

MEMORANDUM

September 20, 2018

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 
Glenn Orlin, Deputy Director

SUBJECT: Expedited Bill 27-18, Taxation – Development Impact Tax for Transportation Improvements – Refunds - Credits – Amendments

PURPOSE: Worksession – Committee to make recommendations on Bill

Expedited Bill 27-18, Development Impact Tax for Transportation Improvements – Refunds - Credits – Amendments, sponsored by Lead Sponsor Council President Riemer at the request of the County Executive, was introduced on July 17. A public hearing was held on September 11 with three witnesses.

Expedited Bill 27-18 would

- (1) authorize a transportation impact tax credit for certain expenses paid by a property owner for improvements listed in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program;
- (2) extend the time for the County to spend transportation impact taxes to equal the time transportation impact tax credits remain valid; and
- (3) change the time to certify an impact tax credit from the issuance of a building permit to the collection of the impact tax.

Background

Under current law, a property owner can receive a transportation impact tax credit for an improvement on a State Road within the White Oak Local Area Transportation Improvement Program (LATIP) or a future Unified Mobility Program (UMP) only to the extent the cost of the improvement exceeds the listed cost in the program. This provision discourages an owner from building a listed improvement when the cost is greater than the LATIP or UMP fee but is not greater than the listed cost. Bill 27-18 would authorize a credit against the development impact tax for transportation for an improvement built by a property owner to the extent the cost exceeds the property owner's LATIP or UMP fees.¹ This change would provide an incentive for a property owner to build a listed improvement during development rather than simply pay a LATIP or UMP fee.

¹ The property owner would also receive a credit against the LATIP or UMP fee for building a listed improvement under Code §52-51(e).

The Bill would also increase the time the County must schedule a use for the transportation impact taxes collected from 6 years to 12 years before the property owner can request a refund. This change would make this time consistent with the time a transportation impact tax credit remains valid. Finally, the Bill would change the time for the Department of Transportation to certify an impact tax credit from the issuance of a building permit to the collection of the impact tax.

Public Hearing

All 3 witnesses supported the Bill. Daniel L. Wilhelm, representing the Greater Colesville Citizens Association (©14), Shane Pollin, representing the Duffie Companies (©15), and Robert Harris, an attorney representing Cabin Branch Management (©16-17), each supported encouraging developers to build transportation improvements in return for impact tax credits. Mr. Harris requested an amendment to the Bill to increase the type of transportation improvements that are eligible for impact tax credits for the benefit of his client on the Cabin Branch Project.

Issues

1. What is the fiscal and economic impact of the Bill?

OMB was unable to quantify the cost to the County. See ©10-13. OMB noted that the Bill would reduce the amount of transportation impact taxes collected, but that this loss of tax revenue would be offset by the private construction of needed public improvements. OMB and Finance also assume that the private sector would build these improvements sooner and cheaper. Finance concluded that this change would have a modest positive economic impact on the County.

2. Should a developer be eligible for an impact tax credit to the extent the cost of building a listed improvement exceeds the LATIP or UMP fee?

Section 52-51(e) authorizes a developer to receive a credit against the LATIP or UMP fee for the cost of building a listed transportation improvement project up to the cost of the improvement listed in that program. Under current law, the developer would be eligible for a transportation impact tax credit for the cost of the improvement that exceeds the LATIP or UMP fee up to the listed cost of the improvement. However, where the developer's cost to construct the improvement is greater than the LATIP or UMP fee, but less than the listed cost, the developer would not receive credit for the developer's total cost of building the improvement. The Bill would change this limited situation by authorizing an impact tax credit to the extent the developer's cost exceeds the LATIP or UMP fee.

If a developer would hesitate to build a listed improvement without receiving a credit for all the developer's costs, this Bill would encourage a developer to build a listed improvement in this limited situation. All impact tax credits result in loss of tax revenue available to build transportation improvement projects. The listed improvements required by the Unified Mobility Program for a specific area or for the White Oak Local Area Transportation Improvement Program are local improvements directly related to the new development that are intended to be financed by the LATIP or UMP fees. The transportation impact tax revenue is collected to finance large

regional projects in the County. To the extent that the Bill uses impact tax revenue to support local improvements, it is not available for larger regional projects.

The Executive believes that the private construction of listed improvements under the Unified Mobility Program for a specific area or for the White Oak Local Area Transportation Improvement Program would be done sooner and cheaper. The benefit of building these listed improvements sooner and cheaper may outweigh the diversion of impact tax revenue for these projects. **Council staff recommendation:** approve this amendment as introduced.

3. Should the time for the County to spend transportation impact taxes equal the time transportation impact tax credits remain valid?

Under current law, transportation impact tax credits remain valid for 12 years. However, if the County fails to designate a specific improvement to be financed by the impact tax collected within 6 fiscal years after it is collected, the applicant may request a refund. This dichotomy can result in a refund of the tax while the credit remains valid. The Bill would amend the law to extend the time to designate a specific improvement from 6 fiscal years to 12 fiscal years to correspond to the life of the credit. **Council staff recommendation:** approve this amendment as introduced.

4. Should the time for the County to certify an impact tax credit be changed from the issuance of a building permit to the collection of the impact tax?

Under current law, the County must certify an impact tax credit before the building permit is issued. However, recent changes in the impact tax law has extended the time for an applicant to pay the impact tax from the time a building permit is issued to either 6 or 12 months after the building permit is issued. The Bill would make these time periods consistent. **Council staff recommendation:** approve the change in the time to certify an impact tax credit.

5. Should the Bill be amended to increase the type of projects eligible for an impact tax credit?

Mr. Harris requested an amendment to the Bill at the public hearing that would authorize a transportation impact tax credit for any transportation improvement that is required for the development under the adequate public facilities law. Specifically, Mr. Harris's client is building the Cabin Branch project in the Clarksburg planning area. The Planning Board required his client to widen a 3,000'-long section of West Old Baltimore Road west of I-270 from a narrow, winding country road to a road that meets County arterial standards, as well as to add turning lanes at a major intersection and to construct a parallel hiker-biker trail and sidewalk. Under current law, generally the widening is not eligible for a transportation impact tax credit since it does not add highway capacity. Mr. Harris requested an amendment that would authorize a credit for this type of improvement.

This amendment was not part of the Bill requested by the Executive. Council staff asked the Executive Branch for its position on this requested amendment, but we have not received a position at the time this packet went to print.² The fiscal and economic impact statement does not

² We hope to receive a position from the Executive before the worksession.

quantify the cost of this amendment because it was not part of the Bill as requested. Council staff does not have an estimate of the number of projects that are likely to benefit from this amendment.

The Development Impact Tax law contains several provisions that show that this request is inconsistent with the purpose of the law. Section 52-40(e) of the County Code states that:

The development impact tax funds, in part, the improvements *necessary to increase the transportation system capacity*, thereby allowing development to proceed. Development impact taxes are used exclusively for *impact transportation improvements*.

Nationwide, impact taxes are distinguished from other taxes because the purpose is to fund *added capacity needed to address the increased demand from new development*, whether the demand be on transportation, schools, or other public facilities. Section 52-39(1) defines additional transportation capacity as an improvement that:

increases the maximum theoretical volume of traffic that a road or intersection can accommodate, or implements or improves transit, pedestrian and bike facilities or access to non-auto modes of travel.

Section 52-50(a)-(i) defines impact transportation improvements as:

- (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 and protected bike lanes 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 in a public right-of-way to or within a major activity center or along an arterial or major highway; or
- (i) element of bus rapid transit, including exclusive bus lanes, shelters, and buses.

Under the Subdivision Staging Policy road adequacy is measured in a section of roadway by the number of through travel lanes and at intersections by the projected level of congestion. Widening a section of West Old Baltimore Road from a two-lane, 18'-wide road (two 9'-wide lanes) to a standard 30'-wide road (two 11'-side lanes with 4'-wide paved shoulders) does not affect either roadway capacity or intersection capacity. For decades such improvements have been routinely required of new developments when a subdivision is built adjacent to or around a rural road, and the cost is borne entirely by the development without an impact tax credit.

Nevertheless, DOT notes that portions of what is required of the Cabin Branch development is creditable against the impact tax. On September 20 DOT sent a revised letter to

Mr. Harris indicating which portions would be creditable, and which would not (©18-21). The creditable portions include:

- the additional turn lanes at West Old Baltimore Road and Broadway Avenue, including the full cost of widening West Old Baltimore Road within the 600'-long section where the turn lanes would be added: the widening to 11' lanes, the shoulders, and associated right-of-way acquisition, utility relocations, side ditches and street trees in this 600' section;
- the cost of the 8'-wide hiker-biker trail along the north side of the 3,000' length of road improvements, including the grass shelf separating the road from the trail, streetlighting, and, possibly, utility relocations; and
- the cost of the 5'-wide sidewalk on the south side of the road, including, possibly, utility relocations.

Costs for each of these elements have not yet been determined. However, Council staff guesstimates that about 30-35% of the overall cost of the project would be creditable.

An expansion of the projects eligible for an impact tax credit results in a loss of impact tax revenue that can be used to construct transportation improvements needed for new development. If the County provides a full credit for this type of improvement, impact tax revenue would be lost without adding a privately built transportation improvement that adds capacity. In addition, we do not have sufficient information to estimate how often this type of credit is likely to occur in the future. The Bill, as introduced, involves a limited situation for a definite benefit. The amendment requested by Mr. Harris may open the door for other significant credits without providing the revenue needed to add capacity elsewhere. **Council staff recommendation:** do not approve this requested amendment.

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Expedited Bill No. 27-18
Concerning: Taxation – Development
Impact Tax for Transportation
Improvements – Refunds - Credits -
Amendments
Revised: August 3, 2018 Draft No. 3
Introduced: July 17, 2018
Expires: January 17, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Riemer at the request of the County Executive

AN EXPEDITED ACT to:

- (1) authorize a transportation impact tax credit for certain expenses paid by a property owner for improvements listed in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program;
- (2) extend the time for the County to spend transportation impact taxes to equal the time transportation impact tax credits remain valid;
- (3) change the time to certify an impact tax credit from the issuance of a building permit to the collection of the impact tax; and
- (4) generally amend the law governing the administration of Development Impact Tax for Transportation Improvements.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-46, 52-47

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Sections 52-46 and 52-47 are amended as follows:**

2 **52-46. Refunds.**

- 3 (a) Any person who has paid a development impact tax may apply for a
4 refund of the impact tax if:
- 5 (1) the County has not appropriated the funds for impact transportation
6 improvements of the types listed in Section 52-50, or otherwise
7 formally designated a specific improvement of a type listed in
8 Section 52-50 to receive funds, by the end of the [sixth] twelfth
9 fiscal year after the tax is collected;
- 10 (2) the building permit has been revoked or has lapsed because
11 construction did not start; or
- 12 (3) the project has been physically altered, resulting in a decrease in
13 the amount of impact tax due.
- 14 (b) Only the current owner of property may petition for a refund of the impact
15 tax. A petition for refund of the impact tax must be filed within the time
16 established for filing a claim for refund of a local tax under state law.
- 17 (c) The petition for refund of the impact tax must be submitted to the Director
18 of Permitting Services on a form provided by the County. The petition
19 must contain at least:
- 20 (1) A statement that petitioner is the current owner of the property;
21 (2) A copy of the dated receipt for payment of the development impact
22 tax issued by the Department of Permitting Services;
23 (3) A certified copy of the latest recorded deed for the subject
24 property; and
25 (4) The reasons why a refund of the impact tax is sought.
- 26 (d) The Director of Permitting Services must investigate each claim and hold
27 a hearing if the petitioner requests a hearing. Within 3 months after

28 receiving a petition for refund of the impact tax, the Director of
 29 Permitting Services must provide the petitioner, in writing, with a
 30 decision on the impact tax refund request. The decision must include the
 31 reasons for the decision, including, as appropriate, a determination of
 32 whether impact tax funds collected from the petitioner, calculated on a
 33 first-in-first-out basis, have been appropriated or otherwise formally
 34 designated for impact transportation improvements of the types listed in
 35 Section 52-50 within [6] 12 fiscal years. If a refund of the impact tax is
 36 due the petitioner, the Director of Permitting Services must notify the
 37 Department of Finance and, if the property is located in Gaithersburg or
 38 Rockville, the finance director of that city.

39 * * *

40 **52-47. Credits**

41 (a) A property owner is entitled to a credit if the owner, before July 1, 2002,
 42 entered into a participation agreement, or a similar agreement with the
 43 state or a municipality, the purpose of which was to provide additional
 44 transportation capacity. A property owner is also entitled to a credit if the
 45 owner receives approval before July 1, 2002[,] of a subdivision plan,
 46 development plan, or similar development approval by the County or a
 47 municipality that requires the owner to build or contribute to a
 48 transportation improvement that provides additional transportation
 49 capacity. The Department of Transportation must calculate the credit.
 50 The credit must equal the amount of any charge paid under the
 51 participation agreement. The Department may give credit only for
 52 building permit applications for development on the site covered by the
 53 participation agreement.

54 (b) Except as provided in subsection (l), a property owner must receive a
 55 credit for constructing or contributing to an improvement of the type
 56 listed in Section 52-50, including the cost of an improvement in a Unified
 57 Mobility Program or the White Oak Local Area Transportation
 58 Improvement Program, if the improvement reduces traffic demand or
 59 provides additional transportation capacity [, including the cost of an
 60 improvement in an Urban Mobility Program or the White Oak Local Area
 61 Transportation Improvement Program] and to the extent [it exceeds the
 62 listed cost of the improvement in that program] the cost of the
 63 improvement exceeds the property owner's fee under a Unified Mobility
 64 Program or the White Oak Local Area Transportation Improvement
 65 Program.

66 (1) If the property owner elects to make the improvement, the owner
 67 must enter into an agreement with a municipality or the County[,]
 68 or receive a development approval based on making the
 69 improvement, before any building permit is issued. The agreement
 70 or development approval must contain:

- 71 (A) the estimated cost of the improvement, if known then;
- 72 (B) the dates or triggering actions to start and, if known then,
 73 finish the improvement;
- 74 (C) a requirement that the property owner complete the
 75 improvement according to applicable municipal or County
 76 standards; and
- 77 (D) any other term or condition that the municipality or County
 78 finds necessary.

79 (2) The Department of Transportation must:

- 80 (A) review the improvement plan;

- 81 (B) verify costs and time schedules;
- 82 (C) determine whether the improvement is an impact
- 83 transportation improvement;
- 84 (D) determine the amount of the credit for the improvement that
- 85 will apply to the development impact tax; and
- 86 (E) certify the amount of the credit to the Department of
- 87 Permitting Services before that Department or a
- 88 municipality [issues any building permit] collects the
- 89 applicable impact tax.

90 * * *

91 (I) The Department must not certify a credit for:

- 92 (1) The cost of a project in [an Urban] a Unified Mobility Program or
- 93 the White Oak Local Area Transportation Improvement Program
- 94 up to the [listed cost of the improvement in that program] property
- 95 owner's fee under a Unified Mobility Program or the White Oak
- 96 Local Area Transportation Improvement Program; or
- 97 (2) Any improvement in the right-of-way of a State road, except:
- 98 (A) a transit program that operates on or relieves traffic on a
- 99 State road or an improvement to a State road that is included
- 100 in a memorandum of understanding between the County
- 101 and either Rockville or Gaithersburg; or
- 102 (B) the cost of an improvement in [an Urban] a Unified Mobility
- 103 Program or the White Oak Local Area Transportation
- 104 Improvement Program to the extent it exceeds the [listed
- 105 cost of the improvement in that program] property owner's
- 106 fee under a Unified Mobility Program or the White Oak
- 107 Local Area Transportation Improvement Program.

LEGISLATIVE REQUEST REPORT

Expedited Bill 27-18

Taxation – Development Impact Tax for Transportation Improvements – Refunds - Credits - Amendments

DESCRIPTION:	<p>The Bill would:</p> <ol style="list-style-type: none">(1) authorize a transportation impact tax credit for certain expenses paid by a property owner for improvements listed in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program;(2) extend the time for the County to spend transportation impact taxes to equal the time transportation impact tax credits remain valid; and(3) change the time to certify an impact tax credit from the issuance of a building permit to the collection of the impact tax.
PROBLEM	<p>Under the provisions of Section 52-47 of the County Code, Transportation Impact Tax Credits are permitted on State Roads within the White Oak LATIP and future UMPs only where the cost of the improvement exceeds the listed cost in the program. This provision limits an owner's ability to implement the listed improvements when the cost does not exceed the listed cost.</p>
GOALS AND OBJECTIVES:	<p>The objective of this bill is to allow owners to receive credit against their impact tax liability to the extent their financial investment in a listed improved within the LATIP or UMP exceeds their LATIP or UMP fees. This change will increase the incentive for owners to implement transportation improvement concurrent with development activity instead of paying fees to the County for public implementation of the improvements.</p>
COORDINATION:	<p>M-NCPPC Planning Department, Department of Permitting Services, Maryland Department of Transportation/State Highway Administration.</p>
FISCAL IMPACT:	<p>Potential reduction in Impact Tax Payments within the LATIP and future UMP areas coupled with increased private implementation of planned transportation improvements.</p>
ECONOMIC IMPACT:	<p>N/A</p>
EVALUATION:	<p>The LATIP will be re-evaluated every six years, consistent with the timeframe of the Capital Improvement Program and the Subdivision Staging Policy evaluation.</p>
EXPERIENCE ELSEWHERE:	<p>N/A</p>
SOURCE OF INFORMATION:	<p>Montgomery County Department of Transportation (MCDOT)</p>

APPLICATION N/A
WITHIN
MUNICIPALITIES:

PENALTIES: None.

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 2, 2018

TO: Hans Riemer, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Introduction of Expedited Bill to Address Impact Credits and Local Area Transportation Review Mitigation Credits

I am requesting introduction of legislation to amend Chapter 52 of the Montgomery County Code related to the certification of Transportation Impact Tax credits at locations within the White Oak Local Area Transportation Improvement Program (LATIP) and future Unified Mobility Programs (UMPs).

These revisions would allow certification of Transportation Impact Tax credits at locations listed in these programs for property-owner expenditures on transportation improvements that exceed the owner's fee obligations under the LATIP or UMP. Modification of this element of the code will encourage property owners to implement needed transportation improvements concurrent with their development since their expenditures will offset the fees they would otherwise pay to the County.

In addition to this specific change to the code, other minor technical corrections related to the Unified Mobility Program (UMP) terminology and timeframe for expenditure of impact tax receipts for consistency with the life span of impact tax credits are included in this legislation. I have also included Financial and Economic Impact Statements for this legislation with this transmittal.

I recommend prompt passage of legislation to advance these programs.

Fiscal Impact Statement
Expedited Bill XX-18 – Taxation: Development Impact Tax Credits and
Local Area Transportation Review Mitigation Payments

1. Legislative Summary

The purpose of this legislation is to clarify the provisions of Transportation Impact Tax Credits and their relationship to the White Oak Local Area Transportation Improvement Program (LATIP) and future Unified Mobility Programs. Other technical corrections are also included. The primary purpose is to allow Impact Tax Credits when the costs of owner-constructed improvements exceeds the owner's LATIP fees.

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

Includes source of information, assumptions, and methodologies used.

Impact Taxes revenues are reduced, but they are offset by the construction of identified Infrastructure by private owners. This is more efficient for the County and net savings can be expected as transportation projects are implemented at the time they are needed to support a project.

Recurring updates to the UMP / LATIP fees will result in lower fees as actual construction costs are reduced. As fees are directly tied to expenditures this has no direct net revenue impact to the County. Indirectly, lower fees could spur more rapid development of the tax base within an UMP / LATIP policy area.

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

See item #2 above.

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

Not applicable. There are no personnel costs associated with this bill.

5. Later actions that may affect future venue and expenditures if the bill authorizes future spending.

Not applicable.

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

Not applicable. This bill would not affect staff responsibilities.

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

Not applicable. This bill would not affect staff responsibilities.

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

Not applicable.

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

The cost of improvements is a key variable. This analysis assumes that development can implement projects at lower costs than the County. The inverse is unlikely to occur, as cost estimates prepared by developers will be reviewed and approved before

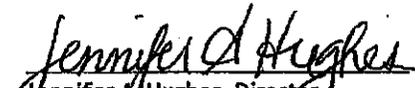
authorizing credits. In the event that construction costs are affirmed by the County to be higher than estimated in the UMP / LATIP analysis, this discrepancy would be addressed at the next recurring UMP / LATIP update.

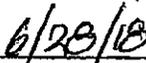
10. Ranges of revenue or expenditures that are uncertain or difficult to project.
Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.
Credits are assigned based on implementation of projects that would have had to have been implemented by the County. The net value remains relatively unchanged, other than a benefit to the County amounting to the cost savings from developments' reduced construction costs.

12. Other fiscal impacts or comments.
Impact Taxes are assigned Countywide, and UMP / LATIP projects are locked to a geographic policy area. This change would increase the potential for Impact Tax credits to applied more regularly toward UMP / LATIP policy areas, reducing the overall funding that could be available outside of these policy areas.

13. The following contributed to and concurred with this analysis:
Andrew Bossi, Department of Transportation


Jennifer D. Hughes, Director
Office of Management and Budget


Date

Economic Impact Statement
Bill xx-18 Taxation: Development Impact Tax Credits and Local Area
Transportation Review Mitigation Payments

Background:

The purpose of this legislation is to clarify the provisions of Transportation Impact Tax Credits and their relationship to the White Oak Local Area Transportation Improvement Program (LATIP) and future Unified Mobility Programs (UMPs). Other technical corrections are also included. The primary purpose is to allow Impact Tax Credits when the costs of owner-constructed improvements exceeds the owner's LATIP fees. This change is designed to increase the incentive for owners to implement transportation improvement concurrent with development activity instead of paying fees to the County for public implementation of the improvements.

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

- White Oak impact tax data, Department of Transportation

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

Variables that could affect the economic estimates include the potential reduction in Impact Tax Payments within the LATIP and future UMP areas and increases in the private implementation of planned transportation improvements. This bill is anticipated to have a modest positive economic impact from increased construction as reduced impact taxes are coupled with increased implementation of identified infrastructure.

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

As noted in the fiscal impact statement for the bill, a net savings to the County can be expected due to private implementation of identified transportation improvements at the time they are needed to support a development project. Recurring updates to the UMP / LATIP fees will result in lower fees as actual construction costs are reduced. As fees are directly tied to expenditures this has no direct net revenue impact to the County. Indirectly, lower fees could eventually spur more rapid development of the tax base within an UMP / LATIP policy area.

The legislation is intended to modify the eligibility of private expenditures on transportation projects for impact tax credits. The bill makes changes to the provisions allowing credits against impact taxes for development within areas covered by the White Oak Local Area Transportation Improvement Program or future Unified Mobility Programs. It does not, however, change the required mitigation or other provisions that would affect the economic performance of real estate projects. The potential revenue impact cannot be quantified with specificity given a lack of data enumerating future mitigation projects in the proposed areas. The impact is expected to be modest as the legislation covers a relatively small area of the County, a set list of projects, and only the incremental amount of funds that the developer would otherwise owe based on the estimated cost of the projects.

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

Please see paragraph 3.

5. The following contributed to or concurred with this analysis:

Christopher Conklin - Department of Transportation.

Economic Impact Statement
Bill xx-18 Taxation: Development Impact Tax Credits and Local Area
Transportation Review Mitigation Payments

David Platt, Dennis Hetman – Department of Finance.

Alexandre Espinosa for A.A.E.
Alexandre Espinosa, Director
Department of Finance

6/22/18
Date

Greater Colesville Citizens Association
PO Box 4087
Colesville, MD 20914
September 11, 2018

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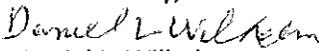
Montgomery County Council
Attn: Hans Riemer President
100 Maryland Ave
Rockville, MD 20850

Re: Expedited Bill 27-18

Dear Council President Riemer:

The Greater Colesville Citizens Association strongly supports Expedited Bill 27-18.

There is widespread support in the community for transportation projects that address existing congestion and provide capacity to support planned development. These improvements include those the council approved as part of the White Oak Local Area Transportation Program (LATIP). We have been encouraging developers to make such improvements rather than the county making them. As everyone agreed when the LATIP program was approved, developers can make the improvements faster and likely at less cost than the county. Both The Duffie Companies and GLDC have expressed a willingness to make such improvements if it doesn't increase their costs. The Duffie Companies have proposed a number of good improvements in Hillandale but they need to be able to receive credits against both the LATIP fee and Transportation Impact Tax. This was the original intent but the language in existing legislation doesn't allow credits against the impact tax until a developer has spent the estimated cost contained in the LATIP. The proposed bill would correct this situation and simply allow the original intent to happen. We therefore support Expected Bill 27-18.

Sincerely,

Daniel L. Wilhelm,
GCCA President



57 Randolph Road, STE 200
Silver Spring, MD 20852

Montgomery County Council
Attn: Hans Riemer President
100 Maryland Ave
Rockville, MD 20850

September 10, 2018

Re: Expedited Bill 27-18

Dear Council President Riemer:

Please accept this letter in support of Expedited Bill 27-18.

This necessary legislation will allow developers like The Duffie Companies to implement needed transportation improvements and to receive credits against our Transportation Impact Taxes for doing the same.

In nearly all of Montgomery County, developers who choose to physically construct the most necessary transportation improvements in the vicinity of their projects are able to credit the cost of those improvements against their County assessed Transportation Impact Taxes. In Eastern Montgomery County, a list of the most necessary improvements was identified by DOT as part of the Local Area Transportation Improvement Program. Unfortunately, without Expedited Bill 27-18, developers in Eastern Montgomery County are unable to receive credits against their transportation impact taxes by making the necessary improvement identified by the LATIP program. These are the very improvements that are virtually by definition most necessary. This current reality is nonsensical and cannot be what was intended.

As a developer with deep roots in the Hillandale community of Eastern Montgomery County we need the option to make necessary physical improvements and to receive credits against our Transportation Impact Taxes and therefore request that you vote in favor of Expedited Bill 27-18.

Respectfully,

Shane Pollin
Director of Development

Before the Montgomery County Council

Testimony of Robert Harris
On Behalf of Cabin Branch Management

Expedited Bill 27 – 18, Taxation – Development Impact Tax

September 11, 2018

Good afternoon. For the record I am Bob Harris of Lerch, Early & Brewer appearing on behalf of Cabin Branch Management, the master developer of the Cabin Branch community in Clarksburg. The purpose of my testimony is to support this Bill along with a limited amendment to it to ensure that developers who make improvements to County roads, pursuant to requirements in their development approvals, can obtain impact tax credits for those improvements. This amendment is necessary because, although I believe the Code provides for an impact tax credit for a road improvement required by the Cabin Branch approvals, the Department of Transportation states that the current wording of the Code does not allow this.

I am attaching for you a copy of the Planning Board Resolution approving the Cabin Branch project. In that approval, under County APFO regulations, Cabin Branch was required to make various road improvements to provide transportation capacity for the project. One of those required improvements, as called for in the Clarksburg Master Plan, was the complete reconstruction of West Old Baltimore Road to transform it from a narrow, winding, country road, only 18 feet wide, to a road that meets full County arterial standards, with an 80 foot right-of-way and paving a minimum of 38 feet wide, together with turn lanes, a sidewalk and a hiker/biker trail, as well as proper storm drainage, lighting and other improvements. The Planning Board, with the recommendation of DOT, determined at the time that complete

reconstruction was necessary in order to add required transportation capacity for the project, and the attached traffic analysis confirms the addition of that capacity. Nevertheless, DOT states that they cannot grant a credit for a major part of this project because it does not fall within their interpretation of the credit provisions. The slight revision to the Ordinance we are proposing (a copy of which is attached to my testimony) will clarify the intent of the Ordinance to provide such credits to those who make road improvements, required under the APFO review for their development. In short if the County requires improvements to a County road to provide APFO traffic capacity for a project, then the County should allow an impact tax credit for those improvements. Without such credits, the County would be left with the obligation to build master planned road improvements.



Isiah Leggett
County
Executive

Al R. Roshdieh
Director

DEPARTMENT OF TRANSPORTATION

September 20, 2018

Mr. Robert R. Harris, Attorney
Lerch Early and Brewer, Chtd.
7600 Wisconsin Avenue, Suite 700
Bethesda MD 20814

Revised 9/20/18
RE: Development Impact Tax Credit
Cabin Branch
West Old Baltimore Road

Dear Mr. Harris :

After further review of your submitted *West Old Baltimore Road STA. 29+75 to STA. 59+80 Storm Drain and Paving Plans ("the plans")* for the improvements along West Old Baltimore Road, we have clarified our decisions on your request for Development Impact Tax Credit. This letter supersedes our previous letter dated August 29, 2018. All revised decisions are under "Revised 9/20/18." These comments are based on *the plans*, your revised statement of justification dated June 29, 2018, and your Memorandum from Wells + Associates regarding Roadway Capacity, dated June 18, 2018. Based on these items, we provide the following response:

1. DOT can only issue development impact tax credits using bonded amounts per the Department of Permitting Services or canceled checks. As we discussed, DOT will change this request from a request for credit to a Declaration of Allowable Credits. The amount of the credit will be determined at the time that certification of a credit is request with proper documentation.

Office of the Director

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Located one block west of the Rockville Metro Station

2. When you submit your Development Impact Tax Credit request, provide a spreadsheet identifying each eligible improvement and specifying the costs of each item.
3. **Request:** Upgrade West Old Baltimore Road to a two-lane arterial roadway standard between Broadway Avenue and Clarksburg Road (MD 121) with:

- a. 11-foot wide travel lanes – one travel in each direction

MCDOT Response: Section 52-50(a) of the Montgomery County Code states “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 ...” is eligible for credit. As the existing roadway is two lanes, and you are reconstructing the road for it to remain two lanes, it is not increasing the capacity of the road. Therefore, this item is **not eligible**.

REVISED 9/20/18: Between STA. 30+30.07 and STA. 36+50.85 on the *the plans*, the 11-foot travel lanes **are eligible** for credit. The other sections of the travel lanes **are not eligible** for credit.

- b. 10-foot wide shoulders (first 4-feet paved full depth asphalt for bike compatibility)

MCDOT Response: This item is **not eligible** for credit since it does not provide for additional transportation capacity.

REVISED 9/20/18: Between STA. 30+30.07 and STA. 36+50.85 on *the plans*, the 10-foot wide shoulders **are eligible** for credit. The other sections of the shoulders **are not eligible** for credit.

- c. Side ditches, randomly spaced street trees, streetlights and traffic signal conduit

MCDOT Response: The street trees, streetlights and traffic signal conduit **are eligible** for credit. Side ditches are **not eligible** for credit, since they are related to the travel lanes.

REVISED 9/20/18: Between STA. 30+30.07 and STA. 36+50.85 on *the plans*, the side ditches, and street trees **are eligible** for credit. Streetlights **are eligible** for credit where they light the proposed sidewalk and/or shared-use path along West Old Baltimore Road.

- d. Grass shelf on the north side of the right-of-way with 8-foot wide paved shared use path (path will not be provided in the section between Broadway and Kittiwake Avenues – it will be located along Broadway Avenue, Little Seneca Parkway, and Kittiwake Avenue within the Development)

MCDOT Response: A shared use path is considered a hiker-biker trail per County Code Section 52-50(e). In order for a hiker-biker trail to be consider an eligible credit, it must be use primarily for transportation. Based on the information I have received and the criteria in County Executive Regulations 26-13 AMIII under Credits (5)(A)(i), this item is **not eligible** for credit.

REVISED 9/20/18: This is an **eligible** credit along West Old Baltimore Road since it will be used for transportation.

- e. 5-foot wide sidewalk on the south side of the right-of-way

MCDOT Response: This is an **eligible** credit as it provides additional transportation capacity.

- f. Relocation of existing affected utilities

MCDOT Response: This is an **eligible** credit as it provides additional transportation capacity.

REVISED 9/20/18: This is only **eligible** for credit between the STA. 30+30.07 and STA. 36+50.85 as shown on *the plans*. Additional areas may be eligible if it can be demonstrated that the relocations are required for the sidewalk and multiuse path.

- g. Pavement widenings for auxiliary turns lanes

MCDOT Response: This is an **eligible** credit as it provides additional transportation capacity.

REVISED 9/20/18: This is an **eligible** credit between the STA. 30+30.07 and STA. 36+50.85. Additional widening into local street "Gull Place" is **not eligible** for credit.

- h. Boxed traffic signal conduit at intersections with Broadway Avenue and Kittiwake Avenue/entrance to Black Hills Regional Park

MCDOT Response: This is an **eligible** credit as it provides for additional transportation capacity.

4. **Request:** Paying for Right-of-way in order to reconstruct West Old Baltimore Road

MCDOT Response: Montgomery County Code Section 52-47.b(5) states that "*Any cost of dedicating land or another right-of-way is not eligible unless the owner shows that the improvement resulted in a loss of density for the development.*" In addition, Executive Regulation 26-13 AMIII states "*Right-of-way costs are not an eligible cost unless a loss of development benefit (without compensation) can be demonstrated.*" Please provide additional document to determine if your right-of-way costs are eligible.

Mr. Robert Harris
West Old Baltimore Road DITC
September 20, 2018
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REVISED 9/20/18: This is likely **eligible** credit between the STA. 30+30.07 and STA. 36+50.85, however more information regarding the loss of development benefit and the nature of the right-of-way acquired will be needed to confirm eligibility.

If you have any questions or comments regarding this letter, please contact myself at rebecca.torma@montgomerycountymd.gov or (240) 777-2118.

Sincerely,



Rebecca Torma, Manager
Development Review Team
Office of Transportation Policy

Sharepoint/DOT/director's office/development review/development impact tax/revise west old Baltimore road.docx

cc-e: Christopher Conklin, MCDOT