AGENDA ITEMS 10-11
November 23, 2010
Worksession

Councilmembers should save this packet for use on November 30 if needed.

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney
Glenn Orlin, Deputy Council Staff Director
Marlene Michaelson, Senior Legislative Analyst

SUBJECT: **Worksession: Bill 50-10**, Special Taxing District – White Flint – Creation
Resolution to approve White Flint Development Tax District transportation infrastructure improvements

The Planning, Housing, and Economic Development (PHED) and Management and Fiscal Policy (MFP) Committees met on October 28 and November 16 to discuss the financing plan to implement the recommendations of the White Flint Sector Plan (Bill 50-10 and the associated infrastructure list/tax policy resolution). The Council earlier held a hearing on both items on October 26. **The joint Committees recommended enacting the Bill and approving the resolution with the amendments discussed in this memorandum.** Their recommendations are summarized below and are provided in more detail on the following pages.

The only amendments needed to Bill 50-10 are those noted in this memo. Executive staff is revising the accompanying resolution, which will include a number of amendments. Council staff did not receive a revised draft before this packet went to print. We will circulate an addendum when we receive it. Council action on both items is scheduled for November 30.

Summary of Committee Recommendations

- Support the Special Taxing District as the appropriate new financing vehicle for White Flint.
- Approve a policy to cap the District tax rate, but do not set a cap in legislation.
- Create a Capital Improvement Program (CIP) amendment to allow all critical projects needed in the short term to proceed.
- Use forward funding by the County, to be repaid by the District, to address short-term revenue shortages for critical projects.
- Retain the transportation impact tax in the White Flint area, but set the rate at zero pending further information regarding potential lost impact tax revenue.
- Revise the infrastructure bucket lists to refine cost estimates, shift or eliminate certain projects, and better reflect master plan staging recommendations.

Background

Executive package: On October 5, the Council President introduced, on behalf of the County Executive, a package of legislation and appropriations to finance the infrastructure necessary for the development authorized in the adopted White Flint Sector Plan. This White Flint infrastructure financing program consists of:

- Bill 50-10, Special Taxing District – White Flint – Creation (see ©8-17);
- a Capital Improvements Program amendment and appropriation request (see Item 12 on this Agenda); and
- a resolution accompanying Bill 50-10 (see ©18-19) to approve a list of transportation infrastructure improvements to be funded by a White Flint Special Taxing District. This resolution also would articulate non-binding County goals regarding the tax rates to be applied in the District.

Bill 50-10 would establish a White Flint Special Taxing District. The Bill would also authorize the levy of an additional ad valorem property tax to fund transportation infrastructure improvements that are specified in an implementing resolution and authorize the issuance of a certain type of bond to finance those transportation infrastructure improvements. Council Staff added more general language to the Bill's long title (purpose clause) to give the Council added leeway to restructure the financing mechanism or otherwise amend the Bill as it sees necessary. The Executive's detailed memo on ©1-7 explains the background of and reasons for the proposals in this Bill and the related resolution and appropriation request.

On November 16, the Executive transmitted a revised proposal. The key changes in this new proposal are as follows:

- Transportation Impact Taxes will not be collected in White Flint.
- The County will forward fund the design and construction of 3 specific projects and up to $15 million in unspecified Stage 1 and Stage 2 projects. In paying the County back for the 3 specific projects, the District will not pay any interest, but payback of the $15 million would carry interest.
- The Executive will put certain projects in his recommended amendments to the Capital Improvements Program.
- Two projects will be funded by the County instead of the District (the second entrance to Metro and the Nebel Street bike lane).
- The County Executive will request that the Maryland Department of Transportation (MDOT) designate the White Flint Sector Plan Area as a Transit Oriented Development (TOD).

Overall, the Executive's revised proposal significantly increases costs to the County because the County will absorb the cost of two additional projects and cover the interest costs for repayment of the cash advance. The revised proposal will also reduce revenues from the transportation impact tax. The Executive estimated the cost of the two projects to now be paid for by the County at $44.2 million and the interest cost to be absorbed by the County at $8.25 million (assuming $30 million in costs, 5% interest and repayment in 10 years).[1] He did not estimate the lost revenue from transportation impact taxes.

---

[1] No repayment period was specified in the Executive proposal, and a longer repayment period would mean greater interest costs.

State legislation: Bill 50-10 is based on recent state law amendments (2010 Maryland Laws, Chapter 617, reprinted on ©20-24). County bond counsel had questioned whether added state authority was needed to assure that the County can use special obligation bonds, which don't count against County debt capacity, to pay debt service other than in a development District created under County Code Chapter 14. This new state law answers that question, at least with respect to transportation facilities. It also exempts any tax used to fund a Special Taxing District created to pay for certain transportation improvements from the County Charter's limit on property tax revenue.

Major Policy Issues

Overview **The challenge: balancing the risks** Broadly defined, the challenge facing the County in adopting a White Flint financing plan is how to balance the costs and risks among the various stakeholders: County government and its taxpayers; property owners in the White Flint area, including those who expect to redevelop their property and those who may not do so; and residents of the area.

The costs and risks that will need to be balanced are:

- the **overall share of costs** assumed by each "bucket";
- the extent of **cost overruns** in each bucket;
- the **projected funding gap** in the Special Taxing District "bucket" between the estimates of infrastructure costs and property tax add-on revenues; and
- the risk that one or more taxes will not produce the **expected level of revenues**.

Property owners have asked for certainty, but providing complete certainty to any one group of stakeholders means an increased risk for another group. For example, guaranteeing certainty regarding the cost of infrastructure to District participants means the cost of any overruns would be borne by County taxpayers. Guaranteeing County resources for White Flint means they may not be available to meet needs elsewhere in the County. Staff believes that the Council has created greater certainty for property owners in White Flint than in any other area of the County:

- The Commercial-Residential (CR) zone provides property owners with greater certainty regarding the cost of the requirements to obtain full density than any other high density mixed-use zone (and provides them with a choice of how to obtain that density).
- There is no public facilities test that a proposed development must pass. Properties are exempt from local area transportation review (LATR) and policy area mobility review (PAMR). Property owners no longer face risks associated with whether and how they will meet facilities tests, the unknown cost of needed transportation improvements, and the time delay associated with reviews and approvals.
- The payments to the Special Taxing District will be spread over time, increasing as the value of the property increases, as compared to unknown costs for infrastructure that must be paid upfront before the redeveloped property generates greater revenues.

Development has inherent uncertainties, many of which are not within the County's control (the market and the unpredictability of when demand or supply for a certain type of development will change). Council Staff believes it is appropriate for the County to provide greater certainty to ensure the success of White Flint, but the County should not be expected to provide complete certainty or absorb all the risks for the total build out of all infrastructure.

The increased net County revenue attributable to White Flint is one of many reasons why the Council supported a new higher density, mixed-use vision for White Flint, but increased revenues should not be the sole (or even primary) basis for making policy decisions. For example, if the Council needed to choose between building a critical public facility that would produce no new revenue (e.g., rebuilding a school or police station destroyed by fire) or a road that would allow new development that would generate net positive revenues, it may decide to build the public facility and defer funding the road.

The major policy issues discussed by the Committees include the following:

1) Should the primary financing mechanism to fund the selected infrastructure items be a property tax-based Special Taxing District?

Committees' Recommendation: create the Special Taxing District.

The Executive proposed in Bill 50-10 to create a Special Taxing District, as authorized in the 2010 state law amendments on ©20-24, to be the primary financing vehicle for those infrastructure items listed in the District "bucket". The District would impose a supplementary property tax, proposed to be an additional 10% above the otherwise applicable property tax on each taxable property in the District. The District boundaries (see ©12, lines 81-94) were drawn to cover the White Flint Sector Plan area but exclude existing single-family houses and residential condominium buildings in the Plan area.

This property tax supplement is the Executive's preferred funding tool. Under the state enabling law, all this revenue is excluded from the County's Charter property tax limit.[2] This supplement has the benefits of being easy to apply (simply add the supplementary rate to the applicable property tax on each property located in the District), predictable, and bondable (this tax yield can be relied on to pay off County-issued bonds). Its yield will grow as property tax assessments rise as the District redevelops. However, its flexibility is limited by the state Constitution's "uniformity" rule for property taxes; that is, each property must be taxed according to its current assessed value, not (for example) its current use, potential value, zoning category, or any other measure of current or future development.

Most of the funds to be raised from this District will be needed before the yield ramps up; i.e., the infrastructure to be paid for should be put in place before the developments that create higher tax assessments are built. **Since the initial District tax rate will not legally be set until May 2011 (to take effect July 1, 2011), the Council will have time to analyze more detailed financial projections before setting that rate.** However, it will be useful to have some idea of the relative orders of magnitude of each "bucket" when the Council makes the basic policy decisions on which financing mechanisms the County will use (at least initially).

Some persons who testified before the Council argued that the Special District Tax was created to take the place of the transportation impact tax. As indicated in the Executive memorandum on ©3, the Special District Tax is meant to provide funding for infrastructure that would otherwise be built by the private sector (e.g., infrastructure required for LATR). The District approach offers numerous benefits to developers, including lower interest rates, financing linked to the value of the property, and the

[2]See Maryland Code, Article 24, §9-1302(b), shown on ©22. Because Council Staff believes that the Special Taxing District proposed in Bill 50-10 would not meet the requirements for a "development district" under state law or County Code Chapter 14, it is not already exempt from the property tax limit in Charter §305.

opportunity to have property owners in White Flint who are not redeveloping but will benefit from redevelopment subsidize costs that might otherwise have to be paid solely by those redeveloping.

2) Should the rate of the supplementary property tax in the Special Taxing District be capped?

Committees' Recommendation: Agree with the Executive and Council Staff to set a goal for the maximum tax rate in the resolution, rather than a binding limit in the law, to ensure that the district has the flexibility to address revenue shortfalls or cost overruns. Each revenue source should be responsible for paying for any cost overruns on its assigned projects.

The White Flint Partnership in its testimony, and other speakers at the hearing, proposed that the law should require the maximum rate of the supplementary property tax in the White Flint Special Taxing District to be set in the implementation resolution, preferably at 10%, the rate proposed by the County Executive. While doing so would enhance the certainty sought by developers in this area (at least with respect to the add-on property tax), it would have the possibly unintended consequence of shifting the burden of any cost overrun on any infrastructure item in the District "bucket" to someone else, most likely County taxpayers. Some speakers at the hearing asserted that 10% is the maximum contribution that would not jeopardize the viability of redevelopment projects, but no data has been provided to support this conclusion, and it is possible that a larger tax would be more than offset by the increase in value resulting from the change in zoning created by the Sector Plan.[3]

A Planning staff memorandum on ©25-29 provides a rough analysis of the cost of the District compared to likely costs that would otherwise be assumed by developers. **The Planning staff found that the District costs were comparable to the estimated per square foot mitigation costs that would otherwise be paid.** Assuming that all LATR costs would be creditable toward impact tax payments, the cost per square foot of the District (approximately $7) is comparable to the cost per square foot of traffic mitigation measures for which property owners would otherwise be responsible (approximately $6.5). (If not all LATR costs are creditable, the mitigation costs would likely be higher than the District costs.) The mitigation costs would have to be paid upfront, but District costs would be spread over time. The cost per square foot does not reflect the added value to property owners of comprehensive and coordinated construction of needed infrastructure, compared to the piecemeal approach of having multiple property owners build necessary infrastructure. The Planning staff analysis also shows that property owners who redevelop are subsidized by those who do not redevelop, with an approximate reduction in District costs of $5 per square foot.

One principle that Council Staff recommends should be assumed in setting policy, and which we believe all parties share, is that **each "bucket" should be prepared to cover its own cost overruns**. That is, if the cost of any infrastructure item in that "bucket" turns out to materially exceed the current estimate, the funders of that "bucket" should continue to bear the cost of that item, rather than shifting the excess cost to another "bucket" or set of stakeholders.

The infrastructure list/tax policy resolution submitted by the Executive (see ©18-19) would set as "the County's goal…that the White Flint Special Taxing District special tax rate must not exceed 10% of the total tax rate for the District, except that the rate must be sufficient to pay debt service on any bonds that are already outstanding". A practical result of applying the assumption in the preceding paragraph is

[3] Planning staff note that one property increased in value from $2 million in 2007 to over $15 million after the Sector Plan rezoning (see ©29).

that *this goal would not become a binding restriction on the tax rate* the Council will set each year for the Special Taxing District. This goal has been referred to as a "policy cap", as distinct from the firm legislative cap" that the Partnership and others proposed.

The resolution submitted by the Executive reflects this principle. It goes on to say:

> If the revenues from the special tax at the level in the preceding paragraph are not sufficient ... the County Executive, before recommending any increase to the tax rate above the (10%) level ..., must consider alternative approaches, including the timing and scope of each infrastructure item and the structure of the financing plan to pay for it, and alternative revenue sources.

In other words, before raising the Special Taxing District rate above 10%, the Executive must consider certain alternatives (as he no doubt would in most circumstances), but he is not prohibited from raising the rate as ultimately needed to cover the District "bucket's" costs. A firm legislative cap could impact the bond rating and lead to a higher interest rate. The Committees agree that the Council should adopt this "policy cap" but not a firm "legislative cap" on the Special Taxing District tax rate.

3) Is it necessary to identify the specific source of funds for any gap between the total cost of all infrastructure needed for complete build-out of master planned development allocated to the Special Taxing District and funds that can be raised by the District?

Committees' Recommendation: The Executive's revised proposal for White Flint sufficiently addresses any long term gap in funding for the District.

The Council received testimony suggesting that it must identify the specific funding that would be used to close the potential gap between the revenue likely to be raised by the Special Taxing District (assumed at $150 million) and the total cost of infrastructure assigned to the District ($218 million based on the Council Staff cost estimate on ©32). The Committees believed that the Executive's revised proposal sufficiently addresses District gaps and, therefore, it was unnecessary to address the question raised by Council Staff.

While Council Staff did not object to most of the Executive's revised proposal (except his recommendation to set impact taxes at zero and not charge interest for forward funding), Staff disagreed for several reasons that it is necessary to identify funding for the district gap. First, estimates of the revenue to be generated by the Special Taxing District and the cost of infrastructure are both likely to change. The revenue will depend on the timing of development, the value of the properties once improved, and the discount rate. (If the value of property increases faster and at a greater rate than assumed or the discount rate is less than the 6% assumed, revenues could be significantly higher; the reverse events would lead to the opposite outcome.) Cost estimates for the infrastructure projects are of limited value until the preliminary planning and engineering has been completed. **In short, it is impossible to project the magnitude of any gap with any degree of confidence now.**

Second, infrastructure needs in a planning area almost always change over the course of build-out, particularly because not all property owners build out at their full zoning capacity and County policy or practice regarding specific facilities changes. **It is very typical to not build all infrastructure recommended in a master plan.** Moreover, the master plan will most likely be revised long before full build-out occurs.

Since no other master plan in the County identified how the needed infrastructure will be funded, every master plan has a "gap". In most planning areas, the gap is the equivalent of the total cost of needed infrastructure. The question for the Council to consider is whether it needs to identify at this time how to fund all of the proposed infrastructure in White Flint while not having even begun to address this question for every other planning area. **Rather than attempt to define or fund a long-term gap now, Council Staff recommended, and the Committees agreed, that the Council instead commit to funding all immediate needs, identifying viable strategies for longer-term needs, and refining those longer-term strategies as development progresses.**

While Council Staff does not believe it is necessary now to determine how the full build-out of White Flint will be funded (particularly since much of the infrastructure is not likely to be needed for many years), it is critical for the Council to determine the immediate funding needed to allow Stage 1 development to proceed without delay. A similar assessment should be undertaken before each stage proceeds, **with a Council commitment to identify all funding necessary to allow development to proceed.** The Council Staff recommended changes to the bucket lists indicate that Stage 1 infrastructure costs can be easily covered by the Special District with no need for additional funding.[4]

Council Staff recommended that the Council undertake an amendment to the Capital Improvements Program (CIP) to fund all Stage 1 trigger infrastructure projects that are the responsibility of the County or the District and ensure that there will be no delays for projects ready to proceed. This is consistent with the revised proposal submitted by the County Executive.

4) What other revenue-raising or cost-shifting options are worth further consideration to address longer term funding needs?

Committees' Recommendation: The Committees support the Executive's proposal to shift two infrastructure items from District funding to County funding and to use County forward funding (to be repaid by the District) to address gaps in funding.

Potential options to close potential funding gaps include the following:

- a higher Special Taxing District tax rate, so that the District can fund more items assigned to it;
- the County forward-funding some infrastructure items, with the District repaying the County when its tax base is adequate;
- shifting some infrastructure items from the District to the County "bucket" – i.e., adding to the costs paid by all County taxpayers; or
- a "complementary source of financing", which could include tax increment financing (TIF) which diverts District property taxes from the General Fund, or another tax entirely (e.g., transportation impact tax, parking excise) paid from the District or certain elements of the District.

Some of these options would effectively keep the costs where the Executive originally assigned them --- i.e., White Flint property owners continue to pay for the items in their "bucket". Others shift costs or risks, directly or indirectly, to others, mainly County taxpayers. The Executive recommended shifting

[4] Assuming revenues that will be generated over the life of the bonds, not during the build-out of Stage 1.

two projects from the District bucket to the County bucket and forward funding to address other gaps in funding.

Projects to be moved from District Funding to County Funding

The Executive recommended that the County take responsibility for two projects that he originally listed as District responsibilities. These projects are:

Project	Estimated Cost
Second Metro entrance	$35,000,000
Nebel Street Bike Lane	$9,200,000

Given questions about the scope, timing, and need for these projects, **the Committees supported removing them from the District**. Like every other capital project recommended in a master plan, the capital budget process is the appropriate place to debate the specific merits of each project; that is not likely to occur in the near term. As Council Staff suggested earlier in this memo, it is neither necessary nor advisable to determine how to fund all infrastructure identified in a master plan so far in advance of full build out of master planned zoning capacity.

Advancing Funding

As an additional means of addressing any gap, both Council Staff and the Executive recommended that the Council agree to **forward fund** infrastructure that will not be covered by the District special tax, with the costs of those improvements **to be repaid by the District at a later time**. Forward funding using traditional County financing vehicles such as general obligation bonds will be less expensive than, for example, tax increment financing. Forward funding may require collecting the special district tax for a longer time or increasing its rate. While Council Staff estimated that the revenue generated by the Special Taxing District should be more than enough to cover the debt service on the $39 million in infrastructure needed in Stage 1, the White Flint Partnership projected that the revenues may not be consistently high enough in the District's first years to cover debt service **every year** on bonds for critical projects needed in the short term.

The Committees supported the concept of advance funding with the following conditions:

- County advance funding should only be used to the extent necessary to cover the gap between debt service on critical projects and projected revenue from the Special Taxing District. The need for this will depend on the estimated cost of the projects, the pace of development (and the rate at which assessed values in the District grow), and the timing of the design and construction of new infrastructure. At this point, the Council need only approve the concept of advance funding and make sure that Bill 50-10 allows it on the terms needed to protect the County's interest (e.g., including ensuring that any advance payment will be repaid by the District). Council signoff on details about specific infrastructure items will occur when the Council approves an amendment to the Capital Improvements Program (CIP).
- The Executive's intent is to structure the advance funding so as to not compete with other County projects that receive general obligation bonds. This requires the firm commitment that the funding will be repaid by the District in a timely manner. The details of how this will be done are not yet clear, and the Council should request further information on this before final approval of a CIP project.

- There will need to be a finite time for the repayment period, and the Executive's package does not include any information on this (other than an assumed 10-year payback in the estimate of interest costs). Repayment of advanced funds is likely to lengthen the life of the District, but the period of repayment and life of the District should not be unlimited or indefinite.
- The Council will need to consider outstanding bonds/funds for forward funding before making a determination to fund additional new infrastructure. This consideration should be part of the review of any CIP project.

To implement these conditions, Bill 50-10 should be amended by inserting on ©13, after line 131:

(f) Before the County loans or advances any funds to the District that the District is required to repay to the County, the Council must adopt a financing plan in a resolution under this Section, or as part of an approved Capital Improvements Program resolution, that specifies:

(1) each transportation infrastructure improvement for which funds would be advanced;
(2) the amount of funds advanced which the District must repay;
(3) the amount of interest, if any, the District must repay;
(4) the time period during which the district must repay the amount due;
(5) the number and timing of installment payments, if any; and
(6) any other principal term of repayment.

Any financing plan adopted under this subsection is binding on the District and the County, except as later modified in a Council resolution.

Interest on Forward Funding

Committees' Recommendation: Exempt the district from repaying interest for the first 10 years of repayment of forward funding on the 3 specific projects designated by the Executive, but charge interest after 10 years. This will provide an incentive to minimize the repayment period. Charge interest on the $15 million that may be spent on yet unspecified projects. Councilmember Floreen would not charge the District any interest on forward funding of the 3 designated projects.

The Executive's revised proposal exempts the District from paying interest on forward funding for the specified 3 projects, while requiring that interest be repaid on the $15 million to be advanced for unspecified projects. Council Staff remains unclear why the Executive believes it is necessary to exclude interest charges and to treat the three specific projects different from the $15 million that may be spent on yet unspecified projects. The Executive's proposal does not specify a term of repayment, and with no interest charged District property owners will have the incentive to lobby for a longer repayment period. The Committees accepted an alternative to provide an incentive to minimize the period of repayment (and thereby the cost to County taxpayers of absorbing the interest cost) by not charging the District interest only for the first 10 years of the repayment period.

Tax Increment Financing

Committees' Recommendation: Do not use tax increment financing in the White Flint area.

Some developers suggested that tax increment financing (TIF) be used to fund the difference between the costs in the District bucket and the revenue raised by the Special Taxing District. A TIF diverts revenues otherwise available for the general fund for capital improvements in a specific area. It does not create additional revenues, but does ensure that some portion of revenues associated with increased property values will be used for the infrastructure needs in a specific area.

Council and Executive Staff did not support the use of a TIF for several reasons summarized below.

- TIFs divert revenue that would be otherwise available to the entire County for the operating or capital budget and instead limit its use to capital projects only in White Flint. This shifts the responsibility for some portion of District funding from the District to the County taxpayer.
- TIFs limit the Council's flexibility to shift resources when necessary (e.g., if development stalls in White Flint, delaying the need for infrastructure at the same time that there is a critical need elsewhere in the County) and can have a negative impact on areas outside the TIF District.[5]
- TIF revenue is unreliable, since it is based on the rate of growth in property values, which is not certain. TIFs are usually backed up by another funding source.
- The designation of an area for TIF financing usually requires a finding that development would not take place "but for" the creation of the TIF. TIFs are more commonly used in blighted areas where there appears to be no alternatives. Given the alternatives available in White Flint, Staff does not believe that White Flint passes the "but for" test.
- TIFs are more expensive than other financing mechanisms available to the County.

5) Should LCOR's North Bethesda Center development be part of the special taxing district? If so, should its development approval be revised?

The North Bethesda Center development by LCOR Inc. was zoned under the TSM zone before the White Flint Sector Plan was revised, and was approved by the Planning Board under the then-County Growth Policy's Alternative Review Procedure (ARP) for Metro Station Policy Areas. Under the ARP, LCOR must pay the transportation impact tax at 150% of the normal Metro Station Policy Area rates (75% of the rates that apply in the rest of the County outside the MSPA's), must not claim any applicable impact tax credit, and must meet significantly higher trip mitigation goals. Under Bill 50-10, this property would be in the proposed White Flint Special Taxing District. LCOR argues, with some justification, that it should not be required to pay both the transportation impact tax (at either its enhanced level or the normal rates) and the District supplementary property tax. In addition to the development already approved under the previous zone, LCOR in the future may further develop some of the parcels on this property under the CR zone. As far as Council staff knows, no other property in the proposed special taxing district faces similar issues.

In return for participating in the District, LCOR asked that the District absorb the cost of two infrastructure items they would otherwise fund (Market Street east of Route 355 and the 3-lane bridge over the White Flint Metro Station) and relief from impact tax payments, similar to the Executive's recommendation for other District properties. LCOR estimates the total cost of the two projects at $12.5 million and the total cost of its impact tax payments at $8.7 million (not including $2.66 million paid for the NRVC building now under construction). In materials provided to Council staff on ©42-45, LCOR estimates its District special property tax payments at $21 million over 20 years, $39 million over 30 years, and $63 million over 40years.

---

[5] A 2006 study by the Lincoln Institute of Land Policy (one of the top research organizations on land use and taxations issues) found that "the non-TIF areas of municipalities that use TIF grow no more rapidly, and perhaps more slowly, than similar municipalities that do not use TIF" and "evidence shows that commercial TIF districts reduce commercial property value growth in the non-TIF part of the same municipality".

In evaluating whether and how to achieve greater equity for LCOR, the Council should consider two issues:

1) How do LCOR's costs and benefits of participation in the District compare to the costs it already committed to for mitigation and impact taxes? Should the value of its contribution remain relatively comparable to what it already committed to, or does any factor justify an increased contribution? Since LCOR already has all necessary land use approvals, it is unclear how it will directly benefit from participating in the District.
2) Should the County treat LCOR similar to other District property owners, with a goal of a similar financial burden? The Executive recommended that the County subsidize development for other White Flint properties owners by absorbing certain costs they otherwise would pay (impact taxes and interest). Is it equitable for the County to subsidize some White Flint property owners, while requiring others to bear a higher financial burden, creating a potential market disadvantage?

Council Staff is waiting for specific financial data from LCOR, which we expect to discuss with Executive staff, and hope to have a more specific recommendation at the Council session on Tuesday.

6) Should transportation impact taxes be collected in the White Flint Special Taxing District? How much revenue would be lost if they are not collected?

Committees' Recommendation: The Committees recommended the Executive's revised proposal to set the transportation impact tax rates in White Flint at zero, but Councilmembers Knapp and Elrich were not prepared to make a final decision until receiving an estimate of the potential lost impact tax revenue. *Revising the impact tax districts and rates will require introduction and enactment of another Bill; doing so is beyond the scope of Bill 50-10.*

Transportation impact taxes have been levied on new development in White Flint since 2001. The rates differ by size and land use category, roughly in proportion to the relative amount of traffic generated. By policy, the rates in Metro Station Policy Areas (including White Flint) are set half as high as they are levied elsewhere. Affordable housing units do not pay the tax.

The purpose of transportation impact taxes (like school impact taxes, which were first levied in 2004) is for the development to provide its fair share of the cost of new infrastructure that adds capacity. When the Council last revised the tax rates in 2007, it set them so that development would pay for roughly 90% of the cost of added transportation capacity which is needed to serve development generally. With few exceptions, there is no geographic nexus between the location of the development that pays the tax and where the proceeds are used. The same is true for the school impact tax, but it has no geographic exceptions.

The Executive's original memo (see ©2, 6) noted that he expected to propose another Bill for Council consideration that would maintain the transportation impact tax in the White Flint area at 50% of the County-wide rate, but require the proceeds to be used only to benefit the White Flint area and allow taxpayers to pay the tax due over 10 years, instead of before the building permit is issued, as is now required.[6] His revised proposal would set the transportation impact tax rates at zero in White Flint.

[6] All parties acknowledge that the school impact tax would continue to apply to residential developments in White Flint.

Many who testified at the hearing urged the Council not to "add" the impact tax on top of a Special District Tax. (This is, of course, incorrect: what they meant is that the existing transportation impact tax should be eliminated.) One reason the Executive originally proposed to retain the impact tax is because it would generate more revenue to pay for projects in the County "bucket". In the past decade, impact taxes contributed about $17.6 million to the cost of Montrose Parkway West; in the next six years, the Council has programmed about $21.2 million of impact tax revenue for *Montrose Parkway East*, *Chapman Avenue Extended*, and *Nebel Street Extended*, all of which serve White Flint. **It is clear that White Flint has received impact tax revenues, with more spent on improvements there than has been generated by development there.**

The other main reason to retain the impact tax is that it provides more equity between developers and non-developers in White Flint. Consider two White Flint office buildings with the same size and same locational advantage (e.g., distance to the Metro Station), but one was built in the last few years and the other has yet to be built. Under the Executive's original scenario, the latter will pay the impact tax, just as the former did. But both will also have to pay virtually the same Special District Tax since their assessed values will be almost identical, even though the first building does not need the infrastructure the Special District Tax would fund. The owner of the first building would have a valid complaint, but the Executive's response is that it will also benefit from the new infrastructure because the type of denser development planned will likely raise the value of existing property. But if the new development does not pay the impact tax, the existing building owner is put at a further competitive disadvantage.

Several property owners who testified argued that the combination of the Special Taxing District and impact taxes would create too great a financial burden on property owners and would deter development. Council Staff has not seen any data from property owners to provide evidence of this assertion, and notes that some projects have already been approved in White Flint with traffic mitigation and impact tax costs that appear to be comparable to those projected for the District.

Planning staff prepared a rough analysis of the cost of the District (see ©25-29). Their preliminary conclusion is that the cost of the Special District Tax and impact taxes combined would be within the range of costs of other mixed-use developments in the County, even before considering the offsetting impact of impact tax credits.

As the Executive noted, many projects will receive significant **credits** that will reduce or eliminate their impact taxes. Although District payments would not be creditable, several projects in the Developer "bucket" would be creditable against impact tax. For example, the $33.9 million project 41 and the $9.5 million project 36 (if it remains a public street, and perhaps even as a private street with the Sector Plan's conditions) are on White Flint Mall's property and presumably would be built by the developer; Council Staff thinks both would be impact tax-creditable. Therefore, if the impact tax in this District were retained, it would be reduced by a $43.4 million credit. For Federal Realty, projects 43 and 53 would be creditable, reducing its impact tax payment by $25.5 million. So not only is there a disparate effect between developers and non-developers, there is also a disparate effect among developers. **If, as the Executive argues, the credits will reduce the impact taxes to an insignificant amount, there is no reason to set them at zero in White Flint. If they will generate a measurable amount of income, the Council must consider how it will replace that income to fund infrastructure needs in and around White Flint.**

Councilmembers Knapp and Elrich believe it is important for the Council to understand the magnitude of the lost revenue before changing the tax rate. **Council and Planning staffs estimate the lost impact**

tax revenue at about $40 million. After the Committee worksession, Planning staff, working with Council and Executive staff, estimated the impact tax revenue that the district would produce after applicable credits are deducted. Planning staff concluded that in the District, **about $67 million in transportation impact taxes would be due**. Although the district would contain about $121 million in impact tax creditable projects (as defined by Council staff with general concurrence from Executive staff), however, based on the location of the creditable projects, only **about $27 million in developers costs would be creditable against impact taxes, so about $40 million of impact tax revenue would still be realized from the District.**

This result flows from the fact that the $121 million in creditable projects are all concentrated in 6 "blocks" of the Sector Plan area, for which the development would generate $44 million in impact tax revenue. For these 6 blocks, $16 million in impact taxes would be retained after all credit. For the remaining 14 blocks, no creditable projects exist and $24 million in impact taxes could be collected.

In concurring with this methodology, Finance Department staff explained that: "you have to tie the specific impact taxes for private development to those infrastructure projects that are creditable, and you have done that with this analysis. In other words, it really doesn't matter how much impact tax credits total, it matters how much in impact tax credits Developer A will get for building infrastructure, relative to the amount of impact taxes Developer A will get billed for his development".

In deciding whether developers in the White Flint area would be overtaxed, as some claim, if they remain subject to transportation impact taxes, the Council should not forget that under the Sector Plan and its implementing Subdivision Staging Policy[7] amendments, once the Council adopts a White Flint Sector financing mechanism, the normal policy and local area transportation requirements (PAMR and LATR) do not apply. **Relieving developers of those requirements will, of course, reduce their development costs, often by large amounts, and perhaps more important, reduce the time needed to bring projects to full development.**

Absent more concrete information to show that the combination of the two taxes would have a detrimental impact on development, Council Staff believes the impact tax should continue to be applied in White Flint. If the Council later finds that the combined costs of both taxes are negatively impacting development, it will be far easier to reduce or eliminate the impact tax. If the Council eliminates the tax and later determines it does not have sufficient County resources to fund necessary infrastructure, it may be too late to recover lost revenue.

As a way of softening the blow, the Executive originally recommended allowing developers to stretch out the impact tax payment over 10 years, with a small adjustment for the time value of money and a lien placed on the property. **Council Staff would go as far as scheduling the payment over 20 years, with the same type of adjustment.**

If the Council believes that some relief from the transportation impact tax is warranted, Staff recommends reducing the rate rather than eliminating all impact tax payments. If the Council agrees with the Executive that impact tax payments in White Flint should be eliminated, we concur with the recommendation to set a $0 impact tax rate in the White Flint District (as the Council did several years ago for bioscience developments), rather than permanently repeal the County's authority to collect the impact tax in this area. This approach would preserve the Council's flexibility to meet changing needs.

[7]Formerly County Growth Policy.

A side issue recently arose as to whether a developer could claim a credit against its transportation impact tax for the amount of supplementary property tax paid to the district on the ground that payment of this property tax is "contributing to an improvement" as that phrase is used in the impact tax credits law. In Council Staff's view, that would never be the case, but to avoid any possible interpretation of this kind, **Council staff recommends** a technical amendment to Bill 55-10 to clarify that the property tax paid to the district cannot result in an impact tax credit.

7) Are all infrastructure items properly allocated to the correct bucket and correct stage of development?

Committees' Recommendation: concur with the Council Staff recommended changes to the bucket lists and Council and Planning Board staff interpretations of conflicting staging provisions in the White Flint Sector Plan.

The most recent list of proposed infrastructure items in the White Flint Sector Plan area, to be funded, respectively, by the White Flint Special Taxing District, the County itself, and the developers as necessary to move their projects forward, as proposed by the County Executive and modified by Council Staff, are shown on ©32-34. These lists are commonly called the White Flint "buckets". The numbers in these tables are highly preliminary cost estimates and cannot be relied on for anything more than order-of-magnitude projections. These tables do not include the changes proposed by the Executive in his most recent submission.

Council Staff reviewed the three "buckets" of projects proposed by the Executive and recommend revising them as shown on ©32-34. Many changes are minor and technical, such as more accurately describing the names and scope of projects, and some are formatting, such as assuring that the aggregate costs of the three stages equals the total cost. In summary, the Council Staff revisions do not significantly change the allocation of costs among the County, the District, and developers (44.5% County, 29.8% developer and 25.8% District), but significantly increase the County contribution and decrease the District contribution **for Stage 1**. At this point, all the cost estimates are extremely soft; because these projects have not been designed, the real costs—in constant dollars—could be as much as 50% higher. All costs displayed in the bucket lists are in 2010 dollars.

The substantive revisions made to the bucket lists are:

District Bucket:

- **Add $10,000,000 to the right-of-way cost for Project 7.** This is the estimated cost of acquiring land and a building from the VOB parcel to build Executive Boulevard Extended between East Jefferson Street Extended and Marinelli Road. The road cannot be built without this acquisition.

- **Shift 80% of the costs of the western and eastern workaround projects from Stage 1 to Stage 2; the 20% retained in Stage 1 would be for design and permitting costs.** This recommendation stems from a discrepancy in the Sector Plan approval resolution. On page 23 of that resolution, under Phase 1: "Work around road projects west of Rockville Pike, including the streets for the civic core, should be contracted for construction during Phase 1 and completed before commencement of Phase 2." This language is inconsistent with the bullets underneath ("contract for construction") and the bullets in Phase 2 ("complete..."). Council Staff believes what makes the most sense is what is contained in the bullets: that the workaround is under contract before Phase 2 commences, and that it be completed during Phase 2. If it is contracted before Phase 2 starts, that means the project will be under construction at the same time the Planning Board could approve preliminary plans in Phase 2. Construction for the western workaround would take no more than 2-3 years (since rights-of-way would already have to be clear before a construction contract is granted), which is probably the minimum amount of time for a Phase 2 development to proceed from preliminary plan approval to construction and occupancy. In other words, Phase 2 development would not be realized until the western workaround is completed.

These revisions bring the total cost of the District Bucket to about $218 million.

County Bucket:

- **Delete the $130,500,000 associated with the bus depot (Project 24).** A new upcounty depot is programmed and will provide capacity for expanding bus service throughout the County. It is not solely or mainly needed to serve White Flint.

- **Show an estimate of $90,000,000 for the CLATR intersections outside the Sector Plan area (Project 28).** As soft as the estimates in these lists are, this is by far the softest. This estimate is the midpoint of costs that could range from as low as $45 million to as high as $135 million.

  The $45 million low estimate is based on three assumptions: an average cost/intersection improvement of $20 million (the lower end of the BRAC intersection average); 3 intersections to be improved (the bare minimum noted by Planning staff); and 75% of the need for the improvements associated with White Flint (rather than the need generated by other neighboring developments, such as at Rock Spring Park).

  The $135 million high estimate is based on: an average cost/intersection improvement of $25 million (the higher end of the BRAC intersection average); 6 intersections to be improved; and 90% of the need for the improvements associated with White Flint.

  Lacking better information, we assumed that the $90 million will be split evenly between Stages 2 and 3.

- **Delete the $2,031,348 land cost associated with the County portion of the streetscaping project on Nicholson Lane (Project 30).** The land along County agency property should be assumed as having no cost.

- **Increase the estimate for the elementary school to $25 million.** The Executive's $20 million estimate was based on modernizing and reopening the Rocking Horse Center as an elementary school. The Sector Plan calls for a new school south of the current White Flint Mall. The $25 million does not include the cost of land, so it assumes the land would be dedicated. If the land must be purchased, the cost would be higher, of course.

  These revisions reduce the County Bucket from about $414 million to about $376 million.

Developer Bucket:

- **Delete all the right-of-way costs (about $145 million) from the total.** These are assumed to be dedications that will not require acquisition. They will not affect the build-ability or profitability of the developments.

- **Delete the $5.9 million construction cost for Project 46.** Project 46 would be done as part of Project 13 in the District Bucket.

These revisions reduce the Developer bucket from about $403 million to about $252 million.

With these revisions, the District Bucket proportion of White Flint's infrastructure cost would be 25.8%, while the County/State Bucket proportion would be 44.5% and the Developer Bucket share would be 29.8%. However, a change in one assumption would change these ratios. The Executive assumed that some development on Rockville Pike will proceed earlier than when the District can fund the Rockville Pike improvement; his assumption is that 25% of the improvement's cost will be covered by exactions. While this is certainly a guesstimate, we have no rationale to assume a different share. If, however, assuming that development proceeds even faster (or the District slower), then perhaps 50% of the cost might be funded through exactions, which would shift about $20 million from the District Bucket to the Developer Bucket.

In Stage 1, there would be a much lighter contribution from both the District and Development Buckets. The District Budget projects require about $39 million of funding in Stage 1, about 16.7% of the Stage 1 total (compared to 25.8% across the entire buildout). Such a reduced funding requirement, plus the fact that most of the costs are for design (which are much more reliable than construction costs) strongly suggests that there will be no funding gap in Stage 1. The Developer projects require about $52 million in Stage 1, about 21.9% of the total (compared to 29.8% across the entire buildout).

On the other hand, the County/State Bucket funding needs are much more frontloaded: County/State Bucket projects require about $145 million in Stage 1, about 61.5% of the Stage 1 total (compared to 44.5% across the entire buildout). Therefore, the need for significant resources will have to come in the form of general obligation bonds, impact taxes, and other such sources.

As noted earlier, the Committees concurred with the Executive's recommendation to have the County take responsibility for two projects that he originally listed as District responsibilities. This is not yet reflected in the bucket lists on ©32-34.

8) Should the White Flint area be designated a Transit Oriented Development (TOD) area?

Committees' Recommendation: Support the designation of White Flint as a Transit Oriented Development, recognizing that this does not mean that all projects in White Flint will be a top priority for the Council at any given time (e.g., the second Metro Station should not take precedence over other previously designated priority projects).

The purpose of a Transit Oriented Development (TOD) designation is to signal to the State where to concentrate its efforts to promote development. White Flint certainly merits TOD status, and this should be so noted in the next joint Council/Executive State transportation priority letter, which will be sent early in 2011. However, the letter should also clearly state that granting White Flint TOD status does not mean that White Flint projects should supersede any others in the priority letter. The current letter includes a backlog of unfunded projects – each with its own merits and constituency – totaling more than $5 billion.

Speaking directly to the point: granting TOD status, without the caveat in the preceding paragraph, might imply a high priority to the planned second (northern) entrance to the White Flint Metro Station. But this entrance, which the Executive recommended removing from the District bucket, should be a very low priority. Virtually all of the White Flint Sector Plan area is within a half-mile of the current entrance, so the area is already transit serviceable without it. The benefit of a new northern entrance is very localized and would only serve a few properties.

9) Should existing apartment building be drawn out of the White Flint special taxing district?

No Committee recommendation.

As proposed in Bill 50-10, the White Flint special taxing district was drawn to exclude 6 existing condominium buildings, on the theory that those residents did not ask or expect to pay an additional tax and did not receive any zoning benefit from the revised sector plan. Residents and owners of the 4 apartment buildings in the proposed District (see map, ©39, and Planning staff data, ©40) questioned whether they should be included in the district, as Bill 50-10 would do. According to Planning staff, the 3030 attached dwelling units (including 2 new developments, North Bethesda Market and Wentworth House) in White Flint include about 1368 (or 45%) rental units.

Rental data supplied by Planning staff (see ©40) and LCOR for its Wentworth House building (see ©41, 43) show that monthly rents in this area range from roughly $1300 to $2500 in the existing buildings, with rents in the new North Bethesda Market across from White Flint Mall somewhat higher. LCOR estimated that the added district property tax would result in a $25/month increase in Wentworth House tenants' rents. (About 15% of the units are MPDU's; their rents are controlled and should not be affected by the tax.)

The Council has at least 3 options with respect to these 4 apartment buildings:

1) Keep them in the special taxing district.
2) Remove them permanently from the district.
3) Put them in the district on a delayed basis. Revise the district boundary now, effective in, say, 5 years, to allow a transition for current renters and maintain the buildings' short-term competitiveness with other nearby buildings.

Council staff recommendation: Keep these units in the district. The estimated rent increases are not excessive or unbearable in a competitive rental environment. If some transition period is desired, 5 years would be sufficient.

10) should Bill 50-10 be converted to a generic law, with the White Flint special taxing district created in the implementing resolution?

The Council staff memo for the November 9 joint MPF/PHED worksession on White Flint financing, reprinted for the November 16 worksession, included this sentence under the heading **Reserved issues:**

We also expect to discuss whether Bill 50-10 should be converted to a general enabling law to authorize this type of Special Taxing District, with each specific District to be created by Council resolution, with the implementation resolution proposed by the Executive being converted to create the District as well as list the infrastructure items the District will fund.

Because of lack of time (2 full worksessions merged into one), Council staff did not bring this issue up at the November 16 worksession. Nonetheless, we would be remiss if we did not take this opportunity to save time and trouble later by converting this Bill now. The advantages of doing so include not having to readopt identical or similar language if another special taxing district is needed. It was relatively easy to convert the introduced district-specific bill into a general enabling law with only a few amendments; those are shown in the draft on ©46-56 with double brackets and double underlines. The Bill title and hearing notice were set up to give the Council this option.

Council staff recommendation: convert this bill to an enabling law, and create the White Flint special taxing district in the accompanying resolution.

F:\LAW\BILLS\1050 White Flint - Creation\COUNCIL 11-23-10 Ver 2.Doc

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

September 27, 2010

TO: Nancy Floreen, President, County Council

FROM: Isiah Leggett, County Executive

SUBJECT: White Flint Development Tax District:
Legislation; Legislative Report Form; Fiscal Impact Analysis
Amendment ($9.835 M) to the FY11-16 Capital Improvements Program and
Special Appropriation #4-E11-CMCG-3 to the FY11 Capital Budget
Montgomery County Government
Department of Transportation
White Flint District West: Transportation (No. 501116), $385,000

I am pleased to transmit for introduction a package of legislative items necessary for the County to commence implementation of the transformational White Flint Sector Plan. This sector plan, a model for smart growth, will be a platform for exciting new redevelopments that will make the White Flint area more pedestrian and bicycle friendly as well as inviting for residents and businesses.

Enclosed for introduction is legislation creating the new White Flint Development Tax District which will implement the financing vehicle envisioned by the recently adopted White Flint Sector Plan. If implemented this district will help fund some of the extensive public infrastructure called for in the Sector Plan. A resolution accompanies the draft legislation. The resolution identifies the specific list of transportation infrastructure to be funded by the White Flint Development Tax District and includes a district funding and rate setting policy statement.

With the legislation and the resolution, I am transmitting an amendment to the FY11-16 Capital Improvements Program and a supplemental appropriation in the amount of $385,000 to the FY 11 Capital Budget for the new White Flint District West: Transportation project (No. 501116) to enable design to begin on infrastructure to be paid for from White Flint Development Tax District funds. This work is critically important to refine the assumptions relative to the district for roadway improvements in the first stage of the recently approved White Flint Sector Plan. This project is needed to accelerate the preliminary engineering for one new, one relocated and three existing roads, and one new bikeway, so that more accurate designs and cost estimates can be established. Funds to pay for analysis and studies necessary to implement the district are also included. The recommended amendment is consistent with the criteria for amending the CIP in that this project supports significant economic development initiatives, which in turn will strengthen the long term fiscal capacity of the County government. The new growth planned for the White Flint area in accordance with the recently approved Sector Plan will revitalize the region and strengthen the County as a whole. These road and bikeway improvements will greatly aid and expedite the planned development for the area.

Other specific Capital Improvements Projects for development district infrastructure will be transmitted with the FY12 amendments in January. To address transportation impact taxes in White Flint, I intend to send a second bill to the Council that will modify the transportation impact tax as it relates to the White Flint Sector Plan Area. The modifications that I will be recommending are to retain the 50 percent metro station policy area rate that applies throughout the district, but require that the tax be applied only for infrastructure within or related to the development within the White Flint Sector Plan. This would include intersections identified through the comprehensive local area transportation review that require improvement due to development within the district. I believe that the opportunity to pay this tax over time rather than as a lump sum payment up front should be available provided that property owners who are benefitting provide a first lien to the County.

The packet that is transmitted with this memorandum reflects many months of meeting with stakeholders and interested parties. Executive staff has held a series of meetings with developer and resident stakeholders, along with Planning Board and County Council staff, to develop the list of improvements that will be funded by the special district tax and the key elements of the district enabling legislation. While the attached draft legislation does not necessarily reflect a consensus of the stakeholders, it does reflect significant input from *all* of the interests represented.

To assist the Council in its deliberations and to facilitate the public discussion regarding this package, I am providing the Council with some of the key considerations that went into the funding plan that is reflected in the attached package.

The Special Tax District

One of the underpinnings of the White Flint Sector Plan is that there be a new funding mechanism to pay for some of the significant transportation infrastructure that is called for in the plan, including the creation of workarounds, street grids, streetscaping and bike lanes. With the limitations of Charter Section 305, it is important that the new tax be structured so that it does not use up fiscal capacity within that limitation and thus preclude the availability of these funds for other important projects in the County.

The development tax district is simple, straightforward and can be easily implemented – all important considerations for the timely realization of the redevelopment of White Flint. The development tax district also provides for certainty of revenues and spreads the burden equally over the entire plan area – except for existing residential which is to be outside of the district. The legislation, which is to be adopted under recently enacted Senate Bill 828, gives bond counsel, and the bond market greater certainty in the County's authority to implement the district and impose an ad valorem tax on all properties except for existing developed residential. In addition, under this special authority, the bonds can be issued as special obligation bonds, the debt service of which will not compete for capacity with other County debt. The development district tax is intended to be implemented in time for the FY12 tax bill.

The development district tax provides substantial benefits to property owners within the plan area while protecting the County taxpayer from the greater fiscal burden. The County has historically required that development pay for itself. With development density doubling throughout the sector plan area, the special tax district provides a means of assessing properties to ensure the government's lower rate of financing for infrastructure that would historically have been required of developers to meet transportation capacity requirements. The County's financing rates are less than rates that the private sector could obtain. In addition to the near doubling of development density, the *quid pro quo* for this additional tax is that properties that are being redeveloped will not be required to go through the transportation capacity reviews that are generally required to satisfy adequate public facilities review. With the steady flow of tax revenues, there is better certainty that the district roads will be built rather than relying on piecemeal development to drive the delivery of needed improvements and capacity. This certainty benefits the property owners as well as the residents and businesses of Montgomery County who must navigate the area. Another benefit of the special district tax is that it is simply fairer. The entire sector plan area picks up the expenses rather than those that are first-in with a development application being charged disproportionately.

Other tax mechanisms were considered but all in all, for the certainty, reliability, ease of implementation and fairness, the special tax district is the better way to go for the White Flint Sector Plan area. Some of the other revenue raising mechanisms that were evaluated but rejected in favor of the recommended funding plan included:

Tax Increment Financing (TIF). This was an approach that had been initially suggested by some in the development community and was discussed by Planning Board staff. This mechanism has been rejected for a number of reasons. As a funding source it has issues of reliability, constraints on fiscal management and equity concerns. Tax increment financing pledges increases in tax revenues to pay for infrastructure. As evidenced by recent history, the development cycle and reliability of projections can be difficult to predict and sometimes wrong. TIFs are dependent upon development moving forward on a predictable schedule. If redevelopment does not occur, the remainder of the County – and in this case the general fund – would have to pick up the fiscal obligations of the debt. This particular funding approach is more typically used in blighted areas and is better suited to large tracts of land that will be redeveloped rather than piecemeal property ownerships reflected in the White Flint Sector Plan area. The lack of assurance of a critical mass of redevelopment occurring is challenging for the issuance of debt, particularly in the context of the sector plan where improvements and capacity are critical to the implementation and staging of the plan.

It is also worth pointing out that a TIF would use tax revenues that are subject to Charter Section 305 limits and would therefore force the funding for these roads to compete with schools, libraries, fire stations, community centers, etc. throughout the County. A TIF also raises fundamental equity issues. Developers would be paying increased taxes based on increases in assessments if they redevelop. They would not be paying for infrastructure as has been historically and is currently required throughout the County. This would be a departure from the general and longstanding policy that development must pay for itself. While the rest of the county would bear the overall total expenses from redevelopment and the risk of carrying up to the full load of that funding if development did not take place as represented, there would be little risk to the development community and their revenues would be pledged to bettering White Flint only, rather than other areas of the County. Further, the County would lose significant flexibility as it manages through difficult fiscal years. Pledging revenues right off the top, while retaining the burden of providing the infrastructure is ill-advised, particularly given recent experiences with our economy.

Some within the development community have proposed *both* a TIF and a special tax district with the special tax district being a back up only if the taxable base for the TIF fails to increase as projected when the debt is issued. For a number of reasons, such an approach is unworkable and impractical and will create financial uncertainty. Implicit in the suggestion is the fact that the TIF is in itself risky. The district tax would by necessity have to be higher up front because it would be bailing out a failed TIF pursuant to which debt had already been incurred. This would be a significant hardship for the residents and businesses that moved to White Flint under the expectation of a TIF only and then find themselves facing a district tax that would need to be set high enough to bail out the failed TIF. The simplicity of the straight development district tax that I am recommending is a far better approach as it can be set at the outset before new development proceeds in White Flint and revenues can begin to be generated before any debt is issued. It provides greater stability and certainty to the County taxpayer, the residents and property owners.

Special Assessments: This was rejected because under current law it is based upon front footage and would be an extremely inequitable way of funding the needed infrastructure.

Chapter 14 Development District: This form of district funding is more cumbersome and requires multiple council actions. It inherently has points following creation where controversy can arise and create uncertainty. It is dependent upon the votes of participants and by design would capture less than the entire district, reducing the equity of the district and increasing the likelihood of the rate increasing to ensure the revenues to be generated. In sum, it would be more difficult to put in place, and is better suited to large tracts of land that will be redeveloped rather than piecemeal property ownerships reflected in the White Flint Sector Plan area. It will also be significantly more time consuming to implement, calling into question timelines that are assumed or necessary to begin implementation of the White Flint Sector Plan. History calls into question whether the district would ever be realized.

Excise Tax: Excise taxes were also evaluated. It was concluded that an excise tax would be more difficult to implement as the targeted stakeholders may have concerns about fairness of taxation and the bond markets would need to understand the nuances of a newly developed excise tax. Additionally, the taxing of an activity that would occur in other locations within the County could generate interest and concerns on the part of similar enterprises. The County's recent experience with a proposed tax on surface parking lots illustrates the concern.

Issues Discussed

Seven primary areas of concerns were raised by the stakeholders in worksessions: 1) the tax is to be spent only in the White Flint Sector Plan area; 2) the tax is to be for a defined list of infrastructure; 3) the period of time during which the tax is to be collected is to be finite; 4) the tax should not exceed 10 percent of the current rate; 5) existing residential should not be charged; 6) the tax should replace transportation impact taxes; and 7) if the tax is insufficient to fund all of the infrastructure in the list during any stage of the plan, the County should commit to funding the difference.

I am not recommending everything that was raised by all of the stakeholders; I am however recommending much of what was raised. I very much appreciate the commitment, level of effort, and forthright and informed discussions and support provided by developers, residents, and staffs of the Planning Board, the Council and the Executive Branch throughout the stakeholder worksessions over the spring and summer. These efforts have resulted in a funding plan that can be readily implemented and have helped to focus the issues that will likely be raised for discussion at the County Council.

The bill that I am sending to you requires that the tax be spent only in the White Flint Sector Plan and only for the list of infrastructure in the accompanying resolution. It is also for a finite period of time and will expire when sufficient revenues have been raised to pay for all of the infrastructure items on the list. The boundaries of the district have been set to exclude existing residential properties. I am not recommending a cap on the tax rate in the bill, but I have recommended a stated policy in the resolution that the tax rate should not exceed 10 percent of the total tax rate not including the development tax. The reason I have not included a cap in the legislation is that I am concerned that doing so will result in a less favorable rating on any bonds that are issued, which in turn would result in a higher interest rate on the bonds. This would make the infrastructure more expensive to the tax payers. I believe that concerns over the level of the tax rate can be addressed through the implementation process and adherence to a 10 percent policy goal.

The two areas I am not prepared to recommend at this time are that the transportation impact tax not apply and that the County commit to fund any gap if the district revenues are not adequate to cover the projected costs for the development tax district infrastructure. The cost projections that are identified for the district infrastructure are estimates. The County's estimates and the White Flint Partnership's (a group of White Flint developers) are fairly consistent, and both include many assumptions which if not borne out will result in changes to the projected costs for the infrastructure. One key area where this can occur is in the area of the costs of right-of-way for the many roads provided for in the plan. These roads carve through properties and the White Flint Sector Plan is predicated on an optimistic assumption that the grid of roads as they cut through properties will result in new blocks of properties that can serve as the basis for exchanges of lands.

It is also assumed that there will be extensive dedications of rights-of-way for these roads. If these assumptions are wrong, the risk of potential gaps in cost versus revenue generation will be greatly increase and the County could be at risk for a substantial sum of money. Likewise, these assumptions reflect current construction prices, which may be more favorable than in a recovered economy. Another area that impacts costs is how the Planning Board views the state of some of the existing roads. As part of the stakeholder worksessions Planning Board staff, a representative of the White Flint Partnership and representatives from the Department of Transportation and the Department of General Services walked some of the existing Sector Plan roads to get a sense of what is needed to complete streetscaping along these roads for purposes of authorizing moving from one stage of the plan to the next. This collaborative effort resulted in conclusions that some roads are satisfactorily completed for that purpose and the costs could therefore be removed from the development tax district.

Significant staff and stakeholder effort was spent developing an understanding of the above described assumptions and any potential gap between the costs of the infrastructure and the revenues projected to be generated by the district. It has been suggested that the County commit up front to cover any "gap." Among other problems, this request is for an as yet undefined amount of money in an as yet undefined CIP budget. I cannot commit an undisclosed amount of money for future years, nor can the Council. I also believe that it would be ill advised to commit to fund an amount of money that may or may not be needed – particularly given the many important needs throughout the County that must compete for that same money.

As for the transportation impact tax, I weigh the fact that development density in the White Flint Sector Plan area was just doubled or nearly doubled for a majority of properties; that development is relieved of the need for transportation capacity review; and that the entire plan area is a Metro station policy area which translates into an already reduced rate of 50 percent of the transportation impact tax rate. I believe that, at least at this point in time, it would be imprudent to recommend elimination of the tax. However, I am recommending that those tax revenues be committed to being spent within the White Flint Sector Plan area or for improvements needed due to the increased development recently authorized for this area. I recognize that we are in the throes of – and hopefully emerging from – a significant recession and that the private financing realm will be different – particularly at the outset. Therefore, I do think that it makes sense to allow developers the opportunity to pay the tax over a period of time (perhaps 10 years to get to project stabilization) if they are able to provide the County with a first lien to assure the payment of the deferred transportation impact tax.

I recommend that the County Council approve the legislation, resolution and amendment to the FY11-16 Capital Improvements Program and special appropriation in the amount of $385,000 and specify the source of funds as Current Revenue General with repayment in FY12 from White Flint Development District tax funds. These efforts will allow us to implement the White Flint Sector Plan which, as I mentioned at the outset, will be transformational, smart growth of which we can all be extremely proud.

I appreciate your prompt consideration of these actions.

IL:ad

Attachments: Legislation to create the White Flint Development Tax; Infrastructure and Policy Resolution; Amendment to the FY11-16 Capital Improvements Program and Special Appropriation #4-E11-CMCG-3; Fiscal Impact Analysis

cc: Jennifer Barrett, Director, Department of Finance
Joe Beach, Director, Department of Management and Budget
Kathleen Boucher, Assistant Chief Administrative Officer
Mike Faden, Senior Legislative Attorney, County Council
Marc Hansen, Acting County Attorney
Ken Hartman, Director, BCC Regional Service Center
Art Holmes, Director, Department of Transportation
Diane Schwartz Jones, Assistant Chief Administrative Officer

Bill No. 50-10
Concerning: Special Taxing District - White Flint - Creation
Revised: 10-1-10 Draft No. 2
Introduced: October 5, 2010
Expires: April 5, 2012
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:
(1) establish a White Flint Special Taxing District;
(2) authorize the levy of an *ad valorem* property tax to fund certain transportation infrastructure improvements;
(3) authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements;
(4) generally authorize a White Flint Special Taxing District; and
(5) generally amend or supplement the laws governing the use of infrastructure financing districts and similar funding mechanisms.

By adding
Montgomery County Code
Chapter 68C, White Flint Special Taxing District

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:

(8)

Sec 1. Chapter 68C is added as follows:

Chapter 68C. White Flint Special Taxing District.

68C-1. Definitions.

For purposes of this Chapter, the following terms have the meanings indicated:

Bond means a special obligation or revenue bond, note or other similar instrument issued by the County that will be repaid from revenue generated by ad valorem taxes levied under this Chapter.

Cost means the cost of:

(1) the construction, reconstruction, and renovation of any transportation infrastructure improvement, including the acquisition of any land, structure, real or personal property, right, right-of-way, franchise, or easement, to provide a transportation infrastructure improvement for the District;

(2) all machinery and equipment needed to expand or enhance a transportation infrastructure improvement for the District;

(3) financing charges and debt service related to a transportation infrastructure improvement for the District, whether the charge or debt service is incurred before, during, or after construction of the transportation infrastructure improvement, including the cost of issuance, redemption premium (if any), and replenishment of debt service reserve funds for any bond that finances a transportation infrastructure improvement for the District;

(4) reserves for principal and interest, the cost of bond insurance, and any other type of financial guarantee, including any credit or liquidity enhancement, related to a transportation infrastructure improvement for the District;

(5) architectural, engineering, financial, and legal services related to providing a transportation infrastructure improvement for the District;

(6) any plan, specification, study, survey, or estimate of costs and revenues related to providing a transportation infrastructure improvement for the District;

(7) any administrative expense incurred by the County necessary or incident to determining whether to finance or implement a transportation infrastructure improvement for the District; and

(8) any other expense incurred by the County necessary or incident to building, acquiring, or financing a transportation infrastructure improvement for the District.

District means the White Flint Special Taxing District created under Section 68C-2.

Transportation infrastructure improvement means:

(1) the construction, rehabilitation, or reconstruction of a road, street, or highway that serves the District, including any:

(A) right–of–way;

(B) roadway surface;

(C) roadway subgrade or shoulder;

(D) median divider;

(E) drainage facility or structure, including any related stormwater management facility or structure;

(F) roadway cut or fill;

(G) guardrail;

(H) bridge;

(I) highway grade separation structure;

(J) tunnel;

(K) overpass, underpass, or interchange;

(L) entrance plaza, approach, or other structure that is an integral part of a street, road, or highway;

(M) bicycle or walking path;

(N) designated bus lane;

(O) sidewalk or pedestrian plaza;

(P) streetscaping and related infrastructure; including placing utilities underground; and

(Q) other property acquired to construct, operate, or use a road, street, or highway; and

(2) a transit facility that serves the needs of the District, including any:

(A) track;

(B) right-of-way;

(C) bridge;

(D) tunnel;

(E) subway;

(F) rolling stock;

(G) station or terminal;

(H) parking area;

(I) related equipment, fixture, building, structure, or other real or personal property; and

(J) service intended for use in connection with the operation of a transit facility, including rail, bus, motor vehicle, or other mode of transportation.

68C-2. Creation; Boundaries.

(a) The White Flint Special Taxing District is coterminous with the approved and adopted White Flint Sector Plan area.

(b) The following properties, identified by street address, are not included in the District: 11700 Old Georgetown Road, 11701 Old Georgetown Road, 11750 Old Georgetown Road, 11800 Old Georgetown Road, 11801 Rockville Pike, 5800 Nicholson Lane, 5802 Nicholson Lane, 5809 Nicholson Lane, 5440 Marinelli Road, 5503 Edson Lane, 5505 Edson Lane, 5507 Edson Lane, 5509 Edson Lane, 11201 Woodglen Drive, 11203 Woodglen Drive, 11205 Woodglen Drive, 11207 Woodglen Drive, 11209 Woodglen Drive, 11200-11219 Edson Park Place, 11222 Edson Park Place, 11224 Edson Park Place, 11226 Edson Park Place, 11228 Edson Park Place, 11230 Edson Park Place, 11232 Edson Park Place, 11234 Edson Park Place, 11236 Edson Park Place, 11238 Edson Park Place, and 11240 Edson Park Place.

68C-3. Levy of Tax; Limits.

(a) Each tax year the County Council may levy against all the assessable real and personal property in the District a sum on each $100 of assessable property that does not exceed an amount sufficient to cover the costs of transportation infrastructure improvements that have been identified in a Council resolution approved under Section 68C-4.

(b) Under Section 9-1302 of Article 24, Maryland Code, the limit in Charter Section 305 on levies of ad valorem taxes on real property to finance County budgets does not apply to revenue from any tax imposed under this Chapter.

(c) The tax imposed under this Chapter must be levied and collected as other County property taxes are levied and collected.

(d) The tax imposed under this Chapter has the same priority, bears the same interest and penalties, and in every respect must be treated the same as other County property taxes.

68C-4. Transportation Infrastructure Improvement Resolution.

(a) After holding a public hearing, the Council may approve a resolution that lists each transportation infrastructure improvement that would be entirely or partly paid for by a tax imposed under Section 68C-3.

(b) The resolution must indicate the estimated cost, including a contingency amount, for each listed improvement.

(c) The Council may amend the resolution after holding a public hearing.

(d) The Council must present the resolution and each amended resolution to the Executive for approval or disapproval. If the Executive disapproves a resolution within 10 days after it is transmitted to the Executive and the Council readopts the resolution by a vote of 6 Councilmembers, or if the Executive does not act within 10 days after the resolution is transmitted, the resolution takes effect.

(e) Before the Council holds a public hearing under subsection (a) or (c), the Executive should transmit to the Council:

(1) a list of recommended transportation infrastructure improvements to be entirely or partly paid for by a tax imposed under Section 68C-3;

(2) the estimated cost, including a contingency amount, for each listed improvement; and

(3) an estimated tax rate for each tax to be imposed under Section 68C-3.

68C-5. District Fund.

(a) The Director of Finance must establish a separate fund for the proceeds collected from any tax imposed under this Chapter. The proceeds of any tax imposed under this Chapter must be pledged to and paid into this fund.

(b) The Director of Finance must use this fund only to pay the cost of any transportation infrastructure improvement related to the District.

(c) If in any fiscal year a balance remains in the fund, the Director of Finance may use the balance to:

(1) pay the cost of any transportation infrastructure improvement for the District;

(2) create a reserve to pay the future costs of any transportation infrastructure improvement for the District;

(3) pay bond-related obligations or retire bonds then outstanding; or

(4) pay into a sinking fund required by the terms of bonds which finance the cost of any transportation infrastructure improvement for the District that may be incurred or accrue in later years.

68C-6. Issuing Bonds.

(a) Before the County issues any bond payable from ad valorem taxes levied under Section 68C-3, the Council must adopt a resolution authorizing the issuance of bonds that meets the requirements of this Section.

(b) Each resolution under this Section must:

(1) describe the types of transportation infrastructure improvements and related costs to be financed; and

(2) specify the maximum principal amount of bonds to be issued.

(c) Each resolution may specify, or authorize the Executive by executive order to specify:

(1) the actual principal amount of bonds to be issued;

(2) the actual rate or rates of interest for the bonds;

(3) how and on what terms the bonds must be sold;

(4) how, when, and where principal of, and interest on, the bonds must be paid;

(5) when the bonds may be executed, issued, and delivered;

(6) the form and tenor of the bonds, and the denominations in which the bonds may be issued;

(7) how any or all of the bonds may be called for redemption before their stated maturity dates;

(8) the nature and size of any debt service reserve fund;

(9) the pledge of other assets in and revenues from the District to pay the principal of and interest on the bonds;

(10) any bond insurance or any other financial guaranty or credit or liquidity enhancement of the bonds; and

(11) any other provision consistent with law that is necessary or desirable to finance any transportation infrastructure improvement that has been identified in a Council resolution approved under Section 68C-4.

(d) (1) The County covenants to levy ad valorem taxes against all assessable real and personal property in the District at a rate and amount sufficient in each year when any bonds are outstanding to:

(A) provide for the payment of the principal of, interest on, and redemption premium if any, on the bonds;

(B) replenish any debt service reserve fund established with respect to the bonds; and

(C) provide for any other purpose related to the ongoing expenses of and security for the bonds.

(2) The County further covenants, when any bond is outstanding, to enforce the collection of all ad valorem taxes under this Chapter as provided by applicable law.

(e) All proceeds received from any issuance of bonds must be applied solely towards costs of the transportation infrastructure improvements listed in the resolution adopted under Section 68C-4, including the cost of issuing bonds and payment of the principal of, interest on, and redemption premium if any, on the bonds.

(f) The bonds issued under this Chapter:

(1) are special obligations of the County and do not constitute a general obligation debt of the County or a pledge of the County's full faith and credit or the County's general taxing power;

(2) may be sold in any manner, either at public or private sale, and on terms as the Executive approves;

(3) are not subject to Sections 10 and 11 of Article 31, Maryland Code; and

(4) must be treated as securities to the same extent as bonds issued under Section 9-1301 of Article 24, Maryland Code.

(g) To the extent provided by law, the bonds, their transfer, the interest payable on them, and any income derived from them, including any profit realized on their sale or exchange, must be exempt at all times from every kind and nature of taxation by the State of Maryland and any county or municipality in Maryland.

(h) The bonds must be payable from the fund required under Section 68C-5 and any other asset or revenue of the District pledged toward their payment. When any bond is outstanding, the monies in the fund are pledged to pay the costs of any transportation infrastructure improvement funded entirely or partly by the proceeds of the bonds, including the costs of issuing the bonds and payment of the principal of, interest on, and redemption premium if any, on the bonds. In addition to ad valorem taxes, the bonds may be secured by any other asset in or revenue generated in the District.

(i) Any ad valorem tax imposed under this Chapter must not be accelerated because of any bond default.

68C-7. Expiration of district.

Any special taxing district created under this Chapter expires by operation of law 30 days after the cost of all transportation infrastructure improvements identified in a Council resolution approved under Section 68C-4, including all outstanding bonds and cash advances made by the County, have been paid.

Approved:

Nancy Floreen, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

Resolution No.________
Introduced: October 5, 2010
Adopted:____________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

SUBJECT: **White Flint Development Tax District Transportation Infrastructure Improvements**

Background

1. County Code Chapter 68C establishes the White Flint Special Taxing District, authorizes the levy of an ad valorem tax to fund transportation infrastructure improvements in the District, and authorizes the issuance of bonds to finance the transportation infrastructure improvements.

2. Chapter 68C-4 requires a resolution that lists each transportation infrastructure improvement that is to be paid for by the District special tax, and the estimated costs of each improvement, which must include a contingency amount.

Action

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

1. The County's goal is that the White Flint Special Taxing District special tax rate must not exceed 10% of the total tax rate for the District, except that the rate must be sufficient to pay debt service on any bonds that are already outstanding.

2. If the revenues from the special tax at the level in the preceding paragraph are not sufficient to afford additional infrastructure improvements as are necessary and ready for implementation to execute the White Flint Sector Plan, the County Executive, before recommending any increase to the tax rate above the level in the preceding paragraph, must consider alternative approaches, including the timing and scope of each infrastructure item and the structure of the financing plan to pay for it, and alternative revenue sources.

3. For the tax year that began on July 1, 2010, the total base real property tax rate in the White Flint Special Taxing District is $1.027 per $100 of assessed value.

4. For the tax year that begins on July 1, 2011, the rate of the White Flint Special Taxing District special tax is estimated to be $0.103 per $100 of assessed value.

5. The specific transportation infrastructure improvements that will be financed by the White Flint Special Taxing District are listed in Exhibit A, along with an estimated cost for each improvement, including a contingency amount.

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council

EXHIBIT A

WHITE FLINT SPECIAL TAXING DISTRICT
DISTRICT-FUNDED IMPROVEMENTS

Improvement Description	Estimated Cost
Old Georgetown Road (MD 187): Nicholson La./Tilden La. to Executive Blvd.	$17,774,000
Old Georgetown Road (MD 187): Hoya St. to Rockville Pike (MD 355)	1,789,000
Hoya Street (formerly Old Old Georgetown Rd.): Executive Blvd. to Montrose Pkwy.	15,344,000
Rockville Pike (MD 355): Flanders Ave. to Hubbard Drive	64,261,000
Nicholson Lane: Old Georgetown Rd. (MD 187) to CSX tracks	12,942,000
Nebel Street: Nicholson La. To Randolph Rd.	9,200,000
Executive Blvd. Ext.: Marinelli Rd. to Old Georgetown Rd (MD 187)	13,500,000
Second Entrance to Metro	35,000,000
Main St./Market St.: Old Georgetown Rd. (MD 187) to Executive Blvd. Extended (Bikeway)	1,713,000
Main St./Market St.: Old Georgetown Rd. (MD 187) to Executive Blvd. Ext.	4,933,000
Main St./Market St.: Executive Blvd. to Rockville Pike (MD 355)	4,661,000
Main Street Bridge	2,000,000
Executive Blvd. Ext. (East): Rockville Pike (MD 355) to Nebel St. Ext. (South)	16,700,000
Nebel St. Ext. (South): Nicholson La. to Executive Blvd. Ext. (East)	8,200,000
TOTAL	208,017,000

F:\LAW\BILLS\1050 White Flint - Creation\White Flint Sector Plan Infrastructure Resolution - 09-27-10 (2).Doc

Chapter 617

(Senate Bill 828)

AN ACT concerning

Special Taxing Districts – Transportation Improvements – Exemption from County Tax Limitations

FOR the purpose of exempting certain taxes imposed only within a special taxing district for the purpose of financing the cost of transportation improvements from county tax limitations; authorizing a county to issue, by law, certain bonds for certain infrastructure improvements; authorizing a county to sell certain bonds secured by certain revenues; providing that certain bonds may not be secured by the full faith and credit or taxing authority of a county; providing for the construction of certain provisions of this Act; defining certain terms; and generally relating to special taxing districts and county tax limitations.

BY adding to
Article 24 – Political Subdivisions – Miscellaneous Provisions
Section 9–1302 and 9–1303
Annotated Code of Maryland
(2005 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 24 – Political Subdivisions – Miscellaneous Provisions

9–1302.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COST" HAS THE MEANING STATED IN ~~§ 3–101(D)~~ § 9–1301 OF ~~THE TRANSPORTATION ARTICLE~~ THIS SUBTITLE.

(3) "COUNTY TAX LIMITATION" MEANS A PROVISION OF A COUNTY CHARTER THAT LIMITS:

(I) THE MAXIMUM PROPERTY TAX RATE THAT A COUNTY MAY IMPOSE; OR

(II) THE RATE OF GROWTH OF COUNTY PROPERTY TAX REVENUES.

(4) "HIGHWAY FACILITY" HAS THE MEANING STATED IN § 3–101(F) OF THE TRANSPORTATION ARTICLE.

(5) "SPECIAL TAXING DISTRICT" MEANS A DEFINED GEOGRAPHIC AREA DESIGNATED BY A COUNTY WITHIN WHICH AD VALOREM OR SPECIAL TAXES ARE IMPOSED FOR THE PURPOSE OF FINANCING THE COST OF INFRASTRUCTURE IMPROVEMENTS.

(6) "TRANSIT FACILITY" HAS THE MEANING STATED IN § 3–101(K) OF THE TRANSPORTATION ARTICLE.

(7) "~~TRANSPORTATION~~ STATE TRANSPORTATION IMPROVEMENTS" INCLUDES HIGHWAY FACILITIES, TRANSIT FACILITIES, AND RELATED INFRASTRUCTURE.

(8) "COUNTY TRANSPORTATION IMPROVEMENTS" INCLUDES:

(I) FOR COUNTY ROADS AND HIGHWAYS:

1. COUNTY RIGHTS–OF–WAY, ROADWAY SURFACES, ROADWAY SUBGRADES, SHOULDERS, MEDIAN DIVIDERS, DRAINAGE FACILITIES AND STRUCTURES, RELATED STORMWATER MANAGEMENT FACILITIES AND STRUCTURES, ROADWAY CUTS, ROADWAY FILLS, GUARDRAILS, BRIDGES, HIGHWAY GRADE SEPARATION STRUCTURES, TUNNELS, OVERPASSES, UNDERPASSES, INTERCHANGES, ENTRANCE PLAZAS, APPROACHES, AND OTHER STRUCTURES FORMING AN INTEGRAL PART OF A STREET, ROAD, OR HIGHWAY, INCLUDING BICYCLE AND WALKING PATHS, DESIGNATED BUS LANES, SIDEWALKS, PEDESTRIAN PLAZAS, STREETSCAPING, AND RELATED INFRASTRUCTURE; AND

2. ANY OTHER PROPERTY ACQUIRED FOR THE CONSTRUCTION, OPERATION, OR USE OF THE HIGHWAY; AND

(II) FOR COUNTY TRANSIT FACILITIES, ANY ONE OR MORE OR COMBINATION OF TRACKS, RIGHTS–OF–WAY, BRIDGES, TUNNELS, SUBWAYS, ROLLING STOCK, STATIONS, TERMINALS, PORTS, PARKING AREAS, EQUIPMENT, FIXTURES, BUILDING STRUCTURES, OTHER REAL OR PERSONAL PROPERTY, AND SERVICES INCIDENTAL TO OR USEFUL OR DESIGNED FOR USE IN CONNECTION WITH THE RENDERING OF TRANSIT SERVICE BY ANY MEANS, INCLUDING RAIL,

BUS, MOTOR VEHICLE, OR OTHER MODE OF TRANSPORTATION BUT DOES NOT INCLUDE ANY RAILROAD FACILITY.

(B) A COUNTY TAX LIMITATION ~~DOES NOT~~ THAT WOULD OTHERWISE APPLY TO AD VALOREM OR SPECIAL TAXES IMPOSED ONLY WITHIN A SPECIAL TAXING DISTRICT DOES NOT APPLY FOR THE PURPOSE OF FINANCING THE COST OF STATE TRANSPORTATION IMPROVEMENTS AND COUNTY TRANSPORTATION IMPROVEMENTS.

9–1303.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "BOND" MEANS A SPECIAL OBLIGATION BOND, NOTE, OR OTHER SIMILAR INSTRUMENT ISSUED BY A COUNTY UNDER THIS SECTION.

(3) "COSTS" MEANS ANY EXPENSE NECESSARY OR INCIDENT TO ACQUIRING, BUILDING, OR FINANCING ANY TRANSPORTATION IMPROVEMENT AS MAY BE PROVIDED BY THE LOCAL LAW AUTHORIZED UNDER SUBSECTION (B) OF THIS SECTION.

(4) (I) "SPECIAL TAX" MEANS AN AD VALOREM OR SPECIAL TAX, ASSESSMENT, FEE, OR CHARGE IMPOSED BY A COUNTY WITHIN A SPECIAL TAXING DISTRICT.

(II) "SPECIAL TAX" DOES NOT INCLUDE AN AD VALOREM OR SPECIAL TAX, ASSESSMENT, FEE, OR CHARGE LEVIED UNDER CHAPTER 20A OF THE MONTGOMERY COUNTY CODE.

(5) (I) "SPECIAL TAXING DISTRICT" MEANS A SPECIAL TAXING DISTRICT, SPECIAL ASSESSMENT DISTRICT, OR SIMILAR DEFINED GEOGRAPHICAL AREA WITHIN A COUNTY IN WHICH THE COUNTY IS AUTHORIZED TO IMPOSE A SPECIAL TAX.

(II) "SPECIAL TAXING DISTRICT" DOES NOT INCLUDE A DEVELOPMENT DISTRICT CREATED UNDER CHAPTER 20A OF THE MONTGOMERY COUNTY CODE.

(6) "TRANSPORTATION IMPROVEMENT" MEANS A STATE TRANSPORTATION IMPROVEMENT OR A COUNTY TRANSPORTATION IMPROVEMENT AS DEFINED IN § 9–1302 OF THIS SUBTITLE.

(B) IN ADDITION TO OTHER POWERS A COUNTY MAY HAVE, AND NOTWITHSTANDING THE PROVISIONS OF ANY OTHER PUBLIC LOCAL LAW, PUBLIC GENERAL LAW, OR THE COUNTY CHARTER OF A COUNTY THAT HAS ADOPTED HOME RULE POWERS UNDER ARTICLE XI–A OF THE MARYLAND CONSTITUTION, A COUNTY MAY ENACT A LAW TO PROVIDE FOR THE ISSUANCE OF BONDS TO FINANCE THE COSTS OF TRANSPORTATION IMPROVEMENTS FOR WHICH THE PRINCIPAL, INTEREST, AND ANY PREMIUM SHALL BE PAID FROM AND SECURED BY SPECIAL TAXES COLLECTED BY THE COUNTY IN A SPECIAL TAXING DISTRICT.

(C) (1) BONDS ISSUED UNDER THIS SECTION ARE SPECIAL OBLIGATIONS OF THE COUNTY AND DO NOT CONSTITUTE A GENERAL OBLIGATION DEBT OF THE COUNTY OR A PLEDGE OF THE COUNTY'S FULL FAITH AND CREDIT OR GENERAL TAXING POWER.

(2) BONDS ISSUED UNDER THIS SECTION MAY BE SOLD IN ANY MANNER, EITHER AT PUBLIC OR PRIVATE SALE AND ON TERMS AS THE COUNTY DEEMS BEST.

(3) BONDS ISSUED UNDER THIS SECTION ARE NOT SUBJECT TO ARTICLE 31, §§ 10 AND 11 OF THE CODE.

(4) BONDS ISSUED UNDER THIS SECTION, THEIR TRANSFER, THE INTEREST PAYABLE ON THEM, AND ANY INCOME DERIVED FROM THEM, INCLUDING ANY PROFIT REALIZED ON THEIR SALE OR EXCHANGE, SHALL BE EXEMPT AT ALL TIMES FROM EVERY KIND AND NATURE OF TAXATION BY THE STATE, A COUNTY, OR A MUNICIPAL CORPORATION.

(5) BONDS ISSUED UNDER THIS SECTION SHALL BE TREATED AS SECURITIES TO THE SAME EXTENT AS BONDS ISSUED UNDER § 9–1301 OF THIS SUBTITLE.

(D) IN ADDITION TO THE SPECIAL TAXES, BONDS ISSUED UNDER THIS SECTION MAY BE SECURED BY OTHER REVENUES GENERATED WITHIN THE SPECIAL TAXING DISTRICT.

(E) THE POWERS GRANTED UNDER THIS SECTION SHALL BE REGARDED AS SUPPLEMENTAL AND ADDITIONAL TO POWERS CONFERRED BY OTHER LAWS, AND MAY NOT BE REGARDED AS IN DEROGATION OF ANY POWERS NOW EXISTING, INCLUDING POWERS TO ISSUE SPECIAL OBLIGATION DEBT UNDER THIS ARTICLE, ARTICLE 25, ARTICLE 25A, OR ARTICLE 25B OF THE CODE.

<u>(F) THIS SECTION, BEING NECESSARY FOR THE WELFARE OF THE STATE AND ITS RESIDENTS, SHALL BE LIBERALLY CONSTRUED TO EFFECT ITS PURPOSES.</u>

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 20, 2010.

To: Marlene Michaelson
From: Jacob Sesker
Re.: White Flint Finance
November 4, 2010

Planning staff prepared the following initial responses to questions raised in the Council's public hearing held on October 26th. In order to provide a timely response, staff's used round numbers and several simplifying assumptions—a reasonable approach given the long term time frame of master plan build out and the magnitude of unknowns regarding the costs of transportation improvements and the future of real estate values. Upon request, we would be happy to provide more detailed analysis for discussion at subsequent work sessions.

1. *Compare (a) district bucket to (b) PAMR, LATR, Transportation Impact Taxes*

Planning staff believes that the district concept represents the best approach to achieve the Sector Plan vision. The "district" concept was intended to replace the PAMR/LATR process. The district concept has advantages in White Flint because of the magnitude of several of the transportation projects involved, the value of coordinating and aggregating the transportation improvements into buildable projects, and the need to provide meaningful increments of capacity in the initial phase of the Sector Plan.

The cost of all projects designated as "district" projects is estimated to be $208 million. To compare the cost of the district projects with an estimate of the total burden of PAMR, LATR, and transportation impact taxes requires several assumptions.

The most significant assumption is that LATR costs would all be creditable against either PAMR or transportation impact taxes. This effectively zeroes out LATR—using this assumption transportation planners have estimated that the PAMR/LATR mitigation costs would be approximately $118 million over the life of the Sector Plan (at $11,300 per trip with a 30% mitigation requirement).

A second assumption is that PAMR burdens would not be creditable against impact taxes. This has generally been the case since PAMR was instituted in 2007; while recent PAMR projects have significantly contributed to transportation infrastructure, they generally are not projects that add capacity to major highways or arterial roads. Impact taxes for the three phases of White Flint are estimated to be roughly $64 million (net of credits for MPDU and offsets for replacement of demolished space).

When impact taxes are added to the mitigation cost the combined burden would be approximately $182 million. While lower than the district bucket amount, the figure is within the range of both error and dispute. However, the County would probably use transportation impact tax revenues to fund transportation projects other than those in the district bucket (e.g. CLATR projects).

White Flint District Bucket	$208 million
White Flint PAMR/LATR Costs	$118 million
White Flint PAMR/LATR Plus Impact Taxes	$182 million

2. *Compare (a) costs of district infrastructure when costs are spread over all new development to (b) the costs of district infrastructure spread over all improved space (new and existing)*

A significant distinction between the district approach and the current PAMR/LATR approach is that the district approach, as recommended by the Executive, spreads the costs of district projects over all properties whether or not they redevelop. In contrast, the PAMR/LATR approach places the full burden of these transportation improvements on new development.

In White Flint, the total cost of district projects divided by the total additional density allowed in the Sector Plan results in an amount close to $12 per square foot ($208 million divided by 18 million square feet). Spreading that same cost over all improved space (new, approved, existing) results in a cost of roughly $7 per square foot ($208 million divided by 30 million square feet). So, for properties that do not redevelop the cost of infrastructure increases from $0 to $7 per square foot (of course, their property values increase as well). Properties that redevelop benefit from spreading the cost of infrastructure—doing so results in a drop in their transportation costs from $12 per square foot to $7 per square foot.

For comparison, the costs of mitigation under PAMR/LATR would amount to approximately $6.50 per square foot of new development ($118 million divided by 18 million square feet).

White Flint "district bucket" costs spread over new development allowed under Sector Plan	$12 per square foot
White Flint "district bucket" costs spread over new and existing development	$7 per square foot
White Flint estimated mitigation costs for new development (does not include impact taxes)	$6.50 per square foot

3. *Compare (a) the combined cost of district bucket and transportation impact taxes to (b) the cost of the district bucket with no impact taxes*

The combined burden of PAMR, LATR and transportation impact taxes varies by policy area, land use mix, and other factors. In past studies, including studies pertaining to the economics of the TMX and LSC zones, planning staff has found that the combined mitigation and impact tax burden generally falls in a range between $8 and $13 per square foot.

In White Flint, that combined burden would be an estimated $10 per square foot ($118 million for mitigation plus $64 million for impact taxes equals $182 million, divided by 18 million square feet of new development).

General transportation mitigation cost and impact taxes per square feet	$8-$13 per square feet
Estimated White Flint transportation mitigation and impact taxes	$10 per square feet

If transportation impact taxes are paid by new development in the district and are not dedicated to district projects then properties within the district (those developing and those that do not) would be asked to bear both the cost of district projects ($208 million), while properties within the district would bear an additional $62 million that the County could spend on non-district projects (including CLATR intersections). Together this would create an overall burden of approximately $270 million for properties within the district. However, that burden would not fall equally—all properties would pay a special tax for district projects while only new development would pay the impact tax.

District bucket	$208 million
District bucket plus transportation impact taxes	$270 million

Using our $7 per square foot number from above, existing development (approximately 8 million square feet) will contribute approximately $56 million towards district infrastructure. New development would pay approximately $10 per square foot ($270 million less $56 million equals $214 million, divided by 22 million square feet of new and approved development equals approximately $10 per square foot).[1] This $10 per square foot is both within the range ($8 to $13 per square foot) of what Planning staff has found in other Twinbrook and Great Seneca Science Corridor, and similar to the $10 per square foot cost that

[1] Assumes all approved development pays MSPA rate—the burden for projects that went through Alternative Review (e.g. LCOR) would be higher.

we would assume for the same projects if they went through the existing PAMR, LATR and transportation impact tax process.

District bucket plus transportation impact taxes	$270 million
Portion of cost borne by existing development	8 million times $7=$56 million
Remaining portion borne by new and approved development	$270 million less $56 million=$214 million
Square feet of new and approved development	22 million
Cost per square foot of new and approved development	$10 per square foot

It is critical to note, however, that the promise of the district is to deliver complete projects rather than mere pieces of projects. Because it is assumed that many of the improvements necessary to achieve the vision of the White Flint Sector Plan are beyond what could be delivered by individual developers through the mitigation process, it is reasonable to assume that developers would assign some added value (reflected in added cost) to the district alternative as compared to the piecemeal results if the Sector Plan were implemented using PAMR and LATR.

4. *School impact tax revenues*

The theory of the school impact tax is that the impact tax captures the cost of each additional seat necessary at every grade level, whether or not that additional seat causes capacity to reach a threshold which requires the construction of a new school.

Assuming that all units built meet the definition of high rise units as established in the sector plan, the total school impact taxes generated by both approved and new (staged) residential development would be approximately $46 million.

New Dwelling Units	9,800
Approved Dwelling Units	2,220
School Impact Tax Per High Rise Unit	$4,422
Total School Impact Tax Revenue (no school impact taxes paid on MPDU)	$46 million

Some development may qualify as low-rise and thus pay a substantially higher rate. However, the code (52-87) defines high rise as any building that is either (a) more than 4 stories tall or (b) any one bedroom unit. Based on those parameters, it is likely that the vast majority of units in White Flint will be high rise units for purposes of the school impact tax.

5. *Cost of BLTs*

Using the sketch plan submitted by Federal Realty for the redevelopment of Mid-Pike Plaza as an example, the cost per square foot is $0.42 (assuming the cost per BLT is $200,000).

Total square feet (phases 1 & 2 plus future phases)	3,442,888
BLTs to be purchased	7.28
Assumed cost per BLT	$200,000
BLT cost per square foot	$0.42

6. Land values in White Flint

A recent sale of land (11503 Rockville Pike) in White Flint from JBG to BF Saul provides a data point for land values. The site is 69,612 square feet and is zoned for an FAR of 4.0. The land sold for $15,050,000. This constitutes $54 per FAR square foot. The same property was purchased in 2007 for less than $2 million.

In September of 2009, consultants working for the Planning Department estimated the residual land value of a parcel zoned CR with maximum density of 4.0 to be between $51 and $78 per FAR square foot.

Cc:

Francoise Carrier
Rollin Stanley
Glenn Orlin
Mike Faden
Diane Schwartz Jones
Dan Hardy
Glenn Kreger
Piera Weiss
Nkosi Yearwood

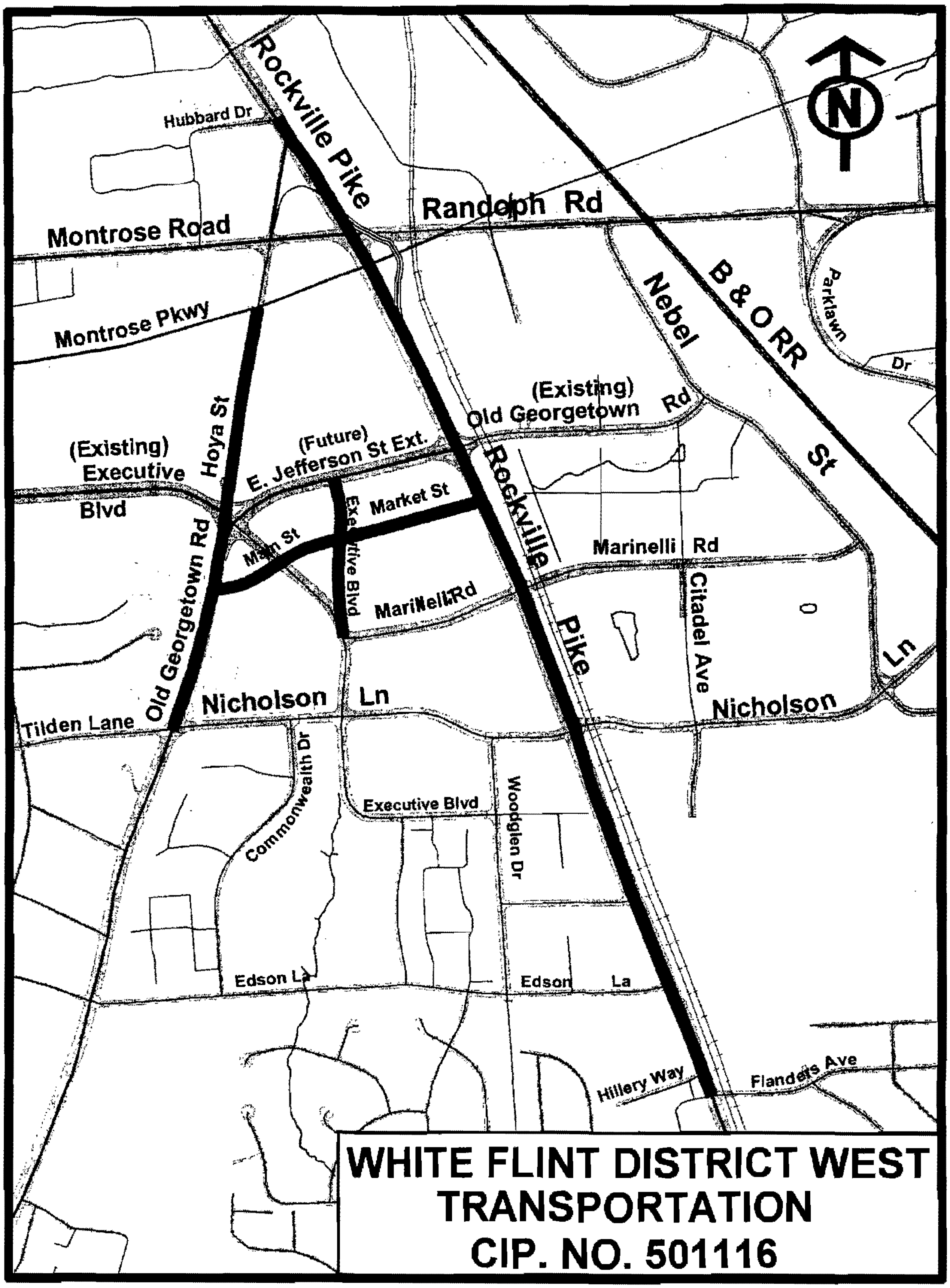
FY 2011 Special District Tax Rates per $100 of Assessed Value

Proposed White Flint Rate	$0.103

Parking Lot District Rates for Commercial Properties	
Bethesda	$0.104
Montgomery Hills	$0.240
Silver Spring	$0.317
Wheaton	$0.240

Urban District Rates	
Bethesda	$0.024
Silver Spring	$0.012
Wheaton	$0.030

Development District Rates	
Kingsview Village	$0.079
West Germantown	$0.163



WHITE FLINT DISTRICT WEST TRANSPORTATION CIP. NO. 501116

White Flint Sector Plan Project Buckets (Council staff recommendation)
DISTRICT BUCKET

November 9, 2010

						Cost Estimates					
									Total Cost by Stage		
		MP #	Name	Limits	Comments	County Estimated Construction Cost	ROW (Minimum Estimated by Partnership)	Total Cost (Construction + ROW)	Stage 1	Stage 2	Stage 3
		District									
Phase 1: Construction Contract. Phase 2: Complete Realignment	1	M-4	Old Georgetown Rd (Md 187)	Tilden Lane to East Jefferson St	20% in Stage 1 for design and permitting; 80% in Stage 2 for construction	$17,774,064		$17,774,064	$3,554,813	$14,219,251	
	2	M-4	East Jefferson St Ext (Md 187)	Old (Old) Georgetown Road to Rockville Pike	25% of Total	$1,789,063		$1,789,063			$1,789,063
	3	M-4A	Old Old Georgetown Rd	East Jefferson St Ext to Montrose Pkwy	20% in Stage 1 for design and permitting; 80% in Stage 2 for construction	$15,344,000		$15,344,000	$3,068,800	$12,275,200	
Phase 1: Fund & Design	4	M-6	Rockville Pike (Md 355)	Flanders Ave to Hubbard Drive	75% of Total	$59,831,810	$4,429,100	$64,260,910	$7,772,281	$453,350	$56,035,279
	5	A-69	Nicholson Lane	Old Georgetown Road to CSX tracks	35% of Total	$12,941,676		$12,941,676		$12,941,676	
	6	B-5	Nebel Street	Nicholson Lane to Randolph Road		$9,200,000		$9,200,000			$9,200,000
Phase 1: Construction Contract. Phase 2. Complete Realignment	7	B-15 (not B-7)	Executive Blvd Ext (North)	East Jefferson St Marinelli	$10 million in Stage 1 for right-of-way; 20% of construction in Stage 1 for design and permitting; 80% of construction in Stage 2 for actual construction	$13,500,000	$10,000,000	$23,500,000	$12,700,000	$10,800,000	
	8	LB-1	Main Street	Old Georgetown Rd to Executive Blvd.	Bikeway	$1,712,500		$1,712,500	$1,712,500		
Phase 2: Fund	9		Second entrance to Metro (includes planning and design)			$35,000,000		$35,000,000		$35,000,000	
	10	B-10	Main Street/Market Street	Executive Blvd to MD 187	Segment WEST of Executive Blvd.	$4,932,942		$4,932,942	$4,932,942		
Phase 1: Construction Contract. Phase 2: Complete Realignment	11	B-10	Main Street (B-10 Market St)	Executive Blvd to Rockville Pike	Conference Center Section Only.		$4,661,175	$4,661,175		$4,661,175	
		Subtotal: Projects in August 2010 Funding Analysis				*$172,026,054*	*$19,090,275*	*$191,116,329*	*$33,741,336*	*$90,350,652*	*$67,024,341*
	12		Main Street Bridge over Metro		Add lane to bridge to be built in Project #48	$2,000,000		$2,000,000	$2,000,000		
Eastern Work Around	13	B-7	Executive Blvd Ext (east)	Rockville Pike to new Nebel Extended		$16,700,000		$16,700,000	$2,000,000	$14,700,000	
	14	B-5	Nebel Street	Nicholson Lane south to Executive Blvd Extended (East)	20% in Stage 1 for design and permitting; 80% in Stage 2 for construction	$8,200,000		$8,200,000	$1,640,000	$6,560,000	
		Subtotal: District Bucket				**$198,926,054**	**$19,090,275**	**$218,016,329**	**$39,381,336**	**$111,610,652**	**$67,024,341**
		District Bucket percent of Grand Total						**25.8%**	16.7%	30.2%	28.0%

32

White Flint Sector Plan Project Buckets (Council staff recommendation)

November 9, 2010

COUNTY/STATE BUCKET

	MP #	Name	Limits	Comments	Cost Estimates: County Estimated Construction Cost	ROW (Minimum Estimated by Partnership)	Total Cost (Construction + ROW)	Total Cost by Stage: Stage 1	Stage 2	Stage 3
	County									
15		Circulator bus infrastructure		DELETED BECAUSE THIS IS AN OPERATING COST						
16	B-6	Marinelli Road	Citadel Ave to Wentworth Pl		$2,200,000		**$2,200,000**	$2,200,000		
17	A-90	Randolph Rd	Nebel Street to CSX tracks		$4,929,408	$113,750	**$5,043,158**	$0	$5,043,158	$0
18	A-270	Montrose Pkwy Phase 1 (MD 355 Interchange Phase I)	Old Georgetown Rd to Chapman Ave	DELETED BECAUSE PROJECT IS COMPLETED						
19	A-270	Montrose Pkwy Phase 2 (MD 355 Interchange Phase 2)	Chapman Ave to Parklawn Drive		$72,156,000		**$72,156,000**	$72,156,000	$0	$0
20	B-5	Nebel Street Ext. (North)	Randolph Road to Plan Area Boundary		$13,931,000		**$13,931,000**	$13,931,000	$0	$0
21	B-12	Chapman Ave (Citadel Ave/ Maple Ave)	Old Georgetown Road to Plan Area Boundary		$27,074,919		**$27,074,919**	$27,074,919	$0	$0
22		Montgomery Aquatic Center (MAC) Expansion			$19,104,227		**$19,104,227**	$0	$0	$19,104,227
23		Fire Station with Police Substation and Urban District Office		(excludes operating and one time costs)	$29,960,000		**$29,960,000**	$29,960,000	$0	$0
24		Bus Depot		DELETED BECAUSE IT IS A COUNTY-WIDE NEED						
25		Civic Green		1 acre	$11,390,000		**$11,390,000**	$0	$11,390,000	$0
26		Elementary School (assumes land is dedicated)		(excludes operating and personnel costs)	$25,000,000		**$25,000,000**	$0	$0	$25,000,000
27		Recreation Center at Wall Park			$37,420,000		**$37,420,000**	$0	$37,420,000	$0
28	Outside Sector	CLATR Intersections outside of District			$90,000,000		**$90,000,000**		$45,000,000	$45,000,000
29	M-4	East Jefferson St Ext (Md 187)	Old (Old) Georgetown Road to Rockville Pike	25% of Total	$1,789,063	$135,938	**$1,925,001**	$0	$0	$1,925,001
Phase 1: Fund: Streetscape/ Sidewalks/Bikeways Phase 2: Construct S/S/B 30	A-69	Nicholson Lane	Old Georgetown Road to CSX tracks	10% of Total	$5,312,868		**$5,312,868**	$0	$5,312,868	$0
	State									
31		MARC Station		MTA	$35,655,000		**$35,655,000**	$0	$0	$35,655,000
	Subtotal: County/State Bucket				**$375,922,485**	**$249,688**	**$376,172,173**	**$145,321,919**	**$104,166,026**	**$126,684,228**
	County/State Bucket percent of Grand Total						**44.5%**	61.5%	44.1%	53.6%
	Subtotal of Public Financing Mechanisms				**$574,848,539**		**$594,188,502**	**$184,703,255**	**$215,776,678**	**$193,708,569**
	Public Financing Mechanisms percent of Grand Total						70.2%	78.1%	58.3%	80.9%

White Flint Sector Plan Project Buckets (Council staff recommendation)

DEVELOPER BUCKET

November 9, 2010

	#	MP #	Name	Limits	Comments	Cost Estimates: County Estimated Construction Cost	ROW (Minimum Estimated by Partnership)	Total Cost (Construction + ROW)	Total Cost by Stage: Stage 1	Stage 2	Stage 3
		Developer									
	32	M-4	East Jefferson St Ext (Md 187)	Old (Old) Georgetown Road to Rockville Pike	50% of Total	$3,578,125		$3,578,125	$0	$0	$3,578,125
Phase 1: Fund & Design	33	M-6	Rockville Pike (Md 355)	Flanders Ave to Hubbard Drive	25% of Total	$19,943,937		$19,943,937	$0	$0	$19,943,937
	34	A-69	Nicholson Lane	Old Georgetown Road to CSX tracks	55% of Total	$29,220,774		$29,220,774	$0	$29,220,774	$0
	35	B-3	Woodglen Drive	Edson Lane to Nicholson Lane		$9,919,800		$9,919,800	$0	$9,919,800	$0
	36	B-4	Huff Court Ext	Nebel St Ext to Executive Blvd	White Flint Garage 2 level	$9,538,720		$9,538,720	$0	$0	$9,538,720
	37	B-4	Huff Court	Executive Blvd to Nicholson Lane		$4,301,880		$4,301,880	$0	$4,301,880	$0
	38	B-4	Citadel Avenue	Nicholson Lane to Marinelli Road		$3,234,375		$3,234,375	$0	$3,234,375	$0
	39	B-4	Citadel Avenue Extended	Marinelli Road to Old Georgetown Rd		$6,928,650		$6,928,650	$6,928,650	$0	$0
	40	B-5	Edson Lane	Woodglen Drive to Rockville Pike		$5,636,250		$5,636,250	$5,636,250	$0	$0
	41	B-5	Nebel Street Ext. (South)	Rockville Pike to Executive Blvd Extended	3 bldgs	$33,922,000		$33,922,000	$0	$33,922,000	$0
Phase 1: Fund: Streetscape/ Sidewalks/Bikeways Phase 2: Construct S/S/B	42	B-6	Marinelli Road	Executive Blvd to Nebel Street		$26,408,448		$26,408,448	$0	$26,408,448	$0
	43	B-7	Executive Blvd Ext (North)	B-16 to East Jefferson Street	Old Toys R US/ AC Moore Bldg	$19,094,290		$19,094,290	$19,094,290	$0	$0
	44	B-7	Executive Blvd Ext	Marinelli Road to Woodglen Drive		$17,605,632		$17,605,632	$0	$17,605,632	$0
	45	B-7	Executive Blvd Ext	Woodglen Drive to Rockville Pike		$5,894,328		$5,894,328	$0	$5,894,328	$0
	46	B-7	Executive Blvd Ext (East)	Rockville Pike to Huff Court	DELETED BECAUSE INCLUDED IN #13				$0	$0	$0
	47	B-10	Main Street (B-10 Market St)	Executive Blvd to Rockville Pike	Developers' amount includes numbers 2, 3 23, and 27 from REF. column, Woodglen to MD355.	$6,820,351		$6,820,351		$6,820,351	$0
	48	B-10	Main Street (B-10 Market St)	Rockville Pike to B-13		$10,582,367		$10,582,367	$0	$10,582,367	$0
	49	B-11	Station Street	Marinelli Road to Old Georgetown Rd		$6,467,208		$6,467,208	$6,467,208	$0	$0
	50	B-12	Chapman Avenue	Marinelli Road to Old Georgetown Rd		$6,086,784		$6,086,784	$6,086,784	$0	$0
	51	B-13	New Street	Marinelli Road to Nebel Street		$6,467,208		$6,467,208	$0	$0	$6,467,208
	52	B-14	Realigned Nicholson Court	Nebel Ext to cul-de-sac		$3,757,500		$3,757,500	$0	$0	$3,757,500
	53	B-16	Midpike Plaza Rung	Existing Terminus to B-13 (approx 900')		$6,467,208		$6,467,208	$0	$6,467,208	$0
	54	B-18	Security Lane Extended	Rockville Pike to B-4		$2,521,750		$2,521,750	$0	$0	$2,521,750
	55	LB-1	Main Street	Executive Blvd. to Rockville Pike	Bikeway	$225,000		$225,000	$225,000	$0	$0
	56		Full Library		one-time capital costs	$6,270,000		$6,270,000	$6,270,000	$0	$0
	57		Satellite Regional Services Center		one-time capital costs	$1,060,000		$1,060,000	$1,060,000	$0	$0
		Subtotal: Developer Bucket				**$251,952,584**		**$251,952,584**	**$51,768,182**	**$154,377,163**	**$45,807,240**
		Developer Bucket percent of Grand Total						**29.8%**	**21.9%**	**41.7%**	**19.1%**
		GRAND TOTAL Cost Estimate				**$826,801,124**		**$846,141,087**	**$236,471,437**	**$370,153,841**	**$239,515,809**

OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

November 15, 2010

To: Nancy Floreen, Council President

From: Timothy L. Firestine, Chief Administrative Officer

Subject: White Flint Sector Plan Implementation Strategy

We have been working with the White Flint Partnership to develop a White Flint Implementation Strategy that would afford us the greatest assurance of the implementation of the White Flint Sector Plan. Attached to this memorandum is a strategy that the County Executive and the White Flint Partnership have reached agreement upon that will provide greater certainty to the success of the White Flint Sector Plan. We will send by separate transmittal conforming amendments to the resolution that is before the Council and will work with your staff to cover all steps required to carry out the White Flint Implementation Strategy.

We recognize that the White Flint area can be a significant economic engine and that the Special Tax District will help defray a portion of the costs to transform the White Flint area into a pedestrian friendly, exciting urban area. All believe that, at least at the outset, the special tax district will not generate sufficient revenues to cover debt for the entire infrastructure that is called for to move through the stages of the Sector Plan.

The White Flint Implementation Strategy has three elements. First, it provides for a forward funding of certain projects until sufficient revenues from the District can carry the projects. Second, it removes two projects in Stage 2 from the District. Third, it provides for setting a rate of $0 for transportation impact taxes within the White Flint Sector Plan area.

While the White Flint Sector Plan has the potential to result in significant economic development, it also has costly infrastructure. The Plan presents the circular "chicken and egg" conundrum in which the development is necessary to generate the right level of special district taxes to pay for the transportation improvements and the improvements are needed to get the development. For this reason, the forward funding or advancement of some of the Special Tax District costs is critical to get development within the Sector Plan moving.

Under the Strategy, the County will forward fund or advance the costs of Rockville Pike design (County reference item 4 on p. circle 20 of the PHED/MFP Committee packet dated November 9, 2010) and the costs of Market Street and the realignment of Executive Boulevard (County reference items 7, 10 and 11 on p. circle 20 of the PHED/MFP Committee packet dated November 9, 2010). The White Flint Transportation Special Tax District would pay the County back for this forward funding but would not be assessed interest for forward funding these projects. Additionally, if a gap persists, the County will forward fund up to another $15 Million of District costs, which would be repaid by the District along with all carrying costs.

Two projects that are currently reflected in Stage 2 of the District Bucket are to be removed from the District list attached to the Resolution transmitted in connection with Bill 50-10. Specifically, the second entrance to the Metro station will be moved into the public funding bucket and we will look at other funding opportunities for this entrance. Likewise, the bike lane on Nebel Street from Nicholson Lane to Randolph Road will be moved to the County ledger.

To further incentivize the smart growth envisioned for the White Flint Sector Plan area the County would set the rate for White Flint transportation impact taxes at $0. Given the extent of credits that could be available for developer constructed streets, the amount of impact taxes that would actually be generated in White Flint is questionable.

In connection with management of the issuance of District supported debt, we will be providing a revised resolution for the Council that would clarify the County's intent to manage debt issuance so that the special district tax rate will not exceed a 10% policy goal except as may be necessary to assure adequacy of revenues to satisfy outstanding bond obligations. In January we will also send the Council CIP amendments that will provide for the above described projects.

With this strategy, we urge the Council to adopt Bill 50-10 immediately so that we can move forward with implementation of the White Flint Sector Plan.

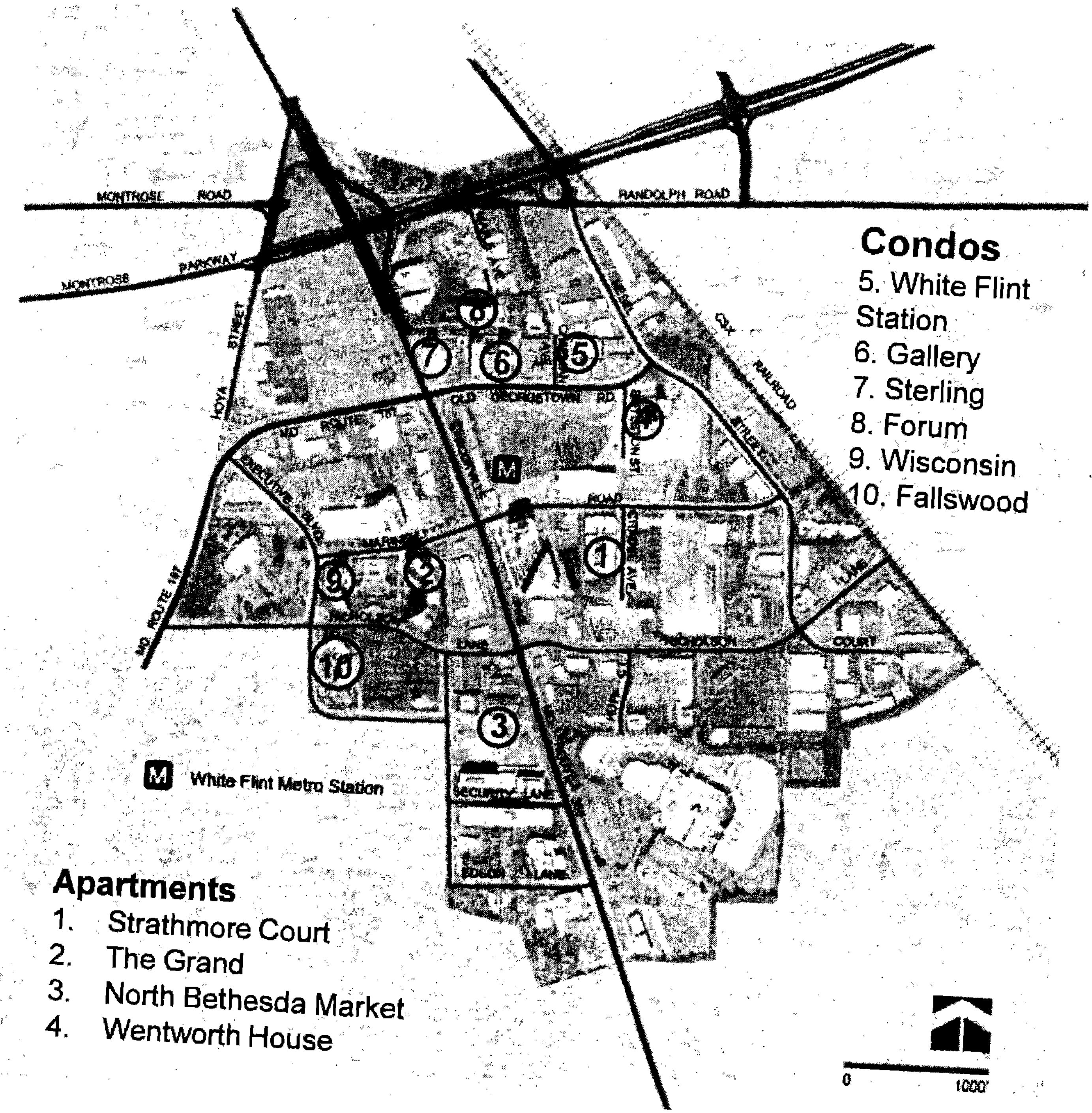
Proposed White Flint Implementation Strategy

The White Flint Sector Plan has the potential to be an important economic engine for the County and will be a model for smart growth and transit oriented development. To ensure successful implementation of the White Flint Sector Plan, the County proposes the following implementation strategy to maximize growth within the plan and to move from Stage 1 to Stages 2 and 3.

1) The financing mechanism is to be a special tax district that is adopted under SB828 authority with a special tax that does not count against I) the County Charter limits, or II) debt capacity.
2) The financing mechanism must not pledge any portion of the County's general tax base.
3) The special tax district shall be adopted with a resolution that states a rate setting policy objective of not having a rate of more than 10% above existing tax rates (currently $0.103/$100 of assessable base) but that can be set higher to assure adequacy of revenues to satisfy outstanding bond obligations; The resolution shall also acknowledge that debt issuance will be managed in a manner that plans for a rate that will not exceed the 10% policy goal except as may arise to assure adequacy of revenues to satisfy outstanding bond obligations.
4) Transportation Impact Taxes will not be assessed in White Flint Sector Plan area (e.g. a rate of 0)
5) District Bucket
    a) To manage a potential gap between district revenues and implementation of transportation projects to be funded by district revenues, the County will forward fund or advance funds for design and construction of:
        i) the portion of Market Street from Old Georgetown Road to Woodglen Road (County reference numbers 10 and 11)
        ii) the realignment of Executive Boulevard from Marinelli Road to Md. 187 (County Reference number 7)
        iii) the design of Rockville Pike (County reference number 4)
        iv) up to $15 Million for district bucket projects in stages 1 and 2
    b) Forward fund or advance Funds means
        i) For items (i), (ii), and (iii) above that the County will include these projects in the County CIP and pay for them and the District will, on a dollar for dollar basis exclusive of interest, repay the County as District funds are available

    ii) For item (iv) above that the County will coordinate with planned development and include these projects in the County CIP and the District will reimburse the County for all costs incurred in connection with any such advance including interest costs
  c) Cost estimates
    i) The realignment of Executive Boulevard and Market Street from Old Georgetown Road to Woodglen Road are estimated to cost between $24.8 Million and $32.2 Million exclusive of ROW which is assumed to be dedicated.
    ii) The design of MD355 is estimated to cost $5 Million

  d) The County will include the projects noted above in section (4)(a)(i), (ii) and (iii) in its January 2011 CIP Amendments with initial expenditures in FYs 15, 16 and beyond until completed.
6) Two items will be removed from the District Bucket and move into the county/public funds bucket
  a) The second entrance to Metro which is estimated to cost $35 Million
  b) The Nebel Street bike lane which is estimated to cost $9.2 Million
7) The County Executive confirms his intent that the joint County Transportation Priority letter include a request to MDOT that the White Flint Sector Plan Area receive an MDOT TOD Designation


MONTROSE ROAD
RANDOLPH ROAD
MONTROSE PARKWAY
HOYA STREET
OLD GEORGETOWN RD.
MD ROUTE 187
NICHOLSON
COURT
SECURITY LANE
White Flint Metro Station
Condos
5. White Flint Station
6. Gallery
7. Sterling
8. Forum
9. Wisconsin
10. Fallswood
Apartments
1. Strathmore Court
2. The Grand
3. North Bethesda Market
4. Wentworth House
0
1000'

Wentworth House North Bethesda Center (LCOR) 312 apartments
Studios

- Cost: $1,349-$1,440
- Models: 3
- Square Feet Range: 563-588

1 Bedroom

- Cost: $1,621-$2,061
- Models: 10
- Square Feet Range: 730-969

2 Bedrooms

- Cost: $2,077-$2,471
- Models: 9
- Square Feet Range: 1038-1250

North Bethesda Market JBG Companies-11333 Woodglen Drive 397 Apartments
Studios

- Cost: $1575-$2080
- Models: 5
- Square Feet Range: 505-675

1 Bedroom

- Cost: $1, 880-$2,375
- Models: 14
- Square Feet Range: 665-795

1 Bedroom plus den

- Cost: $2070-$2980
- Models: 6
- Square Feet Range: 800-1000

2 Bedroom units

- Cost: $2300-$3500
- Models: 16
- Square Feet Range: 960-1325

Penthouse

- Rate: $3110-$5050
- Models: 4
- Square Feet Range: 1475-1680

Strathmore Court 5440 Marinelli Road 202 apartments
1 Bedroom

- Rate: $1300-$2000

2 Bedrooms

- Rate: $1800-$2000

North Bethesda Center
Economic Impact of Special District Tax on NBC
11.18.10

<u>Impact of Special Assessment on Wentworth House Apartment Tenants:</u>

Market Rate Units		**273**
2012 Tax (Current Rate)		$784,005
Tax Per Unit		**$2,872**
2012 Tax (Special Assessment Rate @ 10.27% increase)		$864,522
Tax Per Unit		**$3,167**
Annual Per Unit Impact		**$295**
Monthly Per Unit Impact		**$25**

Wentworth House Current Monthly Market Rent: **$2,072**

Faden, Michael

From: Michael J. Smith [MSmith@lcor.com]
Sent: Thursday, November 18, 2010 5:33 PM
To: Michaelson, Marlene; Faden, Michael
Cc: Sesker, Jacob; Bill Hard; Elmendorf, Stephen P. - SPE
Subject: NBC Special Assessment Impact

Marlene and Mike:

Attached is the analysis that we discussed earlier today.

There are four components to this analysis:

1. We have calculated the annual effect of the Special Assessment Tax on the North Bethesda Center (NBC) project at Stabilization and at potential 20 year, 30 year and 40 year bond repayment periods. We have capped these costs at a 5.5% cap rate to determine the reduction in value of the NBC project caused by the special assessment. In addition, we have calculated the cumulative additional tax burden caused by the special assessment on the NBC project during the same time periods. The net cumulative effect of the reduction in value and the cumulative tax burden is summarized in the top portion of the attached analysis.

2. We have calculated the value of the remaining unpaid Impact Taxes for the NBC project at approximately $8.8 million. We are seeking to have these costs waived for the NBC project. This projection does not include the cost of the Impact Tax for the NRC building. The calculation is broken down by land use.

3. We have calculated the value of infrastructure that we would are seeking to have the District assume at $12.5 million. These costs include $5.3 million to design and build Market Street through the NBC property and $7.2 million to design and build a three lane bridge over the White Flint Metro Station.

Summarized below is the effect of the special assessment on the NBC project:

Item	**Cost in Year 20**	**Cost in Year 30**
Special Assessment Cost	($ 49,000,000)	($ 77,000,000)
Impact Tax Relief	$ 8,800,000	$ 8,800,000
District Funding of Bridge & Road	$ 12,500,000	$ 12,500,000
Net Burden on the NBC Project	($ 27,700,000)	($ 55,700,000)

In conclusion, regardless of which bond repayment timeframe is selected, 20 years or 30 years, the cost of the special assessment to the NBC project far outweighs the benefit of waiving the remaining Impact Taxes due for the project and having the District assume the costs to design and construct the Bridge and Market Street. The net cost/valuation burden on the NBC project ranges from approximately -$28,000,000 to -$56,000,000. **Including the fully proferred NBC project in the proposed financing district continues to impose a significant financial burden on the NBC project.**

42

4. Existing apartment buildings in the District should be treated in the same manner as existing condominium buildings; they should be exempt from the special district tax. Imposition of the 10.27% special assessment will increase apartment rents in Wentworth House, the first phase of development at North Bethesda Center, by $295 annually or $25 per month in 2012. A copy of this calculation is attached. This burden will only increase over time. Although Wentworth House is a new luxury apartment building, there are thousands of existing older apartment units in the WF district that will see rents increase to offset the burden of the special assessment.

   A typical unit in Wentworth House currently rents for $2,072 per month. Due to the oversupply of apartment units in the North Bethesda, Grosvenor, Rockville and Twinbrook submarkets, we have offered two months free rent almost since the building opened in 2008 to attract and retain tenants. Conceding 18% of the monthly rent effectively reduces the average asking rent from $2,072 to $1,700 per month. Adding the special assessment tax to current market rents in North Bethesda makes these buildings much less competitive than other existing apartment buildings in the Grosvenor, Twinbrook and Rockville submarkets that are not subject to the tax. This tax will not only increase the cost of occupancy but will also increase vacancies in these buildings.

Please call with any questions you may have regarding this analysis.

Regards,

Mike Smith
Project Executive
North Bethesda Center

North Bethesda Center
Economic Impact of Special District Tax on NBC
11.18.10

Net Cumulutive Effect of Special Assessment Tax

	2019	2031	2041	2051
Reduction in Value at 5.5% Cap Rate	19,662,284	28,033,715	37,674,969	50,632,007
Cumulative Tax Burden	5,153,978	20,962,031	39,167,931	63,635,140
Total Net Tax Effect	**24,816,261**	**48,995,745**	**76,842,900**	**114,267,147**

Tax Burden Effect on Residual Value

Time Frame	Stabilization	20 Year Horizon	30 Year Horizon	40 Year Horizon
Year (1)	2019	2031	2041	2051
Estimated annual tax on NBC with 10.27% special assessment (2)	11,611,373	16,555,041	22,248,591	29,900,246
Estimated annual tax on NBC with current tax rates (2)	10,529,947	15,013,187	20,176,468	27,115,486
Additional Annual NBC tax burden	**1,081,426**	**1,541,854**	**2,072,123**	**2,784,760**
Reduction in Value @ 5.5% Cap Rate	**19,662,284**	**28,033,715**	**37,674,969**	**50,632,007**

Cumulative Tax Burden Effect of Various Time Frames:

Time Frame	Stabilization	20 Year Horizon	30 Year Horizon	40 Year Horizon
Year (1)	2019	2031	2041	2051
Estimated cumulative tax on NBC with 10.27% special assessment	55,338,768	225,071,385	420,549,931	683,256,752
Estimated cumulative tax on NBC with current tax rates	50,184,790	204,109,354	381,382,000	619,621,612
Cumulative NBC tax burden	**5,153,978**	**20,962,031**	**39,167,931**	**63,635,140**

Note:

(1) Assumes Special Assessment tax starts 1/1/2011

(2) Assumes 3% annual increase in real estate taxes from base year

North Bethesda Center
Economic Impact of Special District Tax on NBC
11.18.10

NBC District Funded Infrastructure:

Description		**Amount**
Market Street - from Citadel Avenue to Station Street		$5,300,000
3 Lane Bridge over WF Metro Station		$7,200,000
Total Cost		**$12,500,000**

Impact of Using Metro Station Impact Fees at NBC:

	Remaining Density	**Current ARP Impact Tax Rate**	**Current ARP Impact Tax**
Office Space	550,543	$7.27	$4,001,071
Retail Space	138,454	$6.50	$900,297
Hotel/Other	220,000	$3.64	$800,250
High-Rise Market Rate Units	843	$3,630	$3,058,729
Total			**$8,760,347** *

***Note:** The Current ARP Impact Tax calculation does not include $2.665M in fees for the NRC Office Building currently under construction on the site

Bill No. 50-10
Concerning: Transportation Special Taxing District - [[White Flint]] - Creation
Revised: 11-17-10 Draft No. 3a
Introduced: October 5, 2010
Expires: April 5, 2012
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. _____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:
(1) authorize the County Council by resolution to establish [[a White Flint Special Taxing District]] one or more transportation special taxing districts;
(2) authorize the levy of an *ad valorem* property tax to fund certain transportation infrastructure improvements;
(3) authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements;
(4) generally authorize [[a White Flint Special Taxing District]] the County to create and operate transportation special taxing districts; and
(5) generally amend or supplement the laws governing the use of infrastructure financing districts and similar funding mechanisms.

By adding
Montgomery County Code
Chapter 68C, [[White Flint Special Taxing District]] Transportation Special Taxing Districts

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. Chapter 68C is added as follows:

Chapter 68C. [[White Flint Special Taxing District]]

Transportation Special Taxing Districts.

68C-1. Definitions.

For purposes of this Chapter, the following terms have the meanings indicated:

Bond means a special obligation or revenue bond, note or other similar instrument issued by the County that will be repaid from revenue generated by ad valorem taxes levied under this Chapter.

Cost means the cost of:

(1) the construction, reconstruction, and renovation of any transportation infrastructure improvement, including the acquisition of any land, structure, real or personal property, right, right-of-way, franchise, or easement, to provide a transportation infrastructure improvement for the District;

(2) all machinery and equipment needed to expand or enhance a transportation infrastructure improvement for the District;

(3) financing charges and debt service related to a transportation infrastructure improvement for the District, whether the charge or debt service is incurred before, during, or after construction of the transportation infrastructure improvement, including the cost of issuance, redemption premium (if any), and replenishment of debt service reserve funds for any bond that finances a transportation infrastructure improvement for the District;

(4) reserves for principal and interest, the cost of bond insurance, and any other type of financial guarantee, including any credit or liquidity enhancement, related to a transportation infrastructure improvement for the District;

(5) architectural, engineering, financial, and legal services related to providing a transportation infrastructure improvement for the District;

(6) any plan, specification, study, survey, or estimate of costs and revenues related to providing a transportation infrastructure improvement for the District;

(7) any administrative expense incurred by the County necessary or incident to determining whether to finance or implement a transportation infrastructure improvement for the District; and

(8) any other expense incurred by the County necessary or incident to building, acquiring, or financing a transportation infrastructure improvement for the District.

District means [[the White Flint]] a Special Taxing District created under Section 68C-2.

Transportation infrastructure improvement means:

(1) the construction, rehabilitation, or reconstruction of a road, street, or highway that serves the District, including any:

(A) right–of–way;

(B) roadway surface;

(C) roadway subgrade or shoulder;

(D) median divider;

(E) drainage facility or structure, including any related stormwater management facility or structure;

(F) roadway cut or fill;

(G) guardrail;

(H) bridge;

(I) highway grade separation structure;

(J) tunnel;

(K) overpass, underpass, or interchange;

(L) entrance plaza, approach, or other structure that is an integral part of a street, road, or highway;

(M) bicycle or walking path;

(N) designated bus lane;

(O) sidewalk or pedestrian plaza;

(P) streetscaping and related infrastructure; including placing utilities underground; and

(Q) other property acquired to construct, operate, or use a road, street, or highway; and

(2) a transit facility that serves the needs of the District, including any:

(A) track;

(B) right-of-way;

(C) bridge;

(D) tunnel;

(E) subway;

(F) rolling stock;

(G) station or terminal;

(H) parking area;

(I) related equipment, fixture, building, structure, or other real or personal property; and

(J) service intended for use in connection with the operation of a transit facility, including rail, bus, motor vehicle, or other mode of transportation.

68C-2. Creation; Boundaries.

(a) [[The White Flint Special Taxing District is coterminous with the approved and adopted White Flint Sector Plan area.]] After holding a public hearing, the Council by resolution approved by the Executive may create a Transportation Special Taxing District. If the Executive disapproves a resolution within 10 days after it is adopted and the Council readopts it by a vote of 6 Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the resolution takes effect.

[[(b) The following properties, identified by street address, are not included in the District: 11700 Old Georgetown Road, 11701 Old Georgetown Road, 11750 Old Georgetown Road, 11800 Old Georgetown Road, 11801 Rockville Pike, 5800 Nicholson Lane, 5802 Nicholson Lane, 5809 Nicholson Lane, 5440 Marinelli Road, 5503 Edson Lane, 5505 Edson Lane, 5507 Edson Lane, 5509 Edson Lane, 11201 Woodglen Drive, 11203 Woodglen Drive, 11205 Woodglen Drive, 11207 Woodglen Drive, 11209 Woodglen Drive, 11200-11219 Edson Park Place, 11222 Edson Park Place, 11224 Edson Park Place, 11226 Edson Park Place, 11228 Edson Park Place, 11230 Edson Park Place, 11232 Edson Park Place, 11234 Edson Park Place, 11236 Edson Park Place, 11238 Edson Park Place, and 11240 Edson Park Place.]]

(b) A resolution adopted under this Section must define the Transportation Special Taxing District by specifying its boundaries or listing the tax account number of each property in the District.

68C-3. Levy of Tax; Limits.

(a) Each tax year the County Council may levy against all the assessable real and personal property in the District a sum on each $100 of assessable property that does not exceed an amount sufficient to cover the costs of transportation infrastructure improvements that have been identified in a Council resolution approved under Section 68C-4.

(b) Under Section 9-1302 of Article 24, Maryland Code, the limit in Charter Section 305 on levies of ad valorem taxes on real property to finance County budgets does not apply to revenue from any tax imposed under this Chapter.

(c) The tax imposed under this Chapter must be levied and collected as other County property taxes are levied and collected.

(d) The tax imposed under this Chapter has the same priority, bears the same interest and penalties, and in every respect must be treated the same as other County property taxes.

68C-4. Transportation Infrastructure Improvement Resolution.

(a) After holding a public hearing, the Council [[may]] must approve a resolution that lists each transportation infrastructure improvement that would be entirely or partly paid for by a tax imposed under Section 68C-3.

(b) The resolution must indicate the estimated cost, including a contingency amount, for each listed improvement.

(c) The Council may amend the resolution after holding a public hearing.

(d) The Council must present the resolution and each amended resolution to the Executive for approval or disapproval. If the Executive disapproves a resolution within 10 days after it is transmitted to the Executive and the Council readopts the resolution by a vote of 6 Councilmembers, or if the Executive does not act within 10 days after the resolution is transmitted, the resolution takes effect.

(e) Before the Council holds a public hearing under subsection (a) or (c), the Executive should transmit to the Council:

51

(1) a list of recommended transportation infrastructure improvements to be entirely or partly paid for by a tax imposed under Section 68C-3;

(2) the estimated cost, including a contingency amount, for each listed improvement; and

(3) an estimated tax rate for each tax to be imposed under Section 68C-3.

68C-5. District Fund.

(a) The Director of Finance must establish a separate fund for the proceeds collected in each District from any tax imposed under this Chapter. The proceeds of any tax imposed under this Chapter must be pledged to and paid into this fund.

(b) The Director of Finance must use this fund only to pay the cost of any transportation infrastructure improvement related to the District.

(c) If in any fiscal year a balance remains in the fund, the Director of Finance may use the balance to:

(1) pay the cost of any transportation infrastructure improvement for the District;

(2) create a reserve to pay the future costs of any transportation infrastructure improvement for the District;

(3) pay bond-related obligations or retire bonds then outstanding; or

(4) pay into a sinking fund required by the terms of bonds which finance the cost of any transportation infrastructure improvement for the District that may be incurred or accrue in later years.

68C-6. Issuing Bonds.

(a) Before the County issues any bond payable from ad valorem taxes levied under Section 68C-3, the Council must adopt a resolution authorizing the issuance of bonds that meets the requirements of this Section.

(b) Each resolution under this Section must:

(1) describe the types of transportation infrastructure improvements and related costs to be financed; and

(2) specify the maximum principal amount of bonds to be issued.

(c) Each resolution may specify, or authorize the Executive by executive order to specify:

(1) the actual principal amount of bonds to be issued;

(2) the actual rate or rates of interest for the bonds;

(3) how and on what terms the bonds must be sold;

(4) how, when, and where principal of, and interest on, the bonds must be paid;

(5) when the bonds may be executed, issued, and delivered;

(6) the form and tenor of the bonds, and the denominations in which the bonds may be issued;

(7) how any or all of the bonds may be called for redemption before their stated maturity dates;

(8) the nature and size of any debt service reserve fund;

(9) the pledge of other assets in and revenues from the District to pay the principal of and interest on the bonds;

(10) any bond insurance or any other financial guaranty or credit or liquidity enhancement of the bonds; and

(11) any other provision consistent with law that is necessary or desirable to finance any transportation infrastructure improvement that has been identified in a Council resolution approved under Section 68C-4.

(d) (1) The County [[covenants]] must covenant to levy ad valorem taxes against all assessable real and personal property in the District at a rate and amount sufficient in each year when any bonds are outstanding to:

(A) provide for the payment of the principal of, interest on, and redemption premium if any, on the bonds;

(B) replenish any debt service reserve fund established with respect to the bonds; and

(C) provide for any other purpose related to the ongoing expenses of and security for the bonds.

(2) The County further [[covenants]] must covenant, when any bond is outstanding, to enforce the collection of all ad valorem taxes under this Chapter as provided by applicable law.

(e) All proceeds received from any issuance of bonds must be applied solely towards costs of the transportation infrastructure improvements listed in the resolution adopted under Section 68C-4, including the cost of issuing bonds and payment of the principal of, interest on, and redemption premium if any, on the bonds.

(f) The bonds issued under this Chapter:

(1) are special obligations of the County and do not constitute a general obligation debt of the County or a pledge of the County's full faith and credit or the County's general taxing power;

(2) may be sold in any manner, either at public or private sale, and on terms as the Executive approves;

(3) are not subject to Sections 10 and 11 of Article 31, Maryland Code; and

(4) must be treated as securities to the same extent as bonds issued under Section 9-1301 of Article 24, Maryland Code.

(g) To the extent provided by law, the bonds, their transfer, the interest payable on them, and any income derived from them, including any profit realized on their sale or exchange, must be exempt at all times from every kind and nature of taxation by the State of Maryland and any county or municipality in Maryland.

(h) The bonds must be payable from the fund required under Section 68C-5 and any other asset or revenue of the District pledged toward their payment. When any bond is outstanding, the monies in the fund are pledged to pay the costs of any transportation infrastructure improvement funded entirely or partly by the proceeds of the bonds, including the costs of issuing the bonds and payment of the principal of, interest on, and redemption premium if any, on the bonds. In addition to ad valorem taxes, the bonds may be secured by any other asset in or revenue generated in the District.

(i) Any ad valorem tax imposed under this Chapter must not be accelerated because of any bond default.

68C-7. Expiration of district.

Any special taxing district created under this Chapter expires by operation of law 30 days after the cost of all transportation infrastructure improvements identified in a Council resolution approved under Section 68C-4, including all outstanding bonds and cash advances made by the County, have been paid.

Sec 2. Ratification of Public Hearing. For purposes of County Code Section 68C-2(a), inserted by Section 1 of this Act, the hearing which the County Council held on October 26, 2010, on Council Bill 50-01 and a Council resolution to approve White Flint development tax district transportation infrastructure improvements is the hearing that is required to be held by Section 68C-2(a) before the Council may adopt a resolution to create a White Flint Transportation Special Taxing District under County Code Chapter 68C. The County Council may, without holding any further hearing, amend and adopt the resolution referred to in the preceding sentence to create a White Flint Transportation Special Taxing District under County Code Chapter 68C.

Approved:

Nancy Floreen, President, County Council — Date

Approved:

Isiah Leggett, County Executive — Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council — Date