



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

MCBP Item Nr. 7
04/23/09

April 10, 2009

TO: Montgomery County Planning Board

VIA: Mary Bradford, Montgomery County Director of Parks
Mike Riley, Deputy Director, Administration
John E. Hench, Chief, Park Planning and Stewardship Division

FROM: Doug Redmond, Principal Natural Resources Specialist
Park Planning and Stewardship Division

SUBJECT: 1. Forest Conservation Plans: #09001-DEP, Batchellor's Run Stream Restoration Project; #09002-DEP, Upper Northwest Branch Stream Restoration Project; #09002-DEP, Bryant's Nursery Stream Restoration Project
2. Mandatory Referral: #09001-DEP, Batchellor's Run Stream Restoration Project; #09002-DEP, Upper Northwest Branch Stream Restoration Project; #09002-DEP, Bryant's Nursery Stream Restoration Project

RECOMMENDED ACTION:

- 1. Forest Conservation Plan: #09001-DEP, Batchellor's Run Stream Restoration Project; #09002-DEP, Upper Northwest Branch Stream Restoration Project; #09002-DEP, Bryant's Nursery Stream Restoration Project:** Environmental Planning staff recommends approval of the preliminary forest conservation plan (FCP); Environmental Planning staff will present this item.
- 2. Mandatory Referral: #09001-DEP, Batchellor's Run Stream Restoration Project; #09002-DEP, Upper Northwest Branch Stream Restoration Project; #09002-DEP, Bryant's Nursery Stream Restoration Project:** Approve construction of the projects on parkland and non-park public property in the upper Northwest Branch watershed.

BACKGROUND: The Montgomery County Department of Environmental Protection (DEP) and the U.S. Army Corps of Engineers propose three restoration projects in the upper Northwest Branch watershed. The proposed projects, originally identified as priority restoration projects in the *Anacostia River and Tributaries, District of Columbia and Maryland, Northwest Branch Watershed, Montgomery County, Final Ecosystem Restoration Report and Integrated Environmental Assessment* (U.S. Army Corps of Engineers, 2000) and presented to the Planning Board on May 18, 2000 (Board package attached), are designed to enhance aquatic and terrestrial habitat in the upper Northwest Branch watershed. The three projects are located in the Batchellor's Run East tributary, the Bryant's Nursery tributary, and the upper mainstem of Northwest Branch. A map of the three sites is attached.

STREAM RESTORATION DESIGN:

Batchellors Run East: The Batchellors Run East site, located northwest of the intersection of Layhill Road and Norbeck Road, is entirely on M-NCPPC property. The stream was impacted by historical agricultural practices, which included the clearing of forest and the grazing of cattle, until approximately 2000, when the property was acquired by M-NCPPC as part of the Red Door Store Historical/Cultural Park. The 2300 foot stream reach is characterized by unstable stream banks which contribute excessive sediment and limit floodplain access along the stream reach. The restoration plan proposes to regrade stream banks to enhance stability and restore floodplain access. Grade control structures will help to stabilize the streambed and prevent future stream incision. Native trees and shrubs proposed for the site will re-establish a viable riparian buffer, which will help to stabilize the stream banks, shade the stream, and provide wildlife habitat.

Bryant's Nursery: The Bryant's Nursery tributary to Northwest Branch was impacted by historical agricultural practices and more recent development. Portions of the stream banks are unstable and contribute fine sediments to a stream which has consistently been rated good or excellent. The proposed 1200 foot stream restoration project is located on private and County-owned property along Bryant's Nursery Road. Minor stream bank grading and revegetation are proposed to stabilize the eroding areas, and grade control structures are proposed to stabilize the streambed and prevent future stream incision.

Upper Northwest Branch: The section of Northwest Branch proposed for restoration is located on parkland between the intersection of Norwood and Norbeck Roads and the Northwest Branch Golf Course. The 1700 foot reach of stream proposed for restoration has high vertical eroding banks and reduced floodplain access. The restoration plan includes structures to stabilize the streambed, enhance in-stream habitat, protect sewer infrastructure, and improve floodplain access. Riparian plantings will expand the buffer, provide shade, and enhance wildlife habitat.

MARYLAND HISTORICAL TRUST: The Maryland Historical Trust has reviewed the project and has determined that no historical properties will be impacted by the project.

NATURAL RESOURCES INVENTORY AND FOREST STAND DELINEATION:

Batchellors Run East (Sites 39, 40 & 41) Approved - NRI/FSD No. 4-05238 on March 3, 2007

Bryant's Nursery (Sites 46 & 47) Approved - NRI/FSD No. 4-05276 on May 14, 2007

Upper Northwest Branch (Site 46) Approved - NRI/FSD No. 420072080 on September 17, 2008.

MONTGOMERY COUNTY NOISE ORDINANCE: DEP will perform all construction activities in accordance with Section 31(b) of the County Code.

TRAFFIC IMPACT STATEMENT:

The DEP has applied and received right of way permits from the Montgomery County Department of Permitting Services for Upper Northwest Branch and Bryant's Nursery, and received a State Highway Administration right of way permit for Batchellors Run East.

PUBLIC MEETINGS:

The following public meetings were held and correspondence sent:

- April 11, 2000 – Anacostia River and Tributaries District of Columbia and Maryland Northwest Branch Watershed, Montgomery County Final Ecosystem Restoration Report and Integrated Environmental Assessment (Northwest Branch Feasibility Study) public meeting for residents to learn more about the concept restoration designs.
- May 18, 2000 – Anacostia Restoration Project, Phase II Mandatory Referral approval received for participation in the final steps of the project plans specifications and construction.
- December 31, 2003 – Right of Access Agreement Letters sent to private property owners.
- July 14, 2008 – Mailed Maryland Department of the Environment certified letters to residents directly adjacent to the Bryant's Nursery Stream Restoration Project
- Personal meetings and phone conversations with Mr. Kalb relating to the Bryant's Nursery project.
- Easement documents and project plans for the Bryant's Nursery Stream Restoration Project were mailed to Mr. Alvarado on March 24, 2009 and to Mr. Kalb on March 27, 2009.

FUNDING: Restoration activities are funded through a cost sharing program between the US Army Corps of Engineers (COE) and non-federal sponsors (DEP and MNCPPC). Total implementation cost is estimated at \$1.5 million dollars, which includes a 65% Federal cost share from COE and 35% non-federal cost share from DEP's Montgomery County Capital Improvements Program (providing cash and in-kind services) and MNCPPC (providing in-kind services).

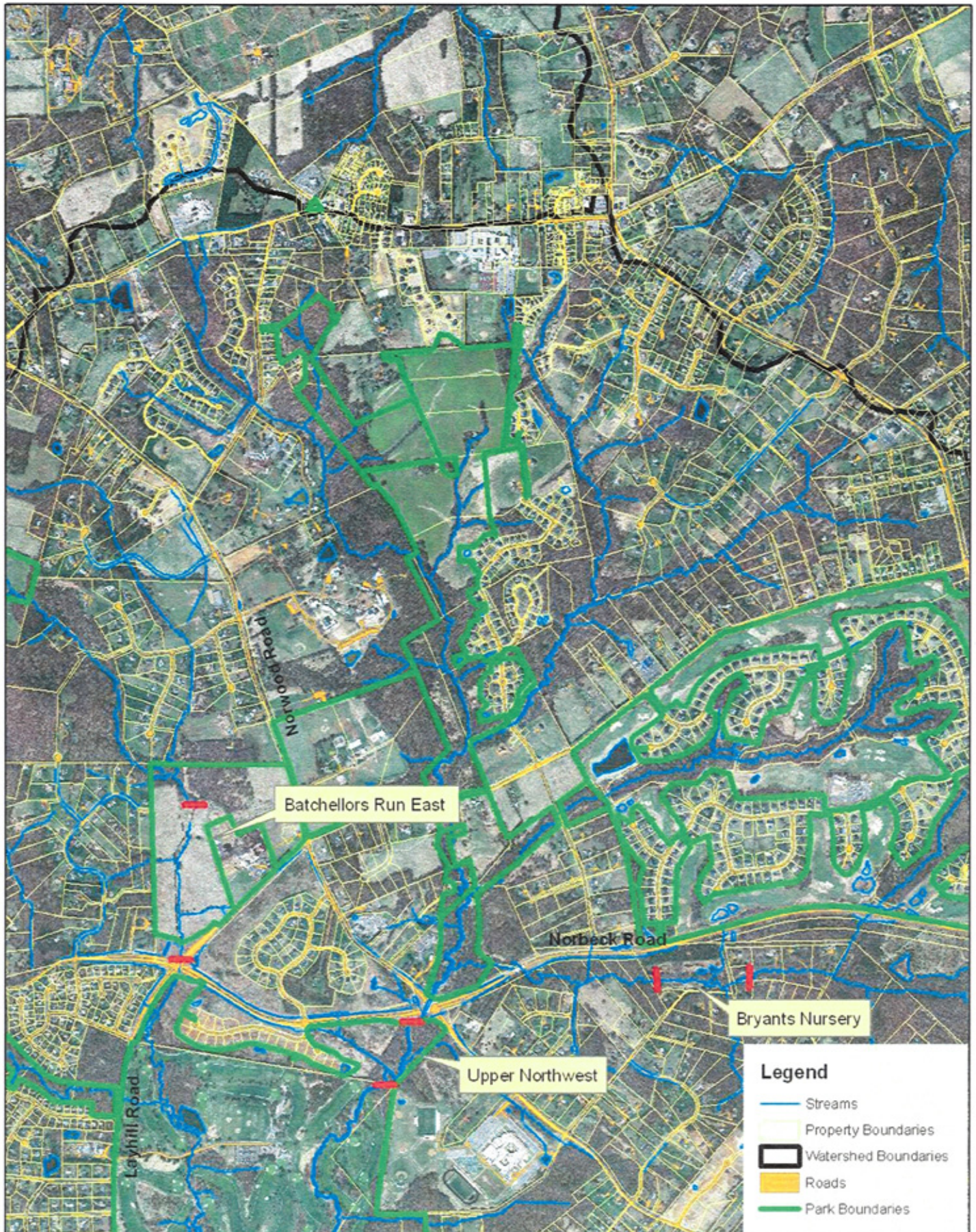
IMPLEMENTATION: If approval is granted, construction is expected to begin during the summer of 2009.

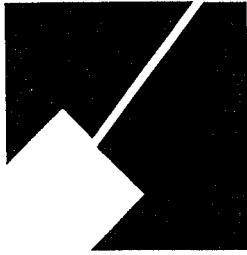
MAINTENANCE: DEP budgets for maintenance of their stream restoration projects. If any maintenance is required, it will be coordinated with M-NCPPC and adjacent property owners.

Pc: Mary Dolan
Brian Woodward
Bill Gillette
Doug Alexander
Andy Frank

Northwest Branch Restoration Projects

Bryant's Nursery, Upper Northwest Branch, and Batchellors Run East





MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760Item #1
Agenda date: May 18, 2000
May 12, 2000MEMORANDUM

To: Montgomery County Planning Board

Via: Jeff Zyontz, Chief, County-wide Planning
John E. Hench, Supervisor, Park Planning and Resources Analysis Unit *J. Hench*

From: Doug Redmond, Natural Resources Specialist,
Park Planning and Resources Analysis Unit *D. Redmond*

Subject: Anacostia Restoration Project, Phase II

Recommendation: Approve the Department's participation in the final steps of the project (plans and specifications, construction).

Background: Participation in the Anacostia Restoration Project, Phase II (formally entitled "Anacostia River and Tributaries (Phase 2), Northwest Branch, Feasibility Study) was approved by the Planning Board on August 1, 1996, and the Agreement (attached) between the Department of the Army, Montgomery County, and M-NCPPC was signed (by Trudye Johnson for M-NCPPC) on September 24, 1996. An information memorandum was provided to the Planning Board in June 1998, and approval to continue participation in the project was granted by the Planning Board in July 1998. A memorandum was provided to the Planning Board in April 2000 concerning the availability of the draft Anacostia Phase II Feasibility Report.

As part of the Anacostia Restoration Project, Phase II, a study was conducted on the Montgomery County portion of Northwest Branch (a tributary of the Anacostia River) by staff from the U.S. Army Corps of Engineers (COE), the Montgomery County Department of Environmental Protection (DEP), and the M-NCPPC Montgomery County Department of Park And Planning. The purpose of the study was to determine the feasibility of implementing environmental restoration projects. Potential restoration projects were identified, both on parkland and on non-parkland.

The objective of this project, as stated in the agreement, is to implement environmental restoration projects in the Anacostia River basin. Phase II, in Montgomery County, concentrates on the Northwest Branch. The feasibility study was conducted on a 50/50 cost share basis between COE and the local sponsors (DEP and M-NCPPC).

Half of the local sponsors' share was cash, provided by DEP, and the other half was in-kind services, shared between DEP and M-NCPPC.

The next phase of the project will be Planning, Engineering, and Design, which is a 65/35 Federal/local cost share, and takes about two years. This would be followed by construction (also 65/35 cost share), which will take from one to several years depending on the project. Delays may occur at any stage if Federal funding is not available. The Department of Park and Planning's portion of the local cost share will be in-kind services.

Initially, 175 potential restoration project sites were identified based on field visits by staff from the three signatory agencies. Through an iterative evaluation process, the potential sites have been reduced to the following 20 top priority sites, 8 of which are on parkland (map attached).

- ◆ **Sandy Spring I (Sites 86 & 87) and Sandy Spring II (Sites 90 & 91)** - The sites are located on private property, east of Norwood Road. Restoration activities involve enhancing two small vernal pool and planting 2,400 feet of riparian buffer.
- ◆ **Batchellors Run East (Sites 39, 40 & 41)** - The sites are located on private property directly north of Layhill Road. Restoration activities involve enhancing 2,500 feet of stream buffer by restricting livestock access, planting the riparian buffer, and stabilizing 300 feet of eroding streambank.
- ◆ **Batchellors Run I (Site 161)** - The site is located east of Layhill Road on the Northwest Branch Golf Course. Restoration activities involve improving 1,600 feet of stream habitat using bioengineering, instream habitat structures, and riparian buffer planting.
- ◆ **Batchellors Run II (Sites 159, 160 & 162)** - The sites are located on park property between Norbeck Road and Layhill Road. Restoration activities involve improving 1,900 feet of stream habitat using bioengineering and instream habitat structures.
- ◆ **Batchellors Run III (Site 155)** - The site is located on private property east of Batchellors Forest Road. Restoration activities involve improving 300 feet of stream habitat using bioengineering and instream habitat structures, and improving fish passage, which will open additional habitat upstream.
- ◆ **Bryants Nursery I (Site 51)** - The site is located on private property west of the Hampshire Greens subdivision. Restoration activities involve improving 1,000 feet of stream habitat using bioengineering and instream habitat structures.
- ◆ **Bryants Nursery II (Sites 46 & 47)** - The sites are located east of Bryants Nursery Road on Montgomery County land and private property. Restoration activities involve improving 1,770 feet of stream habitat using bioengineering, instream habitat structures, and riparian buffer planting.
- ◆ **Woodlawn (Sites 78, 79 & 82)** - The sites are primarily located north of Ednor Road on recently acquired parkland. The lower section of the project crosses Ednor Road onto private property. Restoration activities involve improving 2,800 feet of stream habitat using bioengineering and instream habitat structures.
- ◆ **Upper Northwest Branch (Site 56)** - The site is located southwest of Norwood Road on parkland (north of the golf course).

Restoration activities involve improving 1,660 feet of stream habitat using bioengineering and instream habitat structures, and creating vernal pool habitat.

- ◆ **Sherwood Forest (Site 58)** - The site is located between the mainstem of Northwest Branch and Beaumont Road. Restoration activities involve improving stream habitat using bioengineering and instream habitat structures, enhancing vernal pool habitat, and planting the riparian buffer.

Public participation throughout the study period has involved workshops, stream walks, newsletters, letters, surveys, fliers, and personal contacts.

- ◆ In June 1997, approximately 60 residents attended the first public meeting to discuss the background of the project, the objectives of the feasibility study, current stream conditions, locations of potential restoration projects, and the project selection criteria.
- ◆ In June 1997, surveys were distributed to help gauge public interest throughout the watershed. Twenty surveys were returned. Information from the surveys helped identify five additional stream-related issues.
- ◆ In March 1998, a workshop was held to discuss the top 30 ranked projects, the process for choosing the final projects, and to solicit public comment regarding the conceptual designs. Approximately 30 residents attended.
- ◆ In June 1998, three days of stream walks provided the public an opportunity to observe project sites and comment on proposed designs.
- ◆ In January 1998, the first Northwest Branch Newsletter was distributed to the public. The edition provided watershed background, feasibility study update, and notice of future public meetings.
- ◆ In August 1999, residents were given a chance to comment on plans for the Sherwood Forest (Site 58) project. Six local residents attended the workshop.
- ◆ April 11, 2000 provided an opportunity for private landowners from the Sandy Spring, Batchellors Forest and Bryants Nursery areas to learn more about completion of the draft study, comment on conceptual designs for restoration activities occurring on their property and to learn what the next steps will be during design and implementation phase. Six residents attended the workshop.
- ◆ The draft study has been available for public comment since March 17. The document was distributed to four libraries (Olney, Wheaton, Fairland, and White Oak) and the Brookside Nature Center on April 12.
- ◆ The public notice announcing the 30-day review and comment period (March 17-April 17) for the Northwest Branch Feasibility Study was distributed by COE to all federal, state, and local agencies and environmental organizations on March 17, 2000. However, the individuals who attended the series of public meetings during the study were not notified in the initial mailing. Once this situation was identified, the residents were immediately mailed a public notice on April 14, 2000. Unfortunately, the notice to the general public did not indicate that the comment period had been extended through May 12. After receiving the mailing some citizens complained to COE about the inadequate time period for review and comment. Since the mailing, COE informed citizens who have requested a copy of the report of the extended comment period.

- ◆ The second Northwest Branch newsletter was mailed in the beginning of May.

Funding:

Restoration activities are funded through a cost sharing program between COE and non-federal sponsors (DEP and M-NCPPC). Total implementation cost is estimated at 4.6 million dollars, which includes a 65% federal cost share from COE and 35% non-federal cost share from DEP (providing cash and in-kind services) and M-NCPPC (providing in-kind services) .

Implementation:

If approval is granted, plans and specifications will begin in July 2000, real estate acquisition (easements on private property) will be completed in September 2002 and construction is expected to commence in January 2003.

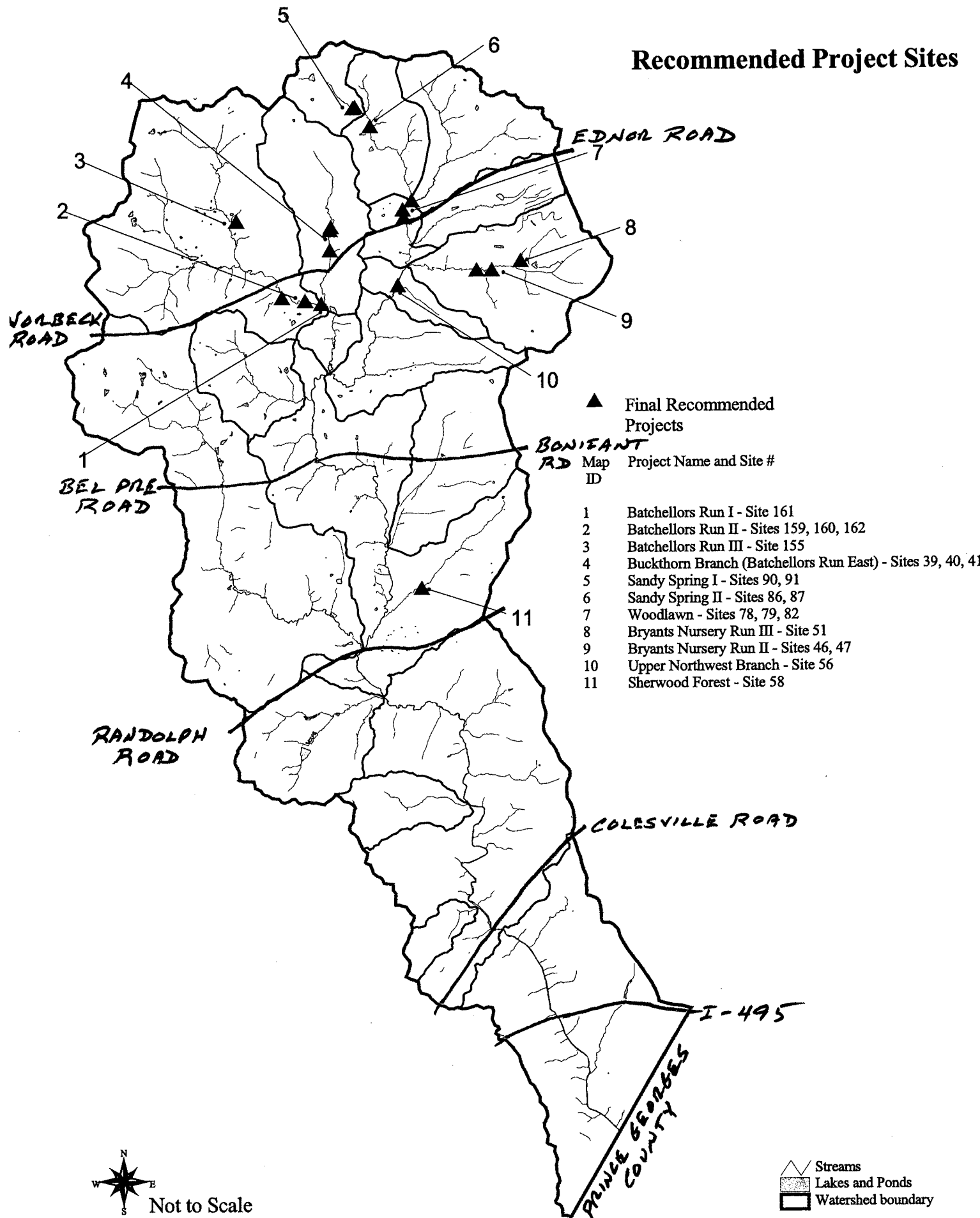
Habitat restoration efforts will involve enhancing stream habitat conditions by reducing excessive streambank erosion, installing aquatic habitat structures, facilitating fish passage, planting the riparian forested buffer and improving vernal pool habitat. Bioengineering (using plants and natural materials) techniques will be used on most design points and rock will be incorporated to prevent toe erosion and utilized as grade control to prevent downcutting. Selected projects will involve an extensive riparian planting of native trees and shrubs. After construction is complete, most disturbed areas will be reforested.

Maintenance:

Maintenance of the stream restoration structures, if any is required, would be coordinated between the park region and the Park Planning and Resources Analysis Unit (for structures on park land), and between DEP and landowners (where structures exist on private property).

pc: Donald K. Cochran
Lester Straw
Carl Falcone
Ronnie Gathers
Gordon Rosenthal
John Boyd
Jerry Bush
Richard Conti
Bill Barron
Khalid Afzal
Tanya Schmieler
Mike Riley
Cameron Weigand

Recommended Project Sites



AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY
AND
MONTGOMERY COUNTY, MARYLAND
AND
MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
FOR THE
ANACOSTIA RIVER AND TRIBUTARIES (PHASE 2), NORTHWEST BRANCH,
FEASIBILITY STUDY

THIS AGREEMENT is entered into this 24th day of September, 1996, by and between the Department of the Army (hereinafter referred to as the "Government"), represented by the District Engineer executing this Agreement and Montgomery County, Maryland and the Maryland-National Capital Park and Planning Commission (hereinafter referred to as the "Sponsors"),

WITNESSETH, that

WHEREAS, a resolution of the Committee on Public Works and Transportation of the United States House of Representatives, adopted September 8, 1988, has authorized the U.S. Army Corps of Engineers to review the report of the Chief of Engineers on the Anacostia River and Tributaries, District of Columbia and Maryland, published as House Document No. 202, 81st Congress, 1st Session, with a view to determining if further improvements for flood control, navigation, erosion, sedimentation, water quality, and other related water resources needs are advisable at this time; and

WHEREAS, the U.S. Army Corps of Engineers has conducted a reconnaissance study of further improvements for flood control, navigation, erosion, sedimentation, water quality, and other related water resources needs pursuant to this authority, and has determined that it is in the Federal interest to implement environmental restoration projects in the Anacostia River basin; and

WHEREAS, further studies in the nature of a "Feasibility Phase Study" (hereinafter referred to as the "Study") are required to investigate and recommend environmental restoration projects along the Anacostia River and tributaries in Maryland and the District of Columbia; and

WHEREAS, Section 105 of the Water Resources Development Act of 1986 (Public Law 99-662, as amended) specifies the cost sharing requirements applicable to the Study; and

WHEREAS, the Sponsors have the authority and capability to furnish the cooperation hereinafter set forth and are willing to participate in study cost sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, the Sponsors and the Government understand that entering into this Agreement in no way obligates either party to implement a project and that whether the Government supports a project authorization and budgets it for implementation depends upon, among other things, the outcome of the Study and whether the proposed solution is consistent with the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* and with the budget priorities of the Administration;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term "study costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsors, and all Negotiated Costs of work performed by the Sponsors pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

B. The term "study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers Baltimore District of initial Federal feasibility funds following the execution of this Agreement and ending when the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with the policies and programs of the President.

C. The term "PSP" shall mean the Project Study Plan, which is attached to this Agreement and incorporated herein by reference and is subject to change by the Government, provided that the Government shall consult with the Sponsors before implementing any change to the PSP.

D. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsors in accordance with the PSP.

E. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, using funds and in-kind services provided by the Sponsors and funds appropriated by the Congress of the United States, shall expeditiously prosecute and complete the

Agenda Item :

Study, currently estimated to be completed in 36 months from the date of this Agreement, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III of this Agreement, the Sponsors shall contribute cash and in-kind services equal to fifty (50) percent of total Study Costs. The Sponsors may, consistent with applicable law and regulations, contribute up to 25 percent of total Study Costs through the provision of in-kind services. The in-kind services to be provided by the Sponsors, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PSP. For this feasibility study, the Montgomery County Department of Environmental Protection will provide its portion of the non-Federal sponsors' share in cash (currently estimated as \$480,000) and estimated in-kind services of \$380,000, while the Maryland-National Capital Park and Planning Commission will provide its portion in estimated in-kind services of \$100,000. Negotiated Costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsors understand that the schedule of work may require the Sponsors to provide cash or in-kind services at a rate that may result in the Sponsors temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B of this Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B of this Article or the obligations concerning payment specified in Article III of this Agreement.

D. If, upon the award of any contract or the performance of any in-house work for the Study by the Government or the Sponsors, cumulative financial obligations of the Government and the Sponsors would exceed \$1,920,000, the Government and the Sponsors agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Sponsors amend this Agreement, but in no event shall such a deferral exceed two years. If a deferral exceeds two years, the Agreement will terminate in accordance with Article X.

E. No Federal funds may be used to meet the Sponsors' share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

F. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsors with a third party in furtherance of this Agreement which obligates funds of the Sponsors and does not obligate Federal appropriations shall be exclusively within the control of the Sponsors, but shall be subject to applicable Federal laws and regulations.

ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of total Study Costs, and current projections of each party's share of total Study Costs. At least quarterly, the Government shall provide the Sponsors a report setting forth this information. Total Study Costs are currently estimated to be no more than \$1,920,000 and the Sponsors' share of total Study Costs is currently estimated to be no more than \$960,000. In order to meet the Sponsors' cash payment requirement, the Sponsors must provide a cash contribution estimated to be \$480,000. The Sponsors' contribution, including cash and in-kind services, is estimated as follows: \$73,500 in the first year, \$437,100 in the second year, \$387,700 in the third year, and \$61,700 in the fourth year. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsors. Montgomery County, Maryland has appropriated funds in the amount of \$425,000 to cover its share of the costs for the first year. Montgomery County shall in good faith seek appropriations to cover its remaining share of the feasibility study costs. If Montgomery County is unable to appropriate funds beyond the first year, this Agreement shall be terminated in accordance with Article X, unless the Maryland-National Capital Park and Planning Commission is willing to assume Montgomery County's share of the Study Costs.

B. The Sponsors shall provide the cash contributions required under Article II.B. of this Agreement in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Sponsors by April 1 of each year of the estimated funds that will be required from the Sponsors to meet the Sponsors' share of total Study Costs for the upcoming fiscal year.

2. No later than 60 calendar days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsors in writing of the funds the Government determines to be required from the Sponsors to meet their required share of total Study Costs for the first fiscal year of the Study. No later than 30 calendar days thereafter, the Sponsors shall provide the Government the full amount of the funds required for the initial quarter of the first fiscal year by delivering a check payable to "FAO, USAED, Baltimore District" to the Baltimore District Engineer. For the remaining quarters in the first fiscal year, the Sponsors shall provide the full amount of their share for the upcoming quarter by the same mechanism, no later than 30 days prior to the beginning of each quarter.

3. For the second and subsequent fiscal years of the Study, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Sponsors in writing of the funds the Government determines to be required from the Sponsors to meet their required share of total Study Costs for that fiscal year, taking into account any temporary divergences identified

under Article II.C. of this Agreement. No later than 30 calendar days prior to the beginning of each quarter of the fiscal year, the Sponsors shall make the full amount of the funds required for that quarter available to the Government through the funding mechanism specified in paragraph B.2. of this Article.

4. The Government shall draw from the funds provided by the Sponsors such sums as the Government deems necessary to cover the Sponsors' share of contractual and in-house fiscal obligations attributable to the Study as they are incurred.

5. In the event the Government determines that the Sponsors must provide additional funds to meet their share of Study Costs, the Government shall so notify the Sponsors in writing. No later than 60 calendar days after receipt of such notice, the Sponsors shall make the full amount of the additional funds available through the funding mechanism specified in paragraph B.2. of this Article.

C. Within one year after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsors, and credits for the Negotiated Costs of the Sponsors, and shall furnish the Sponsors with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsors for the excess, if any, of cash contributions and credits given over their required share of total Study Costs, or the Sponsors shall provide the Government any cash contributions required for the Sponsors to meet their required share of total Study Costs.

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsors and the Government shall appoint named senior representatives to an Executive Committee. The Executive Committee shall consist of the Baltimore District Engineer; Deputy District Engineer for Programs and Project Management; Chief, Planning Division, Baltimore District; Director, Department of Environmental Protection, Montgomery County; and Executive Director, Maryland-National Capital Park and Planning Commission. Thereafter, the Executive Committee shall meet as needed until the end of the Study Period.

B. Until the end of the Study Period, the Executive Committee shall generally oversee the Study consistently with the PSP.

C. The Executive Committee may make recommendations that it deems warranted to the Government on matters that it oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider such recommendations. The Government has the discretion to accept, reject, or modify the Executive Committee's recommendations.

D. The Executive Committee shall appoint representatives to serve on a Study Management Team. The Study Management Team shall keep the Executive Committee informed of the progress of the Study and of significant pending issues and actions, and shall submit to the parties quarterly reports on the progress of all work items identified in the PSP.

ARTICLE V - DISPUTES

Before a party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, the party must first seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VI - MAINTENANCE OF RECORDS

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsors shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Study Costs. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments at 32 C.F.R. Section 33.20. The Government and the Sponsors shall maintain such books records, documents, and other evidence in accordance with these procedures for a minimum of three years after completion of the Study and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsors shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsors are required to conduct under the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsors act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsors' rights and obligations under this Agreement, the Sponsors agree to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Acts of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE X - TERMINATION OR SUSPENSION

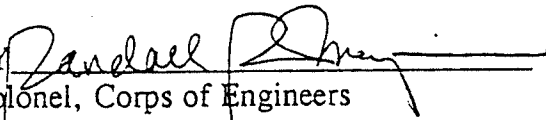
A. This Agreement shall terminate at the end of the Study Period; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon any failure of the Sponsors to fulfill their obligations under Article III of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

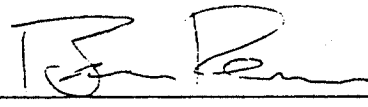
B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, Baltimore District.

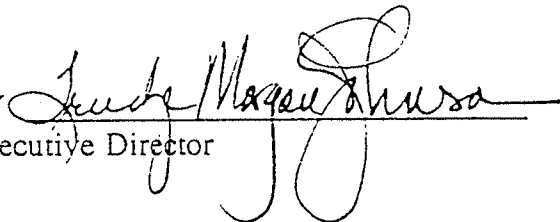
DEPARTMENT OF THE ARMY

MONTGOMERY COUNTY

BY 
Colonel, Corps of Engineers
District Engineer
Baltimore District

BY 
Chief Administrative Officer
Montgomery County, Maryland

MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

BY 
Executive Director

Attachment - Project Study Plan

APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC LEGAL DEPARTMENT