Agenda Item 11B
July 17, 2018
Worksession-Action

MEMORANDUM

July 13, 2018

TO: County Council

FROM: Josh Hamlin, Legislative Attorney

SUBJECT: Bill 38-17, Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build

PURPOSE: Worksession-Action – make recommendations on Bill and roll call vote required.

Planning, Housing and Economic Development Committee recommendation (2-1, Councilmember Floreen opposed): Enact Bill 38-17 with amendments.

Those expected to attend this worksession:

- Clarence Snuggs, Director, Department of Housing and Community Affairs (DHCA)
- Stephanie Killian, Affordable Housing Programs Manager, DHCA
- Casey Anderson, Chair, Montgomery County Planning Board
- Gwen Wright, Director, Montgomery County Planning Department
- Carol Rubin, Acting Deputy Director, Montgomery County Planning Department
- Pamela Dunn, Chief, Functional Planning and Policy, Montgomery County Planning Department
- Lisa Govoni, Housing Planner, Montgomery County Planning Department

Bill 38-17, Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments, sponsored by Lead Sponsor Council Vice-President Riemer and Co-Sponsor Councilmember Katz, was introduced on November 14. A public hearing was held on December 5 and Planning, Housing and Economic Development (PHED) Committee worksessions were held on March 12 and June 18.

Bill 38-17 would expressly provide in the Code that the minimum MPDU requirement Countywide is 12.5 percent, with 15 percent required in any development in an MCPS High School Service Area with an eligibility rate for free and reduced meals ("FARMs rate") of 15 percent or less at the time the applicant submits a preliminary plan of subdivision.

Background

The Council enacted the County's Moderately Priced Dwelling Unit (MPDU) law in 1973 with several objectives. The law was aimed at furthering the objective of providing a full range of housing choices for all incomes, ages and household sizes. In particular, the law imposed requirements on the construction of affordable housing to meet the existing and anticipated needs for low and moderate-income housing, and ensure that moderately priced housing was dispersed throughout the County. It provided incentives to encourage the construction of moderately priced housing by allowing optional increases in density including the MPDU density bonus to offset the cost of construction.

The most recent substantial amendments to the MPDU law were made in 2004.[1] The 2004 amendments extended the control period for for-sale MPDUs from 10 to 30 years, and for rental MPDUs from 20 years to 99 years. The amendments also allowed different income eligibility standards in recognition of the higher cost of construction of certain types of housing, and increased the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units. Additional requirements and structure on the approval alternative payments made to the Housing Initiative Fund in lieu of constructing MPDUs were also added. In 2007, the Office of Legislative Oversight issued Report No. 2007-9, A Study of Moderately Priced Dwelling Unit Program Implementation.[2]

Public Hearing

Eight speakers spoke on Bill 38-17 at the public hearing that it shared with Bill 34-17 on December 5, 2017.[3] Stacy Spann, Executive Director of the Housing Opportunities Commission (HOC), offered general support for the Bill. Fran Rothstein of the Woman's Democratic Club spoke in support of the Bill because it would increase the supply of affordable housing in low poverty areas with high performing schools, but advocated for more housing opportunities for low-income, in addition to moderate-income, households (©18-19). Pete Tomao of the Coalition for Smarter Growth expressed support for the Bill, noting that it would further the County's goal of expanding affordable housing to all parts of the County, and would "lessen the increasing economic east-west divide." Jennifer Russel of the Greater Bethesda Chamber of Commerce cautioned that the FARMs measure is subject to change quickly and could prove difficult to use on an annual basis.

Robert Goldman of the Montgomery Housing Partnership expressed concern that the provisions of Bill 38-17 and 34-17 could be mutually exclusive, and recommended that the higher MPDU requirement be required as provided in Bill 38-17 *and* when set by the Council in the Master Plan approval process as provided in Bill 34-17. Dave Sears, of the Montgomery County Sierra Club group supported the 15% requirement and urged that the location of the additional units be on-site. Sylke Knuppel of the Maryland Building Industry Association noted concern about the fact that the Bill does not provide an incentive to builders to provide additional affordable housing, as well as a lack of certainty, predictability or consistency in the Bill's application (©20).

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[1] http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2003/24-04-25-04-27-03.pdf

[2] https://www.montgomerycountymd.gov/olo/resources/files/2007-9-mpdu.pdf

[3] **The written testimony of speakers referenced, but not included as an attachment to this memorandum can be found in the packet for Bill 34-17's March 5 PHED Committee worksession, at:**
http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&event_id=7633&meta_id=149977

Renato Mendoza of CASA indicated that the Bill is a great step in promoting and ensuring economic diversity throughout the County.

Issues and Committee Recommendation

1. What is the policy objective of the Bill?

By increasing the MPDU requirement specifically in areas served by low-poverty schools, Bill 38-17 is intended to increase access to these schools for students from moderate-income households. There is evidence to support the premise that lower-income students who attend lower-poverty schools achieve better academic outcomes than their peers who attend higher-poverty schools. The 2010 Century Foundation study, "Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland"[4] tracked approximately 850 elementary students in public housing across the County from 2001 to 2007. Over this period, the study found, children in public housing who attended the County's most-advantaged schools (as measured by either subsidized lunch status or the district's own criteria) far outperformed in math and reading than those children in public housing who attended the district's least-advantaged elementary schools.

Three maps are attached to this memo based on MCPS High School Service Areas ("school clusters"). The first shows just the school clusters (©21). The second shows the average household income by school cluster (©22). The third shows the school clusters with FARMs rates below 15% (based on the average of all schools) (©23). School clusters which would be subject to the higher MPDU requirement under the Bill: Poolesville, Sherwood, Wootton, Churchill, Walter Johnson, Walt Whitman and Bethesda-Chevy Chase.

2. Is preliminary plan of subdivision the appropriate time to determine the MPDU requirement? How would information be available to developers and the public on the current requirement?

Bill 38-17, as drafted, bases the MPDU requirement on the FARMs rate for the high school cluster at the time of preliminary plan of subdivision (lines 41-42). The FARMs rate could change between preliminary plan and the time the project is constructed, but the requirement would be certain at the time of preliminary plan. Council staff has not identified an alternative point in the development process that is both early in the project's planning *and* a clearly defined point of reference for such a decision. This provision sets the requirement for the minimum *percent* of MPDUs, but there could continue to be modifications regarding their *location* in a development.

Council staff has discussed implementation of this new requirement with Planning staff. Council staff suggest that the best way to implement this bill is for the Planning Board to issue a map that would be revised annually that would show the areas of the County where the higher minimum is required. A provision for this is included in the Committee-recommended amendment discussed below.

[4] https://tcf.org/assets/downloads/tcf-Schwartz.pdf

3. Is the FARMs rate the best measure to achieve the policy objective?

As described above, Bill 38-17 as introduced uses a low (15% or less) FARMs rate for an MCPS High School Service Area as the trigger for an increased MPDU requirement, from 12.5% to 15%. The FARMs rate does change from year-to-year, and the school boundaries are subject to change by the Board of Education. At the March 12 PHED Committee worksession on the Bill, Councilmember Leventhal expressed support for the object of furthering economic integration in schools, but expressed concern about the fact that the Bill could effectively insert the Board of Education into the planning process through its control of school boundaries. Councilmember Leventhal asked if an alternative to the use of FARMS rates and school boundaries could achieve the goal.

Council staff worked with Planning staff to look at scenarios that are based on household income and Planning Areas. Planning areas are a stable geographic division of the County and would not be subject to change by the School Board. At the June 18 PHED Committee worksession Council staff suggested an alternative to the use of FARMs rates and school clusters: income over and under $150,000 and Planning areas. $150,000 is about 150% of median income based on the American Community Survey, and Council staff suggested that any Planning area with more than 50% of its Census Tracts at or above 150% of median household income would be subject to the higher MPDU minimum of 15%. A map of the County Planning Areas is attached at ©24. The next map (©25) shows the 2016 average household income by Census Tract and the Planning Area borders. The map at ©26 provides Council staff suggested alternative.

Under the alternative suggested by Council staff, developments in the Bethesda/Chevy Chase, Darnestown, Potomac, and Travilah Planning areas would be subject to the higher minimum. The North Bethesda Planning Area is currently just under 46% and would not be included at this time under Council staff's alternative. Therefore, the Walter Johnson school cluster would be impacted differently under the staff alternative than it would be under the FARMs rate/school cluster method. In addition, a development in the Northwest school cluster might have the higher requirement as the Darnestown Planning area exceeds 50%.

The Committee discussed the income/Planning area option, and recommended amending the Bill as suggested by staff, but with the provision that a development in a Planning area with more than *45%* of its Census Tracts at or above 150% of median household income would be subject to the higher MPDU minimum of 15%.

Committee recommendation (2-1, Councilmember Floreen opposed): *Amend lines 33-40 as follows:*

(b) The minimum number of MPDUs required under this Chapter, as a percentage of the total number of dwelling units at that location, not counting any workforce housing units built under Chapter 25B, is:

(1) for development in [[an MCPS High School Service Area with an eligibility rate for free and reduced meals of 15 percent or

less]] a Planning Area designated by the Planning Board, in which at least 45% of the United States Census Tracts have a median household income of at least 150% of the County-wide median household income, at the time the applicant submits a preliminary plan of subdivision, 15 percent; or

(2) for any other development subject to this Chapter, 12.5 percent.

The Planning Board must update the Planning Area designations under this subsection at least annually.

4. *Effective date and consistency with Bill 34-17, if enacted.*

Because Bill 34-17, which is also before the Council, also makes substantive amendments to Chapter 25A, including Section 25A-5, Council staff recommends the following amendments to Bill 38-17 if the Council enacts Bill 34-17:

- Add effective date provisions identical to those included in enacted Bill 34-17 Bill, so that all changes to Chapter 25A will take effect simultaneously;
- Make technical amendments to Bill 38-17 (*i.e.*, reletter subsections) so that its provisions and those of Bill 34-17 are synchronized.

This packet contains:

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Bill No. 38-17
Concerning: Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build
Revised: 06/18/2018 Draft No. 5
Introduced: November 14, 2017
Expires: May 14, 2019
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. ____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Vice-President Riemer
Co-Sponsor: Councilmember Katz

AN ACT to:

(1) require a minimum rate of MPDUs to be constructed for certain new residential development; and
(2) generally amend the laws governing moderately priced housing

By amending
Montgomery County Code
Chapter 25A, Housing – Moderately Priced
Section 25A-5

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

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

Sec. 1. Section 25A-5 is amended as follows:

25A-5. Requirement to build MPDUs; agreements.

(a) The requirements of this Chapter to provide MPDUs apply to any applicant who:

(1) submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50 which proposes the development of a total of 20 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party;

(2) submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which proposes construction or development of 20 or more dwelling units at one location; or

(3) with respect to land in a zone not subject to subdivision approval or site plan review, applies for a building permit to construct a total of 20 or more dwelling units at one location.

In calculating whether a development contains a total of 20 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in the County available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns 10 percent or more of the stock. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans, floating zone plans, or building permits. Any applicant may apply for a preliminary plan of subdivision, site or development plan, floating zone plan, record plat, or building permit for fewer than 20 dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches 20 or more.

(b) The minimum number of MPDUs required under this Chapter, as a percentage of the total number of dwelling units at that location, not counting any workforce housing units built under Chapter 25B, is:

(1) for development in [[an MCPS High School Service Area with an eligibility rate for free and reduced meals of 15 percent or less]] a Planning Area designated by the Planning Board, in which at least 45% of the United States Census Tracts have a median household income of at least 150% of the County-wide median household income, at the time the applicant submits a preliminary plan of subdivision, 15 percent; or

(2) for any other development subject to this Chapter, 12.5 percent.

The Planning Board must update the Planning Area designations under this subsection at least annually.

(c) Any applicant, in order to obtain a building permit, must submit to the Department of Permitting Services, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

(1) a specific number of MPDUs must be constructed on an approved time schedule;

(2) in single-family dwelling unit subdivisions, each MPDU must have three or more bedrooms; and

(3) in multi-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

The Director must not approve an MPDU agreement that reduces the number of bedrooms required by this subsection in any MPDU.

[(c)]<u>(d)</u> When the development at one location is in a zone where a density bonus is allowed; and

(1) is covered by a plan of subdivision;

(2) is covered by a plan of development, site plan, or floating zone plan; or

(3) requires a building permit to be issued for construction, the required number of [moderately priced dwelling units] <u>MPDUs</u> is a variable percentage that is not less than [12.5%] <u>12.5 percent</u> of the total number of dwelling units at that location, not counting any workforce housing units built under Chapter 25B. The required number of MPDUs must vary according to the amount by which the approved development exceeds the normal or standard density for the zone in which it is located. Chapter 59 may permit bonus densities over the presumed base density where MPDUs are provided. If the use of the optional MPDU development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional development standards, in which case the required number of MPDUs must not be less than [12.5%] <u>12.5 percent, or the higher base requirement under</u>

subsection (b), of the total number of units in the subdivision. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

Achieved Density Bonus	***MPDUs Required***	***Achieved Density Bonus***	***MPDUs Required***
Zero	12.5%	Up to 11%	13.6%
Up to 1%	12.6%	Up to 12%	13.7%
Up to 2%	12.7%	Up to 13%	13.8%
Up to 3%	12.8%	Up to 14%	13.9%
Up to 4%	12.9%	Up to 15%	14.0%
Up to 5%	13.0%	Up to 16%	14.1%
Up to 6%	13.1%	Up to 17%	14.2%
Up to 7%	13.2%	Up to 18%	14.3%
Up to 8%	13.3%	Up to 19%	14.4%
Up to 9%	13.4%	Up to 20%	14.5%
Up to 10%	13.5%	Up to 22%	15.0%

[(d)](e)(1) Notwithstanding subsection [(c)](d), the Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location if the Planning Board, in reviewing a subdivision or site plan submitted by the applicant and based on the lot size, product type, and other elements of the plan as submitted, finds that achieving a bonus density of 20 percent or more at that location:

(A) would not allow compliance with applicable environmental standards and other regulatory requirements, or

(B) would significantly reduce neighborhood compatibility.

(2) If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of [MPDU's] MPDUs required must be governed by subsection [(c)](d) unless the formula in subsection [(c)](d) would not allow the development to have one bonus market rate unit. In that case, the Board must reduce the required number of [MPDU's] MPDUs by one unit and approve an additional market rate unit.

[(e)](f) The Director may approve an MPDU agreement that:

(1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A; or

(2) allows an applicant to build the MPDUs at another location only if the agreement meets all requirements of Section 25A-5B.

[(f)](g)(1) An applicant may satisfy this Section by obtaining approval from the Director to transfer land to the County before applying for a building permit. The applicant must sign a written land transfer agreement approved by the Director and by the County Attorney. For the Director to consider the request and take timely action, a written notice of the applicant's intent to submit an agreement should be served upon the Director at least 90 days before the application for a building permit is filed. The land transfer agreement must covenant that so much of the land, designated in the approved preliminary plan or site plan as land to which the optional zoning provisions for MPDUs apply, as is necessary in order to construct the number of MPDUs required by subsection (a) will be transferred, as finished lots, to Montgomery County or to the County's designee before the building permit is issued, so that the County might cause MPDUs to be constructed on the transferred land. After the submission of supporting documentation and review and approval by the County for the transfer of finished lots, the County must reimburse the applicant for the costs the applicant actually incurred, which are directly attributable to the finishing of the MPDU lots so transferred. Reimbursable costs include but are not limited to engineering costs; clearing, grading, and paving streets, including any required bonds and permits; installation of curbs, gutters and sidewalks; sodding of public right-of-way; erection of barricades and signs; installation of storm sewers and street lighting; and park and other open space and recreational development directly benefiting the MPDU lots transferred. The County must not reimburse an applicant for the cost or value of the transferred lots.

(2) If an applicant transfers land to the County under this subsection and no funds have been appropriated to reimburse the applicant for his finishing costs, the County may accept from the applicant undeveloped land rather than finished lots, or the applicant may transfer the finished lots to the County without requiring payment for finishing the lots.

(3) Notwithstanding any other provisions of the subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public interest would best be served thereby. Any rejection and the reasons for the rejection may be considered by the Planning Board or the Director of Permitting Services in deciding whether to grant the applicant a waiver of this Chapter under Section 25A-7(b).

(4) Any transfer of land to the County hereunder is not subject to Section 11B-33, and any land so transferred is not property subject to Section 11B-31A regulating the disposal of surplus land. The Director may dispose of the lots in a manner that furthers the objectives of this Chapter.

[(g)](h) The MPDU agreements must be signed by the applicant and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. The agreements must be executed in a manner that will enable them to be recorded in the land records of the County. If the applicant is a corporation, the agreements must be signed by the principal officers of the corporation individually and on behalf of the corporation. Partnerships, associations or corporations must not evade this Chapter through voluntary dissolution. The agreements may be assigned if the County approves, and if the assignees agree to fulfill the requirements of this Chapter.

[(h)](i) The Department of Permitting Services must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire subdivision or development. The applicant must also file with the first application for a building permit a statement of all land the applicant owns in the County that is available for building development. In later applications, the applicant need only show additions and deletions to the original landholdings available for building development.

[(i)](j) The MPDU agreement must include the number, type, location, and plan for staging construction of all dwelling units and such other information as the Department requires to determine the applicant's compliance with this Chapter. The MPDU staging plan must be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

(1) MPDUs are built along with or before other dwelling units;

(2) no or few market rate dwelling units are built before any MPDUs are built;

(3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and

(4) the last building built must not contain only MPDUs.

This subsection applies to all developments, including any development covered by multiple preliminary plans of subdivision.

[(j)](k) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of Permitting Services must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built.

[(k)](l) The applicant must execute and record covenants assuring that:

(1) The restrictions of this Chapter run with the land for the entire period of control;

(2) The County may create a lien to collect:

(A) that portion of the sale price of an MPDU which exceeds the approved resale price; and

(B) that portion of the foreclosure sale price of an MPDU which exceeds the approved resale price; and

(3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property. These covenants must be senior to all instruments securing permanent financing.

[(l)]<u>(m)</u> (1) In any purchase and sale agreement and any deed or instrument

conveying title to an MPDU, the grantor must clearly and conspicuously state, and the grantee must clearly and conspicuously acknowledge, that:

(A) the conveyed property is [a] <u>an</u> MPDU and is subject to the restrictions contained in the covenants required under this Chapter during the control period until the restrictions are released; and

(B) any MPDU owner, other than an applicant, must not sell the MPDU until:

(i) the owner has notified the Department under Section 25A-8 or 25A-9, as applicable, that the unit is for sale;

(ii) the Department and, where applicable, the Commission, have notified the owner that they do not intend to buy the unit; and

(iii) [T]<u>t</u>he Department has notified the owner of the unit's maximum resale price.

(2) Any deed or other instrument conveying title to an MPDU during the control period must be signed by both the grantor and grantee.

(3) When a deed or other instrument conveying title to an MPDU is recorded in the land records, the grantor must cause to be filed in the land records a notice of sale for the benefit of the County in the form provided by state law.

[(m)]<u>(n)</u> Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection [(c)](d), in a development with fewer than 20 dwelling units at one location, and in so doing from qualifying for an optional method of development under Chapter 59. A development with fewer than 20 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and development standards that apply to a larger development under this Chapter and Chapter 59. Sections 25A-5A, 25A-5B, and 25A-6(b) do not apply to an applicant who voluntarily builds [MPDU's] <u>MPDUs</u> under this subsection and in so doing qualifies for an optional method of development.

LEGISLATIVE REQUEST REPORT

Bill 38-17
Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build

DESCRIPTION:	The Bill would require a minimum MPDU requirement of 15 percent in any development in an MCPS High School Service Area with an eligibility rate for free and reduced meals of 15 percent or less at the time the applicant submits a preliminary plan of subdivision. The build would also establish, in the Code, a Countywide minimum MPDU requirement of 12.5 percent.
PROBLEM:	Despite the County having a longstanding law requiring the construction of affordable housing with new residential development, the County's supply of affordable housing in certain areas is lacking.
GOALS AND OBJECTIVES:	Increase socio-economic integration in residential communities.
COORDINATION:	Department of Housing and Community Development
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Josh Hamlin, Legislative Attorney, 240-777-7892
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A violation

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Fiscal Impact Statement
Bill 38-17
Housing - Moderately Priced Dwelling Units – Requirement to Build

1. Legislative Summary

   Bill 38-17 requires a minimum rate of Moderately Priced Dwelling Units (MPDUs) to be constructed for certain new residential development, and generally amends the laws governing moderately priced housing.

   The Bill would require a minimum MPDU requirement of 15 percent in any development in an MCPS High School Service Area with an eligibility rate for free and reduced meals (FARMS) of 15 percent or less at the time the applicant submits a preliminary plan of subdivision. The Bill would also establish, in the Code, a Countywide minimum MPDU requirement of 12.5 percent.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

   This bill does not impact revenues but will impact expenditures. It is anticipated that up to one part-time Planning Specialist (0.5 FTE) would be required to conduct additional review and analysis as a development moves through the process, including checking the levels of students receiving FARMS at MCPS High School Service Areas as described in the Bill, determining compliance, and writing and revising the MPDU agreements. The total annual personnel cost for a part-time position is approximately $52,680.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

   There is no estimated change to County revenues. The total expenditures for the next six fiscal years are estimated at approximately $316,080.

	Expenditures	Revenue
Year 1	52,680	-
Year 2	52,680	-
Year 3	52,680	-
Year 4	52,680	-
Year 5	52,680	-
Year 6	52,680	-
Total	316,080	-

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

   Not Applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not Applicable.

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   Not applicable. The bill does not authorize future spending.

7. **An estimate of the staff time needed to implement the bill.**

   As indicated in #2, it is anticipated that Bill 38-17 would require a part-time Planning Specialist (0.5 new FTE) to administer the required review and analysis of a development project at an annual estimated cost of approximately $52,680.

   Note: The need for this part-time position could be consolidated with the estimated staff time indicated in Bill 34-17 due to certain overlapping tasks required for implementation of both Bills.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   This Bill impacts current MPDU program operations and practices. It will require additional review and analysis as a development moves through the development process, checking the FARMS levels in high school service areas, and determining compliance with the bill. These new responsibilities cannot be absorbed by existing staff.

9. **An estimate of costs when an additional appropriation is needed.**

   An additional $52,680 would be needed in the first full year of implementation.

10. **A description of any variable that could affect revenue and cost estimates.**

    Not Applicable.

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    Not Applicable.

12. **If a bill is likely to have no fiscal impact, why that is the case.**

    Not Applicable.

13. **Other fiscal impacts or comments.**

    Not Applicable.

14. **The following contributed to and concurred with this analysis:**
    Clarence Snuggs, Director, Department of Housing and Community Affairs (DHCA)
    Jay Greene, DHCA
    Stephanie Killian, DHCA
    Tim Goetzinger, DHCA
    Pofen Salem, Office of Management and Budget

Jennifer A. Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

12/21/17

Date

Economic Impact Statement
Bill 38-17, Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build

Background:

This legislation would require a minimum moderately price dwelling unit (MPDU) requirement of 15 percent in any development in a Montgomery County Public Schools (MCPS) High School Service Area with an eligibility rate for free and reduced meals of 15 percent or less at the time the applicant submits a preliminary plan of subdivision. Bill 38-17 would establish in the County Code a Countywide minimum MPDU requirement of 12.5 percent. Therefore, the amendment to Section 25-A includes:

- The minimum number of MPDUs required as a percentage of the total number of dwelling units at that location and not counting any workforce housing units build under Chapter 25B:
    - 15.0 percent for development in an MCPS High School Service Area, and
    - 12.5 percent for any other development subject to Chapter 25A

1. **The sources of information, assumptions, and methodologies used.**

   Sources of information include the American Community Survey (ACS), U.S. Census Bureau; McGraw-Hill Dodge Analytics (Dodge Analytics); and Montgomery County Department of Housing and Community Affairs (DHCA). According to ACS, of the total number of occupied housing units in Montgomery County an average of 67.7 percent from CY2005 to CY2016 were owner-occupied, and 32.3 percent were renter-occupied. This share of the number occupied housing units in the County contrasts to the share of the number of MPDUs produced for sale or rent. From CY2005 to CY2016, the average number of MPDUs for sale was 50.9 percent while the average number of rental units was 49.1 percent. Therefore, compared to the distribution of countywide occupied units, the distribution of MPDUs produced was greater for rental units than units for sale. That is, in CY2016, the share of MPDUs produced for sale represented 0.03 percent of the total owner-occupied housing units and the share of MPDUs produced as rental units represented 0.19 percent of total renter-occupied units.

   Finally, comparing the construction starts for new residential units from Dodge Analytics with the number of MPDUs produced, the Department of Finance (Finance) estimates that the average of MPDUs for sale from CY2005 to CY2016 was 14.2 percent and 10.6 percent for multi-family units for a combined average of 9.7 percent. Therefore, these percentages provide a better comparison because they compare new residential construction for all types of housing units (Dodge Analytics) with the production of MPDUs (DHCA). While the averages over the twelve-year period may suggest the production of MPDUs are close to meeting the policy target, there is great variability from year to year.

Economic Impact Statement
Bill 38-17, Housing – Moderately Priced Dwelling Units (MPDUs) –
Requirement to Build

2. **A description of any variable that could affect the economic impact estimates.**

   The variable that could affect the economic impact estimates are the number of new construction starts for residential properties and the production of MPDUs as a share of the new construction starts. Since an economic impact of Bill 38-17 is based on the target percentage on new construction allotted to MPDUs, the economic impact is driven by the growth in new construction of residential property and the share of MPDUs of those properties.

3. **The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

   Bill 38-17 would have a positive effect on the number of MPDUs for sale and rent for those families seeking affordable housing. This conclusion is based on the substantive revisions noted in Bill 34-17 and the amendment in Bill 38-17 to Chapter 25A. The increases in the percentages in Bill 38-17 would increase supply of affordable housing in the County and provide an economic benefit to those families.

4. **If a Bill is likely to have no economic impact, why is that the case?**

   Please see item #3.

5. **The following contributed to or concurred with this analysis:** David Platt and Robert Hagedoorn, Finance.

Alexandre A. Espinosa, Director
Department of Finance

12/6/17
Date

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Woman's Democratic Club

of Montgomery County, Maryland

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Woman's Democratic Club Testimony in Favor of County Bill 38-17 Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build December 5, 2017

The Board of Directors of the Woman's Democratic Club of Montgomery County strongly supports increasing affordable housing in Montgomery County Public Schools (MCPS) High School Service areas that have low poverty rates, as proposed by Bill 38-17. We urge you to vote in favor of this bill. We want to ensure that there is socio-economic integration in residential communities throughout the County.

We support this bill because it would enable low-income families to obtain affordable rental housing in diverse low poverty communities, where parents would have more opportunities and their children would perform better, especially in County public schools, than if they lived in poverty areas. The 2010 Century Foundation study, "Housing Policy is School Policy," found that by the end of elementary school, the lower income students who lived in higher income communities as a result of the MPDU program "far outperformed" their peers in lower income communities.

We also support this bill because it would increase the availability of affordable and low-income rental housing throughout the County, resulting in mixed-income housing in communities and in newly constructed residential buildings. This would help address the current socio-economic segregation at MCPS schools, which is clearly disadvantageous for low-income FARMS students who are most in need of stable housing.

This bill would increase the minimum percentage of moderately priced dwelling units (MPDU's) that would be required to be built in new residential developments from 12.5% to 15% in those MCPS High School Service Areas with an eligibility rate for free and reduced meals (FARMS) of 15% or less (where there is more wealth). This bill would also require that MPDU's in single family dwelling unit subdivisions have three or more bedrooms, and MPDU's in multi-family dwelling unit subdivisions have the ratio of efficiency and one-bedroom MPDU's each that does not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

Because the need for affordable housing is so great, we would prefer the MPDU's base requirement to be 15% throughout the County. We support this bill as an important step toward achieving the 15% goal. However, while this bill helps address the need for affordable housing, it does not fully address the critical need for more low-income rental housing. In the County, a family of four

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needs an annual income of $67,000 to $77,000 to afford stable rental housing. MPDU eligibility is for households at 60% to 70% of area median income (AMI), while numerous low-income households, and certainly many of the FARMS students, are at 30% or 30% to 50% of AMI. All County residents, and their children, need stable housing to be free of worry about where they can sleep each night, to manage their self-care and hygiene, to store belongings, and to benefit from education. Nutrition through the FARMS program is necessary but not sufficient for educational success. Students need a place to get adequate sleep and to read and study at home.

The insufficiency of low-income and affordable rental housing in the County has reached a critical point for more than 20,000 low-income households (33,000 households are on the Housing Opportunities Commission's waiting list for low-income housing). Only 19% of rental units are currently affordable to households earning less than 50% of Area Median Income (AMI). The County's AMI is $98,000. An additional 78,000 affordable rental housing units will be needed by 2040. One-third of housing units in the County are rentals, and 50% of renter households spend more than the generally accepted maximum of 30% of their income on housing. Many have to spend 50% of their income on housing (they are severely cost-burdened and unable to sustain payments). The 2017 Montgomery County Rental Housing Study reported that 68% of households with income between 50% and 80% of AMI pay more than 30% of income for rent, and 15% are extremely rent burdened (they have to pay more than 50% of income for rent). Although County families with low income (50%-80% AMI), very low income (30%-50% AMI), and extremely low income (0-30% AMI) desperately need Housing Choice Voucher (formerly Section 8) housing assistance from HUD, that would provide housing stability for them and their children, federally subsidized housing continues to diminish.

We support legislation that would increase low- and moderate- income rental housing in the County. Nearly six of every ten County residents living below the poverty line are women and girls (44,860), and female-headed households comprise 57.5% of families with children under 18 who live in poverty. These are the families who are rent-burdened or homeless. County homeless shelters recently showed a population of 894 homeless persons, 274 of whom were families with 172 children, and this does not include all the un-sheltered homeless families. It is remarkable that 50% of homeless families and individuals are employed. Employed or not, families that cannot afford rental housing in the County often split up, move out of the County, or move around within the County. The lack of housing stability negatively affects the health and education of children as well as their parents' ability to obtain and maintain employment.

We hope that for these reasons the Woman's Democratic Club can count on your vote in support of Bill 38-17.

Respectfully,

Fran Rothstein
Fran Rothstein, President

MARYLAND
BUILDING
INDUSTRY
ASSOCIATION
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MBIA's Montgomery County Chapter Comments on Bill 38-17 Housing-Moderately Priced Dwelling Units—Requirement to Build

Thank you for taking the time to consider MBIA's comments on Bill 38-17 which increases the minimum MPDU requirement to 15 percent based on the free and reduced meal eligibility rate in a given MCPS High School Service Area. Developers and builders across Montgomery County understand that it falls to us and the community at large to provide affordable housing in an inclusive and responsive way. That said, while we appreciate the intent of Bill 38-17—to increase socio-economic integration in Montgomery County—MBIA members have some concerns with the bill as drafted.

While we support the bill's intent, there are several aspects that concern us.

1) Chief among these concerns is the fact that this bill does not provide an incentive to builders of new homes and communities to build the additional affordable housing. Builders and developers are to incur no loss or penalty and should have a reasonable prospect of realizing a profit on the MPDU's. From the outset of the MPDU law, there were incentives for builders that built affordable housing. It is imperative that there be appropriate offsets for the additional costs incurred.

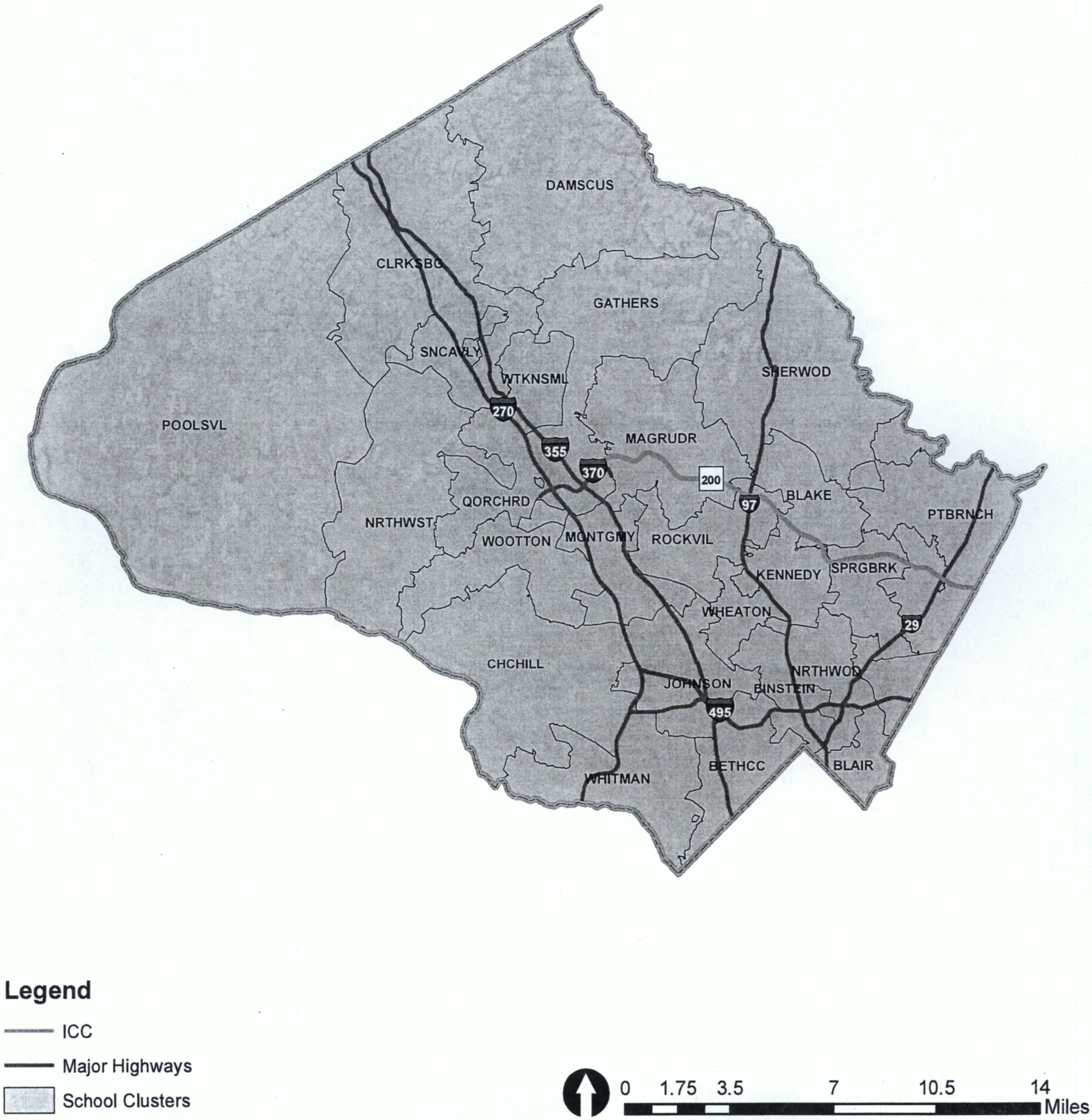
2) Second, in its current form, this bill does not provide certainty, predictability or consistency. Because the legislation frames the requirement in terms of the High School Service Area's eligibility rate for free or reduced meals, there is too much variability. As the eligibility rate changes yearly, it is foreseeable that a developer may purchase a piece of land and only be subject to a 12.5 percent requirement; however by the time they are ready to submit the preliminary plan the requirement is 15 percent.

While the development community understands its obligation, and does not wish to abdicate that responsibility, it is important that the industry be aware and able to account for everything that will impact a proposed project. One way to increase certainty in this bill would be to name the High School Service Areas this bill will affect or tie the requirement to something more concrete. However, as written, there are too many variables that could ultimately cost thousands of dollars or render a new development infeasible.

Thank you for your consideration.

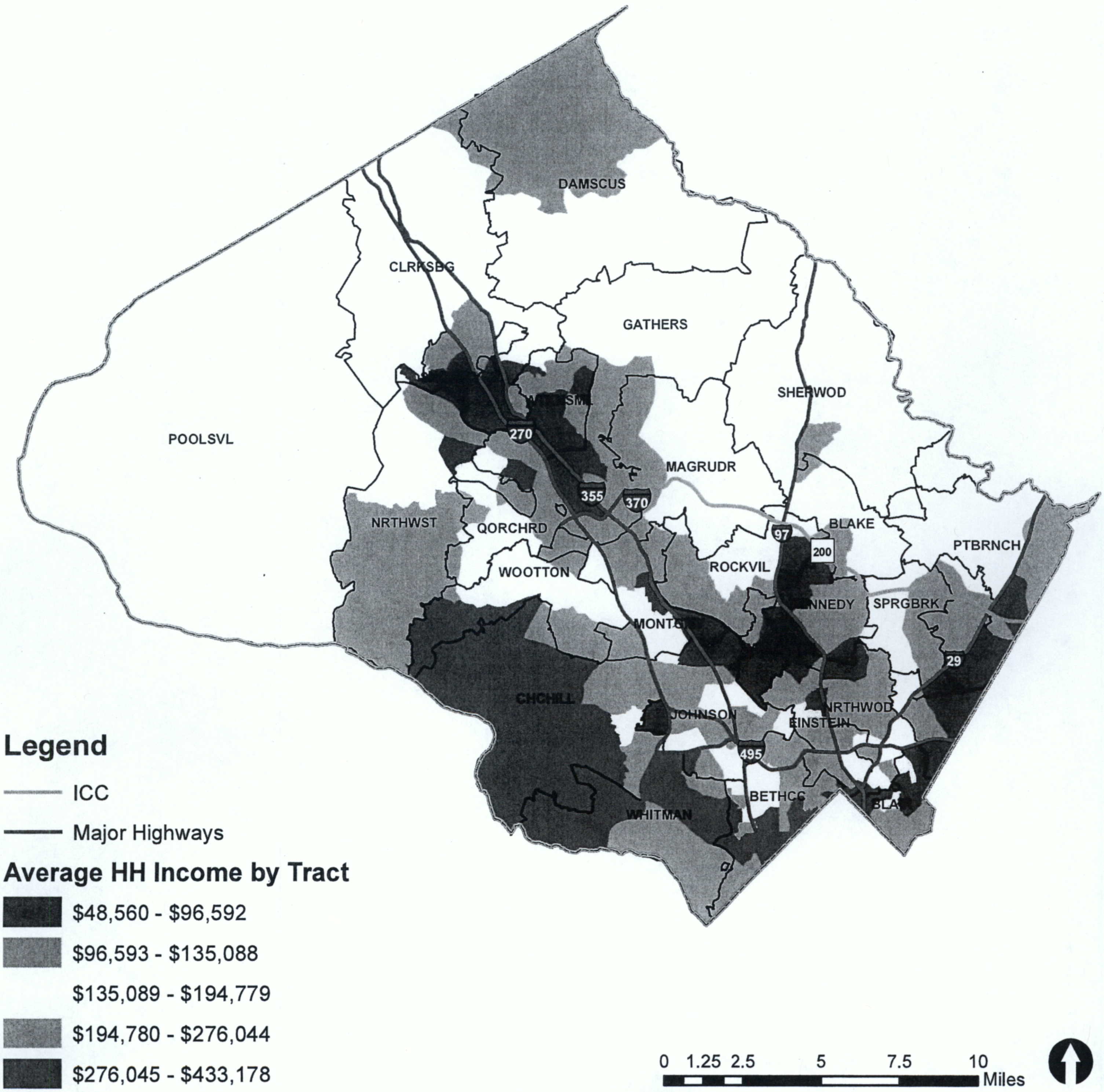
Sylke Knuppel
Chair, Montgomery County Chapter
Maryland Builders Industry Association

MONTGOMERY COUNTY, MD
HIGH SCHOOL CLUSTERS, 2017-2018



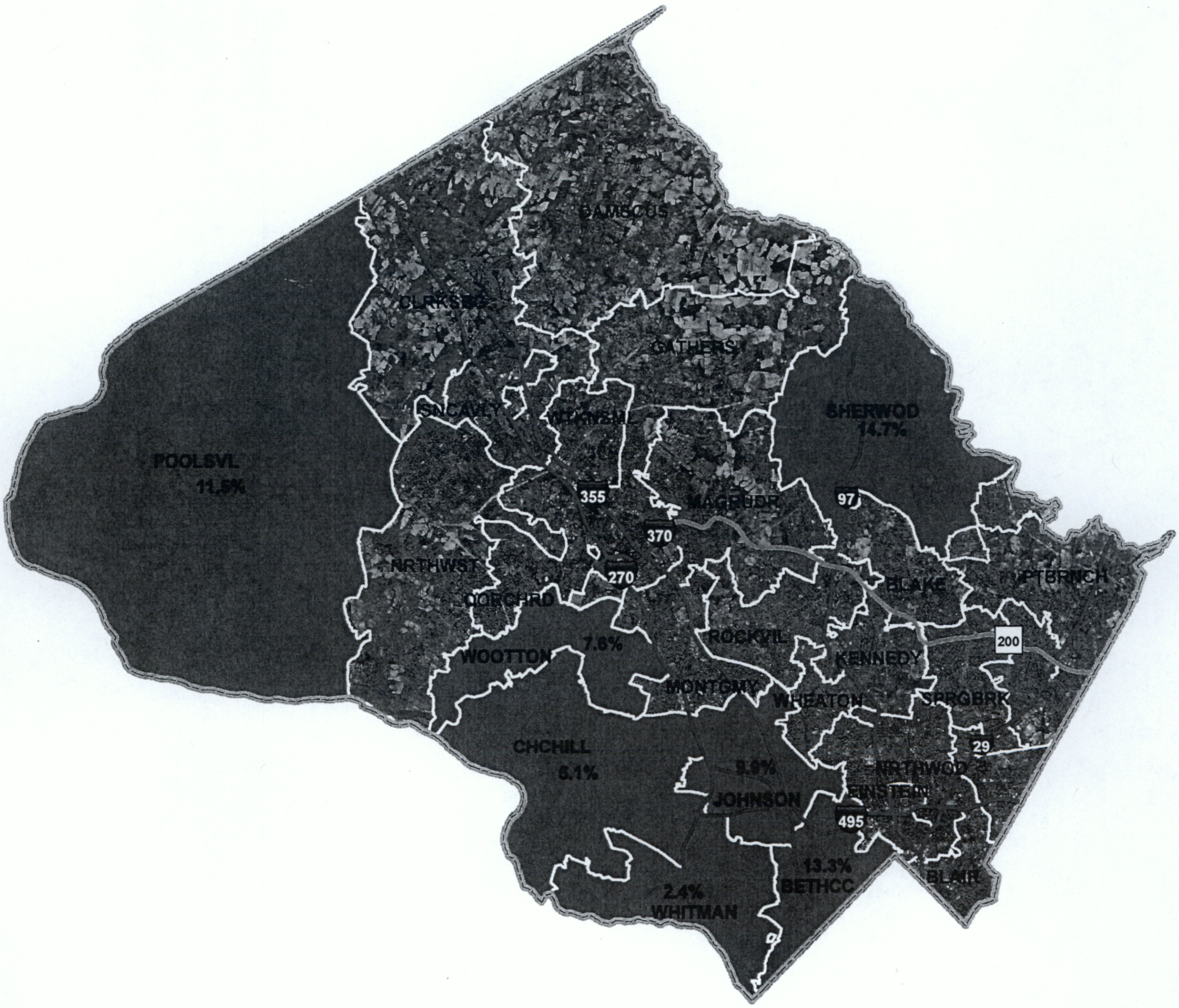
Source: Montgomery County Department of Planning

2016 AVERAGE HOUSEHOLD INCOME BY SCHOOL CLUSTER



Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimate
Average Income for Montgomery County: $135,849

MONTGOMERY COUNTY, MD
SCHOOL CLUSTERS BELOW 15% FARMS (AVG ALL SCHOOLS)
BY HIGH SCHOOL SERVICE AREA, 2017-2018



Legend

ICC

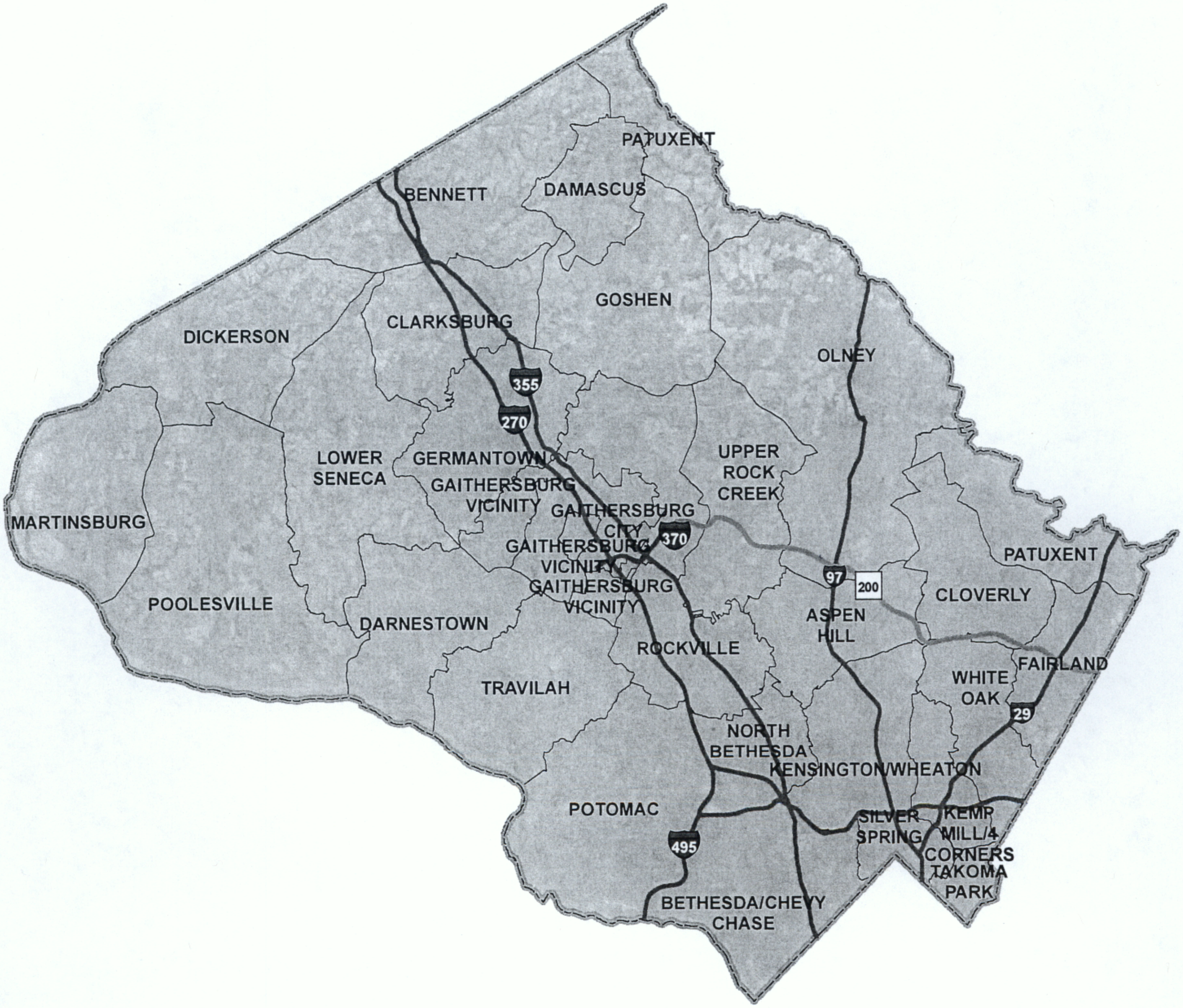
Major Highways

Avg FARMS Below 15% FARMs (All Schools)

0 1.75 3.5 7 10.5 14 Miles

Source: 2017-2018 MCPS FARMs Data, Montgomery County Department of Planning

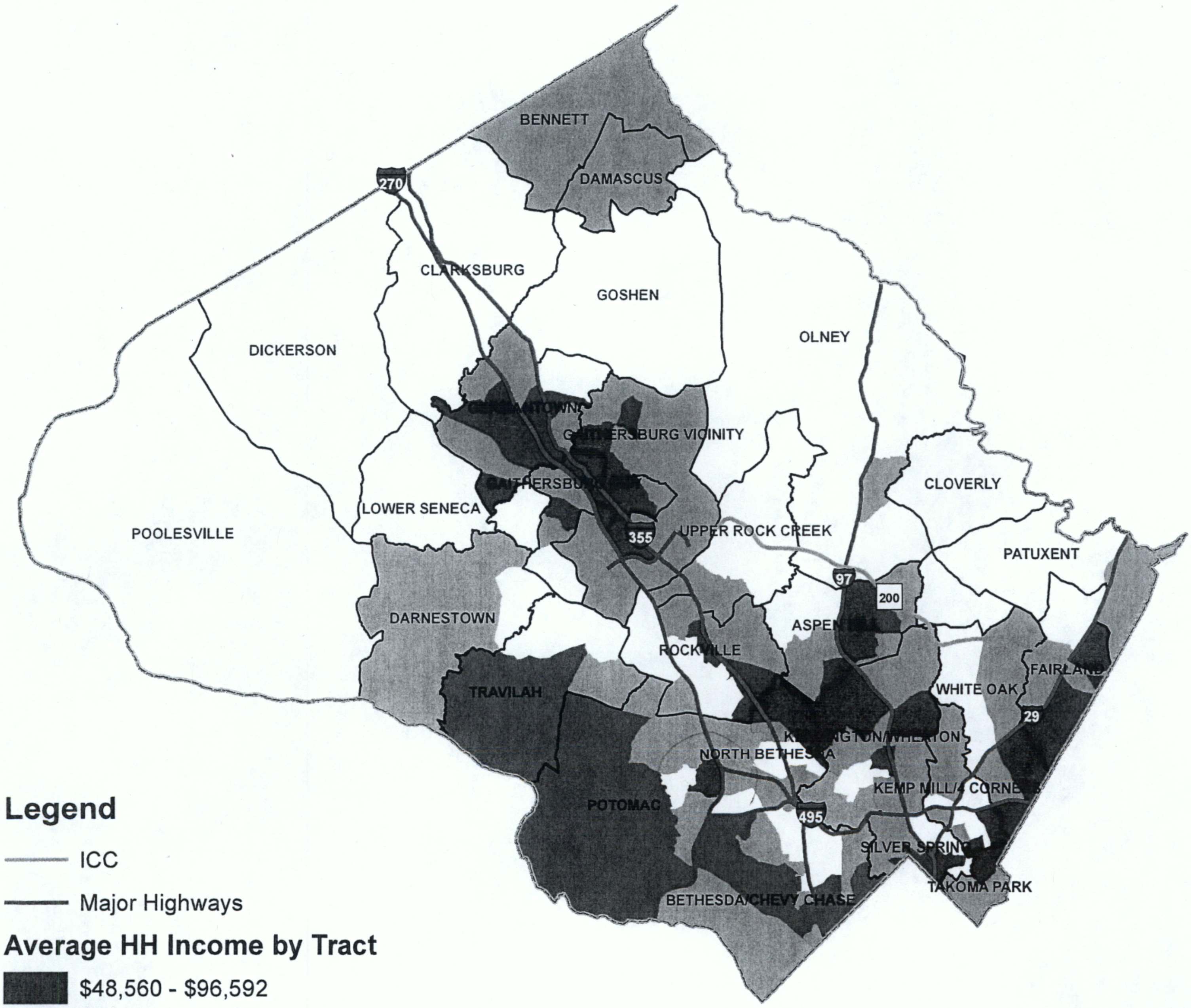
MONTGOMERY COUNTY, MD
PLANNING AREAS



Legend

Source: Montgomery County Department of Planning

2016 AVERAGE HOUSEHOLD INCOME OF U.S. CENSUS TRACTS WITH PLANNING AREA BOUNDARIES



Legend

— ICC

— Major Highways

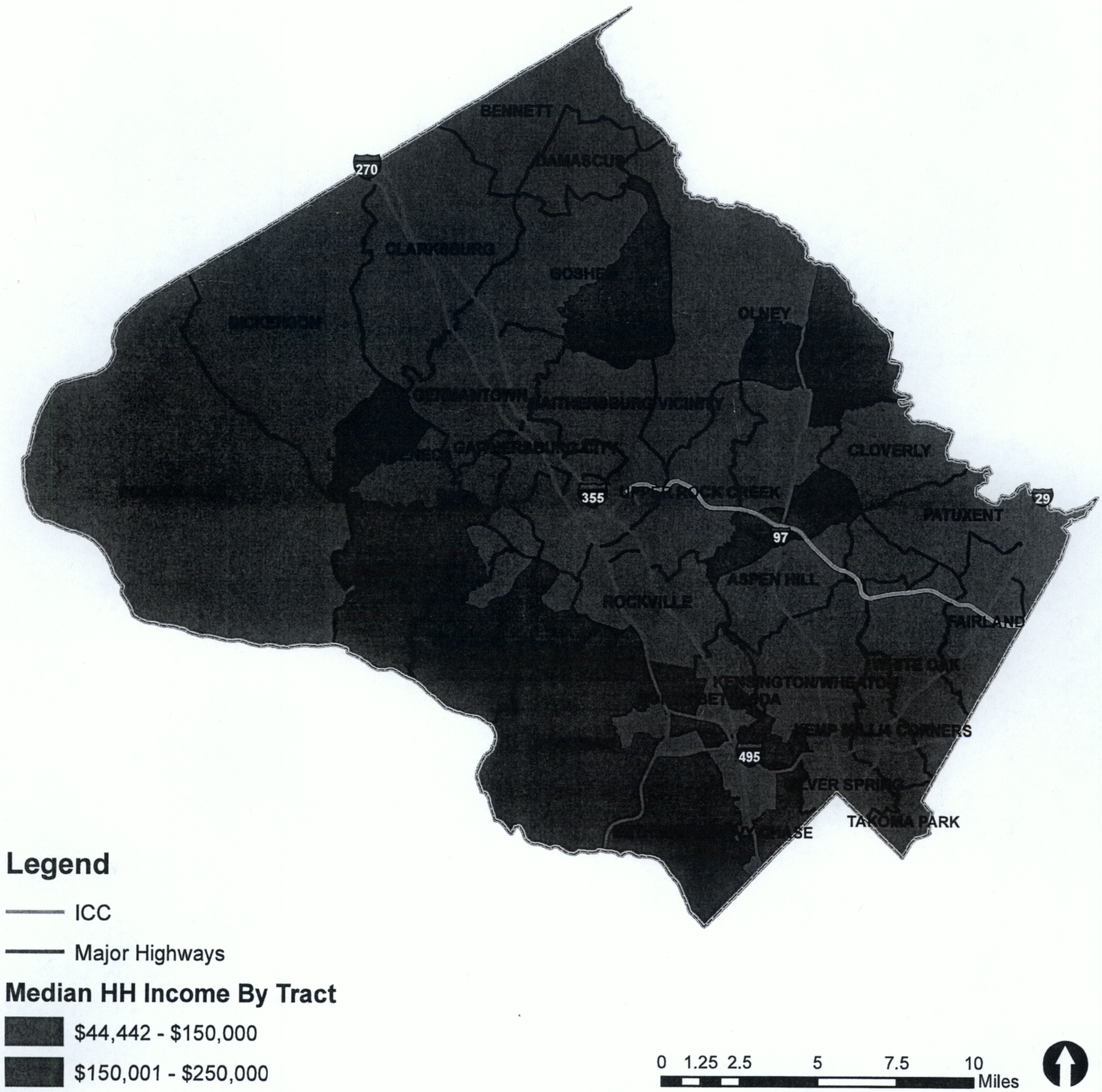
Average HH Income by Tract

- $48,560 - $96,592
- $96,593 - $135,088
- $135,089 - $194,779
- $194,780 - $276,044
- $276,045 - $433,178

0 1.25 2.5 5 7.5 10 Miles

Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimate
Average Income for Montgomery County: $135,849
*Planning Area boundaries are approximated by aggregating tract level data

2016 MEDIAN HOUSEHOLD INCOME BY PLANNING AREAS



Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimate
Median Income for Montgomery County: $100,352
*Planning Area boundaries are approximated by aggregating tract level data