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August 23, 2011

The Anne Arundel County Council
Arundel Center, 1st Floor
44 Calvert Street
Annapolis, Maryland 21401

Subject: **Executive Veto and Veto Statement**
Council Bill No. 44-11
Amendment Nos. 9, 18, 22, 25, 26, 27, 28, 30, 34, 36, 37, 41, 43, 44, 45, 46

Dear Members of the County Council:

Council Bill 44-11 was introduced in the County Council at the request of the Administration. The legislation was the product of careful review by the Office of Planning and Zoning (OPZ) of the current zoning in Districts 6 and 7, the land use designations for this area in the General Development Plan (GDP), the relevant Small Area Plans (SAP) and Growth Management Plans (GMP), and the requests by landowners for rezoning of properties. This review took place in an open and transparent process that included input from the Planning Advisory Board. The decisions that resulted and were incorporated in the bill represented this Administration's strong belief in the vision for Anne Arundel County as expressed in those Plans. Significant citizen participation, and many hours of staff time by the County's professional planners, went into crafting those Plans and their collective vision for the future development of this area of the County. Following introduction, this legislation was the subject of another hearing by the Planning Advisory Board, numerous meetings and discussions held by the Council members representing these two districts and public hearings by the full Council.

Of particular importance in this bill was the preservation of the rural character of the southern portion of the County. While land use decisions throughout the County are important and have definitive effects wherever and whenever they are made, the words "Keep South County Rural" have not been merely a slogan but are a statement of purpose and a beacon that has guided this Administration as it has made those decisions for that area of the County.

Throughout the comprehensive rezoning process, my Administration has also been cognizant of the need to avoid recommending or supporting land use changes that would constitute spot zoning. Spot zoning occurs when a specific parcel of land in an existing zoned area is singled out and placed in a different zone from that of neighboring properties. This type of zoning, resulting in a unique preference for one landowner, is often found by courts to be illegal. Subsequent individual requests for administrative rezoning can utilize such spot zoning changes as the legal basis for that request, resulting in a domino effect that can diminish the quality of life in an entire area. By being vigilant against this sort of error, we prevent development that is not consistent with the character of surrounding communities and which can lead to future unplanned growth.

My Administration's goal of supporting comprehensive rezoning that is consistent with our General Development Plan and relevant Small Areas Plans is also guided by the enactment by the Maryland General Assembly of Chapter 181 of the 2009 Laws of Maryland. This legislation was passed specifically to respond to the decision of the Court of Appeals the previous year in *Trail v. Terrapin Run, LLC*. That law expressed the clear intent of the General Assembly "that comprehensive plans should be followed as closely as possible while not being elevated to the status of an ordinance and that deviations from the plan should be rare." My review of Bill 44-11 as enacted by the County Council was undertaken with this admonition in mind.

In several instances, Council Bill 44-11 included amendments that significantly increased the zoning classification of properties in order to accommodate requests from current landowners to engage in certain activities. As OPZ pointed out during the debate on those amendments, this comprehensive rezoning legislation will assign zoning classifications to properties that will continue for a significant, extended period of time. These rezonings will remain even if the current landowner ceases existing uses or transfers the land. Consequently, such rezonings raise the potential for more intensive uses in the future or could justify later administrative rezonings that would be detrimental to surrounding communities. In lieu of rezoning these properties, my Administration proposes to work with the Council to enact appropriate zoning text amendments that would obviate the need to rezone the affected properties.

Council Bill 44-11 was submitted to me pursuant to Section 307 of the County Charter for my approval or disapproval. Pursuant to Subsection (J) of that Section, "the County Executive may disapprove of one or more parts of an ordinance while approving others and the part or parts approved shall become law and the parts disapproved shall be returned to the Council as prescribed and shall not take effect unless passed over his veto as set forth herein." Consequently, the people of Anne Arundel County have not restricted my decision to one that requires either the approval or rejection of the entire bill, but have empowered me to exercise a "line item veto" over any part or parts of the ordinance that are disapproved. During my terms, I have exercised this power sparingly and only when I believed it was in the best interests of the citizens of Anne Arundel County. However, after careful review and after considering the comments of literally hundreds of County residents, I find it necessary and appropriate to exercise that power with respect to parts of Council Bill 44-11. By my veto, I am expressly disapproving the following parts of this Bill:

Amendment No. 9 – This amendment constitutes inappropriate spot zoning that could provide a basis for future requests for increased residential density in this neighborhood.

Amendment No. 18 – This amendment significantly increases the amount of industrially zoned land in an area adjacent to residential properties. The amendment was opposed by the Councilman representing the area.

Amendment No. 22 – This amendment constitutes inappropriate spot zoning and proposes zoning that is not consistent with the relevant SAP.

Amendment No. 25 – This amendment provides for increased residential density (RA to R1) for property that has already benefited from the "family conveyance" provisions of the zoning code. The increased density is not consistent with surrounding properties south of Route 214.

Amendment No. 26 – This amendment creates 118+ acres of medium density residential (R5) property in the midst of the surrounding Rural Agricultural (RA) area. Such density is not consistent with the relevant SAP. The existing non-conforming use can continue under the existing zoning.

Amendment No. 27 – This amendment provides for increased residential density (RA to RLD) that is not consistent with surrounding properties, including an area designated as Open Space (OS). This increased density could adversely affect that environmentally sensitive OS area.

Amendment No. 28 – This amendment provides for Commercial (C3) zoning to an existing restaurant. OPZ proposed Commercial (C1) zoning for this property. OPZ will provide the Council with a letter confirming that carry-out, catering or private banquet service is permissible in the C1 zone provided the restaurant's normal business consists of full menu service to the general public. If necessary, the Administration will support a zoning text amendment to reflect that interpretation of existing law.

Amendment No. 30 – The property affected by this amendment currently has an existing non-conforming use and can continue in that status. The rezoning would constitute spot zoning in an otherwise rural area.

Amendment No. 34 – This amendment constitutes spot zoning in an otherwise Rural Agricultural (RA) zoned area.

Amendment No. 36 – This amendment provides for Industrial (W2) zoning in lieu of the OPZ-recommended Commercial (C3) zoning. Industrial zoning is not appropriate for this property since it is surrounded by property zoned either residential or commercial. The W2 zoning is being sought to allow outdoor storage on this property. The Administration will support a zoning text amendment to clarify the ability to use appropriately zoned Commercial property for storage.

Amendment No. 37 – This amendment rezones Rural Agricultural (RA) land to Commercial (C4) resulting in the expansion of commercially zoned property beyond the area recommended in the GDP and SAP.

Amendment No. 41 - This amendment provides for Commercial (C3) zoning to an existing restaurant. OPZ proposed Commercial (C1) zoning for this property. OPZ will provide the Council with a letter confirming that carry-out, catering or private banquet service is permissible in the C1 zone provided the restaurant's normal business consists of full menu service to the general public. If necessary, the Administration will support a zoning text amendment to reflect that interpretation of existing law.

Amendment No. 43 - This amendment constitutes spot zoning in an otherwise Rural Agricultural (RA) zoned area.

Amendment No. 44 – This amendment rezones Rural Agricultural (RA) land to Commercial (C2), resulting in an expansion of commercially zoned property south of Route 214. Such expansion is inconsistent with the GDP and SAP and with the policy goal of not converting residentially-zoned property south of Route 214 to commercial uses.

Amendment No. 45 - This amendment rezones Rural Agricultural (RA) land to Commercial (C1), resulting in an expansion of commercially zoned property south of Route 214. Such expansion is inconsistent with the GDP and SAP and with the policy goal of not converting residentially-zoned property south of Route 214 to commercial uses.

Amendment No. 46 – This amendment provides for a more intensive commercial zone (C4) than that currently assigned to the property (C2). The property consists of the former Anne Arundel County Southern District Police Station and was transferred as surplus property to private ownership in 2006. During community meetings held in connection with the decision to surplus the property, elected and appointed County officials represented to the community that C2 was the appropriate zoning classification for the property. Although these representations were made by a previous Administration, the County must maintain its credibility with citizens and community groups in consultations regarding potentially surplus County property or uses of County land. The failure to do so could seriously jeopardize future County proposals relating to potentially surplus land and justify citizen skepticism of County representations in subsequent cases.

Finally, particular concern has been expressed for the proposed zoning of the property at 1625 Old Generals Highway. There is an existing, legal non-conforming use on that property, which is currently zoned RLD. As part of its review of this area, and in light of that long-standing non-conforming use, OPZ recommended that the property be reclassified to SB. Following the submission of that recommendation as part of Bill 44-11, it became apparent that accommodating the non-conforming use through this zoning change was not appropriate. Consequently, Councilman Trumbauer introduced Amendment No. 17 to Bill 44-11 to return the zoning to RLD. That amendment was supported by OPZ but was, unfortunately, defeated.

At my request, the Office of Law reviewed Bill 44-11, as passed, to determine whether I could exercise the authority vested in me by Section 307(J) of the Charter and “line item veto” the specific zoning map dealing with 1625 Old Generals Highway that is incorporated by reference in Section 2 of the bill. I have been advised that this authority cannot be exercised in this instance since Section 1 of the Bill repeals, in their entirety, the existing zoning maps for Districts 6 and 7. Consequently, the Office of Law has determined that if I did “line item veto” this specific zoning map incorporated by reference into Section 2, such action would result that property having no zoning classification. Obviously, such a result is neither desirable nor legal.

Alternatively, my Administration will work with the community and their Councilman on any subsequent appropriate legislation that would help address their concerns as to the zoning of this property. The Office of Planning and Zoning will provide any technical assistance needed in developing this legislation.

Therefore, in accordance with the authority vested in me by Section 307(j) of the Anne Arundel County Charter, I hereby veto Amendment Nos. 9, 18, 22, 25, 26, 27, 28, 30, 34, 36, 37, 41, 43, 44, 45, and 46 to Bill No. 44-11, and this Veto and Veto Statement are incorporated by reference into the bill as returned to you. By my signature to the bill as presented, I approve the remainder of Bill No. 44-11.

Sincerely,



JOHN R. LEOPOLD
County Executive