

Section II: Overview of the Annual Growth Policy¹

Background

The Montgomery County Council adopted the Adequate Public Facilities Ordinance (APFO) in 1973 as part of the Montgomery County Subdivision Ordinance. The County uses the APFO to promote orderly growth by synchronizing development with the availability of public facilities needed to support that development. The Montgomery County Planning Board administers the Subdivision Ordinance and the APFO. In April of 1986, the County Council enacted legislation which established an Annual Growth Policy (AGP) for the County. Since that time, the Council has used the AGP to direct the Planning Board's administration of the County's APFO. The text of the APFO and the Annual Growth Policy legislation is included in this document.

Purpose

The Annual Growth Policy legislation states that “the annual growth policy...is intended to be an instrument that facilitates and coordinates the use of the various powers of government to limit or encourage growth and development in a manner that best enhances the general health, welfare, and safety of the residents of the county.” County officials use the AGP to match the timing of private development with the availability of public facilities. The timing aspect of the AGP cannot be over-emphasized. The AGP is designed to affect the staging of development, not the location, total amount, type, or mix of development. These latter issues are dealt with in master plans, sector plans, and the County's General Plan. The AGP has two components:

- Identifying the need for public facilities to support private development; and
- Constraining the amount of private subdivision approvals to those which can be accommodated by the existing and programmed public facilities that the County and other levels of government can produce in a given time frame.

The relative timing of development approval and provision of public facilities are what the APFO and the AGP are all about. The APFO mandates that the Planning Board not approve a preliminary plan of subdivision unless it finds that the public facilities in place or programmed in the local and state capital improvements programs will be adequate to serve the subdivision, along with all other approved development. The Annual Growth Policy tests the adequacy of four types of facilities:

¹ This section is primarily composed of material that is contained in the adopted Annual Growth Policy. It is included as background information for those unfamiliar with the AGP.

- Transportation;
- Schools;
- Water and Sewerage Facilities; and
- Police, Fire and Health Services.

Transportation Facilities

In general, preliminary plan applications must pass two different transportation tests before the Planning Board can approve them. The two tests are:

- ***Policy Area Transportation Review*** (staging ceilings) for all plans generating more than 5 trips, and
- ***Local Area Transportation Review*** (intersections) for all plans generating 50 or more trips.

There are certain types and sizes of projects that are exempt from Policy Area Transportation Review; these are described later in this chapter. In addition, developers may provide transportation improvements, ride-sharing programs, and traffic mitigation programs to meet Policy and Local Area Transportation Review requirements.

Policy Area Transportation Review

In 1982, the County began using Policy Area Transportation Review to evaluate the adequacy of transportation facilities. This test applies in the urban and suburban portion of the County, which is divided by the County Council into 27 “policy areas;” that is, 25 plus Rockville and Gaithersburg, which are independent localities with their own planning and zoning authority. Policy area boundaries generally are based on physical features such as rivers, parks, and freeways; on the similarity of transportation characteristics; and on administrative boundaries, such as City/County or Sector Plan area boundaries.

There are also five rural policy areas where PATR does not apply. These are Goshen, Patuxent, Poolesville, Rock Creek, and Darnestown/Travilah.

Policy Area Transportation Review determines whether there is sufficient transportation capacity in a policy area to accommodate more preliminary plan approvals. The test looks at the traffic impacts of existing development as well as approved but unbuilt new development (the development pipeline). The development pipeline includes previous preliminary plan approvals by the Montgomery County Planning Board; site plan, use permit, and record plat approvals by the cities of Gaithersburg, Poolesville, and Rockville; and building permits signed off by the Planning Department for public buildings and pre-1982 recorded lots.

Based on this policy area transportation review, the Council each year establishes jobs and housing staging ceilings for the 27 policy areas. The staging ceiling is defined as the maximum amount of development, in jobs and housing units, that can be accommodated by the existing and programmed transportation facilities serving the policy area, given an assigned level of roadway congestion. A programmed transportation facility is defined as those transportation projects for which 100 percent of the expenditures for construction are scheduled to occur within the first four years of the County or state program.

Staging ceilings are set based on a policy that permits greater traffic congestion in areas with greater transit service and usage. Thus, in areas where there is greater service and usage, greater traffic congestion is allowed, and in areas where the transit service and usage is lower, less traffic congestion is allowed. Although every policy area has a unique combination of transit and roadway service, all policy areas must meet the same standard for overall transportation level of service, called the “total transportation level of service,” or TTLOS.

Policy Area Transportation Review measures local road congestion on a policy-area-by-policy-area basis and freeway congestion on a countywide basis. It also accounts for the “upstream and downstream” effects of development on the transportation network. In other words, it measures the impact of development in one policy area on the traffic in all of the other policy areas.

In some policy areas, the amount of existing and approved development exceeds the staging ceiling set by the Council. This means that the roadway congestion in this policy area, once all approved development is built, will exceed the area's standard. In these cases, the Planning Board may not approve any new preliminary subdivision plans, except under certain special circumstances.

Local Area Transportation Review

Since the mid 1970s, the Planning Board has used the Local Area Transportation Review (LATR) test to determine if a proposed preliminary plan of subdivision will cause unacceptable local traffic congestion problems at nearby critical intersections. Local Area Transportation Review is required only for subdivisions which generate 50 or more peak hour automobile trips.

In administering LATR, the Planning Board must not approve a subdivision if it finds that an unacceptable peak hour level of service will result after taking into account existing and programmed roads and transit. If a proposed subdivision causes conditions at a nearby intersection to be worse than the standard, the applicant may make intersection improvements or provide trip reduction measures to offset their traffic impact to meet LATR conditions and gain preliminary plan approval. If the subdivision will affect an intersection or roadway for which congestion is already unacceptable, then the Planning Board may approve the subdivision only if it does not make the situation worse.

Intersection congestion is measured using a method called “critical lane volume,” which is the number of vehicles making “critical,” or conflicting movements through an intersection in an hour.

Montgomery County's level of service standards for intersections vary by policy area. Like PATR, the LATR standards are based on the idea that less traffic congestion should be permitted in areas with lower transit service and usage and more traffic congestion should be allowed in areas with greater transit service and usage. For the rural policy areas, anything worse than 1450 CLV is unacceptable for LATR. For policy areas with the greatest level of transit service available, such as some Metro station policy areas, the LATR standard is 1800 CLV. Other policy areas fall somewhere between the two standards, depending on the area's level of transit service and usage.

Public School Facilities

Since FY 89, the Council has tested public school capacity for the County's 21 high school clusters to determine if there is sufficient capacity to support additional preliminary plan approvals during that fiscal year. Each of the three grade levels - elementary, middle, and high school is assessed separately. The Council compares forecast enrollment in each high school cluster five years out to the capacity that is programmed in the fourth year of the CIP.

For APFO purposes, school capacity is considered adequate for a cluster if forecast enrollment does not exceed 100 percent of the Council funded program capacity. If sufficient capacity is not available in the immediate cluster, the Council looks to see if an adjacent cluster or clusters have sufficient capacity to cover the projected deficit in school capacity for APFO purposes. If these combined clusters do not have sufficient capacity, then schools are considered inadequate for APFO purposes and the Planning Board will be unable to approve a new preliminary plan in that cluster for the next fiscal year.

Water and Sewerage Facilities

The APFO and the AGP consider preliminary plans to be adequately served by water and sewerage facilities if they are located in an area in which water and sewer service is presently available, under construction, or designated by the Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan. Facilities are also considered adequate if the applicant either provides a community water and/or sewerage system, or meets County Health Department requirements for septic and/or well systems.

Police, Fire and Health Facilities

The Planning Board considers police, fire, and health services to be adequate unless agency review and public commentary indicates that a local area problem will be generated by a new subdivision. If such evidence exists, a Local Area Review must be undertaken to determine whether facility capacity at the end of the fifth year of the approved CIP is sufficient to accommodate the demand generated by the “most probable” forecast for the same year.

Approvals in Policy Areas With No Remaining Staging Ceiling Capacity

To balance the County's growth management policies (the APFO and the AGP) with other County policies and concerns and to protect the public interest, the Council has authorized the Planning Board to approve subdivisions in areas where there is no remaining staging ceiling capacity under certain special conditions. A summary of these conditions follows.

Places of Worship

The Adequate Public Facilities Ordinance exempts places of worship and residences for staff, parish halls, and additions to schools associated with places of worship from all adequate public facilities tests including Policy Area Transportation Review and Local Area Transportation Review only if they are “on a unrecorded parcel which has not changed size or shape since June 1, 1958.”

Small Scale Development - De Minimis

The Annual Growth Policy's *de minimis* rule allows the Planning Board to approve preliminary plans that will have minor traffic impacts, even if there is insufficient staging ceiling capacity for Policy Area Transportation Review. “*De minimis* development” is defined as that which will generate 5 or fewer peak hour trips, which means that *de minimis* projects are also automatically exempt from Local Area Transportation Review. Some examples of *de minimis* development are 4 single-family detached housing units or 2,250 square feet of office space. Beginning November 1, 2001, *de minimis* also includes any free-standing child day care center located on the border of a policy area and the adjacent policy area has a positive balance of jobs capacity.

Affordable Housing

The Annual Growth Policy's special ceiling allocation for affordable housing allows the Planning Board to approve, under certain conditions, preliminary plans for affordable housing in a policy area with insufficient staging ceiling capacity for Policy Area Transportation Review. These affordable housing developments, however, must pass all other public facilities tests including Local Area Transportation Review.

The development must be certified by the Housing Opportunities Commission (HOC) as having met the definition of affordable housing, and the owner of the development must enter into an agreement with HOC to maintain the occupancy requirements for at least 15 years. An affordable housing development is defined as a housing development which is either owned by the Housing Opportunities Commission or by a partnership in which HOC is the general partner; or, a privately-owned housing development in which 20 percent of the units are occupied by households at or below 50 percent of the area median income, adjusted for family size, or 40 percent of the units are occupied by households at or below 60 percent of the area median income, adjusted for family size.

For projects owned or controlled by HOC, the Planning Board may approve up to a total of 125 units in a policy area in a fiscal year. In privately owned affordable housing developments, the Planning Board may approve up to 300 units in a policy area in a fiscal year. In a policy area with both HOC owned and controlled developments and privately owned affordable housing developments, the Board may approve a total of 300 units in a fiscal year. The special ceiling allocation for affordable housing does not apply in policy areas that have been in a housing moratorium for a long time and have already had a large number of units approved under the provision.

Previously-Recorded Lots (“Loophole” Properties)

As discussed earlier, the AGP provides guidelines to implement the Adequate Public Facilities Ordinance (APFO), which is part of the County's subdivision regulations. Prior to 1989, previously-recorded lots were exempt from AGP requirements implemented after the subdivision was approved. In 1989, there was increasing concern that these “loophole” properties (lots recorded prior to 1982 or recorded in conformance with a preliminary plan approved prior to 1982) had been approved under a less stringent APFO transportation test (or none at all). In response, the Council passed Bill 25-89, which required non-residential lots approved prior to 1982 to pass Local Area Transportation Review prior to building permit, but exempted them from Policy Area Transportation Review until July 25, 2001, if they registered with the Planning Board before July 1, 1990. Beginning July 2001, eligibility for this special treatment under the APFO expired, and all “loophole” projects are now treated the same as any other subdivision under the APFO.

Alternative Review Procedures

Two alternative review procedures were implemented in FY94 to spur certain kinds of development: *the Alternative Review Procedure for Metro Station Policy Areas* and *the Alternative Review Procedure for Limited Residential Development*. A third alternative review procedure, *the Alternative Review Procedure for Expedited Development Approval*, popularly known as “Pay-and-Go,” was approved on

November 1, 1997 and went into effect in February 1998. Of these three procedures, only one remains fully in effect.

The *Alternative Review Procedure for Metro Station Policy Areas* is intended to encourage development in areas where transportation infrastructure already exists — namely, certain compact policy areas atop Metro stations. A project using this procedure is not required to make the improvements normally required by Policy Area Transportation Review or Local Area Transportation Review. In exchange, the project must make a payment to the County (based on square footage), mitigate at least 50 percent of the project's trips (onsite or off-site) and join and support a transportation management organization.

Intended as a stimulus to the housing construction industry, the *Alternative Review Procedure for Limited Residential Development* permits up to 300 units of housing to be approved each year in most policy areas. These projects need not meet the requirements of either Policy Area or Local Area Transportation Review. In exchange, the developer agrees to an accelerated construction schedule and to make a payment (the "Development Approval Payment") to the County. This procedure was allowed to sunset on October 31, 2001, although subdivisions that filed a preliminary plan or pre-preliminary plan by October 31, 2001 were grandfathered, as were certain planned unit development projects incorporating a public golf course.

Intended as a temporary development stimulus in the wake of Montgomery County's slower-than-expected emergence from the 1991 recession, the *Alternative Review Procedure for Expedited Development Approval* permits non-residential subdivisions to be approved without meeting the requirements of either Policy Area Transportation Review or Local Area Transportation Review if the developer agrees to pay a tax, called the "Expedited Development Approval Excise Tax," and agrees to begin construction within two years of the recording of the plat. This procedure is only available to projects that had submitted applications on or before May 12, 1998 and these projects have until May 1, 2003 to receive Planning Board approval.

The County Council requires the Planning Board to systematically track and report on the traffic impacts of development approved under the "alternative review procedures." The Council can then set priorities for spending the revenues from the fees and for addressing the traffic impacts of the approved projects.

Special Provisions

The Annual Growth Policy contains a number of "special provisions" which are intended to address instances where adequate public facilities concerns may be outweighed by economic development benefits. Generally, these provisions are limited to allowing the expansion of existing major employers and require a payment to the County, submission of a traffic study, and other conditions. The *Special Provision for Corporate Support Facilities* addresses the specific instance where a major County employer's headquarters facility does not have nearby lodging facilities

for its visitors and trainees. The *Special Provision for Corporate Headquarters Facilities* is more general and assures that in limited cases, major corporations can expand their current headquarters facility. The *Special Provision for Hospitals in R&D Village Policy Area* allows the limited expansion of hospitals in that area.

The *Special Provision for Strategic Economic Development Projects* is a two-year pilot provision that allows the County Executive to propose for County Council concurrence “strategic economic development projects” which do not qualify for any of the other AGP exemptions but which are expected to contribute significantly to the County’s economic vitality. Once designated, Strategic Economic Development Projects are eligible for approval upon payment of the development approval payment. As of yet, there have been no “strategic economic development projects” designated, but the procedure is only a few months old.

Stage Ceiling Flexibility

The Annual Growth Policy provides an option for preliminary plan applications which would exceed the Policy Area staging ceiling. The developer can receive preliminary plan approval if he or she agrees to fully mitigate the traffic impacts of the project. Currently, there are three types of staging ceiling flexibility for Policy Area Transportation Review:

- Full-cost developer participation;
- Development district participation; and
- Transferable development capacity (Metro Station Policy Areas only).

Each enable a preliminary plan to pass Policy Area Transportation Review, and also require the plan to pass all other public facilities tests including Local Area Transportation Review.

Full-Cost Developer Participation

Full-cost developer participation allows the Planning Board to approve a preliminary plan in areas where there is insufficient staging ceiling capacity when the applicant agrees to pay for the construction of a public facility project such as a road, or to provide the full cost of a transit, paratransit, or ride-sharing program. The public facilities project has to add as much capacity to the transportation system as the proposed development will generate. If the developer, for a period of 12 years, provides a traffic mitigation program, the program must reduce the number of peak-hour, peak-direction automobile trips by as many trips as would be generated by the proposed development.

Development District Participation

At the initiative of one or more property owners, development districts may be created by the County Council as a way to fund needed public facilities. These districts have the advantage of allowing private developers to finance infrastructure improvements over a much longer term. They also permit public-private partnerships in building needed infrastructure.

Transferable Development Capacity

In Metro station policy areas, the holder of a non-residential subdivision approval may apply to the Planning Board for a conversion of that approval to residential approval. The conversion may be all or part of the original approval, and must occur at a conversion rate of between 0.5 and 0.75 jobs per housing unit.

In the Silver Spring CBD, the development capacity associated with existing buildings or approved but not yet constructed subdivision may be transferred to a not-yet-approved subdivision under certain conditions. Owners of existing buildings may sell the development capacity associated with that building up to 5 years after demolishing the building. This option is available on the Silver Spring CBD policy area.