

MEMORANDUM

October 16, 2014

TO: Planning, Housing, and Economic Development Committee

FROM: Glenn Orlin, Deputy Council Administrator

SUBJECT: Subdivision Staging Policy (SSP) Amendment #14-02, White Oak Policy Area Local Area Transportation Review (LATR)

1. Initial proposal. Councilmembers Floreen, Navarro, and Rice sponsored an amendment to the 2012-2016 SSP that would change how LATR is conducted for developments in the White Oak Policy Area (©1-2). Currently, LATR for a proposed development measures the degree of congestion at nearby intersections in the future, comparing the sum of existing traffic, traffic from the “pipeline” of previously approved but unbuilt subdivisions (also known as “background” traffic), and traffic from the proposed development with the transportation facilities programmed to be on the ground 6 years in the future. The proposal would change the definition of background traffic to traffic from previously approved but unbuilt development that has obtained a building permit. The proposal would apply this definition only to LATR tests in the White Oak Policy Area.

The reason for the Adequate Public Facility Ordinance (APFO)—and its implementation through the SSP—is to assure that the roads, transit, and public schools necessary to adequately meet the demands of new development are in place when that demand materializes. In the case of LATR, the test measures whether intersection congestion standard (1,600 CLV or 1.00 volume/capacity in the White Oak Policy Area) will not be exceeded when comparing the total traffic (existing traffic + background traffic + traffic from the proposed development) to existing capacity plus any new capacity programmed to be completed within 6 years.

The Council has included some exceptions that allow developments to pass LATR even if the intersection standard would be exceeded. Developments generating less than 30 peak-hour trips are considered *de minimis* and so are not subject to LATR. Furthermore, Section TL1 of the SSP states:

For any subdivision that would generate 30-49 peak-hour vehicle trips, the Planning Board after receiving a traffic study must require that either:

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

In administering Local Area Transportation Review for any project that would generate 50 or more peak hour vehicle trips, the Planning Board must not approve a subdivision if it finds that unacceptable peak

hour congestion levels will result after considering existing roads, programmed roads, available or programmed mass transportation, and improvements to be provided by the applicant. If the subdivision will affect an intersection or roadway link for which congestion is already unacceptable, then the subdivision may only be approved if the applicant agrees to mitigate either:

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

SSP Resolution 14-02 is advocated by certain developers of proposed moderately-sized developments (i.e., those generating 50 or more peak-hour trips) who are concerned that if the Percontee/County project is approved in its entirety early on, then its traffic will be included in the background traffic for their LATR reviews, making it much more difficult for them to pass the test. Attorneys Timothy Dugan of Shulman, Rogers testified that the proposal would be one of many important tools to help fund the necessary transportation infrastructure in White Oak without overwhelming developers with too heavy a cost burden. Attorneys William Kominers and Stacy Silber of Lerch, Early and Brewer made similar remarks at the Planning Board's public hearing on this matter.

The proposal is opposed by the Planning Board, Planning staff, State Highway Administration (SHA), Montgomery County Civic Federation, and several civic associations in White Oak (©3-14). They mention the same concern: the likelihood that the level of transportation facilities needed to adequately accommodate future traffic demand will be underestimated, and thus not provided.

Council staff concurs in not approving the initial proposal. Since an approved subdivision may proceed to construction without further APFO review, this practically guarantees that transportation will be inadequate—or even more inadequate than it would otherwise be—at one or more intersections in White Oak. In White Oak today there are three developments that have received subdivision approval but are not yet built: 803,570sf for the Washington Adventist Hospital (or an equivalent of 722,357sf of office space); 265,426sf of light industrial or office space at WestFarm; and a 2,505sf office building expansion at Darcars. Of these three, only the Darcars addition has received a building permit, thus, under the proposal, traffic from about a million square feet of development that is very likely to occur would not be counted in LATR.

2. *New proposal.* In its review of the initial proposal, the Planning Board recommended an alternative that would allow a development in White Oak to pass LATR if it contributed its proportional share of the cost of an LATR improvement, if that improvement were to be built by a public agency (presumably County DOT or SHA) within 6 years of when the subdivision is approved (see ©15-16, especially the last paragraph on ©16). As elucidated in his testimony to the Council, the Board Chairman noted that the proportional share should be based on the proportion of the subdivision's impact on the effected intersection(s). Councilmember Floreen, who was the lead sponsor of the initial proposal, recommends replacing it with the approach suggested by the Planning Board (©17; a revised SSP Amendment 14-02 reflecting her new proposal is on ©18-19).

Council staff believes this is a promising approach, and with further fleshing out can be a means to address the concerns of the moderate-sized developments in White Oak while still assuring the timely provision of adequate transportation facilities and services. A fully-fleshed out concept should include the following provisions, some which should be included in this SSP Amendment and some in a subsequent revision to the Planning Board's TPAR/LATR Guidelines:

- It is not quite enough to say that “a public agency is able to place the local area transportation improvement in service within 6 years ...”. Instead, one of the conditions of approval would be that the Council *affirmatively programs* the full improvement within the 6-year CIP, perhaps in a new White Oak LATR Improvements project. This would probably mean that, initially, the bulk of the cost would be borne by the County.
- To address this problem, it must be assured that subsequent developments that would have affected one or more White Oak intersections provide *their* proportional share of the costs as well. This means that improvements funded under the White Oak LATR Improvements project should *not* be assumed in the background of the LATR studies conducted for subsequent subdivisions. In this way a subsequent subdivision could be approved if it bought down the County’s cost by contributing an amount commensurate to its proportional share of impact on the intersection.

Here is how this approach could work. As noted, the White Oak Policy Area standard is 1,600 CLV. Assume here that the existing + background traffic at a subject intersection is 1,800 CLV:

1. The traffic from Subdivision #1, without further improvements, would raise the congestion by 20 CLV, to 1,820 CLV. Under the SSP, the development has to mitigate 30 CLV (150% of its impact) to pass LATR. However, the least extensive improvement that could mitigate 30 CLV would be to add a turn lane costing \$500,000 that would actually reduce CLV by 100. In this case, the Council would have to program the improvement in the CIP for completion within 6 years; the development would be required to pay 30% of this cost (\$150,000), while County funds would pay for the 70% balance (\$350,000).
2. Subdivision #2 comes next, and it would have traffic that would impact this same intersection. It would be required to conduct an LATR study *that assumes neither the traffic from Subdivision #1 nor the fact that an improvement has now been programmed there*. In other words, it is treated as if it had been the first subdivision through the gate. Under such an LATR study, Subdivision #2 would raise congestion at this (unimproved) intersection by 40 CLV, to 1,840 CLV, and so it would have to mitigate 60 CLV to pass LATR. It could then pass LATR by paying \$300,000 to the County, buying down the County’s share of the turn lane’s cost from \$350,000 down to \$50,000.

This approach would require careful bookkeeping of both dollars and trips, but it would effectively create a type of road club among developments that have an impact on the same intersection. In the meantime, the public would be served by having the timely provision of adequate transportation.

If the Committee wishes to proceed with such approach, Council staff recommends not bringing this amendment forward for Council action until at least November 25. This would give time for Council staff to work with Planning staff, DOT, and OMB to flesh out this concept, and to determine what portion of it belongs in the SSP versus the TPAR/LATR Guidelines.

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Floreen, Navarro, and Rice

SUBJECT: Amendment to the 2012-2016 Subdivision Staging Policy regarding Local Area Transportation Review in the White Oak Policy Area

Background

1. On November 13, 2012 the County Council approved Resolution 17-601, 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.
3. On July 29, 2014, the Council approved the White Oak Science Gateway Master Plan.

Action

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

The 2012-2016 Subdivision Staging Policy is amended 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, as used in TL Local Area Transportation Review, background traffic must be calculated as only approved but unbuilt development for which a building permit has been issued.

* * *

Resolution No. _____

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Subdivision Staging Policy Amendment #14-02 – White Oak Policy Area

- Pam Dunn, Acting Chief, Functional Planning and Policy Division, pam.dunn@montgomeryplanning.org, 301-650-5649
- Eric Graye, Planning Supervisor, Functional Planning and Policy Division, eric.graye@montgomeryplanning.org, 301-495-4632
- Nancy Sturgeon, Master Planner/Supervisor, Area 2 Division, nancy.sturgeon@montgomeryplanning.org, 301.495.1308

Completed: 09/25/14

Description

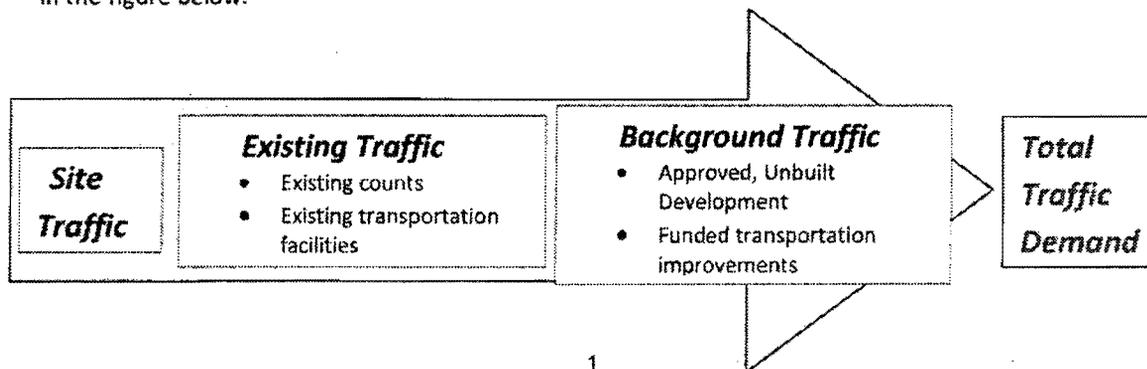
County Council amendment to the 2012-2016 Subdivision Staging Policy (SSP) that would change how Local Area Transportation Review (LATR) is conducted for development in the White Oak Policy Area in the future.

Staff Recommendation

Staff **Does Not Recommend** the adoption of this amendment. A key rationale for this recommendation is the concern that this action would risk the potential to underestimate the appropriate level of transportation facilities needed to adequately accommodate future traffic demand in the context of the LATR process.

Analysis

In the context of scoping Traffic Studies (TSs) for the analysis of congestion at nearby intersections, the County has followed the long-standing policy of including planned development in receipt of an approved preliminary plan and/or an approved building permit as components of background traffic (i.e., traffic associated with approved but yet unbuilt subdivisions). The level of traffic congestion associated with background traffic defined in this manner is then added to the level of traffic congestion associated with existing development in combination with the level of traffic congestion associated with proposed site development in order to determine the total level of traffic congestion to be considered in the TS analysis. This total level of traffic congestion is analyzed in combination with the transportation improvements programmed to be fully implemented six years into the future. This concept is depicted in the figure below.



LATR seeks to ensure a balance between the **traffic demand** in a defined area and the **traffic capacity** from available programmed infrastructure at a time horizon six years in the future. The subject amendment would change the definition of background traffic to be considered for LATR to only that traffic associated with previously approved but yet unbuilt development that has obtained a building permit. **Previously approved but yet unbuilt preliminary plan development that has not obtained a building permit would be exempt from the analysis.** The subject amendment would apply this definition of background traffic only to the LATR test in the White Oak Policy Area.

Staff's concerns about this amendment are briefly described below:

- **Timing of the Availability of Adequate Public Facilities**

The original purpose for adopting an adequate public facility ordinance is to synchronize the timing of development and facilities. The minimum validity period for any preliminary plan of subdivision approved after April 1, 2009 is 7 years; on April 1, 2015 the minimum validity period drops to 5 years. As noted above, LATR assumes a time horizon consistent with the six year Capital Improvement Program (CIP) and Consolidated Transportation Program (CTP). To modify the definition of background traffic to only that traffic associated in receipt of approved building permits changes the time horizon for background traffic demand to as short as 1-2 years, and misses those trips produced later in the 6 year time horizon. If approved preliminary plan development were to proceed to construction prior to the expiration of its approval, there would not be sufficient time to provide additional infrastructure to adequately support it. Therefore, it would be prudent to include such development in the TS analysis. To do otherwise would create an imbalance between traffic demand and traffic capacity and thereby risk the potential to underestimate the appropriate level of transportation facilities needed to adequately accommodate future traffic demand.

- **Risk of Unintended Consequences**

If adopted, the subject amendment would be applicable to all proposed development in the White Oak Policy area, regardless of size. Hypothetically speaking, supposed there were several modest-size development projects recently approved in this policy area. Under this amendment, a new applicant would not need to consider the trips associated with these approvals as an element of the LATR test (with the exception of the portion of these approvals in receipt of building permits). However, the traffic demand associated with this approved preliminary plan development may very well be realized within a six year timeframe. For example, background traffic associated with the Traffic Study currently scoped in support of the Spectrum development proposal located at 12345 Old Columbia Pike in the White Oak Policy Area includes approved preliminary plan development. Not including approved preliminary plan development in the context of the TS prepared for this site would clearly be inappropriate because the traffic demand associated with this approved preliminary plan development may

very well be realized within a six year timeframe. Similarly, extending this policy to other modest-size development in the White Oak Policy Area would be inappropriate, as well.

The subject amendment, introduced to the Council on September 16th, is attached for your review. The Council's public hearing pertaining to this matter is scheduled on October 7th.

Attachment: County Council Subdivision Staging Policy Amendment #14-02

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*



James T. Smith, Jr., *Secretary*
Melinda B. Peters, *Administrator*

September 30, 2014

MARYLAND DEPARTMENT OF TRANSPORTATION

Mr. Casey Anderson
Chairman
Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring MD 20910

Dear Chairman Anderson:

The Maryland State Highway Administration (SHA) is pleased to continue partnering with the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery County Department of Transportation (MCDOT) to address the needs of all transportation network users in both White Oak and the region. We agree with the M-NCPPC staff recommendation to the Planning Board, that the Board not adopt Subdivision Staging Policy Amendment #14-02 – White Oak Policy Area, on which the Board is to take action October 7.

SHA concurs with M-NCPPC staff that not requiring inclusion of approved but not yet permitted developments in background traffic, as proposed in Amendment #14-02, risks “the potential to underestimate the level of transportation facilities needed to adequately accommodate future traffic demand” in White Oak. Instead, SHA suggests that SHA, M-NCPPC, and MCDOT staff work to develop a coordinated approach to White Oak transportation review, one that is consistent with local area traffic review (LATR) in other Montgomery County policy areas and seeks to balance the transportation needs and safety of all users, including motorists, freight carriers, transit riders, cyclists, and pedestrians.

Therefore, SHA respectfully requests that the Planning Board not adopt Amendment #14-02. SHA looks forward to continuing its productive partnership with M-NCPPC staff as well as the Planning Board. If you have additional questions or comments, please do not hesitate to contact me at 410-545-0412, toll-free 1-888-204-4828, or via email at gslater@sha.state.md.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Slater', is written over the word 'Sincerely,'.

Gregory I. Slater, Director
Office of Planning and Preliminary Engineering

cc: Mr. Art Holmes, Director, MCDOT
Ms. Gwen Wright, Planning Director, Montgomery County Planning Department
Ms. Melinda Peters, Administrator, SHA
Mr. James T. Smith, Jr., Secretary, Maryland Department of Transportation

My telephone number/toll-free number is 410-545-0412/1-888-204-4828
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

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October 7, 2014

5104 Elm St., Bethesda MD 20814 (301)652-6359 montgomerycivic@yahoo.com

MCCF Testimony for Council Hearing on Subdivision Staging Policy Amendment 14-02

My name is Jim Humphrey, presenting testimony on behalf of the Montgomery County Civic Federation (MCCF) as Chair of the Planning and Land Use Committee. At their September 18 meeting, the members of the MCCF Executive Committee voted unanimously to recommend Council not approve Subdivision Staging Policy Amendment (SSPA) 14-02.

The amendment would change the Local Area Transportation Review (LATR) as applied in the White Oak policy area. The LATR is a test applied when development projects come to the Planning Board for their Preliminary Plan approval. It is at this stage that the Board determines whether local signalized intersections have the capacity to handle traffic from the planned project, or whether there is no capacity remaining so the project can only get approval if an added transportation fee is paid.

The LATR test is used to enforce the county's Adequate Public Facilities Ordinance (APFO), which requires the Board to determine schools, roads, transit and other public facilities are adequate to handle new development projects before approving them.

At present, when the LATR is applied to new projects countywide, the test calculates traffic volume at nearby intersection by counting not only actual traffic but also projected traffic from nearby projects that are approved by the Board but are not yet built. This projected traffic from approved, unbuilt projects is called "background traffic."

The change proposed for the White Oak area by SSPA 14-02 would only count "background traffic" from approved but unbuilt developments for which building permits have been issued by the Department of Permitting Services. The difficulty is that traffic capacity of an approved unbuilt project could be "reallocated" to a second project without rescinding the APFO approval of the first project. Hence, when the original project is later granted building permits with their valid APFO approval there could be insufficient traffic capacity to support both projects; and, the latter project might have avoided paying the added transportation fee intended to fund intersection and road improvements aimed at increasing traffic capacity.

(continued next page)

We understand some persons might perceive a problem with approved but unbuilt projects sitting idle in the pipeline (some not built in more than a decade since receiving their Preliminary Plan and APFO approvals), while newer projects ready to move forward are made to pay a fee because the aged approvals have absorbed traffic capacity in the area. We do not believe, however, that the solution is to weaken one of the key tools used to enforce the APFO.

Instead, we think the solution to clearing the glut of idle pipeline projects lies in Council instructing the Planning Board to grant minimum length validity periods for APFO approvals, to not routinely grant nearly all requests for extensions of APFO approval validity periods and, in the case of larger, multi-phase projects, to only grant Preliminary Plan and APFO approval to each phase when it is ready to proceed to completion. Additionally, the Council must use restraint and not approve blanket extensions to APFO validity periods, as they did in the recent past in response to a weakened economy.

Although Subdivision Staging Policy Amendment 14-02 is proposed to only apply to the White Oak Policy Area, the legislation, if adopted, will set a dangerous precedent for the undermining of the Adequate Public Facilities Ordinance, which will likely be sought by developers in other planning areas across the entire county. The Civic Federation, therefore, respectfully urges County Council members to disapprove SSPA 14-02. Thank you for considering our views.

To the Montgomery County Council:

I am writing **to express our civic association's opposition to Amendment #14-02** to the 2012-2016 Subdivision Staging Policy (SSP) that would change how Local Area Transportation Review (LATR) is conducted. These changes would only be made for developments in the White Oak Policy Area.

Currently, the LATR for a proposed development measures the degree of congestion at nearby intersections in the future, comparing the sum of existing traffic, traffic from previously approved but yet unbuilt subdivisions ("background traffic"), and traffic from the proposed development with the transportation programmed to be on the ground six years in the future. The proposal would change the definition of "background traffic" to be traffic from previously approved but yet unbuilt development that has obtained a building permit. This would exempt from the Planning Board's traffic analysis any traffic associated with projects between the time the Planning Board approves a project and the time project receives a building permit. This could result in traffic studies for new projects not taking into account needed road improvements because the Planning Board's traffic analysis is required to ignore this traffic.

Currently, developers whose projects create traffic that exceed certain acceptable standards laid out in the SSP, must pay for the cost of road improvements to mitigate the effects of the additional traffic their projects create. Because the Planning Board would be required to ignore this traffic in the circumstances described above, we believe this proposal would inappropriately shift costs associated with needed road improvements, which are currently being paid by developers who projects increase road capacity, to the taxpayers.

Montgomery County Planning Department staff also recommend against adoption of this amendment. In a memo to the Planning Board dated 10/2/14, staff state:

"The subject amendment would change the definition of background traffic to be considered for LATR to only that traffic associated with previously approved but yet unbuilt development that has obtained a building permit. Previously approved but yet unbuilt preliminary plan development that has not obtained a building permit would be exempt from the analysis...To modify the definition of background traffic to only the traffic associated in receipt of approved building permits changes the time horizon for background traffic demand to as short as 1-2 years, and misses those trips produced later than the 6 year time horizon. If approved preliminary plan developments were to proceed to construction prior to the expiration of its approval, there would not be sufficient time to provide additional infrastructure to adequately support it. **Therefore, it would be prudent to include such development in the traffic study analysis. To do otherwise would create an imbalance between traffic demand and traffic capacity and thereby risk the potential to underestimate the appropriate level of transportation facilities needed to adequately accommodate future traffic demand [emphasis added]**"

Residents in our community are also bothered by the fact that the Council just amended the Subdivision Staging Policy for the White Oak Policy Area in August. In those amendments, the Council already

relaxed the congestion standards for White Oak by increasing the acceptable level of congestion from 1475 to 1600 CLV and by categorizing the area as "Urban" which has only been used in the past for areas with Metro stations. During the discussion of those amendments our civic associations, certain members of the County Council and Planning Board expressed concerns about inadequate transportation capacity in White Oak. However, we were assured that the Planning Board's Local Area Transportation Review process would ensure new developments would be required to make transportation improvements. Adoption of this Amendment would undermine those assurances and result in certain transportation improvements not being made by developers, thus resulting in these improvements not being made at all or made much later at taxpayer expense.

We ask that you continue to allow the Planning Board to treat White Oak like every other part of the County is treated when new developments are proposed.

In advance, thank you for your consideration of my views on this matter.

Sincerely,

Barry Wides

President, North White Oak Civic Association

Calverton Citizens Association

P. O. Box 21

Beltsville, Maryland 20704-0021

October 6, 2014

Honorable Craig Rice, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Honorable Rice:

I am writing to say that the Calverton Citizens Association is opposed to Amendment #14-02 to the 2012-2016 Subdivision Staging Policy (SSP) that would change how Local Area Transportation Review (LATR) is conducted. These changes would only be made for developments in the White Oak Policy Area. All parts of the county need to be treated equitably when it comes to projects and development. We ask that you to continue to allow the Planning Board to treat White Oak like every other part of the County is treated when new developments are proposed.

Currently, the LATR for a proposed development measures the degree of congestion at nearby intersections in the future, comparing the sum of existing traffic, traffic from previously approved but yet unbuilt subdivisions ("background traffic"), and traffic from the proposed development with the transportation programmed to be on the ground six years in the future. The proposal would change the definition of "background traffic" to be traffic from previously approved but yet unbuilt development that has obtained a building permit. This would exempt any traffic associated with projects between the time the Planning Board approves a project and the time project receives a building permit from the Planning Board's traffic analysis. This could result in traffic studies for new projects not taking into account needed road improvements because the Planning Board's traffic analysis is required to ignore this traffic.

Currently, developers whose projects create traffic that exceed certain acceptable standards laid out in the SSP, must pay for the cost of road improvements to mitigate the effects of the additional traffic their projects create. Because the Planning Board would be required to ignore this traffic in the circumstances described above, we believe this proposal would inappropriately shift costs associated with needed road improvements, which are currently being paid by developers who projects increase road capacity, to the taxpayers.

Montgomery County Planning Department staff also recommend against adoption of this amendment. In a memo to the Planning Board dated 10/2/14, staff state:

"The subject amendment would change the definition of background traffic to be considered for LATR to only that traffic associated with previously approved but yet unbuilt development that has obtained a

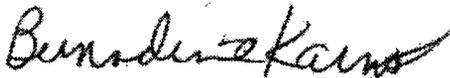
building permit. Previously approved but yet unbuilt preliminary plan development that has not obtained a building permit would be exempt from the analysis...To modify the definition of background traffic to only the traffic associated in receipt of approved building permits changes the time horizon for background traffic demand to as short as 1-2 years, and misses those trips produced later than the 6 year time horizon. If approved preliminary plan developments were to proceed to construction prior to the expiration of its approval, there would not be sufficient time to provide additional infrastructure to adequately support it. **Therefore, it would be prudent to include such development in the traffic study analysis. To do otherwise would create an imbalance between traffic demand and traffic capacity and thereby risk the potential to underestimate the appropriate level of transportation facilities needed to adequately accommodate future traffic demand [emphasis added]**"

On October 2, 2014, the Montgomery County Planning Board also recommended against adoption of this amendment in its current form because it would allow developers from getting out from paying their fair share of certain transportation improvements.

Residents in Calverton and other east county civic associations are also troubled by the fact that the Council just amended the Subdivision Staging Policy for the White Oak Policy Area in August. In those amendments, the Council already relaxed the congestion standards for White Oak by increasing the acceptable level of congestion from 1475 to 1600 CLV and by categorizing the area as "Urban" which has **only been used** in the past for areas with Metro stations. During the discussion of those amendments Calverton, other civic associations, certain members of the County Council and Planning Board expressed concerns about inadequate transportation capacity in White Oak. However, we were assured that the Planning Board's Local Area Transportation Review process would ensure new developments would be required to make transportation improvements. We all know that there will never be a metro in the east county and to make the BRT really work in the east county will be a very difficult task. Adoption of this Amendment would undermine those assurances and result in certain transportation improvements not being made by developers, thus resulting in these improvements not being made at all or made much later at the taxpayer expense.

In advance, thank you for your consideration of our views on this matter.

Sincerely,



Bernadine (Bernie) Karns, President
Calverton Citizens Association

Hillandale Citizens Association, Inc.
Testimony to the Montgomery County Council regarding SSP Amendment 14-02
October 7, 2014

The Hillandale Citizens Association opposes the Subdivision Staging Policy Amendment #14-02 removing “pipeline” development without building permits from the Local Area Transportation Review (LATR) tests in the White Oak Planning Area. To not include development projects, which have VAILD Adequate Public Facilities Ordinance (APFO) approvals, in the background traffic scoping for new-project traffic studies, is a bad policy for Montgomery County for the following reasons:

1. This practice would allow new projects to “reuse” capacity that was allocated to a project previously granted APFO approval. Depending on timing — organized or coincidental — this could very well happen in Hillandale under this amendment. There are three significant projects being discussed for Hillandale: HOC at Holly Hall, adding residential to the Hillandale Shopping Center and various ideas being considered by ATU for the old Labor College site. Given that the New Hampshire/Powder Mill Road intersection is the most challenged in the area, not accurately projecting development infrastructure demands and therefore not applying appropriate actions for the amalgamation of projects is bad planning and poor implementation of the WOSG Master Plan.
2. If this SSP amendment were adopted, could two projects be required to make the same developer-supplied improvements to relieve traffic impacts? And, if project two is built before project one, will project one be the beneficiary and be relieved of developer-provided obligations? Furthermore, when project one uses its APFO, who will pick up the tab for the additional infrastructure, required to remedy the problems — the public sector?
3. Currently the background projects in White Oak are identifiable. The pipeline approvals without building permits include the Washington Adventist Hospital. Does Council want to ignore the WAH project’s traffic impact as new development applications come forward?
4. What is the problem being solved? And, is this just a White Oak problem?
 - o The concern prompting this legislation seems to be the potential that the Percontee/County P3 will be applying and receiving APFO approval for their entire project, therefore making it impossible for other developers to move forward. But as recently as last week, County Executive Leggett stated that the P3’s project submissions would be in phases and would be guided by the yet finalized General Development Agreement (GDA). If this is a specific P3 issue, it should be addressed in the GDA. Or, if large multi-phase projects are the problem across the County, a countywide solution should be evaluated.
 - o Others have mentioned “phantom” or “paper traffic” being a big problem in the County. Given Council’s blanket extensions of APFO validity, possibly this is the time for an analysis of APFO policies/timelines for the entire County.

The Planning Board, in deliberating this legislation last week, did not support ignoring the pipeline projects without building permits in White Oak as proposed. The Board did discuss possible methods to approve plans that do not meet LATR tests — everywhere. If this is the true issue, it needs to be fully thought out, not addressed in a piecemeal method with a dangerous precedent being set in White Oak.

SSP Amendment 14-02 is not good policy. HCA urges Council to not adopt this legislation. Thank you.

Presented on October 7, 2014 by Eileen Finnegan, President, HCA

DEER PARK COMMUNITY ASSOCIATION

October 7, 2014

Mr. Craig Rice, President
Montgomery County Council
Council Office Building, 100 Maryland Ave. 5th Floor
Rockville, MD 20850

Ref: Amendment #14-02 to the 2012-2016 Subdivision Staging Policy

Dear Mr. Rice,

On behalf of the Civic Association members I represent I wish to record our **strong opposition to Amendment #14-02 to the 2012-2016 Subdivision Staging Policy** (SSP) as it would modify how LATR is conducted only for developments in the White Oak Policy Area.

As residents of White Oak, our members fear that this amendment could lead to traffic studies for new projects excluding much needed road improvements because the Planning Board's traffic analysis is required to ignore this traffic.

Montgomery County makes developers pay for the cost of road improvements to mitigate the effects of the additional traffic their projects create when they exceed the SSP standards. However, we fear that Amendment #14-02 will result in tax payers footing the bill of needed road improvements which are currently being paid by developers.

We understand that our concerns regarding this matter are also shared by Montgomery County Planning Department staff. In a 10/2/14 memo to the Planning Board they recommend against adoption of this amendment. Moreover, on October 2, 2014, the Montgomery County Planning Board itself also recommended against adoption of this amendment in its current form because it would allow developers from getting out from paying their fair share of certain transportation improvements.

Please note that this proposed amendment comes on the heels of the August 2014 amendments of the Subdivision Staging Policy for the White Oak Policy Area. In those amendments, the Council already relaxed the congestion standards for White Oak by increasing the acceptable level of congestion from 1475 to 1600 CLV, and by categorizing the area as "Urban" which has only been used in the past for areas with Metro stations. We believe that instead of helping to deliver urgently needed, *and much promised*, solutions to the extremely bad traffic in White Oak adoption of this Amendment will have the opposite effect. We fear it will result in certain transportation improvements not being made by developers, or made much later at taxpayer expense.

Our members request that you continue to allow the Planning Board to treat White Oak like other sections of Montgomery County are treated when new developments are considered.

Thank you in advance for taking our views into account when deciding on this matter.

Respectfully,

Maria Germany
President
Deer Park Civic Association
White Oak

cc: Montgomery County Council Members

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

OFFICE OF THE CHAIR

October 7, 2014

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

SUBJECT: Subdivision Staging Policy Amendment #14-02

Dear Mr. Rice:

This letter provides the Planning Board's public hearing commentary on SSP Amendment #14-02 and offers a proposed alternative for consideration by the Council. The Board appreciates the need to facilitate economic development in the White Oak area, but is concerned about the implications of removing approved-but-unbuilt development from "background" trips used in Local Area Transportation Review (LATR) calculations. Instead, the Board suggests calculating LATR charges for development that is ready to proceed on a proportionate basis together with approved-but-unbuilt projects, allowing each project to go forward while ensuring equitable sharing of the cost of new transportation infrastructure.

As drafted, SSP Amendment #14-02 could produce the unintended result of allowing a project to proceed to construction without making any LATR contribution under circumstances where the development pipeline includes approved projects that have already been allocated all available transportation capacity. For example, the traffic study for the proposed Spectrum development located at 12345 Old Columbia Pike in the White Oak Policy Area includes approved preliminary plan development as an element of background traffic. These approved projects include: (1) the Washington Adventist Hospital (803,570 square foot hospital or 772,357 square feet of equivalent office space); (2) West Farm (265,426 square foot light industrial or office space and; (3) Darcars at Montgomery Industrial Park Lot 33 (2,505 square foot office building). The traffic impact – and contributions to traffic mitigation – of the Spectrum development should be considered in the context of these other projects, because they all can be expected to materialize within the six year capital program time frame and should all be subject to LATR analysis.

The Board discussed several alternative concepts – some of which are available under current rules - for avoiding situations where approved projects that are not ready to proceed with construction absorb all available local transportation capacity. For example:

- **“Payment Instead of Construction” Provision** – This provision, presented on page 26 in the 2013 Local Area Transportation Review/Transportation Policy Area Review Guidelines, could be used by applicants to fund traffic mitigation improvements that

they cannot feasibly implement on their own. This provision reads:

“Where an applicant has made a good faith effort to implement an acceptable improvement and where the Board finds that desirable improvement cannot be feasibly implemented by the applicant but that it can be implemented by a public agency within six years after the subdivision is approved, the County Council has authorized the Planning Board to accept payment to the County of a fee commensurate with the cost of the required improvement.”

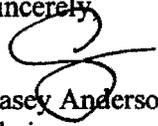
- **“Proportional Payment” Proposal** – A Transportation Management District (TMD) could be created with a fund to collect payments from developers toward LATR improvements in the White Oak Policy Area. This would supplant the current LATR analysis at subdivision or sketch plan, as in White Flint. These payments could roll over into a pool for Bus Rapid Transit implementation.
- **Traffic Impact Study Technical Working Group (TISTWG) Review** - The TISTWG is a recently formed advisory body comprised of civic and private sector representatives, as well as staff representing MCDOT, MDSHA, M-NCPPC and WMATA. In support of the upcoming 2016 Subdivision Staging Policy, this group will provide oversight regarding the update and refinement of the current LATR process and could address the issues in the proposed amendment.

While the Board believes that a variety of approaches might be viable and looks forward to the recommendations of the TISTWG in 2015, we feel that a more timely solution to the traffic analysis concerns in White Oak is appropriate. Thus after consideration, the Board voted 3:0 to support the following proposal in lieu of SSP Amendment #14-02:

“Where the Board finds that the need for a local transportation improvement is attributable to trips generated by a development proposed by the applicant combined with previously-approved but unbuilt development proposed by other property owners and such improvement can be implemented by a public agency within six years after the subdivision is approved, the County Council has authorized the Planning Board to accept payment to the County of a fee commensurate with the **applicant’s proportional share** of the cost of the required improvement.”

The Board looks forward to the upcoming discussion of this amendment with the Council.

Sincerely,


Casey Anderson
Chair

cc: Councilmember Floreen
Councilmember Navaro
Glenn Orlin
Stacey Silber
William Kominers

CA:eg:am



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

NANCY FLOREEN
COUNCILMEMBER AT-LARGE

MEMORANDUM

October 16, 2014

TO: Councilmembers
FROM: Nancy Floreen  Councilmember
SUBJECT: White Oak Local Transportation Review

I ask for your support for Subdivision Staging Policy Amendment 14-02, White Oak Local Area Transportation Review, and I support the modifications proposed by the Planning Board as reflected in the attached draft of the bill. Proportionality is the key to a fairer, more equitable system that still results in new infrastructure.

The Council voted in July to approve the White Oak Science Gateway Master Plan as a way to bring economic renewal to an area of the County that has waited a long time for its turn. SSP 14-02 is a necessary step in the implementation of the plan. It creates an alternative path through the Local Area Review process. Proposed development will continue to operate within our existing Adequate Public Facilities Ordinance system and meet its responsibility to provide infrastructure. However, development will not be stopped by a disproportionate and unsustainable financial burden. The change will be particularly significant for smaller projects.

Our existing system fails to recognize that smaller projects are less able than their larger counterparts to construct intersection improvements and other transportation-related infrastructure. As modified by the Planning Board, SSP 14-02 would allow projects to pass LATR by making a financial contribution that reflects the scope of the project. The County continues to control our transportation system and also receives resources to construct the infrastructure.

Smaller neighborhood-serving projects are just as important as the mega projects on the horizon. As we did with White Flint, we should create a unique process to ensure timely production of infrastructure in an equitable fashion in White Oak.

Let's give White Oak a chance to thrive sooner rather than later. I hope that I can count on your support.

Attachment
cc: Joy Nurmi, Steve Silverman and Greg Ossont

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Resolution No: _____
Introduced: September 16, 2014
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Floreen

SUBJECT: Amendment to the 2012-2016 Subdivision Staging Policy regarding the White Oak Science Gateway Policy Area

Background

1. On November 13, 2012 the County Council approved Resolution 17-601, 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.
3. On (date), 2014, the Council approved the White Oak Science Gateway Master Plan.

Action

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

The 2012-2016 Subdivision Staging Policy is amended as follows:

* * *

TL Local Area Transportation Review (LATR)

* * *

TL4 Unique Policy Area Issues

* * *

TL4.7 White Oak Science Gateway Master Plan

[[In the White Oak Science Gateway Policy Area, as used in TL Local Area Transportation Review, background traffic must be calculated as only approved but unbuilt development for which a building permit has been issued.]]

If the Planning Board finds that:

- (a) the need for a local area transportation improvement is attributable to traffic to be generated by a development proposed by the applicant, combined with existing traffic and traffic from previously-approved but unbuilt development proposed by other property owners; and

(b) a public agency is able to place the local area transportation improvement in service within 6 years after the applicant subdivision is approved;
the Board may approve the subdivision conditioned on the applicant paying a fee to the County that the Board finds is commensurate with the applicant's proportional share of the cost of the required local area transportation improvement. 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.

* * *

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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