



MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Staff Report: Preliminary Plan No. 12005020A: Fairland Park Community
Site Plan No. 82005006A: Fairland Park Community

ITEM #: _____

MCPB HEARING DATE: April 22, 2010

REPORT DATE: April 8, 2010

TO: Montgomery County Planning Board

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APPLICATION DESCRIPTION:

Amendment to redesign previously approved plans. The proposal includes 247 residential lots consisting of 216 one-family detached units and 31 one-family attached and semi-detached MPDUs on 130.45 acres; PD-2 zone; southeast quadrant, intersection of Cedar Tree Drive and Islewood Terrace; Fairland Master Plan.

APPLICANT: Fairland Development, LLC/Fairland Development II, LLC

FILING DATE: Preliminary Plan: December 10, 2009
 Site Plan: December 10, 2009

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY:

The preliminary and site plan amendment applications follow an approved Development Plan Amendment to separate private and public land that was previously part of a land exchange to create a golf course community. The amendments now incorporate 130.45 acres of privately held land that consists of 8 unrecorded parcels. The Applicant requests approval of 247 lots for 247 residential dwelling units. Right-of-way dedication and roadway construction will connect to 3 streets beyond the property boundary, including neighboring Prince George's County. A public school site, public parkland and trail connections, private clubhouse and pool facility, as well as clean-up of an industrial waste site fulfill the public amenities requirement outlined in the Fairland Master Plan for the PD-2 zoning.

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SECTION 1: CONTEXT AND PROPOSAL

SITE DESCRIPTION

Vicinity

The Subject Property is generally located south of Sandy Spring Road (MD-198) and approximately 400-feet north of Green Castle Road. The site runs approximately 1,000 feet along the boundary between Montgomery County and Prince George's County. The property is zoned PD-2. Fairland Regional Park bounds the property to the south and west. The area contains a mixture of uses, from primarily residential, one-family attached and detached units and recreational uses on the Montgomery County side to industrial and recreational uses on the Prince George's County side. The surrounding area for this application is specifically referenced in the 1997 Fairland Master Plan and is known as the "Oakfair/Saddle Creek" area. There are no designated historic resources within the boundaries of the development plan.

Adjacent to the subject property is a proposed residential development in Prince George's County, which can be considered the "sister" application to this site. The 1997 Fairland Master Plan envisioned a Fairland Golf Community with 510 dwelling units overall between Montgomery and Prince George's. The preliminary plan for the Prince George's development proposes approximately 128 dwelling units, with a mixture of one-family attached and detached units.

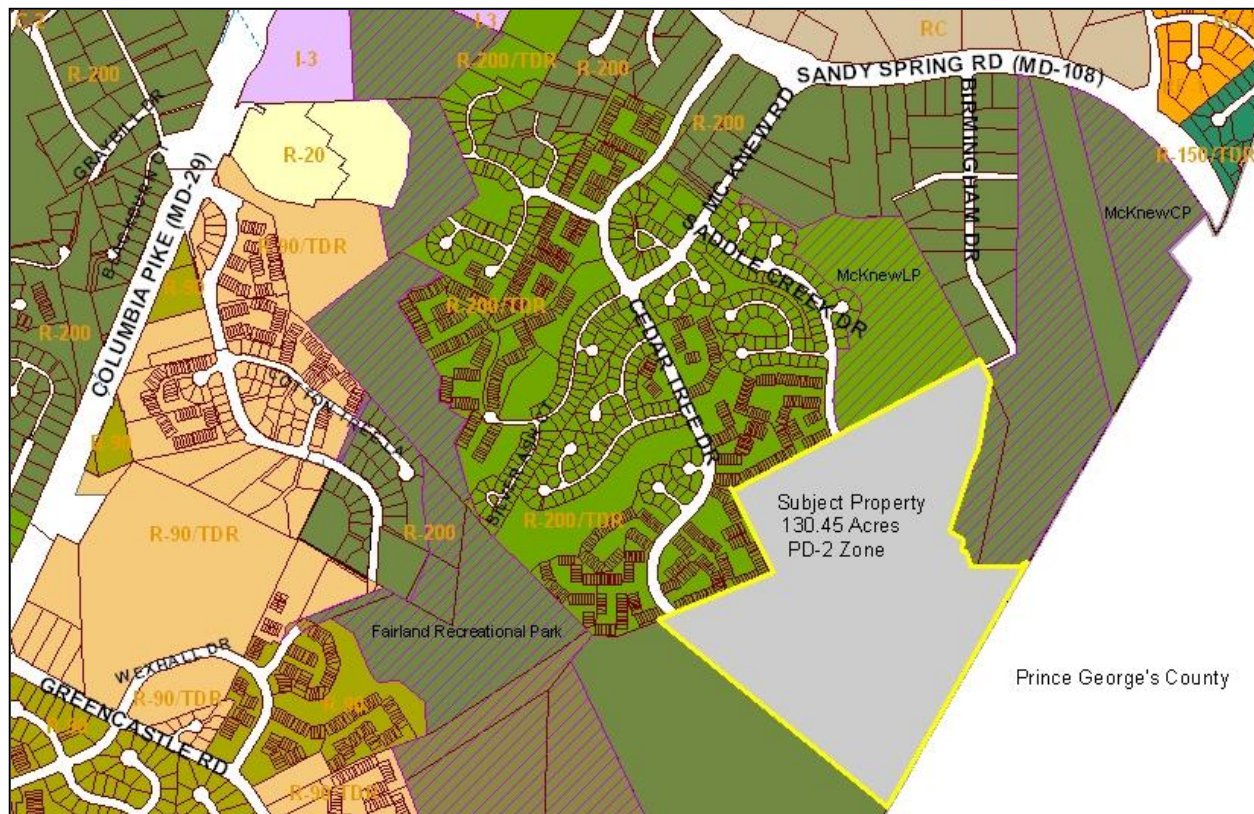


Figure 1: Vicinity & Zoning Map

Site Analysis

The subject property consists of approximately 130.45 acres of land. Portions of the site have been mined for sand and gravel, which has resulted in an assortment of cleared areas. An area toward the middle of the property was used as an illegal landfill (the “stump dump”) for many years.

The Little Paint Branch stream bisects the property from north to south. The site has forested areas, steep slopes, and wetlands associated with the upper reaches of the Little Paint Branch.

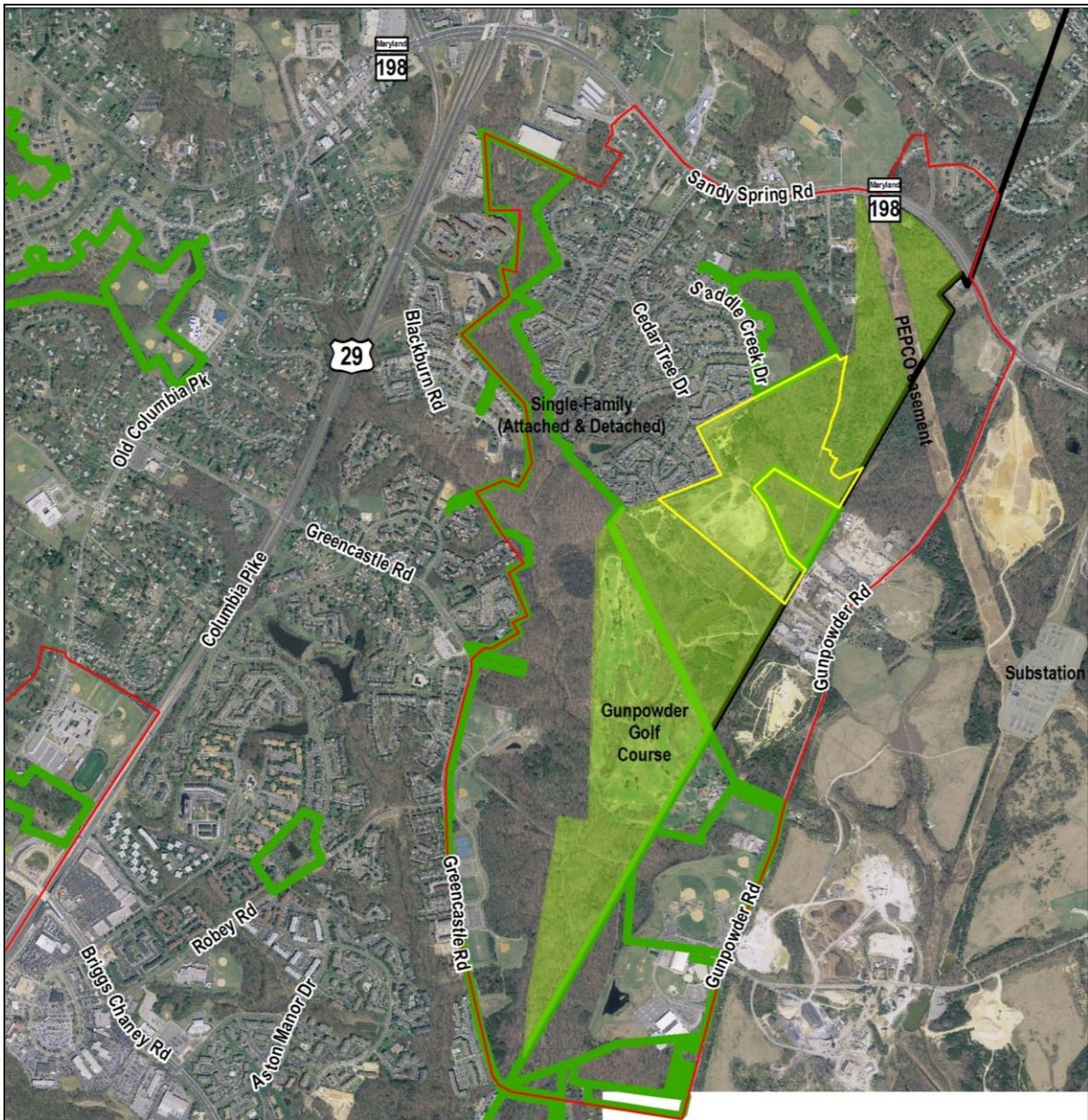


Figure 2: Aerial photo with approximate site boundary outlined in yellow and major roadways highlighted in red

PROJECT DESCRIPTION

Previous Approvals

In April 2004, the property was rezoned from R-200 to PD-2 in conjunction with a Development Plan approved by the District Council in Local Map Amendment applications **G-813** and **G-814**. The Development Plan permitted the construction of up to 396 homes, mostly one-family detached, around a new, 18-hole golf course, replacing an existing public facility, Gunpowder Golf Course.

On December 4, 2004, the Planning Board approved **Preliminary Plan No. 12005020** and **Site Plan No. 820050060** for a maximum of 396 dwelling units, including 50 MPDUs; a redesigned public golf course with associated clubhouse and maintenance building; a community center; a pool house; and associated parking. The total tract area included 314 acres in Montgomery County. The acreage was comprised of both private and public holdings.

On September 15, 2009, **DPA No. 09-1** was approved with revised binding elements by Council Resolution No. 16-1105 [Appendix A] in order to remove the public golf course component and separate the publicly and privately owned land by creating three amended development plans: (1) G-813 Part I and G-814 (privately owned), (2) G-813 Part II (publicly owned), and (3) G-813 Part III (publicly owned). The total tract area for G-813 Part I and G-814 includes 183.32 acres, G-813 Part II consists of 14.52 acres and G-813 Part III comprises a total of 116 acres. As part of this DPA approval, a waiver of Section 59-C-7.131 for the required unit mix was granted by the Council to reduce the minimum 20% townhouse and one-family attached unit requirement. The Applicant proposed 87% one-family detached units and 13% townhouse and one-family attached units in order to meet the Fairland Master Plan goal of providing a greater number of detached units in the area.

Since the approval of **DPA No. 09-1**, the Council approved Resolution No. 16-1046 which completed the MNCPPC acquisition of 52.88 acres of land in the northern portion of G-813 Part I and all of G-814. This acquisition allows for permanent protection of upland forests, a designated bio-diversity area, forested wetlands and bogs, steep slopes, environmental buffer areas, and habitat for rare, threatened and endangered species. This area is on or below the fall-line separating the Piedmont physiographic province from the Coastal Plain. It is an area of diverse geologic and soil conditions that support unique vegetation which is highly valued by the Natural Heritage Division of the Maryland Department of Natural Resources. Preserving these resources and keeping them accessible to the public is not only of countywide importance, but is regionally significant as well. Some of the forest includes old growth stands that are estimated to be more than 75 years old. This acquired parkland will also serve as an important buffer to the historical setting of the Burton House located on Birmingham Drive, which was discussed with the Board during its recent review of the Development Plan Amendment for the Fairland Park Community. The amount of developable land remaining after this acquisition is approximately 130.45 acres.

There is also an area, approximately 18.6 acres in size, in the central portion of the site where illegal dumping and landfilling operations had occurred in the past. This area is believed to contain mostly rubble and woody debris, and was identified by staff during the 2003 review of the rezoning applications (G-813 and G-814) as needing significant reclamation. Reclamation work was proposed for this part of the site as part of the original preliminary and site plan applications. With the current, proposed amendments to these plans, the Applicant continues to show the reclamation work. The Applicant has received approval from the Maryland Department of the Environment (MDE) to perform the reclamation work, which includes the created fill slopes, grading, and stabilization measures for the illegal dump site.

Proposal

The project proposes 247 lots for 247 residential dwelling units, including 12.5% or 31 MPDUs, on a 130.45 acre tract area comprised of 8 unrecorded parcels. Of the 247 dwelling units, 216 are one-family detached market rate units and 31 are one-family attached or semi-detached MPDUs. This mix of units is in accordance with the unit mix waiver granted by the Council as part of DPA 09-1.

The plan proposes two vehicular access points to the site, both of which are extensions of existing public roads; Cedar Tree Drive and Saddle Creek Drive, along the western property boundary. A third access will eventually connect to Old Gunpowder Road to the east through the Prince George's County side of the development. The circulation system consists of a main spine road, Public Road A, which runs through the entire site, and well-connected side streets that provide access to the proposed residential clusters and private alleys.



Figure 3: Illustrative Plan

The pedestrian circulation system consists primarily of sidewalks that closely follow the street layout, an 8-foot bike path that provides access the elementary school site and open space areas, and natural trails. The proposed sidewalk and trail system connects to the existing Fairland Regional Park and to the adjacent development in Prince George's County.

The location of the units follows the proposed street layout, and avoids important environmental features. The proposed units are concentrated along the southern and western property boundaries, allowing for the creation of a large, centrally located open space and amenity area

connected to the community center and pool area. The community center is prominently located on axis with the main entrance to the development, which adds visibility to this facility.



Figure 4: Illustrative plan of the community center and pool area



Figure 5: Rendering of the community center

The 31 one-family attached and semi-detached units are dispersed throughout the development into 3 main clusters. Groupings of 2, 3, 5, and 6 units allow for better integration of these units with the dominate detached unit type. The units have convenient access to open space and amenity areas.



Figure 6: Illustrative plan of two townhouse clusters

Along the southern property boundary, the proposed units will abut the existing Gunpowder Golf Course, owned by M-NCPPC. The plan proposes several mitigation measures consisting primarily of netting and landscaping to offset potential errant shots. Concerns related to the proximity of the proposed development to the existing golf course are discussed in greater detail in the Site Plan Analysis section below.

The Applicant is dedicating 10.95 acres of land to Montgomery County Public Schools (MCPS) for the construction of a future Elementary School, as recommended in the Fairland Master Plan. MCPS Staff supports the location of the proposed School site [Appendix B].

COMMUNITY OUTREACH

The Applicant properly notified adjacent and confronting property owners of the preliminary and site plan submittals on December 14, 2009. Proper signage was placed at various locations along the perimeter of the property and the signage has remained in place. A pre-submission meeting was held on October 19, 2009 satisfying the meeting requirements described in the Development Manual. Staff received correspondence from the Gunpowder Golf Course operator listing the concerns and impacts from the proposed development on the golf course [Appendix D]. Staff has addressed some of these concerns, such as the need for landscaping and netting, through conditions of approval, while the remaining concerns will be addressed by the Applicant during the permit stage and during construction. The Applicant is aware of these concerns and has met with the golf course operator directly on several occasions to address the issues.

Staff has contacted the representative of the Saddle Creek Homeowners Association in regards to the pedestrian connection between the proposed Fairland Park Community and the Saddle Creek community. This connection, proposed as an opening in the future fence and a 20-foot “gap” in between the proposed lots, was envisioned as a way to improve and encourage pedestrian access from the existing adjacent communities to the future Elementary School. The representative supported this connection, but was not able to get feedback from the neighbors on Leatherwood who would be adjacent to the connection and thus mostly impacted [Appendix D].

SECTION 2: PRELIMINARY PLAN REVIEW

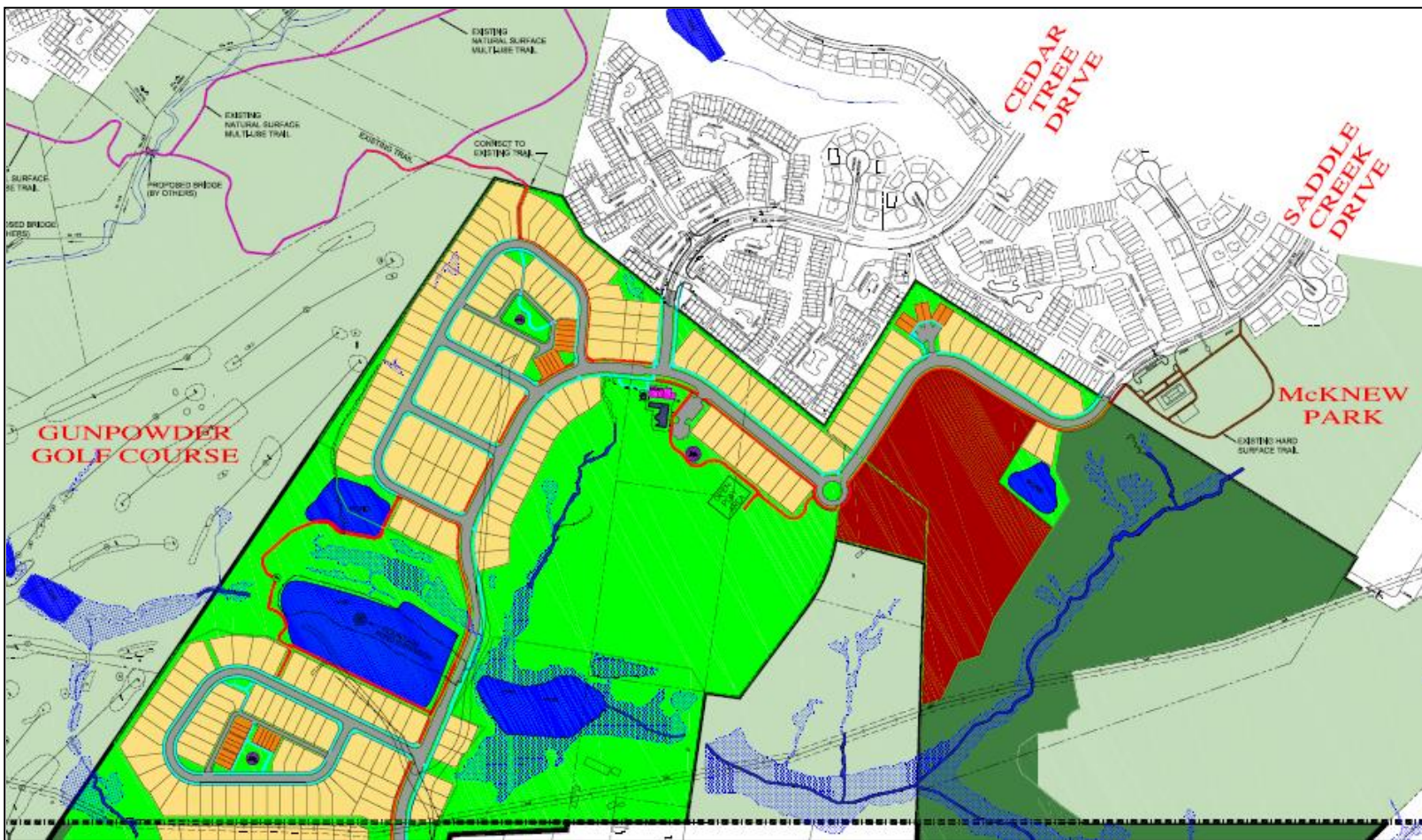


Figure 7: Preliminary Plan

The preliminary plan review for Fairland Park allows for recordation of 247 lots; establishes minimum right-of-way dedications and road design standards; assesses the adequacy of road and transportation facilities as well as other public facilities and services; and ensures compliance with the Forest Conservation Law, Subdivision Regulations, and Zoning Ordinance. Pursuant to

Section 50-38(a)(1) of the Subdivision Regulations, the Applicant is requesting a waiver from the requirements of Chapter 50 so that certain MPDU lots can be recorded without frontage on a public street and the right-of-way and centerline radius for Saddle Creek Drive can meet secondary roadway standards. These waiver requests are discussed in further detail in the Issues and Adequate Public Facilities sections below.

ISSUES

Waiver of Public Street Frontage



Lots 16-29, Block B (in orange)



Lots 24-29, Block H (in orange)

Section 50-29(a)(2) of the Subdivision Regulations states that “except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road.”

The access to 14 lots that accommodate MPDU one-family attached dwelling units (Lots 16-29, Block B) is from a private alley 14 feet in width that extends along the rear of the units in a loop connecting to Public Road B. While the private alley will provide adequate access to these units, the alley does not hold the same status as a public road as stipulated in the Subdivision Regulations. The pavement width is less than 20 feet, a standard turnaround is not present, and circulation within the private alley to the rear of the units will be private and not open to all traffic. In addition, the access to 6 lots that accommodate MPDU one-family semi-detached dwelling units (Lots 24-29, Block H) is from a private driveway 22 feet in width that terminates in a parking area for the units. Although this access has also been deemed adequate by public agencies, a standard turnaround is not present and circulation within the driveway and parking lot will be for residents and guests and will not attain the status of a public road at any time. As such, the Applicant has requested that the Board exercise 50-38(a) (1) and waive the public street frontage requirement for these 20 lots.

Pursuant to Section 50-38(a)(1) of the Subdivision Regulations, the Planning Board has the authority to grant a waiver from the requirements of the Subdivision Regulations upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements being achieved, and a finding that the waiver is: (1) the minimum necessary to provide relief from the requirements; (2) not inconsistent with the purposes and objectives of the General Plan; and (3) not adverse to the public interest.

The Applicant states that strict application of Section 5-29(a) (2) of the Subdivision Regulations will constitute significant practical difficulties in implementing staff and DHCA's recommendations to disperse MPDUs throughout the development and provide a mix of MPDUs that will include townhouses, duplexes and triplexes. The Applicant states that this waiver is the minimum necessary to provide relief from the requirement and will allow for a more attractive design and lot layout. Lots 16-29 in Block B will be served by a 14 foot-wide private alley that will be accessible from a 50 foot-wide right-of-way section and will allow for a larger common open space area in front of these lots. Lots 24-29 in Block H will be served by a 22 foot-wide private driveway that will be accessible from a 70 foot-wide right-of-way section and will thus provide more parking for residents and their guests. The Applicant also states that the granting the waiver will not violate the General Plan but will assist in achieving the Fairland Master Plan's goal of dispersal of MPDUs in new developments to prevent localized areas of high density. Finally, the Applicant argues that the waiver will not be adverse to the public interest because access to the lots will be adequate for emergency vehicles, installation of public utilities, and for other public services.

Staff recommends the Planning Board grant the Applicant's waiver request. The 20 lots are adequately dispersed throughout the development, will create private open space of a higher quality, and will contribute to the Master Plan goal of dispersal of MPDUs. Access to the lots will be adequate for vehicles and pedestrians and the layout of the lots is compatible with surrounding lots.

ANALYSIS AND FINDINGS

Master Plan Compliance

The Fairland Park Community site is located within the *1997 Approved and Adopted Fairland Master Plan*. The subject site is located in the Oakfair-Saddlecreek Community. The Plan made specific recommendations for this property, designated as Area 2 on page 49 of the Plan. The recommendations are accompanied by guidelines for development to be applied to this property. The Plan's primary recommendation was that development on Area 2 could be best accomplished under the provisions of the Planned Development Zone (PD-2) because the zone addresses the appropriate mix and size of units, issues related to public uses, and protection of environmental features.

The recommendations in the Master Plan also support a residential community that could be developed around the existing public golf course. The Master Plan states that Area 2 "has the potential for adding detached units to the housing mix,... improving the road network including a possible extension of roads to Old Gunpowder Road in Prince George's County,... and (providing) a hiker/biker access to the Fairland Recreational Park." In addition to a new school site and street network, the Master Plan envisioned the community as a new development with connected trails and open space.

In addition to the general guidance of the Master Plan regarding this site, staff reviewed this plan using the following eight criteria, outlined on page 48 in the Master Plan:

- 1) *A density cap of 396 units in Montgomery County with an appropriate mix of housing types including single-family detached and attached units.*

The revised plan proposes a total of 247 units. The housing mix includes 216 one-family detached units and 31 one-family attached or townhouse units and semi-detached units. The Fairland Master Plan recommends new developments contain predominately one-family detached units. The Plan highlights that other communities in the county contain far fewer numbers of attached units and multifamily units. Providing single family detached units will help balance the housing mix in the master plan area (p. 18). By proposing that 87% of the total number of units be one-family detached residences, the preliminary plan meets this objective.

- 2) *MPDUs to be distributed throughout the development.*

The Fairland Master Plan encourages a wide choice of housing types for people of all incomes (p. 18). While the Fairland Park Community plan proposes the minimum required 31 lots (12.5% of the total) for MPDU units, they will be located in three areas throughout the development.

- 3) *Extension of the existing road network.*

The Transportation section of the Plan recommends an interconnected road system that creates a connection between Cedar Tree Drive and Gunpowder Road to access the existing golf course and proposed community. The Plan also recommends bikeways and sidewalks to connect the new community to the existing communities along McKnew Road, Cedar Tree Drive, Saddle Creek Drive and Gunpowder Road, and to existing parks.

Saddle Creek Drive and Cedar Tree Drive will be extended through the new community via proposed Public Road 'A' and connect with Old Gunpowder Road in Prince George's County, as well as McKnew Road and ultimately MD 198 in Montgomery County. A bikeway along the west side of Public Road "A" and a sidewalk along the east side of Public Road "A" will extend beyond the site to connect to existing communities and to McKnew Park.

- 4) *Areas of no disturbance or environmental impact (reference to Page 119 of the Master Plan).*

The proposed plan meets the environmental protection objectives of the Master Plan through forest conservation and wetland protection. Moreover, the PD Zone requires 45% green space and the Fairland Park Community is preserving 76.81%, or over 100 acres, as green space. Over 22 acres of quality forest, originally slated for residential development, will be dedicated to M-NCPPC. Environmental Planning staff has reviewed and is satisfied with the Applicant's mitigation plans for filling in two small isolated wetlands, which may have been an outgrowth/remnant of previous sand and gravel extraction operations. The Applicant is voluntarily removing the existing road crossing over the right fork of the Little Paint Branch main stem and creating a new high quality wetland (.39 acres) that will connect the two existing large wetlands to the north and south. This will improve the water quality and restore the natural habitats and forest of the area.

- 5) *Non-vehicular access to Fairland Recreational Park.*

A future trail connection to Fairland Recreational Park will be provided from the new community via a natural surface trail from proposed Public Road “C” to an existing natural surface trail located northwest of the site that connects to Fairland Recreational Park.

6) *Connect road(s) to Old Gunpowder Road in Prince George’s County, if desirable.*

The Plan proposes extending both Saddle Creek Drive and Cedar Tree Drive to connect to proposed Public Road “A”. Public Road “A” will connect to Old Gunpowder Road in Prince George’s County.

7) *Common open space for residents of the new community.*

The recreational amenities will be private, including a community building and a pool of appropriate size serving Fairland Park Community residents within the Montgomery County portion and Prince George’s County portion. Community open space is also provided in open play areas and playgrounds as well as a hiker/biker trail network that meanders around both an existing lake, and several stormwater management ponds as well as connecting residents to the elementary school, McKnew Park and natural surface trails northwest of the site.

8) *A 12-15 acre site for a new elementary school.*

The Fairland Master Plan discusses a school site in the area covered by the preliminary plan noting that it would serve a large number of existing and future households and provide a high potential for children to walk to school. According to the 1997 Master Plan, the school will provide a “centrally located community focal point” (p. 47). The Applicant has worked with Montgomery County Public Schools (MCPS), and an acceptable elementary school site has been identified and will be dedicated to the Board of Education as a part of this preliminary plan. MCPS has noted in their March 31, 2010 letter accepting the proposed site that, since it is less than the desired 12 acres in size, the Applicant should provide forest conservation and stormwater management quantity control areas to serve the school off-site. Other MCPS requirements are specifically detailed in the conditions of approval.

In summary, the amended preliminary plan remains in substantial conformance with the *1997 Approved and Adopted Fairland Master Plan*.

Adequate Public Facilities Review

Roads and Transportation Facilities

Master Plan Roads, Bikeways, Sidewalks, and Trail Facilities

The 1997 Approved and Adopted *Fairland Master Plan* includes the following nearby master-planned transportation facilities:

1. Sandy Spring Road/Spencerville Road (MD 198), as a four-lane divided major highway (M-76) with a minimum right-of-way width of 120 feet and a Class I bikeway (PB-34) to the south side of the roadway between US 29 and the Prince George’s County line.

2. Cedar Tree Drive, as a two-lane primary road (P-45) with a minimum right-of-way width of 70 feet and a Class III bikeway (PB-46) between MD 198 and Fairland Recreational Park. A Class I bikeway (PB-47 – Cedar Tree Drive Connector) that connects Cedar Tree Drive with Robey Road to the south through Fairland Recreational Park is also included in the Master Plan. The existing portion of Cedar Tree Drive is built to master plan recommendations, as a two-lane primary roadway with sidewalks on both sides and a Class III bikeway. McKnew Road, as a two-lane primary road (P-26) with a minimum right-of-way width of 70 feet and sidewalks on both sides between MD 198 and Sugar Pine Court. The existing section of McKnew Road to the south of Sugar Pine Court is currently built as a two-lane primary road to master plan recommendations with sidewalks on both sides.
3. Saddle Creek Drive, as a two-lane primary road (P-27) with a minimum right-of-way width of 70 feet and sidewalks on both sides along the roadway. The master plan recommends Saddle Creek Drive to be either extended from McKnew Road to an undetermined point near Cedar Tree Drive as a cul-de-sac or connected to Cedar Tree Drive. The existing section of Saddle Creek Drive is built as a two-lane roadway to master plan recommendations with sidewalks on both sides, but also within a right-of-way of 60 feet.
4. Riding Stable Road, as a two-lane primary road (P-47) with a minimum right-of-way width of 70 feet and rural open-section to the north of MD 198 across from the site, with a Class III bikeway (PB-61) from MD 198 north to the Prince George’s County line/Brooklyn Bridge Road.
5. Patuxent Trail (PB-41), as an unpaved trail through the site and within the PEPCO right-of-way.

MCDOT and MNCPPC Transportation Planning staff determined as part of the original preliminary and site plans, and once again in reviewing the amendment applications, that the Applicant is responsible for items 2 and 4 above. The Fairland Park Community development proposes to construct Cedar Tree Drive through the site and connect it to Old Gunpowder Road in Prince George’s County through a new primary roadway, “Public Street A”. The Fairland Park Community development proposes to extend Saddle Creek Drive through the site and connect it with Cedar Tree Drive. The Saddle Creek Drive extension will serve the future elementary school proposed on the site as well.

Right-of-Way Width and Centerline Waiver

Section 50-30(c)(1) of the Subdivision Regulations states that “dedication to public use shall be to the full extent of any and all rights-of-way for all roads, ...determined to be necessary and proper and such as would be required by reason of the maximum utilization and development of the subject property in its present zone classification or that higher use shown on any adopted or approved master plan of applicable jurisdiction.”

The Master Plan recommends a 70 foot right-of-way width for Saddle Creek Drive, which is the recommended right-of-way for a “Primary Residential Street without a median” under the Road Code. However, the existing Saddle Creek Drive north of the subject property was constructed as a secondary residential roadway with a right-of-way width of 60 feet. Given this existing circumstance, the Applicant proposes to continue Saddle Creek Drive as a secondary residential

roadway with 60 feet of right-of-way and 26 feet of pavement for the first section of the road up to the curve of the road above Pond F, and then transition into a 70 foot right-of-way with 36 feet of pavement in front and around the elementary school site in order to accommodate MCPS's specific request for 36 feet of pavement in front of the school site. The Applicant is also proposing to maintain a 150 foot centerline curve radius within the 60- foot right-of-way portion into the 70- foot right-of-way portion where there is 36 feet of pavement. The standard centerline curve radius within a 70 foot right-of-way per Section 50-26(d) of the Subdivision Regulations is 300 feet. Waivers of the Subdivision Regulations are required to permit these design modifications.

Section 50-38(a)(2) of the Subdivision Regulations also gives the Planning Board the authority to modify the standards and requirements of the Subdivision Regulations if the Board determines that:

- a. a plan and program for a new town, a complete community or a neighborhood unit will provide adequate public spaces and improvements for the circulation of traffic, recreation, light, air, and service needs of the tract when fully developed and populated, and that legal provisions to assure conformity to the plan are satisfactory; or
- b. a variance will promote the preservation or creation of open space, forest and tree conservation, preservation of environmentally sensitive areas, or the prevention of soil erosion in the public interest.

The Applicant points to the existing 60 feet of right-of-way at the property line and MCPS's requirements for a school size that meets minimum size criteria as unusual circumstances which prevent the road from being pulled further from the property boundary to get the 300 foot centerline radius typically required within a 70 foot right-of-way. The waiver is the minimum necessary to provide relief from the Master Plan recommendations, not inconsistent with the purposes and objectives of the General Plan to provide sufficient access to this proposed development, and not adverse to the public interest. Maintaining the 60 foot right-of-way width for a portion of the road would minimize impacts to trees and stream buffer area in the McKnew tributary and providing 36 feet of pavement along the school site frontage will allow for safe access to the elementary school site. Moreover, with the secondary roadway centerline design standard, the travel speed should be decreased in front of the future school. Staff recommends the Planning Board grant the Applicant's waiver request of Section 50-30(c)(1) and 50-26(d) by the Board's use of Section 50-38(a)(2) of the Subdivision Regulations.

Vehicular/Pedestrian Access and Circulation

The Fairland Park Community development is proposed to have two access points from MD 198. These include:

1. Cedar Tree Drive: Cedar Tree Drive has a monumental entrance at MD 198 that is restricted to right-turns in and right-turns out only and built to primary residential street standards between MD 198 and the site.
2. Saddle Creek Drive via McKnew Road: The MD 198/McKnew Road intersection is signalized. The intersection has a median break that permits full movement of vehicles to and from McKnew Road. The section of McKnew Road between Sugar Pine Court/Saddle Creek Drive (approximately 200 and 400 feet north of Cedar Tree Drive

respectively) and MD 198 (approximately 1,500 feet) is not built to primary residential street standards.

The development also includes a connection to Old Gunpowder Road in Prince George's County via a primary residential street, "Public Road A", that will connect Saddle Creek Drive and Cedar Tree Drive to Old Gunpowder Road in Prince George's County.

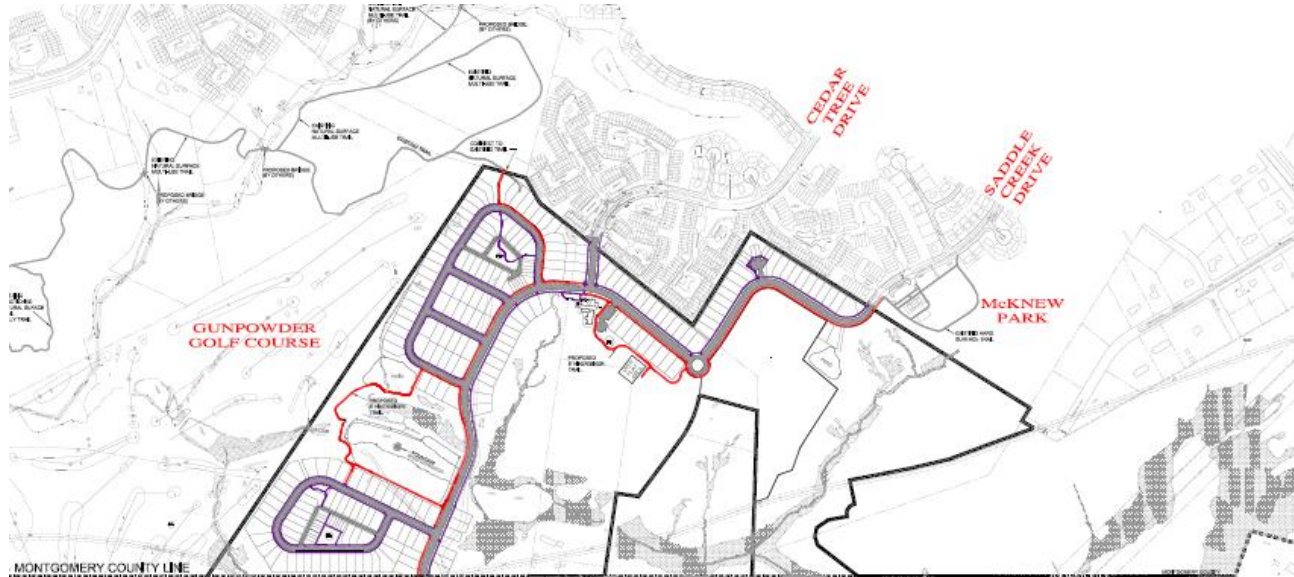


Figure 8: Pedestrian and Vehicular Circulation Plan

On-going Transportation Projects in the Area

On-going transportation projects within the study area include the following:

1. MD 28/MD 198 Corridor Improvement Planning Study: A Draft Environmental Impact Statement for this SHA study is expected to be released in Summer 2009. Currently, the project is funded for planning study only.

Adequate Public Facilities Test

The previous APF approval for transportation facilities remains valid and is applicable to this preliminary plan. Since this amendment to the previously approved preliminary plan proposes a reduction in density, a new LATR test is not required, and a PAMR test is not applicable because the previously approved application pre-dates the PAMR requirement.

A summary of site trip generation for Fairland Park Community development under the current density mix is presented in Table 1 below.

**TABLE 1
SUMMARY OF SITE TRIP GENERATION
PROPOSED FAIRLAND PARK COMMUNITY DEVELOPMENT**

Proposed Density	Trip Generation					
	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
Proposed Dwelling Units						
216 Single Family Detached Units	40	119	159	127	71	198
31 Single Family Attached (Townhouse) Units	3	12	15	17	9	26
Total Trips – 247 DU's (216 SFDU's/31 SFAU's)	43	131	174	144	80	224

Note: Based on M-NCPPC LATR/PAMR Guidelines Trip Generation rates.

As shown in Table 1, the proposed development is estimated to generate 174 peak-hour trips during the weekday morning peak period and 224 peak-hour trips during the weekday evening peak period.

The total number of units proposed in the preliminary plan amendment in comparison to the approved preliminary plan (247 vs. 396 total trips generated) and (174 morning peak-hour and 224 evening peak-hour vs. 289 morning peak-hour and 368 evening peak-hour trips generated) is less than that included in the previously approved APF finding for Fairland Park Community under preliminary plan #120050200. This amendment to the previously approved preliminary plan, therefore, satisfies previously approved findings of the APF test.

Other Public Facilities

Public facilities and services are still available and will be adequate to serve the proposed development. The property will be served by public water and public sewer. The application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the property has appropriate access for fire and rescue vehicles under the current proposal. Other public facilities and services, such as police stations, firehouses, schools, and health services, are operating according to the Growth Policy resolution in effect when the original application was approved and will remain adequate to serve the property. Electrical, telecommunications, and natural gas services are also available to serve the subject property.

Environment

Background

From the forest conservation perspective, the subject site includes portions of the M-NCPPC Old Gunpowder Golf Course because the subdivision's proposed sewer lines cross through the golf course site. In May 2009, an amendment to the Preliminary Forest Conservation Plan (FCP) was reviewed and approved by the Planning Board as part of the review of a Development Plan Amendment for Fairland Park Community (DPA 09-01). The DPA and associated Amendment

to the Preliminary FCP excluded public lands from the application and covered 183.33 acres of land.

Environmental Guidelines

It should be noted that the approved NRI/FSD covers more land than the current Preliminary and Final Forest Conservation Plan Amendments. When the NRI/FSD was approved, the purchase of the 52.8-acre portion for parkland had not occurred. So, the NRI/FSD includes information that covers both the portion of the site that is subject to the current preliminary, site plan, and forest conservation plan amendments and the part of the site that was purchased by M-NCPPC.

The NRI/FSD also includes information on the entirety of the M-NCPPC Old Gunpowder Golf Course. But the current Preliminary and Final Forest Conservation Plan Amendments include only the parts of the golf course site where sewer lines to serve the subdivision are proposed.

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD # 420080090) was approved on February 28, 2008. The site lies within the Little Paint Branch watershed (Use I waters). The 2003 update of the *Countywide Stream Protection Strategy* (Montgomery County Department of Environmental Protection) identifies the sub watershed in which this site is located as the McKnew Park Tributary and documents the stream quality as being good.

Several streams that are part of the Silverwood Tributary network of Little Paint Branch flow through this site. The Silverwood Tributary that flows along the southern portion of the site had been dammed as part of the mining operations to create two large in-stream ponds. Wetlands exist in parts of these ponds, as well as in man-made ponds and small depressions created with the mining work. Some of the smaller wetlands are not hydrologically connected to the streams and associated stream valleys, but are connected to the stream valleys through existing forest stands.

The site roughly slopes from west to east. There are many areas of steep slopes, some of which were created as part of the mining activities that occurred in the past. Roughly the northern third of the site has large forest stands which were not cleared during the mining operations. Forest also occurs on the southern half of the site.

Environmental Buffers, Stream Valleys, and Wetlands

The majority of environmental buffers and associated environmentally-sensitive features within them are proposed to be preserved. Where environmental buffers are on private HOA land, staff recommends the placement of Category I conservation easements. Features in dedicated parkland will not require conservation easements for long-term protection.

There are some environmental buffer areas which are proposed to have permanent encroachments. These areas include: the re-grading and reconfiguration of the southernmost in-stream, manmade pond to create a stormwater management facility that meets DPS requirements; the crossing of public road "A" along the upstream edge of the recreated SWM facility as a necessary and unavoidable feature providing a connection between the subdivision east and west of the stream valley; and unavoidable sewer line connections through the stream valleys at the southeastern corner of the site and within the existing Old Gunpowder Golf Course.

Along the southern boundary line of the site, there are three small wetlands that appear to have been created with the significant grading operations associated with the past mining activities. These wetlands do not lie within an environmental buffer associated with a stream or stream valley. Staff believes the wetlands, which are located within the southern forest area that also encompasses the southern streams and stream valley, provide wildlife habitat function and value since they lie within the same forest complex as the larger stream system and stream valley. However, with the proposed subdivision layout, the southern forest area will be significantly reduced, and there will no longer be a forested connection between the small, created wetlands and the larger streams and stream valley. Therefore, staff believes the wildlife habitat value of these small wetlands will be significantly reduced or eliminated when the forest around them is cleared for the subdivision. Staff does not object to the filling of these particular wetlands, since the habitat value of these wetlands will be greatly diminished or lost, and the Applicant will create wetlands within the on-site stream valley as mitigation for their loss, as required by the Maryland Department of the Environment (MDE).

Forest Conservation

The proposed project is subject to the County Forest Conservation Law (Chapter 22A of the Montgomery County Code). As previously stated, a Preliminary Forest Conservation Plan Amendment was approved with conditions by the Planning Board on May 7, 2009.

The current, proposed amendments to the Preliminary and Final Forest Conservation Plans excludes the 52.8 acres of the property that was bought by M-NCPPC in December 2009 for parkland. The amendments include proposed sewer line extensions into M-NCPPC Old Gunpowder Golf Course that were not included in the forest conservation plan associated with the DPA.

The current Amendments to the Preliminary and Final Forest Conservation Plans propose to retain 37.64 acres and clear 44.03 acres of forest. Retained forest will either lie within HOA parcels or dedicated parkland. The amount of retained forest exceeds the site's conservation threshold of 26.23 acres. Retained forest that meets or exceeds the conservation threshold is consistent with Section 22A-12(f)(2)(B) of the County Forest Conservation Law:

“In a planned development or a site development using cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a).”

It should be noted that with the proposed forest conservation plan the Applicant is not required to plant forest because 37.64 acres of forest will be preserved, which is slightly more than the site's break-even point of 37.32 acres. Although there is no forest planting requirement, staff recommends that native trees and/or shrubs be planted in two places: a portion of an unforested environmental buffer that will be adjacent to the community center and pool, and an area at the toe of the created slope of the reclamation area approved by the Maryland Department of the Environment (MDE) that is adjacent to existing wetlands.

Variance Request

Section 1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. An Applicant for

a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the Montgomery County Code. The law requires no impact to any trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as a county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; trees associated with a historic site or structure; and rare, threatened and endangered species. Although the approval of the first Amendment to the Preliminary Forest Conservation Plan occurred in May 2009, this first Preliminary FCP Amendment did not include the proposed sewer line extensions through the existing Old Gunpowder Golf Course. The current (second) Amendment to the Preliminary Forest Conservation Plan proposes these sewer line extensions, which affect trees at least 30 inches DBH. Therefore, a variance is required for only the part of the Preliminary FCP Amendment which covers the proposed sewer line extensions within the Old Gunpowder Golf Course. The Applicant has requested a variance for impacts to nine trees that are 30 inches or greater, DBH (Attachment 1). Of these nine trees, five trees are proposed to be removed.

The following trees are proposed to be removed: a 31.4" northern red oak, two 30.7" tulip poplars, a 34.3" northern red oak, and a 30.1" tulip poplar. The following trees are proposed to be affected but preserved: a 36.9" beech, a 39.3" chestnut oak, a 37.5" tulip poplar, and a 32.5" northern red oak. The 39.3" chestnut oak that is proposed to be preserved is greater than 75 percent of the size of the existing County champion for that species.

In accordance with Montgomery County Code, Section 22A-21(c), the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. In this case, the variance request was referred to the Montgomery County Arborist on March 23, 2010. The County Arborist has not provided a recommendation for the variance request (Attachment B). By law, the County Arborist's response for the variance request is, therefore, presumed to be favorable.

In accordance with Section 22A-21(e), Environmental Planning staff recommends that the Planning Board find, based on the following justifications, that the Applicant has met all criteria required to grant the variance.

1) Will not confer on the Applicant a special privilege that would be denied to other Applicants.

The requested variance will not confer on the Applicant any special privileges that would be denied to other Applicants. The proposed impacts to trees 30 inches and greater, DBH, are due to sewer line extensions to serve the subdivision. These sewer lines are necessary and unavoidable infrastructure elements of the subdivision. The sewer line routes proposed will minimize impacts within environmental buffers.

2) Is not based on conditions or circumstances which are the result of the actions by the Applicant.

The proposed sewer line connections are constrained by the existing sewer line locations and the required elevations for the connections. Given these constraints, staff believes the sewer alignments minimize impacts to overall forest stands on the golf course.

3) Does not arise from a condition relating to land or building use, either permitted or

nonconforming, on a neighboring property.

The requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.

4) Will not violate State water quality standards or cause measurable degradation in water quality.

The proposed sewer lines are necessary infrastructure elements of the subdivision. The subdivision, with its proposed stormwater management facilities and stump dump reclamation area, will improve the water quality of the receiving streams, compared to the prior use of the site as a mining operation.

As a result of the above findings, staff recommends approval of the Applicant's request for a variance from the Forest Conservation Law to remove or otherwise impact specimen trees. The variance approval would become part of the Planning Board's approval of the final forest conservation plan.

Stormwater Management

The proposed stormwater management concept, approved on July 22, 2009, consists of on-site channel protection measures via dispersion, and via construction of six wetland ponds and modification of the existing wet pond; onsite water quality control via treatment within the wetland ponds as well as construction of one Montgomery County Sand Filter.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. Access and public facilities will be adequate to support the proposed use. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan [Appendix B].

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Fairland Park				
Plan Number: 12005020A				
Zoning: PD-2				
# of Lots: 247				
# of Outlots: N/A				
Dev. Type: Residential				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	Not specified	4,465 sq. ft. is min. proposed for 1-family detached; 976 sq. ft. is min. proposed for MPDU	EG	3/31/10
Setbacks				
Front	Not specified	Determined at Site Plan	EG	3/31/10
Side	Not specified	Determined at Site Plan	EG	3/31/10
Rear	Not specified	Determined at Site Plan	EG	3/31/10
Height	Not specified	Determined at Site Plan	EG	3/31/10
Density	2.0 d.u. per acre	1.89 d.u. per acre	EG	3/31/10
MPDUs	12.5% of total	12.5% of total	EG	3/31/10
Workforce Housing	N/a	N/a		
TDRs	N/a	N/a	EG	3/31/10
Site Plan Req'd?	Yes		EG	3/31/10
FINDINGS				
<i>SUBDIVISION</i>				
Lot frontage on Public Street		Yes	EG	3/31/10
Road dedication and frontage improvements		Yes	MCDOT letter	3/24/10, 3/24/10-Addendum
Environmental Guidelines		Yes	Staff memo	4/6/10
Forest Conservation		Yes	Staff memo	4/6/10
Master Plan Compliance		Yes	Staff memo	4/6/10
<i>ADEQUATE PUBLIC FACILITIES</i>				
Stormwater Management		Yes	Agency letter	7/22/09
Water and Sewer (WSSC)		Yes	Agency comments	
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	
Well and Septic		N/a	EG	3/31/10
Local Area Traffic Review		Yes	Staff memo	3/30/10
Policy Area Mobility Review		N/a	Staff memo	3/30/10
Transportation Management Agreement		No	Staff memo	3/30/10
School Cluster in Moratorium?		No	EG	3/31/10
School Facilities Payment		No	EG	3/31/10
Fire and Rescue		Yes	Agency letter	4/12/10

PRELIMINARY PLAN RECOMMENDATION AND CONDITIONS

The application meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and complies with the recommendations of the Fairland Master Plan. Therefore, Staff recommends approval of Preliminary Plan 12005020A, including a waiver of Section 50-29(a)(2) pursuant to Section 50-38(a)(1) of the Subdivision Regulations to permit lots without public street frontage for Lots 16-29, Block B and lots 24-29, Block H; and a waiver of Section 50-30(c)(1) and Section 50-26(d) pursuant to Section 50-38(a)(2) to permit a non-standard road configuration for a short portion of Saddle Creek Drive subject to the following conditions. These conditions supersede all of those included in the previous approval of Preliminary Plan #120050200:

1. Approval under this preliminary plan limits Fairland Development, LLC/Fairland Development II, LLC (hereinafter referred to as “Applicant”) to:
 - a. A maximum of 247 lots for 247 residential dwelling units, including 216 one-family detached units and 31 one-family attached and semi-detached units.
 - b. A minimum of 12.5% of the residential dwelling units must be Moderately Priced Dwelling Units (MPDUs). MPDUs must be constructed in accordance with the phasing schedule approved by the Department of Housing and Community Affairs.
 - c. A swimming pool and clubhouse facility with associated parking.
2. The Applicant must comply with the conditions of approval of the Amendments to the Preliminary and Final Forest Conservation Plans as conferred in the staff approval letter dated April 6, 2010. The Applicant must meet all conditions and requirements prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s) as applicable.
3. All areas identified as forest retention, forest planting, or environmental buffers must be placed in Category I conservation easements, or within M-NCPPC park dedication areas for conservation use. Conservation easements must be shown on record plats.
4. The Applicant must dedicate and show on the final record plat the following rights-of-way and Public Improvement Easements (PIE):
 - a. Cedar Tree Drive – full width dedication of 70 feet between existing terminus and proposed Public Road “A”.
 - b. Saddle Creek Drive – full width dedication of 70 feet, with appropriate transition between existing terminus (right-of-way dedication of 60 feet) and proposed Public Road “A”/Saddle Creek Drive cul-de-sac
 - c. Public Road “A” – full width dedication of 70 feet between Saddle Creek Drive and Prince George’s County line.
 - d. Public Road “B” – full width dedication of 50 feet.
 - e. Public Road “C” – full width dedication of 50 feet, with three-foot wide PIE to accommodate bike path connections as shown in the amended preliminary plan.
 - f. Public Road “D” – full width dedication of 50 feet.
 - g. Public Road “E” – full width dedication of 50 feet.
5. The Applicant must construct the following roads per Montgomery County Department of Transportation (DOT) requirements. All of the following roadway sections must be open to traffic prior to issuance of the 176th building permit:

- a. Cedar Tree Drive – as a 70-foot wide primary residential street, with five-foot wide sidewalks on both sides along the entire length.
 - b. Saddle Creek Drive – as a 60-foot wide secondary residential street for approximately feet transitioning to a 70-foot wide primary residential street, with an eight-foot shared-use path to the east side and a five-foot wide sidewalk to the west side along the entire length of Public Road “A” – as a 70-foot wide primary residential street, with an eight-foot shared-use path and a five-foot wide sidewalk along the entire length.
 - c. Public Road “B” – as a 50-foot wide tertiary residential street, with five-foot wide sidewalks on both sides along the entire length.
 - d. Public Road “C” – as a 50-foot wide tertiary residential street, , with five-foot wide sidewalks on both sides along the entire length and eight-foot wide shared-use paths with three-foot wide PIE’s as necessary.
 - e. Public Road “D” – as a 50-foot wide tertiary residential street, with five-foot wide sidewalks on both sides along the entire length.
 - f. Public Road “E” – as a 50-foot wide tertiary residential street, with five-foot wide sidewalks on both sides along the entire length.
6. The Applicant must extend off-site the five-foot wide sidewalk proposed along the east side of Cedar Tree Drive approximately 100 feet to the north to Islewood Terrace and the five-foot sidewalk along the west side of Cedar Tree Drive approximately 250 feet to the north to Crosswood Drive.
 7. The Applicant must meet DPS requirements at the time of record plat to ensure the Applicant’s extension of the off-site, eight-foot wide, shared-use path proposed along the east side of Saddle Creek Drive approximately 100 feet to the north to McKnew Local Park southern entrance and along the west side of Saddle Creek Drive approximately 100 feet to the north to Bender Court.
 8. The Applicant must meet DPS requirements at the time of record plat to ensure the Applicant’s placement of the proposed five-foot wide sidewalk off Saddle Creek Drive between Lots 24 and 23 of Block H in the middle of the 20-foot area.
 9. All handicapped ramps that accommodate crossing of the proposed shared-use path across Public Roads “A”, “B”, “C”, “D”, and “E” must be eight feet wide.
 10. The Applicant must convey approximately 22.93 acres that lie in the northern portion of the Subject Property, identified as “Parcel G” on the preliminary plan, for use as parkland. The land must be dedicated to the M-NCPPC through notation on the plat and by conveyance at the time of record plat in a form of deed approved by the Office of General Counsel. At time of conveyance, the property must be free of any trash and unnatural debris. Boundaries must be staked and signed to designate dedicated parkland.
 11. Prior to approval of plat(s), the Applicant must provide funding in a form acceptable to M-NCPPC, in the amount of \$20,000.00, for construction of a stream crossing bridge within Parcel G in order to facilitate construction of a 4-foot wide, natural surface trail.
 12. The Applicant must convey approximately 2,770 square feet located off of Public Road C, identified as “Parcel B” on the preliminary plan, for use as public access to natural surface trails located within Fairland Recreational Park. The land must be dedicated to the M-NCPPC through notation on the plat and by conveyance at the time of record plat in a form of deed approved by the Office of General Counsel. “Parcel B” must be 25 feet

- wide and signed to identify it as public access to parkland. The Applicant must construct a 4' wide natural surface trail within Parcel B from Public Road C to the natural surface trail system. At time of conveyance, the property must be free of any trash and unnatural debris.
13. The Applicant must convey approximately 10.95 acres with access from Saddle Creek Drive, identified as "Parcel E" on the preliminary plan, for use as an elementary school campus. The land must be dedicated to the Board of Education, at no cost, in fee simple, free and clear of any encumbrances or covenants. At time of conveyance, the property must be free of any trash and unnatural debris. Prior to conveyance of the school site to the Board of Education, the Applicant must:
 - a. rough grade the site in a manner and to grades acceptable to MCPS;
 - b. guarantee capacity in stormwater management Pond "F" to satisfy quantity control requirements for development of the school site, if needed;
 - c. release MCPS from responsibility for future costs associated with modification and/or maintenance of Pond "F"; and
 - d. provide sufficient off-site forest conservation and maintenance thereof attributable to the school site and as required to accommodate development of the school site.
 14. Public land conveyance must occur at the time of recordation of plat(s) for the first residential lot(s).
 15. The existing location and alignment of park trails and other park facilities being replaced or relocated must be determined as part of site plan or park permit, as appropriate.
 16. The Applicant must identify lots affected by the rubble fill/stump dump area on the certified set of the site plan. Prior to release of building permits for affected lots, the Applicant must remove the rubble fill/stump dump materials (manmade and natural) that are not suitable for compaction, and provide fill and compaction suitable to meet MCDPS structural standards.
 17. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated July 22, 2009. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
 18. The Applicant must comply with the conditions of the MCDOT letter dated March 24, 2010 and March 26, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
 19. Site Plan Amendment No. 82005006A must be approved by the Board and signed by the Development Review Staff prior to the approval of the record plat.
 20. Prior to approval of the certified site plan, all residential lots that have driveways on or adjacent to significant curves must have sight distance evaluations submitted to MCDOT for approval. This includes all lots on the "inside" of the elongated or modified cul-de-sacs.
 21. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
 22. The record plat(s) must reflect a public use and access easement over all private alleys.
 23. The record plat(s) must reflect common ingress/egress and utility easements over all shared driveways.
 24. The record plat(s) must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.

25. The record plat(s) must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 (“Covenant”). The Applicant must provide verification to Commission staff prior to release of final building permit that Applicant’s recorded HOA Documents incorporate by reference the Covenant.
26. The Adequate Public Facility (APF) review for the preliminary plan will remain valid for one hundred forty-five (145) months from December 4, 2004 (date of the original preliminary plan approval by the Planning Board), or until January 4, 2017.
27. This preliminary plan will remain valid for seventy-three (73) months from the date of mailing of the Planning Board resolution. Record plat(s) must be recorded in three phases:
 - a. Phase I (expires 37 months from the date of mailing of the Planning Board opinion) - 75 dwelling units.
 - b. Phase II (expires 55 months from the date of mailing of the Planning Board resolution) – 100 dwelling units.
 - c. Phase III (expires 73 months from the date of mailing of the Planning Board resolution) – 72 dwelling units.
28. Other necessary easements must be shown on the record plat.

SECTION 3: SITE PLAN REVIEW

ANALYSIS

Issues

The development is directly adjacent to the Gunpowder Golf Course, a Maryland-National Capital Park and Planning Commission (“M-NCPPC”) facility located in both Montgomery and Prince George’s Counties. Prince George’s County Department of Parks and Recreation (“DPR”) currently leases the property to a private Golf Course Operator. DPR is also planning to make substantial physical improvements to the facility.

Collectively Staff raised several concerns resulting from the proximity of the proposed units to the existing Gunpowder Golf Course. These include:

- 1) Safety and protection of future residents from errant shots from the golf course;
- 2) Negative impacts of the proposed development on the operation of the golf course;
- 3) Liabilities that the M-NCPPC may be exposed to as the owner of the golf course;
- 4) Maintenance costs for proposed poles and netting.

The Applicant addressed concerns #1) and #2) by providing two errant shot studies for golf course holes #3, #6 and #14 that identified areas of greatest frequency of errant shots and proposed mitigation measures for the most affected areas. One study provided recommendations on the location and linear feet of netting, and delineated areas of vegetative buffer. The other study provided recommendations for netting heights based on 85-90% containment of errant shots [Appendix E]. As proposed, the plan shows two areas of netting of approximately 350 linear feet each, with heights varying from 25’ to 40’ for hole #6 and from 25 to 62.5’ for hole #3.

In order to evaluate this proposal, DPR staff hired a Golf Course Architect who was directed to conduct an independent errant shot study. The mitigation measures recommended by the Golf Course Architect were substantially similar to those proposed by the Applicant. However, the Golf Course Architect did not make recommendations on netting height because of lack of qualifications. Additionally, the Golf Course Architect recommended installation of an 8-foot-high chain link fence along the entire property boundary between the golf course and the proposed residential community, except in areas where poles and netting are provided. Its purpose is to prevent residents of the community from entering the golf course property.

After a field visit, MRO Staff recommends against the additional fencing because the existing conditions with steep slopes and vegetation effectively prevent pedestrian circulation. DPR Staff supports having the fence as a safety feature to prevent community residents from wandering into areas where they could be struck by golf balls [Appendix F]

Concern #3) was addressed through conditions of approval, HOA covenants and an easement agreement between MNCPPC and the Applicant [Appendix G].

The Applicant addressed concern #4) by confirming that the poles and netting will be installed by the Applicant on the homeowner’s common open space and maintained in perpetuity by the

Homeowners Association. According to the Applicant and confirmed by independent contractors, the netting will typically need to be replaced every 15 years and the poles every 30-40 years. The Applicant provided a cost estimate for the installation of the netting and poles [Appendix H]. When factored into the HOA budget, this cost will translate into an approximate \$5.60 share per household per year. The Applicant also assured access to the poles and netting through an access easement from the public road to the common areas where the poles are located.

Development Standards

The subject site is zoned PD-2. The Planned Development (PD) Zone is intended to provide flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity. The PD-2 Zone allows the proposed residential uses. The proposed development meets the purpose and requirements of the zone as detailed in the Findings section of this report.

The following data table indicates the proposed development’s compliance with the Zoning Ordinance.

Project Data Table for the PD-2 Zone

Development Standard	Zoning Ordinance Permitted/ Required	Binding Elements per DPA 09-1	Proposed for Approval & Binding on the Applicant
Gross Tract Area (GTA)	n/a	n/a	130.45 acres
Housing Mix (59-C-7.13) - One-family detached - One-family semi-detached/attached (MPDUs)	30% min. 20% min. ^(a)	n/a n/a	87%. 13% min. ^(a)
Max. Number of Dwelling Units - One-family detached - One-family attached (MPDUs) - Semi-detached (MPDUs)	260	353	247 216 25 6
MPDUs (%)	12.5%	12.5%	12.5%
Max. Residential Density (du/acres) 59-C-7.14(a)	2	n/a	1.89
Min. Building Setbacks (feet)			
Min. Setback from public street - One-family detached - One-family attached (MPDUs) - Semi-detached units (MPDUs) - Community building	n/a	n/a	15 10 10 10

Rear yard - One-family detached (front garage) - One-family detached (rear garage) - One-family attached and semi-detached units (MPDUs)	n/a	n/a	20 0 0
Side yard - One-family detached (front garage) - One-family detached (rear garage) - One-family attached and semi-detached units (MPDUs)	n/a	n/a	5 5 0
Min. Accessory Building Setback (ft)			
Rear and side lot lines - Detached garages - All other structures	n/a n/a	n/a n/a	0 5
Max. Building Height (feet) ^(b)			
- One-family detached (front garage)	n/a	n/a	40
- One-family detached (rear garage)			35
- One-family attached (w/ garage)			40
- One-family attached (no garage)			30
- Semi-detached units			40
Min. Green Area (% of GTA) (59-C-7.16)	30 (39.1 acres)	45 (58.7 acres)	76.81 (100.2 acres)
Land Devoted to Public Use (acres)			
- MCDOT Public Roads	n/a	n/a	46.97 (total) 13.09
- MNCPPC Public Parkland			22.93
- MCPS Elementary School Site			10.95
Min. Onsite Parking Spaces (59-E)			
Community Center	n/a	n/a	26
Residential		n/a	
- One-family detached (front garage)	366 (2 sp/du)		732
- One-family detached (rear garage)	66 (2 sp/du)		66
- One-family attached (w/ garage)	50 (2 sp/du)		50
- One-family attached (no garage)	12 (2 sp/du)		12
Bicycle spaces (@ 1 sp/ 20 parking spaces)	2	n/a	4

(a) A waiver was granted by the County Council from the minimum 20% requirement in Section 59-C-7.13¹ of the Zoning Ordinance in the approval of DPA No. 09-1 by Resolution No. 16-1105, in light of the Master Plan's emphasis on increasing the number of detached homes in the Fairland area.

(b) Building height as measured to the mean height of roof (not peak).

FINDINGS

1. *The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

The proposed development conforms to all non-illustrative elements of the Development Plan Amendment (DPA 09-1) for Fairland Park Community. DPA 09-1 created three amended development plans: (1) G-813 Part I and G-814 (privately owned), (2) G-813 Part II (publicly owned), and (3) G-813 Part III (publicly owned) in order to remove the public golf course component, which could not be achieved, and separate the publicly and privately owned land, as called for by the approved Development Plans. Each of the three amended development plans has a set of binding elements. This application conforms to all binding elements in terms of maximum number of units, mix of MPDUs and market rate units, forest conservation requirements, trail system, green area, school site dedication, and setbacks.

2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the Planned Development (PD-2) zone as demonstrated in the project Data Table on page 29. This zone does not have specific development standards in order to provide for more flexibility in development. Standards for setbacks and building height are established with the site plan approval and binding on the Applicant.

A waiver was granted by the County Council from the minimum 20% one-family attached requirement in Section 59-C-7.13(1) of the Zoning Ordinance in the approval of DPA No. 09-1 by Resolution No. 16-1105, in light of the Master Plan's emphasis on increasing the number of detached homes in the Fairland area. The application proposes 13% one-family attached units and 87% one-family detached units.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

- a. Locations of buildings and structures

The plan proposes 247 dwelling units, of which 216 are one-family detached, and 31 one-family attached and semi-detached units (MPDUs), and a community center. The location of the units follows the proposed street layout, and avoids important environmental features. The units are concentrated along the southern and western property boundaries, which allows for the creation of a large centrally located open space and amenity area connected to the community center and pool area. The

community center is prominently located on axis with the main entrance to the development, which adds visibility to this facility and could contribute to a stronger civic sense. The 31 MPDUs are divided into 3 clusters with a mix of duplexes and triplexes, which integrates them well into the overall development.

Along the southern property boundary, the proposed units will abut existing Gunpowder Golf Course, owned by M-NCPPC. Although often considered as a desirable relationship, the proximity of the proposed units to the golf course was evaluated in an Errant Shot Study to ensure safety of the future residents. The proposed mitigation measures consist of approximately 20-60-foot tall netting in the areas of highest errant balls frequency and vegetative buffer in areas of less impact.

The Applicant is dedicating 10.95 acres of land to Montgomery County Public Schools (MCPS) for the construction of a future Elementary School, as recommended in the Fairland Master Plan. MCPS Staff supports the location of the proposed School site [Appendix B], which is easily accessible by both the vehicular and pedestrian circulation systems, and abuts parkland recently acquired by M-NCPPC for Fairland Recreational Park.

The location of the proposed buildings and structures is safe, adequate, and efficient with the proposed mitigation measures.

b. Open Spaces

The plan proposes a significant amount of open space and amenity area centrally located just north of the stream valley and environmentally protected areas. This area will be a mostly flat open play area that provides a link between the community center and the proposed school site. Other secondary open spaces are located within the residential clusters and easily accessible to the attached units. All open spaces are well connected through the proposed trail and sidewalk system.

c. Landscaping and Lighting

The landscape plan achieves several objectives by providing a buffer from the adjacent townhouse community to the west of the proposed development, and by supplementing the mitigation measures proposed for errant shots from the existing Gunpowder Golf Course along the southern property boundary. Additionally, the landscaping provides canopy coverage and shade for parking areas, roads, and open spaces. Smaller plant material, such as herbaceous plants, evergreen and deciduous shrubs, and ornamental trees, emphasizes the entrance to the development, the community center area and playground areas. The landscaping with an emphasis on native species is adequate, safe and efficient.

The lighting plan consists of pole mounted light fixtures with a pole height of approximately 16 feet located on all public roads, the community center parking lot, and the parking area for the duplexes at the western corner of the property boundary. The proposed lighting provides safe, adequate and efficient illumination for the visitors and residents of this community.

d. Recreation Facilities

The recreation facilities provided include community space within the community center, a swimming pool, a wading pool, an open play area, and bike and pedestrian systems. This development meets all the recreation requirements onsite through these facilities, which satisfy the 1992 MNCPPC Recreation Guidelines. The facilities provided adequately and efficiently meet the recreation requirements of this development, while providing safe and accessible opportunities for recreation.

e. Pedestrian and Vehicular Circulation Systems

The plan proposes three vehicular access points to the site, two of which are extensions of existing public roads, Cedar Tree Drive and Saddle Creek Drive, along the western property boundary, and a third access will eventually connect to Old Gunpowder Road to the east through the Prince George's County side of the development. The circulation system consists of a main spine road, Public Road A, which runs through the entire site, and well-connected side streets that provide access to the residential clusters and private alleys. Public roads are shown with a 26-foot-wide paved road width to reduce imperviousness while providing the same level of service. Planning Staff has encouraged the Applicant and County agencies to accommodate on-street parking; however, the latest regulations from the Department of Fire & Rescue may prevent on-street parking in order to allow for access, sight distance and safety. Further, the height of the residential buildings must maintain a specific sill height in order to provide for safe fire access from the reduced street. The Applicant has committed to the lower sill height recommended by Fire and Rescue in order to accommodate on-street parking. Staff recommends continued coordination with the necessary Agencies to accommodate on-street parking.

The pedestrian circulation system consists primarily of sidewalks that closely follow the road layout, and an 8-foot bike path that provides access to some open space areas. Pedestrian access from adjacent sidewalks and a hiker/biker access to the Fairland Recreational Park adequately and efficiently integrates this site into the surrounding area. Additionally, the plan will also provide for a future pedestrian connection from Public Road A to the Saddle Creek community. This connection, proposed as an opening in the future fence and a 20-foot "gap" in between the proposed lots, was envisioned to encourage pedestrian access from the existing adjacent communities to the future Elementary School. The pedestrian and vehicular circulation systems are safe, adequate, and efficient.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The structures and uses proposed are compatible with other uses and site plans, and with existing and proposed adjacent development. In order to increase compatibility between the residential uses proposed, consisting primarily of one-family detached units, and the adjacent residential communities to the west, consisting primarily of one-family attached units, the plan proposes a 6-foot board and baton fence with landscaping along the

western property line to provide for screening. The proposal is compatible with the recently approved development along the Prince George's County boundary in terms of lot size, building orientation, and setbacks. Along the southern property line, because of the proximity of the proposed units to the existing Gunpowder Golf Course several studies were performed to ensure safety of the future residents, thereby increasing compatibility between the two uses. The proposed mitigation measures consist of approximately 20-60-foot tall netting in the areas of highest errant balls frequency and vegetative buffer in areas of less impact. The errant golf shot trajectory study [Appendix XX] provides recommendations for netting heights based on 85-90% containment of shots. Additionally, the Applicant is placing signs within the neighborhood to alert future residents of the nearby golf course, adding to the safety component and compatibility within the development.

Within the proposed development, compatibility between the one-family attached and one-family detached units is achieved through architectural treatment and by grouping the attached units into groups of 2, 3 and 5 units. The massing of these groupings is similar to the detached units, allowing for better integration of the different unit types.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved by Environmental Planning Staff on February 28, 2008. The site contains environmental buffers and associated environmentally sensitive features within the buffers, such as streams, wetlands and floodplains, most of which are being protected. The small pockets of wetlands to be disturbed are being mitigated in the larger stream system and stream valley to enhance the forested stream valley areas to be preserved. The filling of the smaller wetland areas is acceptable since the habitat value will be greatly diminished in these areas.

The current proposal retains approximately 37.64 acres of forest and clearing of approximately 44.03 acres of forest with no requirement for planting due to forest conservation requirements. However, staff recommends planting in two areas including an unforested buffer and the toe of slope for the reclamation area, adjacent to existing wetlands.

The proposed storm water management concept, approved on July 22, 2009, consists of on-site channel protection measures via dispersion, and via construction of six wetland ponds and modification of the existing wet pond; onsite water quality control via treatment within the wetland ponds as well as construction of one sand filter.

RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan No. 82005006A, Fairland Park Community, for 247 residential lots consisting of 216 one-family detached units and 31 one-family attached and semi-detached MPDUs on 130.46 acres. All site development elements as shown on the site, landscape, and lighting plans stamped by the M-NCPPC on March 3, 2010, are required except as modified by the following conditions:

1. Development Plan Conformance
The proposed development must comply with the binding elements of the Development Plan Amendment DPA 09-1 as approved by Council Resolution No. 16-1105 on September 15, 2009.
2. Preliminary Plan Conformance
The proposed development must comply with the conditions of approval for Preliminary Plan Amendment No. 12005020A.
3. Forest Conservation
The Applicant must comply with the conditions of approval of the Amendments to the Preliminary and Final Forest Conservation Plans as conferred in the staff approval letter dated April 6, 2010. The Applicant must meet all conditions and requirements prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s) as applicable.
4. Public School Site Dedication
 - a. The dedication of the school site parcel to Montgomery County Public Schools must be completed prior to recordation of plats for the first residential lot(s) (per Binding Element no. 6 of G-813 Part I).
 - b. The Applicant must comply with the conditions of the Montgomery County Public Schools in the memorandum dated March 30, 2010, unless otherwise amended and approved by the Montgomery County Public Schools.
5. Moderately Priced Dwelling Units (MPDUs)
 - a. The proposed development must provide 12.5 percent of the total number of units as MPDUs on-site, consistent with the requirements of Chapter 25A.
 - b. The MPDU agreement to build shall be executed prior to the release of any building permits.
 - c. All of the required MPDUs shall be provided on-site.
6. M-NCPPC Department of Parks
The Applicant must comply with the conditions of the M-NCPPC Department of Parks, Park Planning and Stewardship Division, in the memorandum dated April 1, 2010.
 - a. The Applicant must dedicate and convey Parcel J, consisting of approximately 23 acres, in fee simple to M-NCPPC for use as parkland. Land to be conveyed at the time of record plat and to be transferred free of trash and unnatural debris. Boundaries to be staked and signed to designate dedicated parkland.

- b. The Applicant must provide funding, in the amount of \$20,000.00, for construction of a stream crossing bridge within Parcel J in order to facilitate construction of a 4' wide, natural surface trail.
 - c. The Applicant must dedicate and convey Parcel B, located off of Public Road C, to M-NCPPC. Property to be conveyed in fee simple for use as public access to natural surface trails located within Fairland Recreational Park. Parcel G to be 25' wide and signed to identify it as public access to parkland. A 4' wide natural surface trail to be located by Applicant within Parcel G from Public Road C to the natural surface trail system.
 - d. The Applicant must provide an adequate public sidewalk/trail along Public Road C from Parcel B for safe access to Public Road A and provide safe crossings of Public Road A for pedestrian access to the sidewalk/trail located along the south side of Public Road A.
7. Common Open Space Covenant
Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC staff prior to issuance of the 200th building permit (the same number used for completion of amenities) that Applicant's recorded Homeowners Association Documents incorporate by reference the Covenant.
8. Recreation Facilities
 - a. The Applicant shall meet the square footage requirements for all of the applicable proposed recreational elements and demonstrate that each element is in conformance with the approved M-NCPPC Recreation Guidelines.
 - b. The Applicant shall provide the following recreation facilities: an indoor community space within the community building, a swimming pool, a wading pool, an open play area, and bike and pedestrian systems.
9. Transportation
The Applicant must comply with the conditions of the M-NCPPC Transportation Division in the memorandum dated March 30, 2010.
10. Pedestrian Circulation
Provide a 5-foot-wide paved pedestrian connection and 20-foot-wide Public Access Easement (PAE) from Public Road A to the Saddle Creek community. The Applicant must provide for a 20-foot-wide clear opening in the proposed fence between lots XX and XX.
11. Architecture
Provide architectural treatment of the MPDU townhouse and duplex groupings to have an outward appearance of one-family detached units consistent with the rest of the development, including but not limited to façade materials and architectural treatments. A graphic representation (elevation) of these units must be provided on the Certified Site Plan.
12. Lighting
 - a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
 - b. All onsite down- light fixtures must be full cut-off fixtures.

- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d. Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting county roads and residential properties.
- e. The height of the light poles shall not exceed 16 feet including the mounting base.

13. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated July 22, 2009, unless otherwise amended and approved by the Montgomery County Department of Permitting Services [Appendix B].

14. Golf Course Mitigation

- a. The Applicant must install netting and landscaping as shown on the Errant Shot Study by Schlegel stamped by MNCPPC on March 26, 2010, for the purpose of minimizing adverse impacts to humans, pets, property and homes surrounding the golf course from potential errant golf balls originating from the Gunpowder Golf Course.
- b. The Applicant must install netting and landscaping prior to the issuance of the 1st building permit for the affected lot areas adjacent to golf holes #3 and #6. The two areas include lots 26-31 Block A and lots 6-13 Block D.
- c. The Applicant must install and maintain warning signs at appropriate locations in the community to warn of the possibility of errant golf balls. The locations of the signs must be shown on the certified site plan. The signs shall read “Notice Golf Play Nearby.”
- d. The Applicant is responsible for maintaining the netting and poles until the homeowner’s association (HOA) accepts the common ground where the netting and poles are located.
- e. Applicant must include language that notifies the homeowners of the inherent risks associated with living along and adjacent to a golf course: i) in each sales contract, which language must be initialed by the purchaser, and ii) in the HOA Covenants and Restrictions to be recorded in the land records. See Appendix H for acceptable Golf Course Acknowledgement and acceptable language for inclusion in the Declaration of Covenants, Conditions and Restrictions.
- f. The Applicant must grant M-NCPCC an easement [Appendix G], running with the land, for errant golf balls. The language for the contract disclosure, Covenants and Restrictions and easement must be approved by the Commission’s Office of General Counsel prior to Certified Site Plan and must be substantially consistent with the terms in the contract disclosure and Covenants and Restrictions.

15. Landscape Surety

The Applicant shall provide a surety (performance bond) in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The amount of the surety shall include plant material, on-site lighting, fencing, recreational facilities, poles and netting, and site furniture within the relevant block of development. Surety to be posted prior to issuance of the first building permit and shall be tied to the development program.
- b. Provide a cost estimate of the above materials and facilities, which will establish the initial bond amount.

- c. Completion of plantings by block, to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d. Provide a screening/landscape amenities agreement that outlines the responsibilities of the respective parties and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

16. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in the phasing schedule:

- a. Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- b. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- c. The development program must provide phasing for installation of on-site landscaping and lighting.
- d. Local recreational facilities and site elements must be completed prior to the following release of building permits:
 - 1) Section I (Cedar Tree Drive to Saddle Creek Drive consisting of 51 dwelling units):
 - i. The path connection between lots 23 and 24, Block H, from Public Road A to the Saddlecreek property line must be installed prior to occupancy of either unit;
 - ii. The proposed fence and landscaping on Parcel M and Parcel L must be installed no later than 6 months after issuance of the last permit for the units abutting the perimeter of these parcels;
 - 2) Section II (Cedar Tree Drive to the southern section of Public Road C consisting of 111 dwelling units):
 - i. The proposed fence and landscaping on Parcel H must be installed no later than 6 months after issuance of the last permit for the units abutting these parcels;
 - ii. The tot lot, path, benches and landscaping in Parcel L must be installed prior to the issuance of 78th building permit, which represents 70 percent of the 111 dwelling units within this section);
 - iii. The pathways in Parcels J and K must be completed within six months of the issuance of the permits for the units that abut the parcels;
 - 3) Section III (Public Road B adjacent to the Prince George's County boundary consisting of 85 dwelling units):
 - i. The tot lot, path, benches and landscaping in Parcel D, Block B must be installed prior to the issuance of the 60th building permit, which represents 70 percent of the 85 dwelling units in this section;
 - ii. The pathway in Parcel C must be completed within 6 months of the issuance of the permits for the units that abut this parcel;

- e. Community-wide pedestrian pathways and recreation facilities, including an indoor community space, a swimming pool, a wading pool, an open play area, landscaping, lighting and parking for the community center, and bike and pedestrian systems, must be completed prior to issuance of the 200th building permit.
- f. Provide each section of the development with necessary roads.
- g. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

17. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that “M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading”.
- c. Modify data table to reflect development standards enumerated in the staff report.
- d. Ensure consistency off all details and layout between site plan and landscape plan.
- e. Include the “Golf Course Acknowledgement” language on the certified site plan.

APPENDICES

- A. Council Resolution No. 16-1105, DPA 09-1
- B. Memoranda from reviewing agencies
- C. MNCPPC memos
- D. Community correspondence
- E. Errant shot study
- F. Prince George’s County, Department of Parks and Recreation
- G. Easement agreement
- H. Golf Course Acknowledgement
- I. Cost estimate for the installation of the netting and poles

APPENDIX A
Council Resolution No. 16-1105, DPA 09-1

Clerk's Note: Supersedes Resolution No.: 16-1090



Resolution No.: 16-1105
Introduced: September 15, 2009
Adopted: September 15, 2009

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

By: County Council

SUBJECT: APPLICATION No. DPA 09-1 FOR AMENDMENT TO THE DEVELOPMENT PLAN APPROVED IN LOCAL MAP AMENDMENT APPLICATIONS G-813 and G-814, Barbara A. Sears, Esquire, Attorney for Applicants Fairland Development, LLC and Fairland Development II, LLC, OPINION AND RESOLUTION ON APPLICATION

G-813 Tax Account Nos.: P258-05-01751828; P340, 05-02101492; P454, 05-01751830, P202, 05-15022004; P125, 05-03209161; P181, 05-02309868; P303, 05-03229534; N700, 05-00270246; N300, 05-01705228; N581, 05-00270235; P440, 05-01705217; P75, 05-00262406; P700, 05-00274095. G-814 Tax Account No.: 05-01700636

OPINION

The present application, filed on July 16, 2008 by Fairland Development, LLC and Fairland Development II, LLC (together, the "Applicant"), requests approval for an amendment to the Development Plan that was approved in LMA applications G-813 and G-814 in April 2004. G-813 and G-814 were considered in a single proceeding because they related to a single proposed development. Two separate reclassification requests were filed because the combined property is bisected by property owned by PEPCO, which is not part of the proposed development. The combined subject property consists of a total of 313.94 acres of land along the border between Montgomery County and Prince George's County, south of MD 198 and east and north of Greencastle Road in the 5th Election District, owned in part by the Applicant and in part by the Maryland-National Capital Park & Planning Commission ("MNCPPC"). The entire subject property was rezoned to the PD-2 Zone in 2004, in conjunction with a development plan approved by the District Council that provided for the construction of up to 396 homes, mostly single-family detached, around a new, 18-hole golf course, replacing an existing public facility, Gunpowder Golf Course.

The proposed development plan amendment would separate the publicly and privately owned land by creating three amended development plans: (1) G-813 Part I and G-814, (2) G-813 Part II and

Exhibit A

(3) G-813 Part III. G-813 Part I and G-814 would provide for the construction of a single-family residential community with up to 365 single-family dwellings, including up to 46 MPDUs, as well as the dedication of an 11-acre school site (with grading, forest conservation and stormwater management provided by the Applicant) and 23 acres of park land. G-813 Part II and G-813 Part III would provide for the continued use of the publicly-owned parts of the subject site as parkland.

The application anticipates the possibility that the MNCPPC may acquire approximately 53 acres of the privately-owned part of the subject site under the County's Legacy Open Space program. The Montgomery County Planning Board ("Planning Board") approved such a purchase on May 28, 2009, and the District Council approved the expenditure of funds for this purpose on July 14, 2009.¹ If the sale is consummated, the 53 acres purchased will be used as open space or parkland, and the number of homes proposed for the residential project will decrease to 248. The street network shown on the plans would still function for a smaller project, with some adjustments.

The Hearing Examiner recommended approval of the application on the basis that the submitted Development Plans would comply with the purposes of the PD Zone, would be substantially consistent with the applicable master plan and would be compatible with existing and proposed uses in the surrounding area. The Planning Board and its Technical Staff provided similar recommendations. The District Council agrees with these conclusions, as discussed below, and incorporates herein the Hearing Examiner's Report and Recommendation dated July 9, 2009.

A. Subject Property

The 314-acre subject property stretches along the county line from MD 198 in the north to Greencastle Road in the south, with an irregular shape and varying width. The property has approximately 1,370 feet of frontage on MD 198, widens to approximately 2,500 feet in the middle, then narrows down to a single point less than an inch wide at its southern end, about 400 feet north of Greencastle Road. The property is bisected near its northern end by PEPCO transmission lines.

¹ The District Council takes official notice of Council Resolution No. 16-1046, adopted July 14, 2009.

The portion of the subject property northeast of the PEPCO transmission lines, which was the subject of Case No. G-814, contains 18 acres of land. It is undeveloped, containing woods and wetlands. To the east, in Prince George's County, are industrial uses and storage lots.

The portion of the subject property southwest of the PEPCO transmission lines was the subject of Case No. G-813 and contains the bulk of the property, 295.94 acres of land. It has approximately 100 feet of frontage on MD 198 to the north, and is bounded by the PEPCO power lines and the county line to the east. A stream described as the McKnew Tributary to the Little Paint Branch runs through the G-813 property, parallel to the county line.

The southern part of the G-813 property is in public ownership as part of Fairland Recreational Park. The portion of Fairland Recreational Park within the subject property consists of the Gunpowder Golf Course and a wooded area that has been called the "southern spike" because it is roughly triangular and ends in a sharp point. The Gunpowder Golf Course extends across the county line and is accessed via Old Gunpowder Road, in Prince George's County. A stream known as the Silverwood Tributary to the Little Paint Branch runs through the golf course and converges with the McKnew Tributary. The combined streams then flow south, through the southern spike, to join the Little Paint Branch main stem. Areas of Fairland Recreational Park to the west, outside the subject property, contain additional forested area plus active recreation areas (ball fields, tennis courts and basketball courts) along Greencastle Road. To the east, the southern spike abuts active recreation areas of Fairland Regional Park in Prince George's County. The development plan amendment proposed in this application shows no changes to any of the publicly owned land on the subject property, which would remain as parkland.

The Applicant owns nearly all of the G-813 property located north/east of Gunpowder Golf Course (approximately 165 acres), except for one small area owned by MNCPPC. Portions of this privately owned land have been mined for sand and gravel, resulting in an assortment of cleared areas. An area in about the middle of the privately owned property was used as an illegal landfill (the "stump dump") for many years. The Applicant purchased this land in 2006, after MNCPPC indicated that the County would not be purchasing it due to the cost of the required clean-up. The Applicant has since

entered into a consent agreement with the Maryland Department of the Environment to reclaim part of the land for development (to be the site of a swimming pool and community center) and cover the remainder with a cap and clean fill, for use as open space. The site has been fenced off to prevent further illegal dumping, and all surface trash and debris has been cleared.

The remainder of the G-813 property consists primarily of open space, with a large area of high priority forest surrounding the McKnew Tributary as it enters the subject property. The northern part of the privately owned land abuts residential subdivisions, McKnew Local Park and forest to the west. To the east, it abuts a cluster of industrial uses in Prince George's County, as well as undeveloped Prince George's County land that is planned as the site of approximately 148 homes connected to the residential community proposed in this application, if approved by Prince George's County.

B. Surrounding Area and Zoning History

The surrounding area for this application consists of the area referred to in the 1997 Approved and Adopted Fairland Master Plan as the "Oakfair/Saddle Creek" community, which extends from MD 198 on the north to and including Fairland Park to the south, and from the County line on the east to the Silverwood Tributary on the west. The subject property constitutes about half of the land area within the surrounding area as defined. The remainder of the surrounding area contains a mix of residential uses in the R-200 and R-200/TDR Zones, as well as McKnew Local Park.

The subject property was classified under the R-A Zone (now RE-2, two-acre single-family) in the 1958 Countywide Comprehensive Zoning. The property was reclassified under the R-200 Zone in parts, via sectional map amendments enacted in 1982, 1987 and 1997. Parts of the property were the subject of three unsuccessful local map amendment applications in 1964, 1989 and 1991. The entire subject property was reclassified under the PD-2 Zone in 2004, via LMA Cases G-813 and G-814.

C. Proposed Development

The Applicant seeks to develop the subject property with up to 365 single-family homes, consisting of approximately 319 detached homes and 46 MPDUs in the form of duplexes and/or townhouses. The Applicant has made a binding commitment to dedicate by deed approximately 11

acres of land as a school site (with grading, stormwater management and forest conservation provided by the Applicant) and approximately 23 acres of land as parkland. Required road right-of-way dedications would occupy another 19 acres. The Amended Land Use Plan (the main component of the proposed amended Development Plans), also shows residential amenities including a clubhouse, a swimming pool, open space areas, and trails linking homes within the development to one another, to adjoining residential neighborhoods and to the trail system in adjacent Fairland Recreational Park.

The proposed homes would fall into two neighborhoods, one located at the north end of the site, including the G-814 property and the portion of the G-813 property north of McKnew Local Park, and the other at the south end of the site, abutting Gunpowder Golf Course and the Saddle Creek residential neighborhood. If the proposed land sale to the MNCPPC is consummated, the northern neighborhood will be eliminated and that land will become parkland. This would reduce the maximum number of homes to 248, including up to 31 MPDUs. The school site and parkland dedications would be unchanged, per the written binding elements of the Amended Land Use Plan.

The northern neighborhood would have its sole vehicular access from Route 198. It would be connected to the southern neighborhood via a pedestrian trail only. The southern neighborhood would have two points of vehicular access in Montgomery County, from Saddle Creek Drive and Cedar Tree Drive. The extension of Cedar Tree Drive would connect to Saddle Creek Drive, which would then flow through the development. If the residential development that the Applicant proposes on the Prince George's County side of the line is approved, the Applicant hopes to continue Saddle Creek Drive into Prince George's County, connecting to Old Gunpowder Road. If that development is not approved, Saddle Creek Drive is planned to end in a cul de sac at the county line.

D. Development Plan

The proposed Development Plans include each of the elements required under Code §59-D-1.3, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not public ownership.

The Development Plans, and the Amended Land Use Plan that constitutes one of their primary elements, are binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plans are subject to site plan review by the Planning Board, and minor changes may be made at that time. The principal specifications on the Development Plans – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plans.

The present application has complied with the requirements for a development plan through a single set of documents covering the entire subject property. The principal component of the three Development Plans proposed here is the Amended Land Use Plan, Exhibit 82(a). Additional components include the NRI/FSD (Exhibits 34 (s) – (v)), vicinity maps (e.g. Exs. 6, 13, 25, 34(l) and 34(m)) and a phasing plan (Ex. 82(b)).

The Applicant proposes, with the consent of MNCPPC, to divide the subject property into three amended Development Plans: (1) G-813 Part I and G-814; (2) G-813 Part II and (3) G-813 Part III. G-813 Part I and G-814 would provide for the construction of the proposed residential community, including the school and parkland dedications. G-813 Part II and G-813 Part III would provide for the continued use of the publicly-owned parts of the subject site as parkland.

The Amended Land Use Plan divides the subject property north of Gunpowder Golf Course into use areas: residential, common open space, school dedication, park dedication and community recreation areas. Its text specifies that minor adjustments may be made at site plan to “the limits and extents of geographic areas and amenities areas defined by the legend and depicted hereon.” Thus, the general site layout and locations of land uses may be considered binding elements of the amended Development Plans, but minor changes can be expected at site plan. The Amended Land Use Plan similarly specifies that land areas devoted to public use and green area are approximate and subject to change at site plan, provided that the minimum green area must be 45 percent, a one-third increase over the minimum 30 percent required by the PD Zone.

The Amended Land Use Plan contains three sets of written binding elements: one for G-813 Part I, one for G-814 and one addressing the possible sale of part of the subject property to MNCPPC. These binding elements are reproduced below and on the next page.

FAIRLAND PARK COMMUNITY
LOCAL MAP AMENDMENT APPLICATION G-813 PART I
WRITTEN BINDING ELEMENTS

1. The maximum number of dwelling units will be 353 units, including a maximum of 46 Moderately Priced Dwelling Units (MPDUs). The MPDU requirement for G-813, Part I and G-814 will be satisfied within the boundaries of G-813, Part I. The final number of dwelling units for G-813, Part I and G-814, including 12.5% MPDUs, will be established during site plan review.
2. The MPDUs will consist of townhouse and duplex units. If the number of dwelling units is reduced at site plan, the MPDU unit types (townhouses and duplexes) will be proportionally adjusted downward. Final location and siting of MPDUs will be established during site plan review; however no more than 16 units will be provided in one location.
3. Forest conservation requirements will be satisfied within the boundaries of G-813 Part I and G-814 by the retention of the existing forest. The Applicant must consider G-813 Part I and G-814 as one overall project for the forest conservation plan unless the Planning Board approves modifications to the forest conservation plan.
4. The trails shown on this plan are illustrative only. The trail system and locations will be established during site plan review.
5. The minimum required green area will be increased from 30% to 45%. As used in this Binding Element, green area is gross tract area less the roads, buildings and driveways.
6. The Elementary School site shall be dedicated to public use prior to recordation of final plats for residential lots in Phase II, to also include grading, Forest Conservation and Stormwater Management (SWM) as required.
7. No building other than a single-family detached residence shall be constructed within 100 feet of any boundary of the property comprising G-813 Part I, which adjoins land for which the area master plan recommends a one-family detached zone.

FAIRLAND PARK COMMUNITY
LOCAL MAP AMENDMENT APPLICATION G-814
WRITTEN BINDING ELEMENTS

1. The maximum number of dwelling units will be 12 units.
2. Forest conservation requirements will be satisfied within the boundaries of G-813 Part I and G-814 by the retention of the existing forest. The Applicant must consider G-813 Part I and G-814 as one overall project for the forest conservation plan unless the Planning Board approves modifications to the forest conservation plan.
3. The trails shown on this plan are illustrative only. The trail system and location will be established during site plan review.
4. The minimum required green area will be increased from 30% to 45%. As used in this Binding Element, green area is gross tract area less the roads, buildings and driveways.

PROJECT OPEN SPACE ACQUISITION BY MARYLAND-
NATIONAL CAPITAL PARK AND PLANNING COMMISSION
(WRITTEN BINDING ELEMENT)

If the Northern Portion, hatched area (consisting of approximately 52.88 acres and proposed for the site of 117 units in the northern portion of G-813 Part I and all of G-814) is acquired by the Maryland-National Capital Park and Planning Commission, then (a) the land use designation of this area shall be "Public Parkland" and (b) the maximum number of dwelling units in the Southern Portion of G-813 Part I will be 248 units, including a maximum of 31 MPDU's. The final number of dwelling units, including 12.5% MPDU's, will be established during site plan review. All other commitments in the written binding elements set out above, including the school dedication, shall remain unchanged. If necessary, forest conservation and other easements or restrictions shall be permitted to be placed on the Northern Portion to satisfy the requirements of this Development Plan Amendment or any subsequent amendment to the Preliminary Plan and Site Plan for Fairland Park Community, including those requirements pertaining to tree preservation, stream buffers, trails, utilities, and State Highway Administration dedication.

The proposed residential development would be built in three phases, starting with the property abutting Gunpowder Golf Course. The school site is to be prepared and dedicated before the final plat is recorded in Phase II. If the potential property sale to MNCPPC takes place, those 53 acres will not be part of the phasing plan, but the park dedication will remain in Phase III.

E. Master Plan

The subject property falls within the area covered by the 1997 Approved and Adopted Fairland Master Plan (the "Master Plan"), which divided the planning area into geographically defined communities. The subject property corresponds very closely to Area 2 of the Oakfair/Saddle Creek Community as defined in the Master Plan. The Master Plan recommended development of a golf course community in Area 2, under the PD Zone, to achieve "an appropriate mix and size of [residential] units, an improved golf course design located outside the stream valley, and protection of other environmental features such as steep slopes and wooded areas." The Master Plan recommended development of Area 2 under a private/public partnership, and noted that the PD Zone would permit a high level of scrutiny and promote compatibility between the golf course community and the existing neighborhood.

The Master Plan listed several elements to be evaluated at the time of a PD zoning request:

- A density cap of 510 units overall, with 396 units in Montgomery County and an appropriate mix of housing types including single-family detached homes and attached units;
- MDPUs to be distributed throughout the development;
- Extension of the existing road network (see . . . page 93) ;
- Areas of no disturbance or environmental impact (see page 119);
- Non-vehicular access to Fairland Recreational Park;
- ~~Connect road(s) to Old Gunpowder Road in Prince George's County, if desirable;~~
- Common open space for residents of the new community; and
- A 12-15 acre site for a public elementary school.

The transportation section of the plan specified that Cedar Tree Drive should be extended to Old Gunpowder Road to provide access for the new community and the golf course, and an alternative access point for existing neighborhoods that are currently served only by MD 198. It also emphasized the value of preserving the stream valley between McKnew Local Park and Fairland Recreational Park, which contains a very diverse and unusual plant community. As described more fully in the development

plan findings below, the District Council agrees with the Hearing Examiner, the Planning Board and Technical Staff that the proposed Development Plans would be in substantial compliance with the recommendations and objectives of the Master Plan.

F. Environmental Impacts

The subject property contains 133 acres of forest, all designated high-priority and identified for protection in the Master Plan, which has a goal of achieving the maximum contiguous high-priority forest. As noted by MNCPPC Environmental Planning Staff, achieving the Master Plan's goals for residential development necessarily results in significant loss of natural resources, principally high priority forest and stream buffer areas. The current plan would remove 74 acres of high-priority forest, 25 acres less than the 99 acres that the original plan would have removed. Under Chapter 22A of the Montgomery County Code, the proposed development is subject to a forest conservation threshold of 20 percent of the site, or 36.13 acres, and an afforestation requirement equal to 15 percent of the site, or 18.46 acres. *See id.* The preliminary forest conservation plan, which has been approved by the Planning Board, satisfies these requirements by preserving 57.78 acres of forest on site, approximately 9.5 percent more than the legal minimum. In addition, the Applicant has committed to dedicate an additional 23 acres of forest as parkland. The configuration of the forest retention and parkland dedication would provide larger areas of contiguous forest than the numbers suggest, because they would connect to forest in McKnew Local Park and on property that MNCPPC already owns, identified in this application as G-813 Part II. The District Council agrees with Environmental Staff's conclusion that "the amount and configuration of retained forest shown on the preliminary forest conservation plan meets all the priorities of the forest conservation law, including saving large areas of contiguous forests, and the objective of the master plan to protect the very diverse and unusual plan community." *See Staff Report at circle 25-26.*

The evidence suggests that the potential acquisition of part of the site by the MNCPPC as Legacy Open Space would only improve the proposed Development Plans from an environmental perspective, by protecting important natural resource areas including old-growth upland forest, unique biodiversity and diverse geologic and soil conditions.

In keeping with the Master Plan's objective of restoring the degraded portion of the lower McKnew Tributary, the Applicant has taken responsibility for stabilizing the degraded areas under its control, to prevent further degradation.

The Planning Board's Environmental Guidelines require all lots in a PD Zone to be located outside environmentally sensitive areas. In general, the proposed development would result in only minor encroachments and disturbances to wetlands, streams, stream valley buffers and high priority forest. As currently configured, however, the proposed project would require filling three small pockets of wetlands in the southern neighborhood (the only remaining neighborhood if the potential MNCPPC purchases goes forward) that are located entirely or partially within approximately eleven of the lots shown. The question of whether these wetlands will be filled and new wetlands created to replace them will be resolved at a later stage of review.

The Applicant identified the following environmental benefits of the proposed plan, compared to the 2004 plan (see Ex. 54(b)):

- Reduction in the number of dwelling units from 396 to 365.
- Reduction in stream buffer encroachment by 26.5 acres.
- Enlargement of McKnew Park from 22.5 acres to approximately 60 acres by dedicating 23 acres of upland forest and providing a connection to 14.5 acres of public parkland already owned by the MNCPPC, identified in this application as G-813 Part II.
- Retention of the above-mentioned 14.5 acres of parkland, which previously were shown as part of the new golf course.
- Reduction in tree removal on the overall site by 26.6 acres.
- Reduction in tree removal within the stream buffer area by 9.55 acres.
- Remediation of stump dump property by the Applicant.
- Reduction in number of stormwater management ponds from 22 to eight.
- Elimination of 26,762 square feet of forested wetland conversion (the removal of trees from a wetland).

- Reducing road crossings over a stream channel from two to one by realigning the extension of Cedar Tree Drive.

The Applicant plans to install a stormwater management system using wetland bottom ponds for both water quality and channel protection. The Applicant plans to use stormwater credits where possible, including natural area conservation, disconnecting rooftop runoff and non-rooftop runoff, sheet flow to buffers and environmentally sensitive development. The Department of Permitting Services ("DPS") has approved a concept stormwater management plan for the subject site, but this plan did not include the school site because its location had not been determined. The Applicant's civil engineer testified that a new concept plan has been submitted to DPS with the school site included. He opined that the plan complies with all relevant county and state requirements, and he expects it to be approved.

Community member Audrey Binder, representing the Greencastle Lakes Community Association, argued that any development of the subject site would cause a loss of forest, vegetation, canopy cover and pervious surfaces, and the entire property should be permanently protected as open space. The question before the District Council in this case is not whether any development at all should be permitted on the subject site, but whether the Applicant's plan would satisfy applicable legal standards. As discussed in detail below, the District Council concludes that applicable legal standards have been met.

G. Public Facilities and other Public Interest Issues

1. Transportation

The Planning Board approved a preliminary plan of subdivision for the proposed project in 2004, as well as a site plan.² Its approval of the preliminary plan necessarily included a finding under the County's Adequate Public Facilities Ordinance ("APF," Code §50-35(k)) that public facilities including transportation, schools, water and sewage facilities, and police, fire and health services would be adequate to support the proposed development. MNCPPC Transportation Planning Staff reports that the APF finding remains valid, and that as a matter of policy, Development Review Division Staff will

² Preliminary Plan No. 1-05020 and Site Plan No. 8-05006.

permit the Applicant to file for an amendment of its preliminary plan if the present application is approved, which will maintain the original APF validity. The Transportation Planning Division "considers a development to maintain its APF validity and requires no further LATR/PAMR study as long as any amendment to the development will not exceed the prior APF approval trip generation ceiling." Ex. 70. In this case, the reduced number of units would generate a lower number of trips than the total considered during the APF review, so Technical Staff did not require any traffic analysis to support the present application.

The District Council finds that the continuing validity of the Planning Board's APF finding, paired with the fact that the proposed 365-unit or 248-unit development can be expected to generate fewer trips than a 396-unit development, is persuasive evidence to support a finding that the proposed development plan amendment would not have any adverse impacts on traffic conditions in the area. The Council need not reach the question of whether it is possible for substantial, probative evidence to be introduced in a development plan amendment case that would outweigh the continued validity of a Planning Board APF finding, because no such evidence has been presented here. Representatives of the Greencastle Lakes Community Association argued that local roads are very congested and cannot handle any additional traffic, but they presented only anecdotal evidence, which the District Council does not consider sufficient to outweigh the Planning Board's APF finding. Moreover, the Applicant's traffic expert testified that the proposed development would not overburden local transportation facilities. He stated that with the exception of Route 29, local roadways are operating at very acceptable levels of service. He acknowledged that Route 29 is congested, but argued that the Inter-County Connector, when completed, will provide alternatives for drivers using Route 29 to get to I-495, and that if the proposed project extends into Prince George's County, extending Saddle Creek Drive to Old Gunpowder Road will give local drivers an alternative to Route 29.

2. Schools

The subject property is located within the Burtonsville Elementary School and Banneker Middle School service areas, and is in the Paint Branch "base area" of the Northeast Consortium, which is made

up of Blake, Paint Branch and Springbook high schools. Technical Staff estimates that the proposed 365 homes would generate approximately 97 elementary, 43 middle and 48 high school students. Enrollment at Burtonsville Elementary School is currently over capacity and projected to remain over capacity for the six-year forecast period. Enrollment at Banneker Middle School is currently within capacity and projected to remain within capacity for the forecast period. Paint Branch high school is expected to remain over capacity for the forecast period, despite a modernization and expansion scheduled for completion in August 2012.

Montgomery County Public Schools ("MCPS") supports the proposed development on grounds that it "serves the public interest by generously offering a dedicated elementary school site at no cost to county taxpayers." See letter from Joseph J. Lavorgna, Acting Director, MCPS, Staff Report circle 41. Technical Staff notes that the school site dedication represents more in mitigation than the burden represented by the number of students the project would generate.

The Greencastle Lakes Community Association argued that donating a school site is an inadequate contribution to easing the strain that the proposed development would place on local schools, because there is no real assurance that a school will be built on the site and no definite plan for the timing of construction.

The District Council accords more weight to the opinion of MCPS than to Greencastle Lakes' assertions. While the proposed development would add children to each of the local public schools, the number of students expected is far from enough to independently generate a need for a new school. Moreover, while it is true that dedication of a school site does not guarantee that a school will be built, it makes such construction significantly more likely, and reduces the cost to the County.

The Planning Board's school capacity finding for Fiscal Year 2010 under the Growth Policy indicates that the Paint Branch Cluster is at 106 percent of capacity at the elementary level, 97 percent at the middle school level and 103 percent at the high school level. Accordingly, new subdivision approvals in this cluster during FY 2010 will require a school facility payment. In the District Council's view, the level of overcrowding in local schools does not justify denial of the present application,

particularly in light of the significant contribution to MCPS represented by the school site dedication and the project's still-valid APF finding from the Planning Board, which covers schools as well as roads.

3. Other Public Facilities

The Greencastle Lakes Community Association argued that their neighborhood suffers from inadequate police protection, and cannot accommodate more homes. The association declared that it has had to hire private law enforcement at a cost of about \$60,000 per year to supplement the county police, and that when they asked for more police protection, they were told there was no more money in the budget.

The Growth Policy specifies that police and fire protection are to be considered adequate to serve a proposed subdivision unless there is evidence to the contrary. In the event of such evidence, the Planning Board is directed to seek a written opinion from the relevant agency. A formal inquiry is not called for in the present circumstance, given the anecdotal nature of the evidence suggesting inadequate police services and the still-valid APF finding for this development by the Planning Board. Nonetheless, the Applicant undertook to seek input from the police department at the Hearing Examiner's request.

The Applicant obtained a signed email from Commander Donald Johnson, Montgomery County Police 3d District, who disagreed with the contention that the police department is inadequately staffed in the Fairland area. He stated that the area "is staffed in accordance with population and crime problems." Ex. 73. Commander Johnson noted that a new 3d District Police Station is planned at the intersection of New Hampshire Avenue and Route 29, to be completed in 24 to 30 months. The Applicant submitted the relevant page from the County CIP, which shows a new, 24-hour, seven-days-a week 3d District Police Station funded for land acquisition and planning/design as of June 3, 2008. See Ex. 74. Commander Johnson did not take a position on the proposed development, but stated that while he would always welcome more officers, that does not mean the department is understaffed.

The fact that the Greencastle Lakes Community Association has found it necessary to hire private security guards tends to suggest an inadequate police presence in that neighborhood (or a community with a particularly strong concern about security issues). In the District Council's view, this

evidence is outweighed by Commander Johnson's conclusion that the Fairland area is not understaffed, together with the evidence that a new district station is in the planning stage and the Planning Board's still-valid APF finding.

The Greencastle Lakes Community Association maintained that local fire protection services would not be adequate to accommodate the proposed development, because the Burtonsville Fire Station is one of the busiest stations in the County. The Applicant obtained a letter from Michael T. Hamilton, Battalion Chief, Montgomery County Fire and Rescue Services, stating that fire and rescue coverage in the Fairland area is adequate to accommodate the proposed development. See Ex. 72. Chief Hamilton acknowledged that the Burtonsville Station is busy, but stated that it is not too busy to cover the increased call load. He also stated that there are two other stations not far away in Prince George's and Howard Counties, noting that the three counties participate in a mutual aid agreement, and units are routinely dispatched into Montgomery County from Prince George's and Howard to provide emergency services. See *id.* The District Council concludes that the unsupported contention that fire services are inadequate to serve the proposed development is overwhelmingly outweighed by Chief Hamilton's letter and the Planning Board's still-valid APF finding.

There has been no contention that utilities are not adequate to support the proposed development. The Applicant confirmed that all necessary utilities exist within the subject property or on external roads, and that WSSC has indicated water and sewer are adequate to support the proposed development.

H. Nearby Historic Property

A historic home known as the Burton Log House has been identified just outside the subject property, at 15107 Birmingham Drive. The home is listed on the State Historic Sites Inventory Form, as well as on the County's Master Plan for Historic Preservation. Historic Preservation Staff at the MNCPPC described the Burton Log House, which dates to circa 1800, as one of the first buildings constructed in the Burtonsville area and a rare, highly representative example of an early log residence associated with the County's agricultural history. Because the Burton Log House property is outside the

boundaries of the subject site, the project is not subject to any regulatory review by the Montgomery County Historic Preservation Commission. Historic Preservation Staff at the MNCPPC suggested, however, placing conditions of approval on the project to ensure sensitive design and siting of the road that would abut the Burton Log House property, and of homes to be built nearby, as well as possible screening. The Staff Report did not carry forward the conditions proposed by Historic Preservation Staff. Technical Staff's view is that such conditions, related to design issues such as building types and facades, would be better addressed at site plan than during review of the proposed development plan amendment. The District Council agrees.

The Applicant's land planner visited the site of the Burton Log House and reported that he was unable to see the actual log cabin because it has been subsumed into a more modern house that was built around the log house. The Burton Log House is on a corner property, so it fronts on two small, residential streets and is surrounded on three sides by single-family homes. The proposed development would place a road and single-family homes along a third side of the historic site, in a relationship that would appear no different from the historic site's current surroundings. In the District Council's view, any impact of the proposed project on this historic resource can be appropriately addressed during site plan review.

I. Community Support and Opposition

Fairland resident Stuart Rochester, Chair of the Fairland Master Plan Citizens' Advisory Committee (the "Fairland CAC"), spoke in support of the proposed development at the Planning Board's hearing, on behalf of the Fairland CAC, and submitted his testimony to the Hearing Examiner. Mr. Rochester described the proposed project as a high-priority Master Plan goal for the last decade. He acknowledged that the plan as now configured is not all that was once envisioned, but called it "a welcome addition to a long-neglected part of the planning area. . . ." and "a major enhancement to improving the demographic and housing makeup of the east side of US 29. . . ." Exs. 58(a), 58. Mr. Rochester stated that the Fairland CAC had worked closely with the Applicant and Technical Staff to resolve a host of issues. He noted the Master Plan's emphasis on increasing the number of single-

family detached homes in Fairland, given the overconcentration of apartments and townhouses in the planning area that resulted from the 1981 master plan. Mr. Rochester considered the concern raised by the Greencastle Lakes Community Association about school crowding inexplicable, in light of the "key and hard-fought-for provision" requiring a school site. *See id.*

The only opposition reflected in the record was that of the Greencastle Lakes Community Association, whose concerns have been discussed in previous sections of this resolution.

J. Development Plan Findings

The District Council finds that the Development Plans submitted with this application satisfy all the requirements for a development plan under Code §59-D-1.61(a)-(e). The three proposed Development Plans are considered together, but it is important to note that the Development Plan for G-813 Part I and G-814 can also satisfy all of the required findings on its own. Each of the required findings is addressed below.

§59-D-1.61(a): master plan consistency. The purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans. . . . it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

Code §59-C-7.11.

In the present case, the Hearing Examiner, the Planning Board and Technical Staff opined that the proposed Development Plans are in substantial compliance with the use and density recommended in the *Fairland Master Plan*, and the District Council agrees. The proposed residential development, shown on the Development Plan for G-813 Part I and G-814, would be substantially consistent with the Master Plan's recommendation for up to 396 dwelling units with a mix of single-family detached homes and attached units appropriate for the area, recognizing the need to increase the proportion of detached homes in the area. The number of units cannot reach the maximum anticipated in the Master Plan on the

property now available while substantially fulfilling the Master Plan's environmental goals, so the number of units proposed represents a balancing of Master Plan priorities. If the potential land sale to the MNCPPC is consummated, the number of units will decrease to a maximum of 248, nearly 40 percent lower than the 396 units anticipated in the Master Plan. This sale would represent a different balancing of the Master Plan's residential and environmental goals, but would still be substantially consistent with those goals, viewed as a whole.

The continued parkland use proposed on the publicly owned parts of the site, shown on Development Plans G-813 Part II and G-813 Part III, would not fulfill the Master Plan's goal of expanding or reconfiguring Gunpowder Golf Course outside the stream valley, but it would retain the existing recreational facilities and satisfy the Master Plan's environmental goals. Because the Applicant and MNCPPC were not able to obtain approval from Prince George's County for the 2004 plan, which included an improved golf course bridging the county line, the proposed Development Plans represent the best possible implementation of the Master Plan's use and density recommendations.

The proposed Development Plans would not conflict with the General Plan, which was amended by the Master Plan; thus, substantial compliance with the Master Plan effectively demonstrates consistency with the General Plan. The preponderance of the evidence, as discussed in Part G above, supports the conclusion that the proposed Development Plans would not conflict with the Growth Policy. The Planning Board approved a preliminary plan of subdivision for a larger residential development on the subject site in 2004, which necessarily included a finding that public facilities (including roads, schools and police and fire protection) were adequate to support the proposed development and would not be adversely affected by it. No substantial, probative evidence was presented in this case sufficient to outweigh that finding, which is still legally valid. On the contrary, the preponderance of the evidence fully supports the Planning Board's APF finding.

Based on the preponderance of the evidence, the District Council concludes that the proposed Development Plan would be in substantial compliance with the use and density indicated in the Master Plan and would not conflict with any other applicable county plan or policy.

§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

1. Purpose Clause

The purpose clause for the PD Zone contains a number of goals and objectives, all of which are satisfied by these applications. The District Council's findings as to each paragraph of the purpose clause are set forth below.

1st paragraph: Master Plan implementation. As discussed under (a) above, the proposed Development Plans would be in substantial compliance with the use and density recommended in the *Fairland Master Plan*. The evidence fully supports a conclusion that the proposed Development Plans would be in substantial compliance with the Master Plan's other recommendations, as well, which are summarized in Part E above. The proposed development would include numerous elements directly responsive to the Master Plan, all of which would be achieved, albeit on a smaller scale, even with the potential land sale to the MNCPPC:

- adding detached units to the housing mix;
- improving the road network by connecting Cedar Tree Drive to Saddle Creek Drive, and possibly to Old Gunpowder Road in Prince George's County if approvals can be obtained;
- providing an 11-acre school site to MCPS at no cost, with grading, forest conservation and stormwater management provided by the Applicant, in a location that would allow many children to walk to school;
- providing common open space for residents of the new community;
- providing trails and pathways to connect the new neighborhoods and nearby existing neighborhoods to one another and to the trail system in Fairland Recreational Park;
- providing MPDUs dispersed throughout the development;
- protecting a significant amount of environmental features such as stream valleys, steep slopes, wooded areas and wetlands.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. The proposed development would achieve these objectives in several ways. It would reduce the isolation of the existing Saddle Creek neighborhood immediately northwest of the subject property by connecting it to the new development. A network of sidewalks and trails would connect the neighborhoods on and off the subject property to other neighborhoods, the school site, on-site recreational facilities and Fairland Recreational Park. If the Prince George's County part of the project moves forward, the combined project will provide a vehicular connection across the county line, improving access for residents of the new community and the Saddle Creek neighborhood. The proposed development would provide the location for a community school that would be within walking distance for many students and would serve as a focal point, bringing the community together. It would increase recreational options for the Saddle Creek community by providing pedestrian linkages to Fairland Recreational Park. The character of the development would revolve around the large areas of open space created by the forested areas, stream valleys and proximity to Fairland Recreational Park, all of which would give the community a distinct visual character and identity. No commercial uses are proposed, in keeping with the size of the proposed residential development.

Third paragraph: broad range of housing types. The proposed development would contribute to providing a broad range of housing types by increasing the proportion of single-family detached housing available in the Fairland area, and by providing both market rate and MPDU units on site.

Fourth paragraph: trees and grading. The proposed development would result in substantial forest clearing, an impact that would be practically unavoidable with any development at or near the density recommended in the Master Plan. The amount of forest clearing would be lower for the proposed Amended Land Use Plan than on the 2004 plan, down from 99 acres to 74. Moreover, the written binding elements on the Amended Land Use Plan commit the Applicant to convey 23 acres of high-priority forest to the MNCPPC as parkland, free of charge. This dedication is an important environmental benefit, as it would link existing parkland on the east side of the site, represented by Development Plan G-813 Part II, with McKnew Local Park just west of the subject site. This linkage would create a 60-acre area of

contiguous, forested parkland, which is much more valuable as habitat and for aesthetic benefit than isolated pockets of similar land.

In addition to the parkland dedication, the Applicant's preliminary forest conservation plan, Exs. 40(m), (n) and (o) and Ex. 77, provides for forest retention on-site that exceeds both the regulatory reforestation requirements and the applicable conservation threshold. The District Council is persuaded that the proposed Development Plans would take the greatest possible aesthetic advantage of the trees by providing edges along priority forest areas and streams, and views into the forest from a variety of areas. The significant forest preservation on site and in the parkland dedication area would also take aesthetic advantage of the trees by preserving large areas of contiguous forest as an amenity for all nearby residents.

The evidence indicates that while grading will be necessary due to the rolling topography of the site and degraded conditions in some areas, it will be minimized to protect trees, where feasible and appropriate.

Fifth paragraph: open space and physical/aesthetic integration of uses. The Development Plans would preserve substantial amounts of open space as parkland, conveniently located and available to the public as well as site residents. The proposed development would improve access to existing open space in Fairland Recreational Park by creating pedestrian trails linking the park with the nearby Saddle Creek neighborhood, and with the proposed Prince George's County neighborhood if that part of the plan goes forward. Moreover, the flexibility of the PD Zone and the design of the Amended Land Use Plan would result in a high degree of integration, both physical and aesthetic, between the new residences and existing natural and recreational features on the site.

Sixth paragraph: pedestrian networks. The Development Plan includes a system of trails and sidewalks that would tend to reduce reliance on the automobile by allowing residents to walk among the residential and recreational areas, and enabling children who currently are bussed to school from the neighboring Saddle Creek neighborhood, as well as many in the new community, to walk to school.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. Taken as a whole, the Development Plans cover approximately 314 acres and therefore can be considered large scale.

Eighth paragraph, first part: safety, convenience and amenity. The proposed development would provide a maximum of safety, convenience and amenity for residents and neighbors by providing an improved local road network, a site for a neighborhood elementary school, pedestrian connections to Fairland Recreational Park, an expanded McKnew Local Park and, for the new development, on-site recreation facilities.

Eighth paragraph, second part: compatibility. Much of the Saddle Creek development abutting the subject property to the west, near the proposed school site, is classified under the R-200/TDR Zone. The area was developed at higher density using density transfers from up-county, and primarily contains townhouses. Areas north of the subject property and immediately west of the proposed northern neighborhood contain large-lot single-family homes. The proposed development would consist primarily of single-family detached homes, with duplex and townhouse MPDUs, integrated in a well-designed plan intended to create a "move-up" neighborhood, in an area sorely in need of such housing. The proposed residential development would require reclamation of severely degraded land, turning a blighted area into something attractive and useful. The preponderance of the evidence supports a conclusion that the proposed development would not be incompatible with the surrounding area due to traffic impacts or other impacts on public facilities. The Hearing Examiner concludes that both the proposed residential uses and the continued parkland uses would be compatible with the surrounding area, preserving recreational opportunities and a significant amount of environmental resources while improving the housing mix and reclaiming degraded land.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and

- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that present application is proper for the comprehensive and systematic development of the County, in compliance with and capable of accomplishing the purposes of the zone, and in substantial compliance with the General Plan and Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the District Council's conclusion that the subject site would continue to satisfy these requirements with the approval of the proposed Development Plans.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is already classified under the PD Zone, having been recommended in the Master Plan for development at a density of two dwelling units per acre or greater.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. These include sufficient gross area to construct 50 or more dwelling units under the density category to be granted; and being recommended for the PD Zone in a master plan but "so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest." Code §59-C-7.122(e). The G-813 property has enough land for more than 50 dwelling units, satisfying the first criteria. The G-814 property satisfies the second criteria due to its size, shape and location next to the power lines. Taken as a whole, the proposed Development Plans satisfy the minimum area requirement.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A development with 200 to 800 units

is required to have a minimum of 30 percent single-family detached units and 20 percent townhouse and single-family attached units. The development proposed on G-813 property falls within this category but has a mix of 87 percent single-family detached units and 13 percent single-family attached. A development with fewer than 200 units, as proposed for the G-814 property, is required to have a minimum of 35 percent single-family detached units and 35 percent townhouse and single-family attached units. The small number of units proposed within G-814 are all single-family detached homes, in keeping with nearby homes on the other side of the power lines.

The Applicant requests waivers of the above unit mix requirements pursuant to Code §59-C-7.131, note 1, which authorizes the District Council to waive the unit mix requirements if it finds that "a proposed development . . . achieves goals, policies or recommendations stated in an approved and adopted master or sector plan." The Department of Housing and Community Affairs ("DHCA") objected to the waiver requested for the G-813 portion of the development, arguing that the proposed development should include market-rate townhouses.

Environmental Planning Staff observed that a higher density configuration with more attached units would save more priority forests. They nonetheless supported the waiver, because the proposed development would achieve other Master Plan environmental goals such as preserving high-priority upland forest and continuing the restoration of degraded areas.

In light of the Master Plan's emphasis on increasing the number of detached homes in the Fairland area, the District Council finds that the requested waivers should be granted.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which does not propose any commercial uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the tot lots, swimming pool, community building and parkland shown on the Amended Land Use Plan, are permitted in the PD Zone.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, . . . the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The present application seeks the low-density category of two dwelling units per acre, in keeping with the recommendations of the Master Plan. The maximum number of units permitted under the written binding elements represents an overall density of approximately two dwelling units per acre, including MPDUs (365 units/183 acres). The District Council concludes, based on the evidence of record, that this low density level is appropriate for the subject property in light of the significant environmental constraints on the site, the recommendations of the Master Plan and the density of existing development in the surrounding area.

Section 59-C-7.15, Compatibility. As discussed in Part J.1. above, the District Council finds that the proposed development would be compatible with existing development in the surrounding area. Moreover, the written binding elements on the Amended Land Use Plan show that the development would satisfy the setback specifications set forth in Section 59-C-7.15, which prohibit any building other than a one-family detached residence within 100 feet of an adjoining one-family detached zone. The Amended Land Use Plan does not include a binding element that responds to the specification in the same section that no building may be constructed to a height greater than its distance from such adjoining land. However, the submitted Land Planning Report states that the development would comply with this requirement. See Ex. 51(b) at 19. The Amended Land Use Plan shows that only a small number of residential lots would be adjacent to land that is recommended for single-family detached zoning, and all of the buildings on those lots would be single-family dwellings. Under these circumstances, it is reasonable to expect that the building heights would comply with the Zoning Ordinance and that the Planning Board would ensure such compliance at site plan review.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. A written binding element on the Amended Land Use Plan commits the Applicant to providing at least 45 percent green space, defined as gross tract area less buildings, roads and driveways.

Section 59-C-7.17, Dedication of Land for Public Use. The Land Use Plan clearly identifies the portions of the subject property to be dedicated to public use: the school site, the parkland dedication and property needed for roads.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Amended Land Use Plan shows preliminary parking counts considerably higher than Article 59-E requires.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The extension of Cedar Tree Drive would improve the local road network, benefiting both existing and new residents of the area. Likewise, the network of trails and sidewalks would provide valuable pedestrian connections for both existing and new residents.

§59-D-1.61(d): preservation of natural features. As discussed in Part F above, the proposed Development Plans would preserve a significant amount of the natural vegetation and other natural features of the site. The Applicant has committed to convey 23 acres of high-priority forest to MNCPPC at no charge, as parkland linking existing publicly-owned forest areas. Its preliminary forest conservation plan, which has been approved by the Planning Board, provides for forest retention that exceeds all relevant regulatory requirements. Uncontested evidence on stormwater management indicates that the proposed development would comply with applicable water protection requirements.

The proposed Development Plans would have significant environmental benefits compared to the 2004 plan. These include preserving greater amounts of parkland, high-priority forest, stream buffers and wetlands. The proposed residential development would also provide the significant benefit of stabilizing

and reclaiming severely degraded land, replacing it with useful and attractive open space and recreational amenities. The District Council considers this finding to be satisfied.

§59-D-1.61(e): common area maintenance. A homeowners' association declaration of covenants, conditions and restrictions that has been submitted in draft form adequately and sufficiently demonstrates the intended ownership and perpetual maintenance of common areas.

K. Public Interest

The District Council further concludes that the proposed zoning bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed above, the District Council finds that the proposed Development Plans would be in substantial compliance with the *Fairland Master Plan*. The preponderance of the evidence also establishes that the proposed Development Plans would be adequately supported by and would have no material adverse impacts on public facilities. To the contrary, the proposed residential development would include a park dedication and school dedication that carry significant public benefits. If the County builds a new elementary school on the site provided, the net result will be a substantial benefit to school conditions at the elementary level, while creating a focal point for neighborhood activity and community involvement.

In addition to the added parkland and forest retained on the subject site, the public would benefit from the environmental restoration and reclamation the private developers would perform on land that is currently bare and causing sedimentation problems.

As the Opposition pointed out, some of the natural features on the subject property would be adversely affected by the proposed development – trees would be cut down, some stream buffers cleared and potentially some isolated wetlands filled. However, for the reasons stated in Part F above, the District Council is persuaded that the environmental costs associated with the proposed development are no greater than necessary to allow the Master Plan's housing goals for the area to be achieved, at least in part.

For these reasons and because to approve the instant application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Development Plan Amendment Application No. 09-1, seeking to amend the existing Development Plan approved in conjunction with Zoning Applications G-813 and G-814 to create (1) Development Plan G-813 and G-814, (2) Development Plan G-813 Part II and (3) Development Plan G-813 Part III, is hereby *granted* in the amount requested and the three proposed Development Plans submitted therewith approved, subject to the specifications of the Amended Land Use Plans that form their central components, Exhibits 82(a), 40(g) and 40(h), as well as the Phasing Plan, Exhibit 82(b), and the depiction of the three Development Plans on Exhibits 25 and 39(f), provided, that within ten days of receipt of the District Council's approval resolution, the Applicant must submit a reproducible original and three copies of the approved Amended Land Use Plans and Phasing Plan, Exhibits 82(a), 82(b), 40(g) and 40(h), for certification in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

APPENDIX B
Memoranda from Reviewing Agencies



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

March 24, 2010

Arthur Holmes, Jr.
Director

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #1-2005020A
Fairland Park

Dear Ms. Conlon:

We have completed our review of the preliminary plan dated March 3, 2010. This plan was reviewed by the Development Review Committee at its meeting on January 19, 2010. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
2. A Public Improvements Easement may be necessary to along Public Roads B,D, and E, in order to accommodate the required 5' sidewalk construction. Prior to submission of the record plat, the applicant's consultant will need to determine if there is sufficient right of way to permit this 5' sidewalk construction. If not, the applicant will need to either dedicate additional right of way or execute a Declaration of Public Improvements Easement document. That document is to be recorded in the Land Records of Montgomery County, with the liber and folio referenced on the record plat.
3. Size storm drain easement(s) prior to record plat. No fences will be allowed within the storm drain easement(s) without a revocable permit from the Department of Permitting Services and a recorded Maintenance and Liability Agreement.
4. In accordance with Section 49-35(e) of the Montgomery County Code, sidewalks are required to serve the proposed subdivision. Sidewalks are to be provided along all public streets.
5. The conceptual profiles for Saddle Creek Drive, Cedar Tree Drive, Roads A, B, C, D, and E are acceptable to this office. Grade establishments for all new public streets must be approved by the Department of Permitting Services (MCDPS) prior to submission of the record plat.

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov

Ms. Catherine Conlon
Preliminary Plan No. 1-2005020A
March 24, 2010
Page 2

6. We approve the waiver request for the modified typical section for Saddle Creek Drive into this property. This includes transitioning the existing 60' right of way to the master planned right of way width of 70' and transitioning the pavement width from 26' to 36' with a 5' sidewalk on the west side and an 8' bikepath on the east side.
7. Curb radii for intersection type driveways should be sufficient to accommodate the turning movements of the largest vehicle expected to frequent the site. If any trucks are expected to turn into the private streets, the radii will need to be increased to accommodate them. This issue will be addressed by DPS at the site plan/ permit stage, whichever comes first, and upon reviewing appropriate auto-turn diagrams.
8. The proposed private streets must be sufficiently wide to accommodate two-way vehicular traffic. Private streets are to be designed to allow an SU-30 truck to circulate without crossing the centerline nor the curb line.
9. Waiver from the Montgomery County Planning Board for lot(s) not on a public right of way.
10. Waiver from the Montgomery County Planning Board for a reduction in the minimum centerline radii on Saddle Creek Drive extended. We support this waiver request.
11. Dedication or reservation of park and/or school sites as required by the Montgomery County Planning Board or the Montgomery County Board of Education.
12. In accordance with Section 49-35(e) of the Montgomery County Code, sidewalks are required to serve the proposed subdivision. Sidewalks are to be provided on both sides of the proposed public streets unless the applicant is able to obtain a waiver from the appropriate government agency.
13. In accordance with Section 50-35(n) of the Montgomery County Code, we recommend the Montgomery County Planning Board require the applicant to construct an off-site sidewalk along Saddle Creek Drive and Cedar Tree Drive to connect to the existing sidewalk along the existing portions of those roadways.
14. The parking layout plan for the Community Center will be reviewed by the Department of Permitting Services at the site plan or building permit stage, whichever comes first. To facilitate their review, that plan should delineate and dimension the proposed on-site travel lanes, parking spaces, curb radii, handicap parking spaces and access facilities, and sidewalks. The applicant may wish to contact Ms. Sarah Navid of that Department at 240-777-6320 to discuss the parking lot design.
15. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan.

Ms. Catherine Conlon
Preliminary Plan No. 1-2005020A
March 24, 2010
Page 3

16. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
17. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
18. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Fred Lees of our Traffic Engineering Design and Operations Section at (240) 777-6000 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
19. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Traffic Systems Engineering Team at (240) 777-6000 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
20. Trees in the County rights of way - species and spacing to be in accordance with the applicable DOT standards. Tree planting within the public right of way must be coordinated with Mr. Brett Linkletter with our Division of Highway Services, Tree Maintenance Unit. Mr. Linkletter may be contacted at (240) 777-7651.
21. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
 - A. Street grading, paving, curbs and gutters, sidewalks and handicap ramps, storm drainage and appurtenances, and street trees along all public streets as shown on the preliminary plan.

Provide traffic calming along Street A:

Construct mid-block chokers on Street A adjacent to the environmentally sensitive area, the pavement should be choked down to 26' per standard MC-212-02.

Provide intersection chokers on both sides of Street A at the intersection with Cedar Tree Drive to facilitate pedestrian crossings as well as traffic calming.

On Public Road A provide a 5' sidewalk on the east side of the road and an 8' bikepath on the west side of the road. At the intersection of Public Road A with Cedar Tree Drive, proper transitions should be made to flip the location of the 5' sidewalk to the west side and the 8' bikepath to the east side along Public Road A.

Provide standard 25' curb radii at all intersections. Provide 2 handicap ramps on each corner of all 4 way intersections, and provide aligned handicap ramps on each leg of "T" intersections.

Provide 5' sidewalk on both sides of all tertiary streets.

Ms. Catherine Conlon
 Preliminary Plan No. 1-2005020A
 March 24, 2010
 Page 4

- B. Enclosed storm drainage and/or engineered channel (in accordance with the DOT Storm Drain Design Criteria) within the County rights-of-way and all drainage easements.
- C. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
- D. Developer shall ensure final and proper completion and installation of all utility lines underground, for all new road construction.
- E. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Traffic Engineering and Operations Section.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Ms. Dewa Salihi at (240) 777-2197.

Sincerely,



Gregory M. Leck, P.E., Manager
 Development Review Team

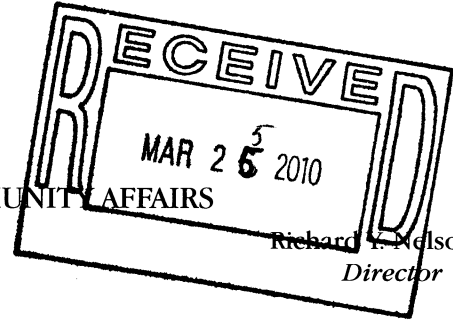
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Enclosure

cc: Bernie Rafferty, Fairland Development LLC
 Caleb Gould, Konterra
 Marc Mezzanotte, Dewberry
 Barbara Sears, Linowes & Blocher
 Joseph Y. Cheung; DPS RWPPR
 Henry Emery; DPS RWPPR
 Sarah Navid; DPS RWPPR
 Erin Grayson; M-NCPPC DRD
 Shahriar Etemadi; M-NCPPC TPD
 Deanna Archey; DOT DTS
 Brett Linkletter; DOT
 Dan Sanayi; DOT DTEO
 Bruce Mangum; DOT DTEO
 Dewa Salihi, DOT TEO
 Preliminary Plan Folder
 Preliminary Plans Note Book



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS



Richard F. Nelson, Jr.
Director

Isiah Leggett
County Executive

March 23, 2010

Ms. Sandra Pereira
Development Review Division
M-NCPPC
8787 Georgia Ave.
Silver Spring, MD 20910

RE: Fairland Park Community
Preliminary Plan No. 12005020A & Site Plan No. 82005006A

Dear Ms. Pereira:

Department of Housing and Community Affairs (DHCA) staff met with the Applicant for the above plans on March 17, 2010. DHCA and the Applicant have now agreed to the following concerning the Applicant's March 3, 2010 responses to DHCA's Development Review Committee (DRC) comments on the above project, and the Applicant's proposed MPDU Development Phasing Plan:

1. **Floor Plans:** The Applicant's proposed floor plans for the townhouse and duplex units are acceptable, provided that all MPDUs include three (3) bedrooms. DHCA will need to approve the final configuration of the MPDUs at the time of the MPDU Agreement to Build.
2. **Site Layouts:** The revised site layouts are acceptable, provided that they are also acceptable to M-NCPPC.
3. **MPDU Development Phasing Plan:** The Applicant has agreed to re-assign the ten (10) single-family detached lots located east of Cedar Tree Drive from Phase IA to Phase II, as follows:

	S.F. Mkt Rate	S.F. MPDU	Total
Phase IA	101	11	122
Phase IB	70	14	84
Phase II	45	6	41
Total	216	31	247

Division of Housing and Code Enforcement

Code Enforcement FAX 240-777-3701	Moderately Priced Dwelling Unit FAX 240-777-3709	Housing Development and Loan Programs FAX 240-777-3691	Landlord-Tenant Affairs FAX 240-777-3691
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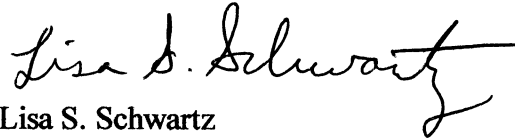
This change will reduce the number of market-rate units in Phase IA to 47% of the total market rate units, which brings this percentage closer to the 35% of the MPDUs to be completed in Phase IA.

The Applicant has also proposed some additional conditions concerning construction starts of MPDUs relative to market rate units. These conditions will be incorporated into the project's Agreement to Build, and will ensure compliance with MPDU staging requirements.

4. Private Roads (Alleys): DHCA acknowledges and accepts the Applicant's responses that the MPDUs will be included in the same Home Owner's Association (HOA) as the market rate units; that the alleys will not be lighted (because alleys are not typically provided with lighting); and the lighting for the civic area and the MPDU duplexes will be the same.

If you have any questions or need additional information, please contact me at (240) 777-3786.

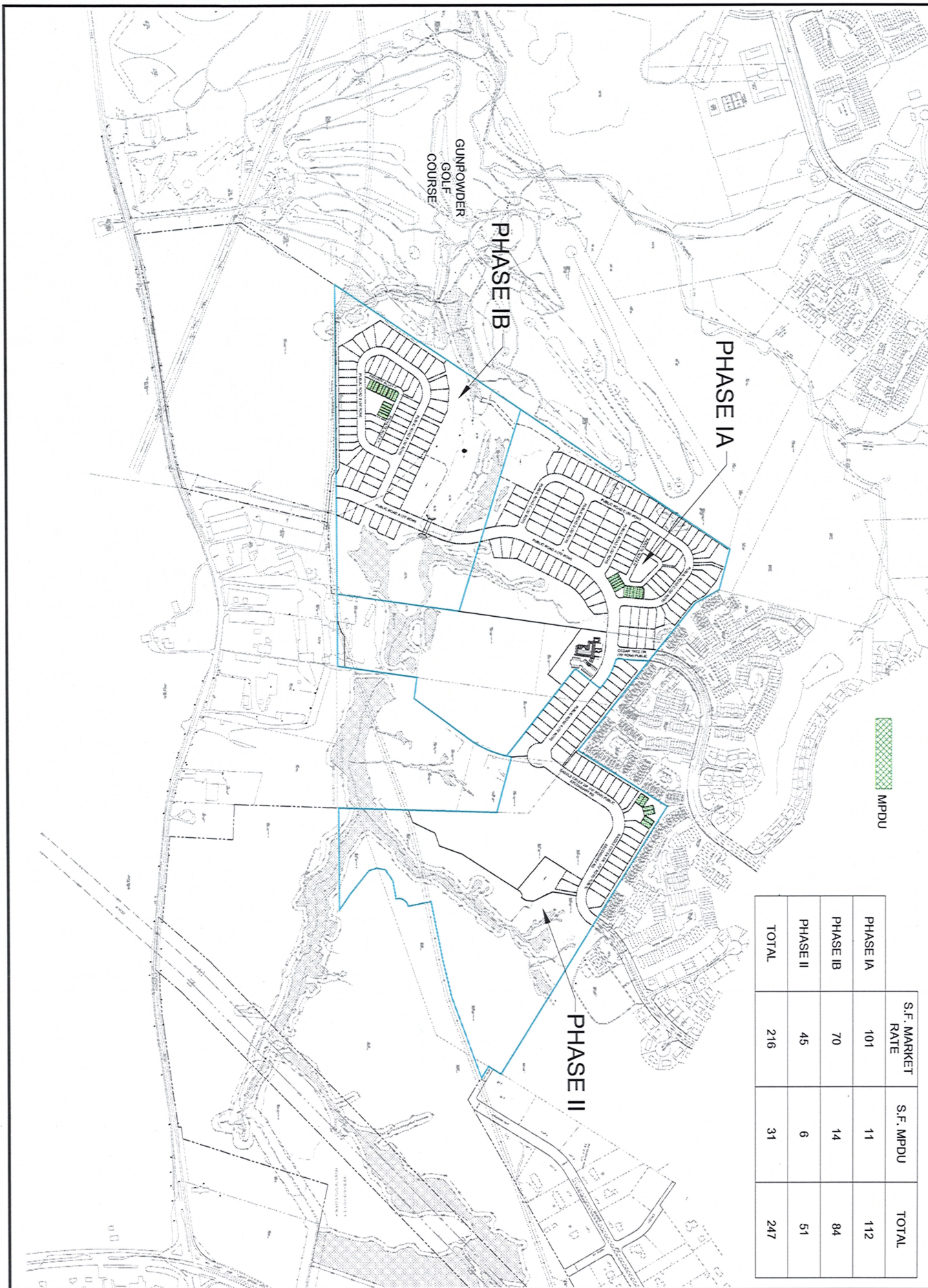
Sincerely,



Lisa S. Schwartz
Senior Planning Specialist

cc: Bernard J. Rafferty, Artery Development Group
Nooshin Amirpour, Artery Development Group
Marc A. Mezzanotte, Dewberry & Davis LLC
Barbara A. Sears, Linowes & Blocher LLP
Yum Yu Cheng, Linowes & Blocher LLP
Richard Y. Nelson, Jr., DHCA
Joseph T. Giloley, DHCA
Christopher J. Anderson, DHCA
Essayas Ababu, DHCA

FAIRLAND PARK COMMUNITY MPDU DEVELOPMENT PHASING



	S.F. MARKET RATE	S.F. MPDU	TOTAL
PHASE IA	101	11	112
PHASE IB	70	14	84
PHASE II	45	6	51
TOTAL	216	31	247

MPDU

17005020A
Evan G.



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

July 22, 2009

Carla Reid
Director

Ms. Cheryl Hannan
Dewberry
203 Perry Parkway, Suite 1
Gaithersburg, MD 20877

Re: **REVISED Stormwater Management CONCEPT**
Request for Fairland Park Community
Preliminary Plan #: Pending
SM File #: 233339
Tract Size/Zone: 183.32 acres / PD-2
Total Concept Area: 183.32 acres
Lots/Block: N/A
Parcel(s): 700, 125, 202, 258, 340, 454, 440
Watershed: Little Paint Branch

Dear Ms. Hannan:

Based on a review by the Department of Permitting Services Review Staff, the **revised** stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site channel protection measures via dispersion, and via construction of six wetland ponds and modification of the existing wet pond; on-site water quality control via treatment within the wetland ponds as well as construction of one Montgomery County Sand Filter. Onsite recharge is not required due to the fact that groundwater elevations throughout the project site are very shallow.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. The reconfiguration of the existing pond will result in its providing full channel protection for its drainage area. Also, at the request of Prince George's County, it will be revised to provide 10- and 100-year attenuation to pre-developed conditions. Per email dated December 9, 2008 from Mr. Bruce Harrington, a dam breach analysis was reviewed by MDE, with the results showing the revised pond to be classified as a "low hazard facility".
5. Results of an on-site geotechnical analysis reveal very shallow groundwater elevations across most of the subject property. For this reason, typical "dry" stormwater management practices are impractical. Instead, wetland facilities will be designed where needed to provide channel protection and water quality control. Special care must be taken when designing structures of

this type in a residential setting. The facilities must be heavily landscaped to provide visual screening as well as wildlife habitat. If fencing is proposed, the fence details must be reviewed and approved by DPS. The parcels must be labeled "Wildlife Enhancement Areas" as outlined in the October 2, 2008 stormwater management concept submission.

6. The "future school site" was NOT reviewed as part of this stormwater concept application and is NOT part of this approval. The school site will require a separate stormwater management concept approval prior to any detailed review for proposed development on that property. It is understood that you intend to design a treatment facility below the school site, and size that facility to address future school development, but there is no guarantee that this facility can be used to meet any of the eventual development on the school property. Your letter of July 6, 2009 reflects that you understand this.
7. This approval supersedes the stormwater concept approval letter dated December 24, 2008.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mark Etheridge at 240-777-6338.

Sincerely,



Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:dm mce

cc: C. Conlon
S. Federline
SM File # 233339

QN -ON; Acres: 89
QL - ON; Acres: 89
Recharge is not provided



MONTGOMERY COUNTY PUBLIC SCHOOLS
MARYLAND

www.montgomeryschoolsmd.org

March 30, 2010

Ms. Sandra Pereira
Development Review Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Ms. Pereira:

Re: Fairland Park Community—Future Elementary
School Site—Preliminary Plan No. 12005020A
Site Plan No. 82005006A

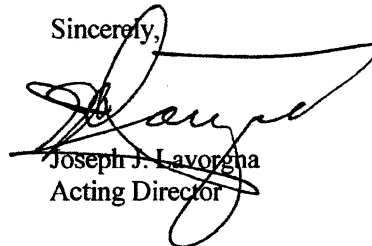
This is to comment on the referenced preliminary and site plans scheduled to be reviewed by the Montgomery County Planning Board on April 22, 2010.

We recommend that as a condition of approval, the Applicant convey the elementary school site to the Board of Education, at no cost, prior to recordation of final plats for residential lots in Phase II. Conveyance is to be in fee simple, free and clear of any encumbrances or covenants. In addition, the Applicant shall perform the following:

- Rough grade the site in a manner and to grades acceptable to Montgomery County Public Schools (MCPS)
- Guarantee capacity in stormwater management Pond "F" to satisfy quantity control requirements for the development of the school site, if needed
- Release MCPS from responsibility for future costs associated with modification and/or maintenance of Pond "F"
- Provide sufficient off-site forest conservation and maintenance thereof attributable to the school site and as required to accommodate the development of the school site

Thank you for the opportunity to comment. Should you have any questions, please contact Ms. Janice M. Turpin, real estate management team leader, at 240-314-1069.

Sincerely,



Joseph J. Lavorgha
Acting Director

JJL:jlc

Copy to:
Ms. Turpin
Ms. Wilson
Mr. Rafferty

Department of Facilities Management

2096 Gaither Road, Suite 200 ♦ Rockville, Maryland 20850 ♦ 240-314-1060



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

March 26, 2010

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Hidden Hill, DAIC 120100180, NRI/FSD applied for on 5/29/2009
Plum Gar Rec Center, MR 2010714, NRI/FSD applied for on 8/17/2009
Fairland Park Community – Sewer Line, DAIC 12005020A, NRI/FSD applied for on 7/12/2007

Dear Dr. Hanson:

As stated in a letter to you from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief



FIRE MARSHAL COMMENTS

DATE: 12-Apr-10
TO: Marc Mezzanotte
Dewberry & Davis, LLC
FROM: Marie LaBaw
RE: Fairland Park Community
DPA-09-001 12005020A 82005006A

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **08-Apr-10** .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.
3. **Parking restrictions either via fire lane orders or traffic orders must be approved by the Fire Marshal's office prior to Certified Site Plan.**
4. **Access to any alternative surface fire department vehicular access can have no more than a 3 inch mountable curb obstruction between it and standard paved vehicular access**
5. **Interior turning radii on any fire department vehicular access can be no less than 25 ft**

APPENDIX C
MNCPPC memos



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 31, 2010

MEMORANDUM

TO: Erin Grayson, Development Review Division

VIA: Khalid Afzal, Team Leader, East Transit Corridor Team
Vision Division

FROM: Kristin O'Connor, Senior Planner, East Transit Corridor Team
Vision Division

SUBJECT: Fairland Park Community- No. 12005020A

KA
KO

Recommendation

The Vision Division has reviewed the amended preliminary plan for Fairland Park Community, located within the *1997 Approved and Adopted Fairland Master Plan*, and finds that the amended plan is in substantial conformance with the Master Plan.

Master Plan Discussion

The subject site is located in the Oakfair-Saddlecreek Community. It is zoned PD-2 and is designated as Area 2 in the Master Plan (Figure 21, see attached). The Master Plan states that Area 2 “has the potential for adding detached units to the housing mix,... improving the road network including a possible extension of roads to Old Gunpowder Road in Prince George’s County,... and (providing) a hiker/biker access to the Fairland Recreational Park.” In addition to a new school site and street network, the Master Plan envisioned the community as a new development with connected trails and open space.

The Plan made specific recommendations for this property, known at the time of the Plan’s preparation as Area 2 (Figure 21). The recommendations are accompanied by guidelines for this property. The Plan’s primary recommendation was that development on Area 2 could be best accomplished under the provisions of the Planned Development Zone (PD-2) and that a residential community could be developed around the existing golf course. The proposed site plan adheres to this recommendation.

In addition to the general guidance of the Master Plan regarding this parcel, staff reviewed this site plan using the following eight criteria, outlined on page 48 in the Master Plan. The next paragraphs highlight individual criteria and indicate how well the proposed plan meets the Master Plan criteria.

1) A density cap of 396 units with an appropriate mix of housing types including single-family detached and attached units.

The revised plan proposes a total of 247 units. The housing mix is 216 single-family detached units and 21 townhouses. The Fairland Master Plan recommends new developments to be predominately single-family detached units. The Master Plan highlights that some communities have far greater numbers of attached units and multifamily units. Providing single family detached units will help balance the housing mix in the master plan area (p. 18). The proposed plan meets that guidance.

2) MPDUs to be distributed throughout the development.

The Fairland Master Plan encourages a wide choice of housing types for people of all incomes (p. 18). The Fairland Park Community plan proposes 31 lots (12/5%) of MPDU units scattered in three areas throughout the development.

3) Extension of the existing road network.

Saddle Creek Drive and Cedar Tree Drive will be extended through the new community and connect with McKnew Road and MD 198 in Montgomery County and Old Gunpowder Road in Prince George's County. The proposed plan extends the existing road networks.

4) Areas of no disturbance or environmental impact (reference to Page 119 of the Master Plan).

The proposed plan meets the environmental protection objectives of the Master Plan through forest conservation, green space requirements, and wetland protection. The PD Zone requires 45 percent green space and the Fairland Park Community is preserving 76.81 percent or over 100 acres as green space. Over 22 acres of quality forest, originally slated for residential development, will be dedicated to M-NCPPC. Environmental Planning staff has reviewed and is satisfied with the applicant's mitigation plans for filling in two small isolated wetlands which may have been an outgrowth/remnant of previous sand and gravel extraction operations. The applicant is voluntarily removing the existing road crossing over the right fork of the Little Paint Branch main stem and creating a new high quality wetland (.39 acres) that will connect the two existing large wetlands to the north and south. This will improve the water quality and restore the natural habitats and forest of the area.

5) Non-vehicular access to Fairland Recreational Park.

A future trail connection to Fairland Regional Park will be provided from the new community as well as a path/trail connection to McKnew Local Park.

6) Connect road(s) to Old Gunpowder Road in Prince George's County, if desirable.

The plan proposes connecting Cedar Tree Drive to Old Gunpowder Road in Prince George's County. It also will connect Saddle Creek Drive to Old Gunpowder Road.

7) Common open space for residents of the new community.

The recreational amenities will be private, including a community building and a pool of appropriate size for the Fairland Park Community subdivision. Community open space will be provided in the sidewalk network as well as around the clubhouse and proposed school.

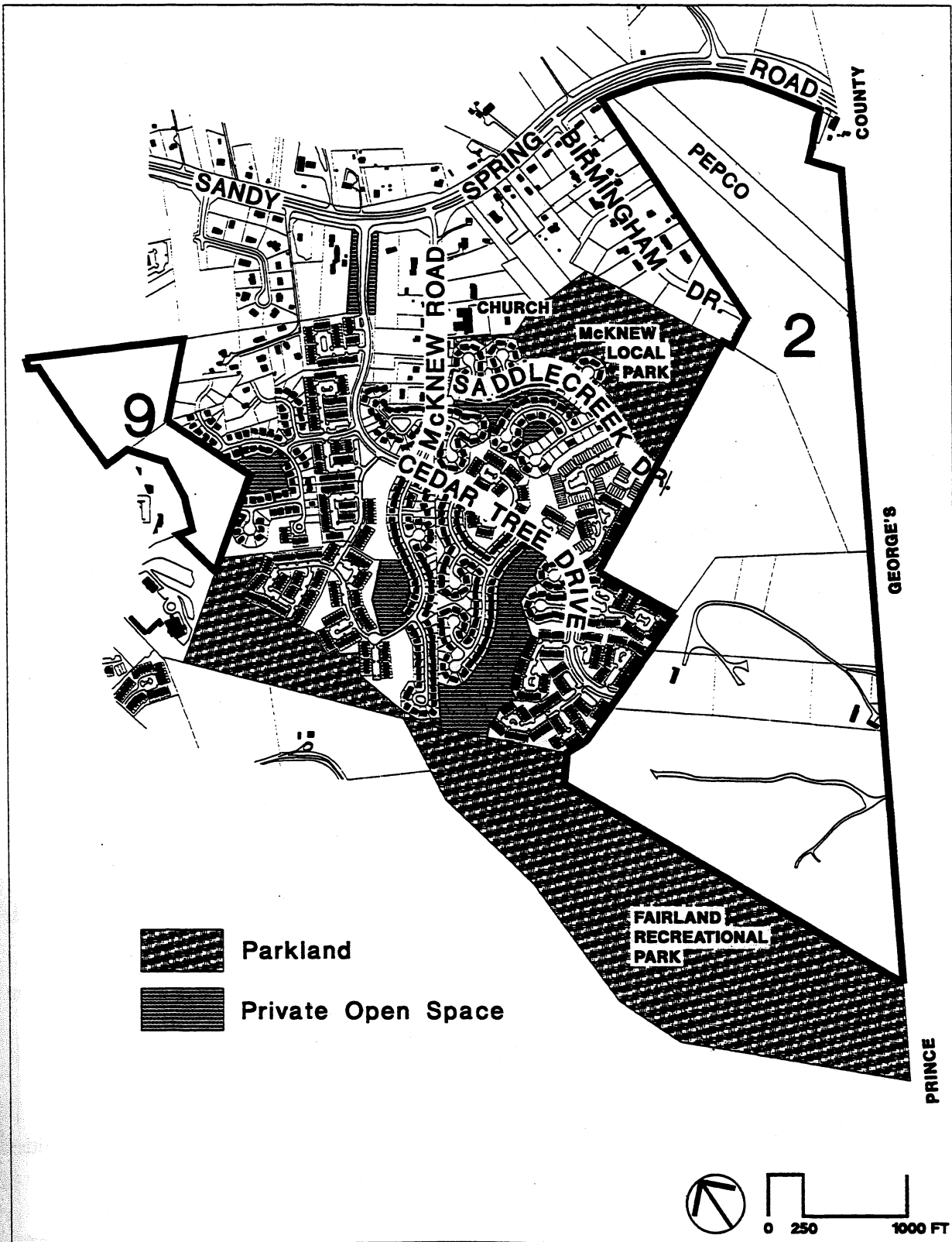
8) A 12-15 acre site for a new elementary school.

The Master Plan identified this property as needing an elementary school to serve the existing community and future residents of this site (approximately 1,500 in total. According to the 1997 Master Plan, the school will provide a “centrally located community focal point” (p. 47). An 11-acre site is to be dedicated for an elementary school site.

Conclusion

The preliminary plan meets all eight criteria in the Master Plan regarding this parcel. Based on staff’s analysis, the proposed plan is consistent with the *1997 Approved and Adopted Fairland Master Plan*.

Attachment






MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

TO: Erin Grayson, Development Review
Sandra Pereira, Development Review

VIA: Stephen Federline, Master Planner, Environmental Planning 

FROM: Candy Bunnag, ^{CB}Planner Coordinator, Environmental Planning

DATE: April 6, 2010

SUBJECT: Preliminary Subdivision Amendment #12005020A and Site Plan
Amendment #82005006A, Fairland Park Community

RECOMMENDATIONS

Amendments to Approved Preliminary Plan/Preliminary Forest Conservation Plan

The Environmental Planning staff has reviewed the preliminary plan referenced above. Staff recommends approval of the amendments to the preliminary plan of subdivision and the preliminary forest conservation plan with the following conditions:

1. Compliance with the conditions of approval of the Amendment to the Preliminary Forest Conservation Plan. The applicant must meet all conditions and requirements prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s) as appropriate. Specific conditions include the following:
 - a. A subsequent amendment must be made to the approved Preliminary Forest Conservation Plan Amendment to reflect a specific proposal for the area dedicated to Montgomery County Public Schools consistent with Forest Conservation Regulation COMCOR 22A.00.01.09A. This amendment may be submitted together with the Final Forest Conservation Plan for the school site at time of the school's mandatory referral review. The plan must maximize forest retention, focusing on the forested areas in the triangular- shaped, southeast corner of the MCPS site.
 - b. The following corrections must be made to the Preliminary Forest Conservation Plan Amendment:
 - i. Note No. 1 on Sheet 1 of the Preliminary Forest Conservation Plan Amendment must be corrected to identify forest retention to be 37.64 acres.
 - ii. Note No. 1 of the FCP Notes on Sheet 1 of the Preliminary Forest

Conservation Plan Amendment must be corrected to identify that park dedication is a mechanism for forest preservation, as well as the use of Category I conservation easements.

- iii. Legend on Sheet 1 of the Preliminary Forest Conservation Plan Amendment must be corrected to identify “Forest Cleared Offsite” instead of two symbols identified as “Forest Retained Counted Cleared”.
 - c. Environmental buffer area on HOA Parcels B and C must be clearly marked with minimum two-inch caliper native trees and permanent signs.
 - d. Plans for proposed wetland mitigation area on HOA Parcel C and M-NCPPC parkland must be approved by M-NCPPC Environmental Planning Division, and receive Park Permit approval by the M-NCPPC Department of Parks, prior to any clearing or grading in this area.
 - e. Restoration plans for portion of HOA Parcel C east of the existing pond must include removal of buildings and pavement and plantings with native vegetation. Such plans must be reviewed and approved by M-NCPPC Environmental Planning Division.
 - f. On HOA Parcel C, the area between the toe of slope of the MDE-approved reclamation fill for stump dump and wetlands to be planted with native shrubs and trees to create a minimum 25-foot wide dense vegetated buffer between the reclamation fill area and wetlands.
2. All areas identified as forest retention, forest planting, or environmental buffers must be placed in Category I conservation easements, or within M-NCPPC park dedication areas for conservation use. Conservation easements must be shown on record plats.

Amendments to Approved Site Plan/Final Forest Conservation Plan

The Environmental Planning staff has reviewed the site plan referenced above. Staff recommends approval of the amendments to the site plan and the final forest conservation plan with the following conditions:

1. Compliance with the conditions of approval of the Amendment to the Final Forest Conservation Plan. The applicant must meet all conditions and requirements prior to recording of plat or MCDPS issuance of sediment and erosion control permit(s) as appropriate. Specific conditions include the following:
 - a. Approval of a Final Forest Conservation Plan Amendment for the Fairland Park Community consistent with the FCP regulatory requirements of Section 22A.00.01.09B – *Forest Conservation Regulations* (COMCOR 22A.00.01) prior to any clearing, grading or demolition on the site.
 - b. Approval of the overall Final Forest Conservation Plan Amendment for the Fairland Park Community is contingent upon the subsequent review and approval of a separate Final Forest Conservation Plan for the

dedicated school site. Grading for the public school project is preliminary, and for rough grading only. No land disturbance exceeding the limits of disturbance approved on the Final Forest Conservation Plan Amendment for Fairland Park Community can occur on the MCPS site until a separate Final Forest Conservation Plan is approved by the Planning Board for the school site.

- c. Prior to the start of clearing or grading, the applicant must submit a bond to cover recommended tree and shrub plantings for review and approval by M-NCPPC Environmental Planning Division.
- d. Details of the following items must be shown on the Final Forest Conservation Plan Amendment:
 - i. Environmental buffer area on HOA Parcels B and C must be clearly marked with minimum two-inch caliper trees and permanent signs.
 - ii. Plans for proposed wetland mitigation area, including a planting plan, on HOA Parcel C and M-NCPPC parkland to be reviewed and approved by M-NCPPC Environmental Planning Division, and receive Park Permit approval by the M-NCPPC Department of Parks prior to any clearing or grading in this area.
 - iii. Restoration plans for portion of HOA Parcel C east of existing pond must include removal of buildings and pavement and plantings with native vegetation. Such plans must be reviewed and approved by M-NCPPC Environmental Planning Division.
 - iv. On HOA Parcel C, the area between the toe of slope of the MDE-approved reclamation fill for stump dump and wetlands to be planted with native shrubs and trees to create a minimum 25-foot dense vegetated buffer between the reclamation fill area and wetlands.

DISCUSSION

Background

The 132.10-acre subject site is located on the south side of Rte. 198 with the boundary of Montgomery and Prince Georges Counties forming the site's eastern edge. From the forest conservation perspective, the subject site includes portions of the M-NCPPC Old Gunpowder Golf Course because the subdivision's proposed sewer lines cross through the golf course site to tie into existing sewer lines on M-NCPPC land. The site is zoned PD-2. The applicant proposes 247 residential units, creation of HOA open spaces, dedication and rough grading for a public elementary school site, and dedication of about 23 acres of M-NCPPC parkland.

The original proposal for this development involved the rezoning of the original 313-acre site to PD-2. The original site covered both private and public lands. The application proposed development of a residential subdivision with a golf course, plus the dedication of land for both a public elementary school site and stream valley parkland.

In May 2009, an amendment to the Preliminary Forest Conservation Plan (FCP) was reviewed and approved by the Planning Board as part of the review of a Development Plan Amendment for Fairland Park Community (DPA 09-01). The DPA and associated Amendment to the Preliminary FCP excluded public lands from the application and covered 183.33 acres of land. A golf course was no longer part of the development proposal, but dedication for a public school site and stream valley parkland remained.

In December 2009, M-NCPPC purchased 52.8 acres of the northern portion of the applicant's site. This part of the applicant's site includes high quality forest which is contiguous to forest on McKnew Local Park. The Fairland Master Plan recommends the acquisition of the Little Paint Branch stream valley between McKnew Local Park on the north and Fairland Recreational Park on the south. It did not specify as to the amount of acreage recommended for acquisition.

The acquired parkland includes high-priority upland forests, a designated bio-diversity area, forested wetlands and bogs, steep slopes, environmental buffer areas, and habitat for rare, threatened and endangered species. This area is on or below the fall-line separating the Piedmont physiographic province from the Coastal Plain. It is an area of diverse geologic and soil conditions that support unique vegetation which is highly valued by the Natural Heritage Division of the Maryland Department of Natural Resources. Preserving these resources and keeping them accessible to the public is not only of countywide importance, but is regionally significant as well. Some of the forest includes stands that are old growth estimated to be more than 75 years old. This acquired parkland will also serve as an important buffer to the historical setting of the Burton House located on Birmingham Drive, which was discussed with the Board during its recent review of the Development Plan Amendment for the Fairland Park Community.

Environmental Guidelines

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD # 420080090) was approved on February 28, 2008. The site lies within the Little Paint Branch watershed (Use I waters). The 2003 update of the *Countywide Stream Protection Strategy* (Montgomery County Department of Environmental Protection) identifies the subwatershed in which this site is located as the McKnew Park Tributary and documents the stream quality as being good.

It should be noted that the approved NRI/FSD covers more land than the current Preliminary and Final Forest Conservation Plan Amendments. When the NRI/FSD was approved, the purchase of the 52.8-acre portion for parkland had not occurred. So, the NRI/FSD includes information that covers both the portion of the site that is subject to the current preliminary, site plan, and forest conservation plan amendments and the part of the site that was purchased by M-NCPPC.

The NRI/FSD also includes information on the entirety of the M-NCPPC Old Gunpowder Golf Course. But the current Preliminary and Final Forest Conservation Plan Amendments include only the parts of the golf course site where sewer lines to serve the

subdivision are proposed.

Several streams that are part of the Silverwood Tributary network of Little Paint Branch which flow through this site. The Silverwood Tributary that flows along the southern portion of the site had been dammed as part of the mining operations to create two large in-stream ponds. Wetlands exist in parts of these ponds, as well as in man-made ponds and small depressions created with the mining work. Some of the smaller wetlands are not hydrologically connected to the streams and associated stream valleys, but are connected to the stream valleys through existing forest stands.

The site roughly slopes from west to east. There are many areas of steep slopes, some of which were created as part of the mining activities that occurred in the past.

Roughly the northern third of the site has large forest stands which were not cleared during the mining operations. Forest also occurs on the southern half of the site.

Environmental Buffers, Stream Valleys, and Wetlands

The majority of environmental buffers and associated environmentally-sensitive features within them are proposed to be preserved. Where environmental buffers are on private HOA land, staff recommends the placement of Category I conservation easements. Features in dedicated parkland will not require conservation easements for long-term protection.

There are some environmental buffer areas which are proposed to have permanent encroachments. These areas include: the re-grading and reconfiguration of the southernmost in-stream, manmade pond to create a stormwater management facility that meets DPS' requirements; the crossing of public road "A" along the upstream edge of the recreated SWM facility as a necessary and unavoidable feature providing a connection between the subdivision east and west of the stream valley; and unavoidable sewer line connections through the stream valleys at the southeastern corner of the site and within the existing Old Gunpowder Golf Course.

Along the southern boundary line of the site, there are three small wetlands that appear to have been created with the significant grading operations associated with the past mining activities. These wetlands do not lie within an environmental buffer associated with a stream or stream valley. Staff believes the wetlands, which are located within the southern forest area that also encompasses the southern streams and stream valley, provide wildlife habitat function and value since they lie within the same forest complex as the larger stream system and stream valley. However, with the proposed subdivision layout, the southern forest area will be significantly reduced, and there will no longer be a forested connection between the small, created wetlands and the larger streams and stream valley. Therefore, staff believes the wildlife habitat value of these small wetlands will be significantly reduced or eliminated when the forest around them is cleared for the subdivision. Staff does not object to the filling of these particular wetlands, since the habitat value of these wetlands will be greatly diminished or lost, and the applicant will

create wetlands within the on-site stream valley as mitigation for their loss, as required by the Maryland Department of the Environment (MDE).

Forest Conservation

The proposed project is subject to the County Forest Conservation Law (Chapter 22A of the Montgomery County Code). As previously stated, a Preliminary Forest Conservation Plan Amendment was approved with conditions by the Planning Board on May 7, 2009. The Preliminary FCP Amendment was associated with the Development Plan Amendment (DPA 09-01) for Fairland Park Community. This first amendment took out the original golf course component of the subdivision and also excluded existing parkland from the application.

The current, proposed amendments to the Preliminary and Final Forest Conservation Plans excludes the 52.8 acres of the property that was bought by M-NCPPC in December 2009 for parkland. The amendments include proposed sewer line extensions into M-NCPPC Old Gunpowder Golf Course that were not included in the forest conservation plan associated with the DPA.

The current Amendments to the Preliminary and Final Forest Conservation Plans propose to retain 37.64 acres and clear 44.03 acres of forest. Retained forest will either lie within HOA parcels or dedicated parkland. The amount of retained forest exceeds the site's conservation threshold of 26.23 acres. Retained forest that meets or exceeds the conservation threshold is consistent with Section 22A-12(f)(2)(B) of the County Forest Conservation Law:

“In a planned development or a site development using cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a).”

It should be noted that the proposed forest conservation plan is not required to plant forest because it proposes to preserve 37.64 acres of forest, which is slightly larger than the site's break-even point of 37.32 acres. Although there is no forest planting requirement, staff recommends that native trees and/or shrubs be planted in two places: a portion of an unforested environmental buffer that will be adjacent to the community center and pool, and an area at the toe of the created slope of the reclamation area approved by the Maryland Department of the Environment (MDE) that is adjacent to existing wetlands.

Variance Request

Section 1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. An Applicant for a variance must provide certain written information in

support of the required findings in accordance with Section 22A-21 of the Montgomery County Code. The law requires no impact to any trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; trees associated with a historic site or structure; and rare, threatened and endangered species. Although the approval of the first Amendment to the Preliminary Forest Conservation Plan occurred in May 2009, this first Preliminary FCP Amendment did not include the proposed sewer line extensions through the existing Old Gunpowder Golf Course. The current (second) Amendment to the Preliminary Forest Conservation Plan proposes these sewer line extensions, which affect trees at least 30 inches DBH. Therefore, a variance is required for only the part of the Preliminary FCP Amendment which covers the proposed sewer line extensions within the Old Gunpowder Golf Course.

The applicant has requested a variance to impact nine trees that are 30 inches or greater, DBH (Attachment A). Of these nine trees, five trees are proposed to be removed.

The following trees are proposed to be removed: 31.4" northern red oak, two 30.7" tulip poplars, 34.3" northern red oak, 30.1" tulip poplar. The following trees are proposed to be affected but preserved: 36.9" beech, 39.3" chestnut oak, 37.5" tulip poplar, 32.5" northern red oak. The 39.3" chestnut oak that is proposed to be preserved is greater than 75 percent of the size of the existing County champion for that species.

In accordance with Montgomery County Code, Section 22A-21(c), the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. In this case, the variance request was referred to the Montgomery County Arborist on month date, 2010. The County Arborist has not provided a recommendation for the variance request (Attachment B). By law, the County Arborist's response for the variance request is therefore presumed to be favorable.

In accordance with Section 22A-21(e), Environmental Planning staff recommends that the Planning Board find based on the following justifications, that the Applicant has met all criteria required to grant the variance.

- 1). *Will confer on the applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. The proposed impacts to trees 30 inches and greater, DBH, are due to sewer line extensions to serve the subdivision. These sewer lines are necessary and unavoidable infrastructure elements of the subdivision. The sewer line routes are proposed to minimize impacts within environmental buffers.

- 2). *Is based on conditions or circumstances which are the result of the actions by the applicant.*

The proposed sewer line connections are constrained by the existing sewer line locations and the required elevations for the connections. Given these constraints, staff believes the sewer alignments minimize impacts to overall forest stands on the golf course.

- 3). *Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.

- 4). *Will violate State water quality standards or cause measurable degradation in water quality.*

The proposed sewer lines are necessary infrastructure elements of the subdivision. The subdivision, with its proposed stormwater management facilities and stump dump reclamation area, will improve the water quality of the receiving streams, compared to the prior use of the site as a mining operation.

As a result of the above findings, staff recommends approval of the applicant's request for a variance from Forest Conservation Law to remove or otherwise impact specimen trees. The variance approval is assumed into the Planning Board's approval of the final forest conservation plan.



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March 22, 2010

Mr. Mark Pfefferle
Acting Division Chief
M-NCPPC Environmental Planning Division
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Forest Conservation Variance Request
Fairland Park Community

Dear Mr. Pfefferle:

This application for Fairland Park Community included a prior LMA application numbers G-813 and G-814 that were approved by County Council resolution #15-577 and a Preliminary Plan (No. 12205020) and a Site Plan (No. 820050069) that were concurrently approved by the MNCP&PC planning board on December 4, 2004. A Development Plan Amendment (No. 09-1) was approved by County Council by resolution #16-1105 on September 15, 2009. As part of that approval, Preliminary Forest Conservation Plan #12005020A was approved. The Preliminary Forest Conservation Plan approval was for the subject property only and unfortunately we were not required to include on the Preliminary FCP the necessary public proposed sewer extension through Fairland Regional Park to the existing sewer located on the M-NCPPC Parks Department Gunpowder Golf course approximately 1200 feet southwest of the Fairland Park Community. Throughout all of the approvals, plans, and testimony on this case it has always been foreseen that the existing public sewer line would have to be extended through Gunpowder Golf course to the subject property line.

According to newly enacted provisions of Natural Resources, Title 5, Section 5-1607 of the Maryland Code it requires the Applicant to file an application for a variance to remove trees that are 30" DBH and greater or trees that are 75 percent the diameter of the county champion for that species (hereafter referred to as specimen trees), if a project did not receive approval of a Preliminary Forest Conservation Plan prior to October 1, 2009. Since a Preliminary Forest Conservation Plan was approved for the subject site prior to October 1, 2009 it is not necessary to obtain variances for the removal of specimen trees for the Fairland Park Community property. However, because the public sewer extension was not part of the Preliminary Forest Conservation Plan for Fairland Park Community, M-NCPPC staff has made a determination that a variance will be required for the removal of specimen trees along the proposed sewer alignment in the Gunpowder Golf course located in Fairland Regional Park. The public sewer outfall will serve 247 residential units, a community building and pool, and a future public elementary school site in Montgomery County; 138 residential units, and provide capacity for the parcels in the Minnicks Industrial Park in Prince Georges County which are now on septic systems.

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(2 of 6)

Mr. Mark Pfeifferle
 RE: Forest Conservation Variance Request
 Fairland Park Community
 March 22, 2010
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The proposed sewer alignment through the Gunpowder Golf course has been designed, staked in the field and walked with the parks department from both counties, Washington Suburban Sanitary Commission (WSSC), the golf course operator, and the planning and environmental staff from Montgomery County.

Numerous specimen trees and significant trees greater than 24 inches diameter are located on the grounds of Fairland Regional Park. In addition, a stream valley bisects the park and it is within this stream valley that the existing sewer connection is located. Most of the forested areas of the park, areas devoted to the golf course, are located upslope from the Fairland Park Community with the topography rising 20 feet or more along much of abutting property boundaries. The proposed location for the sewer alignment as it leaves the Fairland Park Community property and enters onto the Fairland Regional Park property is situated so as to minimize the number of impacts to forest areas, specimen trees, significant trees and stream buffers along the two adjoining boundaries. Attempts have been made to utilize an existing trail constructed on the park and thus minimize impact to trees along the proposed sewer alignment. Historically, sewer alignments have been located in the vicinity of existing streams and therefore within stream buffers just as is the case with the existing sewer connection on the Fairland Regional Park property. Because the stream buffers extend well upslope from the streams, wetlands and floodplains and the existing sewer connection is located within the limits of these features it is not possible to avoid impacts to these features or trees found within these features.

The proposed sewer extension alignment for this development application includes some impact to the Critical Root Zone, CRZ, of nine specimen trees including one tree that is greater than 75 percent the size of the champion of that species, a 39.3 inch diameter Chestnut Oak, *Quercus prinus*. The CRZ is calculated as an area with a radius in feet that is 1.5 times the diameter of the diameter of the specimen tree. Of those nine specimen trees a total of five specimen trees are proposed to be removed as reflected by this variance request. The remaining four specimen trees including one tree that is greater than 75 percent the size of the champion of that species will have a portion of the critical root zone impacted but the impacts are not considered significant enough to require removal of the trees. Appropriate protection measures including root pruning, root aeration, fertilization and top pruning are proposed on the Final Forest Conservation Plan to mitigate for impacts to the CRZ of these trees.

A summary of the proposed impacts and disposition of each of the nine trees being impacted by the proposed sewer alignment can be found in the table below.

Tree #	Species	Diameter (inches)	Condition	Disposition	CRZ Area (sf)	CRZ Impacts (sf)	CRZ Impacts (%)
236	Northern Red Oak	31.4	Fair	Remove	7010	3399	48
312	Beech	36.9	Fair	Save	9681	2973	31
400	Tulip Poplar	30.7	Fair	Remove	6701	3759	56
401	Tulip Poplar	30.7	Fair	Remove	6701	6701	100
402	Chestnut Oak	39.3*	Fair	Save	10981	3396	31
403	Northern Red Oak	34.3	Good	Remove	8365	4407	53
404	Tulip Poplar	37.5	Fair	Save	9998	2065	21

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 RE: Forest Conservation Variance Request
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405	Tulip Poplar	30.1	Poor	Remove	6442	2740	43
406	Northern Red Oak	32.5	Good	Save	7510	2118	28

*This tree is greater than 75 percent the size of the champion tree of this species.

Tree #236 is located in the vicinity of several other significant trees and near wetlands and stream buffers. Efforts to change the alignment of the proposed sewer alignment are hampered because the other trees are located on one side of this tree and the wetlands and stream buffer are located on the other side of the tree. Thus changing the alignment in either direction will result in additional impacts. The tree is therefore proposed to be removed.

Tree #312 is located along the edge of the golf course up slope of the propose alignment. This tree has some butt damage that includes approximately one third of the circumference at ground level and includes some butt decay. Because only about 31 percent of the CRZ will be impacted the tree can be saved with the implementation of mitigation measures. We are proposing root pruning, fertilization, watering and top pruning as determined to be needed by an arborist and as reflected in the Final Forest Conservation Plan.

Tree #400 is located next to the floodplain and wetland area near a trail crossing of the wetland. Approximately 56 percent of the CRZ will be impacted on two sides of the tree with the wetlands being on yet another side. Because of the proximity to the wetlands the potential to initiate mitigation measures is very limited. Although it would not be necessary to remove the tree it is anticipated that the tree could die and is therefore shown as being removed.

Tree #401 is located immediately next to the existing trail on a narrow level area between the 6-foot to 8-foot cut bank that was created when the trail was constructed and the wetland area on the other side of the tree. Moving either direction would force the sewer alignment either into the wetland or upslope resulting in significant cut. This tree will be removed.

Tree #402 is located along the edge of the maintained area of the golf course with the propose alignment being down slope. Approximately 25 to 30 feet from the base of the tree is a steep cut bank that falls approximately 6 to 8 feet to the cart trail location. This cut bank is nearly a shear drop and resulted from the construction of the cart trail. That cut slope previously removed a significant portion of the CRZ for this tree. Therefore, the proposed impacts although reflecting 31 percent of the CRZ will likely be less thus having even less of an impact. The proposed impacts of 5 to 10% of the existing root system can be saved through mitigation measures. We are proposing root pruning, top pruning and fertilization as determined to be needed by an arborist in order to save this tree.

Tree #403 is located approximately 110 feet from the existing sewer connection. The tree is in good condition but the proposed alignment cannot be moved further upslope to effectively avoid impacts to this tree. In fact, moving the alignment upslope would adversely impact Tree #402 resulting in the removal of that tree. Moving the alignment in the opposite direction would result in additional impacts to the wetlands found on the downhill side of the tree. An attempt will be made to save this tree but the LOD is located within a foot or two the base of the tree and

Mr. Mark Pfefferle
RE: Forest Conservation Variance Request
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saving the tree may not be possible and if possible the tree may not survive even with mitigation measures being implemented. Therefore, the tree is shown as being removed.

Tree #404 is located approximately 25 feet from a stream. Although the tree condition is considered "Fair" the tree is proposed to be saved because of its proximity to the stream and the proposed alignment impacting only 21 percent of the CRZ. We are proposing mitigation measures such as root pruning, top pruning and fertilization for this tree to be saved. Aeration although possible would not be appropriate because the tree is located within the 100-year floodplain. In the event of aeration followed by a 100-year storm event significant impacts to the soils including acceleration erosion could occur.

Tree #405 is located near the edge of the golf course and is considered to be in "Poor" condition. The tree is proposed to be removed because 43 percent of the CRZ is proposed to be impacted and the condition of the tree is poor. Because the portion of the CRZ that will not be impacted is located within the existing forest area the implementation of mitigation measures such as aeration will be minimally effective. Therefore, the tree is shown as being removed.

Tree #406 is located in the vicinity of Tree #405 and is rated as being in "Good" condition. The tree is proposed to be saved because only 26 percent of the CRZ is proposed to be impacted. We are proposing root pruning, trimming and fertilization to mitigate the proposed impacts to the CRZ.

To grant the requested variance the Planning Board must find that the request:

1. Will not confer on the applicant a special privilege that would be denied to other applicants;
2. Is not based on conditions or circumstances which are the result of the actions by the applicant;
3. Does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
4. Will not violate State water quality standards or cause measurable degradation in water quality.

The following rationale is presented to support this variance request:

1. The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. All five of the large trees requested to be removed are located along existing areas of disturbance associated with park management activities and outside of the stream valley buffer to the extent possible since stream crossings are necessary and the existing connection is located in a floodplain area near a stream. None of the trees are champion trees or 75% of the DBH of the state champion tree for that species. These are four specimen trees proposed to be saved with partial impacts to the

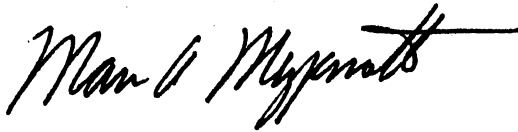
Mr. Mark Pfefferle
RE: Forest Conservation Variance Request
Fairland Park Community
March 22, 2010
Page 5 of 6

- critical root zone. The circumstances related to this variance are not unique or avoidable and are consistent with normal sewer outfall construction.
2. The requested variance is not based on conditions or circumstances which are the result of actions by the applicant. If the existing public sewer connection was located on the applicants property the off-site impacts would not be necessary and the removal of the five specimen trees could be avoided. Furthermore, the alternatives are limited because of the sewer connection must flow downhill and the applicants property is located uphill of the existing connection that is located approximately 1200 feet southeast of the applicants property. The requested variance is based on the existing sewer connections, the topographic conditions present and the site layout and design for a residential development in the PD-2 zone and the necessary sewer connections. Alternate lot layouts would not alter the need for the sewer connection and alternative alignments would not alter the need for removal of these three trees. In fact, alternate alignments might eliminate the need to remove two trees but would result in the removal of two additional trees and additional impacts to stream buffers, wetlands, forest areas and floodplain.
 3. The requested variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. The use on the property has no bearing on the location of the proposed sewer alignment which must connect to the existing public sewer that is located approximately 1200 linear feet south east of the applicant's property. The need for the variance is determined by the existing site conditions as noted above not the proposed or existing land uses.
 4. The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The removal of the five specimen trees including the four specimen trees that are located within a stream buffer will not have an impact on water quality standards or cause degradation to the water quality beyond that associated with the removal of much smaller trees. The appropriate sediment control standards will be installed and the clearing area will not be increased when compared with clearing required for smaller trees that might have a diameter one third that of the trees to be removed. The only Tree #401 is located entirely within the limits of disturbance that forces the removal of that tree. The other four trees (#236, 400, 403 & 405) will have significant impacts to the root systems and it is likely that the trees will not survive even with implementation of mitigation measures. Therefore, trees (#236, 400, 403 & 405) have been identified as being removed. Efforts to minimize adverse impacts can still be made but the long term survival of the trees will remain questionable. Should it then be necessary to remove the trees they could be cut at ground level leaving the root system intake to further avoid and minimize any degradation to the water quality associated with the removal of these trees.

Mr. Mark Pfefferle
RE: Forest Conservation Variance Request
Fairland Park Community
March 22, 2010
Page 6 of 6

In consideration of the above findings, it is requested that the variance allowing the removal of five specimen trees and critical root zone impacts to four additional trees be recommended by staff to the Planning Board for approval of the forest conservation plan.

Very truly yours,
Dewberry & Davis, LLC



Marc A. Mezzanotte, PE
Senior Associate

JM Forestry Services, LLC



John Markovich
Licensed Forester

MAM\dss
G:\ADMIN\Files\MARC M\Letters\Variance Request for Speimen Trees (100319) JM.doc

cc: Candy Bunnag
Bernie Rafferty
Sandra Pereira
Erin Grayson



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

March 26, 2010

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Hidden Hill, DAIC 120100180, NRI/FSD applied for on 5/29/2009
Plum Gar Rec Center, MR 2010714, NRI/FSD applied for on 8/17/2009
Fairland Park Community – Sewer Line, DAIC 12005020A, NRI/FSD applied for on 7/12/2007

Dear Dr. Hanson:

As stated in a letter to you from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief

APPENDIX D
Community Correspondence

Pereira, Sandra

From: richardblackman@comcast.net
Sent: Monday, March 22, 2010 7:17 AM
To: Pereira, Sandra
Subject: Re: Saddle Creek/ Fairland Park Community, ped connection

Sandra,

Sorry, it's been taking so long, but I was trying to get some feedback from the Leatherwood folks. Wasn't able to do that. I think it looks great. However, I can't officially speak for the SCHOA. If you need that I'll have to refer you to the SCHOA management agent.

Richard B.

----- Original Message -----

From: Sandra Pereira
To: richardblackman@comcast.net
Sent: Fri, 19 Feb 2010 22:42:31 +0000 (UTC)
Subject: Saddle Creek/ Fairland Park Community, ped connection

Mr. Blackman,

As a follow-up to our phone conversation, I am sending you 2 attachments to illustrate the pedestrian connection between the proposed Fairland Park Community and your community. This connection was requested by the Montgomery County Public Schools as a way to improve and encourage pedestrian access from the existing adjacent communities to the future Elementary School. As of now, this connection is proposed as an opening in the future fence and a 20-foot "gap" in between the proposed lots.

Sheet 1 provides orientation and context to the area that we're discussing (shown with a red circle). Sheet 2 is an enlarged plan that shows more detail on the area for the pedestrian connection.

Please feel free to call (or email) when you've had a chance to review these. I look forward to hearing more about your thoughts on this pedestrian connection.

Thank you,

Sandra

<<Sheet 1-Overall site with vicinity.pdf>>

<<Sheet 2-Fairland_Saddle Creek_ped path connection.pdf>>

Sandra Pereira
Senior Planner

M-NCPPC Montgomery County Planning Department

APPENDIX E
Errant Shot Study

W.R. LOVE, INC. GOLF COURSE ARCHITECTURE

7309 Baltimore Avenue, Suite 215 College Park, MD 20740

Telephone 301.864.4880

16 MARCH 2010

ERRANT SHOT STUDY Proposed Fairland Park Community Adjacent to Holes 3, 6 & 14

GUNPOWDER GOLF COURSE Laurel, Maryland

INTRODUCTION

The Maryland-National Capital Parks and Planning Commission (M-NCPPC) engaged the consulting services of W. R. Love, Inc. (herein referred to as the Golf Course Architect) to perform an Errant Shot Study for the Montgomery County portion of Holes 3, 6 & 14 at Gunpowder Golf Course located in Laurel, Maryland. The purpose of the Study is determining the approximate dispersion of errant shots and their potential impact on the proposed Fairland Park Community adjacent to Holes 3, 6 & 14. The Study includes possible recommendations for mitigation and improvement of the safety issue caused by errant golf shots due to the close proximity of the proposed community; however it is never possible to prevent the occurrence of all errant golf shots.

OBJECTIVES OF THE ERRANT BALL STUDY

1. To perform an errant shot analysis for Holes 3, 6 & 14 at Gunpowder Golf Course (Figure 1.0).
2. To estimate the areas where the greatest frequency of errant golf shots may occur on the periphery of the holes both on interior side as well as the exterior side where the development is being proposed (Figure 2.0).
3. To recommend possible mitigation solutions for the approximate safety set back distances to the proposed adjacent development with additional measures (Figure 2.0).

ERRANT SHOT STUDY

Utilizing maps, plans and other information provided by the M-NCPPC, the Golf Course Architect prepared a "to scale" base map of the existing facilities to be used to illustrate the Errant Shot Study. Golf Course Architect reviewed the site and studied the existing conditions to confirm the accuracy of the base map information and photograph the area of study in detail. During this site review, the Golf Course Architect began analyzing the existing features of Holes 3, 6 & 14 and their relationship to the proposed development (Figure 3.0 & Figure 6.0).

Site Review and Analysis for Errant Shots

During the review and analysis of the site, the Golf Course Architect examined Holes 3, 6 & 14 for their location, length, playability (club selection and shot type), slope (topography), tree buffering (existing and post-development), prevailing winds, orientation and proximity to the

existing interior adjacent golf holes, orientation and proximity to the proposed development (Figure 3.1 & Figure 6.1).

NOTE: THERE ARE NO ESTABLISHED OR PUBLISHED SAFETY SETBACK DISTANCES THAT ARE USED IN DETERMINING THE LIMIT OF ERRANT SHOTS FOR GOLF HOLES. EACH INDIVIDUAL CASE OR GOLF HOLE MUST BE ANALYZED ON THE SPECIFIC CIRCUMSTANCES CONCERNING PLAY AND MAINTNENANCE OF THE GOLF HOLE, THE EXISTING FEATURES OF THE GOLF HOLE AND THE EXISTING CONDITIONS OF THE SITE WHERE THE GOLF HOLE IS LOCATED. AFTER STUDYING THE EXISTING CONDITIONS, THE GOLF COURSE ARCHITECT CAN ESTIMATE WHERE THE GREATEST FREQUENCY OF ERRANT GOLF SHOTS WILL OCCUR USING SETBACK DISTANCES THAT HAVE BEEN APPLIED ON PAST PROJECTS IN THE REGION WITH SIMILAR EXISTING CONDITIONS.

Based on the analysis of Holes 3, 6 & 14 the Golf Course Architect recommends using the following safety setback distances or limits for the greatest frequency of errant shots:

- 150' radius at all tees.
- 200' radius at landing areas of par 4s and par 5s.
- 200' radius at a point 200 feet back from landing area towards tee.
- 180' radius at the center of the putting surfaces.

Note: These above distances apply only to a predicted majority of shots. There will be errant golf shots that are outside these distances.

Hole 3

Hole 3 is a very short dogleg right par 5 that plays downhill to a landing area and then uphill to a second landing area and green (Figure 3.0). From the first landing area to the green, the golf hole is very close in proximity to the property line at approximately 65 feet at the second landing area and approximately 65 feet from the center of the green. The limit of errant golf shots extends in excess of 100 feet beyond the property line into the area of proposed community at both the second landing area and green (Figure 3.1 & Figure 3.2).



The existing trees provide a buffer between the first landing area and the second landing area that will provide protection for proposed lots 23-25 (Figure 3.2), as long as they remain. Due to the close proximity of the proposed community to the second landing area and green, the existing trees will be removed and subsequently there will be little to no protection for lots 26-32 which is a length of approximately 350 feet (Figure 3.2).

Note: Approximately 240 feet of the existing golf car path is located on the property of the proposed community from the second landing area to the green (Figure 3.2).

Hole 6

Hole 6 is a short dogleg right par 4 that plays uphill to a landing area and then downhill to the green. From the landing to the green, the golf hole is very close in proximity to the property line at approximately 105 feet at the landing area and approximately 40 feet from the center of the green. The limit of errant golf shots extends well beyond the property line into the area of proposed community at both the landing area and green (Figure 6.1 & Figure 6.2).



There is a tree buffer that will remain between the tee and first landing area that will provide some protection for proposed lot 5 just north of the storm water management pond, as long as it remains. Due to the close proximity of the proposed community from the landing area to the green, the existing trees will be removed and subsequently there will be little to no protection for lots 6-14 which is a length of approximately 440 feet (Figure 6.2).



Note: Approximately 490 feet of the existing golf car path is located on the property of the proposed community from in front of the landing area to the green (Figure 6.2).

Hole 14

Hole 14 is a very short par 4 that is drivable for the longer hitters. The golf hole is in moderate proximity to the property line at approximately 140 feet at the center of the green. The limit of errant golf shots extends beyond the property line into the area of proposed community by a maximum of 40 feet at the furthest point between lots 18 & 19. There is an existing tree buffer that will be diminished slightly to construct the proposed community, but a good portion will remain between the green and the Limits of Disturbance for the proposed community. The tree buffer that will remain intact will provide protection from errant shots for the community, as long as it remains (Figure 6.1 & Figure 14.2).

Without the existing trees there could be an errant shot problem due to the short length of the hole.

NOTE: THE INFORMATION AND RECOMMENDATIONS CONTAINED IN THE ERRANT SHOT STUDY FOR HOLES 3, 6 & 14 AT GUNPOWDER GOLF COURSE ARE BASED ON EXISTING CONDITIONS AND DO NOT CONSTITUTE SAFETY STANDARDS OF



ANY KIND FOR SET BACK DISTANCES OR OTHER SAFETY MEASURES. THE FOLLOWING RECOMMENDATIONS ARE INTENDED TO MINIMIZE ERRANT SHOTS AND DOES NOT GUARANTEE THAT ERRANT SHOTS WOULD BE COMPLETELY PREVENTED FROM ANY OF THE AFOREMENTIONED GOLF HOLES.

RECOMMENDATIONS FOR MITIGATION OF ERRANT SHOTS

The following recommendations for Holes 3, 6 & 14 are for conceptual planning purposes only. The Golf Course Architect is not qualified to make specific recommendations or to provide details for construction for any poles and netting or fencing for safety purposes and the prevention of errant golf shots. It is the responsibility of the M-NCPPC to solicit the services of a netting or fencing contractor to provide detailed design of such features.

Hole 3

With the lack of adequate setback distance and removal of the existing trees that would provide some buffer from the second landing area to the green, proposed adjacent lots 26-32 would need to be eliminated and protection in the form of a tree buffer installed along the remaining roadway. The only other viable option for providing safety from errant golf shots without eliminating lots appears to be through the use of poles and netting at an approximate length of 350 feet be installed inside the Limits of Disturbance for the proposed community (Figure 3.1 & Figure 3.2).

Hole 6

With the lack of adequate setback distance and removal of tree buffer from short of the landing area to the green, proposed lots 6-13, possibly 14 would need to be eliminated and protection in the form of a tree buffer installed along the remaining roadway. The only other viable option for providing safety from errant golf shots without eliminating lots appears to be through the use of poles and netting at an approximate length of 440 feet be installed inside the Limits of Disturbance for the proposed community (Figure 6.1 & Figure 6.2).

Hole 14

With the existing tree buffer remaining intact, no poles or netting appear to be necessary for safety purposes from errant golf shots (Figure 6.1 & Figure 14.2), as long as the trees remain. Some errant shots may still reach the proposed adjacent lots. Should the trees be eliminated for whatever reason, then adjacent lots 17-20 and possibly 16 could be impacted. Either the lots would be eliminated to avoid safety issues or poles and netting, of a height to be determined,

would be necessary to contain errant golf shots. The short length of this hole could amplify the situation with out any remaining tree buffer.

Additional Measures

The Golf Course Architect recommends installation of a black chain link fence approximately 8 ft. in height along the entire property boundary between the golf course and the proposed community, except possibly in areas where poles and netting are being recommended (Figure 3.1, Figure 3.2, Figure 6.1, Figure 6.2 & Figure 14.2) The purpose of this fence is not to contain errant shots, but to provide pedestrian control. It is important to keep golfers within the limits of the golf course. It is equally important to prevent residents of the community, young and old alike, from wandering onto golf course property and into areas within the limits of the greatest frequency of errant shots. Allowing residents to fall in harms way will not only undermine the recommended mitigation measures listed above but may also create potential legal issues for both the M-NCPPC and the proposed Fairland Park Community should someone get injured.

The Golf Course Architect also recommends installation of flowering trees, shrubs or other vegetation along the poles and netting and in selected areas along the property boundary. The purposed of this vegetative buffer is to provide additional physical and visual buffer between the golf course and proposed community, especially in the areas of Holes 3 and 6 where all existing tree buffer is being removed by the proposed community (Figure 3.2 & Figure 6.2).

Alternative Investigation

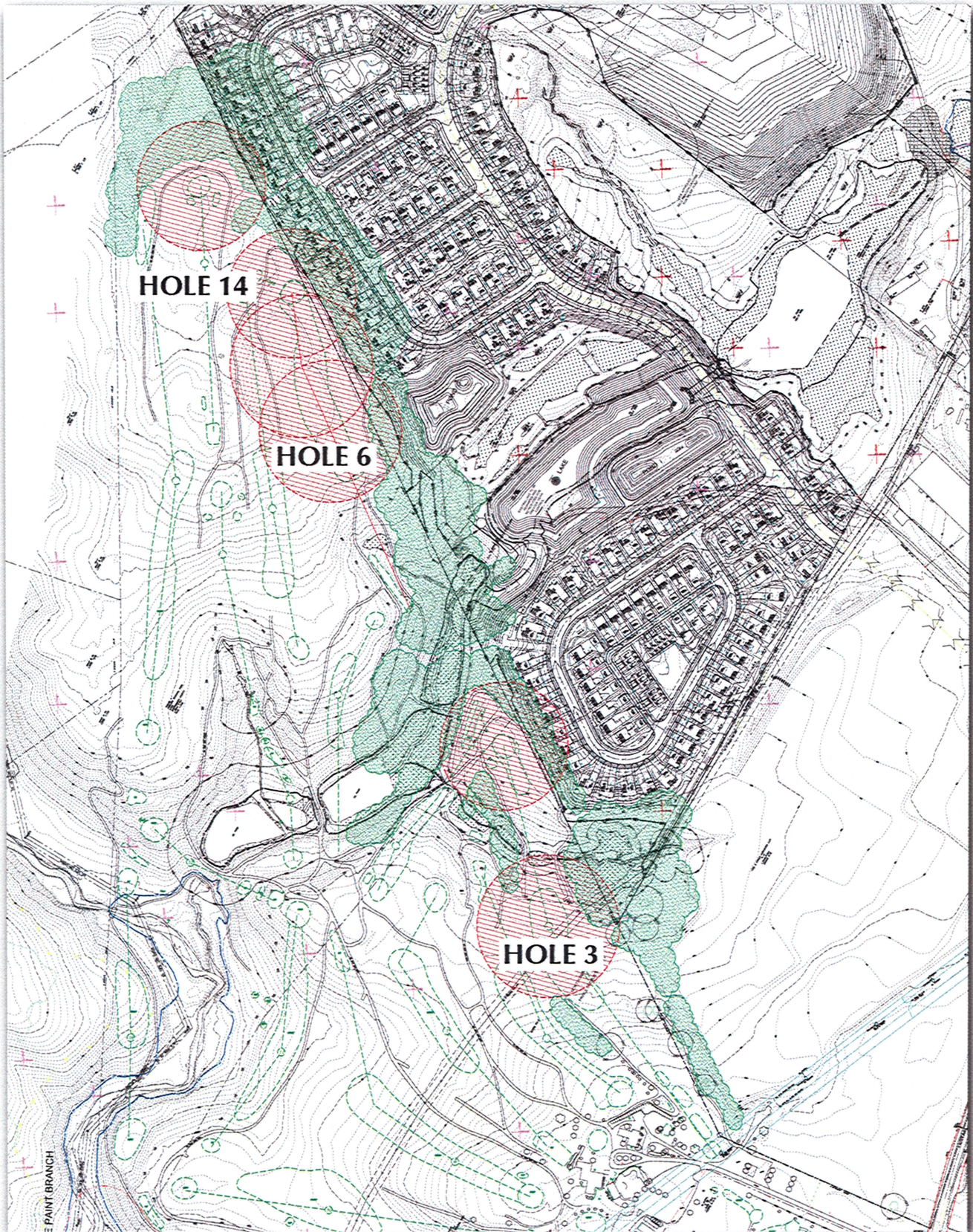
As part of the Errant Shot Study the Golf Course Architect performed analysis of the existing interior adjacent golf holes to Holes 3, 6 & 14. The Golf Course Architect explored possible ways to make modifications to Holes 3, 6 & 14 to move them further away from the property line and proposed development. It was determined that this approach was not feasible due to the close proximity of the adjacent interior holes.

W. R. Love, Inc.
Golf Course Architecture

8 March 2010, Rev. 16 March 2010

FIGURE 1.0

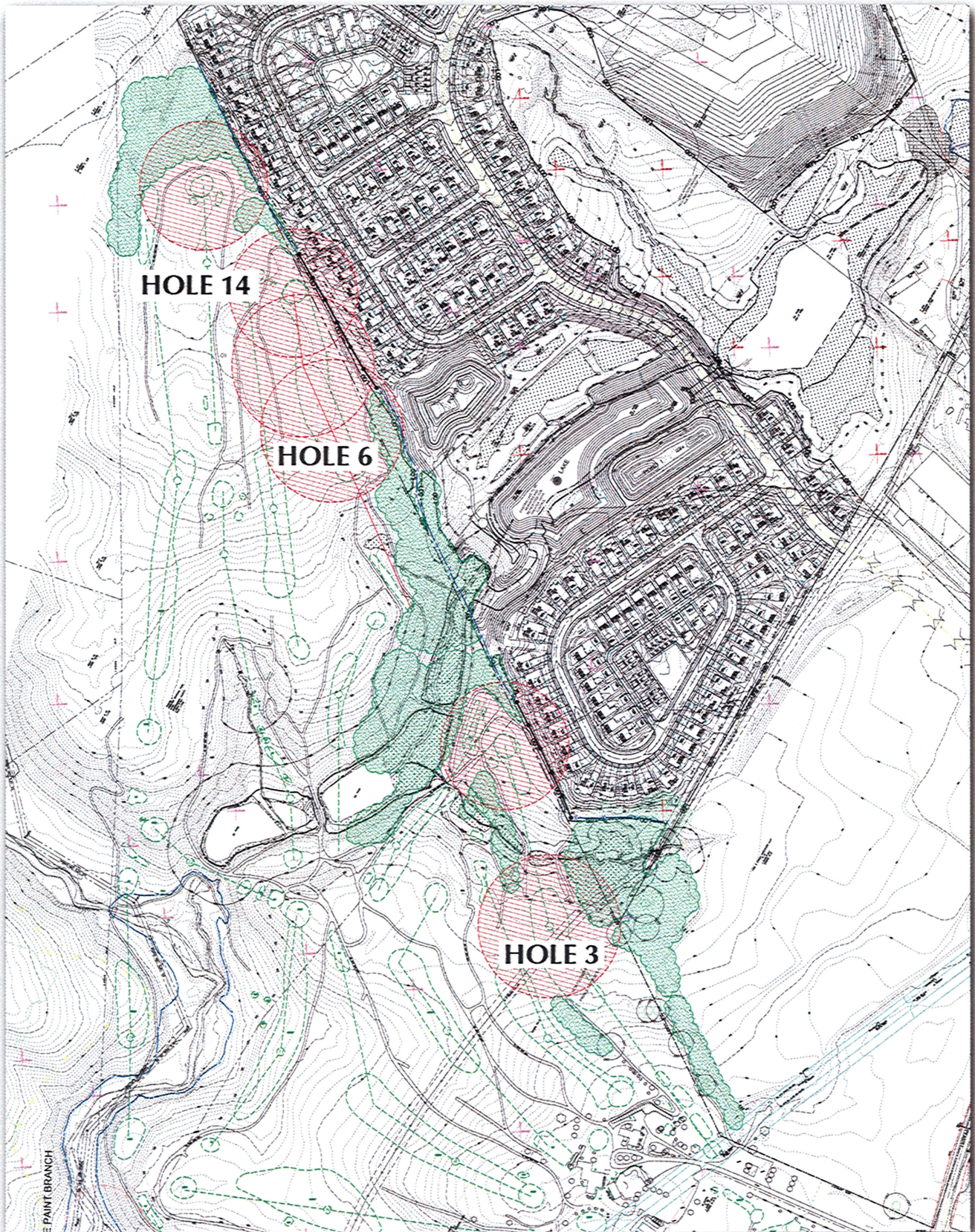
ERRANT SHOT STUDY WITH EXISTING CONDITIONS
Holes 3, 6 & 14



SCALE: 1 INCH = 400 FEET

FIGURE 2.0

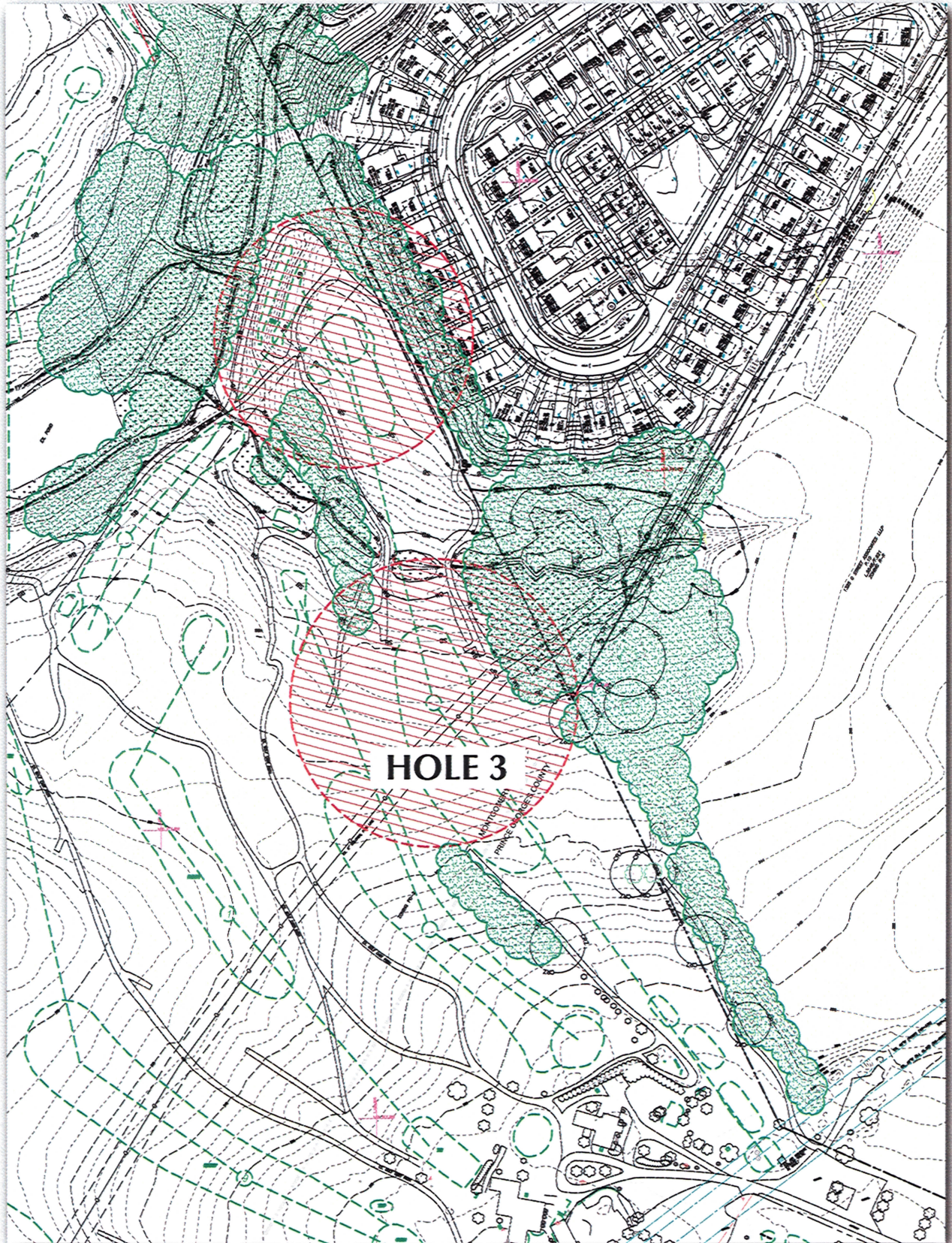
**ERRANT SHOT STUDY WITH PROPOSED COMMUNITY
Holes 3, 6 & 14**



SCALE: 1 INCH = 400 FEET

FIGURE 3.0

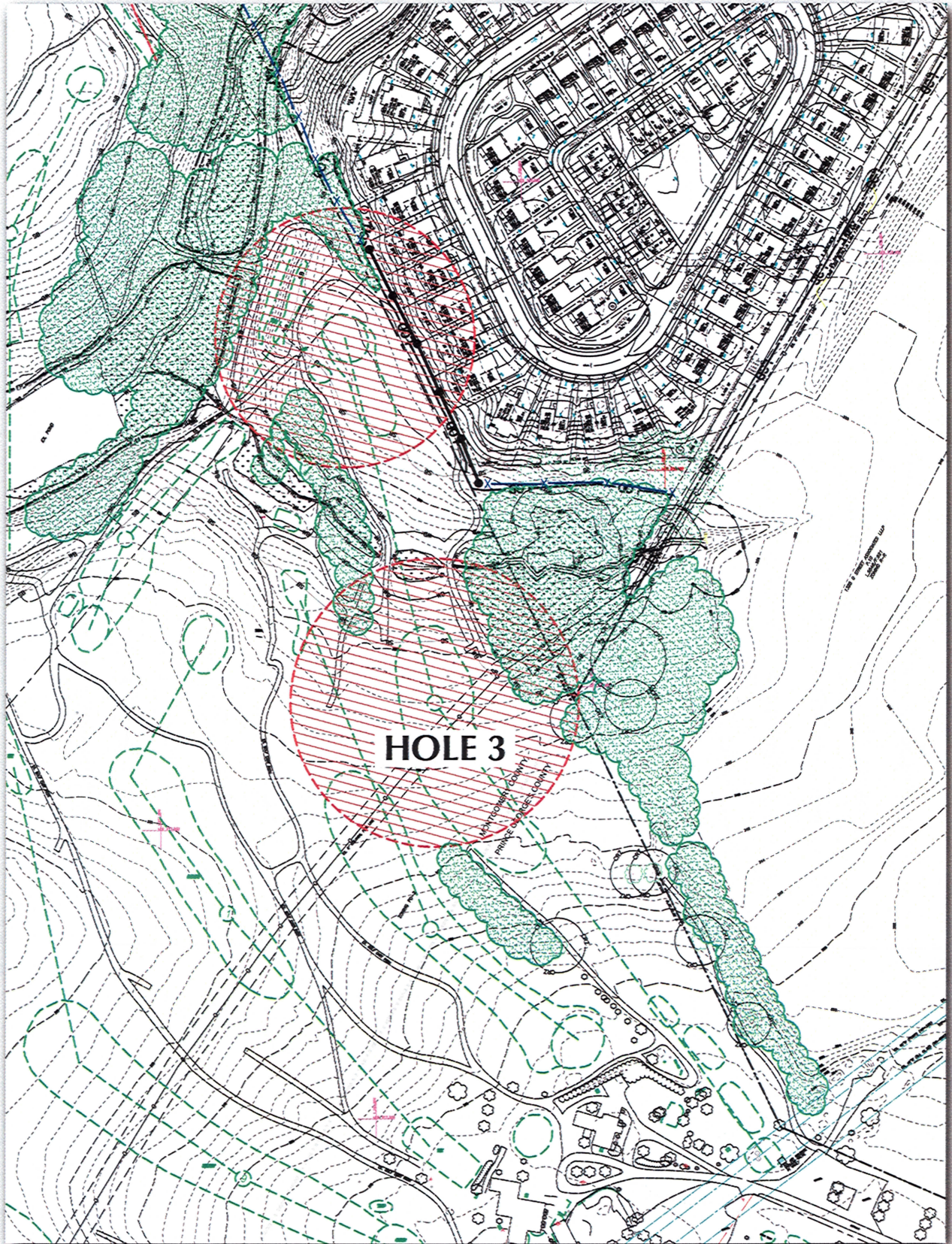
ERRANT SHOT STUDY WITH EXISTING CONDITIONS
Hole 3



SCALE: 1 INCH = 200 FEET

FIGURE 3.1

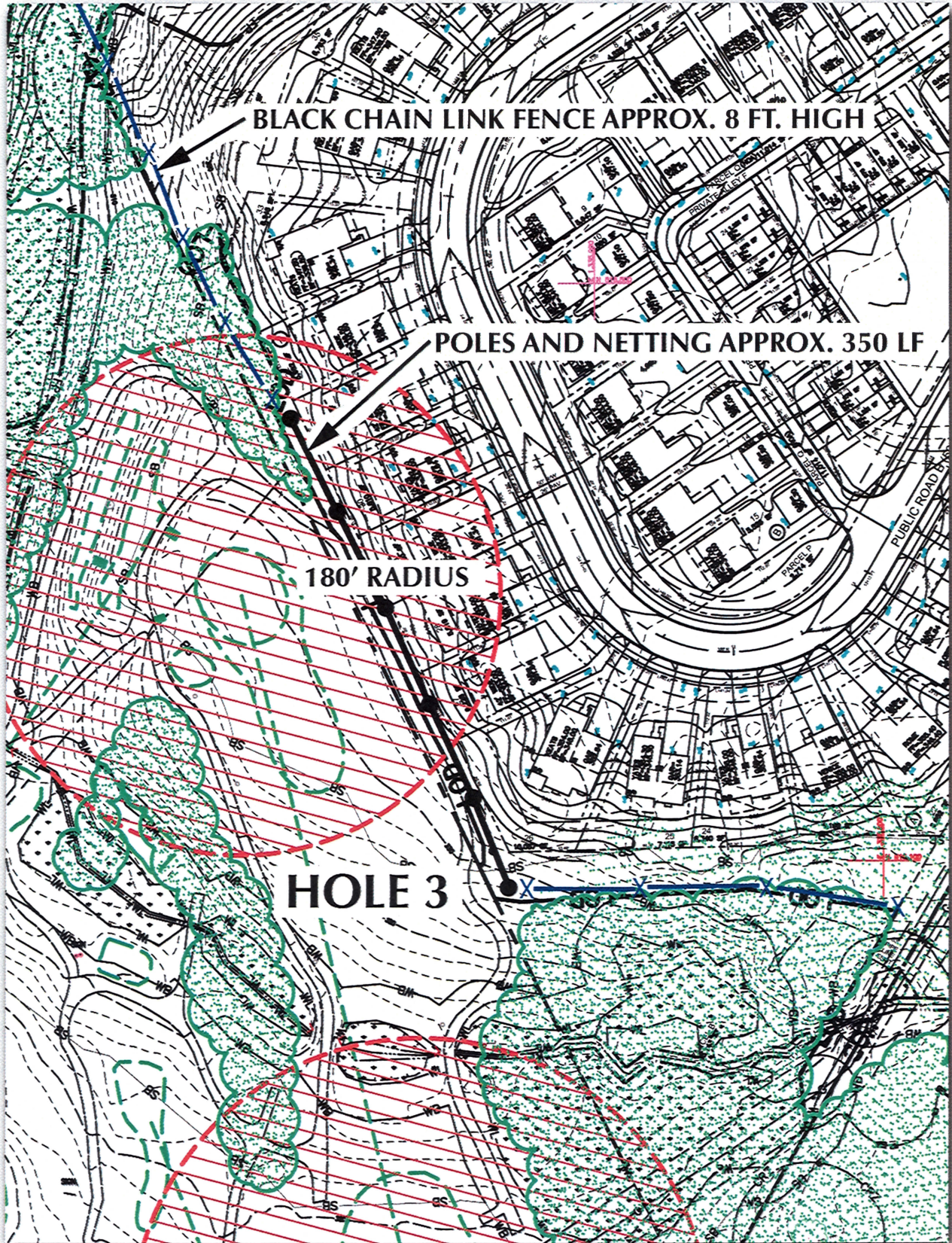
ERRANT SHOT STUDY WITH PROPOSED COMMUNITY
Hole 3



SCALE: 1 INCH = 200 FEET

FIGURE 3.2

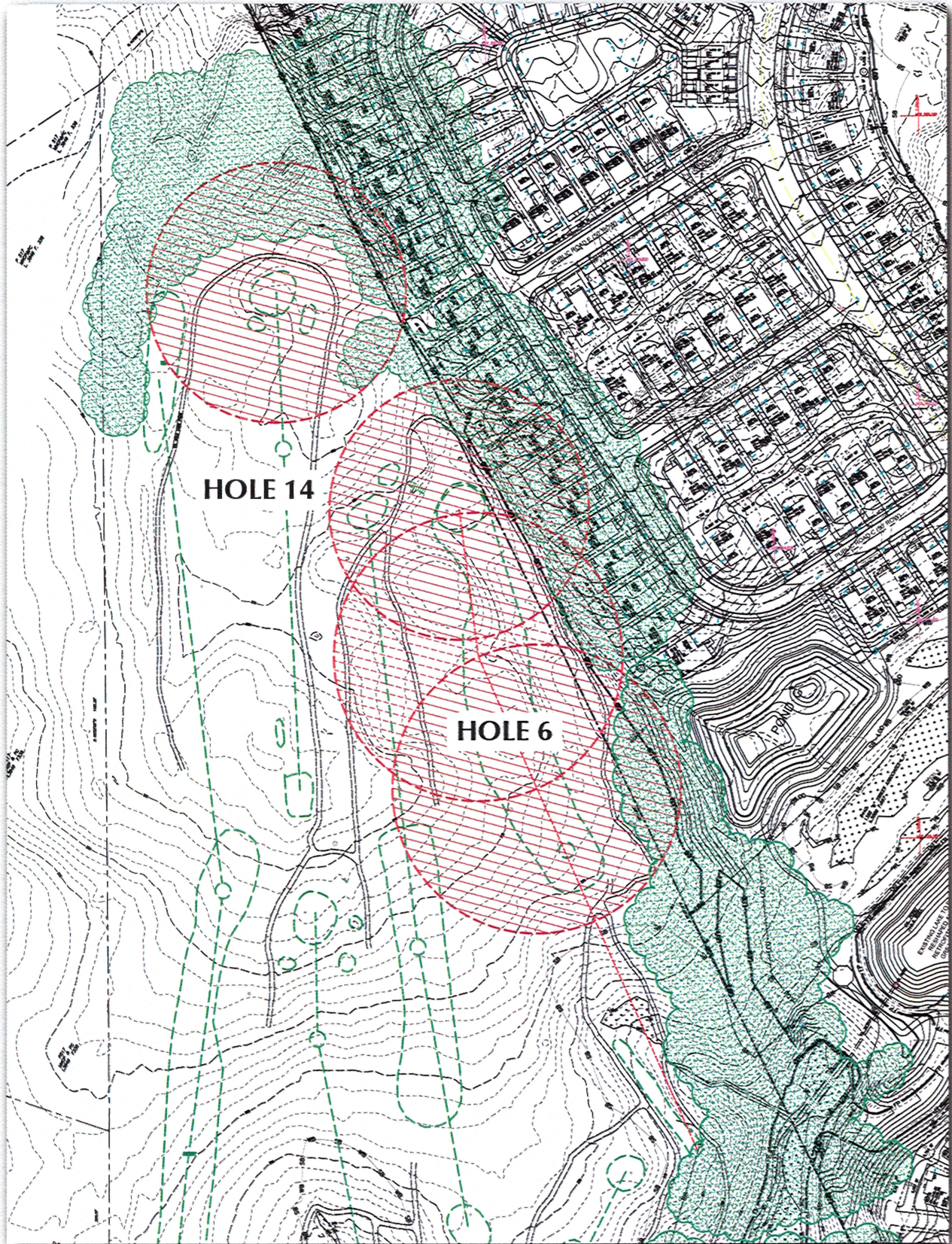
ERRANT SHOT STUDY WITH PROPOSED COMMUNITY
Hole 3



SCALE: 1 INCH = 100 FEET

FIGURE 6.0

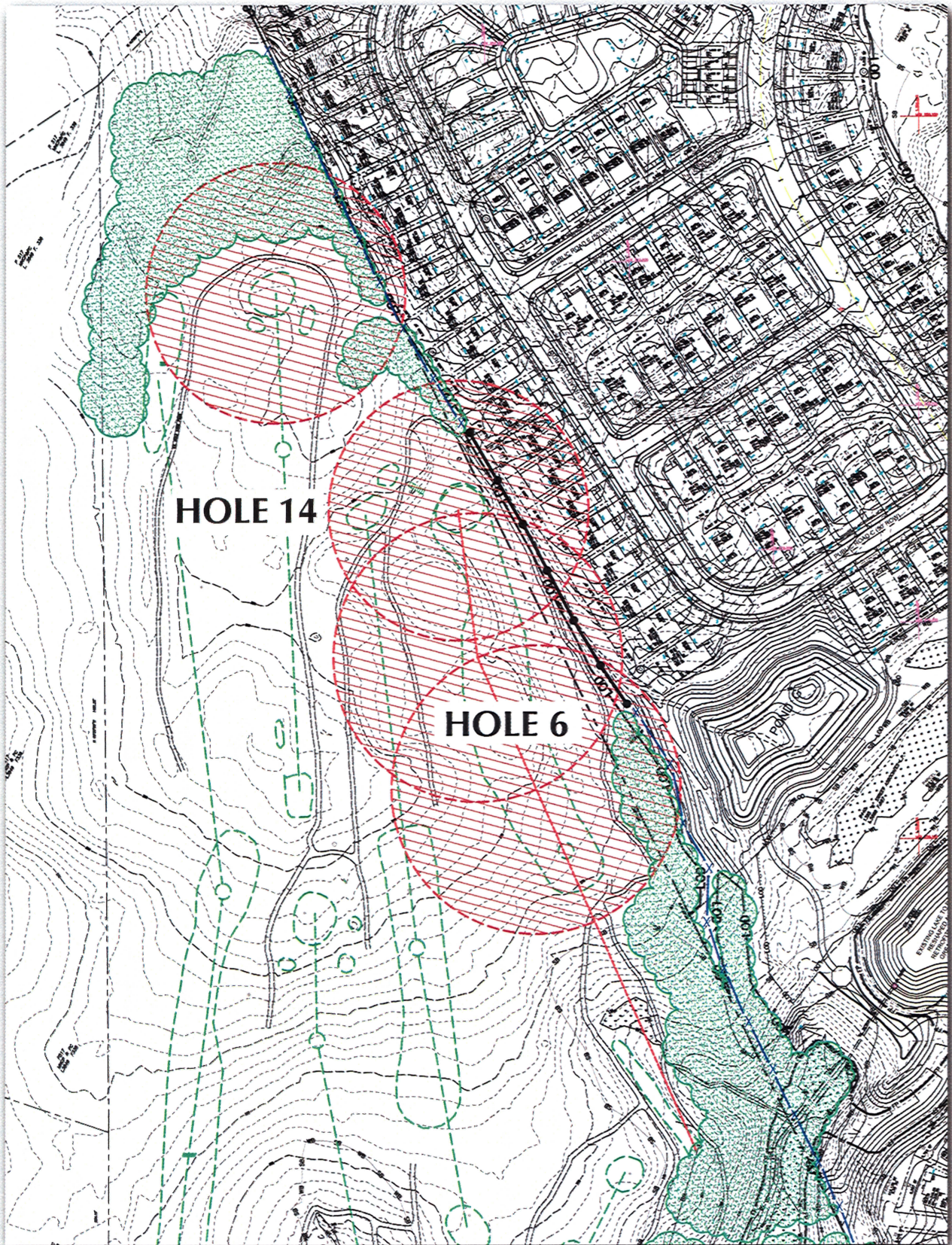
ERRANT SHOT STUDY WITH EXISTING CONDITIONS
Holes 6 & 14



SCALE: 1 INCH = 200 FEET

FIGURE 6.1

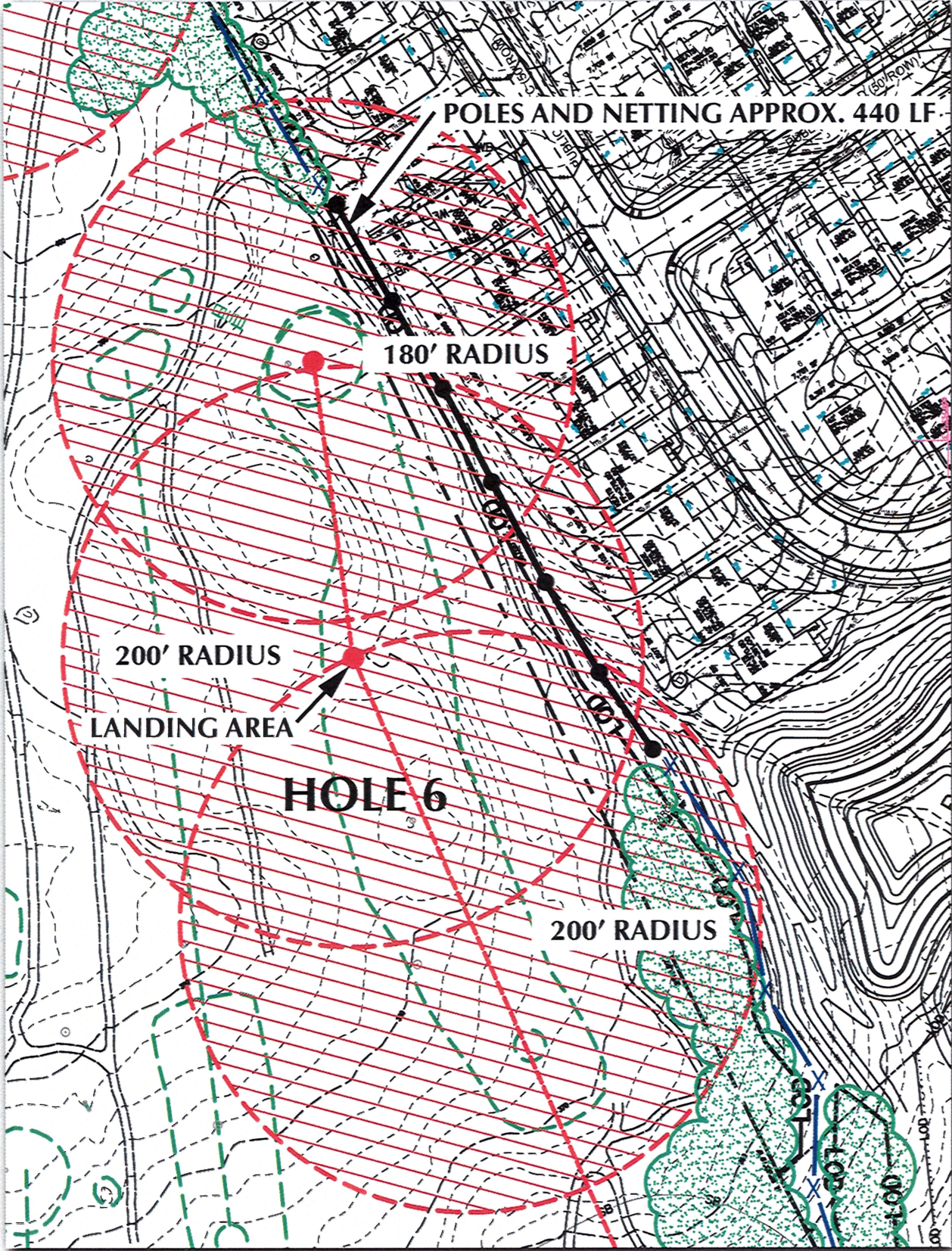
ERRANT SHOT STUDY WITH PROPOSED COMMUNITY
Holes 6 & 14



SCALE: 1 INCH = 200 FEET

FIGURE 6.2

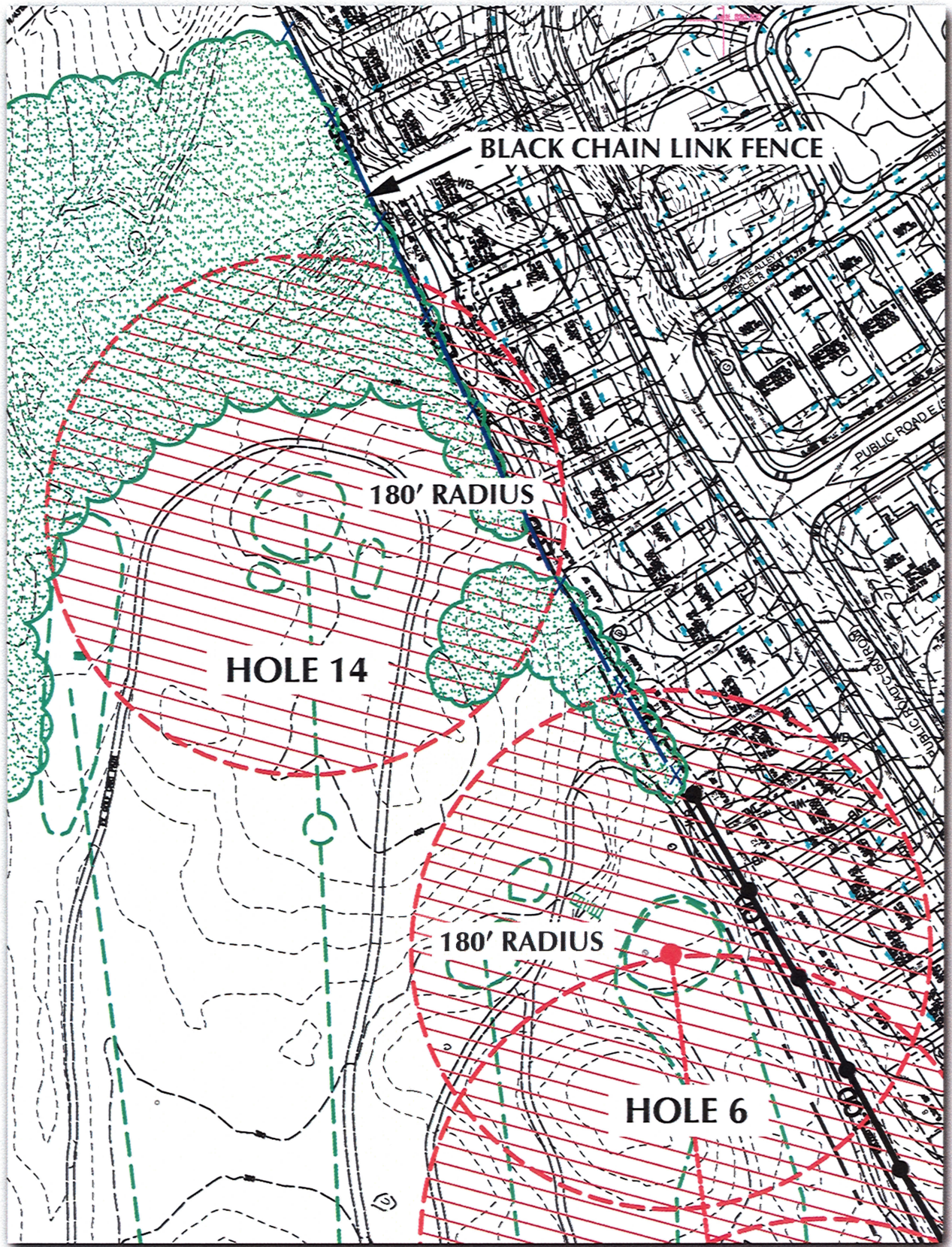
ERRANT SHOT STUDY WITH PROPOSED COMMUNITY
Hole 6



SCALE: 1 INCH = 100 FEET

FIGURE 14.2

ERRANT SHOT STUDY WITH PROPOSED COMMUNITY
Hole 14



SCALE: 1 INCH = 100 FEET

APPENDIX F
Memo from Prince George's County,
Department of Parks and Recreation

MEMO




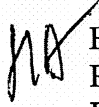
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Department of Parks and Recreation, Prince George's County

301) 699-2547 (Voice)
(301) 277-9041 (Fax)
TTY: (301) 699-2544

April 1, 2010

TO: Sandra Pereira, Senior Planner
Development Review Division
Montgomery County Planning Department

VIA:  CarolAnn Perovshek, Assistant Division Chief
Park Planning and Development Division
Department of Parks and Recreation

FROM:  Helen Asan, Planner Coordinator
Park Planning and Development Division
Department of Parks and Recreation

SUBJECT: Fairland Park Community Subdivision
Preliminary Plan #12005020A
Site Plan #82005006A

The staff of the Prince George's County Department of Parks and Recreation ("DPR") reviewed the above referenced Preliminary Plan and Site Plan applications for the proposed residential development. The development is directly adjacent to the Gunpowder Golf Course, a Maryland-National Capital Park and Planning Commission ("M-NCPPC") facility located in both Montgomery and Prince George's Counties. DPR currently leases the property to a private Golf Course Operator. DPR is also planning to make substantial physical improvements to the facility.

We are hopeful that this new subdivision in Montgomery County will not negatively affect the operation of the golf course and that the residents of the proposed development will be protected from errant shots from the golf course. We feel that is our responsibility to inform the Montgomery County Planning Board about the potential impact the proposed residential development may have on the operation of the golf course. The subdivision plan shows the residential lots backing up to the golf course. There is concern that there is little or no buffer between the golf course and the planned homes, and that significant conflict may arise once the homes are built.

During review of the Preliminary Plan of Subdivision 4-09005, in the Prince George's County, DPR staff enlisted the services of a Golf Course Architect to evaluate the errant shot study prepared by the applicant for the portion of the golf course in Prince George's County. The Architect also had been instructed by DPR staff to conduct a separate errant shot study in addition to the one supplied by the applicant. After review of both studies and discussions with the applicant, the applicant agreed to dedicate a 50-foot-wide strip of land to M-NCPPC along the golf course as a safety buffer.

In addition, the applicant agreed to provide a 20-foot-wide landscaping screen within the dedicated 50-foot safety buffer and install a 6-foot-high decorative fence along the edge of the golf course within Prince George's County.

In order to evaluate errant shot study prepared by the applicant of the subject Preliminary Plan and Site Plan in Montgomery County, DPR staff also hired a Golf Course Architect. The Golf Course Architect had been directed to evaluate the applicant's errant shot study prepared for the portion of the golf course located in Montgomery County and to conduct an independent errant shot study for the portion of the course in Montgomery County. The Architect's study focused on golf holes #3, #6 and #14. This Golf Course Architect recommended the following mitigation measures:

Hole #3: Elimination of Lots 26-32, or use of poles and netting for an approximate length of 350 linear feet.

Hole #6: Elimination of Lots 6-13, and possibly Lot 14, or use of poles and netting for an approximate length of 440 linear feet.

Hole #14: Due to an existing tree buffer, no poles or netting are deemed necessary as long as existing trees remain intact.

Additional safety measures: The Golf Course Architect recommends installation of an 8-foot-high black chain link fence along the entire property boundary between the golf course and proposed residential community in Montgomery County, except in areas where poles and netting are provided. Its purpose is to prevent residents of the community from entering the golf course property.

At a March 16, 2010, meeting with the applicant, the applicant indicated their strong preference to mitigate the errant shots with poles and netting rather than eliminating lots. The poles and netting will be installed by the applicant on the homeowner's common open space and maintained in perpetuity by the Home Owners Association. On March 31, 2010, DPR staff received and reviewed ball trajectory studies conducted by the applicant for Holes #3 and #6. DPR staff recommends that the lengths and pole nettings originally proposed be adjusted to reflect the findings of the study.

The applicant disagrees with the Golf Course Architect's recommendation to install an 8-foot-high black chain link fence along the entire property line of the golf course in Montgomery County. DPR staff believes that the fencing is an important safety feature that will prevent community residents, young and old alike, from wandering into areas where they could be struck by golf balls.

We also have concerns about liabilities that the M-NCPPC may be exposed to as the owner of the golf course. Such liabilities could include damage to private property or bodily injuries resulting from errant shots originating from within the golf course. It is our understanding that the applicant and M-NCPPC legal staff is working on conditions of approval related to these issues.

Thank you for the consideration and assistance you provided in review of these plans.

Feb 13, 2010

Ms. Helen Asan, Planner Coordinator
Park Planning and Development Division
Department of Parks and Recreation
M-NCPPC

Subject: Impact on Gunpowder Golf Course from Proposed Housing Development

Dear Helen,

I would like to call attention to several areas of concern. In response to your questions regarding the sewer line coming through the golf course and what conditions need to be met in order to make this project successful.

Sewer line point of entry concerns:

What we see at this time is that there will be 2 entry points both on the north end of the property.

The first point of entry that will be servicing the Prince George's Co. lots (let's call it "A") on the east side adjacent to the 3rd fairway will unfortunately dictate a loss of trees that will open up an area for errant shot golf balls. We see this currently happening as numerous balls are found within that area.

Next concern, once the sewer pipe is laid at the "A" location, we will need to have 3" of stone free, top soil and turf-type fescue sod to be installed before winter freeze. This is the expectation for any turf area that is disturbed. Any wooded or wetland areas that are disturbed must be brought back to environmental standards afterwards.

Additionally, signage and 30 yr. white vinyl type fence must be installed to stop all entry onto the property, as this is an extremely dangerous area (100 mph. balls travel through this location).

The second point of entry that will be servicing the Montgomery Co. lots (let's call it "B") on the west side behind the #6 Tee Box will be used as the "ONLY" Service Trail for construction ingress and egress. *** VERY IMPORTANT *** ALL traffic for this project must use this construction site entrance. We want to be assured everyone is notified in advance to use this area only, there will be no entrance through any other points on the golf course.

Sewer line cart paths and Tee Box concerns:

What we see at this time is that there will be disturbances to Holes #3, #4, #5, #8 and #12. Our expectations will be for replacement of cart paths that are disturbed. Reminder that during the paving last fall some areas were deliberately not paved because of this project so those will need to be done.

Because of the re-contouring of the area we would like to time this with an upgrade to Tee Boxes #2, #4 and #8 and ask that they be made level and with stone free top soil and the golf course maintenance crew will finish with grass seed and drainage.

Construction Timeframe:

The timeframe has been talked about for a year now, we'd like to see the tree clearing to begin just after Labor Day weekend. "No Trespassing" signage and a "DANGER - High Velocity Golf Balls" signage are very important to alert workers and potential others that this is a work area. Also, it would be smart to block anyone other than construction crew access to the property, maybe a large piece of equipment ?

We request that the project would be completed before March 30.

Golf Ball - Errant Shot Study:

The errant shot study shows that many home sites that are adjacent to golf courses are in great danger of being impacted by golf ball activity, damage to the siding of the home, broken windows, landscaping, vehicles and in extreme cases injury to humans or pets. It is important to notify potential homeowners of these risks before they purchase the property. At settlement there should be a legally binding document that the homeowner must sign in acknowledgement that, should any unfortunate circumstance occur, the golf course will not be held responsible. Also, the community should be responsible for installation and maintenance of any netting separating the golf course from the houses. It is further recommended that this notice/warning be passed on to future owners acquiring the properties identified to be in the "Dangerous" areas. It is strongly recommended by the netting installer to "refrain from building" at such a close proximity to the golf course. We would have to agree that building would only be a loss of time in the near future.

Sincerely,
Thomas S. Milligan,
CEO. Milligan Enterprise Inc.
Property Manager Gunpowder Golf

APPENDIX G
Easement agreement

EASEMENT REGARDING ADJACENT GOLF COURSE

THIS EASEMENT AGREEMENT (this "Agreement"), is made this ___ day of _____, 20___, by and between FAIRLAND DEVELOPMENT, LLC, a Maryland limited liability company, hereinafter referred to as the "Grantor", and MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, an bi-county agency of the State of Maryland, hereinafter referred to as the "Grantee."

RECITALS

- A. Grantor is the owner of certain real property located in Montgomery County, Maryland (the "Fairland Property") which is located adjacent to the Gunpowder Golf Course (the "Golf Course"), as shown more particularly on Exhibit A attached hereto and made a part hereof (the "Easement Plat"). Grantee is the owner of the Golf Course.
- B. Grantor intends to develop the Fairland Property into a residential community and plans to subdivide the Fairland Property into residential building lots which will be sold to homebuilders (the foregoing being referenced as the "Residential Community" or the "Project"). Grantor also intends to create a homeowners' association for the Residential Community (the "HOA") which HOA shall be the ultimate owner and operator of all recreational facilities and common area parcels located within the Project, two of which common areas is shown on the Easement Plat and referenced herein collectively as the "HOA Common Area").
- C. As shown more particularly on the Easement Plat, portions of the Golf Course's gravel golf cart paths encroaches upon the HOA Common Area as shown more particularly on the Easement Plat.
- D. Grantor is willing to grant Grantee an easement for such encroachments, upon the terms and conditions set forth herein, in order for Grantee to maintain its current Golf Course configuration.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee, intending to be legally bound, hereby agree as follows:

1. Incorporation of Recitals. The Recitals above are incorporated herein and made a part of this Agreement.
2. Encroachment of Golf Course into Common Area and Granting of Easement for Same. As shown on the Easement Plat, certain gravel golf cart paths used by the Grantee and its lessees, licensees, invitees and guests (collectively "Golf Course Users") encroach across a portion of the Common Area (collectively "the Encroachment Area(s)"). Grantor hereby grants to Grantee a non-exclusive easement over the Common Area shown on the Easement Plat for the benefit of Grantee for the purpose of accommodating the Encroachment Area(s) identified on the Easement Plat. The non-exclusive easement granted pursuant to this Paragraph is for the Encroachment Area(s) as shown on the Easement Plat that exist as of the date of this Agreement, and Grantee covenants not to enlarge or pave any existing path, create any new path of any type, or expand any Golf Course use of the Common Area beyond that Golf Course usage in existence as of the date of this Agreement.

3. Granting of Ingress/Egress Easement over Common Area for Golf Course Users. Grantor hereby grants for the benefit of the Grantee and the Golf Course Users a non-exclusive easement for ordinary and reasonable pedestrian and golf cart ingress and egress over the Common Area shown on the Easement Plat for the sole purposes of (a) using the paths referenced in Paragraph 2 above in the course of Golf Course play; and (b) Golf Course play. Grantee covenants to permit the Common Areas to only be used for the aforesaid purposes.

4. Maintenance. Grantor hereby also grants to the Grantee a non-exclusive easement across the Common Area for maintaining the Encroachment Area(s) so long as such area(s) exist pursuant to this Agreement; provided, however, that Grantee covenants that such maintenance shall be performed as promptly and expeditiously as possible, in a good and workmanlike manner in accordance with all laws and regulations, and Grantee shall promptly restore or cause to be restored the surface of the Common Area and the surrounding vegetation and improvements to their original condition (to the extent practical). Grantee covenants that any party performing work on the Common Area at the behest of Grantee or the Golf Course Users shall be paid for such work fully and promptly, and Grantee will not permit any lien to arise or attach to the Common Area.

5. Protective Netting. Approximately fifteen (15) lots within the Residential Community are located adjacent to the Common Area, as shown more particularly on the Easement Plat (the "Affected Lots"). At the time the first Affected Lot is conveyed to a builder intending to commence construction of a residential dwelling on said lot, Grantor shall arrange for the installation of protective netting of the size and specifications and in the locations within the Common Area as shown on the Easement Plat (the "Protective Netting") in accordance with the requirements of Developer Condition No. _____ on Site Plan No. _____ approved on _____, 2 _____. Grantee acknowledges and agrees that such Protective Netting may be installed in those locations shown on the Easement Plat. Grantor shall be responsibility for maintaining such Protective Netting in a reasonably satisfactory condition for so long as the Golf Course is in operation adjacent to the Common Areas, which maintenance shall include any necessary replacement of or repairs to the Protective Netting from time to time. Grantee acknowledges and agrees that golf play may need to be halted within the Common Area from time to time during regular golf play hours to allow for Grantor's maintenance, repair and replacement of the Protective Netting, and Grantee agrees to cooperate with Grantor in coordinating said replacement, maintenance and repairs; provided, however, that Grantor covenants that such maintenance shall be performed as promptly and expeditiously as possible, in a good and workmanlike manner in accordance with all laws and regulations.

6. Assumption of Risk Regarding Adjacent Golf Course. Grantor acknowledges that there are certain inherent and foreseeable risks involved with locating the Residential Community adjacent to the Golf Course including, but not limited to, the possibility of injury to persons or damage to property from errant golf balls, and potential trespass by Golf Course Users. Grantor also acknowledges that Grantee has no plans to make future design changes to the Golf Course or pay for property damage or personal injury caused by golf balls originating from the Golf Course. Grantor, its successors and assigns hereby releases Grantee and any licensee or lessee operator of the Golf Course from any liability related to claims arising from ordinary and customary golf course play: (a) on, near or in proximity to the Common Area and Encroachment Area(s), (b) originating from the Golf Course, and (c) resulting in errant golf balls landing on any portion of the Fairland Property. This waiver of liability does not extend to individual golfers on the Golf Course and any liability such golfer(s) may have with respect to damage to persons or property occurring from their individual actions arising from Golf Course play, or to any negligent acts or omissions by Grantee or any of its lessees or licensees with respect to the operation and maintenance of the Encroachment Area(s).

7. Insurance and Indemnification. Grantee shall indemnify, hold harmless and defend Grantor, from and against any and all claims, loss, injury, liability, damage or expense, including reasonable attorneys' fees and costs, arising from or related in any way to the use of the Common Area by Grantee, subject to the limitation of liability set forth in Paragraph 6 above. Further, any indemnification provided by the Grantee under this Agreement is limited by the notice requirements, types of liabilities and damage limits provided in the Local Government Tort Claims Acts, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. Code, and any such indemnification does not create any rights in third parties. For so long as this Agreement is in effect, Grantee shall cause any licensee or lessee operator of the Golf Course to maintain not less than One Million Dollars (\$1,000,000) comprehensive general liability insurance insuring Grantee's indemnity obligations hereunder, a copy of which policy shall be provided to Grantor and/or the HOA upon request.

8. Enforcement. Either Grantor or Grantee shall have the right to enforce the covenants, rights and obligations set forth herein with any remedies available at law or in equity, including the remedy of injunctive relief. The prevailing party in any dispute arising under this Agreement shall be entitled to its reasonable attorneys' fees and court costs.

9. Covenants Running with the Land; termination of easement. The easements declared, and the obligations and covenants set forth herein will run with the land and will burden and benefit those parcels of real property identified on the Easement Plat, and will inure to the benefit of the parties hereto and their respective successors and assigns, including without limitation the contemplated HOA for the Residential Community. In the event of a change in ownership of any of the parcels shown on the Easement Plat, whether by sale or other transfer, the transferring owner will have no further rights or obligations hereunder. The covenants and easements set forth herein shall terminate immediately at such time as (a) the Golf Course ceases to be operated as a Golf Course and/or (b) the Grantee determines that it no longer needs to use the Encroachment Area(s).

10. Further Assurances. Grantor and Grantee each covenants to execute any amendments and modifications to this Agreement as reasonably required by any lender holding a first or second trust from time to time on any of the property shown on the Easement Plat, provided that such amendments or modifications shall not materially adversely affect the rights and obligations of the parties hereunder. Grantor and Grantee, at no cost or expense to either party, shall execute such further assurances as may be necessary or desirable to effectuate the intent and purpose of all of the foregoing easements, covenants and rights.

11. Miscellaneous. Time is of the essence under this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect. The covenants, easements and obligations set forth herein shall be given their fair and normal meaning. The parties hereto further expressly disclaim the creation of any rights in or for the benefit of the general public. This Agreement may be executed in multiple counterparts, each of which is deemed an original for all purposes and all such counterparts shall collectively constitute one Agreement. All notices to any party hereto shall be sent to the address given to the Maryland State Department of Assessments and Taxation Office for purposes of notification for the owner of the Common Area or MNCPPC. Any notice shall be hand delivered, sent by recognized overnight delivery service such as FedEx, or sent by certified mail, return receipt requested. If sent by certified mail, notices shall be deemed delivered three (3) days after the date of the postmark. Refusal of acceptance shall be deemed delivery.

Signature Page and Acknowledgements Follow

Signature Page to Easement Regarding Adjacent Golf Course

IN WITNESS WHEREOF, the above named Grantee and Grantor have executed this Agreement as of the date and year first above written:

WITNESS:

GRANTOR:

FAIRLAND DEVELOPMENT, LLC,
a Maryland limited liability company

By: _____
B. Hayes McCarty
President & Authorized Signatory

WITNESS:

GRANTEE:

**MARYLAND-NATIONAL CAPITAL PARK
AND PLANNING COMMISSION**

By: _____
Name: _____
Title: _____

[Acknowledgements Follow]

APPENDIX H
Golf Course
Acknowledgement

ACKNOWLEDGEMENT OF FAIRLAND DEVELOPMENT, LLC

STATE OF MARYLAND

*

*

to wit:

COUNTY OF MONTGOMERY

*

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the State and County aforesaid, personally appeared B. HAYES McCARTY, known to me (or satisfactorily proven) to be the President and authorized signatory of FAIRLAND DEVELOPMENT, LLC, and that he, in such capacity and being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

ACKNOWLEDGEMENT OF MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION.

STATE OF

*

*

to wit:

*

COUNTY OF

I HEREBY CERTIFY that on this ____ day of _____, 200__, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Maryland-National Capital Park and Planning Commission, and that such officer, being authorized to do so, executed the foregoing instrument on behalf of such corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

CERTIFICATION

In accordance with Section 3-104(f) of the Real Property Article, Annotated Code of Maryland, as amended, I hereby certify that the instrument has been prepared by one of the parties name herein.

B. Hayes McCarty
President, Fairland Development, LLC

Exhibit "A"
(Easement Plat)

CLERK'S INDEX SHEET

EASEMENT AGREEMENT REGARDING ADJACENT GOLF COURSE

(For the purpose of proper indexing only)

Parcel

Tax ID No.

Grantor

Fairland Development, LLC
c/o The Artery Group
7200 Wisconsin Ave.
Suite 1000
Bethesda, Maryland 20814

Grantee

Maryland-National Capital Park and
Planning Commission

Consideration: N/A

Title Insurance Co: N/A

Return to:

Linowes & Blocher, LLP
Attn: William Hoffman
7200 Wisconsin Avenue, Suite 800
Bethesda, MD 20814

APPENDIX I
Cost Estimate of
Netting and Poles

Net Connection

SPORT AND GOLF NETTING

Mr. Schlegel,

Thank you for the opportunity to submit our ball trajectory study for the Fairland's Development Project adjacent to the Gunpowder Golf Course. Included in our submittal is a ball trajectory study for hole #6 and hole #3. The study used is Net Connection, LLC's typical ball trajectory study. The information and calculations used in this study has been collected from public launch angle models, other typical ball trajectory studies, typical club lofts, average swing speeds, average club distance charts, and our own experiences. This information is comprised, calculated and charted in order to reflect an accurate ball flight from various well struck clubs from average players. Our study uses an average player's swing speed using typical lofted clubs and a 90 compression ball to determine the flight path of the golf ball. All trajectories shown assume a well struck ball, with no wind factor and no right or left movement of the ball. Because of the amount of variables and unknowns, such as wind speed, humidity, temperature, playing surface, skill level of each golfer, etc., Net Connection cannot guarantee that all players or balls hit from the proposed areas will travel along the diagramed flight patterns. The trajectories and proposed heights are reasonable assumptions based on the averages of the comprised data from each club studied. The ultimate decision and responsibility of the netting system heights will be that of the Owners.

The ball trajectory studies conducted for Hole #3 and Hole #6 assumed a tolerance level of 85% to 90% containment. The studies and their heights reflect this percentage of containment. The study does not reflect 100% containment nor does Net Connection guarantee 100% containment. All measurements, dimensions and elevations used in determining the critical height of the netting systems were based on the errant shot drawings provided by Schlegel Golf Design.

Hole # 6 Findings

It was discussed and determined that most golfers will be using the tee box labeled TEE B on the errant shot design. This tee box was used in determining the critical heights of the netting system for this hole. The study shows the distance from Tee box B to each support pole along the line of the netting system. These measurements were taken in a straight line. The elevation changes shown on the study also reflect a straight line from tee box B to the first point in the netting system, and then follow the elevations along the netting system to the end of the system. It was determined that the driver is the most critical club to protect against on this hole, thus the first two sections of the netting system are the most critical in height. (Refer to Trajectory #6) The proposed height at these critical sections should provide 85% to 90% containment. Because the hole is a relatively short hole, most approach shots into the green will be made with a higher iron, such as an 8 iron through a lob wedge. It is our opinion that from those distances, protection will be from a "blocked" or "skulled" shot can be accomplished with a shorter net height.

Hole #3 Findings

Because of the distance of the proposed netting location from the tee box area, it was determined that the balls hit from the tee box area will not be a concern on this hole. Approach shots into the green will be the most critical ball flights to contain from. Because of the nature of this golf hole and its distances from tee to green, we determined that there are two points in the fairway from which players will hit toward the green from that need to be considered. Distances shown on these studies are measured from the approach point in fairway to the netting system. Elevation changes are measured in the same manner. The first is a point in the fairway that is approximately located along the line drawn on the errant shot design labeled "AVERAGE TEE SHOT FROM TEE B". This assumes approximately a 200 yd. tee shot leaving approximately 213 yds to the center of the green. Because of the distance of this approach shot, we used the trajectories of a 3 iron, 4 iron, 5 iron, and 6 iron. From this approach point, the most critical heights fall within the first three sections shown on the study. (Refer to Trajectory #3-Lay Up) The second considered approach shot is a point in the fairway where a drive from Tee box B lands 246 yds down the fairway. From this point there is approximately 160 yds left on the approach shot to the center of the green. From this point in the fairway, we did not consider a 3 iron. The study shows that the first five sections of the netting system are the most critical. (Refer to Trajectory #3-Forward Shot) The heights shown on this study will protect from shots into the green from the forward approach position as well as from balls hit from the layup position. We also graduated step down of heights in order to make the netting system as aesthetically pleasing as possible for this situation. The last two sections of netting on Hole #6 fall outside of the trajectories of the clubs charted for this study. These sections, in our opinion, will protect against rolling balls hit past the target area, "skulled" or "blocked" shots from a shorter approach shots, and bouncing balls hit from further back in fairway. The proposed heights shown on this study should provide 85% to 90% containment (when factoring approach shots from both the layup position and the forward position).

Please note that all support poles shown on the studies reflect a spacing of 50' on center.

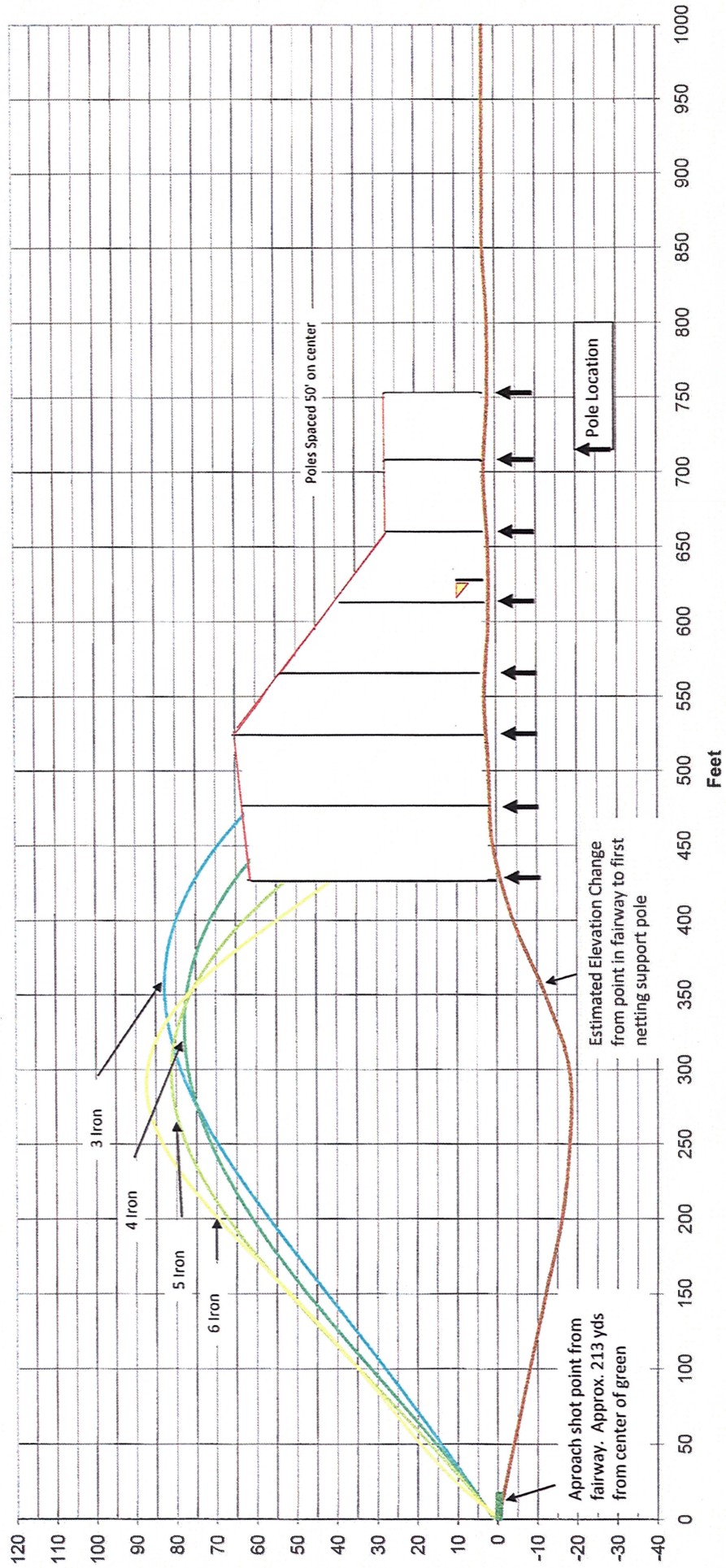
Please call with any questions or for any clarifications.

Regards,

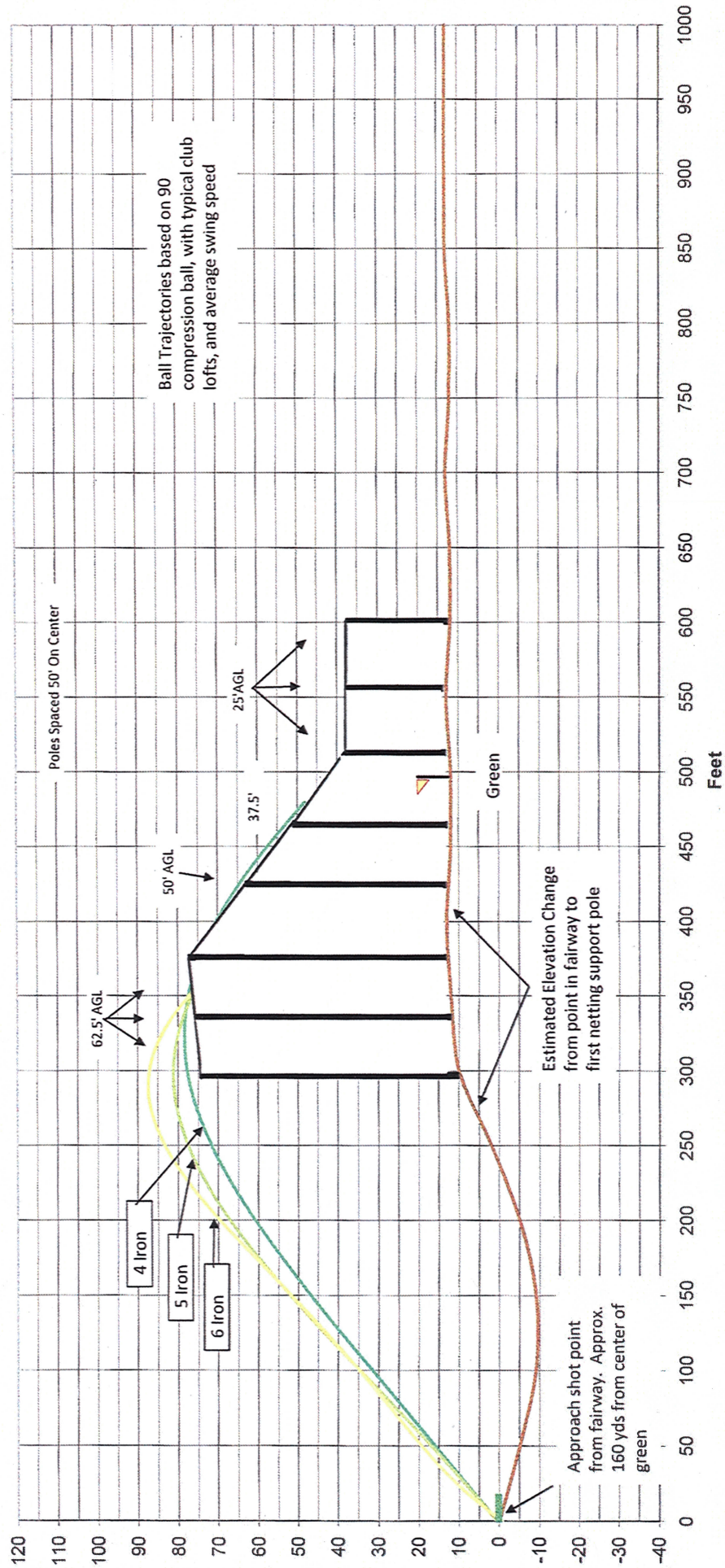
Andy Turner

Sales Manager
Net Connection, LLC
205-838-2995

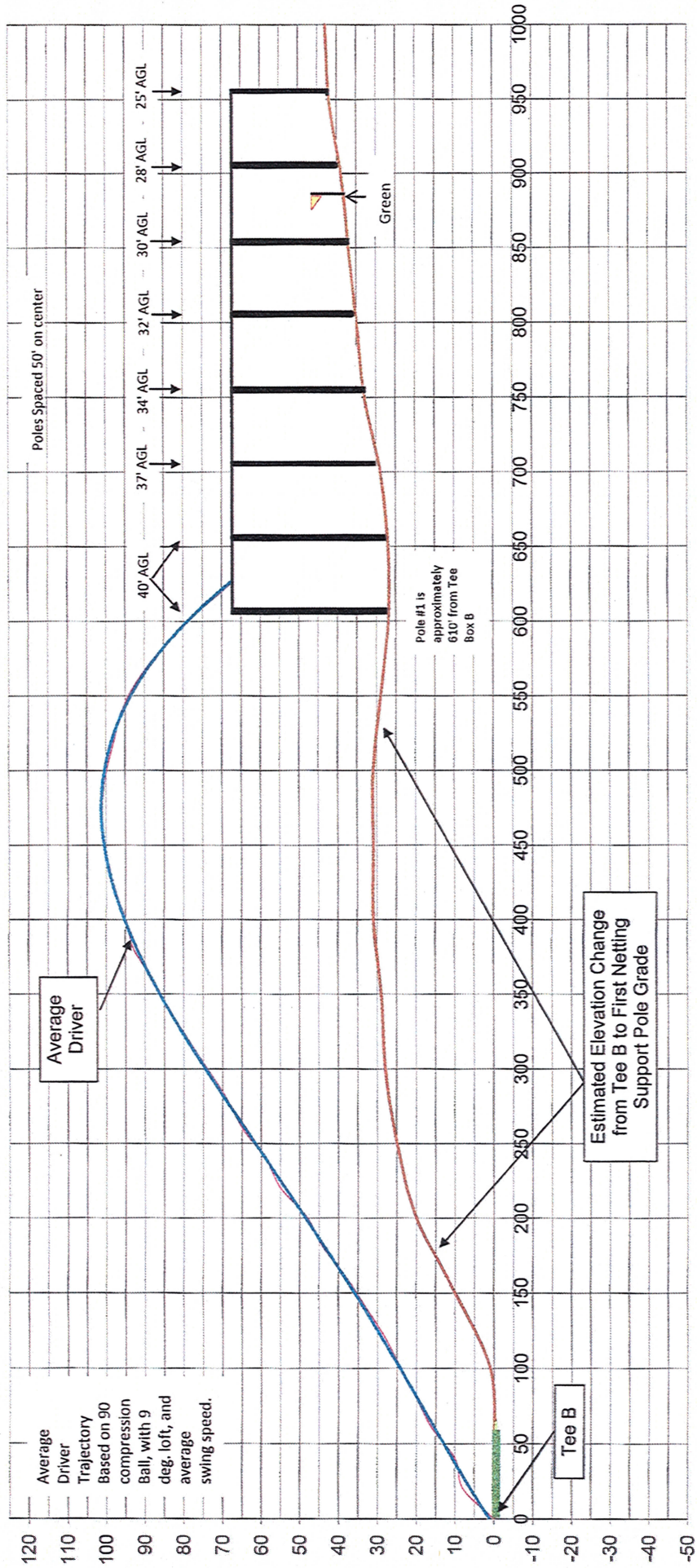
Est. Avg Ball Trajectory Hole #3- From Lay Up Position



Est. Avg Ball Trajectory Hole #3-From Forward Shot

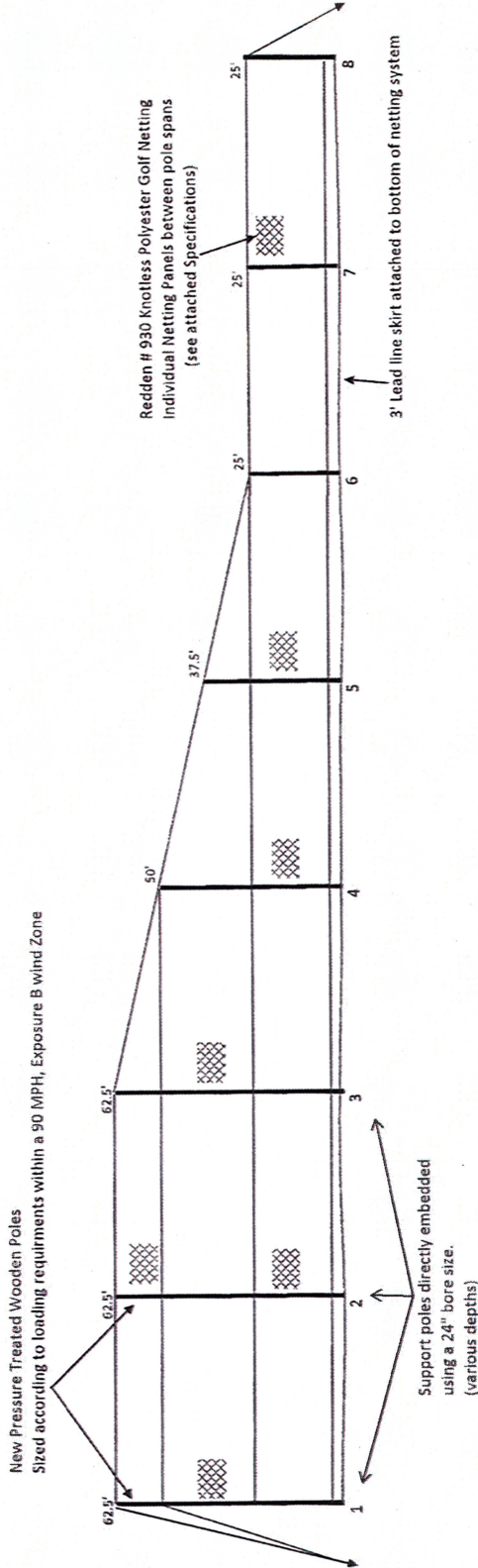


Gunpowder #6 Est. Avg Ball Trajectory



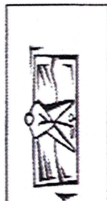
Elevation View

Support Poles Spaced 50' on center



Gunpowder Hole #3

Drawings are representational and not to scale.



Net Connection
SPORT AND GOLF NETTING

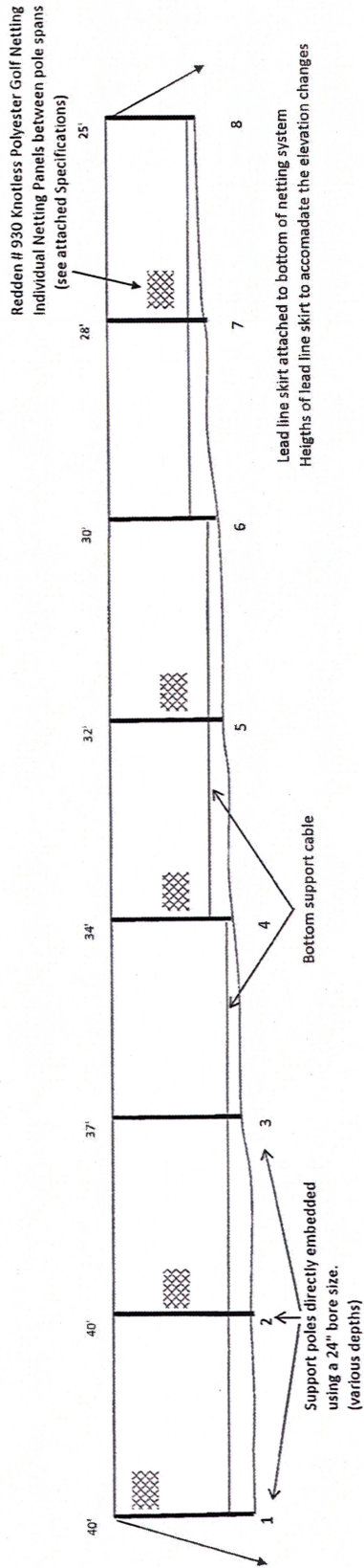
2683-A Overdown Road
Birmingham, AL 35210

Project Designer
Andy Torres
netconn 03.23.10

Elevation View

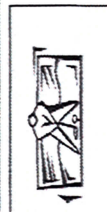
Support Poles Spaced 50' on center

New Pressure Treated Wooden Poles
Sized according to loading requirements within a 90 MPH, Exposure B wind zone



Chumpowder Hole #6

Drawings are representational and not to scale.



Net Connection
SPORT AND GOLF NETTING

369-A Queenstern Road
Birmingham, AL 35210

Project Designer

Andy Turner

© nelcom 03.23.10

Cross Country Cowboy, Inc.

233 13th STREET • HAMMONTON, NJ 08037
 (609) 561-0830 • Fax: (609) 567-9555
 crosscountrycowboy@comcast.net
 www.crosscountrycowboy.com
 Sam Diamond, President

Quote #: 2198

Attention:	Dan Schlegel	Cell:	1-410-353-5470		
Proposal Submitted to:	Schlegel Golf Course Design	Phone:	1-443-203-0020	Date:	11/9/2008
Street	189 Antiqua Place	Fax:	1-443-203-0021	Patent File #:	5 732 935
City, State & Zip Code:	Edgewater, MD 21037	Job Location:	Laurel, MD	Job Name:	Gunpowder Golf
We hereby submit specifications and estimates for:		60' HI Wood Poles set in concrete constraint collars			

NOTICE OF CONFIDENTIALITY

The information contained and submitted in quotes, specs, design, etc. is protected by copyright and patent laws, and cannot be used in any form, including open bids. The unauthorized use or disclosure is strictly prohibited without written permission from CROSS COUNTRY COWBOY, INC.

1. Total square feet of net (28200) Poly (1" Black) Nylon () Sections (15)
2. Line A (340) x (40) = 13600 () x () = () x () =
3. Line B (365) x (40) = 14600 () x () = () x () =
4. Line C () x () = () x () = () x () =
5. Poles (17) Class (HI) Length (50) Depth (6") Pole Height (41'6") see diagram for pole spacing
6. Poles () Class () Length () Depth () Pole Height ()
7. Poles () Class () Length () Depth () Pole Height ()
8. Ground anchors total (4) Total anchor lines per anchor (3)
9. All poles are cross braced (yes) East and west anchors total (N/A)
10. (7120) feet of airplane cable 1/4 and 5/16 mix
11. Top cable hog ring to net sleeve style all horizontal net seams power hog ring
12. Bottom cable lace through net attached to top of chain link
13. (153) total sets 5/8 and 1/2 bolt and eyes, etc. (51) 3 bolt clamps
14. Mid winds lines height (10) + (20) + (30) + () + () + () + ()
15. All seams covered on poles with 1 x 4 cedar boards
16. Horizontal seams at (N/A) No horizontal seams up to 50' high () + () + ()
17. 4' - 1" x 1" black mesh chain link along bottom - cable hung- no posts (705')
- 18.
19. "NOTE" constraint collar on all poles 4 x 4 x 1 - 2600 PSI concrete
20. "NOTE" End guy lines and anchors set back min. 15'
- 21.
22. ALL EQUIPMENT, LABOR, RIGS, TOOLS, ETC., LIABILITY INSURANCE
23. NOT RESPONSIBLE FOR DAMAGE TO TURF, GROUND OR UNDERGROUND UTILITIES
24. ADDITIONAL CHARGES FOR UNFORESEEN GROUND CONDITIONS (EXAMPLE: ROCK & WATER)
25. PERMITS AND UNDERGROUND MARK UTILITIES ARE OWNERS RESPONSIBILITY

We hereby propose to furnish labor and materials - complete in accordance with the above specifications for the sum of:

\$40,894.55

Payments are to be made as follows:

ACCORDING TO DRAW BREAKDOWN SHEET #

1. Deposit:	4. Crossbrace & Anchor
2. Delivery of Poles:	5. Chain Link Skirt
3. Setting of Poles	6. Job Completed:

All material is guaranteed to be as specified. All work to be completed in workman like manner according to standard practices. Any alteration or deviation from above specifications involving extra costs, will be assessed only upon written orders, and will become an extra charge over and above the estimate. These charges must be paid in advance. All arrangements contingent upon strikes, accidents or delays are beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. Warranty void if last draw of contract is not paid within 30 days after completion of work. Not responsible for pole wash out due to ground conditions. No warranty for existing poles or poles supplied by owner unless other arrangements are made.

Authorized Signature: 

NOTE: This AGREEMENT may be withdrawn by us if not accepted within 30 days. All deposits are non-refundable.

ACCEPTANCE OF AGREEMENT

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED

Signature: _____

Date: _____

Signature: _____

<< MERCHANT COPY -- PLEASE SIGN & RETURN >>

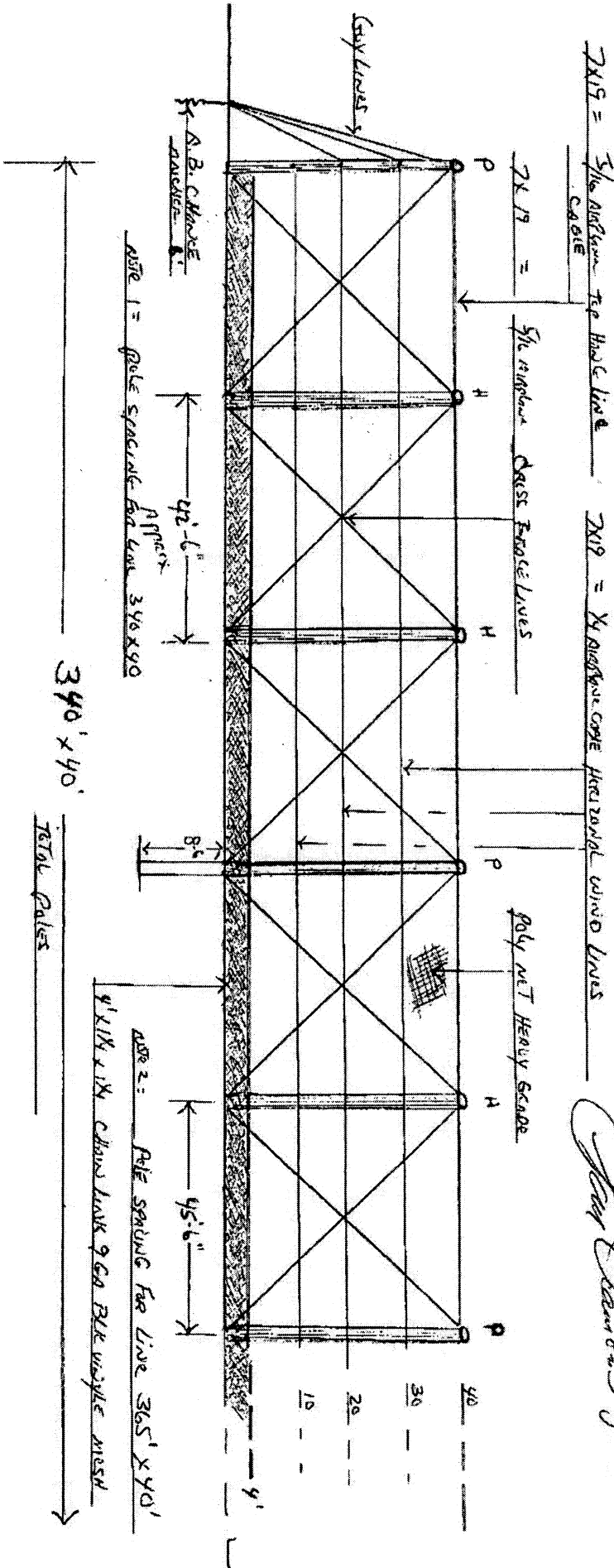
Daniel Schlegel Golf Course Design
169 Anitaqua Place
Edgewater MD 21037
1-413-203-0020 office
1-413-203-0021 FX
1-410-353-5490 cell
FAX ONLY FOR

Gundpowder Golf Course

File # 1310

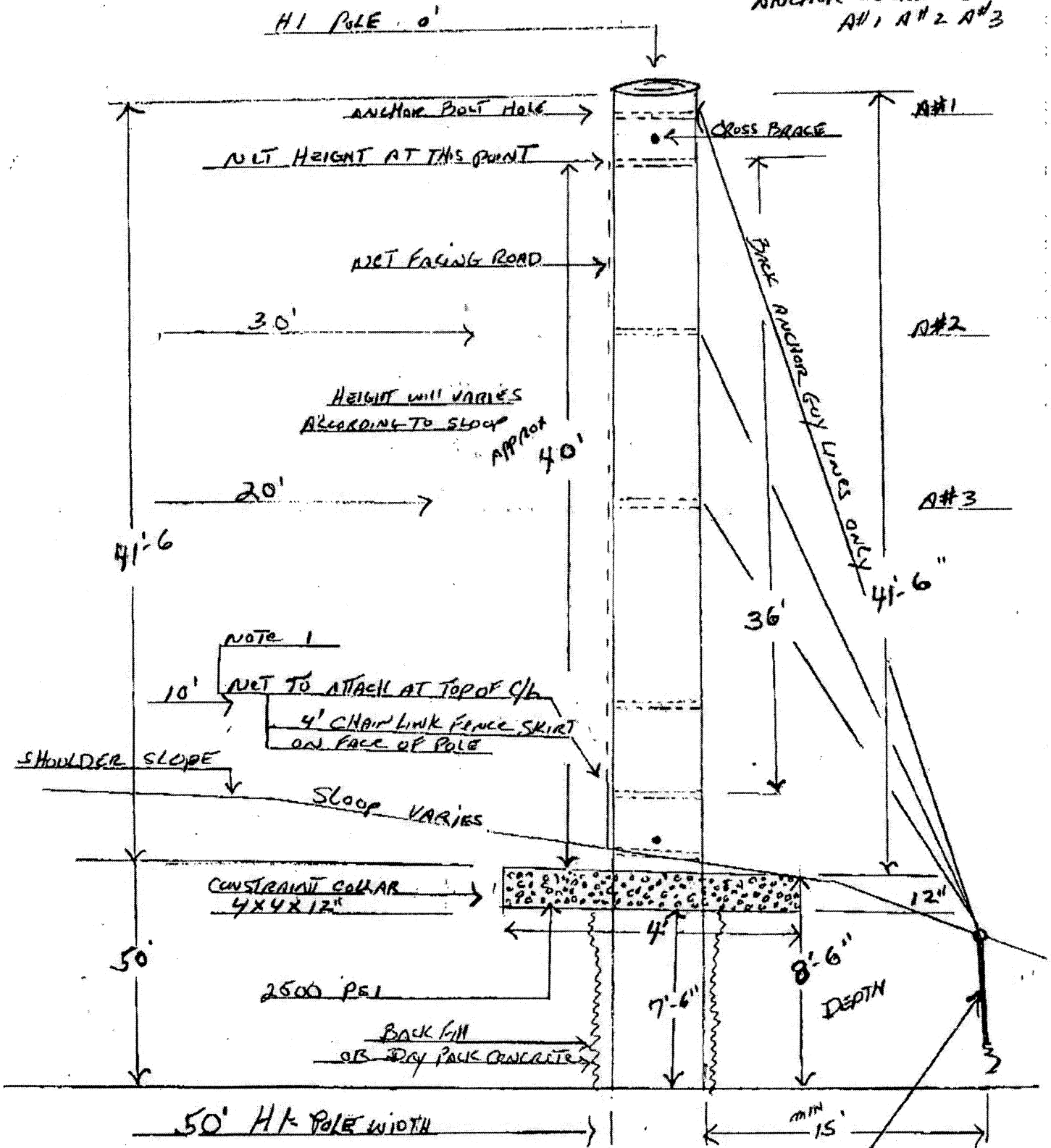
"NOTE" THROUGH THE POLE TO HANDLERS

CROSS COUNTRY COWBOY INC
233 137th St
HARRIS CENTER MD 21037
609 561-0830
John E. Crossman Jr.



60' POLE WITH CONSTRAINT COLLAR 4X4X12" NOT TO SCALE

ANCHOR LOCATIONS
A#1 A#2 A#3



PATENT
SEE POLE DESIGN 1999 H. 5732735

GROUND ANCHOR ATTACHANCE
Sam Diamond