

Staff Draft

2003–2005 Annual Growth Policy

Policy Element

Recommendations for the administration of Montgomery
County's Adequate Public Facilities Ordinance



Prepared by the Montgomery County Department of Park & Planning
Maryland - National Capital Park and Planning Commission
May 2003

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Abstract

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Abstract: Montgomery County Code Section 33A-15 establishes the process by which the Montgomery County Council provides guidance for the management of growth. The Code requires the Council to adopt an Annual Growth Policy "Policy Element" by November 1 of each odd-numbered year.

This document contains the recommendations of the staff of the Montgomery County Department of Park and Planning on growth policy issues identified by the County Council, the Planning Board, other public officials and the general public during a comprehensive review of growth policies. These recommendations will be reviewed by the Planning Board before transmittal to the County Council.

2003-2005 Annual Growth Policy

Policy Element

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Section 1: Summary of Recommendations

1.0 Introduction

In October 2001, the Montgomery County Council directed the Planning Board to “review all aspects of the Policy Element with the objective of reducing its complexity.” Among the issues the Council asked the Planning Board to:

- “examine whether Policy Area Transportation Review should remain as part of the test for transportation adequacy, and if so, whether and how to develop staging ceilings by a method other than the Total Transportation Level of Service (TTLOS) methodology,” and
- “develop an option for the Council to consider that would allow a residential development to be approved in a cluster where school facilities are inadequate if compensatory steps can be taken.”

In the summer of 2002, staff released a report entitled “*Assessing the Effectiveness of Montgomery County’s Adequate Public Facilities Ordinance.*” That report reviewed the history of major aspects of the Annual Growth Policy, including the intent of each provision and the experience in using it. It discussed concerns that have been raised about specific AGP provisions as well as the adequate public facilities ordinance generally. The report also outlined staff’s expectations for further study.

In February of 2003, staff presented the results of its background studies to the Planning Board and County Council. These studies included an estimate of the effect of the AGP on the pace of development, demographic factors effecting school enrollment, the relationship between the AGP and traffic congestion levels in Montgomery County, the results of AGP “focus groups,” and profiles of growth management initiatives by localities around the country. Staff also presented a set of options that staff intended to evaluate in this report.

The February 2003 reports, and the discussion they generated at the Planning Board and County Council, affirmed and further defined concerns with the current AGP and hopes for a future growth management system. There were also important discussions at an early 2003 dinner with the Planning Board and the Board of Education. In developing our recommendations, staff also benefited from our participation in discussions with a range of civic and business groups, from testimony at public hearings on issues directly or indirectly related to growth and the adequacy of transportation and school facilities, and from public forums in support of the master planning process, where there was plenty of frank debate about the benefits and effects of growth. Staff appreciates the input of the mayors of Cities of Gaithersburg and Rockville and found the growth-related discussions at both City Councils over the past year or more to be very helpful in defining the municipal perspective on County growth.

Staff is indebted to the staffs of the County Executive, County Council, Montgomery County Public Schools and the Housing Opportunities Commission, as well

as staff of the Cities of Gaithersburg and Rockville, for their significant contributions to our discussions of the growth-related issues contained in this report. Each of these staff persons brought with them an enormous amount of factual information as well as insight on problems and solutions. Although we worked together in reviewing many of these issues, this report contains Park and Planning staff's recommendations and not necessarily a consensus position of all participating staff, who will be providing their boards and councils with their own, possibly quite different, recommendations.

1.1 Recommendations

The staff of the Department of Park and Planning has reviewed the Annual Growth Policy and, having heard and investigated concerns about the present system for regulating the pace of development to be concurrent with the delivery of transportation and school facilities, have prepared a series of recommendations contained in this report. These recommendations are summarized below:

1.1.1 Testing the Adequacy of Transportation Facilities

Park and Planning staff have explored three alternatives to the current Policy Area Transportation Review method of testing for adequacy of transportation facilities. Staff is putting forth all three alternatives without recommendation for the public forum on May 15. Following the public forum, staff will make a final recommendation to the Planning Board.

The three alternatives are:

- *Current system with important modifications:* This alternative would continue to set staging ceilings for each policy area based on analysis of average congestion using a transportation model. However, the current method of setting policy area congestion standards based on the availability and usage of transit would change. The new system would be conceptually similar to the "group system" that was used until 1994, but modified to address the concern that the group system was not sufficiently sensitive to improvements to the transit network.
- *An alternative method for allocating development capacity to policy areas:* This alternative would retain the basic concept of setting development limits by policy area, but would develop those ceilings in a completely different way. This "capacity metering system," would be based on the amount of remaining planned but unbuilt development and planned but unbuilt transportation infrastructure. As each transportation improvement is programmed, a pro-rata share of the planned but unbuilt development would be allowed to proceed. This approach lends itself to accommodating "pay-and-go" provisions because it can be used to allocate infrastructure costs to new development.
- *Eliminating Policy Area Transportation Review and replacing it with an enhanced version of the Local Area Transportation Review test:* This alternative would end the practice of setting staging ceilings for County policy areas. It would rely instead on an enhanced version of the local transportation test that is

applied at the time of subdivision to proposed development projects. This “Super LATR” would test roadway links in addition to the intersections that LATR currently tests and would include forecasts of background traffic that are not now considered.

None of these approaches are inherently more or less restrictive on the pace of development – instead, there are versions of each approach that are more restrictive, and versions of each approach that are less restrictive.

Staff also offers the following recommendations on issues related to the testing of the adequacy of transportation facilities:

- If staging ceilings are retained, there should periodically be a comprehensive review of how the ceilings are allocated to correct imbalances. However, staff believes that some imbalances serve a legitimate policy purpose, so we would not recommend the single staging ceiling alternative.
- Staff is content with the “average congestion index” as a means for measuring a policy area’s congestion level, but we review a potential alternative, “percent congested vehicle miles of travel,” which yields significantly different results. The average congestion index or its alternative would be used only in the “new group system” alternative for Policy Area Transportation Review.
- The period for measuring traffic congestion should continue to be the weekday morning and evening peak periods and not some other time period; e.g., mid-day or weekends. The measuring period is used for both Policy Area Transportation Review (“new group system” option) and Local Area Transportation Review.
- The current freeway test should be retained if Policy Area Transportation Review is retained and the “new group system” option selected. The other options do not tie development to freeway congestion levels.
- The Alternative Review Procedure for Metro Station Policy Areas continues to have merit, but the need for it may change if Policy Area Transportation Review changes significantly. If it is retained, staff has two recommended changes to the procedures language, clarifying the 50 percent trip reduction requirement and changing language requiring the Planning Board to prepare a Comprehensive Local Area Transportation Review in every policy area where the procedure is used.
- The relationship between transportation tests at zoning and at subdivision should be clarified. Staff will propose language to achieve this clarification before the fall. Staff will provide the Planning Board and County Council with copies of the County Code, including the zoning ordinance, which would be affected by AGP amendments.

- Current policy area boundaries are appropriate for the current system and for the proposed “new group system.” Other Policy Area Transportation Review options may necessitate policy area consolidation or elimination.

1.1.2 Testing the Adequacy of School Facilities

The staff of the Montgomery County Department of Park and Planning recommend that the current test for the adequacy of public school facilities be changed. Staff recommends that the school test:

- Continue to use the current definition of school capacity;
- Consider schools to be adequate at the elementary and middle school levels when enrollment does not exceed 105 percent of capacity, and to be adequate at the high school level when enrollment does not exceed 100 percent capacity;
- Discontinue the practice of “borrowing” capacity from adjacent clusters at the elementary and middle school levels, except in clusters that have only one middle school, but continue to allow borrowing at the high school level;
- Introduce a provision whereby developers are required to make a payment toward school facilities when projected enrollment exceeds the standard (105 percent for elementary and middle schools, 100 percent for high schools) but does not exceed 110 percent of capacity; and
- Impose an absolute moratorium when projected enrollment exceeds 110 percent of capacity.

Staff’s recommendations would impose a school payment on residential development in the Damascus, Walter Johnson, Kennedy, and Northwest clusters because at the elementary school level, each of these clusters is above 105 percent of AGP capacity but below 110 percent of AGP capacity. None of the elementary school clusters exceed 110 percent of AGP capacity. However, if enrollment increases by 109 students in Damascus, 70 students in Walter Johnson, 65 students in Kennedy, or 140 students in Northwest, an absolute moratorium to be imposed.

At the middle school level, once permitted borrowing takes place, no cluster exceeds 105 percent of AGP capacity. At the high school level, once permitted borrowing takes place, no cluster exceeds 100 percent of AGP capacity.

1.1.2 Exemptions for Infill Development, Affordable Housing, and Economic Development Projects

Staff has reviewed existing and potential exemptions to AGP transportation tests for infill development, affordable housing, and economic development projects and has the following recommendations:

- *Infill Development:* Staff’s ultimate recommendation on infill development will depend on decisions made concerning the continued application of Policy Area

Transportation Review. There is no point in an exemption to Policy Area Transportation Review if PATR is no longer applied or if a generally-available buyout provision is in effect.

Staff has reviewed various alternatives for defining “infill development” and believes the best approach is to define it by area and by size. If an infill development provision is warranted, staff would recommend that it be accomplished by increasing the amount of development that qualifies for *de minimis* status under Policy Area Transportation Review from 5 trips to 50 trips in three policy areas: Bethesda-Chevy Chase, Silver Spring/Takoma Park, and Kensington/Wheaton. These policy areas have acceptable levels of average auto congestion and they have modest amounts of planned development remaining to be built. Staff is withholding a recommendation on whether an infill development exemption should apply in the Metro Station Policy Areas within these policy areas because the Alternative Review Procedure for Metro Station Policy Areas is being debated.

- *Affordable Housing*: Staff is not recommending that additional restrictions be placed on the availability of the Special Ceiling Allocation for Affordable Housing. There is no evidence that of Special ceiling Allocation approvals exacerbating problems that may be associated with existing concentrations of affordable housing.

Staff recommends that projects qualifying for the Special Ceiling Allocation for Affordable Housing be permitted to pass both the Policy Area Transportation review and Local Area Transportation Review tests. Staff also supports the idea of a CIP fund to provide transportation improvements needed for development projects approved under the Special Ceiling Allocation for Affordable Housing, but we would not recommend that Special Ceiling Allocation approvals be suspended until the transportation improvements are programmed.

- *Economic Development Projects*: Staff recommends extending the pilot period for the Strategic Economic Development Projects provision. The provision provides considerable flexibility and has been used sparingly thus far.

The utility of all of the economic development provisions of the Annual Growth Policy depends on decisions made in regard to Policy Area Transportation Review. All of these provisions are essentially buyout options, so if a general buyout option is available, these provisions may no longer be necessary.

However, staff notes that the special provisions for corporate headquarters facilities, etc., were adopted with specific goals in mind, namely the retention and support of major existing County employers. Staff recommends no changes to these provisions unless the expansion requirements of these employers can be accommodated in other ways, such as through “Strategic Economic Development Project” designation.