



Montgomery
County Council

Committee: Joint

Staff: Pam Dunn, Senior Legislative Analyst; Glenn Orlin, Senior Analyst; Robert Drummer, Senior Legislative Attorney

Purpose: To make preliminary decisions – straw vote expected

Keywords: #subdivision staging policy, impact tax, recordation tax

AGENDA ITEM #14

October 20, 2020

Worksession

SUBJECT

2020-2024 Subdivision Staging Policy

Bill 37-20, Subdivision - Preliminary Plan - Adequate Public Facilities – Amendments

Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments

Expedited Bill 39-20, Taxation - Recordation Tax - Amendments

EXPECTED ATTENDEES

Casey Anderson, Planning Board Chair

Gwen Wright, Tanya Stern, Jason Sartori, Lisa Govoni, Eric Graye and David Anspacher, Planning Department

Meredith Wellington, Office of the County Executive

Essie McGuire and Adrienne Karamihas, Montgomery County Public Schools (MCPS)

Christopher Conklin, Gary Erenrich, and Andrew Bossi, Department of Transportation (DOT)

Mary Beck, Pofen Salem, and Veronica Jaua, Office of Management and Budget (OMB)

David Platt and Estela Boronat de Gomes, Department of Finance

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Recommendations of the PHED, GO, and joint PHED/GO Committees are summarized in the attached chart. Currently, Council worksessions are scheduled for October 20 and 27, with final action tentatively scheduled for November 10.

DESCRIPTION/ISSUE

The issues are described in detail in the attached the staff reports.

This report contains:

Summary chart of Committee(s) recommendations

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Staff reports

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Current SSP	Planning Board Recommendation	Committee Recommendations
Name: Subdivision Staging Policy	Recommendation 3.1: Change the name of the Subdivision Staging Policy to the County Growth Policy.	PHED Committee: (3-0) in favor of changing the name to <i>Growth and Infrastructure Policy</i> .
Student Generation Rates are calculated for three regions in the County based on school cluster as determined by MCPS.	Recommendation 4.1: Classify county neighborhoods into School Impact Areas based on their recent and anticipated growth contexts. Update the classifications with each quadrennial update to the County Growth Policy.	Joint Committee: (4-1) in favor of Planning Board recommended School Impact Areas, with the exception of adding White Oak RDA as a separate Planning Areas changing its categorization from Turnover to Infill. CM Jawando supports reevaluation of criteria specifying two School Impact Areas (Turnover and Infill), not three.
Metro Station and Purple Line Station areas are categorized by the school cluster and MCPS region (noted above) in which they're located.	Recommendation 4.2: Classify all Red Policy Areas (Metro Station Policy Areas and Purple Line Station Policy Areas) as Infill Impact Policy Areas.	Joint Committee: (5-0) in favor of Planning Board recommendation.
N/A	Recommendation 4.3: By January 1, 2021, the Planning Board must adopt a set of Annual School Test Guidelines which outline the methodologies used to conduct the Annual School Test and to evaluate the enrollment impacts of development applications and master plans.	PHED Committee: (3-0) in favor of the Planning Board recommendation.
Cluster level adequacy test and an individual adequacy test for each middle and elementary school.	Recommendation 4.4: The Annual School Test will be conducted at the individual school level only, for each and every elementary, middle, and high school, for the purposes of determining school utilization adequacy.	PHED Committee: (3-0) in favor of Planning Board recommendation for an individual school test.

<p>Annual School Test evaluates projected school utilization five years in the future.</p> <p>(Moratorium threshold covered under Recommendation 4.9).</p>	<p>Recommendation 4.5: The Annual School Test will evaluate projected school utilization three years in the future using the certain school utilization adequacy standards.</p> <p>(Moratorium threshold covered under Recommendation 4.9, UPP covered under Recommendation 4.16)</p>	<p>PHED Committee: (3-0) in favor of motion by CM Riemer to use a 4-year projection horizon.</p> <p>(Moratorium threshold covered under Recommendation 4.9, UPP covered under Recommendation 4.16)</p>
<p>For each application yielding net new residential dwellings, the number of students generated by the application, by school level, is compared to the available capacity under the most recent school test.</p>	<p>Recommendation 4.6: The Annual School Test will establish each school service area's adequacy status for the entirety of the applicable fiscal year.</p>	<p>PHED Committee: (2-1) in favor of the Planning Board recommendation.</p> <p>CM Jawando dissenting in favor of the current review process.</p>
<p>Annual School Test provides cluster and school level utilization analyses.</p>	<p>Recommendation 4.7: The Annual School Test will include a Utilization Report that will provide a <i>countywide</i> analysis of utilization at each school level.</p>	<p>PHED Committee: (3-0) in favor of the Planning Board recommendation.</p>
<p>N/A</p>	<p>Recommendation 4.8: The Utilization Report will also provide additional utilization and facility condition information for each school, as available.</p>	<p>PHED Committee: GO Committee (3-0) against Planning Board recommendation to allow credits for non-capacity improvements. In light of this, requiring school conditions in a report on utilization seems unnecessary. Planning Board has authority to place information in the Annual School Test Guidelines, as they see fit.</p>

<p>Moratoria apply to any High School cluster, individual middle, or elementary school based on the following criteria.</p> <p>Moratorium if:</p> <ul style="list-style-type: none"> • any cluster above 120% utilization, or • any middle school above 120% with a seat deficit \geq 180 student seats, or • any elementary school above 120% with a seat deficit \geq 110 student seats. 	<p>Recommendation 4.9: Moratoria will only apply in Greenfield Impact Areas. The Planning Board cannot approve any preliminary plan of subdivision for residential uses in an area under a moratorium unless it meets certain exceptions.</p> <p>Moratoria if:</p> <ul style="list-style-type: none"> • In the Greenfield Impact Area, projected utilization is greater than 125% at any school, and for any middle school the seat deficit \geq188 seats, or for any elementary school the seat deficit \geq 115 seats. 	<p>PHED Committee: (2-1) in favor of eliminating moratoria Countywide.</p> <p>CM Jawando dissenting, recommending Countywide moratorium at 135% utilization.</p>
<p>Allow approval in areas under moratorium if application is for no more than 3 residential dwellings or units restricted to senior living.</p>	<p>Recommendation 4.10: Exceptions to residential development moratoria will include projects estimated to net fewer than one full student at any school in moratorium, and projects where the residential component consists entire of senior living units.</p>	<p>PHED Committee: (3-0) in favor of Planning Board recommendation.</p>

N/A	<p>Recommendation 4.11: Establish a new exception that allows the Planning Board to approve residential development in an area under a moratorium if a school (at the same level as any school causing the moratorium) is located within 3, 5, or 10 network miles (ES, MS, or HS, respectively) of the proposed subdivision and has a projected utilization less than or equal to 105 percent.</p>	<p>PHED Committee: (3-0) in favor of sufficient adjacent capacity concept. Limit combined utilization to no greater than 100%. Physical extent of adjacency requirement TBD. MCPS to provide language reflecting their geographic area of consideration for capital planning.</p>
<p>Allow approval for projects providing a minimum of 50% affordable housing and generating less than 10 students. Also allow approval for projects replacing condemned buildings.</p>	<p>Recommendation 4.12: Eliminate the moratorium exception adopted in 2019 pertaining to projects providing high quantities of deeply affordable housing or projects removing condemned buildings.</p>	<p>PHED Committee: (3-0) against Planning Board recommendation. Retain exemptions if moratorium remains.</p>
<p>For all unit types, Student Generation Rates are calculated using all residential structures regardless of year built.</p>	<p>Recommendation 4.13: Calculate countywide and School Impact Area student generation rates by analyzing all single-family units and multifamily units built since 1990, without distinguishing multifamily buildings by height.</p>	<p>Joint Committee: (5-0) in favor of Planning Board recommendation, with the exception of combining multifamily units into one structure type. Low-rise and high-rise multifamily units should remain distinct structure types for the purposes of evaluation and impact taxes.</p>
<p>Extension request does not require retesting.</p>	<p>Recommendation 4.14 Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period.</p>	<p>PHED Committee: (3-0) in favor of the Planning Board recommendation, however, the Committee recommends limiting the retest to projects with certain characteristics. In response, Planning recommends projects generating more than 10 students.</p>

<p>Under the Subdivision Regulations (Ch. 50 of the County Code), MCPS is required to submit a recommendation regarding Montgomery County Public Schools, for application involving school site planning.</p>	<p>Recommendation 4.15: Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS' official positions.</p>	<p>PHED Committee: (3-0) in favor of the Planning Board recommendation.</p>
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<p>N/A</p>	<p>Recommendation 4.16: Require applicants to pay a Utilization Premium Payment when a school's projected utilization three years in the future exceeds 120 percent.</p>	<p>PHED Committee: Under Rec. 4.5 Committee (3-0) in favor of motion by CM Riemer to use a 4-year projection horizon.</p> <p>PHED Committee: (3-0) in favor of including a second measure of adequacy equal to seat deficit (based on program capacity) starting at 105 percent.</p> <p>PHED Committee: (3-0) in favor of CM Jawando recommendation to start at 105 percent overutilization</p> <p>At 105 percent: (2-1) in favor of the UPP set at 20 percent of the proportional impact tax for the overutilized school level. CM Jawando would set at 50 percent. Council Staff recommended 30 percent.</p> <p>(3-0) in favor of a second tier UPP charge at 120 percent threshold.</p> <p>At 120 percent: (2-1) in favor of the UPP set at 40 percent of the proportional impact tax for the overutilized school level. CM Jawando would set at 100 percent. Council Staff recommended 60 percent.</p> <p>(3-0) in favor of a third tier 135 percent threshold.</p> <p>At 135 percent: (2-1) in favor of a third tier charge set at 60 percent of the proportional impact tax for the overutilized school level. CM Jawando and Council Staff recommend moratorium.</p> <p>(3-0) in favor of specifying that revenue from the UPP can be spent on any project at the same school level that adds capacity that alleviates overutilization in the school service area from which the funds are collected.</p>
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		Exemptions need to be clarified. Planning Board exempted MPDUs. Council Staff agrees. Planning Board would not exempt Enterprise zone nor Opportunity zone market rate units. It would also not exempt market rate units receiving an impact tax discount.
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Current SSP	Planning Board Recommendation	Committee Recommendations
N/A	Recommendation 5.1: Design roads immediately adjacent to new development to account for all identified recommendations from applicable planning documents including Functional Plans, Master Plans and Area Plans.	PHED Committee: (3-0) in favor of Planning Board's recommendation, except to require developers to report information to update all transportation databases.
N/A	Recommendation 5.2: Prioritize motor vehicle mitigation strategies designed to improve travel safety.	PHED Committee will take this up on October 22.
Under the Subdivision Regulations (Ch. 50 of the County Code), DOT is required to review sufficiency of all travel modes.	Recommendation 5.3: Given the additional focus on Vision Zero principles in the development review process, designate a Vision Zero representative to the Development Review Committee to review the development application and Vision Zero elements of LATR transportation impact studies and to make recommendations regarding how to incorporate the conclusions and safety recommendations of LATR transportation impact studies.	PHED Committee: (2-0) recommend amending the Subdivision Ordinance to achieve this, which is where DRC representation and roles are stipulated in the County Code. (CM Jawando was not present for this item due to a prior commitment.)
N/A	Recommendation 5.4: Introduce a Vision Zero Impact Statement for all LATR studies pertaining to subdivisions that will generate 50 or more peak-hour person trips.	PHED Committee: (2-0) in favor of the Planning Board's recommendation, with revised language. (CM Jawando was not present for this item due to a prior commitment.)

<p>Local Area Transportation Review (LATR) tests exist for Motor Vehicle, Bicycle, Pedestrian, and Transit (see staff report for details).</p>	<p>Recommendation 5.5: For LATR studies of new development generating 50 or more peak-hour weekday person trips, couple current multi-modal transportation adequacy tests with options that can be implemented over time utilizing Vision Zero-related tools and resources currently available and under development. When the appropriate set of tools (described in the Vision Zero Resources section above) are operational, the current multi-modal transportation adequacy tests should be updated as described below.</p>	<p>PHED Committee: (3-0) recommend major revisions to the Final Draft’s proposed LATR Motor Vehicle, Bicycle, and Bus Transit System Adequacy Tests (see staff report). The Committee will review a proposed, broadened Pedestrian Test on October 22. It recommends taking up a proposed new Safety Test next summer/fall in an SSP amendment.</p>
<p>The Motor Vehicle System Adequacy Test standard is 120 seconds/vehicle of delay in peak periods in Metro Station (Red) Policy Areas.</p>	<p>Recommendation 5.6: Eliminate the LATR study requirement for motor vehicle adequacy in Red Policy Areas (Metrorail Station Policy Areas and Purple Line Station Areas).</p>	<p>PHED Committee: (2-1) in favor of the Planning Board’s recommendation.</p> <p>CM Jawando dissenting, concurring with Council staff to retain the current 120 seconds/vehicle delay standard in Red Policy Areas.</p>
<p>Critical Lane Volume (CLV) must be worse than 1,350 for the more robust Highway Capacity Manual (HCM) methodology to be used to analyze traffic congestion.</p>	<p>Recommendation 5.7: Expand the application of the Critical Lane Volume (CLV) analysis methodology as a screening tool to determine the necessity for the application of the more robust Highway Capacity Manual (HCM) analysis methodology for the motor vehicle transportation adequacy analysis.</p>	<p>PHED Committee: (3-0) oppose the Planning Board’s recommendation.</p>
<p>Current intersection congestion standards are not loosened because of an eventual Bus Rapid Transit line.</p>	<p>Recommendation 5.8: Increase the intersection delay standards to 1,700 CLV and 100 seconds/vehicle for transit corridor roadways in Orange and Yellow policy areas to promote multi-modal access to planned Bus Rapid Transit service in transit corridors.</p>	<p>PHED Committee: (3-0) oppose the Planning Board’s recommendation.</p>
<p>N/A</p>	<p>CM Riemer Recommendation: Exempt bioscience facilities from all Local Area Transportation Review (LATR) tests for 5 years.</p>	<p>PHED Committee: (3-0) in favor of CM Riemer’s proposal, but sunsetting it after 4 years.</p>

<p>Three existing policy areas around planned Purple Line stations (Chevy Chase Lake, Long Branch, and Woodside) are in the Orange category.</p>	<p>Recommendation 5.9: Place all Purple Line Station policy areas (existing and proposed) in the Red policy area category.</p>	<p>Joint Committee: (3-2) place four Purple Line Policy Areas (see Recommendations 5.18-19) in the Red Policy Area category.</p> <p>CMs Jawando and Katz dissenting, concurring with Council and Planning staffs to create a new Purple category, with impact tax rates and congestion standards midway between those in the Red and Orange categories.</p>
<p>Not mentioned in the SSP, but the Mobility Assessment Report/Travel Monitoring Report has been produced every few years for about 15 years.</p>	<p>Recommendation 5.10: Continue producing the Travel Monitoring Report (formerly the Mobility Assessment Report) on a biennial schedule as a key travel monitoring element of the County Growth Policy.</p>	<p>PHED Committee: (2-0) in favor of the Planning Board’s recommendation.</p> <p>(CM Jawando was not present for this item due to a prior commitment.)</p>
<p>N/A</p>	<p>Recommendation 5.11: The proposed auto and transit accessibility metric is the average number of jobs that can be reached within a 45-minute travel time by automobile or walk access transit.</p>	<p>Recommendations 5.11-15 are about measuring master plan adequacy, and so are not in the draft SSP resolution. The PHED Committee will take up these recommendations in the late fall/winter.</p>
<p>N/A</p>	<p>Recommendation 5.12: The proposed metric for auto and transit travel times is average time per trip, considering all trip purposes.</p>	<p>(See above.)</p>
<p>N/A</p>	<p>Recommendation 5.13: The proposed metric for vehicle miles traveled per capita is daily miles traveled per “service population,” where “service population” is the sum of population and total employment for a particular TAZ.</p>	<p>(See above.)</p>
<p>N/A</p>	<p>Recommendation 5.14: The proposed metric for non-auto driver mode share is the percentage of non-auto driver trips (i.e., HOV, transit and nonmotorized trips) for trips of all purposes.</p>	<p>(See above.)</p>

N/A	<p>Recommendation 5.15: The proposed metric for bicycle accessibility is the Countywide Connectivity metric documented in the 2018 Montgomery County Bicycle Master Plan (page 200).</p>	(See above.)
<p>Forest Glen is in the Kensington-Wheaton Policy Area, and Montgomery Hills is in the Silver Spring-Takoma Park Policy Area. Both are in the Orange Policy Area category.</p>	<p>Recommendation 5.16: Create and define boundary of a Forest Glen Metro Station Policy Area.</p>	<p>Joint Committee: (5-0) create a Forest Glen Policy Area in the Red category.</p> <p>Joint Committee: (3-2) in favor of the Planning Board’s recommended boundary.</p> <p>CMs Jawando and Katz dissenting.</p>
<p>Half-mile walksheds around the Medical Center and Takoma Metro Stations are in the Bethesda-Chevy Chase and Silver Spring-Takoma Policy Areas, respectively; both are Orange Policy Areas.</p>	<p>Council staff Recommendation: Create and define boundaries of Medical Center and Takoma Metro Station Policy Areas.</p>	<p>Joint Committee: (5-0) in favor of Council staff’s recommendations.</p>
<p>The Academy of the Holy Cross and St. Angela Hall properties are in the North Bethesda Policy Area, in the Orange category. Both properties are within the half-mile walkshed of the Grosvenor-Strathmore Metro Station.</p>	<p>Recommendation 5.17: Expand the boundary of the Grosvenor-Strathmore Metro Station Policy Area.</p>	<p>Joint Committee: (5-0) in favor of the Planning Board’s recommendation to move these properties from the North Bethesda Policy Area to the Grosvenor-Strathmore Policy Area.</p>

<p>Policy Areas exist around the planned Chevy Chase Lake, Long Branch, and Takoma/Langley Purple Line Stations. All are in the Orange Policy Area category.</p>	<p>Recommendations 5.18-19: Create and set the boundaries for Purple Line Policy Stations at Lyttonsville/Woodside and Dale Drive/Manchester Place.</p>	<p>Joint Committee: (5-0) revise the boundary of the Chevy Chase Lake Policy Area, create Lyttonsville and Woodside Policy Areas, and create a Purple Line East Policy Area that encompasses the existing Takoma/Langley and Long Branch Policy Areas and the proposed Dale Drive/Manchester Place Policy Area. The boundaries of these areas roughly correspond to the half-mile walksheds around planned Purple Line Stations.</p>
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Current SSP	Planning Board Recommendation	Committee Recommendations
<p>For all unit types, Student Generation Rates are calculated using all residential structures regardless of year built.</p>	<p>Recommendation 6.1: Change the calculation of school impact taxes to include one tax rate for all multifamily units, in both low-rise and high-rise buildings, based on the student generation rate for multifamily units built since 1990.</p>	<p>Joint Committee: (5-0) in favor of Planning Board recommendation to use multifamily data since 1990 for calculation of student generation rates. (5-0) against Planning Board recommendation to combine low-rise and high-rise units into one category.</p>
<p>School impact taxes are set at 120% of the cost of student seat using countywide Student Generation Rates. No discount based on geographic location.</p>	<p>Recommendation 6.2: Calculate standard school impact taxes at 100% of the cost of a student seat using School Impact Area student generation rates. Apply discount factors to single-family attached and multifamily units to incentivize growth in certain desired growth and investment areas and maintain the current 120% factor within the Agricultural Reserve Zone.</p>	<p>(a) Joint Committee: (4-1) in favor of regional student generation rates based Planning Board recommended School Impact Areas.</p> <p>CM Jawando dissenting, in favor of two School Impact Areas following re-evaluation using additional criteria.</p> <p>(b) GO Committee: (3-0) in favor of Planning Board recommendation to set tax at 100% cost of a student seat.</p> <p>(c) GO Committee: (3-0) against Planning Board recommendation to discount impact taxes in desired growth areas.</p> <p>(d) GO Committee: (3-0) against Planning Board recommendation to retain higher cost calculation (120%) for AR zone.</p>
<p>Credits are allowed for improvements that add capacity or for the dedication of land under certain circumstances.¹</p>	<p>Recommendation 6.3: Allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS's agreement.</p>	<p>GO Committee: (3-0) against Planning Board recommendation to allow impact tax credit for providing non-capacity adding improvements</p>

¹ Where the density calculated for the dedication area is excluded from the density calculation for the development site, and the Montgomery County School Board agrees to the site dedication.

<p>Single-family units are charged an additional \$2.00 for each square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet.</p>	<p>Recommendation 6.4: Eliminate the current school impact tax surcharge on residential units larger than 3,500 square feet.</p>	<p>GO Committee: (3-0) in favor of the Planning Board recommendation.</p>
<p>Residential development in an Enterprise zones or former Enterprise zones re exempt from payment if the school impact tax.</p>	<p>Recommendation 6.5: Eliminate the current impact tax exemptions for development in former Enterprise Zones.</p>	<p>GO Committee: (2-0) in favor of the Planning Board recommendation. (Council President Katz recused himself from vote)</p>
<p>N/A</p>	<p>Recommendation 6.6: Any development located in a Qualified Opportunity Zone certified by the United States Treasury Department is exempt from development impact taxes.</p>	<p>GO Committee: (2-0) in favor of the Planning Board recommendation. (Council President Katz recused himself from vote)</p>
<p>N/A</p>	<p>N/A</p>	<p>Proposal by Councilmember Jawando to allow a per unit 40 percent impact tax credit for construction of 2-bedroom units and a 60 percent credit for 3-bedroom units in Infill School Impact Areas to encourage family accessible multifamily housing near transit. GO Committee discussed but did not reach a recommendation. Requested relative construction cost information from Planning.</p>
<p>All residential units in a project providing a minimum of 25% of the units as affordable to households earning below 60% of AMI are exempt from the school impact tax.</p>	<p>Recommendation 6.7: Modify the current impact tax exemptions applied to all housing units when a project includes 25% affordable units to:</p> <ol style="list-style-type: none"> 1. require the affordable units be placed in the county's or a municipality's MPDU program, and 2. limit the exemption amount to the lowest standard impact tax in the county for the applicable dwelling type. 	<p>GO Committee: (3-0) in favor of both parts of the Planning Board recommendation.</p>

<p>Impact taxes are levied on net new units. Units that replace demolished units are exempt from the school impact tax if the reconstruction occurs within 1 year.</p>	<p>Recommendation 6.8: Continue to apply impact taxes on a net impact basis, providing a credit for any residential units demolished.</p>	<p>GO Committee: (3-0) in favor of retaining application of impact taxes on a net new basis. CM Riemer proposed changing time limit from one year to 4 years, and changing trigger from construction to application for a building permit.</p> <p>CM Friedson requested addition of a waiver for applicants whose delay is the through no action of their own.</p>
<p>Transportation impact taxes can be used—and credit can be granted—for adding roadway capacity.</p>	<p>DOT Recommendation: Define clearly that adding roadway capacity means adding through travel lanes or turning lanes at intersections.</p>	<p>GO Committee: (3-0) in favor of DOT's recommendation.</p>
<p>For each \$500 that the sale price of a residential unit exceeds \$100,000:</p> <ul style="list-style-type: none"> • \$2.37 to MCPS CIP and • \$2.08 to the General Fund. <p>For each \$500 that the sale price of a residential unit exceeds \$500,000:</p> <ul style="list-style-type: none"> • \$2.30 split evenly between the County CIP and rental assistance. <p>Exempt:</p> <ul style="list-style-type: none"> • First \$100,000 of consideration payable if unit is the homebuyer's principal residence. 	<p>Recommendation 6.9: Incorporate progressive modifications into calculation of the Recordation Tax to provide additional funding for school construction and the county's Housing Initiative Fund.</p> <p>For each \$500 that the sale price of a residential unit exceeds \$100,000:</p> <ul style="list-style-type: none"> • \$2.87 to MCPS CIP and • \$2.08 to the General Fund. <p>For each \$500 that the sale price of a residential unit exceeds \$500,000:</p> <ul style="list-style-type: none"> • \$2.30 split evenly between the County CIP and rental assistance and • \$0.50 to MCPS CIP. <p>Exempt:</p> <ul style="list-style-type: none"> • First \$100,000 of consideration payable if unit is the homebuyer's principal residence. • First \$500,000 of consideration payable if purchaser is a first-time home buyer and it's the home buyer's principal residence. 	<p>GO Committee: Did not discuss this recommendation.</p>

M E M O R A N D U M

October 15, 2020

TO: County Council

FROM: Pamela Dunn, Senior Legislative Analyst
Glenn Orlin, Senior Analyst
Robert H. Drummer, Senior Legislative Attorney

SUBJECT: 2020-2024 Subdivision Staging Policy (SSP), Bill 37-20 – Subdivision, APF Amendments, Bill 38-20 - Development Impact Taxes for Public School Improvements, and Expedited Bill 39-20 - Recordation Tax Amendments

PURPOSE: Worksession

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
Essie McGuire, Montgomery County Public Schools
Adrienne Karamihas, Montgomery County Public Schools
Mary Beck, Office of Management and Budget
Pofen Salem, Office of Management and Budget
Meredith Wellington, Office of the County Executive

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

This worksession will address recommendations from the Government Operations and Fiscal Policy (GO) Committee, the Planning, Housing, and Economic Development (PHED) Committee, the Planning Board and its staff, the County Executive, the public hearing testimony, and Council staff regarding school-related issues that directly affect both the SSP and the impact tax law.

Background

The Subdivision Staging Policy is the tool by which the County coordinates the timing and pace of new development with the availability of public services and facilities. It tests the County's infrastructure for adequacy based on projected capacity and growth. The policy is updated every four years

to ensure that the tools used for evaluating the impact of development, such as a delay-based transportation test or student generation rates, reflect the latest growth patterns and trends in the County. Its purpose is to set the rules for evaluation of individual proposals for development, to determine if the County's public infrastructure is adequate to meet the demands of such development. The Council's SSP resolution will describe the facility standards and/or conditions that must be met for public infrastructure to be considered adequate.

Discussion

This worksession will focus on Planning Board recommendations that involve school-related changes to the SSP, development impact taxes, and the recordation tax. The first two topics involve recommendations that affect both the school-related SSP rules and school impact taxes. Following this are school-related SSP recommendations, then recommendations on school impact taxes, the recordation tax, and finally, the proposed name change for the SSP. 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 Draft. For example, the recommendation for School Impact Areas is referenced as "Rec. 4.1 (p. 37)".

A. Multifamily Structures

Currently, structure type plays a fundamental role in both the SSP and school impact taxes. There are four structure types (single-family detached house, single-family attached house, low-rise multifamily unit, and high-rise multifamily unit) used to evaluate adequacy under the SSP and to calculate school impact tax rates.

School impact taxes are levied by structure type based on the number of students generated by each type of unit and the associated capital cost to construct a seat for each student generated. Currently there are two different impact tax rates for multifamily housing, one for high-rise buildings (five stories or more) and one for low-rise (four stories or less). Under the SSP, structure types are used to evaluate applications for development and to estimate the future infrastructure needs of area master plans. For each structure type, a student generation rate is calculated based on the average number of students generated by that type of dwelling unit.

Rec. 6.1 (p. 88) proposes a change to the calculation of school impact taxes to include only one tax rate for all multifamily units, based on the student generation rate for all multifamily units built since 1990. Likewise, Rec. 4.13 (p. 54) proposes using only one multifamily structure type to calculate student generation rates used in estimating the impact of development applications and master planning.

In 2003, student generation rates by housing unit type were introduced. The rates were used to calculate school facility payments (payments made per unit for development in any cluster exceeding adequacy standards) and impact taxes and were provided to Montgomery County Public Schools (MCPS) for enrollment forecasting purposes. In the earlier years, student generation rates were calculated based on the Census Update Survey, a County-level survey administered by the Planning Department. Since 2013, student generation rates have been calculated using actual MCPS enrollment data that includes the address and grade of every student (all other personal information deleted). Planning staff map the address of each student and assign to that student the type of residential structure associated with that location. With this information, Planning staff then calculate student generation rates for various geographies, dwelling types, and school levels.

Below is a chart showing student generation rates: as introduced in 2003¹, updated in 2007, more recently in 2016, currently, and as calculated for the Planning Board Draft SSP.

Table 1.

Student Generation Rates – K thru 12					
Housing Type	2003	2007	2016	Current	PB Draft
Single-family Detached	0.640	0.595	0.463	0.462	0.464
Single-family Attached	0.480	0.440	0.484	0.490	0.487
Proportion of Students Detached/Attached	1.33	1.35	0.96	0.94	0.95
Multifamily Low-Rise	0.320	0.282	0.385	0.393	0.201
Multifamily High-Rise	0.128	0.114	0.139	0.110	0.067
Proportion of Students Low-rise/High-rise	2.50	2.47	2.77	3.57	3.00

Since student generation rates have been in use, it appears that low-rise units generate, on average, 2½ to 3½ times as many students as high-rise units, whereas single-family units show much less variation.

The Planning Board Draft notes increased methodological complexities with separating multifamily buildings into low- and high-rise categories as a motivation for combining multifamily units. One concern is with the future availability of land use data from the State Department of Assessments and Taxation (SDAT). Fortunately, extensive research and analysis has gone into each update of student generation rates since the switch to parcel-level data in 2013. Planning staff has spent considerable time and effort creating a database of the County’s multifamily housing stock; therefore, updates that include new student-level address data will not require the effort required to date, and other sources of information² may be available to supplement SDAT data should it become less obtainable.

Planning staff’s other concern is the relevance of delineating low- and high-rise construction based on four or five stories. The current 4-5 story distinction has been used for decades and is thought to reflect the cost differential between steel and concrete construction required of high-rise buildings, and wood or “stick-built” construction characteristic of low-rise development. Over the past few years, building methods have evolved to allow wood construction taller than 5-6 stories. However, the extent of this type of construction and a clear change in the number of stories associated with low/high-rise development is unknown. The Council may want to request³ that Planning undertake a study of construction methodology, materials, and development in the next year or so.

Joint GO/PHED Committee recommendation: (5-0) Retain low- and high-rise multifamily structure types for the calculation of student generation rates.

The Committee’s recommendation would ensure impact tax rates remain distinguished by four structure types, and would retain the evaluation of development applications and master plans by dwelling unit types that include low-rise and high-rise multifamily units. Council staff, the Executive, and the

¹ Student Generation Rates were estimated based on a total School Facility Payment figure and School Facility Payment rates by structure type.

² Such as CoStar, Planning Pipeline/Approvals, and the Department of Housing and Community Affairs.

³ The Council sets the Planning Department work program in the spring, prior to adoption of the Operating Budget.

Montgomery County Council of Parent Teacher Associations (MCCPTA) also recommend retaining the low- and high-rise structure types.

Rec 4.13 (p. 54) and Rec. 6.1 (p. 88) also include a recommendation to use all single-family units (regardless of year built) and multifamily units built since 1990 to calculate student generation rates. Planning staff conducted several in-depth analyses of student generation rates by dwelling type and year built. They found that the average K-12 student generation rate for multifamily structures built prior to 1990 was statistically different from structures built in 1990 and later. Figure 22 on page 55 of the Planning Board Draft demonstrates this finding. Single-family units, on the other hand, do not exhibit the same relationship. Single-family housing tends to be owner-occupied, with turnover occurring at a much slower rate than multifamily housing. In 2016, the Council decided to use student generation rates that capture the average student generation over the entire life of a single-family home.

The following table shows the student generation rates calculated using all single-family units (regardless of year built) and multifamily units built since 1990, retaining separate rates for low- and high-rise multifamily units.

Table 2.

Student Generation Rates		ES	MS	HS	K-12
Updated Countywide (Multifamily since 1990)	Single-Family Detached	0.198	0.111	0.155	0.464
	Single-Family Attached	0.222	0.115	0.151	0.487
	Multifamily Low-rise	0.097	0.047	0.057	0.201
	Multifamily High-rise	0.037	0.014	0.017	0.067

Table 3 shows the current student generation rates calculated using all single-family and multifamily units regardless of year built.

Table 3.

Student Generation Rates		ES	MS	HS	K-12
Current Countywide	Single-Family Detached	0.199	0.110	0.154	0.462
	Single-Family Attached	0.227	0.113	0.150	0.490
	Multifamily Low-rise	0.197	0.086	0.109	0.393
	Multifamily High-rise	0.055	0.023	0.031	0.110

Table 4 shows the change in the current impact tax rate associated with the above change in the calculation of student generation rates. It does not include other Planning Board proposed changes to the calculation of impact taxes, such as the percentage cost of student seats or area specific discounts; these issues are taken up later in this report.

Table 4.

School Impact Tax Rates	Current	Multifamily since 1990
Single-Family Detached	\$26,207	\$26,271
Single-Family Attached	\$27,598	\$27,504
Multifamily Low-rise	\$21,961	\$11,274
Multifamily High-rise	\$6,113	\$3,789

Joint GO/PHED Committee recommendation: (5-0) Concur with the Planning Board for use of all single-family units (regardless of year built) and multifamily units built since 1990 to calculate student generation rates.

Council staff supports this change. The Executive did not comment on this part of Rec 4.13 (p. 54) or Rec. 6.1 (p. 88). The MCCPTA supports the change to using multifamily units built since 1990 (for at least the next four years), and testimony from Lerch, Early & Brewer also supports this change.

B. Designation of School Impact Areas

Two primary elements of the schools' portion of the SSP treat all areas of the County the same. One is the Countywide set of adequacy standards for school utilization. The other is the set of impact tax rates based on Countywide student generation rates. A deviation from this Countywide approach is the Planning Board's current use of regional student generation rates to calculate the enrollment impacts of master plans and development applications. These regional student generation rates, created by MCPS, are based on aggregations of adjacent school clusters. They indicate some variation in student generation across the County and provide slightly more nuanced estimates of potential student enrollment. Table G3 (Appendix p. 43) provides student generation rates by school level and region (East, Southwest, and Upcounty). Figure G (Appendix p. 43) is a map of these three regions, including cluster boundaries.

Recognizing the potential in measuring student generation by geographic area, the Planning Board Draft recommends redefining regional student generation rates based on the characteristics of housing and enrollment growth in an area, instead of cluster assignment and relative proximity.

Rec. 4.1 (p. 37) proposes that County neighborhoods be classified into School Impact Areas based on their recent and anticipated growth contexts. To do this, Planning staff divided County neighborhoods into 35 areas.⁴ These 35 planning areas were then statistically indexed based on their housing growth⁵, type of housing⁶, and enrollment growth⁷. Given their relative scores, each planning area was classified as one of three School Impact Areas:

1. Greenfield - Areas with high enrollment growth due largely to high housing growth that is predominantly single-family units.
2. Turnover - Areas with low housing growth where enrollment growth is largely due to turnover of existing single-family units.

⁴ Pulling out certain areas within the larger planning area that were experiencing growth different from the broader area.

⁵ Including the change in units from 2013-2018 and the density of the pipeline of unbuilt units.

⁶ Including share of housing built 2013-2018 that is single-family, percentage of the pipeline that is single-family, and percentage of area zoned for single-family.

⁷ Including change in number of students 2013-2018, mean number of days since single-family units last sold, and change in student/population ratio 2013-2018.

3. Infill - Area with high housing growth that is predominantly multifamily units, which generate fewer students on a per unit basis.

The initial map of School Impact Areas can be found on page 453 of the SSP Appendix. This map shows several of the Metro Station Policy Areas and Purple Line Station Policy Areas classified as Turnover Impact Areas according to the characteristics of the larger planning area in which they are located. In response, the Planning Board added Rec. 4.2 (p. 39), which recommends all Metro Station Policy Areas and Purple Line Station Policy Areas be classified as Infill Impact Areas. An updated map of School Impact Areas can be found on page 40 of the Planning Board Draft.

Joint GO/PHED Committee recommendation: (5-0) Concur with classifying the Metro Station Policy Areas and Purple Line Station Policy Areas as Infill School Impact Areas.

Currently, under the SSP, evaluation of the impact of a development application looks forward 5 years⁸ in future, the average time expected for a project to complete the review process, build units, and become occupied. The two metrics used to create the housing growth index (used to categorize areas as Greenfield, Turnover or Infill) are based on the number of units built 2-7 years ago and the number of unbuilt units in the pipeline of approved development relative to the size of the planning area. While the first metric helps explain relatively recent growth in students, and the second recognizes the potential for additional students from probable construction based on approved projects, a measure of the potential for future development not yet approved (and which the SSP would apply) would best align with the purposes of the SSP.

Working with Planning staff, a third metric based on the potential for future residential development was created using data from the Residential Capacity Analysis⁹ (Appendix p. 24). This metric, measuring the unused zoning capacity of an area, was added as an indicator of future housing growth.

In evaluating the new data under a similar process to the initial analysis, staff decided to designate White Oak-RDA¹⁰ as a separate planning area, based on its zoning capacity compared to the greater Fairland planning area in which it was located. The 36 planning areas were then re-indexed and reclassified as one of three School Impact Areas. As a result, three planning areas changed from one School Impact Area designation to another:

1. *White Oak-RDA*. Classified as an Infill School Impact Area instead of a Turnover School Impact Area, the classification of the Fairland planning area from which it was separated.
2. *North Germantown*. Classified as a Turnover School Impact Area instead of an Infill School Impact Area.
3. *Clarksburg*. Classified as a Turnover School Impact Area instead of a Greenfield School Impact Area.

These shifts are the result of including a more forward-looking measure of the potential for future residential development. For both Germantown North and Clarksburg, adding the residential capacity data lowered the expected future growth based on the remaining zoning capacity in the planning area. For White Oak-RDA, the opposite occurred because the zoning capacity in this area has been practically

⁸ Rec. 4.5 proposes reducing this timeframe to 3 years. PHED Committee (3-0) recommends 4 years.

⁹ The data analysis needed for this metric had not been completed in time for the Planning Board's review of the SSP.

¹⁰ RDA – Redevelopment Area.

untouched since the adoption of the White Oak Science Gateway Master Plan. The Planning Board map of School Impact Areas and a map of the revised classifications (listed under the Index as Council Staff) can be found at <https://arcg.is/0q0yei>.

In addition to using the regional student generation rates to evaluate development applications and master plans, Rec. 6.2 (p. 89) suggests that the calculation of school impact taxes should be based on student generation rates associated with School Impact Areas.

Joint GO/PHED Committee recommendation: (5-0) White Oak-RDA should be treated as a separate planning area. (4-1) Councilmembers Navarro, Katz, Friedson, and Riemer concur with the Planning Board’s recommendation designating three School Impact Areas: Greenfield, Turnover and Infill. Councilmember Jawando, dissenting, supports the reevaluation that results in two School Impact Areas: Turnover and Infill.

Council staff supports the reevaluation resulting in two School Impact Areas. The Executive does not support classification of regional student generations by School Impact Areas; however, the Superintendent of MCPS does. Testimony received from Lerch, Early & Brewer as well as the Maryland Building Industry Association indicates general support for this change; however, both note concern with the classification of the Greenfield School Impact Areas. Testimony from the MCCPTA notes concern with classifying Purple Line station areas as Infill Areas.

C. Annual School Test Guidelines and Utilization Report

Section 8-32(c) of the County Code pertains to Planning Board procedures related to review of development applications. Subsection (4) specifically allows for the Planning Board to establish procedures to carry out its responsibilities. Rec. 4.3 (p. 43, App. p. 89) would require the Planning Board to adopt a set of Annual School Test Guidelines by January 1, 2021. The Guidelines must outline the methodologies used to conduct the Annual School Test and to evaluate the enrollment impacts of development applications and master plans.

The data for the Annual School Test come from Montgomery County Public Schools (MCPS) enrollment projections and planned capacity, as reported in its annual Educational Facilities Master Plan. The Guidelines should note any unique specifications or interpretations related to planned capacity - for example, the circumstances under which a capital project at one school relieves overcrowding at another school. The Annual School Test Guidelines should also identify current student generation rates and indicate, for regional student generation rates, which rates are to be used and for what purpose.

The SSP has always provided that the Planning Board not only review and approve the results of the Annual School Test, but to also approve the procedures used to conduct the test. The Annual School Test Guidelines would provide a transparent reference manual documenting how the test is conducted and how it is utilized.

PHED Committee recommendation: (3-0) Concur with the Planning Board to require the Board to adopt a set of Annual School Test Guidelines by January 1, 2021.

Council staff, the Superintendent of MCPS, the MCCPTA, the law firm of Lerch, Early, and Brewer, and the testimony of several individuals also supports having Annual School Test Guidelines.

In addition to the Annual School Test Guidelines, the Planning Board proposes that a Utilization Report accompany the Annual School Test results, Rec. 4.7 (pp. 46-47; S5, App. pp. 92-93). The report would include historical and projected Countywide utilization rates by school level, and the share and number of schools at each level that fall into specified utilization categories such as up to 80 percent utilization, and between 80 and 100 percent utilization. Examples of the type of data to be conveyed are shown in Tables 7, 8 and 9 on page 48 of the Planning Board Draft.

PHED Committee recommendation: (3-0) Concur with the Planning Board that a Utilization Report accompany the Annual School Test results.

Those in favor of the Annual School Test Guidelines also expressed support for creation of a Utilization Report that would accompany the Annual School Test.

Rec. 4.8 (p. 47; S5.2, App. p. 93) expands the content of the Utilization Report to include data and facility condition information for each school. The Planning Board Draft states that such information would be helpful in preparing master plans and in evaluating development applications. It goes on to state that this information would facilitate discussions between applicants and MCPS regarding ways a developer could make improvements to school facility conditions. This last part is tied directly to Rec. 6.3 (p. 92) which would allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS agreement.

PHED Committee recommendation: (3-0) Base the requirement on the GO Committee decision regarding school impact tax credits for non-capacity improvements. The GO Committee did not support the allowance of school impact tax credits for non-capacity adding improvements. Thus, there is no need for a report on facility conditions as a requirement under the SSP resolution; however, the Planning Board has the authority to include such information in its Annual School Test Guidelines if it so desires.

D. Annual School Test Evaluation Levels

The current SSP requires the Planning Board to assess school infrastructure adequacy through the Annual School Test no later than July 1 of each year. The test evaluates projected utilization rates at individual schools and across school clusters. When the test indicates that capacity is an issue, the area in question (an individual school or a school cluster) is placed in a residential development moratorium. The Annual School Test is currently a two-tier test that evaluates the adequacy of 1) cluster capacity at each school level (elementary, middle, and high school) and 2) capacity at each individual elementary and middle school. The Countywide adequacy standards used to evaluate each cluster and school are based on projected utilization rates five years in the future.

The 2016 SSP update introduced the individual school test. The individual school test intends to better capture the individual school experience. The cluster test, which takes a look at the cumulative utilization of all schools at the same level across a cluster, can mask overcrowding at individual schools when other schools at the same level are equally underutilized. However, since 2016, the opposite has also occurred. In the James H. Blake cluster, a few overcrowded elementary schools pushed the entire cluster, with otherwise fine utilization rates, into a residential development moratorium. If the individual school test were the only test used, parts of the cluster could have remained open to residential development in a part of the County that is eager for economic investment.

Planning Board Rec. 4.4 (pp. 43-44; S2, App. pp. 89-90) proposes conducting the Annual School Test for school utilization adequacy at the individual school level only for each and every elementary, middle, and high school. Removing the cluster level test would eliminate the need to conduct complicated allocations of students caused by elementary and middle schools that articulate to more than one high school. There are currently 21 elementary schools and 14 middle schools that each feed into more than one high school.

PHED Committee recommendation: (3-0) Concur with the Planning Board’s recommendation for an individual school level test only.

Council staff and the Executive supports the individual school level test. Likewise, the Superintendent of MCPS supports an individual school test as it aligns with the MCPS Capital Improvements Program (CIP) and Educational Facility Master Plan. The MCCPTA prefers a cluster level test be retained so that overutilized clusters can be identified, but that information already exists in the Educational Facility Master Plan. The City of Rockville and the testimony of Lerch, Early, and Brewer express support for this change.

E. Time Horizon for Annual School Test Projections

Rec. 4.5 (pp. 44-45; S2.2, App. pp. 90-91) proposes decreasing the time horizon used in evaluating projected school utilization from five years in the future to three. Rec. 4.5 also proposes modifications to the standards for adequacy against which applications for development will be judged. The adequacy piece of Rec. 4.5 will be covered later in this report under Rec. 4.9 Moratoria and Rec. 4.16 Utilization Premium Payments.

As for the timeframe used to conduct the Annual School Test, the Planning Board Draft notes two primary concerns as the motivation for moving from a 5-year time horizon to a 3-year horizon. Projected utilization is based on existing and projected school capacity¹¹ compared to projected enrollment. The Board’s first concern is with the certainty of projected capacity—more specifically, counting capacity funded in the “out years” of the CIP, where delays are more likely to occur. The Draft states that among 61 projects completed in the past 10 years, at least six were delayed one year, and at least three were delayed two years. However, that also means more than 50 projects experienced no delay. While the scheduled funding of capital projects is not immutable, the funding of the County’s CIP is a commitment to facility needs and, far more often than not, funded projects proceed as planned.¹²

The Board’s other concern is the relative reliability of enrollment projections three and five years in the future. The shorter timeframe for projecting enrollment will yield a more accurate result. MCPS currently develops an enrollment forecast for each year of the 6-year CIP, as well as a 10-year forecast for all schools and a 15-year forecast for secondary schools. MCPS also reevaluates the preliminary 1-year enrollment projections every spring for staffing and program planning. In addition, during the 2017-2018 school year, the school system worked with an external consultant to develop a new enrollment forecasting methodology. The new methodology includes four models: a model of the average percentage annual increase in enrollment, a cohort survival model, a linear regression, and a student-per-housing unit model.

¹¹ Projected capacity includes capacity funded in the 6-year CIP.

¹² The Planning Board Draft also notes that over the past 10 years, 14 projects (less than 2 per year) identified to be opened in the out years of the CIP were removed; however, the Draft also notes that these projects were removed because they were no longer needed - due to the planned implementation of another solution or due to a change in enrollment.

It isn't yet known how well the four-model system will improve forecasting, so there isn't a clear measure of the accuracy to be gained by moving to a shorter time horizon.

Last, but not least, is the purpose of the test. One cannot argue that enrollment projections and capacity funding three years in the future will be known with more certainty than in five years. However, the purpose of the test is to evaluate the impact of proposed development. If, on average, residential projects are completed, occupied, and sending students to the neighborhood school in three years or five years, then testing the adequacy of school facilities should match this time frame. Recognizing that there will be some projects that get built faster than the average, the question is, what time horizon is a realistic expectation of the impact of approved development?

To try an answer this question, Council staff, with the help of Planning staff and staff at the Department of Permitting Services, reviewed building permit data on all residential projects approved since 2010. Comparing the date of Planning Board approval to the date of the final building permit for each unit, staff found an average time to completion of 4 years and 7 months.

PHED Committee recommendation: (3-0) Concur with Councilmember Riemer's suggested compromise of a 4-year time horizon for evaluating projected school utilization.

The Executive supports the shift to a 3-year time frame. Council staff and the Superintendent of MCPS do not¹³, with the Superintendent stating that "a capital project approved in the first year of the six-year CIP may not be completed within a three-year window, thus not allowing 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." The City of Rockville, the Town of Chevy Chase, and the MCCPTA support the 3-year timeframe for the reasons cited by the Planning Board. Like MCPS, testimony from Lerch, Early, and Brewer expresses opposition to the 3-year timeframe as the current 5-year timeframe is better aligned with the County's CIP process.

F. Annual School Test Applicability

The current SSP requires the Annual School Test to include the number of additional students a school can accommodate before reaching the moratorium threshold.¹⁴ This number is also referred to as the staging ceiling capacity. Currently, an application for development cannot be approved if the number of students generated by the application exceeds the staging ceiling capacity of any school served by the proposed development. Rec. 4.6 (pp. 45-46; S2, App. 89-91) proposes that the Annual School Test establish each school service area's adequacy status for the entirety of the fiscal year. The Annual School Test would still determine each school service area's status, such as "open", or "utilization payment required", or "in moratorium". And each application for development would be reviewed against this determination; however, the number of students generated by the application would not be evaluated against the staging ceiling.

The staging ceiling is based on projected enrollment data gathered by MCPS in the fall of each year. Once the budget process concludes in the spring, the projected enrollment data (from the prior fall¹⁵) and the projected capacity (as a result of the adopted CIP) determine the results of the Annual School Test

¹³ Instead, supporting the current 5-year time horizon.

¹⁴ Regardless of whether the threshold for evaluation is for moratorium or an additional utilization payment, Rec. 4.6 is about how applications are evaluated with respect to an adequacy threshold.

¹⁵ 1-year projections are adjusted in the spring to inform staffing decisions and the placement of relocatables.

and establish the staging ceiling capacity. As noted in the Planning Board Draft, many have argued that the current process places too much emphasis on a false level of precision. Consider an application for approval being evaluated in December or January; the staging ceiling capacity against which the application is judged will be based on projected enrollment data that is more than a year old and could prevent the project from moving forward if its enrollment impact is one student greater than the staging ceiling capacity. This is the current process for evaluation.

On the other hand, some have argued that the current evaluation of staging ceiling capacity should be *even stricter* by removing available student capacity as each application is approved. This not only implies an even greater level of false precision but would make it difficult for any prospective applicant to know the adequacy status of a school service area, since it could change at any time.¹⁶

PHED Committee recommendation: (2-1) Councilmembers Riemer and Friedson concur with the Planning Board’s recommendation that the Annual School Test establish each school service area’s adequacy status for the entire fiscal year. Councilmember Jawando, dissenting, supports retaining the current evaluation process that would limit or condition the approval of any individual project where the school enrollment impact exceeds the available staging ceiling capacity for the applicable school service area.

Council staff concurs with the Planning Board recommendation. The Executive, the Town of Chevy Chase, the MCCPTA and several of its members support the strictest staging ceiling evaluation which would remove available staging ceiling capacity throughout the year as projects are approved. The Superintendent of MCPS did not comment on this recommendation. The testimony of Lerch, Early, and Brewer, and the MBIA support the Board’s recommendation.

G. SSP Recommendations not included in the Draft SSP resolution

The following are recommendations for which the Planning Board seeks concurrence, but they are not included in the SSP resolution.

1. Retest school adequacy for any applicant seeking an extension of APF Validity

Rec. 4.14 (p. 58; App. M pp. 108-110) would amend Chapter 50, Article II, Section 4.3.J.7 of the County Code (Bill 37-20) to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period. Currently, the County Code limits the validity of an adequate public facilities (APF) approval for an approved preliminary plan to “no less than 5 and no more than 10 years after the preliminary plan is approved.” If an applicant requests an extension of the APF validity period, the Code requires that the applicant demonstrate it has secured financing and met other markers indicating that the project is moving forward. The Code also allows the Planning Board to require the applicant to submit an updated traffic study “to demonstrate how the extension would not be averse to the public interest.”

Currently, an extension of the APF validity period does not address any potential change in school facility conditions. Recognizing that school conditions and school tests change over time, Rec. 4.14 proposes an amendment to Chapter 50 that would require an updated schools APF determination for any remaining unbuilt residential units utilizing the school infrastructure adequacy test in place at the time of the Planning Board’s review of the extension request.

¹⁶ Based on prior approvals.

The purpose of an APF extension request is to allow an applicant additional time to implement a project under the terms of the original approval. An applicant cannot propose any additional development as part of the request, nor can the Board require additional public improvements or other conditions. Given this, is it reasonable to request that an applicant for an extension of APF be retested for school facility adequacy? One could argue that following the original approval, student enrollment impacts were factored into school enrollment projections and therefore should not be reevaluated. However, given the 5-10 year original APF validity period, an applicant seeking extension will be at or past the “4- or 5-years in the future” adequacy benchmark of the original school test and thus could be facing a very different school facility scenario.

Under Chapter 50 today, the Board “may request” that an applicant show, through use of an updated traffic study, how the validity extension would not be adverse to the public interest. Under Rec. 4.14 the Board would require the applicant to retest school facility adequacy.

PHED Committee recommendation: (3-0) Concur with the Planning Board’s recommendation for a retest; however, the Committee recommends limiting the retest requirement to projects with certain characteristics. The Committee asked the Planning Department to provide a suggested limit. In response, Planning recommends that for any project where remaining unbuilt units would generate more than 10 students at any school serving the development, a new adequate public facilities determination must be made.

Council staff supports the retest with the added limit on applicability. The Executive supports the amendment to Chapter 50. The Superintendent did not comment. The testimony from Lerch, Early and Brewer opposes the recommendation to retest, as does testimony from the MBIA.

2. Expand the role of the MCPS representative to the Development Review Committee

The Development Review Committee (DRC) is an inter-agency task force comprised of representatives from public agencies and utilities such as WSSC, PEPCO, the State Highway Administration (SHA), MCPS, and the County Departments of Permitting Services, Environmental Protection, and Transportation. DRC members discuss the application with Planning staff at a regularly scheduled meeting. Each agency, providing comments for the DRC meeting, does so in writing. Planning staff ensures that those comments are included in the application file, along with a meeting summary and next steps. Planners then prepare recommendations that are presented to the Planning Board as part of the public hearing on the proposed plan.

The composition of the DRC is specified in the Subdivision Ordinance, Section 50-4.2(A). An MCPS representative is a required participant of the DRC when the application under review involves school site planning. The Planning Board recommends expanding the role of the MCPS representative to involve review and comment on all applications proposing residential development. Should the Council wish to expand MCPS’s role in DRC to address student capacity issues, then a bill amending Section 50-4.2(A)(9) should be introduced.

PHED Committee recommendation: (3-0) Concur with the Planning Board’s recommendation to expand the role of the MCPS representative on the DRC.

Council staff, the Executive, and the Superintendent of MCPS support this recommendation, as does the MCCPTA, Lerch, Early and Brewer, the MBIA and many others.

H. School Adequacy Standards and Residential Development Moratorium

Recommendations 4.5 (pp. 44-45; S2.2, App. 90-91), 4.9 (pp. 51-52; S2.2, App. pp. 90-91), and 4.16 (pp.59-60; S3, App. p. 91) all relate to utilization adequacy standards and the rules that apply when a school service area is deemed overutilized. In addition to proposing a three-year time horizon to evaluate projected school utilization (covered above¹⁷), Rec. 4.5 proposes new utilization adequacy standards as the basis for the Annual School Test, as shown in Table 5 below.

Table 5.

School Adequacy Standards		Adequacy Status			
Projected Utilization	Projected Seat Deficit	Greenfield Impact Areas	Turnover Impact Areas	Infill Impact Areas	Rec.
> 120%	N/A	Utilization Premium Payment Required	Utilization Premium Payment Required	Utilization Premium Payment Required	Rec. 4.16
> 125%	≥ 115 seats for ES ≥ 188 seats for MS N/A for HS	Moratorium			Rec. 4.9

The above recommendations would:

- (1) place different standards for adequacy based on school impact area; current adequacy standards apply Countywide;
- (2) replace the moratorium standard for Turnover and Infill Impact Areas with a Utilization Premium Payment (UPP); and
- (3) in the Greenfield Impact Area, where the moratorium standard is retained, raise the threshold from school utilization greater than 120 percent to utilization over 125 percent, and require a UPP when utilization exceeds 120 percent up to the moratorium threshold.

Moratoria

Under the current SSP, when schools reach 120 percent capacity utilization, the affected area goes into a moratorium, which means the Planning Board cannot approve new residential development. A moratorium lasts until the applicable school utilization drops below the moratorium threshold – typically evaluated at the next Annual School Test.

Those in favor of a moratorium standard hold that even a small number of additional students can be a burden to overutilized facilities and should therefore be curbed. While this idea seems reasonable, it is important to emphasize that placing a moratorium on development, which contributes only 25-30 percent to enrollment growth, will not stop the construction of already approved units, nor will it stop the more than 70 percent enrollment growth associated with the turnover of existing housing. A moratorium

¹⁷ The Committee supported (3-0) a 4-year time horizon.

will potentially stem some additional enrollment growth; the question is whether stopping the approval of residential development outweighs other County policy priorities, such as filling the County's housing supply gap; providing attainable, affordable housing; and supporting economic growth that contributes to the County's financial resources. The Planning Board Draft elaborates on several County priorities that are affected by a moratorium on residential construction¹⁸:

- (1) A moratorium slows the County's ability to address its housing supply gap. The County needs an additional 10,000 housing units by 2030 to meet future housing demand from population and job growth.¹⁹ Multifamily residential development, in particular, serves a critical role in fulfilling the County's projected housing demand and achieving housing affordability goals.
- (2) A moratorium impacts housing affordability. By restricting the supply of housing in the face of increasing demand for it, moratoria can apply upward pressure on housing prices. This affects not only the County's market rate affordable housing, but also the County's Moderately Priced Dwelling Unit (MPDU) program, as any restriction on new residential development also restricts the MPDUs it would have provided.
- (3) A moratorium affects economic development. Moratoria directly affect important aspects of the County's economic health by stopping new mixed-use development that provides benefits beyond housing. Residential development helps strengthen the County economy by investing in the community, creating local jobs, and increasing the tax base.
- (4) A moratorium impacts sustainable growth patterns. By halting development in desired growth areas, moratoria can result in increased growth elsewhere, potentially inhibiting sustainable growth patterns.
- (5) A moratorium will not solve school overcrowding. Stopping development does not solve overcrowding in the County's schools. As noted above, less than 30 percent of the County's enrollment growth can be attributed to new development. In many of the County's single-family neighborhoods, school enrollment continues to increase (regardless of a moratorium, and in many cases without any new development) due to turnover of the existing housing stock. However, moratoria limit the collection of school impact tax revenue, which is specifically dedicated to fund school capacity across the County.
- (6) A moratorium raises equity concerns. In general, MCPS does not make its capital improvements decisions based on the County's land use, economic or development priorities. However, pressure from developers and community members, along with a desire to avoid many of the negative impacts noted above, can lead the Council to prioritize the funding of projects for schools at risk of moratorium. Under constrained capital budgets, these decisions may delay projects at other schools with overcrowding and/or substandard facilities located in areas with a lack of development interest or not yet reaching the moratorium level. Less pressure to focus on projects that relieve potential moratoria could allow funding to be distributed without this added and potentially inequitable strain.

The fundamental question posed to the Committee was whether it is in the best interest of the County to retain moratoria on residential development when school utilization reaches a certain threshold. Much of the testimony received regarding moratoria focuses on the relative merits of applying a moratorium adequacy standard to only the Greenfield School Impact Area. However, the testimony of Lerch, Early and Brewer, the MBIA, and the Lantian Development Corporation supports the elimination of the moratorium standard Countywide, primarily citing the numerous adverse impacts to other County policy goals.

¹⁸ Paraphrased below.

¹⁹ This is beyond the existing 31,000 housing units already forecasted through the most recently completed MWCOG forecast process, Round 9.1.

PHED Committee Recommendation: (2-1) Councilmembers Friedson and Riemer oppose the use of moratoria, citing its significant negative impacts to the County in exchange for a narrow impact on school enrollment growth. Councilmember Jawando expressed concern over the same negative consequences of moratoria but supports a moratorium threshold—one set high enough to avoid many of the aforementioned externalities, yet setting an upper limit on development’s impact on enrollment growth.

If the Council believes moratoria serve a purpose that should be retained, then the Council must also decide the following:

(1) Should moratoria on residential development apply Countywide or only to certain School Impact Areas?

The Planning Board Draft suggests that moratoria should only apply to the Greenfield School Impact Area, as this area exhibits the highest student generation rate. In lieu of a moratorium in the Turnover and Infill School Impact Areas, the Board recommends a utilization payment equal to a maximum of 60 percent of the impact tax per structure type²⁰.

This is an unprecedented departure from prior SSPs/Growth Policies with respect to school adequacy. To date, the adequacy of a school has been judged equivocally across the County; any school with a utilization rate and seat deficit that meets the moratorium threshold is considered so overcrowded that any additional students (that can be controlled by the approval of new development) should not be allowed.

The Planning Board’s regional approach to moratorium contends that this concern (that at some level any additional student is too much) is only warranted in the Greenfield School Impact Area because each unit of approved development there will produce more students than the same unit built elsewhere in the County. This logic implicitly assumes equal or more development in the Greenfield location (and development of structure types that generate the most students per unit), but what if the magnitude or pace of development in other areas, such as an Infill Area in high demand, is greater than that occurring in the Greenfield Area. The relative impact of new development on the Infill Area school could be greater.

Attached on ©1-2 is the Pipeline of Approved Development for Downtown Bethesda and Clarksburg showing the number and types of housing units approved for development and the number of units remaining to be built. In Downtown Bethesda there are approximately 6,100 multifamily units in the pipeline. In Clarksburg there are approximately 1,800 units in the pipeline (1,100 single-family, 700 multifamily). Applying the applicable regional student generation rates (by structure type) to the pipeline in each area yields about twice as many elementary students in Clarksburg as in Downtown Bethesda. However, there are two elementary schools serving Downtown Bethesda, Bethesda ES and Somerset ES, with a combined seat deficit in four years of approximately 100 student seats. In Clarksburg there are eight elementary schools that serve the planning area, with a combined seat surplus in four years of 247 seats. No one anticipates the pipeline of development to build out in four years nor what projects will be added to it in that time. However, comparing Downtown Bethesda and Clarksburg, if both did build out in four years, taking into consideration the types of units approved, their relative student generation rates and the available elementary school capacity in four years, they end up in about the same place. Both planning areas would be facing an elementary school seat deficit of approximately 330 seats. There is no way to know which of the eight elementary schools in Clarksburg would be affected the most in this example,

²⁰ Over utilization at all three school levels would result in a payment equal to 60 percent of the applicable impact tax.

but with only two elementary schools serving Downtown Bethesda, it's likely both would be significantly overutilized. This simplified example has Downtown Bethesda developing three times faster than Clarksburg, but that's the piece of this that is unknown – the pace of development. It shows that the potential for overcrowding is more than just differences in student generation rates and, depending on the pace of development, Infill and Turnover areas can be just as likely to experience significant issues with school capacity.

So, should a limitation on overcrowding be acceptable for certain schools and not others? Do all schools warrant the same treatment? If they do, then this argues for a Countywide standard; it does **not** advocate for or against moratorium but demonstrates that considerations that limit overutilization in one area should be applied Countywide.

PHED Committee recommendation: (3-0) School utilization adequacy standard should apply Countywide.

Council staff does not support limiting the moratorium adequacy standard to the Greenfield School Impact Area. The Executive does not support limiting the moratorium adequacy standard to the Greenfield School Impact Area. The MCCPTA is not in favor of limiting moratorium based on the recommended structure of the utilization payments and other elements of the draft; numerous residents echoed these remarks. Testimony from the Coalition for Smarter Growth supports the regional moratorium standard, as does the testimony of Ms. Slater, and Mr. Wilhelm.

(2) What level of school utilization warrants a moratorium on residential development?

Whether applied Countywide or only to the Greenfield School Impact Area, there are several options the Council can consider in deciding the level of utilization that should trigger a moratorium.

- Current moratorium threshold of 120 percent. The 120 percent threshold has been in place since 2007. It has resulted in several clusters and numerous school services areas being placed in moratorium. In 2016, with the introduction of the individual school test, the 120 percent threshold was combined with a seat deficit threshold, recognizing the minimum seat deficits used by MCPS to consider requesting funds for additional capital infrastructure.

A primary concern with the current threshold is that it is set too low – meaning it regularly impacts the priority of capital programming in order to avoid it. When it cannot be avoided, residential development in the school service area is halted, potentially lessening the growth in enrollment from the 25-30 percent that comes from new development, at the expense of all residential development.

- Planning Board Draft recommendation of 125 percent. Increasing the moratorium threshold standard from 120 percent to 125 percent²¹ would lessen the impact of the concerns mentioned above. It would result in seven (out of 16) fewer school service areas being placed in moratorium.
- Planning Board and Board of Education recommendation of 135 percent in 2007. When major changes to the SSP were introduced in 2007, particularly the move from calculating school capacity based on “growth policy capacity” to calculating it based on program capacity, a 135 percent moratorium threshold was recommended by both the Planning Board and the Board of Education.²² The higher

²¹ Under 4-year enrollment and capacity projections as agreed to by the Committee (3-0) on Sept 30

²² If the School Facility Payment was not approved, the BOE suggested a 110% moratorium threshold.

threshold was recommended in conjunction with a 110% threshold for the requirement to make a School Facility Payment (similar to the UPP proposed in this SSP) under the premise that a wider threshold between a school facility payment and moratorium would produce more needed revenue for capital programming.

- City of Gaithersburg’s moratorium adequacy standard of 150 percent.

Table 6 below provides a comparison of school service areas that would be in moratorium under the various utilization threshold applied Countywide using a 4-year projection horizon.

Table 6.

School Service Areas in Moratorium Under Various Thresholds²³			
4-year Projections			
120%	125%	135%	150%
High Schools			
Montgomery Blair			
Winston Churchill			
Clarksburg			
Albert Einstein	Albert Einstein		
Walter Johnson	Walter Johnson	Walter Johnson	
R. Montgomery			
Quince Orchard	Quince Orchard	Quince Orchard	
Middle Schools			
Argyle			
Elementary Schools			
Bannockburn	Bannockburn	Bannockburn	
Bethesda	Bethesda		
Diamond			
Greencastle			
Highland View	Highland View	Highland View	
Mill Creek Towne	Mill Creek Towne	Mill Creek Towne	Mill Creek Towne
Judith A. Resnik			
Watkins Mill			

If the moratorium adequacy standard applies only to the Greenfield School Impact Area, the Clarksburg High School service area would be the only area in moratorium under a 120 percent utilization threshold, and no school service area would be in moratorium at the higher thresholds. Because many of the elements of the adequacy standards and rules when applied in combination result in different outcomes, attached at ©3 is a comparison of school service areas that would be in moratorium under various utilization thresholds applied Countywide, using the current 5-year projection horizon.

Before making a recommendation on the moratorium threshold standard, the Council should consider Rec. 4.11 (p. 53; App. 4.1.3, p. 92) as it provides flexibility in the implementation of moratoria. Rec. 4.11 would allow the Planning Board to approve residential development in an area under a

²³ Threshold = percent utilization and applicable seat deficit based on MCPS standard 92, 150, 200 (ES, MS, HS) adjusted by threshold percentage over 100 percent.

moratorium if a school (at the same level as any school causing the moratorium) is located within 3, 5, or 10 network miles (ES, MS, or HS, respectively) of the proposed subdivision and has a projected utilization less than or equal to 105 percent.

This new condition is similar to a provision allowed in early versions of the school SSP which allowed for “borrowing” of capacity. If a neighboring or adjacent cluster had sufficient capacity at the same school level to offset the overutilization of the cluster in question, then moratoria could be avoided. “Borrowing” was removed from the SSP in the early 2000’s due to concern that while cluster level capacity may be sufficient, the school at the same level with sufficient capacity and the school needing capacity could be located at opposite ends of their respective clusters.

The Planning Board’s recommendation allows for “borrowing” 3, 5, or 10 network miles (ES, MS, or HS, respectively) from the proposed development to a school service area with sufficient capacity. This could result in “sufficient” capacity from a non-adjacent school service area or from outside the cluster boundary. In addition to distance, Rec. 4.11 states that the projected utilization of the “non-moratorium” school must be less than or equal to 105 percent. This means that an overutilized school service area (over 100 percent) that is not adjacent or in the same school cluster can serve as an exemption to a moratorium. It is important to note that the premise of “borrowing” does **not** require MCPS to modify school boundaries but has been based, in the past, on the idea that programmatic or service area changes between schools at the same school level are **plausible** and would not worsen the adequacy of the underutilized school. Table 7 below shows the impact of an adjacent capacity exemption on the results of moratoria at various thresholds.

Table 7.

School Service Areas in Moratorium Under Various Thresholds Adjusted for Sufficient Adjacent Capacity			
4-year Projections			
120%	125%	135%	150%
High Schools			
Montgomery Blair			
Winston Churchill			
Clarksburg			
Albert Einstein			
Walter Johnson			
R. Montgomery			
Quince Orchard	Quince Orchard	Quince Orchard	
Middle Schools			
Argyle			
Elementary Schools			
Bannockburn	Bannockburn	Bannockburn	
Bethesda	Bethesda		
Diamond			
Greencastle			
Highland View	Highland View	Highland View	
Mill Creek Towne	Mill Creek Towne	Mill Creek Towne	Mill Creek Towne
Judith A. Resnik			
Watkins Mill			

PHED Committee recommendation: (3-0) Allow an exemption to moratoria for any project for which there is “sufficient adjacent capacity” at the same school level. “Sufficient” means the combined utilization of the overutilized school service area and the underutilized school service area does not exceed 100 percent. “Adjacent” means any school service area within the “catchment area” used by MCPS for programming/planning purposes.

Council staff supports “sufficient adjacent capacity”. The Executive and the Superintendent both expressed support for the concept of “borrowing”; however, the Superintendent stressed that, while plausible, actual boundary changes may not always be practical, and if they are, the adjacent school must be able to accommodate the additional students without itself becoming overcrowded – in terms of utilization and seat capacity. The MCCPTA does not support “borrowing”. The testimony of Lerch, Early and Brewer indicates support for it.

Taking into consideration the history of utilization thresholds triggering moratoria and the potential of “sufficient adjacent capacity” to relieve a project from moratoria under certain circumstances, the Committee made the following recommendation.

PHED Committee Recommendation: (2-1) Councilmembers Friedson and Riemer support elimination of moratoria Countywide. Councilmember Jawando, dissenting, proposes raising the Countywide moratoria threshold from the current threshold of 120 percent to 135 percent.

Council staff supports the 135 percent Countywide moratoria threshold. The Executive expressed support for flexibility with respect to moratoria. The Superintendent did not specifically comment on a moratorium threshold standard.

Other Exemptions to a Residential Development Moratorium

Before moving to the discussion on UPP, there are two additional exemptions related to moratoria that should be covered in the event a moratorium standard is retained. One is Rec. 4.12 (pp. 53-54; S4.1, App. p. 92) which proposes the elimination of the moratorium exception adopted in 2019 pertaining to projects providing high quantities of deeply affordable housing or projects removing condemned buildings. In 2019, the County Council amended the SSP to include an exception to moratoria for residential development if the development is estimated to generate 10 students or fewer at any school and either replaces a condemned or previously condemned and vacant structure located within or abutting an Opportunity Zone; or produces more than 50 percent of its units as affordable to households earning 60 percent or less of area median income.

According to the Planning Board Draft, the recommendation to limit moratoria to Greenfield Areas removes the need for such an exception.

PHED Committee recommendation: (3-0) If the Council chooses a Countywide moratorium standard, then these exceptions should be retained.

The other exemption, Rec.4.10 (p. 52; S4.1, App. p. 92), is related to senior living units and the definition of de minimis. Rec. 4.10 would provide a moratorium exception for projects estimated to net fewer than one full student at any school in moratorium, and projects where the residential component consists entirely of senior living units.

The recommended de minimis exception of projects estimated to generate fewer than one full student (on average) at any school in moratorium is a change from the current SSP, which exempts projects of “three units or fewer.” Using the number of students as the threshold directly connects the exception to the impact on enrollment. It also accounts for both the type and number of units built. Compared to the SSP’s current de minimis exception of three units or fewer, this new exception is a little more lenient and would allow modest residential projects to be approved.

PHED Committee recommendation: (3-0) Concur with the Planning Board’s recommendation with respect to moratoria exceptions for senior living units and de minimis development.

I. 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 utilization²⁴ exceeds 120 percent. The Planning Board would apply the UPP to each School Service Area as shown in Table 8 below.

Table 8.

Planning Board Draft Recommendation 4.5					
School Adequacy Standards		Adequacy Status			
Projected Utilization	Projected Seat Deficit	Greenfield Impact Areas	Turnover Impact Areas	Infill Impact Areas	Rec.
> 120%	N/A	Utilization Premium Payment Required	Utilization Premium Payment Required	Utilization Premium Payment Required	Rec. 4.16
> 125%	≥ 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 would 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, varying by school level to reflect the relative impact housing units have on student enrollment at each level.

The Committee discussed several elements of the UPP, including:

- 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?

²⁴ 4-years in the future. At Sept. 30 worksession Committee voted (3-0) to a 4-year time horizon.

- 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 UPP 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 UPP.

Is 120 percent the right threshold?

In lieu of a moratorium standard in the Turnover and Infill Impact Areas, the Planning Board suggests a UPP kick in at the current 120 percent threshold for moratorium. The former version of the UPP, the School Facility Payment (SFP), was required when utilization at any school level within a cluster exceeded 105 percent. 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 is 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 ©4-5) to his Council colleagues recommending that development in any school service area with utilization above 105 percent be required to make a UPP. Furthermore, for school service areas with utilization above 120 percent, a higher UPP should be required. And for school service areas with a utilization rate above 135 percent utilization, a moratorium would be placed on residential development.

PHED Committee recommendation: (3-0) Set a first-tier UPP threshold at 105 percent utilization, a second-tier UPP threshold at 120 percent utilization, and a third-tier threshold at 135 percent utilization. While the Committee members unanimously agree on the utilization thresholds, they differ on what happens when a school reaches 135 percent utilization. Councilmembers Friedson and Riemer recommend a UPP be required at the 135 percent threshold. Councilmember Jawando recommends a moratorium.

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. Council staff and the MCCPTA support 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 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.

PHED Committee Recommendation: (3-0) Retain seat deficits (adjusted for program capacity) as a second measure of adequacy when setting thresholds for UPPs, and moratoria if retained.

Table 9 below shows the applicable revision to the Adequacy Standards Table under Rec. 4.5 (p.44; S2.2, App. p. 91).

Table 9.

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
> 120%	≥ 102 seats for ES ≥ 151 seats for MS ≥ 216 seats for HS	Utilization Premium Payment Required			
> 135%	≥ 115 seats for ES ≥ 170 seats for MS ≥ 243 seats for HS	Moratorium or Utilization Premium Payment Required			

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 so that it can be implemented to match the adequacy test that is applied to each school. Like the SFP, the Planning Board proposes the UPP be based on 60 percent of the impact tax²⁵ (if all three school levels are inadequate).

The Committee has recommended a 4-year time horizon for the evaluation of school utilization; this choice plus whether the Council²⁶ chooses to retain moratoria (and if so, how) have implications for setting UPP threshold(s) and rates. Table 10 shows the school service areas that would be affected (either by a UPP or moratoria) using a 4-year projection horizon under various utilization thresholds.²⁷

²⁵ Calculated at 100 percent of the cost of a student seat (currently impact taxes are based on 120 percent of the cost).

²⁶ The Committee voted (2-1) in favor of eliminating moratoria; CM Jawando recommends a 135% moratorium threshold.

²⁷ 3-year and 5-year projections under various utilization thresholds are attached at ©3-4.

Table 10.

School Service Areas Under Various Utilization Thresholds²⁸				
4-year Projection Horizon				
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	Walter Johnson	
R. Montgomery	R. Montgomery			
Northwest				
Quince Orchard	Quince Orchard	Quince Orchard	Quince Orchard	
Middle Schools				
Argyle	Argyle			
Elementary Schools				
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			

PHED Committee Recommendation: (2-1) Councilmembers Friedson and Riemer recommend the following UPP rates at the agreed-upon thresholds:

Utilization Premium Payment Rates	
Utilization Threshold	% of the Proportional Impact Tax Rate per Overutilized School Level
105 percent	20 percent
120 percent	40 percent
135 percent	60 percent

²⁸ And applicable seat deficits based on program capacity.

Councilmember Jawando recommends the following UPP rates at the agreed-upon thresholds:

Utilization Premium Payment Rates	
Utilization Threshold	% of the Proportional Impact Tax Rate per Overutilized School Level
105 percent	50 percent
120 percent	100 percent
135 percent	Moratorium

Table 11 shows the school service areas that fall under each utilization threshold.

Table 11.

PHED Committee Threshold Recommendations 4-year Projection Horizon		
Utilization Threshold		
105%	120%	135%
Utilization Premium Payment 20% of Impact Tax – CMs Friedson and Riemer 50% of Impact Tax – CM Jawando	Utilization Premium Payment 40% of Impact Tax – CMs Friedson and Riemer 100% of Impact Tax – CM Jawando	Utilization Premium Payment 60% of Impact Tax – CMs Friedson and Riemer Moratorium – CM Jawando
High Schools		
J. H. Blake	M. Blair	Walter Johnson
Gaithersburg	W. Churchill	Quince Orchard
Northwest	Clarksburg	
	Albert Einstein	
	R. Montgomery	
Middle Schools		
	Argyle	
Elementary Schools		
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 UPP rate that should apply at any given threshold, Table 12 shows the GO Committee’s proposed impact tax rates by dwelling type and school impact area. These rates equal the

Planning Board standard impact tax rates, except that the low-rise and high-rise multifamily rates are not combined.

Table 12.

Committee Impact Taxes	Single-family		Multifamily	
	Detached	Attached	Low-Rise	High-Rise
Infill Standard	\$20,130	\$18,063	\$6,448	\$3,193
Turnover Standard	\$21,530	\$23,884	\$11,555	\$2,326
Greenfield Standard	\$33,809	\$28,691	\$11,753	\$4,148

Tables 13, 14, and 15 show the applicable UPP at 20, 40, 50, and 60 percent of the school impact tax, respectively.

Table 13.

Utilization Premium Payments (20% of Impact Tax)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	\$1,678	\$1,505	\$537	\$266
	Middle	\$1,007	\$903	\$322	\$160
	High	\$1,342	\$1,204	\$430	\$213
Turnover Impact Areas	Elementary	\$1,794	\$1,990	\$963	\$194
	Middle	\$1,077	\$1,194	\$578	\$116
	High	\$1,435	\$1,592	\$770	\$155
Greenfield Impact Areas	Elementary	\$2,817	\$2,391	\$979	\$346
	Middle	\$1,690	\$1,435	\$588	\$207
	High	\$2,254	\$1,913	\$784	\$277

Table 14.

Utilization Premium Payments (40% of Impact Tax)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	\$3,355	\$3,011	\$1,075	\$532
	Middle	\$2,013	\$1,806	\$645	\$319
	High	\$2,684	\$2,408	\$860	\$426
Turnover Impact Areas	Elementary	\$3,588	\$3,981	\$1,926	\$388
	Middle	\$2,153	\$2,388	\$1,156	\$233
	High	\$2,871	\$3,185	\$1,541	\$310
Greenfield Impact Areas	Elementary	\$5,635	\$4,782	\$1,959	\$691
	Middle	\$3,381	\$2,869	\$1,175	\$415
	High	\$4,508	\$3,825	\$1,567	\$553

Table 15.

Utilization Premium Payments (50% of Impact Tax)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	\$4,195	\$3,763	\$1,343	\$665
	Middle	\$2,518	\$2,258	\$805	\$400
	High	\$3,355	\$3,010	\$1,075	\$533
Turnover Impact Areas	Elementary	\$4,485	\$4,975	\$2,408	\$485
	Middle	\$2,693	\$2,985	\$1,445	\$290
	High	\$3,588	\$3,980	\$1,925	\$388
Greenfield Impact Areas	Elementary	\$7,043	\$5,978	\$2,448	\$865
	Middle	\$4,225	\$3,588	\$1,470	\$518
	High	\$5,635	\$4,783	\$1,960	\$693

Table 16.

Utilization Premium Payments (60% of Impact Tax)		Single-family		Multifamily	
		Detached	Attached	Low-Rise	High-Rise
Infill Impact Areas	Elementary	\$5,033	\$4,516	\$1,612	\$798
	Middle	\$3,020	\$2,709	\$967	\$479
	High	\$4,026	\$3,613	\$1,290	\$639
Turnover Impact Areas	Elementary	\$5,383	\$5,971	\$2,889	\$582
	Middle	\$3,230	\$3,583	\$1,733	\$349
	High	\$4,306	\$4,777	\$2,311	\$465
Greenfield Impact Areas	Elementary	\$8,452	\$7,173	\$2,938	\$1,037
	Middle	\$5,071	\$4,304	\$1,763	\$622
	High	\$6,762	\$5,738	\$2,351	\$830

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, but 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.

PHED Committee recommendation: (3-0) Specify that revenue from the UPP can be spent on any school facility capital project at the same school level that adds capacity designed to alleviate overutilization in the school service area from which the funds are collected.

The Planning Board recommends exempting MPDUs from the requirement to make a Utilization Premium Payment. The Planning Board did not recommend a UPP exemption for development in an Enterprise zone or an Opportunity zone, nor does the Board recommend an exemption for market rate units receiving an impact tax discount. **The Committee ran out of time during its worksession to provide a recommendation on exemptions from the UPP.** Council staff supports the Planning Board recommendation with respect to exemptions from the UPP.

When and how should the UPP be collected?

The SSP 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 required²⁹) 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.

PHED Committee recommendation: (3-0) Any UPP 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.

²⁹ 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.

J. Development Impacts Taxes for Public Schools

General history of impact taxes in Montgomery County. The Council approved the initial impact fee law in 1986 and at the time it applied only in Germantown and Eastern Montgomery County (Fairland, White Oak, and Cloverly), then the fastest growing areas in the County. After the Court of Appeals found in 1990 that the County did not have authority to impose the impact fee it had enacted³⁰, the Council enacted Emergency Bill 33-90 that transformed the fee to an excise tax, but most of the other aspects of the program remained unchanged. After the approval of the Clarksburg Master Plan in 1994, the Council extended the tax to Clarksburg. Funds collected in each of these areas could be spent only on projects within the respective areas that were explicitly listed in the law, most of which were new roads, road widenings, and park-and-ride lots. Taxes were collected prior to the issuance of building permits. The cost of capacity-adding projects built by a development were creditable against the tax.

In 2001, the Council enacted Bill 47-01 (effective July 2002) that established transportation impact taxes Countywide. It created a new “County” District that encompassed all areas not within Germantown, Eastern Montgomery County, and Clarksburg, and established its own rate schedule. It created separate accounts for Rockville and Gaithersburg, noting that funds within each municipality could be spent only on projects that served them, respectively. It set the rates in Metro Station Policy Areas at half of the County District rates. It also deleted the explicit list of projects in the law, replacing it with several categories of projects that were eligible; the categories were no longer simply auto-based, but included such elements as added Ride On buses and shelters, new or expanded transit centers, hiker-biker trails, sidewalk connectors, and bike storage facilities. Two years later the County District and the Germantown and Eastern Montgomery County areas were combined into a new “General” District. Early in the last decade, further amendments to the law deferred the payment of the tax from building permit to 6 months after permit issuance or final inspection (whichever is earlier), established bikesharing stations as an eligible expense, and extended the use of credits to 12 years. Several amendments over the years exempted (or set \$0/sf rates) for certain types of development: development in existing and former enterprise zones, affordable dwelling units, hospitals, bioscience facilities, social service agencies, and charitable organizations.

In 2016, the Council stratified the transportation impact tax rates into four different zones: Red (at Metrorail stations), Orange (generally near Metro stations, or at certain Town Centers), Yellow (lower density suburban), and Green (rural). It also set a \$0/sf rate for places of worship (which had been charged a very low rate for several years) as well as for clergy houses.

The Council approved a Countywide school impact tax in 2003 (effective 2004) which applied only to residential development. Rates were set for single-family-detached houses, townhouses, garden apartments (up to 4 stories), and high-rise apartments. The rates for single-family-detached houses and townhouses also included a surcharge for larger homes. Senior housing had a \$0 rate. There was one set of rates Countywide, and funds collected anywhere in the County could be spent on any capacity-adding school project in the County. Under both the transportation and school taxes, affordable dwelling units and development in existing and (starting in 2007) former enterprise zones were exempted. A law enacted earlier this decade provides that if a development includes at least 25% affordable units, all units in that development are exempt from both taxes. In 2016, the Council generally increased school impact tax rates by 20% to reflect the potential cost of land acquisition and as a revenue offset for discontinuing the School Facility Payment levy on some new housing developments.

³⁰ Eastern Diversified Properties, Inc. v. Montgomery County, 39 Md. 45, 570 A.2d 850 (1990).

Impact tax collections over the years have fluctuated widely, reflecting the varying activity in the building industry. Transportation impact tax collections have been especially volatile due to the unpredictability of when credits (which can be substantial) are cashed in.

Revenue from Impact Taxes since FY 2013

Year	School	Transportation
FY13	\$27,901,753	\$13,179,898
FY14	45,837,274	20,274,781
FY15	32,676,773	16,632,489
FY16	23,349,333	8,591,461
FY17	39,286,909	14,393,086
FY18	20,795,511	13,095,573
FY19	27,729,115	29,928,513
FY20	22,936,170	12,818,212

The four funding sources for MCPS’s Approved FY21-26 CIP are shown below. Impact taxes will provide about one of every fourteen dollars spent on school capital projects:

Funding Source	Funding Programmed	% of Total
G.O. Bonds/Current Revenue	\$726,797,000	42.1%
Recordation Tax	\$447,184,000	25.9%
State Aid	\$432,834,000	25.0%
School Impact Tax	\$121,308,000	7.0%
Total	\$1,728,123,000	100.0%

The transportation portion of the CIP is funded from multiple sources. Impact taxes are projected to fund \$58,512,000 (5.7%) of the \$1,022,448,000 transportation capital program in FY21-26.

Calculation of School Impact Tax Rates Rec. 6.2 (pp. 89-92; Sec. 52-54, p. 115) proposes that school impact taxes be calculated at 100 percent of the cost of a student seat using School Impact Area student generation rates. Furthermore, discount factors to single-family attached and multifamily units in desired growth and investment areas should apply, while the current 120 percent factor within the Agricultural Reserve zone should be maintained. The four parts of Recommendation 6.2 are covered separately below.

- (1) *Application of School Impact Area student generation rates to calculate school impact taxes.* Currently, school impact taxes vary by structure type only. Under this recommendation, school impact taxes would vary by structure type and by School Impact Area. Along with Rec. 6.1, the topic of School Impact Areas was covered in the first few pages of this report. .

- (2) *Calculate school impact taxes at 100 percent of the cost of a student seat.* Currently, school impact taxes are based on 120 percent of the cost of a student seat. In 2016, the Council raised it from 100 percent to 110 percent to reflect the potential cost of land per student seat, and then raised it an additional 10 percent to offset the revenue loss from eliminating the School Facility Payment. Prior to 2016, the tax was based on 90 percent of the student seat cost.

This draft of the SSP recommends reinstating a payment, termed a Utilization Premium Payment (UPP), for approval of development in overutilized school service areas. As noted in the prior section, the PHED Committee supports a multi-tiered UPP. Given that, it seems reasonable to return to a school impact tax calculation based on 100 percent of the student seat cost.³¹

GO Committee recommendation: (3-0) Concur with the Planning Board’s recommendation to calculate school impact taxes based on 100 percent of the per student seat cost.

Council staff support the 100 percent student seat cost calculation. The Executive supports the current 120 percent per student seat calculation.

- (3) *Discount factors to single-family attached and multifamily units in desired growth and investment areas should apply.* The Planning Board Draft recommends that a 40 percent discount on school impact taxes be provided to duplex, townhouse, and multifamily development in areas deemed “desired growth and investment areas”. The Planning staff recommended that the discounts apply to MWCOC defined Activity Centers; however, the Planning Board modified this, creating the “desired growth and investment area” designation. “Desired growth and investment areas” are defined as: “Activity Centers located within Infill and Turnover School Impact Areas (with the exception of the Olney, Kensington, NIH/Walter Reed, Bethesda, and Clarksburg Activity Centers) and areas within a 500-foot buffer of an existing Bus Rapid Transit (BRT) line or planned BRT line with approved construction funding in the County’s Capital Improvements Program (CIP).³² Figure 37 on page 90 of the Draft SSP shows the location of the desired growth and investment areas relative to School Impact Areas.

Currently, school impact taxes apply Countywide, varying only by structure type based on the recognition that different types of dwelling units generate students at different rates. Impact taxes are, by definition, supposed to equal the cost of the impact for which they are being charged. School impact taxes do this fairly well. Montgomery County Public Schools (MCPS) provide a per student seat cost based on the actual capital cost of school construction (by school level), which does not vary across the County. The per seat construction cost by school level is then multiplied by the student generation rate (for all school levels) per structure type³³, to provide an impact tax that equals the capital cost of school infrastructure per dwelling unit.

The Planning Board’s proposal to vary school impact taxes based on School Impact Area adds a geographically-based refinement to the calculation. School Impact Areas group planning areas based on the character of their growth and that growth’s impact on school utilization; they capture differences in student generation associated with how and where development is occurring, thus refining the cost-associated impact of development by School Impact Area.

Do the Planning Board’s “desired growth and investment areas” warrant an additional discount based primarily on location? According to the Draft SSP, Montgomery County’s growth expectations are formed by the Metropolitan Washington Council of Governments (MWCOC) Round 9.1 Cooperative Forecast, the most recently-completed forecast of population, household,

³¹ The dedication of land for the purpose of building additional school facilities is more common than the purchase of land. The last appropriation for MCPS land acquisition occurred in 2019 for a Materials Management Warehouse. Prior to that was an appropriation for land acquisition in the Northwest Cluster in 2013.

³² At this point in time, this includes the planned BRT routes along US 29, MD 355, and Veirs Mill Road.

³³ Calculated from actual student data on grade level and address, scrubbed of all other personal information.

and employment growth. Montgomery County is expected to grow its population by 20.5 percent, its number of households by 23.2 percent, and its number of jobs by 30.5 percent over the next 25 years. Furthermore, the MWCOG Forecast estimates that, increasingly, households and jobs will gravitate to Activity Centers and hotspots³⁴, with 76 percent of the County’s household growth and 80 percent of its job growth occurring in these areas. While forecasts are not a guarantee, information on where development is occurring today is also useful. To evaluate preliminary recommendations by Planning staff, the Office of Management and Budget evaluation of impact tax collections from FY15-FY20 showed almost 66 percent of collections coming from development occurring in the County’s Activity Centers. However, more important than whether growth is or isn’t occurring in these locations is whether the “desired growth and investment areas” have a lower cost impact on providing school infrastructure, not already accounted for through regional student generation rates. And the answer is that they don’t.

GO Committee recommendation: (3-0) A discount to “desired growth and investment areas” is unwarranted.

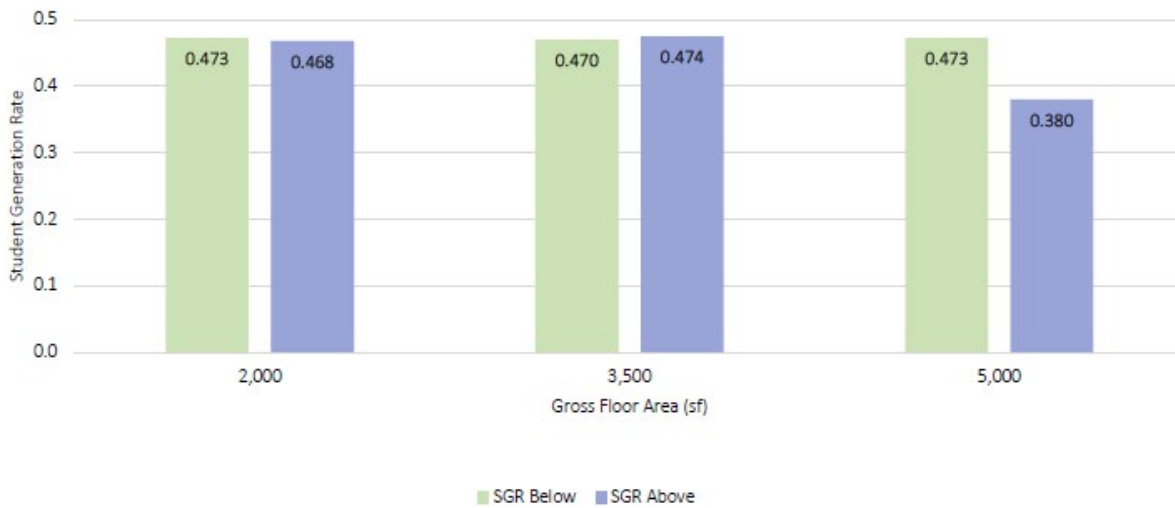
- (4) *Retain the current 120 percent cost per student seat calculation for residential development in the Agricultural Reserve (AR) zone.* Under the Draft SSP, potential residential development in the AR zone will be required to make a UPP, just like residential development anywhere else in the County. If the rationale to remove the 20 percent premium from the base calculation of impact taxes in exchange for the UPP is appropriate for the rest of the County, then it seems appropriate for the AR zone as providing school facilities in the AR zone is not uniquely more expensive than elsewhere. If the rationale is to discourage development in the AR zone, the County has adopted restrictive zoning to further this goal. Impact taxes are to reflect the cost of providing school infrastructure.

GO Committee recommendation: (3-0) Use the 100 percent student seat cost calculation for residential development in the AR zone, just as it recommended for the rest of the County.

School impact tax surcharge Rec. 6.4 (pp. 92-93; Sec. 52-55, p. 116) recommends elimination of the current impact tax surcharge on units larger than 3,500 square feet. Developers are currently charged an impact tax premium surcharge of \$2.00 for each square foot of gross floor area that a single-family unit exceeds 3,500 square feet, to a maximum of 8,500 square feet. Figure 39 in the SSP Draft shows student generation rates for single-family detached houses by gross floor area, indicating no appreciable relationship between the size of a single-family unit and the number of school students generated. In other words, larger single-family homes do not necessarily generate more students compared to smaller-sized homes. Figure 40, copied below, further highlights the relationship between students and three different home size thresholds: 2,000 square feet, 3,500 square feet, and 5,000 square feet, demonstrating no connection between the size of the home and the number of school students living in the home.

³⁴ Hotspots are defined by their relatively high per-acre job or population growth forecasted at the geographic level of a Transportation Analysis Zone (TAZ).

Figure 40. Single-Family Detached Student Generation Rates Above and Below Particular Gross Floor Area Thresholds.



GO Committee recommendation: Concur with the Planning Board’s recommendation to eliminate the impact tax surcharge on dwelling units larger than 3,500 square feet.

Council staff supports elimination of the surcharge. The Executive does not support eliminating the surcharge on larger homes.

Calculation of development impact taxes on net new units Rec. 6.8 (p.99; Sec. 52-54, p.115) recommends the continued application of impact taxes on a net impact basis, providing a credit for any residential unit demolished. Currently, impact taxes are not paid on a replacement dwelling as long as construction begins within a year of the demolition of the original house. Planning staff did an analysis of student generation rates associated with recently torn down and rebuilt single-family homes. Their work showed that teardown/rebuilds generate slightly fewer students on average than other single-family homes that were recently sold (regardless of the home’s age). According to the SSP Draft, there were 848 replacement homes built across the County between 2014 and 2018, generating on average 0.557 students per home. A review of single-family detached homes sold between 2014 and 2018 revealed that they generated 0.622 students per home on average in 2018, or 11.7 percent more than replacement homes. Basically, when a single dwelling unit replaces another single dwelling unit, the net housing impact is zero. Over the life of the new home, it is expected to generate as many students, on average, in any given year as the original home.

During an earlier worksession on the Draft SSP, Councilmember Riemer mentioned the difficulty a couple in his neighborhood encountered in meeting the one-year deadline to start construction on their new home. They ran into unexpected issues that delayed their reconstruction efforts, and consequently they faced a \$30,000 plus impact tax they had not expected nor budgeted for. As a result, Councilmember Riemer suggested modifying the one-year construction start requirement by increasing the time limitation from one year to four years and changing the trigger to an application for a building permit instead of construction. Also, during the discussion Councilmember Friedson raised another issue regarding delays beyond the control of the applicant. He requested a waiver provision be given to the Director of the Department of Permitting Services or the Director’s designee if the Director finds that the applicant was unable to apply for a building permit due to actions or circumstances beyond the applicant’s control.

GO Committee recommendation: (3-0) Concur with the Planning Board’s recommendation to continue application of impact taxes on a net new basis. And concur with the amendments offered by Councilmembers Riemer and Friedson.

K. Development Impact Tax Credits and Exemptions

School impact tax credit for non-capacity improvements Rec. 6.3, (p. 92; Sec. 52-58(c), App. N, pp. 117-118). The School Impact Tax law allows for a credit for a new public elementary or secondary school, an addition to an existing public elementary or secondary school that adds one or more teaching stations, or a modernization of an existing public elementary or secondary school to the extent that the modernization adds one or more teaching stations (Section 52-56(d)). The Planning Board recommends expanding the credit to include other types of physical school facility improvements if the Board of Education agrees to it. The SSP Draft suggests HVAC system upgrades and roof replacements as examples.

This proposal violates the very concept of an impact tax. An impact tax is levied to cover the impact of a new development on capacity. A residential development, depending on its size and type, has an impact on the number of students that need to be accommodated, so there is a direct nexus to the need to add capacity. However, the need to replace or upgrade existing HVAC, roofs, life safety systems, PLAR elements, etc., is totally unrelated to the number of students added to a school. Similarly, the transportation impact tax can only be used for transportation improvements that add capacity, and not for resurfacing, in-kind bridge rehabilitation, Ride On bus replacements, etc. Since the County cannot spend impact tax funds on non-capacity improvements, neither should it grant credits to developers for non-capacity improvements.

GO Committee recommendation: (3-0) Non-capacity adding improvements should not be creditable against the school impact tax.

Council staff does not support a credit for non-capacity adding improvements. Likewise, the Executive does not support a credit that does not add student capacity.

Impact Tax Credits for Projects Providing 2- and 3-Bedroom Units On October 4, Councilmember Jawando sent to his GO/PHED Committee colleagues several recommendations regarding the Planning Board’s Draft SSP and related impact tax changes. With respect to impact taxes, Councilmember Jawando is recommending an impact tax credit of 40 percent for two-bedroom multifamily units and 60 percent for three-bedroom multifamily units built in Infill School Impact Areas to incentivize construction of multifamily housing for families; see ©4-5.

In the October 9 GO Committee worksession staff report, covering recommendations on the calculation of school impact taxes, Council staff explained that the primary basis for an impact tax is to address the cost-associated impact for which it is being collected. And just as discounts for “desired growth areas” do not provide a cost-related savings not already captured by regional student generation rates, constructing two- and three-bedroom units also does not provide an impact-related cost savings. In fact, two- and three-bedroom units are most likely to have a somewhat higher cost impact than efficiencies and 1-bedroom units as they are more likely to generate students. However, this impact would be captured in biennial updates of student generation rates for multifamily structures. That said, the County has a long

history of providing impact tax exemptions and credits that further other important public policy goals, affordable housing being the most notable and prevalent.

Councilmember Jawando's motivation for the tax credit is based on a significant decline in two- and three-bedroom units being constructed in the County; his memo notes that, between 2010-2016, only two percent of the multifamily units built included three-bedroom units and only 35 percent included two-bedroom units (the lowest percentages since 1950). Councilmember Jawando believes that, more than a need to incentivize development in "desired growth areas", the need to provide housing for families, especially housing that is accessible to high quality transit, should be a priority. He therefore recommends a 40 percent per unit credit for two-bedroom multifamily units and 60 percent per unit credit for three-bedroom multifamily units built in Infill School Impact Areas. A map on ©6 shows the Desired Growth Areas and Infill School Impact Areas.

The Committee discussed the Councilmember's proposal without reaching a recommendation. The Committee requested information on the relative rents and construction costs for efficiency, 1-, 2-, and 3- bedroom units. The information regarding this proposal will be added as an addendum to this report.

Impact Tax Exemption for Projects Providing a Minimum of 25 percent Affordable Units Rec. 6.7 (pp.96-98; Sec. 52-55, p. 117) proposes two changes to the current impact tax exemption for projects providing a minimum of 25 percent affordable units. The first change is to require all affordable units be placed in the County's or a municipality's MPDU program. This is fairly straightforward; requiring the affordable units to be placed in the MPDU program ensures their affordability in the long term. Units in the MPDU program are under a 99-year affordability control period. Other affordable housing programs have much shorter control periods.

GO Committee recommendation: (3-0) Concur with the Planning Board's recommendation to require that all affordable units be placed in the MPDU program.

The second change places a limit on the exemption. Currently, the exemption relieves a project from its obligation to pay both school and transportation impact taxes on **all** of its units in exchange for providing a minimum of 25 percent of its units as affordable. Since 2015 when it was adopted, 14 projects have been approved for development, including approximately 6,000 total residential units. Of these, approximately 800 units would be required MPDUs (provided with or without this exemption) and an additional 800 would be "incentivized affordable units", required for the project to qualify for the current exemption. According to OMB, the potential foregone collection of impact taxes associated with these projects equals more than \$100 million.

Recognizing the potential impact of the current exemption on school and transportation infrastructure revenue, and aiming to balance this concern with the County's affordable housing goals, the Planning Board's exemption limit would replace the impact tax exemption with a discount equal to the lowest (standard) impact tax rate in the County for the applicable unit type.³⁵ At first glance, this proposed discount may seem unnecessarily complicated. Why not simply apply a percentage discount to all non-exempt units? Because doing so would provide a greater incentive for projects with the highest impact tax rates, and areas in the County with the highest impact tax rates are also the areas where the differences between MPDU rents and market rents are the lowest. Figures 42 and 43 in the Planning Board Draft demonstrate how the Board's proposed revisions would apply to school and transportation impact tax rates, respectively.

³⁵ For all non-exempt or market rate units.

GO Committee recommendation: Concur with the Planning Board’s recommendation to replace the current exemption with one that limits the amount of the exemption for projects providing a minimum of 25 percent MPDUs. It should also be noted that several property owners or their representatives have written to express their concern with projects at various stages in the approval process expecting/proposing to use the current exemption. Effective dates and grandfathering of applications and/or projects will be covered in an Addendum.

L. Recommended Changes to the Recordation Tax

General history of recordation taxes for the CIP. Recordation taxes are levied under Md. Tax-Property Code §§12-101 to 12-118, as amended. The tax applies to the principal amount of the debt secured by a mortgage or deed of trust. When a mortgage is refinanced, the tax applies to the amount of the principal debt that is greater than the principal remaining on the original debt.

The County has levied a recordation tax for many decades, with the proceeds used to supplement the General Fund. At the beginning of this century the rate was \$2.20 per \$500, with the first \$50,000 of a recordation exempt. In 2004, the County began to levy a \$1.25 per \$500 increase to the tax that could be used for any MCPS capital project or a Montgomery College information technology capital project; this has been referred to as the School Increment to the recordation tax.

In 2008, the Council began to levy a third tier—the so-called Recordation Tax Premium—at \$1.55 per \$500 on the amount a recordation exceeded \$500,000. Half of the Premium’s revenue is allocated to the County Government CIP (e.g., transportation, public safety, library, recreation, and general government projects) and the other half for rental assistance programs for low-to-moderate income households. During the recession years of FYs10-11, the Premium funds were directed to the General Fund instead.

In 2016, the Council reduced the rate associated with the General Fund allocation from \$2.20 to \$2.08 and increased the School Increment rate from \$1.25 to \$2.37. It also increased the Premium rate from \$1.55 to \$2.30. Revenue collected since FY13 from the School Increment and Premium is shown below:

Revenue from Recordation Taxes since FY 2013

Year	School Increment	Premium³⁶
FY13	27,640,951	18,601,744
FY14	24,948,565	15,993,814
FY15	26,147,938	17,147,580
FY16	28,930,069	19,158,439
FY17	57,826,469	30,836,056
FY18	55,495,916	25,872,555
FY19	62,274,141	32,049,271
FY20	65,652,722	36,751,680

Planning Board recommendations for changes to the recordation tax Rec. 6.9 (pp. 101-103; App. Q, pp. 122-124) proposes that the County incorporate progressive modifications into the calculation of the

³⁶ Half is used for funding County Government CIP projects and half for funding rental assistance programs.

Recordation Tax to provide additional funding for school construction and the County’s Housing Initiative Fund. Countywide, Planning staff estimate that more than 70 percent of recent Countywide growth in Montgomery County Public Schools (MCPS) enrollment can be attributed to turnover of existing dwelling units. Given the large role that turnover plays in enrollment growth, the Planning Board is recommending a modification to the calculation of the recordation tax to increase MCPS capital budget funding and increase support for the County’s Housing Initiative Fund.

The GO Committee did not discuss the following recordation tax recommendations proposed by the Planning Board. As such, the recommendations can be taken up by the full Council or can be addressed following adoption of the SSP, whichever the Council decides.

The Recordation Tax is a progressive tax paid on the sale of a property by the purchaser. The tax is progressive in that the amount paid is based on the sales price of the property and the rate paid increases at higher sales prices. Below is a copy of Table 18 in the Planning Board Draft. It highlights the current recordation tax steps and rates and the respective funding targets and compares these to the Planning Board’s recommended modifications.

Table 18. Past, Current and Proposed Changes to the Recordation Tax.

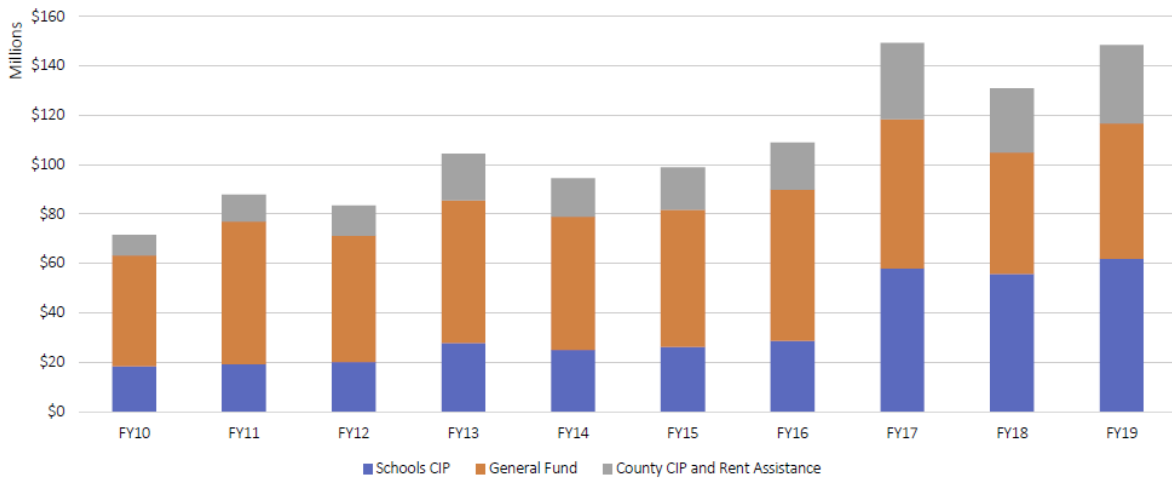
	Prior to September 1, 2016	Current Recordation Tax	Proposed Recordation Tax
Exemptions	<ul style="list-style-type: none"> First \$50,000 of consideration payable, if it's the homebuyer's principal residence 	<ul style="list-style-type: none"> First \$100,000 of consideration payable, if it's the homebuyer's principal residence 	<ul style="list-style-type: none"> First \$100,000 of consideration payable, if it's the homebuyer's principal residence First \$500,000 of consideration payable, if the purchaser is a first-time homebuyer and it's the homebuyer's principal residence
For each \$500 that the sales price exceeds \$100,000	<ul style="list-style-type: none"> \$1.25 to the CIP for schools⁵¹ \$2.20 to the county's general fund 	<ul style="list-style-type: none"> \$2.37 to the MCPS CIP \$2.08 to the county's general fund 	<ul style="list-style-type: none"> \$2.87 to the MCPS CIP \$2.08 to the county's general fund
For each \$500 that the sales price exceeds \$500,000	<ul style="list-style-type: none"> \$1.55 split evenly between the county CIP and rental assistance 	<ul style="list-style-type: none"> \$2.30 split evenly between the county CIP and rental assistance 	<ul style="list-style-type: none"> \$2.30 split evenly between the county CIP and rental assistance \$0.50 to the MCPS CIP
For each \$500 that the sales price of a single-family home exceeds \$1 million	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> \$1.00 to the county's Housing Initiative Fund

Currently, the recordation tax provides \$2.37 to the Montgomery County Public Schools (MCPS) Capital Improvements Program (CIP) for every \$500 interval (or part thereof) above \$100,000 in the sales

price of a home. The Planning Board recommends increasing that component by 50 cents to \$2.87. Additionally, the Board recommends adding a new 50 cent charge earmarked for the MCPS CIP for every \$500 interval above \$500,000. The Board is also recommending a charge of \$1.00 for every \$500 interval in excess of \$1 million allocated to the Housing Initiative Fund (HIF) to support rental assistance. And finally, the Planning Board is proposing an exemption from the recordation tax for the first \$500,000 in consideration for first-time home buyers.

In May 2016, the County Council adopted Bill 15-16, which dedicated more recordation tax revenue to the MCPS CIP; the portion dedicated to schools was increased from \$1.25 for each \$500 increment in sales price to \$2.37. The impact of this change can be seen in Figure 44 in the Planning Board Draft, copied below.

Figure 44. Recordation Tax Revenue, FY2010 to FY2019.



It shows recordation tax funding for the schools CIP increased from approximately \$29 million in FY2016 to almost \$58 million in FY2017.

Since 2017, when the recordation tax rate was raised, the recordation tax has consistently generated much more revenue for the schools CIP than development impact taxes. Table 17 below shows the collections of each for the past four years.

Table 17.

Collections		
Year	Recordation Tax	School Impact Tax
\$ millions		
2017	\$57.8	\$39.3
2018	\$55.5	\$20.8
2019	\$62.3	\$27.7
2020	\$65.7	\$22.9
Total	\$241.3	\$110.7
Source: Montgomery County Department of Finance		

In fact, the relative school impact tax collections from 2017-2020 was about 31 percent of the combined impact tax and recordation tax collections from this period (thus making recordation tax collections approximately 69 percent of the total). This is generally equivalent to the proportion of student enrollment growth from new development compared to student enrollment growth from the turnover of existing homes, suggesting, perhaps, that the relative revenue from these funding sources lines up fairly well with their relative impact on school facilities. In fact, the Approved FY21-26 CIP assumes that \$447.2 million of resources for the MCPS CIP will be derived from the recordation tax, while only \$121.3 million will come from the impact tax, thus making the recordation tax collections about 79% of the total of the two, and the school impact tax 21%.

The following tables are from the Fiscal Impact Analysis prepared by OMB and Finance (see ©7-12).

Table 18.

Recordation Tax	Funding Allocation	Current Rate	Proposed Rate Changes		
		FY19 Tax Collection	Additional Revenue for School CIP	Additional Revenue for MHI	Increases Related to Rate Increase
BASE - for each \$500 that the sales price <\$500K	General Fund	\$ 54,465,614			\$ -
	MCPS Capital Improvement	\$ 62,038,090	\$ 13,088,205		\$ 13,088,205
PREMIUM -for each \$500 that the sales price >\$500K	MCPS Capital Improvement	\$ 15,904,800	\$ 6,915,087		\$ 6,915,087
	Rent Assistance	\$ 15,904,599			
MHI - for \$500 that the sales price >\$1M	Montgomery Housing Initiative (MHI)	\$ -		\$ 2,027,000	\$ 2,027,000
	Total	\$ 148,313,103	\$ 20,003,291	\$ 2,027,000.00	\$ 22,030,292

Table 18 shows that the two 50 cent increases (one for sales prices less than \$500,000 and one for sales prices greater than \$500,000) for the MCPS CIP result in approximately \$20 million in additional revenue based on FY19 collections. It shows the \$1 increase for sales prices over \$1 million results in just over \$2 million in funding for the HIF.

Adding the first-time homebuyer exemption reduces the potential gains from the increases noted above. It should be noted that OMB’s estimation of first-time home buyers is based on a study by The Housing Center of the American Institute that reported a 44.9 percent share of first-time homebuyers for Montgomery County in 2019. The Housing Center’s report uses the U.S. Department of Housing and Urban Development (HUD) definition of a first-time homebuyer, “an individual who has not had an ownership interest in a principal residence (anywhere) for the previous three (3) years” as the basis for its estimation. However, Maryland Tax-Property Code Ann. §12-103 authorizes the County to exempt a first-time homebuyer from paying the recordation tax as follows:

(3) The governing body of a county or Baltimore City may provide for an exemption from the recordation tax for an instrument of writing for residentially improved owner-occupied real property if the instrument of writing is accompanied by a statement under oath signed by each grantee that:

- (i)
 1. the grantee is an individual who has never owned in the State residential real property that has been the individual's principal residence; and
 2. the residence will be occupied by the grantee as the grantee's principal residence;
 or
- (ii)
 1. the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this title for the property; and
 2. the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

Thus, the HUD definition used in OMB's analysis may lead to a much larger first-time homebuyer group than the Maryland definition above limiting a first-time home buyer to someone who has never owned a principal residence in Maryland, but it is difficult to know. At the least, OMB's estimate of the revenue lost due to the proposed first-time homebuyer credit should be viewed with caution as the County is required to follow the State definition of a first-time homebuyer for this exemption. That said, Table 19 show the estimated loss in revenue from the first-time homebuyer exemption.

Table 19.

2019 Home Sales	# of Sales	Average Sold Price (Est.)	Current Rate	Proposed Rate Changes			% Change
			Amount	Estimated Amount	Est. Exemption (1st \$500K for 1st Homebuyer)	Total Amount	
>\$100,000 to <\$499,999	7,290	\$ 330,062	\$ 14,926,635	\$ 16,603,785	\$ (13,005,007)	\$ 3,598,778	-76%
>\$500K to <\$999,999	4,247	\$ 689,958	\$ 26,010,445	\$ 29,322,745	\$ -	\$ 29,322,745	13%
>\$1M	1,180	\$ 1,858,898	\$ 25,848,050	\$ 31,554,050	\$ -	\$ 31,554,050	22%
Total Residential	12,717	\$ 554,555	\$ 66,785,130	\$ 77,480,580	\$ (13,005,007)	\$ 64,475,573	-3%

Of course, a decrease in revenue due to an exemption is not unexpected; however, one consequence of the first-time homebuyer's exemption (regardless of magnitude) is a decrease to the General Fund. Table 20 shows the impact of the first-time homebuyer exemption by fund.

Table 20.

Recordation Tax Proposed Bill 39-20 - Annual Estimated Revenue changes by Fund Type	Forecast-"Proposed Rates" FY21-FY26	
MCPS Capital Improvement increase	\$ 12,463,015	\$ 74,778,088
Montgomery Housing Initiative increase	\$ 2,027,000	\$ 12,162,000
General Fund Operating decrease	\$ (5,464,730)	\$ (32,788,381)
Grand Total Revenue increase	\$ 9,025,285	\$ 54,151,707

Several stakeholders weighed in regarding the proposed changes to the recordation tax. The Executive expressed concern with the motivation for raising the tax and the impact on the General Fund as a result of the first-time homebuyers exemption. Others whose testimony expresses concern or opposition to the proposed changes include the Apartment and Office Building Association of Metropolitan Washington, the Greater Capital Area Association of Realtors, and Lerch, Early and Brewer. However, several others, such as the League of Women Voters and several area residents, expressed support for the proposed

changes, both the increase that could provide more funding for MCPS and the exemption for first-time homebuyers.

In Council staff's opinion, there is no clear answer. Any first-time homebuyer exemption will decrease funding for both the General Fund and MCPS. Given the recent relative collection of impact taxes and recordation taxes, 31 percent to 69 percent, and the projected relative collection of 21 percent to 79 percent, there is no apparent need to raise the recordation tax to better align these funding sources with their relative impact on enrollment growth. However, the capital infrastructure needs of MCPS could always benefit from more funding. The Committee will have had a worksession on the calculation of impact tax rates and other exemptions prior to this worksession (but after the writing of this report). Staff will prepare information summarizing the Committee recommendations on impact taxes to supplement this discussion.

M. 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 (i.e., 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 that 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 led 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 to recommend 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. However, 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 affects the pace of development that at a point in time may seem like an amount of growth but it does not change the 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 map amendments), then that is misleading.

PHED Committee recommendation: Change the name from the Subdivision Staging Policy to the Growth and Infrastructure Policy. Note that any name change will require introduction and adoption of a separate bill.

<u>This packet contains:</u>	<u>Circle #</u>
Development Pipeline Data	1-2
5-year Projections Table	3
Memorandum from Councilmember Jawando	4-5
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Lerch, Early, and Brewer Testimony	53-65
Bill 37-20	66-69
Bill 38-20	70-84
Bill 39-20	85-89

Downtown Bethesda –Pipeline of Approved Development Sept. 2020					
<u>Plan Number</u>	<u>Project Name</u>	<u>Units Approved</u>	<u>Unbuilt Units</u>	<u>Unbuilt SF Units</u>	<u>Unbuilt MF Units</u>
11981068B	4 Bethesda Metro Center	479	479	0	479
119840580	Edgemont at Bethesda II	282	160	0	160
119940800	7340 Wisconsin Avenue	225	225	0	225
120060290	Rugby Condominium	61	60	0	60
120090140	Woodmont Central	455	221	0	221
120120200	7900 Wisconsin Avenue	475	475	0	475
11981068B	4 Bethesda Metro Center	479	479	0	479
12015020B	St. Elmo Apartments	279	279	0	279
120160050	8008 Wisconsin Avenue	106	106	0	106
120160220	8015 Old Georgetown Road	297	295	0	295
120160380	7272 Wisconsin Ave	456	456	0	456
120170250	The Claiborne	84	84	0	84
120180140	ZOM Bethesda	230	230	0	230
120180210	4915 Auburn Avenue	180	180	0	180
120180280	8280 Wisconsin/Woodmont Central	453	453	0	453
120190050	7607 Old Georgetown Road	200	200	0	200
120190060	8000 Wisconsin	441	441	0	441
120190190	Metro Tower	366	366	0	366
120190240	Battery District	1,130	1,130	0	1,130
120200070	4824 Edgemoor Lane	77	77	0	77
820200100	4702 West Virginia Avenue	19	19	0	19
Total		6,495	6,136	0	6,136

Elementary Schools serving Downtown Bethesda	4-year Projections			
	Enrollment	Capacity	Seat Deficit/Surplus	Utilization
Bethesda	734	560	-174	131.1%
Somerset	441	515	+74	85.6%

Clarksburg - Pipeline of Approved Development Sept. 2020					
<u>Plan Number</u>	<u>Project Name</u>	<u>Units Approved</u>	<u>Unbuilt Units</u>	<u>Unbuilt SF Units</u>	<u>Unbuilt MF Units</u>
119950420	Clarksburg Town Center	1,118	78	42	36
120031100	Cabin Branch	2,386	953	453	500
120050030	Linthicum West Property	253	252	252	0
120050950	Tapestry	67	67	67	0
120060780	Shiloh Church Road	1	1	1	0
120080150	Ridge View Estates	5	4	4	0
120080240	Garnkirk Farms	392	288	104	184
120090330	Piedmont Road	4	2	2	0
120150060	The Courts at Clarksburg	140	17	17	0
120160160	Dowden's Station	105	103	103	0
120180110	Avalon Residential	50	50	50	0
Total		4,521	1,815	1,095	720

Elementary School serving Clarksburg ¹	4-year Projections			
	Enrollment	Capacity	Seat Deficit/Surplus	Utilization
Cedar Grove	341	402	+61	84.8%
Clarksburg	264	311	+47	84.9%
Little Bennett	638	624	-14	102.2%
Snowden Farm	897	774	-123	115.9%
Wilson Wims	628	739	+111	85.0%
William B. Gibbs Jr.	602	719	+117	83.7%
Lois P. Rockwell	484	530	+46	91.3%
Woodfield	379	381	+2	99.5%

¹ A CIP project (P651901) that will reassign students among Clarksburg ES, Cedar Grove ES, Wilson Wims ES and Clarksburg ES #9 in September 2023.

School Service Areas Under Various Utilization Thresholds²				
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				

² And applicable seat deficits



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

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.

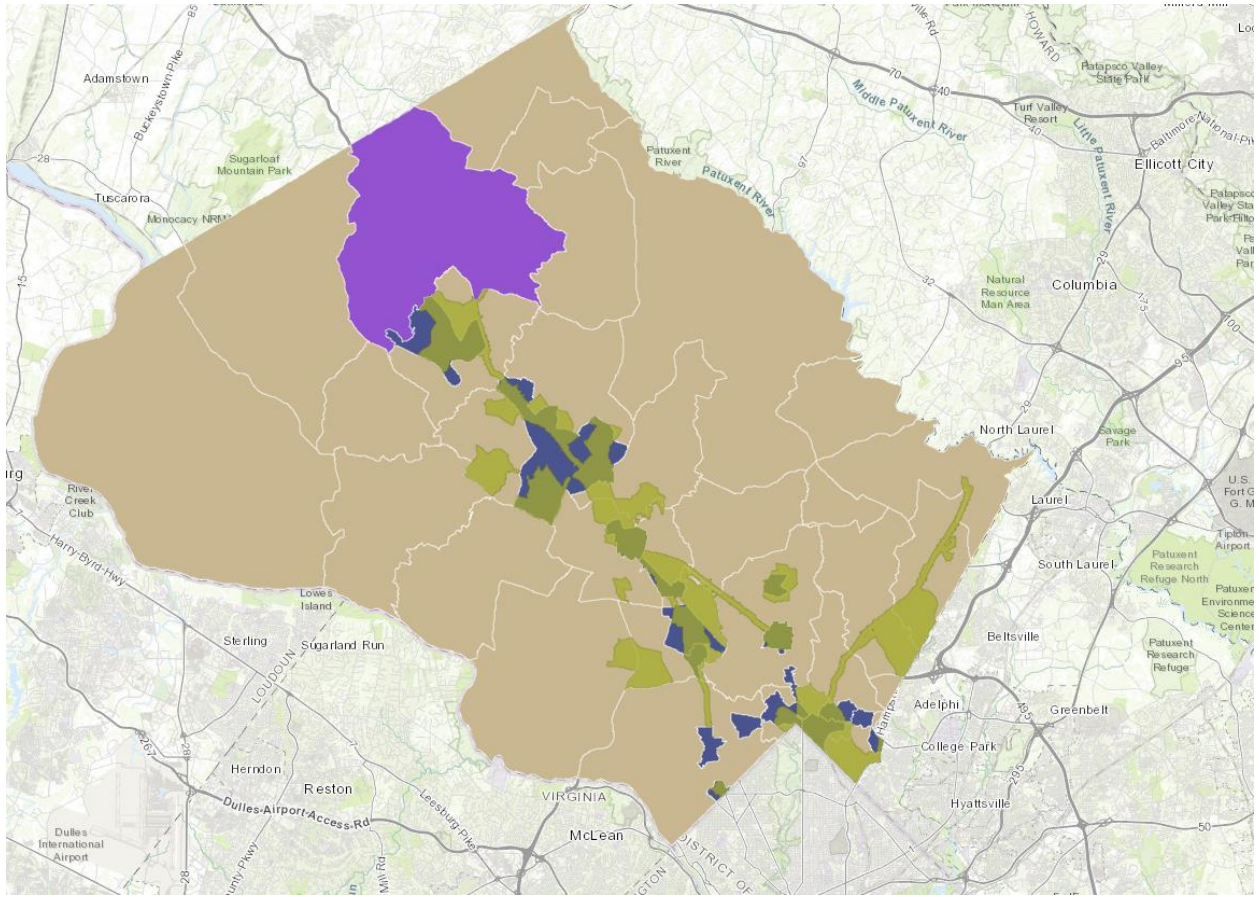
I appreciate the work done by the Planning Board, Council staff and all of my colleagues. The current draft of the SSP misses the mark when it comes to targeting incentives to add the kind of family housing we need most. I am hopeful we can implement a tool that will help prevent overcrowding at schools 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
Infill Impact Areas	Elementary	\$4,138	\$3,635	\$1,354	\$671	\$8,277	\$7,271	\$2,708	\$1,341
	Middle	\$2,365	\$2,077	\$774	\$383	\$4,730	\$4,155	\$1,548	\$766
	High	\$3,350	\$2,943	\$1,096	\$543	\$6,700	\$5,886	\$2,192	\$1,086
Turnover Impact Areas	Elementary	\$4,532	\$5,025	\$2,427	\$488	\$9,064	\$10,050	\$4,853	\$977
	Middle	\$2,590	\$2,871	\$1,387	\$279	\$5,180	\$5,743	\$2,773	\$558
	High	\$3,669	\$4,068	\$1,964	\$395	\$7,338	\$8,136	\$3,929	\$791
Greenfield Impact Areas	Elementary	\$7,100	\$6,025	\$6,178	--[3]	\$14,200	\$12,050	\$12,356	--
	Middle	\$4,057	\$3,443	\$3,530	--	\$8,114	\$6,886	\$7,061	--
	High	\$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



Legend:

Infill School Impact Areas: 

Desired Growth Areas: 

Fiscal Impact Statement
Bill 38-20, Taxation – Development Impact Taxes for Transportation
and Public School Improvements - Amendments

1. Legislative Summary

Bill 38-20 would amend transportation and school impact tax district designations and the impact tax rates that apply in these districts. Bill 38-20 would also modify the applicability of development impact tax exemptions for certain uses and in certain locations, and generally amend the law governing transportation and school development impact taxes. This Bill is part of the Planning Board’s recommended changes to the Subdivision Staging Policy.

The Planning Board recommends tax changes to be included in Bill 38-20 as follows:

- Apply one tax rate for all multifamily units in both low-rise and high-rise buildings;
- calculate the standard school impact taxes at 100% of the cost of a student seat using the newly created School Impact Area student generation rates, but apply a discount to single-family attached and multifamily units to incentivize growth in certain Desired Growth and Investment Areas (DGA), and maintain the current 120% factor within the Agricultural Reserve Zone;
- allow a school impact credit for any school facility improvement constructed or funded by a property owner if the Montgomery County School Board agrees to the improvement;
- eliminate the school impact tax surcharge of \$2 for each square foot of gross floor area that exceeds 3,500 s.f. to a maximum of 8,500 s.f.;
- eliminate the current impact tax exemptions from development in former Enterprise Zones;
- exempt any development in a qualified Opportunity Zones certified by the U.S. Treasury Department; and
- limit the exemption for any non-exempt dwelling unit in a development with 25% MPDUs to require paying the applicable tax discounted by an amount equal to the lowest standard impact tax rate by housing type.

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2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Bill 38-20 does not impact County expenditures related to the reporting and collection of impact taxes to reflect the proposed changes. The Office of Management and Budget (OMB) assumed the impact tax collection and reporting administered and managed by the Department of Permitting Services would be implemented within existing appropriations.

To estimate the potential changes in County revenues, OMB and the Department of Finance collaborated with Planning staff to collect data and then develop a systematic approach to evaluate each component in those proposed tax changes. We evaluated the historical/actual impact tax collections between FY15 and FY20 under the newly proposed school impact area framework, analyzed the macro-level effects on school and transportation impact tax collections resulting from the rate and structure changes, and then utilized a forecasting model developed by Finance and evaluated the pipeline data of unbuilt residential projects in the County to provide an illustrative example of the potential financial implications of the

proposed impact tax rate and structure changes based on specific pipeline project locations in the County. A detailed analysis of anticipated tax changes related to the Planning Board’s Subdivision Staging Policy recommendations, including changes in Bill 38-20, is presented in Attachment 1(©1-30). This analysis was included in the County Executive’s comments on the proposed Subdivision Staging Policy.

Below (Table 1) summarizes the projected changes in County revenues that could be expected. Note that the forecasting analysis assumes that existing development patterns continue over the next six years, and the pipeline analysis also assumes that projects currently submitted or approved will be fully built out as is. However, future development may significantly shift as a result of the pandemic or changes in the housing market or overall economy.

Table 1. Estimated Revenue Changes from Planning Board’s Recommendations on Impact Taxes and Related Fees

	No.	Planning Board's Recommendations	Estimated Revenue Changes	Annual Estimate
School Impact Taxes	6.1	Apply one tax rate for all multifamily units in both low-rise and high-rise buildings.	Forecast data shows an average \$4.4M in revenue loss per year if using one-rate for multifamily units. (This amount is incorporated into the figures in 6.2 below.)	
	6.2	<ul style="list-style-type: none"> •Calculate the standard school impact taxes at 100% of the cost of a student seat using "new" School Impact Area student generation rates. •Apply a discount (60%) to single-family attached and multifamily units to incentivize growth in certain desired growth and investment areas (DGA). •Maintain the current 120% factor within the Agricultural Reserve Zone. 	Forecasting indicates a loss of \$4M in revenue loss per year if using the proposed rates. The estimate includes all unit types in all school impact areas. For Pipeline analysis, the revenue loss could be greater, estimated at \$7.3M. The annual estimate uses the average between \$4M and \$7.3M.	(5,650,000)
	6.3	Allow school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS' agreement	No fiscal impact analysis can be performed due to data limitation.	
	6.4	Eliminate School Impact Tax Surcharge on units larger than 3,500 sf	Surcharge generated from single-family units was \$1.66M per year between FY15 and FY20. If eliminated, it would likely result in approximately \$1.66M in revenue loss if historical development patterns are maintained.	(1,660,000)
	4.16	Require Utilization Premium Payments for a school projected utilization exceeds 120% three years in the future	If the UPP was applied over the past six years, \$3M in revenue per year could have been generated. If UPP are applied to Pipeline projects, it's estimated that \$4M or more could be generated per year.	4,000,000
Tax Exemptions	6.5	Enterprise Zone Exemptions - Eliminate the current tax exemptions in former EZ	If eliminating exemption for former EZ, pipeline analysis suggested that County could gain \$4.4M per year under the current rate, but only collect \$2.5M from proposed rates.	2,500,000
	6.6	Opportunity Zone Exemptions - Exempt any development in Opportunity Zones	Pipeline analysis suggests that revenue loss would be \$3.6M per year under current rates compared to \$2.2M under proposed rates. Due to the drastic rate changes, the exemption effect in OZ would be less under proposed rates.	(2,200,000)
	6.7	25% Affordable Housing Exemptions - Limit the exemption amount to the lowest standard impact tax by housing type and place the affordable units in the MPDU Program.	Using the case study of 14 projects, the proposed rates and 25% MPDU limitation are likely to generate an additional \$31.5M for all projects. Assuming those projects would take 5 years to build out, the average revenue generated per year would be \$6.3M. If take 10 years to build out, the average revenue would be only \$3.15M.	3,150,300

NOTE: Additionally, the Planning Board proposed a new Utilization Premium Payment (UPP) fee that developers would pay when a school’s projected utilization three years in the future exceeds 120%. Although this requirement is not part of the Bill 38-20 amendments, the potential payments collected from the UPP charges were developed based on a percentage of the proposed impact tax rates, and they would have a fiscal impact on County revenues. For this reason, they are included here.

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

As discussed in Question #2, OMB and Finance used the historical FY15-FY20 data to estimate future revenues over the next six fiscal years with the following steps:

- Utilizing Finance’s forecasting model to establish a “baseline” under the assumption of development patterns to be continued over the next six years in similar trends and under current rate structure;
- applying a differential between the proposed rates and the average historical rates to each school impact area; and
- forecasting the potential revenue that could have been generated if the recommended rate changes were applied, and the resulting difference indicates the likelihood of change in macro tax collections projected over the next six years.

The forecasting under the proposed rates indicates that the County is likely to collect \$24M (or 12.7%) less in school impact taxes than that of the baseline forecast under the current tax rates over the next six fiscal years. This could represent an average of \$4M in revenue loss per year. When analyzing 416 projects currently existing in Planning’s pipeline dataset, OMB estimated that those projects, if fully built out within a 10-year timeframe, the average revenue collected per year within the proposed rates would be \$7.3M less than the current rates. Additionally, the elimination of the surcharge for single-family units would likely result in an average of \$1.66M in revenue loss per year based on the historical data analysis. Without taking into consideration other changes in exemptions and new funding sources, the proposed rate structure changes with reduced and discounted taxes would likely result in a loss of \$43.9M dollars from FY21-FY26.

These reductions in impact tax revenues are partially offset by proposed changes in existing impact tax exemptions (\$3.5 million/year on net). These exemption changes relate to reductions in the 25% MPDU exemption (\$3,150,300/year) and elimination of impact tax exemptions in former enterprise zones (\$2,500,000/year). However, the revenue increase related to the elimination of the former enterprise zone exemption is almost fully negated by the proposed new exemption for Opportunity Zones – some of which are former Enterprise Zones (\$2,200,000).

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

Not applicable.

5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill 38 – 20 does not authorize future spending.

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

Not applicable.

8. An explanation of how the addition of new staff responsibilities would affect other duties.
Not applicable.

9. An estimate of costs when an additional appropriation is needed.
Not applicable.

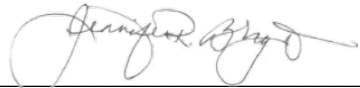
10. A description of any variable that could affect revenue and cost estimates.
Estimating impact taxes is very challenging. Impact tax revenues would vary depending on how the currently approved projects move forward and how, or if, developers respond to the amended tax rates for newly established school impact areas and desired growth areas, exemption changes, and the new UPP requirement. It is difficult to predict future shifts in market demand and individual developer's decision-making.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.
Revenue generated from impact tax collections is generally difficult to project due to market volatility or other conditions which can impact the timing and scope of individual projects. As previously noted, it is difficult to estimate how many developers may adjust their development plans as each project's cost/benefit analysis is unknown to the County.

12. If a bill is likely to have no fiscal impact, why that is the case.
Not applicable.

13. Other fiscal impacts or comments.
Not applicable.

14. The following contributed to and concurred with this analysis:
Dennis Hetman, Department of Finance
Mary Beck, Office of Management and Budget
Pofen Salem, Office of Management and Budget
Estela Boronat de Gomes, Office of Management and Budget



Jennifer Bryant, Acting Director
Office of Management and Budget

09/11/20

Date

Fiscal Impact Statement
Expedited Bill 39-20, Taxation - Recordation Tax - Amendments

1. Legislative Summary

Expedited Bill 39-20 will increase the rate of the recordation tax levied under the state law for certain transactions involving the transfer of property and would establish a partial exemption from the recordation tax for a first-time home buyer. Bill 39-20 would also amend the allocation of revenue received from the recordation tax to capital improvements for schools and to the Montgomery Housing Initiative Fund.

Table 1. Rate changes under the current law vs. the Planning Board’s proposal

(1) For each \$500 of Debt to \$499,999	Current Rate	Proposed Rate	
General Fund	\$ 2.08	\$ 2.08	
MCPS Capital Improvement	\$ 2.37	\$ 2.87	a)
Subtotal	\$ 4.45	\$ 4.95	
(2) for each \$500 of Debt Between \$500,000 to \$999,999			
(A) Premium \$2.30			
Capital Improvement	\$ 1.15	\$ 1.15	
Rent assistance	\$ 1.15	\$ 1.15	
(B) MCPS Capital Improvement		\$ 0.50	b)
Subtotal (cumulative)	\$ 6.75	\$ 7.75	
(3) for each \$500 of Debt over \$1,000,000			
Montgomery Housing Initiative		\$ 1.00	c)
Total Recordation Tax Pay (cumulative)	\$ 6.75	\$ 8.75	
Exemptions 52-16B (b):	Current	Proposed	
(1) owner-occupied residential property 7 month of 12 month after the property is conveyed.	\$100,000	\$100,000	
(2) If the buyer of the property is a first time home buyer.	N/A	\$500,000	d)

Current Rates Sec 52-16B (a) and 52-16B (b) County Code

Proposed rate changes:

- a) Increase the current tax rate of \$2.37 by \$0.50 to \$2.87 for each \$500 interval of which net revenue is reserved or allocated to capital improvements to schools;
- b) Increase of another \$0.50 for each \$500 or fraction of \$500 of the amount over \$500,000 of which the net revenue is reserved or allocated to the cost of capital improvements to schools;
- c) Increase of an additional \$1.00 for each \$500 or fraction of \$500 of the amount over \$1,000,000 of which net revenue is reserved for and allocated to the Montgomery Housing Initiative under Section 25B-9; and
- d) Exempt from the recordation tax the first \$500,000 of the consideration payable if the buyer of that property is a first-time home buyer. (Exemption applies only to recordation tax for residential units.)

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

With the exception of the one-time cost for software modification and testing outlined in item #7, Bill 39-20 does not impact County expenditures related to the reporting and collection of recordation tax required by the proposed changes.

Table 2. Analysis of Recordation Tax Collections

Office of Management and Budget (OMB) and Department of Finance (Finance) calculated the proposed rate collection based on FY2019 actual collections and home sale data from Market Statistics, and assumed all first-time homebuyers purchased homes with cost of less than \$500,000 to estimate the potential exemption.

Recordation Tax	Funding Allocation	Current Rate	Proposed Rate Changes		
		FY19 Tax Collection	Additional Revenue for School CIP	Additional Revenue for MHI	Increases Related to Rate Increase
BASE - for each \$500 that the sales price <\$500K	General Fund	\$ 54,465,614			\$ -
	MCPS Capital Improvement	\$ 62,038,090	\$ 13,088,205		\$ 13,088,205
PREMIUM -for each \$500 that the sales price >\$500K	MCPS Capital Improvement	\$ 15,904,800	\$ 6,915,087		\$ 6,915,087
	Rent Assistance	\$ 15,904,599			
MHI - for \$500 that the sales price >\$1M	Montgomery Housing Initiative (MHI)	\$ -		\$ 2,027,000	\$ 2,027,000
	Total	\$ 148,313,103	\$ 20,003,291	\$ 2,027,000.00	\$ 22,030,292

Calculation of the additional revenue for schools CIP is based on Montgomery Planning (Planning) staff’s estimate as validated by the Department of Finance. Planning applied the historical recordation tax collection data for FY19 from the Treasury Division (Department of Finance) to the proposed new tax rates related to MCPS Capital Improvement. With this approach, the proposed change would have generated \$20M more in revenues for MCPS CIP.

Calculation of the additional revenue for MHI (\$2.03M), and the First-Time Homebuyers exemption (-\$13M) was calculated based on data published by MarketStat in the Market Statistics Report for 2019. Using this data, Finance and OMB were able to group home sales into tiers that matched the recordation tax tiers. The 2019 Montgomery County home sales data was then used to calculate revenues under the current and proposed rates to determine the additional revenues for home sales over \$1M. Then, based on the assumption that first time homebuyers would fall into the lowest tier of home sales (<\$500K), the calculated number of first-time homebuyers was multiplied by the average sales price in the lower tier of home sales. (Table 3)

Table 3. First Time Homebuyers Exemption

2019 Home Sales	# of Sales	Average Sold Price (Est.)	Current Rate	Proposed Rate Changes			% Change
			Amount	Estimated Amount	Est. Exemption (1st \$500K for 1st Homebuyer)	Total Amount	
>\$100,000 to <\$499,999	7,290	\$ 330,062	\$ 14,926,635	\$ 16,603,785	\$ (13,005,007)	\$ 3,598,778	-76%
>\$500K to <\$999,999	4,247	\$ 689,958	\$ 26,010,445	\$ 29,322,745	\$ -	\$ 29,322,745	13%
>\$1M	1,180	\$ 1,858,898	\$ 25,848,050	\$ 31,554,050	\$ -	\$ 31,554,050	22%
Total Residential	12,717	\$ 554,555	\$ 66,785,130	\$ 77,480,580	\$ (13,005,007)	\$ 64,475,573	-3%

Notes

1. The data source is the 2019 home sales reported by Market Statistics; the calculation reflects the existing tax exemption for the first \$100,000 of the sales price if it is the homebuyer’s principal residence.
2. The Housing Center of the American Enterprise Institute reported a 44.9% 2019 share of first-time homebuyers for Montgomery County in 2019. The calculated exemption by OMB and Finance assumes the proposed policy change of exempting the first \$500K of the sales price for first-time homebuyers.
3. Market Statistics home sales data reports FHA first time homebuyers. First time home buyer definition: (HUD, FHA) “an individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property. This includes a spouse (if either meets the above test, they are considered first-time homebuyers). NOTE: In an effort to find first time homebuyer data more consistent with state definitions, OMB and Finance requested information from the Circuit Court. This data was not available.
4. Using 2019 data, we estimate that the exemption for the first-time homebuyers whose sales price is less than \$500K would yield a loss of approximately \$13.01M.

Table 4: Summary of Recordation Tax Resulting from Proposed Rate Changes

Proposed Rate changes applied to FY19 collection	
Additional Revenue for School CIP	\$ 20,003,292
Additional Revenue for MHI	\$ 2,027,000
Exemption for First-time Homebuyers (<\$500)	\$ (13,005,007)
Total Estimated Revenue	\$ 9,025,285

Based on FY19/CY19 data, we could expect to receive an additional \$22M or 14.8% increase in recordation tax revenues without the new first-time homebuyer exemption. However, with the new exemption, we expect a \$13M loss in revenue, for a net increase of \$9.03M in recordation tax revenues.

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

If the proposed changes are approved, the direct impact of the estimated tax exemption for first-time homebuyers will have a negative revenue impact (\$5.5M loss estimated) on the General Fund, though additional revenue generated for the Schools CIP and MHI would

more than offset these losses across all funds. Table 5 shows the revenue estimated for the next 6 years by fund, assuming development and housing markets do not deviate from historical trends.

Table 5: Summary of Estimated Revenue Changes by Fund Type

Recordation Tax Proposed Bill 39-20 - Annual Estimated Revenue changes by Fund Type		Forecast-"Proposed Rates" FY21-FY26
MCPS Capital Improvement increase	\$ 12,463,015	\$ 74,778,088
Montgomery Housing Initiative increase	\$ 2,027,000	\$ 12,162,000
General Fund Operating decrease	\$ (5,464,730)	\$ (32,788,381)
Grand Total Revenue increase	\$ 9,025,285	\$ 54,151,707

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

Not applicable.

- 5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable.

- 6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Finance, which administers this tax, does not expect later actions that may affect future revenue and expenditures nor does this bill authorize future spending

- 7. An estimate of the staff time needed to implement the bill.**

There are additional one-time costs required of Finance to implement Bill 39-20. Changes will have to be made in Oracle, the recordation tax system adopted in June 2020, and in the County's own recently developed system for administering transfer and recordation taxes for transactions that cannot be processed by Simplifile. Testing should precede the implementation when developing changes for any of the mentioned systems. Implementation will require the equivalent of at least 0.5 workyears in total- comprised of roughly 50-50 split between technical and functional staff, and will also require coding by the proprietary software companies. Finance estimates at least 1,040 work-hours will be needed to reconfigure the IT system to track and monitor recordation tax collections at an estimated cost of \$65,000.

- 8. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

- 9. An estimate of costs when an additional appropriation is needed.**

Not applicable.

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

The variables that could affect the revenue estimates are:

- Overall recordation tax activity (purchases of homes and commercial properties, refinancing, etc.)
- Real estate market conditions;
- The percent of first-time home buyers and price of homes they purchase.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

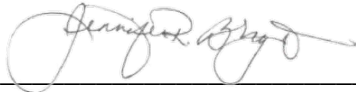
14. The following contributed to and concurred with this analysis:

David Platt, Department of Finance

Mary Beck, Office of Management and Budget

Estela Boronat de Gomes, Office of Management and Budget

Pofen Salem, Office of Management and Budget



Jennifer Bryant, Acting Director
Office of Management and Budget

10/2/20

Date



OFFICE OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Marc Elrich
County Executive

September 10, 2020

Dear President Katz, PHED Committee Chair Riemer, and Councilmembers,

In accordance with Sec. 33A-15 (c), I am submitting extensive comments and specific policy guidance on the Planning Board Draft for the 2020-2024 SSP.

Introduction

Based on the Executive Branch's thorough review, including detailed analysis by OMB, Finance, and MCDOT, I conclude that I cannot support the Planning Board Draft of the SSP because I simply do not understand why we would do anything that reduces or destabilizes existing revenue sources such as impact taxes or general fund recordation taxes at this time. I recommend instead that the Council let the current SSP remain in place, which will happen automatically once the November 15th deadline for adopting a new SSP passes. Minor modifications to the current SSP noted below could also enhance revenues for infrastructure.

The current proposal is set in another time—before Covid-19. **This SSP proposes rate structure changes that, without changes in exemptions and new funding sources, will result in a loss of \$43.9M dollars from FY21-FY-26 through deep cuts and discounts in the school impact taxes and the elimination of a surcharge, seriously diminishing our ability to provide adequate public facilities.** I know that you share my concern about proposals that could result in millions of dollars in lost revenue for transportation and school facilities.

The Planning Board Draft's disregard for the requirements of the Adequate Public Facilities Ordinance (APFO) is demonstrated not only by its deep tax cuts but also by its treatment of school adequacy. The Planning Board's recommendations tolerate much higher levels of school overcrowding than currently permitted through recommended changes in technical standards (4.6--"snapshot" test), revenue reductions, raising the standard for moratorium in Clarksburg from greater than 120% to greater than 125%, and, finally, by eliminating the emergency button—moratorium—from the rest of the county. As a result, if this SSP is approved, there will be more school overcrowding and no mechanism to manage the overcrowding in most of the county.

In the discussion below, this letter delineates three overriding problems with the Planning Board Draft: 1) It does not meet the SSP's primary purpose – to provide policies for adequate infrastructure to accompany new development, instead, it is an attempt, at great cost, to

incentivize housing in locations where incentives are not needed; 2) it removes the county's ability to manage school overcrowding, except in Clarksburg; and 3) its new transportation recommendations are premature, because the recommendations are based on documents that haven't been completed yet, and are therefore not available for review by either the County Executive or the County Council. There are other transportation concerns, too, that are discussed later.

Fiscal Background

On July 6, I sent the County Council, and on July 28, the Council approved, a FY21 Savings Plan to address the shortfall in revenues due to the pandemic and subsequent economic shutdown. That shortfall in revenues - over \$1 billion during the next six years - will have long-term consequences due to the current charter limit.

These reduced revenues are occurring at a time when we know we don't have enough funding to address current needs or other infrastructure investments needed to grow our economy and maintain our status as a desirable place to live. **For example, legislation to increase State Aid for school construction will require expensive match requirements at the same time that we are ramping down our General Obligation bond borrowing to rein in debt service costs.**

On July 10, the County Executive and County Council President announced that the county has again maintained its Triple-A bond rating. Building on this solid foundation, the county must continue its long tradition of responsible fiscal stewardship through prudent spending policies, careful management of the tax dollars we receive, and investment in job creation.

Statutory Background: Adequate Public Facilities and the SSP

The purpose of the SSP (or "Growth Policy") is to evaluate the adequacy of the infrastructure – schools, transportation and more – to support new development. Under the APFO, the Planning Board "may only approve a preliminary plan when it finds that public facilities will be adequate. Public facilities and services to be examined for adequacy include roads and transportation facilities, sewer and water service, schools, police stations, firehouses, and health clinics." Sec. 50 4.3.J.2. Requirements for adequate public facilities have been in place since 1973, and are also codified in the Maryland Code, Land Use, Section 9-1902.

As you know, the Subdivision Staging Policy (SSP) should provide the means to assure adequate public facilities for new development. The SSP assesses the needs of the county, especially for schools and transportation infrastructure, and the impact of new projects on that infrastructure, and then requires developers to pay their fair share through the payment of impact taxes.

- 1. The Planning Board Draft ignores the requirements of the Adequate Public Facilities Ordinance and reduces school impact taxes without evidence that it is solving any problem.**

The Planning Board Draft is nothing like past SSPs. This new policy ignores the statutory requirements of adequate public facilities. **It gives up necessary revenues. Without approval of changes in impact tax exemptions and a new Utilization Premium Payment, OMB's**

estimate is an impact tax revenue decline of \$43.9M for FY21-FY26. These reductions are the result of eliminating a surcharge, substantially reducing impact taxes rates, and then discounting them an additional 60% in some places in the county. These discounts mean that developers are not paying their fair share of the impact of their new developments on infrastructure. It is essential that the costs of new development be shared fairly and that county residents are not asked to shoulder an unfair portion of infrastructure costs.

In the Planning Board Draft, adequate public facilities are not the primary goal as they should be. Instead, the range of impact taxes is designed to encourage housing in some locations while discouraging it in others. That policy goal should be achieved through the master planning process, not by reducing the amount of money available for necessary infrastructure. There's no evidence that this is solving any problem, and there's no evidence that reducing the impact taxes would reduce the price of apartments or spur developers to build new housing types when they are making profits on the housing that they are building now. Furthermore, if the increased impact taxes in areas such as Clarksburg act as a disincentive as intended, that will result in significant revenue losses not included in OMB's analysis.

The Planning Board Draft never discusses the reality of existing investment behavior and the market. In Montgomery County, there is ample evidence that the greatest demand for new housing and for space to locate businesses is in and around our transportation cores, and more specifically areas along the Red Line. Yet the Planning Board eschews any analysis of markets, and simply assumes that reducing the costs to developers through lower impact taxes will result in less expensive housing being built in selected locations of the county.

The Planning Board Draft's assumption that housing is not locating in the areas where the county wants it is also problematic. **In fact, it appears that substantial housing is going to the locations desired by the county.** Initially, Planning targeted the county's 23 Activity Centers, as defined by COG, for reduced impact taxes, in order to incentivize housing in those ACs. OMB worked with Planning to analyze the consequences of this recommendation, and the proposal as a whole. OMB's analysis showed that 66% of growth was already going to the Activity Centers. Instead of revising the SSP to reflect this new information, the Planning Board reduced the list of locations where it believed development should go, changing Bethesda to a non-desired area for housing. But even the Draft's revised list suggests that substantial growth is already occurring in the county's preferred locations. And when one looks at the revised list plus Bethesda, the results are even better.

There are other, cost neutral ways to reduce the costs of development that will not affect the county's finances. The Planning Board can and should be reducing the parking requirements in new developments. These requirements are particularly costly in Activity Centers that are already transit accessible, and reduced parking forwards our long-term environmental goals to reduce the use of automobiles. Currently, the Executive Branch is reviewing how to reduce the time to process development approvals, which will further reduce costs of development projects. Both of these changes are substantive and beneficial and will not leave the county chasing infrastructure as it did for so many years because of inadequate resources partially caused by developers not paying their fair share.

2. Clarksburg should not be singled out from the rest of the county with different rules for the adequacy of its schools. There must be an emergency button to pause school overcrowding throughout the entire school system.

This SSP developed its own unique groupings of Infill, Turnover, and Greenfield that has different results for different parts of the county, largely because of the 60% discount. Consequently, the Draft recommends much higher school impact tax rates for Clarksburg than elsewhere, and Clarksburg (and Bethesda, too) is designated a non-Desired Growth Area, even though Clarksburg is also a COG approved Activity Center.

This new tax structure is likely to be challenged by affected developers as arbitrary, because, as a result of the discounts, the tax rates in many places aren't commensurate with the new infrastructure needed for the new development. How can the county argue that the undiscounted taxes in Clarksburg are this developer's fair share, while the significantly reduced taxes in another part of the county are the fair share of the developers there? In fact, the actual cost of providing infill infrastructure, like sidewalks, land for parks and schools, is greater in the denser, more urban areas of the county than in places like Clarksburg. And yet Clarksburg would be designated for far greater impact tax assessments.

Clarksburg is also singled out for special treatment for school adequacy—it is the only area that is recommended for a policy of moratorium. The County Executive believes that it is wrong to offer some MCPS students in one geographic location greater protection from school overcrowding than students living in other parts of the county. As explained in greater detail in the recommendations, the County Executive supports a policy of moratorium for the entire county. The Utilization Premium Payments (UPPs) are neither a substitute for moratorium nor an adequate offset to the lost impact taxes. The amounts are too low, and they are triggered too late when overcrowding is already greater than 120%, and school capacity is a crisis. If the Council chooses to use them, UPPs should kick in much earlier, when a school's capacity is at 105%.

3. The Transportation recommendations are premature and should not move forward until the County Executive and the Council have all of the materials that the Planning Board cites as support for its recommendations, the most critical being the Predictive Safety Analysis.

The Transportation recommendations are incomplete and are another reason that the Council should not take this SSP up between now and November 15.

In the Planning Board Draft at p. 68, of the eight planning documents identified to be used to design roads near new development, only three have been completed: the Bicycle Master Plan, the High Injury Network, and the Bicycle Level of Traffic Stress Map. The others, the Pedestrian Master Plan, the Predictive Safety Analysis, the Pedestrian Level of Comfort Map, the Vision Zero Toolkit, and the Complete Streets Design Guide are still in progress. The most important of these is the Predictive Safety Analysis.

The County Executive recommends deleting all references to the Predictive Safety Analysis in the Planning Board Draft, and in the proposed Resolution, including all of TL2.1 Safety System Adequacy, because it does not exist, and has not been implemented or validated.

There is also a problem with Recs. 5.11 through 5.14, whereby the Planning Board Draft appears to restore Policy Area Review for master plans, but nothing is included in the proposed Resolution. It is critical to have the appropriate mechanism to evaluate the adequacy of master plans. The Planning Board needs to explain this discrepancy.

Additionally, the rationale for differentiated transportation impact tax across the county is not based on the cost of adequate infrastructure; again, the taxes are an attempt to incentivize development in certain parts of the county over other parts. While I agree that development should occur in areas closest to transit, that development is guided through the master planning process, not by insufficiently funding infrastructure.

4. Finally, the County Executive does not recommend reductions in school impact taxes and will not support an increase in the recordation tax to make up for the lost impact tax revenues.

The County Executive is concerned that this substantial change in the revenue structure for paying for infrastructure for new development significantly reduces and destabilizes impact tax revenues, a funding source that cannot be used in any other context. The current impact taxes assure that each new development pays its fair share of the cost of new infrastructure. Using the increased recordation tax revenues for infrastructure shifts the burden of new infrastructure costs to residents and forecloses the use of recordation tax revenues for other urgent county needs in this unprecedented time.

OMB points out that while the increase in the recordation tax was proposed in an effort to offset any impact tax losses, the Planning Board has simultaneously proposed a first-time homebuyer exemption. There are significant challenges in determining the impact of the first time homebuyer exemptions – but it is clear that it will not only negate a significant portion of the increased funds for the capital budget and the housing initiative fund, but it will also reduce recordation taxes coming to the general fund at a time of extreme fiscal stress.

Additional Tax Considerations and a First Glance Analysis of the Tax Implications

The proposed SSP recommendations imply a complex web of financial increases and decreases in County funding sources that are difficult to definitively predict. Since the Council may decide to pick and choose between various options, the fiscal analysis has been segmented to reflect the major changes. Reductions in impact tax revenues due to a new rate structure including the elimination of a surcharge and desired growth area discounts are estimated to result in an estimated \$7.3 million annual reduction in impact taxes (\$43.9 million over a six-year CIP).

These losses are partially offset by proposed changes in existing impact tax exemptions (\$3.5 million/year on net). The Planning Board's recommendation to reduce the amount of subsidy provided for market rate units when developers double the number of Moderately Priced Dwelling Units is a step in the right direction to help ensure that we make the best use of resources devoted to affordable housing. Executive branch staff and I are currently exploring further enhancements to the Planning Board's recommendation for fall Council consideration.

Elimination of the exemption for former enterprise zones also makes sense given our tremendous infrastructure needs – particularly for impact taxes for school construction. Unfortunately, the elimination of the former enterprise zone exemption is effectively negated by the Board’s recommendation to provide exemptions to developers in opportunity zones where significant federal tax breaks are already in place.

The Planning Board has also proposed a new Utilization Premium Payment based on a percent of the appropriate impact tax that could yield an estimated \$4 million a year when school enrollment would be over 120 percent of capacity. The timing of these payments, however, is an issue. Waiting until schools are above 120 percent of their enrollment capacity will simply provide too little too late.

It is important to know the limitations of our ability to accurately forecast future impact taxes and related revenues based on the Planning Board recommendations. Two approaches have been used to estimate impacts – 1) a forecast based on prior history, and 2) an analysis of projects that are in the development pipeline. The forecast approach assumes that prior development patterns will continue. With the proposed rate structure, impact tax rates would increase significantly in Clarksburg. Based on substantial prior development in Clarksburg, the forecast methodology assumes that Clarksburg impact taxes will cover the significant reductions in impact taxes from other parts of the County. If these same development patterns do not occur, our revenue losses could be considerable. Similarly, the pipeline analysis assumes a ten-year buildout period. If these projects move faster or slower – or not at all, that will also affect revenues.

As noted above, OMB is also analyzing the proposed changes in the recordation taxes. While the proposed rate increase would generate additional income, a preliminary analysis of a proposed first-time homebuyer exemption appears to largely offset this increase – and will certainly result in a decrease in funding for the general fund – precisely when we need the revenues.

While not directly related to the SSP, there are several additional changes to the impact tax law that I would like Council to consider while other impact tax legislative changes are under consideration. The first relates to improving our partnerships with Gaithersburg and Rockville to facilitate the productive use of transportation impact taxes collected for development projects within the municipalities. We are in the process of setting up meetings with local officials and staff to discuss refinements to our partnership, and we will update you on our progress. In addition, language to clarify eligible costs for roads will be helpful in ensuring that credits are only granted for projects that improve transportation capacity.

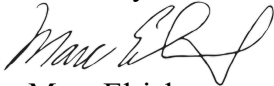
Conclusion

Adequate public facilities are a critical part of building a thriving and successful community. If school capacity is disregarded and there’s no concern about managing congestion, then we risk losing our perceived edge in education and we confirm to businesses and residents alike that we’re not serious about transportation. If competitiveness is the issue vis a vis our neighbors, then we should consider how our neighbors raised the money to meet their infrastructure needs. I think that what we will find is that their focus was not on ways to reduce the revenues coming

from development – rather, the opposite – they looked for ways to ensure the resources needed to provide the infrastructure for a growing community.

I have attached OMB’s PowerPoint, as well as Executive branch comments on each of the 44 recommendations in the Planning Board Draft. These attachments substantiate that the county is better served by the current SSP than by a new SSP that loses substantial impact tax revenues instead of providing needed funding for adequate roads and transportation facilities, sewer and water service, schools, police stations, firehouses, and health clinics for Montgomery County residents and their children.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Elrich". The signature is fluid and cursive, with a large, stylized initial "M" and "E".

Marc Elrich

c: Glenn Orlin, Senior Analyst, County Council
Pam Dunn, Senior Legislative Analyst, County Council

County Executive Comments on the Planning Board Draft for the 2020-2024
County Growth Policy—September 10, 2020

Index of Recommendations

Recommendation	Page
<i>Policy Recommendations: County Growth Policy</i>	
<p>3.1 <u>Change the name of the Subdivision Staging Policy to the County Growth Policy.</u></p> <p>The CE agrees.</p>	34
<i>Schools Recommendations: School Impact Areas</i>	
<p>4.1 <u>Classify county neighborhoods into School Impact Areas based on their recent and anticipated growth contexts. Update the classifications with each quadrennial update to the County Growth Policy.</u></p> <p>The CE opposes these classifications as irrelevant to an SSP that provides adequate public facilities. The CE also questions their usefulness even for the purpose for which they were created.</p> <p>This division is only necessary to implement the schedule of impact fees and discounts that the Planning Board recommends in order to encourage certain housing types in certain parts of the county. It is not being used for the purposes of the SSP—to diagnose infrastructure problems, and provide for adequate public facilities. What do these divisions add to the SSP requirement to evaluate school overcrowding attributable to new development?</p> <p>4.2 <u>Classify all Red Policy Areas (Metro Station Policy Areas and Purple Line Station Policy Areas) as Impact Policy Areas.</u></p> <p>MCDOT recommends deferring classifying the Purple Line Stations to Red Policy Areas, and the CE supports that recommendation.</p> <p>It is preferable to wait until the Purple Line is ready to be operational. Developments under construction should be reviewed under current provisions and not the proposed new provisions for the Red Policy Area. The county should also wait in order to get the benefit of the University of Maryland’s review of the Purple Line Corridor planned land use and TOD opportunities.</p>	37
<i>Schools Recommendations: Annual School Test and Utilization Report</i>	
<p>4.3 <u>By January 1, 2021, the Planning Board must adopt a set of Annual School Test Guidelines which outline the methodologies used to conduct the Annual School Test and to evaluate the enrollment impacts of development applications and master plans.</u></p> <p>The CE believes that to the extent that the Planning Board uses new methodologies in the Annual School Test, those should be disclosed now, and reviewed by the County Council. Planning Staff should also consult with MCPS.</p>	43
<p>4.4 <u>The Annual School Test will be conducted at the individual school level only, for each and every elementary, middle and high school, for the purposes of determining school utilization adequacy.</u></p>	43

The CE is open to discussing borrowing as a general policy to ameliorate school overcrowding. Borrowing needs to be discussed by the County Executive, the Council and MCPS to develop a policy that is workable and benefits the students and the school.

The CE opposes borrowing that is done ad hoc to allow particular projects to proceed that would otherwise be in moratorium, as described below.

At the SSP work sessions the Planning Board had a long discussion about finding that school X had adequate capacity if a nearby school Y had unused capacity, or was overcrowded, but less overcrowded than X school. The Planning Board has added a special test for Clarksburg in Recommendation 4.11 whereby a school could be considered adequate based on the capacity of a school 10 miles away being at 105% capacity. The CE does not support that proposal.

4.5 [The Annual School Test will evaluate projected school utilization three years in the future using the following school utilization adequacy standards:](#)

44

School Adequacy Standards		Adequacy Status		
Projected Utilization	Projected Seat Deficit	Greenfield Impact Areas	Turnover Impact Areas	Infill Impact Areas
> 120%	N/A	UP Payment Required	UP Payment Required	UP Payment Required
> 125%	≥ 115 seats for ES ≥ 188 seats for MS N/A for HS	Moratorium		

The CE supports the Draft’s use of three years rather than the current five years because it is much easier to predict school enrollment three years out.

Moratorium: The CE does not support having moratoria for school overcrowding only in Clarksburg. The CE supports moratoria in all parts of the County when school infrastructure is not adequate to keep up with projected development. It is one school system, and it should be treated as such.

Standard for Moratorium: The CE does not support <125% as the standard for moratorium in Clarksburg. Staff recommended <120% but the Planning Board raised it to <125%. There needs to be a better understanding of the rationale for this increase.

As currently drafted, except in Clarksburg, there is no outer limit to school overcrowding that would require the disapproval of a preliminary plan under the APFO. The only significance of the <120% standard is that when overcrowding reaches that percentage, a developer must pay Utilization Premium Payments (UPPs) in addition to the impact taxes. The fees are the same whether the overcrowding is at 120% or 150%.

The CE does not support reduced, discounted impact taxes with UPPs that result in

<p>the developer not paying his fair share of the infrastructure costs of new development. If, however, the Council approves a tax scheme that includes the proposed UPPs, these payments should be required when overcrowding reaches greater than 105%.</p> <p>THIS RECOMMENDATION WILL INCREASE SCHOOL OVERCROWDING.</p>	
<p>4.6 The Annual School Test will establish each school service area’s adequacy status for the entirety of the applicable fiscal year.</p> <p>This is a return to the “snapshot” test that resulted in exacerbating overcrowding as many schools got closer to the margin of 120%. The CE does not support the snapshot test. The CE supports a cumulative test that tracks enrollment throughout the year because it is more accurate in capturing SGRs.</p> <p>THIS RECOMMENDATION WILL INCREASE SCHOOL OVERCROWDING.</p>	45
<p>4.7 The Annual School Test will include a Utilization Report that will provide a countywide analysis of utilization at each school level.</p> <p>The CE does not understand the purpose of a countywide Utilization Report.</p>	46
<p>4.8 The Utilization Report will also provide additional utilization and facility condition information for each school, as available.</p> <p>The CE only supports in-kind developer contributions that add to school capacity, not air conditioning or improvements like that. There also need to be objective standards so that the contribution can be measured, and compared to other in-kind contributions.</p>	47
<p>Schools Recommendations: Residential Development Moratorium</p>	
<p>4.9 Moratoria will only apply in Greenfield Impact Areas. The Planning Board cannot approve any preliminary plan of subdivision for residential uses in an area under a moratorium, unless it meets certain exceptions.</p> <p>As stated before, the CE does not support leaving moratorium in place only in Clarksburg. He believes that there must be an emergency button—an outside limit on school overcrowding—that stops residential development in any area of the county where schools are severely overcrowded. As currently written, there is no outside limit or cap for overcrowding in the county, except in Clarksburg.</p> <p>The CE also does not support the Planning Board’s weakening of this recommendation for moratorium in Clarksburg by deleting the word “automatic” to describe moratoria, and carving out complicated exceptions that increase school overcrowding.</p> <p>THIS RECOMMENDATION WILL INCREASE SCHOOL OVERCROWDING.</p>	45

<p>4.10 Exceptions to residential development moratoria will include projects estimated to net fewer than one full student at any school in moratorium, and projects where the residential component consists entire of senior living units.</p> <p>The CE has no objection.</p> <p>4.11 Establish a new exception that allows the Planning Board to approve residential development in an area under a moratorium if a school (at the same level as any school causing the moratorium) is located within 3, 5, or 10 network miles (ES, MS, or HS, respectively) of the proposed subdivision and has a projected utilization less than or equal to 105 percent.</p> <p>The CE opposes this exception because it increases school overcrowding.</p> <p>THIS RECOMMENDATION WILL INCREASE SCHOOL OVERCROWDING.</p>	<p>45</p>
<p>4.12 Eliminate the moratorium exception adopted in 2019 pertaining to projects providing high quantities of deeply affordable housing or projects removing condemned buildings.</p> <p>The County Executive supports the recommendation of DHCA.</p> <p>DHCA—The existing exception would be helpful to retain, with the limitations that Student Generation Rate calculation of under 10 students and the property must provide 50% affordable housing.</p> <p>4.13 Calculate countywide and School Impact Area student generation rates by analyzing all single-family units and multifamily units built since 1990, without distinguishing multifamily buildings by height.</p> <p>It is important to have the most accurate SGRs possible for two reasons: 1) in order to anticipate overcrowding early enough to remedy it, and 2) in order to assure that the developer pays his fair share.</p> <p>The CE does not support merging multi-family buildings when calculating SGRs.</p> <p>Multi-family--The Planning Board Draft, p.54, notes “a major difference” between the SGR when high and low-rise multi-family are counted separately. When calculated separately, low-rise generates on average 3.58 times more students than high rise. The result is an overall higher SGR than when the SGR is calculated for all multi-family units, low and high, without distinguishing between high and low-rise. This discrepancy needs to be resolved. Otherwise, the Planning Staff should continue to calculate high and low rise multi-family separately.</p> <p>Single-Family--Planning Staff recognizes that for single family homes, there is a debate about how to count new houses that were built as a result of tear downs. The Planning Board is of the view that students from new houses/teardown are part of turnover, so long as the new home is built less than a year after the teardown. Using this categorization, 23.3% of all new students are attributable to new development. (SSP work session, June 18, 5:36:26--5:40:50) Planning Staff has calculated what the percentage would be if new homes/teardown</p>	<p>47</p>

were included as new construction--27.6%--an additional 4.3%. (Staff Presentation to Planning Board, March 26)There were 848 homes in this category.

The CE agrees with ULI’s recommendation that new homes/teardown be counted as new construction, and any students generated counted in the SGR.

The ULI said, in part:

The panel understands the interpretation of the staff research and recommendation. However, the panel suggests that the county take into consideration the following in revising the policy: • The impact fee is a single event from a funding perspective; the generation of that fee on what is essentially a “new construction” event (despite the fact that an existing home is being replaced) is important in terms of generation of revenue. • The imposition of an impact fee is a progressive revenue source; the cost of that fee can, and probably will be, rolled into a future mortgage, amortizing the fee over a long period of time.

Schools Recommendations: Student Generation Rate Calculation

Recommendation	Page
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Schools Recommendations: Development Application Review

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4.14 Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period.	58
The CE agrees.	

4.15 Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS’ official positions.	58
The CE agrees.	

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	59								
Table 12. Utilization Premium Payment Calculation Factors.									
<table border="1"> <thead> <tr> <th>School Level</th> <th>Payment Factor</th> </tr> </thead> <tbody> <tr> <td>Elementary School</td> <td>25% of the standard impact tax for the School Impact Area and dwelling type</td> </tr> <tr> <td>Middle School</td> <td>15% of the standard impact tax for the School Impact Area and dwelling type</td> </tr> <tr> <td>High School</td> <td>20% of the standard impact tax for the School Impact Area and dwelling type</td> </tr> </tbody> </table>	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	
School Level	Payment Factor								
Elementary School	25% of the standard impact tax for the School Impact Area and dwelling type								
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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									

<p>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%.</p>	
<p>Transportation Recommendations: Vision Zero Resources</p>	
<p>5.1 Design roads immediately adjacent to new development to account for all identified recommendations from applicable planning documents including Functional Plans, Master Plans and Area Plans.</p> <p>MCDOT has two comprehensive observations about this SSP’s transportation proposals:</p> <ul style="list-style-type: none"> • The new analyses proposed for new development are largely information-gathering with few clear actionable results. . • The motor vehicle analyses continue to use old analysis methodologies that are not giving more practical understanding of traffic operations, and are constraining developments and master plans. The analysis methodology should continue to be explored and updated as appropriate within the current SSP. <p>The CE agrees with these observations. The CE is also concerned that the transportation impact taxes are too low in the Red Policy Areas, and would support an increase in those impact tax rates due to the need and relatively high cost of providing transportation improvements in the more urbanized areas of the County.</p> <p>Furthermore, the CE does not support the recommendation in Sec. 5.1 because it needs clarification, and for the reasons below. The transportation recommendations need more work, and it is premature to consider them at this time. This recommendation requires the roads to be designed to account for all identified recommendations from applicable planning documents, as described above. However, in the Planning Board Draft at p. 68, of the eight planning documents identified, only three have been completed, the Bicycle Master Plan, the High Injury Network, and the Bicycle Level of Traffic Stress Map. The others, the Pedestrian Master Plan, the Predictive Safety Analysis, the Pedestrian Level of Comfort Map, the Vision Zero Toolkit, and the Complete Streets Design Guide are still in progress.</p> <p>The CE recommends deleting all references to the Predictive Safety Analysis; it should be struck from the document, because it has not been implemented or validated, and it should also be struck from Sec. TL.2.1 Safety System Adequacy in the proposed Resolution. Appendix L.</p> <p>Page 68 states that “it is critical that any capacity-based mitigation strategy does not negatively impact the safety of any roadway user.” This statement needs to be restated or deleted, as its goal, as written, is unattainable. The question is how to effectively balance competing needs to create a safe environment for all road users, and to attain Vision Zero for pedestrians, while allowing the roads to be used for the effective movement of vehicles. The county will need to rethink its signalization for cars and for pedestrians, as well as other road safety solutions.</p>	<p>68</p>

<p>1st bullet on p. 68 - Need to include a reference to what these TDM measures are, and how they translate into meeting required mitigation needs. Need to define how collision mitigation strategies, TDM, ped/bike, and transit treatments translate into satisfying vehicular mitigation requirements.</p> <p>Same for Recommendation 5.2. The set of bullets for Rec 5.1 and the set for Rec 5.2 appear to convey largely the same information and intent. This overlap may result in conflict and confusion, as developers use the 1st set of bullets to address mobility metrics and the 2nd set of bullets to address safety metrics. References to "Predictive Safety Analysis" should be replaced with "Systematic Safety Analysis" or similar wording. Their methodology develops an expected number of crashes based on the current built environment and crash history, it does not predict the crash rate or density in the future.</p>	
<p>Transportation Recommendations: Mitigation Priorities</p>	
<p>5.2 Prioritize motor vehicle mitigation strategies designed to improve travel safety.</p> <p>While the recommendation is to prioritize motor vehicle mitigation strategies, in fact, the Planning Board prioritizes non-motorized strategies to mitigate congestion such as payment in lieu, and bike, pedestrians, and transit/TDM strategies. The Planning Board needs to explain what the TDM measures are, and how they translate into satisfying mitigation requirements.</p>	68
<p>Transportation Recommendations: Development Review Committee</p>	
<p>5.3 Given the additional focus on Vision Zero principles in the development review process, designate a Vision Zero representative to the Development Review Committee to review the development application and Vision Zero elements of LATR transportation impact studies and to make recommendations regarding how to incorporate the conclusions and safety recommendations of LATR transportation impact studies.</p> <p>The CE understands this position would be a MCDOT representative, and agrees with that.</p> <p>Planning Board also asked if this recommendation was necessary or redundant. DOT Vision Zero staff are already included in DOT's internal Development Review Committee reviews. Consequently, this recommendation would have no substantive effect on what DOT already does.</p>	70
<p>Transportation Recommendations: Transportation Impact Study Approach</p>	
<p>5.4 Introduce a Vision Zero Impact Statement for LATR studies pertaining to subdivisions that will generate 50 or more peak-hour person trips.</p> <p>CE agrees with comments from MCDOT.</p> <p>1st Bullet – Need to consider what action this prompts from developers; how is this information used? Does it prompt any changes in what actions are required whether they have frontage that is or isn't within the HIN? Need to avoid information-gathering of info that we already have.</p>	70

<p>2nd Bullet – The Vision Zero impact statement should not include crash analysis. For one, it can be a huge lift and is not an expertise that developers have. Second, this is likely to backfire on Planning's intentions to push for safety improvements as savvy developers will argue that the crash volume along their frontage does not warrant them paying for changes to the built environment. Master plans and the pending Complete Streets Design Guide should be driving what is required for improvements regardless of the current or "predicted" crash rates.</p> <p>2nd and 4th Bullets – Need to consider what action this prompts from developers; how is this information used? How does this analysis affect conditioned treatments?</p> <p>5th Bullet – Same. Need to consider what action this prompts from developers; how is this information used? How does a speed study affect conditioned treatments? Do we intend to database these speed studies for future reference? (If so, we need to ensure our Traffic Division (DTEO) has access to these studies.)</p> <p>6th Bullet – So far, it is unclear as to what conditions can be imposed on developers. How do we pick & choose projects and needs, particularly if off-site? We need more definition to this and metrics to guide implementation.</p>	
<p>5.5 For LATR studies of new development generating 50 or more peak-hour weekday person trips, couple current multi-modal transportation adequacy tests with options that can be implemented over time utilizing Vision Zero-related tools and resources currently available and under development.</p> <p>The CE agrees with the comments of MCDOT. See Sec. 5.1. above.</p> <p>When the appropriate set of tools (described in the Vision Zero Resources section above) are operational, the current multi-modal transportation adequacy tests should be updated as described above.</p> <p>We would like to see this Recommendation improve the definition of adequacy for things such as ADA compliance, lighting adequacy, transit needs, pedestrian accessibility, etc.</p> <p><i>SAFETY SYSTEM ADEQUACY</i> – This section needs to be deleted or significantly revised as the current requirements are overly complex and unlikely to have the intended outcome Planning envisions. First, it is overly reliant on a tool, the "Predictive" Safety Analysis, that does not yet exist, so it cannot be assumed in this document that it will produce a valid safety performance function (SPF) for any roadway. Incorporating tools that have not been implemented or validated, such as the predictive safety analysis, should be struck from the document.</p> <p>In addition, by not increasing the estimated number of crashes, this leads the developer to do nothing or the absolute minimum to meet this threshold instead of making meaningful investments called for in the various master plans. It also would allow the developer off</p>	70

<p>the hook if the estimated crashes were near zero.</p> <p>It assumes too much power of the SPF and the calculated crash modification factor (CMF) that you can perfectly quantify the safety benefit down to the decimal. Treatments listed in the Crash Modification Factor Clearinghouse can have multiple CMFs because the Clearinghouse is not based on meta-analyses like other clearinghouses, but may be based on one small study done at one location.</p> <p>The Safety System Adequacy should be based on whether or not the current and proposed buildout of the property meets the requirements of the relevant master plan, ped/bike master plan, and the recommended design in the Complete Streets Guide. Basing the safety system adequacy on hard requirements such as those listed in the guides and plans rather than a convoluted equation that a savvy developer can bend to avoid making improvements is key to making this section work.</p> <p><i>MOTOR VEHICLE SYSTEM ADEQUACY</i> – This document appears to rely heavily on Critical Lane Volume Thresholds or Highway Capacity Manual (HCM) delays to determine roadway adequacy. In more congested areas, these metrics alone may not tell the whole operational story, and may mask some operational issues that contribute to significant safety concerns. Having language that calls for assessing existing vehicular queues by movement for a project’s study area, as well as expected queues with background and build out trips included, would help to reduce situations where excessive queuing and blocking of the roadway network lead to undesirable operations that impact the safety of pedestrians, bicyclists, transit users, and vehicles.</p>	
Transportation Recommendations: Transportation Impact Study Scoping	
<p>5.6 Eliminate the LATR study requirement for motor vehicle adequacy in Red Policy Areas (Metrorail Station Policy Areas and Purple Line Station Areas).</p> <p>The CE opposes eliminating LATR Study in Red Policy Areas until Unified Mobility Program is implemented to share in the infrastructure improvement costs. Red Areas have pedestrian safety, bicycle network gaps, transit capacity needs as well as NADMS goals to achieve.</p> <p>5.7 Expand the application of the Critical Lane Volume (CLV) analysis methodology as a screening tool to determine the necessity for the application of the more robust Highway Capacity Manual (HCM) analysis methodology for the motor vehicle transportation adequacy analysis.</p> <p>The County Executive opposes this recommendation.</p>	<p>74</p> <p>74</p>
Transportation Recommendations: Transit Corridor LATR Intersection Congestion Standard	
<p>5.8 Increase the intersection delay standards to 1,700 CLV and 100 seconds/vehicle for transit corridor roadways in Orange and Yellow policy areas to promote multi-modal access to planned Bus Rapid Transit service in transit corridors.</p>	<p>75</p>

The County Executive opposes this recommendation.	
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Recommendation	Page
<p>5.9 Place all Purple Line Station policy areas (existing and proposed) in the Red policy area category.</p> <p>This move increases the congestion delay standard and reduces the transportation impact tax. The County Executive opposes this change as premature. See 4.2 above.</p>	79
<p>5.10 Continue producing the Travel Monitoring Report (formerly the Mobility Assessment Report) on a biennial schedule as a key travel monitoring element of the County Growth Policy.</p> <p>Agree</p>	72
Transportation Recommendations: Policy Area Review	
<p>5.11 The proposed auto and transit accessibility metric is the average number of jobs that can be reached within a 45-minute travel time by automobile or walk access transit.</p> <p>This metric is recommended in the Planning Board Draft but not in the Council Resolution. While a policy area test is important, the measure as recommended in the Planning Board Draft is insufficient to evaluate the adequacy of master plans.</p>	82
<p>5.12 The proposed metric for auto and transit travel times is average time per trip, considering all trip purposes.</p> <p>See comment for 5.11.</p>	83
<p>5.13 The proposed metric for vehicle miles traveled per capita is daily miles traveled per “service population,” where “service population” is the sum of population and total employment for a particular TAZ.</p> <p>See comment for 5.11.</p>	84
<p>5.14 The proposed metric for non-auto driver mode share is the percentage of non-auto driver trips (i.e., HOV, transit and nonmotorized trips) for trips of all purposes.</p> <p>See comment for 5.11.</p>	85
<p>5.15 The proposed metric for bicycle accessibility is the Countywide Connectivity metric documented in the 2018 Montgomery County Bicycle Master Plan (page 200).</p> <p>The CE takes no position on this recommendation.</p>	85
<p>5.16 Define the boundary of the Forest Glen Metro Station Policy Area.</p> <p>MCDOT suggests that the boundary only go to the Beltway to the south.</p>	86
<p>5.17 Expand the boundary of the Grosvenor Metro Station Policy Area.</p> <p>Agree</p>	86
<p>5.18 Establish the proposed Lyttonsville/Woodside Purple Line Station policy area as a Red policy area.</p> <p>MCDOT recommends deferring the decision to make the Purple Line station a Red Area until the Purple Line is operational.</p>	87

5.19	<p>Establish the proposed Dale Drive/Manchester Place Purple Line Station policy area as a Red policy area.</p> <p>MCDOT recommends deferring the decision to make the Purple Line station a Red Area until the Purple Line is operational. The CE agrees with this recommendation.</p>	
Tax Recommendations: School Impact Taxes		
6.1	<p>Change the calculation of school impact taxes to include one tax rate for all multifamily units, in both low-rise and high-rise buildings, based on the student generation rate for multifamily units built since 1990.</p> <p>The CE does not support this change in the calculation of SGRs for multifamily units. See answer to 4.13.</p>	79
6.2	<p>Calculate standard school impact taxes at 100% of the cost of a student seat using School Impact Area student generation rates. Apply discount factors to single-family attached and multifamily units to incentivize growth and maintain the current 120% factor within the Agricultural Reserve Zone, in certain desired growth and investment areas.</p> <p>The CE does not support the reduction of revenue that this formula represents. First, the CE supports the current standard of 120% to calculate the cost of a student seat. The CE does not agree that the UPPs represent sufficient revenue to justify a 10% reduction in the standard. The additional 10% was to help pay for land for school sites. There has been no change in the need for land for schools.</p> <p>As discussed in his letter, the County Executive does not support the reduced impact tax rates and discounts, because this revenue is needed to deal with the county's schools and other important infrastructure.</p>	89
6.3	<p>Allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS's agreement.</p> <p>The CE does not support this recommendation as currently written.</p> <p>The SSP needs to describe a process for a developer to make a school facility improvement and receive an impact tax credit. Any improvement must add student capacity.</p> <p>OMB: Support credit only for school improvements that add student capacity. While an argument can be made that credits for facility capital maintenance (e.g., replacing components in existing schools) may "preserve" capacity, expanding capacity is the greater priority. Credits for such improvements can be explored in future SSPs.</p>	92
6.4	<p>Eliminate the current impact tax surcharge on units larger than 3,500 square feet.</p> <p>The CE opposes this recommendation.</p> <p>OMB: Do not support. The bulk of new SFD homes built since FY15 have been larger than 3,500 SF (90% of total, almost 2300 units) and have been subject to the surcharge. SFD homes continue (along with SFA) to generate the bulk of schools</p>	92

impact taxes by unit type.		
Tax Recommendations: Impact Tax Exemptions on Residential Uses		
6.5	<p>Eliminate the current impact tax exemptions for development in former Enterprise Zones.</p> <p>The CE supports this recommendation.</p> <p>OMB: Generally agree. Support grandfathering in projects/units that have been approved through building permit only (if seeking to maximize future impact tax revenue) or through preliminary plan approval for less impact on developers. Also consider removing the exemption on residential only and retaining it for non-residential development.</p>	95
6.6	<p>Any development located in a Qualified Opportunity Zone certified by the United States Treasury Department is exempt from development impact taxes.</p> <p>CE does not support this exemption. Qualified Opportunity Zone property owners already have significant federal tax advantages and do not need this incentive to develop.</p>	95
6.7	<p>Modify the current impact tax exemptions applied to all housing units when a project includes 25% affordable units to:</p> <ol style="list-style-type: none"> 1. require the affordable units be placed in the county’s or a municipality’s MPDU program, and 2. limit the exemption amount to the lowest standard impact tax in the county for the applicable dwelling type. <p>OMB--The Planning Board’s recommendation to reduce the amount of subsidy provided for market rate units when developers double the number of Moderately Priced Dwelling Units is a step in the right direction to help ensure that we make the best use of resources devoted to affordable housing. Executive branch staff are analyzing possible additional changes in this exemption to ensure the most efficient delivery of affordable housing units.</p>	97
6.8	<p>Continue to apply impact taxes on a net impact basis, providing a credit for any residential units demolished.</p> <p>The CE agrees with OMB.</p> <p>OMB: Support in part. Credit (full or partial) should only be given if demolished unit had previously paid impact taxes. If it did not, then it should be subject to impact tax payment at the applicable rate.</p>	99

Recommendation	Page
<i>Tax Recommendations: Recordation Tax</i>	
<p data-bbox="235 268 1242 367">6.9 Incorporate progressive modifications into calculation of the Recordation Tax to provide additional funding for school construction and the county's Housing Initiative Fund.</p> <p data-bbox="292 415 1250 724">The CE does not support an increase in the recordation tax in order to offset the revenues lost from the impact taxes charged to developers. The SSP is the vehicle for assessing developers with their commensurate share of new infrastructure needs, and that is what should be done in this SSP. The Planning Board's recommendation to add an exemption for the first \$500,000 of the sales price for first time homebuyers will result in significant reductions in recordation tax proceeds – particularly in the general fund which was not recommended for a rate increase. Further analysis is required to determine the net impact of these proposed changes.</p>	101

September 10, 2020

The Honorable Sidney A. Katz, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mr. Katz:

Montgomery County Public Schools (MCPS) appreciates the opportunity to provide comments regarding the *Montgomery County Planning Board's Draft County Growth Policy 2020–2024*. The Subdivision Staging Policy (SSP) assesses the County's infrastructure, such as schools and transportation, as it relates to future growth. The Planning Board draft includes various changes to current practices with respect to school infrastructure. As the Montgomery County Council begins its review of this draft, MCPS wishes to highlight several of the recommendations and provide the following comments.

Comments on Proposed Recommendations

1. *Classify County neighborhoods into School Impact Areas based on their recent and anticipated growth context.* While the current SSP divides the County into clusters, the recommendation would divide the County into three school impact areas—Greenfield, Turnover, and Infill—based on similar amounts of development, type of development, and amount of school enrollment growth. An evaluation of school infrastructure based on the three school impact areas, as a result of an evaluation of the three factors, is understandable and similar to the process used by MCPS to develop enrollment projections and priorities for capital projects in the Capital Improvements Program (CIP).
2. *Adopt a set of Annual School Test Guidelines, which outline the methodologies used to conduct the Annual School Test and to evaluate the enrollment impacts of development applications and Master Plans.* The proposed recommendation would provide a formal and detailed process to be used to conduct the Annual School Test. Having these guidelines—transparent and easily accessible—established would be beneficial to all County stakeholders.
3. *The Annual School Test will be conducted at the individual school level only, for each and every elementary, middle, and high school, for the purpose of determining school utilization adequacy.* The current SSP provides for an individual school test as well as a cluster test to evaluate school utilization throughout the County. The proposed recommendation would eliminate the cluster test, thereby avoiding an area to be designated as inadequate as a result

of several schools exceeding the established threshold. Utilizing the individual school test for all facilities would align with our CIP and Master Plan, which provide enrollment and utilization information for every school in the district.

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.

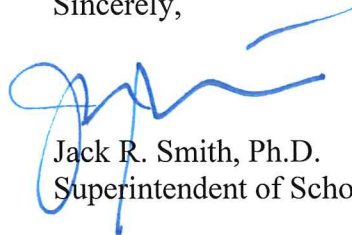
5. *Moratoria will only apply in Greenfield Impact Areas.* Under the current SSP, if a school reaches 120 percent utilization, the area enters moratorium. The proposed recommendation would allow for potential moratoria only in areas that have new development and generate much of the enrollment growth. Providing school capacity for students is a priority for MCPS as well as addressing aging infrastructure and upgrading and replacing many building systems. These priorities compete with other priorities in the county, resulting in fiscal limitations. MCPS will continue to prioritize capital projects based on capacity and infrastructure needs across the system and continue to request the funding necessary to meet those needs.
6. *Establish a new exception that allows the Planning Board to approve residential development in an area under a moratorium if a school (at the same level as any school causing the moratorium) is located within 3, 5, or 10 network miles (ES, MS, or HS, respectively) of the proposed subdivision and has a projected utilization less than or equal to 105 percent.* This recommendation does provide some latitude regarding moratorium; however, this exception does make certain assumptions. While MCPS always considers boundary reassignments during its review of capacity concerns during the CIP process, the reassignment must consider a number of factors, including projected trends in enrollment and utilization, and stability of school assignment over time. On paper, the “borrowing” of adjacent capacity may be beneficial; however, actually reassigning students from one school to another in order to approve residential development may result in unintentional consequences such as shifting

overutilization from one school to another. This is especially the case if that school is at or is approaching 105 percent utilization.

7. *Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS's official positions.* MCPS supports and welcomes the opportunity to continue to collaborate with Montgomery County Planning staff as it relates to residential development and school facility planning. The MCPS representative will be well versed in these matters; however, there may be times, as it relates to certain issues, when the Board of Education would need to provide its position.

Thank you for the opportunity to provide comments on a number of proposed changes included in the *Montgomery County Planning Board's Draft County Growth Policy 2020–2024*. If you have any questions, please contact Ms. Essie McGuire, associate superintendent of operations, Office of Engagement, Innovation, and Operations, via e-mail, at Essie_McGuire@mcpsmd.org.

Sincerely,



Jack R. Smith, Ph.D.
Superintendent of Schools

JRS:DGT:EM:sr

Copy to:

Members of the Board of Education

Dr. McKnight

Dr. Johnson

Mr. Turner

Dr. Wilson

Mrs. Ahn

Mr. Marella

Ms. McGuire

Dr. Nixon

Mr. Adams

Ms. Karamihas

Ms. Webb



To: Council President Katz and Members of the Montgomery County Council
Re: 2020-2024 County Growth Policy
Date: September 10, 2020
Via: Email

Dear Council President Katz and Councilmembers,

Please accept the Montgomery County Council of PTA’s testimony with attached comments on the 2020 Growth Policy. Our current Advocacy Priorities, which is our guiding advocacy document, states that legislators should “Increase the State and County capital budgets to reduce overcrowding and maintain existing infrastructure” and “Update the Subdivision Staging Policy to ensure school infrastructure matches ongoing development.” Unfortunately, this review does not ensure that the priorities of MCCPTA are met.

MCCPTA was optimistic about this quadrennial review of the Subdivision Staging Policy (SSP). Efforts began in the fall of 2019, with public meetings around the county and the implementation of the Schools Technical Advisory Team (STAT). The STAT was comprised of diverse stakeholders; the meetings were data driven and collaborative. Jason Sartori and Lisa Govoni presented a tremendous amount of information over six work sessions and facilitated candid and constructive conversations. As expected, the Public Hearing Draft proposed eliminating automatic moratorium in most of the county. MCCPTA was prepared for this but did not anticipate the numerous and extensive tax cuts. Most troubling is that moratoria – our “emergency brake” – is not replaced with any other mechanisms, nor material funding, to coordinate school infrastructure with new development. The unfortunate result is a policy that pits housing against schools and prioritizes residential development directly at the expense of our public schools, students, administrators, and teachers.

As you review the Proposed Draft, we ask that you bear in mind the purpose of this Policy, which arises out of the subdivision regulations: to make sure that we meet the needs of our residents as our county grows by matching development with the availability of core public facilities. The SSP is specifically meant to “coordinate new facilities with other existing and planned facilities and make a determination of adequate public facilities,” or in other words, to synchronize new development with infrastructure that is needed to support growing needs. It is principally the guidelines by which the Planning Board measures whether residential development can be supported and approved in proportion to the infrastructure it requires. As currently drafted, this policy fails that mandate.

The way that we determine school adequacy is the annual school test. As proposed, the school test will continue to be generated each year, but in the majority of cases there are no consequences for developments that exceed the adequacy threshold. Moratoria continue to be used in Clarksburg, and

modest taxes may be imposed when schools throughout the county are overutilized, but there is no safety net to protect our schools and students from severe, prolonged overcrowding. There's no emergency brake or pause button.

Moratoria are flawed (and their application is widely misunderstood) but they are a symptom, not the problem. A moratorium is triggered only after a school exceeds safe and effective standards and when no solution is planned. In some cases, a moratorium expedites a solution. What we need now is a more equitable emergency button and continued reassurance that we will hold ourselves and our schools to reasonable standards. The goal was to replace moratoria with something better, but that didn't happen. Moratoria go away, taxes go down, and premium payments don't even kick in until schools reach 120% utilization. **This policy fails to produce a meaningful mechanism to maintain adequacy standards.** Does this signal our surrender to gross overcrowding in our schools?

We are all frustrated by chronic capacity issues and subpar school facilities, but lowering our expectations is not the solution.

Beyond the absence of a meaningful school test, school funding is eroded in a variety of ways:

- By reducing the base impact tax rate from 120% to 100%;
- through application of student generation rates (SGR), including calculating SGRs by impact area, combining low- and high-rise developments into a single SGR, only using multifamily units built since 1990;
- by changing Purple Line Station areas from Turnover to Infill resulting in lower (and inaccurate) student generation rates.

All of this results in significant decreases in school impact tax revenue, even before layering on a 40% discount. **Impact tax discounts are not warranted, nor are they prudent under current economic conditions.** Going from one tax rate to seven is overly complicated and there is unjustifiable downside risk. This guarantees that every construction project comes at a cost to residents; it's just a question of how much. It is always hard to forecast the future, but now is an especially dangerous time to make hasty decisions that jeopardize the safety and quality of education of our public school students. As we've seen this fall, some of our families have alternatives, but many of us do not.

Glaringly absent from the Proposed Draft is any consideration of equity. Consistent with its sweeping and progressive racial equity bill, Council is compelled to consider equity impacts of this policy and the related bills. We hope there will be a comprehensive equity impact statement to accompany these recommendations. While the Council does not have authority to enforce equity policies within MCPS, decisions that result from this policy, including lost revenue from compounded exemptions and discounts from impact taxes, will have a disproportionate effect on schools with higher populations of black and brown students. We urge you to consider the full impacts that will result from prioritizing residential development at the direct expense of schools, stimulating gentrification along the Purple Line, driving up the cost of home ownership and leaving our public schools without protections against unsupportable enrollment levels.

We recommend that, at a minimum, Council should reinstate Staff recommendation 4.12 from the draft policy. It is referred to repeatedly in the draft policy, and it was the only mitigation for limiting moratoria to greenfield development. **Planning Board needs clear and consistent criteria for assessing adequacy.** We cannot simply eliminate review of school adequacy. It's mandated by the County Code. Also, we should also continue to measure proposed development against available capacity throughout the year.

The school test is a starting point, and approved development should be tracked on an ongoing basis against adequacy thresholds for purposes of approvals as well as tax calculations (i.e. Utilization Premium Payments). The Urban Land Institute Advisory Services Panel recommends “that Montgomery Planning work with MCPS to simplify the test and better align the timing of its components, to the extent possible.” Abandoning the test altogether is not supportable approach.

Lastly, we want to highlight a very important recommendation that is not reflected anywhere in the policy recommendations. The Urban Land Institute Advisory Services Panel also recommends “seeking additional opportunities for systemic alignment in educational facilities planning and area master planning, to the greatest extent possible.” There is currently no coordination between the Planning Board and MCPS. This policy should strive to implement processes whereby Planning and MCPS work in earnest to align growth and school capacity, including new tools to avert overcrowding. The SSP is the marriage of infrastructure and development, but this draft policy attempts to separate the two.

The decisions you make today will impact our schools for many years to come. Refusing to employ the school adequacy test for approvals WILL increase overcrowding. Moreover, trading impact taxes for speculative increases in recordation taxes and premium payments will pit schools against other capital projects down the road. Don’t make decisions today that will lead to even tougher decisions tomorrow and jeopardize our students’ safety and well-being.

Respectfully submitted,

Katya Marin
MCCPTA SSP Chair

cc: Meredith Wellington, Office of the County Executive

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.

+ 4.1: *Classify county neighborhoods into School Impact Areas based on their recent and anticipated growth contexts. Update the classifications with each quadrennial update to the County Growth Policy.*

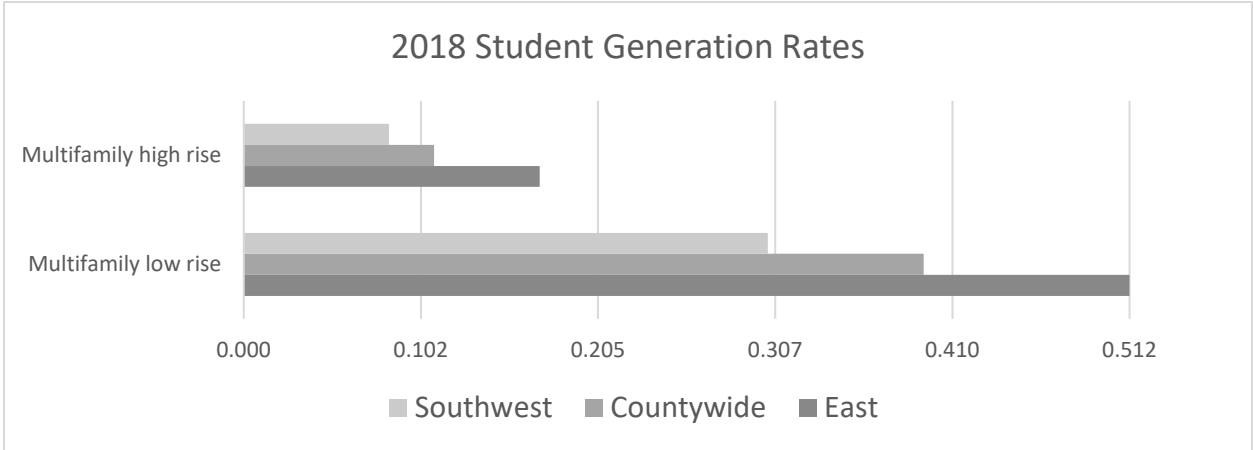
We commend the effort to classify our diverse county in School Impact Areas. One size does *not* fit all in Montgomery County. We are concerned that the purpose of the designations is intended more for tax rates than for understanding and supporting growth patterns.

- 1) The criteria for the designations are unclear, and how they will be maintained and/or modified?
- 2) Large developments are common in Infill Impact Areas with significant impact in some cases. Even though these are “desired growth areas,” care should be taken to ensure timely infrastructure to meet growing demand.
- 3) The designations are used primarily to set tax rates and student generation rates (in ways that are exceedingly favorable to developers). Incentives are an important tool to encourage housing, and one can argue that lower transportation impact taxes make sense in an area served by public transportation, but meeting the demands on our schools is increasingly difficult in densifying areas.
- 4) If we calculate student generation rates by impact area, should we also calculate school costs by impact area?
- 5) **Impact Areas should be employed to analyze and address school capacity objectives as well as growth objectives.**

✘ 4.2: *Classify all Red Policy Areas (Metro Station Policy Areas and Purple Line Station Policy Areas) as Infill Impact Areas.*

All tables and rates should be updated to reflect this change before a decision is made on this (e.g. Table 5, with growth in population, housing, and students by school impact area). Regarding Purple Line Stations being put in this category, student generation rates in the Eastern part of the county

are historically much higher than Southwest and Countywide rates, particularly in multifamily units (69-104% and 30-55% respectively). 1) It's not clear that the higher generation rates in these areas are reflected in the Infill student generation rates, and more importantly, 2) We don't know how this housing will behave and it's premature to assign lower student generation rates (and taxes) in these areas.



- ✓ 4.3: *By January 1, 2021 the Planning Board must adopt a set of Annual School Test Guidelines which outline the methodologies used to conduct the Annual School Test and to evaluate the impact of development applications and master plans.*

We welcome published School Test Guidelines, particularly as they relate to overcrowded schools in the absence of moratoria or any other mandated action where school capacity is inadequate. MCCPTA would like to participate in establishing these guidelines. Nothing in this policy explains how the Planning Board is expected to interpret or act on the proposed Utilization Reports, and more structure from Council is necessary to make these standards as required by the APFO.

- ✓ 4.4: *The Annual School Test will be conducted at the individual school level only, for each and every elementary, middle, and high school, for the purposes of determining school utilization adequacy.*

MCCPTA initially supported this recommendation, however the original policy draft included the following language referring to original recommendation *Staff Draft 4.12*:

In Turnover Impact Areas and Infill Impact Areas, **the test will identify schools requiring Planning Board review of school adequacy**, the standards for which are discussed in Recommendation 4.4. With less emphasis on automatic moratoria, and more on Planning Board review of school adequacy, it also makes sense to simplify the process of identifying which schools require Planning Board review. **If an individual school serving the proposed development exceeds the adequacy thresholds, it will require the Planning Board to view data pertaining to the utilization and facility conditions at the school and other nearby schools.**

In the absence of Planning Board review of, we have concerns that badly overutilized clusters might be overlooked without a cluster test for elementary and middle schools.

✓ 4.5: *The Annual School Test will evaluate projected school utilization three years in the future using current utilization adequacy standards.*

MCCPTA supports this change. MCPS's five-year forecast is notoriously bad. MCPS families and other Montgomery County community members have complained about forecasting accuracy and transparency for decades. MCPS's recent efforts to update their forecasting methodology showed no improvement on either front. For a number of reasons, the three-year forecast is an improvement.

1. MCPS forecasting is more accurate in the near years. It's not good, but it's better. MCPS consistently underestimates enrollment in our overutilized schools, with increasingly unreliable numbers in the out years (and specifically the currently used test year). Testing at three years instead of five will mean testing against more reliable forecasts.
2. The shorter period allows for much more insight and accuracy with regards to development in the pipeline. MCPS can incorporate what is permitted and under way, or about to commence, without having to speculate about the likelihood (or percent) of expected completion of residential projects and subsequent enrollment increases.
3. Programmed school capacity projects in the first three years the CIP are relatively reliable, and many are in fact in the construction phase at that point. Projects contemplated in the last three years of the CIP are often delayed or even removed. A three-year projection is more accurate on the capacity side as well as the enrollment side.

In short, a three-year test timeframe will greatly improve public confidence in the forecast and the School Test, and we fully endorse evaluating utilization three years in the future instead of five.

We do not support an increase in the moratorium threshold from 120% to 125%. Overutilization of 125% is a severe burden on a school, and with a greater likelihood in the three-year window.

✗ 4.6: *The Annual School Test will establish each school service area's adequacy status for the entirety of the applicable fiscal year.*

MCCPTA adamantly opposes this change. The Planning Board and some County Councilmembers are aware that in adopting the staging ceiling in 2007, Council intended the staging ceiling to measure the available capacity of schools on an annual basis, and to measure the cumulative impact of approved development against available capacity. In practice, this has not been implemented as adopted, which has led to an unknown increase in overcrowding and lost revenue.

Now the Planning Board goes even further in the wrong direction, and does not meet the requirements of Chapter 50 of the County Code, specifically Subdivision Regulation Section 4.3.J.2, "The Board may only approve a preliminary plan when it finds that public facilities will be adequate to support and service the subdivision," and Section 10.3.A.1, "the Board must provide analyses of current growth **and the amount of additional growth that can be accommodated** by public facilities and services" (emphasis added). It is unambiguous that the amount of additional growth – the *cumulative* impact of that additional growth – is supposed to be evaluated against existing and planned facilities.

Here are 3 examples to illustrate this:

- 1) *As adopted and intended in 2007: Projects are tracked cumulatively against available capacity.*
Flower Elementary School is at 118% of capacity, with 16 available seats before exceeding 120%.

- Apartment building A will generate 14 students and is approved because 14 students does not exceed 16 available seats.
- Apartment building B will generate 14 students and must be denied or modified to generate less than 2 students to meet adequacy standards; cumulative impact tracking means that development A plus B will trigger moratorium (or payments).

One project can be approved but not both, because 28 students exceeds 16 available seats

2) *As implemented: Each project is measured individually against available capacity.*

Flower Elementary School is at 118% of capacity, with 16 available seats before exceeding 120%.

- Apartment building A will generate 14 students and is approved because 14 students does not exceed 16 available seats.
- Apartment building B will generate 14 students and is also approved because 14 students does not exceed 16 available seats.

In this scenario, the total students generated is 28, exceeding available capacity by 12 students and resulting in overcrowding and lost revenue.

3) *As proposed in 2020: No projects are measured against available capacity.*

Flower Elementary School is at 118% of capacity, with 16 available seats before exceeding 120%.

- The service area is “open” for the year and all projects can proceed regardless of impact – 14 students or 140 students, everything is approved.

In this scenario, subdivisions of hundreds or even thousands of homes can be approved, adding unlimited students to an already crowded school with no imminent solution.

Scenario 1	Cumulative impact is tracked and approval must be denied after available capacity is reached.
Scenario 2	Projects are measured individually against available capacity and each project under the threshold can be approved.
Proposed	Once adequacy is determined for the year there is no limit to the number of projects that can be approved.

Since automatic moratoria will not prevent development from proceeding in Infill and Turnover areas (the majority of the county), this is only relevant for calculating utilization premium payments. Cumulative impact should undoubtedly be tracked for purposes of funding the entirety of the capacity that will be needed. This “red light, green light” approach flies in the face of any earnest efforts to uphold an APFO.

As discussed further below, the Planning Board voted to delete *Staff Draft 4.12*, and therefore also this language referring to it:

The school’s capacity adequacy requires detailed review by the Planning Board. Per Recommendation 4.12, the Planning Board will be provided with information pertaining to the subject school facility, nearby schools at the same school level (elementary, middle or high) and the estimated enrollment impacts of the proposed development. The Planning Board would then make the school facility adequacy determination.

The policy is completely undermined by the elimination of mandatory Planning Board review from the Staff Draft.

- + 4.7: *The Annual School Test will include a Utilization Report that will provide a countywide analysis of utilization at each school level.*

This recommendation is largely moot in the absence of *Staff Draft 4.12*, however MCCPTA supports an annual countywide analysis of utilization at each school level. Only existing and planned capacity within the three-year test window can be used for evaluating proposed development. Decisions cannot be based on hypothetical solutions contemplated by the Planning Board or County Council. Only actual planned actions are relevant in planning and approving development. Per 4.7, “the capacity impacts of any placeholder project will not be counted.”

- ✓ 4.8: *The Utilization Report will also provide additional utilization and facility condition information for each school, as available.*

Moot in the absence of *Staff Draft 4.12*, however MCCPTA supports the inclusion of additional facility information in the Utilization Report. IF Planning Board review is reinstated, this could be incredibly useful in assessing the condition of school conditions. MCPS has expressed a willingness to work closely with Planning to share information and coordinate efforts. It would be incredibly beneficial if MCPS long range planning and the Planning Board could align.

- + 4.9: *Moratoria will only apply in Greenfield Impact Areas. The Planning Board cannot approve any preliminary plan of subdivision for residential uses in an area under a moratorium, unless it meets certain exceptions.*

MCCPTA supported this recommendation with the caveat that something take the place of moratoria in Infill and Turnover areas as well. The Impact Areas as treated here are designed more to steer development than to address the capacity challenges distinct to each Area, and the expense of that is borne directly by our schools.

There is no safety measure, no hard stop, even in the most extreme circumstances. The elimination of *Staff Draft 4.12* means that development will be allowed to proceed under any all circumstances outside of Greenfield impact Areas.

A policy isn't measured by how it performs in ideal circumstances, it's measured by what happens when things go wrong. We believe there should be a reinstatement of *some* “forcing factor,” even if it is far less stringent. For example, we could impose a one-year moratorium in cases where a school is forecast to reach 150%, or where a school is over capacity (actual enrollment) by 120% for three years in a row without a programmed solution. Alternatively, moratorium in cases where a school has been over 120% for 5+ years and continues in the 3-year test. This is a situation where a school is left to languish, with no relief in sight. (At very least there should be a list of such schools when Council reviews the CIP.)

The question is this: What is the mechanism to get the attention of MCPS, Planning and Council?

This draft Growth Policy enumerates the downside of moratoria, but fails to acknowledge that moratoria almost always result in funding for affected schools in areas of desired growth, which raises equity concerns. This is not an optimal solution, but it is better than a policy with no mechanism whatsoever. This policy solves the “moratoria problem,” but fails to address the underlying problems, and fails to link development and infrastructure in any meaningful way.

- ✓ 4.10: *Exceptions to residential development moratoria will include projects estimated to generate net fewer than one full student at any school in moratorium, and projects where the residential component consists entirely of senior living units.*

In the event that moratoria apply on in Greenfield Areas, MCCPTA approves of the changes to exceptions to moratoria.

Smaller projects like these have a high likelihood of proceeding; the impacts on any single school must be tracked cumulatively.

“Blighted” building, or residential buildings that are not currently occupied, should not net empty units against estimated impacts.

- ✗ 4.11: *Establish a new exception that allows the Planning Board to approve residential development in an area under a moratorium if a school (at the same level as any school causing the moratorium) is located within 3, 5, or 10 network miles (ES, MS, or HS, respectively) of the proposed subdivision and has a projected utilization less than or equal to 105 percent.*

MCCPTA opposes exceptions based on nearby capacity. “Borrowing” was disallowed in 2007 with very good reason. Adequacy must be linked to reality.

1. This policy is too complicated in general, with too many SGR’s, tax rates, discounts and exceptions. If we believe moratorium is a legitimate tool in Greenfield areas, then we should use it. We shouldn’t write a policy with one hand and simultaneously undermine it through a multitude of exceptions with the other.
2. We cannot test against hypothetical capacity. The school test is the school test, and the Planning Board cannot make decisions based on anything other than actual planned capacity projects and/or boundary changes. Planning Board has no authority to instigate such changes.
3. Unless and until the Planning Board, County Council and MCPS schools are aligned on systematic and regular boundary changes, nearby capacity is utterly irrelevant. It has nothing to do with the reality for teachers, students and administrators.
4. Nearby capacity as an exception to moratoria could set precedent for exception to utilization premium Payments.

- 4.12: *Eliminate the moratorium exception adopted in 2019 pertaining to projects providing high quantities of deeply affordable housing or projects removing condemned buildings.*

If moratoria are applicable only in greenfield Impact Areas, this exception will be moot.

- ✗ 4.13 *Calculate countywide and School Impact Area student generation rates by analyzing all single-family units and multifamily units built since 1990, without distinguishing multifamily buildings by height.*

As indicated in Appendix G, and consistently in historical student generation rates, the student generation rates (SGR) for multifamily low rise are much higher than multifamily high rise. In fact, multifamily low rise SGRs are closer to single-family attached than to multifamily high rise. MCCPTA proposes that for at least the next four years, we calculate SGRs for units since 1990 as proposed

(which will result in *significantly lower* SGRs for multifamily units than all-time), but continue to track the four established unit types.

REGIONAL STUDENT GENERATION RATES		ES	MS	HS	K-12
East Region Downcounty Consortium (Montgomery Blair, Albert Einstein, John F. Kennedy, Jr., Northwood and Wheaton clusters) and Northeast Consortium (James H. Blake, Paint Branch and Springbrook clusters)	Single-Family Detached	0.203	0.103	0.144	0.450
	Single-Family Attached	0.219	0.115	0.160	0.494
	Multifamily Low Rise	0.253	0.112	0.148	0.512
	Multifamily High Rise	0.088	0.036	0.047	0.171
Southwest Region Bethesda-Chevy Chase, Winston Churchill, Walter Johnson, Richard Montgomery, Rockville, Walt Whitman and Thomas Wootton clusters	Single-Family Detached	0.186	0.109	0.151	0.446
	Single-Family Attached	0.167	0.085	0.111	0.363
	Multifamily Low Rise	0.150	0.068	0.085	0.303
	Multifamily High Rise	0.041	0.018	0.025	0.084
Upcounty Region Clarksburg, Damascus, Gaithersburg, Magruder, Northwest, Poolesville, Quince Orchard, Seneca Valley, Sherwood and Watkins Mill clusters	Single-Family Detached	0.210	0.120	0.169	0.499
	Single-Family Attached	0.248	0.121	0.157	0.526
	Multifamily Low Rise	0.183	0.077	0.093	0.352
	Multifamily High Rise	0.020	0.008	0.010	0.038

Source: Montgomery Planning

Rates calculated for buildings since 1990 might be disproportionately thrown off by vacancies. This is not the case when we look at all-time units, but given the smaller sampling, we request an analysis of the potential impact of including vacant units in the denominator. Furthermore, known short term rentals (e.g. Airbnb) should be excluded from the unit count, particularly as they increase in volume.

Regarding School Impact Areas versus previously used county regions, MCCPTA would like to see a financial impact analysis of what the impact would have been over (at least) the last five years, independent of proposed discounts.

As noted, existing student generation rates in neighborhoods along the Purple Line should be maintained until there is demonstrable similarity to Red Policy areas.

REINSTATE THE FOLLOWING RECOMMENDATION

- ✔ *Staff Draft 4.12: The County Growth Policy should explicitly allow the Planning Board to deny a residential development project in Turnover Impact Areas and Infill Impact Areas if it deems there is inadequate public school infrastructure, after consideration of the applicable data and circumstances.*

Planning Board voted to omit the single only recommendation that might serve to mitigate the elimination of automatic moratoria. Without triggering mandatory Planning Board review, we are saying that there is no instance where development will be meaningfully measured against capacity. This fails to meet the requirements of the APFO. This language was also omitted:

Section 8-32(c)(3) of County Code requires that the Planning Board “must find, consistent with the adopted [County] Growth Policy, whether all applicable public facilities will be adequate to support the proposed development.” To that end, even when an automatic moratorium doesn’t apply, the Planning Board is required to assess the adequacy of school facilities and at its discretion can choose to deny a residential development project for lack of adequate school infrastructure.

The Planning Board is an administrative body and cannot shirk this responsibility when it makes them uncomfortable or doesn't advance their preferred agenda. **In the absence of case-by-case review, a static and overarching determination of adequacy – akin to moratoria – will be necessary to meet the objectives of the SSP.** In an effort to avoid that, MCCPTA is happy to work with Council to come up with a specific and consistent rubric to direct the Planning Board's decision making. Per the original recommendation, that should include:

- school facility status information, including number of relocatable classrooms and Key Facility Indicator information
- the development application's estimated enrollment impacts
- historical, current and projected school utilization data for the schools serving the subject property
- up-to-date development pipeline status for approved development applications served by the same schools as the subject property

After such review with MCPS, and when capacity is insufficient and viable, imminent solutions are not available, applications must be denied. Unless and until there is a determination made by County Council and Montgomery County residents that adequacy standards are irrelevant, the Planning Board is bound by the policies that are in place.

- ✓ *4.14: Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period.*

MCCPTA enthusiastically supports this recommendation. Circumstances can change dramatically in 5-10 years, in all school impact areas, and retesting all infrastructure should be mandatory.

- ✓ ~~*Staff Draft 4.14: Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to cap the Adequate Public Facilities validity period for development to no more than 22 years, at which point the applicant can no longer request an extension of the approval and must restart the plan application process.*~~

MCCPTA supported this recommendation, but it has been omitted from the current draft.

- ✓ *4.15: Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS's official positions.*

MCCPTA enthusiastically supports this recommendation. MCPS can provide valuable insight to the Planning Board, and likewise has much to gain by being apprised of development activity, particularly the target market for a project, and anticipated timing. Likewise, MCPS can benefit from staying apprised of area developments and proposed mitigations (transportation, recreation) near schools.

MCCPTA asks that we be recognized as a Reviewing Agency so that the appropriate Area Vice President can be included on the Development Review Committee. At very least, the MCCPTA Area Vice President should be notified and included where the Annual School Test results are over 105%.

- + *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.

- ✘ *6.1: Change the calculation of school impact taxes to include one tax rate for all multifamily units, in both low-rise and high-rise buildings, based on the student generation rate for multifamily units built since 1990.*

MCCPTA proposes we defer this decision until 2024. Per our comments on 4.11, the SGRs for multifamily low rise and multifamily high rise have historically been very different. Whatever the SGRs, the impact taxes will reflect them, and the tax will be appropriate to the unit type.

- ✘ *6.2: Calculate standard school impact taxes at 100% of the cost of a student seat using School Impact Area student generation rates. Apply discount factors to single-family attached and multi-family units to growth in certain desired growth and investment areas. Maintain the current 120% factor within the Agricultural Reserve Zone.*

MCCPTA opposes the use of the APFO and discounting of school impact taxes to incentivize growth in certain areas over others in this way. It is unnecessarily complicated, and the objective of impact taxes is to recoup to cost of the additional infrastructure necessary to meet increased demand. Yes, impact taxes are been exempted in some cases to incentivize affordable housing, but there are other, better ways to drive development where we want it. Zoning policies and master plans are the appropriate way to drive the housing we want.

Impact taxes in Infill Areas are already adjusted to reflect the SGRs of those units, and they are significantly lower than Turnover and Greenfield Impact Areas. The rate for impact taxes on market rate units should be 100% the cost of impact, regardless of Impact Area. This recommendation gets overly complicate with seven separate tax rates and multiple exceptions without clear criteria.

The cumulative reductions – 120% down to 100%, adjusted student generation rates by impact area instead of region, change to exclude multifamily units prior to 1990, elimination of large house surcharge – already hinder MCPS's ability to keep up enrollment growth from population growth. Transportation tax exemptions are defensible for transit-oriented development, but school impact tax reductions where it is arguably more expensive to support infrastructure are not warranted on top of reductions to SGRs and concomitant impact taxes already made in those areas.

- ✔ *6.3: Allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS agreement.*

MCCPTA supports this recommendation and we hope that MCPS will take advantage of opportunities for effective and economical source of capital improvements.

- ✔ *6.4: Eliminate the current impact tax surcharge on units larger than 3,500 square feet.*

MCCPTA supports this recommendation. It makes sense to match the Impact tax to the measurable impact.

- ✔ *6.5: Eliminate the current impact tax exemptions for development in former Enterprise Zones.*

MCCPTA supports this recommendation. In 2016, Council rejected this proposal and committed to an assessment of how to phase in impact taxes in former enterprise zones. Nothing was done. MCCPTA proposes that we adopt the 2016 plan to phase in impact taxes.

Enterprise Zones were established to stimulate commercial activity, and a legacy exemption on residential housing is unwarranted.

- ✘ *6.6: Any development located in a Qualified Opportunity Zone certified by the United States Treasury Department is exempt from development impact taxes.*

MCCPTA opposes the introduction of any new impact tax exemptions as part of this policy.

- ✘ *6.7: Modify the current impact tax exemptions applied to all housing units when a project includes 25% affordable units to:*
 - 1. require the affordable units be placed in the county's or a municipality's MPDU program, and*
 - 2. limit the exemption to the lowest standard impact tax in the county for the applicable dwelling type.*

MCCPTA is concerned by the arbitrary and inconsistent impact of this policy on housing costs and would like to see the equity impact statement.

- ⊕ *6.8: Continue to apply impact taxes on a net impact basis, providing a credit for any residential units demolished.*

Credit should be provided for inhabitable units (not vacant/blighted/condemned).

- ✔ *6.9: Incorporate progressive modifications into calculation of the Recordation Tax to provide additional funding for school construction and the county's Housing Initiative Fund.*

MCCPTA supports this as a means to capture impact costs of turnover, but not as an offset for impact tax discounts.

September 11, 2020

By Electronic Mail

county.council@montgomerycountymd.gov

The Honorable Sidney Katz, Council President
and Members of the Montgomery County Council
Montgomery County Council
Stella B. Werner Office Building
100 Maryland Avenue
Rockville, MD 20850

RE: Comments on Planning Board Draft of 2020-2024 County Growth Policy (formerly,
Subdivision Staging Policy)

Dear President Katz and Members of the County Council:

This letter is submitted on behalf of Lerch, Early & Brewer’s land use practice group regarding the recommendations contained in the Planning Board Draft of the 2020-2024 County Growth Policy. Our firm represents a significant number of property owners, home builders, hospitals, biotech companies, private schools, senior housing providers, and many other businesses and clients in the County who stand to be impacted by the current recommendations and the ultimate final version of the document. Because of the significance of the Growth Policy, we provide comments below on each one of the schools, transportation, and tax recommendations from the Planning Board Draft. We want to thank the Planning Board and the County Planning Department Functional Planning Staff for its availability over the last several months to provide updates on the proposed ideas and recommendations and to answer various questions.

Preliminarily, we want to recognize the time, hard work, and careful thought that went into the Planning Board Draft. It contains some very good themes – notably, curtailing the imposition of automatic moratoria, recognizing the impact from turnover of existing housing and that “new development is generally not the greatest burden on school infrastructure adequacy today” (page 36), emphasizing the importance of the County’s economic growth and the need to provide more housing, and updating the impact tax structure in a more equitable manner. At the same time, similar to other broad-scale policy documents, it leaves some important details to be determined later, particularly with respect to Vision Zero principles. It also contains some ideas that we do not support, as explained below. As reflected in our comments, we believe that many ideas from the Planning Board Draft should be adopted while others should be modified or eliminated to advance the County’s economic growth, housing objectives, and overall competitiveness more effectively. But overall, the proposed 2020-2024 County Growth Policy is a significant improvement over the current Subdivision Staging Policy.

Some of our individual attorneys will participate further in the public hearing process on behalf of specific clients or projects or with respect to specific items contained in the Planning Board Draft. But on behalf of our entire practice group, we offer these comments which are organized numerically according to the recommendations from the Planning Board Draft.

Schools Recommendations: School Impact Areas

- 4.1 *Classify county neighborhoods into School Impact Areas based on their recent and anticipated growth contexts. Update the classifications with each quadrennial update to the County Growth Policy.*

Comments: We support this recommendation, but have concerns with some of the recommendations within the Greenfield Impact Area (*see* further comments under Recommendation 4.9).

- 4.2 *Classify all Red Policy Areas (Metro Station Policy Areas and Purple Line Station Policy Areas) as Infill Impact Areas.*

Comments: We support this recommendation.

Schools Recommendations: Annual School Test and Utilization Report

- 4.3 *By January 1, 2021, the Planning Board must adopt a set of Annual School Test Guidelines which outline the methodologies used to conduct the Annual School Test and to evaluate the enrollment impacts of development applications and master plans.*

Comments: We support this recommendation.

- 4.4 *The Annual School Test will be conducted at the individual school level only, for each and every elementary, middle and high school, for the purposes of determining school utilization adequacy.*

Comments: We support this recommendation (i.e., we support eliminating the cluster test).

- 4.5 *The Annual School Test will evaluate projected school utilization three years in the future using the following school utilization adequacy standards [see chart on page 44 of the Planning Board Draft].*

Comments: We support the adequacy standards identified on the chart on page 44 of the Planning Board Draft because they are superior to the current Subdivision Staging Policy standards. But we also support elimination of potential moratoria in the Greenfield Impact Area (*see* Recommendation 4.9). We also oppose the recommended change from the five-year timeframe to the three-year timeframe for school adequacy testing. The five-year timeframe is

more consistent with the County CIP process (six years) and more reliably reflects when students from new development will actually enroll.

4.6 *The Annual School Test will establish each school service area's adequacy status for the entirety of the applicable fiscal year.*

Comments: We support this recommendation.

4.7 *The Annual School Test will include a Utilization Report that will provide a countywide analysis of utilization at each school level.*

Comments: We support this recommendation.

4.8 *The Utilization Report will also provide additional utilization and facility condition information for each school, as available.*

Comments: We do not oppose providing additional information for each school. We also do not oppose, in principle, the observation that “The information would also facilitate discussions between developers and MCPS about potential ways the developers can make improvements to school facility conditions (roof replacements, HVAC system upgrades, etc.)” provided that the costs of any such improvements can be credited against applicable school impact taxes (consistent with Recommendation 6.3).

Schools Recommendations: Residential Development Moratorium

4.9 *Moratoria will only apply in Greenfield Impact Areas. The Planning Board cannot approve any preliminary plan of subdivision for residential uses in an area under a moratorium, unless it meets certain exceptions.*

Comments: We support the recommendation to eliminate the automatic moratoria within the Turnover and Infill Impact Areas for the reasons outlined in the Planning Board Draft (pages 50-51). But for those same reasons, we support elimination of the automatic moratoria in the Greenfield Impact Area as well (*i.e.*, moratoria should be eliminated across the entire County consistent with many other jurisdictions as set forth in Appendix I). The Clarksburg area is important for meeting the County's housing goals, and the single-family housing market is important particularly in the face of the existing pandemic. New development should be allowed to move forward within the Greenfield Impact Area without an automatic moratorium, but with payment of the applicable Utilization Premium Payment, as described in Recommendations 4.5 and 4.16, if any of the elementary, middle, or high school levels are over 120% capacity. We support making the entire County consistent in that regard.

Critically, if moratoria is not eliminated within the Greenfield Impact Area altogether, then we ask the County Council at least to support the Planning Board Recommendations 4.5 and 4.11, which provide relief from the current Subdivision Staging Policy to enable two residential projects to move forward. The vast majority of planned development in Clarksburg has already been approved. There are, however, two pending residential projects, filed under the current

Subdivision Staging Policy rules and the school capacity calculations confirmed last November. Both projects would have satisfied the school capacity test when they were filed. Without the relief identified in Recommendations 4.5 (125% capacity prior to triggering moratoria) and 4.11 (potential borrowing), however, the revised school calculations for 2022, combined with the new proposed Growth Policy standards for a three-year test rather than a five-year test, would prevent these two projects from obtaining approval for an undetermined period of time. This result is particularly troubling because the boundary adjustment approved last year for Clarksburg High School was intended to address the capacity issues. (There is ample elementary and middle school capacity for both projects). We ask the County Council to support Recommendations 4.5 and 4.11 to enable these two pending projects to be approved. Their impact on high school capacity will be minimal and spread over a period of years, by which time other projects such as the Damascus expansion will address any concerns.

4.10 Exceptions to residential development moratoria will include projects estimated to net fewer than one full student at any school in moratorium, and projects where the residential component consists entirely of senior living units.

Comments: We support the recommended exceptions. The *de minimus* exception should be clear in being interpreted as net additional units. For example, a project that proposes to remove one unit and build three new units should be considered two units (net additional units) for purposes of calculating the school impact and meeting the *de minimus* exception.

4.11 Establish a new exception that allows the Planning Board to approve residential development in an area under a moratorium if a school (at the same level as any school causing the moratorium) is located within 3, 5, or 10 network miles (ES, MS, or HS, respectively) of the proposed subdivision and has a projected utilization less than or equal to 105 percent.

Comments: We support this recommended exception if a moratorium exists, but we support elimination of potential moratoria altogether (*see* discussion under Recommendation 4.9).

4.12 Eliminate the moratorium exception adopted in 2019 pertaining to projects providing high quantities of deeply affordable housing or projects removing condemned buildings.

Comments: We oppose this recommendation. If any portions of the County are subject to potential moratoria, then this exception should remain.

Schools Recommendations: Student Generation Rate Calculation

4.13 Calculate countywide and School Impact Area student generation rates by analyzing all single-family units and multifamily units built since 1990, without distinguishing multifamily buildings by height.

Comments: We support this recommendation.

Schools Recommendations: Development Application Review

4.14 *Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period.*

Comments: We oppose this recommendation. Extension requests are intended to preserve the original approval for the time period necessary to implement the project, and are not intended to subject the approval to a new Adequate Public Facilities test that could jeopardize the very project that is to be extended. Projected student generation from an approved project already is factored into background school capacity calculations and should not be difficult to monitor. If the Council feels differently, this additional testing requirement should be discretionary, as is the Planning Board's current ability to request additional traffic information for an extension. Under no circumstances should a moratorium be imposed on the project.

4.15 *Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS's official positions.*

Comments: We support this recommendation.

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.

Transportation Recommendations: Vision Zero Resources

- 5.1 *Design roads immediately adjacent to new development to account for all identified recommendations from applicable planning documents including Functional Plans, Master Plans and Area Plans.*

Comments: When there are conflicts between multiple plans, the most recently adopted plan should supersede any prior plans. However, when a project has relied on a prior plan in the entitlement process before the adoption of a new plan, reasonable grandfathering provisions should apply.

Transportation Recommendations: Mitigation Priorities

- 5.2 *Prioritize motor vehicle mitigation strategies designed to improve travel safety.*

Comments: No one opposes safety. But the cost of trying to achieve maximum safety must be balanced with the County's underlying economic development objectives. The County Department of Transportation should actively participate in the safety evaluation and mitigation strategies. To the extent that safety measures slow or otherwise impair vehicle movements, then vehicular adequacy and delay standards must be adjusted accordingly.

Transportation Recommendations: Development Review Committee

- 5.3 *Given the additional focus on Vision Zero principles in the development review process, designate a Vision Zero representative to the Development Review Committee to review the development application and Vision Zero elements of LATR transportation impact studies and to make recommendations regarding how to incorporate the conclusions and safety recommendations of LATR transportation impact studies.*

Comments: The Vision Zero representative should be a County Department of Transportation official who is familiar with the overall development review process and the inherent need to balance multiple objectives.

Transportation Recommendations: Transportation Impact Study Approach and Scope

- 5.4 *Introduce a Vision Zero Impact Statement for all LATR studies pertaining to subdivisions that will generate 50 or more peak-hour person trips.*

Comments: It is difficult to comment on this recommendation without new LATR Guidelines and further information as to the required scope of these statements and how these statements must be prepared. All information necessary to prepare Vision Zero Impact Statements, such as accident investigation data, must be available and easily obtainable. Any proposed safety improvements resulting from a Vision Zero Impact Statement must meet a basic nexus and proportionality test. Any financial contributions collected based on the Vision Zero

Impact Statement should be spent on Vision Zero improvements (as opposed to going into a general fund), and total funds collected across multiple nearby projects should not exceed the total cost of Vision Zero improvements that would serve those projects.

5.5 For LATR studies of new development generating 50 or more peak-hour weekday person trips, couple current multi-modal transportation adequacy tests with options that can be implemented over time utilizing Vision Zero-related tools and resources currently available and under development. When the appropriate set of tools (described in the Vision Zero Resources section above) are operational, the current multi-modal transportation adequacy tests should be updated as described below.

Comments: We have concerns with this Recommendation. As described on pages 66-71 of the Planning Board Draft, the current Subdivision Staging Policy requires a motor vehicle adequacy test if the development generates 50 or more peak-hour weekday person trips. It also requires pedestrian, bicycle, and transit system adequacy tests if the development generates at least 50 peak-hour trips by that particular mode. The number of projected person, pedestrian, bicycle, and transit trips is a function of the type and size of proposed development and the project's location in the County.

The Planning Staff recommended lowering the requirement for pedestrian, bicycle and transit system adequacy tests if the project generates at least 5 peak-hour trips by that given mode. We opposed that Planning Staff recommendation to lower the testing from 50 peak-hour trips to 5 peak-hour trips on the basis that lowering the threshold would be too onerous since the testing is expensive and time consuming, would capture smaller projects that do not justify that level of testing, and would make the County less competitive with other local jurisdictions.

The Planning Board recommendation goes beyond the Planning Staff recommendation. It eliminates any minimum required number of projected trips for each mode, and requires adequacy tests for all four modes – motor vehicle, pedestrian, bicycle, and transit – if the development generates at least 50 peak-hour person trips (i.e., it requires pedestrian, bicycle, and transit testing also if a motor vehicle adequacy test is required). There are many potential projects, particularly those further upcounty, which would generate at least 50 peak-hour person trips, but very few, if any, pedestrian, bicycle, or transit trips.

We ask the Council to restore the Planning Staff recommendation of a 5 peak-hour trip minimum threshold. This change would at least avoid the extreme cases of requiring adequacy tests for pedestrian, bicycle, and transit even though the project would generate very few or no trips within those modes.

The Planning Board Draft inadvertently references the original Planning Staff recommendation -- “The pedestrian, bicycle and transit system adequacy tests are required if the given mode generates at least five peak-hour trips by that mode” (Page 71). We ask the Council to keep this original Planning Staff recommendation in the final Growth Policy.

These comments only concern the amount of testing that is required, which is separate from the amount of mitigation or improvements that could be required in connection with a project. Naturally, any potential improvements that are imposed cannot be disproportionate to the size of the project.

- 5.6 *Eliminate the LATR study requirement for motor vehicle adequacy in Red Policy Areas (Metrorail Station Policy Areas and Purple Line Station Areas).*

Comments: We support this recommendation.

- 5.7 *Expand the application of the Critical Lane Volume (CLV) analysis methodology as a screening tool to determine the necessity for the application of the more robust Highway Capacity Manual (HCM) analysis methodology for the motor vehicle transportation adequacy analysis.*

Comments: We support this recommendation.

Transportation Recommendations: Transit Corridor LATR Intersection Congestion Standard

- 5.8 *Increase the intersection delay standards to 1,700 CLV and 100 seconds/vehicle for transit corridor roadways in Orange and Yellow policy areas to promote multi-modal access to planned Bus Rapid Transit service in transit corridors.*

Comments: We support this recommendation.

- 5.9 *Place all Purple Line Station policy areas (existing and proposed) in the Red policy area category.*

Comments: We support this recommendation.

- 5.10 *Continue producing the Travel Monitoring Report (formerly the Mobility Assessment Report) on a biennial schedule as a key travel monitoring element of the County Growth Policy.*

Comments: We support this recommendation.

Transportation Recommendations: Policy Area Review

- 5.11 *The proposed auto and transit accessibility metric is the average number of jobs that can be reached within a 45-minute travel time by automobile or walk access transit.*

- 5.12 *The proposed metric for auto and transit travel times is average time per trip, considering all trip purposes.*

- 5.13 *The proposed metric for vehicle miles traveled per capita is daily miles traveled per “service population,” where “service population” is the sum of population and total employment for a particular TAZ.*
- 5.14 *The proposed metric for non-auto driver mode share is the percentage of non-auto driver trips (i.e., HOV, transit and nonmotorized trips) for trips of all purposes.*
- 5.15 *The proposed metric for bicycle accessibility is the Countywide Connectivity metric documented in the 2018 Montgomery County Bicycle Master Plan (page 200).*

Comments: We do not have enough information to take a position on Recommendations 5.11 – 5.15.

Transportation Recommendations: Policy Area Designations

- 5.16. *Define the boundary of the Forest Glen Metro Station Policy Area.*
- 5.17. *Expand the boundary of the Grosvenor Metro Station Policy Area.*
- 5.18. *Establish the proposed Lyttonsville/Woodside Purple Line Station policy area as a Red policy area.*
- 5.19. *Establish the proposed Dale Drive/Manchester Place Purple Line Station policy area as a Red policy area.*

Comments: We support Recommendations 5.16 – 5.19.

Tax Recommendations: School Impact Taxes

- 6.1 *Change the calculation of school impact taxes to include one tax rate for all multifamily units, in both low-rise and high-rise buildings, based on the student generation rate for multifamily units built since 1990.*

Comments: We support this recommendation.

- 6.2 *Calculate standard school impact taxes at 100% of the cost of a student seat using School Impact Area student generation rates. Apply discount factors to single-family attached and multifamily units to incentivize growth in certain desired growth and investment areas. Maintain the current 120% factor within the Agricultural Reserve Zone.*

Comments: We support lowering school impact taxes in desired growth areas. As a general policy, development impact taxes should be lowered as much as possible to increase the County’s economic competitiveness.

- 6.3 *Allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS's agreement.*

Comments: We support this recommendation. Credits for land dedication should be allowed to continue and any school facility condition improvements – whether or not they add classroom capacity – should be given credit.

- 6.4 *Eliminate the current impact tax surcharge on units larger than 3,500 square feet.*

Comments: We support this recommendation.

Tax Recommendations: Impact Tax Exemptions on Residential Uses

- 6.5 *Eliminate the current impact tax exemptions for development in former Enterprise Zones.*

- 6.6 *Any development located in a Qualified Opportunity Zone certified by the United States Treasury Department is exempt from development impact taxes.*

Comments: It is important to note that Glenmont is not yet a Former Enterprise Zone, but is within an Enterprise Zone that expires June 2023, unless extended (thus not an immediate issue but still within the life of this Growth Policy). Glenmont is not in an Opportunity Zone. Thus, if Recommendation 6.5 is adopted, and if the Glenmont Enterprise Zone is not extended beyond 2023, then Glenmont would become a Former Enterprise Zone and would lose its exemption status. Glenmont needs to keep its exemption. Making certain that Glenmont retained the exemption status for its overall viability appeared to be extremely important to the Planning Board and its Staff. This should be addressed as part of the Council's review (a likely oversight at the Planning Board level). Otherwise, we can support Recommendation 6.5 (elimination of the exemption for Former Enterprise Zones) but only provided that Recommendation 6.6 (exemption for Opportunity Zones), which we support, is adopted. If Recommendation 6.6 is not adopted, then we oppose the recommended elimination of the exemption for Former Enterprise Zones.

Silver Spring and Wheaton, the Former Enterprise Zones, are not yet self-sustaining and need to be exempt. These areas, with their fragile market and lower rent structure, are not able to absorb either the existing or the proposed new impact taxes. The impact tax exemption is what allows the equalization of the market place between the Former Enterprise Zones and other areas of the County, such as Bethesda or White Flint. The construction cost for buildings is the same in all four areas, but the rental return in Silver Spring and Wheaton is far below that of Bethesda or White Flint. The impact tax exemption is what allows Silver Spring and Wheaton to make their lower rental rates economically viable, by reducing the cost economics of the project in a way that it can be sustained by a lesser income stream from those lower rents.

The Silver Spring Former Enterprise Zone essentially is coterminous with the CBD and the new Opportunity Zone boundaries. The fact that Silver Spring and Wheaton received

Opportunity Zone designations reflects that the Former Enterprise Zones are not ready to lose the benefits of having been Enterprise Zones. To be designated as an Opportunity Zone requires being composed of Low Income Community Census Tracts (“LICCT”). Downtown Silver Spring, essentially a single census tract, is sufficiently below the Washington Metropolitan Statistical Area Average Median Income, and therefore, qualifies as an Opportunity Zone. Silver Spring and Wheaton are not finished with needing the benefits of the exemption.

Projects that have been approved in Silver Spring have relied upon the impact tax exemption as a part of their economic model. Several of these projects have been approved with multiple phases, intending to be implemented over time. Portions are begun and other portions remain for the future. However, that phasing process and long gestation and development process was expected from the outset. These projects should not be adversely affected economically by the retrospective application of a change in the impact tax structure.

While many projects have site plan review, and therefore would, in theory, be protected in the recommended grandfathering, the likelihood is that over the course of the development process, site plan amendments will be required, as is often the case with long term multi-phased projects. Regardless of the final decision on the merits of the exemption, and applying it to post-January 1, 2021 site plans, the eventual action, if implemented, should make clear that amendments to previously approved site plans do not change the grandfather protections of those projects.

Existing applications and approvals should be protected in a manner that allows these existing in-progress projects to proceed to completion using the previous tax exemption rules. This equitable reasoning should apply to any of the tax exemptions if they are to be removed. They should remain available in their previous form to those projects which were approved while the exemption was a part of the law, and upon which law the application relied.

Regarding the other current impact tax exemptions, we support maintaining all current exemptions. Finally, for dwelling units for seniors age 55 and above, we support converting the classification from “rate set at \$0” to “exempt.”

- 6.7 *Modify the current impact tax exemptions applied to all housing units when a project includes 25% affordable units to:*
- 1. require the affordable units be placed in the county’s or a municipality’s MPDU program, and*
 - 2. limit the exemption amount to the lowest standard impact tax in the county for the applicable dwelling type.*

Comments: We opposed the Planning Staff’s original version of this recommendation because it removed the potential exemption from the Greenfield Impact Area and it required the project to include two times the standard share of MPDUs applicable to the project location. The Planning Board Draft recommendation above removed those two provisions, but added Section 2, which limits the exemption amount. We support the removal of the doubling requirement and allowing the Greenfield Impact Area to claim the exemption, but do not support the limitation of the exemption amount (Section 2). The reduced value of the exemption does not seem to

recognize the cost or benefit to providing the additional amount of affordable units. Thus, we generally oppose this recommendation, though it is preferable to the original Planning Staff version. We support maintaining the current exemption, and could support Section 1, requiring affordable units to be placed in the MPDU program, on its own. The current exemption supports providing more housing generally, and with it more affordable units as MPDUs. As has been argued for many years, the best way to achieve more MPDUs is to provide more housing generally, which then increases the number of MPDUs required.

This proposal could restrict the use of the exemption to HOC and other affordable housing providers only. A number of private developers have begun proposing 25% affordable housing, seeking to utilize the exemption. Now that the existing provision is finally achieving some success with the private sector, the recommendation proposes to change the program in a way that could effectively eliminate it for most developers. This seems to be the worst possible time to make these changes. Use of the exemption has already been factored into the economics of projects. If changes are made, then a grandfather provision should be added to protect those projects that are in progress, relying on the exemption as it is today, so there is no confusion about its continued use. If site plan approval after January 1, 2021 remains the trigger, there should be clarity that subsequent amendments do not change the protection received by the previously-approved site plan.

6.8 *Continue to apply impact taxes on a net impact basis, providing a credit for any residential units demolished.*

Comments: We support this recommendation.

Tax Recommendations: Recordation Tax

6.9 *Incorporate progressive modifications into calculation of the Recordation Tax to provide additional funding for school construction and the county's Housing Initiative Fund.*

Comments: Recordation Taxes should be as low as possible to make the County competitive when it comes to tax policy.

As a final general comment, and as emphasized several times in this letter, comprehensive grandfathering provisions are necessary. Protection should be provided for all projects that have filed, are in process, or have approvals that may require amendments later. Specifically regarding impact taxes and exemptions, we support the recommendation in Appendix N related to the Transition from the existing Subdivision Staging Policy to the updated Growth Policy. This Transition language is important because projects with approval have relied on current exemptions in their planning process. Projects with preliminary or site plan approval under the existing Subdivision Staging Policy provisions should be allowed to propose amendments after the effective date of January 1, 2021 and still claim any exemptions under the existing Subdivision Staging Policy.

We thank the Council for its consideration of this input. We look forward to participating in the hearing on September 15, 2020, and in the following worksessions. After you have had a chance to review our comments, we would welcome the opportunity to continue the discussion if you have any questions. Thank you very much.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.
LAND USE PRACTICE



Stuart R. Barr

Christopher Ruhlen, Chair
Robert G. Brewer Jr.
Patricia A. Harris
Robert R. Harris

William Kominers
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Steven A. Robins

Elizabeth C. Rogers
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cc (by e-mail): Robert H. Drummer
 Pamela Dunn
 Dr. Glenn Orlin
 Montgomery County Planning Board
 Gwen Wright
 Robert Kronenberg
 Tanya Stern
 Jason Sartori
 Eric Graye

Bill No. 37-20
Concerning: Subdivision – Preliminary
Plan – Adequate Public Facilities –
Amendments
Revised: 10/14/2020 Draft No. 3
Introduced: July 29, 2020
Expires: January 29, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN ACT to:

- (1) ~~[[require an applicant]]~~ authorize the Planning Board, when reviewing an application for an extension of the validity period of an adequate public facilities determination, to ~~[[provide]]~~ require an updated determination of school adequacy for the remaining unbuilt units; and
- (2) generally amend the law governing a determination of adequate public facilities

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Division 50.4, Section 4.3

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1 **Sec. 1. Division 50.4, Section 4.3 is amended as follows:**

2 **4.3. Technical Review**

3 * * *

4 J. *Adequate Public Facilities Ordinance (APFO).*

5 * * *

6 7. *Extensions.*

7 a. *Application.* Only the Board may extend the validity
8 period for a determination of adequate public facilities;
9 however, a request to amend any validity period phasing
10 schedule may be approved by the Director if the length of
11 the total validity period is not extended.

12 * * *

13 iii. For each extension of an adequate public facilities
14 determination:

15 (a) the applicant must not propose any additional
16 development above the amount approved in
17 the original determination;

18 (b) the Board must not require any additional
19 public improvements or other conditions
20 beyond those required for the original
21 preliminary plan;

22 (c) the Board may require the applicant to submit
23 a traffic study to demonstrate how the
24 extension would not be adverse to the public
25 interest;[and]

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(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot[.]; and

(e) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the [[applicant]] Board must [[provide]] make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.

* * *

g. If a new adequate public facilities determination is required under this Subsection, the procedures in Chapter 8, Section 8-32 apply.

Sec. 2. Transition.

The amendments made in Section 1 must apply to any requests to extend the validity period for a determination of adequate public facilities received by the Planning Board on or after January 1, 2021.

50 *Approved:*

51

52 _____

53 Sidney Katz, President, County Council Date

54 *Approved:*

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56 _____

57 Marc Elrich, County Executive Date

58 *This is a correct copy of Council action.*

59

60 _____

61 Selena Mendy Singleton, Clerk of the Council Date

Bill No. 38-20
 Concerning: Taxation - Development
Impact Taxes for Transportation and
Public School Improvements -
Amendments
 Revised: 10/16/2020 Draft No. 5
 Introduced: July 29, 2020
 Expires: January 29, 2022
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN ACT to:

- (1) update transportation and school impact tax districts;
- (2) establish impact tax rates by school impact tax districts;
- (3) eliminate the school impact tax premium on certain types of dwelling units;
- (4) modify the applicability of development impact tax exemptions for certain uses and in certain locations; ~~[[and]]~~
- (5) establish a Utilization Premium Payment for certain developments to reduce school overcapacity; and
- (6) generally amend the law governing transportation and school development impact taxes

By amending

Montgomery County Code
 Chapter 52, Taxation
 Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, ~~[[and]]~~ 52-58, and 52-59

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1 **Sec. 1. Sections 52-39, 52-41, 52-49, 52-50, 52-52, 52-54, 52-55, ~~[[and]]~~ 52-
 2 **58, and 52-59 are amended as follows:****

3 **52-39. Definitions.**

4 In this Article the following terms have the following meanings:

5 *Additional capacity* means a new road, ~~[[widening an existing road,]]~~ adding
 6 an additional lane or turn lane to an existing road, or another transportation
 7 improvement that:

8 (1) increases the maximum theoretical volume of traffic that a road
 9 or intersection can accommodate, or implements or improves
 10 transit, pedestrian and bike facilities or access to non-auto modes
 11 of travel; and

12 (2) is classified as a minor arterial, arterial, parkway, major highway,
 13 controlled major highway, or freeway in the County’s Master
 14 Plan of Highways, or is similarly classified by a municipality.
 15 The Director of Transportation may find that a specified business
 16 district street or industrial street also provides additional capacity
 17 as defined in this provision.

18 * * *

19 **52-41. Imposition and applicability of development impact taxes.**

20 * * *

21 (c) The following impact tax districts are established:

22 (1) *White Flint*: The part of the White Flint Metro Station Policy
 23 Area included in the White Flint Special Taxing District in
 24 Section 68C-2;

25 (2) *Red Policy Areas*: Bethesda CBD, Chevy Chase Lake, ~~[[Dale~~
 26 Drive/Manchester Place,]] Forest Glen, Friendship Heights,
 27 Grosvenor, Glenmont, ~~[[Long Branch, Lyttonsville/Woodside]]~~,

28 Lyttonsville, Medical Center, Purple Line East, Rockville Town
 29 Center, Shady Grove [[Metro Station]], Silver Spring CBD,
 30 [[Takoma/Langley]] Takoma, Twinbrook, [[and]] Wheaton
 31 CBD and Woodside;

32 (3) *Orange Policy Areas:* Bethesda/Chevy Chase, Burtonsville
 33 Crossroads, [Chevy Chase Lake,] Clarksburg Town Center,
 34 Derwood, Gaithersburg City, Germantown Town Center,
 35 Kensington/Wheaton, [Long Branch,] North Bethesda, R&D
 36 Village, Rockville City, Silver Spring/Takoma Park,
 37 [Takoma/Langley,] White Flint, except the portion that is
 38 included in the White Flint Special Taxing District in Section
 39 68C-2, and White Oak Policy Areas;

40 (4) *Yellow Policy Areas:* Aspen Hill, Clarksburg, Cloverly,
 41 Fairland/Colesville, Germantown East, Germantown West,
 42 Montgomery Village/Airpark, North Potomac, Olney, and
 43 Potomac Policy Areas; and

44 (5) *Green Policy Areas:* Damascus, Rural East, and Rural West
 45 Policy Areas.

46 * * *

47 (g) A development impact tax must not be imposed on:

48 (1) any Moderately Priced Dwelling Unit built under Chapter 25A
 49 or any similar program enacted by either Gaithersburg or
 50 Rockville[.];

51 (2) any other dwelling unit built under a government regulation or
 52 binding agreement that limits for at least 15 years the price or
 53 rent charged for the unit in order to make the unit affordable to

54 households earning less than 60% of the area median income,
55 adjusted for family size;

56 (3) any Personal Living Quarters unit built under [Sec. 59-A-6.15]
57 Section 59-3.3.2.D, which meets the price or rent eligibility
58 standards for a moderately priced dwelling unit under Chapter
59 25A;

60 (4) any dwelling unit in an Opportunity Housing Project built under
61 Sections 56-28 through 56-32, which meets the price or rent
62 eligibility standards for a moderately priced dwelling unit under
63 Chapter 25A;

64 (5) [any non-exempt dwelling unit in a development in which at least
65 25% of the dwelling units are exempt under paragraph (1), (2),
66 (3), or (4), or any combination of them;

67 6] any development located in an enterprise zone designated by the
68 State [or in an area previously designated as an enterprise zone];

69 (6) any development located in a Qualified Opportunity Zone
70 certified by the United States Treasury Department;

71 (7) a house built by high school students under a program operated
72 by the Montgomery County Board of Education; [and] or

73 (8) a farm tenant dwelling.

74 * * *

75 **52-49. Tax rates.**

76 * * *

77 (g) Any non-exempt dwelling unit in a development in which at least 25%
78 of the dwelling units are exempt under Section 52-41(g)(1) must pay
79 the tax discounted by an amount equal to the lowest standard impact
80 tax rate in the County for that unit type.

81

* * *

82 **52-50. Use of impact tax funds.**

83 Impact tax funds may be used for any:

- 84 (a) new road[[, widening of an existing road,]] or total reconstruction of all
- 85 or part of an existing road [[required as part of widening of an existing
- 86 road,]] that adds an additional lane or turn lane [[highway or
- 87 intersection capacity]] or improves transit service or bicycle
- 88 commuting, such as bus lanes or bike lanes;

89

* * *

90 **52-52. Definitions.**

91 In this Article all terms defined in Section 52-39 have the same
92 meanings, and the following terms have the following meanings:

93

* * *

94 *Public school improvement* means any capital project of the Montgomery
95 County Public Schools that adds to the number of teaching stations in a public
96 school.

97 School service area means the geographically defined attendance area for an
98 individual school.

99 **52-54. Imposition and applicability of tax.**

100

* * *

- 101 (c) The following public school impact tax districts are established, as
- 102 identified in the County Growth Policy:

- 103 (1) Infill Impact Areas;
- 104 (2) Turnover Impact Areas; and
- 105 (3) Greenfield Impact Areas.

- 106 (d) The tax under this Article must not be imposed on:

- 107 (1) any Moderately Priced Dwelling Unit built under Chapter 25A
 108 or any similar program enacted by either Gaithersburg or
 109 Rockville[,];
- 110 (2) any other dwelling unit built under a government regulation or
 111 binding agreement that limits for at least 15 years the price or
 112 rent charged for the unit in order to make the unit affordable to
 113 households earning equal to or less than 60% of the area median
 114 income, adjusted for family size;
- 115 (3) any Personal Living Quarters unit built under Section 59-
 116 3.3.2.D, which meets the price or rent eligibility standards for a
 117 moderately priced dwelling unit under Chapter 25A;
- 118 (4) any dwelling unit in an Opportunity Housing Project built under
 119 Sections 56-28 through 56-32, which meets the price or rent
 120 eligibility standards for a moderately priced dwelling unit under
 121 Chapter 25A;
- 122 (5) [any non-exempt dwelling unit in a development in which at least
 123 25% of the dwelling units are exempt under paragraph (1), (2),
 124 (3), or (4), or any combination of them;
- 125 (6)] any development located in an enterprise zone designated by the
 126 State; [or in an area previously designated as an enterprise zone;
 127 or]
- 128 (6) any development located in a Qualified Opportunity Zone
 129 certified by the United States Treasury Department; or
- 130 (7) a house built by high school students under a program operated
 131 by the Montgomery County Board of Education.
- 132 ~~[(d)]~~ (e) The tax under this Article does not apply to:

- 133 (1) any reconstruction or alteration of an existing building or part of
 134 a building that does not increase the number of dwelling units of
 135 the building;
- 136 (2) any ancillary building in a residential development that:
 137 (A) does not increase the number of dwelling units in that
 138 development; and
 139 (B) is used only by residents of that development and their
 140 guests, and is not open to the public; and
- 141 (3) any building that replaces an existing building on the same site
 142 or in the same project (as approved by the Planning Board or the
 143 equivalent body in Rockville or Gaithersburg) to the extent of the
 144 number of dwelling units of the previous building, if:
- 145 (A) [[construction begins]] an application for a building permit
 146 is filed within four years [[one year]] after demolition or
 147 destruction of the previous building was substantially
 148 completed; [[or]]
- 149 (B) the Director of the Department of Permitting Services or
 150 the Director's designee finds that the applicant was unable
 151 to apply for a building permit within four years after
 152 demolition or destruction of the previous building was
 153 substantially completed due to circumstances beyond the
 154 control of the applicant or the applicant's agents; or
- 155 (C) the previous building is demolished or destroyed, after the
 156 replacement building is built, by a date specified in a
 157 phasing plan approved by the Planning Board or
 158 equivalent body.

159 However, if in either case the tax that would be due on the new,
 160 reconstructed, or altered building is greater than the tax that would have
 161 been due on the previous building if it were taxed at the same time, the
 162 applicant must pay the difference between those amounts.

163 ~~[(e)]~~ (f) If the type of proposed development cannot be categorized under
 164 the residential definitions in Section 52-39 and 52-52, the Department
 165 must use the rate assigned to the type of residential development which
 166 generates the most similar school enrollment characteristics.

167 ~~[(f)]~~ (g) A Clergy House must pay the impact tax rate that applies to a
 168 place of worship under Section 52-41(d) if the house:

- 169 (1) is on the same lot or parcel, adjacent to, or confronting the
 170 property on which the place of worship is located; and
- 171 (2) is incidental and subordinate to the principal building used by the
 172 religious organization as its place of worship.

173 The place of worship tax rate does not apply to any portion of a Clergy
 174 House that is nonresidential development.

175 **52-55. Tax rates.**

176 (a) The Council must establish the [Countywide] rates for each school
 177 impact tax district [the tax under this Article] by resolution after a
 178 public hearing advertised at least 15 days in advance.

179 (b) [The tax on any single-family detached or attached dwelling unit must
 180 be increased by \$2 for each square foot of gross floor area that exceeds
 181 3,500 square feet, to a maximum of 8,500 square feet.]

182 ~~[[Any non-exempt single-family attached or multifamily unit located in~~
 183 ~~a Desired Growth and Investment Area, as defined in the County~~
 184 ~~Growth Policy, must pay the tax at 60% of the otherwise applicable~~
 185 ~~rate.~~

186 (c)] Any Productivity Housing unit, as defined in Section 25B-17(j), must
187 pay the tax at 50% of the otherwise applicable rate.

188 [(d)] (c) The County Council by resolution, after a public hearing
189 advertised at least 15 days in advance, may increase or decrease the
190 rates established under this Section.

191 [(e)] (d) The Director of Finance, after advertising and holding a public
192 hearing as required by Section 52-17(c), must adjust the tax rates set in
193 or under this Section effective on July 1 of each odd-numbered year in
194 accordance with the update to the Subdivision Staging Policy using the
195 latest student generation rates and school construction cost data. The
196 Director must calculate the adjustment to the nearest multiple of one
197 dollar. The Director must publish the amount of this adjustment not
198 later than May 1 of each odd-numbered year.

199 [(f)] (e) Any non-exempt dwelling unit in a development in which at least
200 25% of the dwelling units are exempt under Section [[52-41(g)(1)]] 52-
201 54(d)(1) must pay the tax discounted by an amount equal to the lowest
202 standard impact tax rate in the County for that unit type.

203 **52-58. Credits.**

204 (a) Section 52-47 does not apply to the tax under this Article.

205 (b) A property owner must receive a credit for constructing or contributing
206 to an improvement of the type listed in Section 52-56(d), including
207 costs of site preparation.

208 (c) [[A property owner may receive credit for constructing or contributing
209 to other physical school facility improvements not listed in Section 52-
210 56(d) if the Montgomery County School Board agrees to the
211 improvement.

212 ~~(d)~~ A property owner may receive credit for land dedicated for a school
 213 site, if:

- 214 (1) the density calculated for the dedication area is excluded from
 215 the density calculation for the development site; and
 216 (2) the Montgomery County School Board agrees to the site
 217 dedication.

218 ~~(b)~~ ~~(e)~~ (d) If the property owner elects to make a qualified
 219 improvement or dedication, the owner must enter into an agreement
 220 with the Director of Permitting Services, or receive a development
 221 approval based on making the improvement, before any building permit
 222 is issued. The agreement or development approval must contain:

- 223 (1) the estimated cost of the improvement or the fair market value of
 224 the dedicated land, if known then[,];
 225 (2) the dates or triggering actions to start and, if known then, finish
 226 the improvement or land transfer;
 227 (3) a requirement that the property owner complete the improvement
 228 according to Montgomery County Public Schools standards; and
 229 (4) such other terms and conditions as MCPS finds necessary.

230 ~~(c)~~ ~~(f)~~ (e) MCPS must:

- 231 (1) review the improvement plan or dedication;
 232 (2) verify costs or land value and time schedules;
 233 (3) determine whether the improvement is a public school
 234 improvement of the type listed in Section 52-56(d)[, meets the
 235 requirements of subsection (c),] or meets the dedication
 236 requirements in subsection ~~(a)~~ ~~(d)~~ (c);
 237 (4) determine the amount of the credit for the improvement or
 238 dedication; and

239 (5) certify the amount of the credit to the Department of Permitting
 240 Services before that Department or a municipality issues any
 241 building permit.

242 ~~[(d)]~~ ~~[[g]]~~ (f) An applicant for subdivision, site plan, or other
 243 development approval from the County, Gaithersburg, or Rockville, or
 244 the owner of property subject to an approved subdivision plan,
 245 development plan, floating zone plan, or similar development approval,
 246 may seek a declaration of allowable credits from MCPS. MCPS must
 247 decide, within 30 days after receiving all necessary materials from the
 248 applicant, whether any public school improvement which the applicant
 249 has constructed, contributed to, or intends to construct or contribute to,
 250 will receive a credit under this subsection. If during the initial 30-day
 251 period after receiving all necessary materials, MCPS notifies the
 252 applicant that it needs more time to review the proposed improvement,
 253 MCPS may defer its decision an additional 15 days. If MCPS indicates
 254 under this paragraph that a specific improvement is eligible to receive
 255 a credit, the Director of Permitting Services must allow a credit for that
 256 improvement. If MCPS cannot or chooses not to perform any function
 257 under this subsection or subsection (c), the Department of Permitting
 258 Services must perform that function.

259 ~~[(e)]~~ ~~[[h]]~~ (g) (1) A property owner must receive a credit for
 260 constructing or contributing to the cost of building a new single
 261 family residence that meets Level I Accessibility Standards, as
 262 defined in Section 52-107(a).

263 (2) The credit allowed under this Section must be as follows:

264 (A) If at least 5% of the single family residences built in the
 265 project meet Level I Accessibility Standards, then the
 266 owner must receive a credit of \$250 per residence.

267 (B) If at least 10% of the single family residences built in the
 268 project meet Level I Accessibility Standards, then the
 269 owner must receive a credit of \$500 per residence.

270 (C) If at least 25% of the single family residences built in the
 271 project meet Level I Accessibility Standards, then the
 272 owner must receive a credit of \$750 per residence.

273 (D) If at least 30% of the single family residences built in the
 274 project meet Level I Accessibility Standards, then the
 275 owner must receive a credit of \$1,000 per residence.

276 (3) Application for the credit and administration of the credit must
 277 be in accordance with Subsections 52-107(e) and (f).

278 (4) A person must not receive a tax credit under this Section if the
 279 person receives any public benefit points for constructing units
 280 with accessibility features under Chapter 59.

281 ~~[(f)]~~ ~~[(i)]~~ (h) The Director of Finance must not provide a refund for a
 282 credit which is greater than the applicable tax.

283 ~~[(g)]~~ ~~[(j)]~~ (i) Any credit issued under this Section before December 31,
 284 2015 expires 6 years after the Director certifies the credit. Any credit
 285 issued under this Section on or after January 1, 2016 expires 12 years
 286 after the Director certifies the credit.

287 ~~[(h)]~~ ~~[(k)]~~ (j) After a credit has been certified under this Section, the
 288 property owner or contract purchaser to whom the credit was certified
 289 may transfer all or part of the credit to any successor in interest of the
 290 same property. However, any credit transferred under this subsection

291 must only be applied to the tax due under this Article with respect to
 292 the property for which the credit was originally certified.

293 **52-59. ~~[[Reserved]]~~. Utilization Premium Payment**

294 (a) In addition to the tax due under this Article, an applicant for a building
 295 permit must pay to the Department of Finance a Utilization Premium
 296 Payment if such payment was required under the Annual School Test
 297 in effect at the time the building was approved.

298 (b) The Council by resolution, after a public hearing advertised at least 15
 299 days in advance, must establish the rates for the Utilization Premium
 300 Payment.

301 (c) The Director of Finance, after advertising and holding a public hearing,
 302 must adjust the rates set in or under this Section effective on July 1 of
 303 each odd-numbered year in accordance with the update to the
 304 Subdivision Staging Policy using the latest student generation rates and
 305 school construction cost data. The Director must calculate the
 306 adjustment to the nearest multiple of one dollar. The Director must
 307 publish the amount of this adjustment not later than May 1 of each odd-
 308 numbered year.

309 (d) The Payment must be paid at the same time and in the same manner as
 310 the tax under this Article.

311 (e) The Department of Finance must retain funds collected under this
 312 Section in an account to be appropriated for any public school
 313 improvement that adds capacity designed to alleviate overutilization in
 314 the school service area from which the funds were collected.

315 (f) The Utilization Premium Payment must not be imposed on any:

316 (1) Moderately Priced Dwelling Unit built under Chapter 25A or any
 317 similar program enacted by either Gaithersburg or Rockville;

- 318 (2) other dwelling unit built under a government regulation or
 319 binding agreement that limits for at least 15 years the price or
 320 rent charged for the unit in order to make the unit affordable to
 321 households earning equal to or less than 60% of the area median
 322 income, adjusted for family size;
- 323 (3) Personal Living Quarters unit built under Section 59-3.3.2.D,
 324 which meets the price or rent eligibility standards for a
 325 moderately priced dwelling unit under Chapter 25A; or
- 326 (4) dwelling unit in an Opportunity Housing Project built under
 327 Sections 56-28 through 56-32, which meets the price or rent
 328 eligibility standards for a moderately priced dwelling unit under
 329 Chapter 25A.

330 **Sec. 2. Effective date -Transition.**

331 The amendments in Section 1 take effect on March 1, 2021 and must apply to
 332 any application for a building permit filed on or after March 1, 2021 except that the
 333 amendments related to discounts or exemptions for projects with 25% MPDUs must
 334 only apply to a development for which a preliminary plan application is filed and
 335 accepted on or after March 1, 2021.

336 *Approved:*

337

338

339 Sidney Katz, President, County Council Date

340 *Approved:*

341

342

343 Marc Elrich, County Executive Date

344 *This is a correct copy of Council action.*

345

346

347 Selena Mendy Singleton, Clerk of the Council Date

Expedited Bill No. 39-20
Concerning: Taxation - Recordation Tax
- Amendments
Revised: 7/24/2020 Draft No. 1
Introduced: July 29, 2020
Expires: January 29, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN EXPEDITED ACT to:

- (1) increase the rate of the recordation tax levied under state law for certain transactions;
- (2) amend the exemptions from the recordation tax for certain transactions;
- (3) allocate the revenue received from the recordation tax for certain uses; and
- (4) generally amend the law governing the recordation tax

By amending
Montgomery County Code
Chapter 52, Taxation
Section 52-16B

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1 **Sec. 1. Section 52-16B is amended as follows:**

2 **52-16B. Recordation Tax.**

3 (a) *Rates.* The rates and the allocations of the recordation tax, levied under
4 Md. Tax- Property Code §§12-101 to 12-118, as amended, are:

5 (1) for each \$500 or fraction of \$500 of consideration payable or of
6 the principal amount of the debt secured for an instrument of
7 writing, including the amount of any mortgage or deed of trust
8 assumed by a grantee;

9 (A) \$2.08, of which the net revenue must be reserved for and
10 allocated to the County general fund; and

11 (B) ~~[\$2.37]~~ \$2.87, of which the net revenue must be reserved
12 for and allocated to the cost of capital improvements to
13 schools; and

14 (2) if the consideration payable or principal amount of debt secured
15 exceeds \$500,000[.];

16 (A) an additional \$2.30 for each \$500 or fraction of \$500 of
17 the amount over \$500,000, of which the net revenue must
18 be reserved for and allocated equally to:

19 ~~[(A)]~~ (i) the cost of County government capital
20 improvements; and

21 ~~[(B)]~~ (ii) rent assistance for low and moderate income
22 households, which must not be used to
23 supplant any otherwise available funds[.];

24 and

25 (B) an additional \$0.50 for each \$500 or fraction of \$500 of
26 the amount over \$500,000, of which the net revenue must

27 be reserved for and allocated to the cost of capital
 28 improvements to schools; and

29 (3) if the consideration payable or principal amount of debt secured
 30 for a single-family dwelling unit exceeds \$1,000,000, an
 31 additional \$1.00 for each \$500 or fraction of \$500 of the amount
 32 over \$1,000,000, of which the net revenue must be reserved for
 33 and allocated to the Montgomery Housing Initiative under
 34 Section 25B-9.

35 (b) *Exemptions.*

36 (1) The first \$100,000 of the consideration payable on the
 37 conveyance of any owner-occupied residential property is
 38 exempt from the recordation tax if the buyer of that property is
 39 an individual and intends to use the property as the buyer's
 40 principal residence by actually occupying the residence for at
 41 least 7 months of the 12-month period immediately after the
 42 property is conveyed.

43 (2) The first \$500,000 of the consideration payable on the
 44 conveyance of any owner-occupied residential property is
 45 exempt from the recordation tax if the buyer of that property is a
 46 first-time home buyer.

47 **Sec. 2. Expedited Effective Date.**

48 The Council declares that this legislation is necessary for the immediate
 49 protection of the public interest. This Act takes effect on January 1, 2021 and must
 50 apply to any transaction which occurs on or after January 1, 2021.

51 *Approved:*

52

53

54 _____
Sidney Katz, President, County Council Date

55 *Approved:*

56

57

58 _____
Marc Elrich, County Executive Date

59 *This is a correct copy of Council action.*

60

61

62 _____
Selena Mendy Singleton, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 39-20
Taxation - Recordation Tax – Amendments

DESCRIPTION:	Expedited Bill 39-20 would increase the rate of the recordation tax levied under state law for certain transactions involving the transfer of property and would establish a partial exemption from the recordation tax for a first time home buyer. Bill 39-20 would also amend the allocation of revenue received from the recordation tax to capital improvements for schools and to the Montgomery Housing Initiative Fund.
PROBLEM:	This Bill is part of the Planning Board’s recommended changes to the Subdivision Staging Policy.
GOALS AND OBJECTIVES:	Amend the recordation tax rates and allocation of revenue.
COORDINATION:	The Planning Board and Planning Department staff
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	OLO
EVALUATION:	To be determined.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Pamela Dunn, Senior Legislative Analyst and Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	None.

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M E M O R A N D U M

October 15, 2020

TO: County Council

FROM: Glenn Orlin, Senior Analyst
Pam Dunn, Senior Legislative Analyst
Robert Drummer, Senior Legislative Attorney

SUBJECT: 2020-2024 Subdivision Staging Policy (SSP) and Bill 38-20 - Development Impact Taxes: transportation issues¹

PURPOSE: Worksession

Councilmembers: please bring your copies of the SSP Report and Appendices to this worksession.

Those invited to participate in this worksession include:

- Casey Anderson, Planning Board Chair
- Gwen Wright, Jason Sartori, and Eric Graye, Planning Department
- Meredith Wellington, Office of the County Executive
- Christopher Conklin, Gary Erenrich, and Andrew Bossi, Department of Transportation (DOT)
- Mary Beck, Pofen Salem, and Veronica Jaua, Office of Management and Budget (OMB)

This worksession will address recommendations from the Planning Board and its staff, the County Executive and DOT, the public hearing testimony, and Council staff regarding transportation-related issues that would have a direct effect on the SSP and the impact tax law. In this report each of the Planning Board's recommendations are referenced by its 'Rec' number followed by the page number(s) in the County Growth Policy (CGP) Report. For example, the recommendations for the Forest Glen Policy Area are referenced as "(Rec. 5.16, p. 86)."

A. Policy areas around Metrorail stations. The current SSP defines the policy areas roughly within a half-mile walking distance of most Metrorail stations in the county as "Red" policy areas. In a Red policy area, the traffic congestion standard is the most lenient, allowing for up to 120 seconds (two minutes) of delay for the average vehicle passing through an intersection. Since this is an average of all vehicles—including those travelling in the off-peak direction—the average delay in the peak direction can be considerably more than two minutes. The rationale is that the presence of a Metrorail station and the bus routes that connect to it provide an excellent alternative to driving for many trips, so that the level of congestion should be of less concern, especially compared to policy areas where Metrorail is not present.

¹ Key words: #2020-2024SSP and Bill38-20

Red policy areas also feature the lowest set of transportation impact tax rates. The rationale is that since the congestion standard is set at such a low bar, it is unlikely that many expensive County road construction improvements would be needed. Thus, new development in a Red policy area would translate generally into a lesser fiscal impact due to transportation than an area without Metrorail.²

1. *Forest Glen Metro Station area* (Rec. 5.16, p. 86). Currently the area around the Forest Glen Metro Station is part of the Kensington/Wheaton Policy Area (north of the Beltway) and the Silver Spring/Takoma Policy Area (south of the Beltway). Both are Orange policy areas, where the traffic congestion delay standard is more much more stringent (80 seconds/vehicle) and the transportation impact tax rates are 150% higher than in Red policy areas. The recently approved Forest Glen/Montgomery Hills Sector Plan recommends that this SSP create a new Red policy area encompassing the property within roughly one half-mile radius from the Forest Glen Metro Station. One half-mile is the generally recognized distance for walkability; it is used by WMATA and was the basis for establishing the boundaries of the existing ten Red policy areas.

Joint PHED/GO Committee (and Council staff) recommendation (5-0): Create a new Forest Glen Policy Area and that it be classified as a Red policy area.

However, the Final Draft's proposed boundary of this new policy area does not comport with the half-mile rule. It extends too far north and south along Georgia Avenue, and does not extend enough to the east and west along Forest Glen Road. The half-mile walkshed from the Forest Glen Station is designated by the white line in the map on ©1. Along Georgia Avenue the boundary should extend north to Dexter Avenue and south to Seminary Road/Columbia Boulevard, and along Forest Glen Road the boundary should extend east to Holy Cross Hospital and west to Hollow Glen Drive. The signalized intersections along Georgia Avenue between August Drive and Seminary Road/Columbia Boulevard would be held to a 120 seconds/vehicle standard (the current Red policy area SSP standard), and the transportation impact tax rates in this area would be commensurately reduced by 60%.

Joint PHED/GO Committee recommendation (3-2): Councilmembers Friedson, Navarro, and Riemer concur with the Planning Board's recommended boundary, which is on ©2. The Red area congestion standard (either none, or 120 seconds/vehicle, depending on the Council's decision later in this packet) would also apply to the Georgia Avenue intersections at 16th Street and Dennis Avenue. **Councilmembers Jawando and Katz are opposed.**

2. *Grosvenor/Strathmore Metro Station area* (Rec. 5.17, p. 86). The Final Draft notes that the R-60 zoned Academy of the Holy Cross and Saint Angela Hall properties along the south side of Strathmore Avenue are well within the half-mile walkshed of the Grosvenor/Strathmore Metro Station. Therefore, it recommends expanding the boundary of this Red policy area to include these two properties. The Executive and the real estate attorneys of Lerch, Early & Brewer concur. **Joint PHED/GO Committee (and Council staff) recommendation (5-0): Concur with the Planning Board.**

3. *Medical Center and Takoma Metro Station areas.* After Forest Glen, these are the two remaining areas within a half-mile walking distance of a Metro station that are not Red policy areas. Part of the Medical Center Station half-mile walkshed is already within the Bethesda CBD Policy Area. Much

² Transportation impact taxes may be used only for the specific types of County improvements enumerated in County Code Section 52-50. Constructing Metrorail, light rail, and its entrances are not eligible expenses of impact tax revenue.

of the rest is comprised of federal property (Walter Reed Medical Center and the National Institutes of Health), where the SSP and impact taxes have no effect. However, the Rockville Pike signalized intersections at Jones Bridge Road/Center Drive, South Drive/South Wood Road, Wilson Drive, and Cedar Lane are within a half-mile of the station, and if this area were a Red policy area the traffic congestion delay standard under the current SSP would be 120 seconds/vehicle instead of 80 seconds/vehicle. A less stringent standard may obviate the potential long-term need for road improvements beyond those already completed at Cedar Lane and underway at Jones Bridge Road/Center Drive, and it may allow for the MD 355 BRT line to be implemented more easily through this area. **Joint PHED/GO Committee (and Council staff) recommendation (5-0): Create a new Red policy area for the area roughly a half-mile walkshed around the Medical Center Metro Station (©3).**

The Takoma Metro Station is in the District of Columbia, but a significant portion of its half-mile walkshed is within the City of Takoma Park. (A map showing the half-mile walkshed is on ©10.) Treating this area as a Red policy area likely would have little or no effect on LATR there, since the signalized intersections in this area—mainly along Carroll Avenue—will continue to operate considerably better than the existing 80 seconds/vehicle standard. However, should any of the commercial or residential properties redevelop or infill, the transportation impact taxes levied would be 60% less. **Joint PHED/GO Committee (and Council staff) recommendation (5-0): Create a new Red policy area for the area roughly a half-mile walkshed around the Takoma Metro Station that is within Montgomery County (©4).**

4. *Transportation impact tax rates in current Red policy areas.* The Planning Board does not recommend changes to the current transportation impact tax rate schedule. However, the Executive believes the rates in the current Red policy areas are too low, and he “would support an increase in those impact tax rates due to the need for and relatively high cost of providing transportation improvements in the more urbanized areas of the County.”

In developing the 2016-2020 SSP, when LATR test and transportation impact taxes were realigned to the new Red/Orange/Yellow/Green classifications, the Planning Board and Council deliberated extensively how to assign LATR standards and tax rates to each category. They considered several factors; the most important were person-miles of travel, the non-auto-driver mode share (NADMS), and the amount and type of County transportation infrastructure needed. The trips generated to and from areas immediately around Metrorail stations are generally much shorter—and the NADMS much higher—than those in areas further away. There are very few expensive new streets or intersection improvements that have yet to be constructed in the Metrorail station areas, and the sidewalk network is mostly in place. The only major County-funded transportation projects to construct within these areas that are impact tax-eligible expenses are the portions of planned Bus Rapid Transit (BRT) lines within their boundaries.

Joint PHED/GO Committee (and Council staff) recommendation (5-0): Concur with the Planning Board not to raise the rates in current Red policy areas. Impact taxes are to be commensurate with developments’ impact on capacity needed to serve them. The current transportation impact tax rates do that. Since 2016 all transportation impact tax rates, including those in Red areas, have increased by about 12% due to biennial inflation adjustments.

B. Policy areas around Purple Line stations (Rec. 5.9 p. 79 and Recs. 5.18-5.19, pp. 86-87). In the 2016-2020 SSP the Council carved out from the Bethesda/Chevy Chase Policy Area a new Chevy Chase Lake Policy Area, roughly the area within a half-mile walking distance of the planned Connecticut Avenue Purple Line station. Similarly, it excised from the Silver Spring/Takoma Policy Area two new

policy areas around the future Purple Line stations at Long Branch and Takoma/Langley. The three new policy areas retained the Orange policy area classification of its mother areas, since in 2016 the Purple Line was not yet a “given”: while master-planned, the Purple Line had not yet been programmed for construction.

The Public Hearing Draft (prepared by the Planning staff) recommended assigning a new classification to these three areas—Dark Red—with the intention that the traffic congestion delay standard and the transportation impact tax rates be set midway between those in the Red and Orange policy areas. Consequently, the Planning staff recommended the delay standard to be 100 seconds/vehicle—midway between the 120 seconds/vehicle in Red areas and the current 80 seconds/vehicle standard, and setting the transportation impact tax rates at the midpoint between those in the Red and Orange areas; the Purple Line policy area rates thus would be 30% less than in Orange areas.

The Planning Board revised the Planning staff proposal in two major respects. First, it recommended creating two additional policy areas around the Purple Line stations at Lyttonsville/Woodside and at Dale Drive/Manchester Place. Secondly, it recommended that all five policy areas around the Purple Line carry the Red policy area designation. The Maryland Building Industry Association (MBIA), Bozzuto Development Corporation, and Lerch, Early & Brewer agree. The Greater Colesville Citizens Association (GCCA) would go further: it recommends designating some areas around BRT stations as Red policy areas once BRT is implemented there.

The Executive and DOT recommend deferring classifying the Purple Line Stations to Red Policy Areas. They believe it is preferable to wait until the Purple Line is operational. However, the SSP transportation test “counts” all transportation projects programmed for completion within six years; commensurately, the classifications should be based on the transportation system six years in the future. The Purple Line is funded for completion in the Maryland Department of Transportation’s six-year capital improvements program, and while its construction will likely be suspended for a time, it is more than 30% complete and it certainly will be operational by 2026. Therefore, it is now appropriate to consider treating these areas differently in the SSP.

The Purple Line will provide important travel time improvements, but it will not provide service comparable to Metrorail. Service can be calculated by three metrics: frequency, speed (i.e., distance divided by travel time), and capacity:

	Metrorail Red Line (within Montgomery County)	Purple Line (within Montgomery County)
Peak-Period Frequency	15 trains/hour	8 trains/hour
Speed	35 mph	26 mph
Capacity in Peak Direction	21,000 passengers/hour	3,448 passengers/hour

Metrorail service is almost twice as frequent, travels nearly a third faster, and can carry more than six times the passengers than the Purple Line will when it opens for service. The Planning staff was correct in how it would treat Purple Line station areas in the SSP and impact tax rates.

Joint PHED/GO Committee (and Council staff) recommendation (5-0): Include every half-mile walkshed from a Purple Line station in distinct policy areas, except for those portions of these walksheds that are already in the Bethesda CBD or Silver Spring CBD Red policy areas. The policy

area boundaries for the Chevy Chase Lake, Lyttonsville, Woodside, and Purple Line East Policy Areas are on ©5-8.³

Council staff recommendation: Concur with Planning staff’s recognition that Purple Line policy areas represent a middle level of transit service between Red and Orange areas; thus, for Purple Line policy areas setting the congestion delay standard at 100 seconds/vehicle, and the transportation impact tax rates midway between the Red and Orange policy area rates. The transportation impact tax rates for the staff-proposed Purple policy area category are shown below:

<u>Land Use</u>	<u>Red Policy Areas</u>	<u>Purple Policy Areas</u>	<u>Orange Policy Areas</u>	<u>Yellow Policy Areas</u>	<u>Green Policy Areas</u>
<i>Residential Uses</i>	<i>Cost/unit</i>	<i>Cost/unit</i>	<i>Cost/unit</i>	<i>Cost/unit</i>	<i>Cost/unit</i>
SF Detached	\$7,838	\$13,715	\$19,591	\$24,490	\$24,490
SF Attached	\$6,413	\$11,222	\$16,030	\$20,038	\$20,038
Garden Apartments	\$4,986	\$8,726	\$12,465	\$15,582	\$15,582
High - Rise Apartments	\$3,561	\$6,233	\$8,904	\$11,130	\$11,130
Multi-Family Senior	\$1,424	\$2,493	\$3,562	\$4,452	\$4,452
Student-Built Houses	\$0	\$0	\$0	\$0	\$0
<i>Non-Residential Uses</i>	<i>Cost/sf</i>	<i>Cost/sf</i>	<i>Cost/sf</i>	<i>Cost/sf</i>	<i>Cost/sf</i>
Office	\$7.15	\$12.53	\$17.90	\$22.40	\$22.40
Industrial	\$3.60	\$6.25	\$8.90	\$11.20	\$11.20
Bioscience	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Retail	\$6.35	\$11.18	\$16.00	\$19.95	\$19.95
Place of Worship/Clergy House	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Private School	\$0.55	\$1.00	\$1.45	\$1.85	\$1.85
Hospital	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Charitable Institution	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other Non-Residential	\$3.60	\$6.25	\$8.90	\$11.20	\$11.20

Joint PHED/GO Committee recommendation (3-2): Councilmembers Friedson, Navarro, and Riemer concur with the Planning Board to categorize the Purple Line policy areas as Red policy areas. Councilmembers Jawando and Katz concur with the Planning staff/Council staff recommendation.

C. Policy area boundary and classification for Westfield Montgomery Mall. Patricia Harris of Lerch, Early & Brewer, representing the owner of Westfield Montgomery Mall, testified that its property should be reclassified with an Orange policy area classification (©9-10, map on ©11). Currently the

³ On September 25 Councilmembers Friedson and Riemer supported the Planning Board’s recommended boundaries for the Chevy Chase Lake, Lyttonsville/Woodside, Dale Drive/Manchester Place, Long Branch, and Takoma Langley. However, on October 9 they concurred with the revised boundaries for the Chevy Chase Lake, Lyttonsville, Woodside, and Purple Line East Policy Areas.

property is part of the Potomac Policy Area, which is classified as a Yellow area. Ms. Harris notes that its property—part of an area bounded by the I-270 West Spur, Democracy Boulevard, Westlake Drive, and PEPCO’s Bells Mill substation—was included as part of the Rock Spring Sector Plan approved by the Council in 2017, and that it is planned for intensive mixed-used development as is the rest of the Rock Spring area, which is in the Orange-classified North Bethesda Policy Area.

Moving this portion of the Rock Spring Sector Plan area from the Potomac Policy Area into the North Bethesda Policy Area, and classifying it as Orange, would have two consequences: (1) the congestion delay standard for the Westlake Drive intersections at Democracy Boulevard and at Westlake Terrace would be loosened from 55 seconds/vehicle to 71 seconds/vehicle, thus these intersections will be less likely to require additional turn or through lanes in the future; and (2) the transportation impact tax levied on new development would be reduced by 20%. The area is already included in the North Bethesda Transportation Management District.

Joint PHED/GO Committee (and Council staff) recommendation (5-0): Move the portion of the Rock Spring Sector Plan area west of the I-270 West Spur from the Potomac Policy Area into the North Bethesda Policy Area, rendering it part of that Orange policy area.

The Potomac LATR standards in the SSP (TL6.2, App. p. 101) list the specific intersections in the Potomac Policy Area that are subject to the Motor Vehicle System Adequacy Test. If joint Committee recommendation is adopted, then the Westlake Drive intersections at Democracy Boulevard and Westlake Terrace should be deleted from the list, since they now would be in the North Bethesda Policy Area.

D. Classification for the White Oak Policy Area. Jonathan Genn, representing Global LifeSci Development Corporation, advocates that the White Oak Policy Area, now an Orange policy area, be classified as a Red policy area, which would result in lessening the congestion delay standard from 80 seconds/vehicle to 120 seconds/vehicle, and would reduce transportation impact taxes by 60% (©. GCCA concurs. Mr. Genn’s reasoning is based upon his reading of the 2014 White Oak Science Gateway (WOSG) Master Plan (©12), which begins:

This Plan recommends that in light of the County’s economic objectives and its ownership interest in the Life Sciences property, the Plan area be considered an economic opportunity center, similar in form and function to areas around a Metro Station or a central business district with an ultimately urban character, and that the roadway and transit adequacy standards used in the Subdivision Staging Policy for areas that are currently designated as Urban be applied to the Plan area. Currently the Urban roadway standard is a minimum 40 percent ratio of forecast speed to uncongested speed (the borderline between Levels of Service “D” and “E”) averaged over all arterials and roads of higher classifications. [WOSG Master Plan, p. 54]

However, the term “Urban” in this context does *not* refer to what were then called Metro Station policy areas (now, Red policy areas), but to the “Urban Ring” identified in the 1993 update to the County’s General Plan. In that update, the county was split into five zones: the Urban Ring, the I-270 Corridor, the Suburban Communities, the Residential Wedge, and the Agricultural Wedge. The Urban Ring has a boundary that includes all of Bethesda/Chevy Chase, Silver Spring/Takoma, Kensington/Wheaton, nearly all North Bethesda—and about half of the WOSG planning area: Hillandale and FDA. Council staff argued then that the Fairland/White Oak Policy Area be split, with White Oak being treated like the other Urban Ring policy areas.

The Council concurred with staff's recommendation, and the consequences were that the congestion delay standard in White Oak was loosened from 0.92 volume/capacity (59 seconds/vehicle) to 1.00 volume/capacity (80 seconds/vehicle). When the "color" classification system was implemented in the 2016-2020 SSP, the White Oak Policy Area was designated as an Orange policy area; without the change in the WOSG Master Plan it would have been part of a Yellow Fairland/White Oak Policy Area, with transportation impact tax rates 25% higher than they are now.

Joint PHED/GO Committee (and Council staff) recommendation (5-0): Concur with the Planning Board that the White Oak Policy Area remain as an Orange policy area.

E. Non-auto-driver mode share (NADMS) goals. (TL6.1-6.9, App. pp. 101-103). Many master and sector plans include NADMS goals for their respective planning or policy areas. Sometimes the goal is only for residents or only for employees, other times there are goals for both residents and employees, and at still other times there is one 'blended' goal. These goals are also represented in the SSP in Section TL6, "Unique Policy Area Issues."

Bill 37-16, Transportation Demand Management (TDM) approved last year, set the stage for TDM efforts to be expanded to every Red, (Purple?), Orange, and Yellow policy area. However, not all these areas have established NADMS goals. During the deliberations on Bill 37-16 the Council requested that the Planning Board, for this SSP, recommend NADMS goals for those policy areas that do not already have them. If approved by the Council, the NADMS goal(s) for every policy area would be included in Section TL6.

The Planning staff and Board were not able to fulfill this request by the August 1 deadline for transmitting the Final Draft SSP. However, during August the Planning staff developed recommendations, and the Board approved them on September 10. Table 1 in the report (©13) restates the existing NADMS goals; Table 2 (©14) shows the recommended goals for those areas where they do not now exist.

At the last worksession Chair Anderson noted that some of the goals in existing plans appear to be out of sync. He cited a good example: the 39% goal in the Friendship Heights Plan (adopted in 1996), which now seems very low considering the 55% goal in the Bethesda CBD approved only a few years ago. Unfortunately, changes in these existing NADMS goals cannot be amended at this time: guidance in approved master and sector plans supersede guidance in the SSP. However, the existing NADMS goals could be revised in the next countywide transportation functional master plan, which is the Pedestrian Master Plan scheduled for Council review in 2022. **PHED Committee (and Council staff) recommendation (3-0): Review the existing master plan NADMS goals in Table 1 as part of Pedestrian Master Plan.**

PHED Committee (and Council staff) recommendation (3-0): Revise the Planning Board's proposed NADMS goals in Table 2 as follows:

- **Change "Lyttonsville/Woodside" to just "Woodside."** Lyttonsville already has its own NADMS goal in the chart: 50% blended. 50% blended for Woodside also makes sense.
- **Apply a 50% blended goal to the new Purple Line East area, superseding the proposed goal for Takoma/Langley (49% residents, 36% employees).**
- **Change the goal for Glenmont from 30% employees to a blended 35%.** There will be both housing and employment there.

- **Change the goals in Clarksburg and Clarksburg Town Center from 29% residential to a blended 25%.** If there were a residential NADMS goal it should be lower than for Germantown East and West (it is currently higher), and the employment NADMS would be even lower.
- **Change the goal in Burtonsville Town Center from 27% residential to a blended 25%.** The current proposal is for residents only, but more of the town center—now and at buildout—will be commercial.
- **Change all the proposed goals from “residential” to “blended” in Germantown East, Germantown West, North Potomac, Potomac, Aspen Hill, Derwood, Cloverly, Olney, Fairland/Colesville, Bethesda/Chevy Chase, Silver Spring/Takoma, and Kensington/Wheaton.**

F. Local Area Transportation Review (LATR). The current LATR includes tests for motor vehicle, pedestrian, bicycle, and transit adequacy. The Final Draft SSP would revise each of these tests and add a fifth test for safety.

1. Motor Vehicle System Adequacy Test. This test has existed in some shape and form for decades, and it is common throughout the country. Currently the County’s test measures the average vehicle delay to pass through signalized intersections. The standards are expressed in terms of the Highway Capacity Manual (HCM) volume-to-capacity ratio and average delay per vehicle.⁴ The measure regularly used is the average delay per vehicle which is an average of all motor vehicle traffic passing through an intersection, including traffic in off-peak directions. The Motor Vehicle Adequacy Test applies to any development generating 50 or more weekday peak-hour person trips.

The standards vary by policy area, with more congestion allowed where there is greater frequency, speed, and capacity of transit service as an alternative to driving. Therefore, each Red policy area, which comprises an area within walking distance of a Metrorail Station and the many bus routes serving it, has the most lenient delay standard: 120 seconds/vehicle. The further away from Metrorail and bus service, the tighter the congestion standard, to the point where the standard in Damascus is 48 seconds/vehicle and in the rural policy areas is 41 seconds/vehicle. Table 1 (below) shows the standards by policy area.

a. Red policy areas (Rec. 5.6, p 74; TL2.2, App. pp. 95-96). The Planning Board recommends that the Motor Vehicle Adequacy Test be eliminated in Red policy areas. Lerch Early & Brewer, the Coalition for Smarter Growth, and the Greater Colesville Citizens Association (GCCA) concur. The Board argues that the Motor Vehicle Test “often results in mitigation requirements that are in direct conflict with Vision Zero-related travel safety goals and objectives,” an overly broad statement that is generally not true, especially in Red policy areas. The Final Draft itself notes that the 120 seconds/vehicle standard “combined with the fact that most MSPAs [Red policy areas] have a robust street grid that disperses traffic resulting in relatively few LATR studies” results in relatively few intersection improvements. It posits that in Red areas “desired master-planned improvements are most likely to be multimodal and operational in nature,” and that is true; in fact, most mitigation of the 120 seconds/vehicle standard in Red areas are through such transportation demand management (TDM) measures as transit subsidies, carpool programs, provision of bikeshare stations, car-sharing, etc. The Board also desires to streamline approvals in Red areas to maximize the benefits of the presence of Metrorail.

⁴ The HCM is published by the National Academy of Sciences’ Transportation Research Board.

Table 1

Local Area Transportation Review Intersection Congestion Standards – Highway Capacity Manual Volume-to-Capacity (Former CLV Standard) and Average Vehicle Delay Equivalencies

HCM Volume-to-Capacity Standard (Former Standard)	Policy Area	HCM Average Vehicle Delay Equivalent (seconds/vehicle)⁵
0.84 (1,350 CLV)	Rural East/ West	41
0.88 (1,400 CLV)	Damascus	48
0.89 (1,425 CLV)	Clarksburg Germantown East Germantown West Gaithersburg City Montgomery Village/Airpark	51
0.91 (1,450 CLV)	Cloverly North Potomac Potomac Olney R&D Village	55
0.92 (1,475 CLV)	Derwood Aspen Hill Fairland/Colesville	59
0.94 (1,500 CLV)	Clarksburg Town Center Germantown Town Center Rockville City	63
0.97 (1,550 CLV)	Burtonsville Town Center North Bethesda	71
1.00 (1,600 CLV)	Bethesda/Chevy Chase Chevy Chase Lake Kensington/Wheaton Long Branch Silver Spring/Takoma Park Takoma/Langley White Oak	80
1.13 (1,800 CLV)	Bethesda CBD Silver Spring CBD Wheaton CBD Friendship Heights CBD White Flint Twinbrook Grosvenor Glenmont Shady Grove Rockville Town Center	120

⁵ The Veirs Mill Corridor Master Plan set the HCM Delay Equivalent at 100 seconds/vehicle at all Veirs Mill Road intersections between boundaries of the Wheaton CBD Policy Area and the City of Rockville.

The Executive and DOT oppose eliminating LATR Study in any Red area until a Unified Mobility Program is implemented to share in the infrastructure improvement costs, and the Town of Chevy Chase agrees. A Unified Mobility Program (or “UMP”) is a program of transportation improvements—road, bikeway, and sidewalk projects, as well as transit service—that together comprise what is needed to serve all the local area transportation needs in a master plan area. The concept is that a comprehensive program of local area transportation improvements is developed, with each development paying its proportionate share of that cost through payment of the UMP fee; this is the alternative to having each applicant produce its own traffic study and mitigation. This measure was included in the SSP during the last few years precisely with the goal of streamlining approvals.

Several years ago, an UMP and its fee was approved by the Council for the White Oak Planning Area, and DOT has been developing an UMP for the Bethesda CBD which has yet been transmitted to the Council for public hearing, deliberation, and action. Eliminating the LATR’s 120 seconds/vehicle test in Red policy areas would undercut the motivation for the UMPs, and for TDM measures.

Council staff concurs with the Executive and DOT to retain the 120 seconds/vehicle standard in any given Red policy area until it can be superseded by an UMP. DOT should ramp up its efforts to develop UMPs for all the Red policy areas with the goal of implementing them prior to the next SSP.

PHED Committee recommendation (2-1): Councilmembers Riemer and Friedson concur with the Planning Board to eliminate the Motor Vehicle System Adequacy Test in Red policy areas. Councilmember Jawando concurs with Council staff to retain the test and its 120 seconds/vehicle standard in each Red policy area until replaced by an UMP.

b. Expand Critical Lane Volume (CLV) methodology as an alternative to HCM analysis methodology (Rec. 5.7, pp. 74-75; TL2.2, App. p. 96). Under Growth Policies prior to 2012, the County used the CLV method of analyzing future conditions at an intersection. CLV has the advantage of being simple, transparent, and quick. However, over the past 20 years the traffic engineering profession has gravitated towards more robust methods of estimating future delay, especially as operational analysis methods such as that described in the Transportation Research Board’s Highway Capacity Manual (HCM), and network operational models such as Synchro and Corsim became easier to use. These methods, although more data intensive and time-consuming, produce much more accurate predictions of delay.

In the 2012-2016 SSP the Council decided that any intersection forecast to have a CLV worse than 1,600 (the borderline between Level of Service E and F) would require a second-tier test incorporating the HCM method. In the 2016-2020 SSP, the Council decided that any intersection located within Red or Orange policy areas would use the HCM method solely, and that any intersection located within Yellow or Green policy areas with a CLV greater than 1,350 would use HCM method.

For the 2020-2024 SSP the Planning Board has recommended re-expanding the utilization of the CLV test. It recommends that in Orange, Yellow, and Green policy areas the simpler CLV method be used for any intersection meets that policy area’s former CLV standard, and those worse than the standard would be re-tested by the more robust HCM method. Lerch, Early & Brewer supports this recommendation. On the other hand, the Executive opposes this recommendation.

PHED Committee (and Council staff) recommendation (3-0): Do not change the test’s methodology concurs with the Executive: do not change the test’s methodology. The CLV method is

less reliable in predicting delay. For intersections that are forecasted to be near the standard there is a near 50% chance that the CLV method would understate congestion and result in a false positive.

c. BRT Corridor standard (Rec. 5.8, pp. 75-77; TL9, App. p. 104). The Final Draft recommends loosening the traffic congestion standard for intersections along roads in Orange and Yellow policy areas where BRT routes are master-planned. Currently those standards vary between 80 seconds/vehicle downcounty to 51 seconds/vehicle in Germantown and Clarksburg. The Planning Board proposes setting the standard for these intersections at a uniform 100 seconds/vehicle, thus allowing congestion levels to rise by 25-96% without requiring mitigation. Lerch, Early & Brewer concur. Conversely, the Executive opposes the recommendation. A map showing the planned BRT routes is on p. 76, and a table showing how the intersection standards would change along these routes is on p. 77.

Council staff concurs with the Executive in opposing this proposal. At best, it is premature. Except the US 29 BRT, none of these routes are funded in the CIP or CTP for completion in six years, so, unlike the Purple Line, they cannot be considered a “given.” And the US 29 FLASH service that will begin operation next month will run in general traffic over most of its length; while it will be an improvement over current bus service, transit riders along US 29 will still travel more slowly than general traffic. This is not sufficient rationale for a more lenient congestion standard.

Furthermore, most BRT routes may never justify a more lenient congestion standard, since they are unlikely to provide better travel time than automobiles. The table below shows the forecasted travel times in Year 2040 for the preferred alternatives on MD 355 and MD 586 for BRT versus autos:

<i>MD 355 between Watkins Mill Rd and E-W Hwy</i>	<i>Minutes by Auto</i>	<i>Minutes by BRT</i>
Northbound, morning peak, Year 2040	40.7	67.8
Southbound, morning peak, Year 2040	54.1	61.0
Northbound, evening peak, Year 2040	72.5	76.9
Southbound, evening peak, Year 2040	48.5	61.9

<i>MD 586 between Rockville and Wheaton</i>	<i>Minutes by Auto</i>	<i>Minutes by BRT</i>
Eastbound, morning peak, Year 2040	21.3	26.2
Westbound, morning peak, Year 2040	20.5	22.7
Eastbound, evening peak, Year 2040	20.2	25.3
Westbound, evening peak, Year 2040	18.6	25.7

These routes differ from Metrorail and the Purple Line which, respectively, do or will operate in exclusive or near-exclusive rights-of-way, providing a faster service than by auto and warranting more lenient congestion standards at intersections near their stations.

As the BRT routes are more defined and programmed for completion within six years, the Council could examine their anticipated service to determine whether the congestion standard for nearby intersections should be relaxed. For example, if the Corridor Cities Transitway is programmed to be built along an exclusive right-of-way, it may be plausible to loosen the standard on intersections in its immediate vicinity. But as noted above, any relaxation of standards now is premature.

PHED Committee (and Council staff) recommendation (3-0): Do not apply a 100 seconds/vehicle congestion delay standard to intersections along master-planned Bus Rapid Transit

(BRT) routes. Text should be added stating that if a master or sector plan specifies a congestion standard, it would take precedence over what is in the SSP.

2. *Bicycle System Adequacy Test* (Rec. 5.5, p. 73; TL2.4, App. p. 98). The current Bicycle System Adequacy Test has as its objective to provide low Level of Stress conditions for bikers in the vicinity of a development. Specifically, it requires a development generating at least 50 peak-hour *non-motorized* trips and located within a quarter-mile of an educational institution or existing/planned bikeshare station to make improvements needed to provide low Level of Traffic Stress (LTS-2) conditions that link the site to—or otherwise extend an—LTS-2 facility within 750 feet of a development site boundary, or to implement a master-planned improvement that provides an equivalent improvement to LTS-2.

The Planning staff had proposed expanding the scope to include any development that generates at least 5 peak-hour bicycle trips and had proposed dropping the restriction that the development be within a quarter-mile of a school or a bikeshare station.

The Planning Board proposes expanding the scope of the test considerably more in most areas of the county. It would require the same type of improvement for a development generating at least 100 peak-hour *person* trips, and, like the Planning staff, it would drop the restriction that the development be within a quarter-mile of a school or a bikeshare station. It would also apply the test to a development generating 50-99 peak-hour person trips, in which case mitigation needed within 375' of the site's boundary would be required. In the Bethesda and Silver Spring CBDs, where the non-auto-driver mode share (NADMS) is currently at or approaching 50%, the difference between 50 non-motorized trips and 100 person trips is inconsequential. However, in the mid-to-upcounty the existing or proposed master-planned NADMS goals are well below 50%, ranging between 22% (Olney) to 39% (Derwood). The current NADMS in these areas, of course, are much lower than that.

Neither the Executive nor DOT commented on this proposal. Lerch, Early & Brewer initially opposed that Planning staff recommendation because the testing would be expensive and time consuming, would capture smaller projects that do not justify that level of testing, and would make the County less competitive with other local jurisdictions. However, in the face of the Planning Board's even more extensive recommendation, it requests the Council to approve the Planning staff recommendation of a 5 peak-hour trip minimum threshold requiring mitigation within 750' of a site.

At the last worksession the PHED Committee indicated that they want to use the Planning Board's person-trip measure for the Bicycle and Transit System Adequacy tests. The members asked that the Planning, DOT, and Council staffs attempt to develop consensus recommendations for these tests. These staffs met twice (virtually) over the past few days and developed such recommendations. The staffs were informed by peak-hour person-trip generation rates by mode, which show that bicycle and pedestrian trips generated by the same size of development are significantly lower in the Yellow zone than in the Red and Orange zones, and even lower in Green zone. The staffs also agreed that much larger developments should have stiffer requirements than had been proposed by the Board.

PHED Committee (and Council staff) recommendation (3-0): Replace Section TL2.4 with the following:

TL2.4 Bicycle System Adequacy

Bicycle system adequacy is defined as providing a low Level of Traffic Stress (LTS-2) for bicyclists. Bicycle system analysis will be based on the following standards and scoping:

For any site generating at least 50 peak-hour person trips:

Conduct an existing adequacy test to ensure low Level of Traffic Stress (LTS-2) conditions on all transportation rights-of-way within a certain distance of the site frontage, specified in the table below. If current and programmed connections will not create adequate conditions, the applicant must construct sidepaths, separated bike lanes, or trails, consistent with the Bicycle Master Plan, that create or extend LTS-2 conditions up to the specified distance from the site frontage.

Peak-Hour Person-Trips Generated	Red⁶ and Orange Policy Areas	Yellow and Green Policy Areas
50-99	400	250
100-199	750	400
200-349	900	500
350 or more	1,000	600

Alternatively, if the Planning Board and MCDOT agree that constructing all or part of this requirement may not be practicable due to undesirable transitions, unattainable right-of-way, or an existing CIP project, an applicant may meet this requirement with a mitigation payment to MCDOT that is reasonably related to MCDOT’s estimated cost of constructing the required facilities. These funds must be used by MCDOT in the construction of other LTS-1 or LTS-2 bicycle system improvements within the same policy area, or—for a Red policy area or an Orange town center policy area—either in that area or an adjacent one.

These revisions would retain the Planning Board’s proposal for developments in Red and Orange policy areas that generate fewer than 200 peak-hour person-trips. They would require a larger investment for developments generating 200 or more trips, up to a maximum distance of 1,000’ from the site. The revisions also recognize that Yellow and Green policy areas generate significantly fewer bicycle trips, holding the development size constant.

3. *Transit System Adequacy Test* (Rec. 5.5, pp. 73-74; TL2.5, App. p. 98). The current Transit System Adequacy Test is, in actuality, a Bus System Adequacy Test. In the 2016-2020 SSP the standard is to provide for bus loadings of no more than 1.25 riders per seat during the peak period in the peak direction. For any development generating at least 50 peak-hour riders the applicant must inventory bus routes at stations/stops within 1,000 feet of the site and identify the peak load for each route at that station. The applicant must coordinate with the bus service provider to identify and implement (or fund) improvements that would be needed to address conditions worse than 1.25 riders per seat due to the additional patrons generated by the development. No such improvements have been required since the test was initiated in 2016.

The Planning staff had recommended applying the current test much more widely: to developments generating at least 5 peak-hour transit riders. The Planning Board’s proposes a threshold is 50 peak-hour person trips, which is not likely as broad as the Planning staff’s threshold, but much broader than the current 50 peak-hour bus rider threshold. Furthermore, the Board proposes applying the test to a

⁶ This would apply in Purple policy areas, too, should the Council approve them.

development generating 50-99 peak-hour person trips, in which case the inventory is for stations/stops within 500 feet (instead of 1,000 feet) from the site.

Neither the Executive nor DOT commented on this proposal. As with the Bicycle System Adequacy Test, Lerch, Early & Brewer initially opposed that Planning staff recommendation because the testing would be expensive and time consuming, would capture smaller projects that do not justify that level of testing, and would make the County less competitive with other local jurisdictions. However, in the face of the Planning Board’s more expansive recommendation, it requests the Council to approve the Planning staff recommendation of a 5 peak-hour trip minimum threshold requiring implementing or funding added bus service if the bus loadings are more than 1.25 riders/seat at stations/stops within 1,000 feet of the site.

The proposed test ignores a fundamental aspect of bus service: that buses tend to be overfilled only when approaching the Metro station end of the line. It makes little fiscal sense to acquire one or more buses—costing \$525,000 for a diesel bus, \$890,000 plus charging infrastructure for an electric bus—plus its operation and maintenance costs, simply to run less than 25% over seating capacity in the last mile of a route. Furthermore, bus service is very dynamic: Metrobus and Ride On adjust their schedules three times a year to address overcrowding such as this.

Bus service, since it is not fixed over time as is road, bikeway, or pedestrian infrastructure, does not lend itself readily to an adequate public facilities test. It is not as if transit viewed comprehensively isn’t considered: the very classification of policy areas into Red, Orange, Yellow, and Green (and Purple?) categories is based on the prevalence of transit.

If the concern is that, absent this test, new development would not be doing enough to support transit ridership, the new regime of TDM ushered in by Bill 36-18 will ultimately place new TDM requirements on developments in Orange and Yellow policy areas, not just in Red policy areas. Depending on the size of the development, these requirements will be both be operational and financial, and they will be continuing responsibilities, not mere one-time investments.

PHED Committee (and Council staff) recommendation (3-0): Replace Section TL2.5 with the following:

For any site generating at least 50 peak-hour person trips in Red, Orange, and Yellow policy areas:

Conduct an existing adequacy test to assure that there are bus shelters outfitted with real-time travel information displays and other standard amenities, along with a safe, efficient, and accessible path between the site and a bus stop, at a certain number of bus stops within a certain distance of the site frontage, specified below. Where shelters and associated amenities are not provided, an applicant must construct up to the number of shelters and amenities specified below.

Peak-Hour Person-Trips Generated	Red and Orange Policy Areas	Yellow Policy Areas
50-99	2 shelters within 500’	1 shelter within 500’
100-199	2 shelters within 1,000’	2 shelters within 1,000’
200-349	3 shelters within 1,300’	2 shelters within 1,300’
350 or more	4 shelters within 1,500’	3 shelters within 1,500’

Alternatively, if the Planning Board and MCDOT agree that constructing all or part of this requirement may not be practicable due to undesirable transitions, unattainable right-of-way, or an existing CIP project, an applicant may meet this requirement with a mitigation payment to MCDOT that is reasonably related to MCDOT’s estimated cost of constructing the required facilities. These funds must be used by MCDOT in the construction of other bus shelters with the same amenities and improvements to pedestrian access to and from bus stops, such as improved paved connections, crossings, and lighting. These funds must be spent on such improvements within the same policy area, or—for a Red policy area or an Orange town center policy area—either in that area or an adjacent one.

4. Pedestrian System Adequacy Test (Rec. 5.5, pp. 72-73; TL2.3.1-2.3.2, App. pp. 96-97). **The PHED Committee is scheduled to review this at its October 22 meeting.**

5. Safety System Adequacy Test (Rec. 5.5, pp. 71-72; TL2.1, App. p. 95). The Planning Board recommends a new, fifth LATR test that would examine LATR through a Vision Zero lens. A mathematical model currently under development—the Predictive Safety Analysis—would have the goal of predicting the number of crashes along roadways and at intersections. Safety system adequacy would be defined as a reduction in overall estimated crashes. The geographic scope of the analysis would be the lesser of: (1) one network mile from the development and (2) the area used in scoping the Motor Vehicle System Adequacy Test:

Maximum Peak-Hour Vehicle Trips Generated	Minimum Signalized Intersections in Each Direction
< 250	1
250 – 749	2
750 – 1,249	3
1,250 – 1,750	4
1,750-2,249	5
2,250 – 2749	6
>2,750	7

As in the Motor Vehicle System Adequacy Test, the Safety System Adequacy Test would apply to all developments that generate 50 or more weekday peak-hour person trips.

The Planning Board proposes that for a development to pass the test, its Predictive Safety Analysis of the additional traffic from the site and transportation improvements required from the other LATR tests must result in a reduction in the overall estimated number of crashes along all intersections and road segments within the geographic scope. This would be a departure from the traditional requirement of the Motor Vehicle System Adequacy Test, that only requires that a new development mitigate *its* impact, not to address pre-existing deficiencies. The Bicycle and Pedestrian System Adequacy Tests, however, do require a developer to address off-site pre-existing deficiencies.

The proposed text also states that the developer “should make a fair share contribution to mitigation at study intersections that are not direct access points to the development” (App. p. 95). This somewhat contradicts the requirement the prior sentence, which states: “If the number of expected crashes is found to increase with the new development traffic, safety mitigation *must* be applied in order to reduce the overall number of expected crashes at study intersections *and street segments* to below

predevelopment levels” (*emphasis mine*). Would the developer required to construct or fund all necessary safety improvements to reduce crashes, or just make a “fair share” contribution? The text needs clarity.

Several testified in favor of including a Vision Zero test in the SSP although few commented on the specifics. Lerch, Early & Brewer argues that any exaction must requirement must meet a basic nexus and proportionality test: the use of any exacted funds must be restricted to the Vision Zero improvements must be limited to the safety improvements required of that developer, and the total exactions from multiple projects in the vicinity must not exceed the total cost of safety improvements there. The B.F. Saul Company notes that the metrics for this test do not yet exist, and it is concerned about the unknown effect that the cumulative proposed changes to LATR will have on development costs, especially during the present time.

The Executive and DOT recommend deleting or significantly revising this section. They note that the Predictive Safety Analysis, Vision Zero Toolkit and Complete Street Guidelines are not yet finished, and that a mathematical model to predict crashes may not be able to be validated. Alternatively, they recommend that developments follow the guidance in master plans and the to-be-completed Complete Streets Design Guide.

Planning staff report that the Vision Zero Toolkit should be finished in the next month or two. The Complete Streets Design Guide likely will be transmitted to the Council in January, which means the T&E Committee and Council reviews and approval will not be completed until late this winter. The Predictive Safety Analysis is not anticipated to be completed until next summer.

PHED Committee (*and Council staff*) recommendation (2-0): Councilmembers Riemer and Friedson recommend not including the proposed Safety System Adequacy Test in the SSP at this time. The Council could review and act on a Safety Test as part of an SSP amendment once these other studies are complete, perhaps in Fall 2021.

6. *Vision Zero Impact Statement* (Rec. 5.4, p 70; TL3, App. pp. 98-99). The Planning Board also recommends that every development generating at least 50 weekday peak-hour person trips produce an impact statement describing six elements:

- Any segment of the high injury network located on the development frontage;
- Crash analysis for the development frontage;
- An evaluation of the required sight distance for all development access points;
- Identification of conflict points for drivers, bicyclists, and pedestrians, and a qualitative assessment of the safety of the conflict;
- A speed study, including posted, operating, design, and target speeds; and
- Any capital or operational modifications required to maximize safe access to the site and surrounding area, particularly from the Vision Zero Toolkit.

The stated goal of the impact statement is “to ensure Vision Zero resources accurately reflect conditions on the development frontage.”

The Executive and DOT raise concerns about each of the six proposed elements, from questioning how the information will be useful in designing solutions, to noting that some of this information exists and is readily available to plan reviewers, to expressing concern that developers’ consultants being required to perform crash analyses about which they don’t have expertise.

PHED Committee (and Council staff) recommendation (3-0): Replace Section TL3 with the following:

All LATR studies for a site that will generate 50 or more peak-hour person trips must develop a Vision Zero Statement. This statement must assess and propose solutions to high injury network and safety issues, review traffic speeds, and describe in detail how safe site access will be provide. With concurrence of the responsible agency, projects must implement or contribute to the implementation of safety countermeasures. The County Council may adopt predictive safety analysis as part of this statement, when available.

7. *Vision Zero resources* (Rec 5.1, p 68; TL1, App pp 94-95). The Planning Board recommends that a development's traffic consultant be required to report inaccurate and outdated bicycle and pedestrian network data in the following reports to Planning staff during the consultant's conducting a transportation impact study:

- Bicycle Master Plan
- Pedestrian Master Plan
- High Injury Network
- Predictive Safety Analysis
- Bicycle Level of Traffic Stress Map
- Pedestrian Level of Comfort Map
- Vision Zero Toolkit
- Complete Streets Design Guide

The SSP notes this is particularly important for the Bicycle Level of Traffic Stress Map and the PLOC Map. It is often difficult for planners to keep their databases updated to account for all the changes to transportation network, especially the smaller ones.

PHED Committee (and Council staff) recommendation (3-0): Concur with the Planning Board, except that the text should refer to transportation network databases generally (including road and transit system databases), and not to specific documents, which may change over time.

8. *Mitigation priorities* (Rec. 5.2, pp. 68-69; TL5, App. pp. 100-101). **The PHED Committee is scheduled to review this at its October 22 meeting.**

9. *Temporary exemption of biohealth facilities from LATR requirements.* Committee Chair Riemer proposes exempting biohealth/life sciences facilities from the LATR tests for five years after the effective date of the SSP, with the further requirement that any application for a building permit under this exemption must be filed within three years of approval of a preliminary plan or site plan. His purpose is to allow bioscience facilities, many of which are crucial to the effort to suppress the COVID-19 virus, to build or expand more quickly (©15-16). A related article is on ©17-19.

The Executive agrees that while some SSP requirements may be counterproductive, he would not waive the LATR tests without an alternative plan in place. At this writing the Planning Board has not yet weighed in.

The positive impact of the proposal is that it would speed approvals for new and expanded bioscience facilities without expending the cost and time to prepare and review traffic studies. The negative impact would be the degree to which the traffic from the new or expanded bioscience facilities will incrementally impact congestion at nearby intersections, and the degree to which potential required improvements under the Bicycle, Transit, Pedestrian, and Safety Adequacy Tests would be foregone. Without knowing the size and location of these new or expanded facilities makes it impossible to estimate these impacts. However, while bioscience is an important sector of the local economy, it is nonetheless not a large enough presence so that exempting bioscience facilities from LATR will make a significant difference to the transportation network.

The provision needs a definition of a biohealth/life sciences facility. A ready description is the impact tax law's definition of bioscience facility (County Code Section 52-39):

Bioscience facility means any biological research and development or manufacturing facility that substantially involves research, development or manufacturing of:

- (1) biologically active molecules,
 - (2) devices that employ or affect biological processes,
 - (3) devices and software for production or management of specific biological information,
- or
- (4) products or materials that purify or handle biologically active products.

Another consideration is the length of this temporary exemption. Council staff believes that the exemption should sunset in four years, when the next full SSP (2024-2028) becomes effective. The Draft 2024-2028 SSP would evaluate the impact and effectiveness of the exemption, which could lead to the conclusion that it either be extended, be extended with different conditions, or expire.

PHED Committee (and Council staff) recommendation (3-0): Approve this temporary LATR exemption, using the impact tax definition of bioscience facility as a proxy for a biohealth/life sciences facility, sunsetting the exemption after four years instead of five, and using the same January 1, 2021 effective date recommended for the full 2020-2024 SSP. Thus, the text in the SSP resolution would read as follows:

TL2.6 Temporary Suspension for [Biohealth / Life Sciences] Bioscience Facilities

The Local Area Transportation Review (section TL2) requirements of the Subdivision Staging Policy must not apply to a development or a portion of a development where:

- (a) the primary use is [biohealth or life sciences] for bioscience facilities, as defined in Section 52-39 of the County Code; and
- (b) an application for preliminary plan, site plan, or building permit that would otherwise require a finding of Adequate Public Facilities is approved after January 1, 2021 and before January 1, 2025; and
- (c) an application for building permit is filed within 3 years after the approval of [the application] any required preliminary plan or site plan.

G. Amendment to transportation impact tax credit provision. If a development constructs added capacity on a County road, it is eligible for a dollar-for-dollar credit against that development's transportation impact tax. For decades, the County has interpreted added capacity as meaning additional through or turning lanes. In the past some developers have claimed that widening a road to a larger cross section, such changing a narrow two-lane road to wider curb-and-gutter cross-section (and, perhaps, parking lanes), constitutes added capacity, but DOT has consistently rejected these claims.

Recently a Cabin Branch developer in Clarksburg requested credits for the reconstruction of West Old Baltimore Road, including widening the roadway from a two-lane 20'-wide roadway (a typical country road width) to a two-lane 24'-wide roadway (a standard suburban cross-section), a sidewalk, bike lanes, and turning lanes at intersections. DOT was willing to grant dollar-for-dollar credit for all these elements except for the widening from 20' to 24'. However, in a recent court case a judge interpreted the impact tax law in favor of the developer, and the result was approval of a further credit valued at about \$5.5 million. This means that resources for the County's CIP are diminished by \$5.5 million.

To prevent a recurring claim by other developers, the Executive and DOT propose the following amendment:

Sec. 52-39. Definitions.

In this Article the following terms have the following meanings:

Additional capacity means a new road, [widening an existing road], adding an additional lane or turn lane to an existing road, or another transportation improvement that:

- (1) increases the maximum theoretical volume of traffic that a road or intersection can accommodate, or implements or improves transit, pedestrian and bike facilities or access to non-auto modes of travel; and
- (2) is classified as a minor arterial, arterial, parkway, major highway, controlled major highway, or freeway in the County's Master Plan of Highways, or is similarly classified by a municipality. The Director of Transportation may find that a specified business district street or industrial street also provides additional capacity as defined in this provision.

Additional capacity is sometimes referred to as added "highway capacity," "transportation capacity," or "intersection capacity".

* * *

Sec. 52-50. Use of impact tax funds.

Impact tax funds may be used for any:

- (a) new road[, widening of an existing road,] or total reconstruction of all or part of an existing road [required as part of widening of an existing road,] that adds an additional lane or turn lane [highway or intersection capacity] or improves transit service or bicycle commuting, such as bus lanes or bike lanes;

* * *

PHED Committee (and Council staff) recommendation (3-0): Concur with these revisions. They will make clear what the County has always intended with this credit.

H. Recommendations not included in the Draft SSP resolution. The following are recommendations for which the Planning Board seeks concurrence, but they would not be the resolution because they do not regulate subdivision approvals.

1. Designate a Vision Zero representative to the Development Review Committee (Rec 5.3, p. 70). The Development Review Committee (DRC) is an inter-agency task force comprised of representatives from public agencies and utilities such as WSSC, PEPCO, the State Highway Administration (SHA), MCPS, and the County Departments of Permitting Services, Environmental Protection, and Transportation. DRC members discuss the application with planning staff at a regularly scheduled meeting. Each agency, providing comments for the DRC meeting, does so in writing. The planning staff ensures that those comments are included in the application file, along with a meeting summary and next steps. Planners then prepare recommendations that are presented to the Planning Board as part of the public hearing on the proposed plan.

The Planning Board recommends designating a Vision Zero representative on the DRC. (There is a parallel recommendation, 4.15, that proposes expanding MCPS's role in the DRC.) DOT already fulfills this function implicitly for County roads, as does SHA for State roads. The Executive does not object to this provision, but he notes that it would have no substantial effect on DOT's input on the DRC.

The composition of the DRC is specified in the Subdivision Ordinance, Section 50-4.2(A) (©20), not in the SSP. Should the Council wish to make DOT's Vision Zero role in DRC more explicit, then it should introduce a bill amending Section 50-4.2(A)(2). To expand MCPS's role on DRC to address student capacity issues (see the Planning Board's Recommendation 4.15), then a bill will be needed anyway to amend Section 50-4.2(A)(9).

PHED Committee (and Council staff) recommendation (3-0): Ultimately amend Section 50-4.2(A) of the Subdivision Ordinance, as follows:

Section 50-4.2. Approval Procedure

A. Referral of plan. After accepting an application, the Director must send a copy to the Development Review Committee and other reviewing bodies, requesting each agency to submit a recommendation concerning the plan. The Director must send copies, as need, to:

...

2. the Department of Transportation, for roads, streets, intersection locations, site access, sight distances, traffic calming, paths, pedestrian and bicycle facilities (including bike share), parking, transit facilities, transportation demand management elements, and storm drainage within County-maintained rights -of-way and easements, with all reviews consistent with the objective to achieve Vision Zero goals;

2. Continue producing the Travel Monitoring Report (Rec. 5.10, p. 79). Since 2004 the Planning staff has prepared regular analyses (under different titles) that documents recent travel conditions and trends in the County. It was initiated on the request of former PHED Chair Nancy Floreen, who believed it important not just to understand the longer term forecasts of travel in master plans, but what was happening on the ground currently. Over the years it has proven to be a useful report, especially in identifying congestion problems and accessibility issues that can be addressed with short-term solutions.

The Planning Board recommends continuing to produce the report biennially. The Executive concurs. **PHED Committee (and Council staff) recommendation (2-0): Councilmembers Riemer and Friedson concur with the Planning Board.**

3. *Policy area review in master plans* (Recs. 5.11-5.15, pp. 81-85). For at least three decades draft master and sector plans have been evaluated to determine whether the traffic from the proposed buildout land use is in balance with the proposed transportation network and services at buildout. The evaluation has matched the SSP test, except for the time-frame: instead of the 6-year forecast of traffic, the master plan analyses use buildout as the time-frame. Because the SSP traffic test has evaluated intersection performance, so has the master plan test in more recent years.

The Planning Board is now recommending a series of tests that would examine the land use/transportation balance at the policy area level. The Executive’s initial reaction is that the Planning Board’s proposed metrics are insufficient. Others have weighted in as well.

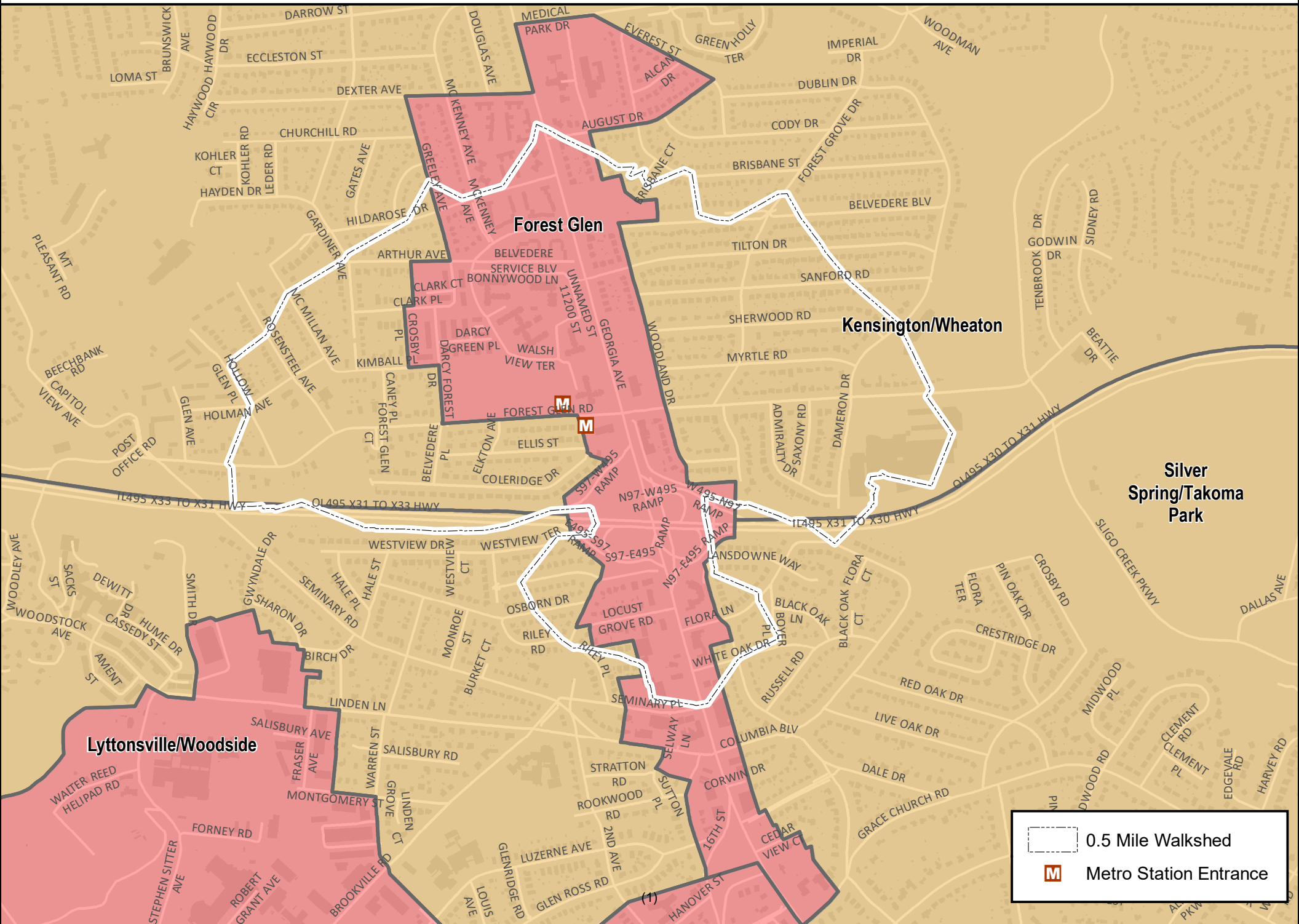
Because these proposals are for reviews of master plans and not subdivisions, they are not proposed to be included in the SSP, which must be adopted by November 15. However, this is an important issue that should to be explored and resolved by the Council before the next major draft master or sector plan is transmitted. The matter deserves an in-depth review and deliberation by the PHED Committee, but it does not need to be done in the next several weeks.



PHED Committee (and Council staff) recommendation (2-0): Councilmembers Riemer and Friedson recommend setting aside this issue for now, but plan on returning to it later this fall or winter.

Attachments:

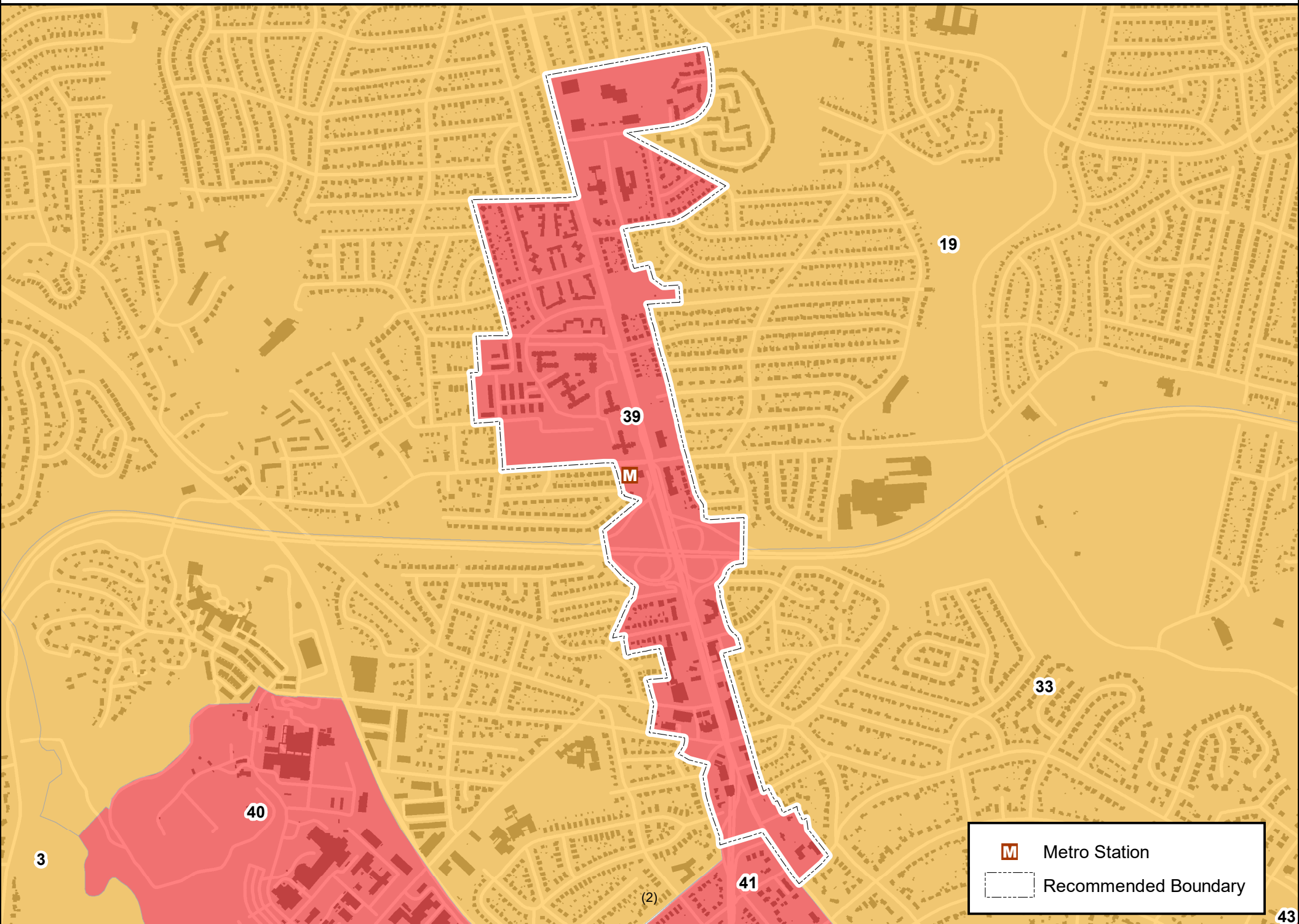
Forest Glen Metro half-mile walkshed	©1
Forest Glen Policy Area boundary (GO/PHED majority recommendation)	©2
Medical Center Policy Area boundary	©3
Takoma Policy Area boundary	©4
Chevy Chase Lake Policy Area boundary	©5
Lyttonsville Policy Area boundary	©6
Woodside Policy Area boundary	©7
Purple Line East Policy Area boundary	©8
Westfield testimony	©9-10
Area of Rock Spring Master Plan west of I-270 West Spur	©11
Excerpt from Global LifeSci testimony	©12
NADMS goals in existing master plans	©13
Proposed NADMS goals where goals do not now exist	©14
Councilmember Riemer’s proposal to temporarily suspend LATR for biohealth/life science facilities	©15-16
Article about bioscience expansion	©17-19
Development Review Committee text in County Code Chapter 50	©20



Forest Glen Metro Station



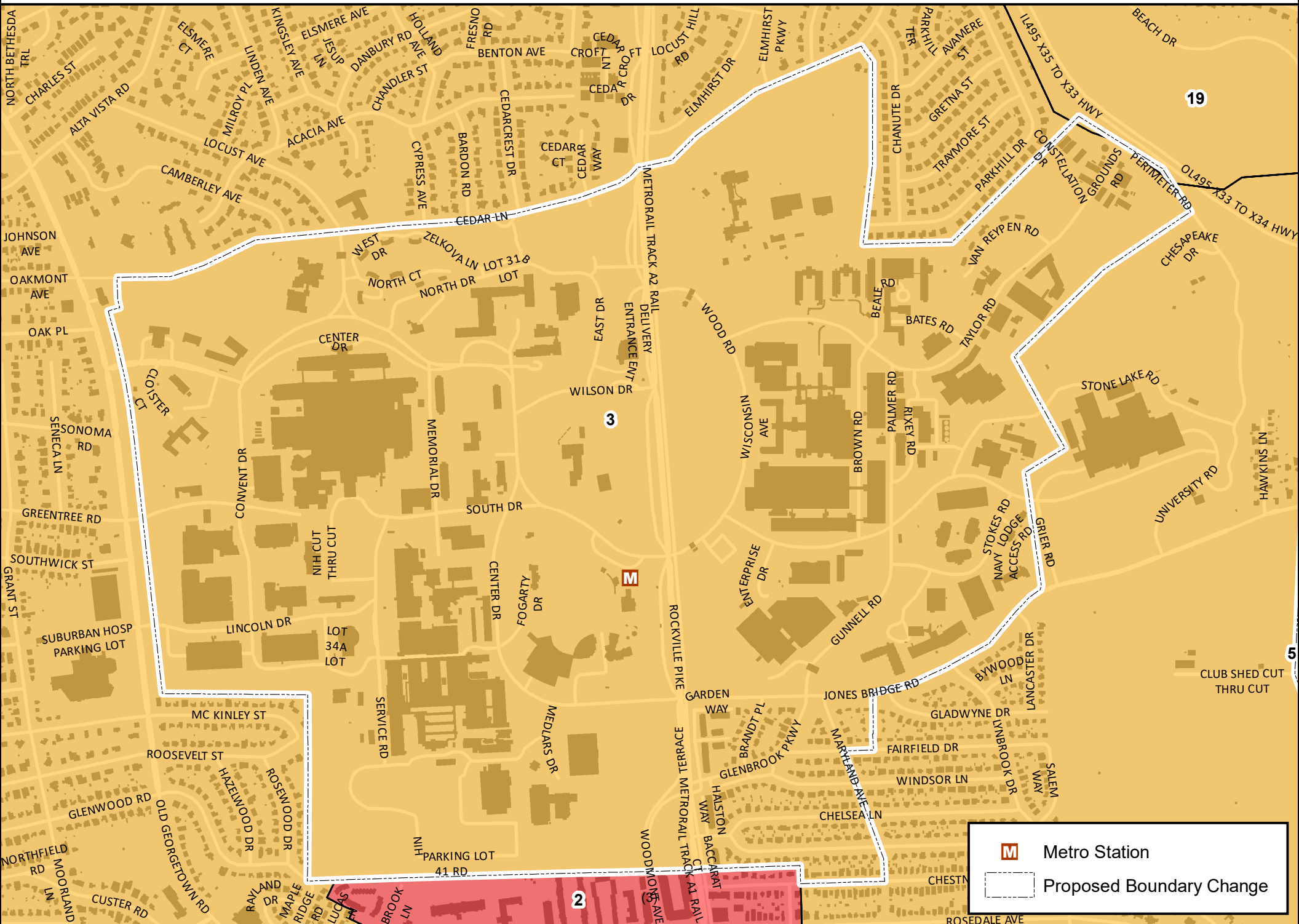
	0.5 Mile Walkshed
	Metro Station Entrance


Forest Glen Metro Station




	Metro Station
	Recommended Boundary

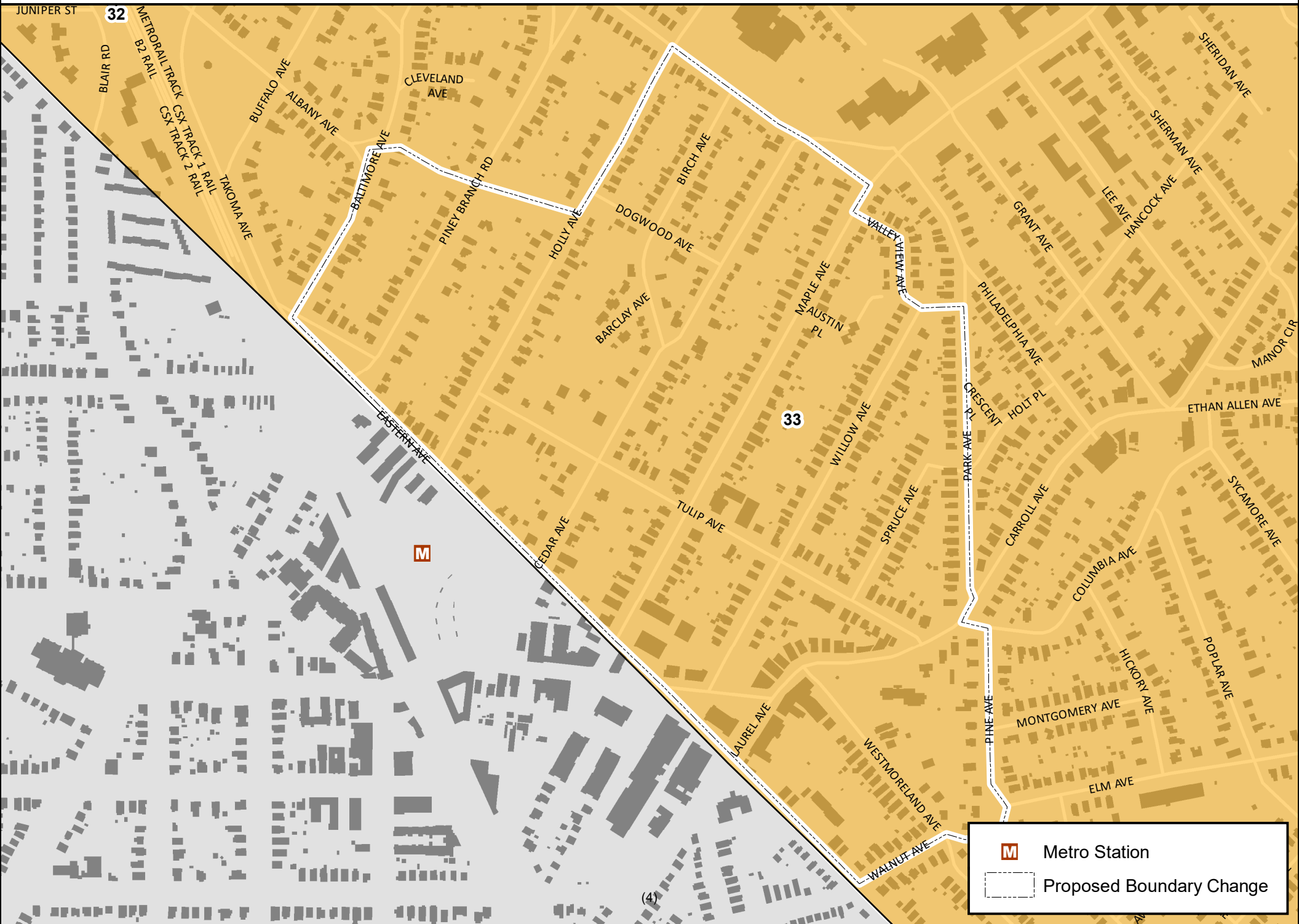
Medical Center Metro Station





 Metro Station

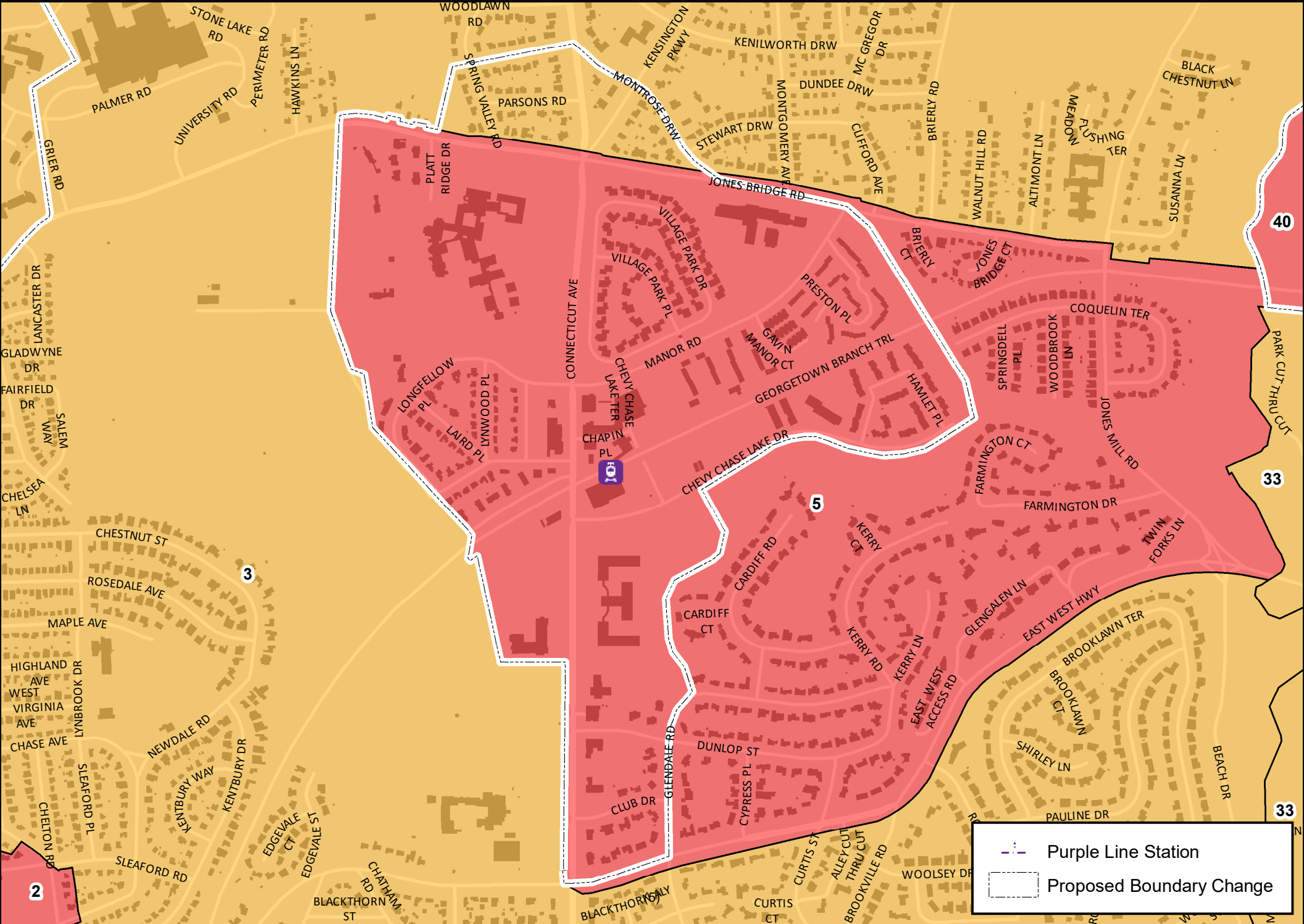
 Proposed Boundary Change



Takoma Metro Station



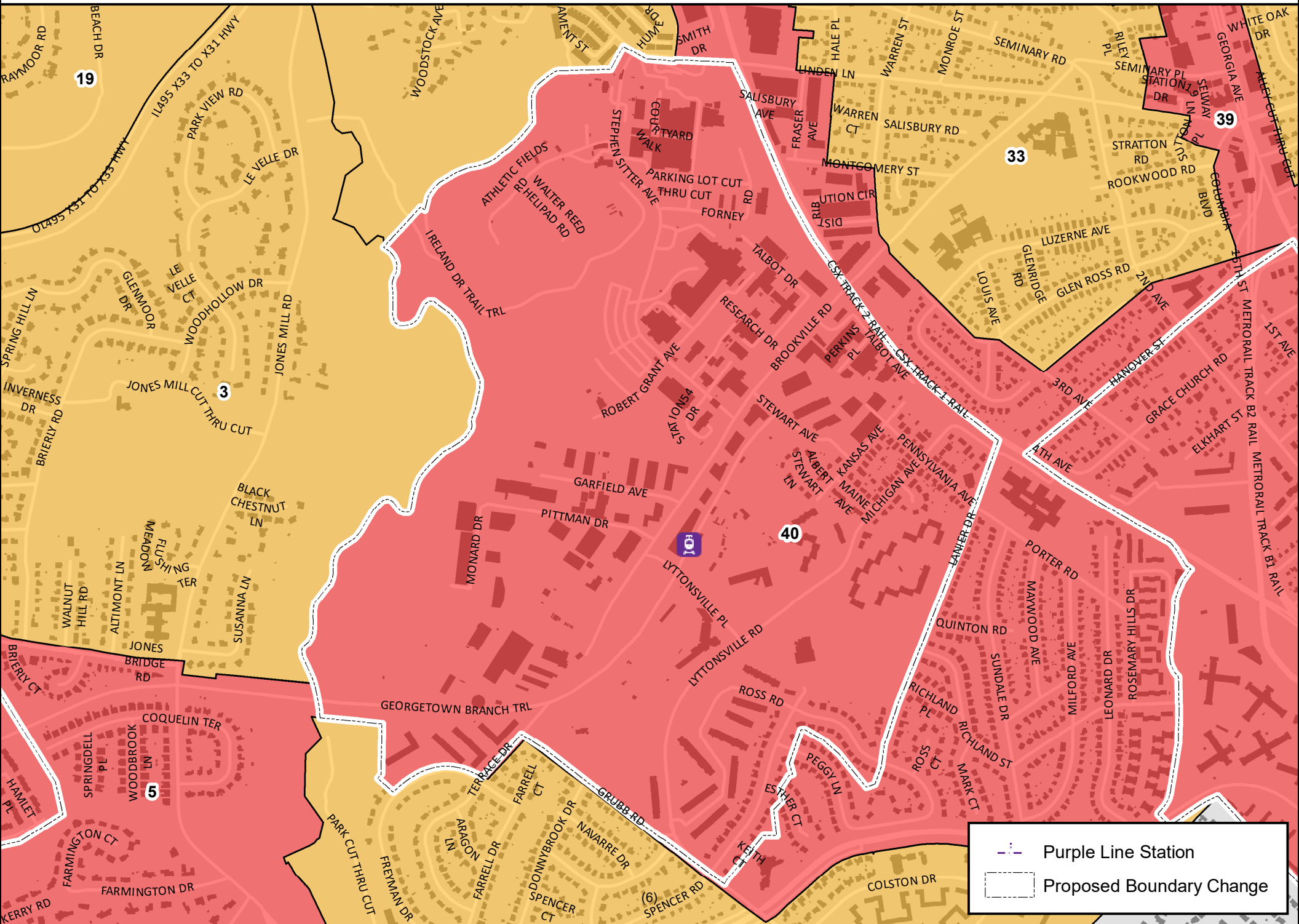
 Metro Station
 Proposed Boundary Change

Chevy Chase Lake Purple Line Station



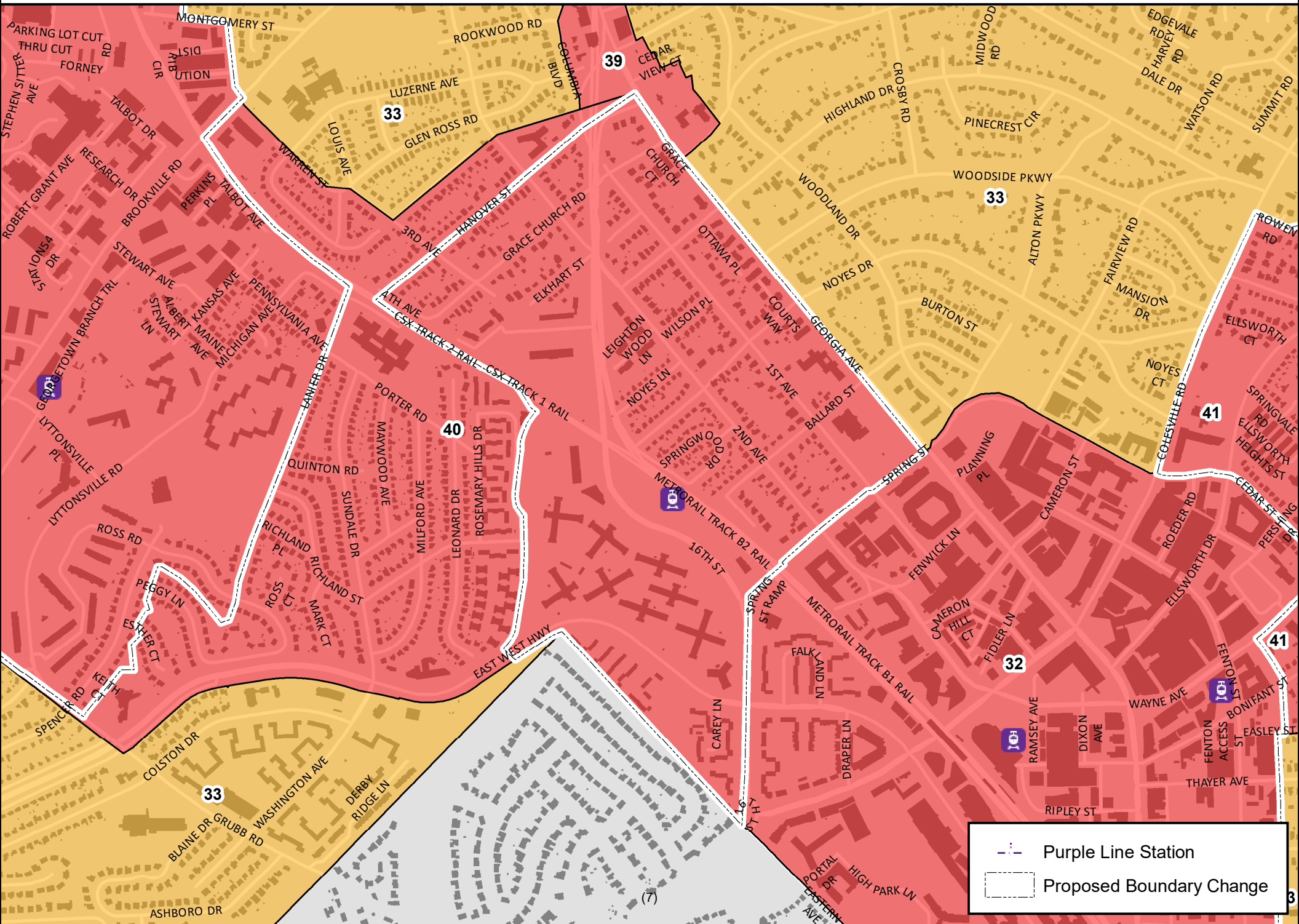
 Purple Line Station
 Proposed Boundary Change

Lyttonsville Purple Line Station



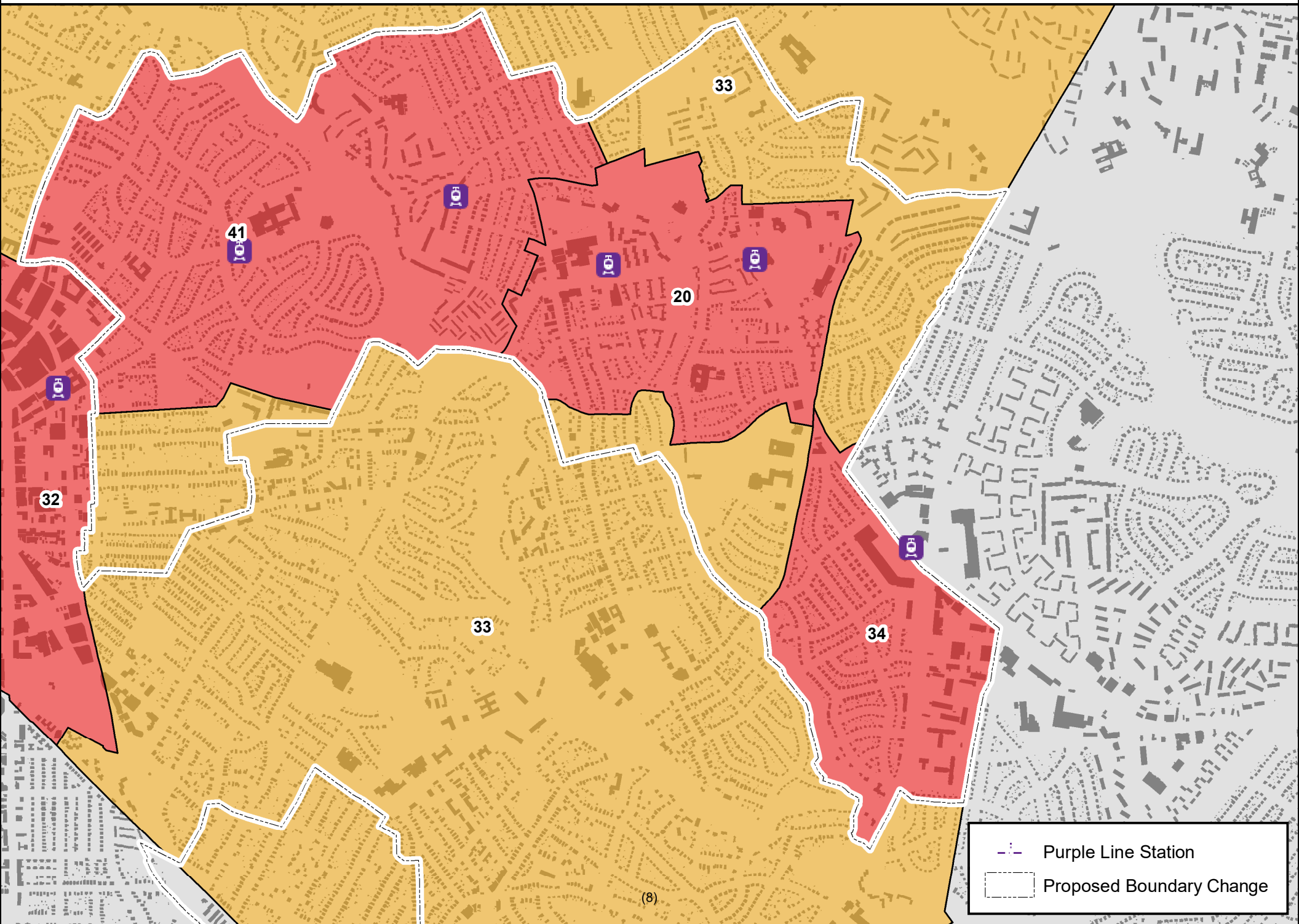
- Purple Line Station
- Proposed Boundary Change

Woodside Purple Line Station



- Purple Line Station
- Proposed Boundary Change

Purple Line East Policy Area



(8)

Legend:

- Purple Line Station
- Proposed Boundary Change



Patricia A. Harris, Esquire
301-841-3832
paharris@lerchearly.com

September 10, 2020

BY ELECTRONIC MAIL

The Honorable Sidney Katz, President
and Members of the County Council
100 Maryland Avenue
Rockville, Maryland

Re: County Growth Policy – Transportation Policy Areas

Dear Council President Katz and Members of the Council:

We represent Unibail-Rodamco-Westfield (“Owner”), the owner of Westfield Montgomery Mall (“Property”). The Owner appreciates the efforts of Park and Planning Staff and the Montgomery County Planning Board (“Planning Board”) in drafting the County Growth Policy and generally supports the Planning Board’s draft County Growth Policy (“Draft CGP”). In connection with your review of the Draft CGP, we respectfully request your consideration to re-designate the policy area within which the Property is located to better reflect the urbanized, mixed-use transit orientation of the Property. This can be accomplished simply by revising the Draft CGP to re-designate the Property as within the Orange Policy Area as opposed to the Yellow Policy Area. The Property is located within the *2017 Approved and Adopted Rock Spring Sector Plan* (“Sector Plan”) area.¹

Like the current 2016-2020 Subdivision Staging Policy (“2016-2020 SSP”), the Draft CGP assigns areas of the County to Red, Orange, Yellow, and Green transportation policy areas. It is the intent of the Draft CGP to assign transportation policy areas based on the intensity of development and the availability of mass transit. Specifically, Orange Policy Areas are intended for “[c]orridor cities, town centers, and emerging Transit-Oriented Development (TOD) areas where premium transit service (i.e., Corridor Cities Transitway, Purple Line/bus rapid transit) is planned.” (Draft CGP p. 64) Yellow Policy Areas are intended for “[l]ow-density areas of the county characterized by mainly residential neighborhoods with community-serving commercial areas.” (Draft CGP p. 64)

The 2016-2020 SSP and the Draft CGP transportation policy areas are derived from geographic policy areas established in the 1986 Annual Growth Policy (the SSP’s predecessor). These policy areas are more than 30 years old and quite large in some cases. Thus, they do not account for emergent nuances in transportation and development patterns. Based on a designation from more than 30 years ago, the Property is located in the Potomac Policy Area, which stretches from the County’s southwestern boundary to I-270. The 2016-2020 SSP assigned the entire Potomac Policy Area to the Yellow Policy Area. Meanwhile, the North Bethesda Policy Area to the east and across I-270, in which the vast majority of the properties located within the Rock Spring Sector Plan area are located, is assigned to the Orange Policy Area.

Both the County Council and the Planning Board envisioned the Rock Spring Sector Plan area as a cohesive, unified planning area, and did not draw a distinction between those sites located to the east or

¹ We note that there are five other properties located north of Westlake Terrace and east of Westlake Drive that are also located within the Rock Spring Sector Plan area that are designated as Yellow Policy Areas.

west of I-270. The Sector Plan recognizes that the entire Sector Plan area, including the Property, is part of an emerging higher density mixed-use center that is increasingly connected by mass transit. This vision is more consistent with the Orange Policy Area than the Yellow Policy Area. Specifically, the Sector Plan envisions the entire plan area as “an employment center that includes new housing, where appropriate, with concentrations of retail.” Sector Plan at p. 17. The Property itself is recommended to be a “mixed-use regional market place.” Sector Plan at p.18. In addition to this cohesive land use vision, the Sector Plan’s transportation recommendations include a bus rapid transit (“BRT”) line running from the Property to Grosvenor-Strathmore Metro Station. This is in addition to the existing Transit Center currently located in the northeast corner of the Property which serves seven bus lines daily, including two to the Grosvenor-Strathmore Metro Station.. As previously explained, Orange Policy Areas are intended for emerging TOD areas with premium transit such as BRT, while Yellow Policy Areas are for lower density residential areas. Thus, the Orange Policy area is more consistent with the Sector Plan’s goals, objectives and recommendations and should be assigned to the entire Rock Spring Sector Plan area, including the Property.

The Draft CGP’s recommendation that the properties west of I-270 be in the Yellow Policy Area and the properties east of I-270 be in the Orange Policy Area appears to be a vestige from the initial policy area designation and did not involve any analysis or review. As a general rule, areas under a single master plan are not split between transportation policy areas unless the areas are subject to separate, distinct land use and development policies (e.g. the 2009 *Germantown Employment Area Sector Plan* is split between the Yellow and Orange Policy Areas with the higher-density, more transit-oriented town center being an Orange Policy Area; the 2006 *Shady Grove Sector Plan* area is split between the Orange and Red Policy areas with the area surrounding Shady Grove Metro Station being in the Red Policy Area). In the case of the Property, the entire Sector Plan area is designated as a higher density mixed-use employment center. In fact, the Property is located on the “central spine” of the Sector Plan area (Westlake Terrace, Fernwood Road and Rock Spring Drive) and is the location of the Sector Plan’s primary transit hub. There simply is no justification for assigning two separate policy areas to the Sector Plan area; the Orange Policy Area should be consistently applied throughout the entire Sector Plan area.

The Planning Board’s recent approval of mixed-use development on the Property further reaffirms the appropriateness of the Orange Policy area designation. More specifically, in July 2020 the Planning Board approved development on the Property to accommodate 1,737,801 square feet of retail (a portion of which is the existing retail shopping mall), 717 dwelling units, and a 261 room hotel (“Project”). This level of development is wholly inconsistent with the Property’s Yellow Policy Area designation which is intended for “[l]ow-density areas of the county characterized by mainly residential neighborhoods with community-serving commercial areas.” The Property will be redeveloped into a dynamic mixed-use center, more consistent with the Orange Policy Area.

For the above-stated reasons, the Owner respectfully requests that the Property be placed in the Orange Policy Area, as it better reflects the Property’s mixed-use, transit-oriented future. The Owner appreciates this opportunity to provide its comments on the proposed County Growth Policy.

Sincerely,



Patricia A. Harris

cc: Mr. Jason Satori
Mr. Eric Graye
Mr. Jim Agliata

Montgomery County Zoning

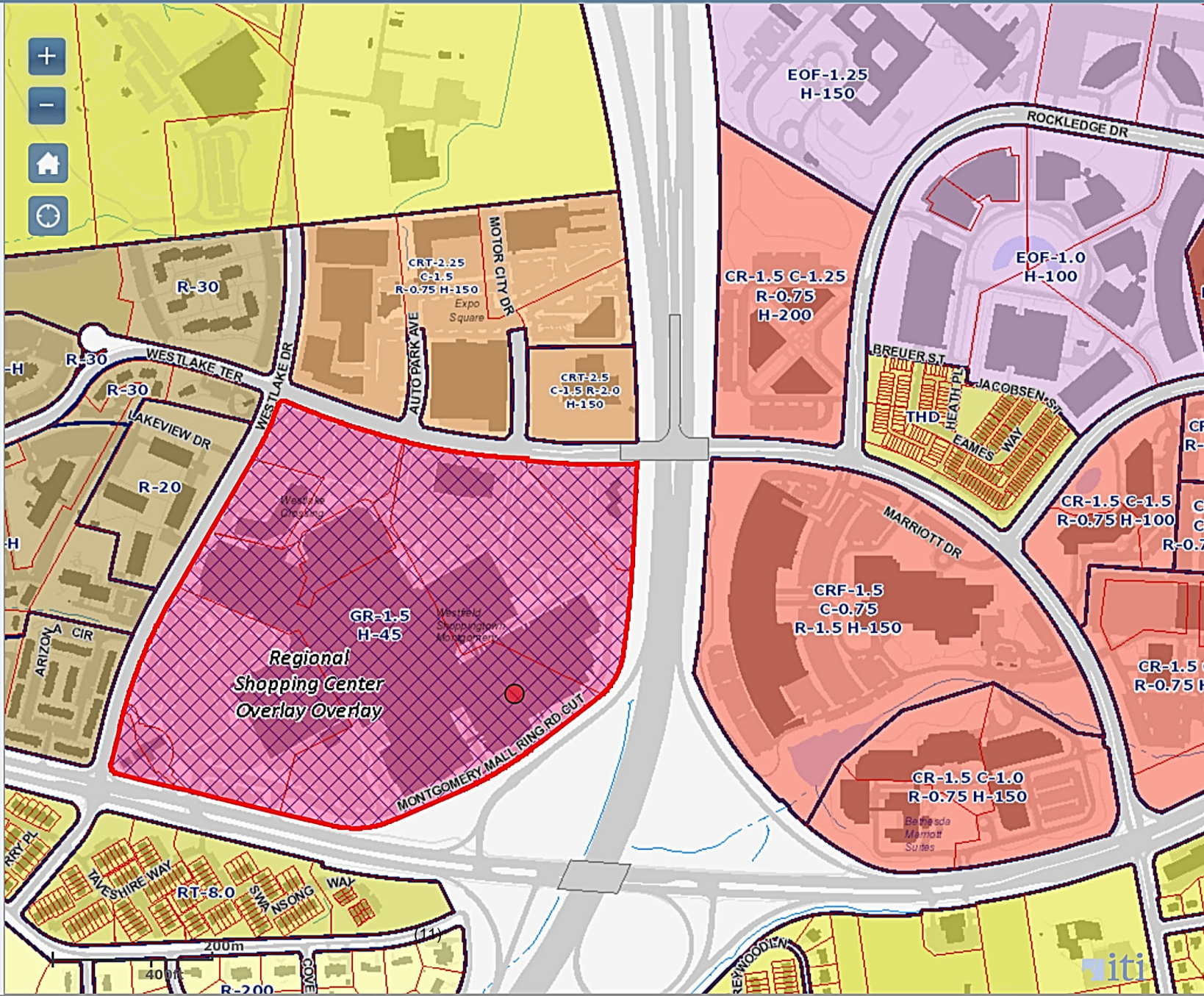
(last amended: January 21, 2020 H-130 (LMA))

Address/Place Name Search:

Details Layers Info Dev. Info

Print Measure

Property Info	
Location:	Latitude: 39.0237 Longitude: -77.1440
ACCT #:	03379217
Parcel, Lot, Block:	N861, N/A, N/A
Address:	10341 WESTLAKE DR BETHESDA, 20817
Legal Description:	PT PAR P LAKEVIEW 18688/296
Landuse:	Retail
WSSC Grid:	213NW07
Zoning Info	
Zone:	GR-1.5 H-45
Overlay Zone:	Regional Shopping Center Overlay
CDR Overlay:	N/A
Allowable Use Table:	View PDF
Map Amendments:	G-247 G-800 G-956 H-126
Other Legislative Districts	
Septic Tier:	Tier 1: Sewer existing
Water/Sewer Categories:	W-1 / S-1
Municipality:	N/A
Master Plan:	ROCK SPRING SECTOR PLAN
Historic Site/District:	N/A
Parking District:	N/A
Urban District:	N/A
Central Business District:	N/A
Special Protection Area:	N/A
Enterprise Zone:	N/A
Arts & Entertainment District:	N/A
Special Tax District:	N/A
Bike/Pedestrian Priority Area:	Montgomery Mall
Urban Renewal Area:	N/A
Metro Station Policy Area:	N/A
Priority Funding Area:	Yes



Click Here to see a list of Development Plans that exist at the selected location



1. **Create a new “Purple” Transportation Policy Area for Transportation Impact Surtax Purposes**

- a. The “Red” Transportation Policy Area should be reserved exclusively for the County’s Metro Station and Central Business Districts (as was originally intended). BUT, for sound public policy reasons, the County Council may wish to designate certain areas to have the same Transportation Impact Surtax Rates as Red Policy Areas (although those areas may not technically be in a Metro Station or Central Business District). A new “Purple” Transportation Policy Area could serve that purpose.
- b. Such was the Council’s intention for the White Oak Science Gateway (“WOSG”) Master Plan in 2014 (before the County adopted color-coded Transportation Policy Areas). Specifically, the Council stated in the WOSG Master Plan on page 54 that the WOSG Master Plan area should:

“...be considered an **Economic Opportunity Center** similar in form and function to areas around a **Metro Station** or **central business district** with an ultimately **urban character**, and that the roadway and transit adequacy standards used in the Subdivision Staging Policy for areas that are currently designated as Urban be applied to the [WOSG Master] Plan area.” (Emphasis added.)¹

- c. For the same reasons the Council intended for the WOSG Master Plan area to be treated and taxed as if in a Red Transportation Policy Area, so too the Council may now want to include the **Purple Line Stations** recommended by the Planning Board to be taxed as if in the Red Policy Area. But, because those Purple Line Stations are not technically at a Metro Station or a Central Business District, they too could be classified in this new “Purple” Transportation Policy Area.
- d. Similarly, for future Master Plans, if the Council explicitly determines that such area constitutes an “**Economic Opportunity Center similar in form and function to areas around a Metro Station or central business district with an ultimately urban character**” such a newly created “Purple” Transportation Policy Area would be another policy tool the Council could use to treat and tax such an area similar to a “Red” Policy area (although not technically in a Metro Station or Central Business District.”

¹ See Appendix B analysis showing the County Council in 2014 intended for the WOSG Master Plan area to be treated and taxed as if in a Metro Station or CBD --- and thus should have been treated and taxed as if in the Red category when the color-coded policy areas were later created (but was erroneously omitted) --- and why that error should be corrected now by including the WOSG Master Plan area in a new “Purple” Transportation Policy Area.

Table 1: Currently Established Policy Area NADMS Goals

PA	Master Plan/Sector Plan Area or TMD	NADMS Goal at Buildout	½ Mile from Metro or Purple Line?	Inside Beltway?
2	Bethesda TMD	55%	Yes	Yes
5	Chevy Chase Lake	49% residents; 36% employees	Yes	Yes
12	Friendship Heights	39%	Yes	Yes
15	Germantown Town Center	25% employees	No	No
25	Great Seneca Science Corridor	28% employees	No	No
26	Greater Shady Grove TMD	35% (transit) residents in SG MSPA; 25% residents elsewhere in SG Sector Plan area; 12.5% (transit) employees in SG Sector Plan area.		
31				
18	Grosvenor Strathmore Metro Area	50%	Yes	No
20	Long Branch Sector Plan	49% residents; 36% employees	Yes	Yes
	Lyttonsville Sector Plan Area	50%	Yes	Yes
22	North Bethesda TMD	30% residents; 39% employees	No	No
22	Rock Spring Master Plan	41% residents; 23 employees	No	No
32	Silver Spring TMD	50% employees	Yes	Yes
36	Wheaton CBD	30% employees	Yes	No
37	White Flint Sector Plan, Phase 1	51% residents; 50% employees	Yes	No
37	White Flint Sector Plan, Phase 2	51% residents; 50% employees 42% residents east of CSX tracks	Yes	No
38	White Oak (White Oak & Hillandale Centers)	25%	No	No
38	White Oak (Life Science/FDA Village Center)	30%	No	No

Table 2: 2020-2024 CGP-Recommended Policy Area NADMS Goals

PA	Master Plan/ Sector Plan Area	NADMS Goal at Buildout	½ Mile from Metro or Purple Line?	Inside Beltway?
39	Forest Glen MSPA	48% residents; 25% employees	Yes	No ¹
35	Twinbrook	45%	Yes	No
40	Lyttonsville/Woodside	50%	Yes	Yes
41	Manchester Place/Dale Drive	50%	Yes	Yes
34	Takoma/Langley	49% residents; 36% employees	Yes	Yes
17	Glenmont	30% employees	Yes	No
28	Rockville Town Center	N/A*	Yes	No
27	Rockville City	N/A*	No	No
13	Gaithersburg City	N/A*	No	No
4	Burtonsville Town Center	27% residents	No	No
14	Germantown East	28% residents	No	No
16	Germantown West	27% residents	No	No
7	Clarksburg Town Center	29% residents	No	No
6	Clarksburg	29% residents	No	No
25	North Potomac	27% residents	No	No
23	Potomac	29% residents	No	No
1	Aspen Hill	35% residents	No	No
10	Derwood	39% residents	No	No
8	Cloverly	23% residents	No	No
24	Olney	22% residents	No	No
11	Fairland/Colesville	27% residents	No	No
3	Bethesda/Chevy Chase	41% residents	No	Yes
33	Silver Spring/Takoma Park	48% residents	No	Yes
19	Kensington/Wheaton	40% residents	No	No

* The municipalities of Rockville and Gaithersburg administer their own AFPO and are exempt from the Bill 36-18 legislation.

¹ Metro station and northern portion of MSPA is located outside the Beltway, southern portion of MSPA is inside the Beltway.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

September 11, 2020

To: Council colleagues
Fr: Hans Riemer
Re: Emergency growth policy amendment to support biohealth industry

Right now there are billions of dollars in investment flowing into companies that are providing vaccines and therapeutics for COVID-19. Many of those companies are located in Montgomery County: Novavax, Emergent, AstraZeneca, Qiagen, to name just a few.

As the companies are receiving contracts and investment from public and private entities, they are planning their growth for the next several years and beyond. Some will need new and expanded facilities to conduct new research and manufacturing enterprises.

This is a crucial moment where Montgomery County can secure our brand as the vaccine capital of the world, capturing economic growth that will benefit our community for decades to come -- or see that growth go to other communities such as Frederick, Philadelphia, or North Carolina.

Accordingly, now is the time for unconventional and emergency steps to support growth in our biohealth sector.

One of the impediments to investment in Montgomery County is our extensive and lengthy development approval process, which according to industry experts takes about 18 months on average, despite recent efforts to improve the process. A company that wants to hit a certain and accelerated timeline for getting project approvals can not have enough confidence that their goals can be achieved in Montgomery County. That must change.

Research on pandemics will grow even after COVID19 has passed. Montgomery County could capture a significant amount of that growth and create high wage jobs for our community. Or, companies in these sectors could find that County processes are too slow and cumbersome and they need to locate their investments elsewhere in order to meet deadlines. That has already happened, as you can see from the life sciences growth in Frederick today.

Given the incredible timeliness and opportunity for the County in this moment, I am proposing that we include in the 2020-2024 Subdivision Staging Policy (which we should rename Growth Policy) a provision to exempt any facility that will primarily be used for life sciences and biotech from SSP transportation tests, for the next five years. The exemption will enable these projects to move forward more quickly and with greater confidence.

The provision to achieve that goal reads as follows:

Temporary Suspension for Biohealth / Life Sciences

The Local Area Transportation Review (section TL) requirements of the Subdivision Staging Policy must not apply to a development or a portion of a development where:

- 1) the primary use is biohealth or life sciences; and*
- 2) an application for preliminary plan, site plan, or building permit that would otherwise require a finding of Adequate Public Facilities is approved after [insert effective date] and before [insert date 5 years after effective date]; and*
- 3) an application for building permit is filed within 3 years after the approval of the application.*

This amendment would be part of the larger growth policy (SSP) that we are taking up and need to approve by November 15, 2020.

As for how this will impact transportation, the implication will be that if the County is concerned about local area transportation impacts it can do an assessment and plan for improvements, but those will not be required of the developer or company. Think of this as a guaranteed economic development incentive for a critical industry at a “make or break” moment.

Because this reform only addresses a share of the development process, it is urgently important that County departments accelerate their timelines to provide absolute confidence in a pathway for investment and approval. I am exploring additional steps the Council can take to remove barriers as well.

From an economic perspective, leveraging this moment of economic development opportunity could bring long lasting benefits -- benefits that help us secure our County’s place in the global life sciences industry over time. We must act with urgency.

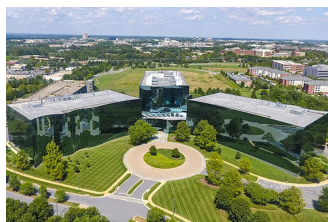
Thank you for your earlier support for my proposal to add an item to the Planning Department work program to rethink and re-envision transportation and development in the Great Seneca Science Corridor biohealth cluster area. That work is underway.

Please let me know if you would like to co-sponsor this amendment. Thank you.

Vaccine Work Boosts Montgomery County Life Sciences Demand, Outpacing Available Space

September 28, 2020 | Jon Banister, Bisnow Washington, D.C.

The federal government has pumped billions of dollars into **Montgomery County** life sciences companies to work on a COVID-19 vaccine, and these investments are having major implications for the area's real estate market.



The vaccine-related activity is creating more demand for lab space in an already tight market, further reducing vacancy rates and driving up rents. This dynamic is leading developers to consider breaking ground on spec and converting vacant office buildings to lab space, multiple experts said Thursday on *Bisnow's Life Science Surge webinar*.

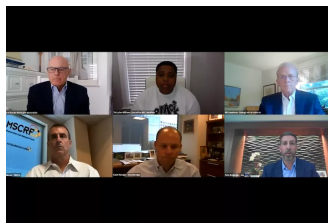
The Department of Health and Human Services has distributed billions of dollars through its **Operation Warp Speed program**, with a goal of producing and delivering 300 million doses of effective vaccines starting in January. Four of the 10 companies that have received the most funding are based in Montgomery County, BioHealth Innovation CEO Richard Bendis said.

Gaithersburg-based Novavax received \$1.6B to manufacture a COVID-19 vaccine, HHS **announced July 7**. Rockville-based Emergent BioSolutions received \$628M in funding, **HHS announced June 1**. U.K.-based GlaxoSmithKline, which has a Global Vaccine Center in **Rockville**, was part of a partnership that **received** \$2B in vaccine funding. AstraZeneca, a U.K.-based company with a major Gaithersburg facility, **received** \$1.2B in vaccine funding in May.

"It speaks to how important from a vaccine development and manufacturing perspective this region is to everybody in the world, because almost 40% of the funds from Operation Warp Speed are going into one small county in the U.S., which happens to be part of this region," Bendis said.

This vaccine funding is not only benefiting the companies that have received it but also the broader market that supports them, EwingCole Managing Principal Bill Gaudreau said.

"There are so many companies that are involved in supporting the manufacturing, testing, distribution, there's a huge benefit that has played out," Gaudreau said. "There's been an increased demand in the real estate market to try to accommodate those [companies], and it's been difficult with the shrinking availability of space in the market."



Venture capital investment has also been flowing into Maryland life sciences companies. JLL has tracked more than \$500M in VC investment in the region's life sciences companies this year, compared to \$100M in 2016, JLL Executive Managing Director Pete Briskman said.

"There is a direct correlation between VC and private equity and tenant demand, so in the future what we're going to have to do is keep up with that demand," Briskman said.

Life science tenants created 870K SF of leasing demand in suburban Maryland from January 2019 through June 2020, comprising nearly 25% of the area's commercial leasing activity during that period, according to JLL. The vacancy rate for suburban Maryland life sciences space is around 4%, Briskman said, compared to roughly 17% vacancy in the area's office market.

This low vacancy rate has led rents to increase by nearly 50% over the last three years, Briskman said. Even with the increases, he said rents in suburban Maryland's life sciences market are still roughly half the rents in the Boston, New York and San Francisco markets.

"There is certainly a value play in staying in Maryland even though the rents are increasing," Briskman said.

Briskman said he expects the rising demand and rents in the life sciences sector will lead to more developers entering the market and to more speculative construction.

"I think we're going to see more spec development," he said. "I think we're going to see institutional owners from outside our region enter the market and maybe buy land and entitle it."



In addition to new development, Briskman said he is seeing a growing trend of life sciences companies leasing spaces that developers have converted from other uses.

"Because the market is so tight, tenants and landlords are

... because the market is so tight, tenants and landlords are being more flexible with their space needs," he said. "So if you're manufacturing you can go to warehouse buildings ... you can also convert an office building. Owners are looking at office product that's empty and saying 'here's an opportunity.'"

[Alexandria Real Estate Equities](#) and an affiliate of [Scheer Partners](#) converted an 80K SF office building in Gaithersburg into lab space, and in August the team announced it [signed a lease](#) with Novavax to bring the project to 100% leased. Rock Creek Property Group in 2018 [signed](#) a full-building lease with Supernus Pharmaceuticals for a 119K SF Gaithersburg office-to-lab conversion project. American Gene Technologies in July [leased](#) 27K SF of lab space in a converted office building in Rockville.

Gaudreau, who works on strategic planning and design for initiatives for his architecture firm's science and technology tenants, also said he is seeing many property owners adapt vacant office buildings for science purposes.

"We're in the middle of a very robust marketplace with inadequate real estate opportunities to support the life sciences community, so anything that the market can do to support the development of more space and more capability for these companies ... is really what's going to be key for this economy," Gaudreau said.

LucasPye Bio founder and CEO Tia Lyles-Williams said that while the influx of vaccine funding has benefited the market, it has also created challenges for the manufacturing of other drugs not related to the coronavirus.

"For all the space the COVID effort is going to take up, that's also a loss to different patients with different chronic diseases for which there may be a shortage of drugs," Lyles-Williams said. "Patients have already been turned away from receiving their regular dose, their standard of care has been interrupted because of what's going on with Operation Warp Speed."

Contact Jon Banister at jon.banister@bisnow.com

See Also: ['A Sobering Picture Of Stagnation': CREW Finds Gender Wage Gap Is Much Worse Than 2015](#)

Related Topics: [JLL](#), [GlaxoSmithKline](#), [Montgomery County](#), [Rockville](#), [Alexandria Real Estate Equities](#), [Gaithersburg](#), [Scheer Partners](#), [EwingCole](#), [Novavax](#), [Department of Health and Human Services](#), [webinar](#), [BioHealth Innovation](#), [Richard Bendis](#), [Bill Gaudreau](#), [Pete Briskman](#), [LucasPye Bio](#), [Tia](#)

Section 50-4.2. Approval Procedure

A. *Referral of plan.* After accepting an application, the Director must send a copy to the Development Review Committee and other reviewing bodies, requesting each agency to submit a recommendation concerning the plan. The Director must send copies, as needed, to:

1. WSSC, for water and sewer service;
2. the Department of Transportation, for roads, streets, intersection locations, site access, sight distances, traffic calming, paths, pedestrian and bicycle facilities (including bike share), parking, transit facilities, transportation demand management elements, and storm drainage within County-maintained rights-of-way and easements;
3. the Department of Permitting Services, for stormwater management, floodplain delineation, sanitation, wells, and septic systems;
4. the Montgomery County Department of Environmental Protection, for water and sewer adequacy and tree variances;
5. Montgomery County Fire and Rescue Service, for requirements for adequate fire protection and access;
6. the State Highway Administration, for right-of-way requirements and access on state roads;
7. any appropriate agency of the federal government;
8. any municipality that has filed a request with the Board for an opportunity to review subdivision or resubdivision plans for property located in that municipality;
9. Montgomery County Public Schools, for school site planning;
10. any other Montgomery County Executive agency, for the adequacy of public facilities and services and any proposed public use; and
11. local utility providers.