



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #2
May 5, 2011

MEMORANDUM

DATE: April 27, 2011

TO: Montgomery County Planning Board

CC: Glenn Kreger, Chief
Area 2 Team

Shahriar Etemadi, Supervisor
Area 2 Team

FROM: Dan Hardy, Chief *DKH*
Functional Planning and Policy Division

Jacob Sesker, Planner Coordinator *JS*
Director's Office

SUBJECT: White Flint Transportation Approval Mechanism

RECOMMENDATION

Accept changes to Chapter 3 (Transportation Approval Mechanism) and Section 5.2 for the purposes of publishing a second Discussion Draft of the White Flint Implementation Guidelines.

PURPOSE

The purpose of this work session is to finalize the Board's work on Chapter 3 (Transportation Approval Mechanism). The Planning Board addressed Chapter 3 in a work session on April 14, 2011. In that session, several minor edits were proposed to clarify the language, but two issues remain outstanding.

OUTSTANDING ISSUE #1: APPLICATION FEE

The first outstanding issue was whether charging an application fee would require additional legal authorization (e.g. changes to 50-34(b)), or whether it could be adopted by the Planning Board in a resolution. Legal staff will be present to discuss this issue, and if necessary, changes can be made to the proposed text reflecting any decision by the Board.

OUTSTANDING ISSUE #2: “PARTIAL APPROVALS”

The second outstanding issue was whether—as staff recommended—a Staging Allocation Request should be placed in a queue if the entire amount of capacity requested cannot be accommodated within the staging limits. Commissioners Carrier, Wells-Harley, and Presley favored the approach recommended by staff.

Commissioners Dreyfuss and Alfandre favored an alternative approach, which would have allowed the Planning Board to approve part of a Staging Allocation Request in instances in which there is not sufficient capacity to accommodate the applicant’s entire request. In such instances, part of the applicant’s request would be placed on the consent agenda calendar with the remainder going into the queue. The Planning Board could either approve the portion of the request for which there is capacity, or the Planning Board could determine that the item is not appropriate for the consent agenda (because, e.g., of concerns about the phasing of public benefits in the applicant’s approved site plan).

Staff continues to recommend that Staging Allocation Requests should only be approved if the entire request can be accommodated within the Sector Plan’s staging limits. Staff cites the following as arguments in favor of the original proposal:

- 1) *Simplicity and accuracy.* Generally, staff’s recommendation to match one request with one approval is less likely to lead to tracking errors.
- 2) *Clearly assigns queue management priorities.* The staff proposal makes it clear that the queue is based on the order in which requests are received, with the sole exception that requests that “fit” within the capacity can bypass those that don’t. Creating a “partially fits” category requires creation of a whole new set of rules as to the queue position of the remainder of a partially approved Staging Allocation Request.
- 3) *Consistency with phased site plans.* The proposed alternative could create a situation in which, at the end of a phase identified in the Sector Plan, a developer submits a Staging Allocation Request for one building that had previously been tied to a later phase identified in the approved site plan, or which is associated with a public benefit other than the public benefit that the Planning Board envisioned receiving at that time when it approved the site plan.
- 4) *More appropriate for a streamlined process/consent agenda item.* The “partial approval” alternative may result in greater uncertainty about staff’s role in accepting Staging Allocation Requests. In addition, in the “partial approval” scenario it may not be possible to process Staging Allocation Requests as consent agenda items.
- 5) *No imminent need to solve a problem that is not certain to occur and which would not likely occur in the next several years.* The “partial approval” alternative adds complexity in order to resolve a problem that may or may not ever manifest.

Staff believes the “keep it simple” approach (argument #1) is the strongest practical reason behind our proposal. The question of queue management (argument #2) may be the strongest technical reason. Consider the case described on page 6 of the April 14 worksession packet:

- Remaining Phase 1 non-residential capacity is 250,000 square feet
- Applicant “A” has approved phased site plan with demolition of 25,000 square feet of non-residential, and two new buildings with 200,000 square feet each of non-residential (total net of 375,000 square feet)
- Applicant “A” submits two Staging Allocation Requests (one for 175,000 square feet and a second one for 200,000 square feet)
- The Planning Board grants Applicant “A” a Staging Allocation Approval for 175,000 square feet
- Applicant “A” s other Staging Allocation Request for 200,000 goes into the queue in first position
- The remaining staging capacity is 75,000 square feet of non-residential
- Applicant “B” has an approved site plan with 75,000 square feet of non-residential and submits a Staging Allocation Request for that full amount
- The Planning Board grants Applicant “B” a Staging Allocation Approval for the 75,000 square feet
- The Applicant “A” 200,000 square foot request remains first in the queue

If, under a partial approval scenario, Applicant “A” submitted a single Staging Allocation Request for 375,000 square feet:

- Staff, Applicant “A”, and the Board would first need to determine:
 - Where and how the 25,000 square foot demolition should be credited
 - Whether to grant partial approval for just a 200,000 square foot building, or for the full 250,000 remaining capacity in the stage (thereby foreclosing Applicant “B” or any smaller Applicant from moving forward while Applicant “A” worked on their building permit, and perhaps considered the feasibility of further disaggregating their second building.) **In order to determine how to manage a partial approval, the Applicant, staff, and Board would need all the same information as would be needed for two separate approvals.**
- The Board would also need to determine whether the remaining “unapproved” capacity associated with Applicant “A” being first in line should preclude Applicant “B” from moving forward with either a full or partial approval:
 - If the answer to this question is “yes,” then smaller projects that request capacity later will be held up in line behind larger projects that request capacity earlier, even though there is staging capacity for the smaller project. Such a policy would be contrary to the stated Stage 1 policy intent that staging should facilitate, rather than inhibit, rapid development and thus rapid increases in the size of the tax base.
 - If the answer to this question is “no,” then the smaller project that requested capacity later will still be able to move forward if staging capacity is available. In

that case, allowing partial approvals has merely complicated the “order of request” priority by adding a “size of partial approval” priority. Such a policy could create an incentive for everyone to submit their initial Staging Allocation Requests for their full sketch plan or preliminary plan approval as soon as we near the end of a stage.

Staff’s recommended approach is illustrated in Attachment A.

The Planning Board also recommended several relatively minor edits to Chapter 3 of the Guidelines, most notably the following:

- Replacing “first-in, first-out” with a less colloquial term
- Requiring a Staging Allocation Request Form

Attachment B shows the staff’s proposed changes (strikethrough to show deleted text, underlines to show added text) to Chapter 3.

The Planning Board also approved staff’s proposal to amend Section 5.2 of the Guidelines relating to mode share goals to incorporate results from both employees working in White Flint as well as resident employees living in White Flint. Attachment C shows the staff’s proposed changes (strikethroughs and underlines) to Section 5.2.

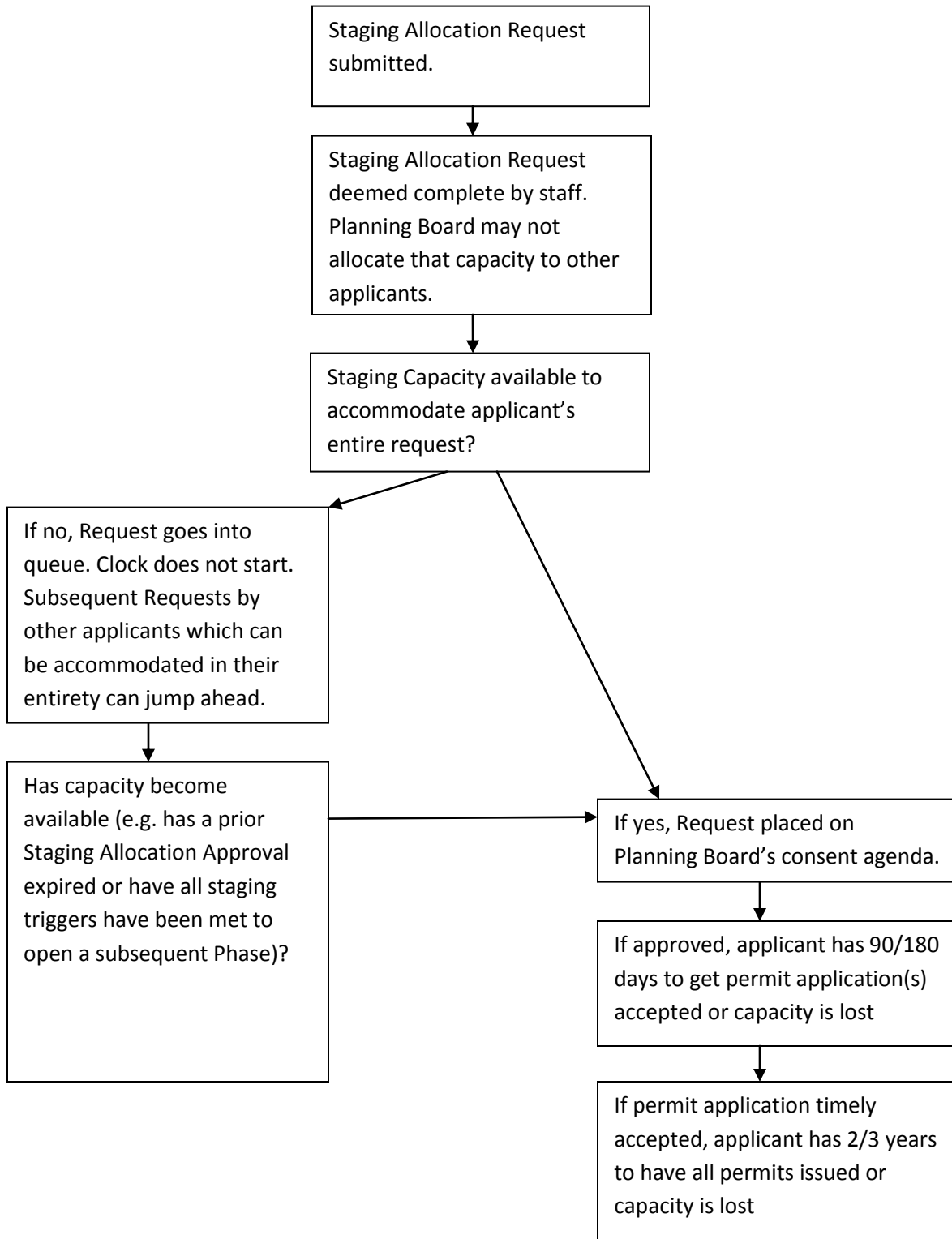
NEXT STEPS

Staff will prepare Discussion Draft Version 2 of the White Flint Implementation Guidelines to reflect these amendments as approved by the Planning Board. Staff will transmit Discussion Draft Version 2 to the White Flint Implementation Advisory Committee and Council staff as a supporting resource for testimony on the Subdivision Staging Policy amendment that the Planning Board transmitted for County Council public hearing, to be scheduled later this spring.

Attachments:

- Attachment A: Recommended Staging Queue Management Flowchart
- Attachment B: Proposed Text, Chapter 3 (Transportation Approval Mechanism), as amended pursuant to April 14 work session
- Attachment C: Proposed Text, Section 5.2, as amended pursuant to April 14 work session

ATTACHMENT A: RECOMMENDED STAGING QUEUE MANAGEMENT PROCESS FLOWCHART



**ATTACHMENT B.
PROPOSED TEXT (CHAPTER 3), AS AMENDED PURSUANT TO APRIL 14
WORKSESSION**

3. Transportation Approval Mechanism

The streamlined transportation infrastructure delivery described on Page 54 of the White Flint Sector Plan directs the County to “establish an alternative adequate public facilities (APF) review procedure with an exaction process based on the planned transportation infrastructure as proportioned to the traffic generated by each development.” The alternative adequate public facilities review procedure is also referenced indirectly in the Staging Plan, which required the County to create public entities or financing mechanisms necessary to implement the Sector Plan, and required the Planning Board to “develop a transportation approval mechanism and monitoring program within 12 months of adopting the sectional map amendment.” The transportation approval mechanism and monitoring program replaces traditional transportation APF (PAMR and LATR) within the Special Taxing District, ~~and supplements traditional transportation APF for the limited number of properties that are within the Sector Plan but outside the Special Taxing District.~~ Properties that are within the Sector Plan but outside the Special Taxing District will be subject to traditional transportation APF and will also count against the staging caps established in the Sector Plan.

The intent of the above-referenced language from the Sector Plan was fulfilled by the implementing legislation contained in Appendix A that established the Special Taxing District and the Alternative Review Procedure within the Subdivision Staging Policy. These Planning Board guidelines provide the operational details of the transportation approval mechanism authorized and described in the Alternative Review Procedure, and implement the staging plan described on pages 67 to 71 of the approved and adopted Sector Plan.

3.1. Staging Allocation Request Process

Under the White Flint Sector Plan, staging capacity in Phase 1 will be allocated based on the order in which requests are received ~~a “first in, first out” basis~~. The advantages of this approach include fairness, predictability, and efficiency. Such a system potentially creates a “race for capacity,” which will accelerate new development and therefore the build-up of additional tax revenues that can be used to fund the infrastructure projects that are triggers under the Staging Plan. The biennial monitoring reports will provide the Planning Board with the information it needs to determine whether this approach is achieving the Sector Plan vision.

3.1.1. Staging Allocation Request

A Staging Allocation Request is a request for staging capacity under the White Flint Sector Plan. The contents of a Staging Allocation Request and the effect of submitting a completed Staging Allocation Request will be established in these guidelines.

3.1.2. Contents of Staging Allocation Request

A Staging Allocation Request must include a statement by the applicant that the applicant has received any necessary sketch plan approvals, preliminary plan approvals, or site plan approvals. The request should indicate the number of buildings proposed as well as the amount of residential and non-residential staging capacity requested, the gross amount of new development, and the net amount of new development if there will be demolition of existing structures. If demolition occurred before the submission of the Staging Allocation Request, the applicant must furnish information showing the amount of demolition that occurred after the adoption of the Sector Plan. ~~If a Staging Allocation Request Form has been approved by the Planning Board, each Staging Allocation Request must include that form.~~ Each Staging Allocation Request must include a Staging Allocation Request Form (see Appendix).

3.1.3. Planning Board review of Staging Allocation Request

The Planning Board must approve the Staging Allocation Request if sufficient staging capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request.

3.1.4. Effect of Staging Allocation Request

In order to be deemed complete, a Staging Allocation Request must contain all information required under the Subdivision Staging Policy section TA6 Alternative Review Procedure for the White Flint Policy Area, must comply with these Planning Board guidelines, and must be submitted concurrently with any application fees established under these guidelines. Once a Staging Allocation Request has been deemed complete, the Planning Board must not allocate to any other applicant the capacity requested, unless the Staging Allocation Request is rejected by the Planning Board or withdrawn by the applicant or unless a Staging Allocation Approval becomes void or expires under these guidelines. Under 3.1.3, a ~~A~~ Staging Allocation Request that has been deemed complete must be approved by the Planning Board if sufficient capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request. If sufficient capacity is not available to accommodate the applicant's entire request, the Staging Allocation Request will be placed in a queue and will be scheduled for Planning Board action when capacity becomes available.

Alternative to the last sentence above: If sufficient capacity is not available to accommodate the applicant's entire request, the Planning Board must approve the request up to the greatest amount of capacity available that represents an entire building identified in an approved ~~phased~~ site plan, with any remainder being placed in a queue.

3.1.5. Staff approval of Staging Allocation Requests for zero net staging capacity

3.1.5.1. No net draw on capacity

A Staging Allocation Request will always be approved, regardless of available staging capacity, if the Request is for an amount equal to or less than any development being removed. In such cases, the Staging Allocation Approval may be granted by staff without Planning Board review.

3.1.5.2. Development approvals that pre-date the approval of the Sector Plan

A Staging Allocation Request will always be approved, regardless of available staging capacity, for projects requesting capacity for which they have valid Adequate Public Facilities approvals or development plan approvals that predate the approval of the White Flint Sector Plan on July 13, 2010. In such cases, the Staging Allocation Approvals may be granted by staff without Planning Board review.

3.1.5.3. Procedures for staff approval of ~~certain~~ Staging Allocation Requests

Staging Allocation Requests that can be approved by staff under 3.1.5.1, or 3.1.5.2, or 3.1.5.3 must be approved by the ~~appropriate Chief or supervisor~~ Planning Director or designee. Such staff approvals must be included in the biennial monitoring report.

3.1.5.4 Projects approved by staff under 3.1.5 not subject to certain provisions of these guidelines

A Staging Allocation Approval that can be issued by staff under 3.1.5 is not subject to the requirements of the following subsections: 3.1.6 (Contents of Staging Allocation Approval); 3.1.7 (Timely submission of building permit applications); 3.1.8 (Reporting requirement); 3.1.9 (Effect of failure to timely submit); 3.1.10 (Validity); and 3.1.11 (Application fees).

3.1.6. Contents of Staging Allocation Approval

A Staging Allocation Approval must incorporate all information included in the Staging Allocation Request. The Staging Allocation Approval must also specify, as established in these guidelines, (1) the deadline for completion and acceptance of a building permit application under 3.1.7, and (2) the Staging Allocation Approval expiration date under 3.1.10.

3.1.7. Requirement to obtain timely acceptance ~~Timely submission of building permit applications~~

An applicant who has received a Staging Allocation Approval resolution from the Planning Board must present that Staging Allocation Approval to the Department of Permitting Services when applying for a building permit. The Staging Allocation Approval becomes void if a completed building permit application for core and shell is not accepted within 90 days from the date the Planning Board's Resolution granting the Staging Allocation Approval. An applicant who ~~submits~~ has received a Staging Allocation Approval Request for multiple buildings has a period of up to 180 days to have building permit applications accepted for at least the core and shell of all buildings.

3.1.8. Reporting Requirement

The applicant must present evidence of acceptance to the Planning Board within 15 business days after a building permit application is accepted.

3.1.9. Effect of failure to obtain timely acceptance ~~to timely submit~~

Any failure to obtain timely acceptance of ~~submit~~ a building permit application results in the loss of staging capacity allocated for which no building permit application has been accepted. The portion of the Staging Allocation Approval that is not perfected by obtaining timely acceptance submission, and acceptance by the Department of Permitting Services, is void as of the day after the date established in the Staging Allocation Approval per 3.1.7. ~~for timely submission of an application for building permit.~~

3.1.10. Validity

A Staging Allocation Approval that has not become void due to failure to satisfy the requirement to timely submit a building permit application remains valid for 2 years from the date of the Planning Board's Resolution approving the Staging Allocation Approval. All core and shell building permits necessary to construct the capacity allocated by the Planning Board must be issued within that 2 year validity period. An applicant who submits a Staging Allocation Approval Request for multiple buildings has a period of up to 3 years to have building permits issued for the core and shell of all buildings.

3.1.11. Application fees

An applicant must pay a fee at the time the Staging Allocation Request is submitted. Any public facility ~~and any Staging Allocation Request for no net staging capacity (under 3.1.5 of these guidelines)~~ is exempt from this requirement. Applicants submitting a Staging Allocation Request for no net draw on staging capacity and development approvals predating the adoption of the Sector Plan are also exempt from this requirement.

An applicant submitting a Staging Allocation Request for a net increase of less than 20,000 square feet of non-residential or fewer than 20 dwelling units must submit a fee of \$2,500. A Staging Allocation Request for a net increase of at least 20,000 square feet of non-residential or at least 20 dwelling units must submit a fee of \$5,000. For purposes of calculating the fee for a mixed-use Staging Allocation Request, one dwelling unit is equal to 1,000 square feet of non-residential. For example, a Staging Allocation Request for 18 dwelling units and 1,900 square feet of non-residential would be subject to a fee of \$2,500 (18x1,000 equals 18,000 plus 1,900 equals 19,900, which is less than 20,000). Any applicant submitting multiple and simultaneous Staging Allocation Requests because there is not sufficient capacity available to accommodate the entire request will be required only to pay one application fee.

3.1.12. Joint Staging Allocation Requests

Multiple property owners may submit Joint Staging Allocation Requests if those property owners also submitted a joint sketch plan application, which was approved by the Planning Board, and which included conditions establishing a phasing schedule of demolition and construction on all subject properties.

3.2. Staging queue management

The Planning Department will maintain a White Flint Sector Plan staging queue.

- Any Staging Allocation Request for which there is not sufficient capacity (see also 3.1.4) will be placed in the queue.
- The queue will track dates on which Staging Allocation Requests were submitted and accepted as complete.
- The oldest eligible application(s) in the queue will be placed on the consent agenda calendar at such time as staging capacity exists for both the full residential and commercial development proposed in the application.
- Adjustments to queue position may be granted by the Planning Board, but only after receipt of a proposal jointly submitted by all applicants whose positions in the queue would be affected. The Planning Department would not be a party to any negotiations between applicants who agree to change queue positions.

3.3. Exemptions from Staging Allocation

3.3.1. Development approvals predating approval of the Sector Plan

The Sector Plan states:

“Any development approvals that predate the approval of this Sector Plan are considered to be in conformance with this Plan. For such approvals, only the difference between the amount of the prior approval and any requested increase would be subject to the phasing caps.”

While the language in the Sector Plan refers specifically to the staging caps, the intent was that these projects would not be subject to the staging allocation process generally. Therefore, while staff approval of a Staging Allocation Request remains an option for such property owners (e.g. to prove to other agencies that they can move forward with their development), such approvals should not be subject to the other requirements or limitations set forth in these guidelines (see 3.1.5.4).

On December 9, 2010 the Planning Board confirmed its intent that four specific projects should not be subject to the phasing caps up to the amount of development approval that predated the adoption of the Sector Plan.

- 1) North Bethesda Center (LCOR)
1,350 dwelling units

1.14 million square feet of office
202,037 square feet of commercial
Zone: TSM

2) North Bethesda Market (JBG)
440 dwelling units
223,000 square feet of non-residential
Zone: TSM

3) White Flint View (Quantum/Noland Plumbing)
183 dwelling units
29,500 square feet of non-residential
Zone: C-2

4) Metro Pike (BF Saul)
247 dwelling units
201,822 square feet of non-residential
Zone: TSM

3.3.2. Affordable housing units

Affordable housing units that are in addition to those required by Chapter 25A and which are provided under the CR Zone incentives are not to be counted against staging plan limits for residential development.

3.3.3 Public facilities and staging

A public facility is a facility that is owned or operated by a governmental body or an instrumentality of a governmental body and which serves a public purpose.

3.3.3.1 Public facilities subject to mandatory referral are exempt from staging

Public facilities which are subject to the mandatory referral provisions of Article 28, section 7-112 are not subject to staging.

3.3.3.2 Public facilities provided as a proffer are exempt from staging

Public facilities that are to be owned or operated by a public entity and that are provided in a private project as a proffer (e.g. in exchange for a density award) are not subject to staging, if such public facility will be conveyed to the public entity in fee simple, by perpetual exclusive easement, or by a long-term lease in excess of fifty years. The terms and method of any such conveyance must be acceptable to the public entity prior to the Planning Board's approval of the staging allocation request for the private elements of the project for which such public facility is proffered. The private elements of a project that includes a public facility are subject to the staging allocation requirements.

3.3.3.3 Effect on traffic analysis of development outside the special taxing district

Traffic generated by public facilities must be included in any analysis of development that is proposed to occur the outside special taxing district, as described below.

3.4. Relationship to other transportation related processes and requirements

The Subdivision Staging Policy states that any property in the Special Taxing District is exempt from the requirements of either Local Area Transportation Review or Policy Area Mobility Review. The intent of this requirement is to remove the need for any individual applicant to prepare transportation studies for the purposes of determining APF validity

3.4.1. Development outside the special taxing district

For the purpose of assessing the transportation impacts of new development, the White Flint Special Taxing District will be treated in a manner similar to the way a separate jurisdiction such as Rockville is treated. In general, applicants inside and outside of the Special Taxing District will be responsible only for their improvements on their side of the Special Taxing District boundary. Applicants outside of the Special Taxing District will be tested for APF compliance and intersection improvements (if needed) outside of the Special Taxing District boundary.

Applications outside the White Flint Special Taxing District must submit LATR and PAMR transportation studies, if applicable, that reflect development within the Special Taxing District as part of their background traffic. The Planning Board will provide guidance on trip generation and distribution assumptions as part of the most recent biennial Comprehensive Local Area Transportation Review (CLATR)—it is expected that the first biennial CLATR will be completed prior to completion and application of the new guidelines. Applicants outside the Special Taxing District who must submit ~~LATR and PAMR~~ transportation studies (e.g. to satisfy the requirements of the LATR & PAMR Guidelines) will conduct traffic assignment consistent with the CLATR. Applicants outside the Special Taxing District will be responsible only for intersection improvements outside the Special Taxing District.

Within the White Flint Special Taxing District, the applicants will be responsible only for constructing improvements required by Section 50-24, such as streets interior or adjacent to their sites, making any additional improvements necessary for safe access and circulation (other than those associated with APF) and providing the funds for those shared projects identified through the taxing district mechanism. ~~The improvements inside the Special Taxing District are planned to accommodate traffic generated by development occurring outside the Special Taxing District.~~

3.4.2. Privatization of Traffic Carrying Streets

Page 51 of the Plan identifies four specific business street segments that are required to be open to general vehicular use as part of the robust street grid needed to disperse traffic. Page 52 of the Plan identifies eight conditions for potential construction and operation of these streets as private

streets. All eight conditions must be incorporated within the Planning Board's subdivision approval opinion.

3.4.3. Transportation Information Required From Applicants

The Subdivision Staging Policy states that any property in the Special Taxing District is exempt from the requirements of either Local Area Transportation Review or Policy Area Mobility Review. The intent of this requirement is to remove the need for any individual applicant to prepare transportation information for the Planning Board whose sole purpose is to assess transportation system adequacy as required by the Subdivision Staging Policy.

Applicants will still be required to provide information to state or County agencies as needed to fulfill other requirements of the law. Such information may include, but not be limited to:

- Parking space requirements
- Sight distance evaluations

ATTACHMENT C.

PROPOSED TEXT (SECTION 5.2), AS AMENDED PURSUANT TO APRIL 14 WORKSESSION

5.2. Mode Share Goals

Mode share goals to be determined based on annual employee surveys conducted by the North Bethesda TMD (the same process as used in in Bethesda CBD staging in 2004) and annual surveys of selected residential properties. Relevant survey information includes journey-to-work mode share for employees (NADMS-E) arriving to their workplace in the White Flint Sector Plan Area during the AM peak period (6:30 – 9:30 AM) and journey-to-work (or school) mode share for employees leaving their residence (NADMS-R) in the White Flint Sector Plan Area during the same AM peak period. The overall White Flint Sector Plan Area mode share (NADMS) is the weighted average of NADMS-R and NADMS-E. For instance, if at the time of an annual survey, there are:

- 34,000 employees working in White Flint Sector Plan Area with an NADMS-E of 30%, and
- 4,000 employed residents of the White Flint Sector Plan Area with an NADMS-R of 45%,
- Then the NADMS is $(34,000*30\% + 4,000*45\%) / (34,000 + 4,000) = 31.58\%$

Non-Auto Drivers include transit users, carpool/vanpool passengers, walkers, and bikers. Non-Auto Drivers do not include employees on scheduled leave or sick leave, or out of the office (they are neither in the numerator of non-auto-drivers nor the denominator of all employees working in White Flint). Non-Auto Drivers do include teleworkers and compressed-schedule employees.

The NADMS-E will be the weighted average of responses for the full week of the survey.

The NAMDS is a non-integer number. The Phase 1 requirement is a 34 percent NADMS. A ~~survey response~~ calculated combination of NADMS-E and NADMS-R of 33.9% would not meet the NADMS requirement; a ~~survey response~~ result of 34.1% should meet the NADMS requirement.

Once the NADMS requirement has been met, any subsequent lower survey result does not change the validity of the decision to move from one phase to the next. The staff must consider the variability inherent in survey results in developing the recommendation to move to another phase (i.e., if four consecutive annual surveys during Phase 1 showed NADMS results of 27%, 26%, 28%, and 35%, any consideration to move to Phase 2 in the fifth year should be accompanied by analyses of independent indicators of changes in mode share behavior).