



THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

MCPB
Item No. 14
January 8, 2004

January 2, 2004

Memorandum

To: Montgomery County Planning Board
From: Karl Moritz, Research & Technology Center, 301-495-1312
Re: Bill 37-03: Growth Policy - Process

This bill contains proposed changes to the process for adopting an Annual Growth Policy. The proposed amendments implement positions taken by the County Council during their review of the Annual Growth Policy in October 2003. Most of the growth policy decisions made by the Council were implemented by amending the AGP resolution, but process-related changes are made by amending the County Code.

The proposed changes are needed because the County Code now requires the Planning Board to prepare an AGP Ceiling Element each year. One of the main reasons a Ceiling Element is needed is to implement Policy Area Transportation Review. Since the County Council eliminated Policy Area Transportation Review, a Ceiling Element is no longer needed.

The other major change contained in Bill 37-03 is a compression of the schedule for the biennial AGP process now referred to as the "policy element." In odd-numbered years starting in 2005, the schedule would be as follows:

	<i>Current</i>	<i>Proposed</i>
Staff Draft due by:	May 1	June 15
Planning Board recommendations due by:	June 15	August 1
Executive's recommendations due by:	August 1	September 15
Board of Education's recommendations due by:	September 1	October 1
WSSC's recommendations due by:	September 1	October 1
Council action due by:	November 1	November 15

While the time period for the Planning Board's review would shift from May to July, the amount of time (45 days) would remain the same.

A public hearing is tentatively scheduled for January 13, 2004. Staff recommends that the Planning Board support the proposed review schedule. Although the differences in the two schedules are modest, the proposed schedule reduces the lag

time between the release of the Planning Board's recommendations and the County Council's public hearing on those recommendations by about half (90 days to 45 days). These may be some benefit to reducing this lag time; at least, staff does not believe that the current schedule's "summer break" between the Planning Board's work and the Council public hearing has had demonstrable benefits.

The other benefit to the proposed schedule is that the Staff Draft AGP could take into account the most recent CIP, which is adopted in May.

Bill 37-03 is attached.

Update on Other AGP-Related Issues

Report on the Effect of the New AGP

On November 19, 2003, Chairman Berlage received a letter from Councilmembers Andrews, Perez and Praisner requesting that six months after the new AGP goes into effect, the Planning Board report on the "track the loss of developer-funding for transportation mitigation that was an option for addressing area wide traffic congestion under policy area review." On December 5, 2003, Chairman Berlage replied that such a report would be prepared on or about January 31, 2005. A copy of the letter and the reply is attached.

Limiting Unmitigated Trips in Metro Station Policy Areas

The newly-adopted AGP resolution states that "The Planning Board must submit to the Council by February 1 an AGP amendment proposing a specific maximum number of unmitigated trips for each Metro Station Policy Area under the Alternative Review Procedure for Metro Station Policy Areas, considering its current number of jobs and housing units and its current congestion levels." Planning staff is working on the issue, which we plan to bring to the Planning Board for review in a week or two.

Testing the Adequacy of Transportation Facilities at Zoning

In April 2003, the County Council passed zoning text amendment 03-06, which addressed the issue of testing rezoning applications for the adequacy of transportation facilities in Metro station policy areas. Specifically, the zoning text amendment addressed the situation of a proposed development project that would be using the AGP's Alternative Review Procedure for Metro Station Policy Areas. At issue: what is an appropriate test at the zoning stage when a policy decision has been made to reduce the stringency of the test at the subdivision stage. The Council's action on ZTA 03-06 made it clear that such projects could satisfy the transportation test at zoning by showing that they would be able to comply with the requirements of the AGP's Alternative Review Procedure for Metro Station Policy Areas.

However, the Council included sunset language in ZTA 03-06 so that the provision expired on November 1, 2003. The expectation was that the issue would be resolved during the AGP Policy Element discussions, but it was not. Staff is now reviewing options for addressing the issue and will be bringing a proposal to the Planning Board soon.

MEMORANDUM

TO: County Council

FROM: *MAF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 37-03, Growth Policy - Process

Bill 37-03, Growth Policy - Process, sponsored by the Council President, is scheduled to be introduced on November 18, 2003. A public hearing is tentatively scheduled for January 13, 2004.

Bill 37-03 makes the technical changes to the current law required to implement the Council's decision, made during its consideration of the 2003-5 Annual Growth Policy, to eliminate the ceiling element and convert the Policy fully to a biennial basis.

This packet contains:	<u>Circle #</u>
Bill 37-03	1
Legislative Request Report	11

Bill No. 37-03
Concerning: Growth Policy - Process
Revised: 11-14-03 Draft No. 2
Introduced: November 18, 2003
Expires: May 18, 2005
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President

AN ACT to:

- (1) repeal the requirement to adopt a ceiling element of the annual growth policy;
- (2) revise the schedule and terminology for the policy element; and
- (3) generally amend the law governing the County growth policy.

By amending

Montgomery County Code
Chapter 33A, Planning Procedures
Section 33A-15

Boldface	<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. Section 33A-15 is amended as follows:**

2 **33A-15. [Annual] Growth Policy.**

3 (a) Purpose.

4 (1) The purpose of this Article is to establish a process by which the
5 County Council can give policy guidance to agencies of
6 government and the public on matters concerning:

7 (A) land use development;

8 (B) growth management; and

9 (C) related environmental, economic, and social issues.

10 (2) The [process] policy guidance will be [established] provided
11 through the adoption by the County Council of [an annual] a
12 growth policy, which is intended to be an instrument that
13 facilitates and coordinates the use of the powers of government to
14 limit or encourage growth and development in a manner that best
15 enhances the general health, welfare, and safety of the residents
16 of the County.

17 (b) Simplified description.

18 [(1) The annual growth policy has 2 components: a ceiling element
19 and a policy element.

20 (2) The ceiling element must be adopted annually by the County
21 Council. It consists of:

22 (A) growth ceilings based on transportation capacity for each
23 policy area in the County, for both residential and
24 employment land uses, which must be consistent with
25 relevant portions of state, county, and municipal capital
26 improvement programs;

- 27 (B) the determination whether adequate capacity will exist for
 28 public schools; and
 29 (C) a list of any roads, transit, or school facilities that should
 30 not be counted in calculating growth ceilings.

31 [(3)] The growth policy [element] must be adopted every 2 years by
 32 the County Council. It consists of [other] policy guidelines for
 33 the Planning Board, and other agencies as appropriate, for their
 34 administration of Section 50-35(k) and other laws and regulations
 35 which affect growth and development.

36 (c) Duties of the [Montgomery] County Planning Board.

37 [(1)] Each year, the Planning Board must produce a recommended
 38 ceiling element.

39 (A) By November 7, the Board must make available a staff
 40 draft ceiling element to the County Executive and other
 41 county agencies for their use in preparing recommended
 42 capital improvement programs for the next fiscal year.

43 (B) By May 1, the Board must:

44 (i) for each policy area, calculate the existing pipeline of
 45 approved development permits, including preliminary
 46 subdivision plans, sewer authorizations, record plats, and
 47 building permits;

48 (ii) for each policy area, recommend growth ceilings based on
 49 transportation capacity, for both residential and
 50 employment land uses, consistent with the latest
 51 information in relevant portions of the upcoming county,
 52 state, and municipal capital improvement programs;

- 53 (iii) for each high school cluster, recommend whether public
 54 school capacity will be adequate to serve planned growth;
 55 and
 56 (iv) list any roads, transit, and school facilities that should not
 57 be counted in calculating growth ceilings.
- 58 (2) Every [2 years, beginning in 1995] odd-numbered year, the
 59 Planning Board must produce a recommended growth policy
 60 [element].
- 61 [(A)] (1) By [May 1] June 15, the Planning Board must send to the
 62 County Council a staff draft growth policy [element] which
 63 includes:
- 64 [(i)] (A) a status report on general land use conditions in the
 65 county, including the remaining growth capacity of zoned
 66 land, recent trends in real estate transactions, the level of
 67 service conditions of major public facilities and
 68 environmentally sensitive areas, and other relevant
 69 monitoring measures;
- 70 [(ii)] (B) a forecast of the most probable trends in population,
 71 households, and employment for the next 10 years,
 72 including key factors that may affect the trends;
- 73 [(iii)] (C) a recommended set of policy guidelines for the
 74 Planning Board, and other agencies as appropriate, with
 75 respect to [their] administration of laws and regulations
 76 which affect growth and development; and
- 77 [(iv)] (D) any other information or recommendations relevant to
 78 growth policy, or requested by the County Council in the

79 course of adopting the [annual] growth policy or by a later
 80 resolution.

81 [(B)] (2) By [June 15] August 1, the Board must produce a
 82 recommended growth policy [element] which reflects the
 83 Planning Board's views [on the items in subsection (2)(A)(iii) and
 84 (2)(A)(iv)].

85 (3) The Planning Board must promptly make available to the County
 86 Executive, other agencies (including the Office of Zoning and
 87 Administrative Hearings and the People's Counsel), and the
 88 public copies of the staff draft and the Board's recommended
 89 [ceiling and] growth policy [elements].

90 (d) Duties of the County Executive.

91 [(1)] (1) By May 15 of each year, the County Executive must send to the
 92 County Council a recommended ceiling element, including:

93 (A) growth ceilings based on transportation capacity, for both
 94 residential and employment land uses, consistent with the
 95 latest information in relevant portions of the upcoming
 96 county, state, and municipal capital improvement
 97 programs;

98 (B) recommendations regarding whether public school
 99 capacity will be adequate to serve planned growth; and

100 (C) a list of any roads, transit, and other school facilities that
 101 should not be counted in calculating growth ceilings.]

102 [(2)] (1) Every [2 years, beginning in 1995] odd-numbered year, the
 103 County Executive must send to the County Council by [August
 104 1] September 15 any revisions to the [recommended] growth

105 policy [element of] recommended by the Planning Board in the
 106 form of specific additions and deletions.

107 [(3)] (2) The County Executive must promptly make available to the
 108 Planning Board, other agencies, and the public copies of the
 109 County Executive's recommendations.

110 [(4)] (3) The County Executive must assist the Planning Board to
 111 compile its status report for the recommended [annual] growth
 112 policy by making available monitoring data which is routinely
 113 collected by executive branch departments.

114 [(5)] The County Executive should use the information in the Planning
 115 Board staff's draft ceiling element as a reference document in
 116 preparing the recommended capital improvement program for the
 117 next fiscal year, particularly with respect to the linkage between
 118 future capital construction schedules and policy area capacity
 119 ceilings.]

120 (e) Duties of the [Montgomery] County Board of Education.

121 [(1)] Each year, the Board of Education must:

122 (A) by February 15 send the County Council any comments on
 123 the County Executive's recommended capital improvement
 124 program as it pertains to the annual growth policy; and

125 (B) by June 1 send the County Council any comments on the
 126 recommended ceiling elements submitted by the Planning
 127 Board and the County Executive, including any revisions
 128 in the form of specific additions or deletions.]

129 [(2)] (1) Every [2 years, beginning in 1995] odd-numbered year, the
 130 Board of Education must send to the County Council by
 131 [September 1] October 1 any comments on the recommended

132 growth policy [element] submitted by the Planning Board and the
 133 Executive's recommendations, including any proposed revisions
 134 in the form of specific additions or deletions.

135 [(3)] (2) The Board of Education must promptly make available to the
 136 Planning Board, the County Executive, and the public copies of
 137 these comments and revisions.

138 [(4)] (3) [During the year, the] The Board of Education must assist the
 139 Planning Board to compile its status report for the [draft annual]
 140 growth policy by making available monitoring data which is
 141 routinely collected by Montgomery County Public Schools staff
 142 [of the Board of Education].

143 (f) Duties of the Washington Suburban Sanitary Commission.

144 [(1)] Each year, the Washington Suburban Sanitary Commission must:
 145 (A) by February 15 send the County Council any comments on
 146 the County Executive's recommended capital improvement
 147 program as it pertains to the annual growth policy; and
 148 (B) by June 1 send the County Council any comments on the
 149 recommended ceiling elements submitted by the Planning
 150 Board and the County Executive, including any revisions
 151 in the form of specific additions or deletions.]

152 [(2)] (1) Every [2 years, beginning in 1995] odd-numbered year, the
 153 Washington Suburban Sanitary Commission must send to the
 154 County Council by [September 1] October 1 any comments on
 155 the recommended growth policy [element] submitted by the
 156 Planning Board and the Executive's recommendations, including
 157 any proposed revisions in the form of specific additions or
 158 deletions.

159 [(3)] (2) The [Washington Suburban Sanitary] Commission must
 160 promptly make available to the Planning Board, the County
 161 Executive, and the public copies of these comments and
 162 revisions.

163 [(4)] (3) During the year, the [Washington Suburban Sanitary]
 164 Commission must assist the Planning Board to compile its status
 165 report for the [draft annual] growth policy by making available
 166 monitoring data which is routinely collected by Commission staff
 167 [of the Washington Suburban Sanitary Commission].

168 (g) Duties of the County Council.

169 (1) After [receipt of either a ceiling element or a policy element]
 170 receiving the recommended growth policy, the recommendations
 171 of the County Executive, and [the] any other agency comments,
 172 the County Council must hold a public hearing on the [draft,]
 173 recommendations and comments.

174 [(2)] No later than July 15 of each year, the County Council must
 175 adopt a ceiling element to be effective until the following July 15.
 176 If the County Council does not adopt a new ceiling element, the
 177 ceiling element adopted most recently remains in effect.]

178 [(3)] (2) Every [2 years, beginning in 1995] odd-numbered year, the
 179 County Council must adopt by November [1] 15 a growth policy
 180 [element] to be effective until November [1] 15 two years later.
 181 If the County Council does not adopt a new growth policy
 182 [element], the growth policy [element] adopted most recently
 183 remains in effect.

184 (h) Amending the [annual] growth policy.

- 185 (1) The County Council, the County Executive, or the Planning
186 Board may initiate an amendment to [either the ceiling element
187 or] the growth policy [element].
- 188 (2) If the [County] Executive initiates an amendment:
- 189 (A) the [County] Executive must send it to the [County]
190 Council, the Planning Board, and other agencies, and make
191 copies available to the public;
- 192 (B) the Planning Board must send any comments on the
193 proposed amendment to the [County] Council and the
194 other agencies within 45 days after receiving the
195 amendment (unless the Council requests an earlier
196 response), and must make copies of any comments
197 available to the public; and
- 198 (C) the [County] Council may amend [either the ceiling
199 element or] the growth policy [element] after [receiving]
200 giving the Planning [Board's comments] Board an
201 opportunity to comment and holding a public hearing.
- 202 (3) If the Planning Board initiates an amendment:
- 203 (A) the Planning Board must send it to the [County] Council,
204 the [County] Executive, and other agencies, and make
205 copies available to the public;
- 206 (B) the [County] Executive must send any comments on the
207 proposed amendment to the [County] Council and other
208 agencies within 45 days after receiving the amendment
209 (unless the Council requests an earlier response), and must
210 make copies of any comments available to the public; and

- 211 (C) the [County] Council may amend [either the ceiling
 212 element or] the growth policy [element] after [receiving]
 213 giving the [County Executive's comments] Executive an
 214 opportunity to comment and holding a public hearing.
- 215 (4) If the County Council initiates an amendment:
- 216 (A) the [County] Council must send it to the [County]
 217 Executive, the Planning Board, and other agencies, and
 218 make copies available to the public;
- 219 (B) the [County] Executive and the Planning Board must send
 220 any comments on the proposed amendment to the [County]
 221 Council and other agencies within 45 days after receiving
 222 the amendment (unless the Council requests an earlier
 223 response), and must make copies of any comments
 224 available to the public; and
- 225 (C) the County Council may amend [either the ceiling element
 226 or] the growth policy [element] after a public hearing.
- 227 (5) If it finds that an emergency [exists] so requires, the County
 228 Council may hold the public hearing and adopt an amendment
 229 before receiving comments under subparagraphs (2)(B), (3)(B),
 230 or (4)(B).

231 **Sec. 2. Cross references.** Any reference in any other section of the County
 232 Code, or any other County document, to the Annual Growth Policy refers to the
 233 Growth Policy approved under Code Section 33A-15, as amended by Section 1 of
 234 this Act, with respect to any Growth Policy or amendment to a Growth Policy
 235 approved after this Act takes effect.

LEGISLATIVE REQUEST REPORT

Bill 37-03

Growth Policy - Process

DESCRIPTION: Converts the Annual Growth Policy to a fully biennial process. Eliminates the annual ceiling element.

PROBLEM: Without policy area ceilings, the Council in its adoption of the 2003-5 Annual Growth Policy decided that an annual ceiling element would be unnecessary.

GOALS AND OBJECTIVES: To conform the law establishing the Growth Policy to the current policy structure.

COORDINATION: Planning Board

FISCAL IMPACT: Minimal.

ECONOMIC IMPACT: Minimal.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905; Glenn Orlin, Deputy Council Staff Director, 240-777-7936

APPLICATION WITHIN MUNICIPALITIES: Applies only to County Growth Policy.

PENALTIES: Not applicable

AGENDA

1. Letter from Councilmembers Andrews, Perez, and Praisner

How do we “track the loss of developer-funding for transportation mitigation that was an option for addressing area wide traffic congestion under policy area review?”

2. Bill 37-03: Amendments to the Growth Policy section of the County Code

The Ceiling Element of the AGP is to be eliminated. The schedule for the biennial Policy Element is to be changed. In odd-numbered years starting in 2005, the schedule would be as follows:

Staff Draft due by:	June 15
Planning Board recommendations due by:	August 1
Executive’s recommendations due by:	September 15
Board of Education’s recommendations due by:	October 1
WSSC’s recommendations due by:	October 1
Council action due by:	November 15

Public hearing will be January 13, 2004.

3. Maximum Unmitigated Trip Level for Metro Station Areas

“The Planning Board must submit to the Council by February 1 an AGP amendment proposing a specific maximum number of unmitigated trips for each Metro Station Policy Area under the Alternative Review Procedure for Metro Station Policy Areas, considering its current number of jobs and housing units and its current congestion levels.”



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

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PHIL ANDREWS
COUNCILMEMBER - DISTRICT 3

November 17, 2003

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

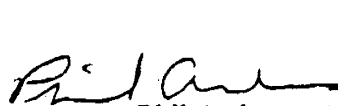

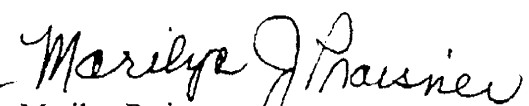
Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, MD 20910-3760

Dear Chairman Berlage:

As you know, the County Council has eliminated policy area review from the Annual Growth Policy, effective July 1, 2004. Among our concerns about this action is the loss of developer funding for transportation mitigation that was an option for addressing area wide traffic congestion under policy area review. We would appreciate it if the Planning Board's staff could track the loss of such developer funded traffic mitigation once the new Annual Growth Policy goes into effect next summer, on a project-by-project basis. We would appreciate a summary of the loss of developer funded traffic mitigation on or about January 31, 2005.

Thank you for your assistance in this matter.

Sincerely,

		
Phil Andrews Councilmember	Tom Perez Councilmember	Marilyn Praisner Councilmember



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

December 5, 2003

Councilmember Phil Andrews
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Phil Andrews:

I want to thank you for your letter, co-signed by Councilmembers Perez and Praisner, requesting that the Planning Board staff track the effects of the new Annual Growth Policy when it goes into effect on July 1, 2004. Specifically, you requested that the staff track the loss of developer-funded traffic mitigation on a project-by-project basis, with a summary analysis delivered to the County Council on or about January 31, 2005.

I have directed the Planning staff to comply with your request. Part of the effect of the new AGP is that private development will no longer be required to submit traffic studies that address area-wide congestion issues, and this means that a valuable source of information is no longer available. Nevertheless, Planning staff assures me that we will be able to provide the County Council with useful information about the effects of the new AGP on the developer-funded traffic mitigation when we submit our report in January 2005.

Sincerely,

Derick P. Berlage
Chairman

DPB:KWM

cc: Councilmember Perez
Councilmember Praisner