

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

**MCPB  
3/30/06  
Item #1**

March 20, 2006

**MEMORANDUM**

**TO:** Montgomery County Planning Board

**VIA:** John A. Carter, Chief *JAC*  
Community-Based Planning Division

**FROM:** Nancy Sturgeon, Planner Coordinator, 301-495-1308  
*NS*  
Community-Based Planning Division

Callum Murray, Potomac Team Leader, 301-495-4733  
*CM*  
Community-Based Planning Division

**SUBJECT:** City of Gaithersburg Annexation Petition X-182 for the Crown Farm  
Draft Transmittal Letter to County Council

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**STAFF RECOMMENDATION:** Approve transmittal of comments to County Council regarding City of Gaithersburg Annexation Petition X-182 for the Crown Farm.

**DRAFT**

March 30, 2006

The Honorable George Leventhal  
President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville Maryland 20850

**SUBJECT:** City of Gaithersburg Annexation Petition X-182 for the Crown Farm

Dear Mr. Leventhal:

The Montgomery County Planning Board received a briefing from staff of the City of Gaithersburg regarding annexation of the Crown Farm at their regular meeting of March 16, 2006. This 182-acre property is strategically located in the Mid-County area and is within the boundaries of the County's 1990 *Shady Grove Study Area Master Plan*, which is currently being updated. The 1990 Master Plan made specific land use and zoning recommendations for this property, some of which were intended to implement County-wide policies, and its coordinated development is critical.

The proposed zoning classification (the City of Gaithersburg's MXD – Mixed Use Development Zone) permits land uses that are substantially different from the County's zoning for the property, as specified in the 1990 County Master Plan. Section 23-A of the Annotated Code of Maryland states that if the land uses in the City's proposed zone are substantially different than the County zone, the land cannot be rezoned for five years without the express approval of the County Council. To meet the requirements of Section 23-A of the State, the County Council must review this petition and take specific action to approve the proposed zoning change prior to final action by the City of Gaithersburg.

The Planning Board is supportive of Gaithersburg's annexation of the Crown Farm and its rezoning to the Mixed Use Development Zone, subject to the County Council being satisfied regarding the resolution of several issues via an Annexation Agreement. The Planning Board would like to highlight several of these issues, which are explained further in the attached technical staff report dated March 10, 2006.

The first issue pertains to the lack of an Annexation Agreement as a tool for the County Council to ensure that their issues and policies are addressed. The Planning Board believes that the County Council has a critical role to play in reviewing and commenting on an Annexation Agreement. Given the size of the Crown Farm, its location and key role it may play in proposals and policies of mutual benefit to the City and County (including the Corridor Cities Transitway), the Planning Board believes that the County Council should review an Annexation Agreement and any subsequent amendments to that agreement that are made within five years.

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Another issue pertains to the use of Transferable Development Rights (TDRs) recommended in the 1990 *Shady Grove Study Area Master Plan* for the west side of the Crown Farm as the optional method for achieving density above the R-60 (base) Zone. The annexation petitioner states that the proposed zoning fully complies with the residential density recommendations of the Master Plan, but does not acknowledge that much of the master-planned density is predicated on TDRs. By designating the Crown Farm as a TDR receiving area, the County Council sought to preserve farmland in the Agricultural Reserve. TDRs are particularly important in this case because the large number (of TDRs) assigned to the Crown Farm in the Master Plan could potentially result in the preservation of one or more farms in the Agricultural Reserve, and the injection of over \$11 million in equity.

The Planning Board notes that a Memorandum of Understanding (MOU) was signed by the Montgomery County Executive, and the Mayors of the Cities of Gaithersburg and Rockville on July 23, 1992 that was based on the goals and principles of the County's General Plan. The MOU focused on urban growth areas (municipal expansion/annexation areas) and stated that all jurisdictions support well-managed economic development and housing initiatives that are mutually advantageous to all parties. This agreement (attached) provides that the County and City work on a cooperative basis in the development of plans and programs that affect parcels in the annexation areas. The agreement states that the municipalities recognize the importance of creative development initiatives such as Moderately Priced Dwelling Units (MPDUs) and Transferable Development Rights (TDRs), and that Rockville and Gaithersburg will continue to utilize these and other appropriate innovative concepts to further the common development goals for the area. The Planning Board regards these issues as significant and recommends that the County Council review an Annexation Agreement that contains a provision mandating acquisition and use of TDRs as well as the provision of MPDUs.

The Planning Board would like to note that compliance with Article 23A, Section 19 (a) (2) of the State Code, restricting the creation of enclaves, may be an issue, and suggest that the legal staff of the County and State examine the particular circumstances of this case. In essence, the petitioner proposes the creation of a "flag lot" of 182 acres supported by a "flag pole" some 35-40 feet wide and 2200 feet long, and the "flag pole" has now been removed from the annexation petition. Application of similar methods to amending electoral districts is termed "gerrymandering" and it is questionable whether the use of such an artifice complies with the spirit of the State Code. If the State and County find this to be acceptable, the petition will need to be amended in terms of the area to be annexed, as planning staff estimate the "flag pole" to be 1.7 to 2.0 acres in size.

The Planning Board has substantive concerns regarding Master Plan roadways, transportation system adequacy, and Corridor Cities Transitway facilitation. The Planning Board recommends that an Annexation Agreement address the following:

## DRAFT

- Dedication of right-of-way for all master planned roadways and interchanges on or adjacent to the site together with right-of-way for the Corridor Cities Transitway.
- Commitment to a traffic mitigation plan to achieve the same objectives as the County's Adequate Public Facilities Ordinance.
- Incorporation of Maryland Transit Authority guidance regarding the integration of the Corridor Cities Transitway into site development plans.

The County Council should also receive assurance that the active outdoor recreational needs of residents are met subsequent to annexation. Park staff have recommended that a local park, with a minimum of two large rectangular fields, related parking and a playground should be provided on-site to accommodate the needs of existing and future residents. The petitioner proposes a five-acre passive park, basically confined to the perimeter of the historic buildings, and unspecified 'comprehensive recreational facilities and open space amenities throughout the project.'

Another issue is the lost revenue from county taxes that results from annexation. Of particular concern to the Planning Board are the regional park facilities that are operated and maintained in the County through the Metropolitan District Tax. With this annexation, the County will continue to provide these regional facilities to all County and City residents. The County needs to consider some mechanism for an equivalent distribution of the cost of these facilities between the County and City residents. The Planning Board recommends that an Annexation Agreement contain language to ensure continuity of payment for Metropolitan (Park) taxes or the equivalent after annexation.

The Planning Board notes that the high school site on the concept sketch provided by the applicant is illustrated as 30 acres, but that forest and stream valley buffer reduce the usable area to approximately 23 acres. The Planning Board notes that it can be difficult for Montgomery County Public Schools (MCPS) to meet their full program of requirements for a high school on less than 30 acres. The Planning Board encourages the City and the petitioner/developer to work with MCPS on a site and design solution that meets the program needs for a public high school.

The Planning Board is also concerned regarding compliance with Article 23A, Section 19 (o) of the State Code, outline for the extension of services and public facilities. In addition to land use information, this Section requires municipalities to provide a schedule for extension and general methods as to how municipal services would be financed. The Planning Board believes that this requirement has not been fully met. The City Planning staff report does not provide adequate staging or financial information for all the services and public facilities required for development of this property and the Planning Board believes a more detailed development phasing plan projecting the sequence of events is required, including a list of public facilities that will be needed to serve the development, facilities that will be provided by agencies outside the City, and a general schedule of when these facilities may be needed to be constructed and put in operation.

## DRAFT

Finally, the Planning Board recommends that development after annexation follow applicable Forest Conservation law and regulations, that environmental buffers and forest conservation areas be protected by perpetual conservation easements, that stormwater management be sufficiently comprehensive to avoid further stress on the Muddy Branch subwatershed, that noise mitigation be addressed, that "green" buildings be encouraged, and that historic preservation provisions and an appropriate setting for the England-Crown Farm be included in the Annexation Agreement.

Ongoing coordination and cooperation between the County and the City of Gaithersburg will be necessary as development on the Crown Farm proceeds for the provision of TDRs and public facilities, including roads, sewer, the Corridor Cities Transitway, and a public high school. It is critical that an Annexation Agreement be formulated and that the County, the City, and the M-NCPPC be responsive to the agreement to assure coordinated provision of facilities both on the Crown Farm and in the surrounding area of the County.

Sincerely,

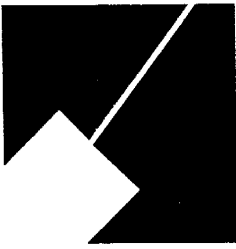
Derick P. Berlage  
Chairman

### Attachments:

1. Staff Report, March 10, 2006
2. Memorandum of Understanding July 23, 1992
3. Correspondence Received

NS:CM:ha: G:Sturgeon/CrownFarmAnnexation12

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

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Silver Spring, Maryland 20910-3760  
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MCPB  
3/16/06  
Item#6

March 10, 2006

MEMORANDUM

TO: Montgomery County Planning Board

VIA: John A. Carter, Chief, Community-Based Planning Division

FROM: Nancy Sturgeon<sup>NS</sup> Planner Coordinator, 301-495-1308  
Callum Murray<sup>CM</sup> Potomac Team Leader, 301-495-4733

SUBJECT: City of Gaithersburg Annexation Petition X-182 for the Crown Farm

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**STAFF RECOMMENDATION:** Approve transmittal of preliminary comments to the City of Gaithersburg's Mayor and City Council as part of the public hearing record

SUMMARY OF ISSUES

1. **Time Frame and lack of an Annexation Agreement.** Staff is concerned regarding the limited time frame for review of this annexation petition. For similar large-scale annexations such as the King Farm in Rockville, a draft annexation agreement was provided for Executive, Planning Board and County Council staff to review simultaneously over a period of 12 weeks.
2. **Substantially Different Zoning and Land Use.** The proposed zoning classification (the City of Gaithersburg's MXD – Mixed Use Development Zone) permits land uses that are substantially different from the County's zoning for the property as specified in the 1990 *Shady Grove Study Area Master Plan*.
3. **Compliance with Article 23A, Section 19 (a) (2) of the State Code, restricting the creation of enclaves.** The annexation does not meet the requirements of this section of the State Code and will create an unincorporated area bounded on all sides by property within the corporate limits of the municipality. (See below)

4. **Compliance with Article 23A, Section 19 (o) of the State Code, outline for the extension of services and public facilities.** In addition to land use information, this Section requires municipalities to provide a schedule for extension and general methods as to how municipal services would be financed. Staff does not believe this requirement has been fully met. The City Planning staff report does not provide adequate staging or financial information for all the services and public facilities required for development of this property. Staff believes a more detailed development phasing plan projecting the sequence of events is required, including a list of public facilities that will be needed to serve the development, facilities that will be provided by agencies outside the City, and a general schedule of when these facilities may be needed to be constructed and put in operation.
5. **Provide a role for Planning Board and County review and comment on an annexation agreement and any future amendments.** For major annexations, the Planning Board and County typically provide review and comment on annexation agreements. Given the size of this parcel, its location and the key role it may play in proposals and policies of mutual benefit to the City and County (including the Corridor Cities Transitway), staff believes that the Planning Board and County should review any future amendments to an annexation agreement.
6. **Corridor Cities Transitway facilitation, Master Plan roadways, and Transportation system adequacy.** Transportation Planning staff has substantive concerns in these three areas, explained in more detail in this memorandum.
7. **The school site on the concept sketch.** This is illustrated as 30 acres, and contains 7.5 acres of forest, of which 6.5 acres is in the stream buffer, reducing the usable area to approximately 22.5 acres. Staff believes that the school site should be re-evaluated, if a full-size high school is proposed.

#### **PRELIMINARY RECOMMENDATIONS**

1. The County Council must review this annexation petition prior to final action by the City since the MXD Zone permits uses that are substantially different from the County's zoning for this property. To meet the requirements of Section 23-A of the Annotated Code of Maryland, the County Council must take specific action to approve the zoning change as proposed.
2. Staff recommends that a future Annexation Agreement be reviewed by the Planning Board and contain a provision mandating acquisition and use of TDRs, and the provision of MPDUs.
3. In accordance with Montgomery County Forest Conservation law and regulations, at least 15 percent of the site should be forested. Since only 7.5 acres of the site is currently in forest, all this area should be protected and an additional 19.2 acres be planted according to forest specifications.
4. All environmental buffers and forest conservation areas should be protected by perpetual conservation easements.

5. Any development on this site should comply with county stormwater management requirements and avoid further stress on this subwatershed. Waivers should not be requested or granted, because the downstream effects would be a burden on the Muddy Branch in Montgomery County.
6. Noise mitigation should be required to address noise impacts based on ultimate traffic conditions from Sam Eig Highway and Fields Road/Omega Drive.
7. Green or high performance buildings, and protection of natural resources should be integrated into all uses within this mixed-use development and expanded upon to create a green community.
8. A local park with a minimum of two large rectangular fields, related parking and a playground should be provided on-site.
9. The City of Gaithersburg should include historic preservation provisions for the England-Crown Farm in the annexation agreement. These provisions should include:
  - A historic and architectural analysis of the England-Crown Farm complex with a detailed statement of historic significance and definition of the period of significance. The analysis should include a detailed description of each of the buildings on the parcel (P833), a history of construction, and a categorization of their historic value (outstanding, contributing, non-contributing). In addition, the analysis should include significant landscape features and vista.
  - Developer agreement to renovate or restore the residential and agricultural buildings in conjunction with the use proposal. An example of such an agreement was the Waters House in the Milestone subdivision in which the historic house and farm outbuildings were renovated or stabilized by the developer.
  - Identify a compatible use for the historic buildings. Determine owner/occupant and funding source for determined use.
  - Provide adequate environmental setting for historic context and for adaptive use.
  - Orient roads and new construction to provide respect for historic buildings and their setting.
10. Any future annexation agreement should contain language to ensure continuity of payment for Metropolitan (Park) taxes after annexation.



## **LOCATION AND BACKGROUND**

Annexation Petition X-182 has been submitted to the City of Gaithersburg for the Crown Farm, located east of Sam Eig Highway, south of Fields Road, west of Omega Drive, and north of the current terminus points of Diamondback Drive and Decoverly Drive. (See Attachment 1.) The Crown Farm is included in the area covered by the 1990 *Shady Grove Study Area Master Plan*, which is being updated. The annexation petition includes six parcels of land that comprise the 182.8-acre Crown Farm as well as portions of the right-of-way of Sam Eig Highway, Fields Road, and Research Boulevard that abut the property and are not currently within the municipal limits of the City of Gaithersburg. (Alternative information from the applicant's project engineer indicates the acreage as approximately 177.9.)

In 2004, the same petitioner who has submitted the subject application (X-182) filed an annexation petition (X-181) with the City of Gaithersburg for a smaller portion of the Crown Farm located west of Sam Eig Highway and divided by Diamondback Drive. The annexation was approved in 2005 for 16.2 acres in the City's RP-T Zone (Medium-Density Residential) and the property is proposed for townhouse development.

## **SURROUNDING AREA**

The Crown Farm is one of the last large tracts of undeveloped land in the mid-County area. The property was owned and farmed by either the England or Crown families for over 100 years. Intensive development surrounds the Crown Farm. (See Attachment 2.) To the east, across Omega Drive, is the Shady Grove Executive Center office park. To the south is the Decoverly office park and the Decoverly residential developments, which include apartments and townhouses. To the west, across Sam Eig Highway, are two parcels that were annexed into the City of Gaithersburg in 2005 (X-181) and are planned for 68 townhouses.

North of Fields Road and south of Washingtonian Boulevard are townhouse and apartment communities within the County's jurisdiction, including the high-rise Washingtonian Tower, Oakwood Apartments, Courtyards at Rio, and Avalon Fields Apartments. North of Washingtonian Boulevard and adjacent to I-270 is the Washingtonian/Rio Center, a mixed-use development in the City of Gaithersburg that includes retail, offices, and hotels clustered around an 18-acre man-made lake.

## **ANNEXATION SCHEDULE AND DEVELOPMENT PROPOSAL**

In September 2005, the developer sponsored a three-day charrette to discuss ideas for the property and encourage participation from interested citizens. On October 10, 2005, the developer presented the results of the charrette to the City Council and City Planning Commission. On November 14, 2005, Crown Village Farm, LLC, the owner of the property, formally submitted an annexation petition to the City of Gaithersburg for the 182.8-acre Crown Farm.

On January 12, 2006, City of Gaithersburg Mayor Sidney A. Katz sent a letter notifying Planning Board Chairman Derick Berlage of the annexation petition. The City introduced a resolution for the annexation petition, which it designated X-182, on December 19, 2005. The City held a joint public hearing before the City Council and the City Planning Commission on February 6, 2006 and a joint worksession on February 27, 2006. Additional worksessions with the City's Council and Commission will be scheduled. The City is keeping their public record open indefinitely to receive citizen comments on the annexation. On March 6, 2006, the City's Staff Analysis and Preliminary Recommendations were provided to the M-NCPPC in preparation for the March 16, 2006 Montgomery County Planning Board consideration of the annexation petition. (See Attachment 2A.) The applicant has requested that the annexation petition be approved by mid-April.

The applicant's vision for the development, as described in their presentation to the City on February 6, 2006, is a sustainable, pedestrian-oriented urban community with distinct yet unified neighborhoods. Other development and design features articulated by the applicant include a choice of housing types, a town center that serves the community, and a variety of interconnected streets and open spaces that promote walking, biking, and transit use.

The applicant has requested a range of 1,975 to 2,550 residential dwelling units and 260,000 to 370,000 square feet of commercial space. (See Attachment 3.) Building heights of 5, 10, and 20 stories are proposed. The applicant is dedicating 30 acres on the eastern side of the property, along Omega Drive, for a public high school. The applicant has described the future high school as a valued regional and local resource that will be well integrated with the community yet buffered to protect adjacent residents from noise and light pollution. The applicant is requesting that the entire site be placed in the City's MXD (Mixed Use Development) Zone.

## **MAXIMUM EXPANSION LIMITS**

Maximum Expansion Limits (MELs) establish geographic boundaries for potential future annexation of County land into a municipality to allow for growth of a City. An MEL map typically shows areas adjacent to the municipality that may be annexed into the City. State law prohibits annexation of land that is not contiguous and adjoining to the existing municipality. MELs are useful planning tools to forecast logical growth areas for a City, to determine future service needs and responsibilities between the County and the municipality.

The 1997 City of Gaithersburg Master Plan included a discussion of MELs and a map showing potential expansion areas for the City. (See Attachment 4.) The Crown Farm was not shown on the MEL map as a potential annexation area. The City's most recent long-range plan, the 2003 *Land Use Element of the Master Plan*, does not address Maximum Expansion Limits and does not include a map. The Crown Farm is listed as a Special Study Area to be examined in the future.

## **GAITHERSBURG PLANNING COMMISSION COMMENTS AND PRELIMINARY CITY STAFF RECOMMENDATION**

At the City's first worksession on February 27, 2006, the City Council and City Planning Commission discussed the annexation and provided the following comments:

- Overall residential density should not exceed the density permitted under the County's existing Master Plan;
- Clubhouse and Homeowner's Association (HOA) facilities must be better integrated into the community and additional green space provided;
- Significant affordable housing must be included;
- Five acres of land should be dedicated to the City as parkland;
- Proposed changes to the Corridor Cities Transitway (CCT) alignment and proposed changes to the location of the transit station are appropriate; and
- Majority of multi-family dwellings should be located over the retail components of the mixed-use center (at Fields Road and Sam Eig Highway) and near the transit station.

The City of Gaithersburg has not made a formal decision on the annexation petition. City staff prepared a preliminary analysis and will provide additional comments upon the completion of the worksessions and the closing of the public record. According to their preliminary report, City staff support the petition and the proposed MXD zoning because annexation of the Crown Farm:

- Compliments the Washingtonian and Rio centers, is contiguous to the City, and follows existing roads.
- Fulfills the City's goal to promote annexation for logically situated parcels that create a concise and reasonable municipal boundary.
- Responds more effectively and responsively to community concerns related to phasing and infrastructure.
- Benefits the surrounding properties.

M-NCPPC staff are not in complete agreement that the Crown Farm annexation will achieve all of the items listed above. The City's 1997 Master Plan states that it "envisioned changing the existing maximum expansion limits, with the proposed boundary changes to basically follow existing roads instead of following or traversing private properties, and reflect a more bilateral approach to this issue." The City's intended goal of creating logical, clear, and identifiable boundaries may be difficult to achieve due to the piecemeal nature of annexations. If the subject parcel is annexed into the City, a concise and reasonable municipal boundary will not necessarily be formed. Private property lines, not existing roads, will become the new City/County boundary along the south side of the Crown Farm property. And, contrary to State law, an enclave of land in the County's jurisdiction that is completely surrounded by the City will be created as a result of the proposed annexation. (See discussion below under "Annotated Code of Maryland").

## COMMUNITY CONCERNS

Annexation Petition X-182 was the subject of a public hearing before the City Council and City Planning Commission on February 6, 2006. Citizens raised concerns about overcrowding of schools, traffic congestion, and the adequacy of public facilities and infrastructure. Residents who live near the proposed development expressed concern about the ability of the City's fire and police forces to respond. Others raised the issue of phasing and stated that infrastructure improvements should be in place before development begins. One citizen expressed concern that the City has not increased its parkland in recent years and questioned whether the proposed development provided adequate open space. Others urged the City to carefully consider the traffic studies and cautioned that the Corridor Cities Transitway will not be built in the near future and traffic will be a big problem. Some citizens raised the issue of density and whether the developer was proposing more development than the county Master Plan recommended. Others were concerned about the proposed height of buildings.

## COUNTY MASTER PLAN AND ZONING

The subject property is located in the area of the County covered by the 1990 *Shady Grove Study Area Master Plan*, which is being updated. The western portion of the property is zoned R-60/TDR (with an optional density of eight units per acre recommended in the Master Plan) and the eastern portion of the property is zoned R-200/PD. (See Attachment 5.) The Master Plan anticipated that, at the time of development, the PD Zone (Planned Development; a floating zone) would be applied for and the Plan recommended a medium high density of 20 to 25 units per acre. Higher density was recommended for the eastern portion of the property because two CCT transit stops were proposed in that area.

The Master Plan made specific recommendations for the Crown Farm, including a diversity of housing types (with a total of 2,000 dwelling units), small scale retail uses (50,000 square feet), a ten-acre local park, and an elementary school. (See Attachments 6 and 7.) The historic England Crown Farm is on the *County Master Plan for Historic Preservation*, and the 1990 Plan recommended adaptive reuse of the property as a community resource and focal point. The Master Plan also provided development guidelines, including an interconnected system of streets, a diversity of housing types, street-oriented buildings, and a mix of active and passive open space areas.

In revisiting the Crown Farm recommendations, staff recognized that the amount of retail in the 1990 Plan (50,000 square feet) was too low. Since many of today's grocery stores are 60,000 square feet, a neighborhood shopping center with a grocery store anchor is generally 120,000 – 150,000 square feet. In preparation for the Master Plan update, staff would have recommended an increase in the amount of retail square footage, but would have emphasized that the Crown Farm retail center should be neighborhood oriented rather than a regional destination. (See Attachment 8, an evaluation of retail potential at the Crown Farm.) The updated County Plan would have continued to recommend housing as the primary land use for the Crown Farm and would have added a recommendation for a 30-acre public high school.

## Public Schools

In preparation for the Master Plan update, planning staff had begun analyzing the Crown Farm and revisiting the recommendations in the 1990 Plan. One of the most important changes from the 1990 Plan is the need for a new public high school in the mid-County area. There are six high school clusters in the mid-County and most are operating at or above capacity and enrollments are expected to increase. Planning staff worked with Montgomery County Public Schools (MCPS) to identify potential sites for a new, 30-acre high school and had determined that the Crown Farm was an ideal location. When the Crown Farm was purchased by the new owner/developer, who was interested in annexation, discussions continued with the City of Gaithersburg and MCPS regarding a high school on the property. The owner has agreed to dedicate land on the site for the high school, which is recognized as a significant public benefit. Typically, MCPS requires 30 usable acres for a high school.

MCPS staff estimate that build-out of the Crown Farm with 2,200 residential units would generate approximately 285 elementary school students, 100 middle school students, and 150 high school students. At the middle school level there is some capacity available in existing schools to absorb additional development. In addition, a middle school site has been dedicated in the King Farm development. At the elementary school level, MCPS now has two dedicated sites in the area of the Crown Farm, including one in the King Farm development and one in the Falls Grove development, both of which are in the City of Rockville. In addition, an elementary school site has been identified in the 2006 *Shady Grove Sector Plan*, which should be sufficient for the build-out of the Sector Plan area.

## Local Parks

The primary park and open space concern with this proposed annexation is the need for active recreation in the area. The 1990 *Shady Grove Study Area Master Plan* proposed a new, public local park on the Crown Farm, Fields Road Local Park. This is the only park that is proposed to serve the South Gaithersburg and Northern Travilah area residents, and there appear to be no other suitable locations for such a facility.

The recently approved 2005 *Land Preservation, Parks, and Recreation Plan* estimates that by the year 2020 the I-270 Corridor will need 19 more standard rectangular soccer/lacrosse fields, ten more small rectangular fields for younger children, and three more baseball fields. In addition, six additional public playgrounds are estimated to be needed in the Gaithersburg Planning Area alone. These needs are for County residents outside of the City of Gaithersburg and do not include Gaithersburg City residents. The proposed Fields Road Local Park was intended to provide a portion of these County recreation needs. The potential developer of the Crown Farm has offered to dedicate a 30-acre high school site. Facilities at high schools are usually so heavily used by students that they are unavailable for use by the community.

The staff recommends that a local park with a minimum of two large rectangular fields, related parking and a playground be provided on this site. The City of Gaithersburg staff recommendation that the applicant dedicate five acres of land as City Parkland would provide too small a park for these facilities. If the site is annexed, an agreement should be reached with the City of Gaithersburg to allow County leagues to permit these fields so that the park can serve residents in the County as well as the City of Gaithersburg and the future Crown Farm development.

### **Transferable Development Rights (TDRs) and Moderately Priced Dwelling Units (MPDUs)**

The Crown Property is split zoned with the R-60/TDR-8 Zone to the west of proposed extension of Decoverly Drive to Fields Road and the R-200 Zone to the east. The applicant's project engineer estimates the TDR portion to the west to be approximately 94.2 acres.

The 1990 Shady Grove Study Area Master Plan contains the following language on pages 61 and 62 regarding the Crown Farm:

*The Plan recommends a residential land use pattern that locates high-density housing near two proposed transit stops. The western portion of the farm is proposed for lower density housing in order to encourage a mix of apartments and attached and detached dwelling units.*

*This Plan proposes a total of 2,000 dwelling units on the Crown Farm. The majority of these units would be located near the transit stops and consist of multi-family units. The balance of the housing would be located on the western portion of the farm. This Plan strongly encourages the provision of detached housing on the western portion of the Crown Farm, but the actual number must be provided at time of subdivision and site plan review.*

The 1990 Master Plan clearly recommends TDR development for approximately 53 percent of the subject property. The western portion of the property is a designated TDR receiving area (TDR-8) and zoned R-60/TDR consistent with the Master Plan.

The 1990 Master Plan recognized that areas designated for TDRs may be annexed by municipalities and includes the following recommendations regarding inter-jurisdictional issues:

*Any land annexed by either Gaithersburg or Rockville should include a staging component in the annexation agreement, similar to that which would be in effect if the tract remained outside the City.*

*The cities should require the use of TDRs in their annexation agreements when TDR receiving areas are involved. In the absence of TDRs, the County Council should not concur in zoning densities greater than the base density shown in the Master Plan.*

*The cities of Rockville and Gaithersburg and the County should agree to develop a memorandum of understanding on maximum expansion limits and annexation issues. This agreement would provide the policy basis for reviewing all future annexation applications. (Page 137)*

If the Crown Property were to remain within the County, optional method development of the west of the property would mandate acquisition and use of TDRs, and the provision of MPDUs. (i.e. TDRs would be purchased on all units above the base density, exclusive of MPDUs.) Use of the floating Planned Development (PD) Zone on the east would also mandate provision of MPDUs. The calculation of the number of TDRs and MPDUs when both are included in the same plan is relatively simple if the plan is at maximum density. The number of MPDUs equals 15 percent of the total number of units. The number of TDRs equals the difference between the R-60 base density (5 per acre) and the TDR option density (8 per acre) times the acreage (94.2) as follows:

Maximum Yield:

$$94.2 \text{ acres} \times 8 \text{ (TDR density)} \times 1.22 \text{ (maximum density bonus)} = 919 \text{ units}$$

Number of MPDUs:

$$919 \text{ units} \times 0.15 \text{ (%MPDU @ 22% bonus)} = 137.8 = 138 \text{ MPDUs (MPDU fraction is always rounded up)}$$

Number of TDRs:

$$\begin{aligned} 94.2 \text{ acres} \times 8 \text{ (TDR density)} &= 753 \text{ units} \\ 94.2 \text{ acres} \times 5 \text{ (R-60 base density)} &= 471 \text{ units} \\ 753 - 471 &= 282 \text{ TDRs} \end{aligned}$$

Unit Summary:

Base Density	=	471 units
TDRs	=	282 units
MPDUs	=	138 units
Bonus Market Rate	=	28 units
		-----
TOTAL		919 units

The above calculations assume 100 percent single-family housing. The Master Plan recommends a range of 40-50 percent multi-family in the western portion of the Crown Farm. Assuming 50 percent multi-family, the number of TDRs under this scenario would be 212, as only one TDR is required for every two multi-family units.

The above calculations become more complicated if the proposed plan is not at maximum density. Because of the sliding MPDU scale, there are many alternative combinations of MPDUs and TDRs possible. The applicant can minimize the number of TDRs required by maximizing MPDUs and thereby receiving bonus market rate units. In the alternative, the applicant can limit the number of MPDUs by providing more TDRs. Either the number of MPDUs or the number of TDRs must be established first so that the other can be determined.

Staff recommends that a future Annexation Agreement be reviewed by the Planning Board and contain a provision mandating acquisition and use of TDRs, and provision of MPDUs.

## **ANNOTATED CODE OF MARYLAND**

### **Creation of an Enclave**

State law on annexations is found in the Annotated Code of Maryland, Article 23A, Section 19. The annotated code states the following:

*The legislative body, by whatever name known, of every municipal corporation in this State may enlarge its corporate boundaries as provided in this subheading; but this power shall apply only to land: (1) which is contiguous and adjoining to the existing corporate area; and (2) which does not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the municipality, real property proposed to be within the corporate limits of the municipality as a result of the proposed annexation, or any combination of such properties. (Emphasis added.)*

This annexation has met the requirements of (a)(1) of the State Annotated Code because the subject property is contiguous to the municipal boundary in two locations along Fields Road. Staff is concerned that this annexation does not meet the requirements of (a)(2) of the State Code because it will result in the creation of an enclave, or island, of County land that is bounded on all sides by property that is within the City of Gaithersburg. (See Attachments 8 and 9.) This issue is addressed in the applicant's submission as "Joint Exhibit #3; Petition for Annexation." Number 3 of Exhibit 3 states: "Annexation of the Property will not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the City of Gaithersburg, real property proposed to be within the City of Gaithersburg as a result of the proposed annexation, or any combination of any such properties."

If petition X-182 is approved and the Crown Farm is incorporated into the City of Gaithersburg, the annexation and subsequent redrawing of municipal and County boundaries will result in the creation of an unincorporated (County) area, which is completely surrounded by the City. As shown on Attachment 9, this area is located north of Fields Road and south of Washingtonian Boulevard and includes the Washingtonian Tower as well as several townhouse and apartment communities. This issue is not addressed in the City's preliminary staff report.

### **Substantially Different Zoning and Land Use**

The State Annotated Code places some restrictions on changes in zoning and land use when property is annexed. In Article 23A, Section 9 (c), the code states the following:



*...no municipality annexing land may for a period of five years following annexation place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or plans...of the county or agency having planning and zoning jurisdiction over the land prior to its annexation without the express approval of the board of county commissioner or county council of the county in which the municipality is located. (Emphasis added)*

Section 9 (2) further states:

*If the county expressly approves, the municipality...may place the annexed land in a zoning classification that permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or general plan of the county or agency having planning and zoning jurisdiction over the land prior to its annexation.*

The land uses permitted in the City's MXD (Mixed Use Development) Zone are substantially different from the County's zoning for the Crown Farm, which is R-60/TDR and R-200/PD. The City's MXD Zone allows (by right) all uses that are permitted in the City's commercial, employment, or industrial zones. (Section 24-160D.3 (b) of the City Zoning Code.) The County's R-60, R-200, and PD zones are primarily residential. The PD zone allows a very limited amount of retail, personal service, and professional office uses that serve the residents of the development. Since the land uses permitted in the City's proposed zone for the Crown Farm are substantially different than the uses allowed for the property in the County's zones, the Montgomery County Council will be required to take action on this annexation. The County Council will need to grant specific approval of the new zoning classification.

## **TRANSPORTATION**

This memorandum contains Transportation Planning staff's initial comments on the transportation issues related to the subject annexation case and the traffic impact study. Our comments were developed based on our cursory review of the City of Gaithersburg's staff analysis and the February 24 traffic study prepared by the applicant's traffic consultant and received March 1. Staff provided preliminary comments on the traffic study, summarized below, on March 3 to the City of Gaithersburg's Engineering Services Director for consideration in their continuing review of the traffic study. Staff received a supplemental report from the traffic consultant on March 6 and is continuing the review of both documents.

There are three areas of substantive concern:

### **Corridor Cities Transitway (CCT) Facilitation**

Preliminary discussions in the annexation process have indicated that the developer is considering a CCT alignment shift that would increase the transitway length and incorporate the transitway into the median of some roadways, both elements of concern to the Maryland Transit Administration (MTA). On the other hand, the preliminary discussions

have also suggested consolidating the two proposed stations into one station, located central to a cluster of high-rise residential buildings, both elements that staff finds would help increase overall system ridership. There does not appear to be any significant problem with a one-station approach as long as the development plans take into account station spacing and the parking requirements and other issues raised by the MTA. Any changes to the alignment as a result of the proposed development would receive the same level of examination as the alignment in the state's 2002 Draft Environmental Impact Statement (DEIS). The DEIS alignment received approval after a lengthy public input process and after an initial determination that stated concerns could be addressed.

### **Master Plan Roadways**

Staff is concerned that the City may not pursue elements of the roadway system described in the current master plan of highways (as referenced in the 1990 Shady Grove Study Area Master Plan amendment). Preliminary discussions in the annexation process have indicated that the development might abandon the proposed arterial roadway extension of Diamondback Drive to meet Fields Road at Sam Eig Highway, and that provisions for future grade separated interchanges on Sam Eig Highway may not be preserved. Preservation of interchange right-of-way is a particular concern since the City did not fully preserve options per Planning Board comment on the related annexation case (X-181).

### **Transportation System Adequacy**

Staff has begun review of the February 24 traffic impact study referenced in the application. The study identifies roadway infrastructure needs including many that would be associated with site development regardless of annexation status. Staff has three concerns regarding the study:

- The study contains several technical deficiencies that would preclude our acceptance of it as a formal Local Area Transportation Review analysis, were it to be submitted for a development case before the Planning Board. These deficiencies relate to study scope assumptions regarding background traffic, site definition details, the treatment of internal capture and pass-by trips, and the lack of defined improvements or programs to mitigate all site-generated impacts.
- The application indicates that the proposed zoning after annexation would yield higher commercial densities, yet the traffic study does not identify what elements of site-generated traffic are associated with the annexation.
- From a procedural perspective, the annexation case review schedule does not allow sufficient time for our staff, the State Highway Administration (SHA), Montgomery County Department of Public Works and Transportation (DPWT), and the public to review and comment on the study.

The site is located within the proposed Greater Shady Grove Transportation Management District (TMD). The County Council Transportation and Environment Committee approved the draft resolution in January and County Council action is expected this spring. Regardless of the annexation status, staff expects the Crown Farm property to be required to participate in the TMD, including consideration of travel demand management strategies, such as, but not limited to, the level of service provided by the shuttle bus service proposed in the City's staff analysis.

## **ENVIRONMENT**

Environmental Planning staff has reviewed the proposed annexation for the Crown Farm and recommends that the annexation agreement contain the following commitments:

- In accordance with Montgomery County Forest Conservation law and regulations, at least 15 percent of the site should be forested. Since only 7.5 acres of the site is currently in forest, all this area should be protected and an additional 19.2 acres be planted according to forest specifications.
- All environmental buffers and forest conservation areas should be protected by perpetual conservation easements.
- Any development on this site should comply with county stormwater management requirements and avoid further stress on this subwatershed. Waivers should not be requested or granted, because the downstream effects would be a burden on the Muddy Branch in Montgomery County.
- Noise mitigation should be required to address noise impacts based on ultimate traffic conditions from Sam Eig Highway and Fields Road/Omega Drive.
- Green or high performance buildings, and protection of natural resources should be integrated into all uses within this mixed-use development and expanded upon to create a green community.

The site consists of approximately 182.8 acres and is located in the Muddy Branch watershed. The headwaters of the Decoverly Tributary form the southern boundary of the property and three branches of this tributary are partially or wholly within the property boundaries. Two of these streams have little or no forested buffer areas. The property is almost completely composed of farm fields. The U.S Army Corps of Engineers staff has delineated the wetland boundaries and those wetlands lie completely within the environmental buffers on the site. At later stages, the wetland analysis should consider any indicators of the existence of prior converted cropland conditions on the site. Prior converted croplands are former wetland areas that have been artificially drained for agricultural purposes, and provide excellent opportunities for restoration and mitigation.

### **Forest Conservation**

This site has an approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) from the City of Gaithersburg. The M-NCPPC staff has not fully reviewed this document, and no approval has been sought from the M-NCPPC. The site contains approximately 7.5 acres of forest. The afforestation threshold, the appropriate threshold for forest conservation purposes, is 26.7 acres (15 percent of the site). The concept/sketch plan shows open space covering the forest in the stream buffer, but does not indicate whether the unforested portion of the stream buffer will be planted in forest. The forested portion of the proposed school site extends beyond the environmental buffer, but no indication is given whether this forest is to be retained. If all this forest is protected and the entire remaining stream buffer is reforested, the afforestation threshold is approximately 11 acres short on site.

The school site, which is illustrated at approximately 30 acres, is of particular concern. Approximately 7.5 acres of this site is forested, 6.5 acres of which is in the stream buffer. This reduces the usable area for the school to approximately 22.5 acres. Staff believes that the school site should be re-evaluated, if a full-size high school is proposed.

Montgomery County Code, Chapter 22A requires development of this type to plant or protect 15 percent of the site in forest. The concept/sketch plan submitted does not indicate any specific area of forest protection or forest planting.

### **Environmental Guidelines**

This proposed development will be subject to the environmental regulations for the City of Gaithersburg. These regulations are patterned on the Planning Board's Environmental Guidelines, so the environmental buffers should be the same as would be required if the project were being reviewed through the M-NCPPC development review process. There is no encroachment proposed into wetlands or stream buffers on the plans submitted with the annexation request.

### **Watershed Protection/Water Quality**

The property is located in the Decoverly Tributary to the Muddy Branch watershed. That section of Muddy Branch is designated as a Use I-P. The *Countywide Stream Protection Strategy* (CSPS, 1998) rates subwatershed stream conditions fair and habitat conditions good but unstable. Further stress on this subwatershed can have dramatic effects on downstream conditions in Montgomery County. Although a regional stormwater pond just off the site serves the area proposed for the high school, on-site stormwater management should be used to protect the stream above this point. Any development on this site should comply with county stormwater management requirements outside the stream valley buffers and avoid further stress on this subwatershed. Waivers for any part of the site should be avoided.

### **Water and Sewer**

The service area categories for this site as designated in the County's Water and Sewer Plan are W-1 and S-6. Under these categories, the site is currently eligible for public water service, but not public sewer service. The provision of public sewer service will require the approval of a category change request (from S-6 to S-3) for the entire site. The owners will coordinate this request with the City and with the County's Department of Environmental Protection.

The Washington Suburban Sanitary Commission (WSSC) provides public water and sewer service in this area, both to the city and the surrounding county. Two major WSSC water transmission lines (60" and 36") traverse the property in a northeast-southwest direction. Access to public water service will be provided by extensions to the extensive network of smaller, local service water mains surrounding the property on almost all sides. The land generally falls from north to south, or away from Fields Road. This will likely direct sewer service extension towards the WSSC sewer mains south