

MONTGOMERY COUNTY PLANNING BOARD
APPROVED AND ADOPTED GUIDELINES
AND INTERIM POLICIES

FOR THE ADMINISTRATION
OF PRELIMINARY, PROJECT, AND SITE PLAN EXTENSIONS

EFFECTIVE AS OF SEPTEMBER 18, 1992

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STATEMENT OF ADOPTION

On September 17, 1992, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on a Motion made by Commissioner Aron, seconded by Commissioner Floreen voted to adopt the within guidelines and interim policies. Commissioners Aron, Floreen, Bauman, Baptiste, and Richardson voted in favor of the motion. These guidelines and interim policies were reviewed by the Planning Board in the course of its regular meetings on August 6 and September 17, 1992, following a public forum held by the Board on September 10, 1992.

These guidelines and interim policies are intended to be effective as of September 18, 1992.

INTRODUCTION

The Montgomery County Planning Board and Planning Department have observed an unprecedented increase in the number of requests for extensions appearing on its agenda over the last year. It is generally recognized that the criteria, set forth in both the Subdivision Regulations and the Zoning Ordinance, guiding the Board's consideration of extension requests appears to be outdated and incomplete.

In order to effectively judge extension requests the Planning Board determined that it was necessary to update its criteria and policies for plan validity periods and extension requests to better reflect the many issues now pervading the development industry and driving the need for these extension requests. Accompanying the rise in the number of extension requests is a heightened sense shared by many in the development community and the Planning Board that a significant number of projects seeking extensions are no longer feasible. Planning Board approval of a project that no longer remains feasible or viable, often frustrates the ability and efforts of an applicant of another plan for property that is in close geographic proximity to bring forward its development proposals when development in such areas are constrained by limitations on supporting infrastructure. The Planning Board, in developing updated policies for administering extension requests, will focus in greater detail on the feasibility of a project and its likelihood of actually coming to fruition.

The Planning Board, consequently, instructed staff to develop legislation and guidelines that would set forth criteria for reviewing and evaluating extension requests for review and approval by the Board and, where necessary, the County Council. In the interim, the Board instructed that any extension requests acted upon prior to the adoption of Planning Board guidelines and any required legislation would only be granted through September 30, 1992. This interim date was intended to enable the Board to bring current its extension policy without prejudicing itself or an affected applicant. Staff from various divisions have met numerous times to examine both the process for handling extension requests and broad ranging policy issues associated with extensions.

Currently, the Planning Board under existing laws and regulations has broad, general authority to promulgate guidelines to assist in its administration of plan extensions. These Guidelines are being promulgated, in part, under the authority currently vested with the Board. The Planning Board also intends to have introduced necessary zoning ordinance text and subdivision regulation amendments for consideration by the District Council which will serve to confirm the practices effectuated by these Guidelines.

Until legislation is enacted by the District Council, the

Planning Board will employ these Guidelines as interim guidelines, each of which will remain effective after Council action, unless the Council enacts legislation expressing a contrary intent.

These interim Guidelines will be effective upon adoption by the Planning Board and will only be construed to be ineffective and require modification in the event the District Council enacts contrary legislation.

OVERVIEW OF EXTENSION POLICY AND GUIDELINES

Extensions requests are only one piece in a larger puzzle which together constitute the process for implementing an approved project plan, preliminary plan or site plan. For purposes of these Guidelines measures made applicable to a site plan shall also be deemed to apply to any supplemental plan or other plan approved by the Planning Board, unless the Board in approving such plan indicates a different intent. The process entails an approval of a plan by the Planning Board which triggers an "initiation date" that commences the approved plans "validity period". During the validity period, the applicant must implement or "validate" (ie. go to the next plan approval stage, ultimately record plat) the approved plan. Failure to timely validate, absent the "grant of an extension", results in the "expiration" of the validity period and voids the balance of the plan approval. This process and these terms are more fully developed in the following guidelines.

These Guidelines are intended to address a series of cumulative issues, which cover the spectrum of fundamental policies related to plan validity periods and extension requests. In some instances, the Guidelines reflect revised practices in others existing practices remain undisturbed.

As a general theme, the Guidelines assume that if a sufficient, reasonable time frame is initially established for implementing a plan, the likelihood of needing an extension should be diminished and, therefore, an extension should not be readily available. In some instances the validity period of the various plans routinely reviewed by the Board (Preliminary Plans, Project Plans and Site Plans) are proposed to be lengthened somewhat to accommodate the applicant's needs. It is assumed that an applicant securing a plan approval is doing so at a time when they are prepared to move forward to construction and not merely obtaining an approval for speculative purposes. Therefore, the Guidelines impose rather restrictive grounds under which the Board could grant an extension request. Extensions will no longer be granted for projects that are not feasible.

The Guidelines also account for differences between large and small scale projects that warrant the need for defining and applying different policies and procedures. It is recognized that "larger" projects require a longer validity period. Defining and differentiating large and small scale projects is very elusive. What is clear is that the need to phase construction is an attribute common to large projects; small projects tend to be capable of development in one phase. This concept of phasing has become extremely important in the generation of these Guidelines. To take advantage of the theoretically longer validity periods, an applicant of a large project must produce for Board approval a binding phasing schedule in the initial plan approval stage which is then followed throughout the remainder of the development and construction process.

I. DIFFERENTIATING LARGE (MULTI-PHASE) SMALL (SINGLE PHASE) PROJECTS

An applicant of a "larger" scale project (ie. a project that by its design is intended to build out in predetermined phases beyond three years) may elect to avail itself of the opportunity to develop in accordance with a phasing schedule. Such an election must be joined as part of the application for the initial plan application (typically the preliminary plan) submitted for the project. The effect of such a schedule would allow the applicant to secure a plan approval for the entire project upfront and then pace its obligation to validate each particular section in an orderly and reasonable manner. Such phasing shall take into account the type and size of the project, whether it is a mixed use project, and other factors, such as the timing for the construction of supporting on site and offsite infrastructure projects.

The phasing schedule, once approved by the Board or staff, shall be adhered to, unless modified by the Board, throughout the balance of the development process. The schedule should be logically crafted so as to allow each individual phase to develop and be reasonably capable of standing on its own in the event subsequent phases are not pursued. Therefore, consideration must be given to designing a phased project in which each individual phase has little dependence on features (other than community-wide facilities) to be provided in subsequent phases and that construction occurring in one phase has minimal impact on already constructed and occupied phases.

When applicable, the phasing schedule should indicate and incorporate the timing for the provision of such things as common

open areas, recreational facilities, MPDU's, and infra-structure improvements. It is recognized that events may lead to variations in the timing for the provision of these types of features. Consequently, the Board understands that it must be flexible and allow an applicant to amend the phasing schedule from time to time if warranted.

The following figures represent general break point numbers intended to be used for differentiating between large and small scale projects. These numbers are intended to serve as general standards. It may be that a project that falls below the threshold standard, based upon peculiar or unique facts and circumstances, may persuade the Board that its project will build out in phases over a defined period of time beyond the validity period normally associated with a smaller size project. Characterizing a project as being a small, single phase or a larger, multi-phase development shall be based upon the project as proposed in the plan application submitted by applicant.

A. Small Scale

- i. Residential - less than 100 dwelling units
- ii. Commercial/Retail - less than 200,000 square feet
- iii. Office/Industrial - less than 300,000 square feet

B. Large Scale

- i. Residential - 100 or more dwelling units
- ii. Commercial/Retail - 200,000 square feet or greater
- iii. Office/Industrial - 300,000 square feet or greater

The Planning Board may approve a revision (including adjustments to the sequencing/timing of events or for the purpose of including additional events to be phased) to an approved phasing schedule as part of an amendment to a plan establishing the phasing schedule. In proposing a revision that alters and extends the time for the performance of a phase, the applicant must demonstrate, to the satisfaction of the Board, that applicant has performed in substantial compliance with the staging schedule, but for good cause shown, due to events beyond applicants' control and not the result of self-imposed delay or hardship, additional time is required to complete the schedule. A request to amend a phasing schedule, if timely sought prior to the expiration of the phase, shall not be administered as a request for an extension, but rather shall be treated as a plan amendment reviewed in accordance with this guideline and other laws and regulations that are applicable to plan amendments/revisions.

II. COMMENCING THE VALIDITY PERIOD (THE "INITIATION DATE")

Clearly, the calculation of a validity period and the determination as to when a plan will expire is tied to some beginning date known as the Initiation Date. Establishing this date is not always straight forward.

Under applicable State and County laws, regulations, and the Planning Board Rules of Procedures, the Planning Board must reduce to writing any decision it renders on a regulatory matter (consideration of a project, preliminary, and site plan). The date the written opinion is mailed becomes the date of the Planning Board action, even though the Board may have voted on the plan application in the course of a public hearing held on a prior date. These same laws and regulations allow for the taking of an appeal by aggrieved parties, provided such appeal is initiated within thirty days the challenged Board action deemed to be thirty days from the date of the mailing of the written opinion).

Parties to any such litigation may prosecute the appeal through all available avenues of judicial redress. Because the pendency of an administrative appeal has a chilling effect on the applicants ability to proceed forward towards validation of its plan, the Board has determined that the validity period shall not run during the period of time that litigation is pending and possible subsequent appeal periods (thirty days from the date of the Board action or the issuance of a decision by a reviewing court on appeal).

This background allows for a better understanding of how an initiation date is determined. For project, preliminary, and site plans the initiation date for commencing validity period during which time a plan must be validated, shall be the later of:

- (1) thirty days from the date of mailing of the written opinion, as such date is printed on the opinion; or
- (2) in the event an administrative appeal is timely noted by any party authorized to take an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.

Language noting both the expiration date (absent litigation) for validating each plan then approved by the Planning Board, and the APFO approval (12 years from date of preliminary plan approval, consistent with 50-20(c), enacted as part of the loophole legislation) shall be noted on each opinion generally in a form as follows:

"The date of this written opinion is _____ (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must

initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before _____ (which is thirty days from the date of this written opinion). If no administrative appeal is filed, then this plan shall remain valid until _____ (which is _____ months plus thirty days, inclusive, from the date of mailing of the written opinion). If an administrative appeal is timely and correctly initiated, then this plan will remain valid, unless the decision is reversed by the court on appeal, for _____ months following the date that the reviewing court issues its written decision, plus thirty days if another level of appeal is authorized by law. The determination made by the Planning Board, pursuant to the Adequate Public Facilities Ordinance, that transportation facilities are adequate to serve the project contemplated by this approval shall remain valid until _____ (which is twelve years from the date of the mailing of the written opinion approving the preliminary plan), provided that the preliminary plan has not expired."

For purposes of these guidelines, in computing any period of time prescribed herein, the day the act or event actually occurs shall commence the running of the time. Weekends and holidays are counted as part of the time period. The last day of the period so computed is included unless it is a weekend or holiday (for which the M-NCPPC is closed), in which event the period runs until the next day which is not a weekend or holiday.

III. DURATION OF VALIDITY PERIOD AND ACTIONS REQUIRED TO VALIDATE THE PLAN.

A. Project Plan

An approved project plan shall remain valid for up to twenty-four months from the initiation date, provided Applicant has filed a complete site plan application, as determined by staff within a reasonable period of time, within eighteen months of the initiation date and, in the absence of governmental delay, received site plan approval within six months of the assigned complete application date. The timely approval of a site plan validates a project plan.

B. Preliminary Plan

1. An approved preliminary plan for a single phase project shall remain valid for thirty-six months from its Initiation Date. Prior to the expiration of the validity period, the applicant must have secured all governmental approvals necessary as a condition precedent for plat recordation and a final record plat for all property delineated on the approved preliminary plan has been recorded among the Montgomery County Land Records.

2. An approved preliminary plan for a multi-phase project shall remain valid for such period of time as is established in the phasing schedule approved by the Planning Board. Each phase shall be assigned a validity period, the duration of which shall be proposed by applicant, reviewed by staff, and determined on a case by case by the Planning Board, after giving consideration to such factors as the size, type, and location of the project. Generally, development proposed in a phase should be planned in such a manner so that validation can occur within thirty-six months from the initiation date associated with that particular phase. The cumulative validity period of all phases may not exceed the twelve year APFO validity period which runs from the date of the initial preliminary plan approval. Validation of a preliminary plan for a phase shall occur upon the recordation of a final record plat for all property delineated in that particular phase of the approved preliminary plan.

3. A failure to timely propose a phasing schedule on the part of applicant of a project meeting the definition of a large scale project shall be construed to mean that applicant does not intend to pursue phasing and will validate the entire preliminary plan within thirty-six months of the initiation date.

C. Site Plan

1. Many zones require the Planning Board to approve a site plan prior to the time that a record plat may be recorded. Site plan approval is always predicated upon the prior approval of a preliminary plan. The validity period of an approved site plan shall be conditionally tied to the expiration date of the underlying preliminary plan. The site plan shall validate upon the recordation of the final record plat for all of the property delineated on the approved preliminary plan. Where phasing is contemplated, validation of phases shall be treated in the same manner as the preliminary plan.

2. Upon recordation of the record plat, the approved site plan would not expire or require an amendment prior to the issuance of a building permit, unless:

- (1) the project's APFO approval expires; or
- (2) changes to the applicable zoning map or zoning text (absent express grandfathering provisions) or other applicable laws or regulations require a modification of the site plan.

A site plan approval is not intended per se to vest the property from validly enacted changes to applicable laws or regulations.

3. For property that does not require the submission and approval of a preliminary plan and/or record plat, a site plan

approved for the property shall be valid for thirty-six months from the Initiation Date of the site plan. Commencement of construction must occur within the validity period.

IV. EFFECT OF AN AMENDMENT ON THE VALIDITY PERIOD

A. Minor Plan Amendment

1. A minor amendment is an amendment or revision, by Planning Department staff in writing, to a previously approved plan. The action is deemed administrative in that the action is undertaken by staff outside the scope of a public hearing by the Planning Board. Ordinarily, an administrative amendment will not entail matters that relate to basic, fundamental determinations assigned to the Planning Board.

2. No action taken by staff on a request for a minor plan amendment shall have the effect of altering the previously established validity period in any manner.

B. Major Plan Amendment

1. Any action to amend or revise a previously approved plan by the Planning Board whether such amendment is limited or comprehensive in scope shall be considered a major plan amendment.

2. The Planning Board shall determine on a case by case basis whether the validity period should be extended and, if so, for what duration. In making such determination, the Board shall consider the nature and scope of the requested amendment.

V. REQUESTING AN EXTENSION - WHAT MATERIALS MUST BE SUBMITTED AND WHEN MUST THEY BE SUBMITTED

A. Project Plan

1. A request to extend the validity period of an approved project plan must be submitted in writing and received by staff prior to the previously established validity period expiration. The written submission must specify in detail all grounds and reasons purported by applicant to support the extension request and include a declaration that states the anticipated date for validating the plan, which applicant warrants is the minimum additional time required for validation.

2. The failure to submit a detailed, written request in timely

2. An approved preliminary plan for a multi-phase project shall remain valid for such period of time as is established in the phasing schedule approved by the Planning Board. Each phase shall be assigned a validity period, the duration of which shall be proposed by applicant, reviewed by staff, and determined on a case by case by the Planning Board, after giving consideration to such factors as the size, type, and location of the project. Generally, development proposed in a phase should be planned in such a manner so that validation can occur within thirty-six months from the initiation date associated with that particular phase. The cumulative validity period of all phases may not exceed the twelve year APFO validity period which runs from the date of the initial preliminary plan approval. Validation of a preliminary plan for a phase shall occur upon the recordation of a final record plat for all property delineated in that particular phase of the approved preliminary plan.

3. A failure to timely propose a phasing schedule on the part of applicant of a project meeting the definition of a large scale project shall be construed to mean that applicant does not intend to pursue phasing and will validate the entire preliminary plan within thirty-six months of the initiation date.

C. Site Plan

1. Many zones require the Planning Board to approve a site plan prior to the time that a record plat may be recorded. Site plan approval is always predicated upon the prior approval of a preliminary plan. The validity period of an approved site plan shall be conditionally tied to the expiration date of the underlying preliminary plan. The site plan shall validate upon the recordation of the final record plat for all of the property delineated on the approved preliminary plan. Where phasing is contemplated, validation of phases shall be treated in the same manner as the preliminary plan.

2. Upon recordation of the record plat, the approved site plan would not expire or require an amendment prior to the issuance of a building permit, unless:

(1) the project's APFO approval expires; or

(2) changes to the applicable zoning map or zoning text (absent express grandfathering provisions) or other applicable laws or regulations require a modification of the site plan.

A site plan approval is not intended per se to vest the property from validly enacted changes to applicable laws or regulations.

3. For property that does not require the submission and approval of a preliminary plan and/or record plat, a site plan

approved for the property shall be valid for thirty-six months from the Initiation Date of the site plan. Commencement of construction must occur within the validity period.

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2. No action taken by staff on a request for a minor plan amendment shall have the effect of altering the previously established validity period in any manner.

B. Major Plan Amendment

1. Any action to amend or revise a previously approved plan by the Planning Board whether such amendment is limited or comprehensive in scope shall be considered a major plan amendment.

2. The Planning Board shall determine on a case by case basis whether the validity period should be extended and, if so, for what duration. In making such determination, the Board shall consider the nature and scope of the requested amendment.

V. REQUESTING AN EXTENSION - WHAT MATERIALS MUST BE SUBMITTED AND WHEN MUST THEY BE SUBMITTED

A. Project Plan

1. A request to extend the validity period of an approved project plan must be submitted in writing and received by staff prior to the previously established validity period expiration. The written submission must specify in detail all grounds and reasons purported by applicant to support the extension request and include a declaration that states the anticipated date for validating the plan, which applicant warrants is the minimum additional time required for validation.

2. The failure to submit a detailed, written request in timely

fashion voids the project plan approval and would require the submission and approval of a new plan by the Planning Board.

3. Only the Planning Board may approve a request to extend a project plan validity period.

B. Preliminary Plans and Site Plans

1. A request to extend the validity period of an approved preliminary plan or site plan (since the validity period of a site plan is to be tied to that of the underlying preliminary plan) must be submitted in writing and received by staff prior to the previously established validity period expiration. The written submission must specify in detail all grounds and reasons purported by applicant to support the extension request and include a declaration that states the anticipated date for validating the plan, which applicant warrants is the minimum additional time required for validation. In the instance of a large scale project subject to a previously approved phasing schedule, the extension request must also indicate any alterations proposed to the phasing schedule.

2. The failure to submit a detailed, written request in timely fashion voids all non-validated portions of the preliminary plan and, where applicable, site plan approval and would require the submission and approval of a new preliminary plan and, where applicable, site plan by the Planning Board.

3. In instances where a preliminary plan or site plan have been allowed to expire by the applicant by failing to make a timely request for an extension, the Board, on a case by case basis in unusual situations where practical difficulty or undue hardship is demonstrated by applicant, may elect to utilize its equitable powers so as to validate and extend such otherwise expired plan. The Board, when considering a request to extend an otherwise expired plan, may require applicant to secure a new APFO review and approval by the Board, as a prerequisite or condition of its action to validate and extend the expired plan.

4. Only the Planning Board may grant a request to extend a preliminary plan or site plan validity period.

VI. GROUNDS FOR PROJECT PLAN, PRELIMINARY PLAN, AND SITE PLAN EXTENSIONS

1. The Planning Board may only grant a request to extend the validity period of a project plan, preliminary plan, or site plan, if the Board is persuaded that:

- (a) delays, subsequent to the plan approval, by the government or some other party, essential to the applicants' ability to perform terms or conditions of the plan approval, have materially prevented applicant from validating plan, provided such delays are not created or facilitated by applicant; or
- (b) the occurrence of significant, unusual, and unanticipated events, beyond applicants control and not facilitated or created by applicant, have substantially impaired applicant's ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to applicant if the plan were not extended.

2. The Planning Board, in considering a request for an extension, may condition the grant of an extension on a requirement that the applicant revise its plan to conform with changes to applicable laws or regulations that may have occurred since the time of the plan approval and that are intended to have application to the project.

3. The Planning Board, in considering a request for an extension, may deny the request if it is persuaded that the project, as approved and conditioned, is no longer viable. In considering the viability of a project, the Board shall consider such factors as whether the project is capable of being financed, constructed, and marketed within a reasonable timeframe as demonstrated by the applicant upon request by the Planning Board or staff.

4. The applicant bears the burden of establishing that grounds in support of the requested extension have been stated. There should be no presumption by the applicant that an extension will be granted by the Planning Board.

5. If voting to approve an extension, the Board may only grant such minimal time it determines to be necessary for the applicant to validate its plan. The Board will not grant an extension to a preliminary plan which has the effect of carrying the plans validity period beyond any established APFO validity period, unless otherwise allowed by law.

6. An applicant may request and the Planning Board may approve one or more extensions.

7. The Board, in approving an amendment to a phasing plan, shall effectively extend the validity period of the plan and forego a need for Board approval of a separate, formal an extension of the validity period.

VII. EFFECT OF FAILURE TO TIMELY VALIDATE PLAN OR SECURE EXTENSION

1. If a project plan, preliminary plan, or site plan is not timely implemented in whole or in part prior to the expiration of the validity period, the remaining portion of such plan not then validated also expires. Similarly, the failure on the part of an applicant to timely validate a phase, in whole or part, shall void the balance of the preliminary plan approval for that phase and all subsequent phases not yet validated. For instance, if the Board approved a residential project for 100 units and assigned a three year validity period, the applicant must go to record plat for all 100 units within the three year period or secure an extension. In the absence of the grant of an extension by the Planning Board or a modification to the phasing schedule, if such applicant only recorded 75 lots within the validity period, the applicant's ability to record the remaining 25 lots and all lots in a subsequent phase would terminate. Likewise, if the Board approved a three lot office project, the applicant must go to record on all three lots before the plan expires or lose its approval as to the unrecorded portion.

2. In those instances where an applicant has timely validated only a portion of a plan and no extension is granted, the applicant seeking to develop only that portion of the project remains responsible for fully complying with all terms, conditions, and other requirements associated with the plan approvals.

3. Pursuant to Section 50-20(c) of the subdivision regulations, generally, an Adequate Public Facilities Determination required to be made by the Planning Board is valid for twelve years from the date of the preliminary plan approval. If a preliminary plan or portion thereof is not timely validated, any APFO determination made by the Planning Board associated with the expired portion of the preliminary plan also expires. In such event the applicant loses any further rights to claim any trips associated with the expired APFO approval. The filing of a new preliminary plan would not lay the basis for reclaiming trips lost by the termination of the APFO approval.

4. A project plan that is not timely validated may also cause a preliminary plan approval conditionally linked to such project plan approval to simultaneously expire.

VIII. APPLICATION OF GUIDELINES AND POLICIES
FOR APPROVED/PENDING PLANS

Until legislation, as contemplated in these Guidelines, is enacted by the District Council some of these Guidelines will be adopted by the Planning Board as interim guidelines and administered as interim measures, subject to final action on the legislation by the Council. This is especially true for dealing with the proposals to adjust the validity periods for the plan approvals. These proposed changes generate a need for an interim policy to assign validity periods for plans which have varying status. Some plans are approaching the need for an initial extension, others are in a posture to seek a second or more additional extensions, other plans are coming to the Board for their initial approval.

The Board, on an interim basis as described below, will establish validity periods as follows:

1. Project Plans

a. For a project plan approved by the Board prior to September 30, 1991 and for which the applicant has timely submitted an extension request (including plans for which the Board may have granted an interim extension through September 30, 1992) - the Board shall grant an extension to allow applicant to submit within thirty days of the date written notice of such action is mailed to applicants last known address, a request for a further extension, if applicant so elects. If applicant elects not to submit a written extension request stating in detail all grounds which support such request within thirty days of the date notice is sent, the plan shall be deemed to have expired with no further action required to be taken by the Board. The Board will evaluate any such extension request based upon the criteria set forth in the Interim Guidelines. The Board may elect not to grant any further extension beyond September 30, 1992, in cases that it determines such extensions would not advance the public interest and where the project has failed to conform with an established implementation schedule.

b. For a project plan approved by the Board between September 30, 1991 and September 30, 1992 - Board should administratively extend the validity period of each such plans for one additional year running from the Initiation Date of the plan, with the understanding that a complete site plan application must be submitted and approved consistent with the timing requirements established in the interim guidelines.

c. For a project plan which may be approved after September 30, 1992 but prior to the enactment of applicable legislation affecting the validity period of a project plan - state that the plan approval shall be valid for the period of time established in

the zoning ordinance. The Board would include language in a text amendment that would attach any additional validity period to plans which had not expired.

2. Preliminary Plans.

a. *For a preliminary plan approved by the Board between September 30, 1989 and September 30, 1992 - the Board should authorize applicants of a large scale project to submit a phasing schedule that establishes the proposed phases, with associated number of units and build out time-frames for the phase and entire project. If site plan is required and has not yet been approved, an applicant wishing to propose a phasing schedule must do so as part of site plan review. Where site plan is not required or should an applicant elect to pursue site plan approval at a later time, an applicant wishing to propose a phasing schedule must do so, as a revision to the preliminary plan, prior to the expiration of the validity period for the preliminary plan. In the latter instance, the applicant must demonstrate that it has or will timely implement the initial phase of the project as proposed by applicant. A failure on the part of applicant to timely request Board consideration and approval of a phasing schedule shall be construed as applicants election to be considered a single phase project. The Board will determine whether a phasing schedule should be approved based upon the Interim Guidelines and any enacted legislation.*

b. *For a preliminary plan approved by the Board prior to September 30, 1989 and for which the applicant has timely submitted an extension request (including plans for which the Board may have granted an interim extension through September 30, 1992) - the Board shall grant an extension to allow applicant to submit within thirty days of the date written notice of such action is mailed to applicants last known address, a request for a further extension, or, in the case of a large scale project, a proposed phasing schedule as described in the preceding paragraph a. If the applicant elects not to submit a written extension request stating in detail the grounds in support of such request or a detailed phasing schedule within thirty days of the date notice is sent, the plan shall be deemed to have expired with no further action required to be taken by the Board. The Board will evaluate any such extension request or phasing schedule based upon the criteria set forth in the Interim Guidelines. The Board may elect not to grant any further extensions beyond September 30, 1992, in cases that it determines such extension would not advance the public interest (including a determination that a further extension would unduly constrain other property owners from making use of limited public facilities for an excessive period of time) and where the project has failed to conform with an established implementation schedule.*

c. For a preliminary plan which may be approved after September 30, 1992 but prior to the enactment of applicable legislation affecting the validity period of a large scale preliminary plan - require applicant to submit for Board consideration a proposed detailed phasing schedule as part of the preliminary plan review. The phasing schedule shall be reviewed and may be approved by the Board in the course of its review of the plan in accordance with the Interim Guidelines. The subdivision regulations currently allow for the use of phasing plans, although clarifications to the law (having a retroactive effect) may be required to allow for the longer time-frames associated with a large scale project.

3. Site Plans

a. For all site plans for which the underlying preliminary plan has been validated (ie. record plat for entire site plan area has been recorded) - the Board should grant an administrative extension, extending the validity period associated with each site plan until March 30, 1994, with the understanding that any legislation that has the effect of validating a site plan by recording a record plat would then be given immediate effect to site plans in this grouping and allow them to be considered validated.

b. For all site plans for which the underlying preliminary plan has not been validated (ie. record plat for entire site plan area has not been recorded) -the Board should grant an administrative extension, extending the validity period associated with each site plan for an interim period running until March 30, 1994, with the understanding that any legislation that has the effect of tying the validation of a site plan to the validation of a preliminary plan (ie. recording a record plat) would be given effect to site plans in this grouping. This may have the effect of reducing the validity period granted by an administrative amendment under this section to less than March 30, 1994 should the legislation pass and the underlying preliminary plan otherwise expire on a date before March 30, 1994. The Board shall seek enactment of legislation that extend the validity period associated with site plans in this grouping through the date that the underlying preliminary plan is valid, including dates that the preliminary plan may be extended through.

C: GUIDELIN.EXT