



INCENTIVE ZONING UPDATE

IMPROVING THE PUBLIC BENEFITS POINT SYSTEM FOR CR AND EMPLOYMENT ZONES

Description

Scope of Work for the Incentive Zoning Update

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SUMMARY

Montgomery planning is undertaking a review of the incentive zoning point system (point system) for mixed use and employment zones, allowing for the highest density in the County. Developers must provide public benefits, like affordable housing, environmental features, or public infrastructure facilities to maximize the allowable density in these zones. To achieve greater densities, the optional method of development is applied to the Commercial Residential (CR), Commercial Residential – Town (CRT), Life Science Center (LSC), and Employment Office (EOF) zones. The Planning Board publishes and maintains a set of implementation guidelines to provide criteria for planning department staff and applicants to evaluate the adequacy of the public benefits proposed in an optional method application.

While these incentive zones comprise only three percent of the county’s land area, the Planning Board has approved almost 37 million square feet of development in these zones through the optional method of development since the policy’s inception in 2010. The policy has undergone some minor-to-moderate changes throughout its 12-year history, albeit without a comprehensive countywide review. Since the implementation guidelines were last updated in 2017, the County Council has passed several major policies and programs related to planning and development, including the County’s new General Plan (Thrive 2050), a Climate Action Plan (CAP), and the Racial Equity and Social Justice (RESJ) Law. Each of these policies provides high level guidance regarding how the incentive zones and point system could be enhanced. In addition, there are other policies that interact with the incentive zones and point system, including the County’s inclusionary zoning law, and two farmland preservation programs. Just as planning priorities, market conditions, and development standards evolve over time, so do the needs for public benefits, thereby impacting the effectiveness of the point system and implementation guidelines.

This staff report presents the proposed scope of work for the Incentive Zoning Update project, including the overview and context, background of the policy, overall planning framework, elements to explore, public engagement strategy, and the project schedule. Also included is a synopsis of data collection performed by staff to date.

PROJECT INFORMATION

Scope of Work

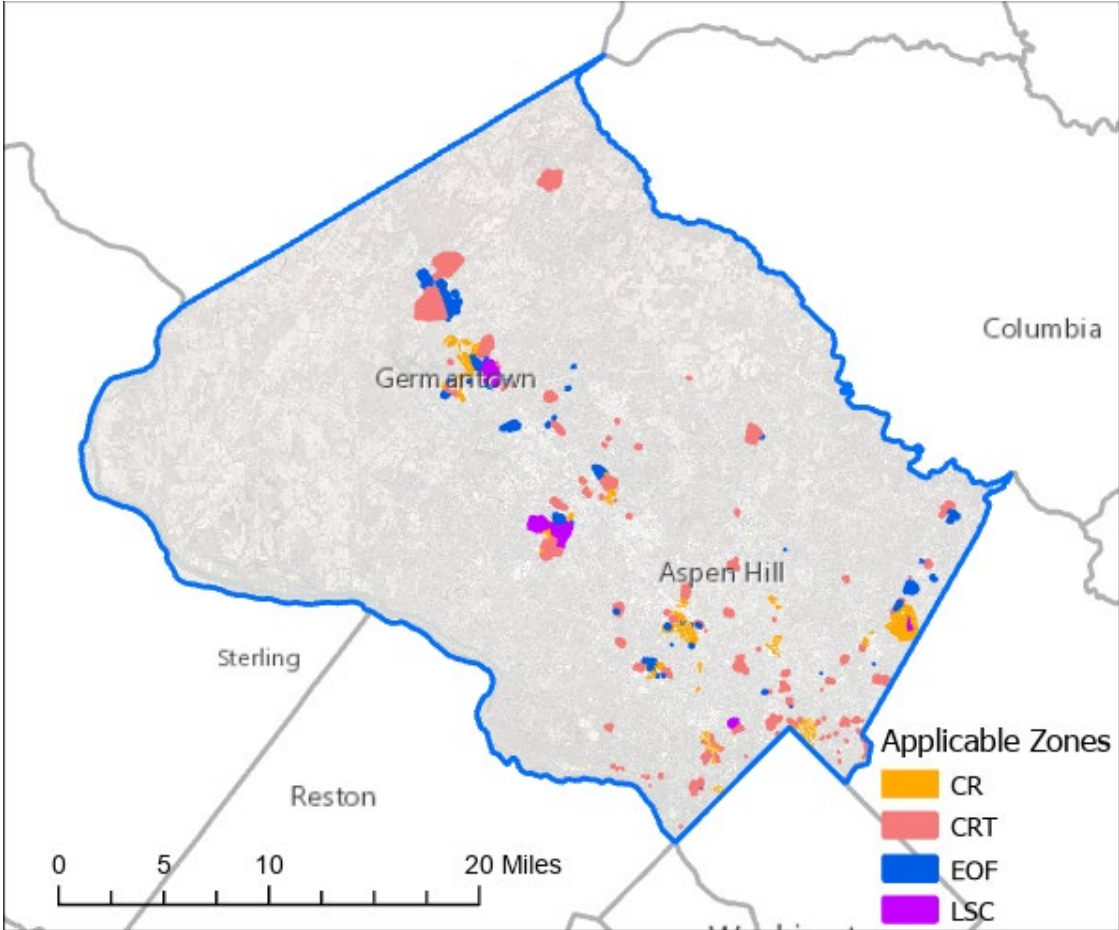
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Planning Board Information
MCPB Item No. 5



The optional method of development is applicable to the Commercial Residential (CR), Commercial Residential - Town (CRT), Life Science Center (LSC), and Employment Office (EOF) zones.

Incentive Zoning Update Scope of Work

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INTRODUCTION

OVERVIEW AND CONTEXT

As part of its work program for FY2023, Montgomery County is undertaking a review of its incentive zoning point system (point system) for Commercial-Residential (CR), Commercial-Residential Town (CRT) and Employment Zones (EOF & LSC). The CR and Employment Zones (incentive zones) allow for a Floor Area Ratio (FAR) of up to 8.0. The public benefits are selected from a menu of facilities intended to focus on features such as site and building design, accessibility, housing, and environmental sustainability. Since the policy's inception in 2010, Montgomery Planning has implemented this density and the corresponding public benefit requirements with a point system as delineated in section [59.4.5](#) of the zoning code and further elaborated in the [Incentive Density Implementation Guidelines](#).

Real estate fundamentals and development standards have considerably evolved since 2010 while the policy has undergone only some minor-to-moderate changes. As an incentive zoning program, the point system is also the subject of recommendations of more recently adopted policies like Thrive Montgomery 2050, the Climate Action Plan, and the Racial Equity and Social Justice Act. Furthermore, financial feasibility is fundamental for the policy to function as an incentive, so the policy must be grounded in up-to-date market conditions. Finally, the point system is a tangible mechanism that regulatory reviewers within Montgomery Planning and developers utilize regularly, so it is critical that the policy is designed with efficiency and ease of use in mind.

A review and update is therefore necessary to modernize the policy and align it with evolving county priorities and market conditions, particularly as it governs some of the largest and most economically significant developments in the County. This will also ensure the policy continues to support high density development in the strategically located, transit-oriented CR and Employment Zones. This update and review will involve a rigorous analysis of every aspect of the policy, from its theoretical underpinnings and financial assumptions to the experience of implementing it through the entitlement process.

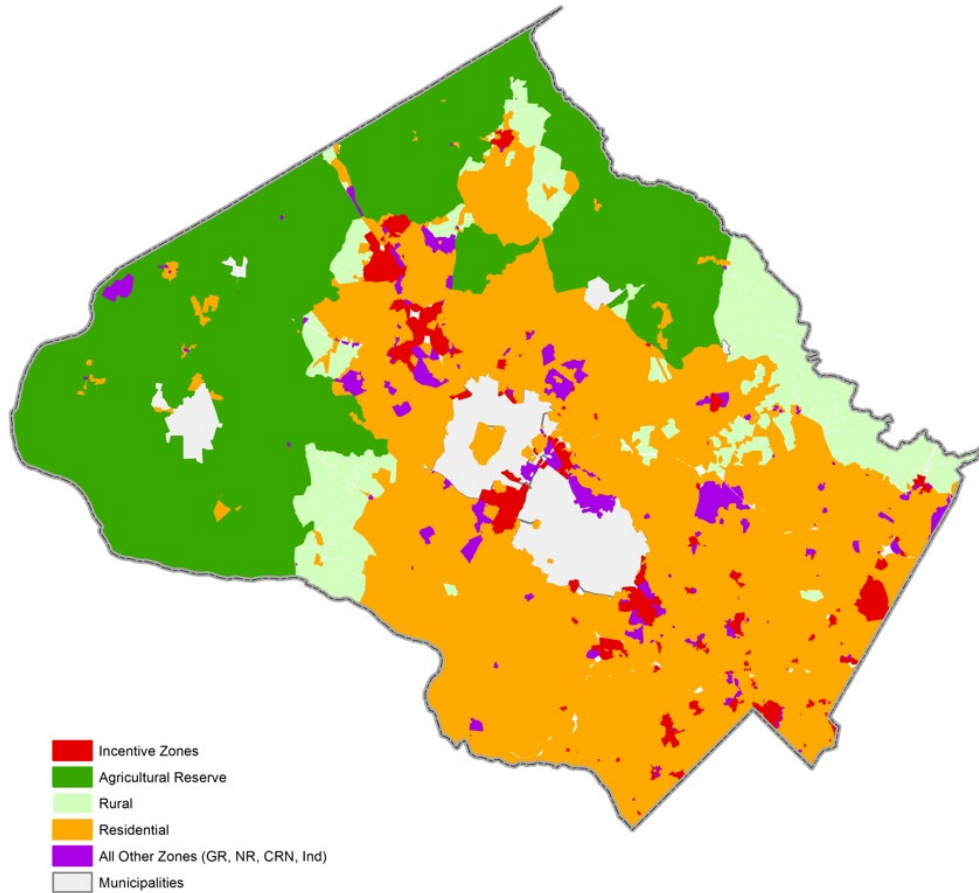


Figure 1 – Map of Montgomery County Incentive Zones

Figure 1 shows a map of Montgomery County, highlighting the incentive zones and placing them in the context of countywide zoning. As measured in terms of parcel size, the total size of Montgomery County is 318,543 acres. The incentive zones comprise 8,370 acres, or three percent of land countywide. While these zones account for a small portion of the county’s land, they have seen more than 37 million square feet of development approved by the Planning Board since 2010.

HISTORY OF CR AND EMPLOYMENT ZONES AND THE POINT SYSTEM

The CR and Employment zones are comprised of four zones that require public benefits: the CR (Commercial Residential) zone, the CRT (Commercial Residential – Town) zone, the LSC (Life Science Center) zone, and the EOF (Employment Office) zone. These zones allow for a range of densities and heights. The original, standalone CR zone was established by Zoning Text Amendment (ZTA) 09-08 in 2010 for the Great Seneca Science Corridor and White Flint Master Plans. The “[Incentive Density Provisions](#)” section of the ZTA established how optional method projects must provide public benefits in return for increases in density and height, consistent with the applicable master or sector plan, up

to the maximum permitted by the zone. This section also created a list of potential public benefits an applicant could provide for receiving the increased density and height. In addition to the ZTA, [Commercial/Residential \(C/R\) Incentive Density Guidelines](#) were created to help with the implementation of the provision of public benefits. The guidelines state that in approving any incentive density based on the provision of public benefits, the Planning Board must consider the policy objectives and priorities of the applicable master or sector plan and design guidelines, among other factors related to the size and context of the project. This directive therefore established a key role sector plans have since played in prioritizing which public benefits are considered during the optional method of development approval process.

A central goal for creating the CR zone was to provide a flexible zone for infill development throughout the commercial areas of the county that would encourage a mix of uses and public benefits commensurate with an appropriate range of densities. The point system was designed to provide greater transparency regarding what developers were being asked to provide as a condition of approval, standardizing the list of amenities. Another key goal was to ensure a faster and more efficient development review process while keeping the community informed regarding the delivery of public benefits in exchange for the approved density.

The CRT and CRN zones were later established in 2011 by [ZTA 11-01](#) for the Town of Kensington, Takoma Langley Crossroads, and Wheaton Master Plans. By creating CR zoning classifications for neighborhood, town, and Metrorail settings, the zones offered ways to soften the transition between mixed-use and residential areas, address concerns about the proximity of some uses to single-family residential properties and create rules for parking and drive-thru design. In addition, public benefit requirements were adjusted for small properties and lower density areas zoned CRT. There are no public benefit requirements for the CRN zone, which is the lowest density zone in the C/R family.

The LSC and the EOF zones are a part of the Employment family of zones, primarily used for employment and commercial uses. The LSC zone was rolled over from the previous zoning ordinance as a part of the 2014 Zoning Rewrite while the EOF zone was a new zone created as a part of the rewrite. In the EOF zone, residential densities are limited to 30 percent of the gross floor area (GFA) on the site while in the LSC zone, densities are limited to 30 percent of the mapped FAR. The LSC zone is intended to promote research, academic, and clinical facilities that advance the life sciences, health care services, and applied technologies. The EOF Zone is intended for office and employment activity combined with limited residential and neighborhood commercial uses.

THE 2014 ZONING REWRITE

As a part of the 2014 Zoning Rewrite, development standards for optional method projects were also modernized for the CR and Employment Zones. Notably, while several changes to the point system were discussed by the Planning Board and the Planning, Housing, and Economic Development (PHED) committee, only a few changes were implemented in the final version of the new code as adopted by the full council. However, the new code did enable the application of the incentive zones and the

point system countywide, and beyond just a handful of master plan geographies. Since 2014, the CR, CRT, LSC, and EOF zones have been applied within several new master planning areas, thereby expanding the optional method of development and the point system to new parts of the county.

The 2014 Zoning Rewrite retained the number of categories, points required, and maximum points achievable per benefit as they existed in the prior code, except for points related to MPDUs. The Council retained the PHED Committee's recommendation that projects could earn more points for providing more than 15 percent of total units as MPDUs, while two- and three-bedroom MPDUs were further incentivized. Projects could also receive additional height and density needed to accommodate additional MPDUs beyond the minimum 12.5 percent requirement, depending upon the number of MPDUs provided. Modifications were also made to the BLT requirement points calculation in the CR and LSC zone, and TDRs were added as a public benefit available for projects in a TDR Overlay zone. Additionally, the guidelines for including Major Public Facilities as a public benefit were amended to clarify the Planning Board's discretion to approve major public facilities that are not specifically recommended in a master plan.

IMPLEMENTATION GUIDELINES

The creation of the incentive zones required the Planning Board to publish and maintain a set of implementation guidelines to provide criteria for Planning Department staff, the Planning Board, applicants, and citizens to evaluate the adequacy of the public benefits proposed in an application for the optional method of development. The implementation guidelines list the menu of public benefit options and provide guidelines for evaluating each public benefit contained therein. The Incentive Density Guidelines were created in 2010 to implement the CR zone and later updated as a part of the 2014 Zoning Rewrite and applied to the CR, CRT, LSC, and EOF zones. The guidelines were adjusted again in 2017, when planning staff edited the text for clarity and added images to help communicate the intent and expectations for the various public benefits.

The Bethesda Downtown Plan, approved and adopted in 2017, modified the countywide Incentive Density point system for optional method development within the Plan area. This was motivated by the uniquely strong market conditions in Downtown Bethesda, as well as certain limiting conditions also unique to Bethesda. Downtown Bethesda as defined in the plan is entirely within one mile of a Metro station and given the dense nature of existing development in Bethesda, the lot sizes are very small, rendering certain public benefits moot. As a result, the Bethesda Overlay Zone (BOZ) does not award points for transit proximity or structured parking, in addition to raising the minimum requirements for certain public benefits to be higher than standards in the countywide guidelines. Similarly, Silver Spring Downtown and Adjacent Communities plan adopted an overlay zone that eliminated transit proximity but did not change the point system.

HOW DOES THE CURRENT POINT SYSTEM WORK?

The point system is the mechanism for granting density in the CR and Employment zones, in return for public benefits as part of the optional method of development. A project larger than the greater 0.5 FAR or 10,000 square feet of gross floor area in CR and LSC zones is required to include public benefits. For the CRT and EOF zones, the threshold is the greater of 1.0 FAR or 10,000 square feet of gross floor area. If a project does not exceed the threshold for size and FAR, it does not need to provide public benefits and is called standard method of development.

Technically, the point system only applies to projects approved after the CR and Employment zones were established, meaning there are some projects that exceeded the thresholds for minimum size or FAR but did not provide public benefits because they are legacy projects with older approvals. Most of these projects were located in the now extinguished Central Business District (CBD) zones and received additional height and density for public use and amenities. However, there was no point system or metric to evaluate what public benefit was being achieved. There are also other, unique instances such as mandatory referrals¹, where projects in the incentive zones did not provide public benefits even though they exceeded the maximum limits for standard method development and were built after 2010. This analysis distinguishes two types of projects: optional method projects (i.e., projects with public benefits) and standard method projects (i.e., projects without public benefits).

CR and Employment Zone Designation

CRT 2.0 C 1.0 R 1.5 H 60

- CRT** sets the uses and some requirements.
- 2.0** means the overall maximum building floor ratio (FAR) is a maximum of two times the size of the lot.
- C 1.0** is the maximum commercial FAR within the total 2.0 FAR.
- R 1.5** is the maximum residential floor area within the total 2.0 FAR.
- H 60** is the maximum building height—60 feet.

¹ Mandatory Referrals are plans submitted by government entities for any type of land acquisition, sale, use, or development activity. The Planning Board reviews the plans on an advisory basis and typically takes one of three possible actions: 1) approval without comments, 2) approval with comments; or 3) denial.

Table 1: Minimum Points and Public Benefit Categories Requirements by Zone

Zone	Tract Size OR Max Total FAR	Minimum Public Benefit Points	Minimum Number of Benefit Categories
CRT	< 10,000 SF OR < 1.5 max FAR	25	2
	≥ 10,000 SF OR ≥ 1.5 max FAR	50	3
CR	< 10,000 SF OR < 1.5 max FAR	50	3
	≥ 10,000 SF OR ≥ 1.5 max FAR	100	4
LSC	< 10,000 SF OR < 1.5 max FAR	15	1
	≥ 10,000 SF OR ≥ 1.5 max FAR	30	2
EOF	< 10,000 SF OR < 1.5 max FAR	30	2
	≥ 10,000 SF OR ≥ 1.5 max FAR	60	3

Source: Montgomery County Zoning Ordinance, 2023.

As shown in Table 2, the ‘menu’ of public benefits developers may provide covers a wide range of policy priorities. The categories of public benefits are selected during the Sketch Plan review and the actual public benefits are evaluated at the Site Plan review stage. Some public benefits are awarded points on a discretionary basis, where there is a maximum number of points and general guidelines for reviewers to assess the proposed public benefit. Other public benefits are awarded points on a formulaic basis, where the portion of the public benefit is relative to the site size and the number of points is determined as a fraction of the maximum available points awarded for the public benefit. Projects receive points for transit proximity based on the site’s distance to transit, with different thresholds of points available for projects abutting transit, up to one-quarter mile from transit, between one-quarter and one-half mile of transit, and between one-half and one mile of transit. These points are also sensitive to the nature of the transit itself, with the most points awarded for proximity to the Metrorail (‘Level 1’ Transit), followed by proximity to Bus Rapid Transit (BRT) (‘Level 2’ Transit), followed by proximity to MARC rail (‘Level 3’ Transit). Finally, there is no maximum number of points projects can receive for Moderately Priced Dwelling Units (MPDUs). Projects are also exempt from providing public benefits in addition to MPDUs if MPDUs equal or exceed 20 percent of a project’s total residential density.

Table 2: List of Public Benefits in the Incentive Density Implementation Guidelines

Category	Subcategories	Maximum Points (a)	Category	Subcategories	Maximum Points (a)
Category 1:	Major Public Facility		Category 5:	Quality Building and Site Design	
Subcategories:	None. Planning Board approves or denies the choice of public facility included in a project	70	Subcategories:	Architectural Elevations	20
				Exceptional Design	10
				Historic Resource Protection	20
				Public Art	20
				Public Open Space	15
				Structured Parking	20
				Tower Step-Back	10
Category 2:	Transit Proximity		Category 6:	Protection and Enhancement of the Natural Environment	
Subcategories:	None. Points awarded based on distance and type of transit.	50	Subcategories:	Building Lot Terminations	30
				Cool Roof	10
				Energy Conservation and Generation	15
				Habitat Preservation and Restoration	20
				Recycling Facility Plan	10
				Transferable Development Rights	20
				Tree Canopy	15
				Vegetated Area	10
				Vegetated Roof	15
				Vegetated Wall	10
Category 3:	Connectivity and Mobility		Category 7:	Retained Buildings	
Subcategories:	Advance Dedication	30	Subcategories:	None	100
	Minimum Parking	10			
	Neighborhood Services	15			
	Public Parking	25			
	Through-Block Connection	20			
	Transit Access Improvement	20			
	Streetscape Improvement	20			
	Trip Mitigation	20			
	Way Finding	10			
Category 4:	Diversity of Uses				
Subcategories:	Adaptive Buildings	15			
	Care Centers	20			
	Dwelling unit Mix	10			
	Enhanced Accessibility	20			
	Live/Work	15			
	MPDU (b)	n.a.			

Notes:

(a) The maximum number of points for certain categories is different in the [Bethesda Overlay Zone \(BOZ\)](#).

(b) There is no maximum number of points for MPDUs, and projects providing 20% MPDUs do not need to provide any other public benefits.

Source: Montgomery Planning, 2023.

Following the 2014 update, when the point system was implemented countywide, the intent was for Master Plans to guide the choice of public benefits. In the implementation chapter of every Master Plan since the zoning rewrite, if the Master Plan includes any of the four incentive zones, it also indicates which public benefits from the options shown in Table 2 should be prioritized when approving optional method development applications. As discussed in the data analysis of this report, public benefits delivered do not always reflect the Master Plan priorities.

PLANNING FRAMEWORK

COUNTY LEVEL POLICY GUIDANCE

Since the incentive zones were last updated in 2017, the County Council adopted several major policies and programs related to planning and development, including the County’s new General Plan (Thrive 2050), a Climate Action Plan (CAP), and Racial Equity and Social Justice (RESJ) Law. Each of these provides overall policy guidance that suggests ways to update the incentive zones and the point system. In addition, there are other policies that interact with the incentive zones and point system, including the County’s inclusionary zoning law, and two farmland preservation programs: Building Lot Terminations (BLTs) and Transfer of Development Rights (TDRs). The inclusionary zoning policy is also associated with incentives other than optional method density in the incentive zones, such as density bonuses and fee and tax abatement.

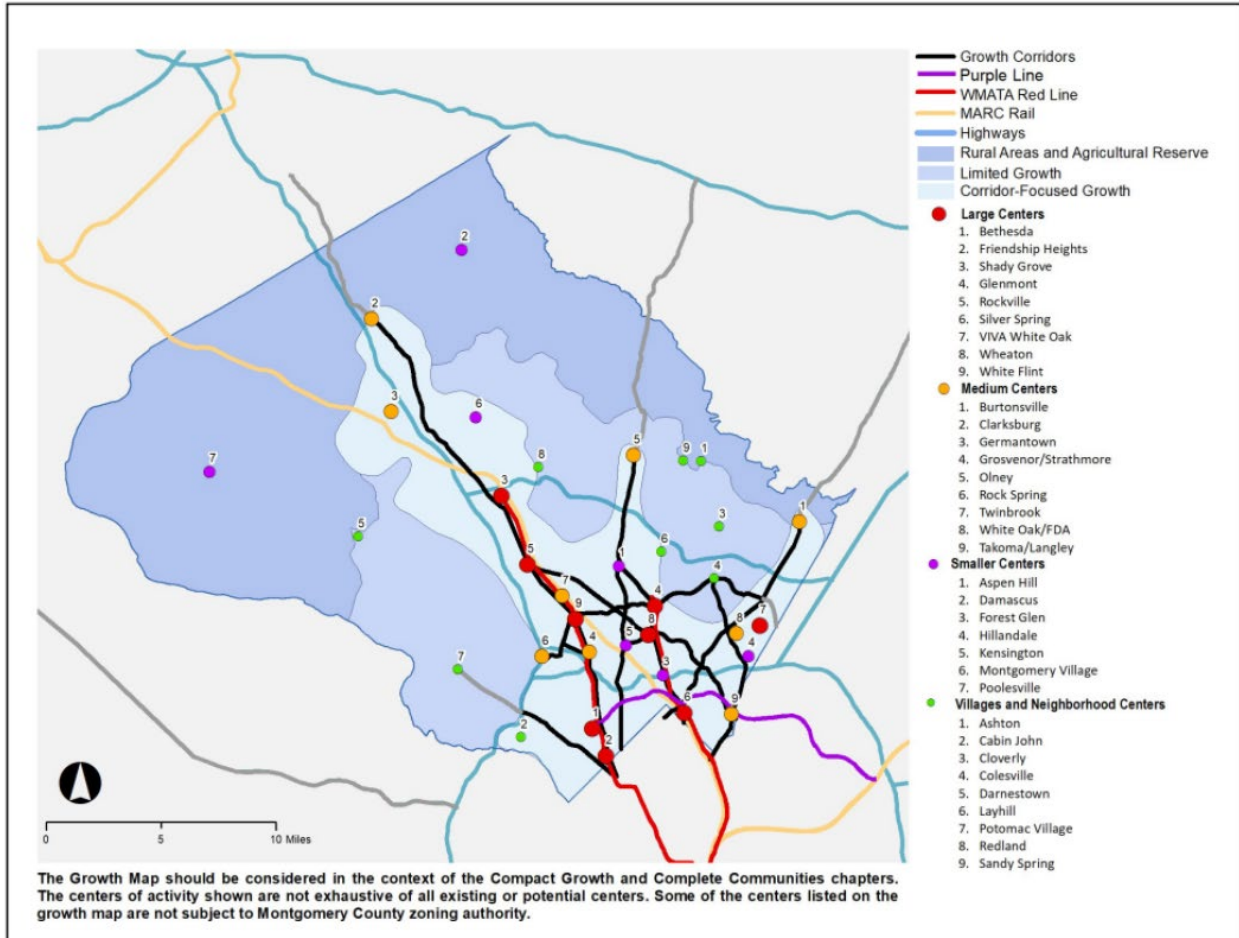
Thrive 2050

Thrive Montgomery 2050 (“The Plan”) is Montgomery County’s update to its General Plan. According to the Plan, “Thrive Montgomery 2050 aims to create communities that offer equitable access to jobs, more housing, transportation, parks, and public spaces. Just as importantly, it can help guide the design of the built environment to strengthen the social and physical health of our residents, supporting active lifestyles and encouraging interaction and engagement.” Thrive 2050’s supplementary Recommended Actions document includes specific recommendations relevant to the CR and Employment zones and the point system.

One of the key tenets of Thrive 2050 is supporting corridor-focused development. Specifically, the Plan states “Compact Footprints along Multiple Corridors are Central to Future Growth”. This is the fundamental role of the incentive zones; as the highest density zones in the county, they can guide corridor-focused growth, and ultimately, may serve this function with or without a public benefits requirement. Another key planning principle promoted in The Plan is “Complete Communities”, which promotes the creation of self-sustaining neighborhoods with a mix of uses within walking distance. To achieve Complete Communities, Thrive 2050 suggests a more flexible approach to zoning and land use, encouraging strategies such as allowing equal allocation of nonresidential FAR to residential FAR to maximize density on a site in cases where one use alone may not maximize the

density. Thrive 2050's recommended updates for the incentive zones also include analyzing the success of the BLT program².

Figure 2: Montgomery County Growth Map



Note: Thrive Montgomery 2050 identifies transit served corridors as the recommended areas to accommodate future growth in a compact footprint and the creation of activity centers of as “Complete Communities”

Thrive 2050 also includes some recommendations related to the point system, although the plan does not layout a detailed approach for a comprehensive overhaul. Such information would have been too detailed and premature to include in a General Plan. Recommendations to update the point system are generally limited to expanding or modifying the menu of public benefits. Specific public benefits recommended in Thrive 2050's 'Action Appendix' to be considered in an update to the policy are:

- Restoring streams/ecology
- Construction techniques that minimize impervious surface

² The office of Legislative Oversight recently prepared a report analyzing both the BLT and the TDR programs. [Transferable Development Rights and Building Lot Termination Programs in Montgomery County](#) (January 2023).

- Suburban/urban farming
- Design Excellence
- Adaptable Design
- Live-work units
- Public art (strengthen and streamline current incentives)
- Complete Streets
- Office Conversion
- Accessory Dwelling Units (ADUs)
- Larger units suitable for families (three bedrooms or larger)

Climate Action Plan

The Climate Action Plan (CAP) is Montgomery County’s strategic plan to cut greenhouse gas (GHG) emissions 80 percent by 2027 and 100 percent by 2035 compared to 2005 levels, with an emphasis on ensuring equitable outcomes. The CAP suggests a need to expand incentives for renewable energy generation, electrification of the power grid, limiting building emissions, and on-site stormwater management, although there is no direct reference to using optional method density as the incentive. In terms of expanding the menu of public benefits, the CAP recommends including community gardens as eligible for points. As an implementation strategy for achieving the goals of the CAP, the county council passed [Bill 3-22](#) in July 2022 which requires a climate assessment must be undertaken for all master plans and ZTA’s and submitted to the county council for its review alongside the primary documents.

Growth and Infrastructure Policy (GIP)

Montgomery Planning administers the Growth and Infrastructure Policy (GIP) to support the infrastructure demands of growth, updating it every four years. The intent of the GIP is to ensure that public facilities, particularly schools and transportation infrastructure, but also water and sewer services, are adequate to accommodate new development. The GIP lays out the criteria and guidance used for the administration of the Adequate Public Facility Ordinance (APFO). It outlines requirements for mitigating private development’s impact on public infrastructure. Every four years, Montgomery Planning staff initiate an effort to revisit the policy, which is then reviewed by the Planning Board and the County Council.

The GIP divides the County into two categories based on the character of their growth and that growth’s impact on schools: Infill Impact Areas and Turnover Impact Areas. These two categories, in addition to housing type, determine the school impact taxes that are charged. Impact taxes are lower for Infill Impact Areas, which are defined to have high housing growth, predominantly in the form of multifamily units, generating fewer students on a per unit basis. Turnover Area have low housing growth, and enrollment growth here is largely due to turnover of existing single-family units. Given that the incentive zones are located around transit and in urban or urbanizing areas, most development in the incentive zones are currently subject to the Infill Impact Area school impact tax. Additionally, the utilization rate and seat deficit rate (i.e., school capacity) will determine whether

a project must pay a Utilization Premium Payment (UPP) above the school impact tax to account for the impact of building near schools with high-capacity utilization rates.

Similarly, the GIP divides the county into four transportation policy areas based on transportation characteristics. Transportation policy areas are generally consistent with planning boundaries (i.e., sector plan or master plan boundaries). Depending on the policy area, new development must meet minimum standards for motor vehicle system adequacy, pedestrian system adequacy, bicycle system adequacy, and bus transit system adequacy. Depending on their location, development applicants are required to conduct a Local Area Transportation Review (LATR) study to generate a list of transportation improvements that are required to meet the adequacy standards. To ensure that off-site transportation system requirements are not out of proportion with a project's impact on the overall safety and functionality of the transportation system, the LATR Proportionality Guide provides the Planning Board with guidance on establishing a maximum cost of improvements an applicant is required to construct or fund to address deficiencies identified in the LATR study.

As of 2023, projects are not eligible for public benefit points for complying with the GIP and APFO as the fees and impact-mitigation requirements are based on growth-related impacts.

Racial Equity and Social Justice Law

In December 2020, the Montgomery County Council passed The Racial Equity and Social Justice (RESJ) Act, establishing the Office of Racial Equity and Social Justice (ORESJ) within the County government. The ORESJ supports aligning the work of the County government with RESJ principles. This requires all County departments to assess how their policies, practices, and procedures support or undermine equity. As a result, all planning policies must be analyzed through a RESJ lens and must include this analysis in any policy consideration.

OTHER COUNTY LAWS AND INCENTIVE PROGRAMS

Moderately Priced Dwelling Units (MPDUs)

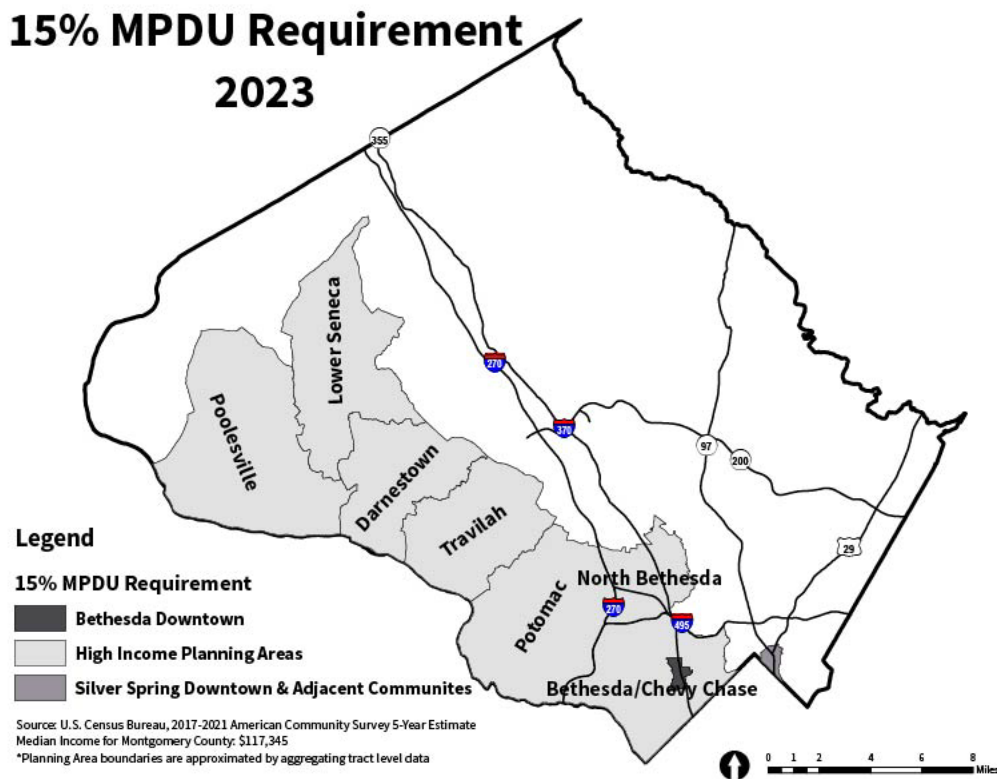
Montgomery County's Moderately Priced Dwelling Units (MPDU) program, enacted in 1974, is the country's first mandatory inclusionary zoning law. Under Chapter 25A, any project with 20 or more units must provide 12.5 to 15 percent MPDUs. MPDUs in garden-style multifamily apartments must be affordable to households earning up to 65 percent of the Area Median Income (AMI), while MPDUs in for-sale developments or high-rise apartment buildings must be affordable to households earning up to 70 percent AMI. For properties providing 11-19 units, MPDUs are not required on site, but a payment must be made to the county's housing trust fund, the Housing Initiative Fund (HIF). Currently, the amount of payment required to the HIF is equal to one-half percent of the purchase price of each dwelling unit.

Some Master Plans have increased the minimum required MPDUs to 15 percent, including the Silver Spring Downtown and Adjacent Communities Plan (2022), and the Bethesda Downtown Plan (2017).

Furthermore, in 2018, the County Council passed [Bill 38-17](#), which requires minimum 15 percent in MPDUs in planning areas where 45 percent of the census tract earns more than 150 percent of the AMI. High Income Planning Areas are shown in Figure 2.

The County Council also passed Zoning Text Amendment ([ZTA](#) 18-06 in 2018, effectively increasing the maximum allowable density bonus for including MPDUs. Prior to 2018, the maximum density bonus was 22 percent for including 15 percent MPDUs, and no additional bonus for including MPDUs beyond 15 percent. Since the ZTA’s adoption, projects receive incremental density bonuses up to 35 percent, for including up to 25 percent MPDUs.

Figure 3: High Income Planning Areas, 2023



Notes:

(a) For 2023, the Planning Areas of the county that have a 15 percent MPDU requirement include Poolesville, Lower Seneca, Darnestown, Travilah, Potomac, North Bethesda, and Bethesda Chevy Chase.

Source: Montgomery Planning, 2023.

In all Master Plan Areas other than the Bethesda Overlay Zone, projects may receive public benefit points for all MPDUs above the 12.5 percent minimum requirement, while in the Bethesda Overlay Zone, projects may only receive points for MPDUs above a 15 percent requirement. Projects also

receive additional points for providing a higher share of two- and three-bedroom MPDUs compared to the share of two- and three-bedroom market-rate units³. Projects providing 20 percent MPDUs or more do not need to provide any other public benefits.

In addition to points, there are other incentives for including MPDUs, regardless of the underlying zoning. As a result, developers providing more than the minimum required MPDUs in the Incentive Zones may be doing so not only to receive public benefit points, but also because they are associated with other financial and development incentives. The incentives other than the public benefit points are summarized in Table 5.

³ Affordable Housing (page 44), [Commercial/Residential and Employment Zones Incentive Density Implementation Guidelines](#) (September 2017).

Table 3: Incentives for Providing Moderately Priced Dwelling Units

Incentive	Details
Density Bonus (a)	<p>Tier 1 - Density bonus of 0.88% for each 0.1% increase in MPDUs above 12.5% up to and including 15%.</p> <p>Tier 2 - 22% density bonus plus 0.16% density bonus for each 0.1% increase in MPDUs above 15%, up to and including 20%.</p> <p>Tier 3 - 30% density bonus plus a 0.1% density bonus for each increase in MPDUs above 20%.</p>
Height Bonus	<p>For projects exceeding 12.5% MPDUs, the maximum height limit may be increased to accommodate the MPDUs.</p> <p>The additional height is calculated as the total MPDU floor area divided by the average residential floor plate. Each whole number and remaining fraction allow for an increase of one additional floor of 12 feet.</p>
Impact Fee Waiver	<p>Development impact taxes are not imposed on any MPDU.</p> <p>For projects providing 25 percent MPDUs, the applicable school and transportation impact taxes are discounted by an amount equivalent to the lowest standard impact tax in the county for the applicable dwelling units</p>
Payment In-Lieu of Taxes (PILOT) for WMATA-owned Properties	<p>Majority market-rate developments are eligible to apply for a PILOT on property leased from WMATA (i.e., on Metro property).</p> <p>50% of the project must consist of one or more high-rise residential apartment buildings located on land leased from WMATA at a metro station.</p> <p>The project must also include minimum 25% MPDUs affordable to 50% of AMI.</p>

Source: Montgomery Planning, 2023.

Building Lot Termination (BLT)

The Building Lot Termination (BLT) Program is a farmland preservation tool. A BLT easement restricts residential, commercial, industrial, and other non-agricultural uses on a given property. Creating a BLT easement can provide additional compensation to a landowner who can demonstrate that the land is capable of residential development and agrees to forgo that development and terminate the approved waste disposal system associated with the lot. All optional method development in the CR and LSC zones is required to purchase BLTs based on a formula stipulated in the implementation

guidelines⁴, although projects are awarded points for the BLT requirements. Any project may purchase additional BLTs and receive additional points, including projects in the CRT and EOF zones where a BLT is not required for optional method development.

Transfer of Development Rights (TDR)

Like BLTs, the Transfer of Development Rights (TDR) program helps to preserve farmland in the Agricultural Reserve. The TDR program predates the BLT program. Private property owners in the agricultural reserve (“sending area”) may sell their development rights on a private exchange to development in places designated as “receiving areas”. Receiving areas are intended to be strategically located in places where there is demand for density, creating a market for the density from the sending areas. In the 2014 zoning rewrite, purchasing TDRs was added to the menu of public benefits for optional method development in the incentive zones, although to date, no optional method project has purchased a TDR to receive public benefit points⁵.

THEMES TO EXPLORE

Below is a list of themes that will be explored through the planning process for the Incentive Zoning Update. It is anticipated that additional questions will come up as the engagement effort and existing conditions analysis are further undertaken. No issue will be studied in a vacuum; all recommendations will be considered as part of a holistic approach to shaping the update.

Review the Performance of the Point System Since its Inception in 2010

As a part of the overall analysis, planning staff has been collecting data about how many and what type of public benefits have been delivered to date. We will analyze this data in a variety of ways, including parsing it out by planning divisions, specific master plan geographies, and equity emphasis areas, to name a few. Staff will also examine the pattern of delivery for specific benefits and compare the delivery of actual public benefits to the ones that were prioritized by master plans and other county programs. This objective evaluation will help staff understand the need and scale for an update to the point system. The scope of our recommendations will be informed by the results of our data analysis and stakeholder input and could range from minor tweaks to substantial changes.

Understand the Costs and Financial Incentives Related to the Current Point System

⁴ Building Lot Termination (page 66), [Commercial/Residential and Employment Zones Incentive Density Implementation Guidelines](#) (September 2017).

⁵ The Montgomery County Office of Legislative Oversight (OLO) prepared a report in January 2022 that examines the history of the TDR and BLT programs and assesses how well implementation over time has aligned with program goals and objectives: https://www.montgomerycountymd.gov/OLO/Resources/Files/2023_reports/OLOReport2023-1.pdf

Working with a consultant, planning staff will undertake a financial analysis to estimate the cost associated with providing each public benefit under the existing policy from the following categories: Major Public Facilities, Transit Proximity, Connectivity and Mobility, Diversity of Uses and Activities, Quality Building and Site Design, Protection of the Natural Environment, and Retained Buildings. Certain public benefits will require a range of estimates to account for variation by location or project type. Some public benefits may need to be priced on a square foot basis, while others may have lump sum costs. Staff will work with the consultant to craft an appropriate approach for pricing each of these development costs (i.e., developer interviews, construction cost databases, etc.). Staff will also examine other benefits beyond the points themselves that are offered to developers such as additional density, height, and reduced impact fees etc. to fully understand the “value” developers receive when building under the optional method of development. This analysis will provide a sound estimate of the cost to include the public benefits in a development project as well as the financial incentives available to developers and will thereby inform assumptions while testing the feasibility of future recommendations.

Compare the Policy to Regional and National Programs

It is important to compare our policy to peer jurisdictions from the region and beyond. The consultant will provide case studies of incentive zoning for public benefits in similar markets. The case studies will provide an overview of how the policy is implemented, as well as the parties involved in implementing it. The overview will describe the range of public benefits required, the methods by which developers can comply with the policy, the flexibility to negotiate between jurisdictions and developers, the pros and cons of the policy, and any notably successful projects under the policy. Based on this comparative analysis, the consultant will highlight best practices that could be considered for implementation as a part of this update.

Align the Point System with Updated County Priorities

Several landmark countywide policies have been adopted in the past five years and each provides some guidance about how the point system should be updated to further goals related to enhancing the county’s economic competitiveness, boosting environmental resilience in the face of a changing climate, and ensuring that social justice and equity are a centerpiece of all planning outcomes. Planning Staff will examine the county’s adopted general plan Thrive Montgomery 2050, the Climate Action Plan, and County’s Racial Equity and Social Justice Act to consider how changes could be made to the point system to better align it with goals stated in these overarching regulations.

Consider the Role of Master Plans in the Delivery of Public Benefits

Master and sector plans currently prioritize certain public benefits from the overall menu for the geographies they control. Staff will analyze how successful these plans have been in promoting certain public benefits and also consider how much influence individual plans should exert in encouraging the delivery of certain public benefits above others. Staff will also explore what the most impactful practices might be to ensure that the delivery of public benefits in a given area aligns with

the vision of the applicable master/sector plan while also promoting countywide planning and development goals.

Modernize the Point System to Address Current Building Industry Standards and Real Estate Practices

Working with partner county agencies, planning staff will analyze the current standards and the state of the practice as they relate to building construction, sustainable planning and design, accessibility, etc. to gain an understanding of what elements are presently required by law. Working alongside the consultant, staff will also gain an understanding of current real estate practices that may be significantly different than what was the norm when the policy was initially created, and consider what implications these changes may have on the efficacy of the point system in delivering public benefits above and beyond de jure requirements.

Develop Clear Standards to Effectively Maximize the Positive Impact of Public Benefits

Once the proposed recommendations for updating the current point system is drafted, staff will evaluate how clear standards could be set in place that will be easy to understand and implement the updates requirements. Care will be taken to craft standards in a way that they don't become outdated quickly with changes in planning practices, technological advancements in various sectors, or evolving real estate trends.

Configure the Process of Implementing the Policy to be Clearer and More Efficient

Planning staff will evaluate regulatory mechanisms to implement the suggested changes and recommend these changes for the Planning Board's review. Recommendations will also include strategies to transition from the current policy as well as modernizing the monitoring and implementation of the point system moving forward.

Define Success and Strike the Right Balance

Lastly, and perhaps most importantly, this effort will reframe what success looks like for this policy for the next decade of its existence. Staff will outline the overarching goals that should guide this update and highlight the most pressing needs facing the county, related to planning and development. Staff hopes to identify best practices for implementing incentive zoning and recommend actionable changes to the policy that balance public benefits required, the cost of development, and overall county goals.

COMMUNITY OUTREACH AND ENGAGEMENT STRATEGY

Equitable and impactful community engagement is central to Montgomery Planning's work. Accordingly, the planning team will use a multi-pronged approach to engage stakeholders and community members. In addition to the data analysis, the project team will rely upon input from the

following internal and external stakeholders to gain a fuller understanding of the issues to be considered and the potential impacts of proposed changes.

- An internal working group of staff from various divisions will provide insights to the project team regarding the strengths and weaknesses of the current system as experienced during the master planning process, as well share obstacles faced during implementation of the current policy through regulatory review. The internal working group will also act as a fact checking body for the project team’s analysis and assumptions, and identify potential opportunities for enhancements for all deliverables.
- A technical working group representing frequent users and monitors of the current point system including real estate and design professionals, county agency and government representatives, land use attorneys and policy experts etc. will share lessons learned from utilizing the current policy, relate the experience of working under similar programs in peer jurisdictions, and highlight the greatest needs this update should address.
- One-on-one meetings with various interest groups with a stake in specific aspects of the current point system, including public agencies, non-profits, advocacy groups, and business representatives etc. will help staff gain a deeper understanding of the various considerations to be accounted for while drafting recommendations.
- In-person and virtual public meetings will invite residents into the planning process and provide opportunities to question, comment, and share ideas about the current policy and potential updates. Planning staff will pay additional attention to invite community members who live and work in neighborhoods where incentive zoning is currently established since these residents are most directly affected by the delivery of public benefits.

Throughout the engagement process, planning staff will seek to understand and integrate the interests of stakeholders. This process will start with listening sessions to gather feedback and during subsequent stages, planning staff will present potential ideas and solicit further stakeholder input. This input will be considered along with the findings of our data analysis and the technical expertise of staff and consultant when formulating recommendations. Due consideration will be given to ensure that proposed recommendations do not negatively impact disadvantaged or marginalized groups.

PROJECT SCHEDULE

Planning staff is presenting the scope of work to the Planning Board in spring 2023. Working alongside a consultant, staff will undertake a robust analysis of the current point system and conduct outreach to stakeholders through the summer of 2023. Staff will prepare a summary of the analysis and input received and share it with the Planning Board and stakeholders by late summer/early fall 2023. Staff will then develop preliminary recommendations in fall 2023 and aim to present them to the Planning Board in early 2024. The Planning Board will direct staff towards a finalized set of

recommendations, which staff will present to the County Council following the Planning Board’s review.

August – October 2022:	Pre-planning
October–December 2022:	Preliminary data collection
January–July 2023:	Existing conditions analysis & stakeholder outreach
August - December 2023:	Drafting preliminary recommendations & continued outreach
January - September 2024:	Planning board review
October - December 2024:	Council briefings and review

PRELIMINARY DATA COLLECTION

This section of the staff report summarizes early data compilation efforts and analysis conducted to date by planning staff. This portion of the analysis is primarily concerned with the delivery of public benefits, meaning the focus of the analysis is optional method projects in the incentive zones since policy was established in 2010. This analysis describes the total amount of development in these projects and the public benefits they delivered between 01/01/2010 and 08/17/2022, which is when staff pulled together the overall pool of development data. Planning staff and a consultant will expand upon this early analytical work and share key findings with the planning board in the summer of 2023.

Data Analysis Methodology

Planning staff has developed a dataset of all optional method development in the incentive zones since 2010, which is all the development to which the point system has been applied. Creating this dataset first required identifying all the relevant projects, and then entering details into a spreadsheet. Since Montgomery Planning has only monitored optional method development in the incentive zones for specific sector plans, identifying relevant projects across the county required cross-checking the Intake Division’s development application dataset with the in-house GIS dataset that tracks approved development applications. Additionally, neither dataset had complete development details on the projects nor tracked public benefits, so this data was collated into the spreadsheet from multiple sources including planning board resolutions, staff reports, and certified site plans obtained from DAIC.

Optional method projects in incentive zones are easy to identify because they must have approved sketch⁶ and site⁷ plans. The dataset in this analysis was created by identifying all projects in

⁶ A sketch Plan is a conceptual design that establishes a basic building, open space and circulation framework for future, more detailed planning approvals. It serves as an initial agreement between the applicant and the Planning Board about the public benefits that will be provided for the proposed density. All optional method projects within the incentive zones must submit a sketch plan.

⁷ A site plan is a detailed plan, required only in certain cases, that shows proposed development on a property in relation to immediately adjacent areas. It indicates roads, walks, parking areas, buildings, landscaping, open spaces, recreation facilities, lighting, etc. The Planning Board approves the site plan after sketch plan approval and

CR/CRT/LSC/EOF zones with approved sketch and site plans (i.e., optional method projects) since January 2010, when the policy was approved. This dataset has undergone several rounds of quality control and staff will continue to monitor and remove any additional discrepancies.

The dataset includes details from approved sketch plans, therefore showing the full scope of the developer's proposal, and from approved site plans, showing what the developer is committed to building when they pull a building permit. Some sketch plans include multiple phases, including the phasing of public benefits, with site plans approving one or all the phases in the sketch plan, depending on the project. A sketch plan can therefore be associated with multiple site plans. Notably, sketch plan details may be amended at site plan, including which public benefits must be provided. Given that developers are committed to public benefits approved in site plans and because the Department of Permitting Services tracks the construction of projects based on the certified site plans approved by the Planning Board, public benefits in approved site plans provide a good estimate for public benefits committed for delivery. Similarly, development in approved site plans provides a sound assumption about development committed for delivery under the optional method in the incentive zones.

Several non-optional method projects have also been approved since 2010 in the incentive zones. Some are standard method projects that do not trigger the development thresholds and do not provide public benefits. Standard method projects are typically not required to submit approved sketch or site plans, but sometimes may need to obtain an approved preliminary plan for subdivision purposes. There are also legacy projects with older approvals predating this policy that do not provide public benefits. These projects could be smaller or larger than the development thresholds for optional method of development.

Of these non-optional method projects, planning staff has thus far identified 97 non-optional method site plans approved since 2010, although it is unclear whether these site plans are associated with standard method development, projects with older approvals, or unique application types such as mandatory referrals filed by another public agency. Staff has also not yet identified the standard method projects in the incentive zones that do not have a site plan, and it is unclear how many such projects there are because typically standard method projects are not required to submit a site plan. Staff will continue to analyze non-optional method projects in the incentive zones since 2010.

The analytical methodology includes describing the details of total development under the optional method in the incentive zones in terms of total square footage, lot size, residential units, parking, and other details specific to the site and building. It also includes describing the public benefits in terms of frequency, total points awarded, and average points awarded. The analysis also examines the distribution of public benefits across different subsets of projects, such as by Planning Area. The total development in the dataset is placed in the context of the total development potential in the zones,

before building permits can be issued. All optional method project must submit both a sketch and a site plan, however, in some cases these two applications can be submitted concurrently.

and the total land area the zones occupy in the county. While non-optional method projects in the incentive zones are not included in the dataset as they do not provide public benefits, this analysis will eventually compare total development yields in the incentive zones in terms of optional method vs non-optional method projects. The consultant’s financial and feasibility analysis will also be critical for contextualizing findings from the dataset. Finally, all findings from the data analysis will be discussed with internal and external stakeholders, with additional analysis conducted as needed.

Data Transparency

Staff uploaded the dataset on to the project website for the public to view and analyze and will continue to examine and update the dataset, particularly as the consultant’s financial study reveals new findings and perspectives. Despite the ongoing internal analysis, planning staff invites all interested parties to review the dataset and we hope that stakeholders will use the data to formulate questions or comments related to the project.

SUMMARY OF TOTAL DEVELOPMENT

Since 2010, the Planning Board has approved 64 sketch plans, associated with 67 approved site plans, as shown in Table 6. Thus, there have been 64 optional method projects approved in the incentive zones between January 2010 and August 2022 (i.e., projects that included public benefits). Discussed in more detail in the Public Benefits section of this analysis, the 64 projects are associated with 567 total public benefits, suggesting developers provide nine public benefits on average to meet their minimum points requirements. There has been 37.6 million square feet of development approved in the 64 sketch plans, and 30.2 million square feet approved in the 67 site plans. Put another way, 30.2 million square feet of the 37.6 million square feet that the planning board has approved has actually been built, is under construction, or is in the near-term delivery pipeline.

Table 4: Total Optional Method Site Plans and Approved Public Benefits

	<u>Overall</u>	<u>Downcounty</u>	<u>Midcounty</u>	<u>Upcounty</u>
<u>Approved Benefits (i.e. total subcategories)</u>				
Total Projects	64	37	24	3
Approved Benefits in Site Plans	567	310	232	25
<i>Avg. Approved Benefits in Site Plans</i>	<i>8.9</i>	<i>8.4</i>	<i>9.7</i>	<i>8.3</i>

Source: Montgomery Planning

As Table 7 shows, 80 percent of total development proposed in sketch plans was approved in site plans. Within that overall development, 83 percent of the residential development proposed (in terms of square feet) in sketch plans was approved in site plans, compared to just 73 percent of non-residential development. This implies that developers have a greater ability to deliver the residential development they are seeking approvals for compared to nonresidential development, which is

generally in line with market conditions since 2010 (i.e., consistently high demand for housing, and inconsistent and uncertain demand for retail and office).

Table 5: Overall Development Approved in Sketch and Site Plans

Overall Development	Total Residential Development (sf)	Total Nonresidential Development (sf)	Total Development (sf)
Approved in Sketch Plans	26,788,346	10,807,381	37,595,727
Approved in Site Plans	22,240,685	7,911,998	30,152,683
<i>Percent of Sketch Delivered at Site</i>	83.0%	73.2%	80.2%

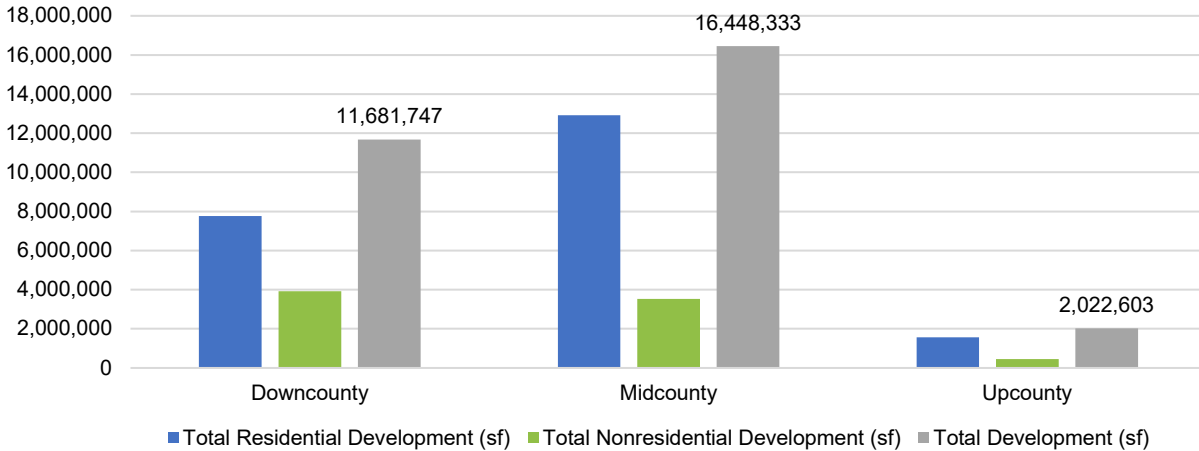
Source: Montgomery Planning, 2023.

Midcounty accounts for the most development of any of three County Planning Divisions, with 16.5 million (55 percent) of the development approved in site plans, compared to 11.7 million in Downcounty (39 percent). By contrast, Upcounty accounts for just seven percent of 30.2 million square feet approved in site plans, in just three projects. A few factors likely account for the discrepancy in development between Down and Midcounty, and Upcounty: a generally lower amount of transit adjacent land with incentive zoning in place, the availability of large sites in Upcounty, and the lower rents in Upcounty.

With relatively large sites, Upcounty development can generate a significant yield of residential units and nonresidential development without triggering the optional method of development, meaning that more development may be approved under the standard method and does not require public benefits. Moreover, residential, and non-residential rents are unlikely to support high rise construction and structured parking with expensive materials such as steel and concrete, meaning the projects typically are surface-parked and buildings use wood construction. Together, these development constraints may limit the density that can be achieved and influence developers to stay below optional method thresholds.

Similarly, lot sizes and market conditions may explain the differences in development yield between Down and Midcounty. Lot sizes in Midcounty tend to be larger, meaning they can accommodate more total development. Indeed, Midcounty does have a strong market for housing, with similar albeit slightly lower rents and sale prices than Downcounty. However, Midcounty has a weaker market for commercial development than Downcounty, which includes two major employment centers in downtown Silver Spring and downtown Bethesda. Since 2010, Downcounty has 3.9 million square feet in approved commercial development optional method site plans, compared to 3.5 million in Midcounty, even though Midcounty has 4.8 million more square feet of total development approved in site plans. This is summarized in Figure 3.

Figure 4: Overall Development Approved at Site Plan by Planning Division



Source: Montgomery Planning, 2023.

RESIDENTIAL DEVELOPMENT

The 22.2 million square feet of residential development under the optional method in the incentive zones translates to 18,802 units, including 2,936 Moderately Priced Dwelling Units (MPDUs). The distribution of dwelling units by Planning Division corresponds with the distribution of total development, with Downcounty accounting for 44 percent of dwelling units, Midcounty accounting for 52 percent, and Upcounty accounting for five percent. The average residential square footage per dwelling unit (i.e., average unit size) is 943 square feet in Downcounty, 1,331 square feet in Midcounty, and 1,786 square feet in Upcounty, likely due to differences in the lot sizes and market conditions in each Planning Division. Table 8 summarizes the optional method residential development in the incentive zones since 2010.

Table 6: Residential Development Approved in Site Plans by Planning Division

Planning Division	Dwelling Units (a)	Total MPDUs (a)	MPDU % (a)	Total Residential Development (sf)	Average Residential sf per Dwelling Unit
Downcounty					
Sketch Plan	7,474	1,234	n.a.	9,127,571	n.a.
Site Plan	8,226	1,346	16.4%	7,761,035	943
<i>% Delivered at Site Plan</i>				85%	
Midcounty					
Sketch Plan	11,578	1,204	n.a.	15,529,343	n.a.
Site Plan	9,700	1,434	14.8%	12,915,400	1,331
<i>% Delivered at Site Plan</i>				83%	
Upcounty					
Sketch Plan	876	110	n.a.	2,131,432	n.a.
Site Plan	876	171	19.5%	1,564,250	1,786
<i>% Delivered at Site Plan</i>				73%	
Countywide					
Sketch Plan	19,928	2,549	n.a.	26,788,346	n.a.
Site Plan	18,802	2,951	15.7%	22,240,685	1,183
<i>% Delivered at Site Plan</i>				83%	

Notes:

(a) Some projects do not indicate the total number of units or MPDUs during the sketch plan phase, while some projects only provide estimates of unit totals. Unit totals are confirmed at site plan. Thus, the difference between dwelling units at sketch plan versus site plan is not a meaningful figure. Similarly, the share of MPDUs out of the total dwelling units proposed in sketch plans is not representative of the total share of MPDUs because some sketch plans do not indicate a number of dwelling units.

Source: Montgomery Planning, 2023.

Moderately Priced Dwelling Units (MPDUs)

Moderately Priced Dwelling Units (MPDUs) are an important component of the residential development in the incentive zones. A critical county priority, there is no cap on the points a project can receive for providing MPDUs. Projects that include 20 percent or more MPDUs are also exempt from providing any other public benefits. The minimum MPDU requirement for any residential project of 20 units or more, in any zone, is of 12.5 percent of the overall units. In some master plan areas, the minimum requirement is 15 percent, although developers may receive public benefit points for all units above the 12.5 percent requirement. Some master plans simply require a minimum of 15 percent MPDUs and only provide points for exceeding 15 percent.

In total, of the 18,802 dwelling units in approved optional method site plans, 2,951 (15.7 percent) are MPDUs, in line with most Master Plan requirements and importantly, above the county's minimum requirement of 12.5 percent. Interestingly, as shown in Table 9, the share of MPDUs in Downcounty was slightly higher than average, at 16.4 percent, compared to 14.8 percent in Midcounty. There was relatively little optional method development in Upcounty generally. Of the three projects in Upcounty, one provided 25 percent MPDUs while the other two provided 12.5 percent MPDUs.

Table 7: MPDU Threshold in Site Plans, by Planning Area

MPDU Threshold	Countywide		Downcounty		Midcounty		Upcounty	
	Total		Total		Total		Total	
	Site Plans	MPDUs	Site Plans	MPDUs	Site Plans	MPDUs	Site Plans	MPDUs
12.5% or below	13	467	6	163	6	282	1	22
12.6% to 14.9%	13	537	4	117	8	393	1	27
15%	3	150	3	150	0	0	0	0
15.1% to 19.9%	20	1,040	15	547	5	493	0	0
20.1% or more	10	757	3	369	6	266	1	122
Total	59	2,951	31	1,346	25	1,434	3	171
Total Dwelling Units	18,802		8,226		9,700		876	
MPDUs as % of Dwelling Units	15.7%		16.4%		14.8%		19.5%	
Site Plans Providing More than 15% MPDUs	30		18		11		1	

Notes:

(a) There are seven total site plans that only included commercial development. In addition, two site plans with residential development did not include MPDUs. They are Brightview Bethesda (assisted living facility) and 4702 West Virginia (fewer than 20 dwelling units).

Source: Montgomery Planning, 2023.

The data in Table 9 includes projects that provided 20 percent MPDUs or more. However, such projects do not need to provide any other public benefits. Removing these projects from the dataset reveals the MPDU percentage in projects that provided multiple public benefits, including MPDUs, summarized in Table 10. Such projects provided 13.8 percent MPDUs in total, less than the 15 percent required in many Master Plans with the incentive zones. In Downcounty, projects with less than 20 percent MPDUs provided 14.2 percent MPDUs in total.

As MPDUs are also associated with additional incentives like fee waivers, tax abatements, and density and height bonuses, it is possible that those additional incentives are more valuable in Downcounty than Midcounty. For example, with smaller site sizes in Downcounty, and due to a stronger real estate market in downtown Bethesda and Silver Spring, it is plausible that to maximize density, developers already need to use high rise construction with more expensive materials like steel and concrete. In such cases, it is easier to add additional height to accommodate more density and the additional incentives mentioned above may more strongly influence the development program to include more MPDUs. Additionally, the ability to get more units (market rate and affordable) by using the density and height bonus may be a greater incentive in stronger Downcounty markets than elsewhere. By contrast, larger lot sizes, the inability to afford high-rise steel and concrete construction to maximize the mapped density, coupled with lower rents in Midcounty could make the incentives less attractive there. MPDUs will be the focus of additional analysis throughout this project, including a cost analysis for the true, marginal cost of providing MPDUs, accounting for incentives.

Table 8: MPDU Threshold in Projects Providing Fewer Than 20 percent MPDUs, by Planning Area

MPDU Threshold	Countywide		Downcounty		Midcounty		Upcounty	
	Total		Total		Total		Total	
	Site Plans	MPDUs	Site Plans	MPDUs	Site Plans	MPDUs	Site Plans	MPDUs
12.5% or below	13	468	6	164	6	282	1	22
12.6% to 14.9%	12	523	3	103	8	393	1	27
15%	3	150	3	150	0	0	0	0
15.1% to 20%	20	1,010	15	517	5	493	0	0
20.1% or more	0	0	0	0	0	0	0	0
Total	48	2,151	27	934	19	1,168	2	49
Total Dwelling Units	15,563		6,581		8,594		388	
<i>MPDUs as % of Dwelling Units</i>	13.8%		14.2%		13.6%		12.6%	
<i>Site Plans Providing More than 15% MPDUs</i>	20		15		5		0	

Source: Montgomery Planning, 2023.

As described in Project Background section, the county updated its density bonus policy for MPDUs in 2018. Previously, the maximum density bonus was 22 percent for including 15 percent MPDUs, and no additional bonus was given for including MPDUs beyond 15 percent. Since 2018, projects receive incremental density bonuses up to 35 percent, for including up to 25 percent MPDUs. This has had a noticeable effect on MPDUs as a percentage of total dwelling units delivered under the optional method in the incentive zones in Midcounty. Whereas Table 9 shows that the MPDU percentage was 14.7 percent for all Midcounty projects in the dataset, Table 11 below shows that after 2018, the MPDU percentage in Midcounty increased to 17.2 percent of total dwelling units. The MPDU percentage in Downcounty (16.4 percent) did not change as a result of the policy update.

Table 9: MPDU Threshold in Projects Approved After 2018 Update to the MPDU Law

MPDU Threshold	Countywide		Downcounty		Midcounty		Upcounty	
	Site Plans	MPDUs	Site Plans	MPDUs	Site Plans	MPDUs	Site Plans	MPDUs
12.5% or below	1	0	1	0	0	0	0	0
12.6% to 14.9%	2	58	0	0	2	58	0	0
15%	0	0	0	0	0	0	0	0
15.1% to 19.9%	12	391	9	252	3	139	0	0
20.1% or more	5	150	1	24	4	126	0	0
Total	20	599	11	276	9	323	0	0
Total Dwelling Units	3,569		1,687		1,882		0	
<i>MPDUs as % of Dwelling Units</i>	16.8%		16.4%		17.2%		0.0%	
<i>Site Plans Providing More than 15% MPDUs</i>	85.0%		90.9%		77.8%		0.0%	

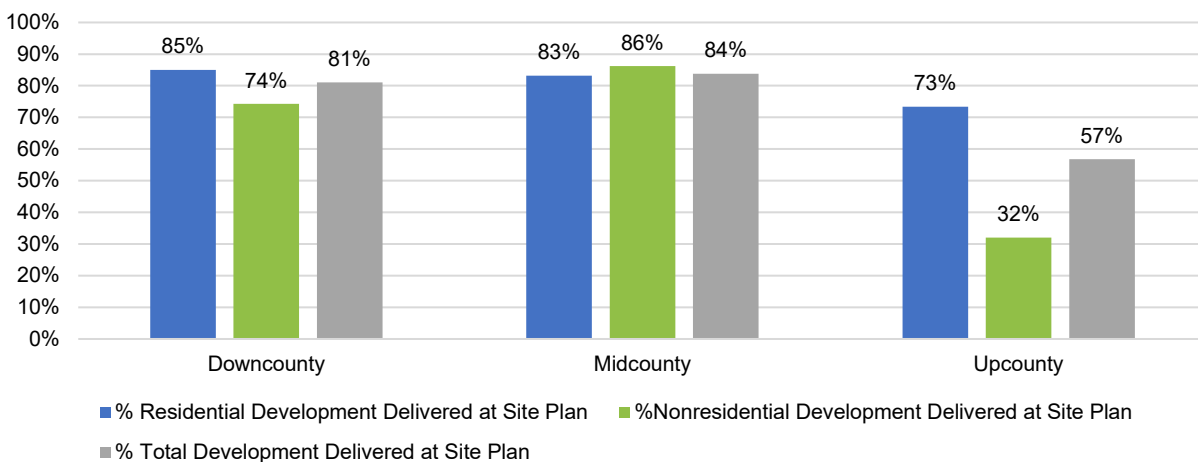
Source: Montgomery Planning, 2023.

NONRESIDENTIAL DEVELOPMENT

As shown in Figure 4, a smaller share of the nonresidential development approved in Downcounty sketch plans was approved in site plans (74 percent) than in Midcounty (86 percent). Nonetheless, the overall demand for non-residential development is greater in Downcounty, stemming largely from a stronger demand for retail and office in downtown Silver Spring and downtown Bethesda. As described in Figure 3 in the previous section, there is 3.9 million square feet of non-residential development approved in Downcounty site plans, which is 34 percent of total approved development in Downcounty. By contrast, there is 3.5 million square feet of non-residential development approved in Midcounty site plans, which is just 21.5 percent of total approved development in Midcounty. In fact, the amount of non-residential development approved in Midcounty *sketch plans* is roughly equal to the amount approved in Downcounty *site plans*, even though Midcounty accounted for 4.8 million more square feet of total development.

With just 32 percent of non-residential development approved in Upcounty sketch plans further approved in Upcounty site plans, it is likely that the non-residential development portion of these projects is not currently feasible. However, if the developer does not have immediate plans to deliver the commercial development, they can also wait to deliver the public benefits associated with that phase. This suggests developers can delay providing public benefits for phases that are not likely to deliver under existing market conditions, since they are not required to provide all public benefits with construction of the first phase of a project.

Figure 5: Percent of Development Approved at Sketch Plan Delivered at Site Plan, by Planning Area



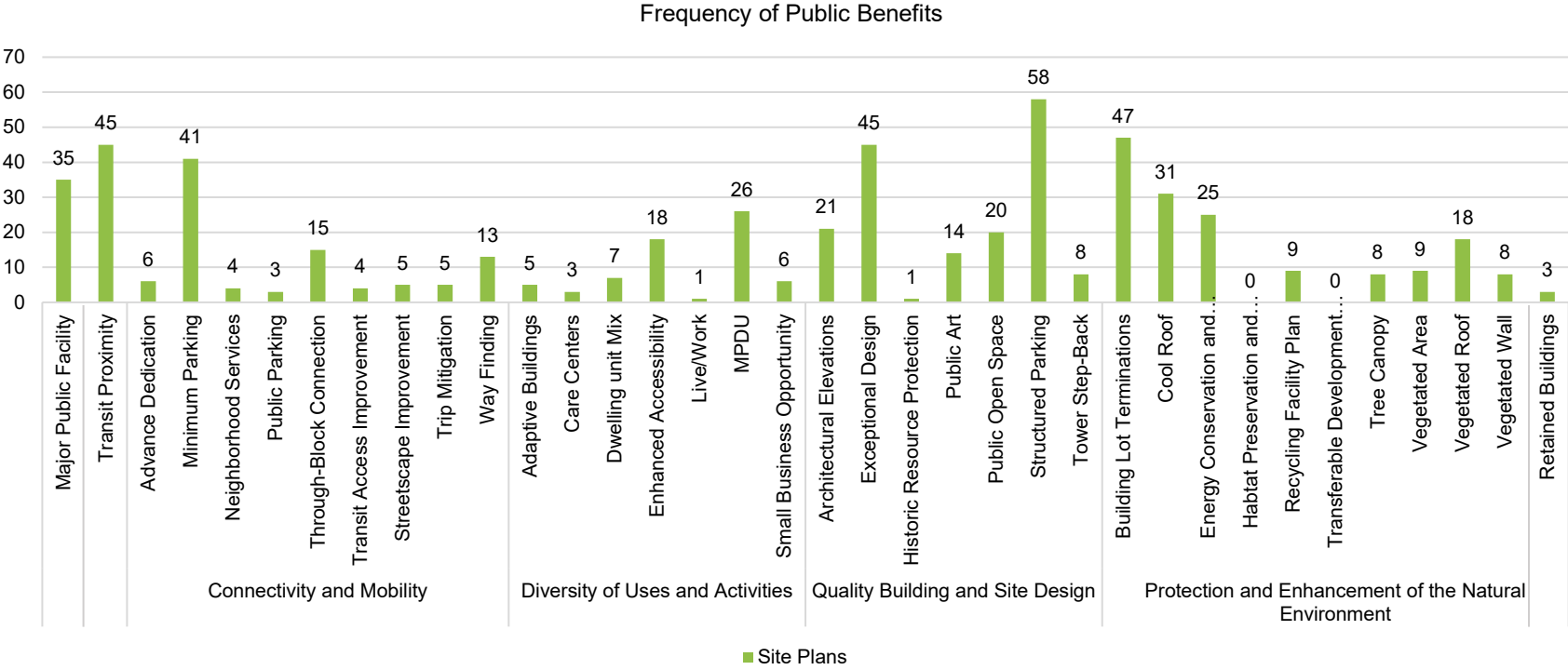
Source: Montgomery Planning, 2023.

ANALYSIS OF PUBLIC BENEFITS DELIVERED IN C/R AND EMPLOYMENT ZONES

There are 36 unique types of public benefits developers may include to meet their minimum required points for optional method development, across seven categories. As shown in Figure 5, the ten most frequent public benefits account for 66 percent of the 567 total public benefits included in approved site plans. The top 15 public benefits account for 75 percent of the 567 total public benefits included in approved site plans. In fact, the top six most common public benefits were included in over half of all site plans in the dataset. The top ten most common public benefits included in approved site plans are: Structured Parking, Building Lot Terminations, Exceptional Design, Transit Proximity, Minimum Parking, Major Public Facility, Cool Roof, MPDU, Energy Conservation and Generation, and Architectural Elevations. In addition, Public Open Space, Enhanced Accessibility, Vegetated Roof, Through-Block Connection, and Public Art round out the top 15 public benefits.

Additionally, the delivery of public benefits does not seem to be sensitive to geography between Downcounty and Midcounty as they share eight of the top ten public benefits among their site plans, as shown in Figure 6 and Figure 7. The distribution of public benefits is not significant enough in Upcounty to highlight any patterns, with just three optional method projects.

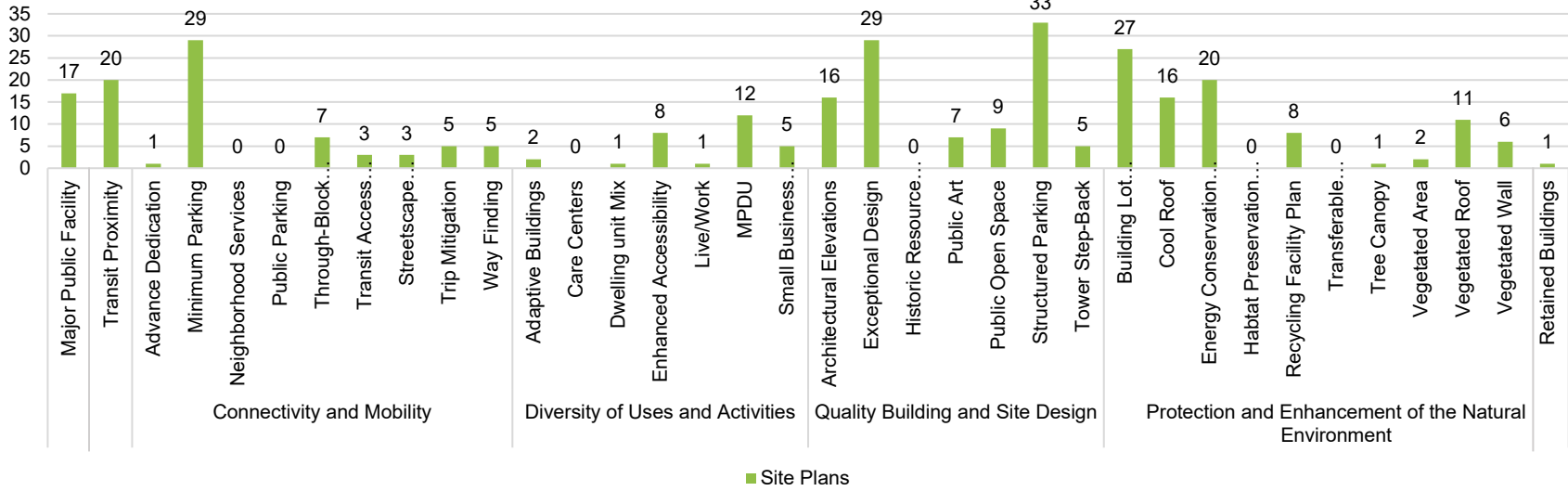
Figure 6: Frequency of Public Benefits in Approved Site Plans, Countywide



Note:
 (a) There are 67 total site plans in the dataset, countywide.

Source: Montgomery Planning.

Figure 7: Frequency of Public Benefits in Approved Site Plans, Downcounty

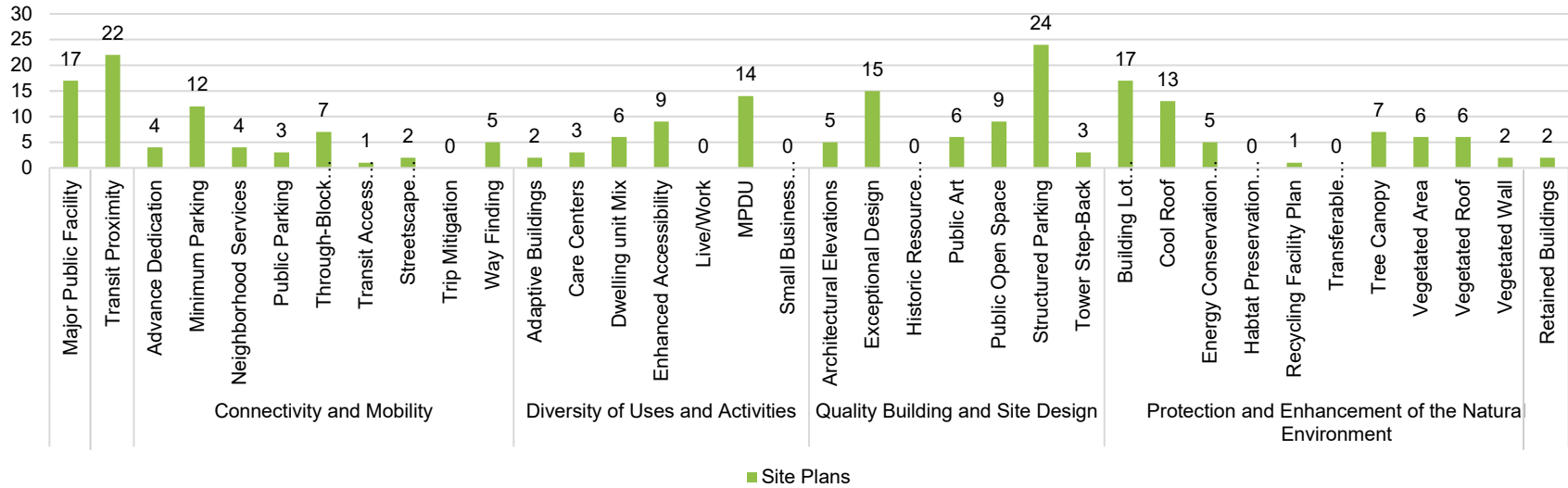


Note:

(a) There are 37 Downcounty site plans in the dataset.

Source: Montgomery Planning

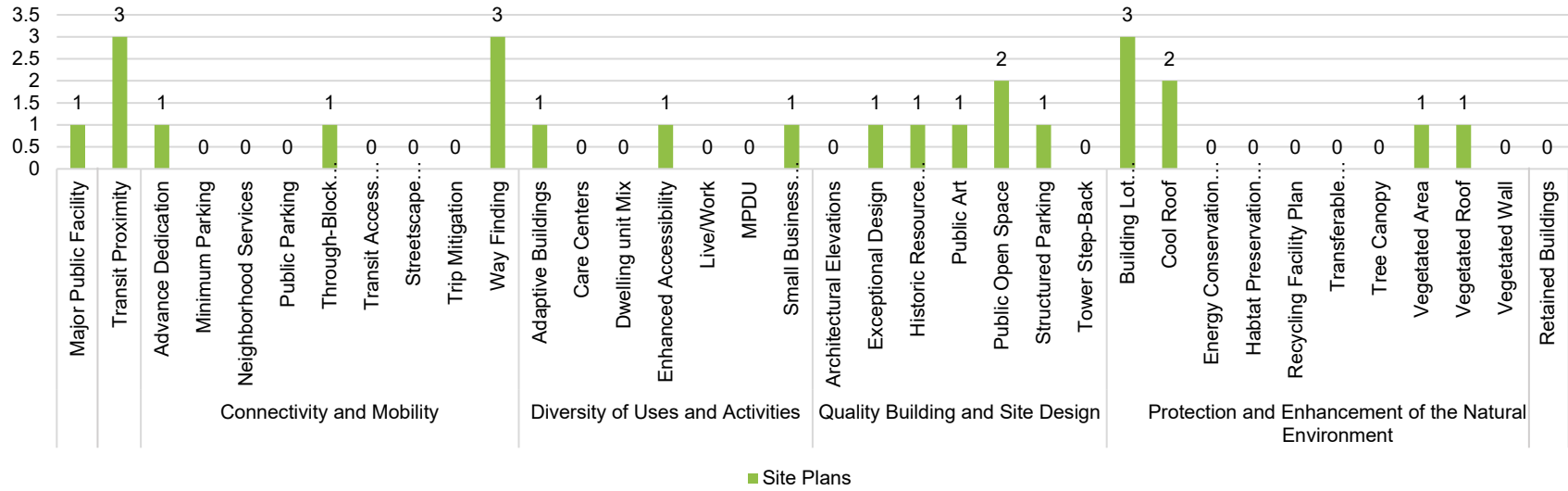
Figure 8: Frequency of Public Benefits in Approved Site Plans, Midcounty



Note:
(a) There are 24 Midcounty site plans in the dataset.

Source: Montgomery Planning.

Figure 9: Frequency of Public Benefits in Approved Site Plans, Upcounty



Note:

(a) There are 3 Upcounty site plans in the dataset.

Source: Montgomery Planning.

Out of the 36 public benefits, the top 10 public benefits are either features inherent to a development, incentivized through policies other than the point system, or are a de facto requirement due to Master Plan recommendations, current building code requirements, energy efficiency standards mandated by the Department of Environmental Protection (DEP), DPS, or outlined in certification systems like LEED. For example, as shown in Table 12, features inherent to a development include Structure Parking (most common public benefit), Transit Proximity (fourth most common), Minimum Parking (fifth most common), and Major Public Facility (sixth most common).

Table 10: Top Ten Public Benefits

Inherent to Development	Other Incentive Programs	De Facto Requirement
Structured Parking (1)	BLTs (2)	Cool Roof (7)
Transit Proximity (4)	Exceptional Design (3)	Energy Conservation and Generation (9)
Minimum Parking (5)	Architectural Elevations (10)	
Major Public Facility (6)*	MPDUs (8)	

** In most instances, the major public facility awarded points has been either a bikeshare facility or bicycle parking, or a payment towards parks development.*

Source: Montgomery Planning, 2023.

The frequency of the top ten public benefits is predictable, particularly considering the nature of the CR and Employment zones. For example, the incentive zones are intended to be located around transit. Consequently, sites and tracts in these zones are small, as evidenced by the projects in the dataset. The median tract size in approved site plans is two acres, while the median approved FAR in site plans is 3.0, meaning a typical project in the dataset could not accommodate surface parking for minimum parking requirements, explaining why all but nine projects in the dataset include structured parking as a public benefit. The high cost of structured parking further incentivizes developers to minimize parking. Transit Proximity, Structured Parking, and Minimum Parking are listed under separate categories, satisfying three of the four public benefit categories required at minimum for optional method development in the CR zone. These three public benefits are associated with an average of 27, 16, and eight points, respectively, out of 100 points, which is the typical minimum requirement in the CR zone⁸. Therefore, developers may receive approximately 51, or half, of their minimum required points for features that are inherent to the project based on the zoning. For

⁸ 53 out of the 67 projects in the dataset are in the CR zone, 13 in the CRT zone, and one the EOF zone. There are no projects in the dataset developed in the LSC zone.

smaller projects in the CR zones, the minimum required points are 50, in which case these three benefits would cover all the required points.

Similarly, there are incentives and requirements governed by other policies that are awarded points under the existing point system, helping to explain the frequency of BLTs, Exceptional Design, Architectural Elevations, and MPDUs. All development in CR and LSC (but not CRT and EOF) zones are required to purchase BLTs but are also awarded points for purchasing the required BLTs. With most projects located in CR zones, BLTs are the second most frequent public benefit included in approved site plans after structured parking. The ‘Other County Law and Incentive Programs’ section of this report describes the various incentives for providing MPDUs. For planning staff to adequately review the project, make necessary site plan findings and assure conformance with the applicable sector plan and urban design guidelines, the applicants need to provide detailed architectural elevations which are included in the Certified Site Plan Set that Department of Permitting Services (DPS) uses as an enforcement document. If the applicant agrees to substantially conform to the design, materials, and details as shown on these drawings, the project would likely be eligible for points for Architectural Elevations. Finally, projects in Bethesda are subject to a Design Advisory Panel (DAP) and as a result, must incorporate exceptional design and earn a minimum number of points. Projects in downtown Silver Spring will also be subject to a DAP as of 2023.

Cool Roofs and Energy Conservation and Generation as public benefits are de facto requirements given the county’s current green building code, DEP’s energy performance regulations, and market expectations set by certification standards like LEED. These requirements compel developers to choose public benefits like a cool roof, while industry standards like LEED and the corresponding demand to live or work in energy efficient buildings also compels developers to provide similar public benefits regardless of the point system. The policy generally recommends that points should not be given for features that are *de jure* requirements, but the dataset reveals that several projects have received points for such public benefits. In fact, more recent master plans have updated the point system for a specific geographic area to address some of the weaknesses of the point system and the implementation guidelines that were last updated in 2017.

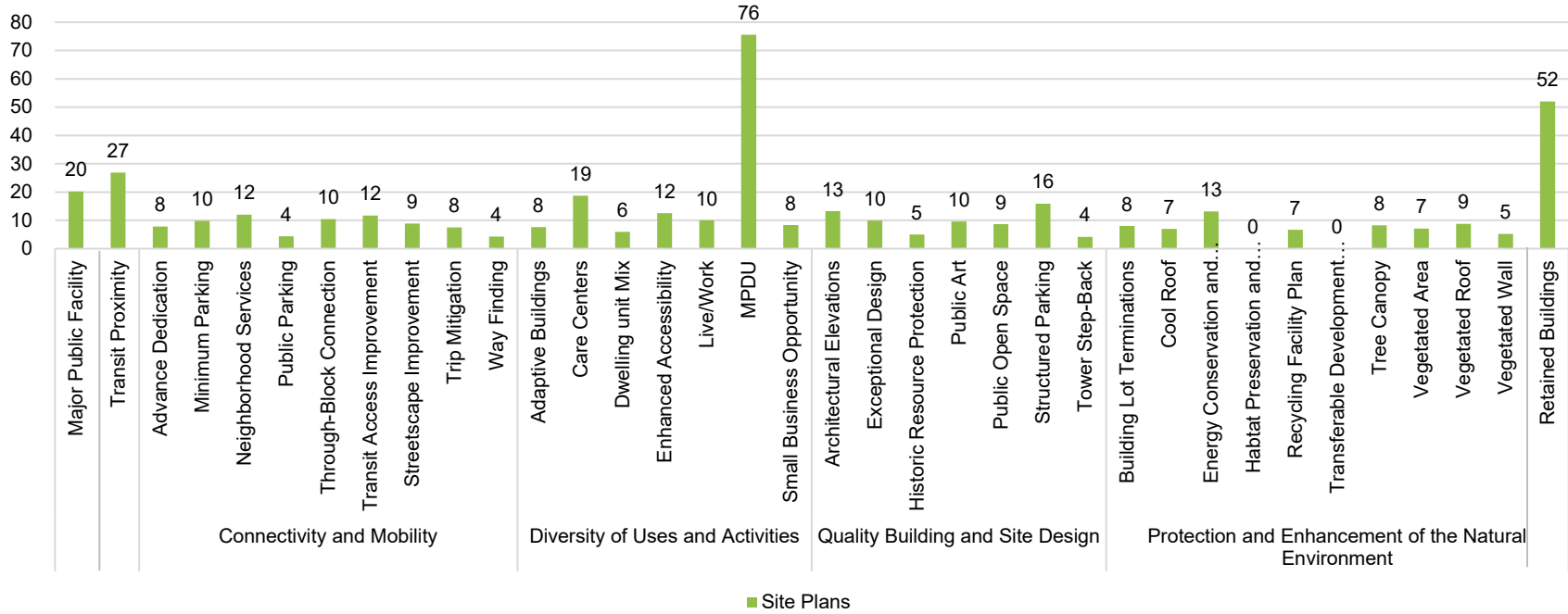
Table 12 also shows Major Public Facilities (sixth most common) as a feature ‘Inherent to Development’. According to the implementation guidelines, a major public facility “provides public services at a convenient location where increased density creates a greater need for civic uses and greater demands on public infrastructure.” However, in most instances, the major public facility awarded points has been either a bikeshare facility or bicycle parking, or a payment towards a major public facility. Bicycle parking is a requirement under the zoning ordinance, so it is possible that adding more bicycle parking is relatively simpler to comply with for points compared to other public benefits. Moreover, most payments awarded points were Park Impact Payments, which most projects in downtown Bethesda already contribute towards if they are purchasing density from the Bethesda Overlay Zone. Some payments went towards right of way or roadway improvements that serve the project. Of the 35 major public facilities awarded points, there is just one “complete” facility, to be

constructed by the developer and dedicated to Montgomery Parks, which will be available to the public for civic use: a 1.75-acre urban park in the ELP Bethesda at Rock Spring project.

Regulatory reviewers seek to award points for developers going above and beyond meeting the minimum regulatory requirements. Nonetheless, the data suggests that even if developers are going above minimum requirements, they still prefer to meet higher standards for the more common public benefits than pursue including the less common or unused public benefits such as schools, adaptive reuse, Live/Work units, Care Centers, etc. It is likely easier and more cost effective to meet higher than minimum standards for public benefits that are either features inherent to a development, incentivized through policies other than the point system, or a de facto requirement under the building code or other standards like LEED, than it is to provide the other public benefit options under the existing policy.

Based on the average points awarded per public benefit in the dataset, developers can typically receive more than half their points for providing public benefits that are either features inherent to a development, incentivized through policies other than the point system, or a de facto requirement under the building code or other standards like LEED. For example, the average points awarded for Transit Proximity (27), Structured Parking (16), Minimum Parking (10), Exceptional Design (10), and Architectural Elevations (13), total 76 out of a minimum of 100 points. If a project included all these public benefits and provided 15 percent MPDUs in a Master Plan Area that will award points for any MPDU above 12.5 percent, the project would receive 30 points at minimum bringing the total to 106 points. Such a project would not need to provide any other public benefits. The average points awarded per public benefit is summarized in Figure 9.

Figure 10: Average Points Awarded by Public Benefit (out of 100), Countywide



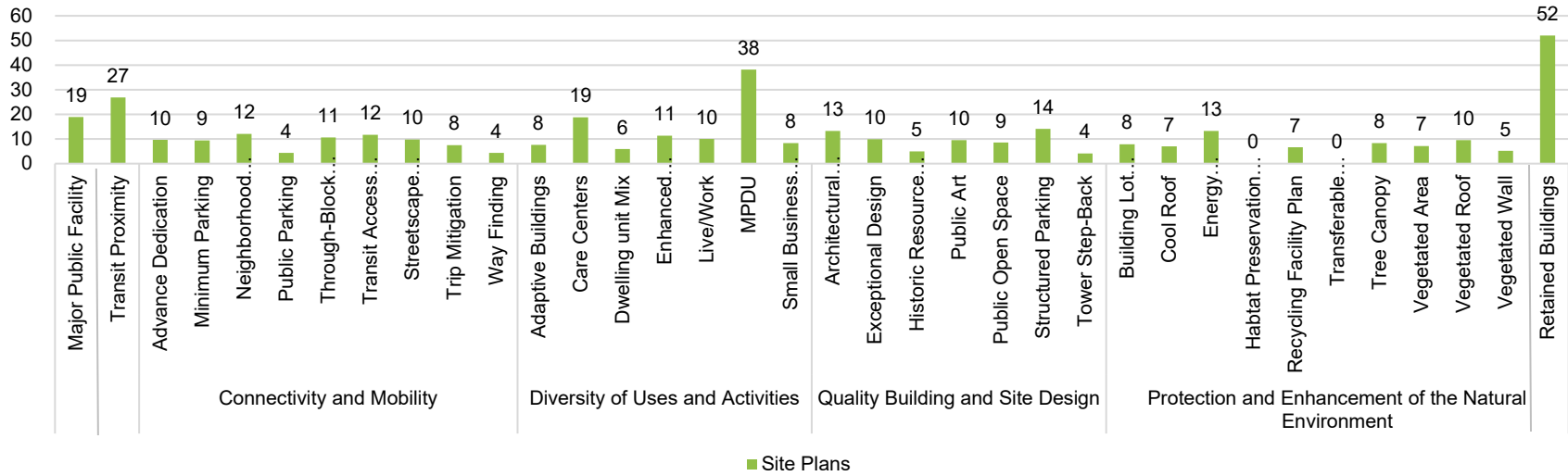
Note:

(a) There are 67 total site plans in the dataset, countywide.

(b) This figure shows the average award for MPDUs is 76 points. However, this includes outlier projects that provided 20 percent MPDUs, receiving well over 150 points for doing so. Removing these ten projects lowers the average MPDU points awarded to 38, which is in line with the amount of MPDU points a project would earn for providing 15 percent MPDUs while earning points for MPDUs above 12.5 percent. Figure 10 shows the average points awarded by benefit for all projects minus projects with 20 percent MPDUs.

Source: Montgomery Planning.

Figure 11: Average Points Awarded by Public Benefit (out of 100), Countywide, Minus Projects with 20 percent MPDUs or More



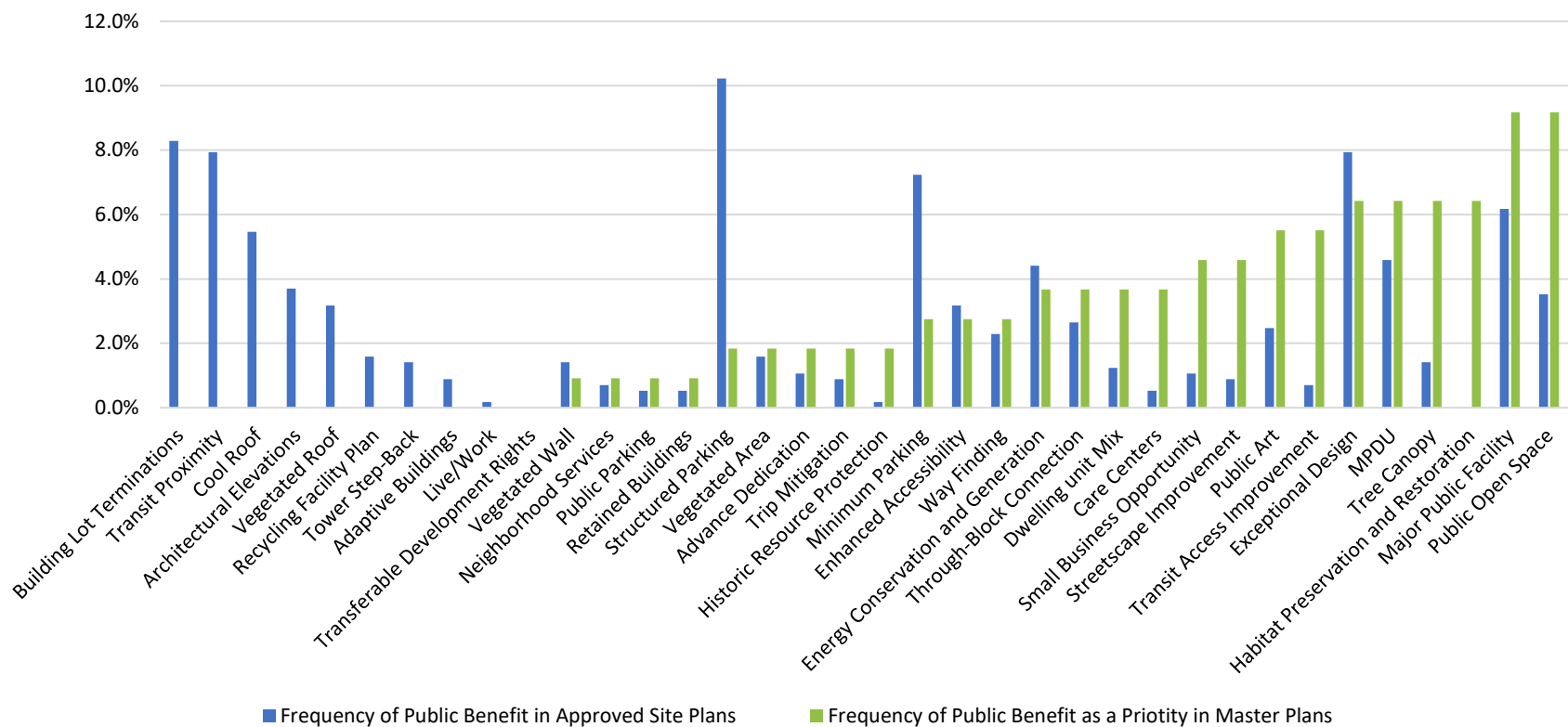
Note:
 (a) There are 57 total site plans in the dataset with less than 20 percent MPDUs, and ten site plans with 20 percent MPDUs or more.

Source: Montgomery Planning.

A fundamental feature of the public benefits point system is their relationship to Master Plans. Master Plans are legal documents adopted by the County Council and are intended to guide the choice of which public benefits developers include in their projects. The intent of this feature was to ensure not only those public benefits responded to a specific community's needs, but also the ensure the has an opportunity to shape which public benefits are prioritized through the master planning engagement process. The list of Master Plan public benefit priorities is shown in Appendix A.

Despite master plan prioritization, the distribution of the frequency of public benefits in approved site plans suggests Master Plans have not guided the choice of public benefits as intended. As of 2023, 14 approved master plans have specifically prioritized public benefits for development in the incentive zones. The top ten public benefits mentioned in master plans are: Major Public Facility, Public Open Space, MPDU, Exceptional Design, Habitat Preservation and Restoration, Tree Canopy, Transit Access Improvement, Public Art, and Streetscape Improvement. Of these, only Major Public Facility, MPDU and Exceptional Design are among the top ten public benefits in approved site plans. As noted, MPDUs and Exceptional Design are associated with additional policy guidance and incentives. In fact, there appears to be a mismatch between public benefits prioritized in master plans and public benefits in approved site plans, as indicated in Figure 12. Many of the most common public benefits in approved site plans are not prioritized in any master plan, including BLTs, Transit Proximity, and Cool Roofs. Structured parking, the most common approved public benefit, is prioritized in just two master plans. As part of this study, Montgomery Planning will conduct a comprehensive evaluation of public benefit priorities and approved public benefits in each master plan area.

Figure 12: Public Benefits in Approved Site Plans compared to Public Benefit Priorities in Master Plans since 2010



Source: Montgomery Planning.

STAY CONNECTED

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APPENDICES

ATTACHMENT A: LIST OF PUBLIC BENEFITS PRIORITIES IN APPROVED MASTER PLANS SINCE 2010

The following lists highlight the various public benefits that were identified as priorities by different master and sector plans since 2010. While developers may choose from the overall list of public benefits, they first must consider providing these highlighted benefits or provide a justification as to why these benefits cannot be provided as a part of the project. After due consideration, the Planning Board may approve public benefits that are not listed as priorities within a planning area. The dataset collected indicates that this prioritization approach has not been overly effective in delivering the public benefits that were highlighted as priorities during the master planning process.

Downtown Bethesda Plan (2017)

- Quality of Building and Site Design
 - Exceptional design
 - Public open space
- Connectivity and Mobility
 - Minimum parking
- Diversity of Uses and Activities
 - Affordable housing
- Protection and Enhancement of the Natural Environment
 - Energy conservation and generation

Chevy Chase Lake (2015)

- Quality of Building and Site Design
 - Public open space
 - Public art
 - Historic resource protection
- Diversity of Uses and Activities
 - Affordable housing
 - Small business opportunities
 - Dwelling unit mix
- Protection and Enhancement of the Natural Environment
 - Habitat preservation and restoration
 - Tree canopy

Forest Glen/Montgomery Hills Sector Plan (2020)

- Major public facility
 - Bus rapid transit (BRT) stations

- Undergrounding of utilities
- Connectivity and Mobility
 - Minimum parking
- Protection and Enhancement of the Natural Environment
 - Energy conservation and generation
 - Tree canopy
- Quality of Building and Site Design
 - Exceptional design
 - Public open space
- Diversity of Uses and Activities
 - Small business opportunities

Glenmont Sector Plan (2013)

- Connectivity Between Uses, Activities, and Mobility Options
 - Through-block connections
 - Neighborhood services
- Diversity of Uses and Activities
 - Affordable Housing
 - Dwelling Unit Mix
 - Care Centers
- Quality Building and Site Design
 - Public open space
 - Streetscape
- Protection and Enhancement of the natural Environment
 - Tree canopy
 - Habitat preservation and restoration

Greater Lyttonsville (2017)

- Major Public Facilities
- Connectivity and Mobility
 - Through-block connection
 - Transit access improvements
 - Wayfinding
- Protection and Enhancement of the Natural Environment
 - Tree canopy
 - Habitat preservation and restoration
- Quality building and site design
 - Public art

Great Seneca Science Corridor Master Plan (2010)

- Major Public Facilities
 - Local park
 - Civic green

- Amenities and open space on Belward Farm
- Research library focused on science and biotech
- Trials
- Connectivity and mobility
- Diversity of uses
- Building reuse (For Belward Farm)

Grosvenor-Strathmore Metro Area Minor Master Plan (2018)

- Quality of Design
 - Exceptional design
 - Public open space
 - Public art
- Major Public Facilities
 - A civic green
- Connectivity and Mobility
 - Transit access improvements
- Protection and Enhancement of the Natural Environment
 - Energy conservation and generation

Kensington Sector Plan (2012)

- Connectivity and mobility
 - Public parking facilities, as part of a parking lot district or shared parking program
 - Streetscape to enhance the public realm
- Diversity of uses and activities
 - Small business opportunities throughout the Town’s business districts
- Quality building and site design
 - Public open space for community gatherings
 - Exceptional design that is sympathetic to its context
 - Historic resource protection

Long Branch Sector Plan (2013)

- Major Public Facilities
 - Private street
- Connectivity between Uses, Activities, and Mobility Options
 - Transit access improvement (including bikeshare stations)
 - Advance dedication
 - Trip mitigation
- Diversity of Uses and Activities
 - Affordable housing
 - Small business opportunities
- Quality of Building and Site Design
 - Structured parking
 - Shared parking

- Public open space
- Public art
- Protection and Enhancement of the Natural Environment
 - Green wall
 - Vegetated areas
 - Habitat preservation and restoration

Takoma/Langley Crossroads (2012)

- Major Public Facilities
 - A neighborhood service center with community meeting facilities within the Takoma/Langley Crossroads Center
 - A civic green
 - A new recreation center
 - Funding of a buffered cycle track along University Boulevard
- Diversity of Uses and Activities
 - A daycare facility adjacent to the Transit Center

Veirs Mill Corridor Plan (2019)

- Diversity of Uses and Activities
 - MPDUs
 - Dwelling Unit Mix
 - Enhanced accessibility for the disabled
- Major Public Facilities
 - Public transportation (bus rapid transit stations)
 - Undergrounding of utilities
- Connectivity and Mobility
 - Transit access improvements
 - Streetscape improvements
 - Wayfinding
- Quality of Building and Site Design
 - Public art
 - Public open space
- Protection and Enhancement of the Natural Environment
 - Tree canopy
 - Habitat preservation and restoration

Westbard Sector Plan (2016)

- Major Public Facilities
 - Civic green
 - Neighborhood park
 - Community use space
 - Bikeshare station
 - Pedestrian trail
- Connectivity and Mobility
 - Streetscape improvements

- Pedestrian connection
- Transit access improvement
- Wayfinding
- Diversity of Uses and Activities
 - Small business opportunities
- Quality of Building and Site Design
 - Public art
- Protection and Enhancement of the Natural Environment
 - Tree canopy
 - Habitat preservation and restoration
 - Vegetated area

White Flint 2 Sector Plan (2018)

- Major Public Facility
 - Dedication of land for needed school sites as the highest priority public benefit
 - Land for school athletic fields
 - New neighborhood parks and open spaces
 - Public transportation (new Metro Station entrance)
 - Undergrounding of utilities
- Diversity of Uses and Activities
 - MPDUs
 - Care Centers
 - Dwelling unit mix
 - Enhanced accessibility for seniors/disabled
- Quality of Building and Site Design
 - Exceptional design
 - Public open space
- Connectivity and Mobility
 - Advanced dedication
 - Streetscape improvement
 - Minimum parking
 - Trip mitigation
 - Transit access improvement
- Protection and Enhancement of the Natural Environment
 - Tree canopy
 - Energy conservation and generation
 - Habitat preservation and restoration

Montgomery Village Master Plan (2016)

- Major Public Facility
 - Separated bike lanes along Montgomery Village Avenue
 - Road enhancements along Lost Knife Road to improve pedestrian and bike access to the Transit Center
- Connectivity and Mobility, including but not limited to,
 - Through-block connections

- Streetscape improvements
- Diversity of Uses and Activities, including but not limited to,
 - Care Centers
 - Enhanced accessibility for seniors and the disabled
 - MPDUs
- Quality building and Site Design
 - Exceptional design
 - Public open space
 - Structured parking