

## **Section III: Blueprint for Assessment**

### ***Introduction***

This assessment of the Montgomery County's Annual Growth Policy and Adequate Public Facilities Ordinances is proposed to begin in January of 2002 (that is, it has already begun) and conclude in October 2003 with the approval of a new Annual Growth Policy (or an alternative) by the County Council.

Interim deadlines include a May 1, 2003 deadline of a staff draft proposal, and a June 15, 2003 deadline for a draft from the Montgomery County Planning Board.

The study is proposed to be divided into three phases: a "definition and research phase," an "alternative selection and evaluation phase," and a "recommendation and discussion phase." This section is intended to provide guidance on the possible parameters of such a review, particularly the definition and research phase. These include: 1) defining the issues that must be addressed, 2) reviewing the history of the APFO to recall how County came to have the current system; 3) assessing current and forecast County conditions (demographic, economic, land use) that affect growth management issues; 4) performing research on alternative approaches and assessing those which are most applicable to Montgomery County; 5) building linkages with relevant County, State and other studies, either recently completed, underway, or upcoming; and 6) gaining access to "expert" input, both in the sense of technical experts as well as County residents and businesspeople who are "expert" in how growth is affecting daily lives in their communities.

It is expected that the "definition and research phase" will inform, and therefore alter, the "alternative selection and evaluation phase" of this study. This assessment envisions a series of reports submitted to the Planning Board and County Council of the findings of the definition and research phase beginning in the summer of 2002. It is likely that "definition and research phase" will find issues that require further study. The summer of 2002 is likely, then, to be a transit period between the "definition and research phase" and the "alternative selection and evaluation phase."

A key aspect of each stage of this study will be to "ground" all analysis in terms that the average person will understand and find relevant to issues that concern them. The technical complexity of AGP issues has been a barrier to broad public debate about these important issues. As a first step toward addressing that significant concern, this study should produce materials that are as accessible as possible.

### **Definition and Research Phase: Through Summer 2002**

#### ***A. Defining the Challenge***

This work program item will define the scope and mission of the review. What is the problem we are trying to solve? What are the failings of the current

system? What aspects of the AGP are working well and what are not? What can policymakers expect from the result of this review?

Councilmembers provided some indication of aspects of the AGP that they consider problematic, or possible symptoms of a failing policy. These include:

1. ***The AGP allows more traffic congestion than it should.*** Councilmembers suggested that the AGP's analysis of traffic congestion does not reflect "real world" experiences, and/or the AGP's standards for "acceptable" congestion don't necessarily reflect what is acceptable to the average County resident.
2. ***The AGP allows schools to be overcrowded.*** Because there are schools that are overcrowded and because the AGP's current school test has not, until just recently, imposed moratoria, there is widespread belief that the AGP's school test is not effective. This may be that the school test does not impose subdivision moratoria soon enough or that it does not allow/require development to contribute toward schools, or other reasons. For most Maryland jurisdictions with APFOs, the primary issue is schools, rather than roads.
2. ***The AGP methodology is too complex.*** The concern is that the calculations required to determine the adequacy of transportation facilities are so complicated that policymakers and citizens don't have the time to fully understand the implications of, and alternatives to, recommended policies. There is also a concern that there are AGP procedures which may not be well-understood by policymakers because they have not been raised as an issue in the recent past. A top-to-bottom review will take policymakers through aspects of the County's growth management system that they might otherwise not see, and this could reveal issues that need to be addressed.
3. ***There are too many exceptions.*** Although there may be sound public policy reasons for each exception, the concern is that a well-crafted policy should not require so many exceptions. A corollary concern is that exceptions are provided primarily on a case-by-case basis without adequate analysis of the desirability of special treatment for a broad category of development that meets public policy objectives. Examples may include: biotech employers, child day care facilities, health care facilities, corporate headquarters, and so forth.
4. ***A maturing County's growth management needs have changed.*** The Adequate Public Facilities Ordinance and the AGP were originally crafted to address the concerns of a rapidly-growing County at the edge of the development frontier. However, Montgomery County is now maturing and has concerns that go beyond growth: maintaining the health and livability

of our existing neighborhoods, addressing the impacts of growth beyond our borders, and so forth. A related issue: how Montgomery County's growth management program meshes with the state's Smart Growth program.

5. ***Other localities may be using more advanced approaches to manage growth.*** When Montgomery County implemented its APFO in 1973, it was at the forefront of the nation in techniques to manage growth. Since then, many other localities have implemented growth management tools. There is concern that other communities may have development more effective approaches to managing growth that Montgomery County should consider.
6. ***The AGP is not well-documented or explained.*** A concern has been raised that too much of the day-to-day procedures staff uses to implement the AGP are not well-documented, and therefore not accessible to the public. There is also concern that the much of the documentation that does exist is highly technical and not explained in "real-world" terms.

The scope of a study of this type could range from an assessment of the combined effect of all of Montgomery County's mechanisms that regulate growth (the General Plan, zoning, etc), to evaluations of whether specific provisions of the APFO are operating as intended. This study expects to cover the entire range, although not to the same degree of detail.

As mentioned in Section II, 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. Therefore, it is not the purpose of this study is to review how well the end-state of development succeeds from a variety of different planning perspectives, including public facilities adequacy. Rather, this study assumes that the main requirement of the adequate public facilities ordinance is to assure, to the greatest degree possible, that at each *stage* between today and the buildout of the General Plan, public facilities are adequate. The APFO may be called upon to help implement other objectives, but its primary responsibility is to stage the timing of development and infrastructure.

**B. *Foundations of the APFO and AGP***

The purpose of this element is to explore the foundations of the AGP to recall why do we have the process that we do. This will explore the relationship of the AGP to the General Plan, to concerns in the 1970s about open space preservation, affordable housing, and other issues that led to such landmark "alphabet" programs such as the TDR program, the MPDU ordinance, and the AGP.

This element will also follow how the County has implemented its APFO over the past three decades...and how the process has changed to address new unmet challenges or to remove provisions that addressed were never needed.

The resulting report will be used to reacquaint policymakers and the public with the AGP and help them identify provisions that may have outlived their usefulness, as well as, perhaps, to learn that the need for some procedures continues.

C. *Goals and Constraints*

This element will identify and clarify the public policy objectives that are implemented through, or affected by, the adequate public facilities ordinance and the AGP. These include policies in the General Plan as well as

1. Housing policies;
2. Education policies;
3. Transportation policies, including those resulting from the Transportation Policy Report process;
4. Economic development policies;
5. Land use and community development policies, including the General Plan and adopted master plans and sector plans;
6. Environmental policies;
7. Park and open space preservation policies;
8. Public safety and public health policies; and
9. Policies of social equity.

In addition, this element will identify the major economic, demographic, land use, and other trends that will help define how growth should, or could, be managed in the future. This element will build upon Departmental expertise in housing policies, demographic analysis, the *Economic Forces That Shape Montgomery County* series, and others.

Understanding the characteristics of land available for development or redevelopment is critical to understanding how and where future growth will occur. The Research and Technology Center is now completing an update of its inventory of land available for commercial development. This consists of a detailed database of available parcels, including important development

characteristics and constraints (zoning, environmental, access, etc) linked to a GIS map to facilitate identification and analysis. The Department of Park and Planning intends to complete a similar analysis in FY 2003 for residential parcels. Together, these analyses could greatly inform an assessment of the how – or even whether – to manage future growth in each area of the County.

This element will also be closely linked to Departmental housing policy analyses that have begun to explore the supply of, and demand for, housing in the County based upon employment needs. Those analyses will inform the extent to which the AGP (or its successor) provides incentives for affordable housing, encourages or constrains the production of various types of housing, and other issues.

C. *Managing Growth: What Are the Alternatives?*

This element will review how other states and local governments are managing growth. In addition to developing a compendium of the broad spectrum of approaches – and outstanding examples of each type -- this effort will highlight the approaches used by localities or states that are facing similar issues as Montgomery County.

Beginning in the late 1980s, there has been a rapid expansion in the number of localities that have implemented tools to manage growth. Similarly, there has been a proliferation in the planning literature of articles, books, and other material related to growth management and “Smart Growth.” An important task of this element will be to identify and concisely describe those examples that are most relevant to Montgomery County, and to the greatest extent possible, determine how successful the approaches have been in meeting their objectives.

In this element, staff will not “reinvent the wheel” but will make sure to build upon the work of others to streamline and focus the research process on information useful for the public policy decisions at hand. Nevertheless, the products of this element will likely have ongoing usefulness as reference material. Staff will explore the potential for releasing the finding of this element as published report, as a web site, or as a CD to maximize the future usefulness of the material.

1. *Compendium/Survey of Localities Nationwide*

The purpose of this work element is to obtain summary information on the growth management techniques of approximately 100–125 localities around the country. The idea is to collect sufficient information on each to be able to identify those growth management approaches from which Montgomery County might learn something helpful. The survey is structured to be implemented by an intern in the following manner:

- a) Background research: This consists of learning Montgomery County growth management policies and the development of an outline of how to proceed.
- b) Literature search/survey preparation: During this period the researcher will conduct a literature search with two specific goals in mind: identifying whether a survey or compendium has already been completed that wholly or partially meets the study objectives, and identifying localities that should be included in the compendium/survey. Among the questions the researcher should keep in mind:
- What kinds of research are being done? What are the gaps?
  - Look for policies/tools to use/modify for use in Montgomery County.
  - Are there “leading edge” concepts in growth management that the profession is currently “excited” about? Which jurisdictions are using them? Identify/describe.
  - Identify/describe other jurisdictions with growth management policies similar to Montgomery County.

Steps to prepare for the survey include: developing a list of localities to survey, a list of questions to be asked and information to be gathered, and a system for characterizing localities and their growth management approaches, (e.g., “a first-tier suburban county in a large metropolitan area that uses a constrained zoning envelope to limit total growth and uses an adequate public facilities ordinance to stage growth”).

- c) Survey development: The researcher will develop a survey instrument that will include some basic information, or a “profile”) about each locality to provide context, why each locality has implemented a growth management approach (the “growth management story”),
- Basic information (profile) may include: demographics, growth rates, drivers of growth, economic characteristics, land area/density, form of government/government structure, other unique constraints/factors affecting ability or desire to manage growth.
  - Growth management “stories” for each locality: This will include answers to such questions as: When did it start? What issues started them off? Who were the drivers for growth management...who are the players now? What are the “lofty goals?” What did they hope to achieve at the beginning? How

has the system been tweaked or changed? Why was it changed? What unforeseen problems arose? How were they addressed?

- Copy of relevant ordinance and any explanatory material.
- What is interesting/warrants further study?
- Extra/additional information: sources/files and documents/short description.

- d) Survey execution: The researcher will compile the data from the identified localities, identify and interview contacts, and assemble copies of ordinances, policies and procedures.
- e) Survey analysis: A summary report of survey findings will be prepared. An important aspect of this effort will be to tease out of the findings issues for further exploration.
- f) Report and feedback: The summary report will be presented to a group of staff researchers for discussion and follow-up. The final report will conclude with recommendations for localities or procedures that are worth exploring in more detail.

2. In-Depth Comparison of Montgomery County and Two-to-Three Other Selected Localities/Developing a Methodology for Measuring Success

The purpose of this study is to take an in-depth look at how three or four localities (including Montgomery County) are managing growth. This detailed review of a few localities will complement the broad survey of many localities, not only by providing information about the selected localities but also by developing an evaluation methodology for determining the success of growth management systems.

- a) Select comparison localities/regions: During this period the researcher will identify candidate localities for study. A majority of the candidate localities should resemble Montgomery County in such attributes as size, growth rate, and relationship to metropolitan area (e.g., a first-tier suburban county in a large metropolitan area). Localities with a history of growth management are preferred over those with newly-implemented procedures and all should have growth management mechanisms in place, at least one should have an APFO or concurrency requirement.
- b) Background research: This overlaps somewhat with the locality selection since background research will have to be performed on

each candidate locality. The purpose is to provide context for our review of each locality:

- What does the “profession”(planners, traffic engineers, housing advocates, public infrastructure financing professionals, whatever) consider the state of the art methods of measuring current conditions or future success?
  - For what planning successes or failures are these localities known in the profession?
  - Profiles: comparative information about each (demographics, growth rates, what economic or other factors are driving growth, economy, land area/density, form of government/government structure, other unique constraints/factors affecting ability or desire to manage growth.
- c) Growth management “stories” for each locality:
- When did it start?
  - What issues started them off?
  - Who were the early proponents for growth management...who are the players now?
  - What are the “lofty” goals? What did they hope to achieve at the beginning?
  - How has the system been tweaked or changed? Why was it changed? What unforeseen problems arose? How were they addressed?
- d) What are the specific provisions?
- What is the general form of growth management (APFO, growth boundary)?
  - What is measured...how is growth regulated?
  - How long is a finding of APF good for? What happens when the finding expires?
  - Are moratoria imposed? How long can a moratorium last? Can you buy your way out? If so, what is the money used for?
  - Transportation: how do they address this issue?
    - how is auto congestion measured? is development tested for its contribution to auto congestion? does the locality analyze auto congestion for other purposes?
    - how does the availability of transit factor into the development approval process?
    - is parking an issue?
  - Ditto for schools, water and sewer, other public services or facilities.



- How is the concentration/dispersion of development addressed? Affordable housing? How about other principles of “Smart Growth”?
- e) What studies were used as the basis for decision-making/policy development – especially “outside” studies: universities, consultants, non-profits, citizen groups.
- Obtain and evaluate reports/studies
  - Were these studies challenged by other studies or groups? What were the concerns? How did/do the study authors respond?
- f) How has the program been evaluated? What measures of success were selected and does the system allow the County to realistically expect to attain their goals?
- Internally: by the staff
  - Externally
  - What criticisms have been raised?
  - Who are the watchdog groups? What do they say?
  - Ideological supporters/critics...What do they say?
  - Activists for related issues (such as affordable housing, environment)...what do they say?
- g) Our evaluation:
- General applicability to Montgomery County.
    - What is obviously different?
    - What is obviously similar?
  - What are some specific features that might replace specific features of Montgomery County approach (e.g., measure “tour” in stead of “trip” or measure “delay” instead of “congestion.”)
  - Go through the list of issues Montgomery County wants to address. How likely is it that provisions of the other locality’s system will help Montgomery County to better achieve its goals?

*D. Municipalities, the Region, and Smart Growth*

Managing growth at the County level within the context of a larger metropolitan area raises issues a variety of issues. One is the concern that restriction on growth in one area merely pushes development elsewhere – the old “toothpaste” argument. In general, there are three aspects to this issue, or collection of issues:

1. Municipalities: Montgomery County surrounds the second and third largest cities in Maryland: Rockville and Gaithersburg. These localities are independent for the purposes of managing growth and have their own

planning and zoning authority. Over the past several decades, these localities have not implemented a school adequacy test, and their transportation adequacy tests have generally been viewed as less stringent than those of Montgomery County. Both localities would be in moratorium for new subdivisions if they had been subject to the County's APFO. Recently both localities are expressing interest in implementing APFOs or similar legislation. Gaithersburg recently adopted a one-year moratorium on new residential subdivision approval while they study the issue.

The historic tensions between the County and the municipalities on APFO issues have included:

- a) *External impacts of municipal development:* Development approved within the municipality has impacts outside the boundaries of the municipality, such as “downstream” traffic congestion and additional school enrollment. The County may feel that the municipality does not adequately take these impacts into account when reviewing proposed development. In general, municipal transportation tests look only at traffic impacts with the municipality, which is one reason these tests are easier for development to pass than the County test, which is concerned with upstream/downstream impacts. Until Gaithersburg's current moratorium, adequacy of schools was not a factor in the development approval process in the municipalities.
- b) *Ability of municipalities to address capacity deficits:* Municipalities have expressed reluctance in the past to tying the approval of development within their borders to the adequacy of public facilities over which they have little control. These include the County school system and the Countywide network of roads and transit facilities.
- c) *Is an APFO appropriate for a municipality?* Some of the debate around implementing an APFO or similar mechanism in the municipalities has centered around the idea that growth in the municipalities is *ipso facto* smart growth – concentrated, relatively transit-oriented (or transit-serviceable) – and it is the sprawl-type development elsewhere that should be the focus of growth management efforts. A corollary argument is that the municipalities are close to buildout, so it does not make sense to control the little remaining development left to be approved. Others would argue that the municipalities are not so centrally located that development within their borders is necessarily optimal from a public facilities usage standpoint. Given the ability of localities to annex, and the impacts of growth inside

municipalities on public facilities outside the municipality, there is still some weight behind the argument that municipalities should manage their growth carefully.

Collaboration and coordination on APFO issues among the County and the municipalities could be a significant positive step, if accomplished. Preliminary discussions will begin in FY 2002 among staff to see where opportunities for agreement lay. Some of the main issues will be to determine if there is agreement on standards of adequacy, on general approaches for applying a regulatory framework to agreed-upon standards, and how or whether the municipalities will agree to work toward limiting the impact of new development on public facilities, and how or whether the County can provide municipalities with a larger role in deciding upon improvements to public facilities affecting the municipality.

## 2. *The Region*

Montgomery County is the second-largest jurisdiction (by population) in the Washington Metropolitan Area, following Fairfax County, and the largest jurisdiction in the State of Maryland. The Washington Metropolitan Area is served by the Metropolitan Washington Council of Governments, which provides opportunities for analysis of regional issues and collaboration on issues of mutual concern.

There is considerable sentiment that growth is a regional issue that must be addressed on a regional basis. This study does not propose to explore the issue of regional growth management in a significant way, which is not the same as dismissing the approach. Instead, this study will review:

- The extent to which Montgomery County's Annual Growth Policy takes into account regional growth, particularly traffic through Montgomery County as a result of growth elsewhere.
- How regional growth, infrastructure delivery, and traffic congestion data and models can be used to assess how well Montgomery County manages the impact of growth compared to similar localities in the region, especially Fairfax and Prince George's Counties.
- Explore how to test the theory that constraints on the pace of growth in Montgomery County have encouraged development "father out" at a more rapid pace than otherwise would have occurred.
- The adequate public facilities ordinances/growth management mechanisms of the three Maryland neighbors: Prince George's, Howard, and Frederick. Conflicting policies should be identified and opportunities for agreement should be pursued.

3. *Smart Growth*

The State of Maryland's Smart Growth program uses a variety of mechanisms to encourage compact development patterns, efficiently use existing infrastructure, and to preserve open space, among other worthy objectives. A gross simplification of the Smart Growth challenge to local governments is twofold: not only are counties encouraged to limit greenfields development (e.g., "sprawl"), but they are also asked to encourage higher intensity development within already-developed areas. Montgomery County's role in implementing Maryland's Smart Growth program is an interesting one since many of the Smart Growth precepts echo those that have been in place in Montgomery County for three decades. At the same time, there is some feeling, primarily by County landowners facing development restrictions but by others as well, that Montgomery County's restrictions on development within its borders might encourage sprawl elsewhere.

This portion of the study will review Montgomery County's role in implementing Smart Growth. To a great degree this review will overlap with the regional discussion. If successful, this report will clarify Montgomery County's role in the growth of the state and the region.

***Alternative Selection and Evaluation Phase: Mid-FY 2003***

The purpose of the "definition and research" phase is to collect and analyze the background information from which alternatives will be selected and evaluated during the second phase. This "alternative selection and evaluation phase" is expected to take roughly nine months, from Fall 2002 until May 1, 2003 when the Staff Draft AGP Policy Element is released.

The first part of this phase will involve identifying the alternative approaches that will be subject to further exploration. Among the issues that are likely to be raised during this discussion are:

1. Is the list of facilities tested by the APFO (transportation, schools, water and sewer, police, fire and health) sufficient? Should other types of facilities be added? Should some be removed? Are there broader issues of "livability" or "quality of life" that need to be addressed? Do these issues have a close nexus with the approval of new subdivisions, or should the need for them be addressed in other ways?
2. What are the best alternatives for defining adequacy of these facilities?
3. What are the consequences of putting an area in moratorium because these facilities are inadequate?
4. What are the options for imposing moratoria? Adequacy tests can be imposed on a geographic area (such as the current Policy Area Transportation Review and the

School Test), or on individual development projects as they are proposed, such as the current intersection congestion test. Moratoria can last until the problem is corrected, or for a specific time limit.

5. How would changes to the AGP tests affect developer contributions for infrastructure? How would development districts be affected?
6. What land uses should receive special treatment under the tests for adequacy? What does “special treatment” mean?

There are two main parameters of growth management systems. The first parameter is complexity – alternatives range from the simple to the highly sophisticated. The second parameter is stringency: a “tight” test would require higher levels of public facilities or each increment of development, and would impose stricter moratoria if those levels were not reached. A growth management system may be:

1. Simple and stringent
2. Simple and permissive
3. Complex and stringent
4. Complex and permissive

or somewhere between the extremes of each parameter. It is anticipated that during this phase that the alternatives identified in the first phase will be arrayed in a matrix showing how they rate in terms of complexity and stringency. From this matrix the best alternatives of each type will be selected for further evaluation.

The evaluation phase will review the likely outcomes of implementing each proposed alternative. These evaluations will not focus solely on the impact on the approval of new development, although this will be an important consideration. A main consideration will be how well the proposed alternative safeguards the adequacy of the public facilities, and how well the alternative balances adequacy with the range of public policy objectives identified in earlier phases are implemented by the alternative.

This phase is expected to be accomplished primarily by staff working with a technical advisory committee. As needed the process will be punctuated by opportunities for public input and comment. These will likely focus on focus groups, surveys, or public workshops, rather than a citizens advisory committee that will require significant staff resources to administer.

There are two rationales for this approach to eliciting public input during this phase. The first is that for transportation adequacy issues, this review will build on the extensive public involvement that has been accomplished through the TPR process. Public outreach efforts have been both broad and deep, and the concerns and issues identified during that process, from the specific to the general, will be very helpful to the evaluation of potential successors to the Annual Growth Policy. Additionally, the *AGP Policy Element* process is structured so that there is an extended period between the

release of Planning Board recommendations in the spring and the beginning of Council worksessions in the fall. This provides the opportunity for public input, debate and re-evaluation by the Planning Board and Departmental staff.

The evaluation phase will likely include a review of each master plan or sector plan area, the current status of its implementation, the issues facing that area, and the extent to which the proposed alternative helps address those issues. Additionally, each alternative will be reviewed in the context of adopted functional plans.

This section above describes a concept for an “alternative selection and evaluation phase” but it is expected that the work program for this phase won't be completely determined until the conclusion of the “definition and research phase.” It is likely that the definition and research process will necessarily include some evaluation, and this may show that some approaches, or some avenues of evaluation, will not be productive.

***Recommendation and Discussion Phase: June to November 2003***

The AGP Policy Element process requires staff to release its draft AGP Policy Element by May 1, with Planning Board review by June 15. It may be useful for staff to release recommendations on this issue earlier in 2003 to allow the Planning Board an opportunity to evaluate public comment and direct staff to perform further analysis. The Board may also wish to hold a public hearing on this issue.

Following the release of the Board's recommendations on June 15, the Planning Board, County Executive and County Council may wish to schedule public workshops during the summer of 2003 to enhance public understanding of the proposals and to expand opportunities for public input.

The Council's AGP public hearing is typically scheduled in mid-September and worksessions begin soon thereafter. The 2001-2003 AGP Policy Element has thus far involved three PHED Committee worksessions, two MFP committee worksessions (on the development impact tax) and at least two worksessions of the full Council. Planning staff does not expect that additional Council time can or should be devoted to this issue, with the possible exception of Councilmember participation in workshops over the summer. The workshops held by Councilmember Adams in 1994, which led to the adoption of two Alternative Review Procedures, may be a model in that regard.

Previous experience suggests that additional topics or issues for study emerge following the release of the Planning Board's June recommendations. Once Board recommendations are “on the table,” groups and individuals have real proposals to seriously consider, and may for the first time be able to identify issues of importance that are not addressed. During the period leading up to, and just after, the release of the Board's recommendations, staff should make plans to take full advantage of this period to maximize opportunities for meaningful input.