PHED/MFP 1 & 2
November 9, 2010
Worksession 2

Committee members should bring any testimony from the October 26 public hearing that you will refer to. Hearing testimony is not reprinted in this packet.

MEMORANDUM

TO: Planning, Housing, and Economic Development Committee
Management and Fiscal Policy Committee

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

SUBJECT: **Worksession 2:**
Bill 50-10, Special Taxing District – White Flint – Creation
Resolution to approve White Flint Development Tax District transportation infrastructure improvements

Schedule: This is the second of 3 scheduled joint Management and Fiscal Policy Committee/Planning, Housing, and Economic Development Committee worksessions on Bill 50-10 and the associated infrastructure list/tax policy resolution. Another joint worksession is scheduled for November 16 at 9:30 a.m. The Transportation, Infrastructure, Energy, and Environment Committee completed its work on the Capital Improvements Program amendment and appropriation request on October 21. Council action on the entire White Flint financing package is tentatively scheduled for November 23.

Summary of Staff Recommendations

- Support the Special Taxing District as the appropriate new financing vehicle for White Flint.
- Minimize risk to District property owners, but do not guarantee complete certainty since this places too great a risk on other County taxpayers.
- Create a policy to cap District contributions, but do not set a cap in legislation.
- Determine funding to allow Stage 1 to proceed without delay and create a Capital Improvement Program (CIP) amendment to fund all County and District infrastructure required as a Stage 1 trigger or otherwise necessary for Stage 1 development.
- Identify strategies to ensure funding for Stages 2 and 3 (including forward funding by the County of District obligations) to be refined as development proceeds. The Council should not develop a specific plan to fund any long term gaps at this time. Do not use tax increment financing.
- Retain the transportation impact tax, but require that the proceeds be used in White Flint and allow it to be paid over 20 years.
- Revise the bucket lists to refine cost estimates, 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 ©29-33); 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.

State legislation: Bill 50-10 is based on recent state law amendments (2010 Maryland Laws, Chapter 617, reprinted on ©24-28). 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.

Reserved issues/special situations: For this worksession, Council Staff will outline the major policy issues that have been raised regarding the White Flint financing plan. We will reserve for discussion at the November 16 worksession limited policy issues, such as whether to exclude currently occupied apartment buildings from the proposed Special Taxing District, and special situations, such as the approved North Bethesda Center development by LCOR, Inc., east of the White Flint metro station, which involve unique circumstances and raise questions of fairness and equal treatment. Staff will also include in our packet for the November 16 worksession any specific amendments to Bill 50-10 and the implementing resolution that Council Staff recommends or the Committees request. 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.

"Buckets": 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 are shown on ©20-22. 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.

Council Staff has created a revised version of the bucket lists that are attached at © 34 to 36. To ensure that the Committees have time to review each of the policy questions set forth below, Staff recommends that any detailed discussion of the allocation of projects among buckets and stages be held until other issues have been discussed. 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. To ensure that Stage 1 can proceed without delay, Staff recommends that any County project not yet in the Capital Improvements Program (CIP) and the District projects **required as a Stage 1 trigger** (or deemed essential to allow development to proceed), be funded in an amendment to the CIP, with a clear identification of funding sources. This recommendation is addressed further below.

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 of the taxes/fees 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 must be passed. Properties are exempt from local area transportation review (LATR) and policy area mobility review (PAMR). Property owners no longer face risks associated with whether/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 Tax 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 property generates revenues.

Development has many 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). Staff believes it is appropriate for the Council to provide greater certainty to ensure the success of White Flint, but it should not be expected to provide complete certainty or absorb all the risks for the total build out of all infrastructure. Instead, Staff recommends in the discussion which follows that the Council focus on ensuring that development ready to proceed immediately in Stage 1 be able to do so without delay and identifying viable options to fund the infrastructure needs to Stages 2 and 3.

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 produced no new revenue (e.g., rebuilding a school or fire 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 for the road.

The major policy issues that are ripe for Committee consideration include:

1) Should the primary financing mechanism to fund the selected infrastructure items be a property tax-based 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 ©24-28, 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.[1]

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 become effective July 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

[1]Existing apartment buildings would be included because the property tax assessment system treats them as commercial property. The Council staff memo for the November 16 worksession will discuss whether these buildings should also be excluded from the district.

[2]See Maryland Code, Article 24, §9-1302(b), shown on ©26. Because 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.

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 of those who testified before the Council indicated their view that the Special District Tax was created to take the place of the 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 opportunity to have those in White Flint who are not developing (but will benefit from development) subsidize costs that might otherwise have to have been paid solely by those developing.

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

The White Flint Partnership in its testimony, and other speakers at the hearing, proposed that the law should require that the maximum rate of the supplementary property tax in the White Flint Special Taxing District 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. It has been 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 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 Department staff memorandum on © 37 to 41 provides a rough analysis of the cost of the District compared to likely costs that would otherwise be assumed by developers. **They found that the District costs were comparable to the per square foot costs that would otherwise be paid for estimated mitigation costs.** Assuming that all LATR costs are credible 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 cost are credible the mitigation costs would like be higher than the District costs.) The mitigation costs would have to be paid upfront but District costs are 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 built necessary infrastructure. Their analysis also shows that property owners who are redeveloping are subsidized by those who are not redeveloping 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.

[3] Planning Department staff note that one property increased in value from $2 million in 2007 to over $15 million after the Sector Plan rezoning (see © 41).

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 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 "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. **Council Staff recommendation:** 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 plan allocated to the District and funds that can be raised by the Special Taxing 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 © 34). Staff rejects this premise for several reasons. 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 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 with any degree of confidence the magnitude of any gap at this time.**

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

Since no other master plan in the County identifies 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, Staff recommends 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]

Staff recommends that the Council undertake an amendment to the Capital Improvements Program (CIP) to fund all Stage 1 trigger infrastructure that are the responsibility of the County or the District and ensure that there will be no delays for projects ready to proceed.

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

While there does not appear to be a Stage 1 problem, the Committees may want to consider options to ensure that future gaps can be filled. Options to close a funding gap, listed in the Planning Board's testimony at the hearing, include:

- 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. **Staff recommends that any strategy continue to allocate costs within the assigned bucket, rather than reallocating them to another entity.**

To provide any future missing District funding, Staff recommends 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 tax increment financing. This may require collecting the special tax for a longer period of time or increasing the rate.

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

Some have suggested that the 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. Councilmember Berliner believes that a TIF is an appropriate mechanism to ensure the successful development of White Flint and has drafted an amendment to Bill 50-10 for the Committees' consideration, which is attached beginning at © 42.

Staff does not support the use of a TIF for several reasons summarized below. (Executive staff are preparing additional information that was not available in time for this packet.)

- 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 the transportation impact tax be retained in the White Flint Special Taxing District?

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. Furthermore, 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 memo (see ©2, 6) noted that he expects to propose another Bill for Council consideration that would maintain the transportation impact tax in the White Flint area at 50% of the

[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".

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]

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 would 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 been the recipient of impact tax revenues, with more spent on improvements there than has been generated by development there.

The other main reason the Executive would 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 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 of the property owners who testified indicated 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. Staff has not yet received any data from property owners to provide evidence of this assertion. Any analysis of the cost of impact taxes should include the likely credits available from developer projects (see discussion in the following section).

Planning Department staff have prepared a rough analysis of the cost of the District (© 37 to 41) and is doing further work regarding the combined cost of the District tax and impact tax, the results of which may be available for the meeting. Their preliminary conclusion is that both costs combined would be within the range of costs of other mixed-use developments in the County.

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.**

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

Absent more concrete information to show that the combination of the two taxes would have a detrimental impact on development, Staff believes it should be continued. Should the Council later determine that the combined costs are in fact negatively impacting development, it will be far easier to reduce or eliminate the cost of 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.

Council Staff recommendation: retain the transportation impact tax in the White Flint Special Taxing District at its current rates with proceeds to only be spent in White Flint. As a way of softening the blow, the Executive recommended stretching 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 stretching the payment out over 20 years, with the same type of adjustment.** Either option would require conforming the impact tax law, which probably could be done in the context of Bill 50-10.

6) What role would potential impact tax credits play in funding each "bucket"? How would the use of impact tax credits reallocate costs?

If, as the Executive proposed, the County transportation impact tax remains in effect in the White Flint Special Taxing District and is limited to funding infrastructure in that District, this impact tax revenue will pay for some portion of the gap in the County "bucket". However, some of the developer-paid "bucket" will be capacity-adding improvements that qualify for impact tax credits.

Attorney Steve Elmendorf, among others, argued that retaining the impact tax would be worse with a Special District tax than under the current PAMR/LATR APFO requirements since, under the current system, impact tax credits may be granted, while credits cannot be taken against the Special District tax because of the uniformity rule for property taxes.[8] However, 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.

7) Are projects properly allocated to the correct bucket and correct stage of development?

Council Staff reviewed the three "buckets" of projects proposed by the Executive and we recommend revising them as displayed on © 34 to 36. Many of the 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. 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.

[8]Historically, pay-and-go exactions have not been creditable against the transportation impact tax, whether they were the Development Approval Payment in the mid-1990s, the Expedited Development Approval Excise Tax in the late 1990s, the Alternative Review Procedure used by LCOR in the middle of this decade, the PAMR payments initiated in 2007, or the Executive's recently proposed TPAR payment.

The substantive revisions we recommend 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 the 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 commences, 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. Its purpose is not based solely or mainly on the needs of 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 (as contrasted with 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 have 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 grand 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 assumes 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 G.O. Bonds, impact taxes, and other such sources.

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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.

<u>The Special Tax District</u>

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;

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(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.

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(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

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White Flint Sector Plan Executive Branch Cost Estimates - District

October 13, 2010

Assumes Property Dedications (County Estimates Assume No Property Dedications)

ROW Estimates Based Solely on FAR at White Flint Partnership's estimated $50 per FAR foot

N.B. land values are assumptions and not based on appraised values

						County Estimates					
									Stages - TOTAL COST		
		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		$17,774,064		$17,774,064	$17,774,064		
	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		$15,344,000		$15,344,000	$15,344,000		
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	***REVISED PROJECT SCOPE (was $38.8 Million)***	$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	VOB Service bldg	$13,500,000		$13,500,000	$13,500,000		
	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 construction, planning, design, and permitting, construction administration, and contingency/escalation)			$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	Developers' amount includes numbers 2, 3 23, and 27 from REF. column. Conference Center Section Only.		$4,661,175	$4,661,175		$4,661,175	
		Subtotal: Projects in August 2010 Funding Analysis				$172,026,054	$9,090,275	$181,116,329	$61,035,787	$53,056,201	$67,024,341
	12		Main Street Bridge (LCOR)			$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	$10,000,000	$6,700,000	
	14	B-5	Nebel Street	Nicholson Lane south around Combined Prop		$8,200,000		$8,200,000	$8,200,000		
		Subtotal District				$198,926,054	$9,090,275	$208,016,329	$81,235,787	$59,756,201	$67,024,341
		Subtotal District: Percent of Grand Total				**22.9%**					

White Flint Sector Plan Executive Branch Cost Estimates - County

October 13, 2010

Assumes Property Dedications (County Estimates Assume No Property Dedications)

ROW Estimates Based Solely on FAR at White Flint Partnership's estimated $50 per FAR foot

N.B. land values are assumptions and not based on appraised values

					County Estimates					
								Stages - TOTAL COST		
	MP #	Name	Limits	Comments	County Estimated Construction Cost	ROW (Minimum Estimated by Partnership)	Total Cost (Construction + ROW)	Stage 1	Stage 2	Stage 3
	County									
15		Circulator bus infrastructure		Was in District @ $1.25 million. Removed because it is operating.			$0			
16	B-6	Marinelli Road[3]	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	$4,929,408	$0
18	A-270	Montrose Pkwy Phase 1 (MD 355 Interchange Phase I)	Old Georgetown Rd to Chapman Ave	Funded and Under Construction	$0		$0	$0	$0	$0
19	A-270	*Montrose Pkwy Phase 2 (MD 355 Interchange Phase 2)*	*Chapman Ave to Parklawn Drive*		$72,156,000		$72,156,000	$0	$0	$0
20	B-5	Nebel Street Ext. (North)	Randolph Road to Plan Area Boundary		$13,931,000		$13,931,000	$0	$0	$0
21	B-12	Chapman Ave (Citadel Ave/ Maple Ave)	Old Georgetown Road to Plan Area Boundary		$27,074,919		$27,074,919	$14,146,919	$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			$130,530,000		$130,530,000	$0	$0	$130,530,000
25		Civic Green		1 acre	$11,390,000		$11,390,000	$0	$11,390,000	$0
26		Elementary School		(excludes operating and personnel costs)	$20,000,000		$20,000,000	$0	$0	$20,000,000
27	added	Recreation Center at Wall Park			$37,420,000		$37,420,000	$0	$37,420,000	$0
28	Outside Sector	CLATR Intersections outside of District					$0			
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	$1,789,063
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	$2,031,348	$7,344,216	$0	$5,312,868	$0
	State									
31		*MARC Station*		*MTA*	$35,655,000		$35,655,000	*$0*	*$0*	$35,655,000
	Subtotal County (or State)				$411,452,485		$413,733,521	$46,306,919	$59,052,276	$207,078,290
	Subtotal County (or State): Percent of Grand Total				**47.4%**					

NOTE Figures do not include Operating Budget Impacts.
Some Projects not reflected in Staging. ROW costs not included in Staging.

White Flint Sector Plan Executive Branch Cost Estimates - Developer

October 13, 2010

Assumes Property Dedications (County Estimates Assume No Property Dedications)

ROW Estimates Based Solely on FAR at White Flint Partnership's estimated $50 per FAR foot

N.B. land values are assumptions and not based on appraised values

						County Estimates					
									Stages - TOTAL COST		
		MP #	Name	Limits	Comments	County Estimated Construction Cost	ROW (County Estimated)	Total Cost (Construction + ROW)	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	$271,875	$3,850,000	$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	$14,184,313	$34,128,250	$0	$0	$19,943,937
	34	A-69	Nicholson Lane	Old Georgetown Road to CSX tracks	55% of Total	$29,220,774	$11,172,414	$40,393,188	$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	$23,164,000	$32,702,720	$0	$0	$9,538,720
	37	B-4	Huff Court	Executive Blvd to Nicholson Lane		$4,301,880	$2,350,000	$6,651,880	$0	$4,301,880	$0
	38	B-4	Citadel Avenue	Nicholson Lane to existing terminus		$3,234,375		$3,234,375	$0	$3,234,375	$0
	39	B-4	Citadel Avenue Ext (?)	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	$2,578,125	$8,214,375	$5,636,250	$0	$0
	41	B-5	Nebel Street Ext. (South)	Rockville Pike to Nicholson Lane	3 bldgs	$33,922,000	$16,083,750	$50,005,750	$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	$2,000,000	$28,408,448	$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	$7,700,000	$26,794,290	$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		$5,894,328	$3,960,000	$9,854,328	$0	$0	$5,894,328
	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	$11,979,649	$18,800,000		$6,820,351	$0
	48	B-10	Main Street (B-10 Market St)	Rockville Pike to B-13		$10,582,367	$11,225,353	$21,807,720	$0	$10,582,367	$0
	49	B-11	Station Street	Marinelli Road to Old Georgetown Rd		$6,467,208	$10,843,350	$17,310,558	$6,467,208	$0	$0
	50	B-12	Chapman Ave (or other name	Marinelli Road to Old Georgetown Rd		$6,086,784	$10,203,375	$16,290,159	$6,086,784	$0	$0
	51	B-13	New Street	Marinelli Road to Nebel Street		$6,467,208	$1,964,375	$8,431,583	$0	$0	$6,467,208
	52	B-14	Realigned Nicholson Court	Nebel Ext to cul-de-sac		$3,757,500	$62,500	$3,820,000	$0	$0	$3,757,500
	53	B-16	Midpike Plaza Rung	Existing Terminus to B-13 (approx 900')		$6,467,208	$9,900,000	$16,367,208	$0	$6,467,208	$0
	54	B-18	Security Lane Extended	Rockville Pike to B-4		$2,521,750	$3,368,750	$5,890,500	$0	$0	$2,521,750
	55	LB-1	Main Street	Executive Blvd. to Rockville Pike	Bikeway	$225,000	$2,343,750	$2,568,750	$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 [7]				**$257,846,912**	**$145,355,580**	**$403,202,492**	**$51,768,182**	**$154,377,163**	**$51,701,568**
		Subtotal Developer: Percent of Grand Total [5]				**29.7%**					

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NOTE Stage estimates do not include ROW costs.

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

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

24

(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.

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

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

Approved by the Governor, May 20, 2010.

Resolution No:_______________
Introduced: _______________
Adopted: _______________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

SUBJECT: 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

Background

1. Section 308 of the Montgomery County Charter provides that a special appropriation: (a) may be made at any time after public notice by news release; (b) must state that the special appropriation is necessary to meet an unforeseen disaster or other emergency or to act without delay in the public interest; (c) must specify the revenues necessary to finance it; and (d) must be approved by no fewer than six members of the Council.

2. Section 302 of the Montgomery County Charter provides that the Council may amend an approved capital improvements program at any time by an affirmative vote of no fewer than six members of the Council.

3. The County Executive recommends the following capital project appropriation increases:

Project Name	Project Number	Cost Element	Amount	Source of Funds
White Flint District West: Transportation	501116	PDS	$385,000	Current Revenue General

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4. This project is needed to accelerate the preliminary engineering for one new road, one relocated road, improvements to three existing roads, and one new bikeway in the White Flint Development Tax District so that more accurate designs and cost estimates can be established. Funds to pay for the 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 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 roadway and bikeway improvements will greatly aid and expedite the planned improvements for the area.

5. The County Executive recommends an amendment to the FY11-16 Capital Improvements Program and a special appropriation in the amount of $385,000 for White Flint District West: Transportation (No.501116), and specifies that the source of funds will be Current Revenue General with repayment in FY12 from White Flint Development District tax funds.

6. Notice of public hearing was not given and no public hearing was held.

Action

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

1. The FY11-16 Capital Improvements Program of the Montgomery County Government is amended as reflected on the attached project description form and a special appropriation is approved as follows:

Project Name	Project Number	Project Element	Cost Amount	Source of Funds
White Flint District West: Transportation	501116	PDS	$385,000	Current Revenue General

2. The County Council declares that this action is necessary to act without delay in the public interest, and that this appropriation is needed to meet the emergency.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

White Flint District West: Transportation -- No. 501116

Category	**Transportation**	Date Last Modified	**September 27, 2010**
Subcategory	**Roads**	Required Adequate Public Facility	**No**
Administering Agency	**Transportation**	Relocation Impact	**None.**
Planning Area	**North Bethesda-Garrett Park**	Status	**Preliminary Design Stage**

EXPENDITURE SCHEDULE ($000)

Cost Element	Total	Thru FY09	Est. FY10	Total 6 Years	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Planning, Design, and Supervision	8,800	0	0	8,800	350	1,250	500	2,200	2,200	2,300	0
Land	1,000	0	0	1,000	0	0	600	0	200	200	0
Site Improvements and Utilities	0	0	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	35	0	0	35	35	0	0	0	0	0	0
Total	**9,835**	**0**	**0**	**9,835**	**385**	**1,250**	**1,100**	**2,200**	**2,400**	**2,500**	**0**

FUNDING SCHEDULE ($000)

Current Revenue: General	0	0	0	0	385	-385	0	0	0	0	0
Development District -White Flint	9,835	0	0	9,835	0	1,635	1,100	2,200	2,400	2,500	0
Total	**9,835**	**0**	**0**	**9,835**	**385**	**1,250**	**1,100**	**2,200**	**2,400**	**2,500**	**0**

DESCRIPTION

This project provides for completing preliminary engineering, to 35% plans, for one new road, one relocated road, improvements to three existing roads, and one new bikeway in the White Flint District area for Stage 1. Various improvements to the roads will include new traffic lanes, shared-use paths, the undergrounding of overhead utility lines, other utility relocations and streetscaping.

The proposed projects are as follows:

- Main Street/Market Street (B-10) - Old Georgetown Road (MD187) to Executive Boulevard Extended - New 2 lane 700 foot roadway.
- Executive Boulevard Extended (B-15) - Marinelli Road to Old Georgetown Road (MD187) - Reconstruct 900 feet of 4 lane roadway.
- Old Georgetown Road (MD187) (M-4) - From Nicholson Lane/Tilden Lane to Executive Boulevard - Reconstruct 1,600 feet of 6 lane roadway.
- Hoya Street (formerly 'Old' Old Georgetown Road) (M-4A) - From Executive Boulevard to Montrose Parkway - Reconstruct 1,100 feet of 4 lane roadway.
- Rockville Pike (MD355) (M-6) - Flanders Avenue to Hubbard Drive - Reconstruct 6,300 feet of 6-8 lane roadway.
- Main Street/Market Street (LB-1) - Old Georgetown Road (MD187) to Executive Boulevard Extended - Construct 1,250 feet of bikeway.

The proposed projects will be White Flint Development Tax District funded and are located primarily in the western side of the White Flint Development District. All the roadway segments except for the Rockville Pike are specified for completion in Stage 1 of the White Flint Sector Plan and will be designed in FY11-13 with land acquisitions in FY13. The Rockville Pike segment will be designed in FY14-16 with land acquisitions in FY15-16. The Rockville Pike segment will be constructed during Stage 3 of the Sector Plan.

This project also provides for consulting fees for the analysis and studies necesary to implement the district, which are programmed in the "Other" cost element.

ESTIMATED SCHEDULE

Design is expected to commence on all projects except the Rockville Pike section in the Spring of 2011(FY11) and to conclude in the Spring of 2013 (FY13). Some property acquisition may occur in 2012-13 (FY13). Design on the Rockville Pike section will begin in the Fall of 2013 (FY14) and be complete in the Spring of 2016 (FY16). Some property acquisition may occur on this section in 2015 (FY15) and 2016 (FY16).

JUSTIFICATION

The vision for the White Flint District is for a more urban core with a walkable street grid, sidewalks, bikeways, trails, paths, public use space, parks and recreational facilities, mixed-use development, and enhanced streetscape to improve the areas for pedestrian circulation and transit oriented development around the Metro station. These road improvements, along with other District roads proposed to be constructed to be funded and constructed by developers will fulfill the strategic program plan for a more effective and efficient transportation system. The proposed improvements are in conformance with the White Flint Sector Plan Resolution 16-1300 adopted March 23, 2010.

FISCAL NOTE

The funding source for these projects will be White Flint Development District Tax revenues and related bond issues. Debt service on the bond issues will be paid soley from White Flint Development District revenues.

The advanced funds (Current Revenue: General) in FY11 will be repaid by White Flint Development District Tax funding sources in FY12.

The project cost estimates are based on FY10 costs and exclude escalation factors. Final construction costs will be determined after the preliminary

APPROPRIATION AND EXPENDITURE DATA

Date First Appropriation	FY11	($000)
First Cost Estimate Current Scope	FY11	9,835
Last FY's Cost Estimate		0
Appropriation Request	FY11	0
Appropriation Request Est.	FY12	1,750
Supplemental Appropriation Request		385
Transfer		0
Cumulative Appropriation		0
Expenditures / Encumbrances		0
Unencumbered Balance		0
Partial Closeout Thru	FY08	0
New Partial Closeout	FY09	0
Total Partial Closeout		0

COORDINATION

M-NCPPC, White Flint Sector Plan
WMATA
City of Rockville
MSHA
Town of Garrett Park
Neighborhood Civic Associations
Developers

MAP

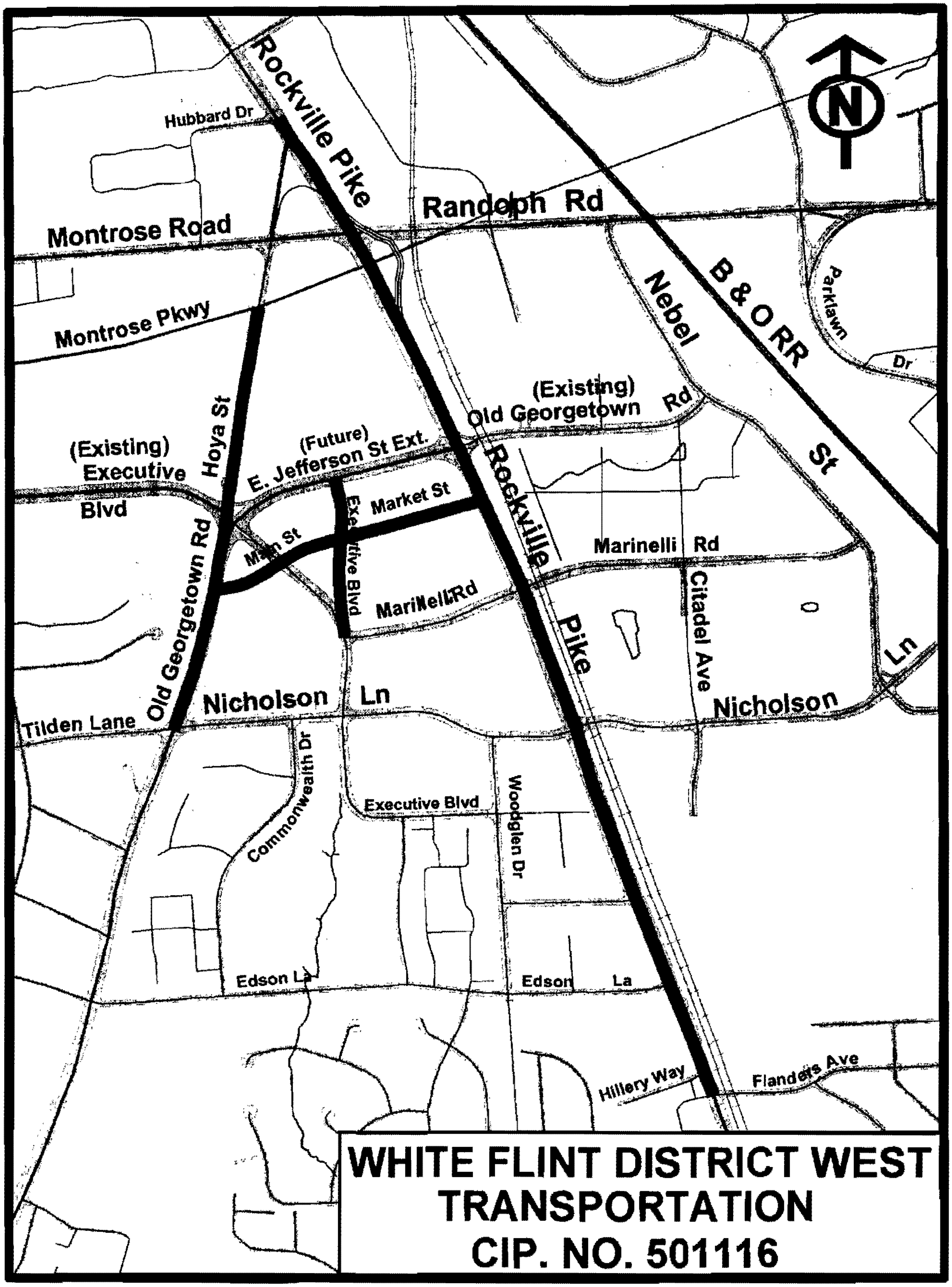
See Map on Next Page

engineering phase. The total project cost the for Stage 1 west-side White Flint Development Tax District -funded projects is anticipated to approximate $59 million.

The total project cost for White Flint Development Tax District-funded projects planned for Stages 1, 2, and 3 of the White Flint Sector Plan are estimated at $208 million

OTHER DISCLOSURES

- A pedestrian impact analysis has been completed for this project.


Rockville Pike
Hubbard Dr
Randolph Rd
Montrose Road
Montrose Pkwy
B & O RR
Nebel St
Parklawn Dr
(Existing) Old Georgetown Rd
(Existing) Executive Blvd
Hoya St
(Future) E. Jefferson St Ext.
Market St
Executive Blvd
Main St
Marinelli Rd
Old Georgetown Rd
Citadel Ave
Nicholson Ln
Tilden Lane
Commonwealth Dr
Woodglen Dr
Edson La
Hillery Way
Flanders Ave
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%

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%

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White Flint Sector Plan Project Buckets (Council staff recommendation)

November 9, 2010

DEVELOPER 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
		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**

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

MEMORANDUM

To: Joint MFP/PHED Committee Members

From: Roger Berliner RB

Re: Consideration of Tax Increment Financing to Address Financing Gap

Date: November 5, 2010

Enclosed in your packet is an amendment to the County Executive's proposed financing plan for White Flint that I requested Mr. Faden to draft for the Joint Committee and our Council's consideration.

The amendment would use Tax Increment Financing (TIF) to meet the gap between the $150 million in revenue to be raised by an additional commercial property surcharge in White Flint and the projected total costs of infrastructure in the so-called Development District bucket (approximately $250 million).

Like you, I have met with the County Executive's staff and heard their strong objections to a TIF. After listening respectfully and seriously considering their objections, I, for one, do not find them persuasive. To assist you in your own analysis, I posit below their objections as best I can and my response:

Flexibility: The County Executive's Team wants to retain the flexibility to use the additional revenue generated from White Flint for other worthwhile County objectives. From my perspective, "flexibility" is synonymous with not making a real commitment to fund the infrastructure necessary to make White Flint a national model for transit oriented development and to fulfill our obligations to our community.

Equity: The County Executive's Team argues that taking this revenue stream before it becomes available for general revenue purposes will cause "equity" concerns within the county. I maintain that it is precisely the unprecedented level of revenue generated by White Flint – a projected $6.8 billion -- that provides the County the resources we need to address pressing needs elsewhere.

Whose Responsibility Is It To Fund the Gap?: The County Executive's Team maintains that the developers and commercial property owners in White Flint bear 100% cost responsibility for all of the projects in the development district bucket (approximately $250 million) in addition to the developer bucket ($400 million). Their underlying assumption is that the tax burden this would impose on the developers would not be too onerous given the profits to be generated by development.

I don't agree with that conclusion and find it contradictory to their stated position in support of a 10% property tax surcharge. If a 10% surcharge on White Flint commercial properties for 30 years is the right level of taxation as the County Executive proposed, then it is disingenuous to then say that the developers have the sole responsibility to fill the projected $100 million plus gap. We have heard repeatedly that the sum total of the county's exactions on development is a major factor in determining whether the County will maximize the unparalleled economic development opportunity presented by White Flint. If the County Executive's Team believes that this argument from the business community is without foundation, it should make that case and present the analysis that supports it.

Why Should There be Certainty that the Gap Will Be Filled?: The County Executive's Team submits that there is always uncertainty regarding whether infrastructure projects as envisioned by master plans will be built in a particular timeframe, and that White Flint is no different.

The contrary argument is that what makes certainty more relevant here is that property owners are agreeing to pay for 30 years as long as they have the right to develop when it is their turn, perhaps in year 20, and that the infrastructure improvements that are critical to their development are funded. In that context, certainty becomes almost a quid pro quo for the additional level of exaction. A TIF, by definition, provides more certainty than using the traditional CIP process at some point in the future.

Precedent: The County Executive's Team argues that even if a TIF were appropriate for White Flint, the Council would find the mechanism "addictive" and would apply it in numerous instances, depriving the general fund of too much revenue.

The opposing view is that a TIF makes sense in White Flint because of the combination of (1) a development district funded by a 10% commercial surcharge; and (2) the extraordinary return on investment the County will earn (projected by one hearing participant as 35-1). If there are other parts of the county that require a development district and where our investment would yield similar returns, then it may be appropriate to consider TIFs then. However, it is also possible that the conditions that make a TIF appropriate here will not be replicated in the future. Any future financing plan would need to be evaluated in context in order to determine the most appropriate financing tools.

While I do not share the Administration's objections to a TIF, I do believe that a TIF should be limited to a specified amount, and that it should only be triggered if (a) development is proceeding at a pace where the infrastructure to be funded is absolutely needed and (b) the county as a whole is also benefiting from the enhanced property values created in White Flint. The amendment as drafted seeks to address those concerns.

I do appreciate that using a TIF is but one way to "close the gap." However, I have concluded that a TIF has substantial merit and therefore warrants our most serious consideration. If there are other mechanisms that provide an acceptable degree of certainty and county responsibility, I, like you, will be open to exploring them.

Thank you for your consideration of a TIF and your commitment to making White Flint a reality, not just a promise.

AMENDMENT 1

To Bill 50-10

By Councilmember Berliner

PURPOSE: authorize a special taxing district created under Chapter 68C to also function as a tax increment financing district.

On p. 10, insert after line 227:

68C-8. Tax Increment Financing District.

(a) If so designated by a separate Council resolution under this Section, a district created under this Chapter may also function as a development district as that term is used in the State Tax Increment Financing Act (Maryland Code, Economic Development Article, Sections 12-201 through 12-213).

(b) In a resolution adopted under this Section or an amendment to that resolution, the Council:

(1) must take all actions required by the State Tax Increment Financing Act to create and implement a tax increment financing development district and to issue bonds as authorized by the Act;

(2) must set a maximum amount of taxes on the tax increment that must be paid into the special fund, subject to amendment if the Executive and the Council find that the cost of the infrastructure improvements to be funded by the special fund exceeds the maximum amount; and

(3) must designate the following percentage of the taxes on the tax increment that must be paid into a special fund established under Maryland Code, Economic Development Article, Section 12-208:

(A) 50% up to $50 million; and

(B) 33% up to the maximum amount;

(4) if a special fund is created as provided in the preceding paragraph, must specify the purposes for which the fund may be used from among the purposes listed in Maryland Code, Economic Development Article, Section 12-209;

(5) must not permit the payment of the designated percentage of the taxes on the tax increment into the special fund until the Montgomery County Planning Board finds that the infrastructure improvements to be funded by the special fund are needed based upon development in the district that:

(A) has been completed;

(B) is under construction; and

(C) is expected to begin in the immediate future.

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