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Mr. Don Buch
389 Livermore Lane
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Dear Don:

In response to the many questions and concerns you raised in your letter, the following response is provided, and is organized based on the framework outline of your letter.

1. **The 2005 BRAC Process:** As indicated in the Mayor's letter of April 5, during the regional competitive process to locate the BRAC-133 facility, the City was equally supportive of two sites in Alexandria (Mark Center and the Victory Center) which had already been zoned for the level of density proposed by the Department of Defense (DoD), and where the owners of those sites had placed those sites in competition. It is reasonable to assume that given the City actions on zoning both of those properties had already been completed (2004 for the Mark Center site and 2005 for the Victory Center site), that those two properties not only had vested property development rights for that level of density, but those properties zoning was consistent with City policy.
2. **EA, EIS, FONSI:** The determination of whether or not to employ an Environmental Assessment (EA), or Environmental Impact Statement (EIS) was one that was made by the Department of Defense (DoD). To our knowledge, the use of an EA rather than an EIS was not challenged by any of the state or federal agencies who were requested to review the EA. By federal law, under the National Environmental Policy Act (NEPA), there is an extensive agency coordination effort required which DoD undertook. This included sending the draft EA to many state, federal and local entities, such as the U.S. Department of Transportation, U.S. Fish and Wildlife Service, Virginia Department of Environmental Quality, and the Virginia Department of Transportation (VDOT). To our knowledge no state or federal agency requested that the EA process be changed to an EIS process. Even VDOT, which expressed concerns about transportation impacts, did not request that the EA be changed to an EIS. Finally, whether or not an EA or an EIS is undertaken is an issue that one can litigate. No state or federal agency filed any kind of legal action in regard to changing this study to an EIS process. The City's accepting of

an EA process appears consistent with that of many, if not all, of the plethora of state and federal agencies involved in this environmental assessment.

In your letter, you had also raised the point of taking issue with the DoD in regard to locating a "major terrorist target" in the City. DoD has long had offices and major facilities in the City, and while there has been the need for additional security above and beyond that of private sector and most public sector offices, the City has not equated that need for higher security with being a "terrorist target." DoD jobs have been good for the City's economy, as they have been for all of Northern Virginia and the Washington, D.C. metropolitan area. While DoD needs a higher level of security, the City (since the issuance of the post 9-11 DoD anti-terrorism facility standards) has argued that those standards have now gone too far in creating unnecessary levels of security. Hence, the City's opposition to the planned DoD Remote Inspection Facility at the Mark Center.

Your letter also raises the issue of traffic congestion, and how the City could have supported the Mark Center site for the BRAC-133 project. As indicated in the April 5 letter from the Mayor, the support for both the Victory Center and Mark Center was based on the traffic studies that had been done at the time of the land use approvals for both sites, as well as the traffic measures that were proposed at that time and approved by Council (such as the triple lefts from Seminary to Beauregard). Both the Victory Center and Mark Center BRAC-133 development proposals planned on handling similar or less projected vehicles than what had been previously approved by the City. Therefore, I think one can see the logic of why the City did not take issue with the potential location of the BRAC-133 site at either the Mark Center or Victory Center. That basic tenet, whether in hindsight can be viewed as correct or incorrect, explains the City's decisions during the BRAC-133 site selection process, its reaction to the DoD decision to use an EA process, as well as its finding of no significant impact (FONSI).

The change in specifications which expanded the consideration from just the Victory Center to more sites, the City was told from multiple sources, related to the desire for the DoD to have a competitive multi-bidder process, and not a single, sole source process.

3. **Other Pre-Selection Outcomes:**

- 3.1 **Waiver of Mitigation:** The change in 2004 from the prior concept of a I-395 direct access to the widening of Seminary turn lanes to Beauregard, and the widening of the Beauregard turn lanes to Mark Center Drive, was driven by the Federal Highway Administration (FHWA) stating that they would not permit direct access from I-395 to the Mark Center site. Since then FHWA has apparently somewhat modified their position, and would now allow access to the Mark Center site (the Winkler Preserve option), but not direct access to the parking garages.

- 3.2 DoD Payments in Lieu of Taxes (PILT): While the City had discussed a PILT single payment option with DoD, and had believed that DoD was amenable to such a payment, details of a written legal agreement were never negotiated. The discussions stayed at the preliminary and research stage. It was clear from research early in this process that an annual PILT was not part of DoD policy, and if a PILT payment was made in this case, it would have national precedent setting repercussions. The discussions were for a lump sum up front payment to be made as part of the construction project budget, and not for an annual payment amount. The City was not offering anything in exchange for the PILT, but did indicate on November 2, 2007, and January 4, 2008, (see enclosure in April 5 letter) that the City's support "is contingent upon the City obtaining significant financial compensation to offset its multi-year loss of future real estate taxes." When it was clear no lump sum PILT was possible, the City dropped that contingency.
- 3.3 Financial Compensation (from Developers?) in Lieu of Real Estate Taxes: The "significant financial compensation" that the City referred to in the letters was part of the PILT discussion in the above paragraph. The proposal that was on the table was to have the developers build a one-time lump sum payment to the City into their construction budget as a new line item. It is that approach that DoD thought might work, and then came to the legal conclusion that it would not.
- 3.4 Traffic Concerns: The basis for the traffic conclusions in the August 13, 2008, letter, and for the City actions before that date, were the traffic studies that formed the basis of the 2004 land use approvals of the Mark Center development. Late during the BRAC selection process, the City became aware of VDOT's position opposing Mark Center, as well as opposing the Victory Center, citing traffic concerns on both sites. VDOT was a strong advocate for the Springfield warehouse site. VDOT's advocacy for the Springfield site, and their criticism of even the Victory Center site, made it difficult to believe that they were serving a neutral analyst role. To our knowledge, during the BRAC site consideration process, at no time did VDOT staff call the City, or write directly to us about their concerns. Rather, we learned of their position from a few letters that they wrote to DoD.
- 3.5 Policy Determination: It is understandable that there is public concern about transparency over the executive session method used to make the City's decision. The issue, as articulated in the prior April 5 letter, was that the site selection process was a sealed bid competitive selection process in which not only were property owners competing, but also the City was competing with Fairfax County and other jurisdictions for the BRAC-133 site. In economic development competitions such as that, the norm in local governments is for most discussions of that nature not to be held in public session because of the confidential

proprietary information (such as some of the details of the competing proposals) that often needs to be discussed. Also, in this case the Victory Center and Mark Center properties had been already rezoned in a public process for office use of the intensity proposed by DoD. In the case of the Mark Center, the 2004 land use decisions by Council were ones made after traffic studies had been undertaken, made publically available, and after a robust public debate. Therefore, the issue of traffic at Mark Center had been publically debated with Council making its land use decisions prior to the BRAC-133 process.

- 3.6 Executive Session: See response in 3.5 above.
- 3.7 “Technical Expertise”: As indicated in the April 5, letter, responses to EA’s or EIS are a ministerial action frequently responded to by staff (as is evidenced by the EA staff-level responses from numerous state and federal agencies, as well as Fairfax County) using their technical expertise. Determining whether or not to support or oppose a project like the BRAC-133 location in the City is a governing body decision with staff involvement, which is consistent with how it was handled in this case.
- 3.8 Support of Property Owners: When property owners seek the City’s support to lease to a particular tenant, to sell to a particular buyer, or to seek a federal entity to occupy their space, the City looks at each case before making a decision as to whether or not to support that request or not. The uses and consequences are factors in that decision making process.
- 3.9 Firmly Stating a Preference: The City’s decision in 2008 was to support both the Victory Center and Mark Center sites equally as they had been zoned by the City for high density office use, and both of their property owners had certain property rights as a result.

4. **Post Selection Issues:**

- 4.1 The Zoning Envelope: The City was aware that DoD did not have to obtain the City’s approval for land use changes through a process such as the Development Special Use Permit Process (DSUP), or amendments to the Coordinated Development District (CDD). However, DoD did issue an RFP and that governed the overall breadth of the project, and was bound by that, as well as EA which considered the City’s existing zoning on the property as a factor.
- 4.2 Variances from the SUP: The quote about the Mark Center project that it is “within the previously City-approved zoning envelope” was not intended to convey that each building was exactly as originally proposed by the Mark

Winkler Company in 2004, but that the total project was at a density which was within what the City approved in 2004. As previously detailed to you by the Department of Planning & Zoning, the difference in square footages between the 1.8 million and the 1.4 million is solely based on differing definitions and not actual square footage which is within the approved zoning envelope with the exceptions cited in the April 5 letter.

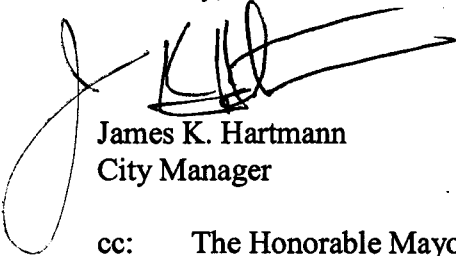
- 4.3 City Addressing the Variances: The City did take issue with the height and design of the office buildings and parking garages, as well as the loss of open space. Since the DoD square footage was within the 2004 City-approved zoning envelope, the proposed total square footage was not challenged.
- 4.4 Challenging the RIF: The RIF was actively and continually challenged by the City at a staff and elected official level. We believe that clear and forceful representations were made to NCPC, to the point that its vote to approve the RIF by NCPC was a close vote. Congressman Moran, Senator Warner and Senator Webb all challenged the RIF, but to no avail.
- 4.5 Open Space: In regard to your open space legal questions, we know of no letter or email that you sent the City Attorney. Rather, we understood that the draft letter that you had prepared for the City Attorney was not sent to the City Attorney, but as indicated in your April 15 email "shared with no one but you (Mark Jinks) and Jim (Hartmann)." In response to your question about any agreement with Duke or DoD on mitigation of the open space and obtaining compensation, we will provide information to the BRAC Advisory Group before any agreements are finalized.
- 4.6 Net Financial Impact: One of the most frustrating elements of the BRAC-133 process has been DoD's inability or unwillingness to focus on emergency services such as fire and emergency medical services. We are continuing to press the issue at higher levels in DoD to get resolution of the matter, and have engaged Congressman Moran in assisting us both on the DoD as well as the appropriation front.
- 4.7 Quantifying Ramifications: City decisions on traffic, such as the Mark Center and Victory Center, have been made in studies using commonly accepted professional quantitative traffic modeling techniques.
- 4.8 Addressing Traffic Challenges: The City continually pressed DoD from early in the process to undertake and complete the TMP. In fact, the TMP was a key agenda item in one of the City's first post-award meetings with the Washington Headquarters Service leadership.

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- 4.9 The Tax Roll/Eminent Domain: It is highly unlikely that the federal government would buy additional office space such as the IDA or the CNA buildings. With the exception of the BRAC process, the federal government's office space program in the Washington, D.C. area is lease-based, and the type of transaction of buying a taxable site, such as in the Mark Center, and building a federal office building is not likely to occur again anytime soon. Also, if the City opposed such an acquisition that would be an influencing factor in the federal government's decision and, in most cases, Congressional approval would be required. If anything happens, it would likely be DoD leasing some, or eventually all, of the CNA building (which is owned by Duke Realty), or leasing some of the new IDA office building that IDA may be deciding to go forward with soon to construct.

Finally, we would agree with you that this whole BRAC process has been one where we have all learned, and will be able to apply the lessons learned to future City decision making.

Sincerely,



James K. Hartmann
City Manager

cc: The Honorable Mayor and Members of City Council
Mark Jinks, Deputy City Manager
Rich Baier, Director, T&ES
Faroll Hamer, Director, P&Z