

APPENDIX A

Bonus and Credit Exchange Application Explanation

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What is it?

This is a tool to assist County Officials to make informed and uniform decisions with regard to applications for complex concept development plans. This item is referred to in the OTC zoning text as a submittal item that the Planning and Zoning Officer may require as part of Concept Development Plans applications. The proposed Matrix application form will assist the applicant and reviewer, by providing a single source, decision-making framework for considering the factors or elements that are part of a combined review of proposals regarding plan and zoning requirements, public facility improvements due to APF, bonuses, credits and administrative minor modifications.

Who should use it?

This tool is not necessary or required for all applicants in the OTC Development. Applicants that wish to apply for some form of Bonus, Minor modification or other form of exchange, as defined below, are required to include this information in their concept development plans application. All multi-staged projects may be required to submit this form depending on the size and complexity of the proposal.

What is its purpose?

This added submittal requirement, with its associated worksheets, provides a:

1. **A consolidated viewable framework** - from which both the government and the landowner/developer can make informed development and public facility decisions at the time of Concept Plan review with regard to a series of interconnected and complex issues on the following:
 - a) Compliance with basic planning and zoning requirements regarding building intensity and density, functional plans, design standards and other elements, and to review any requests for minor modifications to those requirements.
 - b) Identification of and award of any applicable bonuses, rewards or credits for actions that exceed the requirements.
 - c) Identification of required extent, timing and responsibilities of fees, improvements or creation of public facilities needed to support the development.
 - d) Phasing of deliveries on interim and final requirements, bonus action bonus rewards and other APF actions.

With this submittal, the government and the landowner/developer can identify and compare, the total list of impacts, cures, proffers and exchanges in order to make sure that they don't overlap or get credited twice and that logical trades between various elements can occur. For instance if the applicant paid to fully build a road that he might only be obligated to pay for a portion, the County might, request

the he build the entire road and in exchange, agree to either reserve APF credits for a later phase of that development or pay for a required stream restoration project.

2. **A structure for various possible exchanges** - The application also provides a uniform process for receiving proposals and making decisions regarding possible exchanges regarding the extent, timing and responsibilities of improvements. These exchanges may take the form of:
 - a) Development Bonuses - Provision of certain public benefits in exchange for added density, building height or other rewards.
 - b) Credits - Advance construction or provision of certain public facilities or benefits in exchange for some form of public reimbursement, re-payment in kind or acknowledgement of approved methods of compliance for later development phases.
 - c) Burden Sharing/Exchange - Public/private cost sharing to create mutual desired or needed public facilities and amenities and other benefits as well as to establish logical construction and design processes for their creation.
 - d) Contributions-in-lieu - Contributions to various defined OTC funds, and possible future special tax districts in lieu of improvements to meet requirements.
 - e) Minor Modifications- Acceptance of modification/variance from the requirements in exchange for additional improvements in other areas.
3. **Transparent process** - The associated application matrix and worksheets provide a consolidated viewable framework from which outside parties such as the public officials and the public can understand the logic and merits of the decision made on their behalf to maintain adequate public facilities and obtain added public benefits.

Why is it needed?

At maturity, the OTC will be among the highest density areas in the County. It will receive large and complex multi-stage development projects. The County and the development applicants needs a better set of tools to help in making and reviewing applications, and making agreements on behalf of the public. This additional application materials area intended to assist with this need and to address the following issues:

1. **Nexus Requirements**

The local government requires that new developments provide or pay for facilities that are needed to serve the project. This requirement is upheld so long as there is a “reasonable nexus” between the public facility demanded and the created need. It is a legal maxim that such a “public exaction” must be “proportional” to such need.

Public infrastructure and facilities, such as roads, schools, sewer and water supply are not “static” improvements, that is, they are impacted by many factors such as

outside growth and trip generation, changed environmental standards, new transportation decisions, changed budgets and market cycles, to name just a few.

These submittal requirements will help to determine the place or position of any development relative to adequacy and to evaluate the “proportion” and “reasonableness” of any requirements imposed on or exacted from an applicant for development. Since the other side of “proportion” is general “public responsibility”, it will also take into account the proportion of infrastructure responsibility that lies in the public domain. In order to achieve the vision of this plan, the County may wish to require development applications to provide exactions that exceed the Nexus Requirement. In these cases, a means to make an exchange with the applicant to restore the nexus balance is required.

2. **Incentives to build inside the OTC**

The application of Growth Management tools and Priority Funding Area requirements essentially mandate the establishment of mixed-use compact communities, and concentrated urban scale development, within a relatively small area. There is, however, no guarantee that either the buying public or the investment community will choose to locate or invest in these compact communities. In order to achieve the vision of this Plan, the County must create a demand or “marketplace” for homes and business to locate in the OTC rather than outside the boundaries. The plan vision seeks to create a vibrant “place”, with attractive and active streetscapes, convenient pedestrian oriented transit and transportation options, high quality building and public open space design. In order to create a high quality urban area, the Plan requires a high degree of public facility and public benefit features and a more costly development review process. These requirements make the cost of developing and building in the OTC higher than in other areas of the county. In exchange for these higher standards this planning tool helps to:

- a) Offset the cost of developing in the OTC by offering economic rewards, incentives and “bonuses” to owners and developers of quality projects to induce investment and create a favorable business climate.
- b) Streamline the application review process by providing prospective builders/ developers with a unique tool help stream line the review of complex proposals; and
- c) Create a forum for approval of creative proposal that meet the goals of the plan.

3. **Staging of Public Facility Provision and Development**

Not unlike many high growth areas, Anne Arundel County has difficulty maintaining a program that provides needed or desirable public facilities and amenities that match the requirements of growth within its boundaries. It is always difficult to effectively plan these facilities in pace with the nature and amount of growth. A sound, desirable and publicly beneficial project may be held in abeyance for many years, or even dissolve, due to public facility failures. This condition persists even though an applicant is willing to advance funding for needed facilities as long as he

is reimbursed, re-paid or enabled to exchange advances for proportionate regulatory adjustments and benefits. Therefore, the submittal includes a place for applicants to request such **credits in exchange for advance actions**.

4. **Overlapping Decisions**

Inevitably, public facilities requirements, functional plans, regulatory mandates, impact fees, fees-in-lieu, bonus/credit provisions and related process review elements will overlap and interconnect. This process creates a mechanism to identify and understand public facility/public benefit/amenity elements within the Plan and other regulations, and provide a viewable framework from which both the government and the landowner/developer can make informed development and public facility decisions in a more comprehensive manner. This process both helps to avoid conflicts between decisions on various issues and permit decisions that exchange one action for another other the entire range of decisions the county must make.

Bonus and Credit Exchange Application and Review Sequence

The preparation and review of Bonus and Credit exchange application element of a CDP application is recommended to proceed according to the following steps:

Step One - Initial application submittal to include the products of the following:

1-A Definition and quantification of proposed actions

- a) Identify any plan or zoning requirements that the application either exceeds or fails to comply with.
- b) Identify any items for which a minor modification will be requested.
- c) Identify the amount of new floor area to which that APF calculations will apply.
- d) Define the net new floor area not exempted by Grandfathering, vesting or other exemption, any residual square feet not exempted and all new square footage will result in a net increase of floor area for a project.
- e) Identify the amount of net new off site trips, both average daily and peak hour numbers.
- f) Identify the land use mix based on the total new floor area to be built, at full build out and at each stage of a multi-stage plan, define the floor area for each proposed land use and the ratios between the uses. (Including any requested bonus development)

1-B Compliance/ Impact Analysis

- a) Identify and quantify the proposed bonus eligible actions and bonus points earned
- b) Identify the results of required impact analysis studies regarding adequate public facilities and stream impacts and the proposed mitigation actions, if any.
- c) Identify the party responsible for mitigating identified impacts. If a requirement of a Plan, Map or Zoning Text is considered by an applicant to exceed a reasonable proportion of private expenditure that benefits the public in addition to the project applied for, or does not bear a reasonable nexus to the need created by the project, the County may be required to adjust its requirement or compensate the applicant by an exchange of value or other mechanism. For example, a development project will produce vehicular off-site trips and will often require turning lanes (acceleration/deceleration lanes) to accommodate trips into and out of the project site. It will also contribute trips into the main roadway that mix or blend with other off-site trips that are not caused by the project development. While improvements to the roadway system for the *turning lanes* are likely the obligation of the project applicant, improvements that may be needed to increase capacity to a through roadway system are a mixed obligation.

1-C Preliminary Development Proffers

As applicants prepare studies and reports required as part of the Concept Plan submission, including an impact analysis, they should also prepare a preliminary Proffer containing the undertakings and actions that the applicant is willing to accept as conditions of approval. This will be reviewed and acted upon by the Director as part of the application review process. It should include:

- a) The proposed cure or mitigation for *proportional* deficiencies or inadequacies.
- b) A compilation and calculation of Bonus eligible actions.
- c) Requests for specific rewards, credits, etc.
- d) Requests for minor modifications, if any.
- e) Requests for specific exchanges if any, with details on the manner in which each positive balance will be applied to an applicable exchange option.
- f) Documents of any development right transfers or joint use agreements.
- g) A statement of the proposed delivery of required actions, bonus actions mitigations action and rewards in coordination with proposed development staging.

Example - The proffer might, in the case of an applicant who exceeds his requirement for stormwater management, request either a development bonus or an exchange where by the county builds the stream a restoration project, but not both.

Step Two - Public Facility Cure, Mitigation or Satisfaction Determination

After determining the nature and extent of any impact(s), the Planning and Zoning Officer will provide the applicant with a written Decision as to the conformance of the Concept Plan application with the plan and zoning requirements and with adequate public facility standards. The Decision will state whether the application fulfills all applicable requirements and standards or whether there are deficiencies or inadequacies that require mitigation and/or satisfaction. The Decision will also note whether or not impacts may adequately be mitigated or cured by the payment of impact fees or fees-in-lieu, and the amount of such payments.

Where fees are not specifically provided for, the Decision will state the nature and extent of the mitigation required to bring the application into compliance with Functional Plan and Adequacy Standards, and a Finding as to the nexus and proportionality supporting the imposition of mitigation measures on the applicant. The Decision should state with specificity the imposition of requirements for land reservation, dedication, construction or improvement to land, and the granting of any public easements.

Step Three - Exchange Proposals & Agreement:

After a Finding /Decision has been issued by the Planning and Zoning Officer, a final Proffer shall be made. This proffer may take the form of a list of conditions to be attached to the Planning and zoning Officers letter of Conditional Approval or, at the Applicants option, may take the form of a Development Agreement as defined by the zoning code.

Step Four

Upon County approval of the Concept Plan, a letter of Conditional Approval will be issued that memorializes the approval of any exchanges, modifications, bonus rewards or other agreements. An Applicant will have 30 days in which to accept or reject the Conditional Approval. Any signed development agreements will be appended to that approval.

Sample Nexus Matrix - Application Aid

Figure 72, Nexus Matrix, will be used by the county to review Bonus and Credits Exchange applications. The Planning and Zoning Officer may also issue additional worksheets, amended and updated from time to time, to inform and guide applicants. The Worksheets should also provide administrative guidelines, interpretations and clarifications to assist the applicant in understanding and following the Bonus and Credits Exchange Review Process.

The Matrix form summarizes the recommended structure of the submittal and review process. Applicants, who elect to exercise this Review Process, are required to organize their applications based on this format for consistency. The Matrix is organized to follow the defined steps for review as follows:

Column One: Proposed Actions - identifies and quantifies the scope of the applicant's proposed actions relative to the requirements. The vertical listing, on the left, is organized to follow the four Plan element sections. For each section, it identifies the requirements regarding Functional Plan components, public facility requirements, and public benefit features, recommended bonuses/credits that need to be analyzed and defined.

Column Two: Nexus Analysis

Impacts identify the results of the impacts studies and identifies if the impacts needs to be solved by either the public or private sector.

Mitigations - identifies how the impact/requirement will be migrated, cured or satisfied. Four choices are possible provision of land, construction of an improvement, payment of either an impact fee or fee -in-lieu.

Column Three:

Proffers - Summarizes the offered proffer text

Rewards and Exchanges - Summaries the exchange requests and the specific reward requests for earned bonus points.

**Note that not all land use programs, benefit features and funding mechanisms are in referred to here will be in place when this application is first used. New or amended county or state legislation will be needed in order to obtain the full utility of this Matrix program.*