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THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

July 18, 2003

Memorandum

To: The Montgomery County Planning Board

From: Karl Moritz, Research Manager, 301-495-1312

Re: Annual Growth Policy Worksession Number 6

Purpose and Contents

The purpose of this worksession is for the Planning Board to complete its recommended Growth Policy concept for transmittal to the Montgomery County Council, to the County Executive, and to the public.

Although we believe it is not necessary to "dot every *i* and cross every *t*," the Planning Board has indicated that it wants to provide sufficient detail so that two things can occur:

- Officials and other stakeholders can see how the proposed concept will operate, and
- Planning staff can prepare, over the August break, a sample growth policy report based on the planning Board's concept.

In this memo, staff outlines the main issues left to be addressed and our recommendations.

1. Period of Review and Allocation

How often should the County review the amount of development that can be approved? How often should the amount of development be allocated?

Under the Planning Board's recommended approach, the County would engage in a periodic review of the "growth rate needed to support economic vitality." This review could occur annually, biennially, or other time period.

Staff recommends that the growth cap be reviewed every two years. A biennial schedule is consistent with the CIP review schedule, and the Planning Board has indicated it would like to see the growth policy-capital program relationship strengthened. Staff does not believe conditions change frequently enough that an annual review would always be needed – although a growth policy amendment could be initiated at any time. In addition, staff believes that the biennial review will be sufficiently detailed that annual updates would be too labor-intensive. Staff suggests that this review will be similar in some ways to the current "AGP Policy Element" and expects that as the County Council identifies growth policy issues to be studied, they will reviewed on the same schedule as the growth cap review.

Staff recommends that new allocations occur annually. As Chairman Berlage has noted, if an area's development allocation is used up quickly, two years would be a long time to wait for the next allocation. Because the amount of the allocations will be constrained to that needed to support economic vitality, it doesn't appear to staff that there's utility in dividing the allocation into 6-month increments. Metering out capacity in very small increments could be a headache for, for example, a multi-family project.

2. Schedule of Review and Allocation

If the growth policy is to be reviewed biennially, should it be reviewed in odd-numbered years or even? When during the year should the various activities (reports, hearings, worksessions, and votes) take place?

The Planning Board has indicated that it would like to strengthen the connection between the growth policy and capital programming. The County Executive's recommended CIP is released by January 15 of even-numbered years and the County Council adopts the CIP by the following June. That schedule suggests either of two options:

- The growth policy review should occur in the fall prior to the County Executive's CIP (the fall of odd-numbered years); or
- The growth policy review should occur in the fall after the adoption of the CIP by the County Council.

There is a third option, similar to the current Ceiling Element schedule, which would have the staff draft of the biennial review occur *prior* to the release of the County Executive's CIP (for example, in November of odd-numbered years), followed by a Planning Board review the following May, with Council adoption in July. However, staff believes that this schedule, which culminates in Council worksessions in June, is fine for a technical "Ceiling Element" but would discourage the broad public participation desirable for biennial growth policy discussions. Staff has heard this concern on more than one occasion from members of the public.

Staff recommends that the growth policy review occur in the fall after the adoption of the CIP by the County Council. Staff believes it is more important that the

growth policy reflect a freshly-adopted capital budget, rather than one that is more than a year old and on the verge of being replaced. This means that the first biennial growth policy would be in the fall of 2004, which is next year.

If the Planning Board would like the biennial growth policy to include recommendations for the programming of public facilities, staff believes that the fall of even-numbered years will work fine. The development of the Board's recommendations will be based on long-term issues, but they can also be informed by the capital programming discussions of the previous spring. It may be more likely that the fall just prior to the County Executive's CIP is too late for the Planning Board's CIP recommendations to be acted upon.

A schedule might be: Planning Staff Draft due September 15; Planning Board (Final) Draft by November 1, with County Council Action by the end of the year.

Staff recommends that new growth allocations occur January 1 each year. An alternative would be to wait 6 months and begin allocations on July 1. Staff does not see the benefit of the delay and believes, instead, that using fiscal years (especially fiscal years that start on July 15) has been confusing to most participants in the system.

3. Determination of the Annual Growth Cap

The "annual growth cap" is the number of jobs and housing units the Planning Board can approve over a twelve-month period.

The Planning Board has described its goal for the annual growth cap as allowing the growth necessary to maintain economic vitality as well as allowing some growth but measurably less than what would occur if there weren't a cap. The Board has talked about the growth cap as a rate – one percent has been the rate discussed – but also as an annual allocation in jobs and housing units.

Relevant to this discussion is the growth policy's role in implementing the Adequate Public Facilities Ordinance. The growth policy's relationship to the APFO is strongest when there is an explicit link between the amount of development that is approvable and the amount of infrastructure that is provided.

We might contrast two approaches as "pure rate-of-growth" and "facility-based increments." The current system uses facility-based increments – that is, increments of allowed growth are based on increments of public facilities programmed.

Staff believes that a pure rate-of-growth mechanism is workable and legally defensible. The Planning Board's finding that "roads and schools are full" is essentially the application of an adequate public facilities test – a test which the County fails. If the data collected thus far is not adequate justification to support the Board's finding, staff is confident that it can be. In a situation where facilities are not adequate to support additional development, a rate-of-growth procedure can be justified as a reasonable

method for restraining growth to either "allow public facilities to catch up" or "reduce the pace at which levels of service get worse."

The Planning Board has discussed how the optimal rate of growth would be determined, and the Board has identified that a big part of the problem with the current approach is that it is too formula-driven (and the formulas are too complicated). The present system is pretty good at keeping "politics" out of the decision-making process – unfortunately the positive aspects of politics (public participation, judgment of relevant-but-hard-quantify factors) as well as the negative ones. However, the Board is also leery of a system that's too vague, because the outcomes would be too uncertain.

So the Board has indicated that it would like to see a methodology for determining how much development can be approved that is simple but still, and also allows a variety of growth-related factors to be taken into account.

In the *Staff Draft 2003-2005 AGP Policy Element*, staff presented a concept that we called "capacity metering" which is a simplified approach for determining how much development can be allowed to move forward based upon programmed infrastructure. When a transportation improvement is programmed, the cost of the improvement is compared to the cost of all planned transportation improvements. For example, the cost of a new roadway may be 3 percent of the cost of all planned transportation improvements. In this case, 3 percent of planned development (as represented by the 2030 forecasts) would be allowed to move forward.

Staff recommends that capacity metering be the basic methodology for determining the countywide growth cap, and both transportation and school facility expenditures would be reviewed. However, the growth cap resulting from the capacity metering analysis would be the starting point, not the final answer, in the biennial growth cap review. Also taken into account would be would be a host of other growth and public facility-related factors, which staff will review below.

Staff believes this is the best compromise between a system that is pure rate-of-growth and facility-based increments.

Setting the Growth Cap

Even before the first biennial review is started, we can calculate the percentage growth associated with *every* master-planned transportation improvement, based on its estimated cost. In other words, if a new roadway will cost $100 million and the total transportation infrastructure plan will cost $2.5 billion, then the roadway represents 4 percent of buildout. This ability makes the biennial growth review – and the relationship between allowable growth and provision of infrastructure – much more transparent. Each growth policy report could include a chart of the percentages associated with each planned transportation improvement.

The first step in the process would be to look at the transportation infrastructure that is countable for the first time. Assuming the growth cap review is done biennially, two years of infrastructure programming would become countable during each review. The newly countable infrastructure could be transportation improvements that are:

- *Fully funded in years five and six of the most recently-adopted CIP.* This is analogous to the criteria that the AGP now uses.
- *Completed in the past two years.* This would be less speculative than the current approach of looking into the future, but would mean that for several years we would be counting infrastructure that we've already counted under the AGP.

Each newly-countable project represents a certain percentage master-planned infrastructure. We would apply that same percentage to our estimate of planned jobs and housing, using the 2030 forecast.

The next step would be to look at the expenditures for capacity-increasing public school improvements, comparing them to the average cost per housing of school infrastructure we've calculated (about $11,000 per unit). If the transportation analysis showed we can support 8,000 more housing units over two years but the school analysis says 6,500, the County would likely select the lower figure.

The result from these calculations would be the starting point for determining the amount of development the Planning Board would be able to approve over the next two years. That number could be -- but not necessarily -- adjusted by the following factors:

- *Job/housing balance:* A "balanced" allocation would be 1.6 jobs per housing unit, since there are 1.6 workers per household. The County could decide that each annual allocation should be balanced countywide, or it could decide to tilt the annual allocations in favor of housing (because the pipeline of approved development is currently tilted toward jobs), or it could decide to tilt the allocation toward jobs (because there is roughly twice as much planned-but-unbuilt non-residential development as residential).

- *Capacity leftover from previous allocations:* A strict incremental approach would simply add unused allocations from a previous year to the next year's allocation. However, the goal may be instead to try to "catch up" by applying each year's unused capacity toward improving the overall level of service in the County.

- *Adjustments due to changes in previously-counted infrastructure:* If some programmed infrastructure is changed or deprogrammed, the next allocation could be increased or reduced to take those changes into account.

- *Growth not subject to APFO*: The overall growth cap could be adjusted to take into account growth that will have an impact on public facilities but can't be restrained by the growth cap. Staff suggests that where growth forecasts are available, a time frame consistent with the period for counting infrastructure (such as previous two years, last

two years of the adopted CIP) be used. The categories of growth not regulated by Montgomery County's APFO include:

- *Already approved development ("the pipeline") in Montgomery County*. As has been discussed, staff does not have a valid methodology for predicting how much pipeline development moves forward at any time. However, monitoring the pace of buildout of the pipeline will be a useful part of the biennial growth cap review.
- *Forecasts of federal, state, and local government job growth.* The primary focus of this review will be near-term forecasts of federal job growth, which staff tracks and updates annually. There are only a modest number of state jobs in Montgomery County, and local jobs can be tracked and forecasted through the CIP and the mandatory review process. The County may decide to discount the overall job growth cap (which applies only to private sector development) when there are forecasts of increases in government jobs – particularly increases that involve the construction of new government buildings. For example, if the federal government is forecast to add a new facility with 600 jobs in the next six years, the County may decide to reduce the annual growth cap by 600 jobs immediately, or by 100 jobs per year over the next 6 years, or make some other adjustment.
- *Forecasts of development in municipalities and in surrounding jurisdictions.* The County may wish to reduce the overall growth cap to wholly or partially account for the impact on public facilities of development of forecast development in Rockville, Gaithersburg, Frederick County, Howard County, or Prince George's County.

All of these factors would also be helpful in allocating the countywide growth cap to County sub areas.

The biennial growth cap review would also contain a "report card," or set of growth indicators, that would help inform the decision of an overall growth cap. It would also provide information to officials and the general public about the pace of growth and the factors affecting the adequacy of public facilities – transportation and schools. However, staff envisions that the primary utility of these indicators will be to determine how to make capacity allocations to sub areas (see number **5: Allocating Growth to Sub-areas**).

Growth Rates Resulting From Rate-of-Growth and Capacity Metering Methods

At its July 17, 2003 worksession, the Planning Board reviewed a range of growth rates and discussed how the selection of an initial rate would be justified. Staff presented a review of all staging ceiling allocations that have occurred under the Annual Growth Policy from FY 1988 to FY 2004. If staging ceiling adjustments due to policy changes[1] are not counted, the average annual allocation was 5,075 jobs and 3,382 housing units; if

[1] Policy changes include the switch to the TTLOS methodology for determining auto congestion standards and the creation of Metro station policy areas.

policy changes are included, the annual allocations averaged 6,087 jobs and 4,308 housing units. These figures are consistent with the 5,800 jobs and 3,400 housing units per year that would be allocated under a growth cap of 1 percent. The Planning Board suggested that this is sufficient justification to recommend that the initial growth cap under a new growth policy be set at 1 percent, and staff agrees.

The Planning Board emphasized that the 1 percent cap is the *initial* cap. This rate would be reviewed regularly and very likely changed each time. Staff is recommending that capacity metering be the methodological foundation for the regular review, and we have done some analysis to give the Planning Board an idea of the magnitude of development that would result from a capacity metering approach. Our capacity metering analysis supports a growth cap in the same range that the Planning Board has discussed, and provides further justification for an initial growth cap of 1 percent.

Staff prepared a capacity metering analysis using three different assumptions about the transportation facilities program, and then compared the results with the staging ceiling increases in the FY04 AGP. The FY04 AGP increased staging ceilings by increases totaled 7,810 jobs and 3,330 housing units based upon transportation projects representing expenditures totaling $61 million. Staff wanted to see how much capacity would results from a capacity metering analysis of an equivalent expenditure. Staff also calculated the amount of capacity that would result from an expenditure of $46 million, which is the average transportation capital expenditure over the past 11 years.

Staff's three different assumptions about the transportation facilities program that should be used as the basis for capacity metering were as follows:

- *One program would count all unprogrammed facilities*. This is a $6.8 billion program, of which the Montgomery County share of the cost is $5.8 billion. Using these figures for the cost of planned transportation facilities results in transportation facilities costs of $26,000 to $30,000 per unit of development (job or housing unit). Using these costs as a basis for calculating growth allocations, the FY04 AGP counted program of $61 million would add 1,200-1,450 jobs and 800-900 housing units.

- *The second program would count all unprogrammed facilities but exclude the Inter-County Connector and I-270 improvements*. This is a $3.6 billion program. Using these figures results in transportation facilities costs of $16,000 per unit of development (job or housing unit). Using these costs as a basis for calculating growth allocations, the FY04 AGP counted program of $61 million would add 2,350 jobs and 1,500 housing units.

- *The third program would exclude the Inter-County Connector, the I-270 improvements, and state projects*. This is a $908 million program. Using these figures results in transportation facilities costs of $4,000 per unit of development (job or housing unit). Using these costs as a basis for calculating growth allocations, the FY04 AGP counted program of $61 million would add 9,300 jobs and 5,800 housing units.

To summarize, the analysis shows that with smallest transportation facilities program comprising solely local roads (a program costing $908 million), the capacity metering approach yielded growth allocations of 9,300 jobs and 5,800 housing units, while the FY04 AGP approach yielded 7,810 jobs and 3,330 housing units.

Using $908 million as the basis for making the capacity metering calculations, the $46 million average annual expenditure on transportation facilities would have yielded annual growth allocations of 7,000 jobs and 4,300 housing units. The AGP's annual average has been 6,087 jobs and 4,308 housing units.

Staff hopes that these calculations provide the Planning Board with a technical foundation for the growth rates that have been discussed. As we noted during the July 17 worksession, we believe the best way to illustrate how the approaches will work is to go through the exercise of applying these guidelines to a realistic situation to determine if it will produce valid, rational, and desired results. Once the Planning Board adopts a recommended approach, staff will engage in that exercise over the Board's August recess.

4. Determination of Sub-area Boundaries

The Planning Board's concept envisions allocating the countywide annual growth cap to sub-area of the County. Why have sub-areas instead of a single, countywide cap on development? Staff has elaborated on some of the parameters suggested by the Planning Board below:

- *Transportation efficiency:* development in some locations has a smaller overall burden on the roadway network than development in other locations. The most efficient locations are those within walking distance of high-quality transit. See attachment circle 1.
- *School efficiency:* Development in some locations – locations that are planned for multi-family development – will have lower student generation rates than development in areas where single-family homes are planned. Based on the most recent Census Update Survey, the yield factors for a new housing unit are:
    - Single-family detached: 0.56
    - Townhouse: 0.47
    - Multi-family: 0.29
    - High-rise: 0.11
- *Amount of planned, unbuilt development:* Areas with substantial amounts of planned but not yet built will benefit from growth caps in ways that areas with little development "left to go" will not.
- *Economic development:* One of the main reasons the Planning Board recommends continuing to allow approvals despite a lack of public facilities is to support economic vitality. What is needed to support economic vitality varies among areas of the County, as different areas of the County are facing very different levels of growth pressure. Many locations along the west spur of Metro's Red

Line (and on up the I-270 Corridor) do not require government assistance to encourage growth; instead, government action is needed to *control* the pace of development by an eager private sector. However, east of Rock Creek, such as along the Red Line's east spur, the public sector has a role to play in encouraging desired redevelopment in partnership with the private sector. The geographic boundaries can assist these public efforts by assuring that areas such as Wheaton are not competing for scarce capacity with areas such as White Flint.

- *Other*: An area may have a unique situation that suggests it would be appropriate for it to be treated as a separate area, at least for the time being. A candidate may be the area comprising the current Fairland/White Oak policy area, which is affected by the following growth and public facility issues:
  - *Major congestion relief largely tied to state-funded grade-separated interchanges:* The area experiences significant congestion, and the major source of potential relief are a set of grade-separated interchanges on Route 29 funded by the state. This is a project that is underway but the scheduling of completion is uncertain.
  - *Housing balance:* The Fairland area's housing stock is generally tilted toward affordable units and the master plan called from diversifying the stock by approving higher-end units.
  - *The ongoing Food and Drug Administration consolidation*: The timing of this large influx of jobs to the White Oak area in uncertain and cannot be controlled by local growth caps.
  - *The East County Center for Science and Technology:* This County-sponsored project will locate substantial numbers of jobs on the former WSSC sludge composting site in Calverton.
- *Municipalities*: The Planning Board has not taken a position on this but staff recommends that the geographic areas exclude Rockville and Gaithersburg, as growth in these areas is controlled by other mechanisms. Rockville and Gaithersburg growth will be taken into account when setting the overall growth cap, but staff does not suggest explicitly allocating a portion of the growth cap to the municipalities. Staff also believes that the past practice of setting staging ceilings for the cities was problematic for a variety of reasons.

The above parameters suggest to staff that the sub-areas should break out rural, suburban, and urban (Metro) areas, should distinguish between the eastern and western halves of the County, and perhaps breakout the Route 29 corridor. Staff believes breaking out "high-growth" and "low-growth" suburban could ultimately be useful, but does not believe the distinction is needed to pursue the Planning Board's economic vitality goal. As Rockville and Gaithersburg would not receive a growth allocation, staff does not recommend showing them on the map.

Staff has prepared two alternative sets of geographies for the Planning Board's consideration, which are shown on circle 2. Option 1 divides the County into seven areas as follows:

1. *Rural:* this includes all of the areas of the County considered "rural" under the current Annual Growth Policy, plus Damascus.
2. *Lower-growth suburban:* These include areas that are planned for a suburban pattern of development of varying intensities, generally at the mid-to-lower end of the density spectrum. The areas do not contain Metro stations, although there may be significant transit improvements planned. They also share a key characteristic: most of planned development is either built or already approved. As shown on the map, the area includes Potomac, North Potomac, Montgomery Village, Olney, Aspen Hill, Cloverly, and Fairland/White Oak.
3. *Higher-growth suburban:* These areas of the County are similar in many ways to the lower-growth suburban areas, except that significant additional development is planned. The areas include the current R&D Village policy area, as well as Germantown and Clarksburg.
4. *Red line areas east and west:* These are the suburban areas of generally higher intensities with greater proximity – although not typically within walking distance – to Metro. They surround but do not include Metro station areas. Although many of the development opportunities in these areas are infill or redevelopment and therefore relatively small ("small" compared to the typical suburban office park, that is), each project may still have significant impacts on its neighbors because the development pattern is fairly dense and public facilities are generally at capacity. The western Red Line areas are Bethesda/Chevy Chase, North Bethesda, and Derwood the demand for development approvals in these areas is quite strong. The eastern red Line areas are Silver Spring/Takoma Park and Kensington/Wheaton, and the demand for development approvals in these areas has been modest.
5. *Metro station areas east and west:* These boundaries are the same as the current set of Metro station policy areas. Staff is not opposed to revisiting these boundaries at a future date but believes they are carefully drawn, valid for planning purposes, and represent the area around a Metro station where development is planned for concentration and where increase transit mode shares can be achieved.
6. *Fairland/White Oak optional area:* For the reasons described above, staff has shown Fairland/White Oak as an optional separate area. This would allow this area to "keep" any growth allocation it would receive and it would mean that growth allocations could be tailored to meet the specific housing and jobs policy objectives the County has for the area.

Option 2 has several major differences with Option 1. Option 2 does not distinguish between "higher-growth" and "lower-growth" suburbs as Option 1 does. Option 2 is more oriented toward radial corridors than rings of development intensity. It also puts more of the County into the rural area. The seven Option 2 areas are:

1. *Rural:* Compared with Option 1, the rural area would be expanded to include Potomac and Olney. Both of these areas are given staging ceilings under the current AGP, but in other ways Potomac is treated as rural (its ceilings are set

at the holding capacity, for example). The northern half of the current Olney policy area was treated as rural during the Transportation Policy Report analysis. Olney's master plan is under review.

2. *Route 29 Vicinity:* This area encompasses the current Fairland/White Oak and Cloverly policy areas. Cloverly has a fairly modest job growth forecast to 2030 (a little over 100 jobs) but a larger housing forecast (between 550 and 600 housing units). White Oak is a job growth center: the 2030 forecast shows about 9,000 jobs but that could increase as plans for the East County Center for Science and Technology move forward. The Fairland/White Oak area will see some additional housing: about 2,500 additional units over the forecast period.
3. *Georgia Avenue Vicinity:* This area adds Aspen Hill to the eastern Red Line area in Option 1, which means that this area comprises the southern 2/3 of the Georgia Avenue corridor (excluding Olney).
4. *Georgia Avenue Metro:* This area includes the three Metro station areas along Georgia Avenue: Silver Spring CBD, Wheaton CBD, and Glenmont. The rationale for separating these station areas from others is to allow growth capacity to be allocated to them to support redevelopment efforts.
5. *Wisconsin Ave/Rockville Pike Vicinity:* This is the same geography as the western Red Line area in Option 1.
6. *Wisconsin Ave/Rockville Pike Metro:* This is the same geography as the western Metro station area in Option 1.
7. *I-270 North:* In addition to Clarksburg and Germantown, this area would encompass North Potomac and Montgomery Village. Although neither North Potomac nor Montgomery Village have significant additional development left to occur, they have similar transportation characteristics and impacts as Germantown and Clarksburg.

Staff recommends adopting the "Option 1" set of sub-areas as the basis for allocating the Countywide growth caps. Staff also recommends creating a separate area in eastern Montgomery County, either employing the current Fairland/White Oak boundaries or a narrower boundary following on either side of Route 29.

Staff believes Option 1 most fully realizes the objectives the Planning Board has articulated for these sub-areas. We believe that the communities contained within each sub-area are similar in terms of "transportation efficiency" and we believe that the seven areas, while many fewer than the number currently in effect, are detailed enough to allow the County to allocate limited growth capacity in ways that further the County's public policy objectives.

5. Allocating Growth to Sub-areas

Once an overall growth cap is established, it would be allocated to the set of sub-areas selected. Caps would be set from jobs and housing separately, although during each

biennial review the allocations to jobs and housing could be reallocated. All development within the same sub-area would "compete" for the same limited amount of approvals.

To allocate the growth cap to the sub-areas, ***staff recommends that preference be given to areas where development will have the least overall impact on the transportation network and the public school system***. In the case of transportation, the priority, from highest to lowest, will generally be Metro station areas, followed by "Red Line" areas, then suburban areas, and then the rural area. For public schools, areas that are likely to produce higher proportions of multi-family housing (especially high rise) and senior housing will have less impact than areas where the growth allocation will be used predominantly for single-family detached housing.

The technical foundation for the allocations would be based on the relative transit mode share of the four basic area types: Metro station areas, Red Line areas, suburban areas, and rural areas. Development in Red Line areas has half the transit mode share as Metro station areas; development in suburban areas has half the transit mode share as Red Line areas, and rural development has half the transit mode share as suburban areas. The growth allocations are illustrated below in an example assuming a total allocation of 5,800 jobs and 3,400 housing units:

Share	*Area*	*Jobs*	*Housing*
53%	Metro	3,100	1,800
26%	Red Line	1,550	900
13%	Suburban	775	450
7%	Rural	375	250
100%	County	5,800	3,400

If staff's recommended geography is accepted, the shares allocated to Metro areas and Red Line areas would be split east and west; the share allocated to suburban areas would be split among high and low-growth suburban areas.

This general preference will need to be tempered with information about current roadway congestion and school crowding conditions in these areas, and the potential for improvement. For example, the County may not wish to allocate housing capacity to the east Metro station areas if the clusters serving those stations are currently overcrowded and there are no school capacity improvements that can move forward in the foreseeable future.

For this reason, every biennial growth policy should identify for each area both a set of planned transportation capacity improvements as well as a set of potential school capacity improvements for the clusters serving that area. ***Staff believes it is very important for the growth policy to identify specific transportation and school improvements that can be made in each area where growth is allocated.*** Doing so will highlight areas where adding new infrastructure is infeasible or costly. It will also go a long way toward strengthening the relationship between the growth policy and capital programming.

Staff has already prepared a list of planned transportation improvements. We are working with Montgomery County Public School System staff to develop a similar list of potential school improvements to support growth allocations to Metro station areas, but we do not have that list yet. ***If there are sub-areas, or portions of sub-areas, served by clusters for which there is not a feasible school capacity improvement, staff would support restricting approvals in that area until a feasible school improvement is identified.***

All of the information reviewed to set the overall Countywide growth cap will be helpful, too, in allocating growth to sub-areas. These include: job/housing balance, capacity left over from previous allocations, adjustments due to changes in previously-counted infrastructure, future growth in the sub-area not subject to APFO ("the pipeline" and forecasts of federal, state, and local government job growth). In addition, the criteria used to determine the sub-area boundaries will be helpful. These of course included transportation efficiency and school efficiency, as well as: already-approved development, economic development policies and opportunities, forecast government development, master plan guidance, and other County policies.

In summary, the information that would be available to help inform sub-area allocations would include:

- *School Crowding Indicators:* Student generation by housing type, and for clusters serving each area: school capacities (standard multipliers as well as "program capacity"), enrollment trends and forecasts, and the cost, likelihood and feasibility of school capacity improvements.
- *Transportation Indicators*: Relative transportation impact of development in each area (trip generation, non-auto mode share), congestion and transportation usage trends (vehicle miles of travel, volume-to-capacity ratios on major links), and the cost, likelihood, and feasibility of transportation capacity improvements.
- *Development Trends and Forecasts:* Amount, location, and type of development that is being built, as well as planned development projects ready to move forward.
- *Market Indicators:* Economic indicators affecting pace of growth: vacancy rates, rents, sales prices, and interest rates. These data will indicate the capacity of existing buildings to absorb new job growth.
- *Demographic trends* that impact transportation and schools.

Staff recommends that every sub-area receive a minimum allocation each year as long as approvals in the area continue. This recommendation partly compensates for our recommending against the County guaranteeing that a developer will only have to wait in the queue for a certain number of years. For example, the minimum allocation to an area could be 100 jobs and 100 housing units, but the minimum allocations would stop

if the area had more than 300 jobs or 300 housing units in unused capacity from the previous allocation.

Again, staff recognizes that this description of a process will seem vague until it is applied to a realistic situation to determine if it will produce valid, rational, and desired results. Staff will engage in that exercise over the Board's August recess.

6. When An Area's Growth Allocation is Depleted by Approvals

Once the capacity allocated to an area is "used up" by approvals, what happens next? The options are: approvals stop until the next allocation is made, developers can proceed if they make needed improvements, or developers move ahead under a pay-wait-and-go system.

Staff recommends that in areas without growth developers continue to be permitted to mitigate their transportation impact by reducing trips or providing the transportation infrastructure needed by their project. The criteria should continue to be that the development project, including mitigation efforts, will not make the situation worse. If the developer chooses to build infrastructure, the "capacity metering" system provides the methodology for matching improvements to levels of development.

Although staff is recommending that school facilities be considered when developing growth caps, staff does not recommend a "developer participation" procedure for schools. That is, staff does not recommend requiring developers to mitigate the impact of their development on school facilities beyond payment of a development impact tax for schools.

Staff has given considerable thought to the mechanism colloquially described as "pay-wait-and-go." Under this concept, a developer would make an early payment to the County, and by taking this payment the County agrees to limit the period that the developer must wait for a finding of adequate public facilities. The time period that has been mentioned is three years; Howard County currently limits the time that a developer can be held back for APF reasons to three years. If such a system is adopted, three years seems like a good time period to us.

There are positive aspects to this approach. It generates money early, well in advance of subdivision approval, which in turn would likely be well in advance of development actually taking place. The County can take into account all "pay-wait-and-go" projects during the biennial review of the annual growth cap, and adjust the annual growth accordingly. Knowledge of "pay-wait-and-go" projects will help in capital programming. The mechanism embraces the idea of a moratorium, but limits its negative effect on any individual developer. A final potential benefit – assuming payments are not refundable – is that the County might collect payments for development projects that, after approval, are not constructed.

We also have some concerns about "pay-wait-and-go." Despite the benefits of receiving developer payments early, the public sector will still need to make the needed improvements. It is not likely that the developer payments alone will be sufficient to pay for the improvements, and our recent history is that the public sector has not been making infrastructure improvements as fast as the private sector has been adding to the demand for it. We are also concerned about the potential situation of a developer paying and waiting, but his development project is not one the Planning Board approves (for non-APF reasons).

At this point, staff is not ready to endorse pay-wait-and-go. We believe this new vision that the Planning Board is articulating is based to a great degree on setting growth caps that mean something. Staff believes that the Planning Board's approach for setting the growth caps allows a high degree of judgment – if the caps are too tight, then they should be increased. As we more closely approach buildout, the County will likely decide growth caps are no longer needed and a pay-and-go system is sufficient. But the tenor of the discussion thus far does not suggest to staff that folks believe we have reached that point yet.

If the Planning Board disagrees because of the potential benefits we've cited, or for other reasons, staff would recommend that limits be set on the amount of development that can use the provision, at least initially. A guideline could be that the annual limit for the number of jobs and housing units that can enter the "pay-wait-and-go" program in any area would be the same as that area's annual growth allocation.

7. Special Treatment of Certain Types of Development Under the Growth Caps

The current Annual Growth Policy provides varying degrees of "special treatment" to certain types of development – development that achieves an important public policy objective that justifies approval despite a lack of public facilities. These land uses include: affordable housing, economic development projects, development in Metro station areas, and hospitals and freestanding child day care centers in limited circumstances. Senior housing is exempt from the school test.

- *Affordable housing:* Staff has strongly supported the current Special Ceiling Allocation for Affordable Housing. We believe this provision produces a very desirable outcome – affordable units within mixed income residential projects – that are not at all likely to be produced otherwise. The impact of the procedure on any one area is already limited by annual and lifetime caps. More importantly, its actual use is rare: only three times since 1994, (although some potential projects moving forward). Apart from the one policy area where Special Ceiling Allocations prompted the institution of the lifetime cap, the impact of Special Ceiling Allocation approvals on the transportation network or the school system are minute. We are not convinced by assertions that Special Ceiling Allocation approvals should be limited in areas that already have concentrations of market-rate housing that happens to be affordable. There is no evidence that such approvals would have a negative impact on those communities

As we have noted, when other options (such as pay-and-go procedures) are available, developers do not use the Special Ceiling Allocation. Staff is convinced that the program is not in any way a "giveaway" to the development community, and staff would like to clarify the common misperception that developers qualify for the Special Ceiling Allocation by providing already-required Moderately Priced Dwelling Units. This strongly suggests to staff that if the County wants to continue to build this affordable housing resource, the growth policy will have to provide special treatment under the growth caps to residential projects that provide this added component of affordable housing.

That said, staff fully understands concerns about approving any development over the cap. ***Staff feels strongly enough about affordable housing to recommend continuing the Special Ceiling Allocation for Affordable Housing under the new growth policy***; however, staff would also support the best alternative: reserving some development capacity within each area's growth cap for projects that provide the added component of affordable housing as defined by the current Special Ceiling Allocation. Staff would recommend that each year, 50 units of the area's allocation be added to the area's reserve for a maximum reserve at any one time of 300 units.

Staff continues to support allowing projects that qualify for the Special Ceiling Allocation (or whatever its new name might be) also be exempt from Local Area Transportation Review, although we would require that development projects generating 50 or more peak trips be required to submit a traffic study.

At the July 17 AGP worksession, the Planning Board discussed "Ideas on Increasing the Housing Supply Through Changes to the MPDU Law" submitted by Wayne Goldstein. Board members requested that staff respond to the extent possible in this memorandum. The Montgomery County Council recently directed an interagency work group to review the current process for allowing developers to make payments rather then provide MPDUs. Park and Planning staff serve on this working group. Council staff will be reporting the findings of the Working Group to the Council's PHED Committee on July 21, 2003, and the Council staff memo is attached. The Working Group is recommending that a broad range of MPDU issues be evaluated. ***Staff believes this evaluation is the appropriate forum for addressing the issues raised in Mr. Goldstein's letter.*** Staff believes the MPDU law itself, and not the growth policy, is the best starting point for evaluating the success of the MPDU program. That evaluation may find that the growth policy can play a more important role in meeting the County's affordable housing goals.

- *Economic development projects:* The current AGP allows approvals in moratorium areas ("special treatment") for economic development projects under two general conditions: either project is the expansion of the headquarters of a major employer, or the project has been designated a "strategic economic development project." (The provision related to hotel "corporate support" facilities is no longer valid since the one employer to which it applied is no longer pursuing the application. The "medical research organization" provision may no

longer be needed since Howard Hughes Medical Institute chose to pursue "strategic economic development" status instead).

Staff does not believe these very limited instances are excessive – no development project has actually been built under these provisions, and only one "strategic economic development project" has ever been designated. We do not disagree that the issue could bear further study and suggest that the current status of the "strategic economic development project" provision as a "demonstration project" be extended and study under the next biennial growth policy review.

Staff recommends that – with the exception of the "corporate support facilities" provision – the current procedures be retained for the time being.

Several of the economic development provisions require the payment of a "Development Approval Payment" (DAP) originally created in 1994 for the Alternative Review Procedures for Metro Station policy Areas and for Limited Residential Development. Neither procedure uses the DAP anymore. ***Staff recommends replacing the DAP with a payment that is tied to the impact tax***, such as is the case of the Alternative Review Procedure for Metro Station Policy Areas.

- *Development in Metro station areas:* The AGP's Alternative Review Procedure for Metro Station Policy Areas was substantially revised in 2001. Given the attention that has focused on the procedure since then, it may be surprising to some that the new version of the procedure has not yet been used. Development can be approved in Metro station areas even if there is insufficient staging ceiling with a 50 percent reduction in trips and payment of the impact tax.

  Staff continues to believe that the efficiencies provided by Metro station policy area development justify special treatment under the growth caps. We believe the provisions in the current procedure are appropriate. We would support restricting the approval of residential development under the procedure to Metro station Metro station areas where school capacity improvements have been identified, but we would not delay approvals until the school facilities are programmed. We strongly support the use of the growth policy to identify, to encourage the programming of, and to help steer revenues of impact taxes toward, transportation and school facilities serving development at Metro station areas.

  Staff has previously recommended that the 50 percent trip reduction requirement be better defined. The current wording of the procedure is unclear. We would also support additional language documenting how compliance will be verified.

  Staff has further recommended that the requirement for a "Comprehensive Local Area Transportation Review" be eliminated. The purpose of the "CLATR" is to provide information to determine needed transportation facilities in the Metro station area. A CLATR requires significant staff time and public expense, and the information requirements can be supplied by requiring the developer to submit a traffic study instead.

Staff recommends revisiting the Metro station area provision at the same time as the "strategic economic development program" is evaluated. A concern has been raised that the Metro station procedure is too broad and that eligibility should be limited to high-value development projects. Staff believes that the idea has merit, but we have suggested addressing economic development issues in the next growth policy and believe this issue should be addressed at the same time.

- *Hospitals and Free-Standing Child Day Care Centers:* The current provisions are very limited and, as far as staff can determine, apply to one hospital and to a very limited set of potential freestanding child day care centers. Neither provision was added to the AGP upon the recommendation of staff, and we have not revisited the issue during this review of the AGP. However, we believe that treatment of hospitals under the APFO is an important future issue because hospitals provide a needed public service, are sometimes located in areas where traffic congestion is a major concern, and are constrained in their options for meeting expansion needs. Staff does not have a recommendation on whether these provisions should be retained, but if retained, would recommend that hospital provision substitute the "DAP" payment requirement with payment based on the development impact tax for transportation.

- *Senior housing:* Currently, senior housing is exempt from the school test. The growth policy concept now under discussion does not test individual subdivisions for school adequacy. If future versions do, staff would support exempting senior housing because it doesn't generate students. Staff would not support exempting senior housing from the area growth caps, because they are based on transportation as well as school facilities.

10. APF Time Limits

The Planning Board has expressed concern about the size and age of the pipeline. As of June 2003, the pipeline of approved development (not including the cities of Gaithersburg and Rockville) is about 72,000 jobs and 24,000 housing units. The current APF time limit, which is 5 years (but up to 12 years with approval of a phasing plan) was initiated in 1999. This means that the first subdivisions subject to the 5-year time limit will expire in 2004.

In addition, some pipeline projects will expire sooner than might otherwise be anticipated because they were approved under "pay-and-go" which required the receipt of building permits within four years of approval.

Staff notes that there is no APF time limit for residential subdivisions approved prior to 1989. An extension is available for any residential subdivisions approved after 1989 that is at least 50 percent complete, as long as the developer submits a letter to the Planning Board stating when the project will be completed.

All non-residential subdivisions are subject to the APF time limit, and the extension provision is limited to projects that are at least 40 percent complete, and having

completed at least 10 percent in last four years (a 60 percent/5percent split is also acceptable).

Options that would reduce the size of the pipeline over time include reducing the APF time limit on future approvals and revising the extension provisions.

Allowing the transfer of APF approvals from one project to another would not necessarily reduce the size of the pipeline (it would create a more active pipeline, however). A scheme could be developed to reduce the size of the pipeline by allowing proposed development to buy approvals from pipeline projects, with the following constraints:

- The proposed development would have to buy 100 percent of the jobs or housing units needed from pipeline projects, but
- A pipeline project would lose 2 jobs or housing units for every one job or housing unit that it sold.

Staff believes that APF time limit should be addressed. We believe a time limit for pre-1989 residential approvals should be considered, and we believe there should be an explicit time limit on residential development that qualifies for an extension.

As noted, the first subdivisions approved under the five-year rule will come "due" in 2004. Assuming a new growth policy is put into effect, expiring plans will not automatically create capacity for new approvals. If the Planning Board believes the pipeline issue is urgent, staff would of course, be happy to develop detailed recommendations quickly. If not, staff would suggest that the issue be reviewed in the next growth policy, which staff suggests should occur in the fall of 2004.

11. Relationship to Capital Improvements Program

Although the AGP and CIP were designed to work hand-in-glove, it is clear from the top-to-bottom review that over time the connection between the two has been weakened. The Planning Board has heard comments that the relationship should be strengthened and staff believes the Board agrees.

Early in this memo, staff addresses a possible schedule of a new biennial growth policy. Staff's recommendation to engage in the biennial review in the fall following the adoption of the biennial CIP is intended to strengthen the relationship between the two. As noted, we believe that when it comes to making recommendations for programming public facilities, it is not "too early" to be making recommendations a year before the County Executive releases his Recommended CIP. Rather, the Planning Board's recommendations are likely to be most helpful as early in the process as possible.

The Planning Board would also review, as it does now, the County Executive's Recommended CIP following its release in January of even-numbered years. The Board's comments are transmitted to the County Council.

Staff recommends that each draft growth policy transmitted by the Planning Board to the County Executive and County Council identify a set of transportation and school improvements that will add capacity in each subarea/cluster of the County. The purpose of this work will be to:

- Strengthen the connection between continued growth and the provision of additional public facilities.
- Highlight areas where needed public facilities may be especially expensive or otherwise have barriers to implementation.
- Provide a source for the Planning Board, the public, and others to select priority projects for programming, including those that should be funded with impact tax revenues.

During the growth policy worksessions this fall, the Planning Board may wish to request that the County Executive and the County Council consider how the growth policy can best serve their capital programming processes. There may also be aspects of the CIP process which could be adjusted so that the relationship to the growth policy is strengthened.

One major connection between the growth policy and the CIP is the development impact tax, particularly if the transportation impact tax is increased and a school impact tax is implemented. The Planning Board has made it clear that it strongly supports dedicating impact tax revenues to the construction of transportation and school facilities. The CIP can assist in this effort by including a table that shows impact tax revenues by location and type of development, and shows impact tax expenditures by location and type of public facility.

A growth policy as described in the first dozen or so pages of this memorandum will strengthen the *information connection* between the growth policy and the CIP, since the growth policy will report on progress in providing capital facilities, provide measure of transportation and school facility utilization, and discuss growth trends affecting demand for public facilities. However, the growth policy will continue to react to capital programming decisions in the only way it can: by restricting the pace of new development approvals.

12. Development Impact Tax For Transportation

The Montgomery County Planning Board's vision for the development impact tax for transportation is a two-tier tax: one base rate that "everybody pays" and a second tier that reflects the relative transportation efficiency of the land use. Development projects with the smallest relative impact on the transportation network would pay the lowest rate and development projects that have the highest impact would pay the highest rate.

The Planning Board has requested staff's recommendations for a range of rates that implement this vision and staff provides them here. Before discussing the recommendations, staff would like to review some options we are not recommending.

Over the past six months, staff's analysis of the "capacity metering" method has involved considering the different options for allocating the cost of planned transportation infrastructure to units of development. In addition to the simplest approach – dividing the total $5.8 billion program among the 148,000 jobs and 78,000 housing units in the 30-year forecast – staff has looked at:

- *Looking at the transportation program by geographic subarea.* Staff does not recommend this approach as the basis for setting a transportation impact tax because it results in wide disparities in rates by area. In some cases the highest rates are in areas with the greatest amount of needed transportation improvements, but in other cases it results from the fact that there is only a modest amount of future development in the area.

- *Discounting the transportation program.* The $5.8 billion transportation program is so large that that the resulting cost-per-unit-of-development is much higher than could realistically be charged as an impact tax. For example, $26,000 per job translates to roughly $100 per square foot. Discounting options include: counting only the expected local share of transportation costs (discounting federal/state share), counting only part of the transportation program (not counting "regional" projects, not counting transit projects, only counting "local" roads), or applying a discount based on "new development's share" of planned transportation improvements (such as 50 percent). All of these have conceptual merit but still result in very high rates, especially on non-residential development.

Staff's review of these options led us to look for another approach, and we began by looking at current impact tax rates in the County and in the state of Maryland. We were also mindful that we are recommending rate ranges for a development impact tax for schools, so the rates on residential development have to take both impact taxes into account.

The current Countywide rates for the transportation impact tax are: $2,100 for single-family (attached and detached units), $1,100 for multi-family units, $1.50 per square foot of office and retail space and $1.00 per square foot for industrial space. Rates are different in Clarksburg, Germantown, and eastern Montgomery County. The Countywide rates are discounted 50 percent in Metro station policy areas.

In May 2003, the County Council considered a resolution to generally increase the development impact tax rates and to make them the same Countywide. The proposed rates were:

Single-family detached (per unit):	$3,300
single-family attached (per unit):	$2,753
Multi-family (per unit):	$1,981
Multi-family Senior (per unit):	$573
Office (per square foot):	$2.50
Industrial (per square foot):	$1.25
Bioscience (per square foot):	$0.00

Retail (per square foot):	$3.50
Hospitals (per square foot):	$0.00
Other (per square foot):	$2.50

Development within Metro station areas would continue to be charged 50 percent of the rate. The Council staff memorandum and impact tax rate resolution are attached at circle 10. The memo provides a good explanation of the basis for the rates and the implications of various grandfathering requests.

Park and Planning staff believe that these rates are an appropriate basis for recommending rate ranges for the Planning Board's transportation impact tax.

The Planning Board's vision of a two-tiered tax requires a basis for charging higher tax rates on the least efficient land uses. For this basis, staff returns to the relative transit mode shares of the four basic geographic sub-areas of the County: Metro station areas, Red Line areas, suburban areas (both high- and low-growth) and rural areas. As staff has noted, transit mode shares in Metro station areas is about twice that of Red Line areas, which in turn are about twice that of suburban areas, which are twice that of the rural areas.

Staff recommends that the range for the basic transportation impact tax rate – the rate that development would pay regardless of location – be as follows:

Single-family detached (per unit):	$1,000-$1,500
Single-family attached (per unit):	$1,000-$1,500
Multi-family (per unit):	$750-$1,000
Multi-family Senior (per unit):	$250-$500
Office (per square foot):	$1.00 - $2.00
Industrial (per square foot):	$0.50 - $1.00
Bioscience (per square foot):	$0.00
Retail (per square foot):	$2.00 - $3.00
Hospitals (per square foot):	$0.00
Other (per square foot):	$1.00 - $2.00

Development in Metro station areas would pay the basic rate only. Development in the other areas would pay a multiple of the basic rate based upon relative transportation efficiency as expressed by relative transit mode shares. Development in red line areas would pay double the basic rate; development in suburban areas would pay three times the basic rate, and development in the rural areas would pay four times the basic rate. To illustrate:

For a single-family detached unit, the rate structure would be:

Single-family detached	*Basic*	*Efficiency Rate*	*Total Rate*
Metro station area:	$1,000-$1,500	$0	$1,000-$1,500
Red Line area:	$1,000-$1,500	$1,000-$1,500	$2,000-$3,000
Suburban areas:	$1,000-$1,500	$2,000-$3,000	$3,000-$4,500
Rural areas:	$1,000-$1,500	$3,000-$5,000	$4,000-$6,500

For an office building, the rate structure would be:

Single-family detached	*Basic*	*Efficiency Rate*	*Total Rate*
Metro station area:	$1.00-$2.00	$0	$1.00-$2.00
Red Line area:	$1.00-$2.00	$1.00-$2.00	$2.00-$4.00
Suburban areas:	$1.00-$2.00	$2.00-$4.00	$3.00-$6.00
Rural areas:	$1.00-$2.00	$3.00-$6.00	$4.00-$8.00

Other development types would have the same multipliers applied to the basic rates staff recommends.

Staff does not recommend exempting pipeline development from the transportation impact tax. This development is already subject to the impact tax, and this development has already benefited from previous grandfathering provisions and a fairly generous phase-in schedule.

One impact tax credit proposal that staff believes has merit is to explore credits for transportation improvements required by the Planning Board at the time of preliminary plan. The Planning Board has discussed the advantages to having the developer agree to make some transportation improvements directly, rather than through the mechanism of paying the impact tax and having the impact tax revenues available for the public sector to make the improvement. The two main advantages are that the improvements would be made more expeditiously and could be better tailored to meet the transportation impacts of the proposed development project. Staff does not believe there are significant regulatory barriers to implementing this concept, but we have not had the chance to explore it in detail.

13. Development Impact Tax for Schools

In the *Staff Draft 2003-2005 AGP Policy Element*, staff supported the imposition of a County impact tax for schools. At the time, the County Council was considering Bill 9-03, which would establish a development impact tax for schools. Staff indicated our belief that that the approach taken in Bill 9-03 in assessing a school impact tax was a logical one, and we used it as the basis for our analysis. Bill 9-03's approach is to identify a desired revenue stream, in this case $10 million per year, and impose rates on residential development based upon their comparative students generation rates that will, on average, generate the desired revenue. According to Council staff, $10 million per year is about 10 percent of the school facilities annual capital budget. The money raised by the impact tax would have to be spent on facilities that add capacity to schools. Material on the proposed development impact tax for schools is attached at circle 47.

Bill 9-03 proposes the following rates (per dwelling unit) that were based on the comparative student generation rates of the various types of new housing, as calculated by Montgomery County Public Schools staff.

Single-family-detached houses	$3,920
Townhouses	$3,220

Garden apartments	$1,960
High-rise apartments	$770
Apartments for seniors	$0

Park and Planning staff has since engaged in additional research and analysis concerning the cost of school infrastructure per unit of residential development – the summary finding being that, on average, the cost per housing unit of school facilities is about $11,000.

Staff has also reviewed with the Planning Board various means of estimating "new development's share" of school enrollment growth. Although each of the methods has its limitations, staff is fairly comfortable with an estimate of approximately 20 percent.

The Montgomery County Planning Board has requested that staff recommend a range of school impact tax rates. Given our overall acceptance of the methodology underlying Bill 9-03's impact tax rates, which were developed to generate about 10 percent of school facilities annual capital budget, staff recommends school impact tax rates are in the following ranges:

Single-family-detached houses	$4,000 to $8,000
Townhouses	$3,000 to $6,000
Garden apartments	$2,000 to $4,000
High-rise apartments	$800 to $1,600
Apartments for seniors	$0

The recommended ranges would raise between 10 and 20 percent of the annual capital budget. At the high end, the rates are comparable to the highest in Maryland (Prince George's, Charles, and Frederick counties); at the low end, the rates are similar to those charged by Anne Arundel, Calvert, St. Mary's, and Carroll counties.

The Planning Board indicated that it prefers applying the school impact tax rates countywide and staff agrees. Staff previously considered, but do not recommend, calculating impact tax rates based on the capital needs of individual clusters, or based on the costs of specific improvements. As our experience with transportation infrastructure tells us, these methods could result in payment rates that are very different from cluster to cluster.

As with the transportation impact tax, ***staff does not agree that pipeline projects (development that has already received preliminary plan approval) should be exempt for the impact tax.*** The building industry testified that it would be extremely difficult for developers to absorb changes in the cost of development after the preliminary plan is approved. Staff does not agree that preliminary plan is the point in the development process when costs are fully known and expects that it is common for development costs to change significant between preliminary plan and building permit for reasons other than government action.

As with the transportation impact tax, staff could support a limited phase-in period of the impact tax, but notes that a representative of the Department of Public Works and Transportation cautioned the Planning Board against an impact tax with too many loopholes (our term), including an extended phase-in period.

The building industry also requested that school site dedications be credited against the impact tax. Staff notes that the when dedications do not result in a loss of density, the financial impact of the dedication is mitigated. ***Staff does not support the credit, as it does not support a credit for the dedication of land for roadway rights-of-way.***

14. Dedication of the Recordation Tax to School Construction

In May 2002, the Montgomery County Council enacted changes to the recordation tax to “raise significant amounts of revenue for school capacity construction while making the County recordation tax more progressive, and thus making lower-priced homes more affordable.”[2] The rate was increased from \$2.20/\$500 to \$3,45/\$500 (\$6.90/\$1000). The estimate of increased revenue due to the changes reaches \$22.2 million in FY08.

In approving the changes, the County Council signaled its intention to allocate the increased revenues to school construction. The bill’s language reads:

> *“The Council intends to allocate the net revenue attributable to the increase in the rate of the recordation tax enacted in this Act to the cost of capital improvements to schools and educational technology for Montgomery College.”*

However, the County Council may allocate revenues from the increase in the recordation tax to other needs, and Park and Planning staff understands that this has occurred. The Montgomery County Board of Education has requested the Planning Board support their request that the increase in the recordation tax be dedicated to school facility construction. A bill has been introduced by Councilmembers that would effect this change and the Board’s perspective has been requested.

Staff recommends that the planning Board support dedicating the revenues from the increase in the recordation to school facilities construction on the basis of the following:

- The Planning Board has heard testimony and reviewed data which support the contention that the turnover of existing homes is a major factor in the increase in public school enrollment. Although estimates of the direct effect of housing turnover on school enrollment vary, the County is experiencing at least as rapid enrollment growth in neighborhoods with little new development as it is in parts of the County where the pace of residential development is much more rapid.

[2] Quoted from Council staff memorandum attached. See circle 62.

Montgomery County Public Schools staff told the Planning Board that public school facility needs in developed areas are of a similar magnitude as “growth areas” of the County.

- Although it may successfully be argued that housing turnover generates additional demand for a variety of public facilities, and not just schools, staff does not believe that other public facilities (except, perhaps, transportation) are experiencing the same level of unmet need and at the same magnitude as the public school system. Moreover, however important other public facilities are, the adequate public facilities ordinance has designated schools as one category in a small set of public facilities meriting special consideration. Staff believes there is ample justification to give priority to public school facility needs in allocating recordation tax revenues.
- Of course, County Council has the final decision-making authority about the allocation of tax revenues. In this case, the Planning Board would be providing advice to the Council as to whether there is justification, on the basis of adequate public facilities concerns, for dedicating revenues toward school facility construction. The Planning Board has made a determination that school facilities are not now adequate to support additional development, and this finding should be useful to the Council when evaluating whether to dedicate the recordation tax revenues.