



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #4**  
**1/27/11**

**MEMORANDUM**

**DATE:** January 18, 2011

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief  
Area 1  
Dan Hardy, Chief  
Functional Planning

*RK*

*DKH*

**FROM:** Catherine Conlon, Supervisor (301-495-4542)  
Development Applications and Regulatory Coordination

*CAC*

**RE:** Policy Discussion: Change in Application of the Provisional Adequate Public Facilities Review



**RECOMMENDATION:** Modify the LATR/PAMR Guidelines to permit application of Provisional Adequate Public Facilities (PAPF) to an *accelerated public infrastructure through private investment*.

**BACKGROUND**

Early last year, staff was approached by the representatives for Symmetry at Cloverleaf, LLC ("Symmetry" or "Property Owner") the property owner of a tract of land in the northwest quadrant of the intersection of Interstate 270 (I-270) and Father Hurley Boulevard in Germantown ("Property"). The property consists of approximately 24 acres and is part of the Cloverleaf Center assemblage previously owned by Creamore Germantown Associates. Two preliminary plans were approved for the Cloverleaf Center; Preliminary Plan 119881560 by Opinion dated July 23, 1996, and after that plan expired, Preliminary Plan 120020950 by Opinion dated August 14, 2002.

Symmetry purchased the Property from Creamore Germantown Associates in 2001 and assumed the obligation to design and participate in the construction of the Century Boulevard Extension. Although the preliminary plan has now expired, Symmetry intends to satisfy its commitment to the road construction. The original concept was for Symmetry to construct two lanes from Century Boulevard's current north terminus located south of Father Hurley Boulevard, proceed under Father Hurley

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Boulevard to Kinster Drive, and then construct four lanes from Kinster Drive to the Boulevard's future connection with Dorsey Mill Road, with Montgomery County constructing the remaining two lanes. It was decided that it would be best to construct the entire road as a single project and an agreement has been reached between Symmetry and Montgomery County for the County to construct the road with Symmetry making a \$4,000,000 commitment toward its cost. Attachment A shows the CIP Project Description Form for this project. Before making this investment, Symmetry is asking for a Provisional Adequate Public Facilities (PAPF) approval that will run in favor of its future Cloverleaf project so that the Property vests its rights to APF credits for the public infrastructure improvements it will be financing before having final development approvals for the site.

The issue before the Planning Board at this time is whether the Board deems it appropriate to modify the LATR/PAMR Guidelines to permit application of PAPF to an *accelerated public infrastructure through private investment*. If it does, Staff will bring Symmetry's application for its PAPF to the Board for action in accordance with the revised Guidelines at a future hearing.

## **DISCUSSION**

Although the Provisional Adequate Public Facilities (PAPF) process in the Growth Policy is currently limited to projects within development districts, staff recommends that the PAPF process be found applicable for development projects such as Symmetry at Cloverleaf without the requirement that they be within a development district. This is an application of the PAPF process that has not previously been used, but staff believes that it is appropriate for limited purposes in order to accelerate private sector investment in public projects, particularly given the current economic climate for CIP funding. In fact, both the Planning Board and County Council have supported such an economic development approach in the CR Zone which provides incentive density for advanced dedication of right-of-way.

The *LATR and PAMR Guidelines* provide the Planning Board's guidance for the preparation and review of transportation impact studies for development. These guidelines provide additional direction on implementing the growth management tools of the County Code and the Subdivision Staging Policy. Currently, the Provisional APF (PAPF) procedure is not addressed separately in the *LATR and PAMR Guidelines* because:

- The Provisional APF process applies to all elements of the APFO, not just transportation elements
- The fact that the transportation test is for a Provisional APF rather than a full APF finding does not affect the administrative or technical aspects of the LATR and PAMR processes such as the trip generation or distribution rates, the number of

intersections to be studied, the elements to be included in the traffic studies, or the mitigation requirements

- The Planning Board has not sought to exercise any application of the PAPF that could be considered by some stakeholders as not entirely consistent with the Subdivision Staging Policy

The staff proposal to apply the PAPF process to facilitate an *accelerated public infrastructure through private investment* only changes the third bullet above. However, it also creates the need to introduce contextual language into the Guidelines that addresses PAPF, both for the development district application detailed in the Subdivision Staging Policy as well as for the accelerated public infrastructure through private investment application proposed by staff. The *LATR and PAMR Guidelines* contain several appendices that address unusual circumstances in applying the Subdivision Staging Policy, including Appendix E delegating certain Planning Board responsibilities to staff for APF findings that occur at building permit and Appendix F describing the Special Mitigation Standards for smart growth development introduced in the 2009-2011 Growth Policy

Staff proposes that the PAPF process (whether for a *development district* or for an *accelerated public infrastructure through private investment*) be described in a new Appendix G to the Guidelines and referenced in the Introduction on Page 6 as shown in the following Exhibits.

## Exhibit 1

### Page 6 Introduction:

#### A. Background

County Code Section 50-35(k) (the Adequate Public Facilities Ordinance or APFO) directs the Montgomery County Planning Board to approve preliminary plans of subdivision or other approvals that require a finding of Adequate Public Facilities (APF) only after finding that public facilities will be adequate to serve the subdivision. This involves forecasting future travel demand from private development and comparing it to the capacity of existing and programmed public transportation facilities.

In accordance with the *FY 2009-2011 Growth Policy* adopted by the County Council on November 10, 2009, subdivision applications are subject to two transportation tests called Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR).

#### B. Policy Areas

The County is divided into traffic zones, which are grouped into policy areas (Map 1). The congestion standards for both LATR and the mitigation requirements for PAMR are established by the County Council, adopted in these Guidelines, and applied to policy areas.

#### C. Local Area Transportation Review and Policy Area Mobility Review Standards

The *Local Area Transportation Review and Policy Area Mobility Review Guidelines* are to be used by applicants in preparing reports to the Planning Board that determine the requirement for and the scope of a traffic study or review prepared by an applicant for APF review and mandatory referral cases brought before the Planning Board.

The Guidelines are also recognized as the standard for reports to the Board of Appeals and the Hearing Examiner for special exception and zoning cases.

The Guidelines may also apply to building permit review for cases requiring an APF finding without subdivision, though in limited cases (less than 12 months vacancy, no increase in square footage, fewer than 30 peak hour trips) the APF test may be approved administratively by staff.

The Guidelines also apply to Provisional Adequate Public Facilities (PAPF) applications associated with Development Districts as described in Appendix G. The Planning Board may consider the use of the PAPF process for an individual property, in the absence of a Development District, in the event that it would accelerate public infrastructure through private investment.

## Exhibit 2

### Appendix G. Provisional Adequate Public Facilities Finding

Section TP4 of the Subdivision Staging Policy provides guidance on Provisional Adequate Public Facilities (PAPF) applications for Development District Participation, as specified in Chapter 14 of the Montgomery County Code. Section TP4 is designed to facilitate:

- Acceptance of transportation APF mitigation through public / private partnerships, and
- Identification and conditioning of APF mitigation requirements in advance of the submission of a preliminary plan that would trigger APF requirements under Section 50-35(k).

The PAPF process described in Section TP4 includes details on the administration of the application for development districts. For development districts, the APF of those developments included in the development district is satisfied once all required infrastructure improvements have been fully financed.

The Planning Board may choose to accept a PAPF application without a development district, in the event that an applicant proposes *accelerated public infrastructure through private investment*. The *accelerated public infrastructure investment* may be for any or all of the types of facilities identified Section TP4.

The Planning Board review of a PAPF for an *accelerated public infrastructure through private investment* must make the additional findings:

- The APF validity period begins at the time that the Planning Board approves the PAPF.
- The duration of the APF validity period should consider the proposed project schedule, and may be at or near the maximum length allowed by County law, reflecting the fact that the APF validity period may begin substantially in advance of subdivision approval.
- The process (financing or construction) and timing of all infrastructure delivery
- That the value of the public infrastructure, based on the difference between the construction cost required for access improvements under subdivision regulations and the extent of financing improvements through the PAPF process, provides a timely private investment in public infrastructure.
- The Applicant has no expectation of reimbursement for its private investment.

**Century Boulevard -- No. 501115**

Category  
Subcategory  
Administering Agency  
Planning Area

Transportation  
Roads  
Transportation  
Germantown

Date Last Modified  
Required Adequate Public Facility  
Relocation Impact  
Status

January 07, 2011  
No  
None:  
Final Design Stage

**EXPENDITURE SCHEDULE (\$000)**

Cost Element	Total	Thru FY10	Rem. FY10	Total 6 Years	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Planning, Design, and Supervision	1,013	0	0	1,013	181	100	569	163	0	0	0
Land	837	0	0	837	837	0	0	0	0	0	0
Site Improvements and Utilities	530	0	0	530	40	0	490	0	0	0	0
Construction	10,932	0	0	10,932	0	1,979	5,966	2,987	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>13,312</b>	<b>0</b>	<b>0</b>	<b>13,312</b>	<b>1,058</b>	<b>2,079</b>	<b>7,025</b>	<b>3,150</b>	<b>0</b>	<b>0</b>	<b>0</b>

**FUNDING SCHEDULE (\$000)**

Contributions	4,000	0	0	4,000	0	0	4,000	0	0	0	0
G.O. Bonds	9,312	0	0	9,312	1,058	2,079	3,025	3,150	0	0	0
<b>Total</b>	<b>13,312</b>	<b>0</b>	<b>0</b>	<b>13,312</b>	<b>1,058</b>	<b>2,079</b>	<b>7,025</b>	<b>3,150</b>	<b>0</b>	<b>0</b>	<b>0</b>

**OPERATING BUDGET IMPACT (\$000)**

Maintenance				42	0	0	0	14	14	14
Energy				42	0	0	0	14	14	14
<b>Net Impact</b>				<b>84</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>28</b>	<b>28</b>	<b>28</b>

**DESCRIPTION**

This project provides for the design, utilities and construction of a new four lane divided, closed section roadway from its current terminus south of Oxbridge Tract to its intersection with future Dorsey Mill Road a distance of approximately 2,565 feet. The project has been coordinated to accommodate the Corridor Cities Transitway within its right-of-way. The new road will be constructed below Father Hurley Boulevard at the existing bridge crossing. This project will also provide construction of a new arch culvert at the existing stream crossing with 5-foot concrete sidewalk along the east side and 8-foot bike way along west side of the road.

**ESTIMATED SCHEDULE**

The design phase is to be completed in the Spring of 2011 (FY11). Right-of-way is expected by the Spring of 2011(FY11). Construction to start in the Fall of 2011(FY12) and is expected to be completed within 24 months.

**JUSTIFICATION**

This project will provide a vital link in the Germantown area. The new roadway segment provides the necessary link to the future Dorsey Mill Road overpass over I-270, thus providing a connection to Clarksburg without using I-270. This link would create a connection between economic centers on the east and west side of I-270. The linkage to Dorsey Mill Road also establishes a roadway alternative to congested north-south roadways such as I-270 and MD355. In addition, The Corridor City Transitway (CCT) will operate within the right-of-way of Century Boulevard.

**OTHER**

This project was initially funded under County's Subdivision Road Participation Program and now is a stand alone project for FY11 fiscal year.

Special Capital Projects Legislation will be proposed by the County Executive.

**FISCAL NOTE**

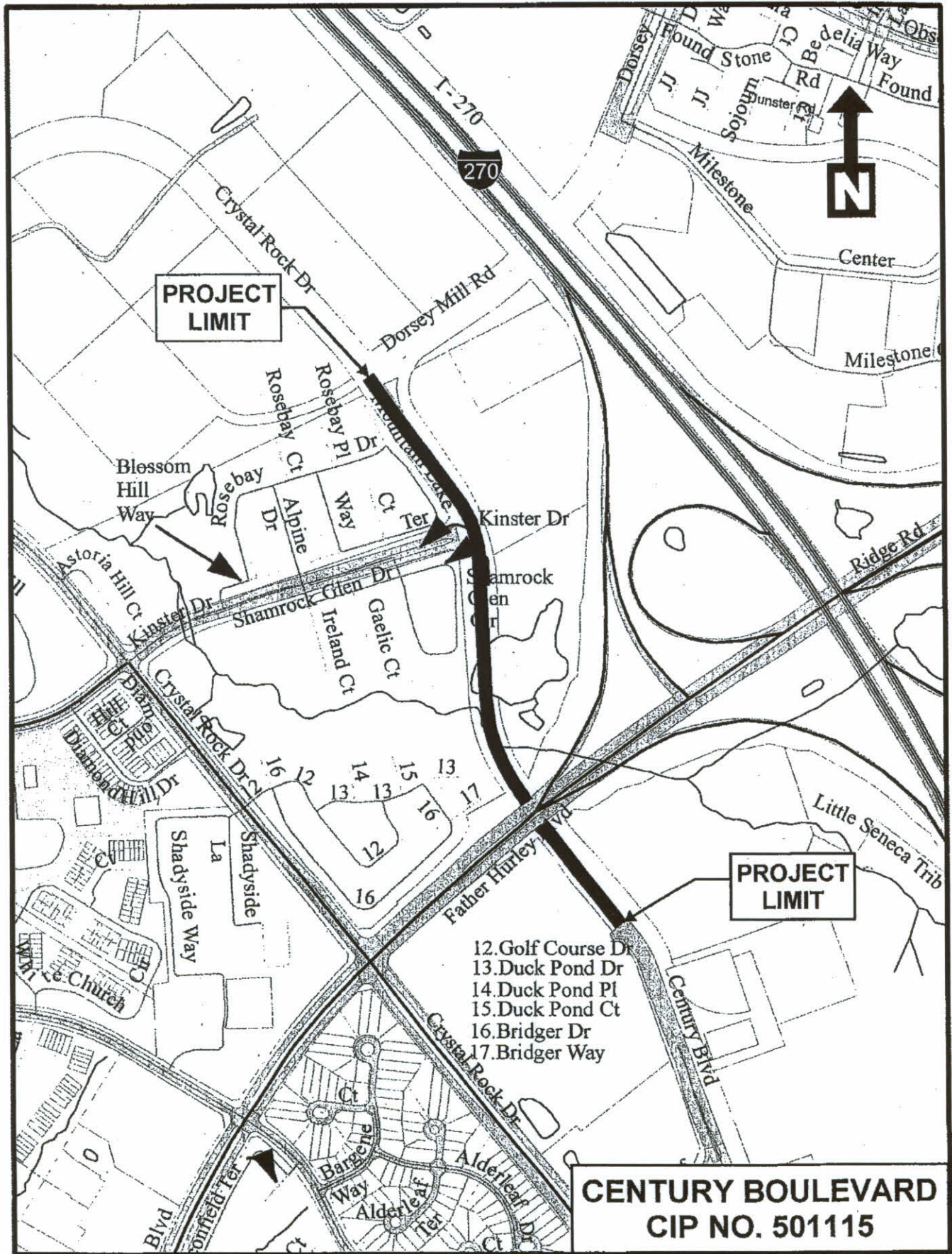
Shift expenditures from FY12 to FY14 to reflect current implementation schedule.

Terms and conditions regarding Contributions from the developer will be specified within the MOU between the County and the developer. Developer land fronting this project will be dedicated.

**OTHER DISCLOSURES**

- A pedestrian impact analysis has been completed for this project.

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP
Date First Appropriation FY11 (\$000)	Maryland Transit Authority (Corridor Cities Transitway)	See Map on Next Page
First Cost Estimate	Developers	
Current Scope FY11 13,312	Maryland State Highway Administration	
Last FY's Cost Estimate 13,312	Maryland Department of the Environment	
Appropriation Request FY12 569	Maryland-National Capital Park and Planning Commission	
Supplemental Appropriation Request 0	Department of Permitting Services	
Transfer 0	Washington Suburban Sanitary Commission	
Cumulative Appropriation 12,743	Allegheny Power	
Expenditures / Encumbrances 0	Washington Gas Light Company	
Unencumbered Balance 12,743	Verizon	
Partial Closeout Thru FY09 0	Annual Bikeway Program	
New Partial Closeout FY10 0		
Total Partial Closeout 0		



- 12. Golf Course Dr
- 13. Duck Pond Dr
- 14. Duck Pond Pl
- 15. Duck Pond Ct
- 16. Bridger Dr
- 17. Bridger Way

**CENTURY BOULEVARD**  
**CIP NO. 501115**

Both the subdivision plan and all necessary mitigation measures must be consistent with an adopted master plan or other relevant land use policy statement. For the Planning Board to accept a roadway capacity improvement as a mitigation measure, the applicant must show that alternative non-auto mitigation measures are not feasible or desirable. In evaluating mitigation measures proposed by an applicant, the Board must place a high priority on design excellence to create a safe, comfortable, and attractive public realm for all users, with particular focus on high-quality pedestrian and transit access to schools, libraries, recreation centers, and other neighborhood facilities.

### **TP3.1 Special Mitigation Standards**

An applicant for a preliminary plan of subdivision located entirely in a Metro Station Policy Area or the Germantown Town Center Policy Area, or entirely in Kensington, White Oak, Rock Spring Park, or the North Bethesda Road Code Urban Area (as shown in maps 34-37), may satisfy the applicant's trip mitigation requirements under **TP Policy Area Mobility Review** if the proposed development would meet all of the following conditions:

- At least 50 percent of the floor area must be used for residences.
- The development must use at least 75 percent of the achievable on-site density allowed under Chapter 59, subject to any lower limit imposed in a Master or Sector Plan and applied under Chapter 59.
- The development must achieve a minimum energy cost savings percentage, using applicable LEED standards, of 17.5% for new construction and 10.5% for renovation, or offset at least 2.5% of its annual building energy costs on site, using applicable LEED standards.

If these requirements are met, the applicant must pay 75% of the trip mitigation payment otherwise required under TP3 to the County Department of Transportation, which must use at least 2/3 of the funds received under this paragraph for any transit system which serves the policy area where the development is located and must use the remaining 1/3 of the funds for any transportation purpose, including any transit system which serves the policy area where the development is located. As used in this paragraph, "transit system" means the transit systems of the Washington Metropolitan Area Transit Authority, Ride On, and the Maryland Transit Administration, and includes any infrastructure project that supports or improves the quality of transit, such as a park and ride lot served by transit, a passenger information system, a queue jumper, or traffic signalization which improves transit efficiency.

### **TP4 Development District Participation**

Under Chapter 14 of the County Code, the County Council may create development districts as a funding mechanism for needed infrastructure in areas of the County where substantial development is expected or encouraged. The Planning Board may approve subdivision plans in accordance with the terms of the development district's provisional adequate public facilities approval (PAPF).



**TP4.1 Preparation of a PAPF**

The development district's PAPF must be prepared in the following manner:

One or more property owners in the proposed district may submit to the Planning Board an application for provisional adequate public facilities approval for the entire district. In addition to explaining how each development located in the district will comply with all applicable zoning and subdivision requirements, this application must:

- show the number and type of housing units and square footage and type of the non-residential space to be developed, as well as a schedule of proposed buildout in five-year increments;
- identify any infrastructure improvements necessary to satisfy the adequate public facilities requirements for development districts; and
- estimate the cost to provide these improvements.

**TP4.2 Planning Board Review**

The Planning Board must then review all developments within the proposed development district as if they are a single development for compliance with the Adequate Public Facilities Ordinance. The Planning Board must identify the public facilities needed to support the buildout of the development district after considering the results of the following tests for facility adequacy:

- Transportation tests for development districts are identical to those for Local Area Transportation Review. Planning Department staff must prepare a list of transportation infrastructure needed to maintain public facility adequacy.
- The PAPF application must be referred to Montgomery County Public Schools staff for recommendations for each stage of development in the proposed district. MCPS staff must calculate the extent to which the development district will add to MCPS's current enrollment projections. MCPS staff must apply the existing school adequacy test to the projections with the additional enrollment and prepare a list of public school infrastructure needed to maintain public facility adequacy.
- The PAPF application must be referred to the Washington Suburban Sanitary Commission for recommendations for each stage of development in the proposed district. Wastewater conveyance and water transmission facilities must be considered adequate if existing or programmed (fully-funded within the first 5 years of the approved WSSC capital improvements program) facilities can accommodate (as defined by WSSC) all existing authorizations plus the growth in the development district. Adequacy of water and wastewater treatment facilities must be evaluated using the intermediate or "most probable" forecasts of future growth plus development district growth, but only to the extent that development district growth exceeds the forecast for any time period. If a test is not met, WSSC must prepare a list of water and sewer system infrastructure needed to maintain public facility adequacy.

- The PAPF application must be referred to the County Executive for recommendations for each stage of development in the proposed district regarding police, fire, and health facilities. Adequacy of police, fire, and health facilities must be evaluated using the intermediate or most probable forecasts of future growth plus development district growth, but only to the extent that development district growth exceeds the forecast for any time period. Any facility capacity that remains is available to be used by the development district. If any facility capacity deficits exist, the County Executive must prepare a list of infrastructure needed to maintain public facility adequacy.

#### **TP4.3 Planning Board Approval**

The Board may conditionally approve the PAPF application if it will meet all of the requirements of the APFO and Growth Policy. The Board may condition its approval on, among other things, the creation and funding of the district and the building of no more than the maximum number of housing units and the maximum nonresidential space listed in the petition.

For an application to be approved, the applicants must commit to produce the infrastructure improvements needed to meet APF requirements in the proposed district as well as any added requirements specified by the Planning Board. The Planning Board must list these required infrastructure improvements in its approval. The infrastructure improvements may be funded through the development district or otherwise. The development district's PAPF must be prepared in the following manner:

The Planning Board must not approve a PAPF application unless public facilities adequacy is maintained throughout the life of the plan. The timing of infrastructure delivery may be accomplished by withholding the release of building permits until needed public facilities are available to be "counted," or by another similar mechanism.

Infrastructure may be counted for public facilities adequacy, for infrastructure provided by the district, when construction has begun on the facility and funds have been identified and committed to its completion, and, for infrastructure provided by the public sector, when:

- for Local Area Transportation Review, the project is fully-funded within the first 6 years of the approved County, state, or municipal capital improvements program;
- for water and sewer facilities, the project is fully-funded within the first 5 years of the approved WSSC capital improvements program;
- for public school facilities, the project is fully-funded within the first 5 years of the approved Montgomery County Public Schools capital improvements program; and
- for police, fire, and health facilities, the project is fully-funded within the first 6 years of the relevant approved capital improvements program.

#### **TP4.4 Additional Facilities Recommended for Funding**

The County Executive and Planning Board may also recommend to the County Council additional facilities to be provided by the development district or by the public sector to support

development within the district. These facilities may include, but are not limited to libraries, health centers, local parks, social services, greenways, and major recreation facilities.

#### **TP4.5 Satisfaction of APF Requirements**

As provided in Chapter 14 of the County Code, once the development district is created and the financing of all required infrastructure is arranged, the development in the district is considered to have satisfied all APF requirements, any additional requirements that apply to development districts in the Growth Policy, and any other requirement to provide infrastructure which the County adopts within 12 years after the district is created.

#### **TL Local Area Transportation Review (LATR)**

##### **TL1 Standards and Procedures**

To achieve an approximately equivalent transportation level of service in all areas of the County, greater congestion is permitted in policy areas with greater transit accessibility and usage. Table 1 shows the intersection level of service standards by policy area. Local Area Transportation Review must at all times be consistent with the standards and staging mechanisms of adopted master and sector plans.

Local area transportation review must be completed for any subdivision that would generate 30 or more peak-hour automobile trips. For any subdivision that would generate 30-49 peak-hour automobile trips, the Planning Board after receiving a traffic study must require that either:

- all LATR requirements are met; or
- the applicant must make an additional payment to the County equal to 50% of the applicable transportation impact tax before it receives any building permit in the subdivision.

In administering Local Area Transportation Review, the Planning Board must not approve a subdivision if it finds that an unacceptable peak hour level of service will result after considering existing roads, programmed roads, available or programmed mass transportation, and improvements to be provided by the applicant. If the subdivision will affect an intersection or roadway link for which congestion is already unacceptable, then the subdivision may only be approved if the applicant agrees to mitigate either:

- a sufficient number of trips to bring the intersection or link to acceptable levels of congestion, or
- a number of trips equal to 150 percent of the CLV impact attributable to the development.

The nature of the LATR test is such that a traffic study is necessary if local congestion is likely to occur. The Planning Board and staff must examine the applicant's traffic study to determine whether adjustments are necessary to assure that the traffic study is a reasonable and appropriate reflection of the traffic impact of the proposed subdivision after considering all approved development and programmed transportation projects.