



February 14, 2003

Memorandum

To: The Montgomery County Planning Board

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

Re: Annual Growth Policy: Study “Check-In” and Options for Detailed Evaluation

Summary of Issue

The purpose of this worksession is to give the Montgomery County Planning Board an update on the Annual Growth Policy study, discuss some of the findings thus far, and review the set of options staff plans to evaluate for the *Staff Draft AGP Policy Element* due in May. The Planning Board’s main review of the *AGP Policy Element* will take place between May 1 and June 15. However, staff wants to check in now to make sure that we are “on the right track” toward producing the material that the Planning Board will need during its evaluations at that time.

This packet contains a wealth of material; most of it is not needed for the immediate discussion, which will focus on the Board’s concurrence with the “options for detailed study” starting on page 11 of this memo. We believe the background study material will be more useful to the Planning Board during its AGP discussions in May and/or June, but we felt that the Board might like to have it sooner.

This worksession will be followed by a similar session with the County Council on February 25, 2003.

Background and Approach

Introduction

In October of 2001, the Montgomery County Council requested a thorough review of the Annual Growth Policy during the next biennial “Policy Element.” Although the Council identified specific issues that it wanted to see addressed – including a new method of setting staging ceilings, the continued utility of Policy Area Transportation

Review, and a “developer participation” mechanism for schools – the Council’s charge that this will be “top-to-bottom” review means that all aspects of the AGP are up for discussion.

There are many potential methods for administering the Montgomery County’s Adequate Public Facilities Ordinance, and possibly a limitless number of permutations of those methods. During this worksession, staff will review with the Planning Board our recommendations for a manageable set of options that will be evaluated in detail in the *Staff Draft 2003-2005 Annual Growth Policy “Policy Element”* which is due in May. It is our hope that these options encompass a sufficiently broad range of alternatives so as to be consistent with the County Council’s request for a “top-to-bottom” review. Staff is recommending options that target specific issues or problems with the current AGP, as well as options that add, remove or fundamentally recast major aspects of the AGP. Staff believes reviewing these options now gives public officials an opportunity to be introduced to issues that have been raised during the course of this study thus far, as well as reintroduced to issues that have been part of the growth policy debate for the past decade and a half. Staff is especially interested in learning if there are options that we did not identify but should be included in our analysis; or if there is additional research that officials would find helpful.

Staff is not expecting that the Planning Board will be able to digest all of this packet’s material by the worksession on February 20. Most of this material will be more relevant to the Board’s May/June review of the *Staff Draft AGP Policy Element*.

Research, Outreach and Coordination Activities

Over the past year, the AGP staff team has been working on background studies, holding coordination meetings, and talking with the public. The main goals of the work so far: to get up to speed on the current growth management theory and practice, to learn from Montgomery County’s experience with the AGP thus far, and to engage a range of stakeholders in discussions about what they want the AGP to accomplish. These efforts were designed to clarify and document the issues that the AGP study should address. Some of these activities have included:

- Roundtable discussion of AGP history and future with former Chairman Royce Hanson and former Planning Director Dick Tustian.
- Presentation/breakout group discussion with growth management expert Terry Moore.
- Coordination discussion among staff from Rockville and Gaithersburg and with agencies such as HOC and WSSC, who are all members of the AGP staff team.
- Detailed national and international literature review, focusing on alternative methods of staging growth as well as the best methods for assessing the adequacy of the APFO as a growth regulator.
- Public outreach, including two focus groups and presentations/discussions with the Montgomery County Civic Federation and the Maryland-National Capital

Building Industry Association. The focus group report is provided as part of this packet as a separate memo.

In addition, other events/reports/discussions have informed staff's understanding of AGP-related issues, including housing and transportation policy debates over the past year, concerns raised during master plan and sector plan public meetings, issues raised by the public officials in Gaithersburg and Rockville, and issues raised at a recent dinner with the Planning Board, Board of Education, and the mayors of Rockville and Gaithersburg.

Results of background studies are included in this packet as separate memos or reports. These background studies consist of:

- *Measuring the effect of the AGP:* How do congestion levels in Montgomery County compare to those in neighboring jurisdictions? How much faster would Montgomery County have developed without the AGP? What are some notable developer contributions toward public facilities that have been received as a result of the AGP transportation requirements?
- *How do other localities control growth?* This effort had two aspects. The first is a paper comparing Montgomery County in detail to several other communities in the United States known for growth management, including Portland, Oregon; King County, Washington; and Broward County, Florida. The second is a broader review of communities nationally with a particular focus on Maryland localities. Much of the research and writing of these papers is by graduate students in the University of Maryland's planning program. This packet contains drafts of both papers. Final versions will be available in about a month.
- *Demographic factors shaping school enrollment change:* Any time growth management is discussed; one of the central debates is the extent to which pressures on infrastructure are due to new development or to other factors. MCPS staff has prepared a short report for this packet which discusses how the school enrollment forecasting methodology and the trends that are shaping changes to school enrollment.

Role of the Annual Growth Policy

During discussions of the Annual Growth Policy over the past year, a surprising amount of time was devoted to discussing different perspectives of what the AGP was intended to accomplish. What's the AGP for? We suggest:

1. *Regulating the pace of development when public facilities cannot absorb additional demand.* Montgomery County's use of the subdivision moratorium is intended to affect the pace of development; it really has no other purpose. Other communities find public facilities are inadequate, but typically they do not impose moratoriums. Rather they use their findings to require developers to make payments toward infrastructure. Montgomery County is nearly unique in that so-called "pay-and-go" provisions have been the exception, and not the rule.

2. *Providing developers with advance notice that public facilities are inadequate so that they do not invest time and money submitting an application that will not be approved.* Two of the three main AGP tests for adequacy, Policy Area Transportation Review and the School Test, provide a clear, annual assessment of the likelihood that there is adequate capacity for a proposed subdivision. In the case of Policy Area Transportation Review, staging ceilings and the capacity available for new approvals change infrequently. The “uncertainty” is that it is not known when new facilities will bring an area out of moratorium. In the case of the school test, findings of adequacy, while in effect, are limitless.
3. *Identifying where public facility deficits are.* A prominent feature of early AGP reports is a graphic showing a yin-yang symbol. One side is labeled “AGP” and the other “CIP.” The purpose of the graphic was to show that the two documents have separate but inter-related roles, and the role of one feeds into the role of the other in a circular way. The cycle can start with the AGP’s responsibility to identify when facilities are adequate and when they are not adequate to support new development. The CIP’s job is to take that information and use it to decide where and what kind of new facilities to program. When new facilities are programmed in the CIP, the AGP’s job is to determine how much new development can be accommodated by the new facilities and to show where there are still inadequacies.
4. *Administer the APFO in concert with the General Plan and other public policy objectives.* Integral to the AGP from the beginning have been features that support the General Plan’s goals of concentrating growth into the urban ring and along transportation corridors. The AGP has always allowed additional congestion in areas planned for more growth than in areas where little growth is planned. This aspect of the AGP is both a compromise of the APFO in order to allow the General Plan’s goals to occur and but also an enforcement of the APFO which keeps the General Plan’s goals from being subverted. In some cases the AGP explicitly recognizes County policies with specific provisions (such as the Special Ceiling Allocation for Affordable Housing and the provision for Strategic Economic Development Projects) and in other cases the AGP simply defers to other policies, plans and regulations. For example, no provision of the AGP may override any master plan or sector plan.

What isn’t the AGP for? Staff believes there are at least three common misperceptions about what the Annual Growth Policy is intended to accomplish.

1. *The AGP does not provide public facilities:* The Capital Improvements Program is the mechanism through which public officials allocate resources toward new public facilities. The AGP was never intended to take the place of the CIP, but to provide information for the CIP, and to reflect actions taken in the CIP.
2. *The AGP is not an arena for revisiting the master plan.* The AGP is intended to *stage* the development called for in the master plan, not to halt it

permanently. The AGP's role is partly shaped by legal issues – moratoriums due to inadequate facilities are to be temporary – but also because the master plan process is the appropriate vehicle for planning the amount, type and location of development in an area.

3. *The AGP does not encompass all of the County's policies related to growth:* Over the years and especially in the past year, staff has realized that there is a perception that the AGP is, or should be, the repository for all of Montgomery County's growth-related policies. But the AGP is really a regulatory document, and what it regulates is new development. In the past, new development played the lead role in how Montgomery County was changing; today, "growth" may also encompass new uses for existing development, demographic shifts, and other factors that the AGP does not regulate.

Related Issues

There are three issues, or subject areas, that are not a major focus of the Annual Growth Policy but are affected or touched upon by the AGP in some way. For two of them, affordable housing and economic development, the AGP contains provisions designed to mitigate potential conflicts between the adequate public facilities requirements and County objectives in these areas. The third issue, infill development, is less defined. There is no consensus yet on what infill development is, let alone whether it needs "encouragement." There are provisions or aspects of the AGP that favor infill development already, but the issue has not yet been fully explored.

Affordable Housing

The *Special Ceiling Allocation for Affordable Housing* has been part of the AGP since the AGP's inception. The Special Ceiling Allocation is intended to help encourage the production of affordable housing by allowing the approval of subdivisions with an added component of affordable housing in areas that are otherwise in moratorium because of inadequate transportation facilities. A stated justification for this procedure is that growth management systems such as the AGP may have the effect of increasing the cost of housing as a result of limiting supply. It has not been established that there is a link from the AGP to an increment of housing price increase, but the need for affordable housing in the County is undeniable.

There have been several issues related to the Special Ceiling Allocation that have been studied in recent years. These include: a concern that the persistent moratoria in some parts of the County have led to an over-concentration of affordable housing in those areas and a concern that provisions enacted in 1994 to stimulate the production of housing undermined the attractiveness to developers of the Special Ceiling Allocation. Both of these issues have been resolved, the first by limiting the total number of housing units that can be approved under the provision in any one policy area, and the second by eliminating the competing provision in October 2001.

As a result, there appears to be increased interest in the use of the Special Ceiling Allocation for Affordable Housing. There are residential projects that have proposed or are considering using the provision in Olney, Aspen Hill, and Montgomery Village/Airpark. Because the Special Ceiling Allocation had not been used since 1994, there appears to have been some surprise by residents that the procedure is a way for developers to proceed in moratorium areas. In at least one case, there was confusion between the AGP's Special Ceiling Allocation for Affordable Housing and the Moderate-Priced Dwelling Unit (MPDU) Ordinance.

The MPDU program requires that a percentage of units in any residential subdivision of more than 50 units be "moderately-priced." MPDUs are not affordable enough to qualify as "affordable housing" under the AGP's Special Ceiling Allocation, and so provision of MPDUs does not confer upon a developer any special status under the AGP. In recent discussions of proposed changes to the MPDU, there were members of the public that had received the impression that complying with the MPDU law would allow developers to build in moratorium areas. That is not true, although a developer that provides sufficient affordable housing to meet the requirements of the Special Ceiling Allocation for Affordable Housing will meet the requirements of the MPDU law, since the Special Ceiling Allocation's requirements are stricter.

Although the MPDU program is not related to the AGP, studies of MPDU issues can be helpful when reviewing the AGP's Special Ceiling Allocation. There is also a broader series of housing studies underway; AGP staff has been following them as they proceed. In addition, there are worksessions scheduled with the Planning Board and County Council in March to review some of the housing study findings thus far. AGP staff will be on hand at those sessions to take note of issues that can be addressed through the AGP.

Montgomery County's Housing Policy includes a recommendation that the County's Annual Growth Policy be reviewed to see how it can increase the production of affordable housing.

In the list of options for further study, staff has included several that relate to affordable housing. This fall primarily into two categories that are somewhat contradictory. The first category includes modifications to the Special Ceiling Allocation to guard against compatibility concerns (such as additional limits on where the Special Ceiling Allocation can be used, or alternatives to the Special Ceiling Allocation under certain circumstances). The second category includes options that would attempt to increase production of affordable housing units in the AGP, primarily through the Special Ceiling Allocation, but other ways as well.

Staff recognizes that the preservation of the existing affordable housing stock is a high priority. Because the focus of the AGP is on regulating new development, and the only "benefit" that the AGP confers is the approval for development to proceed, staff believes that the AGP will only play a tangential role at best in helping to realize the

County's goals in this area. However, we are continuing to review the issue and to look for opportunities.

Infill Development

One of the issues driving the “top-to-bottom” review of the Annual Growth Policy is the AGP's treatment of infill development, a basic definition of which may be: development in areas of the County that are already, to a great extent, developed. The issue can be viewed from a variety of perspectives, but the Maryland Department of Planning's report, “Managing Maryland's Growth: Infill and Redevelopment,” offers a concise argument why infill development is often considered something to encourage:

“By absorbing growth into existing communities, infill relieves growth pressure on rural areas and can improve quality of life for older communities. Infill helps to achieve the goals of smart growth: support existing communities, preserve our best agricultural and natural areas, and save taxpayers from the high cost of building infrastructure to support development that has spread far from our traditional population centers.”

The report goes on to note that “Adequate Public Facilities Ordinances sometimes contains language or provisions that inadvertently preclude infill and direct growth to peripheral areas with less capacity.”

The issue has also been described, in relation to the Annual Growth Policy, by saying that much of Montgomery County is now “mature,” and that AGP staging ceilings are more appropriate for areas when there is significant development left to be approved. From a practical as well as policy standpoint, there are arguments that it makes little sense to closely regulate the final increment of development in a built-out area as closely as we staged preceding increments. That is, even without staging ceilings, the zoning limits future development as much as is necessary. Equally, it can be argued that in urbanized areas there are fewer opportunities for improving the transportation network.

Additionally, some would say that the potential problems associated with infill development have very little to do with *timing*, which is the AGP's role, but rather *compatibility*. They would say that the issue with infill development is not whether or not it is premature, but whether or not it fits well with its neighbors.

Those less convinced of the inherent benefits and modest impacts of infill development might counter that the Maryland Department of Planning's report assumes that there is unused infrastructure capacity in existing neighborhoods that can support new development, but this may not necessarily be true. They might note that roadway links and intersections in urban areas of the County are not operating at optimal levels of service and that the school enrollment is increasing rapidly in the Counties urban neighborhoods even with modest levels of new development. They might argue that AGP already allows greater levels of auto congestion in urban areas precisely to allow for infill development, but once these levels of congestion are reached, it is just as important to

control development in urban areas as it is anywhere else. Finally, they might note that the limit number of transportation options in urban neighborhoods means that the growth should be carefully staged.

Communities around the country have adopted programs to facilitate infill development. Staff has collected reports on a number of these reports, from such disparate places as Portland, Oregon; Atlanta, Georgia; Glendale, Arizona, and Fairfax County, Virginia. A common theme among them is alluded to in the quote from the Maryland Department of Planning: that infill development may be at a competitive disadvantage with greenfield development. There is no question that usually infill development is both more expensive and more complex. Typically the solution adopted by communities involves relaxing development standards, a policy choice that may increase concerns among redevelopment-wary neighbors.

In some parts of Montgomery County, infill development is something that the County must encourage; in other parts, infill areas are highly desirable and there are significant development proposals recently approved or awaiting approval.

Staff is recommending further study of several options for the Annual Growth Policy that would make it easier for infill development to be approved. These include the option to eliminate staging ceilings entirely, but there is also an option that would exempt infill development from Policy Area Transportation Review. This would necessarily involve developing a definition of infill development – which may be development in certain areas or development of a certain type – as well as a review of the possible benefits and drawbacks of exempting infill development.

Staff hastens to note that we are also recommending the further study of alternatives that would make Policy Area Transportation Review more stringent so that it is harder for development to be approved when transportation facilities are inadequate.

Economic Development

The Annual Growth Policy's relationship to economic development policy is typically one of competing, rather than complimentary, interests. Although there is a strong policy case to be made that Montgomery County's high quality of life, which the AGP is intended to help safeguard, is one of our major economic development assets, on a project-by-project basis the discussion ends up being: which to choose? Economic development or adequate public facilities?

In the AGP focus groups, several participants stated that the AGP does not reflect the County's economic development policy. Others suggested that the AGP reflects economic development policy only too well – through its exceptions. The rejoinder is that any policy with so many exceptions can't be working properly.

In fact, most of the exceptions to the AGP that remain are extremely narrowly drawn. The heyday for exceptions was the mid-1990s, a period when there was little

commercial development taking place and exceptions were seen as a method for jump-starting the development economy. The *Alternative Review Procedure for Metro Station Policy Areas* and the *Special Ceiling Allocation for Affordable Housing*, are the only two exceptions that are broadly available, and both of these are fairly limited in their availability, either geographically (in the case of the Alternative Review Procedure) or by amount of approvals and by cost (in the case of the Special Ceiling Allocation).

The AGP once contained a provision that was closely tailored to the County's economic development policy. Called "Partial-Cost Developer Participation," the procedure would allow the public sector to assist developers in paying for the infrastructure needed to support their project, provided the project met County economic development objectives, which were enumerated in the AGP. The provision was never used and was removed from the AGP.

In addition to those already mentioned, the following are exceptions to the AGP that are, in whole or in part, related to economic development:

- *The Special Provision for Corporate Support and Headquarters Facilities:* This provision recognizes that there is a special economic development benefit to Montgomery County being home to the headquarters of major corporations. There are a very limited number of major corporations headquartered in Montgomery County, and the benefit that the AGP confers is limited to the ability to expand on or near their current sites. Corporations would have to pay a fee that would go toward transportation infrastructure. At least one of the potential "beneficiaries" of this provision, Choice Hotels, is not proceeding with the "corporate support facility" that the AGP exception was created to allow.
- *The Special Provision for Medical Research Organizations:* This provision is similar to the Special Provision for Corporate Headquarters Facilities and was designed to accommodate the expansion needs of the Howard Hughes Medical Institute (HHMI) because of its enormous contribution to the County's signature industry, biotechnology. HHMI chose instead to pursue designation under the AGP's Strategic Economic Development Projects provision; it is probable that the Special Provision for Medical Research Organizations is no longer needed in the AGP.
- *The Special Provision for Strategic Economic Development Projects.* This provision was adopted for a two-year test in 2001. In contrast to the other special provisions which are very narrowly-drawn, the Strategic Economic Development Projects provision is purposely general. The idea is that it is not likely that we can anticipate in advance every project that may have economic development benefits that either outweigh its transportation impact and/or for which the County is ready to commit funds to mitigate its transportation impact. Only one project has been designated a "strategic economic development project." There is unfinished work on the provision, as there has not yet been a process put in place for review of candidate projects.

There are two exceptions to the AGP that are primarily justified by public benefits other than economic development, but they may have economic development benefits as well. These are:

- *The Special Provision for a Hospital in the R&D Village Policy Area:* An applicant for a preliminary plan of subdivision to build or expand a hospital in the R&D Village policy area can pass both Policy Area Transportation review and Local Area Transportation Review by making a payment to the County. The total amount of development cannot exceed 350,000 square feet.
- *Ceiling Flexibility for Freestanding Child Day Care Centers:* Freestanding child day care centers are exempt from Policy Area Transportation Review if the policy area in which they are located is in moratorium but they are located on the border of a policy area that is not in moratorium.

Staff recommends evaluating an option that retains Policy Area Transportation Review but eliminates either all or most of the above exceptions. The option that would eliminate most of the exceptions might involve retaining the Alternative Review Procedure for Metro Station Policy Areas, the Special Ceiling Allocation for Affordable Housing, and the Special Provision for Strategic Economic Development Projects.

Options for Detailed Study

Introduction to Options

The *Staff Draft 2003-2005 Annual Growth Policy “Policy Element”* will contain an analysis of a variety of options for changing the Annual Growth Policy. There are many potential methods for administering the Montgomery County’s Adequate Public Facilities Ordinance, and possibly a limitless number of permutations of those methods, but staff is recommending that the Policy Element focus on a relative few. It is our hope that these options encompass a sufficiently broad range of alternatives so as to be consistent with the County Council’s request for a “top-to-bottom” review. Staff is recommending options that target specific issues or problems with the current AGP, as well as options that add, remove or fundamentally recast major aspects of the AGP.

Staff believes reviewing these options now gives public officials an opportunity to be introduced, or reintroduced, to issues that have been raised during the course of this study so far and issues that have been part of the growth policy debate for the past decade and a half. Staff is especially interested in learning if there are options that we did not identify but should be included in our analysis; or if there is research that officials would find helpful.

The Transportation Test

Goals for the Transportation Test

While working toward either a major change or technical refinement to the transportation test, staff believes it is useful to keep in mind some general goals for the test methodology. In our work to evaluate various options, staff will be looking for alternatives that are:

- *Understandable and transparent:* Although there are aspects to transportation analysis that have to be complex, we should strive for a system that is as easy to understand as possible.
- *Consistent with General Plan and master plan goals:* The AGP’s standards and methods for measuring the transportation impact of new development should be consistent with those in master plans so that the AGP’s staging of development reaches the end state envisioned in the master plan. The AGP’s transportation provisions should be consistent with the goals of the General Plan.
- *Easy to administer:* The test should minimize the effort involved in testing adequacy.
- *Multi-modal:* The transportation test should take into account auto and non-auto modes of transportation.

- *Exhibit proper sensitivity:* This means that we have a system that will continue to generate valid results even as various “inputs,” such as transit level of service or traffic counts change.

Options for the Transportation Test

The Annual Growth Policy tests for the adequacy of transportation facilities with a two-tier test that consists of Policy Area Transportation Review (staging ceilings) and Local Area Transportation Review (intersections). The options that staff has identified for detailed study focus on Policy Area Transportation Review because most of the issues that were raised during the 2001-2003 AGP Policy Element debate related to Policy Area Transportation Review, as have most of the issues raised during staff’s discussions with public officials, local government staff, the general public, and the development community. Additionally, Policy Area Transportation Review is the method through which the County measures transportation adequacy on a Countywide basis and it is the only test that has resulted in moratoriums of a year or more on new subdivision approvals.

Staff recognizes that there continue to be disagreements about aspects of the Local Area Transportation Review test, and staff plans to review some of those in the Policy Element report. However, other aspects of LATR have been visited and revisited on more than one occasion over the past half-decade or more. On the whole, then, staff’s recommendation is to focus attention during this policy cycle on Policy Area Transportation review and the School Test. Staff is aware, however, that there is some constituency for changes to LATR and perhaps some expectation on the part of public officials that more fundamental changes to LATR would be reviewed. If that is the case, then staff looks forward to having those issues raised by public officials now.

Transportation Option Set 1: Keep Basic Transportation Tests, But Address Methodology Concerns

The first set of options for the transportation test comprises those that involve relatively modest changes in methodology, such as how staging ceilings are calculated. For each option evaluated, staff plans to provide results at various standards of adequacy; that is, more stringent, less stringent, and as close as possible to the current approach.

- *Replace TTLOS Equation as Means of Setting Congestion Standard:* One of the main inputs in the process to set policy area staging ceilings is the automobile congestion standard. A less-stringent auto congestion standard results in higher staging ceilings while a more stringent standard results in lower ceilings. The County has a policy of allowing more development, and more auto congestion, in areas where there are options to the automobile, namely transit.

Since 1994, the AGP has used an equation to determine the auto congestion standard for a given amount of transit service and usage. The components of the TTLOS (Total Transportation Level of Service) equation are:

- auto congestion: defined as the volume-to-capacity ratio on policy area roads weighted by vehicle miles of travel on those roads,
- auto usage: percent of residents in the policy area that use automobiles as a means of commuting,
- transit service: defined as “regional transit accessibility,” a measure of how well jobs and housing units in the policy area are connected to jobs and housing units in the metropolitan area by transit, and
- transit usage: percent of residents in the policy area that use means other than automobiles as a means of commuting.

The components of the equation were updated for the 2001-2003 AGP Policy Element. That update revealed problems with the equation, especially with the way that “regional transit accessibility” was calculated and indexed. One of the problems is that each policy area’s transit “score” is relative to every other policy area’s score, so that a policy area’s transit score could change even if transit service did not.

Prior to 1994, the relationship between auto congestion and transit service was determined using a simple set of categories, or groups. Policy areas with similar levels of transit service were included in the same group, and that group was assigned an auto congestion standard. The group system was abandoned because it was considered to be insufficiently sensitive to changes in transit service.

Staff will propose a return to the group system, modified to be more sensitive to changes in transit service.

- *Review Measure of Policy Area Auto Congestion:* Currently the AGP uses as its measure of policy area auto congestion something called the “average congestion index.” This is the evening peak hour volume-to-capacity ratio on local roads, weighted by vehicle-miles of travel (VMT). An aspect of this approach is that some roads in a policy area are permitted to be more congested than the standard as long as they are balanced by roads that are less congested than the standard. Some have objected to this aspect. Staff will review the current method, addressing issues raised by those who have suggested other approaches. Staff will also explicitly test at least one alternative. A candidate is the percentage of trips experiencing congestion, with longer trips given more weight than shorter ones.
- *Review Use of Weekday Peak Hour as Time of Measurement for Auto Congestion:* Both Policy Area Transportation Review and Local Area Transportation Review focus on weekday peak hour. It has been suggested that the analysis should also include other parts of the day and/or week. Staff will review the potential benefits and pitfalls of looking at other times, including an all-day measure and a Saturday measure.

- *Review Measure of Freeway Auto Congestion:* Montgomery County’s freeways include the Beltway, I-270, I-370, and portions of Clara Barton Parkway. The current method of measuring freeway congestion treats the entire freeway network as a single entity. As in policy areas, the measure of congestion is the evening peak hour volume-to-capacity ratio, weighted by vehicle-miles of travel (VMT). The current freeway standard of 0.90, which is not a stringent standard, was selected to appropriately reflect the fact that much of freeway traffic is not generated in Montgomery County. Put another way, development levels and moratoriums in Montgomery County have relatively small effects on the future volumes on the freeway network. Also, since the freeways are state owned and operated roads, the County has not control and limited influence over their capital improvement scope and timing. However, both the freeway measure and the freeway standard have been criticized as too lenient. Staff will review these concerns, the percent of freeway traffic that is externally generated, and evaluate at least one alternative for measuring freeway congestion.
- *Review Allocations of Staging Ceiling to Jobs and Housing:* The AGP has separate staging ceilings for residential and non-residential development (“jobs”). These separate ceilings acknowledge that jobs and housing have different transportation impacts – for example, in the evening, trips flow from jobs to housing – and also acknowledges that trip lengths may be shorter where there is a balance of jobs and housing. That said, there are a variety of combinations of jobs and housing ceilings that all have nearly the same transportation impact; for example, 2,000 jobs and 3,000 housing units may have the same transportation impact as 2,500 jobs and 2,500 housing units. In evaluating how new capacity should be allocated, the County Council can take into account Countywide policy objectives, master plan implementation issues, or other information.

Last summer, Council staff proposed a policy of reallocating staging ceilings so that deficits were minimized. For example, if a policy area had a deep jobs deficit but lots of housing capacity, the housing capacity would be converted to jobs until the deficit was erased or the housing capacity was used up. Staff will evaluate this proposal, including the option of setting one staging ceiling for each policy area that would be allocated to both jobs and housing on a first-come, first-served basis.

Transportation Option Set 2: Alternatives to the Current Policy Area Transportation Review

The County Council explicitly requested that this “top-to-bottom” review of the AGP look at the option of eliminating staging ceilings as a method of staging development and transportation facilities. Staff will evaluate several options in this category, including:

- *Options to Eliminate, Relax or Replace Policy Area Transportation Review:* Staff will evaluate the possible benefits and consequences of eliminating staging

ceilings as a means for regulating the pace of development. Included in this analysis will be a review of how well Local Area Transportation Review might work as the sole transportation test. Staff will also evaluate at least two possible alternatives to the current Policy Area Transportation Review. Among the possibilities:

- An option which limits the amount of time that any one subdivision can be held up by a moratorium; for example, three years.
 - An option which replaces staging ceilings with an annual allocation, such as 3,500 housing units Countywide.
 - An option to replace staging ceilings in Metro station policy areas with a scorecard approach that evaluates how well the proposed project meets a variety of non-SOV transportation objectives.
 - An option that closely ties development capacity allocations to master plans, developing capacity allocation guidelines based on unbuilt master planned transportation facilities. When an increment of master planned facilities is built, a proportionate share of the master planned development is permitted to move forward.
- *An Option to Eliminate Exceptions to Policy Area Transportation Review:* Staff will evaluate the possible consequences and benefits of eliminating exceptions to Policy Area Transportation Review, thereby imposing a true moratorium on new development approvals when transportation facilities are inadequate.
 - *An Option to Exempt Infill Development:* During the 2001-2003 AGP Policy Element, an issue was raised related to whether it was useful to continue to subject “infill development” to Policy Area Transportation Review. Among the rationales for such an exemption, or partial exemption, is that infill development is “smart growth,” that it will only marginally increase traffic congestion, that it doesn’t make sense to “stage” the very last increments of development in an area that is approaching buildout, and that the transportation issues of concern for infill development are generally covered by Local Area Transportation Review. Other perspectives may be that there is no clear definition of infill development, that built-up neighborhoods need at least as much protection from traffic congestion as other areas, and that Local Area Transportation Review is not sufficient. Staff will review the issue and evaluate at least one option for exempting infill development. A possible option is a higher threshold for the de minimis provision, which currently exempts development generating 5 or fewer peak hour trips.
 - *At Least One “Pay-and-Go” Option:* Staff will evaluate and present for consideration at least one option that allows development to proceed in moratorium areas by making a payment. Among the variables that staff will consider: how narrow or broad? An option that developers use often, or as a last resort? Targeted to the small development, large projects, or any? Will the fee be based on the transportation needs of the area, or a flat rate? Staff will also evaluate how a payment option will work with other AGP mechanisms that

encourage developers to provide infrastructure or affordable housing when an area is in moratorium.

- *Consistency with City Approaches:* Although there are reasons why the approach used by a municipality to evaluate the transportation impact of development may not be equally suitable for County use, staff believes that there are potential benefits to having similar approaches, especially near municipal boundaries. Rockville is currently developing a refinement of its transportation adequacy provisions. Staff will review both the Gaithersburg and Rockville approaches to determine if they are applicable for County use.

The School Test

Goals For the School Test

In discussions about the AGP school test, some of the desired attributes for a test for the adequacy of schools were mentioned again and again. Some of these attributes are complimentary but others may not easily be achieved by one test.

Staff believes a school test should:

- *Reflect how crowded classrooms really are:* The test should describe the true experience of level of crowding in schools, and relate as much as possible to how enrollment and capacity are measured for school planning purposes.
- *Be transparent:* It should be clear to all how the numbers are calculated.
- *Affect the pace of development appropriately:* The school test should do a good job of reflecting the relationship between approvals of residential subdivisions and school crowding.
- *Address developer contributions:* the County Council has requested at least one option “for the Council to consider that would allow a residential development to be approved in a cluster where school facilities are inadequate if compensatory steps can be taken.”
- *Set or reflect development priorities:* The test itself, or some part of the AGP, should either reflect priorities for where the County wants to see development happen – such as development near Metro – to help steer funding so as to provide adequate facilities in those areas.
- *Achieve consensus among various agencies, the County, and the Cities:* Over the past several years, there has been heightened interest among the public officials in Montgomery County and the cities of Gaithersburg and Rockville in identifying a mutually satisfactory approach to the school test.

School Test Options

Staff reviewed aspects of the current school test that could be changed. Staff is recommending that alternatives to some of these aspects be explored; staff is also recommending that we not explore alternatives to some of the aspects. This report reviews both.

Aspects for Which Staff Recommends that Alternatives be Evaluated

- *Calculation of Capacity:* Currently a set of standard capacities of classrooms; e.g., the AGP counts all elementary school classrooms as having a capacity of 25 students. A reason to favor this approach: using standard multipliers means that a moratorium won't be created by moving programs. A problem with this approach: MCPS doesn't use standard multipliers for planning; the AGP multipliers are generally higher than program capacity. Staff will evaluate alternatives to the current system, including program capacity and a different set of standard multipliers that are closer to program capacity.
- *Standard of Adequacy:* Currently the standard is that enrollment should not exceed 100% of capacity. A reason to favor this approach: if there's consensus on the definitions of enrollment and capacity, 100% is the point that schools become crowded. A problem with this approach: Some suggest development should be halted *before* schools hit 100% to better ensure that enrollment does not exceed capacity. Staff plans to show the results for various test options using a range of standards (100%, 95%, 105%) so public officials can evaluate each test. Staff also plans to evaluate a two-stage moratorium: when enrollment is between 90% and 110% of capacity, payments are required; above 110%, the moratorium is absolute.
- *Geography:* Currently the school test is applied at the cluster level of geography. There are currently 23 clusters. Reasons to favor this approach: clusters reflect real boundaries; 23 areas is a manageable number of areas to test. A problem with this approach: adding up enrollment and capacity over a whole cluster may mask crowded schools, especially if "adjacent capacity" rule is kept. Staff will evaluate alternatives to the cluster as the testing geography, including smaller geographies (such as middle school boundaries) and a larger geography (super clusters) that would eliminate borrowing from adjacent clusters.
- *Adjacent Capacity:* Currently, clusters over 100% of capacity are not put into moratorium if there's capacity in adjacent clusters. Reasons to favor this approach: it reflects our ability to move cluster boundaries; some feel boundary changes preferable to moratorium. Problems with this approach: boundary changes are disruptive; borrowing makes test hard to fail; some clusters have many adjacent clusters while others do not; a boundary change may not be realistic in the case where you need to "borrow" from one cluster

for high schools and another for elementary schools. Among those who favor a revision to the school test, the “adjacent capacity” rule receives particular criticism. Staff will evaluate several alternatives to the current rule, including not counting capacity in adjacent clusters, testing at a smaller geography (with and without counting adjacent capacity), and requiring that if you borrow at more than one level, you must borrow from the same cluster for all levels. Since there are multiple elementary schools within a cluster, it can be argued that elementary schools are borrowing adjacent capacity from other schools within the cluster even before adjacent cluster capacity is included; an option for the elementary school level may be to no longer count adjacent cluster capacity but raise the standard to something higher, such as 115 percent of capacity.

- *Point of Application:* Currently the school test is applied once per year and the findings, adequate or inadequate, stay in effect for the entire year. Individual subdivision approvals are taken into account after they are approved when new school forecasts are prepared. Reasons to favor this approach: provides some certainty, easier to administer. Problems with this approach: approvals over the course of the year could be excessive, individual subdivisions are not tested. An alternative would be to apply the test to each subdivision, or to larger subdivisions; or to develop a system of caps on the number on the number of housing units that can be approved. Staff knows that there it is commonly thought that individual subdivisions are subject to a detailed school impact analysis, and we think it would be helpful to decision-makers if we outlined how such a test might be applied.
- *Exemptions/de minimis:* Currently, subdivisions of any size are subject to the moratorium, but senior housing is not. The lack of exemptions has not been much of an issue since moratorium imposed only briefly. A reason to favor a lack of exemptions: except for senior housing, every subdivision has the potential to generate students. On the other hand, it is inconsistent with the transportation policy that exempts small-scale development and affordable housing. Staff will evaluate exemptions for small-scale development and affordable housing.
- *Terminology:* Currently, an area that passes the school test is “adequate,” while an area that doesn’t is “inadequate.” A reason to favor this approach: this terminology relates to the “adequate” public facilities ordinance, and the word “adequate” doesn’t mean “optimal.” A problem with this approach is that some feel that “adequate” describes a condition that is better than the AGP standard. Some other communities use the terms “open” and “closed” to new approvals. Staff recommends keeping this option open for the time being.
- *Developer contributions:* Currently there are no provisions for a developer to contribute toward school facilities in order to mitigate impact of his development. Reasons for continuing this approach: a “hard” moratorium provides better protection of school adequacy; most developer contribution

mechanisms will likely result in a mismatch between what the developer contributes and what is needed to fix capacity deficit. However, a “hard” moratorium is a much bigger step than a soft moratorium and developer contributions may be a useful resource. Staff will evaluate alternatives for assessing developer contributions to school facilities. These will include:

- Developer pays a flat rate tax that funds capacity improvements, anywhere in the County, only in the same cluster (or other geography), or only in same or adjacent cluster (or other geography)
- Developer pays into an escrow account a pro-rata share of the cost of a specific school improvement or set of improvements for that area. These improvements must be approved by the Board of Education.
- There is a countywide tax that all goes into effect whenever one cluster goes into moratorium.
- The tax is one that the homebuyer pays over time (such as in Charles County).
- There is a 2-stage moratorium: between 90% and 110%, there’s an impact tax; above 110% there’s an absolute moratorium.

Where fees or taxes are proposed, staff will propose an appropriate basis for assessing it (per unit, per square foot, etc). The analysis will also address the benefits and drawbacks to developer contributions and whether developers should be able to contribute infrastructure or just money. Other issues: compatibility with the need for land dedications for school sites, limits on spending developer contributions or school taxes raised in municipalities, and whether there is a need for broader revenue increases that address school enrollment increases due to reasons other than new development.

School Test Aspects for Which Staff Does Not Recommend Exploring Alternatives

- *Calculation of Enrollment:* Currently, “enrollment” for AGP purposes means the five-year forecast prepared by MCPS. A reason to favor this approach: forecasts are our best estimate of what enrollment will really be in five years. A problem with this approach: puts pressure on school forecasts, which require judgment. There are alternatives, such as counting students generated by all approved development, like Policy Area Transportation Review does, but this has its own pitfalls. Staff is not recommending that alternatives to the enrollment forecasts be explored.
- *Five-Year Rule:* The school test is applied five years into the future. This is designed to take into account the lag between development approval and student generation. Reasons to favor this approach: it takes into account future growth in enrollment and it gives credit for funded-but-not-built facilities. Potential problems with this approach: it gives credit for funded-but-not-built facilities, which can be delayed, and it requires forecasting. Staff is not recommending that alternatives to the five-year rule be explored.

- *Levels of Application:* The current school test is applied at high school, middle school and elementary school level. This approach is favored because it is more comprehensive; schools may be crowded at any level. A problem with this approach: enrollment in earlier grade levels is more sensitive to changes caused by new development than higher grade levels are. An alternative would be to test elementary schools only. Staff is not recommending that alternatives to the current levels of application be evaluated.

Options for Affordable Housing

The options described below address to different aspects of the AGP’s treatment of affordable housing. The first set will evaluate whether there is a need to further limit the availability of the Special Ceiling Allocation for Affordable Housing beyond the current limits that are placed on it, and the second set look to identify ways in which the Special Ceiling Allocation could be expanded, or alternatively, ways in which the AGP’s provisions could result in the provision of more affordable housing.

Options that Further Limit the Availability of the Special Ceiling allocation for Affordable Housing

There is a perception that it may not be a good idea to allow the Special Ceiling Allocation for Affordable Housing to be used for a development which will be located in an area where there is already a concentration of affordable housing. Staff has not had a opportunity to explore this issue in much detail, and so part of the evaluation of these options will entail exploring whether this is a valid concern or not. The AGP already guards against an over-concentration of new affordable housing in an area by limiting approvals under the provision to 500 (a figure which includes both the affordable and market rate units). But the AGP does not take into account concentrations of existing affordable housing.

If there is evidence that the approvals under the Special Ceiling Allocation should be limited in areas with existing affordable housing, there are some options to address that concern. These include:

- Developing a definition of areas with a concentration of affordable housing and forbidding approvals under the Special Ceiling Allocation in those areas.
- Giving the Planning Board latitude to not approve an application to use the Special Ceiling Allocation where the Board finds that there is an over-concentration of affordable housing.
- At the County’s option, permit the development to be approved, but require the developer to make contribution to a housing fund rather than provide the affordable units within the proposed development.

Options that Use AGP to Encourage the Production of More Affordable Housing

The AGP's role in the production of affordable housing is fairly small. Apart from Fairland/white Oak, no policy area is close to reaching the 500-unit limit for approvals under the allocation. The Special Ceiling Allocation for Affordable Housing appears to be becoming more attractive to developers as other options for approval in moratorium areas have been dropped. These options are geared toward increasing the production of affordable housing, but the overall additional impact is likely to be small. Most of the options directly involve in the AGP, but at least one is AGP-related but relied on CIP expenditures to pay for the transportation impacts of affordable housing.

The options that staff recommends evaluating in more detail include:

- Allow development projects using the Special Ceiling Allocation for Affordable Housing to pass both Policy Area Transportation Review and Local Area Transportation Review. Currently, projects only pass Policy Area Transportation Review.
- Staging Ceiling Reserve: Convert some existing staging ceiling to capacity reserved for projects with added component of affordable housing. For example, if a policy area currently has 2,000 units in available capacity, 20 percent or 400 units of that capacity could be reserved for projects that meet affordable housing criteria. An advantage over the current Special Ceiling Allocation is that it would not compromise transportation adequacy. This idea is not new; there was a staging ceiling reserve for retail development in the Silver Spring CBD that saved capacity for the redevelopment project.
- The County could create a fund in the CIP that would pay for the transportation infrastructure needed to support affordable housing. This option might not be more attractive to the development community than the current Special Ceiling Allocation, but it might be more attractive to the surrounding community. To the extent that the community concerns about the Special Ceiling Allocation relate to traffic congestion impacts, this option would also address that issue as well.

There are a few options that we are not recommending for further evaluation but we are sharing them in case they are sufficiently interesting to the Planning Board or County Council to warrant further discussion.

- Allow non-residential construction to use the Special Ceiling Allocation. If the proposed development is a mixed-use project, the non-residential portion would be able to pass transportation tests as well as the residential portion. If an exclusively non-residential project, they would be able to either make a payment to the County housing funds or purchase housing units elsewhere and convey them to the County.
- To help preserve existing affordable housing, the AGP would confer benefits similar to the those provided by the Special Ceiling Allocation for Affordable

Housing when a developer purchases existing affordable housing and conveys it to the County or agrees to keep it affordable for a certain period of time.

Finally, there are a couple of options which are being addressed under the “transportation options” section but which could have some impact on housing affordability.

- Loosening restrictions on housing generally (such as the option for eliminating staging ceilings entirely) or in a more targeted fashion (on “infill development”) might have some moderating effect on the price of new housing, but the difference would be very small and probably undetectable.
- Converting jobs staging ceiling to housing would make more capacity available to housing.