

## MEMORANDUM

October 12, 2020

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM: Pamela Dunn, Senior Legislative Analyst  
Glenn Orlin, Senior Analyst

SUBJECT: 2020-2024 Subdivision Staging Policy (SSP) – school issues and a follow-up transportation issue

PURPOSE: Worksession – recommendations expected

**Expected Attendees for this Worksession:**

Casey Anderson, Chair, Montgomery Planning Board  
Gwen Wright, Director, Planning Department  
Tanya Stern, Deputy Director, Planning Department  
Jason Sartori, Chief, Countywide Planning Division, Planning Department  
Lisa Govoni, Housing Policy Coordinator, Countywide Planning Division  
Hye-Soo Baek, Senior Planner, Countywide Planning Division  
Meredith Wellington, Office of the County Executive  
Mary Beck, Office of Management and Budget  
Pofen Salem, Office of Management and Budget  
Essie McGuire, Montgomery County Public Schools  
Christopher Conklin, Director, Department of Transportation  
Gary Erenrich, Special Assistant, Department of Transportation  
Andrew Bossi, Senior Planning Specialist, Department of Transportation  
Eric Graye, Planning Supervisor, Planning Department

**Councilmembers: Please bring your copies of the SSP Draft and Appendices to this worksession.**

This report continues the evaluation of school adequacy standards and the rules that apply when a school service area is deemed overutilized. It also revisits the Motor Vehicle Adequacy Test mitigation priorities and addresses the proposed name change. The school-related portion of this report was originally released as an Addendum to the October 5 worksession. Councilmember Jawando released a memorandum to his Council colleagues shortly after the Addendum was posted. This report references the Councilmember's recommendations where applicable. In this report each of the Planning Board's recommendations are referenced by its 'Rec' number followed by the page number in the Planning Board's Draft Report, in turn followed by its section and page number in the Draft SSP resolution, found in Appendix L (p. 86). For example, the

recommendations on the Utilization Premium Payment are referenced as “Rec. 4.16, (pp. 59-60; S3, App. p. 91).”

### Utilization Premium Payment

Rec. 4.16 (pp.59-60; S3, App. p. 91) establishes the Utilization Premium Payment (UPP), a fee paid by an applicant when a school’s projected utilization<sup>1</sup> exceeds 120 percent. The Planning Board would apply the UPP to each School Service Area, shown in Table 1 below.

**Table 1.**

<b>Planning Board Draft Recommendation 4.5</b>					
<b>School Adequacy Standards</b>		<b>Adequacy Status</b>			
<b>Projected Utilization</b>	<b>Projected Seat Deficit</b>	<b>Greenfield Impact Areas</b>	<b>Turnover Impact Areas</b>	<b>Infill Impact Areas</b>	<b>Rec.</b>
<b>&gt; 120%</b>	N/A	Utilization Premium Payment Required	Utilization Premium Payment Required	Utilization Premium Payment Required	Rec. 4.16
<b>&gt; 125%</b>	≥ 115 seats for ES ≥ 188 seats for MS N/A for HS	Moratorium			Rec. 4.9

According to the SSP Draft, if the schools serving a residential development project are overcapacity, the developer will be required as a condition of preliminary plan approval to make a Utilization Premium Payment. The payment would be made by the developer when it applies for a building permit, based on the Annual School Test in effect at that time. If multiple schools serving the project site exceed the given threshold then payments are required for each. The Utilization Premium Payment would be based on a percentage of the applicable standard impact tax rates, as shown in Table 2, below. The factors vary by school level to reflect the relative impact housing units have on student enrollment at each level.

**Table 2.**

<b>School Level</b>	<b>Payment Factor</b>
Elementary	25% of the standard impact tax rate for the School Impact Area and dwelling type
Middle	15% of the standard impact tax rate for the School Impact Area and dwelling type
High	20% of the standard impact tax rate for the School Impact Area and dwelling type

<sup>1</sup> 4-years in the future. At Sept. 30 worksession Committee voted (3-0) to a 4-year time horizon.

Table 3 identifies the Utilization Premium Payment rates<sup>2</sup> by School Impact Area, school level and dwelling unit type.

**Table 3.**

<b>School Impact Area</b>	<b>School Level</b>	<b>Single-family Detached</b>	<b>Single-family Attached</b>	<b>Multifamily Low-Rise</b>	<b>Multifamily High-Rise</b>
<b>Infill Impact Area</b>	Elementary	\$4,927	\$4,328	\$1,612	\$798
	Middle	\$2,956	\$2,597	\$967	\$479
	High	\$3,941	\$3,462	\$1,290	\$639
<b>Turnover Impact Area</b>	Elementary	\$5,396	\$5,982	\$2,889	\$582
	Middle	\$3,237	\$3,589	\$1,733	\$349
	High	\$4,316	\$4,786	\$2,311	\$465
<b>Greenfield Impact Area</b>	Elementary	\$8,452	\$7,173	\$7,355	-- <sup>3</sup>
	Middle	\$5,071	\$4,304	\$4,413	--
	High	\$6,762	\$5,738	\$5,884	--

There are several elements of the Utilization Premium Payment that warrant discussion:

- Who should be required to make a payment? Or, more precisely, what are the adequacy standards that determine which applicants will be required to make a UPP?
- What should they pay? Basically, what is a reasonable fee to pay when a school is overutilized? Should the fee increase as utilization increases?
- When should they pay? Typically impact taxes and fees are paid at the time a building permit for residential construction is approved based on the rates in effect at that time.

There are two factors that should determine whether a Utilization Premium Payment is required (as established by the Annual School Test). One, as the Planning Board suggests, is the school utilization rate. The Board recommends that development in any school service area where utilization exceeds 120 percent be required to make a Utilization Premium Payment.

*Is 120 percent the right threshold?*

In lieu of a moratorium standard in the Turnover and Infill Impact Areas, the Planning Board suggests a Utilization Premium Payment kick in at the current threshold for moratorium. The former version of the UPP, the School Facility Payment (SFP), was created to as a way to

<sup>2</sup> Based on 100 percent of the cost of a student seat as recommended by the Planning Board.

<sup>3</sup> Student Generation Rate cannot be calculated, too few student records for this structure type – alternative rate TBD.

slow the pace of development (based on the premise that some projects would choose not to move forward due to the added cost) while collecting additional funds for school facilities (from those that did) before facilities became too overutilized. If utilization at any school level within a cluster exceeded 105 percent, a School Facility Payment was required.

In 2016, the School Facility Payment was dropped in lieu of raising impact taxes by an additional 10 percent, to 120 percent of the cost of a student seat. The Planning Board is recommending the impact tax be adjusted back to 100 percent of the cost of a student seat, and the GO Committee concurs (3-0). Given this, there may be interest in requiring applicants to contribute to school facilities as they become more crowded, rather than waiting until they reach a level currently considered so inadequate as to require a moratorium. Councilmember Jawando has written a memorandum (see © 1-2) to his Council colleagues recommending that development in any school service area with utilization at or above 105 percent be required to make a Utilization Premium Payment. **Council staff concurs with setting the UPP threshold at 105 percent utilization.** The Executive supports increasing impact taxes in place of the UPP; however, if the Council chooses to implement the UPP, he agrees the threshold should be set at 105 percent. The MCCPTA also supports setting the UPP threshold at 105 percent utilization. The testimony of Lerch, Early and Brewer, and the MBIA supports the use of UPP as an alternative to moratorium; both have some concerns regarding the reevaluation process at the time of payment (this issue is covered later in this report).

*Should seat deficit be added to the standard?*

The current two-tier adequacy test takes into account differences in school size through the use of seat deficit as a second measure of adequacy. In its Capital Facilities Master Plan, MCPS states that while their primary measure of adequacy is utilization, with 80-100 percent being the target for each facility. Seat deficit information is used in capital planning as the threshold for consideration of an addition to an existing facility. **Council staff suggests retaining seat deficits (adjusted for program capacity) as a second measure of adequacy when setting thresholds for Utilization Premium Payments, and moratoria if retained.** The Superintendent supports Utilization Premium Payments noting they should be based on seat deficits as well as utilization rates. Table 4 below shows the applicable revision to the Adequacy Standards Table under Rec. 4.5 (p.44; S2.2, App. p. 91).

**Table 4.**

School Adequacy Standards		Adequacy Status			
Projected Utilization	Projected Seat Deficit	Greenfield Impact Areas	Turnover Impact Areas	Infill Impact Areas	Rec.
> 105%	≥ 85 seats for ES ≥ 126 seats for MS ≥ 180 seats for HS	Utilization Premium Payment Required			Rec. 4.16

*What should applicants pay in areas with overutilized schools?*

The proposed UPP, like the prior SFP, are both calculated based on a percentage of the impact tax. Impact taxes are paid by dwelling unit type, and under the proposed SSP by School Impact Area. The UPP must be apportioned to school level to so that it can be implemented to match the adequacy test which is applied to each school. The Planning Board Draft uses a factor reflective of the relative impact a particular structure type has on student enrollment at each school level. And like the SFP, the Planning Board proposes the UPP be based on 60 percent of the impact tax<sup>4</sup> (if all three school levels are inadequate).

However, before deciding on the rate the Committee should consider that if the moratorium threshold is raised, or eliminated, this provides an opportunity to take a two-tiered approach to the UPP. The Committee could recommend setting one rate at 105 percent utilization up to 120 percent (or some other threshold) then setting a higher rate at 120 percent up to another threshold (perhaps 135 percent) – which would then trigger moratorium or could trigger a third tier UPP, if there is no moratorium standard. Councilmember Jawando recommends setting an initial UPP threshold at 105 percent with a required payment equal to 50 percent of the applicable impact tax rate, then setting a second tier threshold at 120 percent utilization with a required payment equal to 100 percent of the applicable impact tax rate. **Council staff suggests setting the UPP threshold at 105 percent, with a required payment equal to 30 percent of the applicable undiscounted and unexempted impact tax rate, then setting a second tier threshold at 120 percent utilization with a required payment equal to 60 percent of the applicable undiscounted and unexempted impact tax rate.** Council staff's suggestion follows the rate proposed by the Planning Board, which equals the rate charged under the School Facility Payment, however, staff has no objection to the higher rates proposed by Councilmember Jawando.

Below are several options for the Committee to consider including the threshold for implementing the UPP, the threshold for moratorium, if applicable, and the UPP rate. The Committee has recommended a 4-year time horizon for the evaluation of school utilization, this choice plus whether the Council<sup>5</sup> chooses to retain moratoria (and if so, how) have implications for how the Committee may choose to set the UPP threshold(s) and rates. Table 5 shows the school service areas that would be affected (either for a UPP or moratoria) using a 4-year projection horizon under various utilization thresholds<sup>6</sup>.

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<sup>4</sup> Calculated at 100 percent of the cost of a student seat (currently impact taxes are based on 120 percent of the cost).

<sup>5</sup> The Committee voted (2-1) in favor of eliminating moratoria, CM Jawando recommends a 135% moratorium threshold.

<sup>6</sup> 3-year and 5-year projections under various utilization thresholds are attached at © 3-4.

**Table 5.**

<b>School Service Areas Under Various Utilization Thresholds<sup>7</sup></b>				
4-year Projection Horizon				
<b>105%</b>	<b>120%</b>	<b>125%</b>	<b>135%</b>	<b>150%</b>
<b>High Schools</b>				
M. Blair	M. Blair			
J. H. Blake				
W. Churchill	W. Churchill			
Clarksburg	Clarksburg			
Albert Einstein	Albert Einstein	Albert Einstein		
Gaithersburg				
Walter Johnson	Walter Johnson	Walter Johnson	Walter Johnson	
R. Montgomery	R. Montgomery			
Northwest				
Quince Orchard	Quince Orchard	Quince Orchard	Quince Orchard	
<b>Middle Schools</b>				
Argyle	Argyle			
<b>Elementary Schools</b>				
Ashburton				
Bannockburn	Bannockburn	Bannockburn	Bannockburn	
L. Barnsley				
Bethesda	Bethesda	Bethesda		
Burning Tree	Burning Tree	Burning Tree		
Burtonsville				
Capt. Daly				
Diamond	Diamond			
Farmland				
Greencastle	Greencastle			
Highland View	Highland View	Highland View	Highland View	
S. Matsunaga				
Mill Creek	Mill Creek	Mill Creek	Mill Creek	Mill Creek
J. A. Resnik	J. A. Resnik			
R. C. Forest				
Snowden Farm				
South Lake				
Watkins Mill	Watkins Mill			

Table 6 shows the Planning Board’s recommendation regarding the UPP under a 3-year projection and the effect of moving to a 4-year projection.

<sup>7</sup> And applicable seat deficits based on program capacity.

**Table 6.**

<b>Planning Board Recommendation</b> 3-year Projection Horizon Change to 4-year Projection Horizon	
Utilization Threshold	
120%	125%
Utilization Premium Payment 60% of Impact Tax	Moratorium Greenfield School Impact Area
High Schools	
M. Blair	
W. Churchill	
Clarksburg	
Albert Einstein	
Walter Johnson	
<del>R. Montgomery</del>	
Quince Orchard	
Middle Schools	
Argyle	
Elementary Schools	
<del>Ashburton</del>	
Bannockburn	
Bethesda	
Burning Tree	
<del>Burtonsville</del>	
Diamond	
Greencastle	
Highland View	
Mill Creek	
<del>W. T. Page</del>	
J. A. Resnik	
<del>South Lake</del>	
Watkins Mill	

And Table 7 shows Council staff's suggestion regarding UPP with a 4-year projection horizon (the same thresholds proposed by Councilmember Jawando). However, there are many other possibilities<sup>8</sup>.

<sup>8</sup> For reference attached on © 3-4 are tables showing school service areas under various utilization thresholds using 3-year and 5-year projections

**Table 7.**

<b>Council Staff Recommendation</b> (CM Jawando recommended thresholds) 4-year Projection Horizon		
<b>Utilization Threshold</b>		
<b>105%</b>	<b>120%</b>	<b>135%</b>
<b>Utilization Premium Payment</b> <b>30% of Impact Tax</b> (CM Jawando UPP 50% )	<b>Utilization Premium Payment</b> <b>60% of Impact Tax</b> (CM Jawando UPP 100%)	<b>Countywide Moratorium</b> (or third tier UPP, if moratorium eliminated)
<b>High Schools</b>		
J. H. Blake	M. Blair	Walter Johnson
Gaithersburg	W. Churchill	Quince Orchard
Northwest	Clarksburg	
	Albert Einstein	
	R. Montgomery	
<b>Middle Schools</b>		
	Argyle	
<b>Elementary Schools</b>		
Ashburton	Bethesda	Bannockburn
L. Barnsley	Burning Tree	Highland View
Burtonsville	Diamond	Mill Creek
Capt. Daly	Greencastle	
Farmland	J. A. Resnik	
S. Matsunaga	Watkins Mill	
R. C. Forest		
Snowden Farm		
South Lake		

For context in considering the Utilization Premium Payment rate that should apply at any given threshold, Table 8 show the Planning Board’s proposed (standard) impact tax rates by dwelling type and school impact area.

**Table 8.**

<b>Impact Tax Rates</b>	<b>Single-family</b>		<b>Multifamily</b>	
	<b>Detached</b>	<b>Attached</b>	<b>Low-Rise</b>	<b>High-Rise</b>
<b>Infill Impact Areas</b>	\$19,707	\$17,311	\$6,448	\$3,193
<b>Turnover Impact Areas</b>	\$21,582	\$23,928	\$11,555	\$2,326
<b>Greenfield Impact Areas</b>	\$33,809	\$28,691	\$29,420	tbd



Tables 9, 10 and 11 show the applicable UPP at 60, 50 and 30 percent of the school impact tax, respectively.

**Table 9.**

<b>Utilization Premium Payments (60% of Impact Tax)</b>		<b>Single-family</b>		<b>Multifamily</b>	
		<b>Detached</b>	<b>Attached</b>	<b>Low-Rise</b>	<b>High-Rise</b>
<b>Infill Impact Areas</b>	<b>Elementary</b>	\$4,927	\$4,328	\$1,612	\$798
	<b>Middle</b>	\$2,956	\$2,597	\$967	\$479
	<b>High</b>	\$3,941	\$3,462	\$1,290	\$639
<b>Turnover Impact Areas</b>	<b>Elementary</b>	\$5,396	\$5,982	\$2,889	\$582
	<b>Middle</b>	\$3,237	\$3,589	\$1,733	\$349
	<b>High</b>	\$4,316	\$4,786	\$2,311	\$465
<b>Greenfield Impact Areas</b>	<b>Elementary</b>	\$8,452	\$7,173	\$7,355	tbd
	<b>Middle</b>	\$5,071	\$4,304	\$4,413	tbd
	<b>High</b>	\$6,762	\$5,738	\$5,884	tbd

**Table 10.**

<b>Utilization Premium Payments (50% of Impact Tax)</b>		<b>Single-family</b>		<b>Multifamily</b>	
		<b>Detached</b>	<b>Attached</b>	<b>Low-Rise</b>	<b>High-Rise</b>
<b>Infill Impact Areas</b>	<b>Elementary</b>	\$4,106	\$3,607	\$1,343	\$665
	<b>Middle</b>	\$2,463	\$2,164	\$806	\$399
	<b>High</b>	\$3,284	\$2,885	\$1,075	\$533
<b>Turnover Impact Areas</b>	<b>Elementary</b>	\$4,497	\$4,985	\$2,408	\$485
	<b>Middle</b>	\$2,698	\$2,991	\$1,444	\$291
	<b>High</b>	\$3,597	\$3,988	\$1,926	\$388
<b>Greenfield Impact Areas</b>	<b>Elementary</b>	\$7,043	\$5,978	\$6,129	tbd
	<b>Middle</b>	\$4,226	\$3,587	\$3,678	tbd
	<b>High</b>	\$5,635	\$4,782	\$4,903	tbd

**Table 11.**

Utilization Premium Payments (30% of Impact Tax)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	\$2,464	\$2,164	\$806	\$399
	Middle	\$1,478	\$1,299	\$484	\$240
	High	\$1,971	\$1,731	\$645	\$320
Turnover Impact Areas	Elementary	\$2,698	\$2,991	\$1,445	\$291
	Middle	\$1,619	\$1,795	\$867	\$175
	High	\$2,158	\$2,393	\$1,156	\$233
Greenfield Impact Areas	Elementary	\$4,226	\$3,587	\$3,678	tbd
	Middle	\$2,536	\$2,152	\$2,207	tbd
	High	\$3,381	\$2,869	\$2,942	tbd

*How should the funds from the UPP be spent?*

Text to implement the UPP, as was the case for the School Facility Payment, must be included in Chapter 52 of the County Code. This text will not only set up the County's ability to collect the UPP, it will also specify how and when the payments must be made, and how the funds collected from the UPP must be spent.

Under the School Facility Payment, the funds collected were required, to the extent possible, to be spent at the school level and in the school cluster for which they were collected. The UPP, like the SFP, is a fee paid when school utilization is deemed inadequate. Because it is a fee, and not a tax, the funds taken in from the UPP must have a rational nexus or connection to the reason for its collection. **Council staff suggests the funds collected from the Utilization Premium Payment be required to be spent at the school level and in the school cluster in which they are collected.** This is slightly different from the SFP in that the UPP is being assessed at the school service area level; however, restricting the funds be spent in such a narrow way may make it difficult for MCPS to use them. The solution to over utilization may be an addition at another school at the same level therefore allowing some flexibility in this regard seems appropriate.

*When and how should the UPP be collected?*

The Planning Board Draft suggests that if the schools serving a residential development project are overcapacity, the developer be required, as a condition of approval, to make a Utilization Premium Payment to help fund the need for additional school facilities. The Draft suggests that payments be made at the time an application for building permit is filed and that the

payment be based on the Annual School Test in effect at that time. Making the payment at the time an application for building permit is filed is customary and matches the payment timing required of impact taxes. However, basing the payment on the Annual School Test in effect at the time of building permit is equivalent to conducting a **new** Adequate Public Facilities determination.

Currently, an adequate public facilities determination is required for approval of a preliminary plan of subdivision (hence the name Subdivision Staging Policy), or for approval of a site plan (where a preliminary plan approval is not required<sup>9</sup>) or, in some cases, for approval of a building permit when neither a preliminary plan nor a site plan are required. Under Sec. 8-31 of the County Code, the Director (of the Department of Permitting Services, DPS), may issue a building permit only if the Planning Board has made a determination that public facilities will be adequate to serve the proposed development covered by the permit application.

According to the Draft SSP, only those projects requiring a UPP as a condition of approval will be “retested” at the time of payment. What this means is that, if the school utilization for the applicable school service areas has improved by the time a developer applies for a building permit, then the UPP would no longer be collected. However, the same provision does not apply to projects that were **not** required to make a UPP as a condition of approval. For these projects, if conditions worsen by the time the applicant files for a building permit, and now the applicable school service area has a utilization greater than 105 percent, there is no required “retest” and the UPP is not collected.

Requiring the “retest” of **all** applicants at the building permit phase, while fair, would add uncertainty for applicants as they would not know the extent of their APFO requirements at the time all other conditions of their approval are determined. It would also require use of an Annual School Test whose projection horizon would be out of sync with the time between the “retest” and when development would likely be complete. **Council staff does not support the Planning Board’s proposed “retest”, instead any Utilization Premium Payment required as a condition of approval must be paid at the time of building permit according to the conditions of approval.** The amount of the payment should be based on the rates in effect at the time the payment is made.

#### Motor Vehicle Adequacy Test Mitigation Priorities

In Rec. 5.2, (pp. 68-69; TL5, App. pp. 100-101), the Planning Board states that “A developer must mitigate *all* failing LATR tests (safety, transit, bicycle, pedestrian, transit, and motor vehicle)” [*emphasis, theirs*]. However, the next sentence goes on to say that “motor vehicle congestion strategies (widening roads or intersections, even modifying signal timing) can [are?] often counter to other mitigation strategies related to other modes of travel.” The Board

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<sup>9</sup> Development on a site may be a change in use or an increase in the intensity of a use that does not require creation of a lot thus will not require a preliminary plan of subdivision, but will require an APFO finding.

recommends that if an intersection is projected to fail the applicable LATR standard, then its mitigation is prioritized as follows:

- 1<sup>st</sup> priority: Transportation demand management (TDM) approaches to reduce vehicular demand.
- 2<sup>nd</sup> priority: Payment in lieu of mitigation.
- 3<sup>rd</sup> priority: Intersection operational improvements.
- 4<sup>th</sup> (and last) priority: Roadway capacity improvements [including intersections].

Furthermore, the recommendation would allow the Board to exact a payment-in-lieu instead of requiring a traffic operations change or a roadway/intersection capacity improvement that would satisfy the Motor Vehicle System Adequacy Test if it was deemed to interfere with Vision Zero goals or any of the improvements required to satisfy the Bicycle, Pedestrian, Transit, or Safety System Adequacy Tests.

Under this proposed priority regime, it is unlikely that a developer would ever be required to make a master-planned roadway or intersection capacity improvement as a condition of subdivision approval. It would allow the developer merely to “pay and go” and *not* provide an adequate public facility. It also ignores the fact that in nearly all of the County, even by the time of buildout, one-half to three-quarters of peak-hour travelers will be driving: for example, in Fairland/Colesville, 73% will be driving; Germantown, 73-75%; Olney, 78%. The percentage of those driving now, of course, are even higher. Giving short-shrift to traffic congestion relief short-changes the needs of most residents for which driving is the only reasonable travel option.

The PHED Committee asked the staffs to try to reach a consensus, but we were unable to do so. **Council staff recommends the following mitigation priorities:**

**For improvements within Red policy areas<sup>10</sup>:**

- 1<sup>st</sup> priority: Transportation demand management (TDM) approaches to reduce vehicular demand.**
- 2<sup>nd</sup> priority: Intersection operational improvements.**
- 3<sup>rd</sup> priority: Payment to DOT in lieu of mitigation equal to 50% surcharge on the applicable undiscounted and unexempted transportation impact tax. The funds must be used towards roadway or intersection capacity or operational improvements in the Red area or an adjacent policy area.**

**For improvements within all other policy areas:**

- 1<sup>st</sup> priority: Transportation demand management (TDM) approaches to reduce vehicular demand.**
- 2<sup>nd</sup> priority: Intersection operational improvements.**

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<sup>10</sup> This would apply in Purple policy areas, too, should the Council approve them.

**3<sup>rd</sup> priority: Roadway capacity improvements (including intersections). Meeting the Motor Vehicle System Adequacy Test in these areas should have as high a priority as the other four tests; the best solution is that which optimizes standards in all five tests.**

DOT proposes that a Motor Vehicle Test mitigation payment should not be used solely for a roadway capacity improvement, but for any improvement that adds transportation capacity, such as bikeway or pedestrian improvements. DOT's argument is that such improvements reduce the demand for driving, so they would accomplish the same end as adding capacity. However, bikeway and pedestrian improvements have a miniscule effect on the propensity to drive, particularly for commuting trips that dominate weekday peak-periods, which is when adequacy is measured.

#### *Renaming the Subdivision Staging Policy*

Rec. 3.1 (p. 34) proposes changing the name of the Subdivision Staging Policy to the County Growth Policy. Reference to the County's Adequate Public Facilities Ordinance (APFO) can be found in Chapters 8, 50, and 59 of the County Code. Under various sections of the code, the Planning Board is required to find that public facilities will be adequate to support and service an area of development (ie subdivision, site, etc...) Chapter 33A of the County Code lays out the purpose of the Subdivision Staging Policy (SSP) and its relation to the APFO. The SSP provides guidance to the Planning Board and other county agencies for the administration of the APFO. Essentially, the SSP defines infrastructure adequacy, how it is measured, and what is required of an applicant if public infrastructure cannot adequately support the proposed development.

According to the Draft SSP, Chapter 33A also states that the SSP is "an instrument that facilities [sic] and coordinates the use of the powers of government to limit or encourage growth and development." Therefore, the SSP and related laws and regulations are intended to be about more than limiting development or ensuring adequate infrastructure. The Planning Board Draft asserts that the policy is expected to help guide the county's growth to desired areas and desired forms and thus a name more apt for this document is the County Growth Policy. Furthermore, it states that the SSP/Growth Policy must be a tool that helps ensure growth comes in the form, amount, and locations we need and desire, and that a change in name will better identify the full scope of this policy and make it more understandable, and perhaps more relevant, for all stakeholders.

While this idea and perspective is inspiring, it is basically the exact thought process that lead to the current name. The SSP or Growth Policy is not at all about the amount or location of growth. Zoning sets the maximum amount of growth (development) possible for any property, and master plans determine the location of growth through careful, thoughtful planning and community engagement which recommends zoning that is implemented via sectional map amendment.

The SSP/Growth Policy determines what adequate means, how it is measured and what happens when existing and planned infrastructure cannot adequately accommodate proposed development. That is it. The name was changed from Growth Policy to the Subdivision Staging Policy because many in the public have been confused about the policy's actual scope. A decade ago, most of the Council's public hearing testimonies on the Draft Growth Policy were from residents who were really addressing issues in the Draft White Flint Sector Plan, which was also under the Council's review at the time.

Is Subdivision Staging Policy the best/most accurate name? As noted above, infrastructure adequacy is required not only for approval of a preliminary plan of subdivision, but can also be required for approval of a site plan or building permit. The SSP/Growth Policy is really the set of rules for determining the adequacy of public facilities to accommodate proposed development. If calling it Growth Policy implies that, then the change seems reasonable, but if the motivation to change the name is to set an expectation that the policy actually determines the amount of growth (it does not, it effects the pace of development which at a point in time may seem like an amount of growth but it does not change to ultimate amount of growth/development that can built) or the location of growth (the location of growth is planned through the master planning process and implemented through zoning/sectional maps amendments), then that is misleading.

**Council staff recommends that if the name is to be changed from Subdivision Staging Policy, then "Adequate Public Facilities Policy" would be a more accurate title.** Note that any name change will require introduction and adoption of a separate bill.

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**MONTGOMERY COUNTY COUNCIL**  
**ROCKVILLE, MARYLAND**

WILL JAWANDO  
COUNCILMEMBER  
AT-LARGE

**Memorandum**

To: GO/PHED Committees- CM Reimer, CM Navarro, CM Katz, CM Friedson  
From: Councilmember Jawando  
Date: October 4, 2020  
Re: Subdivision Staging Policy Amendments

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As we work our way through the new SSP, it is essential we remember the problems it is intended to tackle: overcrowded schools and inadequate transportation infrastructure. If you visit our schools or spend a day on our roads it becomes obvious we have problems with both overcrowding and traffic. There are numerous schools perpetually overcrowded at capacities in excess of 120%. We need to do more to support these overcrowded schools and incentivize the kinds of development that will address our missing middle family housing crisis.

We should make some key changes to the SSP to keep our promise to Montgomery County residents. First, the moratorium as it is currently structured only comes into effect after we already have a problem and then frequently focuses attention on funding solutions that overshadow other MCPS priorities. While I agree that moratoria are inefficient, I believe that we need to keep some form of moratorium policy in order to avoid catastrophic overcrowding while limiting its effect on other school needs. In order to do that, I recommend increasing the moratorium threshold to 135% countywide. Additionally, implementing a Utilization Premium Payment in areas with overcrowded schools, as proposed by M-NCPPC, is a step in the right direction but should be implemented below a utilization of 120%. We should start requiring UPP payments of 50% of impact taxes beginning at 105% capacity. Once a school's capacity has reached 120% we should double the UPP payment to 100% of impact taxes. This will bring in additional, sorely needed funds to help address overcrowding issues, see Table 1 attached.

We must also start addressing the lack of two and three bedroom units in our multi family housing. The incentives suggested in the plan are directed towards projects in desired growth areas that do not necessarily address our missing middle family housing needs. According to MWCOG's Round 9.1 Forecast, 76 percent of the County's overall housing growth is expected to occur within our Activity Centers. The need to further incentivize more housing in these locations is unwarranted; however, the fact that between 2010-2016 only 2% of the multifamily units built included 3 bedrooms, and only 35% included 2 bedrooms (the lowest percentages since 1950) demonstrates the real issue we need to solve, and should incentivize - the lack of housing for families. Instead of giving a 40% discount on the school impact tax to developers building in desirable growth areas, we should use the discount to further our commitment to providing more housing options for families by incentivizing increases in the number of two and three bedroom units. Instead, I propose providing an impact

tax credit of 40% for two bedroom apartments and 60% for three bedroom apartments built in Infill School Impact Areas.

I appreciate the work done by the Planning Board, Council staff and all of my colleagues. The current draft of the SSP misses the mark when it comes to targeting incentives to add the kind of family housing we need most. I am hopeful we can implement a tool that will help prevent overcrowding at schools and will give us the means to address facility needs for our children.

**Table 1. Utilization Premium Payments**

		Utilization 105 - 120%[1]				Utilization 121-135%[2]			
		Single-family		Multifamily		Single-family		Multifamily	
	School Level	Detached	Attached	Low-Rise	High-Rise	Detached	Attached	Low-Rise	High-Rise
<b>Infill Impact Areas</b>	<b>Elementary</b>	\$4,138	\$3,635	\$1,354	\$671	\$8,277	\$7,271	\$2,708	\$1,341
	<b>Middle</b>	\$2,365	\$2,077	\$774	\$383	\$4,730	\$4,155	\$1,548	\$766
	<b>High</b>	\$3,350	\$2,943	\$1,096	\$543	\$6,700	\$5,886	\$2,192	\$1,086
<b>Turnover Impact Areas</b>	<b>Elementary</b>	\$4,532	\$5,025	\$2,427	\$488	\$9,064	\$10,050	\$4,853	\$977
	<b>Middle</b>	\$2,590	\$2,871	\$1,387	\$279	\$5,180	\$5,743	\$2,773	\$558
	<b>High</b>	\$3,669	\$4,068	\$1,964	\$395	\$7,338	\$8,136	\$3,929	\$791
<b>Greenfield Impact Areas</b>	<b>Elementary</b>	\$7,100	\$6,025	\$6,178	--[3]	\$14,200	\$12,050	\$12,356	--
	<b>Middle</b>	\$4,057	\$3,443	\$3,530	--	\$8,114	\$6,886	\$7,061	--
	<b>High</b>	\$5,748	\$4,877	\$5,001	--	\$11,495	\$9,755	\$10,003	--

Based on a percentage of the impact tax rate factored by school level to reflect relative impact of housing units on school enrollment.

[1] UPP at all 3 school levels equals 50% of the impact tax.

[2] UPP at all 3 school levels equals 100% of the impact tax

[3] Insufficient student data to determine rate – alternative proxy TBD



School Service Areas Under Various Utilization Thresholds <sup>1</sup>				
3-year Projections				
105%	120%	125%	135%	150%
High Schools				
M. Blair	M. Blair			
J. H. Blake				
W. Churchill	W. Churchill			
Clarksburg	Clarksburg			
Albert Einstein	Albert Einstein	Albert Einstein		
Gaithersburg				
Walter Johnson	Walter Johnson	Walter Johnson		
R. Montgomery				
Northwest				
Quince Orchard	Quince Orchard	Quince Orchard		
Middle Schools				
Argyle	Argyle			
Elementary Schools				
Arcola				
Ashburton	Ashburton			
Bannockburn	Bannockburn	Bannockburn	Bannockburn	
L. Barnsley				
Bethesda	Bethesda	Bethesda		
Burning Tree	Burning Tree	Burning Tree		
Burtonsville	Burtonsville	Burtonsville		
J. A. Daly				
Diamond	Diamond			
Farmland				
Greencastle	Greencastle			
Highland View	Highland View	Highland View	Highland View	
S. Matsunaga				
Mill Creek	Mill Creek	Mill Creek	Mill Creek	Mill Creek
W. T. Page	W. T. Page	W. T. Page	W. T. Page	W. T. Page
J. A. Resnik	J. A. Resnik			
R. C. Forest				
Snowden Farm				
South Lake	South Lake	South Lake		
Stonegate				
Watkins Mill	Watkins Mill			

<sup>1</sup> And applicable seat deficits based on program capacity

School Service Areas Under Various Utilization Thresholds <sup>2</sup> 5-year Projections				
105%	120%	125%	135%	150%
High Schools				
J. H. Blake				
W. Churchill				
Clarksburg				
Gaithersburg				
R. Montgomery	R. Montgomery			
Northwest				
Quince Orchard	Quince Orchard	Quince Orchard	Quince Orchard	
Middle Schools				
Argyle	Argyle			
Briggs Chaney				
Elementary Schools				
Ashburton				
Bannockburn	Bannockburn	Bannockburn		
Burtonsville				
Diamond				
Farmland				
Greencastle				
Highland View	Highland View	Highland View	Highland View	
S. Matsunaga				
Mill Creek	Mill Creek	Mill Creek	Mill Creek	Mill Creek
J. A. Resnik	J. A. Resnik			
Watkins Mill				

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<sup>2</sup> And applicable seat deficits



OFFICE OF THE COUNTY EXECUTIVE  
Rockville, Maryland 20850

Marc Elrich  
County Executive

September 10, 2020

Recommendation	Page
<b><i>Policy Recommendations: County Growth Policy</i></b>	
<b><u>3.1 Change the name of the Subdivision Staging Policy to the County Growth Policy.</u></b>	34
<b>The CE agrees.</b>	

**4.16 Require applicants to pay Utilization Premium Payments when a school's projected utilization three years in the future exceeds 120 percent. in Turnover and Infill Impact Area when a school's projected utilization three years in the future established**

Table 12. Utilization Premium Payment Calculation Factors.

School Level	Payment Factor
Elementary School	25% of the standard impact tax for the School Impact Area and dwelling type
Middle School	15% of the standard impact tax for the School Impact Area and dwelling type
High School	20% of the standard impact tax for the School Impact Area and dwelling type

**The CE supports developers paying their fair share of impact taxes, i.e., an amount that reflects their contribution to increased school enrollment. Impact taxes should be**

increased in this SSP so that Utilization Premium Payments are not necessary, and this recommendation rejected. **If, however, the Council approves these payments than the payments should be required when overcrowding is greater than 105%, not greater than 120%.**

September 10, 2020

4. *The Annual School Test will evaluate projected school utilization three years into the future using a newly established utilization adequacy standards.* The current SSP evaluates projected school utilization five years into the future, which allows a capital project to be planned, constructed, and completed in a six-year planning period. If a capital project is approved in the first year of the six-year plan, completion will not occur within the three-year window; therefore, this would not allow the capacity to be counted in the Annual School Test. While it is possible for projects to be delayed, shortening the Annual School Test window may result in unintentional outcomes.

With respect to the utilization adequacy standards, the recommended 120 percent utilization that would trigger a new Utilization Premium Payment may align with the MCPS process to consider a capital project for schools that exceed capacity. However, depending on the capacity of the school, the 120 percent threshold for payment could result in enrollment deficits that are greater than those generally used to consider a capacity project before generating funds. MCPS guidelines generally analyze capital solutions when schools exceed capacity by 92 seats at an elementary school, 150 seats at a middle school, and 200 seats at a high school.

## MCCPTA Comments on 2020-2024 County Growth Policy Recommendations

### Submitted to the County Council September 8, 2020

#### ✖ 3.1: *Change the name of the Subdivision Staging Policy to the County Growth Policy.*

MCCPTA agrees that this name change will make the policy more accessible to stakeholders, but after attending all Planning Board work sessions on the Subdivision Staging Policy, it's clear that the Board is trying to shift focus – in name and policy – from adequacy of infrastructure to promoting residential development. The purpose of this Policy, however, per Chapter 50 of Montgomery County Code, is to ensure that development does not outpace available infrastructure. Housing and growth priorities are addressed elsewhere in Montgomery County policies and zoning. This is our Adequate Public Facilities Ordinance, and its job is to guide the Planning Board in making sure that schools, transportation, water and sewer, emergency services, and recreational space can support our growing population. The name of the policy should reflect that, e.g. Balanced Growth Policy, Growth and Infrastructure Policy, County Growth and Adequate Facilities Policy.

#### ⊕ 4.16: *Require applicants to pay Utilization Premium Payments when a school's projected utilization three years in the future exceeds 120 percent.*

MCCPTA supports this recommendation. In fact, we support the elimination of moratoria if and only if *Staff Draft 4.12* is reinstated and Utilization Premium Payments are implemented. Furthermore, Utilization Premium Payments should be implemented at 105%. There is precedent for this, since School Facility payments were triggered at 105% until 2016. As proposed, the 2020 Growth Policy tolerates school enrollment up to 120% with no ramifications whatsoever. It is not acceptable to allow our schools to reach 120% utilization without intervention. Lastly, Utilization Premium Payments should be calculated based on cost per seat without applying discounts for desirable growth areas.



September 11, 2020

*4.16 Require applicants to pay Utilization Premium Payments when a school's projected utilization three years in the future exceeds 120%.*

Comments: We support this recommendation insofar as Utilization Premium Payments are a better alternative to moratoria. Utilization Premium Payments should be applied in lieu of potential moratoria in the Greenfield Impact Area as well (*see* Recommendation 4.9). The Planning Board recommendation is that the amount of Utilization Premium Payments, if any, will be determined at time of building permit. Whether Utilization Premium Payments are owed at the time of building permit will depend on whether school capacity exceeds 120% three years in the future at the elementary, middle, or high school levels, and based on the applicable rates of Utilization Premium Payments at that time. We believe this creates financial uncertainty for a project. If a project receives subdivision approval and little or no Utilization Premium Payments are owed at the time of the approval, then the project could be subject to substantial Utilization Premium Payments later at time of building permit. These changed circumstances in school capacity that create the Utilization Premium Payments could be due to school boundary changes, enrollment increases due to turnover of existing housing, or other factors outside of the project's control. Thus, the maximum amount of Utilization Premium Payments the project owes should be established at time of subdivision approval based on applicable Utilization Premium Payments at that time of subdivision approval. At time of building permit, Utilization Premium Payments should be recalculated and that amount, if any, should be paid, up to the maximum amount established at the time of subdivision approval.