

Municipal Revenue Sharing Task Force

Final Report

Montgomery County, Maryland

June 2012

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CHAPTER 1. INTRODUCTION

1.1 Formation of the Municipal Revenue Sharing Task Force

At the request of the municipalities in the County, the Municipal Revenue Sharing Task Force (Task Force) was created by County Executive Isiah Leggett. On January 31, 2007, in a letter to Gaithersburg Mayor Sidney Katz, who was then serving as president of the Montgomery County Chapter of the Maryland Municipal League, Mr. Leggett requested that the Chapter appoint representatives to the Task Force (see **Appendix 1**). On February 27, 2007, the Montgomery County Chapter of the Maryland Municipal League, through a letter from Mayor Katz, replied by appointing six municipal representatives to the Task Force (see **Appendix 3**).

The Task Force was comprised of five municipal and five County representatives, plus a sixth municipal representative and a sixth County representative who served as Co-Chairs of the Task Force. Gaithersburg Assistant City Manager Fred Felton served as the municipal Co-Chair until December 2009. Gaithersburg Assistant City Manager Tony Tomasello replaced Mr. Felton as the Gaithersburg representative and Takoma Park City Manager Barbara Matthews replaced Mr. Felton as Co-Chair. Chevy Chase Village Manager Geoff Biddle was one of the six municipal representatives and served from the Task Force’s inception until he resigned his position in July 2009; Mr. Biddle was not replaced on the Task Force. Former County Assistant Chief Administrative Officer (CAAO) Paul Folkers initially served as the County Co-Chair. On his departure from the County government in September 2007 Finance Department Manager Mike Coveyou assumed this role. County CAO Kathleen Boucher joined the Task Force in January 2008. Betty Ferber and Gladys Balderamma initially represented the Office of the County Attorney (OCA) and the Office of Management and Budget (OMB), respectively. They were replaced on the Task Force by Scott Foncannon and Blaise DeFazio in the fall of 2007. Chuck Sherer represented County Council staff on the Task Force. Jacob Sesker represented County Council staff during the final stages of editing this report, after Mr. Sherer’s retirement in September 2011.

The membership of the Task Force at the time of the issuance of this report is shown below:

<i>Municipal Members</i>	<i>County Members</i>
<i>Gavin Cohen, Rockville</i>	<i>Patti Barney, M-NCPPC</i>
<i>Tony Tomasello, Gaithersburg</i>	<i>Kathleen Boucher, CAO</i>
<i>Julian Mansfield, Friendship Heights</i>	<i>Mike Coveyou (Co-Chair), Finance</i>
<i>Barbara Matthews (Co-Chair), Takoma Park</i>	<i>Blaise DeFazio, OMB</i>
<i>Wade Yost, Poolesville</i>	<i>Scott Foncannon, OCA</i>
	<i>Chuck Sherer, County Council</i>

The Task Force first met on May 1, 2007. While the Task Force was initially expected to have an independent facilitator on hand throughout the process, one was only on hand for the initial meeting of the Task Force.

The initial goal of the Task Force was to provide its report to the County Executive by December 31, 2007. The Task Force requested additional time in December 2007 and the County Executive extended the life of the Task Force to April 30, 2008. In April 2008, the Task Force again requested additional time to complete its work and the County Executive extended the Task Force until July 31, 2008. In all, the Task Force met 19 times between May of 2007 and the end of July 2008. Thereafter, the Task Force continued to work to prepare this final report. The Task Force met for the final time on September 7, 2011.

1.2 Municipal Issues

The issues raised by the municipalities, initially and during the Task Force's work, fell into the following categories: (1) tax duplication payments and methodologies; (2) operating grants/financial subsidies; (3) revenue sharing; and (4) procedural matters. The following is a list of specific topics of concern within each these four categories:

- Tax Duplication Issues
 - County Administrative and Overhead Costs
 - County Debt Service (Interest) Costs for Capital Projects
 - Road Maintenance Formula
 - Municipally-Owned Bridges
 - Police Services (Gaithersburg, Rockville, Chevy Chase Village)
 - Park Maintenance (Municipalities that Pay the Park Tax)
 - Elderly Services
 - Housing and Community Development Matters
 - Takoma Park Recreation Services
- Contract and Operating Grant (Financial Subsidy) Issues
 - Gaithersburg Senior Center
 - New Hampshire Avenue Recreation Center
 - Takoma Park Affordable Housing Services
- Revenue Sharing Issues
 - Hotel Tax
 - Energy Tax
 - Income Tax
- Procedural Matters
 - Timing of Information
 - Consistency and Accuracy of Data

1.3 County Issues

The issues raised by the County dealt mainly with tax duplication methodologies, but also included a request made by the Montgomery County Planning Board to discuss extending the Metropolitan District Tax (an ad valorem property tax which is also known as the Park Tax)

to those municipalities within the County that are not subject to that tax. The County issues included:

- Simplification of Formulas
- Annual Municipal Certification of Services
- Duplicated Property Taxes
- Road Maintenance Reimbursement
- Other County Financial/Service Support
- M-NCPPC – Metropolitan District Tax (Park Tax)

1.4 Summary

All of the issues identified above in *Sections 1.2 and 1.3* are addressed in this report. The report provides background on each matter and how it was addressed by the Task Force. For the issues on which the Task Force did not reach consensus, the positions of the municipalities and the County are provided, as well as an explanation of the differences between the two. *Chapter 2* provides an Executive Summary of the Task Force work. *Chapter 3* outlines the law, policy, and practice relating to the current tax duplication reimbursement program. *Chapter 4* addresses property tax duplication issues. *Chapter 5* addresses other issues relating to contracts, grants, and financial subsidies provided by the County to municipalities. *Chapter 6* discusses several issues relating to the sharing of revenues between the County and municipalities.

CHAPTER 2. EXECUTIVE SUMMARY

2.1 Introduction

The full Municipal Revenue Sharing Task Force (Task Force) met as a body 19 times between May 1, 2007 and July 31, 2008. Thereafter, the Task Force continued to work to prepare this final report. The Task Force met for the final time on September 7, 2011.

During the Task Force's deliberations, many issues were discussed. In keeping with the broad charge given to it by the County Executive, the Task Force did not limit its discussions to tax duplication issues, although those issues were its primary focus. Members also considered several matters relating to existing County contractual payments and operating grants/financial subsidies as well as services for which municipalities sought additional operating grants/financial subsidies. Revenue sharing issues and procedural matters, such as the timing of information, were also discussed by the Task Force. This report discusses all of the issues the Task Force studied during its work.

Given the magnitude and complexity of the issues to be considered, the Task Force elected in some instances to utilize subcommittees to accomplish its work. Three subcommittees—one on road maintenance and two on park maintenance—met numerous times. Additionally, subgroup meetings regarding police-related issues and Takoma Park recreation services were held.

The issues discussed by the Task Force and the final County and Municipal positions on these issues are summarized in Table 2.1 at the end of this Chapter.

2.2 Areas of Agreement

The Task Force reached substantial agreement on the following issues:

- A new payment methodology for reimbursing those municipalities that pay the Park Tax and provide park maintenance services (see *Section 4.5* of this report).
- More municipalities that pay the Park Tax are entitled to reimbursement for park maintenance, based on a comprehensive audit of municipal park systems (see *Section 4.5* of this report).
- Takoma Park's entitlement to a tax duplication payment for recreation services; however, the parties disagree on the method by which the payment should be calculated (see *Section 4.6* and *Section 5.2* of this report).
- The appropriateness of the current methodology used to calculate reimbursement for elderly services (see *Section 4.7* of this report).

- Institution of an annual certification process by which the municipalities would certify in writing that they provide the service(s) for which they receive payment(s) (see *Section 7.1* of this report).
- Reaffirmation of the current two-year data lag used in calculating tax duplication payments that has been part of the MOU between the County and municipalities since 1996 (see *Section 7.2* of this report).
- The use of only audited (actual cost) data in calculating tax duplication payments (see *Section 7.3* of this report).
- The creation of a process by which municipalities could request and receive supporting documentation so that they can audit the calculations prepared by the County (see *Section 7.3* of this report).

The Task Force discussed a number of revenue sharing issues relating to the following taxes but subsequently decided not to pursue those issues by mutual agreement: (1) the County hotel tax; and (2) the County and municipal income tax. In the case of the hotel tax, the municipal request to discuss revenue sharing was made moot by State legislation enacted in 2008, which authorized municipalities to impose their own hotel tax. Because the portion of the County income tax allocated to municipalities is mandated by State law, Task Force members agreed to take this issue off the table. See *Chapter 6* of this report for further discussion of revenue sharing issues.

2.3 Areas of Disagreement

While there were a number of areas where the Task Force was in agreement, there were also a number of issues where the County and municipal representatives were unable to reach consensus. The main areas of disagreement relate to the following six topics, which are discussed in more detail within the report.

Property tax duplication:

County:

The County representatives believe that the amount of property tax duplication payments should be clearly indicated in the budget documents relating to annual reimbursements to municipalities so that all Montgomery residents can understand the extent to which the annual reimbursements constitute payments for duplicative property taxes and payments above that amount. The County representatives believe that this distinction is important because the portion of any reimbursement payment above the amount that constitutes payment for duplicative property taxes is essentially a subsidy for municipal services that is being paid for by non-municipal County residents.

Municipalities:

The municipal representatives believe that such a depiction is inappropriate. By County Code, County reimbursement payments are based on the cost of service; as indicated in the August 2008 legal opinion issued by the County Attorney's Office, Chapter 30A makes no specific reference to property taxes. Additionally, how the County allocates unrestricted revenue sources for its budgeting purposes is a discretionary decision. Unrestricted revenues are fungible and can be applied to various County services at will. Consequently, there is no clear cut mechanism to determine which County services are funded by property taxes and which are not.

See *Section 3.3, Section 4, and Appendix 8* of this report for further discussion of this issue.

County Administrative Costs:

Municipalities:

The municipal representatives believe that the current calculations of tax duplication payments do not reflect sufficient overhead or administrative costs incurred by the County. The County Code sets forth an actual cost methodology, which would include all overhead and administrative costs associated with providing a County service.

County:

The County and the Planning Board believe that an appropriate amount of overhead/administrative costs are included in the calculations.

See *Section 4.2(1)* of this report for further discussion of this issue.

County Debt Service Costs:

Municipalities:

Many County road projects are financed with borrowed funds. The municipal representatives believe that the full cost of capital projects, including expenditures for the projects and interest costs associated with debt financing, should be taken into account in calculating tax duplication payments. The inclusion of interest costs on debt financing would be in keeping with the County's cost of service methodology for tax duplication payments.

County:

The County's position is to use either capital expenditures or debt service but not both.

See *Section 4.2(4)* of this report for further discussion of this issue.

Highway User Revenues:

County:

The County representatives believe that the County portion of the Highway User Revenue grant should be excluded from County cost calculations because it reduces the County's cost of providing the services.

Municipalities:

The municipalities note that State law has now been changed in regard to the way that HUR funds are disbursed. In 2010, the law separated county and municipal funds. If a municipality did not exist, a county would get only a small fraction more of the State's disbursement to counties overall. All other State municipalities would also get a small fraction more of the State's disbursement to municipalities overall. Additionally, by State law, HUR funds can be expended for a number of purposes, not just the activities for which the County provides a municipal tax duplication payment. How the County allocates its HUR for budgetary purposes is a discretionary matter to some degree. Therefore, the municipalities do not believe that it is appropriate for any HUR monies to be deducted in calculating the County's road/streetlight costs as the basis for the road maintenance tax duplication payment amount.

See *Section 4.2(2)* of this report for further discussion of this issue.

Metropolitan District Tax (Park Tax):

County:

The County representatives believe that all municipalities should provide financial support for the County-wide park system for which no other similar assets are provided in the County (i.e., regional and stream valley parks), including those municipalities that do not pay the Park Tax. Under State law, there is no obligation on the part of those municipalities that are exempt from the Park Tax to provide any financial support for regional and stream valley parks.

Municipalities:

While certain municipal representatives concurred that the regional County parks are community assets which should be financially supported by all, others felt that County residents utilized municipally-owned park facilities yet pay no taxes to support them, resulting in a "financial wash." Because of these divergent positions, the municipal representatives concluded that the status of those municipalities that do not pay the Park Tax was best addressed by the General Assembly.

See *Section 4.5* for further discussion of this issue.

Police Services (Other than Takoma Park):

Municipalities:

Takoma Park receives a tax duplication payment for police services in accordance with a Memorandum of Understanding with the County. The Takoma Park Police Department provides all police services within its boundaries (unless it requests help from another police agency). Takoma Park is the only municipality in the County that provides police services in this manner and is the only one that currently receives a tax duplication payment for police services. Three other municipalities (Gaithersburg, Rockville, and Chevy Chase Village) also provide police services within their boundaries and are routinely first responders on calls for service; however, they are not eligible for a tax duplication payment under current County law. Without these municipal police departments, the Montgomery County Police Department's workload would increase, which would likely lead to slower response times. In recognition of this benefit to County residents, the municipal representatives had asked that some form of financial compensation be paid to Gaithersburg, Rockville, and Chevy Chase Village. Although the Task Force's scope was broader than tax duplication, no meaningful discussion of the municipal representatives' request took place during the Task Force's deliberations.

County:

The Task Force devoted a significant amount of time and effort to this issue. After intense discussion and data review, the County representatives concluded that there is no tax duplication occurring because the County provides police services in Gaithersburg, Rockville, and Chevy Chase Village.

See *Section 4.4* of this report for further discussion on this issue.

TABLE 2.1

SUMMARY OF COUNTY AND MUNICIPAL POSITIONS

Issue	Municipal Position	County Position	Consensus
Municipality Issues			
<i>Tax Duplication</i>			
County Administrative & Overhead Costs	The County's full administrative and overhead costs are not sufficiently covered in the existing payment formulas. The County Code sets forth an actual cost methodology, not an incremental cost approach as suggested by the County's representatives. An actual cost methodology would include all overhead and administrative costs associated with providing a County service. As a proxy for these additional costs, the payment formulas should include a factor of three percent.	Current and proposed road maintenance formulas include the primary and secondary levels of direct management costs. These costs would not increase if the County maintained the roads currently maintained by the municipalities.	No.
County Debt Service (Interest) Costs for Capital Projects	The County's basis for tax duplication is a cost of service approach. Debt financing of capital projects creates certain costs above and beyond the cost of the capital project. For example, the interest portion of the County's debt service payment impacts the per mile cost of road construction and should be taken into account in calculating the County's project cost for the purpose of determining the amount of the tax duplication payment.	The County could reasonably use either of two methods to calculate road construction costs, but should not mix them up. The County could use the total annual expenditures for road construction projects included in the capital budget or debt service (principal and interest) for those projects included in the operating budget.	No.
Road Maintenance	In addition to administrative/overhead costs and debt service (interest costs), major issues include the extent to which County State Highway User Revenue (HUR) should be accounted for in the calculation and how the payment should be displayed in County budget materials. County law is based on a cost of service methodology with no regard to how the service is funded. State law allows HUR to be used for activities other than those captured in the road maintenance reimbursement formula. How the	The County representatives believe that the County portion of the Highway User Revenue grant should be excluded from County cost calculations because it reduces the County's cost of providing the services. The property tax portion of the road maintenance payment should be shown since that is only duplicated tax. The County should continue to use the actual capital project expenditures. The County believes that either capital project expenditures or debt service can be counted,	No.

TABLE 2.1
SUMMARY OF COUNTY AND MUNICIPAL POSITIONS

Issue	Municipal Position	County Position	Consensus
	<p>County allocates HUR for its budgeting purposes is a discretionary decision. Additionally, State law recently changed the way HUR funds are disbursed, providing for a separate municipal share. Municipalities believe that there should be no exclusion of HUR in the payment calculation and that it would be inappropriate to break out the road maintenance payment into a “property tax funded portion” and a “grant funded portion.”</p>	<p>but not both (would be double counting). Using capital expenditures is less complex and fully accounts for capital project costs.</p>	
<p>Municipally-Owned Bridges</p>	<p>The current formula provides a minimal payment for the municipally-owned bridges. In recent years, the payment has ranged from as little as \$17 per bridge to a high of several thousand dollars. It does not address or provide funding for the replacement or rehabilitation of municipally-owned bridges. The County Code does not require that a cost occur on an annual basis to constitute tax duplication. There is no doubt that the County receives a financial benefit because it does not have to bear the cost of replacing or rehabilitating bridges owned by municipalities. Additionally, taxes paid by municipal residents help pay for the reconstruction or rehabilitation of bridges in unincorporated areas of the County.</p>	<p>The County has always reimbursed municipalities for the tax-supported annual costs of maintaining bridges. Since a replacement/rebuild does not happen every year, it is not tax duplication. Municipalities should program the replaced bridges in their capital budget using their revenues and federal revenues. The County's Department of Transportation will help the municipalities receive federal aid towards bridges.</p>	<p>No.</p>

TABLE 2.1
SUMMARY OF COUNTY AND MUNICIPAL POSITIONS

Issue	Municipal Position	County Position	Consensus
Police Services (Gaithersburg, Rockville, Chevy Chase Village)	Rockville, Gaithersburg, and Chevy Chase Village provide police services and are first responders on calls for service. If these municipalities stopped providing first responder services, MCPD would experience an increased workload, which would likely lead to slower response times in unincorporated areas of the County. Because current County law does not allow a tax duplication payment to be made, the municipalities had requested an operating subsidy or other financial consideration for the police services provided by Gaithersburg, Rockville, and Chevy Chase Village. This request was within the scope of the Task Force.	Since the County does provide police services in the three municipalities, there is no tax duplication payment according to the County Code. Also, these municipalities provide a higher level of service than the unincorporated residents receive.	No.
Park Maintenance (Municipalities that Pay the Park Tax)	The municipal representatives requested that the current park maintenance formula be reviewed and updated to provide a more defined method of payment. The current formula was adopted decades ago and has been annually increased by the Consumer Price Index percentage increase since its adoption.	M-NCPPC classified the municipal parks and determined their payments, based on maintenance costs for existing M-NCPPC parks.	Somewhat. The Task Force agreed on the new M-NCPPC methodology and that there are more municipalities that should receive park maintenance payments. However, there were disagreements on the classifications of certain municipal parks.
Elderly Services	Friendship Heights, Gaithersburg, and Rockville requested clarification on the elderly services calculation payments.	The Department of Health and Human Services provided an explanation of the elderly services payments.	Yes. Municipalities were satisfied with the explanation.
Housing & Community Development Matters	Municipalities requested that they receive payments for code enforcement, housing inspections, and landlord-tenant affairs.	Since these services are fee-based, it is not appropriate to provide tax duplication payments.	Yes. Both sides agreed that a payment was not appropriate.
Takoma Park Recreation Services	Takoma Park residents pay the County Recreation Tax. The City provides recreation services but does not receive a tax duplication payment. Takoma Park requested that it receive a tax duplication payment for recreation services or that the Recreation Tax no longer be	Takoma Park should receive a tax duplication payment - in the amount that the County would provide the service, minus existing grants.	Somewhat. The parties agreed that Takoma Park should receive a tax duplication payment for recreation services. The parties disagreed on how

TABLE 2.1
SUMMARY OF COUNTY AND MUNICIPAL POSITIONS

Issue	Municipal Position	County Position	Consensus
	<p>assessed in Takoma Park, which would require a change in State law. Because the County has limited facilities in the Silver Spring/Takoma Park area, Takoma Park serves a significant number of County residents. Takoma Park proposed a tax duplication payment equal to 115% of the Recreation Tax.</p>		<p>the payment should be calculated. The area of disagreement was the contractual payment made by the County to Takoma Park for its operation of the New Hampshire Avenue Recreation Center on behalf of the County Recreation Department. The County representatives consider the payment to be a grant and therefore should be deducted from any payment to Takoma Park. The City's position is that it is serving as a County vendor for the operation of the Center and that the payment does not constitute a grant.</p>
<i>Contract and Operating Grant (Financial Subsidy Issues)</i>			
<p>Gaithersburg Senior Center</p>	<p>Gaithersburg requested that the County reimburse Gaithersburg for 50% of their senior center costs, which would equate to a payment of \$287,000.</p>	<p>Based on the County's cost to provide services, the annual non-resident cost for the Gaithersburg Senior Center would be \$94,894. Therefore, the \$100,000 annual payment was sufficient (when the issue was discussed by the Task Force).</p>	<p>No. In FY2010, the County ceased the payment to Gaithersburg. The City now charges non-residents more than Gaithersburg residents.</p>
<p>New Hampshire Avenue Recreation Center (Takoma Park)</p>	<p>The New Hampshire Avenue Recreation Center is owned by M-NCPPC. Takoma Park operates the facility on behalf of the County Recreation Department under a contractual arrangement between the parties. The Center is an important resource for the geographic area but the age, layout, and condition of the building pose significant programming and maintenance challenges. Pending further discussion of the long-term fate of the Center, Takoma Park</p>	<p>An increased payment for the Center would be addressed through a tax duplication payment to Takoma Park for recreation services (cost to provide recreation services in Takoma Park, minus the existing payment for the Center).</p>	<p>No.</p>

TABLE 2.1
SUMMARY OF COUNTY AND MUNICIPAL POSITIONS

Issue	Municipal Position	County Position	Consensus
	requested an increase in the contractual payment from \$125,000 to \$245,000 to limit its operating loss. During the course of the Task Force's work, the payment was reduced to \$79,670.		
Takoma Park Affordable Housing Services	Takoma Park requested that the County provide a payment of \$60,000 for its work in preserving affordable housing—a stated priority of the County Executive and the County Council. In support of its request, Takoma Park provided materials that highlighted its outreach and education efforts as well as its Capacity Building Program. Takoma Park also noted that the County offers few educational seminars in the down County area, resulting in a strong County resident presence in programs offered by the City. The requested payment is based on 30% of the cost of Takoma Park's Affordable Housing Manager, 50% of the cost of the City's Capacity Building Program, and 100% of the cost of the Affordable Housing Division's training budget. The scope of the Task Force was broader than tax duplication, and the City's request could have been considered by the County as part of the group's work.	Not a tax duplication issue. - Takoma Park is not providing services instead of County services. In addition, the County has spent significant funds in Takoma Park to preserve affordable housing.	No.
Revenue Sharing Issues			
Hotel Tax	The hotel tax revenues are not shared with the municipality in which a hotel is located.	Wait to review the issue until the Maryland General Assembly completed its work on a municipality-requested bill that would authorize municipalities to collect hotel-motel tax revenue.	N/A. The bill was passed in 2008. It authorizes municipalities to collect up to two percent hotel-motel tax.
Energy Tax	The municipalities requested that the County fund some sort of rebate to municipalities since they pay the energy tax, yet they have to operate municipal buildings and streetlights. They also argued that municipal taxpayers pay for the	Each unit of fuel and energy delivered within the County is taxed once and taxed the same as every other unit of energy; therefore, there is no inequity. There should also be some recognition that an additional level of	No.

TABLE 2.1
SUMMARY OF COUNTY AND MUNICIPAL POSITIONS

Issue	Municipal Position	County Position	Consensus
	energy tax, but that County taxpayers do not have to pay the part of the County's fuel and energy costs attributed to the pass-through cost of this tax because the tax revenues end up as County General Fund revenues.	government causes an additional level of expenses beyond what the County government would incur to provide the same level of service. All of the revenues from this tax go to the General Fund, which benefits all residents of Montgomery County. Additionally, the County representatives believe that, if there were a rebate, then residents who do not live in municipalities would have to pay more in property taxes to make up the loss, thereby subsidizing the municipal residents at the non-municipal residents' expense. In 2008, the municipalities put forth legislation in the Maryland General Assembly to exempt municipalities from the County energy tax; it was unsuccessful.	
Income Tax	The municipalities requested that the Task Force discuss the appropriateness of the 17% share of the income tax collected by the County from municipal residents and allocated to the municipality from which the income tax was paid.	Income tax allocation is a matter of State law.	N/A. The parties mutually agreed to take the issue off the table due to the magnitude of other issues and since the allocation was a matter of State law.
<i>Procedural Matters</i>			
Timing of Information	The municipalities requested that the County notify municipalities of their respective tax duplication amounts earlier than mid-March. It was also requested to keep the current two-year data lag (i.e., use FY2010 data for the FY2012 payment).	The County agreed to try to give the municipalities a figure by the end of February, noting that it still may change when the County Executive's recommend budget is released on March 15th. Also, the County agreed to keep the two-year data lag.	Yes.

TABLE 2.1
SUMMARY OF COUNTY AND MUNICIPAL POSITIONS

Issue	Municipal Position	County Position	Consensus
Consistency and Accuracy of Data	The municipalities requested that the data used by the County be consistent and that only actual expenditures be used, not budgeted amounts. They also requested that they receive supporting documentation for the payments so that they could review the accuracy of the calculations.	The County agreed with the municipalities. The County requested that the municipalities advise the County of any concerns about the payment calculations by a date certain so that any error could be corrected promptly and reimbursement could be made accordingly.	Yes.
County Issues			
<i>Tax Duplication</i>			
Simplification of Formulas	The municipalities were open to simplifying the calculations as long as the municipalities are still accurately compensated for their services.	The current formulas are complex and laborious – it takes considerable time to finalize the calculations.	Somewhat. Agreement was reached on a new park maintenance formula. By mutual agreement, certain calculations (such as elderly services and animal control services) remained the same. Others, such as road maintenance, could not be agreed upon.
Duplicated Property Taxes	County tax duplication payments are based on the cost of service and are not tied only to property tax funding. How the County allocates its unrestricted revenues for its budgeting purposes is a discretionary decision. Unrestricted revenues are fungible and can be applied to various County services at will. Consequently, there is no clear cut mechanism to determine which County services are funded by property taxes and which are not. Additionally, the County imposes other taxes on municipal taxpayers, including the real property transfer tax, the energy tax, and the County income tax. For these reasons, the municipal representatives believe that the current depiction of tax duplication payments in the County budget is appropriate and should remain unchanged.	Because the property tax is the only tax that is levied by both the County and the municipalities, it is the only existing “duplicate” tax. The County’s annual reimbursement payments to municipalities consist of two components. First, the amount that can be attributed to property tax duplication. Second, the amount that is best described as a discretionary grant to municipalities. The annual budget books should clearly indicate the amounts that are allocated to both of these components. From a policy perspective, the first component is justified based on tax duplication concerns but the second component gives rise to concerns that non-municipal County residents are subsidizing municipal services.	No.

TABLE 2.1
SUMMARY OF COUNTY AND MUNICIPAL POSITIONS

Issue	Municipal Position	County Position	Consensus
<i>Financial Subsidy</i>			
Extend the Metropolitan District Tax (Park Tax)	Seven municipalities in the County do not pay the Park Tax. Three of the municipalities (Brookeville, Barnesville, and Laytonsville) do not have park systems. Four municipalities (Gaithersburg, Rockville, Poolesville, and Washington Grove) provide varying levels of park programs. There were different feelings among the municipal representatives as to whether or not the seven municipalities should pay the Park Tax or to make a financial contribution in some other manner. Because of these divergent opinions, the municipalities feel that the issue is best resolved by the General Assembly.	Seven municipalities do not pay the Park Tax, yet they receive benefits from the M-NCPCC Park System. These municipalities could voluntarily make a payment or they could be required to do so if State law (Article 28) was amended, requiring such a payment.	No.
<i>Procedural Matter</i>			
Annual Municipal Certification of Services	As requested by the County, the municipalities agreed to certify their services related to tax duplication payments.	The County requested that the municipalities annually certify that they are performing the services for which they are receiving tax duplication payments.	Yes.

CHAPTER 3. THE CURRENT MUNICIPAL TAX DUPLICATION PROGRAM

3.1 State Law¹

The State law governing tax duplication is set out in §6-305 of the Tax-Property Article. That section uses the term “tax setoff” instead of tax duplication. Section 6-305(a)(2) defines “tax setoff” to mean: (1) the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipality; or (2) a payment to a municipality to aid the municipal corporation in funding services or programs that are similar to county services or programs. Section 6-305(c) requires a county to provide a tax setoff for services or programs provided by a municipality “instead of similar county services or programs”. Section §6-305(d) requires a county to consider the following when determining the amount of a tax setoff: (1) the services and programs that are performed by the municipal corporation instead of similar county services and programs; and (2) the extent that the similar services and programs are funded by property tax revenues.

3.2 County Law²

The County’s municipal property tax duplication program has been in effect since 1974 and is governed by Chapter 30A of the Montgomery County Code which is entitled “Montgomery County Municipal Revenue Program.”

Section 30A-2 outlines the types of municipal services that qualify for County reimbursement under the program as follows:

Municipal public services shall qualify for county reimbursement if the following conditions are met: (1) The municipality provides the service to its residents and taxpayers, (2) the service would be provided by the county if it were not provided by the municipality, (3) the service is not actually provided by the county within the municipality and (4) the comparable county service is funded from tax revenues derived partially from taxpayers in the participating municipality.

Section 30A-3 addresses how the reimbursement amount will be calculated as follows:

Subject to the provisions of section 30A-4, each participating municipality shall be reimbursed by an amount determined by the county executive to approximate the amount of municipal tax revenues required to fund the eligible services. The amount of reimbursement shall be limited to the amount the county executive estimates the county would expend if it were providing the services.

¹ The full State law is in **Appendix 4**.

² The full County law is in **Appendix 5**, and the 1996 Council Resolution that was adopted after the issuance of the 1996 Task Force Report is in **Appendix 6**. The 1996 Task Force Report is **Appendix 7**, while **Appendix 8** is advice from the Office of the County Attorney on the legal requirements of the County law.

Section 30A-4 makes it clear that the County Council has the final say regarding the amount of any County reimbursement under the program. It specifically provides that “*All expenditures by the county under the authority of this chapter shall be subject to the limits of the funds appropriated by the county council.*”

3.3 The Policy Rationale for Tax Duplication Payments

Residents of municipalities pay a property tax to their municipality and also pay the General Fund property tax to the County. Property tax is the only duplicate tax, as it is the only tax that is levied by both the County and by municipalities. Most of the General Fund property tax that municipal residents pay to the County is used to fund services the County provides to all County residents, such as the public schools and the community college, fire and rescue services, health and human services, libraries, and police for most municipalities. A portion of the General Fund property tax that municipal residents pay to the County is used to fund services the County does not provide to the municipal residents because the municipality provides the services. This portion of their property tax payment to the County is a duplicate payment.

Because municipal residents pay the County for some services that the County does not provide to these residents, State law (discussed in *Section 3.1*) requires the County to do one of the following: (1) set a lower General Fund property tax rate for the residents in a municipality; or (2) reimburse the municipal government for the property taxes paid by municipal residents that would have been used to pay for the service if it had been provided by the County (i.e., the duplicate property tax).

The County complies with this State law requirement under a system of reimbursement that reflects option (2). However, County law (discussed in *Section 3.2*) is different than State law because it does not restrict reimbursement to the portion of the cost of services that would be paid from the County’s General Fund property tax revenues. Rather, it requires the County to reimburse municipalities for the County’s net cost of services (i.e., the net cost of services that would be provided by the County if they were not provided by municipalities).

Because there are no duplicate taxes other than property taxes, the County representatives noted during Task Force discussions that County law goes beyond reimbursement for tax duplication and requires the County to reimburse municipalities for the portion of the County’s net cost that is funded by other taxes (e.g., income tax, sales tax, recordation and transfer taxes, energy tax, etc.). This issue is discussed in more detail in *Section 4.1* of this report.

Although current County law requires the County to make property tax duplication payments (i.e., reimbursements) to municipalities, State law allows for the use of either tax rate differentials or property tax duplication payments. The County could amend its law to use a combination of tax rate differentials and property tax duplication payments or to require tax rate differentials instead of property tax duplication payments. This would entail setting different general County tax rates for each municipality based on either duplicative property taxes (as required by State law) or duplicative costs (as required by current County law). This would mean that the General County property tax rate would be different in each municipality, and would be calculated to reduce the total General County property tax rate paid by all of the property owners in each municipality by the amount of the reimbursement payment that would have been due to each municipal government. This change would increase the workloads of the

Finance Department and Office of Management and Budget but would make taxation more transparent and straightforward because it would reduce the burden of general County property taxes on municipal property owners while allowing municipalities to set property tax rates that more accurately reflect the services that those municipalities provide to their residents.

While the municipalities agree that the property tax is the only tax that is levied by both the County and by municipalities, they note that the County imposes other taxes on municipal taxpayers, including the real property transfer tax, the County income tax, and the energy tax. As noted in the August 2002 legal opinion of the County Attorney's Office, the imposition of these other taxes prohibits the County from limiting its service cost to only the portion attributed to the property tax. Additionally, how the County allocates unrestricted revenue sources for its budgeting purposes is a discretionary decision. Unrestricted revenues are fungible and can be applied to various County services at will. Consequently, there is no clear cut mechanism to determine which County services are funded by property taxes and which are not. For these reasons, the municipal representatives believe that the current cost of service methodology for calculating tax duplication payments is appropriate and should remain in effect.

3.4 Overview of Services for which Municipalities Currently Receive Tax Duplication Payments

Currently, the following ten types of services, provided by some or all municipalities, qualify for municipal tax duplication payments:

1. Road Maintenance (includes general road maintenance, minor bridge maintenance, street signals, and street lighting)
2. Board of Appeals
3. Hearing Examiner (zoning and administrative hearings)
4. Animal Control
5. Human Rights Commission
6. Park Maintenance
7. Transportation Services for Senior Residents
8. Community Services for Senior Residents
9. Takoma Park Crossing Guards
10. Takoma Park Police³

The Takoma Park Police payment is governed by a Memorandum of Understanding (MOU) between the County and Takoma Park and was not included within the scope of the Task Force's work. It is not addressed in this report. Separate from the Task Force work, at the request of Takoma Park, several discussions were held in 2008 regarding the execution of a new MOU for police services to better reflect the County's current police practices. Those discussions were terminated by the County without the execution of a new MOU. Takoma Park continues to wish for this matter to be resolved.

³ Police services provided by the Takoma Park Police Department are outside the integrated (County/municipal) police system that exists in the rest of the County. County payments to Takoma Park for police services have existed since at least 1946.

The total municipal tax duplication payment for all services in Fiscal Year 2010 (FY2010) was almost \$7.5 million. Excluding the Takoma Park police payment, the FY2010 tax duplication payments totaled \$5.1 million.

As part of the County's budget reconciliation efforts for FY2011, the County Executive proposed a payment reduction of 25 percent. During the budget reconciliation process, the County Council restored a portion of the proposed reduction, resulting in a 15 percent across the board cut in municipal tax duplication payments.

The County Executive proposed a further reduction in municipal tax duplication payments for FY2012. Through the budget reconciliation process, the County Council restored funding, leaving payments at the FY2011 level for most payment categories. In recognition of the increased County police staffing in the Silver Spring area and the disproportionate reduction in the FY2011 Takoma Park police payment, the County Council approved a 0.5% increase in the tax duplication payment made to Takoma Park for police services for FY2012. This increase was comparable to the increase received by the County Police Department.

Combined, FY2012 payments for all service categories total approximately \$6.4 million. Of this amount, \$1.9 million represents the Takoma Park police payment, with the balance of \$4.5 million constituting reimbursement for all other services provided by municipalities. The FY2012 payment for road maintenance totals \$3.8 million, or about 87 percent of non-police tax duplication payments. Road maintenance is the only service category for which all municipalities will receive a payment in FY2012. The next largest payment (\$163,896) is for park maintenance services and comprises 3.7 percent of the total. The smallest payment (\$275) is for Board of Appeals services and is paid only to the Town of Chevy Chase.

At the request of the municipal representatives, the County calculated the tax duplication amount for the various service categories that would have been paid in FY2012 if the current formulas in place had been followed. Payments would have been based on actual FY2010 County expenditures.

In calculating the tax duplication amount for the various service categories for FY2012 based on the current formulas in place, the County elected to exclude certain costs, including the County's cost of responding to the significant snowfalls in FY2010. Even with this exclusion, which the municipalities do not believe is supported by the current road maintenance tax duplication formula, the County's calculations indicate that the municipalities would have received an additional \$6.8 million if the current formulas had been applied in FY2012. Put another way, the municipalities will receive only 48 percent of the amount to which they were entitled under the current methodology.

The current methodologies used to calculate tax duplication payments for each of these types of services is provided below.

3.5 Current Methodologies for Calculating Tax Duplication Payments

Road Maintenance Methodology⁴

The County reimburses all municipalities for road maintenance services. As a first step, the County calculates the County's actual cost per mile for road maintenance service, based on its total operating and capital costs, divided by total County road miles. This per mile cost is then multiplied by the number of road miles in each municipality, resulting in an amount for each municipality.

As a second step, the County calculates its tax-supported operating expenditures for the Department of Transportation and debt service for roads and storm drains, resulting in total tax-supported expenditures. This figure is then reduced by certain County revenues (including funds received from the State Highway Administration (SHA) for the County's maintenance of State traffic signals, departmental service fees, and storm drainage maintenance fees) to arrive at the County's total tax-supported transportation expenditures.

The ratio of State Highway User Revenues to the County's total tax-supported transportation expenditures is then calculated. The resulting ratio (or percentage) is then applied to the amount for each municipality to determine the reimbursement amount.

Board of Appeals and Hearing Examiner (Zoning and Administrative Hearings) Methodologies

The Town of Chevy Chase provides duplicative services for both County departments. The net tax-supported cost for the County's Board of Appeals and Hearing Examiner (i.e., expenditures minus revenues) is divided by the County's population, yielding the County per capita cost for each unit of government. The County per capita cost is multiplied by the population in The Town of Chevy Chase to obtain the reimbursement amount.

Animal Control (Animal Field Services) Methodology

The County reimburses Rockville and Gaithersburg for field and dispatch services, but not for kennel services, which are only provided by the County. Municipalities bring the animals (live and dead) to the County's shelter/kennel operations. The calculation is performed by the County Police Department's Animal Services Division, which estimates the total cost of handling, care, and pick-up of stray animals, including wildlife. This figure is then divided by the number of County residents to get the County's per capita cost. That figure is then multiplied by the number of municipal residents to obtain the reimbursement amount for each municipality.

⁴ The current methodology for the Road Maintenance Payment is detailed in **Appendix 14**.

Human Rights Methodology

Rockville provides the same human rights services as the County. The County's net tax supported cost for Office of Humans Rights personnel is divided by the number of authorized work years at the start of the fiscal year, taken from the County's personnel complement to obtain the County's cost per position. This figure is then multiplied by the incremental number of work years to serve Rockville to get the reimbursement amount.

Park Maintenance Methodology

Park maintenance payments are currently paid to Chevy Chase Section 3, the Town of Chevy Chase, Friendship Heights, Kensington, and Takoma Park. The payment is calculated by applying an inflation factor to the previous year's payment.

Senior Transportation Services Methodology

Rockville, Gaithersburg, and Friendship Heights provide similar senior transportation services as the County. The County's net tax supported cost for senior transportation services is divided by the County's population, yielding the County per capita cost for senior transportation services. The County per capita cost is multiplied by the population of each municipality to obtain the reimbursement amount.

Senior Community Services Methodology

Friendship Heights provides similar senior community services as the County. The County's net tax supported cost for senior community services, excluding transportation expenses, is divided by the County's population, yielding the County per capita cost for senior community services. The County per capita cost is multiplied by the population of Friendship Heights to obtain the reimbursement amount.

Takoma Park Crossing Guards Methodology

Takoma Park provides similar crossing guard services as the County. The County's net tax supported cost for crossing guard personnel is divided by the number of authorized positions at the start of the fiscal year, taken from the County's personnel complement; this yields the County's cost per position. This figure is then multiplied by the number of Takoma Park's crossing guards to obtain the reimbursement amount.

3.6 Revenue Sharing

The services discussed above are those that are compensated under the Municipal Property Tax Duplication program. The County does not currently have a revenue sharing program (i.e., there is no County law that requires the County to share tax revenues with municipalities). However, under State law, certain State grants are shared by the County and its municipalities and 17% of County income tax revenues collected from municipal residents must be given to municipalities. With the exception of HUR, these grants and tax revenues, which are summarized in the table below, would be distributed to the County if its municipalities did not

exist. The County also provides its municipalities with many services, and funding for many other services, some of which are listed in Section 3.7 of this report. The municipalities note that the County would assume greater operational costs if the municipalities did not exist, specifically for law enforcement and street maintenance.

FY 2010

**Municipal Share of State Shared Taxes, State Aid and County Grants to Municipalities
as Required Under State Law**

With the exception of Highway User Revenues, the following represents Revenues that Would have been paid to the County

Municipality	Income Tax	Highway User Revenues	State Aid for Police Protection	Business Licenses	Bank Shares	Total
Barnesville	59,288	-	-	-	346	59,634
Brookeville	133,875	379	-	-	44	134,298
Chevy Chase, Sec. III	397,778	1,368	-	-	-	399,146
Chevy Chase, Sec. V	412,452	1,073	-	-	-	413,525
Chevy Chase View	315,292	1,836	-	-	271	317,399
Chevy Chase Village	1,557,096	4,424	108,352	-	-	1,669,872
Town of Chevy Chase	2,097,649	5,734	-	-	510	2,103,893
Drummond	183,735	220	-	-	-	183,955
Friendship Heights	914,577	3,126	-	-	-	917,703
Gaithersburg	8,650,211	77,566	377,729	130,492	2,645	9,238,643
Garrett Park	222,037	2,085	-	-	68	224,190
Glen Echo	57,751	763	-	-	-	58,514
Kensington	688,901	4,682	-	12,509	4,226	710,318
Laytonsville	187,252	719	-	-	2	187,973
Martin's Addition	293,835	1,429	-	-	-	295,264
North Chevy Chase	126,270	1,073	-	-	-	127,343
Oakmont	54,876	219	-	-	-	55,095
Poolesville	810,610	10,756	-	-	722	822,088
Rockville	10,198,625	116,176	417,386	98,187	13,265	10,843,639
Somerset	487,291	2,313	-	-	269	489,873
Takoma Park	2,093,843	22,177	261,254	23,951	5,643	2,406,868
Washington Grove	81,181	1,925	-	-	-	83,106
Total	30,024,425	260,043	1,164,721	265,139	28,011	31,742,339

Source: "State Shared and State Administered Local Revenues" Published by the Maryland Municipal League, February 2011; except for Highway User Revenue figures, which are from the State Highway Administration.

3.7 Other County Financial/Service Support

Beyond tax duplication payments, the County provides many types of service/support to municipalities at little or no municipal cost. This provides significant benefit to municipalities. This section identifies a few examples of services and support that the County provides to municipalities at little or no charge or projects for which the County has contributed funds.

Municipal Elections: The Board of Elections does not charge municipalities for voter equipment, keeping the Broome School open on election night, or for the equipment to tally the votes.

Insurance: The Risk Management section of the Department of Finance offers municipalities the option of participating in the County's insurance program.

Police Services: The County provides varying degrees of police services and support to municipalities that have their own police departments (Rockville, Gaithersburg, Chevy Chase Village, and Takoma Park). They include the following:

- Police Recruit training
- Access to gun range in Poolesville
- CAD for Police for Rockville and Gaithersburg
- Emergency Response Team (SWAT, Hostage Negotiators, command bus, etc.)
- Major Crimes Division (homicide, sex offense, and robbery investigators)
- 9-1-1 center operations (call-takers and dispatchers)
- K9
- Crime scene/forensic specialists
- Crime lab services (DNA, fingerprint, drug analysis, etc.)
- Firearms Examination Unit
- SAT teams (covert surveillance teams)
- PCAT teams (targeted patrol teams)
- Peer Support Team (traumatic incident response for employees)
- Collision Reconstruction Team
- Central Auto Theft Team
- Financial Crimes Unit
- Firearms Investigations Unit
- District detectives
- Pawn unit Warrant Control Unit (enters and houses ALL District Court warrants)
- Victim/Witness Assistance Unit
- Fugitive Unit
- Special Investigations Division
- Drug Enforcement Section
- Pharmaceutical Unit
- Drug Interdiction Unit
- Major Offender/Conspiracy Unit
- Vice and Intelligence Unit (full-time liaison to Joint Terrorism Task Force)
- Repeat Offender Section
- Gang Task Force
- Electronic and Technical Support Unit (wiretapping, etc.)
- Family Crimes Division
- Child Abuse/Sex Assault Section
- Missing Children Unit
- Domestic Violence Unit
- Sex Offender Registry Unit
- Telephone Reporting Unit
- Abandoned Vehicle Unit

- Animal Services Division (not including Field Services for Rockville and Gaithersburg)

Takoma Park has a full-service police department and, consequently, relies on the County for few of the services listed above.

County Funding for Municipal Projects: On occasion, the County has made a financial contribution towards the construction of municipal projects.

- Rockville Town Center
- Takoma Park's Community Center
- Gaithersburg Aquatic Center
- Piney Branch Pool
- Takoma Park Bridges

The City of Takoma Park notes that the Piney Branch Pool is located in Piney Branch Elementary School and was not a municipal project.

CHAPTER 4. TAX DUPLICATION ISSUES⁵

4.1 Property tax duplication

Because there are no duplicate taxes other than property taxes, the County representatives noted during Task Force discussions that County law goes beyond reimbursement for property tax duplication (as required by State law) because it requires the County to reimburse municipalities for the portion of the County's net cost (i.e., net cost of services that the County would provide if the municipality did not provide the service) that is funded by other taxes as well (e.g., income tax, sales tax, recordation and transfer taxes, energy tax, etc.). See *Sections 3.1, 3.2, and 3.3* of this report for a discussion of current State and County law.

The County representatives noted that the County's net cost of providing a service is always higher than the portion of that cost that can reasonably be viewed as being paid for with property tax revenues. For example, if the County's net cost of providing a service in FY2011 was \$1 million, the portion of that cost that can reasonably be viewed as being paid for with property taxes revenues is \$433,000 because FY2011 property tax revenues made up 43.3% of total County tax revenues. To the extent that the County reimburses municipalities for the portion of the County's net cost that is funded by taxes other than the property tax, the County representatives believe that non-municipal County residents are subsidizing municipal services.

The County representatives note that the County could amend its law to conform to State law, which only requires reimbursement for the portion of the County's net cost that is covered by property tax revenues. In the view of the County representatives, this change would eliminate the current subsidy provided by non-municipal County residents for municipal services because the municipal reimbursement amount is based on costs that are paid for with tax revenues that are not duplicative (e.g., income tax, energy tax, hotel tax, recordation tax, etc.)

Even if County law is not changed, the County representatives believe that the annual budget documents showing reimbursements to municipalities should clearly indicate the amount that constitutes payment for duplicative property taxes and the amount that constitutes payment above that amount. The County representatives believe that this distinction is important because all County residents are entitled to understand that the portion of any reimbursement payment above the amount that constitutes payment for duplicative property taxes is a subsidy for municipal services that is being paid for by non-municipal County residents.

The municipal representatives believe that such a depiction is inappropriate and is inconsistent with current County law, which requires that County reimbursement payments reflect the amount that the County would otherwise have expended for providing County-level services within the boundaries of the municipalities. They noted that the County receives revenues from a variety of sources to fund the services it provides. The County could just as

⁵ More information on tax duplication can be found in the tables in **Appendices 3b through 3e**. **Appendix 10** shows some options for calculating the full tax duplication program, while **Appendix 11** shows the current program, **Appendix 12** shows the County recommendation, and **Appendix 13** shows the municipal recommendation. A discussion of tax duplication methodologies is in **Appendix 9**.

easily fund services out of income tax revenues so the County representatives' assertion that there is a property tax duplicative portion is an arbitrary characterization.

The municipalities noted that, while the property tax is the only tax that is levied by both the County and by municipalities, the County imposes other taxes on municipal taxpayers, including the real property transfer tax, the energy tax, and the County income tax. Municipalities get no portion of the transfer tax or energy tax paid by their residents and, by State law, only receive 17% of the County income tax paid by municipal taxpayers.

Additionally, the municipalities noted that how the County allocates unrestricted revenue sources for its budgeting purposes is a discretionary decision. Unrestricted revenues are fungible and can be applied to various County services at will. Consequently, there is no clear cut mechanism to determine which County services are funded by property taxes and which are not. Any characterization of a property tax funded portion of a service would therefore be arbitrary and misleading.

For these reasons, the municipal representatives believe that the current cost of service methodology for calculating tax duplication payments is appropriate and should remain in effect, with no change in how the County budget is prepared.

4.2 Road Maintenance

As noted earlier in this report, road maintenance is the only service category for which all municipalities receive a tax duplication payment. In FY2011 and FY2012, it comprised approximately 87 percent of the total amount paid by the County to municipalities, excluding the Takoma Park police payment made in accordance with a separate Memorandum of Understanding.

Because all municipalities receive a road maintenance payment, this was a topic of utmost importance to the municipal representatives on the Task Force. In Task Force discussions, they sought to gain a better understanding of the payment methodology, and expressed concern that the formula did not take into account all applicable County costs, such as capital expenditures, overhead, debt service, etc.

The Task Force designated a Roads Maintenance Subcommittee comprised of five members (three from the County and two from the municipalities) to discuss the methodology by which the road maintenance tax duplication payment was calculated. The Roads Subcommittee met several times in late 2007 and discussed the formula as it is currently constituted, as well as some changes that were recommended by the County members to simplify the formula. The Roads Subcommittee also discussed the County's request to study the use of lane-miles to calculate the formula, instead of the center-line mileage that is currently used.

The Roads Maintenance Subcommittee discussed the individual components of the Road Maintenance formula at length. As part of this process, the County provided the municipal representatives with the supporting documentation for all components of the formula.

One of the goals of the Subcommittee was to make the formula more transparent and easier for the County to administer. To facilitate these objectives, it was agreed that it would be

beneficial to clearly delineate all data which the County uses to compute the road maintenance payment, the source of the figures, and any associated calculations that are required.

Through the Subcommittee's work, several methodologies for the road maintenance payment calculation were developed⁶. However, no consensus on a road maintenance formula was reached. Primary areas of disagreement were:

- (1) The portion of the County's administrative (i.e., operating) overhead costs for road maintenance services that should be captured in the formula.
- (2) To what extent the Highway User Revenues should be deducted from the County's road maintenance cost for tax duplication purposes.
- (3) Whether the tax duplication payment should be displayed in the budget book as a property tax portion and a grant portion.
- (4) Whether to include interest costs associated with debt financing in addition to capital project expenditures for the road maintenance calculation.

(1) *Administrative Costs*

On the first issue, County members believe that including the primary and secondary levels of direct management costs (which are included in both the current and proposed formulas) sufficiently captures the proper amount of overhead. During the course of its work, the Road Maintenance Subcommittee met with representatives of the County agency responsible for road maintenance (now known as the Department of Transportation or MCDOT). MCDOT advised the Subcommittee that the figures reflected in both the current and proposed methodologies captured the costs of workers, their line supervisors (the first level of management), and their supervisors (second level of management). The Subcommittee was advised that employees above the second level of management were not engaged in providing direct services, and those personnel costs should not be taken into account in calculating tax duplication payments. According to MCDOT, if the County maintained the roads that are currently maintained by municipalities, the County's administrative costs beyond the two levels that are reflected in the current calculation of the road maintenance payment would not increase. Therefore, those costs should not be reflected in the calculation. The County members agree with MCDOT, while the municipal members do not.

The municipal representatives recognize that the existing formula computations include certain costs of supervision. However, the County's tax duplication payment methodology is not an incremental cost approach as suggested by the County's representatives. Rather, it is based on the actual cost of service, which would include all levels of County supervision associated with the County's provision of road maintenance. The municipalities also noted that there are other overhead costs, such as those associated with bidding capital projects, not captured in the

⁶ More information on the Roads Maintenance calculations is in **Appendices 3f through 3j**. **Appendix 14** details the current formula, while **Appendices 3g and 3i** detail the County recommendations, and **Appendices 3h and 3j** detail the municipal recommendations.

current or proposed methodologies. The municipal representatives believe that some factor should be incorporated into the new road maintenance payment methodology to account for this. In keeping with the overhead factor agreed to by the Task Force for park maintenance, the municipalities proposed a factor of three percent.

(2) State Highway User Revenues

Regarding State Highway User Revenues (HUR), the County members believe that HUR should be treated as they are in the County budget, where all HUR are budgeted to pay general fund costs of MCDOT. Under this budgetary approach, the road maintenance costs and the streetlight personnel and operating costs that are budgeted within the MCDOT general fund are entirely paid for with HUR and 100% of HUR should be deducted from the total road and streetlight costs to arrive at the net cost to the County (See **Appendix 17**). This is the basis for calculating the net cost to the County for per mile road/streetlight maintenance costs, and the treatment would be consistent with how the County budgets for transportation-related expenditures. Furthermore, the municipalities already receive HUR grants from the State and they would, in essence, receive a part of the County's HUR grant as well if the County's HUR grant is not deducted from the County's cost.

From the municipal perspective, the County law is clear that the rebate program is a "...program to reimburse municipalities within the county for those public services provided by the municipalities which would otherwise be provided by the county government." The County law does not specify the source of the funds for those services. State law allows HUR to be used for activities other than those captured in the road maintenance reimbursement formula; these activities include debt service and transportation facilities.

The municipalities note that, since the Subcommittee concluded its work, State law has changed regarding the way HUR funds are disbursed. As noted earlier in this report, State law now provides for a separate municipal share and is not based on county-municipal ratios. Counties receive a set amount statewide that is divided among the counties based on mileage of roads and number of motor vehicles. Municipalities receive a set amount statewide based on the same criterion. If Montgomery County had no municipalities, it would get only a small fraction more of the State's disbursement to counties overall. All other State municipalities would also get a small fraction more of the State's disbursement to municipalities overall.

Therefore, the municipalities do not believe that it is appropriate for any HUR monies to be deducted in calculating the County's road/streetlight costs as the basis for the road maintenance tax duplication payment amount.

With regard to the municipalities' reference to recent changes in State law, the County representatives note that State law now provides that, in FY 2012, the amount of HUR that will be distributed to counties from total highway user revenues will be 1.5%. These funds are allocated to the individual counties based on a calculation that includes the total mileage of county roads, not including municipal roads and total number of motor vehicles registered to owners in each particular county, not including those registered in municipalities. If the municipalities did not exist, this would increase the number of road miles and the number of

registered vehicles in the County and that would result in additional money allocated to the County. The allocation of HUR to the municipalities for FY 2012 is 0.4%. The allocation of HUR for FY 2013 is the same amount as 2012 for both the Counties and the municipalities.

(3) *Property Tax Duplication Portion v. Grant Portion*

The third point of disagreement concerns how the reimbursement for property tax duplication should be depicted in the County's budget books. This point of disagreement relates to all reimbursement payments and not just road maintenance reimbursement payments.

County representatives believe that the budget books should reflect that there are two parts to the reimbursement payment: (1) a property tax duplication payment that is required by State law; and (2) an additional payment that is required by County law and is best described as a grant. See *Section 4.1* of this report for further discussion of this issue.

The County representatives believe that calculating reimbursement payments based on County costs, rather than actual property tax duplication, requires residents who do not live in municipalities to subsidize the municipal services, rather than merely reimbursing municipalities for the duplicative property taxes paid by municipal residents (in the road maintenance service category as well as all other service categories). The County representatives want the County's annual budget documents to reflect that the current payment methodology consists of a tax duplication component and a component unrelated to duplicative taxes (i.e., a component that would most properly be classified as a grant). The proposal made by County representatives would entail calculating the County's cost of providing road maintenance services and then showing, in the annual budget documents for the tax duplication program, the portion of the cost for which the County will provide a property tax duplication payment and the portion of the cost that reflects a County grant to the municipalities.

In response to the County's proposed depiction of the road maintenance payment, the municipalities note that County law does not specify the source of the funds for services for which payment is being made. Rather, the basis for the road maintenance payment is a cost of service methodology. Additionally, the County receives revenues from a variety of sources to fund the services it provides. How the County allocates unrestricted revenue sources for its budgeting purposes is a discretionary decision. Because there is no clear cut mechanism to determine which County services are funded by property taxes and which are not, any characterization of a property tax funded portion of road maintenance services would therefore be arbitrary and misleading. For all these reasons, the municipalities believe it is inappropriate to break out the road maintenance payment into a "property tax-funded portion" and a "grant-funded portion."

(4) *Debt Service for Capital Projects*

The fourth area of disagreement concerns how capital expenses for roads are calculated. The County and municipalities disagree about the method to be used to calculate the actual cost of County roads. The current methodology for calculating road maintenance reimbursement

payment is discussed above in Section 3.5. The first step of this methodology is to calculate the County's net cost of road maintenance and construction costs in a given year.

The municipalities argue that using the amount expended for road construction in any given year does not capture the full cost of road construction, and that the cost of debt that is used to fund those capital projects should be included (i.e., the cost of interest on bonds).

The County members believe that the County could reasonably use either of two methods to calculate road construction costs, but should not mix them up. The County could use the total annual expenditures for road construction projects included in the capital budget or debt service (principal and interest) for those projects included in the operating budget. Using a combination of capital budget expenditures for road construction projects and operating budget expenditures for debt service in a given year would not accurately reflect net County cost because those two figures have completely different foundations and are not actually related at all. The capital budget includes funding for both current projects that are underway and future projects that may or may not be started in the applicable budget year. Operating budget expenditures for debt service reflect the cost of debt that has been issued for the previous 20 years for projects that were actually funded. Debt service amounts in any given year could be based on funding levels for capital projects in prior years that were very different from the funding level in any given year for capital projects in the capital budget. The County representatives expressed concern that using the debt service method would necessitate recalculating each of the prior 20 years' worth of debt service on the roads capital program, which would be extremely time-consuming and subject to error as the County refunds its debt when material savings can be realized.⁷ The County representatives also believe there is no duplication of costs regarding debt service as some municipalities do not use debt to fund their capital program.

The municipalities' position is that the interest portion of debt service paid by the County on road maintenance projects should be taken into account in calculating the amount of the tax duplication payment. The County's basis of tax duplication is a cost of service approach, and debt financing of capital projects creates certain costs above and beyond the cost of the capital project. These interest costs impact the per mile cost of road construction and maintenance and should be recognized in the calculation of the road maintenance tax duplication payment. In light of the County representatives' concern about making the payment calculation overly complex, the municipalities offered an alternative that would require adding a certain percentage (an estimate of the debt service interest cost) to each year's capital expenses.

4.3 Municipally-Owned Bridges

According to the 2009 Municipal Bridge Inventory, there are 31 municipally-owned bridges in the County. The current road maintenance payment methodology provides a minimal payment to the municipalities that are responsible for these bridges (i.e., municipalities with

⁷ For example, to calculate the amount of debt service on the road program one would calculate 20 years of debt service on the road program debt incurred in the FY1991 budget, use the 20th year of debt service, make sure one made any adjustments for any year(s) of debt that were refunded, and then add the 19th year of debt service for the FY1992 debt incurred, modifying that for any refundings, then add each subsequent year's appropriate year of debt service.

bridges located within their respective boundaries). In recent years, this portion of the annual road maintenance payment has ranged from as little as \$17 per bridge to a high of several thousand dollars per bridge and only addresses minor maintenance such as painting. The current road maintenance formula does not address the replacement or major rehabilitation of bridges located in municipalities. However, the County did provide a \$168,000 grant in FY2010 to Takoma Park to pay half of the repair costs for the Flower Avenue and Maple Avenue bridges over Sligo Creek.

Recent events in other parts of the country clearly demonstrate the importance of allocating resources for the proper maintenance of bridges. Because the current road maintenance methodology does not address the issue of bridge replacement and rehabilitation, the municipal representatives requested that the Task Force discuss this matter during its deliberations.

The municipal representatives proposed that the County take the lead role in the replacement or rehabilitation of a municipally-owned bridge due to the complex nature of such work. Most municipalities have limited or no knowledge of bridge construction while MCDOT has expertise in both the federal funding application process and overseeing such projects.

The Road Maintenance Subcommittee discussed several options to address the major rehabilitation or replacement of municipally-owned bridges, including transfer of ownership to the County. Because of the implications for routine maintenance activities, the County was not comfortable with this approach.

After considering what other alternatives might be appropriate, the municipal representatives proposed the following:

- MCDOT would continue to coordinate the bi-annual bridge inspection process and to discuss the results with those municipalities with bridges within their boundaries.
- As the ranking of a municipal bridge falls, it would be placed on the County's Capital Improvement Program, anticipating the need for its repair or replacement. The inclusion of all bridges in the County's Capital Improvement Program will facilitate the direction of funding to those bridges that are most in need of repair or replacement.
- The Bridge Sufficiency Rating (BSR) of each municipally-owned bridge would be evaluated to determine if it is eligible for federal funding. Under current guidelines, a bridge must have a BSR equal to or less than 80 to be eligible for federal funds for major rehabilitation and equal to or less than 50 to be eligible for federal funds for total replacement.
- MCDOT would notify each municipality when a bridge within its boundaries appears to qualify for federal funding based on the BSR, the length of the bridge, and other relevant factors. The parties will discuss any significant structural

modifications that would likely be required for the project to qualify for federal funding.

- Assuming that the municipality agrees to any structural modifications that would likely be required for the project to qualify for federal funding, MCDOT would take the necessary actions to pursue federal funding from Maryland State Highway Administration for the design and reconstruction of the municipal bridge.
- The County would pay the required 20 percent local match for a federally-funded bridge project. Decorative or other aesthetic design enhancements desired by a municipality would not be eligible for County funding.
- Of the 31 municipally-owned bridges, four are 20 feet or less in length. Such short span bridges are not currently eligible for federal funding but should also be included in the County's Capital Improvement Program, anticipating the need for their repair and replacement. The County would pay for any elements required to make a short span bridge structurally sound. Decorative or other aesthetic design enhancements desired by the municipality would not be eligible for County funding.
- MCDOT would, at its expense, manage the design contract and provide construction management services of the bridge replacement or rehabilitation.
- Recognizing that municipal officials have a greater knowledge of their communities, municipalities would play the primary role in interacting and communicating with area residents regarding a bridge project.

The County and Municipal members of the Task Force disagreed as to whether this was a tax duplication issue⁸. The County has always reimbursed municipalities for the annual costs of maintaining bridges as part of the road maintenance payment. However, the County has never reimbursed for the cost of building a new bridge or completely rebuilding an existing bridge, which only occurs every 30-50 years.

County Task Force members argue that, because a complete rebuilding does not occur every year and each bridge varies from others in type, length, and width, there is no basis or rationale for an annual reimbursement in the municipal tax duplication program. Instead, the County members think that the municipalities should program the renovation of their bridges in their capital improvements program, using municipal and federal revenues. County members note that MCDOT has publicly stated its willingness to assist the municipalities in planning their renovations and in applying for federal aid.

⁸ Appendices 3k through 3o contain more information on the municipal bridges. Appendices 3k through 3n are letters on the issue from the County and Takoma Park, while **Appendix 23** is a memo detailing the municipal proposal for treating the bridges as part of tax duplication separately from the Road Maintenance Payment.

County Task Force members note that County funding, if any, for the replacement or major rehabilitation of municipal bridges should not be considered municipal tax duplication. County funding for annual maintenance will continue to be part of municipal tax duplication.

The municipal representatives note that the language of Chapter 30A does not require that a cost reoccur on an annual basis to constitute tax duplication. The guiding principle that the Task Force has followed throughout its deliberations is whether the County has incurred savings because of a municipally-provided service. The municipal representatives believe that there is no doubt that the County receives a financial benefit because it does not have the responsibility for replacing or rehabilitating the 31 bridges owned by municipalities.

Additionally, the municipal representatives noted that the taxes paid by municipal residents help pay for the reconstruction or rehabilitation of bridges in unincorporated areas of the County.

4.4 Police Services (other than Takoma Park)

As noted earlier in this report, Takoma Park receives a tax duplication payment for police services in accordance with a Memorandum of Understanding (MOU) with the County. The Takoma Park Police Department provides all police services within its boundaries (unless it requests help from another police agency). Takoma Park is the only municipality in the County that provides police services in this manner and the only one that currently receives a tax duplication payment for police services.

Three other municipalities (Gaithersburg, Rockville, and Chevy Chase Village) also provide police services within their boundaries. Gaithersburg's 54 sworn officers, Rockville's 54 sworn officers, and Chevy Chase Village's 12 sworn officers respond to a significant number of the County dispatched calls for service within their respective jurisdictions; Rockville provided the Task Force with a copy of an independent study prepared in 2004 by MAXIMUS, Inc. which Rockville believes clearly illustrated the volume of work performed by the Rockville Police Department. The MAXIMUS report suggested a methodology by which the City of Rockville could be compensated by the County for the benefit provided its sworn officers. The municipalities believe that this methodology could be extended to Gaithersburg and Chevy Chase Village. Despite the fact that the police departments of Rockville, Gaithersburg, and Chevy Chase Village are routinely first responders on calls for service, they have never received tax duplication payments from the County. However, they have received County financial and service support at little or not cost to the municipality (see list provided in Section 3.7).

The Task Force began its discussion of this issue with a presentation by former Gaithersburg Police Chief John King⁹. Chief King presented data which he believed showed that: (1) Gaithersburg provides police services for which the County should reimburse the City under the tax duplication program (i.e., what Chief King called "core services"); and (2) that the County deliberately understaffed the 6th District (Gaithersburg and Montgomery Village)

⁹ The Gaithersburg proposal for Police Services payments to Chevy Chase Village, Gaithersburg and Rockville is **Appendix 29**, while the County's analysis of the issue is **Appendix 30**.

because of the existence of the Gaithersburg Police Department. After listening to Chief King's presentation, the County members agreed to internally discuss those two issues.

After consulting with representatives of the Montgomery County Police Department (MCPD), the County members concluded that the term "core services" has no legal meaning in the context of the municipal tax duplication program. Functionally, the term was used by Gaithersburg representatives to refer to services which MCPD typically calls "first responder services." A first responder is a police officer who provides initial public safety service in response to an emergency or other call for service. In Gaithersburg, Rockville and Chevy Chase Village, the municipal police departments and MCPD all provide first responder services. As a result, the residents of these municipalities receive enhanced police services as compared to residents in other areas of the County, including faster response times.

The County members asked the Office of the County Attorney (OCA) to advise them as to whether the State and County law governing the tax duplication program required the County to reimburse Gaithersburg, Rockville, or Chevy Chase Village for the cost of police services provide by those municipalities. OCA concluded that the County Code specifies four conditions that must be met for a municipal service to qualify for County reimbursement. One of these conditions is that the County does not provide the service within the municipality. Since the County does provide police services in the three municipalities, police services do not qualify for reimbursement. See **Appendix 8**.

Gaithersburg and Rockville representatives argued that their police departments provide a level of police services that the County could not provide if their police departments did not exist. The County members agreed that Gaithersburg and Rockville residents receive a high level of service, but maintained that it is a level of service that the County does not provide County-wide (e.g., writing reports on all traffic accidents, rather than just those accidents that result in personal injury and/or disabled vehicles).

The County members also explored the staffing issue raised by Chief King with the MCPD. They discussed MCPD's deployment methodology with the Field Services Bureau (FSB), which is responsible for assigning police officers to each of the County's six police districts. They learned that the FSB evaluates a district's overall workload using a model that factors in calls for service, geographic factors, and personnel availability factors for each district. Each district's workload, as a percent of total County workload, is multiplied by the total number of patrol officers available County-wide. For example, if District Alpha has 25 percent of the County-wide workload and 400 officers are available for patrol Countywide, the FSB would assign 100 officers to patrol the communities in District Alpha.

MCPD staffs each police district to meet a 35 percent Proactive Policing Time (PPT) while maintaining a seven-minute response time to emergency calls. This standard allows officers 3.5 hours of a ten-hour shift to complete tasks that are not "radio driven," such as community based policing initiatives and traffic enforcement. Through this process, district level requirements are established by time-of-day and day-of-week, thus establishing a template for the staffing of police squads. If, for unanticipated reasons, staffing falls below the

established minimum level, the PPT is reduced as officers spend more of their shift addressing calls for service; customer service to the residents calling 911 is not affected.

Within this staffing model, the existence of the municipal police departments cannot be and is not considered. MCPD does not control the staffing of its allied agencies (e.g., municipal police departments). To consider their complement of officers in the model would allow understaffing to occur if policies, procedures, or deployment priorities changed at the municipal level.

MCPD reviewed the data provided by Chief King regarding staffing levels in the 6th District and concluded that the district was not understaffed (see **Appendix 30**). MCPD understands that it would experience an increased workload if the municipal police departments stopped providing first responder services, and that the increased workload could lead to increased response times. Nonetheless, MCPD maintains a comparable level of resources in all Districts, including those with municipalities, and plans to do so in the future.

The County members noted that Chevy Chase Village, Gaithersburg, and Rockville are different from Takoma Park, which has had a unique arrangement with MCPD for many decades. If Chevy Chase Village, Gaithersburg, and Rockville assumed sole responsibility for their police services like Takoma Park has done, the County would compensate them for those services that the County would no longer provide. However, until the municipalities take that step, the County members believe that no tax duplication payment is justified. The County members believe that the law governing tax duplication does not authorize payment for police services to those jurisdictions, and payments beyond those authorized under the tax duplication program would constitute a subsidy of municipal services by other County taxpayers.

The municipalities stressed that the MCPD would experience an increased workload if the municipal police departments stopped providing first responder services, which would likely lead to slower response times. In light of this, the services provided by the police departments of Rockville, Gaithersburg, and Chevy Chase Village directly benefit County residents for which the municipal representatives believe they should receive some type of financial benefit from the County.

Given the impediment posed by the current provisions of §30A-2 of the County Code in providing a tax duplication payment to Rockville, Gaithersburg, and the Village of Chevy Chase, the municipal representatives requested that the County Executive consider an operating subsidy or some other means to support the activities of these municipalities' police services. Such a subsidy was within the scope of the Task Force, which was broader than tax duplication payments. The municipal representatives were disappointed that their request was not considered by the County as part of the group's work.

The County representatives felt that further consideration of a grant to Gaithersburg, Rockville, and Chevy Chase Village for police services was inappropriate because it would require all County residents to subsidize municipal police services.

4.5 Park Maintenance (Municipalities that Pay the Park Tax)

Five municipalities currently receive tax duplication payments because they maintain their own parks and their residents also pay the Park Tax¹⁰. These municipalities are Chevy Chase Section 3, the Town of Chevy Chase, Friendship Heights, Kensington, and Takoma Park.

The 1996 Tax Duplication Task Force Final Report noted a number of problems with the park maintenance formula and recommended that a new methodology be developed. The report indicated that the 1996 Task Force planned to recommend a new formula for park maintenance reimbursement to address these problems; however, no new formula was ever developed. Consequently, one of the goals of the Task Force was to develop a fair and easily calculated formula with specific criteria to support a property tax duplication payment to municipalities that pay the Metropolitan District (Park Tax) and provide some level of community based park services.

The Task Force formed a subcommittee to review and recommend a payment methodology. The Commission's park staff representatives assisted the Subcommittee in developing the proposed model. As part of this process, a comprehensive review of all municipally-owned parks was conducted. Through this review, it was determined that there are a number of municipalities that own and operate municipal parks but do not receive a tax duplication payment even though their residents pay the Park Tax.

After numerous discussions, the Task Force reached agreement on a payment methodology. The model is based on classifying municipal parks into the M-NCPPC park categories as defined in the Parks and Recreation Open Space Plan (PROS Plan) for community-use parks. The payment would equal M-NCPPC's average cost per acre by park type, as calculated by M-NCPPC's SmartParks System, times the number of acres in the municipal park. A capital renovation factor is proposed for specific capital improvements, including playgrounds, basketball courts, and tennis courts based upon M-NCPPC cost experience. An administrative overhead factor was also added based on the M-NCPPC's cost for second level supervisors not captured in the SmartParks Systems.

While the Task Force reached agreement on a payment methodology, there remain disagreements on specific park classifications for some municipalities. For example, Takoma Park believes that one of its parks should be classified as urban, instead of M-NCPPC's classification of non-local.

4.6 Takoma Park Recreation Services

Takoma Park residents pay the County Recreation Tax and the City provides recreation services; however, no municipalities currently receive a tax duplication payment. The municipal representatives requested that the Task Force discuss some form of rebate of the Recreation Tax

¹⁰ The M-NCPPC proposal for municipalities whose residents pay the Metropolitan (Park) Tax is **Appendix 26. Appendices 4a and 4d** update information from the M-NCPPC proposals and provide information on county-wide parks, respectively.

or the possibility of the Recreation Tax no longer being assessed in certain municipalities, including Takoma Park.

The Task Force discussed this matter and agreed that Takoma Park provided a significant level of recreation services that were duplicative of County's services. The County Recreation Department acknowledged the important role that the Takoma Park Recreation Department plays in serving the residents of the Silver Spring/Takoma Park area of the County. In a meeting on December 14, 2007, County Recreation Department staff stated that the County does not program in the area because of the services offered by the Takoma Park Recreation Department and that it would have to provide further programming if Takoma Park stopped providing recreation services.

While the Task Force agreed that the County should reimburse Takoma Park some amount for recreation services, there was no consensus on how the payment should be calculated. The County representatives proposed the following tax duplication payment methodology for reimbursing Takoma Park:

- (1) Calculate the cost the County Department of Recreation would incur to provide recreation services in Takoma Park = A
- (2) Calculate the total amount of County Grants provided to Takoma Park for recreation services = B
- (3) Calculate A minus B = Payment to Takoma Park.

While appreciative of the County's recognition of the recreation services that it provides, Takoma Park did not agree with the County's proposed methodology. The primary area of disagreement was the contractual payment made to Takoma Park for its operation of the New Hampshire Avenue Recreation Center. The County proposes to reduce the payment to Takoma Park by the amount of the operating grant for the New Hampshire Avenue Recreation Center (see Section 5.2 of this report for more details of this grant). This facility is owned by M-NCPPC and is operated by Takoma Park under a contractual arrangement with the Montgomery County Recreation Department. Takoma Park's position is that it is serving as a County vendor for the operation of the New Hampshire Avenue Recreation Center and that the payment is not a grant. Therefore, the amount paid to Takoma Park for its operation of the facility should not be factored into the municipal tax duplication payment paid to Takoma Park for recreation services.

County members do not believe that the City is being penalized. From their perspective, the service that Takoma Park is providing at the New Hampshire Avenue Recreation Center is partially paid by the County and, if Takoma Park ceased to provide that service, the County would discontinue the operating grant to Takoma Park and reprogram the operating grant to pay for service that the County would begin to provide in that area. For this reason, the County members believe that the offset for this grant is appropriate.

In addition to Takoma Park's concerns about the proposed reduction for the New Hampshire Avenue Recreation Center operating grant, Takoma Park also believes that the proposed payment methodology does not take into account the integral role that Takoma Park

plays in meeting the recreational needs of County residents in the Takoma Park/Silver Spring area.

In December 2007, Takoma Park provided statistics reflecting that approximately 35 percent of participants in Takoma Park recreation programs are County residents living outside of Takoma Park. At a meeting on March 24, 2008, the County acknowledged that it would likely site a recreational facility in Takoma Park/Silver Spring area if the Takoma Park Community Center did not exist. During the same discussion, it was noted that the County's cost for constructing a recreational facility is in the range of \$24 million; there would be on-going operational costs as well.

Additionally, Takoma Park noted that the County has limited recreational facilities in the Silver Spring/Takoma Park area, which is a significant population center in the lower part of the County. The Long Branch Community Center—the nearest facility to Takoma Park—has insufficient capacity to accommodate County residents currently being served by the Takoma Park Recreation Department. As noted by the County Recreation Department on March 24, 2008, traffic and other considerations make it physically difficult for youth and others residing in Takoma Park and Silver Spring to access services at the Long Branch Community Center. However, Takoma Park residents can and do take advantage of County recreation programs and facilities.

Takoma Park believes that, at a minimum, there is sufficient justification for it to receive a payment equal to the Recreation Tax amount paid by municipal property owners. In light of the factors cited above, Takoma Park believes that there is a strong basis for Takoma Park to receive a payment greater than the amount of Recreation Tax paid by municipal property owners, given the important role that it plays in providing recreational services in this part of the County. Takoma Park proposed a payment equal to 115 percent of the Recreation Tax amount in addition to the requested increase in the operating grant for the New Hampshire Avenue Recreation Center, which is discussed in *Chapter 5* of this report.

4.7 Elderly Services

Three municipalities—Friendship Heights, Gaithersburg, and Rockville—currently receive a payment for elderly services. The municipal representatives requested clarification on how the payment is calculated and whether it is only for transportation or if it includes programming.

The Department of Health and Human Services, the County agency responsible for the program, provided an explanation of the payment methodology and calculation. A payment is provided to Rockville, Gaithersburg, and Friendship Heights for senior transportation services. Friendship Heights also receives reimbursement for community services.

4.8 Housing and Community Development Matters

The municipalities do not currently receive tax duplication payments for services such as code enforcement, housing inspections, and landlord-tenant affairs. They requested that the Task Force consider the institution of a new payment for these services.

The Department of Housing and Community Affairs (DHCA), the County agency responsible for all of these services, reported to the Task Force that each of these services is fee-based and, therefore, it would not be appropriate to provide tax duplication payments for them. Based on this information, the Task Force agreed that no further discussion was warranted.

CHAPTER 5. CONTRACT. GRANT/FINANCIAL SUBSIDY ISSUES

5.1 Gaithersburg Senior Center

The Gaithersburg Upcounty Senior Center opened in 1990. Originally, the majority of its members were Gaithersburg residents. In 1997, Montgomery County closed its Emory Grove Road Senior Center. An agreement was reached between Gaithersburg and the County that permitted the former members of the County's Emory Grove Road Center to use Gaithersburg's Senior Center. The County provided Gaithersburg with an annual payment of \$50,000 to offset the costs of providing services to non-City residents.

As Gaithersburg expanded its senior programming offerings, more and more non-City residents began using the facility. In light of the partnership with the County, Gaithersburg elected to charge non-City residents the same rate as City residents. In 2002, Montgomery County increased its annual payment from \$50,000 to \$100,000.

During the Task Force's deliberations, the City of Gaithersburg provided statistical data regarding usage of the Gaithersburg Upcounty Senior Center. In 2008, there were 800 members of the Gaithersburg Upcounty Senior Center. Of these, 30 percent were Gaithersburg residents and 70 percent were Montgomery County residents not living in Gaithersburg. The significant percentage of non-City residents is likely attributable to the fact that the Gaithersburg facility is the only one of the five senior centers located in the central portion of the County:

In 2008, the annual operating cost of the Gaithersburg Senior Center was \$674,000. Given the significant usage by non-City residents, Gaithersburg requested that the County reimburse it for 50 percent of the annual operating cost, equating to a current year payment of \$337,000.

The County reviewed the contract between the County and Gaithersburg regarding programming at the Gaithersburg Senior Center and concluded that, under the current contract, payment to the City is a fixed contribution rate and is not based on costs. In addition, the County noted that it provides services and support to Gaithersburg for which it is not reimbursed. See *Section 3.7* of this report for a list of some of the additional services and support that the County provides to municipalities

The County members believe that issues relating to the County's contract with Gaithersburg regarding services provided to County residents at the Gaithersburg Senior Center should not be resolved in the context of a Task Force whose primary mission is to focus on issues relating to tax duplication and revenue sharing. This is not a tax duplication or revenue sharing matter. This is a matter that relates to services provided under a County contract which has a one-year term ending June 30 of each year and its annual renewal is subject to availability of funds and County Council appropriation. The County has engaged in a good faith discussion with Gaithersburg representatives on this issue in the course of the Task Force work, and will continue to do so in the future.

As part of the County's budget reduction efforts for FY2010, FY2011, and FY2012, the County eliminated its payment to the City of Gaithersburg for the Senior Center. In response, Gaithersburg imposed a charge for non-City resident use of the facility, which has slightly impacted the ratio of City resident to non-City resident use (\$115 per non-resident annually; \$40 per resident annually). Currently, 48 percent of users are Gaithersburg residents and 52 percent are Montgomery County residents not living in Gaithersburg.

Because of the high percentage of users who are County residents not living within the corporate boundaries of Gaithersburg, the City of Gaithersburg believes an operating grant equivalent to 50 percent of the facility's operating costs is still appropriate. Based on current annual operating expenditures, the requested payment equates to \$287,000.

5.2 New Hampshire Avenue Recreation Center

As noted in the discussion concerning Takoma Park recreation services in *Section 4.5* of this report, the New Hampshire Avenue Recreation Center is owned by M-NCPPC. Takoma Park operates the facility on behalf of the County Recreation Department under a contractual arrangement between the parties.

In FY2009, the City received an operating grant in the amount of \$125,000 from the County. The County subsequently imposed a series of reductions in the payment amount. In FY2012, Takoma Park will receive \$79,670 from the County—a reduction of \$45,330 or 36 percent from the FY2009 payment level.

During the Task Force's work, Takoma Park provided the County with FY2008 revenue and expenditure data associated with the City's operation of the New Hampshire Avenue Recreation Center. Budgeted recreation expenditures totaled \$227,446. This figure did not include custodial, maintenance, or utility costs, which are accounted for in another departmental budget; those expenditures were approximately \$45,000 per year in FY2008.

Takoma Park's total operating revenues associated with the New Hampshire Avenue Recreation Center for FY2008 were budgeted at \$153,000; this amount was comprised of the \$125,000 operating grant from the County and \$28,000 generated from programs and rentals at the Center. The resulting operating shortfall for the fiscal year was approximately \$119,000.

Since the Task Force's initial discussion of the matter, Takoma Park's operating costs for the New Hampshire Avenue Recreation Center increased to approximately \$293,000.

The City and the County agreed that the New Hampshire Avenue Recreation Center is an important resource for the geographic area in which it is located. There was also a consensus that the layout and condition of the building pose significant programming challenges. These challenges, along with projected maintenance costs, call into question the long-term future of the building.

The fate of the New Hampshire Avenue Recreation Center will require in-depth discussion by the respective staffs of M-NCPPC, the County and Takoma Park; this could not be

accomplished during the Task Force’s work. The outcome of the sector plan process—that began as a joint effort of both Prince George’s County and Montgomery County—will also have an impact on the building’s fate; this process is expected to be completed in one to two years.

Takoma Park proposed that the Task Force report note the aforementioned issues, with a recommendation that the parties continue their discussions concerning the fate of the New Hampshire Recreation Center. Recognizing that these discussions may take some time, the City requested that the County increase the amount of the operating grant it provides to Takoma Park for operation of the facility. Since there is agreement that the layout and condition of the building pose significant programming challenges and limit revenue generation opportunities, the City requested an annual payment in the approximate amount of \$245,000 to limit its operating loss.

The County members agree that the disposition of the New Hampshire Avenue Recreation Center is an important topic that requires joint analysis by Takoma Park, the County, and M-NCPPC.

5.3 Takoma Park Affordable Housing Services

Takoma Park requested that the County provide a payment to the City for its work in preserving affordable housing—a stated priority of the County Executive and the County Council. In support of its request, the City provided the County with materials that highlighted some of Takoma Park’s outreach and education efforts. The City believes that these efforts are particularly important given the unique nature of many of Takoma Park’s rental properties, which tend to be small buildings. These “Mom and Pop” operations require more intensive assistance than the owners of larger properties. Takoma Park provides these services in an effort to maintain them as affordable housing units.

In making its request for financial assistance from the County, Takoma Park also cited the fact that the majority of the County’s educational seminars are offered in Rockville, with very little done in the down County area. Consequently, the City sees a strong County resident presence at seminars that it offers, such as the First Time Homebuyer’s sessions.

Takoma Park’s Capacity Building Program¹¹ also has a positive impact on preserving affordable housing in the down County area. Under this Program, the City retains community organizers to assist in the formation of tenant associations at multi-family rental facilities. The organizers also assist tenants in exercising their rights when a multi-family rental facility is being sold. The City is notified when a rental facility is being sold, and the community organizers are sent to the property to present the various options to the tenants. This early notice and involvement have provided the City with the opportunity to provide the appropriate assistance to preserve the tenants’ rights and has resulted in some properties being preserved as affordable housing units. For example, two properties (8604-8606 and 8508-8510 Flower Avenue) are now owned by Montgomery Housing Partnership.

¹¹ **Appendix 31** contains budget information for Takoma Park’s Housing and Community Development programs.

Takoma Park proposed the following payment methodology: (1) 30 percent of the cost of the City's Affordable Housing Manager position (\$30,664); (2) 50 percent of the cost of the City's Capacity Building Program (\$27,500); and (3) 100 percent of the cost of the Affordable Housing Division's Training budget (\$12,000).

The Affordable Housing Manager's salary and benefit costs are allocated among three divisions in Takoma Park's budget. Sixty (60) percent of this position's salary is allocated to the Affordable Housing Division. The City is asking for the County to reimburse it for one-half of this share in recognition that this position benefits both jurisdictions. Similarly, the City is requesting reimbursement/financial support for the 50 percent of the cost of its Capacity Building Program in recognition that the program facilitates the preservation of affordable housing.

As noted above, Takoma Park believes that the County does very little in the way of educational seminars in the down County area. Takoma Park has undertaken this role and allows County residents to participate in them free of charge. Altogether, Takoma Park is requesting financial support/operating grant in the aggregate amount of approximately \$60,000.

The County members note that Takoma Park's request for this \$60,000 was made very late in the Task Force process and was not discussed in any great detail. Based on the information provided by Takoma Park, County members believe that this is not a tax duplication issue (i.e., Takoma Park is not providing services instead of County services). Therefore, any payment to Takoma Park for affordable housing services would be unfair to County residents who do not live in Takoma Park. These County residents should not be required to subsidize services that Takoma Park chooses to provide. The County Department of Housing and Community Affairs (DHCA) reported to County members that the County has spent a significant amount of money in Takoma Park to preserve affordable housing, including \$10 million from the Housing Initiative Fund (HIF) for projects in Takoma Park during calendar years 2007 and 2008.

Takoma Park submitted its request to the County Task Force members in 2008. As a unique request of Takoma Park, there was ample time for the County members to discuss the issue with the Takoma Park representative prior to the conclusion of the Task Force's work. The municipal representatives note that the Task Force's scope was broader than tax duplication payments and Takoma Park's request could have been more openly considered by the County as part of the group's work.

5.4 Municipalities that do not pay the Park Tax

As noted in *Section 2.3* of this report, the Task Force discussed those municipalities that, in accordance with State law, do not pay the Park Tax. Some of the municipalities that do not pay the Park Tax provide no park services, while others offer various levels of park services. M-NCPPC requested that the Task Force develop a fair methodology for calculating payments to be made by these municipalities to support County parks to reflect the benefits their communities receive from the County Park System.

In accordance with State law, seven municipalities in the County do not pay the Park Tax. Of these seven, three municipalities (Laytonsville, Brookville, and Barnesville) do not have park systems and do not provide any park services. Four municipalities (Gaithersburg, Rockville, Poolesville, and Washington Grove) provide varying levels of park programs¹².

Because Brookeville, Barnesville, and Laytonsville do not have park systems and do not pay the Park Tax, M-NCPPC proposed that the three municipalities should be included in the Metropolitan District and pay the Park Tax. These three municipalities could voluntarily pay the Park Tax or they could be required to pay the Park Tax if State law (Article 28) were amended to require that they pay the Park Tax.

M-NCPPC also proposed that Gaithersburg, Poolesville, Rockville, and Washington Grove support the Commission's county-wide park system. M-NCPPC believes that these four municipalities should make a contribution to M-NCPPC which is equivalent to the percentage of the Park Tax required to support regional parks and stream valley parks. These four municipalities could voluntarily make this kind of payment or they could be required to do so if State law (Article 28) were amended to require such a payment.

While certain municipal representatives strongly concurred that regional County parks are community assets which should be financially supported by all, others were equally adamant that County residents utilize municipally-owned park facilities yet pay no taxes to support them, resulting in a "financial wash." There were also divergent opinions among the municipalities as to whether Brookeville, Barnesville, and Laytonsville should be included in the Metropolitan District and pay the Park Tax.

Because of these divergent positions, the municipal representatives advised the Task Force that the status of those municipalities that do not pay the Park Tax was best addressed by the Maryland General Assembly. The legislative process would allow the elected leadership of each municipality in the County to weigh the impact of the current taxing arrangement on its own residents and to take a formal position regarding any attempt by the M-NCPPC to modify it.

¹² **Appendix 25** contains the M-NCPPC proposal for municipalities that do not pay the Metropolitan (Park) tax, while **Appendix 28** contains a memo detailing the Town of Poolesville's position on the Metropolitan tax. **Appendices 4a and 4d** update information from the M-NCPPC proposals and provide information on county-wide parks, respectively.

CHAPTER 6. REVENUE SHARING ISSUES

The County does not currently have a revenue sharing program; however, under State law, certain revenues are shared by the County and municipalities located within its boundaries. As part of its work, the Task Force reviewed possible modification to the current allocation of some revenue sources. These issues are described in more detail below.

6.1 Hotel Tax

Montgomery County charges a seven percent hotel tax. The revenues generated by the hotel tax are not shared with the municipality in which a hotel is located. The municipalities requested that the Task Force discuss this issue, in recognition that a hotel requires the provision of municipal services.

The Task Force agreed to wait for the Maryland General Assembly to complete its work on a municipally-requested bill that would authorize municipalities to collect a hotel-motel tax. The General Assembly passed this bill in 2008 (Senate Bill 131) and it was signed into law by the Governor (Chapter 149 of 2008). The bill authorizes municipalities to collect up to two percent hotel-motel tax. Because of this action by the State, no action on the part of the Task Force was taken.

6.2 Energy Tax

Montgomery County imposes a fuel-energy tax on energy utilities which is passed on to municipalities as a cost of doing business. The municipalities requested that the Task Force discuss some form of rebate to reflect on the cost of this tax as it relates to the operation of municipal buildings and streetlights.

The municipalities argued that they should not have to pay the part of their fuel and energy costs attributed to the pass-through cost of this tax because municipal taxpayers end up paying for it, but that County taxpayers do not have to pay the part of the County's fuel and energy costs attributed to the pass-through cost of this tax because the tax revenues end up as County General Fund revenues. The municipalities argue that this is not equitable¹³.

County members argued that each unit of fuel and energy delivered within the County is taxed once and taxed the same as every other unit of energy. Because of this, there is in fact no inequity. Further, there should be some recognition that an additional level of government causes an additional level of expense beyond what the County government would incur to provide the same level of service. The fuel-energy taxes paid to the County by energy utilities all go the General Fund portion of the County budget, which benefits all residents of Montgomery County. If the County were to approve a municipal rebate, then residents who do not live in municipalities would have to pay more in property taxes to make up the loss, thereby subsidizing the municipal residents at the non-municipal residents' expense.

¹³ The municipal proposal on the Energy Tax is **Appendix 32**.

During the 2008 session of the Maryland General Assembly, Delegate Alfred Carr, a former Kensington municipal official, put forward a bill to exempt municipalities from the County energy tax. The legislation was unsuccessful.

6.3 Income Tax

In accordance with State law, municipalities receive 17 percent of the income tax collected by the County. The municipalities requested that the Task Force discuss this percentage to determine if it is an appropriate amount. Given the magnitude of the other issues that the Task Force was addressing and that the income tax allocation was a matter of State law, it was mutually agreed that the issue be taken off the table.

CHAPTER 7. PROCEDURAL ISSUES

7.1 Annual Municipal Certification of Services

The County requested that municipalities annually certify that they provide the services for which they receive tax duplication payments. The municipalities agreed to certify, by letter, that they either do or do not provide the service(s) for which they receive payment(s).

7.2 Timing of Information

For many municipalities, tax duplication payments constitute an important revenue stream. The municipal representatives expressed concern that the anticipated amount of the payments were often not provided by the County until March, which makes it difficult for municipalities to prepare their budgets. The municipalities requested that the County provide a written statement of the amount of the reimbursement no later than February 1 of each year, to allow sufficient time for the municipalities to incorporate the information into their annual budgets. The County agreed to try to give the municipalities a figure by the end of February, noting that the County Executive's recommended budget for the program may not be complete at that time.

Since 1996, tax duplication payments have been based on a two-year lag in actual cost data. The County proposed that a three-year lag be utilized so that calculations for all components of the tax duplication process could be done much earlier in the budget process. The municipalities felt that the two-year data lag was sufficient and should enable the County to provide timely information to them. Consequently, the Task Force recommends that tax duplication payments continue to be based on a two-year lag.

During the County's preparation of its FY2011 budget, the County Executive initially informed municipalities that tax duplication payments would be reduced by five percent due to the County's fiscal challenges. In late April 2010, the County Executive revised his proposal, calling for an additional 20 percent reduction in municipal tax duplication payments as a result of revised County revenue projections. The budget adopted by the County Council implemented a 15 percent reduction from the FY2010 payment level.

While cognizant of the financial difficulties faced by the County, the move away from the two-year lag, the budgetary and economic difficulties faced by municipalities, and the late resolution of the 2011 tax duplication payments created a significant hardship for many municipalities. Some municipalities had already adopted their budgets and set their tax rates when the County Executive proposed his second round of reductions in municipal tax duplication payments.

The County acknowledges the hardship that the late notice of FY2011 tax duplication payments caused municipalities. However, the full extent of the revenue decline in 2010 was not reflected in actual collections until after the County Executive released his recommended budget. The County Executive took immediate action and amended his FY2011 recommendation in

April, reducing County budgets and municipal tax duplication payments. Given the potential volatility of this source of funding for municipalities, the County believes that it is prudent for municipalities to plan adequately for contingencies and maintain flexible spending plans.

The municipalities would note that tax duplication payments are based on a two-year lag. Therefore, any current year financial difficulties on the part of the County should have no bearing on the tax duplication or reimbursement amounts. Going forward, the municipalities request that the agreed upon two-year lag process be respected and that tax duplication payments be based on the County's actual prior year service costs. If this is done, the County staff would have ample time to calculate the municipal tax duplication amount for the various service categories and to communicate the reimbursement amounts to the municipalities in a time frame that would facilitate the municipalities' preparation of their budgets.

7.3 Consistency and Accuracy of Data

During the Road Maintenance Subcommittee's work, the municipal representatives noted a lack of consistency in the data that was used to calculate the road maintenance payment. The figures used to calculate the road maintenance payment were a mixture of budgeted figures and actual cost data. The Task Force discussed this matter and agreed that actual cost (audited) data should be consistently used in calculating tax duplication payments.

In reviewing the road maintenance issue, the municipal representatives also noted some calculation errors. For example, in calculating the net cost to the County per mile, municipal maintained road miles were included, resulting in artificially low County Costs and a lower reimbursement amount to the municipalities. The municipalities asked that they receive the supporting documents used to calculate the applicable tax duplication payment(s) so that they could review the accuracy of the calculations. The municipalities also requested that a process be put in place that included a supervisory sign-off within the County, as a check and balance to ensure that the computations were done correctly.

The County was amenable to the request for supporting documentation. It was agreed that it was incumbent on the municipalities to advise the County of any concerns about the payment calculations by a date certain so that the error could be corrected promptly and reimbursement could be made accordingly to the municipalities.