

Exhibit B

First Report (2007 Public Hearing Report)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
PUBLIC HEARING STAFF REPORT
REVIEW OF PUBLIC HEARING AND STAFF RECOMMENDATIONS

PROPOSED RELOCATION OF BUS FACILITIES
AND PARKING CHANGES AT TAKOMA STATION

RED LINE
WASHINGTON, D.C.

HEARING NO. 175
DOCKET NO. R06-5

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I. Background: Takoma Station and the Joint Development Proposal

A. The Washington Metropolitan Area Transit Authority

The Washington Metropolitan Area Transit Authority is an interstate compact agency created as a “common agency of [the District of Columbia, Maryland and Virginia]” and “empowered . . . to plan, develop, finance and cause to be operated improved transit facilities . . . as part of a balanced regional system of transportation, utilizing to their best advantage the various modes of transportation.”¹ The WMATA Compact establishes WMATA’s general powers, including the power to own and maintain real and personal property, provided that such property “shall be necessary or useful in rendering transit service or in activities incidental thereto.”²

B. Takoma Station

WMATA owns approximately 6.8 acres of real property located in the District of Columbia comprising its Takoma rail and bus station (“Takoma Station”). That portion of Takoma Station closer to the Metrorail station is zoned C-2-A, permitting matter-of-right low density development, including office, retail, and residential uses to a maximum lot occupancy of 60% for residential use, a maximum floor area ratio (“FAR”) of 2.5 for residential use and 1.5 FAR for other permitted uses, and a maximum height of fifty (50) feet.³ The portion of Takoma Station closer to Eastern Avenue is zoned R-5-A, permitting matter-of-right development of single-family residential uses for detached and semi-detached dwellings and, with the approval of the Board of Zoning Adjustment, new residential development of low density residential uses

including row houses, flats, and apartments to a maximum lot occupancy of 40%, 60% for churches and public schools; a maximum FAR of 0.9, and a maximum height of three (3) stories/forty (40) feet.⁴

Takoma Station is currently improved with a Metrorail Station and an internal road system serving 9 bus bays and 149 non-commuter spaces in a surface parking lot (including Kiss & Ride and handicapped spaces). On a typical weekday, Takoma Station serves approximately 12,500 Metrorail Red Line riders, 3,000 Metrobus passengers on eight routes, and 3,200 Ride On passengers on eight routes.

C. Construction of Takoma Station

Takoma Station opened in February, 1978, as part of a 5.7 mile extension of Metrorail's Red Line.

When planning for the original Metrorail system began, WMATA proposed building a surface parking lot at Takoma Station containing 450 Park & Ride spaces and 16 Kiss & Ride spaces. Community and political opposition in the District of Columbia (the "District") caused WMATA to substantially cut back on proposed parking at Takoma Station and other District stations. "Between 1968 and 1978, the number of peak-hour parking spaces planned for District stations gradually dropped from 4,925 to 1,646, even as models projected a demand for 18,706 spaces."⁵

At Takoma Station, the District and Montgomery County, Maryland (the "County") both provided input on the question of parking. While the District opposed urban transit parking, the County originally supported a "heavy" commuter parking focus. In a March 1, 1967

memorandum to the County Planning Board, planning staff commented that it was important to design the proposed 450-space Takoma Station parking lot to allow for future expansion of parking, including future construction of a multi-story parking garage “if future transit use and redevelopment nearby to more intensive uses suggest such a need.”⁶

In 1971, WMATA held a Compact Hearing on the proposed construction of the section of the Red Line containing Takoma Station. “Most witnesses opposed the provision of parking in DC.”⁷ Despite opposition, WMATA staff recommended the 450-space commuter parking because of projected demand and revenues concerns.⁸

At various times between 1971 and 1975, WMATA’s Board of Directors debated parking at Takoma Station.⁹ On September 17, 1971, the WMATA Board considered a compromise proposal that reduced parking at all District rail stations from 2,300 spaces to 1,300 spaces. Rev. Jerry Moore, a District Board member, advocated a “wait and see” approach; that is, he supported a District recommendation that WMATA build only 200 spaces at Takoma Station and wait three years, after which, if there was demonstrated need, more parking could be built. Mr. Hussman, an alternate director from Maryland, resisted, arguing that reduced parking would adversely affect Maryland commuters. Thereupon, Mr. Barnett, a Maryland director moved for approval of the 450-space plan. That motion failed on a 3-3 tie vote. Thereafter, Mr. Harris, a Virginia director, moved to modify the District’s proposal, to provide for 350 parking spaces and to acquire additional land at Takoma “to accommodate an additional 100 parking spaces in the event the need arises.” This compromise motion passed unanimously.¹⁰

In October, 1973, WMATA’s Board of Directors formally approved the alignment of that portion of the Red Line including Takoma Station’s “access and related facilities” with the

previously-approved 350 parking spaces with additional land set aside for possible additional (future) parking.¹¹

Rather than ending debate, the October, 1973 vote seemingly reignited it. The sea change came, in large part, because the County's support for parking evaporated. On November 11, 1973, WMATA's General Manager, Jackson Graham, advised WMATA's Board that the County Council now recommended only 80 non-commuter spaces plus 20 handicapped spaces.¹² Mr. Graham recommended that WMATA retain 350 spaces, but set aside 30 for non-commuter parking.¹³

But with the District and Maryland views on parking now aligned in opposition, the proposed large commuter parking lot was doomed. On December 12, 1973, the WMATA Board, by unanimous vote, directed WMATA staff to plan for parking "not to exceed 100 spaces, said recommendation to incorporate the views of D.C. and Montgomery County planning agencies which are urged to address the station parking issue in the context of joint land use planning for the Takoma area in consultation with affected citizens."¹⁴

WMATA staff prepared a new draft site plan.¹⁵ In a memorandum to the WMATA Board dated May 29, 1974, WMATA's General Manager introduced a WMATA staff plan and briefed the Board on a citizen group's alternative plan. As summarized by General Manager Graham, the proposed WMATA plan placed parking in the "same general area as the previous plan" but included a total of 100 non-commuter parking spaces which include 45 Kiss & Ride spaces and 2 handicapped spaces. The new plan had 9 bus bays (versus 6 in the earlier plan); provided for 3 vehicular access points with all trees "asked to be preserved" remaining. General Manager Graham noted that the staff plan was presented to a local citizens group who were generally

pleased that changes had been made although “a few were disappointed that the plan submitted by their group was not adopted.”¹⁶

On June 20, 1974, the Board debated the modified site plan. Although District and Maryland representatives agreed on 100 spaces, there remained a final battle over configuration. Ms. Garrott, an alternate director from Maryland, reported that Montgomery County did not support the “staff plan” but instead supported the “citizen plan” which proposed the Kiss & Ride be east of the bus bays, with access off relocated Cedar Street, “putting the major park buffer on Eastern Avenue.”¹⁷ The “citizen plan” described the open area as an “urban park.” Ms. Garrott indicated that the “staff plan” would have “a serious adverse impact on Montgomery County and its citizens.”¹⁸ In response, Mr. Nevius, one of the District’s directors declined to support Ms. Garrott “due to the adverse impact this entrance would cause on the residents and property owners in the District of Columbia.”¹⁹ After discussion, the WMATA staff plan was approved by the WMATA Board unanimously.²⁰

One week later, on June 27, 1974, at the next Board meeting, Ms. Garrott reported that the County Council and the City of Takoma Park, Maryland were unanimous in their support of the “citizen plan” and she asked for reconsideration of the June 20, 1974 Board action. Mr. Barnett, director from Maryland, reported that he had voted in favor of the staff plan, but had subsequently received a letter from the Montgomery County Council Chairman and, based on that, was prepared to change his vote to support the “citizen plan.”²¹

Both District Board members opposed the motion to reconsider. Mr. Nevius reiterated his earlier statement that the District’s planners had accommodated all other citizen group requests and “could go no further without adversely affecting the D.C. residents in that area and

that he could not support the motion for reconsideration.”²² Rev. Moore concurred and reported that the District’s City Council unanimously supported the WMATA staff plan. The motion to reconsider failed by a vote of 2-4.²³

On June 12, 1975, as a result of “objections from citizens in the area of the Takoma station regarding the number of parking spaces proposed and the number of trees that had to be removed,” the WMATA Board formally limited parking at Takoma Station to 100 non-commuter spaces along with other associated changes such as relocating the Kiss & Ride facility.²⁴

In accordance with this Board requirement, the parking lot at Takoma Station, when first built, had 100 parking spaces, of which approximately 45 were Kiss & Ride spaces.²⁵ At some point thereafter—WMATA is not sure when--WMATA, contrary to the Board mandate, restriped the parking lot to increase its capacity to 149 non-commuter spaces.²⁶ WMATA’s restriping of the parking lot and the corresponding increase in capacity beyond that approved by WMATA’s Board was either not noticed by the local community or was noticed, but tacitly accepted.

D. WMATA’s Joint Development Program (Generally)

The term “joint development” means, generally, “any income-producing activity with a transit nexus related to a real estate asset in which [the Federal Transit Administration (“FTA”)] has an interest or obtains one as a result of granting funds.”²⁷ WMATA’s joint development program is the marketing of real estate to:

office, retail/commercial, recreational/entertainment and residential developers with the objective of developing transit oriented development projects. Projects are encouraged that integrate WMATA’s transit facilities, reduce automobile dependency, increase pedestrian/bicycle originated transit trips, foster safe station areas, enhance surrounding area connections to transit stations, provide mixed use including housing and the opportunity to obtain goods and services near transit

stations, offer active public spaces, promote and enhance ridership, generate long-term revenues for WMATA, and encourage revitalization and sound growth in the communities which WMATA serves.²⁸

Under FTA rules, a joint development project “enhances economic development or incorporates private investment including commercial and residential development, pedestrian and bicycle access to a mass transportation facility” because the project either “enhances the effectiveness of a mass transit project and is related physically or functionally to that mass transit project” or the project “establishes new or enhanced coordination between mass transportation and other transportation” and the project also provides a “fair share of revenue for mass transportation use.”²⁹ The “physically related” test is satisfied if the project provides “a direct physical connection with transit services or facilities” which includes “projects using air rights over transit stations or projects built within or adjacent to transit facilities.”³⁰ A project is “functionally related” to a transit station if related by activity or use or functionally linked (with or without direct physical connection) to the transit services or facility or if the project “provides a beneficial service to the public (or community service) and enhances use of or access to transit.” As a general rule, FTA requires projects be within 1,500 feet of a transit center to satisfy the “functionally related” test.³¹

Under existing WMATA policy, proceeds of WMATA’s joint development are deposited into WMATA’s Transit Infrastructure Investment Fund (“Investment Fund”) and allocated for use by WMATA’s funding jurisdictions, including Maryland and the District, pursuant to defined formula.³² As a general matter, Investment Fund monies are to be spent on “non-recurring capital investment projects which will provide long-term benefit to the Authority, or to advance approved projects or purchase in the Infrastructure Renewal Program that will strengthen

reliability of transit services and meet increased ridership demands.”³³ Past illustrative uses of Investment Fund monies include the allocation of \$6,700,000 by Maryland for partial funding of the Takoma Langley transit center;³⁴ the allocation of \$2,000,000 by Virginia for partial funding of a new parking structure at the West Falls Church Metrorail station;³⁵ the allocation of \$500,000 by the District towards expansion of WMATA’s Navy Yard Metrorail Station;³⁶ and allocation towards general capital projects, such as Regional Fare Integration (SmarTrip); a CNG facility; and the design of precision stopping to facilitate 8-car train operation.³⁷

Proceeds from the Takoma joint development project, if approved, are projected to be deposited by WMATA into the Investment Fund.

E. Joint Development at Takoma Station

Even in the earliest planning stages of Metrorail, interested parties discussed potential future development at or near Takoma Station. As early as 1968, the City of Takoma Park, Maryland expressed concern that draft impact studies should be modified because “too much of what [the City of Takoma Park, Maryland] considered their potential commercial development was being scheduled for and located in Washington.”³⁸ In 1971, the City of Takoma Park urged WMATA not to develop air rights at Takoma for two reasons. First, “there will be a need for more parking in the future, requiring additional levels. Second, air rights will be more valuable in the future when surrounding community has had the opportunity to redevelop to its maximum potential.”³⁹

WMATA began offering Takoma Station as a joint development opportunity in March, 1996, but, until 1999, there was no interest. In July, 1999, WMATA again offered Takoma

Station. In its September 30, 1999 proposal, EYA Development, Inc. (“EYA”) proposed to build a two-level parking structure to consolidate the existing parking and “release approximately 3.5 acres of land for development.”⁴⁰ On that “released” property, EYA proposed to build “88 quality, market rate town homes that would be architecturally compatible with the surrounding neighborhood.”⁴¹ EYA originally proposed to pay WMATA \$500,000 and construct the parking garage, at an estimated cost of \$1,500,000.⁴²

EYA and WMATA entered into negotiations that, by February, 2000, resulted in a recommendation that the WMATA Board select EYA as the developer. February 2000 marked public announcement of the proposal and triggered a community reaction that ranged, in the words of one commentator, from “skeptical of the substance of the plan” to outrage “that WMATA had kept citizens in the dark.”⁴³ In addition, the historic preservation group, Historic Takoma “claimed that Metro had promised to permanently preserve the green space when the station was constructed in 1974.”⁴⁴

The WMATA Board initially deferred consideration of the EYA proposal to study the claim that WMATA had previously promised to perpetually preserve green space. In July 2000, however, the WMATA Board approved a term sheet between WMATA and EYA. By mid-2000, negotiations were overtaken by a District planning initiative:

The Takoma Central District small area plan was initiated in June 2000 by the Office of Planning, after the announcement of the disposition of the [WMATA] property at the Takoma Metro station and growing development interest in the Takoma community. All parties agree that ideally this planning process would and should have been initiated prior to the announced disposition of the Metro Station site. Nonetheless, that disposition has been on hold at the request of the District government, awaiting the outcome of this process.⁴⁵

F. The Takoma Central District Plan

The Takoma Central District Plan prepared by the District's Office of Planning and its consultants and issued in January, 2002, "defines near and mid-term strategies for revitalization and articulates broad development goals, urban design guidelines and priority actions necessary to encourage and facilitate reinvestment in the district."⁴⁶ Among its stated objectives is providing the community with a "predictable development guide" to allow a framework to assess the compatibility of new development in the District as well as to provide "guidance and advice" to potential developers in their decision making.⁴⁷

The Takoma Central District Plan identifies a goal of establishing a "vibrant 'town center'" using community assets, top among which "is the Metro station and the open space area that separates the station's surface parking lots from the adjacent residential community."⁴⁸

It is from this Metro Gateway site that much of the core vision for Takoma is derived. Residents envision a village-scale, mixed-use commercial district for Takoma, drawing inspiration and guidance from the area's historic character and architecture, and anchored by a high quality, signature open space at the Metro station that defines the town center. The existing historic buildings within the district are revitalized with quality retail businesses and complemented by new infill development of compatible scale and design on key opportunity sites.⁴⁹

The Takoma Central District Plan identified 5 "priority" redevelopment sites as the "primary focus of initial efforts to attract new near-term investment to the Central District."⁵⁰ The first listed—and largest—priority redevelopment site is Takoma Station. The Takoma Central District Plan proposes development that maintains green space as a 0.8 to 1.2 acre "Village Green", with a residential density of 22-32 dwelling units per acre (or 65-95 total residential units), with limited retail use, possibly in "live/work units."⁵¹

With respect to Takoma Station, the Takoma Central District Plan emphasized that

planning for Takoma Station must “first accommodate the site’s current and future transit functions, with the needs of the local business community and potential new development as secondary consideration.”⁵² The plan suggested a western entrance to the station to ameliorate a “physical and psychological barrier between areas east and west of the Metro tracks”, to improve pedestrian access and to “help activate deserted areas along the Metro and boost the retail potential of 4th Street.”⁵³ It also suggested making the WMATA Station a “community gateway” by modifying the station design in ways designed to “enhance the experience of arriving in the neighborhood” by, for example, allowing retail kiosks near the station entrance, adding public art, enhancing the underpass with streetscape treatment and adding bicycle racks to accommodate additional bicycle riders.⁵⁴

With respect to parking, the Takoma Central District Plan observed that “parking at the Metro site. . . currently appears to be underutilized at times” and makes a suggestion that the Metro parking, combined with increased parking along 4th Street “can be promoted as additional parking for retail uses in the area.”⁵⁵ Elsewhere, after first noting that there is “generally an adequate parking supply, although its location and design does not effectively serve the community”, the plan recommends that “the parking facility at the Metro station site should also be relocated to a more strategic and convenient location to serve both commuters and retail shoppers.”⁵⁶ In its Conceptual Development Plan presenting a “visual guide for redevelopment of the Metro station site,” the Takoma Central District Plan places the WMATA parking in a “two-level parking garage located on the Metro site, close to the Village Green and above the Metro and Ride On bus facility.”⁵⁷ The Takoma Central District Plan provides that this parking is intended for “both shoppers and transit users....”⁵⁸

With respect to buses, the Takoma Central District Plan proposed a “redesigned and expanded bus facility, partially covered by the parking garage, [which] includes ten bus bays for boarding, additional stacking spaces and a turnaround loop. The bus facility is sited immediately adjacent to the Metrorail station to improve rail/bus transfers and provide appropriate space on the site to accommodate new private investment. Primary bus access remains on Carroll Street, with a secondary Ride On exit-only to Eastern Avenue adjacent to an intensive landscaped buffer area on the site’s northern border.”⁵⁹

The Takoma Central District Plan also recommended a comprehensive traffic study (then already funded and scheduled to be performed by the District’s Department of Transportation) “to improve mobility, parking and traffic safety.”⁶⁰

After public hearing, the Takoma Central District Plan was approved by the District of Columbia Council on June 4, 2002.⁶¹ Now approved, the Takoma Central District Plan “shall provide supplemental guidance to the Zoning Commission and other District agencies in carrying out the policies of the Comprehensive Plan.”⁶²

G. The Transportation Study

The Transportation Study, issued in July 2003, was far-reaching, providing recommendations with respect to traffic, transit, pedestrian and parking issues. With respect to Takoma Station, the Transportation Study contained, among others, the following recommendations:

- Provide a three-space taxi stand beneath the Metro tracks on the north side of Cedar Street.

- Provide 12 bus bays (11 active; one for layovers).
- Provide multiple Kiss & Ride locations at the back of the Station, and along Cedar Avenue and Carroll Street.
- Maintain existing bus access points (both Cedar/Carroll and Eastern).
- Eliminate bus layovers on street.
- Construct an ADA accessible western entrance.
- Provide parking spaces at a 1:1 ratio, with improved signage.
- Locate bicycle racks and lockers adjacent to “Village Green” to increase visibility (and hence security) to encourage bicycle use and be prepared to install additional bicycle facilities to accommodate the Metropolitan Branch Trail.⁶³

H. WMATA and EYA Execute a Sales Agreement

In June, 2005, WMATA and EYA entered into a Joint Development Sales Agreement. Under this agreement, WMATA agreed to sell EYA a portion of Takoma Station for a purchase price of \$105,000 per market-rate townhome lot (with a \$7,350,000 minimum), minus the eventual cost of building the WMATA Replacement Facilities, defined initially as “not fewer than 75 metered parking spaces, . . . not fewer than 10 bus bays, not fewer than 2 bus holding areas, a turn-around loop allowing buses to both enter and exit the Station on Carroll Street, satisfactory access roads for bus and automotive traffic and sidewalks to allow safe pedestrian access.”⁶⁴

The Sales Agreement requires that EYA proceed through the District’s Planned Unit Development (“PUD”) process.⁶⁵ It also contains an “initial concept plan for the Property

describing in detail the proposed Project, the number of residential units (including the number of live/work units designated as “L/W”) or retail square feet, as applicable . . . for each type of use and the WMATA Replacement Facilities (including the WMATA Parking Lot which provides for 75 surface parking spaces).”⁶⁶ As noted, the concept plan attached to the Sales Agreement was “initial”; the Sales Agreement contemplated (and the parties expected) that it could, and would, be amended, subject to a requirement that EYA eventually submit to WMATA a concept plan designated as “final” before “submitting the final Concept Plan to the District of Columbia as part of the PUD Approval.”⁶⁷

As part of its response to Compact Hearing testimony (and as discussed later in this staff report), WMATA and EYA propose to amend the Sales Agreement to, among other things, increase the purchase price by \$715,000 if a parking garage is built and to provide for a \$2,500,000 minimum purchase price.

I. WMATA Community Meetings

In response to a request from Congresswoman Eleanor Holmes Norton, two WMATA-organized meetings were held in the Takoma community: one on Sept. 14, 2005 at Trinity Episcopal Church and one on Sept. 15, 2005 at the Takoma Park Municipal Building. Also, at the invitation of the Takoma Park City Council, WMATA staff made a presentation of the revised site plan on October 24, 2005. In addition, on March 4, 2006, WMATA held a Planning Workshop at Trinity Episcopal Church, Washington, D.C. ⁶⁸

II. The Compact Public Hearing

A public hearing was held on Wednesday, October 11, 2006, at Trinity Episcopal Church, 7005 Piney Branch Road, N.W. Washington, D.C. 20012. Official notice of the hearing was published in The Washington Post on August 19, 2006 and August 26, 2006. Notices were mailed to property owners and civic associations in the vicinity of Takoma Station.

The hearing was chaired by WMATA Board Chairman Gladys Mack who was joined by Board member Charles Deegan. Approximately 150 people attended. Mrs. Mack explained the hearing procedures which included staff and developer presentations, followed by public testimony. Mrs. Mack further explained the opportunity to present written comments until October 25, 2006.

A transcript of the hearing is included in the Appendix to this staff report and is incorporated, in its entirety, in this staff report. Copies of all written comments are also included in the Appendix and are also incorporated, in their entirety, in this staff report. The Appendix is posted online at www.metroopensdoors.com. A hard copy is available at the Takoma Park Branch Library, 416 Cedar Street, N.W, Washington, D.C. 20012 and the Takoma Park Maryland Library, 101 Philadelphia Avenue, Takoma Park, Maryland 20912, as well as at WMATA's Office of the Secretary located at WMATA's main office, 600 5th Street, N.W., Washington, D.C. 20001. In addition to the materials in the Appendix, the public may submit comments in response to this staff report until September 25, 2007, addressed to WMATA's Office of the Secretary, at the address listed in the preceding sentence or, via email, to public-hearing-testimony@wmata.com.

III. Staff Review and Analysis

A. *Promise of Perpetual Green Space*

One of the earliest criticisms of the proposed joint development was that WMATA breached a promise to the community to provide perpetual green space.⁶⁹ Although this argument has now faded with respect to both frequency raised and primacy, it merits scrutiny because it questions WMATA's legal authority to sell. The case that WMATA's proposed sale violates some earlier promise was laid out by attorneys for the City of Takoma Park and Historic Takoma. The argument runs as follows: The current site plan, including a "park" buffer were part of a "deliberative process and agreements among and between WMATA, the District of Columbia, Montgomery County, Maryland National Capital Park and Planning Commission, the City of Takoma Park, Maryland, citizens' groups from D.C. and Maryland, and concerned residents of both jurisdictions."⁷⁰ Because the site plan was "not a unilateral decision by WMATA, or even a decision of WMATA made in conjunction with the District of Columbia" then "[b]efore the site plan can be altered, the local entities and communities which were involved in the 1974-75 agreements regarding the site plan for the Takoma Metrorail Station are entitled to participate in any revision to these understandings."⁷¹ Counsel for the City and Historic Takoma referred to a "document trail that substantiates WMATA's promises of participation to the Takoma Park government and community."⁷²

The "perpetual no build promise" argument concedes the non-existence of the kind of land use agreement most commonly and properly used to perpetually restrict the use of property-- a written covenant recorded in the District's land records. By itself, the lack of a recorded covenant defeats, legally, the "perpetual no build" case.⁷³

Likewise, a key foundation of this argument—that the *status quo* providing open space resulted from consensual agreement—is not correct. The WMATA “staff plan” showed an open space, without description and without representation of permanent use as a public park. The “citizen plan” specifically called for an “urban park.” In 1974, the existing site plan, the now-current *status quo*, was approved by WMATA over the express *objection* of Montgomery County, the City of Takoma Park, Maryland and those supporting the “citizen plan.” Conflict, not consensus, marked the birth of the existing open space.

But, perhaps most noteworthy, even if one accepts that events in the 1970's created promises of “participation” before the Takoma Station site plan could be amended, there can be little dispute that, since 2001, there have been numerous opportunities for such participation, not the least of which are the District’s Takoma Central District Plan process as well as this Compact Hearing proceeding.

Finally, as an aside, the argument that WMATA once promised to perpetually operate and maintain a park also assumes, incorrectly, that WMATA has legal authority to operate and maintain parks. It does not. WMATA is not a general government. It is an interstate compact agency, given a narrow charge to “plan, develop, finance and cause to be operated improved *transit* facilities”⁷⁴ and, to achieve that end has limited authority to acquire and own property “necessary or useful in rendering *transit* service or in activities incidental thereto.”⁷⁵

Staff Conclusion and Recommendation: In the 1970's, WMATA did not promise to create or perpetually maintain a public park. Staff recommends that the Board review the current proposal without consideration of alleged historic WMATA “no build” promises.

B. Future Transit Needs

As measured by number of persons who testified or gave written comment, perhaps the most prevalent criticism of the proposed transit plan amendment is that the proposed reconfigured bus facility with ten bus bays and four layover spaces is inadequate to accommodate an inevitable ridership growth. By way of illustration, some argued that “this plan limits the bus bay area in such a way that expansion in the future is impossible.”⁷⁶ Decisions should not be made based only upon currently-funded routes, but WMATA should “regain the flexibility to address needs 10, 15, 20 years out and beyond. If you sell land necessary to do anything additional beyond this current proposal, you're constraining your own ability to address future transit needs.”⁷⁷ No witness provided qualitative information regarding future bus growth except for an occasional general statement that “we know that the demand for public bus transportation and Metro transportation is going to be skyrocketing over the next several decades.”⁷⁸

The plan, with ten bus bays, satisfies the Takoma Central District Plan. The proposed plan does not have the eleven bus bays plus one layover space suggested by the Transportation Study, but, for the reasons set forth below, the proposed “ten plus four” configuration will accommodate present and future transit needs.

WMATA’s analysis of bus transit needs begins with the September, 2003 Regional Bus Study, commissioned by WMATA to plan short and long-term regional and non-regional bus services. To be sure, the Regional Bus Study projects overall “skyrocketing” growth, in that it sets a goal of doubling bus ridership by 2025.⁷⁹ But that growth is not expected to occur evenly throughout WMATA’s service area.

It is evident that while the District retains the largest number of riders, the faster rates of growth in ridership are in suburban areas. To a large extent, this simply reflects the COG projections of population and employment growth, which fuel background growth and also influence the Long Term plan improvements designed to accommodate and attract new riders. Outer Virginia (Fairfax and Loudon Counties and the City of Fairfax) grows particularly fast. By 2025, this subregion's share of bus riders will grow from 8% to 14%. Overall, the majority of riders in 2000 are from inside the Core (District and Inner Virginia), while in 2025 the majority will be from outside the Core.⁸⁰

Takoma Station is not located in a historic population growth area, nor is it an area where skyrocketing future population growth is projected. The District's population declined from a high of 802,178 in 1950 to 572,059 in 2000. The Census Bureau estimates that between 2000 and 2006, the population of the District increased 1.7% to 581,530.⁸¹ The Metropolitan Washington Council of Governments ("MWCOC") projects that the District's population will continue to grow, to a projected 733,800 by 2030 (or an aggregate 26% growth over 24 years).⁸² The population of the City of Takoma Park, Maryland declined from a high of 18,455 in 1970 to 17,299 in 2000 (despite adding area through annexation).⁸³ Although Takoma Park's population is not separately projected by MWCOC, the population of Montgomery County is expected to grow from 942,000 in 2005 to 1,155,800 in 2030 (or an aggregate 22% growth over 24 years).

With respect to future employment growth, MWCOC projects District employment to grow by 115,000 jobs between 2005 and 2030 and for Montgomery County's employment to grow by 170,000 jobs over the same period.⁸⁴ Little of that employment growth is projected to occur in Takoma (DC) or Takoma Park.⁸⁵ The same stable residential characteristic of this neighborhood that constrains future population growth also defines this neighborhood as one not likely to become a major employment center.

The City of Takoma Park's own appraisal of Takoma Station opined that the surrounding

area has a “mature and stable population.”⁸⁶ This conclusion is sound. “Because Ward 4 is primarily a stable, residential neighborhood, city officials and ward residents envision few major changes in the overall character of the ward.”⁸⁷ Given these population growth projections, WMATA believes it appropriate to plan, long term, at Takoma Station, assuming a “mature and stable population.”

Beyond considering population and employment growth, WMATA has studied the existing bus coverage areas around Takoma Station. “The District as a whole has the densest transit network in the region, both in terms of geographic coverage and service frequency.”⁸⁸ Likewise, the “densely-developed inner ring” of Montgomery County “is served by an extensive route network.”⁸⁹ An examination of the map of existing services⁹⁰ shows the dense route network already in place. It is unlikely that other new services beyond those proposed by the Regional Bus Study, both of which are in Maryland, would justify consideration. To be sure, the Transportation Study recommended that service to the station from 3rd Street NW be reinstated, but with existing alternative service on 5th Street to the west (Route 62) and with the railroad embankment to the east, WMATA staff believes, and past experience has shown (a prior route (K8) along this corridor was discontinued due to low ridership), that this limited area would not support a viable service.

The Regional Bus Study’s recommendations impacting Takoma Station were 1) that K2 service be increased to a 15-minute frequency in the near-term, 2) that Ride On Route 3 be eliminated,⁹¹ and 3) that two new routes be established between Silver Spring and Takoma Stations, most likely to be operated by Ride On.⁹² With respect to the K2 route, since publication of the Regional Bus Study, Route K2 has been split into two services: Route K1, between

Takoma Station and Walter Reed at a 15-20 minute frequency, and Route K2, between Takoma and Fort Totten Stations, at a 20-minute frequency. The effect is nearly a doubling of the number of buses compared to when K2 served both Walter Reed and Fort Totten.

The two proposed new Maryland routes are shown on Exhibit 5. Ride On Route 3—proposed to be eliminated and replaced, in part, by a proposed new route—continues to operate.

To be sure, the Regional Bus Study did state that Takoma Station had “severe capacity constraints” and noted that Ride On “anticipates that two new bays will be required to handle two new services it is planning in response to these requests.”⁹³ WMATA has considered the effect of adding the proposed new routes. Exhibit 6 shows the location of the existing bus bays, with current bus assignments. Eight bus bays are currently assigned, four to WMATA; four to Ride On. One bus bay remains unassigned.⁹⁴ Although future bus bay assignments have not been made, Takoma Station, reconfigured as proposed, will have ten bus bays to handle the existing traffic (now accommodated with eight) plus the two new bus lines proposed in the Regional Bus Study. The issue presented, then, is whether projected future growth can be accommodated by the proposed configuration and, if so, what capacity will thereafter remain for even more growth.

Based on 30 years of bus scheduling experience, WMATA, through practical experience, calculates that one bus bay at a station used for layover; *i.e.*, for recovery time between trips at a terminal, can accommodate as many as ten trips an hour, or a six-minute frequency of service.⁹⁵ More comfortable would be eight or six trips per hour, or frequencies of 7½ or 10 minutes, respectively. The more variable the running time on a given route in actual practice, the longer the layover should be to help assure that the next trip can leave on time, with the result that fewer trips per hour can be accommodated at the bay served by that route. On the other hand, a much

higher frequency of service than ten trips per hour can be accommodated if the bay serves as a mid-route stop (such as, for example, some of Ride On's Route 18 trips) where no layovers are scheduled or where the bulk of the layover is taken at the other end of the route.

As noted above, the current layout has nine bus bays (one unassigned) and no designated layover area, although the loop is used informally for that purpose. The proposed layout provides ten bus bays and a designated layover area for up to four standard-size forty-foot buses. Both arrangements permit clockwise circulation for reentry as necessary using Eastern Avenue, Cedar Street, and Carroll Street.

Bus ridership increases would be accommodated by utilizing excess capacity presently scheduled, by increasing the size of the vehicles used to the extent feasible, by increasing the frequency of service, and by making reassignments of routes to bays and coordinating schedules so as to even out bus volumes among them. Of note, some of the roads over which routes serving this station operate could not physically accommodate buses significantly larger than those presently used. Neither the existing bays nor the proposed bays are designed for articulated buses.

It is the professional opinion of the WMATA's bus planning staff that, by applying the above measures, the proposed layout would satisfactorily accommodate all the new routes proposed to serve Takoma Station and, thereafter, still accommodate a *doubling* of the current (2007) volume of bus passengers using this station.

Moreover, WMATA's ridership growth plans in the Takoma/Takoma Park area involve strategic planning more sophisticated than simply adding new riders to existing routes. Indeed, for such "over the horizon" planning, it is simply not practical to project ridership growth for

individual bus lines. For the “Long Term” period, the Regional Bus Study concluded that “it is not reasonable to conduct detailed bus service planning. The approach to this period of the plan was to create a vision of the bus system of the future and to quantify the major parameters such as fleet size, types of vehicles, types of service, total vehicle hours, operating budget and required facilities and systems.”⁹⁶

One key long-term strategy advocated by the Regional Bus Study is the transit center.

Transit center functions range from facilitating operations by providing off-street layover space to supporting large numbers of transfers between automobiles and transit and different transit services. A transit center serving local routes may have simple bus pull-outs, shelters, and detailed system information. Large-scale regional transit centers, in turn, can be regional focal points for the transit system and may include large-scale bus facilities, large-scale parking facilities, additional passenger services and information, and may also be foundations for joint development. Ultimately, a network of transit centers throughout the region would support the Long Term vision of a family of services meeting different market needs.⁹⁷

Two transit centers are planned to be built in the near future near Takoma Station. A \$75 million regional transit center is planned for Silver Spring.⁹⁸ The proposed Silver Spring Transit Center is a three-tiered state of the art transit center that will feature 32 bus bays for WMATA, Ride On, MTA regional commuter bus service, Van-Go shuttle, the University of Maryland shuttle, and inter-city buses, all with direct access to both the Metrorail and MARC rail systems as well as connections to bicycle trails, bicycle storage facilities, an urban park, a transit store, a transit police station, infrastructure to support an intelligent transportation system, and ancillary WMATA facilities, as well as private development.

Indeed, although some witnesses at the Compact Hearing questioned whether WMATA failed to consider projected bus ridership growth due to growth at Montgomery College’s

Takoma/Silver Spring campus, that facility is now served, and will logically continue to be served, by bus service originating at the new Silver Spring Transit Center.⁹⁹

The second transit center, at Takoma-Langley (the northwest corner of New Hampshire Avenue and University Boulevard), will provide a twelve bus bay transit center to provide a safe and attractive facility for passengers and bus transfers at this high traffic volume location.¹⁰⁰

Takoma Station is located less than two miles from each of these two proposed transit centers. Contrary to the suggestion that WMATA has not considered future growth, the issue has been studied and State and local governments, with WMATA's assistance, are making an investment of over \$85 million to accommodate that growth. Takoma Station, which is not located on an arterial road, is not an appropriate location for a transit center. However, the improvements to Takoma Station are designed to fulfill its role as part of the larger regional system.

Staff Conclusion and Recommendation: In reviewing the proposed amendment to the mass transit plan as it relates to the number of bus bays (10) and capacity for staging buses (4), WMATA staff has considered the following: 1) an assessment of the specific bus route needs identified in the Regional Bus Study and the Takoma Transportation Study; 2) a review of the existing local bus service coverage areas; 3) an assessment of historic and projected population and employment growth near Takoma Station; 4) an assessment of current and projected bus bay use/capacity compared against capacity limits; and 5) consideration of the scheduled construction of two nearby transit centers. Based upon such consideration, staff believes that Takoma Station, as proposed to be reconfigured, can handle future increases in ridership well above projected population or employment growth.

C. *Parking*

The other intense focus of criticism is WMATA's proposal to reduce the existing 149 space surface parking lot to a 74 space lot. WMATA, in light of previous informal public comment, is also presenting to the WMATA Board an alternative plan that provides 121 parking spaces in a parking garage. In both scenarios, EYA will seek District approval to build an additional 36 public parking spaces on new internal streets and to maintain 19 public spaces (including Kiss & Ride and taxi spaces) on existing streets. That is, under the lower count scenario, on-site parking capacity at Takoma Station from all available spaces would be 110 (a net reduction of 39 spaces). Under the higher count scenario, on-site parking capacity would be 157 (a net increase of 8 spaces). Under either scenario, parking capacity would exceed the 100-space maximum originally authorized by the WMATA Board in June, 1975.

In the debate over parking, there is a role reversal: WMATA, the 1970's advocate of more parking, today advocates less. And whereas in the 1970's the local community successfully resisted a large parking lot, today many in that same community strongly advocate keeping existing parking.

For WMATA, the question is not whether parking is useful; it certainly is useful for any individual parker. The question is whether a surface parking lot at Takoma Station is the best use of WMATA's property consistent with a sound long-term *transit* strategy. WMATA's current strategic policy, to consider parking reductions on a case-by-case basis came about, in substantial part, as a result of the advocacy of the Chesapeake Bay Foundation. In its November 1, 2001 report, "Building Healthier Neighborhoods with Metrorail: Rethinking Parking Policies," the Chesapeake Bay Foundation urged WMATA to rethink its parking strategy. Parking lots "make

station areas less pedestrian and bicycle-friendly, reduce the economic development potential of station areas, weaken air quality benefits of transit, and—over the long term—diminish the ultimate ridership potential, and the role of the Metrorail system in supporting a livable, environmentally and economically sustainable region.”¹⁰¹

WMATA's proposal to reduce parking at Takoma was intended to be consistent with such environmental concerns, to mitigate traffic congestion and to comport with WMATA's internal guideline encouraging projects that “reduce automobile dependency.”¹⁰² It also was made because the parking did not serve an effective transit purpose. For one thing, as noted above, these are not commuter spaces. They do not generate substantial income. WMATA collects less than \$1.00 per day per metered space at Takoma Station. By comparison, WMATA charges \$3.50 for daily parking at Rhode Island Avenue. Other metered spaces in the transit system yield between \$2.25 and \$5.00 per day. Even these parking rates are considered to be lower than “market rate” but are set as part of an integrated pricing plan.

Yet WMATA recognizes the strong support in the community for the 1:1 parking replacement, including comments from some who have said that they can support the plan if the current level of parking is maintained. As expressly indicated in the Takoma Central District plan, the WMATA parking lot is viewed as a resource serving both WMATA and the local business community.¹⁰³

Staff Conclusion and Recommendation:

Staff presents two alternate parking plans; one with a small net parking reduction and one with a parking garage and a small net parking increase. Staff is neutral on the two parking options, and will leave that decision to the WMATA Board.

D. ADA Access

There were concerns that handicapped access would be more difficult.¹⁰⁴

In response to these concerns, WMATA has required the developer to incorporate a handicapped drop off area in both the garage and the surface parking lot. As shown on Exhibit 9, handicapped drop off will be on the first floor of the garage or the nearest corner of the surface lot (depending upon the parking configuration).

In this configuration, customers with disabilities can take the sidewalk to the elevator without crossing roads, a safer situation than currently exists. Appropriate signage will direct customers to the designated drop off location. There will be additional handicapped parking on the public road on the east side of the Village Green. There is a crosswalk immediately nearby.

Staff Conclusion and Recommendation: The plan, with the modifications described above, provides safe, convenient ADA access to Takoma Station.

E. Traffic Circulation

Some criticize the project's internal traffic circulation. In the words of one witness, "Buses will likely be held up in the traffic circle by cars dropping off people, by confused drivers, or by pedestrians and handicapped patrons crossing the crosswalks that separate the bus bays from the circle or the circle from the shared roadway to Eastern."¹⁰⁵

In light of the comments regarding a concern that drivers would use the western portion of the traffic circle as a drop off location, WMATA staff recommends, and the Developer has agreed to, installation of a barrier of sufficient height and design to prevent pedestrian drop-offs at the traffic circle. Also, as always planned, the bus bay area will be restricted to bus traffic

only. Crosswalks will be plainly marked. Jaywalking will be deterred by pedestrian barriers placed in the median of the bus bay area. Traffic, pedestrians and bicyclists will be informed (and regulated) by appropriate signage. WMATA staff believes automobile traffic in the traffic circle will not adversely affect bus traffic and schedules.

Staff Conclusion and Recommendation: The plan has been modified to require the installation of a pedestrian barrier to prevent drop-offs at the traffic circle, and the installation of a pedestrian barrier in the bus bay median. With these changes, as well as new crosswalks and signage, there will be safe traffic circulation.

F. Pedestrian Access

There was a general concern that the proposed transit plan amendment provide for safe pedestrian conditions.¹⁰⁶ Exhibit 10 shows pedestrian access paths to the station.

Pedestrian traffic will be along sidewalks. Crosswalks will be plainly marked. As noted above, there will be a barrier in the bus bay median and the along the western portion of the traffic circle in order to channel pedestrian traffic to crosswalks and prevent automobile/bus conflicts within the traffic circle.

Staff Conclusion and Recommendation: The amended transit plan provides for good, safe pedestrian access.

G. Bicycles

Some thought the plan provided for insufficient bicycle lockers or racks; others felt it failed to properly incorporate the Metropolitan Branch Trail or to otherwise provide appropriate

bicycle access.¹⁰⁷

The site currently has 40 bicycle lockers and bicycle rack capacity of 38. Under the proposed plan, the station will have 50 bicycle lockers and 50 bicycle racks (using superior “inverted U” racks). In addition, WMATA is seeking \$450,000 in federal funding (for fiscal year 2008) which, if obtained, will be used to upgrade bicycle facilities throughout the transit system. WMATA continues to explore ways, again subject to funding, to improve the capacity and effectiveness of its bicycle storage in ways that do not require a large property footprint, including, by way of example, double-decked bicycle loaders.¹⁰⁸ Another example is a web based reservation system, like Zipcar or Flexcar, but for bike lockers. Compared to a long term rental to a single person, the reservation system increases occupancy by making the locker available on those days when, for example, a long term renter might be ill or traveling.

As for incorporating the Metropolitan Branch Trail, WMATA does not determine the location of this trail. Exhibit 11 shows the two alternative proposed Metropolitan Branch Trail locations. The western configuration will run on the other side of the rail track from Takoma Station. The eastern configuration will run on the public streets bordering Takoma Station. The argument of the City of Takoma Park, Maryland that “the District of Columbia is planning to route its portion of the Metropolitan Branch Trail through this station” is inaccurate.¹⁰⁹

The plan, as proposed, incorporates the following elements of the Metropolitan Branch Trail plan:

Eastern Avenue and Cedar Street – Eastern (Preferred) Option

- 11 foot shared use path
- 5 foot buffer

- 24 foot travel lanes
- 4 foot sidewalk on District of Columbia side of Eastern Avenue

Intersection of Cedar Street and Carroll Avenue–Western Option

- 2 new crosswalks
- Signal heads for trail users to be provided by DDOT if bicycle traffic warrants
- Curb ramps for the full width of the trail

In addition to the MBT Plan recommendations, an 8 foot sidewalk along Carroll Avenue is also incorporated in the proposed transit plan amendment. In either configuration, the proposed development is consistent with existing plans for the Metropolitan Branch Trail.

As for bicycle access to the rail station, the Metropolitan Branch Trail's western configuration at its closest point, runs approximately 425 feet from Takoma Station's elevator entrance. (Under WMATA rules, bicycles enter the station via elevator, not escalators). The eastern configuration, at its intersection with Carroll Avenue, N.W., is approximately 475 feet from Takoma Station elevator entrance. In either configuration, riders coming to Takoma Station from the Metropolitan Branch Trail have to cross a short portion of the site to gain access to Takoma Station. The installation of pedestrian barriers will also channel bicycle traffic to designated crossing areas.

Staff Conclusion and Recommendation: The proposed amendment to the mass transit plan is compatible with the planned Metropolitan Branch Trail; provides for safe bicycle access to Takoma Station and provides for bicycle storage capacity consistent with the Takoma Central District Plan.

H. Buffer

The Takoma Central District Plan provided for a landscaped buffer not less than 50 feet between WMATA transit uses and nearby residences, such as the multi-family structures along Eastern Avenue.¹¹⁰ The plan, as proposed, locates the access road to Eastern Avenue approximately 36 feet from the closest apartment building. Because this access road will be public, WMATA staff believes this issue is one better left to the District PUD process during which it is typical for the developer to provide studies assessing impacts. We note the following considerations: (1) The access road to Eastern Avenue is not used by WMATA buses, only Ride-On buses; (2) under the existing condition, Ride-On buses turn left leaving the station onto Eastern Avenue, and already pass close to these apartment buildings; (3) any impact of the Ride-On buses using this access road will likely be considered in the context of other, existing conditions at this site, including background noise created by CSX and Amtrak trains which pass by the station; (4) the developer has proposed to build a landscaped berm to provide a sound and visual buffer between the new road and the apartment buildings.

Staff Conclusion and Recommendation: While not a WMATA facility, staff concludes that there may be some unquantified impact from the location of the new public access road, and the analysis of the net impact should be left to the District PUD process.

I. Western Entrance

The Takoma Central District Plan calls for an extension of the existing elevator entrance tunnel to the western side of the tracks to increase accessibility to the station and some have asked that such an entrance be incorporated into this transit plan amendment.¹¹¹ WMATA has

prepared a technical analysis of the western entrance issue, which is attached to this report as Exhibit 12. The cost of constructing a tunnel (measured in 2005 dollars) ranges anywhere between \$3.5 million and \$10.5 million. Further, there would likely need to be street improvements to access such an entrance, a cost not included in the estimate. In addition, traffic impacts would need to be studied. The technical analysis also included a lower cost option of removing a 9-foot section in the metal grill panels of the mezzanine under the overpass on Cedar Street, N.W. and constructing stairs between the sidewalk and station mezzanine to improve the walk access for customers accessing the station from the west. The cost of constructing a new entry to the station along Cedar Street (measured in 2005 dollars) ranges between \$150,000 and \$250,000 depending on the extent of streetscape improvements.

Staff Conclusion and Recommendation: WMATA staff believes a tunnel is cost prohibitive. Staff is mildly positive about the option of opening an entrance under the rail overpass. Although this option (as yet unfunded) only reduces the walk to the station entrance by approximately 100 feet (a minimal benefit), this project, if combined with lighting and sidewalk upgrades, could improve station access and the station “experience.”

J. Community Traffic

Some expressed concern that any new development would increase traffic congestion.¹¹² EYA submitted a traffic study by Wells & Associates that projected this project would generate 16 morning peak hour trips and 23 evening peak hour trips.¹¹³

Traffic generated by the EYA and WMATA’s proposed joint development would account for 0.14 percent to 1.83 percent of the total future forecasts at the study intersections during either the AM or PM peak hours. Specifically, the proposed project would make up 0.28 percent and 0.30 percent of the forecasted traffic at

the Blair Road/Piney Branch Road intersection during the AM and PM peak hours. At the Eastern Avenue/Piney Branch Road intersection, the projects traffic would be 0.42 percent and 0.54 percent of the forecasted traffic during the AM and PM peak hours. At the Blair Road/Cedar Street/4th Street intersection, EYA and WMATA's traffic would make up 0.30 percent and 0.28 percent of the total future traffic, and 0.14 percent and 0.27 percent of the future forecasts at the Carroll Street/Eastern Avenue/Willow Street intersection, during the AM and PM peak hours. Thus, the proposed site would not have a significant impact to the surrounding road network.¹¹⁴

To be sure, the Wells & Associates traffic study relied on 2003 data that projected development through 2012 that undercounted new units coming into the market¹¹⁵ and the Wells & Associate report frankly notes some of the nearby intersections, particularly that at 4th Street/Blair/Cedar, are currently "failing."¹¹⁶ But WMATA does not believe that the traffic increase will adversely affect transit operations. The determination as to whether local roads can support this residential development is one better left to the District of Columbia—which can evaluate traffic in light of its long-term transportation planning.¹¹⁷

There are other considerations affecting traffic. First, providing four layover spaces on site should reduce bus idling on Cedar Avenue. EYA also proposes a bus-activated traffic signal at the bus entrance on Carroll Street to improve operations.

Staff Conclusion and Recommendation: The development resulting from the proposed townhouses will, by a small fractional amount, increase traffic in the nearby community. That increase will not impair transit operations.

K. Green Space/No Need for Development

Some people asked to maintain the *status quo*. In the words of one witness, "if it isn't broke, don't fix it. Leave well enough alone, and first and foremost, do no harm."¹¹⁸ As noted in

the Takoma Central District Plan “[m]any residents of the Takoma community have strong feelings about the existing Metro station open space area.”¹¹⁹

The Takoma Central District Plan calls for “new development at the Metro site” as part of its overall goal of “strengthening the identity of the area’s commercial district as a vibrant ‘town center’ for residents of the surrounding neighborhood.”¹²⁰ That plan calls for a 0.8 to 1.2 acre “Village Green”.¹²¹ “This Village Green should include a variety of uses, including passive and active areas and features for more formal community gathering. The green should be an extension of the public realm and activities along Carroll Street and help form a continuous connection to, from and through the Metro station area.”¹²² As proposed, the Village Green is consistent with the Central District Plan.

Staff Conclusion and Recommendation: The Village Green presented in the EYA proposal is consistent with the Takoma Central District Plan and provides the required extension of the “public realm” into the development site, allowing passive and active areas and features for more formal community gatherings.

L. Fair Market Value/Inadequate Financial Return

The City of Takoma Park hired an appraiser (Lipman, Frizzell & Mitchell, LLC (“LFM”)) and argues the property to be sold is worth \$10,350,000 and that WMATA’s proposed sale provides for less than fair market value.¹²³ WMATA’s price was supported by an outside appraisal, although WMATA has declined to make its appraisal public for so long as continued negotiations with EYA are possible, that is, until such time as it has closed on this transaction. A careful review of the LFM Appraisal demonstrates that WMATA has obtained fair market value.

The WMATA-EYA Joint Development Sales Agreement is dated June, 2005 (based on an appraisal value obtained in February, 2005). The LFM Appraisal's effective date is October 2, 2006, many months later.¹²⁴ The proper method for obtaining a second opinion of value for a transaction is to perform an appraisal as of the effective date of the transaction, not months and months later.

But this is only a minor criticism compared to the more obvious ones. LFM appraised the property using two different approaches. The first looked to sales of land used for townhouse development and determined a price "per lot." Curiously, LFM did not look to a local sub-market to find comparable sales, but instead went to distant areas--North Potomac, Gaithersburg and Fairland. Using these oddly distant "comparables," LFM opined that the value of Takoma Station was \$10,320,000, or \$120,000 per townhouse lot assuming "an expected development of 86 market rate townhouse units."¹²⁵

Then, to prove its "per lot" analysis, LFM now did find some local sub-market sales and ran a second analysis, this time determining fair market value based on an FAR (floor area ratio) basis. LFM was straightforward in noting that, using this approach, "we ignored the EYA development proposal and focused on the maximum permitted FAR under existing zoning."¹²⁶ In doing so, LFM also "ignored" the Takoma Central District Plan and its 22-32 dwelling unit per acre density requirement. Looking instead to maximum "matter of right" available density--370,556 FAR square feet--LFM opined that the value of Takoma Station was \$10,375,000. Blending the two approaches resulted in a final appraised value, by LFM, of \$10,350,000.¹²⁷

The City of Takoma Park has used the LFM appraisal to argue that WMATA has failed to sell the property for fair market value as required by FTA regulations. The City of Takoma Park

generally insists upon strict compliance with the Takoma Central District Plan, but then, when criticizing WMATA's sale price, instead insists that WMATA obtain value based on a "matter of right" high-density development.

The EYA project, assuming 86 market rate townhouses, will occupy less than 200,000 sf, or less than 54% of the maximum matter of right density, yet WMATA has negotiated a sales price that falls between 87 and 94 percent of the "maximum" density price.

Moreover, the concern that WMATA may not recoup a satisfactory net payment is addressed, in part at least, by the first amendment to the sales agreement which now guarantees WMATA a minimum \$2,500,000 net payment.¹²⁸

Staff Conclusion and Recommendation: The proposed sale is at a fair market value. The appraisal presented by the City of Takoma Park, Maryland uses the wrong effective date, uses unnecessarily distant comparables, and makes unsupportable assumptions regarding project density that contradict the Takoma Central District Plan.

M. Legal Errors

The City Attorney for the City of Takoma Park, Maryland advances legal arguments against the proposed transit plan amendment. The City Attorney's first argues that WMATA advances a "narrow interpretation" of the scope of the Compact Hearing that "clearly conflicts with the express language of the Compact."¹²⁹ The City Attorney does not challenge the notice of the Compact Hearing. It would be hard to argue otherwise, as the notice of the Compact Hearing tracks the language of the Compact.

As indicated in this staff report, WMATA has considered all testimony at the Compact

Hearing. There is no challenge made by the City Attorney that WMATA did anything to interfere "with the clear intent of the Compact . . . that an affected party have an adequate opportunity to challenge the Authority's proposals as they may adversely affect his or her interests."¹³⁰ Nobody was excluded from the hearing. No issue was "off limits." The "opportunity to challenge" was, and is, unfettered. Without demonstration of any sort of cognizable injury, the City Attorney's argument is mere academics.

The City Attorney also argues that the sale is a "foregone conclusion" because "the only plan under consideration at the Compact hearing is the EYA plan."¹³¹ To be sure, only a single "amendment" to the transit plan is before the Board. WMATA has agreed to provide the Board with information on all the alternative suggestions for development for Takoma Station and the Compact Hearing record transmitted to the Board the report of the March 4, 2006 planning session. The WMATA Board retains complete discretion to approve the proposed plan, to conditionally approve it, to reject it, to instruct staff to pursue a "no build" option or a "fresh start" or any one of the community's alternative plans or even to pursue some plan crafted by the Board. The sales agreement between WMATA and EYA specifically provides that "[t]he Board may adopt one or the other of the Surface Parking Proposal or the Garage Parking Proposal, some hybrid of the two, any other proposal, either proposed by the public or conceived by the Board or the Developer, or it may elect to leave the WMATA Facilities in their "as is" condition."¹³²

The third argument of the City Attorney is that the Environmental Evaluation is flawed. Aside from the unremarkable finding that WMATA, EYA and the consultant preparing the report communicated during its preparation, the City Attorney culls out five "errors and

omissions:"

In Section 4.4.2, the Environmental Evaluation states that "[a]ll transit access facilities (parking, bus, bicycle, pedestrian, etc.) are being replaced in kind or above existing levels" and the City Attorney believes this misstates the level of parking replacement.¹³³ However, the Environmental Evaluation, at Table 1, in Section 1.1, provides a complete description of the transit plan's effect on transit facilities and the Evaluation does not misstate the parking replacement as alleged.

In Section 4.7.1, discussing noise, the City Attorney challenges the statement that "existing bus routes and transit linkages will not be substantially modified from the existing condition as a result of the project."¹³⁴ In fact, the existing bus entrance to Eastern Avenue will be relocated from a point approximately 250 feet from the closest apartment building to a point approximately 35 feet from that building. Automobile traffic, now approximately 100 feet from the nearest apartment will share that same public access. Although these changes are not likely to significantly increase background noise in this urban setting, the Developer proposes to construct an landscaped, earth berm between the new public street and the adjoining multi-family buildings.

In Section 4.6.2, the City Attorney argues that the environmental assessment fails to consider air quality issues related to the relocation of the access road to Eastern Avenue.¹³⁵ The new public street will be a matter for the District of Columbia to assess. Staff notes that as WMATA replaces its current bus fleet, the new CNG and hybrid buses are more environmentally friendly than the buses they replace.¹³⁶

In Section 3.5, the Environmental Evaluation states that there are no "parklands" on the

site. The City Attorney finds this a notable omission and says that "the Evaluation makes no mention of the 3.5 acres of green space" on the site. That is not accurate. In Section 4.3.1, describing existing conditions, the Environmental Evaluation states as follows: "Prominent elements of the current property include a green area, surface parking lot, and nine bus bays." The City Attorney criticizes the Environmental Evaluation for describing a .95 acre Village Green "as if the village green were being created out of thin air."¹³⁷ Yet the Environmental Evaluation provides as follows: "The *existing green space* will be redeveloped as a village green and community gathering place."¹³⁸ The Environmental Evaluation also contains photographs of existing conditions. The reference to the term "parklands" is a technical one, indicating that there is no public park on the land triggering potential "Section 4(f)" analysis.¹³⁹ No Section 4(f) analysis is required because no federal action is involved.

Also, the City Attorney questions why the "Environmental Justice" section of the Environmental Evaluation says that "[t]here [sic] no anticipated destruction of natural resources."¹⁴⁰ WMATA's Environmental Evaluation should have noted that trees will be removed as part of the construction project, and that trees will be planted as part of the new project. Whatever the impact of these changes, it will affect all segments of the population equally. There are no Environmental Justice issues.

With respect to economics, the City Attorney argues that the deal is not viable because "the cost of the replacement facilities could actually exceed the gross revenue from the sale."¹⁴¹ EYA and WMATA have amended the sales contract to guaranty to WMATA not less than \$2,500,000 in sale proceeds.

Finally, the City Attorney urges WMATA to start over. Citing WMATA's "evolving

position regarding replacement facilities and the absence of competing bidders in the selection process" the City Attorney asks WMATA to "take advantage of it's [sic] ability to terminate the contract created by delays in the approval process to seek additional proposals."¹⁴² WMATA staff believes it would be poor business practice to jettison EYA. First, EYA has prepared a plan fully supported by the District of Columbia as being consistent with the Takoma Central District Plan.¹⁴³ Second, the argument that WMATA has agreed to "absorb" the costs of replacement facilities is misleading. The cost of putting the developable property into a condition suitable for construction was always to be "absorbed" by WMATA, either as an offset in the gross purchase price or, as here, as a post-closing offset. Indeed, although City officials characterize the sales agreement's price structure as "very unusual,"¹⁴⁴ the City's own appraiser disagrees and recognizes--after setting a price based on land value only-- that if there are "major additional costs" (*i.e.*, a facility relocation) required under any development scenario, then "it represents a dollar for dollar reduction from our opinions of value..."¹⁴⁵

Staff Conclusion and Recommendation: There are no noteworthy legal arguments raised against the proposed transit plan amendment.

N. Environmental

Some witnesses raised questions that can, generically, be categorized as "environmental." Some urged that any construction have superior storm water management, tree preservation, and comply with at least gold LEED.¹⁴⁶ Currently, some of the storm water from the station flows into the street. As part of the new development, all of the storm water from the site will flow into storm sewers. The Leadership in Energy and Environmental Design (LEED) Green Building

Rating System is the nationally accepted benchmark for the design, construction, and operation of high performance (typically commercial) green buildings. The District has recently passed legislation dealing with environmental standards in new construction. The District standard for residential is "Green communities." The developer intends to comply with any District laws and with the US Department of Energy "Energy Star" standards.

Some asked why a Section 4(f) analysis was not prepared for the "public park."¹⁴⁷ Putting aside the debate over whether the unimproved portion of Takoma Station is a "public park" as defined in the federal statute-and WMATA strongly contends that it is not-no Section 4(f) analysis is triggered because this is not a federally funded project.¹⁴⁸ Likewise, the lack of federal money in the project means that NEPA does not apply.

As to whether the green space should remain untouched, that land use decision has been considered by the District as part of the Takoma Central District Plan.

One witness asked why the 1975 environmental impact statement was not included in the information package and questioned the accuracy of a statement in that report that there would be no parking at Takoma Station.¹⁴⁹ WMATA has determined that the 32 year old environmental impact statement contains no legally relevant information and that the legal requirements applicable to that environmental impact statement do not govern this action because of a critical difference: again, the lack of federal funding.

That same witness questioned why a certain court order was not included in the information package. WMATA determined that this court order did not contain factual information germane to the Compact Hearing. Finally, that witness asked why WMATA ignored information about a "buried stream." To support this claim, this witness (prior to the

Compact Hearing) submitted a 1975 document with a proposed conceptual plan (not adopted) that had a notation “old stream valley” running, generally, from Takoma Station, across Eastern Avenue into Maryland on a course parallel to, and between, Cedar Avenue and Holly Avenue. An “old stream valley” and a “buried stream” are two different things. On its face, the notation refers to a topographical condition (“old stream valley”) rather than a hydrological condition (“buried stream”).

WMATA also points out that there will likely be further consideration of environmental conditions as part of the District’s permitting process. The District’s Environmental Policy Act of 1989 requires that all District of Columbia agencies consider the environmental impact of all proposed “major actions” before issuing any approvals for them.¹⁵⁰

Staff Conclusion and Recommendation: Because this project is not federally funded, there are no federal environmental “cross cutting” requirements affecting WMATA transit facilities. Environmental considerations relating exclusively to the residential housing development will be addressed by the District of Columbia.

O. Transit Oriented Development and Two Car Garages

There was considerable testimony contending that the plan does not, or should not, qualify as “smart growth” or good transit oriented development because the density is too low and the townhomes have two car garages.¹⁵¹ There is no minimum density required for a residential development to be a good transit-oriented development. Likewise, transit-oriented development does not contemplate (at least today) the banishment of the automobile or parking garages. To be sure, WMATA would prefer a more dense mixed-use development. As noted in

Section L, above, WMATA would make more money and gain more riders with a matter-of-right development. Yet this project is not being developed in a vacuum. The Takoma Central District Plan calls for townhouse development (22-32 dwelling units per acre) at the site.

Regarding two car garages, WMATA would likewise prefer that every person who purchased a townhouse at Takoma Station used public transportation. Yet EYA believes a two-car garage option is necessary to market its townhomes. Nevertheless, EYA has agreed with WMATA to now offer one-car garages as an option to buyers. This option will truly allow the decision of one versus two car garage to be made by the “market.”

For many, however, the two-car garage issue is one of compatibility of these townhouses with the surrounding community,¹⁵² an issue which is best handled by the District as part of its land use process.

EYA will apply to the District of Columbia Zoning Commission for approval of a Planned Unit Development (PUD). The design of the townhouses will be addressed during the PUD process. Details of the PUD process are available at Title 11, Chapter 24 of the District of Columbia Municipal Regulations. The Historic Preservation Review Board (HPRB) and the National Capital Planning Commission (NCPC) must also review and approve the project. Details of the HPRB process are available at Title 10A of the District of Columbia Municipal Regulations. The NCPC review process can also be found at www.ncpc.gov/actions/review_process.html. There will be ample opportunity for additional public input.

Staff Conclusion and Recommendation: Subject to EYA’s commitment to offer one-car garage townhomes as an option to purchase, WMATA should approve a plan with a two-car

garage option.

P. Alternative Community Plans

On March 4, 2006, WMATA conducted a Planning Session inviting community members to “contribute their ideas for the development of the site.”¹⁵³ WMATA committed to present the planning session recommendations “at the WMATA Compact Hearing on the joint development project at this station.”¹⁵⁴ The report of that session is included in the formal record of these proceedings and it is incorporated by reference in this staff report. That report includes, at Appendix D, alternate site plans presented at the March 4, 2006 session.

Of those who discussed the planning session at the Compact Hearing, most urged the Board to heed the “prevailing view”¹⁵⁵ that an alternative with fewer townhouses and separate access for buses and cars be adopted. One view is that WMATA should admit its “error” and “start again and do it right.”¹⁵⁶

There is no question that some feel the community has not been adequately involved in the planning of this development, notwithstanding the District’s Takoma Central District Plan. At the Compact Hearing, Ms. Anita Hairston, from the District’s Office of Planning described the earlier process as follows: “In order to encourage this type of development, in 2002, the district initiated a community planning process for the commercial district located adjacent to the Takoma Station. The result of this planning process was the Takoma Central District Plan which was formally adopted by the D.C. Council in June 2002.”¹⁵⁷ The District’s Office of Planning continues to support the current plan (with the 128-space parking garage) as being consistent

with this earlier “community planning process.”¹⁵⁸

It is also probably safe to say a single plan that achieves universal “consensus” among all stakeholders is unlikely to be achieved. Whether a “start again” approach could achieve something closer to a plurality “consensus” than exists today is an open question. One obvious trade off to any “start over” approach is time.

As noted, the concepts to be discussed at the March 4, 2006 planning session were, ultimately, intended for Board consideration. The plan advocated by Friends of Takoma Transit (the alternate plan that seems to have the strongest—or best organized—community support) provides for a larger and more bucolic park, preserves more existing trees, increases the number of bus bays and locates the residential dwelling units closer to the rail station. To accomplish this, the Friends of Takoma Transit Plan calls for the construction of a steel and concrete pedestrian bridge and parking facility upon which a reduced number of dwelling units (65 townhouse and loft residences) will be built (along with 10,000 square feet of commercial/retail). Some of the townhouse units would be built on top of the garage. Staff notes that townhouses built on top of a multi-story garage will almost certainly have less value than townhouses built on a street, and the pedestrian bridge is a cost not found in other plans. No proposed alternative, including that advanced by Friends of Takoma Transit, demonstrates how an alternative plan would provide a “reasonable economic return to WMATA” one of the prerequisites set forth at the Planning Session. No proposed alternative, including that advanced by Friends of Takoma Transit, comes with builder, architect, engineer and lender committed to transform pencil on paper to real-world construction.

Staff Conclusion and Recommendation: The Board must balance community calls for a

“start again” approach against the District’s recommendation that the currently proposed plan conforms to the District’s earlier “community planning” process that resulted in the creation of the Takoma Central District Plan. “Starting over” will result in a major delay. The reduced density of the alternative plans will likely reduce the “reasonable economic return to WMATA.” Staff recommends that the Board approve the amendment to the Mass Transit Plan as represented by the EYA plan.

Q. Construction Staging

Some expressed concern that WMATA has not yet provided a plan for construction staging.¹⁵⁹ There will necessarily be noise and temporary disruption on the site during construction. However, at this point, before the PUD and final approval of the development plan, it is premature to prepare a formal maintenance of traffic or construction staging plan. The Sales Agreement between WMATA and EYA requires the Developer to submit an Interim Parking Plan which “will be managed, maintained and operated so as to minimize inconvenience to WMATA’s customers and so as to allow WMATA to continue to collect the parking revenues during construction of the WMATA Replacement Facilities.”¹⁶⁰ EYA has expressly agreed not to interfere with WMATA’s transit operations at Takoma Station.¹⁶¹

Staff Conclusion and Recommendation: Although it is too early to prepare formal staging plans, WMATA shall enforce the existing contract provisions that prohibit EYA for interfering with its transit operations during construction.

R. Public Art

Some community members urged WMATA to include public art at Takoma Station by pursuing public grant monies.¹⁶² The idea is excellent and WMATA staff commits to working with the community to include public art at Takoma Station, subject to the availability of funding.

Staff Conclusion and Recommendation: WMATA staff commits to working with the community to include public art at Takoma Station, subject to the availability of funding.

S. Affordable Housing

Some asked that affordable housing be provided at the development at Takoma Station.¹⁶³ In late 2006, the District of Columbia passed the Inclusionary Zoning Implementation Amendment of 2006. D.C. Code §§ 6-1041.01 et seq. The townhome development will be subject to this new law and its affordable housing requirements.

Staff Conclusion and Recommendation: A new affordable housing law will govern development of Takoma Station.

T. Lease versus Sale

Two witnesses questioned whether WMATA should lease the property, not sell it.¹⁶⁴ Although WMATA leases many of its joint development properties, a lease is only appropriate where the underlying use is rental, *i.e.*, office, retail or multi-family residential. Few would buy

a house without also owning the land. Of those who might, the value of the property would be substantially discounted to account for this odd ownership structure.

Staff Conclusion and Recommendation: Leasing land to be used for townhouse sales is wholly impractical.

U. Motorcycle Parking

Some inquired about motorcycle parking.¹⁶⁵ WMATA will continue to provide three motorcycle parking spaces at Takoma Station.

V. Flexcar

One witness asked that a Flex Car/Zip Car be made available.¹⁶⁶ Four spaces will be dedicated to Flex Car or Zip Car use. As demand dictates, other parking spaces can be dedicated to such usage.

IV. Conclusion

For the reasons set forth in this staff report, and provided the modifications recommended herein are adopted by the Board, Staff recommends that the Board approve the amendment to the Mass Transit Plan based on the EYA proposal, with either of the two parking options.

NOTES

1. WMATA Compact, Section 2 (codified at Maryland Annotated Code, Transportation Article, Section 10-204).
2. *Id.* at Section 12(d).
3. See District of Columbia Office of Zoning, Zoning Map (dcoz.org/info/map/zmap4_pdf.shtm). A summary of the zoning districts may be found at dcoz.dcgov.org/info/districts.shtm.
4. *Id.*
5. Zachary M. Schrag, *The Great Society Subway: A History of the Washington Metro* (2006) at 161.
6. March 1, 1971 Memorandum from Staff to Montgomery County Planning Board.
7. 1971 Glenmont Route Compact Hearing staff report.
8. *Id.*
9. WMATA is governed by a Board, consisting of two voting members each from the District, Maryland and Virginia. Each jurisdiction also appoints two alternate directors who vote only in the absence of the voting member. WMATA Compact, Section 5.
10. WMATA Board Minutes, September 16, 1971. The minutes were amended at the October 17, 1971 meeting to provide that additional parking would be determined during a 3 year test period commencing with the opening of the Takoma Park [sic] Station." WMATA Board Minutes, October 7, 1971.
11. WMATA Resolution 71-20, approved by WMATA's Board on October 7, 1973.
12. Specifically, the Montgomery County Council's Committee on Takoma Park Metro Station Site wrote that the objective should be to reduce the use of automobiles at the Metro station. Commuter parking, it was believed, would only serve the 350 riders who used the parking lot. "Opening the parking lot to commuters will keep persons who would have a much more frequent turnover from using the lot. Seventy percent of the persons who will use the subway will come by bus and about 90% will come by bus or foot. Consequently, the station can be well served without permitting commuter parking."
13. November 7, 1973 memorandum from Mr. Graham to WMATA's Chairman and Board of Directors.
14. WMATA Board Minutes, December 20, 1973.

15. The 1974 draft site plan, which later became known as the “staff plan” is attached hereto as Exhibit 1.
16. May 29, 1974 Memorandum from Jackson Graham, WMATA’s General Manager to WMATA’s Board.
17. The “citizen’s plan” was prepared by Ms. Francis Phipps (and perhaps others). A copy is attached hereto as Exhibit 2.
18. WMATA Board Minutes, June 20, 1974.
19. *Id.*
20. *Id.* Ms. Garrott, the advocate of the “citizen plan” was an alternate director and, therefore, could not vote.
21. WMATA Board Minutes, June 27, 1974.
22. *Id.*
23. *Id.*
24. WMATA Board Minutes, June 12, 1975.
25. Exhibit 3 is a 1981 photograph of Takoma Station showing the original parking configuration.
26. The restriping was done prior to the Takoma Central District Plan and the Transportation Study, discussed below, both of which assessed Takoma Station at its current capacity.
27. FTA Circular 5010.1C–Appendix, ¶2.
28. WMATA Joint Development Policies and Guidelines, §1.0.
29. FTA Circular 5010.1C–Appendix, ¶3.
30. *Id.* at ¶4(a).
31. *Id.* at ¶4(b).
32. WMATA Resolution #2000-50.
33. *Id.*
34. WMATA Resolution #2005-50.
35. WMATA Resolution #2003-17.

36. WMATA Resolution #2005-58.
37. WMATA Resolution #2002-44.
38. April 25, 1968 Memorandum from Albert J. Roohr to Files.
39. March 25, 1971 Letter from the Mayor of Takoma Park, Maryland to Carlton Sickles, WMATA Board member.
40. September 30, 1999 Proposal of EYA Development, Inc.
41. *Id.*
42. *Id.*
43. David Schneider, *"Common Ground: A Case Study of Infill Development and Community Conflict in Takoma, DC."* (hereinafter "Common Ground").
44. *Id.*; see also, *"Housing coming to Metro property"*, Takoma Gazette (June 22, 2005) ("Sabrina Baron, president of the preservation group Historic Takoma, said there was an understanding between the community and WMATA in the early 1970's when the agency used eminent domain to secure the property, that it would remain as green space."); Letter dated March 7, 2000 from David & Jillian Minton to the Hon. Anthony A. Williams ("First, in 1974 WMATA and Takoma Park entered into an agreement that this land was to be used as a park buffer henceforth."); Letter dated March 9, 2000 from Hon. Derick P. Berlage, Councilmember to Richard White, General Manager ("I have received numerous letters from constituents who are very concerned about potential development on this property In particular, it is imperative WMATA address the assertions the original development approvals for the station required the property in question be maintained as green space.").
45. Council of the District of Columbia Report dated June 4, 2002 re: PR-614, "Takoma Central District Plan Approval Resolution of 2002."
46. Takoma Central District Plan at 1.
47. *Id.*
48. *Id.* at 7.
49. *Id.*
50. *Id.* at 33. All 5 "priority" sites are described as having the advantage of being owned or controlled by a single owner or developer and being "relatively unconstrained."
51. *Id.* at 29.

52. *Id.* at 43; see also *id.* at 51 (“It is imperative that the Metro site continues to serve transit needs first, and the revitalization goal of the community second.”); *id.* (“Easy, safe and direct station access for pedestrians, bicyclists, vehicles and buses should be accommodated first.”); *id.* at 39 (“Redevelopment planning must recognize that the primary function of the Metro station site is to provide transit services. Secondary functions accommodating the needs of the local business community or potential new development must be designed in a manner that continues to support current and future transit needs at the station.”).

53. *Id.* at 49.

54. *Id.*

55. *Id.* at 44-45.

56. *Id.* at 39.

57. *Id.* at 55.

58. *Id.*

59. *Id.*

60. *Id.* at 40.

61. Leg # PR14-0614. The approval came over substantial community opposition: “In April [2002], Takoma DC’s Advisory Neighborhood Commission voted 5 to 1 against endorsing the plan and sent the DC City Council a petition with 700 signatures urging its rejection until a comprehensive traffic study was completed. A few weeks later the Takoma Park City Council voted to support the ANC’s decision.” *Common Ground* (see fn. 32, above).

62. D.C. Code 1981 § 1-247 (c)(4).

63. Transportation Study, Table 25.

64. June 20, 2005 Sales Agreement, §4.02(D).

65. *Id.* at §4.02(E).

66. *Id.*

67. *Id.* at §4.02(D).

68. For a discussion of the planning workshop, see Section III, Part P (Alternative Community Plans”).

69. See note 44. For illustrations of testimony on this issue, see Testimony of Ruth Foster at 136-37.

70. Letter dated April 12, 2000 from Susan Silber, Esq., Corporation Counsel, City of Takoma Park, Maryland and Richard O'Connor, Counsel, Historic Takoma to Cheryl Burke, Esq., General Counsel of WMATA.

71. *Id.*

72. *Id.*

73. "An action may not be brought . . . upon a contract or sale of real estate, of any interest in or concerning it . . . unless the agreement upon which the action is brought, or a memorandum or note thereof, is in writing, which need not state the consideration and signed by the party to be charged therewith or a person authorized by him." D.C. Code Sec. 28-3502. In addition, promises by a landowner that impair its right to later transfer property—known as "restraints upon alienability"—are disfavored. See, e.g., Julian v. Christopher, 320 Md. 1, 7, 575 A.2d 735 (1990)("Traditional property rules favor the free and unrestricted right to alienate interests in property.").

74. WMATA Compact, Section 2 (emphasis added).

75. *Id.* at Section 12 (emphasis added).

76. Testimony of Mayor Porter, Transcript at 24.

77. Testimony of Councilmember Williams, Transcript at 45.

78. Testimony of Mr. (now Senator) Raskin, Transcript at 93.

79. Regional Bus Study ("RBS") at 2.

80. RBS, Final Report at 43.

81. Bureau of Census website: (census.gov/population/cencounts/dc/190090.txt and quickfacts.census.gov/qfd/states/11000.html).

82. Metropolitan Washington Council of Governments, "Growth Trends: Cooperative Forecasting in the Washington Region" ("Growth Trends") (Fall 2006) at 5.

83. City of Takoma Park Library website :
<http://www.cityoftakomapark.org/library/reference/demographics/index.html>

84. Growth Trends at 6.

85. *Id.* at 8.

86. Lipman, Frizzell & Mitchell, LLC (“LFM”) Appraisal at 8.
87. D.C. Mun. Regs. Title 10, Section 1500.1.
88. RBS, Final Operating Plan, at 79.
89. *Id.* at 107.
90. Exhibit 4.
91. *Id.* at 117.
92. *Id.* at 131.
93. RBS, Facilities Technical Memorandum, at 19.
94. The Nelson/Nygaard study, commissioned by the City of Takoma Park, Maryland observes that “Takoma Metro’s existing nine bus bays currently provide sufficient capacity for active vehicle pick-up/drop-offs” although it observes “that buses do not have sufficient layover space.” Takoma Station Redevelopment Plan: An Analysis of Transportation Elements and the Impact on Transit Users” (hereinafter, “Nelson/Nygard”) at 12.
95. By way of specific example, at the present time, at the Pentagon transit center, WMATA accommodates 12 trips in the PM peak hour, or an average of a five minute headways, at two bays at the Pentagon, U-5 (Routes 7A,B,C,D,E,F,H,P) and U-6 (Routes 7W,X). Layover is taken in a storage lane, four of which are proposed at Takoma.
96. RBS, Final Report, at 34.
97. *Id.* at 60.
98. See Exhibit 7.
99. Both Ride On’s “Campus Connector” (Route 127) and Montgomery College’s free campus shuttle operate through Silver Spring, not Takoma. (<http://www.montgomerycollege.edu/maps/>).
100. See Exhibit 8.
101. Chesapeake Bay Foundation Report, “Building Healthier Neighborhoods with Metrorail: Rethinking Parking Policies” at 4.
102. WMATA Joint Development Policies and Guidelines, Section 1.0.
103. Takoma Central District Plan at 34.
104. See, e.g., Testimony of Ms. Silber, Transcript at 64; Testimony of Ms. Ludlow, Transcript at 70; Testimony of Mr. Grimes, Transcript at 128; Testimony of Mr. French, Transcript at 182..

105. *Id.*

106. See, e.g., Testimony of Ms. Napier, Transcript at 103; Testimony of Mr. Ulibarri, Transcript at 143 (a “maze of driveways” limits pedestrian access); Testimony of Ms. Cassidy, Transcript at 193.

107. See, e.g., Testimony of Mayor Porter, Transcript at ; Testimony of Ms. Austin-Lane, Transcript at 42; Testimony of Ms. Wheeler, Transcript at 87; Testimony of Sen. Raskin, Transcript at 94; Testimony of Mr. Silverstone, Transcript at 120 (requesting 50 new bicycle racks); Testimony of Mr. Greenberg at 192.

108. For an illustration, see www.josta.de.

109. See Written comments of Takoma Park, Maryland at 3.

110. Central District Plan at 52.

111. See, e.g., Written testimony of Mr. Silverstone; Written Testimony of Ms. Green.

112. See, e.g., Testimony of Ms. Austin-Lane, Transcript at 42.

113. One witness criticized the Wells traffic figures as “downright absurd” and “not believable” because that witness felt this undercounted the number of adult residents of the Takoma Station project who would drive to work. See Testimony of Mr. Feiden, Transcript at 231-32. But the Wells study did not purport to count *all* residents of the Takoma Station project who would drive to work. The 23 morning “peak hour” projected trips were only those projected to occur during the “peak hour” from 7:45 am to 8:45 am. Others could, and likely would, leave (and return) at other times.

114. Wells & Associates, “Takoma Metro Joint Development Transportation Impact Study Washington, D.C.” at page 26.

115. See Written testimony of Ms. Wheeler; the development referred to in Ms. Wheeler’s testimony is referred to, in the appraisal prepared by the City of Takoma Park, Maryland, as a “healthy amount of new in-fill transportation oriented residential development” occurring in a “generally mature” neighborhood. LFM Appraisal at 8.

116. Wells & Associates Traffic Study at 23.

117. “The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.” D.C. Mun. Regs., Title 11, §11-2403.3.

118. Testimony of Ms. Vidutis, Transcript at 122.

119. Takoma Central District Plan at 48.
120. *Id.* at 48, 7.
121. *Id.* at 29.
122. *Id.* at 48.
123. A bevy of witnesses complained that the sales price was too low because it was less than two days of WMATA's operating expenses (see, e.g., Testimony of Comm. Wheeler, Transcript at 87; Testimony of Mr. Grimes, Transcript at 129; Testimony of Ms. Labovitz, Transcript at 164). This is classic "red herring" argument. There is no logical connection between real estate's fair market value and WMATA's \$1.2 billion annual operating budget.
124. LFM Appraisal at 3.
125. *Id.* at 15.
126. *Id.* at 18.
127. *Id.*
128. The form of the proposed amendment is attached as Exhibit 13. It remains subject to WMATA Board approval.
129. October 11, 2006 Memorandum of Susan Silber, Esq. to WMATA's Board of Directors at 5 ("Silber Memorandum").
130. *The Bootery, Inc. v. WMATA*, 236 F. Supp. 794, 800 (D.D.C. 1971).
131. Silber Memorandum at 7.
132. First Amendment, at paragraph 6. The original sales agreement provided that "[t]he sole authority within WMATA to determine if the WMATA Replacement Facilities as contemplated by the Concept Plan, including the proposed parking reduction, will be acceptable rests with WMATA's Board of Directors and may only be exercised after consideration of public comment at the WMATA Compact Hearing." Sales Agreement at 4.02G.
133. Silber Memorandum at 8.
134. *Id.*
135. *Id.*
136. "WMATA is aggressively reducing emissions from its bus fleet. Its strategies include purchasing CNG buses as well as deploying passive regenerative diesel particulate filters (DPF's)

on diesel buses and using ultra-low sulfur diesel (ULSD) fuel.” Chandler, Eberts & Melendez, *Washington Metropolitan Area Transit Authority: Compressed Natural Gas Transit Bus Evaluation*, National Renewable Energy Laboratory (April, 2006) at 3. “Beyond the order of 250 CNG buses, WMATA’s next planned acquisitions are ‘clean diesel’ buses (diesel buses with advanced emission control technologies fueled with USDL) and diesel hybrid electric buses.” *Id.* at 4.

137. Silber Memorandum at 8.

138. Environmental Evaluation at 16 (emphasis added)

139. Now codified as 49 U.S.C. §303 (yet still known by its original designation as Section 4(f) of the USDOT Act of 1966) Section 4(f) applies to federally funded projects “which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.”

140. Silber Memorandum at 8.

141. Silber Memorandum at 9.

142. Silber Memorandum at 10.

143. See Testimony of Ms. Hairston, Office of Planning, Transcript at 77-83.

144. Testimony of Mayor Porter, Transcript at 23.

145. LFM Appraisal at 18.

146. See, e.g., Testimony of Mr. Silverman, Transcript at 208-10.

147. See note 139.

148. FTA Circular 5010.1C-Appendix, paragraph 10 defines what federal “cross-cutting” requirements apply to joint development projects: Where “there is no federal assistance for new improvements” then the only “cross-cutting” requirements are certain non-discrimination, conflict of interest and debarment provisions. However, “[i]f the construction of improvements is also federally assisted” then numerous federal “cross cutting” requirements are triggered, including the National Environmental Policy Act of 1969 (“NEPA”) and other federal environmental provisions.

149. Testimony of Mr. Turner, Transcript at 200-202.

150. D.C. Code §8-109.01 *et seq.* A “major action” means “any action that costs over \$1,000,000 and that may have a significant impact on the environment....” D.C. Code §8-109.02.
151. See Testimony of Mr. Ulibarri, Transcript at 142; Testimony of Ms. Schoenman, Transcript at 151; Testimony of Ms. Labovitz, Transcript at 164-65.
152. See Testimony of Commissioner Green, Transcript at 75.
153. See Meeting Notice, Appendix B to Takoma Metrorail Station Community Planning Session.
154. *Id.*
155. See Testimony of Ms. Simpson, Transcript at 159; written submission of Commissioner Wheeler; written submission of Mr. Ulibarri.
156. See Testimony of Mr. Goldstein, Transcript at 163; Testimony of Councilmember Austin-Lane, Transcript at 42 (“The proposal before you is not the right fit for this space. And I hope that Metro can move on.”).
157. See Testimony of Ms. Hairston, Transcript at 78.
158. *Id.* at 77-83.
159. See, e.g., Testimony of Mr. Ulibarri, Transcript at 143; Testimony of Mr. French, Transcript at 183-84.
160. Joint Development Sales Agreement at Section 16.01.
161. *Id.* at Section 11.02.
162. See, e.g., Testimony of Ms. Napier, Transcript at 102.
163. See, e.g., Testimony of Ms. Cort, Transcript at 100; Testimony of Ms. Jones-Napier, Transcript at 102; Written testimony of Ms. Allen; Written testimony of Ms. Green.
164. See, e.g., Testimony of Sen. Raskin, Transcript at 95; Testimony of Ms. Silver, Transcript at 64.
165. See, e.g., Written submission of Ms. Chaker.
166. See Written submission of Ms. Lynch.

EXHIBITS

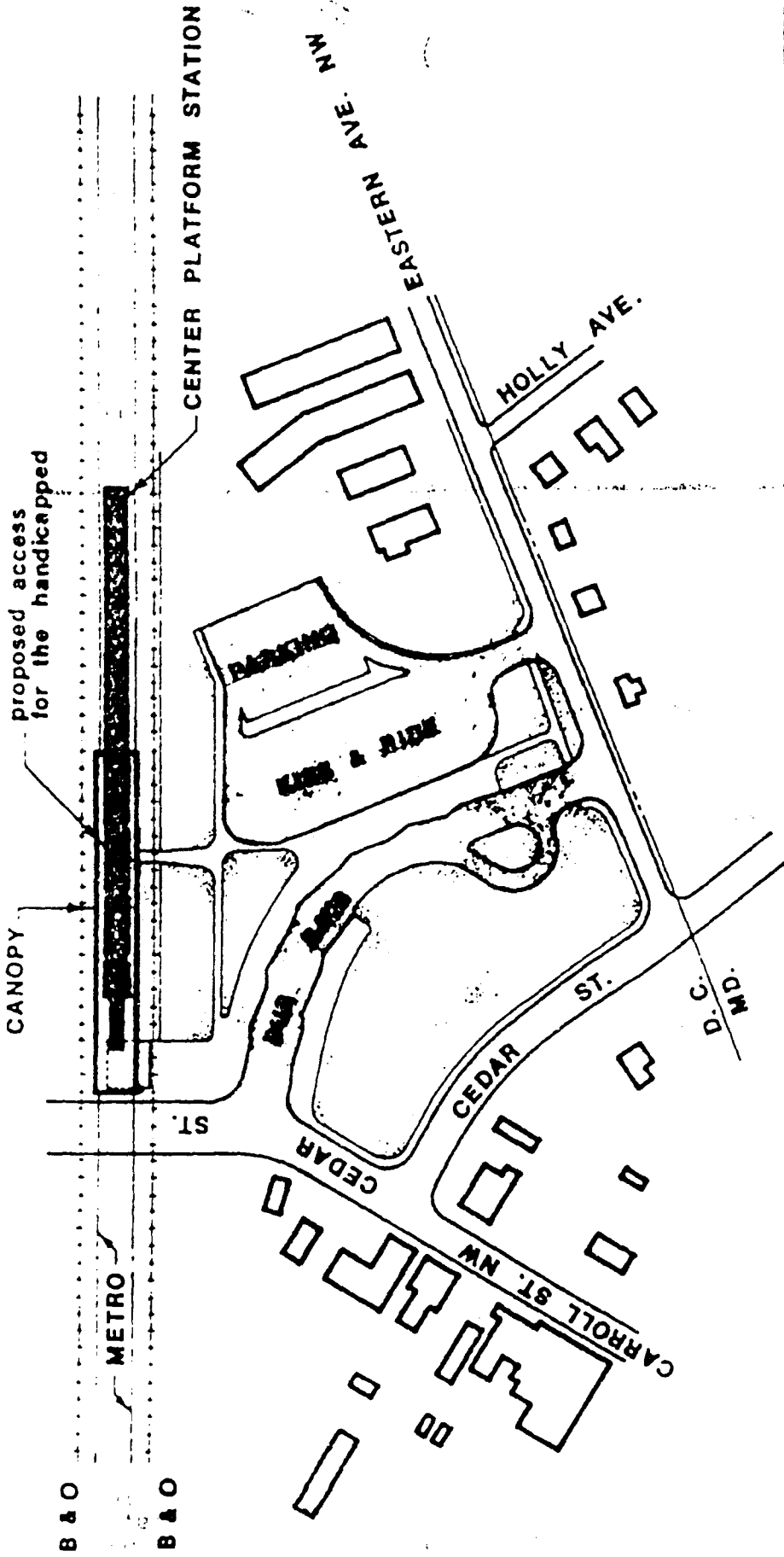
- 1 “Staff Plan”
- 2 “Citizen Plan”
- 3 1981 Photograph
- 4 Map of Existing Bus Services
- 5 Proposed New Routes
- 6 Existing Bus Bays
- 7 Silver Spring Transit Center
- 8 Takoma-Langlely Transit Center
- 9 ADA Drop-Off Plan
- 10 Pedestrian Access
- 11 Metropolitan Branch Trail
- 12 Western Entrance Study
- 13 Proposed First Amendment to Sales Agreement

EXHIBITS

- 1 “Staff Plan”
- 2 “Citizen Plan”
- 3 1981 Photograph
- 4 Map of Existing Bus Services
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EXHIBIT 1

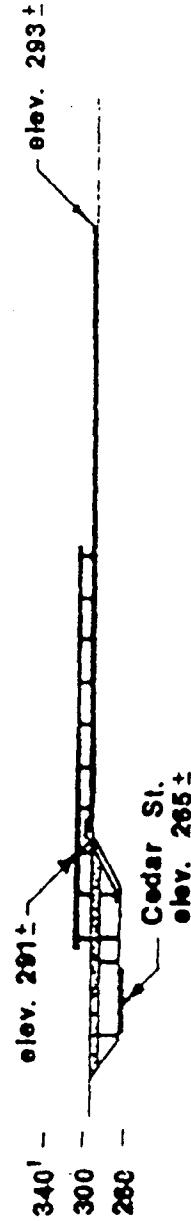
"STAFF PLAN"



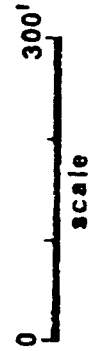
takoma station

proposed
site plan
not final

5-74



PROFILE



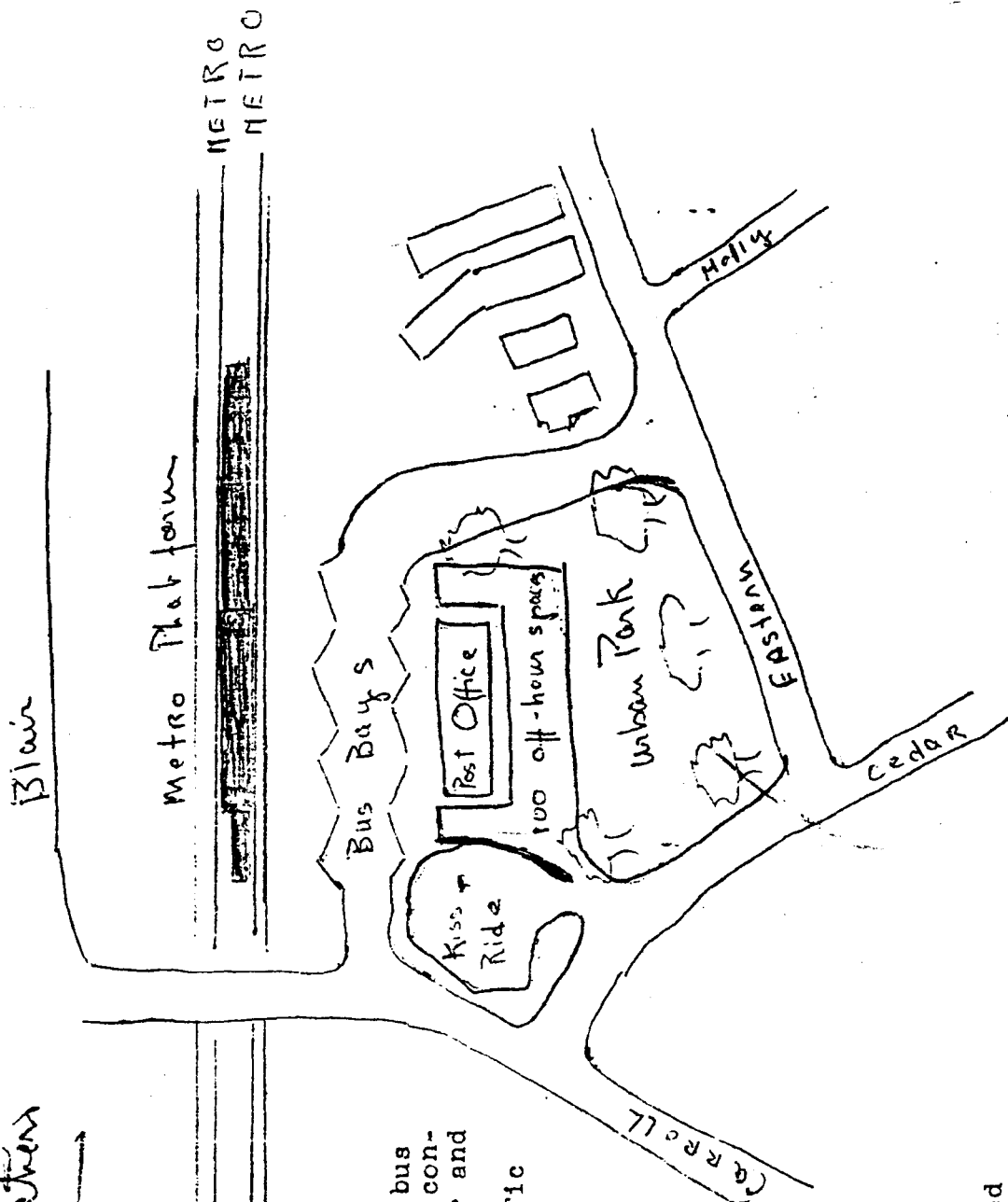
Plate

washington metropolitan area transit authority

EXHIBIT 2

"CITIZEN PLAN"

Takoma Metro Station



Advantages of Site Design

- I. Permits unimpeded two-way bus circulation, alleviating congestion on Carroll, Blair and Eastern.
- II. Separates automobile traffic from bus movement
- III. Places bus riders nearer Metro tracks.
- IV. Off-hour facility shares same access with Kiss & Ride whose heavy use is during rush hours.
- V. Ideal new site for Takoma, D.C. and Takoma Park, Md, share the same zip code.
- VI. Urban Park would serve as excellent buffer to residential areas, and alleviate the impact of highly congested Metro site. Post Office and Urban Park use are consistent with WMATA public use acquisition procedure.

Save Takoma Park Committee
February, 1974

For information, call: Planning
Phygs. 588 4651

EXHIBIT 3

1981 PHOTOGRAPH



EXHIBIT 4

MAP OF EXISTING BUS SERVICES



EXHIBIT 5

PROPOSED NEW ROUTES

Takoma Station New Routes.

Regional Bus Study – New Service Recommendations

Takoma Park

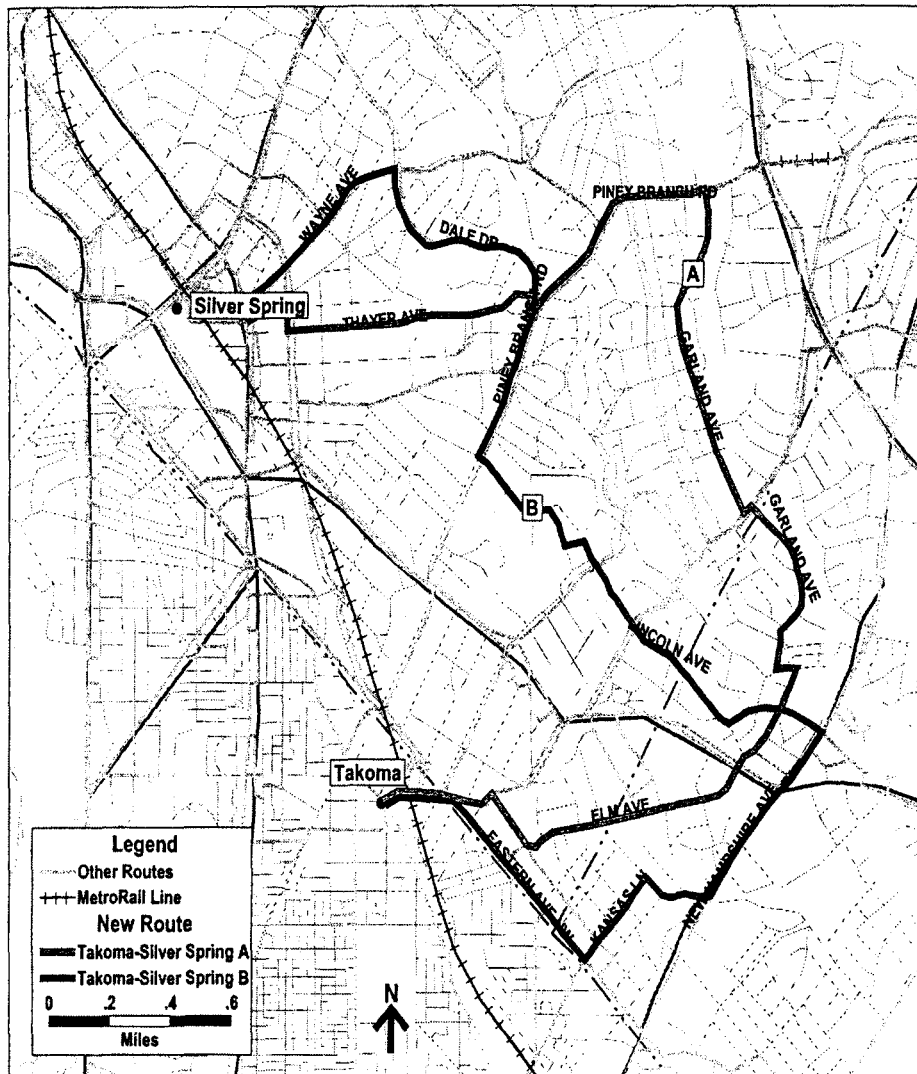


EXHIBIT 6

EXISTING BUS BAYS

Takoma Station Existing Bus Bays

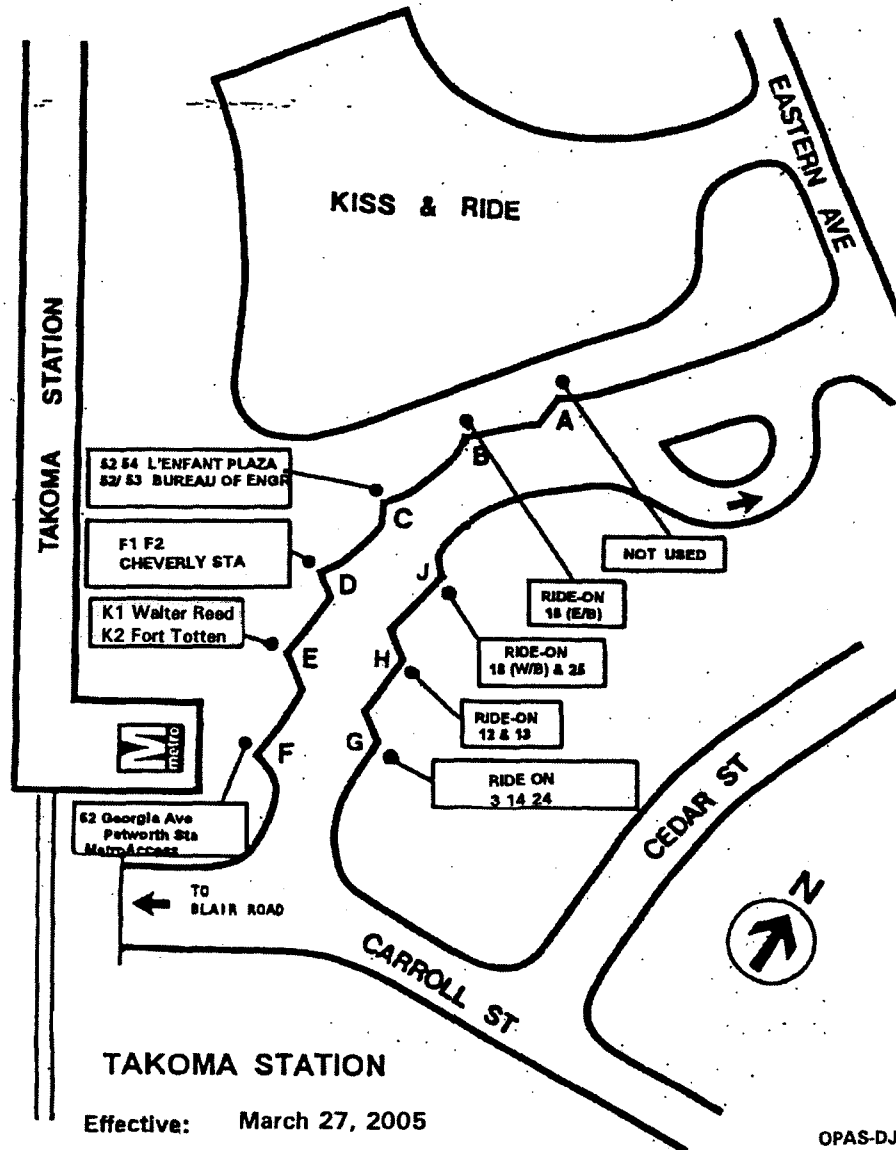


EXHIBIT 7

SILVER SPRING TRANSIT CENTER



EXHIBIT 8

TAKOMA-LANGLEY TRANSIT CENTER

New Hampshire Avenue

University Boulevard

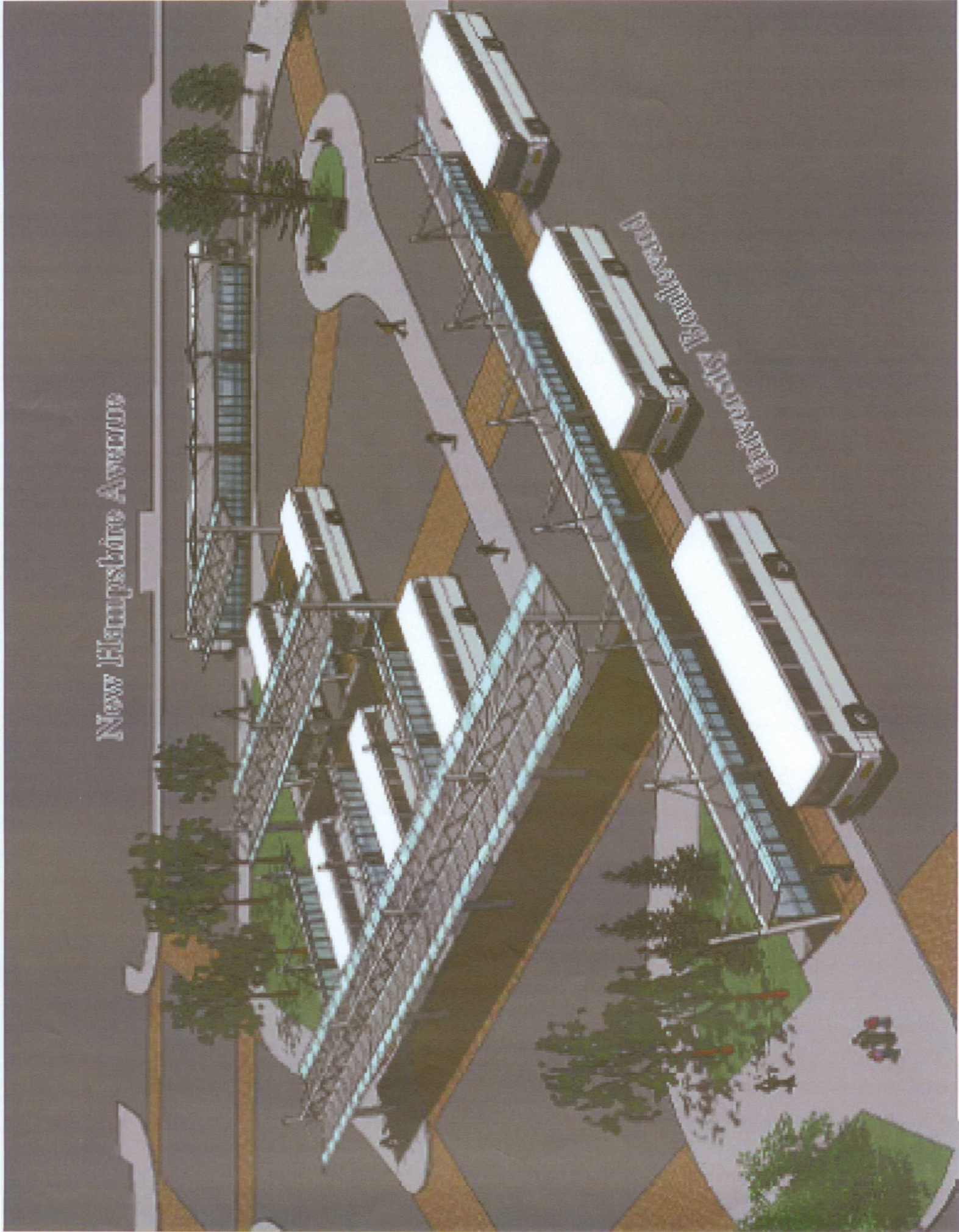
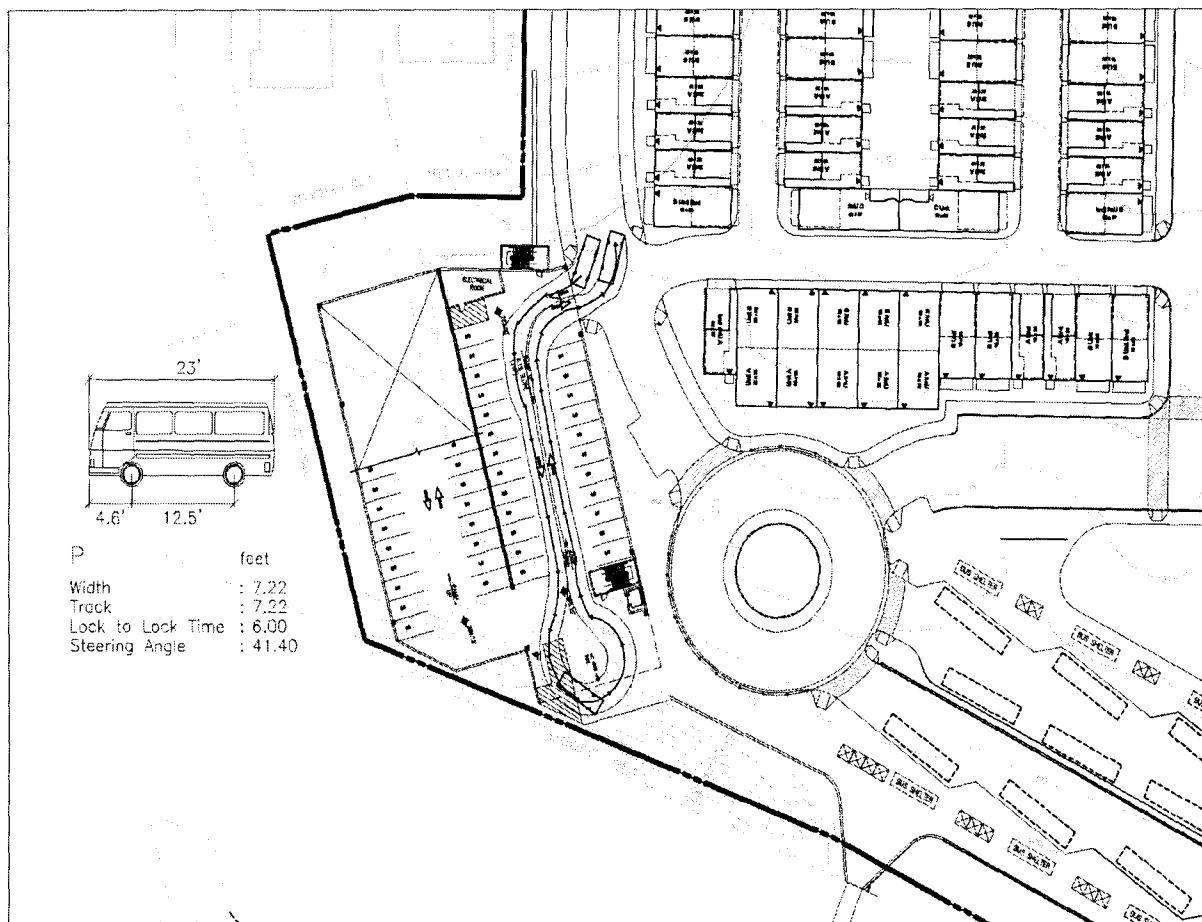


EXHIBIT 9

ADA DROP-OFF PLAN

Takoma Station Handicapped Access



Bowman
CONSULTING

2121 Eisenhower Avenue
Suite 202
Alexandria, Virginia 22314
Phone: (703) 646-2188
Fax: (703) 663-6781
www.bowmanconsulting.com

HANDICAP DROPOFF EXHIBIT

MAY 30, 2007

Takoma Park
Washington, DC

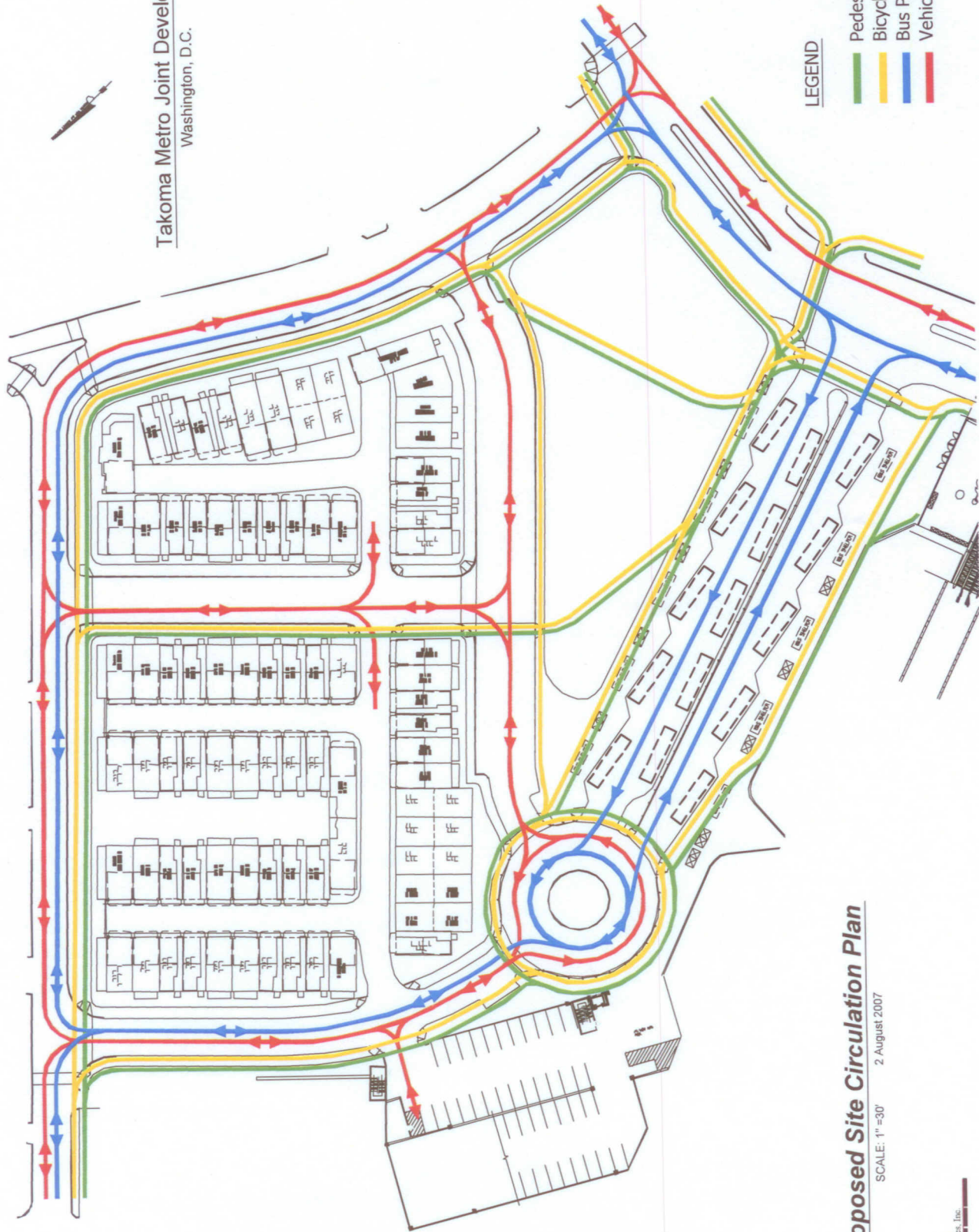
Eckstut/Younger/Rob Assoc., Inc.
EYAL21609



EXHIBIT 10

PEDESTRIAN ACCESS

Takoma Metro Joint Development
Washington, D.C.



LEGEND

- Pedestrian Path
- Bicycle Path
- Bus Path
- Vehicle Path

Proposed Site Circulation Plan

SCALE: 1" = 30' 2 August 2007

EXHIBIT 11

METROPOLITAN BRANCH TRAIL

Takoma Station / Metropolitan Branch Trail



EXHIBIT 12

WESTERN ENTRANCE STUDY

DRAFT

Takoma Metro Station

Technical Memorandum on

Alternatives for a Western Entrance

February 2006

Background

The Takoma Central District Plan (Plan) completed in 2001 defines near and mid-term strategies for revitalization to facilitate reinvestment in the Takoma commercial district in Washington D.C. One of the goals is to foster a vibrant “town center” in Takoma’s commercial district. Residents envision a village-scale, mixed-use commercial district for Takoma with the Metro Station seen as an integral element of this vision.

The Plan considers the Metro station as a key asset of the Takoma commercial district and envisions an enhanced station with more amenities including consideration of additional station entrances on the west side to better serve the residents and commercial/retail businesses.

Recent development in the vicinity of the Takoma Metro Station on the west side of the tracks includes mid-rise residential dwellings with ground level retail while future development opportunities includes the old B & B Catering site.

Purpose

The purpose of this study is to identify and evaluate alternatives for providing a new entrance on the west side of the station to address the recommendation outlined in the Takoma Central District Plan.

Existing Conditions

The Takoma Metro Station is located in the District of Columbia and is on the Metrorail Red Line. Figure 1 show a plan of the Takoma Metro Station and surrounding are including a ½ mile radius around the station. The Takoma Metro Station has one full service southern at-grade entrance (Figure 2) along Cedar Street with escalator access between the mezzanine and the platform above.

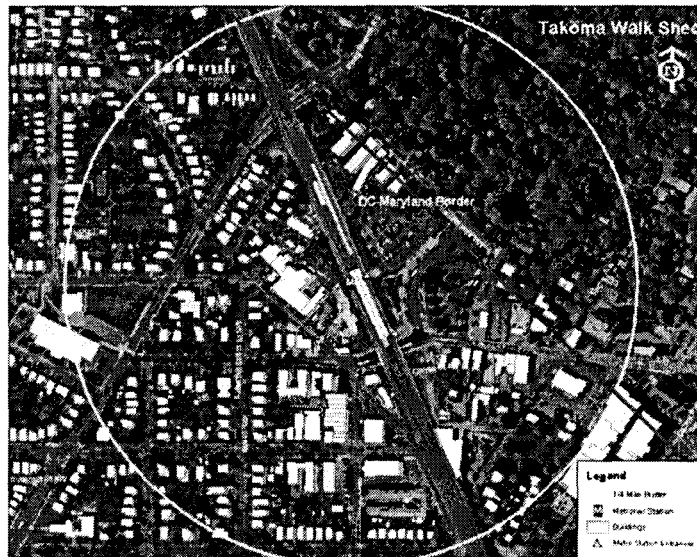


Figure 1: Site Map of Takoma Metro Station and Surrounding Area

Currently customers access the station from both east and west. Bus, Kiss & Ride and Park & Ride facilities are located on the east (Figure 2). Sidewalks connect the Takoma Metro Station to residential developments and commercial/retail businesses on both the east and west. However, customers accessing the station from the west must walk under the Metrorail and CSX tracks (Figure 3). During the am peak period customers are dropped off at the entrance to the station along Cedar Street often blocking the bus entrance.



Figure 2: Takoma Metro Station Entrance

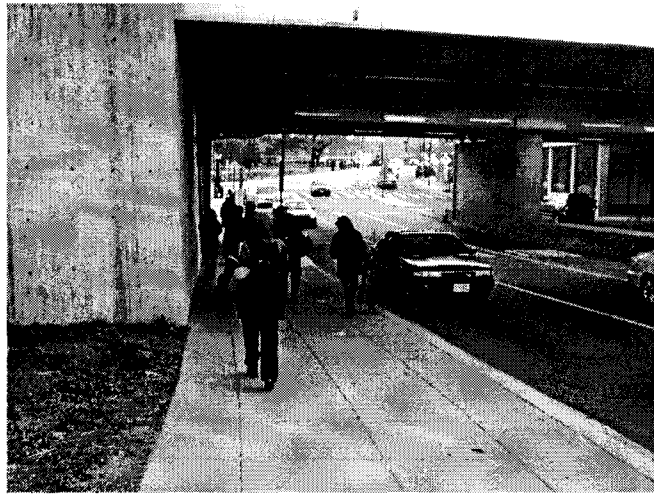


Figure 3: Sidewalk to Station Entrance from West

In addition, there is a separate northern entrance (Figure 4) providing access to the station platform via an elevator with a mini-mezzanine located on the platform. This mini-mezzanine consists of an accessible faregate and a fare vending machine. This entrance is also located on the east side of the station near the Metro surface parking lot (Figure 5).

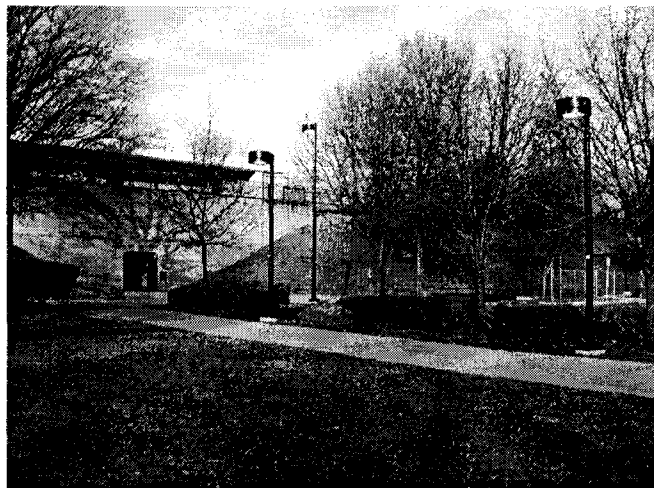


Figure 4: Takoma Station Elevator Entrance



Figure 5: Takoma Station Surface Parking Lot

The Takoma Metro Station mezzanine has the following station facilities (Figure 6):

“Free Area”

- Five (5) faregates, one of which is accessible
- Six (6) fare vending machines
- One (1) telephone/map case

“Paid Area”

- Three (3) operational fare vending machines
- One (1) telephone/map case;
- Two (2) transfer dispensers
- Three (3) escalators between the mezzanine and the platform (Figure 7)



Figure 6: Takoma Metro Station Entrance and Mezzanine

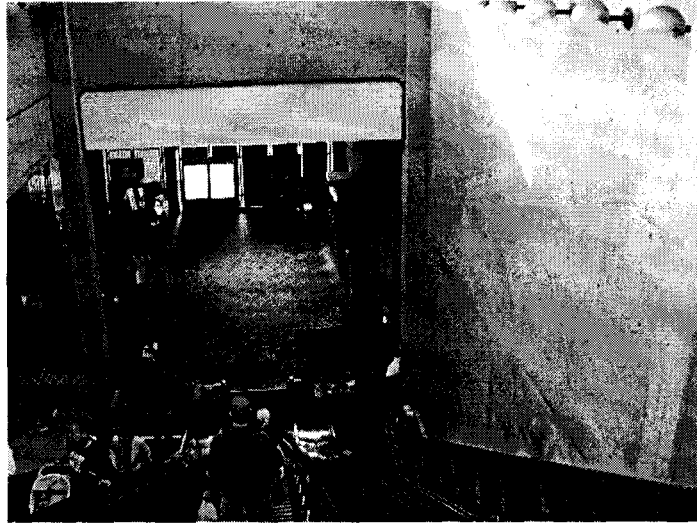


Figure 7: Escalators between Mezzanine and Platform

Service rooms are located behind the fare vending machines in the “Paid Area” and include the train control room, communications room, washrooms, cleaners room, operations room and fire equipment cabinet.

Ridership

A key consideration for providing a second entrance is existing and forecasted ridership and the extent to which the existing entrances serve this future demand.

The existing ridership at the Takoma station averages 6,400 boardings per day. Over the last ten years the ridership has increased by 19%. On February 16, 2006, a pedestrian count was taken of the customers accessing the station from the west between 7:30 am – 9:00 am. This count included Kiss&Ride drop-off and pick-up at the station entrance along Cedar Street.

Pedestrian Entering and Exiting Station from the West Including Kiss & Ride Curb Drop-Off and Pick-Up

	<u>Est. AM Peak</u>	<u>Est. PM Peak</u>	<u>All Day</u>
Pedestrians Entering Station	701	394	1,442
Pedestrians Exiting Station	308	643	1,379
Kiss & Ride Curb Drop-Off	267	0	285
Kiss & Ride Curb Pick-Up	0	228	258
Total Pedestrians/Kiss & Ride Entries and Exits	1,276	1,265	3,364

Development

In general, the area west of the station (within a ½ mile of the station) is built out with community serving retail and low-density residential dwellings. However, recent development includes mid-rise condominiums with ground level retail (Figure 8). In addition, new development is underway along Blair Road adjacent to the B&B site. Currently the old B&B Catering site is available for redevelopment. Aside from the B&B site, there are limited development opportunities planned on the west side of the station that would result in significant increases in ridership.



Figure 8: Takoma Metro Station and Surrounding Area

Options for a Western Entrance

This study evaluates four (4) options for a western entrance:

Option 1 – Provide an entrance to the Takoma Station from Cedar Street through the existing metal grill panels (Option 1 Concept Plan).

Option 2 – Provide an entrance to the Takoma Station from Cedar Street through the concrete abutment via the area of the existing Metro service rooms (Option 2 Concept Plan).

Option 3a – Provide an elevator mezzanine including a second elevator, faregates and fare vending machines by expanding and extending the existing pedestrian tunnel from the existing elevator west under the CSX and Metrorail tracks (Option 3a Concept Plan).

Option 3b – Extend the pedestrian tunnel from the existing elevator west side under CSX tracks and Metrorail tracks (Option 3b Concept Plan).

It is envisioned that streetscape improvements (e.g., enhanced lighting, physical separation along the outer edge of the sidewalk adjacent to Cedar Street, enhanced signage and potential

artwork) along Cedar Street under the CSX and Metrorail tracks would be included in all options.

The evaluation of each option includes: (1) developing a concept sketch showing the new entry location and revised layout of the mezzanine entrance for Options 1 and Option 2, and the new pedestrian passageway for Options 3a and 3b; (2) identifying the issues and benefits; and (3) developing an order of magnitude capital cost estimate.

Option 1 involves expanding the “Free Area” by opening a section (approximately 9’ wide) in the existing metal grill panels along Cedar Street (Figure 9), constructing stairs between the sidewalk along Cedar Street and the mezzanine level, and streetscape improvements along Cedar Street. This option would provide a better walking experience by opening up the metal grill enclosure and a more direct access for customers accessing the station from the west by shortening the distance to the entrance by approximately 100’.

The issues associated with Option 1 include:

- Reduced area for pedestrian circulation in the “Paid Area” resulting in potential pedestrian conflicts.
- Reduced queuing distance in front of the fare vending machines in “Paid Area”.
- Eliminates the opportunity for installing additional faregates.
- Cost for streetscape improvements along Cedar Street.



Figure 9: Metal Grill Panels along Cedar Street

Option 2 involves providing an entrance from the west by cutting an opening through the bridge abutment (Figure 10) and constructing a passageway under CSX and Metrorail tracks to connect to the existing mezzanine through the area of the existing service rooms. This new entrance would have two (2) new fare gates, two (2) fare vending machines and security

cameras along with streetscape improvements, and would require relocating the existing WMATA personnel washrooms and fire equipment cabinet. There are no existing rooms available for relocation, therefore, construction of new space for the washrooms and fire equipment cabinet would be required.

The benefits of Option 2 include direct access for customers accessing the station from the west, eliminating the need to walk under the Metro overpass. The issues associated with this option include the technical and cost implications of the following elements as well as, coordination with CSX to obtain agreement to work below CSX tracks.

- Cutting through bridge abutment.
- Tunneling below CSX and Metrorail tracks and constructing passageway.
- Constructing new space for washrooms and fire equipment cabinet.
- Renovating existing area of service rooms for new mezzanine.
- New mezzanine equipment including:
 - Fare vending machines
 - Faregates
 - Security gates
 - Security cameras
- Streetscape improvements along Cedar Street.

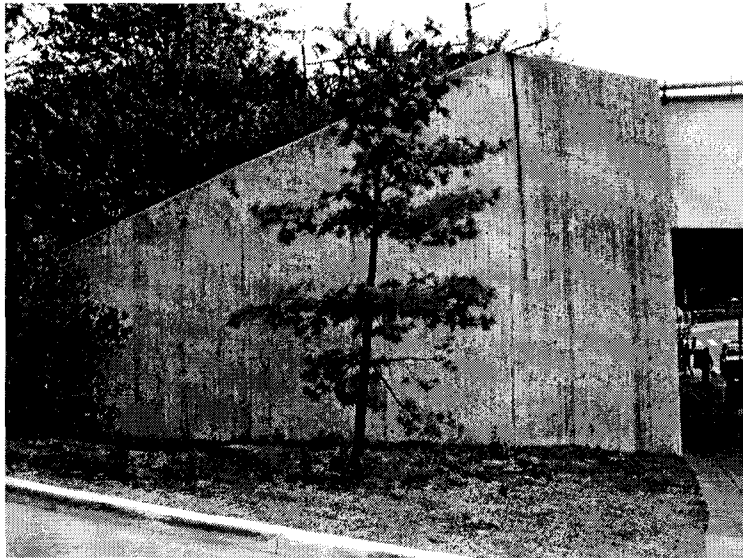


Figure 10: Concrete Bridge Abutment on West Side of Tracks

Both **Options 3a and 3b** involve constructing a new pedestrian passageway under the inbound Metrorail and CSX tracks and connecting to the existing elevator from the west. Option 3a provides a full service elevator mezzanine, which would involve expanding the existing pedestrian passageway, extending the pedestrian passageway to the west and relocating the fare equipment from the platform to this new mezzanine for reuse. In addition, this elevator

mezzanine would include a second elevator for redundancy, two (2) faregates at the east pedestrian passageway (one of which is wheelchair accessible), two (2) faregates at the west pedestrian passageway (one of which is wheelchair accessible), six (6) fare vending machines, security cameras, security gates, lighting, signage and site work at the western entrance to connect to existing grades. A second elevator is desirable to comply with the current WMATA Design Criteria and to ensure the station platform is accessible during service disruptions, such as maintenance work, for customers using wheelchairs or customers using strollers, bicycles and segways that rely on elevator service.

Option 3b is limited to constructing a new pedestrian passageway under the inbound Metrorail and CSX tracks and connecting to the existing elevator from the west. In addition to the new pedestrian passageway, this option would require relocating the existing elevator machine room; installing security gates, security cameras, lighting, signage; and site work at the western entrance to connect to existing grades.

The benefits of Option 3a include providing a full service northern entrance with direct access for customers accessing the station from the west and north thereby shortening the walk distance to the station entrance and eliminating the need to walk under the Metro overpass. In addition, this option provides more space for customers to wait on the platform level by eliminating the mini-mezzanine.

The issues associated with Option 3a include the technical and cost implications of the following elements as well as, coordination with CSX to obtain agreement to work below CSX tracks.

- Expanding the existing pedestrian passageway to construct new elevator mezzanine.
- Tunneling below CSX and Metrorail tracks and constructing new passageway to the west.
- Relocating existing elevator machine room and cost for equipment to support new elevator.
- Relocating existing fare equipment on platform level.
- New mezzanine and passageway equipment including:
 - New elevator
 - Fare vending machines
 - Faregates
 - Security gates
 - Security cameras
 - Lighting
 - Signage
- Site work at western entrance.
- Streetscape improvements along Cedar Street.

The benefits for Option 3b also includes providing direct access for customers accessing the station from the west and north, thereby shortening the walk distance to the station entrance and eliminating the need to walk under the Metro overpass. However, this option does not provide any redundancy in elevator service. The issues associated with Option 3b include the

technical and cost implications for the following elements as well as, coordination with CSX to obtain agreement to work below CSX tracks.

- Tunneling below CSX and Metrorail tracks and constructing new passageway to the west.
- Constructing new space for elevator machine room and relocating existing elevator equipment.
- New passageway equipment including:
 - Security gates
 - Security cameras
 - Lighting
 - Signage
- Site work at western end.
- Streetscape improvements along Cedar Street.

Order of Magnitude Cost Estimates

The cost of constructing a new entrance to the Takoma Metro Station from the west depends upon many factors, many of which are not quantifiable at this time. Based on the known factors and providing allowances for unknown factors, an order of magnitude cost estimate was developed for each option.

Option 1 is the least costly since it does not involve any significant structural work. The order of magnitude cost estimate for Option 1 is \$150,000 - \$250,000 depending on the extent of streetscape improvements and whether any artwork is incorporated.

Option 2 is significantly more complicated since it involves cutting into the existing bridge abutment, constructing a passageway under the CSX and Metrorail tracks, constructing new washrooms and a fire equipment cabinet in addition to providing new fare vending machines and fare gates and security equipment. The order of magnitude cost estimate for Option 2 is \$4.0 - \$6.0 million.

Option 3a involves significant construction under CSX and Metrorail tracks including a new underground passageway and new elevator mezzanine including fare equipment and security related equipment that connects to the existing elevator plaza. The order of magnitude cost estimate for Option 3a is \$6.5 - \$10.5 million.

Option 3b also involves construction under CSX and Metrorail tracks for a new underground passageway that connects to the existing elevator plaza. The order of magnitude cost estimate for Option 3b is \$3.5-\$5.5 million.

Conclusions

The Takoma Metro Station is a key asset to the Takoma community and provides an important link to downtown DC. According to the Takoma Central District Plan, the station will remain a key focal point of the community as development around the station occurs. While the primary access point is from the east given the location of bus, Kiss & Ride and Park & Ride facilities, a significant number of customers access the station from the west and improvements to the walk experience would be desirable.

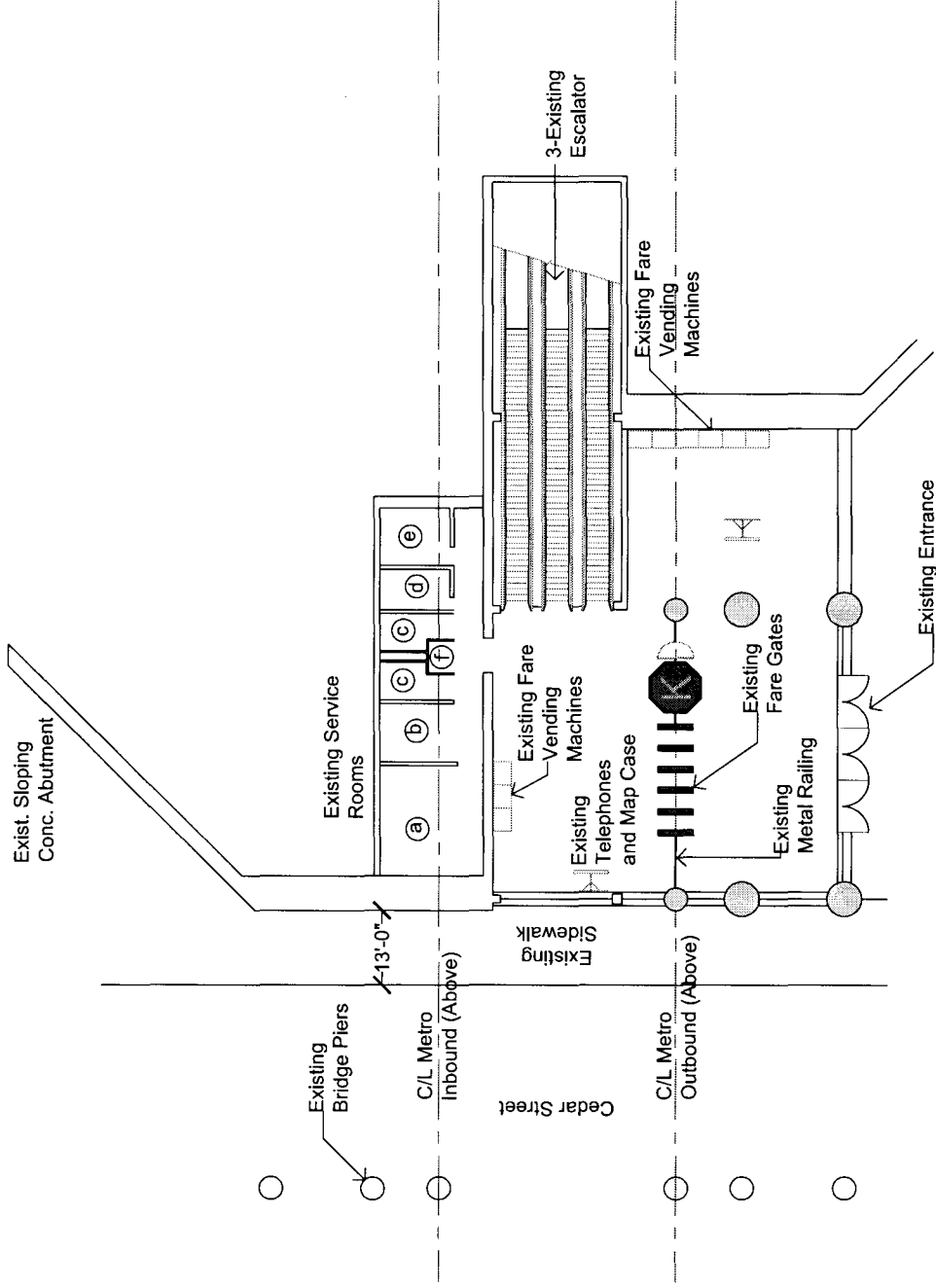
A key consideration of providing a second entrance is the existing and forecasted ridership. In general, it is not envisioned that the forecasted ridership at the Takoma Metro Station would require a second entrance. However, further ridership analysis is required to determine the projected number of customers who would potentially use a second entrance.

While Option 1 requires minimal capital investment, it would enhance the walk experience for customers accessing the station from the west and minimize the distance customers must walk under the CSX and Metrorail tracks. Options 2, 3a and 3b essentially provide a new station entrance requiring significant capital investment as well as operating cost increases.

If the Takoma Metro Station western entrance concept were advanced, the next steps would involve obtaining a request from the District of Columbia to develop a cost benefit analysis including a financial strategy for both operating and capital costs as well as advancing the concept design. Advancement of concept design would include: performing detailed ridership forecasts; evaluating operational impacts; developing design drawings and preliminary cost estimates; and coordinating with District of Columbia staff as well as the Takoma community.

LEGEND

- (a) Train Control Room
- (b) Communications Room
- (c) Wash Room
- (d) Cleaners Room
- (e) Operations Room
- (f) Fire Equipment Cabinet



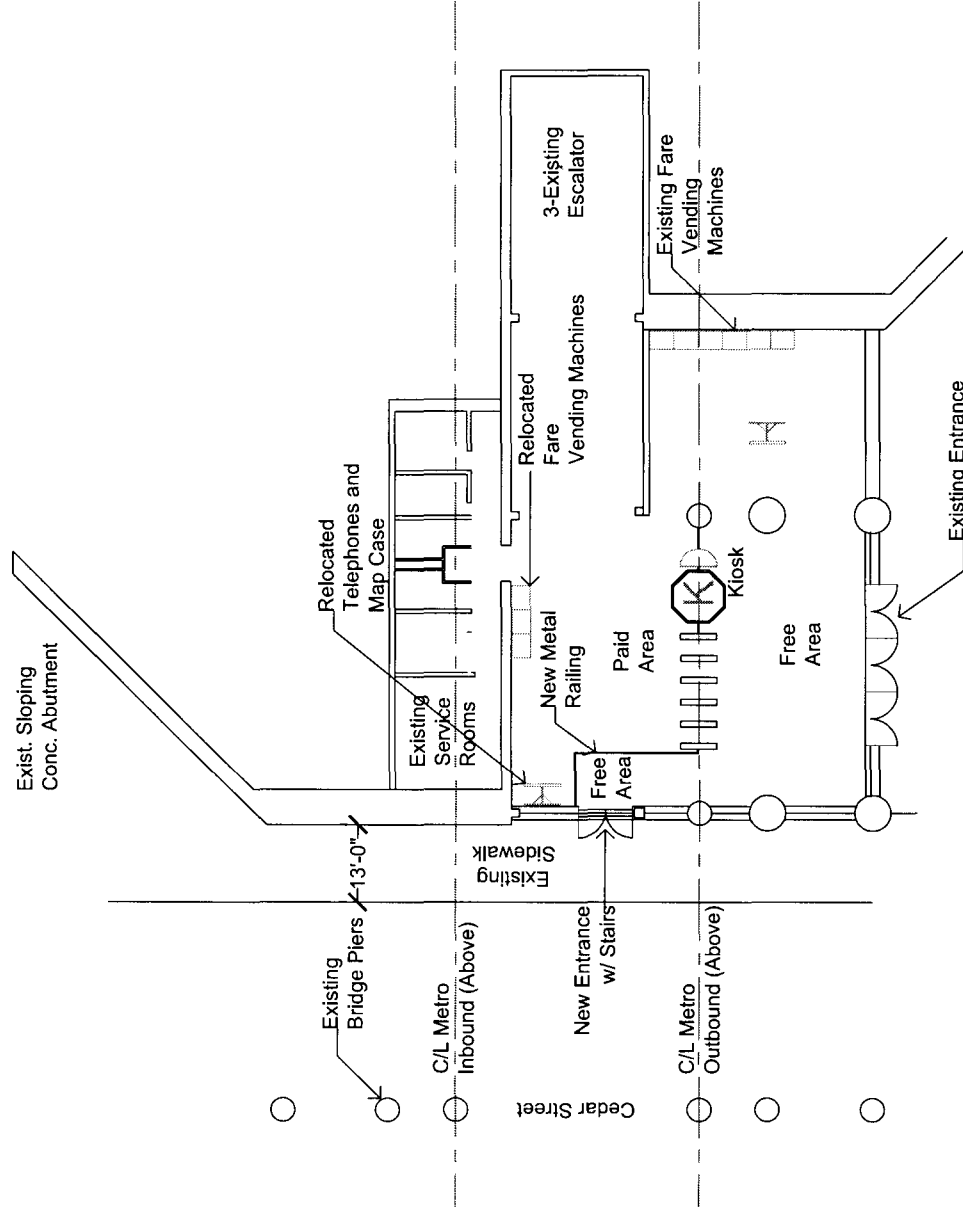
EXISTING CONDITIONS - LOWER LEVEL PLAN

Scale 1" = 20'

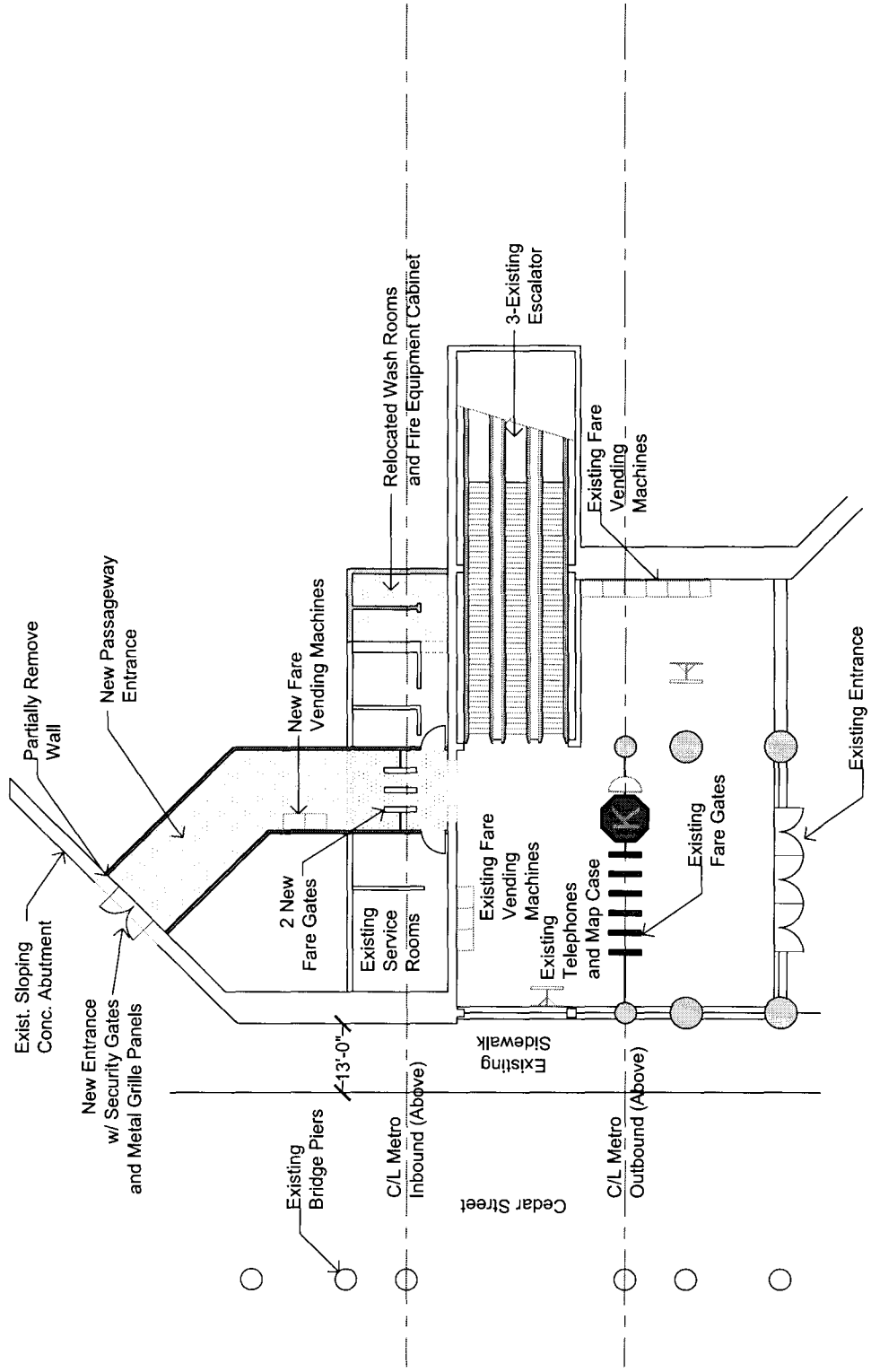
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY / DIVISION OF PLANNING, DEVELOPMENT, ENGINEERING AND CONSTRUCTION / OFFICE OF BUSINESS PLANNING AND PROJECT DEVELOPMENT

TAKOMA STATION

February 2006



OPTION 1 - LOWER LEVEL CONCEPT PLAN
Scale 1" = 20'

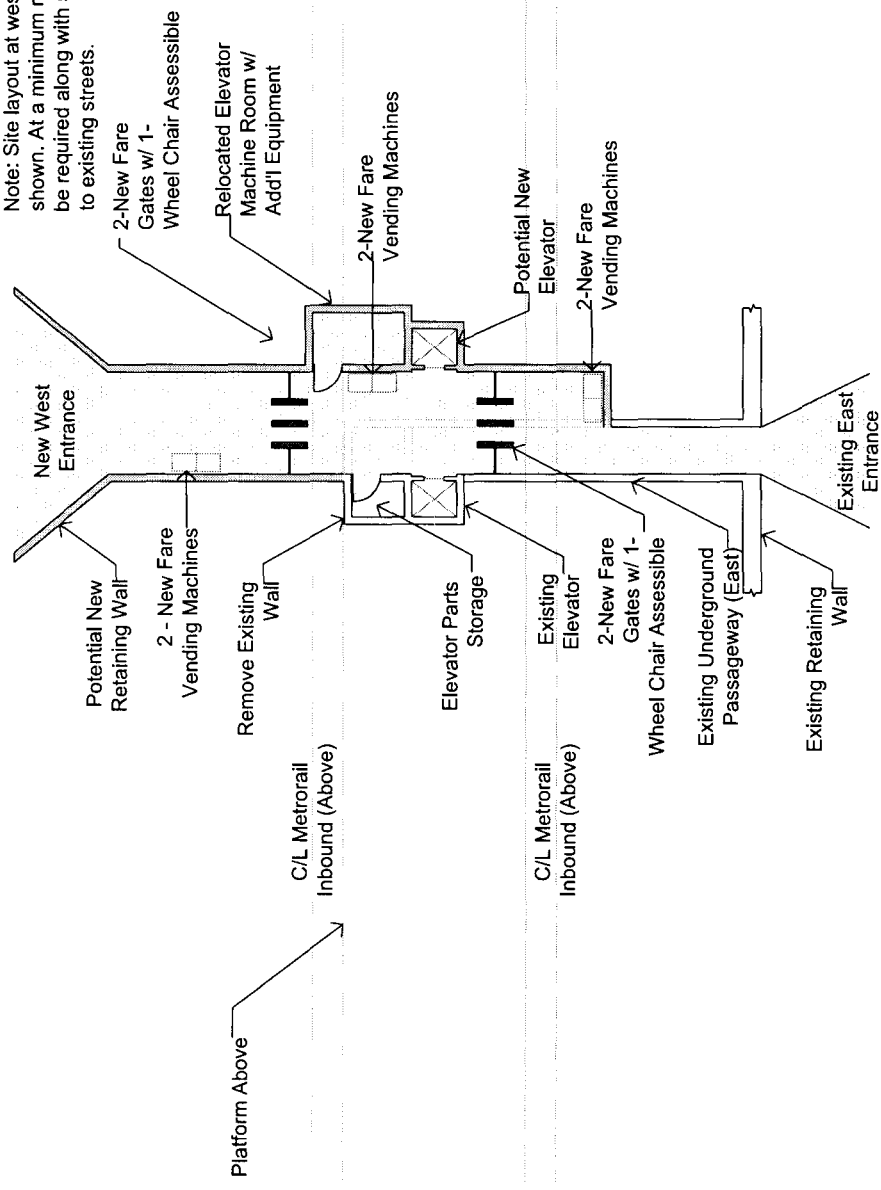


OPTION 2 - LOWER LEVEL CONCEPT PLAN
Scale 1" = 20'

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY / DIVISION OF PLANNING, DEVELOPMENT, ENGINEERING AND CONSTRUCTION / OFFICE OF BUSINESS PLANNING AND PROJECT DEVELOPMENT

TAKOMA STATION

Note: Site layout at western entrance is not shown. At a minimum retaining walls would be required along with sidewalks connecting to existing streets.



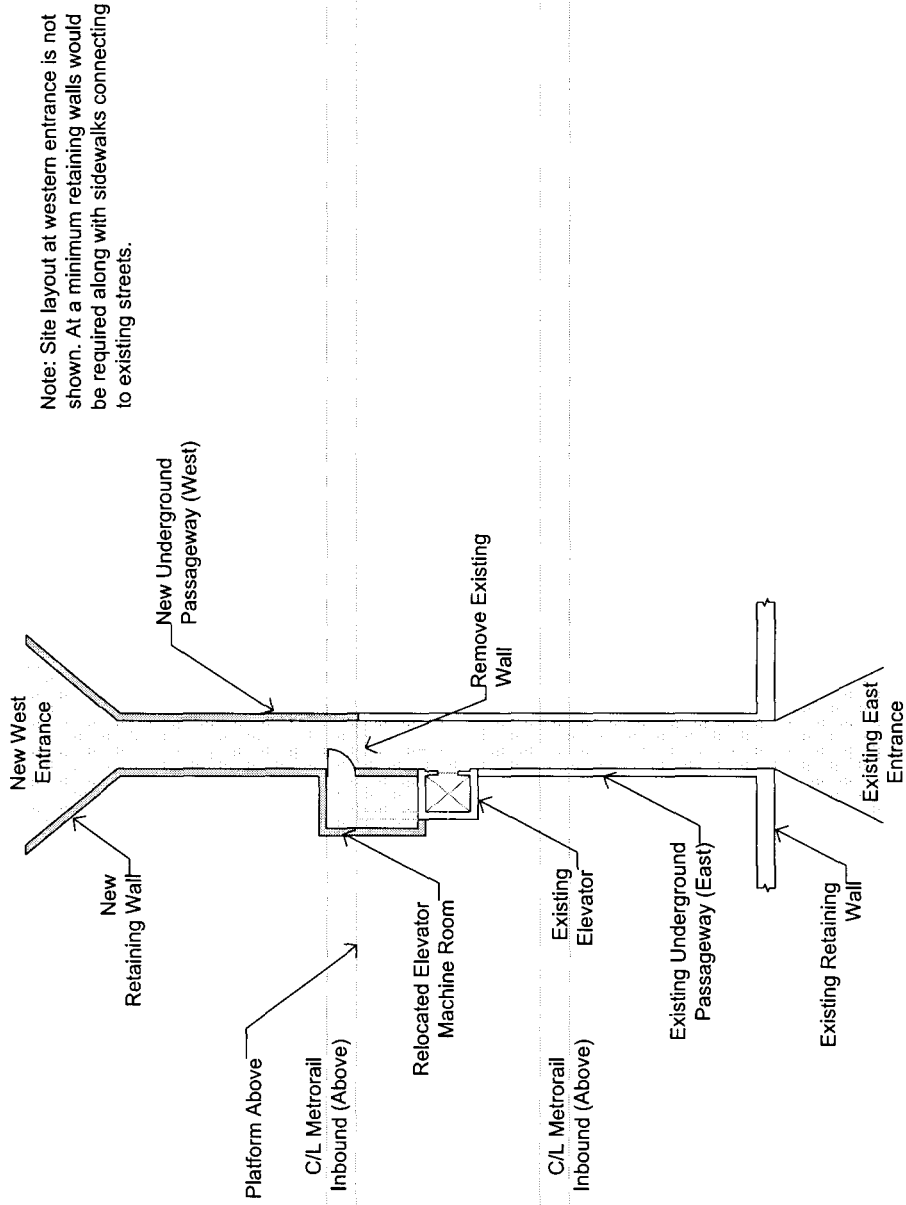
OPTION 3a - LOWER LEVEL ELEVATOR ENTRANCE CONCEPT PLAN

Scale 1"= 20'

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY / DIVISION OF PLANNING, DEVELOPMENT, ENGINEERING AND CONSTRUCTION / OFFICE OF BUSINESS PLANNING AND PROJECT DEVELOPMENT

TAKOMA STATION

February 2008



OPTION 3b - LOWER LEVEL ELEVATOR ENTRANCE CONCEPT PLAN

Scale 1"= 20'

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY / DIVISION OF PLANNING, DEVELOPMENT, ENGINEERING AND CONSTRUCTION / OFFICE OF BUSINESS PLANNING AND PROJECT DEVELOPMENT

February 2008

TAKOMA STATION

EXHIBIT 13

PROPOSED FIRST AMENDMENT TO SALES AGREEMENT

FIRST AMENDMENT TO JOINT DEVELOPMENT SALES AGREEMENT

THIS FIRST AMENDMENT TO JOINT DEVELOPMENT SALES AGREEMENT ("First Amendment"), dated as of the 1st day of August, 2007 (the "**Amendment Effective Date**"), is made by and between **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966; having its principal office and place of business at 600 Fifth Street, NW, Washington, D.C. 20001 (hereinafter, "**WMATA**"), and **TAKOMA METRO ASSOCIATES LIMITED PARTNERSHIP**, a Maryland limited partnership, having an office and place of business at c/o EYA, LLC, 4800 Hampden Lane, Suite 300, Bethesda, Maryland 20814 (hereinafter, "**Developer**").

WHEREAS, WMATA and Developer entered into a Joint Development Sales Agreement dated as of June 20, 2005 ("**Sales Agreement**"); and

WHEREAS, the parties wish to amend the Sales Agreement in order to provide for additional options with respect to the WMATA Replacement Facilities and also to account for developments that have occurred since June, 2005, including the October, 2006 WMATA Compact Hearing.

NOW, THEREFORE, for and in consideration of the agreements, terms, covenants and conditions hereinafter set forth, the parties agree as follows:

1. All capitalized terms in this First Amendment to Joint Development Sales Agreement shall have the same meaning used in the Sales Agreement, unless the context clearly requires otherwise.

2. In light of community comments regarding the WMATA Replacement Facilities, the parties have modified the Concept Plan and presented at the WMATA Compact Hearing, two alternative site plans. The first Concept Plan (the "**Surface Parking Proposal**") provides for 75 parking spaces and at least 50 bike lockers (either similar to the bike lockers which currently exist on the WMATA surface parking lot or such other type of bike lockers as may be agreed upon by WMATA and the Developer) and racks to accommodate at least 50 bicycles on the WMATA Reserved Area. In addition, if the WMATA Board of Directors adopts the Surface Parking Proposal, then in that event, Developer agrees that it shall submit the site plan attached as Exhibit A (with the surface parking configuration) for Project Approval which includes an area in the surface parking lot designated for ADA drop-off and pick-up; 33 parking spaces on the Property and 19 street parking spaces, and pedestrian barriers at the traffic circle and in the bus bay median, bus bay and layover areas (and capacity) all as depicted in Exhibit A. Spaces marked Kiss & Ride will be signed so as to only permit their use for pick-up and drop-off; taxi spaces will be restricted to licensed taxis; and handicapped spaces will be restricted to vehicles displaying appropriate license tags or permits for disabled persons in accordance with law.

3. The second Concept Plan (the "**Parking Garage Proposal**") provides for approximately 128 parking spaces, including [one space] to serve as a "Kiss & Ride" drop-off/pick-up location restricted for use by vehicles displaying appropriate license tags or permits for disabled persons, and at least 50 bike lockers (either similar to the bike lockers which currently exist on the WMATA Parking Lot or such other type of bike lockers as may be agreed upon by WMATA and the Developer) and racks to accommodate at least 50 bicycles, on the WMATA Reserved Area in a structured parking garage which will constitute the WMATA Parking Lot in lieu of the surface parking facility. In addition, if the WMATA Board of Directors adopts the Parking Garage Proposal, then in that event, Developer agrees that it shall submit the site plan attached as Exhibit A (with the parking garage configuration) for Project Approval which includes 33 parking spaces on the Property and 19 street parking spaces, an area in the parking garage designated for ADA drop-off and pick-up, pedestrian barriers at the bus bay median and traffic circle; bus bay and layover areas (and capacity), all as depicted in Exhibit A. Spaces marked Kiss & Ride will be signed so as to only permit their use for pick-up and drop-off; taxi spaces will be restricted to licensed taxis; and handicapped spaces will be restricted to vehicles displaying appropriate license tags or permits for disabled persons in accordance with law.

4. Both alternative Concept Plans described in Exhibits A (which shows both garage and surface parking configurations) have been reviewed and approved by WMATA's bus operations personnel for approval of the bus facilities for present and projected future bus transit needs. WMATA's execution of this First Amendment constitutes WMATA's approval of the "final" Concept Plan attached hereto as Exhibit A as provided in Section 4.02.D. of the Sales Agreement, except that the Interim Parking Plan shall be provided as required in this First Amendment.

5. Developer shall consult with WMATA during the PUD process with respect to its intentions regarding the Interim Parking Plan. The Interim Parking Plan shall set forth the precise location of the temporary parking on the Property and the number of parking spaces to be provided during construction of the WMATA Replacement Facilities, and shall set forth the manner in which temporary parking will be managed, maintained and operated so as to minimize inconvenience to WMATA's customers and so as to allow WMATA to continue to collect the parking revenues during construction of the WMATA Replacement Facilities. The Interim Parking Plan, shall be subject to WMATA's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Prior to taking any existing parking facilities out of service, Developer shall implement the relevant provisions of the Interim Parking Plan. Developer shall provide WMATA with a proposed Interim Parking Plan not later than 45 days prior to Closing and the existence of a mutually-agreeable Interim Parking Plan shall remain a condition of closing pursuant to Section 9.02 of the Agreement.

6. Nothing in this First Amendment is intended to limit or restrict the WMATA Board of Directors' discretion at the Compact Hearing, or WMATA's right to review the WMATA Replacement Facilities Construction Drawings in accordance with the Sales Agreement. The Board may adopt one or the other of the Surface Parking Proposal or the Garage Parking Proposal, some hybrid of the two, any other proposal, either proposed by the public or conceived by the Board or the Developer, or it may elect to leave the WMATA Facilities in their "as is" condition. The final approval, if any, by WMATA's Board of Directors

of either the Surface Parking Proposal or the Garage Parking Proposal, after conducting the Compact Hearing and consideration of additional public comment and staff reports, shall constitute an "approval" by the WMATA Board of Directors under the Sales Agreement, including, without limitation Section 4.02.G., and shall be referred to herein as the "**Compact Hearing Approval.**" If the Board does not approve either Concept Plan proposed by Developer or approves a Concept Plan different than either the Surface Parking Proposal or the Garage Parking Proposal which is not acceptable to the Developer, then such action shall constitute a "disapproval" by the WMATA Board of Directors under the Sales Agreement, including Section 4.02.G. ("**Compact Hearing Disapproval**").

7. Section 4.02.C. of the Sales Agreement is amended as follows: delete each reference to "Effective Date" and replace with "Compact Hearing Approval Date" and by adding at the end of the third sentence of said Section 4.02.C. the following clause: ", in which event the Security Deposit and the Option Fee (including any portions which were previously disbursed to WMATA) shall be refunded to the Developer."

8. Section 4.02.G. of the Sales Agreement is amended as follows: delete each reference to "Effective Date" and replace with "December 31, 2006."

9. Section 2.01 of the Sales Agreement is hereby amended by labeling the entire language existing under Section 2.01 as paragraph A. – Base Purchase Price, and by deleting the first paragraph thereof in its entirety and inserting the following text in lieu thereof:

A. **Base Purchase Price.** The base Purchase Price (the "**Base Purchase Price**") shall be the greater of (i) Seven Million Three Hundred Fifty Thousand Dollars (\$7,350,000.00), or (ii) One Hundred Five Thousand Dollars (\$105,000) multiplied by the number of Market Rate Townhomes approved for development on the Property. The Base Purchase Price shall be subject to adjustment as hereinafter set forth and post-closing adjustment through the escrow and disbursement process set forth in Section 2.02. The Base Purchase Price shall be adjusted at Closing such that the portion of the Purchase Price defined in Section 2.02 as the "Minimum Purchase Price" shall be increased by the CPI Escalation. The CPI Escalation Factor shall be determined by comparing (A) the Revised Consumer Price Index for All Urban Consumers, (Nov.1996=100 Base Year), All Items, Washington-Baltimore, D.C.-MD-VA-WV Metropolitan Area (CPI-U) as published by the Bureau of Labor Statistics of the United States Department of Labor (herein referred to as the "**Index**"), which is the last Index published for the bi-monthly reporting period immediately preceding the scheduled date of Closing (the "**Adjustment Index**"), to (B) the last Index published for the bi-monthly reporting period that immediately follows the Compact Hearing Approval Date (the "**Beginning Index**"). If the Adjustment Index has increased over the Beginning Index, then the CPI Escalation Factor shall be a fraction whose numerator is the Adjustment Index minus the Beginning Index and whose denominator is the Beginning Index.

For purposes of illustration only, if the Adjustment Index were 135.5 and the Beginning Index were 124, then, at Closing, Developer is obligated to tender the Base Purchase Price, plus an additional amount equal to \$2,500,000 multiplied by 0.0927 (135.5-124/124).

10. Section 2.01 of the Sales Agreement is hereby further amended by inserting the following text as paragraph B. under said Section 2.01:

B. **Garage Contribution.** If the WMATA Board of Directors adopts the Parking Garage Proposal, then Developer shall pay, as additional consideration due and payable at Closing (and only to the extent that Closing occurs under the Sales Agreement), an additional Seven Hundred Fifteen Thousand Dollars (\$715,000) (the "**Garage Contribution**"). If the WMATA Board of Directors adopts the Surface Parking Proposal, then the Developer has no obligation to pay the Garage Contribution or any other additional consideration to WMATA. The Garage Contribution is not part of, but is in addition to, the Base Purchase Price. The sum of the Base Purchase Price plus the Garage Contribution is referred to herein as the "**Purchase Price**."

11. The definition of "Construction Costs" is deleted in its entirety and replaced with the following:

"**Construction Costs**" means the "Construction Costs" as itemized (and excluded) in Exhibit B to this First Amendment.

12. Section 2.02 of the Sales Agreement is hereby amended by deleting the text of this Section in its entirety and inserting the following text in lieu thereof:

Section 2.02 Payment of Purchase Price

A. Payment of Minimum Purchase Price at Closing and Escrow of Remaining Purchase Price.

At Closing, the Purchase Price, as adjusted as shown on the Settlement Statement as executed by WMATA and the Developer pursuant to **Section 9.07** hereof, will be delivered by Developer, by certified check, cashier's check, or wire transfer of current funds in U.S. Dollars, to the account of the Settlement Agent. Upon recordation of the Deed (as defined in **Section 9.06** hereof), the Settlement Agent shall disburse to WMATA the non-refundable amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the "**Minimum Purchase Price**") and the remainder of the Purchase Price due to WMATA (the "**Remaining Purchase Price**") shall be deposited into an escrow account with the Settlement Agent (the "**Escrow Account**") to be held and disbursed by the Settlement Agent in accordance with the terms below, all of which shall be incorporated into an escrow agreement approved by WMATA, Developer and the Settlement Agent (the "**Escrow Agreement**"). The Remaining Purchase Price shall be deposited by the Settlement Agent into an interest-bearing escrow account at a federally-insured financial institution in the District of Columbia, and the Remaining Purchase Price, together with all interest accrued thereon, are referred to collectively as the "**Escrow Funds**." The Escrow Agreement shall provide that the Escrow Funds shall be disbursed to the Developer upon written request of the Developer to reimburse the Developer for all Construction Costs in accordance with the following guidelines:

- (i) Each request submitted by the Developer to the Settlement Agent for the disbursement of any Escrow Funds pursuant to the Escrow Agreement shall be accompanied by invoices from *bona fide* third parties substantiating the amount of the requested disbursement, a certificate from Developer's architect that the work referenced in the invoice was performed substantially in accordance with the Construction Drawings and was undertaken as part of the construction of the WMATA Replacement Facilities (and not Developer Improvements), and, where previous disbursements have been made, appropriate mechanic's lien releases with respect to work done, or supplies provided, for work paid by previous disbursement(s). Simultaneously with the delivery to the Settlement Agent of its request for disbursement from the Escrow Funds for Construction Costs, the Developer shall deliver a copy of such request for disbursement (including the invoices) to WMATA.
- (ii) The Settlement Agent shall pay the amount of the requested disbursement to the Developer within ten (10) business days after receipt of Developer's request for disbursement, unless WMATA files a written objection, setting forth one of the following grounds for non-payment: a) Developer has failed to remedy defective work within thirty (30) days following written notice from WMATA specifying the defective work to be remedied; b) third party claims or liens have been filed with respect to the work on the WMATA Replacement Facilities (which claims or liens have not been bonded off or released) prior to the disbursement; c) failure of the Developer to make payments to its contractor, subcontractors or suppliers in accordance with the terms of the contracts with such contractor, subcontractors or suppliers, and subject to the right of the Developer to hold back funds based upon claims of Developer; d) damage to WMATA's facilities; and e) persistent failure to build the WMATA Replacement Facilities in accordance with Article 16 of this Agreement following written notice from WMATA to Developer setting forth the alleged failure and a reasonable time for Developer to cure the alleged failure. WMATA's right to audit Construction Costs (as provided below), and to make claim(s) based upon such audit, is preserved whether or not WMATA files a timely objection to payment from the Escrow Account.
- (iii) Upon completion of the WMATA Replacement Facilities, and WMATA's final acceptance of the WMATA Replacement Facilities, then the Developer shall, by written notice to the Settlement Agent within ten (10) business days following WMATA's full acceptance of the WMATA Replacement Facilities (the "**Final Escrow Release Notice**"), authorize and direct the Settlement Agent to disburse the remaining Escrow Funds to WMATA within five (5) business days following the delivery of the Final Escrow Release Notice to the Settlement Agent. In no event shall WMATA be responsible for any Construction Costs which, in the aggregate, exceed the amount of the Remaining Purchase Price.

B. Audit of Construction Costs.

Developer shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management of Construction Costs under this Agreement, and the accounting and control systems shall be satisfactory to WMATA. WMATA and its agents shall be afforded access to, and shall be permitted to audit and copy, the Developer's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Construction Costs, and Developer shall preserve these documents and records for a period of one year after WMATA's final acceptance of the WMATA Replacement Facilities. If the Developer does not act as its own general contractor, then Developer shall require its general contractor to maintain the records required by this section and to allow WMATA the audit rights to those records, as provided herein.

13. Exhibit C to this First Amendment contains the a good faith estimate of the Construction Costs for the Surface Parking Proposal as required by **Section 16.02(2)** of the Sales Agreement. Exhibit D to this First Amendment contains a good faith estimate of the Construction Costs for the Parking Garage Proposal. The estimated budgets set forth in Exhibit C and Exhibit D are referred to as the "**Concept Plan Budgets.**" WMATA and Developer have carefully reviewed these estimates of Construction Costs and both parties accept them as both a full description of WMATA Replacement Facilities based on known site conditions and a reasonable estimate of Construction Costs of the WMATA Replacement Facilities under each alternative Concept Plan. WMATA and the Developer acknowledge that the actual Construction Costs of the WMATA Replacement Facilities may differ from the Concept Plan Budgets. However, in no event shall WMATA be responsible for Construction Costs which in the aggregate exceed the amount of the Remaining Purchase Price.

14. WMATA shall have the right to identify contractors and subcontractors for any subcontract for the construction of the WMATA Replacement Facilities having a cost in excess of \$200,000 ("**Major Subcontractors**") as shown on the Concept Plan Budget for the Concept Plan approved by the WMATA Board of Directors. WMATA shall provide a list of all such Major Subcontractors that it wishes to be considered by the Developer (the "**WMATA Identified Subcontractors**"), identifying the specific subcontract for which WMATA wishes the WMATA Identified Subcontractor to be considered, with WMATA's response to the WMATA Replacement Facilities Construction Drawings submitted to WMATA by the Developer in accordance with the provisions of Section 16.02(1) of the Sales Agreement. All such WMATA Identified Subcontractors must be qualified and experienced to perform the scope of services for which WMATA has identified the Major Subcontractor. Developer shall send invitations to bid to such WMATA Identified Subcontractors. Developer shall not be obligated to award a contract to any such WMATA Identified Subcontractor, but it may not include the difference between a lower bid of a WMATA Identified Subcontractor and the bid of the subcontractor selected by Developer in the calculation of Construction Costs.

15. Section 9.02.A.(9) and Section 9.02.B.(10) of the Sales Agreement are each hereby amended by deleting each of said sections in its entirety and substituting the following text in lieu thereof:

The Developer shall have posted acceptable payment and completion bonds for the WMATA Replacement Facilities in substantially the forms attached hereto as Exhibits G and H.

16. Section 16.02 (2) of the Sales Agreement is hereby amended by deleting the same in its entirety and substituting the following text in lieu thereof:

2. **Compliance with Laws.** The Developer shall comply with the Davis-Bacon Act, 40 U.S.C. §276a, et seq., in Developer's construction of the WMATA Replacement Facilities.

17. Section 16.03 of the Sales Agreement is hereby deleted in its entirety, and all references to said Section 16.03 in the Sales Agreement are hereby deleted.

18. Notwithstanding the provisions of Section 6.02 of the Sales Agreement, no Option Fees shall be due and payable for any periods from and after the Amendment Effective Date and continuing through the date the Compact Hearing Approval or Compact Hearing Disapproval. If Closing occurs under the Agreement, then any and all Option Fees paid for any period(s) on and after May 1, 2006 through the date of Compact Hearing Approval shall be applied against the Minimum Purchase Price payable at Closing under the Sales Agreement. All Option Fees paid for period prior to May 1, 2006 shall be held and disbursed in the manner provided in the Sales Agreement. Seller and Purchaser hereby authorize and direct the Title Company to suspend the payment of all Option Fees to WMATA until such time as WMATA shall deliver to the Title Company a copy of the WMATA Compact Hearing Approval. All remaining Options Fees held by the Title Company shall continued to be held by the Title Company until the earlier to occur of (a) the Title Company's receipt of a copy of the Company Hearing Approval from WMATA and joint written instructions from WMATA and the Developer to the Title Company directing that the Title Company re-commence the payment of Option Fees to WMATA on a monthly basis as provided in the Sales Agreement, or (b) the Title Company's receipt of a copy of the Compact Hearing Disapproval from either WMATA or the Developer, in which event all remaining Option Fees, if any, then held by the Title Company shall be disbursed to the Developer within five (5) business days following receipt of such Compact Hearing Disapproval and WMATA will refund to the Developer all Option Fees which it has received to date in accordance with the provisions of Section 6.02.A of the Agreement

19. The definition of "**WMATA Parking Lot**" in the Sales Agreement is deleted and replaced with the following:

"**WMATA Parking Lot**" means a parking facility, either surface or garage, access road thereto, and fare collection devices, all on the WMATA Reserved Areas, to be built pursuant to Article 16 of this Agreement, the cost of which construction shall be a Construction Cost."

20. The definition of "**WMATA Replacement Facility(ies)**" in the Sales Agreement is deleted and replaced with the following:

"WMATA Replacement Facility(ies)" means the WMATA Parking Lot and any replacement bus bays and related bus lanes or layover areas, sidewalks, bike racks and lockers, pedestrian barriers, bus shelters, signage, meters, landscaping, infrastructure and other improvements relating to the use of the Station, all as shown on the Site Plan and the Surface Parking Proposal or the Garage Parking Proposal, as applicable, or any other configuration proposed by the Developer and approved by the WMATA Board of Directors after WMATA Compact Hearing, to be built by Developer subject to its right to obtain payment for the Construction Costs as provided in Section 2.02 of this Agreement (and subject to the limitation set forth therein), to replace any currently existing WMATA Facilities on the Property.

21. Section 18.01 is amended to provide the following new address for Developer's notice (the copy address remaining unchanged):

Takoma Metro Associates Limited Partnership
c/o EYA, LLC
4800 Hampden Lane, Suite 300
Bethesda, Maryland 20814
Attention: Mr. Le Roy Eakin III and
Mr. Jack Lester

22. WMATA's consent, as evidenced by the signature on the following page is contingent upon subsequent approval by the WMATA Board of Directors to be given or withheld in the Board's sole discretion. If not so approved by the WMATA Board by November 30, 2007, then this Amendment shall have no legal effect and shall be null and void.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed under seal as of the date first above written.

DEVELOPER

**TAKOMA METRO ASSOCIATES LIMITED
PARTNERSHIP,**
a District of Columbia limited partnership

By: **TAKOMA METRO HOMES, INC. ,**
a District of Columbia corporation,
General Partner

By: _____
Le Roy Eakin, III
Chairman of the Board

Date: _____

WMATA

**WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY**

By: _____
Contracting Officer

Date: _____

STRUCTURED PARKING	SURFACE PARKING
GARAGE PARKING - 1ST LEVEL - 41 2ND LEVEL - 60 3RD LEVEL - 20 TOTAL OFF-STREET PARKING - 121* *INCLUDES 6 HANDICAP SPACES	OFF-STREET SURFACE PARKING - 1ST LEVEL - 74 2ND LEVEL - N/A 3RD LEVEL - N/A TOTAL OFF-STREET PARKING - 74* *INCLUDES 6 HANDICAP SPACES
ON-SITE ON-STREET PARKING KISS AND RIDE - 4 HANDICAP SPACES - 2 STANDARD SPACES - 30 TOTAL ON-SITE STREET PARKING - 36	ON-SITE ON-STREET PARKING KISS AND RIDE - 4 HANDICAP SPACES - 2 STANDARD SPACES - 30 TOTAL ON-SITE STREET PARKING - 36
OFF-SITE ON-STREET PARKING TAXI STAND SPACES - 3 KISS AND RIDE - 4 PARALLEL SPACES - 12 TOTAL OFF-SITE STREET PARKING - 19	OFF-SITE ON-STREET PARKING TAXI STAND SPACES - 3 KISS AND RIDE - 4 PARALLEL SPACES - 12 TOTAL OFF-SITE STREET PARKING - 19
BUS LAY-OVER SPACES - 5 BUS TERMINAL SPACES - 10 50 BICYCLE LOCKERS 50 BICYCLE RACKS	BUS LAY-OVER SPACES - 5 BUS TERMINAL SPACES - 10 50 BICYCLE LOCKERS 50 BICYCLE RACKS
TOTAL NON-BUS PARKING: 176	TOTAL NON-BUS PARKING: 129

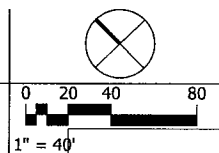
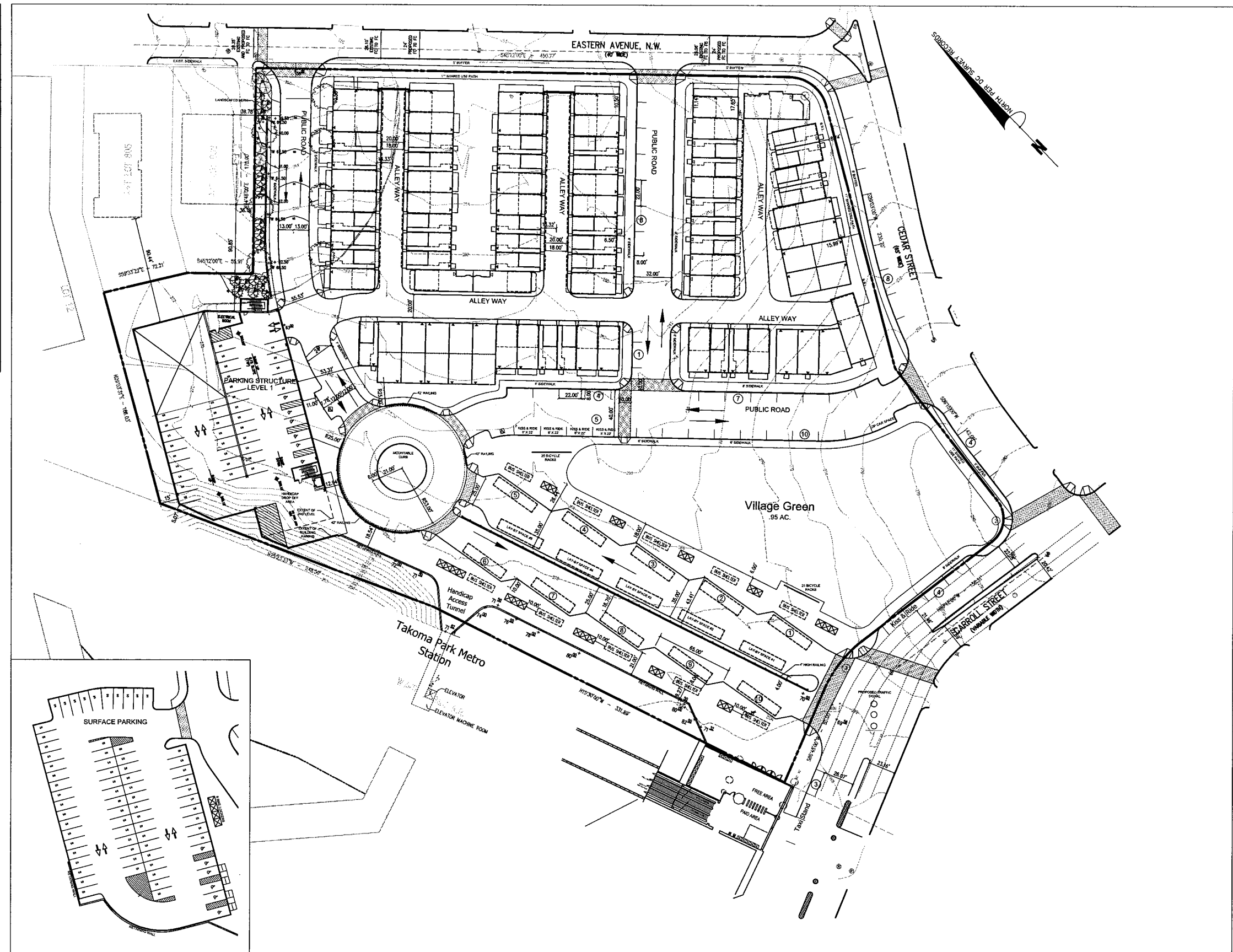
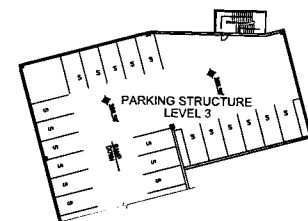
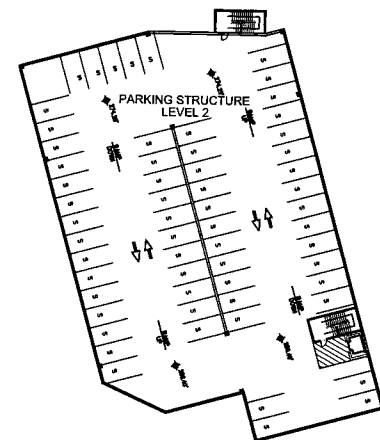


Exhibit B

Definition of "Construction Costs"

"Construction Costs" include the following:

A. Labor Costs

- i. Wages of construction workers directly employed by Developer to perform the construction of the WMATA Replacement Facilities;
- ii. Wages or salaries of the Developer's supervisory and administrative personnel when stationed at Takoma Station;
- iii. Costs incurred by Developer for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based upon permitted wages and salaries.

B. Subcontracts

- i. Payments made by Developer to its subcontractors with respect to work on the WMATA Replacement Facilities.

C. Costs of Materials and Equipment

- i. Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the WMATA Replacement Facilities.
- ii. Costs of materials described in the preceding paragraph in excess of those actually installed to allow for reasonable waste and spoilage.

D. Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- i. Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Developer at the site and are fully consumed in the performance of the work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Developer. Costs for items previously purchased by Developer shall mean fair market value.
- ii. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Developer at the site whether rented from the Developer or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
- iii. Costs of removal of debris and of excavation, removal, replacement, and/or remediation of unsuitable or "bad" soil from the site.

iv. Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;

v. Reasonable expenses of Developer's personnel incurred while traveling in discharge of duties connected with the work.

vi. Costs of materials and equipment intended, and actually used, in construction of the WMATA Replacement Facilities.

E. Other Costs

i. Insurance and bond premiums directly attributable to the WMATA Replacement Facilities.

ii. Fees and assessments for permits, licenses and inspections required to build the WMATA Replacement Facilities.

iii. Costs of design, engineering and surveying for the WMATA Replacement Facilities, and fees paid to consultants relating to the construction of the WMATA Replacement Facilities, including, without limitation, monitoring of the work and testing of the construction materials.

iv. Other costs incurred in the performance of the Work if and to the extent approved by WMATA.

v. Legal, mediation and arbitration costs, including attorneys' fees other than those arising from disputes between WMATA and Developer, reasonably incurred by Developer in the performance of the work and with WMATA's prior written approval, not to be unreasonably withheld.

The following are not "Construction Costs":

- A. Salaries and other compensation of the Developer's personnel stationed at the Developer's principal office rather than the site, except for the Developer's project manager whose salary and other compensation shall be included in the Construction Costs;
- B. Expenses of the Developer's principal offices other than the site office;
- C. Overhead and general expenses, except as expressly permitted above;
- D. The cost of any equipment currently at Takoma Station (such as bike lockers) used by Developer (but any costs incurred in connection with the repair, replacement or refurbishment of such equipment shall be included in Construction Costs);
- E. Developer's capital expenses, including interest on Developer's capital.
- F. Rental costs of machinery and equipment to the extent not expressly permitted above.
- G. Costs due to the negligence or failure to fulfill a specific responsibility of Developer, subcontractors or supplies or anyone directly or indirectly employed by any of them.

If the Developer does not act as its own general contractor, then "Developer" as used in this Exhibit B shall refer only to the Developer's general contractor.