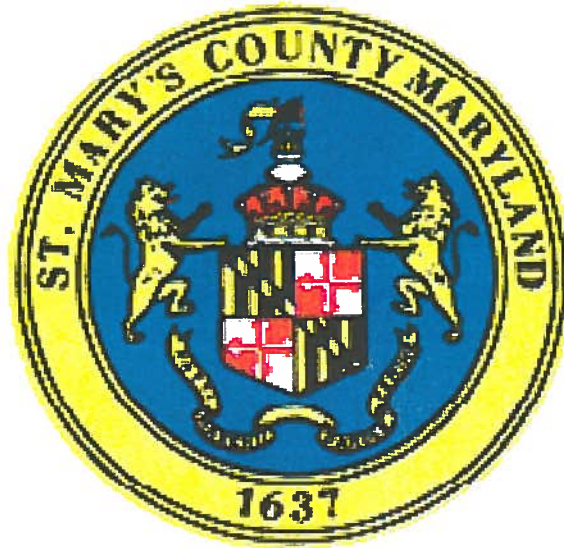
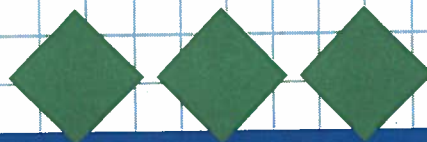


Final Report



**Metropolitan Commission
Task Force**

June 2010



Final Report
of the
St. Mary's County
Metropolitan Commission Task Force

June 2, 2010

This report was produced with the assistance of the University of Maryland's Institute for Governmental Service and Research.

University of Maryland
Institute for Governmental Service and Research
4321 Hartwick Road, Suite 208
College Park, Maryland 20742

Phone: 301.405.4905
Fax: 301.314.9258
www.igsr.umd.edu

Table of Contents

Letter of Transmittal	iv
Members of the Task Force	1
House Bill 1559	2
History.....	3
Expressed Powers of METCOM	4
Findings.....	5
Recommendations.....	8
Recommendation #1	8
Recommendation #2	9
Recommendation #3	10
Recommendation #4	10
Recommendation #5	12
Recommendation #6	13
Recommendation #7	14
Recommendation #8	15
Recommendation #9	16
Recommendation #10	16
Recommendation #11	16
Recommendation #12	17
Recommendation #13	17
Recommendation #14	18
Summation	19
Appendix A: House Bill 1559.....	A1
Appendix B: Donahue Transcription.....	B1
Appendix C: Cox Transcription.....	C1
Appendix D: Task Force Meeting Minutes	D1

Letter of Transmittal

**ST. MARY'S COUNTY METROPOLITAN
COMMISSION TASK FORCE**

June 2, 2010

Senator Roy P. Dyson
102 James Senate Office Building
11 Bladen Street
Annapolis, Maryland 21401-1991

Delegate John F. Wood, Jr.
422 Lowe House Office Building
6 Bladen Street
Annapolis, Maryland 21401-1991

Delegate John L. Bohanan, Jr.
350 Lowe House Office Building
6 Bladen Street
Annapolis, Maryland 21401-1991

Delegate Anthony J. O'Donnell
212 Lowe House Office Building
6 Bladen Street
Annapolis, Maryland 21401-1991

County Commissioner President Jack Russell
P.O. Box 653
Leonardtown, Maryland 20650

County Commissioner Kenneth R. Dement
P.O. Box 653
Leonardtown, Maryland 20650

County Commissioner Lawrence D. Jarboe
P.O. Box 653
Leonardtown, Maryland 20650

County Commissioner Thomas A. Mattingly, Jr.
P.O. Box 653
Leonardtown, Maryland 20650

County Commissioner Daniel H. Raley
P.O. Box 653
Leonardtown, Maryland 20650

Re: St. Mary's County Metropolitan
Commission Task Force Report

Gentlemen:

It is our pleasure to provide you with the Metropolitan Commission Task Force's Final Report, as mandated by House Bill 1559 (2009 legislative session). Under the provisions of HB 1559, the Task Force's members were appointed by the Southern Maryland Delegation, the Board of County Commissioners for St. Mary's County, and the Metropolitan Commission. The Task Force has held numerous public meetings since its creation, including a public forum to solicit public input.

It is our hope that the enclosed Final Report will assist the Southern Maryland Delegation, the Board of County Commissioners and the Metropolitan Commission in enacting recommendations that will improve the structure and governance of the Metropolitan Commission to face the many challenges it faces in providing public water and sewer service to a growing population. Some of the Task Force recommendations will require additional study, debate and drafting, particularly the re-write of Chapter 113 of the St. Mary's County Code, which is the enabling legislation for the Metropolitan Commission.

On behalf of the entire Task Force, thank you for the opportunity to contribute to this important task. We would also like to take this opportunity to publically express our appreciation to Ford L. Dean, who generously volunteered his time, energy and intellect to the drafting of the Final Report.

Very Truly Yours,



Mary Lynn Stone
Co-Chair



Joseph R. Densford
Co-Chair

**REPORT OF THE ST. MARY'S COUNTY
METROPOLITAN COMMISSION TASK FORCE
June 2, 2010**

Members of the Task Force:

Mary Lynn Stone, Co-chairperson (Business owner)

Joseph R. Densford, Co-chairperson (Attorney and former County Attorney)

F. Elliott Burch, Jr. (Business owner)

Ford L. Dean (Former County Commissioner and business owner)

Shelby P. Guazzo (Former County Commissioner and current member of Planning Commission)

Glen Ives (Former Commanding Officer of the Patuxent River Naval Air Station and currently associated with a defense contractor)

Robert T. Jarboe (Former County Commissioner and farmer)

Susan P. McNeill (Retired Air Force Colonel and attorney; current member of Planning Commission)

James W. Spence (Former Director of St. Mary's County Office of the Department of Assessments and Taxation and former member of Planning Commission)

Frank Taylor (Business owner and former member of the Metropolitan Commission Board of Directors)

Staff Support:

University of Maryland Institute For Governmental Service and Research
- Dr. Robin Parker Cox and Richard Lawrence

St. Mary's County Department of Land Use and Growth Management staff

St. Mary's County Metropolitan Commission staff

Recording Secretary, Jada Stuckert and Sarah Cannavo

The Task Force acknowledges the able assistance of those who provided Staff Support, such assistance having been a significant contribution to the Task Force in the accomplishment of its assigned task.

House Bill 1559

House Bill 1559 (attached hereto as Appendix 1) was presented by the St. Mary's County Delegation to the General Assembly of Maryland in the 2009 Legislative Session, said bill was subsequently adopted by the General Assembly and signed into law by Governor Martin O'Malley.

Given the fact that the St. Mary's County Metropolitan Commission (hereafter, METCOM) has been in operation for forty-six (46) years, the St. Mary's County Delegation determined that a current review of the operation of METCOM would be appropriate. The bill provided for the creation of a Task Force consisting of ten (10) members appointed by the Board of St. Mary's County Commissioners, the St. Mary's County Delegation to the General Assembly and the St. Mary's County Metropolitan Commission Board of Directors to study the governance and structure of METCOM and make recommendations regarding: (1) the structure and governance of METCOM, and (2) how best to continue the provision of water and sewer services to the citizens of St. Mary's County, Maryland. The bill further provided that the Task Force shall report, on or before July 1, 2010, its findings and recommendations in the form of a written report.

The Task Force commenced its work in August 2009. Initially and throughout the time the Task Force was engaged in its efforts, significant time was devoted to the study of all aspects of METCOM, its organization, structure, procedures and the details relative to the provision of public water and sewer services to the citizens of St. Mary's County. Additionally, time was devoted to gain an understanding of the relationship between METCOM and County government---the Board of County Commissioners, the Planning Commission and various County departments.

Included among the topics and areas of study in this phase of the Task Force's efforts were:

- Review of Chapter 113 of the St. Mary's County Code, the statutory basis for METCOM
- Review of METCOM's By-Laws and organizational structure
- Tour of the Marlay-Taylor Wastewater Treatment Plant
- Review of the water and sewer utilities in selected Maryland counties
- Various METCOM processes: capital planning & budget, financing requirements, rate determination, operating budget and development review
- METCOM's personnel manual, procedures, policies and salary scale
- The County Comprehensive Land Use Plan and its relationship to the County's Transportation Plan, Parks and Recreation Plan, Solid Waste Plan and the Comprehensive Water and Sewerage Plan
- Review of METCOM's Engineering Department, Operations Department, Fiscal Department, Human Resources Department and IT Department
- Review of the Financial Statements and Independent Auditor's Report for METCOM for years ending June 30, 2009 and 2008
- Review of METCOM's 2009 Facilities Plan for the 5th and 8th sanitary districts

- Met with Edward Donahue, water and sewer utility consultant provided by Dr. Robin Parker Cox (A transcription of Mr. Donahue's comments is attached hereto as Appendix 2)

Additionally, the Task Force met with the METCOM Board of Directors and conducted an advertised public forum in which members of the general public were invited to appear before the Task Force and offer comments relative to METCOM and its operations/issues.

History

The law providing for the creation of METCOM was approved by the Maryland General Assembly on April 15, 1957 (LAWS OF MARYLAND, CHAPTER 816, House Bill 852), the bill having been developed and introduced by then Delegate J. Frank Raley, Jr., who subsequently also served as State Senator.

Delegate Raley proposed the creation of a sanitary district and METCOM empowered to consolidate the then existing several privately owned sewage treatment plants discharging effluent into the Wicomico, St. Mary's, Potomac and Patuxent rivers, and the Chesapeake Bay --- each of varied treatment methods and effectiveness. Among the privately owned sewage treatment plants was one serving the greater Lexington Park area, in addition to the sewage treatment plant owned and operated by the Navy to serve the Patuxent River Naval Air Station. While the Navy for a time agreed to accept for disposal some off-base generated sewage, due to increasing growth and development at Pax River, the Navy ultimately reached the point where it no longer wished to receive off-base sewage for treatment. Concurrent with the growth at Pax River, there was an evolving growth of the Lexington Park area in support of the Navy base. The increased private development generated increased loads of sewage which the private system could not handle nor meet the increasingly more stringent standards of treatment required by the federal Clean Water Act.

Delegate Raley recognized that if St. Mary's County was to continue to grow and develop, if Pax River were to be supported and if the pollution of tidal waters was to be abated, there was the need for public involvement in the provision of adequate public water and sewer services. His solution was House Bill 852 which created METCOM, a separate corporation, organized as a non-profit body politic and corporate, outside of County government. There were two primary reasons that METCOM was created as such: (1) County government in 1957 lacked the required organizational structure, for example, there did not exist a County Department of Public Works, and (2) the Board of County Commissioners then in office did not support the creation of a sanitary district and public involvement in the provision of public water and sewer services. In fact, while the legislation authorizing the creation of METCOM was approved in 1957, METCOM did not actually become operational until after the election of 1962 when a different Board of County Commissioners agreed to appoint the METCOM Board of Directors. METCOM began service in 1964.

The sources for the above historical perspective were: House Bill 852, discussion with former State Senator J. Frank Raley, Jr. and an article, "MetComm: Neither Fish nor Fowl" by former reporter for The Enterprise, Viki Volk.

A comparison of the 1957 House Bill 852 with Chapter 113 of the Code of Public Local Laws for St. Mary's County, the current law governing METCOM, will reveal that in the intervening fifty-two (52) years there has been an evolution in the law's provisions, accomplished by in excess of twenty (20) amendments over the years --- each designed to improve the operating structure of METCOM as issues have presented themselves. These amendments have been accomplished through the cooperation of successive Boards of Directors of METCOM, Boards of County Commissioners and Local Legislative Delegations.

Expressed Powers of METCOM and the Board of County Commissioners as set forth in Chapter 113 of the St. Mary's County Code

Chapter 113 provides that the sanitary districts created there under are under the jurisdiction of the members of a Commission with the name "St. Mary's County Metropolitan Commission". In common usage the Commission is also known as the Board of Directors and the term St. Mary's County Metropolitan Commission has evolved to include the total organization consisting of the Board of Directors and the professional staff. In this report the term **METCOM** refers to the total organization and the term **Board of Directors** refers to the Commission.

Section 113-3. sets forth that St. Mary's County is divided into ten (10) sanitary districts, the individual boundaries of which are adopted by the Board of Directors and must be approved by the Board of County Commissioners. While the ten sanitary districts still exist, the amendments to Chapter 113 adopted in 2007 provide that rates are now uniform throughout all sanitary districts, rather than varying for each sanitary district as was the former case.

In accord with separate state statutes, St. Mary's County, as other Maryland counties, is required to adopt a Comprehensive Water and Sewerage Plan, namely, the "St. Mary's County Comprehensive Water and Sewerage Plan" (hereafter, W&S Plan) and to review same on at least a three year cycle. The W&S Plan is in effect a growth management tool and places the entire area of the County in several Water and Sewer Categories which bear a relationship to the time frame within which a specific area is projected to be served by public water and/or sewer. The Plan provides that an individual area of the County cannot be served by public water and sewer until that individual area has been placed in the appropriate W-1, W-3 or S-1, S-3 category. The approval of the W&S Plan, and any amendments thereto, is vested in the Board of County Commissioners. To ensure that METCOM's capital projects are eligible for receipt of State loan funding, the W&S Plan must be amended annually by the Board of County Commissioners, to include METCOM's Five Year Capital Improvement Budget/Plan which is updated annually.

The provision of public water and sewer services within those areas appropriately designated for such services is under the jurisdiction of the METCOM Board of Directors which consists of seven (7) voting members appointed by the Board of County Commissioners and one (1) non-voting member, the Commanding Officer of the Patuxent River Naval Air Station --- or his/her designated representative. METCOM's role in the provision of water and sewer services deals with **how** such services are provided, not **where** the services are provided. The where and when water and/or sewer services are provided is a collaborative function of the Board of County

Commissioners, the Planning Commission and the County Department of Land Use and Growth Management.

For the purpose of providing funds in connection with the provision of water supply and sewerage systems, the Board of Directors is authorized from time to time to issue bonds to fund such provision. The full faith and credit of the County is pledged as collateral for such bonds which must be approved by the Board of County Commissioners. Section 113-6 of the St. Mary's County Code provides that the total issue of bonds in any sanitary district shall not exceed twenty-five percent (25%) of the total value of the property assessed for County taxation purposes within the sanitary district.

Section 113-1.C. of the St. Mary's County Code confers upon the Board of Directors the right to appoint personnel as may be required to fulfill the obligations of the Board of Directors, and further requires that the creation of any new positions is subject to the approval of the Board of County Commissioners.

Section 113.1.F provides that the Board of County Commissioners may in its discretion appoint an auditor to conduct an audit of METCOM's financial affairs and report the findings of such audit to the Board of County Commissioners.

Findings

House Bill 1559 charges the Task Force with making recommendations on “ (1) the structure and governance of the St. Mary's County Metropolitan Commission and (2) how best to continue the provision of water and sewer services to the citizens of St. Mary's County, Maryland.” As the members of the Task Force set about the task of formulating these recommendations, it became evident that first there needed to be an assessment of the current state of the provision of these services. Accordingly, the Task Force decided to identify what aspects of the current provision of water and sewer services appear to be working well, and those aspects for which there is indicated improvement.

With respect to sewerage systems, METCOM currently owns and operates five waste water treatment plants: Wicomico Shores, St. Clements Shores, Forrest Farm, Airedale Road and Marlay-Taylor. Only the Marlay-Taylor Wastewater Treatment Plant discharges into tidal waters, the remaining ones dispose of treated sewage effluent utilizing either spray irrigation on land or rapid ground infiltration. In addition, METCOM operates, but does not own, certain waste water treatment plants throughout the County which are either privately owned or owned by the Board of Education. The level of sewage treatment at all plants is in compliance with current State and Federal requirements. Recent changes in State sewage treatment standards, for example the increased removal of nitrogen, will require an upgrade of the Marlay-Taylor Wastewater Treatment Plant ---- similar plant upgrades will in fact be required for most, if not all, of the individual waste water treatment plants operating within the State which discharge into tidal waters. It is envisioned that a portion of the cost of these treatment plants upgrades will be an obligation of the State.

The primary waste water treatment plant is the Marlay-Taylor plant. This plant has a treatment capacity of 6.0 million gallons per day, or 24,000 EDU's per day if calculated at 250 gallons per EDU. At this time, the average current flow rate through the plant is 4.0 million gallons per day (16,000 EDU's per day). There exists, however, the condition whereby the number of **allocated** but unused EDU's of capacity plus the current average daily flow rate totals 5,750,000 gallons (23,000 EDU's) which represents 95.83% of the plant's total capacity. On its face, it would appear that the plant is nearing its current total capacity, but this is a paper capacity issue, given the fact that the current actual average flows into the plant are 4,000,000 gallons (or 16,000 EDU's) per day, which is only 66.66% of the plant's capacity. METCOM currently serves 10,833 public sewer customers.

METCOM currently operates 27 water supply and distribution systems supplying 406,300,613 gallons/year with an average of 1,107,143 gallons/day. METCOM currently serves 12,950 public water customers.

One measure of the efficiency of METCOM is the rates charged to its customers for the collection and treatment of sewage and the provision of public water. St. Mary's County enjoys a lower monthly combined service rate than that charged in Calvert and Charles counties. Indicated below is a comparison of the FY 2011 Proposed Monthly Service Rates for the three Southern Maryland counties, to which METCOM has made certain adjustments to provide a meaningful and accurate comparison among the three (3) counties ---- given the variations in charges which exist in each county.

<i>FY 11 Monthly Service Rates</i>	<i>Calvert</i>	<i>St. Mary's</i>	<i>Charles</i>
Water – Metered			
6,000 gallons	\$11.16	\$16.38	\$20.28
Account Charge	12.79	0.00	0.00
System Improvement Charge	0.00	5.43	0.00
	<u>\$23.95</u>	<u>\$21.81</u>	<u>\$21.91</u>
Sewer – Non-Metered			
Non-Metered Charge	\$41.32	\$29.36	\$39.67
Account Charge	0.00	0.00	1.33
System Improvement Charge	0.00	9.00	0.00
	<u>\$41.32</u>	<u>\$38.36</u>	<u>\$41.00</u>
Combined Water and Sewer	\$65.27	\$60.17	\$62.91

NOTE: For St. Mary's and Charles Counties, the above rates assume monthly water consumption of 6,000 gallons per month. St. Mary's rates are for the period of July 2010-June 2011. Any water consumption overage is billed per each 1,000 gallons at the overage rates indicated below:

St. Mary's (water rate per 1,000 gal. of overage): \$2.73
Charles (water rate per 1,000 gal. of overage): \$3.38

For Calvert County rates are on a calendar basis and are for the period of January-December 2011. An inherent difference in calculating comparable rates of Calvert to St. Mary's and Charles is the fact that Calvert has variable rates for different locations within the county. The rates indicated above for Calvert is a compilation of the variable rates adjusted to make them comparable with those of St. Mary's and Charles.

METCOM is financially solvent. It is current in retiring all outstanding debt obligations and has a current assets balance in the amount of \$9,639,008 per the June 30, 2009 audit, an amount considered not to be excessive by the Task Force given the ongoing operating needs and perpetual maintenance and expansion of its water and sewerage systems. While the full faith and credit of the county is pledged as collateral for METCOM issued debt, METCOM's operation is not funded with general county tax revenues ---- rather by the users of its systems.

It is the current practice of METCOM that new sewage collection systems and public water distribution lines created for the purpose of serving new private developments, while designed and constructed per METCOM standards and supervision, are funded in large part by developers who in turn convey the newly constructed systems to METCOM in fee simple for \$1.00 for operation and maintenance, after which time METCOM owns, operates and maintains such facilities. This practice has undoubtedly contributed to the financially solvent state of METCOM in that much of the capital cost for the expansion of sewer and water systems is an expense and risk incurred by the developers who desire these expansions, as well as assuring that the expansions occur in those areas where there is a perceived need and customer base.

It is further the practice of METCOM that when METCOM desires to have additional capacity built into a proposed water or sewer line to be built by a developer, METCOM requires that the subject line be sized to accommodate future anticipated growth. In such instances, METCOM compensates the developer for the cost differential between the cost of constructing the line to accommodate the developer's requirement compared to the cost of constructing the line as may be required by METCOM.

The METCOM personnel system has evolved to the point where its salary structure and benefits package for its employees is commensurate with comparable positions within county government, as indicated by the "St. Mary's County Metropolitan Commission Compensation and Classification Study Findings and Recommendations" dated January 4, 2007 prepared by The Singer Group, Inc. and implemented by METCOM in two stages in 2007.

In the purist sense METCOM is a technical organization whose function is the provision of public water and sewer services. While it has its internal procedures by which this function is achieved, it hardly operates in a vacuum without appropriate oversight. The enabling legislation provides that the Board of County Commissioners: (1) appoints the seven voting members of the Board of Directors; (2) approves the County Comprehensive Land Use Plan and the Comprehensive Water and Sewerage Plan and amendments thereto, which serve as the vehicles by which individual expansion of sewage collection and public water systems are approved; and (3) approves any borrowings secured by the full faith and credit of the County. Additionally, the

Planning Commission approves the allocation of EDU's of sewer capacity, which authority the Planning Commission has delegated to the Department of Land Use and Growth Management, which is also charged with the responsibility of maintaining the records of the amount of EDU's allocated and to whom.

RECOMMENDATIONS

The recommendations which follow are those determined by consensus agreement among the individual members of the Task Force. They are not presented in any particular order of priority, rank or significance, and while individual recommendations may vary in significance and importance, all are deemed to be appropriate and pertinent. Subsequent responsibility for action on the individual recommendations will vary. Some can be accomplished by the METCOM Board of Directors and Staff, while others will require the coordinated action of the METCOM Board of Directors, Board of County Commissioners, Planning Commission, the Department of Land Use and Growth Management and the Local Legislative Delegation.

RECOMMENDATION #1: *The organization and structure of METCOM should continue as it does currently, as a separate corporation not a part of the organizational structure of County government.*

A fundamental question which may be raised is: Are there compelling reasons to amend Chapter 113 of the St. Mary's County Code to disenfranchise METCOM as a body politic and corporate and assign the provision of public water and sewer services as an assumed function of county government, either as a newly created department or perhaps as an office within the Department of Public Works? The Task Force finds no compelling reasons to do so. On the contrary, there are compelling reasons for continuing METCOM essentially as it is now structured.

There exists within METCOM the personnel with the required technical expertise, as well as the organizational structure and procedures, to perform well its assigned function of providing water and sewer services to the citizens of St. Mary's County, which is being accomplished currently in a satisfactory manner with those services being funded by the users of those services without the infusion of general tax revenues.

The system for the provision of water and sewer services within St. Mary's County, including the setting of rates therefore, should be devoid to the extent possible of political influence. At the same time there should be built within the system the provision of appropriate oversight, or checks and balances, to complement the professional staff of METCOM and its Board. The current system of having a community based Board of Directors appointed by the Board of County Commissioners, as well as the Board of County Commissioners' authority over approving bond issues involving the full faith and credit of the County and the approval of the County Comprehensive Water and Sewerage Plan, together with the Planning Commission's role in the allocation of EDU's of capacity, all combine to provide an adequate means of oversight and checks and balances. Nevertheless, there are improvements which can be made with respect to checks and balances and oversight and they are discussed in some of the following recommendations, specifically numbers 2,5,8 &13.

Given the facts that METCOM is currently providing water and sewer services which are keeping pace with demand and providing those services in compliance with federal and state standards at rates comparable or lower than in the other Southern Maryland counties, as well as being in a financially solvent state not requiring funding from the general tax revenues of the County, the Task Force in its review and analysis has not found any evidence in fact or in principle that the current system of providing public water and sewer services would be made “better”, or more cost effective, if METCOM’s function were to be assumed by County government.

It is additionally noted that Dr. Robin Parker Cox, consultant to the Task Force from the University of Maryland Institute For Governmental Service and Research, has indicated that their research shows there is a trend nationwide for local governments to increasingly provide water and sewer services through an entity separate from the local government, but with local government coordination and oversight. Such public entities operate as self-supporting enterprises free of political influence and deliver services paid by user fees to those who benefit from them. Such is precisely the situation as now exists in St. Mary’s County. (A transcription of the remarks by Dr. Cox to the Task Force relative to their findings and research is attached hereto as Appendix 3).

RECOMMENDATION #2: There should be required periodic meetings: (1) between METCOM, the Board of County Commissioners (BOCC), the Planning Commission and the Department of Land Use and Growth Management (LUGM) to discuss issues of common concern; and (2) between METCOM staff and LUGM to reconcile EDU allocations.

There is the indicated need for improved communication between METCOM and the public in general, including County government, because there does appear to exist a level of a lack of understanding within the community and in County government of METCOM’s role and activities, including the timely knowledge by County government of significant issues. Some examples of this are illustrated by: (1) The misconception that METCOM decides and determines where sewage collection systems and water lines are extended, (2) Timely knowledge by the Board of County Commissioners of METCOM’s previous negotiations with the Patuxent River Naval Air Station to enter into a contract to treat the Navy’s sewage, and (3) Timely knowledge by the Board of County Commissioners that St. Mary’s College may have an excess of EDU’s of needed capacity reserved in the Marlay-Taylor Waste Water Treatment Plant which it may be willing to relinquish, thereby making available for distribution to other projects.

The above can be characterized more as a lack of communication, rather than a systemic problem in the organizational structure of METCOM. Such could be easily remedied if there were scheduled and structured periodic meetings involving METCOM (Board of Directors and appropriate staff), the Board of County Commissioners, the Planning Commission and LUGM. It would be appropriate for the BOCC and its staff to assume the organizational lead for scheduling such meetings, the agenda for each to be developed as a collaborative effort by the BOCC and its staff and METCOM. It would seem that such meetings should be held on a semi-annual basis, or more frequently as may be warranted.

While communication between METCOM and LUGM has improved relative to the tracking of the number of EDU's of sewage treatment capacity which have been allocated in relation to the EDU's of capacity available, it nevertheless seems that a formal policy and regularly scheduled meetings between METCOM and LUGM relative to this matter would facilitate such communication.

RECOMMENDATION #3: *Chapter 113 of the County Code should be amended to delete the requirement that the Board of County Commissioners approve all newly created METCOM employment positions.*

Section 113.1.C. of the County Code should be amended, deleting the last sentence therein, namely "*The creation of any new position by the Commission is subject to the prior approval of the Board of County Commissioners of St. Mary's County.*"

The County Code confers to METCOM the authority to hire the personnel required to perform its assigned tasks. It is logical to conclude that the METCOM staff and the Board of Directors is in the best position to assess personnel requirements and the corresponding impact on user fees and as such should have the authority to decide on the creation of any new positions in the organization.

It is understandable why the original 1957 law creating METCOM contained the provision that the creation of new employment positions would require the BOCC's approval, because at the time METCOM was an unknown quantity. However, in the 46 years in which METCOM has been in operation, it has evolved, developed and matured ---- and has demonstrated its ability to effectively and efficiently run its operation. This fact, together with the fact that METCOM is in the better position to determine its personnel needs, lends credence to the recommendation that the BOCC no longer be required to approve new employment positions created at METCOM.

RECOMMENDATION #4: *There should be careful consideration and evaluation of the potential effects of any proposal to forward fund the construction of water and/or sewer lines within the designated Growth Areas of the County.*

From time to time there has been discussion about whether or not the County Commissioners and/or METCOM should forward fund the construction of sewer collection lines and/or water lines in an effort to direct growth within the designated growth areas. Such a policy is deemed by the Task Force to be one that is more appropriately the prerogative of the Board of County Commissioners, as opposed to being an initiative of METCOM.

If the Board of County Commissioners were to decide to forward fund the construction of water and sewer lines, it is presumed that the funding of such would be paid for either from general obligation funds on hand or borrowings by the County Commissioners for this purpose. It is presumed that the Board of County Commissioners possesses such authority to construct, expand and extend public works projects (which could include water and sewer) as is conferred by the Public Facility Bonds Authorization approved by the Maryland General Assembly, both current

and/or future bond authorizations. Additionally, Chapter 113.5.C of the County Code expressly confers to the BOCC such authority.

While on its face it may appear that it only makes sense that the County take the initiative to construct in advance water and sewer lines within the designated growth areas to facilitate and encourage growth therein, any decision as to the implementation of such projects is not something to be undertaken lightly.

METCOM's policy is that the extension of water and sewer lines are either funded by private developers, or if a METCOM initiated project, the costs associated with the system expansions are allocated among all new customers in the form of a one-time Capital Contribution Charge, paid on a per EDU basis at the time of connection. To better project the income generated by the Capital Contribution Charge and the time frame within which such income will be recognized, METCOM identifies in advance, to the extent possible, the anticipated designated service area to be served by such system expansions.

If the County were to forward fund the extension of water and sewer lines in advance of the identification (or existence) of customers, provision must be made for the carrying costs of the projects until the customers materialize. The precise amount that such carrying costs would prove to be would be directly proportional to the length of time which might pass for the number of customers required for financial solvency to materialize. Until there is a sufficient payment stream generated by connected customers, forward funding of water and sewer line extensions by the County would have to be provided for, most likely from general tax revenues of the County. While it is inherent in the use of general tax revenues for the purpose of providing public facilities that all taxpayers may not equally benefit from such public facilities, the use of general tax revenues for the forward funding of water and sewer services may very well generate significant political opposition from those residents who would not benefit from the provision of such services. Of significance to the potential of generating political opposition is that the use of general tax revenues for the purpose of providing water and sewer services would be a departure from the current practice that such services are financed entirely from water and sewer user fees.

While Section 113.5.C of the County Code does currently provide that METCOM shall reimburse the Board of County Commissioners for any funds advanced by the County for the expenses and costs associated with the extension of water and sewerage systems, such as the forward funding thereof, it is important to understand that the only payment stream available to METCOM is from fees and charges paid by its customers. If METCOM were placed in the position of having to raise fees and charges on its customers because of the construction and carrying costs of forward funded water and sewer lines, it is reasonable to assume that such would similarly generate significant opposition from those customers.

The Task Force does not recommend that the Board of County Commissioners *never* consider forward funding of extensions of water and sewer lines in the growth areas, but that any consideration of such should be carefully evaluated and considered in light of the above.

RECOMMENDATION #5: *Chapter 113 of the County Code should be amended to: (1) Remove the requirement that METCOM's borrowings shall be in all cases secured by the full faith and credit of the County; (2) Require the approval by the Board of County Commissioners of METCOM's Capital Plan/Budget and Facilities Plans; and (3) Require that the Board of County Commissioners annually amends the County W&S Plan to incorporate METCOM's Capital Plan.*

Section 113.6 of the County Code grants to METCOM the authority to issue from time to time bonds as may be necessary to carry on its work. In more recent years, METCOM has not entered directly into the public bond market to issue bonds, rather it borrows funds to finance its capital projects, most commonly through the State loan programs funded by State issued bonds. Chapter 113 of the County Code also currently requires that all borrowing by METCOM be secured by the full faith and credit of the County and approved by the Board of County Commissioners.

Because of the rate restructure changes to Chapter 113 of the Code passed in 2007, which created uniform and annually adjusted debt service rates (i.e., Capital Contribution Charges and System Improvement Charges) for all METCOM customers, METCOM possesses the ability to appropriately adjust these charges commensurate with funds required to repay debt obligations. In the past METCOM was necessarily reliant upon the County's ability to impose additional taxes to cover debt repayment shortfalls; METCOM now has that independent ability through its ability to adjust rates as required to cover debt repayment shortfalls. In other words, METCOM possesses the means to assure the repayment of debt from revenues generated. This fact means that METCOM possesses the means to borrow funds for its capital projects without necessarily requiring the pledging of the full faith and credit of the County.

It is recommended that Chapter 113 of the Code be amended which would accomplish the following:

- Amend the mandated requirement that the full faith and credit of the County shall be pledged to secure all METCOM debt; rather provide that METCOM shall determine for each individual borrowing whether it will borrow on its own *or* seek from the County a pledge of its full faith and credit.
- Delete the requirement that the Board of County Commissioners shall approve the borrowings of METCOM, unless same shall require the pledging of the County's full faith and credit.
- Establish the requirement that the Board of County Commissioners shall approve METCOM's: Facilities Plans, Five Year Capital Improvement Plan (CIP) and Annual Capital Budget.
- Establish the requirement that, consistent with Maryland Department of the Environment (MDE) policy, in accord with COMAR regulations, the Board of County Commissioners shall annually and formally amend the County W&S Plan to include METCOM's current CIP, same being a prerequisite for METCOM's participation in MDE's loan programs.

Historically this has not been done. While to date MDE has accepted as being in compliance with the COMAR regulation a copy of an annual letter from the Planning Commission to the Board of County Commissioners stating that METCOM's CIP is consistent with both the Comprehensive Land Use Plan and the W&S Plan, such is not precisely in accord with MDE's policy. Accordingly, the County should act in this matter in accord with the COMAR regulation so as not to risk a determination by MDE that METCOM can thus not participate in its loan programs.

The combined effect of the above would accomplish several benefits: (1) pledging of the full faith and credit of the County would not be used if unnecessary; (2) directly involve the Board of County Commissioners in the planning of the capital improvements plans of METCOM, thus providing an important means of checks and balances and oversight; and (3) ensure compliance with MDE policy required for METCOM to participate in MDE's loan programs.

RECOMMENDATION #6: There should be an evaluation of the mandatory requirement that property owners within a designated service area abandon their private systems and connect to newly installed water and/or sewer lines, culminating in the adoption of a written policy which gives greater consideration to the financial impact on such property owners.

Section 113-10 of the County Code mandates that upon the construction of water and sewer mains, either funded by METCOM or private developer funded, that every abutting property owner located in the designated service area of the subject water and/or sewer mains for whom a water or sewer connection has been provided shall connect to said water and/or sewer mains and shall abandon any connected private water supply or sewage disposal system. Such a requirement is also prescribed in the County W&S Plan and the County Comprehensive Land Use Plan, entitled "Quality of Life in St. Mary's County – A Strategy for the 21st Century".

The above provision in the Code is designed to assure that there is created a critical mass of customers who will pay for the construction and ongoing maintenance and operation of the subject water and/or sewer mains.

The argument can also be made that if a property is located in a designated growth area of the County and currently served by a private water and/or sewer system, that there exists the very real potential that in time public water and/or sewer lines will be extended to such properties and that connections to the public system(s) will be required. Nevertheless, such an argument does not negate the fact that when such property owners find themselves placed in the position of mandated hook-up, perhaps through no initiative on their part, they are faced with significant expense to abandon perfectly satisfactory private water supply and/or sewer systems and connect to the newly constructed public system(s).

It is noted that in Section 113-10 of the Code the METCOM Board of Directors is conferred some flexibility with respect to when the mandated connections shall be made, namely that same shall occur "... *within the time prescribed by the Commission.*"

While it is reasonable to expect and require that properties situated in the growth areas of the County connect to public water and sewer when they become available, it is also reasonable to

provide a measure of relief to those property owners faced with the expense of the mandated connection requirement. It is the understanding of the Task Force that the METCOM Board of Directors has in the past, on a case by case basis, granted an extension of time within which mandated connections have to be made. It is also the understanding of the Task Force that the METCOM Board of Directors adopted late in 2009 a written policy whereby in certain circumstances mandated connections could be deferred for periods of up to eighteen (18) months from the date on which a new public system is completed.

It is the considered view of the Task Force that a maximum connection deferral period of up to eighteen (18) months is too short and may very well in individual circumstances not provide an adequate time frame for a property owner to plan and provide for the expense of abandonment of private systems and connection to the public systems. While the determination of what an appropriate connection deferral time period might be is at best a subjective determination, it would seem that up to five (5) years may not be unreasonable. The recommendation is also made that when a public water and/or sewer project is first proposed and the designated service area therefore is determined, that those affected property owners be individually notified, early in the process, by mail of the proposed project and the policy with respect to the mandated connections, including the fact that deferred connections will likely result in an increase in the cost of the one-time Capital Contribution Charge payable at such time as the connections are made.

As stated above in the first paragraph of this recommendation, Chapter 113.10 of the County Code, as well as the County W&S Plan and the County Comprehensive Land Use Plan, each contain provisions dealing with the mandatory connection to installed water and sewer lines. The W&S Plan and the Comprehensive Land Use Plan provisions are silent as to the time frame within which the connections must be made. Accordingly, it is thus concluded that the time frame in which mandated connections must be made is ruled by Chapter 113.10 of the County Code as discussed above. Nevertheless, it is recommended that when the METCOM Board of Directors undertakes its evaluation of the connection deferral policy that there be a concurrent review of the appropriate provisions contained in the County W&S Plan and the County Comprehensive Land Use Plan so that the related provisions are consistent and in conformance with Chapter 113.10 of the County Code.

NOTE: For the sake of clarity: A “designated service area” is not to be confused with the “Water and Sewer Categories” (i.e., S-1, S-3, W-1, W-3, etc.) contained in the W&S Plan. The former pertains to a specific area to be served by a proposed public water and/or sewer project. The latter referring to the time frame within which a designated area is planned for service with public water and/or sewer. A prerequisite for serving a specific area with public water and/or sewer is designation in the proper Water or Sewer Category.

RECOMMENDATION #7: *A policy should be developed which provides for the equitable compensation of developers who first install extensions of public water and/or sewer lines by subsequent developers who benefit from the “first-in” developer’s efforts and expenditures.*

Currently it is the policy of METCOM that for developer funded extensions of water and sewer mains that the developer pays for the total cost of the installation of the mains and in turn conveys the completed system to METCOM for \$1.00 upon the completion of construction. If it

is envisioned by METCOM that the construction of the subject water and sewer mains will create the demand for the additional customers in the future, METCOM will require that excess capacity be built into the subject mains, for which it pays for the excess capacity. The provision of the excess capacity (gained by installing large pipe sizes, and possibly a larger sewage pumping station) is a small fraction of the total cost to the developer of designing and constructing the mains and sewage pumping station.

While the provision of excess capacity for future growth is appropriate, the above policy confers to subsequent developers and/or property owners an inequitable benefit at the expense of the "first-in" developer (i.e., the developer who initially extends water and/or sewer lines to serve his/her project), without whose efforts and expense the subsequent developers and/or property owners would not have had been presented the opportunity to serve their properties with public water and sewer.

It is recommended that METCOM develop the policy whereby the first-in developer would be given the option of either not paying for the determined excess capacity, or paying for the determined excess capacity. If the developer chooses the latter option, he/she would then be entitled to receive a payment of an appropriate portion of each connection fee, based upon the total cost of the first-in developer's system, as paid by subsequent developers when they connect to the systems. If the developer chooses the option of not paying for the determined excess capacity, in such case he/she would not be entitled to a portion of subsequent connection fees. Such a policy would provide a greater degree of equity among the first-in developers and subsequent developers.

As with many conceptual policies, the devil is always in the details. It is the understanding of the Task Force that METCOM has recently begun the task of addressing the issue of the first in developer in relation to subsequent developers. The Task Force applauds this effort.

RECOMMENDATION # 8: *A comprehensive review of Chapter 113 of the County Code needs to be undertaken.*

Fifty-three (53) years have elapsed since the adoption of the original House Bill which led to the creation of METCOM and over the intervening years in excess of twenty (20) amendments have been enacted. Chapter 113 of the County Code, which pertains to METCOM, is very much in need of a comprehensive review and revision to correct typographical errors, inconsistencies and ambiguities, many of which resulted from legislative changes to Chapter 113 which became effective October 1, 2007. Additionally, there are certain other changes to Chapter 113 recommended in other individual recommendations included in this report.

Many of the typographical errors, inconsistencies and ambiguities were identified and submitted as a part of the County's 2009 Legislative Package, but it was not passed by the General Assembly.

The recommendation is made that a committee be convened consisting of members appointed by the METCOM Board of Directors, the Board of County Commissioners (possible Commissioner staff members to include the Director of the Department of Land Use and Growth Management,

the County Attorney and the County Administrator) and the County Planning Commission, with the invitation extended to the members of the Local Delegation to the General Assembly to participate in the work of the committee. The suggestion is made that METCOM staff provide the lead organizational function and staff support to the committee.

The committee would be tasked with making a comprehensive review of Chapter 113 with the goal of preparing a legislative proposal to be included in the County Legislative Package for the 2011 session of the General Assembly, unless such a time frame would prove to be unrealistic --- in which case, it would be prepared for submission for the 2012 session.

RECOMMENDATION #9: *Every effort should be expended to inform the affected public regarding METCOM's plans, procedures and rates/fees.*

It is considered important by the Task Force that METCOM provide adequate information to the general public relative to its plans, procedures and rates/fees schedule. While the Task Force does not suggest that METCOM currently fails in this regard, it is recommended that METCOM adopt the mindset that it is far better to provide an excess of information, as opposed to an inadequate amount. Accordingly, increased use of news releases, public hearings and personal contact of property owners who may be affected by METCOM's plans all seem to be appropriate.

RECOMMENDATION #10: *There should be the formal requirement that the Director of METCOM annually file the financial disclosure form with the County Ethics Commission.*

There exists the requirement that County government department heads annually file a financial disclosure form with the County Ethics Commission. It would be consistent with this County government requirement if the Director of METCOM would also be subject to the same requirement. The recommendation is that such be implemented.

RECOMMENDATION #11: *The positions of METCOM Director and METCOM's General Counsel should be filled by different individuals.*

Currently, the positions of METCOM Director and METCOM General Counsel are held by the same individual. The recommendation which follows is not offered as a criticism of that individual, nor are there any implied aspersions on that individual's integrity. In fact, the Task Force has been impressed by the professionalism, openness, integrity and competence of that individual. Additionally, individuals in the community who have had dealings with METCOM have expressed the same sentiments to individual members of the Task Force. The Task Force, however, has been charged with study of the governance and structure of METCOM and with making recommendations relative thereto, devoid of individual personalities.

Accordingly, it is the considered opinion of the Task Force that from a governance and structure standpoint, the positions of METCOM's Director and General Counsel should not be filled by the same individual. The Director and the General Counsel each has a role of providing advice and recommendations to METCOM's Board of Directors. That Board has every right in any given circumstance to receive such advice from its Director and General Counsel that is of an

independent nature. The Director's duties are administrative in nature, while the General Counsel deals with legal matters. The Board of Directors should not be placed in the position of having to discern which hat a Director/General Counsel is wearing.

Given the current Director/General Counsel's long experience with METCOM and the Board of Directors obvious perception that she was capable of performing well the Director's duties, it is at least understandable how the decision was made to appoint her in the dual role. Because of familiarity with ongoing METCOM issues and matters, the Board may very well have concluded that there were certain benefits which would result from the continuity of having the new Director continue as General Counsel. The Task Force, however, urges the Board of Directors to re-visit its prior decision and rather separate the positions of Director and General Counsel. Not only would doing so create the more appropriate condition of assuring the Board's receipt of independent advice, administrative versus legal, it is the view of the Task Force that such would meet with greater public acceptance.

RECOMMENDATION #12: The filling of all vacant employment positions at METCOM should be through a publicly advertised process.

While it is entirely appropriate, and even desirable, for a public organization to promote from within, there is always the potential that finding the best available individual to fill a vacant employment position is enhanced if vacant employment positions involve a publicly advertised application process. The recommendation is thus made that all vacant METCOM employment positions, consistent with County government policy, be filled through a publicly advertised process. Such would provide for the increased potential of finding the most suitable individual, while not precluding any decision to ultimately promote from within the organization.

RECOMMENDATION #13: Because of its unique role and organization, there should be the requirement that if METCOM proposes to enter into certain capital projects contracts/agreements with federal, state or municipal agencies, the approval of the Board of County Commissioners should be required.

METCOM currently operates as a separate body politic and corporate and it is recommended above at Recommendation #1 that this arrangement continue. In fulfilling its role of providing public water and sewer services, there are implications for the public at large, as well as County government ---- as well as to the relationship between the Board of County Commissioners and METCOM as currently provided for in the County Code and as recommended in certain of the recommendations stated herein. Accordingly, it is appropriate that the Board of County Commissioners be directly involved in certain, specific proposed agreements or contracts by and between METCOM and federal agencies, state agencies and municipal corporations within the County boundaries. Toward this end, it is recommended that Chapter 113 be amended to require the approval by the Board of County Commissioners of any contracts or agreements between METCOM and any federal, state or municipal agencies --- provided such contracts or agreements involve funding in METCOM's Capital Budget.

RECOMMENDATION #14: *Outside employment by the Director of METCOM should be limited to that which is of a strictly incidental nature and not ongoing, so as to avoid any conflicts of interest —either real or perceived.*

Every organization, governmental or private, has an obligation to ensure that decisions made on behalf of the organization are free from conflicts of interest on the part of personnel who act as decision makers. Private organizations owe this duty to their shareholders if they are for-profit, or to their membership if they are not-for-profit. Similarly, governmental organizations owe this duty to the citizens they serve and to the citizens of their jurisdictions generally.

One area in which conflicts between personal interests and official duties may arise is that of outside, private employment. Accordingly, organizations – public and private – develop policies regarding the outside activities of their employees to minimize the possibility of either an actual or in-appearance conflict of interest.

Of significance, METCOM is a large organization with operating revenues in FY 2009 of 10.3 million dollars and with net capital assets in the same period of 78.8 million dollars. It serves currently 10,833 public sewer customers and 12,950 public water customers. It would seem to be a reasonable expectation of the customers of METCOM, as well as the Board of Directors, that the Director – who is paid a salary for full time employment – will devote his/her full time employment attention to the position for which hired.

In contrast to what the METCOM Board of Directors has permitted regarding outside employment of its Director, County government restricts its senior staff from engaging in outside employment other than incidental or intermittent activities such as being a lecturer in a university sponsored training program. The County Administrator testified before the Task Force that the County would not permit its senior staff to engage in ongoing outside employment – reference the October 2005 edition of the “St. Mary’s County Manual of Personnel Policies and Procedures.”

The Task Force is cognizant of the fact that the nature of this Recommendation is pointed and specific, wrought by the situation whereby the Director of METCOM has been permitted to engage additionally in significant and on-going outside private employment. The Task Force strongly states and emphasizes that it has not been offered any reasons or incidents which would bring into question the current Director’s character or integrity. As stated elsewhere in this Report, the Task Force has been impressed by the professionalism, openness, integrity and competence of the current Director. The Task Force, however, has been charged with making recommendations relative to the *organization and structure* of METCOM. In this Recommendation, as with the others contained herein, the views expressed are presented without consideration of individual personalities ---- rather are based on what would be the appropriate organization and structure. Accordingly, it is the recommendation of the Task Force that the policy of METCOM with respect to outside employment of its Director and senior staff personnel should be the limiting thereof to only that which is incidental, not ongoing, and which does not present the opportunity for conflicts of interest, or the appearance thereof.

Summation


By any objective standard, the St. Mary's County Metropolitan Commission can be termed a success story in that it has performed well, and is performing well, the purpose for which it was created. Measures of this success include the fact that METCOM is providing public water and sewer services which are keeping pace with demand and meet the appropriate standards set by the State and Federal Government, and providing these services at rates which are comparable to or lower than the other Southern Maryland counties. And, not only is METCOM financially solvent and current on all outstanding debt obligations, same is accomplished via user fees without the infusion of the County's general tax revenues.

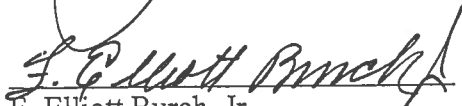
The METCOM success achieved being due to the efforts of: Senator J. Frank Raley, Jr., through whose efforts it was established via H.B. 852, and which serves as a part of his enduring legacy; the Board of County Commissioners elected in 1962 (F. Elliot Burch, Sr., J. Wilmer Bowles and Clarence 'Buzzy' Ridgell) which had the political will to implement H.B. 852; and those individuals – past and present – who have served either on the Board of Directors or as professional employees.

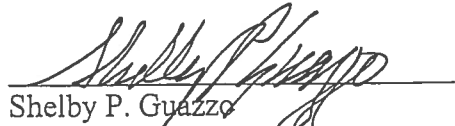
Nevertheless, regardless of how well an organization is performing, there are often improvements which may be made. The recommendations contained in this report, if implemented, can provide the means to effect the indicated improvements. The accomplishment of same will require the coordinated and cooperative effort of the METCOM Board and staff, the Board of County Commissioners and staff and the members of the Local Legislative Delegation.

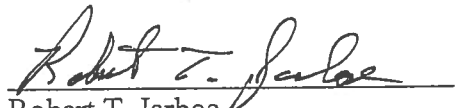
The members of the Task Force appreciate the opportunity which we, individually and collectively, have been afforded to undertake the task as assigned.

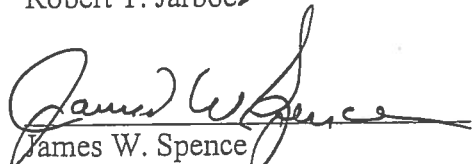
Respectfully submitted,

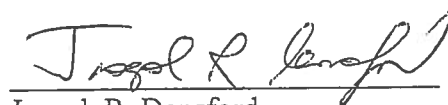

Mary Lynn Stone



F. Elliott Burch, Jr.



Shelby P. Guazzo

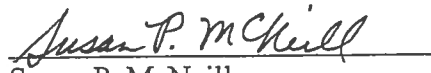

Robert T. Jarboe

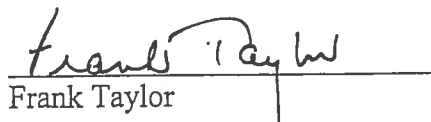

James W. Spence


Joseph R. Densford


Ford L. Dean


Glen Ives


Susan P. McNeill


Frank Taylor

Appendices to this Report:

1. *Copy of H.B. 1559*
2. *Transcription of remarks made by Edward Donahue, water and sewer consultant, to the Task Force at the December 18, 2009 meeting*
3. *Transcription of remarks made by Dr. Robin Parker Cox of the University of Maryland Institute For Governmental Service and Research to the Task Force at the April 23, 2010 meeting*
4. *Copies of the minutes of the individual meetings of the Task Force*