Attachment 3 - Testimony and Comment Response Matrix

Summary of Comments and Responses - 2024 GIP Update - Public Hearing Draft

#	Element	Rec. No.	Summary of Testimony or Comments	Commenter	Planning Staff Response
1	General	General	GCCA supports the recommendations in the draft document except as noted. The staff proposed changes are largely small adjustments to make the existing process work better.	Daniel L. Wilhelm, GCCA	Comment received.
2	General	General	Supports the recommendations that encourage the building of more affordable and attainable housing options and treats public transportation, walking, and bicycling as public benefits.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
3	General	General	This update is full of common sense updates and tweaks that will play a supporting, but significant role in addressing Montgomery County's housing crisis.	Mike English	Comment received.
4	General	General	GGWash supports the recommendations in the 2024–2028 Growth and Infrastructure Policy update, as a way to incentivize the construction of much-needed smaller and more attainably-priced housing options. We're excited to see that the Growth and Infrastructure Policy recommends reducing impact fees for homes under 1,500 square feet, and eliminating impact taxes and off-site mitigation payments for family-sized apartments.	Dan Reed, Greater Greater Washington (GGWash)	Comment received.
5	General	General	Once the detailed fiscal analysis is completed, Executive branch staff would like the opportunity to provide a briefing on it to the Planning Board at one of your June work sessions; they will also be available to assist in discussions of scenarios that may evolve as you move forward in your deliberations.	Marc Elrich, County Executive	Executive Branch staff can provide the information to Planning staff. The Executive Branch will have an opportunity to present this information to Council later in the process.
6	General	General	The Growth Policy has diverged from the APFO, reducing the County's ability to finance essential transportation, transit, and school facilities for both existing and new residents, as exemptions to impact taxes and modifications to infrastructure tests transfer funding responsibilities from developers to the County, potentially hindering the County's ability to finance necessary infrastructure projects in its Capital Improvements Program (CIP), with further exacerbations suggested in the draft GIP.	Marc Elrich, County Executive	APFO is intended to address local impacts with constructed or paid for improvements. It is not intended to provide funding for the CIP. It is not intended to provide funding for the CIP or to finance existing needs. While the County Executive asserts that the GIP reduces the county's ability to funding essential infrastructure, it's not clear that this is the case for the transportation recommendations. One of the main benefits of reducing the transportation requirements of the GIP is to incentivize new development, which may provide both frontage and off-site improvements. Additionally, the county is experiencing a housing crisis and must find ways to incentivize the creation of more housing. Exempting the affordable housing component of projects from LATR is a way to balance the needs for infrastructure and housing. Planning Staff recognizes that there is insufficient funding to implement infrastructure recommendations in master plans and are supportive of the County Executive's efforts to convene a larger discussion about infrastructure funding and welcome the opportunity to participate.
7	Schools	2.0	The Schools' Technical Advisory Team. The meetings were well-run, informative and presented MCCPTA with the opportunity to provide input on proposed discussion items related to schools.	Sally McCarthy, on behalf of the MCCPTA	Comment received.
8	Schools	2.0	New Recommendation: De Minimus Impact for Schools A development application that proposes new development of only a de minimus quantity should also be exempt from adequate public facilities review and from providing any improvements, (whether frontage or other improvements called for by any master, sector, or functional plan). For example, up to a total of [a number to be decided] school students of all levels.	William Kominers, Lerch, Early & Brewer	Transportation has a de minimis exemption in part due to the cost of conducting a LATR study. For schools, the adequacy analysis is conducted by Planning Staff as part of the development review process at no additional cost to the applicant. Also, a school adequacy analysis will have to be done to determine whether a project qualifies for a de minimis exemption or not anyway.

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9	Schools	2.0	Since 2020, the surcharge (UPPs) has generated slightly more than $6,000, an amount that may rise as additional developments move forward, but with no clear indication that future payments will generate the funding needed for additional seats in schools.	Marc Elrich, County Executive	Not only are UPP funds calculated at a fraction of the cost of a seat, the need for additional capacity in most schools are due to turnover enrollment. Therefore, it is impractical to expect UPPs to be able to generate the funding needed for classroom addition projects.
10	Schools	2.2	Highly supportive of recommendation 2.2 because it achieves critical data metric consistency across MCPS and County Planning and will improve accuracy as trends in enrollments fluctuate.	Sally McCarthy, on behalf of the MCCPTA	Comment received.
11	Schools	2.2	Changes to the schools test are shifting the funding burden from private developers to the County.	Marc Elrich, County Executive	The 2020 GIP replaced the moratorium, which would cut off any opportunity to collect private funding, with UPPs, a surcharge assessed to developers in addition to their due school impact tax.
12	Schools	2.2	With diminution of the schools test, the county is left without resources to adequately fund infrastructure.	Marc Elrich, County Executive	Recommendation 2.2 tightens the schools test by lowering the seat deficit thresholds of most UPP tiers, not diminish it.
13	Schools	2.3	The current surcharge for developments that generate students in overcrowded school districts (UPPs) does not generate enough funding for additional seats in schools. It is further limited by restricting use of the funds to the area in which the funds are generated. Changes that allow more flexibility would address some of these concerns.	Marc Elrich, County Executive	This comment expresses support for the recommendations, but the premise is inaccurate - school impact taxes are calculated at 100% of the cost of a seat. UPPs are assessed as an additional percentage to the due impact tax rates.
14	Schools	2.3	Highly supportive of the recommendation to allow UPP funds to be used in adjacent schools because provides direct flexibility to MCPS Planning and Facilities as they build out the CIP. The current MCPS CIP reflects a thoughtful and strategic use of resources as it will alleviate high school overcrowding.	Sally McCarthy, on behalf of the MCCPTA	Comment received.
15	Schools	2.3	If funds are used on an adjacent school, we give should credit to that deficient school to avoid double-dipping.	Planning Board	The Annual School Test does not 'queue' the cumulative impact of different development applications - each developer is assessed a fee based on their own estimated impact and one project's impact does not get passed down to another regardless of where the funds are used.
16	Schools	2.4	Concerned about 2/2 being treated as SFA for impact tax purposes. Tax effects are "highly significant" - increase is 300% in school impact taxes. 1) Wait until there's real data then create a separate 2/2 category. 2) if not 1), then grandfather current affected projects so they can be treated as MFL.	Pat Harris, Lerch, Early & Brewer	DPS has said their current practice is to recognize stacked flats as single family attached units and charge impact tax rates accordingly, but Planning Staff is otherwise open to grandfathering approved stacked flats. Staff will present the Planning Board with options and data regarding stacked flats for further discussion.
17	Schools	2.4	Highly supportive of the recommendation to calculate SGRs for stacked flats and similar housing types as single-family because it implements another important delineation among housing classifications, which in turn will refine student generation rates.	Sally McCarthy, on behalf of the MCCPTA	Comment received.
18	Schools	2.4	Supportive of changing the classification for stacked flats or two-over-twos but would like to see this be closer to multifamily to further incentivize their creation.	Katie Wagner, on behalf of the NAIOP and MBIA	Staff will present the Planning Board with options and data regarding stacked flats for further discussion.

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19	Schools	2.4	Keep stacked flats or two-over-twos as multifamily low rise to avoid increased impact taxes that are ultimately passed on to renters or homeowners while also maintaining alignment with current zone classifications often assigned to such building types. There is also uncertainty about whether these types of buildings will generate a similar number of students as single-family attached units, especially in infill areas where they are likely to be constructed.	Miles Group	Staff will present the Planning Board with options and data regarding stacked flats for further discussion.
20	Schools	2.5	Highly supportive of Recommendation 2.5 as it enables County Planning staff to adequately monitor and assess the rollout of statewide Blueprint requirement of compulsory Pre-K education. MCPS is planning to absorb many of these enrollments, and these students will become a part of the MCPS enrollment forecasts.	Sally McCarthy, on behalf of the MCCPTA	Comment received.
21	Transportation	General	The GIP should acknowledge or incorporate the LATIP Program and the area that it covers into the draft, specifically noting which areas, such as the White Oak Science Gateway (WOSG), where LATR is replaced by LATIP.	Eileen Finnegan	No change needed as the draft policy describes the WOSG LATIP in section T7.3 White Oak Policy Area (Appendix D, p. 16).
22	Transportation	General	Acknowledges the "excellent, open and honest communication" between SHA, Planning Staff, and the development community through the Transportation Advisory Group (TAG). SHA is updating its TIS Guidelines and asks for continued to engagement and collaboration.	Joe Moges, MD SHA	Comment received.
23	Transportation	General	New Recommendation: Frontage improvements No Impact: A development application that does not propose any additional square footage or net new peak hour trips, should be exempt from providing any frontage improvements, or other improvements called for by any master, sector, or functional plan,	William Kominers, Lerch, Early & Brewer	This is outside of the scope of the GIP. The GIP only considers off-site transportation adequacy. Frontage improvements are governed by other sections of the county code.
24	Transportation	General	New Recommendation: De Minimus for Transportation De Minimus Impact. A development application that proposes new development of only a de minimus quantity should also be exempt from adequate public facilities review and from providing any improvements. For this purpose, "de minimus" would mean traffic generation of up to [a number to be decided] commercial trips, or up to [a number to be decided] residential trips, including an equivalent combination of both.	William Kominers, Lerch, Early & Brewer	Projects with minor or no impact are not required to provide off-site transportation improvements. Under the recommended 2024-2028 GIP, any project with fewer than 30 net new peak-hour motor vehicle trips is assumed to satisfy APF requirements and is exempt from further review. Frontage improvements are considered on-site improvements and are governed by other sections of the county code.
25	Transportation	3.1	Policy area changes in the northwest quadrant illustrate the swelling of corridor-focused growth. Orange abuts green. "These represent sprawl". Tight boundaries not steep gradients are the key to corridor focused growth.	Scott Plumer, Darnestown Civic Association	Designating the Germantown and East Clarksburg policy areas as Orange policy areas is consistent with the area master plans and the designation of these areas as Corridor-Focused Growth areas in Thrive Montgomery 2050.
26	Transportation	3.1	Changing Damascus from Green to Yellow is a dangerous precedent. Protecting our communities from densification is well aligned with corridor focused growth, and stopping our sprawling corridors from detracting investment from where it is most needed.	Scott Plumer, Darnestown Civic Association	Designating Damascus as a Yellow policy area accurately reflects existing conditions and the master planned vision for the area.

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27	Transportation	3.1	Updating the Rock Spring Policy Area designation from Orange to Red is fully consistent with and supportive of the Rock Spring Sector Plan, the characteristics and goals of Red Policy Areas, and the efforts by the County to encourage the continued economic development of Rock Spring Park as a critically important mixed-use center in the County. It will assist Rock Spring in becoming more of a mixed use and dynamic area and will help stimulate much desired development opportunities while advancing those that are already underway.	Steven A. Robins, on behalf of the Camalier and Davis families and the Buchanan Partners	Comment received.
28	Transportation	3.1	The White Oak Village portion of WOSG should not be changed from an Orange to a Red Policy Area. Though the area is on the verge of change, it does not yet have the high-quality transportation seen in other Red Policy Areas and development in the area is still very much in the future. The lack of revenue that will come from $0 in transportation impact taxes will stress future County CIPs and increase the likelihood that needed transportation improvements will not happen.	Eileen Finnegan	The recommended policy area designations reflect the vision for future development detailed in area master plans, functional master plans, and the General Plan. Aligning the GIP with our planned vision increases the likelihood of achieving it. If we delay Red policy assignments until after we achieve the vision, it becomes more difficult to reach that goal. Red policy areas pay impact taxes, albeit at a lower rate than orange policy areas. However, as an Opportunity Zone, development in White Oak Village and Center is exempt from paying impact taxes under the current policy.
29	Transportation	3.1	Supports including the White Oak Village & Center Policy area in the red category.	Daniel L. Wilhelm, Greater Colesville Citizens Association (GCCA)	Comment received.
30	Transportation	3.1	We also recommend that the White Oak Policy Area be classified in the red policy area. These two areas are covered by the Local Area Transportation Improvement Program (LATIP) which replaces LATR, and thus most of the GIP transportation rules do not apply to them. The area is planned for premium transit and White Oak is already a downtown area because of its highly dense residential development and the dense non-residential development there and in the Hillandale activity centers.	Daniel L. Wilhelm, GCCA	The designation of the White Oak Policy Area as an Orange policy area is appropriate for a town center.
31	Transportation	3.1	Asks that change to policy areas be linked to implementation of new infrastructure. MCDOT opposes changes to policy areas until the transit and active transportation infrastructure and transit service is in place to support the more intensive development. MCDOT also advocates for a sustainable funding source to support ongoing improvements in transit service.	Haley Peckett, MCDOT	Planning Staff acknowledges that achieving the vision for these areas will take time and that the recommended changes to policy area classifications will reduce impact taxes. However, the provision of premium transit in many areas is contingent upon more urban forms of development. By incentivizing this type of development, we are creating the ridership base that will ultimately use and pay for the service. Development projects in Red policy areas are not required to mitigate traffic, as mitigation measures, such as adding turn lanes in areas that are to become downtowns, are inconsistent with urban form and Vision Zero.

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32	Transportation	3.1	The draft GIP proposes further weakening traffic congestion standards through transitioning certain areas from Green to Yellow, Yellow to Orange, and from Orange to Red without the current transportation infrastructure to support the change. These changes could undermine efforts to promote transit use and allocate resources for transit improvement. A successful strategy for encouraging transit usage should align development intensity with access to a robust and operational transit system, emphasizing the importance of transit infrastructure.	Marc Elrich, County Executive	Planning Staff acknowledges that achieving the vision for these areas will take time and that the recommended changes to policy area classifications will reduce impact taxes. However, the provision of premium transit in many areas is contingent upon more urban forms of development. By incentivizing this type of development, we are creating the ridership base that will ultimately use and pay for the service. Development projects in Red policy areas are not required to mitigate traffic, as mitigation measures, such as adding turn lanes in areas that are to become downtowns, are inconsistent with urban form and Vision Zero.
33	Transportation	3.2	What would the impact be on increasing the motor vehicle trip threshold from 30 net new trips per peak hour to 50?	Planning Board	Planning Staff reviewed the 17 approved projects that triggered LATR under the 2020-2024 GIP. One project had 47 net new vehicle trips, and the other 16 projects had over 50 net new motor vehicle trips. Specifically, eight projects had 51-100 net new peak-hour motor vehicle trips, five had 100-200 trips, and three had 200-268 trips. A cursory review of other jurisdictions revealed that the county's threshold is on the lower side. DC uses a threshold of 25 vehicles in the peak direction with exemptions for projects with a low parking supply, robust transportation demand management (TDM), and high-quality pedestrian realm. (These projects still need to ensure ADA access to transit and provide one improvement to a second transit stop - like a curb ramp.) Fairfax uses a 250 peak hour or 2,500 ADT threshold for the more cursory Comprehensive Transportation Review and a 5,000 ADT for the more intensive Transportation Impact Assessment.
34	Transportation	3.2	In favor of moving to 30 vehicle trips as the trigger for an LATR traffic study, noting that smaller sites or exempt uses should focus more on the on-site and safe site access critical for functionality.	Katie Wagner, on behalf of the NAIOP and MBIA	Comment received.
35	Transportation	3.2	Supports this new standard (30 vehicle trips) as it aligns land use policy with more sustainable transportation options.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
36	Transportation	3.2	MCDOT neither supports nor opposes on the understanding that this is an approximately equal conversion between units, and that this recommendation does not lead to a substantive reduction in LATRs produced. But we do note that there have been several developments under the current growth policy which met this de minimis and would not under this proposal, and vice versa.	Haley Peckett, MCDOT	Planning staff confirms that 30 motor vehicle trips is the approximate equivalent of the existing threshold of 50 person trips. Planning staff did not identify any projects that surpassed the threshold under the current growth policy which would not also surpass the threshold under the proposed policy.
37	Transportation	3.3	Support the increase in the delay standard for some policy areas as they are minor increases.	Katie Wagner, on behalf of the NAIOP and MBIA	Comment received.

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38	Transportation	3.3	MCDOT is concerned that this change would allow for greater vehicular congestion from new growth in newly classified policy areas without necessitating that robust transit service is available for users to have viable alternatives.	Haley Peckett, MCDOT	The county's growth policy acknowledges a greater tolerance for traffic mitigation as areas become less dependent on travel by private vehicle. As the areas recommended for changes to traffic congestion standards are envisioned to become more urban by Thrive Montgomery 2050, its reasonable to reduce traffic congestion standards. If we continue to prioritize traffic in these areas, they will not be transformed into more walkable, bikeable, and transit-friendly places.
39	Transportation	3.4	Clarify that the non-motor vehicle adequacy test is not a new test.	Planning Board	•Planning Staff agrees and suggests the following revised recommendation: ~~Establish a~~ **Simplify the** Non-Motor Vehicle Adequacy Test**. The test has** ~~with~~ five components: Pedestrian Level of Comfort (PLOC), illuminance, Americans with Disabilities Act (ADA) compliance, bicycle system, and bus transit system. This test replaces the individual pedestrian, bicycle, and bus transit systems tests.
40	Transportation	3.4	Supports 3.4 as it recognizes our county needs an integrated transportation system to accomplish this shift of focus. All residents should be able to walk, roll, bike and take transit as individual transportation options or in combination and do so safely.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
41	Transportation	3.5	MCDOT recommends maintaining the 2020 modal adequacy tests to maintain funding levels for APFO. The proposed changes for pedestrian adequacy stand to increase the County's burden in funding pedestrian infrastructure by reducing the extent of offsite improvements.	Haley Peckett, MCDOT	This recommendation aims to reduce the amount of required data collection and analysis, as applicants typically identify more inadequacies than they are required to mitigate. While the recommendation reduces the size of the study area in Red and Orange policy areas, it also removes the existing limits on the physical extent of mitigation projects. Ultimately, the amount of required mitigation must be proportional to the project's impact.
42	Transportation	3.5	MCDOT recommends study and development of a future transit modal adequacy test or other transit-focused GIP policy that results in meaningful improvement of transit service. Adding a shelter does not substantively expand transit access.	Haley Peckett, MCDOT	The GIP and LATR prioritize developer-constructed improvements and allow for payments only when construction is impracticable. Planning staff welcomes further conversation with MCDOT about future changes to the transit test. However, the growth policy is not an appropriate vehicle to help to increase transit service, which would have both an operations component (more service) and a capital component (more vehicles and storage facilities). This is regional transportation improvement, not a local transportation improvement, and therefore should not be required as a form of mitigation.
43	Transportation	3.5	Each of these adequacy tests must also define the point from which Pedestrian, Bicycle, and Transit Adequacy is measured. MCDOT suggests that they be measured from the nearest edge of the property.	Haley Peckett, MCDOT	Planning Staff agrees and recommends defining off-site, frontage, on-site improvements as part of the LATR Guidelines update. Staff will work with MCDOT and other stakeholders to develop these definitions.
44	Transportation	3.5	NAIOP and MBIA support the simplification of the study areas, but questions the necessity of the illumination study. They caution that care needs to be taken when developing the testing procedures based on MCDOT's updated standards to ensure the study is not "costly and dangerous."	Katie Wagner, on behalf of the NAIOP and MBIA	Planning Staff will coordinate with stakeholders during the LATR Guidelines update to ensure testing procedures prioritize safety and efficiency.

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45	Transportation	3.6	MCDOT supports this recommendation. The narrowed focus on speed provides useful data on existing conditions to MCDOT. The language allows MCDOT staff to approve implementation of safety countermeasures on a case-by-case basis.	Haley Peckett, MCDOT	Comment received.
46	Transportation	3.6	Supports recommendation to focus on speed.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
47	Transportation	3.6	Concerned about the update to the Vision Zero Statement, particularly the idea that developers can implement speed reduction strategies and other roadway safety improvements as a mitigation project at MCDOT or at the discretion of MSHA. This may not be feasible as proposed solutions often require changes beyond the development site, such as additional ROW, speed limit changes, and road diets, which are difficult solutions to coordinate during the development review timeline. Further, current regulations do not grant private developers the ability or authority to implement traffic calming improvements.	Katie Wagner, on behalf of the NAIOP and MBIA	Planning staff acknowledges the difficulties of implementing these projects. The recommendation gives MCDOT and MDOT the discretion and flexibility to partner with private developers to implement desired safety countermeasures when feasible.
48	Transportation	3.7	MCDOT supports the recommendation to remove the reference to the Safe Systems Adequacy Test.	Haley Peckett, MCDOT	Comment received.
49	Transportation	3.8	MCDOT will monitor this recommendation as the proportionality guide is developed in 2025.	Haley Peckett, MCDOT	Planning staff will coordinate with MCDOT during the development of the new proportionality guide formula.
50	Transportation	3.8	Support the development of a trip-based proportionality guide calculation that better accounts for impacts, specifically as non-auto driver mode share in these areas results in higher rates, which places a higher cost burden on developments in red policy areas.	Katie Wagner, on behalf of the NAIOP and MBIA	Comment received.
51	Transportation	3.8	The proportionality guide should include a factor that represents the actual proportion of impact so that it ensures that developers are not paying for a full improvement when they are only contributing to what pushes it over the line.	William Kominers, Lerch, Early & Brewer	The LATR Proportionality Guide will ensure that development projects contribute to local area transportation improvements based on the impact to the overall transportation system that they generate, as defined by the number of net new peak hour trips the project generates. Since constructed improvements are preferred over mitigation payments, development projects will be required to construct full improvements. As a hypothetical example, a project that impacts traffic conditions at four intersections would not be required to construct a partial improvement at each of these intersections, but rather may be required to construct a full improvement at one intersection.
52	Transportation	3.8	Supports development of a new Proportionality Guide calculation that focuses on the impact of motor vehicle trips instead of housing units and non-residential units.	Michael Larkin, Montgomery for All Steering Committee	Comment received.

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53	Transportation	3.9	Planning Board asked about equity implications of using fees collected in EEAs in an adjacent non-EEA	Planning Board	The county's strong preference is to require developers to construct improvements. When mitigation payments are necessary, MCDOT prioritizes directing the payments towards partially funded capital projects within the subject policy area. However, because of the unpredictable timing of payment collection, it can be a challenge to find an appropriate project. Under this recommendation, if there is no suitable project in the subject policy area, MCDOT has the option of allocating the funds in an adjacent area. This recommendation provides MCDOT with flexibility to use small mitigation payments more effectively. While it is possible to use fees collected in an Equity Focus Area in a non-Equity Focus Area, the reverse is also true.
54	Transportation	3.9	MCDOT supports the recommendation to provide more flexibility in spending fee-in-lieu funds. It provides the County with greater flexibility to use fee-in-lieu for the highest priority needs.	Haley Peckett, MCDOT	Comment received.
55	Transportation	3.10	MCDOT supports the recommendation to provide more flexibility in spending fee-in-lieu funds. It provides the County with greater flexibility to use fee-in-lieu for the highest priority needs.	Haley Peckett, MCDOT	Comment received.
56	Transportation	3.11	Planning Board asked about equity implications of the affordable housing exemption	Planning Board	The county is experiencing a housing crisis and must find ways to incentivize the creation of more housing. Exempting the affordable housing component of projects from LATR is a way to balance the needs for infrastructure and housing.
57	Transportation	3.11	Expand adjustments to the proportionality guide limit such that deeply affordable MPDUs (at 50% AMI or less) also exempt a corresponding market-rate unit from off-site mitigation, effectively doubling the exemption.	Matthew Gordon, Robert Dalrymple on behalf of Selzer Gurvitch Rabin Wertheimer & Polott, P.C.	While Planning Staff supports exempting the affordable housing component of projects from LATR construction and payment at a one-to-one ratio, increasing the exemption to include market-rate units is excessive.
58	Transportation	3.11	Provide a full LATR exemption for projects with 30% or more MPDUs. All units (both affordable and market rate) would be exempt from off-site mitigation.	Matthew Gordon, Robert Dalrymple on behalf of Selzer Gurvitch Rabin Wertheimer & Polott, P.C.	While Planning Staff supports exempting the affordable housing component of projects from LATR construction and payment at a one-to-one ratio, increasing the exemption to include market-rate units is excessive.
59	Transportation	3.11	Supports the recommendation. Recommends providing a full LATR exemption for mixed income community projects with more than 25% affordable units. All units (both affordable and market rate) would be exempt from off-site mitigation.	Katie Wagner, on behalf of the NAIOP and MBIA	While Planning Staff supports exempting the affordable housing component of projects from LATR construction and payment at a one-to-one ratio, increasing the exemption to include market-rate units is excessive.
60	Transportation	3.11	Supports the recommendation, noting that there are a wide variety of limitations on new affordable housing and helping these projects pencil out is unambiguously good.	Mike English	Comment received.

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61	Transportation	3.11	Supports expanding the current off-site mitigation exemption for affordable housing units to include constructed improvement as worthy policy for encouraging the development of additional housing in the County, including affordable housing, and supports their broad application.	Miles Group	Comment received.
62	Transportation	3.11	Supports recommendation as it could increase the financial viability of building more affordable and attainable housing. Montgomery County must simplify and reduce the cost of the housing construction process in light of the ongoing housing crisis.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
63	Transportation	3.11	MCDOT would support this recommendation only if the County can develop an alternate funding source for adequate public facilities (APF) for affordable housing units. The current recommendation will result in a notable decrease in offsite improvements, which may disproportionately affect residents of affordable housing and their market-rate neighbors.	Haley Peckett, MCDOT	The county is experiencing a housing crisis and must find ways to incentivize the creation of more housing. Exempting the affordable housing component of projects from LATR is a way to balance the needs for infrastructure and housing.
64	Transportation	3.12	Supports 3.12 as it address one of the biggest challenges facing Montgomery County right now: the mismatch between the housing stock that currently exists and the housing stock the county's residents want and need.	Dan Reed, Greater Greater Washington (GGWash)	Comment received.
65	Transportation	3.12	Supports the exemption for larger units.	Katie Wagner, on behalf of the NAIOP and MBIA	Comment received.
66	Transportation	3.12	Supports recommendation as a worthy policy for encouraging the development of additional housing in the County, including affordable housing, and supports their broad application.	Miles Group	Comment received.
67	Transportation	3.12	Supports recommendation as it could increase the financial viability of building more affordable and attainable housing. Montgomery County must simplify and reduce the cost of the housing construction process in light of the ongoing housing crisis.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
68	Transportation	3.12	MCDOT voices minor opposition to this recommendation, given that MCDOT's priority is to ensure adequate public facilities can be built for all new developments. However, the anticipated fiscal impact is minor (under $200K over three years). Clearly define 3+ bedroom units and clarify whether boarding / rooming houses, or other forms of shared or group housing would qualify for the proposed changes.	Haley Peckett, MCDOT	Planning Staff recommends developing a definition for 3+ Bedroom Units to add to Appendix G and will discuss this with the Planning Board during the impact tax work sessions.
69	Transportation	3.12	Supports 3.12 - Directly incentivizing family size units, which face headwinds smaller (also needed) units do not, is a good idea.	Mike English	Comment received.
70	Transportation	3.13	Support the elimination of an LATR traffic study day care uses. The traffic studies required for daycares are costly as daycares generate a lot of trips on paper but those trips are generally made by parents already on the road who choose a daycare that is on the way to work and therefore the real traffic impact from daycares are minimal beyond the site driveway.	Katie Wagner, on behalf of the NAIOP and MBIA	Comment received.

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71	Transportation	3.13	MCDOT opposes the LATR exemption for daycares. MCDOT supports maintaining the requirement for LATRs wherever they are currently required. LATRs are a critical tool for MCDOT to measure impact on our transportation network and determine need for APF.	Haley Peckett, MCDOT	The costs of LATR Studies are often greater than the required mitigation. The studies can significantly burden daycares, which are a greatly needed land use typically operating on thin margins. Many of the trips are pass-by (meaning that people drop off/pick up their children on the way to other locations) and, therefore, already captured on the road system. County Code Sections 50.4.2 and 59.6.1.1 cover site access and circulation.
72	Transportation	3.14	MCDOT neither supports nor opposes this recommendation; it would have no or negligible fiscal impact as compared to the current policy.	Haley Peckett, MCDOT	Comment received.
73	Transportation	3.14	Support the elimination of an LATR traffic study for bioscience.	Katie Wagner, on behalf of the NAIOP and MBIA	Comment received.
74	Transportation	3.14	Expand on the bioscience LATR exemption and extend the three-year period for filing the building permit "for good cause shown" for approvals under the new GIP and projects using the same exemption under the 2020-2024 GIP. Because of the nonlinear nature of many bioscience projects that are often halted by funding lapses or changes in research, the 3-year time limit may be too restrictive.	William Kominers, Lerch, Early & Brewer	Planning staff agrees and recommends removing the time limit with the following revision from the Draft 2024-2028: T5.1 Temporary Suspension for Bioscience Facilities LATR requirements must not apply to a development or a portion of a development where: (a) the primary use is for bioscience facilities, as defined in Section 52-39 of the County Code; and (b) an application for preliminary plan, site plan, or building permit that would otherwise require a finding of Adequate Public Facilities is approved after January 1, 2021 and before January 1, 2029.~~; and~~ ~~(c) an application for building permit is filed within 3 years after the approval of any required preliminary plan or site plan.~~
75	Transportation	3.15	Identify a path to achieve NADMS goals that developed outside of master plans.	Planning Board	While Planning Staff understands the importance of this comment, the GIP is not the venue for identifying how to achieve NADMS goals. Bill 36-18 required the GIP to include to create NADMS goals for areas without them, but otherwise there is no role for the NADMS goals in the GIP. That said, countywide plans such as the Pedestrian Master Plan, Bicycle Master Plan, and the Master Plan of Highways and Transitways established recommendations that will enable a countywide 5% NADMS increase. Planning Staff developed the new NADMS goals by adding 5% to the existing NADMS compiled from the American Community Survey, 2019 5-year estimates. Additionally, telework has grown substantially in Montgomery County since 2020 and it is likely that existing NADMS rates exceed the NADMS goals in many policy areas.

#	Element	Rec. No.	Summary of Testimony or Comments	Commenter	Planning Staff Response
76	Transportation	3.15	MCDOT supports the establishment of NADMS goals for new policy areas, but would like to partner on the goal creation and requests more information on the calculations.	Haley Peckett, MCDOT	Planning Staff will review the goals and calculations with MCDOT. Staff will bring any proposed revisions to the Planning Board during a future worksession. The main purpose of this recommendation is to include NADMS goals that were inadvertently left out of the 2020 GIP update and to establish goals for new policy areas. The 2020 GIP update process developed NADMS goals for areas without them by adding 5% to the existing NADMS compiled from the American Community Survey, 2019 5-year estimates. Considering the Covid pandemic's impact on travel trends, we used the same data set for this update rather than relying on more recent 5-year data. The 2028 GIP update process could include a more thorough review and potential overhaul of NADMS goals.
77	Transportation	3.16	MCDOT supports this recommendation, with the goal of modernizing and streamlining existing regulations and guidance.	Haley Peckett, MCDOT	Comment received.
78	Transportation	3.16	Requests that the GIP include language about projects going to the Planning Board after the adoption of the GIP, allowing them to take advantage of the recommendations.	Katie Wagner, on behalf of the NAIOP and MBIA	Planning will suggest revised language at a future Planning Board worksession.
79	Transportation	3.17	MCDOT neither supports nor opposes this recommendation. MCDOT would look to partner with the Planning Department on their revision.	Haley Peckett, MCDOT	Planning Staff will partner with MCDOT and other stakeholders to revise the LATR Guidelines
80	Transportation	3.18	MCDOT neither supports nor opposes this recommendation; this relates to Maryland State Highway Administration processes. In general, MCDOT supports streamlining and alignment in agency review timelines.	Haley Peckett, MCDOT	Comment received.
81	Transportation	3.18	Supports the recommendation for the 30-day SHA review timeline and desire to have mutual expectations in the development review process. Consistently get requests for analysis from SHA for projects located in Red Policy areas and the purpose of the study is typically for informational purposes where no access permit is required or outside the desired project timeline.	Katie Wagner, on behalf of the NAIOP and MBIA	Planning Staff notes that Del. Lesley Lopez introduced a bill (HB1309) that would require the State Highway Administration to provide comments on an application for a development project within 30 days after the complete project application is received. However, the bill did not make it out of the House during the 2024 legislative session.
82	Transportation	3.18	Strongly supports changing the state law to align SHA's review time (45 days) with the review time for other agencies (30 days). This was an important recommendation of the recent development review workgroup to streamline the County's development review process and enhance economic competitiveness.	Miles Group	Planning Staff notes that Del. Lesley Lopez introduced a bill (HB1309) that would require the State Highway Administration to provide comments on an application for a development project within 30 days after the complete project application is received. However, the bill did not make it out of the House during the 2024 legislative session.
83	Transportation	3.18	Notes that while there were and still are disagreements between SHA and Montgomery Planning about motor vehicle analysis in Red policy areas, we are working together to find solutions that meet all needs.	Joe Moges, MD SHA	Comment received.
84	Transportation	Appendix B p.5	Hammer Hill daycare LATR mitigation requirement includes "Plant additional street trees" - Please clarify that the developer was originally required to provide an off-siteshared use path, but that this requirement was eliminated due to the Proportionality Guide.	Haley Peckett, MCDOT	While the day care may have been required to provide an off-site shared use path without the LATR Proportionality Guide, this shared use path was never required by the Planning Board.

#	Element	Rec. No.	Summary of Testimony or Comments	Commenter	Planning Staff Response
85	Transportation	Appendix B p.8	4910/4920 Strathmore: There was an amendment to the plan after the applicant reduced the size of their development. The applicant is no longer required to construct a sidepath to replace the existing sidewalk and bridge on the south side of Strathmore Ave.	Haley Peckett, MCDOT	Edit Appendix B: - Remove sidepath and bridge from list of mitigations - Proportionality Guide from $1,315,890 to $1,062,795 (a reduction of $253,095) - Reduce Constructed totals by $360,376.80. - Edit project description Page 23: -Edit totals: The estimated combined value of the required improvements is ~~$7.25~~ **$6.89** million, including $3.14 million in mitigation payments and ~~$4.11~~**$3.75** million in developer-constructed improvements. Sidewalks ~~3,450 ft~~ **3,420 ft**
86	Impact Taxes	General	Understanding the burden of upfront impact taxes on developers, recommends the Planning Board explore a more equitable tax structure akin to Northern Virginia's, where long-term payments sustain infrastructure funding and foster business growth. In Northern Virginia, taxes allocated for infrastructure directly contribute to essential projects, showcasing a model for effective and sustainable development.	Marc Elrich, County Executive	Response forthcoming.
87	Impact Taxes	General	If further exemptions and reductions in impact taxes are adopted, alternative funding sources must be identified. Absent that, the growth policy may intensify the inequitable distribution of public services throughout the County.	Marc Elrich, County Executive	Response forthcoming.
88	Impact Taxes	General	At a minimum, we strongly recommend that the collective portfolio of GIP recommendations be neutral in value to the County as compared to the current GIP policy. It would be our preference that recommendations provide a net positive value to the County, which would improve our ability to ensure adequate public facilities and achieve master planned visions.	Haley Peckett, MCDOT	Response forthcoming.
89	Impact Taxes	General	Reduce transportation impact tax rates for developments the meet or exceed the NADMS rates. The tax rate could be value per auto trip. Thus, trips taken by transit, walking or biking would not be charged an impact tax, thus encouraging their usage.	Daniel L. Wilhelm, GCCA	Response forthcoming.
90	Impact Taxes	General	A number of GIP recommendations make it more difficult to provide supportive infrastructure for new developments regardless of income, etc. Exemptions and discounts would further reduce impact tax revenues. In particular, the provision of state highways impact tax credits could be "particularly problematic" because it would decrease DOT ability to fund its identified priorities.	Haley Peckett, MCDOT	Response forthcoming.
91	Impact Taxes	4.1	This recommendation should be clarified to base impact taxes for schools at 100% of the construction cost incurred by MCPS. MCPS receives funding from the state for construction costs associated with a student seat (thereby lowering that cost to MCPS). As such, the school impact taxes paid by building permit applicants should be recalibrated to reflect this contribution.	Miles Group	Response forthcoming.
92	Impact Taxes	4.3	Raise 1,500 sf threshold to at least 1600. Support for MBIA 2000 as well.	Pat Harris, Lerch, Early & Brewer	Response forthcoming.

#	Element	Rec. No.	Summary of Testimony or Comments	Commenter	Planning Staff Response
93	Impact Taxes	4.3	If the County is going to have a viable system for measuring growth and its impact on infrastructure, the new kind of growth being planned through the attainable housing initiative has to be included in that system. This is not reflected in the current draft. The County's approach to measuring infrastructure impact, which focuses on large-scale development and excludes small-scale residential development, may have worked when replacement rates were low. However, with anticipated higher replacement rates in the future, especially in growing areas, continuing this exclusion is no longer reasonable or responsible, as reflected in the draft GIP. These new residential developments and their anticipated residents need to be factored into the GIP so that their infrastructure impact can be accurately assessed.	David Barnes, on behalf of the Edgemoor Citizens Association	Response forthcoming.
94	Impact Taxes	4.3	To match the current offset or exemption against transportation impact taxes based on the amount of office space being removed, recommend including a 50% exemption from school impact taxes for development projects that involve the demolition of office buildings for infill attached and/or multifamily housing. This will not only allow for 100% exemption where projects adaptively reuse an office building for multifamily housing but also incentivizes a wider range of housing types. The proposed discount for smaller homes does not go far enough for this purpose because to cover the cost of the office conversion, the market will demand housing larger than 1,500 ft. Similarly, The GIP should go further to encourage office to residential conversions and align with Thrive 2050 goal that half of all new dwellings need to be rentals in multifamily buildings including apartments, townhomes, duplexes and other attainable housing types.	Matthew Gordon, Robert Dalrymple on behalf of Selzer Gurvitch Rabin Wertheimer & Polott, P.C.	Response forthcoming.
95	Impact Taxes	4.3	Approve of a 50% reduction in impact fees for single-family attached or detached dwelling units, however, recommend expanding from 1,500 square feet to 2,000 square feet or separate thresholds for attached and detached units. From the developer perspective, it is not financially viable to build homes smaller than 1,500 sf because of the required width of the units and the market preferences for number of bedrooms.	Katie Wagner, on behalf of the NAIOP and MBIA	Response forthcoming.
96	Impact Taxes	4.3	Support the 50% reduction in impact fees for single-family attached or detached dwelling units that are 1,500 sq ft or smaller, but suggests increasing the eligible unit size to reflect market conditions. These housing types are usually larger than 1,500 square feet (but not significantly so) and increasing the size limit will meaningfully encourage the development of attainable housing.	Miles Group	Response forthcoming.
97	Impact Taxes	4.3	Supports this recommendation because it encourages more compact land use and can lead to lower construction costs that will be passed onto residents through comparatively lower housing prices.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
98	Impact Taxes	4.3	Supports 4.3, as it address one of the biggest challenges facing Montgomery County right now: the mismatch between the housing stock that currently exists and the housing stock the county’s residents want and need.	Dan Reed, Greater Greater Washington (GGWash)	Comment received.

#	Element	Rec. No.	Summary of Testimony or Comments	Commenter	Planning Staff Response
99	Impact Taxes	4.3 and 4.5	I am writing in support of the Growth and Infrastructure Policy update recommendation to discount impact taxes for smaller homes, and eliminate them for three-bedroom apartments. This will help incentivize the construction of more of the smaller more affordable homes that are needed in the county.	Mary Stickles	Comment received.
100	Impact Taxes	4.4	MCDOT supports the recommendation to remove the desired growth and investment area discount.	Haley Peckett, MCDOT	Comment received.
101	Impact Taxes	4.5	Full support of recommendation 4.5 which exempts multifamily units with three or more bedrooms from transportation and school impact taxes consistent with Thrive 2050's recommendation.	Matthew Gordon, Robert Dalrymple on behalf of Selzer Gurvitch Rabin Wertheimer & Polott, P.C.	Comment received.
102	Impact Taxes	4.5	Supports this recommendation because it encourages more compact land use and can lead to lower construction costs that will be passed onto residents through comparatively lower housing prices.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
103	Impact Taxes	4.5	Supports 4.5, as it address one of the biggest challenges facing Montgomery County right now: the mismatch between the housing stock that currently exists and the housing stock the county's residents want and need.	Dan Reed, Greater Greater Washington (GGWash)	Comment received.
104	Impact Taxes	4.5	MCDOT voices minor opposition to this recommendation.. However, the anticipated fiscal impact of is minor due to the few number of 3+ bedroom units built over recent years. Clearly define units with three or more bedrooms, such as whether boarding / rooming houses, or other forms of shared or group housing, would qualify for the proposed changes.	Haley Peckett, MCDOT	Response forthcoming.
105	Impact Taxes	4.5 and 4.6	Supportive of the policy to exempt multifamily bedrooms with three or more units and for office-to-residential conversion projects from development impact taxes all together. This is a creative way to encourage the development of needed housing in the County by adaptively reusing vacant and outmoded office buildings.	Miles Group	Comment received.
106	Impact Taxes	4.6	Supports this recommendation because it encourages more compact land use and can lead to lower construction costs that will be passed onto residents through comparatively lower housing prices.	Michael Larkin, Montgomery for All Steering Committee	Comment received.
107	Impact Taxes	4.6	Supports 4.6 - office-to-residential conversions are not a panacea, but we *should* do this where possible, and there is no shortage of barriers to doing so. Exempting them from impact taxes won't make fundamentally unfit office buildings suddenly workable, but they could help mitigate significant costs, and cause a more marginal project to pencil that otherwise wouldn't.	Mike English	Comment received.

#	Element	Rec. No.	Summary of Testimony or Comments	Commenter	Planning Staff Response
108	Impact Taxes	4.6	MCDOT voices minor opposition to this recommendation, given that MCDOT's priority is to ensure adequate public facilities can be built for all new developments, and this recommendation may reduce available revenues to address needs. Precise definitions will be needed of what does and what does not constitute an office-to-residential conversion, particularly for projects that may include both conversions as well as new non-conversion development. Any benefits for conversions might also be tailored to better support other County needs, such as proximity to transit, affordable housing, 3+ bedroom units, and daycare facilities.	Haley Peckett, MCDOT	Response forthcoming.
109	Impact Taxes	4.7	MCDOT neither supports nor opposes this recommendation; it would have no or negligible fiscal impact as compared to the current policy.	Haley Peckett, MCDOT	Comment received.
110	Impact Taxes	4.7	Continuing the exemption for bioscience projects is appropriate and in the public interest. Adding the exemption to the code will provide assurance of greater certainty and consistency, which will benefit pursuit of bioscience businesses.	William Kominers, Lerch, Early & Brewer	Comment received.
111	Impact Taxes	4.7	Agree with maintaining the current policy, as it recognizes the importance of this sector to the County's economic and advances the recommendations of the pending update to the Great Seneca Plan.	Miles Group	Comment received.
112	Impact Taxes	4.8	The proposal to allow developers credit for capacity improvements along State roads will significantly impact the County's financial ability to build priority infrastructure projects needed to accommodate growth. If credits are allowed for improvements on State roads, impact tax rates should be increased to account for the additional scope of work the County would have to fund.	Marc Elrich, County Executive	Response forthcoming.
113	Impact Taxes	4.8	MCDOT strongly opposes this recommendation. Credits for capacity improvements along state roads would significantly impact the County's financial ability to build priority infrastructure projects to accommodate growth. credits for improvements on state roads would further reduce the pot of available funds and serve to de-prioritize the projects that have been carefully selected through master planning and County budget approvals.	Haley Peckett, MCDOT	Response forthcoming.
114	Impact Taxes	4.8	Agree with recommendation to allow tax credits for projects along state roadways, however **suggest furthering these credits to include all projects that align with County's current policies including the Complete Streets Guidelines and Vision Zero**. Recommend that the credits be acknowledged during preliminary plan and/or site plan review and confirmed prior to building permit issuance.	Katie Wagner, on behalf of the NAIOP and MBIA	Response forthcoming.
115	Impact Taxes	4.8	The credits for improvements to state roads are long overdue - where the County is the source of the requirement, there should be credit given for improvements, even if it is on a state road.	William Kominers, Lerch, Early & Brewer	Comment received.
116	Impact Taxes	4.8	In agreement that the impact tax law needs comprehensive review and revision. The existing law (including the credit provisions) contains unclear language with complicated procedures, unreasonably restricts eligible improvements, and result in unpredictable and arbitrary determinations. It can encourage multimodal transportation and enhance safety, but it is an expensive and complicated frontage improvement that can make projects unviable or lead to increased costs that get passed on to homeowners or renters. This has been a focus in surrounding jurisdictions such as Gaithersburg.	Miles Group	Response forthcoming.

#	Element	Rec. No.	Summary of Testimony or Comments	Commenter	Planning Staff Response
117	Impact Taxes	4.8	Suggests undergrounding of utilities be added as an improvement eligible for impact tax credits.	Miles Group	Response forthcoming.
118	Impact Taxes	4.8	The provision of state highways impact tax credits could be "particularly problematic" because it would decrease DOT ability to fund its identified priorities.	Haley Peckett, MCDOT	Response forthcoming.
119	Impact Taxes	4.9	For long-term projects with existing plan approvals like Viva White Oak, it is essential that the Opportunity Zone tax exemption be maintained after the designation expires in a few years. Leveraging the economic advantages of this designation is critical to the project's success. Recommends including legacy language.	Scott Wallace, Miles & Stockbridge, on behalf of MCB White Oak LLC	Response forthcoming.
120	Impact Taxes	4.9	Continue to exempt development projects under opportunity zones and enterprise zones so long as the underlying APF approval remains valid at the time of building permit issuance when impact taxes are calculated. The current exemption for Enterprise zones should remain in effect until they expire. If such transitional language is not included, it will continue to head the development process in these qualified opportunity zones.	Matthew Gordon, Robert Dalrymple on behalf of Selzer Gurvitch Rabin Wertheimer & Polott, P.C.	Response forthcoming.
121	Impact Taxes	4.9	Recommend continuing the impact tax exemption for enterprise zones and opportunity zones beyond the expiration dates. These areas will remain distressed and in need of economic development and investment beyond the lapse of the federal designation and continuing to provide impact tax exemptions will provide incentives to continue development there.	William Kominers, Lerch, Early & Brewer; Daniel L. Wilhelm, GCCA	Response forthcoming.
122	SWM	Appendix C	Working Draft's Appendix C mischaracterizes the county's stormwater management efforts in this statement: "The county has long been at the forefront of …stormwater management. This has resulted in …high standards for environmental resource protection, preservation, and conservation." In fact, the Department of Environmental Protection has stated that it has not seen any improvement in BMIs, which are an industry standard measure of stream health.	Kenneth Bawer	Response forthcoming.
123	SWM	Appendix C	Adequate stormwater control infrastructure should be an integral component for administering the county's Adequate Public Facilities (APF) requirements. If not adequate to support a proposed development project, there must be a requirement for enhanced on-site stormwater retention.	Kenneth Bawer	Response forthcoming.

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May 22, 2024

By E-Mail

Artie Harris, Chair
and Commissioners of the Montgomery County Planning Board
2425 Reedie Drive, 14th Floor
Wheaton, Maryland 20902

Re: 2024-2028 Growth and Infrastructure Policy Update Public Hearing Draft

Dear Chair Harris and Commissioners of the Montgomery County Planning Board:

The attorneys of Miles & Stockbridge P.C.'s land use/zoning practice group in Rockville (the "Miles Group") appreciate this opportunity to provide feedback on the public hearing draft (the "Public Hearing Draft") of the 2024-2028 Growth and Infrastructure Policy Update (the "GIP"). The Miles Group strongly supports the objectives of the GIP, including promoting flexibility, enhancing economic competitiveness, and supporting the provision of a range of housing. The Miles Group particularly supports recommendations to review the County's impact tax rate and impact tax laws as an important method of encouraging desired development and improving the County's standing within the Metropolitan DC area.

It is with this understanding that the Miles Group provides the following comments on the recommendations in the current Public Hearing Draft that will be the subject of the May 23, 2024 public hearing before the Planning Board. We believe these suggested modifications will promote orderly growth, encourage additional investment, and advance several important public policy priorities.

Recommendation 2.4

- This recommendation reclassifies stacked flats (commonly known as two-over-twos) and similar building types from the current multi-family low-rise category to the single-family attached category. Public Hearing Draft, pgs. 19-

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20. The Miles Group strongly suggests maintaining the existing classification for several reasons:
   - Stacked flats and related unit types are a critical component of delivering additional "missing middle" or attainable housing. Changing the classification of such housing from low-rise multi-family to single-family attached will have negative impacts that will discourage the production of this kind of housing, including a considerable increase in development impact taxes. Such costs are passed on to the homeowner or tenant, thereby making housing more expensive.
   - Furthermore, and as recognized in the Public Hearing Draft, two-over-twos and comparable building types are recognized as multi-family low-rise units under zoning standards. Public Hearing Draft, pg. 19. It is reasonable for the classification for zoning purposes to be consistent with the classification for purposes of assessing the adequacy of public facilities and development impact taxes.
   - As acknowledged in the Public Hearing Draft, there is some uncertainty regarding whether these building types generate students in similar numbers to townhouses (single-family attached) located in Infill Impact Areas. Public Hearing Draft, pgs. 19-20. It is within Infill Impact Areas where many two-over-twos and similar housing types are expected to be constructed in the near future.
- A thoughtful balancing of these interests supports keeping the low-rise multi-family classification for two-over-twos and similar building types.

Recommendations 3.11 and 3.12

- The GIP proposes expanding the current off-site mitigation exemption for affordable housing units to include constructed improvements and exempting multi-family units with three or more bedrooms from off-site mitigation construction and payment. Public Hearing Draft, pg. 31. The Miles Group supports these as worthy policies for encouraging the development of additional housing in the County, including affordable housing, and supports their broad application.

Recommendation 3.18

- The Miles Group strongly supports changing state law to align SHA's review time (45 days) with the review time for other agencies (30 days). Public Hearing Draft, pg. 34. This was an important recommendation of the recent Development Review Workgroup to streamline the County's development review process and enhance economic competitiveness.

Recommendation 4.1

- This recommendation continues calculating standard school impact taxes at 100% of the construction cost of a school seat. Public Hearing Draft, pg. 20.

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- We believe this recommendation should be clarified to base impact taxes for schools at 100% of the construction cost *incurred by the Montgomery County Public Schools ("MCPS").* It is our understanding that MCPS receives funding from the state for construction costs associated with a student seat (thereby lowering that cost to MCPS). As such, the school impact taxes paid by building permit applicants should be recalibrated to reflect this contribution.

Recommendation 4.3

- This recommendation offers a 50% discount on development impact taxes for single-family attached and detached units that are 1,500 square feet or smaller. Public Hearing Draft, pg. 40. The Miles Group supports this concept but suggests increasing the eligible unit size to reflect market conditions. It is our experience that these housing types are usually larger than 1,500 square feet (but not significantly so) and increasing the size limit will meaningfully encourage the development of additional "missing middle" and attainable housing.

Recommendations 4.5 through 4.7

- Recommendations 4.5 and 4.6 provide a total development impact tax exemption for multi-family units with three or more bedrooms and for office-to-residential conversion projects. Public Hearing Draft, pgs. 41-42. The Miles Group supports this policy and believes it is a creative way to encourage the development of needed housing in the County by adaptively reusing vacant and outmoded office buildings.
- Recommendation 4.7 proposes to continue setting the development impact tax rate for bioscience uses at zero. We agree with maintaining the current policy, as it recognizes the importance of this sector to the County's economy, as well as advances the recommendations of the pending update to the Great Seneca Plan.

Recommendation 4.8

- This recommendation suggests updating the County Code's impact tax credit provisions to provide additional clarity and expand the list of improvements eligible for credits. Public Hearing Draft, pgs. 42-43.
- The Miles Group agrees the impact tax law needs comprehensive review and revision. The County Code and associated COMCOR regulations contain unclear language with complicated procedures, unreasonably restrict the types of improvements that are eligible for impact tax credits, and result in unpredictable and arbitrary determinations. The existing impact tax law (including the credit provisions) ultimately deprives the County of needed housing, while increasing the cost of the housing that gets built.
- We also suggest that the undergrounding of utilities be added as an improvement eligible for impact tax credits. Undergrounding utilities can

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encourage multimodal transportation and enhance safety. It is, however, an expensive and complicated frontage improvement that can make desired development projects financially unviable and/or result in increased costs that get passed on to homeowners or tenants. Incentivizing the undergrounding of utilities has been a focus in surrounding jurisdictions (see, for example, the City of Gaithersburg's comprehensive Zoning Ordinance revisions) and can be a useful strategy to enhance the County's competitiveness.

Conclusion

The Miles Group is grateful to the Planning Department and Planning Board for consideration of these comments. We look forward to continued participation in the public review of the GIP and are available to answer any questions.

Sincerely,

MILES & STOCKBRIDGE P.C.

Casey L. Cirner / By: PAH
Casey L. Cirner

Erin E. Girard / By: PAH
Erin E. Girard

Phillip A. Hummel

Scott C. Wallace / By: PAH
Scott C. Wallace

Attachments

cc: Jason Sartori
David Anspacher
Lisa Govoni
Darcy Buckley
Hye-Soo Baek

Kenneth Bawer, 8 Cleveland Ct, Rockville, MD 20850
2024 GIP Update

May 22, 2023

To: Montgomery County Planning Board Chair, 2425 Reedie Drive, 14th Floor, Wheaton, MD 20902

Subject: 5/23/2024 Planning Board Hearing, 2024-2028 Growth and Infrastructure Policy (GIP) Update

There are glaring holes in the GIP update with respect to adequate stormwater control infrastructure.

The Planning Board's website on the May 23 public hearing for Growth and Infrastructure Policy update[1] states, "The GIP ensures infrastructure, such as roads, sidewalks, and schools, is adequate to support growth...." However, no mention is made about adequate stormwater control infrastructure.

While the "Growth and Infrastructure Policy 2024-2028 Update" Working Draft's Appendix C Environmental Resources section[2] recognizes the need for adequate stormwater management, the authors erroneously state that, "The county has long been at the forefront of ...stormwater management. This has resulted in ...high standards for environmental resource protection preservation, and conservation." Nothing could be further from the truth. In fact, the Department of Environmental Protection has stated that "We have not seen benthic [macroinvertebrate] improvement in any of our stream restorations."[3] BMIs are an industry standard measure of stream health.

Please see the linked document that debunks any assertions that Montgomery County, the Department of Environmental Protection, and Montgomery Parks are protecting our stream valleys and water quality: https://drive.google.com/file/d/1YDGJwW1IwOQTdlNgNKlNuivBwNSmPV3X/view.

Please see how the county and Parks destroy, rather than protect, our stream valleys in this link to a **video of a typical stream "restoration" in Takoma Park (https://www.youtube.com/watch?v=s63H0nidRGw).**

(still photo of Brashears Run stream "restoration" in Takoma Park, May 6, 2024)

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[1] https://montgomeryplanning.org/montgomery-county-planning-board-schedules-may-23-public-hearing-for-growth-and-infrastructure-policy-update/

[2] Appendix's Chapter C, the GIP working draft (https://montgomeryplanningboard.org/wp-content/uploads/2024/04/Attachment-1-%E2%80%93-2024-%E2%80%93-2028-Growth-and-Infrastructure-Policy-Working-Draft.pdf)

[3] 1/16/2024 DEP presentation to Stormwater Partners Network

As stated in the GIP Appendix C, it is true that "Redevelopment affords the potential …environmental improvements over existing conditions. It offers opportunities to improve stormwater management, water quality, air quality, tree canopy, and other green spaces in older developed areas that are environmentally impaired." Yet the current county standards for stormwater control are inadequate to control the more intense rain events we are now experiencing due to global warming.

The glaring holes in the GIP with respect to stormwater control are:

- the lack of recognition that current stormwater control requirements are woefully inadequate as evidenced by the stormwater-caused erosion of our streams. This is why the county spends millions of dollars on so-called stream "restorations" each year to repair the damage caused by this uncontrolled stormwater runoff, and
- the lack of any requirement in the GIP to include adequacy of stormwater control infrastructure even though the purpose of the GIP, per the Staff Report is "…to test whether infrastructure like schools, transportation, water, and sewer services can support a proposed development."[4]

As stated in the "2024 Growth and Infrastructure Policy Working Draft" presentation to the Planning Board,[5] one of the County Priorities is Environmental Resilience. Therefore, adequate stormwater control infrastructure should be an integral component for administering the county's Adequate Public Facilities (APF) requirements.

Appendix C of the GIP Working Draft[6] states that, "Older developments, built before stormwater controls, degrade our natural environment." However, the same is true of new development due to the county's inadequate stormwater control requirements. A case in point is the Pike and Rose development which is causing $1.7M to be spent on the Old Farm Creek stream "restoration" to repair a previous stream "restoration."[7]

Adequacy standards must take into account all future impacts from private development. This must include adequacy of public stormwater control. If not adequate to support a proposed development project, there must be a requirement for enhanced on-site stormwater retention. The current county standards are "meets minimum" requirements which are wholly inadequate to protect our natural resources. The county must exceed these current standards if we want to protect our stream valleys from the ravages of stormwater firehosing into, and eroding, our streams. Currently, the lack of adequate stormwater control requirements has resulted in the spending of millions of dollars of public funds to construct so-called stream "restorations" in an attempt to deal with the problem of stream erosion created by the development industry. The result has been that developers get off scot-free while the public pays for stream erosion damage.

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[4] https://montgomeryplanningboard.org/wp-content/uploads/2024/04/2024-%E2%80%93-2028-Growth-and-Infrastructure-Policy-Working-Draft-Staff-Report.pdf

[5] Page 13, PowerPoint presentation, 74 pages.

[6] GIP working draft (https://montgomeryplanningboard.org/wp-content/uploads/2024/04/Attachment-1-%E2%80%93-2024-%E2%80%93-2028-Growth-and-Infrastructure-Policy-Working-Draft.pdf)

[7] https://www.montgomerycountymd.gov/DEP/water/clean-water-montgomery/watershed/restoration-projects/old-farm-creek.html

Kenneth Bawer, 8 Cleveland Ct, Rockville, MD 20850
2024 GIP Update

The Growth and Infrastructure Policy must be revised to ensure that developers pay their fair share for stormwater control.

Thank-you for your consideration.

Sincerely,

Kenneth Bawer
8 Cleveland Ct
Rockville, MD 20850

Montgomery County Council of Parent-Teacher Associations

MCCPTA

everychild.onevoice.

May 22, 2024

Montgomery County Planning Board
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

To Planning Board Chairman Harris and Board Members:

Thank you for the opportunity to participate in the year long Growth & Infrastructure Policy review process as a member of the Schools' Technical Advisory Team. The meetings were well-run, informative and presented MCCPTA with the opportunity to provide input on proposed discussion items related to schools. We support the five recommendations contained in the draft, Chapter 2: School Element Recommendations. In particular, we are highly supportive of recommendations 2.2 through 2.5.

In our view, these elements target specific and needed areas of policy refinement such that:

- Recommendation 2.2 achieves critical data metric consistency across MCPS and County Planning and will improve accuracy as trends in enrollments fluctuate.
- Recommendation 2.3 provides direct flexibility to MCPS Planning and Facilities as they build out the CIP. The current MCPS CIP reflects a thoughtful and strategic use of resources as it will alleviate high school overcrowding.
- Recommendation 2.4 as written, implements another important delineation among housing classifications, which in turn will refine student generation rates.
- Recommendation 2.5 enables County Planning staff to adequately monitor and assess the rollout of statewide Blueprint requirement of compulsory Pre-K education. MCPS is planning to absorb many of these enrollments, and these students will become a part of the MCPS enrollment forecasts.

We look forward to additional engagement as the Planning Board discusses the recommendations and the policy moves to full Council consideration in the fall.

Sincerely,
Sally McCarthy
MCCPTA Capital Improvement Committee Chair
GIP STAT Participant member

CC: Brigid Nuta How, MCCPTA President; Rodney Peele, MCCPTA VP Advocacy; Darcy Buckley; Lisa Govini; Hye-Soo Baek

M E M O R A N D U M

May 8, 2024

TO: Artie Harris
Chair Montgomery County Planning Board

FROM: Marc Elrich
County Executive

SUBJECT: 2024-2028 Growth and Infrastructure Policy (GIP)

Thank you for the opportunity to comment on the **Planning Department's 2024-2028 Update Working Draft for the Growth and Infrastructure Policy (GIP)**. This memo contains the Executive Branch's high-level recommendations for the new GIP. More detailed recommendations will follow once the Office of Management and Budget and Department of Finance have finished their fiscal and programmatic analysis.

Below is a summary of recommendations of the County Executive and County agencies.

(1) WE OPPOSE new recommendations that remove the Local Area Transportation Review infrastructure burden from developers and place it on the County. The working draft suggests that Thrive Montgomery 2050's policy recommendations are implemented through this GIP. However, the draft's recommendations are counter-productive to the implementation of Thrive's goals. The County will need more revenue, not less, to begin to implement the expansive and expensive infrastructure needed to implement Thrive.

(2) WE OPPOSE policy updates in the working draft that will provide a net loss in revenue and/or in-kind improvements. Given the County's current fiscal picture, it is prudent to have a sense of the fiscal impacts of changes to GIP and ideas to offset any financial losses before moving forward with policy changes.

(3) WE SUPPORT the Planning Board's direction to Planning staff to simplify and clarify GIP. The working draft includes many recommendations that replace a known process for a new,

unknown process, which seems to add confusion rather than clarity. At the Transportation Advisory Group, (TAG), many developer participants asked for GIP to be simplified in concept and method of implementation, arguing that GIP added delays and unpredictability at the end of the development review process.

It is worth repeating that the decisions made in GIP affect the County's ability to generate funds and in-kind contributions. Developers have asked for, and I support, a simple, straightforward policy that is easy to understand, simple to administer, and that collects sufficient revenues.

Thank you for considering our views. We are available to discuss or answer questions.

CC: Jason Sartori, Director, Montgomery County Planning Department
Robert Kronenberg, Deputy Director, Montgomery County Planning Department
David Anspacher, Acting Division Chief, Montgomery County Planning Department
Lisa Govoni, Acting Supervisor, Montgomery County Planning Department
Darcy Buckley, Multimodal Planner, Montgomery County Planning Department
Haley Peckett, Deputy Director of Policy, Department of Transportation
Andrew Bossi, Sr Planning Specialist, Department of Transportation
Rebecca Torma, Development Review Manager, Department of Transportation
Mary Beck, Capital Budget Manager, Office of Management and Budget
Rachel Silberman, Budget Manager, Office of Management and Budget
Veronica Jaua, Senior Fiscal and Policy Analyst, Office of Management and Budget
Dennis Hetman, Fiscal Manager, Department of Finance
Todd Fawley-King, Fiscal Policy Analyst, Department of Finance

MEMORANDUM

May 24, 2024

TO: Artie Harris
Board Chair Montgomery County Planning Board

FROM: Marc Elrich
County Executive

SUBJECT: PUBLIC HEARING 2024-2028 Growth and Infrastructure Policy Update

Thank you for the opportunity to send comments for inclusion in the public hearing record on the Growth and Infrastructure Policy (GIP).

GIP Should Provide a Path to Adequate Public Facilities

The purpose and requirements of the Adequate Public Facilities Ordinance (APFO) are presented in Chapter 8, Article IV of the County Code. The APFO seeks to match the timing of private development with the availability of public infrastructure, thus assuring that both current and new residents are well served by the public realm. This concept is reinforced in Thrive Montgomery 2050, the new general plan, which states the following on page 156:

"Of course, growth requires improvements and additions to public infrastructure and services. Public infrastructure is provided mainly through the county's Capital Improvements Program (CIP), but the private sector makes important contributions pursuant to the county's Adequate Public Facilities Ordinance and impact tax law, which require property developers to build, dedicate, or provide money for parks, roads, schools, and affordable housing. These rules are the mechanism by which new development at its inception generates revenue for the public sector to fund infrastructure improvements."

In recent years, the Growth Policy has drifted away from the APFO, adopting policies that have diminished the ability of the County to fund the transportation, transit, and school facilities necessary to support current and new residents as subdivisions are built and occupied. Exemptions to impact taxes and changes to the schools test and the transportation modal adequacy tests (which are meant to account for traffic congestion levels) are shifting the funding burden from private developers to the County. Absent any new public funding mechanism, it will be increasingly difficult for the County to fund the necessary infrastructure in its Capital Improvements Program (CIP). There are recommendations in the draft GIP that will exacerbate this problem. My staff has reviewed those recommendations and have comments and requests for consideration below.

However, before I put forward specifics regarding the GIP, I must address the problem above – with more and more exemptions to impact taxes and diminution of the schools and transportation tests, the county is left without resources to adequately fund infrastructure, which is essential to the continued vitality of this county. The lack of infrastructure is a major impediment to development in this county. I understand the desire to reduce impact taxes, which require developers to produce large amounts of cash at the beginning of their project, and I urge the Planning Board to consider replacing impact taxes with a tax structure that is more equitable and successful. You can look to Northern Virginia where they have created a structure that funds infrastructure and enables business development. The taxes there are paid over the long-term rather than an upfront lump sum. Additionally, in Northern Virginia, the taxes paid for infrastructure go toward the necessary infrastructure.

Reducing the amount of revenue from impact taxes simply shifts the burden to residents. I urge you to identify a mechanism that actually funds infrastructure needs in a manner that is transparent and fair to developers and residents.

Specific Comments and Recommendations

In my memo of May 8, 2024, I indicated that we would send additional comments once the Office of Management and Budget and the Department of Finance finished their fiscal and programmatic analysis of the recommendations in the draft GIP update. Although Planning and Executive staff have worked together to identify the data OMB and Finance need for their analysis, policy boundaries and some data sources were available too late to be properly analyzed and reviewed with your staff prior to this public hearing. Once the detailed fiscal analysis is completed, Executive branch staff would like the opportunity to provide a briefing on it to the Planning Board at one of your June worksessions; they will also be available to assist in discussions of scenarios that may evolve as you move forward in your deliberations. The Department of Transportation (MCDOT) is testifying at the public hearing and submitting detailed comments separately.

Please consider the following during your deliberations:

- Modal adequacy tests to measure traffic congestion are still necessary. Due to the absence of adequate transit options in many areas of the county, many residents still travel by auto and will for the foreseeable future. Traffic congestion standards weakened in the 2020 Growth Policy would be weakened further in the draft GIP by changes to several transportation policy areas – from Green to Yellow in an area served by only one bus without frequent service; from Yellow to Orange or from Orange to Red in several policy areas where Metrorail and/or high-frequency transit such as BRT are years away from construction or operation. Weakening the congestion standards does not incentivize people to use transit; it reduces resources available to improve transit. To successfully encourage a shift from driving to transit, the intensity of development allowed should correlate to an area's access to a robust and operational transit system.

- The schools test in the current GIP attempts to address overcrowding by requiring payment of an impact tax surcharge (a Utilization Premium Payment - UPP) based on the degree of overcrowding a development is expected to generate. Since 2020, the surcharge has generated – in total - slightly more than $6,000, an amount that may rise as additional developments move forward, but with no clear indication that future payments will generate the funding needed for additional seats in schools. The effectiveness of the surcharge is further limited by restricting use of the funds to the area in which the funds are generated. Changes that allow more flexibility would address some of these concerns.
- The proposal to allow developers credit for capacity improvements along State roads will significantly impact the County's financial ability to build priority infrastructure projects needed to accommodate growth. If credits are allowed for improvements on State roads, impact tax rates should be increased to account for the additional scope of work the County would have to fund.
- Simply put, the County needs sustainable funding sources for transit and transportation infrastructure, as well as for schools. If further exemptions and reductions in impact taxes are adopted, alternative funding sources must be identified. Absent that, the growth policy may intensify the inequitable distribution of public services throughout the County.

Thank you for considering our views. We would like to continue to assist in discussions that will lead to a growth policy that works for everyone.

CC: Mitra Pedoeem, Vice Chair, Montgomery County Planning Board
Shawn Bartley, Member, Montgomery County Planning Board
James Hedrick, Member, Montgomery County Planning Board
Josh Linden, Member, Montgomery County Planning Board
Jason Sartori, Director, Montgomery County Planning Department
Robert Kronenberg, Deputy Director, Montgomery County Planning Department
David Anspacher, Acting Division Chief, Montgomery County Planning Department
Lisa Govoni, Acting Supervisor, Montgomery County Planning Department
Darcy Buckley, Multimodal Planner, Montgomery County Planning Department
Haley Peckett, Deputy Director of Policy, Department of Transportation
Andrew Bossi, Sr Planning Specialist, Department of Transportation
Rebecca Torma, Development Review Manager, Department of Transportation
Mary Beck, Capital Budget Manager, Office of Management and Budget
Rachel Silberman, Budget Manager, Office of Management and Budget
Veronica Jaua, Senior Fiscal and Policy Analyst, Office of Management and Budget
Dennis Hetman, Fiscal Manager, Department of Finance
Todd Fawley-King, Fiscal Policy Analyst, Department of Finance
Meredith Wellington, Land Use Planning Policy Analyst, Montgomery County Government

Scott Plumer
Staff Assistant for Research and Strategic Projects
Darnestown Civic Association Executive Board and Committees
Participant Vision Zero Darnestown, a project of the Darnestown Civic Association's Roads Task Force
14100G Darnestown Road Darnestown MD 20874
scott.plumer@verizon.net
www.darnestowncivic.org

Thank you. For the record my name is Scott Plumer. I am representing the Darnestown Civic Association.

We wish to thank Chair Harris, Vice Chair Pedoeem, and the rest of the board for allowing us to testify today. We also wish to thank Director Sartori and the entire Montgomery Planning staff for their exceptional work, which we enjoy every day, as we live our lives in Montgomery County.

The GIP is one of a few strategic, countywide, planning reviews done on a regular basis and with extensive detailed analytics.

The GIP Policy Areas are one of the best illustrations of the countywide development footprint, population density, and localized transportation infrastructure.

Tonight, we'd like to focus on changes in select GIP policy area classifications demonstrating selected Thrive Montgomery 2050 precepts; population density as a key planning concept; an incongruence in our myriad of planning geographies and the data which informs them; and as we go, highlight major policy challenges.

- As shown on page 25 of the Public Hearing Draft the proposed Transportation Policy area classification changes, specifically the changes in the northwestern part of the county where four areas change from yellow to orange, and one area from green to yellow, illustrates the swelling of our bloated corridors at the expense of corridor focused growth. For your reference these changes also appear in a table format in Appendix E page 1 and 2.

- These northwestern area changes are right up against the green Rural Areas and Agricultural Reserve of Thrive Montgomery 2050.
- these new orange policy areas directly abutting green areas and the new red area in Rock Spring abutting a yellow area, represent sprawl but also show how tight boundaries, not buffer areas with steep density gradients are key to our future of corridor focused growth.
- Damascus takes a green area and turns it yellow - a dangerous precedent.
- Sprawl is most likely to happen on the edges of the development footprint and is especially threatening to very low population Planning Areas like Darnestown, Travilah, Upper Rock Creek, Cloverly, and Patuxent. Goshen might also be included in this list.

Thrive Montgmery 2050 says to succeed we need to move ...

- from Buffers resulting in separation, to Boundaries which control development
- from Expandable Flexibility to Tight Controls
- from Accommodating the Political Economy of Sprawl, to the Prosperity of Corridor Focused Growth
- These points speak to why the Limited Growth area in Thirve Montgomery 2050 might not only be too large but be unnecessary.
- The area outside the Ag Reserve and outside the water and sewer envelope needs to be unified and protected from the political economy of sprawl.
- Managing population density might well be the single most critical spatial factor in managing human settlements.
- We are delighted to see more and more population density maps and discussions of people per acre and per square mile
    - We saw it in Montgomery Planning's presentation to the newly elected County Council in early 2023
    - We see it in again here in Appendix C of this plan

    - And we are encouraged to see more in-depth evaluations of our ability to manage density gradients and directing investment to where it is most needed.
- The GIP Transportation Policy Areas match up well with population density maps from the 2020 Census.
- Our November 2021 testimony to the County Council on Thrive Montgomery 2050 was a series of map-based views of our plans and strategies centered around population densities and environmentally sensitive areas. Our ever-expanding map stack illustrates the incongruities of the Limited Growth area.
- GIP Appendix C says around 70% of our growth will be in the corridor focused growth area. Perhaps we are setting the bar far too low.
- Planning's annual report to the state of Maryland includes the percent of our growth occurring in Priority Funding Areas, and we have been exceeding the state and our own targets for some time, but the numbers I think are declining. Our tepid growth expectations and our desire to focus growth, suggest we look to set these bars far higher.
- If we are to achieve critical mass in our core, we need much tighter controls, better incentives, and much higher targets for directing our tepid growth.
- As noted in Appendix C and in many other Montgomery Planning strategic plans, densification is key to our future success, yet with our timid growth expectation and allowances for expanded footprints outside of the Corridor Focused Growth area, the hollowing out of our core will continue. We risk establishing rings of decay by allowing the footprint to continue to expand with our septic tier subdivision exemption, and too large Limited Growth area. In fact, it appears our plans and our research repeatedly point out how the entire Limited Growth concept is not a credible approach for us.
- Sprawling to densify low population areas does not help us.
- Page 10 in Appendix C clearly makes the case for locating investments in a tightly focused area.
- Perhaps then, it is time for us to consider widening our focus from impact fees to corridor focused growth incentives calculated from

private direct infrastructure investment, especially in areas where it is most needed.

- We need to consider if the APF ordinances are properly geared to a non-greenfield, infill, and redevelopment strategy.
- One unfilled gap in the GIP policy is a countywide overlay. The impact fees calculations consider only hyperlocal impacts, and in the aggregate these developments can have far reaching impacts across an array of county wide infrastructures.

I'd like to close with an example of how communities like ours are viewed from the various plan lenses. As you can see from the GIP overview and Appendices, we have a myriad of plans which we use to manage growth. Areas like Darnestown are often split across boundaries. We are in multiple Thrive areas, multiple septic tiers, mostly outside the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan envelope, and covered by Planning Areas, Policy Areas, Master Plan areas, Functional plans, Suburban and Rural contexts and many more plan lenses.

So, a quick case in point from my community of Darnestown. We are composed, as we define it, and as defined in the Potomac Subregion Master Plan, of three complete Census Block Groups and a small slice of a fourth census block group. The other part of that fourth census block group is multiple times as dense as the rest of Darnestown and part of it is in the city of Gaithersburg. Together these four census block groups make up a census tract. When planning lenses use census tract level data, our measures are heavily skewed by areas outside of our boundaries, inside the development footprint, and with densities hundreds of percent greater than in our community. The same is true for Travilah, and even more so, as the Travilah Planning Area includes what is now known as North Potomac. These planning configurations lead to data errors which are promulgated and lead to errant foundations creating policy errors. In the RDCA (see Chapter 4 of Appendix C in the GIP) – it seems over half of the buildable lots in Darnestown, are not in Darnestown or located on master planned parcels not slated for housing and should not be considered buildable in terms of predicting future population densities. The point here is not so much about failings in our data analytics but rather about how difficult these fragile, sparsely populated, environmentally sensitive edge communities are to define and protect.

Thank you for your time tonight, and for your continued attention to these vitally important issues for our county, our community, and other similarly situated communities.   Our communities are outside the edge of the development footprint and wholly or partially outside Thrive Montgomery 2050 Rural Areas and Agricultural Reserve, we are sparsely populated, and served by well and septic. Protecting our communities from densification is well aligned with corridor focused growth, and stopping our sprawling corridors from detracting investment from where it is most needed. We look forward to continuing to inform your decision making. Thank you.

From: Eileen Finnegan <finnegan20903@yahoo.com>
Sent: Wednesday, May 22, 2024 12:53 AM
To: MCP-Chair <mcp-chair@mncppc-mc.org>
Cc: Anspacher, David <david.anspacher@montgomeryplanning.org>; Buckley, Darcy <Darcy.Buckley@montgomeryplanning.org>; Estrada, Luis <luis.estrada@montgomeryplanning.org>
Subject: May 23, 2024 Public Hearing Item – 2024–2028 Growth and Infrastructure Policy Update

Hello Chair Harris and fellow Planning Board Commissioners,

In reviewing the staff draft, I urge additional thought on two very specific points that impact the East County and the White Oak Science Gateway Master Plan area. As a member of the WOSG CAC, please consider my concerns.

First, the draft document appears to totally ignore the fact that the WOSC area is under a very basic "pay and go" approach known as the Local Area Transportation Infrastructure Program (LATIP). Development in the area is not subject to the more involved Local Area Transportation Review which the GIP discusses. The White Oak specific policy is administered by MoCo DOT and needs to be documented in this GIP update.
https://www.montgomerycountymd.gov/dot- dir/dev_review/ump.html

For Commissioners who may not be familiar with the LATIP, a developer may pay a fee based on the new PM peak-hour trips, or build a project (from an approved list) for credit against the fee amount. If a developer proposes a different improvement, it is evaluated by MoCo DOT and vetted through a MoCo DOT public hearing process. Acknowledgement of this program and the area it covers must be incorporated, or at least referenced, in this GIP update.

Second, changing the color classification of the "White Oak Village" portion of the WOSG area from Orange to Red, is very premature. Please do not approve this change. This area may be on the verge of incremental development in the coming years, but does not have the high-quality transportation, or the density to fully qualify as a Red area like Bethesda, Silver Spring, Wheaton, Rockville, etc. The White Oak Village needs time to evolve to become a Red area.

Furthermore, a very serious downside of changing the classification for this area is the elimination of the Transportation Impact Tax. Given that this area will need to have massive regional transportation infrastructure improvements, including the Randolph-Cherry Hill BRT, a lack of revenue will stress future County CIPs. Without a source of transportation funds there will be a strong possibility that needed improvements will not happen.

As the East County looks toward the transformation of a gravel quarry to a much-desired destination, there will be steps. For example, the first phase illustration for Viva White Oak under the new developer, MCB Real Estate, shows that a downtown similar to other Red areas is very far in the future.
https://online.fliphtml5.com/uxsl/bmom/#p=1

Thank you for considering my comments as you review the GIP.
Regards,
Eileen Finnegan
10404 Sweetbriar Parkway
Silver Spring, MD 20903

GREATER GREATER WASHINGTON

May 22, 2024

Artie Harris, Chair
and Members, Montgomery County Planning Board
2425 Reedie Drive
Wheaton, Maryland 20902

Dear Chair Harris and Members of the Montgomery County Planning Board:

My name is Dan Reed and I serve as the Regional Policy Director for Greater Greater Washington, a nonprofit that works to advance racial, economic, and environmental justice in land use, transportation, and housing throughout Greater Washington. GGWash supports the recommendations in the 2024–2028 Growth and Infrastructure Policy update, as a way to incentivize the construction of much-needed smaller and more attainably-priced housing options.

We'd like to call attention to three specific provisions in the update:

> **3.12 Exempt multi-family units with three or more bedrooms from off-site mitigation construction and payment.**
>
> **4.3 Offer a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,500 square feet or smaller.**
>
> **4.5 Expand the current discount for units with three or more bedrooms to a total impact tax exemption for both transportation and school impact taxes and in all impact areas and policy areas.**

These recommendations, if enacted, will address one of the biggest challenges facing Montgomery County right now: the mismatch between the housing stock that currently exists and the housing stock the county's residents want and need. Households in the county are getting smaller, but both existing homes and new construction trends towards larger homes. According to Planning staff, the average size of a new home built between 2020 and 2023 in Montgomery County is 3,800 square feet.[1] One result is that 18,000 households in the county are "overhoused," meaning they have more bedrooms than residents.[2] This mismatch

[1] https://moco360.media/2024/05/13/zoning-reform-at-the-heart-of-solving-county-housing-crisis-officials-say/
[2] https://montgomeryplanning.org/blog-design/2020/01/over-housed-number-crunching-montgomerys-housing-crunch/

80 M Street SE, Suite 100, Washington, DC 20003
info@ggwash.org

exacerbates our existing housing shortage as people compete for a limited number of homes that actually meet their needs. Home prices in the county are at a record high, averaging $970,000 for a single-family home in 2023.

Montgomery County residents need, and deserve, more housing choices, which requires the increased production of smaller, more affordably-priced homes, as well as apartments that can accommodate families. One solution is changing the permitting and fee structure Montgomery County uses for new construction, which can reduce the costs of building certain housing types. We're excited to see that the Growth and Infrastructure Policy recommends reducing impact fees for homes under 1,500 square feet, and eliminating impact taxes and off-site mitigation payments for family-sized apartments.

Alongside the zoning changes recommended by Attainable Housing Strategies, these recommendations will create a powerful incentive for builders to produce the diverse housing types current and future residents need. We urge the Planning Board to adopt the recommendations in the 2024-2028 Growth and Infrastructure Policy update, and look forward to working with you to increase the diversity of our housing stock. Thank you for your time.

Sincerely,

Dan Reed
Regional Policy Director

LerchEarlyBrewer 7600 Wisconsin Avenue, Suite 700 • Bethesda, MD 20814 • lerchearly.com

William Kominers
Attorney
301-841-3829
wkominers@lerchearly.com

May 20, 2024

Mr. Artie Harris, Chair
Montgomery County Planning Board
2425 Reedie Drive
Wheaton, MD 20902

Re: 2024 – 2028 Update on the Growth and Infrastructure Policy ("GIP")

Dear Chair Harris and Members of the Board:

The purpose of this letter is to transmit my comments on the Working Draft of the 2024 – 2028 Update of the Growth and Infrastructure Policy ("GIP").

Please include my attached testimony in the Record of the May 23, 2024, Public Hearing on the GIP.

Thank you for your consideration of my comments.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.

William Kominers

Enclosure

5983377.1 08502.001

2024 – 2028 GROWTH AND INFRASTRUCTURE POLICY
TESTIMONY OF WILLIAM KOMINERS
(May 23, 2024)

Good evening Chair Harris and Members of the Board, my name is Bill Kominers. I am an attorney with Lerch, Early & Brewer, but I am testifying this evening as an individual on the 2024 – 2028 Working Draft Update of the Growth and Infrastructure Policy ("GIP"). There are many positive thoughts and recommendations in the GIP. However, I will concentrate today on those that call for adjustment or that should be included in the GIP, but are absent.

Recommendation 3.8. Proportionality. The creation of proportionality standards in 2022 in the LATR Guidelines was a valuable first step in recognizing the unpredictable and disproportionate mitigation costs for off-site improvements. Unfortunately, the formula created to mitigate the disproportionate impact of these off-site costs is missing the most important factor that should be applied. That factor is the proportional impact of the project under review on the improvement that is required.

At present, the only proportionality element in the formula is an adjustment factor based on the locality within the County and the type of development (residential/nonresidential). But this adjustment factor is locality-based and uniform for that area. There is no factor that takes into account the degree of impact that the proposed project itself produces on the need for the improvement.

I recommend that an additional factor be included in the formula, representing the percentage impact of the project itself on the statistics that result in the inadequacy. That additional factor will make the cost of an improvement truly proportional to the impact of the development.

If a facility condition is already inadequate, or the impact from the proposed development pushes the facility into inadequacy and triggers improvement, the entirety of the cost of that improvement is currently placed as a burden on the development project – irrespective of the degree of its impact. For example, consider an improvement required as a result of aggregating 100 movements (vehicular for a traffic signal, pedestrian for a pedestrian beacon, or, bicycle for a bike lane, etc.). If the current utilization is at 90 movements, and the project itself produces an additional 20 movements, the 100 movements threshold would be crossed and an improvement would be required. But the current formula would not take into account the fact that of the total of 110 movements, the applicant provides only 20 (or 18%). The applicant is currently compelled to fund 100% of that improvement, even though its impact only represents 18% of the utilization. The applicant should more properly only be responsible for 18% of the cost. That is the "proportion" of the applicant's impact. Alternatively, if the facility is already at the 100 movements utilization, meaning that it is already at capacity, the addition of the applicant's 20 movements represents only 16.7% of the 120-movement total. Thus, the applicant should only be obligated for 16.7% of the cost of the improvement.

The LATR Guidelines should add an additional factor to the proportionality equation -- that of the percentage impact that the project has on the overall capacity of the facility requiring improvement. Then, true proportionality of the project's impact will be measured, and the appropriate nexus of the project to the need for the improvement will exist.

Recommendation 3.14. Bioscience exemption from LATR. Extending the bioscience exemption from all LATR tests continues a favorable mechanism to support the County's economic development focus on bioscience facilities. However, there is one element missing from this exemption in order to render it fully functional in bringing bioscience facilities to fruition in the County.

Bioscience research and development does not proceed on a strictly linear basis. Scientific progress sometimes gets ahead of, or sometimes falls behind, the development review process in Montgomery County. Trying to keep in alignment those two parallel paths, each of uncertain duration, can be a challenge that is not always successful. Even with the best of intentions, a bioscience project may end up with the physical facility approved by the County, but delays from unexpected research setbacks, obstacles in clinical trials, or delays in FDA approval, may prevent the project moving forward on the building schedule as originally planned. The requirement in the GIP that an application for a building permit must be filed within three years after the approval of the Preliminary Plan or Site Plan, can cause application of the exemption to terminate and with it, a corresponding adverse effect on the underlying plan approval and its adequate public facilities review.

To cure this problem, I recommend that the GIP provide that the three-year period for filing the building permit may be extended by the Planning Board for good cause shown. This ability to extend should apply not only to those approvals under the new GIP, but also to those projects approved using the same exemption under the currently operative 2020 – 2024 GIP.

Recommendation 4.7. Bioscience exemption from Impact Taxes. In a similar vein to the LATR exemption, the exemption from Impact Taxes for bioscience facilities is a valuable part of the County's toolkit to encourage bioscience in Montgomery County. Continuing the exemption for bioscience projects is appropriate and in the public interest. Adding the exemption to the Code will provide assurance of greater certainty and consistency, which will benefit pursuit of bioscience businesses.

Recommendation 4.8. Credits for Improvements to state roads. This is change that is long overdue. The importance of this credit has escalated over time, as there are more frequent requests to make improvements to state roads (sidewalks, bike paths, crosswalks, as well as roadway). Often, those improvements are not called for by the state, but instead result from directions in County master plans. Where the County is the source of the requirement, there should be a credit given, even if the improvement is on a state road.

Recommendation 4.9. Legacy provision for Opportunity Zones. Adding legacy language to continue Impact Tax relief for projects that are approved but do not receive building permits before the expiration of the Opportunity Zone program, is another good recommendation. But it can be better.

The expiration of the Opportunity Zone program does not automatically correlate with uplifting the Opportunity Zone areas. While the Opportunity Zone provisions may expire by the end of 2026, being a "distressed area" that justified designation as an Opportunity Zone originally, will not similarly expire or change by the end of 2026. Removal of the Impact Tax exemption for the areas previously designated as Opportunity Zones will thwart the efforts of those areas to climb out of their present circumstances that caused the Opportunity Zone designation in the first place. The challenges faced by these areas require long-term efforts, care, and some special treatment. The fact that many Opportunity Zone designations encompass areas that were formally designated as enterprise zones suggests that the areas have not yet been uplifted by either designation.

Recognizing the continuing struggles of these Opportunity Zone areas, the County should continue the exemption from Impact Taxes past 2026, even if the Opportunity Zone program and designations expire. After expiration, the Opportunity Zones can be used as a means to delineate a geographic area within which the Impact Tax exemption would continue to apply.

Some may suggest that this is a mistaken continuation of benefits for Opportunity Zones, just as was argued about the previous Impact Tax exemption for "former enterprise zones." Nevertheless, putting designations and time limits aside, one cannot but recognize that the areas covered by the Opportunity Zones have not been lifted out of their challenges within the duration of that designation.

Neither can one fail to realize that in some Opportunity Zones, such as Silver Spring, where Impact Taxes have been forgiven for an extended period, the imposition of the Impact Tax may well have a severely negative effect on what development activity is currently being pursued. Construction costs in Silver Spring and Wheaton are no different from those in Bethesda, while the rental structures lag well behind the corresponding Bethesda rental rates. Adding the Impact Tax as a new cost in the financial equation for development in Silver Spring or Wheaton, can be expected to have a serious negative impact on the continued success of redevelopment.

The time for resolution of the distress in these areas, unfortunately has a longer duration than the life of the government designations (whether Opportunity Zone or Enterprise Zone). Therefore, there is a need to continue the Impact Tax exemption for those geographic areas, by use of whatever means of identification can be found.

New Recommendation. No Impact/*De Minimus*.

No Impact. A development application that does not propose any additional square footage, or proposes a change of use that does not generate any net new peak hour trips, should be exempt from providing any frontage improvements, or other improvements called for by any master, sector, or functional plan, and should be deemed to satisfy adequate public facilities standards by virtue of being an existing condition.

This proposed exemption will recognize that when producing no new impacts on public facilities, there is no nexus for requiring any new improvements.

De Minimus Impact. In addition to the no impact scenario above, a development application that proposes new development of only a *de minimus* quantity should also be exempt from adequate public facilities review and from providing any improvements, (whether frontage or other improvements called for by any master, sector, or functional plan). For this purpose, "*de minimus*" would mean traffic generation of up to [a number to be decided] commercial trips, or up to [a number to be decided] residential trips, including an equivalent combination of both, and up to a total of [a number to be decided] school students of all levels.

Thank you for your consideration of these comments and recommendations. I look forward to further discussions during the worksessions.

May 24, 2024

<u>*Via Electronic Mail*</u>

Artie Harris, Chair
Montgomery County Planning Board
2425 Reedie Drive
Wheaton, Maryland 20902

Re: 2024-2028 Growth & Infrastructure Policy

Dear Chair Harris and Members of the Planning Board:

On behalf of several residential developers, I want to take this opportunity to further comment on the 2024-2028 Growth & Infrastructure Policy ("GIP") as it relates to the two-over-two housing product and the student generation rates and corresponding impact taxes. These comments include and expand upon the testimony I delivered to the Planning Board during the public hearing.

Foremost, we applaud the Planning Board Staff's efforts with respect to the GIP and the focus on one of the County's most significant problems – the housing shortage, including the shortage of affordable housing. While two-over-twos are a fairly new housing type, they are increasingly popular and at an overall height of approximately 50 feet, the units are smaller, denser and more affordable than a townhouse. For all of these reasons, the product type should be encouraged.

As discussed below, we are concerned about the GIP's proposed reclassification of two-over-twos from low-rise multi-family to single-family attached. In addition, we believe that the 1,500 square foot cap to qualify a residential unit for a 50 percent reduction in the impact taxes should be increased to at least 1,600 square feet.

I. Classification of Two-over-Two Units

The GIP (page 19) points out that two-over-twos are currently recognized as multi-family low-rise by zoning standards and for purposes of student generation rates. This classification is consistent with the definition provided in the impact tax provisions of the County Code. Section 52-39 provides:

(3) *Multifamily residential* includes:
(A) garden apartments;
(B) mid-rise and high-rise dwelling unit structures; and
(C) mobile homes.

Moreover, this classification is consistent with the building code which requires that two-over-twos be constructed pursuant to the International Building Code, as opposed to the International Residential Code (the code to which single family, duplexes and townhouses are subject).

In keeping with the classification of two-over-twos as multi-family low-rise for zoning standards and student generation purposes, two-over-twos have also historically been subject to the low-rise multi-family impact tax rates.[1]

The GIP correctly recognizes that two-over-two units generate more students than low-rise multi-family but less students than single-family attached units. For this reason, the GIP recommends that two-over-twos should be provided for in a separate category for purposes of student generation rates (and hence impact taxes). However, the GIP recommends that given the current lack of data on student generation rates, a new category should not be created at this time and instead the two-over-twos should in the interim be reclassified as single-family attached units. This conclusion is based on the available data from the two-over-twos that are located in the more suburban "turnover" impact areas and the lack of data for the two-over-twos located in the more urbanized "infill" impact area. We note that two of our clients' two-over-two projects are located within the City of Rockville – one located well within ¼ mile of the Twinbrook metro station and the second within the Rockville Town Center planning area.

We strongly disagree with the recommendation to reclassify the two-over-twos as single family attached given the resulting exorbitant increase in impact taxes and the corresponding significant negative impact it will have on the production of two-over-two housing. This is especially true with respect to those project currently undergoing entitlements which are relying on pro-formas based on the low rise multi-family impact tax rate. More specifically, the current school impact tax rate for a low-rise multi-family unit in an infill area is $6,584 compared to $21,664 for a single-family attached unit. This represents an increase of more than 300 percent and threatens the economic viability of these types of projects, which ironically provide a unit type that the County wants to encourage. To highlight this impact, a 1,600 square foot lower level two-over-two unit would pay the same school impact tax as a 3,000 square foot townhouse. Further highlighting this inequity is the fact that the lower level two-over-two units often have no school age children, given the nature of the unit (see discussion of size below). We note that the transportation impact tax also increases under the single-family attached classification, but not nearly as dramatically (i.e. $6,146 per low-rise multi-family unit vs. $7,905 per single family attached unit in a red policy area and $15,366 per low-rise multi-family unit vs. $19,761 per single family attached unit in an orange policy area).

Recommendation:

Given that the data does not support reclassifying the two-over-twos as single-family attached units, we respectfully recommend the following:

1. Postpone any reclassification until more data is available at which time a new two-over-two category can be created.

[1] There is a recent effort afoot by the Department of Permitting Services to impose the single-family attached impact tax rate to two-over-twos.

2. Add a grandfathering provision to the GIP exempting all two-over-two applications that have been accepted and are currently undergoing review, given that these projects were underwritten based on the current low-rise multi-family classification.[2]

II. Impact Tax Discount –Increase Maximum Square Footage to at least 1,600 Square Feet

Recognizing the need for smaller, more affordable units, the GIP recommends a 50 percent discount on the impact taxes for the construction of single-family and single-family attached units that are less than 1,500 square feet in size. We recommend that the two-over-two product (to the extent that it is not reclassified as a single-family attached unit, which as indicated, we do not support) be included in this provision and that the threshold be increased to at least 1,600 square feet. At the public hearing, several witnesses testified that the threshold should be increased to 2,000 square feet to reflect the current market, and we would also support this.

The typical two-over-two unit is a for-sale unit. The two-over-two units, and especially the lower-level smaller units, provide an entry into homeownership for many first time homebuyers. Decreasing the impact tax rates on these units helps to lower the sales price of these units. However, based on our evaluation of the two-over-two proto-type floor plan that builders use throughout the District, Maryland and Virginia market, even the smaller lower level units are greater than 1,500 square feet in size. It is important to emphasize that even so, these are not large units -- the second and third bedrooms are only 110 square feet (approximately 10 feet x 11 feet) and the combined living room/dining room area is approximately 180 square feet, which is well below the size of an averaged sized living room only (average size 216 square feet) (an averaged size dining room is 200 square feet). Reducing the threshold by 100 feet would further limit the available space in these units. In considering this request, we note that the upper level two-over-two units typically exceed 2,000 square feet and would not qualify for this reduced impact tax rate.

Recommendation:

Offer a 50 percent transportation and school impact tax discount to single-family attached, single-family detached and two-over-two units that are 1,600 square feet or smaller.

We appreciate the opportunity to provide our comments on the GIP and look forward to the continued discussion regarding these points.

Sincerely,

[2] There is precedent for a GIP to include a grandfathering provision. The 2020 GIP provided a grandfathering provision with respect to the 25 percent MPDU exemption provision which eliminated the full exemption and instead provided for a discount up to the amount of the impact tax in a red policy area.

Patricia A. Harris

cc: Ms. Lisa Govoni
Ms. Darcy Buckley

Email

Impact Tax Reform

Owner MCP...

Email

From	Mary Stickles
To	<MCP-Chair MCP-Chair>; MCP-Chair #; MCP-Chair@mncppc-mc.org
Cc	
Bcc	
Subject	Impact Tax Reform
Date Sent	
Date Received	5/26/2024 8:30 AM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Artie Harris and members of the Montgomery County Planning Board,

I am writing in support of the Growth and Infrastructure Policy update recommendation to discount impact taxes for smaller homes, and eliminating them for three-bedroom apartments. This will help incentivize the construction of more of the smaller more affordable homes that are needed in the county.

Three-bedroom apartments are especially scarce and a great solution for families. My daughter's family is a case in point. They have raised their two children since birth in a two-bedroom apartment. This is not ideal as the kids (a boy and a girl now 10 and 12 years old) grow older since they have to share a bedroom. Their family is making it work because this is an older building with very large closets. One child uses the master bedroom closet while the other uses the hall closet for a dressing room and "office" to do their homework. Their family longs for larger space that they could afford. A three-bedroom apartment would be ideal for them.

Sincerely,

Mary P. Stickles
2602 Arvin St.

May 23, 2024

Hon. Artie Harris
Chair, Montgomery County Planning Board
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

Re: 2024 – 2028 Growth and Infrastructure Policy Update

Dear Chair Harris and Commissioners:

Good morning my name is Katie Wagner and I am a principal at Grove Slade leading our Maryland office. Grove Slade is a transportation engineering and planning firm, where we work with clients through the entitlement process for development projects. I am here today on behalf of both NAIOP the National Association of Industrial and Office Properties and MBIA, the Maryland Building Industry Association.

I served on the Transportation Advisory Group (TAG) with a number of other stakeholders where we worked with Planning Staff to develop many recommendations for the Growth and Infrastructure Policy that was presented to you a few weeks ago. Gorove Slade and other stakeholders also worked with planning staff to develop and implement the Proportionality Guide when the 2020 GIP was adopted and there was a disproportionate burden placed on developers to improve deficient pedestrian, bicycle, and transit infrastructure identified in the LATR traffic studies prepared as part of the entitlement process. I'm intimately familiar with the implementation of the LATR & GIP having worked in the county since 2017.

Throughout the fall and winter when the Transportation Advisory Group worked collaboratively with staff, we were able to address several topics that were not originally included in the scope of work for the GIP update. We were excited to see many of these recommendations make their way to you. The implementation of these recommendations is an important step to help make Montgomery County more resilient, increase the housing supply, encourage a swift and through development review process, and spur economic development by not placing huge cost burdens on developers improving a disproportionate amount of transportation projects. While these outcomes are critical to the future of Montgomery County, we understand that we must not lose sight of ensuring that adequate public facilities are in place and available for existing and future residents as the County grows.

As the TAG worked with staff, a number of themes came about, the fees assessed on development projects is much higher in Montgomery County compared to the rest of the state, the fees collected make up a very small percentage of the County's transportation budget, and finally, as these fees have gone up over the last 10 years, the fees collected have not also gone up, indicating the high fees are discouraging development. We must weigh the perpetual long term economic support from increased tax base and attractiveness of vibrant activity centers against the marginal boost from one-time upfront impact fees from development activity.

Given this, I would now like to highlight a number of important points NAIOP and MBIA would like specifically to support and provide further refinements that we believe will have the greatest impact on the County and its ability to meet its goals. First, I would like to highlight our support for the removal of the proportionality guide for affordable housing (**Recommendation 3.11**). This would eliminate the requirement of offsite mitigation measures for affordable housing units. We would also recommend you expand this to include mixed income community projects where more than 25% of the units are affordable. This would reduce the reliance on County funds to build affordable units as the market rate units built in the mixed income communities support the viability of the affordable units. We also support the elimination of the proportionality guide for large units (**Recommendation 3.12).**

We support the elimination of a LATR traffic study requirements for both bioscience and daycare use (**Recommendations 3.13 and 3.14**). As staff described, the traffic studies required for daycares are costly as daycares generate a lot of trips on paper but those trips are generally made by parents already on the road who choose a daycare that is on the way to work and therefore the real traffic impact from daycares are minimal beyond the site driveway.

The next item I would like to highlight is revising the impact tax credits allowable projects, **Recommendation 4.8**. Currently eligible projects for impact tax credits include projects that are adding regional capacity or reduce traffic demand. We believe that the eligibility criteria, as defined in Section 52-50 of the County Code, needs further evaluation. The current eligibility criteria are limited and do not align with the County's broader goals of enhancing multimodal infrastructure and capacity. Notably, the eligibility list omits improvements along roadways that serve the County but are owned by the state, which represents the majority of frontage roads along major development corridors, upgrades to existing infrastructure to comply with ADA standards, upgrades to existing infrastructure to conform to the County's Complete Streets guidelines, and improvements to support the County's commitment to Vision Zero. This limitation disincentivizes infrastructure improvements on all roadways in the County that advance the principles of Complete Streets and Vision Zero. We would encourage you to allow all transportation projects that align with the County's current policies in both County and State ROW to be eligible for impact tax credits. We also suggest that these credits be acknowledged during preliminary plan and/or site plan review and confirmed prior to building permit issuance.

Another item I'd like to highlight is revising the Proportionality Guide to a vehicle trip-based approach (**Recommendation 3.8**). The Proportionality Guide was established in response to concerns associated with the costs borne by developers to meet multimodal adequacy standards. We support the efforts to ensure that required off-site transportation improvement costs are reasonable and proportional to a project's impact. However, we note a disparity in rates, particularly for developments in Red Policy Areas. Higher non-auto driver mode share goals (NADMS) in these areas result in higher Proportionality Guide Rates that are greater than the Transportation Impact Tax Rates for these projects, placing an additional financial burden on such projects compared to developments in other policy areas. We look forward to continuing to work with staff to ensure the Proportionality Guide helps the County meet its goals and not discouraging housing development.

We appreciate the recommendation for a 50% reduction in impact fees for single-family attached or detached dwelling units smaller than 1,500 (**Recommendation 4.3**). We recommend expanding this requirement to 2,000 sf or allow for two (2) thresholds for the attached and detached units. We spoke with a number of home builders throughout the county and they do not see viability in building homes smaller than 1,500 sf. This is for a number of reasons including the required width of units and achieving the number of bedrooms homeowners are interested in having, even in the smallest units. Additionally in support of the County's policy to incentivize attainable housing, we support a separate impact tax classification for 2-over-2s, but would like to see that classification similar to multifamily to further incentivize the creation of these units.

We support the move to 30 vehicle trips, being the requirement for an LATR traffic study (**Recommendation 3.2**). Traffic studies ensure safe and efficient access for development sites. Without studies required as part of the APF approval at the Preliminary Plan process, often SHA or MCDOT will request a study at the access permit stage, further delaying the process and the study does not have specific guidelines and processes it must follow. Transportation statements for smaller sites or exempt uses should focus more on the on-site and safe site access that are critical for site functioning rather than broad off-site infrastructure improvements.

We support the increase in the delay standard for some policy areas as these are minor increases (**Recommendation 3.3**).

We support simplification of the study areas (**Recommendation 3.5**). We continue to have concerns about the requirement of an illumination study reviewing streetlights and their specific details. These studies are costly, expensive, and dangerous.

We support the recommendation for the 30-day SHA review timeline and desire to have mutual expectations in the development review process (**Recommendation 3.18**). We consistently get requests for analysis from SHA for projects located in Red Policy areas and the purpose of the study is typically for informational purposes where no access permit is required or outside the desired project timeline.

I'd like to highlight our concerns regarding the recommendations for the Vision Zero Statement (**Recommendation 3.6**). This section highlights developers can implement speed reduction strategies and other roadway safety improvements as a mitigation project at MCDOT or at the discretion of the Maryland State Highway Administration." However, this is often not the case as proposed solutions often require additional rights of way, speed limit changes, road diets, and other improvements that extend far beyond the development site. It is difficult to come up with solutions to speeding strategies in the short development review timeline. The issue is further complicated by the fact that a private developer does not have the ability or authority to implement a traffic calming improvement during the development process under the current code.

Finally, we would like to ensure there is language in the Growth and Infrastructure Policy about projects going to the Planning Board after the GIP is adopted. Many of the changes to the policy will have a dramatic impact on the financial viability of projects throughout the County. Stakeholders are tracking the proposed changes, and many projects are on pause until these changes take effect. There should be language added to the GIP to allow projects to be able to take advantage of many of these monumental recommendations.

This is the current language.

Effective dates

This resolution takes effect on January 1, 2025 and applies to any application for a preliminary plan, site plan, building permit, or other application that requires a finding of Adequate Public Facilities filed on or after that date.

Guidelines for the Administration of the Adequate Public Facilities Ordinance

In closing, MBIA and NAIOP are excited to see the transportation recommendations put forth in the 2024-2028 Growth and Infrastructure Policy Update.

We believe these recommendations look to make Montgomery County resilient, increase the housing supply, encourage a swift and through development review process, and spur economic development by not placing huge cost burdens on developers improving a disproportionate amount of transportation projects. Thank you for your time today.

Marc Elrich
County Executive

Christopher R. Conklin
Director

DEPARTMENT OF TRANSPORTATION

M E M O R A N D U M

May 24, 2024

TO: Artie Harris, Chair
Montgomery County Planning Board

FROM: Haley Peckett, Deputy Director for Transportation Policy
Department of Transportation

Haley Peckett (May 24, 2024 14:09 EDT)

SUBJECT: Growth and Infrastructure Policy
Public Hearing Draft – MCDOT Comments

Thank you for the opportunity to review the May 2024 Public Hearing Draft of the Growth & Infrastructure Policy (GIP). In addition to our attached detailed comments, we would like to highlight several significant issues:

1) **FISCAL IMPACTS AND ADEQUATE PUBLIC FACILITIES:** Many of the proposed changes will reduce development-provided revenues and infrastructure while limiting the ability of the County to ensure equitable Adequate Public Facilities (APF). The recommendations proposing to change policy areas will reduce impact taxes and proposed changes to LATR treatments will reduce or eliminate required off-site mitigations. The recommendations would allow impact tax credits for treatments along State highways further reducing the County's fiscal ability to fund priority transportation projects.

   With these recommendations in place, new development may not have adequate public facilities to serve this new growth, requiring the County to build these facilities while simultaneously reducing the amount of impact taxes to pay for these investments. The reduced resources also risk underfunding master-planned infrastructure based on the Thrive Montgomery 2050 general plan vision and approved master plans.

At a minimum, we strongly recommend that the collective portfolio of GIP recommendations be neutral in value to the County as compared to the current GIP policy. It would be our preference that recommendations provide a net positive value to the County, which would improve our ability to ensure adequate public facilities and achieve master planned visions.

2) **IMPACT TAX:** Impact Tax rates were initially based on the costs of unbuilt master-planned infrastructure needs assessed across all developments in the County. As one means to keep the impact tax rates down, a decision was made to specifically exclude the cost of improvements on State roads. Since the 2000s, no adjustment in the rates have been made to account for infrastructure additions from master plans. With only modest adjustments for inflation, impact tax rates have become increasingly disconnected from the cost of producing the master-planned infrastructure.

   Infrastructure funding has long been a critical issue hampering our ability to grow our economy and provide public services. Further impact tax reductions will only further reduce our ability to meet public expectations and implement planned school and transportation infrastructure.

   Allowing transportation impact tax credits along State roads, in particular, could have a substantive fiscal impact whereby credits are granted for projects that are the State's responsibility to fund, eroding the County's ability to address needs along County facilities. We concur with the need for an interconnected transportation system, regardless of road ownership, but this recommendation would effectively mean that developer priorities would take precedence over the priorities identified by the County through our planning and budgeting process. As credits along State roads were not included in the calculation of impact tax rates, if the Growth Policy gives credits for projects on State roads, we would suggest recalculating impact taxes to reflect this additional scope of work.

3) **POLICY AREA ADEQUACY:** We urge caution with changing policy areas without adequate transit, bicycle, and pedestrian infrastructure in place (#3.1, #3.3). While we recognize the "chicken & egg" situation between land use and transportation, changing policy areas before non-auto options are in place risks a period where travelers lack high quality and safe access to transit and active transportation, and they therefore resort to car travel and create additional congestion.

   We do not oppose the changes in policy areas at some point in the future, but these changes should be linked to the implementation of transportation alternatives, especially increased transit service, prior to making these changes.

4) **SUPPORT:** We support several recommendations, including those that increase the value gained from new development (such as #3.5 increasing the Bike and Transit adequacy distances), streamlining recommendations (such as #3.5, 3.6, 3.7, 3.15, 3.17, 3.18), and more flexibility in spending revenues (such as #3.9 and 3.10).

Enclosure: GIP 2024 MCDOT Recommendations

cc: Andrew Bossi, MCDOT
Rebecca Torma, MCDOT
Kara Olsen-Salazar, MCDGS
Claire Iseli, CEX
Meredith Wellington, CEX

Growth and Infrastructure Policy Index of Recommendations

Montgomery County Department of Transportation (MCDOT)

5/24/24

MCDOT offers the following response to each of Planning's recommendations on the 2024-2028 Growth and Infrastructure Policy Update. MCDOT's priority across all of these recommendations is to ensure adequate public facilities (APF) are in place to support all new developments.

Rec #	GIP Transportation Recommendation	MCDOT Response
3.1 (p.24)	Update policy areas to support the county's goals (includes new "red" areas at Great Seneca Life Sciences, White Oak Village & Center, Rock Spring; "orange" areas at Rockville Pike, Georgia Avenue, US29; and "yellow" areas at Damascus.	MCDOT opposes changes to policy areas until the transit and active transportation infrastructure and transit service is in place to support the more intensive development. MCDOT also advocates for a sustainable funding source to support ongoing improvements in transit service.
3.2 (p.26)	Require LATR studies for a proposed development generating 30 or more peak-hour vehicle trips.	MCDOT neither supports nor opposes on the understanding that this is an approximately equal conversion between units, and that this recommendation does not lead to a substantive reduction in LATRs produced. But we do note that there have been several developments under the current growth policy which met this de minimis and would not under this proposal, and vice versa.
3.3 (p.27)	Update the LATR Intersection Congestion Standards to reflect changes to policy area boundaries and designations.	MCDOT is concerned that this change would allow for greater vehicular congestion from new growth in newly classified policy areas without necessitating that robust transit service is available for users to have viable alternatives.
3.4 & 3.5 (p.27-28)	Modify the non-motor vehicle test requirements to maintain the county's high standards while minimizing unnecessary data collection and analysis. • Ped Adequacy (PLOC, ADA, Lighting) - Use Yellow/Green distances for all policy areas. • Bike Adequacy - Use Red/Orange distance for all policy areas.	The modal adequacy tests may not be perfect in accomplishing the goals of Thrive 2050 or in ensuring APFO. However, MCDOT recommends maintaining the 2020 modal adequacy tests to maintain funding levels for APFO. The proposed changes for pedestrian adequacy stand to increase the County's burden in funding pedestrian infrastructure by reducing the extent of offsite improvements. The relative financial benefit to the County of increased area for offsite bike mitigation is much less than the disbenefit of decreased offsite pedestrian mitigation.

Rec #	GIP Transportation Recommendation	MCDOT Response
	• Bus Adequacy - Use Red/Orange distance for all policy areas.	MCDOT calculated approximate fiscal impact of these recommendations, if applied retrospectively to LATRs submitted from 2021-2024 (and assuming no induced changes in development). The impact of pedestrian adequacy changes results in a *cost* of approximately $1.7M, where the bike adequacy changes result in a *benefit* of approximately $360K. MCDOT recommends study and development of a future transit modal adequacy test or other transit-focused GIP policy that results in meaningful improvement of transit service. Adding a shelter does not substantively expand transit access. Each of these adequate tests must also define the point from which Pedestrian, Bicycle, and Transit Adequacy is measured. MCDOT suggests that they be measured from the nearest edge of the property.
3.6 (p.29)	Refine the Vision Zero Statement to focus on managing speed for safety. Effective speed management helps reduce roadway fatalities and ensures the safety of all road users. It is one of the best tools for saving lives and reducing serious injuries on our roadways.	MCDOT supports this recommendation. The narrowed focus on speed provides useful data on existing conditions to MCDOT. The language allows MCDOT staff to approve implementation of safety countermeasures on a case-by-case basis.
3.7 (p.29)	Remove the reference to the Safe Systems Adequacy Test from the GIP.	MCDOT supports this recommendation.
3.8 (p.30)	As part of the 2025 LATR Guidelines update, develop a vehicle trip-based Proportionality Guide calculation that better accounts for impacts.	MCDOT will monitor this recommendation as the proportionality guide is developed in 2025.
3.9 & 3.10 (p.31)	Allow all fee-in-lieu funds to be spent in both the subject policy area and adjacent policy areas. Rather than limiting the use of funds to specific modes, allow fee-in-lieu funds collected for non-motor vehicle deficiencies to be used for any non-motor vehicle improvement within the subject policy area or an adjacent policy area.	MCDOT supports this recommendation. It provides the County with greater flexibility to use fee-in-lieu for the highest priority needs.

Rec #	GIP Transportation Recommendation	MCDOT Response
3.11 (p.31)	Exempt affordable housing units from off-site mitigation construction and payments. Adjust the Proportionality Guide limit by subtracting trips attributed to new affordable units.	MCDOT would support this recommendation only if the County can develop an alternate funding source for adequate public facilities (APF) for affordable housing units. The current recommendation will result in a notable decrease in offsite improvements, which may disproportionately affect residents of affordable housing and their market-rate neighbors. For this and the following items, MCDOT supports maintaining the requirement for LATRs wherever they are currently required. LATRs are a critical tool for MCDOT to measure impact on our transportation network and determine need for APF (regardless of who funds the improvements).
3.12 (p.31), 4.5 (p.41)	Exempt multifamily units with three or more bedrooms from off-site mitigation construction and payment. Adjust the Proportionality Guide limit by subtracting trips attributed to new three or more-bedroom multifamily units.	MCDOT voices minor opposition to this recommendation, given that MCDOT's priority is to ensure adequate public facilities can be built for all new developments. Exemptions of off-site mitigations can decrease the County's ability to build APF on County roads. However, the anticipated fiscal impact of Recommendation 3.12 is minor (under $200K over three years per the fiscal analysis described above) due to the few number of 3+ bedroom units built over recent years. We also request that units with three or more bedrooms be clearly defined, such as whether boarding / rooming houses, or other forms of shared or group housing, would qualify for the proposed changes.
3.13 (p.32)	Exempt daycares from the requirement to complete an LATR study.	MCDOT opposes this recommendation. MCDOT supports maintaining the requirement for LATRs wherever they are currently required. LATRs are a critical tool for MCDOT to measure impact on our transportation network and determine need for APF.
3.14 (p.32), 4.7 (p.42)	Make the Bioscience LATR exemption permanent.	MCDOT neither supports nor opposes this recommendation; it would have no or negligible fiscal impact as compared to the current policy.
3.15 (p.32)	Establish NADMS goals for new policy areas and other areas without goals. Update the NADMS goals to reflect recently adopted master plans.	MCDOT supports the establishment of NADMS goals for new policy areas, but we would like to partner with Planning on calculating these goals. First, we'd like to see the data calculations supporting these goal areas. We have some questions about whether the 2019 American Community Survey data and the 2023 TMR data (Appendix 3, page 11) reflect current and future travel patterns.

Rec #	GIP Transportation Recommendation	MCDOT Response
		We recommend integrating MCDOT Commuter Survey data and levels of transit service into these goals.
3.16 (p.33)	Revise the GIP resolution text to reflect updated county plans, policies, laws, regulations, and guidance.	MCDOT supports this recommendation, with the goal of modernizing and streamlining existing regulations and guidance.
3.17 (p.33)	Reorganize and update the LATR Guidelines. The revised version will reduce duplicative and contradictory language, address frequently asked questions, and include example documents and directions for common challenges.	MCDOT neither supports nor opposes this recommendation; revision may provide clarification or cause confusion among developers who are accustomed to current guidelines. MCDOT would look to partner with Planning on their revision.
3.18 (p.34)	Continue to work with SHA and State Delegates to codify SHA review times.	MCDOT neither supports nor opposes this recommendation; this relates to Maryland State Highway Administration processes. In general, MCDOT supports streamlining and alignment in agency review timelines.
4.4 (p.40)	Remove the Desired Growth and Investment Areas 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.	MCDOT supports this recommendation.
4.6 (p.41)	Exempt office-to-residential conversion projects from impact taxes, given the high office vacancy rate in the county and the difficulty of converting office space to residential use.	MCDOT voices minor opposition to this recommendation, given that MCDOT's priority is to ensure adequate public facilities can be built for all new developments, and this recommendation may reduce available revenues to address needs. Precise definitions will be needed of what does and what does not constitute an office-to-residential conversion, particularly for projects that may include both conversions as well as new non-conversion development. Any benefits for conversions might also be tailored to better support other County needs, such as proximity to transit, affordable housing, 3+ bedroom units, and daycare facilities.
4.8 (p.43)	Update the County Code to provide more clarity and allow credit for capacity improvements along state roadways.	MCDOT strongly opposes this recommendation. Credits for capacity improvements along state roads would significantly impact the County's financial ability to build priority infrastructure projects to accommodate growth.

Rec #	GIP Transportation Recommendation	MCDOT Response
		The impact tax rates are calculated based on regional capacity infrastructure projects along County roads, which are identified as necessary to accommodate future growth. If impact taxes were to include projects on state roads or anything other than *regional capacity projects* on County roads, the rates would be much higher. The County already lacks funding to advance priority projects on County roads to meet future needs; credits for improvements on state roads would further reduce the pot of available funds and serve to de-prioritize the projects that have been carefully selected through master planning and County budget approvals. The budgeted projects would be delayed and the projects on state roads would happen at the potential expense of critical County needs. This recommendation would likely result in the loss of several million dollars of impact taxes each year, based on past development patterns.
Appendix B p.5	Hammer Hill daycare LATR mitigation requirement includes "Plant additional street trees"	Please clarify that the developer was originally required to provide an off-site shared use path, but that this requirement was eliminated due to the Proportionality Guide.
Appendix B p.8	4910/4920 Strathmore	There was an amendment to the plan after the applicant reduced the size of their development. The applicant is no longer required to construct a sidepath to replace the existing sidewalk and bridge on the south side of Strathmore Ave.

Email

GIP Written Comments

Owner MCP...

Email

From Mike English

To <MCP-Chair MCP-Chair>; MCP-Chair #; MCP-Chair@mncppc-mc.org

Cc

Bcc

Subject GIP Written Comments

Date Sent **Date Received** 5/22/2024 8:35 PM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Hello Chair Harris, and all members of the planning board.

Apologies for missing the deadline for comment earlier today. I hope these still reach you in time. While I am unable to attend the hearing tomorrow, I wanted to briefly write you to express my support for the staff recommendations on the Growth and Infrastructure Policy update.

While the changes here are more modest than the last update, which thankfully lead to the end of the county's longstanding, ill advised conditional housing moratorium, this update is full of common sense updates and tweaks that will play a supporting, but significant role in addressing Montgomery County's housing crisis.

In particular I would like to highlight 3 recommendations.

3.11 Expand the current off-site mitigation exemption for affordable housing units, which currently only includes mitigation payments, to include constructed improvements.

As I don't need to tell you, there are a wide variety of limitations on new affordable housing, more comprehensive mitigation to help these pencil out is unambiguously good.

3.12 Exempt multi-family units with three or more bedrooms from off-site mitigation construction and payment.

While I spend a lot of time pushing for smaller apartments and condos to meet the significant share of 1-3 person households living, or seeking to live in the county, larger units also have a role to play. Sure more supply of smaller units will free up some of these indirectly, but policies like this that directly incentivize these also needed family size units, which face headwinds smaller (also needed) units do not, seem like a good idea to me.

4.6 Exempt office-to-residential conversion projects from impact taxes,

given the high office vacancy rate in the county and the difficulty of converting office space to residential use.

A lot of people offer up office to residential conversions as some sort of panacea, and, frankly, as an excuse not to allow change near them, and I have no patience for that, but we *should* do this where possible, and there is no shortage of barriers to doing so. (I talked about some of them in an article a few years ago for what it's worth. Converting office space into housing can be one solution for the region's housing crisis — but not the only solution – Greater Greater Washington (ggwash.org)**)**

In any event, exempting them from impact taxes won't make fundamentally unfit office buildings suddenly workable, but they could help mitigate significant costs, and cause a more marginal project to pencil that otherwise wouldn't.

Thank you,

Mike English
8005 13th Street
Unit 304
Silver Spring, MD
20910

Attachments

	File Name	File Size (Bytes)	

There are no Attachments to show in this view. To get started, create one or more Attachments.

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Montgomery for All

May 22, 2024

Re: May 23th Public Hearing Item 2024–2028 Growth and Infrastructure Policy Update

Dear Chair Harris and Members of the Montgomery County Planning Board:

My name is Michael Larkin, and I am writing on behalf of Montgomery for All, the Coalition for Smarter Growth's grassroots branch in Montgomery County, with over 200 members who want to see more sustainable, welcoming neighborhoods. The Montgomery for All Steering Committee supports the recommendations in the 2024–2028 Growth and Infrastructure Policy (GIP) update that encourages the building of more affordable and attainable housing options and treats public transportation, walking, and bicycling as public benefits. The GIP is an opportunity to continue aligning county policies with Thrive 2050 and other plans such as the Pedestrian Master Plan and the Climate Action Plan.

In 2022, the Montgomery County Council passed Thrive 2050 with a vision of abundant housing and transportation options that do not default to automobile dependence. Many of the recommendations in the GIP move in this direction. Montgomery for All points out the following as steps in the right direction:

> **3.2 Require a Local Area Transportation study (LATR) for any proposed development generating 30 or more peak-hour motor vehicle trips.**

This revises the current policy that counts 50-person trips whether they be by car, truck, transit, walking, or biking. These transportation modes are obviously not all the same. It is preferable that a bus carrying 30 people should only be counted once, and it no longer makes sense in light of the Climate Action Plan to assume walking and biking adds a burden that must be mitigated. This new standard aligns land use policy with more sustainable transportation options.

> **3.4 Establish a Non-Motor Vehicle Adequacy Test with five components: Pedestrian Level of Comfort (PLOC), illuminance, Americans with Disabilities Act (ADA) compliance, bicycle system, and bus transit system.**

The focus of transportation needs to shift from moving cars as fast as possible to focusing on moving people safely. Recommendation 3.4 recognizes our county needs an integrated transportation system to accomplish this shift of focus. All residents should be able to walk, roll, bike and take transit as individual transportation options or in combination and do so safely.

> **3.11 Expand the current off-site mitigation exemption for affordable housing units, which currently only includes mitigation payments, to**

include constructed improvements.

3.12 Exempt multi-family units with three or more bedrooms from off-site mitigation construction and payment.

Both of these recommendations could increase the financial viability of building more affordable and attainable housing. Montgomery County must simplify and reduce the cost of the housing construction process in light of the ongoing housing crisis.

4.3 Offer a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,500 square feet or smaller.

4.5 Expand the current discount for units with three or more bedrooms to a total impact tax exemption for both transportation and school impact taxes and in all impact areas and policy areas.

4.6 Exempt office-to-residential conversion projects from impact taxes, given the high office vacancy rate in the county and the difficulty of converting office space to residential use.

These three recommendations encourage more compact land use and can lead to lower construction costs that will be passed onto residents through comparatively lower housing prices. Although office-to-residential conversion projects are not a panacea, Montgomery for All vigorously supports an all of the above approach to tackling the housing crisis, and this exemption should help defray some of the significant cost barriers to office-to-residential conversion and larger units in multi-family buildings.

Montgomery for All is also encouraged by other recommendations regarding the reclassification of stacked flats and focusing Vision Zero on managing speeds. Moreover, we recommend the development of a new Proportionality Guide calculation that focuses on the impact of motor vehicle trips instead of housing units and non-residential units. In conclusion, the 2024-2028 GIP update can move Montgomery County in the direction of ending the contrived scarcity of housing and incentivize the shift away from automobile dependence and support more public transit and active transportation options. Thank you for your time and consideration.

Sincerely,

Michael Larkin
Montgomery for All Steering Committee
7981 Eastern Ave., Apt. 201
Silver Spring, MD 20910

Scott Wallace's Testimony for
May 23, 2024 Planning Board Public Hearing

I'm Scott Wallace with the law firm of Miles & Stockbridge. I'm speaking tonight on behalf of MCB White Oak, LLC. MCB is the contract purchaser and developer of the VIVA White Oak Project in Eastern Montgomery County.

VIVA White Oak is a large-scale, multi-phased mixed-use project that will create a new live/work/play community adjacent to the FDA headquarters. As envisioned in the White Oak Science Gateway Master Plan, the project will have a transformative impact on East County.

The project is in a federally designated Opportunity Zone and leveraging the economic advantages of this designation is critical to the project's success.

One advantage is the existing exemption from County impact taxes for properties in designated Opportunity Zones.

For long-term projects with existing plan approvals like Viva, it is essential that this exemption be maintained after the designation expires in a few years as recommended in the Public Hearing Draft at page 43.

We provided Staff suggested legacy language and look forward to working with them on that.

I appreciate the opportunity to present this testimony and I’m happy to answer any questions.

Thank you for your time.

C. Robert Dalrymple, Esquire
Bdalrymple@sgrwlaw.com
Direct Dial: (301) 634-3148

Matthew M. Gordon, Esquire
Mgordon@sgrwlaw.com
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May 14, 2024

Via Email - MCP-Chair@mncppc-mc.org
Mr. Artie Harris, Chair
And Members of the Planning Board
Montgomery County Planning Board
2425 Reedie Drive, 14th Floor
Wheaton, Maryland 20902

Re: 2024 Growth and Infrastructure Policy (the "GIP"); Selzer Gurvitch's Written Comments for the Working Draft

Dear Chair Harris and Planning Board Members,

On behalf of the Land Use/Zoning practice group at Selzer Gurvitch, we offer these written comments to the GIP Working Hearing Draft (the "Working Draft"). We largely support the recommendations in the Working Draft as they will help to further important land use, economic development and housing goals established by Thrive Montgomery 2050 ("Thrive"). We commend M-NCPPC staff on their creative and forward thinking included in the Working Draft as there are a number of important policy changes that will help to make the production of housing more economically viable. We offer the following comments in support of five (5) specific policy recommendations included in the Working Draft and note that there are opportunities to expand on these policy recommendations. More specifically, we recommend that the Working Draft include specific treatment for projects that include deeply affordable MPDUs (i.e., MPDUs at 50% Area Median Income – "AMI" or less).

1. Deeply Affordable MPDUs

While MPDUs provide an important source of affordable housing (at 65% to 70% AMI), Thrive recognizes the need for a broader spectrum of affordable housing. More specifically, Thrive recommends the following:

- As part of the commitment to the Housing First approach, develop strategies to build deeply affordable housing and provide permanent supportive housing in support of unsheltered populations and those who may be aging out of youth programs. (p. 132).

- Adjust the applicability of the Moderately Priced Dwelling Unit (MPDU) program and other affordable-housing programs to provide price-regulated units appropriate for income levels ranging from deeply affordable to workforce. (p. 133).

Given the well-defined need for deeply affordable housing and the Working Draft's recommendation to exempt trips associated with MPDUs and multi-family units with 3 or more bedrooms (Recommendations 3.11 and 3.12), **we recommend that the Working Draft include an expanded adjustment to the Proportionality Guide limit by subtracting the trips attributed to the deeply affordable MPDUs by two (2) times.** More specifically, deeply affordable MPDUs should exempt a corresponding market-rate unit from off-site mitigation (i.e., deeply affordable MPDUs receive an exemption for 2 total units). By way of example, if a development project includes 10 deeply affordable MPDUs, M-NCPPC staff would subtract the trips attributable to 20 dwelling units from the Proportionality Guide limit.

2. Recommendation 4.9, Legacy Language For Opportunity Zones

We support the recommendation that "legacy language to allow Planning Board–approved projects that have not yet received building permits to continue to receive the impact tax exemption" be added to the Chapter 52, Article V of the Montgomery County Code (the "Impact Tax Law"). The current language (Sections 52-41(g)(6) and 52-54(d)(4)) exempts any development located in a qualified opportunity zone from impact taxes (except for developments located in the City of Rockville). Given the significant investment and time required to obtain development approvals and the good faith reliance by property owners on this exemption, it is critical that any changes to the Impact Tax Law maintain this exemption for development projects that have valid development approvals or a pending development application, as of the expiration of the qualified opportunity zone, that will result in Adequate Public Facilities (APF) approval.

In this respect, **we recommend that the Working Draft continue to exempt development projects so long as the underlying APF approval remains valid at the time of building permit issuance (impact taxes are calculated at the time of building permit issuance).** This should be the standard for both Planning Board and municipal development approvals (i.e., the City of Gaithersburg since the current exemption does not apply in the City of Rockville). Absent the inclusion of such transitional language, the Growth Policy will unfairly frustrate the investments and assumptions made by applicants with development approvals in qualified opportunity zones.

3. Enterprise Zones

We support the Working Draft's recommendation to maintain the impact tax exemption for development projects located in an Enterprise Zone designated by the State. For the same reasons provided for qualified opportunity zones, it is critical that property owners be able to avail themselves of the impact tax exemption for Enterprise Zones where they have obtained development approvals prior to expiration of the relevant Enterprise Zone. Since the only Enterprise Zones in the County (Burtonsville and Olde Towne Gaithersburg) are set to expire in 2028, the Working Draft should **recommend that the current exemption under the Impact Tax Law be maintained so long as these Enterprise Zones remain in effect, and to include a transitional provision (similar to the language proposed above for qualified opportunity zones) for development projects with APF approval that have not yet gone to building permit**.

4. Recommendation 4.6, Office to Residential Conversions

We fully support the Working Draft's recommendation to introduce an impact tax exemption for office to residential conversion projects. This policy change is market responsive and cognizant of the strong headwinds facing the office market throughout the region and beyond. Even with the proposed impact tax exemption, it is extremely expensive and challenging to convert an under-performing and obsolete office building to multi-family units (only a small number of buildings in the County will be viable for conversion). However, in order to meet the County's housing goals and to mitigate the negative impacts caused to a surrounding area by a vacant or underutilized office building, the Working Draft appropriately recognizes the need to provide for incentives to create housing where feasible.

Notwithstanding our support for this recommendation, it is our position that the Working Draft should go further to encourage the replacement of underutilized office buildings with attached housing units and/or multi-family low-rise units (e.g., townhouse, duplex, and other attainable housing unit types). To this end, Thrive provides that to meet the County's housing demands by 2045, approximately "**half** of all new dwellings will need to be rental units in multifamily buildings (**including both apartment and townhome, duplex, triplex, and quadplex units**) and **more than one quarter** will need to be **for-sale units in multifamily buildings (including condominiums and other attached and semi-detached building types**)." (Thrive, p. 131) (emphasis added).

Based on the foregoing, the GIP should embrace and encourage opportunities to replace underperforming office buildings with market-responsive attached and low-rise housing types (for-sale and rental). We note that current Impact Tax Law provides for an off set (or exemption) against transportation impact taxes based on the amount of office space being removed, but that these projects are subject to the school impact tax. In order to provide for greater opportunity for market-responsive infill housing, **we recommend that the Working Draft include a 50% exemption from school impact taxes for development projects that involve the demolition of an office building to make way for infill attached and/or multi-family housing.** Such an approach would allow for the 100% exemption where a development project adaptively reuse an office building for multi-family housing (this will only be viable in very limited instances), but also provide for appropriate incentives to create a more diverse range of housing types (e.g., townhouse units, stacked flats, triplex, and other attainable housing typologies). The proposed discount for smaller homes (recommendation 4.3) does not adequately address this scenario because the market will demand, to support the cost of replacing an office building, that some of this infill housing be larger than 1,500 square feet.

5. Recommendation 3.11, LATR Exemption for MPDUs

We fully support the Working Draft recommendation that would "[e]xpand the current off-site mitigation exemption for affordable housing units, which currently only includes mitigation payments, to include constructed improvements." While it is our position that the current GIP exempted affordable housing projects from off-site mitigation, whether in-kind or through mitigation payments, M-NCPPC staff has interpreted the current GIP to limit the exemption to mitigation payments (even in instances where a project includes 100% regulated affordable housing). In order to be consistent with Thrive and the economic realities underlying the development of affordable housing (i.e., these projects rely on public subsidies), it is critical that the Recommendation 3.11 be included in the GIP.

While we fully support this policy recommendation, **we encourage the Planning Board to expand on this policy to account for projects that contain a minimum of 30% MPDUs (or other regulated affordable units exempt from impact taxes)**. In recognition of the challenge with financing housing projects that contain additional MPDUs, the Impact Tax Law provides an exemption for market rate units (in Red Policy Areas) in a development in which at least 25% of the dwelling units are MPDUs (or other exempt affordable units). For the same reasons, **the GIP should exempt projects with a higher proportion of MPDUs (i.e., 30% is two times the minimum requirement in many policy areas) from any off-site mitigation (in-kind construction or mitigation payments).**

6. Recommendation 4.5, Exemption for Multi-Family Units with Three or More Bedrooms

Given the well-documented lack of supply of family size multi-family units (for sale and rental), we support the Working Draft's recommendation to "[e]xpand the current discount for units with three or more-bedroom units to a total impact tax exemption for both transportation and school impact taxes and in all impact areas and policy areas." Since the market is not producing an adequate supply of 3-bedroom and larger units, it is important that the GIP establish incentives to encourage the development of these larger units. Not only is this consistent with Thrive's recommendation to "encourage provision of multi-bedroom units suitable for households with children in multifamily housing," it will result in both market-rate and MPDUs that contain 3-bedroom units and larger. (Thrive, p. 132). We request that the Planning Board adopt recommendation 4.5 in the Working Draft for transmittal to the County Council.

We thank you for the opportunity to provide these comments and look forward to continuing to work with all stakeholders through the remainder of the public review process. It is our strong desire that the GIP encourage important economic development opportunities contemplated by Thrive and that will enhance the public welfare and increase the County's housing supply.

Very truly yours,

Selzer Gurvitch Rabin Wertheimer & Polott, P.C.

C. Robert Dalrymple

C. Robert Dalrymple

Matthew M. Gordon

Matthew M. Gordon

cc: Jason Sartori
Robert Kronenberg
Darcy Buckley
Lisa Govoni

Greater Colesville Citizens Association
PO Box 4087
Colesville, MD 20914
May 23, 2024

Montgomery County Planning Board
Attn: Artie Harris, Chair
2425 Reedie Drive
Wheaton, MD 20902

Re: Growth & Infrastructure Policy

Dear Chairman Harris:

The Greater Colesville Citizens Association (GCCA) has commented for decades on the Growth & Infrastructure Policy (GIP) and its predecessor documents. GCCA supports the recommendations in the draft document except as noted below. The staff proposed changes are largely small adjustments to make the existing process work better.

Recommendation 3.1. GCCA supports including the White Oak Village & Center Policy area in the red category. We also recommend that the White Oak Policy Area be classified in the red policy area. These two areas are covered by the Local Area Transportation Improvement Program (LATIP) which replaces LATR, and thus most of the GIP transportation rules do not apply to them. Also, with BRT being studied for New Hampshire Ave, it will have premium transit. We have also been encouraging the county to link the two activity centers together using BRT/walking/biking at a new Paint Branch crossing rather than using Old Columbia Pike. White Oak is already a downtown area because of its highly dense residential development and the dense non-residential development there and in the Hillandale activity centers

Transportation Impact Rates. The Policy establishes non-auto drive mode share (NADMS) goals but fails to reduce the transportation impact tax to account for achieving the goal or exceeding it. The current LATR contains two tables that could be used to address this shortcoming: Appendixes 1a and 1b. Appendix 1a adjusts the ITE vehicle trip generation rate to reflect local conditions. Appendix 1b could be modified and updated to identify existing NADMS rates. Using those two tables, the transportation impact tax should thus become:

= ITE rate * Appendix 1a factor * (1 – Appendix 1b NADMS rate) * tax rate

Appendix 1b would represent the default LATR rate. However, if the developer could demonstrate a higher NADMS, that higher value would be used in place of the Appendix 1b value. The NADMS would most likely vary by the nature of the development in terms of number of auto trips, provision of public transportation, and any measures the developer puts in place to encourage non-auto trips. The tax rate would be value per auto trip. Thus, trips taken by transit, walking or biking would not be charged an impact tax, thus encouraging their usage.

Thank you for considering our recommendations.

Sincerely

Daniel L. Wilhelm

GCCA President