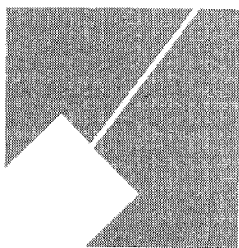


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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MCPB
ITEM NO. 15
7-13-06

June 29, 2006

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Gwen Wright, Acting Chief *GW*
Countywide Planning Division

John Carter, Chief *JC*
Community-Based Planning Division

FROM: Jorge Valladares: 301-495-4545, and *JV*
Dan Hardy: 301-495-4530, for the Park and Planning Department *DKH*

PROJECT: Intercounty Connector
Project Number AT376A21

REVIEW TYPE: Mandatory Referral No. 06809-SHA-1

APPLICANT: Maryland State Highway Administration

APPLYING FOR: Plan Approval

COMMUNITY-BASED PLANNING TEAM AREAS: I-270 Corridor, Georgia
Avenue, and Eastern County

RECOMMENDATION: Transmit comments to the Maryland Department of Transportation (MDOT)

This memorandum is prepared for the Planning Board's mandatory referral of the Intercounty Connector (ICC), the 9th session the Planning Board has held on the project since the current planning process began in June 2003. The Federal Highway Administration (FHA) released the ICC Record of Decision (ROD) on May 29, 2006, confirming the state's selected alternative, Corridor 1.

The purpose of the mandatory referral is to provide comments to the Maryland Department of Transportation (MDOT) to both:

- inform the development of their Request for Proposals (RFP) on the Design-Build process for the project, and to
- provide guidance regarding expected processes and protocols during the design, construction, and operation of the ICC.

The subject mandatory referral review is for only those portions of the ICC mainline, interchanges, and maintenance facilities within Montgomery County. The table below summarizes which elements of the project are covered by this mandatory referral, and how those elements not covered by this mandatory referral will be addressed in future reviews.

Mandatory Referral #06809-SHA-1 Coverage

Elements included in this mandatory referral	Elements <u>not</u> included in this mandatory referral
<p>Portions of ICC mainline, interchanges, and bike path in Montgomery County</p> <p>The Western Maintenance Facility</p>	<p>Elements within Prince George’s County will be addressed by the public processes determined by the Prince George’s County government</p> <p>Details regarding property transfer between the Commission and the State will be handled by subsequent Planning Board actions</p> <p>Compensatory Mitigation (CM) and Environmental Stewardship (ES) elements within Montgomery County will be subject to independent mandatory referral reviews</p> <p>The purpose and need for two potential park-and-ride lots in Montgomery County will be examined further by the Maryland Transit Administration (MTA) ICC transit study initiated in June 2006.</p>

The attached report is organized into the following sections:

- Section 1 provides the substantive comments to be transmitted as the Planning Board’s comments to MDOT. This section itemizes each of the 15 substantive recommendations (with additional detailed recommendations included in Attachment B).
- Section 2 summarizes the features of the selected alternative, Corridor 1.

- Section 3 summarizes the ICC planning process concluded by the ROD, the design and implementation process initiated by the ROD, and the transition between the two processes.
- Section 4 provides contextual information for each of the 15 recommendations in Section 1, in the same order as they are listed in Section 1.

Staff recommends that the Planning Board transmit the following mandatory referral comments from the attached report to the Maryland Department of Transportation:

- The cover letter proposed in Attachment A
- The substantive comments contained in Section 1
- The detailed comments contained in Attachment B

Staff notes two characteristics of the recommendations in the attached report:

- Attachment B reflects detailed staff comments on the ICC draft performance specifications as those specifications were defined on May 24, 2006. As part of the Interagency Working Group, staff continues to work with other agencies in an iterative process to continue the refinement of the project performance specifications.
- The attached report represents the Department staff position regarding recommendations. Individual staff recommendations are included as attachments so that the Planning Board has that information for those elements on which different opinions were synthesized into a single staff recommendation.

The attached report includes written public testimony received prior to memorandum publication. Staff looks forward to receiving additional oral testimony at the July 13, 2006 public hearing. Staff will compile additional written testimony received prior to July 13, 2006 for distribution to the Planning Board members at the hearing.

DKH:gw

mmo to MCPB re ICC 06809-SHA-1

Intercounty Connector
Mandatory Referral
MR 06809-SHA-1

Montgomery County
Department of Park and Planning
Staff Recommendations

Presented for

Planning Board Public Hearing

July 13, 2006

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SECTION 1. RECOMMENDED COMMENTS FOR TRANSMITTAL TO MDOT

PROCEDURAL

- 1) Submit an independent mandatory referral for Intercounty Connector (ICC) Contracts B and C if material changes are made to the Design-Build process, including the revision of performance specifications developed for Contract A other than to incorporate site-specific references.
- 2) As part of the development of the Environmental Management Plan, develop written guidance incorporating our Technical Review and Park Permitting process that will, per our 1989 MOU, describe ways for the M-NCPPC representatives overseeing all construction impacting parkland to influence design and construction activities as needed to protect resources, especially in the case of episodic or emergency situations.
- 3) Develop appropriate legal interagency instruments (such as MOU or property deed restriction) to document:
 - a) Agreements for the schedule and process to remove, relocate, and/or replace physical facilities on property needed for ICC construction, including the active playing fields in Layhill Local Park and Northwest Branch Recreational Park and facilities associated with the National Capital Trolley Museum.
 - b) Agreements regarding the use and restoration of park property that will be the subject of either temporary construction easements or perpetual drainage easements.
 - c) Agreements for perpetual maintenance and liability of MdTA property beneath ICC bridge structures adjacent to stream valley parks to retain the park continuity function.
- 4) Develop and distribute details of a public outreach and community involvement program during design and construction.
- 5) Consider the following elements in the development of the RFP and the review of the Design-Build proposals:
 - a) Seek to implement the highest quality product that fully utilizes the available budget.
 - b) Structure the overall compensation package in such a way that incentives for performance are given equal or greater weight than the combined incentives for cost savings and liquidated damages for exceeding project completion date projections.

- c) Where discretionary choices are available, consider the protection of natural resources, particularly those in Special Protection Areas, as the project's highest priority.

ENVIRONMENTAL AND PARKLANDS RESOURCE PROTECTION

- 6) Develop an agreement between the Maryland State Highway Administration (SHA), the Montgomery County Department of Permitting Services (DPS), and M-NCPPC that:
 - a) Outlines the content of, and review processes for, Water Quality Plans within the Upper Rock Creek and Upper Paint Branch Special Protection Areas (SPA),
 - b) Establishes points of involvement for DPS, such as inclusion on the Interagency Working Group,
 - c) Establishes the process for and timing of Planning Board review of SPA water quality plans to allow any Planning Board recommendations to be incorporated into the Design-Build process and final impervious waiver and mitigation package, and
 - d) Is developed expeditiously to be in place prior to commencement of further design work in SPAs.
- 7) Provide significant financial incentives for the Design-Build contractor to further address and reduce impacts to the highest quality forests beyond the level identified in the ROD commitments, by:
 - a) Providing incentives based on specific guidance in Attachment B (comment PS310-1), and
 - b) Including in the RFP an explicit request that proposals demonstrate how the impacts in the most sensitive areas of the right-of-way will be reduced, and including the evaluation of these proposals in the establishment of the best value award.
- 8) Limit available planting species to reduce the threat of non-native invasive (NNI) species and commit to a limited program of NNI inspection and removal on park property (Attachment B comments PS301-1 to PS301-2)
- 9) Consider three levels of incorporation of comments regarding environmental resources in Attachment B. First, consider application to the entire project, as suggested. If a recommendation cannot be accepted in that regard, next consider application to the portions of the project where the LOD is bounded by park property on both sides. Finally, consider application of comments to the portions of the project within 25 feet of any adjacent park property.

COMMUNITY PLANNING AND DESIGN

- 10) Plan for integrating future County Service Park uses into the Western Maintenance Facility so that all future maintenance facilities can be designed and operated as though one site, with shared uses such as driveway and parking access, stormwater management, and necessary environmental mitigation elements.
- 11) Improve the parkway character of the ICC roadway by elements (Attachment B, comments PS 301-3 through PS 301-11) that:
 - a) Provide additional space for landscaping,
 - b) Increase the density of required plantings,
 - c) Specify additional planting requirements with typical planting zone layouts,
 - d) Increase the level of aesthetic treatments for structural elements,
 - e) Include ornamental lighting and railing specifications,
 - f) Simplify the design options to achieve a more unified treatment, and
 - g) Provide greater detail regarding visual conformity of elements.

MULTI-MODAL TRANSPORTATION

- 12) Participate in continuing discussions and Planning Board worksessions with the County, M-NCPPC, and the public regarding:
 - a) The implementation schedule for the portions of the state's ICC bike plan that are not adjacent to the ICC, and
 - b) The master plan and implementation status for those portions of the ICC for which the County master plan recommends a bike path but the state proposal does not.
- 13) Incorporate the following elements of the hiker-biker trail into the Design-Build contracts:
 - a) Construct the easternmost ICC bridge across Northwest Branch in a manner so that a future bike trail crossing of the stream valley could be supported by the structure
 - b) Extend the trail beneath Norbeck Road (MD 28), as well as providing the at-grade crossing at Wintergate Drive
 - c) Provide either traffic signal phases or grade separated pedestrian crossings of Georgia Avenue (MD 97), Layhill Road (MD 182), and New Hampshire Avenue (MD 650)
 - d) Include other recommendations described in Attachment B (PS 309-1 through PS 309-8).

- 14) Provide a sequencing plan for implementation of the ICC interchanges at Georgia Avenue (MD 97) and US 29 that shows how:
 - a) the design will work both prior to the construction of adjacent interchanges (MD 97 at MD 28 and US 29 at Fairland Road),
 - b) safe traffic and pedestrian accommodations will be accommodated in the ICC-open-to-traffic condition, and
 - c) reconstruction efforts for the subsequent adjacent interchange connections can be phased to minimize cost and community disruption.

- 15) Incorporate additional design references and details related to transportation improvements in Attachment B, including elements such as design speeds, sidewalk connections and clear zones, and roadway abandonment procedures.

SECTION 2. ICC SELECTED ALTERNATIVE FEATURES

The ROD documents the features of the ICC Selected Alternative, which can be described as consisting of three two functional components; those associated with the roadway (including maintenance facilities and bike path segments) and those associated with compensatory mitigation or environmental stewardship features.

ICC ROADWAY AND RELATED ELEMENTS

The ICC selected alternative is an 18-mile long, six-lane toll roadway with the following characteristics:

- The Corridor 1 alignment, commonly described as the master plan alignment, with three notable exceptions; the alignment of Rock Creek Option C, the alignment of Northwest Branch Option A, and the inclusion of a partial interchange at Briggs Chaney Road,
- Interchanges with I-370/Metro Access Roadway, Georgia Avenue (MD 97), Layhill Road (MD 182), New Hampshire Avenue (MD 650), US 29, and Briggs Chaney Road in Montgomery County and with I-95 and Virginia Manor Road in Prince George's County. The ICC eastern terminus is at an at-grade intersection with US 1,
- Construction of 7.7 miles of bike path adjacent to the roadway,
- Construction of two maintenance facilities; a ten-acre Eastern Maintenance Facility adjacent to the ICC interchange with US 1 and a three-acre Western Maintenance Facility on the Casey 6 property adjacent to the ICC at Crabbs Branch Way.

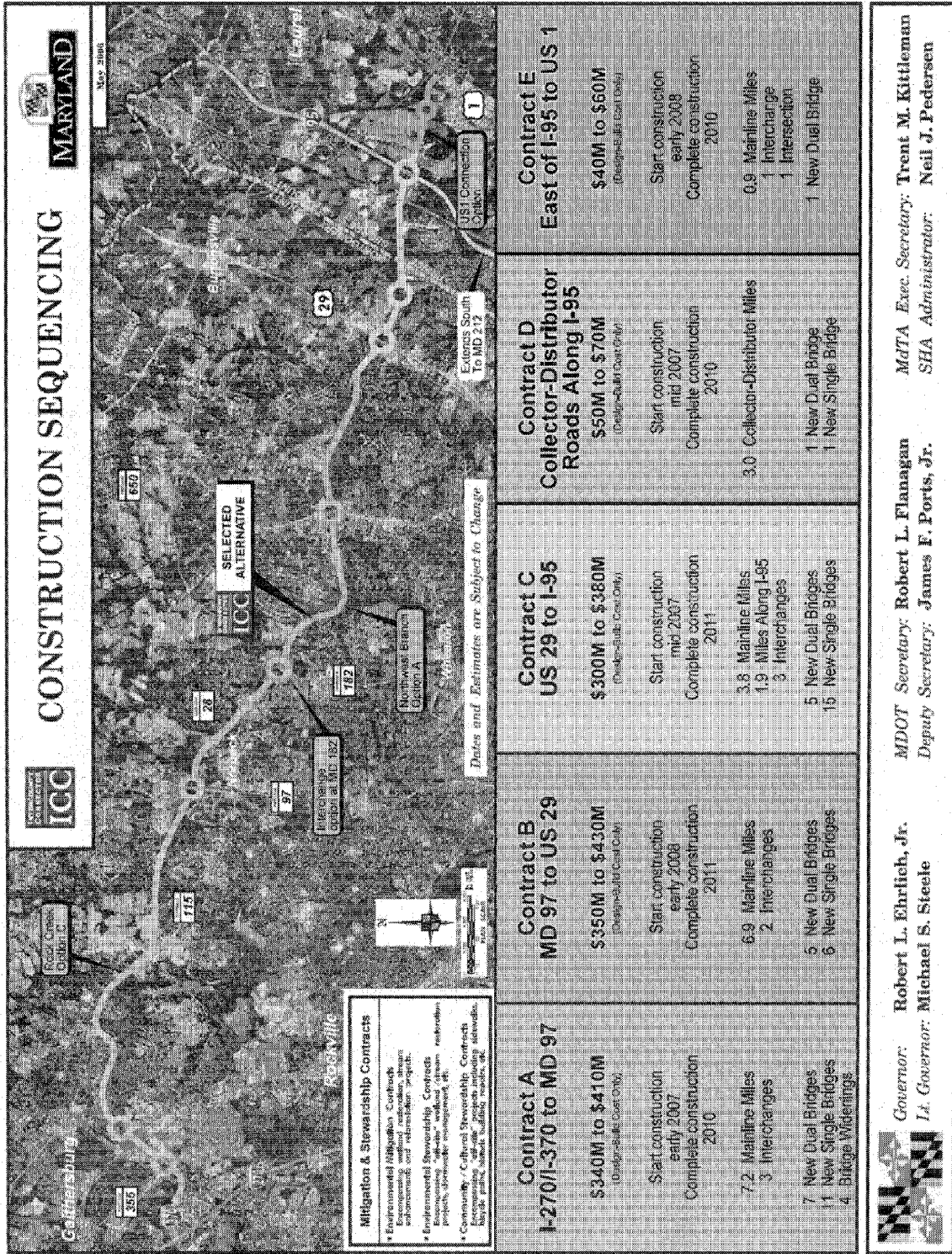
The state will construct the roadway, interchanges, and bike path elements of the selected alternative through a series of five Design-Build contracts as indicated in Exhibit 1.

The ROD describes many of the commitments made to minimize the environmental and community impacts of the ICC design. These commitments, resulting in a less intrusive design than the concepts examined in the 1997 DEIS, were instrumental in achieving federal and state regulatory agency concurrence to select Corridor 1. The Planning Board has been previously briefed on the design elements such as longer bridges, a narrower roadway footprint, and more aggressive stormwater management elements. Updates on these commitments are described as they pertain to specific recommendations throughout this report.

ICC COMPENSATORY MITIGATION AND ENVIRONMENTAL STEWARDSHIP

The ICC selected alternative includes 97 elements, independent of the wildlife passage structures incorporated into the roadway design, that comprise the compensatory mitigation and environmental stewardship package, as indicated in ROD Table 4.

Exhibit 1. Design-Build Contract Status



Parkland Mitigation

The Planning Board reviewed SHA and M-NCPPC staff proposals for a Corridor 1 parkland mitigation package at ICC Worksession #7 on July 28, 2005, and approved the staff parkland mitigation concept at ICC Worksession #8 on September 15, 2005. Per our 1989 MOU, included as Attachment D, the parkland concept must provide replacement property that is equivalent to the parkland lost in terms of acreage, economic value, recreational value, and natural resource value. Natural resource value equivalency was determined using interior forest acreage as the primary determinant, a process developed by staff and accepted by the Planning Board at Worksession #4 on July 15, 2004 after public hearing.

The Planning Board parkland mitigation strategy included the acceptance of 698 acres of parkland containing 206 acres of interior forest to replace the loss of 82 acres of parkland with an associated loss of 181 acres of interior forest. The state committed to construct five playing fields on the Llewellyn Property adjacent to Northwest Branch Regional Park to mitigate for the loss of playing fields in the preferred alternative.

The ROD provides an update on the total parkland acquisition and replacement totals for the selected alternative. The Corridor 1 parkland impact has been increased from 82 acres to 88 acres based primarily on the correction of five acres in the Paint Branch Stream Valley Park as parkland rather than reserved transportation corridor. Staff notes that these properties would also increase the interior forest impact from 181 to 186 acres, still lower than the 206 acres of interior forest provided in the mitigation strategy.

As indicated in Exhibit 2, the ROD identifies a total parkland replacement package consisting of 777 acres, greater than the replacement strategy considered by the Planning Board for the following reasons:

- The state continues to consider the 49-acre Santini Road properties as parkland. While staff concurs that the properties are suitable conservation properties, they are not part of the Planning Board's parkland replacement strategy as they have very little interior forest and are not contiguous to any other parks, an important consideration for parkland management purposes. The Santini Road properties will be managed by the Washington Suburban Sanitary Commission.
- The state will not need to use all of the ALARF properties reserved by M-NCPPC for the ICC. The state has committed to return an estimated 29 acres not needed to M-NCPPC.

COMPENSATORY MITIGATION AND ENVIRONMENTAL STEWARDSHIP

Figure 4 of the ROD describes both the compensatory mitigation and environmental stewardship elements of the selected alternative. The state estimates the overall compensatory mitigation and environmental stewardship package to be \$370M.

Exhibit 2. Parkland Replacement

Table 5
Parkland for Selected Alternative

Property	Acres	Description
Dungan Property North	44.9 acres	The Dungan Property North would provide 44.9 acres of replacement parkland adjacent to existing parkland in the North Branch Rock Creek Watershed. This property would provide stream valley protection, passive recreational opportunities, and community open space. It contains 738 linear feet of streams, 20 acres of forest, and 24.5 acres that would be reforested by SHA. Once reforested, there is potential in the future for up to 87 acres of new FIDS habitat on site and on adjacent lands in North Branch Stream Valley Park.
Llewellyn Property	23.2 acres	The Llewellyn property would provide 23.2 acres of replacement parkland adjacent to the Northwest Branch Recreational Park. The property would include construction of four baseball/softball fields, one soccer field, onsite parking, and restrooms. The replacement fields would be superior in quality than the existing fields because they are located in upland areas that are less prone to flooding. Access to these replacement fields would be provided directly from MD 28, which is also an improvement over access to the existing fields from Layhill Road and Bonifant Road. This property would also provide 3 acres of reforestation land.
Peach Orchard Allnut Property	118 acres	The Peach Orchard Allnut property would provide 118 acres of replacement parkland in the Upper Paint Branch Watershed. This site would provide stream valley protection and passive recreational opportunities. The Peach Orchard Allnut site would provide 15.9 acres of wetlands, 2,100 linear feet of streams, and 28.3 acres of forest. There would also be approximately 90 acres of potential reforestation land and 67 acres of potential future FIDS habitat. Also, because it is at the headwaters of the Paint Branch, it would serve to protect this portion of the stream.
Santini Road Properties	49.2 acres	The Santini Road Properties would serve to protect undeveloped land in the sensitive Rocky Gorge watershed, thereby providing stream valley protection, passive recreation, and community open space in this portion of the County. Though not directly adjacent to the T. Howard Duckett Watershed Property, these properties would be conserved as parkland and protected from future development. Therefore, they would continue to offer additional protection for the T. Howard Duckett (Rocky Gorge) Reservoir. These sites contain 35.2 acres of existing forest and an additional 14 acres would be reforested.
Southern Asia Adventist Property	23.2 acres*	The Southern Asia Adventist Property would provide 23.2* acres of replacement parkland in the Upper Paint Branch Watershed. The site would provide stream valley protection and passive recreational opportunities. It contains extensive areas of stream valley buffer and good quality forest. It also contains the critical headwater wetland complexes of the Left Fork of the Paint Branch. These features would be protected by converting this land to parkland.
McNeill Property	36.2 acres*	The McNeill Property would provide 36.2* acres of replacement parkland in the Upper Paint Branch Watershed. The site would provide stream valley protection and passive recreational opportunities. It contains extensive areas of stream valley buffer and good quality forest. It also contains the critical headwater wetland complexes of the Left Fork of the Paint Branch. These features would be protected by converting this land to parkland.
Casey Property at Hoyles Mill	459 acres	The Casey Property at Hoyles Mill is located outside of the ICC Study Area, near Poolesville in Montgomery County. This site, which would become public parkland, would add an additional 459 acres to the park system adjacent to several existing parks including Seneca Creek State Park, South Germantown Recreational Park, Little Seneca Stream Valley Park and Hoyles Mill Conservation Park. Preservation of this property will add over 340 acres of existing forest and 214 acres of existing FIDS habitat to the park system. There is approximately 118 acres of open land that may be available for reforestation, which could also help increase the FIDS habitat to approximately 340 acres on site.
Unused DTA in Northwest Branch Stream Valley Park - Unit 5	21.3 acres	The unused portion of the DTA in Northwest Branch Stream Valley Park - Unit 5 would be converted to parkland adding 21.3 acres to the park. The conversion of this land would protect land adjacent to the existing park that has many of the same natural features and passive recreational functions as the adjacent parkland.
SHA-Owned Unused DTA Adjacent to Upper Paint Branch Stream Valley Park	7.6 acres	The unused SHA-owned DTA adjacent to Upper Paint Branch Stream Valley Park will be transferred to M-NCPPC for incorporation into the park. This area includes forests, wetlands, streams, and FIDS habitat. It was originally acquired by SHA for the ICC. It is not needed due to a change in the corridor for the ICC on the M-NCPPC's Master Plan in 1982. For further information about this 7.6-acre parcel, see the Addendum to the Section 4(f) Evaluation, which is attached as to this ROD as <i>Attachment G</i> .
TOTAL	782.6 acres (total); 776.6 (net)*	* The total of the properties listed above is 782.6 acres. However, it is expected that approximately six acres of land (total) located on the Southern Asia Adventist and McNeill Properties would be reserved for the planned widening of MD 198. When this acreage is subtracted, the net total is 776.6 acres ²⁵

²⁵ SHA has committed to transfer the unused Designated Transportation Area described in this table to M-NCPPC (the 21.3 acres in Northwest Branch Stream Valley Park and the 7.6 acres adjacent to the Upper Paint Branch Stream Valley Park). In addition it may be possible, in several parks, to use less than the entire Designated Transportation Area. SHA will include incentives in construction contracts to minimize the use of land within the Designated Transportation Areas. If such lands are available, they will be offered to M-NCPPC after construction of the ICC has been completed. See Item # 159 in Attachment A (Summary List of Project Commitments) to this ROD.

Compensatory Mitigation

Compensatory mitigation comprises projects that are required by regulation to offset the adverse impacts created by the selected alternatives. As indicated in ROD Figure 4, the compensatory mitigation includes:

- The nine areas of new parkland described above
- Six stream restoration sites
- Five water quality sites to improve stormwater management from existing private developments in the Upper Paint Branch SPA
- Three wetland creation sites
- Three fish passage sites
- Compensatory mitigation also includes specifications regarding the types of wildlife passages to be maintained at each of 26 sensitive stream or other drainage course crossings.

Environmental Stewardship

Environmental stewardship comprises projects that are not required by regulation to offset adverse impacts, but are rather included in the project to meet the stewardship elements of the Purpose and Need, as described in the DEIS. As indicated in ROD Figure 4, the environmental stewardship includes:

- Participation with M-NCPPC in restoration for the Woodlawn Barn
- Four segments of sidewalks or bike path construction
- Twenty-one locations where Best Management Practices for stormwater management retrofits will be implemented in SPAs
- Sixteen additional locations where stormwater management pond retrofits will be implemented in SPAs
- Twenty-six stream restoration sites
- Two wetland creation sites
- A wayfinding program for historic and cultural resources in the study area
- A dog exercise area at Olney Manor Recreational Park.

SECTION 3. ICC PLANNING AND DESIGN PROCESSES

The May 2006 Record of Decision marks the formal federal process transition from planning for a variety of alternatives (including a No-Action alternative) to design and construction activities associated with the selected alternative. From a pragmatic perspective, however, the transition from planning to design is not a turn-of-the-switch, but is more a shift in the focus of activities among all agencies involved in the ICC process. This section of the report highlights the recently completed planning process and summarizes the design and construction process envisioned by the state.

PLANNING PROCESS

The concept for an east-west limited access highway connecting the I-270 corridor to Prince George's County, originally termed an Outer Beltway, has been part of the Montgomery County Master Plans since the 1950s. The current master planned alignment for the ICC was approved and adopted in 1972. The first two ICC studies conducted by the state under the National Environmental Policy Act (NEPA) were halted after publications of Draft Environmental Impact Statement (DEIS) documents, one in 1983 and a second in 1997. The ICC is now the single largest unbuilt component of the County's master plan for transportation facilities; therefore both the level of mobility benefits and the level of environmental impacts requiring mitigation are very significant.

Following the 1997 DEIS, independent state and county studies conducted a broader search for consensus, supplementing the technical findings of the DEIS with informed advice of technical experts and local leaders. The Transportation Solutions Group (TSG), convened by Governor Glendening, released a 1999 report concurring with the DEIS finding that a need for limited access connection in the study area still existed. The Planning Board's Transportation Policy Report (TPR), released in 2002 after four years of development guided by a 35-member task force of local leaders, also reconfirmed the need for the ICC. The TPR Task Force released an independent report that also concurred that the ICC was needed.

During the past ten years, the Planning Board and County Council have contemplated removing the ICC from area master plans. Due in part to the lack of a suitable alternative transportation strategy, the ICC has been retained in area master plans adopted for Aspen Hill (1994); Fairland, Cloverly, and White Oak (1997), Upper Rock Creek Area (2004), Olney (2005), and the Shady Grove Sector Plan Area (2006).

The current NEPA study process was initiated in June 2003, with a DEIS published in November 2004, an FEIS published in January 2006, and a ROD published in May 2006.

Prior Planning Board Actions

The Planning Board conducted eight worksessions on the ICC during the 30-month NEPA planning process. The Planning Board held public hearings for the three worksessions in which staff requested that the Planning Board provide policy guidance on the ICC:

- On July 15, 2004 staff proposed the use of interior forest as the primary determinant of the ecological value of replacement parkland.
- On February 3, 2005 staff recommended guidance on the development of a Locally Preferred Alternative from the range of alternatives described in the DEIS.
- On July 28, 2005 staff recommended the replacement parkland strategy.

A summary of the prior Planning Board worksessions is included in Attachment I and website references to the staff reports for those worksessions is included in Attachment K.

The County Council reviewed the DEIS and transmitted recommendations to the state on a locally preferred alternative on March 3, 2005. Exhibit 3 shows how the selected alternative in the ROD generally responds to the County Council comments.

Next Steps

The publication of the ROD marks the formal completion of the state's planning process and the beginning of the Design-Build process. The local planning process, however, will ultimately need to reflect those elements of the selected alternative that are not consistent with the current master plan. Three of those elements have already been discussed and concurred with by the Planning Board: the selection of the Rock Creek Option C alignment, the selection of the Northwest Branch Option A alignment, and the inclusion of a partial interchange at Briggs Chaney Road.

Staff efforts on the ICC will continue to pursue the master plan studies initiated in 2004. The primary legal purpose served by an adopted master plan alignment is that of right-of-way preservation. Because the state is expeditiously acting to acquire properties for construction, staff finds that there is no pragmatic reason to immediately adopt a master plan amendment regarding the elements described above. Our FY 07 work program does not identify a schedule for an ICC master plan amendment process.

The primary difference remaining between the selected alternative as defined in the ROD and the Planning Board's position on the ICC relates to the status of the "missing segments" of the bike path. During the spring 2005 review of the DEIS, several alternative perspectives were offered on the means to provide east-west off-road bicycle connectivity associated with the ICC. Staff recommends that further county and state coordination is needed at the planning level to refine the master plan bike path network,

Exhibit 3. ROD Response to County Council DEIS Comments

The table below shows how the ROD has addressed the eleven comments in the County Council's March 1, 2005 comments on the DEIS.

Item	Council Comment on DEIS	FEIS response	Staff notes
1	Select Corridor 1	Yes	
2	Select Rock Creek Option A	No	ROD selection of Option C consistent with Planning Board recommendation to Council
3	Include MD 182 interchange	Yes	
4	Select Northwest Branch Option A	Yes	
5	Defer I-95 truncation to Prince George's County	N/A	
6	Delete Old Columbia Pike ramps	Yes	
7	Include Briggs Chaney Road partial interchange	Yes	
8	Construct bike path from Needwood Road to County line	Partial	ROD includes 7.7 miles of the 18 miles of master planned bike path
9a1	Bridge at Station 174	No	
9a2	Bigger culvert at Station 297	No	Staff now concurs with SHA response
9b	More linear SWM, retaining walls, reinforced side slopes	Yes	Extent of agreement part of staff review of performance specifications
9c	Reduce property displacements with retaining walls	Not yet answered	To be determined during Design-Build
9d	Preserve ROW for Georgia Avenue busway	Yes	
10	Evaluate heavy truck prohibition	Not yet answered	
11	Add dredging of Lake Needwood	No	

as described in the section of this memorandum regarding bike path implementation comments.

MANDATORY REFERRAL

The ICC is a top priority at the federal, state, and local levels of government. From the federal and state perspectives, the direction to staff has been to identify innovative means to deliver a quality product with a minimum of delay. The state's proposed "best value" Design-Build contract vehicle is one of those means.

As described in greater detail below, the Design-Build contract vehicle will transfer direct responsibility for design and construction from the state to the selected contractor. The contractor therefore has flexibility to make revisions to the design within the bounds established by the ROD, as well as all applicable regulations, permit conditions, and performance specifications. State, federal, and local agencies are tasked with ensuring that the ongoing design and construction activities remain compliant with the project requirements.

This mandatory referral, therefore, is unlike any other that has recently been brought to the Planning Board. **The task for review agencies at all jurisdictional levels is to identify performance specifications and desired outcomes rather than specific design adjustments.** The permits issued by the U.S. Army Corps of Engineers (COE) and the Maryland Department of the Environment (MDE), available for review at website locations identified in Attachment K, demonstrate the process by which acceptable bounds are established for project performance despite the fact that design plans are not yet completed to allow a review for conformance.

The state and federal agencies are tasked with moving expeditiously on this project; a directive that has raised concerns among many County residents and some elected officials. Staff has received similar concerns regarding the schedule for this mandatory referral review. Due to continuing coordination throughout the planning process, staff has been able to dovetail the mandatory referral process to the state's RFP process.

The mandatory referral process is described in Section 7-112 of the Regional District Act and the Planning Board has adopted uniform standards for mandatory referral review as required in Section 7-112. Both documents identify a 60-day review period "clock", which is the time between the submission of a complete application and the delivery of Commission comments to the applicant.

From a more pragmatic perspective, staff has scheduled this mandatory referral to providing meaningful input into the RFP development process, while meeting two primary objectives:

- Establishment of a public hearing date after FHWA issuance of the ROD,
- Providing at least 30 days notice of the Planning Board's public hearing, and
- Providing comments to the state at an appropriate time in the RFP process.

Staff processed the mandatory referral as follows:

- SHA submitted a mandatory referral application to M-NCPPC on May 4, 2006.
- Staff worked with SHA to identify missing information and establish a complete mandatory referral submission as of May 24, starting the 60-day review period
- The Federal Highway Administration issued the Record of Decision on May 29, 2006.
- Staff established the July 13 public hearing and tentative July 20 worksession date so that the Commission comments could be provided both within the 60-day review clock and in a timely manner to influence the RFP process.
- Staff mailed notices on June 8 to the addressees in the civic and homeowners database for those associations within one mile of the selected alternative (plus registered umbrella associations or special interest groups countywide).

DESIGN-BUILD PROCESS

The Design-Build process for ICC Contracts A through E entails three separate subprocesses:

- The development of Requests for Proposals (RFP) and selection of a Design-Build contractor for each contract
- The design and construction of the roadway facility
- Environmental monitoring both during and after construction

Details on each of these subprocesses are described briefly in the following paragraphs, with particular attention to how the Design-Build process affects staff and public comment through the mandatory referral process.

Requests for Proposals

MDOT is developing a series of Request for Proposals (RFP) for the five Design-Build contracts shown in Exhibit 1. The Design-Build process is a **best value** selection process, meaning that both estimated costs and quality of value are considered in the selection of a Design-Build contractor from a group of pre-qualified teams.

The Design-Build contractor will need to adhere to a series of conditions:

- The Permit Conditions stipulated by the US Army Corps of Engineers and the Maryland Department of the Environment,
- The I45 ROD Commitments, included as Attachment C,
- The contract performance specifications, which cross-reference the other commitments,
- Other state and federal regulations as required by law,
- Other state and federal guidelines or County requirements such as cited by the RFP.

The ROD Commitments were established by FHWA through the collaborative Interagency Working Group (IAWG) process, incorporating recommendations from both agencies and consultants on the IAWG, including M-NCPPC staff. **The focus of the staff mandatory referral comments is to add value to the RFP process by supplementing the Permit Conditions and ROD Commitments.**

The Design-Build concept encourages the contractor to seek innovative means to achieve contractual objectives, as long as the design conforms to the bounds established by all conditions. To use a simple analogy, the contract conditions define a “box” within which the contractor is able to operate with flexibility. The primary purpose of staff comments on the mandatory referral is not to prescribe how the contractor should operate within that box, but rather to suggest means by which that box can be better defined.

Based on coordination during the past two months, staff expects that some of the comments in Attachment B of this memorandum are already incorporated into the state’s current working draft RFP documents. SHA staff expects that the Contract A RFP will be issued in mid-July, after the production of this memorandum, but prior to the submission of Planning Board mandatory referral comments at the end of July.

However, SHA will consider the Planning Board’s comments as an amendment to the Contract A RFP. The qualified contractors will also be reviewing and commenting on the RFP issued in July. The state anticipates considering contract specification amendments from other parties, including IAWG agencies and the qualified contractors, through September. After that time, the RFP specifications will be fixed and the competitive bid process will begin, with a due date for sealed bids estimated in November and a Notice-to-Proceed in March 2007. In a way, this is comparable to the County’s process for adopting master plans, with multiple production drafts prior to the final, binding version.

Roadway Design and Construction

The roadway design and construction will be managed and monitored through a multi-agency, multi-disciplinary effort with multiple checks and balances. MDOT has a high level of confidence in this approach, having developed it from both the successes and lessons learned from the Woodrow Wilson Bridge construction project.

MDOT has developed a process called the “InterAgency Working Group” (IAWG) that led the development of the ICC DEIS and FEIS. The IAWG consists of 16 federal, state, and local agencies, as described in greater detail on pages VIII-3 through VIII-9 of the FEIS. The IAWG process will continue through design, construction, and post-construction monitoring. M-NCPPC staff will continue to serve on the IAWG team.

Environmental Monitoring

The state's ICC environmental monitoring activities began during the development of the DEIS and will continue both during and beyond the 2010 timeframe for construction activities. The environmental management and monitoring commitments are summarized in pages VII-96 through VII-98 of the FEIS.

The Design-Build process focuses on the use of collaborative, over-the-shoulder reviews to identify and resolve issues, as well as the production of formal compliance reports used to grade performance against contract specifications. The monitoring program is structured into three overlapping components:

- The Federal Highway Administration and the state transportation agency members (the State Highway Administration and the Maryland Transportation Authority) are responsible for maintaining a database tracking the compliance with the project commitments outlined in Attachment C.
- An Environmental Construction Management team will monitor the performance of sensitive environmental issues and project compliance on a daily basis during project construction. This team will closely interact with the contractors and the construction inspection teams to both identify and avoid potential problems, as well as acknowledge and react to unforeseen issues. This team will also be responsible for providing weekly inspection and erosion/sediment control rating reports, quarterly formal compliance reports, and final reports to document compliance. M-NCPPC will have representation on this team.
- An Independent Environmental Monitor will serve as an extension of staff for the two regulatory agencies (the US Army Corps of Engineers and the Maryland Department of the Environment) to focus on reviews associated with the regulatory permits.

PROPERTY TRANSFER

The Planning Board approved the replacement parkland concept for the state's selected alternative on September 15, 2005, as documented in the September 21, 2005 correspondence to the state included in the FEIS Appendix B (page 213). The property transfer will occur in several stages, each of which will require separate Planning Board action. Those parcels that were both acquired by M-NCPPC explicitly as use for transportation right-of-way through the Advance Land Acquisition Revolving Fund (ALARF), and needed in their entirety for ICC right-of-way will be transferred to the SHA during summer 2006. Remaining parcels needed for the ICC are a combination of parkland and ALARF properties. M-NCPPC and SHA staff are coordinating on property transfer details. Our MOU with the state indicates that property needed for the ICC must be transferred before roadway construction begins, so staff anticipates that property transfers from M-NCPPC to the state will occur over time following the contract schedule shown in Exhibit 1.

Replacement parkland will be transferred from the state to M-NCPPC when required mitigation activities have been completed. Most of the replacement parkland acreage will be managed as conservation areas to address natural resource impacts and the state will need to conduct remediation and reforestation activities on those sites before M-NCPPC accepts them as parkland.

The state is working with M-NCPPC to define a schedule for replacing active use facilities in parkland, namely the ballfields at two sites (Layhill Local Park and Northwest Branch Recreational Park) and the Trolley Museum. The state will also need to agree with M-NCPPC conditions regarding parklands needed for temporary use during construction or perpetual drainage easements. Additional details on these elements are described in the sections of this memorandum on Comment #3.

As described in Section B, the state has also committed to provide unneeded portions of properties to M-NCPPC; these transactions will be made after project completion.

SECTION 4. DEVELOPMENT OF RECOMMENDATIONS

This section of the report provides contextual information for both the substantive recommendations in Section 1, as well as the more detailed editorial comments in Attachment B.

COMMENT #1: MANDATORY REFERRAL COVERAGE

The state proposes to construct the ICC project with three basic procedures:

- The roadway will be constructed through a Design-Build process with five independent contracts
- The two maintenance facilities will be constructed through independent contracts let by the Maryland Transportation Authority
- The 97 compensatory mitigation and environmental stewardship projects will be constructed through independent contracts by MDOT modal agencies to be determined.

Exhibit 4. Mandatory Referral #06809-SHA-1 Coverage

Elements included in mandatory referral	Elements <u>not</u> included in mandatory referral
<p>Portions of ICC mainline, interchanges, and bike path in Montgomery County</p> <p>The Western Maintenance Facility</p>	<p>Elements within Prince George's County will be addressed by the public processes determined by the Prince George's County government</p> <p>Details regarding property transfer between the Commission and the State will be handled by subsequent Planning Board actions</p> <p>CM and ES elements within Montgomery County will be subject to independent mandatory referral reviews</p> <p>The purpose and need for two potential park-and-ride lots in Montgomery County will be examined further by the MTA ICC transit study initiated in June 2006.</p>

The mandatory referral submission includes plans and profiles for the ICC project as described in the ROD. As indicated in Exhibit 1, the state intends to begin construction on the westernmost segment of the ICC between I-370 and just east of Georgia Avenue (MD 97) described as Contract A. The draft performance specifications submitted May 4,

2006 as part of the mandatory referral are written to apply only to Contract A but are designed to apply to all ICC Design-Build contracts. The mandatory referral submission also includes information supplied through May 24, 2006, regarding bridge specifications and retaining wall specifications for the entire portion of the roadway within Montgomery County.

Staff notes that because the Planning Board is not the only agency commenting on the RFP, even if the state responds positively to the Board's comments in August, some of those responses could be revisited by the time the RFP is "locked down" in November. Staff accepts that this mandatory referral should apply to all portions of the ICC mainline within Montgomery County. Staff expects that specific Contract A performance specifications textual references to parks, stream valleys, communities, roads, historic/archeological sites, and other features will be repeated so that the same types of features are treated in the same manner in Contracts B and C.

However, if the state changes plans or procedures between the completion of performance specs for Contract A and the issuance of RFP documents for Contracts B or C, staff will expect the opportunity to bring those changes back to the Board as a subsequent mandatory referral. Per the Uniform Standards for Mandatory Referral Guidelines, staff will work with SHA to determine whether any such changes would require an administrative review or a full Planning Board review.

COMMENT #2: STAFF INVOLVEMENT IN ENVIRONMENTAL MANAGEMENT TEAM

The SHA proposal to construct the ICC using a Design-Build process has caused a high level of concern among staff, particularly those for whom resource protection and community involvement are primary work program objectives. Commenting at this stage of the Design-Build process is inherently more proactive than reactive, and our methods of operation are typically defined to be reactive.

A common staff concern is that it's difficult to develop recommendations on any element without a more detailed plan to react to, whether that plan is an erosion-sediment control proposal, a stormwater quality concept, or a landscaping concept. The most common draft staff recommendation has been a suggestion to incorporate "review and approval by M-NCPPC" into the RFP Performance Specifications.

However, the state's process is established with a focus on "over the shoulder" design and continuing interagency monitoring to ensure that the design and construction processes conform with all commitments. This process has very few "review and approval" steps where design stops for a period for concurrent interagency review. Where such reviews exist, the Interagency MOU established on the project limits approvals to the Lead Agencies (FHWA, MdTA, and SHA) and the Permit Agencies (COE and MDE). As with any mandatory referral, our agency approvals are limited to those regulatory items associated with park permits.