

**REPORT
ON THE
TOWN OF HERNDON—COUNTY OF FAIRFAX
SETTLEMENT AGREEMENT**



**COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA**

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ON THE
TOWN OF HERNDON - COUNTY OF FAIRFAX
SETTLEMENT AGREEMENT

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REPORT OF THE
COMMISSION ON LOCAL GOVERNMENT

TOWN OF HERNDON - COUNTY OF FAIRFAX SETTLEMENT AGREEMENT

PROCEEDINGS OF THE COMMISSION

On June 29, 1987 the Town of Herndon and Fairfax County formally submitted to the Commission for review a proposed settlement agreement which had been negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia. Consistent with the Commission's Rules of Procedure, the notice was accompanied by data and materials supporting the proposed agreement.¹ Further, in accordance with statutory requirement, the Town and County concurrently gave notice of the proposed agreement to 11 other localities with which they were contiguous or with which they shared functions, revenues, or tax sources.² The proposed agreement contains provisions which would (1) grant the Town an annexation of 101.4 acres of territory in the County, (2) return 88.1 acres of territory presently located in the Town to unincorporated status in Fairfax County, (3) preclude the Town from initiating or supporting succeeding annexation actions until January 1, 2005, (4) delegate to Fairfax County through the same date the authority for public planning and zoning and subdivision regulation activities in a substantial portion of the area to be annexed to the Town, and (5) mandate the reversion of the annexed area to unincorporated status in the County, if Herndon becomes a city prior to January 1, 2005.³ The proposed

¹John F. Herrity, Chairman, Fairfax County Board of Supervisors and Richard C. Thoesen, Mayor, Town of Herndon, letter to staff of Commission on Local Government, June 24, 1987. Town data and materials supporting the proposed agreement were filed with the Commission on July 22, 1987. (Town of Herndon, Information, Data, and Factors Relative to Mandatory Commission Reviews, July 22, 1987.) The Town's submissions were revised subsequently to include more detailed information. [Town of Herndon, Information, Data, and Factors Relative to Mandatory Commission Reviews (hereinafter cited as Town Submissions-Revised), Aug. 17, 1987.]

²Sec. 15.1-945.7(A), Code of Va.

³See Appendix A for full text of the proposed settlement agreement.

agreement represents the culmination of negotiations which had been conducted by the parties since 1983.

Following its receipt of the notice filed by the Town and the County the Commission met with representatives of the two jurisdictions on July 28, 1987 for the purpose of establishing a schedule for its review of the proposed agreement. Consistent with the schedule adopted at that meeting, the members of the Commission toured relevant areas and facilities in the Town and the County and received oral presentations from the parties in support of the proposed agreement on August 31, 1987.⁴ In addition to its receipt and consideration of materials from the parties, the Commission solicited comment from other potentially affected political subdivisions and the public. Each political subdivision receiving notice of the proposed agreement from the parties was invited by this Commission to submit testimony on the agreement for consideration. Further, the Commission held a public hearing, advertised in accordance with the requirements of Section 15.1-945.7(B) of the Code of Virginia, on the evening of August 31, 1987 in the Town. The public hearing was attended by approximately 40 persons and produced testimony from 12 individuals. In order to receive additional public comment, the Commission agreed to keep open its record for receipt of written submissions through September 30, 1987.

SCOPE OF REVIEW

The Commission on Local Government is directed by statute to review proposed annexations and other local boundary change and transition issues, as well as negotiated agreements settling such matters, prior to their presentation to the courts for ultimate disposition. Upon receipt of notice of such proposed action or agreement, the Commission is directed to "hold hearings, make investigations, analyze local needs" and to submit a report containing findings of fact and

⁴Because of his employment as a consultant by the developer of a portion of the area proposed for annexation, Commissioner Raflo

recommendations regarding the issue to the affected local governments and to the court which may be convened to consider the matter.⁵ With respect to a proposed agreement negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia, the Commission is required to determine in its review "whether the proposed settlement is in the best interest of the Commonwealth."

It is evident that the General Assembly encourages local governments to attempt to negotiate settlements of interlocal boundary change and transition issues. Indeed, one of the statutory responsibilities of this Commission is to assist local governments in such efforts. In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as that negotiated by the Town of Herndon and Fairfax County, should be approached with respect and a presumption of their compatibility with applicable statutory standards. The Commission notes, however, that the General Assembly has decreed that interlocal agreements negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia must be reviewed by this body prior to their final adoption by the local governing bodies and approval by the court. We are obliged to conclude, therefore, that while interlocal agreements negotiated for purposes of resolving boundary change issues are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be permitted to render our review a pro forma endorsement of any proposed settlement. Our responsibility to the Commonwealth and to the affected localities mandates more.

The analysis and recommendations which follow in this report are based upon the Commission's collective experience in local government administration and operations. It is the intention of the Commission

disqualified himself from participating in the Commission's review of the proposed settlement agreement and, consequently, is not a signatory to this report.

⁵Sec. 15.1-945.7(A), Code of Va.

to leave questions of law for appropriate resolution elsewhere.⁶ The Commission trusts that this report will be of assistance to the parties, the court, the citizens of the area, and the Commonwealth generally.

GENERAL CHARACTERISTICS OF THE TOWN, THE COUNTY, AND THE AFFECTED AREAS

TOWN OF HERNDON

The Town of Herndon was incorporated by the Virginia General Assembly in 1879, and much of its early history was associated with the operation of the railroad line connecting the City of Alexandria with the Blue Ridge Mountains.⁷ By virtue of its location in the extreme western portion of Fairfax County, the Town shares a common boundary with Loudoun County.

Demographic data indicate that the Town of Herndon experienced a significant population growth during the preceding decade, with its populace increasing between 1970 and 1980 from 4,301 to 11,449 persons, or by 166.2%.⁸ Moreover, population estimates for 1987 place the Town's populace at 14,305, an increase of nearly 25% since the

⁶The Commission notes that the proposed settlement agreement contains a provision whereby the Town of Herndon delegates to Fairfax County the authority for public planning and zoning regulation activities in a portion of the area proposed for annexation, known as the Worldgate site, until January 1, 2005. [See Boundary Line Agreement between Town of Herndon and Fairfax County (hereinafter cited as Agreement), Sec. 6.] Further, the proposed agreement also contains a provision which states that if the Town becomes a city prior to January 1, 2005, the territory annexed by Herndon under the terms of the agreement would be deannexed and revert to unincorporated status in the County. (See Agreement, Sec. 4.) These two provisions are without precedent in other interlocal agreements reviewed by this body or the courts since the enactment of Sec. 15.1-1167.1 of the Code of Virginia.

⁷J. Deveareux Weeks, Dates of Origin of Virginia Counties and Municipalities (Charlottesville: Institute of Government, University of Virginia, 1967).

⁸U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Number of Inhabitants, Virginia, Table 4. See

preceding decennial census. Based on its land area of 4.25 square miles and the 1987 population estimate, the Town has a population density of 3,366 persons per square mile.⁹

With respect to the nature of its population, the evidence indicates that the Town's populace is younger and has a higher average income than the State overall. Data reveal that as of 1980 the median age of Herndon residents was 26.6 years, a statistic less than that for the State collectively (29.8 years).¹⁰ Further, the percentage of the Town's 1980 population age 65 and over was 2.8%, while the comparable figure for the State generally was 9.5%.¹¹ In terms of earnings, data reveal that as of 1979 the median family income in Herndon was \$27,132, or 135.5% of the median family income figure for the Commonwealth as a whole (\$20,018).¹²

With respect to the Town's physical development, 1986 data indicate that 45.0% of Herndon's total area was then devoted to residential development, 3.2% to commercial enterprise, 6.2% to industrial activity, 15.4% to public and semi-public uses, with 30.2% (829 acres) remaining agricultural, wooded, or vacant.¹³ Of the 829 undeveloped

Appendix B for a map of the area proposed for annexation and the areas to be deannexed by the Town.

⁹Town Submissions-Revised, p. 5. There has been no expansion of Herndon's original boundaries since the Town's incorporation in 1879.

¹⁰U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, General Population Characteristics, Virginia, Table 14.

¹¹Ibid.

¹²U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, General Social and Economic Characteristics, Virginia, Tables 61, 161.

¹³Ava M. Sawyer, Deputy Town Attorney, Town of Herndon, letter to staff of Commission on Local Government, Aug. 28, 1987.

acreage, however, 116 acres were located in the 100-year floodplain. Exclusive of this land affected by environmental constraint, the Town retained approximately 713 acres, or 26.2% of its total area, vacant and generally amenable to development.¹⁴

COUNTY OF FAIRFAX

The County of Fairfax was created in 1742 from territory formerly a part of Prince William County.¹⁵ Fairfax County has held and continues to occupy a prominent place among the Commonwealth's political subdivisions. Located in the burgeoning Washington Metropolitan Statistical Area (MSA), the County is the most populous jurisdiction in the State.¹⁶ As of 1980 Fairfax County had a population of 596,901 persons, reflecting a growth in its populace of 31.4% since 1970.¹⁷ The official population estimate for 1986 placed the County's population at 710,500 persons, an increase of 19.0% since the preceding decennial census.¹⁸ Based on its land area of 409.2 square miles and the 1986 population estimate, the County has an overall population density of 1,736 persons per square mile.

¹⁴Ibid.

¹⁵Dates of Origin of Virginia Counties and Municipalities.

¹⁶The Bureau of the Census includes within the Washington Metropolitan Statistical Area the jurisdictions of the District of Columbia, Charles, Montgomery and Prince George's Counties in Maryland and Arlington, Fairfax, Loudoun, and Prince William Counties and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia. In 1986 the Washington MSA was the tenth largest metropolitan statistical area in the United States. (U. S. Department of Commerce, Bureau of the Census, Statistical Abstract of the United States, 1987, Table 34.)

¹⁷1980 Census of Population, Number of Inhabitants, Virginia, Table 2. In addition to Herndon, there are two other incorporated towns in Fairfax County. The 1980 population of persons residing in the three incorporated areas of the County was 27,088. (Ibid., Table 4.)

¹⁸Julia H. Martin, Research Director, Tayloe Murphy Institute, University of Virginia, memoranda to Virginia State-Local Cooperative Program participants and other concerned parties, June 26, 1987.

With respect to the nature of its population, various statistical indices disclose that while the age profile of the County's populace is similar to that of the State generally, the residents of Fairfax County have personal incomes which are among the highest in the Commonwealth. Data indicate that as of 1980 the median age of residents of Fairfax County was 30.4 years, while that for the State as a whole was 29.8 years.¹⁹ Further, statistics reveal that as of 1980 only 4.5% of the County's population was age 65 or over, while the percentage of that age category for the State generally was 9.5%.²⁰ In terms of earnings, the median family income for County residents in 1979 was \$33,173, or 165.7% of the comparable figure for the State overall (\$20,018).²¹

Employment data for recent years reveal that the County also has experienced a significant increase in its economic base. Statistics indicate that between March 31, 1975 and December 31, 1986 the number of nonagricultural wage and salary positions in the County grew from 125,599 to 308,336, or by 145.5%.²² Despite the significant number of employment opportunities within Fairfax County, however, statistics suggest that a major component of the County's labor force is employed outside the County. As of 1980 (the latest date for which such information is available) approximately 65% of County residents age 16 and

¹⁹1980 Census Population, General Population Characteristics, Virginia, Table 14. Unless otherwise noted, all demographic data cited for Fairfax County include those persons residing in the Town of Herndon and in the County's other incorporated towns.

²⁰Ibid.

²¹1980 Census of Population, General Social and Economic Characteristics, Virginia, Tables 61, 180. By 1986 the estimated median family income for the County had increased to \$49,248, while the comparable statistic for the State collectively had risen to \$31,148. As of that date, Fairfax County had the highest projected median family income of all Virginia's 136 counties and cities, a statistic more than 57% greater than the State's projected median income. [John L. Knapp and Robert W. Cox, Projected 1986 Median Family and Median Household Income in Virginia's Counties, Cities, MSAs, and Planning Districts (Charlottesville: Tayloe Murphy Institute, University of Virginia, 1986.)]

over were employed outside the boundaries of Fairfax County.²³ While an increase in the number of employment opportunities in Fairfax County has certainly occurred since 1980, it is reasonable to conclude that a major segment of County residents continue to work in other portions of the Washington MSA.

With respect to Fairfax County's physical development, 1983 land use data (the latest available) indicate that 37.9% of the County's total area was then devoted to residential development, 2.2% to commercial enterprise, 1.0% to industrial activity, 20.3% to public and semi-public uses, with 30.2% (71,504 acres) remaining agricultural, wooded, or vacant.²⁴ Since Fairfax is the Commonwealth's most urbanized county, agricultural and forestal operations are not major components of the County's industrial base. As of 1982 there were 242 farms in Fairfax County occupying a total of only 17,605 acres, with the value of the County's agricultural products then totaling approximately \$4.5 million.²⁵ Moreover, 1986 data disclose that only 99,337 acres in Fairfax County were considered "forest" land.²⁶ These statistics suggest the predominantly urban nature of the County.

AREA PROPOSED FOR ANNEXATION

Although the area proposed for annexation under the terms of the

²³Michael A. Spar, Transportation and Commuting in Virginia, 1980 (Charlottesville: Tayloe Murphy Institute, University of Virginia, 1984), Appendix 2.

²⁴County of Fairfax, The Comprehensive Plan for Fairfax County, Virginia, Introduction/Countywide, Table 1, p. 22. Approximately 8.4% of the land within the County is used for road or railroad right-of-way. Land use statistics for Fairfax County do not include territory within its three incorporated towns.

²⁵U. S. Department of Commerce, Bureau of the Census, 1982 Census of Agriculture, Virginia, Ch. 2, Tables 1, 3. In 1982, 124 farm operators in the County, or 53.7% of the total, were employed for 100 days or more in nonfarm related activities. (Ibid, Table 5.)

²⁶U. S. Department of Agriculture, Forest Service, Forest Statistics for the Northern Piedmont of Virginia, 1986. The Forest Service defines "forest" land as property being at least 16.7% stocked

agreement between the Town and the County is currently unpopulated, it does embrace 101.4 acres of territory which currently generate \$17.7 million in total assessed property values subject to local taxation.²⁷ Based on those figures, the area includes 0.04% of the County's land area and 0.06% of its 1986 total assessed property values.

The area to be annexed by the Town of Herndon under the terms of the proposed agreement (identified as Parcel A) is comprised of two discrete but adjacent tracts of land. The largest tract, known as the Worldgate site, contains 94.1 acres which are scheduled to be developed over the next decade into a mixed use commercial center containing offices, hotels, retail establishments, movie theaters, and associated facilities.²⁸ The development proposal for the Worldgate site has been approved by Fairfax County, and under the terms of the proposed agreement the County's land development regulations will control the future development of that tract.²⁹ The second tract located within the area proposed for annexation, known as the Batman site, contains 7.3 acres which are currently vacant but which are scheduled to be developed as a commercial office center within the next two years.³⁰ Although the development proposal for the Batman property has been

by forest trees of any size, or land formerly having had such tree cover and not currently developed for nonforest use. Such property may also be included in the Census Bureau's definition of "farm" land.

²⁷Town Submissions-Revised, p. 59.

²⁸Ibid., p. 59; and Michael Long, Assistant County Attorney, County of Fairfax, letter to staff of Commission on Local Government, Aug. 14, 1987, Exhs. A, B. The Worldgate site, which is located in one of the County's major development corridors, will be developed over the next ten years and will ultimately include approximately 2.9 million square feet of commercial facilities. (Ibid.) At the present time land clearing operations have begun at the site for the construction of the first phase of the Worldgate Office Park.

²⁹See Agreement, Sec. 6.

³⁰Town Submissions-Revised, p. 59. The Batman site is located in the extreme southeastern portion of the area proposed for

approved by Fairfax County, this tract will be developed under the provisions of the Town's land development regulations.³¹ In sum, while currently vacant, the area proposed for annexation contains properties which are scheduled to undergo intensive commercial development in the years immediately ahead.

AREA PROPOSED FOR REVERSION TO UNINCORPORATED STATUS

The area to revert to unincorporated status under the terms of the agreement between the Town and the County encompasses two tracts of land (identified as Parcels B and C) which collectively contain 88.1 acres of territory. While these parcels currently have no resident population, they represent \$19.3 million in total assessed property values subject to local taxation.³² Thus, the area includes 2.5% of the Town's current land area and 4.7% of its 1987 total assessed property values.

In terms of current development, Parcel B, which is physically separated from the Town by the Dulles Airport Access Road, contains 35.5 acres, including a developed 14.9 acre commercial site occupied by one office building and approximately 20 acres occupied by the Dulles Airport thoroughfare. Located on Parcel B are sewerage lines owned by Fairfax County and water lines owned by the Fairfax County Water Authority.³³ The other property proposed for reversion, Parcel C, is an undeveloped tract containing approximately 53 acres

annexation and is separated from the Worldgate property by a County secondary road. Plans for the Batman site, which were approved by the County in 1984, include the construction of 219,000 square feet of commercial office space. (Long, letter to staff of Commission on Local Government, Sep. 25, 1987.)

³¹Sawyer, letter to staff of Commission on Local Government, Sep. 18, 1987.

³²Town Submissions-Revised, pp. 1, 59.

³³Ibid., pp. 1, 22; and Long, letter to staff of Commission on Local Government, Aug. 14, 1987.

owned by the Reston Land Company. This tract of land, half of which is located in the 100-year floodplain, has been designated by the Town's zoning ordinance for future residential development. Parcel C contains sanitary sewer facilities owned by Herndon.³⁴ In sum, the area proposed for reversion to unincorporated status contains some property which is currently developed for commercial purposes, as well as a tract of land presently vacant but designated for future development.

STANDARDS FOR REVIEW

As indicated previously, the Commission on Local Government is charged with reviewing proposed interlocal agreements negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia for purposes of determining whether such settlements are "in the best interest of the Commonwealth." In our judgment the State's interest in this and other proposed interlocal agreements is fundamentally the preservation and promotion of the general viability of the affected localities. In this instance the Commission is required to review an interlocal agreement which provides principally for (1) an annexation by the Town of approximately 101.4 acres of territory, (2) the reversion of approximately 88.1 acres of territory presently located in the Town to unincorporated status in Fairfax County, (3) the waiver by the Town of its authority to initiate succeeding annexation actions until January 1, 2005, (4) the Town's delegation to the County of the authority for public planning, zoning, and subdivision regulation activities in a portion of the area to be annexed during that period, and (5) the reversion of the annexed area to unincorporated status if Herndon becomes a city prior to January 1, 2005.³⁵ A proper analy-

³⁴Town Submissions-Revised, p. 22. The long-range plan for the community of Reston calls for that portion of Parcel C which is not located within the 100-year floodplain to be developed for residential uses. A portion of the sanitary sewer line which is currently owned by the Town of Herndon and located in Parcel C will be transferred to Fairfax County after the relocation of the Town's boundary line.

³⁵If the Town of Herndon makes the transition to city status

sis of the proposed Town of Herndon - Fairfax County settlement agreement, as mandated by statute, requires consideration of the ramifications of these provisions with respect to the future viability of the two jurisdictions.

INTERESTS OF THE TOWN

Although the annexation authorized under the terms of the proposed agreement will not result in the addition of any new residents to the Town, it will provide Herndon with 101.4 acres of territory and \$17.7 million in current assessed property values subject to local taxation. While the territory to be annexed is currently undeveloped, the two tracts of land which comprise that area are scheduled to undergo significant commercial development in the future. Under the terms of the settlement agreement, the largest tract of land in the area proposed for annexation, the Worldgate site, will be developed according to the zoning, land use, and development regulations of Fairfax County. In April 1987 the County approved a development proposal for that site which calls for the construction of 12 office buildings, 2 hotels, a retail center containing 19 stores, approximately 10 restaurants, a movie center with 8 theaters, and a health club. Collectively, the Worldgate site will contain approximately 2.9 million square feet of commercial space when the scheduled development is completed during the forthcoming ten-year period.³⁶ The Town estimates that it will receive approximately \$1.8 million annually in local tax revenues from the Worldgate tract when the proposed develop-

prior to January 1, 2005, the new city will be barred from annexing any part of Fairfax County prior to that date. (Agreement, Secs. 3, 4.) In addition, the proposed agreement calls for the Town and the County not to support any citizen-initiated annexations. (Agreement, Sec. 5.)

³⁶Long, letter to staff of Commission on Local Government, Aug. 14, 1987, Exhs. A, B. The Worldgate site is considered to be one of the most attractive properties for commercial development in the Herndon environs because of its frontage along the Dulles Airport Access Road and its location adjacent to an access road for that highway.

ment is completed.³⁷ In addition, Herndon will benefit from the conditional zoning proffers agreed to by the developer of the Worldgate project and Fairfax County which require, prior to the issuance of a certificate of occupancy by the County for any of the buildings constructed at the Worldgate site, the construction or improvement of all public facilities which will serve directly that property and the accompanying commercial development.³⁸ Those proffers include improvements to two major road arterials which will be annexed by the Town pursuant to the terms of the agreement.³⁹

The remaining portion of the area proposed for annexation consists

³⁷Town Submissions-Revised, p. 56. The estimated total local tax revenues the Town expects to receive from the Worldgate site when the proposed development is completed include receipts from real estate; personal property; business, professional and occupational license; hotel occupancy; and utility taxes. The Town's estimate is for the tenth year following the effective date of the annexation and is measured in constant 1987 dollars. Based on current assessed values for the undeveloped Worldgate site, the Town estimates that the property would produce approximately \$55,800 in local tax revenues the first year following the effective date of annexation. (Ibid., p. 55.)

³⁸Long, letter to staff of Commission on Local Government, Aug. 14, 1997, Exh. C. Conditional zoning proffers are those which are offered voluntarily by a developer that limit or qualify how a property in question will be used or developed. Proffers are made under the terms of conditional zoning to lessen the possible negative effects of an unrestricted zoning. The conditions proffered must relate to the rezoning itself and be in accord with the community's comprehensive plan. Terms of any proffer must be submitted in writing by the developer prior to a public hearing before the governing body. Upon approval, the conditions (proffers) become part of the rezoning and remain in effect even if the property is sold. Localities are authorized to enact conditional zoning proffers under Sec. 15.1-491.1 et seq., Code of Va. (Virginia Citizens Planning Association and Virginia Department of Housing and Community Development, The Language of Planning, Community Planning Series, Vol. V, p. 29.) A certificate of occupancy is the official certification that the structure conforms to the provisions of the zoning ordinance (including all conditional zoning proffers) that it adheres to the locality's building code, and that it may be used or occupied. (Ibid., p. 6.)

³⁹Long, letter to staff of Commission on Local Government, Aug. 14, 1987, Exh. C. Under the terms of the approved conditional

of a 7.3 acre tract known as the Batman site. This property, which is subject to a development proposal already approved by Fairfax County, will be developed under the Town's zoning and land use regulations and will ultimately contain approximately 219,000 square feet of commercial office space.⁴⁰ The Town estimates that it will receive approximately \$86,500 annually in local tax revenues from the Batman site when the proposed development is completed.⁴¹

Although the proposed annexation will initially place upon the Town few additional public service responsibilities, Herndon will be required to provide certain urban services as the area develops. Those services, such as solid waste collection, crime prevention and detection, street maintenance, and street lighting, can be extended to the area by the Town without necessitating any major additional capi-

zoning proffers for the Worldgate project, the developer will improve and widen Centerville Road (which forms the western boundary of the area proposed for annexation) from four to six lanes, widen Monroe Street (which traverses the eastern portion of the area proposed for annexation and divides the Worldgate site from the Batman property), make necessary improvements to two bridges over the Dulles Airport Access Road to accommodate the widening of Centerville Road and Monroe Street, install the necessary traffic control signals at appropriate intersections on both arterials, establish and promote a program to encourage employees at the Worldgate Commercial Center to utilize car and van pools, and post a \$500,000 letter of credit to further ongoing activities to reduce traffic generated by the development at the Worldgate site. Other proffers agreed to by the developer include the planting of a 120-foot buffer between the commercial facilities and adjacent residential subdivisions located in the Town and the implementation of a comprehensive signage master plan. The Commission notes that the conditional zoning proffers agreed to by the developers of the Worldgate site are not an integral part of the proposed settlement agreement and, thus, are not subject to review by this body.

⁴⁰Town Submissions-Revised, p. 59. Construction of the two office buildings at the Batman site began in October 1987. (Long, letter to staff of Commission on Local Government, Sep. 25, 1987.)

⁴¹Ibid., p. 56. The Town's estimate for local tax revenues expected to be received from the Batman development is for the second year following the effective date of the annexation and includes real estate; personal property; business, professional and occupational license; and utility taxes receipts. Based on current assessments of the undeveloped Batman site, the Town estimates it will receive

tal expenditure.⁴² In our view, the Town shall be able to respond to the future service needs of the area proposed for annexation with modest additional cost.

In addition to the annexation authorized by the settlement, the proposed agreement includes a provision which transfers two parcels of land, comprising collectively 88.1 acres, from the Town to unincorporated status. One tract, Parcel B, contains 35.5 acres encompassing a developed 14.9 acre commercial site owned by the GTE Realty Corporation and approximately 20 acres occupied by the Dulles Airport Access Road. The developed portion of this parcel, which is located south of the Dulles Airport Access Road and physically isolated from the Town of Herndon by that thoroughfare, is an extension of adjacent commercial development located outside the boundaries of the municipality. That portion of the commercial property located within the Town of Herndon contains 185,000 square feet of commercial office space and \$18.5 million in total assessed property values subject to local taxation as of 1987.⁴³ Herndon estimates that the development on Parcel B currently provides the Town approximately \$63,500 annually in local tax revenue.⁴⁴ Because the Dulles Airport Access Road forms a physical barrier separating the Town from the developed portion of Parcel B, urban services are currently provided to that development by

approximately \$4,300 in local tax revenues during the first year following the effective date of the annexation.

⁴²David P. Larsen, Town Manager, Town of Herndon, letter to staff of Commission on Local Government, Aug. 28, 1987. Upon completion of the commercial developments proposed for the two parcels which comprise the area proposed for annexation, the Town estimates that it will incur approximately \$130,500 annually in expenses to provide services to that area. The Town will not incur, however, any capital improvements expenditures since the developers of both properties to be annexed will be responsible for the construction of all necessary capital facilities serving those properties.

⁴³Town Submissions-Revised, p. 59.

⁴⁴Ibid., p. 57. The estimate of local tax revenues received from the GTE development on Parcel B include real estate; business; professional and occupational license; and utility tax receipts. For

Fairfax County or the property owner.⁴⁵

The second and largest tract of land to be disincorporated by Herndon under the terms of the proposed agreement, Parcel C, contains approximately 53 acres of territory and \$841,000 in 1987 assessed property values subject to local taxation.⁴⁶ Parcel C, which is located along the northeastern boundary of the Town, is part of the 7,100 acre planned community of Reston, the only portion of that community extending within Herndon's corporate limits.⁴⁷ Although currently vacant, Parcel C is zoned by the Town for residential development consistent with the comprehensive plan for the Reston community.⁴⁸

The Commission notes that, in terms of local tax revenue accruing to Herndon, the annexation proposed under the terms of the settlement agreement will initially be offset by the transfer of Parcels B and C from the Town. As mentioned previously, the Town currently receives approximately \$66,400 in local tax revenues annually from Parcels B

Fiscal Year 1985-86, the property owned by the GTE Realty Corporation generated 3.6% of the total 1986 property values within the Town. (Town of Herndon, Comprehensive Annual Financial Report for the Year Ended June 30, 1986, p. 88.)

⁴⁵Town Submissions-Revised, pp. 22-30. Agencies of Fairfax County provide Parcel B with water treatment and distribution, sewage collection and disposal, crime prevention and detection, and fire services by cooperative agreement with the Town. Other urban services are not required in the area due to the commercial nature of the development on Parcel B, or they are provided by the property owner.

⁴⁶Ibid., pp. 1, 59. The Town currently receives approximately \$2,900 annually in local tax revenues from Parcel C. (Ibid., p. 57.)

⁴⁷County of Fairfax, Comprehensive Plan for Fairfax County, Virginia, Area III, p. 18. The planned community of Reston, which was begun in the late 1960s, contains a wide range of housing including single-family homes, townhouses, and apartments. In addition, the community has three major commercial centers and an industrial park oriented largely to office and research-type operations. Reston is approximately one-half completed and will ultimately contain a population in the neighborhood of 70,000. (Ibid.)

⁴⁸Approximately one-half of Parcel C is located within the 100-year floodplain, and almost all of the parcel is outside of the drainage basin which includes the Town of Herndon. The latter factor

and C, while Herndon estimates that it will receive initially only \$66,100 in local tax revenues from the area proposed for annexation.⁴⁹ Previous sections of this report have indicated, however, that the area to be annexed by the Town will be the site of high density office and retail development during the next decade. The proposed facilities, which are currently in the first stages of development, will provide Herndon with local tax resources over the next ten years which should significantly exceed the Town's loss of local revenues resulting from the transfer of Parcels B and C to the County.⁵⁰

In sum, the proposed agreement permits Herndon to annex territory which will be the site of major commercial development within the next decade and which will provide the Town with significant local tax resources in the future. In addition, the provisions of the proposed agreement which will transfer territory from the jurisdiction of the Town will relieve Herndon of the urban service responsibility for properties which are part of larger developments located predominantly in the unincorporated portion of the County. Based upon the information cited above, the Commission finds that the various provisions of the proposed settlement are in the best interests of the Town of Herndon.

INTERESTS OF THE COUNTY

The proposed annexation sanctioned by the agreement between the Town and County will have minimal adverse fiscal impact on Fairfax County. All properties annexed by the Town will remain subject to

would increase the cost of sewage collection services for prospective residents of Parcel C, if the property were to be served by the Town. The Commission notes that the development located on properties adjacent to Parcel C and within the Reston community are residential in nature.

⁴⁹Town Submissions-Revised, pp. 55, 57. Almost all of the local tax revenue received by the Town from the area to be transferred to the County is derived from Parcel B.

⁵⁰Ibid., p. 56. The Town estimates that beginning the second year following the effective date of the agreement it will receive

taxation by Fairfax County. Further, the agreement contains provisions by which the Town of Herndon agrees not to initiate further annexation proceedings for a period of 17 years following the effective date of the proposed annexation, or seven years longer than the interval imposed by State law for succeeding annexation actions by a municipality.⁵¹ Furthermore, the agreement contains provisions which discourage the Town's transition to city status for a similar period.⁵² The latter provision will encourage the Town to remain a constituent element of the County for an extended period of time and support with its resources the needs of the County generally.

Aside from these elements, there are two additional provisions in the proposed interlocal settlement which are of significance to Fairfax County. First, the agreement contains provisions whereby Herndon agrees to delegate to the County the responsibility for zoning and land development regulation in that portion of the area to be annexed to the Town known as the Worldgate site until January 1, 2005. That site, which comprises more than 93% of the area proposed for annexation, is scheduled to be developed into a major mixed use commercial center over the next decade.⁵³ By retaining the zoning and

increasing amounts of local tax revenues from the Worldgate and Batman properties as the various phases of those projects are completed. As noted previously, upon completion of the Worldgate project in the tenth year following the effective date of the agreement, Herndon estimates that the area proposed for annexation will provide the Town approximately \$1.8 million annually in local tax revenues. (Ibid., p. 54.)

⁵¹Agreement, Sec. 2. In addition, the agreement calls for the Town and the County not to support any citizen-initiated annexations. (Agreement, Sec. 5.)

⁵²Ibid., Secs. 3, 4. As observed earlier, the agreement provides that if the Town of Herndon makes the transition to city status prior to January 1, 2005, the new city will be barred from annexing any part of Fairfax County prior to that date and that the territory annexed under the terms of the proposed agreement would revert to unincorporated status in Fairfax County.

⁵³The development proposal for the Worldgate site has been approved by the County and site clearing operations are underway for

land development control responsibility for the Worldgate site, Fairfax County can ensure that the proposed commercial center, which is located in one of the County's major development corridors, will be developed in accordance with existing County land use plans and that the public service impacts of the Worldgate development can be effectively managed with respect to the concerns of the County generally. Second, under the terms of the proposed agreement the Town will transfer to Fairfax County two tracts of land which will serve to unify homogeneous properties under the jurisdiction of the County and, thereby, simplify service responsibilities for those properties.⁵⁴ In brief, these various provisions in the interlocal settlement between the Town and the County, coupled with the modest adverse financial impact of the proposed annexation in future years, are features of the settlement which are, in the Commission's judgment, in the interest of Fairfax County.

INTERESTS OF THE AREA PROPOSED FOR ANNEXATION

The proposed agreement, as noted before, permits the Town of Herndon to annex 101.4 acres of land which are currently undeveloped, contain no residents, and have no immediate urban service needs or concerns. Although presently vacant, all of the properties located within that area have been zoned by Fairfax County for commercial

the construction for the first phase of that proposed commercial complex. The development of the remaining portion of the area proposed for annexation, the Batman site, will not be subject to Fairfax County's zoning and land development regulations. Herndon officials have indicated, however, that the development proposals for the Batman project can be accommodated by existing Town regulations without major modification. (Larsen, communication with staff of Commission on Local Government, Sep. 29, 1987.)

⁵⁴while all of the property located in the area to be deannexed is currently subject to taxation by Fairfax County, following the effective date of the agreement the County will be permitted to levy certain taxes, (e. g., consumer utility, business professional and occupational license, and motor vehicle license taxes) in that area undiminished by the Town's imposition of such taxes.

purposes.⁵⁵

Under the terms of the proposed agreement, the Town agrees to delegate to the County until the year 2005 the responsibility for zoning and land development regulation in that portion of that area proposed for annexation known as the Worldgate site. That property, as noted previously, is to be developed into a major mixed-use commercial center which will include, when completed, an estimated \$262 million in assessed property values subject to local taxation.⁵⁶ This commercial center, which is currently under construction and due for completion within the next ten years, represents a significant financial investment by the developers. The provision in the proposed agreement whereby the County retains responsibility for the land development regulation of that property assures the developers of the Worldgate site that the property will be constructed in accordance with the conceptual and final development plans which have been previously approved by Fairfax County. The assurance that the development proposal for the Worldgate site will not be affected by that site's incorporation into the Town of Herndon is of significant benefit to the property owners and developers of that commercial tract.⁵⁷

In addition to the Worldgate site, the area proposed for annexation contains a 7.3 acre parcel of land, the Batman site, which also is

⁵⁵Long, letters to staff of Commission on Local Government, Aug. 14, 1987, Exh. B; and Sep. 25, 1987. The Commission notes that the County has approved development proposals for both parcels in the area to be annexed which will result ultimately in the construction of more than 2.9 million square feet of commercial space on those properties over the next decade. Because of utility service concerns, the Town of Herndon was kept advised by Fairfax County during the site plan review process for both the Worldgate and Batman properties. (Larsen, communication with staff of Commission on Local Government, Sep. 23, 1987.)

⁵⁶Town Submissions-Revised, p. 59.

⁵⁷Representatives of the owners of the Worldgate property have indicated that any uncertainty resulting from the annexation over the exact status of the final development plan approved by the County

to be developed for commercial purposes within the next two years.⁵⁸ The Town of Herndon will not delegate to the County land development control responsibility over that parcel.⁵⁹ Town officials have indicated, however, that the development proposal for that commercial facility can be accommodated within Herndon's existing land development regulations.⁶⁰ Thus, the incorporation of the Batman tract into the Town of Herndon will not require any major modification to the proposed development plans for that property.

Although currently vacant, the area proposed for annexation will experience significant future development in the immediate future and will increasingly require the provision of urban services. The nature of the proposed development in the area, as well as intergovernmental service arrangements, will determine the additional urban service responsibility which will be placed upon the Town of Herndon as a result of the annexation.

With respect to the capacity of the Town of Herndon to extend utility services to the area proposed for annexation in the future, the Commission notes that the sewage collection lines which will serve the proposed commercial facilities in that area will be installed by the developers of those properties and turned over to the Town for maintenance purposes. Under the terms of a multijurisdictional agreement, sewage collected by those facilities will flow through collector lines

would be a cause of concern to potential lenders and investors and possibly make major tenants reluctant to commit to their occupation of facilities constructed at the Worldgate site. (William H. Hansbarger, Attorney, Worldgate Office Park, Inc., letter to Nancy K. Flack, Board of Supervisors, Fairfax County, Aug. 28, 1985, Town Submissions-Revised, pp. 45-46.)

⁵⁸Town Submissions-Revised, p. 61. When completed, the Batman parcel will contain two office buildings offering collectively approximately 219,000 square feet of commercial space.

⁵⁹Sawyer, letter to staff of Commission on Local Government, Sep. 18, 1987.

⁶⁰Larsen, communication with staff of Commission on Local Government, Sep. 23, 1987. The Commission notes that the Batman prop-

owned by Fairfax County to a regional sewage treatment plant operated by the District of Columbia.⁶¹ Herndon's allocated capacity in the regional facility is 11.4 million gallons per day (MGD). Since Herndon delivered 1.6 MGD of effluent to the regional facility during 1986, the evidence indicates that the Town has the capacity to meet the future sewage treatment needs of the area proposed for annexation.⁶²

Public water service to the area to be annexed under the terms of the proposed agreement will be provided, as the need arises, in a similar manner. Water distribution lines to serve both the Worldgate and the Batman tracts will be constructed by the developers of those properties and deeded to the Town of Herndon for maintenance. The Town will serve the area with potable water which it obtains from the Fairfax County Water Authority (FCWA).⁶³ The terms of the agreement between the two entities does not impose a limit on the amount of water Herndon can purchase from the FCWA.⁶⁴ In addition, the Town owns four wells which currently provide approximately 5% of its residents' water needs.⁶⁵ Storage for the Town's water distribution system is provided by three tanks, with an aggregate storage capacity

erty has been zoned by Fairfax County for high-density commercial development. In addition, adjacent land uses in the Town of Herndon consists primarily of office park development.

⁶¹John E. Moore, Public Works Director, Town of Herndon, communication with staff of Commission on Local Government, Oct. 1, 1987. The Town of Herndon has contracted with Fairfax County to utilize a portion of the County's allocation in the District of Columbia's sewage treatment plant.

⁶²Ibid.

⁶³Ibid.

⁶⁴Ibid. During FY1986-87 the Town purchased approximately 1.85 MGD of water from the FCWA.

⁶⁵Larsen, communication with staff of Commission on Local Government, Sep. 23, 1987. The Town of Herndon plans to drill two additional wells in the immediate future to supplement its public water supply.

of 2.4 million gallons.⁶⁶ Although the area proposed for annexation has no immediate need for central water service, the Town of Herndon can, in our view, meet such needs as they arise.

With respect to other urban services, the evidence indicates that the Town of Herndon currently offers a broad array of public services to its commercial establishments and, in our judgment, has the capacity to extend those services to the area proposed for annexation as needed. Two such services merit note here. First, while the Town provides its smaller business concerns with twice weekly solid waste collection service, it does not offer solid waste collection services to its larger commercial concerns, such as those proposed for the Worldgate and Batman sites.⁶⁷ Those businesses will be required to contract with private collectors for such service.⁶⁸ Refuse collected by the Town and private collectors is deposited at the Fairfax County transfer station, which is located six miles south of the Town.⁶⁹ Second, crime prevention and protection services in the Town are provided by Herndon's police department consisting of 34 full-time sworn law enforcement officers.⁷⁰ As the area proposed

⁶⁶Moore, communication with staff of Commission on Local Government, Oct. 1, 1987.

⁶⁷Ibid. The Town will collect up to one cubic yard of refuse per pickup from business concerns, with the cost of such service being borne by general fund revenues. Fairfax County presently offers solid waste collection service only to residences.

⁶⁸The Town will provide solid waste collection services to small retail operations located at the Worldgate site and will make collection from road-side litter cans located at the development. Herndon officials have estimated that the cost of such service would be approximately \$16,000 a year. (Sawyer, letter to staff of Commission on Local Government, Aug. 28, 1987.)

⁶⁹Moore, communication with staff of Commission on Local Government, Sep. 23, 1987. Fairfax County charges the Town for use of the County's landfill.

⁷⁰Town Submissions-Revised, p. 26. The Town's Police Department is supported by an administrative staff of approximately 10 persons.

for annexation develops over the next decade, the Town plans to hire and equip additional law enforcement officers to ensure an appropriate level of service to the commercial establishments proposed for the Worldgate and Batman sites.⁷¹ In our judgment, these services by the Town will benefit the area proposed for annexation.

Other urban service needs in the proposed annexation area will be met principally by the developers or through intergovernmental service arrangements. The Commission observes that the developers of the Worldgate and Batman properties will be responsible for the construction of various road improvements (both on and off the site), as well as for the installation of curbs, gutters, sidewalks, stormdrains, and street lighting. Herndon, however, will assume responsibility for those facilities which will be dedicated to the Town for maintenance purposes.⁷² Other urban services, such as fire prevention and protection, currently are provided to the Town by Fairfax County through cooperative agreement, can be extended to the annexed area as needed.⁷³ As a result of the commercial nature of the development proposed for the area to be annexed, no additional Town expenditures for public recreational or library services should be required.

Based upon our review of the services currently provided in Herndon directly by the Town or through intergovernmental agreement, the Commission concludes that the Town can be expected to respond prop-

⁷¹New police officers will be hired by the Town to provide crime prevention and detection services to the Worldgate Office Park as that commercial center is developed and occupied. The Town estimates that the provision of increased law enforcement services to that center once it is completed will cost approximately \$106,000 annually in operating expenses. (Sawyer, letter to staff of Commission on Local Government, Aug. 28, 1987.)

⁷²Town Submissions-Revised, p. 28. The Town estimates that the additional cost for street maintenance and streetlighting for the Worldgate development will be approximately \$8,500 annually. (Sawyer, letter to staff of Commission on Local Government, Aug. 28, 1987.)

⁷³Town Submissions-Revised, pp. 26-27. The County-owned fire station, which is located in Herndon, is manned by full-time paid firefighters who have available for fire suppression work three pieces

erly to the needs of the area annexed.⁷⁴

INTERESTS OF THE AREA PROPOSED FOR REVERSION TO UNINCORPORATED STATUS

The proposed agreement, as noted before, includes a provision which transfers two tracts of land, identified as Parcels B and C, from the Town of Herndon to the exclusive jurisdiction of Fairfax County. Although currently unpopulated, those areas contain 88.1 acres of territory and, as of 1987, \$19.3 million in total assessed property values subject to local taxation.⁷⁵ The predominant portion of the assessed property values in the area to be transferred to the County are located in Parcel B, reflecting the presence of an office building owned by the GTE Realty Corporation. This facility, which is physically isolated from Herndon, is part of a larger commercial center extending into the County. Parcel C, which has been zoned by the Town for residential development, is an undeveloped tract of land located along Herndon's northeastern boundary.⁷⁶ The transfer of those areas to the County will unify territories which are currently divided by existing jurisdictional boundaries but which are part of cohesive developments. The concentration of these properties in one jurisdiction will also result in a more logical delineation of service areas and place upon Fairfax County the sole responsibility for meeting

of equipment. (Moore, communication with staff of Commission on Local Government, Oct. 1, 1987.)

⁷⁴The Commission notes that although Herndon has in place current zoning and subdivision ordinances which are administered by a planning commission with the assistance of a professional planning staff, the Town has not adopted a comprehensive plan which meets the requirements of Secs. 15.1-446.1 and 15.1-447, Code of Va. While the development of a comprehensive plan for the Town should now await the resolution of the boundary changes contemplated by the proposed agreement, the Town should address the need for a comprehensive plan as soon as possible.

⁷⁵Ibid., p. 59.

⁷⁶Parcel C is the only portion of the planned community of Reston which is located in the Town of Herndon. Almost all of Parcel C is outside of the drainage basin which includes the Town of Herndon,

their urban service needs.

While the County of Fairfax clearly has the capacity to serve the areas proposed for detachment from the Town of Herndon, brief comment on the County's urban service capabilities is appropriate in this report. With respect to utilities, the County currently operates three wastewater treatment plants with a total capacity of 42.7 MGD. During Fiscal Year 1985-86 those plants treated collectively 37.5 MGD of effluent.⁷⁷ In addition, during the same period approximately 42.5 MGD of sewage emanating from Fairfax County was treated at facilities operated by other jurisdictions under various contractual arrangements⁷⁸ As part of its sewerage operations, the County maintains 2,467 miles of sewer lines and 54 sewage pumping stations, providing it with an expansive collection system.⁷⁹ In terms of water service, residents of the western portion of Fairfax County, including those in Parcels B and C and in the Town of Herndon generally, receive public water from the FCWA.⁸⁰ The FCWA operates two water treatment plants which have a combined capacity of approximately 162 MGD.⁸¹

and approximately half of that area is in the 100-year floodplain. The developers of the community of Reston plan to use the portion of Parcel C not located in the floodplain for residential development in the immediate future.

⁷⁷County of Fairfax, Adopted Budget Plan, Fiscal 1988 (hereinafter cited as County Budget), Vol. II, p. 974.

⁷⁸Ibid., Vol. II, p. 988.

⁷⁹Ibid., Vol. II, p. 961. Currently, Fairfax County owns and maintains the sanitary sewer system serving Parcel B. Although Parcel C is presently undeveloped, that area contains a Town sewer line connected to facilities within Herndon. Following the effective date of the agreement, the Town will transfer responsibility for the maintenance of that line to Fairfax County.

⁸⁰Comprehensive Plan for Fairfax County, Virginia, Introduction/Countywide, p. 48. The residents of Fairfax County also receive public water service directly from the Cities of Fairfax and Falls Church. Currently, the FCWA provides water service directly to Parcel B. There are no public water facilities located in Parcel C.

⁸¹Ibid.; and Long, letter to staff of Commission on Local

Storage for the FCWA distribution system is provided by 41 storage facilities having an aggregate capacity of approximately 21 million gallons.⁸²

With respect to other public service considerations, the Commission observes that the County operates a police department consisting of approximately 900 full-time sworn law enforcement officers;⁸³ that it maintains a fire department which is staffed by 755 full-time paid fire personnel who operate 105 pieces of fire suppression equipment located at 31 stations;⁸⁴ and that the County supports a full-service library system.⁸⁵ Moreover, by means of the Fairfax County Park Authority, the County offers its residents a variety of recreational opportunities through the operation of more than 342 parks (collectively encompassing more than 14,348 acres), 8

Government, Oct. 2, 1987. One of the FCWA's facilities is being expanded to provide an additional 50 MGD in treatment capacity by 1990. Supplementary sources of water for the FCWA include 22 wells and the purchase of water from the Cities of Fairfax and Falls Church, the Town of Vienna, and Loudoun and Arlington Counties.

⁸²Ibid. The Authority owns and maintains 1,793 miles of water lines.

⁸³County Budget, Vol. I, p. 413. County police officers operate from seven substations located throughout the County with the Reston substation providing service to areas adjacent to the Town of Herndon. At the present time, the Fairfax County Police Department provides law enforcement services to Parcel B when called upon to do so by the Town of Herndon. (Larsen, communication with staff of Commission on Local Government, Sep. 23, 1987.)

⁸⁴County Budget, Vol. I, p. 436. Thirteen of the County's fire stations are also staffed by volunteer firefighters. Forty-four fire suppression vehicles operated by the County are owned by volunteer fire companies. (Long, letter to staff of Commission on Local Government, Oct. 2, 1987.) The County's Herndon fire station currently provides fire suppression services to Parcels B and C as well as the Town of Herndon.

⁸⁵County Budget, Vol. I, p. 619. The County operates 6 regional libraries, 9 community libraries, 6 mini libraries, and bookmobiles.

full-time recreational centers, 5 golf courses, and an extensive variety of recreational facilities and programs for senior citizens, adults, and youth.⁸⁶

In terms of other urban services of relevance to the areas to be deannexed, we note that Fairfax County offers some of its residents weekly solid waste collection service as well as special leaf and brush collections upon request.⁸⁷ Further, the planning and land development activities of the County are administered by a planning commission assisted by an extensive professional staff and guided by an adopted comprehensive plan and zoning, subdivision, and other land development control ordinances. Finally, although Fairfax County does not have primary responsibility for the construction and maintenance of its public thoroughfares, the County has demonstrated a willingness to expend substantial local funds to meet its thoroughfare needs.⁸⁸

This Commission also wishes to acknowledge the County's efforts to address the housing needs of its residents. Through the operation of the Fairfax County Redevelopment and Housing Authority and the County's Department of Housing and Community Development approximately 2,300 housing units, administered under a variety of assisted housing

⁸⁶County Budget, Vol. II, p. 1299. The Commission notes that County recreational facilities and programs also are available for use by the residents of the three incorporated towns within its borders.

⁸⁷Ibid., Vol. II, p. 168. Residential solid waste collection is provided by the County upon receipt of citizen petition requesting the creation of a sanitary district for that purpose. The County currently provides residential refuse collection to approximately 15% of the households in Fairfax County, with those homeowners paying a fee for such service. The remaining households in the County, as well as all businesses, utilize private solid waste collection firms. Fairfax County operates a landfill near the community of Lorton in the southern portion of the County. In addition, the County has a solid waste transfer station located at its West Ox Road maintenance facility which serves the residents of the northwestern portion of the County. (Long, letter to staff of Commission on Local Government, Oct. 2, 1987.)

⁸⁸County Budget, Vol. II, pp. 277-79. Between FY1984-85 and FY1986-87, Fairfax County has invested more than \$44 million in general obligation bond proceeds for street construction. During that

programs, are available for occupancy by low and moderate income residents.⁸⁹ We note that the County has continued its efforts to increase the availability of low and moderate income housing in its jurisdiction. In our judgment, housing is a fundamental human need and one which will be increasingly a concern of local government.

Based upon our review of the level of services currently provided by Fairfax County to its residents and the County's apparent commitment to addressing their housing and public transportation needs, the Commission concludes that the County can and will respond properly to the existing and prospective needs of the areas proposed for deannexation.

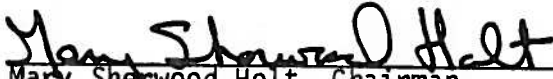
FINDINGS AND RECOMMENDATIONS


The interest of the State in this and similar interlocal issues is, from the Commission's perspective, the development of a resolution which equitably reconciles the interest of the affected residents and which protects and promotes the viability of jurisdictions involved. In our judgment, the proposed agreement between the Town of Herndon and Fairfax County meets that standard. Accordingly, we find the agreement, as presented, consistent with the best interests of the Commonwealth and recommend the court's approval.

same period, the County also invested an additional \$44 million in general fund revenues and general obligation bond proceeds for the construction of curbs, gutters, sidewalks, the installation of streetlights, and the maintenance of its thoroughfares. (Long, letter to staff of Commission on Local Government, Oct. 2, 1987.)

⁸⁹County Budget, Vol. II, p. 1192; and Long, letter to staff of Commission on Local Government, Oct. 2, 1987. The Commission notes that 231 assisted housing units in Fairfax County are operated under a program supported entirely by County general fund revenues. (John Callaghan, Director of Operations and Services, Fairfax County Department of Housing, communication with staff of Commission on Local Government, Oct. 7, 1987.)

Respectfully submitted,


Mary Sherwood Holt, Chairman


Donald N. Johnston, Vice Chairman


Harold S. Atkinson


William S. Hubbard

BOUNDARY LINE AGREEMENT

Pursuant to § 15.1-1167.1 of the Code of Virginia (1950), as amended, the County of Fairfax, hereinafter referred to as the County, and the Town of Herndon, hereinafter referred to as the Town, have determined that an adjustment in the boundaries of the two jurisdictions and such other matters as are addressed in this Agreement will be beneficial to the orderly growth and continued viability of the parties, will assist in the administration of government, and will be of benefit to both parties and to the affected citizens.

Accordingly the parties agree:

1. Upon the effective date of this Agreement the boundaries of the Town of Herndon within the County of Fairfax shall be as shown on the attached Plat.

2. Except as provided by this Agreement, the Town shall not annex any territory of the County prior to January 1, 2005.

3. This Agreement shall not preclude the Town from becoming a city, but if the Town should become a city prior to January 1, 2005, that city shall not annex nor attempt to annex any part of Fairfax County prior to January 1, 2005.

4. If the Town becomes a city prior to January 1, 2005, the land area designated as Area A on the attached plat shall cease to be part of the Town or of a successor city and shall revert to the sole jurisdiction of the County.

5. The parties agree that neither will take or support any action which will or could result in the annexation of any part of the Town or of the County by any other jurisdiction, whether now in existence or later created.

6. The Town delegates to the County all power for zoning and land use and development regulation of certain property in the land area designated as Area A on the attached plat, said property being more particularly described as Tax Map Parcel References 16-3((1)) 1, 2, 3 and 16-4((1)) 1, 2, until January 1, 2005. The parties recognize that the zoning regulations currently applicable to this property, including proffered conditions by the owner, were adopted by the County for promotion of the public health, safety, and general welfare after testimony by the public, including citizens and officials of the Town, and serve to protect existing and future financial commitments of both public and private interests regarding this property. The parties agree that until January 1, 2005, no change in the approved use of this property shall be accomplished except through the process for zoning amendment or development modification specified by County ordinances and regulations.

7. Either party may in writing waive any of the benefits and protections afforded to it by this Agreement.

8. This Agreement shall take effect at midnight on December 31, 1987, except as provided in paragraph 11 below.

9. The Town and the County agree to share equally the expenses of presenting this Agreement to the Commission on Local Government and the Circuit Court of Fairfax County pursuant to the provisions of § 15.1-1167.1 of the Code of Virginia (1950), as amended, as well as any expense incurred in connection with the public hearings required to be held pursuant to statute by the Commission, except that each party shall bear the cost of its own legal services.

10. The County will submit this Agreement to the Attorney General of the United States for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

11. This Agreement shall not take effect unless it is approved by the Commission on Local Government and, with any amendments as may be agreed upon by the parties, approved in its entirety by the Circuit Court of Fairfax County and the Attorney General of the United States, in accordance with applicable law as described in paragraphs 9 and 10 above, and by any other officials, or entities whose prior approval is required by law. Each party shall use its best efforts to obtain all necessary approvals of this Agreement.

12. The parties stipulate that this is not an agreement under Article 1.1, Chapter 25 of Title 15.1 of the Code of Virginia (1950), as amended (§§ 15.1-1058.1 et seq.),

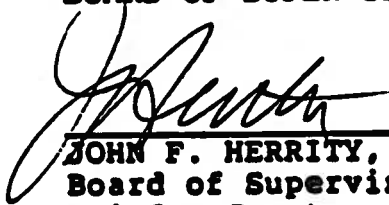
nor is it an agreement under Article 2, Chapter 24 of the Title 15.1, Code of Virginia (1950), as amended (§ 15.1-1031.1 et seq.), nor is it an agreement under any other provision of law other than § 15.1-1167.1 of the Code of Virginia (1950), as amended; further, the parties agree that no petition shall be filed in relation to this Agreement with any court except pursuant to § 15.1-1167.1, Code of Virginia (1950), as amended.

13. This Agreement may be amended, modified, or supplemented, in whole or in part, by the mutual consent of the Board of Supervisors of the County and the Town Council of the Town by a written document, duly executed by the authorized representatives of both bodies, and approved in accordance with applicable law.

14. The Board of Supervisors and the Town Council intend that this Agreement shall bind and inure to the benefit and detriment of them and their successors, and the County and the Town, and their successors.

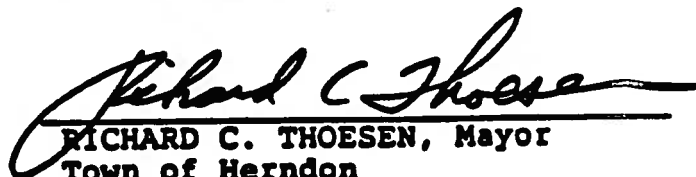
Witness our hand this 24th day of June, 1987.

COUNTY OF FAIRFAX BY ITS
BOARD OF SUPERVISORS:



JOHN F. HERRITY, Chairman
Board of Supervisors,
Fairfax County

THE TOWN OF HERNDON BY ITS
TOWN COUNCIL:



RICHARD C. THOESSEN, Mayor
Town of Herndon

