



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item #8  
10/03/02

September 27, 2002

## Memorandum

**To:** Montgomery County Planning Board

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

**Re:** Two Annual Growth Policy Issues: *Allowing the Transfer of Development Capacity Within the Cherry Hill Road Employment Area Overlay Zone* and *Bill 32-02 Transportation Management Districts - Amendments*

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### *Summary*

On October 15, the Montgomery County Council will hold public hearings on two issues related to the Annual Growth Policy. Since both are Council actions to implement Montgomery County Planning Board recommendations, staff recommends that the Planning Board support them in its testimony.

### *Issue 1: Allowing the Transfer of Development Capacity Within the Cherry Hill Road Employment Area Overlay Zone*

The first is an Annual Growth Policy amendment that would allow the transfer of non-residential development capacity (or “jobs”) from an approved subdivision to a subdivision in the queue of pending development. The transfer would apply to projects within the Cherry Hill Road Employment Area Overlay Zone only. The amendment supports the public policy objective of a County-sponsored technology park on the former site of the WSSC sludge composting facility by giving the technology park access to unused developed capacity that is currently allocated to other projects within the overlay zone. During its June 20, 2002 review of zoning ordinance text amendment #02-06 (which added “research and development” as a permitted use in the Cherry Hill overlay zone), the Montgomery County Planning Board recommended that such transfers be permitted, and this amendment implements the Board’s recommendation.

On September 12, 2002, the County Council’s Planning, Housing and Economic Development Committee met to review the Board’s recommendation and agreed that an AGP amendment is required to allow the transfers to take place. For that meeting, Park and Planning staff prepared a detailed memo on the issue, including suggested language

for the amendment. Attached on circles 1 to 19 is the packet for the PHED Committee meeting, which includes: the Planning Board's June 2002 recommendations, the Park and Planning staff memo, and Council staff's reaction.

Staff recommends that the Planning Board support the AGP amendment because it implements the Board's objective of allowing the reallocation of unused development capacity to the proposed County-sponsored technology park.

#### *Issue 2: Bill 32-02 Transportation Management Districts - Amendments*

In the 2001-2003 AGP Policy Element, the Planning Board recommended that the County Council require all employers with 25 or more employees to participate in Transportation Management Organizations. In most of the County's Transportation Management Districts (TMD), only employers located in development approved after the creation of the TMO are required to participate. If only a fraction of the employers located within the TMD are participating in TMO activities, it is more difficult to achieve the desired result: a higher percentage of employees commuting by means other than driving alone.

Consistent with the Board's recommendation, Bill 32-02 would require these employers to:

- Turn in a plan for meeting master plan mode share goals;
- Make a reasonable effort to achieve those goals;
- Participate in the monitoring efforts of the TMO (e.g., surveys, etc).

The Planning Board did not recommend, and Bill 32-02 does not require, that the TMO fee be extended to existing employers. Instead, the approach taken will be the same as that currently in use in the Silver Spring Transportation Management District, where participation by "existing" employers is already occurring.

In addition to implementing the Planning Board's AGP Policy Element recommendations, Bill 32-02 would also make some other changes to the TMD legislation. The two main changes are (1) that it would bring all TMDs under a single authorizing law, and (2) it would delete the requirement that TMDs must include a Metro Station Policy Area. Although all current TMDs (and the upcoming Shady Grove TMD) include at least one Metro station policy area within its boundaries, the amendment will allow the County to consider TMDs in other areas. Staff notes that the change would not, by itself, create such a TMD – and when a new TMD is proposed, it will come before the Planning Board for review.

Attached for the Board's information are two documents: Bill 32-02 as proposed (on circles 20 to 34) and the first nine pages of the *Final Draft 2001-2003 AGP Policy Element's* section on "Strengthening the AGP's Support of Smart Growth in Metro Station Policy Areas" on circles 35 to 44. In that section, the Planning Board articulated four actions to "strengthen the County's ability to provide the infrastructure needed to support planned development, remove barriers to the approval of the 'smartest of smart

growth,' that is, mixed-use development at Metro stations; and strengthen policy and regulatory tools for achieving transit use and affordable housing goals." These four actions were: (1) countywide application of the development impact tax, (2) use of the Silver Spring CBD methodology for Local Area Transportation Review in all Metro station policy areas, (3) amendment of the Alternative Review Procedure for Metro Station Policy Areas to allow it to be used for Policy Area Transportation Review (staging ceilings), and (4) requiring all employers within Transportation Management Districts with 25 or more employees to participate in the TMO. Of those four actions, only one has not yet been implemented. This is the TMO participation requirement that would be implemented with the passage of this legislation.

Because the proposed legislation implements the Planning Board's AGP objectives, staff recommends that the Planning Board support Bill 32-02.

MEMORANDUM

August 30, 2002

TO: Planning, Housing, and Economic Development Committee  
FROM: Ralph D. Wilson, Senior Legislative Analyst *RDW*  
SUBJECT: 2<sup>nd</sup> Worksession – ZTA 02-06, Cherry Hill Road Employment Area Overlay Zone

Background

Zoning Text Amendment 02-06 would permit research and development activities by right in the Cherry Hill Overlay Zone. At the previous worksession, the Committee agreed with staff's recommendation to add a full range of research and development uses to support efforts to create a new Science and Technology Center.

The Committee also discussed a proposal made by Bill Kominers, on behalf of Grosvenor, to allow non-residential density to be transferred between properties in the Cherry Hill Overlay Zone. The proposal was not part of the ZTA as introduced and had not been reviewed by the Planning Board or its staff. The Committee generally agreed with the density transfer concept, but recognized that there were important details that needed to be worked out. The ZTA was referred back to the Planning Board for review and comment on how best to include a transfer of density element. The Committee noted that if a lengthy study was required, the density transfer issue should be separated from the main provision of the ZTA and considered separately.

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Density Transfer Proposal

The Planning Board and Technical Staff are recommending that the density transfer proposal be refined to "allow the transfer of AGP development capacity from approved properties with available capacity to the I-2 zoned properties within the Cherry Hill Overlay Zone". The Board and Technical Staff do not believe that the Zoning Ordinance is the best place for a provision that allows a transfer of a finding of adequate public facilities.

To implement the development capacity transfer concept, the Board and Technical Staff recommend that the ZTA be revised to clarify that development capacity transfers within the overlay zone are subject to the procedures of the Annual Growth Policy. The AGP, in addition to the ZTA, would be amended under the Planning Board and Technical Staff recommendation to allow capacity transfers in the Cherry Hill Overlay Zone.

**Council Staff is comfortable with the Board and Technical Staff recommendations for addressing development capacity transfers, provided the overlay zone only references the AGP procedures and does not include substantive elements of the transfer.** The advertisement for the ZTA was to include research and development and possibly other industrial and retail uses in the Cherry Hill Overlay Zone. To include substantive elements of the development capacity transfer as part of ZTA 02-06 would be questionable.

f:\wilson\zta\zta02-06\2nd worksession memo 02-06.doc



September 27, 2002

## Memorandum

**To:** Gregory Russ, Development Review

**From:** Karl Moritz, Research & Technology Center

**Re:** Zoning Text Amendment 02-06 (Cherry Hill Overlay Zone) and the Annual Growth Policy

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### *Summary*

In the Montgomery County Planning Board's recommendations on Zoning Text Amendment 02-06, the Board endorsed the concept of allowing "the transfer of approved but unused non-residential density between properties in the overlay zone." The intent is to allow the transfer of AGP development capacity from approved properties with available capacity to the I-2 properties within the overlay zone.

I believe that the zoning ordinance is not the best place for a provision that allows the transfer of a finding of adequate public facilities. Instead, I believe the provision should be in the AGP. There are currently provisions in the AGP governing the transfer of a finding of adequate public facilities, or development capacity, from one property owner to another; at this time, however, they don't allow transfers outside of the Silver Spring CBD. It would require very modest revisions to the current AGP text to allow such transfers in the Cherry Hill Overlay Zone.

If it is decided to implement the ability to transfer development capacity through the zoning ordinance, I would suggest that the language be changed to clearly indicate that it is "AGP development capacity," or "the finding of adequate public facilities," that is being transferred, rather than (or in addition to) density.

### *Background on Transferability of AGP Development Capacity*

Until the mid-1990s, the AGP did not permit the transfer of a finding of adequate public facilities from one property owner to another under any circumstances. The Planning Board and the County Council explored the possibility of allowing such

transfers as part of the “Pipeline Reform” studies in both the *1997-1999 AGP Policy Element* and the *1999-2001 AGP Policy Elements*. The Planning Board ultimately recommended against allowing such transfers on a broad basis out of concern that it would grant private property owners rights to an APF finding that they don’t currently have. The Council agreed and did not pursue the issue.

However, both the Planning Board and the County Council did agree to amend the AGP to allow transfers of AGP capacity in the Silver Spring CBD only. The primary purpose was to allow owners to sell the development capacity of vacant buildings if they demolished the vacant building. But the provision also allows transfers from approved but unbuilt subdivisions to pending subdivisions awaiting approval.

I have attached at the end of this memo a revised version of the current AGP provision. There are only very modest changes needed to accomplish the Planning Board’s goal of allowing development capacity transfers in the Cherry Hill Overlay Zone under certain circumstances. I have also suggested a revision to a sentence that required the transfer agreement to specify the amount paid for the transferred development capacity. I believe it is only necessary for the agreement to specify the amount of capacity transferred, but not the cost.

The Annual Growth Policy has an amendment process. An amendment may be proposed by the County Council, the County Executive, or the Planning Board. The process requires a public hearing, and there is a 45-day comment period (which can be shortened if the Council agrees that there is an emergency).

### ***Appropriateness of Implementing APF Rules in the Zoning Ordinance***

Although the zoning ordinance addresses the adequacy of public facilities (APF), it focuses on testing for the adequacy of public facilities at rezoning, and does not provide guidance on APF tests at subdivision. Certainly the main source of guidance on APF at subdivision is the Annual Growth Policy. This view is strengthened by the fact that the AGP already contains provisions describing the conditions under which development capacity may be transferred from one subdivision to another.

One of the reasons why I believe the zoning ordinance is not the place to confer the ability to transfer development capacity from one property to another is that what is being transferred is not “density,” but a finding of adequate public facilities, or “development capacity.” These are two distinct concepts; the density allowed or approved on a property may not be the same as the amount of development for which a property has a finding of adequate public facilities. For example, development capacity is measured in “jobs,” whereas density is measured in square footage. Further, a finding of adequate public facilities has an expiration date, which is not true of density.

***Density Transfer Text in Zoning Text Amendment 02-06***

Most of the language in zoning text amendment 02-06 relating to this issue can be deleted. However, it would be appropriate to include language stating that development capacity transfers within the overlay zone are permitted, pursuant to the procedures in the FY03 Annual Growth Policy as amended on (whatever date it is amended).



***Annual Growth Policy  
Text Regarding the Transferability of Development Capacity***

**TA4 Development Capacity Transferability**

**TA4.1 Metro Station Policy Areas**

To further encourage housing in Metro Station Policy Areas, the Planning Board may convert jobs capacity to housing capacity on a case-by-case basis when existing staging ceiling capacity is not adequate to approve or amend a preliminary plan of subdivision for a development located in a Metro Station Policy Area. The Board must approve a conversion ratio in each case that is not less than .5 nor more than .75 jobs for each housing unit. The applicant must satisfy all applicable Local Area Transportation Review requirements and show that the capacity conversion is consistent with the applicable master or sector plan.

**TA4.2 Silver Spring Central Business District and the US 29/Cherry Hill Road Employment Area Overlay Zone**

**TA4.2.1 Planning Board Ability to Approve Transfer**

The Planning Board may approve the voluntary transfer of staging ceiling capacity from an existing vacant building or a subdivision in the pipeline of approved development to a subdivision in the queue of pending development if both subdivisions are located completely within the Silver Spring Central Business District policy area or the US 29/Cherry Hill Road Employment Area Overlay Zone in the Fairland/White Oak policy area. Job capacity may be transferred to jobs and housing capacity may be transferred to housing on a one-for-one ratio, and in the Silver Spring Central Business District only, jobs-to-housing or housing-to-jobs capacity may be transferred at a ratio set in each case by the Planning Board.

**TA4.2.2 Capacity Transferable From Approved Subdivisions or Buildings**

The original holder of the development capacity may transfer all or part of the development capacity to another subdivision. If only a portion of the development capacity is transferred, the balance of the development capacity remains with the original holder until the original subdivision's development approval expires. For partially completed subdivisions in the pipeline of approved development, only that portion of the development capacity on which construction has not begun may be transferred.

**TA4.2.3 Capacity Transferable to Pending Subdivisions**

The developer of a subdivision in the queue of pending development may provide some or all of the development capacity needed for the subdivision by receiving capacity under TA4.2. If net remaining capacity is available but is insufficient for a subdivision at the head of the queue to receive subdivision approval, the developer of that subdivision may provide the remaining development capacity required by receiving capacity under TA4.2.

**TA4.2.4 Transfer Agreements**

Before the Board approves a transfer, a transfer agreement must be executed by the transferor, the transferee, the Planning Board and the County Department of Public Works and Transportation.

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The transfer agreement must provide that the original holder of the development capacity forfeits the Planning Board finding of adequate public facilities for the approved building or subdivision. The agreement must specify the cost to the transferee, on a per-unit or per-job basis, amount of the transferred development capacity.

#### **TA4.2.5 Treatment of Subdivisions From Which Capacity Has Been Transferred**

If development capacity is transferred from an approved but not completed subdivision, the portion of that subdivision associated with the transferred development capacity must be removed from the pipeline of approved development and building permits, if any, issued for buildings in the subdivision associated with the transferred capacity should be canceled. The original subdivision, or portion of that subdivision from which development capacity was transferred, may be resubmitted to the Planning Board for adequate public facilities approval and if the Board finds that adequate public facilities will be available the Board may reinstate the subdivision or portion of the subdivision into the pipeline of approved development.

#### **TA4.2.6 Expiration Dates of Transferred Capacity**

The expiration date of development capacity transferred from a subdivision in the pipeline of approved development to a subdivision in the queue of pending development does not change as a result of the transfer. Development capacity transferred from an existing building expires when the receiving subdivision's preliminary plan expires.

#### **TA4.2.7 Transferring Capacity from Existing Buildings**

The owner of an existing building may transfer the development capacity associated with the building under TA4.2. The owner must apply for and receive from the Planning Board certification of the development capacity associated with the building. Any transfer of development capacity from an existing building is not complete until the building is demolished. However, the owner of an existing non-residential building who wishes to convert that building to residential use may convert the jobs capacity associated with that building to residential capacity at a ratio set by the Planning Board.

#### **TA4.2.8 Demolition of Existing Buildings**

The owner of an existing building may demolish the building before transferring its development capacity. The owner of a demolished building may transfer the development capacity within five years after the building is demolished. If the development capacity is transferred from a demolished building, the owner may later apply to the Planning Board for approval of adequate public facilities for a new development on the site. If the Board finds that adequate public facilities will be available for that development, the Board must add the proposed development to the pipeline of approved development.

#### **TA4.2.9 Transferring Housing Capacity to Jobs and Vice Versa**

If capacity is transferred from a non-residential building or subdivision to a residential subdivision, or from a residential building or subdivision to a non-residential subdivision, subject to the Planning Board's approval at the time of subdivision approval, the appropriate jobs-to-housing or housing to jobs ratio must be maintained.

#### **TA4.2.10 Required Approval Date of Source Subdivision**

Development capacity may be transferred from a subdivision which was in the pipeline of approved development before May 19, 1998. A subdivision in the Silver Spring CBD using transferred development capacity must meet the requirements of **TP2**.

**TA4.2.11 Transferability of Capacity Created Under Certain Procedures**

Development capacity acquired under the Special Ceiling Allocation for Affordable Housing or under any Alternative Review Procedure must not be transferred under **TA4.2**.

**TA4.2.12 Transferability of Capacity Created Through Ceiling Flexibility**

A subdivision that received subdivision approval through **TP4.1** may be removed from the pipeline of approved development and resubmitted for subdivision approved using transferred development capacity under **TA4.2** unless the subdivision is required to implement a traffic mitigation program. If a traffic mitigation program is required, capacity may be transferred if all off-site transportation improvement conditions are met by either the developer of the original subdivision or the developer of the subdivision receiving transferred development capacity.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

## MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

June 20, 2002

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board on Zoning Ordinance Text Amendment No. 02-06

### BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning commission reviewed additional information for Zoning Ordinance Text Amendment No 02-06, at its regular meeting on June 20, 2002. By a vote of 4-0, the Board recommends that the text amendment be approved with modifications.

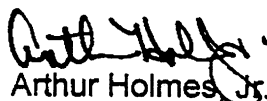
The proposed text amendment would allow 'research and development' as a permitted use in the U.S. 29/Cherry Hill Road Employment Area Overlay Zone. Currently, research and development uses are not permitted in the I-2 zone and the overlay zone. The Board, at its May 30, 2002 meeting recommended approval of this concept. Since that time, the County Council received a request to include in the overlay zone several other technology and bioscience uses that are allowed in the Life Sciences Center (LSC) zone. It was further requested that a process be established that would allow the transfer of approved but unused non-residential density between properties in the overlay zone.

The Board supports the proposed zoning text amendment with modifications to permit density transfer only to the I-2 zone within the Cherry Hill Road Overlay Zone. This modification would allow transfer of density to the I-2 properties, which are located away from residential uses. Additionally, the transferred density can only come from an unused portion of an approved Preliminary Plan of Subdivision. Therefore, no additional density is being requested within the overlay zone. The means for managing the density transfer would require the transferee (receiving) property to submit a

preliminary plan and a site plan for review and approval while also recording covenants on all affected properties. The Board's recommendations are included in the technical staff report supplement.

### CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on a motion of Commissioner Bryant, seconded by Commissioner Robinson, with Commissioners Bryant, Robinson, Wellington and Chairman Holmes voting in favor of the motion, and with Vice-Chair Perdue absent, at its regular meeting held in Silver Spring, Maryland on Thursday, June 20, 2002.

  
Arthur Holmes, Jr.  
Chairman

AH:gr



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #7**  
**Supplement**  
**6/20/02**

**DATE:** June 19, 2002  
**TO:** Montgomery County Planning Board  
**VIA:** Michael Ma, Zoning Supervisor  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To allow research and development and other related uses as permitted uses in the Cherry Hill Road Employment Area Overlay Zone, under certain circumstances. Permit additional density transfer provisions within the overlay zone.

**TEXT AMENDMENT:** No. 02-06  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmembers Praisner and Berlage  
**INTRODUCED DATE:** April 30, 2002

**PLANNING BOARD REVIEW:** May 30, 2002 and June 20, 2002  
**PUBLIC HEARING:** Held on June 4, 2002, 1:30pm

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**STAFF RECOMMENDATION:** APPROVAL with modifications

#### **PURPOSE OF THE TEXT AMENDMENT**

To allow 'research and development' and other related uses as permitted uses in the U.S. 29/Cherry Hill Road Employment Area Overlay Zone. Permit additional density transfer provisions within the overlay zone.

#### **BACKGROUND/ANALYSIS**

- At the County Council public hearing held on June 4, 2002, a representative for Grosvenor Atlantic and West Group Management expressed the need for including in the overlay zone several other technology and bioscience uses that are allowed in the Life Sciences Center (LSC) zone. It was further requested that a process be established that would allow the transfer of approved but unused density between

properties in the overlay zone. As such, the Council requested that Park and Planning further evaluate the text amendment with the proposed additional language.

- In a memo to the Planning Board dated June 14, 2002, staff recommended that the proposed additional uses for the overlay zone be approved with one change to the manufacturing, compounding, processing or packaging category to remove the specific reference to certain products such as cosmetics, drugs, perfumes, pharmaceuticals and toiletries. Staff continues to recommend approval of the inclusion of additional uses.
  
- Staff further recommended that the request to allow non-residential density to be transferred within the Cherry Hill overlay zone should not be pursued at this time. Staff believed that it would be premature to establish density transfer provisions throughout the overlay zone prior to the evaluation of development impacts from the removal of the area from moratorium. Additionally, the details of a density transfer provision for application throughout the overlay zone should be thoroughly examined to provide the assurance that there would be no additional impacts on the adjacent residential properties. Staff has since met with the Community-Based Planning Division and William Kominers, a representative for Grosvenor Atlantic and West Group Management. A modified proposal was discussed to address staff's concerns. This proposal is discussed below.

#### Density Transfer Proposal

One of the concerns with the original proposal was its ability to transfer density to properties along those property boundaries located adjacent to residential uses and to properties located in the C-6 retail center. As such the proposal has been modified to permit density transfer only to the I-2 zone within the Cherry Hill Road Overlay Zone. This modification would allow transfer of density to the WSSC site 2 and all other I-2 properties that are located away from residential uses adjacent to the overlay zone. Additionally, the transferred density can only come from an unused portion of an approved Preliminary Plan of Subdivision. Therefore, no additional density is being requested within the overlay zone. The means for managing the density transfer would require the transferee (receiving) property to submit a site plan for review and approval while also recording covenants on all affected properties. It should be noted that only non-residential density could be transferred as part of this proposal. Staff believes that the modified proposal addresses staff's concerns.

#### **RECOMMENDATION**

The staff supports the proposed text amendment to allow research and development and other related uses as a permitted use in the U.S. 29/Cherry Hill Road Employment Area Overlay Zone with the exclusion of those uses prohibited by the overlay zone. Staff believes that the inclusion of a density transfer provision, as modified, for use throughout the overlay zone could be advantageous for the County's redevelopment efforts for the WSSC site 2 and other I-2 zoned properties within the overlay zone. By limiting the transferee sites to the I-2 zone, staff believes

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that impacts on adjacent residential properties would be minimized. This amendment can be accomplished through the proposed language, as amended, in Attachment 1.

GR

**Attachments**

1. Proposed Text Amendment 02-06
2. Letter from William Kominers on ZTA 02-06



Law Offices

# HOLLAND & KNIGHT LLP

3 Bethesda Metro Center  
Suite 800  
Bethesda, Maryland 20814-6301

301-654-7800  
FAX 301-656-3978  
www.hklaw.com

## ATTACHMENT 2

Annapolis	
Atlanta	
Bethesda	Orlando
Boston	Providence
Bradenton	St. Petersburg
Chicago	San Antonio
Fort Lauderdale	San Francisco
Jacksonville	Seattle
Lakeland	Tallahassee
Los Angeles	Tampa
Melbourne	Washington, D.C.
Miami	West Palm Beach
International Offices:	
Caracas*	Sao Paulo
Mexico City	Tel Aviv*
Rio de Janeiro	Tokyo
*Representative Office	

June 19, 2002

WILLIAM KOMINERS  
301-215-6610

Internet Address:  
wkominers@hklaw.com

### VIA HAND DELIVERY

Mr. Joseph R. Davis  
Chief, Development Review Division  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20901

Re: Zoning Text Amendment No. 02-06

Dear Mr. Davis:

In accordance with our discussion on June 17, 2002, please find enclosed a revision to the transfer of density provisions proposed as an amendment to Text Amendment No. 02-06. As suggested in our discussion, I have modified the transfer provision (attached hereto as Exhibit "1") to allow transfer of density from any site within the Route 29/Cherry Hill Road Employment Overlay Area to only those properties where the base zone is I-2. This will facilitate the intended purpose of supporting the proposed Science and Technology Center (the "Technology Center") presently being considered for the WSSC Site 2.

As we discussed, the density transfer provision is intended to facilitate the new Technology Center, by allowing a "jump start" using development capacity that has already received development approvals. With this provision, density could be transferred between properties within the Overlay Zone to implement development at the Technology Center, to accommodate early needs of prospective tenants, and to respond more quickly to specific future conditions. This is an opportunity to "prime the pump" as new science and technology users approach the site.

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Mr. Joseph R. Davis

June 19, 2002

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The attached proposal will allow any area in the Overlay Zone to send approved density, but only property with a base zone of I-2 could receive density. This would carefully and clearly direct the use of this procedure in support of the County's goals for the Technology Center.

Utilizing existing approved development capacity can allow the County to achieve its goals early, responding to tenants who may want to locate before all new approvals can be established. Approved but as yet unbuilt development, already having obtained adequate public facilities approval, can be immediately diverted to undeveloped or underdeveloped sites to establish the base of technology development that is encouraged by the Text Amendment. This will allow the Technology Center to respond to tenant interest and opportunities, but without impacting staging ceiling, and without the need for additional local area review improvements—the approved density will already have met both standards. Because the density has already been approved (and the necessary transportation improvements already undertaken), use of this development capacity will not affect the surrounding area. No new or additional impacts will be created.

Density transfer can also deal with other uncertain future conditions. At present, the Annual Growth Policy ("AGP") is proposing additional jobs capacity for Fairland/White Oak. However, the Food and Drug Administration may utilize a substantial portion of that capacity as that project proceeds. Thus, in the future, there may be constraints on obtaining and implementing development approvals for the Technology Center. There may also be a substantial time lag between the desire of companies to locate in the area and the ability to fully obtain necessary regulatory approvals. Use of the existing development density can be used to respond to such early opportunities. Transfer of density could also accommodate incremental additional density needs that might be beyond quantities for which the County has approved capacity on the Technology Center itself.

For all of the foregoing reasons, we believe the density transfer provision, as currently restricted to being used for the I-2 Zone, will be beneficial to the County, to the employment area itself, and to achievement of the goal of bringing the new Technology Center to Eastern Montgomery County as rapidly and efficiently as possible, while also being responsive to the marketplace.

Enclosed as Exhibit "1" is revised text for the Density Transfer provision. Please do not hesitate to contact me if you have any questions on this matter or any additional thoughts about the specific language on Exhibit "1."

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Mr. Joseph R. Davis  
June 19, 2002  
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Thank you for your attention to this matter.

Very truly yours,

HOLLAND & KNIGHT LLP



William Kominers

Enclosure

Cc: Mr. Ralph Wilson  
Mr. Henry Bernstein  
Ms. Meg McGirr  
Mr. Gregory Russ  
Mr. William Barron  
Ms. Piera Weiss



Exhibit "1"

Add the following subsection (h)(2) to Section 59-C-18.132(h) and renumber the existing subsection(h) as (h)(1):

Section 59-C-18.132

\* \* \*

(h) Transfer of Density.

(1) \* \* \*

(2) Notwithstanding subsection (1) above, any approved, but unbuilt, density may be transferred from any property within the overlay zone (regardless of the underlying base zone) to any other property within the overlay zone with a base zone of I-2, in accordance with the standards and limitations herein:

- (A) Density that is transferred may not exceed the amount of density approved by a valid Preliminary Plan of Subdivision for the transferor property; and
- (B) Only non-residential square footage may be transferred; and
- (C) Density may only be transferred at a one-to-one ratio of square footage, but may be converted to another type of use at a conversion ratio approved by the Planning Board; and
- (D) A site plan for the transferee property is submitted and approved in accordance with the provisions of Division 59-D-3; and
- (E) The transfer of density shall be evidenced by means of recorded instruments, approved by the Planning Board or its designee, including covenants on all affected properties. The covenants shall be recorded in the Land Records of Montgomery County, and shall contain, at least, the following: (1) as to the transferor property, limit the future development on the transferor property to the amount of density approved under the applicable Preliminary Plan, reduced by the square footage of density transferred; indicate the amount of square footage transferred; identify the transferee property, and (2) as to the transferee property, indicate the amount of square footage transferred; identify the transferor property; and
- (F) Nothing in this section shall limit the ability of the owner of either a transferor or transferee property to apply for a new or revised Preliminary Plan of Subdivision to allow further

development or redevelopment of such property, in  
accordance with normal requirements.

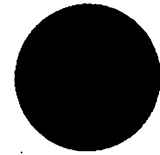
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-TA 02-06

046523

RW  
CC

Greater Colesville Citizens Association  
P. O. Box 4087  
Colesville, MD 20914



Montgomery County Council  
Attn.: President Silverman  
100 Maryland Ave.  
Rockville, MD 20850

May 19, 2002

Re: ZTA 02-06

Dear Council President Silverman and Councilmembers:

GCCA supports the proposed text amendment 02-06 as a means of providing more office development in West Farm. The office development is needed to help balance jobs and housing in Eastern Montgomery County. Such a balance will allow people to live near their place of employment. Even when people choose to drive some distance to work, an improved jobs/housing balance will make better use of existing roads. More people will travel in the non-peak direction - east in the morning and west in the evening.

The change in the overlay zoning is also needed to provide space for businesses that will be supporting and working with the FDA when they move to White Oak.

Sincerely

Jim Michal  
GCCA President

RECEIVED COUNCIL  
MAY 23 8:31

19

Bill No. 32-02  
Concerning: Transportation Management  
Districts - Amendments  
Revised: Sept. 20, 2002 Draft No. 1  
Introduced: Sept. 24, 2002  
Expires: March 24, 2004  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Silverman

**AN ACT** to:

- (1) clarify the law related to transportation management districts;
- (2) eliminate the requirement that a transportation management district be located in a Metro station policy area;
- (3) require an employer that employs a certain number of employees in a transportation management district to submit an annual survey on traffic mitigation efforts; and
- (4) generally amend County law regarding transportation demand management.

By repealing

Montgomery County Code  
Chapter 42A, Ridesharing and Transportation Management  
Sections 42A-10 through 42A-20

By amending

Chapter 42A, Ridesharing and Transportation Management  
Sections 42A-20A through 42A-30

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Chapter 42A is amended as follows:**

2   **Article II. Transportation [System] Demand Management.**

3   **[42A-10. Application.**

4           This article applies in the Silver Spring central business district as defined in section 59-C-  
5 6.12(c).]

6   **[42A-11. Definitions.**

7           In this Article, unless the context indicates otherwise:

- 8           (a)   Alternative work hours program means any system for shifting the workday of an  
9           employee so that the workday starts or ends outside of the peak period, including:  
10           (1)   Compressed workweeks;  
11           (2)   Staggered work hours involving a shift in the set work hours of all  
12           employees at the workplace; or  
13           (3)   Flexible work hours involving individually determined work hours within  
14           guidelines established by the employer.
- 15           (b)   Annual growth policy means the most recently adopted annual growth policy under  
16           Section 33A-13.
- 17           (c)   Carpool means a motor vehicle occupied by two (2) or more employees traveling  
18           together.
- 19           (d)   Commute means a home-to-work or work-to-home trip.
- 20           (e)   Department means the Department of Public Works and Transportation.
- 21           (f)   Director means the Director of the Department of Public Works and Transportation.
- 22           (g)   District means a transportation management district established in the Silver Spring  
23           central business district as defined in Section 59-C-6.12(c).
- 24           (h)   Employee means any person hired by an employer, including part-time and seasonal  
25           workers.
- 26           (i)   Employer means any public or private employer, including the County, having a  
27           permanent place of business in the district. The maximum number of employees on  
28           the largest shift determines the size of the employer. "Employer" does not include:  
29           (1)   Contractors with no permanent place of business in the district;  
30           (2)   Other businesses with no permanent workplace or location; or  
31           (3)   Government agencies not required by law to follow county regulations.
- 32           (j)   Peak period means the hours from 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m.  
33           during workdays.
- 34           (k)   Planning board means the Montgomery County Planning Board of the Maryland-  
35           National Capital Park and Planning Commission.
- 36           (l)   Single-occupancy vehicle means a motor vehicle occupied by one (1) employee for  
37           commuting purposes, excluding two-wheeled vehicles.
- 38           (m)   Transportation system management means any method of reducing demand for road  
39           capacity during the peak period, including alternative work hours programs,  
40           carpools, vanpools, subsidized transit passes, preferential parking, and peak period  
41           parking charges.
- 42           (n)   Vanpool means a van occupied by at least eight (8) employees traveling together.
- 43           (o)   Workplace means the place of employment, base of operation, or predominant  
44           location of an employee.]

45   **[42A-12. Findings, general intent.**



- 46 (a) The district is experiencing significant new economic activity and interest in further  
47 revitalization.
- 48 (b) Limited transportation infrastructure in the district and vicinity and related traffic  
49 congestion, pedestrian access, and safety concerns are primary constraining factors  
50 in achieving county land-use and economic development objectives.
- 51 (c) Transportation system management is undertaken in conjunction with adequate  
52 transportation facility review, planned capital improvement projects, and parking  
53 and traffic control measures to provide sufficient transportation capacity to achieve  
54 county land use objectives and further permit economic development in the district.
- 55 (d) Transportation system management will reduce the demand for road capacity and  
56 promote traffic safety and pedestrian access in the district and vicinity.
- 57 (e) Transportation system management will also help reduce vehicular emissions,  
58 energy consumption, and noise levels. The resulting improved traffic levels of  
59 service, air quality, and ambient noise levels will contribute to making the district  
60 and vicinity an attractive and convenient place to live, work, visit, and do business.
- 61 (f) Transportation system management will equitably allocate responsibility for  
62 reducing single-occupancy vehicle trips among government, developers, employers,  
63 nonresidential property owners, and the public.
- 64 (g) The establishment of transportation system management in the district in accordance  
65 with this article substantially advances these important governmental objectives.  
66 Adoption of this article is in the best interests of the public health, safety, and  
67 general welfare, both within the district and the county.]

68 **[42A-13. Creation; purpose; authority of the department and planning board.**

- 69 (a) Transportation system management is established in the district to foster coordinated  
70 and comprehensive transportation system management by government, new  
71 developers, property owners and employers in order to:
  - 72 (1) Increase transportation capacity;
  - 73 (2) Reduce existing and future levels of traffic congestion;
  - 74 (3) Reduce air and noise pollution; and
  - 75 (4) Promote traffic safety and pedestrian access.
- 76 (b) Transportation system management in the district must be implemented in a manner  
77 consistent with the commuting goals specified in the annual growth policy.
- 78 (c) (1) The department may take action necessary to achieve transportation system  
79 management in the district in accordance with this article and other  
80 applicable law, including:
  - 81 a. Constrained parking;
  - 82 b. Monitoring and assessment of changing traffic patterns and  
83 pedestrian access and safety in the district and vicinity;
  - 84 c. Establishment of traffic and parking control measures in the district  
85 and vicinity;
  - 86 d. Provision of approved transportation-related capital projects in the  
87 district and vicinity;
  - 88 e. Promotion, development, and implementation of transit and r  
89 ridesharing incentive programs;
  - 90 f. Promotion of regional cooperation between the county and other  
91 governmental agencies; and

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- 92 g. Establishment of cooperative county and private sector programs to  
 93 increase ridesharing and transit usage.  
 94 (2) The department and the planning board may, in accordance with this article  
 95 and other applicable law, impose reasonable transportation system  
 96 management measures as conditions on development.]

97 **[42A-14. Advisory committee.**

- 98 (a) Creation. The district must have a Silver Spring Transportation System Management  
 99 Advisory Committee. The members of the advisory committee are appointed by the  
 100 county executive and confirmed by the county council.  
 101 (b) Composition.  
 102 (1) The advisory committee has twelve (12) voting members and four (4)  
 103 nonvoting members. The county executive should appoint the voting  
 104 members so that:  
 105 a. Three (3) members are nominated by the Silver Spring Chamber of  
 106 Commerce;  
 107 b. Three (3) members are nominated by the Silver Spring Advisory  
 108 Board of which:  
 109 i. One (1) is a resident of the district;  
 110 ii. One (1) is a resident within the north and western Silver  
 111 Spring Sector Plan areas; and  
 112 iii. One (1) is a resident of the southern portion of the Kemp  
 113 Mill- Four Corners or the Silver Spring East master plan area,  
 114 or the Montgomery County portion of the Takoma Park  
 115 planning area.  
 116 c. Three (3) members are employers of fewer than fifty (50) employees  
 117 in the district; and  
 118 d. Three (3) members are employers of fifty (50) or more employees in  
 119 the district.  
 120 (2) The following are nonvoting members of the advisory committee:  
 121 a. The directors or their designees of the:  
 122 i. Department; and  
 123 ii. Silver Spring Center;  
 124 b. A representative of the planning board;  
 125 c. A representative of the Montgomery County Police Department.  
 126 (c) Nominations.  
 127 (1) Prior to deciding who shall be recommended to the county executive for  
 128 membership on the advisory committee, the Silver Spring Advisory Board  
 129 must solicit nominations, by letter, from the presidents of each civic  
 130 association in the district and the Silver Spring/Takoma Park policy area as  
 131 well as from the mayor and city council of Takoma Park.  
 132 (2) The county executive may reject individuals nominated to serve on an  
 133 advisory committee and request additional nominations.  
 134 (d) Term.  
 135 (1) Advisory committee members serve for a period of three (3) years beginning  
 136 July 1. However, when the advisory committee is first formed:

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- 137 a. The period between appointment and the next July 1 is not counted  
 138 as part of a committee member's term; and  
 139 b. The county executive may designate up to six (6) members to serve  
 140 for only two (2) years.
- 141 (2) The county executive may reappoint committee members.
- 142 (e) Duties.
- 143 (1) The advisory committee may advise the county government on all aspects of  
 144 programs, management, and finances relating to the implementation of  
 145 transportation system management in the district and vicinity.
- 146 (2) The advisory committee:
- 147 a. Proposes guidelines for traffic mitigation plans;  
 148 b. Monitors the implementation of the traffic mitigation plans;  
 149 c. Evaluates progress in attaining the commuting goals specified in the  
 150 annual growth policy;  
 151 d. Recommends government, private, or joint actions necessary to  
 152 facilitate attainment of the commuting goals specified in the annual  
 153 growth policy;  
 154 e. Advises the director on parking policies, including the parking rate  
 155 structures for garages in the district funded under section 60-16;  
 156 f. Reviews traffic patterns and control measures in the district and  
 157 vicinity, including any relevant issues relating to neighborhood  
 158 parking and pedestrian access and safety;  
 159 g. Submits comments and recommendations on the director's annual  
 160 report required under section 42A-18 by December 1 of each year,  
 161 starting December 1, 1988.
- 162 (f) Compensation.
- 163 (1) The county does not compensate members of the advisory committee for  
 164 their services.
- 165 (2) Committee members are exempt from chapter 19A, "Ethics."
- 166 (g) Advisory category. The advisory committee is in the advisory category established  
 167 in section 2-143.]
- 168 **[42A-15. Traffic mitigation plans.**
- 169 (a) Upon determining that an employer may be subject to this article, the director must  
 170 notify the employer, by letter, that the employer must submit a traffic mitigation plan  
 171 meeting the requirements of this section.
- 172 (b) An employer who employs twenty-five (25) or more employees in the district at any  
 173 time within one (1) year preceding the date of notice under subsection (a) must  
 174 submit a traffic mitigation plan to the director. The traffic mitigation plan should be  
 175 consistent with the commuting goals specified in the annual growth policy. A traffic  
 176 mitigation plan may include use of an alternate work hours program, carpools,  
 177 vanpools, subsidized transit passes, preferential parking, and peak period parking  
 178 charges or other transportation system management measures.
- 179 (c) The director must establish a schedule for initial submission of traffic mitigation  
 180 plans by employers.
- 181 (d) Each employer must submit its traffic mitigation plan within forty-five (45) days  
 182 after receiving notice under subsection (a).

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- 183 (e) The director may extend an employer's time to file a traffic mitigation plan for good
- 184 cause.
- 185 (f) (1) The director may require that the owner of a nonresidential building in the
- 186 district submit a traffic mitigation plan if:
- 187 a. The director determines that a plan under this subsection can best
- 188 achieve the purpose of this article because of the owner's control of
- 189 parking or common space or for other similar reasons; and
- 190 b. Notice is provided to the owner of the building as required in
- 191 subsection (a).
- 192 (2) As designated in the notice, the plan may cover all or some of the employers
- 193 in the building. A plan required to be submitted under this subsection may be
- 194 in addition to that required under this section of an individual employer.
- 195 (3) Upon receipt of the notice required under this section, an owner must submit
- 196 a traffic mitigation plan that meets the requirements applicable to an
- 197 employer.
- 198 (g) The director, in consultation with the advisory committee, must provide guidance in
- 199 the preparation of traffic mitigation plans.
- 200 (h) The director must:
- 201 (1) Determine if each proposed plan meets the requirements of this section; and
- 202 (2) Participate with the employer in revising a plan that does not meet the
- 203 requirements.
- 204 (i) (1) An employer required to submit a traffic mitigation plan may submit a
- 205 consolidated plan with other employers in the same building or complex of
- 206 buildings. A consolidated plan must be designed so that the consolidated
- 207 actions would satisfy the requirements of this section measured on an overall
- 208 basis for all employers covered by the plan.
- 209 (2) An owner may submit a traffic mitigation plan on behalf of one (1) or more
- 210 employers in a building to satisfy the requirements imposed on the
- 211 employers under this section measured on an overall basis for all employers
- 212 covered by the plan.
- 213 (j) The director may require an employer to resubmit a plan that is not consistent with
- 214 the commuting goals specified in the annual growth policy. The director may not
- 215 require an employer to submit a plan that meets the requirements of this section
- 216 more than once every two (2) years.]

**[42A-16. Traffic mitigation agreements.**

- 218 (a) (1) Any proposed subdivision or optional method development in the district
- 219 must be subject to a traffic mitigation agreement if the planning board
- 220 determines, under criteria and standards adopted by the county council
- 221 relating to the adequacy of public transportation facilities, that additional
- 222 transportation facilities or traffic alleviation measures are necessary for
- 223 approval.
- 224 (2) A traffic mitigation agreement must specify those transportation system
- 225 management measures that will be undertaken by the applicant or other
- 226 responsible party. The transportation system management measures must be
- 227 reasonably calculated to ensure that public transportation facilities will be

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- 228 adequate to serve the proposed development by meeting the commuting  
 229 goals specified in the annual growth policy.
- 230 (b) A traffic mitigation agreement may include:
- 231 (1) The required appointment of a transportation coordinator;
- 232 (2) Limitations on parking spaces;
- 233 (3) Peak period parking charges;
- 234 (4) Preferential parking requirements for carpools and vanpools;
- 235 (5) Provision of transit or vanpool subsidies for employees;
- 236 (6) Financial or other participation in the construction or operation of related on-  
 237 or off-site transportation facilities or systems; or
- 238 (7) Other transportation system management measures;
- 239 (c) A traffic mitigation agreement must be:
- 240 (1) Executed by the applicant, the department, and the planning board; and
- 241 (2) Made an express condition of any approval for subdivision under chapter 50  
 242 or optional method development under chapter 59, division 59-D-2, as  
 243 appropriate.
- 244 (d) A traffic mitigation agreement is subject to all additional review and approval  
 245 requirements of chapter 50, "Subdivision Regulations," and chapter 59, division 59-  
 246 D-2, "Project Plan for Optional Method of Development, CBD Zones," as  
 247 applicable.
- 248 (e) A traffic mitigation agreement may:
- 249 (1) Require adequate financial security assurances, including bonds, letters of  
 250 credit, or similar guarantees;
- 251 (2) Be made binding on future tenants; and
- 252 (3) Provide for liquidated damages, specific performance, or other remedies, as  
 253 appropriate.
- 254 (f) The department is the agency designated to enforce the contractual terms of a traffic  
 255 mitigation agreement. This may not be interpreted, however, to limit the planning  
 256 board's authority to revoke or otherwise enforce, in accordance with law, any  
 257 approvals granted for subdivision under chapter 50 or optional method development  
 258 under chapter 59, division 59-D-2, in the event of noncompliance with a traffic  
 259 mitigation agreement.]

260 **[42A-17. Annual survey.**

- 261 (a) The director, after consulting the advisory committee, must establish a schedule for  
 262 annual commuter surveys.
- 263 (b) The director, after consulting the advisory committee, must prepare an employer  
 264 commuter survey form that generates information:
- 265 (1) To establish an accurate data base of employee commute patterns;
- 266 (2) To monitor progress toward the attainment of the commuting goals specified  
 267 in the annual growth policy.
- 268 (c) The director must mail the annual survey forms to all employers under the schedule  
 269 the director establishes. Each notified employer must submit a completed survey to  
 270 the director within forty-five (45) days after receiving the form.]

271 **[42A-18. Annual report.**

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- 272 (a) By September 1 of each year, starting September 1, 1988, the director must submit  
 273 to the advisory committee and planning board an annual report on transportation  
 274 system management in the district. The report must include:  
 275 (1) Employee commute patterns by employer in the district;  
 276 (2) Auto occupancy rates by employer in the district;  
 277 (3) Level of service measurements for each intersection in the district and  
 278 selected critical intersections outside of the district:  
 279 (4) Parking supply and demand in the district;  
 280 (5) Status of road or intersection improvements, signal automation, and other  
 281 traffic modifications in the district and vicinity;  
 282 (6) Transit utilization and availability in the district; and  
 283 (7) Carpooling and vanpooling efforts in the district.
- 284 (b) By January 1 of each year, starting January 1, 1989, the county executive must  
 285 forward the annual report to the county council. The county executive must note any  
 286 areas of disagreement between the director and the advisory committee.
- 287 (c) If the commuting goals specified in the annual growth policy are not met by  
 288 September 1, 1990, the director must recommend to the county executive corrective  
 289 action, which may include mandatory mitigation measures for the district.]

290 **[42A-19. Regulations.**

291 The county executive may adopt regulations under method (2) to implement this article.]

292 **[42A-20. Enforcement.**

293 The department enforces this article. Any employer who fails within thirty (30) days after a  
 294 second notice to submit a traffic mitigation plan or to provide survey data is guilty of a class C  
 295 violation. An owner who fails within thirty (30) days after a second notice to submit a traffic  
 296 mitigation plan is guilty of a class C violation. Any party to a traffic mitigation agreement under  
 297 section 42A-16 who fails within thirty (30) days after notice to comply with the agreement is guilty  
 298 of a class A violation.]

299 **[Article III. Transportation Management in Metro Station Areas.]**

300 **[42A-20A] 42A-20. Application.**

301 This Article applies [in] to each Metro station policy area or transportation management  
 302 district designated in the Alternative Review Procedure[s] for Transportation Facilities adopted in  
 303 the [annual growth policy] Annual Growth Policy, and [in] to any other Metro station policy area or  
 304 transportation management district designated in the [annual growth policy] Annual Growth Policy.

305 **42A-21. Definitions.**

306 In this Article, unless the context indicates otherwise:

- 307 [(a)] *Alternative work hours program* means any system [for shifting] that shifts the  
 308 workday of an employee so that the workday starts or ends outside of [the] a peak  
 309 period, including:  
 310 (1) compressed workweeks;  
 311 (2) staggered work hours involving a shift in the set work hours of [some or all]  
 312 an employee[s] at the workplace; or  
 313 (3) flexible work hours involving individually determined work hours under  
 314 guidelines established by the employer.
- 315 [(b)] *Annual [growth policy] Growth Policy* means the most recently adopted Annual  
 316 Growth Policy under Section 33A-15.
- 317 [(c)] *Carpool* means a motor vehicle occupied by 2 or more employees traveling together.

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- 318 [(d)] *Commute* means a home-to-work or work-to-home trip.
- 319 [(e)] *Department* means the Department of Public Works and Transportation.
- 320 [(f)] *Director* means the Director of the Department of Public Works and Transportation
- 321 or the Director's designee.
- 322 [(g)] *District* means a transportation management district created [in one or more
- 323 Metro station policy areas] under this Article.
- 324 [(h)] *Employee* means [any] a person hired by an employer, including a part-time or
- 325 seasonal worker.
- 326 [(i)] *Employer* means any public or private [employer] business or government entity,
- 327 including the County, employing 25 or more employees and having a permanent
- 328 place of business in a district. The maximum number of employees on the largest
- 329 shift working in a district determines the size of the employer. Employer does not
- 330 include:
- 331 (1) a contractor, business, or government entity with no permanent place of
- 332 business in a district;
- 333 (2) a home-based business;
- 334 (3) a business with no employees housed at that work site;
- 335 [(2)] (4) any business with no permanent workplace or location; or
- 336 [(3)] (5) any government agency not required by law to follow County regulations.
- 337 [(j)] *Peak period* means the hours of highest transportation use in a district each workday,
- 338 as defined in the resolution creating [that] a district.
- 339 [(k)] *Planning Board* means the Montgomery County Planning Board of the Maryland-
- 340 National Capital Park and Planning Commission.
- 341 [(l)] *Single-occupancy vehicle* means a motor vehicle occupied by one employee for
- 342 commuting purposes, other than a two-wheeled vehicle.
- 343 Telework means a work arrangement where a manager directs or permits an
- 344 employee to perform usual job duties away from the central workplace in
- 345 accordance with established performance expectations and agency-approved or
- 346 agreed-upon terms.
- 347 [(m)] *Transportation demand management* means any method of reducing demand for
- 348 road capacity during [the] a peak period, including an alternative work hours
- 349 program[s], carpool, vanpool, subsidized transit pass[es], preferential parking,
- 350 improved bicycle and pedestrian access and safety, [and] or peak period parking
- 351 charge[s].
- 352 [(n)] *Transportation management organization* means a public, nonprofit private, or
- 353 public-private firm, corporation, or instrumentality created or contracted to manage
- 354 or coordinate transportation demand management programs.
- 355 [(o)] *Vanpool* means a van occupied by at least 8 employees traveling together.
- 356 [(p)] *Workplace* means the place of employment, base of operations, or predominant
- 357 location of an employee.

**42A-22. Findings and purposes.**

- 358 (a) New economic development is important to stimulate the local economy. Focusing
- 359 new development in [highly] high transit-[serviceable] service areas [, such as Metro
- 360 station policy areas,] is an important County land use and economic development
- 361 objective.
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- 363 (b) Limited transportation infrastructure, [and related] traffic congestion, pedestrian  
364 access, and safety [concerns] issues [are constraining] impede the [achievement of]  
365 County's land use and economic development objectives.
- 366 (c) Transportation demand management, in conjunction with adequate transportation  
367 facility review, planned capital improvement projects, and parking and traffic  
368 control measures, will:
  - 369 (1) help provide sufficient transportation capacity to achieve County land use  
370 objectives and permit further economic development [in Metro station policy  
371 areas];
  - 372 (2) reduce the demand for road capacity, and promote traffic safety and  
373 pedestrian access [in Metro station policy areas]; and
  - 374 (3) help reduce vehicular emissions, energy consumption, and noise levels.
- 375 (d) [The resulting improved] Improved traffic levels [of service,] and air quality and a  
376 reduction in ambient noise levels will help [make Metro station policy areas] create  
377 attractive and convenient places to live, work, visit, and [do] conduct business.
- 378 (e) Transportation demand management will [also] equitably allocate responsibility for  
379 reducing single-occupancy vehicle trips among government, developers, employers,  
380 [nonresidential] property owners, and the public.
- 381 (f) Transportation demand management should be [used in Metro station policy areas,]  
382 consistent with any commuting goals set in the [annual growth policy] Annual  
383 Growth Policy, [to] and foster coordinated and comprehensive government, private  
384 industry, and public action [by government, new developers, property owners and  
385 employers] to:
  - 386 (1) increase transportation capacity;
  - 387 (2) reduce existing and future levels of traffic congestion;
  - 388 (3) reduce air and noise pollution; and
  - 389 (4) promote traffic safety and pedestrian access.
- 390 (g) [The use of transportation] Transportation demand management [in Metro station  
391 policy areas] will substantially advance [these important] public policy objectives.  
392 Adoption of this Article is in the best interest of the public health, safety, and general  
393 welfare [in Metro station policy areas and] of the County [as a whole].

**42A-23. Districts; authority of the Department and Planning Board.**

- 395 (a) The County Council by resolution may create [one or more] transportation  
396 management districts [in each Metro station policy area, or may create one or more  
397 districts which include all or parts of more than one Metro station policy area. A  
398 district may also include areas which are served by the same transportation network  
399 as the Metro station policy area].
- 400 (b) The Department may take actions necessary to achieve effective transportation  
401 demand management in each district, on its own or by contract with any employer,  
402 transportation management organization, or other party, including:
  - 403 (1) regulating or limiting public parking, by regulation adopted under method  
404 (2);
  - 405 (2) monitoring and assessing traffic patterns and pedestrian access and safety;
  - 406 (3) adopting traffic and parking control measures;
  - 407 (4) providing approved transportation-related capital projects;
  - 408 (5) promoting or implementing transit and ridesharing incentives;

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- 409 (6) promoting regional cooperation between the County and other government
- 410 agencies; and
- 411 (7) creating cooperative County-private sector programs to increase ridesharing
- 412 and transit use.
- 413 (c) In each transportation management district, sole source contracts may be signed
- 414 with, or funds granted to, one or more transportation management organizations to
- 415 carry out transportation demand management programs [which] that the Department
- 416 could otherwise carry out, under Chapter 11B.
- 417 (d) The Department and the Planning Board may, in accordance with this Article and
- 418 other applicable law, jointly impose reasonable transportation demand management
- 419 measures as conditions on the Board's approval of development in any district.
- 420 (e) Each district may have a Transportation Management District Advisory Committee
- 421 if the Executive by regulation decides [one] a Committee is necessary to carry out
- 422 this Article or if the Council creates [one] a Committee by resolution. The
- 423 Executive or Council may [also] designate any existing advisory body appointed by
- 424 the Executive and confirmed by the Council to serve as a Transportation
- 425 Management District Advisory Committee. The Executive must appoint and the
- 426 Council must confirm [The] members of any Advisory Committee [must be
- 427 appointed by the Executive and confirmed by the Council]. The County must not
- 428 compensate members of an Advisory Committee for their services. [The County
- 429 financial disclosure law does not apply to] Advisory Committee members, [who are]
- 430 not otherwise public employees as defined in Chapter 19A, are not subject to the
- 431 financial disclosure provisions of that Chapter.

432 **42A-24. Traffic mitigation plans.**

- 433 (a) If an employer is subject to this Section, and if the Council by resolution or in the
- 434 [annual growth policy] Annual Growth Policy has approved the use of traffic
- 435 mitigation plans in a given district, the Director [may] must notify the employer by
- 436 letter that the employer must submit a traffic mitigation plan meeting the
- 437 requirements of this Section.
- 438 (b) An employer who employs 25 or more employees in a district at any time within one
- 439 year before receiving notice under subsection (a) must submit a traffic mitigation
- 440 plan to the Director.
- 441 (c) The traffic mitigation plan should be consistent with and contribute to the
- 442 achievement of any commuting goals set in the [annual growth policy] Annual
- 443 Growth Policy. A traffic mitigation plan may include [use of] an alternative work
- 444 hours program, [incentives for] carpool[s] or vanpool[s] incentives, subsidized
- 445 transit passes, preferential parking, peak period or single-occupancy vehicle parking
- 446 charges, improved bicycle and pedestrian access and safety, telework, and other
- 447 transportation demand management measures.
- 448 (d) The Director [may] must establish a schedule for initial submission of traffic
- 449 mitigation plans by employers.
- 450 (e) Each employer must submit its traffic mitigation plan within [45] 90 days after
- 451 receiving notice under subsection (a). The Director may extend an employer's time
- 452 to file a traffic mitigation plan for good cause.
- 453 (f) (1) An employer may submit a consolidated traffic mitigation plan with other

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- 454 employers in the same building or building complex [of buildings].  
 455 [Similarly, an] An owner of a nonresidential building in a district may  
 456 submit a consolidated traffic mitigation plan on behalf of one or more  
 457 employers in the building.
- 458 (2) A consolidated plan must be designed so that the action[s] it requires  
 459 [satisfy] satisfies this Section for [all] employers covered by the plan.
- 460 (g) (1) The Director may require an owner of a nonresidential building in a district  
 461 to submit a traffic mitigation plan if:  
 462 (A) the Director finds that a plan is necessary to achieve the purpose of  
 463 this Article because of the owner's control of parking or common  
 464 space or for similar reasons; and  
 465 (B) the Director notifies the owner of the building under subsection (a).
- 466 (2) As specified in the notice, the owner's plan may cover all or some employers  
 467 in the building. A plan submitted under this subsection may be in addition to  
 468 one an individual employer must submit.
- 469 (3) After receiving notice under this Section, an owner must submit a traffic  
 470 mitigation plan that meets the requirements applicable to an employer.
- 471 (h) (1) The Director may require an owner of a residential building or complex with  
 472 at least 100 dwelling units, [(including a common ownership community as  
 473 defined in Chapter 10B)], in a district to submit a traffic mitigation plan if:  
 474 (A) the Director finds that a plan is necessary to achieve the purpose of  
 475 this Article because of the owner's control of parking or common  
 476 space or for similar reasons; and  
 477 (B) the Director notifies the owner of the building under subsection (a).
- 478 (2) After receiving notice under this Section, an owner of a residential building  
 479 must submit a traffic mitigation plan that meets the requirements applicable  
 480 to an employer.
- 481 (i) The Director must offer to help employers and owners prepare traffic mitigation  
 482 plans.
- 483 (j) The Director must:  
 484 (1) decide if each proposed plan meets the requirements of this Section; and  
 485 (2) help the employer or owner revise a plan which does not meet the  
 486 requirements.
- 487 (k) The Director may require an employer or owner to resubmit a plan [which] that is  
 488 not consistent with any commuting goals set in the [annual growth policy] Annual  
 489 Growth Policy. The Director must not require an employer to submit a plan that  
 490 meets the requirements of this Section more than once every 2 years.

491 **Sec. 42A-25. Traffic mitigation agreements.**

- 492 (a) Any proposed subdivision or optional method development in a district must be  
 493 subject to a traffic mitigation agreement if the Planning Board and the Director  
 494 jointly decide, under standards adopted by the Council for the adequacy of public  
 495 transportation, that more transportation facilities or transportation demand  
 496 management measures are necessary to meet any commuting goals set in the annual  
 497 growth policy.
- 498 (b) A traffic mitigation agreement must specify [those] transportation demand  
 499 management measures that the applicant or [another] a responsible party must carry

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500 out. The measures must be reasonably calculated to ensure that public transportation  
 501 will be adequate to meet [any] commuting goals set in the [annual growth policy]  
 502 Annual Growth Policy.

- 503 (c) A traffic mitigation agreement may require:
- 504 (1) naming a transportation coordinator;
  - 505 (2) limits on parking spaces;
  - 506 (3) peak period or single-occupancy vehicle parking charges;
  - 507 (4) preferential parking for carpools and vanpools;
  - 508 (5) subsidies for employees not using single-occupancy vehicles;
  - 509 (6) financial or other participation in building or operating on- or off-site  
 510 transportation facilities or systems; [or]
  - 511 (7) providing space on a periodic basis for marketing and promotional activities  
 512 of the district;
  - 513 (8) designating permanent areas in prominent locations to display information  
 514 on commuting options; or
  - 515 [(7)] (9) other transportation demand management measures[;].

- 516 (d) A traffic mitigation agreement must be:
- 517 (1) agreed to by the applicant, the Department, and the Planning Board;
  - 518 (2) made an express condition of any approval for subdivision under Chapter 50  
 519 or optional method development under Chapter 59; [and]
  - 520 (3) subject to all other review and approval requirements of Chapter 50 and  
 521 Chapter 59 [which apply]; and
  - 522 (4) recorded in the County's land records.

- 523 (e) A traffic mitigation agreement may:
- 524 (1) require adequate financial security, including bonds, letters of credit, or  
 525 similar guarantees;
  - 526 (2) bind future tenants of the development; and
  - 527 (3) specify liquidated damages, specific performance, or other contractual  
 528 remedies, as appropriate.

- 529 (f) The Department must enforce the terms of each traffic mitigation agreement. This  
 530 does not limit the Planning Board's authority to revoke or otherwise enforce any  
 531 approvals for subdivision under Chapter 50 or optional method development under  
 532 Chapter 59[ if an applicant does not fully comply with a traffic mitigation  
 533 agreement].

534 **42A-26. Annual survey.**

- 535 (a) The Director, after consulting any Advisory Committee, [may] must schedule an  
 536 annual commuter survey[s].
- 537 (b) The Director, after consulting any Advisory Committee, [may] must prepare a  
 538 survey that generates information to:
- 539 (1) create an accurate data base of employee commuting patterns in the [policy  
 540 area] district; and
  - 541 (2) monitor progress toward reaching any commuting goals set in the [annual  
 542 growth policy] Annual Growth Policy.
- 543 (c) The Department [may] must [mail] distribute the annual survey [form] to [all]  
 544 employers under the schedule the Director sets. Each notified employer must submit  
 545 a completed survey to the Department within 45 days after receiving [the form] it.

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546 **42A-27. Executive report.**

- 547 (a) By [September 1] December 1 of each even-numbered year, the Director must  
 548 submit to any Advisory Committee and the Planning Board [an annual] a report on  
 549 transportation demand management in each district. The report should include:  
 550 (1) employee commuting patterns by employer;  
 551 (2) auto occupancy rates by employer;  
 552 (3) level of service measurements for each intersection in the policy area and  
 553 selected critical intersections outside [it] the area;  
 554 (4) parking supply and demand;  
 555 (5) status of road or intersection improvements, signal automation, improved  
 556 bicycle and pedestrian access and safety, and other traffic modifications in or  
 557 near the policy area;  
 558 (6) transit use and availability;  
 559 (7) carpool[ing] and vanpool[ing] use; and  
 560 (8) the source and use of any funds received under this Article.  
 561 (b) By [January 1] March 1 of each odd-numbered year, the Executive must forward  
 562 each annual report to the Council. The Executive must note any area of  
 563 disagreement between the Director and an Advisory Committee.  
 564 (c) If any commuting goals set in the [annual growth policy] Annual Growth Policy are  
 565 not met [by] 4 years after a district is created, the Director must recommend [to the  
 566 Executive] corrective action to the Executive. This action may include mandatory  
 567 mitigation measures. If the Executive agrees that such action[s are] is necessary, the  
 568 Executive should propose appropriate legislation or adopt appropriate regulations as  
 569 authorized by law.

570 **42A-28. Regulations.**

571 The Executive may adopt regulations under method (2) to implement this Article.

572 **42A-29. Transportation Management Fee.**

- 573 (a) (1) The Executive may by regulation adopted under method (2) set the amount  
 574 of a Transportation Management Fee [which] that the Department may  
 575 annually charge, [each applicant who files an application after January 1,  
 576 1994,] under the Alternative Review Procedures [for Metro Station Policy  
 577 Areas adopted] in the [FY 1994 annual growth policy] Annual Growth  
 578 Policy, an applicant for subdivision or optional method development  
 579 approval in a district and each successor in interest of that applicant.  
 580 (2) If the resolution creating a district so provides, the Department may also  
 581 charge the Transportation Management Fee to:  
 582 (A) [all] other applicants for subdivision or optional method development  
 583 in the district, and each successor in interest; and  
 584 (B) owners of existing commercial and multi-unit residential properties  
 585 in the district.  
 586 (b) The rate of the Transportation Management Fee must be set to produce not more  
 587 than an amount of revenue substantially equal to:  
 588 (1) the portion of the cost[s] of administering the district, including the review  
 589 and monitoring of traffic mitigation plans under Section 42A-24 and traffic  
 590 mitigation agreements under Section 42A-25, reasonably attributable to the  
 591 transportation effects of development subject to the Fee; and

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- 592 (2) the portion of the cost[s] of any program implemented under Section 42A-
- 593 23(b), including any vehicle or other equipment necessary to carry out any
- 594 such program, reasonably attributable to the transportation effects of
- 595 development subject to the Fee.
- 596 (c) A Transportation Management Fee may be assessed on:
- 597 (1) the gross floor area, the maximum or actual number of employees, or the
- 598 average number of customers, visitors, or patients, in a nonresidential
- 599 building;
- 600 (2) the number of dwelling units, or the gross floor area, in a residential
- 601 building;
- 602 (3) the number of parking spaces associated with a building; or
- 603 (4) any other measurement reasonably related to transportation use by occupants
- 604 of, employees located in, or visitors to a particular development.
- 605 (d) The fee and the basis on which it is assessed may vary from one district to another
- 606 and one building or land use category to another.
- 607 (e) If the fee is assessed on a gross floor area basis (as defined in Section 8-38(e)), the
- 608 rate must not exceed 10 cents per square foot subject to the Fee. If the fee is
- 609 assessed on any other basis, the total collected each year from any district must not
- 610 significantly exceed the total amount [which] that would have been collected from
- 611 that district if the rate were 10 cents per square foot.

**42A-30. Enforcement.**

The Department must enforce this Article. [Any] An employer [who] that does not submit a traffic mitigation plan or provide survey data within 30 days after a second notice has committed a class C violation. An owner who does not submit a traffic mitigation plan within 30 days after a second notice has committed a class C violation. [Any] A party to a traffic mitigation agreement under Section 42A-26 who does not comply with the agreement within 30 days after notice has committed a class A violation.

*Approved:*

620 \_\_\_\_\_  
 Steven A. Silverman, President, County Council Date

621 *Approved:*

622 \_\_\_\_\_  
 Douglas M. Duncan, County Executive Date

623 *This is a correct copy of Council action.*

624 \_\_\_\_\_  
 Mary A. Edgar, CMC, Clerk of the Council Date

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## Strengthening the AGP's Support of Smart Growth in Metro Station Policy Areas

In the *Final Draft 1999-2001 Annual Growth Policy Policy Element*, the Montgomery County Planning Board recommended significant changes to the Annual Growth Policy and the Development Impact Tax to support Smart Growth initiatives by streamlining the development approval process in selected areas, increasing opportunities to obtain additional financing for needed infrastructure improvements and traffic mitigation programs, and other objectives. Although several of the Board's recommendations were not implemented at the time, the Planning Board believes a number of them were viewed positively. Moreover, the Planning Board believes that in the past two years the need for these changes has grown more urgent:

- ◆ There were no new transportation improvements countable toward staging ceilings in the FY 2002 AGP Ceiling Element, illustrating the continued challenges to programming needed infrastructure.
- ◆ The County's goal of directing growth to Metro Station Policy Areas is frustrated by a lack of capacity at several stations where highly-desired pending projects cannot move forward.
- ◆ It has become increasingly clear that to achieve the County's transit use and affordable housing goals, every available policy and regulatory option must be considered, and every practicable option implemented.

The Montgomery County Planning Board therefore recommends the implementation of a series of initiatives to (1) strengthen the County's ability to provide the infrastructure needed to support planned development, (2) remove barriers to the approval of the "smartest of smart growth," that is, mixed-use development at Metro stations, and (3) strengthen policy and regulatory tools for achieving transit use and affordable housing goals.

Specifically, the Montgomery County Planning Board recommends the following:

1. **Countywide application of the development impact tax.** The Planning Board recommends reconsideration of the impact tax package in its final form before the Council completed its work on the 1999-2001 Annual Growth Policy. That package exempted Metro Station Policy Areas from the tax, partially exempted MARC station areas from the tax, and set tax rates that would have generated needed revenues without placing a disproportionate burden on new development. This was a Planning Board recommendation in 1999.

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2. **Within Transportation Management Districts, require all employers with 25 or more employees to participate in the TMO.** This was a Planning Board recommendation in 1999.
  3. **Expand use of the Silver Spring CBD methodology for Local Area Transportation Review to all Metro Station Policy Areas.** This allows development projects to use queuing analysis when intersections exceed the 1800 CLV standard and would remove the requirement for development inside Metro Station Policy Areas to test intersections outside the policy area.
  4. **Significantly amend the Alternative Review Procedure for Metro Station Policy Areas.** Under the Planning Board's recommendation, a subdivision within a Metro Station Policy Area could meet both its staging ceiling and local area transportation review requirements
    - ◆ For a subdivision that is at least one-third residential, by agreeing to an added component of moderately priced dwelling units and by agreeing to meet the area's transit mode share goals.
    - ◆ For a subdivision that is less than one-third residential, or exclusively non-residential, by paying the development impact tax and by agreeing to meet the area's transit mode share goals.

The procedure would be available in all Metro Station Policy Areas, irrespective of the presence of a transportation management organization or an up-to-date comprehensive traffic analysis.

In 1999, the Montgomery County Planning Board recommended that development in Metro Station Policy Areas be permitted to use a form of the now-discontinued *Alternative Review Procedure for Expedited Development Approval* (a.k.a. "Pay-and-Go"). The Planning Board believes the new recommendation is consistent with, and better meets, the Planning Board's goals.

### ***Background: Development at Metro Station Policy Areas***

One of the functions of the Annual Growth Policy is to implement the County's policy of directing new development to compact areas served by a variety of transportation options; that is, near Metro stations. The primary AGP mechanism for favoring development at Metro stations over other areas is the "Metro Station Policy Area." Over the past decade and a half, the County carved nine of these areas out of larger policy areas and reduced staging ceilings in the surrounding policy areas so that the development capacity could be redirected to the Metro Station Policy Areas.

In addition to favoring Metro Station Policy Areas when setting staging ceilings, the County has also adopted less-stringent intersection congestion standards in these areas – not just to lessen the burden on new development, but also in recognition of higher transit accessibility and that multi-lane intersections are often anti-pedestrian and therefore counterproductive. The AGP also contains a provision – the *Alternative Review Procedure for Metro Station Policy Areas* – which permits development to meet its Local Area Transportation Review requirements by making a payment to the

County.

For most of the past decade, these provisions have not been fully tested because the demand for new development – at Metro stations and elsewhere – was moderate. In the second half of the 1990s the pace of development accelerated; first in Bethesda CBD, then in Friendship Heights, and now in North Bethesda, particularly at Twinbrook and White Flint. Along the Shady Grove line, development capacity that was relatively plentiful mid-decade is now in short supply. Along the Glenmont line development capacity is readily available. Table 1 shows the net remaining capacities of Metro Station Policy Areas in July 1995 and in July 2000.

**TABLE 1: Capacity for New Approvals**

	Housing		Jobs	
	1995	2000	1995	2000
<i>Shady Grove Line</i>				
Friendship Heights*	800	149	2,650	421
Bethesda CBD	3,200	1,119	5,295	939
Grosvenor	1,400	540	0	28
White Flint	900	163	3,065	817
Twinbrook	300	300	971	80
Shady Grove*	500	500	998	998
<b>Total</b>	<b>7,100</b>	<b>2,771</b>	<b>12,979</b>	<b>3,283</b>
<i>Glenmont Line</i>				
Silver Spring CBD	4,138	5,716	1,707	1,888
Wheaton CBD	1,509	1,391	2,663	2,604
Glenmont**	500	378	200	183
<b>Total</b>	<b>6,147</b>	<b>7,485</b>	<b>4,570</b>	<b>4,675</b>

\* area created in 1998; figure shown for 1995 is the 1998 number.

At issue is more than a lack of development capacity. The situation is complicated by several factors, most notably: coordinating the timing of development and infrastructure in Metro Station Policy Areas, and achieving the levels of transit use necessary to maintaining acceptable roadway congestion.

*Coordinating the Timing of Development and Infrastructure in Metro Station Policy Areas*

In Montgomery County, “smart growth” is implemented by restricting development in the County’s rural and agricultural wedges and directing it to growth areas, primarily inside the Beltway and in the I-270 Corridor. By that measure, further directing development to Metro Station Policy Areas might be termed “brilliant growth,” since these areas have the highest levels of transportation service in the County.

In principle, the adequate public facilities ordinance does not affect the amount or location of development, but rather the timing. We accept that planned development for which there is market demand and a ready developer may not be able to move forward because public facilities are not adequate. We assume that when facilities become adequate, both market demand and a ready developer will eventually move the project ahead.

In Metro Station Policy Areas, there are a smaller number of developable parcels, which correspondingly increases the importance of seeing that each parcel is developed as planned. There is a valuable opportunity created by the confluence of market demand and a ready developer in Metro





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Station Policy Areas -- an opportunity to add to, or create, a lively urban space where people want to be. When viewing development from an AGP perspective, it is easy to forget that development contributes anything other than roadway congestion. Development also provides the housing, jobs, shopping and entertainment opportunities that make our urban spaces attractive. In order to achieve our high expectations for Metro Station Policy Areas, the County must be in a position to approve desired development when the private sector is ready to move forward.

While recognizing the critical importance of attracting appropriate development to Metro Station Policy Areas, the Planning Board also stresses the importance of public investments to maintain public facilities' adequacy and provide the amenities needed to make the areas successful. Suggestions that Metro Station Policy Areas not be subject to APF tests miss the critical role that the public sector plays in supporting successful urban spaces.

The Planning Board believes the County can better achieve its expectations for Metro Station Policy Areas by relaxing its demand that development not be approved until public facilities are programmed and by expanding its ability and commitment to provide those facilities in a timely manner. In other words, the County should continue to commit to providing the same level of infrastructure, but it should not tie approvals in Metro Station Policy Areas to the *timing* of that infrastructure, except in the staging elements of sector plans. To do this, it will need additional resources to invest in those areas, so that the lag time between development approval and infrastructure completion is minimized.

#### *Achieving Transit Mode Share Goals*

Balancing land use and transportation in Metro Station Policy Areas requires a recognition that (1) concentrations of human activity inevitably result in congestion, and (2) there are levels of congestion that are too great. The rationale for allowing more development at Metro Station Policy Areas is the presence of high-quality transit. Balancing land use and transportation depends on maximizing our investment in Metro by getting people to use it. Keeping roadway congestion at acceptable levels depends upon workers arriving to their jobs by means other than driving alone.

Table 2 shows the Transit Mode Share Goals for Metro Station Policy Areas. Generally, the mode share goal is expressed as the percentage of workers (or residents) who arrive (or leave) their jobs (or homes) by a means other than driving a car. The "non-auto driver mode share" includes persons who walk, bike, take transit, or are a passenger in a vehicle. Mode share goals are set in Master Plans and Sector Plans; achievement of the goals is crucial to managing traffic congestion.

The Bethesda CBD Sector Plan and the North Bethesda Master Plan contain "staging elements" These provisions direct the AGP to hold staging ceilings at specific levels until certain conditions are met. In both cases, the elements have several stages, each with its own, progressively higher, transit mode share goal. Currently, North Bethesda is in Stage II, having made material progress toward its mode share goal, while Bethesda CBD is still in Stage I. In part this is because North Bethesda has had a transportation management organization longer than Bethesda CBD.

It is difficult, but definitely not impossible, to materially improve transit mode shares. The County

has implemented policies, developed programs, and invested significant resources toward increasing the transit mode share. In general, these programs offer incentives for transit use, and only to a lesser degree use requirements. For example, while new development is subject to conditions at approval that require achieving mode share goals, participation by the vast majority of workers and residents in Metro Station Policy Areas is voluntary.

The Planning Board believes that Montgomery County is one of the nation's leaders in providing programs to encourage transit use.

The Planning Board also believes that progress toward meeting mode share goals will be slow until the participant base in transportation management organizations is expanded by more than voluntary means.

**TABLE 2: Transit Mode Share Goals**

<i>Metro Station Area</i>	<i>Employee Goal</i>	<i>Resident Goal</i>
Friendship Heights	39%	n/a
Bethesda CBD	37%	n/a
Grosvenor	39%	30%*
White Flint	39%	30%*
Twinbrook	39%	30%*
Shady Grove	12%	25%
<i>Glenmont Line</i>		
Silver Spring CBD**	46%	n/a
Wheaton CBD	n/a	n/a
Glenmont	n/a	n/a

*Goal is percentage of employees or residents that are not auto drivers, generally measured during the most congested time of day ("peak hour" or "peak period").*

*\* for multi-family residential only.*

*\*\*the goal for new non-residential development is 50% non-driver mode share.*

***Friendship Heights, Bethesda CBD, White Flint and Twinbrook***

The four Metro Station Policy Areas where development capacity does not, or may not, meet market demand are Friendship Heights, Bethesda CBD, White Flint and Twinbrook. Of these, the situation is most acute at White Flint and Twinbrook. In Friendship Heights the remaining unapproved parcel is grandfathered under Pay-and-Go. In Bethesda CBD there is a modest amount of available jobs capacity and it is not certain when additional capacity can be provided; however, the Planning Board does not know of any development projects wishing to move forward that are unable to.

***Friendship Heights***

The last remaining unapproved parcel planned for major development in Friendship Heights is Chevy Chase Center. Chevy Chase Center includes office and retail space totalling 1,158 jobs; capacity available for the project in Friendship Heights is 421 jobs, leaving a deficit of 737 jobs. Despite this deficit, Chevy Chase Center can gain approval because it was grandfathered under Pay-and-Go. The Pay-and-Go tax is \$3.50 per square foot in moratorium areas and \$2.50 per square foot in non-moratorium areas. In addition, the project was required to make some intersection improvements required at rezoning. They are also required to participate in the Friendship Heights TMO. The developer suggested that some of the Pay-and-Go payment be spent within the CBD to support the transit mode share.

Additional capacity could be allocated to Friendship Heights from the surrounding Bethesda-

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Chevy Chase policy area. However, the Bethesda CBD Sector Plan specifies that Bethesda CBD should be given preference in reallocating development capacity.

### *Bethesda CBD*

As noted, development in Bethesda CBD is constrained by the staging element of the Bethesda CBD Sector Plan as well as the Annual Growth Policy. Bethesda CBD is currently in Stage I and will be able to move to Stage II when it achieves, or makes substantial progress toward, a non-auto driver mode share of 32 percent. The current non-auto driver mode share is 27 percent.

Through a conversion of housing capacity to jobs, Bethesda CBD has 939 jobs in capacity available for new non-residential approvals. A year ago, the available capacity was 1,119 jobs. While 939 is relatively modest amount of development capacity, the Planning Board is unaware of development projects that are preparing to draw down that capacity, or of development projects that cannot move ahead because they need more capacity than is available.

### *White Flint*

The recent approval of the White Flint Place development reduced the remaining capacity in the White Flint Policy Area to 163 housing units and 817 jobs. The main focus of current interest is the Metro Station property at the northeast corner of Rockville Pike and Marinelli Road. The area surrounding the station property has either been developed or received approval for development in the last 10 years. WMATA recently concluded a multi-year process to select a developer for the site, LCOR. LCOR recently executed a development agreement for the White Flint parcel and is preparing an application to rezone the property. This property is key to developing a transit center/node at White Flint along the Red Line, and LCOR's proposed project appears to have a number of very positive attributes, including an urban grid street pattern and a significant housing component. LCOR would like to build approximately 1.2 million square feet of office, 200,000 square feet of retail and 1,338 dwelling units on this key site.

LCOR's development capacity requirement exceeds what is available in White Flint by 5,299 jobs and 1,172 housing units. There is no available capacity in the surrounding North Bethesda policy area to reallocate to White Flint. While the project will construct a portion of Chapman Avenue, that improvement will not create more than a fraction of the capacity to allow the project to be approved under the current AGP.

The Montrose Parkway and the remaining components of Nebel Street Extended and Chapman Avenue Extended, if constructed, could provide some of the needed capacity. The grade-separated interchanges on Rockville Pike recommended in the Master Plan might also increase staging ceilings in North Bethesda.

### *Twinbrook*

The Twinbrook Sector Plan area is defined by the walking distance to the Twinbrook Metro

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Station. In the fall of 2000, the Planning Board conducted a design charrette for the Twinbrook area. The results of the charrette were to allow mixed use development on the Metro property and encourage incubator hi-tech/bio-tech uses in the surrounding area. The WMATA property is currently underutilized with surface parking. WMATA has chosen a developer (JBG) for the property and negotiation on the contract is in progress. JBG has indicated they would like to pursue mixed use development on the site which would require rezoning to TS-M. The Master Plan currently recommends TS-R zoning on this property allowing approximately 1,100 units to be built. JBG would like to build 1 FAR of office/commercial on the site in addition to the recommended housing.

JBG also owns a significant amount of existing development in the surrounding area. Most of the development is being used by the federal government. JBG plans to renovate these properties over the next 10-20 years. In some cases this will entail the expansion of structures. JBG has approval for 500,000 square feet of new office/lab space on Fishers Lane (approximately 500,000 square feet of renovated space is part of this project). Davis construction is building an 83,500-square-foot office building across from the Metro site. There is interest to construct a 135,000-square-foot office building on Parklawn Drive north of the Metro station. There is also interest outside of the Sector Plan area to develop incubator space in the near future.

In order to allow Twinbrook to develop into a pedestrian friendly, active transit station node and town center as envisioned in the Charrette, additional capacity under the AGP ceiling will be necessary. JBG has received a grant from the State Highway Administration for streetscape improvements along Parklawn Drive.

The Montrose Parkway project may help provide some capacity for this area. The MARC rail station proposed by the Master Plan would also provide needed capacity; however, MTA has indicated no interest in pursuing this station.

### ***Policies, Principles and Suggestions***

In considering whether to recommend changes to the Annual Growth Policy, and if so, what types of change, the Planning Board attempted to identify policies that should be better supported and principles that should guide growth. The Planning Board also noted recommendations that have been made over the past two years, from a wide variety of sources, about whether and how the AGP could better support compact development at transit stations.

As a first principle or policy, a majority of the Planning Board reaffirmed its belief that concentration of development at Metro stations is the smartest of smart growth and that provisions in the AGP which are barriers to Metro Station Policy Area development should be examined closely.

A second principle arose from the observation that in most cases the AGP requires development to pay a price in exchange for relief from Policy Area Transportation Review, Local Area Transportation Review, or both. In some cases the price has been relatively high. The Planning Board does not believe it is effective to "encourage" development in Metro Station Policy Areas by making it pay a high price for approval. Rather, the Planning Board believes, it is the development outside Metro Station

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Policy Areas that should contribute comparatively more toward infrastructure, and development inside Metro Station Policy Areas should contribute comparatively less.

Third, the Planning Board recognized that concentrations of development bring some congestion, even those concentrations where transit use is very high. The Planning Board believes that some measured local congestion is appropriate given the lower total vehicle miles of travel and shorter trip making that result from concentrated, rather than dispersed development.

Fourth, the Planning Board believes that additional revenues are needed by the County for transportation facilities and services, that if most development projects are required to contribute then the amount required from each project can be reasonable. Further, the Board believes that focusing transportation investments to support development at Metro Stations should be a higher priority than constructing roads that support approvals in more dispersed locations.

Finally, the Planning Board reaffirms that the AGP can play an important role in encouraging the production of affordable and moderately-priced housing, and that in recent years the AGP's role in encouraging the production of affordable housing has diminished as developers made use of other alternative approval procedures. The Board particularly recognizes both the value of having affordable housing near Metro Stations and the challenges to providing it. Achieving affordable housing at Metro Stations may at times be worth some additional congestion, especially if that congestion can ultimately be mitigated.

The Planning Board acknowledges, and attaches at the end of this section, a letter to the County Executive and County Council calling for possible additions to planned housing "in the vicinity of Metrorail and planned transit stations." The letter is signed by an impressively broad coalition of concerned stakeholders in Montgomery County's future. While the AGP affects the timing but not the amount or location of development, the Board believes the proposed AGP amendments are consistent with the policy objectives expressed in the letter.

### ***Planning Board Recommendations in Detail***

The Montgomery County Planning Board recommends the implementation of a series of initiatives to (1) strengthen the County's ability to provide the infrastructure needed to support planned development, (2) remove barriers to the approval of the "smartest of smart growth," mixed-use development at Metro stations, and (3) strengthen policy and regulatory tools for achieving transit use and affordable housing goals.

Specifically, the Planning Board recommends the following:

1. **Countywide application of the development impact tax.** The Planning Board recommends reconsideration of the impact tax package in its final form before the Council completed its work on the 1999-2001 Annual Growth Policy. A countywide impact tax achieves several objectives, including a much-needed increase in the funds available for transportation infrastruc-

ture and a better and more fair distribution of the contribution from the development industry to transportation infrastructure. Equally important, from the Planning Board's perspective, is that it allows the County to create a relative incentive for development near transit by exempting or partially exempting such development from the tax.

The Planning Board notes that during the Council worksessions on the 1999-2001 AGP Policy Element, considerable effort went into developing a package of features of a countywide impact tax. The Planning Board continues to support that package and reminds readers of some of its elements:

- ◆ The countywide impact tax would apply in all areas of the County, including the municipalities of Gaithersburg and Rockville. Metro Station Policy Areas, including a new Metro Station Policy Area in Rockville, would be wholly exempt from the tax, while new MARC station areas at Metropolitan Grove and Olde Towne Gaithersburg CBD would be partially exempt, paying 50 percent of the full rate.
- ◆ The countywide impact tax rates would be as shown in Table 3. In the Board's opinion these rates are an appropriate balance between the need for additional revenue and concerns about overtaxing the development industry.
- ◆ The Council's MFP Committee unanimously recommended that the countywide impact tax be phased in; that is, it would have not gone into effect until the following July 1, and then for the first six months it would be applied at a 50 percent rate, for the next six months at the 75 percent rate, and then at the full rate thereafter.

**TABLE 3: Countywide Impact Tax Rates (as proposed in 1999)**

<i>Residential</i>	<i>Rate per unit</i>
Single family detached	\$3,500
Townhouse	\$2,500
Multifamily	\$1,500
Multifamily Senior	\$500
<i>Non-Residential</i>	<i>Rate per square foot</i>
Office	\$2.00
Industrial	\$1.00
Retail	\$2.50
Places of Worship	\$0.75
Private Schools	\$0.75
Other non-residential	\$0.75

*Source: OMB memorandum dated October 14, 1999.*

This recommendation for a countywide impact tax is not *contingent upon* adoption of the specific package of features from the 1999 discussion. However, in the Board's opinion the proposed tax package was balanced and reasonable.

**2. Within Transportation Management Districts, require all employers with 25 or more employees to participate in the Transportation Management Organization.**

In some policy areas, improvement in the non-driver mode share is a critical component to building out the land use envisioned in the master plan without creating unacceptable levels of

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congestion. North Bethesda and Bethesda CBD are two examples. The County has created Transportation Management Organizations (TMOs) to pursue strategies to increase the non-driver mode share in these areas. The policy has been to require participation in Transportation Management Organizations by employers located in new development, but participation by employers in existing development is voluntary.

The challenge of getting people to switch from driving alone to work to other modes of transportation is a daunting one in the best of circumstances. Since the overwhelming percentage of employers in any transportation management district are those in existing buildings, the challenge of achieving mode share goals without significant participation by these employers is even greater.

In North Bethesda, the goal is to reduce the single-occupant vehicle mode share from 78 to 74 percent. The TMD survey showed a one percentage point decline in 1996 and a 1.3 percentage point decline in 1997. County and M-NCPPC transportation staff note that each percentage point in improvement is significant and not easily achieved. In the Bethesda CBD, the goal for Stage I is a non-driver mode share of 32 percent. The current non-driver mode share is 27 percent.

The Planning Board proposes requiring all firms with 25 or more employees within the boundaries of a Transportation Management District to participate in the TMO. The employers would be required to do the following: (1) turn in a plan for meeting master plan mode share goals, (2) make a reasonable effort to achieve those goals, and (3) participate in the monitoring efforts of the TMO (collect and return annual surveys, etc.). Administering the expanded TMO program may require a commensurate expansion of the TMO's budget.

This was a Planning Board recommendation in 1999, although at that time the Planning Board recommended that the requirement be limited to employers with 50 or more employees. Since then, the Board has come to understand that the focus of TMO activities, marketing efforts, and so forth, are employers with 25 or more employees.

3. **Expand use of the Silver Spring CBD methodology for Local Area Transportation Review to all Metro Station Policy Areas.** The "Silver Spring CBD methodology" allows development projects to use queuing analysis when intersections exceed the 1800 CLV standard. Additionally, it would not require development inside Metro Station Policy Areas to test intersections outside the policy area. A review of Silver Spring's LATR guidelines is contained in *Issue 2: Silver Spring CBD Staging Ceiling Provisions and Local Area Transportation Review Standards*.

The Silver Spring CBD LATR provisions recognize that there are some intersections that may function well, even at levels above 1800 CLV. Queuing analysis identifies whether intersections operating above 1800 CLV have unacceptable delay. The effect of this recommendation is to

