Using Impact Tax Credits to Promote Infrastructure Growth in Montgomery County

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David Bluhm, Montgomery County Council Summer Fellow

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About the Fellow

David Bluhm is a Master of Public Policy Candidate at Georgetown University's McCourt School of Public Policy. His interests center around environmental, infrastructure, and transportation policy. He previously worked as a Federal Relations Manager for his alma mater, the University of Michigan, where he handled the immigration and student veteran portfolios. David has previous municipal experience working with Washington D.C.'s Office of Planning, the Detroit City Council, and the Detroit Mayor's Office.

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Executive Summary

Montgomery County has historically used impact taxes on new development to collect revenue that ensures transportation and school infrastructure is able to accommodate the growth associated with construction. The County has sought to strike a balance between developers paying their fair share and encouraging growth in the County, especially because the growth of residential units can help address the housing shortage that leads to increased rent costs. However, the revenue collected from the transportation impact tax represents a relatively small portion of the funds used to improve infrastructure, making up just 4% of the transportation capital budget.[1] Montgomery County Executive Marc Elrich has publicly entertained the idea of eliminating the impact tax altogether, saying that the tax “is flat out bad for builders and it's bad for the County” during the 2024 State of the County address.[2]

Another way that the County ensures satisfactory transportation infrastructure for residents is through the Adequate Public Facilities Ordinance. This ordinance is enforced through Montgomery County’s Growth and Infrastructure Plan (GIP), where Local Area Transportation Reviews (LATR) are conducted to ensure that growth from development does not lead to motor vehicle, transit, pedestrian, and bicycle congestion.[3] Through this mechanism, the County can require developers to invest in the needed infrastructure associated with their parcels before they receive approval to

[1] “2024-2028 Growth and Infrastructure Policy Work Session #3 – Impact Taxes.” *Montgomery County Planning.* June 13, 2024. https://montgomeryplanningboard.org/wp-content/uploads/2024/05/2024-Growth-and-Infrastructure-Policy-Update_Work-Session-3-Impact-Taxes_6-13-24_Final.pdf

[2] “State of the County Address.” *County Executive Marc Elrich.* May 2, 2024. https://www.youtube.com/live/xJPIffnxXww?si=fiVPJkdHeDBaIccA&t=3229

[3] “Transportation Development Review.” *Montgomery County Planning.* https://montgomeryplanning.org/planning/transportation/transportation-development-review/#latr

build. These investments can take the form of vehicle, bicycle, or pedestrian infrastructure improvements, creating the potential for additional costs that developers must pay before building. There is currently a provision in the County code that allows developers to receive a credit towards their impact tax payment if they invest in public infrastructure through the LATR process, however there are many situations that are ineligible for this credit. As recommendations for the 2024 GIP are presented to the Council this fall, Councilmembers should consider approving the recommendation to allow infrastructure improvements on State-owned roads to qualify for a transportation impact tax credit.

Key Definitions and Acronyms

- **Impact Tax**: The tax set by the Montgomery County Council, assessed on new residential and commercial buildings and additions to commercial buildings in the County, used to fund the improvements necessary to increase the transportation or public-school systems capacity, thereby allowing development to proceed.
- **Thrive Montgomery 2050**: The County's General Plan that envisions the future and serves as a long-range guide for development.
    - **Growth Corridors**: Areas of proposed concentrated development.
- **Transportation Infrastructure**: The physical components and networks that enable the movement of people, goods, and services in Montgomery County.
- **Transportation Policy Area**: Geographical divisions of Montgomery County based on transportation characteristics, categorized as Red, Orange, Yellow, or Green Policy Areas.
    - **MSPA**: Metro Station Policy Area
    - **Red Policy Area**: Locations in the immediate vicinity of Metrorail stations.
- **Vision Zero**: A plan to eliminate serious-injury and fatal collisions on County roads for vehicle occupants (drivers and passengers), pedestrians, and bicyclists by the end of 2030.
- **APFO**: Adequate Public Facility Ordinance
- **CIP**: Capital Improvement Plan
- **COMCOR**: Code of Montgomery County Regulations
- **DPS**: Department of Permitting Services
- **FY**: Fiscal Year
- **GIP**: Growth and Infrastructure Policy

- **LATR**: Local Area Transportation Review
- **MCC**: Montgomery County Code

Development Impact Taxes

Overview of Montgomery County Development Impact Taxes

Impact taxes are taxes on new development where the revenue is specifically earmarked to address the infrastructure needs that arise from the growth the development creates.[4] For transportation impact taxes, this means that the money collected is used to accommodate (provide infrastructure for) the additional car drivers, pedestrians, bikers, and transit users that will traverse in the area. Montgomery County imposes a transportation impact tax on both commercial and residential development, and according to Montgomery County Code section 50-52[5], the funds collected from the tax can be used for any of the following:

- New road or total reconstruction of all or part of an existing road that adds an additional lane or turn lane or improves transit service or bicycle commuting, such as bus lanes or bike lanes,
- New or expanded transit center or park-and-ride lot,
- Bus added to the Ride-On bus fleet, but not a replacement bus,
- New bus shelter, but not a replacement bus shelter,
- Hiker-biker trail and protected bike lanes used primarily for transportation,
- Bicycle locker that holds at least 8 bicycles,

[4] "Frequently Asked Questions – Impact Fees." *US Department of Transportation Federal Highway Administration.* https://www.fhwa.dot.gov/ipd/pdfs/value_capture/faq_impact_fees.pdf

[5] "Code of Montgomery County: Sec 52-50. Use of Impact Tax Funds." https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-151358

- Bikesharing station (including bicycles) approved by the Department of Transportation,
- Sidewalk connector in a public right-of-way to or within a major activity center or along an arterial or major highway, or
- Element of bus rapid transit, including exclusive bus lanes, shelters, and buses.

The taxes are collected using the Department of Permitting Services payment infrastructure and must be paid before any building permit is approved. The tax amount varies based on the number of residential units to be constructed and the estimated number of increased traffic trips for commercial construction. These rates are multiplied each year to correspond with the Baltimore Cost Construction Index, which ensures the tax rates keep up with inflation. Year-over-year increases are capped at 20%, and if the index exceeds that then the excess is saved and applied the following year.[6] The rate for transportation impact taxes varies by development type, size, and location, seen below.

[6] "Code of Montgomery County: Sec 52-43. Calculation of Development Impact Tax." https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-151358

Building Type	Red Policy Areas (Metro Stations)	Orange Policy Areas	Yellow Policy Areas	Green Policy Areas
Residential Uses				
Single-Family Detached (per unit)	$9,663	$24,151	$30,190	$30,190
Single-Family Attached (per unit)	$7,905	$19,761	$24,702	$24,702
Multi-Family Low Rise (per unit)	$6,146	$15,366	$19,208	$19,208
Multi-Family High Rise (per unit)	$4,390	$10,976	$13,720	$13,720
Senior Residential (per unit)	$1,755	$4,391	$5,488	$5,488
Student-Built Houses (per unit)	$0	$0	$0	$0
Commercial Uses				
Office (per sq. ft. GFA)	$8.80	$22.10	$27.60	$27.60
Industrial (per sq. ft. GFA)	$4.45	$10.95	$13.85	$13.85
Bioscience facility (per sq. ft. GFA)	$0.00	$0.00	$0.00	$0.00
Retail (per sq. ft. GFA)	$7.85	$19.70	$24.60	$24.60
Place of worship (per sq. ft. GFA)	$0.00	$0.00	$0.00	$0.00
Clergy House (per unit)	$0.00	$0.00	$0.00	$0.00
Private elementary and secondary school (per sq. ft. GFA)	$0.70	$1.80	$2.25	$2.25
Hospital (per sq. ft. GFA)	$0.00	$0.00	$0.00	$0.00
Charitable, Philanthropic Institution (per sq. ft. GFA)	$0.00	$0.00	$0.00	$0.00
Other nonresidential (per sq. ft. GFA)	$4.45	$10.95	$13.85	$13.85
Agricultural Facility	$0.00	$0.00	$0.00	$0.00

The current transportation impact tax rates, which are in effect until June 30, 2025.[7]

Although this paper is primarily focused on the transportation impact tax, the County also imposes a school impact tax on development which funds improvements to the public school system necessitated by growth.[8] This tax is assessed for new developments based on the number of housing units they have. Since 2016, 5,040 developments have paid the school impact tax, contributing approximately $156

[7] “New and Revised Transportation Impact Taxes.” *Montgomery County Planning.* July 31, 2023. https://www.montgomerycountymd.gov/DPS/Resources/Files/Fees/Transportation%20Impact%20Tax%207-1-2023.pdf

[8] “Code of Montgomery County: Sec 52-53. Development Impact Tax for Public School Improvement.” https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-151392

million (almost $31,000 per development).[9] The yearly totals are as low as $13 million in 2023 and as high as $39 million in 2017.[10]

History of Impact Taxes in Montgomery County

The transportation impact tax was the first impact tax to be established in Montgomery County, codified in 1986.[11] Initially, the tax was only applied to developments in designated areas of the County like Germantown and Eastern Montgomery County, compared to now where the tax is applied throughout the County.[12] The funds collected were mainly considered as a way to mitigate motor vehicle congestion. However, as the major urban areas of the County became more populated and the feasibility to add additional traffic lanes dwindled, the revenue from transportation impact taxes have increasingly been used to improve pedestrian, bicycle, and public transit infrastructure.

Following the tax implementation, a developer quickly challenged the authority of the County to levy the tax. The lawsuit (Montgomery County v. WATERS LANDING LTD) went to the Montgomery Circuit Court in 1990, where the court decided that the tax was invalid.[13] However, the County appealed the decision and in 1994 the Maryland Appeals Court ruled that the County did have the authority to impose the tax.[14]

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[9] "Impact Taxes_Paid and Unpaid_Permits Issued since 01.01.16" *Montgomery County Department of Permitting Services.* July 8, 2024.
[10] "Impact Tax Actuals." *Montgomery County Department of Finance.* July 12, 2024.
[11] "Montgomery County v. WATERS LANDING LTD."*Court of Special Appeals of Maryland.* September, 1993. https://law.justia.com/cases/maryland/court-of-special-appeals/1994/627-september-term-1993-0.html
[12] *Ibid.*
[13] *Ibid.*
[14] *ibid.*

Analysis of Impact Taxes in Montgomery County

From 2016 to now, a total of $123 million has been collected in transportation impact taxes.[15] The revenue has come from approximately 3,000 residential buildings, which have paid an average $20,808 each, and just over 1,400 commercial builds, which have paid an average of $43,433 each.[16] In total, 4,393 developments have paid a transportation impact tax since 2016, and the average amount paid is $28,090.[17] There is a great deal of variation in the taxes collected both over time and by developments. The greatest amount paid by a commercial development was $4,566,119 in 2019 for the Marriott-International headquarters in Bethesda.[18] Conversely, the lowest amount paid by a commercial development was only $40 in 2019 for a development in Germantown. For residential construction, the transportation impact tax varies from $30,190 paid in 2024 down to just $24 paid in 2019.

Transportation Impact Taxes Collected Since 2016

Permit Type	# of Permits Paid	Sum of Taxes Collected	Average Tax Paid
Residential	2,979	$61,987,390	$20,808.12
Commercial	1,414	$61,414,668	$43,433.29
Total	4,393	$123,402,058	$28,090.61

A table of transportation impact tax revenue from 2016 to 2024.[19]

[15] "Impact Taxes_Paid and Unpaid_Permits Issued since 01.01.16" *Montgomery County Department of Permitting Services.* July 8, 2024.
[16] *Ibid.*
[17] *Ibid.*
[18] "Resolution on Marriott International Headquarters." *Montgomery County Planning Board.* January 9, 2018. https://montgomeryplanningboard.org/wp-content/uploads/2018/01/Marriott-International-Headquarters-Preliminary-Plan-No.-120180020-MCPB-No.-17-118.pdf
[19] "Impact Taxes_Paid and Unpaid_Permits Issued since 01.01.16" *Montgomery County Department of Permitting Services.* July 8, 2024.

However, the transportation impact taxes collected are just a small portion of the total revenue collected by the County. Montgomery County collected $5.97 billion in revenue in fiscal year 2023, meaning that the $7 million in transportation impact taxes collected during that fiscal year make up only 0.12% of the money collected by the County.[20] The County's Capital Improvements Program, which was approved in May of 2024, is $5.94 billion for the period between FY25 and FY30.[21] The positive revenue effects of the transportation impact tax are marginal compared to the scale of money being spent throughout the County and used to improve transportation infrastructure.

A line graph, which shows the yearly totals collected in transportation impact taxes since 2000.

[20] "Popular Annual Financial Report of Montgomery County." December 30, 2023. https://www.montgomerycountymd.gov/Finance/Resources/Files/data/financial/pafr/PAFR_FY23_web-FINAL.pdf

[21] "Budget Update." *Montgomery County Council.* May 23, 2024. https://www.montgomerycountymd.gov/COUNCIL/budget_summary/index.html

Volatility and Unpredictability of Impact Taxes

Because the revenue collected from impact taxes is dependent on the number and size of developments for a given year, the effect of the tax can vary greatly, making it an unstable revenue source to rely on. One external factor that can influence how much money is generated from impact taxes is the interest rate environment. In a period of prolonged high interest rates (which is outside the control of the County government) the incentive to build wanes and less development is planned and completed, resulting in less impact tax revenue collected.[22] Following the 2009 financial crisis, development activity slowed, and the revenue collected from transportation impact taxes bottomed out at $1.65 million in FY2009.[23]

Currently, the Montgomery County Department of Finance uses modeling to estimate how much will be collected in impact taxes for future years. This process takes an average of the previous 10 years of taxes collected and applies technical modifiers to alter the average, depending on the assumptions of development trends. Although impact taxes accounted for 4% of the transportation capital budget in FY2024, the year-to-year changes can make it difficult to rely on impact taxes for future fiscal planning.[24]

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[22] Kaye, Danielle. "New Home Construction Slows as Mortgage Rates Remain High." *The New York Times.* June 20, 2024. https://www.nytimes.com/2024/06/20/business/economy/new-home-construction-mortgage-rates.html

[23] "Impact Tax Actuals." *Montgomery County Department of Finance.* July 12, 2024.

[24] "2024-2028 Growth and Infrastructure Policy Work Session #3 – Impact Taxes." *Montgomery County Planning.* June 13, 2024. https://montgomeryplanningboard.org/wp-content/uploads/2024/05/2024-Growth-and-Infrastructure-Policy-Update_Work-Session-3-Impact-Taxes_6-13-24_Final.pdf

Impact Taxes in Neighboring Jurisdictions

In the nearby areas to Montgomery County, and across the United States, impact taxes are not widely utilized. The District of Columbia, Fairfax County, and Arlington County do not utilize development impact taxes.[25] The Code of Virginia does allow localities to impose a road impact fee if the population is greater than 20,000 and it has a population growth rate over 5% or population growth over 15%.[26] Prior to implementation, the municipality must establish an advisory committee to study the existing capacity of roads and the need for road improvement and expansion.[27] The Code also permits the establishment of an impact fee credit, where the dedication, contribution, or construction from a developer for off-site transportation improvements benefiting the impact fee service area can be credited against the impact fee imposed on their project.[28] Localities can also enact ordinances to provide credits for on-site transportation improvements that go beyond what is required of the development.

Prince George's County does not have a development impact tax but does have two surcharges that function in a similar capacity to an impact tax: a school facilities surcharge and a public safety surcharge.[29] These surcharges are one-time payments for

[25] DeFazio, Blaise, and Rubin, Leslie. "Private Development and Public Infrastructure." *Montgomery County Office of Legislative Oversight.* November 27, 2018. https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/2018_11Private_Development_Public_Infrastructure.pdf

[26] "Code of Virginia: Article 8: Road Impact Fees."https://law.lis.virginia.gov/vacodefull/title15.2/chapter22/article8/

[27] "Code of Virginia: Article 8: § 15.2-2321: Adoption of Road Improvements Program." https://law.lis.virginia.gov/vacodefull/title15.2/chapter22/article8/

[28] "Code of Virginia: Article 8: § 15.2-2324: Credits Against Impact Fee." https://law.lis.virginia.gov/vacodefull/title15.2/chapter22/article8/

[29] DeFazio, Blaise, and Rubin, Leslie. "Private Development and Public Infrastructure." *Montgomery County Office of Legislative Oversight.* November 27, 2018.

new residential construction that is used to supplement funding for public school facilities and police, fire, and emergency medical services. Certain residential development, like graduate student housing, elderly housing, and studio apartments in urban corridors, are exempt from the fee.[30] Multifamily housing located near metro stations have their surcharge discounted by 50%.[31]

https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/2018_11Private_Development_Public_Infrastructure.pdf

[30] "Code of Prince George's County: § 10-192.01: School Facilities Surcharge." https://library.municode.com/md/prince_george's_county/codes/code_of_ordinances?nodeId=PTIITI17PULOLAPRGECOMA_SUBTITLE_10FITA_DIV7TATACR_SD2SCFASU_S10-192.01SCFASU

[31] *ibid.*

Local Area Transportation Review

History of Local Area Transportation Review

The Montgomery County Council adopted an Adequate Public Facility Ordinance in 1973, meaning that the infrastructure around a new development must be equipped to handle the growth the area will see from new residents and businesses.[32] The responsibility to evaluate if the public facilities will be able to accommodate the additional drivers, pedestrians, bikers, and transit users falls to the Planning Board. If these standards are not met, the Planning Board cannot approve any preliminary plan for development.[33] Every four years, the Council votes on changes to the Adequate Public Facility Ordinance; the policy document that explains these changes is called the Growth and Infrastructure Policy (GIP) (formerly called the Subdivision Staging Policy, and before that the Growth Policy). An updated version of the GIP will come before the Council in the fall of 2024.

A component of the GIP is the Local Area Transit Review (LATR), which tests the transportation adequacy for a proposed development. This test is required for any development that would create 50 or more peak-hour weekday person trips.[34] If a plan is found to have inadequate facilities, the applicant must provide those facilities or

[32] "Transportation Development Review." *Montgomery County Planning.* https://montgomeryplanning.org/planning/transportation/transportation-development-review/#latr

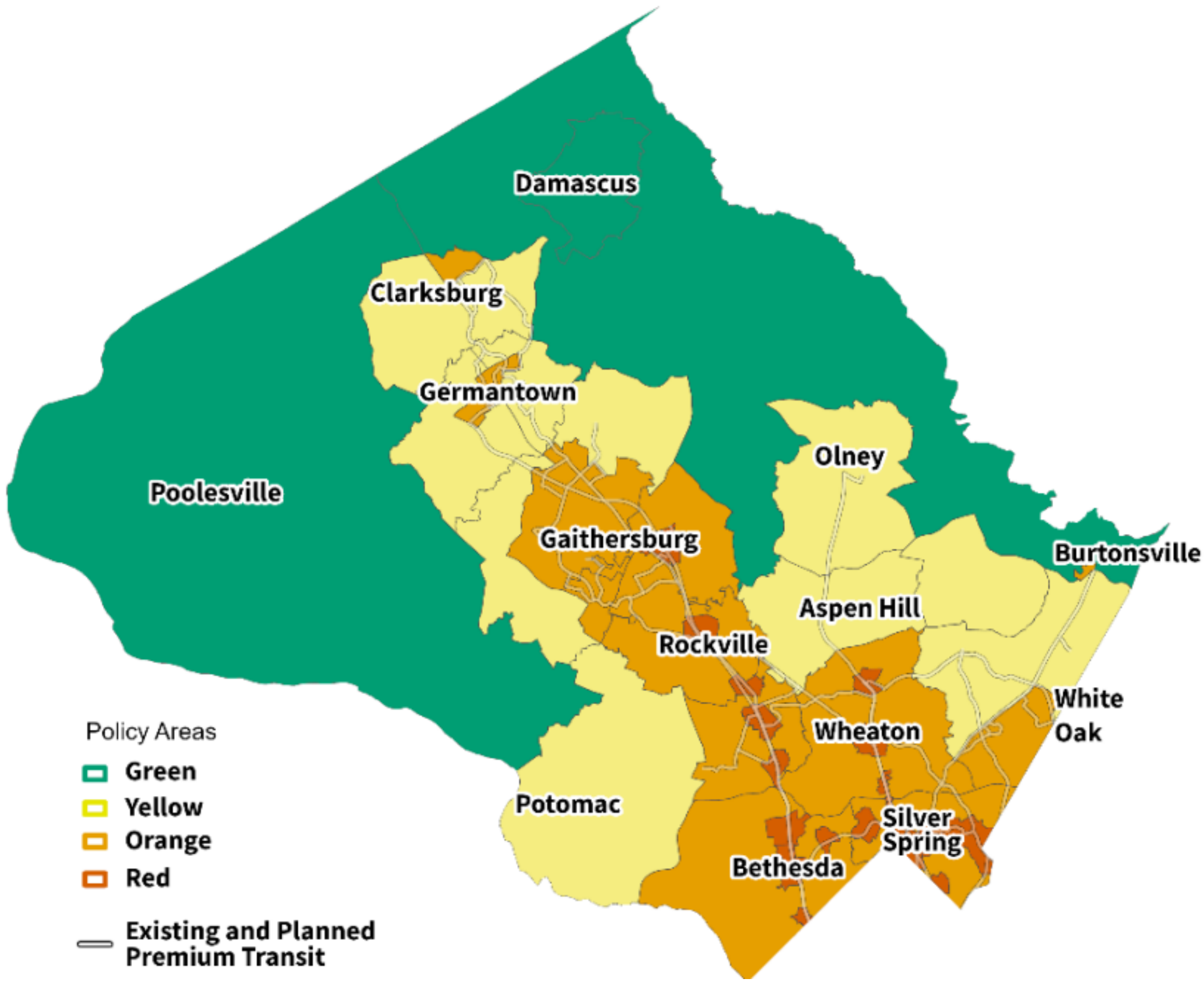
[33] DeFazio, Blaise, and Rubin, Leslie. "Private Development and Public Infrastructure." *Montgomery County Office of Legislative Oversight.* November 27, 2018. https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/2018_11Private_Development_Public_Infrastructure.pdf

[34] "2020-2024 Growth and Infrastructure Policy." *November 16, 2020.* https://montgomeryplanning.org/wp-content/uploads/2020/11/20210101-Text-of-the-2020-2024-Growth-and-Infrastructure-Policy-with-Maps.pdf

make a payment towards the area's transportation needs.[35] Prior to 2020, the LATR tested all areas of the County on motor vehicle, pedestrian, bicycle, and bus transit system adequacies. However, the 2020 GIP (then called the Subdivision Staging Policy) eliminated the requirement to test for motor vehicle adequacy in the denser red policy areas.[36] Locations in red policy areas, which are more urban than the rest of the County, are tied to Metro train stations and include Bethesda, Rockville, and Silver Spring, among others.[37]

[35] "Local Area Transportation Review Guidelines." *Montgomery County Planning Board.* June, 2023. https://montgomeryplanning.org/wp-content/uploads/2023/06/LATR-Guidelines-Update-FINAL-2023.06.22.pdf
[36] "2020-2024 Growth and Infrastructure Policy." *November 16, 2020.* https://montgomeryplanning.org/wp-content/uploads/2020/11/20210101-Text-of-the-2020-2024-Growth-and-Infrastructure-Policy-with-Maps.pdf
[37] *ibid.*

Figure 2. 2020-2024 Transportation Policy Areas



A map showing the different policy areas in Montgomery County.[38]

Analysis of LATR Mitigation Costs

The elimination of motor vehicle adequacy tests for red policy areas signaled a significant shift in priorities to encompass transportation options that don't require a car. In 2020, the GIP was updated to incorporate Vision Zero initiatives which look to

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[38] "2024-2028 Growth and Infrastructure Policy – Working Draft." *Montgomery County Planning Board.* https://montgomeryplanningboard.org/wp-content/uploads/2024/04/Attachment-1-%E2%80%93-2024-%E2%80%93-2028-Growth-and-Infrastructure-Policy-Working-Draft.pdf

eliminate injuries and deaths on roadways.[39] All LATR studies must develop a Vision Zero statement to promote the safety of drivers, pedestrians, and bikers.[40] This increasing focus on other transportation methods has created additional requirements for developers to consider and opportunities for LATR studies to necessitate that applicants pay for more infrastructure investments that can mitigate other types of congestion beyond motor vehicle. Since the most recent GIP went into effect at the start of 2021, the following improvements have been required by LATR studies:[41]

- Installing and widening sidewalks,
- Constructing and upgrading bicycle lanes,
- Planting street trees,
- Upgrading bus stops and installing new bus shelters,
- Installing protected pedestrian crossings,
- Installing new streetlights,
- Improving curbs to be ADA accessible.

These public facility improvements can be implemented by the developer, or they can pay the County to complete the work. Since 2021, developers have spent $4.1 million addressing these requirements themselves and $3.1 million paying the County to do the work, for a total of $7,251,791 spent.[42] This investment comes from seventeen

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[39] "Vision Zero: Zero Traffic Deaths in MoCo." July 1, 2023. https://www.montgomerycountymd.gov/visionzero/Resources/Files/vz2030-plan.pdf
[40] "Local Area Transportation Review Guidelines." *Montgomery County Planning Board.* June, 2023. https://montgomeryplanning.org/wp-content/uploads/2023/06/LATR-Guidelines-Update-FINAL-2023.06.22.pdf
[41] "2024-2028 Growth and Infrastructure Policy – Working Draft: Appendix B." *Montgomery County Planning Board.* https://montgomeryplanningboard.org/wp-content/uploads/2024/05/Attachment-2-2024-GIP-Update-Appendices-web_5-23-24.pdf
[42] *ibid.*

projects: thirteen commercial, three residential, and one mixed use. Some individual plans, like a conversion of a medical office to apartments and retail space in Forest Glen, are investing a total of $1.86 million in construction costs and payments to the County.[43] In addition to the costs these developers are paying to improve public facilities, they are also paying the transportation impact tax.

[43] *ibid.*

Transportation Impact Tax Credit

Existing Credit System

Currently, under MCC 52-47, there are situations where developers can receive a credit that lowers the amount they owe in transportation impact taxes. In order to receive a credit, the developer must build infrastructure that the County would otherwise have to build.[44] The infrastructure must be something that provides additional transportation capacity and that transportation impact taxes can pay for according to MCC 50-52, like road construction, protected bike lanes, or sidewalks.[45] To claim the credit, developers must enter into a participation agreement with the County and submit the cost associated with the improvement to the Montgomery Department of Transportation, who reviews the cost and timeline and calculates the credit.[46] The credit amount, which cannot exceed the actual cost of the improvement, is then certified to the Department of Permitting Services before the impact tax is collected.[47] This credit system lessens the cost of development, making it more attractive for developers to invest in the County, while also ensuring the high standards for public facilities are met. However, the current implementation of the credit can be confusing and does not allow for credits in many situations. During a Planning Board public comment period, a development group stated that the impact tax law "contains

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[44] DeFazio, Blaise, and Rubin, Leslie. "Private Development and Public Infrastructure." *Montgomery County Office of Legislative Oversight.* November 27, 2018. https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/2018_11Private_Development_Public_Infrastructure.pdf

[45] "Code of Montgomery County Regulations: 52.47.01.06: Credits." https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_comcor/0-0-0-27794

[46] "Code of Montgomery County: Sec 52-47. Credits." https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-151358

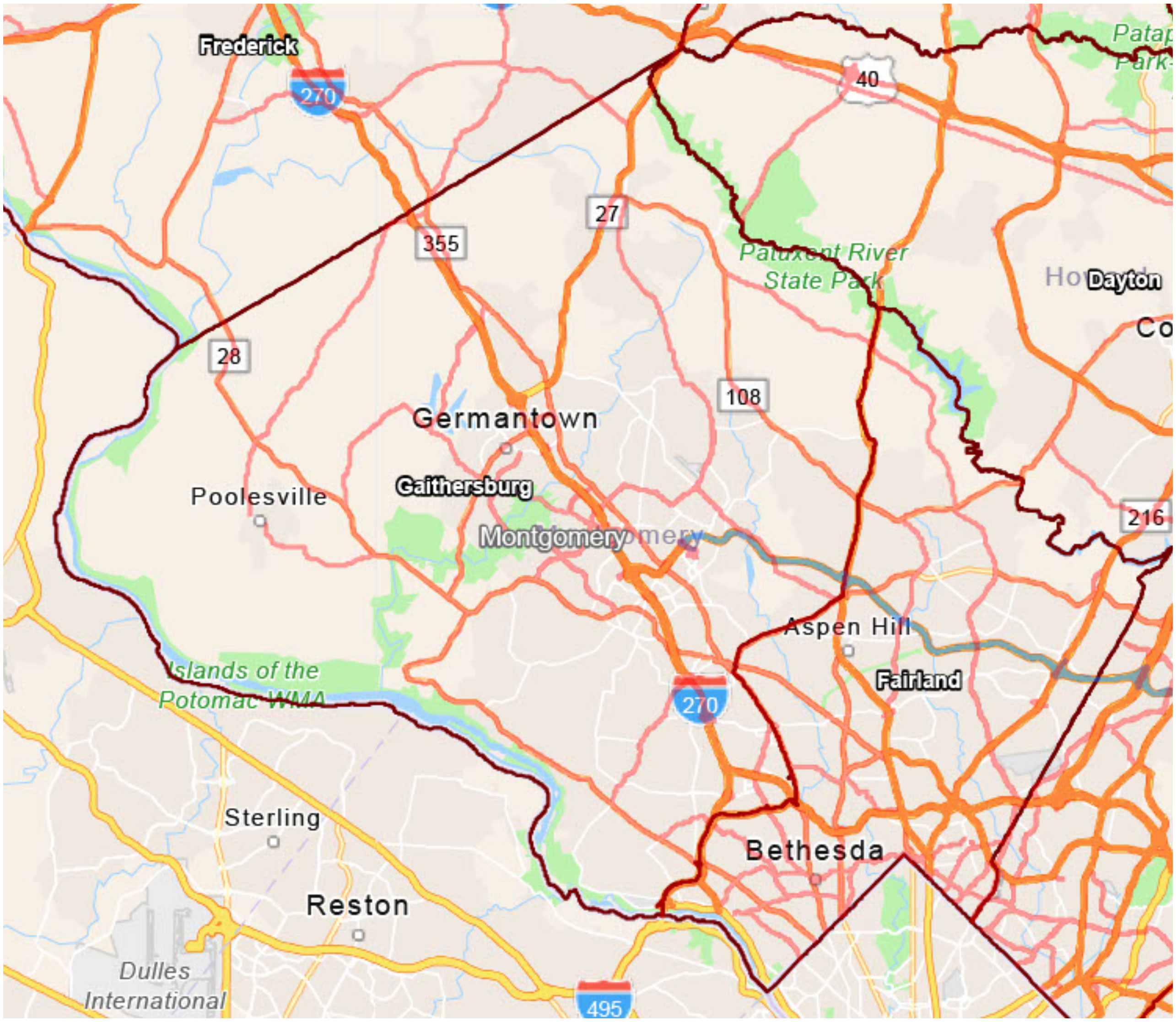
[47] *ibid.*

unclear language with complicated procedures, unreasonably restricts eligible improvements, and results in unpredictable and arbitrary determinations."[48]

Instances Where Credits are not Allowed

While the transportation impact tax credit system is a good policy in theory, there are many instances under the current interpretation of the County code where the credit cannot be given, mitigating any positive effects that could be had. A common example is projects situated on State-owned roads. County regulations state that the Department of Transportation must not certify a credit for any capacity improvement to a State road.[49] This disqualifies many major developments on roads like Georgia Avenue, Connecticut Avenue, New Hampshire Avenue, and Rockville Pike from receiving benefits.

[48] "2024-2028 Growth and Infrastructure Policy Work Session #3 – Impact Taxes." *Montgomery County Planning.* June 13, 2024. https://montgomeryplanningboard.org/wp-content/uploads/2024/05/2024-Growth-and-Infrastructure-Policy-Update_Work-Session-3-Impact-Taxes_6-13-24_Final.pdf
[49] "Code of Montgomery County Regulations: 52.47.01.06: Credits." https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_comcor/0-0-0-27794



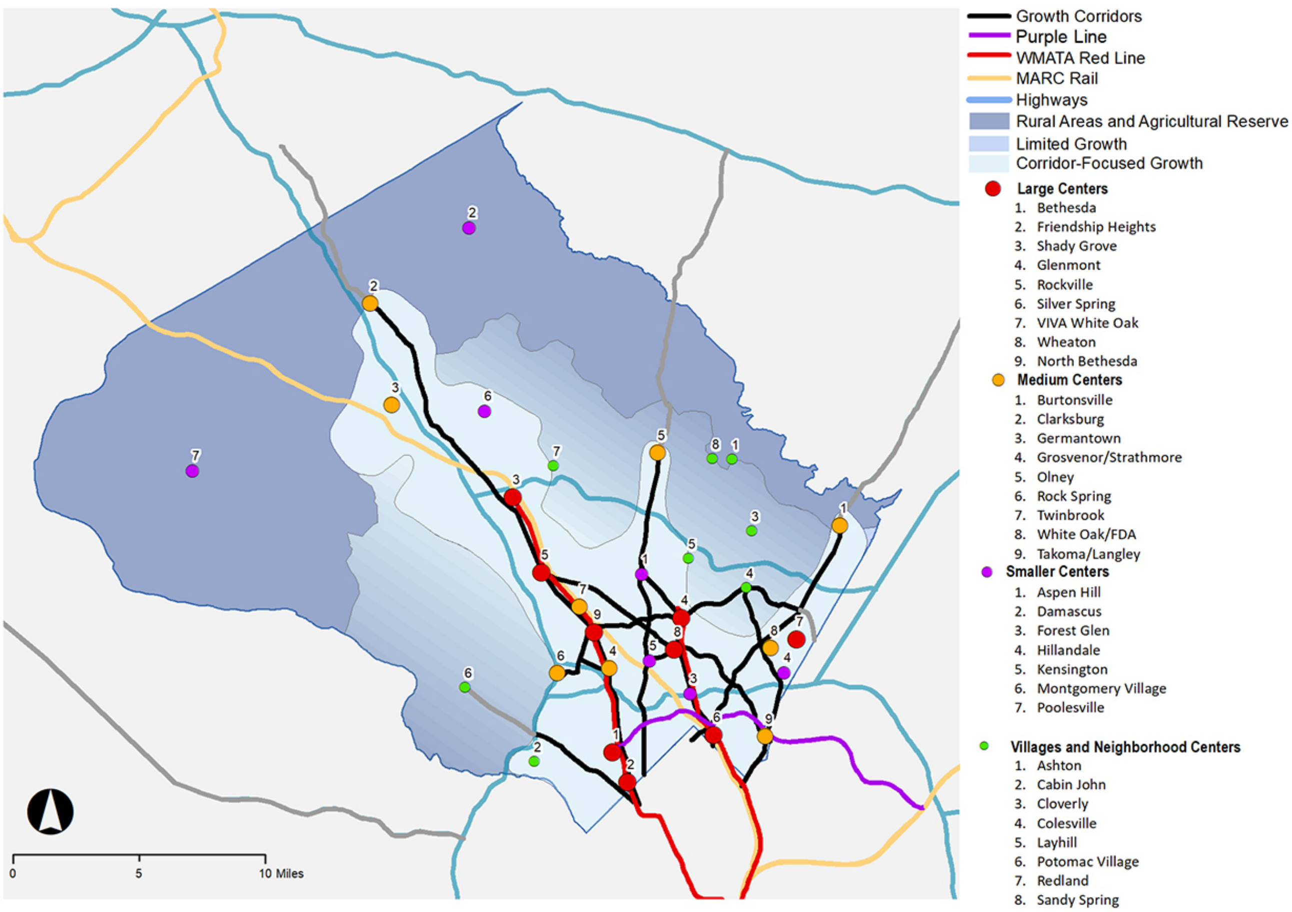
A map of State-owned roads (in orange and red) in Montgomery County.[50]

Many of the State roads have been identified in the Thrive Montgomery 2050 plan as targeted growth corridors, where development will be concentrated to maximize efficiency and connect residents to centers of activity.[51] Not only are these corridors located in all of the red policy areas, but they go through orange and yellow policy

[50] "MDOT Know Your Roads." *Maryland Department of Transportation.* August 6, 2024. https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=14f27a6cab51422dabdfb168ca603482

[51] "Thrive Montgomery 2050." *Montgomery County Planning.* October 25, 2022. https://montgomeryplanning.org/planning/master-plan-list/general-plans/thrive-montgomery-2050/

areas as well. The concentrated development called for in these corridors will lead to increased density, which creates opportunities for transportation congestion unless sufficient investments are made in the transportation infrastructure. Under the current implementation of the credit, developers building on State roads lack the incentive to make improvements to the public facilities compared to builders on County-owned roads.



The Thrive Montgomery 2050 Growth Map.[52]

52 *Ibid.*

In addition, mandating LATR improvements and transportation impact taxes while not allowing credits for State road improvements may make the price to build higher than it would be in other areas. This could produce a disincentive for developers to build directly on the identified growth corridors, negatively impacting the efficacy of Thrive Montgomery 2050. This also hampers growth in the County more generally, preventing the housing supply from increasing at the needed rate and slowing the number of new businesses operating. If the County were to extend transportation impact tax credits for improvements made to State-owned roads, it could make it more attractive to build in all areas of the County, addressing the housing shortage and allowing the County to collect additional revenue from property taxes.

Another situation that is not eligible for a transportation impact tax credit is sidewalks that don't connect to other paths. County regulations say that sidewalks must connect to a major activity center or along an arterial or major highway in order to qualify for a credit.[53] The applicant must provide information about the sidewalk location and what schools, retail, or Metro stops it leads to. However, there are often situations where neighboring properties don't have a sidewalk, causing the new sidewalk for a development to be ineligible for a credit because it doesn't fully connect. This disincentivizes developers from installing a sidewalk, creating a cycle where the neighboring properties will then be unlikely to install a sidewalk if they undergo development in the future.

[53] "Code of Montgomery County Regulations: 52.47.01.06: Credits." https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_comcor/0-0-0-27794

Recommendations

To promote a favorable environment for development that still ensures that the public transportation infrastructure needs are met, the County Council should consider expanding and promoting the transportation impact tax credit system. In the revised GIP, which the Council will vote on this fall, the Planning Department will recommend changing the County code to clarify the credit process and make improvements to State roads eligible for credits.[54] It can be argued that this would decrease the revenue collected from the transportation impact tax, mitigating the ability for the County to make infrastructure improvements. However, since the impact tax money makes up only a small portion of the Capital Improvements Program, it may actually result in more revenue if the decreased development cost leads to more development and redevelopment that pay a higher property tax.

This change would also create a more equitable system for development, ensuring that the many residents living on or around state roads will be able to benefit from the infrastructure improvements that the credit would incentivize. It could be argued that the infrastructure of State roads is the responsibility of Maryland, not Montgomery County, but that does little to assuage the feelings of residents along these roads who might feel the effects of insufficient infrastructure investments and don't know the entity responsible for their road. The type of residents affected by this can be exemplified by the demographics of residents living along University Boulevard, a growth corridor identified in Thrive Montgomery 2050 that is State-owned. The

[54] "2024-2028 Growth and Infrastructure Policy Work Session #3 – Impact Taxes." *Montgomery County Planning.* June 13, 2024. https://montgomeryplanningboard.org/wp-content/uploads/2024/05/2024-Growth-and-Infrastructure-Policy-Update_Work-Session-3-Impact-Taxes_6-13-24_Final.pdf

surrounding area has a slightly higher percentage of Black residents, 23.65%, compared to the rest of the County, 26.73% Hispanic/Latino residents, 10.43% Asian residents, and 33.48% White residents.[55] By not allowing credits for improvements to State roads, Montgomery County is failing to reward developers for the infrastructure investments needed to facilitate healthy growth throughout the County.

Because of this, in the fall the County Council should **vote in favor of the GIP recommendation 4.8: Update the County Code to provide more clarity and allow credit for capacity improvements along State roadways**. In addition, the Council should consider a change to the County code that would allow sidewalks to qualify for an impact tax credit, even if they don't currently connect to a major activity center, arterial, or highway. This would promote the installation of sidewalks for developers, even if neighboring parcels don't have one, setting the stage for greater pedestrian connectivity in the future.

[55] "University Boulevard Corridor Plan." *Montgomery County Planning. October 5, 2023.* https://montgomeryplanning.org/planning/corridor-planning/university-boulevard-corridor-plan/#about-area

Racial Equity and Social Justice Impact

Development in Montgomery County is intrinsically tied to racial equity and social justice. Having development plans like Thrive Montgomery 2050 influence what is built and where. Many of the County's Equity Focus Area tracts have State-owned roads in them.[56] By expanding the transportation impact tax credit to apply towards improvements to State roads, development that improves the transportation infrastructure in these Equity Focus Areas can be rewarded. This means that residents who are more likely to be younger, have lower educational attainment, and have lower household income levels can benefit from the improvements to public facilities that they use.

The transportation impact tax credit can also be seen as an incentive that promotes additional construction in the County. By lowering the costs associated with paying for LATR-mandated improvements and a transportation impact tax, development may be more likely to occur. This is particularly salient for residential construction, which is continually needed to keep up with the increased housing demands in Montgomery County. More housing units can prevent the large rent increases caused from housing demand outpacing supply, which would put significant strain on many low-income residents throughout the County. The revised GIP that the County Council will vote on this fall includes a number of recommendations that would lower the impact tax amount for specific development in order to address the housing shortage[57]:

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[56] "The Equity Focus Areas Analysis." *Montgomery County Planning.* https://montgomeryplanning.org/planning/equity-agenda-for-planning/the-equity-focus-areas-analysis/

[57] "2024-2028 Growth and Infrastructure Policy Work Session #3 – Impact Taxes." *Montgomery County Planning.* June 13, 2024. https://montgomeryplanningboard.org/wp-content/uploads/2024/05/2024-Growth-and-Infrastructure-Policy-Update_Work-Session-3-Impact-Taxes_6-13-24_Final.pdf

- Recommendation 4.3: Offer a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,500 square feet or smaller.
- Recommendation 4.5: Expand the current discount for units with three or more bedroom units to a total impact tax exemption for both transportation and school impact taxes and in all impact areas and policy areas
- Recommendation 4.6: Exempt office-to-residential conversion projects from impact taxes, given the high office vacancy rate in the county and the difficulty of converting office space to residential use.

By considering these changes to the GIP, the County Council can utilize changes to the impact tax system to promote additional housing and infrastructure improvements, addressing the needs of Montgomery County's most vulnerable residents.

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