Section 5: Exemptions for Infill Development, Affordable Housing, and Economic Development Projects

5.1 Infill Development

An exemption to Policy Area Transportation Review for "infill development" has been proposed. The policy rationale is that encouraging infill development will help reduce pressure for development on the fringes of the growth envelope and, at least theoretically, infill development makes use of possibly underutilized existing transportation infrastructure.

Staff investigated this subject through a review of infill development policies in various communities around the country. These were helpful but tend to focus on infill as a method to revitalize struggling communities, rather than from the perspective of regulating the pace of infill development so as not to overwhelm nearby public facilities.

Our review of other communities and literature on the subject suggests to staff that the appropriate definition for "infill development" should be "area-based" rather than based on site characteristics. That is, the definition should define areas of the County where development is considered infill, rather than try to describe the site of an infill project (e.g., surround on at least three sides by existing development, already served by water and sewer, etc.).

Staff suggests that the areas of Montgomery County where "infill development" is occurring would be policy areas that are approaching buildout. Section 2 of this report shows policy areas where existing development is within 10 percent of the 2030 forecast. Policy areas where this is true for both jobs and housing are: Bethesda-Chevy Chase, Silver Spring/Takoma Park, Kensington/Wheaton, Aspen Hill, and Montgomery Village/Airpark.

Because this potential provision is to be used to exempt development projects from Policy Area Transportation Review, staff believes that two other restrictions should be placed on the types of development that would be eligible for the provision. These are: size of the development project, and the general state of transportation adequacy in the policy area where the exemption is available.

Of the five policy areas identified as being within 10 percent of the 2030 forecast, three have adequate levels of transportation service on an area-wide basis: Bethesda-Chevy Chase, Silver Spring/Takoma Park, and Kensington/Wheaton. Both Aspen Hill and Montgomery Village/Airpark have a deficit in transportation facilities. Therefore, if this exemption is approved, staff would recommend that it apply in Bethesda-Chevy Chase, Silver Spring/Takoma Park, and Kensington/Wheaton.

There is no accepted size threshold for infill development, so staff must look to other County policies or regulations that may have relevance. Staff proposes that the LATR threshold is the most relevant existing definition of infill-type development. Local

Area Transportation Review is required of development generating 50 or more peak hour trips. In other words, projects generating fewer than 50 trips are exempt from LATR. Staff believes that it makes sense to have a proposed exemption for Policy Area Transportation Review that is consistent with the exemption for Local Area Transportation Review. The 50-trip limit does, we believe, accurately reflect the threshold between a project with manageable impacts and a project with potentially significant impacts.

Staff is withholding a recommendation on whether the exemption should apply in the Metro Station Policy Areas within these three policy areas. The calculation that the areas are within 10 percent of the 2030 forecast did not include the significant additional development planned in at least one of the Metro station in these policy areas. In addition, the Alternative Review Procedure for Metro Station Policy Areas provides an option for development approvals that may be sufficient.

Both Policy Area Transportation Review and the Alternative Review Procedure for Metro Station Policy Areas are up for discussion and made not exist in the current form or at all in the future. Staff expects that the infill development question could become more relevant when conclusions are reached on these larger issues.

5.1.2 Recommendations

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.

5.2 Special Ceiling Allocation for Affordable Housing

5.2.1 Background

The Special Ceiling Allocation for Affordable Housing allows residential development to be approved in policy areas that are otherwise in moratorium for new residential subdivision approvals. During the period 1988 to 1994, approximately 2,500 housing units were approved under the provision, of which about 750 were affordable units. In 1994, a provision was added to the AGP that provided a buyout-based option for residential developers seeking approvals in moratorium areas. That option proved popular and requests for approval under the Special Ceiling Allocation for Affordable Housing ceased. In October 2001, the County Council removed the buyout option from the AGP, and approvals under the Special Ceiling Allocation for Affordable Housing resumed. In 2002, there were three approvals totaling 161 units.

One of the new approvals is Layhill Village East, a thirty-unit subdivision that will contain six affordable units. There was some public testimony expressing concern that the project was located in an area that already has a concentration of affordable housing. Staff was asked to evaluate whether Special Ceiling Allocation for Affordable Housing approvals should be restricted in such areas.

Always an important issue in Montgomery County, affordable housing has become a priority for public officials in recent years. Staff was asked to recommend ways to increase usage of the Special Ceiling Allocation for Affordable Housing.

5.2.2 Summary of Recommendations

Staff is not recommending that additional restrictions be placed on the availability of the Special Ceiling Allocation for Affordable Housing. There is no evidence 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.

Staff looks favorably on the idea of a "staging ceiling reserve" for projects containing affordable housing. This would reserve some of the available development capacity in a policy area for affordable units, or for projects containing a minimum percentage of affordable units.

However, the general concept of setting staging ceilings is under review and a staging ceiling reserve would, of course, have no utility if there are no staging ceilings. Staging ceilings are retained under the "new group system" and the "capacity-metering system." It is also likely that if there is a buyout provision under any of the alternatives for Policy Area Transportation Review, developers will prefer the buyout to providing affordable housing. If the staging ceiling concept is not retained, or if a buyout provision is considered, then a fresh approach to the Special Ceiling Allocation for Affordable Housing will be required.

5.2.3 Restrictions on the Use of the Special Ceiling Allocation for Affordable Housing

The first issue concerns what the February AGP report to the Planning Board and the County Council called "options that further limit the availability of the Special Ceiling Allocation for Affordable Housing." There are three options that staff offered to review. These were:

1. Developing a definition of areas with a concentration of affordable housing and forbidding approvals under the Special Ceiling Allocation in those areas.

2. Giving the Planning Board latitude to not approve an application to use the Special Ceiling Allocation where the Board finds that there is an over-concentration of affordable housing.

3. At the County's option, permit the development to be approved, but require the developer to make contribution to a housing fund rather than provide the affordable units within the proposed development.

Park and Planning staff are not recommending a change to the AGP that would further limit use of the Special Allocation. We have not yet found evidence of a real problem, only theoretical ones. Additionally, we have not found a "solution" that does not create as many theoretical problems as it solves.

Option 1: Define Areas of Affordable Housing Concentration Where the Special Ceiling Allocation Would Not Be Available

Efforts in the past to define areas where there is a concentration of affordable housing have yielded unsatisfactory results. There were several concerns. The first is the negative connotations of designating a portion of the County as having a concentration of affordable housing. No matter how nicely it is phrased, such a designation suggests to some that the area is struggling, or declining. Official designation can become a self-fulfilling prophecy. Even neighborhoods that may be wary of additional affordable housing may also resist such a designation. As a staff member pointed out: "We don't want to label an area. Labels can last a long time."

The second concern is the problem of definition: there is no standard or natural geography to use to define concentrations of affordable housing. The question is not academic but practical: to be useful for regulatory purposes, the definition has to "work" in the majority of cases. Such a definition will be difficult to develop in this case as there is (a) no generally accepted definition of "concentrations" of affordable housing and (b) in Montgomery County, pockets of affordable housing are generally surrounded by areas where there is great need for additional affordable housing.

As an example, the County could use Community Analysis Zones (CAZ, formerly known as "Traffic Zones") as the geographic basis for defining a concentration of affordable housing. There are over 313 CAZs in the County and the smallest unit of geography for which a broad range of data are available. The new policy could be that the Special Ceiling Allocation would not be available in a CAZ where the median price of a new home was less than 80 percent of the County median. The next day, someone could propose a Special Ceiling Allocation subdivision in an adjacent CAZ, across the street from the CAZ with the concentration of affordable housing. The policy might then be revised to include adjacent CAZs. The problem with this approach is that it could result in areas as large as entire policy areas being closed to new Special Ceiling Allocation approvals based upon what might be a very small concentration of affordable housing.

Another definitional problem is deciding what to count as "affordable housing." If Moderately-Priced Dwelling Units are not counted, then the count is missing a large fraction of affordable housing; but they are counted, the number will change as MPDUs become market-rate units.

The affordability of market-rate units is also trackable but is a moving target. This is especially true now when home prices are increasing rapidly in the County. Neighborhoods may be affordable only in comparison to other neighborhoods and still out of reach for some County families.

Option 2: Giving the Planning Board latitude to not approve an application to use the Special Ceiling Allocation where the Board finds that there is an over-concentration of affordable housing.

Of the three options, this one provides the most discretion that is both a positive and a negative. As pointed out, there are problems with defining areas of affordable housing in advance, but giving the Planning Board more latitude would also open the Board to more pressure at the time of subdivision to disapprove projects. It would not, in the end, allow the County to completely avoid the problems with Option 1 since the Planning Board would need some criteria for disapproving a subdivision.

Option 3: At the County's option, permit the development to be approved, but require the developer to make contribution to a housing fund rather than provide the affordable units within the proposed development.

Staff believes there might be some future utility to this approach, especially if DHCA finds it attractive, but several aspects restrain us from recommending it now. One is: the "rational nexus" of a developer's meeting their transportation adequacy requirements by providing affordable housing becomes ever more remote if the developer is contributing toward a fund which may supply affordable housing elsewhere. Second, the County is reviewing its Moderately-Priced Dwelling Unit buyout provisions and so any change to the Special Ceiling Allocation for Affordable Housing based on a potential buyout should await the resolution of that issue.

Option 4: Limit size of individual subdivisions that can receive approval under the Special Ceiling Allocation for Affordable Housing

Staff did not identify this option earlier but raises it now, as it would be a simple way to limit the impact of Special Ceiling Allocation approvals in any one area. Subdivisions receiving approval under the Special Ceiling Allocation could be limited to projects of, for example, no more than 100 units. The minimum number of affordable units in such a project would be 20.

Staff is not recommending this option for two reasons. First, it is not an especially effective limit since developers are permitted to provide a larger number of affordable units than the minimum. All 100 units in the above example could be affordable. More importantly, such a rule would validate an assertion that staff does not believe has been proved: that the Special Allocation for Affordable Housing is a potential threat to unstable neighborhoods.

As mentioned, “Layhill East” is a recent Special Ceiling Allocation subdivision that generated some concern from the neighborhood in which it will be located. Layhill East is in the adjacent CAZ from the concentration of affordable housing that was of concern. The project consists of 30 units, of which 6 would be affordable. These would be townhouses. It is not clear how problems in the neighborhood, if they are in some way related to the availability of affordable housing, will be exacerbated by 24 units of new market rate housing and 6 new affordable duplexes.

Staff asked DHCA to review its records concerning code violations or other problems they might know about concerning projects that were approved under the Special Ceiling Allocation. DHCA reported that their records showed no pattern of problems.

5.2.4 Encouraging the Use of the Special Ceiling Allocation for Affordable Housing

In the February 2003 report to the Planning Board and the County Council, staff promised to evaluate several options to help encourage the use of the Special Ceiling Allocation for Affordable Housing.

Option 1: Allow development projects using the Special Ceiling Allocation for Affordable Housing to pass both Policy Area Transportation Review and Local Area Transportation Review.

Currently, development projects that qualify for the Special Ceiling Allocation for Affordable Housing only pass Policy Area Transportation Review, and staff recommends that Local Area Transportation Review be added. This added benefit to using the Special Ceiling Allocation will not make a difference in all cases, because Local Area Transportation Review is required only of projects generating 50 or more peak hour trips, and not all of the projects subject to LATR are required to make improvements.

The only recent Special Ceiling Allocation project to be subject to Local Area Transportation Review was the Airpark Apartments, a 106-unit approval in Montgomery Village. In that case, the only nearby intersection that was over its congestion standard is planned for an improvement (incidentally to be funded with revenues from the Goshen Oaks "pay-and-go" approval).

Option 2: Staging Ceiling Reserve: Convert some existing staging ceiling to capacity reserved for projects with added component of affordable housing.

Staff has a generally favorable view of reserving some existing staging ceiling for affordable housing projects because it accomplishes the same objective as the Special Ceiling Allocation for Affordable Housing without having a negative impact on the level of transportation service. If the staging ceiling concept is retained, as it is under the "new group system" and the "capacity metering system," then staff would recommend that a staging ceiling reserve be explored.

Option 3: The County could create a fund in the CIP that would pay for the transportation infrastructure needed to support affordable housing.

Staff agrees that it would be advantageous to place emphasis on providing the transportation improvements needed to support subdivisions approved under the Special Ceiling Allocation for Affordable Housing.

However, staff would not recommend restricting Special Ceiling Allocation approvals to only those areas for which there are transportation improvements already programmed. This is because it would be difficult to anticipate in advance where to program transportation improvements to best support future affordable housing proposals.

5.3 Exemptions for Economic Development Projects

5.3.1 Background

The AGP contains some "special provisions" which were adopted in order to provide a partial exemption to the AGP's transportation tests for very specific types of development projects that are especially important to the County's economic future. The main focus of these provisions is to allow the expansion of headquarters sites of major employers or major medical research institutions. There is also a provision for certain hospitals and free-standing child daycare centers at very specific locations.

In general, these provisions were enacted to give the major employer some certainty that future expansions would be able to proceed irrespective of the availability of staging ceiling at the time. With the exception of free-standing child day care centers, all of the beneficiaries of the special provisions are required to pay the Development Approval Payment.

In 2001 the Council adopted a *Special Provision for Strategic Economic Development Projects*. This provision allows the Council to designate "strategic Economic Development Projects" on a case-by-case basis. Such projects would be eligible to meet transportation tests by paying the Development Approval Payment. One project has been so designated: Howard Hughes Medical Institute. The Council's strategic economic development projects consideration process is open to the public; that is, a public hearing is held and is followed by public worksessions of the PHED Committee and full Council.

5.3.2 Staff Recommendations

Staff recommends extending the pilot period for the Strategic Economic Development Projects provision for at least two years. The provision provides considerable flexibility and has been used sparingly thus far. Part of the usefulness of the provision is its lack of specificity (allowing projects to be considered on their own merits), but any future assessment may wish to consider if it is sufficiently clear what the provision is intended to accomplish.

The continued 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. As noted, the provisions were adopted in part to provide certainty for expansion plans that may occur well into the future. The County should make sure that certainty is retained if other aspects of the AGP are changed.

Table 5.2

Special Ceiling Allocation for Affordable Housing Approvals

Updated November 2002

Policy Area	Project Name	Total Units	Below Market Rate Units*	% Below Market Rate	Planning Board Approval Date
Aspen Hill	Strathmore at Bel Pre**	60	12	20.0%	02/95
Aspen Hill	Layhill Village East	30	6	20.0%	09/02
Aspen Hill	Bonifant Park	25	6	24.0%	02/02
Cloverly	Bonifant Woods (Biggs/Schultze/Quinn)**	40	8	20.0%	01/91
Cloverly	Naples Manor (Pappas Property)**	20	4	20.0%	12/91
Damascus	Magruder Village**	159	32	20.1%	06/89
Damascus	Oakridge (HOC/Damascus)	156	104	66.7%	04/91
Damascus	Plantations**	20	5	25.0%	01/94
Damascus	Ridgeview (Magruder Village)**	4	4	100.0%	10/91
Fairland/White Oak	Blackburn Village (Rebold & Tolson/Bond)**	73	16	21.9%	FY90
Fairland/White Oak	Brooks Farm Prop.**	38	12	31.6%	06/92
Fairland/White Oak	Burnt Mill Crossing**	96	96	100.0%	08/88
Fairland/White Oak	Dring's Reach Apartments (Robey Road)**	104	32	30.8%	09/90
Fairland/White Oak	Percon at Marlow Rd.**	40	18	45.0%	11/91
Fairland/White Oak	Soper Property**	84	17	20.2%	07/90
Fairland/White Oak	West Fairland Estates (Fairland Gardens)**	39	8	20.5%	06/92
Fairland/White Oak	Willow's Run (Conley Site)**	191	39	20.4%	07/91
Germantown Center	Churchill Town Sector**	138	36	26.1%	03/90
Germantown East	Fox Run (Campus Apartments)**	218	44	20.2%	06/88
Germantown East	Wexford**	35	7	20.0%	03/91
Germantown West	Chestnut Oaks (Stiles Property)**	80	16	20.0%	07/91
Germantown West	Churchill View (Churchill Town Sector)**	140	29	20.7%	03/90
Germantown West	Clopper Hills**	60	12	20.0%	07/93
Germantown West	Clopper's Mill East (Village of)**	50	10	20.0%	01/92
Germantown West	Clopper's Mill West**	125	25	20.0%	12/92
Germantown West	Kingsview Ridge**	48	10	20.8%	07/92
Germantown West	Seneca Knolls **	138	28	20.3%	FY90,92
Germantown West	Seneca View Estates (Brodsky Property)**	100	20	20.0%	09/92
Germantown West	Waterford Place (NVLand)**	70	14	20.0%	06/89
Montgomery Village/Airpark	Airpark Apartments	106	106	100.0%	01/02
North Bethesda	Timberlawn Crescent II**	24	15	62.5%	06/89
North Bethesda	Timberlawn Crescent I**	83	61	73.5%	
Olney	Pond Ridge (Lake Hallowell)**	59	12	20.3%	04/91
Total		**2,653**	**864**	**32.6%**	

* May include MPDUs. ** Some or all units completed

Source: Montgomery County Planning Department, Research and Technology Center, November 1993. Updated 2/96, 8/98, 4/00, 11/02.