



**MONTGOMERY COUNTY DEPARTMENT OF PARKS**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB 07/10/08**  
**Item # 9**

**MEMORANDUM**

**DATE:** July 1, 2008

**TO:** Montgomery County Planning Board

**VIA:** Michael F. Riley, Deputy Director of Administration  
Douglas Alexander, Acting Chief, Park Development Division  
Michael Ma, Acting Supervisor, Project Management Section

**FROM:** Linda Komes, Project Manager, Park Development Division

**SUBJECT:** Approval of Park Facility Plans for the Gene Lynch Urban Park and the Transit Plaza Easement Area.

---

**RECOMMENDATION**

Approval of Facility Plans for the Gene Lynch Urban Park and Transit Plaza Easement at the Paul S. Sarbanes Transit Center.

**PROJECT DESCRIPTION**

Background

Metro Urban Park, consisting of 35,354 square feet, is an existing public park located at the terminus of Bonifant St. on the site of existing Silver Spring Metro Station. The existing park will be displaced as a result of the construction of the new Paul S. Sarbanes Transit Center. The park was created by a perpetual easement granted by WMATA to the Commission in 1977 to compensate for land owned by the Commission at Jesup Blair Park in South Silver Spring, which WMATA needed for construction of the Red Line Metrorail line.

In exchange for the displaced Metro Urban Park, two smaller park replacement areas are planned as part of the Transit Center project. Combined, the two park replacement areas total 23,214 sf. The new parks will be constructed concurrently with construction of the Center. Capital costs associated with the design and construction of both parks are included as part of the transit center project, are not to be incurred by the Commission, and are not subject to the supplemental appropriation request pending Council action.



A Memorandum of Understanding (MOU) was jointly developed and signed by the Commission, Montgomery County and WMATA. The MOU establishes the timing for the release of the existing Metro Urban Park easement, describes the size, location, quality of design and finish of the two new permanent replacement park easement areas, the Facility Plan approval process for these new public spaces, the general construction schedule, and park maintenance responsibility. The MOU also requires that a park permit be obtained by the County for each park replacement area prior to the inset of construction. A copy of the executed MOU is attached as Attachment A.

The Facility Plans for these parks is the subject of this report.



## The Replacement Parks

During approval of the Mandatory Referral for the Transit Center, the Planning Board agreed to accept two smaller park replacement areas, with less total square footage than currently exists in Metro Urban Park, if the quality of the two replacement parks was of the highest quality. This was an important decision in that it allowed two very important pedestrian spaces to be

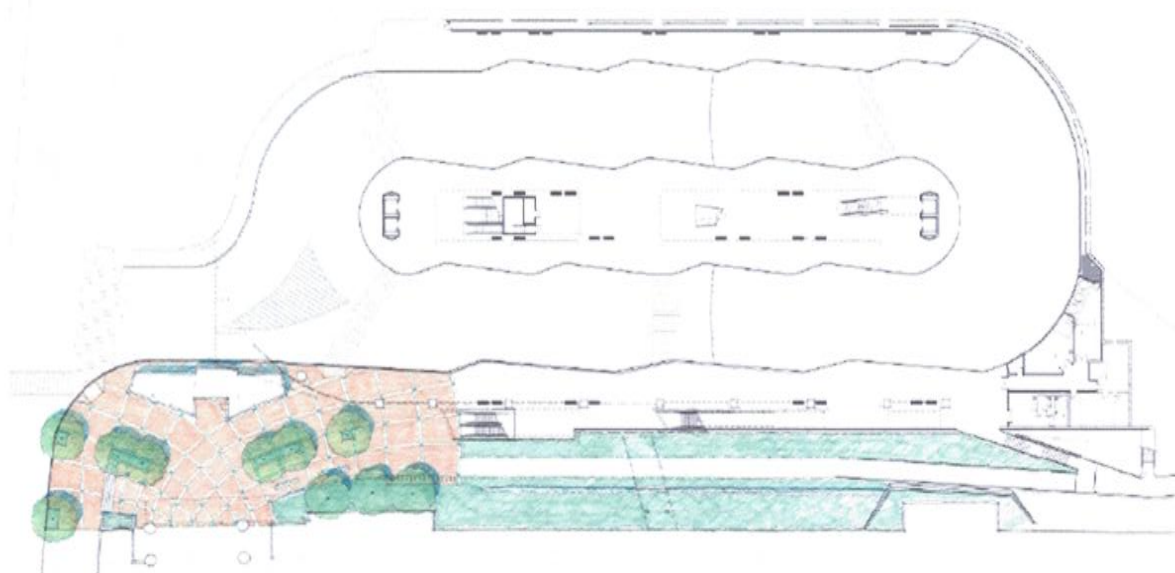
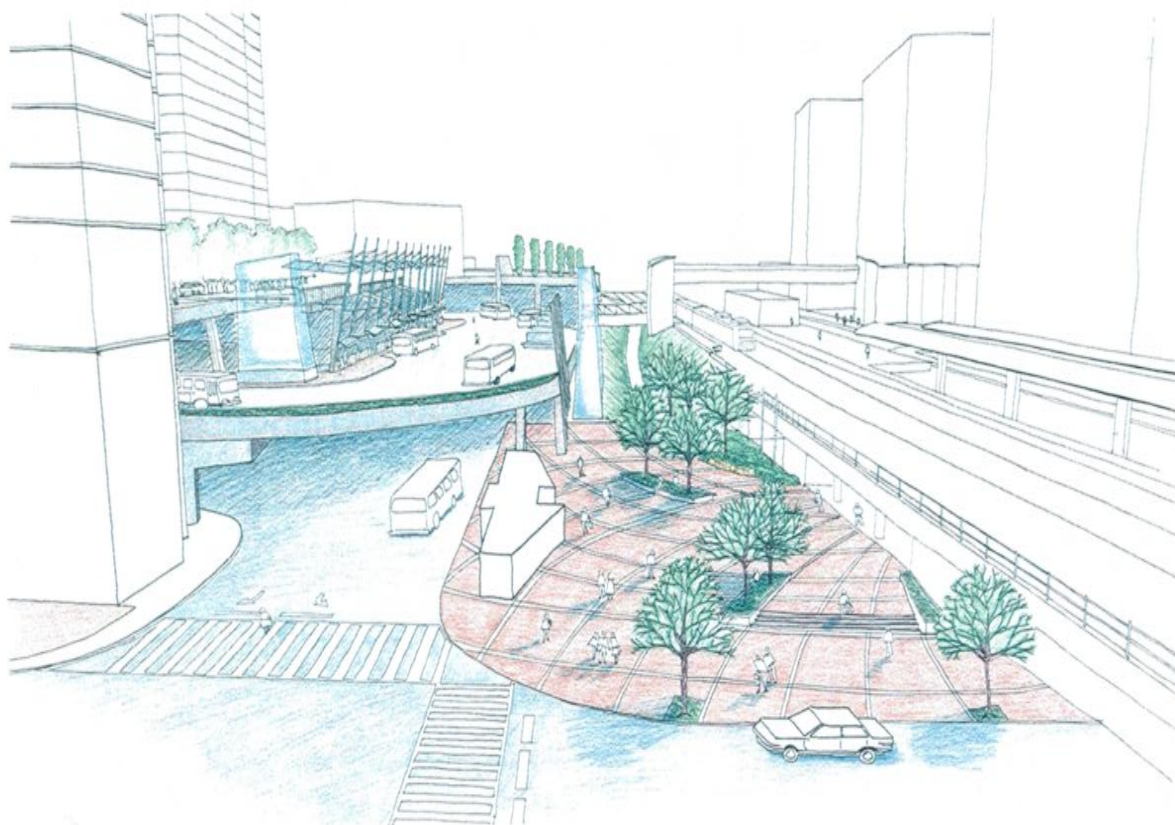
### **Paul S. Sarbanes Transit Center** First Level (Level 305)



developed with a higher level of design and quality of materials than is typical of WMATA stations. WMATA agreed to the use of higher quality, non-standard WMATA materials in these areas, provided that its personnel would not be required to maintain these areas, other than remove snow. It is intended that the Silver Spring Urban District will maintain these areas, with fees shared by the Commission and WMATA. The maintenance obligation and fees are fully described in the executed MOU.

## The Transit Plaza Easement Area

The first of these areas is at the main entrance to the Transit Center and the Metrorail station along Colesville Road. This area, consisting of approximately 11,624 sf, is physically and symbolically the gateway to Downtown Silver Spring. The proposed design, features the use of the Silver Spring Streetscape standard, with fields of Belden brick separated by broad, sweeping bands of granite. The curving movement of the granite bands reinforces pedestrian desire lines into and out of the station, and the previously proposed, rhomboid-shaped transit store. At the point where the bands intersect, an accent paver featuring recycled glass is proposed. Large shade trees in raised planters help soften and cool the space. The area is punctuated by the ribbon of fritted glass canopy at the existing metro entrance-now proposed to be eliminated in a cost saving measure. (See following discussion regarding the elimination of the "Essential Elements"). Several raised planters, designed with built-in skateboard deterrents, will include large shade trees to cool and soften the hardscape plaza.



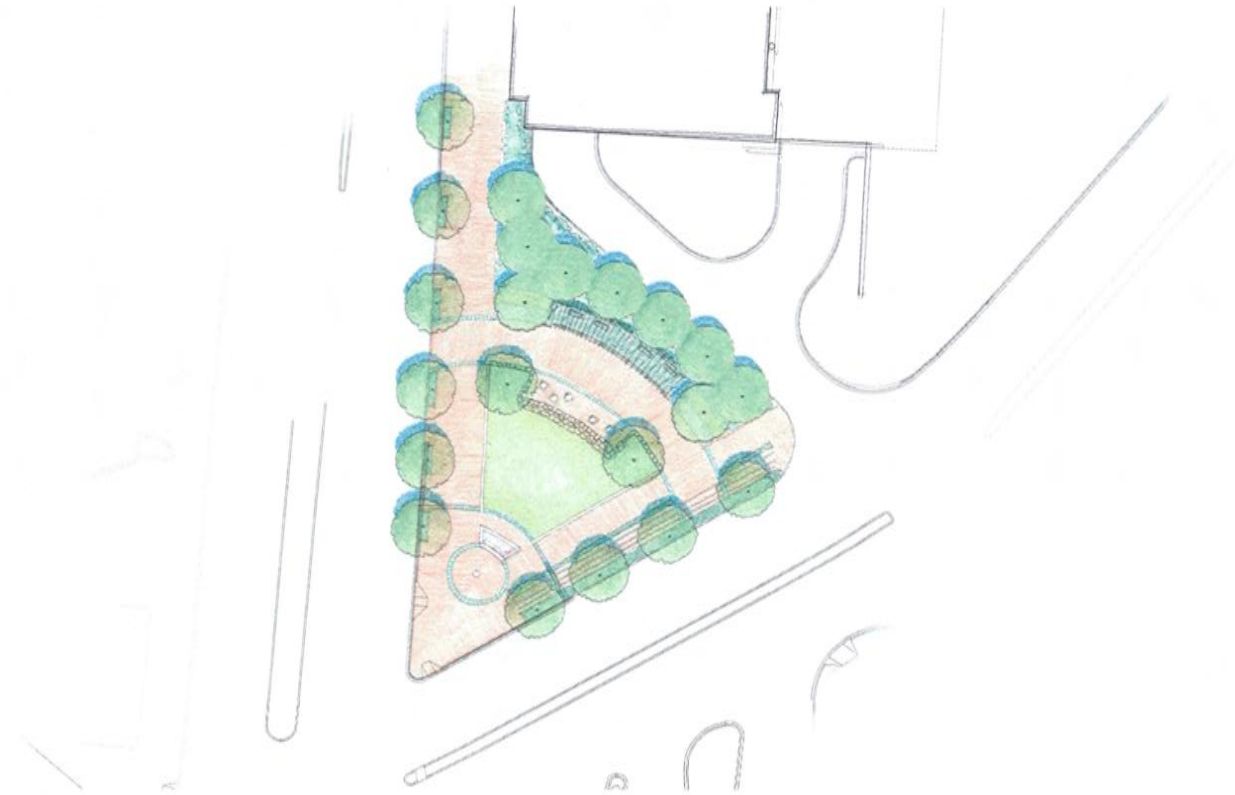
PLAN VIEW





### The Gene Lynch Urban Park

The second park replacement area was formerly known as the “jughandle” or the “WMATA tip” and has been renamed for the late Planning Board Commissioner Gene Lynch. The family is requesting that the park be called the “Gene Lynch Urban Park”. This triangular-shaped parcel consists of approximately 11,590 sf and is currently occupied with bus turning lanes and an interim bus stop. After construction of the Transit Center is complete, DPWT will remove the existing bus lanes and bus stop and will construct the park in accordance with the approved park plans, including the extension of the Silver Spring Greenway Trail across the Wayne Avenue frontage.



Staff from the Park Development Division have met with the Lynch family on several occasions and have worked together to develop ideas to make the park a fitting memorial to Commissioner Lynch. A triangular-shaped granite planter is proposed at the visually prominent intersection of the sidewalks along Colesville Road and Wayne Avenue. The south facing curved wall will be inscribed with the name of the park, include a brief narrative about Commissioner Lynch, and the following quote from the late Commissioner: “Always put your children first and teach them to reach higher, every day, with compassion and strength; for they are your best contribution to the world”.

The north side of the planter will include a brief description of the communities who together helped shape today’s downtown Silver Spring, with the following quote from Margaret Mead: “Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has”. A raised granite curb which surrounds the lawn panel will be inscribed with the names of the communities inside the beltway that were involved in shaping today’s downtown Silver Spring. The park will include various opportunities for sitting, either on

benches under the new iron pergola structure, on stone seatwalls, on the grass lawn panel, or at the proposed canopied café tables. In addition, the park will include extensive landscape planting, irrigation, and lighting.



Future plans for this park include the addition of a 1,500 sf bike station. Bike Stations are being constructed in urban areas all over the country and worldwide. They are always located near public transportation and provide safe and secure bicycle parking, and frequently include other services such as bike rental, repairs, information, restroom/changing areas, refreshments, etc.

#### Park Maintenance

As previously mentioned the MOU established that the Commission and WMATA would share maintenance responsibility of the two new park replacement areas. Section 11 of the MOU commits the Commission to paying up to \$70,000, as adjusted for inflation, for maintenance of the two park replacement areas. It is intended that the Silver Spring Service District will provide the service to these areas. An Maintenance Agreement with the Service District is currently being developed, and per the terms of the recently executed MOU, will be completed within the next year, well in advance of completion of the parks. Under the terms of the MOU, WMATA is solely responsible for snow removal in the Transit Plaza area.

#### Construction Schedule

Provided that the County's Supplemental Appropriation request is approved, construction of the Paul S. Sarbanes Transit Center is scheduled to begin in September of 2008 and is expected to continue for 26 months, until the fall of 2010. The Transit Plaza Easement area will be open to the public in the late fall of 2010. Completion of the Gene Lynch Park will follow in the Spring of 2011.



## The Paul S. Sarbanes Transit Center

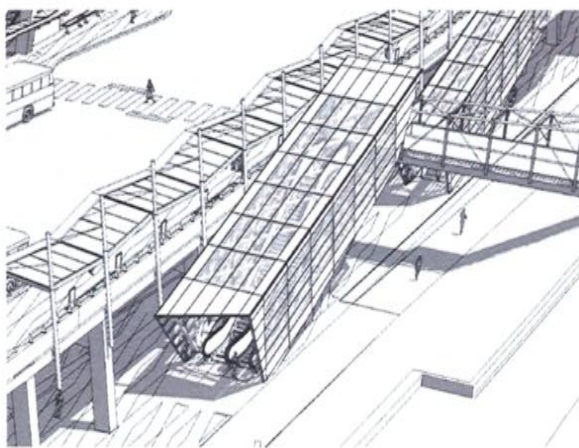
The Paul S. Sarbanes Transit Center is proposed as a three-level multi-modal transit facility, designed to meet existing and future transit needs, allow for the safe and convenient transfer from one mode of travel to another, and accommodate joint development opportunities that support and contribute to the revitalization of Silver Spring. The Center will be constructed on the site of the existing Silver Spring Metro Station and includes the following components: bus bays for WMATA and Montgomery County buses, an intercity bus terminal with ticketing facilities and bus bays, kiss-and-ride spaces, taxi spaces, pedestrian and bicycle facilities, an open space park and pedestrian plaza, and infrastructure necessary for road improvements and utility connections. The existing Silver Spring Metro Station is the busiest metro station in the State of Maryland and is second busiest in the entire Metro system, after Metro Center.

The approximate five-acre site is bordered by Colesville Road on the north, Ramsey Avenue on the east, an undeveloped tract of County-owned land to the south, and railroad tracks to the west. Surrounding land uses are comprised primarily of office buildings, including the Discovery Communications Headquarters, NOAA, and the Silver Spring Metro Plaza building.

The subject property is primarily owned by the Washington Metropolitan Transit Authority (WMATA) and is being developed as a joint development project consisting of a three-acre, public development portion (the Paul S. Sarbanes Transit Center), and the remaining two-acre private development portion, divided along what is referred to as "the bright line". A Project Plan for the private development portion of the project was filed in 2006 by Silver Spring Metro, LLC, a partnership of Foulger Pratt and Mid City Urban. The Project Plan was placed on indefinite hold to allow development of the Transit Center to proceed independently.

The first two levels of the structure will contain bus loops for WMATA, County and intercity buses. Access to the lowest level will be from Colesville Road. A new entrance road from Ramsey Avenue will provide access to the second level. The top deck will be accessed off of Bonifant Street and will provide Kiss and Ride parking, a taxi stand, access to the Marc bridges, and entrances to the proposed hotel and one of the residential buildings, proposed as part of the private development. The project architect states that careful consideration has been given to the placement of the support columns and to the floor to ceiling height ratio within the Transit Center to facilitate the penetration of natural light and for better air circulation.

The dominant architectural design vocabulary for the transit center is the repeated use of the rhomboid shape. A rhomboid is defined as an angular, four-sided shape, a shape that expresses the edge of the shape, or a shape that comes together at angles other than at 90 degrees. The use of this unusual shape has "guided the development of the design", and can be seen throughout the Center. It is most prominently seen in the shape of the Transit Store/Transit Police Station, in the elevator enclosures, supervisor's kiosks, in the escalator and stair enclosures, and in the canopies in the bus waiting areas. It is the use of this distinctive shape and the proposed use of fritted glass that gives the Transit Center its architectural



character and separates it from being just an enormous, utilitarian, bus-parking garage, located at the gateway to Silver Spring.

## The Mandatory Referral for the Transit Center

Montgomery County filed a Mandatory Referral application for the Transit Center, as the authorized agency representative for WMATA, and is also providing project management services during construction of the Center on behalf of WMATA. The Planning Board reviewed and voted to approve the Mandatory Referral on July 12, 2007. The Planning Board's approval included 17 specific recommendations for the project and one Binding Element. (See letter attached in Appendix B).

### Essential Elements

At the time of the Mandatory Referral, the Planning Board was very concerned that the prominent architectural features, particularly the glass canopy covers, and escalator and stair enclosures, (which were included as alternates in the bid documents), would be eliminated during the bidding process due to cost overruns or value engineering efforts. In an effort to ensure that this did not occur, the Planning Board included these character-adding elements in Exhibit D, which was included in the MOU entered into between WMATA, Montgomery County, and the Commission. These nine elements are referred to in the MOU as the "Essential Elements". At the time of the Mandatory Referral, the unusually-shaped, and architecturally prominent, transit store and transit police building, was included in the base bid documents and was not proposed as an alternate. If the prominent building had been included as a bid alternate, the Planning Board would certainly have included it on the list of "Essential Elements".

On June 16, 2008 Commission staff received an email from DPWT staff informing us that six of the nine "Essential Elements" would not be included in the transit center project because of cost over runs. The correspondence stated that the County Executive would request a supplemental appropriation of 16.72 million dollars be approved by the County Council in order to build the center. This sum did not include funds for the six remaining "Essential Elements". According to DPWT staff, the cost of the six deleted "Essential Elements" would require an additional \$849,384 in funding. DPWT later confirmed that the architecturally distinctive, glass transit store and police building would also be eliminated from the Transit Plaza replacement area and their functions relocated to the second level in the back of the Center. The cost to construct that building is estimated at \$470,000. Instead of the building, space defining building a planter with several shade trees is proposed. A copy of DPWT's costs for the eliminated "Essential Elements" is included as Attachment C. Please note that this list does not include the \$470,000 Transit Store and Transit Police Building. On June 19, 2008, the Planning Board discussed the proposed elimination of the six "Essential Elements" by the County. A letter was sent from the Chairman's on June 30, 2008 to the County Council and to the State Secretary of Transportation informing them of DPWT's intent to delete the "Essential Elements" and the Transit Store/Police building. A copy of this letter is attached in Attachment D.

## **ATTACHMENTS**

- A. Copy of Executed MOU
- B. Planning Board's Recommendation to Art Holmes on Transit Center Mandatory Referral
- C. DPWT's costs for the eliminated "Essential Elements"
- D. Chairman's letter to the County Council and the State Secretary of Transportation



**MEMORANDUM OF UNDERSTANDING FOR VACATING ORIGINAL PARK  
EASEMENT AND GRANTING REPLACEMENT EASEMENTS**

This **MEMORANDUM OF UNDERSTANDING** ("MOU") is entered into by and between the Maryland-National Capital Park and Planning Commission, a public corporation, organized and existing under the laws of the State of Maryland, (the "Commission"), the Washington Metropolitan Area Transit Authority, a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of the General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of the District of Columbia Board of Commissioners adopted November 15, 1966 ("WMATA"), and Montgomery County, Maryland, a body corporate and politic and subdivision of the State of Maryland (the "County").

**W I T N E S S E T H**

**WHEREAS**, the Commission is authorized and empowered to provide parks and recreation facilities for the inhabitants of the Maryland-Washington Metropolitan District, and

**WHEREAS**, pursuant to a certain deed of easement for open space dated January 22, 1978, and that Agreement by and between the Commission and WMATA dated July 19, 1977 (the "1977 Agreement"), attached thereto, and together recorded in Liber 5262 at Folio 139 of the Land Records of Montgomery County, Maryland, WMATA granted to the Commission a permanent surface easement (the "Original Park Easement") consisting of approximately 35,354 sq. ft., more or less, for the purpose of constructing, maintaining and operating an open space park facility for the benefit and use of the general public (the "Original Park Easement Area"), and

**WHEREAS**, the County, for and with the assistance of WMATA, intends to construct the Silver Spring Transit Center (the "Transit Center"), a multi-level, intermodal transit facility as part of a public/private development on property owned by WMATA and the County and including *inter alia* the Original Park Easement Area (hereinafter referred to as the "Transit Center Site"). That portion of the WMATA property to be developed privately (the "Private Development Site"), for purposes of Section 10 herein is set forth on Exhibit A attached hereto.

---

The entity to develop the Private Development Site shall be referred to as the "Private Developer."

WHEREAS, pursuant to Md. Ann. Code Article 28, § 7-112, the County, on behalf of WMATA, submitted certain plans and materials from November 2004 through February 2005 to the Commission for Mandatory Referral review of the Transit Center, and

WHEREAS, as a result of such review, on March 10, 2005, the Commission requested that a second Mandatory Referral be provided at approximately thirty-five percent (35%) of design in order for the Commission to review the Transit Center plans at a more advanced stage of project design, and

WHEREAS, in order to permit the construction of the Transit Center and the Private Development, the Commission has agreed to release and relinquish all right, title and interest in and to the Original Park Easement Area by Deed of Release, substantially in the form attached hereto as Exhibit B, to be executed simultaneously with this MOU; and in consideration therefore to accept two replacement permanent surface easements in accordance with the terms and conditions of this MOU, to be granted by WMATA to the Commission by Deed of Replacement Easements (the "Deed"), substantially in the form attached hereto as Exhibit C, to be executed simultaneously with this MOU which shall be a material part of the Deed, and together with this MOU and the Deed of Release to be recorded in the Land Records of Montgomery County.

NOW THEREFORE in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**Section 1: Recitals.** The above recitals are incorporated herein by this reference to the same extent and with the same force and effect as if fully hereinafter set forth.

**Section 2: Mandatory Referral.** The County has agreed to voluntarily submit design plans for the Transit Center to the Commission for review, which plans will include the design for the Jughandle Replacement Park and the Transit Plaza Easement Area (as hereinafter defined and collectively referred to as the "Replacement Easement Areas.').



2.1 **Review Process.** The Commission will review the final design of the Transit Center and Replacement Easement Areas. The County has further voluntarily agreed that certain conditions as set forth on Exhibit D attached hereto and made a part hereof will be constructed by the County, subject to the terms of this MOU (the "Essential Elements"). The County commits to develop the Replacement Easement Areas in accordance with plans at 30% design drawings (the "Facility Plan(s)") approved by the Planning Board, which shall be based upon the Concept Plans and Specifications for Materials for the Replacement Easement Areas as set forth on Exhibit E hereto and incorporated herein. WMATA consents to such development, subject to the terms and conditions of this MOU. If changes to, or deletions of any of those Essential Elements that apply to areas located outside the Replacement Easement Areas are necessary due to insufficient funding as a result of contract bid negotiations, the County Council and the State will be informed of the amount of insufficient funding, and the proposed change or deletion of the Essential Element and the impact to the Transit Center resulting therefrom. If the County Council or the State take action, or determine that either will take appropriate action to provide additional funds necessary for the County to construct such underfunded Essential Element, both the County and the Commission will provide such information and evaluation as necessary for the County Council and/or the State to act thereon. If the County Council and/or the State fail to provide the additional funds necessary for the County to construct such Essential Element, that Element will be deemed waived by the Commission. Notwithstanding the foregoing, as between WMATA and the County, nothing in this Section 2.1 shall modify WMATA's review and approval rights under the WMATA/County MOU for the Transit Center, as amended.

**Section 3: Grant of the Replacement Easements.** WMATA hereby agrees and does grant to the Commission the following easements, subject to the terms and conditions herein:

3.1 **Transit Plaza Easement Area.** Consisting of an approximately Eleven Thousand Four Hundred Fifty-eight (11,458) square foot area more or less on the surface of a portion of the Transit Center Site in the area around the proposed

transit store (hereinafter referred to as the "Transit Plaza Easement Area"), excluding from such Transit Plaza Easement any and all WMATA facilities, not otherwise specifically addressed in this MOU. The Transit Plaza Easement shall be used as an open space area for ingress into and egress out of the Transit Center, serving as an attractive portal into the Silver Spring Central Business District. The County shall have the legal description of the Transit Plaza Easement Area prepared by a registered surveyor, and, once completed, such description will be attached as the property description of the Transit Plaza Easement portion of the Deed of Replacement Easement attached hereto as Exhibit C; and

- 3.2 **Jug Handle Replacement Park.** The Jug Handle Replacement Park shall be known as such for purposes of this MOU. The Commission reserves the right to name the Park with approval from the County and WMATA. Consisting of an approximately Eleven Thousand Five Hundred Ninety (11,590) square foot area more or less on the surface of the WMATA Jug Handle (referred to from time to time as the WMATA Tip) (hereinafter referred to as the "Jug Handle Replacement Park"), such easement to be used for purpose of a public park. The County shall have the legal description of Jug Handle Replacement Park prepared by a registered surveyor, and, once completed, such description will be attached as the property description of the Jug Handle Replacement Park portion of the Deed of Replacement Easement attached hereto as Exhibit C.

**Section 4: Standard of Design of Replacement Easement Areas.** In consideration of the Commission releasing the Original Park Easement, the County, on behalf of WMATA will provide an enhanced quality design and use of materials above the typical WMATA standards as shown on the Facility Plan approved by the Planning Board, which approval shall be granted subject only on the condition that such Plan is in accord with the Concept Plans and Specifications for Materials for the Replacement Park Easement Areas as set forth on Exhibit E attached hereto and incorporated herein.

**Section 5: Reservation of Rights for Purple Line.** WMATA hereby reserves to itself, its successors and assigns, the air rights above the Transit Plaza Easement Area and any necessary surface and subsurface rights over, across, through and under the Transit Plaza Easement Area



for purposes of potential future construction and operation of the Bi-County Transit Way (BCT), also known as the Purple Line, or any replacement thereof (the "Purple Line"), or any construction by or on behalf of WMATA, or another public entity, or any private development approved by WMATA. The Commission shall require that design plans for the Purple Line which include revisions to the Transit Plaza Easement Area, be submitted to the Commission for Mandatory Referral review. Any other construction by or on behalf of WMATA or any private development approved by WMATA shall be governed by Section 12.4. The Commission will not impede construction of the Purple Line. WMATA and the Commission agree to collaborate through the Purple Line planning process and advocate development and implementation of a design that does not render either the Transit Plaza Easement Area or the Jug Handle Replacement Park ineffectual as public open space. In the event that the modifications required for construction and operation of the Purple Line are so significant as to render the Transit Plaza Easement Area ineffectual as public open space, WMATA and the Commission will endeavor to reach an agreement to designate other property located in Montgomery County that is comparable to replace the Transit Plaza Easement Area no longer operative as public open space.

**Section 6: Reservation of Rights for Bus Loop Lanes (Area 2).** The County and WMATA hereby reserve the right to utilize the existing bus loop lanes through Jug Handle Replacement Park during construction of the Transit Center for bus stops as part of the Interim Operations Site.

**Section 7: Commission's Right to Construct Improvements on Jug Handle Replacement Park.** Subject to the Commission providing, or requiring its contractor to provide indemnity, insurance and bonding acceptable to WMATA, the Commission shall have the right to construct, or to have constructed, improvements on the Jug Handle Replacement Park, provided, however, such improvements shall be consistent with the Commission's use of such Area as an open space park facility. WMATA and the County will cooperate as necessary in the process to create a record lot if it is required in order to procure a building permit for such construction; provided that neither the County nor WMATA shall be required to incur any costs or liability as a result thereof or transfer any property without appropriate compensation therefor; and provided further that WMATA and the County's commitment to assist is in its capacity as a party to this MOU

only and shall not bind or limit WMATA, or the County in its governmental and regulatory functions.

**Section 8: Release of Original Park Easement.** The Commission hereby re-conveys and releases all of its right, title and interest in and to the Original Park Easement Area recorded in Liber 5262 at Folio 139 of the Montgomery County Land Records; the same to be evidenced by a Deed of Release substantially in the form attached as Exhibit B to be executed simultaneously with this MOU and recorded in the Montgomery County Land Records.

**Section 9: Construction of Replacement Easement Areas.** Within sixty (60) days of the date of execution of this MOU, the County will submit to the Planning Board for review and approval i) Facility Plans for the Replacement Easement Areas, which approval of the Facility Plans shall be granted subject only to the condition that such Plan is in accord with the Concept Plans and Materials Specifications attached as Exhibit E, and ii) a schedule for construction of each Replacement Easement Area, which approval of the construction schedule shall not be unreasonably withheld, conditioned or delayed. The County shall not commence construction on either Area until a Park Permit has been issued by the Montgomery County Parks Department, which Permit shall be issued subject only to the condition that the construction drawings are materially consistent with the Facility Plans and schedule for construction approved by the Planning Board. Provided further that as to the construction schedule the County will make all commercially reasonable efforts to conform to the construction schedule by requiring its contractor to do so but the County shall not be liable as a consequence of any delay or suspension of work as a result of the Transit Center construction which adversely impacts the construction schedule. And provided further that prior to the issuance of the Park Permit the County is hereby authorized to proceed with demolition and any and all other preconstruction activities and work on the Replacement Easement Areas.

- 9.1 **Restoration of Jug Handle Replacement Park.** After transferring buses into the newly constructed Transit Center, the County will remove the existing bus lanes from the Jug Handle Replacement Park and construct the Jug Handle Replacement Park in accordance with the construction plans approved as part of the Park Permit issued. As part of such plans, the County will extend the bike



path (also known as the green trail) that exists along the Discovery Communications, Inc. property on Wayne Avenue along the length of the Jug Handle Replacement Park; and provide sidewalks along Colesville Road and Wayne Avenue in accordance with the 1992 Approved Silver Spring Streetscape Standards. This construction work shall commence upon completion of the Transit Center by the County and acceptance of the Transit Center by WMATA, and shall be completed in accordance with the approved Facility Plan and construction schedule approved by the Planning Board, provided further that as to the construction schedule the County will make all commercially reasonable efforts to conform to the construction schedule by requiring its contractor to do so but the County shall not be liable as a consequence of any delay or suspension of work as a result of the Transit Center construction which adversely impacts the construction schedule.

**Section 10: Stabilization of Disturbed Private Development Site.** Upon completion of construction and acceptance by WMATA of the Transit Center, provided there is "no planned construction" on the Private Development Site, the County agrees to stabilize, grade and seed any portions of the Private Development Site disturbed during construction of the Transit Center to a condition typical for accessible vacant development sites and to provide walkway connections to the various levels of the Transit Center. For purposes of this Section 10, the term "no planned construction" shall mean that the Private Developer has not begun construction or closed on its construction financing for any portion of the Private Development Site and does not intend to do so within the next sixty (60) days. A letter from the Private Developer that it has received a formal commitment for construction financing and intends to close on such financing within sixty (60) days shall be deemed sufficient evidence of "planned construction."

**Section 11: Maintenance of Replacement Easement Areas.**

11.1 **Jug Handle Replacement Park.** Within one (1) year of the execution of this MOU, the County shall, or shall cause the Silver Spring Urban District ("Urban District") to enter into a maintenance agreement with the Commission and WMATA, to maintain the Jug Handle Replacement Park (the "Jug Handle Maintenance Agreement"), and the Commission shall pay the costs of such maintenance, whether

capital or operational. All materials used in the repair and maintenance of the Jug Handle Replacement Park will be equivalent materials to those used during construction of the Jug Handle Replacement Park. The Jug Handle Maintenance Agreement will continue until a Private Developer, as a condition of its site plan approval is required to "upgrade" the Jug Handle Replacement Park, and/or assume responsibility for maintenance or the cost of maintenance of the Jug Handle Replacement Park, at which time the Private Developer will be responsible for the maintenance or the costs of maintenance of the Jug Handle Replacement Park, at its sole cost and expense. Provided further that if the Private Developer is required to "upgrade" the Jug Handle Replacement Park or assume responsibility for its maintenance or the cost of its maintenance, the Jug Handle Replacement Park shall be counted by the Commission towards the Private Developer's off-site amenity for the Private Development.

The County shall, or shall cause the Urban District to indemnify, defend and hold harmless the Commission and WMATA against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, and judgments that are made against or incurred by the Commission and/or WMATA arising from the Urban District's negligence, wrongful conduct, negligent performance or failure to perform any of its obligations under the Jug Handle Maintenance Agreement; provided however that the indemnification provided under this paragraph is limited by the notice requirements, types of liabilities and damage limits provided in the Local Government Tort Claims Act, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. Code. The foregoing indemnification obligation shall be included in the Jug Handle Maintenance Agreement.

- 11.2 **Transit Plaza Easement Area.** WMATA exclusively shall be responsible for all snow removal in the Transit Plaza Easement Area. Within one (1) year of the execution of this MOU, the County shall, or shall require the Urban District to enter into a maintenance agreement with the Commission and WMATA for landscape maintenance, cleaning, sweeping, repair, and replacement, and such other maintenance of the Transit Easement Area (the "Transit Plaza Maintenance

Agreement"). All materials used for the repair and maintenance of the Transit Plaza Easement Area will be equivalent materials to those used during construction of the Transit Plaza Easement Area. Based upon invoices from the Urban District or its successor, if any, WMATA shall contribute Fifteen Thousand Dollars (\$15,000.00) per year, adjusted annually by the adjustment provided in WMATA's union contract(s) covering employees who perform similar maintenance services, for the costs to maintain the Transit Plaza Easement Area that it would be required to bear were the design and improvements to the Transit Plaza Easement Area developed with WMATA standard design elements. All obligations of WMATA under this Agreement that directly or indirectly require, or may require, WMATA's expenditure of any of its funds are, and shall be, subject to the appropriation and availability of funding through WMATA's normal and customary budgetary procedures. The Commission shall contribute the maintenance costs, whether capital or operational, incurred as a result of the enhanced quality design and use of materials above the typical WMATA standards.

The Transit Plaza Maintenance Agreement between WMATA, the Commission and the Urban District shall include, among other things: i) the Commission's annual contribution for maintenance shall not exceed Thirty-seven Thousand Five Hundred Dollars (\$37,500) per year, adjusted for inflation based upon the Washington-Baltimore Area CPI Urban Consumers Index (this limit shall not apply to costs incurred as described in Section 12.5 herein); ii) in the event the maintenance costs exceed the total of WMATA's annual contribution as provided in this Section 11.2 plus the Commission's annual contribution as provided in this Section 11.2, an amendment to the Transit Plaza Maintenance Agreement shall be negotiated and entered into between WMATA and the Commission to address the overage; iii) the County shall, or shall cause the Urban District to indemnify, defend and hold harmless the Commission and WMATA against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, and judgments that are made against or incurred by the Commission and/or WMATA arising from the Urban District's negligence, wrongful conduct,



negligent performance or failure to perform any of its obligations under the Transit Plaza Maintenance Agreement; provided however that the indemnification provided under this paragraph is limited by the notice requirements, types of liabilities and damage limits provided in the Local Government Tort Claims Act, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. Code.

- 11.3 **Failure to Maintain Replacement Easement Areas.** In the event that the Urban District (or the Private Developer as the case may be) fails to maintain the Transit Plaza Easement Area and/or the Jug Handle Replacement Park as herein provided, then the Commission shall be responsible for maintaining such Replacement Easement Areas. In the event that the Commission fails to maintain the Transit Plaza Easement Area and/or the Jug Handle Replacement Park, as set forth in the Transit Plaza Maintenance Agreement, WMATA shall provide the Commission with notice of such failure. If the Commission fails to maintain the Transit Plaza Easement Area and/or the Jug Handle Replacement Park as required within thirty (30) days of such notice, WMATA shall have the right to terminate the easement over the Replacement Easement Area that has not been properly maintained.

**Section 12: Non-Interference With WMATA Operations.**

- 12.1 The parties acknowledge and agree that the Transit Plaza Easement Area is the entrance to WMATA's Silver Spring Transit Center that serves as the Metrorail Station (the "Metrorail Station"), and that the first priority is safe and efficient access to the Metrorail Station by transit passengers.
- 12.2 Subject to the Parties' rights and obligations under this MOU, The Commission shall not interfere with WMATA's current or future use, construction, maintenance, repair and operation activities at the Metrorail Station, including, but not limited to activities within the Transit Plaza Easement Area.
- 12.3 WMATA shall have the right to modify access to and from the Metrorail Station or features at the Transit Plaza Easement Area as provided in Exhibit F attached hereto and incorporated herein ("Approved Changes to the Transit Plaza Easement Area"). In the event of such modifications, WMATA shall notify the Director of Parks in writing within thirty (30) days of such modification.

- 12.4 In the event WMATA needs to make modifications to the Transit Plaza Easement Area for the purpose of accommodating its operational needs (or any other transit agency's operational needs if served by the Transit Center) that are not included on Exhibit F, WMATA shall submit the design plans for such modification to the Commission for Mandatory Referral review. In the event WMATA desires to make modifications to the Transit Plaza Easement Area that are not for the purpose of accommodating its operational needs and not included on Exhibit F, WMATA shall submit the design plans for such modification to the Commission, and such modification shall be subject to written approval by the Commission's Director of Parks, which approval shall not be unreasonably withheld, conditioned or delayed. In the event the Director does not approve the requested change, WMATA may appeal such decision to the Planning Board. The costs of any modifications at WMATA's request shall be the sole and exclusive responsibility of WMATA, including any increased maintenance costs as a result thereof beyond those maintenance costs as provided in Section 11.2. Repair or disturbance of the Area, other than WMATA's modifications to the Area themselves (which materials WMATA shall endeavor to be consistent with the character with the Area), shall be replaced with equivalent materials to those used during construction of the Transit Plaza Easement Area.
- 12.5 Excluding any renovations or reconstruction required for construction and operation of the Purple Line, in the event that the Commission desires to modify, renovate or reconstruct the Transit Plaza Easement Area, the Commission shall submit its plans for such modification, renovation or reconstruction to WMATA for review and approval. Additionally, WMATA shall require the Commission to comply with WMATA requirements for insurance, indemnification and adjacent construction as provided in WMATA's "Adjacent Construction Design Manual, Revision 1," and/or any revisions or the last edition of that manual. All costs for such modification, renovation or reconstruction shall be the sole and exclusive responsibility of the Commission, including any increased maintenance costs as a result thereof beyond those maintenance costs as provided in Section 11.2.

Neither WMATA nor the County shall be responsible for the costs associated with such modification, renovation or reconstruction.

**Section 13: Future Private Developer Amenities and Contributions.** Subject to i) the proposed improvements being built in accordance with WMATA's Adjacent Construction Design Manual, and ii) WMATA and the Private Developer, or any other private developer, entering into an access agreement in which the developer agrees to provide (or have provided) indemnity, insurance, bonding, and conditions of maintenance, including a maintenance agreement with the Urban District (or the County through the Urban District) acceptable to WMATA, WMATA shall provide access to the Private Developer or such other private developer to install certain improvements on the pedestrian and landscape areas of the WMATA property as required for off-site amenities in accordance with its optional method development approvals, which optional method development approvals shall contain conditions consistent with this Section 13. In the event that the Private Developer (or such other private developer) installs brick pavers or other items or materials that are not WMATA standard items or materials on any portion of the Transit Center as required by and in accordance with its optional method development approvals, then the Commission shall require the Private Developer (or such other private developer) to enter into an Agreement with the Urban District (or the County through the Urban District) pursuant to which the Urban District shall assume responsibility for maintenance of such improvements, at the Private Developer's (or such other private developer's) sole and exclusive cost, and the Private Developer shall indemnify, defend and hold WMATA harmless against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, and judgments that are made against or incurred by the WMATA arising from the Private Developer's negligence, wrongful conduct, negligence performance or failure to perform any of its obligations to provide maintenance whether caused by the Private Developer or the Urban District; provided however that the indemnification provided under this paragraph as to the Urban District is limited by the notice requirements, types of liabilities and damage limits provided in the Local Government Tort Claims Act, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. In the event that any of the Essential Elements are not funded in accordance with Section 2.1 of this MOU, as to such unfunded Essential Element, this Section 13.1 shall become null and void and the maintenance responsibility shall remain with WMATA. In all events, the maintenance of the drive aisles and other non-pedestrian areas of the top deck and the entrance



drive from Ramsey will remain the responsibility of WMATA. In the event the Urban District refuses or fails to accept responsibility for maintenance as herein provided, then the Commission shall be responsible for maintaining such improvements.

**Section 14: Effect on 1977 Agreement.** The 1977 Agreement (a copy of which is attached as Exhibit G) shall become immediately null and void and of no further force or effect upon the execution of this MOU and recordation of the Deed and Deed of Release.

**Section 15: Remedies.** If a party breaches any term of this MOU and does not cure such default after thirty (30) calendar days' written notice from the other party or, as to defaults not reasonably susceptible to being cured within thirty (30) calendar days, fails to diligently and continuously prosecute the cure of same, the non-breaching party may seek specific performance or other affirmative or negative injunctive relief against the breaching party and/or seek any other remedies available to it at law, in equity, under this MOU or otherwise. In addition to the remedies set forth in the preceding sentence, the non-breaching party may, following the expiration of the 30-day period or the failure of the breaching party to continuously and diligently prosecute the cure to completion, take action to correct the uncured default, including the right to enter on the Replacement Easement Areas to correct the same, and the breaching party shall pay the non-breaching party the costs thereof upon demand.

**Section 16: Miscellaneous.**

16.1 **Governing Law, Jurisdiction and Venue.** The law of the State of Maryland will govern the validity, interpretation, construction and performance of this MOU. The parties agree that the exclusive jurisdiction and venue for any suit between the parties, relating to this MOU, the Deeds of Easement or the Deed of Release, shall be in the United States District Court for the District of Maryland, and the parties hereto expressly consent to the venue and jurisdiction of such court.

16.2 **Compliance with All Laws, Rules and Regulations.** The parties shall comply with all applicable laws, rules and regulations, whether federal, state or local, relating to this MOU.

16.3 **Successors in Interest.** The terms and conditions of this MOU shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties hereto.

16.4 **Notices.** Notices in connection with this MOU, the Deed of Replacement Easements or the Deed of Release shall be in writing and shall be sent to the parties at the following respective address(es) or to such other address as either party shall notify the other in accordance with the provisions hereof by: (a) registered or certified mail, return receipt requested; (b) hand delivery with evidence of receipt; or (c) a nationally recognized overnight courier service with evidence of receipt. Notices and other communication shall be deemed to have been given on the earlier of actual receipt or, in the case of mailing by United States mail, the fourth business day after the date so mailed or, in the case of overnight courier, on the first business day after delivery to such courier.

If to WMATA:

Nat Bottigheimer  
Assistant General Manager  
Office of Planning & Joint Development  
Washington Metropolitan Area Transit Authority  
600 5<sup>th</sup> Street, NW  
Washington, DC 20001

With a copy (which does not constitute notice) to:

General Counsel  
Washington Metropolitan Area Transit Authority  
600 5<sup>th</sup> Street, NW  
Washington, DC 20001

If to County:

Director, Department of Public Works and Transportation  
101 Monroe Street, 10<sup>th</sup> Floor  
Rockville, Maryland 20850

With copies (which do not constitute notice) at the same address to:

The County Attorney on the 3<sup>rd</sup> Floor

and to:

The Chief Administrative Officer on the 2<sup>nd</sup> Floor

If to the Commission:

Director of Parks  
Montgomery County Department of Parks  
9500 Brunett Avenue  
Silver Spring, Maryland 20901

With a copy (which does not constitute notice) to:

Office of General Counsel  
M-NCPPC  
6611 Kenilworth Avenue, Suite 403  
Riverdale, Maryland 20737

- 16.5 **Invalid or Unenforceable Term.** If any provision of this MOU or the application to any person or situation shall be held invalid or unenforceable, the remainder of this MOU and the application of such provision to persons or situations other than those held invalid or unenforceable shall not be affected and shall continue valid and be enforced to the fullest extent permitted by law provided that to do so does not cause this MOU to fail of its essential purposes.
- 16.6 **Amendments.** This MOU and the attached Exhibits contain the entire agreement between the parties and shall not be amended or modified in any manner except by an instrument in writing executed by the parties as an Amendment to this MOU.
- 16.7 **Authority.** The undersigned individuals represent that they have the requisite authority to enter into this MOU on behalf of WMATA subject to Section 17, the County, and the Commission, respectively, and to bind WMATA, the County and the Commission hereby.
- 16.8 **Counterparts.** This Agreement may be signed in counterparts, each constituting an original. Photocopies or facsimile transmissions of signatures shall be deemed original signatures and shall be fully binding upon the Parties to the same extent as original signatures.

**Section 17: WMATA Board Approval.** The parties to this MOU acknowledge and agree that this MOU will require WMATA Board approval (or action). Execution of this MOU by WMATA, and its validity thereby shall be subject to such approval.

**[SIGNATURES FOLLOW]**



MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_  
Oscar Rodriguez  
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
M-NOPPC Legal Department  
Date 12/13/07

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

By: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Print Name

Title

Date

MONTGOMERY COUNTY, MARYLAND

By: Diane R. Schwartz-Jones

ATTEST: Deborah A. Lichman

Diane R. Schwartz-Jones

Print Name

Assistant Chief Administrative Officer

Title

January 9, 2008


Date


APPROVED AS TO FORM AND LEGALITY.

OFFICE OF COUNTY ATTORNEY

BY [Signature]  
DATE 1/2/08

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

  
Patricia Colihan Barney  
Secretary-Treasurer

By:   
Oscar S. Rodriguez  
Executive Director

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

By: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_  
Oscar Rodriguez  
Executive Director

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_  
John B. Catoe, Jr.  
General Manager  
4/30/08  
\_\_\_\_\_  
Date

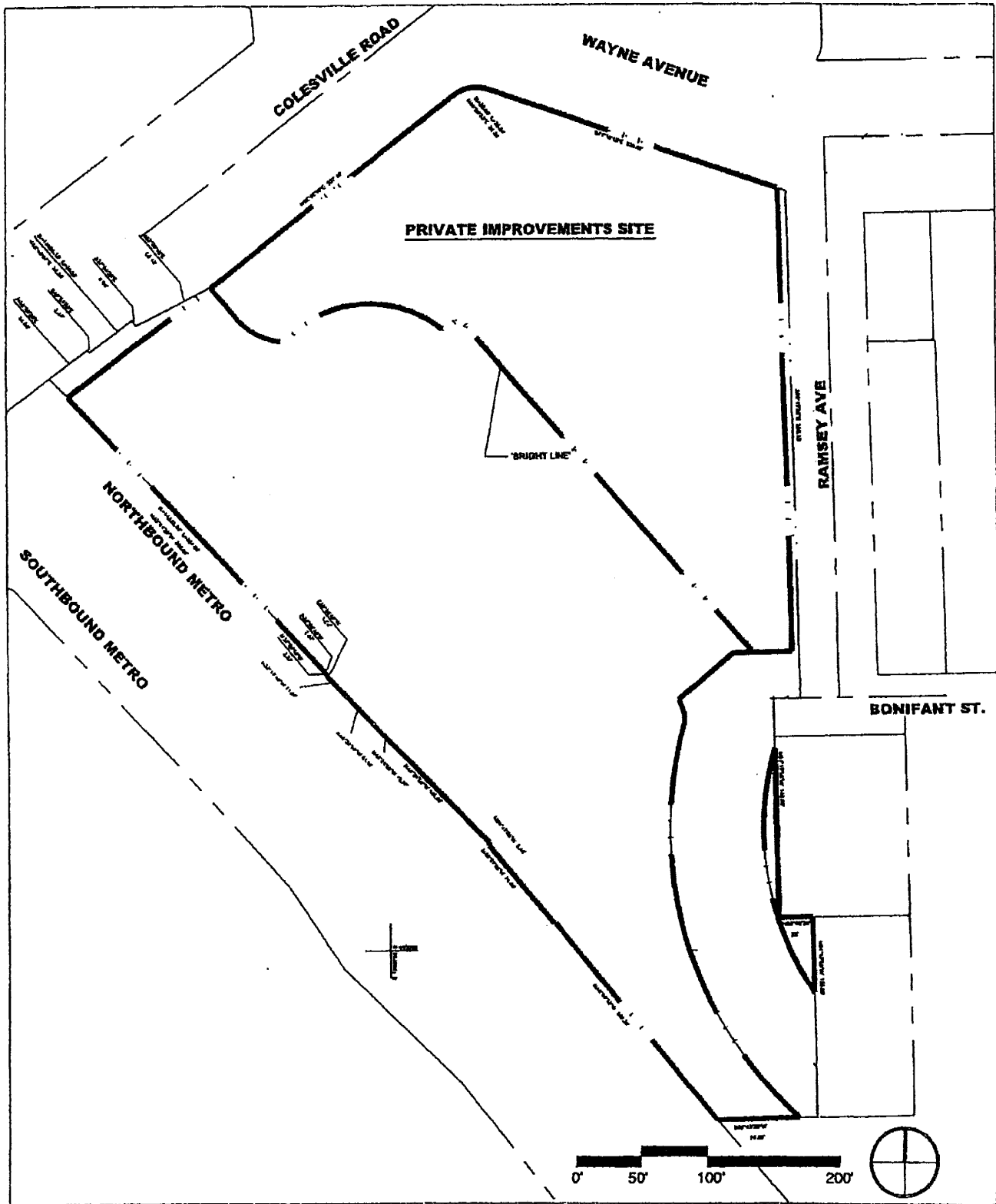
MONTGOMERY COUNTY, MARYLAND

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date



EXHIBIT A  
Transit Center Site with Private Development Site Delineated



**Exhibit - A**

EXHIBIT B  
Form of Deed of Release

**DEED OF RELEASE**

This **DEED OF RELEASE** is executed this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a body corporate and politic, (the "Releasor"); and the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of the General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of the District of Columbia Board of Commissioners adopted November 15, 1966 ("WMATA").

WHEREAS, certain property rights, in the form of a permanent surface easement, were acquired by Releasor by a deed dated January 22, 1978, and that Agreement by and between the Commission and WMATA dated July 19, 1977 (the "1977 Agreement"), together recorded among the Land Records of Montgomery County, Maryland, in Liber 5262 at Folio 139 (the "Easement Area"); and

WHEREAS, that property, being more particularly described in the attached Exhibit "1" (the "Property"), was included within the land area comprising the afore mentioned Easement Area conveyed to Releasor; and

WHEREAS, Releasor has determined that the Easement Area and the 1977 Agreement can and should be released so that WMATA may use the Property;

**NOW, THEREFORE, THIS DEED OF RELEASE WITNESSETH:**

That Releasor, in consideration of the sum of \$1.00 and other good and valuable consideration, hereby releases and quit claims any and all of its right, title and interest in the Property described on the attached Exhibit 1 for a permanent surface easement, and terms and conditions of the 1977 Agreement shall become null and void and of no future force or effect upon the execution of this Deed of Release.

IN WITNESS WHEREOF, Releasor has set its hand and seal this day, month,  
and year first above written.

Attest:

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_  
Bruce Crawford  
Executive Director

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned officer, personally  
appeared \_\_\_\_\_, personally known to me or satisfactorily proven to me to be the  
person whose name is subscribed to the foregoing instrument and acknowledged the foregoing to be his  
act and that he is duly empowered and authorized, as \_\_\_\_\_ for the Maryland-National  
Capital Park and Planning Commission, to execute this Deed on behalf of the Maryland-National Capital  
Park and Planning Commission.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

I HEREBY CERTIFY that this deed was prepared by or under the supervision of the undersigned,  
an attorney duly admitted to practice before the Court of Appeals of Maryland.

  
John J. Fisher  
Associate County Attorney

PARCEL ID NUMBER: \_\_\_\_\_

GRANTOR'S ADDRESS: \_\_\_\_\_

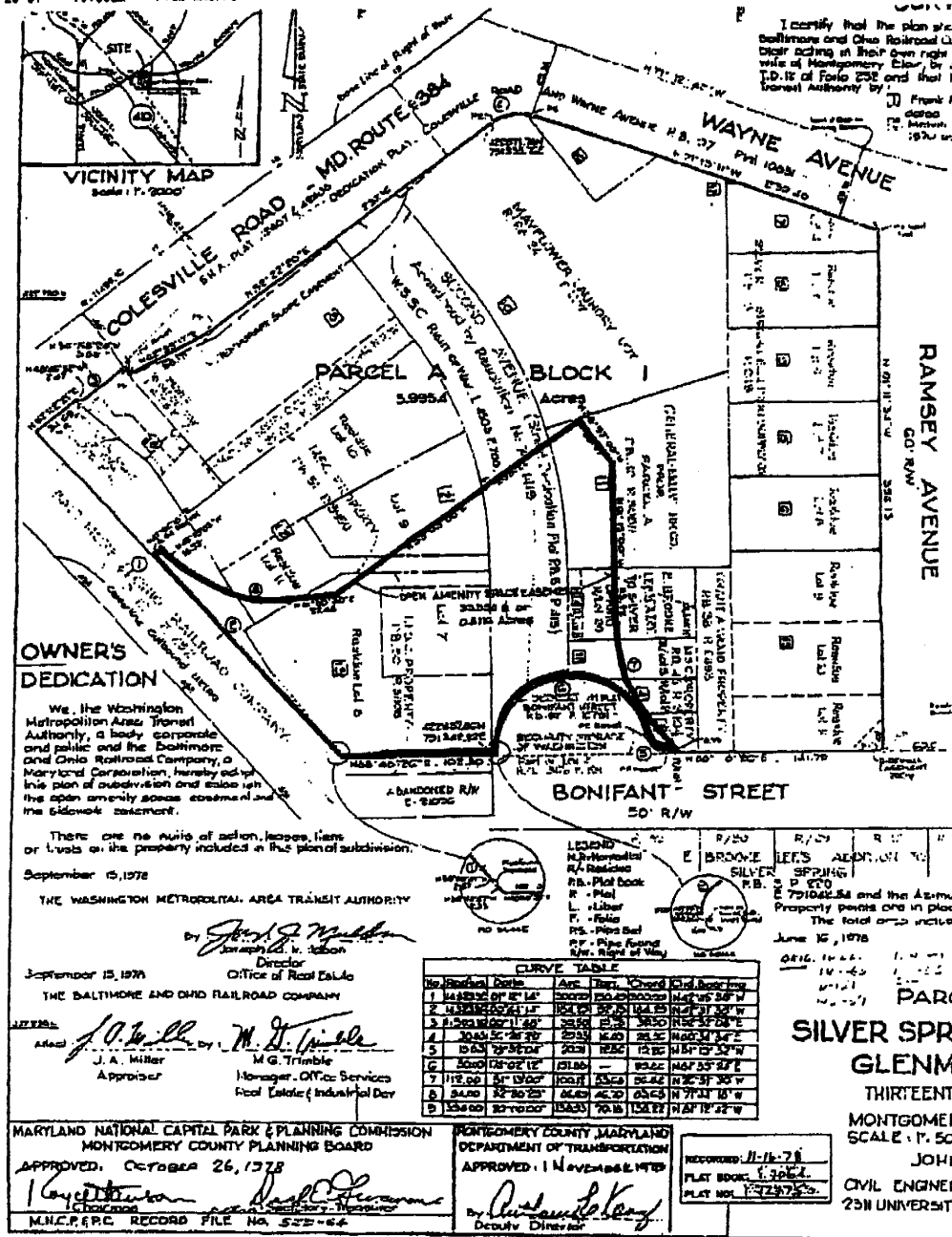
GRANTEE'S ADDRESS: \_\_\_\_\_

Return to: John J. Fisher, Associate County Attorney  
Office of the County Attorney  
101 Monroe Street, Third Floor  
Rockville, Maryland 20850

EXHIBIT 1  
The Property

That 35,354, more or less, delineated as "Open Space Amenity Easement" on Plat No. 12175, Book 106 recorded on November 16, 1978 in Plat Book 106, Plat No. 12175 recorded on November 16, 1978 in the Land Records of Montgomery County, Maryland, a copy of which is attached hereto.





210/11

EXHIBIT C  
Form of Deed of Replacement Easements

**DEED OF REPLACEMENT EASEMENT AREAS 1 AND 2**

This DEED is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the Washington Metropolitan Area Transit Authority, a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of the General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of the District of Columbia Board of Commissioners adopted November 15, 1966, its successors or assigns, hereinafter referred to as "WMATA", and the Maryland-National Capital Park and Planning Commission, a public corporation organized and existing under the laws of the State of Maryland, hereinafter called "the Commission".

WITNESSETH that for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid by the Commission and other good and valuable consideration hereby acknowledged, WMATA does hereby grant and convey unto the Commission, its successors and assigns, a permanent surface easement on and over those areas hereinafter described for use as open space for the use and betterment of the general public, provided further, however, that the same shall not interfere in any manner with WMATA's Transit Center operation as specifically set forth in that Memorandum of Understanding for Vacating Original Park Easement And Granting Replacement Easements by and between the Maryland-National Capital Park and Planning Commission, the Washington Metropolitan Area Transit Authority, and Montgomery County, Maryland attached hereto and incorporated herein as Exhibit "1" (the "Memorandum of Understanding"); the said easement being defined as two separate easement areas. Replacement Easement Area 1 and Replacement Easement Area 2 being more particularly described in the attached Exhibit "2."

IT IS FURTHER UNDERSTOOD that WMATA, the Commission and Montgomery County Maryland, a body corporate and politic and subdivision of the State of Maryland (the "County") agree to abide by all conditions contained in the Memorandum of Understanding.

IN WITNESS WHEREOF, the parties hereto have caused this permanent surface easement to be signed by their respective authorized representatives, their corporate seal to be affixed and attested by their respective authorized representatives, all as of the day and year first written above.

[CORPORATE SEAL]

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Title

Attest:

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

Patricia Colihan Barney  
Secretary-Treasurer

By: Bruce Crawford  
Executive Director

[CORPORATE SEAL]

MONTGOMERY COUNTY, MARYLAND

ATTEST:

Deborah A. Richards

By:

Diane R. Schwartz Jones

Assistant Chief Administrative  
Title Officer

Washington, D.C.

APPROVED AS TO FORM AND LEGALITY

OFFICE OF COUNTY ATTORNEY

TO WIT:

UATC

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned Notary Public, personally  
appeared \_\_\_\_\_, of the Washington Metropolitan Area Transit  
Authority, a body corporate and Politic, and that he, as such \_\_\_\_\_,  
being authorized so to do, executed the foregoing instrument for the purposes therein contained,  
by signing the name of the corporate body by himself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

STATE OF MARYLAND

COUNTY OF

TO WIT:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned Notary Public, personally  
appeared R. Bruce Crawford who acknowledged himself to be the Executive Director of the  
Maryland-National Capital Park and Planning Commission, a corporation, and that he, as such  
Executive Director, being authorized so to do, executed the foregoing instrument for the  
purposes therein contained, by signing the name of the corporate body by himself as Executive  
Director.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF MARYLAND

COUNTY OF Montgomery

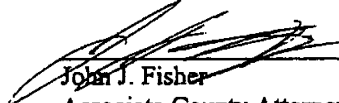
TO WIT:

On this the 9<sup>th</sup> day of January, 2008, before me,  
Deborah A. Richards, the undersigned Notary Public, personally  
appeared Diane Schwartz Jones who acknowledged <sup>herself</sup> ~~himself~~ to be the she  
Ass't. CAO of the Montgomery County, Maryland, a corporation, and that ~~he~~, as such  
Ass't. CAO, being authorized so to do, executed the foregoing instrument for the  
purposes therein contained, by signing the name of the corporate body by himself as  
Ass't. CAO. herself

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Deborah A. Richards  
Notary Public

I HEREBY CERTIFY that this deed was prepared by or under the supervision of the undersigned,  
an attorney duly admitted to practice before the Court of Appeals of Maryland.

  
John J. Fisher  
Associate County Attorney

PARCEL ID NUMBER: \_\_\_\_\_

GRANTOR'S ADDRESS: \_\_\_\_\_

GRANTEE'S ADDRESS: \_\_\_\_\_

Return to: John J. Fisher, Associate County Attorney  
Office of the County Attorney  
101 Monroe Street, Third Floor  
Rockville, Maryland 20850



EXHIBIT 1  
Memorandum of Understanding

[TO BE ATTACHED TO RECORDATION DOCUMENT]

EXHIBIT 2  
Replacement Easement Area 1 and Replacement Easement Area 2  
[TO BE ATTACHED TO RECORDATION DOCUMENT]

**EXHIBIT D**  
**The Essential Elements**

Subject to the provisions of Section 2.1, it is the expectation of the County and the Planning Board that the Silver Spring Transit Center will be built in substantial conformance with the Permit Set Package, dated May 18, 2007, as presented during the Mandatory Referral hearing held on June 7, 2007. The following list of "Essential Elements" shall be included in the base bid documents or as "add alternates" and shall be constructed as part of the Silver Spring Transit Center Project in accordance with Section 2.1 of the MOU:

1. The Silver Spring Streetscape treatment shall be provided along Colesville Road from Wayne Avenue, south under the bridge to the limits of the project, except that the Transit Plaza shall incorporate the new paving pattern as indicated on EDAW's most current plan submitted May 21, 2007 and shall extend to the curb line of Colesville Road in the vicinity of the Transit Plaza.
2. The pedestrian areas in level 350 of the Transit Center, including the center island area (but excluding the pedestrian crosswalks), and the new access road from Ramsey Avenue shall be constructed with a concrete base, bond break and concrete surface so that in the future the top concrete surface can be removed and replaced with the Silver Spring Streetscape standard brick. The Silver Spring street light fixtures on level 350 and along the new access road will be installed as part of the transit center construction.
3. Specially paved (stamped modified asphalt) crosswalks shall be installed across Wayne Avenue and Ramsey Avenue (County roads). The County will seek approval by SHA for similar specially paved (stamped modified asphalt) crosswalks on Colesville Road, and will install the crosswalk if approved by SHA. The approved construction detail for these crosswalks will be reviewed and approved by M-NCPPC staff, however, M-NCPPC approval will be subject to approval by the authority having jurisdiction over the individual road improvement. The quality and type of installation shall be similar to the previously installed County crosswalks as located at the corners of Fenton Street and Ellsworth Drive in downtown Silver Spring.
4. Each shade tree planted over structure shall have a minimum of 250 cubic feet of soil to sustain and encourage healthy growth, and shall be designed to include proper drainage. The top level of the transit center deck and adjacent on-grade areas shall include a minimum of 25 shade trees as shown on sheet A2.02.
5. The canopies identified as Canopy 2-6, in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed as shown as part of the base bid.
6. The canopy covers for Canopy 1-6, as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed using laminated glass roof panels with a fritted pattern, as shown as part of the base bid.

7. Canopy #1 at the entrance to the Metro Station shall be constructed (using laminated decorative glass roof panels) as described in Alternate 12 of Specification Section 01230 of RFP 7504510123.
8. The stair and escalator enclosures for Escalators 1 & 2 and stair 1 and 5 as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007, shall be constructed as described in Alternate #10 (using glass panels only) of Specification Section 01230 of RFP 7504510123.
9. The Green Roof as shown as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed as shown allowing for minor adjustments for plant material substitutions as necessary.

**EXHIBIT E**  
**Concept Plans and Materials List**

The following construction materials are intended to be utilized in the Transit Plaza and the Jughandle Park. Samples of all construction materials proposed as part of the Facility Plan submission for the Replacement Easement Areas shall be provided to M-NCPPC staff for review no later than 60 days in advance of the Facility Plan hearing and will be included as part of the application for approval. The final materials list, which will be of similar quality and cost to those materials listed herein, will be determined by the Planning Board during approval of the Facility Plans.

Proposed Materials to be used in the Transit Plaza Easement Area

Paving Field:	Silver Spring standard brick unit paver – color A
Paving Bands:	Granite (Metro gray)
Paving Band Alternate:	Silver Spring standard brick unit paver – color B
Accent Paving:	Wausau precast concrete Terra Pavers with recycled glass aggregate
Steps:	Granite (Metro grey)
Transit Plaza Planters:	Planters to be designed as seat walls with a typical height in the range of 18” – 24”, and a minimum soil depth at tree locations of 36” (planter open at bottom). The planters should be a minimum of four feet wide and shall provide a minimum of 250 cubic feet of soil per tree. Planters to be irrigated and provided with adequate drainage. Planter walls to be Granite veneer (Metro grey)
Lighting:	As shown on the plans, pole mounted fixtures will be included in the planter areas or sloped grass area outside the paved plaza area. The type will be determined at the time of Facility Plan.
Trash cans:	‘Pitch’ receptacle by Landscape Forms or other appropriate receptacle as approved by WMATA and the M-NCPPC.
Bike racks:	WMATA standard
Seating:	The planter walls will provide approximately 150 linear feet of seating. Four (4) benches may be included provided that, in WMATA’s judgement, they can be located in an area that will not interfere with pedestrian traffic. ‘Sit’ or ‘Stay’ benches by Landscape Forms or other bench as acceptable to the M-

NCPPC as determined at the time of Facility Plan, to be coordinated with the Urban District.

Tree grates/tree guards: The location and type of tree grates and/or tree guards, if necessary, will be determined at the time of Facility Plan approval.

Plant Material: Numbers and species to be determined at the time of Facility Plan or Park Permit. Shade trees to be a minimum of 3-1/2"-4" in caliper.

Proposed Materials to be used in the Jughandle Replacement Park

Paving Field: Silver Spring standard brick unit paver – color A

Paving Bands: Granite (Metro gray)

Paving Band Alternate: Silver Spring standard brick unit paver – color B

Accent Paving: Wausau precast concrete Terra Pavers with recycled glass aggregate

Retaining/seat walls: Jerusalem stone or other warm/buff color stone similar to that used in the adjacent Discovery Building such as: Idaho Quartz, Amherst Sandstone, Kasota Valley Limestone, etc.

Turf Panel edging: Granite setts; brick; poured, colored concrete or warm/buff color stone as used in the retaining/seat walls.

Drinking Fountain: Freeze resistant, handicap accessible drinking fountain. Type and model to be determined at the time of Facility Plan approval.

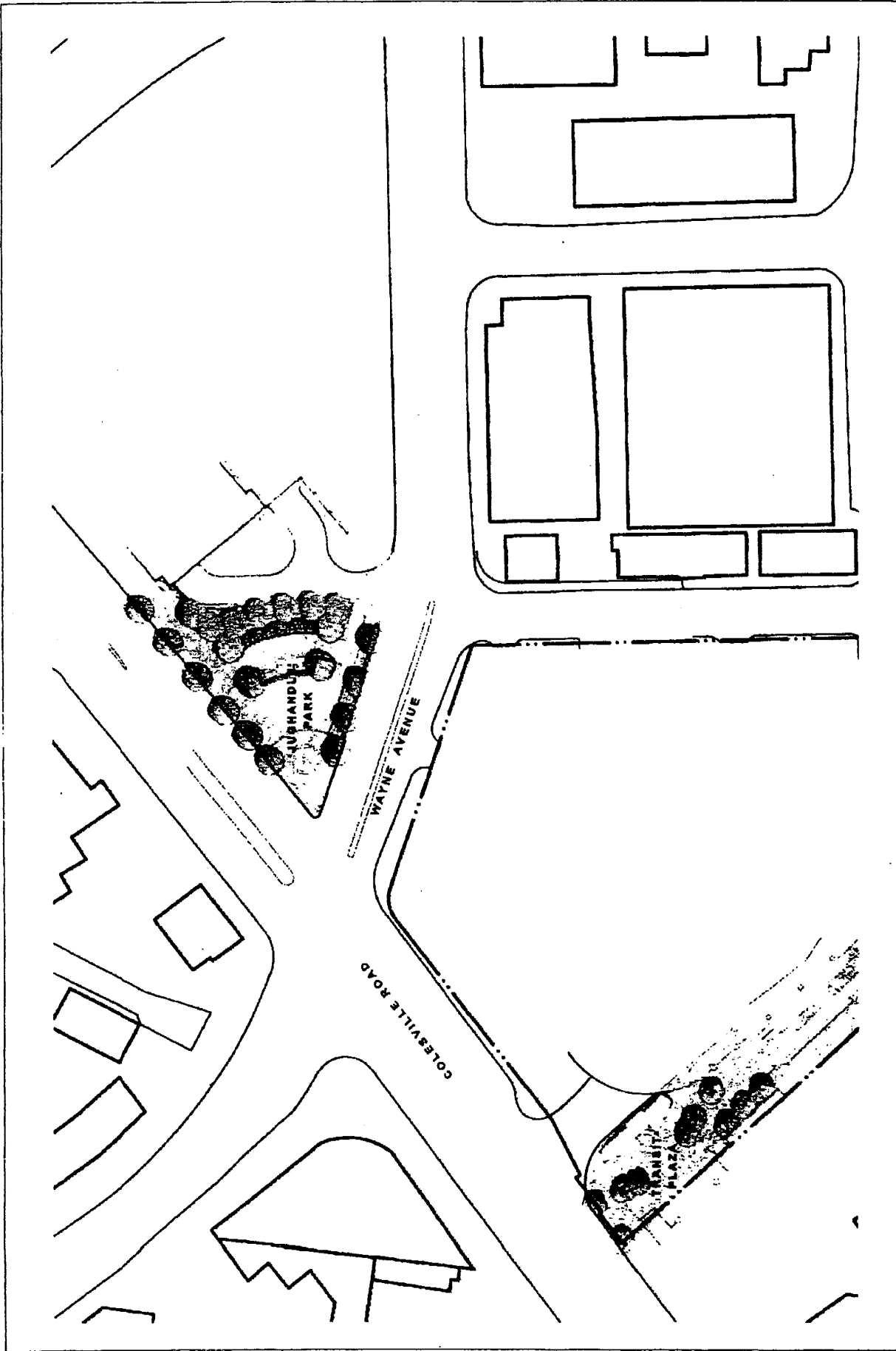
Irrigation system: Fully automated system with concealed spray heads in lawn area and drip system in garden bed areas.

Lighting: Silver Spring standard light pole

Trash cans: Silver Spring standard or the 'Pitch' receptacle by Landscape Forms, or equivalent, as determined by the M-NCPPC. The number and model of trashcans will be determined at the time of Facility Plan.



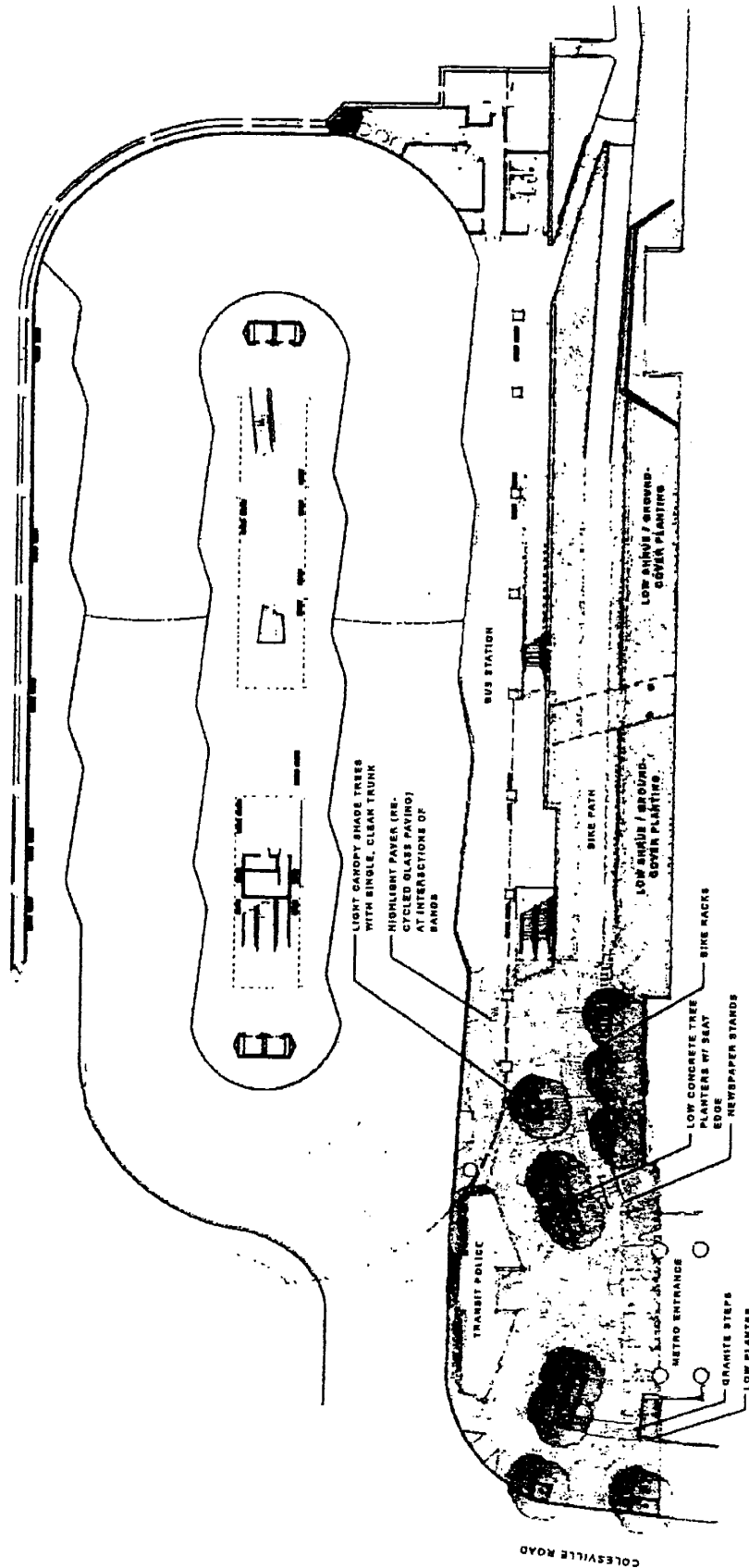
Pergola:	Cedar, Ipe Wood, or comparable cost concrete, stone or steel. Materials to be determined based on design at time of Facility Plan.
Tables and Chairs:	'Plateau' Chair and Table by Conceptual Site Furnishings, or equivalent depending on design development and Silver Spring Urban District furnishings. Additional seating is provided by the retaining walls and seat terraces.
Benches:	Up to ten (10) benches may be provided. 'Sit' or 'Stay' benches by Landscape Forms or other bench as acceptable to the M-NCPPC as determined at the time of Facility Plan, to be coordinated with the Urban District.
Turf:	High traffic sod installed over specially designed base to discourage compaction and promote good drainage



HOW

CONTENT PLAN

Silver Spring Transit Center Park

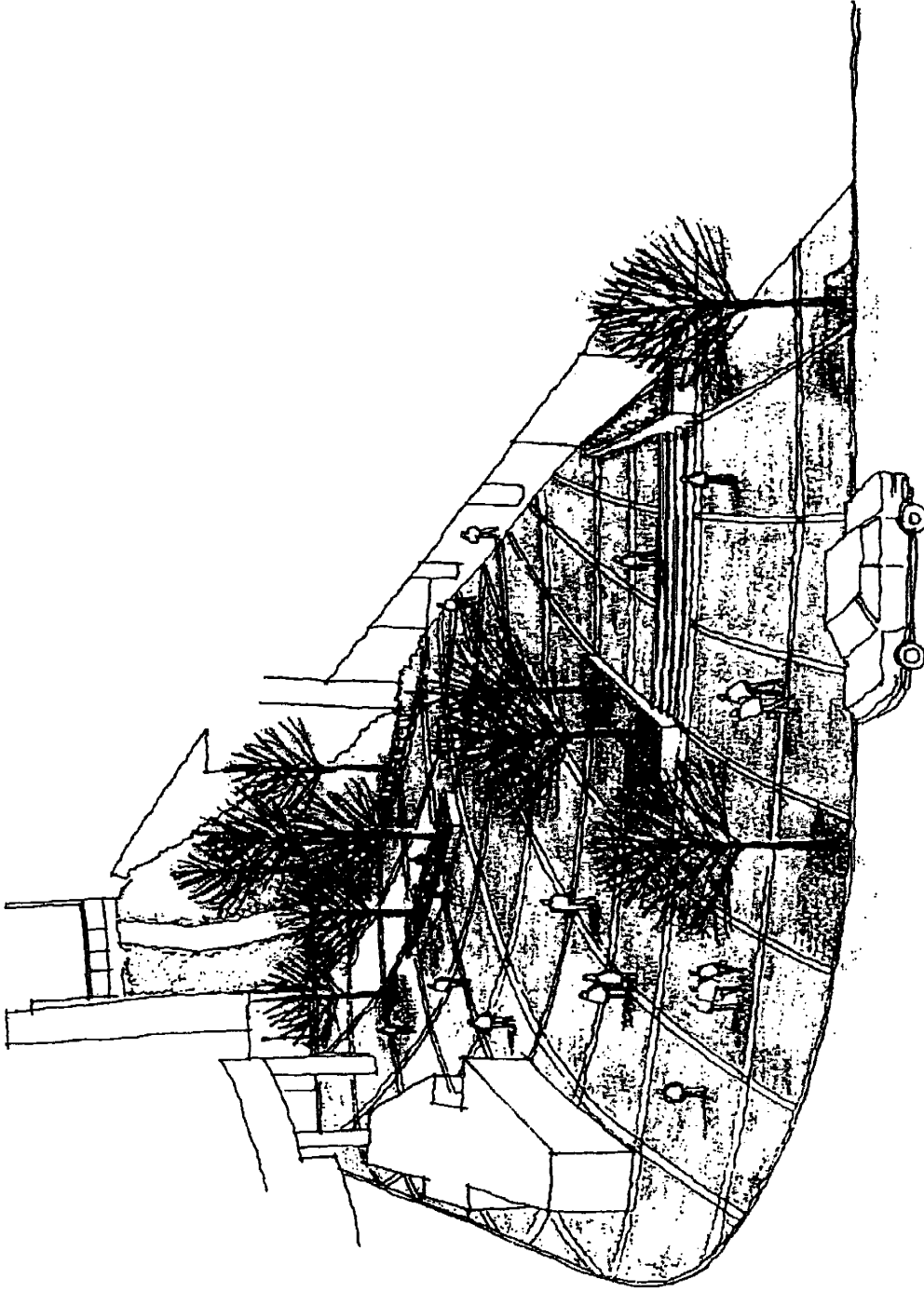


PLAN VIEW

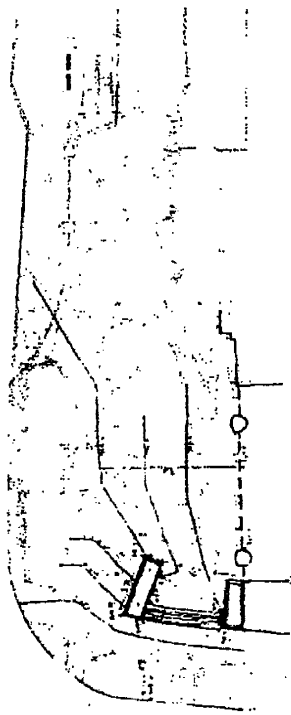
Silver Spring Transit Center Park

TRANSIT PLAZA

100'



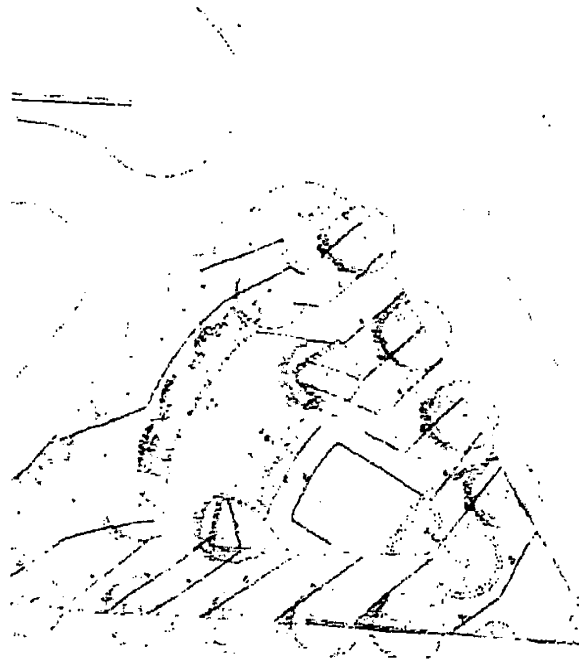
AERIAL PERSPECTIVE VIEW



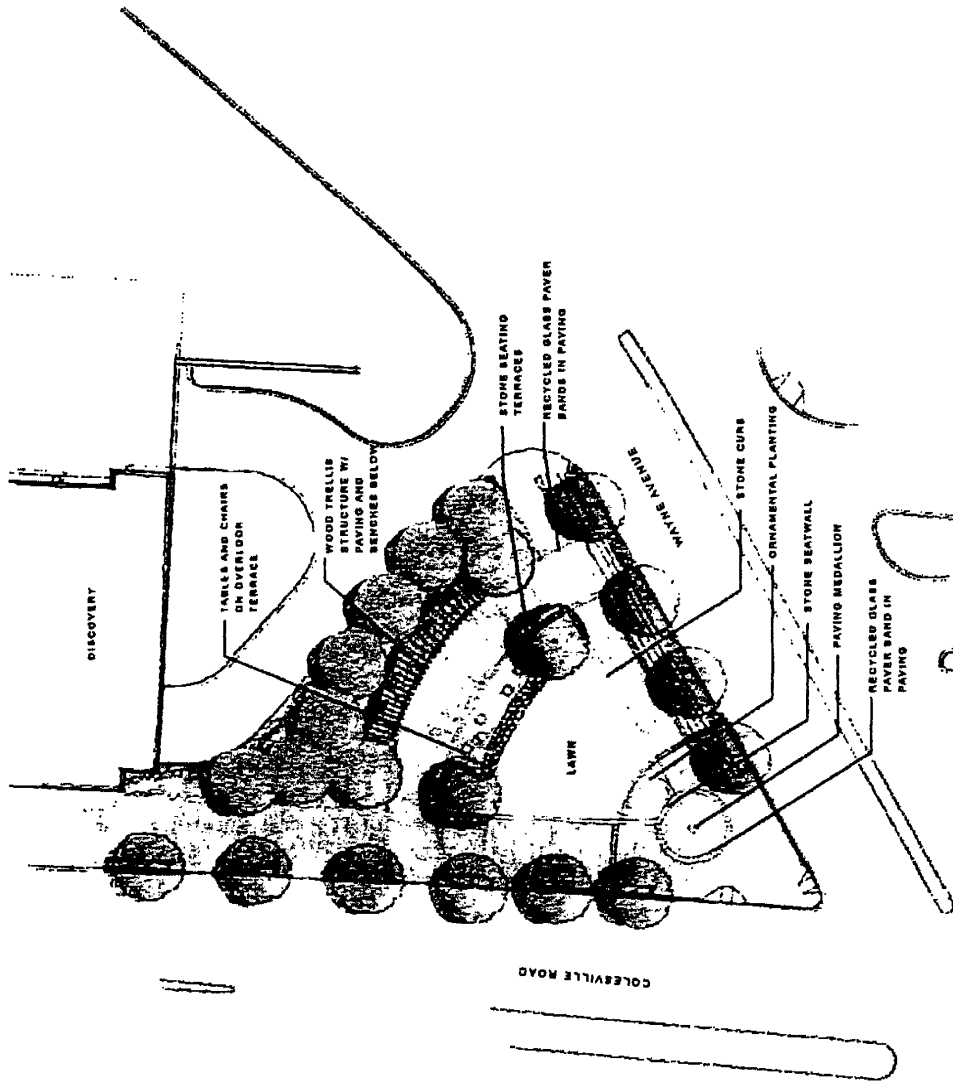
TRANSIT PLAZA



JUGHANDLE PARK - WITH BIKE STATION

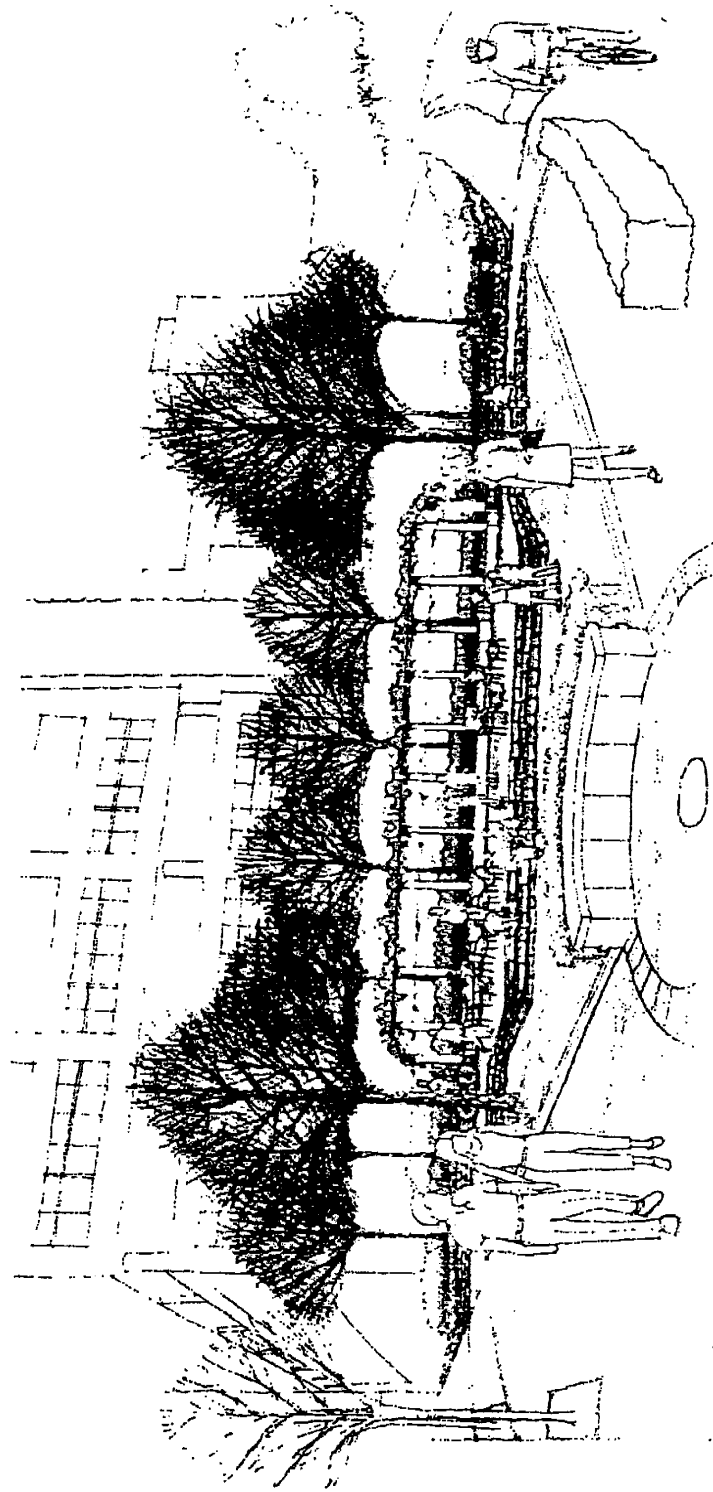


JUGHANDLE PARK - WITHOUT BIKE STATION



PLAN VIEW WITHOUT BIKE STATION





PERSPECTIVE VIEW WITHOUT BIKE STATION

Silver Spring Transit Center Park

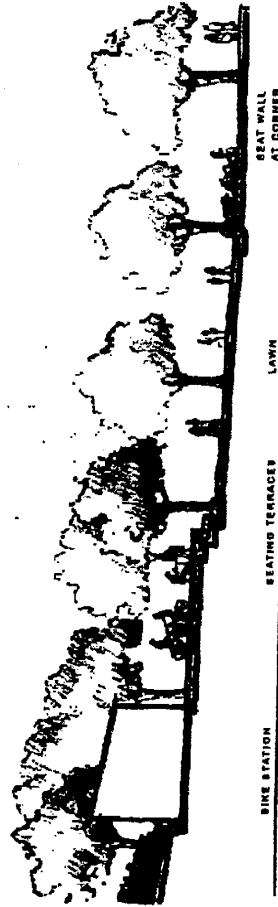
JUGHANDIE PARK

11/04/04



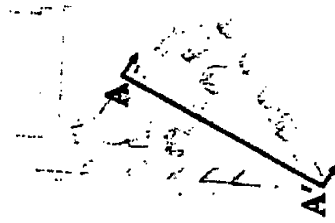
SECTION A-A' WITHOUT BIKE STATION

SCALE: 1/8" = 1'-0"



SECTION A-A' WITH BIKE STATION

SCALE: 1/8" = 1'-0"



## **EXHIBIT F**

### **Pre-Approved Changes to the Transit Plaza Easement Area**

Per Section 12.4 of the MOU, WMATA shall have the right to move, remove or add the following features to the Metro Transit Plaza Easement Area without obtaining the approval of any other party:

1. Trash Cans
2. Wayfinding and Transit Signage (excluding advertising)
3. Bike Racks
4. Pay Phones



EXHIBIT G  
1977 Agreement

RECORDING OFFICE  
MONTG. CO., MD.

1978 DEC 28 AM 10:53

## DEED OF EASEMENT FOR OPEN SPACE

THIS DEED made and entered into this 22<sup>nd</sup> day of February, 1978, by and between the Washington Metropolitan Area Transit Authority, a body corporate and politic, its successors or assigns, hereinafter referred to as "WMATA", and the Maryland National Capital Park and Planning Commission, a public corporation, organized and existing under the laws of the State of Maryland, hereinafter called "The Commission".

WITNESSETH that for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid by the Commission and other good and valuable consideration hereby acknowledged, said WMATA does hereby grant and convey unto the Commission, its successors and assigns, the easement hereinafter described for the construction, reconstruction, maintenance and operation of an open space park facility within said easement, but limited so as not to interfere in any matter with WMATA's operations; the said easement being as described on plat No. 12175, book 106, recorded on November 16, 1978 in the Land Records of Montgomery County, Maryland.

IT IS FURTHER UNDERSTOOD that both WMATA and the Commission agree to abide by all conditions contained in Agreement dated July 18, 1977, between WMATA and the Commission attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Deed to be signed by their respective authorized representatives, their corporate seal to be hereto affixed and attested by their respective authorized representative, all as of the day and year first above written.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

[CORPORATE SEAL]

ATTEST:

BY:

Delmer Ison  
Secretary-Treasurer

BY:

Joseph J. Muldoon  
Director  
Office of Real Estate

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

[CORPORATE SEAL]

ATTEST:

BY:

Donald C. Herman  
Assistant Secretary

BY:

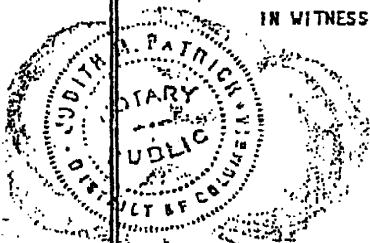
Thomas H. Goulet, Jr.

WASHINGTON, D.C.

TO WIT:

On this the 21<sup>st</sup> day of December, 1978, before me,  
JUDITH M. PATRICK, the undersigned Notary Public, personally  
 appeared DELMER TSON, of the Washington Metropolitan  
 Area Transit Authority, a body corporate and politic, and that he, as such  
SECRETARY-TREASURER, being authorized so to do, executed the foregoing  
 instrument for the purposes therein contained, by signing the name of the  
 corporate body by himself as SECRETARY-TREASURER.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Judith M. Patrick  
 Notary Public

My Commission Expires October 14, 1983

STATE OF MARYLAND

COUNTY OF

TO WIT:

On this the 22<sup>nd</sup> day of Dec., 1978, before me,  
Wanda L. Wells, the undersigned Notary Public, personally  
 appeared Thomas H. Countee, Jr., who acknowledged himself to be  
 the Executive Director of The Md. North Cap Park & Res. Comm.,  
 a corporation, and that he, as such Executive Director,  
 being authorized so to do, executed the foregoing instrument for the purposes  
 therein contained, by signing the name of the corporation by himself as  
Executive Director.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Wanda L. Wells  
 Notary Public

My Commission expires:

July 1, 1982

[SEAL]

MARYLAND ATTORNEY'S CERTIFICATION

I hereby certify that this deed was prepared under my direction.

Richard H. McBurrows  
 Attorney-at-Law  
 Richard H. McBurrows  
 Date 12-21-78

AGREEMENT

THIS AGREEMENT entered into this 18th day of July, 1977, by and between THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public Corporation, organized and existing under the laws of the State of Maryland, hereinafter called "the COMMISSION", and WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a body corporate and politic, hereinafter called "WMATA".

## WITNESSETH:

WHEREAS: The Commission is authorized and empowered to provide parks and recreation facilities for the inhabitants of the Maryland-Washington Metropolitan District, and

WHEREAS, the Silver Spring Metro Station Site consists of a total of 4.0 acres, more or less, of which .77 acre, more or less, of this total acreage shall be designated and hereinafter referred to as "Open Amenity Space". The remaining 3.23 acres, more or less, shall hereinafter be referred to as the "Silver Spring Station Access Area", and

WHEREAS, the exact description of the Open Amenity Space shall be governed by an independent survey by a registered surveyor as hereinafter provided.

NOW, THEREFORE WITNESSETH, In consideration of the premises and mutual promises of the parties herein, it is hereby agreed by and between the parties as follows:

1. WMATA agrees to grant without cost to the Commission a permanent surface easement containing .77 acre, more or less, with perpetual skylight for the purpose of constructing and maintaining a public park for Open Amenity Space purposes by the Commission within the area described as follows:

Part of the tract of land known as Silver Spring Metro Station Site, containing 4.00 acres, more or less, of which .77 acre, more or less, shall be designated for Open Amenity Space for public park purposes. Said Open Amenity Space area is outlined on the attached plat.



2. The Commission shall design a park facility for the Open Amenity Space in a manner which will not interfere with construction and operation of the Metro Silver Spring Station and related transit facilities nor any future air rights development of or on any part of the Silver Spring Metro Station site. Said design plans must be approved in writing by WMATA prior to any actual construction. In addition the Commission must provide WMATA with a detailed development feasibility study showing the physical adaptability of the Silver Spring Metro Station Site for accommodating a commercial building having a minimum gross floor area of approximately 1,000,000 square feet.

3. WMATA, its successors or assigns, shall reserve the right to enter upon the Park Open Amenity Space for the purpose of future air rights development of the Silver Spring Metro Station Site and the Open Amenity Space and if required by a future development design, reserves the right to modify the layout of the park facility in the Park Open Amenity Space to accommodate such a development. WMATA will to the extent possible restore the said park facility area to its pre-existing condition. If exact restoration is not possible, the modification of the park facility shall be accomplished in such a manner as to preserve the general integrity or overall purpose of the facility.

4. WMATA, its successors or assigns, agrees that any air rights development conducted by it, its successors or assigns, that occur on the Silver Spring Metro Station Site shall be submitted to the Commission and subject to the site plan review procedures of the CBD-3 Zone of the Montgomery County Maryland Zoning Ordinance.

5. WMATA agrees to explore the possibility of co-development of air rights on the Silver Spring Metro Station Site with the Commission and Montgomery County.

6. WMATA shall notify the Commission ~~within~~ 60 days in advance of the preparation of the final disposal plan recommendations relative to the sale, lease or disposal of the air rights on or over the Silver Spring Metro Station Site.

7. WMATA shall record the entire 4.00 acre Silver Spring Metro Station Site as one lot with the .77 acre Open Amenity Space recorded as a perpetual open space easement in the Land Records of Montgomery County, Maryland. The Commission accordingly will permit the entire parcel (4.00 acres) to be considered in the calculation of the density permitted and the Open Amenity Space requirements necessary to conform with the CBD-3 zone.

8. The Commission shall have the right to review and approve development plans drafted by WMATA, its successors or assigns, for air rights development on or over the Silver Spring Metro Site, relative to the access to the park facility.

9. The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement or any other provisions of this Agreement.

10. This Agreement shall be construed, interpreted and enforced according to the Laws of Maryland.

11. If for any reason the Commission fails to proceed in accordance with the terms of this Agreement by not completing the construction of the park facility within 24 months from execution of this Agreement, WMATA at its sole discretion may declare this Agreement null and void. In addition, no construction will be permitted by WMATA for the park facility until the Commission complies with all provisions of this Agreement.

If the Commission decides not to proceed under the terms of this Agreement prior to the commencement of construction of the park facility, they shall retain the right to do so upon written notice to WMATA at least ninety (90) days prior to the effective date of said termination. No termination by the Commission shall take place without prior consultation with WMATA and the Montgomery County Planning Board.

12. WMATA retains the right of review and approval of all plans for construction of improvements within the Open Amenity Space to ensure that said improvements will not interfere with abutting Metro facilities and that the improvements will be aesthetically compatible with the Silver Spring Metro Station.

13. The proposed park facility will be constructed at no cost to WMATA and the Commission agrees to accept sole responsibility for all expenses associated with its maintenance. If for any reason the Commission fails to properly maintain the park facility and if in WMATA's judgement said lack of maintenance adversely affects abutting Metro facilities, WMATA may at its sole

discretion after written notice to the Commission perform the necessary maintenance. If the Commission refuses to reimburse WMATA for the incurred maintenance costs or refuses to provide the necessary maintenance, the Commission's rights under the terms of this Agreement may be declared null and void by WMATA and all right, title and interest to the Open Amenity Space and Improvements thereon shall revert to WMATA.

14. The Commission agrees to save and hold harmless and indemnify WMATA against any and all liability claims, and costs of whatever kind and nature arising or alleged to arise for injury, including personal injury or death to any person or persons, and for loss or damage to any property, occurring in connection with or in any way incident to or arising out of the occupancy, presence, use, service and operations of said premises and its facilities by the Commission, resulting in whole or in part from the negligent acts, errors or omissions of the Commission, its principals or agents.

The Commission during the entire term of this Agreement shall procure and maintain, at its own cost and expense, the following type of insurance: General Liability - a standard (10/66 Edition) General Liability Insurance policy or policies or its equivalent issued to and covering the liability of the Commission in accordance with the provisions hereof and all obligations assumed by the Commission under this Agreement.

THE COVERAGE under such policy or policies should have not less than a combined single limit of \$500,000.00, Bodily Injury and Property Damage Liability, each occurrence.

15. This Agreement shall survive the execution and delivery of the Deed of Easement contemplated herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed the day and year first above written.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

BY: Don L. Spicer  
Don L. Spicer, Executive Director

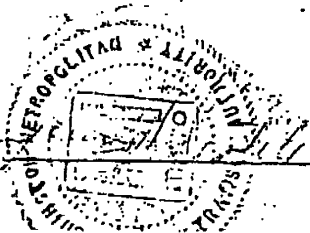
BY: [Signature]  
Vice Chairman

ATTEST: [Signature]

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

BY: [Signature]  
General Manager

ATTEST: [Signature]





**ADDENDUM TO  
MEMORANDUM OF UNDERSTANDING FOR VACATING ORIGINAL PARK  
EASEMENT AND GRANTING REPLACEMENT EASEMENTS  
(Silver Spring Transit Center)**

This Addendum to Memorandum of Understanding for Vacating Original Park Easement and Granting Replacement Easements ("Addendum") is made this 4<sup>th</sup> day of Feb 2008, by and between the Maryland-National Capital Park and Planning Commission (the "Commission"), the Washington Metropolitan Area Transit Authority ("WMATA"), and Montgomery County, Maryland (the "County").

WHEREAS, the Commission, WMATA, and the County entered into a Memorandum of Understanding for Vacating Original Park Easement and Granting Replacement Easements ("MOU") on Feb. 4, 2008, in which the Commission agreed to release and relinquish all right, title and interest in and to the Original Park Easement and replace such Easement with certain Replacement Easement Areas; and

WHEREAS, the Commission agreed to fund certain costs of maintenance of the Replacement Easement Areas.

**NOW, THEREFORE**, for and in consideration of the respective covenants, promises and agreements provided herein, Commission, WMATA, and the County agree as follows:

1. Unless otherwise provided herein, all capitalized terms shall have the same meaning as defined in the MOU. All Recitals are hereby incorporated into and made a part of this Addendum.
2. All obligations of the Commission under the MOU that directly or indirectly require, or may require, the Commission's expenditure of any of its funds are, and shall be, subject to the appropriation and availability of funding through the Commission's normal and customary budgetary procedures.
3. This Addendum may be signed in counterparts, each constituting an original. Photocopies or facsimile transmissions of signatures shall be deemed original signatures and shall be fully binding upon the Parties to the same extent as original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this  
\_\_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_  
Oscar Rodriguez  
Executive Director

ATTEST:

WASHINGTON METROPOLITAN  
AREA TRANSIT AUTHORITY

\_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

MONTGOMERY COUNTY, MARYLAND

Deborah A. Richards

By: Diane R. Schwartz Jones  
Diane R. Schwartz Jones  
Assistant Chief Administrative Officer

APPROVED AS TO FORM AND LEGALITY.

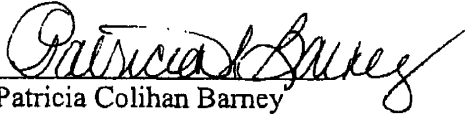
OFFICE OF COUNTY ATTORNEY

BY [Signature]  
DATE 5/14/08

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this  
\_\_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_

Oscar Rodriguez,  
Executive Director

ATTEST:

WASHINGTON METROPOLITAN  
AREA TRANSIT AUTHORITY

\_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_

By: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this  
\_\_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_  
Oscar Rodriguez  
Executive Director

ATTEST:

WASHINGTON METROPOLITAN  
AREA TRANSIT AUTHORITY

\_\_\_\_\_

By: \_\_\_\_\_  


ATTEST:

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_

By: \_\_\_\_\_





**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**OFFICE OF THE CHAIRMAN**

July 24, 2007

Mr. Arthur Holmes, Jr.  
Director  
Department of Public Works and  
Transportation  
101 Monroe Street – 10<sup>th</sup> Floor  
Rockville, MD 20850

Re: Paul S. Sarbanes Silver Spring Transit Center Mandatory Referral

Dear Mr. Holmes:

The Montgomery County Planning Board at its July 12, 2007 meeting voted to approve the Mandatory Referral for the Paul S. Sarbanes Silver Spring Transit Center. I want to thank you and your staff for their work in response to the Planning Board's review and know you share the Board's objective of insuring that this landmark project is consistent with the vision of the Silver Spring CBD Sector Plan.

In its approval, the Planning Board also approved the following specific recommendations for the project:

1. Provide for a minimum 30 foot wide building setback along Colesville Road as recommended in the March 2005 Mandatory Referral review.
2. Construct as part of the project the hiker/biker trail along Colesville Road adjacent to the Transit Center within the thirty-foot setback and in accordance with adopted Silver Spring Streetscape Standards.
3. Continue to pursue funding for the connection of Bonifant Street and Ripley Street, as recommended in the adopted Silver Spring CBD Sector Plan.
4. Avoid reductions in the project scope that would have a direct impact on facility users such as canopies, stairs, elevators, signage, landscaping, and tree plantings.
5. Provide a public art component that is submitted for review by the art panel prior to September 1, 2007.

6. Provide for an architectural treatment along the Colesville Road and Wayne Avenue edges that will soften the appearance given the fact that the private development may not take place until well after the construction of the Transit Center is completed.
7. Provide the wayfinding /signage plan previously requested by the Planning Board by June 30, 2007.
8. Provide a formal Crime Prevention Through Environmental Design (CPTED) analysis for the Transit Center by September 30, 2007.
9. Consider another approach to the pavement marking proposed on the Lower Level entrance at Colesville Road for guiding buses to and from the two different circulation patterns. The large crosshatch area as currently proposed appears to cover an area that buses cannot avoid.
10. Include simple, straightforward information on the two-way bus circulation pattern as part of the outreach effort a minimum of 30 days in advance of the Transit Center becoming operational.
11. Provide crosswalk widths of a minimum of 15 feet across Colesville Road and 20 feet across Wayne Avenue south of Colesville Road.
12. Identify the number and location of bike lockers and bike racks for the Transit Center.
13. Widen the existing northbound Wayne Avenue through/right lane to accommodate bus right turn movements.
14. Widen northbound Dixon Avenue approach to Wayne Avenue from the existing one left/through/right lane to one left/through lane and one right turn lane.
15. Submit an updated VISSIM analyses for SHA review no later than June 30, 2008.
16. The Transit Center shall be constructed in substantial conformance with the Permit Set Package, dated February 19, 2007, and as amended herein. A complete, revised Permit Set package, including the specifications, shall be provided to the Commission prior to bidding which incorporates the following revisions:
  - a. Construction documents and specifications for the park shall be added to the Permit Set package or shall be included as an addendum. The Planning Board shall review and approve the construction documents

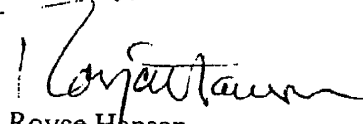
for the park replacement areas prior to vacating the current park easement.

- b. A paving pattern shall be implemented throughout the passenger portions of the station based on the paving pattern used in Park Area #1. The pattern shall consist of intersecting bands with accent nodes. Alternates shall be developed to obtain costs to implement the pattern. The paving pattern shall be constructed concurrent with construction of the station. Special design emphasis and higher quality materials shall be used at all entrances to the Transit Center, including around all escalators and elevators.
- c. The streetscape treatment along the public road frontage at the Metro station entrance at Colesville Road, under the bridge and in front of the south entrance shall incorporate the new paving pattern as indicated on EDAW's most current plan submitted May 21, 2007.
- d. The Silver Spring Streetscape treatment shall be provided in all of the pedestrian areas of level 350 of the Transit Center. The center island, as well as the large striped island at the northwest terminus of the island, shall also be paved with The Silver Spring standard Belden brick.
- e. Specially paved crosswalks shall be installed across Wayne Avenue, Ramsey Avenue and Colesville Road. A construction detail for these crosswalks shall be reviewed and approved by staff.
- f. The Silver Spring Streetscape treatment shall be used along the public sidewalk along both sides of the new road providing access to the Transit Center from Ramsey Avenue to level 330 of the transit center structure.
- g. Demonstrate that each shade tree planted over structure has a minimum of 250 cubic feet of soil to sustain and encourage healthy growth, and that all planters have been designed with proper drainage. The top level of the transit center deck shall include a minimum of 25 shade trees as shown on sheet A2.02.
- h. The curved planter at the second floor (el. 330) level that faces Colesville Road shall be redesigned as a hanging garden similar to the very successful planters at National Airport. The metal trusses for future signage can be scaled to fit within the planting or be relocated to another equally prominent location.

- i. The plan for Park #2 shall be further developed to ensure that the proposed park area is significantly enhanced to justify the reduction in overall replacement parkland. The plan may include public art, a water feature, drinking fountains, a high quality paving treatment similar to that in Area #1, benches, signage, bike racks, extensive plantings, lighting, etc.
17. The south entrance to the Metro Station shall be opened to the public upon, or before, completion of the Transit Center construction

Again and in closing, thank you for all of your efforts on this important project and more specifically, for your responses to the Planning Board's questions during the course of the review of the Mandatory Referral application.

Sincerely,

  
Royce Hanson  
Chairman

**Essential Element  
Summary of Add Costs  
Silver Spring Transit Center**

Item No.	Description	Agency	ADD Cost (\$)	Comment
1	The Silver Spring Streetscape treatment shall be provided along Colesville Road from Wayne Avenue, south under the bridge to the limits of the project, except that the Transit Plaza shall incorporate the new paving pattern as indicated on EDAW's most current plan submitted May 21, 2007 and shall extend to the curb line of Colesville Road in the vicinity of the Transit Plaza.	M-NCPPC	\$0	Work will be constructed as part of the project with approval of the Supplemental
2	The pedestrian areas in level 350 of the Transit Center, including the center island area but excluding the pedestrian crosswalks), and the new access road from Ramsey Avenue shall be constructed with a concrete base, bond break and concrete surface so that in future the top concrete surface can be removed and replaced with the Silver Spring Streetscape standard brick. The Silver Spring street light fixtures on level 350 and along the new access road will be installed as part of the transit center construction.	M-NCPPC	\$55,000	Requires funds beyond the CE requested Supplemental
3	Specially paved (stamped modified asphalt) crosswalks shall be installed across Wayne Avenue and Ramsey Avenue (County roads). The County will seek approval by SHA for similar specially paved (stamped modified asphalt) crosswalks on Colesville Road, and will install the crosswalk if approved by SHA. The approved construction detail for these crosswalks will be reviewed and approved by M-NCPPC staff, however, M-NCPPC approval will be subject to approval by the authority having jurisdiction over the individual road improvement. The quality and type of installation shall be similar to the previously installed County crosswalks as located at the corners of Fenton Street and Ellsworth Drive in downtown Silver Spring.	M-NCPPC	\$17,000	Requires funds beyond the CE requested Supplemental
4	Each shade tree planted over structure shall have a minimum of 250 cubic feet of soil to sustain and encourage healthy growth, and shall be designed to include proper drainage. The top level of the transit center deck and adjacent on-grade areas shall include a minimum of 25 shade trees as shown on sheet A2.02.	M-NCPPC	\$0	Work will be constructed as part of the project with approval of the Supplemental
5	The canopies identified as Canopy 2-6, in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed as shown as part of the base bid.	M-NCPPC	\$0	Work will be constructed as part of the project with approval of the Supplemental
6	The canopy covers for Canopy 1-6, as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed using laminated glass roof panels with a fritted pattern, as shown as part of the base bid.	M-NCPPC	\$0	Work will be constructed as part of the project with approval of the Supplemental, except for Canopy 1
7	Canopy #1 at the entrance to the Metro Station shall be constructed (using laminated decorative glass roof panels) as described in Alternate 12 of Specification Section 01230 of RFP 7504510123.	M-NCPPC	\$445,000	Requires funds beyond the CE requested Supplemental
8	The stair and escalator enclosures for Escalators 1 & 2 and stair 1 and 5 as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007, shall be constructed as described in Alternate #10 (using glass panels only) of Specification Section 01230 of RFP 7504510123.	M-NCPPC	\$332,384	Requires funds beyond the CE requested Supplemental, as current design is a mix of metal panel and glass.
9	The Green Roof as shown as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed as shown allowing for minor adjustments for plant material substitutions as necessary.	M-NCPPC	\$0	Work will be constructed as part of the project with approval of the Supplemental
<b>Total M-NCPPC</b>			<b>\$849,384</b>	

06/23/2008



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**OFFICE OF THE CHAIRMAN**

June 27, 2008

The Honorable Michael Knapp  
President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850-2322

Re: Amendment to the FY09-14 Capital Improvements Program and Supplemental  
Appropriation #3-S09-CMCG-2 to the FY09 Capital Budget  
Montgomery County Government  
Paul S. Sarbanes (Silver Spring) Transit Center (No. 509974), \$16,720,000

Dear Mr. Knapp:

Redevelopment of the Silver Spring Transit Center ("Transit Center"), to be dedicated in honor of former Senator Paul S. Sarbanes for his years of service to the citizens of Maryland, and for his indefatigable support for the funding of this project, came before the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (the "Planning Board") for several different purposes. First, the Planning Board reviewed the construction plans under Mandatory Referral in accordance with its regulatory authority. Additionally, in order to accommodate the new Transit Center, an existing 35,000 square foot Park Easement held by the Commission immediately adjacent to the existing Transit Center must be replaced.

The Planning Board considered both together in order to provide assurance to the Silver Spring community that this major gateway into Silver Spring would be developed with appropriately high design standards. Development of this important investment in Silver Spring must be consistent with the quality of improvements to the downtown area already supported with hundreds of millions of dollars of public and private dollars invested in Silver Spring's redevelopment, and it must befit the honor imparted on Senator Sarbanes.

When the County presented the proposed Transit Center to the Silver Spring community and at public hearings before the Planning Board, it did not clearly distinguish what the County considered optional design elements from the base project design. The Planning Board reviewed the Transit Center under the advisory Mandatory Referral process instead of the Optional Method regulatory process (even though it is the public portion of a public/private partnership). For these reasons, the Planning Board attempted to leverage the release of its Park Easement to ensure the higher quality design of the Transit Center.

A copy of a March 23, 2007, letter from me to Tim Firestine is attached to provide you with a greater understanding of the Planning Board's early concerns, as we fully anticipated a shortfall in public funding for the Transit Center as it was being proposed for review. The Planning Board agreed to accept significantly less area as replacement for its Park Easement under the condition that the quality of the Transit Center and of the replacement park areas would retain a high level quality of design and finish. As replacement for the 35,000 square foot Park Easement, the Planning Board accepted a total of 23,048 square feet in the form of an urban park reclaimed from use as a roadway (i.e., the "jughandle") at the corner of Colesville Road and Wayne Avenue to be named the Eugene R. Lynch, III Urban Park ("Lynch Park") in honor of the Commissioner, and an easement over the entrance to the Metro Station ("Transit Plaza") (together, the "Replacement Easement Areas").

Unfortunately the County and WMATA were only willing to commit to construct the Replacement Easement Areas in accordance with the Mandatory Referral recommendations. They would not commit to retain the design standards recommended in the Mandatory Referral review as desired by the Planning Board. Section 2.1 of the Memorandum of Understanding dated February 4, 2008 by and between the Commission, WMATA and the County ("MOU") sets forth the ultimate agreement reached by the parties, to which the Planning Board reluctantly agreed in order to move the project forward. I have enclosed a copy of the MOU for your reference.

Specifically, the Planning Board identified certain elements that it felt were essential to the quality of design of the Transit Center (the "Essential Elements"). The nine Essential Elements are described on Exhibit D to the MOU. Section 2.1 provides in relevant part that if changes to, or deletions of any of the Essential Elements outside the Replacement Easement Areas are necessary due to insufficient funding as a result of contract bid negotiations, the County Council and the State will be informed of the amount of insufficient funding, the proposed change or deletion of the Essential Element, and the impact to the Transit Center as a result of such change or deletion so that the County Council and/or the State can request such information from the County and the Commission as is necessary to appropriate additional funds.

The County Executive has requested a Supplemental Appropriation in the amount of \$16,720,000 for the Transit Center (the "Supplemental"). However, the request as presented is not consistent with the terms of the MOU.

The County proposes to relocate the building that is to house the Transit Police and the Transit Store ("Transit Building") away from the Transit Plaza to an alternative hidden location in the Transit Center. Technically, the Transit Building is not part of the Transit Plaza, and therefore the County is not required to construct it in accordance with the Mandatory Referral recommendations. However, the Transit Building was originally part of the Transit Plaza Easement Area. For liability reasons the boundary of the Transit Plaza was adjusted at WMATA's request so that the land area the Transit Building occupies was not included as part of the Transit Plaza Easement Area. It was neither the intention nor the

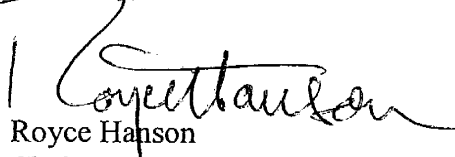
understanding of the Planning Board or WMATA that the actual location of the Transit Building was an optional design element. It was always intended to remain at the location at the entrance to the Transit Center as shown on the plans presented to the Planning Board and the public at the Mandatory Referral hearing.

Furthermore, the County Executive has sent you his Supplemental request without advising you or the State of the changes to, or deletions of any of the Essential Elements due to insufficient funding. Nor has the County Executive informed you or the State of the amount of insufficient funding for the Essential Elements, or the impact to the Transit Center as a result of such change or deletion.

Therefore, I have enclosed with this letter a chart that outlines the Essential Elements either changed or deleted due to insufficient funding as a result of contract bid negotiations, the amount of insufficient funding, and the impact to the transit Center as a result of such change or deletion so that the County Council and/or the State can request such information from the County and the Commission as is necessary to appropriately act.

I look forward to appearing before you on July 15<sup>th</sup> to discuss this in greater detail. Please let me know if there is specific information that you will need in order to fully consider the Supplemental and the shortfall of such request so that the public investment in this important project is increased sufficiently to avoid squandering the current public investment on a substandard project. The Paul S. Sarbanes Transit Center will be the gateway to downtown Silver Spring and an important part of the urban fabric. A "bus garage" simply is not adequate.

Sincerely,



Royce Hanson  
Chairman

cc: Isiah Leggett  
Timothy Firestine  
Art Holmes  
Gary Malasky  
Senator Jamie Raskin  
Delegate Sheila E. Hixson  
Delegate Tom Hucker  
Delegate Heather Mizeur  
Senator Benjamin Cardin  
Senator Barbara Mikulski  
Representative Donna Edwards  
Congressman John P. Sarbanes  
Secretary John Porcari