



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**ITEM # 1**  
**June 20, 2002**

June 14, 2002

## MEMORANDUM

TO: Montgomery County Planning Board

FROM: Jeff Zyontz, Chief  
County-wide Planning Division

SUBJECT: Special Protection Area (SPA) Combined Preliminary and Final Water Quality Plan for U.S. 29 at Briggs Chaney Road Improvements (associated with Mandatory Referral 02802-SHA-1)

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## STAFF RECOMMENDATION

Staff recommends approval of the Special Protection Area (SPA) combined preliminary and final water quality plan with the following conditions:

1. Proposed reconstruction of concrete ditches to grass ditches to occur only if it can be demonstrated to the satisfaction of DPS that such reconstruction will not cause erosive stormwater flows through the ditches.
2. If the reconstructed grass ditches create problems in the conveyance of stormwater runoff, SHA should correct these problems.
3. Proposed conversion of impervious median to pervious surface to include removing existing pavement and aggregate layers, scarifying the soil underneath the aggregate layer to a minimum depth of 12 inches, refilling the excavated area with soil suitable for planting, including a minimum of 6 inches of topsoil at the surface, and planting with shrubs and groundcover other than grass. Revised plan for median construction and planting to be submitted for staff review and comment.

4. Conformance to the conditions as stated in DPS' water quality plan approval letter dated June 14, 2002. (Attachment A).

## **DISCUSSION**

There are two items for Planning Board review for the SHA U.S. 29 at Briggs Chaney Rd. Interchange Improvements: the Special Protection Area (SPA) Combined Preliminary and Final Water Quality Plan and the Mandatory Referral application, which is the subject of the agenda item immediately following this item.

This memorandum contains staff's review and recommendations on the SPA combined preliminary and final water quality plan for the proposed project. A separate memorandum, prepared by Transportation Planning staff, covers the Mandatory Referral application.

**The Planning Board must act on the SPA water quality plan before it can act on the Mandatory Referral application.**

### **Site Description**

Roughly 3.5 acres of this project lies within the Mainstem sub-watershed of the Upper Paint Branch SPA. The SPA portion of the project includes that portion of Old Columbia Pike and adjoining sidewalk west of roughly the centerline of the road. It also includes the part of Briggs Chaney Rd. and its sidewalks west of Old Columbia Pike. Currently, about 2.8 acres of the SPA portion of the project are in pavement.

### **Review for Conformance to the Special Protection Area Requirements**

As part of the requirements of the Special Protection Area law, a SPA water quality plan must be reviewed in conjunction with a Mandatory Referral application<sup>1</sup>. Under the provision of the law, the Montgomery County Department of Permitting Services (DPS) and the Planning Board have different responsibilities in the review of a water quality plan. DPS has reviewed and approved the elements of the preliminary water quality plan under its purview. The Planning Board's responsibility is to determine if environmental buffer

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<sup>1</sup> Section 19-62 (c) of the Montgomery County Code states that "before engaging in any land disturbing activity on publicly owned property in an area designated a special protection area, the applying agency or department should prepare a combined preliminary and final water quality plan." In addition, Section 19-65(d)(4)states: "For a water quality plan for a project on public property, the Planning Board, after public hearing which may be conducted when the Board considers a mandatory referral application, must determine if the plan meets the standards of this Article. The applying agency or department should not engage in land disturbing activities that are inconsistent with the approved combined water quality plan unless the applying agency has found that the water quality protection measures it would otherwise use meet the purposes of this Chapter."

protection, SPA forest conservation and planting requirements, and site imperviousness limits have been satisfied.

**DPS has reviewed and conditionally approved the elements of the preliminary water quality plan under its purview (see Attachment A).**

### **Site Performance Goals**

As part of the water quality plan, several site performance goals were established for the site: minimize storm flow runoff increases, minimize increases to ambient stream water temperatures, minimize sediment loading, maintain stream baseflow and groundwater recharge.

### **Site Imperviousness**

The Upper Paint Branch SPA is the only SPA that has regulatory impervious surface restrictions for development projects. These are set forth in the environmental overlay zone for the Upper Paint Branch SPA. On new development, there is a ten percent (10%) site imperviousness limit. There is also a provision for projects with existing impervious surfaces lawfully existing before July 1, 1997 that already exceed the 10 percent limit and are proposing to reconstruct features; such projects may keep, but not increase impervious surface coverage.

Section 59-C-18.152 (a)(1) of the Montgomery County Code states:

“Any development must not result in more than 10 percent impervious surface of the total land area under application for development.

“(A) Any impervious surface lawfully existing pursuant to a building permit issued before July 1, 1997 that exceeds the 10 percent restriction, may continue or be reconstructed under the development standards in effect when the building permit was issued.”

For this project, staff has defined the parameters for review of conformance to the impervious surface provisions of the overlay zone as follows:

- Count only proposed new impervious surfaces.
- Subtract out any existing impervious surfaces that are proposed to be removed.
- Count the land area within the existing or proposed road right-of-way which is currently pervious and which is proposed to be disturbed or is adjacent to proposed disturbed area.

With these parameters, the project's imperviousness is currently proposed at 5.4 percent. This is an improvement over an earlier submission which resulted in an imperviousness of about 9.3 percent

The current proposal includes adding 11,487 square feet of pavement within an area of 30,716 square feet and removing 9,827 square feet of existing impervious surfaces. This is a net increase of 1,660 square feet of impervious surfaces. Pavement will be added to create additional lanes on Briggs Chaney Rd. at the intersection, to reconstruct the curb and gutter portion of Old Columbia Pike, and to extend an existing sidewalk on the north side of Briggs Chaney Rd. to Old Briggs Chaney Rd. Existing impervious surfaces will be removed by reconstructing some concrete stormwater conveyance channels as grassed ditches and narrowing some existing sidewalks.

**SHA indicates, and staff agrees, that the currently proposed project conforms to the environmental overlay zone since the imperviousness is less than 10 percent.** In addition, staff supports the concept of converting concrete stormwater conveyance channels to grassed channels if the resulting channels will not result in erosion problems in the channels (see staff's recommended condition no. 1). Staff assumes that the converted ditches will not create problems of safe conveyance of stormwater runoff, such as erosion within the ditches or unstable soils in the ditches because of inadequate grass cover. If problems arise after the ditches have been reconstructed, SHA must correct these problems.

### **Rationale for the Recommended Approach**

The project as proposed would create a net addition of 1,660 square of impervious surface. One could debate the area of construction (or in other words what should be used as a denominator to determine the 10% rule has been exceeded) but under any circumstances the net addition to impervious does not change. SHA has minimized the net additions to impervious surface from earlier plans. Avoiding impacts is the best means of being environmentally sensitive and that has been SHA's strategy of choice. The net additional impervious area is less than the area of the proposed new sidewalk on the north side of Briggs Chaney Road that was requested by staff. SHA offered to bring the net addition to impervious surface to zero by eliminating the new sidewalk area and further reducing the existing sidewalk. Staff rejected that offer in recognition of the need to provide for pedestrian activity in this area.

This project is the first roadway project in the Upper Paint Branch since the SPA legislation was passed in 1995. In reaching the staff recommendation, staff had to determine which provision of the SPA legislation applied. Staff chooses to apply the standards for new development. The project area for purposes of calculating site imperviousness has been defined as covering the area from the edge of paving to the edge of road right-of-way, excluding existing

paving. The recommended analysis is most in line with how another case was handled.

Some might argue that the existing roadway should be included as part of the project area. This has not previously been done in prior reviews by the staff on sidewalk projects in the public right of way.

Unless the right of way for every roadway is 10 times the paved area of the road and sidewalk (which they are not), every road exceeds 10% impervious surface. The SPA legislation itself indicated potential problems with public projects.

“The Council, in acknowledging the critical need to protect the Upper Paint Branch Watershed, reaffirms that the design and construction of all public projects in the watershed, including roads, buildings, structures and other facilities, must conform to the water quality plan submission and review requirements established in the Special Protection Area legislation. The Council notes that the application of the Special Protection law does not preclude the construction of any public project, including those delineated in the Eastern Montgomery County Master Plan, such as widening Briggs Chaney Road, the Intercounty Connector, or the expansion of Spencerville Post Road.” (Resolution 13-215 adopted July 11, 1995)

If the Planning Board is persuaded that existing impervious surface should be included, you would then have to determine if a waiver should be granted. The Board did grant a waiver for the County’s own sidewalk project on Old Columbia Pike.

### **Alternative Position on the Review of Project Imperviousness**

There is a dissenting staff position regarding the review for compliance to the imperviousness criteria. This position is that this project is a reconstruction project. The project proposes to modify an existing road intersection, which includes adding lanes to the road and extending an existing sidewalk. Under the environmental overlay zone, the criterion for review for a reconstruction project is to demonstrate that the imperviousness does not increase over what exists today. That is, if the project adds a certain amount of new impervious surface, it has to take out at least the same amount of existing impervious surface. Using this criterion, the currently proposed project has a net gain of 1,660 square feet of impervious surface and must remove this amount of existing impervious surface to comply with the environmental overlay zone.

The dissenting staff position does not classify this project as new construction. This project cannot be considered the same type of project as two

DPWT projects in the SPA that had been previously reviewed: both the Phase I Old Columbia Pike sidewalk and the Thompson Road sidewalk were strictly sidewalk projects and did not involve any road improvements. Another DPWT project, the Phase II Old Columbia Pike sidewalk project, is not applicable to this project either. Changes were made late in the review by DPWT to the Phase II Old Columbia Pike sidewalk project to include some road improvements. Staff was faced with changing the review criteria at a late stage of review after the Planning Board had already approved both the criteria and the mandatory referral for the Phase I project, but did not do so. A decision was made to use the same review criteria as in Phase I. In retrospect, staff was mistaken in not changing the review criteria when changes in the Phase II sidewalk project were made. However, the same mistake should not be made again in the review of this Briggs Chaney Road/Old Columbia Pike intersection improvement project.

### **Environmental Buffers**

There are no environmental buffers in or adjacent to the SPA portion of the project area.

### **Forest Conservation**

There are no forests in or adjacent to the SPA portion of the project area. For the overall project (i.e., the portions within and outside the SPA), Md. Department of Natural Resources (DNR) has reviewed and approved the forest conservation plan. The staff memorandum for the mandatory referral should include a summary of the forest conservation review for the entire project.

### **Stormwater Management Concept**

To help meet the project's performance goals, the stormwater management (SWM) concept for the SPA portion of the site includes the following features:

- Stormwater runoff that flows over 0.7 acre of Old Columbia Pike and currently enters a SWM facility behind the shopping center will be re-directed. The concept is to take this runoff to the proposed new SWM facility within the proposed interchange.
- Some of the stormwater runoff on Briggs Chaney Rd. west of Old Columbia Pike is currently conveyed to the SWM facility behind the shopping center. Some of this runoff is proposed to be conveyed through the proposed reconstructed grass channels for filtering prior to entering the facility. A part of the runoff will also be treated in a small, proposed sand filter prior to entering the facility.

### **Sediment and Erosion Control**

The sediment and erosion control concept involves the use of sediment diversion measures such as earth dikes, stone outlet structures, curb inlet protection devices, silt fences, and stabilized construction entrances.

### **Monitoring of Best Management Practices**

The details of the monitoring program will be determined by DPS and DEP. SHA will be conducting monitoring of the existing wet pond where some of the stormwater from the project will be captured. Monitoring will occur before, during, and after construction and will include total suspended solids.

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#### **Attachments**

- A. DPS SPA Water Quality Plan approval letter
- B. County Council Resolution 13-215 establishing SPA for Upper Paint Branch
- C. Environmental Overlay Zone for the Upper Paint Branch Special Protection Area
- D. Four letters commenting on project



ATTACHMENT A  
(1 of 2)

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan  
County Executive

June 14, 2002

Robert C. Hubbard  
Director

Mr. Raja Veeramachaneni  
Highway Hydraulics Division  
State Highway Administration  
707 North Calvert Street  
Baltimore, Maryland 21202

Re: **Preliminary/Final Water Quality Plan** for U.S.  
29 at Briggs Chaney Road Interchange  
Improvements  
SM File #: 204511  
Montg. Co. Grid: 32B6  
Watershed: Upper Paint Branch

**SPECIAL PROTECTION AREA**

Dear Mr. Veeramachaneni:

Based on a review by the Department of Permitting Services Review Staff, the Preliminary/Final Water Quality Plan for the above mentioned site is conditionally approved. This approval is for the elements of the Preliminary/Final Water Quality Plan of which DPS has lead agency responsibility, and does not include limits on imperviousness or stream buffer encroachments.

**Site Description:** The proposed improvements within the Special Protection Area (SPA) include widening Briggs Chaney Road west of the intersection with Old Columbia Pike to accommodate additional through/turning lanes and minimal widening of Old Columbia Pike. It also includes sidewalk additions and curb modifications along the improved areas.

**Stormwater Management:** Quantity control will be provided in the existing wet pond adjacent to Briggs Chaney Road and a new dry pond that is to be constructed outside of the SPA. Quality control will be provided by a proposed surface sand filter that will be pretreated by a vegetated swale (flat bottomed). The surface sand filter will be sized to treat a total of one-inch over the tributary impervious area and provide one foot of recharge storage below the underdrain pipe. Additionally, approximately 0.7 acres of roadway impervious area will be diverted out of the SPA to a proposed stormwater management structure via a storm drain system. A portion of an existing concrete drainage ditch will be replaced with a vegetated drainage ditch to provide additional filtering and groundwater recharge opportunities.

**Sediment Control:** Silt fence alone will not be allowed as a perimeter control. The use of super silt fence coupled with the other devices noted in the water quality plan will be acceptable as sediment controls. The site grading shall be limited as much as possible with immediate stabilization emphasized.

**Performance Goals:** The performance goals that were established at the pre-application meeting will be met as specified in the Preliminary/Final Water Quality Plan. They are as follows:

1. Minimize storm flow run off increases.
2. Minimize increases to ambient water temperatures.





ATTACHMENT A  
(2 of 2).

Raja Veeramachaneni  
June 14, 2002  
Page 2

3. Minimize sediment loading.
4. Maintain base flow and provide groundwater recharge.

**Monitoring:** The monitoring must be in accordance with the BMP monitoring protocols which have been established by the Department of Permitting Services (DPS) and Department of Environmental Protection (DEP). Prior to the start of any monitoring activity, a meeting is to be held on site with DEP, DPS and those responsible for conducting the monitoring to establish the monitoring parameters. **The pre-construction monitoring must be completed prior to the issuance of a sediment control permit.** See the attachment to this approval letter titled "Description of Monitoring Requirements" for the detailed monitoring requirements.

**Conditions of Approval:** The following conditions must be addressed in the initial submission of the detailed sediment control/stormwater management plan. This list may not be all inclusive and may change based on available information at the time of the review:

1. The proposed surface sand filter is to be designed to Montgomery County standards. The surface of the sand filter is to be covered with pea gravel (instead of soil).
2. Submit an engineered stormwater management/sediment control plan for review and approval and specify who will have the maintenance responsibilities of the sand filter.

Payment of the stream monitoring fee is not required. 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 you have any questions regarding these actions, please feel free to contact Leo Galanko at (240) 777-6242.

Sincerely,



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

RRB:enm:CN204511

cc: C. Bunnag  
M. Sommerfield  
L. Galanko  
SM File # 204511

Qn on-site; 1 acres  
Ql on-site; 1 acres

Resolution No.: 13-215  
Introduced: May 16, 1995  
Adopted: July 11, 1995

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Upper Paint Branch Watershed Special Protection Area

Background

1. The Paint Branch is a moderately sized tributary stream to the Anacostia River's Northeast Branch. The Paint Branch stream is located in portions of the Cloverly and Fairland/White Oak Planning Areas of Eastern Montgomery County. The headwaters of the Paint Branch originate near Spencerville, Maryland and follow a southeasterly course for a distance of 17 miles through Montgomery County into Prince George's County.
2. Maryland Water Resources Administration, having observed that portions of the Paint Branch stream sustains a naturally reproducing brown trout population since 1973, designated the entire area of Paint Branch above the Capital Beltway as "Use III Waters" under Maryland's adopted watershed classification system. The presence of naturally reproducing trout species in Maryland waters is indicative of the highest measure of water quality, and, consequently, is afforded the highest order of resource protection under State and County laws and policies.
3. The County Council from time to time receives and evaluates information concerning watershed resource management, prepared by qualified representatives of various public agencies from Montgomery County, the State of Maryland, and from other affected Maryland Counties.
4. The Council has been advised by the Park and Planning Commission that certain portions of the Paint Branch watershed are experiencing considerable stress as a result of development pressure which may lead to degradation of these resources. In particular, the resources consist of the headwater tributary areas and portions of the main stem of the Paint Branch north of Fairland Road, located in Montgomery County, namely the Good Hope, the Gum Springs, the Right Fork and Left Fork.
5. The Park and Planning Commission's conclusions are contained in a technical report on the designation of the Upper Paint Branch Watershed as a Special Protection Area and are supported by preliminary findings of the Maryland Department of Natural Resources (MdDNR) and the Maryland Department of the Environment (MDE). Analysis of changes to in-stream cross-section and in-stream habitat conducted by MdDNR, the Planning Department and Department of Parks, and staff of the Washington Council of Governments confirms that

these resources while still healthy are facing serious levels of stress. The Staff Draft Limited Amendment to the Eastern Montgomery County Master Plan, Expanded Park Acquisition/Resource Management Plan, dated May 1995 provides further supporting information relevant to findings, conclusions, and recommendations regarding the status of the Upper Paint Branch Watershed.

6. The Anacostia Watershed Restoration Committee's Upper Paint Branch Work Group, chaired by the Montgomery County Department of Environmental Protection, has similarly studied the Upper Paint Branch Watershed. The Work Group reached similar conclusions concerning stress being experienced by the stream and its tributaries and the need to carefully protect this resource.
7. Protecting the water quality and quantity of the Upper Paint Branch Watershed and its tributaries, as well as the varied biodiversity situate in these resources, has been assigned a high degree of importance by State and County policies. A robust Paint Branch stream system, especially its headwaters, aside from its aesthetically pleasing appeal, contributes to the health of the entire watershed.
8. The 1981 Master Plan for Eastern Montgomery County recognized the importance of the Upper Paint Branch Watershed as a critical resource for the County. Numerous factors contribute to make the Upper Paint Branch Watershed resource an important asset for Montgomery County and the State, including the very high water quality of the stream, its unique habitat conditions, the particular presence and status of several environmental features in the watershed, and its capacity for supporting self-reproducing populations of aquatic species. Since the adoption of the Master Plan, the County has endeavored to implement the watershed protection goals and objectives through a variety of strategies that which include downzoning, park acquisition, and the development and use of stormwater management performance criteria.
9. The County has committed almost \$3 million in performing stormwater management retrofits and stream restoration projects in the Anacostia Watershed since 1993. In addition, the County has acquired sizeable parcels of property in the watershed. The thrust of these efforts is to improve local stream water quality and protect waterway conditions, enhance aquatic habitats, and create wetlands.
10. State and Federal watershed/water quality anti-degradation policy requires that existing water quality be maintained. The policy precludes governmental conduct consciously allowing or facilitating the degradation of a watershed, unless MDE determines that a change to a lower quality designation is justifiable as a result of necessary economic or social development. Thus far no information has been articulated in support of a finding that some degradation of the Paint Branch Watershed is necessary in light of economic or social circumstances.

11. The Economic Growth, Resource Protection, and Planning Act of 1992 requires Montgomery County to protect sensitive areas (defined to include streams and buffers) through its exercise of the planning, zoning, and subdivision powers.

12. Since the adoption of the Master Plan, the Park and Planning Commission, DEP, MdDNR, MDE, and the Upper Paint Branch Work Group and other State and County agencies have examined the nature, intensity, type, and location of development that has occurred, based upon approvals both before and after the Master Plan was adopted in 1981. These examinations indicated declining water quality and aquatic habitat conditions in tributaries of the Upper Paint Branch and were attributed to the effect from increased levels of imperviousness in sensitive areas of the watersheds and other developmental impacts.

13. As part of its work in preparation of both the May, 1995, limited-purpose plan amendment and the comprehensive amendment to the 1981 Eastern Montgomery County Master Plan, the Park and Planning Commission analyzed data that has been collected relating to the vitality of the Upper Paint Branch Watershed. Principal considerations to be balanced include appropriate land uses associated with development activity and compliance with the established Performance Criteria.

14. The amount and location of such factors as impervious areas are key benchmarks in determining the long term vitality of the health and quality of a given stream. Rain water can penetrate pervious areas, thus maintaining levels of groundwater, controlling erosion, and allowing the ground to naturally filter water and control temperature. Current levels of impervious surface and the resulting effect on the Use III designation of the Upper Paint Branch Watershed are approaching critical levels according to estimates made by the Park and Planning Commission and MdDNR Staff.

15. Preliminary findings by the Park and Planning Commission indicate that in order to maintain the viability of this very high quality, cold water Use III stream system resource, impervious levels and other parameters need to be kept in check. Information available to the Commission indicates that engineering solutions do not appear to suitably offset development impacts and protect the cold water resource. Deterioration of water quality and habitat, in part taking the form of increased sedimentation and erosion, have been observed in these watersheds.

16. It is the position of the Council that the Upper Paint Branch Watershed will best be protected through the combined application of the Special Protection Area law and performance criteria as established in the 1981 Eastern Montgomery County Master Plans. The Council supports the establishment of relevant and appropriate performance criteria under Planning Board guidelines and Executive Regulation and rigorous application of the performance criteria in the review of water quality plans.

17. Because of the sensitivity and current condition of the Upper Paint Branch Watershed, it is the position of the Council that each applicant proposing any land disturbance activity in the watershed must submit water quality plans and undergo water quality reviews as provided in the Special Protection Area legislation.

18. The County Council, based upon available evidence, finds that: 1) the Upper Paint Branch Watershed together with its associated supporting plant and animal species, have been previously designated and continue to be watershed resources of critical importance to the needs and interests of Montgomery County residents; 2) protection of the Upper Paint Branch Watershed is essential to the promotion of the public health, safety and welfare; and 3) the Upper Paint Branch Watershed is of particular importance because it, among other things:

- o supplies the imperiled Anacostia River system with the highest quality of naturally occurring water which is of critical importance to inter-jurisdictional efforts to restore the watershed and prevent its further degradation within the region and in Montgomery County;
- o currently complies with Federal and State clean water standards governing the control of point and non-point pollution levels;
- o maintains quality groundwater sufficient for potable utilization through existing private wells and reserves for potential use as a source of public drinking water;
- o provides efficient management of stormwater runoff without flooding, stream channel erosion, pollution, siltation, and sedimentation, and, consequently, without adverse impacts to water and land resources within Montgomery County and the State;
- o provides suitable habitat and conditions that sustain a high degree of naturally occurring biodiversity of plant and animal species, including a naturally reproducing brown trout population;
- o provides numerous scenic and recreational opportunities; and
- o features a diverse landscape supporting a broad diversity of wildlife habitats.


19. The Council, in acknowledging the critical need to protect the Upper Paint Branch Watershed, reaffirms that the design and construction of all public projects in the watershed, including roads, buildings, structures, and other facilities, must conform to the water quality plan submission and review requirements established in the Special Protection Area legislation. The Council notes that the application of the Special Protection Area law does not preclude the construction of any public project, including those delineated in the Eastern Montgomery County Master Plan, such as the widening of Briggs Chaney Road, the Intercounty Connector, or the expansion of the Spencerville Post Office.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

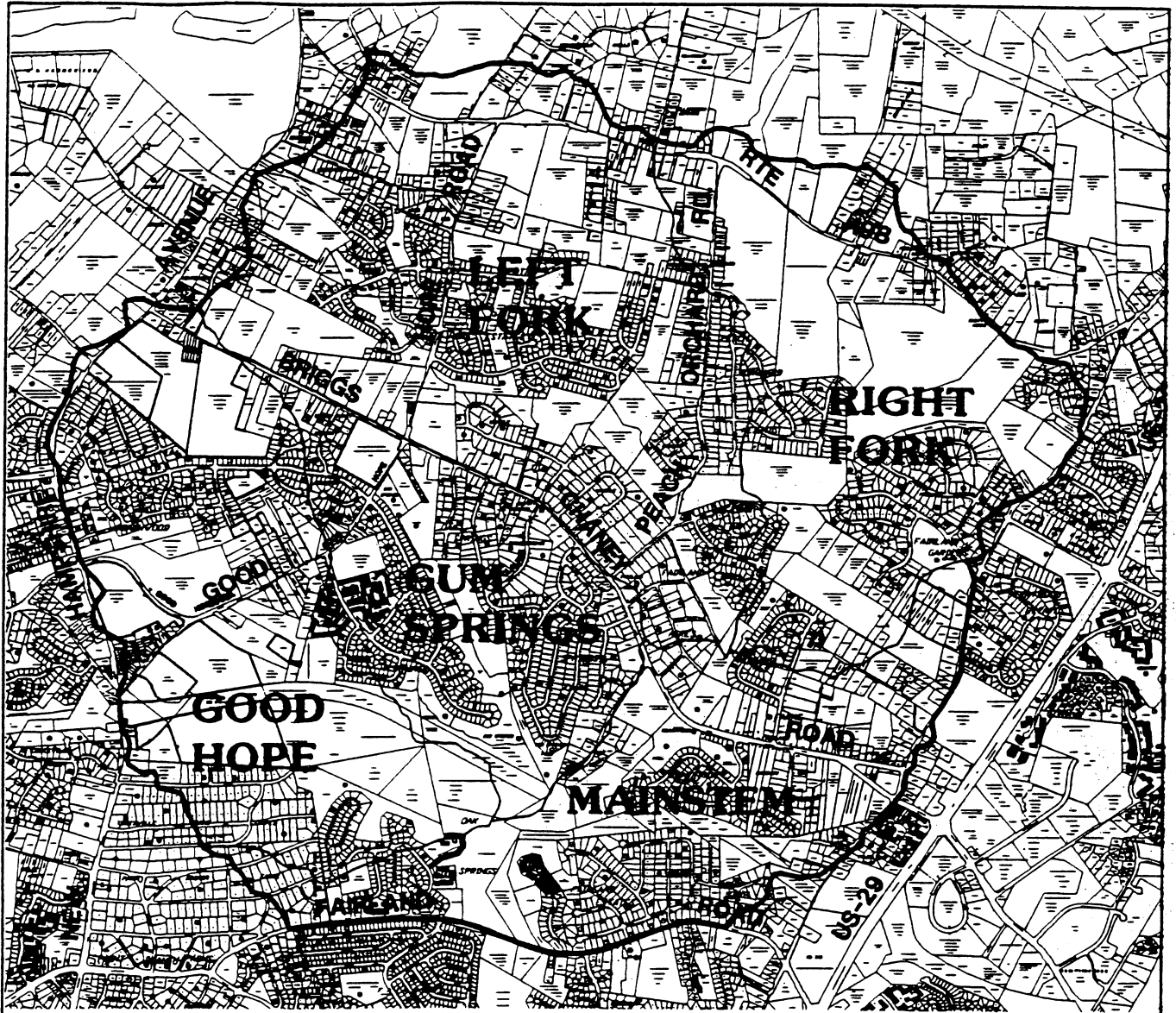
In order to protect and manage the Upper Paint Branch Watershed as a very high quality, cold water Use III stream system resource, the County Council: 1) designates the Upper Paint Branch Watershed, as shown on the attached map, a Special Protection area under Section 19-62(a)(4), Montgomery County Code; and 2) as authorized under Sec. 19-63(b), requires each applicant proposing any land disturbance activity within the Upper Paint Branch Special Protection Area to submit a water quality plan for review in accordance with the Special Protection Area legislation.

This is a correct copy of Council action.

  
Kathleen A. Freedman, CMC  
Secretary of the Council

Z/860/1-5

# UPPER PAINT BRANCH - SPECIAL PROTECTION AREA



- SPECIAL PROTECTION AREA BOUNDARY
- SUB-WATERSHED BOUNDARIES



MONTGOMERY COUNTY CODE  
ZONING ORDINANCE  
Chapter 59

Division 59-C-18

**Special provisions for existing uses:** Any lawfully existing use allowed as of the effective date of application of this overlay zone, including parking and maneuvering areas, which is not otherwise allowed in the overlay zone may be continued as a lawful use under the standards of the underlying zone.

(Ord. No. 13-52, § 1.)

**Sec. 59-C-18.15. Environmental Overlay Zone for the Upper Paint Branch Special Protection Area.**

**59-G-18.151. Purpose.**

It is the purpose of this overlay zone to:

- (a) Protect the water quality and quantity of the Upper Paint Branch Watershed and its tributaries, as well as the biodiversity situated in these resources. The resources consist of the headwater tributary areas—Good Hope, Gum Springs, Right Fork and Left Fork—and the segment of the main stem of the Paint Branch north of Fairland Road.
- (b) Regulate the amount and location of impervious surfaces in order to maintain levels of groundwater, control erosion, and allow the ground to filter water naturally and control temperature.
- (c) Regulate land uses that could adversely affect this very high quality, cold water stream system resource that is afforded the highest order of resource protection (Use III Waters) under the State of Maryland's watershed classification system.

**59-C-18.152. Regulations.**

- (a) **Development standards.** The development standards of the underlying zone apply except as modified by the requirements of this overlay zone.
  - (1) **Restriction on Impervious Surface.** Any development must not result in more than 10 percent impervious surface of the total area under application for development.
    - (A) Any impervious surface lawfully existing pursuant to a building permit issued before July 1, 1997 that exceeds the 10 percent restriction, may continue or be reconstructed under the development standards in effect when the building permit was issued.



MONTGOMERY COUNTY CODE  
ZONING ORDINANCE  
Chapter 59

Division 59-C-18

- (B) Any impervious surface which results from construction pursuant to a building permit application pending before the Department of Permitting Services on July 1, 1997, may continue or be reconstructed under the development standards in effect when the building permit was issued.
  - (C) Any expansion of an impervious surface above the 10 percent restriction is not allowed, except in accordance with the waiver provisions of Subsection (a)(2) or as provided under Subsection (a)(1)(D).
  - (D) Any impervious surface resulting from an addition or accessory structure to an existing one-family residential dwelling must not be counted against any calculation of the 10 percent impervious surface restriction.
- (2) **Waiver.** The Director may grant a waiver from the 10 percent impervious surface restriction subject to the following standards and procedures:
- (A) **Written Request.** An applicant may apply for a waiver from the 10 percent impervious surface restriction if enforcement would result in undue hardship to the applicant. The request must be in writing to the Director.
  - (B) **Review and action.** The Director may grant a waiver from the 10 percent impervious surface restriction if the applicant shows by clear and convincing evidence that:
    - (i) the 10 percent impervious limitation would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant;
    - (ii) the applicant complies with all applicable federal, state, and county water quality standards; and
    - (iii) the relief sought is the minimum needed to prevent the hardship and the Director must consider alternative techniques.

MONTGOMERY COUNTY CODE  
ZONING ORDINANCE  
Chapter 59

Division 59-C-18

) **Land use.** All permitted or special exception uses allowed in the underlying zones are allowed in the overlay zone except that:

(1) The following special exception uses are allowed subject to the requirements of Article 59-G and specified environmental protection requirements:

Landscape contractor.<sup>1</sup>  
Retail nursery or garden center.<sup>1</sup>  
Wholesale nursery or greenhouse.<sup>1</sup>  
Golf courses and country clubs.<sup>2</sup>  
Golf driving range.<sup>2</sup>  
Riding stables.<sup>3</sup>

(2) The uses in Section (1), if validly existing on July 1, 1997, may be continued under the regulations in effect at the time the use was established. Any expansion requires compliance with the provisions of this overlay zone.

(3) The following uses are prohibited in the overlay zone:

Airstrips, in common open space.  
Helistops.  
Pipelines, aboveground.<sup>4</sup>  
Pipelines, underground.<sup>4</sup>  
Automobile filling stations.  
Automobile fluid maintenance stations.  
Automobile repair and services.

<sup>1</sup> If certified as an organic grower by the State of Maryland or another approved certifying body.

<sup>2</sup> Must have an Integrated Pest Management program.

<sup>3</sup> Must have an approved Soil Conservation Water Quality Plan from the Montgomery Soil Conservation District.

<sup>4</sup> Pipelines used for interstate transmission of petroleum products.

(Legislative History: Ord. No. 13-64, § 1.)

ATTACHMENT D

(1 of 5)

**FAIRLAND MASTER PLAN CITIZENS ADVISORY COMMITTEE**  
2901 Greencastle Road                      Burtonsville MD 20866

June 11, 2002

Mr. Arthur Holmes, Jr., Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring MD 20910

**RECEIVED**  
0898  
JUN 11 2002

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

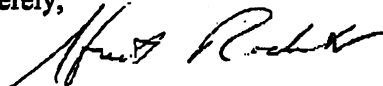
Dear Chairman Holmes:

The Fairland Master Plan CAC joins the Eyes of Paint Branch and other environmental and civic organizations in expressing grave concern over the State Highway Administration plan for expanding the intersection at Briggs Chaney Road and Old Columbia Pike to seven lanes—inconsistent with both the understanding the Master Plan CAC reached with SHA and the impervious standards for the Upper Paint Branch Special Protection Area.

We ask the Planning Board to insist that at the hearing on this item scheduled for June 20, SHA not be permitted to manipulate or compromise impervious standards that have been carefully implemented and regularly applied in order to protect the Paint Branch SPA, in which nearly \$30 million has been invested by the county. To contrive a new approach, a new standard, in order to expedite a local road expansion that is excessive in terms of both residential and environmental impacts undermines the interest of the local jurisdiction and sets an unfortunate precedent for SHA's ability to disregard other County environmental and master plan priorities.

At the very least, we ask the Planning Board to defer action pending a recommendation from Councilmember Praisner's Upper Paint Branch Technical Work Group, which is currently meeting to review the alarming increase in imperviousness in the SPA. To adopt a new, more permissive standard for the SHA project on June 20 would be perverse given the County's investment in the watershed and the documented concern over its continuing degradation.

Sincerely,



Stuart Rochester  
Chairman, Fairland Master Plan Committee

cc. Steven Silverman, President, MCC

ATTACHMENT D  
(2 of 5)

Dr. and Mrs. Jeffrey D. Whall  
15529 Thompson Road  
Silver Spring, Maryland 20905  
301-989-1795  
MJDKTWHALL@AOL.COM

RECEIVED  
JUN 14 2002

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

June 12, 2002

Arthur Holmes, Jr., Chairman  
Montgomery County Planning Board  
8787 Spring Street  
Silver Spring, MD 20910

Dear Chairman Holmes:

We are writing this because we were made aware of a significant action being taken by the managers at the Maryland-National Capital Park and Planning Commission. The rules are being ignored to accommodate the State Highway Administration's agenda. We are referring to the expansion of the intersection at Briggs Chaney Road and Old Columbia Pike. The Upper Paint Branch Special Protection Area is being ignored.

The law that established the Upper Paint Branch Special Protection area clearly states that the imperviousness of any project must be no more than 10 percent, that this limit applies to *all* projects both public and private, and explicitly states that it is applicable to road projects. Imperviousness has been calculated consistently for every project since 1981. Why is MNCPPC treating this project differently?

It seems the Upper Paint Branch is no longer considered a protected area if this were to happen as planned. Why do we make these rules? Is it only for some and not all? Why is this protection being taken away and threatened?

Please take action and stop this injustice of bending rules for certain projects over others. On June 20, we ask the Planning Board to state at the hearing that the same method and rules be used to evaluate impervious for all projects, including this one. Please defer action until a recommendation from Council member Marilyn Praisner's Upper Paint Branch Technical Work Group is available. Please consider the tremendous impact of this particular project. It will set a dangerous precedent: bending the rules for *all* road projects, (biased of course to who's agenda it is). We urge you to consider this action.

Sincerely,

RECEIVED  
JUN 13 2002

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

15016 Timberlake Drive  
Silver Spring, Md. 20905  
12 June 2002

Arthur Holmes, Jr., Chairman  
Montgomery County Planning Board  
8787 Spring Street  
Silver Spring, Md. 20910

Dear Chairman Holmes:

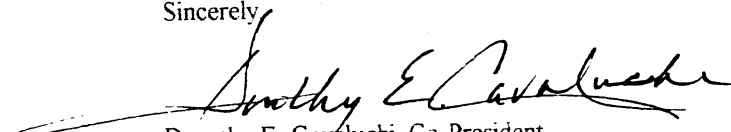
On behalf of the Peach Orchard Heights Citizens' Association, we are deeply concerned about the apparent willingness of the Planning Board to approve SHA's proposal to increase the imperviousness levels in their construction projects, especially the most recent project involving the improvement of the Briggs Chaney and Old Columbia Pike intersection. We live in the Right Branch of the North Fork of the Paint Branch Special Protection area, and have already suffered significant damage to the trout population and ecosystem due to the housing development upstream, which supposedly complies with the ten percent imperviousness limit. More damage and destruction will be evidenced as road and housing construction continues.

There should be a commitment on the Planning Board's part to preserve and protect our natural resources, and to adhere to the strict guidelines developed in 1981. SHA, as well as all other agencies, should be held accountable regarding these guidelines. We request that, at the hearing on June 20<sup>th</sup>, the same approach for evaluating impervious levels used for all projects in the past be used for this project, as well as all future projects. There are ways SHA could comply with this project, such as setting land aside as a "pervious reserve" to bring the overall imperviousness into compliance. SHA could utilize property it currently owns at the corner of Peach Orchard Road and MD 198, the Peach Orchard/Allnut property, as a "pervious reserve." This solution would also serve as a buffer zone to protect our section of the Paint Branch from further erosion and destruction.

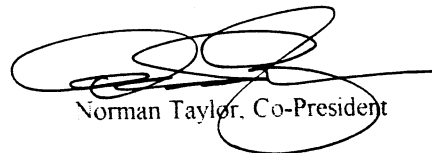
In addition, we request that the Planning Board defer any action until the conclusions and recommendations of Council Member Marilyn Praisner's Upper Paint Branch Technical Work Group are available. The Planning Board has an honorable reputation of maximizing its influence to protect and preserve the pure natural resources in Montgomery County. To do any less is a betrayal of the residents the members of the Board represent.

Please distribute this letter to all members of the Planning Board. Thank you for your attention.

Sincerely



Dorothy E. Cavaluchi, Co-President



Norman Taylor, Co-President

cc: Steve Silverman, President, Montgomery County Council



## Eyes of Paint Branch

Grassroots Conservation, Education, and Action for the Paint Branch and its Watershed

June 13, 2002

Parris N. Glendening  
Governor of Maryland  
State House  
Annapolis, MD 21401

Dear Governor Glendening:

The State Highway Administration (SHA) is proposing to make changes to the Briggs Chaney Road / Old Columbia Pike intersection, a portion of which is in the Upper Paint Branch Special Protection Area (SPA). Unfortunately, SHA is not complying with the environmental requirements of the Upper Paint Branch Special Protection Area.

Last fall SHA claimed that, as a state agency, they were exempt from the SPA regulations and did not have to comply. Recently though, they did submit the required water quality plan. However, SHA is not complying with the imperviousness requirements of the SPA.

If this project is treated as new construction in the SPA, then it is subject to a 10 percent imperviousness limit. The imperviousness of the project site in the SPA today is on the order of 70 percent. The State Highway Administration (SHA) proposes to add 4 new lanes and sidewalks, and they claim that the imperviousness of their project is only 4 percent. This defies all logic. The only conclusion that can be drawn from this is that SHA is cooking the books.

If this project is treated as a "reconstruction" in the SPA, which is more appropriate since it involves modifying an existing roadway, then the law states that there can be no net increase in imperviousness. Once again, SHA is not complying with the imperviousness requirement for this interpretation either.

The law that established the Upper Paint Branch Special Protection area clearly states that the imperviousness limit applies to all projects both public and private, and explicitly states that it is applicable to road projects. Imperviousness has been calculated consistently for every project since 1981.

While much has been done to protect the Paint Branch, data from the resource agencies indicate that conditions continue to degrade. Further, MNCPPC planners project an alarming increase in imperviousness, particularly in the Right Fork and Left Fork sub-watersheds. This puts the investment of nearly \$30 million and countless volunteer hours over three decades to



protect the Paint Branch at risk. Clearly what the Paint Branch needs now is more protection, not less.

From a historical perspective, every project to date has complied with the SPA requirements. Similar issues have arisen on previous projects, but the end result was compliance. For example, when the Spencerville post office was first proposed, the federal government claimed to be exempt from local laws and did not have to comply with the SPA. Eventually they reduced the imperviousness of the project and complied with all aspects of the SPA. Similarly, the Fairland Community Center was initially over the 10 percent limit, and the county transportation department claimed that public projects were exempt. Eventually they acquired nearby properties and set the land aside as a "pervious reserve" to bring the overall imperviousness of the project into compliance.

There are several ways SHA could comply on this Briggs Chaney Road – Old Columbia Pike project. SHA already owns the Peach Orchard/Allnut property and could use a portion of it as a pervious reserve. There are also other sites where existing impervious surfaces could be removed to bring this project into compliance. Also, there are other sites could be purchased and set aside as pervious reserve as done in other cases.

Frankly, it is an outrage the SHA is not complying with the SPA. The project is only 1600 square feet over the limit, which should be trivial to rectify. We have repeatedly offered several alternatives for compliance, but SHA counters with a threat to pull the project. This is not good government.

Sincerely,

  
David G. Dunmire





# SIERRA

103 North Adams Street  
Rockville, MD 20850



# CLUB

Montgomery County Group  
Phone (301) 294-0466

June 13, 2002

RECEIVED  
JUN 14 2002

Arthur Holmes, Jr., Chairman  
Montgomery County Planning Board  
8787 Spring Street  
Silver Spring, MD 20910

Dear Chairman Holmes:

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

We are concerned about the increased imperviousness to accommodate the State Highway Administration's expansion of the intersection at Briggs Chaney Road and Old Columbia Pike. Clearly this is not consistent with the original intent of the Upper Paint Branch Special Protection Area.

The law that established the Upper Paint Branch Special Protection area clearly states that the imperviousness of any project must be no more than 10 percent. This limit applies to all projects both public and private, and the law explicitly states that it is applicable to road projects. Imperviousness has been calculated consistently for every project since 1981. Why is MNCPPC treating this project differently?

While much has been done to protect the Paint Branch, data from the resource agencies indicate that conditions continue to degrade, and MNCPPC planners project an alarming increase in imperviousness. This puts the investment of nearly \$30 million and countless volunteer hours over three decades to protect the Paint Branch at risk. Clearly what the Paint Branch needs now is more protection, not less.

We request the Planning Board to decide, at the hearing on this item on June 20, that the same approach for evaluating imperviousness that has been used for all previous projects be used for this project as well. Alternatively, the Planning Board should defer action until a recommendation from Council Member Marilyn Praisner's Upper Paint Branch Technical Work Group is available.

Thank you for your consideration. Please distribute copies of this letter to other members of the Planning Board.

Sincerely,

A handwritten signature in cursive script that reads "Jim Fary".

Jim Fary, Chair  
Conservation Committee

cc: Steve Silverman, President, Montgomery County Council

**... To explore, enjoy, and protect the nation's scenic resources...**

*Printed with Soy-based Ink on 100% Recycled Paper (15% post-consumer)*

June 13, 2002

Arthur Holmes, Jr., Chairman  
Montgomery County Planning Board  
8787 Spring Street  
Silver Spring, MD 20910

RECEIVED  
JUN 14 2002

Dear Chairman Holmes:

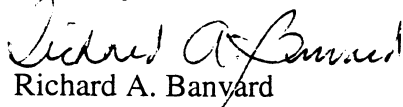
OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Managers at the Maryland-National Capital Park and Planning Commission are bending the rules on imperviousness to accommodate the State Highway Administration's expansion of the intersection at Briggs Chaney Road and Old Columbia Pike. Clearly this is not consistent with the original intent of the Upper Paint Branch Special Protection Area. The imperviousness of the project site today is on the order of 70 percent. The State Highway Administration (SHA) is proposing to add 4 new lanes, and yet they claim that the imperviousness of their project is 4 percent. This defies all logic. Worse yet, SHA stated at the water quality plan meeting on June 6 that management at the Maryland-National Capital Park and Planning Commission (MNCPPC) has accepted SHA's imperviousness approach. The law that established the Upper Paint Branch Special Protection area clearly states that the imperviousness of any project must be no more than 10 percent, that this limit applies to all projects, both public and private, and it explicitly states that it is applicable to road projects. Imperviousness has been calculated consistently for every project since 1981. Why is MNCPPC treating this project differently?

While much has been done to protect the Paint Branch, data from the resource agencies indicate that conditions continue to degrade, and MNCPPC planners project an alarming increases in imperviousness. This puts at risk the investment of nearly \$30 million and countless volunteer hours over three decades to protect the Paint Branch. Clearly what the Paint Branch needs now is more protection, not less. We ask the Planning Board to state at the hearing on this item on June 20 that the same approach for evaluating impervious that has been used for all previous projects needs to be used for this project as well. Alternatively, at a minimum, the Planning Board should defer action until a recommendation is available from Council member Marilyn Praisner's Upper Paint Branch Technical Work Group. Far more important than the impacts of this particular project is the dangerous precedent that bending the rules would set for all future road projects in the SPA.

Please distribute copies of this letter to the Planning Board.

Sincerely,

  
Richard A. Banyard

17530 New Hampshire Ave.

Ashton, Maryland 20861

Dr. and Mrs. Jeffrey D. Whall  
15529 Thompson Road  
Silver Spring, Maryland 20905  
301-989-1795  
MJDKTWHALL@AOL.COM

June 12, 2002

Arthur Holmes, Jr., Chairman  
Montgomery County Planning Board  
8787 Spring Street  
Silver Spring, MD 20910

RECEIVED  
JUN 14 2002

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Holmes:

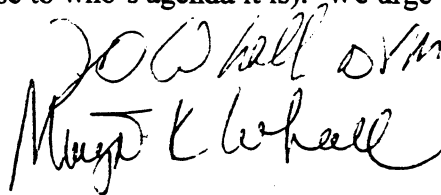
We are writing this because we were made aware of a significant action being taken by the managers at the Maryland-National Capital Park and Planning Commission. The rules are being ignored to accommodate the State Highway Administration's agenda. We are referring to the expansion of the intersection at Briggs Chaney Road and Old Columbia Pike. The Upper Paint Branch Special Protection Area is being ignored.

The law that established the Upper Paint Branch Special Protection area clearly states that the imperviousness of any project must be no more than 10 percent, that this limit applies to *all* projects both public and private, and explicitly states that it is applicable to road projects. Imperviousness has been calculated consistently for every project since 1981. Why is MNCPPC treating this project differently?

It seems the Upper Paint Branch is no longer considered a protected area if this were to happen as planned. Why do we make these rules? Is it only for some and not all? Why is this protection being taken away and threatened?

Please take action and stop this injustice of bending rules for certain projects over others. On June 20, we ask the Planning Board to state at the hearing that the same method and rules be used to evaluate impervious for all projects, including this one. Please defer action until a recommendation from Council member Marilyn Praisner's Upper Paint Branch Technical Work Group is available. Please consider the tremendous impact of this particular project. It will set a dangerous precedent: bending the rules for *all* road projects, (biased of course to who's agenda it is). We urge you to consider this action.

Sincerely,



Dr. Jeffrey Whall      Marguerite Whall

RECEIVED  
JUN 14 2002

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

15016 Timberlake Drive  
Silver Spring, MD 20905  
June 12, 2002

Arthur Holmes, Jr., Chairman  
Montgomery County Planning Board  
8787 Spring Street  
Silver Spring, MD 20910

Dear Chairman Holmes:

Managers at the Maryland-National Capital Park and Planning Commission (MNCPPC) are bending the rules on imperviousness to accommodate the SHA's expansion of the intersection at Briggs Chaney Road and Old Columbia Pike. Clearly this is not consistent with the original intent of the Upper Paint Branch Special Protection Area.

The imperviousness of the project site today is on the order of 70%. The SHA proposes to add 4 new lanes, and yet they claim that the imperviousness of their project is 4%. This defies all logic. The only conclusion that can be drawn from this is that SHA is cooking the books. Worse yet, SHA stated at the water quality plan meeting of June 6 that the management at the MNCPPC has accepted SHA's imperviousness approach.

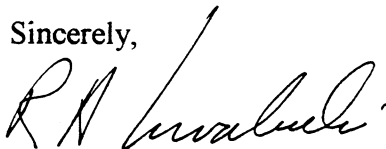
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While much has been done to protect the Paint Branch, data from the resource agencies indicate that conditions continue to degrade, and MNCPPC planners project an alarming increase in imperviousness. This puts the investment of nearly \$30 million and countless volunteer hours over three decades to protect the Paint Branch at risk. Clearly what the Paint Branch needs now is more protection, not less.

Please state at the hearing on this item on June 20 that the same approach for evaluating impervious that has been used for all previous projects needs to be used for this project as well. Alternatively, as a minimum, the Planning Board should defer action until a recommendation from Councilmember Marilyn Praisner's Upper Paint Branch Technical Work Group is available. Far more important than the impact of this particular project is the dangerous precedent that bending the rules would set for all road projects in the SPA.

Would you please distribute copies of this letter to the Planning Board?

Sincerely,



Robert A. Cavaluchi

RECEIVED  
JUN 14 2002

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

June 12, 2002

Arthur Holmes, Jr., Chairman  
Montgomery County Planning Board  
8787 Spring Street  
Silver Spring, MD 20910

Re: Briggs Chaney intersection and imperviousness requirements

Dear Chairman Holmes:

Managers at the Maryland-National Capital Park and Planning Commission are bending the rules on imperviousness to accommodate the State Highway Administration's expansion of the intersection at Briggs Chaney Road and Old Columbia Pike. Clearly this is not consistent with the original intent of the Upper Paint Branch Special Protection Area.

The imperviousness of the project site today is on the order of 70 percent. The State Highway Administration (SHA) proposes to add 4 new lanes, and yet they claim that the imperviousness of their project is 4 percent.

This causes me great concern. I have often hiked the waters of the Paint Branch that flow directly to the west of this intersection. The intersection is part of the Paint Branch watershed. If you have ever had the opportunity to hike farther south on this beautiful stream, you can see what happens in terms of speeding up erosion, with all the adverse consequences to aquatic and plant life, as a result of having too much runoff coming into these small streams too fast. There are good reasons for the imperviousness limits. As the county continues to lose woodlands to commercial, residential and transportation development, it becomes ever more important to stick to the rules that have been developed regarding protection of these streams through easements, imperviousness limits and similar mechanisms.

We ask the Planning Board to state at the hearing on this item on June 20 that the same approach for evaluating impervious that has been used for all previous projects needs to be used for this project as well. Alternatively, as a minimum, the Planning Board should defer action until a recommendation from Council member Marilyn Praisner's Upper

Paint Branch Technical Work Group is available. Far more important than the impacts of this particular project is the dangerous precedent that bending the rules would set for all road projects in the SPA. I know Council member Praisner to be fair and balanced in her approach to these issues and I think it would be useful to hear what her study has to say.

I appreciate your willingness to hear my concerns. I would also appreciate it if you could pass along a copy of this letter to other members of the Planning Board.

Sincerely,

A handwritten signature in cursive script that reads "Craig Parker". The signature is written in black ink and is positioned above the printed name and address.

Craig Parker  
2904 Greencastle Road  
Burtonsville, MD 20866