2024 GROWTH AND INFRASTRUCTURE POLICY PRELIMINARY RECOMMENDATIONS

Description

Today's briefing will provide an overview of the preliminary recommendations for the 2024-2028 Growth and Infrastructure Policy update. The Planning Board's feedback will inform the development of the Working Draft. The Planning Board must transmit the draft 2024-2028 Growth and Infrastructure Policy (GIP) to the County Council by August 1, 2024. The Council will adopt an updated policy by November 15, 2024.

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Summary

- This staff report presents the preliminary recommendations for the County's Growth and Infrastructure Policy 2024 – 2028 update, including recommendations for schools, transportation, and impact taxes.

- Montgomery Planning is undertaking its quadrennial update of the County's Growth and Infrastructure Policy (GIP). The GIP addresses the adequacy of public facilities as it relates to the regulatory or development review process. It sets standards for evaluating individual development proposals to determine if the surrounding public infrastructure, such as the transportation network and school facilities, can accommodate the demands of the development. It also outlines requirements for mitigating inadequate infrastructure.

- The County Code directs the Planning Board to transmit a draft of the GIP to the County Council by August 1, 2024, and for the County Council to adopt the 2024-2028 policy by November 15, 2024.

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INTRODUCTION

Overview and Context

The foundation of the Growth and Infrastructure Policy is that we must have adequate infrastructure to support growth. Every four years, planners update the Growth and Infrastructure Policy (GIP) to ensure the best available tools are in place to test whether infrastructure like schools, transportation, water, and sewer services can support a proposed development. These policy tools are the guidelines for administering the county's Adequate Public Facilities (APF) requirements.

The GIP addresses the adequacy of public facilities as it relates to the regulatory or development review process. The master-planning process is aspirational in creating a long-term vision for our communities, but the GIP has a more focused, shorter-term view. It sets standards for evaluating individual development proposals to determine if the surrounding public infrastructure, such as transportation and school facilities, can accommodate the demands of the development. It also outlines requirements for mitigating inadequate infrastructure.

Chapter 33A of the County Code requires a quadrennial review of the GIP, with the current review to be completed in 2024. The code directs the Planning Board to transmit a draft of the GIP to the County Council by August 1, 2024, and for the County Council to adopt the 2024-2028 policy by November 15, 2024. A primary goal of the 2024 update is to ensure the policy is aligned with the County's priorities and the current growth context.

History of the Growth and Infrastructure Policy

Montgomery County's 1964 General Plan ("On Wedges and Corridors") called for containing sprawl by concentrating development along major transportation corridors while maintaining wedges of low-density and rural land uses. The 1969 General Plan Update had key recommendations for accommodating future population growth, such as balancing development with the provision of public infrastructure through adequate public facilities requirements.

The County Council adopted the Adequate Public Facilities (APF) requirement in 1973 to synchronize development with the availability of public facilities needed to support growth. Its adoption followed a landmark court decision (Golden v. Planning Board of the Town of Ramapo, 1972), finding adequate public facilities requirements constitutional.

In 1986, the County Council adopted a growth policy establishing criteria and guidance for administering the APF requirement. During the 1980s and 1990s building boom, the policy ensured that road and school capacity kept pace with growth. When new areas of the county were converted from farmland into neighborhoods, infrastructure to support new homes and businesses had to be in place.

When the growth policy was initially adopted, much of the county's land was undeveloped. The county has since evolved from a bedroom community into a complex jurisdiction with major employment centers and mature residential neighborhoods. Over time, the policy has shifted to respond to the county's changing growth context and reflect its planning goals.

Today's Growth and Infrastructure Policy focuses on ensuring that new development provides adequate public facilities in an appropriate manner and extent. If the adequacy tests identify inadequate existing facilities, a developer must provide needed infrastructure or pay a fee for mitigation.

Known at times as the county's "Growth Policy," "Annual Growth Policy," and "Subdivision Staging Policy," the policy was renamed the "Growth and Infrastructure Policy," or GIP, in 2020. The policy was initially reviewed and updated annually, then biennially. Chapter 33A of the County Code now requires a quadrennial update, with the current review to be completed in 2024.

How Does the Current Policy Work?

The County's Adequate Public Facilities (APF) regulation, which appears in Chapter 50 of the County Code, states that "the [Planning] Board may only approve a preliminary plan [of subdivision] when it finds that public facilities will be adequate to support and service the subdivision." The APF includes transportation, schools, water, sewer, police, fire, and health services. Chapter 33A of the County Code instructs the Council to administer the APF by adopting a Growth and Infrastructure Policy that describes the facility standards that must be met for public infrastructure to be considered adequate and how private development can mitigate deficient public infrastructure.

Making an adequacy determination involves assessing the condition of public infrastructure and predicting future demand from private development. The following sections summarize the methods and criteria that the Planning Board and its staff must use in determining the adequacy of public facilities, according to the 2020-2024 GIP.

School Adequacy

Each residential development application is evaluated to forecast its demand for school facilities and to determine if and how the applicant will mitigate inadequacies. The GIP uses a context-sensitive approach that classifies county neighborhoods into School Impact Areas based on the character of their growth and that growth's impact on school facilities. These classifications, in addition to housing type, determine the per-unit rate of school impact taxes:

- **Infill Impact Areas** – High housing growth predominantly in the form of multifamily units that generate few students per unit.
- **Turnover Impact Areas** – Low housing growth, with enrollment growth mainly due to turnover of existing single-family units.

- **Greenfield Impact Areas** – High housing growth predominantly in the form of single-family units, consequently experiencing high enrollment growth. (The 2020-2024 GIP does not include any areas with this classification.)

The Annual School Test evaluates the projected capacity utilization of the County's K-12 public school facilities. It establishes an adequacy status for each school service area as the Growth and Infrastructure Policy prescribes. The results of the test are certified by the Planning Board each June to be effective for the upcoming fiscal year and then used to determine the appropriate conditions of approval during development review. The FY24 test results and the annual School Utilization Report are available on Montgomery Planning's website.

Mitigation comes in the form of Utilization Premium Payments, or UPPs, that vary based on the School Impact Area, the type of development, the degree of projected overutilization, and the estimated number of students to be generated by the development. The payments are in addition to the school impact tax, which developers must pay on new residential units regardless of the adequacy status of the schools serving the proposed project area. School impact taxes help pay for new construction or classroom additions to school facilities countywide. The rates are determined by School Impact Area and residential unit type (single-family detached, single-family attached, multifamily low-rise, or multi-family high-rise) classifications.

Montgomery Planning's interactive map displays the current School Impact Area classifications, the Utilization Premium Payment tier designations, and other relevant information.

Transportation Adequacy

Development applications are evaluated to forecast their impacts on transportation facilities and determine if and how the applicant will mitigate inadequate transportation infrastructure. Each development application must either show that the surrounding facilities are adequate, provide needed facilities, or pay for mitigation when constructing needed facilities is infeasible for the applicant.

Like the school element, the transportation element defines context-based geographies known as Policy Areas. Policy Areas are currently categorized by land use context and the prevalence and use of different transportation facilities. The Policy Area categories determine adequacy thresholds and the rates of transportation impact taxes. Montgomery Planning's interactive map displays the current Policy Area classifications, which can be generally characterized as:

- **Red –**Downcounty central business districts, Purple Line station policy areas and Metro station policy areas (MSPAs) generally characterized by high-density development and the availability of premium transit service (i.e., Metrorail, Purple Line, MARC).
- **Orange –**Corridor cities, town centers and emerging transit-oriented development (TOD) areas with planned premium transit.

- **Yellow –** Lower-density areas characterized by residential neighborhoods with community-serving commercial areas.
- **Green** – The county's Agricultural Reserve and rural areas.

The transportation adequacy finding requires forecasting travel demand generated by the proposed development and evaluating the condition of nearby transportation infrastructure, such as roads, sidewalks, lighting, bikeways, and bus stops.

Transportation adequacy is assumed for any development application generating 49 or fewer net new peak-hour trips.[1] Any new development expected to generate 50 or more net new peak-hour person trips must complete a series of multimodal infrastructure tests known as Local Area Transportation Review, or LATR. The tests evaluate the area around a development site for the adequacy of motor vehicle, pedestrian, bicycle, and bus transit systems.

The GIP sets quantifiable service levels for public facilities and services, when and how each test is conducted, and how applicants must mitigate inadequacies identified in the test results.

Mitigation typically involves constructing or installing transportation infrastructure, such as a nearby sidewalk, curb ramps, or traffic signal. If constructing all or part of this requirement is not practicable, an applicant may meet this requirement with a mitigation payment reasonably related to the estimated cost of constructing the required facilities. The Planning Board established the LATR Proportionality Guide in 2021 to help ensure pedestrian, bicycle, and bus transit mitigation requirements are proportional to the size of the project.

The mitigation measures are in addition to the transportation impact tax, which developers must pay on new developments regardless of the adequacy status of the transportation serving the area of a proposed project. However, under County Code Sec. 52-47, a property owner may be entitled to a tax credit for constructing or contributing to an improvement that reduces traffic demand or provides additional regional transportation capacity. Examples of projects that could receive impact tax credit include a new road or a sidewalk connector within a major activity center. Projects that would not qualify for impact tax credit include a new signalized pedestrian, new curb ramps, and a sidewalk along a state-owned roadway.

It should be noted that the GIP only addresses transportation facilities in the area surrounding a development site. Development approval conditions for on-site and frontage improvements are derived from other County Code requirements, including site layout, site access, and internal site travel circulation features. These elements are evaluated based on design standards identified in the County Code, master plans, and other guidelines independent of LATR. The GIP also does not address regional connectivity, such as constructing major new roadways, interchanges or transitways. These

[1] The net new trips are calculated by subtracting the existing use's trips from the proposed use's trips.

projects typically require major capital investments through federal, state, and local funding programs.

Finally, the GIP identifies certain Policy Area-specific requirements related to transportation management districts and establishes non-auto-driver mode share goals for each Policy Area.

Water and Sewer

Water and sewer service are considered adequate if the subdivided property is planned to be serviced within two years, as outlined in the County's 10-Year Water and Sewer Plan.

Police, Fire and Health Services

Police, fire, and health facilities are assumed adequate unless the appropriate agency identifies a problem with a particular subdivision – an outcome that rarely, if ever, occurs.

Impact Taxes

Impact taxes are not part of the GIP. However, because they are so closely related, the Planning Department reviews and prepares recommendations related to impact taxes in conjunction with the GIP update. Chapter 52 of the County Code details the development impact taxes for transportation and school improvements, requiring a new development project to pay its *pro rata* share of the infrastructure improvements necessitated by that development.

County Code also requires the Department of Finance to update the impact tax rates based on land use and geographic context every two years, effective July 1 of each odd-numbered year. The transportation impact taxes are updated by applying an inflation factor to the existing rates. Montgomery Planning Staff calculates the updated school impact tax rates on behalf of the Department of Finance using current housing, enrollment, and school construction cost data. For both transportation and schools, the biennial tax rate adjustment cannot exceed 20%. If it does exceed 20%, then the excess dollar amount must be carried over and added to the tax rate before calculating the next update. From time to time, wholesale updates to the transportation impact taxes are conducted whereas a wholesale update for school impact taxes is conducted with every biennial update.

Revenue from impact taxes is used to fund transportation and school improvement projects. The funds are not geographically constrained. They can be used to fund infrastructure anywhere in the county. Sections 52-50 and 52-56 detail the types of capital projects that can be funded by transportation and school impact taxes, respectively.

The 2024 update of the GIP continues the trend of using impact taxes as a tool to advance county priorities.

THEMES OF THE GROWTH AND INFRASTRUCTURE POLICY UPDATE

The 2024-2028 Growth and Infrastructure Policy recommendations aim to ensure adequacy while improving development conditions in the county by enhancing predictability, transparency, and proportionality in the approval process – stimulating the production of much-needed housing and commercial space.

The policy update is framed by the themes established in the scope of work, including:

Review the Performance of the 2020-2024 GIP

Montgomery Planning Staff collected data and completed analyses to better understand the effectiveness of the past GIP and presented these findings to the two technical workgroups, STAT and TAG. The summary presentations with findings can be found on the GIP Work Group webpage. This objective evaluation, along with stakeholder input, helped inform staff's recommendations for the update. While the 2016 and 2020 updates included in-depth policy reviews, resulting in significant overhauls of the existing policy, the 2024 update primarily focuses on honing existing tools to ensure they are equitable, fair, and effective.

Consider the County's Current Growth Trends

Planning Staff used the current growth context along with stakeholder input to recommend policy revisions, including changes to the School Impact Area and Transportation Policy Area classifications. As presented to the Planning Board on February 22, the current growth trends analysis looked at the most probable trends in population, households, and employment, including key factors that may affect them. Planning Staff also recreated much of the schools-related research in 2020 to better understand if trends were sustained.

Make Policy Implementation Clearer and More Efficient

Planning Staff evaluated the Local Area Transportation Review (LATR) Guidelines and the Annual School Test (AST) Guidelines to better align the implementation tools with county priorities.

The LATR Guidelines is a document that regulatory reviewers in Montgomery Planning and partnering agencies, developers, and community stakeholders regularly reference. The guidelines have been updated over several GIP cycles, and the iterative nature of its development has made it difficult to follow in places. The recommendations include reorganizing and updating the guide with clarity and ease of use.

Similarly, the AST evaluates projected school utilization at all 200 geographically based public schools in the county. Adopting the 2020-2024 GIP meant several changes to the AST, with the introduction of Utilization Premium Payments, which require developers to make additional payments if the AST results indicate a project's school utilization will exceed certain thresholds. The 2024 update makes recommendations to AST to better align it with MCPS' CIP thresholds with ease of use and efficiency in mind.

Review Development Impact Taxes

While impact taxes are not part of the Growth and Infrastructure Policy, they are an important implementation tool that can help the county meet many of its priorities. Planning Staff evaluated the current impact tax regime to build on existing context-sensitive approaches that encourage compact growth while providing appropriate exemptions and discounts for housing and other priority uses. While some proposed changes may result in less impact tax revenue from specific projects, others may lead to increased revenues. While impact taxes are a small portion of the capital budget, representing approximately 7% of the school capital budget and 4% of the transportation capital budget, they are an important source of revenue for the county. Acknowledging the inherent difficulty with predicting revenue streams, Planning Staff will work with the Executive Branch over the coming weeks to better understand how proposed recommendations in the GIP may affect impact tax revenues and consider approaches to offset and maintain impact tax revenues.

Align the Policy with Updated County Priorities

Since the 2020 GIP update, the county has adopted several landmark plans and policies, establishing 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 the centerpiece of all planning outcomes. Planning Staff also examined the adopted General Plan, Thrive Montgomery 2050, the Climate Action Plan, and the Racial Equity and Social Justice Act to include changes that will align the policy with the goals stated in these visionary documents.

County Priorities

The recommendations align the GIP with priorities identified in county plans and policies, including *Thrive Montgomery 2050*, the Racial Equity and Social Justice Act, the Climate Action Plan, and the Vision Zero Action Plan. These priorities include:

- **Racial Equity and Social Justice**: Reducing and ultimately eliminating racial and other disparities experienced by residents of color across Montgomery County.
- **Economic Competitiveness**: Strengthening the county's ability to compete for economic opportunities.
- **Environmental Resilience**: Minimizing the adverse environmental effects of development locally and countywide.
- **Compact Growth**: Creating a mix of land uses, developing strong population and employment centers, interconnecting streets, and designing structures and spaces at a human scale.
- **Housing for All**: Making Montgomery County's housing stock more affordable and attainable.
- **Safety**: Improving the transportation system in line with the county's Vision Zero approach.

- **Good Governance**: Ensuring that government is accountable, transparent, efficient, and effective to the extent possible.

SUMMARY OF FEEDBACK

Planning Staff met with various stakeholders to garner feedback as part of the 2024-2028 Growth and Infrastructure Policy (GIP) update. Notably, in support of the schools and transportation elements, two technical advisory groups were created that included frequent policy users to solicit direct feedback. Each advisory group met four times between September 2023 and February 2024.

Beyond two technical advisory groups, the project team is employing a multi-pronged approach to engage stakeholders and community members. At the beginning of the update process, the project team met with the community through a virtual meeting to give an overview of the process and created small group breakout rooms to discuss specific elements of the update. The project team also has a meeting planned with the community on March 19th. This meeting will provide an opportunity for the community to question, comment, and share feedback and ideas about the preliminary recommendations.

Schools Element

Feedback was generally supportive of the current structure of the policy and its requirements, given its recent significant overhaul in 2020. Feedback noted several key areas that needed improvement or investigation during the 2024 update. Feedback included:

- **Boundaries**: Stakeholders noted a desire to simplify the number of boundaries used in the implementation of the policy for ease of understanding and access. Some of the boundaries used by the GIP include Transportation Policy Areas, School Impact Areas, Desired Growth and Investment Areas, Opportunity Zones, and Enterprise Zones. All these boundaries have different meanings and implications for the policy, leading to five unique sets of geographies with conflicting boundaries. [See Map 1]
- **Utilization Premium Payments (UPPs):** Stakeholders noted that evaluating the effectiveness of UPPs is difficult given the small number of projects that have been subjected to a UPP payment and the short amount of time that has passed since. UPP conditions are determined at preliminary plan approval and collected at the building permit stage, but most projects that have been assessed a fee have not moved forward to that stage yet. There is also concern over the usefulness of the funds. By the time UPPs are collected, the school capacity may have already been relieved and the funds will not be able to be used until there is another capacity addition scheduled. Moreover, Council added language during the 2020 update that funds collected from the UPP must be used for a project that relieves the school that it was collected for, but MCPS is often increasing capacity at schools undergoing Major Capital Projects

(complete rebuilds or major renovations of aging facilities) and creating surplus capacity that could potentially relieve future overutilization in adjacent schools.

- **Impact Taxes**: Feedback related to impact taxes was generally focused on the fact that they are too high and can hinder housing production needed in the county. They also represent too small of a share of the total MCPS capital budget to help cover the capital needs effectively.

Transportation Element

Feedback noted several key areas that needed improvement or investigation during the 2024 update. Key points included:

- **Policy Implementation:** Stakeholders spoke favorably of recent policy updates that moved decisively away from strategies that were almost exclusively concerned with reducing congestion for travel by motor vehicle and toward improvements designed to make walking, biking, and transit safer and more convenient. They said that while the changes have mainly been positive, in some cases, these policies have been implemented in internally inconsistent ways or have produced unintended consequences. Stakeholders asked staff to revisit policies, including the transportation tests and LATR Proportionality Guide, to ensure that required analysis and mitigation are reasonably related to the size and impact of the development project, particularly in areas targeted for compact growth.

- **Impact Taxes:** Stakeholders voiced concern that the rates charged under the current structure are making it challenging to increase housing supply, noting that Montgomery County's development impact fees and taxes are more than double the amounts charged by any other jurisdiction in Maryland. They suggested modifications that reduce costs while remaining faithful to the county's progressive land use and transportation policies. Development stakeholders also called for the expansion of impact tax credits for developer-built transportation adequacy improvements, expressing frustration that impact tax credits are denied for some transportation infrastructure improvements built within the public right-of-way. Others expressed concerns about shifting additional cost burdens onto the County or allowing credits for projects along state-owned roads.

- **Affordable Housing:** Stakeholders noted that while affordable units are exempt from paying transportation impact taxes and making LATR mitigation payments, they are not exempt from constructing off-site LATR improvements. They shared that this makes building affordable housing less financially viable.

- **SHA Coordination:** Stakeholders shared that coordinating with the Maryland State Highway Administration (SHA) during the development review process can be challenging. They noted that the county and state review timelines and traffic analysis requirements are not aligned. They said this can lead to delays and reduce the transparency and predictability of the development process.

- **LATR Guidelines:** Stakeholders confirmed that the LATR Guidelines should be clarified and simplified to improve efficiency and predictability. They also requested the inclusion of guidance for common challenges, such as amendments to approved development applications.

PRELIMINARY RECOMMENDATIONS

Schools Element

The 2020-2024 Growth and Infrastructure Policy (GIP) update overhauled the Schools Element of the policy. The 2020 GIP eliminated the residential building moratorium, established School Impact Areas, changed how student generation rates were calculated for multifamily structures, and established Utilization Premium Payments. The scope of the update of the Schools Element for the 2024-2028 GIP is envisioned to be smaller, given the significant changes that occurred in the 2020-2024 update.

The recommendations below are intended to make the policy more effective and accessible and align the GIP with county priorities.

1. Modify School Impact Area Boundaries to Align with Transportation Policy Areas

The 2020 GIP introduced School Impact Areas, classifying areas of the County into Infill, Turnover, or Greenfield based on their housing and enrollment growth context, as seen on the associated GIP web map.

Infill Impact Areas have high housing growth predominantly in the form of multifamily structures that generate fewer students on a per-unit basis. Turnover Impact Areas are areas with lower housing growth, where enrollment growth mainly comes from the turnover of existing single-family units. Greenfield Impact Areas are those experiencing high enrollment growth mainly due to high growth in single-family housing (when considering future residential capacity, no area of the County was designated as a Greenfield Impact Area during the 2020 GIP update).

The School Impact Areas, however, introduced an additional boundary to the complex layers of geographies, making it difficult for applicants and the community to understand the full implications of the policy.

Recommendation: Modify the School Impact Area boundaries to align with the Transportation Policy Area boundaries, classifying each area into Infill, Turnover, or Greenfield based on an analysis of their updated growth context.

County Priority: Good Governance

2. Adjust the Seat Deficit Thresholds to Better Align with MCPS' CIP Thresholds

The Annual School Test (AST) establishes the adequacy status of each school service area (the Utilization Premium Payment Tier level) for the entirety of the fiscal year by evaluating each school's projected capacity utilization rate (enrollment divided by capacity) and seat deficit (enrollment subtracted from capacity) for four school years in the future. While generally effective in balancing the difference in size between schools at the same level, the current thresholds lack an apparent relation to the seat deficit thresholds used in MCPS' CIP process for classroom additions (see Table 1).

Table 1 Current AST Seat Deficit Thresholds and MCPS' CIP Threshold for Classroom Additions

	UPP Tier 1 (105%)	UPP Tier 2 (120%)	UPP Tier 3 (135%)	MCPS CIP Threshold
Elementary School	85	102	115	92
Middle School	126	151	170	150
High School	180	216	243	200

Recommendation: Adjust the seat deficit thresholds for each UPP tier and school level to better reflect MCPS' CIP threshold for classroom additions (see Table 2). MCPS' CIP threshold will be used as the threshold for a Tier 2 UPP. The threshold for Tier 1 will be at 80% of the CIP threshold, and Tier 3 threshold will be at 120% of the CIP threshold, which aligns with the previous individual school moratorium thresholds.

Table 2 Recommended AST Seat Deficit Thresholds

	Tier 1 (CIP threshold x 0.8)	Tier 2 (CIP threshold x 1)	Tier 3 (CIP threshold x 1.2)
Elementary School	74	92	110
Middle School	120	150	180
High School	160	200	240

County Priority: Good Governance

3. Add a Category for Diverse Housing Unit Types

The official Student Generation Rates (SGRs), which are used to estimate a residential development's enrollment impact or determine the county's school impact tax rates, are calculated based on housing type and School Impact Area. Currently, all residential units are categorized into four housing types – single-family detached, single-family attached, multifamily low-rise (defined as structures that are less than five stories), and multifamily high-rise (5 stories and above).

The rationale for distinguishing multifamily structures into low-rise and high-rise was discussed during the 2020 update, but since there was a discernable difference in the student generation rates between the two types, it was determined by the Council that the distinction should remain. Based on a review of the student generation rates since the last policy update, the difference between low-rise and high-rise units is still discernable, validating the distinction between the two housing types.

The current student generation rate housing categories however do not embrace the evolving housing typologies. For example, stacked flats[2] are currently classified as multifamily low-rise structures for both student generation rates and by our Zoning Ordinance, although often marketed as and perceived as townhouses. While the latest student generation rate dataset does not fully capture the extent of these units built since 1990, a preliminary review of those that have been identified indicates that the student generation rate of stacked flats is discernibly different from typical multifamily low-rise apartment structures, as seen in Table 3.

Table 3 Student Generation Rate Comparison of Stacked Flats vs. MFL

	Infill SGR	Turnover SGR	Countywide SGR
Current MFL classification	0.135	0.258	0.218
Stacked Flats	0.091	0.366	0.322
Typical Low-Rise Apartment	0.138	0.238	0.203

Recommendation: Maintain the student generation rate distinction between multifamily low-rise and high-rise structures. Also, create an additional category to reflect the evolving housing typologies, starting with the separation of stacked flats from the multifamily low-rise classification. Should the Attainable Housing Strategies initiative continue to move forward, additional unit types will be evaluated for reclassification.

County Priority: Housing for All

4. Calculate Multifamily SGRs Based on Structures Built in 1990 or Later

Multifamily structures built in recent decades differ from their predecessors in unit size (square footage and number of bedrooms), affordability, and overall typology. During the 2020 GIP update process, Planning staff analyzed the student generation rate of multifamily structures by the decade they were built in and found that the structures built in 1990 or later were generating much fewer students per unit than those built before 1990. Therefore, the official student generation rates for multifamily low-rise and high-rise units have been calculated based on structures built in 1990 or later since the last update.

[2] Stacked flats are also referred to as 2-over-2s and are generally defined as structures that have the form of a typical townhouse or row home but contain two stacked units.

An updated analysis of multifamily student generation rates indicates that structures built in 1990 or later continue to generate fewer students than those built in prior decades, as seen in Figure 2.

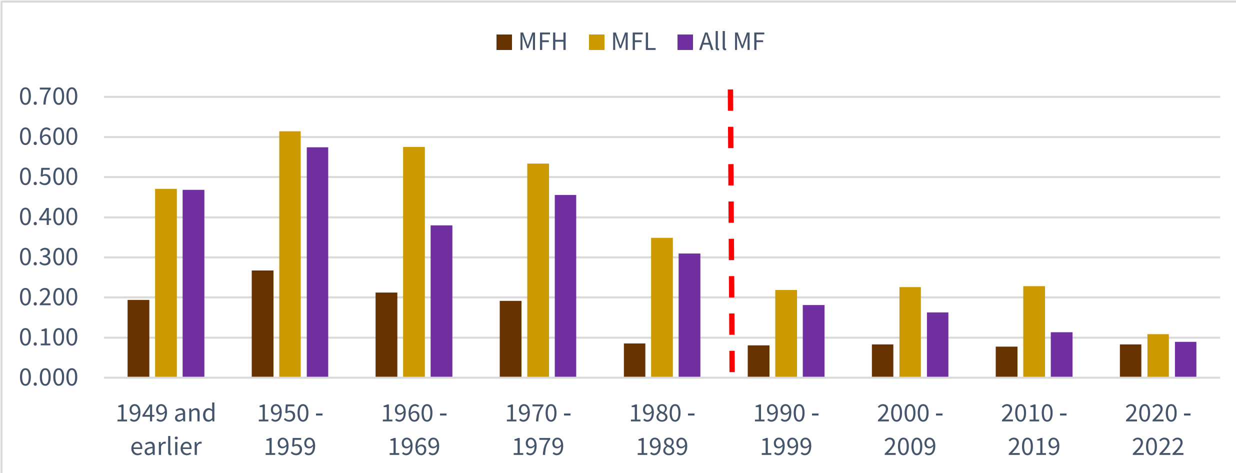

Figure 21 Student Generation Rate of Multifamily Units by Decade Built

Recommendation: Continue to calculate official student generation rates for multifamily units, including stacked flats, based on data from structures built in 1990 or later.

County Priority: Good Governance

5. Allow Utilization Premium Payment Funds to Be Used in Adjacent Schools

The 2020 GIP introduced Utilization Premium Payments to replace (UPP) as a mitigation tool that replaced the previous residential building moratorium. UPPs are assessed on residential units as a condition of preliminary plan approval according to the Annual School Test results[3]. The fee is applied to each market rate unit as a surcharge to their impact tax rate as seen in Table 4 below:

Table 4 Utilization Premium Payment Rate (Surcharge Factor Applied to Impact Tax)

	No UPP	Tier 1	Tier 2	Tier 3
Elementary School	-	16 2/3%	33 1/3%	50%
Middle School	-	10%	20%	30%
High School	-	13 1/3%	26 2/3%	40%

[3] The Annual School Test determines the UPP tier placement of each school service area based on their projected utilization levels. When a school is found to exceed certain adequacy thresholds, the service area is placed in a payment tier for the entirety of the fiscal year. In addition, if the estimated enrollment impact of a residential development exceeds an adequacy ceiling, the payment rate is adjusted to reflect the number of seats needed in the subsequent tier level.

If a development's enrollment impact is estimated to exceed the AST's adequacy ceiling, then the above rates are adjusted in proportion to the number of expected seats falling under each tier level. During the work sessions of the 2020-2024 Growth and Infrastructure Policy update, Council Staff asserted that use of the funds generated by the UPP must have a rational nexus to the development project because the UPP is a fee and not a tax, and therefore the Council voted to specify that the funds must be used for a project that relieves capacity at the school that it was collected for. However, as MCPS has been providing capacity relief of overutilized facilities at adjacent schools through boundary changes more frequently, the nexus between a specific residential location and the immediate schools serving it is becoming weaker. Because the UPP is a fee and not a tax, there must be a rational nexus between the generation of the funds and its use. Under the current policy, this nexus is interpreted as '*projects that add capacity designed to alleviate overutilization in the school service area from which the funds were collected (County Code Sec. 52-59, e)'*.

As MCPS continues to invest in projects that provide surplus capacity, sometimes without specifying the school it is intended to relieve nor an expected timeline of relief, capital projects that increase capacity at a certain location should not be viewed as an infrastructure investment only available for use by its limited school service area. Also, as boundaries are changed as a result of this kind of off-site capacity relief, the school service area that funds collected from a certain location are tied to due to the nexus that existed at the time of approval can become outdated if the schools serving that location changes.

Recommendation: Allow the UPP funds collected in a certain school service area to be used for capital projects that increase capacity at adjacent schools, or clusters ('adjacent' defined by contacting service area boundaries).

County Priority: Good Governance

6. Monitor the Enrollment of Early Childhood Programs

Under the Blueprint for Maryland's Future, MCPS is charged with expanding its early childhood education services. MCPS's CIP projections of individual schools already include students enrolled in early childhood programs and their capacity. There are currently over 2,800 students enrolled in early childhood programs (Prekindergarten or Head Start) across 70 of MCPS' 137 elementary schools. Since the Annual School Test uses MCPS' CIP data, these numbers are also reflected in the adequacy evaluation of schools where applicable. However, students enrolled in these programs are not included in the official SGR calculations.

The Blueprint grants all three- and four-year-old children from families earning incomes at or below 300% federal poverty level access to full-day pre-k through public or private providers. It is unclear when these efforts will be fully implemented and how much impact they will have on the county's enrollment and utilization trends. Still, MCPS is expecting an increased demand for capacity, especially at the elementary school level. When the projected demand for capacity reach a level comparable to that of other K-12 grade levels, their enrollment should be accounted for in official student generation rates.

Recommendation: Monitor the impact of the early childhood program initiatives as they continue to be implemented throughout MCPS. Consider including it in official student generation rate calculations when or if the countywide enrollment level reaches that of other grade levels (the current projection for Prekindergarten and Head Start enrollment combined is less than 40% of the kindergarten projection in the 2029-2030 school year).

County Priority: Good Governance, Equity

Transportation Element

The recent growth policy updates transformed how the county defines, measures, and mitigates transportation adequacy issues. The recent policy updates introduced a context-driven framework for transportation improvements in 2016 and expanded adequacy definitions to focus on safety and pedestrian, bicycle, and bus transit systems in 2020. Generally, these changes have successfully aligned the policy with the county's efforts to focus growth in areas closest to jobs, services, and infrastructure while promoting walking, biking, and transit and reducing reliance on driving.

The preliminary recommendations for the 2024-2028 GIP Transportation Element focus on honing these tools and aligning the policy with the county priorities and goals established in other plans and policies. The recommendations aim to ensure the policy is equitable, fair, and effective.

1. Adjust Policy Area Boundaries to Reflect Growth Priorities

The GIP defines context-based geographies known as transportation policy areas. The 42 policy areas are categorized into one of four colors (red, orange, yellow, and green) based on current and forecasted land use contexts and travel trends. The categorizations determine adequacy thresholds, impact tax rates, and Transportation Demand Management (TDM) requirements. Policy area designations are an essential tool in the county's effort to concentrate context-sensitive growth in centers of activity and along corridors.

Recommendation: Revise the policy area boundaries and classifications to reflect the vision for future development detailed in area master plans, functional master plans like the *Master Plan of Highways and Transitways* and *Thrive Montgomery 2050*. [See Map 2: Proposed Policy Areas]

- Modify boundaries of the Colesville-Fairland and Clarksburg policy areas to align with respective master plan visions.
- Expand the boundaries of the Gaithersburg and Rockville City policy areas to incorporate recent annexations.
- Designate the Life Sciences Center, Life Sciences / FDA Village in White Oak, and Rock Spring as red policy areas, reflecting the vision for these activity centers as defined in area master plans and the Pedestrian Master Plan.

- Designate Aspen Hill, portions of Clarksburg and Colesville-Fairland, Germantown East, Germantown West, Montgomery Village, Olney Town Center, and recently annexed portions of Gaithersburg as orange policy areas, reflecting the current and future conditions of these Corridor-Focused Growth activity centers.
- Designate Damascus as a yellow policy area, reflecting the developed nature of the town center.
- Develop updated descriptions of red, orange, yellow, and green policy areas.

County Priority: Compact Growth

2. Replace Person Trips with Peak-Hour Vehicle Trips

The 2016-2020 growth policy update introduced "person trips" as the metric for determining which projects were required to complete a LATR study, replacing the previous vehicle trip threshold. The 2020 policy update expanded the use of person trips by replacing the pedestrian, bicycle, and transit adequacy tests' mode-specific thresholds with the multimodal person trips metric.

Person trips are calculated by applying an area-specific adjustment factor to the Institute of Transportation Engineers' (ITE) vehicle trip generation rates. Any project expected to generate at least 50 net new weekday peak-hour person trips must complete the LATR process. To account for differences in travel behavior across the county, analysis and mitigation requirements vary depending on the number of net new peak-hour person trips and the project's location.

Using person trips as a metric for assessing a development's impact on the transportation network is problematic because person trips weigh pedestrian trips and vehicle trips equally. This means that a development that generates 100 pedestrian trips is held to the same requirements as one that generates 100 vehicle trips, even though the latter has a more significant negative impact on the transportation system. Treating pedestrian, bicycle, and transit trips as impacts to be mitigated rather than things to encourage is inconsistent with the goals of *Thrive Montgomery 2050*. Person trips do not provide an accurate picture of a development's transportation impact, and an alternative metric is necessary to assess impact more effectively.

Recommendation: Develop a peak-hour vehicle trip metric to replace the 50-peak-hour person trip threshold. The peak-hour vehicle trip metric is used widely and is simple to understand. It serves as a more precise measure, helping to ensure that required analysis and mitigation are reasonably related to a proposed development's impacts. Peak-hour vehicle trips would be used for:

- Conducting an LATR study, including all tests
- Determining the size of the study area for all tests
- Determining the maximum cost of mitigation via the LATR Proportionality Guide

County Priorities: Environmental Resilience, Compact Growth, Safety

3. Standardize the Transportation Adequacy Tests

Development projects expected to generate 50 or more net new peak-hour person trips must develop a Vision Zero Statement and complete the LATR adequacy tests. The following recommendations simplify the policy, making it more effective, transparent, and predictable.

County Priorities: Economic Competitiveness**,** Environmental Resilience, Compact Growth, Good Governance

a. Refine the Vision Zero Statement

All projects with LATR studies develop a Vision Zero Statement that assesses and proposes solutions to high-injury network locations and local transportation safety issues, reviews traffic speeds, and describes in detail how safe site access will be provided. Applicants are not required to address the safety issues they identify.

Applicants collect and analyze a substantial amount of data for this statement but generally do not mitigate identified issues. Constructing off-site improvements to address identified safety challenges is usually not feasible because construction typically requires additional right of way, speed limit changes, road diets, and other changes that extend far beyond the development site. Gaining agency consensus on significant changes can be challenging during the limited review time.

Likewise, some requirements are duplicative, such as the description of safe site access, which the County Code already covers in Sections 50.4.2 and 59.6.1.1.

Recommendation: Refine the Vision Zero Statement by reducing the amount of required data collection and analysis. Changes would include standardizing the maximum number of speed studies using the current yellow/green policy area scope and develop new thresholds using peak-hour vehicle trips.

Table 5 Current Vision Zero Statement Scoping Table (2020-2024 GIP)

Peak-Hour Person Trips Generated	Distance from Frontage		Speed Studies (Max. #)	
	Red and Orange	Yellow and Green	Red and Orange	Yellow and Green
50 – 99	400’	250’	2	1
100 – 199	750’	400’	4	2
200 – 349	900’	500’	6	3
350 or more	1,000’	600’	8	4

b. Remove the Safe Systems Adequacy Test Placeholder

The 2020-2024 GIP included a placeholder for a future Safe Systems Adequacy Test. This test would create another development expense while providing limited transportation safety benefits. County design guidance like the Complete Streets Design Guide (2021) and other related County Code updates provide appropriate direction for private development, and the pedestrian and bicycle tests address similar safety issues.

Recommendation: Remove the reference to the Safe Systems Adequacy Test from the GIP.

c. Motor Vehicle Adequacy

The motor vehicle adequacy test requires the applicant to evaluate a project's impact on vehicle delay and then mitigate that impact or reduce it to the applicable policy area standard. The standards are defined by Critical Lane Volume (CLV) or Highway Capacity Manual operational (delay-based) level of service standard[4]. The CLV level of service standard applies for yellow and green policy area intersections with a CLV of 1,350 or less and the Highway Capacity Manual delay-based intersection level-of-service standard applies to intersections with a CLV of more than 1,350. Red policy areas are exempt from motor vehicle adequacy and mitigation. The safety of all roadway users is the top priority, and therefore, transportation demand management is the first mitigation option to be pursued, followed by operational changes. Roadway capacity improvements may only be considered so long as they do not negatively impact safety.

Recommendation: No changes are recommended.

d. Pedestrian Adequacy Test

The pedestrian adequacy test has three components: the Pedestrian Level of Comfort (PLOC) score, illuminance and street light standards, and American Disabilities Act (ADA) compliance. Applicants evaluate existing conditions, identify deficiencies, and mitigate them to meet PLOC-2, MCDOT illuminance, and ADA standards. An applicant must evaluate and mitigate conditions within a certain distance from their frontage based on the number of net new peak hour trips the project generates.

Pedestrian tests require extensive analysis across large areas and typically identify many more deficiencies than projects can address. The current study area scope places a higher analysis burden on red and orange policy areas despite their ability to support new growth best.

Recommendation: Standardize the study boundaries using the current yellow/green policy area extents and develop new study area thresholds using peak-hour vehicle trips. Remove

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[4] A traffic impact study often evaluates intersections to determine if there is sufficient capacity to accommodate new trips generated by a proposed development. The study may also identify improvements to ensure the intersection will continue to operate adequately. Critical Lane Volume is a planning-level tool to measure congestion at signalized intersections and is most appropriate in locations where traffic signals are not closely spaced. Highway Capacity Manual analysis is a more detailed measure of intersection delay that is appropriate in congested areas where traffic queues are likely to back up into another intersection.

footnotes limiting the extent of improvements because the LATR Proportionality Guide governs the extent of required improvements.

Table 6 Current Pedestrian Adequacy Test Scoping Table (2020-2024 GIP)

Peak-Hour Person Trips Generated	Walkshed by Policy Area	
	Red and Orange	Yellow and Green
50 – 99	400’	250’
100 – 199	750’	400’
200 – 349	900’	500’
350 or more	1,000’	600’
Max. length of sidewalk and streetlighting improvements beyond frontage = 4x Max. span for ADA improvements beyond the frontage = ½x*		

e. Bicycle Adequacy Test

The bicycle adequacy test requires applicants to evaluate any right-of-way with master plan-recommended bikeways within a certain distance of the site. Applicants identify and mitigate deficiencies by creating or extending Level of Traffic Stress 2 (LTS-2) conditions consistent with the Bicycle Master Plan. An applicant must evaluate and mitigate conditions within a certain distance from their frontage based on the number of net new peak hour trips the project generates.

The current study area in yellow and green policy areas is insufficiently small to provide meaningful bicycle facilities off-site.

Recommendation: Standardize the study area boundaries using the current red/orange policy area extents and develop new study area thresholds using peak-hour vehicle trips.

Table 7 Current Bicycle Adequacy Test Scoping Table (2020-2024 GIP)

Peak-Hour Person Trips Generated	Red and Orange Policy Areas	Yellow and Green Policy Areas
50 – 99	400’	250’
100 – 199	750’	400’
200 – 349	900’	500’
350 or more	1,000’	600’

f. Bus Transit Adequacy Test

The bus transit adequacy test requires applicants to ensure bus stops are outfitted with shelters, displays, and other standard amenities, such as trash receptacles, seating, and USB outlets. Applicants must also provide an accessible path between the site and a bus stop. An applicant must evaluate and mitigate conditions within a certain distance from their frontage based on the number of net new peak hour trips the project generates. Green policy areas are currently exempt from this test despite the presence of bus stops in these areas.

Bus transit improvements can be challenging to implement. MCDOT is reluctant to accept amenities in areas without frequent transit and prefers to invest in shelters in priority locations. Creating pads for shelters and improving access to bus stops often requires right-of-way acquisition and, therefore, cannot be completed as an off-site improvement. Small study areas in yellow policy areas and the green policy area exemption don't align with county goals to expand access. Nonetheless, ensuring bus transit stops adequacy is an important policy goal.

Recommendation: Simplify the bus transit adequacy requirements by requiring an ADA bus stop pad when practicable and otherwise referring applicants to published MCDOT guidelines – when available – for shelters and amenities. Remove the exemption for green policy areas. Remove the maximum number of shelters. Standardize study boundaries using the current red/orange policy area extents and develop new study area thresholds using peak-hour vehicle trips.

Table 8 Current Bus Adequacy Test Scoping Table (2020-2024 GIP)

Peak-Hour Person Trips Generated	Max. # of Shelters		Distance from Site
	Red and Orange	Yellow	
50 – 99	2	1	500'
100 – 199	2	2	1,000'
200 – 349	3	2	1,300'
350 or more	4	3	1,500'

4. Modify the Proportionality Guide Calculation

The 2020 policy update made triggering the multimodal adequacy tests more likely, exposing development projects to potentially excessive costs for off-site improvements to address adequacy for these modes. The Planning Board introduced the LATR Proportionality Guide in 2022 as a temporary measure to address concerns about disproportionate and unpredictable mitigation costs. The current calculation multiplies 1) the full extent of development by 2) the orange policy area impact tax by 3) the policy area non-auto driver mode share (NADMS) goal.

While the Proportionality Guide has made costs more predictable, the calculation continues to generate disproportionate and excessive costs for some projects and needs further evaluation to ensure it appropriately accounts for impacts.

Recommendation: Develop a new calculation that better addresses proportionality as part of the LATR update**.** Planning Staff will coordinate with MCDOT and other stakeholders to develop a new calculation that multiplies net new development by a trip-based policy area rate. Modifying the formula to use net new development rather than the full extent of development better accounts for the project's impact since existing uses have previously received adequacy approval from the Planning Board. Net new development is calculated by subtracting existing use from the total development. The trip-based policy area rate, based on impact tax rates, standardizes the cost of a trip by land use, accounting for trip generation rates and project location.

County Priorities: Economic Competitiveness**,** Environmental Resilience, Compact Growth, Good Governance

5. Align LATR Exemptions with County Policies

a. **Affordable housing:** Recognizing that providing affordable housing is a fundamental element of the County's General Plan and economic development strategy, the current GIP exempts affordable housing from making transportation mitigation payments. The LATR Guidelines strongly favor requiring applicants to build improvements that mitigate transportation adequacy issues, allowing mitigation payments only in exceptional cases. This means affordable housing projects only receive relief if desired improvements are infeasible and thus not constructible.

   Recommendation: Exempt affordable housing units from off-site mitigation construction. The Proportionality Guide limit can be adjusted by subtracting new affordable units from net new development. This adjustment would enhance the financial viability of affordable housing projects.

   County Priorities: Housing for All, Economic Competitiveness**,** Social Justice and Racial Equity

b. **Three-bedroom multifamily units:** *Thrive Montgomery 2050* recommends enacting policies that encourage the construction of housing units in multifamily buildings suitable for households with children. This will help increase the amount and variety of housing in the county.

   Recommendation: Exempt multifamily units with three or more bedrooms from off-site mitigation construction and payment. The Proportionality Guide limit can be adjusted by subtracting new three-bedroom multifamily units from net new development. This adjustment would enhance the financial viability of these units in support of county goals.

   County Priorities: Housing for All, Economic Competitiveness**,** Social Justice and Racial Equity

c. **Daycare:** LATR studies can significantly burden daycares, a greatly needed land use typically operating on thin margins. Many of the trips are pass-by and, therefore, already captured on the road system. Site access and circulation are covered in County Code Sections 50.4.2 and 59.6.1.1.

   Recommendation: Exempt daycares from the requirement to complete an LATR study.

County Priorities: Economic Competitiveness**,** Social Justice and Racial Equity

d. Bioscience: The 2020-2024 GIP exempted bioscience facilities from all LATR tests, enabling faster approval of facilities supporting biological research and development or manufacturing related products. This exemption helps support an industry that provides significant employment opportunities in the county. The LATR exemption applies to applications for preliminary plans, site plans, or building permits approved after January 1, 2021, and before January 1, 2025. The application for a building permit must be filed within three years after the approval of any required preliminary plan or site plan.

Recommendation: Extend the LATR exemption for another four years so it applies to applications filed before January 1, 2029.

County Priorities: Economic Competitiveness

6. Revise Impact Tax Credit to Align with County Policies

The County Code (§52-47) permits developers to receive transportation impact tax credits for constructing transportation improvements that reduce traffic demand or increase transportation capacity. Section 52-50 lists eligible improvements. However, unclear and conflicting definitions in the code can create confusion during the development process. In practice, only improvements enhancing regional transportation capacity receive credit, meaning many pedestrian and bicycle projects are not eligible. Other improvements designed to address the safety of roadway users, such as traffic signals, are also ineligible for credit. Improvements along state highways are ineligible for tax credits.

Recommendation: Update the code to provide more clarity and allow credit for adequacy improvements along state roadways. By expanding the availability of credits from capacity projects to those improving transportation adequacy and safety, the county can continue to move away from a system that prioritizes speed and capacity for motor vehicles during peak hours toward a system that supports walking, bicycling, transit, and driving throughout the entire day – a policy stance the county has increasingly endorsed in recent years.

While impact taxes represent approximately 4% of the transportation capital budget, they are an important source of revenue for the county. While some proposed changes may result in less impact tax revenue from specific projects, others may lead to increased revenues. Acknowledging the inherent difficulty with predicting revenue streams, Planning Staff will work with the Executive Branch over the coming weeks to better understand how proposed recommendations in the GIP may affect impact tax revenues and consider approaches to offset maintain impact tax revenues.

County Priority: Housing for all, Economic Competitiveness, Safety, Compact Growth

7. Clarify SHA's Expectations in the LATR Process

The Maryland State Highway Administration (SHA) reviews proposed development projects as part of a multi-agency development review process. The feedback provided by SHA is valuable in understanding a project's potential impacts on surrounding roadways. However, there are instances where SHA review comments diverge from the LATR Guidelines, resulting in discrepancies and unpredictability in the scope of review. Additionally, SHA's 45-day review period does not align with the Development Review Committee's (DRC) 30-day review period, making it challenging to resolve comments within the Code-mandated 120-day timeline. Often, SHA's review timeline exceeds the 45-day review period, which includes multiple rounds of comments, leading to delays for applicants.

Recommendation: Clarify mutual expectations in the development review process, particularly for projects in red policy areas, where motor vehicle analysis and mitigation are not a county priority. Develop standard parameters for Synchro and SimTraffic modeling in partnership with MCDOT and SHA. Clarify the GIP text to state that the County or State would complete any motor vehicle monitoring in red policy areas outside the development process.

County Priority: Good Governance

8. Create a Repository for Fee-In-Lieu Payments

The GIP allows developers to pay a fee in lieu of improving deficiencies if mitigation projects would degrade safety (motor vehicle adequacy only) or are otherwise impracticable. Payments collected instead of construction must be spent on similar improvements within the same policy area (or an adjacent one for red policy areas and orange town centers). However, these small amounts of money attached to discrete areas make tracking, budgeting, and spending impossible.

Recommendation: Continue to limit the collection of fee-in-lieu payments by encouraging developers to construct mitigation projects. When this is impractical, collect a fee that can be spent in group collected funds with impact taxes and budget them by policy area. Alternatively, the funds could also be used to create a new capital budget project for LATR participation that would be used to contribute towards developer-built improvements, essentially funding extensions of required off-site improvements being completed as part of other development projects – taking advantage of the mobilization of private sector contractors to build transportation improvements quicker.

County Priority: Good Governance

9. Reorganize and Update the Local Area Transportation Review (LATR) Guidelines

The GIP adequacy tests are implemented through the LATR Guidelines, which detail the specific documentation and analysis required to describe the condition of the pedestrian, bicycling, bus transit, and motor vehicle networks surrounding the proposed development. The guidelines are regularly referenced by regulatory reviewers in Montgomery Planning and partnering agencies, developers, and community stakeholders. The guidelines have been updated over several GIP cycles, and the iterative nature of its development has made it difficult to follow in places. The guide lacks explicit direction for some common challenges, adding uncertainty and delay to the process.

Recommendation: Reorganize and update the LATR Guidelines with clarity and ease of use in mind. The revised version will reduce duplicative and contradictory language, address frequently asked questions, and include example documents,
direction for common challenges.

County Priority: Good Governance, Economic Competitiveness

Impact Taxes

The Planning Department typically reviews and prepares recommendations related to impact taxes in conjunction with the GIP update because they are closely related. Recent policy updates applied a context-based framework to the impact tax regime to help focus growth by introducing Transportation Policy Areas and School Impact Areas in 2016. Recent updates have also focused on encouraging the production of diverse housing types while balancing the need to ensure our school and transportation systems are adequately funded. The preliminary recommendations for development impact taxes as part of the 2024 GIP update continue advancing county priorities, like housing for all, economic competitiveness, racial equity, and social justice.

Private developers are responsible for investing in public schools, roads, and sidewalks by paying development impact taxes on new development. Development impact taxes are an important source of funds, representing 4% of the transportation capital budget and 7% of the school capital budget in fiscal year 2024.

While the Planning Staff is sensitive to the importance of development-provided transportation and school funding, the county pays a significant price when development projects do not advance or are pared down due to the county's high development costs. While some proposed changes may result in less impact on tax revenue from specific projects, others may lead to increased revenues. Additional development will provide new long-term sustainable revenue through increased property tax receipts to support the county's capital budget priorities, including transportation and schools.

1. Calculation of School Impact Taxes

In 2016, the County Council changed the calculation of impact taxes, which had previously been calculated at 90% of the cost of a student seat, to 120%. This was done, in part, to compensate for the elimination of additional developer facility payments that were required when a school cluster exceeded certain projected utilization thresholds. In 2020, the calculation was changed to 100% of the cost of a seat factor with the introduction of Utilization Premium Payments.

Recommendation: Utilization Premium Payments should continue to be used for schools identified as overcrowded, and the calculation should remain at a 100% seat cost.

County Priority: Good Governance

2. Cap and Carryover System

In 2023, Bill 25-23E was passed in response to anticipated higher-than-usual biennial impact tax adjustments. The biennial tax rate adjustment for transportation and schools cannot exceed 20%. If it does exceed 20%, then the excess dollar amount must be carried over and added to the tax rate before calculating the next update.

Recommendation: Keep the cap and carryover system, as its implementation is relatively new and will help soften any anticipated upward adjustments.

County Priority: Good Governance

3. Consider Calculating Single-Family Attached and Detached Rates by Square Foot

Currently, impact tax fees are charged on a per-unit basis, with no distinction for the unit size. Recently, the county has prioritized the production of smaller homes as a way to provide more entry-level homes. Right now, a detached home at 5,000 square feet pays the same impact tax fees as a 2,000 square-foot home.

Recommendation: While Planning Staff supports developing a methodology to move to a square-foot basis, we are still working on the mechanics. One option is to use the median square-foot value from the past ten years (as calculated by the Department of Permitting Service's building permit data) to calculate the 100% rate.

Table 9 Impact Taxes on a Square Foot Basis

	Single Family Detached			Single Family Attached		
	Rate by unit	Median Size (square feet)	Proposed Rate by Square Foot	Rate by unit	Median Size (square feet)	Proposed Rate by Square Foot
Infill	$25,004	5,600	$4.47	$21,664	2,500	$8.67
Turnover	$26,084	5,600	$4.66	$29,456	2,500	$11.78
Red	$9,663	5,600	$1.73	$7,905	2,500	$3.16
Orange	$24,151	5,600	$4.31	$19,761	2,500	$7.90
Yellow	$30,190	5,600	$5.39	$24,702	2,500	$9.88
Green	$30,190	5,600	$5.39	$24,702	2,500	$9.88

County Priority: Housing for All

4. New Impact Tax Category

The Planning Board is currently reviewing the Attainable Housing Strategies initiative report, which will make it easier to build housing types beyond the typical single-family attached, detached, and multifamily high-and-low-rise structures. Relatedly, 2-over-2s/stacked flats are becoming increasingly common in the county. Our Zoning Ordinance classifies them as multifamily low-rise structures, and for calculating student generation rates, they are classified as such. However, the SGRs resemble the typical single-family attached unit.

Recommendation: Create a new impact tax category between multifamily low and single-family attached for attainable housing types (if needed) that would include 2-over-2s/stacked flats.

County Priority: Housing for All

5. Enterprise Zone Exemption

The Maryland Enterprise Zone program designates areas of the state meeting certain requirements as targets for employment growth. A business owner in an Enterprise Zone may apply for income tax credits based on the number of jobs created by the business within the zone. Property tax credits are also available for businesses that hire new employees or invest in capital improvements. The state's designation of Enterprise Zone designations expires after ten years. As the County Council phased out the former Enterprise Zone designation in the 2020 GIP, the exemption remains for only current Enterprise Zones, which are only located in two areas of the county now (Olde Towne Gaithersburg and Burtonsville[5]). Both Enterprise Zones will expire by 2028.

Recommendation: Eliminate the current impact tax exemption for Enterprise Zones. Only two Enterprise Zones remain, and this will simplify the number of boundaries used in conjunction with the policy.

County Priority: Good Governance

6. Opportunity Zone Exemption

An Opportunity Zone is an economically distressed community where private investments may be eligible for capital gains tax incentives. They were created in 2017 as part of the federal Tax Cuts and Jobs Act. The program requires state-nominated areas to be certified by the U.S. Treasury Department. Fourteen census tracts in the county have been certified as Qualified Opportunity Zones. The designations remain for ten years, until 2028.

Recommendation: Retain the development impact tax exemption for certified Opportunity Zones. Opportunity Zones remain an important way to invest in economically distressed

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[5] https://commerce.maryland.gov/fund/programs-for-businesses/enterprise-zone-tax-credit

communities. Add legacy language for projects that may have an approved application but have not yet gone to building permit by the time the program ends in 2028 to increase predictability and support the county's economic development goals.

County Priority: Economic Competitiveness

7. Desired Growth and Investment Areas

Desired Growth and Investment Areas include specific Metropolitan Washington Council of Governments (MWCOG) designated Activity Centers and a 500-foot buffer around existing and specific planned bus rapid transit (BRT) lines. DGIAs give a 40% transportation impact tax discount for orange policy areas and 32% for yellow policy issues.

Recommendation: Remove this exemption and rely on other policies to advance corridor-focused compact growth and housing. This will simplify the number of boundaries used in conjunction with the policy.

County Priority: Good Governance

8. 25% MPDU Exemption

In 2017, Expedited Bill 36-17 was passed, which allowed projects that provide 25% affordable units to have all their impact taxes exempt for all units in the project (including market rate). In the 2020 GIP, the exemption was altered in two ways. First, the affordable units were required to be in the MPDU program (which has a more extended control period than many other affordable programs). Second, the exemption was changed from a 100% exemption countywide to either an exemption or partial waiver equal to the lowest possible standard impact tax rate for unit type by policy area and school impact area.

Table 10 Example of 25% MPDU Exemption for Multifamily High-Rise Structures

	Multifamily High Rise		
	Impact Tax	*Exemption*	*To Pay*
Infill	$3,739	$3,739	$0
Turnover	$6,073	$3,739	$2,334

	Multifamily High Rise		
	Impact Tax	*Exemption*	*To Pay*
Red	$4,390	$4,390	$0
Orange	$10,976	$4,390	$6,586
Yellow	$13,720	$4,390	$9,330
Green	$13,720	$4,390	$9,330

Recommendation: Retain the exemption or partial waiver for projects with at least 25% MPDUs. It is consistent with county goals to incentivize more housing production, including affordable housing.

County Priority: Housing for All

9. Three Bedroom or More Multifamily Units Exemption

Currently, a three-bedroom multifamily dwelling in an Infill Impact Area pays impact taxes at 40% of the otherwise applicable rate. The county has prioritized building these units in the past, desiring more family-friendly units, especially in high-rise units. According to CoStar, only around 929 three-bedroom units (roughly 4% of all rental housing units) have been built since 2013 in rental projects. No four-bedroom units have been built. *Thrive Montgomery 2050* recommends enacting policies that encourage the construction of housing units in multifamily buildings suitable for larger households. This will help increase the amount and variety of housing in the county.

Recommendation: Given the need for family-sized units in our multifamily structures, expand the discount to a total exemption.

County Priority: Housing for All

Table 11 Example Projects with 3-Bedroom Units

	Studios	1-Beds	2-Beds	3-Beds	# Total Market Rate Units	Impact Taxes Paid	Impact Taxes Waived
Red/Infill MFH	70	75	45	10	200	$1,544,510	$81,290
Turnover/ Orange MFL	70	75	45	10	200	$5,508,290	$289,910

10. Office-to-Residential Conversions

Office-to-residential conversions get a credit for the office use against their new residential impact taxes. The county has a high office vacancy rate, and converting offices to residential is difficult and expensive.

Recommendation: Given the high office vacancy rate in the county and the difficulty of converting office space to residential use, exempt office-to-residential conversion projects from impact taxes.

County Priority: Housing for All, Economic Competitiveness

Table 12 12 Example of Office-to-Residential Conversion Impact Taxes

Original Office Impact Taxes	
Building GFA	200,000
Transportation Impact Tax Rate (Orange)	$22.10
Total Impact Taxes	$4,420,000
Office-to-Residential Conversion Impact Taxes	
# of Market Rate Units Converted	175
Transportation Impact Tax Rate (MFL/Orange)	$15,366
Turnover Impact Area (MFL/Turnover)	$13,625
Transportation Impact Tax	$2,689,050
School Impact Tax	$2,384,375
Total Impact Taxes	$5,073,425
Office-to-Residential Conversion Impact Taxes Waived	
$653,425	

11. Bioscience

The county has exempted bioscience from paying impact taxes for nearly twenty years, expiring on January 1, 2025.

Recommendation: Extend the exemption until January 1, 2029.

County Priority: Economic Competitiveness

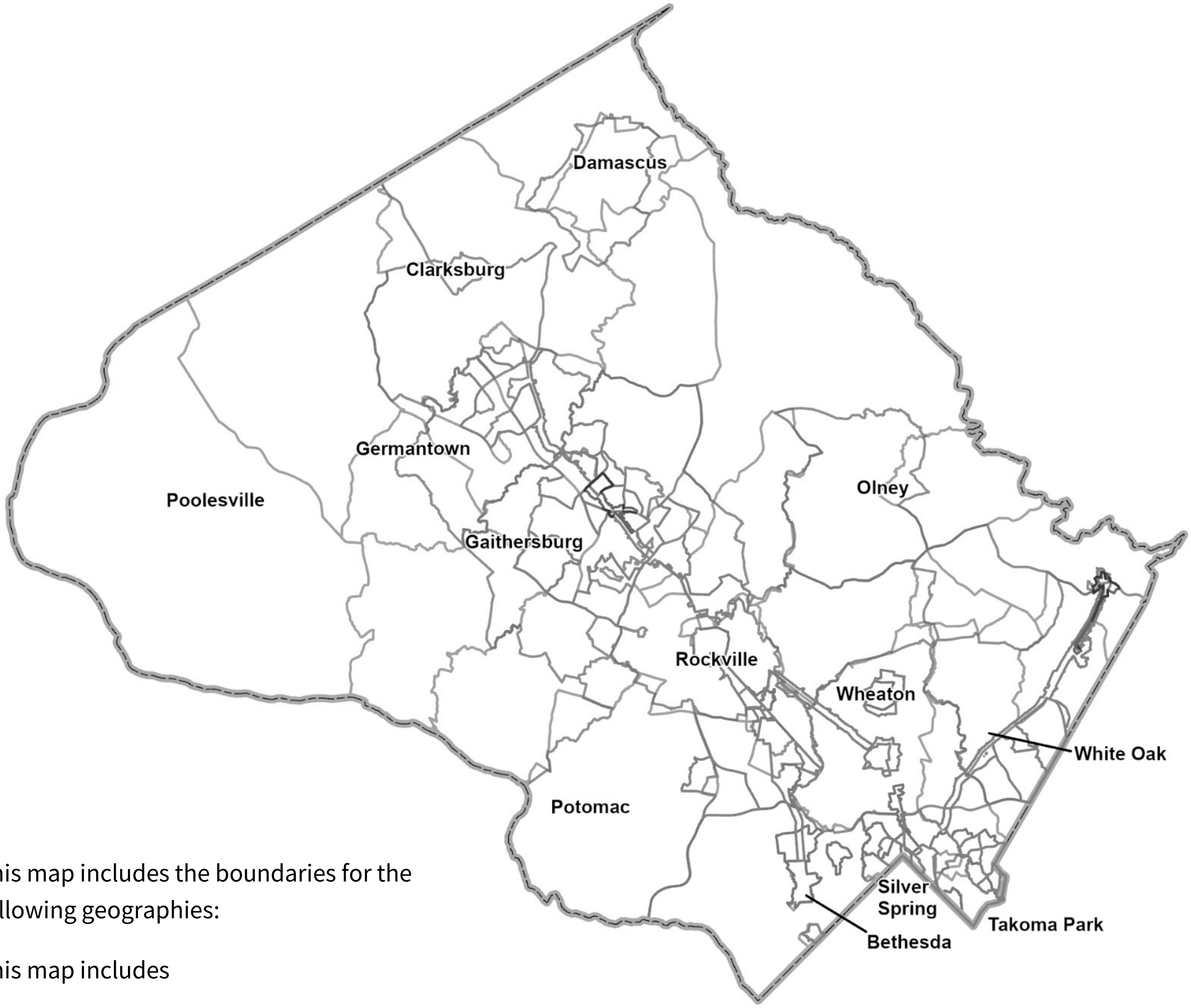
PROJECT SCHEDULE

The Planning Board must transmit its policy recommendations and a report on the county's growth context to the County Council by August 1, 2024. The Council will adopt the updated policy via resolution by November 15, 2024. The following table highlights the anticipated timeline for GIP milestones and activities.

Milestone	Dates	Notes
Planning Board Briefings	February/March 2024	Initial review of draft recommendations to prepare the Working Draft
Community Meeting	March 19, 2024	Preliminary recommendations will be presented to the community
Working Draft Posted	April 2024	
Planning Board Briefings on Working Draft	May 2024	Review of draft recommendations to prepare the Public Hearing Draft
Public Hearing	May 2024	
Planning Board Work Sessions	June – July 2024	Four to six work sessions on the Public Hearing Draft
Planning Board approval of Planning Board Draft and Resolution	July 25, 2024	Transmit to the County Council and County Executive by August 1
County Council Review and Approval	September – November 2024	Council adoption is required by November 15, 2024

MAPS

Map 1 Impact Tax Geographies



This map includes the boundaries for the following geographies:

This map includes

1. School Impact Areas
2. Transportation Policy Area Categories
3. Desired Growth and Investment Areas
4. Enterprise Zones
5. Opportunity Zones

Map 2 Proposed Policy Areas