



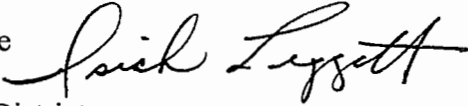
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

September 27, 2010

TO: Nancy Floreen, President, County Council

FROM: Isiah Leggett, County Executive 

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

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

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

With the legislation and the resolution, I am transmitting an amendment to the FY11-16 Capital Improvements Program and a supplemental appropriation in the amount of \$385,000 to the FY 11 Capital Budget for the new White Flint District West: Transportation project (No. 501116) to enable design to begin on infrastructure to be paid for from White Flint Development Tax District funds. This work is critically important to refine the assumptions relative to the district for roadway improvements in the first stage of the recently approved White Flint Sector Plan. This project is needed to accelerate the preliminary engineering for one new, one relocated and three existing roads, and one new bikeway, so that more accurate designs and cost estimates can be established. Funds to pay for analysis and studies necessary to implement

the district are also included. The recommended amendment is consistent with the criteria for amending the CIP in that this project supports significant economic development initiatives, which in turn will strengthen the long term fiscal capacity of the County government. The new growth planned for the White Flint area in accordance with the recently approved Sector Plan will revitalize the region and strengthen the County as a whole. These road and bikeway improvements will greatly aid and expedite the planned development for the area.

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

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

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

The Special Tax District

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

The development tax district is simple, straightforward and can be easily implemented – all important considerations for the timely realization of the redevelopment of White Flint. The development tax district also provides for certainty of revenues and spreads the burden equally over the entire plan area – except for existing residential which is to be outside of the

district. The legislation, which is to be adopted under recently enacted Senate Bill 828, gives bond counsel, and the bond market greater certainty in the County's authority to implement the district and impose an ad valorem tax on all properties except for existing developed residential. In addition, under this special authority, the bonds can be issued as special obligation bonds, the debt service of which will not compete for capacity with other County debt. The development district tax is intended to be implemented in time for the FY12 tax bill.

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

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

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

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

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

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

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

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

Issues Discussed

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

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

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

The two areas I am not prepared to recommend at this time are that the transportation impact tax not apply and that the County commit to fund any gap if the district revenues are not adequate to cover the projected costs for the development tax district infrastructure. The cost projections that are identified for the district infrastructure are estimates. The County's estimates and the White Flint Partnership's (a group of White Flint developers) are fairly consistent, and both include many assumptions which if not borne out will result in changes to the projected

costs for the infrastructure. One key area where this can occur is in the area of the costs of right-of-way for the many roads provided for in the plan. These roads carve through properties and the White Flint Sector Plan is predicated on an optimistic assumption that the grid of roads as they cut through properties will result in new blocks of properties that can serve as the basis for exchanges of lands.

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

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

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

I recommend that the County Council approve the legislation, resolution and amendment to the FY11-16 Capital Improvements Program and special appropriation in the

Nancy Floreen, Council President

September 27, 2010

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amount of \$385,000 and specify the source of funds as Current Revenue General with repayment in FY12 from White Flint Development District tax funds. These efforts will allow us to implement the White Flint Sector Plan which, as I mentioned at the outset, will be transformational, smart growth of which we can all be extremely proud.

I appreciate your prompt consideration of these actions.

IL:ad

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

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

White Flint Development Tax District Bill

Bill No. _____ [Click - type number]
 Concerning: White Flint Development
Tax District - Creation
 Revised: [date] Draft No. [#]
 Introduced: [date]
 Expires: [18 mos. after intro]
 Enacted: [date]
 Executive: [date signed]
 Effective: [date takes effect]
 Sunset Date: None
 Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) establish the White Flint Development Tax District;
- (2) authorize the levy of an *ad valorem* property tax to fund certain transportation infrastructure improvements;
- (3) authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements; and
- (4) generally provide for a White Flint Development Tax District.

By adding

Montgomery County Code
 Chapter 68C, White Flint Development Tax District
 Sections 68C-1 – 68C-6

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

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

APPROVED AS TO FORM AND LEGISLATIVE
 OFFICE OF COUNTY ATTORNEY
 BY Maria Hansen
 DATE 9/23/10

1 Sec 1. Sections 68C-1, 68C-2, 68C-3, 68C-4, 68C-5, and 68C-6 are added as
2 follows:

3 **68C-1. Definitions.**

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

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

8 (b) Cost means the cost of:

9 (1) the construction, reconstruction, and renovation of transportation
10 infrastructure improvements, including the acquisition of all
11 lands, structures, real or personal property, rights, rights-of-way,
12 franchises, and easements, to provide a transportation
13 infrastructure improvement for the District;

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

16 (3) financing charges and debt service related to a transportation
17 infrastructure improvement for the District, whether incurred
18 prior to, during, or after construction of the transportation
19 infrastructure improvement, including the cost of issuance,
20 redemption premium (if any), and replenishment of debt service
21 reserve funds for any bond financing a transportation
22 infrastructure improvement for the District;

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

- 27 (5) architectural, engineering, financial, and legal services related to
 28 providing a transportation infrastructure improvement for the
 29 District;
- 30 (6) plans, specifications, studies, surveys, and estimates of costs and
 31 revenues related to providing a transportation infrastructure
 32 improvement for the District;
- 33 (7) administrative expenses incurred by the County as may be
 34 necessary, or incident to, determining whether to proceed with
 35 and to implement a transportation infrastructure improvement for
 36 the District; and
- 37 (8) other expenses incurred by the County as may be necessary, or
 38 incident to, the construction, acquisition, and financing of a
 39 transportation infrastructure improvement for the District.
- 40 (c) District means the White Flint Development Tax District created under
 41 Section 68C-2.
- 42 (d) Transportation infrastructure improvement means:
- 43 (1) the construction, rehabilitation, and reconstruction of a road,
 44 street, or highway that serves the District, including:
- 45 (A) rights-of-way;
- 46 (B) roadway surfaces;
- 47 (C) roadway subgrades and shoulders;
- 48 (D) median dividers;
- 49 (E) drainage facilities and structures, including related
 50 stormwater management facilities and structures;
- 51 (F) roadway cuts and fills;
- 52 (G) guardrails;
- 53 (H) bridges;

- 54 (I) highway grade separation structures;
 55 (J) tunnels;
 56 (K) overpasses, underpasses, and interchanges;
 57 (L) entrance plazas, approaches, and other structures forming
 58 an integral part of a street, road, or highway;
 59 (M) bicycle and walking paths;
 60 (N) designated bus lanes;
 61 (O) sidewalks and pedestrian plazas;
 62 (P) streetscaping, and related infrastructure; including placing
 63 utilities underground and
 64 (Q) any other property acquired for the construction, operation,
 65 or use of a road, street, or highway; and
 66 (2) a transit facility that serves the needs of the District, including:
 67 (A) tracks;
 68 (B) rights-of-way;
 69 (C) bridges;
 70 (D) tunnels;
 71 (E) subways;
 72 (F) rolling stock;
 73 (G) stations and terminals;
 74 (H) parking areas;
 75 (I) related equipment, fixtures, buildings structures, and other
 76 real or personal property; and
 77 (J) services intended for use in connection with the operation
 78 of a transit facility, including rail, bus, motor vehicle, or
 79 other mode of transportation.

80 **68C-2. Creation; Boundaries.**

- 81 (a) The White Flint Development Tax District is coterminous with the
82 approved and adopted White Flint Sector Plan area.
- 83 (b) The following properties, identified by street address, are not included
84 in the White Flint Development Tax District: 11700 Old Georgetown
85 Road, 11701 Old Georgetown Road, 11750 Old Georgetown Road,
86 11800 Old Georgetown Road, 11801 Rockville Pike, 5800 Nicholson
87 Lane, 5802 Nicholson Lane, 5809 Nicholson Lane, 5440 Marinelli
88 Road, 5503 Edson Lane, 5505 Edson Lane, 5507 Edson Lane, 5509
89 Edson Lane, 11201 Woodglen Drive, 11203 Woodglen Drive, 11205
90 Woodglen Drive, 11207 Woodglen Drive, 11209 Woodglen Drive,
91 11200 through 11219 Edson Park Place, 11222 Edson Park Place,
92 11224 Edson Park Place, 11226 Edson Park Place, 11228 Edson Park
93 Place, 11230 Edson Park Place, 11232 Edson Park Place, 11234 Edson
94 Park Place, 11236 Edson Park Place, 11238 Edson Park Place, and
95 11240 Edson Park Place.

96 **68C-3. Levy of Tax; Limitations.**

- 97 (a) Each tax year the County Council may levy against all the assessable
98 real and personal property in the District a sum on each \$100 of
99 assessable property that does not exceed an amount sufficient to cover
100 the costs of transportation infrastructure improvements that have been
101 identified in a Council resolution approved under Section 68C-4.
- 102 (b) Under Section 9-1302 of Article 24, Maryland Code, the limitation set
103 forth in Charter Section 305 regarding levies of ad valorem taxes on real
104 property to finance County budgets does not apply to revenue from
105 taxes imposed under this Chapter.
- 106 (c) The tax imposed under this Chapter is levied and collected as other
107 County property taxes are levied and collected by law.

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

111 **68C-4. Transportation Infrastructure Improvement Resolution.**

112 (a) After a public hearing, the Council may approve a resolution that lists
113 each transportation infrastructure improvement that is to be paid for by
114 the tax imposed under Section 68C-3.

115 (b) The resolution must indicate the estimated cost, including a contingency
116 amount, for each transportation infrastructure improvement.

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

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

124 (e) Before holding a public hearing under subsections (a) or (c), the
125 Executive should transmit to the Council:

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

128 (2) an estimated cost, including a contingency amount for each
129 transportation infrastructure improvement; and

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

131 **68C-5. Fund.**

132 (a) The Director of Finance must establish a separate fund for the proceeds
133 collected from the tax imposed under this Chapter. The proceeds of the

134 tax imposed under this Chapter are pledged to this fund, and the
 135 proceeds of such tax must be paid into the fund.

136 (b) The Director of Finance must use this fund only for the purpose of
 137 paying the cost of transportation infrastructure improvements related to
 138 the District.

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

141 (1) pay the cost of transportation infrastructure improvements for the
 142 District;

143 (2) create a reserve to pay the future costs of transportation
 144 infrastructure improvements for the District;

145 (3) pay bond-related obligations or to retire bonds then outstanding;
 146 and

147 (4) pay into a sinking fund required by the terms of bonds related to
 148 the cost of transportation infrastructure improvements for the
 149 District that may be incurred or accrue in later years.

150 **68C-6. Issuance of Bonds.**

151 (a) In order to issue bonds payable from ad valorem taxes levied under
 152 Section 68C-3, the Council must adopt a resolution authorizing the
 153 issuance of bonds that meets the requirements of this Section.

154 (b) The resolution must:

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

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

158 (c) The resolution may specify, or authorize the Executive by executive
 159 order to specify, any of the following:

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

- 161 (2) the actual rate or rates of interest for the bonds;
 162 (3) how and on what terms the bonds must be sold;
 163 (4) how, when, and where principal of, and interest on, the bonds
 164 must be paid;
 165 (5) when the bonds may be executed, issued, and delivered;
 166 (6) the form and tenor of the bonds, and the denominations in which
 167 the bonds may be issued;
 168 (7) how any or all of the bonds may be called for redemption before
 169 their stated maturity dates;
 170 (8) establishment of debt service reserve funds;
 171 (9) the pledge of other assets in and revenues from the District
 172 towards the payment of the principal of, and interest on, the
 173 bonds;
 174 (10) arrangement for bond insurance or any other financial guaranty or
 175 credit or liquidity enhancement of the bonds; or
 176 (11) any other provision not inconsistent with law that is necessary or
 177 desirable to finance any transportation infrastructure
 178 improvement that has been identified in a Council resolution
 179 approved under Section 68C-4.
- 180 (d) (1) The County covenants to levy ad valorem taxes against all the
 181 assessable real and personal property in the District at a rate and
 182 amount sufficient in each year when any bonds are outstanding
 183 to:
- 184 (A) provide for the payment of the principal of, interest on, and
 185 the redemption premium, if any, on the bonds;
 186 (B) replenish any debt service reserve fund established with
 187 respect to the bonds; and

- 188 (C) provide for any other purposes related to the ongoing
189 expenses of and security for the bonds.
- 190 (2) The County further covenants when any bonds are outstanding to
191 enforce the collection of all ad valorem taxes under this Chapter
192 as provided by applicable law.
- 193 (e) All proceeds received from any issuance of bonds must be applied
194 solely towards costs of the transportation infrastructure improvements
195 listed in the resolution adopted under Section 68C-4, including the cost
196 of issuing bonds and payment of the principal of, interest on, and
197 redemption premium, if any, on the bonds.
- 198 (f) The bonds issued under this Chapter:
- 199 (1) are special obligations of the County and do not constitute a
200 general obligation debt of the County or a pledge of the County's
201 full faith and credit or the County's general taxing power;
- 202 (2) may be sold in any manner, either at public or private sale, and on
203 terms as the County deems best;
- 204 (3) are not subject to Sections 10 and 11 of Article 31, Maryland
205 Code; and
- 206 (4) must be treated as securities to the same extent as bonds issued
207 under Section 9-1301 of Article 24, Maryland Code.
- 208 (g) To the extent provided by law, the bonds, their transfer, the interest
209 payable on them, and any income derived from them, including any
210 profit realized on their sale or exchange, must be exempt at all times
211 from every kind and nature of taxation by the State of Maryland, any
212 county or any municipal corporation.
- 213 (h) The bonds must be payable from the fund required under Section 68C-5
214 and any other assets or revenues of the District pledged toward their

215 payment. When any bonds are outstanding, the monies in the fund are
216 pledged to the payment of the costs of any transportation infrastructure
217 improvement funded in whole or in part by the proceeds of the bonds,
218 including the costs of issuing the bonds and payment of the principal of,
219 interest on, and redemption premium, if any, on the bonds. In addition
220 to ad valorem taxes, the bonds may be secured by other assets in or
221 revenues generated within the District.

222 (i) Ad valorem taxes imposed under this Chapter must not be accelerated
223 because of any bond default.

224 Sec. 2. Sunset.

225 Section 1 of this Act creating a White Flint Development Tax District sunsets
226 30 days after the cost of all transportation infrastructure improvements identified in a
227 Council resolution approved under Section 68C-4 have been paid, including
228 outstanding bonds and cash advances made by the County.

229
230 *Approved:*

231

Nancy Floreen, President, County Council Date

232 *Approved:*

233

Isiah Leggett, County Executive Date

234
235 *This is a correct copy of Council action.*

236

Linda M. Lauer, Clerk of the Council Date

White Flint Development Tax District Bill Fiscal Impact Analysis



OFFICE OF MANAGEMENT AND BUDGET

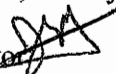
Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

September 27, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director 

SUBJECT: Bill XX-10, White Flint Development, Tax District - Creation

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The Bill would establish the White Flint Development Tax District by adding Chapter 68C, Sections 68C-1 – 68C-6 to the Montgomery County Code. The bill would authorize the levy of an ad valorem property tax to fund certain transportation infrastructure improvements; authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements; and generally provide for a White Flint Development Tax District.

FISCAL SUMMARY

The legislation would allow the County Council to levy a property tax against all assessable real and personal property in the Tax District. The tax imposed as a result of this bill would be used to cover the costs of transportation infrastructure improvements identified by Council resolution that lists each transportation infrastructure improvement, its estimated cost, and estimated completion date.

The transportation infrastructure improvements in the White Flint Development District will support the White Flint Sector Plan development. The proposed White Flint Sector Plan area covers approximately 430 acres located approximately ¾ mile around the White Flint metro station. Upon completion, the Sector Plan contemplates 14,341 residential units and approximately thirteen million square feet of commercial space. Redeveloped and proposed new commercial development is projected to include office, retail, industrial and hotel uses. Fiscal and economic impact projections of the Sector Plan are contained in a study prepared by MuniCap, Inc. in October 2009. In that study, the net projected 40 year cumulative County surplus of the White Flint Sector Plan is \$6,857 million, while the private development grows from about \$2 billion today, to about \$29 billion in 2050.

Office of the Director

| | |
|--|-------------|
| Projected Net Surplus – 40 year cumulative total | \$ millions |
| Revenues | \$9,871 |
| County Public Services | 1,261 |
| Montgomery County Public Schools | 1,224 |
| Total Expenditures | 2,485 |
| Net Montgomery County Revenues | 7,386 |
| Capital Costs | 529 |
| Net Montgomery County Surplus | \$6,857 |

This bill allows the County to begin the implementation of the White Flint Sector Plan by establishing a new special tax to fund approximately \$200 million in transportation improvements (in 2010 dollars) that are necessary to serve the transportation needs of that area of the County over the next few decades. The next two tables show the direct impact of the enactment of the special tax authorized by the subject legislation (\$208 million) and the impact on the County's CIP program (\$378.1 million) funded by general obligation bond and other County resources. These are order-of-magnitude, FY10 estimated capital costs which have not been inflated and need to be further refined.

WHITE FLINT DEVELOPMENT TAX DISTRICT
 DISTRICT FUNDED IMPROVEMENTS
 (Direct Impact of the Legislation)

| Improvement Description | Estimated Cost |
|--|--------------------|
| Old Georgetown Road (MD 187): Nicholson La./Tilden La. to Executive Blvd. | \$17,774,000 |
| Old Georgetown Road (MD 187): Hoya St. to Rockville Pike (MD 355) (25% of project) | 1,789,000 |
| Hoya Street (formerly Old Old Georgetown Rd.): Executive Blvd. to Montrose Pkwy. | 15,344,000 |
| Rockville Pike (MD 355): Flanders Ave. to Hubbard Drive | 64,261,000 |
| Nicholson Lane: Old Georgetown Rd. (MD 187) to CSX tracks | 12,942,000 |
| Nebel Street: Nicholson La. To Randolph Rd. | 9,200,000 |
| Executive Blvd. Ext.: Marinelli Rd. to Old Georgetown Rd (MD 187) | 13,500,000 |
| Second Entrance to Metro | 35,000,000 |
| Main St./Market St.: Old Georgetown Rd. (MD 187) to Executive Blvd. Extended (Bikeway) | 1,713,000 |
| Main St./Market St.: Old Georgetown Rd. (MD 187) to Executive Blvd. Ext. | 4,933,000 |
| Main St./Market St.: Executive Blvd. to Rockville Pike (MD 355) | 4,661,000 |
| Main Street Bridge | 2,000,000 |
| Executive Blvd. Ext. (East): Rockville Pike (MD 355) to Nebel St. Ext. (South) | 16,700,000 |
| Nebel St. Ext. (South): Nicholson La. to Executive Blvd. Ext. (East) | 8,200,000 |
| TOTAL | 208,017,000 |

WHITE FLINT SECTOR PLAN
 COUNTY FUNDED CIP PROJECTS

| Improvement Description | Estimated Cost |
|--|----------------------|
| Marinelli Rd.: Citadel Ave. to Wentworth Pl. | \$2,200,000 |
| Randolph Rd.: Nebel St. to CSX Tracks | 5,043,000 |
| Montrose Pkwy. Phase 2 (MD 355 Interchange): Chapman Ave. to Parklawn Dr. | 72,156,000 |
| Nebel St.Extended (North): Randolph Rd. to Plan Area Boundary | 13,931,000 |
| Chapman Ave. (Citadel/Maple): Old Georgetown Rd. (MD 187) to Plan Area Boundary | 27,075,000 |
| Montgomery Aquatic Center (MAC) Expansion | 19,104,000 |
| Fire Station with Police Substation and Urban District Office | 29,960,000 |
| Bus Depot | 130,530,000 |
| Civic Green | 11,390,000 |
| Elementary School | 20,000,000 |
| Recreation Center at Wall Park | 37,420,000 |
| Old Georgetown Road (MD 187): Hoya St. to Rockville Pike (MD 355) (25% of project) | 1,925,000 |
| Nicholson La: Old Georgetown Rd. (MD 187) to CSX Tracks | 7,344,000 |
| CLATR Intersections Outside of District | TBD |
| TOTAL | \$378,078,000 |

The scope of the White Flint Sector Plan has required more analytical resources than are currently available in the Executive Branch. In order to perform the in-depth analysis required by the Plan, the Executive contracted with one of its financial advisors to perform the Fiscal Impact Analysis of the Plan, and to provide preliminary financial analyses of the special taxing district that would be implemented under this bill. In FY11, the Executive expects that these analyses and studies necessary to implement the district will approximate at least \$35,000. These funds have been recommended in an amendment to the FY11-16 Capital Improvements Program and special appropriation to the FY11 Capital Budget for the new White Flint District West: Transportation project number 501116. This amount does not include the many hours that Executive staff have spent on complementary fiscal, financial and tax analysis and outreach to interested parties in the White Flint Sector Plan area.

The following contributed to and concurred with this analysis: Alex Espinosa and John Cuff, Office of Management and Budget; and David Platt and Mike Coveyou, Department of Finance.

JFB:jc

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Dee Gonzalez, Office of the County Executive
- Jennifer Barrett, Director, Department of Finance
- David Platt, Department of Finance
- Alex Espinosa, Office of Management and Budget
- John Cuff, Office of Management and Budget
- Jacqueline Carter, Office of Management and Budget

**White Flint Development Tax District Infrastructure
and Rate Policy Resolution**

Resolution No. _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

SUBJECT: White Flint Development Tax District Transportation Infrastructure
Improvements

Background

1. Chapter 68C of the County Code establishes the White Flint Development Tax District, authorizes the levy of an ad valorem tax to fund transportation infrastructure improvements in the District, and authorizes the issuance of bonds to finance the transportation infrastructure improvements.
2. Chapter 68C-4 requires a resolution that lists each transportation infrastructure improvement that is to be paid for by the White Flint Development Tax District special tax, and the estimated costs of each improvement, which shall include a contingency amount.

Action

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

1. It is the County's goal that the White Flint Development Tax District special tax rate shall not exceed 10% of the total tax rate for the District, except that the rate must be sufficient to pay debt service on bonds already outstanding.
2. Should the revenues from the special tax at the policy goal not be sufficient to afford additional infrastructure improvements as such costs are determined to be necessary and ready for implementation in order to execute the White Flint Sector Plan the County Executive, prior to recommending any increase to the tax rate above the policy goal, will consider alternative approaches, including the timing and scope of the infrastructure item, and the structure of the financing plan to pay for the costs, and alternative revenue sources.
3. For the current tax year that begins on July 1, 2010, the total base real property tax rate in the White Flint Development Tax District is \$1.027 per \$100 of assessed value.
4. For the tax year that begins on July 1, 2011, the rate of the White Flint Development Tax District special tax is estimated to be \$0.103 per \$100 of assessed value.

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

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

EXHIBIT A

WHITE FLINT DEVELOPMENT DISTRICT
DISTRICT FUNDED IMPROVEMENTS

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

**White Flint Development Tax District CIP
Amendment and Special Appropriation**

Resolution No: _____

Introduced: _____

Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

SUBJECT: Amendment (\$9.835 M) to the FY11-16 Capital Improvements Program and
Special Appropriation #4-E11-CMCG-3 to the FY11 Capital Budget
Montgomery County Government
Department of Transportation
White Flint District West: Transportation (No. 501116), \$385,000

Background

1. Section 308 of the Montgomery County Charter provides that a special appropriation: (a) may be made at any time after public notice by news release; (b) must state that the special appropriation is necessary to meet an unforeseen disaster or other emergency or to act without delay in the public interest; (c) must specify the revenues necessary to finance it; and (d) must be approved by no fewer than six members of the Council.
2. Section 302 of the Montgomery County Charter provides that the Council may amend an approved capital improvements program at any time by an affirmative vote of no fewer than six members of the Council.
3. The County Executive recommends the following capital project appropriation increases:

| <u>Project Name</u> | <u>Project Number</u> | <u>Cost Element</u> | <u>Amount</u> | <u>Source of Funds</u> |
|--|-----------------------|---------------------|---------------|----------------------------|
| White Flint District West: Transportation | 501116 | PDS | \$385,000 | Current Revenue General |

4. This project is needed to accelerate the preliminary engineering for one new road, one relocated road, improvements to three existing roads, and one new bikeway in the White Flint Development Tax District so that more accurate designs and cost estimates can be established. Funds to pay for the analysis and studies necessary to implement the district are also included. The recommended amendment is consistent with the criteria for amending the CIP in that this project supports significant economic development initiatives, which in turn will strengthen the fiscal capacity of the County government. The new growth planned for the White Flint area in accordance with the recently approved Sector Plan will revitalize the region and strengthen the County as a whole. These roadway and bikeway improvements will greatly aid and expedite the planned improvements for the area.
5. The County Executive recommends an amendment to the FY11-16 Capital Improvements Program and a special appropriation in the amount of \$385,000 for White Flint District West: Transportation (No.501116), and specifies that the source of funds will be Current Revenue General with repayment in FY12 from White Flint Development District tax funds.
6. Notice of public hearing was not given and no public hearing was held.

Action

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

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

| <u>Project Name</u> | <u>Project Number</u> | <u>Project Element</u> | <u>Cost Amount</u> | <u>Source of Funds</u> |
|--|-----------------------|------------------------|--------------------|----------------------------|
| White Flint District West: Transportation | 501116 | PDS | \$385,000 | Current Revenue General |

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

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

White Flint District West: Transportation -- No. 501116

Category
Subcategory
Administering Agency
Planning Area

Transportation
Roads
Transportation
North Bethesda-Garrett Park

Date Last Modified
Required Adequate Public Facility
Relocation Impact
Status

September 27, 2010
No
None.
Preliminary Design Stage

EXPENDITURE SCHEDULE (\$000)

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

FUNDING SCHEDULE (\$000)

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

DESCRIPTION

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

The proposed projects are as follows:

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

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

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

ESTIMATED SCHEDULE

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

JUSTIFICATION

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

FISCAL NOTE

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

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

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

| APPROPRIATION AND EXPENDITURE DATA | COORDINATION | MAP |
|------------------------------------|----------------------------------|----------------------|
| Date First Appropriation | M-NCPPC, White Flint Sector Plan | See Map on Next Page |
| First Cost Estimate | WMATA | |
| Current Scope | City of Rockville | |
| Last FY's Cost Estimate | MSHA | |
| Appropriation Request | Town of Garrett Park | |
| Appropriation Request Est. | Neighborhood Civic Associations | |
| Supplemental Appropriation Request | Developers | |
| Transfer | | |
| Cumulative Appropriation | | |
| Expenditures / Encumbrances | | |
| Unencumbered Balance | | |
| Partial Closeout Thru | | |
| New Partial Closeout | | |
| Total Partial Closeout | | |

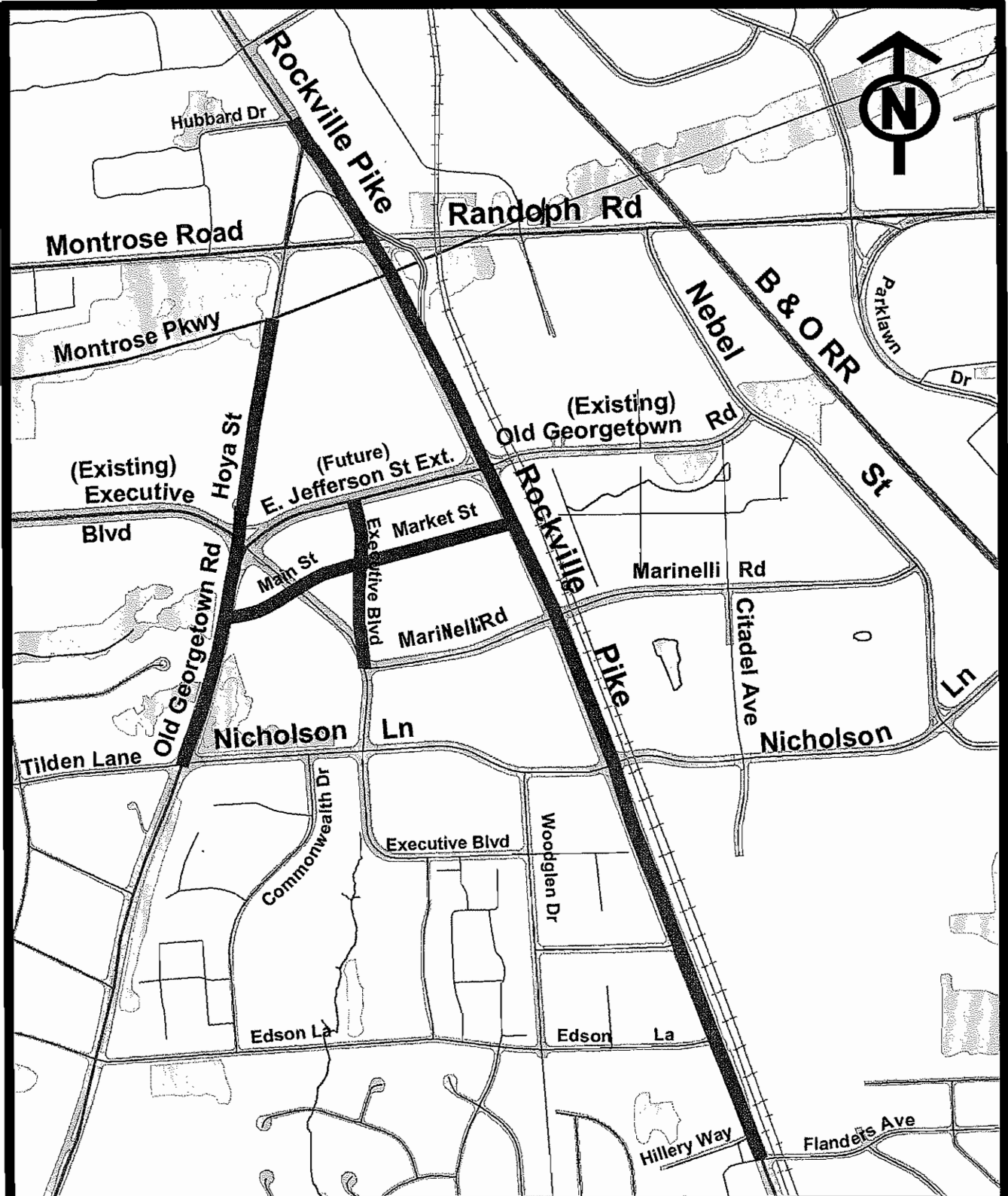
White Flint District West: Transportation -- No. 501116 (continued)

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

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

OTHER DISCLOSURES

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



**WHITE FLINT DISTRICT WEST
TRANSPORTATION
CIP. NO. 501116**