

REVISIONS TO THE 2021 LOCAL AREA TRANSPORTATION REVIEW GUIDELINES

Description

Approve changes to the Local Area Transportation Review (LATR) Guidelines to incorporate a method to ensure that off-site transportation mitigation is not out of proportion with a project's impact on the overall safety and functionality of the county's transportation system. Approve additional minor changes to the LATR Guidelines.

Completed: 2-24-2022

MCPB
Item No. 4

March 3, 2022

2425 Reddie Drive
Floor 14
Wheaton, MD 20902



David Anspacher, Planning Supervisor, david.anspacher@montgomeryplanning.org, 301-495-2191

Eric Graye, Planning Supervisor, eric.graye@montgomeryplanning.org, 301-495-4632

Jason Sartori, Chief, jason.sartori@montgomeryplanning.org, 301-495-2172

TABLE OF CONTENTS

Section 1: Background	3
Section 2: Staff Recommendations	4
Section 3: Proposed Changes to the LATR Guidelines	9
Section 4: Attachments	10

SECTION 1

BACKGROUND

Since the Growth and Infrastructure Policy came into effect on January 1, 2021, several applicants and land use attorneys have expressed concern that the policy is likely to impose transportation improvement costs that are out of proportion to the impacts of an individual development project, especially for the pedestrian, bicycle and bus transit adequacy tests. Planning Department staff agrees that the policy has the potential to require improvements that may not be proportional to a project's impacts, especially for sites that generate a large number of peak-hour person trips.

On October 21, 2021, Planning Department staff presented the Planning Board with a draft approach to ensure that off-site transportation improvements are reasonable as they relate to a project's impact. This approach established an upper limit to the cost of off-site mitigation for projects that surpass the 50 net new peak hour person trip threshold that triggers an LATR study. After the hearing, Planning Staff coordinated extensively with the Montgomery County Department of Transportation (MCDOT), Department of Permitting Services (DPS), transportation engineers, civil engineers and land use attorneys to seek their feedback on the proposed revisions.

On February 17, 2022, Planning Staff presented the Planning Board with a revised approach, incorporating feedback from stakeholders. This approach is documented in the staff report presented to the Planning Board on February 17 (Attachment A). During the discussion, several issues were raised:

1. Planning Staff proposed to include a definition for "Extent of Development" on page 58 of the LATR Guidelines (see Attachment B).
2. The Planning Board requested language in the guidelines that clarifies that applicants will be required to construct the conditioned improvements listed in the resolution, even if the cost of mitigation increases above the calculated LATR Proportionality Guide for the application.
3. The Planning Board heard testimony that Moderately Priced Dwelling Units (MPDUs) should be exempt from the LATR Proportionality Guide.
4. Planning Staff indicated that MCDOT had raised issues about the proposed changes to the LATR Guidelines and would take the next two weeks to better understand MCDOT's concerns and to address them to the extent possible.

On March 3, 2022, Planning Staff will seek approval to publish the revised guidelines.

SECTION 2

STAFF RECOMMENDATIONS

Staff has considered feedback from the Planning Board, MCDOT and other stakeholders and proposes the following:

1. Revised Definition for Extent of Development

During the February 17, 2021 Planning Board discussion, Planning Staff proposed adding the following definition for “Extent of Development” on page 58 of the draft LATR Guidelines (Attachment B):

The Extent of Development refers to the number of residential units and/or commercial square footage used in the applicant’s approved scoping letter to describe the proposed project or development.

After receiving feedback that the Extent of Development could change in the applicant’s development program between when the scoping letter is approved by Planning Staff and when the Planning Board approves the project, staff now proposes the following definition:

The Extent of Development refers to the number of residential units and/or commercial square footage as approved by the Planning Board.

2. Clarification about Conditioned Improvements

Commissioner Verma asked Planning Staff to include language in the guidelines that clarifies that applicants will be required to construct the conditioned improvements listed in the resolution, even if the cost of mitigation increases above the calculated LATR Proportionality Guide for the application. Given additional discussion on February 17, 2022 about MPDUs (see #3 below) and about providing staff the ability to substitute a conditioned improvement for another improvement on the prioritized list of projects of similar cost on a revised Certified Preliminary Plan, staff is now proposing to add the following language starting on page 59 of the draft LATR Guidelines (Attachment B), which includes guidance on preparing conditions of approval in the Planning Board resolution:

D. Condition of Approval

The condition of approval will include a list of mitigation projects and/or a mitigation payment to address Pedestrian System Adequacy, Bicycle System Adequacy and Bus Transit System Adequacy deficiencies.

Conditions for Mitigation Payments

While constructed improvements are strongly preferred, mitigation payments may be necessary when there are few or no deficiencies that can be mitigated by a constructed

improvement. Mitigation payments are acceptable if the Planning Board and MCDOT agree that constructing all or part of the mitigation projects may not be practicable due to:

- Unattainable right-of-way;
- An existing CIP project;
- Other operational conditions outside the applicant's control; or
- Not considered practicable by the Planning Board and MCDOT

If a mitigation payment is required, the condition will identify:

- The type of improvement (pedestrian, bicycle and/or bus transit); and
- The policy area(s) where the payment must be used. The payment must be dedicated to projects 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.

Mitigation payments will be adjusted for inflation based on the Federal Highway Administration's National Highway Construction Cost Index from the mailing date of the Planning Board resolution to the date of the first above-grade building permit or right-of-way permit (whichever comes first).

Consistent with Section TA4 of the 2020-2024 Growth and Infrastructure Policy, any mitigation payment will be reduced proportionally based on the share of the LATR Proportionality Guide that is generated by MPDUs.

Modifications to Conditioned Improvements

Situations may arise in which an applicant proposes to replace a conditioned improvement for another improvement on the list of mitigation projects identified in the staff report. In these instances, the replacement project must be of similar cost to the conditioned project, as estimated in the staff report and adjusted for inflation.

- If the conditioned improvement has been made obsolete because it has been constructed or is under construction or because of a change to a master plan recommendation, the applicant can propose an alternative mitigation project from the list of improvements identified in the staff report that is of similar value, and this alternative improvement, if reviewed and approved by Planning Staff, can be substituted and shown on a revised Certified Preliminary Plan.
- For all other reasons, an amendment to the preliminary plan (or site plan if there is no preliminary plan) is required.

As the condition of approval includes a list of mitigation projects and not the calculated LATR Proportionality Guide, an increase in the cost to construct a mitigation project, either under or outside of the applicant's control, will have no bearing on the conditioned mitigation projects.

3. Moderately Price Dwelling Units

The Planning Board heard testimony from Françoise Carrier that moderately priced dwelling units (MPDUs) should be excluded from the LATR Proportionality Guide. She referenced the 2020 Growth and Infrastructure Policy, which includes the following language about MPDUs:

TA4 Affordable Housing

The provision of affordable housing in the County is crucial to providing long lasting reductions to regional congestion. Long distance trips affect the County's traffic in many parts of our community. The provision of affordable housing is a fundamental element of the County's General Plan and part of the County's economic development strategy. All trips generated by any moderately priced dwelling unit (MPDU) and any other low-and moderate-income housing which is exempt from paying a development impact tax must also be exempt from any Transportation Mitigation payment.

Ms. Carrier stated that when the Council adopted the MPDU law, the intent was that it should be cost-neutral for developers, but in fact they lose money on MPDUs. She said that the Council likely included section TA4 in the GIP to avoid adding transportation mitigation costs to the already considerable profit that developers lose when they construct MPDUs. While it might not have previously been possible to exempt MPDUs from constructed improvements, the LATR Proportionality Guide makes this possible. Therefore, Ms. Carrier believes that it is within the Planning Board's authority to use section TA4 to exclude MPDUs when the LATR Proportionality Guide is calculated.

Planning Staff believes that a strict interpretation of section TA4 is that it exempts applicants from the requirement to make **mitigation payments** for MPDUs when off-site deficiencies exist, but that it does not exempt applicants from the requirement to make **improvements** for MPDUs when off-site deficiencies exist. First, the affordable housing provision was initially created in the 2012-2016 Subdivision Staging Policy and includes the following two provisions that when considered together, indicate that at the time of approval on November 13, 2012, transportation deficiencies under the Transportation Policy Area Review (TPAR) could be addressed by full mitigation of a constructed improvement or with a Transportation Mitigation Payment (see TP3) and that the MPDUs were to be only exempted from TPAR payments (see TA5):

TP3 Imposition of Transportation Mitigation Payment

If projected transportation capacity in a policy area is not adequate, the Planning Board may approve a subdivision in that area if the applicant commits to either: (1) fully mitigate the incremental traffic impact of the subdivision by adding capacity or implementing a trip reduction program; or (2) pay a Transportation Mitigation Payment as provided in County law.

TA5 Affordable Housing

The provision of affordable housing in the County is crucial to providing long lasting reductions to regional congestion. Long distance trips affect the County's traffic in many parts of our community. The provision of affordable housing is a fundamental element of the County's General Plan and part of the County's economic development strategy. All trips generated by any moderately priced dwelling unit (MPDU) and any other low- and moderate-income housing which is exempt from paying a development impact tax must also be exempt from any TPAR payment.

Second, Planning Staff believes that requiring MPDUs to be counted toward constructed improvements was a logical approach, as it is unclear how the Planning Board would exempt projects from making constructed improvements based on the share of MPDUs in their project. This is because when the MPDU provision was first added to the growth policy in the 2012-2016 Subdivision Staging Policy, most off-site improvements were to address increased traffic. Therefore, if an applicant was providing 50 percent MPDUs and the off-site mitigation was to construct a turn lane or add a signal, it would have been illogical to require applicants to construct half of a turn lane or half of a portion of a traffic signal.

Additionally, it is not clear that exempting MPDUs from off-site improvements is a desirable policy goal from an equity perspective, if residents of MPDUs are not provided the same high-quality bicycle, pedestrian and transit facilities as residents of non-MPDUs. For example, if MPDUs are to be exempted altogether and an applicant submits a 100 percent MPDU project, that project would not have to provide its residents high-quality bicycle, pedestrian or bus transit facilities.

While Ms. Carrier is correct that the proposed LATR Proportionality Guide makes it possible to exempt MPDUs from constructing off-site improvements, Planning Staff believes this was not the Council's original intent and that this may not be a desirable policy outcome.

Planning staff does agree that mitigation payments must be reduced proportionally based on the share of the LATR Proportionality Guide that is generated by MPDUs and proposes to add the following language on page 60 of the draft LATR Guidelines (Attachment B):

Consistent with Section TA4 of the 2020-2024 Growth and Infrastructure Policy, any mitigation payment will be reduced proportionally based on the share of the LATR Proportionality Guide that is generated by MPDUs.

For example, if a project is proposing 100 single family homes and 15 of the homes are MPDUs, any mitigation payment will be reduced by 15 percent.

4. Concerns from MCDOT

At the Planning Board work session on February 17, 2022, MCDOT expressed a concern that the approach to proportionality proposed by Planning staff was not a procedural implementation matter

but rather a change in policy that should require a Council-approved amendment to the Growth and Infrastructure Policy.

In preparing the approach to proportionality, Planning staff consulted with Commission and County Council legal staff. Each was in agreement that the proposed approach is not a change to policy and fully within the Planning Board's authority. The Council-adopted Growth and Infrastructure Policy provides the Board with the ability to establish procedures for determining the extent of off-site improvements to be made by an applicant and to ensure that those improvements are roughly proportional to the project's impact, as constitutionally required. The Council's attorney has informed the councilmembers as such and there has been no request by any councilmember to take up this issue through a Growth and Infrastructure Policy amendment.

Specifically, as documented in Section 3 of Attachment A, while the Growth and Infrastructure Policy identifies the maximum amount of improvements that could be required for the pedestrian, bicycle and bus transit modes, it does not require the applicants to improve *every* identified deficiency, up to those maximums. The actual amount of pedestrian, bicycle and bus transit improvements required of an applicant is left to the discretion of the Planning Board. This is already true for every application, whether the Board adopts the revisions to the LATR Guidelines or not. What the proposed revisions provide is a rational and consistent procedure to determining an appropriate and reasonable limit on the off-site improvements required of an applicant. This objective and transparent approach also provides applicants with a level of certainty that facilitates development and financing decisions.

In subsequent conversations, MCDOT continued to express concerns that an approach establishing a formulaic cap suggested a hard and fast rule akin to a policy change, rather than procedures that can guide, but not dictate, Board action. In response to this, Planning staff offered a couple of modifications to help clarify the approach. First, staff has changed "LATR Improvement Cap" to "LATR Proportionality Guide." The calculation and function are the same as previously proposed, but the name is more reflective of the calculated value being used to inform and guide Board decisions.

Next, Planning staff propose adding the following text to Section VIII of the LATR Guidelines to further clarify that the Board continues to maintain its discretion in determining the extent of improvements required of an applicant to address infrastructure deficiencies:

While the LATR Proportionality Guide will ensure rough proportionality in most situations, there may be rare circumstances under which the Board finds a modified approach to proportionality is warranted (within the bounds of the Council-approved Growth and Infrastructure Policy). The Board maintains this flexibility to determine when existing transportation infrastructure will not adequately support a proposed use or when the calculated LATR Proportionality Guide presents an excessive burden on an applicant.

SECTION 3

PROPOSED CHANGES TO THE LATR GUIDELINES

Proposed changes to the LATR Guidelines are summarized below and included in the revised LATR Guidelines (Attachment B).

- Section III.B (page 21) permits applicants to propose alternative mode split assumptions in very limited instances where the mode split assumptions in Appendix 1b clearly do not fit the proposed project.
- Section III.C.1 (page 26) updates guidelines for documenting deficiencies and proposed mitigation for the pedestrian, bicycle and bus transit system adequacy test.
- Section III.C.3 (page 28) updates guidelines for traffic speed studies.
- Section IV.D (page 45) specifies that alternatives to motor vehicle mitigation need to be constructed within one-quarter mile of the intersection that exceeds the traffic congestion standard.
- Section V (page 47) provides additional guidance on evaluating and mitigating street lighting.
- Section VIII (pages 58–60) and Appendices 5 and 6 (pages 87–89) incorporate Planning Department staff’s recommended proportionality approach.
- Additional minor edits and clarifications throughout the document.

SECTION 4

ATTACHMENTS

Attachment A: Planning Board Staff Report, Revisions to the 2021 Local Area Transportation Review Guidelines, February 17, 2022

Attachment B: Updated proposed revisions to the Local Area Transportation Review Guidelines