

MEMORANDUM OF UNDERSTANDING

IMPLEMENTATION OF THE APRIL, 2010 REPORT OF THE CONFLICT RESOLUTION WORKGROUP ON WAYS TO IMPROVE THE DEVELOPMENT APPROVAL PROCESS IN MONTGOMERY COUNTY, MARYLAND

This Memorandum of Understanding (the "MOU") is made this 6 day of May, 2010 between the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, a bi-county agency and an instrumentality of the State of Maryland, with a regional office located at 8787 Georgia Avenue, Silver Spring, MD 20910 ("MCPB"), MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland, with a principal address of 101 Monroe Street, Rockville, MD 20850 (the "County"), the WASHINGTON SUBURBAN SANITARY COMMISSION, a bi-county government agency responsible for providing water and sewer service within the Washington Suburban Sanitary District, with a regional office at 14501 Sweitzer Lane, Laurel, MD 20707 ("WSSC") and the POTOMAC ELECTRIC POWER COMPANY, a regulated electric utility that provides transmission and distribution services, with a principal address of 701 Ninth Street, Washington, D.C. 20068 ("PEPCO") – collectively the "Parties."

WHEREAS, the February 17, 2009 Second Annual Report to the County Executive by the Department of Permitting Services Citizens Advisory Committee contained a recommendation to review and codify the Lead Agency portion of the circa 1992 Implementation Report for Streamlining the Development Authorization Process.

WHEREAS, on July 28, 2009, the Montgomery County Council held a Public Hearing on Subdivision Regulation Amendment 09-02 Subdivision Approval – Conflict Resolution ("SRA "09-02"). The Council heard testimony and received written statements from the MCPB, the County Executive, and development community representatives about different ways to facilitate conflict resolution and streamline the development approval process.

WHEREAS, on September 21, 2009, the Montgomery County Council's Planning, Housing, and Economic Development Committee ("PHED") held a worksession on SRA 09-02. During that worksession, the representatives from MCPB and MCDOT recommended against a legislated solution to the situation and advocated a more flexible approach to achieve the desired results. The PHED Committee requested a written statement from the Chairman of MCPB and the Director of MCDOT to address the Council's concern about the need for timely resolution of development-related conflicts.

WHEREAS, on October 5, 2009, the Chairman of MCPB and the Director of MCDOT submitted a jointly signed letter to indicate establishment of a working group composed of key agency and utility representatives (“Workgroup”) with the input of key stakeholders identified in the Conflict Resolution Report to prepare a report to the Planning Board, County Executive and other agencies by the end of January, 2010.

WHEREAS, the work program for that report was to include at a minimum:

- Redefine and re-establish lead agency roles based on current agency structure
- Analyze and recommend ways to reduce the delays caused by the need for conflict resolution
- Develop a procedure for resolution of disagreements within and among agencies, and between applicants and an agency
- Analyze the current operation of the Development Review Committee to determine where improvements can be made

WHEREAS, on January 11, 2010, the Chairman of MCPB and the Director of MCDOT requested a sixty-day extension until the end of March, 2010 to complete the workgroup’s deliberations. On January 26, 2010, the County Council President granted an extension to March 2, 2010 to submit the completed report.

WHEREAS, the workgroup actively met between October 2, 2009 and February 24, 2010. During this period, the workgroup members consulted among themselves and with representatives of the development community to identify examples of recurring conflicts, develop five updated and/or new Lead Agency Designations tables, set up a flowchart with timelines for resolving inter-agency review conflicts with participation by the development applicant, and prepare the Report to the County Council.

WHEREAS, on March 2, 2010, the completed Report was delivered to the County Council President for the Council’s consideration. The March 2, 2010 transmittal letter acknowledged two issues that arose at the February 25, 2010 MCPB worksession on the DRAFT Report and indicated the workgroup would reconvene to address those topics.

WHEREAS, on March 10, 2010, the workgroup met to discuss the MCPB comments and identify changes to the Report to remedy those concerns.

WHEREAS, on April 2, 2010, the amended Report was distributed to workgroup members and other stakeholders. The transmittal letter noted the changes made to address the MCPB comments, requested all parties to immediately follow the new procedures, noted the new process would be memorialized in an MOU, and indicated the workgroup would reconvene in six months to review progress and recommend further refinements to the new procedures.

WHEREAS, on October 11, 2010, the Planning Housing and Economic Development Committee of the County Council (“PHED Committee”) held a worksession on SRA 09-02 at which time the PHED Committee recommended that County Council action on SRA 09-02 be deferred and directed the Parties to enter into the MOU with revisions based upon the worksession discussion.

NOW, THEREFORE, in consideration of the foregoing Recitals, the parties hereby agree to the following:

1. By entering into this MOU, the Parties adopt and will immediately implement the attached Lead Agency Designations and Flowchart with timelines for resolving inter-agency review conflicts as identified in the April 2010 Report of the Conflict Resolution Workgroup on Ways to Improve the Development Approval Process in Montgomery County, Maryland as amended by the issues identified at the March 10, 2010 meeting (“Conflict Resolution Report”).
2. For the purposes of this MOU, the term “development plan” shall apply to any plan or application that is referred to the Montgomery County Development Review Committee for comments.
3. Lead Agencies (to resolve a specific conflict) and supporting Stakeholder Agencies with input in those decisions are identified in the Lead Agency Designations tables in the Conflict Resolution Report. Supporting Stakeholder Agencies with regulatory authority that affect Lead Agency decisions have also been identified in those tables.
4. If conflicts are identified in the inter-agency review comments at the Pre-Development Review Committee (“Pre-DRC”) meeting, and those comments are not resolved as part of the Pre-DRC meeting, the Lead Agency shall convene a meeting of the affected Stakeholder Agencies to discuss and attempt to resolve the conflicts before the Development Review Committee (“DRC”) meeting.
5. At the time of the DRC meeting, the applicant will be notified of, and given an opportunity to comment on all inter-agency review comment conflicts that required a follow-up meeting(s), including those that have already been resolved.
6. At the conclusion of the DRC meeting the Lead Agency staff will have four weeks to convene a meeting, have further discussion of any unresolved conflicts with the Applicant and other Stakeholder Agencies, and reach a solution. If the Applicant and the affected Parties are unable to reach a mutually agreed-upon solution for an issue, the Lead Agency for that issue is charged with making a decision regarding the recommendation that will be made to the Planning Board (“Lead Agency Decision”). The Applicant can request a time extension to submit additional information before a Lead Agency Decision is finalized.

7. If the Lead Agency Decision conflicts with any legal or regulatory requirement or legally authorized policy decision of a Stakeholder Agency, the Department Heads (or designees) of the conflicting agencies shall meet with the Applicant and appropriate staff to reach a solution. This meeting will occur within four weeks of the Lead Agency Decision. A legal or regulatory requirement or legally authorized policy decision of a Stakeholder Agency must be adopted in accordance with an established regulatory process.
8. The Staff Report to the MCPB will identify all inter-agency review conflicts that required Lead Agency Decisions and the process used by the Lead Agency(s) to resolve the conflicts.
9. If the MCPB, in its review of the development plan, agrees with the Lead Agency Decision, the MCPB will incorporate the Lead Agency Decision into its action on the development plan.
10. If the MCPB, in its review of the development plan, does not agree with the Lead Agency Decision, the following will occur:
 - a. If the Lead Agency Decision is not based on a legal or regulatory requirement or legally authorized policy decision of the Lead Agency, the MCPB may render a decision on the development plan that differs with the Lead Agency Decision. If that decision is to approve the proposed development plan, neither the Lead Agency nor any other Party may deny permits or approvals based upon the overruled Lead Agency Decision. However,
 - b. if the Lead Agency Decision is based on a legal or regulatory requirement or legally authorized policy decision of the Lead Agency, the MCPB decision on the plan will be deferred, and the matter will be referred back to the Department Head of the Lead Agency (or his or her Designee) for reconsideration.
11. The Lead Agency will consult with the Applicant and appropriate staff and complete their review of any matter referred by the MCPB within three weeks of the MCPB hearing.
12. If agreement or compromise is reached between the MCPB position and the Lead Agency decision, the development plan application will promptly be set for hearing before the MCPB for final decision. An amended Staff Report will be prepared which will document the additional analysis and discussion of the Lead Agency issue.
13. If agreement or compromise is NOT achieved between the MCPB position and the Lead Agency decision, and the development plan application as submitted is not approvable based on the Lead Agency decision in accordance with this MOU, the Applicant may choose to go forward with its application or amend (with or without

regard to the Lead Agency Decision and anticipated MCPB decision), or to withdraw the application.

14. The Workgroup and other stakeholders, including the development community representatives, will reconvene in the spring of 2011 and from time to time thereafter to determine, based on further experience as a result of implementation of this MOU, whether revisions are needed to these procedures.
15. The Workgroup will provide an annual report to the County Council, the first of which is due after the meeting to be held per Paragraph 14 herein, highlighting examples of Lead Agency Decisions, the steps that were taken to resolve issues that arose, and recommendations for revisions, if any, to either the MOU or the Conflict Resolution Report.

IN WITNESS WHEREOF, the Parties hereby set their hands and seals on the day and year first written above.

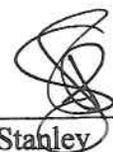
Approved as to legal sufficiency:

The Montgomery County Planning
Board of the Maryland-National
Park and Planning Commission

By: 
Associate General Counsel

By:  5/5/11
Françoise M. Carrier Date
Chair

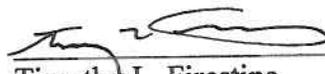
Recommended:

By:  5-5-11
Rollin Stanley Date
Director, Department of Planning

Approved as to legal form
and legality:

Montgomery County, Maryland

By: 
Marc Hansen
County Attorney

By:  5/6/2011
Timothy L. Firestine Date
Chief Administrative Officer

Recommended:

By: Arthur Holmes, Jr. 15 APR 11
Date
Director
Department of Transportation

By: Jennifer Hughes 5/2/11
Date
Acting Director
Department of Permitting Services

By: Richard Bowers 4/27/11
Date
Fire Chief
Montgomery County Fire and
Rescue Service

By: Robert G. Hoyt 4/21/11
Date
Director
Department of Environmental
Protection

By: David E. Dise 4/25/11
Date
Director
Department of General Services

By: Richard Y. Nelson, Jr. 5/4/11
Date
Director
Department of Housing and
Community Affairs

Washington Suburban Sanitary Commission

By: Gary Gumm, Chief Engineer
Engineering & Construction Team

Potomac Electric Power Company

By: George P. Nelson
~~Kim M. Watson~~ George P. Nelson
Vice President - ~~Maryland Affairs~~
Operations + Engineering Perce

LEAD AGENCY DESIGNATIONS
Site Design and Layout

	MNCPPC	DPS	DEP	FRS	WSSC	Dry Util.	DOT	DHCA	MCPS	DGS
1. Configuration of buildings and roads	L									
a. Environmentally Sensitive Design		S*	S				S			
b. Forest conservation and tree save			S				S*			
c. Fire department access				S*			S			
d. Location of cisterns				S*			S			
e. Clearance for wet utilities					S*					
f. Horizontal alignments and classifications of new roads	S*	S		S			S			
g. Open vs closed section roads		S	S	S			S			
2. Site Access	S*	S		S	S	S	L			
3. Density	L							S*		
a. Number of MPDUs/WFH								S*		
4. On-Site Landscaping	L									
a. Relationship to stormwater management facilities		S*								
b. Street tree/streetscape conflicts with wet and dry utilities					S	S	S*			
5. On-site Lighting (excluding road rights-of-way)	L									
6. MPDUs and WFH units								L		
a. Location and unit type	S									
7. Fire department access				L						
a. Environmentally Sensitive Design	S	S*	S				S			
b. Permeable pavement	S	S	S				S			
c. Impervious surface limits	S*	S	S				S			
8. Location of dry utilities						L				
a. Location within road ROWs	S	S		S	S		S*			
b. Location of cisterns vs. PUEs	S			S*			S			
9. Location of wet utilities					L					
a. Location in stream valleys, forested areas and parks	S*	S	S							
b. Location within road ROWs	S	S		S			S*			
c. Location in relation to conservation easements	S*		S							
d. Type of service (i.e., gravity vs. pump stations)	S	S	S*							
e. Connection with future public service areas	S		S							
10. Sites for public schools	S	S	S	S	S	S	S		L	
11. Sites for public buildings	S	S	S	S	S	S	S			L
12. Sites for public parks	L	S	S	S	S	S	S		S	S

* Denotes a stakeholder who has a statutory responsibility for this aspect of the particular review. Conflicts between the recommendations of these stakeholders and the lead agency must be resolved in order for a plan to obtain all necessary approvals, therefore, these conflicts may require elevation to agency principals for resolution. The lead agency will make the final decision when conflicting recommendations are received from stakeholders without statutory authority.

L=lead agency
S=stakeholder

**LEAD AGENCY DESIGNATIONS
Environmental Reviews**

	MNCPPC	DPS	DEP	FRS	WSSC	Dry Util.	DOT	DHCA	MCPS	DGS
a. FCL variance requests			S							
b. Establishment of disturbance limits to provide adequate protection		S*	S			S	S			
10. Noise	L									
a. Design and location of noise walls		S		S		S	S			
b. On-site noise sources			S							
11. SPA Impervious Surface Limits	L									
a. Stormwater management to offset increased imperviousness		S*	S				S			
b. Layout of site and improvements to reduce overall site imperviousness		S	S	S			S			
12. Environmental settings around historic resources	L									
a. Location of SWM facilities		S*	S	S						
b. Location of site plan features		S								
c. Onsite grading		S								

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LEAD AGENCY DESIGNATIONS
Non-APF Transportation Reviews

	MNCPPC	DPS	DEP	FRS	WSSC	Dry Util.	DOT	DHCA	MCPS	DGS
Improvements within the public rights-of-way & easements										
13. Street classification	L						S			
i. Fires department access		S		S*						
j. Public vs private streets		S						S		
14. New streets – horizontal alignments	L	S	S	S			S*			
15. New streets – conceptual profiles	S	S	S	S	S		L			
16. Target speed, construction standards and cross sections	S*	S		S*	S	S	L			
c. Curb return radii										
d. Existing trees in ROW			S							
e. Improvements to storm drain system										
17. Modifications to roadway design standards	S*	S	S	S	S	S	L			
18. Access points and intersections	S*	S		S*	S		L			
19. Traffic calming measures	S	S		S			L			
20. Street interconnections with adjacent properties (current & future)	L	S	S	S	S	S	S			
21. ROW dedications	L	S			S	S	S*			
22. Slope easements for roadways	S	S	S	S	S	S	L			
23. Length of cul-de-sacs	L	S	S	S	S	S	S			
24. Sidewalks, bikeways & regional transit in ROW	L(SP), S*(non-SP)	S*		S	S	S	S*(SP) L(non-SP)			
25. On street parking	S	S		S*	S	S	L			
26. Crosswalk and under/over passes	S	S		S	S		L			
27. Commercial driveways and parking structures	S*	L		S	S	S	S			
28. Stormwater management in public ROW	S	L	S	S	S		S*			
29. Traffic controls & median breaks	S	S		S			L			
30. Open section vs closed section roadways	L	S*	S	S	S		S			
31. Utility location in ROW	S	S		S	S*	S*	L			
32. Fire protection water	S	S	S	L	S		S			
33. Street trees	S*	L	S	S	S	S	S			
On-site improvements outside the public rights-of-way & easements										
34. Transit stops, shelters, entry gates, noise walls, streetscape, street	S*	S		S	S	S	L			

**LEAD AGENCY DESIGNATIONS
Non-APF Transportation Reviews**

	MNCPPC	DPS	DEP	FRS	WSSC	Dry Util.	DOT	DHCA	MCPS	DGS
furniture, lighting, etc.										
35. Pedestrian paths, bikeways	L	S		S	S		S			
36. Access to transit, lighting, noise walls, parking garages, etc.	L	S		S	S	S	S			
37. On-site circulation and loading	S*	L		S	S	S	S			
38. Parking lot design (stacking)	S*(non-SP) L(SP)	L(non-SP) S*(SP)		S	S		S			

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LEAD AGENCY DESIGNATIONS
APF Transportation Reviews

	MNCPPC	DOT*
1. Determine Transportation Review Type: a. Traffic Statement describing exemption from both LATR and PAMR studies b. Traffic Study for LATR including traffic statement regarding PAMR exemption c. Traffic Study for PAMR including statement regarding LATR exemption d. Traffic Study for both LATR and PAMR	L	S
2. Identify number and location of intersections to be studied	L	S
3. Review Report to confirm satisfaction of Figure 2 Completeness Checklist in the LATR and PAMR Guidelines and accuracy of calculations, including: a. adequacy of turning movement counts b. background traffic volumes c. site generated traffic volumes, percentage and directional assignments d. existing and proposed lane use assignments e. total traffic and critical lane volumes f. acceptability of the Pedestrian and Bicycle Impact Statement g. number of trips to be mitigated h. identification of proposed measure(s) to mitigate trips	L	S
4. Review Report to determine if proposed mitigation measures within the right-of-way are technically and operationally feasible	S	L
5. Review Report to determine acceptability of proposed Special Mitigation Standards for PAMR mitigation (using LEED standards)	L	S
6. Determine acceptability of proposed traffic controls including review and approval of studies that evaluate the need for new or modification of existing controls (e.g., traffic signals, stop signs, crosswalks, etc.)	S	L
7. Determine the need to enter into a Traffic Mitigation Agreement and the proposed measure(s) to mitigate trips	L	S
8. Determine technical and operational acceptability of proposed Traffic Mitigation Agreement measures	S	L

*** NOTE: When intersections with State highway(s) are analyzed, the MSHA would be the lead agency or stakeholder (in lieu of MCDOT) for the specific State highway intersection(s)**

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**LEAD AGENCY DESIGNATIONS
Private Street Reviews**

	MNCPPC	DPS	DEP	FRS	WSSC	Dry Util.	DOT	DHCA	MCPS	DGS
39. Street classification	L	S	S	S			S			
k. Fires department access				S*						
l. Open section vs closed section		S*			S					
40. Target speed, construction standards and cross sections	L	S	S	S	S	S	S			
f. Curb return radii										
g. Existing trees in ROW										
h. Storm drain system										
41. Roadway design standards	L	S	S	S	S	S	S			
42. Access points and intersections	L	S		S	S		S			
43. Traffic calming measures	L	S		S			S			
44. Street interconnections with adjacent properties (current & future)	L	S		S	S	S	S			
45. Slope easements for roadways	L	S		S	S	S	S			
46. Length of cul-de-sacs	L	S		S	S	S	S			
47. Sidewalks and bikeways	L	S		S	S	S	S			
48. On street parking	L	S*		S*	S		S			
49. Commercial driveways and parking structures	L _(SP) S*(non-SP)	S*(SP) L _(non-SP)		S			S			
50. Stormwater management in ROW	S	L	S	S	S	S	S			
51. Traffic controls & median breaks	S	L		S			S			
52. Parking lot design (stacking)	L _(SP) S*(non-SP)	S*(SP) L _(non-SP)		S	S		S			
53. Utility location in ROW	L	S	S	S	S*	S*	S			
54. Fire protection water	S	S	S	L	S	S	S			
55. Street trees	L	S	S	S	S	S	S			

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FLOW CHART FOR RESOLVING INTER-AGENCY REVIEW CONFLICTS

