



MCPB
ITEM #
10/2/08

MEMORANDUM

DATE: September 19, 2008

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief
Development Review Division

Catherine Conlon, Subdivision Supervisor
Development Review Division

FROM: Richard A. Weaver, Coordinator
Development Review Division

SUBJECT: Request for an Extension to the Validity Period and Limited Preliminary Plan Amendment – Preliminary Plan No. 12002022A, Piedmont Crossing, (Casey Property at Mill Creek)

Staff Recommendation: Approval of the following:

- 1) Grant an extension to the validity periods for Phases I, II and III, as contained in Planning Board Opinion date July 11, 2005, and amend the previous conditions of approval to add a condition as follows:

The preliminary plan will remain valid according to the following phasing schedule by which time record plats must be recorded for all property within each phase:

Phase I: February 11, 2010
Phase II: August 11, 2011
Phase III: August 11, 2011

then continuing along the south boundaries of Parcels P067 and P95 and the western edge of NIST to its intersection with the east boundary of Parcel P95 and the western boundary of NIST;

continuing in a northeast line along the NIST boundary to its intersection with the northern boundary of Parcel P015;

then continuing west along the northern boundary of Parcel P015 to its intersection with the east line of Quince Orchard Road;

then proceeding northeast along the east line of Quince Orchard Road to its intersection with the south line of Diamond Avenue and the northern boundary of NIST;

then continuing southeast along the northern boundary of NIST to its intersection with the east boundary of NIST and the west line of I-270 ;

then proceeding south along the eastern boundary of NIST to the point of beginning, which is at the west line of I-270 at its intersection with the west line of Muddy Branch Road.

There shall also be included in the foregoing described area any lot partially within and partially without such area that is zoned for commercial or multi-unit residential use.




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Phase I: February 11, 2010
Phase II: August 11, 2011
Phase III: August 11, 2011

- 2) Delete previous condition #4 requiring the applicant to enter into a Traffic Mitigation Agreement.
- 3) Replace previous condition #27 with the following:

#27) The Adequate Public Facility (APF) review for the preliminary plan shall remain valid until August 11, 2013.

BACKGROUND

The Planning Board approved the preliminary plan for Piedmont Crossing (formerly Casey Property at Mill Creek) at two public hearings on December 16, 2004 and December 23, 2004. As outlined in the Planning Board's Opinion (Attachment A), the application was approved for a mix of residential development to be constructed in the following phases:

Phase I: fifty three (53) one family detached dwelling units and twelve (12) one family attached residential units, including nine (9) MPDU's.

Phase II: twenty three (23) one family detached and sixty six (66) one family attached units, including eleven (11) MPDU's.

Phase III: sixteen (16) one family detached units and fourteen (14) one family attached units, including three (3) MPDU's.

The Opinion, which was mailed on July 11, 2005, also established the validity periods for the preliminary plan and its associated Adequate Public Facilities (APF) approval. The preliminary plan validity was established as 37 months from the date of mailing of the Opinion (August 11, 2008), by which time all three phases of the preliminary plan should have been recorded. A 61-month validity period from the date of mailing of the Opinion (August 11, 2010) was established for the APF approval, by which all building permits must be issued. Note that while the conditions of approval established phasing for the construction of units, there was no provision to permit the lots within each phase to be recorded in stages.

A site plan application (820060120) for Phase I was submitted to staff on September 8, 2005 and approved by the Planning Board on November 1, 2007. The Resolution for that site plan approval was approved by the Planning Board on September 4, 2008. ~~Conditions of approval as specified in the Site Plan Resolution require that the site plan must comply with the conditions of approval of the preliminary plan.~~

PROPOSED EXTENSION AND AMENDMENT

On August 11, 2008 the validity period for the preliminary plan expired; the applicant has submitted a timely request for an extension of the validity period and, in concert with that request, has asked to establish specific timeframes for each

development phase. Related to this request, they have also filed an amendment to the preliminary plan requesting that a new validity period for the APF approval be established that would coincide with the requested development phasing. The proposed amendment also includes a request to delete an existing condition which incorrectly required the developer to participate in a Traffic Mitigation Agreement.

DISCUSSION

On July 23, 2008, staff received a timely request (Attachment B) for an extension of the validity period for the preliminary plan which was to expire on August 11, 2008. Included with this letter is a request to amend the previous conditions of approval to establish timing elements for the validity of each phase of the plan.

Pursuant to Section 50-35 (h)(3)(d) of the Subdivision Regulations, “the Planning Board may only grant a request to extend the validity period of a preliminary plan if the Board is persuaded that:

- i. delays, subsequent to the plan approval by the government or some other party, essential to the applicant’s ability to perform terms of conditions of the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created by the applicant; or
- ii. the occurrence of significant, unusual, and unanticipated events, beyond applicant’s control and not facilitated or created by applicant, have substantially impaired applicant’s ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to applicant if the plan were not extended.”

The applicant’s memorandum seeks the extension based on both: 1) delays, subsequent to the approval of the plan, and essential to Applicant’s ability to perform the terms and conditions of the plan, which have materially prevented the timely validation of the plan, and 2) significant, unusual and unanticipated events that have occurred beyond the Applicant’s control which prevent timely validation of the plan.

Applicant’s position

By letter dated July 23, 2008, the Applicant requests extension of the validity period in phases: 18 months, until January 11, 2010, for Phase I; and five years, until August 11, 2013, for Phases II and III, at which time the plats for all land within the phases must be recorded by plat. The Applicant bases this request on six factors that have lead to the inability to record plats in a timely manner. To summarize, they are:

- 1) Involvement of the Town of Washington Grove in the process.

- 2) The condemnation suit filed by the Town for the Legacy Open Space (LOS) site.
- 3) Uncertainty by SHA over the exact area within Phase III needed for the ICC.
- 4) MCPS and MNCPPC decision-making concerning acquisition of the Phase II area for a school site (previously placed in reservation).
- 5) Efforts of MNCPPC to alternatively acquire Phase II for a Park.
- 6) Staff delays in processing the Phase I site plan and associated Resolution.

In addition, the letter cites continued indecision on the part of SHA on any additional portions of the Property that may need to be acquired for the ultimate alignment of ICC facilities. This indecision seemingly froze any ability to determine the size and scope of Phase II because of the potential for SHA acquisition of portions of the Property in this phase.

Staff Position

With regard to Phase I, staff agrees with the Applicant's argument that staff delays have substantially contributed to the inability to move the plats forward. Staff acknowledges that at the time of site plan submission, the site plan section was severely understaffed and the plans were necessarily on hold until staff shortages were addressed. This resulted in many months of delays. Delays were compounded after approval of the site plan because of a very complicated Resolution that addressed LOS issues with the Town. In all, the plan was delayed approximately 2 years. Staff finds that this delay was not caused by the Applicant and was beyond their control.

With regards to Phases II and III, it seems very likely that all of the land area within these phases will be acquired for public purposes. Essentially all of Phase III will likely be purchased by SHA for the ICC construction leaving no ability to develop any residential lots., and all of Phase II, or the school site, was recently recommended by the Planning Board for purchase using ALARF funds for a park. The Board's recommendation has been forwarded to the County Council. Although it does not seem likely, in the event the Council does not support the Planning Board's purchase request, and/or SHA does not purchase all of Phase III and land is available for development, plan validity for each of these phases also needs to be extended. Based on the same delays already noted, staff also supports establishment of an extended plan validity period for these two phases.

Recommended Phasing Schedule for Preliminary Plan Validity

In Staff's opinion, the Applicant has demonstrated the necessary justification upon which an extension of the preliminary plan can be granted. For Phase I, staff supports the requested extension of 18 months, in keeping with the staff delays discussed above, until February 11, 2010. For Phases II and III, the Applicant has requested an additional five years until August 11, 2013. In Staff's opinion, this timeframe is excessive. In the event Phases II or III are not acquired, three (3) years (August 11, 2011) is adequate time to gain site plan approval so that plats can be recorded.

Establishment of a New APF validity period

Because phased projects have historically been granted an extended period for APF review validity, and because this project did not receive such a phasing schedule, staff supports the Applicant's request to amend the previous conditions of approval to establish a new expiration date for the APF validity. Given the proposed phasing schedule, staff recommends a new APF validity period that extends until August 11, 2013, three years longer than the current expiration date. This would allow for all development in all three Phases to have until that time to gain building permit approvals. This phasing essentially allows Phases II and III to have two additional years, beyond their "plating" validity period to gain approval of building permits. This is consistent with the majority of preliminary plans approved by the Board.

Traffic Mitigation Agreement

In the review of the transportation requirements for this plan, there was an erroneous determination by staff that the project was located in the Shady Grove Transportation Management District (TMD) which prompted a requirement for the Applicant to enter into a Traffic Mitigation Agreement (TMA) with the Planning Board. Condition #4 reads as follows:

Enter into a traffic mitigation agreement that provides for effective transportation demand management with the Planning Board and DPWT to participate with the Greater Shady Grove Transportation Management District (TMD). The TMD's trip reduction goal is to achieve and maintain the commuting mode share goals of the Greater Shady Grove TMD of 25% non-auto drivers for the resident and 12 percent non-auto drivers for workers in the peak hours. DPWT is anticipating implementation of the Greater Shady Grove TMD and Share-A-Ride District within the timeframe of this development.

In their letter dated September 18, 2008, (Attachment C) the Applicant has requested an amendment to the previous approval that would relieve them of the requirement to enter into a Traffic Mitigation Agreement as specified above. Transportation planning staff has evaluated this request and has provided comments. (Attachment D) Staff concurs with the applicant's request and recommends that previous Condition #4 be stricken from the Opinion and formally corrected.

CONCLUSION

It is staff's determination that delays, not caused by the Applicant, have created the inability to timely record plats for Phases I, II and III of the approved preliminary plan. The Applicant submitted a timely request and provided the necessary justification for the Board to support an extension of the validity period for which staff has recommended an additional 18 months for Phase I and an additional three years for Phases II and III. Staff has also found that there is justification to delete the erroneous

requirement to enter into a TMA with the Planning Board. Finally, Staff also believes that there is justification to establish a new APF validity period for this plan in conjunction with the new phasing schedule for plats.

Attachments:

- Attachment A – Planning Board Opinion
- Attachment B – Request for extension and amendment
- Attachment C – Addendum to request
- Attachment D - Staff memo
- Attachment E – Preliminary plan

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

Date Mailed: JUL 11 2005

Action: Approved Staff Recommendation with modifications.

Motion of Commissioner Perdue, seconded by Commissioner Bryant, with a vote of 5 - 0.

Chairman Berlage and Commissioners Perdue, Bryant, Wellington and Robinson voting in favor.

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Preliminary Plan 1-02022

NAME OF PLAN: Casey Property at Mill Creek

I. Introduction

The date of this written opinion is JUL 11 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

On September 14, 2001, Oxbridge Development at Washington Grove, L.C. ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the R-90 (MPDU Option) zone.

The application proposed to create Preliminary Plan approval of one hundred eighty four (184) lots, ninety two (92) one family detached and ninety two (92) one family attached units including twenty three (23) Moderately Priced Dwelling Units on 65.59 acres of land ("Subject Property") located at the southern terminus of Amity Drive, south of Ridge Road, in the Shady Grove Sector Plan. Ridge Road and the Town of Washington Grove ("Town") bound the site to the north. Amity Drive terminates at the eastern border of the site. A number of homes on Bounding Bend Court directly abut the

eastern property line. Existing homes along Brown Street frame the western border of the property along with undeveloped industrial-zoned property. The southern portions of the site have a master plan ICC right-of-way traversing through it. The northwestern and central portions of the site are idle agricultural lands. The northeastern portion and the extreme southern portion of the site are forested. Two stream valley tributaries to Mill Creek cross the site and are for the most part forested. Numerous trees of specimen size and other significant trees are found on the property both within and out of the stream valleys.

The application was designated Preliminary Plan 1-02022. The Montgomery County Planning Board considered the application during a public hearing that began on December 16, 2004 and was continued on December 23, 2004. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.¹

The record for this application ("Record") closed at the conclusion of the December 23 public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the

¹ Staff noted on the record that the plan originally had been noticed for Phase I, only, however the notice was revised and re-sent, advising all parties that the Board would consider all three Phases as part of this public hearing. Additionally, legal counsel to the Town of Washington Grove and legal counsel to the Greater Shady Grove Civil Alliance ("Opposition Counsel") asked to cross-examine staff and other witnesses as they testified. The Chairman advised Opposition Counsel they could cross-examine witnesses present in the room during their allotted speaking time. Opposition Counsel noted their objections for the record, including the difficulty of cross-examining witnesses and making a presentation within their allotted time limits. The Chairman noted their objections, and confirmed on the record that this hearing was conducted in accordance with the Board's Rules of Procedure and their consistent application at public hearings. Vice-Chair Perdue noted that unlimited written testimony and/or requests for answers to questions can be submitted in record, thus Opposition Counsel has the ability to present all of its evidence in written form, regardless of the time limits on presenting spoken evidence. Opposition Counsel did cross-examine a MCPS representative during the course of the hearing.

Opposition Counsel also asked to have witnesses sworn in. The Chairman likewise denied this request, based on the Board's Rules of Procedure (which do not require witnesses to be sworn in) and on agency practice. The Chairman noted Opposition Counsel's objections in the record.

application and prior to the Board's action at the conclusion of the public hearing from (among many others) the Applicant, the Town of Washington Grove and its legal counsel, the National Trust for Historic Preservation and Montgomery County's Historic Preservation Commission, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

II. Project Description

The application proposes a total of 184 units divided between 92 attached and 92 detached residential lots. The plan utilizes the MPDU option provision under Section 59-C-1.6 of the Montgomery County Zoning Ordinance. Although this option permits an increase in density above the total number of dwelling units permitted by the standard method, the application does not take advantage of this allowance. The plan is at a density of 3.10 dwelling units per gross acre; below the allowable density of 4.39 dwelling units per gross acre. Site Plan approval procedures under Section 59-D-3 must be followed once the Planning Board approves a preliminary plan application.

The plan has been split into three separate phases to accommodate a number of development options and overriding public needs on the site. The phases and options are discussed below.

A. Phase I

Phase I includes fifty-three one family detached and twelve one family attached units (9 MPDUs) and is approximately 22 acres in size including the adjacent stream valley. Staff has worked with the Town and Applicant to provide a predominantly one family detached mix of units for this phase that staff believes to be compatible with the Town. Twelve townhomes including nine MPDUs will be located on the extension of Amity Drive. A landscape buffer of evergreens is proposed to provide screening along the Ridge Road edge.

During staff's review of the plan, the Applicant removed one proposed lot to the rear of the homes on Bounding Bend Court, and reduced the number of lots to the rear of the existing homes at the turn in Ridge Road in the northernmost portion of the Subject Property. The Applicant also revised its grading plan to save a specimen tree in this area. Phase I also includes a local park and a picnic area; the improvements of which are discussed in the conditions of approval. Staff anticipates further review of all remaining compatibility issues that are more appropriately addressed when the detailed site plan is submitted.

B. Phase II

Residential development in Phase II includes a maximum of twenty-three (23) detached and sixty-six (66) attached residential units, including eleven (11) MPDUs. Phase II as originally proposed also included a dedicated Legacy Open Space ("LOS") parcel totaling approximately 12.0 acres, which is adjacent to the Town of Washington Grove.

As a result of the ongoing Shady Grove Sector Plan discussion, the plans include an option to reserve an 8.5-acre elementary school site. The Montgomery County Public Schools ("MCPS") reviewed the proposed school site and found it to be adequate with the caveat that the alignment of Amity Drive/Crabbs Branch Way will need to be shifted to the south to meet their operational requirements. The school site will be placed on a plat of reservation for a period not to exceed 24 months from the Planning Board hearing or December 23, 2006. It is not known at this time if the proposed ICC right-of-way, which may affect Phase III, will require re-configuration of lots or changes to unit count. The Applicant may be able to negotiate certain elements of the dedication with the State Highway Administration ("SHA") (*i.e.*, shared stormwater management) that will avoid changes to the preliminary plan.

C. Phase III

Residential Development in Phase III is limited to a maximum of sixteen (16) detached and fourteen (14) attached residential units, including 3 MPDUs. This portion of the site may also be impacted by the November 2004 ICC alignment study. The final number of units will be determined once the State Highway Administration makes a decision on the need for the area shown within the study. Again, it is not known at this time if the ICC right-of-way will require re-configuration of lots or changes to unit count. The Applicant may be able to negotiate certain elements of the acquisition with the SHA (*i.e.*, shared stormwater management) that will avoid changes to the preliminary plan. If not, staff is recommending that the preliminary plan be revised by Planning Board action.

MASTER PLAN COMPLIANCE

Staff testified that the Preliminary Plan is consistent with the Draft Plan, and with previous master and sector plans. The Subject Property is proposed to be recommended in the Draft Shady Grove Sector Plan for an elementary school site because of its location in the community and its relationship to the LOS parcel. The Draft Plan recommended:

- Designating the Subject Property as the preferred site for an elementary school. (The Applicant has agreed to place this area in reservation for future conveyance for 24 months from December 23, 2004.)²
- Designing the elementary school layout to encourage walking as well as accommodate school buses and parking areas. Walkway connections from all sides of the surrounding community to be provided.

The Draft Plan also acknowledges the historic and cultural significance of the proposed LOS parcel, and encourages protecting the parcel through the development review process through dedication as follows:

- Protect as much of the 13-acre Ridge Road Meadow on the Casey at Mill Creek property as possible through the development review process, balancing site constraints and developer interests. It has been identified as a Class II Heritage site in the Legacy Open Space Functional Plan and provides a historic setting and open space buffer for Washington Grove. It should offer passive recreational opportunities including trails and nature observation. As much as possible of the meadow should eventually be acquired through dedication.

ENVIRONMENTAL

Forest Conservation

There are approximately 29.21-acres of existing forest on the property. The development is proposing to utilize an optional method of development and therefore must comply with Section 22A-12(f) of the Montgomery County code. This section of the Code requires developments utilizing an optional method of development to either retain or plant a certain percentage of forest onsite. For this particular plan, the appropriate threshold is the conservation threshold, which is approximately 13.12 acres.

The plan proposes to remove approximately 12.57 acres of forest and retain approximately 16.64 acres of forest. The preliminary forest conservation indicates that the proposed plan retains more forest than is necessary to meet the forest conservation threshold and there are no forest planting requirements. In addition, there are unforested stream buffer areas that could be used for onsite planting areas if necessary in the future.

² The Approved and Adopted (1985) Gaithersburg Vicinity Master Plan makes no specific recommendations for a school site regarding the Casey at Mill Creek property, and the associated Approved and Adopted Land Use Map does not show a school site in this area.

Environmental Guidelines

The site includes stream buffers and wetlands. These areas will be protected by Category I forest conservation easements. The environmental buffers around all wetlands are a minimum of 40 feet. This is 15 feet greater than the wetland buffer required by the Maryland Department of Environment. All stream buffers are a minimum of 125 feet from the top of the stream bank. Both the wetland and stream buffers are consistent with the environmental buffers identified in the Environmental Guidelines for Use IV watersheds. The only encroachment into stream valley buffers is for necessary infrastructure such as stormwater management outfalls and necessary road connections. All stream crossings will be designed using environmental sensitive methods.

Noise

The property is located near the proposed future ICC. When the State Highway Administration (SHA) conducted its noise analysis for the ICC, SHA did not measure existing noise levels on the subject property and will not provide noise mitigation for the future occupants. It is SHA policy to provide noise mitigation for existing developments when constructing new roads and for developers to provide the noise mitigation for the future developments. Therefore, it is necessary for the Applicant to prepare and submit a noise analysis with future site plans. The future site plans must identify the means to mitigate future noise levels to acceptable interior and exterior levels. M-NCPPC discourages residential units within 150 feet of the proposed ICC. The preliminary plan submitted does not have any residential units within 150 feet area of the proposed ICC. This separation is the first, and staff's preferable, method for noise mitigation.

TRANSPORTATION

Status of the Intercounty Connector

As part of its preparation of the Draft Environmental Impact Statement (DEIS) dated November 2004, for the proposed ICC, SHA included engineering mapping for the roadway, proposed as a limited-access east-west highway intended to link areas between I-270 and I-95/US 1, through central/eastern Montgomery and western Prince George's Counties, including an interchange with Shady Grove Metrorail Station Access Road to the south of the subject property.

The ICC planning process has concurrently two alternative alignments, selected through the Alternatives Retained for Detailed Study (ARDS), called Corridor 1 and Corridor 2. Corridor 1 is the southern alignment that generally follows the ICC alignment incorporated in the area master plans and runs along the south side of the subject property. The Corridor 2 is the alignment that diverts to the north, east of

Georgia Avenue. It is noted that the ICC Corridor 2 alignment is not represented in any area master plans.

The area for Phase III includes the now-expired Reservation Plat No. 576-90 (i.e., first approved on June 1989 and recorded on July 1989) to reflect the master-planned ICC interchange with the Shady Grove Metrorail Station Access Road at that time. The area south of Phase I bordered the now-expired Reservation Plat No. 574-10 (i.e., approved on October 1986 and recorded in November 1996) to reflect the master-planned ICC right-of-way east of this interchange.

According to SHA's November 2004 plans (Attachment No. 1), even less right-of-way is needed for the interchange within the Phase III area, but additional right-of-way within the Phase I area is now required to the east for storm water management. Condition Number 5, below, requires reservation of this area in anticipation of SHA's eventual acquisition of that property if needed after selection of a final alignment of the ICC.

Trail Connection and Pedestrian Facilities

The alignment of a future trail connection should be coordinated with M-NCPPC's Park Planning and Resource Analysis staff, the Town of Washington Grove, and (MCPS) with the specific alignment to be determined at site plan. The trail starts from Amity Drive Extended along the east side of the proposed elementary school site, through the Legacy Open Space, into the Town of Washington Grove corporate limits, and to the Washington Grove Marc Station. The Draft Plan also recommends extending the bikeway route along Crabbs Branch Way through the proposed development at Casey at Mill Creek to connect with Washington Grove's bikeway system.

Five-foot sidewalks are being provided along Amity Drive. Four-foot sidewalks are being provided along all the reduced width tertiary residential streets except where no houses front along them or for environmental reasons. Transit service is not available along Amity Drive or connecting Epsilon Drive between Washington Grove Lane and Shady Grove Road. With the future extension of Amity Drive to extended Crabbs Branch Way, transit service can more readily be provided along extended Crabbs Branch Way to extended Amity Drive into the existing Mill Creek community.

Adequacy of Transportation Facilities

The Planning Board expressly incorporates herein the transportation analysis provided by staff in its December 10, 2004 staff report and subsequently updated December 13, 2004 staff report from the Department of Transportation.

Amity Drive Extended (to Crabbs Branch Way Extended) should be designed to discourage non-local traffic using Amity Drive as an alternative route between Shady

Grove Road and Washington Grove Lane and reflect its surrounding residential character. Instead of a straight-line connection between its existing terminus and Crabbs Branch Way, traffic calming measures should include an alignment with gentle curves and traffic islands. Where the 70-foot-right-of-way Amity Drive Extended connects with 80-foot-right-of-way Crabbs Branch Way, a traffic circle should be considered in lieu of an intersection design.

Local Area Transportation Review ("LATR") was analyzed under the standards in the *FY 2002 AGP* and the July 2002 *LATR Guidelines*, because the preliminary plan was submitted and completed before the July 2004 LATR procedures. Under the 2002 standards, the CLV/congestion standard is 1,525 for intersections within the Derwood Policy Area, (and not the reduced congestion standards under the *FY 2005 AGP*). Both the entire development, and Phase I only, generate more than 50 peak-hour trips during the weekday morning peak period (considered then from 7:00 to 9:00 a.m.) and the evening peak period (considered then from 4:00 to 6:00 p.m.). Consequently, the Applicant was required to submit traffic studies to verify traffic levels. Based on those studies, and staff's subsequent review, staff determined for Phases I, II, and III that LATR would be satisfied with the following improvements:

1. Shady Grove Road and Epsilon Drive/Tupelo Drive: The improvements described in Recommendation No. 3 would mitigate the impact of site-generated peak-hour trips for Phase I only. Although still exceeding the 1,525 congestion standard, the CLV value in the total-with Phase I traffic condition added is less than the CLV value in the background traffic condition during the weekday morning peak period.

The improvements described in Recommendation No. 4 would be needed to satisfy LATR for the additional traffic generated by Phases II and III by the connecting Amity Drive Extended with Crabbs Branch Way Extended. This connection provides an alternative travel route in lieu of Epsilon Drive to Shady Grove Road. Although still exceeding the 1,525 congestion standard, the redistribution of traffic to Amity Drive Extended and Crabbs Branch Way Extended reduces the congestion and mitigated the traffic impact of the site-generated peak-hour trips.

Public Hearing Testimony

Applicant, represented by legal counsel, appeared and testified. The Applicant testified that the three-phase preliminary plan is the result of several years of cooperation and negotiation that occurred between the Planning Board's staff, representatives of the Town, the Applicant, and MCPS. The Applicant stated that it is willing to dedicate the LOS to M-NCPPC, and additionally that it was willing to place the school site and ICC right-of-way portions of the site in reservation for 24 months from December 23, 2004. The Applicant further testified that it agreed with the staff's

recommendation of approval, and with staff's proposed amendments to conditions six and nine as presented during the public hearing.

A number of speakers appeared to testify about the project. The primary contested issues were (A) the timing and size of the LOS parcel to be dedicated; (B) the timing of the dedication of the school site; (C) the density and housing mix within the three acres of the LOS property that will not be dedicated, and the new road proposed adjoining those lots; (D) the preservation of trees and wetlands on the site; and (E) the protection of stone quarry sites on the property. These issues will be addressed in turn.

A. LOS Parcel

In its staff report and presentation, staff noted that the Planning Board approved the addition of part of the property as LOS site on February 7, 2002.³ Specifically, the 13-acre open field adjacent to Ridge Road was determined to provide a valuable buffer to the significant heritage resource that is the Town of Washington Grove. The meadow enhances the setting of the Town, designated a National Register historic site, by maintaining the town's rural character. The site was added to Legacy Open Space as a Heritage Resource (Class II) with protection recommended through negotiations with the developer as part of the development review process. Legacy Open Space staff supported approval of the proposed preliminary plan.

The plan proposes dedication to the Commission of approximately 12 acres as the Legacy Open Space resource, including approximately 10.5 acres of the designated open field and approximately 1.5 acres of a forested hedgerow adjacent to the field. The Town negotiated over a period of several years with the Applicant and reached a

³ The meadow was determined to be significant according to several Legacy Open Space criteria:

- a. The property has countywide and national significance in terms of its association with the Town of Washington Grove, a heritage resource of national import with exceptional architectural character and rural viewscapes.
- b. Because of its association with Washington Grove, the site contributes to the Legacy program's heritage theme of the Rail Community Cluster, of which the Town is a part.
- c. If preserved as open space, the site would serve as a protective buffer of the significant heritage resource that is Washington Grove. Over 57% of the Town is preserved as forest today, and the preservation of this open field would preserve a rural viewcape on the last remaining unprotected side of the Town.

compromise whereby houses are proposed on 3 acres of the field in the northeast corner but the forested hedgerow would be saved to preserve the existing natural edge to the field. The current plan preserves approximately a 50-70 foot width along the entire length of the hedgerow on all versions of the plan.

The record includes a November 24, 2004 memorandum from the Chair of the Planning, Housing and Economic Development Committee, which asked the Phases 2 and 3 of the preliminary plan be deferred pending completion of the Council's review of the Shady Grove Sector Plan, in order for the Council to make a final determination on the location of a school site in the Shady Grove planning area. The Board considered all three phases during this plan, as the Applicant asked for a decision on all three phases and the Board had no authority to unilaterally defer a portion of the application.

The Town Mayor testified at length, both at the hearing and through written correspondence. He stated that the staff recommendation reflected almost four years of cooperation and negotiation between Applicant, the staff and the Town. He intended to testify in full support of the project, indicating that the three-phase plan confers significant benefit to many citizens. His primary concern was with Condition No. 15, which addressed the timing of dedication of the LOS piece. It had been his understanding that the staff recommendation would require dedication of the LOS property in Phase I, and he objected to any suggestion that dedication should occur in Phase II. The Mayor testified that the Town's overriding concern was to ensure the protection of the 13-acre Legacy Open Space parcel to provide a buffer between the new project and the existing Town communities. In response to Planning Board questioning, staff testified that it had changed its earlier position on dedication at Phase I to a requirement that dedication occur in Phase II because geographically the LOS piece was more related to Phase II, and in keeping with staff's general practice of requiring dedication of property with adjoining development, they adjusted the phasing schedule for the dedication requirement.

The Mayor also testified that the proposed plan confers many public benefits, including the preservation of the LOS site as parkland, which also ensures compatibility between the Town and the new development, and which enhances the preservation of the rural character of Ridge Road. Additionally, the project offers a school site that the Town and surrounding community support. The Mayor urged that the Board require ~~dedication of the LOS piece with Phase I, not Phase II, suggesting that to delay~~ dedication to Phase II risks the loss of the site. He noted that unlike many LOS properties that the County has purchased at great cost, this LOS site will be conveyed to the County at no cost.

The Town's legal counsel testified that in prior proceedings the Planning Board directed Applicant to work with community and staff to remove lots from this site and to coordinate the protection of the LOS property. He urged that the Board require dedication of the LOS site in Phase I. Legal counsel for the Town also argued that the

reservation period for the school site should be extended to three years, rather than the two years proposed by staff. He noted that the proposal before the Board reflected a consensus between the Applicant and the Town that had been reached two years earlier, consistent with Planning Board's direction after the February 14, 2002 hearing.

This line of testimony was extensively reiterated. The Chair of Historic Preservation Commission for the Town, and a resident, testified that the Town had worked extensively with Applicant to (1) ensure protection of LOS property; and (2) allow Applicant to attain viable density on the site. He testified that the project protected large areas of passive open space, reflected positive modifications to Amity Road, achieved a desirable balance of 50/50 single family detached and single family attached housing, all of which combined to maximize the compatibility of the proposed neotraditional style of the new development with the existing historic Town. He also raised concerns that the density in Phase I along the meadow was too high, and asked the Board to review the plan at the time of site plan to reduce this density and create a 50' forested buffer along this edge.

A representative of both the Montgomery Civic Federation and Norbeck Meadows Association testified that the Civic Federation adopted a resolution approving staff's recommendations on the plan. A member of the Greater Shady Grove Civic Alliance ("Alliance") and Town Councilmember testified that the Town and Applicant negotiated at length to achieve a balance between the character of the existing Town and the new development, achieved in large part through preservation of the meadow, and asked that the Board honor the balance achieved by the Town and require dedication of the LOS property in Phase I. The record also includes written correspondence from the Southern Field Office of the National Trust for Historic Preservation and Montgomery County's Historic Preservation Commission supporting dedication of the LOS parcel.

Individual residents of the Town, of the greater Shady Grove area and of Derwood also supported the dedication of the LOS parcel in Phase I, reiterating the concept that the meadow was critical to the long-term protection of the Town as a historic resource, and concerned that if the LOS parcel was not dedicated with Phase I, the dedication may be lost. This evidence was submitted in both testimony and written correspondence contained in the record.

In response to Board questions, staff provided a chronology of the application. Staff noted that the plan was first filed four years before the December public hearing, and that the Board identified the LOS parcel in 2002. The Board approved for County Council review and ultimate adoption the Draft Shady Grove Sector Plan in July of 2004, and that draft recommended the LOS parcel to remain. The Draft Plan also recommends a school site within the Subject Property, adjacent to the Mill Creek South Community along Amity Drive.

B. Dedication of School Site

Legal counsel to MCPS appeared to testify, and asked that the Board require reservation of a viable school site - stating that the location shown on the preliminary plan before the Board was such a site. MCPS also testified that it was concerned that the Amity Drive alignment would be adequate for this school site, and asked that there be appropriate plat of reservation for school site and access. MCPS stated on the record that revised condition numbers six and nine, as presented by staff at the hearing, adequately addressed both of these concerns, and testified in support of the staff report and recommendations.

Opposition Counsel cross-examined a MCPS representative as to why it had agreed to seek a two-year (versus a three-year) period of reservation for the school site. The MCPS representative testified that the school changed its position based on good-faith negotiations with Planning Board staff, who had recommended a two-year period of reservation, and the school board agreed to that time frame.

Legal counsel for the Greater Shady Grove Alliance testified on this issue, as well, and asked the Board to require dedication of the LOS parcel in Phase I to ensure that the location of the school site would not occur.

In response to Planning Board questioning about the length of time for the reservation period, the Board's legal counsel indicated that under Maryland law a period of reservation must be tied to a reasonable period of time. In light of the fact that the District Council will finalize the Draft Plan within several months, the 24-month period gives MCPS a reasonable amount of time to acquire the site.

Responding to testimony raising concerns about the Council's request that the Board defer action on the LOS property until a decision could be made in the Master Plan process about the need for a school site, Chairman Berlage noted that the Planning Board makes ultimate findings on the dedication issues. He also noted, however, that the Council memorandum was part of the public record and the concerns of council members, like the concerns of all other citizens, are a matter for the Board to consider and weigh.

C. Density and Housing Mix/Ridge Road location.

Several people testified in opposition to the location of housing within the three acres of LOS property that the Applicant has not proffered to dedicate. The Town Mayor testified that the 5,000 - 6,000 square foot new lots in that location are incompatible with the Town, and asked for additional setbacks for compatibility and greater protection of stream buffers, perhaps through more multi-unit dwellings in interior of site, thus reducing the number of units in this location. (However, in response to Planning Board questions, the Mayor stated that it was not his intent to reduce overall density on the

site through a reduction of density within this single portion of the site.) Individual residents echoed these concerns, seeking relocation of 12 homes within the LOS property elsewhere within the site, leaving the entire Legacy site undeveloped. The Mayor asked that these changes be made during the site plan review process. Additional compatibility concerns were raised with respect to the new street proposed to run parallel to existing Ridge Road, and the lots adjoining that road, with the suggestion that the new road should be moved internally into the new community to provide additional buffering between the new units and the old by replacing the road location with open space buffering. There was also testimony raising the loss of old, large hardwood forest in this area, resulting from the development of these units. In particular, the testimony raised concerns about large white oak, black gum and red maples that were estimated by the authors to be more than 100 years old, and in particular about a single black-gum near lot 51 - (according to the witness one of largest in county) and should be preserved.

Staff testified that the single-family detached units were placed next to existing single-family homes in Town for compatibility purposes, but that layout could change somewhat at site plan, and additionally that the proposed 30-foot buffer in Phase I may be widened at site plan. During rebuttal, the Applicant noted that testimony on this issue was contradictory; some speakers urged the Board to increase the townhome density in the center of the site to allow for larger lots on the periphery, providing greater compatibility with the Town's development patten, however, other speakers suggested that the development as proposed included too many townhome units in the center of site thus skewing the monetary valuation of the school site in the event it is acquired through purchase by MCPS.

D. Preservation of Trees and Wetlands

A representative of the Maryland Native Plant Society, and several neighboring residents, testified as to a number of old specimen trees on the site, and argued for the preservation of those trees. Although this testimony gave detailed information on the location, size and specimen of those trees that would be lost, none of the testimony indicated that the project as recommended by staff failed to meet the standards and criteria contained in the County's Forest Conservation Law or in the Planning Board's Environmental Guidelines.

In addition there was testimony that the development should be revised to preserve additional wetland and stream buffer areas, in order to better preserve the water quality of the streams. The Board asked staff if they had conducted a study on the impact of Phase I on water quality. In response to that questioning, Staff testified that the Applicant had provided, and Montgomery County's Department of Permitting Services ("DPS") had approved, a study that analyzed (among other things) the impact of Phase I on water quality and on wetlands, and that the stormwater management

concept plan requires maximization of recharge into wetlands. This is an area of substantive review that lies with DPS, not with the Planning Board.

E. Stone Quarry Sites

A representative of the Maryland Native Plant society and individual residents testified as to the existence of certain archaeological and historical artifacts near rock quarry sites (pottery, glassware and old bottles) located within the Subject Property. Additionally, the Greater Shady Grove Civic Alliance submitted a report dated July 18, 2003, recommending that the property should be further evaluated to historical and cultural significance. Park Staff testified at the hearing that it would work with the Applicant to further study the site for these artifacts. During rebuttal the Applicant objected to the study, noting that he had not seen the testimony on this issue until the commencement of the public hearing.

F. Transportation

There was some generalized testimony raising concerns about traffic, but no specific evidence that refuted the findings and conclusions of Transportation staff with respect to the adequacy of public facilities for road purposes.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies⁴; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- 1) Preliminary Plan No. 1-02022 substantially conforms to the Gaithersburg Vicinity Master Plan and the Draft Shady Grove Sector Plan, and particularly with the current layout which provides both protection of the Legacy Open Space parcel and the provision of a school site as requested by MCPS. The Board specifically finds that the plan is consistent with the Draft Plan, and moreover reflects the community agreement based on Board comments at the time the LOS property was identified. Moreover, the Board finds that the Applicant has voluntarily proffered to dedicate the LOS site, when it is under no legal obligation to do so. The Board accepts the Applicant's proffer to dedicate 12 acres of property identified as "Legacy Open Space" on the preliminary plan, and finds that this dedication conforms with the public hearing draft sector plan as approved by the Board.

⁴ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities.

- 2) The Board expressly adopts the analysis of its Transportation Staff with respect to the adequacy of transportation capacity, and finds that through the application of condition numbers 2, 3, 4 and 24 below, that roads and public transportation facilities will be adequate. The Board also expressly finds based upon uncontested evidence of record, that all other public facilities, including sewerage and water service, schools, police stations and firehouses public facilities are adequate to support and service the area of the proposed subdivision.
- 3) The Board finds that the size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision. The Board additionally finds that while there was testimony suggesting that additional townhome density be included in the center of the site, that testimony was offset by other testimony suggesting that the townhome density in the center of the site is too great. The Board looked specifically at the plan before it, and determines based upon the recommendations of its staff that the application as presented meets the standards and requirements of the Subdivision Regulations, and should be approved as presented. The Board notes that it will determine the compatibility of specific lots at the time of site plan, when the size, number and location of lots may be reconfigured and/or reduced, and in particular will look at the units located adjacent to the dedication portion of the LOS parcel with respect to this issue.
- 4) The Board finds that based upon the uncontested evidence of record, the application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable conditions of approval in a final forest conservation plan to be submitted at site plan. With respect to the specific testimony presented on the issue of the loss of forest, trees and wetlands, the testimony submitted raised generalized concerns but did not present any evidence that the plan as reviewed by the Board failed to meet the standards as set forth in the Board's Environmental Guidelines or in Montgomery County's Forest Conservation law. Consequently, the Board adopts and incorporates the written and oral testimony of staff on these matters, and finds the plan to be in full compliance with the Guidelines and law, and approves the preliminary plan as submitted.
- 5) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards, and notes that MCDPS has exclusive jurisdiction over this aspect of the preliminary plan application.

6) The Board further finds as follows:

- i. The Board finds that a requirement that the Applicant place in reservation Phase II of the Plan for a period of 24 months from the public hearing date (December 23, 2004) conforms with its legal authority under Section 50-31 of the Subdivision Regulations and conforms with the request for reservation as submitted by MCPS.
- ii. With respect to the issue of the archaeological and historical artifacts found on the site, the Board finds that it has no jurisdiction over this matter, however notes that Planning Board staff indicated that they would seek further study on these issues prior to site plan approval.

7) The Board further finds that any objection (concerning a substantive issue) that was not raised prior to the closing of the Record is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-02022 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-02022 subject to the following conditions:

- 1) Approval under this preliminary plan is limited to the following:
 - a. Phase I - fifty-three (53) one family detached and twelve (12) one family attached residential units, including nine (9) MPDUs.
 - b. Phase II - twenty-three (23) one family detached and sixty-six (66) one family attached units, including eleven (11) MPDUs.
 - c. Phase III - sixteen (16) one family detached and fourteen (14) one family attached units, including three (3) MPDUs.
- 2) To satisfy LATR for the first 65 building permits, provide for the following off-site transportation improvements:
 - a. Install or provide funding to the Montgomery County Department of Public Transportation and Transportation (DPWT) to install the non-automobile transportation infrastructure amenities listed below prior to release of the first building permit:
 - Two bus shelters
 - Two sets of electronic signing for real-time transit information
 - 1,560 linear feet of off-site sidewalks and or bike path
 - Two bike lockers that are equivalent to one vehicular trip per locker

- b. Provide for the following future modification of the traffic signal operation at the intersection of Shady Grove Road and Epsilon Drive/Tupelo Drive as requested in the DPWT letter dated December 1, 2004, provide the following:
 - i. Reconfigure the eastbound approach on Epsilon Drive-Tupelo Drive to allow shared through/right and an exclusive right turn.
 - ii. The appropriate signs to prohibit right-turns-on-red.
 - iii. Change the traffic phasing on the Epsilon Drive-Tupelo Drive approaches from concurrent to split phasing (*i.e.*, one approach moves at a time)
 - c. Prior to release of the first building permit, construct the extension of Amity Drive westward from its current terminus to the eastern stream buffer as follows:
 - i. Dedicate 70 ft. of right-of-way for and construct this segment that is in accordance with DPWT's primary residential street standards and includes a five-foot sidewalk on the south side, an eight-foot bike path on the north side, and other cross-section design features/amenities.
 - ii. Include along this segment the necessary vehicular and pedestrian access and provide a parking area for the master-planned local park on the south side of Amity Drive.
- 3) To satisfy LATR, prior to release of the 66th building permit, provide the following transportation improvements:
- a. Provide for the construction of the westward extension of master-planned Amity Drive and its connection to the terminus of master-planned Crabbs Branch Way (*i.e.*, from its terminus north of Shady Grove Road and northward under the existing I-370 bridge). The Amity Drive and Crabbs Branch Way extensions must be under construction prior to release of the 66th building permit or be funded in DPWT's CIP by December 23, 2008. Under construction means all construction contracts are let and all bonds are posted with the Montgomery County Department of Permitting Services.
 - b. Extend Amity Drive segment from the eastern stream buffer to the master-planned extension of Crabbs Branch Way as follows:

- Provide adequate traffic calming measures such as proposed traffic islands before and after the eastern and western stream buffer crossings. These measures are needed to discourage non-local traffic from using master-planned extensions of Amity Drive and Crabbs Branch Way as an alternative route between Shady Grove Road and Washington Grove Lane.
 - Provide along this segment the vehicular and pedestrian access and a parking area for the master-planned local park on the south side of Amity Drive.
 - Coordinate with prospective Applicant(s) of the adjoining property west of the subject site regarding, 1) the alignment of Amity Drive master-planned extension approaching Crabbs Branch Way Extended, and 2) the transition and cross-sectional delineation of Crabbs Branch Way as an industrial roadway compared with Amity Drive as a primary residential street.
- 4) Enter into a traffic mitigation agreement that provides for effective transportation demand management with the Planning Board and DPWT to participate with the Greater Shady Grove Transportation Management District (TMD). The TMD's trip reduction goal is to achieve and maintain the commuting mode share goals of the Greater Shady Grove TMD of 25 percent non-auto drivers for the residents and 12 percent non-auto drivers for workers in the peak hours. DPWT is anticipating implementation of the Greater Shady Grove TMD and Share-A-Ride District within the time frame of this development.
- 5) Provide for the necessary right-of-way for the Inter County Connector (ICC) as follows:
- a. Record a plat of reservation for the right-of-way needed for the (SHA) ICC according to SHA's November 2004 plans for an interchange with the Shady Grove Metrorail Station Access Road including two stormwater management areas. The right-of-way should be held in reservation until the earlier of either:
 - September 1, 2005; or
 - A final Record of Decision is issued the Federal Highway Administration (FHWA) and that Record of Decision does not include the Reservation Area, or any portion thereof, within the final ICC alignment.

- b. If FWHA issues a final Record of Decision that includes the Reservation Area Applicant shall either coordinate with SHA to negotiate a shared stormwater facility and thereby not require alteration of lots or submit a revised preliminary plan locating all dwelling units (including MPDU's), roadways, stormwater management ponds, public area and other related infrastructure outside of the Reservation Area and show the ICC right-of-way area of acquisition on final record plat.
- 6) Applicant to record a "plat of reservation" for a 24-month period not to exceed December 23, 2006 as shown on the Preliminary Plan for Phase II within 60 days from the date of the Opinion of the Preliminary Plan approval, together with an area representing the future dedication of Amity Drive in an alignment suitable for the school site.
 - 7) Compliance with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
 - 8) At the time of site plan approval, Applicant to submit a noise analysis for technical staff review and approval that delineates the location of the existing and 20-year future, 60 and 65 Ldn dBA noise contours and the methods to minimize exterior and interior noise levels if the analysis indicates the need for mitigation.
 - 9) The Applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Shady Grove Sector Plan unless otherwise designated on the preliminary plan, including the designation of Amity Drive through Phase II no later than at the time of acquisition of the proposed elementary school site and in an alignment suitable for the school site.
 - 10) The Applicant shall construct all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Shady Grove Sector Plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
-
- 11) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation that are not dedicated to Parks.
 - 12) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
 - 14) Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission

staff prior to release of final building permit that Applicant's recorded HOA documents incorporate by reference the Covenant.

- 15) Within the earlier of 24 months of the issuance of the opinion for Preliminary Plan 1-02022 or the recordation of the initial plat of Phase I, Applicant to dedicate to MNCPPC the area shown on the plan as "Legacy Open Space Natural Area" totaling approximately 12 acres.
- 16) Dedication of the areas identified as "To be dedicated to M-NCPPC" for use as parkland and protection of the valuable natural resources including: 1) the designated area located south of Amity Drive and east of the stream crossing in the Phase I Section of the plan to be used as a neighborhood park and; 2) the stream valley that lies between the developed portions of the property and along the south side of the site surrounding and including the streams and wetland areas. Dedication not to include any stormwater management ponds.
- 17) Dedicated land described in Condition No. 16 to be conveyed in concert with Condition No. 5 above pending resolution of ICC boundaries. Dedication to parks to be free of any trash and unnatural debris with the boundaries adequately marked and signed to delineate between parkland and private properties. Location and design of boundary markers and signs to be approved by M-NCPPC staff.
- 18) Applicant to construct within the dedicated neighborhood park, in the location as agreed by Applicant and M-NCPPC staff, the following recreation facilities to be constructed to park standards and specifications:
 - Multi-Age Playground with minimum size of 100' x 100'
 - Picnic Area with shelters and tables
 - Adequate Parking for active recreation and picnic areas
 - Basketball/Multipurpose Court (if no school is constructed)M-NCPPC staff to approve location and design of recreation facilities and parking. Engineering and design plans, acceptable to M-NCPPC staff, to be prepared for the site by Applicant by time of Site Plan and are subject to staff approval.
- 19) Applicant to provide natural surface trails within the dedicated open space and sufficient access to the trail system from the communities adjacent to the parkland. Trail locations to be determined by time of Site Plan and to be coordinated with and acceptable to M-NCPPC staff. Trails to be constructed to park standards and specifications.

- 20) Compliance with the conditions of approval of the MCDPS stormwater management approval dated May 4, 2004.
- 21) No recordation of plats until Site Plan signature set approval and final stormwater management approval by MCDPS.
- 22) Compliance with conditions of MCDPWT letter dated February 15, 2002 and as revised December 6, 2004, unless otherwise amended.
- 23) No clearing, grading or recording of plats prior to signature set approval.
- 24) Final approval of the number and location of dwelling units, sidewalks, bikepaths and a master-planned hard-surface trail connection from Amity Drive through the Legacy Open Space area to the north and recreational amenities will be determined at site plan(s).
- 25) A landscape and lighting plan must be submitted as part of each future site plan application for review and approval by technical staff.
- 26) Final number of MPDU's/TDR's as per Condition No. 24 above to be determined at the time of site plan.
- 27) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 28) Other necessary easements.

* * * * *

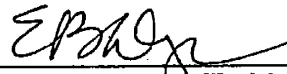
[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

MF 6/17/05

Approved for legal sufficiency
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday, June 23, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for the Casey Property at Mill Creek, Preliminary Plan 1-02022.



Certification As To Vote of Adoption
Technical Writer

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

July 23, 2008

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VIA HAND DELIVERY

Ms. Cathy Conlon
The Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Piedmont Crossing (formerly Casey Property at Mill Creek);
Preliminary Plan No. 1-02022 ("Preliminary Plan") – Request to Amend Preliminary
Plan to Add a Phasing Schedule and to Extend the Validity Date and Adequate Public
Facilities Validity Period

Dear Ms. Conlon:

On behalf of our client, Toll MD II, LLC ("Toll" or the "Applicant"), owner and developer of the property that is the subject of the Preliminary Plan, and pursuant to § 50-35(h)(3) of the Montgomery County Code (the "Code"), the purpose of this letter is to request an amendment to the Preliminary Plan to provide a phasing schedule or alternatively, a revised phasing schedule,¹ and thereby extend the Adequate Public Facilities ("APF") validity period from the existing 5-year validity period to a 9-year period (see § 50-20(c)(3)(B) of the Code). Toll believes and certifies that the requested extension is the minimum additional time required for validation of the Preliminary Plan.

¹ A validity period phasing schedule may not have been technically established with the approval of the Preliminary Plan. Although the Opinion (as hereinafter defined) identifies three phases, differing validity periods were not established and therefore, the whole of the Preliminary Plan was required to be validated three years from the initiation date or by August 10, 2008.

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Factual Background

The Preliminary Plan was approved by the Planning Board by Opinion dated July 11, 2005, a copy of which is attached hereto as Exhibit A (the "Opinion"), for a residential subdivision of 184 lots on approximately 65.59 acres of land (the "Property") to be developed in the following three phases:

Phase I: 65 units (53 single-family detached and 12 single-family attached), including 9 MPDUs, a local park and a picnic area. This area also includes a proposed landscape buffer along Ridge Road to screen the view of the proposed development from the Town of Washington Grove.

Phase II: 89 units (23 single-family detached and 66 single-family attached), including 11 MPDUs. This area includes a dedication of a Legacy Open Space parcel of approximately 12 acres located adjacent to the Town of Washington Grove (the "LOS Parcel"), a reservation of an 8.5-acre elementary school site and land affected by the proposed ICC right-of-way acquisition by the State Highway Administration ("SHA").

Phase III: 30 units (16 single-family detached and 14 single-family attached), including 3 MPDUs. This area was expected and is significantly affected by the proposed ICC right-of-way.

Although the Preliminary Plan proposed three developments in designated phases, as noted above, there was no formal phasing plan for validating the Preliminary Plan by the recordation

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of plats in a multi-phased project pursuant to Section 50-35(b)(2)(B) of the Code. Accordingly, the standard preliminary plan validity period of 37 months applies to the Preliminary Plan as a whole, resulting in an expiration date of August 10, 2008.² Also, pursuant to Condition No. 27 of the Opinion, the APF validity period is 5 years or 61 months.

Site Plan No. 820060120 for Phase I of the Project (the "Phase I Site Plan") was filed by the Applicant on September 8, 2005, less than two months after the Preliminary Plan was mailed. Approval of the Site Plan is required prior to recordation of plats and application and issuance of building permits. The Site Plan required extensive processing primarily due to issues raised by the Town of Washington Grove ("Town") and a condemnation action filed by the Town to acquire LOS Parcel. The Site Plan review was also taking place at a time when the Board was short staffed, and several reviewers who worked on the review were reassigned, adding to the review time. As a result of these factors, Park & Planning Staff required Toll to undertake redesigns and comply with new procedures and the Phase I Site Plan was not presented to the Board until November 1, 2007. Finally, although the Site Plan was approved for 61 units by the Planning Board at a public hearing held on November 1, 2007, as of the date of this letter, the Site Plan Resolution has not yet been approved by the Board.

As noted above, the Resolution is required to obtain a certified site plan document, submit and record plats, and file and obtain building permits. Further, as more fully explained below, it has been impossible to design and process site plans for Phases II and III due to the uncertainties associated with the extent and timing of acquisitions of land by SHA for the ICC, Montgomery County Public Schools ("MCPS") for a proposed elementary school site and the Planning Commission for a possible local park.

² No appeal was filed.

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Request for Extension of Validity Period and/or Establishment or Revision of a Phasing Schedule

Pursuant to Section 50-35(h)(3) of the Code, an applicant may request an extension of the validity period in which to record plats for an approved preliminary plan, prior to the previously established validity period expiration. As grounds for such an extension request, an applicant must demonstrate that (1) delays, subsequent to the plan approval by the government or another party, essential to the applicant's ability to perform the terms or conditions of the plan approval, have materially prevented the applicant from validating the plan, or (2) that the occurrence of significant, unusual and unanticipated events have substantially impaired the applicant's ability to validate its plan and that exceptional hardship (as evidenced by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to applicant if the plan were not extended. See Section 50-35(h)(3)(d) of the Code. As part of its request, the applicant must request a phasing schedule be revised or established pursuant to the Preliminary Plan. The requested phasing schedule and extension are justified under both grounds.

In support of the instant request, Toll notes the complexities and delays in processing and proceeding with development have occurred due to (1) the extensive involvement of the Town in the staff review of the Phase I Site Plan, (2) the unusual condemnation suit filed by the Town to condemn the LOS site despite the fact that the LOS site was required to be dedicated to the Planning Board by the Preliminary Plan, (3) the uncertainty of SHA in determining the location and extent of land to be acquired for the ICC, (4) the efforts of MCPS and M-NCPPC to acquire a proposed school site and subsequent abandonment of that effort, (5) the continuing

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effort of Park and Planning to acquire the former school site as a park site, and the uncertainty of the final size of this parcel as a result of SHA's changing acquisition needs for the ICC, and (6) the unusually long site plan processing and Resolution drafting time for the Phase I Site Plan.

As noted above, the Town has been heavily involved in the review and comments on the Phase I Site Plan and other issues involving the Property. This impact has extended the normal processing time due to meetings, information exchange and, as further explained below, a condemnation action filed by the Town in the Circuit Court. While the Phase I Site Plan was being processed, the Town filed a condemnation action seeking to acquire the LOS site by eminent domain rather than allow it to be dedicated to Park and Planning as required by Condition No. 15 of the Preliminary Plan Opinion. M-NCPPC became a party to the condemnation suit and, together with Applicant, opposed the Town's right and ability to exercise eminent domain to acquire the LOS Property, which is not located in the municipal boundaries of the Town.

The Applicant and M-NCPPC entered into an agreement on April 11, 2007, to dedicate the LOS site to M-NCPPC under certain terms and conditions (the "LOS Agreement").

Importantly, in the LOS Agreement, M-NCPPC recognized that "delays not facilitated or created by Toll have materially prevented Toll from obtaining approval and recordation of final plats of subdivision for the Overall Tract [the Property], including Phase I." See p. 1. A copy of the April 11, 2007 Agreement is attached as Exhibit B. Because of the delays experienced in processing the plans necessary for validation of the Preliminary Plan, the 24 months required by the Preliminary Plan Opinion for the dedication of the LOS Property to M-NCPPC was approaching, prior to the record platting or even site plan approval for Phase I. Therefore, in

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the April 11, 2007 Agreement, the Board acknowledged the delays in validating the Preliminary Plan was not facilitated or created by Toll. *Id.* at 1. The LOS Parcel was deeded by the Applicant to M-NCPPC on April 19, 2007.

In addition, Condition No. 5 of the Preliminary Plan Opinion requires the Applicant to provide "for the necessary right-of-way for the Inter-County Connector (ICC)." The Applicant provided a reservation plat to M-NCPPC for reservation of the ICC right-of-way as required by the Opinion. Although SHA took possession of some of the Applicant's land, it advised Applicant that changes, well beyond the land set aside by the reservation plat, to the location and extent of area to be acquired were necessary. However, SHA was not in a position to finalize this area needed for nearly two years. Recently, SHA provided the Applicant with the new description of the revised area and parties are currently in the process of finalizing the acquisition. The SHA issue continues to prevent the Applicant from proceeding with site plans for both Phase II and Phase III because the possible SHA land acquisition affected the final planning for the areas of both phases.

Additionally, the conditions of the Preliminary Plan Opinion required the placement of a portion of the Phase II property in reservation for acquisition by MCPS for an elementary school. This plat was prepared and submitted to M-NCPPC by Toll. MCPS proceeded to have an appraisal report prepared for the proposed school site and engaged the Applicant in discussions on the acquisition. After nearly two years, MCPS advised the Applicant that it would not proceed to acquire the proposed school site. Shortly thereafter, Park and Planning proposed to acquire the proposed school site for MCPS through its Advanced Land Acquisition Fund and secured Toll's cooperation in extending the school reservation for several months. Ultimately, rejecting the recommendation of the Board, the County Council determined it would not fund this acquisition and the purchase of the school site was abandoned. However,

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shortly thereafter, the Parks Department contacted the Applicant to initiate discussions on acquisition of the site for a local park. These discussions were delayed because of the uncertainty of the impact of the SHA acquisition for the ICC on the size of the Park. However, the discussions are now proceeding and a final decision on whether to acquire the proposed school site for a public park has not yet been finalized. Again, with this continuing uncertainty imposed by the Parks Department, the Applicant continues to be prevented from preparing further site plans until State and local agencies conclude their pursuit of acquiring Toll's land.

Accordingly, for the reasons stated above, Applicant has been materially prevented from performing the terms and conditions of the Preliminary Plan approval necessary to validate the Preliminary Plan and proceed to obtain building permits within the current validity and APF periods due to delays by the government and others. As shown by the above facts, Applicant has not created or facilitated these delays. Further, the occurrence of significant, unusual, and unanticipated events not facilitated or created by the Applicant that have substantially impaired Applicant's ability to validate the Preliminary Plan and undue hardship would result to Applicant if the Preliminary Plan is not extended. Therefore, we respectfully request the Planning Board grant a 60-month extension needed to validate the Preliminary Plan by amending the Preliminary Plan to establish the following phasing schedule for the Project:

Phase I: Record plats by January 11, 2010

Phases II and III: Record plats by August 11, 2013³

³ From the recent ICC area determinations, Phase III will be taken in major part and the boundaries of Phase II will be required to be adjusted to reflect the remaining developable land once the ICC and acquisitions are complete local park (if it proceeds).

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Request for APF Conformance

Section 50-35(h)(3)(D)(ii), provides that the Planning Board's amendment to a Preliminary Plan to provide a new phasing schedule will also have the effect of extending the validity period. Section 50-20(c)(3) of the Code provides that "[a] determination of adequate public facilities made under this Chapter is timely and remains valid: [f]or no less than 5 and no more than 12 years after the preliminary plan is approved, as determined by the Planning Board at the time of approval, for any plan approved on or after October 19, 1999, but before August 1, 2007." The Preliminary Plan was approved by Opinion dated on July 11, 2005, and, therefore, falls within the time frame in Section 50-20(c)(3) of the Code. Accordingly, in order to conform with the above 60-month validity extension and phasing schedule and extended with the APF validity, Applicant requests the APF period be modified from 5 years to 9 years from the initiation date of the original Preliminary Plan approval in accord with the above phasing schedule (or to August 10, 2014).

Thank you for your attention to this matter. Should you have any questions, please contact us.

Very truly yours,

LINOWES AND BLOCHER LLP


Barbara A. Sears


Yum Yu Cheng

Enclosures

LINOWES
AND **BLOCHER LLP**
ATTORNEYS AT LAW

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cc: Mrs. Rose Krasnow
Mr. Al Edwards
Mr. Walter O'Connor

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LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

September 18, 2008

Barbara A. Sears
301.961.5157
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Yum Yu Cheng
301.961.5219
ycheng@linowes-law.com

VIA EMAIL

Ms. Cathy Conlon
The Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Piedmont Crossing (formerly Casey Property at Mill Creek);
Preliminary Plan No. 1-02022 ("Preliminary Plan") – Addendum to Request to Amend
Preliminary Plan to Add a Phasing Schedule and to Extend the Validity Date and
Adequate Public Facilities Validity Period

Dear Ms. Conlon:

On behalf of our client, Toll MD II, LLC ("Toll" or the "Applicant"), owner and developer of the property that is the subject of the Preliminary Plan, this letter is an addendum to our July 23, 2008 letter (a copy attached) requesting amendment to the Preliminary Plan to add a phasing schedule and to extend the validity date and Adequate Public Facilities ("APF") validity period. After the filing of the July 23, 2008 letter, the Applicant realized that Condition No. 4 of the Preliminary Plan was based on an erroneous assumption that the subject property would be located within the boundaries of the Greater Shady Grove Transportation Management District ("TMD"). As it turned out, the subject property was not included in the TMD.

Condition No. 4 states the following:

~~"Enter into a traffic mitigation agreement that provides for effective transportation demand management with the Planning Board and DPWT to participate with the Greater Shady Grove Transportation Management District (TMD). The TMD's trip reduction goal is to achieve and maintain the commuting mode share goals of the Greater Shady Grove TMD of 25 percent non-auto drivers for the residents and 12~~

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percent non-auto drivers for workers in the peak hours. DPWT is anticipating implementation of the Greater Shady Grove TMD and Share-A-Ride District within the time frame of this development.”

As noted, according to Resolution No. 15-1432 (a copy attached), which established the boundaries of the Greater Shady Grove TMD, the subject property correctly is not located within the TMD. As such, the Applicant should not be required to enter into a traffic mitigation agreement as set forth in Condition No. 4. On this point, we have been in contact with Chuck Kines of the Transportation Staff. Therefore, we request that Condition No. 4 be removed as part of the Preliminary Plan Amendment.

Thank you for your attention to this matter. Should you have any questions, please contact us.

Very truly yours,

LINOWES AND BLOCHER LLP

Barbara A. Sears / yyc

Barbara A. Sears

yum yu cheng

Yum Yu Cheng

Enclosures

cc: Mr. Al Edwards
Mr. Walter O'Connor
Mrs. Rose Krasnow
Mr. Richard Weaver
Mr. Chuck Kines

Resolution No.: 15-1432

Introduced: October 18, 2005

Adopted: May 2, 2006

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Executive and County Council

SUBJECT: Establishment of a Transportation Management District in Greater Shady Grove with the Authority Given to Charge a Transportation Management Fee on New or Existing Development

Background

1. Montgomery County Code, 2004 as amended, sections 42A - 10 through 30 provides for transportation management in Metro Station Areas and authorizes the County to create Transportation Management Districts (TMDs). These provisions allow flexibility in terms of establishing boundaries to include Metro station planning areas, appointing advisory committees, reporting annual performance of TMDs, and financing of TMD activities.
2. Section 42A-22 of the Montgomery County Code provides that new development is important to stimulate the local economy and that focusing new development in highly transit serviceable areas is a County land use and economic development objective. Transportation demand management will help provide sufficient transportation capacity, reduce the demand for roads, promote traffic safety and pedestrian access, and help reduce vehicular emissions, energy consumption, and noise levels. Transportation demand management will also equitably allocate responsibility for reducing single-occupancy vehicle trips among government, employers, property owners, and the public.
3. In 1996, Council directed the creation of a TMD in the Shady Grove vicinity as part of its Shady Grove Sectional Map Amendment process. Planning Commission staff recommended TMD boundaries follow those of the Shady Grove Study Area Master Plan of 1990 and include new development in Rockville and Gaithersburg. These boundaries included the Shady Grove Metro Station Policy Area and the R & D Village Policy Area and major areas of commercial development. Planning Commission staff also recommended an initial program of services including carpool/vanpool matching, a transportation demand management educational outreach program with employers and building owners, and monitoring. This resolution implements the Council's directive.

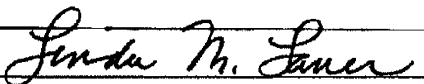
4. The Department of Public Works and Transportation (DPWT) conducted extensive background work for establishment of the Greater Shady Grove TMD. Public forums and briefings were held with the business community, civic representatives, and members of the general community to explain TMD purposes and operations and to apprise them of the progress in implementing the TMD for Shady Grove. Elected officials and appropriate staff from the County, and the cities of Gaithersburg and Rockville were also briefed on several occasions. Negotiations were conducted over an extended period of time with representatives of both municipalities regarding participation in the proposed TMD, including operational and funding mechanisms.
5. The Department of Public Works and Transportation (DPWT) may use a Transportation Management Organization (TMO) to assist it in providing services to implement transportation demand management. In addition to use of the fees authorized in this resolution, the Department may provide additional revenues from other sources to fund these services. The level of transportation management demand services in the Greater Shady Grove TMD will be provided in accordance with the amount of funds available to pay for the services. It is expected that as development, and corresponding revenues, in the TMD increase, the level of services provided will also increase.
6. While the cities of Gaithersburg and Rockville are included within the boundaries of the Greater Shady Grove TMD, their participation in the TMD is intended to be reflected in agreements with each municipality. TMD services will only be provided within the municipalities to the extent that they have entered into agreements with the County and paid their proportionate share of the costs of such services.
7. Montgomery County Code 2004, as amended, Section 42A-24 enables the Council to authorize use of traffic mitigation plans in a TMD. This resolution authorizes the Director of DPWT to require the submission of traffic mitigation plans.
8. DPWT and the Planning Board may jointly impose reasonable transportation demand management measures as conditions on the Board's approval of development in the Greater Shady Grove TMD. These measures can include the requirement of traffic mitigation agreements in accordance with Chapter 42A of the County Code.
9. The TMO must annually monitor transportation demand management in the Greater Shady Grove TMD. A biennial report must be submitted by the TMO to the Director of DPWT by December 1 of each even-numbered year. The Director of DPWT must transmit the report to the Executive, the Greater Shady Grove Transportation Management Advisory Committee, and the Planning Board pursuant to Section 42A-27 of the County Code, 2004, as amended. The Director of DPWT may recommend to the Executive corrective action if any peak period (the three hours of highest transportation use in the morning and evening) commuting goals set forth in the Annual Growth Policy are not met within a reasonable period of time after the establishment of the TMD.

Action

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

1. Under Chapter 42A-23 of the Montgomery County Code, 2004 as amended, the Greater Shady Grove Transportation Management District (TMD) is established. Its boundaries include the Shady Grove Metro Station Policy Area as well as the R&D Village Policy area and portions of the cities of Rockville and Gaithersburg. Boundary lines are defined on Attachment A of this resolution.
2. Pursuant to Section 42A-29(a)(1) and (2) of the Code, the Department of Public Works and Transportation (DPWT) is hereby authorized to charge a Transportation Management Fee in the Greater Shady Grove TMD to:
 - all applicants who file an application for subdivision or optional method development approval in the Greater Shady Grove TMD under the Alternative Review Procedures in the Annual Growth Policy, and each successor in interest; and
 - all applicants for subdivision or optional method development approved after the Sectional Map Amendment of June 11, 1996, and each successor in interest; and
 - owners of existing commercial and multi-unit residential development.
3. The Director of DPWT may require traffic mitigation plans in the Greater Shady Grove TMD in accordance with Section 42A-24 of the County Code.
4. Under authority of Section 42A-23(e) of the County Code, a Greater Shady Grove Transportation Management District Advisory Committee will be appointed by the Executive and confirmed by the Council, according to a structure to be designated by Executive Regulation.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

APPENDIX A

**BOUNDARIES OF THE GREATER SHADY GROVE
TRANSPORTATION MANAGEMENT DISTRICT**

Beginning at a point on the west line of I-270 at its intersection with the west line of Muddy Branch Road and running southeast along the west line of I-270 to its intersection with the north line of I-370;

then east along the north line of I-370 to its intersection with the western boundary of Parcel "C" (N881) as shown on Plat 9659;

then in a northeasterly direction along the western boundaries of Parcel "C" (N881), the Right of Way of Nancy Place, and Parcel "B" (N738) to the west boundary of the Right of Way of Frederick Road (MD 355) as shown on Plat 9659;

then crossing directly Frederick Road (MD 355) to the southwestern-boundary of the remainder of Parcel "D" as shown on Plat 20275,

then continuing along the Right of Way line of I-370 in a southeasterly direction to the south corner of the remainder of Parcel "D" (Plat 20275), then continuing in a northeasterly direction along the Right of Way line of I-370 to the south line of Parcel P385;

then northerly along the west boundary of Parcel P385, Parcel K (N327), Parcel P266, Parcel E (N211), Parcel G (000), and Parcels P103, P048, N007, N977, P925, and P913;

then northerly along the west boundary of Parcel K (N327), Parcel P266, Parcel E (N211), Parcel G (000), and Parcels P103, P048, N007, N977, P925, and P913;

then continuing northeasterly along the western boundary of Parcel P871 and north along the west boundary of Parcel P817;

continuing in a northern direction along the west boundary of Parcel P762;

continuing easterly along the northwest boundary of Parcel P762;

then crossing directly Oakmont Road and the CSX Railroad to the western-most corner of Parcel P747;

continuing northeast along the northwest boundary of Parcel P747;

~~then southeast along the northeast boundary of Parcels P747, Parcel P743 and Parcel P131;~~

continuing in a southerly direction along the east arc boundary of Parcel P131 to Parcel N730;

then running in a southerly direction along the west boundary of Parcel N730 to the north line of I-370;

then east along the north line of I-370 to its intersection with Shady Grove Road;
continuing along the east line of I-370 to its intersection with the north line of Crabbs Branch Way;

then southeast along the east line of Crabbs Branch Way to its intersection with the north boundary of Parcel 'N' (Plat 14070);

then running east along the north boundary of Parcel 'N';

continuing south along the east boundary of Parcels 'N', 'M' (Plat 14070) and 'A' (Plat 13887) to the southeast boundary of Parcel 'A';

then crossing Monona Drive directly to the northwest corner of Parcel P960;

then running east along the north and northeast boundaries of Parcel P960 to the intersection with north boundary of Parcel N075;

then running in an east and southerly direction with the north boundaries of Parcels N075 and N136;

then running southwest with the southeast boundary of Parcel N136 to the northern line of Gude Drive East;

continuing in a direct line across Gude Drive East to the northwest corner of Parcel N353 at the south line of Gude Drive East;

then west along the south line of Gude Drive East to the intersection with the east line of the CSX Railroad tracks;

then south along the east line of the CSX Railroad tracks to an extension of the north line of College Parkway;

then following the extension of the north line of College Parkway in a southwesterly direction to the north line of Rutgers Street;

then following the north line of Rutgers Street to the east line of Yale Place;

then following the east line of Yale Place to the south line of Gude Drive West;

continuing westward along the south line of Gude Drive West to its intersection with the west line of I-270;

then south along the west line of I-270 to its intersection with the west line of West Montgomery Avenue;

then following the west line of West Montgomery Avenue in a northerly direction to the south line of Darnestown Road;

then west along the south line of Darnestown Road to its intersection with the east line of Shady Grove Road;

then following the east line of Shady Grove Road to its intersection with the eastern boundary of Parcel P781;

then following the eastern boundary of Parcels P781 and P840 in a southerly direction;

then continuing along the south boundaries of Parcel P840 to its intersection with the east line of Willow Tree Drive;

then following the east line of Willow Tree Drive north to a point directly opposite the southeast corner of Lot 214 of Willows of Potomac, Block D (Plat 18778);

then following directly across Willow Tree Drive to the above-referenced point;
then continuing along the east boundary of Lot 214 described above;

continuing along the southeastern boundary of Traville, Block B, Parcel E (N850) (Plat 22293) to its intersection with Traville, Block B, Parcel D (N983), also shown on Plat 22293;

then following the boundary of Parcel D in a south and westerly direction to the intersection with Parcel N862;

continuing in a westerly direction along the southern boundary of Parcel N862;

then north and west along the west boundaries to the east line of Shady Grove Road;

then following a direct line across Shady Grove Road to the southeast point of Parcel P836 at the west line of Shady Grove Road;

continuing northwest on the south boundary of Parcel P836 to the west boundary;

then following the west boundary in a northerly direction to its intersection with Parcel P834;

continuing in a westerly direction along the south boundary of Parcel P834 to its west boundary;

then northerly along the west boundary to Parcel N777;

then westerly along the south boundary of Parcel N777 to the east line of Travilah Road;

then following directly an extension of the south boundary of Parcel N777 to a point on the west line of Travilah Road;

then following the west line of Travilah Road to its intersection with the south line of Darnestown Road;

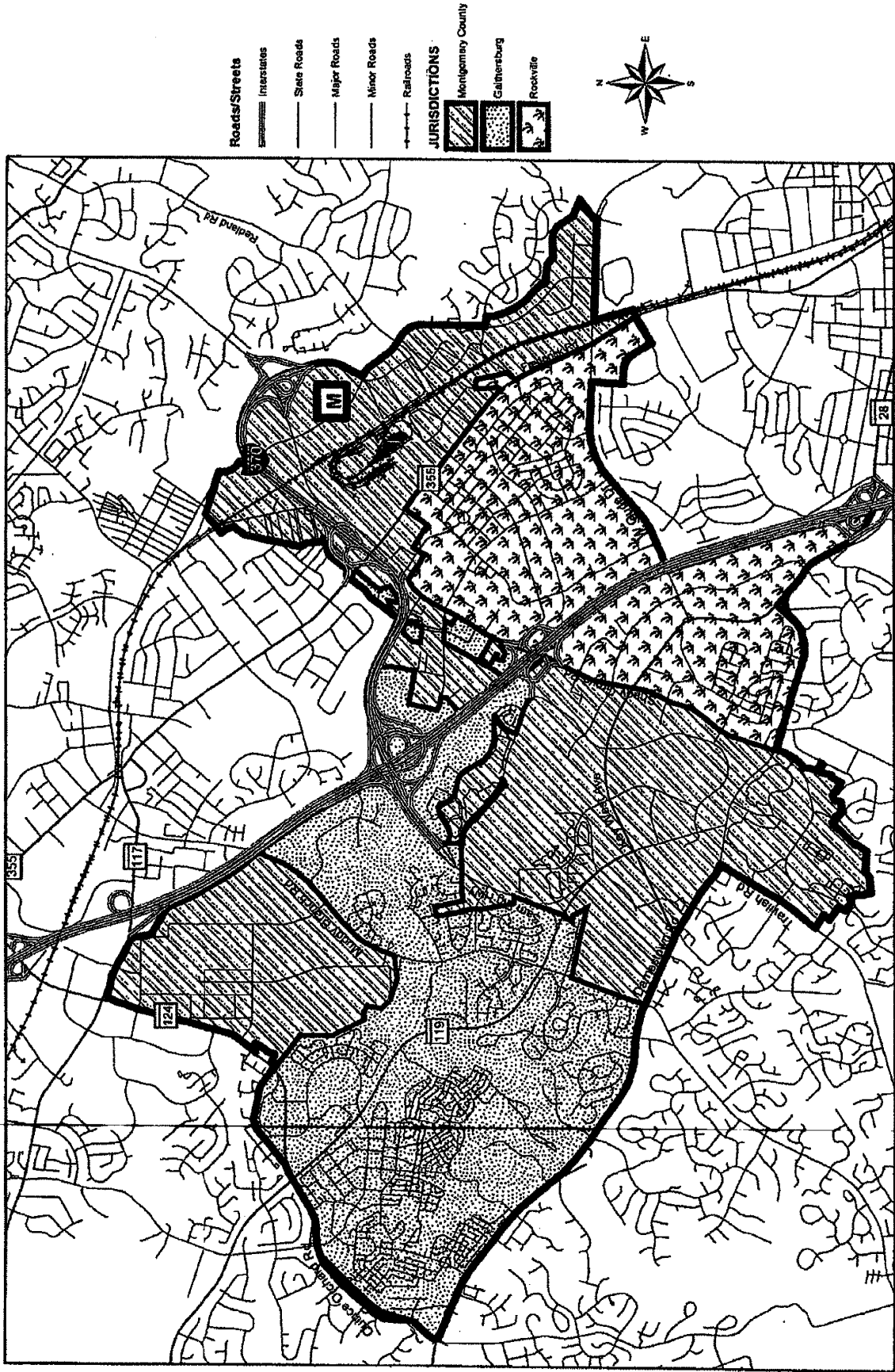
then westward along the south line of Darnestown Road to its intersection with the west line of Quince Orchard Road;

then northeast along the west line of Quince Orchard Road to its intersection with the east line of Great Seneca Highway;

then following the north line of Quince Orchard Road to a direct line to the north line of Dosh Drive, continuing along the north line of Dosh Drive to its intersection with the east line of Quince Orchard Road;

then northeast following the east line of Quince Orchard Road to its intersection with the south line of Parcel P067;

Greater Shady Grove Transportation Management District (TMD)



Montgomery County
 Department of Public Works & Transportation
 Office of Project Development
 February 28, 2005

The Greater Shady Grove TMD includes properties within Montgomery County as well as the cities of Rockville and Gaithersburg. TMD services will be provided within the Cities of Rockville and Gaithersburg to the extent that each municipality enters into financial agreements with Montgomery County. Commercial and residential developments will be subject to the laws of each municipality with regard to TMD participation.



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

Attachment D

September 18, 2008

MEMORANDUM

TO: Richard Weaver, Planner/Coordinator
Development Review Division

VIA: Shahriar Etemadi, Supervisor *TA FOR SE*
Transportation Planning Division

FROM: Chuck Kines, Planner/Coordinator *OK*
Transportation Planning Division

SUBJECT: Piedmont Crossing, Traffic Mitigation Agreement and Participation in the Greater Shady Grove Transportation Management District

The applicant contacted Transportation Planning staff in July 2008 requesting relief from two conditions of approval for Preliminary Plan No. 102022, Casey Property at Mill Creek (also known as Piedmont Crossing) and Site Plan No. 820060120, Piedmont Crossing (formerly known as Casey Property at Mill Creek). The resolutions approving these plans were issued on July 11, 2005 and July 31, 2008, respectively. Both the Preliminary Plan and Site Plan contain a condition of approval that requires the applicant to enter into a Traffic Mitigation Agreement (TMAg) to participate in the Greater Shady Grove Transportation Management District (GSGTMD). **Staff recommends that the Planning Board amend both Plans to delete the conditions.**

At the time the Preliminary Plan was reviewed and approved by the Planning Board during the Fall of 2004, the subject site was under consideration by the county for inclusion within the boundaries of the GSGTMD. Transportation Planning, therefore, conditioned the applicant to enter into a TMAg to participate in the future GSGTMD. The applicant then filed its application for the site plan during October 2005 by which the subject site continued to be considered within the boundaries of the GSGTMD.

The County Council subsequently approved the boundaries of the GSGTMD on May 2, 2006, that did not include the subject property. The Planning Board approved the site plan at its hearing on November 1, 2007, which re-stated the Preliminary Plan requirement to enter into a TMAg and to participate in the GSGTMD. Yet, both the County and the applicant failed to realize that the subject property had not been officially included in the approved GSGTMD boundaries.

Because the property is not included within the approved boundaries of the GSGTMD, Transportation Planning staff recommends that the applicant be relieved of prior conditions requiring a TMAg and participation in the GSGTMD. Staff recommends that the Planning Board delete from the public record condition No. 4 from the Planning Board Opinion for the Preliminary Plan and condition No. 8(c) from the Planning Board Resolution for Site Plan.

CK:tc

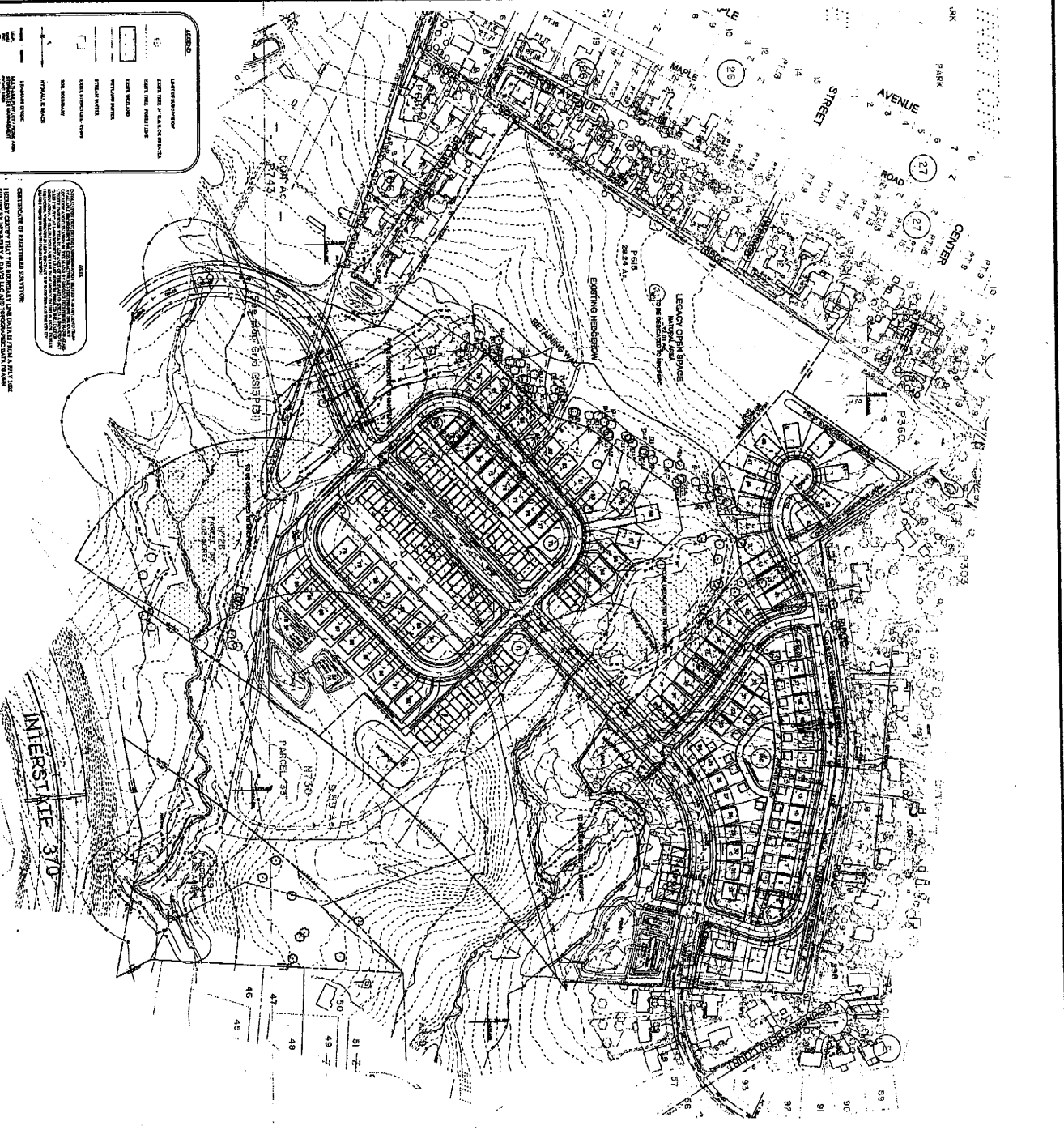
LEGEND

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STATEMENT OF WORK

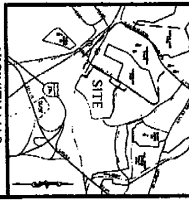
This preliminary subdivision plan is prepared for the purpose of illustrating the proposed subdivision of the land shown and for the purpose of obtaining the necessary approvals from the appropriate governmental agencies. This plan is not intended to constitute a contract and does not constitute a warranty of any kind. The information contained herein is based on the best available information and is subject to change without notice. The owner is responsible for the accuracy of the information provided and for the proper use of this plan. This plan is not to be used for any other purpose without the written consent of the engineer. This plan is not to be used for any other purpose without the written consent of the engineer.

DATE: 10/15/2022



REVISIONS

| NO. | DATE | DESCRIPTION | BY |
|-----|------------|------------------------------------|-----|
| 1 | 10/15/2022 | PRELIMINARY SUBDIVISION PLAN | WJD |
| 2 | 10/15/2022 | REVISIONS TO LOTS 31-40 | WJD |
| 3 | 10/15/2022 | REVISIONS TO LOTS 41-50 | WJD |
| 4 | 10/15/2022 | REVISIONS TO LOTS 51-60 | WJD |
| 5 | 10/15/2022 | REVISIONS TO LOTS 61-70 | WJD |
| 6 | 10/15/2022 | REVISIONS TO LOTS 71-80 | WJD |
| 7 | 10/15/2022 | REVISIONS TO LOTS 81-90 | WJD |
| 8 | 10/15/2022 | REVISIONS TO LOTS 91-100 | WJD |
| 9 | 10/15/2022 | REVISIONS TO STREETS AND UTILITIES | WJD |
| 10 | 10/15/2022 | REVISIONS TO EASEMENTS | WJD |
| 11 | 10/15/2022 | REVISIONS TO CONTOUR LINES | WJD |
| 12 | 10/15/2022 | REVISIONS TO ENCROACHMENTS | WJD |
| 13 | 10/15/2022 | REVISIONS TO LEGAL DESCRIPTION | WJD |
| 14 | 10/15/2022 | REVISIONS TO TITLE BLOCK | WJD |
| 15 | 10/15/2022 | REVISIONS TO SHEET 1-1000 | WJD |



OWNERS / DEVELOPER

Casey Property @ Mill Creek
 3100 Parkway
 Suite 100
 Rockville, Maryland 20850
 Phone: (301) 948-1110
 Fax: (301) 594-1451

REGISTERED PROFESSIONAL ENGINEER

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 283 Perry Parkway, Suite 1
 Odenton, MD 21113-1109
 (410) 744-3100 Fax: (410) 331-7607

REGISTERED PROFESSIONAL SURVEYOR

W. J. Dewberry, Inc.
 283 Perry Parkway, Suite 1
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 (410) 744-3100 Fax: (410) 331-7607

REGISTERED PROFESSIONAL LANDSCAPE ARCHITECT

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 Odenton, MD 21113-1109
 (410) 744-3100 Fax: (410) 331-7607

PRELIMINARY SUBDIVISION PLAN 1-02022
CASEY PROPERTY @ MILL CREEK

97th ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND

OWNERS / DEVELOPER
 Casey Property @ Mill Creek
 3100 Parkway
 Suite 100
 Rockville, Maryland 20850
 Phone: (301) 948-1110
 Fax: (301) 594-1451

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Dewberry
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Engineers
 Surveyors
 Landscape Architects

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