

**ATTACHMENT # B**

Planning Board Briefing #8

September 15, 2005

**TITLE:**

Linowes and Blocher Letter-August 24, 2005

Re: Peach Orchard/Allnutt Property - Potential Trade for McNeill  
and Southern Asia Properties.

**LINOWES** |  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

August 24, 2005

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**BY HAND**

Mr. Jeffrey Zyontz  
Maryland-National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

Re: Peach Orchard/Allnutt Property - Potential Trade for McNeill and Southern Asia Properties

Dear Mr. Zyontz:

Pursuant to our meeting with you, Bill Gries, Dan Hardy, and property owner/developer representatives of the Peach Orchard/Allnutt ("PO Property"), the Southern Asia ("SA Property") and the McNeill Property ("McNeill Property") we will attempt to set forth herein our understanding of three possible scenarios for providing mitigation properties related to construction of the Inter-County Connector ("ICC"). As you are aware, we represent Winchester Homes ("Winchester"), the holder of a repurchase right on the PO Property currently held by the Maryland State Highway Administration ("SHA"). SHA purchased the PO Property in 1998 for approximately \$10.6 million dollars, subject to Winchester's right to repurchase the property if it were not used for ICC right-of-way. Now that the southern alignment has been selected by SHA, it seems imminent that the PO Property will not be used for ICC right-of-way. Consequently, Winchester is now in a position to repurchase the PO Property and develop the 130 lots, which have already been approved and platted by the Montgomery County Planning Board (the "Planning Board").

Notwithstanding the above, Winchester recognizes that as part of construction of the ICC and consistent with the understanding between SHA and the Maryland-National Capital Park and Planning Commission ("MNCPPC"), where the ICC disturbs parkland and environmentally sensitive areas, MNCPPC is looking to replace these areas with other undeveloped lands. Accordingly, a mitigation package is being developed to accomplish this goal. Pursuant to the report prepared by the ICC Internal Review Team dated July 28, 2005, staff of the Planning Board is recommending the PO Property as well as the SA Property and the McNeill Property for replacement parkland related to the ICC construction.

As has been discussed previously, including public testimony before the Planning Board on August 10, 2005, the PO Property has never been recommended for parkland, has been approved for development, is already partially developed, and the environmentally significant portions of the land are being held in escrow by the Planning Board should a developer ever go forward with constructing the approved homes. Conversely, the SA and McNeill Properties are still in their

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natural state, are within the same Upper Paint Branch watershed and have been identified as desirable parkland mitigation properties in the master plan. There would be many benefits to the public by allowing some sort of "trade" between the PO Property and the SA and McNeill Properties. Such a land swap was the topic of our meeting and is reflected in the first two options described below. As we discussed, we believe either Option A or Option B reflects the parkland and environmental objectives of M-NCPPC, the legal obligations and financial limits of SHA, and the contract and property rights of Winchester Homes and the two contract purchasers. Further, Option B would clearly be a win-win for all parties involved.

Option A:

One option would be for Winchester to exercise its repurchase rights of the PO Property. Winchester would then move forward with the approved development of 130 lots and the Planning Board would retain ownership of the 70 environmentally sensitive acres. Working with the contract purchasers of the SA and McNeill Properties, Winchester would acquire those Properties and dedicate them to M-NCPPC as mitigation land on behalf of SHA, receiving credit against the repurchase price for the PO Property for the amount paid for the SA and McNeill Properties. Under this option, Winchester would be repurchasing the PO Property for the repurchase price of \$10.6 million plus interest, an approximate amount of \$15 million dollars paid in part by the value of the SA and McNeill Properties. Further, the PO Property would be developed subject to all of the environmental regulations that were already accepted for the Property at the time it was approved, including the ten percent (10%) impervious area cap. This is the simplest of the proposed options and provides much better environmentally sensitive lands, considering PO is already largely cleared, graded and developed.

Option B:

A second option would be for Winchester to repurchase the portion of the PO Property that has already been developed so that it can develop 89 lots of the 130 lots that were approved. In this scenario, Winchester would pay the SHA a pro-rata payment for this reduced portion of development (approximately 68% of the lots and the same percentage of the \$15 million) and would work with the contract purchasers of the SA and McNeill Properties to acquire them and then donate the SA and McNeill Properties to M-NCPPC as SHA mitigation land, as well as allow SHA or the Planning Board to have not only the 70 acres being held in escrow by the Planning Board, but also the 19 acres that were previously planned for the remaining 41 lots. This scenario would allow Winchester to at least develop 89 established lots as approved under the prior Preliminary Plans consistent with all of the impervious caps and other environmental conditions previously established. That is, the same lot sizes and houses as were contemplated by the prior development agreements could be utilized for development of the 89 lots. Accordingly, this would eliminate approximately 5.46 acres of previously approved impervious area including the following: Saddlehorn Court, Hildegard Road Extended, and the 41 houses on these lots as well as their driveways, leadwalks and solariums. The result is an estimated  $\pm 6\%$  impervious area based on the

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entire 142 acres instead of the approved 9.46% and the 10% limit of the approved Preliminary Plans. In addition, this reduces the impervious area of the collective 202 acres (PO plus McNeill plus SA) from 7% under Option A to 4% under Option B. Lastly, Winchester would waive its claim for the repurchase rights of the 41 undeveloped lots on the PO Property.

Option C:

The last option would be for the SA and the McNeill Properties to simply be purchased by SHA or MNCPPC for cash. As counsel for these owners/developers has stated, the contract purchasers do not wish to sell those two properties; were they to do so, the current purchase price for these Properties would be in the \$7 to \$8 million dollar range. However, such a purchase does not involve the Winchester Property or interests and the contract purchasers may resist such an option in favor of one of the above-mentioned scenarios. In addition, Winchester would then pursue its claim for repurchase rights of the PO Property, likely to be in excess of \$20 million dollars.

We have provided below a chart that compares the costs and benefits of each of the Options:

	<u>Option A</u>	<u>Option B</u>	<u>Option C</u>
Cost to SHA	\$3.1 million (10.6 mil. - 7.5 mil.)	\$7.9 million (10.6 mil. - 2.7 mil.)	\$38.1 million (10.6 mil. + 7.5 mil. + 20 mil.)
Winchester Pays to SHA	\$7.5 million (15 mil. - 7.5 mil.)	\$2.7 million (10.2 mil. - 7.5 mil.)	\$0
Parkland/Open Space to the Public	130 acres (70 M-NCPPC Ded. + 60 SA/McNeill)	149 acres (70 M-NCPPC Ded. + 60 SA/McNeill + 19 PO not dev.)	202 acres (142 PO + 60 SA/McNeill)
Costs to SHA per Acre for Parkland	\$23,846	\$53,020	\$188,614
Impervious Area in Watershed	13.79 acres (7% of 202)	8.34 acres (4% of 202)	0 acres
Development	130 lots	89 lots	0 lots

Notes/Assumptions:

- SHA paid \$10.6 million for PO Property in 1998.
- Winchester would pay \$15 million to repurchase PO Property today (purchase price plus interest at fair market value)

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- Winchester would receive a credit from SHA for the cost to purchase SA/McNeill Properties, which is \$7.5 million.
- PO Property is 142 acres; SA/McNeill Properties are 60 acres.
- M-NCPPC is holding 70 acres in escrow from PO; the southern/undeveloped 41 lots of the PO Property make up 19 acres.
- Winchester would receive 68% of the lots under Option B, and would thus pay 68% of the \$15 million value, which is \$10.2 million.
- Winchester's repurchase rights for the PO Property would be valued at \$20 million.

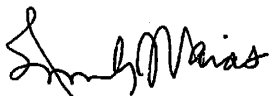
As you can see from the chart, there are significant cost differences per acre in acquiring all of the PO Property and McNeill and SA Properties, and the benefit to the public and watershed is not comparable. That is, if you elect Option B, it reduces the already approved impervious area by 40% and provides 149 acres of truly environmentally valuable land at a cost difference of \$30,000 per acre from Option A; whereas, Option C only gives SHA another 53 acres, including mostly developed and graded land, at almost four times the cost per acre of Option B. Consequently, these additional, least environmentally sensitive lands, begin to cost the public over \$188,000 an acre. Accordingly, we believe Option B is a responsible compromise that should be seriously considered.

We appreciate the opportunity to present you with these options and look forward to further discussing them with you. Again, we believe that the SA and McNeill Properties in their natural states provide a much greater environmental benefit than the already developed PO Property and hope that we can move towards a satisfactory resolution. As we have been in discussions with SHA on this issue, we are copying their counsel for their input as well.

Thank you.

Sincerely,

**LINOWES AND BLOCHER LLP**



Emily J. Vaias

cc: Janet Handy, Esq.  
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