

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
1	Laura Prizzi President and Owner 3D Building Supplies, LLC laura@3dbuildingsupplies.com 3dbslc@gmail.com 301-802-5088	9/21/2021	1.The TDM plans seem punitive to me. They inflict an undue burden on the employers in Montgomery County. The employers in these TDM districts have enough to do keeping business open during these unprecedented times as things are not back to normal.	Code Section 42-A-24 Transportation Demand Management Plans for Employers. Exec Reg Section II.	The employer TDM Plan requirements are basically the same as what has been required under the County Code for employers of 25 or more employees in TMDs for 20 years. In the former Code language these plans were called "Traffic Mitigation Plans" [Former Section: 42A-24]. The Exec Reg specifies what is required to implement those Code provisions. These same requirements have been used to implement these Code provisions for the past 20 years. More recently MCDOT developed a system to make it easier for employers to complete the plans using an online template.	No change required.
2	Laura Prizzi (cont'd)		2.Why burden them [employers] with data collection, the possible hiring of someone to do the data collection and conduct meetings? And then there is the additional		These are requirements in County Code and are basically the same as those in place for 20 years or more. Employers are not expected to do their own data collection or conduct their own meetings. There is no need and no requirement for employers to	No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			expense if the county feels that any effort made is not good enough. Really?		hire anyone for this purpose. MCDOT provides a survey link they distribute to their employees which goes directly to a data consolidation site – the employer is not required to collect the data. Paper copies of the survey are available for those without convenient online access.	
3	Laura Prizzi (cont'd)		3. There should be a size requirement for what businesses need to participate. Large firms with employees coming in from elsewhere should participate, not the mom-and-pop shops, who according to these plans will lose any nearby free parking – lose patrons by not even allowing them to validate their patrons' tickets.		There <u>is</u> a size parameter established in the County Code for businesses required to participate. The Exec Reg provisions apply only to those employers meeting those Code-established requirements. "Mom and pop shops" - employers of fewer than 25 employees -- are not required to file a TDM Plan in any of the TMDs or Policy Areas. There is no provision in the Code or Exec Reg not allowing validation of parking. Ensuring parking is paid by the user is however a TDM strategy that helps reduce traffic and provides equity for those	No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
					paying to use transit and other alt modes.	
4	Laura Prizzi (cont'd)		4.Incentives to make people want to change will be better than punishing them if they don't.		MCDOT and other entities <u>do</u> provide incentives for people to change their mode of travel. Examples include the FareShare transit & vanpool benefits program, reduced parking rates for car/vanpools, improved biking, micromobility and pedestrian infrastructure, State tax credits for employers providing incentives.	No change required.
5	Ernest Bland, R.A. President EBA Ernest Bland Associates, P.C. 802 Sligo Avenue Silver Spring, MD 20910 (301) 589 4811 Office (301) 589 3810 Fax	9/25/2021	I own a business with about half the number in this proposed regulation, so this regulation does not affect us. However, this is one of many reasons that Montgomery County is economically lagging behind other local and national jurisdictions, too many rules and too much performative		<i>The letter's comments do not pertain to the proposed Exec Reg.</i> The comments pertain more to the County Code provisions. There are significant benefits from adoption of TDM strategies – both for businesses and property owners and for the community at large. By implementing TDM provisions our community will be more economically robust and have reduced traffic congestion, improved air quality and greater	No change required.

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Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>progressivism. We should draft a new logo for the county that says, Montgomery County, "We Hate Businesses". That way we can stop pretending to care about the economic realities of what and who really creates marketplace catalysts and revenue.</p> <p>If people drive solo from Prince George's County or Virginia, so what. Stop pretending that people are not going to drive, that is not happening. No matter how many bike lanes you come up with, cars are here to stay. We have become an over-taxed repository with little to show for it. The cost-benefit ratio is all cost.</p>		<p>resilience to the impacts of climate change.</p>	

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

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			Stop focusing on this nonsense and start policing Downtown Silver Spring!			
6	Bruce H. Lee, President & CEO LDG INC - Lee Plaza 8601 Georgia Avenue Ste 200 Silver Spring, MD 20910 (301) 585-7000 ext. 111 Direct: (301) 565- 5421 Fax: (301) 585-4604 Email: bruce@leedg.com	9/25/2021	Thank you, Ernest. I couldn't agree with you more. Why locate or renew a lease in downtown Silver Spring, let alone in MoCo. This type of thing has got to stop.		<i>This was not a comment on the Exec Reg.</i>	No change required.
7	William Kominers, Attorney Lerch Early & Brewer, Chtd 7600 Wisconsin Ave Suite 700	9/30/21	General Operational Comments	Sec. 42A-26.		No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
	Bethesda, MD 20814 (301) 841-3829 (301) 986-1300 Main wkominers@lercheearly.com		1. The new TDM Regulations, necessarily consistent with Chapter 42A, unfortunately returns to a project-by-project treatment and evaluation that looks at each project to achieve any commuting goals individually and internally to itself. This tracks and measures every action at the individual project level, rather than as a group in a TMD. The focus on individual project actions causes competition rather than cooperation. This approach is likely not to achieve the County's goals for many projects.	TDM Plans for New Development Projects (Project-based TDM Plans)	As Mr. Kominers notes, the approach for the Exec Regs must be consistent with Chapter 42A. In accordance with Chapter 42A, each development must pull its own weight. Each entity is responsible for implementing required TDM strategies and selected actions for which they are programmatically and financially responsible. Collectively these actions are needed to achieve the TMD goals. Using this approach owners/managers of each project are responsible for their performance and cannot assume it is everyone else's responsibility to achieve the goals. This should lead to their recognizing their own responsibility to adopt policies, programs and services that enable goal achievement. Commuter surveys and/or other data collection will capture the contribution of each development with a TDM Plan in	

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Implementation of Chapter 42A, Article II. Transportation Demand Management**

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			Particularly for certain types of uses, this methodology is a prescription for failure.		terms of project, TMD and Policy Area goals NADMS.	
8	William Kominers (cont'd.)		<p>Failure to Recognize Changing Occupancy and External Conditions.</p> <p>2. The Regulation does not address or account for occupancy changes that will occur over time. Uses on which the initial TDM Plan and program was premised may change. This change may be to uses for which particular TDM strategies are not operationally practical. This will cause failure and</p>	<p>Code Sec. 42A-26. TDM Plans for New Development Projects (Project-based TDM Plans)</p> <p>Reg Section IV. B.</p>	<p>The project-based TDM Plan can be revised if there are major changes in a development's composition or occupancy in the future. The project must adapt its strategies to accomplish its goals, in the same way it must adapt other elements of its management of that project, depending upon the tenants – or perhaps new ownership. For example, needs for ADA vehicle parking or bike parking might increase with certain tenants or owners. Examples could also include things prospective tenants are seeking - such as air exchange rates or environmentally-friendly policies - could require changes in building or project strategies.</p>	<p>No Change to Regulation: In the event a building or project is sold the new owner must complete an Assignment document. The new owner must either acknowledge they accept the existing TDM Plan as binding - or they can file a new or amended TDM Plan.</p> <p>The owner's successor(s) in interest or assignee(s) must sign the TDM Plan indicating their obligations to be bound by the obligations of the TDM Plan. This is already indicated in the Reg.</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>resulting penalties that come about through no means other than a building's success in leasing, but to a use that is not as susceptible to successful TDM measures.</p>		<p>If the change must be approved through the Development Review process, the Planning Board can require, upon Department recommendation, that the previously-submitted Project-based TDM Plan be revised to reflect amended elements (e.g., increase in project square footage over amount approved, change in type of use such as office space changed to multi-family residential dwelling units).</p>	<p>The project-based TDM Plan can be revised if there are major changes in a development's composition or occupancy. The project must adapt its strategies to accomplish its goals. If the change must be approved through the Development Review process, the Planning Board can require, that the previously-submitted Project-based TDM Plan be revised to reflect amended elements (e.g., increase in project square footage over amount approved, change in type of use such as office space changed to multi-family residential dwelling units). These provisions are also included in the TDM Plan templates.</p>
9	William Kominers (cont'd.)		<p>3. There is no accounting for the presence or absence of external</p>		<p>The impact of external circumstances may be reflected in the degree to which a</p>	<p>No change required.</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>circumstances and changes that affect the ability of commuters to use other means of travel. The instrumentalities utilized for shared commuting are not under the control of building owners or employers. The County could add a bus stop nearby or build the BRT system, thus making public transit easier to use. On the other hand, the County could equally move a bus stop farther away, or change the timing on a route, so as to make it harder for an employer in a particular location to have sufficient commuting options to achieve the goals.</p>		<p>development meets NADMS goals. Changes to a bus stop location or frequency of service frequency, for example, could potentially be offset by adding or substituting a TDM strategy to counteract the effects, such as subsidizing use of micromobility devices for first mile/last mile travel.</p> <p>We recognize the validity of this concern. The Code does not allow for Director’s discretion in adapting to changing circumstances and reconsidering goals as needed.</p> <p>From Pike & Rose Amended TMAg 2014, pg. 7, 19 (c): “...if a major disruption in the normal transportation system occurs during a Survey (e.g., strikes affecting public transit services, closure of transit facilities, elimination of funds for transit services), the results of such Survey will not be used for determining a Stabilized</p>	

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
					<p>Building's or Stabilized Project's compliance with the NADMS Goal.</p> <p>Consideration: "If a major disruption to the transportation network occurs which significantly impacts the ability of commuters to use alternative modes (e.g., strikes affecting public transit services, closure of transit facilities, elimination of funds for transit services), the Director may on an interim basis waive the imposition of requirements for additional funding of the on-site program until normal transportation access is restored. This discretion for the Director is not in the Code. This would require an amendment to the Code.</p>	
10	William Kominers (cont'd.)		4. In trying to encourage positive participation in traffic mitigation efforts (and thus achieve positive results), <u>the</u>		Providing transit subsidies is the most popular incentive to transit use and it is within private sector control. A suite of subsidy support could be considered (i.e., subsidies for commuter bus,	No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p><u>commitment asked of the private sector should be to do something within its control</u> - take a certain action, provide a certain opportunity, make certain things available. This is in contrast to requiring a commitment to accomplish something that is not within the party's control – such as making people/employees <u>accept</u> an offer or <u>utilize</u> the opportunities provided – and then penalizing when those people fail to do so.</p>		<p>vanpool services or discounted bikeshare memberships).</p> <p>See Shane Pollin's similar comment, line 39 below.</p>	
11	William Kominers (cont'd.)		<p>Inappropriate Penalties.</p> <p>5. Because of looking at each project in isolation, the</p>		<p>Independent assessments mean a developer is responsible for their project alone, without responsibility for the actions or inactions of an adjacent</p>	<p>No change required.</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>Regulation appears to begin with the expectation of private sector failure or evasion. Thus, the Regulation is principally made up of sticks, with minimal carrots.</p> <p>A penalty is an acceptable stick if an applicant/ owner/ employer does not do what is promised with its own actions. For example, if one does not appoint a transportation coordinator, does not file reports, does not participate with DOT in other commuting measures, then a penalty is appropriate. These are all actions which are under the unique control of the</p>		<p>development and any potentially associated “penalties”.</p> <p>The term “additional funding commitment” is used rather than “penalty” because of the acknowledgement that some aspects of performance are not under the “control” of the owner/employer. With an understanding of why a target population is not taking advantage of opportunities offered, additional funding may be used to implement strategies that are more attractive and more effective at reducing the number of residential or employee trips associated with the development.</p>	

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			owner/employer. For failing to undertake the actions that the applicant can take – the applicant can justifiably be penalized. However, if no employees take advantage of the offers or other opportunities that are provided, in spite of diligent pursuit by the owner/employer of those elements that it controls, then there should not be a penalty. The owner/employer should not be responsible if people do not take advantage of opportunities offered.			
12	William Kominers (cont'd.)		<u>Specific Comments</u> 6. The Regulation allows the Department to	Section I.C.	Section I. Paragraph C addresses the basis for making this determination. This discretion allows the Department to	Section 1 C.: Insert new Item 3: The Director may require analysis and statistical

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Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>determine and adjust the individual project goals by up to five to ten percent lower or higher than the NADMS goal for that policy area or TMD. In each of the Subparagraphs 1 and 2, the Director is allowed to modify the goal for the particular plan level. However, there are no clear criteria by which to guide the Director in making that decision. There is general language about determining whether, by virtue of the use and location, a project might contribute disproportionately to achieving or not achieving the commuting goals. However, beyond this general guidance, and</p>		<p>evaluate the characteristics of each project in order to determine if an adjustment in plan level is appropriate. Applicants may provide information to the Department relevant to that decision. This process is also clarified in Section IV.B.1. As different scenarios present themselves, the Department needs leeway – it is not possible to identify in advance all possible factors relevant to this decision.</p> <p>Project-based TDM Plans submitted to the Department are reviewed and discussed with the property owner or applicant as a part of the review and approval process. The Department’s reasons for an adjusted NADMS goal would be considered a top priority discussion item so that the owner understands the expectation and commitment associated with the adjusted goal.</p>	<p>evidence to support an alternative goal.</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			the expertise of the Department exercised in good faith, a property owner or applicant has no basis for understanding why an adjustment to the goal might be appropriate, or why a particular percentage was selected over some other percentage.		Add new sentence to provide further clarification: The Director may require analysis and statistical evidence to support an alternative goal.	
13	William Kominers (cont'd.)		7. The regulation gives authority to the Director to require adjustment in the level of TDM Plan required. This determination is to be based on the "typical trip generation rates" in the County for that type of land use." This is obviously a two-edged sword. This language has the	Section IV.B.1.	The Department's reasons for an adjusted TDM Plan Level would be considered a top priority discussion item so that the owner understands the expectation and commitment associated with the adjusted goal. Add new sentence after final sentence in that para to provide further clarification: "The Director will provide clarification to the Applicant of the basis for	IV.B.1. Inserted new sentence after final sentence in that para: "The Director will provide clarification to the Applicant of the basis for any adjustment made to the Level of TDM Plan required."

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			potential effect of allowing the Department to acknowledge unique characteristics, such as employee shifts for manufacturing, health care, or retail. However, this discretion could also be used in the reverse, to require a higher-level plan based merely on the expectation of the use.		any adjustment made to the Level of TDM Plan required.”	
14	William Kominers (cont’d.)		8. In addition, there is an apparent inconsistency in the language of Subsection 1. The text notes first that the determination is to be made based on “typical trip generation rates” for that land use. Then, at the end of the	Section IV.B.1.	The “other factors” are those stated in the preceding sentence: “Other trip generation and transportation management factors, including the gross floor area to the number of employees ratio and employee shift times, may be taken into consideration by the Department in determining the appropriate Level of TDM Plan required,	No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

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			<p>paragraph, the Director is to make the final determination of the level “based upon the trip generation and other factor presented.” (Emphasis added.) There is no indication what those “other factors” are, what they are based on, and what standards for them will be applied.</p>		<p>including those presented by the owner or applicant.”</p>	
15	William Kominers (cont’d.)		<p>9.Subsections i and iii each refers to the owner or applicant providing equipment for some kind of information display and/or real time transit information digital display. Are these two elements intended to be the same or different? If they are to be</p>	<p>Section IV.C.1. (d)</p>	<p>An information display is used for paper copies of information such as bus schedules and County bike maps. Although we recognize the movement away from paper, there are still members of the population that need or prefer paper materials.</p> <p>Real time information is typically displayed on digital monitors located in building lobbies. At the optimum size, the monitor</p>	<p>Additional clarification added to Section IV.C.1.d), Subsection i. “This display may be electronic as discussed in Subsection iii below, or paper-based. If paper-based, the Transportation Coordinator must ensure the display is kept stocked with current information, in coordination with MCDOT and other transit</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			different, such that the applicant must provide two such facilities, how do they differ in substance and in function?		can be seen by multiple people at a time from a few feet away. Information on alternative modes of transportation usually includes next arrival times for nearby Ride On or Metrobus service, Metrorail service, and the location and availability of bikeshare bikes at the closest bikeshare station. Monitors that display this information can be the same monitor that displays the building's directory.	and micromobility providers.”
16	William Kominers (cont'd.)		10. The last sentence of this Subsection should have the following clause added at the end: “as the same are provided to the Transportation Coordinator by the County.” The final sentence of Subsection iii provides that the Transportation Coordinator “must	Subsection IV.C.1. (d) iii	Once a monitor is installed, the developer is instructed they may contact a digital information provider such as Transit Screen or Redmon. The developer selects the type and arrangement of information they wish to display, in addition to the information they are required to display, on the monitor. The County provides the digital display provider with the real time information feed for Ride On service. Information regarding the availability of	Added clarification to end of paragraph in Subsection IV.C.1.(d) iii : “..., in coordination with MCDOT and other transit and micromobility providers.”

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>ensure displays on such monitor(s) include all relevant real time transit information..."</p> <p>However, that information cannot be presented by the Transportation Coordinator, unless he or she has received electronic information from the County. The language of the regulation should be clear that the County must provide the information before the Transportation Coordinator can provide it to employees. The Transportation Coordinator cannot be expected to work alone on this endeavor.</p>		<p>bikeshare bikes and other shared-use mobility devices is provided by those operators to the digital information providers. As an alternative the Transportation Coordinator may obtain this information directly from the County and other transit, bikeshare and micromobility providers, upon request. However, that information may not display clearly without additional programming by the Project. It is the responsibility of the Transportation Coordinator to implement this provision. Therefore, the proposed clause is not needed.</p>	

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
17	William Kominers (cont'd.)		11. The same comment applies to the third sentence of this Subsection as with respect to Subsection iii above.	Subsection IV.C.1. (d). iv.	See above.	In IV.C.1.(d).iv. delete word "County-provided" from first sentence.
18	William Kominers (cont'd.)		12. Level Two: Project-based Action Plan. Subsection 2(a) notes that each TDM Action Plan "must include certain required strategies along with optional strategies..." Unlike the optional strategies (listed in Appendix A), the "required strategies" do not seem to be identified in the Regulation.	Subsection IV.C.2.	See Subsection IV. C.1 Level One: Project-based TDM Basic Plan. All elements of the Basic plan are required and carry forward as requirements in each subsequent plan level. We will clarify that the components listed there are the required ones; the optional components are listed in Appendix A.	Subsection IV.C.2.: Changed first sentence to read: "This plan must include all components required for the Level One Project-based TDM Basic Plan, plus the additional required components shown below:" Additional clarifying language has been included under IV.C.2.a) as well, so that now reads: "Each Level Two: TDM Action Plan must include the required strategies shown for Level One, plus optional

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
						strategies selected by the project applicant or owner, such as those shown on the Menu of TDM Optional Strategies in Appendix A.”
19	William Kominers (cont’d.)		13. This Subsection (g) seems to have a general problem with what must be its assumed premise. The evaluation of whether a TDM plan is contributing toward achievement of the commuting goals, is to be made based upon the project’s “annual average percentage	Subsection IV.C.2.(g).	<p>We recognize that all projects will not contribute toward meeting goals at the same rate over time. However, we need some way to determine whether progress is being made at adequate rate to achieve the NADMS goals for that TMD and/or Master Plan area.</p> <p>In addition, the Project itself needs to know whether they are making progress or not so they can adjust the strategies being implemented to increase the chances they will be in</p>	No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>improvements or total percentage improvements in NADMS over multiple years.” In order for this to be realistic, measurable, and evaluated, it appears to presume that all projects will advance toward meeting the commuting goals at the same, constant rate.</p> <p>This seems to be an erroneous assumption from the outset: (1) because all projects are different, and (2) because the availability of alternative commuting options change over the course of time as</p>		<p>compliance. They need to know that incrementally, along the way – not just at some future point. The Project has four years to monitor its own progress before being required to change strategies that are not helping to contribute to the goals – and six years before they would be required to dedicate additional funds to their on-site program.</p>	

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>additional facilities are provided. As a result, the progress toward meeting the goals inherently cannot be at a constant rate. The example cited in Subsection i confirms the expectation of regular, equal success on a continuing annual basis. This expectation for the evaluation will inherently create conflicts and failure due to the operational reality of the TDM programs.</p>			
21	William Kominers (cont'd.)		<p>14. Second, there is some inherent inaccuracy/ margin of error in survey data. The</p>	<p>Section IV. C. 2. g) Determination of Contribution Toward District</p>	<p>MCDOT must work with a recognized survey consultant to conduct appropriate analysis of survey results, and to ensure</p>	<p>Section IV.C.2.g.: Additional paragraph added: "The Department will work with a recognized survey consultant to</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			Regulations should spell out some understanding of how this survey analysis is to occur, and how the survey data itself will be analyzed for its accuracy in being used to potentially impose regulatory burdens and increases in cost on the regulated industry.	or Policy Area Goals, i. Measuring Contribution Toward achievement of Goal, and ii. Adjustments in Annual Percentage Required for Determining Contribution.	proper interpretation of those results.	conduct analysis of survey results, and to ensure proper interpretation and application of those results.”
22	William Kominers (cont'd.)		15. Also, in Subsection ii, the Regulation notes that in making the determination, the Department may consider “any relevant factors” and will make its determination after receiving information from the owner, M-NCPPC	Subsection IV.C.2. (g), cont'd.	Re “any relevant factors”, a tenant’s drastic increase or decrease in size, could be a “relevant factor” worthy of department consideration as survey results related to a target NADMS could be affected. If the tenant meets criteria to file an Employer TDM Plan, knowing what their selected TDM strategies are could also be valuable information. Therefore,	Delete word “other” and insert “stakeholders with a role or interest in achievement of the goals for that project.”

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>Staff, and “other stakeholders.”</p> <p>There is no definition for the “other stakeholders.”</p> <p>However, one might question what other stakeholder interests or biases might be, and what purpose they serve in making a determination as to whether the individual applicant’s project is contributing to its goals. What information or input is expected from those “other stakeholders” that would be relevant to the Department’s consideration of whether a particular Project-based Plan is meeting goals? How</p>		<p>a tenant could be considered a stakeholder.</p> <p>Stakeholders are not selected. A stakeholder could be defined as a person, business or organization with a role or an interest in whether or not a development contributes to or meets the NADMS or commuting goals associated with its development. The Department will accept input from any and all those who care to have input. We will use professional judgment to determine if that input is “biased” against the proposed project.</p>	

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>are those “other stakeholders” identified and selected? This again seems to provide a risk of being arbitrary in selecting individuals who might have no knowledge, inaccurate knowledge, or a desire to subvert the success of a competing project while participating in this evaluation with the Department.</p>			
23	William Kominers (cont’d.)		<p>16. The Regulations should set the criteria so they are known and limited. <i>(We assume this comment is re “stakeholders” per comments above.)</i></p>		<p>Stakeholders are not selected, so there is no criteria. We do not feel we should be in the position of determining who has an interest/“standing” to have input to this process. We will use professional judgment in how that input is taken into account.</p>	<p>No change required.</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
24	William Kominers (cont'd.)		<p>TDM Optional Strategies.</p> <p>17. The Table in Appendix A as a menu of TDM Optional Strategies does not seem to be consistent with the various strategies listed in the matrix on the Department website for TDM Plans.</p>	Subsection IV. E.	<p>Revisions to Department's website are in progress. Please note that list of TDM Optional Strategies may be revised occasionally to reflect changes in technologies and TDM strategies over time. Updated lists will be available online.</p> <p><i>Mr. Kominers may be referring to the earlier version of the matrix included with the draft Exec Reg submitted with Bill 36-18. The matrix has changed since then and the one currently used is the one submitted with the Exec Reg that went out for public comment.</i></p>	Additional clarification added at end of paragraphy in Subsection IV.E. so it now reads: "These strategies and additional ones accepted by the Department are listed on the Department's website and will be updated periodically."
25	William Kominers (cont'd.)		18. Also, there is no designation about the content or methodology of the strategies, thus leaving their parameters to subjective interpretation.		The wording is intentionally open to allow flexibility. We do not want to dictate the exact way in which a strategy can be designed or implemented. In fact, in TDM Plans for New Developments, we require that information be provided regarding the way in which a strategy is to be implemented. It is our intention	No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
					over time to compile information on strategies and have that posted on our website, including where possible case studies.	
26	William Kominers (cont'd.)		19. Appendix A is positive, insofar as noting at the end that "strategies listed above are examples of options; this is not an all-inclusive list." The ability of the Department to consider and accept other types of programs and actions allows an opportunity for creativity and for recognition of unique aspects of individual projects and the commuting patterns of their employees.		Acknowledged. Thank You!	No change required.
27	Patricia Harris, Attorney	9/30/21	1.NADMS Goals are just that – Goals – not		Code clarifies the NADMS Goal <u>is</u> a requirement for development	No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
	7600 Wisconsin Ave Suite 700 Bethesda, MD 20814 (301) 841-3832 (301) 986-1300 Main pharris@lercheary.com		requirements. They are aspirational targets.		projects in TMDs that qualify for Level 3 TDM Plans. Code 42A-26 (c) (3) states the owner/applicant must commit to “achieve a base NADMS that is 5% higher than the District’s goal...” Those NADMS goals are established as requirements under the Growth and Infrastructure Policy adopted by Council every 4 years. There is a public hearing and comment period for that Policy where input from the public can be received.	
28	Patricia Harris (cont’d.)		2. Penalties based on false premise that increasing amounts allocated to Project’s TDM measures will result in NADMS goals being met.		There are no “penalties” called for in the Code or in the Exec Reg. There are additional funding commitments provided as an option for MCDOT to implement in the Code. The requirement for these additional funds are consistent with the County Code and are to be dedicated to the Project’s on-site program. MCDOT does not agree this is a “false premise.” For example, for employees	No change required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
					<p>commuting from areas where transit costs would be very high, providing subsidies to buy down the cost of that commute – potentially even to a zero-cost level (i.e., fully-paid) may convince many commuters to use those options. Also, the same principle applies to vanpools for those not living within transit service areas.</p> <p>There is substantial research to support the concept that allocating funding to TDM measures DOES result in increased effectiveness. The White Flint TDM Study cited many analyses showing that relationship.</p>	
29	Patricia Harris (cont'd.)		3.Senior living development projects produce very low residential peak-period trips. NADMS goal for residents should not be based		We agree that low rates of peak period trip generation are likely for senior housing – meaning that achievement of NADMS % becomes much more difficult.	No change. The Code does not enable adjustment for senior housing or other specific types of trips.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			on all residents – should exclude residents of senior housing. Otherwise makes achievement of goal nearly impossible bc so few commuters in peak period in the base # for the NADMS %. Exec Reg should not require additional contributions to on-site TDM program if the NADMS goal is not being achieved.		NADMS goals established elsewhere (such as a Master Plan) cannot be adjusted (e.g., exclude specific types of trips from the NADMS calculations) under the Code or in the proposed Executed Regulations. However, in TDM plan for a new development, senior housing can be a factor in determining the types of strategies selected and possibly as the Plan Level is addressed under Sections IV B. 1 <u>Projects with traffic impacts disproportionate to their size</u> and IV B. 2 <u>TDM Plan Levels</u> .	
30	Jane Stern janestern@yahoo.com	9/30/21	1. I am a 57-year resident of Montgomery County, and a 58-year employee of the Montgomery County Public Schools. I am writing to express serious concerns about this proposal. The ability of Montgomery County Public School staff to		This is not a comment on the Exec Reg. It is more applicable to the County Code provisions. In addition we confirmed with the OCA that Chapter 42A of the County Code does not apply to MCPS. MCPS has expressed support for the provisions related to TDM in	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>get to and from work efficiently depends entirely upon their ability to drive their cars to work in the smallest possible amount of time. Anything which makes it more difficult for them to do this will increase the time burdens on their lives which are already stressed by the extensive demands that the school system places on employees, especially those who are MCEA bargaining unit members.</p> <p>If I understand the intent of the proposal correctly, the plan is to constrain the number of parking spaces provided by employers so as to compel employees to use</p>		<p>the CAP. MCDOT has worked with MCPS to implement TDM strategies in the past and will continue to do so. It may be true for some MCPS employees that the location of their work site makes it seem they need to drive, but for others additional options may be available, such as transit, vanpool, carpool or biking.</p> <p>Under MCDOT's TDM programs, assistance is available for employees throughout the County to find alternatives to driving alone.</p> <p>There are no provisions in either the Code or the Exec Reg "requiring" employees to use transit. Nor are there any provisions "requiring" no parking be provided.</p> <p>There is no impact on the MCPS CBA from the Exec Reg.</p>	

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>public transportation, bicycles, scooters etc.to come to work. MCEA unit members cannot do this because many have to live in faraway jurisdictions since housing in Montgomery County is out of range for many of them. How sad that so many who provide the high quality of public services to Montgomery County residents are unable to access those services for themselves and their families! Of those who live in the county, many still have long commutes.</p> <p>Recent reports have indicated that demands on employees are escalating due to the difficulty of hiring needed staff during the</p>			

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>COVID pandemic. Current employees are being required to “fill in” by giving up their contractually and legally mandated duty-free lunch periods, teaching extra classes and remaining at school to supervise students beyond their contractual on-site workday. Current conditions mean that many full-time positions remain unfilled because prospects become aware of these difficult conditions. The prospect of being required to use public transportation or other inefficient commuting methods in the future will certainly discourage many from favorably considering a</p>			

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>teaching career in the county.</p> <p>This proposal also runs afoul of the following provisions of the negotiated agreement between MCPS and MCEA, which says, <i>Article 11 = Physical Environments</i> <i>C.3. Parking</i> <i>a. Adequate amounts of employee parking in safe, well-lit lots.</i> <i>b. Should the number of staff that require accessible parking exceed the number of accessible spaces provided by ADA guidelines, it is a reasonable accommodation for the administration to ensure that sufficient accessible parking spaces are available to staff that require them.</i> <i>Staff will furnish appropriate</i></p>			

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p><i>documentation from their motor vehicle administration upon request.</i></p> <p>In my daily life as a resident of the county, I must access services from a variety of businesses. Should some such locations suffer from inadequate parking facilities, preventing me from patronizing them conveniently and efficiently, I will simply seek out alternative providers. This may compel me actually to drive further than I otherwise would if all business centers had adequate parking.</p> <p>My current vehicle is a 2021 Avalon Hybrid which gets more than a measured 40 mpg. I spent a good bit of</p>			

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>extra money to obtain such a vehicle because of my concern for the environment, and I would be very disappointed if I could not use it. My next vehicle will, no doubt, be an all- electric one. I want to suggest that a better strategy for saving the environment would be to encourage the purchase of all-electric vehicles by exempting them from tolls on Maryland’s highways. This would have the added benefit of encouraging the use of I-200 and other toll roads which are not really paying off for our investment in them. Thank for your serious consideration of these important concerns.</p>			

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
31	Jane Stern (cont'd.)		2....the plan is to constrain the number of parking spaces provided by employers so as to compel employees to use public transportation, bicycles, scooters etc.to come to work.		The proposed regulation does not compel anyone to use any particular mode.	No changes required.
32	Jane Stern (cont'd.)		3.The prospect of being required to use public transportation or other inefficient commuting methods in the future will certainly discourage many from favorably considering a teaching career in the county.		There are no provisions in either the Code or the Exec Reg "requiring" employees to use transit. Nor are there any provisions "requiring" no parking be provided.	No changes required.
33	Jane Stern (cont'd.)		4.This proposal also runs afoul of the following provisions of the negotiated agreement between		There is no impact on the MCPS CBA from the Exec Reg. If MCPS opts to engage in these types of programs, availability of "adequate amounts of employee parking..." would depend upon	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>MCPS and MCEA, which says, <i>Article 11 = Physical Environments</i> <i>C.3. Parking</i> <i>a. Adequate amounts of employee parking in safe, well-lit lots.</i> <i>b. Should the number of staff that require accessible parking exceed the number of accessible spaces provided by ADA guidelines, it is a reasonable accommodation for the administration to ensure that sufficient accessible parking spaces are available to staff that require them. Staff will furnish appropriate documentation from their motor vehicle administration upon request.</i></p>		<p>how many employees were using alternative modes vs. SOVs to get to work.</p>	

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
34	Jane Stern (cont'd.)		5.I want to suggest that a better strategy for saving the environment would be to encourage the purchase of all-electric vehicles by exempting them from tolls on Maryland's highways.		The County has a program to provide a purchasing coop for EVs. There are also state and federal incentives available – and the state has exempted EVs from HOV restrictions. However incentivizing use of EVs does not address the issue of reducing auto travel to combat traffic congestion and improve the environment and climate or quality of life. And it will take many years until enough EVs are on the road to replace the existing autos re emissions reductions.	No changes required.
35	Matt Gordon, Attorney Selzer Gurvitch Rabin Wertheimer & Polott, PC	9/30/2021	1. We have highlighted two primary comments and concerns to the Executive Regulations below. As an initial point, we recommend that the Executive Regulations be re-advertised for another 30-60 days of public comment. We have		The number of comments received indicates awareness of the opportunity to provide comments on the reg was fairly high and does not indicate there is a need to extend the period for comments.	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			only heard from one client that is aware of the Executive Regulations and it is our impression that many stakeholders have not had an opportunity to review and provide comments on the Executive Regulations.			
36	Matt Gordon (cont'd)		<p>2. Commitment to fund and implement the TDM Plan</p> <p>Section IV.C.2.b and Section IV.C.3.b describe the financial commitments that an applicant for a Level 2 and Level 3 must commit to spend toward TDM strategies or measures annually. These sections go on to state “[t]his commitment to support the project’s on-site</p>		See detailed discussion and responses below.	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>program <u>with these financial resources will be in addition to required payment of TDM fees to the County.</u>" (emphasis added).</p>			
37	Matt Gordon (cont'd)		<p>3.The application of TDM fees to a project with a Level 2 or 3 TDM Plan and then also requiring these projects to expend a commensurate amount of financial resources for on-site TDM measures results in TDM fees being applied to these projects two (2) times. This is unfair (and will discourage economic development in the County) as a matter of policy and is also inconsistent with how fees are evaluated under Maryland law.</p>		See detailed discussion and responses below.	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
38	Matt Gordon (cont'd)		<p>4. A fee is treated differently from a tax under Maryland law. Section 42A-26 (c) makes clear that these TDM fees are not a tax. The Court of Appeals has held that “[a] regulatory measure may produce revenue, but in such a case the amount must be reasonable and have some definite relation to the purpose of the act.” <i>Maryland Theatrical Corp. v. Brenan</i>, 180 Md. 377, 381 (1942) (emphasis added). This is a different from a tax where the Court of Appeals has found that a tax “on the other hand, may also provide for regulation, but if the raising of revenue is the primary purpose, the amount</p>		<p>The expenditure of funds for an Applicant’s/Owner’s on-site TDM program is not a fee. The Code & Reg makes it clear this is a separate financial commitment by the Project to support the on-site project-based strategies. This money does not come to the County. The TDM fee is simply being used as a metric on which to base the level of additional resources the Project must commit to their on-site program.</p>	<p>No changes required.</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p><u>of the tax is not reviewable by the courts.” For a fee to be valid, it cannot be unreasonable and arbitrary.</u></p>			
39	Matt Gordon (cont'd)		<p>5. <u>In this instance, Section 42A-26 (c)(2) expressly provides that the “The rate of a transportation demand management fee must be set to produce not more than an amount of revenue substantially equal to...the portion of the cost of any program implemented under section 42A-23(b), including any vehicle or other equipment necessary to carry out the program, reasonably attributable to the transportation effects of the development</u></p>		<p>The TDM fee IS set at a rate “not more than” the cost of the County’s program – and in fact is MUCH less. The County is continuing to support TDM efforts in each of the TMDs- including support for the entire transit system, cost of incentives like FareShare, cost of car/vanpool matching system and parking controls, etc. The funds required under the Code to be set aside for the on-site project-based TDM program are to be used for that program’s purposes, not to support the County’s broader TDM program which are supported only partially by the current TDM fees.</p>	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<u>project or property subject to the fee.</u> (emphasis added).			
40	Matt Gordon (cont'd)		6.If the annual TDM fee is intended to be proportionate and reasonable related to cost of TDM measures and strategies necessary to mitigate the transportation effects of the development project, it is unreasonable and arbitrary to also require these same projects to expend the same amount of financial resources toward on-site TDM measures. In short, the Executive Regulation would impose the same TDM fees on certain projects two (2) times and it is not permissible under Maryland Law to		<p>The expenditure of funds for an Applicant's/Owner's on-site TDM program is not a fee.</p> <p>The Code & Reg makes it clear this is a separate financial commitment by the Project to support the on-site project-based strategies. This money does not come to the County. The TDM fee is simply being used as a metric on which to base the level of additional resources the Project must commit to their on-site program.</p> <p>Also see Response on Line 36 above. The requirements in the proposed Exec Reg will not result in collection of fees that produce a larger amount of revenue than necessary. They will not produce revenue to the County at all.</p>	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			collect fees that produce a larger amount of revenue than reasonably necessary to mitigate transportation effects of a project.			
41	Matt Gordon (cont'd)		7. In addition to being inconsistent with State law, this policy will create inequities between development projects that are subject to a Level 2 or Level 3 TDM Plan. By way of example, a 500,000 square-foot office building that is presently occupied in Downtown Bethesda is required to pay a TDM fee of \$50,000 annually. Another 500,000 square-foot project that is going through the Planning Board review process today, will be required		Laws and costs of development change over time. The Code includes provisions for increasing the amount of funding dedicated to on-site measures. Most new projects will incorporate the additional costs for the TDM program into their pro-forma for operating costs, which then reflect the true costs of operating these projects, rather than relying on the public to cover those costs. The costs to developers, the community and the County of not addressing the issues the new law & reg are designed to address will be much higher in terms of economic and climate impacts from more use of auto modes of travel.	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>to pay \$50,000 in TDM fees annually and spend another \$50,000 toward on-site TDM measures. Why should a project be required to spend two (2) times as much just because it went through the development review process later? This will discourage growth in Montgomery County.</p>			
42	Matt Gordon (cont'd)		<p>8. Proposed Solution: To make the Executive Regulations fair and permissible under Maryland law, a project that is subject to a TDM Plan (Level 2 or 3) must be exempt or receive a credit against the annual TDM fees due that is equal to the amount</p>		<p>With this proposed solution the County would not collect adequate TDM fees to support the portion of the overall TDM program elements that each individual project does not and cannot support.</p>	<p>No changes required.</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			of financial resources spent annually toward TDM measures.			
43	Matt Gordon (cont'd)		<p>9. Penalties for Projects Note Meeting TDM Goals</p> <p>The penalties for projects not meeting the TDM goals (particularly Level 3 TDM Plans) are too broad and need to be more flexible to address the specific, unique needs of each project.</p>		There are no “penalties” for projects not meeting goals. They just must make changes to their strategies and fund those to the level required. This approach is, as recommended by the comment, “flexible to address the specific needs of each project.”	No changes required.
44	Matt Gordon (cont'd)		10. The Executive Regulations provide no metrics for quantifying the extent that a project is not meeting its goals. For instance, there is no distinction between whether a project fails to meet the goal by 1% or 20%. There should be some level		There is a provision in IV.C.3. g) of the Reg that states: “The Department will determine the level of increased financial support to be required up to the maximum multiple of the TDM fees as established in this Regulation, ...”	IV.C.3. g) – Added sentence for clarification: “The Department may exercise judgment as to whether the maximum amount of additional funding indicated will be required in the event a project falls only a small amount short of the goals at each point in the process.”

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>of a buffer for projects that are within 5% fo the goal such that they are not required to expend additional funds. For instance, a project that comes up short of the goal by 5% or less in year 6 should not be required to spend a multiple of two-times the annual TDM fee. This project is clearly close to the overall goal so it would be more and practical to ask the applicant to evaluate their selected strategies and make some minor adjustments. It is unreasonable to treat a project that misses its goal by 1% the same as a project that misses the same goal by 20%, and the Executive Regulations</p>			

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			provide no rational or fair way to distinguish between these examples.			
45	Matt Gordon (cont'd)		11. In general, the penalties are excessive and disproportionate for a Level 3 project failing to meet its goals in years 6,8,10 and 12 (especially if a project is within 5% or less of the goal). Requiring these projects to increase their funding by 2x, 4x, 6x, and 8x (respectively) toward TDM strategies is arbitrary and not reasonably related to the traffic impacts of a project. A one size fits all approach for projects failing to meet their goals is not feasible or fair. The language should be more flexible and		There are no “penalties.” The reg does not propose a “one-size-fits-all” approach. It is based on the size and location of each project.	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			include the potential to increase funding, but it cannot be a mandate.			
46	Matt Gordon (cont'd)		12. Proposed Solution: There should be no obligation that a project increase funding if they fail to meet their goal in years 6 and 8. The consequence should be that the applicant is required to explore alternatives and make modifications to their existing strategies in the TDM Plan. In years 10 and 12, it may be reasonable to ask an applicant to consider increasing their funding if they are not within 5% of the established goal, but it should not be mandate that they increase it by 6 and 8		The recommendation here to require the project to “explore alternatives and make modifications to their existing strategies” is already included in the Exec Reg wherever it discusses “Addition and Substitution of Strategies.” Changes to strategies can be made by the project by changing strategies and reallocating resources, well before additional resources need to be allocated. The project has 6 years to make those changes. However if those changes have not resulted in improved performance, without a requirement to provide adequate funding for new strategies, projects are unlikely to adopt them.	No additional changes required. Some additional clarifying language has been added in response to these comments – see Line 41 above.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>times respectively (this is not a defensible fee under well-established Maryland law). The maximum increase on funding for any project should be capped at 2 times their annual TDM fee by regulation, and any increase in the financial commitment must relate to how far or close the project is to meeting the goal. If a project is within 5% of meeting their goal, it is not reasonable to require that they spend a 8 times their initial obligation.</p>			
47	<p>Shane Pollin PS Ventures, LLC Spollin@psvdev.com</p>	10/12/21	<p>1. I write you today on behalf of PS Ventures, LLC to again raise concerns with transportation regulations which</p>		See discussion below.	No changes required.

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>utilize NADMS as a means to evaluate individual projects and against which project/developer success is measured.</p> <p>While we are supportive of the concept of the implementation of more uniformly applicable Transportation Demand Management Program throughout the County, we nonetheless continue to have several items which we think deserve particular focus.</p>			
48	Shane Pollin (cont'd.)		1. NADMS – First, globally, we have some concern that NADMS <u>should not (and probably cannot)</u> be realistically or	Reg Section IV. C. Components of Project-based TDM Plans, Level 1, 1.vii	NADMS – The Commuter Survey is the way we currently measure NADMS. For both mixed- and single-use developments, the survey is sent to employers to distribute to employees and to	Change made to clarify basis for determining NADMS using Commuter Survey and other data: Wording already included: IV. C. “Components of

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>accurately measured on a project by project basis. Even a cursory study of NADMS reveals that it is most typically applied across a citywide transportation network not to individual buildings (see http://en.wikipedia.org/wiki/Modal_share)? We think there will need to be some clarification as to how NADMS measurements are conducted especially on a mixed-use project.</p> <p>2. The Premise of NADMS - Any project's ability to achieve the worthy NADMS goals set forth within the Master Plan will require the successful</p>		<p>residents via managers of multi-unit buildings. The survey asks questions about the frequency and time of day of travel, the mode or type of transportation used, and the purpose of the trip (i.e., school, work, non-school or non-work trips). The survey is completed via a link or in paper form. The Commuter Survey is intended to be conducted biennially (every other year) and is currently the basis for determining a building's or project's progress toward achieving its NADMS goal, as well as the progress toward achieving the area-wide NADMS goal.</p> <p>We agree that incentives, options and buy-in from people (in the sense of the on-site population of the project) are all key elements in a development's ability to achieve its NADMS goals.</p>	<p>Project-based TDM Plans," in Level 1 at 1.vii says: TBC must "assist in distribution ...(etc) of commuting surveys." That same provision applies to Levels 2 & 3. Added clarifying language to IV.C.2. g) at end of that paragraph: "NADMS will be determined by the Department based on commuter surveys conducted by the Department and using other data relevant to this determination in the Department's professional judgement, consistent with County Code."</p> <p>Later in that same section, in paragraph ii., wording has also been added</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

Line	Name & Contact Info	Date Received	Comment	Section of Code &/or Exec Reg	Response	Changes to Regulation
			<p>implementation of at least three components.</p> <ul style="list-style-type: none"> ○ Incentive - Efforts on behalf of individual projects to encourage the use of alternative means of transportation; ○ Options - The successful investment in and implementation of a transit network which provides options other than cars; and ○ People - The community's willingness to accept both the incentives provided by projects and the alternative transportation system largely implemented by the County. 		<p>The survey is required in the County Code and the regulation states that the TC must assist in its dissemination. However, because new ways of collecting data are becoming available and a survey may not always be the only way travel data is collected, providing details about the survey in the regulation is not advisable, since the survey will likely require frequent changes. One way to communicate information regarding the most current form of NADMS-related data collection is to include that information on the MCDOT website.</p>	<p>stating: "Information on how the commuter surveys are to be conducted and types of information to be collected will be made available to Transportation Coordinators in advance of the survey effort."</p> <p>In IV.C.3. wording was added to clarify that Level Three TDM Action Plans will be assessed in that same way: "This plan must include all components required for the Level Two Project-based TDM Action Plan, and will be assessed as to achievement of the project goal in the same way as for the Level Two Project-based Action Plan, consistent with IV.C.2. g) above, plus the following:"</p>

**Comments on Proposed Executive Regulation 8-21
Implementation of Chapter 42A, Article II. Transportation Demand Management**

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49	Shane Pollin (cont'd.)		<p>3.As to incentive, we are supportive of Transportation Management Agreement (TMA) approach as the TMA can provide certainty to the development community. Each project can be held accountable for compliance with and continued satisfaction of the <i>measures</i> identified within their TMA (e.g. the provision of bus passes, distribution of ride-share literature, installation and maintenance of bicycle facilities, etc.).</p> <p>Enforcement of these agreements poses no new challenges as this type of agreement is already enforced within the County as part of existing site</p>		<p>Acknowledged.</p> <p>Most of this part of the comment relates back to the Code, not to the Exec Reg detailing how the Code provisions will be implemented.</p> <p>Note that we understand the challenge of achieving the NADMS goals on a Project-by-Project basis.</p> <p>However, if each of the new projects does NOT make substantial strides toward (Level 2) or actually achieve (Level 3) the goals, it will be impossible for the County to achieve those goals for the overall TMD or Policy Area – or the community at large. And it is based upon the assumption that those NADMS goals WILL be achieved by those new Projects that they are able to be approved.</p> <p>We understand this is partnership between the public and private sector – but need to ensure the private sector partners are doing all they can to</p>	No change required.

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Implementation of Chapter 42A, Article II. Transportation Demand Management**

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			<p>plan enforcement mechanisms.</p> <p>The key we believe is for projects to be held accountable for the critical component of NADMS which they control, namely the creation of measures which incentivize, not satisfaction of the goal itself. In addition to the creation of these incentives, <i>it will also take the availability of actual transit options</i> (e.g. BRT) and buy in of the community <i>if the goal is to be achieved</i>.</p> <p>If one agrees with the premise that it will take at least three components to achieve NADMS goals, then it would seem illogical to expect individual projects to have the capability of shouldering the full burden.</p>		<p>provide projects that support these goals.</p>	

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