

**MEMORANDUM**

October 31, 2016

TO: County Council

FROM: Glenn Orlin, Deputy Council Administrator  
Robert Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession 2**—resolution to adopt the 2016-2020 Subdivision Staging Policy (SSP);  
Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School  
Improvement – Amendments;  
Resolution to establish Development Impact Tax rates for transportation and public  
school improvements

**Please bring the SSP Report and Appendix to this worksession.**

**I. SSP TRANSPORTATION TEST**

*1. Background.* The SSP (and its predecessor, the Annual Growth Policy, or AGP) has included a transportation school test since the Council first established the AGP in 1986.<sup>1</sup> In the beginning, and during most of the years since, there has been both a policy area review test that examined whether transportation was adequate, on average, over the entire policy area, and a local area test, which examined the congestion level at intersections proximate to the development being tested. The tests have always measured adequacy at a point in the future, when it was believed that an approved subdivision would materialize into actual housing units and buildings generating traffic. Congestion standards were changed one way or another almost every time the Council updated the Growth Policy. From the 1980s until the early part of this century, if a development “failed” either the Policy Area Transportation Review (PATR) or Local Area Transportation Review (LATR), it was usually up to the developer to build capacity or reduce demand, by building or widening roads, adding turn lanes at intersections, running bus shuttles, etc., so that the future congestion level would be no worse with the development than if the development never happened.

As time went on, developers found it increasingly difficult to borrow large amounts of funds from banks and other lending institutions to build projects or fund traffic mitigation programs. In the late 1990s the Council experimented with a “pay-and-go” regime, under which developers would pay to

<sup>1</sup> Prior to the AGP the Planning Board, since the late 1970s, had administered a transportation test for subdivisions under its Comprehensive Planning Policies Report (CPPR).

the County a pre-set fee per trip to pass the transportation test, and the County would use the funds for transportation capacity improvements in the vicinity of the paying development. This was phased out a couple of years later. In 2004 the Council eliminated PATR entirely, opting instead to tighten LATR considerably. In 2007 the incoming Council reintroduced a form of policy area review called Policy Area Mobility Review (PAMR) that measured policy-wide mobility: evaluating both traffic congestion and the quality of transit service. If a development failed the test, it could proceed by paying a fee based on the number of peak period trips the development would generate.

In the 2012-2016 Subdivision Staging Policy the Council replaced PAMR with yet another policy area test called Transportation Policy Area Review (TPAR), which expanded the time-horizon of “countable” projects to those programmed for completion within 10 years. TPAR has a road component and a transit component. The road component calculates the future average congestion in the peak direction during peak periods on major roads in a policy area and compares that average to a standard specific to that policy area.<sup>2</sup> If the average road congestion forecasts to fail the standard, then a development can proceed only by paying an additional traffic mitigation fee equal to 25% of the applicable transportation impact tax. The transit component assesses whether a policy area has sufficient local bus service—in terms of coverage, frequency, and span (the hours of bus service during a normal weekday)—measured against policy-specific standards for coverage, frequency, and span. If local bus service cannot meet the standards, then, again, a development can proceed only by paying an additional traffic mitigation fee equal to 25% of the applicable transportation impact tax. If a policy area fails both the road and transit components, then a 50% surcharge is required.

Note that under both PAMR and TPAR, the Council has moved away from the original PATR model that if a subdivision did not meet the standard the developer would build transportation capacity or conduct transportation demand management to mitigate the effect of a subdivision. Over the past decade the policy area test has morphed entirely into a pay-and-go regime.

**2. Policy Area Transportation Review.** The Planning Board recommends overhauling both the policy area and local area reviews. For policy area review, the Board would introduce a new geographic grouping of policy areas: “Red” policy areas are Metro Station Policy Areas (MSPAs); “Orange” policy areas are corridor cities (but not MSPAs), town centers, and emerging transit-oriented development areas where transitways (Purple Line, BRT lines) are planned; “Yellow” policy areas are lower density residential neighborhoods with community-serving commercial areas; and “Green” policy areas are the Agricultural Reserve and other rural areas. Although Germantown East and Germantown West to its south would be Yellow areas, the Board recommends that the Clarksburg Policy Area be an Orange area in recognition of the original master-planned vision for the area and the high quality service to be provided ultimately by the Corridor Cities Transitway (CCT). Furthermore, the Board recommends new, small policy areas around the future Purple Line stations at Lyttonsville, Long Branch, and Takoma/Langley Crossroads; all would be in the Orange group, the same as the Silver Spring/Takoma Policy Area that surrounds them. A map displaying the policy areas by group is on p. 20 of the SSP Report.

The Board proposes measuring adequacy based on transit accessibility: how many jobs are within a certain commuting time of housing in each policy area. The Board has estimated/forecasted the number of jobs within an hour’s commute by transit in Years 2015, 2025 (10 years out) and 2040 (25 years out). The 2025 findings are based on the land use forecast for 2025 and the transportation projects

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<sup>2</sup> PATR and PAMR had calculated the average congestion in *both* directions on major roads in a policy area.

programmed to be built within 10 years (similar to the practice for the current TPAR test). The 2040 findings are based on the land use forecast for 2040 and the transportation projects included in the Constrained Long Range Plan (CLRP) of the National Capital Region Transportation Planning Board (TPB), except that the entire master-planned BRT system is also assumed.

Using these calculations, the Board then compares how much transit accessibility is forecast to improve between 2015 and 2025 compared to the anticipated improvement between 2015 and 2040. If the improvement in transit accessibility is at least 40% by 2025—Year 2025 being 40% of the way to 2040—then transit accessibility will be on pace for that policy area, and so the new policy area will have “passed.” If the 2025 improvement in transit accessibility is less than 40% but at least 30%, then a development would make a partial mitigation payment equal to 15% of the applicable transportation impact tax. If the 2025 improvement in transit accessibility is less than 30%, then a development would make a full mitigation payment equal to 25% of the applicable transportation impact tax. The test would not apply to policy areas where the forecasted increase in jobs within an hour’s transit ride from housing would increase by less than 60,000. A more detailed description of this concept is on ©1-2. The table on ©3 shows which policy areas would require no mitigation payment, the partial mitigation payment, or the full mitigation payment.<sup>3</sup>

The Board recommends applying the transit accessibility test solely to the Orange and Yellow areas. The Board believes there is no need to apply the transit accessibility test to the Red areas (the MSPAs) since they already have high transit accessibility, by definition. Nor would they apply it to the Green areas, because attaining adequate transit accessibility in rural areas is neither likely nor desired. The Board, however, recommends retaining TPAR to test master-plan transportation adequacy.

Given that the short time before the November 15 legislative deadline to approve a new SSP, the Council has really only three realistic options:

1. approve the transit accessibility test, with any revisions it may wish to make to the Board’s proposal;
2. eliminate the policy area test entirely (as was the case in 2004-2007), perhaps replacing it with a higher transportation impact tax, similar to Council President Floreen’s proposal for the School Test; or
3. retain TPAR for now, but provide the Planning Board with concrete direction in developing an alternative, and a timetable for bringing the alternative back in an SSP amendment.

*Option #1: Transit accessibility.* An advantage of using transit accessibility as a measure is that development could proceed not just by adding a new transit line or more frequent bus service, but by allowing more density—particularly mixed-use development—at existing or programmed transit nodes. Even a new road, a road widening, or an intersection improvement can improve transit accessibility, since buses would be running in less congested conditions. ***If the Council were to go with this option, several revisions should be made to the Planning Board’s approach:***

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<sup>3</sup> Planning staff reports an error on p. 23 of the SSP Report. Silver Spring/Takoma is described as being inadequate to the point of requiring a full mitigation payment. However, it would in actuality be adequate, so currently there would be no mitigation payment.

- a. ***Carve out a new Clarksburg Town Center Policy Area from the existing Clarksburg Policy Area, and place it in the Orange group; place the new Clarksburg Policy Area (minus its town center) in the Yellow group. The boundary for the Clarksburg Town Center Policy Area should be the same as its Road Code Urban Area.*** This had been the Planning staff's proposal. It is difficult to conceive of most of Clarksburg as having the transit accessibility that, say, the North Bethesda Policy Area has. By designating Clarksburg as Yellow with an Orange core, it would be comparable to how Germantown is treated in the SSP.
- b. ***The 2040 CLRP+BRT network should only include those BRT lines most likely to be built in the next 25 years, namely: the Corridor Cities Transitway, US 29, MD 355, Veirs Mill Road, New Hampshire Avenue, and the North Bethesda Transitway.*** It is not likely that the full BRT network will be built out by 2040, so the other master-planned BRT routes (University Boulevard, Georgia Avenue North and South, and Randolph Road) should not be assumed in the calculations of transit accessibility. The table on ©4 shows which policy areas would require no mitigation payment, the partial mitigation payment, or the full mitigation payment.
- c. ***Set the partial mitigation payment at 25% (instead of 15%) of the applicable impact tax and the full mitigation payment at 50% (instead of 30%).*** This would make the mitigation payments comparable to what they are now under the TPAR test, where failing either the transit or road test results in a 25% surcharge, and failing both results in a 50% surcharge.
- d. ***Apply the transit accessibility test to the "Red" group, too.*** The Planning Board stipulates that MSPAs, by definition, have good transit accessibility. But if they do, why not prove it using the same metric by which the Orange and Yellow areas are gauged? In fact, ©4 shows that the Wheaton CBD Policy Area will only have improved its transit accessibility by 37% by 2025, which means that it should be subject to partial mitigation payment. As it happens, however, Wheaton CBD is an active enterprise zone, so it is currently exempt from traffic mitigation payments anyway.<sup>4</sup> That does not mean Wheaton CBD, or some other "Red" area, may not fall below the threshold at some point in the future.
- e. ***Update the findings every 4 years, as part of each regular update of the SSP.*** In the next SSP the comparison would be using the transit accessibility estimates for 2020, 2030 (10 years from 2020), and 2045 (25 years from 2020). All these data sets should be available, including the 2045 CLRP.

**PHED Committee recommendation (3-0): Do not adopt the transit accessibility test. Carve out a new Clarksburg Town Center Policy Area from the existing Clarksburg Policy Area, and place it in the Orange group; place the new Clarksburg Policy Area (minus its town center) in the Yellow group. The boundary for the Clarksburg Town Center Policy Area should be the same as its Road Code Urban Area (see map on ©5).**

*Option #2: Retain TPAR for now, but come back with a series of measures by next spring and summer that would replace TPAR with a robust traffic mitigation program.* For more than a year the Transportation Demand Management (TDM) Work Group, headed by DOT but with representation from DPS, Planning, and Council staffs, have developed a detailed outline of a more comprehensive and

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<sup>4</sup> There are 4 other MSPAs currently exempt: Silver Spring CBD is a former enterprise zone; Glenmont, like Wheaton CBD, is an active enterprise zone; White Flint has a special taxing district for transportation; and the County's SSP does not apply in Rockville's Town Center. So, currently, the transportation mitigation payments can be levied only in 5 MSPAs: Friendship Heights, Bethesda, Grosvenor, Twinbrook, and Shady Grove.

consistently-applied approach for traffic mitigation agreements. The Work Group necessarily delved into other areas of TDM as well.

A summary of the Work Group's findings and recommendations are on ©6-17. The key recommendations are to:

- require varying levels of TDM to all areas of the County except rural (Green) areas;
- establish a tiered system for applying TDM that responds to the variety and quality of local mobility options;
- apply TDM efforts to commercial and moderate-to-high density residential developments;
- establish non-auto-driver mode share (NADMS) goals where they do not currently exist in the Red, Orange, and Yellow areas;
- develop and adopt a TDM menu of required tools and strategies; and
- improve monitoring and reporting, and to strengthen enforcement mechanisms.

Implementing the Work Group's recommendations—many of which are yet to be fleshed out—likely will require legislation, budget actions, and SSP amendments. The Work Group met with several stakeholders from the development industry on October 5; a summary of their reaction is on ©18-19.

There is clearly much work left to do, but Council staff nevertheless is confident that, with the present momentum for change in this arena—and the budget to support it—much of this new approach could be initiated during FY18.

**The PHED Committee was supportive of this general approach, and urges DOT and the Planning Board to develop the requisite legislation, budget requests, and SSP amendments over the next several months in time for transmittal to the Council for deliberation and action next spring and summer.**

*Option #3: eliminate the policy area review test.* On October 13 the Council President circulated her proposal to eliminate policy area review and to replace it with a higher impact tax (©20-22). On October 17 Councilmember Elrich recommended several changes to the SSP and Bill 37-16 (©23-26), one of which is to continue TPAR until it can be replaced with a version that would incorporate measures of passenger load, reliability, and travel time along with the existing measures of coverage, frequency, and span of service (see especially Recommendation #2 on ©24-25).

**PHED Committee recommendation (3-0): Delete transportation policy area review in general, and TPAR in particular.**

As noted above, the proposed policy area review, like PAMR and TPAR before it, is a pay-and-go approach: if the accessibility standard is not met the development can still proceed with a mitigation payment. The payments under PAMR and TPAR over the past decade—as with the school facility payment—have been quite small. Over the past 6 years, the County has collected about \$1.46 million in transportation mitigation payments, or about 2% of what the County collected in transportation impact tax revenue during the same period. However, it was also noted that the amount of mitigation payment revenue would likely be larger in the future, since many subdivisions having been approved with the condition of making this payment have not yet reached the point of payment: 6 months after building

permit issuance for residential development or 12 months after permit issuance for non-residential development.

To gain an understanding of future mitigation revenue should TPAR continue, Planning staff conducted an analysis, which is on ©27. MSPAs are effectively exempt from the TPAR test, so they generate no mitigation payment revenue. Of the many non-MSPA policy areas, most fail either the transit adequacy or roadway adequacy tests, but not both: so to proceed, developments there must make a mitigation payment equal to 25% of the applicable transportation impact tax. Three policy areas fail both tests, so they must pay an amount equal to 50% of the applicable, and three others pass both tests, so no TPAR payment is required. Therefore, on average, developments in non-MSPAs pay an amount equal to 25% of the impact tax.

The housing and employment growth projections between 2015 and 2020 show that 44% of the housing growth and 65% of the jobs growth will be in the non-MSPA policy areas, that is, where the TPAR test applies. Thus, Planning staff estimates that, if TPAR were to continue as it is now, mitigation payment revenue from housing would equal about 11% ( $0.25 \times 0.44$ ) of the impact tax, and such revenue from employment would equal about 16% ( $0.25 \times 0.65$ ) of the impact tax.

Therefore, in order not to reduce revenue below what would otherwise be collected, there are two options: after determining what the base impact tax rate schedule would be assuming continuation of mitigation payments, either (1) increase the rates only in the non-MSPAs, by 25%, or (2) raise the rates in all policy areas by a figure between 11% and 16%, say 14%.

***To replace the foregone revenue from discontinuing TPAR payments, Council staff recommends raising the rates in all policy areas by 14%.*** This is consistent with Council staff's earlier recommendation to equalize impact tax rates across all areas of the County, just as the school impact tax is levied. A 14% increase would roughly cover the loss of TPAR mitigation revenue.

Since the GO Committee is the lead on Bill 37-16, the PHED Committee attempted to make a recommendation to the GO Committee on this matter. However, the PHED Committee was split: Councilmember Riemer recommended raising the rates only in the non-MSPAs, by 25%; Councilmember Leventhal recommended raising the rates in all policy areas by 14%; and Councilmember Floreen recommended raising the rates in all policy areas by 11%. The GO Committee's recommendation is discussed later in this packet as part of the review of the transportation impact tax rates in Bill 37-16.

***3. Local Area Transportation Review.*** The Planning Board initially recommended that LATR no longer be required in the Red areas (MSPAs). The Board noted that the combination of the current, congestion-tolerant standard of 1,800 Critical Lane Volume, or CLV (actually 1.13 volume-to-capacity ratio using the Highway Capacity manual test), and the presence of a fine grid of streets within most MSPAs that distribute the traffic, has had the result that very few traffic studies for MSPA developments have shown a "failure" that needed to be addressed. The Board also wanted to streamline the approval process for developments near Metro stations as they are most desirable in terms of transportation efficiency. Instead, the Board suggested a Comprehensive LATR be conducted biennially to identify trouble spots where the County should invest in improvements.

Opinion is divided on this. The business community generally supports the Planning Board’s recommendations, but Councilmember Elrich (©23-24), civic groups and many individuals oppose dropping the LATR requirement for the Red areas. DOT had also expressed concern about this. Planning staff notes that very few traffic studies in MSPAs have resulted in findings that required intersection improvements or some other type of mitigation, and the concern is these studies incur considerable cost and review time. A consistent argument is that even if an intersection improvement were warranted, the resulting impact on pedestrian and bike accommodation might be severe: in other words, the cure is worse than the cause.

On this last point, it must be noted that most of the congestion generated by MSPA development is usually not at intersections within the MSPA where there is a grid of streets, but at the fewer “gateway” intersections to the MSPAs, through which the traffic is funneled. Five of the 10 most congested intersections in the county, according to the Planning Board’s most recent Highway Mobility Report, are “gateway” intersections:

- #1 - Rockville Pike at West Cedar Lane (gateway to Bethesda CBD)
- #5 - Shady Grove Rd at Choke Cherry Lane (gateway to Shady Grove)
- #6 - Connecticut Avenue at East West Highway (gateway to Bethesda CBD)
- #7 - Georgia Avenue at 16th Street (gateway to Silver Spring CBD)
- #10 - Rockville Pike at First Street/Wootton Parkway (gateway to Rockville Town Center)

Some of these intersections have improvements that are either under construction or master-planned; all of them could add turning lanes without deteriorating an urban, walkable environment. Only one intersection in the “Top 10” is within an MSPA: Rockville Pike and Nicholson Lane (White Flint), where there is no LATR test.

Planning Chair Anderson and DOT Director Roshdieh have ironed some differences between their departments relative positions on some issues (©28-29). DOT and Planning staff have recently agreed to using 750,000sf as the threshold for whether an LATR study would be required in a Red policy area. However, a large proposed MSPA development near its edge likely would have a greater impact: being further from the Metro station means it likely would have a lower NADMS, and it would be physically closer to a gateway intersection so more likely to pass trips through it.

***Council staff recommendation: For the time being, continue to require the LATR test for MSPA developments, but only where the scope of the traffic study would carry out to gateway intersections.*** For several years the SSP has directed that each traffic study must examine, at a minimum, the number of signalized intersections in the following table:

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

If a proposed development is large enough to warrant studying a large enough radius of signalized intersections to reach a gateway intersection, then a traffic study for that intersection—and its mitigation to meet the applicable LATR standard—should be required.

**PHED Committee recommendation (3-0): Use 750,000sf as the threshold for whether an LATR study would be required in a Red policy area.**

However, in the SSP resolution the Council should also direct the Planning Board to develop, in concert with DOT, a comprehensive LATR for each County MSPA, leading to proportional cost-sharing of local area transportation improvements. This model, approved in an earlier SSP amendment for the White Oak Policy Area, would identify all “local” transportation capital improvements that contribute to transportation capacity—such as new streets, intersection improvements, filling gaps in the local sidewalk and bikeway network, bikesharing stations, additional Ride On buses for local transit service, etc.—and divide their cumulative cost across the master-planned development yet to be built. Thus a per-trip fee would be calculated, which, if approved by the Council after a public hearing, would be required of any new development in lieu of the standard LATR test.

In the next few weeks the Executive Branch is anticipated to transmit its study on White Oak and the Executive’s recommended per-trip fee. In the meantime DOT has produced a memorandum describing how the White Oak model could be applied to MSPAs (©30-33). A subsequent paper describes how such Unified Mobility Programs (UMPs) would ultimately replace the LATR test, first in White Oak and the MSPAs, and ultimately to other Orange and Yellow policy areas (©34-35). As with the TDM concept described earlier, this concept will also need more fleshing out and revisions<sup>5</sup>, and both DOT and Planning staff support developing a work program to do exactly that. This approach would produce an equitable means to generate the revenue for these improvements, which would be programmed by the Council as the need for them becomes evident. DOT estimates that concurrent studies were undertaken for all 8 MSPAs<sup>6</sup>, the White Oak model could be in place in 9-18 months, or in about 3 years if two or three MSPAs were undertaken at a time (©36).

**PHED Committee (and Council staff) recommendation (3-0): Develop Unified Mobility Programs for the MSPAs in the next few years—followed, in other Orange and Yellow policy areas in the longer run—to replace the current and interim LATR tests.**

When the Planning Board transmitted its Draft 2016-2020 SSP in August, it inadvertently left out the text of the 2015 White Oak SSP amendment (©37-38). If the Council is to transition to this model in MSPA’s and, perhaps, other policy areas in the next several years, this would be a good opportunity to generalize the White Oak text so that it could apply to any policy area where the Council may wish to use proportional cost-sharing.

**PHED Committee (and Council staff) recommendation (3-0): Include in the SSP the new section, below.** The text is parallel with the language already in the SSP regarding the White Oak

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<sup>5</sup> One revision is that the per-trip fee should be paid at the same time impact taxes are: not at building permit issuance, but 6 or 12 months later (depending on whether the development is residential or commercial) or at final inspection, whichever is earlier.

<sup>6</sup> Except White Flint and Rockville Town Center, as they are forever exempt from LATR.

proportional cost sharing model. By adopting this amendment the Council would not have to amend the SSP every time it wished to establish proportional cost-sharing in a policy area.

**TL5 Unified Mobility Programs**

- (a) **The Board may approve a subdivision in any policy area conditioned on the applicant paying a fee to the County commensurate with the applicant's proportion of the cost of a Unified Mobility Program, including the costs of design, land acquisition, construction, site improvements, and utility relocation. The proportion is based on a subdivision's share of net additional peak-hour vehicle trips generated by all master-planned development in the policy area.**
- (b) **The components of the Unified Mobility Program and the fee per peak-hour vehicle trip will be established by Council resolution, after a public hearing. The Council may amend the Program and the fee at any time, after a public hearing.**
- (c) **The fee must be paid at a time and manner consistent with Transportation Mitigation Payments as prescribed in Section 52-59(d) of the Montgomery County Code.**
- (d) **The Department of Finance must retain funds collected under this Section in an account to be appropriated for transportation improvements that result in added transportation capacity serving the policy area.**

*LATR standard in Clarksburg Town Center.* In the context of the Planning Board's consideration of the SSP earlier this year, Planning staff initially proposed a 1,500 Critical Lane Volume (CLV) standard for the Town Center to distinguish this area from its "parent" Clarksburg policy area in recognition of the vision of the creation of a compact, mixed-use, walkable town center that serves as the primary civic focus for the surrounding community that will eventually be enhanced by CCT service. This proposal became moot when the Board directed staff not to consider the Town Center as a separate entity relative to the remainder of Clarksburg.

Given Council staff's recommendation to carve out a new Clarksburg Town Center policy area from the existing Clarksburg policy area, and place it in the Orange group, Planning staff has reiterated its recommendation that a 1,500 CLV standard would be appropriate for this area. This proposal seems reasonable given that this standard is less than the 1,600 CLV standard adopted for the Germantown Town Center (served by the Germantown MARC rail station and express bus service to Shady Grove) and higher than the adopted 1,425 CLV standard for the "parent" Clarksburg policy area. **PHED Committee (and Council staff) recommendation (3-0): If a Clarksburg Town Center policy area is created, give it a standard of 1,500 CLV: 0.94 volume/capacity using the HCM method.**

*Traffic generation rates.* For many years the Planning staff has used some traffic generation rates that are based on county surveys for most major land use categories, and Institute of Transportation Engineers (ITE) rates when local data has not been collected. These rates have been applied countywide, however, even though actual trip generation often varies by how urban the setting is. The Planning Board intends to adjust ITE rates—which are the nationwide average for suburban environments—to reflect the transportation character of each policy area. For example, in Damascus the ITE rates would be utilized for all land uses, but in the Bethesda CBD the rates would vary from 61% of the ITE rate for retail to 79% for residential. Table 2 on p. 26 of the SSP Report shows the adjustment factors by policy area and land use category that the Board would include in the next edition of its LATR Guidelines.

*Threshold for a traffic study.* Currently the rule is that an LATR study is required if a proposed subdivision will generate 30 or more peak-hour vehicle trips. The Board proposes amending the threshold to 50 peak-hour *person* trips. **PHED Committee (and Council staff) recommendation (3-0): Concur with the Planning Board.**

*Type of intersection analysis.* Under Growth Policies prior to 2012, the County used the Critical Lane Volume (CLV) method of analyzing future conditions at an intersection. CLV has the advantage of being simple, transparent, and quick. However, the traffic engineering profession, over the past 20 years, has shifted steadily towards using more robust methods of estimating future delay, especially as operational analysis methods such as that described in the Transportation Research Board's Highway Capacity Manual (HCM) and even network operational models such as Synchro and Corsim have developed and became easier to use.

For more than a decade the LATR studies conducted by the Planning staff have not relied solely on CLV in all circumstances. For example, if in the reviewer's judgement congestion at a nearby intersection would likely influence the forecasted congestion at the intersection under study, then a network analysis was used. In 2012 the Council decided that any intersection forecast to have a CLV worse than 1,600 (the borderline between Level of Service E and F) would require a second-tier test incorporating the HCM method.<sup>7</sup> The Planning staff, in its draft of the 2016-2020 SSP, recommended a 3-tier test:

1. Tier 1: If an intersection is forecast to operate at 1,350 CLV (near the border between Levels of Service C and D) or better, no further analysis is required.
2. Tier 2: If the forecast is above 1,350 CLV, then require an operational analysis of the intersection using the HCM method. The intersection must operate better than the policy area's HCM standard for it to "pass" (for example, HCM=1.00 in Bethesda/Chevy Chase Policy Area).
3. Tier 3: Instead of the Tier 2 analysis, perform a modeling analysis of the network of intersections near the development if:
  - a. a future intersection projects to have a CLV greater than 1,600; or
  - b. a future intersection projects to have a CLV greater than 1,450, the development under study will add at least 10 CLV, and either:
    - i. the intersection is on a congested roadway with a travel time index greater than 2.0, or
    - ii. the intersection is within 600' of another traffic signal.

The Planning Board has recommended that the cut-off for the Tier 1 test be the applicable LATR standard for each policy area. For example, the cut-off would remain at 1,600 CLV for the downcounty policy areas, vary between 1,400 and 1,550 CLV for the upper- and mid-county policy areas, and 1,350 CLV for rural areas. The Board concurred with its staff on the Tier 2 and 3 tests.

Brian Krantz testified, with evidence of several national research efforts, that CLV is not a good predictor of delay. He recommends discontinuing the use of CLV altogether (©39-49), as does Councilmember Elrich (©25-26). The Council has received some other correspondence from individuals in support of his recommendation. Mr. Krantz also decries the current LATR study practice

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<sup>7</sup> The Council was divided on this point. A minority wanted the threshold to be 1,800 CLV.

of using very few, over even one, traffic count as the basis for measuring existing traffic at an intersection.

**PHED Committee (and Council staff) recommendation (2-1): Councilmembers Leventhal and Riemer recommend tightening the threshold for a higher tier test from 1,600 CLV to 1,350 CLV. Councilmember Floreen recommends retaining this threshold at 1,600 CLV.** It is difficult to imagine an intersection operating with a significant delay with a CLV of 1,350 or less, unless it is close to another, failing intersection; in such a case current practice allows the plan reviewer to require an operational analysis anyway. Retaining CLV (at 1,350) as a screening mechanism makes sense in order not to waste time and money evaluating an intersection that would not be a problem. The Planning Board's recommendation—using the policy area CLV standard as the test threshold—would be a tighter requirement than what is in effect now, but would not be nearly tight enough, especially in those policy areas with 1,550-1,600 CLV as the CLV standard; the soft relationship between CLV and delay could easily result in underestimating the true delay.

**Council staff recommendation: Encourage the Planning Board to require more traffic counts for its LATR studies.** This is properly a subject for the Planning Board when it takes up its LATR Guidelines, which usually follows shortly after adoption of an updated SSP. But the Council has a role here, too: not only should more counts be required of a development applicant, but the Council should approve a higher budget for the Planning Board (and/or DOT) to conduct more frequent counts.

*Pedestrian, bicycling, and bus transit tests.* The SSP report describes recommended standards for measuring adequacy for pedestrian movement, bicycling, and bus transit (p. 30):

*Pedestrian system adequacy* is defined as providing LOS D capacity or better (at least 15 square feet per person) in any crosswalk. Any site that generates at least 100 peak hour pedestrians (including transit trips) must:

- Fix (or fund) ADA non-compliance issues within a 500' radius of site boundaries, and
  - Ensure LOS D for crosswalk pedestrian space at LATR study intersections within 500' of site boundaries or within a Road Code Urban Area/Bicycle Pedestrian Priority Area (RCUA/BPPA).
- Regardless of the development size and location, if an intersection operational analysis (Tier 2 or 3) is triggered for any intersection within a RCUA/BPPA, mitigation must not increase average pedestrian crossing time at the intersection.

M-NCPPC and DOT would tighten the threshold to intersections where 50 peak hour bicycle/pedestrian trips are generated. They would also require that in Red area applicants fix deficiencies within 500 feet of the site boundary. Rather than defining pedestrian system adequacy as having sufficient crosswalk capacity, their recommendation is now to use pedestrian crosswalk delay as the measure of adequacy (©29, third bullet).

*Bicycle system adequacy* is defined as providing a low Level of Traffic Stress (LTS). For any development generating at least 100 peak hour pedestrian volumes and within a quarter mile of an educational institution or existing/planned bikeshare station, the applicant must identify improvements needed to provide LTS=2 (or "Low") conditions to all destinations within 1,500 feet of site boundaries.

A Level of Traffic Stress 2 –better termed a “low stress” bicycling environment – is one where most adults would be comfortable bicycling. It would mostly consist of: (1) trails, side paths, or protected bike lanes, or (2) streets with a speed limit that does not exceed 30 mph, no more than 3 total traffic lanes, and low parking turnover.

*Transit system adequacy* for LATR is defined as providing a peak load of LOS D for bus routes (< 1.25 transit riders per seat) on routes during the peak period. For any development generating at least 50 peak hour transit riders the applicant must inventory bus routes at stations/stops within 1,000 feet of the site and identify the peak load at that station for each route. The applicant must coordinate with the transit service provider to identify improvements that would be needed to address conditions worse than LOS D due to additional patrons generated by the development.

Rather than using 1,000 feet from the site as the strict distance to measure bus transit adequacy, Director Roshdieh and Chairman Anderson now recommend that the limit be extended to the nearest transfer point if it is reasonably close to 1,000 feet from the site (©29, second bullet).

Of these three tests, only the pedestrian system adequacy might require an applicant to make an improvement. The other two “tests” only require the applicant to make an inventory of improvements that should be made.

**PHED Committee (and Council staff) recommendation (2-0-1): Councilmembers Leventhal and Riemer recommend approving these three tests for now, but would direct the Planning Board to prepare in a subsequent SSP amendment revised tests that would require some or all of these identified improvements to be implemented by the developer, or paid for as part of an Unified Mobility Program. Councilmember Floreen is undecided.**

## II. TRANSPORTATION IMPACT TAX

Note: The GO Committee’s recommendations for Bill 37-16—including its recommendations for the school and transportation impact taxes, exemptions, refunds, grandfather clause/effective date, are included in the draft on ©95-119.

**1. Purpose and intent.** §52-48 is largely unchanged since the original impact fee bill was enacted in 1986. It has not kept up with the times, both in its terms and its scope. The Bill as introduced does not include changes in this section, but the Council should take the opportunity to update it. **GO Committee (and Council staff) recommendation (3-0): Redraft §52-48 as follows:**

**Sec. 52-48. [Findings;] [p]Purpose and intent.**

**(a) The master plan of [highways] transportation indicates that certain [roads] transportation facilities are needed in planning policy areas. Furthermore, the [Growth] Subdivision Staging Policy indicates that the amount and rate of growth projected in certain planning policy areas will place significant demands on the County for provision of [major highways] transportation facilities necessary to support and accommodate that growth.**

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(e) The development impact tax [will] funds, in part, the improvements necessary to increase the transportation system capacity, thereby allowing development to proceed. Development impact taxes [will be] are used exclusively for impact transportation improvements.

(f) In order to assure that the necessary impact transportation improvements are constructed in a timely manner, the County [intends to] assures the availability of funds sufficient to construct the impact transportation improvements.

(g) The County retains the power to determine the types of impact transportation improvements to be funded by development impact taxes; to estimate the cost of such improvements; to establish the proper timing of construction of the improvements so as to meet APFO policy area transportation adequacy standards where they apply; to determine when changes, if any, may be necessary in the County CIP;] and to do all things necessary and proper to effectuate the purpose and intent of this Article.

(h) The County intends to further the public purpose of ensuring that an adequate transportation system is available in support of new development.

[i) The County's findings are based on the adopted or approved plans, planning reports, capital improvements programs identified in this Article, and specific studies conducted by the Department of Transportation and its consultants.]

[j)] (i) The County intends to impose development impact taxes until the County has attained build-out as defined by the General Plan.

**2. Uses and credits.** The uses to which transportation impact taxes can be put are in §52-58. An important point to remember is that, generally speaking, whatever is identified as an eligible use of impact tax revenue can also legitimately be claimed as an eligible credit by a development. (The credit provisions are in §52-55.) The eligible uses of impact taxes are:

**Sec. 52-50. Use of impact tax funds.**

Impact tax funds may be used for any:

- (a) new road, widening of an existing road, or total reconstruction of all or part of an existing road required as part of widening of an existing road, that adds highway or intersection capacity or improves transit service or bicycle commuting, such as bus lanes or bike lanes;
- (b) new or expanded transit center or park-and-ride lot,
- (c) bus added to the Ride-On bus fleet, but not a replacement bus;
- (d) new bus shelter, but not a replacement bus shelter;
- (e) hiker-biker trail used primarily for transportation;
- (f) bicycle locker that holds at least 8 bicycles;
- (g) bikesharing station (including bicycles) approved by the Department of Transportation;
- (h) sidewalk connector to a major activity center or along an arterial or major highway; or
- (i) the operating expenses of any transit or trip reduction program.

During the three decades transportation impact taxes have been imposed, about \$93.5 million has been collected, and nearly all of it used to fund road improvements. Road improvement funding also dominates the \$50.6 million of impact tax funds programmed in FYs17-22. Not surprisingly, most of the credits that have been granted over the years were also for road improvements.

*Planning Board recommendations.* The Bill recommends two revisions to the use section. Subsection (e) would be amended to read: “hiker-biker trail and other bike facility used primarily for transportation.” The Department of Transportation (DOT) is concerned about the added phrase:

The Executive Regulation associated with Transportation Impact Taxes and Impact Tax Credits includes specific criteria for hiker-biker trails used primarily for transportation. The proposed language is overly vague and will lead to confusion and misinterpretation in reviewing and certifying impact tax credits (©50).

Council staff understands that the Planning Board’s intent was to allow for protected bike lanes (i.e., cycle tracks) to be an eligible expense. Protected bike lanes serve the same bicycle transportation purpose as hiker-biker trails and regular bike lanes, both of which are eligible expenses. **GO Committee (and Council staff) recommendation (3-0): Amend subsection (e) to read “hiker-biker trail and protected bike lanes used primarily for transportation.”**

The other change would be to subsection (h). It would read “sidewalk connector to or within a major activity center or along an arterial or major highway.” However, DOT notes:

While using impact taxes as a potential funding source for all CIP sidewalk projects if desirable, we do not believe that issuing tax credits for any sidewalk built as part of certain developments is in keeping with the underlying philosophy of granting transportation impact tax credits for what county would have otherwise built. Also, a sidewalk within an activity center is more of a local amenity as opposed to providing connectivity to the overall transportation network. Sidewalks are a fundamental requirement of new development construction, and including this provision will increase the amount of credits provided and will decrease the revenues collected from impact taxes (©50).

**GO Committee (and Council staff) recommendation (3-0): Amend subsection (h) to read “sidewalk connector within a public right-of-way to or within a major activity center or along an arterial or major highway.”**

*Light rail and BRT.* Cynthia Bar testified that the list of eligible impact tax uses—and, therefore, eligible credits—be extended to include a “new or expanded public transportation facility, including light rail and bus rapid transit facilities” (©51-53). Her point is that impact tax uses and credits related to transit should not be limited to transit centers, bus shelters, and Ride On buses.

There is only one light rail line in the County’s master plan: the Purple Line, which is a State project. The purpose of the transportation impact tax is to fund capacity-adding transportation facilities that are the *County’s responsibility* to construct.<sup>8</sup> While the County has programmed about \$46.5 million to the State project, this comprises only about 2% of the total cost, and there is no subset of the Purple Line that is explicitly funded by this 2%. Also, none of the \$46.5 million programmed are impact tax funds.

The County’s master-planned bus rapid transit (BRT) lines are primarily in State rights-of-way<sup>9</sup>. However, it appears clear that these will be the County’s responsibility to construct; while the State did provide \$10 million for the initial phase of planning for the MD 355 and US 29 BRT lines a few years ago, it recently turned down the County’s request for funding part of the preliminary design of the MD 355 BRT. So, while constructing new State roads and widening them are not eligible impact tax expenses, the Council should consider BRT—whether in State right-of-way or not—as eligible expenses.

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<sup>8</sup> Or, in Gaithersburg and Rockville, capacity-adding transportation facilities that are either the County’s or the municipality’s responsibility to construct.

<sup>9</sup> The major exceptions are the Corridor Cities Transitway, the Randolph Road BRT, the North Bethesda Transitway, and potentially a portion of the MD 355 North BRT.

A bus lane is already an eligible expense, and BRT has been interpreted as fitting under the “bus lanes” definition.<sup>10</sup> But including BRT as an explicit eligible expense would be useful in making clear that all of its route elements—bus lanes, BRT vehicles, and stations—are eligible. **GO Committee (and Council staff) recommendation (3-0): Add a subsection identifying bus rapid transit lanes, vehicles, and stations as eligible expenses.**

*State roads.* Christopher Ruhlen testified that improvements to State roads required of a development should be creditable against the transportation impact tax. He notes that many necessary road improvements are not being funded by the State, but by developments as conditions of subdivision approvals, in order to meet their adequate public facilities requirements. He suggests that many of these roads would be build sooner if the developers were to receive impact tax credits for their expenditure. Specifically, he proposes deleting subsection (b) of the credit section (©54-56):

(b) A property owner must receive a credit 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. [However, the Department must not certify a credit for any improvement in the right-of-way of a State road, except a transit or trip reduction program that operates on or relieves traffic on a State road or an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg.]

**GO Committee (and Council staff) recommendation (3-0): Do not include this proposed amendment.** As noted above, the purpose of the law is to fund transportation facilities that are the County’s responsibility to construct. In the extraordinary circumstance where the County wishes to expedite a particular road improvement that is a developer’s responsibility—whether it would be in a State or County right-of-way—it can do that directly with County funds. That is exactly what occurred in Clarksburg, where the County agreed to provide about \$10 million to the Clarksburg Village developer to expedite the extensions of Snowden Farm Parkway, Little Seneca Parkway, and the improvement to the MD 355/Brink Road intersection. This is preferable to granting a blanket credit to any development required to improve a State road.

*Transit and trip reduction programs.* Despite the number of categories of eligible projects, the Department of Permitting Services (DPS) has indicated that nearly all the credits have been granted for new roads, road widenings, or intersection improvements. DPS’s experience that there have been no more than one or two credit applications in the other categories. One such category is subsection (i), the operating expenses of any transit or trip reduction program. This category is an odd one, since it is not a capital improvement, and does not fit the definition of adding transportation capacity. How does one calculate the value of a credit for an operating program that may have no termination date? And if it has a termination date, then what has it contributed to the master plan capacity at buildout?

**GO Committee (and Council staff) recommendation (3-0): Delete subsection (i).** This subsection was included early on, when there was an effort to provide more balance in the credit provisions between roads and transit. However, operating expenses of a transit or trip reduction program have never been funded with impact taxes, and they have been claimed as a credit only once in

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<sup>10</sup> The Approved FY17-22 CIP’s Rapid Transit System project, which funds BRT, includes \$2 million in impact tax funding.

the last dozen years, according to DPS. Furthermore, there are now several transit and other non-auto-based use (and credit) categories that have the potential to be exercised.

*Transferability of credits.* A principle of the impact tax law has been that credits can only be applied against the tax due with respect to the subdivision for which the credit was originally certified. The credit concept was created to protect a large development that is required to build a substantial capacity-adding project to serve the entire buildout of that subdivision. Usually the project is built first, and the developer receives a dollar-for-dollar credit for it. Subsequently the developer draws down from his or her earned credit as each phase of the subdivision is undertaken<sup>11</sup>. This continues until the available credit is exhausted. The credit follows the ownership of the property, should the subdivision be sold from one developer to another before it is completed. However, the credit does *not* follow from one property to another.

Buchanan Partners is the developer of the virtually completed Village West subdivision in the Germantown Town Center Policy Area. Although not required to do so, Buchanan Partners have agreed to construct a short extension of Waters Road to intersect with MD 118. In return for doing so, DOT has recently approved a credit of \$960,000 for construction of a section of Waterford Hills Boulevard (which was not initially granted by DOT) and for an additional yet-to-be-determined amount for the Waters Road extension itself. The rub is that, since Village West is almost entirely built out, almost none of this credit can be used by Buchanan Partners. Buchanan Partners' proposed remedy would be to add a clause to §52-47 allowing such "excess" credit to be used by another property owner in the same policy area (©57-59).

**GO Committee (and Council staff) recommendation (3-0): Do not approve this proposed provision, but explore another type of remedy specific to Village West.** The provision would create a green market for excess credits throughout the county, and it would further sap transportation impact tax revenues.<sup>12</sup> However, Buchanan Partners has agreed to undertake the Waters Road extension without being required to do so. Certainly it would benefit from the extension by providing easy and visible access off MD 118, but this is a master-planned Business District Street that would provide a more general public benefit, too.

*Special provision.* In §52-47(a)(2) the Council had approved this special credit provision:

- (2) (A) An entity that received more than \$20 million in credits under this subsection that were certified before July 1, 2002, may apply any unused credit to satisfy an obligation under Policy Area Mobility Review, or any applicable successor policy area transportation test, if:
- (i) the County Executive has identified the project for which a credit would be applied under this paragraph as a strategic economic development project; and
  - (ii) the credit is used before November 1, 2015.

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<sup>11</sup> For single-family units, impact taxes are due within 6 months of building permit issuance or at final inspection, whichever is sooner. For multi-family units and non-residential development, taxes are due within 12 months of building permit issuance or at final inspection, whichever is sooner.

<sup>12</sup> Recall that in the Bill's fiscal impact statement OMB and Finance already have assumed that 68% of gross impact tax revenue is not collected, mostly owing the enormous amount allowable credits that have (and will be) granted. This provision would raise that percentage higher.

(B) The total of any credits used under this paragraph to satisfy an obligation under Policy Area Mobility Review, or any applicable successor policy area transportation test, must not exceed \$1.7 million.

**GO Committee (and Council staff) recommendation (3-0): Eliminate this provision.** The allowable credit under this provision had to have been used by November 1, 2015.

*Dedication of transportation impact tax revenue.* Council President Floreen, as part of her proposal on the SSP, recommends dedicating impact tax funds in Red areas to projects in Red areas. However, like with school impact taxes, transportation impact tax revenue collected anywhere should be allowed to be used anywhere, with the exception of Rockville and Gaithersburg, where there is a long-standing agreement that funds collected in each municipality will be used for projects serving it. **GO Committee (and Council staff) recommendation (3-0): Do not dedicate transportation impact tax funds collected in an area to that area, with the exceptions of Rockville and Gaithersburg.**

Council President Floreen also recommends that impact tax funds be used to pay for LATR improvements in its area. For the same reason as noted above, impact tax funds collected in an area should not be automatically dedicated to that area in particular. Of course, LATR improvements that add capacity are creditable against the tax, and they would continue to be. **GO Committee (and Council staff) recommendation (3-0): Do not dedicate impact tax revenue collected in an area to pay for LATR improvements in that area.**

**3. Base transportation impact tax rates.**<sup>13</sup> Transportation impact tax rates, like school impact tax rates, differ by land use. While the school impact tax rate schedule is the same throughout the county, the transportation tax currently has four sets of rates: one for the “General District” (most of the county); one for MSPAs, set at 50% less than the General District rates; one for development within a ½-mile of the Germantown, Metropolitan Grove, Gaithersburg, Washington Grove, Garrett Park, or Kensington MARC stations, set at 15% less than the General District rates; and one for Clarksburg, set 50% higher than the General District rates for residential development and 20% higher for non-residential development. In this discussion, the current rate schedule is referred to as “Scenario A.” Furthermore, the transportation impact tax is not collected in the White Flint Policy Area in recognition that a special taxing district there collects revenue for transportation capital projects. As with the school tax, the transportation rates were raised across the board by about 70% in 2007, and since then they have been automatically increased biennially (in the July of odd-numbered years) according to the regional construction cost index.

Bill 34-15 was introduced on June 30, 2015 and a public hearing was held on July 21, 2015; among other proposed changes, it would apply the same transportation tax rates countywide (except in White Flint) just as the school impact tax rates are.<sup>14</sup>

*Planning Board’s proposal: “Scenario B’.”* The Planning Board’s discussion and recommendations on the transportation impact tax are on pp. 33-34 of the SSP Report and on pp. 76-101 of the Appendix (Appendix J). The Board’s recommended transportation rate schedule is shown below.

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<sup>13</sup> For this discussion, “base” transportation impact rates are those that do not include a supplementary rate to cover the foregone revenue from eliminating TPAR and its traffic mitigation payments.

<sup>14</sup> The provisions of Bill 34-15 to extend the life of a credit from 6 to 12 years and to change how the credit for road reconstruction is calculated were separated out in Bill 47-15, which was enacted last December.

<u>Land Use</u>	<u>Red Policy Areas</u>	<u>Orange Policy Areas</u>	<u>Yellow Policy Areas</u>	<u>Green Policy Areas</u>
<b>Residential Uses</b>	Cost/unit	Cost/unit	Cost/unit	Cost/unit
SF Detached	\$3,653	\$10,959	\$18,266	\$29,225
MF Residential				
SF Attached	\$2,552	\$7,656	\$12,759	\$20,415
Garden Apartments	\$2,312	\$6,937	\$11,562	\$18,499
High - Rise Apartments	\$1,652	\$4,955	\$8,259	\$13,214
Multi-Family Senior	\$661	\$1,982	\$3,303	\$5,286
<b>Commercial Uses</b>	Cost/sf	Cost/sf	Cost/sf	Cost/sf
Office	\$6.72	\$13.45	\$16.81	\$16.81
Industrial	\$3.34	\$6.69	\$8.36	\$8.36
Bioscience	\$0.00	\$0.00	\$0.00	\$0.00
Retail	\$5.98	\$11.96	\$14.95	\$14.95
Place of Worship	\$0.35	\$0.70	\$0.88	\$0.88
Private School	\$0.53	\$1.06	\$1.33	\$1.33
Hospital	\$0.00	\$0.00	\$0.00	\$0.00
Social Service Agencies	\$0.00	\$0.00	\$0.00	\$0.00
Other Non-Residential	\$3.35	\$6.69	\$8.36	\$8.36

The Planning staff has also prepared a chart that shows—for each policy area and the major land use categories—how the Board’s proposed rates compare to the current rates (©60), and the difference between the two sets of rates (©61).

The Board’s impact tax rate recommendations tie with its proposal in the SSP that policy areas should be categorized the four aforementioned geographic groups according to relative density and transit service: “Red,” “Orange,” “Yellow,” and “Green.” The Bill would place Clarksburg with the Orange policy areas, and would eliminate its status as a separate district, within which currently the funds collected must be spent. The Bill would retain the 15% discount for development within ½-mile of the MARC stations noted above.

In calculating the tax rates, the following assumptions were used:

- *An estimated \$1.6 billion needs to be collected from the tax over the next 25 years to cover 100% of the cost of County capacity-adding projects.* The Planning staff calculated that the FY15-20 CIP had \$388 million for capacity-adding transportation projects, not including White Flint, for which County transportation improvements are funded with a special tax (see pp. 80-81 of the Appendix). The \$388 million over 6 years translates to about \$64.6 million annually. The staff posits that the amount spent for these projects over the next 25 years will be the same annually, on average, so the total would be about \$1.6 billion.
- *Assume that roughly the same share of these costs would be funded by impact tax revenue.* About 10.4% of the cost of these projects were funded by impact taxes; the staff assumes this proportion

would continue into the future. Therefore, about \$168 million (in today’s dollars) would be needed from the tax over the next 25 years.<sup>15</sup>

- “Average” rates were calculated for each land use category that would raise the \$1.6 billion over 25 years. The rates were allocated by land use according to relative vehicle trip generation for each use. The average rates by land use category, compared to the current General District rates, are shown below:

Land Use Category	Current General District Rates	Calculated “Average” Rates
Single-family detached	\$13,966/unit	\$14,613/unit
Single-family attached	\$11,427/unit	\$10,208/unit
Multi-family garden apartments	\$8,886/unit	\$9,250/unit
Multi-family high rise	\$6,347/unit	\$6,607/unit
Multi-family senior	\$2,539/unit	\$2,643/unit
Office	\$12.75/sf	\$13.45/sf
Industrial	\$6.35/sf	\$6.69/sf
Retail	\$11.40/sf	\$11.96/sf
Place of worship	\$0.65/sf	\$0.70/sf
Private grade school	\$1.05/sf	\$1.06/sf
Other non-residential	\$6.35/sf	\$6.69/sf

- Adjust the “average” residential rates among the four geographic groups (Red, Orange, Yellow, and Green) according to their relative vehicle-miles of travel (VMT) per capita for home-to-work trips. Adjust the “average” commercial rates among the four groups according to their relative non-auto-driver mode share (NADMS) for home-to-work trips (for more detail, see pp. 39-40). The proposed adjustment factors are:

Policy Area Grouping	Residential Adjustment to the “Average” Rate	Non-Residential Adjustment to the “Average” Rate
Red (MSPAs)	0.25, a 75% discount	0.75, a 25% discount*
Orange	0.75, a 25% discount	1.00, no adjustment
Yellow	1.25, a 25% surcharge	1.25, a 25% surcharge
Green	2.00, a 100% surcharge	1.25, a 25% surcharge

\*After reviewing the calculations, the Planning Board decided to propose reducing the adjustment factor by another third, to 0.50, a 50% discount from the “Average” rate. The rates in Bill 37-16 reflect this adjustment.

*Testimony.* There was little testimony about the rates themselves. In the end, most stakeholders cared about the resulting rates, not the methodology. However, the Greater Bethesda Chamber had this to say:

It is refreshing to see that in many instances impact taxes are proposed to decline, particularly in areas where land use policy encourages development. However, the methodology is intensely detailed and cryptic. Indeed, the impact tax formula required the Planning Board itself to artificially lower the rate for commercial development in the Core [Red] area by one-third. It is simply not a process that anyone can describe or

<sup>15</sup> Recall that the amount collected over the past 30 years was about \$93 million, but for more than half of those years funds were collected only in Germantown, Fairland/Cloverly, White Oak, and Clarksburg. Thus, \$168 million countywide over the next 25 years is fairly consistent with the prior impact tax burden placed on new development.

explain to the public or to the investment community and financial institutions who hold our economic development future in their hands.

The Agricultural Advisory Committee has written in opposition to the large proposed rate increase in the Green (rural) Policy Areas (©62-63). Anticipating that issues from Bill 34-15 would also be raised, several developers in MSPAs have written in opposition to eliminating the discount in MSPAs (an example is on ©64-65), just as they did at the public hearing during the summer of 2015. Last summer there was support from the developers to eliminate the impact tax surcharge in Clarksburg (©66).

*Council staff comments on rates.* Impact taxes are supposed to be based on the capital cost needed to support various types of development. The Planning Board's proposed rates are based on the conclusion that Red (MSPA) area development generates less of a need for capital improvements than development in the Orange area, which in turn generates less need than development in the Yellow and Green (rural) areas. This certainly was true for the first 25 years of the impact tax program, when most transportation capital improvements were road-based. *However, that is not true now, and it will be even less true in the future.*

There are very few major master-planned County road improvements yet to be programmed: Observation Drive Extended and M-83 being the two largest. Together these two projects will cost about \$500 million, and M-83, which represents \$350 million of this total, is in doubt. Montrose Parkway East and Goshen Road South are programmed, but about \$135 million of their costs are shown as being funded with G.O. Bonds after FY22. There are a few other, less costly County road projects in the future. Examples are: the reopening of Old Columbia Pike over Paint Branch and its widening from White Oak to Fairland; the western extension of Little Seneca Parkway in Clarksburg; the Dorsey Mill Road bridge in Germantown; Summit Avenue Extended in Kensington. Taken together, future County expenditures on road improvements will likely be no more than \$1 billion (in today's dollars), and \$650 million if M-83 is not built.

On the other hand, the cost of master-planned non-auto-based County transportation improvements dwarfs the auto-based total. The cumulative cost of the Corridor Cities Transitway and the MD 355 North and South, US 29, and Veirs Mill Road BRT lines is about \$2.2 billion. The remaining master-planned BRT lines—New Hampshire Avenue, University Boulevard, Georgia Avenue North and South, and the North Bethesda Transitway will add at least \$1 billion more. In addition there will be a large number of smaller investments retrofitting the county with cycle tracks, hiker-biker trails, bike lanes, and sidewalk connectors, as well as additional buses needed to expand the Ride On fleet. Taken together, it would not be unreasonable to figure that the total expenditures on non-auto-based capacity-adding County capital improvements will reach \$4 billion.

In this context, using vehicle-miles of travel (VMT) as a means of differentiating residential rates among geographic areas is not appropriate, because most of the future new County capacity expenditure will not be for private vehicles. Neither is NADMS appropriate for differentiating the commercial rates, because it does not take into account the distance a commuter travels. More representative would be using *person-miles of travel* (PMT), which reflect the distance component as well as the fact that most future expenditures will be for transit and other non-auto-based modes. Using PMT produces slightly less differentiation among the relative impacts for residential development, but it results in virtually no differentiation for commercial development.

Another concern is where the facilities would be built and who they would serve. Most of the BRT routes, the bulk of the County's future transportation expense, are in the Red and Orange areas. The Green Area would not be served at all. Unlike Metrorail, BRT is not planned to have much park-and-ride access, so there would be little benefit to most people either living or working in the Yellow and Green areas. This all suggests that there is no strong rationale for differentiating the rates by group either for residential or commercial development.

When the Council established the MSPA rates with a 50% discount a dozen years ago, it did so for two reasons. First, the law then allowed impact taxes to be used primarily for new roads, widening existing roads, and new park-and-ride lots; almost none of these types of improvements were common in MSPAs (nor are they now). As noted above, the law has been changed over the past decade to allow transit and other non-auto-based improvements, and that the overwhelming majority of such expenditures in the future will be for such projects, for which MSPA developments are the primary beneficiary. Second, in 2004, very little of the development in the county was occurring in the MSPAs, and so the Council wished to provide an incentive to develop there. According to COG's Round 9.0 forecast, however, over 48% of the job growth in the County over the next decade will be in MSPAs, and most of the multi-family housing planned or under construction will be there.

The two most important questions that developers consider in whether or not to build are: "Is the market demand present?" and "Is the zoning sufficiently high and the building regulations not too tight so that the market demand can be met?" Cost is a factor, but a lesser one. The Council provided a large benefit to developers a few years ago when it deferred the impact tax payment (and traffic mitigation and school facility payments) to very late in the building process: near or at final inspection by DPS. This put in close correlation the time when housing units and commercial square footage are sold to when these taxes and fees are paid, thus effectively eliminating a developer's carrying cost.

There certainly is an inflection point where the rates, if too high, will lead in some cases to a decision not to file a development application, because the pro forma will not produce the requisite profit margin to undertake the risk. However, history has shown that tax breaks generally have had little effect on influencing development. As demonstrated by the recent Office of Legislative Oversight report on enterprise zones, even exempting all impact taxes and SSP fees, as well as substantial property and income tax credits, has not resulted in more than scant commercial development in Wheaton, Glenmont, and Long Branch. The one enterprise zone where employment has thrived is Silver Spring, but it is doubtful that the tax breaks paid a significant role. It is more likely that the \$450 million public investment and the willingness for the County to assemble sufficient land for the Town Center were the keys to its success.

Where the higher rates will pinch are for developments that are well into development process. Certainly, a project under construction has very limited means of recouping the cost of a higher impact tax. When impact taxes were raised in 2007 by about 70% across the board, the new rates went into effect for all development for which building permit applications were filed after *only 16 days after adoption* (©40-42).

*Council President's proposal: Scenario C.* Following this rationale, Ms. Floreen proposes that the base rates for the entire County be set at the current General District rates for each land use category. ***Council staff proposes a variation—Scenario C'—that adjusts the rates of Scenario C to the average rates across the County, considering updated cost estimates and trip generation rates.*** These are the "average" rates shown on page 19. The rates for Scenario C' are slightly higher, except for townhouses.

*Councilmember Riemer's proposal.* Mr. Riemer asked for two scenarios to be evaluated: (1) retaining the rates in the Red and Orange areas as they are today, but increasing the rates in the Yellow areas 25% higher than the General District, and increasing the rates in the Green areas 50% higher than the General District (Scenario D); and (2) adopting Ms. Floreen's proposal, but setting the rate for Office and Industrial uses in the Red areas at \$0.00/sf (Scenario E). On October 27 he proposed a hybrid of these two options, Scenario G, which combines both concepts.

**GO Committee recommendation (2-1): Councilmembers Navarro and Riemer recommend Scenario G: retaining the rates in the Red and Orange areas as they are today—except to set the rate for Office and Industrial uses in the Red areas at \$0.00/sf.—and increasing the rates in the Yellow areas 25% higher than the General District, and increasing the rates in the Green areas 50% higher than the General District. Councilmember Katz supports Scenario C: Council President Floreen's proposal.**

Since the October 27 GO Committee meeting, more scenarios—or proposed revisions to earlier scenarios—have emerged:

- Scenario G': Adjust rates in the GO Committee's recommendation to reflect updated trip generation rates and costs of construction.
- Scenario H': Same as Scenario G', but sets the rates in the Green area 25% higher than the base rate, not 50% higher. Proposed by Planning staff.
- Scenario L': For residential—current rates adjusted to reflect updated trip generation rates and costs of construction in Red and Orange areas, 25% higher in Yellow area, and 50% higher rates in Green area. For commercial—current rate adjusted to reflect updated trip generation rates and costs of construction in Red area, current rates adjusted to reflect updated trip generation rates and costs of construction in Orange, Yellow, and Green areas. Proposed by the County Executive.

Chart 1 on the following pages show the effective rates for each of these scenarios.

The revenue estimates over the FY17-22 period (assuming the rates go into effect at the beginning of FY18), are shown below. In each case the option of zeroing out the impact taxes for Office and Industrial in Red areas is shown separately. The main takeaway from these forecasts is that all scenarios produce roughly the same revenue impact, certainly within the margin of error.

	<b>Gross Revenue</b>	<b>Less Revenue if \$0/sf for Office/Ind. in Red areas</b>	<b>Net Revenue if \$0/sf for Office/Ind. in Red areas</b>
Scenario A	\$61,755,052	-\$2,356,036	\$59,399,016
Scenario B'	\$59,991,870	-\$2,464,611	\$57,527,259
Scenario C	\$65,286,635	-\$4,243,132	\$61,043,503
Scenario C'	\$66,495,988	-\$4,449,476	\$62,046,512
Scenario G	\$64,226,641	-\$2,356,036	\$61,870,605
Scenario G'	\$65,356,394	-\$2,466,117	\$62,890,277
Scenario H'	\$64,505,865	-\$2,464,611	\$62,041,254
Scenario L'	\$62,664,283	-\$2,466,117	\$60,198,166

Transportation Impact Tax Rates	Planning Board- Scenario B'				Change in Rates						Change in Rates					
	Red	Orange	Yellow	Green	Red	Orange	Yellow	Green	Clarksburg Town Center	Greater Clarksburg	Red	Orange	Yellow	Green	Clarksburg Town Center	Greater Clarksburg
	<b>Residential (Per Dwelling Unit)</b>															
Single-Family (SF) Detached	\$ 3,653	\$ 10,959	\$ 18,266	\$ 29,225	\$ (3,331)	\$ (3,007)	\$ 4,300	\$ 15,259	\$ (9,989)	\$ (2,682)	-48%	-22%	31%	109%	-48%	-13%
Single-Family (SF) Attached	\$ 2,552	\$ 7,656	\$ 12,759	\$ 20,415	\$ (3,162)	\$ (3,771)	\$ 1,332	\$ 8,988	\$ (9,485)	\$ (4,382)	-55%	-33%	12%	79%	-55%	-26%
Multi-Family (Garden)	\$ 2,312	\$ 6,937	\$ 11,562	\$ 18,499	\$ (2,131)	\$ (1,949)	\$ 2,676	\$ 9,613	\$ (6,393)	\$ (1,768)	-48%	-22%	30%	108%	-48%	-13%
Multi-Family (High-Rise)	\$ 1,652	\$ 4,955	\$ 8,259	\$ 13,214	\$ (1,522)	\$ (1,392)	\$ 1,912	\$ 6,867	\$ (4,567)	\$ (1,263)	-48%	-22%	30%	108%	-48%	-13%
Multi-Family (MF) Senior	\$ 661	\$ 1,982	\$ 3,303	\$ 5,286	\$ (608)	\$ (557)	\$ 764	\$ 2,747	\$ (1,826)	\$ (505)	-48%	-22%	30%	108%	-48%	-13%
<b>Non-Residential (Per Square Foot)</b>																
Office	\$ 6.72	\$ 13.45	\$ 16.81	\$ 16.81	\$ 0.37	\$ 0.70	\$ 4.06	\$ 4.06	\$ (1.85)	\$ 1.51	6%	5%	32%	32%	-12%	10%
Industrial	\$ 3.34	\$ 6.69	\$ 8.36	\$ 8.36	\$ 0.14	\$ 0.34	\$ 2.01	\$ 2.01	\$ (0.91)	\$ 0.76	4%	5%	32%	32%	-12%	10%
Bioscience	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Retail	\$ 5.98	\$ 11.96	\$ 14.95	\$ 14.95	\$ 0.28	\$ 0.56	\$ 3.55	\$ 3.55	\$ (1.74)	\$ 1.25	5%	5%	31%	31%	-13%	9%
Place of Worship	\$ 0.35	\$ 0.70	\$ 0.88	\$ 0.88	\$ -	\$ 0.05	\$ 0.23	\$ 0.23	\$ (0.20)	\$ (0.02)	0%	8%	35%	35%	-22%	-2%
Private School	\$ 0.53	\$ 1.06	\$ 1.33	\$ 1.33	\$ 0.03	\$ 0.01	\$ 0.28	\$ 0.28	\$ (0.29)	\$ (0.02)	6%	1%	27%	27%	-21%	-1%
Hospital	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Social Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Other Non-Residential	\$ 3.35	\$ 6.69	\$ 8.36	\$ 8.36	\$ 0.15	\$ 0.34	\$ 2.01	\$ 2.01	\$ (0.91)	\$ 0.76	5%	5%	32%	32%	-12%	10%

Transportation Impact Tax Rates	Planning Board - Scenario H'			Change in Rates						Percentage Change in Rates				
	Red - .5 multiplier	Orange- General Rate	Yellow/Green +.25 multiplier	Red	Orange	Yellow/Green	Clarksburg Town Center	Greater Clarksburg	Red	Orange	Yellow/Green	Clarksburg Town Center	Greater Clarksburg	
	<b>Residential (Per Dwelling Unit)</b>													
Single-Family (SF) Detached	\$ 7,307	\$ 14,613	\$ 18,266	\$ 323	\$ 647	\$ 4,300	\$ (6,335)	\$ (2,682)	5%	5%	31%	-30%	-13%	
Single-Family (SF) Attached	\$ 5,104	\$ 10,208	\$ 12,760	\$ (610)	\$ (1,219)	\$ 1,333	\$ (6,933)	\$ (4,381)	-11%	-11%	12%	-40%	-26%	
Multi-Family (Garden)	\$ 4,625	\$ 9,250	\$ 11,563	\$ 182	\$ 364	\$ 2,677	\$ (4,080)	\$ (1,768)	4%	4%	30%	-31%	-13%	
Multi-Family (High-Rise)	\$ 3,304	\$ 6,607	\$ 8,259	\$ 130	\$ 260	\$ 1,912	\$ (2,915)	\$ (1,263)	4%	4%	30%	-31%	-13%	
Multi-Family (MF) Senior	\$ 1,322	\$ 2,643	\$ 3,304	\$ 53	\$ 104	\$ 765	\$ (1,165)	\$ (504)	4%	4%	30%	-31%	-13%	
<b>Non-Residential (Per Square Foot)</b>														
Office	\$ 6.72	\$ 13.45	\$ 16.81	\$ 0.37	\$ 0.70	\$ 4.06	\$ (1.85)	\$ 1.51	6%	5%	32%	-12%	10%	
Industrial	\$ 3.34	\$ 6.69	\$ 8.36	\$ 0.14	\$ 0.34	\$ 2.01	\$ (0.91)	\$ 0.76	4%	5%	32%	-12%	10%	
Bioscience	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	
Retail	\$ 5.98	\$ 11.96	\$ 14.95	\$ 0.28	\$ 0.56	\$ 3.55	\$ (1.74)	\$ 1.25	5%	5%	31%	-13%	9%	
Place of Worship	\$ 0.35	\$ 0.70	\$ 0.88	\$ -	\$ 0.05	\$ 0.23	\$ (0.20)	\$ (0.03)	0%	8%	35%	-22%	-3%	
Private School	\$ 0.53	\$ 1.06	\$ 1.33	\$ 0.03	\$ 0.01	\$ 0.28	\$ (0.29)	\$ (0.02)	6%	1%	26%	-21%	-2%	
Hospital	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	
Social Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	
Other Non-Residential	\$ 3.35	\$ 6.69	\$ 8.36	\$ 0.15	\$ 0.34	\$ 2.01	\$ (0.91)	\$ 0.76	5%	5%	32%	-12%	10%	

	Council President - Scenario C	Change in Rates			Change in Rates		
	Countywide Rate = Current General	MSPA	General	Clarksburg	MSPA	General	Clarksburg
<b>Transportation Impact Tax Rates Residential (Per Dwelling Unit)</b>							
Single-Family (SF) Detached	\$ 13,966	\$ 6,982	\$ -	\$ (6,982)	100%	0%	-33%
Single-Family (SF) Attached	\$ 11,427	\$ 5,713	\$ -	\$ (5,714)	100%	0%	-33%
Multi-Family (Garden)	\$ 8,886	\$ 4,443	\$ -	\$ (4,444)	100%	0%	-33%
Multi-Family (High-Rise)	\$ 6,347	\$ 3,173	\$ -	\$ (3,175)	100%	0%	-33%
Multi-Family (MF) Senior	\$ 2,539	\$ 1,270	\$ -	\$ (1,269)	100%	0%	-33%
<b>Non-Residential (Per Square Foot)</b>							
Office	\$ 12.75	\$ 6.40	\$ -	\$ (2.55)	101%	0%	-17%
Industrial	\$ 6.35	\$ 3.15	\$ -	\$ (1.25)	98%	0%	-16%
Bioscience	\$ -	\$ -	\$ -	\$ -	0%	0%	0%
Retail	\$ 11.40	\$ 5.70	\$ -	\$ (2.30)	100%	0%	-17%
Place of Worship	\$ -	\$ (0.35)	\$ (0.65)	\$ (0.90)	-100%	-100%	-100%
Private School	\$ -	\$ (0.50)	\$ (1.05)	\$ (1.35)	-100%	-100%	-100%
Hospital	\$ -	\$ -	\$ -	\$ -	0%	0%	0%
Social Services	\$ -	\$ -	\$ -	\$ -	0%	0%	0%
Other Non-Residential	\$ 6.35	\$ 3.15	\$ -	\$ (1.25)	98%	0%	-16%
	Council Staff - Scenario C'	Change in Rates			Change in Rates		
	Countywide Rate = Updated General	MSPA	General	Clarksburg	MSPA	General	Clarksburg
<b>Transportation Impact Tax Rates Residential (Per Dwelling Unit)</b>							
Single-Family (SF) Detached	\$ 14,613	\$ 7,629	\$ 647	\$ (6,335)	109%	5%	-30%
Single-Family (SF) Attached	\$ 10,208	\$ 4,494	\$ (1,219)	\$ (6,933)	79%	-11%	-40%
Multi-Family (Garden)	\$ 9,250	\$ 4,807	\$ 364	\$ (4,080)	108%	4%	-31%
Multi-Family (High-Rise)	\$ 6,607	\$ 3,433	\$ 260	\$ (2,915)	108%	4%	-31%
Multi-Family (MF) Senior	\$ 2,643	\$ 1,374	\$ 104	\$ (1,165)	108%	4%	-31%
<b>Non-Residential (Per Square Foot)</b>							
Office	\$ 13.45	\$ 7.10	\$ 0.70	\$ (1.85)	112%	5%	-12%
Industrial	\$ 6.69	\$ 3.49	\$ 0.34	\$ (0.91)	109%	5%	-12%
Bioscience	\$ -	\$ -	\$ -	\$ -	0%	0%	0%
Retail	\$ 11.96	\$ 6.26	\$ 0.56	\$ (1.74)	110%	5%	-13%
Place of Worship	\$ 0.70	\$ 0.35	\$ 0.05	\$ (0.20)	100%	8%	-22%
Private School	\$ 1.06	\$ 0.56	\$ 0.01	\$ (0.29)	112%	1%	-21%
Hospital	\$ -	\$ -	\$ -	\$ -	0%	0%	0%
Social Services	\$ -	\$ -	\$ -	\$ -	0%	0%	0%
Other Non-Residential	\$ 6.69	\$ 3.49	\$ 0.34	\$ (0.91)	109%	5%	-12%

Transportation Impact Tax Rates Residential (Per Dwelling Unit)	Councilmember Riemer - Scenario G				Change in Rates						Change in Rates					
	Red - Current	Orange - Current	Current General + 25%	Current General + 50%	Red	Orange	Yellow	Green	Clarksburg Town Center	Greater Clarksburg	Red	Orange	Yellow	Green	Clarksburg Town Center	Greater Clarksburg
	MSPA	General														
Single-Family (SF) Detached	\$ 6,984	\$ 13,966	\$ 17,458	\$ 20,949	\$ -	\$ -	\$ 3,492	\$ 6,983	\$ (6,982)	\$ (3,491)	0%	0%	25%	50%	-33%	-17%
Single-Family (SF) Attached	\$ 5,714	\$ 11,427	\$ 14,284	\$ 17,141	\$ -	\$ -	\$ 2,857	\$ 5,714	\$ (5,714)	\$ (2,857)	0%	0%	25%	50%	-33%	-17%
Multi-Family (Garden)	\$ 4,443	\$ 8,886	\$ 11,108	\$ 13,329	\$ -	\$ -	\$ 2,222	\$ 4,443	\$ (4,444)	\$ (2,223)	0%	0%	25%	50%	-33%	-17%
Multi-Family (High-Rise)	\$ 3,174	\$ 6,347	\$ 7,934	\$ 9,521	\$ -	\$ -	\$ 1,587	\$ 3,174	\$ (3,175)	\$ (1,588)	0%	0%	25%	50%	-33%	-17%
Multi-Family (MF) Senior	\$ 1,269	\$ 2,539	\$ 3,174	\$ 3,809	\$ -	\$ -	\$ 635	\$ 1,270	\$ (1,269)	\$ (634)	0%	0%	25%	50%	-33%	-17%
<b>Non-Residential (Per Square Foot)</b>																
Office	\$ 6.35	\$ 12.75	\$ 15.94	\$ 19.13	\$ -	\$ -	\$ 3.19	\$ 6.38	\$ (2.55)	\$ 0.64	0%	0%	25%	50%	-17%	4%
Industrial	\$ 3.20	\$ 6.35	\$ 7.94	\$ 9.53	\$ -	\$ -	\$ 1.59	\$ 3.18	\$ (1.25)	\$ 0.34	0%	0%	25%	50%	-16%	4%
Bioscience	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Retail	\$ 5.70	\$ 11.40	\$ 14.25	\$ 17.10	\$ -	\$ -	\$ 2.85	\$ 5.70	\$ (2.30)	\$ 0.55	0%	0%	25%	50%	-17%	4%
Place of Worship	\$ 0.35	\$ 0.65	\$ 0.81	\$ 0.98	\$ -	\$ -	\$ 0.16	\$ 0.33	\$ (0.25)	\$ (0.09)	0%	0%	25%	50%	-28%	-10%
Private School	\$ 0.50	\$ 1.05	\$ 1.31	\$ 1.58	\$ -	\$ -	\$ 0.26	\$ 0.53	\$ (0.30)	\$ (0.04)	0%	0%	25%	50%	-22%	-3%
Hospital	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Social Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Other Non-Residential	\$ 3.20	\$ 6.35	\$ 7.94	\$ 9.53	\$ -	\$ -	\$ 1.59	\$ 3.18	\$ (1.25)	\$ 0.34	0%	0%	25%	50%	-16%	4%

Transportation Impact Tax Rates Residential (Per Dwelling Unit)	Councilmember Riemer - Scenario G'				Change in Rates						Change in Rates					
	Red - Updated	Orange - Updated	Yellow - Updated	Green - Updated	Red	Orange	Yellow	Green	Clarksburg Town Center	Greater Clarksburg	Red	Orange	Yellow	Green	Clarksburg Town Center	Greater Clarksburg
	MSPA	General	General + 25%	General + 50%												
Single-Family (SF) Detached	\$ 7,307	\$ 14,613	\$ 18,266	\$ 21,920	\$ 323	\$ 647	\$ 4,300	\$ 7,954	\$ (6,335)	\$ (2,682)	5%	5%	31%	57%	-30%	-13%
Single-Family (SF) Attached	\$ 5,104	\$ 10,208	\$ 12,760	\$ 15,312	\$ (610)	\$ (1,219)	\$ 1,333	\$ 3,885	\$ (6,933)	\$ (4,381)	-11%	-11%	12%	34%	-40%	-26%
Multi-Family (Garden)	\$ 4,625	\$ 9,250	\$ 11,563	\$ 13,875	\$ 182	\$ 364	\$ 2,677	\$ 4,989	\$ (4,080)	\$ (1,768)	4%	4%	30%	56%	-31%	-13%
Multi-Family (High-Rise)	\$ 3,304	\$ 6,607	\$ 8,259	\$ 9,911	\$ 130	\$ 260	\$ 1,912	\$ 3,564	\$ (2,915)	\$ (1,263)	4%	4%	30%	56%	-31%	-13%
Multi-Family (MF) Senior	\$ 1,322	\$ 2,643	\$ 3,304	\$ 3,965	\$ 53	\$ 104	\$ 765	\$ 1,426	\$ (1,165)	\$ (504)	4%	4%	30%	56%	-31%	-13%
<b>Non-Residential (Per Square Foot)</b>																
Office	\$ 6.73	\$ 13.45	\$ 16.81	\$ 20.18	\$ 0.38	\$ 0.70	\$ 4.06	\$ 7.43	\$ (1.85)	\$ 1.51	6%	5%	32%	58%	-12%	10%
Industrial	\$ 3.35	\$ 6.69	\$ 8.36	\$ 10.04	\$ 0.15	\$ 0.34	\$ 2.01	\$ 3.69	\$ (0.91)	\$ 0.76	5%	5%	32%	58%	-12%	10%
Bioscience	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Retail	\$ 5.98	\$ 11.96	\$ 14.95	\$ 17.94	\$ 0.28	\$ 0.56	\$ 3.55	\$ 6.54	\$ (1.74)	\$ 1.25	5%	5%	31%	57%	-13%	9%
Place of Worship	\$ 0.35	\$ 0.70	\$ 0.88	\$ 1.05	\$ -	\$ 0.05	\$ 0.23	\$ 0.40	\$ (0.20)	\$ (0.03)	0%	8%	35%	62%	-22%	-3%
Private School	\$ 0.53	\$ 1.06	\$ 1.33	\$ 1.59	\$ 0.03	\$ 0.01	\$ 0.28	\$ 0.54	\$ (0.29)	\$ (0.02)	6%	1%	26%	51%	-21%	-2%
Hospital	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Social Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Other Non-Residential	\$ 3.35	\$ 6.69	\$ 8.36	\$ 10.04	\$ 0.15	\$ 0.34	\$ 2.01	\$ 3.69	\$ (0.91)	\$ 0.76	5%	5%	32%	58%	-12%	10%

	County Executive - Scenario L'				Change in Rates						Change in Rates					
	Red - Updated	Orange - Updated	Yellow - Res:	Green - Res:	Red	Orange	Yellow	Green	Clarksburg	Greater	Red	Orange	Yellow	Green	Clarksburg	Greater
			1.25 multiplier	1.50 multiplier					Town Center	Clarksburg					Town Center	Clarksburg
Transportation Impact Tax Rates	MSPA	General	General	General												
<b>Residential (Per Dwelling Unit)</b>																
Single-Family (SF) Detached	\$ 7,307	\$ 14,613	\$ 18,266	\$ 21,920	\$ 323	\$ 647	\$ 4,300	\$ 7,954	\$ (6,335)	\$ (2,682)	5%	5%	31%	57%	-30%	-13%
Single-Family (SF) Attached	\$ 5,104	\$ 10,208	\$ 12,760	\$ 15,312	\$ (610)	\$ (1,219)	\$ 1,333	\$ 3,885	\$ (6,933)	\$ (4,381)	-11%	-11%	12%	34%	-40%	-26%
Multi-Family (Garden)	\$ 4,625	\$ 9,250	\$ 11,563	\$ 13,875	\$ 182	\$ 364	\$ 2,677	\$ 4,989	\$ (4,080)	\$ (1,768)	4%	4%	30%	56%	-31%	-13%
Multi-Family (High-Rise)	\$ 3,304	\$ 6,607	\$ 8,259	\$ 9,911	\$ 130	\$ 260	\$ 1,912	\$ 3,564	\$ (2,915)	\$ (1,263)	4%	4%	30%	56%	-31%	-13%
Multi-Family (MF) Senior	\$ 1,322	\$ 2,643	\$ 3,304	\$ 3,965	\$ 53	\$ 104	\$ 765	\$ 1,426	\$ (1,165)	\$ (504)	4%	4%	30%	56%	-31%	-13%
<b>Non-Residential (Per Square Foot)</b>																
Office	\$ 6.73	\$ 13.45	\$ 13.45	\$ 13.45	\$ 0.38	\$ 0.70	\$ 0.70	\$ 0.70	\$ (1.85)	\$ (1.85)	6%	5%	-5%	5%	-12%	-12%
Industrial	\$ 3.35	\$ 6.69	\$ 6.69	\$ 6.69	\$ 0.15	\$ 0.34	\$ 0.34	\$ 0.34	\$ (0.91)	\$ (0.91)	5%	5%	5%	5%	-12%	-12%
Bioscience	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Retail	\$ 5.98	\$ 11.96	\$ 11.96	\$ 11.96	\$ 0.28	\$ 0.56	\$ 0.56	\$ 0.56	\$ (1.74)	\$ (1.74)	5%	5%	5%	5%	-13%	-13%
Place of Worship	\$ -	\$ -	\$ -	\$ -	\$ (0.35)	\$ (0.65)	\$ (0.65)	\$ (0.65)	\$ (0.90)	\$ (0.90)	-100%	-100%	-100%	-100%	-100%	-100%
Private School	\$ 0.53	\$ 1.06	\$ 1.06	\$ 1.06	\$ 0.03	\$ 0.01	\$ 0.01	\$ 0.01	\$ (0.29)	\$ (0.29)	6%	1%	1%	1%	-21%	-21%
Hospital	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Social Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	0%	0%	0%	0%	0%
Other Non-Residential	\$ 3.35	\$ 6.69	\$ 6.69	\$ 6.69	\$ 0.15	\$ 0.34	\$ 0.34	\$ 0.34	\$ (0.91)	\$ (0.91)	5%	5%	5%	5%	-12%	-12%

**4. Rate increase to replace foregone TPAR revenue.** As noted earlier in this packet, the PHED Committee recommended deleting TPAR and its mitigation payments from the SSP.

**GO Committee recommendation (2-1):** To replace the foregone revenue from discontinuing TPAR payments, Councilmembers Navarro and Riemer support raising the rates by 25% over the base rates, but only in the non-MSPAs. Councilmember Katz (*and Council staff*) recommends raising the rates by 14% across all policy areas, including MSPAs. Executive Branch staff reports that the County Executive supports the recommendation of the Committee majority.

**5. Other issues. MARC station area discount.** Several years ago the Council established this discount to recognize that MARC, like Metrorail, is a transitway providing premium service, and so development nearby also should be incentivized with an impact tax rate discount, if not as large as for an MSPA. The Council settled on a 15% discount on development within a ½-mile of certain MARC stations. However, Metrorail and MARC are not remotely comparable. On a typical weekday Metrorail trains stop in MSPAs in one direction or the other 120 or 240 times during the morning and evening peak periods; MARC trains stop in one direction only 12-19 times during these peaks. *Council staff recommendation: Eliminate the MARC station area discount.*

**GO Committee recommendation (3-0):** Continue the current MARC station area discount.

*Bioscience R&D and manufacturing facilities.* Currently impact taxes are not charged for biological research and development or manufacturing facilities that substantially involve research, development, or manufacturing. The administrative offices of bioscience companies are not exempt from impact taxes.

Bioscience businesses are the only type of for-profit commercial developments that are not charged transportation impact taxes for their new buildings or additions. This status was granted because it was the Council's desire to highlight it as the County's primary economic development drawing card. But there are new types of business being sought after now; most recently, cybersecurity. Rather than exempting an entire type of business from the tax, the County should provide direct aid to particular companies—bioscience, cybersecurity, or other—which are vital to draw or retain because they provide unique economic development advantages for the County. Each of these companies should be subject to the tax, but the unique relocations and expansions could have their tax covered by an Economic Development Fund grant.

*Council staff recommendation: Delete bioscience R&D and manufacturing facilities as a category.* New bioscience R&D and manufacturing facilities should be charged at the Industrial rate, which is about half of the general office rate.

**GO Committee recommendation (3-0):** Continue the \$0.00 rate for bioscience R&D and manufacturing facilities.

*Regular updates.* Currently both transportation and school impact taxes are updated using aregional construction cost index over the two prior calendar years. Finance uses the change in the index to calculate what the new tax schedules would be, publishes them in the County Register for comment, and implements them on July 1. Finance notes that all other taxes—property, income, energy, etc.—are updated on July 1, and that both government and business base many of their financial decisions on a fiscal year basis. The

Planning Board is not recommending a change as to how or when transportation impact taxes are regularly updated.

At the last worksession the Committee tentatively agreed that the school impact tax should be updated on January 1 in odd-numbered years. However, as Finance has remarked, there is a tradition of adjusting rates on July 1, and adjusting both the school and transportation impact rates at the same time would provide more predictability to the building industry.

**GO Committee (and Council staff) recommendation (3-0): Continue to have the effective date of the biennial updates to both school and transportation impact taxes occur on July 1 of odd-numbered years.** The school impact taxes, as recommended by the Committee, would be based on MCPS's latest estimates of construction cost/student and students/household; this information would be provided to Finance early in an odd-numbered year so they could calculate what the new school impact tax schedule would be, publish it in the County Register for comment, and implement it on July 1 along with the updated transportation impact tax schedule.

*Student-built houses.* For 40 years MCPS has sponsored a program out of Edison HS (and, formerly, Wheaton HS) whereby its students construct market-rate houses as part of their training in the construction trades. Montgomery County Students Construction Trades Foundation, Inc. (CTF) is a non-profit that acquires property, arranges financing and sells the home. The process involves paying all permit fees, as well as school and transportation impact taxes.

Council President Floreen proposes exempting houses built under this program from school and transportation impact taxes (©67-68). She notes that CTF and the students have built 40 homes over the past four decades, but that the last four homes built under the program has resulted in a net loss to CTF. Currently a house of 3,500sf or less pays transportation and school impact taxes totaling \$40,793.

Over its useful life any house built by the students will house school children and generate demand for travel. It should be charged a tax just as for any other single-family-detached house; the tax is based on the impact of the home's residents over time, not who is building the house. Creating an exemption in the law for this particular non-profit opens the door for other, perhaps equally worthy enterprises. Furthermore, it is unlikely that an impact tax exemption would provide exactly what CTF needs to break even.

A better course would be for CTF to apply to the Executive and the Council for a community grant when it finds it is short on resources, for whatever combination of reasons. In any given year the request might be larger or smaller than the impact tax payment, depending on the circumstances.

***Council staff recommendation: Do not approve this proposal, but consider CTF as a candidate for a community grant in those years where it can demonstrate a need for aid.***

**GO Committee recommendation (3-0): Concur with Ms. Floreen to exempt student-built houses.**

*Clergy houses.* Last May the County Executive proposed a bill that would exempt from school and transportation impact taxes the residential portion of a clergy house

that is on the same lot or parcel, adjacent to, or confronting the property on which the place of worship is located and which is incidental and subordinate to the principal building used by the religious institution as its place of worship.

The Council has deferred action on this provision until now so it can be taken up as part of the comprehensive review of the impact tax law. The Executive's transmittal, the proposed bill, its Legislative Request Report, and its Fiscal and Economic Impact Statements are on ©69-76.

The motivation for this bill is a proposed 7,791sf house across the street from an existing place of worship in North Potomac. The Department of Finance calculates that the house, if charged as a single-family detached house, would currently pay \$49,375 in impact taxes: \$13,966 in transportation taxes and \$35,409 in school taxes. The Executive's proposal would backdate the effective date for this provision to January 1, 2016 so that when the house goes to final inspection (it hasn't yet), it would be charged at the current tax rates, not any that are now under consideration by the Council. Finance notes that there has only been one other clergy house approved in the past 6 years, and it was a teardown/rebuild and so was not subject to an impact tax.

As with a student-built house, over its useful life a clergy house will house school children and generate demand for travel. In this respect it should be charged a tax just as for any other single-family-detached house. On other hand, if the Council were to agree with the Executive that a clergy house is "incidental and subordinate" to the place of worship, then the law could explicitly note that point and direct that it pay the "place of worship" rate, which, under the current transportation impact tax rate schedule, would be a tax of \$5,064 (7,791 sf x \$0.65/sf).

**GO Committee recommendation (2-1): Councilmembers Navarro and Riemer recommend adding a provision noting that a clergy house is incidental and subordinate to a place of worship and to be taxed as such. Councilmember Katz recommends that a clergy house be exempt.**

*Refunds where tax rates decline.* For the past three decades County Code §52-46(a) has allowed only three reasons for a refund to impact taxes paid:

- (1) the County has not appropriated the funds for impact transportation improvements of the types listed in Section 52-50, or otherwise formally designated a specific improvement of a type listed in Section 52-50 to receive funds, by the end of the sixth fiscal year after the tax is collected;
- (2) the building permit has been revoked or has lapsed because construction did not start; or
- (3) the project has been physically altered, resulting in a decrease in the amount of impact tax due.

Councilmember Rice proposes a fourth reason. He recommends that if an impact tax rate goes down within 6 months of when a person pays the tax, then that person should receive a refund of the difference between the rate paid and the new (lower) rate, as long as the application for a refund is submitted within 60 days of when the new rate is adopted. He notes that if the Planning Board's recommendations are approved, then the retail rates in Clarksburg would drop from \$13.70/sf to \$11.96/sf. He notes, that as a matter of fairness, if the Council were to agree with the Planning Board that the rates had been set too high, then those who have recently paid the fee should receive a refund (©77-78).

Persons who have recently paid the impact tax long ago decided that they would go forward with their developments, knowing what the rates were. Presumably, their pro formas demonstrated that they could afford the higher rates and still made a requisite profit, otherwise they would not have proceeded to build in the first place. Nor would a refund to these developments promote economic development; it would merely be an after-the-fact gift to the developer.

Fairness is a two-way street. If it makes sense to provide a refund to builders who paid impact taxes in the past 6 months where impact tax rates will now drop, would it not also make sense to add another tax to other builders who paid impact taxes in the past 6 months where the impact taxes will now rise? The Council would never contemplate the latter scenario; it should never contemplate the former, either.

The GO Committee asked staff to draft text that would allow for Clarksburg Premium Outlets to receive a refund if the ultimate transportation impact tax rate for retail approved by the Council for Clarksburg is lower than the current \$13.70/sf rate. The mall consists of 450,000sf of retail space. Depending on the combination of the base rate and TPAR replacement surcharge approved by the Council, there would either be no refund (most scenarios) or a refund between \$31,500 and \$472,500:

<b>Scenario</b>	<b>New Retail Rate</b>	<b>Refund</b>
C (+14% TPAR)	\$13.00/sf	\$315,000
C (+11% TPAR)	\$12.65/sf	\$472,500
C' or L' (+14% TPAR)	\$13.63/sf	\$31,500
C' & L' (+11% TPAR)	\$13.28/sf	\$189,000

Below is text drafted by Council staff that would restrict any potential refund to Clarksburg Premium Outlets:

*Add the following after line 415:*

**Sec. 2.** The Director of Finance must refund, without interest, to any property owner the difference between the development impact tax for transportation improvements paid for up to 450,000 square feet and the development impact tax that would have been due after this Act takes effect if:

- (a) the property owner paid the development impact tax for transportation improvements on or before November 15, 2016;
- (b) the impact tax was paid for a retail development on the west side of Interstate 270 in the Clarksburg policy area;
- (c) the development impact tax rate per square foot for this project was reduced on the date this Act takes effect; and
- (d) the property owner applies for the refund on a form requested by the Director of Finance on or before 60 days after this Act takes effect.

**GO Committee (and Council staff) recommendation (2-1): Councilmembers Navarro and Riemer do not recommend allowing a refund when rates decline, even if it were limited to Clarksburg Premium Outlets. Councilmember Katz concurs with the limited amendment.**

*HOC proposal.* Council staff informed the Committee in the October 20 packet that William Kominers, representing the Housing Opportunities Commission (HOC), transmitted a proposal to amend the law to expand HOC's exemptions by adding buildings that are "controlled", but not owned, make certain units exempt when they serve households earning equal or less than 60% of area median income (AMI), and to increase the options that allow a development to have all units exempt if 20% of units are affordable to households earning 50% of AMI or 15% of units are affordable to households earning 40% of AMI (©79-82). In response to questions from Council staff, Mr. Kominers has provided additional information which is attached at ©83-85.

**GO Committee (and Council staff) recommendation (3-0): Approve the minor request for "equal or less than 60%," but do not approve the other amendments.** The other two amendments do not only apply to HOC, which raises the following concerns.

The first amendment would expand the exemption to any building controlled, and used primarily, by any agency or instrumentality of federal, State, County or municipal government. If this amendment is needed for HOC, the Council should consider it separately and approve a clear definition of control. It is not clear to Council staff how the proposed amendment might impact, for example, an office building that would not be owned, but would be "controlled" by the federal government for a period of time.

While the amendment to allow an exemption for providing a certain percentage of very low income affordable units is responsive to the need to increase the housing stock for those earning 50% AMI and below, it does not only apply to HOC. Council staff expects that HOC would always have a mix of incomes in its development and would be developing rental housing. However, the provision would also apply to for-sale developments. Council staff believes it is preferable to get more MPDU units (25%) and then work with other resources to buy the affordability down further, as was done at the Bonifant, or to assist non-profit organizations to purchase MPDUs that can then be rented to very low income households.

### **III. GRANDFATHER CLAUSES/EFFECTIVE DATES**

**1. SSP.** The Planning Board's Final Draft recommends that the provisions of the new SSP would apply to any application for a preliminary plan of subdivision filed on or after January 1, 2017, except that the school test provisions would apply to any subdivision plan filed after November 15, 2016. The past few SSPs have had the following grandfather clauses/effective dates:

- The 2012-2016 SSP (approved on November 13, 2012) applied to any application for a preliminary plan of subdivision filed on or after January 1, 2013, except that the school test provisions applied to any subdivision plan filed after November 15, 2012.
- The 2009-2011 Growth Policy (approved on November 10, 2009) applied to any application for a preliminary plan of subdivision filed on or after January 1, 2010, except that the school test provisions applied to any subdivision plan filed after November 15, 2009.

- The 2007-2009 Growth Policy (approved on November 13, 2007) applied to any application for a preliminary plan of subdivision filed on or after November 15, 2017.

In summary, the Planning Board's proposal is consistent with the last two SSPs/Growth Policies. In 2007 the effective date was essentially right after the resolution's adoption for both the transportation and school tests, that was because the development industry was given notice more than six months earlier that the Council had intended to tighten both tests considerably, and that whatever was approved would go into effect immediately. However, Council staff sees no obvious policy rationale for not applying a new transportation test at the same time as a new school test.

**PHED Committee (and Council staff) recommendation (3-0): Apply the 2016-2020 SSP to any application for a preliminary plan of subdivision filed on or after January 1, 2017.**

**2. Bill 37-16: generally.** The Planning Board did not recommend a particular grandfather clause/effective date for when a new impact tax rate schedule would go into effect, leaving that issue at the Council's discretion. In the past, when the Council has raised the rates across the board, the new rates were applied to any building permits applied for after a certain date. The effective dates have varied. On November 15, 2007, when the Council raised transportation and school impact tax rates by roughly 70%, the new rates went into effect for any building permits applied for on or after December 1, 2007: 16 days later (©86-88). In late fall of 2003, when the Council approved countywide impact taxes for transportation for the first time, the rates went into effect for any building permits applied for on or after March 1, 2004: about 4 months later.

The revenue estimates prepared by OMB and Finance have assumed that the new rates would be in effect so that taxes at the higher rate would be paid starting on July 1, 2017. Since impact taxes are paid within 6 months after a residential building permit is issued (within 9 months for a non-residential permit) or final inspection, whichever is sooner, this effectively means they assumed the rates would go into effect at the time of—or shortly after—the adoption of Bill 37-16.

In setting the grandfather clause/effective date for the new rates, the Council should balance the burden placed on the developer or builder with the need for additional revenue. Past Councils have grandfathered those who have applied for building permits, because by that stage the developers/builders have detailed plans, secured financing, and most have likely received their building permits and are under construction. More than 30% of the residential units in the pipeline of approved development—and nearly 50% of the non-residential square footage in the pipeline—have applied or received building permits, or are under construction. For such a development there is little opportunity to revise plans to accommodate higher taxes unless last-minute savings in amenities and finishes are incorporated into the construction, or unless the developer/builder is willing to accept a smaller profit margin than in the pro forma. On the other hand, the level of investment prior to building application is but a fraction of the overall cost of development, except land acquisition; but land that is bought may be sold to another developer that might make the numbers work, even with the higher tax.

Another important consideration is to provide enough time for the Departments of Permitting Services and Finance to prepare their respective collection systems to adjust to the new set of rates, and any other new definitions in the law that would affect the rates, credits, or other aspects of the law.

**Council staff recommendation:** *With the exception for the provisions regarding enterprise zones and the former enterprise of Silver Spring CBD (see below), set the effective date for Bill 37-16 at January 1, 2017 and grandfather developments that have applied for building permits before January 1, 2017.* This would match the effective for the SSP recommended by the PHED Committee. It would allow some time for subdivisions that are close to starting construction to lock in the current rates. It should also provide DPS and Finance enough time to adjust to the new set of rates and conditions. If this grandfather clause/effective date recommendation is approved, then the rates and conditions would go into effect 6 months before the beginning of FY18, so the first impact tax payments made at the new rates would not occur until after the start of FY18.

**The GO Committee did not make a recommendation on the grandfather clause/effective date for Bill 37-16.** It wished to wait until the Council had decided what its decision would be on the effective date for the SSP and how the impact tax rates would be change in the aggregate before making that decision. For example, Council President Floreen recommended that if the taxes were to increase substantially (as in MSPAs under her proposal) the effective date for those rates should be applied over a long term.

**3. Replacement of foregone TPAR mitigation and SFP revenue.** Subdivision approvals include any requirement to make a TPAR and/or SFP payment as a condition of approval. Any development filed prior to the effective date of the 2016-2020 SSP will be subject to the TPAR policy area test and the SFP test, and it may be required to make one or both of these payments. If the new impact tax rates are in effect when a previously approved development applies for a building permit, it may be charged a TPAR and/or SFP payment as well as impact tax rates that had been raised to offset foregone TPAR and SFP revenue.

**Council staff recommendation:** *Nullify any TPAR and SFP mitigation payment requirement for projects that have not yet applied for a building permit as of the effective date of the SSP and Bill 37-16.* The 2016-2020 SSP and Bill 37-16 should be adopted/effective at the same time. This means all projects would be subject to the new impact tax rates following its effective date, and no further TPAR or SFP payment would be required. This would remove the issue of how to treat projects with filed applications not yet approved.

**4. Enterprise zones and former enterprise zones.** There are currently four State-designated enterprise zones in the county: Wheaton CBD, Long Branch/Takoma Park, Glenmont, and Old Town Gaithersburg. Under current County law, development in these enterprise zones are exempt from school and transportation impact taxes, as well as—if otherwise applicable—school facility payments and traffic mitigation payments. In 2006 the Silver Spring Enterprise Zone expired, but in 2007 the Council amended the impact tax law to extend these exemptions to former enterprise zones, too.

The State of Maryland established the enterprise zone to promote job creation, not housing. Nevertheless, a recent review of enterprise zones in the county by the Office of Legislative Oversight (OLO)<sup>16</sup> reported that 89% of the \$14.4 million in school and transportation impact tax exemptions—nearly all in the Silver Spring and Wheaton CBDs—have benefited apartment houses and condominiums, not office, retail, industrial, or other job-related land uses. About \$5.8 million of the \$14.4 million exemption has been for Silver Spring since it ceased being an enterprise zone.

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<sup>16</sup> Office of Legislative Oversight, The Experience and Effect of County Administered Enterprise Zones, August 2, 2016.

OLO's conclusion is that the enterprise zone has had a negligible effect to date on job creation in the Wheaton CBD, Long Branch/Takoma, and Glenmont. Silver Spring is the only enterprise zone in Montgomery County—and in the State—where there has been significant business investment. But Council staff stipulates that this certainly had more to do with the County and State government's direct investment of about \$450 million and the government's direct involvement in assembling the land for the Town Center, rather than the \$8.3 million in impact tax exemptions over the years.

The Planning Board recommends phasing out the school impact tax and school facility payment exemption for Silver Spring and for any other enterprise zone once it expires. The Board's recommended phase out for the Silver Spring former enterprise zone exemption is as follows:

*Amend §52-54(c) as follows:*

- (6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone based upon the length of time since the expiration of its enterprise zone status. Within 1 year of its expiration, a full exemption must apply. Within 2 years of its expiration, 25% of the applicable development impact tax must apply. Within 3 years, 50% of the applicable development impact tax must apply. Within 4 years, 75% of the applicable development impact tax must apply. A project within an area previously designated as an enterprise zone must be required to pay 100% of the applicable development impact tax for public school improvements beginning 4 years after its expiration with the exception of Silver Spring CBD whose enterprise zone status will be treated as expired on November 15, 2016. Any exemption or associated discount, will remain in effect only for the duration of the development project's validity period.

This means that in Silver Spring the phase out of the exemption would proceed as follows:

- For subdivisions approved by November 15, 2017: full exemption
- For subdivisions approved by November 15, 2018: 75% of exemption
- For subdivisions approved by November 15, 2019: 50% of exemption
- For subdivisions approved by November 15, 2020: 25% of exemption
- For subdivisions approved after November 15, 2020: no exemption

The Board's recommended phase out for an existing enterprise zone, once it expires, is:

- For subdivisions approved within 1 year of expiration: full exemption
- For subdivisions approved within 2 years of expiration: 75% of exemption

For subdivisions approved within 3 years of expiration: 50% of exemption  
For subdivisions approved within 4 years of expiration: 25% of exemption  
For subdivisions approved after 4 years of expiration: no exemption

The Board does not recommend phasing out the exemption for the transportation impact tax and traffic mitigation payments.<sup>17</sup> The Board is also not recommending any changes to the exemptions in the existing enterprise zones.

The Council has heard from several developers in Silver Spring who oppose eliminating the CBD's impact tax exemption, but stated that if it must be eliminated, it should occur according to the Board's gradual phase out. Representative is a letter from Washington Property Company, a major developer in the Ripley District of Silver Spring (©89-91). The Greater Silver Spring Chamber of Commerce makes the argument that Silver Spring should retain the exemption because otherwise it cannot compete with Bethesda, which can command higher rents (©92-93).

The Montgomery County Civic Federation (MCCF) recommends a more complete and rapid phase out of the Silver Spring exemption. It supports reestablishing both school and transportation impact taxes, with no phase in for residential subdivision approvals. For commercial subdivision approvals MCCF supports a phase-in of 2 years: approvals by November 15, 2017 would retain the full exemption, and approvals by November 15, 2018 would be 50% of the applicable impact taxes and any applicable mitigation payments. After November 15, 2018, commercial development approval would pay 100% of both impact taxes and applicable mitigation payments. Furthermore, MCCF recommends collecting impact taxes and applicable mitigation payments on housing in existing enterprise zones, since the purpose of such zones is to incentivize employment, not housing.

Council staff concurs entirely with MCCF's conclusion that the enterprise zone impact tax exemption should apply only to commercial development, and that it should not apply at all in former enterprise zones. It is a job creation program, not a housing creation program. There is no policy rationale for continuing the exemption for the transportation tax while phasing it out for the school tax; both should be eliminated. Continuing the housing exemption in existing enterprise zones undercuts the potential for more affordable housing that was the objective of Bill 8-15; if a proposed residential development in Silver Spring, Wheaton, Long Branch, Takoma/Langley, or Old Town Gaithersburg would pay no impact tax, why would the developer provide 25% of its units as MPDUs rather than the minimum required by law?

Silver Spring is no longer eligible for enterprise zone status and hasn't been for a decade; the question should not be whether it can compete with Bethesda, but whether it has a built-in advantage over development in Rock Spring Park, Twinbrook, Shady Grove, the Great Seneca Science Corridor, White Oak, Twinbrook, Rockville, Gaithersburg, Germantown, Clarksburg, and other development nodes, all of which must pay both taxes.<sup>18</sup>

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<sup>17</sup> On October 18 the PHED recommended that school facility and traffic mitigation payments be discontinued as conditions of some future subdivisions, but raising the school and transportation impact tax rates by amounts that would cover more than the lost payment.

<sup>18</sup> In White Flint, housing developments must pay the school impact tax, and all development pays an annual property tax surcharge that, over time, is arguably larger than a one-time transportation impact tax payment.

The phase out periods under consideration are also much too long. Eliminating an exemption is equivalent to raising an impact tax, and impact tax effective dates have always been tied to building permit filing. Recall, again, that when the taxes went up by 70% across the board in 2007, the rates went into effect on building permits filed *16 days later*. The proposed phase out applies at the time of subdivision approval—and extended out over 4 years—and building permit filings are usually years after subdivision approval. So, under the Planning Board’s proposal, the foregone revenue for schools and transportation projects effectively will not be recouped for years.

Council staff, above, has recommended that developments filing for building permits on or after March 1, 2017 pay the new impact tax rates. The distinction in the case of enterprise zones and Silver Spring is that the effective rate is rising from \$0 to the rates charged elsewhere, a much larger change. Therefore, a more somewhat more gradual grandfather clause/effective date is called for.

***Council staff recommendations:***

1. ***Eliminate all former enterprise zone school and transportation impact tax exemptions—both in Silver Spring and any future former enterprise zone.***
2. ***Eliminate the school and transportation impact tax exemptions in existing enterprise zones for residential development. Retain both exemptions for non-residential development.***
3. ***In Silver Spring:***
  - For building permits filed by November 15, 2017: full exemption***
  - For building permits filed by November 15, 2018: 50% of exemption***
  - For building permits filed by November 15, 2018: no exemption***
4. ***In future former enterprise zones:***
  - For building permits filed up to 1 year after expiration: full exemption***
  - For building permits filed up to 2 years after expiration: 50% of exemption***
  - For building permits filed after 2 years after expiration: no exemption***
5. ***In existing enterprise zones:***
  - For building permits that include residential filed by November 15, 2017: full exemption***
  - For building permits that include residential filed by November 15, 2018: 50% of exemption***
  - For building permits that include residential filed by November 15, 2018: no exemption***

Councilmember Navarro recommends that the Council adopt a new process for identifying areas that would be exempt from impact taxes, rather than coupling it to a State decision as to whether an enterprise zone is established or is continued (©94). Until a new process is identified and codified, she recommends keeping the current exemption rules in place.

**GO Committee recommendation (2-1): Councilmembers Navarro and Katz recommend continuing the exemptions in the former Silver Spring enterprise zone until a new County-designation process is in place. Councilmember Riemer recommends phasing out the exemptions for both the school and transportation impact taxes in Silver Spring according to the schedule proposed by the Planning Board.**

**GO Committee recommendation (3-0): Continue the exemptions in existing enterprise zones.**

## Attachments

Planning staff summary of transit accessibility test	©1
Results of transit accessibility test, as proposed	©3
Results of transit accessibility test, with nearer-term BRT lines included	©4
Clarksburg Road Code Urban Area map	©5
Summary of the Transportation Mitigation Task Force's proposed TDM program	©6
Summary of stakeholder input <i>re</i> the proposed TDM program	©18
Council President Floreen's proposal <i>re</i> transportation test and impact tax	©20
Councilmember Elrich's proposals <i>re</i> transportation test and impact tax	©23
Planning staff analysis of future TPAR revenue	©27
October 6 letter from Chairman Anderson and DOT Director Roshdieh	©28
DOT's preliminary approach to Red policy area LATR pro-rata analysis	©30
DOT/Planning staff summary of proposed approach to LATR	©34
Draft schedule for preparing Unified Mobility Programs (UMPs)	©36
White Oak LATR SSP amendment, adopted April 2015	©37
Brian Krantz's analysis of Critical Lane Volume (CLV)	©39
Sabra Wang's literary review of traffic impact study processes	©44
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Agricultural Advisory Committee's testimony on Bill 37-16	©62
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Clarksburg Premium Outlets' testimony on Bill 34-15	©66
Council President Floreen's proposal <i>re</i> impact tax exemption for student-built houses	©67
County Executive's proposed bill to exempt clergy houses from impact taxes	©69
Councilmember Rice's proposal to allow impact tax refunds when rates decline	©77
William Kominers' proposals <i>re</i> HOC and response to questions	©79
Resolution 16-377 adopting impact tax rates, November 13, 2007	©86
Washington Property Company's letter <i>re</i> enterprise zone exemption	©89
Greater Silver Spring Chamber of commerce's letter <i>re</i> enterprise zone exemption	©92
Councilmember Navarro's proposal <i>re</i> former enterprise zone exemption	©94
Bill 37-16, with GO Committee's recommendations	©95

In lieu of the current Policy Area transportation test (TPAR), a new transportation adequacy test based on transit accessibility (defined as the number of jobs that can be reached within a 60-minute travel time by walk-access transit) is desirable to better reflect existing and planned multi-modal travel options and transit supportive land use densities, and to better align growth with the provision of adequate public facilities. The proposed definition of Policy Area adequacy is based on the proportion of transit accessibility that can be achieved within the next 10 years based on changes in land use and the implementation of transportation facilities within this timeframe. It is the estimated share of the Master Plan vision, reflecting a 25-year (master) planning horizon, attainable within the next 10 years.

This assessment recognizes that not all Policy Areas are planned to have high levels of transit accessibility. The degree to which areas have high transit accessibility scores is dependent upon the balance and intensity of jobs and households in each area of the County, and the degree to which the area is well connected by transit to jobs elsewhere in the region. The degree of transit accessibility is therefore highly correlated to proximity to the Washington, DC core, where the number and density of jobs are the greatest.

The recommended proposed measure of accessibility is not total transit accessibility, but rather the degree to which the planned increase in transit accessibility is proceeding at an acceptable pace.

The transit accessibility metric considers three conditions:

- Current (year 2015) transit accessibility.
- Planning horizon (year 2040) transit accessibility with transportation improvements recognized as fiscally feasible from a regional planning perspective and therefore included in the Constrained Long Range Plan (CLRP) such as the Purple Line and the Corridor Cities Transitway. These transportation improvements are assumed in combination with the Countywide Transit Corridors Functional Master Plan (CTCFMP) network reflecting service attributes in the non-CCT corridors which are largely by average speeds that are faster than local bus service but less than speeds that would be attained operating in fully dedicated lanes.
- Regulatory horizon (year 2025) transit accessibility with transportation improvements included in the state Consolidated Transportation Program (CTP) and County Capital Improvements Program (CIP). Notably, the Purple Line is fully funded for construction by 2025 in the current state CTP, but the Corridor Cities Transitway is not funded for construction at all by the state or County.

The 10-year regulatory horizon (from 2015 to 2025) is 40 percent as long as the 25-year planning horizon (from 2015 to 2040). Areas that have at least 40 percent of their planned 2015-2040 transit accessibility by 2025 are, therefore, considered to be "on pace" with respect to reaching a key indicator of future non-auto travel options and are therefore considered "adequate." The remaining areas are "behind pace" and are considered to have inadequate transit accessibility. The recommendation is that the mitigation requirement for these areas to help fund transit capital projects or transit access projects should be specified as follows:

- If transit accessibility in 2025 is between 30% - 40% of 2040 transit accessibility, a partial mitigation payment of 15% of the applicable transportation impact tax is required.

- If transit accessibility in 2025 is less than 30% of 2040 transit accessibility, a full mitigation payment of 25% of the applicable transportation impact tax is required.

The results of the transit accessibility test by policy area are reported in the following tables for two scenarios:

- The scenario described in the Planning Board draft SSP, in which the full complement of BRT lines in the Countywide Transit Corridors Functional Master Plan are assumed as part of the 2040 scenario
- A refined 2040 scenario developed in the past two weeks in response to coordination with MCDOT and Council staff that assumes only the highest priority BRT lines are in place, including the Corridor Cities Transitway, MD 355 (north and south), US 29, Veirs Mill Road, New Hampshire Avenue, and the North Bethesda Transitway.

For both tables, the following information is provided for each policy area:

- The total increase in transit accessibility between 2015 and 2040. This reflects the effects of the planned master planned land use and transit system investments.
- The percentage of that 2015-2040 increase that will occur by 2025.
- The policy area requirement following the 30% and 40% criteria for partial and full mitigation above for Yellow and Orange policy areas; Red and Green policy areas are exempt.

Transit Accessibility Mitigation Requirements  
2040 Includes BRT Plan

6/24/2016

PA_Name	2015-2040 Increased Transit Accessibility	Percent of 2015- 2040 increase by 2025	Mitigation Status
<b><u>RED Policy Areas</u></b>			
Friendship Heights	515167	47%	Exempt
Bethesda CBD	513033	52%	Exempt
Silver Spring CBD	468746	46%	Exempt
White Flint	437498	41%	Exempt
Grosvenor	425356	44%	Exempt
Twinbrook	418386	42%	Exempt
Wheaton CBD	374648	35%	Exempt
Glenmont	526166	33%	Exempt
Rockville Town Center	363238	42%	Exempt
Shady Grove Metro Station	292100	41%	Exempt
<b><u>Orange Policy Areas</u></b>			
Silver Spring/Takoma Park	432512	62%	No Mitigation
North Bethesda	364476	29%	Inadequate - Full Mitigation
Bethesda/Chevy Chase	233689	66%	No Mitigation
Kensington/Wheaton	375324	27%	Inadequate - Full Mitigation
Rockville City	264023	19%	Inadequate - Full Mitigation
White Oak	440229	65%	No Mitigation
Derwood	166121	36%	Inadequate - Partial Mitigation
R&D Village	283345	8%	Inadequate - Full Mitigation
Gaithersburg City	175671	19%	Inadequate - Full Mitigation
Germantown Town Center	141449	2%	Inadequate - Full Mitigation
Clarksburg	5472	0%	Inadequate - Full Mitigation
<b><u>Yellow Policy Areas</u></b>			
Aspen Hill	141072	13%	Inadequate - Full Mitigation
Fairland/Colesville	213473	31%	Inadequate - Partial Mitigation
Potomac	62153	60%	No Mitigation
North Potomac	94161	5%	Inadequate - Full Mitigation
Germantown East	105769	2%	Inadequate - Full Mitigation
Germantown West	86314	15%	Inadequate - Full Mitigation
Montgomery Village/Airpark	27944	N/A	No Mitigation
Olney	83166	4%	Inadequate - Full Mitigation
Cloverly	74593	22%	Inadequate - Full Mitigation
<b><u>Green Policy Areas</u></b>			
Rural East	7167	N/A	Exempt
Rural West	195	N/A	Exempt
Damascus	710	N/A	Exempt

Transit Accessibility Mitigation Requirements  
 2040 Refined BRT Plan Concept  
 10/5/2016

PA_Name	2015-2040 Increased Transit Accessibility	Percent of 2015- 2040 Increase by 2025	Mitigation Status
<b><u>RED Policy Areas</u></b>			
Friendship Heights	512866	48%	Exempt
Bethesda CBD	506296	53%	Exempt
Silver Spring CBD	459977	47%	Exempt
White Flint	409350	43%	Exempt
Grosvenor	425210	44%	Exempt
Twinbrook	387500	46%	Exempt
Wheaton CBD	355450	37%	Exempt
Glenmont	331539	52%	Exempt
Rockville Town Center	350026	43%	Exempt
Shady Grove Metro Station	261067	45%	Exempt
<b><u>Orange Policy Areas</u></b>			
Silver Spring/Takoma Park	417974	64%	No Mitigation
North Bethesda	356814	29%	Inadequate - Full Mitigation
Bethesda/Chevy Chase	233195	67%	No Mitigation
Kensington/Wheaton	295303	34%	Inadequate - Partial Mitigation
Rockville City	228717	22%	Inadequate - Full Mitigation
White Oak	389724	74%	No Mitigation
Derwood	148700	40%	Inadequate - Partial Mitigation
R&D Village	219843	11%	Inadequate - Full Mitigation
Gaithersburg City	167844	20%	Inadequate - Full Mitigation
Germantown Town Center	120902	2%	Inadequate - Full Mitigation
Clarksburg	71402	0%	Inadequate - Full Mitigation
<b><u>Yellow Policy Areas</u></b>			
Aspen Hill	73619	24%	Inadequate - Full Mitigation
Fairland/Colesville	124890	53%	No Mitigation
Potomac	83278	45%	No Mitigation
North Potomac	60014	8%	Inadequate - Full Mitigation
Germantown East	66030	3%	Inadequate - Full Mitigation
Germantown West	73869	17%	Inadequate - Full Mitigation
Montgomery Village/Airpark	26230	N/A	No Mitigation
Olney	608	N/A	No Mitigation
Cloverly	18612	N/A	No Mitigation
<b><u>Green Policy Areas</u></b>			
Rural East	6853	N/A	Exempt
Rural West	989	N/A	Exempt
Damascus	838	N/A	Exempt

# Clarksburg Town Center



# MONTGOMERY COUNTY DEVELOPMENT-RELATED TDM PROCESS

## RECOMMENDATIONS FOR REVISIONS

October 2016

### TDM Process Review Work Group

The Montgomery County Department of Transportation (MCDOT) convened a diverse work group of Executive, Council and M-NCPPC staff to provide input regarding improvements to the process for Traffic Mitigation Agreements (TMAs) and other Transportation Demand Management (TDM) strategies used in the County. Nelson/Nygaard Consulting Associates facilitated the discussions, consolidated recommendations from the group and contributed information regarding best practices nationally. The objectives were to improve consistency and predictability in the development process while enhancing the ability to achieve the County's non-auto driver mode share (NADMS) and broader TDM goals.

After consideration of national best practices and alternatives for local application, the TDM Process Review Work Group ("Work Group") recommended consideration of a number of modifications to the development review and subdivision process with the goal of sustaining mobility in the County to support the economic strength of the County and the quality of life offered to residents and workers. Working with the consultants, MCDOT has incorporated the Work Group recommendations into a plan for revision of the process, as highlighted with additional recommendations (in *bold italics*) below.

#### Summary of Key TDM Work Group Recommendations:

1. *Expand Transportation Demand Management efforts to all areas of the County (excluding Agricultural Reserve areas)*
2. *Establish a tiered system for applying TDM that responds to the variety and quality of local mobility options, using geographic units and/or boundaries already established in the County.*
3. *Expand TDM efforts beyond commercial projects to include moderate-to-high density residential developments*
4. *Establish project-specific mode share targets that help the County achieve Transportation Management District (TMD), area and/or Countywide goals*
5. *Develop and adopt a TDM "menu" of required tools and strategies. The recommended menu or "toolbox" should provide both flexibility and consistency.*
6. *Improve monitoring and reporting and strengthen enforcement mechanisms.*

After review of these alternatives, the Work Group determined that a hybrid approach was preferred – one that provided a flexible toolbox of expected measures combined with performance requirements to ensure the package of programs chosen delivered the required results. The following conceptual approaches are proposed:

#### **Geographic Application**

The current areas of application for TMAs, as established by County Code, are fairly narrow at present – limited only to projects within designated TMDs. It is recommended that the program be modified under the Code to apply to the whole of Montgomery County, excepting only areas within the designated Agricultural Reserve. The application of the program throughout the

County levels the playing field and reduces the possibility of leapfrog development or an incentive to develop just outside of established TMD boundaries.

Certain issues remain to be resolved. Subdivision regulations have been proposed which would allow for TMAgs outside of TMDs, which is a good start. However, non-motorized mode share goals do not currently exist in all portions of the County, particularly in less urbanized areas. Those goals need to be established.

**Work Group Recommendation for NADMS Goals:**

- ***Include NADMS goals in Subdivision Staging Policy (SSP) transportation recommendations for all Policy Areas except Green.***
- ***Use current master plan/sector plan NADMS goals for a 10-year time frame, where available.***
- ***As a starting point for areas where NADMS goals do not currently exist, use Planning Board assumptions shown in the SSP Appendix (data based on the most recent Journey to Work of the American Community Survey in the U.S. Census) for NADMS and add 5 percent. For example, the draft SSP shows that the Olney Policy Area has NADMS for residential trips of 35.7% and 23.7% for office trips – so the NADMS goals for Olney should be 40.7% for residential trips and 28.7% for office trips.***

**Tiered Requirements by Geographic Area or Project Type**

Although it is appropriate that TMAgs be required across the County, it is recognized that the County is not homogeneous in land use context and level of transit services. For that reason, it is recommended that a tiered system be established to determine the appropriate level of transportation demand management expected and achievable in areas with very different context and/or of projects with different intensities of impact.

The Work Group recommended that three tiers of TDM requirement be established.

***The Work Group recommends using the same geographic classifications for TDM as for the SSP.***

These three tiers then would be:

1. ***High Mode Choice (HMC) Areas (SSP: Red)***– These are defined to include areas with transit services operating in exclusive rights-of-way, which due to higher speed and reliability are able to attract a higher level of fixed investment from prospective developers. They are comprised of the Metro Station Policy Areas (MSPAs) defined in the 2016 Subdivision Staging Policy recommendations as the “Red” areas. These high-choice areas include some established Transportation Management Districts but may include additional designated areas that provide other modal options.

**Work Group Recommendation:** ***All areas designated as “Red” in the SSP should be TMDs. However not all TMDs should be Red. Thus Glenmont and Wheaton (which are designated “Red”) would need to have TMDs created by Council resolution. Wheaton could be established as a TMD in the near-term. The timing for creation of the Glenmont TMD would relate to level of development.***

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2. Moderate Mode Choice (MMC) Areas (SSP: Orange)– The Work Group recommended these areas be those with some level of transit service, although service may not necessarily be frequent. Moderate Mode Choice areas would include corridor cities, town centers, and emerging Transit Oriented Development (TOD) areas as well as Bicycle Pedestrian Priority Areas (BiPPAs) and Urban Road Code Areas as defined by the SSP.

**Work Group Recommendation: Define these areas as all the “Orange” areas designated in the SSP.**

3. Limited Mode Choice (LMC) Areas (SSP: Yellow)– These are areas of the County that may not have distinct centers or modal hubs that would support a variety of mode options to meet commuting or other travel needs.

**Work Group Recommendation: Define these areas as the “Yellow” areas designated in the SSP – but LMC areas could also include the “Green” areas when proposed for new development of the types to be included in the requirements for TMAg/TDM strategies.**

#### Exemptions from TDM Program Requirements

The following types of development projects should not be required to participate in TDM program efforts, regardless of in what geographic area they are located:

- Single Family Detached Residential Projects

Single family detached residential developments are unique. Sustainable management and delivery of the TDM programs are generally difficult in these projects given the diffuse ownership structure and lack of a common management oversight. Consistent monitoring and enforcement is nearly impossible. For this reason, it is recommended that developments of single family detached properties should not be required to develop or deliver a formalized transportation demand management program or enter into a TMAg. These projects should, however, be reviewed with a keen eye and required to build into their physical infrastructure TDM-supportive features such as bicycle parking, transit-supportive amenities, connected and walkable networks, and low stress bicycle accommodation.

- Projects that generate fewer than 50 Peak Hour Person Trips

Since the new SSP guidelines call for basing Traffic Impact Analysis for LATR on Person Trips rather than Vehicle Trips – and since projects generating fewer than 50 Peak Hour Person Trips would be exempt from LATR analysis – the Work Group recommended that Projects generating fewer than 50 Peak Hour Person Trips that are exempt from LATR likewise be exempt from requirements to do a TDM plan.

For example, a 20,000 sq. ft. office building would be expected to hold approximately 100 employees. If half of those employees commute to work during the peak hour, they would generate 50 Peak Hour Person Trips. Projects of that and similar size would be the smallest ones where a TDM Plan would be required.

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- Religious Institutions and similar non-profit places of public assembly

It is part of public policy to encourage churches, other places of worship, and community-based non-profit organizations to maintain locations within the County's urban centers and where those without access to private autos can still readily access those service providers.

### **Fee for Service/Incentives for Compliance**

The TDM program currently provides certain services and assistance to commercial and, in some cases, high density residential development projects within TMDs, and on a limited basis to major commercial developments outside TMDs. The Work Group recommended that a basic level of TDM education, awareness and services should be offered throughout the County to support the Countywide effort to reduce traffic impacts and achieve TDM goals.

Under the proposed system discussed in the Work Group, developments would pay into a countywide TDM fund commensurate with their mode choice area designation. Such a tiered fee would require some level of administrative tracking versus a general tax.

- Areas within designated TMDs would continue to have the existing TMD fee apply, and would retain their existing programming and attention.
- Adding participation by areas outside TMDs will level the playing field between TMD and non-TMD locations and the associated requirements. It will also provide the pooled resources necessary to provide more effective TDM services and support to the non-TMD portions of the County, which represent a much larger geographic area.

Currently TMD fees are applied only to commercial developments first occupied after the fees were adopted in 2006. The Work Group recommended consideration be given to assessing TMD fees on multi-unit residential projects as well, and potentially to existing development that was in place prior to adoption of the fees, since all projects – new or existing – benefit from the TDM efforts in those areas.

### **Work Group Recommendation:**

- ***Red areas/HMC/TMDs – Fees should apply to all development, regardless of when completed (i.e., both those completed prior to 2006 and those built/occupied after that). Fees should apply to residential multi-unit and townhome projects, as well as commercial development.***
- ***Orange areas/MMC – Fees should apply to commercial, multi-unit residential and townhomes. Fees should be set at a level to cover staff and marketing of TDM programs and services. Consider 50% of TMD fee.***
- ***Yellow areas/LMC – Fees should be set lower commensurate with lower level of TDM services. Consider 25% of TMD fee.***

Projects will have the option of providing their own TDM program to achieve NADMS and other TDM goals, or participating in the County's programs. Projects not wishing to provide their own TDM program may be required to pay a separate fee for service to have the County TDM program concurrently provide TDM services to the payee's property.

### **Targets and Thresholds**

The new SSP draft recommends a peak hour 50-person trip threshold to trigger Local Area Transportation Review studies. In parallel, the new TDM program would utilize that same 50-

person trip threshold to determine whether a project must submit a TDM plan/strategy and participate in ongoing monitoring requirements.

***Work Group Recommendation: Every development project required to have LATR analysis must have a TMag, including developments in the Red/HMC areas that exceed the 50 Peak Hour Person Trip threshold (consistent with pending revision of SSP recommendations).***

It is appropriate that projects each have an independent performance requirement for their development. These independent targets should roll up into a larger NADMS goal for the general area. Failure to successfully meet and maintain the target would trigger a requirement to revisit and revise the adopted TDM measures.

Each existing TMD, as a transit-rich area, already has designated Non-Auto Driver Mode Share targets. Every new project is expected to contribute positively to the overall goal. However, with few exceptions, projects currently are not actually required to achieve a certain NADMS goal or any other specific TDM goals for their project itself.

Under the proposed TDM program, newly established *High Mode Choice Areas* will have goals and targets set for them just as with the existing TMDs, and all new (and perhaps existing) development projects over a given size will be required to achieve the goals and targets.

Universal, area-wide goals also will be set for *Moderate Mode Choice Areas*. While existing projects within these areas should strive to meet these goals, new projects proposed in the area may be required to achieve a higher level of Non-Auto Driver trips in order to ensure the target is met for the whole area.

Targets may not be established for *Limited Mode Choice Areas* but rather basic standards of mode choice support and encouragement must be demonstrated and a good faith effort made.

## **Toolbox of TDM Measures – Appendix A**

Appendix A presents a sample of TDM measures considered potentially suitable for Montgomery County by Nelson/Nygaard. The required measures in the toolbox would need to be scaled appropriately to the *High, Moderate* and *Limited Mode Choice Areas*. Some elements will be common across all areas such as parking management techniques and informational elements. High Mode Choice Areas will have more robust requirements that are reduced in the lower mode choice areas. The toolbox would be flexible regarding adding components as they become available and their efficacy is evaluated.

The final toolbox or “menu” may include default/required measures together with comparable options that could be swapped out for the default measure. Like a well-balanced meal, the required TDM programs may outline the basic components but permit applicants to choose the specific measure (for example a healthy meal may include a protein, two vegetables and a fruit but diners may choose what individual components best suit their taste – and for developers, best suit their project type, context and “travel consumers.”)

In identifying or allowing the application of alternative programs or services, the County must also consider the cost to provide the alternatives making up that program. Ideally that cost would be approximately comparable across various projects on a per unit basis (e.g., cost per square foot, housing unit, or trip generated/reduced). However, where gaps between existing NADMS and NADMS goals are greater, costs for achievement may also be greater. The County must also consider context to ensure that alternative program selections have the area infrastructure necessary to support their success and effectiveness. Determination of whether measures are

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required or optional, and what cost basis should be used to ensure equity, will be made at a later date in conjunction with further discussion with stakeholders and other parties.

### **Monitoring and Reporting**

At present, measurement and reporting on specific activities is conducted primarily by the properties themselves utilizing online reporting templates developed and provided by the County. The County conducts an annual Commuter Survey to determine overall area NADMS, and can determine NADMS for specific properties, but does not have the resources to survey every property every year. Currently the County does not have the capacity nor resources to conduct monitoring and reporting on all aspects of TMAgs with properties on a regular basis.

The requirement for monitoring and reporting may vary across the tiers of modal choice opportunity areas.

- Projects in *Limited* (LMC) or *Moderate Mode Choice* (MMC) areas would be required to demonstrate that they are doing what they said they would do. These areas may not have specific NADMS targets. But even if the decision is made to establish NADMS targets for MMC areas, individual projects may not be required to achieve those targets. Therefore, the properties themselves would not be held to specific numerical targets or measures of effectiveness. They would simply need to show that they are providing the services, programs and amenities as committed to and agreed upon.
- Projects in *High Mode Choice* (HMC) areas need to have more active monitoring, not just a certification of action as with the lower tier areas. These projects will be held to a property-specific performance target. TDM plans approved for these areas must be actually monitored for effectiveness and must be modified if properties are not achieving the expected level of effectiveness. It is not enough to simply do what was agreed upon. Programs must be effective or they must be altered.

Several alternatives for monitoring were discussed by the Work Group and in subsequent discussions within MCDOT:

1. Monitoring could be done by the County, with expanded staff capacity.
2. Projects could be tasked to self-report following an established data collection methodology and certification.
3. The County could designate and certify third party contractors to complete monitoring (as is done in Arlington County, VA). These vendors may be contracted directly by the property, or properties could pay the County for regular monitoring. The County may then aggregate properties requiring monitoring in that particular year, bundle and contract under one effort, likely enabling reduced cost for monitoring associated with this economy of scale.

**Performance Security:** Projects in the HMC/Red areas, and projects with specific goals in the other areas, will be required to provide some type of security for their commitments. This may take the form of a bond or letter of credit. In most cases, the letter of credit must be in effect for up to 12 years. Alternatively, projects may choose to make an up-front payment if they anticipate they may not be able to securitize the project for the whole monitoring period. The security and/or payment will be scaled to project size. These provisions require further discussion.

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**Work Group Recommendation:**

**Adopt two types of monitoring: Self-Directed and County-Directed  
Both types must be based on valid and reliable determination of NADMS, thus  
requiring improved methods of data collection with regard to commuting choices.**

**Self-Directed**

- **Project/Developer will monitor based on approved data collection and analysis protocol, conducted with an approved vendor. (MCDOT will establish criteria for vendor approval.)**
- **Project/Developer will submit bi-annually a report on accomplishing the NADMS goal.**
- **If NADMS goal is met, then project is in compliance.**
- **If NADMS goal is not met, a remediation plan must be developed by the Project/Developer and approved by MCDOT within three months.**
- **Implementation of the remediation plan must commence within three months of MCDOT approval.**
- **A new monitoring report must be submitted within one year of implementation of remediation.**
- **County reserves the right to monitor achievement independently of Project owner**

**County-Directed**

- **MCDOT will establish toolbox of TDM measures appropriate for each Mode Choice geography (Red/HMC; Orange/MMC; Yellow/LMC)**
- **Project/Developer will have options to choose among choices with certain elements optional and others required.**
- **Project/Developer is responsible to implement the approved plan**
- **County responsible for monitoring and reporting on achievement of NADMS**
- **Failure to achieve NADMS goal will require a remediation plan developed by MCDOT with Project/Developer cooperation and assistance.**
- **County's role is to establish a toolbox of measures appropriate to each geographic area. Implementation costs of those measures will be the responsibility of the developer/owner.**

**Enforcement and Corrective Action**

The TDM program will be enforced through both regulation and penalties. Additional research and work is necessary to determine the available remedies, though penalties may be contingent on the flexibility of the final instituted program. For instance, if a property follows a compulsory set of measures, but does not reach specified goals, a penalty may not be appropriate. However, if a property chooses to design their own program, and that program proves to be ineffective, then a penalty may be in order.

**Work Group Recommendation:**

- **NADMS goals for each Project must be achieved within five years of approval of TDM plan**

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- ***Failure to meet NADMS goals will incur penalties/liquidated damages. These will be proportionate to the shortfall***
- ***Penalty level should relate to the cost of achieving the goal for Policy Area.***
- ***Penalty is assessed annually until goal is achieved.***

### **Instruments for Implementation**

Currently TDM programs for new development projects are implemented using the Development Review process, with recommendations made by MCDOT/Commuter Services for incorporation into conditions of approval by Planning Board. Recommendations made at that level are generally broad and do not delve into more specific details of the program and commitment. At present, these details for individual projects are expressed through the Traffic Mitigation Agreement (TMAG).

The Work Group recommends actions to move away from individually negotiated agreements for programs and into more consistent requirements incorporated into the County Code, specifically Section 42A-25. While the standard “required” measures may be able to be clearly articulated as additions to the County Code, higher-level TDM measures/strategies tailored to a specific project may still require individualized TMAGs. However, a level of standardization and basic elements required should be established to reduce the amount of negotiation necessary for these agreements.

TDM requirements will continue to be inter-related with SSP categories. Ensuring the currency and consistency of the TDM requirements may require regular re-examination of the provisions of future adopted Subdivision Staging Policies. An implementation deadline is currently undetermined, but should be given near-term consideration.

### **Work Group Recommendation:**

- ***Incorporate standard TDM requirements into County Code and/or SSP provisions, based upon geographic location***
- ***Permit individualized arrangements for specific projects through TMAGs, selecting from Toolbox of options to achieve goals, coupled with Performance Security measures as appropriate based upon geographic location***

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Appendix A  
 Transportation Demand Management  
 Sample Toolbox/Menu of Options

	High Mode Choice Area	Moderate Mode Choice Area	Limited Mode Choice Area
<b>PARKING</b>			
<u>Maximum parking limits:</u> Transit-oriented residential and office developments in Montgomery County exhibit lower parking demand than required by the county's parking requirements by being in a location where residents and workers have multiple transportation options. As a result, residential and commercial developments in parking lot districts or reduced parking areas have maximum parking limits. High minimum parking limits undermine the performance of TDM programs and encourage more driving. Providing a maximum parking limit in high mode choice areas can eliminate underused parking and create incentives to use other transit modes.	X		
<u>Eliminating minimum parking requirements:</u> Parking minimums can make it difficult to provide a compact, walkable urban environment, whether by forcing different buildings and uses to spread out or by making development projects on smaller lots infeasible. Some cities have eliminated minimum parking requirements in order to encourage appropriate development and allow the market to determine parking needs.	X		
<u>In-lieu fees or ad valorem tax:</u> Montgomery County currently requires a minimum number of parking spaces in Parking Lot Districts; if the property owner provides fewer than the requirement, they must pay an ad valorem tax to the PLD to contribute to shared public parking facilities. This encourages developers to build less parking while taking advantage of existing parking infrastructure.	X		
<u>Unbundled parking:</u> Renters or homebuyers in Montgomery County pay for parking in new housing, whether they use it or not. This can add costs to what is already an expensive housing market, particularly in areas where residents have multiple transportation options and may not need a car. Separating the cost of parking from housing can reduce housing costs while providing an additional incentive to take advantage of modes other than driving. Similar benefits accrue when parking for office and some other commercial space is unbundled from tenant leases. f	X	X	X
<u>Unassigned parking:</u> Currently, the county's zoning code requires that all developments provide assigned parking spaces for different uses (such as a building with apartments and retail), which can often duplicate parking resources. Different users may require parking at different times; for instance, office workers may park during the day, while residents could use the same spaces at night. Allowing unassigned parking between building uses could take advantage of varying parking demand throughout the day while reducing the need to build additional parking.	X	X	X

	High Mode Choice Area	Moderate Mode Choice Area	Limited Mode Choice Area
<b>BICYCLING</b>			
<b>Bicycle access improvements:</b> Ensuring safe, easy bicycle access to a property can encourage occupants and visitors to bike there instead of driving. This means providing multiple entrances for people on foot or bike and, on larger sites, publicly-accessible paths through the site. Building entrances should face pathways or streets, not parking lots. Montgomery County already allows developers to contribute to closing gaps in the bicycle network, whether through a fee or by constructing the improvement themselves.	X	X	X
<b>Secure bicycle parking:</b> Adequate bicycle parking gives bicyclists the same reliability that drivers expect at sites where parking is provided. Secure, indoor bicycle parking such as a bike room or bike lockers adds an additional level of security for building occupants seeking long-term parking. Today, developers in CR and some other zones are already required to provide on-site bicycle parking, usually in the form of bike racks.	X	X	X
<b>On-site bicycle repair facilities:</b> Like secure bicycle parking, on-site bicycle repair facilities make bicycling a more reliable transportation mode for occupants and visitors and reduce barriers to owning and maintaining a bike. They also keep bicycles in circulation, ensuring that people who come and go from the site by bike will continue to do so unimpeded by repair issues.	X	X	X
<b>Participation in County bikeshare:</b> Private entities such as developers or property managers can sponsor an on-site bike share station that is part of the County bikeshare program, creating connectivity with a larger system in the County and the region. This creates an incentive for residents or workers to bike to and from the property, particularly for short trips or "first mile/last-mile" connections. Incentives for bikeshare use can also be provided to tenants, employees, residents etc. using membership sponsorship programs available in the region.	X	X	
<b>Private individual bicycle share:</b> Developers or property managers can sponsor a bikeshare program within an individual site for round trips or within a network of bikesharing "pods" available to residents or employees affiliated with a particular developer or company. This is particularly geared towards short trips, such as meetings or running errands, as well as exercise and tourism. It generally does not result in as robust or flexible a system as the County bikeshare system but could be used for developments outside the County's bikeshare service areas.	X		X
<b>Private bicycle loan programs:</b> Like a private individual bikeshare program, properties can provide bikes to rent or borrow for a set period of time, but only for round trips. Borrowers may be provided a helmet and lock and be required to return the bike within a set period of time.	X		
<b>VEHICLE SHARING SERVICES</b>			
<b>Fleet-based car share:</b> Fleet-based car share operators (like Zipcar) maintain a fleet of cars at set locations. Property managers or developers can provide spaces for car sharing vehicles on their site for their occupants or the general public to use. Montgomery County offers provision of car sharing spaces as an option for developers in the CR zone seeking additional density. Developers/property managers can incentivize one-way car share use by providing dedicated spaces on their property for them, and/or offering discounted or free passes to users.	X	X	X
<b>One-way car share:</b> One-way car sharing programs (like car2go) enable users to pick up and drop off vehicles within a set "home area," typically a municipal boundary. One-way car sharing programs allow users to mix-and-match transportation options, for instance taking transit to a location and using a car share vehicle for the return trip. They reduce the barriers to using other modes of transportation. In DC, car2go vehicles can park on street or within specific private parking facilities for free. Developers/property managers can incentivize one-way car share use by providing dedicated spaces on their property for them and/or offering discounted or free passes to users.	X		X

	High Mode Choice Area	Moderate Mode Choice Area	Limited Mode Choice Area
<b>TRANSIT PASSES</b>			
<p><u>Universal transit pass programs:</u> Transit pass programs can encourage the use of public transportation by reducing financial barriers to using transit or making transit comparable in price to the perceived value of free parking. In doing so, they can improve transportation access and reduce vehicle ownership rates, as well as the demand for parking, in turn reducing the carbon footprint of more intensive land uses. Universal transit passes, when implemented at a residential or commercial property, allow occupants unlimited use of all service within a system for a significant discount. The passes can be distributed by the property manager or employer to occupants. In some cases costs may be recouped from rent, HOA dues, or other fees. WMATA is currently testing a SelectPass program that allows unlimited transit use for a discounted price based on trip length (since Metro fares are set by distance).</p>	X		
<p><u>Discount transit pass programs:</u> Discounted passes are partially subsidized by a property manager or employer and sold to occupants at a lower rate. Like a universal pass, they may provide unlimited use of all regular transit service, and may be covered by rent, HOA dues, or other fees. This is an in-house program and property occupants can elect whether or not to purchase a pass.</p> <p>The County recently re-instituted their FareShare transit subsidy matching program, which is designed to incentivize employers to offer discounted transit passes to their employees. The County pays half the cost of transit passes, up to \$100/month/employee for employers located in TMDs. Employers are also eligible for a State tax credit of 50% up to \$100/month/employee for their portion of any transit subsidy provided to employees.</p>	X		
<p><u>Guaranteed Ride Home:</u> Emergency ride home programs are commonly offered by employers to incentivize their workers to use transit, though they may also be offered in residential communities. They provide a subsidy that can either be set to a maximum value or number of trips for residents or workers to get home in an emergency by transit, taxi, or transportation network company (TNC) services such as Lyft or Uber. In the Washington region the Commuter Connections program of the Council of Governments provides a GRH program throughout the region. These programs are especially effective when traveling from a high mode choice area to a low mode choice area (such as from a suburban residential community to an urban job center, or a reverse commute from a transit-oriented residential community to a suburban job center.</p>	X	X	X

	High Mode Choice Area	Moderate Mode Choice Area	Limited Mode Choice Area
<b>COORDINATION AND COMMUNICATION</b>			
<u>Marketing and distribution of materials:</u> Apartment or office buildings generally experience turnover of occupants (tenants and/or employees) over a given period of time. They may face challenges in informing new residents or workers about transportation options. Property managers can place an information kiosk on the property or provide new occupants a transportation package with information about nearby transit and bicycle facilities, TDM programs such as transit passes, walking/biking groups, and rideshare matching. Marketing materials should convey the benefits of a car-free or car-light lifestyle. Not only do these materials educate occupants, but they make the property more attractive to residents or employers interested in transportation choices.	X	X	X
<u>On-site commute coordinator:</u> At apartment or office buildings, an on-site TDM coordinator can be an additional source of information for residents or workers who do not know about transportation options in the area, and reduce friction to those seeking alternatives to driving.	X	X	X
<u>Rideshare or ride-matching programs:</u> A trip coordinator can collect information from interested residents or workers about travel preferences and match them with partners with similar plans. This may be most effective with large-scale participation. Rideshare programs can reduce single-occupancy vehicle trips, particularly in areas with low mode choice. Commuter Services provides the local connection to the regional Commuter Connections ridesharing program and region-wide database of potential rideshare partners.	X	X	X
<u>Real-time transportation news and commuter alerts:</u> Provide occupants updated information on transit schedules, transit and bike maps, important service changes, and real-time transit arrivals. This can be in the form of an interactive, real time display of transit information and other options (such as a TransitScreen) in a prominent, highly-visible location. It can also be postings on static lobby or breakroom displays or similar information posted on the local website, e-distribution or listserv. This further reduces barriers to using multimodal transportation options, while improving the experience of using different options.	X	X	X
<u>Organized walk or bike groups:</u> Organized groups on a property- or neighborhood-level scale can promote pedestrian or bicycle travel, help people feel more comfortable with active transportation modes, and improve health and camaraderie. This may be most effective for suburban bike-to-work journeys, and can also be accompanied by safe cycling classes and other pedestrian and bicycle safety information.			X
<u>Wayfinding:</u> Provide signage for clear directions and walking or biking time to nearby destinations, such as transit stops, shopping and commercial districts, major employers, or public institutions such as schools or libraries. Wayfinding signage can make the area easier to navigate and encourage people to travel by foot or bike. Montgomery County already offers provision of wayfinding as an option for developers seeking extra density under the CR zone.	X		X

**TMD/TMAg Recommendations:**

**Summary of Development Community Stakeholder Input – Meeting of 10/5/16**

A work session with representatives of the development community on the draft recommendations from the interagency work group on development-related transportation demand management was held on October 5, 2016. A brief summary of the discussion is provided below.

**Process:** The development community is curious about how these ideas will be incorporated into the ongoing discussion of the Subdivision Staging Policy and is seeking clarity about how the TMAg requirements and expanded concepts for transportation demand management will be implemented.

***Specific Questions about the Recommendations:***

- Standardization and predictability are positive aspects of proposals.
- The development community commented that it is difficult to react to the framework presented without knowing more of the specific details, especially fees and penalties, and its relationship to other development laws and regulations.
- Some representatives of the development community commented that TMAgs are a useful tool resulting in benefits to projects. Also these requirements can help convince owners/managers of ongoing need to implement TDM strategies.
- There is some question about why we would expand TDM to entire County. If we need transit to achieve best results, why extend TDM efforts to areas of County not currently well-served by transit? And why charge fees to those projects?
- Representatives stated that some aspects of TDM & these recommendations go beyond developers' control. Developers could use all tools available and still not meet goal.
- There are some concerns about how these requirements are either translated to employer requirements or to unit owners in for-sale residential development (particularly townhouse and single family units).
- Participants mentioned that TDM strategies and developer commitments must be accompanied by corresponding public investments in infrastructure that promotes alternative transportation modes – e.g. bikeshare, BRT, and other walking and bicycling improvements. Implementation of these projects over time suggests the need for interim goals.
- Some representatives suggested that aggregate goals for TMD's seem more fair, rather than individual project goals. Aggregate goals promote collaboration among various owners, plus can use the structure of TMD to coordinate. It was also suggested to use aggregate goal for TMD, but if one property is meeting its goals and another is not, and therefore the aggregate goal is not being achieved, the property meeting its goals should still be permitted to proceed with further phases even if aggregate goal not being achieved.
- It was widely agreed that security-instrument requirements for TDM are off-putting, costly, difficult to implement. Alternatively, we should agree on the strategies to be implemented and agree to a process to revise the program if the goals are not being attained.

- Some suggested that we should not penalize developers if strategies agreed upon are not working. It would be preferable to use funds that would otherwise be paid by developer for penalties and have developer use these to implement additional strategies.
- Participants noted that technology is changing quickly and the toolbox needs to be easily updated to reflect evolving options. The toolbox useful as a way to identify strategies up-front, not late in the process. There is a need to be sure toolbox includes identifies the physical requirements of the program so they can be incorporated into site planning early.
- Participants suggested that a TDM budget for projects should be established and that programs can be updated or replaced within that budget. This would help provide more certainty for property owners.
- Participants suggested that there should be rewards for good performance in addition to, or instead of, penalties for poor performance. TMAgs can be good for their development re attracting tenants, employees, residents. Some suggested that we consider reducing incentives once goals are achieved.
- Others identified that the real incentive is being able to build project in timely fashion & not be subjected to added requirements. Also, participants noted that TDM can help offset other liabilities and associated payments -e.g. LATR fees.
- Generally, representatives indicated that the development community willing to collaborate on this, but much more certainty about the details is needed and costs need to be understood and controlled.

### TDM Developer Stakeholders

TDM Developer Stakeholders		
Sign In Sheet		
Wednesday 10/5/16		
Name	Organization	Contact Information
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MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

MEMORANDUM

NANCY FLOREEN  
COUNCIL PRESIDENT

October 13, 2016

**To:** Councilmembers  
**From:** Nancy Floreen, Council President  
**Subject:** Subdivision Staging Policy – Transportation Tests and Impact Taxes

Consistent with what I've recommended on the education side, and after having thought about this, frankly, for years, I propose that we confront reality, increase the transportation impact tax across the board, apply it consistently across the county, and impose a traffic management system across the county.

As far as I am concerned, the Planning Board's new Subdivision Staging Policy proposal of using "transit accessibility" and "vehicle miles traveled" as the basis for measuring transportation adequacy and calculating tax rates may fit squarely within the mainstream of modern planning practice, but it offers us little in the way of actual improvement. (Our staff has taken that concept further and has proposed a standard of "person miles travelled" to be used as a measure for tax rate calculation.) While I appreciate the seriousness and thoughtfulness that supports this work, I do not believe these well-intentioned standards advance our needs. Apart from the complexity of its analysis, the Planning Board's test assumes a pace of transit production that is highly unpredictable. Witness the Governor's recent removal of funds for the Corridor Cities Transitway from his capital budget.

In addition, what we have learned in the Planning, Housing and Economic Development Committee so far is that the existing policy area based test – Transportation Policy Area Review - is widely believed to be overly complex and primarily a revenue collection device. Many regard it as a multilayered "black box" of analysis and algorithms.

Similarly, we long have had a localized test, Local Area Traffic Review, designed to measure traffic congestion, although LATR is not particularly related to transit accessibility. As with the TPAR test, this process is elaborate and mysterious, using the questionable Critical Lane Volume and shifting Level of Service analyses, and is subject to discretionary standards and application.

Historic data reveals that we have collected \$1.457 million over five years in transportation mitigation revenues under TPAR, which is equivalent to two percent of our impact tax receipts during the same period. LATR also has produced an additional multitude of well-intentioned and varied ways of addressing congestion. At the same time, we do not know what transportation facilities have actually been constructed to meet our traffic adequacy requirements under all these tests, although I assume this information could be compiled. The total cost of all of these tests, not to mention staff and consultant time, has not been calculated.

So what do we have to show for all our work over all these years to address our adequate public facilities needs? A variety of ad hoc intersection, roadway, sidewalk and bicycle improvements, a number of traffic mitigation agreements, and about \$75 million in receipts, assigned to random transportation initiatives - NONE of which is particularly coordinated.

I propose we think differently.

I agree with staff's proposal, similar to what we did in White Oak, to establish a formal list of needed transportation facilities - whether they are based on car, bus, pedestrian or bicycle travel needs. (We already have a pretty comprehensive compendium.) This list would constitute our priorities for adequate public facilities needs for each planning area. While such a list may evolve over time, our master plans already detail much of what needs to be done and can be the starting resource. As projects come along, I would allocate their transportation impact tax to those projects, some of which might be funded entirely, others of which would only provide a drop in the bucket, but at least would constitute a start. I would substitute this process for the current policy area review proposal and eliminate LATR. This concept is consistent with the Planning Board's recommendations for the Road Code Urban areas and Bicycle Pedestrian Priority areas. Why not apply it everywhere?

Some might argue that the transportation impact tax has historically been applied to big network type projects. Maybe that is the case, but the amount raised has never been enough to fund any one big project. It makes far more sense to spend the revenue in the community receiving the impact of any development project. Others may argue that the State requires an LATR analysis for projects that seek access to state roads. I would point out that we are not the State, and, in any event, we would expect that whatever the State requires would be consistent with our master plans. We should permit credits against the impact tax in such cases, because such improvements achieve community goals.

I would establish the transportation impact tax at the 2015 General District Rate. (The Planning Board analysis concludes that it is at a reasonable level.) I would add an additional five percent to account for the replacement of LATR revenue. I would further proceed to apply the revised transportation impact tax to ALL projects that have not yet submitted an application for subdivision approval. Current applications could choose the new approach or be subject to the current requirements. I would exempt current enterprise zones (not former ones), affordable housing, bioscience projects, hospitals, social service agencies, churches and private schools. The transportation impact tax would increase annually based on the regional Consumer Price Index.

I would apply this tax equally to all projects in each of the Planning Board's use categories, without regard to location. For example, commercial projects in Bethesda would pay the same square footage base rate as those in Damascus. This approach is consistent with our staff's recommendation. While the dollars in Bethesda might be dedicated to bike lanes or Bus Rapid Transit stations, those in Damascus are more likely to go to roadway improvements. If a developer preferred to actually deliver a listed improvement instead of contributing to it, a credit against the impact tax due should be granted, whether or not the project involves a county or state facility.

The PHED and Transportation, Infrastructure, Energy & Environment committees have been briefed on an ongoing effort to establish Transportation Demand Management Districts across the county, with different levels of goals depending on the Planning Board's color coded districts. This plan would form the basis for an annual per square foot assessment of all commercial and medium to higher density residential projects to manage community based transportation demand. I applaud this effort. Once the plan's elements have been fleshed out for public review, amendment and adoption, I propose we eliminate the five percent increase to the transportation impact tax I propose above, and use the new TDM plan as a community based substitute for LATR.

These proposals would add simplicity, predictability, and rationality to our never-ending commitment to address transportation adequacy. What's more, it would add a new element of community based coordination. It would respect the fact that all communities have infrastructure needs, of varying types but of equal importance. And it would eliminate the current cost differentials between various parts of the county. Our zoning and parking policies already create strong incentives for locational choices, particularly at Metro stations. Encouraging a mix of uses throughout the county can help with vehicle miles travelled, and its demand for supporting infrastructure, everywhere.

I further point out that if we continue down the current path of tests and measurements, it is likely that the net revenue collected will be comparable to what I have outlined above, but that the actual experience of community transportation benefits will be even more marginal than it is today. The underlying objective of achieving adequacy of public facilities should be recognized as serving a far more local need that we have previously acknowledged, which my proposal does. At the end of the day, we should judge ourselves on what we have achieved for our community, not on how many numbers we have crunched.

I trust that you will find this approach simple, understandable, straightforward, community based and cost effective. I therefore ask for your support of this worthy approach.

cc: Isiah Leggett, Montgomery County Executive  
Casey Anderson, Chair Montgomery County Planning Board  
Gwen Wright, Planning Director  
Glenn Orlin, Deputy Staff Director  
Bob Drummer, Council Staff Attorney  
Al Roshdieh, Director, Montgomery County Department of Transportation  
Jeremy Criss, Director, Office of Agricultural Services  
Gigi Godwin, Montgomery County Chamber of Commerce  
Marilyn Balcombe, Gaithersburg-Germantown Chamber of Commerce  
Ginanne Italiano, Bethesda-Chevy Chase Chamber of Commerce  
Jane Redicker, Greater Silver Spring Chamber of Commerce  
Frank Jamison, Charles H. Jamison, LLC  
Dan Wilhelm, Greater Colesville Civic Association  
Jim Zepp, President, Montgomery County Civic Federation



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

MARC ELRICH  
COUNCILMEMBER AT-LARGE

To: PHED Committee Chair Nancy Floreen and  
GO Committee Chair Nancy Navarro  
Re: Subdivision Staging Policy  
Date: October 17, 2016  
Subject: Subdivision Staging Policy – Transportation - comments, questions and next steps

I have been following the deliberations of the Subdivision Staging Policy (SSP) in both committees, and I will continue to do so. Below are comments, suggestions and proposals about the transportation section of the SSP based on numerous discussions, meetings, research and more. Separately, I have other comments about the draft, including impact taxes, as submitted by the Planning Board (PB).

First, I think it is important to reiterate the purpose of the SSP, which before 2012 was called the Annual Growth Policy. As the PB draft states, “The Subdivision Staging Policy (SSP) transportation elements serve a single purpose: ensuring that new development provides adequate public facilities in an appropriate manner and to an appropriate extent.” (pg. 17)

The Planning Board has stated their intent to make this a policy that prioritizes transit over road solutions, which is a policy I strongly support. However, this draft does not do that. There seems to be confusion between transportation tests and solutions. Tests that show inadequate transportation infrastructure do not require road widenings or new roads. Tests show us where there are problems and then it is our job to determine the appropriate solution. We know that in our central business districts (CBDs) like Silver Spring and Bethesda, we are not adding or widening roads. We also know that the CBDs need better sidewalks, bike paths, more bike shares, and improved transit, which brings me to my first point.

**1. Do not eliminate the Local Area Transportation Test (LATR) in "red" areas.** Instead, require that all LATR remedies in red areas are transit, pedestrian and bike solutions.

The draft lists some of the problems with the existing LATR (p.18), but the problems should not lead to a conclusion of eliminating a test. Instead, they point to the need for better tests and better solutions.<sup>1</sup>

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<sup>1</sup> At least one person at the public hearing, Barney Rush, raised this same issue - don't eliminate a test - make it better.

It is up to us to decide (and the Planning Board can propose) the remedies, and the remedies do not have to be road solutions like intersection widenings and additions of turn lanes.

If the goal is to preserve walkability and public transit in our "red" areas, then the SSP could and should require only transit, pedestrian and bike solutions. An adequate public facilities policy should not ignore worsening traffic and congestion; it should seek to focus on getting people out of their cars in as many ways as possible.

A test that shows a large increase in vehicle traffic does not require wider roads or bigger intersections; it could (and should) require aggressive measures to increase non-auto drive mode share (NADMS) and require that the many of the new jobs be served by transit. I am aware that there have been and continues to be discussions about expanding the Traffic Mitigation Agreements (TMAs) that outline the NADMS. Once NADMS targets are set, we then need an emphasis on policies and practices to help achieve those targets, including a comprehensive parking policy approach and a commitment to the BRT system, both of which have great potential for increasing NADMS.<sup>2</sup> And we need measurable standards that are regularly monitored and enforced.

Also, as raised in public hearing testimony, without LATR, there are fewer mechanisms to fund other improvements important to quality of life in urban-like areas, such as bikepaths, wide walkways, parks, greenways and reducing heat islands.<sup>3</sup>

An increased focus on NADMS requires a better analysis of transit adequacy, which leads me to my second point.

**2. Use meaningful measures of transit capacity and adequacy and provide resources to improve and expand transit capacity, including in areas currently served by transit.**

Mode share dictates the capacity needs of our transit system. Simply having a transit station (metro, MARC or future BRT or Purple Line) is a necessary but insufficient transit measure. The current PB draft proposes a transportation adequacy test based on transit accessibility (defined as the number of jobs that can be reached within a 60-minute travel time by walk-access transit); that proposal misses multiple necessary criteria.

As explained by the national Transportation Research Board (TRB), "transit capacity deals with the movement of *both* people and vehicles; depends on the size of the transit vehicles and how often they operate; and reflects interactions between transit vehicles, passengers, and other travel modes." [Emphasis in original.]<sup>4</sup> Transit capacity measures begin with the forecast/required

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<sup>2</sup> This approach is preferable to the idea that massive density will bring intolerable traffic congestion, which in turn will force commuters into transit. Not only is the idea that we should actively seek to make residents miserable an absurd concept, but it is also a concept that is not proven. Commuters will often choose longer travel times in the car over the unpredictability and unreliability of transit. It is up to elected leaders to make the transit accessible, reliable, predictable and appealing. Transit has to be a viable alternative.

<sup>3</sup> Testimony from Maj-Britt Dohlie, #35

<sup>4</sup> Transit Cooperative Research Program (TCRP) Report 165, Transit Capacity and Quality of Service Manual, 3rd edition, 2013, page 3-4

mode share and then must include measures that ascertain whether/how people will ride transit and the transit available to serve them.<sup>5</sup>

The transit measures in the 2012 SSP (for TPAR but outside metro station policy areas) included three of the transit measures from the TRB: *coverage, peak headway and span of service*. The addition of actual transit measures in 2012 was an important step for TPAR despite the fact that it did not apply to MSPAs and that it was missing three other important measures from TRB: Passenger Load, Reliability, and Travel Time. *While those three measures currently in TPAR were inadequate, they were in the appropriate direction.*

The six measures together give a picture of transit effectiveness that is integral to assessing transit capacity - attracting and retaining "choice" riders (those that have a choice between taking transit and using their cars). The transit accessibility measure does little to ascertain adequacy and capacity and provides nothing to maintain, improve or expand existing transit.

Rather than eliminating TPAR, the transit measures should be improved to include the missing measures. TPAR should apply in red, orange and yellow areas (both current practice and the proposed policy would exempt transit measures in red - or the current equivalent - areas). More comprehensive measures can help identify the best ways to improve and expand transit to accommodate increased demand, which should be driven by required/enforceable NADMS for new (and/or existing) development.

**3. Do not use Critical Lane Volume (CLV) as a measure. Instead use measures of delay that address the actual experience on the roads; measures that look at how delay and queues at intersections impact other intersections.**

CLV measures only the functioning at an intersection.<sup>6</sup> In fact, it does not even measure the entire intersection.<sup>7</sup> We need a measure that better reflects the experiences of people on the roads - in cars and buses. Because Montgomery County is not laid out on a grid system (actual cities do have grids), vehicles have no alternative routes so sit in ever increasing traffic. In Montgomery County, the absence of a grid system means unmanageable traffic at choke points during the morning and afternoon rush hours.

Rather than having each developer pay for their individual traffic study (hiring individual contractors), DOT and/or Planning staff should use a central program that can measure delay and survey the impact on the area more consistently and comprehensively. Developers instead would pay to maintain the central system and to pay for particular runs. The forecasting system developed by University of Maryland, which was presented to the Council on October 21, 2014,

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<sup>5</sup> The TRB manual also notes that "transit capacity is different than highway capacity." (page 3-4). Before the 2012 SSP, the "transit" measure of the Growth Policy disregarded this important distinction and simply stated that if bus speed was 70% of the speed of a car, then capacity was considered adequate.

<sup>6</sup> "An intersection's ability to carry traffic is expressed as CLV, the level of congestion at critical locations with conflicting vehicle movements, usually an intersection." (LATR and TPAR guidelines, [http://www.montgomeryplanning.org/transportation/latr\\_guidelines/](http://www.montgomeryplanning.org/transportation/latr_guidelines/) p.8) For more information about CLV, see <http://www.montgomeryplanning.org/transportation/IntersectionApplication.shtm>

<sup>7</sup> "Free right turns" are not counted at all and left turns count for less if there is a dedicated left turn lane. (See pages 9 and 10, LATR and TPAR Guidelines.)

is able to show the effects of future development on a small area as well as the ripple effects further out.

Montgomery County resident Brian Krantz has documented that CLV is not an appropriate measure for delay even though it has been used for decades. In fact in 1998, the Chief of Transportation Planning at Park and Planning, Rick Hawthorne, published a paper analyzing the relationship between average delay and CLV and concluded "there is little relationship between delay and CLV."<sup>8</sup> Additionally, a 2012 technical memorandum from Sabra Wang to Planning staff recommends using HCM delay measures for capacity rather than CLV.<sup>9</sup>

**4. Impact taxes in former enterprise zones.** Transportation impact taxes should be required in former enterprise zones. The Planning Board recommended the imposition of education impact taxes in former enterprise zones; transportation impact taxes should also be required.

**5. Develop a parking policy that can reduce car use for commuting to work.** Limiting long-term parking can and should be part of a plan to encourage/move commuters to public transit and other forms of commuting. However, it must be part of a coordinated effort that includes sufficient transit (with real measures of adequacy) and the limited parking has to be applied in a coordinated fashion. Simply allowing developers to build less parking - and reducing their impact taxes, as proposed in the PB draft, is not a policy step that controls parking and promotes transit.

**6. Extend the transportation provisions of the SSP for one year to allow development of true transit-oriented measures.** It does not make sense to pass a new SSP that does not meet the stated aims of providing adequate infrastructure with new development and does not prioritize and promote transit as explained above. We need solutions countywide and the ability to raise funds for those solutions.

**7. Rename the SSP to better reflect its purpose.** Many (most?) residents do not understand the words "subdivision staging"; the erstwhile "annual growth policy" title was more understandable. The title should be more reflective of the purpose: "Infrastructure and Development Coordination Policy" better explains the purpose.<sup>10</sup>

Cc: Planning Board members  
Glenn Orlin, Council staff

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<sup>8</sup> "Measuring Congestion and Delay: The Critical Lane Volume Method," Richard C. Hawthorne and Ronald C. Welke, M-NCPPC. Published 1998, Conference: 68th Annual Meeting of the Institute of Transportation Engineers. Page 6.

<sup>9</sup> [http://www.montgomeryplanning.org/research/subdivision\\_staging\\_policy/2012/documents/latr\\_lit\\_review\\_memo\\_4\\_9\\_%2012.pdf](http://www.montgomeryplanning.org/research/subdivision_staging_policy/2012/documents/latr_lit_review_memo_4_9_%2012.pdf)

<sup>10</sup> My staff has suggested the title, "Future Infrastructure Policy", which could be known as FIP - "Don't have a fit, do FIP!"

Assuming the elimination of a Policy Area Test (or TPAR), what percentage increase in transportation impact tax is needed to raise relatively the same amount of revenue (countywide) as could potentially be raised by 2020 under the current TPAR mitigation requirement of 25% for any policy deemed inadequate for roadway or transit service?

Currently, Metro Station Policy Areas (MSPAs) are exempt from the transit test under TPAR, and all are found to have adequate roadway service. Thus, only non-MSPAs are currently required to make a TPAR payment. Three non-MSPAs are adequate for both roadways and transit, while three different non-MSPAs are inadequate for both roadways and transit. Based upon this current profile, an assumption is made that from a revenue stand point this is like all non-MSPAs being inadequate at one level, or making a payment equivalent to 25% of the transportation impact tax.

A forecast of household and employment growth between 2015 and 2020 is shown in the chart below.

Policy Areas*	Total number of HHs 2020	Total Employment 2020	Increase in HHs 2015-2020	Increase in Employment 2015-2020	Percentage of County HH Growth	Percentage of County Employment Growth
MSPAs	39,203	115,717	7,020	6,339	56%	35%
Non-MSPAs	344,872	402,139	5,442	11,659	44%	65%
Total	384,075	517,856	12,462	17,998	100%	100%

\*Does not include White Flint

Based on the estimated percentage of county employment growth in the non-MSPAs, to recover an equivalent amount of revenue from an increase in the impact tax on non-residential development for all policy areas, the impact tax countywide would need to increase on average 16%. Basically, using the current TPAR results for 2014, a 25% TPAR surcharge would apply to 65% of new employment (non-residential development) with an expected TPAR income stream is equal to 25% of 65%, or 16% of the total impact tax revenue stream.

Likewise, based on the estimated percentage of county household growth in the non-MSPAs, to recover an equivalent amount of revenue from an increase in the impact tax on household development for all policy areas, the impact tax countywide would need to increase an average of 11%.

Countywide residential and employment growth between 2015 and 2020 are approximately equal to 3.2% and 3.5% respectively.



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

OFFICE OF THE CHAIR

October 6, 2016

The Honorable Nancy Floreen  
Chair, Planning, Housing, and Economic  
Development Committee  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Dear Chair Floreen:

The Planning Department and the Montgomery County Department of Transportation have worked together to address the concerns raised in Mr. Roshdich's September 14 letter. We have concurred that the following changes are appropriate across both the SSP and the Board's LATR Guidelines and we expect that many of these changes will materially satisfy MCDOT's concerns.

- Proceeding with the transit accessibility approach as the preferred method for policy area review, but with a slightly refined list of planned BRT lines in 2040 to reflect the fact that not all master planned lines can reasonably be expected to be implemented by the horizon year.
- Reducing the threshold for quantitative pedestrian LATR analyses from 100 peak hour ped/bike trips generated (based on New York City and Washington DC thresholds) to 50 peak hour ped/bike trips generated.
- Including a requirement for improvement to sidewalk deficiencies within 500 feet of the site boundary for the Red Policy Areas as an applicant requirement (consistent with what is required in the other policy areas).
- Including a provision that will require a project-specific impact assessment for projects greater than 750,000 SF in the Red Policy Areas.
- Retaining a process to tie reduced parking to an adjustment in trip generation rates, or as an alternative adopt a fee structure that incentivizes reduced parking.

We are looking forward to further review and discussion with Councilmembers on defining the relationships of the following elements as related to LATR studies both within the Red Policy Areas and elsewhere in the County:

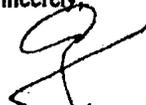
- Existing access/circulation studies, independent from the SSP, as required through Section 50 of the County Code to address independent M-NCPPC, MCDOT, and (where applicable) SHA assessment of access permits and site design,
- Requirements that may be developed through TDM and TMAGs as a result of the ongoing interagency work group developing proposed conditions Countywide,
- Purpose and scope for biennial monitoring within the Red Policy Areas, to include both a Comprehensive Local Area Transportation Review of forecast growth and a performance assessment of observed multi-modal travel conditions, and
- Development of a work program to determine pro-rata share contribution needs with engagement of SHA in the Red Policy Areas (similar to the recently established approach in White Oak).

Chair Nancy Floreen, PHED Committee  
October 6, 2016  
Page Two

The Planning Department and MCDOT are in agreement regarding several elements of the LATR process that will be incorporated with the Planning Board's LATR Guidelines after the Council adopts the SSP. Continuing coordination on these elements will be enhanced by including MCDOT in the scoping process for LATR studies to address the following in a collaborative manner:

- Maintaining flexibility in whether or not a network approach is warranted for intersection operational assessments,
- Considering the extension of the assessment of transit capacity to the nearest major transfer point when such points are reasonably close to the suggested 1,000 ft distance from a site,
- Using pedestrian crosswalk delay rather than crosswalk capacity as the LATR measure for pedestrian system adequacy, and
- Modifying the LATR mitigation approach from "payment in lieu of construction" in Road Code Urban Areas and Bicycle Pedestrian Priority Areas to one in which payment in lieu of construction is an appropriate option only in cases where applicant coordination with public projects is anticipated; retaining the Planning Board's hierarchy of mitigation approach priorities.

Sincerely,



Casey Anderson  
Chair, Montgomery County Planning Board



Al Rosdich  
Director, Montgomery County Department  
of Transportation

cc: Councilmember Leventhal  
Councilmember Riemer

## MEMORANDUM

October 5, 2016

**TO:** Glenn Orlin  
Deputy Council Administrator

**FROM:** Chris Conklin, Deputy Director for Policy  
Department of Transportation

**SUBJECT:** Preliminary Technical Approach to Red Policy Area LATR Pro-Rata Analysis

Ongoing discussions on the Subdivision Staging Policy (SSP) have yielded an increased interest in the use of pro-rata fee structures to address LATR needs in Red policy areas. What follows is a summary of a potential scoping process, methodology, and implementation of such a concept, based on MCDOT's experience with White Oak Science Gateway (WOSG) pro-rata fee. The WOSG analysis is nearing completion and we anticipate completing the reporting in the next few weeks.

The Red Policy Areas differ from White Oak in many ways in terms of the current characteristics of the areas, the types of development generally proposed, and the transportation system serving the policy areas. This preliminary approach differs in several ways from the ongoing work on WOSG. For example:

- Use of a person-trip basis for pro-rata calculation instead of vehicle trips
- Assessment of local area transportation needs beyond intersection improvements
- More direct incorporation of transit, pedestrian, bicycle, and NADMS program needs

The approach outlined below is preliminary and intended to improve understanding of how this process could work. If the Council believes this type of approach will be beneficial for implementation of the SSP, MCDOT will work with the Planning Department and MDSHA to formalize these as LATR study guidelines for Red Policy areas, incorporating changes as appropriate.

### *TECHNICAL SCOPING & ANALYSIS*

The LATR assessment should be multimodal and, in addition to roadway capacity needs, should include local transit, pedestrian, and bicycle facilities that serve the policy area. For traffic analysis, the study area should span approximately 2 major intersections beyond the policy area boundary, with additional intersections added as deemed appropriate to make connections to other major facilities like interchanges. Similarly, non-auto infrastructure outside the policy area may be included in the scope to reach a major transfer point for transit or connection to major trail or other pedestrian/bicycle routes. Generally, the analysis should be scoped consistent with the master plan

non-auto driver mode share (NADMS) goals for the policy area. A decision about to incorporate master plan phasing thresholds should also be determined during project scoping. The LATR-type analysis should include the following elements:

- Local transit capacity and quality of service;
- Local bikeways and pedestrian routes, including street crossings and sidewalk gaps;
- The need to supplement to Transportation Management District (TMD) operations to achieve NADMS goals; and
- Intersection capacity and traffic operations.

Scoping should be done with input from affected communities and partner agencies. This scoping process should include, at a minimum, the Maryland State Highway Administration (MDSHA), MDCOT, Montgomery County Planning staff, development community representatives, and citizen's groups identified by the Regional Service Center. Ideally, scoping would occur concurrent with the development of a new master plan, allowing for an existing process for public input. For those areas where plans are already complete, a separate scoping process should occur.

The analysis should assume an appropriate level of Master Plan Buildout. Full yield of master plans is very unusual, however, 100% development build-out (as compared to the 75% typically used in master planning analyses) may be the best assumption to use for these LATR-type analyses, due to the uncertainty of development progression. This assumption maximizes both the "numerator" (the amount of investment needed) and the "denominator" (the number of development units) in the pro-rata calculation.

For transit improvements, the required capital cost for new buses, stations, transit centers, etc. should be identified. For non-motorized facilities, conceptual plans for new links should be developed and included in traffic impact analyses (if they affect capacity). For traffic analysis, a regional model will evaluate the land use and infrastructure inputs across the entire analysis area. The outputs of this regional model are then applied to an intersection-by-intersection network. Mitigating treatments are identified at each intersection. In some cases, further adjustment to the NADMS and appropriate measures to achieve these goals may need to be substituted for physical improvements.

A determination should be made regarding the suitability of including large-scale projects (LRT, BRT, Metro Station improvements, interchanges, new highways, etc.). Generally, this scale of improvement should be excluded from a pro-rata calculation, or be limited to a fair-share contribution. It may be appropriate to identify alternative, short-term improvements for locations where large-scale projects are proposed.

## *COST ESTIMATING*

Preliminary concepts should be developed for pedestrian and bicycle improvements, preliminary service concepts should be developed for local transit, and preliminary intersection designs should be prepared for intersections that do not meet LATR metrics. Conceptual cost estimates should then be developed for each type of improvement using established methodologies such as SHA's Major Quantities Estimating methodology, or another accepted practice. Operating costs are not currently included in these estimates, though recurring costs over the lifetime of a plan (such as for replacement buses, Bikeshare, or TMD expenditures) could potentially be included.

At this stage, concurrence about the improvements identified and their costs among the transportation planning, management, and operating agencies (MCDOT, MDSHA, Montgomery Planning, others as appropriate) is needed.

## *POLICY AREA PRO-RATA FEE DETERMINATION*

Not all identified projects may necessarily be included in the pro-rata fee. Examples of cases where projects may be excluded from the fee could include pending capital projects that would address their needs (such as interchanges), pending developments that would build the project as a condition of development due to a high proportion of the benefits accruing to one development, projects that are located outside of the policy area, and/or projects considered to be “not feasible” to implement.

The total cost of all included projects provides for the numerator in the \$-per-trip fee. The denominator can be measured in any unit of trips or development but consideration should be given toward whether 100% of -person trips should be used, or a value between 75% and 100% to recognize that 100% of development potential is unlikely to be built-out.

## *IMPLEMENTATION*

Each policy area under a pro-rata structure could have its own dedicated CIP, as well as a dedicated account to receive the pro-rata fees. This CIP will identify the projects to be included, and may include some direction as to prioritization among these projects.

This CIP will be a mechanism to allow for forward-funding of projects, ensuring that design and construction can occur on schedule with development. Revenues from the pro-rata fee – acquired at building permit – would be used to pay down initial public investment associated with forward funding. Other fees (such as Impact Taxes, TPAR, TMD Fees, their successors, or new fees) may still apply normally, with no changes to how such revenues are spent. We assume that pro-rata fees would not be eligible for impact tax credit.

A cost-sharing agreement may be necessary with SHA to establish how the pro-rata fees would be contributed toward State projects included in the fee estimate. The State Transportation Participation CIP (P500722) may provide a potential framework for this need.

Monitoring and reassessment should occur periodically over the lifetime of the policy. These analyses will effectively repeat this initial process, with the intent of identifying changes in land use, rates of development, changes in traffic estimates, changes to what projects are needed or should/should not be included in the fee, and any other factors. These estimates may be used for prioritizing identified projects for implementation.

## ***OTHER CONSIDERATIONS***

Several other elements need to be considered in this approach, as described below.

### **SITE ACCESS**

This analysis is still largely rooted in large-area methodologies, and does not reflect the intricacies of individual developments, which may have a varying number of access points spread out across one or multiple roadways. New developments should still evaluate access points for any necessary treatments and mitigate as necessary.

### **POLICY-AREA-ADJACENT DEVELOPMENTS**

To address developments located outside the policy area but impacting intersections within the policy area, we suggest assessing the pro-rata fee on all trips originating from or destined into the study policy area.

### **MONITORING / REASSESSMENT**

Changes in the pace and nature of development as well as the need and palatability of transportation infrastructure will change over time. Regular reassessments of the pro-rata fee should be included. We suggest the analysis and fee be reassessed at 4-5 year intervals.

### **COLLECTION & APPLICATION**

We suggest that the pro-rata fee be due at Building Permit and that an account be setup for each applicable policy area to receive the fees. We suggest that a CIP be created for each policy area, into which funding can be allocated.

### **ESTIMATING BASIS**

Costs are likely to be developed in present value. Recurring costs can to be normalized to a present value as well. The expenditures will occur in future years. An agreed upon structure for adjusting the pro-rata fee to year of collection and/or use is needed.

### **FORWARD FUNDING**

Revenues from the pro-rata fee will not be generated quickly or early enough to allow for design and implementation of associated needs. Forward funding either individual projects or a policy area CIP will be critical to ensuring that necessary infrastructure and services are in place to serve the growing needs.

### **PRIORITIZATION**

A policy area may include multiple activity centers, each of which may be vying for what could be a limited supply of funding. A process for prioritization between competing needs as a part of the CIP process will be needed to implement this program.

Should you have any questions regarding this analysis, please feel free to contact me or Mr. Andrew Bossi, Senior Engineer, at 240-777-7200.

cc: Al Roshdih, MCDOT  
Gary Erenrich, MCDOT  
Andrew Bossi, MCDOT

Casey Andersen, Montgomery Planning  
Pam Dunn, Montgomery Planning  
Eric Graye, Montgomery Planning

## **Transportation Impact Taxes and Adequate Public Facility Compliance Programs**

*10/21/2016 – Montgomery County Planning Department/Montgomery County DOT*

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As an outcome of its worksession on October 17, 2016, the *Planning Housing and Economic Development* (PHED) Committee reached preliminary conclusions on several elements of the proposed Subdivision Staging Policy (SSP). In these discussions, the Committee asked for more clarity around the approach to Local Area Transportation Review (LATR) and its relationship to other impact taxes and fees. To assist the committee with further consideration of these issues, the Planning Department and Department of Transportation have prepared this description of the relationships between the different concepts discussed by the Committee.

### **Transportation Impact Taxes and Transportation Policy Area Review (TPAR):**

In its current deliberations, the PHED Committee has made preliminary recommendations regarding Impact Taxes and replacement of Transportation Policy Area Review (TPAR). For clarity, the Impact Tax is a fee paid based on unit of development following a schedule established by Council. The tax rate schedule is under consideration by the *Government Operations and Fiscal Policy* (GO) Committee. TPAR is a fee that is proportional to the Impact Tax and is paid when a Policy Area fails to meet a specified performance metric, currently for highway congestion and transit service availability.

The PHED Committee agreed that TPAR should be eliminated and indicated general support for increasing the Transportation Impact Tax to make up for the revenues that would have been realized through TPAR. Traditionally, Impact Taxes have been used to fund countywide transportation needs. The use of TPAR payments have been limited to uses that address the needs of the policy area in which it is collected.

With the structure currently endorsed by the PHED Committee, there will no longer be TPAR payments and there has been discussion of whether the Transportation Impact Tax should be reserved for use in the Policy Areas in which it is collected. The Planning Department and MCDOT concur with the Council Staff recommendation to retain the availability of Transportation Impact Tax payments for Countywide needs. It is the opinion of our two departments that the needs of specific policy areas are best addressed through a revised approach to Local Area Transportation Review (LATR) as described below.

### **2012-2016 Local Area Transportation Review (LATR)**

Currently, LATR is a process where project proponents demonstrate that the transportation system will meet established performance objectives after implementation of their project. Currently, this process has been focused on compliance with traffic standards based on Critical Lane Volumes (CLV), with modest requirements for addressing pedestrian and bicycle needs. If an applicant cannot meet the CLV standards, mitigation must be implemented. Generally, the applicant must take measures to reduce the trip generation so that the standard can be met, must implement physical improvements to address the impact, or, as a last resort, must make a payment sufficient for the public sector to implement an improvement.

### **Proposed 2016-2020 LATR**

The Planning Board has recommended expanding the provisions of LATR to include requirements for pedestrian, bicycle and transit adequacy. Adjustments to the Planning Board recommendations have been jointly proposed by the Planning Department and MCDOT in our letter dated October 6, 2016.

With these enhancements, it is our shared opinion that the Proposed LATR process will provide a comprehensive, multimodal test for adequate roadway, transit, pedestrian and bicycle facilities. If an applicant

is unable to demonstrate that the test for each mode is met, specific measures to conform with the requirements must be implemented.

Both departments agree that the Proposed 2016-2020 LATR will serve the transportation Adequate Public Facilities (APF) needs of large areas of the county, where new development is of a smaller scale, lower frequency, or has less interaction with other development activities. When there is substantial value to a highly-prescriptive approach, such as areas of concentrated development activity, a process to develop a comprehensive plan and development contribution assignment is proposed, as described below.

### **Unified Mobility Programs (UMPs)**

In particular focus areas, where a high level of coordination of transportation infrastructure, operations, and management activities is essential to provide adequate system operation, the Planning Department and DOT have proposed developing Unified Mobility Programs. In these areas, multimodal projects, operational changes, and transportation management needs would be identified for the planning area and its gateways.

With this plan of projects, policies, and management activities established, cost estimates would be developed for each area. Once costs are understood, a set of rates per unit of development (or trips) would be recommended and adopted by Council. The adopted rates would reflect a policy decision about the appropriate level of development-generated and publicly-provided funding required to meet the needs of the specified geography. A description of the technical approach is detailed in a memo from MCDOT to Glenn Orlin contained in the PHED Committee's October 14, 2016 packet.

### **UMP Implementation**

Implementation of UMPs would take some time and DOT developed an estimate of 9 – 18 months per UMP, with the possibility of completing multiple UMPs at the same time, dependent on available funding and staff capacity. In the interim, either the Proposed 2016-2020 LATR requirements could be used, LATR could be waived in a certain set of Policy Areas (except for very large projects) until an UMP is adopted, or an interim UMP fee could be established. Until the UMPs are in place, using the 2016-2020 LATR is the most straightforward approach as its application will be consistent with the general approach used in other areas. It is our recommendation that preparation of UMPs in the Red Policy Areas (Metro Station Policy Areas) be prioritized so that the new requirements can be established as quickly as possible in these areas.

### **Transportation Demand Management (TDM) Programs**

Transportation Demand Management programs complement individual project mitigation commitments and UMPs by providing tools to property-owners, employers, and residents to reduce single-occupant vehicle trips. Annual service fees are paid by property owners for participation in programs. Currently participation is conditioned on development projects within the Transportation Management Districts (TMDs). However, we have proposed expanding this program to have an impact Countywide as shared with the T&E Committee and the PHED committee in recent weeks.

Potential Red Policy Area LATR Workflow/Schedule:\*

<u>Activity</u>	<u>Duration**</u>
• Agency Scoping	1 month
• Public Scoping Review	1 month
• Finalize Scope, Contracting & Kickoff	1-2 months
• Data Collection and Existing Conditions Assessment	1-3 months
• Future Conditions Assessment	1-3 months
• Mitigation Determination and Cost Estimating	1-3 months
• Draft Report and Agency Review	1-2 months
• Council Review	1 month
• <u>Final Report and Pro-Rata Fee Establishment</u>	<u>1-2 months</u>
<b><i>Total Study Duration</i></b>	<b><i>9 – 18 months***</i></b>

- \* Policy area studies could occur concurrently. It is assumed that 8 of the 10 Red Policy Areas would need study (excluding White Flint and Rockville Town Center).
- \*\* Small policy areas (Grosvenor/Friendship Heights) would probably be faster, larger policy areas, like Silver Spring/Wheaton/Shady Grove) would probably take longer. The magnitude of the plan will also have some influence on the schedule. Some plans, like Bethesda, may have substantial foundational work available, which could accelerate the study.
- \*\*\* If 2 - 3 studies are conducted at a time; a complete cycle of the studies could be complete in +/- 3 years. Before a policy area study is complete, a typical LATR process, as modified through the proposed policy could apply.

Resolution No: 18-107  
Introduced: September 16, 2014  
Adopted: April 14, 2015

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Councilmember Floreen

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**SUBJECT:** Amendment #14-02 to the 2012-2016 Subdivision Staging Policy regarding the White Oak Policy Area

**Background**

1. On July 29, 2014 the County Council approved Resolution 17-1203, amending the 2012-2016 Subdivision Staging Policy.
2. County Code §33A-15(f) allows either the County Council, County Executive, or the Planning Board to initiate an amendment to the Subdivision Staging Policy.

**Action**

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

The 2012-2016 Subdivision Staging Policy is amended, effective January 1, 2016, as follows:

\* \* \*

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

\* \* \*

**TL4 Unique Policy Area Issues**

\* \* \*

**TL4.7 White Oak Policy Area**

In the White Oak Policy Area, the non-auto driver mode share (NADMS) goal for all new development based on the area's future transit serve (assuming bus rapid transit) and connectivity opportunities, is 25% in the White Oak Center and Hillandale Center, and is 30% in the Life Sciences/FDA Village Center.

- (a) The Board may approve a subdivision in the White Oak Policy Area conditioned on the applicant paying a fee to the County commensurate with the applicant's proportion of the cost of a White Oak Local Area Transportation Improvement Program, including the costs of design, land acquisition, construction, site improvements, and utility relocation. The proportion is based on a subdivision's share of net additional peak-hour vehicle trips generated by all master-planned development in the White Oak Policy Area approved after January 1, 2016.
- (b) The components of the White Oak Local Area Transportation Improvement Program and the fee per peak-hour vehicle trip will be established by Council resolution, after a public hearing. The Council may amend the Program and the fee at any time, after a public hearing.
- (c) The fee must be paid at a time and manner consistent with Transportation Mitigation Payments as prescribed in Section 52-59(d) of the Montgomery County Code.
- (d) The Department of Finance must retain funds collected under this Section in an account to be appropriated for transportation improvements that result in added transportation capacity serving the White Oak Policy Area.

\* \* \*

This is a correct copy of Council action.

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

# **Analysis of Critical Lane Volume in Local Area Transportation Review**

Brian Krantz, bskrantz@verizon.net, 301.571.4538

## **1 Summary**

The Local Area Transportation Review (LATR) portion of the 2016 Subdivision Staging Policy Planning Board Draft fails to meet the stated goal of calling for robust analytic assessments for those proposed projects where an LATR study is required. Specifically, the Planning Board Draft continues to utilize the Critical Lane Volume (CLV) metric in a similar manner as the existing 2012 SSP. To our knowledge, there are no data supporting the Planning Department's claims of a specific and significant relationship between CLV and intersection congestion. In fact, the only available data obtained demonstrate a fairly weak relationship, and also indicate intersection congestion can occur at significantly lower CLV values than those asserted by the Planning Department. Furthermore, most people recognize that congestion and delays vary day-to-day, and that the delays of any single day are not necessarily indicative of average conditions. However, the Planning Board Draft continues to allow single-day snapshots to assess existing intersection adequacy.

## **2 Background**

Successful growth in Montgomery County is reliant on meaningful and robust adequacy tests, which are supposed to be established in the County's Adequate Public Facilities Ordinance (SFPO), the Subdivision Staging Policy (SSP). The SSP is revisited and revised every four years. Currently, the 2016-2020 SSP process is underway, due to be adopted by the County Council in November 2016. On July 21, 2016, the Planning Board released their Draft to the County Council. Within the sections pertaining to Transportation, there is ample room for improvement across many different topics and levels of detail. However, the foremost issue at hand is that the actual adequacy tests are fundamentally flawed, defeating the main purpose of the SSP: a safety mechanism for unexpected growth spurts, allowing growth to be consistent with the public infrastructure.

## **3 Discussion**

### **3.1 Fundamental Flaws of the 2016 SSP Planning Board Draft**

This brief discussion provides supporting data and explanation of the claims that:

- Even if CLV was a perfect measure of congestion, any meaningful adequacy assessment is negated due to the fact that the policy does not mandate a statistical analysis of CLV over multiple days
- CLV, at best, is only weakly correlated to the delay of an isolated intersection, and the relationship that does exist is significantly different than that employed within the SSP

#### **3.1.1 Lack of Statistical Analysis**

Imagine if Major League Baseball proposed gauging the talent of a batter by his batting performance of a single game – or even more absurd, a single at-bat. Averages over a series: gone. Averages over a season: gone. Career averages: definitely gone. The entire country would outcry, and Major League Baseball would be ridiculed by their preposterous proposal. People would insist that batter performance varies game to game, and year to year – and that the only fair way to assess performance is by examining average performance over various lengths of time. The people would be correct, but the issue is that this is how existing traffic adequacy is assessed in Montgomery County; in transportation

impact studies, LATR mandates that applicant provide CLV data for only a single day for any particular intersection.

The vast majority of people understand that traffic delays vary day-to-day in the Metropolitan Washington area. Traffic delays can easily vary by  $\pm 16\%$  (e.g., a commute that is  $60 \pm 10$  minutes), and because we are assuming that CLV is a perfect indicator of intersection congestion (i.e., intersection delay), then CLV must vary in a similar manner as delay, such as  $\pm 16\%$ . Consider an SSP policy area such as Damascus with a CLV threshold of 1400. Let's say that the actual peak-hour average CLV for a particular intersection was 1500 (meaning that the intersection *should* fail the adequacy test). However, with a  $\pm 16\%$  window, the measured CLV for the intersection on any given day will be  $1500 \pm 240$ , or within the range of 1260-1740. Note that this encompasses the pass/fail threshold of 1400, meaning that the CLV test could easily pass on any single day.

This example is depicted in Figure 3-1, where a statistical distribution of 250 CLV measurements was created (Distribution: Gaussian, Mean: 1500, Standard Deviation: 16%). Note that the upper limit of CLV was clamped at 1800, in an attempt to represent that intersection CLVs saturate at about this level, as reported in various publications. As shown in this notional example, the total probability that a single CLV measurement would pass the adequacy test, *in error*, is 27%.

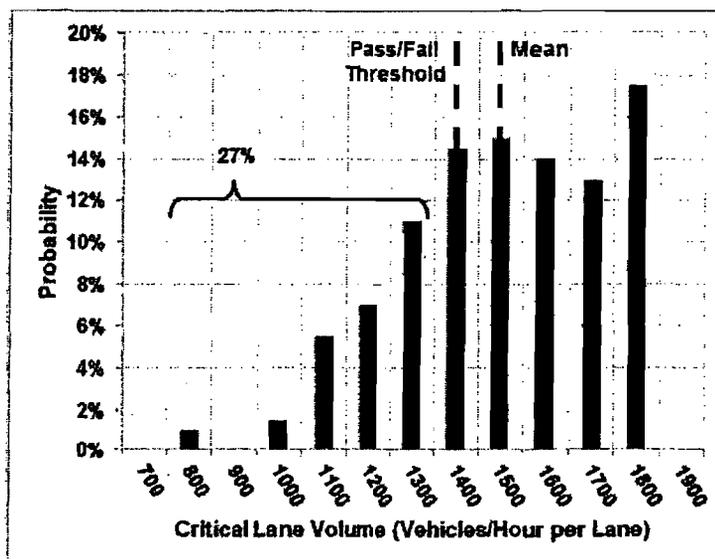


Figure 3-1: Example Statistical Analysis

### 3.1.2 Critical Lane Volume versus Congestion

The statistical discussion of Section 3.1.1 above assumed that CLV was a perfect indicator of intersection congestion. The nationwide standard for intersection congestion is the Average Control Delay, as defined by the Highway Capacity Manual (HCM). In the LATR, the Planning Department contends that CLV is a good enough indicator of HCM Delay, at least for CLV values up to 1600. The Planning Department's mapping of CLV to HCM Delay is shown below in Table 3-1, for the threshold levels between the different Levels of Service (LOS).

Level of Service (LOS)	CLV (veh/hr. per lane)	HCM Delay (secs)
A/B	1000	10
B/C	1150	20
C/D	1300	35
D/E	1450	55
E/F	1600	80

Table 3-1: Planning Department CLV/Delay Equivalency

The basic premise being asserted in the LATR is that CLV can be directly converted into HCM Delay by a formula based on a regression fit of Table 3-1. As such, LATR contends it is not necessary to directly measure the nationwide standard HCM Delay, unless the measured CLV is greater than or equal to 1600. As this is a departure from the nationwide methodology, it would be prudent to examine the legitimacy of the CLV/Delay equivalency that is claimed here. The Planning Department has been asked repeatedly for any data that supports the equivalency shown in Table 3-1, but has yet to be responsive on this particular subject. In a recent TISTWG meeting, Planning Department representatives acknowledged that they do not have any data that supports their claims.

As we were unable to obtain any supporting data from the Planning Department, we searched for any publically available data sets that could substantiate or refute the CLV/Delay equivalency asserted in the LATR. We were able to find only two recent traffic studies within Montgomery County that included values for both CLV and HCM Delay. One study included data for a series of intersections within the Bethesda Central Business District (CBD) [1], and the other assessed various intersections within Gaithersburg City [2]. Between the two studies, data from a total of eleven intersections are available.

Figure 3-2 shows the scatterplot of HCM Delay and CLV for the above datasets that were obtained via the Internet. Thresholds between LOS D/E and E/F are represented.

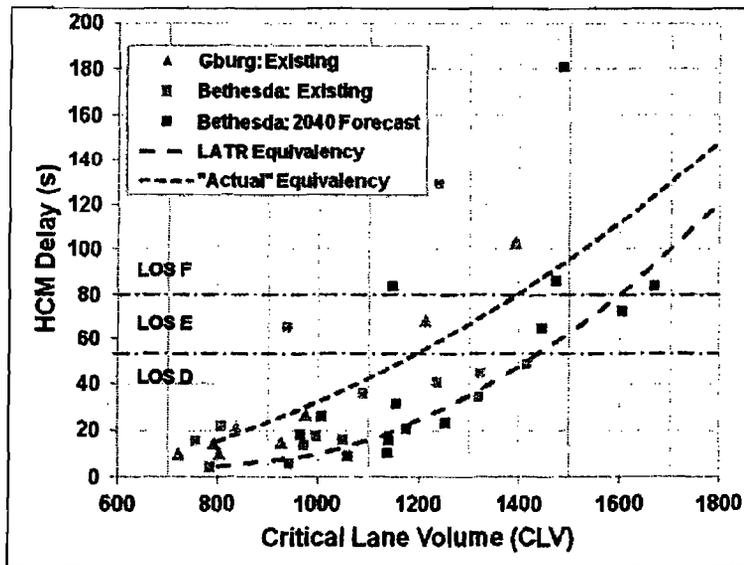


Figure 3-2: CLV/Delay Equivalency

Of note, two of the eleven existing intersections are heavily to severely congested - at moderately low CLVs, well below their respective CLV standards. The AM and PM data for these two intersections are summarized in Table 3-2. As shown, with Levels of Service at E and F, all conditions are still *deemed adequate* by the 2012 and 2016 LATR (although in the 2016 LATR, Bethesda CBD would be exempt from LATR). Clearly a disconnect between congestion and CLV is evident.

Intersection/ Peak Period	Policy Area	Peak Period	CLV Congestion Standard	HCM Delay (secs)	Measured CLV	Level of Service
Bradley Blvd & Arlington Road	Bethesda CBD	AM	1800	65.5	939	LOS E
		PM		129.3	1238	LOS F
MD 355 & MD 124	Gaithersburg City	AM	1425	68.9	1212	LOS E
		PM		103.8	1392	LOS F

Table 3-2: Examples of Congested Intersections with Acceptable CLVs

With regards to general trends of these study data, Figure 3-2 shows a line corresponding to the LATR CLV/Delay Equivalency. A 2<sup>nd</sup> order polynomial regression fit was calculated for the union of the two studies and is also shown, labeled as “Actual Equivalency”. There are two observations that can be made, based on the available data. First, the correlation coefficient of the data,  $r^2$ , is 0.46. What this means in simple terms is that less than 27% of the HCM Delay standard deviation can be attributed to CLV. Specifically, the standard deviation of HCM Delay is about 32 seconds per vehicle, and CLV only accounts for 8 seconds. In even simpler terms, it does not appear that relationship between CLV and HCM is particularly strong.

This analysis is not the first study to demonstrate that CLV does not correlate well with HCM Delay. In 1998, Rick Hawthorne, then Chief of Transportation Planning at the Montgomery County Park and Planning Department, published a paper [3] that analyzed the relationship between average delay and CLV, based on 27 intersections in 1993 and 1996 that had CLVs ranging from about 1000 to 2300. With a correlation coefficient of 0.14 (even less than the datasets presented above), the study conclude that “there is little relationship between delay and CLV”.

If an honest intersection assessment is desirable, why use CLV, an indirect and inferior method – as opposed to the direct and widely accepted HCM method? The Planning Board Draft references the fact that measuring CLV is less time consuming and more economical than the HCM nationwide standard. It appears that you get what you pay for.

The second observation is that these data do *not* substantiate the validity of the SSP’s LATR CLV/Delay equivalency. In fact, it appears as the LATR CLV/Delay Equivalency may describe the *minimum* HCM Delay, as opposed to the *average* delay as claimed in the LATR. That is, the datapoints are not centered about the “LATR Equivalency” line: instead, nearly all points are above it. To illustrate the impact of this flaw, consider the threshold between LOS E and LOS F. The nationwide standard, HCM, establishes this at a delay of 80 seconds; the LATR equates this to a CLV of 1600, which happens to be the threshold level in many policy areas (e.g., Bethesda/Chevy Chase, Kensington/Wheaton, Silver Spring/Takoma Park, Germantown Town Center, White Oak). However, based on *actual* data, the LOS E/F threshold probably equates to a CLV of ~1400, not 1600. Revising the LATR CLV Pass/Fail threshold from 1600 to 1400 would certainly result in many more intersection failures, but this decision would be supported by genuine data.

### 3.2 CLV as a “Screening” Tool

The 2016 SSP Planning Board Draft recommends the application of adequacy tests that are widely accepted nationwide (i.e., Intersection Operations Analysis and Network Operations Analysis), under certain conditions – but only if a CLV threshold is first surpassed. For reference, Table 3-3 summarizes and compares the traffic adequacy testing scheme for 2012 and the recommendations for 2016. It is essential to realize here that *neither* of the two “robust” adequacy tests is mandated unless the CLV condition is met. The 2016 recommendations make it slightly easier to trigger “Tier 2” tests in more rural portions of the County, but this is not sufficiently adequate. Recall the statistical analysis argument in Section 3.1; regardless of the policy area, if an intersection has an average CLV close to the policy area threshold, there will be a 50% chance that it will be surpassed, and a 50% chance it will not. There is no rational argument to justify the continued use of CLV in the adequacy tests – even as a “screening tool”.

	2012 SSP	2016 SSP Planning Board Draft
<b>Tier 1: CLV</b>	Calculate Future CLV	Calculate Future CLV
<b>Tier 2: Intersection Operations Analysis</b>	If CLV > 1600	If CLV > Policy Area Threshold (1350-1600)
<b>Tier 3: Network Operations Analysis</b>	N/A	1) If CLV > 1600 <b>OR</b> 2) CLV > 1450 <b>AND</b> Development Increases CLV by > 10 <b>AND</b> at least one of the below: <ul style="list-style-type: none"> <li>• Intersection is on a congested roadway with a travel time index greater than 2.0</li> <li>• Intersection is within 600' of another traffic signal</li> </ul>

Table 3-3: Summary Comparison of 2012 and 2016 Traffic Adequacy Test

### 4 Conclusion

Continuing to use CLV “as is” in the Subdivision Staging Policy prevents honest, legitimate and robust assessment of transportation adequacy. As such, we recommend removing CLV from the policy entirely, and rely on HCM Delay, as well as Network Operations Analysis. Interestingly, a similar conclusion was determined as part of a consultant’s 2012 Literature Review [4] for Montgomery County as part of the 2012 SSP Process. We believe Montgomery County should heed the advice from its own subject matter experts and paid consultants.

### 5 References

- [1] Bethesda Purple Line Minor Master Plan Appendix - Traffic Analysis.
- [2] Appendix - Traffic Study for City of Gaithersburg, The Traffic Group, 2013.
- [3] R. Hawthorne, *Measuring Congestion and Delay: the Critical Lane Volume Method*, 68th Annual Meeting of the Institute of Transportation Engineers, 1998.
- [4] P. Silberman, *Literature Review of Local Area Traffic Impact Study Processes*, SABRA, WANG & ASSOCIATES, INC., Technical Memorandum, April 9, 2012.



**TECHNICAL MEMORANDUM**

**TO:** Mr. Eric Graye, Planning Supervisor, Functional Planning and Policy Division, Montgomery County Planning Department

**FROM:** Paul Silberman, P.E. PTOE, Senior Associate, Sabra, Wang & Associates, Inc.

**REFERENCE:** Literature Review of Local Area Traffic Impact Study Processes

**DATE:** April 9, 2012

**Introduction**

In order to evaluate current local area traffic impact policy, performance and analysis methodology, the Sabra Wang team developed a comprehensive questionnaire asking pertinent questions pertaining to the complete process of a traffic impact study (TIS) from triggering all the way through to mitigation. The survey was to be used as a tool to compare Montgomery County's local TIS process with that of other similar jurisdictions. The survey will be used to find the best practices, or at least to highlight alternative means for accomplishing similar goals within the TIS Process in order to make Montgomery County's more efficient and relevant.

Montgomery County, MD, along with the following 12 jurisdictions were successfully interviewed for this research:

1. Baltimore, Maryland
2. Seattle, Washington
3. Vancouver, Washington
4. Boston, Massachusetts
5. Miami-Dade County, Florida
6. Miami Beach, Florida
7. Alexandria, Virginia
8. King County, Washington
9. Orlando, Florida
10. Rockville, Maryland
11. Gaithersburg, Maryland
12. San Jose, California

Key staff from each jurisdiction were identified and asked to fill out a lengthy questionnaire on policy and procedure for submitting, performing, and reviewing traffic impact studies, from application submittal up to and including mitigation. Montgomery County staff completed the questionnaire in order to provide a baseline existing conditions scenario from which to compare the responses of other jurisdictions.

**Methodology**

The questionnaires covered the six main areas of a traffic impact study, starting with basic **background framework** questions, such as *Is there a formal policy in place?* and *Who is the governing authority over the traffic impact process?* Respondents were asked about staffing levels, frequency of policy updates, junior or senior governing agency coordination, and the presence and form of coordination between local site transportation review and area-wide transportation review. The questionnaire contained a small set of questions related to the conditions that trigger an applicant to file a formal traffic impact study such as zoning, development size or number of trips. In addition, respondents were asked about the **project scoping** (i.e. size, determining the number of intersections to include, etc.), study performance, determining the horizon year as well as how overlapping studies and multi-phased projects are handled and if there is an alternative review process such as pay-and-go. The fourth section of the questionnaire was the largest, as it covered **Data Collection and Analysis**. In this section, inquiries were directed toward topics such as what modes of data are collected; how and when the data is collected; how traffic data is validated; and future through traffic growth rates. From the analytical perspective, the questionnaire asked the practitioners about analysis method (e.g. Critical Lane Volume, Highway Capacity Manual, other); modes of travel analyzed, the inclusion of roadway segments in the local review; upstream queuing; traffic simulation; and the inclusion of unfunded or programmed transportation improvements. The respondents about required forecasting methods.

These questions focused on how trip generation rates were determined; modal split; internal capture; trip distribution and assignment; and trip credits (in the cases of redevelopment). The final section of questionnaire focused on *mitigation*. These questions probed acceptable levels of service; spillover traffic effects across jurisdictions; impact fees; negotiation parameters; Travel Demand Management; non-vehicle impacts; and the authority of the jurisdiction to deny permits based on inability to fully mitigate trips.

In addition to the questionnaires that we received back, many jurisdictions publish their formal procedures on-line as standalone documents.

#### **Key Findings**

Respondents sent back individual filled-out questionnaires. In many cases, there were follow-on interviews to clarify responses. Individual responses were compiled into a large matrix, along with Montgomery County's responses, so that their answers to each question could be contrasted with answers from all of the other jurisdictions in a side-by-side comparison. While the key findings of this comparison are presented below, the entire matrix is included as Appendix A.

For clarity, key findings (or differences) are grouped by the following classification:

1. Process and Scoping
2. Data Collection and Analysis
3. Forecasting
4. Mitigation

#### *Process and Scoping*

A comparison of the other jurisdictions shows similar initial triggers for a traffic impact study. Every jurisdiction looks at net trips generated or development as the triggering mechanism for a study; the difference among jurisdictions is the details of that mechanism. For example, while most jurisdictions evaluate peak hour trips – like Montgomery, Orlando looks at daily trips generated (1000 is the threshold). Both Boston and Baltimore use 50,000 gross square feet as their threshold, though Baltimore has a much higher threshold for warehouses and a much lower threshold if the development was near an intersection that was already at level of service D.

More often than not, the developer hired their own consultant to perform the traffic impact study and submit to the local jurisdiction – similar to Montgomery County's requirements. However, a few jurisdictions – Orlando, Boston, and Baltimore utilize 3<sup>rd</sup> party consultants hired by the local agency authorized to review the TIS.

With regard to scoping of the traffic impact study, all jurisdictions used trip impact as the determining factor, although a couple of jurisdictions handled the scope on a case-by-case basis. Of the respondents, Vancouver appeared to have the most far reaching scope, with development generating only 250 trips requiring a 3-mile radius scope. As of this writing, they are looking at both increasing the thresholds and reducing the radii. Most jurisdictions, like Montgomery County, looked at *peak hour* trip impacts, although one Jurisdiction – Orlando – looked at total *daily* trips generated. In addition, Boston used a gross square footage of development as the triggering factor.

The horizon year for a development was typically consistent with project opening (assuming some 5 of occupancy). But for large projects, some jurisdictions looked at a horizon year 10 years out.

Like Montgomery County, a couple of the surveyed jurisdictions have alternative processes that involve an applicant paying a fee for every trip generated.

#### *Data Collection and Analysis*

Most jurisdictions, like Montgomery County allow data that is no older than one year old. A few jurisdictions allow data up to two years. All jurisdictions require AM and PM peak period data collection, though the actual peak period times vary from place to place. Like Montgomery County, other jurisdictions will require weekend peak period data collection for retail establishments, such as grocery stores. When a developer is redeveloping an active site, Montgomery County, like all jurisdictions surveyed, allow for trip credits based the trips generated by an existing use.

Montgomery County requires data collection for vehicles and pedestrians and for transit routes to be identified. Several other jurisdictions – for example Boston and Baltimore – also include counting of bikes, as well. Miami-Dade goes a step further and counts transit headway and ridership, while Vancouver, Washington counts vehicle delay and travel time.

Montgomery County validates counts through its own internal database, while most jurisdictions typically rely on the applicant's consultants. Some jurisdictions use their internal Synchro file both as a check or also to supply to applicant's traffic consultants in order for them to populate with projected traffic volumes.

Background developments are part of the data collection for Montgomery County and all surveyed jurisdictions. In addition, while Montgomery County does not account for regional growth in through-traffic (typically on Arterials only), most other jurisdictions do. Typical arterial growth rates vary from 0.25% annually (Boston) to 1.5-2% annually for Vancouver. Gaithersburg only requires this additional background growth for developments that have a build-out date exceeding 3 years. Almost all jurisdictions justify the additional annual percentage increase in traffic from regional growth, based on historical counts.

Unlike Montgomery County that uses CLV<sup>1</sup> for analysis of traffic counts, most jurisdictions utilized the Highway Capacity Manual 2000 methodology<sup>2</sup>. Montgomery County did utilize a CLV congestion standard that varied based on the local policy area. For example, a higher level of congestion is permissible in Central Business Districts (CBDs) and Metro Station Policy Areas than relative to suburban and rural areas of the County. Rockville utilizes a similar tiered CLV congestion standard, whereby it varies based on the signal cycle length and number of phases. Only Miami-Dade has reported using HCM 2010, while several of the jurisdictions say they are interested in switching or are researching it. Like most jurisdictions, Montgomery County does not require Synchro or other simulation software as part of the traffic impact analysis but recognizes that is often useful to study the effects of queuing. VISSIM was also cited by several jurisdictions as a software package that was used to provide additional information for a comprehensive traffic impact analysis. Like most jurisdictions, Montgomery County calculates level of service only for vehicles. However, Seattle reported calculating LOS for pedestrians at certain downtown locations.

Montgomery County typically evaluates intersection level of service, but occasionally will evaluate level of service on road segments, on a case-by-case basis. This practice is similar across all jurisdictions surveyed. Likewise, Montgomery County, similar to other jurisdictions, requires special studies on a case by case basis. Special studies would include crash data analysis, signal warrants and queuing analysis. Triggers for these studies are not formally spelled out, but are generally location-driven. In addition, for large developments, the City of Alexandria requires a formal transportation demand management (TDM) plan to reduce automobile trips. Vancouver Washington also measure arterial travel speeds.

When considering the existing roadway capacity, Montgomery County allows applicants' consultants to consider un-built but planned roadway assuming that they are fully funded and will be completed within the next six years. All jurisdictions had a similar policy, though the time frames varied from four to six years out. No jurisdiction surveyed allowed for unfunded transportation improvements to be counted in an analysis even if they were programmed into a Capital Improvement Program or Transportation Improvement Program.

---

1- There is only one overriding measure for CLV analysis: the Critical Volume. This critical volume is correlated with preset values to calculate LOS and a v/c ratio. There is no relationship at all between the LOS and v/c ratios in the CLV and the HCM methods; their derivations are significantly different. It should also be noted that the CLV methodology differs from the HCM methodology because here, LOS and v/c ratio are the only 2 ways of representing the total intersection sufficiency. Unlike the HCM methods, CLV analysis calculates overall intersection Critical Volume, whereas the HCM aggregates each MOE on a lane group, approach, and then overall intersection basis, thus identifying failed movements and approaches. Additionally, in the CLV method, the maximum capacity of the intersection is fixed; i.e. it does not vary with signal timings, grades, lane widths, etc.

2- There are two primary measures of effectiveness used to evaluate the performance of an intersection in the Highway Capacity Manual: intersection control delay (seconds per vehicle) and volume-to-capacity ratio (v/c). Level of Service is determined using control delay. As noted in the HCM, Level of Service (LOS) is a measure of the acceptability of delay levels to motorists at a given intersection, and is defined as a qualitative measure describing operational conditions within a traffic stream, based on service measures such as speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. It is subjective in that levels that are considered acceptable in a large city might be unacceptable in a rural area. Volume-to-capacity (v/c) ratio is an approximate indicator of the overall sufficiency of an intersection. A v/c ratio of 1.0 indicates that an intersection or a movement has reached its theoretical capacity, i.e. demand volume equals maximum theoretical supply. A v/c ratio above 1.0 indicates that a residual queue (i.e., unserved demand) will be expected. In layman's terms, this means that the specific movement or intersection will fail to operate satisfactorily under such a condition.

### *Forecasting*

With regard to trip generation Montgomery County uses a combination of locally-derived trip generation rates and Institute of Transportation Engineers (ITE) trip generation rates. Approximately half of the jurisdictions surveyed utilized the same methodology, with the other half employing only ITE trip generation rates. ITE also is heavily used for pass-by and internal capture and mode split assumption, in conjunction with local knowledge. In addition, some jurisdictions cap internal capture and pass-by trip reductions. For example, internal capture is capped at 10% in transit-oriented area, while Miami-Dade caps pass-by trips at 10%. Boston's approach to mode split is unique in that they provide consultants with tables of modal split for each neighborhood in the City. Baltimore City also set's non-auto mode share at a neighborhood/ Traffic Analysis Zone level derived from the regional travel demand model. Consultants are required to utilize the tabular information.

Almost all jurisdictions use regional models for distribution/assignment of site-generated trips. Montgomery County has its own tabular data for trip distribution. The model divides the County into 11 "super districts" that each have their own distribution percentages both within the other super districts and outside the County to the surrounding locales. This approach is similar to the other jurisdictions surveyed, but used on a more refined manner that is specific to Montgomery County.

The length for which forecasting studies are valid varies greatly by jurisdiction from 1 year to up to 5 years. However, some jurisdictions have no formal limit, though these jurisdictions provided the caveat that if land use or traffic substantially changed prior to construction, then the forecast would no longer be valid. This is similar to Montgomery County, where the forecast is valid as long as the plan review is pending, with the caveat that background traffic conditions are still similar.

### *Mitigation*

Because most jurisdictions utilize HCM and delay, while Montgomery County uses a variable CLV congestion standard, comparing congestion levels is difficult. Montgomery County has a CLV standard based on policy areas within the County, other jurisdictions vary their allowable LOS based on other factors. For example, Baltimore and Seattle set LOS D as their standard city-wide, but other jurisdictions vary depending on road classification (Rockville) or pedestrian/transit accessibility (Alexandria). Both King County, Washington and Boston allow LOS E, but Boston will allow LOS F in some cases. It was noted in subsequent discussions that the City of Frederick uses CLV as a primary capacity analysis screening tool and then may require HCM.

While Montgomery County has a specific mitigation negotiation policy, it is typically negotiated in "good faith" by the other jurisdictions surveyed. Other localities have a laundry list of items that they typically ask for during negotiation.

Montgomery County requires TDM strategies in some locations, particularly around Metro stations. Periodic performance monitoring by Montgomery County and a Planning Board auditor will be required for Traffic Mitigation Agreements that are designed to mitigate at least 30 peak hour vehicle trips. Similarly, Alexandria City monitors car pools and transit usage annually as part of its TDM performance monitoring. Other jurisdictions request performance monitoring to be done by the applicant. Orlando noted in the survey that TDM is rarely verified and/or enforced. Gaithersburg has stated that its policy is for self-reporting by developers on a quarterly basis.

When recommended roadway improvements are not feasible (typically because the right-of-way does not exist), Montgomery County applies other non-auto mitigation measures or allow for a monetary contribution to be made in lieu of mitigation. The survey found similar responses across the other jurisdictions, however, some noted that the applicant will have to find a way to reduce their site-generated auto trips. Boston, for example, says that developers must consider reducing parking requirements or even look at reversible lanes. Similarly San Jose cited the need to reduce project size if LOS impacts were shown to be significant. However, most of the responses centered on the need to apply mitigation improvements to other transportation modes, such as pedestrian/bike or transit. The City of Baltimore and Boston include transportation system management (such as communications and ITS) and operating contributions (e.g. transit) as part of mitigation options.

Pedestrian and bike and transit improvements or amenities are not measured or credited on the local TIS level in Montgomery County. Similarly, in other jurisdictions, these amenities are not measured but are often required on-site. Off-site amenities for pedestrian bike and transit are often used to justify higher non-auto mode splits.

No jurisdiction was found to have a formal policy for mitigating spillover effects of traffic into neighboring jurisdictions. However, many localities surveyed said that they share traffic impact studies with their neighbors and offer the opportunity for written comments.

Finally, all jurisdictions surveyed, including Montgomery County, have the ability and authority to cap, delay or deny future development if mitigation cannot be agreed upon by all parties.

#### Conclusion

The comparison between Montgomery County and the surveyed jurisdictions show many similarities in approach along with many differences – some of which are not substantial enough to be considered in an alternatives analysis. A detailed summary matrix of question-by-question responses is attached as an appendix to this memorandum. However, there are some key differences in the processes that are noteworthy in their approach. Several notable differences in TIS methodology between Montgomery County and other jurisdictions include *who* performs the TIS; *Type* of data collected in a TIS; TIS analysis method; alternative processes in lieu of a TIS; use of simulation software in as a validation tool; TDM management requirements and monitoring; local area mode split tables; and mitigation alternatives. In summary, the notable findings are as follows:

- o Several jurisdictions surveyed allow a third-party consultant to scope, review or perform the traffic impact study, funded by the developer
- o Several jurisdictions have an alternative review process that allows developers to pay a fee per trip and bypass performing a traffic study
- o Most jurisdictions collect traffic data on vehicles, pedestrian and bicycles. A few collect transit usage (headway and occupancy) and one jurisdiction surveyed collected travel time
- o Several jurisdictions use Synchro models to validate traffic count data, to account for oversaturated conditions (actual demand vs. throughput). At least one requests that consultants use the Synchro model in lieu of collecting new data.
- o Most jurisdictions do not use the CLV, but rather HCM methodology to determine level of service.
- o The most notable special study included in a local traffic impact study was a Transportation Demand Management plan, required by all developers in the City of Alexandria to identify specific methods to reduce site auto trips. No jurisdiction has a monitoring program specifically focused on development impact, however, Alexandria requires annual reports on a TDM plan which includes monitoring elements.
- o Most jurisdictions only require vehicle level of service. The City of Seattle has performed pedestrian level of service analysis, and the City of Boston is leaning towards implementing a complete street multi-modal analysis requirement
- o The City of Baltimore and Boston use mode share data from the regional travel demand model in accounting for discounts in raw vehicle trip generation rates for pedestrian, bicycle and transit site access.
- o Most jurisdictions use level of service as an operational measurement, however, Vancouver Washington also uses arterial travel speeds.
- o No jurisdiction had a formal policy for inter-jurisdictional coordination, good professional cooperation was the norm.
- o The City of Baltimore and Boston include transportation system management (such as communications and ITS) and operating contributions (e.g. transit) as part of mitigation options. Requesting reduced parking (parking maximums) was a notable tool used by Boston to reduce auto trips when recommended roadway improvements are not feasible.

Based on this list of key peer local transportation review practice, it is recommended to consider in subsequent Beta Tests the following:

- o Use of the Highway Capacity Manual (HCM) 2010 for capacity analysis
- o Documentation of relative arterial mobility including average vehicle vs. bus speeds
- o Analysis of pedestrian and bicycle level of service
- o Safety analysis
- o Consideration of growth in the traffic volumes
- o Documentation of projected non-auto trips

- o Non-auto travel shed analysis
- o Use of traffic analysis software (Synchro/ SimTraffic) for signal timing and queuing assessment
- o Use of person-throughput metrics and system-level operational measures of performance

Bill 37-16  
MCDOT Comments  
9/8/16

MCDOT's review on this bill is specifically related to its function as the agency responsible for the review and certification of Transportation Impact Tax Credits. Our comments are as follows:

Lines 9-10: The proposed language to be added to the definition of "Additional capacity" are transportation demand management activities, and do not add roadway or intersection capacity. MCDOT feels this additional language confuses the definition and will create interpretation problems in the submission and evaluation of transportation impact tax credit requests. We agree that the actual activities described - implementing or improving transit, pedestrian and bike facilities or access to non-auto modes of travel - are potentially eligible for transportation impact tax credits as listed in Section 52-58, but do not belong in the definition of "Additional capacity".

Lines 60-63: The language as drafted is unclear if the intent is to only allow taxes collected in one specific Red Policy Area to only be used in the same specific Red Policy Area (e.g., collected in Grosvenor can only be used in Grosvenor), or if taxes collected in the any of the Red Policy Areas can be used in any Red Policy Area (e.g., collected in Grosvenor can be used in any other red area).

Line 80: MCDOT suggests consolidating the tax rate table for White Flint as a new column into the table for the various policy areas.

Line 115: MCDOT is not clear as to the reason for including the proposed language "or other bike facility". The Executive Regulation associated with Transportation Impact Taxes and Impact Tax Credits includes specific criteria for hiker-biker trails used primarily for transportation. The proposed language is overly vague and will lead to confusion and misinterpretation in reviewing and certifying impact tax credits.

Line 119: MCDOT disagrees with including the words "or within" to this item. This section of the code is also the basis for determining what is credit eligible. While using impact taxes as a potential funding source for all CIP sidewalk projects if desirable, we do not believe that issuing tax credits for any sidewalk built as part of certain developments is in keeping with the underlying philosophy of granting transportation impact tax credits for what county would have otherwise built. Also, a sidewalk within an activity center is more of a local amenity as opposed to providing connectivity to the overall transportation network. Sidewalks are a fundamental requirement of new development construction, and including this provision will increase the amount of credits provided and will decrease the revenues collected from impact taxes.

Line 122: It appears the title of this section should change to Transit Accessibility Mitigation Payment.

TESTIMONY OF CYNTHIA BAR  
 BEFORE THE  
 MONTGOMERY COUNTY COUNCIL  
 BILL 37-16 – TAXATION – DEVELOPMENT IMPACT TAX  
 SEPTEMBER 13, 2016

Good evening. I am Cynthia Bar of Lerch, Early & Brewer, testifying in support of the Development Impact Tax legislation with some additional suggestions. I believe the Planning Board has appropriately evaluated the important role and impact of development in Metro Station Policy Areas, and has recommended appropriate impact tax rates for such development which I support. I also support their recommendation that projects providing reduced parking should be entitled to a reduction in the impact tax given the significantly lower trip generation resulting from a building with constrained parking. I understand that this provision will be added to the Bill.

I do, however, believe an additional modification should be made to the impact tax provisions to be consistent with the proposed Subdivision Staging Policy which you also are considering tonight. The Subdivision Staging Policy continues to direct Montgomery County development towards areas served by public transit, and further requires development projects to focus increasingly on providing non-automobile transportation improvements, including those in support of public transportation. This is consistent with the Department of Transportation's evolution towards a County with more urban development, fewer new highways and considerably more public transportation. However, as you know, the impact tax measures were drafted years ago when the County had a more automobile and road oriented philosophy, and hence they do not match in some ways current public policy on transportation. More specifically, Section 52-58 regarding the use of impact tax funds allows such funds to be spent

on new Ride-On buses and bus shelters, and for Park and Ride lots, but it does not specifically mention that those funds can be spent on public transit facilities such as the Purple Line, BRT facilities or other planned public transportation improvements. I believe the legislation should be amended to make it clear that impact tax funds can be spent on any capital improvement project which is adding public transportation capacity and facilities. Similarly, the impact tax legislation allows developers to pay for certain transportation improvements rather than waiting for the public to provide them, and enables those developers to obtain credits against the impact tax that otherwise would be due when they provide those facilities. For years, this has traditionally meant credits for road improvements. As I have noted, however, there is an increasing focus on public transportation and other alternative transportation measures. Developers should be entitled to fund these types of improvements to address transportation needs and should receive impact tax credits when they do so, just as they receive them now for new roads, bus shelters and Ride-On buses. I have provided draft language attached to this testimony of how Chapter 52 should be amended to accomplish these objectives. Thank you for your consideration of my views.

- 121 (i) the operating expenses of any transit or trip reduction program.
- 122 (j) new or expanded public transportation facility, including light rail and
- 123 bus rapid transit facilities.

124 **52-59. Transportation Mitigation Payment.**

- 125 (a) In addition to the tax due under this Article, an applicant for a building
- 126 permit for any building on which an impact tax is imposed under this Article
- 127 must pay to the Department of Finance a [Transportation] Transit Accessibility
- 128 Mitigation Payment if that building was included in a preliminary plan of
- 129 subdivision that was approved under the Transportation Mitigation Payment
- 130 provisions in the County Subdivision
- 131 Staging Policy adopted on \_\_\_\_\_.
- 132 (b) The amount of the Payment [for each building, must be calculated by
- 133 multiplying the Payment rate by the total peak hour trips generated by the
- 134 development] is based upon the latest finding of adequacy for transit
- 135 accessibility for each Policy Area as approved and applicable under the
- 136 County Subdivision Staging Policy process. The initial findings of
- 137 applicability and adequacy as adopted on \_\_\_\_\_ are as follows: [.]



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22

**TESTIMONY OF CHRISTOPHER M. RUHLEN  
BEFORE THE MONTGOMERY COUNTY COUNCIL**

**March 8, 2016**

**Bill 37-16, Taxation – Development Impact Tax –  
Transportation and Public School Improvements -- Amendments**

Good evening, for the record I am Chris Ruhlen with the law firm of Lerch, Early and Brewer. I am here to testify in support of the proposed impact tax changes recommended by the Planning Board with Bill 37-16, but also to suggest one further modification that I believe is appropriate.

With respect to funding public road infrastructure, the County currently distinguishes between development impact tax expenditures and credits for County roads and State roads. In some cases, Montgomery County is able to obtain full funding for new road improvements from the State and this distinction is not an issue. In other cases, however, State funds are stretched too thin to enable State funding, leaving the obligation for constructing State road improvements either to Montgomery County or to private developers. Clarksburg provides a good example of where past, pending and future road improvements for State roads – specifically for Maryland Route 355 and Maryland Route 121 – are not being funded by the State but by Montgomery County and private developers.

Like County roads, State road improvements provide important benefits to new and existing residents and workers and to the public at large. However, the current impact tax legislation ignores the reality that State road improvements are often not being funded by the State. While the current legislation enables Montgomery County to use impact taxes to fund a wide variety of improvements, and also allows developers who provide funding to obtain impact tax credits, the legislation does not allow credits to be granted for State road improvements even when the County or the private sector are providing the funding. In order to expedite construction of these desirable improvements, both County impact tax funding and private funding offset by impact tax credits should be encouraged. The thinking at one time was that not using impact tax funds for State roads would somehow force the State to fund them itself. In

reality, however, this has often not occurred. Multiple times, standoffs with the State about funding those improvements have arisen, hurting the public until the County or the private sector provide funding to make sure State road improvements are built. To avoid these situations, impact tax funds should be available for State road improvements as should impact tax credits.

One case in point stands out. As noted, County and private sector funding has been used for a variety of improvements along both Maryland Route 121 and Route 355 in Clarksburg. These improvements have begun to address the long-standing complaint from Clarksburg residents about the inadequacy of road capacity. The improvements to Route 355, however, have not included needed upgrades at the intersection of Brink Road and 355 because developer obligations there will not be triggered until years from now. Given the progress on the other Route 355 improvements, this will soon result in a severe bottleneck at the intersection. At the same time, working with some of the developers responsible for participating in that improvement, I have been informed that they would be willing to fund that improvement and build it years ahead of time if they were able to obtain impact tax credits for their funding. I ask that you consider modifying the legislation to allow this to occur, and am providing a proposed change to Section 52-58 with my testimony that would accomplish this.

54 [(4) *General:* Any part of the County, including any municipality, not  
55 located in an area listed in paragraphs (1)-(3);]  
56

57  
58 (d) Reserved.  
59

60 \* \* \*

61 **52-53. Restrictions on use and accounting of development impact tax funds.**  
62

63 \* \* \*

64 (h) Development impact tax funds collected from the [Clarksburg impact tax  
65 district] Red Policy Areas must be used for impact transportation  
66 improvements located in or that directly benefit [the Clarksburg] those  
67 policy [area] areas.  
68  
69

70  
71  
72 **52-55. Credits.**

73 \* \* \*

74 (b) A property owner must receive a credit for constructing or contributing to  
75 an improvement of the type listed in Section 52-58 if the improvement  
76 reduces traffic demand or provides additional transportation capacity.  
77 ~~However, the Department must not certify a credit for any improvement~~  
78 ~~in the right-of-way of a State road, except a transit or trip reduction~~  
79 ~~program that operates on or relieves traffic on a State road or an~~  
80 ~~improvement to a State road that is included in a memorandum of~~  
81 ~~understanding between the County and either Rockville or Gaithersburg.~~  
82

83 \* \* \*

84 (d) Any credit for building or contributing to an impact transportation  
85 improvement does not apply to any development that [is] has been  
86 previously approved under the Alternative Review Procedure for Metro  
87 Station Policy Areas in the County Subdivision Staging Policy.  
88

89 \* \* \*  
90



September 14, 2016

Hon. Nancy Floreen  
President, Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Impact Tax Credits  
Transportation Impact Taxes

Dear Ms. Floreen,

As the Council considers the draft Subdivision Staging Policy, it also will be considering changes proposed by the Montgomery County Planning Board to the current transportation impact tax rates. This letter is to request that the Council consider a modest expansion of the impact tax credit provisions to enable a property owner to utilize earned transportation impact tax credits for other properties within the same transportation policy area.

We have a situation currently in Germantown West where we are constructing a master planned extension/relocation of Waters Road to connect to Maryland Rt. 118 opposite the Germantown MARC station. The right-of-way for this "connector" road is on an adjacent off-site property, and reaching an agreement and obtaining approvals for the connector road have taken approximately five years.

This connector road is not required to be built in conjunction with our development approvals for our adjacent Martens project, rather it is intended to provide greater accessibility for Germantown West residents to the MARC station and Maryland Rt. 118. In conjunction with the late development of the connector road, and the impact of its connection to the existing area road network, we recently earned \$960,000 of transportation tax credits for our construction of Waterford Hills Boulevard and should qualify for additional credits for other improvements, including the connector road.

However, due to the late timing of earning our transportation impact tax credits, our Martens project buildout is approximately 95% complete and consequently our earned transportation impact credits cannot be used for our project. We think it is unfair for us to build infrastructure for the County and rightfully earn impact tax credits, but then not be able to use them.

(57)

Accordingly, we respectfully request that the Council consider adopting a simple amendment to the impact tax credit statute that would allow earned transportation impact tax credits to be transferred to another property owner in the same transportation policy area. We have attached for your use suggested language for a simple and straightforward text amendment.

We believe that our request is fair and reasonable. We also believe that this credit transfer flexibility will be an incentive to facilitate earlier infrastructure investment and result in stronger economic development activity. Please note that our suggested language includes a caveat that the transfer of credits only be allowed in the proposed Red, Orange or Yellow areas of the County, and not the Green (or rural) transportation policy areas.

Thank you for your consideration in this very important matter.

Sincerely,

Buchanan Pinkard Germantown, LLC



Robert E. Buchanan

cc: Mr. Craig L. Rice, Member, Montgomery County Council, District 2  
Mr. Glenn Orlin, Montgomery County, Deputy County Administrator  
Mr. Steve Silverman  
Mr. Robert G. Brewer, Jr.

(58)

**PROPOSED ZONING TEXT AMENDMENT**

**Transferability of Impact Tax Credits**

**Sec. 52-55. Credits**

....

- (b) A property owner must receive a credit 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. However, the Department must not certify a credit for any improvement in the right-of-way of a State road, except a transit or trip reduction program that operates on or relieves traffic on a State road or an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg.

....

- (j) After a credit has been certified under this Section, the property owner or contract purchaser to whom the credit was certified may transfer all or part of the credit to any successor in interest of the same property. However, any credit transferred under this subsection must only be applied to the tax due under this Article with respect to the property for which the credit was originally certified.

Amend Sec. 52-55 by adding new subsection (k):

- (k) Notwithstanding section (j) above, the property owner or successor in interest to whom the credit was certified may transfer the credit, in whole or in part, to another property owner(s) in the same transportation policy area, provided that the credit was earned in a Red, Orange or Yellow (but not Green) policy area. The Department of Transportation must adopt policies to implement the transfer mechanism.

(59)

Comparison of Current Transportation Impact Tax Rates to 2016 Proposed Rates

	Single Family Detached		Single Family Attached		Garden Apartments		High Rise Apartments		Multi Family Senior		Office		Industrial		Retail	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
	Bethesda CBD	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70
Friendship Heights	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70	\$5.98
Glenmont	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70	\$5.98
Grosvenor	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70	\$5.98
Rockville Town Center	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70	\$5.98
Shady Grove Metro	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70	\$5.98
Silver Spring CBD	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70	\$5.98
Wheaton CBD	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70	\$5.98
White Flint	\$6,984	\$3,653	\$5,714	\$2,552	\$4,443	\$2,312	\$3,174	\$1,652	\$1,269	\$661	\$6.35	\$6.72	\$3.20	\$3.34	\$5.70	\$5.98
Bethesda/Chevy Chase	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
Clarksburg	\$20,948	\$10,959	\$17,141	\$7,656	\$13,330	\$6,937	\$9,522	\$4,955	\$3,808	\$1,982	\$13.30	\$13.45	\$7.60	\$6.69	\$13.70	\$11.96
Derwood	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
Gaithersburg City	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
Germantown Town Center	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
Kensington/Wheaton	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
North Bethesda	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
R&D Village	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
Rockville City	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
Silver Spring/Takoma Park	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
White Oak	\$13,966	\$10,959	\$11,427	\$7,656	\$8,886	\$6,937	\$6,347	\$4,955	\$2,539	\$1,982	\$12.75	\$13.45	\$6.35	\$6.69	\$11.40	\$11.96
Aspen Hill	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Cloverly	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Fairland/Colesville	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Germantown East	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Germantown West	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Montgomery Village/Airpark	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
North Potomac	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Olney	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Potomac	\$13,966	\$18,266	\$11,427	\$12,759	\$8,886	\$11,562	\$6,347	\$8,259	\$2,539	\$3,303	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Damascus	\$13,966	\$29,225	\$11,427	\$20,415	\$8,886	\$18,499	\$6,347	\$13,214	\$2,539	\$5,286	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Rural East	\$13,966	\$29,225	\$11,427	\$20,415	\$8,886	\$18,499	\$6,347	\$13,214	\$2,539	\$5,286	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95
Rural West	\$13,966	\$29,225	\$11,427	\$20,415	\$8,886	\$18,499	\$6,347	\$13,214	\$2,539	\$5,286	\$12.75	\$16.81	\$6.35	\$8.36	\$11.40	\$14.95

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Change in Current Transportation Impact Tax Rates compared to 2016 Proposed Rates

	Single Family Detached	Single Family Attached	Garden Apartments	High Rise Apartments	Multi Family Senior	Office	Industrial	Retail
	Change in Rate	Change in Rate	Change in Rate	Change in Rate	Change in Rate	Change in Rate	Change in Rate	Change in Rate
Bethesda CBD	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
Friendship Heights	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
Glenmont	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
Grosvenor	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
Rockville Town Center	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
Shady Grove Metro	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
Silver Spring CBD	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
Wheaton CBD	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
White Flint	-\$3,331	-\$3,162	-\$2,131	-\$1,522	-\$608	\$0.37	\$0.14	\$0.28
Bethesda/Chevy Chase	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
Clarksburg	-\$9,989	-\$9,485	-\$6,393	-\$4,567	-\$1,826	\$1.85	\$0.91	\$1.74
Derwood	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
Gaithersburg City	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
Germantown Town Center	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
Kensington/Wheaton	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
North Bethesda	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
R&D Village	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
Rockville City	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
Silver Spring/Takoma Park	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
White Oak	-\$3,007	-\$3,771	-\$1,949	-\$1,392	-\$557	\$0.70	\$0.34	\$0.56
Aspen Hill	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
Cloverly	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
Fairland/Colesville	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
Germantown East	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
Germantown West	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
Montgomery Village/Airpark	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
North Potomac	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
Olney	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
Potomac	\$4,300	\$1,332	\$2,676	\$1,912	\$764	\$4.06	\$2.01	\$3.55
Damascus	\$15,259	\$8,988	\$9,613	\$6,867	\$2,747	\$4.06	\$2.01	\$3.55
Rural East	\$15,259	\$8,988	\$9,613	\$6,867	\$2,747	\$4.06	\$2.01	\$3.55
Rural West	\$15,259	\$8,988	\$9,613	\$6,867	\$2,747	\$4.06	\$2.01	\$3.55

19



AGRICULTURAL ADVISORY COMMITTEE

September 30, 2016

The Honorable Nancy Floreen  
Montgomery County Council President  
100 Maryland Avenue  
Rockville, MD 20850

Dear Council President Floreen: Bill 37-16- Taxation-Development Impact Tax-  
Transportation and Public School Improvements

On behalf of the Montgomery County Agricultural Advisory Committee-AAC, please accept this letter as our comments for Bill 37-16 Taxation-Development Impact Tax-Transportation and Public School Improvements-Amendments. Please understand that the AAC was not able to comment during the September 13, 2016 public hearing because we did not meet in the month of August due to the County Agricultural Fair and our September 20, 2016 meeting was the first opportunity for the Committee to discuss this Bill 37-16.

We in agriculture are very much concerned that the Council is considering raising the impact fees in outlying east and west ag districts of the county. The impact fees are already a very high barrier for the Montgomery County farmer who wants to build a house for his tenant or for his offspring to build on the child's lot.

Although the increase in tax money may be needed somewhere in the county, we feel that the green policy area increase is a special burden on the Ag Reserve farmers. We have a few specific points about this:

The added revenue is to be used for infrastructure improvements for transportation and public schools; although these improvements will most probably occur down county and not in the Agricultural Reserve. The Agricultural Reserve has the least amount of public services in the County (examples no internet, the majority of rural and rustic roads, very few public schools) although the proposed impact tax rate for the Agricultural Reserve-Green Policy Area is the highest of all other policy areas.

If an existing or new farmer needs a new home on the farm for the owner, a tenant farmer, or next the generation, this would be an added burden that may influence whether that farm is viable and profitable. Some farmers on our committee have said they will not be able to afford the costs to construct a house for their children on the child lot that they have reserved for their purpose.



The profitability of the individual farm will ultimately decide the fate of the Agricultural Reserve. If as a county we truly want the Ag Reserve to continue as farmland we should consider this impact fee and the unintended burden to farmers.

The AAC thanks the County Council for this opportunity to present our views on Bill 37-16 and please let us know if you have any questions.

Sincerely,

David Weitzer

David Weitzer, Chairman



**WILLCO**

September 28, 2016

Via email only to [Councilmember.Floreen@montgomerycountymd.gov](mailto:Councilmember.Floreen@montgomerycountymd.gov)

The Honorable Nancy Floreen, President  
and Members of the Montgomery County Council  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Re: Impact Tax – Metro Station Policy Areas

Dear President Floreen and Members of the Council:

As you are aware, the Government Operations and Fiscal Policy (GO) Committee will convene on Thursday, October 6 to continue work on Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements – Amendments.

It is our understanding that the GO Committee will provide recommendations to full Council on whether Development Impact Taxes in Metro Station Policy Areas will DOUBLE, as proposed by Councilmember Elrich and Council Staff Deputy Director Glenn Orlin.

As a major stakeholder in the County and a developer in Metro Station areas, we share the Council's goal to increase accessibility and relieve traffic congestion surrounding Metro areas within the County. However, doubling the transportation Impact Tax, which has been in place for over 10 years, would jeopardize the ability of future developments located in Metro Station Policy Areas to obtain financing.

(64)

Page 2  
September 28, 2016

The doubled tax will surely result in more projects seeking County financial support in order to offset the increase in the Impact Tax. In addition, the County only collected \$476,000 last year from the tax so doubling it will not produce enough revenue to affect transportation funding. Therefore, it is simpler to preserve the current Transportation Impact Tax rate and simultaneously send a message that the County continues to prioritize Metro area development.

We appreciate your consideration of our request and look forward to hearing from you.

Sincerely,



Jason L. Goldblatt  
President & CEO

cc:

Councilmember.Berliner@montgomerycountymd.gov  
Councilmember.Elrich@montgomerycountymd.gov  
Councilmember.Floreen@montgomerycountmd.gov  
Councilmember.Hucker@montgomerycountymd.gov  
Councilmember.Katz@montgomerycountymd.gov  
Councilmember.Leventhal@montgomerycountymd.gov  
Councilmember.Navarro@montgomerycountymd.gov  
Councilmember.Rice@montgomerycountymd.gov  
Councilmember.Riemer@montgomerycountymd.gov  
Glenn.Orlin@montgomerycountymd.gov



ideas that work

*Attorneys at Law*

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Bethesda, MD 20814-5367

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**Testimony of Steven A. Robins for Robert R. Harris, Lerch Early & Brewer  
on behalf of the Clarksburg Premium Outlets  
before the Montgomery County Council  
Bill No. 34-15  
July 21, 2015**

Good afternoon President Leventhal and Members of the Montgomery County Council. I am Steven Robins, an attorney with the law firm of Lerch Early & Brewer located in Bethesda, Maryland. I am here today for my partner, Bob Harris, testifying on behalf of the Clarksburg Premium Outlets. As you may recall, the Premium Outlets will be located on a portion of the Cabin Branch property on the west side of Interstate 270 in Clarksburg. We have been diligently pursuing the approvals for the Outlets and anticipate an opening in late 2016. This development will be a great addition to the Clarksburg community and will serve as a catalyst for quality, desirable development in this area of the County.

We support the provision of Bill No. 34-15 that eliminates the separate impact tax rates for Clarksburg and instead equalizes the rates with the County's general tax rate category. The County tax rate will put Clarksburg on a level playing field with those areas that pay the general rate. This, in turn, will have the desirable impact of affording those in Clarksburg an opportunity to provide more development activity in this area of the County that translates into job creation and revenue generation. As a developer in the Cabin Branch area, we are required to make improvements to state infrastructure, like the I-270/Rt. 121 interchange, for which impact credits may not be available. Equalizing the impact tax rate is the equitable action to take. The County still will collect substantial revenue - this is a win-win for Clarksburg and the County.

We appreciate the Council's consideration of our testimony in support of eliminating the separate impact tax rate for Clarksburg. Thank you very much.

(66)



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

NANCY FLOREEN  
COUNCIL PRESIDENT

MEMORANDUM

September 27, 2016

**To:** Councilmembers  
**From:** Nancy Floreen, Council President  
**Subject:** Impact Tax Exemption for Student Built Houses

I propose that we exempt student built houses from impact taxes.

MCPS students get real world experience building houses so that after high school they are prepared either to pursue additional education or to enter apprenticeships in the construction trades. I'm very impressed with what a worthwhile and unique opportunity this program provides for many of our students who prefer or need non-college track education options. We can help this worthwhile program by exempting student-built houses from impact taxes.

MCPS' Thomas Edison High School of Technology offers the Construction Technology Pathway Cluster in which students learn construction trades such as electrical, masonry, HVAC, carpentry, plumbing, and principles of architecture and CAD technology. The program culminates with the Young American Design/Build Project, with students building a house which is sold at market rates. Since 1976, the program has produced 40 homes. Students receive instruction at Edison, and the Montgomery County Students Construction Trades Foundation, Inc., a nonprofit organization, manages the rest of the process in cooperation with MCPS. CTF buys the land, arranges the construction loan, and manages the sale of the home.

This program encourages our students to learn about and become inspired to pursue careers in construction. Graduates meet Apprenticeship Training requirements and may earn industry certifications as well as college credits through dual enrollment at Montgomery College.

CTF houses go through the permit process just like any other development, and CTF is responsible for the same infrastructure, such as roads, stormwater management and sediment control, as any other project. CTF also pays impact taxes.

In recent years, students have completed a home every two years. The last four homes have resulted in financial losses to CTF.

Here's a link to CTF's website: <http://ctfcareers.org/>.

We can support this worthwhile effort by providing an exemption from one of the expenses, impact taxes. I would appreciate your support of my proposal.

cc: Glenn Orlin, Deputy Staff Director  
Bob Drummer, Council Staff Attorney  
Casey Anderson, Chair Montgomery County Planning Board  
Gwen Wright, Planning Director  
Steve Boden, MCPS Supervisor and Executive V.P., Construction Trade Foundation



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
*County Executive*

MEMORANDUM

May 11, 2016

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Request for Introduction of Legislation to Exempt Clergy House from Impact Taxes

I am writing to ask that you introduce the attached proposed legislation to exempt clergy houses from development impact taxes when the clergy house is accessory to and supports an on-site or neighboring place of worship. The fiscal impact statement is attached. My staff is available to answer questions. I hope that the County Council will favorably consider this request.

Attachment

(69)

Bill No. XX-16  
Concerning: Taxation – Development  
Impact Taxes – Exemptions – Clergy  
House  
Revised: \_\_\_\_\_ Draft No. \_\_\_\_  
Introduced: \_\_\_\_\_  
Expires: \_\_\_\_\_  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: January 1, 2016  
Sunset Date: none  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Council President Floreen at the Request of the County Executive

---

**AN ACT to:**

- (1) exempt certain clergy houses from development and school impact taxes; and
- (2) generally amend the law governing impact taxes.

By amending

Montgomery County Code  
Chapter 52. Taxation.  
Sections 42-47, 42-49(h), 52-89(d)

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

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





## LEGISLATIVE REQUEST REPORT

Bill XX-16

*Development Impact Taxes—Exemptions—Clergy House*

- DESCRIPTION:** The proposed changes would exempt certain clergy houses from transportation and school development impact taxes.
- PROBLEM:** A concern has been raised relative to clergy houses that are accessory and incidental to places of worship.
- GOALS AND OBJECTIONS:** The proposed legislation, which would retroactively take effect on January 1, 2016, is intended to accommodate certain clergy houses that are accessory and incidental to places of worship.
- COORDINATION:** Department of Permitting Services
- FISCAL IMPACT:** The fiscal impact would be a rare loss of tax revenue, and the expected fiscal impact would be minor.
- ECONOMIC IMPACT:** No economic impact is expected, however, there would be an economic benefit for a place of worship seeking to locate a new accessory clergy house. Places of worship may provide services to their membership which can help with the community health and welfare.
- EVALUATION:** The proposed development and school impact tax exemptions will accommodate clergy houses that are accessory and incidental to places of worship.
- EXPERIENCE ELSEWHERE:**
- SOURCE OF INFORMATION:** Department of Permitting Services
- APPLICATION WITHIN MUNICIPALITIES:** Impact taxes apply County-wide.
- PENALTIES:** Not applicable.

**Economic Impact Statement**  
**Bill #-16, Impact Taxes – Exemptions – Clergy House**

**Background:**

This legislation would exempt the development transportation and school impact taxes for a single-family house, or Clergy House, that is provided for the designated religious leader of a place of worship to reside and to carry out his or her duties as the leader for the religious institution. The Clergy House does not include any portion of the single-family house that is used for non-residential use if that use exceeds thirty-three percent (33%) of the gross floor area of the house. The Clergy House must be located on the same lot as, adjacent to, or confronting the place of worship.

**1. The sources of information, assumptions, and methodologies used.**

The source of information includes the Department of Permitting Services (DPS). According the DPS, there are only two identified houses during the past six years that qualified as Clergy Houses with one of the houses a tear down and rebuild and not subject to the tax. For a single-family detached house subject to the development transportation and school impact taxes, the total tax amounts to \$49,375 per unit. Therefore, only a total of \$49,375 were collected over the past six years.

**2. A description of any variable that could affect the economic impact estimates.**

There are no variables that could affect the economic impact estimates.

**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

Because of the small number of Clergy Houses that paid the development transportation and school impact taxes, the number of such houses that would be exempt from the tax is uncertain. Therefore, Bill #-16 would likely have no significant economic impact on employment, spending, savings, investment, income, and property values in the County.

**4. If a Bill is likely to have no economic impact, why is that the case?**

See paragraph #3

**5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Gail Lucas, DPS, and Dennis Hetman, OMB.**

*FOR*  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

\_\_\_\_\_  
Date

5/10/16

(74)

**Fiscal Impact Statement**  
**Council Bill \_\_\_\_\_ Impact Taxes – Exemptions – Clergy House**

1. Legislative Summary:

*This Bill would exempt from development transportation and school impact taxes a single family house provided for the designated religious leader of a place of worship to live in to carry out duties as the leader for the religious institution and which is incidental and subordinate to a place of worship structure for religious assembly. Clergy House does not include any portion of the single family house that is for non-residential use. The Clergy House must be on the same lot as, adjacent to or confronting the place of worship.*

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget.

*For a single family detached house subject to the general rate the decrease in revenues would be \$13,966 for transportation impact tax, \$35,409 for school impact tax which is a total of \$49,375. This revenue loss would be rare. There were only two identified in a search of DPS records for the past 6 years, one of which was a rebuild and not subject to the tax.*

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

*There are no additional revenue or expenditure estimates as a result of the Bill.*

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

*There is no impact to retiree pension or group insurance costs.*

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

*No additional systems or resource planning will be required to implement the Bill.*

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

*This Bill does not authorize future spending.*

7. An estimate of the staff time needed to implement the bill.

*The Bill does not result in the addition of any new staff responsibilities.*

8. An explanation of how the addition of new staff responsibilities would affect other duties.

*See number 7.*

9. An estimate of costs when an additional appropriation is needed.

*This Bill will not require an additional appropriation.*

10. A description of any variable that could affect revenue and cost estimates.

*There are no additional revenue or costs estimates as a result of this Bill.*

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

*See number 10.*

12. If a bill is likely to have no fiscal impact, why that is the case.

*The Bill is likely to have a limited fiscal impact as described in question 2.*

13. Other fiscal impacts or comments.

*Not applicable.*

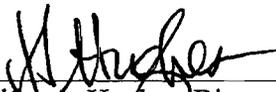
14. The following contributed to and concurred with this analysis:

Diane Schwartz Jones, DPS

Joseph Beach, Finance

Gail Lucas, DPS

Dennis Hetman, OMB

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

5/9/16  
Date



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

CRAIG RICE  
COUNCILMEMBER  
DISTRICT 2

CHAIRMAN  
EDUCATION COMMITTEE

**Memorandum**

Date: October 3, 2016  
To: Glenn Orlin  
FROM: Craig Rice, Councilmember   
RE: Clarksburg Impact tax rate

The pending impact tax changes propose eliminating the Clarksburg impact tax rate differential and, instead, creating a more uniform transportation impact tax rate structure for the County. This recommendation comes from the Montgomery County Planning Board after their Staff conducted a comprehensive analysis of the different tax rates throughout the County and the use of impact taxes to fund transportation infrastructure. The current impact tax rates for the Clarksburg Policy Area are considerably higher than they are throughout the rest of the County, including planning areas with land use characteristics very similar to Clarksburg, (For example, the transportation impact tax for a single-family home in Clarksburg is \$20,948 while the rate in Damascus or Germantown is \$13,966 and the rate for retail development in Clarksburg is \$13.70 per square foot while it is \$11.40 per square foot in policy areas directly adjoining Clarksburg). Through its comprehensive study of impact tax rates, the Planning Board concluded that impact tax rates for Clarksburg should be lowered in order to be consistent with areas similar to Clarksburg. The transportation impact tax for retail in Clarksburg would be reduced from \$13.70 per square foot to \$11.96 per square foot, a rate still higher than the current general rate for the County (\$11.40 per square foot), but an important reduction that would facilitate such development in Clarksburg.

Assuming the Council agrees with the Planning Board and revises the Clarksburg transportation impact tax rate, at least some development in Clarksburg will have paid the prior rate just before the lower rates take effect. Given the Planning Board's recognition that the prior rates were too high and should be adjusted downward consistent with similar areas, there is a question of fairness for someone who just paid the higher rate. (Note, even the new, lower Clarksburg rate will be higher than the current general rate applicable throughout the County). The attached revision to Section 52-54 addresses this by allowing an applicant to seek a refund with respect to the recent payment of the higher tax.

(77)

Sec. 52-54 Refunds

(a) Any person who has paid a development impact tax may apply for a refund of the impact tax if:

(1) the County has not appropriated the funds for impact transportation improvements of the types listed in Section 52-58, or otherwise formally designated a specific improvement of a type listed in Section 52-58 to receive funds, by the end of the sixth fiscal year after the tax is collected;

(2) the building permit has been revoked or has lapsed because construction did not start;  
or

(3) the project has been physically altered, resulting in a decrease in the amount of impact tax due

(b) Only the current owner of property may petition for a refund of the impact tax. A petition for refund of the impact tax must be filed within the time established for filing a claim for refund of a local tax under state law.

(c) The petition for refund of the impact tax must be submitted to the Director of Permitting Services on a form provided by the County. The petition must contain at least:

(1) A statement that petitioner is the current owner of the property;

(2) A copy of the dated receipt for payment of the development impact tax issued by the Department of Permitting Services.

(3) A certified copy of the latest recorded deed for the subject property; and

(4) The reasons why a refund of the impact tax is sought.

(d) The Director of Permitting Services must investigate each claim and hold a hearing if the petitioner requests a hearing. Within 3 months after receiving a petition for refund of the impact tax, the Director of Permitting Services must provide the petitioner, in writing, with a decision on the impact tax refund request. The decision must include the reasons for the decision, including, as appropriate, a determination of whether impact tax funds collected from the petitioner, calculated on a first-in-first-out basis, have been appropriated or otherwise formally designated for impact transportation improvements of the types listed in Section 52-58 within 6 fiscal years. If a refund of the impact tax is due the petitioner, the Director of Permitting Services must notify the Department of Finance and, if the property is located in Gaithersburg or Rockville, the finance director of that city.

(e) If the County reduces an impact tax rate within six (6) months of the person's payment of an impact tax, the person shall be entitled to a refund of the difference between the former impact tax and the current impact tax by filing a request for a refund within 60 days of the adoption of the new impact tax rate.

**Orlin, Glenn**

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**From:** Kominers, William <wkominers@lercheary.com>  
**Sent:** Tuesday, October 18, 2016 4:55 PM  
**To:** Orlin, Glenn  
**Cc:** Zachary Marks (zachary.marks@hocmc.org); Nowelle Ghahhari (Nowelle.Ghahhari@hocmc.org)  
**Subject:** Impact Tax Amendment -- HOC  
**Attachments:** Draft.PDF; Changes.PDF

Glenn,

Attached is a proposal to address some of the impact tax treatment of HOC that you and I had discussed. I am sorry that it took a little while for us to settle on the appropriate manner of trying to address the issues and make it as simple as possible. (The impact tax discussion is complex enough in Bill 37-16.) I also know that you have been rather consumed by the SSP and have not wanted to distract you.

This language enclosed tries to address two issues -- the ownership of HOC rental properties (where often the majority of ownership rests with an investor, while control and all other attributes except complete ownership rests with HOC) and other types of percentage of units/affordability mixes that are equivalent or better than the 25% at 60% of AMI that is embodied in the text from Bill No. 8-15. These amendments, proposed by HOC, would modify Sections 52-49(g)(5) and 52-89(c)(5) to expand the provision established by Bill No. 8-15 in 2015 to apply to similar levels of deeper affordability of units.

Bill No. 8-15 added a means by which, as a result of constructing a higher percentage (25%) of MPDUs, the remaining dwelling units in a development would be exempt from the Impact Tax. In order to address the variety of financing types that HOC uses in its projects, HOC has evaluated the combinations of percentage of dwelling units and percentage below area median income that are essentially the equivalent of, or better than, the 25% at 60% AMI that is present today in Sections 52-49(g)(5) and 52-89(c)(5). HOC proposed that the combination of either 20% of the units being offered at 50% of AMI, or 15% of the units being offered at 40% AMI, are equivalent or better than what is provided in the current sections. Thus, HOC proposes, as an alternative to the existing language in the Code, additional text to allow an alternative for these other combinations of unit types. Our hope is, since the revision simply looks at other equivalent conditions, it should fall within the scope of what the Council was trying to accomplish with Bill No. 8-15. But the Code would now be able to accommodate the different types of structures that HOC uses in its financings.

Rather than repeating language, this revision has been prepared in table form as an addition and alternative in the referenced code sections.

In addition to the alternative percentage arrangements referenced above, HOC also proposes that the general exemption for government buildings be clarified, so that for HOC purposes the language is consistent with what is called for by the Internal Revenue Service in reviewing HOC ownership structure. This suggests that buildings owned "or controlled," and used primarily for the agency for its purpose of providing housing, would not be subject to the impact tax. Very often, HOC may give up a large percentage of ownership (for example, in the tax credit situation), while HOC retains control of the building and its operations. HOC has all attributes of ownership other than a significant ownership in the title. Of course, HOC always retains some small percentage of ownership in those situations.

Enclosed is a clean copy of the proposed text, and a redline to show the comparison to current law.

I apologize for the late transmission of this material. The number of holidays recently became more of a challenge than anticipated.

Please contact me if you have any questions on this matter.

Bill

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Marked in an effort  
to show changes

Proposed Equivalency Amendment to Impact Tax—HOC  
(HOC, October 13, 2016)

TRANSPORTATION IMPACT TAX

Sec. 52-49. Imposition and applicability of development impact taxes.

\* \* \*

- (f) A development impact tax must not be imposed on any building owned or controlled, and used primarily, by any agency or instrumentality of federal, state, County, or municipal government.
- (g) A development impact tax must not be imposed on:
- (1) any Moderately Priced Dwelling Unit built under chapter 25A or any similar program enacted by either Gaithersburg, or Rockville,
  - (2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal or less than 60% of the area median income, adjusted for family size;
  - (3) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
  - (4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
  - (5) any non-exempt dwelling unit in a development: (i) in which at least 25% of the dwelling units are exempt under paragraph (1),(2),(3), or, (4), or any combination of them; and, or (ii) in which, of the total dwelling units, at least the percentage listed in Column "A" below are built under a government regulation or binding agreement that limits for at least 20 years the price or rent charged for the unit in order to make it affordable to households earning equal or less than the percentage of the area median income, adjusted for family size, that is listed in Column "B" below:

<u>Column "A"</u>	<u>Column "B"</u>
<u>Percentage of total dwelling units</u>	<u>Percentage of area median income, adjusted for family size</u>
20	50
15	40

- (6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone; and

(h) \* \* \*

**SCHOOL IMPACT TAX**

**Sec. 52-89. Imposition and applicability of tax.**

(a) \* \* \*

- (c) The tax under this Article must not be imposed on:
  - (1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville,
  - (2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal or less than 60% of the area median income, adjusted for family size;
  - (3) any Personal Living Quarters unit built under Sec. 59-A-6-15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
  - (4) any dwelling unit in an Opportunity Housing Project built under Section 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
  - (5) any non-exempt dwelling unit in a development: (i) in which at least 25% of the dwelling units are exempt under paragraph (1),(2),(3), or (4), or any combination of them; and, or (ii) in which, of the total dwelling units, at least the percentage listed in Column "A" below are built under a government regulation or binding agreement that limits for at least 20 the price or rent charged for the unit in order to make it affordable to households earning equal or less than the percentage of the area median income, adjusted for family size that is listed in Column "B" below.

<u>Column "A"</u>	<u>Column "B"</u>
<u>Percentage of total dwelling units</u>	<u>Percentage of area median income, adjusted for family size</u>
20	50
15	40

(6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone.

\* \* \*

(d) \* \* \*  
(e) \* \* \*

(f) A development impact tax must not be imposed on any building owned or controlled, and used primarily by any agency or instrumentality of federal, state, County, or municipal government.

Details of Property Under Consideration.

The concept is not property specific. HOC is simply trying to clarify that as a government agency, it should be exempt from the tax on developments it owns or controls. We are suggesting a separate provision that any development should be exempt by meeting the 25% at 60% AMI; 20% at 50% AMI; or 15% at 40% AMI with any given project. That capability would be available to any developer, not just HOC.

Owned or Controlled.

Control. The intent is to address properties where HOC has either ownership, or control of the operation of the project, for a sufficient duration of occupancy that it represents a consistent affordable housing project. The intent is not to gain exemption for a property or component of a property simply by having HOC hold that element through the development phase in order to spin off later after occupancy.

HOC might “own” through a wholly-owned subsidiary, or a subsidiary in which HOC has majority ownership. HOC would “control” through agreements providing day-to-day management and operation of the property.

Duration. Ownership for this purpose could vary. It could reflect a five year period, such as under the Agreement Not To Convert that is required in the instances of the right of first refusal. Alternatively, the period could be ten years, related to the term of the 20 year covenant required for the financing. Control could occur through the non-profit entity established by HOC for use and operation of the project. Ownership or control, as appropriate, could be accomplished with title held by a non-profit housing corporation where the project is used as housing for persons of eligible income and owned in whole or in part, directly or indirectly,

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through one or more wholly or partially owned subsidiary entities of HOC. As you are probably aware, the reality is that HOC almost never disposes of its properties.

Options for Income Restrictions.

This proposal should not in any way affect the existing requirement for 12.5% MPDUs. Within the percentage that would be authorized by Chapter 52, at least 12.5% of those units would have to be treated as, and controlled as, MPDUs under County law. This would be the case unless some other control period and program were "accepted" by DHCA as being equivalent to MPDUs for this purpose. Whatever might be required by that agreement with DHCA would, presumably, be reflected in the construction agreement between the developer (whether HOC or other) and DHCA.

Bedrooms. On proportionality of bedrooms, I expect that all units meeting the percentage test will follow the proportionality standard for the MPDUs. That is the simplest method.

Variety of Incomes.

In a mixed-income building, I think that from the standpoint of HOC, a variety of incomes would be a desirable outcome. For example, workforce housing units and some proportion of deeply affordable units would normally be a part of the HOC unit mix. However, part of the goal of the proposed text was to establish some basic, necessary parameters, but without trying to be too prescriptive so as to exclude creativity and other solutions not currently contemplated. None of the potential scenarios would be substantially different from the minimum MPDU scenario of 12.5% MPDU/87.5% market.

In the event that a greater range of affordability were desired, it would likely necessitate a reduction of the qualifying units. For example, in the 20% at 50% situation, it might result in a

reduction of the 20% and the infeasibility of the 15% at 40%. If this is a topic you would like to explore further, we can provide additional information.

I hope these answers are responsive to your inquiry. Please do not hesitate to contact me if you have any questions after reviewing our thoughts.

Resolution No.: 16-377  
Introduced: May 24, 2007  
Adopted: November 13, 2007

**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: Impact Taxes - Rates**

**Background**

1. County Code §52-57(d) authorizes the County Council, by resolution, after a public hearing advertised at least 15 days in advance, to increase or decrease the transportation improvements impact tax rates set in §52-57(a).
2. County Code §52-90(d) authorizes the County Council, by resolution, after a public hearing advertised at least 15 days in advance, to increase or decrease the school improvements impact tax rates set in §52-90(a).
3. The Council finds that it is necessary to increase the rates of the impact taxes to more adequately fund urgent transportation and school infrastructure priorities. The existing rates shown below are the rates scheduled to take effect on July 1, 2007, as published in the May 1, 2007, Montgomery County Register.
4. A public hearing on this resolution was held on June 19 and June 26, 2007.

**Action**

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

1. Under County Code §52-57(d) the rates of the transportation impact tax are:

<b>Building type</b>	<b>Tax per unit or sq. ft. GFA</b>		
<b>Residential</b>			
<i>General</i>			
Single-family detached	<del>[\$6,264]</del>	<del>[[<u>\$8,380</u>]]</del>	<u>\$10,649</u>
Single-family attached	<del>[\$5,125]</del>	<del>[[<u>\$6,856</u>]]</del>	<u>\$8,713</u>
Multi-family residential (except high rise)	<del>[\$3,986]</del>	<del>[[<u>\$5,884</u>]]</del>	<u>\$6,776</u>
High-rise residential	<del>[\$2,847]</del>	<del>[[<u>\$4,204</u>]]</del>	<u>\$4,840</u>
Multi-family senior residential	<del>[\$1,139]</del>	<del>[[<u>\$1,682</u>]]</del>	<u>\$1,936</u>
<i>Metro Station</i>			
Single-family detached	<del>[\$3,132]</del>	<del>[[<u>\$4,191</u>]]</del>	<u>\$5,325</u>
Single-family attached	<del>[\$2,563]</del>	<del>[[<u>\$3,429</u>]]</del>	<u>\$4,357</u>
Multi-family residential (except high rise)	<del>[\$1,993]</del>	<del>[[<u>\$2,943</u>]]</del>	<u>\$3,388</u>
High-rise residential	<del>[\$1,424]</del>	<del>[[<u>\$2,102</u>]]</del>	<u>\$2,420</u>
Multi-family senior residential	<del>[\$569]</del>	<del>[[<u>\$840</u>]]</del>	<u>\$968</u>
<i>Clarksburg</i>			
Single-family detached	<del>[\$9,396]</del>	<del>[[<u>\$12,572</u>]]</del>	<u>\$15,973</u>
Single-family attached	<del>[\$7,688]</del>	<del>[[<u>\$10,286</u>]]</del>	<u>\$13,070</u>
Multi-family residential (except high rise)	<del>[\$5,979]</del>	<del>[[<u>\$7,591</u>]]</del>	<u>\$10,164</u>
High-rise residential	<del>[\$4,271]</del>	<del>[[<u>\$5,422</u>]]</del>	<u>\$7,261</u>
Multi-family senior residential	<del>[\$1,708]</del>	<del>[[<u>\$2,169</u>]]</del>	<u>\$2,904</u>
<b>Non-Residential</b>			
<i>General</i>			
Office	<del>[\$5.70]</del>	<del>[[<u>\$11.55</u>]]</del>	<u>\$9.69</u>
Industrial	<del>[\$2.85]</del>	<del>[[<u>\$5.40</u>]]</del>	<u>\$4.85</u>
<u>Bioscience facility</u>	<u>\$0.00</u>		
<u>Bioscience facility</u>	<u>\$0.00</u>		
Retail	<del>[\$5.10]</del>	<del>[[<u>\$18.80</u>]]</del>	<u>\$8.67</u>
Place of worship	<del>[\$0.30]</del>	<del>[[<u>\$0.55</u>]]</del>	<u>\$0.51</u>
Private elementary or secondary	<del>[\$0.45]</del>	<del>[[<u>\$0.75</u>]]</del>	<u>\$0.77</u>
Hospital	<u>\$0.00</u>		
<u>Social service provider</u>	<u>\$0.00</u>		
Other non-residential	<del>[\$2.85]</del>	<del>[[<u>\$4.85</u>]]</del>	<u>\$4.85</u>
<i>Metro Station</i>			
Office	<del>[\$2.85]</del>	<del>[[<u>\$5.80</u>]]</del>	<u>\$4.85</u>
Industrial	<del>[\$1.40]</del>	<del>[[<u>\$2.65</u>]]</del>	<u>\$2.43</u>
<u>Bioscience facility</u>	<u>\$0.00</u>		
<u>Bioscience facility</u>	<u>\$0.00</u>		
Retail	<del>[\$2.60]</del>	<del>[[<u>\$9.50</u>]]</del>	<u>\$4.34</u>
Place of worship	<del>[\$0.15]</del>	<del>[[<u>\$0.30</u>]]</del>	<u>\$0.26</u>
Private elementary or secondary school	<del>[\$0.20]</del>	<del>[[<u>\$0.35</u>]]</del>	<u>\$0.39</u>

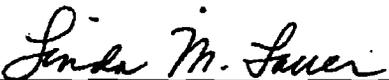
Hospital	\$0.00		
<u>Social service provider</u>	<u>\$0.00</u>		
Other non-residential	[\$1.40]	[[ <u>\$2.40</u> ]] [[ <u>\$3.64</u> ]]	<u>\$2.43</u>
<b>Clarksburg</b>			
Office	[\$6.85]	[[ <u>\$13.90</u> ]]	<u>\$11.65</u>
Industrial	[\$3.40]	[[ <u>\$6.40</u> ]]	<u>\$5.78</u>
[Bioscience facility	\$0.00]		
<u>Bioscience facility</u>	<u>\$0.00</u>		
Retail	[\$6.15]	[[ <u>\$22.55</u> ]]	<u>\$10.46</u>
Place of worship	[\$0.40]	[[ <u>\$0.65</u> ]]	<u>\$0.68</u>
Private elementary or secondary school	[\$0.60]	[[ <u>\$0.65</u> ]]	<u>\$1.02</u>
Hospital	\$0.00		
<u>Social service provider</u>	<u>\$0.00</u>		
Other non-residential	[\$3.40]	[[ <u>\$5.80</u> ]]	<u>\$5.78</u>

2. Under County Code §52-90(d) the rates of the school improvements impact tax are:

Dwelling type	Tax per unit		
Single-family detached	[\$9,111]	[[ <u>\$22,729</u> ]]	<u>\$20.456</u>
Single-family attached	[\$6,833]	[[ <u>\$17,112</u> ]]	<u>\$15.401</u>
Multi-family (except high rise)	[\$4,555]	[[ <u>\$10,815</u> ]]	<u>\$9.734</u>
High-rise	[\$1,822]	[[ <u>\$4,585</u> ]]	<u>\$4.127</u>
Multi-family senior		\$0	

3. This Resolution takes effect on ~~[[September]]~~ December 1, 2007. The rates set in this Resolution apply to any building for which an application for a building permit is filed on or after that date. Subsections (b) ~~[[and (c)]]~~ through (f) of County Code §52-57 and subsections (b) ~~[[and (c)]]~~ through (f) of County Code §52-90 apply to the rates set in this resolution as if the rates were set under subsection (a) of the respective section.

This is a correct copy of Council action.

  
 Linda M. Lauer, Clerk of the Council

P

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

September 13, 2016

**C. Robert Dalrymple**  
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**HAND DELIVERY**

Council President Floreen  
and Members of the Montgomery County Council  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Bill 37-16: Taxation – Development Impact Tax Transportation and Public School  
Improvements – Amendments

Dear Council President Floreen and Members of the Montgomery County Council:

On behalf of Washington Property Company (“WPC”), the parent company of entities developing properties in (among many other areas) the Ripley District of the Silver Spring Central Business District (“CBD”), we are submitting this letter into the record (supplementing oral testimony) for the Montgomery County Council’s (the “County Council”) September 13<sup>th</sup> public hearing on Bill 37-16. To the extent that the Council, in its consideration of the 2016-20 Subdivision Staging Policy (“SSP”) and related Bill 37-16, determines to reinstate the school impact tax and school facility payment in the former Silver Spring Enterprise Zone (which includes the Ripley District), which reinstatement WPC strongly opposes, Bill 37-16 must include grandfathering (discussed below) to soften the detrimental economic impacts that this change in policy will create.

Generally speaking, WPC does not support the reinstatement of the tax payments that have been exempted for the former Silver Spring Enterprise Zone. Being very familiar with the economic realities of developing properties in this CBD, WPC can speak firsthand in relaying that the current proposal to eventually fully reinstate these taxes in the former Silver Spring Enterprise Zone fails to recognize the difficult economics that continue to face projects in this area. While the balance of this letter discusses grandfathering necessary to protect ongoing projects that WPC has in the Ripley District (which grandfathering we believe is supported by the Planning Board and Council Staff), it is important that WPC reiterate that the economic realities of redeveloping property in this area are such that additional regulatory costs and burdens will render redevelopment infeasible.

Montgomery County Council  
September 13, 2016  
Page 2

The project that we are primarily bringing to your attention in the specific context of Bill 37-16 and the SSP is a public/private project involving the construction of a new Progress Place facility for the County ("New Progress Place") and the private mixed-use redevelopment of the existing Progress Place property ("Ripley II") (collectively, the "Progress Place Public/Private Project"). When the 2016 SSP was originally introduced, it proposed to reinstate the school impact tax and school facility payment in former Enterprise Zones with no grandfathering provision. Simply stated, the ability to commence construction of the Ripley II project – a mixed-use public/private project that is extremely important to the continuing redevelopment and revitalization of the Ripley District and Downtown Silver Spring - could not absorb the imposition of the school impact tax and school facility payment. Without grandfathering, the entire economic model and structure for the Progress Place Public/Private Project would be dismantled, and would become the source of great conflict.

WPC has an executed (June 18, 2014) General Development Agreement (the "GDA") with Montgomery County for the Progress Place Public/Private Project, whereby WPC (through a related development entity) is in the midst of construction on the New Progress Place on property shared with Silver Spring Fire Station #1 in the southern part of the Ripley District. WPC is also purchasing the Parking Lot District's ("PLD") adjacent property pursuant to the GDA. The GDA provides for the subsequent private redevelopment by WPC of Ripley II on the existing Progress Place and PLD properties, located just north of the New Progress Place. If Ripley II were subject to the school impact tax and school facility payment, the additional cost to the Ripley II project would be over \$1,000,000. The pro forma for Ripley II and the New Progress Place was not based on accommodating this additional tax, and certainly not at such a late hour in the project's development approvals process. The entire rationale for the land values of the County and PLD properties and the terms negotiated and reflected in the GDA was predicated on Ripley II being exempt from the impact tax payments per the County Code.

As part of the proposed 2016 SSP, the Planning Board has proposed grandfathering language whereby in the former Silver Spring Enterprise Zone, so long as a project receives approval of its preliminary plan of subdivision within one year of the effective date of the 2016 SSP (which effective date is proposed to be November 15, 2016), such project would not be subject to the proposed reinstatement of the school impact tax and school facility payment so long as its preliminary plan remains valid. While Bill 37-16 is intended (we believe) to provide this grandfathering, we note that the language of the Bill is not consistent with the Planning Board's recommended grandfathering set out above - it is our understanding; however, that Council Staff (Dr. Orlin) will present corrective language to have the Bill be in accordance with the Planning Board's recommendations at the first PHED Committee worksession on the Bill. Assuming that this takes place and that the County Council recognizes that fairness and equity necessitate inclusion of grandfathering provisions into the Bill, and given that the Planning Board public

Montgomery County Council  
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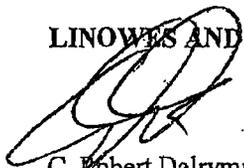
hearing on Ripley II's preliminary plan is scheduled for September 22<sup>nd</sup>, we believe that Ripley II will remain exempt from the school impact tax and school facility payment. However, we are submitting this written (and oral) testimony at this time to clearly establish that Ripley II cannot survive without grandfathering, and to convey the broader point of the difficult economics still facing development in the Silver Spring CBD and the fact that additional regulatory costs creates a volatile and unpredictable business climate in this County generally and in this CBD specifically.

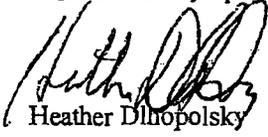
WPC has demonstrated over the years a commitment to the redevelopment and the success of the Ripley District beyond any other private developer, having invested hundreds of millions of dollars in pursuing its vision for this area even before the turn of the century. The construction of the Progress Place Public/Private Project (as well as WPC's Ripley East, on which construction is anticipated to begin soon, and the recent completion of The Solaire, an existing mixed-use residential high-rise project developed and owned by WPC), is a vital piece in the Ripley District's continuing evolution and success (as well as the evolution and success of the entire redevelopment of the Silver Spring CBD). The grandfathering spelled out herein is mandatory to allow this vision to continue to become reality.

Thank you for your consideration of WPC's positions relative to this critically important matter.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
C. Robert Dalrymple

  
Heather Dlinopolsky



cc: Dr. Glenn Orlin  
Mr. Charles Nulsen  
Mr. Daryl South  
Ms. Janel Kausner



**Testimony of  
The Greater Silver Spring Chamber of Commerce  
Bill 37-16 Transportation and School Impact Tax Amendments  
Montgomery County Council Public Hearing  
Tuesday, September 13, 2016**

Council President Floreen, members of the Council, good evening. For the record, my name is Jane Redicker and I am President of the Greater Silver Spring Chamber of Commerce. Our Chamber represents more than 400 member organizations, for which success depends on the continued growth and prosperity of downtown Silver Spring.

I come before you today to address the sections of Bill 37-16 which would alter the application of school impact taxes in former enterprise zones. I am here to urge you to strike those sections from the bill and make no changes in the treatment of former enterprise zones like Silver Spring.

As most of you know, the revitalization of Silver Spring occurred, in part, because of its designation as a State Enterprise Zone, in which special tax considerations were provided to businesses that chose to locate in the downtown area. Montgomery County further supported the redevelopment of Silver Spring by providing special tax incentives that made it cost effective for property owners to create new commercial and residential spaces that would contribute to the growth. That has all been very effective, but, as you have heard me say before, "We're not done yet."

Commercial development in Silver Spring has is at a virtual standstill. The only exception is United Therapeutics's expansion. Everything else is residential. Now, don't get me wrong. Residential is good. Bringing more people into Silver Spring to support the businesses already here is welcome. Indeed, Silver Spring is evolving into a "hip, very cool" place, especially for the millennial generation. We have the Metro. We have an evolving and growing nighttime economy. We have apartments that are affordable for this young generation, and for seniors looking to down-size in an affordable, walkable community with lots of amenities.

The operative word here is "affordability," and that's where being exempt from certain impact taxes becomes so critical. The cost of constructing an identical building in Silver Spring, or Bethesda, or elsewhere in the County is exactly the same. But because Silver Spring is more affordable than, say Bethesda, the return on development investment is much lower.

Why do I set up a comparison between Silver Spring and Bethesda, as opposed to elsewhere in the County? Because both have similar qualities that make them attractive. They are "close-in," immediately on the Red Line, and have an increasingly bustling night life. But, given all this, Silver Spring has a long way to go to becoming the prime market it should be.

According to the latest census data, the average residential rent in Silver Spring is more than \$500 lower than that in Bethesda. Further, a comparison of average rents on the multifamily properties built in Silver Spring and Bethesda over the past eight years shows that average rents in Silver Spring are 23% lower than in Bethesda.

So, why would a developer choose to build apartments in Silver Spring, when there is more money to be made in Bethesda and is easier for a developer to arrange financing? Because Silver Spring has an equalizer – the exemption from transportation and school impact taxes. This exemption has and is an incentive for further growth and development in Silver Spring. And that is why it should not be taken away.

But now, let's take a look at this legislation from another perspective. Let's look at it, not for how it will affect the continued redevelopment of Silver Spring, or the cost of doing business for private property owners. Let's look at it for what it will mean for Montgomery County in the long term. Yes, eliminating the exemption will mean income for the County from one-time payments of these impact taxes. But at what cost? An increase in the developer's upfront costs will have to be offset by finding savings somewhere. This will likely be in the quality of the units or the finishes. The result is likely to lower the potential rental income, which lowers the general property tax that the County can collect. And this decrease is not just a one-time thing. It affects the property value for years to come, dramatically reducing the expected income the County will realize from the developed property.

And, what if the property owners cannot get financing to redevelop, or decide that it is just not worth the investment. Silver Spring AND Montgomery County both lose. The much needed affordable housing that is included in redevelopment projects will not be built. And, the road improvements, environmental enhancements to control storm water and run-off, and creation of new public spaces will not happen.

For all these reasons, we urge you to make no change in the exemption for former enterprise zones. However, if you decide that a change must be made, we urge you to approve the Planning Board's proposal to continue the exemption for existing approvals and phase out the exemption for new development in Silver Spring (attached). In order to clarify and better reflect what we believe was the Board's intent, we recommend an amendment (attached) that specifies continuing the current exemption for existing preliminary plan approvals and their amendments, and timing the four-year phase in for new approvals to begin with the date of the Subdivision Staging Policy adoption.



**MONTGOMERY COUNTY COUNCIL**  
ROCKVILLE, MARYLAND

**NANCY NAVARRO**  
COUNCILMEMBER, DISTRICT 4

**MEMORANDUM**

**TO:** Sidney Katz, Councilmember  
Hans Riemer, Councilmember

**FROM:** Nancy Navarro, Chair *NY*  
Government Operations and Fiscal Policy Committee

**DATE:** October 20, 2016

**SUBJECT:** Former Enterprise Zone Proposal

While, in concept, I agree with the Planning Board proposal to phase out former Enterprise Zones, I cannot support a process where the County essentially cedes its taxing authority to the State. Enterprise Zone designations are determined by the State Department of Business and Economic Development through an application process. The designation may be renewed every 10 years. I propose creating a process where the Council makes the final decision of whether to phase out or eliminate impact tax exemptions after an Enterprise Zone designation expires.

All Enterprise Zones are unique and have different circumstances at the expiration of their designation. Silver Spring today may be in a very different position economically compared to Wheaton or Glenmont when their respective designations expire. While I understand fully that impact tax exemptions are only a small piece of the puzzle when it comes to incentivizing development, they are a tool in the toolbox for promoting economic growth.

When an Enterprise Zone is set to expire, the Council should begin a deliberative process that may result in the elimination of the impact tax exemption. In summary, my proposal would:

- Require a full economic analysis of the designated area;
- Solicit input from key stakeholders, including property owners, small businesses, chambers of commerce, residents, and others with an economic interest in the area;
- Solicit feedback from the County Executive and the Montgomery County Economic Development Corporation;
- After the Council performs its due diligence, we can make a reasoned policy decision regarding the phase out (modeled after the Planning Board recommendation) or elimination of the impact tax exemption.

I support local control of impact tax policy and strongly oppose handing this authority over to a State bureaucratic process. Eventually, the Council may want to consider decoupling our impact tax exemptions from the State Enterprise Zones altogether, creating a new process for providing impact tax exemptions in areas needing additional incentives for economic development opportunities.

Bill No. 37-16  
 Concerning: Taxation – Development  
Impact Tax – Transportation and  
Public School Improvements –  
Amendments  
 Revised: October 31, 2016 Draft No. 6  
 Introduced: August 2, 2016  
 Expires: February 2, 2018  
 Enacted: \_\_\_\_\_  
 Executive: \_\_\_\_\_  
 Effective: \_\_\_\_\_  
 Sunset Date: None  
 Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the request of the Planning Board

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**AN ACT** to:

- (1) modify the method of calculating the transportation and public school impact tax;
- (2) create new transportation tax districts associated with policy area categories;
- (3) adjust the transportation impact tax for residential uses based on Non-Auto Driver Mode Share associated with each tax district;
- (4) adjust the transportation impact tax for non-residential uses based on Vehicle Miles of Travel associated with each tax district;
- (5) [[authorize an adjustment to the transportation impact tax for providing parking below the minimum required under Chapter 59]] ~~exempt certain student-built houses from the impact tax;~~
- (6) [[modify the public school impact tax payable for property located in a former enterprise zone]] ~~eliminate the transportation mitigation payments for certain projects;~~
- (7) eliminate the school facilities payments for certain projects; and
- ~~[[7]]~~ (8) generally amend County law concerning the transportation and public school impact tax.

By amending

Montgomery County Code  
 Chapter 52, Taxation  
 Sections 52-39, 52-40, 52-45, 52-47, 52-49, 52-50, 52,51, 52-52, 52-54, 52-55, 52-56, 52-58, and 52-59.

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

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



27 Construction means the planning, design, acquisition of land, site  
28 improvements, utility relocation, building, and initial furniture and equipment  
29 for a capital project.

30 \* \* \*

31 **52-40. Findings; purpose and intent.**

32 (a) The master plan of ~~[[highways]]~~ transportation indicates that certain  
33 ~~[[roads]]~~ transportation facilities are needed in planning policy areas.  
34 Furthermore, the ~~[[Growth]]~~ Subdivision Staging Policy indicates that the  
35 amount and rate of growth projected in certain planning policy areas will  
36 place significant demands on the County for provision of ~~[[major~~  
37 ~~highways]]~~ transportation facilities necessary to support and  
38 accommodate that growth.

39 \* \* \*

40 (e) The development impact tax ~~[[will fund]]~~ funds, in part, the  
41 improvements necessary to increase the transportation system capacity,  
42 thereby allowing development to proceed. Development impact taxes  
43 ~~[[will be]]~~ are used exclusively for impact transportation improvements.

44 (f) In order to assure that the necessary impact transportation improvements  
45 are constructed in a timely manner, the County ~~[[intends to assure]]~~  
46 assures the availability of funds sufficient to construct the impact  
47 transportation improvements.

48 (g) The County retains the power to determine the types of impact  
49 transportation improvements to be funded by development impact  
50 taxes~~[[; to estimate the cost of such improvements; to establish the proper~~  
51 ~~timing of construction of the improvements so as to meet APFO policy~~  
52 ~~area transportation adequacy standards where they apply; to determine~~  
53 ~~when changes, if any, may be necessary in the County CIP;]]~~ and to do

54 all things necessary and proper to effectuate the purpose and intent of this  
 55 Article.

56 (h) The County intends to further the public purpose of ensuring that an  
 57 adequate transportation system is available in support of new  
 58 development.

59 (i) [[The County's findings are based on the adopted or approved plans,  
 60 planning reports, capital improvements programs identified in this  
 61 Article, and specific studies conducted by the Department of  
 62 Transportation and its consultants.

63 (j)]] The County intends to impose development impact taxes until the County  
 64 has attained build-out as defined by the General Plan.

65 **52-41. Imposition and applicability of development impact taxes.**

66 (a) A development impact tax must be imposed before a building permit is  
 67 issued for development in the County.

68 (b) An applicant for a building permit must pay a development impact tax in  
 69 the amount and manner provided in this Article, unless a credit in the full  
 70 amount of the applicable tax applies under Section 52-47 or an appeal  
 71 bond is posted under Section 52-48.

72 (c) The following impact tax districts are established:

73 (1) [*Metro Station*: Friendship Heights, Bethesda CBD, Grosvenor,  
 74 White Flint, Twinbrook, Rockville Town Center, Shady Grove  
 75 Metro, Silver Spring CBD, Wheaton CBD, and Glenmont Metro  
 76 station policy areas, as defined in the most recent Subdivision  
 77 Staging policy, except as modified by paragraph (3) for the White  
 78 Flint policy area;

79 (2) *Clarksburg*: Clarksburg policy area, as defined in the most recent  
 80 Subdivision Staging Policy;

- 81 (3)] *White Flint*: The part of the White Flint Metro Station Policy Area  
 82 included in the White Flint Special Taxing District in Section 68C-  
 83 2; [and]
- 84 (2) Red Policy Areas: Bethesda CBD, Friendship Heights, Grosvenor,  
 85 Glenmont, Rockville Town Center, Shady Grove Metro Station,  
 86 Silver Spring CBD, Twinbrook, and Wheaton CBD Metro Station  
 87 Policy Areas;
- 88 (3) Orange Policy Areas: Bethesda/Chevy Chase, Chevy Chase Lake,  
 89 Clarksburg Town Center, Derwood, Gaithersburg City,  
 90 Germantown Town Center, Kensington/Wheaton, Long Branch,  
 91 North Bethesda, R & D Village, Rockville City, Silver  
 92 Spring/Takoma Park, Takoma/Langley, and White Oak Policy  
 93 Areas;
- 94 (4) Yellow Policy Areas: Aspen Hill, Clarksburg, Cloverly,  
 95 Fairland/Colesville, Germantown East, Germantown West,  
 96 Montgomery Village/Airpark, North Potomac, Olney, and  
 97 Potomac Policy Areas; and
- 98 (5) Green Policy Areas: Damascus, Rural East, and Rural West Policy  
 99 Areas.
- 100 [(4) *General*: Any part of the County, including any municipality, not  
 101 located in an area listed in paragraphs (1) - (3).]
- 102 (d) [[Reserved]] A Clergy House must pay the impact tax rate that applies to  
 103 a place of worship if the house:
- 104 (1) is on the same lot or parcel, adjacent to, or confronting the property  
 105 on which the place of worship is located; and
- 106 (2) is incidental and subordinate to the principal building used by the  
 107 religious organization as its place of worship.

99

The place of worship tax rate does not apply to any portion of a Clergy House that is nonresidential development.

\* \* \*

(g) A development impact tax must not be imposed on:

\* \* \*

(5) any non-exempt dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them; ~~[[and]]~~

(6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone; and

(7) a house built by high school students under a program operated by the Montgomery County Board of Education.

\* \* \*

**52-45. Restrictions on use and accounting of development impact tax funds.**

\* \* \*

~~[[h)]~~ Development impact tax funds collected from the ~~[Clarksburg impact tax district]~~ Red Policy Areas must be used for impact transportation improvements located in or that directly benefit ~~[the Clarksburg]~~ those policy [area] areas.

**52-47. Credits.**

(a) ~~[[1)]~~ A property owner is entitled to a credit if the owner, before July 1, 2002, entered into a participation agreement, or a similar agreement with the state or a municipality, the purpose of which was to provide additional transportation capacity. A property owner is also entitled to a credit if the owner receives approval before July 1, 2002, of a subdivision plan, development plan, or

100

135 similar development approval by the County or a municipality that  
136 requires the owner to build or contribute to a transportation  
137 improvement that provides additional transportation capacity. The  
138 Department of Transportation must calculate the credit. The credit  
139 must equal the amount of any charge paid under the participation  
140 agreement. The Department may give credit only for building  
141 permit applications for development on the site covered by the  
142 participation agreement.

143 ~~[(2) (A) An entity that received more than \$20 million in credits  
144 under this subsection that were certified before July 1, 2002,  
145 may apply any unused credit to satisfy an obligation under  
146 Policy Area Mobility Review, or any applicable successor  
147 policy area transportation test, if:~~

- 148 ~~(i) the County Executive has identified the project for  
149 which a credit would be applied under this paragraph  
150 as a strategic economic development project; and~~
- 151 ~~(ii) the credit is used before November 1, 2015.~~

152 ~~(B) The total of any credits used under this paragraph to satisfy  
153 an obligation under Policy Area Mobility Review, or any  
154 applicable successor policy area transportation test, much  
155 not exceed \$1.7 million.]]~~

156 \* \* \*

157 (d) Any credit for building or contributing to an impact transportation  
158 improvement does not apply to any development that [is] has been  
159 previously approved under the Alternative Review Procedure for Metro  
160 Station Policy Areas in the County Subdivision Staging Policy.

161 \* \* \*  
101

162 (j) (1) A property owner must receive a credit for constructing or  
 163 contributing to the cost of building a new single family residence  
 164 that meets Level I Accessibility Standards, as defined in Section  
 165 52-107(a).

166 (2) The credit allowed under this Section must be as follows:

167 (A) If at least 5% of the single family residences built in the  
 168 project meet Level I Accessibility Standards, then the owner  
 169 must receive a credit of \$250 per residence.

170 (B) If at least 10% of the single family residences built in the  
 171 project meet Level I Accessibility Standards, then the owner  
 172 must receive a credit of \$500 per residence.

173 (C) If at least 25% of the single family residences built in the  
 174 project meet Level I Accessibility Standards, then the owner  
 175 must receive a credit of \$750 per residence.

176 (D) If at least 30% of the single family residences built in the  
 177 project meet Level I Accessibility Standards, then the owner  
 178 must receive a credit of \$1000 per residence.

179 (3) Application for the credit and administration of the credit be in  
 180 accordance with Subsections 52-107(e) and (f).

181 (4) A person must not receive a property tax credit under this Section  
 182 if the person receives any public benefit points for constructing  
 183 units with accessibility features under Chapter 59.

184 (k) After a credit has been certified under this Section, the property owner or  
 185 contract purchaser to whom the credit was certified may transfer all or  
 186 part of the credit to any successor in interest of the same property.  
 187 However, any credit transferred under this subsection must only be

188 applied to the tax due under this Article with respect to the property for  
 189 which the credit was originally certified.

190 **52-49. Tax rates.**

191 (a) The Council must establish the tax rates for each impact tax district,  
 192 except as provided in subsection (b), by resolution, after a public hearing  
 193 advertised at least 15 days in advance. [[are:]]

194

<i>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</i>			
<i>Building Type</i>	<i>Metro Station</i>	<i>Clarksburg</i>	<i>General</i>
Single-family detached residential (per dwelling unit)	\$2,750	\$8,250	\$5,500
Single-family attached residential (per dwelling unit)	\$2,250	\$6,750	\$4,500
Multifamily residential (except high-rise) (per dwelling unit)	\$1,750	\$5,250	\$3,500
High-rise residential (per dwelling unit)	\$1,250	\$3,750	\$2,500
Multifamily-senior residential (per dwelling unit)	\$500	\$1,500	\$1,000
Office (per sq. ft. GFA)	\$2.50	\$6	\$5

103

Industrial (per sq. ft. GFA)	\$1.25	\$3	\$2.50
Bioscience facility (per sq. ft. GFA)	\$0	\$0	\$0
Retail (per sq. ft. GFA)	\$2.25	\$5.40	\$4.50
Place of worship (per sq. ft. GFA)	\$0.15	\$0.35	\$0.30
Private elementary and secondary school (per sq. ft. GFA)	\$0.20	\$0.50	\$0.40
Hospital (per sq. ft. GFA)	\$0	\$0	\$0
Cultural institution	\$0.20	\$0.50	\$0.40
Charitable, philanthropic institution	\$0	\$0	\$0
Other nonresidential (per sq. ft. GFA)	\$1.25	\$3	\$2.50

195

**III**

<b><u>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</u></b>				
<b><u>Land Use</u></b>	<b><u>Red Policy Areas (Metro Stations)</u></b>	<b><u>Orange Policy Areas</u></b>	<b><u>Yellow Policy Areas</u></b>	<b><u>Green Policy Areas</u></b>
<b><u>Residential Uses</u></b>				
<b><u>SF Detached</u></b>	<b><u>\$3,653</u></b>	<b><u>\$10,959</u></b>	<b><u>\$18,266</u></b>	<b><u>\$29,225</u></b>
<b><u>MF Residential</u></b>				

104

<u>SF Attached</u>	<u>\$2,552</u>	<u>\$7,656</u>	<u>\$12,759</u>	<u>\$20,415</u>
<u>Garden Apartments</u>	<u>\$2,312</u>	<u>\$6,937</u>	<u>\$11,562</u>	<u>\$18,499</u>
<u>High - Rise Apartments</u>	<u>\$1,652</u>	<u>\$4,955</u>	<u>\$8,259</u>	<u>\$13,214</u>
<u>Multi-Family Senior</u>	<u>\$661</u>	<u>\$1,982</u>	<u>\$3,303</u>	<u>\$5,286</u>
<b><u>Commercial Uses</u></b>				
<u>Office</u>	<u>\$10.08</u>	<u>\$13.45</u>	<u>\$16.81</u>	<u>\$16.81</u>
<u>Industrial</u>	<u>\$5.01</u>	<u>\$6.69</u>	<u>\$8.36</u>	<u>\$8.36</u>
<u>Bioscience</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Retail</u>	<u>\$8.97</u>	<u>\$11.96</u>	<u>\$14.95</u>	<u>\$14.95</u>
<u>Place of Worship</u>	<u>\$0.53</u>	<u>\$0.70</u>	<u>\$0.88</u>	<u>\$0.88</u>
<u>Private School</u>	<u>\$0.80</u>	<u>\$1.06</u>	<u>\$1.33</u>	<u>\$1.33</u>
<u>Hospital</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Social Service Agencies</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Other Non-Residential</u>	<u>\$5.02</u>	<u>\$6.69</u>	<u>\$8.36</u>	<u>\$8.36</u>

196 II

197 (b) For any development located in the White Flint Impact Tax District, the  
 198 tax rates are \$0. II;

199

105

<b>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</b>	
<i>Building Type</i>	<i>White Flint</i>
High-rise residential (per dwelling unit)	\$ 0
Multifamily-senior residential (per dwelling unit)	\$ 0
Office (per sq.ft. GFA)	\$ 0
Industrial (per sq.ft. GFA)	\$ 0
Bioscience facility (per sq.ft. GFA)	\$ 0
Retail (per sq.ft. GFA)	\$ 0
<b>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</b>	
<i>Building Type</i>	<i>White Flint</i>
Place of worship (per sq.ft. GFA)	\$ 0
Private elementary and secondary school (per sq.ft. GFA)	\$ 0
Hospital (per sq.ft. GFA)	\$ 0
Other nonresidential (per sq.ft. GFA)	\$ 0

- 201           **II**
- 202           (c) [Any development that receives approval of a preliminary plan of
- 203           subdivision under any Alternative Review Procedure must pay the tax at
- 204           double the rate listed in subsection (a). However, any development
- 205           approved under an Alternative Review Procedure that is located in a
- 206           Metro Station Policy Area must pay the tax at 75% of the rate listed in
- 207           subsection (a) for the same type of development in the General district.
- 208           (d)] Any Productivity Housing unit, as defined in Section 25B-17(j), must pay
- 209           the tax at 50% of the applicable rate calculated in subsection (a).
- 210           [(e)] (d) Any building that would be located within one-half mile of the
- 211           Germantown, Metropolitan Grove, Gaithersburg, Washington Grove,
- 212           Garrett Park, or Kensington MARC stations must pay the tax at 85% of
- 213           the applicable rate calculated in subsection (a).

106

214 [(f)] (e) The County Council by resolution, after a public hearing  
 215 advertised at least 15 days in advance, may increase or decrease the rates  
 216 set ~~[[in]]~~ under this Section.

217 [(g)] (f) The Director of Finance, after advertising and holding a public  
 218 hearing as required by Section 52-17(c), must adjust the tax rates set in  
 219 or under this Section on ~~[[July 1]]~~ ~~[[January 1]]~~ July 1 of each odd-  
 220 numbered year by the annual average increase or decrease in a published  
 221 construction cost index specified by regulation for the two most recent  
 222 calendar years. The Director must calculate the adjustment to the nearest  
 223 multiple of 5 cents for rates per square foot of gross floor area or one  
 224 dollar for rates per dwelling unit. The Director must publish the amount  
 225 of this adjustment not later than ~~[[May 1]]~~ ~~[[November 1]]~~ May 1 of each  
 226 ~~[[odd]]~~ ~~[[even]]~~ numbered]] odd-numbered year.

227 **52-50. Use of impact tax funds.**

228 Impact tax funds may be used for any:

- 229 (a) new road, widening of an existing road, or total reconstruction of all or  
 230 part of an existing road required as part of widening of an existing road,  
 231 that adds highway or intersection capacity or improves transit service or  
 232 bicycle commuting, such as bus lanes or bike lanes;
- 233 (b) new or expanded transit center or park-and-ride lot;
- 234 (c) bus added to the Ride-On bus fleet, but not a replacement bus;
- 235 (d) new bus shelter, but not a replacement bus shelter;
- 236 (e) hiker-biker trail ~~[[or other bike facility]]~~ ~~and protected bike lanes~~ used  
 237 primarily for transportation;
- 238 (f) bicycle locker that holds at least 8 bicycles;
- 239 (g) bikesharing station (including bicycles) approved by the Department of  
 240 Transportation; ~~[[or]]~~

107

- 241 (h) sidewalk connector in a public right-of-way to or within a major activity  
 242 center or along an arterial or major highway; or  
 243 (i) [[the operating expenses of any transit or trip reduction program]]  
 244 element of bus rapid transit, including exclusive bus lanes, shelters, and  
 245 buses.

246 **52-51. [[Transportation Mitigation Payment]] Reserved.**

247 [[a) In addition to the tax due under this Article, an applicant for a building  
 248 permit for any building on which an impact tax is imposed under this  
 249 Article must pay to the Department of Finance a [Transportation] Transit  
 250 Accessibility Mitigation Payment if that building was included in a  
 251 preliminary plan of subdivision that was approved under the  
 252 Transportation Mitigation Payment provisions in the County Subdivision  
 253 Staging Policy adopted on \_\_\_\_\_.]]

254 [[b) The amount of the Payment [for each building must be calculated by  
 255 multiplying the Payment rate by the total peak hour trips generated by the  
 256 development] is based upon the latest finding of adequacy for transit  
 257 accessibility for each Policy Area as approved and applicable under the  
 258 County Subdivision Staging Policy process. The initial findings of  
 259 applicability and adequacy as adopted on \_\_\_\_\_ are as follows: [.]

<u>Policy Area</u>	<u>Transit Accessibility Mitigation</u>
<u>Red Group</u>	
<u>Bethesda CBD</u>	<u>Exempt</u>
<u>Friendship Heights</u>	<u>Exempt</u>
<u>Grosvenor</u>	<u>Exempt</u>
<u>Glenmont</u>	<u>Exempt</u>
<u>Rockville Town Center</u>	<u>Exempt</u>
<u>Shady Grove Metro Station</u>	<u>Exempt</u>

108

<u>Silver Spring CBD</u>	<u>Exempt</u>
<u>Twinbrook</u>	<u>Exempt</u>
<u>Wheaton CBD</u>	<u>Exempt</u>
<u>White Flint</u>	<u>Exempt</u>
<b><u>Orange Group</u></b>	
<u>Bethesda/Chevy Chase</u>	<u>Adequate</u>
<u>Clarksburg</u>	<u>Inadequate, Full Mitigation</u>
<u>Derwood</u>	<u>Inadequate, Partial Mitigation</u>
<u>Gaithersburg City</u>	<u>Inadequate, Full Mitigation</u>
<u>Germantown Town Center</u>	<u>Inadequate, Full Mitigation</u>
<u>Kensington/Wheaton</u>	<u>Inadequate, Full Mitigation</u>
<u>North Bethesda</u>	<u>Inadequate, Full Mitigation</u>
<u>R&amp;D Village</u>	<u>Inadequate, Full Mitigation</u>
<u>Rockville City</u>	<u>Inadequate, Full Mitigation</u>
<u>Silver Spring/Takoma Park</u>	<u>Inadequate, Full Mitigation</u>
<u>White Oak</u>	<u>Adequate</u>
<b><u>Yellow Group</u></b>	
<u>Aspen Hill</u>	<u>Inadequate, Full Mitigation</u>
<u>Cloverly</u>	<u>Inadequate, Full Mitigation</u>
<u>Fairland/Colesville</u>	<u>Inadequate, Partial Mitigation</u>
<u>Germantown East</u>	<u>Inadequate, Full Mitigation</u>
<u>Germantown West</u>	<u>Inadequate, Full Mitigation</u>
<u>Montgomery Village/Airpark</u>	<u>Adequate</u>
<u>North Potomac</u>	<u>Inadequate, Full Mitigation</u>
<u>Olney</u>	<u>Inadequate, Full Mitigation</u>
<u>Potomac</u>	<u>Adequate</u>
<b><u>Green Group</u></b>	
<u>Damascus</u>	<u>Exempt</u>
<u>Rural East</u>	<u>Exempt</u>
<u>Rural West</u>	<u>Exempt</u>

261 In addition to the above, buildings in the Chevy Chase Lake, Langley  
 262 Park, and Takoma/Langley Policy Areas are considered to have adequate  
 263 transit accessibility as a result of programmed construction funds for the  
 264 Purple Line.]]

265 [(c) The Transit Accessibility Mitigation Payment is based upon a percentage  
 266 of the tax due under this Article according to the following schedule:

- 267 (1) Full Mitigation Required – 25% of tax due under this Article; and
- 268 (2) Partial Mitigation Required – 15% of tax due under this Article.

269           The rate must be set by Council resolution, including a resolution that  
 270           amends the Subdivision Staging Policy.]] [The Director of Finance must  
 271           adjust the then-applicable Payment rate as of July 1 of 2015 and each later  
 272           odd-numbered year by the annual average increase or decrease in a  
 273           published construction cost index specified by regulation for the two most  
 274           recent calendar years to the nearest multiple of \$10. The Director must  
 275           publish the amount of this adjustment in the County Register not later  
 276           than May 1 of each odd numbered year. The Council by resolution, after  
 277           a public hearing advertised at least 15 days in advance, may increase or  
 278           decrease the Payment rate or set different rates for different types of  
 279           development.]

280           [[d) The Payment must be paid at the same time and in the same manner as  
 281           the tax under this Article, and is subject to all provisions of this Article  
 282           for administering and collecting the tax.]]

283           [[e) The Department of Finance must retain funds collected under this Section  
 284           in an account to be appropriated for transportation improvements that  
 285           result in added transportation capacity in the area where the development  
 286           for which the funds were paid is located.]]

## 287   **52-52. Definitions.**

288           In this Article all terms defined in Section 52-39 have the same meanings, and  
 289           the following terms have the following meanings:

290           Cost of a student seat means the construction cost of a school, not including the  
 291           cost of land acquisition, divided by the program capacity of the school.

292           *Development impact tax for public school improvements* means a tax imposed  
 293           to defray a portion of the costs associated with public school improvements that  
 294           are necessary to accommodate the enrollment generated by the development.

295 High-rise unit means any dwelling unit located in a multifamily residential or  
296 mixed-use building that is taller than 4 stories, and any 1-bedroom garden  
297 apartment.

298 *Public school improvement* means any capital project of the Montgomery  
299 County Public Schools that adds to the number of teaching stations in a public  
300 school.

301 [[High-rise unit includes any dwelling unit located in a multifamily residential  
302 or mixed-use building that is taller than 4 stories, and any 1-bedroom garden  
303 apartment.]]

304 **52-54. Imposition and applicability of tax.**

305 \* \* \*

306 (c) [[A portion of the development impact tax equal to 10% of the cost of a  
307 student seat must be dedicated to land acquisition for new schools.

308 (d) The tax under this Article must not be imposed on:

- 309 (1) any Moderately Priced Dwelling Unit built under Chapter 25A or
- 310 any similar program enacted by either Gaithersburg or Rockville;
- 311 (2) any other dwelling unit built under a government regulation or
- 312 binding agreement that limits for at least 15 years the price or rent
- 313 charged for the unit in order to make the unit affordable to
- 314 households earning equal to or less than 60% of the area median
- 315 income, adjusted for family size;
- 316 (3) any Personal Living Quarters unit built under Sec. 59-A-6.15,
- 317 which meets the price or rent eligibility standards for a moderately
- 318 priced dwelling unit under Chapter 25A;
- 319 (4) any dwelling unit in an Opportunity Housing Project built under
- 320 Sections 56-28 through 56-32, which meets the price or rent

III

321 eligibility standards for a moderately priced dwelling unit under  
322 Chapter 25A;

323 (5) any non-exempt dwelling unit in a development in which at least  
324 25% of the dwelling units are exempt under paragraph (1), (2), (3),  
325 or (4), or any combination of them; ~~[[and]]~~

326 (6) ~~any development located in an enterprise zone designated by the~~  
327 ~~State or in an area previously designated as an enterprise zone; or~~  
328 ~~[[based upon the length of time since the expiration of its enterprise~~  
329 ~~zone status. Within 1 year of its expiration, a full exemption must~~  
330 ~~apply. Within 2 years of its expiration, 25% of the applicable~~  
331 ~~development impact tax must apply. Within 3 years, 50% of the~~  
332 ~~applicable development impact tax must apply. Within 4 years,~~  
333 ~~75% of the applicable development impact tax must apply. A~~  
334 ~~project within an area previously designated as an enterprise zone~~  
335 ~~must be required to pay 100% of the applicable development~~  
336 ~~impact tax for public school improvements beginning 4 years after~~  
337 ~~its expiration]]~~

338 (7) ~~a house built by high school students under a program operated by~~  
339 ~~the Montgomery County Board of Education.~~

340 ~~[(d)] ~~[(e)]~~ (d)~~ The tax under this Article does not apply to:

341 (1) any reconstruction or alteration of an existing building or part of a  
342 building that does not increase the number of dwelling units of the  
343 building;

344 (2) any ancillary building in a residential development that:

345 (A) does not increase the number of dwelling units in that  
346 development; and

112

- 347 (B) is used only by residents of that development and their
- 348 guests, and is not open to the public; and
- 349 (3) any building that replaces an existing building on the same site or
- 350 in the same project (as approved by the Planning Board or the
- 351 equivalent body in Rockville or Gaithersburg) to the extent of the
- 352 number of dwelling units of the previous building, if:
- 353 (A) construction begins within one year after demolition or
- 354 destruction of the previous building was substantially
- 355 completed; or
- 356 (B) the previous building is demolished or destroyed, after the
- 357 replacement building is built, by a date specified in a
- 358 phasing plan approved by the Planning Board or equivalent
- 359 body.

360 However, if in either case the tax that would be due on the new,  
 361 reconstructed, or altered building is greater than the tax that would have  
 362 been due on the previous building if it were taxed at the same time, the  
 363 applicant must pay the difference between those amounts.

364 [(e)] ~~[[f)]~~ (e) If the type of proposed development cannot be categorized  
 365 under the residential definitions in Section 52-39 and 52-52, the  
 366 Department must use the rate assigned to the type of residential  
 367 development which generates the most similar school enrollment  
 368 characteristics.

369 (f) A Clergy House must pay the impact tax rate that applies to a place of  
 370 worship if the house:

371 (1) is on the same lot or parcel, adjacent to, or confronting the property  
 372 on which the place of worship is located; and

373 (2) is incidental and subordinate to the principal building used by the  
 374 religious organization as its place of worship.

375 The place of worship tax rate does not apply to any portion of a Clergy  
 376 House that is nonresidential development.

377 **52-55. Tax rates.**

378 (a) The Council must establish the Countywide rates for the tax under this  
 379 Article by resolution after a public hearing advertised at least 15 days in  
 380 advance. ~~[[are:~~

381

<i>Dwelling type</i>	<i>Tax per dwelling unit</i>
Single-family detached	<del>[\$8000]</del> \$18,878
Single-family attached	<del>[\$6000]</del> \$19,643
Multifamily (except high-rise)	<del>[\$4000]</del> \$15,507
High-rise	<del>[\$1600]</del> \$5,570
Multifamily senior	\$ 0

382 ~~[[~~

383 (b) The tax on any single-family detached or attached dwelling unit must be  
 384 increased by \$2 for each square foot of gross floor area that exceeds 3,500  
 385 square feet, to a maximum of 8,500 square feet.

386 (c) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay  
 387 the tax at 50% of the otherwise applicable rate.

388 (d) [Any non-exempt dwelling unit located in a development where at least  
 389 30% of the dwelling units are exempt from this tax under Section 52-  
 390 54(c)(1)-(4) must pay the tax at 50% of the applicable rate in subsection  
 391 (a).]

392 ~~[[e)]~~ (d) The County Council by resolution, after a public hearing  
 393 advertised at least 15 days in advance, may increase or decrease the rates  
 394 set in this Section.

114

395 [(f)] (e) The Director of Finance, after advertising and holding a public  
 396 hearing as required by Section 52-17(c), must adjust the tax rates set in  
 397 or under this Section effective on ~~[[July 1]]~~ ~~[[January 1]]~~ July 1 of each  
 398 [odd-numbered] ~~[[even-numbered]] odd-numbered~~ year~~[, or on~~  
 399 November 15,]] in accordance with the update to the Subdivision Staging  
 400 Policy using the latest student generation rates and school construction  
 401 cost data [by the annual average increase or decrease in a published  
 402 construction cost index specified by regulation for the two most recent  
 403 calendar years]. The Director must calculate the adjustment to the nearest  
 404 multiple of one dollar~~[[, except that the rate must not be increased or~~  
 405 decreased more than 5%]]. The Director must publish the amount of this  
 406 adjustment not later than ~~[[May 1]]~~ ~~[[November 1]]~~ May 1 of each [odd  
 407 numbered] ~~[[even-numbered]]~~ odd-numbered year.

408 **52-56. Accounting; use of funds.**

409 \* \* \*

410 (d) Revenues raised under this Article may be used to fund planning design,  
 411 acquisition of land, site improvements, utility relocation, construction,  
 412 and initial furniture and equipment for any:

- 413 (1) new public elementary or secondary school;
- 414 (2) addition to an existing public elementary or secondary school that  
 415 adds one or more teaching stations; [or] or
- 416 (3) modernization of an existing public elementary or secondary  
 417 school to the extent that the modernization adds one or more  
 418 teaching stations~~[[; or~~
- 419 (4) acquisition of land for a public elementary or secondary school]].

115

420 [(e) Any funds collected for the acquisition of land must be placed in the  
421 MCPS Advance Land Acquisition Revolving Fund (ALARF), to be used  
422 for the purchase of property for new public schools.]]

423 **52-58. Credits.**

424 (a) Section 52-47 does not apply to the tax under this Article. A property  
425 owner must receive a credit for constructing or contributing to an  
426 improvement of the type listed in Section 52-56(d), including costs of site  
427 preparation. [A credit must not be allowed for the cost of any land  
428 dedicated for school use, including any land on which the property owner  
429 constructs a school] A property owner may receive credit for land  
430 dedicated for a school site, if:

- 431 (1) the density calculated for the dedication area is excluded from the  
432 density calculation for the development site; and
- 433 (2) the Montgomery County School Board agrees to the site  
434 dedication.

435 (b) If the property owner elects to make a qualified improvement or  
436 dedication, the owner must enter into an agreement with the Director of  
437 Permitting Services, or receive a development approval based on making  
438 the improvement, before any building permit is issued. The agreement  
439 or development approval must contain:

- 440 (1) the estimated cost of the improvement or the fair market value of  
441 the dedicated land, if known then;
- 442 (2) the dates or triggering actions to start and, if known then, finish the  
443 improvement or land transfer; [.]
- 444 (3) a requirement that the property owner complete the improvement  
445 according to Montgomery County Public Schools standards; [.]  
446 and

116

- 447 (4) such other terms and conditions as MCPS finds necessary.
- 448 (c) MCPS must:
- 449 (1) review the improvement plan or dedication; [,]
- 450 (2) verify costs or land value and time schedules; [,]
- 451 (3) determine whether the improvement is a public school
- 452 improvement of the type listed in Section 52-56(d) or meets the
- 453 dedication requirements in subsection (a); [,]
- 454 (4) determine the amount of the credit for the improvement or
- 455 dedication; [,] and
- 456 (5) certify the amount of the credit to the Department of Permitting
- 457 Services before that Department or a municipality issues any
- 458 building permit.

\* \* \*

- 460 (e) (1) A property owner must receive a credit for constructing or
- 461 contributing to the cost of building a new single family residence
- 462 that meets Level I Accessibility Standards, as defined in Section
- 463 52-107(a).
- 464 (2) The credit allowed under this Section must be as follows:
- 465 (A) If at least 5% of the single family residences built in the
- 466 project meet Level I Accessibility Standards, then the owner
- 467 must receive a credit of ~~[\$500]~~ \$250 per residence.
- 468 (B) If at least 10% of the single family residences built in the
- 469 project meet Level I Accessibility Standards, then the owner
- 470 must receive a credit of ~~[\$1,000]~~ \$500 per residence.
- 471 (C) If at least 25% of the single family residences built in the
- 472 project meet Level I Accessibility Standards, then the owner
- 473 must receive a credit of ~~[\$1,500]~~ \$750 per residence.

474 (D) If at least 30% of the single family residences built in the  
 475 project meet Level I Accessibility Standards, then the owner  
 476 must receive a credit of ~~[[\\$2,000]]~~ \$1000 per residence.

477 (3) Application for the credit and administration of the credit be in  
 478 accordance with Subsections 52-107(e) and (f).

479 (4) A person must not receive a property tax credit under this Section  
 480 if the person receives any public benefit points for constructing  
 481 units with accessibility features under Chapter 59.

482 (f) The Director of Finance must not provide a refund for a credit which is  
 483 greater than the applicable tax.

484 (g) Any credit issued under this Section before December 31, 2015 expires 6  
 485 years after the Director certifies the credit. Any credit issued under this  
 486 Section on or after January 1, 2016 expires 12 years after the Director  
 487 certifies the credit.

488 (h) After a credit has been certified under this Section, the property owner or  
 489 contract purchaser to whom the credit was certified may transfer all or  
 490 part of the credit to any successor in interest of the same property.  
 491 However, any credit transferred under this subsection must only be  
 492 applied to the tax due under this Article with respect to the property for  
 493 which the credit was originally certified.

494 **52-59. ~~[[School Facilities Payment]]~~ Reserved.**

495 [(a) In addition to the tax due under this Article, an applicant for a building  
 496 permit for any building on which a tax is imposed under this Article must  
 497 pay to the Department of Finance a School Facilities Payment if that  
 498 building was included in a preliminary plan of subdivision that was  
 499 approved under the School Facilities Payment provisions in the County  
 500 Subdivision Staging Policy.]

501 ~~[(b) The amount of the Payment for each building must be calculated by~~  
 502 ~~multiplying the Payment rate by the latest per-unit student yield ratio for~~  
 503 ~~any level of school or individual school found to be inadequate for the~~  
 504 ~~purposes of imposing the School Facilities Payment in the applicable~~  
 505 ~~Subdivision Staging Policy and for that type of dwelling unit and~~  
 506 ~~geographic area issued by MCPS.]]~~

507 ~~[(c) The Payment rates must be set by Council resolution. The Director of~~  
 508 ~~Finance must adjust the then-applicable Payment rates]] [as of] ~~[[on July~~  
 509 ~~1 of]] [2015 and] ~~[[each]] [later odd- numbered] ~~[[even-numbered]]~~~~  
 510 ~~[[odd-numbered year, or on November 15, in accordance with the update~~  
 511 ~~to the Subdivision Staging Policy by using the latest student generation~~  
 512 ~~rates and school construction cost data. The Director must calculate the~~  
 513 ~~adjustment to the nearest multiple of one dollar.]] [based on the~~  
 514 ~~construction cost of a student seat for each school level as certified by the~~  
 515 ~~Superintendent of Montgomery County Public Schools for the two most~~  
 516 ~~recent calendar years, to the nearest multiple of \$10.] ~~[[The Director must~~  
 517 ~~publish the amount of this adjustment in the County Register not later~~  
 518 ~~than May 1 of each]] [odd numbered] ~~[[even-numbered]] ~~[[odd-~~~~  
 519 ~~numbered year. The Council by resolution, after a public hearing~~  
 520 ~~advertised at least 15 days in advance, may increase or decrease the~~  
 521 ~~Payment rate or set different rates for different types of housing unit.]]~~  
 522 ~~[[The Council must not increase or decrease the rate by more than 5%.]]~~~~~~~~~~

523 ~~[(d) The Payment must be paid at the same time and in the same manner as~~  
 524 ~~the tax under this Article, and is subject to all provisions of this Article~~  
 525 ~~for administering and collecting the tax.]]~~

526 ~~[(e) The Department of Finance must retain funds collected under this Section~~  
 527 ~~in an account to be appropriated for MCPS capital improvements that~~

528 result in added student capacity for, to the extent possible, the affected  
529 grade level in the school cluster, or, if no cluster is established, another  
530 geographic administrative area, where the development for which the  
531 funds were paid is located.]]

532 **Sec. 2. Transition.**

533 This Act takes effect on *to be determined* and the development impact tax for  
534 transportation improvements and the development impact tax for public school  
535 improvements imposed under Section 52-41 and Section 52-54, added by Section 1 of  
536 this Act, applies to any building permit issued on or after *to be determined*. A property  
537 owner who applies for subdivision approval before January 1, 2017 must pay a  
538 transportation mitigation payment and a school facilities payment at rates the Council  
539 establishes by resolution, after a public hearing advertised at least 15 days in advance.

540

541 *Approved:*

542

\_\_\_\_\_  
Nancy Floreen, President, County Council

\_\_\_\_\_  
Date

543 *Approved:*

544

\_\_\_\_\_  
Isiah Leggett, County Executive

\_\_\_\_\_  
Date

545 *This is a correct copy of Council action.*

546

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

\_\_\_\_\_  
Date

547

120