevailing base nondriver mode share are subject to review by the Planning Department and approval by the Department of Public Works and Transportation.
- (4) Proposed development in the Silver Spring CBD must meet the commuting goals specified under TL4.
- (5) In accordance with County Code §42A-9A, the applicant must enter into an agreement with the Director of the Department of Public Works and Transportation before a building permit is issued. The agreement may include a schedule for full compliance with the traffic mitigation goals. It must provide appropriate enforcement mechanisms for compliance.
- (6) As provided by law, these goals supersede traffic mitigation goals established under §42A-9A(a)(4).

#### Issues to be Addressed in the Future

Scheduling of items by the Planning Board under this Section may be reviewed and modified at the Board's regular work program meetings with the County Council.

[For delivery to the Council on or before February 1, 2008:

- **F1 Enhanced Intersection Data Collection:** The Planning Board must include in its recommended FY2009 budget a request for additional funds to expand its database of current traffic counts to allow a more comprehensive analysis of congestion conditions and verify developer-provided traffic counts.]

[For delivery to the Council on or before July 1, 2008:

- **F2 Impact tax implementing regulations:** The Executive must submit revised implementing regulations for the transportation and school impact taxes to the Council under Method (2).]

For delivery to the Council on or before August 1, [2008] 2011:

- **[F3 Alternatives to PAMR:** The Planning Board, with the aid of the Executive, must evaluate alternatives to Policy Area Mobility Review (PAMR) as a policy area level transportation test. As part of this study, the Planning Board must evaluate alternative methods to calculate the key

components of PAMR, relative arterial mobility and relative transit mobility, and options to replace PAMR and LATR in Metro station policy areas with a broad requirement for trip mitigation from new development.]

- **[F4: Guidelines for Non-Auto Facilities:** The Planning Board, with the aid of the Executive, must evaluate its guidelines for trip credits for non-automobile facilities, including the text and chart that appears on pages 26-29 of its *Local Area Transportation Review Guidelines*. In reviewing these credits and acceptable facilities, the Board must consider factors such as the likelihood of the action reducing peak hour auto trips and the approximate construction costs of each action, to allow some equivalency between actions. The Board must also evaluate its procedures to monitor the construction of facilities for which credits are given. The Board must submit any revisions of these trip credit guidelines to the Council for its review.]
- **[F5 Development Activity Status Report:** The Planning Board must prepare a status report of development activity that has occurred since this Growth Policy took effect. The Board must report, to the extent that it is able, on the effect of Growth Policy and impact tax changes on development activity in Clarksburg relative to nearby areas inside and outside the County.]
- **[F6 Design of Public Facilities:** The Planning Board, with the aid of the Executive, must convene a “design summit” of public agencies involved in the design and development of public facilities and the review of private land development to develop a consensus and commitment to design excellence as a core value in all public and private projects and focus on how to improve design of public facilities and private development through various means, including better coordination among agencies.]
- **[F7 Transportation-Housing Affordability Index:** The Planning Board must conduct the necessary research and analysis to develop a transportation-housing affordability index for the County. The Board must develop the index as part of its FY08 work on a *Housing Policy Element of the General Plan* unless it concludes that the index is better developed as part of *F9 Sustainable Quality of Life Indicators*.]
- **[F8 Public agency signoff:** The Planning Board, after consulting Executive staff, must evaluate and submit a recommendation to the Council for any necessary changes to current law or policy regarding the point or points in the development process when an agreement between an applicant and a public agency is required for an additional facility or program which would be a condition of development approval.]

[For delivery to the Council on or before October 1, 2008:]

- **[F9 Impact Tax Issues:** The County Executive, with the aid of the Planning Board and the Board of Education, must 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 Executive and the interagency working group must review credits granted under the impact tax and develop recommendations to retain, modify, or repeal the law’s credit provisions.]
- **[F10 Sustainability Quality of Life Indicators Program:** The Planning Board, with the aid of the Executive and with broad public participation, must develop a set of sustainable quality of life indicators, addressing issues of environment, social equity, and economy. These indicators must

be suitable to guide land use and other public policy decision-making, including capital programming and design of public facilities. An initial set of tracking indicators must be prepared in time to inform the 2009-2011 Growth Policy review.]

[To be included in the 2009-2011 Growth Policy:]

- **[F11] F1 Biennial Growth Policy Report:** In accordance with County Code §33A-15, the Planning Board must submit its recommended Growth Policy to the County Council by [June 1] August 1 of each odd-numbered year. Beginning in 2009, this biennial growth policy must include: an analysis of current and future pace and pattern of growth in the County and the factors affecting demand for public facilities in established communities; an update on the County's success in meeting a set of indicators as developed under F10; an implementation status report for each master plan and sector plan, including a review of how planned development is proceeding and whether the public actions/facilities in the plan are occurring in a timely way; the contents of the biennial Highway Mobility Report; and a comprehensive list of priority facilities that are recommended for addition to the Capital Improvements Program. The report may also recommend other public actions needed to achieve master plan objectives or improve the County's performance on its adopted indicators. The Board must also include recommendations for changing policy area boundaries to be consistent with adopted master plans or sector plans or changes to municipal boundaries.
- **[F12 Special Studies:** The Planning Board must prepare the following studies to be included in the 2009-2011 Growth Policy:]
  - **[F12a:** With the aid of the Executive, a comprehensive parking management study, which must include recommendations to improve the use of parking as a travel demand management tool, particularly in Metro station policy areas.]
  - **[F12b:** With the aid of the Executive, a study of options to revise the local area transportation tests, including using proximity to various levels of transit service and pedestrian connectivity as a basis for mitigation requirements; developing a multi-modal quality of service requirement to provide a more seamless integration of pedestrian, bicycle, transit, and auto modes; considering feasible revisions of or alternatives to the Critical Lane Volume method to measure intersection congestion; the duration of Transportation Mitigation Agreements; and identifying more pedestrian and transit-oriented urban areas, in addition to Metro Station Policy Areas, which may be eligible for different standards. The Planning Board must convene a technical working group, consisting of staff from the Planning Commission, the Department of Public Works and Transportation, the State Highway Administration, transportation consultants, and interest groups such as the Action Committee for Transit and Coalition for Smart Growth, to work with an independent consultant to consider and test various proposals and practices in other jurisdictions and recommend appropriate changes in approaches, standards, and measures used in the Growth Policy.]
  - **[F12c:** A study of options to increase efficiency in allocating development capacity, including trading capacity among private developers.]
  - **[F12d:** A study of the County's job-housing balance, including implications for housing affordability and traffic congestion.]

- **F2 Compact Subdivision Development:** To further the development of sustainable communities, Planning staff must develop incentives for compact subdivision development through the Growth Policy, master plans, and zoning.
- **F3 Investigation into the Use of LEED:** Planning staff must study emerging changes to the LEED for Neighborhoods, and LEED for New Construction or Major Renovation classification systems to determine those which can further encourage smart growth and may influence recommendations in the next Growth Policy.
- **F4 Investigation into the Use of Carbon Offsets:** Planning staff must look into the potential of carbon offsets for mitigating automobile trips. For example, a green roof reduces a building's carbon emissions by a specific factor that on an annual basis could be compared to vehicle emissions. In this way, green building features could be provided as a direct offset for the vehicle emissions generated by a development, rather than a mitigation solution of an intersection.
- **F5 Dedicated Transit Revenue:** Executive branch staff should report on the potential to create area specific funds where PAMR mitigation fees are used to help finance transit improvements in that district to meet needs created by redevelopment.
- **F6 Land Use Impact on VMT:** Planning staff should work with Executive branch staff to evaluate whether the impact of VMTs vary for specific land uses by their location. For example, does a fast food restaurant in a Metro Station Policy Area generate fewer VMT than the same use in a suburban location? How should that impact be weighted in the Growth Policy?
- **F7 Retail Impacts on VMT:** Planning staff should investigate the impact of chain retailers compared to local retail outlets on VMT and parking demand to evaluate how they affect vehicle generation rates, consider the feasibility of setting impact tax and mitigation requirements at different rates for different types of retail outlets, and assess whether, in combination with emerging zoning policy, different rates would encourage small business growth.
- **F8 Impact Tax Issues:** Executive branch staff should complete the impact tax study begun under recommendation F9 of the 2007-2009 Growth Policy. Emerging mixed-use zoning for pending master plans has raised the issue of linkage fees on non-residential uses to be used for additional affordable housing. The Executive should engage an economic consultant to evaluate the impact of linkage fees on the County office and retail market, and should recommend if the 2011-2013 Growth Policy should advance this concept.
- **F9 Highway Mobility Report:** Planning staff should complete the scheduled revision to the Highway Mobility Report in 2011 with data collection resources incorporated in the Department budget, after coordinating with Executive branch staff on methods to improve data collection and reporting techniques that better address daily variability in traveler behavior. The 2011 report must continue to examine transit and pedestrian system performance as well as highway mobility.
- **F10 Fiscally Sustainable Development:** New development generates additional revenue annually from ad valorem taxes and taxes on revenue generated by building tenants. The County

Resolution No.:

Executive should recommend whether development impact taxes should be reduced if tax revenue generated by new development over the life-cycle of a project may exceed the cost of County services provided to that development.

- **F11 Options to LATR:** Planning staff should, with the aid of Executive branch staff, study options to revise the LATR test, including using proximity to various levels of transit service and pedestrian connectivity as a basis for mitigation requirements; developing a multi-modal quality of service requirement to provide a more seamless integration of pedestrian, bicycle, transit, and auto modes; and considering feasible revisions of or alternatives to the Critical Lane Volume method to measure intersection performance.

This is a correct copy of Council action.

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

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**TABLE 1****Local Area Transportation Review Intersection Congestion Standards**

1350	Rural East	Rural West	
1400	Damascus		
1425	Clarksburg Germantown East Montgomery Village/ Airpark	Gaithersburg City Germantown West	
1450	Cloverly Olney R & D Village	North Potomac Potomac	
1475	Aspen Hill Fairland/White Oak	Derwood	
1500	Rockville City		
1550	North Bethesda		
1600	Bethesda/Chevy Chase Kensington/Wheaton	Germantown Town Center Silver Spring/Takoma Park	Life Sciences Center
1800	Bethesda CBD Glenmont Rockville Town Center Silver Spring CBD Wheaton CBD	Friendship Heights CBD Grosvenor Shady Grove Twinbrook White Flint	



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.

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  
Page 7 of 7

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

**Attachment To County Executive Comments on the Draft 2009 Growth Policy  
Suggested Revisions to County Code - Chapter 52  
Impact Tax Issues**

Executive staff in cooperation with Planning Board staff have looked at several areas that we believe would benefit from clarification in the law. Actual experience with Impact Tax credit requests from applicants over the last several years revealed that current language is vague or too open to multiple interpretations in various areas. Requests for credits are evaluated based on the merits of the requests in a consistent and fair manner with the goal of ensuring that decisions on credits will not result in setting an unacceptable precedent. The following proposed changes will limit varying interpretations of the Code, reduce vagueness, ensure consistency and fund stability.

**1. Revise Section 52-55 to clarify that refunds for credits will not be issued and to ensure consistency among sub-sections.**

Section 52-54 is the Refund Section of the Code with respect to Impact Tax and Section 52-55 is the Credit Section. A credit can be given based on either Section 52-55(a) or 52-55(b) and a refund can only be granted based on the criteria established in Section 52-54.

Section 52-55(a) states that...“The Department must not give a refund for a credit earned under this subsection”. However, Section 52-55(b) is silent on this issue. This can result in confusion and has resulted in applicant’s interpreting the Code that they are eligible for a refund for a credit under other subsections. The Code currently provides an appropriate mechanism to handle errors and revisions, and contains guidance as to refunds for tax paid. However, under no condition should a refund be allowed for any credit, as credits only have monetary value when issued in lieu of paying the impact tax. The Code should clearly state that under no condition should a refund be allowed for any credit applied for under Section 52-55(a) or 52-55(b).

Language should also be added to clarify that there is no mechanism for a refund if the impact tax has been paid prior to having a credit certified, except under Section 52-54. The credit must be certified prior to the tax being paid.

**2. Amend Section 52-55(b) to require that surety be provided at 100% of the estimated cost of an improvement at the time of the first building permit application.**

The amount of a credit is determined by the actual cost of an eligible transportation improvement or the estimated cost of that improvement. Actual costs are supported by documentation of those costs (vouchers, invoices). The Code recognizes that a credit may need to be certified prior to the actual construction of an improvement and provides for cost estimates to be used to determine the amount of the credit.

Credits are certified and issued when a property owner agrees to implement an eligible improvement. Once issued the credit is used in lieu of paying the impact tax and at that point has a monetary value (in the amount of the tax that has been assessed). Once the tax has been collected or the credit issued in lieu of paying the tax, the associated building permits are released. At this point, the property owner has the permits and the County has the expectation that the improvements for which the credit was certified will be implemented. However, there is currently little recourse for the county to take if the transportation improvements are not constructed or implemented. To remedy this situation, language should be added to the law to require some form of surety in the amount of the credit. A security instrument provides a means by which the County can implement an improvement for which a credit has been issued if the property owner who has received the credit fails to construct the improvement on which the credit has been based. This instrument would allow the County to use the bond to construct an improvement if necessary. To this end, it is recommended that language be added to provide the authority for the County to require a surety for all improvements for which a credit is requested based on a cost estimate.

- 3. Add language to Section 52-55 that provides the authority for the County to revoke a credit if the property owner defaults on an agreement to implement improvements for which the credit was certified.**

There currently is no mechanism to revoke credits issued. This is problematic when it is clear that an improvement for which a credit was issued will not be built by the entity to which it was issued. A default should be specific to situations where the required improvement is not built, and should not apply to minor mistakes.

- 4. Amend Section 52-55(b) to require that once an improvement has been implemented the property owner who has previously had a credit certified based on an estimate must submit the actual costs to DOT for review and reconciliation.**

The Impact Tax Credit Agreement (that must be executed prior to a credit being certified) includes language specifically related to the applicant who receives a credit based on estimated costs. The agreement states that once the actual cost of the improvement for which a credit is certified becomes available those costs should be submitted to DOT for their review. DOT will then determine how consistent the estimates were with the actual costs.

In cases where the actual costs are greater than the estimates, the credit can be revised to include the full cost of the improvement. However, in cases where the actual costs are lower than the amount certified based on an estimate, any unissued credit will be reduced by the difference between the estimate and the actual costs in order to balance the two or an additional tax (in the amount of the difference between what was originally paid and what should have been paid based on the actual costs) will be required to be paid. In any case, language is needed in the law to provide a mechanism by which the credit (based on an estimated cost) is reconciled with the actual cost of the improvement.

**5. Add clarifying language to Section 52-55(b) that requires a specific improvement to be identified and that it must be fully funded.**

Section 52-55(b) states that a credit must be given for constructing or contributing to an improvement of the type listed in Section 52-58 if the improvement reduces traffic demand or provides additional transportation capacity. Applicants have applied for credits based on a contribution to an improvement fund, for which a specific capacity adding improvement has not been identified and/or is not fully funded. This occurs most frequently within the municipalities. The law should clearly state that only a contribution to a fully funded specific project that provides additional transportation capacity is eligible for a credit. Credits should not be certified in cases where a contribution is made into an account from which projects can be programmed in the future if there is no clear definition of the project for which the credit is to be certified. Road clubs are in fact eligible for credits provided that the credit applied for is for a specific eligible project. Credits will only be certified for contributions to real projects (that are clearly defined with specific limits) that are fully funded in the Capital Program of the municipality or County.

**6. Modify Section 52-55(a) to state that a credit issued is only valid for a period of six years.**

As of March 1, 2004, credits certified under Section 52-55(b) have a six year life from the date of certification. Credits certified under Section 52-55(a) were grandfathered in under the earlier version of the law and did not have an expiration date for a credit. Many of these are for older credits for which there is no opportunity for the credits to be issued in lieu of tax paid. Yet, these credits must remain on the books and must be considered when calculating potential impact tax revenue even though they will never be used. The intent of the proposed amendment is to create consistency by assuring that all credits have the same life span. The nexus for the 6 year life of credits is the 6 year period of the CIP and Maryland Consolidated Transportation Program (CTP). While language should be added to provide a six year life for all credits regardless of which subsection they were certified under, a provision for an extension of that life should be provided in the event that the County is the cause of a delay that results in permits not being able to be pulled. An example of this situation would be the recent moratorium in Clarksburg.

**7. Add language to Section 52-55(b) that clarifies which costs are to be considered in determining the amount of a credit.**

The Executive Regulation for the Development Impact Tax for Transportation specifies those costs that are eligible to be considered in determining the amount of a credit. Soft costs, such as attorney fees, and right-of-way costs are precluded from consideration when calculating the amount of a credit. While this language is in the regulation, the code should state that the cost of land (right-of-way or easements) that has been purchased or dedicated to the County for the implementation of a transportation improvement is not eligible for a credit unless it

can clearly be demonstrated that there has been a loss of benefit (density) from the loss of that land, or that it was an off-site land acquisitions necessary to construct the improvement.

8. **Add language to Section 52-55 that limits the use of credits outside of the property in which it was certified and requires credits certified within a municipality to be used within that municipality.**

Earlier versions of Chapter 52 included language that limited the use of a credit by others. At one time, there was language that required 30% of the ownership of a property must be under the same ownership as that for which a credit was certified in order for that credit (or the remaining credit) to be used for another property. There have also been requirements that the property be in the same location in order for it to use a credit certified for another property. This language is no longer in the law and the code is now silent on this. Credits should not become a commodity that can be bought and sold but the code as it is now written leaves the door open on the use of these credits. Language should be added to state that credits will only be certified to the entity that would be responsible for paying the impact tax and should address other issues such as who is authorized to use the credit, whether there needs to be a business relationship between the parties and where the credits can be applied.

Credits certified within the municipalities should only be used (or issued) within the municipality. If credits certified within a municipality are allowed to be used outside of the municipality the potential impact tax revenue collected within the General (county) District could be diminished in that the credit would be reflected in the tax not paid into that district. Therefore, language should be added to Chapter 52 that states that a credit certified within one of the municipalities can only be used within that municipality.

9. **Add definitions to Section 52-47 for “New Capacity”, “Sidewalk Connectors”, “Major Activity Centers”, and Operating Expenses”.**

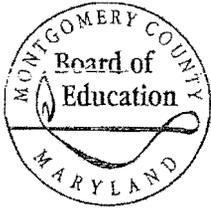
Section 52-58 lists eight items that impact tax funds can be used for and Section 52-55(b) references this list and states that a “property owner must receive a credit for constructing or contributing to an improvement of the type listed in 52-58...”. In determining eligibility for a credit, DOT must interpret the intent of the language provided in the law and specifically in Section 52-58. Experience has identified which language is frequently subject to discussion and/or debate. To clarify the intent of the law and reduce the debate over that intent, definitions for several of these terms need to be added to Section 52-47, the “Definition” section of Chapter 52. Given that each is a fundamental concept of the law and the basis on which credits are issued, definitions are needed in the Code to eliminate any ambiguity as to the intent of the law.

The terms that require definition and/or clarification are “transportation capacity”, “sidewalk connectors”, “major activity centers” and “operating expenses”. In terms of an improvement that “adds transportation capacity,” it needs to be clear that this new capacity is the result of a

physical improvement to the overall arterial transportation network. The law also references "highway capacity" which speaks to the arterial network. Requests for a credit are often made for roads that are local or internal to the development. These roads do not reduce congestion or provide capacity to the area-wide arterial network and therefore should not be eligible for a credit.

Section 52-58(g) states that impact tax funds may be used for any "sidewalk connectors" to a "major activity center" along an arterial or major highway. In that impact tax funds may be used to fund these sidewalk connectors they would also be eligible for impact tax credit in accordance with Section 52-55(b). DOT must determine what a sidewalk connector is and whether it serves a major activity center in order to determine whether it is an eligible project for an impact tax credit. Definitions for "sidewalk connectors" and "major activity centers" will provide clarity as to the intent of the law.

Section 52-58(h) allows for the inclusion of operating expenses associated with a transit or trip reduction program to be eligible for a credit. The issue as to what these operating expenses are often becomes the subject of debate. Again, a definition or examples of the types of operating expenses that is eligible for a credit is needed in the law to reduce the confusion and debate.



# 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

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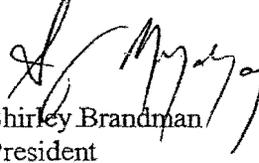
Dear Mr. Andrews:

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

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COUNCIL

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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-