



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

Agenda #9

Agenda Date: March 6, 2008

February 26, 2008

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mary Bradford, Director of Parks
Michael F. Riley, Deputy Director of Parks *MR*
Douglas Alexander, Acting Chief, Park Development Division *DA*

FROM: William E. Gries, ^{*weg*} Land Acquisition Specialist

SUBJECT: Authorization to Convey 37.27 acres, more or less, of parkland in Fee Simple and 6.29 acres, more or less, of parkland in Temporary Easements to the State Highway Administration of the Maryland Department of Transportation as Right-of-Way and as Temporary Construction Area for the Intercounty Connector.

Staff Recommendation: Approval

RECOMMENDATION:

Staff recommends that the Montgomery County Planning Board approve the attached resolution (Attachment #1) authorizing the Commission to convey to the State Highway Administration (SHA) of the Maryland Department of Transportation:

- 1) Approximately 37.27 acres, more or less, of parkland, "in fee" (21.68 acres in Northwest Branch Recreational Park; 8.11 acres in Northwest Branch Stream Valley Park, Unit 5; 7.43 acres in Upper Paint Branch Stream Valley Park; and 0.05 acres in Layhill Local Park) as right-of-way for the Intercounty Connector
and
- 2) Approximately 6.29 acres of parkland, "in temporary easements" (1.78 acres in Northwest Branch Recreational Park; 0.87 acres in Northwest Branch

Stream Valley Park, Unit 5; and 3.64 acres in Upper Paint Branch Stream Valley Park) for use during construction of the Intercounty Connector.

These interests in real estate are located within the limits of Contract B of the ICC. The area covered by Contract B runs between Georgia Avenue (MD Rte. 97) on the west and Columbia Pike (U. S. Route 29) on the east. The consideration to be given by SHA for the "in fee" and "temporary construction easements" on parkland needed for the ICC is the mitigation land totaling 776.6 acres identified in the approved EIS for the ICC project. The mitigation lands are specifically identified on Attachment #2. All mitigation lands identified on Attachment 2 will be conveyed by SHA to M-NCPPC at no cost, with the exception of the Santini Road property, which is to be conveyed to WSSC as watershed protection lands for the T. Howard Duckett Reservoir and the Dungan property, which will be dedicated to M-NCPPC as part of the development approval process for Bowie Mill Estates. The conveyance of these mitigation lands is a condition of the Record of Decision (ROD) therefore there is ample assurance that these lands will be conveyed accordingly by SHA when these lands are in a condition acceptable to the Commission and WSSC.

BACKGROUND:

On May 29, 2006 the Federal Highway Administration issued its Record of Decision (ROD) on the proposed Intercounty Connector between I-370 in Montgomery County and Route 1 in Prince George's County. Subsequent to the ROD being issued SHA has begun the acquisition of properties needed for the right-of-way to support the project. In addition to initiating negotiations to acquire property from private landowners and Montgomery County, SHA has, to date, negotiated four purchases from M-NCPPC. The first involved the purchase of approximately 130 acres of ALARF properties, which was approved by the Montgomery County Planning Board on July 6, 2006 and confirmed by the full Commission on July 27, 2006. The second involved the purchase of approximately 87 acres of ALARF properties, which was approved by the Montgomery County Planning Board on February 15, 2007. The third involved the conveyance of approximately 74 acres of existing parkland, in fee simple, and approximately 14 acres of existing parkland in temporary easements (Contract A), which was approved by the Montgomery County Planning Board on March 8, 2007 and confirmed by the full Commission on March 21, 2007. The fourth involved the conveyance of approximately 0.1533 acres of existing parkland, in fee simple, (Contract C) which was approved by the Montgomery County Planning Board on January 10, 2008 and confirmed by the full Commission on January 16, 2008.

The fifth and last "in fee" transfer of Commission owned parkland properties needed as right-of-way for the Intercounty Connector has now been requested by SHA. These properties fall within the limits of Contract B of the ICC construction project. The total "in fee" area, which amounts to 37.27 acres, more or less, will be graphically identified for the Board on large-scale aerial maps at the 2/28/08 meeting. If, after these conveyances, the ICC project is not pursued for whatever reason, these lands will revert

back to the Commission at no cost pursuant to Section 8-309 of the Transportation Article of the Annotated Code of Maryland.

In addition, SHA has also requested "temporary construction easements" on parkland within the limits of Contract B. The total "temporary construction easement" area, which amounts to 6.29 acres, more or less, will also be graphically identified for the Board on large-scale aerial maps at the 3/6/08 meeting. Upon completion of ICC construction, all rights to utilize these temporary easement areas by SHA shall cease to exist, provided however, in no event shall these temporary rights extend 10 years beyond the date of the original grant of easement. Also, the temporary easement areas can only be used by SHA according to a specific set of conditions that will be incorporated into the easement document. These conditions were negotiated and agreed to between SHA and Park staff after many weeks of discussion. The Planning Board concurred with the agreed to conditions at its meeting of February 8, 2007. The specific conditions controlling the use of the easement areas are detailed in Attachment #3 and are identical to the conditions incorporated into the easement document executed with the third conveyance transaction described above.

COUNTY-OWNED PARKLAND:

There are two parcels of parkland within the limits of Contract B that are owned by Montgomery County, Maryland that are needed "in fee" for the ICC project. One parcel located in Northwest Branch Stream Valley Park, Unit 5 contains 9.90 acres, more or less and the second parcel located in Upper Paint Branch Stream Valley Park contains 3.71 acres, more or less. In addition, SHA has also requested "temporary construction easements" on two parcels of County owned parkland within the limits of Contract B. These parcels, both located in Upper Paint Branch Stream Valley Park contain 0.18 acres, more or less, and 0.04 acres, more or less, respectively. The conveyance of these property interests to SHA is being handled directly between SHA and the County as the County is the title owner and the County Executive will be the signatory to the transfer. County staff is coordinating this matter staff of M-NCPPC. The Planning Board's approval of this staff recommendation will constitute the Board's approval of the conveyance of the County owned parkland to SHA. These parcels will also be identified for the Board on a large-scale aerial map at the 3/6/08 meeting.

FUTURE PARKLAND CONVEYANCES:

Following the conveyance of the parklands described in this memorandum to SHA, no other right-of-way requests to use parkland or ALARF funded properties of the Commission for the Intercounty Connector are expected.

SUMMARY:

Staff is recommending to the Board that it approve the conveyance of 37.27 acres, more or less, of parkland, in fee, and 6.29 acres, more or less, of parkland, in temporary construction easements, to the SHA within the limits of Contract B for the ICC project.

The consideration to be given for these conveyances is the mitigation land approved for the ICC project as detailed in the Record of Decision.

Assuming the Montgomery County Planning Board approves the staff recommendation contained in this memorandum, this matter will be scheduled for final approval action of the Full Commission at its regularly scheduled meeting on March 19, 2008.



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

DRAFT

MCPB 08-
M-NCPPC 08-

RESOLUTION

WHEREAS, the Maryland-National Capital Park and Planning Commission (Commission), owns parkland along the master planned alignment of the Intercounty Connector (ICC), between I-370 on the west and the Montgomery and Prince George's County line on the east; and

WHEREAS, the Commission acquired this parkland using funds available to it through its Capital Improvement Program (CIP) between April 1962 and July 1989, which properties are identified in Montgomery County Tax Records as:

5-1-269087	5-1-2625361
5-1-268540	5-58-2216593
5-1-268915	5-1-268538
5-1-2522600	5-58-2182737
5-1-2625372	5-1-269098
5-53-375348	13-245-2207257
5-1-2840668	13-502-969515

and are designated as being parts of Northwest Branch Recreational Park, Northwest Branch Stream Valley Park, Unit 5, Upper Paint Branch Stream Valley Park, and Layhill Local Park; and

WHEREAS, on May 29, 2006, the Federal Highway Administration, U. S. Department of Transportation, issued its Record of Decision (ROD) on the ICC, which allows the SHA to complete the acquisition of land and other real estate interests needed for the construction of the ICC; and

WHEREAS, in consideration of the Commission granting fee simple interest in approximately 74 acres, and temporary easement interests in approximately 14 acres of land for the ICC, including the Properties (as hereinafter defined and included in this Resolution) to SHA, SHA will convey as mitigation land approximately 776 acres of replacement parkland and watershed lands to the Commission and the Washington Suburban Sanitary Commission as required by the Federal Highway Administration's ROD; and

WHEREAS, the SHA has requested that the Commission convey portions of the above described properties (hereinafter "the Properties"), consisting of approximately

37.27 acres, in fee simple, to SHA for ICC right-of-way, and 6.29 acres in temporary easements to SHA for use during construction of the ICC; and

WHEREAS, said portions of the herein described properties are more particularly described as follows:

Item No. 95728 on SHA Plats 57114 (Rev. 1/22/08) and 57115 (Rev. 6/5/07), including a temporary easement

Item No. 95729 on SHA Plats 57115 (Rev. 6/5/07) and 57116 Rev. (12/6/06), including a temporary easement

Item No. 95731 on SHA Plats 57119 (Rev. 2/22/07) and 57634 (Rev. 11/9/07), including a temporary easement

Item No. 95732 on SHA Plat 57634 (Rev. 11/9/07)

Item No. 95733 on SHA Plats 57634 (Rev. 11/9/07) and 57635 (Rev. 11/9/07)

Item No. 95737 on SHA Plats 57130 (Rev. 5/9/07) and 57131 (Rev. 5/9/07), including a temporary easement

Item No. 95738 on SHA Plats 57132 (Rev. 7/16/07) and 57133 (Rev. 7/12/07), temporary easement only

Item No. 95739 on SHA Plat 57133 (Rev. 7/12/07)

Item No. 95741 on SHA Plat 57130 (Rev. 5/9/07)

Item No. 95743 on SHA Plats 57133 (Rev. 7/12/07) and 57134 (Rev. 7/10/07)

Item No. 95744 on SHA Plat 57134 (Rev. 7/10/07)

Item No. 95746 on SHA Plat 57135 (Rev. 1/4/07)

Item No. 98650 on SHA Plats 57132 (Rev. 7/16/07) and 57133 (Rev. 7/12/07), temporary easement only

Item No. 98651 on SHA Plat 57113 (Rev. 9/26/07); and

WHEREAS, the Montgomery County Planning Board received and considered a recommendation from staff of the Commission at its regularly scheduled meeting on Thursday, February 28, 2008, that the portions of the properties described above are not needed for public park use or any other use of the Commission and that this conveyance of properties is in the public interest; and

WHEREAS, on Thursday, February 28, 2008, the Montgomery County Planning Board concluded that the property is no longer needed for public park use or other public use under Article 28, Annotated Code of Maryland; and

WHEREAS, the Montgomery County Planning Board approved the conveyance of the properties to SHA, consisting of 37.27 acres, more or less, in fee simple, and 6.29 acres, more or less in temporary easements;

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Section 5-111, Article 28, Annotated Code of Maryland, the Maryland-National Capital Park and Planning hereby declares that the 37.27 acres, more or less, in fee simple, and the 6.29 acres, more or less, in temporary easements, as described herein, are not needed for park purposes or other public purpose under Article 28, Annotated Code of Maryland;

BE IT FURTHER RESOLVED, that pursuant to Article 28, Annotated Code of Maryland, the Maryland-National Capital Park and Planning Commission hereby approves the conveyance of the properties described herein to SHA, in consideration for SHA conveying the mitigation lands specified in the Federal Highway Administration, U.S. Department of Transportation's ROD for the ICC as issued on May 29, 2006.

* * * * *

This is to certify that the forgoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner _____ seconded by Commissioner _____, with Commissioners _____, _____, and _____ voting in favor of the motion, at its regularly scheduled meeting held on March 6, 2008 in Silver Spring, Maryland.

Oscar S. Rodriguez
Executive Director

* * * * *

This is to certify the foregoing is a true and correct copy of a resolution adopted by The Maryland-National Capital Park and Planning Commission on motion of Commissioner _____, seconded by Commission _____, with Commissioners _____, _____, _____, _____, and _____ voting in favor of the motion, at its regular meeting held on Wednesday, March 19, 2008 in Riverdale, Maryland.

Oscar S. Rodriguez
Executive Director

Approved as to legal sufficiency

M-NCPPC Legal Department
Date 2/13/08

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.

SCHEDULE "A"
 to
Deed to the State of Maryland
to the use of the
State Highway Administration of the
Maryland Department of Transportation
 from
The Maryland-National Capital Park and Planning Commission

CONDITIONS WITH REGARD TO TEMPORARY CONSTRUCTION EASEMENTS

1. Contractor Obligations. SHA will provide a copy of the Deed, including this Schedule "A" to all contractors or agents of SHA that are provided access to the Temporary Construction Easements ("Contractor"). All rights of SHA hereunder will extend to such Contractors, and all obligations and commitments of SHA will apply to such Contractors.
2. Boundaries and Use of the Easement Area. The Easement Area will be clearly demarcated by SHA. SHA may only remove, clear and/or trim trees within the boundaries of the Temporary Construction Easement (sometimes referred to as the "Easement Area") as indicated in the final construction documents. Tree preservation will be performed in accordance with M-NCPPC Park Specification Section 721 – Tree Preservation. SHA will ensure safe and non-erosive conveyance of any stormwater runoff from the Easement Area onto adjacent Commission property.
3. Mitigation of Impact to Natural Resources. SHA has offered, and the Commission has accepted, an incentives program, as contained in the Contract A Request for Proposals, for its Contractor(s) to pursue construction alternatives that reduce the actual areas of disturbance within the Easement Areas to minimize impact to the existing natural resources. The Commission reserves the right to review the construction documents for the Easement Areas and, through its role on the Environmental Management Team (EMT) make suggestions as to the design or method of construction in the Easement Areas.
4. Required Notice To Enter Property. SHA will provide 3 working days notice in advance of entering the Easement Areas to commence construction ("Entry Notice"). Such notice will be in writing and will include reference to the Item No. and SHA Plat, and will be deemed given when received by the Commission. Notice will be given by phone call and email to each of the following M-NCPPC contacts:

Kyle Spindeff
 Mitra Pedoeem

If necessary, a replacement contact name and information will be provided to SHA should the above contact become unavailable.

5. Permits. SHA will obtain and maintain all appropriate permits and/or licenses required for the type of work in the Easement Area.

6. Restoration and Repair. SHA will restore the Easement Area, and any Commission property outside of the Easement Area that has been disturbed as a result of the activities of SHA, to the original grades and contours, and provide reforestation as required by the Commission's Planting Requirements for Land-Disturbing Activities on Commission/Montgomery County Parkland. SHA will promptly, upon completion of all work within the applicable Easement Area, perform all restoration work in a good and workmanlike manner and clean and clear the Easement Area of any debris, materials, tools and equipment.
 - a) All disturbed areas will be stabilized in compliance with the approved seed mixture (M-NCPPC Park Specification Section 705) and planting schedule specifications. Landscape soil will meet the criteria specified in M-NCPPC Park Specification Section 723 – Landscape Soil (Topsoil).
 - b) Site restoration and repair or replacement of damaged infrastructure will be in accordance with the Commission's Standard Details and Technical Specifications.
 - c) All plant materials, planting locations, and any plant substitutions and installation will be performed in accordance with M-NCPPC Park Specification Section 722 – Plant Installation.

7. Commission Access and Remedies. The Commission may, at all reasonable hours, enter onto the Temporary Construction Easements to inspect for compliance with the terms herein. The Commission must notify the SHA Construction Manager that they plan to be in the field prior to entering onto the property. In the event that SHA has failed to perform its obligations hereunder, SHA will restore the area as indicated in item #6 above.

8. Protection of Trees.
 - a) Within the Easement Area. Special protection measures such as a 12 " thick mulch layer for access bedding, tree protection fencing, will be provided as directed in the field by the Commission. The Commission has the right to inspect the condition of trees throughout construction and reserves the right to require repair by a qualified arborist, or replacement of any damaged trees at SHA's expense.
 - b) Outside the Easement Area. SHA will take measures to protect trees adjacent to the Easement Areas. If trees outside the Easement Areas are damaged, SHA will either:
 - i) retain an experienced and certified Arborist to make repairs; or
 - ii) if the certified arborist determines that a tree or shrub is damaged and not reparable, SHA, shall remove the tree or shrub and plant a replacement tree or shrub of the same species

9. Maintenance. SHA will secure and maintain, including the regular and periodic removal of trash and debris, the Easement Areas for the entire duration of construction and monitoring periods.

10. Protection Against Non-Native Invasive (NNI) Species. Within 30 days of Entry Notice, SHA will prepare and submit to the Commission a non-native invasive (NNI) species inventory and eradication plan for the Easement Area to the Commission's Senior Ecologist for review. During the term of the Temporary Construction Easements, SHA will manage NNI species within the Easement Areas in accordance with the document: *BEST MANAGEMENT PRACTICES FOR CONTROL OF NON-NATIVE INVASIVES*.