

Approved by vote of MCCF delegate assembly--Sept. 14, 2009

**2009 GROWTH POLICY POSITION OF THE MONTGOMERY COUNTY
CIVIC FEDERATION--SUBMITTED TO COUNTY COUNCIL ON 9/22/09**

The MCCF position on the 2009-2011 Growth Policy is presented here in two parts. The first section contains the MCCF position on the 11 recommendations in the Planning Board Draft Growth Policy, approved by the Board on July 16. The second section contains the 12 changes to the Growth Policy that the Civic Federation is suggesting the County Council consider and adopt.

The Civic Federation sees the Growth Policy and master plans as two tools to be used in concert to guide the future development of the county. Master plans set forth the type of development that is allowed and its location. Under county law, the Growth Policy is used to implement the Adequate Public Facilities Ordinance by pacing the rate of growth to allow proposed development to proceed only in areas where supportive infrastructure can accommodate it. We believe these tools--master plans and the Growth Policy--should be used to facilitate growth only when and if it is in the public interest and will not harm residents' quality of life or the natural environment of the county.

I. PLANNING BOARD RECOMMENDED CHANGES TO THE GROWTH POLICY

The MCCF believes the Growth Policy should not assume the role of other policy mechanisms. For example, strengthening of affordable housing initiatives should properly be done through the legislative mechanism, not the Growth Policy. Similarly, we do not believe the Growth Policy is an appropriate tool to encourage greener buildings or to reduce our carbon footprint, as these policy issues are properly addressed through regulation, master planning, and zoning standards.

We oppose several of the Planning Board recommendations as they would weaken existing processes designed to prevent worsening traffic congestion (PB Numbers 1, 2, 5, 6 and 7). And we are concerned several Board recommendations would decrease the amount of revenue received by the county from development to provide needed infrastructure (PB Numbers 1, 2, 3, 7 and 8).

Specific Planning Board Recommendations-

PB1. Alternative Review Procedures for projects near transit meeting Smart Growth Criteria

- For smart growth mixed-use projects meeting certain standards and located within 1/2 mile of major transit center or corridor, PAMR mitigation costs should be allocated as follows--50% directed to transit infrastructure, 25% applied to provision of additional MPDUs or workforce housing units above the amount required in the project, and 25% retained by the developer. In addition, 75% of transportation impact taxes should be dedicated for improving public transit.

MCCF urges disapproval. Since transit centers have above average transit service, any trip mitigation required in these areas results from inadequate road capacity. This proposal will not remedy that inadequacy but would instead allocate payments to transit projects, or to create more affordable housing which will generate more traffic. We find this inappropriate, as is allowing funds to be retained by the developer. Also, while there is a need for improved transit throughout the county we do not think it wise to restrict the use of transportation impact taxes by requiring 75% of such tax collected in transit centers be used for transit improvements.

PB2. Change to a Symmetrical PAMR Chart and allow Roads Level of Service (LOS) E in areas with Transit Mobility LOS of B. (In 2007, the Council did not allow Roads LOS below D.) This change would move the following areas from "requiring partial mitigation" to "acceptable with no mitigation": Bethesda/Chevy Chase; Derwood/Shady Grove; Olney; Kensington/Wheaton; and, Silver Spring/Takoma Park.

MCCF urges disapproval. By declaring that traveling on roads at 25% of free flow speed (LOS E) is acceptable, even in areas with above average transit level of service, we believe the Council would be setting the bar for "adequate" road level of service too low, and would be undermining the credibility and value of the county's Adequate Public Facilities Ordinance. In addition, slower road speeds would result in increased carbon footprint. (See MCCF Recommendations #4 and #5)

PB3. Expand types of non-auto facilities that can be provided to mitigate trips to include additional projects, update costing information on mitigation projects (increasing value of sidewalk/bike path connectivity projects), and set value of trip mitigation at \$11,000 per vehicle trip.

MCCF urges disapproval. MCCF believes the current PAMR process not only inappropriately merges tests for roads and transit adequacy, but merges the remedies if either is found lacking. If a remedy is required due to inadequate roads level of service, the improvement or payment-in-lieu should be used to improve arterial los, not for projects which it is hoped will increase transit usage but for which no demonstrable results have been shown. Similarly, where transit is found to be inadequate, required remedies should go to improve transit los. (See MCCF Recommendation #5)

PB4. Allow transfer of Adequate Public Facilities (APF) capacity to projects in Metro Station Policy Areas (MSPAs) from within the same policy area (allow developer with approved project they don't intend to build to sell their APF capacity to developer proposing project in a MSPA in the same policy area, which would extinguish the APF validity finding of the sending project and remove it from the pipeline--the two parties would have to agree on cost)

MCCF urges disapproval because we believe a finding of APF capacity is not a commodity that can be transferred. It is based on mobility analysis using PAMR, or some alternative, and also an LATR analysis which involves specific intersections. There is no way to transfer a finding of adequacy, involving one set of intersections, to a project at another location. In addition, we are not sure how APF capacity for one project, which might require mitigation or remedy under some growth policy test, could be transferred to another project years later when a different set of growth policy remedies to address road or transit inadequacy may be in place for the policy area.

PB5. Reduce residential trip generation rates in Metro Station Policy Areas by 18%, similar to Bethesda, Silver Spring and Friendship Heights generation levels listed in LATR.

MCCF urges disapproval because we believe the areas within which a lesser trip generation rate might be allowed should be defined by distance from a Metro station, and not on artificial MSPA boundaries which can be changed over time.

PB6. Replace LATR and PAMR in White Flint with implementation authority process, as recommended in the proposed Sector Plan revision for that area.

MCCF urges disapproval. Replacing professional traffic analysis with monitoring by an implementation authority abdicates the county's responsibility, lacks standards, and precludes an objective analysis. We also see this recommendation as a case of "putting the cart before the horse," since the Council will not begin consideration of the White Flint Sector Plan revision, which contains a recommendation for establishment of an implementation authority process, until after members vote on the Growth Policy. This Growth Policy recommendation should only be addressed when and if Council approves such an implementation authority in the context of adopting the White Flint Sector Plan revision.

PB7. Change Policy Area boundaries--establish Life Sciences Center Policy Area, and expand White Flint, Germantown Town Center and R&D Village policy area boundaries.

MCCF urges disapproval. Expanding policy area boundaries and raising the level of allowable traffic congestion is not the way to manage congestion. MSPA and other policy area boundaries should be defined by a more objective standard (i.e.; distance from the transit station), not gerrymandered to facilitate approval of development by allowing increased congestion levels.

PB8. Raise threshold for School Facilities Payment from 105% to 110% of projected cluster capacity

MCCF urges disapproval. By raising the School Facilities Payment threshold, fewer projects will be required to provide funds than are currently required, at a time when State funding for school construction is limited and the county government fiscal outlook is bleak.

PB9. Retain threshold for school moratorium on new residential approvals at 120% of cluster capacity

MCCF urges APPROVAL.

PB10. Allow residential preliminary plan applications for projects in areas in moratorium, which have been completed within 12 months prior to imposition of the moratorium, to proceed to the Planning Board for consideration.

MCCF urges disapproval. Allowing the Planning Board to approve the Preliminary Plan for any residential project located in an area for which a finding of inadequate school capacity has already been made would be a violation of the Adequate Public Facilities Ordinance, and likely not withstand judicial scrutiny.

PB11. Allow approved but unused school capacity for a specific development to be transferable to another development project in the same school cluster (similar to APF rights transfer above)

MCCF urges disapproval unless transfer is only allowed between projects in the same elementary school area, not cluster. (See MCCF Recommendation #10)

II. CIVIC FEDERATION RECOMMENDED CHANGES TO THE GROWTH POLICY

In addition to addressing the recommendations of the Planning Board in the preceding section, the Civic Federation offers the following additional suggestions for your consideration.

Separate the 2 Policy Area Mobility Review (PAMR) Tests

MCCF1. MCCF strongly recommends the current PAMR test be split in two. We believe the separation of the current PAMR test into two stand-alone tests, a Policy Area Roads Test and a Policy Area Transit Test, would be more useful and appropriate to the implementation of the Adequate Public Facilities Ordinance (APFO). The current PAMR test balances adequacy of roads level of service against adequacy of transit level of service within each county policy area. This implies that the adequacy of one of these public facilities somehow substitutes for the inadequacy of the other. Yet the APFO states the Planning Board must find an area's roads and transit facilities are adequate before approving the preliminary plan for a project in that area. It reads:

Sec.50-35(k). Adequate Public Facilities. The Planning Board must not approve a preliminary plan of subdivision unless the Board finds that public facilities will be adequate to support and service the area of the proposed subdivision. Public facilities and services to be examined for adequacy include roads and public transportation facilities, sewerage and water services, schools, police stations, firehouses, and health clinics.

The Federation does not believe it is any more appropriate to assert that it is acceptable for an area to have inadequate roads level of service if it has more than adequate transit facilities than it would be to assert that an area could have inadequate sewerage facilities so long as it has more than adequate water service.

If the PAMR tests were separated, there would then be 3 primary growth policy tests (i.e.; for schools, roads and transit), in addition to Local Area Transportation Review. At present, if there is inadequate school capacity in an area where a developer wants to build, then they can still get Preliminary Plan approval by paying a School Facilities Payment in addition to the School Impact Tax. Similarly, under the MCCF recommendation, if there is inadequate road capacity, a developer could still get Preliminary Plan approval to build by paying a Road Facilities Payment in addition to the Transportation Impact Tax. Or if transit is found to be inadequate, they could proceed by paying a Transit Facilities Payment.

Improve Tests for Roads and Transit Level of Service

MCCF2. We believe the Council should make a commitment to change as soon as possible to use of the latest generation software to model traffic capacity for the Policy Area Roads Test (SYNCHRO, and SimTraffic and/or CORSIM). However, we understand that, due to time constraints, you may opt to employ existing PAMR arterial LOS data in the initial creation of a stand-alone roads test.

MCCF3. We believe the Council should make a commitment to improving the Policy Area Transit Test as soon as possible, for instance by comparing the time for point-to-point commute trips by transit to the time for the same point-to-point trips by car. However, we understand that, due to time constraints, you may opt to employ existing PAMR transit LOS data in the initial creation of a stand-alone transit test.

Stand-Alone Policy Area Roads Test

MCCF4. Whatever roads test is approved, MCCF recommends using the poorer level of service from either AM or PM weekday peak hours. The current PAMR arterial test looks at PM peak hours only, but the 2008 Highway Mobility Report showed 46% of the 81 failing intersections in the county failed in AM peak hours only (indicating inadequate level of service in AM on roads in these areas that is not reflected in the current PAMR analysis). MCCF believes a roads test should analyze weekend congestion levels, as well.

MCCF5. POLICY AREA ROADS TEST--recommendation using 2013 PAMR data

If actual speed is-

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|----------------------------------|---|---|
| 85% free-flow speed or faster | A | (no policy areas) |
| 70 - 84% of free-flow speed | B | Damascus, Cloverly |
| 55 - 69% of free-flow speed | C | Rural West, Clarksburg, Germantown W, R&D Village, Rural East |
| 40 - 54% of free-flow speed | D | Montgomery Village/Airpark, North Potomac, Olney, Germantown E, Kensington/Wheaton, Silver Spring/Takoma Park, Aspen Hill, Rockville, Derwood, Bethesda-Chevy Chase, North Bethesda, Fairland/White Oak, Potomac, Gaithersburg City |
| 25 - 39% of free-flow speed | E | (no policy areas) |
| less than 25% of free-flow speed | F | (no policy areas) |

Road Facilities Payment is imposed equal to \$11,000 x [% of trips generated by a project].

For levels A or B no payment is imposed, for level C a payment is imposed on 10% of trips generated, for level D a payment is imposed on 25% of trips generated, for level E a payment is imposed on 50% of trips generated, and for level F a payment is imposed on 100% of trips generated by a project. Payments to be used for road improvements only.

MCCF6. In policy areas where a percentage remediation based on trips generated by a project is required, if a development is calculated to generate a lower number of trips than the countywide rate due to proximity to Metro station or transit center, the percentage should be applied to that lower number of trips. Current calculation used by Planning staff lowers or eliminates trips needing to be mitigated in Metro Station Policy Areas.

Stand-Alone Policy Area Transit Test

MCCF7. POLICY AREA TRANSIT TEST--recommendation using 2013 PAMR data

If transit commute time is-

70% of time by car or less	A	(no policy areas)
71 - 100% of time by car	B	(no policy areas)
101 - 130% of time by car	C	(no policy areas)
131 - 160% of time by car	D	Bethesda/Chevy Chase, Silver Spring/ Takoma Park, Kensington/Wheaton, Derwood, North Bethesda, Aspen Hill, Olney, Rural East, Potomac, Rockville
161 - 190% of time by car	E	Montgomery Village/Airpark, Cloverly, North Potomac, Germantown W, Fairland/White Oak, Rural West, Gaithersburg City, Germantown E, R&D Village
more than 190% of time by car	F	Clarksburg, Damascus

Transit Facilities Payment is imposed equal to \$11,000 x [% of the total of non-auto mode dwelling units and jobs in a project]. For levels A and B no payment is imposed, for level C a payment is imposed on 10% of non-auto mode dwelling units and jobs, for level D a payment is imposed on 25%, for level E a payment is imposed on 50%, and for level F a payment is imposed on 100% of non-auto mode dwelling units and jobs in a project. Payments to be used for transit improvements only.

Impact Taxes

MCCF8. Eliminate 50% reduction in impact tax rate for Metro Station Policy Areas (MSPAs) and repeal the separate Clarksburg impact tax district, and apply a single County-wide rate. In the May 2007 Staff Draft Growth Policy, planning staff recommended doing away with the 50% impact tax rate in MSPAs, stating that "our Metro Station Policy Areas have matured as development land has become more scarce, so that financial incentives to encourage redevelopment in MSPAs are of decreasing value to the county." [emphasis added] MCCF believes the additional new funds derived from collecting the countywide transportation impact tax rate from development projects in MSPAs could be put to good use, to fund projects that would improve roads level of service or to fund projects which would further improve transit service or increase capacity of the transit systems in these areas. In addition, we believe the imposition of an impact tax rate for Clarksburg which is higher than the County-wide rate is no longer needed.

School Facilities Payment and School Capacity

MCCF9. Retain imposition of School Facilities Payment when cluster exceeds 105% of capacity on middle or high school level, and retain cessation of new residential project Preliminary Plans when cluster exceeds 120% of capacity on middle or high school level.

MCCF10. Calculate capacity on individual school basis on elementary school level, and apply the same percentage limits for requiring School Facilities Payment and cessation of approvals as those applied on a cluster basis on the middle school and high school levels. This will prevent student enrollment from grossly exceeding capacity at any individual elementary school. This gross exceeding of capacity at an individual school can occur under the existing cluster capacity calculation if an elementary school is the primary receiver of new students generated by nearby development or redevelopment projects, while enrollment at other elementary schools in the cluster may be below capacity.

MCCF11. A School Facilities Payment received due to inadequate capacity of an individual elementary school, as recommended in MCCF10, should be used solely for increasing the classroom capacity of the affected elementary school.

CAPACITY CEILINGS

MCCF12. Reinstate capacity ceilings as part of growth policy. Set a maximum total number of dwelling units and jobs for each policy area which the Planning Board can approve in projects located there over the ensuing two years. If reinstated, capacity ceilings can be used to correct the jobs-housing imbalance within specific areas or in the county as a whole. Council staff has the in-depth knowledge on this issue to suggest an appropriate method for calculating and assigning capacity ceilings for each of the County's policy areas.

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