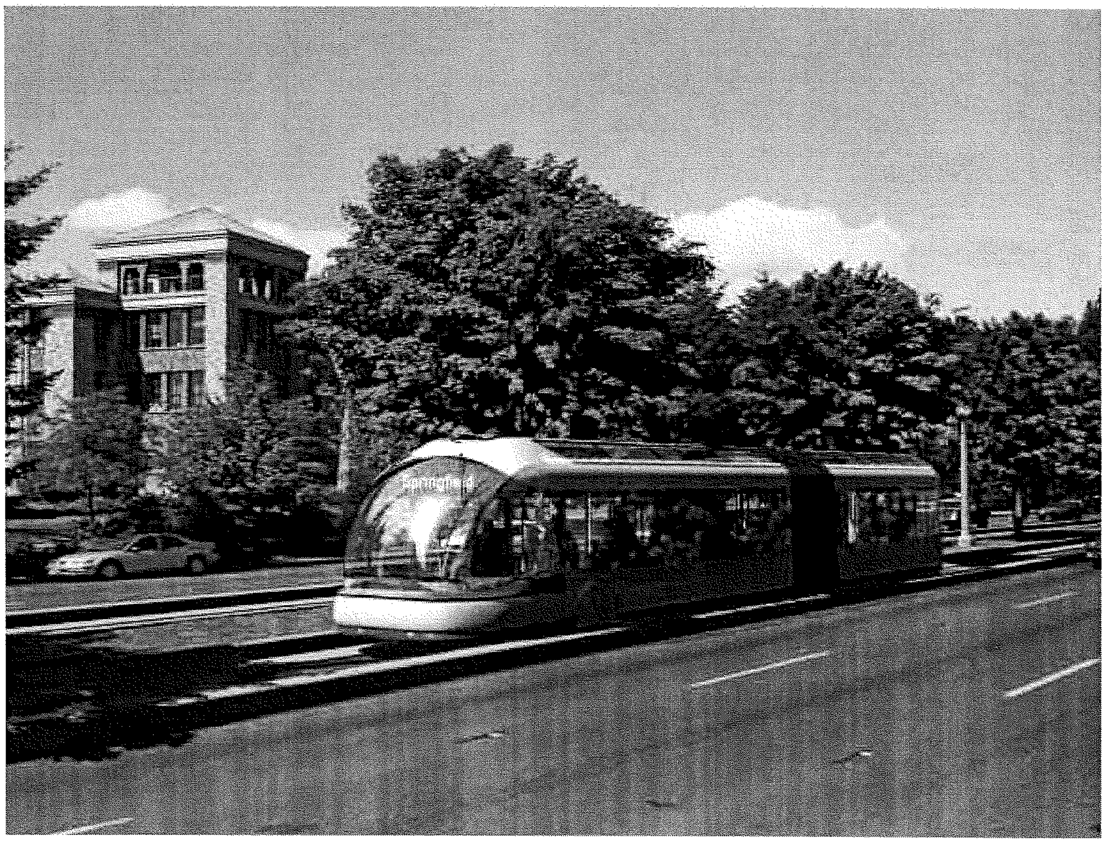
Attachment C

October 2015

County Executive's Transit Task Force
Final Report and Recommendations



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Executive Summary

Reconvening the Transit Task Force

On April 6, 2015, Montgomery County Executive Isiah Leggett asked a reconvened Transit Task Force ("Task Force") to study the legislation that he proposed in the 2015 Session of the Maryland General Assembly, develop procedures for soliciting community and business input to its deliberations, and provide advice and recommendations on how the proposed legislation may be improved (See Appendix 1). The County Executive added several new members to the Task Force, including several new community representatives (See Appendix 2).

The County Executive also asked that the Task Force review the full range of potential funding sources relating to the Rapid Transit System ("RTS") network, and alternative ways in which various funding sources and revenues could be blended as part of an overall financial plan. Among the issues he asked the Task Force to consider were: (a) whether removing this unique investment in transit development and operation from the constraints of the Montgomery County Charter is necessary and appropriate in order to finance the development and operation of the RTS network; (b) whether use of "public-private partnership" techniques creates additional funding alternatives (both as a result of savings that can be achieved through the design and construction of the network, and through the use of non-public entities to raise capital for the project; (c) whether changes in the relationship between the County and State with regard to projects like the RTS network (including the Corridor Cities Transit Way) are necessary and, if so, the nature and extent of such changes; and (d) the advisability of transferring existing County transit functions to the proposed transit authority, and the complications such transfers would create.

The second round of Task Force meetings took place between April 22, 2015 and October 8, 2015 (See Appendix 4). These included meetings of the full Task Force, numerous meetings of its Working Groups (See Appendix 4), two (2) public forums, held on June 17, 2015 and September 30, 2015, convened exclusively to hear public views on the subject, and several sessions during which the Report of the Task Force was considered in detail, amended and adopted. All meetings of the Task Force and its Working Groups were open to the public, and except for sessions during which drafts of this Report were considered and marked-up by the Task Force, members of the public had the opportunity at each meeting to ask questions and make comments.

Alternatives Considered

In reconvening the Task Force, the County Executive asked it to consider alternatives to his proposal for a quasi-independent transit authority, and invited people to propose workable alternatives. Those alternatives need to take into account, as did the County Executive's original proposal, the organizational and financial challenges we face. Finding an alternative that achieves only some of these goals is insufficient. The Task Force identified the following alternative approaches that:

1. There be no change from the present structure;

2. The County create a new transit department within the executive branch;

3. The County create a new executive department and a new transit finance agency;

4. That the County support creation of a new regional transit authority; and

5. The State enable and the County create a new Montgomery County transit authority.

In late 2014, the County Executive requested that MCDOT engage a consultant to study alternative ways in which the County could organize itself to implement and finance the development of a BRT-based RTS network that would include, as a first phase, four transit corridors consisting of MD Route 355 North, MD Route 355 South, US Route 29, and Veirs Mill Road, together with the 9.1 mile first stage of the Corridor Cities Transit-Way (which will hereafter in this report be referred to as the "CCT"), a transit corridor that has been in planning under the auspices of MTA for several years, all of which corridors are referred to herein as "Phase I".[1]

Developments since Original Task Force Report

The Task Force report issued more than three years ago outlined many of the benefits of a countywide transit network and described some of the costs of inaction. The Task Force has not revisited those conclusions, but events that have transpired since the publication of the first Task Force report highlight the urgency of the need to find ways to extend the reach and scope of high quality transit services in the County. A brief review of the rationale for an RTS system may help to put the debate over how a transit network might be managed and financed in context. The initial Task Force report noted that a rapid transit network would:

- Help to meet the need for new transportation capacity to accommodate projected population growth;
- Create vibrant communities for existing, as well as future, residents and employees;

[1] The second stage of the CCT is anticipated to be part of a subsequent phase of RTS development.

- Implement previously adopted land use policies, including both the General Plan (the "Wedges and Corridors Plan") as well as plans supporting economic development in specific areas such as the Great Seneca Science Corridor ("GSSC"), White Flint, and White Oak;

- Reduce greenhouse gas emissions and the impact of economic activity on the environment; and

- Attract employers and generate the kinds of jobs needed to support the County's tax base and a high standard of living for its residents.

Since the release of the Task Force's first report the County Planning Board adopted its draft of an amendment to the County's Master Plan of Highways, which was referred to as a Draft Countywide Transit Corridors Functional Master Plan ("Draft Transit Master Plan"). The Draft Transit Master Plan was transmitted to the Montgomery County Council in 2013 for consideration. In late 2013, based on work performed by the Council's Committee on Transportation, Energy and Environment, and after extensive public hearings and amendment, the County Council adopted a Countywide Transit Corridors Functional Master Plan ("Transit Master Plan"), which remains in effect.

County Executive Considerations in Proposing the Legislation

The County Executive considered the following in making his original proposal: (1) limitations of existing funding; (2) Charter limits on property tax revenues; (3) special obligation debt and debt affordability guidelines; (4) special operating budgets, maintenance of effort requirements, and spending affordability guidelines; and (5) the fact that developing transit is crucial to meeting County economic development goals.

Criticism of County Executive's Proposal

The County Executive's proposal (MC 24-15) received significant criticism from some members of the public and was eventually withdrawn. The criticism centered around four major areas (with the Task Force's response also included in the text): (1) lack of public input; (2) lack of accountability of the proposed authority to elected officials; (3) inadequate solution to labor issues; and (4) exceeding existing Charter limits on property taxes. Parts III and IV of this Report address both the issues raised and detail how the Task Force proposes to address them. The Recommendations of the Task Force appear at the end of this Executive Summary.

Financing the Project

Background and Context

As discussed earlier in this Report, current constraints under the County Charter make such an investment in our future very difficult or, at best, will unacceptably delay its implementation and the realization of its benefits. Furthermore, to the extent bonded indebtedness is used to finance a significant portion of Phase I of the RTS network, if that debt is issued as "County debt" it will compete with County debt issued to fund other capital projects, and could affect the County's credit ratings. Creating a transit authority that will allow the County to achieve its immediate and long term financing goals without those impediments is a worthy objective.

For the RTS, because each separate transit corridor is part of a larger system that is being developed in an integrated and systematic manner, it is important to develop a comprehensive financial plan to address the whole of Phase I. This will lead to a more efficient and cost-effective development process, and will enable members of the community to better understand the complete Phase I effort.

The potential financing structures for Phase I of the RTS network presented in this Report take into account all five corridors and each element of development and operating costs. This comprehensive multi-corridor approach will allow the most effective development schedule and sequence, as well as the lowest total cost.

It is essential that debt incurred to implement the RTS not be carried on the County's balance sheet. If the debt were carried on the County's balance sheet, it would be subject to the County Charter, debt affordability limits, and other technical requirements relating to such debt. The alternative approach of a transit authority issuing independent debt envisions a more effective leveraging of County, State and Federal resources.

The Executive's proposal sought to tie all of these elements together. The Task Force has, in turn, sought to improve on these proposals by considering the constructive criticism and suggestions that have been made on their merits. In particular, **the Task Force has improved the financial accountability of the proposed transit authority and has proposed limits on any new taxes that might be imposed for this purpose.**

Issues Relating to Financing the Project

Two primary issues have been raised concerning finance-related aspects of the transit authority proposal: lack of financial accountability to elected officials and the unlimited ability to impose additional taxes. The Task Force sought to address both of these issues by increasing the accountability of the transit authority to elected officials for budgetary and other decisions, and by placing an absolute maximum limit of the extent to which taxes could be increased for this purpose.

Estimated Capital and Operating Costs

The starting point for arriving at a reasonable financial approach for Phase I requires preparing reasonable estimates of capital and operating costs. The capital and operating costs in this report have been developed by the County's transportation consultant, VHB. VHB's capital cost estimates are attached to this Report as Appendix 5a, and the full Report presents them and how they were developed in greater detail.

Financial Scenarios Considered

Types of Local Taxes Considered

In its evaluation of alternative revenue sources, the Task Force found that in Maryland there are very few taxation alternatives available to counties. Those which are available either are heavily relied upon or tend not to generate sufficient revenue to meet the needs of constructing and operating the RTS. Beyond the real property tax, the Task Force has provided options to consider implementing an excise tax (an alternative available to the County without further State authorization), and a local-option sales tax (an alternative not now available to counties in Maryland, which would require additional enabling legislation to be enacted by the State). Other revenue sources are possible, and should be considered by decision-makers, but some would generate relatively small amounts.

While not recommending any action on them at this time, the Task Force also recognizes that other potential revenue sources exist, which also would require state enabling legislation, including an employment withholding tax, and a congestion tax which taxes vehicular access to specific parts of a community at particular times.

Accordingly, the scenarios constructed below use different combinations of the three most viable local revenue sources identified: property, excise[2] and sales taxes. Scenarios are defined in pairs: one pair without any state or federal contribution, and one pair with such a contribution.

Potential for Federal and State Funding

The availability of federal and state funding for the RTS is uncertain. While the federal government has been a major source of infrastructure funding in the past, and still has some grant and loan programs, traditional U.S. DOT grant programs are inadequate to enable the County to develop Phase I in reliance on a Federal

[2] The excise tax proposed in this context is assumed to be a tax on the privilege of leasing, or offering for lease, commercial space (i.e., office, retail, industrial, and multi-family residential). The proposed excise tax rate would be set at a specific number of cents per square foot of space. Owner occupied space would not be subject to the tax as proposed.

grant large enough to support a major part of the capital cost. The Task Force's reasoning is discussed more fully in the body of the report.

State funding is a different matter. The Task Force supports an approach to state funding that would spread support for the RTS program over a long period of time, through annual payments that could support both (or either) debt service payments or operating subsidy requirements. Illustrative scenarios presented in this Report demonstrate the favorable impact that such state contributions could have on local tax burdens needed to meet the financial requirements of RTS development and operation. Moreover, the Task Force considers it equitable for the State to make material contributions to the RTS, since the State is a principal beneficiary of the investment. This is because not only does Montgomery County benefit in increased economic activity and tax revenues, but so does the State. The Sage report, included below, estimated the present value to the County of these net fiscal benefits to be in excess of $800 million. The Sage Report also estimated that the net present value of net fiscal benefits to the State is more than $1 billion; however, the net fiscal benefit to the State did not attribute costs of the project to the State. Therefore, net fiscal benefits to the County may be understated and to the State may be overstated.

Likewise, the federal government could structure a variety of different kinds of payments in lieu of more typical grant programs, to assist in defraying costs in Montgomery County that are unique to us because of the heavy federal presence. Indeed, each of the five (5) corridors that are a part of Phase I will carry a large number of current and future federal employees, contractors and clients. Efforts should be undertaken to pursue a regularized plan of payments by the federal government, or the agencies most directly involved, to help the proposed transit authority offset the operating subsidy required for the RTS – in part due to the federal presence. The Task Force also considers it equitable for the federal government to participate in funding this extraordinary asset.

Funding Scenarios

The scenarios that follow cover capital and operating costs for Phase I of the RTS network, which includes Stage 1 of the CCT, 355 North, 355 South, US 29, and Veirs Mill Road. The CCT is currently defined as a state project.

The Task Force asked the County's financial advisor to develop a realistic financing model, one that would achieve favorable marketability of bonds and favorable rating from independent rating agencies. Thus, the model developed included conservative capital, operating and debt service reserves; reasonable inflation assumptions for both capital and operating costs; and an approach whereby 15% of capital costs would be paid on a "pay as you go" basis. The model also accepted without change VHB's capital and operating cost estimates and fare box recovery projections (See Appendix 6a – PFM Financial Analysis Summary).

The Task Force then asked the financial advisor to generate a number of specific financing scenarios, utilizing a variety of different potential revenue sources, to gain an understanding of how different approaches would potentially impact taxpayers. The goal of the exercise was to develop alternative scenarios that would illustrate different approaches – and how they would impact different categories of taxpayers. The Task Force is making recommendations on enabling legislation in Chapter 6 of the Report, but is not making a recommendation as to which combination of taxing sources should be used. The scenarios are presented to inform decision-makers and the public, and to illustrate the impact of changing certain variables.

The scenarios fall into four (4) broad categories (See Appendix 6b – PFM Financial Scenarios), two of which contain state and federal contributions as described in the pages that follow.

Category 1 – County-wide Real Property Tax

The first set of scenarios uses the county-wide real property tax as the County's contribution to the RTS financing structure, and this source of funding covers both capital and operating costs not covered by farebox recovery. Four scenarios are presented in this category, and are detailed in the full Report and found in Appendix 6b.

Category 2 – County-wide Real Property Tax and County-wide Excise Tax

The second set of scenarios uses the two sources of revenue as the County's contribution to the project; the county-wide real property tax and a new proposed excise tax. As noted above, the excise tax would be a tax on the privilege of leasing or offering to lease commercial space in the County. The real property tax would be dedicated to paying the capital costs of the project and the proposed excise tax would be dedicated to defraying operating costs. The primary reason to allocate the use of revenues in this way is to ensure the best possible bond ratings, financing terms and the lowest cost of capital. Four scenarios are presented in this category, and are detailed in the full Report and found in Appendix 6b.

Category 3 – County-wide Real Property Tax, Excise Tax and New Local Option Sales Tax

The third set of scenarios uses the real property tax, excise tax and a new 0.5% sales tax. While the sales tax option would require new State enabling legislation, this additional revenue source would generate substantial revenue (including from non-County taxpayers), and would materially reduce tax rates required on both real property and excise taxpayers. This category has two scenarios, and is detailed in the full Report and found in Appendix 6b.

Category 4 – County-wide Real Property Taxes and Corridor-based Real Property Taxes

The final set of scenarios considered included the County-wide real property tax, supplemented by a corridor-based real property tax within special districts that would have encompassed geographic areas extending a given distance from the centerline of the five transit corridors comprising Phase I of the RTS network. While these two scenarios are included in the detailed appendices (Appendix 6b) to this Report, along with the scenarios presented in the body of this Report, the Task Force ultimately discarded them, because the effective tax burdens on both residential and commercial taxpayers within the corridor-based districts was simply too great.

Summary of scenarios presented

The first three categories of financing scenarios presented represent a progression – from scenarios reflecting the highest burden on real property taxpayers to the lowest burden on County taxpayers as a whole.

Perhaps the most feasible and least burdensome approach to any single group of taxpayers is the scenario employing the County-wide real property tax, the County-wide excise tax, and the annual state and federal contribution. These observations are demonstrated by tables contained in the full Report, including, but not limited to, Table 5-7.

Recommendations for Enabling Legislation

Enactment by the General Assembly of enabling legislation authorizing Montgomery County to establish a transit authority, and further authorizing Montgomery County to subject the transit authority to certain terms, provisions, conditions and limitations, as follows:

1. That the governing board of the transit authority consist of up to 7 members, appointed for staggered 4 year terms, with several suggested criteria for appointment, as set forth in Section 4 of this Report.

2. That the County Council be authorized to establish special tax districts consisting either of the entire County or specifically defined areas within the County.

3. That the transit authority be authorized to impose special real property taxes within special tax districts, the revenues from which would be dedicated to the use of the transit authority for transit functions assigned to it. The transit authority would impose such taxes and set tax rates annually, subject to the veto of the Council. In the event of such a veto, the transit authority would still be able to impose (and the County would collect as

its agent) a special real property tax at a rate sufficient to pay debt service on bonds previously issued by the transit authority and approved by the Council. In such circumstances, the Council and transit authority would continue to work to resolve any differences.

4. That the transit authority be authorized to impose a new excise tax, taxing the privilege of leasing property defined as "commercial property" within the County. Revenues from such an excise tax would be dedicated to the use of the transit authority for transit functions assigned to it. The transit authority would impose such taxes and set tax rates annually, subject to the veto of the Council. In the event of such a veto, the transit authority would still be able to impose (and the County would collect as its agent) an excise tax at a rate sufficient to meet operating expenses of the transit authority, but in no event higher than the excise tax rate imposed during the preceding fiscal year. In such circumstances, the Council and transit authority would continue to work to resolve any differences.

5. That with respect to the special real property tax described above, the maximum rate that could be assessed be 7¢ per $100 of assessed valuation.

6. That with respect to imposition of an excise tax as described in Part 5 of the Report, the maximum rate that could be assessed be 30¢ per square foot of gross commercial space leased or being marketed for lease.

7. That revenues collected, expenditures made, and debt incurred be outside the limits of the Montgomery County Charter.

8. That all dedicated transit revenues be paid into one or more special funds, the principal and income to be used only to fund transit authority activities and in accordance with authority bond indentures and related requirements.

9. That the transit authority be required to submit to the Council and Executive a multi-year capital improvement program, an annual capital budget and an annual operating budget, each of which shall be subject to the review and approval of the Council in accordance with a process

established to deal with similar matters in connection with county Executive Branch departments.

10. That the exercise by the transit authority of the power of eminent domain be subject to Council approval, with the Council required to ensure, as part of its decision process, that any real property taking is consistent with Title 12 of the Real Property Article of the State Code and substantially consistent with all adopted Montgomery County Master Plans, including the County-wide Transit Corridors Functional Master Plan.

11. That the Council's implementing legislation require the transit authority to submit to the Council annual independent financial audits and periodic management audits, to be published for public review, and adopt reasonable performance metrics for the transit corridors after they are operational.

12. That the Council subject the transit authority to County Ethics laws; to review of its personnel, functions and activities by the County's Inspector General; to the County's Open Government initiative at a level consistent with County Executive Branch departments; and to a requirement to develop and periodically report performance metrics, in a format approved by the Council, that inform elected officials and the public concerning the efficiency and efficacy of authority operations.

13. That the transit authority be empowered to enter into inter-jurisdictional agreements to promote both inter-county and regional transit service, and authorized to enter into agreements with municipalities where appropriate.

14. That the County government consider whether it wishes to sponsor legislation for enactment by the General Assembly to authorize a one-half cent sales tax for Montgomery County, the principal and income of which to be used only to fund transit authority activities and in accordance with authority bond indentures and related requirements; provided, that consideration of whether to sponsor such a legislation should not delay

support for and enactment of the enabling legislation (and subsequent local implementing legislation) for the creation of the transit authority with the financing powers described herein.

15. That all county employees who are or could be members of a collective bargaining unit under County law, including but not limited to Ride On and Department of General Services employees, will remain as County employees as described more fully in Section 4.3 of this report.

CONCLUSION

The County Executive has proposed the creation of a new transit authority empowered to develop and operate a unique transit asset: an RTS network. To accomplish this, enactment of State enabling legislation is necessary – which would empower (but not require) the County Council to adopt local legislation to create the transit authority and actually confer powers upon it, subject to a broad range of terms, conditions and limitations. The Task Force supports this objective, and has sought to address criticism of and strengthen the original proposal in the manner described herein.

No alternative will combine the needed organizational strengths and financial resources, while protecting the County's credit, other than the proposed quasi-independent transit authority described in this Report.

Development of the RTS network efficiently and as expeditiously as possible is in the public interest, and will address critical transportation, economic, environmental and social needs.

The Task Force urges that its recommendations be adopted, that enabling legislation consistent herewith be introduced in and adopted by the General Assembly, and the County government invoke that legislation and adopt local implementing legislation to create and empower the transit authority consistent herewith.

A concurring statement, a minority report, and a statement from the Montgomery County Civic Federation accompany this Final Report. Public comments may be accessed through the Task Force website.