

Audit Report

Office of Inspector General

Review of Selected Capital Improvements Program (CIP) Projects
With Development District Funding

August 2007



Office of Inspector General
Montgomery County, Maryland

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September 4, 2007

Hon. Marilyn Praisner, President, County Council
Hon. Isiah Leggett, County Executive

President Praisner and Executive Leggett:

We conducted an audit of selected Capital Improvements Program (CIP) projects identified as receiving funding from the Clarksburg Town Center Development District (CTCDD) created in March 2003 with the Council's passage of Resolution 15-87. The Resolution provided \$17 million for infrastructure improvements. The projects we examined - Stringtown Road Extended (#500403) and Clarksburg Town Center Development District: Roads (#500423) - account for approximately \$1.6 million and \$9.5 million, respectively.

The objective of our audit was to evaluate the reliability of cost data, financial statements, and related support documentation presented to the Executive and Council. We also assessed whether County policies and procedures provide adequate control for budget, finance, public works, and other County decisions related to the projects. Our audit did not study specific legal issues raised earlier this year by residents that the County Attorney, Council staff, and others have been asked to address.

For the Stringtown Road Extended project, there are no reportable findings. For the CTCDD: Roads project, we found that improvements are needed in the administration of management processes used to implement the development district and coordinate infrastructure road construction projects. We found that the County may not be complying with the development district law (Chapter 14) regarding competitive procurement requirements. Also, action needs to be taken to document business processes that have been and will be used to justify the planned disbursement of CTCDD funds. We also found that information in the current CTCDD: Roads project does not accurately account for certain funds authorized in the 2003 Resolution. Until these conditions are addressed, the County's approach to implementing the CTCDD and possibly future development districts will not be systematic, and accountability for management actions and transparency of operations may be adversely affected.

We wish to acknowledge the cooperation extended to us by the Chief Administrative Officer, department directors, and staff.

Respectfully submitted,

Thomas J. Dagley
Inspector General

**Office of Inspector General
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August 2007**

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Background Information

The primary goals of the Office of Inspector General (OIG) include: reviewing the effectiveness and efficiency of County government; preventing and detecting fraud, waste, and abuse; and ensuring legal, fiscal, and ethical accountability by those responsible for managing resources and programs approved by the County Council. In this regard, our review of selected Capital Improvements Program (CIP) projects with authorized development district funding is based on modified action plans described in the OIG's Four-Year Work Plan published in August 2005 regarding the assessment of management practices and costs for County projects. Our review is also based on fraud, waste, and abuse complaints we received regarding the handling of development district funding in CIP projects.

Based on information developed during the planning phase of this audit, we identified two objectives: 1) evaluate the reliability of cost data, financial statements, supporting documentation, and related information provided to the County Executive and Council in support of selected projects in the approved FY07-12 CIP; and 2) determine if County policies and procedures provide adequate internal controls related to the selected projects.

In a March 27, 2007 memorandum to the Chief Administrative Officer (with a copy to all Council Members), we advised that two CIP projects selected for review were: Clarksburg Town Center Development District: Roads - #500423 (Appendix B) and Stringtown Road Extended - #500403 (Appendix C).

Our field work included a review of all documents provided to us by Executive and Council staff, and interviews with officials from the: Offices of Management and Budget (OMB) and Procurement; the Departments of Finance, Public Works and Transportation (DPWT), and Permitting Services (DPS); Council staff; and Planning Board.

Capital Improvements Program

In 1996, a two-year capital budget programming cycle was approved by Montgomery County. The biennial process for the six-year CIP mandates that for even numbered fiscal years, the Executive and Council consider only amendments to the approved CIP. In odd numbered fiscal years, the process mandates that the entire program be reviewed and approved. Accordingly, the FY 07-12 CIP was comprehensively reviewed and approved in May 2006, and published in July 2006. The two projects we reviewed were not amended for the FY 2008 capital budget.

Development Districts

In 1994, the Council enacted legislation (Bill No. 44/46-92) to authorize the creation of development districts and the issuance of County bonds to finance the construction of certain infrastructure improvements in development districts. Generally, the purpose of a development district is to create a method to finance infrastructure improvements necessary for the development of land in areas of the County identified for new

development. The bill authorized taxes and assessments on the property within the district to pay for the bonds which finance the construction of the improvements. The bill also established the procedures for creating the district and issuing the bonds. This bill is codified in Chapter 14 of the Montgomery County Code.

The Council adopted Resolution 15-87 on March 4, 2003, which resulted in the creation of the Clarksburg Town Center Development District (CTCDD). The Resolution provided for \$17 million of infrastructure improvements, including numerous road projects, to be financed by this development district.

Table 1 on the following page details the CTCDD infrastructure improvements totaling \$17 million in development district funding authorized by the passage of Resolution 15-87, and how those projects are reflected in the FY2007-12 CIP. The improvements appear as Exhibit C in the Resolution. The Table also identifies two relevant infrastructure road improvements projects not included in the \$17 million – these projects appear on Exhibit D in the Resolution.

Table 1

**Clarksburg Town Center Development District (CTCDD)
District Funded Improvements**

Project/CIP No.	Estimated CTCDD Funding	
	Per Council Resolution 15-87 (Exhibit C)	Reflected in CIP (as of FY07)
Clarksburg Town Center Development District: Roads (No. 500423)		
Stringtown Road 800' gap	\$ 550,000	
Stringtown Road (MD355-Piedmont Rd)	4,435,000	
Piedmont Road	2,270,000	
Lowering MD355 at Stringtown Road	905,000	
Clarksburg Road	1,340,000	
Project Total	\$9,500,000	\$9,521,000
Stringtown Road Extended (No. 500403)*		
Stringtown Road Ext. (MD355-I-270)	\$1,600,000	\$1,600,000
Project Total	\$1,600,000	\$1,600,000
Clarksburg Library (No. 710500)**		
Civic Center/Library	\$4,640,000	\$4,640,000
Project Total	\$4,640,000	\$4,640,000
WSSC Water Main (No. 964860)		
WSSC 20" Water Main	\$ 779,000	\$ 174,000
Project Total	\$779,000	\$174,000
Greenway Trails (No CIP No.)		
Greenways Trails	\$ 460,000	
Project Total	\$460,000	0
<hr/> Grand Total*** <hr/>		
	\$16,979,000	\$15,935,000

* CTCDD to provide \$1,600,000 of the estimated cost of \$8,810,000 in the CIP expenditure schedule.
 ** CTCDD to provide \$4,640,000 of the estimated cost of \$13,852,000 in the CIP expenditure schedule.
 *** Exhibit C of Resolution 15-87 shows a rounded total of \$17,000,000.

Although not in the Grand Total above, according to Resolution 15-87, the following road projects (totaling \$3,000,000) which appear in Exhibit D are available for CTCDD funding to the extent any cost savings are realized in the construction of any infrastructure improvement listed in Exhibit C.

Road Project	Estimated Cost
Clarksburg Sq/Overlook Pk Roads	\$2,900,000
MD355-MD121 Intersection	\$ 100,000

Findings and Recommendations

Finding 1

The absence over the past four years of a designated administrator and written procedures resulted in weaknesses in the coordination of key management processes used to implement the Clarksburg Town Center Development District: Roads (CTCDD: Roads) CIP project.

Analysis

County Code Chapter 14-16, Administration of District: Termination, states in part “The Executive must administer each district, prepare bond issues, collect taxes and revenues, and oversee construction of infrastructure improvements.”

Through the adoption of Resolution 15-87 on March 4, 2003, the Council created the Clarksburg Town Center Development District (CTCDD) and identified approximately \$17 million in infrastructure improvements funding. However, our review of two Capital Improvements Program (CIP) projects created by Executive staff to address individual road improvement projects funded by the CTCDD found that procedures used over the past four years did not ensure the availability and reliability of cost data and other key records used by the Executive and Council in their decision-making.

Our analysis found the administration of CTCDD road construction projects included in the County’s CIP beginning in fiscal year 2004 was fragmented, resulting in a lack of coordination of various actions carried out by Office of Management and Budget (OMB), Department of Finance (Finance), Department of Public Works and Transportations (DPWT), and other officials. We found that certain official files needed to independently evaluate cost estimates produced by the developer for individual road projects and reviewed by Executive staff beginning in 2002 were not available.

During the audit, we learned that responsibility for administering critical activities of the CTCDD implementation, including four road improvement projects totaling \$9,521,000 in the CTCDD: Roads CIP project, was not assigned to a specific Executive Branch official. As a result, some County records necessary to evaluate development district funding for individual road projects in the CIP either did not exist or were incomplete when located by OMB, Finance, or DPWT staff. In addition, we were advised that written procedures had not been developed to coordinate the budget, finance, public works, legal, and other key processes associated with the implementation of development districts. There were several instances where the absence of a designated administrator and written procedures prevented us from evaluating development district decisions related to road project funding identified in the CIP, the Executive’s Fiscal Report dated October 17, 2002, and the Council Resolution 15-87. For example:

- DPWT prepared a memorandum, dated June 4, 2002, that includes DPWT’s “Guidelines for Determination of Inclusion into Development District.” These guidelines were used by DPWT to recommend whether individual CTCDD road

projects submitted by the developer should receive development district funding. The guidelines were included in the Fiscal Report under the heading “DPWT Recommended Guidelines for Funding of Roads in Development Districts.” However, during the audit, DPWT officials were not able to explain the criteria used or how the guidelines were developed.

After our field work was complete, a Department of Finance official advised us that the guidelines are themselves criteria used by management to make development district funding recommendations and that they should be evaluated on their own merit without an explanation as to how they were developed. Nevertheless, our assessment of how the guidelines were developed was deemed an important part of the audit, considering that DPWT could not provide insight into the basis for their guidelines. Given a span of more than four years of ongoing CTCDD road construction by the developer, it was not clear that sound business practices were being applied to oversee the use of development district funds.

- A July 19, 2002 memorandum from the Chief, DPWT Division of Engineering Services, to OMB compares developer cost estimates to DPWT cost estimates for individual road construction projects, and the Fiscal Report states “Reviews by DPWT... confirmed that the developer’s updated estimates were generally within acceptable ranges.” However, DPWT was unable to provide us with official files of detailed analyses performed to support DPWT estimates or its approval of revised developer estimates that were ultimately included in Resolution 15-87.

We also noted that the CTCDD: Roads CIP project is classified under the Transportation category as a DPWT project in the County’s fiscal year 2007 CIP budget book. However, when asked about the lack of official DPWT files to support this transportation project, we were advised the department did not consider its review of developer cost estimates or the preparation of its own estimates a formal project. Therefore, unlike DPWT-funded transportation projects that typically rely on Office of Procurement regulations to competitively bid road construction projects, DPWT’s work on cost estimates for individual road projects in the CTCDD: Roads CIP did not rely on established County policies or procedures. DPWT management advised us that after four years, they were not surprised complete files could not be located to support the cost estimates DPWT provided to OMB.

We were unable to identify and effectively evaluate DPWT’s decision-making process for CTCDD road construction projects, including methods used to finalize the cost estimates for individual road projects included in Resolution 15-87 and relied upon to create the CTCDD: Roads CIP project.

Recommendation

We recommend the Chief Administrative Officer (CAO) take appropriate action to ensure a comprehensive approach is developed to implement the Clarksburg Town Center Development District and all other development districts created by the Council. We recommend that an administrator be formally designated for each development district, including the CTCDD. This individual should be responsible for preparing a detailed business process that ensures all key budget, finance, public works, procurement, and legal requirements are addressed. We also recommend that the CAO ensure sufficient policies and procedures are in place to ensure the availability and reliability of all official records prepared by Executive staff throughout the implementation of each development district.

Chief Administrative Officer Response to Finding #1

I concur that there needs to be a comprehensive approach to implementing development districts, and will consider the designation of a development district administrator. However, I do not agree that there have been weaknesses in the coordination of the key management processes used to implement the CTCDD: Roads CIP project, because I disagree with the Inspector General's interpretation of the processes that are appropriate for the implementation of that unique project. Nevertheless, I agree that processes and procedures, which are already in place, should be clearly documented to ensure the availability and reliability of an official record for each development district.

The experience with development districts thus far has been one of fits and starts, characterized by periods of intense activity and the need for staff resources, followed by slow periods with little meaningful activity. As an example, the financing team (including County staff and outside consultants) was prepared to move forward on the Clarksburg Town Center financing in the fall of 2003, but its work was put on hold while the developers sought additional approvals from the Planning Board, and various development issues were addressed.

To date, the Executive Branch has approached this challenge with contractual resources to support existing County staff positions. This approach was deemed to be most efficient as costs have been incurred only when activity has taken place. Dedicated contractual resources are currently reimbursed out of bond proceeds. If another approach is determined which requires dedicated County staff, a significant up front, annual deposit or fee from the developers should be charged to offset the costs and ensure that those additional costs are not incurred by general taxpayers.

The report suggests that there should have been a more coordinated effort to administer the road construction projects included in the CTCDD: Roads project. I disagree, because this development district project is fundamentally different from the normal CIP process. In the formulation of the Clarksburg Town Center Development District recommendations, there was extensive coordination among County departments and agencies as to which projects should be included. Prior to and since 2003, when the

County Council approved the creation of the District and the CTCDD: Roads CIP project, responsibility for implementing the road projects has rested with the developer, with any funding arrangements still to be determined in an Implementation Agreement.

The CTCDD: Roads projects are not being built by the County but rather are being built by the developers under the same processes used for other developer-built roads throughout the County. The actual construction of the CTCDD roads has not been and is not currently under the purview of Finance, OMB, or DPWT, but rather is under the procedures controlled by the Department of Permitting Services and the State Highway Administration, and all appropriate processes are being followed.

Finding 2

The County may not be complying with Section 14-16 of the County's development district law regarding competitive bidding for road projects, including two substantially completed by the developer. Also, action should be taken to document the business processes that have been and will be used to justify disbursement of development district funds for infrastructure road improvement projects in the CTCDD: Roads CIP project.

Analysis

Infrastructure road improvements included in the County's Capital Improvements Program (CIP) project for the Clarksburg Town Center Development District (CTCDD) have been underway for more than four years and have not been subject to a competitive bid process, or some other comprehensive business process, to ensure the County and residents receive a competitive price. In this regard, Executive staff have not taken action to adhere to requirements in Section 14-16 of the County's development district law, or to document an alternative business process to justify the disbursement of development district funds reported in the County's most recent CIP.

The County's development district law (Chapter 14) includes provisions regarding the administration of development districts approved by the Council. Section 14-16, Administration of District: Termination, states, in part:

- (a) *The Executive must administer each district, prepare bond issues, collect taxes and revenues, and oversee construction of infrastructure improvements.*
- (b) *Construction of each infrastructure improvement listed in the resolution creating a district must begin promptly when bond proceeds or other funds are available. Unless otherwise authorized by law, bidding and construction of infrastructure improvements must follow the County's usual process for constructing capital improvements.*
- (c) *The County may contract with another public agency or (subject to competitive procurement laws) a private party, including the Revenue Authority or owners of property in a development district, to construct any infrastructure improvement when significant cost or time savings are likely to result.*

Recognizing that infrastructure road improvements for CTCDD were initiated by the developer in conjunction with Resolution 15-87, and substantially completed for two of the roads between 2003 and 2007 (prior to the issuance of bonds), we examined whether or how the County sought to comply with Section 14-16 regarding competitive bidding. Our review found that the County's Office of Procurement was not involved in any of the four road projects totaling \$9,521,000 in the CTCDD: Roads CIP project and that paragraphs (b) and (c) of Section 14-16 were not applied to this CIP project by Executive staff. We noted that although the County relied on Invitations for Bid and a competitive

bid process to implement the Stringtown Road Extended CIP project (another project we examined with \$1.6 million of the \$17 million in development district funds authorized in Resolution 15-87), a comparable process was not used for the CTCDD: Roads project. Instead, according to the Description section in the CTCDD: Roads Project Description Form (PDF), “This project provides for acquisition of completed road improvements in the Clarksburg Town Center Development District that will be constructed by the developer and subsequently acquired by the County.”

In the absence of a competitive bid process for the CTCDD: Roads project, we examined whether the County’s administration of the CTCDD from 2003 through 2007 relied on a documented business process to ensure legal and fiscal accountability. In this regard, we found no evidence that written procedures were in place or that Executive staff had identified or documented a business process to oversee the use of development district funds for the road projects. We were also unable to obtain documentation regarding Executive staff decisions or business processes specific to County plans to acquire CTCDD-funded roads.

After our field work was completed, we were advised by Executive staff that, Section 14-16 provides an alternative process to disburse development district funds; however, competitive bidding was not the option chosen for the CTCDD road projects. In lieu of competitive bidding, we were advised that County plans to acquire completed CTCDD road projects as reported in the CIP do not fall under the limits for Purchasing and Competitive Procurement in Sections 313 and 314 of the County Charter, nor the definition of goods, services, or construction in Chapter 11B of the County’s procurement laws. We were advised that a County acquisition of completed (road) infrastructure is similar to the acquisition of buildings accomplished through the County’s CIP projects and, in such projects, detailed cost estimates are not generally required to support an acquisition.

We noted that in October 2005, more than two years after passage of Resolution 15-87, the law firm for the CTCDD developer submitted a request to Council staff to amend Chapter 14 so provisions of Chapter 11B relating to the County’s procurement laws would not apply to the financing, acquisition, or construction of infrastructure improvements, or the hiring of consultants or other professionals to provide services to the County in connection with the issuance of development district bonds. When discussed with Executive staff, we were advised various proposed changes to Chapter 14 have been discussed over the past ten years and that this October 2005 request, which was presented to the MFP Committee by Council staff, is an example of such a discussion.

By not applying provisions of Section 14-16 in the development district law designed to maximize the benefits of competitive procurement practices, and without a documented alternative business process specifying the County’s approach to disburse approximately \$9.5 million for CTCDD road improvements, the County’s implementation of the CTCDD to date raises questions as to whether a competitive price for all development

district road construction projects will result. In addition, the County’s implementation to date may not be in compliance with provisions of the development district law.

Recommendation

We recommend that the Chief Administrative Officer (CAO) take the necessary action to clarify and document specific business processes that have been and will be used to justify disbursement of development district funds authorized for CTCDD infrastructure road improvements. We also recommend that the CAO obtain a formal opinion from the County Attorney as to whether the County’s approach to date to construct the CTCDD infrastructure road improvements complies with Chapter 14 and related County laws.

Chief Administrative Officer Response to Finding #2

Executive staff complied in every aspect with the business process set forth in the CTCDD: Roads CIP project, and as noted in that text, “an Implementation Agreement between the County and the developer will set forth the conditions for disbursements of funds after inspection and acceptance by the County of substantially completed improvements.” To date, no funds have been disbursed to the developers, and the Implementation Agreement has not been developed.

I disagree with the Inspector General’s representation of Section 14-16 of the County Code as requiring competitive bidding of development district improvements. The key language in subsection (b) is preceded with the phrase “unless otherwise authorized by law”, and subsection (c) is constructed as an option using the key word “may”. To present these sections as requirements that must be complied with is misleading. The alternative process being used is clearly set forth on the County Council approved project description form.

The audit analysis also suggests that a competitive price for all development district roads projects should result from a documented process. I do not agree. The process currently used to determine the amounts to be allocated for various development district infrastructure built by the developers adequately implements the intent of the development district law, and there is no incentive for developers to “overcharge” for infrastructure. Rather, the total amount to be funded is the key recommendation made by the County Executive. The final determination is made by the County Council, and is adequately documented by the Council actions required as part of the process set forth in Chapter 14. The Council further affirms this approach by endorsing the “B list approach” – the designation of additional projects to which funding should be applied should cost savings result. Given this clear indication of an overall funding amount as the key fiscal aspect of development district financing, the review of cost estimates required by the development district law is both appropriate and sufficient.

While this approach is clearly documented in the CIP project description and the County Council’s resolutions, I agree that it would be useful to clarify these processes for those unfamiliar with this complex set of transactions. As Executive staff noted many times

during the audit process, the development district financing process does not fit usual norms for public financing or capital construction activity, resulting in understandable misinterpretation and confusion among those not familiar with this unique type of financing. The County Attorney's Office is currently reviewing the issues raised in the audit. However, please note that the process being followed is clearly laid out in the CTCDD: Roads project description form, and will be further documented in an Implementation Agreement that does not yet exist.

Finding 3

As of July 2007, key cost data, expenditure/funding schedules, and descriptions included in the CTCDD: Roads CIP PDF did not accurately account for certain development district funds authorized in 2003.

Analysis

As of July 2007, incident to the approval of the fiscal year 2008 capital budget, the CTCDD: Roads CIP PDF did not accurately account for certain development district road improvement funding approved in the Council's Resolution 15-87 in March 2003. The Resolution provides funding for infrastructure improvements totaling \$17 million (rounded) consisting of six road improvements and three non-road improvements described on Exhibit C in the Resolution. One of the road improvements is included in the Stringtown Road Extended CIP project (No. 500403); the other five are included in the CTCDD: Roads CIP project (No. 500423).

The Resolution states that to the extent any cost savings are realized in the construction of any infrastructure improvement listed on Exhibit C, those cost savings may be applied to construction of additional infrastructure improvement listed in Exhibit D (consisting of two road projects totaling \$3 million that were not part of Exhibit C).

When the CTCDD: Roads CIP project totaling \$9,521,000¹ was created in January 2004, the project description stated that any funds remaining from the total available development district funds would be applied to improvements, including Overlook Park Road and Clarksburg Square Road, as well as an MD355/MD121 intersection project included on Exhibit D. While this CIP statement is consistent with Resolution 15-87, another statement in the PDF published in 2004 and again in 2006 conflicts with the Resolution, raising questions about the total amount of potential development district funding authorized by the Council for disbursement to the developer for infrastructure road improvements.

The following statements were included in the project description section of the CTCDD: Roads PDF – “An Implementation Agreement between the County and the developer will set forth the conditions for disbursement of funds after inspection and acceptance by the County of substantially completed improvements. Amounts shown are the maximum that will be disbursed from development district funds for the improvements described.” As a result, there is a conflict between the PDF and Resolution 15-87 which provides that, to the extent any cost savings are realized in the construction of any of the estimated \$17 million in infrastructure improvements listed in Exhibit C of the Resolution, those cost savings may be applied to the construction of additional infrastructure items. Based on the provisions of Resolution 15-87, instead of the road projects identified in the PDF being limited to \$9,521,000, it appears these projects could result in up to \$12,521,000 in

¹ Exhibit C of Resolution 15-87 shows a total of \$9,500,000 for these projects; however, the CTCDD: Roads project in the capital budget book shows \$9,521,000. We were informed by the Department of Finance that since the improvements included in Exhibit C totaled \$21,000 less than the \$17 million rounded total approved by the Council, the \$21,000 difference was added to the PDF for CTCDD: Roads.

CTCDD funds being disbursed for the road projects described. This could occur if \$3 million in cost savings were realized on CTCDD infrastructure improvements other than the four road projects in the CTCDD: Roads PDF. Table 1 in this report shows the distribution of the \$17 million of CTCDD funding identified in Resolution 15-87 and the resulting projects that appear in the FY07-12 CIP.

When we discussed concerns with Executive staff regarding the conflict between language in the Resolution and the CTCDD: Roads CIP project regarding maximum amounts that could be disbursed from development district funds for road improvements, we were advised our concerns were unfounded because the PDF authorizes the expenditure of \$9.5 million for projects described in the PDF, whether it be for the first four projects (those in Exhibit C) or for the two road projects included on Exhibit D. We were advised the calculation of any cost savings would be limited to the \$9.5 million authorized for the CTCDD: Roads project (rather than the \$17 million for all projects identified in Exhibit C).

Recommendation

We recommend that the Chief Administrative Officer (CAO) take the action necessary to ensure all key cost data, expenditure/funding schedules, and project descriptions included in the Capital Improvements Program (CIP) budget for the CTCDD: Roads project accurately reflect the development district funds authorized for infrastructure road improvement projects. We also recommend that, to the extent necessary, the CAO formally request clarification from the Council regarding the maximum amount of development district funds to be disbursed for all infrastructure road improvement projects included in Resolution 15-87, including those in Exhibits C and D.

Chief Administrative Officer Response to Finding #3

I believe that the Council's actions to authorize expenditures through appropriation to various CIP projects, combined with the description of the scope of those expenditures in the project text, provide an adequately clear indication of how much money should be spent for specific improvements. Further clarification is not necessary.

While the audit findings cite a concern that savings from other projects listed in Resolution 15-87 could be applied to additional expenditures on the CTCDD: Roads project, I believe that the concern expressed is unfounded, as additional Council action would be required. Project expenditure authority resides in Council appropriation actions, and the limit on and purpose for expenditures on the CTCDD: Roads CIP project is clear. In addition, clarification regarding the application of any savings can be appropriately provided in the Implementation Agreement, consistent with the text of the PDF which states that the Implementation Agreement "will set forth the conditions for disbursement of funds."

Audit Scope, Objectives, and Methodology

We conducted an audit of selected projects appearing in the Council's approved fiscal year 2007 Capital Improvements Program (CIP) budget book. We conducted the audit under the authority of Montgomery County Code Section 2-151. The audit was performed in accordance with generally accepted government auditing standards published by the Comptroller General of the United States, and relied upon by Association of Inspectors General.

The objectives of our audit were to: 1) evaluate the reliability of cost data, financial statements, supporting documentation, and related information provided to the County Executive and Council in support of selected projects in the approved FY07-12 CIP; and 2) determine if County policies and procedures provide adequate internal controls related to the selected projects.

The CIP projects reviewed were selected, in large part, because they included development district funds authorized in 2003 by Council Resolution 15-87. We reviewed the projects on a non-statistical basis and our approach was not designed to evaluate policies, procedures, or reliability issues for other projects in the FY07-12 CIP.

To accomplish our objectives, we met with the Chief Administrative Officer, representatives of the: Offices of Management and Budget (OMB) and Procurement; the Departments of Finance, Public Works and Transportation (DPWT), and Permitting Services (DPS); Council staff; and Planning Board. Our methodology included reviewing applicable County laws, policies, and procedures related to the CIP and development districts, and examining all documents provided to us by these County units, including staff analyses and correspondence, cost estimates, and recommended and approved CIP projects.

Our audit addressed the reliability of information, and compliance with applicable laws and regulations; however, future assessment may be necessary regarding the adequacy of management controls to prevent and detect fraud or abuse.

At the conclusion of our field work, preliminary conclusions were discussed with the Directors of OMB and Finance, the County Attorney, Council staff, and others. Following these discussions, our preliminary results were presented in writing to the Chief Administrative Officer and an audit exit conference was held on the August 7, 2007 prior to issuing a draft audit report requesting management's response. The Chief Administrative Officer's response appears after each finding and recommendation, and in Appendix A.

All data used for background information and to develop Table 1 were deemed reasonable but not independently verified. We conducted our field work from March to July 2007.



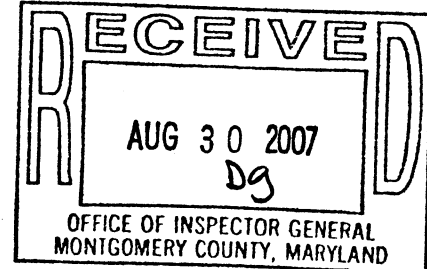
OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

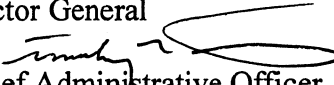
Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

August 30, 2007



TO: Thomas J. Dagley, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer 

SUBJECT: Formal Response – Audit of Selected CIP Projects with Proposed Development District Funding

The purpose of this memorandum is to provide a formal response to the subject draft audit report. As suggested, my responses are formatted for placement after each finding and recommendation and have been provided to your office electronically.

RESPONSE TO FINDING #1

I concur that there needs to be a comprehensive approach to implementing development districts, and will consider the designation of a development district administrator. However, I do not agree that there have been weaknesses in the coordination of the key management processes used to implement the CTCDD: Roads CIP project, because I disagree with the Inspector General's interpretation of the processes that are appropriate for the implementation of that unique project. Nevertheless, I agree that processes and procedures, which are already in place, should be clearly documented to ensure the availability and reliability of an official record for each development district.

The experience with development districts thus far has been one of fits and starts, characterized by periods of intense activity and the need for staff resources, followed by slow periods with little meaningful activity. As an example, the financing team (including County staff and outside consultants) was prepared to move forward on the Clarksburg Town Center financing in the fall of 2003, but its work was put on hold while the developers sought additional approvals from the Planning Board, and various development issues were addressed.

To date, the Executive Branch has approached this challenge with contractual resources to support existing County staff positions. This approach was deemed to be most

efficient as costs have been incurred only when activity has taken place. Dedicated contractual resources are currently reimbursed out of bond proceeds. If another approach is determined which requires dedicated County staff, a significant up front, annual deposit or fee from the developers should be charged to offset the costs and ensure that those additional costs are not incurred by general taxpayers.

The report suggests that there should have been a more coordinated effort to administer the road construction projects included in the CTCDD: Roads project. I disagree, because this development district project is fundamentally different from the normal CIP process. In the formulation of the Clarksburg Town Center Development District recommendations, there was extensive coordination among County departments and agencies as to which projects should be included. Prior to and since 2003, when the County Council approved the creation of the District and the CTCDD: Roads CIP project, responsibility for implementing the road projects has rested with the developer, with any funding arrangements still to be determined in an Implementation Agreement.

The CTCDD: Roads projects are not being built by the County but rather are being built by the developers under the same processes used for other developer-built roads throughout the County. The actual construction of the CTCDD roads has not been and is not currently under the purview of Finance, OMB, or DPWT, but rather is under the procedures controlled by the Department of Permitting Services and the State Highway Administration, and all appropriate processes are being followed.

RESPONSE TO FINDING #2

Executive staff complied in every aspect with the business process set forth in the CTCDD: Roads CIP project, and as noted in that text, "an Implementation Agreement between the County and the developer will set forth the conditions for disbursements of funds after inspection and acceptance by the County of substantially completed improvements." To date, no funds have been disbursed to the developers, and the Implementation Agreement has not been developed.

I disagree with the Inspector General's representation of Section 14-16 of the County Code as requiring competitive bidding of development district improvements. The key language in subsection (b) is preceded with the phrase "unless otherwise authorized by law", and subsection (c) is constructed as an option using the key word "may". To present these sections as requirements that must be complied with is misleading. The alternative process being used is clearly set forth on the County Council approved project description form.

The audit analysis also suggests that a competitive price for all development district roads projects should result from a documented process. I do not agree. The process currently used to determine the amounts to be allocated for various development district infrastructure built by the developers adequately implements the intent of the development district law, and there is no incentive for developers to “overcharge” for infrastructure. Rather, the total amount to be funded is the key recommendation made by the County Executive. The final determination is made by the County Council, and is adequately documented by the Council actions required as part of the process set forth in Chapter 14. The Council further affirms this approach by endorsing the “B list approach” – the designation of additional projects to which funding should be applied should cost savings result. Given this clear indication of an overall funding amount as the key fiscal aspect of development district financing, the review of cost estimates required by the development district law is both appropriate and sufficient.

While this approach is clearly documented in the CIP project description and the County Council’s resolutions, I agree that it would be useful to clarify these processes for those unfamiliar with this complex set of transactions. As Executive staff noted many times during the audit process, the development district financing process does not fit usual norms for public financing or capital construction activity, resulting in understandable misinterpretation and confusion among those not familiar with this unique type of financing. The County Attorney’s Office is currently reviewing the issues raised in the audit. However, please note that the process being followed is clearly laid out in the CTCDD: Roads project description form, and will be further documented in an Implementation Agreement that does not yet exist.

FINDING #3

I believe that the Council’s actions to authorize expenditures through appropriation to various CIP projects, combined with the description of the scope of those expenditures in the project text, provide an adequately clear indication of how much money should be spent for specific improvements. Further clarification is not necessary.

While the audit findings cite a concern that savings from other projects listed in Resolution 15-87 could be applied to additional expenditures on the CTCDD: Roads project, I believe that the concern expressed is unfounded, as additional Council action would be required. Project expenditure authority resides in Council appropriation actions, and the limit on and purpose for expenditures on the CTCDD: Roads CIP project is clear. In addition, clarification regarding the application of any savings can be appropriately provided in the Implementation Agreement, consistent with the text of the PDF which states that the Implementation Agreement “will set forth the conditions for disbursement of funds.”

Thomas J. Dagley
August 30, 2007
Page 4

Conclusion

In conclusion, I appreciate the opportunity to respond to the audit findings, and note that some of the recommendations for documentation of procedures are useful. I maintain however, that Executive Staff has fully complied with applicable law, and is following the processes laid out in the Council approved project description form. As always, please do not hesitate to contact me or Jennifer Barrett if you have any further questions about this matter.

TLF/ed

cc: Jennifer Barrett, Director of Finance
Joseph Beach, Director, Office of Management and Budget
Art Holmes, Director, DPWT
Leon Rodriguez, County Attorney

Clarksburg Town Center Development District: Roads -- No. 500423

Category	Transportation	Date Last Modified	January 6, 2006
Agency	Public Works & Transportation	Required Adequate Public Facility	YES
Planning Area	Clarksburg		
Relocation Impact	None.		

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY05	Est. FY06	Total 6 Years	FY07	FY08	FY09	FY10	FY11	FY12	Beyond 6 Years
Planning, Design and Supervision	2	2	0	0	0	0	0	0	0	0	0
Land	0	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	9,519	0	9,519	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other											
Total	9,521	2	9,519	0	0	0	0	0	0	0	0

FUNDING SCHEDULE (\$000)

Development District	9,521	2	9,519	0	0	0	0	0	0	0	0
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ANNUAL OPERATING BUDGET IMPACT (\$000)

DESCRIPTION

This project provides for acquisition of completed road improvements in the Clarksburg Town Center Development District that will be constructed by the developer and subsequently acquired by the County. Four road projects are to be acquired upon substantial completion by the developer: 1) Stringtown Road between Piedmont Road and MD 355 - two lanes will be constructed with dedicated right of way for an ultimate four-lane roadway. The ultimate four lanes will be provided in an 800-foot "gap" between adjacent developments on the south side of Stringtown Road, 2) MD 355 - vertical realignment of a 600-foot segment south of Stringtown Road to improve safety and visibility, 3) Piedmont Road will be constructed from Stringtown Road to Clarksburg Road as a two-lane road, 4) Clarksburg Road - the two-lane roadway will be widened to include turning lanes between MD 355 and Piedmont Road.

Any funds remaining from the total available development district funds would be applied to these improvements: 1) Town Center - new streets to provide circulation, and access to the planned retail center; Overlook Park Road, from Clarksburg Road to Stringtown Road, and Clarksburg Square Road from the current end of Redgrave Place to Overlook Park Road. 2) MD 355 at MD 121 in the Clarksburg Historic District - turn lanes will be added to improve intersection capacity. All improvements are in accordance with the Master Plan and will include streetlighting, street trees, sidewalks and/or paved bike paths.

Service Area

Clarksburg Policy Area.

JUSTIFICATION

Improvements are required as a condition of development approval.

Plans and Studies

Clarksburg Master Plan and Hyattstown Special Study Area 1994, and County Executive's Fiscal Report, Clarksburg Town Center Development District, October 17, 2002.

Cost Change

Not applicable.

STATUS

Piedmont Road has been completed. The other roads are at various stages ranging from design, final design, and construction.

OTHER

An Implementation Agreement between the County and the developer will set forth the conditions for disbursement of funds after inspection and acceptance by the County of substantially completed improvements. Amounts shown are the maximum that will be disbursed from development district funds for the improvements described.

FISCAL NOTE

The bonds to be issued for the district will be secured by, and the debt service on the bonds is to be paid from, the revenues of the special taxing district. The revenues of the special taxing district will primarily consist of an ad valorem tax on property within the district and a benefit assessment on undeveloped property.

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP																																																															
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Date First Appropriation</td> <td style="text-align: right;">FY04</td> <td style="text-align: right;">(\$000)</td> </tr> <tr> <td>Initial Cost Estimate</td> <td></td> <td style="text-align: right;">9,521</td> </tr> <tr> <td>First Cost Estimate</td> <td></td> <td></td> </tr> <tr> <td>Current Scope</td> <td style="text-align: right;">FY04</td> <td style="text-align: right;">9,521</td> </tr> <tr> <td>Last FY's Cost Estimate</td> <td></td> <td style="text-align: right;">9,521</td> </tr> <tr> <td>Present Cost Estimate</td> <td></td> <td style="text-align: right;">9,521</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Appropriation Request</td> <td style="text-align: right;">FY07</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Appropriation Request Est.</td> <td style="text-align: right;">FY08</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Supplemental</td> <td></td> <td></td> </tr> <tr> <td>Appropriation Request</td> <td style="text-align: right;">FY06</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Transfer</td> <td></td> <td style="text-align: right;">0</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Cumulative Appropriation</td> <td></td> <td style="text-align: right;">9,521</td> </tr> <tr> <td>Expenditures/</td> <td></td> <td></td> </tr> <tr> <td>Encumbrances</td> <td></td> <td style="text-align: right;">2</td> </tr> <tr> <td>Unencumbered Balance</td> <td></td> <td style="text-align: right;">9,519</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Partial Closeout Thru</td> <td style="text-align: right;">FY04</td> <td style="text-align: right;">0</td> </tr> <tr> <td>New Partial Closeout</td> <td style="text-align: right;">FY05</td> <td style="text-align: right;">0</td> </tr> <tr> <td>Total Partial Closeout</td> <td></td> <td style="text-align: right;">0</td> </tr> </table>	Date First Appropriation	FY04	(\$000)	Initial Cost Estimate		9,521	First Cost Estimate			Current Scope	FY04	9,521	Last FY's Cost Estimate		9,521	Present Cost Estimate		9,521				Appropriation Request	FY07	0	Appropriation Request Est.	FY08	0	Supplemental			Appropriation Request	FY06	0	Transfer		0				Cumulative Appropriation		9,521	Expenditures/			Encumbrances		2	Unencumbered Balance		9,519				Partial Closeout Thru	FY04	0	New Partial Closeout	FY05	0	Total Partial Closeout		0	<p>Department of Finance Department of Public Works and Transportation Department of Permitting Services Office of Management and Budget Maryland-National Capital Park and Planning Commission Council Approved Resolution 15-87 Maryland State Highway Administration Clarksburg Historic District Washington Suburban Sanitary Commission Stringtown Road Extension project Upcounty Regional Services Center Developers</p>	<p>See Map on Next Page (not included)</p>
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Stringtown Road Extended -- No. 500403

Category
Agency
Planning Area
Relocation Impact

Transportation
Public Works & Transportation
Clarksburg
None.

Date Last Modified
Required Adequate Public Facility

January 6, 2006
NO

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY05	Est. FY06	Total 6 Years	FY07	FY08	FY09	FY10	FY11	FY12	Beyond 6 Years
Planning, Design and Supervision	1,459	782	533	144	144	0	0	0	0	0	0
Land	487	28	459	0	0	0	0	0	0	0	0
Site Improvements and Utilities	1,296	2	322	972	972	0	0	0	0	0	0
Construction	5,568	0	3,685	1,883	1,883	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Total	8,810	812	4,999	2,999	2,999	0	0	0	0	0	0

FUNDING SCHEDULE (\$000)

Development District	1,600	0	750	850	850	0	0	0	0	0	0
G.O. Bonds	0	0	0	0	0	0	0	0	0	0	0
Contributions	970	0	700	270	270	0	0	0	0	0	0
Development Approval Payment	512	0	512	0	0	0	0	0	0	0	0
Impact Tax	5,614	708	3,027	1,879	1,879	0	0	0	0	0	0
Investment Income	104	104	0	0	0	0	0	0	0	0	0
Intergovernmental	10	0	10	0	0	0	0	0	0	0	0

ANNUAL OPERATING BUDGET IMPACT (\$000)

Maintenance				35	0	7	7	7	7	7	0
Energy				50	0	10	10	10	10	10	0
Net Impact				85	0	17	17	17	17	17	0

DESCRIPTION

This project provides for the final design, right-of-way acquisition and construction of a 2,400 foot extension of Stringtown Road westward from Frederick Road (MD 355) to I-270 ramps at existing MD 121. This road will be a four-lane divided closed section arterial highway with two lanes in each direction. It will include a five-foot sidewalk on the south side, an eight-foot bike path on the north side, street trees and streetlights within a 120-foot right of way. Appropriate auxiliary lanes and traffic signals will be provided at the intersections with MD 355 and with Gateway Center Drive.

Capacity

The projected Average Daily Traffic (ADT) for the year 2020 is 40,000 vehicles per day.

JUSTIFICATION

The Clarksburg Town Center and other master planned developments are under construction and/or in the approval process. This master planned arterial roadway is required to provide access to development in various stages, and will also serve to redirect traffic away from the Clarksburg Historic District.

Plans and Studies

The Clarksburg Master Plan and Hyattstown Special Study Area (June 1994) includes the extension of Stringtown Road from MD 355 to I-270 ramps as an arterial road that would connect MD 355 to the proposed Mid-County Arterial (A-305). Pedestrian safety was considered during design.

Cost Change

Transferred \$20k to Advanced Reforestation.

STATUS

Final design stage.

OTHER

An agreement has been reached with Gateway Commons, LLC. to construct a portion of the project, Gateway Center Drive to MD 355. The developer contribution is 35 percent of the costs.

FISCAL NOTE

The Town Center Development District participation would not exceed \$1,600k.

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP
Date First Appropriation FY01 (\$000)	Department of Permitting Services	
Initial Cost Estimate 8,830	Department of Environmental Protection	
First Cost Estimate	Washington Suburban Sanitary Commission	
Current Scope FY04 8,830	Washington Gas	
Last FY's Cost Estimate 8,830	Verizon	
Present Cost Estimate 8,810	Allegheny Power	
Appropriation Request FY07 0	Clarksburg Town Center Development District	
Appropriation Request Est. FY08 0	Maryland-National Park and Planning Commission	
Supplemental Appropriation Request FY06 0		
Transfer -20		
Cumulative Appropriation 8,830		
Expenditures/Encumbrances 4,454		
Unencumbered Balance 4,376		
Partial Closeout Thru FY04 0		
New Partial Closeout FY05 0		
Total Partial Closeout 0		

See Map on Next Page

(not included)

Audit Manager

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Staff

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