Maryland Department of Transportation
The Secretary's Office

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Beverley K. Swaim-Staley
Secretary

Harold M. Bartlett
Deputy Secretary

January 3, 2011

The Honorable Edward J. Kasemeyer
Chairman
Senate Budget and Taxation Committee
3 West Miller Senate Office Building
Annapolis MD 21401-1991

The Honorable Norman Conway
Chairman
House Appropriations Committee
121 House Office Building
Annapolis MD 21401-1991

Dear Chairman:

Please find enclosed for your consideration, as required by State Finance and Procurement Article § 10A-101(d)(2) and (3), the inaugural annual report concerning Public Private Partnerships that the Maryland Department of Transportation is involved. The language directs:

> *"(d) (2) By January 1 of each year, each reporting agency shall submit to the budget committees, in accordance with § 2-1246 of the State Government Article, a report concerning each public-private partnership under consideration at that time by the reporting agency that has not been reviewed or approved previously by the General Assembly.*
>
> *(3) By January 1 of each year, each reporting agency shall submit to the budget committees, in accordance with § 2-1246 of the State Government Article, a status report concerning each existing public-private partnership in which the reporting agency is involved."*

If you have additional questions or concerns, please do not hesitate to contact Mr. Christopher Patusky, Director, Office of Real Estate, Maryland Department of Transportation at 410-865-1236. Of course, you should always feel free to contact me directly.

Sincerely,

Beverley K. Swaim-Staley
Secretary

Attachment

cc: Budget Committee Members
Mr. Christopher Patusky, Director, Office of Real Estate, Maryland Department of Transportation

Annual Report to the

Maryland General Assembly

regarding

Public-Private Partnerships

(SB 979, HB 1370, Chapters 640 and 641, Acts of 2010; State Finance and Procurement Article § 10A-101(d)(2) and (3))

The Maryland Department of Transportation

January 2011

Public-Private Partnerships
(SB 979, HB 1370, Chapters 640 and 641, Acts of 2010;
State Finance and Procurement Article § 10A-101(d)(2) and (3))

Introduction

The Maryland Department of Transportation (MDOT) hereby submits this *Annual Report to the Maryland General Assembly regarding Public-Private Partnerships* pursuant to Senate Bill 979/ House Bill 1370, Chapters 640 and 641, Acts of 2010 (State Finance and Procurement Article § 10A-101(d)(2) and (3). This report is designed to ensure that the budget committees receive sufficient and timely information regarding the status of each public-private partnership in which MDOT is either involved or considering as required by the following statutory language from State Finance and Procurement Article § 10A-101(d)(2) and (3):

> *"(d) (2) By January 1 of each year, each reporting agency shall submit to the budget committees, in accordance with § 2-1246 of the State Government Article, a report concerning each public-private partnership under consideration at that time by the reporting agency that has not been reviewed or approved previously by the General Assembly.*
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> *(3) By January 1 of each year, each reporting agency shall submit to the budget committees, in accordance with § 2-1246 of the State Government Article, a status report concerning each existing public-private partnership in which the reporting agency is involved."*

I. <u>The Scope of the Report</u>

A. Definition of Public-Private Partnership

The scope of this report includes status reports on MDOT's existing or contemplated projects that meet the following definition of public-private partnership (P3) provided in State Finance and Procurement Article § 10A-101(d)(2) and (3):

"A sale or lease agreement between a unit of State government and a private entity under which:

1. *The private entity assume controls of the operation and maintenance of an existing State facility; or*
2. *The private entity constructs, reconstructs, finances, or operates a State facility or a facility for State use and will collect fees, charges, rents or tolls for the use of the facility."*

MDOT is involved in two existing P3s that meet this definition and is exploring two new P3s that have not yet been reviewed or approved by the General Assembly as follows:

B. MDOT Existing P3s:

1. Seagirt Marine Terminal Agreement: This project meets the statutory definition of a P3 because responsibility for the operation of Seagirt, including gate, terminal and vessel activity, was transferred to a private entity.

2. State Center Transit Oriented Development project: The State Center TOD meets the statutory definition of a P3 because a private entity is redeveloping an existing State office complex.

C. MDOT Potential P3s Not Yet Reviewed or Approved by the Maryland General Assembly

1. Curtis Bay Ordnance Depot (Anne Arundel County) – This project involves MDOT's efforts to acquire a 400+ acre site from the General Services Administration (Anne Arundel County) for redevelopment port-related warehousing, storage and distribution facility. The project might meet the State Finance and Procurement Article § 10A-101(d)(2) definition of a public-private partnership because the project could potentially involve the leasing of a state owned site to a private company that would finance, construct, own and operate the port-related facility.

2. Cambridge Marine Terminal (Dorchester County) – This project involves MDOT's anticipated disposition through a competitive process of a 12-acre parcel that is owned by the Maryland Port Administration (MPA) on the Cambridge Waterfront to a private developer for the purposes of creating a mixed-use development. The project might meet the State Finance and Procurement Article § 10A-101(d)(2) definition of a public private partnership because the site includes an existing MPA dock that will likely be repaired and incorporated into the new redevelopment project as a place where small cruise ships, tall ships, privately-owned boats, and other boats can dock and access the site, the City and the County.

II. Project Status

A. Seagirt

Seagirt Project Summary

The Seagirt Marine Terminal Concession and Lease Agreement were approved by the Maryland Board of Public Works on December 16, 2009.

Seagirt Agreement Framework

The approval by the Board of Public Works successfully transferred the responsibility for the operation of Seagirt (including gate, terminal and vessel activity) to Ports America Chesapeake (PAC) at 0600 hours on January 12, 2010. The transfer of Seagirt to PAC has been transparent to the shipping lines and the lines are pleased with PAC's performance to date. The agreement is performing well by all measures and allows a strong relationship to continue with PAC, which has proven itself a successful local employer and community partner.

Potential Action in Calendar Year 2011

As required by budget language in the 2009 Joint Chairmen's Report (pages 55), a separate JCR report regarding PAC's performance during its first year of operations at Seagirt will be submitted to the General Assembly not later than January 15, 2011. This report contains detailed performance measures of the status of the P3 Agreement.

B. State Center TOD

State Center Project Summary

The Maryland Department of General Services (DGS) owns the 28-acre parcel that comprises the State Center complex and serves as the lead State agency for the project in partnership with MDOT. The site includes the State Center Baltimore Metro station and is adjacent to the Cultural Center Light Rail station. In September 2005, DGS issued a Request for Qualifications seeking a project developer. In March 2006, the State selected a development team that included Struever Brothers, Eccles and Rouse, Doracon Development, and McCormack Barron Salazar to pursue the project pursuant to a Memorandum of Understanding (MOU) that granted the developers an exclusive negotiating privilege (ENP). The State and development team subsequently engaged in an extensive community engagement process that included more than 60 community meetings and attracted more than 600 participants. In December 2007, the Board of Public Works (BPW) approved an Interim Development Agreement (IDA) among DGS, MDOT and the development team that extended the ENP and that laid out a road map for reaching a final MDA. On June 3, 2009, the BPW approved the MDA, which calls for the phased development of a $1.4 billion mixed-use (office space, residential and retail), mixed-income project to be built on the site.

The project team reports to the State Center Executive Committee which serves as an advisory board for the project. The State Center Executive Committee initially comprised the Maryland Secretaries of General Services, Transportation, Business and Economic Development, Planning, and Housing and Community Development. In July 2009, the Executive Committee was expanded to include Maryland Senators Verna Jones and James DeGrange, and Maryland Delegates Talmadge Branch and Galen Clagett. In addition, the Maryland Stadium Authority has attended Executive Committee meetings since July 2009. The Stadium Authority's role, as the state's representative with respect to construction oversight, will likely be defined and formalized during early 2011.

The project entails a ten-year, multiple phase development program with ground-breaking scheduled during calendar year 2011 and the first phase completed in 2013. The site currently contains five State office buildings containing approximately 950,000 square feet of State office space. The new State Center TOD, in addition to adding private office space, residential, and retail components to the site, would replace the existing State office space with new State office space that represents, at a minimum, the same square footage that currently exists.

As permitted in the IDA, the development team restructured itself in May 2009, as approved by the State. The development team added PS Partners (a joint venture of Linden Associates and Ekistics Capital LLC). Struever Brothers Eccles and Rouse assigned its equity interest in the project to PS Partners, but will continue to participate in a consulting capacity. The development team added minority equity partners during 2010 and reached terms with the four minority firms as described in greater detail below.

The minority partners on the development team include: National Development Company (Adrian Washington), State Center Baltimore Developers, LLC (Kevin Johnson, Joseph Haskins, Eddie Brown, Ken Banks), Midtown Convergence (CL McCoy, Omari Patterson), and TAC Companies LLC (Ron Adolph). After extensive negotiations, the current members of State Center, LLC (PS Partners, McCormack Barron and Salazar (MBS)), and the minority partners have negotiated the following proposed ownership and rights structure for the project:

- State Center, LLC: the State Center, LLC entity will be the master development entity for the overall project. It is 33% owned by PS Partners which will serve as managing member, 33% owned by MBS, and 33% owned by Neighborhood Development Company. However, State Center, LLC is a "horizontal" project entity that does not develop any components of the project. Instead, separate development entities will be established to develop and own the office/commercial, the for-sale housing, and the rental housing components for each phase of the project. These "vertical" development entities will generate the returns to the developers. More specifically, the agreement calls for the following:

    - Office and Retail Development Rights: PS Partners generally retains the right to develop the office and retail components for the project. However, PS Partners and the proposed minority partners have negotiated the following agreement for the ownership of "vertical" development entities that develop the office and retail components:

- *Phase One of the Project* -- The office and retail development entity is owned as follows: 50% PS Partners; 20% State Center Baltimore Developers (Kevin Johnson, Joe Haskins, and Eddie Brown); 10% Midtown Convergence (C.L. McCoy and Omari Patterson); 10% TAC (Ron Adolph); 10% Neighborhood Development Company (Adrian Washington).

- For-Sale Housing: National Development Company (NDC) generally retains the right to develop the "for sale" housing for the project. However, the minority partners have agreed to the following ownership structure for the for-sale housing development entity for all phases of the project up to 300 units: 75% NDC; 12.5% State Center Baltimore Development; 12.5% Mid-Town Conversions. If the development includes more than 300 for-sale housing units than PS Partners has the right to participate in additional units.

- Rental Housing: MBS retains all rights to develop the rental housing for all phases of the project.

Potential State Center Agreement Framework

The MDA calls for a phased approach to the development. For each phase, the State will ground lease the phase parcel to the developer and will have the option to lease back office space. The BPW must approve the ground leases for any phase where the State leases back office space. In Phase I, the BPW approved the construction of a 928-space State garage, two ground leases and 490,000 square feet of office leases on July 28, 2010. In future Phases if the State decides not to lease office space during a particular phase, the developer may proceed with construction on a vacant project parcel pursuant to TOD density guidelines. Alternatively, the State can terminate the developer's contract in exchange for reimbursement of the developer's costs from December 2007 forward. Therefore, the MDA gives the State the flexibility either to lease space in new buildings owned by the developer, to remain in its current or refurbished buildings and allow the developer to build the private portion of the TOD around it, or to cancel the agreement upon payment of a termination fee.

The MDA also includes a series of protections for the State. These include, among other things, a required development timeline, the ability to replace any member of the development team who becomes insolvent or cannot obtain financing for the project, and the ability to terminate the agreement for a termination fee equal to the developer's costs in the event the State does not want to proceed with the project or with the developer.

Potential Action in Calendar Year 2011

The Phase One development program includes approximately 515,000 square feet of office space serving the Maryland Department of Health and Mental Hygiene (DHMH), Maryland Transit Administration (MTA) and the Maryland Department of Planning (MDP); approximately 15,000 square feet of private office space; 60,000 square feet of retail space; and 100-130 units of mixed income rental housing. MTA and MDP will share a headquarters building to be constructed near the intersection of Howard Street and Preston Street. The DHMH building and State garage will be constructed on a surface parking lot at Martin Luther King Boulevard and Eutaw Street. The primary costs to the State are: (1) standard predevelopment costs; (2) State office lease rents and costs; and (3) the cost of constructing and financing a 928-space shared garage. The State will receive revenues in the form of ground rents and also in the form of parking fees from non-State users of the shared garage. The ground lease has been structured to provide the State with annual base rent equivalent to the net present value of the land and 7% of net cash flow from the project after the debt is retired. In addition, the State is working with Baltimore City to seek approval of a "Payment in Lieu of Taxes" (PILOT) of $2.50/square foot on the State leased space to effectively cap this cost for State agencies.

Construction of the garage and the MTA/MDP building should begin in this Fiscal Year; however, a recent lawsuit filed involving the project could impact the project timeline.

C. Curtis Bay Ordnance Depot – An acquisition from the General Services Administration for development as a freight rail and highway served warehousing, storage, and distribution facility for use by the Port of Baltimore.

Curtis Bay Project Summary

The Curtis Bay Ordnance Depot (Depot) is currently owned by the U.S. General Services Administration (GSA). The 435.46 +/- acre site is located along Ordnance Road in Glen Burnie, Anne Arundel County, Maryland. It is well served by highway and has existing freight rail access. An aerial map of the site is herein, as Attachment A. The Depot site was made available for purchase in September 2007 by the Federal General Services Administration (GSA).

The Maryland Department of Transportation (MDOT) Office of Real Estate has expressed its interest in acquiring the property from the GSA for use as a port-related warehousing, storage and distribution complex. It is perhaps the largest undeveloped parcel within short driving distance from existing and potential future port facilities. MDOT is currently in discussions with the General Services Administration regarding MDOT's potential acquisition of the Depot. The project could be considered a public private partnership pursuant to State Finance and Procurement Article § 10A-101(d)(2) because it would be located on property owned by MDOT that is leased to a private entity that would develop, own and operate a port-related warehousing, storage, and distribution facility pursuant to an agreement with MDOT.

MDOT has completed both a preliminary concept plan for the complex and a study of the potential benefits of the above development plan.

- Three Hundred and Thirty (330) direct full-time equivalent jobs during the construction period.
- Six Thousand Nine Hundred and Seventy-Eight (6,978) direct and indirect ongoing new Maryland jobs.
- Construction related revenues:
  - $16.7 million for State of Maryland
  - $12.2 million for Anne Arundel County
  - $3.7 million for the City of Baltimore;
- Ongoing tax revenues:
  - $50.3 million for State of Maryland
  - $10.6 million for Anne Arundel County
  - $11.2 million for the City of Baltimore; and
- Impact fee revenues:
  - $8.8 million for Anne Arundel County.

Potential Curtis Bay Agreement Framework

Although discussions are still in a preliminary stage, MDOT anticipates that it will propose that either it or a private developer working in partnership with MDOT would acquire the property from GSA after it has been certified as clean to an industrial use standard (the federal government would be responsible for all environmental remediation costs). MDOT and its private development partner would seek to obtain the parcel for a significantly lower cost that its appraised approximate value of $33 million either by: (1) seeking to offset the value of economic development from the price as potentially allowed through a federal program; (2) negotiating a revenue sharing arrangement with the federal government that allows for no or a low up-front payment for the site; or (3) requesting the property free of cost through the federal government Public Benefits Conveyance program, which would require reversal of the GSA's initial decision on this request. If negotiations are successful and State approvals are forthcoming, then MDOT would enter the property into the Maryland Department of the Environment's (MDE) Land Restoration Program, subject to completion of negotiations with GSA for required access to the property for this purpose and for additional required engineering.

The transfer would likely be subject to an agreement with Anne Arundel County, Maryland currently under discussion calling for transfer of a portion of the site to the County in exchange for a parcel that allows for additional road access to the site. Such an exchange would be contingent upon the completion of the acquisition of the property from GSA and would include the construction of two additional replacement baseball fields for the benefit of Anne Arundel County.

Potential Action in Calendar Year 2011

MDOT might request approval by the BPW during the first half of 2011 of a non-binding Memorandum of Understanding with Anne Arundel County regarding the potential property swap described above subject to applicable notice and review processes. In addition, subject to review and approval processes, MDOT could issue a Request for Qualifications as early as May 2011 seeking a developer for an exclusive negotiating right. If negotiations are successful, then the developer could assist with the acquisition, environmental process and development of the property.

D. Cambridge Waterfront Redevelopment – A disposition for the Maryland Port Administration, through a competitive process, for redevelopment as a mixed use development.

Cambridge Project Summary

The Cambridge Waterfront Redevelopment project would involve the redevelopment of an 11.77 acre Maryland Port Administration (MPA) waterfront parcel located in Cambridge, Maryland that includes a deep water dock and two buildings as a private mixed use community. The project would not meet the P3 definition except that the site includes an MPA dock that might be incorporated into the project to serve small cruise ships, tall ships, private yachts and other boats. The site has not been used as a commercial dock for many years now and the MPA does not foresee that it will use the site or facilities as a traditional port facility in the future. The site is currently leased to the City of Cambridge, at no cost, until July 2014.

The City of Cambridge completed a community planning study for the site a few years ago that called for a mixed-use private development on the site. During the past two years, at the City's request, MDOT has explored the City's redevelopment concept. For example, MDOT staff met with a wide range of stakeholders and state and local officials to discuss the concept. It has also completed certain due diligence regarding the site, including studies that evaluate the condition of the dock, the size of boats that can access the dock through the channel, and development studies. In June 2010, MDOT entered into a nonbinding Memorandum of Understanding (MOU) among MDOT, the MPA and the City of Cambridge that outlined the intentions, considerations and important milestones that would be part of a joint effort to solicit a developer for redevelopment of the site. The MOU is attached.

Potential Cambridge Agreement Framework

MDOT anticipates that it would either sell or long-term lease the site to a private developer that would implement the City's vision for a mixed-use maritime village development on the site. Although the project would require the development of certain infrastructure and public components, MDOT has not made any financial commitments to the project. However, it is likely that the City will request that MDOT fund repairs to the dock as part of the project as well as the creation of a bike/pedestrian connection from the site to the City's downtown area. MDOT projects that the minimum required dock repairs would cost approximately $500,000. MDOT has not made any further projections regarding potential project infrastructure costs, other than to analyze the tax increment financing capacity of the project.

Potential Action in Calendar Year 2011

MDOT anticipates giving notice to the budget chairs of its intention to issue a Request for Qualifications (RFQ) during January 2011, assuming that there are no material questions raised. The RFQ would be issued after the 45 day notice and comment period provided to the Budget Chairs.

Public-Private Partnerships
(SB 979, HB 1370, Chapters 640 and 641, Acts of 2010; State Finance and Procurement Article § 10A-101(d)(2) and (3))

The following timeline is being used as a guide for project development:

- Developer Solicitation Issued – February 2011;
- Selection of developer for Exclusive Negotiating Privilege – April 2011;
- Negotiation of Master Development Agreement (MDA) - May – December 2011;
- Approval of MDA – January – March 2012; and
- Project Groundbreaking – January – March 2013.