Maryland Department of Transportation
The Secretary's Office

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Beverley K. Swaim-Staley
Secretary

Darrell B. Mobley
Deputy Secretary

January 11, 2012

The Honorable Edward J. Kasemeyer
Chairman, Senate Budget and Taxation Committee
3 West Miller Senate Building
11 Bladen Street
Annapolis MD 21401

The Honorable Norman Conway
Chairman, House Appropriations Committee
1312 Whittier Drive
Salisbury MD 21801-3241

Dear Chairmen:

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), and Transportation Article § 4-406 (c)(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 or MDTA are 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.*
>
> *(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."*

My telephone number is 410-865-1000
Toll Free Number 1-888-713-1414 TTY Users Call Via MD Relay
7201 Corporate Center Drive, Hanover, Maryland 21076

And the following statutory language from Transportation Article § 4-406 (c)(2) and (3):

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If you have any questions concerning this report, please do not hesitate to contact Mr. Leif Dormsjo, Senior Advisor to the Secretary at 410-865-1006. Of course, you should always feel free to contact me directly.

Sincerely,

Beverley K. Swaim-Staley
Secretary

cc: Members of the Senate Budget and Taxation Committee
Members of the House Appropriations Committee
Mr. Leif Dormsjo, Senior Advisor for the Secretary, 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) and
Transportation Article § 4-406 (c)(2) and (3))

The Maryland Department of Transportation (MDOT)

and

The Maryland Transportation Authority (MDTA)

January 2012

Annual Report on MDOT & MDTA 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) and
Transportation Article § 4-406 (c)(2) and (3))

Introduction

The Maryland Department of Transportation (MDOT) and Maryland Transportation Authority (MDTA) hereby submit 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), and Transportation Article § 4-406 (c)(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 or MDTA are either involved or considering as required by the following statutory language from State Finance and Procurement Article § 10A-101(d)(2) and (3):

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I. The Scope of the Report

A. Definition of Public-Private Partnership (P3)

The scope of this report includes status reports on MDOT's and MDTA'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) and Transportation Article § 4-406 (c)(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 under the existing definition: the Seagirt Marine Terminal project and the State Center Development project Phase I. MDTA is involved in one in-progress P3 under the existing definition: the I-95 Travel Plazas Redevelopment project. Future phases of the State Center project may be structured as P3s. There are two additional MDOT projects which may or may not be structured as P3s. It is not anticipated that decisions will be made in the coming year to make that determination; however, MDOT will keep DLS and the budget committees informed if these or other projects are structured as proposed P3s.

B. MDOT Existing P3s State Finance and Procurement Article § 10A-101(d (3):

1. Seagirt Marine Terminal project: A private entity has assumed responsibility for the operation of Seagirt, including gate, terminal and vessel activity.

2. State Center Development project Phase 1: In Phase 1 of the State Center project, a private entity will reconstruct, finance and collect rents for existing state offices.

C. MDTA Existing (in-progress) P3s Transportation Article § 4-406 (c)(2) and (3):

3. I-95 Travel Plazas Redevelopment: MDTA is currently seeking a partnership through the execution of a Lease and Concession Agreement with a single entity to undertake the re-development (including financing) and long-term operation of the I-95 Travel Plazas.

D. P3s Under consideration not previously reviewed or approved by the General Assembly State Finance and Procurement Article § 10A-101(d)(2):

1. State Center Development project – future phases: Future phases of the project may or may not include the reconstruction, financing and collecting of rents for existing office space.

E. Projects which may or may not be structured as P3s in the future

1. Curtis Bay Ordnance Depot (Anne Arundel County) – It is unclear whether this will evolve into a P3. This project involves MDOT's efforts to acquire a 400+ acre site from the General Services Administration (Anne Arundel County) for redevelopment of a port-related warehousing, storage and distribution facility.

2. Cambridge Marine Terminal (Dorchester County) – It is unclear that this project would evolve into a P3. 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.

II. Project Status

A. Seagirt

Ports America Chesapeake (PAC) assumed operational control of Seagirt Marine Terminal about two years ago, in January 2010. The Maryland Port Administration continually monitors Seagirt's key performance indicators, and since the transition, Seagirt's operational efficiency has remained high while cargo throughput has increased.

One of the primary goals of the Seagirt P3 Agreement was to ensure the construction of a new 50-foot deep container berth prior to the completion of the Panama Canal expansion in June of 2014. Berth construction is well underway and the project is scheduled to be completed in summer 2012, well before the Lease and Concession Agreement contract terms require. Other elements of the Agreement include: the State received a one-time payment of $140 million, and an annual lease payment of $3.2 million; PAC returned 40+ acres to MPA for other cargo needs; PAC improved the Canton Warehouse site and existing cranes; and PAC is responsible for all system preservation, environmental issues and maintenance dredging at the terminal for the 50-year term of the agreement.

The transfer of Seagirt to PAC has been transparent to the shipping lines and the lines are very pleased with PAC's performance to date. MPA and PAC jointly market for containers and cargo volumes grew in 2010 and again in 2011. Most recently, a joint marketing effort by MPA and PAC resulted in Hapag-Lloyd's selection of Baltimore as its first U.S. stop for direct shipping from Northern Europe, a move estimated to boost container traffic by roughly 10 percent. 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.

Construction of 50-foot deep berth at Seagirt is underway.

Potential Action in CY 2012

MDOT does not anticipate any potential action in calendar year 2012.

B. State Center

State Center Phase 1 Summary- The Board of Public Works approved a Master Development Agreement, which calls for a phased development of a $1.4 billion mixed-use (office, residential and retail) project on the site. The project is currently envisioned as five phases, with a 10-15 year build out. Under Phase 1, a private entity will reconstruct, finance and collect rents for existing state offices.

State Center – future phases - Future phases may not be considered P3s since they may be limited to a more traditional joint development project, the lease or sale of State real estate for private development.

State Center Background: 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 stop. 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. In December 2007, the 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 includes the Maryland secretaries of General Services, Transportation, Business and Economic Development, Planning, and Housing and Community Development, Maryland Senators Verna Jones and James DeGrange, Maryland Delegates Talmadge Branch and Galen Clagett, and the Maryland Stadium Authority Executive Director Michael Frenz.

The project entails a 10-15 year, multiple phase development program. The site currently includes five State office buildings containing approximately 950,000 square feet of State office space. The new State Center, in addition to adding private office space, residential, and retail components to the site, would replace the existing State office space with new leased State office space.

As permitted in the IDA, State Center, LLC restructured itself during 2009-10 subject to State approval. In May 2009, Struever Brothers Eccles and Rouse assigned its equity interest in State Center to PS Partners (a joint venture of Linden Associates and Ekistics Capital LLC). During early 2009, Doracon Development withdrew from the project and was subsequently replaced by a minority development team in 2010 that includes: National Development Company (Adrian Washington), State Center Baltimore Development, LLC (Kevin Johnson, Joseph Haskins, Eddie Brown), Midtown Convergence (CL McCoy, Omari Patterson), and TAC Companies LLC (Ron Adolph). The development includes the following:

- Master Developer Rights: 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 minority partners. 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 Convergence. If the development includes more than 300 for-sale housing units then 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.

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 in newly constructed or refurbished privately-owned office buildings. Pursuant to the MDA, the BPW must approve the ground leases for any phase where the State leases office space in a building.

On July 28, 2010, the BPW approved the ground leasing of two parcels to the developer in exchange for both a base ground rent with escalation and a profit share. 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. The BPW also approved state office space leases totaling approximately 500,000 square feet. The BPW also approved amendments to the MDA that included MDOT's agreement to fund the construction of a 928-space State garage in an amount not to exceed $28.2 million in hard and soft construction costs. In December 2010, the BPW approved amendments to the leases, as well as a lease of the State garage from MEDCO to MDOT in exchange for rent payments that would be used by MEDCO to make garage debt payments. MDOT is in the process of implementing this agreement via an arrangement with MEDCO that calls for: (1) MEDCO to issue bonds to finance the construction of the garage; (2) MEDCO to own the garage; (3) MEDCO to lease the garage to MDOT for an amount that is equivalent to the bond payments plus operating costs. MDOT will receive all garage parking fees as revenue.

The Phase One development program includes approximately 500,000 square feet of office space serving the Maryland Department of Health and Mental Hygiene (DHMH), the 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, Jr. Boulevard.

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 unpaid costs from December 2007 forward through a certain point in the project. The MDA also provides that the developer must meet a required development timeline and gives the State the ability to replace any member of the development team who becomes insolvent or cannot obtain financing for the project.

<u>Anticipated Action on the Project in CY12</u>:
Phase One of the project has received all necessary State approvals to proceed to financing and construction. However, a lawsuit filed in the Baltimore Circuit Court in December 2010 by a group of downtown building and business owners has made it difficult for the private developer to obtain financing for the private portions of the project. Design of the State garage and infrastructure is anticipated to continue in CY12. MDOT and DGS will continue to brief the Budget Chairs and the Department of Legislative Services about State Center in CY12.

C. MDTA's I-95 Travel Plazas P3 Redevelopment

The only P3 that is being considered or actively pursued by the MDTA is the I-95 Travel Plazas P3 Redevelopment project, about which we previously reported to the Budget Committees in a letter dated March 11, 2011. The letter provided notification of the MDTA's intent to issue a public notice of solicitation for a P3 as required under Transportation Article § 4-406 (c) (1). We also provided briefings to the Budget Committees on November 7, 2011 and November 10, 2011.

The original John F. Kennedy Memorial Highway (I-95) included the Maryland House service area in Harford County, which at its opening in 1963 provided a restaurant and two automotive service stations for highway travelers. The second service area, the Chesapeake House, opened in 1975, north of the Susquehanna River in Cecil County. Engineering studies conducted in 2004-05 identified issues that warrant full redevelopment of both locations. Traffic volumes have increased significantly since the original design concept was developed and overcrowding is a problem during peak interstate travel periods, like holidays and summer weekends. The facilities are nearing the end of their design life and the changing nature of highway-oriented food and beverage business requires an updated interior and site layout. Since the opening of the Travel Plazas in 1963 and 1975, these facilities have been operated by third-party vendors under revenue-generating contracts. The current contracts expire in September 2012.

This project involves MDTA's plan to redevelop the two travel plazas located on I-95 and includes the Maryland House and Chesapeake House Travel Plazas on I-95 (Harford County and Cecil County). MDTA is seeking a firm, or a team of firms, to conduct all Design-Build-Finance-Operate-Maintain (DBFOM) activities in exchange for the privilege of conducting commercial operations under the MDTA's oversight and specific service level requirements for a period of 35 years under a ground lease and agreement.

The redeveloped facilities will result in an appropriately sized primary service facility accommodating all functional requirements; a separate fuel service station with a canopy, office, and a convenience store with an adequate number of fueling positions. The primary service facility will include restroom facilities, food service facilities, indoor and outdoor seating, retail space, tourism information, administrative offices, and maintenance facilities.

The RFP for this project was initially issued on March 25, 2010 with proposals due on November 15, 2010. On November 8, 2010, it was determined that it was in the best interest of the State to cancel the RFP solicitation. The MDTA obtained the services of a P3 advisor to assist the MDTA in preparing a revised RFP. In addition, support was requested and received from other State agencies, including the Maryland Port Administration and the Maryland Aviation Administration, to review the RFP prior to the RFP being re- issued. The MDTA re-issued a Request for Proposals (RFP) on June 27, 2011.

The proposals for the I-95 Travel Plazas P3 Redevelopment project were due on November 10, 2011. The MDTA has received multiple proposals in response to the RFP. The evaluation of the proposals is on-going by a team of senior level MDTA and MDOT staff. The team evaluating the proposals is being assisted by advisors and other State agencies personnel knowledgeable with P3 projects.

It is anticipated that the analysis of the impact of the partnership agreement as required by Transportation Article § 4-406 (e) will be sent in early 2012. The language directs:

> "*(e) Not less than 30 days before entering into a public-private partnership agreement, the Authority shall submit to the budget committees, in accordance with § 2-1246 of the State Government Article, an analysis of the impact of the proposed public-private partnership agreement on the Authority's financing plan, including the Authority's operating and capital budgets and debt capacity.*"

III. Projects that may or may not be structured as P3s

There are two projects which are not currently structured as P3s. While reported previously as P3s it has not been determined that these projects will proceed as P3s, therefore they have not been reviewed by the General Assembly. At this time, it is not clear that they will be structured as P3s. It is not anticipated decisions will be made in the coming year to make that determination, however, MDOT will keep the Department of Legislative Services (DLS) and the budget committees informed if these or other projects are expected to be structured as P3s.

A. 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. 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. MDOT is currently in discussions with the General Services Administration regarding MDOT's potential acquisition of the Depot. It is unclear whether this project would be pursued as a P3, given the uncertainty about the potential project's ownership and financial structures.

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). A framework for the implementation of the project will be developed in the future and reported to DLS and the budget committees.

Potential Action in Calendar Year 2012

MDOT will continue to work with GSA to ensure the property has been certified as clean for an industrial use. Additional environmental studies are expected by the GSA in CY12. Acquisition is not anticipated to proceed until the completion of those studies.

B. 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 will likely not be structured as a P3, but as a more traditional joint development real estate project.

The City of Cambridge completed an economic development study for the site calling 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 and engaged stakeholders. It has also completed certain due diligence regarding the site. 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 Request for Qualifications were released on May 4, 2011. MDOT received submittals and is currently in the review process.

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 may require certain infrastructure and public components, MDOT has not made any financial commitments to the project. Potential infrastructure needs related to the development include repairs to a dock on the site, as well as bike/pedestrian improvements connecting the site to the City's downtown area.

Potential Action in Calendar Year 2012

MDOT anticipates entering into an agreement with a selected developer, which will not require BPW action, nor convey any property rights. The agreement will provide an Exclusive Negotiating Privilege to allow for the developer to seek community & stakeholder input into a site plan. MDOT will provide project updates throughout the year to the DLS analyst assigned to the Cambridge project.

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

- Developer Solicitation Issued – May 4, 2011;
- Selection of developer for Exclusive Negotiating Privilege – December 2011;
- Community/Stakeholder Input& Design – January 2012 – December 2012
- Negotiation of Master Development Agreement (MDA) – January 2013 – August 2013; and
- Approval of MDA – September 2013 – December 2013.