



Reserve Business Center, Preliminary Plan, 120130100



Carlton W. Gilbert, Planner Coordinator, Area 2 Division, Carlton.Gilbert@montgomeryplanning.org, 301-495-4576



Lynn Knaggs, Senior Planner, Area 2 Division, Lynn.Knaggs@montgomeryplanning.org, 301-495-4638



Joshua Sloan, Planner Supervisor, Area 2 Division, Joshua.Sloan@montgomeryplanning.org, 301-495-4597

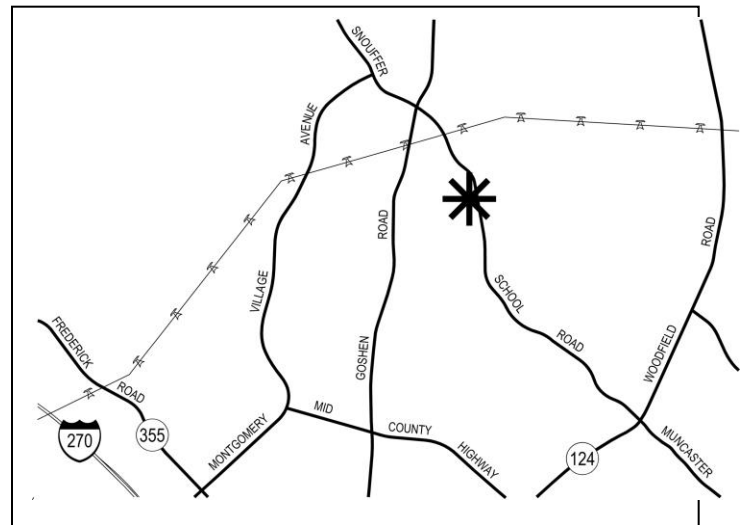


Glenn Kreger, Chief, Area 2 Division, Glenn.Kreger@montgomeryplanning.org, 301-495-4653

Completed: 06/14/13

Description

- Creation of one recorded lot (Lot 16) for a total of 200,000 square feet of light industrial warehouse and accessory office uses on 13.74 acres of land in the I-4 zone;
- Preliminary Forest Conservation Plan (PFCP) and Tree Variance;
- Location: Parcels P491 and P649 on the east side of Snouffer School Road, approximately 300 feet north of Ridge Heights Drive in the 1985 Gaithersburg Vicinity Master Plan;
- Applicant: M & D Real Estate, LLC;
- Filing Date: December 28, 2012.



Summary

Staff Recommendation: Approval of Preliminary Plan 120130100 and associated Preliminary Forest Conservation Plan (PFCP) and tree variance with conditions.

The Applicant proposes to convert the two parcels (P491 and P649) into one buildable lot for development of 188,000 square feet of industrial space and 12,000 square feet of office space in three warehouse buildings with associated parking and loading areas. In general, the proposed development meets all applicable development standards of the I-4 Zone (59-C-5.44) and complies with the purpose clause as set forth in the Zoning Ordinance. The project also generally conforms to the Montgomery County Code, Chapter 50, Subdivision Regulations.

The Applicant has obtained an access easement agreement from the owner of the adjacent Army Reserve property that would allow access to the Property from Snouffer School Road opposite of Ridge Heights Drive. However, a significant issue must be addressed by the Planning Board prior to its action upon the proposed Preliminary Plan. Abutting the Property to the west is 4.5 acres of vacant land that is landlocked and without access to, or frontage on, a public street. Staff recommends, as a condition of approval, that the Applicant provide an access easement to the abutting property as required by Subdivision Regulations (Sections 50-2(a) and 50-29(a)(2)). The Applicant disagrees with Staff's interpretation of these sections and has provided a letter, dated April 17, 2013, detailing their position. (See Attachment 1)

This application is subject to the Forest Conservation Law and the submitted PFCP provides the minimum required reforestation and mitigation on- and off-site. Because this project will not require a Site Plan, the Applicant must submit a Final Forest Conservation Plan to be reviewed and approved by Staff prior to the record plat approval.

RECOMMENDATION:

Staff recommends Approval of Preliminary Plan 120130100, subject to the following conditions:

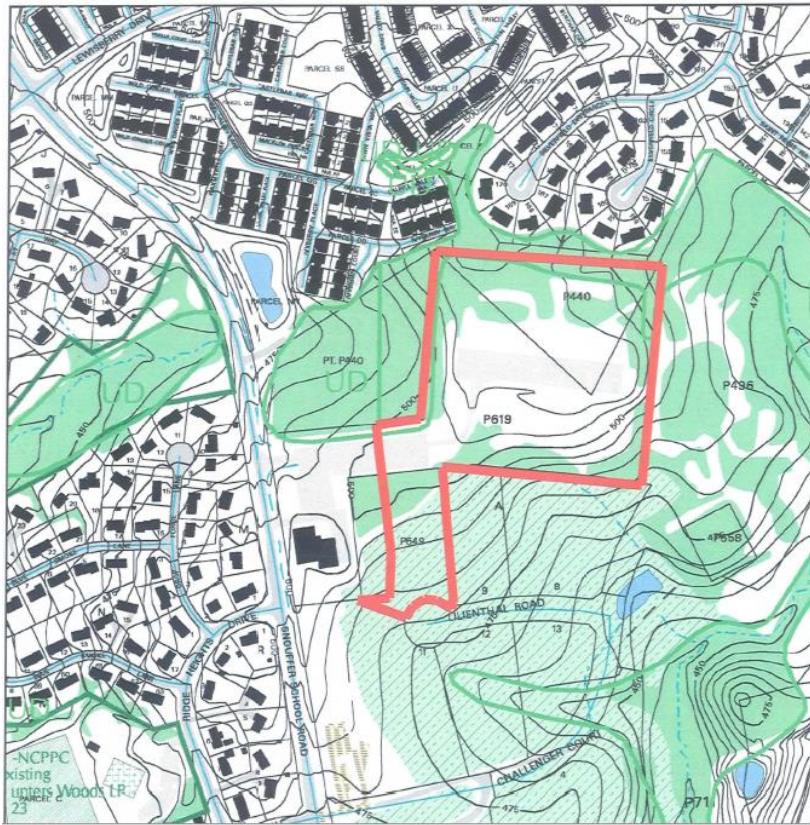
1. This Preliminary Plan is limited up to 188,000 square feet of warehouse space and 12,000 square feet of general office use.
2. The Applicant must demonstrate compliance with Section 50-32(b) of Chapter 50-Subdivision of Land by obtaining approval for site remediation, demolition, clearing, or grading from the Maryland Department of the Environment (MDE) before any building permit may be issued and must follow any environmental mitigation measures required by MDE during construction.
3. The Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department before any demolition, clearing, or grading on-site prior to Record Plat approval.
4. The Applicant must provide traffic control measures and design of the Snouffer School Road/Ridge Heights Drive intersection to encourage trucks to travel to and from the site south along Snouffer School Road, as approved by the Montgomery County Department of Transportation (MCDOT).
5. The Applicant must provide an access easement for the abutting landlocked property allowing vehicular and pedestrian circulation through the Applicant's property. The dimensions and location must satisfy Fire and Rescue Service requirements and must be delineated on the Record Plat. Access for the abutting property to Snouffer School Road will require separate agreements with the Federal Government and Montgomery County.
6. Subject to future agreements with the Federal Government and Montgomery County, the Applicant must finalize access agreements with the U.S. Government and the MCDOT before Record Plat approval.
7. The Applicant must provide a public access easement for the existing trail that crosses the northern property line.
8. The Applicant must provide for safe pedestrian movement on the site with ADA-compliant pedestrian connections from the handicapped parking spaces to the proposed building entrances.
9. The Applicant must provide 18 total bike parking spaces located near the entrances of each building with connections to the on-site sidewalk network and in a weather-protected area, if possible. A minimum of 12 spaces using inverted-U bike racks, or approved equals, and 6 spaces using bike lockers, or approved equals, must be provided.
10. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter, dated May 24, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the MCDOT letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the preliminary plan approval.
11. Prior to recordation of the plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT, including any necessary deceleration/acceleration lanes at the intersection of the access driveway and Snouffer School Road.

12. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its stormwater management concept letter dated June 11, 2013 and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
13. The record plat(s) must show necessary easements, as applicable.
14. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
15. Prior to certification, the first line under the ‘Site Tabulations’ on the Preliminary Plan must specify the use of the Standard Method of development.
16. Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.

SITE DESCRIPTION

Vicinity

The I-4 zoned Property is located along the east side of Snouffer School Road near its intersection with Ridge Heights Drive, generally to the northwest of the Montgomery County Airpark. The Property is approximately 13.74 acres consisting of two adjoining parcels, Parcel P491 (11.7 acres) and Parcel P649 (2.04 acres). Immediately to the west of the Property is the Army Reserve Center property located at 8791 Snouffer School Road, also located in the I-4 Zone. The Hunter's Woods residential community primarily consisting of single-family detached homes in the R-200 Zone is located to the west across Snouffer School Road. Adjacent to the north of the Property are single-family detached homes in the Town Sector (T-S) Zone in the East Village neighborhood of Montgomery Village. The adjoining properties located to the east and south of the Property, also known as the Webb Tract, are zoned I-4 and owned by Montgomery County. The County Webb Tract property is currently vacant and is proposed for the County's new Public Service Training Academy, a Montgomery County Public Schools Food Distribution and Maintenance facility, and an M-NCPPC Park Maintenance Depot.



Vicinity Map

Site History & Description

The Property was previously owned by the United States Army and used as a Nike-Ajax Missile Launch Area site between 1956 and 1962. The launch area was constructed with three missile launching pads and associated underground missile silos. In 1962, the facility was transferred to the Department of the Navy and the facility was utilized for communications research. In 1968, the Harry Diamond Laboratories began performing radar research at the facility and continued constructing, maintaining, and testing electronic and mechanical systems to track aircraft until 1979, when the facility was

transferred to Fort George G. Meade and the 99th Reserve Support Center. By the 1980s, the launch area was decommissioned and by 1984, most of the structures on the property were removed, with the exception of the three on-site underground missile silos and launching pads. In 2002, three hydraulic fluid tanks associated with the three underground missile silos were reportedly closed in place and the fluid from each tank was reportedly removed and properly disposed. Because of its prior history, the Subject Property is also known as “the former Gaithersburg Nike Missile Launch Area Site” or the “Nike Missile Property.”



Site Aerial View

The Property site currently contains no active uses, operations, occupants, or above-ground structures. Aside from the abandoned missile silos, the remainder of the site contains 5.92 acres of existing forest and areas of overgrown vegetation or tree cover that do not meet the definition of forest. Remnants of an asphalt parking lot is present on the western portion of the Site, the three underground missile silos and other minor features associated with the former Nike Missile Launch Area are located in the central portion of the Site.

As depicted on the approved Natural Resource Inventory/Forest Stand Delineation (#420120910) that was approved on May 3, 2012, the site contains no wetlands, streams, floodplains, or stream valley buffers and is not located in a Special Protection Area.

The Property drains to the Cabin Branch tributary within the Great Seneca Creek watershed that is designated a Class I-P Waters¹ by the State of Maryland. Finally, there are five specimen trees that are 30 inches and greater diameter at breast height (DBH) and 10 significant trees that are 25 inches DBH or greater located on-site.

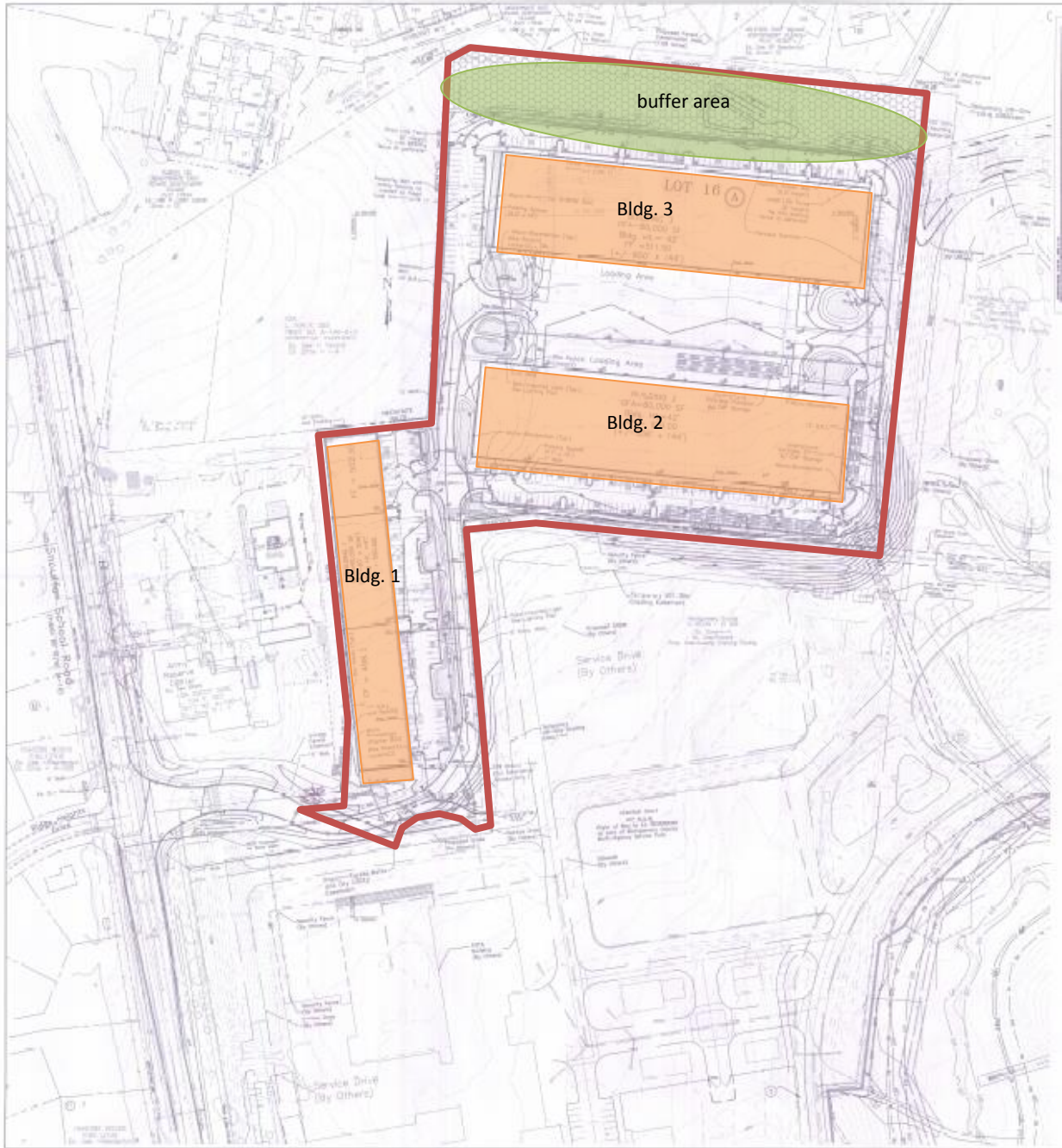
In 2007, access to the Property was proposed from Snouffer School Road via future streets within an approved subdivision record plat known as the AirPark North Business Park. Subsequently, Montgomery County acquired the Webb Tract and proposed to provide more direct access to the Property in lieu of the original plan for access. The U.S. Government and Montgomery County own the intervening land between the Property and Snouffer School Road. The Applicant and these property owners are in process of finalizing an easement agreement for driveway construction, permanent access, and utilities. As shown on the Preliminary Plan, driveway access and utilities will be provided from Snouffer School Road, opposite of Ridge Heights Drive, with access agreements from both the County and the Army Reserve site.

PROPOSAL

The Applicant proposes to develop the Property with 200,000 square feet of light industrial warehouse and accessory office uses in three buildings with associated parking. As shown on the Preliminary Plan, Building 1 is 40,000 square feet in size and 42 feet in height and will be closest to Snouffer School Road. Buildings 2 (south side) and 3 (north side) are each approximately 80,000 square feet and 42 feet in height, sitting parallel to each other in the northern area of the site. Building 3 is the closest building to the adjoining neighbors in the East Village section of Montgomery Village, approximately 150 feet from the property line. In addition to the 100-foot forested area separating Building 3 from the closest homes, the Applicant is proposing a combination of fencing, masonry walls, berms, preservation of many of the existing trees and supplemental evergreen tree plantings to create an effective screening buffer.

The Applicant is proposing 318 parking spaces located primarily in front of Building 1 and around the perimeter of the Property. As stated earlier, the proposed vehicular access point is from Snouffer School Road opposite Ridge Heights Drive via access easements from the owners of the adjacent Army Reserve and County properties. This access location allows full turning movements from the driveway and for the Hunters Woods Park neighborhood located across Snouffer School Road; a shift in either direction would require limiting turning movements due to the resulting offset. New sidewalks along Snouffer School Road, the access driveway, and through the interior of the site will connect the site to nearby neighborhoods and shopping areas.

¹ Use I-P - Waters that are suitable for: water contact sports; play and leisure time activities where the human body may come in contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply, industrial water supply, and public water supply.

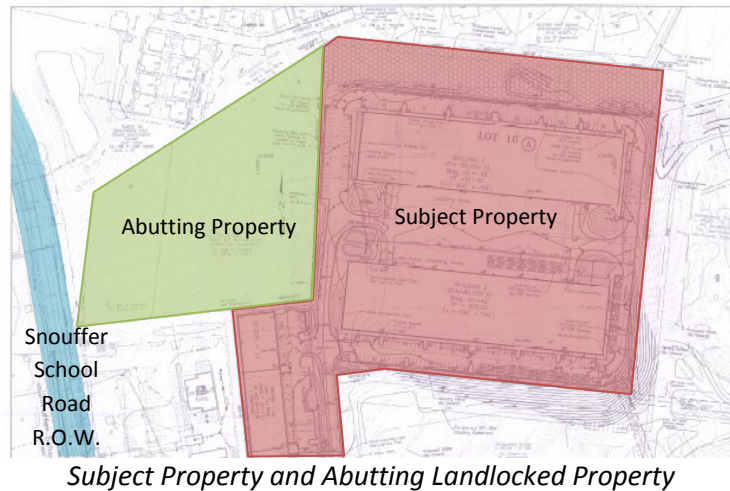


Preliminary Plan

DEVELOPMENT ISSUES

Access Easement for Abutting Land-Locked Property

As stated in the summary of this report, there is a key issue concerning access to an abutting 4.5-acre parcel of land. This undeveloped landlocked property has approximately 8.18 feet of frontage along the current right-of-way of Snouffer School Road, but a minimum of 25 feet of width is required for a driveway entrance to allow for industrial development in the I-4 Zone. As a result, the property is effectively landlocked without access to, or frontage on, a public street.



Section 50-29(a)(2) of the Subdivision Regulations reads, “In exceptional circumstances, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands.” Because neither property to the west or south of the landlocked property is under review for subdivision, access through the subject property is the only viable route for access to a public road at this time. Further, if the subject property develops and does not provide access for the landlocked property, that property is effectively unable to develop for the foreseeable future, a situation that Staff concludes is “detrimental to future subdivision of adjacent lands”.

It is Staff’s opinion, therefore, while the Planning Board cannot require that access be provided to the landlocked property beyond the scope of the Preliminary Plan currently under review, the Board may ensure an opportunity for access to the landlocked property remains viable by requiring an access easement across the subject property. Separate agreements with the U.S. Government and Montgomery County will be required for access across their respective properties. As conditioned, the Applicant must work with the owner of the landlocked property to ensure access for future subdivision of the adjacent landlocked land.

The Applicant does not agree with Staff’s interpretation of the Subdivision Regulations. Attached is a letter (Attachment 1) detailing the significant issues they feel will be imposed on the current Preliminary Plan application and further reasons describing additional constraints the landlocked property may face, beyond this access issue. Staff understands the unusual nature of the proposed condition, and offers the following point-by-point responses to the Applicant’s position:

1. Subdivision Regulations. As noted above, Staff feels that development of the subject property without an access easement for the landlocked property would leave the landlocked property effectively undevelopable. This is because the alternative means of access to Snouffer School Road are through two properties that are not under preliminary plan review and a possible route for access is being established at this time. The fact that the future subdivision of the landlocked property is open for many different (and presently unknown) uses combined with the fact that the Board is approving access via a private driveway rather than a public street for the subject property/application does not limit the Board's ability to determine that an opportunity for access to the landlocked property should be available. A separate finding regarding the landlocked property's adequate access for any given use will be determined when an application for subdivision of that property is reviewed. Because access is available does not mean it will be approved.
2. Hardship. Because the private driveways are being designed to accommodate any number of permitted uses on the subject property and to standards approved by the Department of Permitting Services and Fire and Rescue Service, Staff does not agree that an access easement along the driveway to the landlocked property will cause "significant delays and other practical problems". Given the similar types of use and the known limits on density for the landlocked property, the design should not need significant modification.
3. Community Opposition. Although the neighboring community is concerned that development of the landlocked property, which is heavily forested, may result in loss of significant tree canopy and buffering between themselves and the other industrially-zoned properties to the south, this is not germane to the current discussion.
4. Security Concerns. Staff believes that fencing, gates, lighting, and restrictions on access via the access easement should provide adequate means to ensure security for the subject property and tenants.

COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements, and staff has received letters of correspondence from citizens as of the date of this report. The Montgomery Village Foundation, Inc. (MVF) and the Mid County Citizens Association (MCCA) have submitted several documents expressing environmental concerns regarding the redevelopment proposal of the Nike Launch Site. Also, several letters from individual citizens have expressed concern that it is premature to authorize development of this property until all environmental and public health issues have been addressed and resolved. Other concerns that both MVF and MCCA have regarding development of the property include: lighting, traffic entering and leaving the property, particularly the prevention of truck traffic from the residential streets in the communities of Montgomery Village, the need for the placement of a traffic signal at Ridge Heights Drive, special handling on the removal of the concrete silos, and access to the adjacent landlocked parcel. (See Attachments 11, 12, & 13)

As conditioned, development of the Property must ensure responsible and sensitive remediation and mitigation of the environmental contamination on site via approval by MDE. Further, MCDOT may, under its traffic operations jurisdiction, limit truck traffic to ingress and egress only from the south as will be required for County and Department of Parks' trucks coming to and leaving the agency facilities adjacent to the south.

MASTER PLAN

The proposed Reserve Business Center is within the 1985 *Gaithersburg and Vicinity Master Plan* area, as amended. This Master Plan contains little in the way of detailed recommendations for this site, only the zoning designation. The Property is identified as Airpark Analysis Area 52 in the Master Plan. Table 3 (Summary of Zoning Recommendations) lists Area 52 at 16 acres of vacant land and is recommended for I-4 zoning. The Master Plan discussion of the Airpark Study Area states that “Land use proposals in the Airpark vicinity should locate non-residential uses in noise-impacted areas” (page 41). On the same page, the Master Plan says that “This Plan has channeled non-residential uses to properties lying within the 60 Ldn noise contours [from the airport]. A new zoning category, the I-4 Zone, was developed to address the problems related to industrial land use in this part of the Study Area.” The Noise Contours map on page 38 shows the western half of the property to be within the 60 to 64 Ldn noise contour. The map of the Land Use Plan that accompanies the Master Plan places the site within an area recommended for Industrial (Manufacturing and Warehouses) land uses.

The Preliminary Plan proposal to develop the property with light industrial warehouse and accessory office buildings is in substantial conformance with the Master Plan recommendations.

TRANSPORTATION

Master-Planned Roadways and Bikeways

In accordance with the 1985 *Gaithersburg Vicinity Master Plan* and the 2005 *Countywide Bikeways Functional Master Plan*, the master-planned designated roadways and bikeway are as follows:

1. Snouffer School Road is designated as a four-lane arterial, A-16, with a recommended 80-foot-wide right-of-way. The *Countywide Bikeways Functional Master Plan* designated along the segment of Snouffer School Road between Centerway Road and Goshen Road recommends a shared use path, SP-28. Although the Property has no frontage along Snouffer School Road, the existing right-of-way at the site’s driveway exceeds the recommended 80-foot wide right-of-way.
2. Centerway Road is designated as a four-lane arterial, A-275, with a recommended 80-foot wide right-of-way and no bikeway.

The other side streets along Snouffer School Road analyzed in the traffic study area are not listed in the Master Plan:

1. Chelsey Knoll Drive is a secondary residential street with a 60-foot wide right-of-way.
2. Lewisberry Drive is a secondary residential street with a right-of-wide between 60 and 70 feet.
3. Alliston Hollow Way is a secondary residential street between Snouffer School Road and Ridge Heights Drive and a tertiary residential street between Ridge Heights Drive and its western terminus.
4. Ridge Heights Drive is a secondary residential street between Snouffer School Road and Alliston Hollow Way and a tertiary residential street between Alliston Hollow Way and its southern terminus.

Current Roadway Projects

MCDOT has the following two current roadway improvement projects along Snouffer School Road:

1. MCDOT CIP Project No. 501119, Snouffer School Road North (Webb Tract), will widen the road from two to four lanes between Centerway Road and Turkey Thicket Drive and improve the two-lane segment between Turkey Thicket Drive and Alliston Hollow Drive. The project includes a raised median, an 8-foot wide shared use path on the northern side, a 5-foot wide sidewalk on the southern side, and a new traffic signal at Alliston Hollow Drive. The project limits are between Centerway Road and Alliston Hollow Drive. The design is projected to be completed in 2014.

Associated with this CIP project, the Applicant must comply with each of the recommendations in the MCDOT's letter, dated May 24, 2013, including:

- a. Obtain the necessary right-of-way by easements from the owners of U.S. Army Reserve and County's Multi-Agencies Service Park properties for the proposed intersection at Snouffer School Road and the site's access driveway-Ridge Heights Drive.
 - b. The design details for the proposed intersection at Snouffer School Road and the site's access driveway-Ridge Heights Drive to align with the continuation of cross-sectional design elements of the on-going MCDOT Capital Improvements Program (CIP) Project No. 501119, Snouffer School Road North (Webb Tract), improvement project with a northern project limit at Alliston Hollow Drive to the south.
 - c. The Applicant must construct the continuation of shared use path from Ridge Heights Drive to Alliston Hollow Drive (i.e., as to be constructed as part of MCDOT CIP project above south of Alliston Hollow Drive) along Snouffer School Road within available public right-of-way.
 - d. The Applicant must submit a traffic signal warrant study to MCDOT at the proposed intersection at Snouffer School Road and the site access driveway-Ridge Heights Drive. If warranted, the Applicant is responsible for installing the traffic signal.
2. MCDOT CIP Project No. 501109 Snouffer School Road, Facility Planning Phases 1 and 2 is to upgrade Snouffer School Road between Sweet Autumn Drive (860 feet west of Woodfield Road, MD 124) and Centerway Road. The project would provide a consistent five-lane arterial, including a center turn lane, 5.5-foot wide on-road bike lanes, an 8-foot wide shared-use path, and a 5-foot wide sidewalk. This project was reviewed as Mandatory Referral, MR2013003 at the Planning Board's public hearing held on October 4, 2012. The project was dormant for several years after the Facility Planning Phase II was completed in October 2007 because of a lack of funding until the final design phase started in September 2010. Construction is projected to begin in November 2015 and to be completed in December 2017.

Available Transit Service

Ride-On Route 58 operates along Snouffer School Road and connects the Shady Grove Metrorail Station and the Lakeforest Transit Center with 30-minute headways on weekdays and weekends. The nearest bus stops are located on both sides of Snouffer School Road at the intersection with Ridge Heights Drive.

Two other Ride-On routes have bus stops at the intersection of Snouffer School Road and Centerway Road approximately three quarters of a mile to the south:

1. Ride-On Route 60 with 30-minute headways on weekdays only.
2. Ride-On Route 64 with 15 to 20-minute headways on weekdays and weekends.

They both operate along Snouffer School Road south of Centerway Road and connect the Shady Grove Metrorail Station and the Montgomery Village Center (shopping center).

Pedestrian Facilities

As noted above, an MCDOT CIP Project for Snouffer School Road North (Webb Tract) will provide sidewalks and the master-planned shared use path.

The Applicant’s plans show a 5-foot wide lead-in sidewalk from Snouffer School Road on the north and west side of the site’s driveway. Most of the necessary handicapped ramps are shown on the plan and any missing connections are required under the recommended conditions of approval. In addition, the Applicant is proposing an access easement for the existing trail serving the adjacent residents that crosses the northern property line.

Bicycle Accommodations

A total of 18 total bike parking spaces are required based on 318 vehicular parking spaces shown on the proposed preliminary plan. The bike parking spaces should include bike lockers for employees and inverted-U bike racks for visitors and employees. The bike parking spaces must be located near the main entrances of each building with the bike racks in weather-protected areas, if possible.

The plan shows four bike racks and two bike lockers proposed next to each building. For the office/warehouse Building No. 1, six bike parking spaces are located in the southeastern corner of the building but have no connection to the sidewalk along the site’s driveway. For the warehouse buildings No. 2 and 3, the bike spaces are in unsafe locations next to the loading docks on the buildings’ west side. These bike parking spaces should be relocated nearer a pedestrian main entrance on the buildings’ east side. Similar to Building No. 1, the proposed bike parking spaces for Building No. 3 have no connection to the on-site sidewalk network and should be relocated near the building entrance.

Adequate Public Transportation Facilities Review

Local Area Transportation Review (LATR)

The proposed business park will generate the following number of peak-hour trips during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.):

Land Use	Square Feet	Peak-Hour Trips	
		Morning	Evening
Warehouse Space	188,000	126	94
General Office Space	12,000	18	23
Total Peak-Hour Trips	200,000	144	117

A traffic study was required to satisfy the LATR test because the proposed business park generates 30 or more total peak-hour trips within the weekday morning and evening peak periods. The study submitted for APF review was prepared before the square footage of general office space was finalized and analyzed the site with 40,000 square feet, instead of the currently proposed 12,000 square feet,

although the total square feet of office and warehouse uses remained at the same total of 200,000 square feet. The modification to 12,000 square feet of general office space, however, reduces the number of site-generated peak-hour trips by 14% within the weekday morning peak hour and 26% within the evening peak hour. Thus, the traffic study did not need to be updated.

The table below shows the calculated Critical Lane Volume (CLV) values at the analyzed intersections for the following traffic conditions:

1. Existing: Existing traffic conditions as they exist now.
2. Background: The existing condition plus the trips generated from approved but un-built nearby developments.
3. Total: The background condition plus the site-generated trips, as revised.

<i>Analyzed Intersection</i>	<i>Weekday Peak Hour</i>	<i>Traffic Conditions</i>		
		<i>Existing</i>	<i>Background</i>	<i>Total</i>
Snouffer School Road & Centerway Road	Morning	1,278	1,095	1,148
	Evening	952	994	1,024
Snouffer School Road & Lewisberry Drive-Chelsey Knoll Drive	Morning	937	969	987
	Evening	881	899	913
Snouffer School Road & Alliston Hollow Way-County Service Park Drive	Morning	1,056	1,073	1,095
	Evening	983	1,029	1,050
Snouffer School Road & Ridge Heights Drive-Site Driveway	Morning	886	918	946
	Evening	793	826	897

As shown on the table above, the CLV values at the four analyzed intersections are less than the congestion standard of 1,425 for these intersections located in the Montgomery Village/Airpark Policy Area. Thus, the LATR test is satisfied.

Transportation Policy Area Review (TPAR)

Because the final plan was submitted on or before March 30, 2013, *or* within 30 days of Planning Board adoption of the *LATR & TPAR Guidelines*, the Applicant may choose to satisfy the “policy area review” test by either the Policy Area Mobility Review (PAMR) or Transportation Policy Area Review (TPAR) test. Since the PAMR mitigation is 0% in the Montgomery Village/Airpark Policy Area, the Applicant selected PAMR over TPAR. Thus, the policy area review test is satisfied.

Other Public Facilities

Adequate public facilities and services will be available to serve the proposed development of the Property. The Property is located in water and sewer service area categories W-3/S-3. According to the Applicant, public water will be extended from Snouffer School Road through the County-owned property. Sanitary sewer will need to be extended on the east side of the Property through the adjoining County property. Other utilities, including gas, electricity, telephone and cable will be provided to the Property from Snouffer School Road. Fire, police, and rescue services are within appropriate distances to serve the Property. A Fire Access Plan has been approved by the Montgomery County Fire and Rescue Service.

ENVIRONMENT

Environmental Guidelines

The Subject Property contains no wetlands, streams, floodplains, or stream valley buffers and is not located in a Special Protection Area. The proposed project is in compliance with M-NCPPC's *Environmental Guidelines*.

Preliminary Forest Conservation Plan

This property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and a Preliminary Forest Conservation Plan ("PFCP") has been submitted for Planning Board approval. The PFCP proposes the removal of 4.72 acres of forest that requires a total of 3.26 acres of reforestation. The Applicant proposes to meet the planting requirement by:

- Planting 0.25 acres of landscape trees,
- Planting 0.40 acres of reforestation,
- Placing 1.58 acres in a Category I conservation easement, and
- Meeting the remaining 2.61 acres of reforestation requirement off-site.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. These include trees that measure 30 inches or greater DBH; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to these trees, including removal or disturbance within the critical root zone (CRZ) of a subject tree, requires a variance. An applicant for a variance must provide written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

The Applicant submitted a variance request on April 2, 2013 for the impacts to and removal of specimen trees as depicted on the attached PFCP (Attachment 7). The Applicant is requesting a variance to remove four specimen trees (trees >30" DBH) and to impact the critical root zones of six specimen trees that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law. These 10 trees are further described in Tables 1 and 2, below.

Table 1: Specimen trees to be removed

Tree Number	Common Name	DBH	Condition
61	Red Oak	34"	Good
62	Red Oak	37"	Poor
63	Red Maple	31"	Good
68	Red Oak	21"	Good

Table 2: Specimen trees to be impacted but retained (off-site)

Tree Number	Common Name	DBH	Condition	CRZ Impact
10	Red Oak	31"	Poor	40%
14	Red Oak	36"	Fair	10%
16	Red Oak	33"	Poor	21%
17	Red Oak	36"	Fair	25%
18	Red Oak	31"	Fair	4%
32	Red Oak	34"	Fair/Good	15%

The Applicant is proposing to impact the critical root zones of six specimen trees located off-site to the west of the property. In the event the proposed limits of disturbance necessitates the removal of any of these trees, the Applicant would be required to obtain permission from the landowner and to obtain a new variance approval from the Planning Department prior to any tree removal.

Unwarranted Hardship Basis

Under Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship. The proposed development is in accordance with both the intent and recommendation of the 1985 Gaithersburg Vicinity Master Plan area and in the I-4 zone. The Applicant is proposing the construction of three warehouse buildings, parking, and stormwater facilities that retain an existing stand of trees along the northern boundary of the site. This stand of trees and the proposed supplemental forest plantings will be placed in a Category I conservation easement and will act as a buffer between the proposed development and the adjacent residential community to the north. Protection of this forest and its associated easement pushes the development toward the southern and western portion of the property and impacts the critical root zones of off-site specimen trees along the property’s western boundary (see Figure 1). Also, given the configuration of Parcel 649, and the need to use it for access to the property, the inability to remove trees #61-63 would severely limit the use of a significant percentage of the entire tract. Finally, in order to align the access driveway at Snouffer School Road directly across from Ridge Heights Drive to provide for transportation operational safety, tree #68 would need to be removed (see Figure 2). Therefore, Staff concurs that the Applicant has a sufficient unwarranted hardship to consider a variance request.



Figure 1. Specimen trees with critical root zones circled in blue that are located along the western boundary of the subject site.



Figure 2. Specimen trees (#61-63, 68) proposed for removal as indicated with red Xs.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board, in order for a variance to be granted.

Variance Findings

Staff has made the following determination based on the required findings for a variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*
 Granting the variance will not confer a special privilege on the Applicant as this property is proposing a development consisted with the I-4 zone. One of the four specimen trees requested to be removed (tree #68) is located within the access easement to the property. The entrance alignment was designed to meet operational safety requirements; therefore, the removal of tree #68 is unavoidable. Trees #61-63 are located on Parcel 649; due to the narrow configuration of the parcel and the use of this parcel for access to the remainder of the development, restricting the removal of these trees would significantly limit the developable area of the Property. Finally, because the Applicant is proposing to preserve and plant 1.58 acres of forest along the northern boundary of the site, the proposed buildings must be constructed towards the central and southern portions of the site. Therefore, perimeter parking and road access to the buildings would require impacts to the critical root zones of the specimen trees located off-site and along the western boundary. Due to the constraints of the property, it is Staff's opinion, that granting the variance will not confer a special privilege to the Applicant.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*
Staff concurs that the requested variance is based on proposed industrial use of the site, access to the site from Snouffer School Road, and the site conditions, rather than on conditions or circumstances which are the result of actions by the Applicant.
3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*
Staff concurs that the requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.
4. *Will not violate State water quality standards or cause measurable degradation in water quality.*
Because the specimen trees proposed for removal will be mitigated with new forest and tree plantings, any water quality benefits that would be lost by removing the specimen trees will ultimately be replaced by the planting of the proposed mitigation trees. In addition, the specimen trees are not located within an environmental buffer or within a Special Protection Area. Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

The Applicant proposes to disturb the critical root zones of six specimen trees and to remove four specimen trees; three of which are located within an existing forest stand and will be mitigated for as part of the planting requirement. The remaining tree (#68) is to be removed in order to align the access driveway at Snouffer School Road with Ridge Heights Drive. In order to mitigate for the removal of this tree, the Applicant has proposed to plant three 3" caliper native trees on-site. This mitigation follows Staff's recommendation that replacement should occur at a ratio of approximately 1" caliper for every 4" DBH removed. While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the canopy coverage. Because these trees are in mitigation for specimen trees removed, they do not count toward afforestation requirements.

County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on April 9, 2013. On April 26, 2013, the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation (Attachment 9).

Variance Recommendation

Staff recommends that the variance be granted.

Stormwater Management

DPS issued a letter accepting the Stormwater Management Concept for the Reserve Business Center site on June 11, 2013 (Attachment 4). The stormwater management concept proposes to meet required stormwater management goals via the use of micro biofiltration and structural filtration.

Unsafe Land

Section 50-32(b) of the Subdivision Regulations states:

The board must restrict the subdivision of any land which it finds to be unsafe for development because of possible flooding or erosive stream action, soils with structural limitations, unstabilized slope or fill, or similar environmental or topographical conditions.

As previously stated, the Property was used as a Nike-Ajax Missile Launch Area site and a radar research facility. In a letter from the Maryland Department of the Environment (MDE), dated November 26, 2012, MDE described the Subject Property as the subject of environmental investigations conducted by the Department of the Army (Army) and MDE since the mid-1980s. In addition, a 1990 Preliminary Assessment/Site Inspection conducted by EA Engineering for the Department of the Army prompted comments from MDE that included recommendations to collect additional samples due to metals in the groundwater. Additional issues of potential concern were a 1000-gallon fuel oil underground storage tank, the potential for polychlorinated biphenyls (PCBs) to be in the hydraulic fluid, and asbestos material in the missile storage structures. The last involvement by MDE with the Property occurred in 1994, during which the Army and the MDE identified low levels of trichloroethene and chloroform (although MDE was not able to locate the actual data in the file).

The Applicant has submitted the initial investigation conducted by EA Engineering, Science, and Technology, Inc. prepared for the U.S. Army Toxic and Hazardous Materials Agency dated January 1990 and a Phase II Environmental Site Assessment conducted by Hillis-Carnes Engineering Associates dated December 2012 as part of the Preliminary Plan application. In order to accurately assess this data, Staff is recommending that the Applicant receive a determination from MDE that the Property is suitable for development. In MDE's November 2012 letter, MDE proposes the use of the Voluntary Cleanup Program (VCP) or an evaluation by the Department's State Assessment and Remediation Division. Using either approach will enable MDE to issue a regulatory determination regarding environmental conditions for the property. It is Staff's position that the issuance of a regulatory determination from MDE would provide the necessary assurance that the proposed project will be in compliance with Section 50-32(b). As of the issuance of this Report, Staff understands that the Applicant has entered into the Voluntary Cleanup Program as proposed by MDE. (See Attachment 10)

Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report. The Variance approval is assumed in the Planning Board's approval of the Preliminary Forest Conservation Plan.

COMPLIANCE WITH ZONING ORDINANCE AND SUBDIVISION REGULATIONS

Per Sec. 59-D of the Zoning Ordinance - Plan Approvals Required table, developments in the I-4 Zone require site plan review only when the Optional Method of development is used. This request appears to be for the Standard Method development; however, only the application form refers to this latter method. For clarification purposes, the first line under the 'Site Tabulations' of the Preliminary Plan (with reference to the property's zoning) should specify the Applicant's intention to use the Standard Method of development for this proposal.

Because the Standard Method of development does not require site plan review by the Planning Board, the Plan's Site Tabulations have been checked for compliance with the respective sections of the Zoning Ordinance, including building height, coverage/green area, floor area ratio, building and parking setbacks, required parking, and required interior green space in the parking compound. As shown below, all of the calculations shown in the Plan's 'Site Tabulations' are in compliance with the Zoning Ordinance.

Table 1: Development Standards Data Table - I-4 Zone

PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan
Maximum Building Height (feet) [Sec. 59-C.31(a)]	42 ft.	42 ft.
Minimum Setbacks (feet):		
Abutting residential [Sec. 59-C-5.35(a)] at the rear	100 ft. Min.	150 ft.
(b) From any industrial zone	10 ft. Min.	10 ft.+ ¹
(d) (2) From private rights-of-way	25 ft.	25 ft.+ ²
Maximum Density [Sec. 59-C-5.44(c)]	1.0 FAR or 598,457 SF	0.33 or 200,000 SF
Minimum Green Area (% of gross tract acres) [Sec. 59-C-5.32]	20% or 119,691 SF	30% or 183,500 SF
Parking Sec. 59-E 3.7 1.5 spaces/1,000sf GFA of warehouse space	282	282
And 2.9 spaces/1,000 GFA of office space in an Office Parking Policy Area (the Northern Central Area)	35	35 ³
Off-Street Parking Setback [Sec. C-59-5.44(d)(1) from any residential zone [at the rear of Building #3]	50 ft.	105 ft. +

CONCLUSION

The application meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conforms to the recommendations of the Gaithersburg Vicinity Master Plan. Staff recommends approval of the Preliminary Plan subject to the conditions contained in this Staff Report.

¹ Because there are three separate buildings proposed this setback varies in relation to the abutting/adjoining properties and each building.

² Because there are three separate buildings proposed this setback also varies in relation to each building location from the private right-of-way.

³ The total required parking for both warehouse and office space = 317; the total number of parking spaces on this plan = 318.

ATTACHMENTS

- Attachment 1 - Letter from Stuart R. Barr, Attorney on behalf of the Applicant
- Attachment 2 - Letter from Robert C. Park, Jr., Attorney on behalf of the Estate of Hewett Webb
- Attachment 3 - MCDOT Approval Letter
- Attachment 4 - Stormwater Concept Approval Letter
- Attachment 5 - Fire and Rescue Approval Letter & Access Plan
- Attachment 6 - Letter from MDE
- Attachment 7 - PFCP Plan
- Attachment 8 - Tree Variance Request
- Attachment 9 - Letter from the County Arborist
- Attachment 10 - Voluntary Cleanup Program (VCP) Application Package
- Attachment 11 - MVF Comments on VCP and Environmental Concerns
- Attachment 12 - MCCA Executive Summary Presented to MDE
- Attachment 13 - Letters of Environmental Concerns from MCCA and Individual Citizens
- Attachment 14 – Department of the Army Access Easement Agreement
- Attachment 15 – Montgomery County Access Easement Agreement
- Attachment 16 – Montgomery County Utility Easement Agreement

April 17, 2013

STUART R. BARR
DIRECT 301.961.6095
SRBARR@LERCHEARLY.COM

BY E-MAIL

Carlton Gilbert
M-NCPPC
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Reserve Business Center
Preliminary Plan of subdivision application #120130100
Opposition to Potential Condition Requiring Access to Adjoining Property

Dear Carlton:

On behalf of our client M&D Real Estate, LLC (“M&D”), the applicant and owner of the subject property, we thank you and your colleagues for your review of Preliminary Plan of subdivision application #120130100 (Reserve Business Center). There appear to be very few remaining issues to resolve prior to the public hearing, currently scheduled for June 27th. This letter responds to one of those issues -- the potential access to the adjoining landlocked property to the west of the subject property (the “Adjoining Property”).¹ The Adjoining Property is currently undeveloped and we are not aware of any specific development plans.

Staff’s current position concerning access to the Adjoining Property was expressed in two emails dated February 26 and March 29, 2013. As M&D explained in a meeting with Staff in March and as detailed further here, providing access to the Adjoining Property presents several significant problems. We request that Staff change its current position on this issue, based on the following:

1. Subdivision Regulations. We have reviewed the Montgomery County Subdivision Regulations and they do not require access to be provided under these factual circumstances. Staff appears to be concerned that the Subdivision Regulations somehow require access to be provided under these circumstances, or Staff is otherwise concerned that somehow it “cannot approve a Preliminary Plan that prevents access to a landlocked parcel of land” (February 26, 2013 email). We disagree. First, there is a significant difference between a proposal that “prevents” access to a landlocked property as compared with a proposal, such as M&D’s, that simply doesn’t affirmatively provide access where access is otherwise potentially and more logically available. Here, M&D does not own the intervening land in between the Snouffer School right-of-way and the Adjoining Property. M&D is not preventing access to Snouffer School Road. M&D’s Property is in fact land locked,

¹ Based on our research, the Adjoining Property directly to the west is described as “vacant” on the tax map and appears to be owned by various Webb Family heirs or the Estate of Helen Webb. Tim Shaw, who has communicated with the Staff at various times, has some relationship to the Adjoining Property, but we are unaware of specifics.

and M&D, through considerable effort, has arranged for access from Snouffer School Road with the United States Army and Montgomery County. The Adjoining Property similarly can request and receive access to Snouffer School Road from the intervening property owners.

We also cannot identify any regulations that require M&D to provide access under these circumstances. M&D does not own the intervening land, and M&D proposes a private driveway from Snouffer School Road, not a public street. The Subdivision Regulation sections noted by Staff in prior communications – Sections 50-25(c) and 50-29(a)(2) – do not require access to be provided under these circumstances. Section 50-25(c) applies to “future subdivision” and “future opening of streets.” M&D proposes immediate development of its property and is proposing a private driveway from Snouffer School Road, not a public right-of-way.

As for Section 50-29(a)(2), we believe it was not intended to apply to nonresidential lots. But regardless, it encourages lots to abut on a street or road which has acquired the status of a public road. If a private driveway is proposed, it requires a showing that the access is adequate to serve the lots for emergency vehicles and installation of public utilities. M&D – and we believe, the Staff and Planning Board – cannot make those determinations because we know nothing about the plans proposed for the Adjoining Property. The M&D development also is not detrimental to potential development on the Adjoining Property. Arguably, if M&D owned the property in between the right-of-way and the Adjoining Property, the circumstances may be different, but that is not the case.

2. Hardship. It is unreasonable to impose a condition of providing access under these circumstances given the significant delays and other practical problems that would be created for M&D. At great time and expense, M&D has designed its project including its access, driveway, circulation and overall traffic study based on its projected use, traffic generation, and other development requirements. The public hearing on that subdivision plan is now tentatively scheduled for June 27, 2013. M&D knows nothing about the proposed use or development on the Adjoining Property and cannot and should not have to delay its project to determine that. M&D cannot design its plans based on an unknown adjoining development proposal.

Even if M&D were inclined to provide access, M&D cannot on its own grant access to the Adjoining Property from Snouffer School Road. As noted previously, M&D has carefully discussed its plans, designs, and needs with the United States Army and Montgomery County, the intervening land owners. The arrangements with the Army and County are for M&D’s use, do not allow use by any other party, and do not contemplate any additional impact that would be generated by the Adjoining Property.

M&D wants to move forward with its development project now. Forcing M&D to coordinate with the Adjoining Property for access, utilities, shared construction and maintenance responsibility, financial contributions, amendments to existing agreements, indemnification, the associated changes to plans, and a host of other issues that would have to be negotiated between the two parties would create significant and unreasonable delays.

3. Community Opposition. In 2010, representatives of the Adjoining Property sued Montgomery County and East Village Homes Corporation to establish access to Snouffer School Road. The Montgomery County Circuit Court dismissed the complaint in 2011. The adjoining community has made it clear that it does not want M&D to provide access to the Adjoining Property. M&D has spent the last nine months carefully discussing the proposed M&D project with the community and resolving concerns. M&D has no desire to provide the community with potential grounds for opposition to the project.
4. Security Concerns. M&D and its contract purchaser require a secure facility, and providing access to the Adjoining Property will not ensure that security. We appreciate the Staff's time and ideas that were reflected in the sketch plan attached to the March 29, 2013 email. M&D's planners and civil engineers Macris, Hendricks & Glascock reviewed the suggested changes to the design, and unfortunately there are significant problems with turning radii, stormwater management, and functionality of the buildings. The design reconfiguration also does not address the security concern adequately.

Beyond these material concerns, we believe that the Adjoining Property has significant other development constraints beyond access alone. We request that Staff support the M&D preliminary plan as currently proposed and refrain from compelling M&D to provide access that is unjustified under the circumstances. Again, M&D cannot provide access to the Adjoining Property from Snouffer School Road on its own anyway. Thank you for your consideration of our position.

Very truly yours,



Stuart R. Barr

Lerch Early & Brewer, Attorneys for Applicant

Cc (by e-mail): Joshua Sloan
Catherine Conlon
Patrick Butler
Ed Axler
Applicant Team

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

Robert C. Park, Jr.
301.961.5175
rpark@linowes-law.com

April 29, 2013

Via E-mail (joshua.sloan@montgomeryplanning.org)
and First-Class Mail

Joshua Sloan
Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: *Reserve Business Center (Proposed Subdivision by M&D Real Estate, LLC); 4.5 Acres of Unimproved Land Owned by The Estate of Helen Hewett Webb*

Dear Mr. Sloan:

Please be advised that we represent the Personal Representatives of The Estate of Helen Hewett Webb, Hugh G. Webb and Susan W. Errickson (collectively, "the Estate"). The Estate owns approximately 4.5 acres of unimproved land abutting the parcels proposed to be developed on the south and east by M&D Real Estate, LLC ("M&D").

I understand that you have had several conversations with Tim Shaw about the fact that the 4.5 acres ("Subject Property") is landlocked and without access to, or frontage on, a public street. Now that M&D is in discussions with the Park & Planning Commission ("P&P") about subdividing the property next door, the Estate has requested the assistance of P&P to require that M&D provide access to the Subject Property.

At this point, I understand that M&D has not made provisions for access to the Subject Property in the plans submitted so far to P&P. I further understand that M&D has been requested by P&P to make other revisions to its plans and to resubmit those to P&P. To date, P&P has not received a resubmittal.

In the meantime, you have requested that the Estate provide P&P with a "comprehensive summary" of the issue of access to the Subject Property that can be a part of the Planning Board's deliberations and decision once a resubmittal is received. This "comprehensive summary" also would be used by Staff in making its recommendation to the Planning Board on M&D's resubmittal.

Joshua Sloan.
April 29, 2013
Page 2

The Estate has asked me to prepare the requested "comprehensive summary", which is as follows:

1. At one time, the Webb family owned a larger portion of property comprised of approximately 193 acres, which included the Subject Property. In 1955, the United States of America condemned a portion of the Webb property, immediately adjacent to the Subject Property, for purposes of installation of a Nike missile defense system during the Cold War. Initially, the Subject Property was included in the property to be condemned, but a later amendment by the government resulted in the taking of an easement interest only in the Subject Property, which was later extinguished.

2. The Subject Property is located adjacent to the current right-of-way of Snouffer School Road in Gaithersburg. However, the Subject Property only has 8.18 feet of its property line touching the current right-of-way, which is not wide enough to provide access for development in the Subject Property's current I-4 zoning. A minimum of 25 feet of width is required for a driveway entrance to allow for industrial development. Accordingly, the Subject Property is effectively and legally landlocked.

3. The reason that the Subject Property became landlocked is that in or around 1958, Montgomery County approved a plan for the realignment of Snouffer School Road. Subsequent to the approval of the plan by the County in May of 1958, the project went forward and the County moved the alignment of Snouffer School Road away from, and to the west of, the Subject Property. As a result, the Subject Property became effectively and legally landlocked, and the County failed to provide substitute access for the Subject Property. No compensation was paid to the Webb family for this deprivation of access by the County.

4. After the death of their parents, the Personal Representatives discovered that the Subject Property still was owned by The Estate. This discovery was made in or around 2004. Since that time, the Personal Representatives have made extensive and numerous efforts to obtain access for the Subject Property:

(a) In 2005-2006, the Personal Representatives made efforts to acquire access over property owned by the East Village Homes Corporation, which property lies between the western boundary line of the Subject Property and the right-of-way of Snouffer School Road. Those efforts were not successful since East Village insisted on numerous commitments and considerations from The Estate, including going through the costly process of obtaining residential rezoning and subdivision approval for the Subject Property, with no firm commitment or promises from East Village until that had been done. In any event, in May of 2006, the Montgomery County Revenue Authority advised the Estate that it would go on record opposing any residential development plans for

Joshua Sloan.
April 29, 2013
Page 3

the Subject Property since residential development would not be compatible with the existing flight paths and use of the nearby Montgomery Airpark.

(b) The Estate next approached the Department of the Army about access across a portion of the property used as the U. S. Army Reserve Center which had been constructed on the old Nike site. In December of 2007, the Army declined the Estate's request for an access easement because of "heightened national security" concerns and impacts that the access easement would have on existing drainage, stormwater management and parking on the Army's property.

(c) Over the years, the Estate has attempted to discuss this issue with Concrete General/M&D, but without any results.

(d) Before Miller & Smith sold the other portions of the former Webb property to Montgomery County, Miller & Smith had proposed a development which would have included requirements to make improvements to Snouffer School Road. If Miller & Smith's development had gone forward and the improvements made to Snouffer School Road as originally proposed, then the Subject Property would have acquired additional frontage on the Snouffer School Road right-of-way that would have been sufficient to allow for an access driveway. However, Miller & Smith sold its property to the County before that occurred and, in any event, the Army registered its objections to improvements to Snouffer School Road on its side of the right-of-way, so the plans were revised and called for widening to occur on the west side of Snouffer School Road, instead.

(e) With the real estate recession beginning at the end of 2007, further efforts to obtain access for the Subject Property were put on hold until late in 2010 when it appeared that the recession was winding down. At that time, the Estate and undersigned counsel met with representatives of Montgomery County to point out to them that the old right-of-way for Snouffer School Road had never been formally abandoned by the County and that the Estate desired access across the old right-of-way (which was a part of the East Village common area) to gain access. That request was denied. As a result, the Estate filed suit against the County and East Village, but the Court dismissed the litigation, not because it lacked merit, but because the Court believed that the Estate had waited too long to bring these claims.

(f) Finally, the Estate and undersigned counsel met with representatives of Park & Planning (John Carter, et al.) to make P&P aware of

Joshua Sloan.
April 29, 2013
Page 4

the Subject Property's access issues. The Estate knew that M&D would be coming to P&P at some point with a development proposal and wanted P&P to be aware that the Subject Property's access issue should be addressed during that process. This chronology brings us to where we are today.

As you can see from this chronology, the Subject Property suffers from a lack of access through no fault of the property owners. The Subject Property was thought to have been taken by the United States government during the condemnation for the Nike site, and it was only discovered in 2004 that the property was still owned by the Estate. It was the County's actions in the realignment of Snouffer School Road, without providing for alternative access for the Subject Property, that left the Subject Property landlocked. All reasonable attempts by the Estate to negotiate and receive an easement for access from East Village, the Army, or through the County have been denied. M&D has not responded to requests to discuss providing access as a part of its proposed development.

At this time, the Estate has no other alternatives to obtaining access for the Subject Property. We respectfully request that P&P require M&D to accommodate this request for access as a part of its proposed adjacent development. We are having prepared, and will forward to you, a sketch that will show where the Estate believes that access could be provided.

It is respectfully requested that the Staff and the Planning Board give favorable consideration to this request by the Estate in its deliberations regarding the anticipated resubmittal from M&D for its proposed adjacent development and subdivision.

Please do not hesitate to contact me should you have any questions or need additional information from us.

Thank you for your consideration.

Sincerely,

LINOWES AND BLOCHER LLP



Robert C. Park, Jr.

RCP:sew

cc: Stuart R. Barr, Esquire (via e-mail only)
Timothy L. Shaw (via e-mail only)
Hugh G. Webb
Susan W. Errickson

**L&B 2360048v1/10619.0002



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

May 24, 2013

Mr. Carlton Gilbert; Planner Coordinator
Area 2 Planning Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan # 120130100
Reserve Business Center

Carlton
Dear Mr. Gilbert:

We have completed our review of the preliminary plan dated December 28, 2012 and revised on February 26, 2013. The original plan was reviewed by the Development Review Committee at its meeting on February 4, 2013. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to MCDPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Coordinate with Mr. Hamid Omidvar, Chief, Department of General Services - Office of Special Projects, for improvements and easements through the "PSTA and Multi Agency Service Park" on the Webb Tract site (CIP Project No. 470907. Any perpetual easements granted should be delineated on the record plat. Mr. Omidvar may be contacted at 240-777-6126.
2. Coordinate with Ms. Dewa Salihi, Project Manager in the Department of Transportation – Division of Transportation Engineering Construction Section, regarding the County's project to provide improvements along Snouffers School Road adjacent to the Webb Tract under the "Snouffer School Road North (Webb Tract)" (CIP Project No. 501119). Ms. Salihi may be contacted at 240-777-7290.

The thirty (30) percent complete plans for that CIP project were presented at a public meeting on May 20, 2013. Those plans propose installing a traffic signal at the northern entrance to the PSTA site, opposite Alliston Hollow Way; to implement that signal, Snouffers School Road is proposed to be widened. The lane use and pavement design at that intersection remain under consideration – so those plans are subject to revision as that project proceeds in the final design phase.

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov

The pending preliminary plan proposes widening Snouffers School Road - at the new-proposed entrance opposite Ridge Heights Drive - to provide lanes for southbound through/right, opposing left turns, a northbound through lane, and a northbound right turn/deceleration lane (into the site).

Since the Snouffers School Road North CIP project no longer extends to the Ridge Heights Drive intersection, the applicant is responsible for providing safe vehicular movements along Snouffers School Road. **We remain concerned about the curblane transitions between the Alliston Hollow Way and Ridge Heights intersections.** Prior to approval of the Storm Drain and Paving Plan (for site access improvements) at the record plat stage, the applicant's consultant will need submit a coordinated pavement widening plan – which delineates the pavement widenings proposed under the County and applicant's projects – for approval by MCDOT. **Depending on the results of that review, the applicant may be required to widen Snouffers School Road south to tie into the transition from the Alliston Hollow Way – to provide a continuous northbound curblane (in the ultimate location) between the two intersections.**

The applicant will be responsible for all costs to reconstruct Snouffers School Road to implement the proposed entrance opposite Ridge Heights Drive as a full movement intersection.

3. Prior to submission of the record plat (and approval of the Storm Drain and Paving Plans to widen Snouffers School Road), the applicant will need to submit a traffic signal warrant analysis for the intersection of Ridge Heights Drive/site driveway. If a signal is determined to be warranted, the applicant will be required to construct the signal at their cost. If the signal is not found to be warranted at this time, the applicant will need to install traffic signal conduit and handboxes on all legs of that intersection (as part of the pavement widening).
4. The applicant has submitted a copy of a January 28, 2013 easement agreement, between M&D Real Estate, LLC and the U.S. Army Corps of Engineers, for site access through the adjacent "MG Benjamin L. Hunton Memorial USARC" parcel. The pending preliminary plan suggests the applicant's proposed improvements can be accommodated within the existing right-of-way of Snouffers School Road. However, there appear to be differences between the depictions of that right-of-way between the preliminary plan and Exhibit "B" ("Access Easement") of that document. Prior to approval of the record plat, the consultant will need to satisfactorily demonstrate that there is sufficient right-of-way to accommodate the proposed widening of Snouffers School Road at Ridge Heights Drive.

Since the preliminary plan proposes a southbound left turn into the site, we expect a comparable number of exiting trips will want to return to the north. **We are concerned that the preliminary plan does not provide a northbound acceleration lane.** The applicant will need to continue to coordinate with Messrs. David Adams & Mark Terry of this Division on the proposed entrance design. **We recommend the applicant pursue approval from the U.S. Army Corps of Engineers to obtain the necessary right-of-way and/or perpetual easements to allow construction of an acceleration lane (with appurtenant improvements at the intersection – including pavement transition, curb, gutter, storm drainage, sidewalk to the bus stop, and streetlighting).** Such perpetual easements will need to grant Montgomery County the right to issue permits to construct, reconstruct, and maintain the public improvements built within that area. If the applicant is unable to secure the ability such right-of-way and/or perpetual easements, turn restrictions may be required.

5. The lengths of left turn storage lanes and pavement transitions will be affirmed at the permit stage, following a review of the traffic signal warrant analysis, projected ultimate turning movements, etc.
6. Prior to approval of the record plat by the Department of Permitting Services, submit a completed, executed and sealed MCD)T Sight Distances Evaluation certification form, for the new location of the proposed driveway **with exact sight distances** for our review and approval.
7. We recommend the applicant install a five (5) foot wide leadwalk from Snouffer School Road to the site.
8. Install two triangular islands in the proposed entrance using three-centered curves as shown on Figure 9.43 -C- in AASHTO's 2011 edition of A Policy on Geometric Design of Highways and Streets to facilitate pedestrian crossings of the proposed entrance.. Relocate the driveway crosswalk through the right turn islands to keep the Snouffer School Road sidewalk or bikeway adjacent to roadway.
9. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by each common driveway.
10. Waiver from the Montgomery County Planning Board for lot(s) on a private right of way.
11. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan.
12. In accordance with Section 50-35(n) of the Montgomery County Code, we recommend the Montgomery County Planning Board require the applicant to construct an off-site shared-use path along Snouffer School Road to connect with the planned shared use path at Alliston Hollow Way.
13. The parking layout plan will be reviewed by the Department of Permitting Services at the site plan or building permit stage, whichever comes first. To facilitate their review, that plan should delineate and dimension the proposed on-site travel lanes, parking spaces, curb radii, handicap parking spaces and access facilities, and sidewalks. The applicant may wish to contact Mr. Sam Farhadi of that Department at (240) 777-6298 to discuss the parking lot design.
14. The parking lot travel lanes are to be designed to allow a WB-50 truck to circulate without encroaching the centerline or curbline.
15. The applicant needs to submit a truck circulation plan for review by the M-NCPPC and MCDPS. This plan should delineate the proposed movements on-site between the anticipated access locations, the proposed truck loading spaces, and the proposed dumpsters. The truck circulation pattern and loading position should be designed for counter-clockwise entry and for a left-side backing maneuver. Passenger vehicle travel ways should be separated from the expected truck patterns and storage areas. The applicant may also need to provide documentation of their proposed delivery schedules.

16. Truck loading space requirements to be determined in accordance with the Executive Branch's "Off-Street Loading Space" policy.
17. On the site plan, delineate the location and dimensions of the proposed truck loading and/or dumpster spaces.
18. Provide on-site handicap access facilities, parking spaces, ramps, etc. in accordance with the Americans with Disabilities Act.
19. Where perpendicular parking spaces border a sidewalk, a two (2) foot vehicle overhang is assumed. The applicant should either provide a seven (7) foot wide sidewalk or wheelstops within those parking spaces.
20. For any parking facility containing more than fifty (50) parking spaces, the applicant needs to furnish bicycle parking facilities as required Section 59 E-2.3 of the Montgomery County Code. Accordingly, the applicant should provide either bike lockers or inverted "U" type bike racks.
21. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
22. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
23. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant..
24. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Transportation Systems Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
25. Permit and bond will be required as a prerequisite to MCDPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
 - A. On Snouffer School Road, widen the existing pavement to a four lane undivided cross-section as determined in future plan reviews (per comments 1 thru 5).
 - B. On Snouffer School Road, construct five (5) foot wide concrete sidewalk or 10-foot wide shared-use path between Alliston Hollow Way and Ridge Heights Drive, if required as an off-site amenity by the Montgomery County Planning Board.

NOTE: the Public Utilities Easement is to be graded on a side slope not to exceed 4:1.

- C. Construct a traffic signal at the intersection of Snouffers School Road with Ridge Heights Drive/site access, if determined to be warranted. If the signal is not found to be warranted at this time, the applicant will need to install traffic signal conduit and handboxes on all legs of that intersection.
- D. Enclosed storm drainage and/or engineered channel (in accordance with the MCDOT Storm Drain Design Criteria) within all drainage easements.
- E. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
- F. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Montgomery County Department of Permitting Services (MCDPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the MCDPS.
- G. Developer shall ensure final and proper completion and installation of all utility lines underground, for all new road construction.
- H. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the MCDOT Division of Traffic and Operations.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Mr. David Adams, our Development Review Engineer for this project at david.adams@montgomerycountymd.gov or (240) 777-2190.

Sincerely,



Gregory M. Leck, Manager
Development Review Team

m:/correspondence/FY13/Traffic/Active/120130100, Reserve Business Center, MCDOT plan review ltr.doc

cc: Mike Miller; M & D Real Estate, LLC
Brian Donnelly; Macris, Hendricks & Glascock, PA
Robert G. Brewer, Jr., Lerch Early & Brewer, Chtd.
Stuart Barr; Lerch, Early & Brewer, Chtd.
C. Craig Hedberg; ITS, Inc.
Joshua Sloan; M-NCPPC Area 2
Edward Axler; M-NCPPC Area 2
Hamid Omidvar; MCDGS Special Projects
James S. Turkel; USACE Real Estate D
Dewa Salih; MCDOT DTE

Mr. Carlton Gilbert
Preliminary Plan No.120130100
May 24, 2013
Page 6

cc-e: Atiq Panjshiri; MCDPS RWPR
Henry Emery; MCDPS RWPR
Sam Farhadi; MCDPS RWPR
Girum Awoke; MCDOT DTE
Dan Sanayi; MCDOT DTEO
Bruce Mangum; MCDOT DTEO
Kamal Hamud; MCDOT DTEO
Fred Lees; MCDOT DTEO
Mark Terry; MCDOT DTEO
David Adams; MCDOT DTEO



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

June 11, 2013

Diane R. Schwartz Jones
Director

Mr. Pearce Wroe
Macris, Hendricks & Glascock, P.A.
9220 Wightman Road, Suite 120
Montgomery Village, MD 20886

Re: Stormwater Management **CONCEPT** Request
for Reserve Business Center
Preliminary Plan #: 120130100
SM File #: 242884
Tract Size/Zone: 13.8/1-4
Total Concept Area: 15.4ac
Lots/Block: N/A
Parcel(s): P491, P649
Watershed: Great Seneca Creek

Dear Mr. Wroe:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via the use of micro biofiltration and structural filtration.

The following **item(s)/condition(s)** will need to be addressed **during/prior** to the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
6. The off site connection storm drain system or the 20 ft recorded storm drain easement must be in place prior to the first submission of detailed plan review.
7. All off site grading permissions must be in place prior to the first detailed plan submission.

255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY
www.montgomerycountymd.gov




This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Thomas Weadon at 240-777-6309.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: jb CN 242884

cc: C. Conion
SM File # 242884

ESD Acres:	8.3ac
STRUCTURAL Acres:	4.3ac Effective DA
WAIVED Acres:	N/A

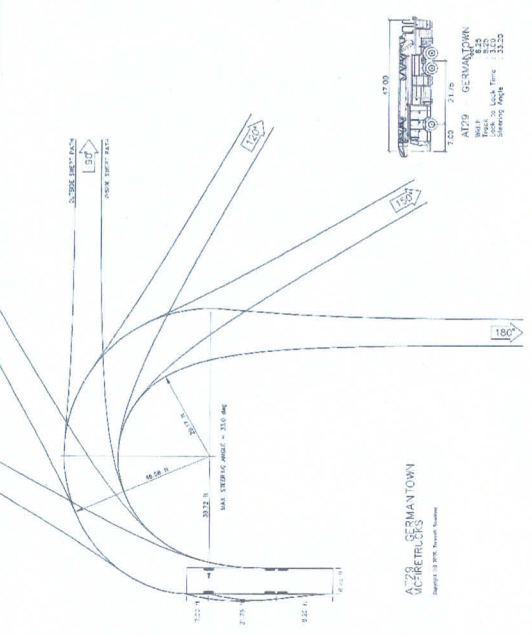
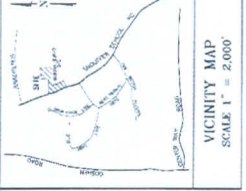


FIRE MARSHAL COMMENTS

DATE: 27-Feb-13
TO: Brian Donnelly
Macris, Hendricks & Glascock
FROM: Marie LaBaw
RE: Reserve Business Center (Web Tract)
1/20130100

PLAN APPROVED

1. Review based only upon information contained on the plan submitted 27-Feb-13 .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.



NOTE:
THE ANTICIPATED OCCUPANCY LOAD FOR THE PROPOSED DEVELOPMENT IS APPROXIMATELY 456 OCCUPANTS. THE TOTAL AREA OF THE PROPOSED WAREHOUSE AND 12,000 SF OF OFFICE SPACE. THE PROPOSED CIRCULAR ACCESS IS SUFFICIENT TO SERVE THE PROPERTY.

FIRE CODE COMPLIANCE
Fire Department Access Route
Radius-based only type hydrants installed on the site. Fire hydrants shall be installed in accordance with the Fire Code. The hydrant shall be installed in accordance with the Fire Code. The hydrant shall be installed in accordance with the Fire Code.

GRAPHIC SCALE
1" = 40' (1:40)
1" = 80' (1:80)
1" = 160' (1:160)

APP. MAP 0123 & 10487 / 4000-278008

FIRE ACCESS PLAN
PARCELS 491 and 649
RESERVE BUSINESS CENTER
L 104 F.293
1ST ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

APPLICANT:
M&D Real Estate, LLC
8000 Beechcroft Avenue
Galliersburg, MD 20879
Phone: 301-948-4450
Fax: 301-330-4106

PREPARED BY:
M&D Real Estate, LLC
12/17/17
PROJECT NO: 2008-200

DATE: 12/17/17

PROJECT NO: 2008-200

1	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
2	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
3	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
4	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
5	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
6	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
7	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
8	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
9	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)
10	12/17/17	1" = 40' (1:40)	1" = 80' (1:80)	1" = 160' (1:160)	1" = 320' (1:320)

**MARYLAND DEPARTMENT OF THE ENVIRONMENT**

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101 • www.mde.state.md.us

Martin O'Malley
GovernorRobert M. Summers, Ph.D.
SecretaryAnthony G. Brown
Lieutenant Governor

November 26, 2012

Airpark North, LLC
c/o Mr. Michael Miller
8000 Beechcraft Avenue
Gaithersburg, MD 20879Re: Gaithersburg Launch, W-94 (MD-222)
Snouffer School Road
Montgomery County, Maryland

Dear Mr. Miller:

The Maryland Department of the Environment (MDE) is writing you regarding the 11.7 acre parcel located off Snouffers School Road, Gaithersburg, Maryland 20886, and further identified as Parcel p491 on Montgomery County's Tax Map GU122 (the "Property" or "Site").

The Property previously served as a Nike missile launch site and was the subject of environmental investigations by the Department of the Army and MDE since the mid 1980s. A 1990 Preliminary Assessment/Site Inspection conducted by EA Engineering for the Army prompted comments from the MDE, which included recommendations to collect additional samples due to metals in the groundwater. Additional issues of potential concern identified by MDE were a 1000-gallon fuel oil underground storage tank, the potential for polychlorinated biphenyls (PCBs) to be in the hydraulic fluid, and asbestos material in the missile storage structures. The latest known activity took place in approximately 1994, during which the Army and the MDE identified low levels of trichloroethene and chloroform (the actual data is not found in the file). These investigations were conducted in order to determine if hazardous materials from historic site activities are impacting the soil, groundwater, surface water and sediment and whether additional environmental investigation or remediation is required to protect public health and the environment.

It is MDE's understanding that you wish to develop the property for industrial purposes and receive a regulatory determination regarding environmental conditions for the property. In 1997, Maryland enacted the Voluntary Cleanup Program (VCP) for the express purpose of facilitating the assessment and review of Brownfield sites. The purpose of the VCP is to provide property owners and prospective purchasers with a mechanism for receiving liability protection from both the State of Maryland and the U.S. Environmental Protection Agency. In addition to the liability protection, the prospective purchaser may also be deemed an inculcable person. An inculcable person can qualify for various financial incentives, including grants and loans from both the Department of Business and Economic Development and Department.



Mr. Michael Miller
Page Two

Upon successful completion of the VCP, a participant receives either a No Further Requirements Determination (NFRD) or a Certificate of Completion (COC). The Department evaluates the data collected during the Phase II Environmental Site Assessment to determine which path is appropriate for the project. For those sites with minimal risk to human health and the environment, the Department can determine that the site qualifies for a NFRD. If the site requires some further activity, the Department can require that a Response Action Plan be developed and implemented in order to receive a COC.

An alternative approach is for the Department's State Assessment and Remediation Division (SAR) to evaluate the submitted documentation. Based on the information available to MDE, Airpark North, LLC is a responsible person as defined by Section 7-201(u) of the Environment Article. If you elect to have the SAR Division provide oversight of assessment activities and receive closure documentation from MDE, please be advised that MDE shall submit semi-annual invoices to you as part of the statutorily required cost recovery efforts.

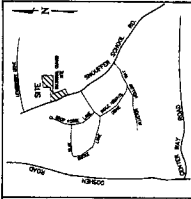
If you have any further questions, please contact me at (410) 537-3440, or e-mail me at pegwilliams@mde.state.md.us.

Sincerely,

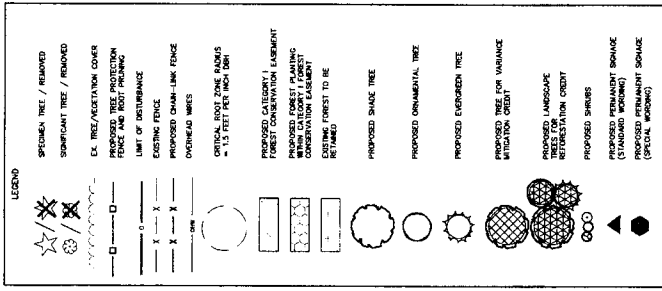


Peggy Williams, Section Head
NPL/Site Assessment Section

cc: Mr. Steve Findley, Maryland-National Capital Park and Planning Commission
Mr. Bob Hoyt, Montgomery County Department of Environmental Protection
Mr. Jan Szaro, United States Environmental Protection Agency
Mr. Horacio Tablada
Mr. James Carroll
Mr. Arthur O'Connell



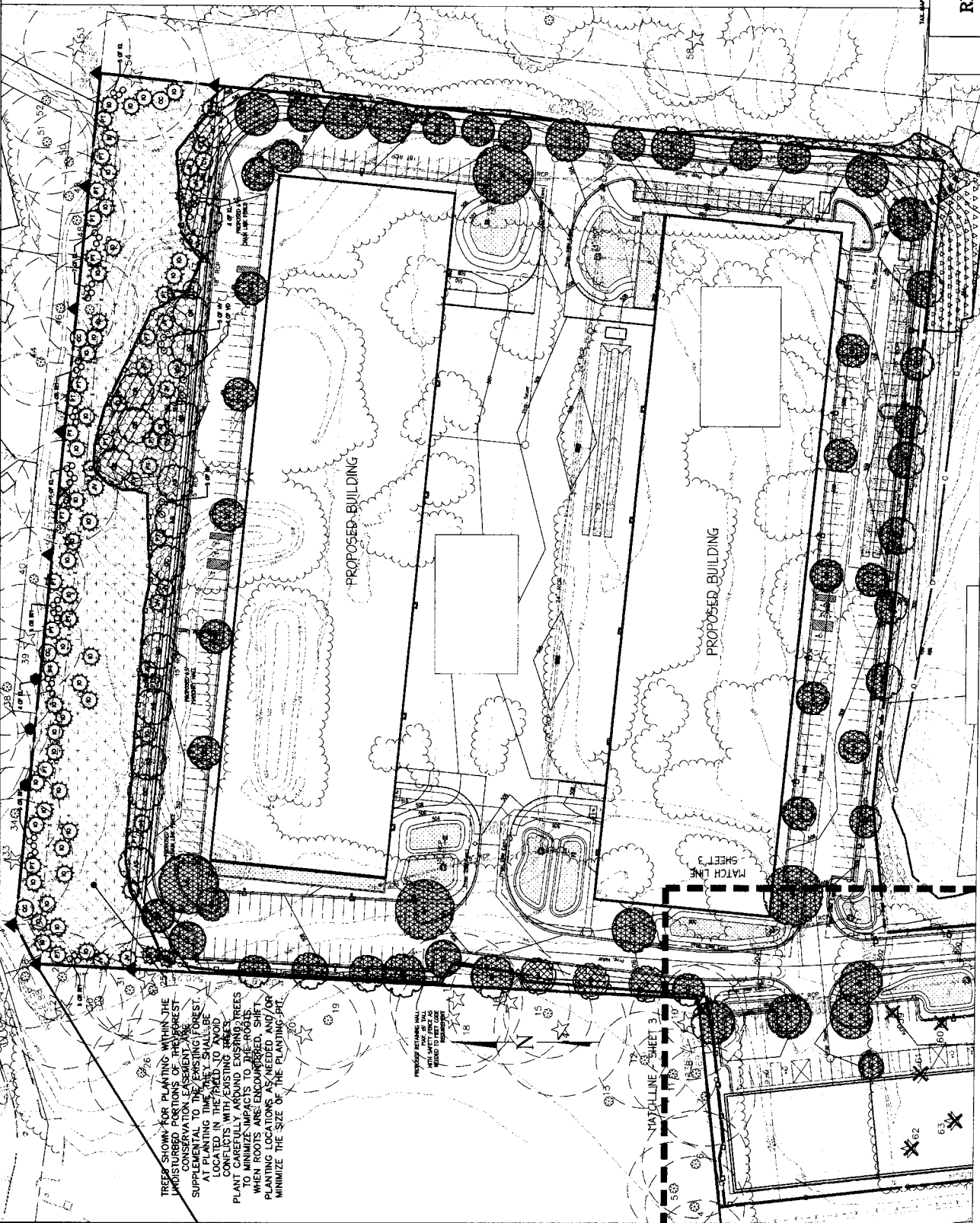
VICINITY MAP
SCALE 1" = 2,000'



DUALLED PROFESSIONAL CERTIFICATION
THIS PLAN HAS BEEN PREPARED BY ACCREDITED PERSONNEL IN ACCORDANCE WITH THE STANDARDS AND PRACTICES OF THE PROFESSION OF LANDSCAPE ARCHITECTURE AS SET FORTH BY THE BOARD OF PROFESSIONAL LANDSCAPE ARCHITECTS OF MONTGOMERY COUNTY, PENNSYLVANIA.
DATE: 4/7/2013
PROJECT NO.: 08-225
SHEET NO.: 3 OF 4

TITLE: PRELIMINARY FOREST CONSERVATION PLAN
PARCELS 440, 540 & 649
RESERVE BUSINESS CENTER
1ST ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND
DATE: 4/7/2013
PROJECT NO.: 08-225
SHEET NO.: 3 OF 4

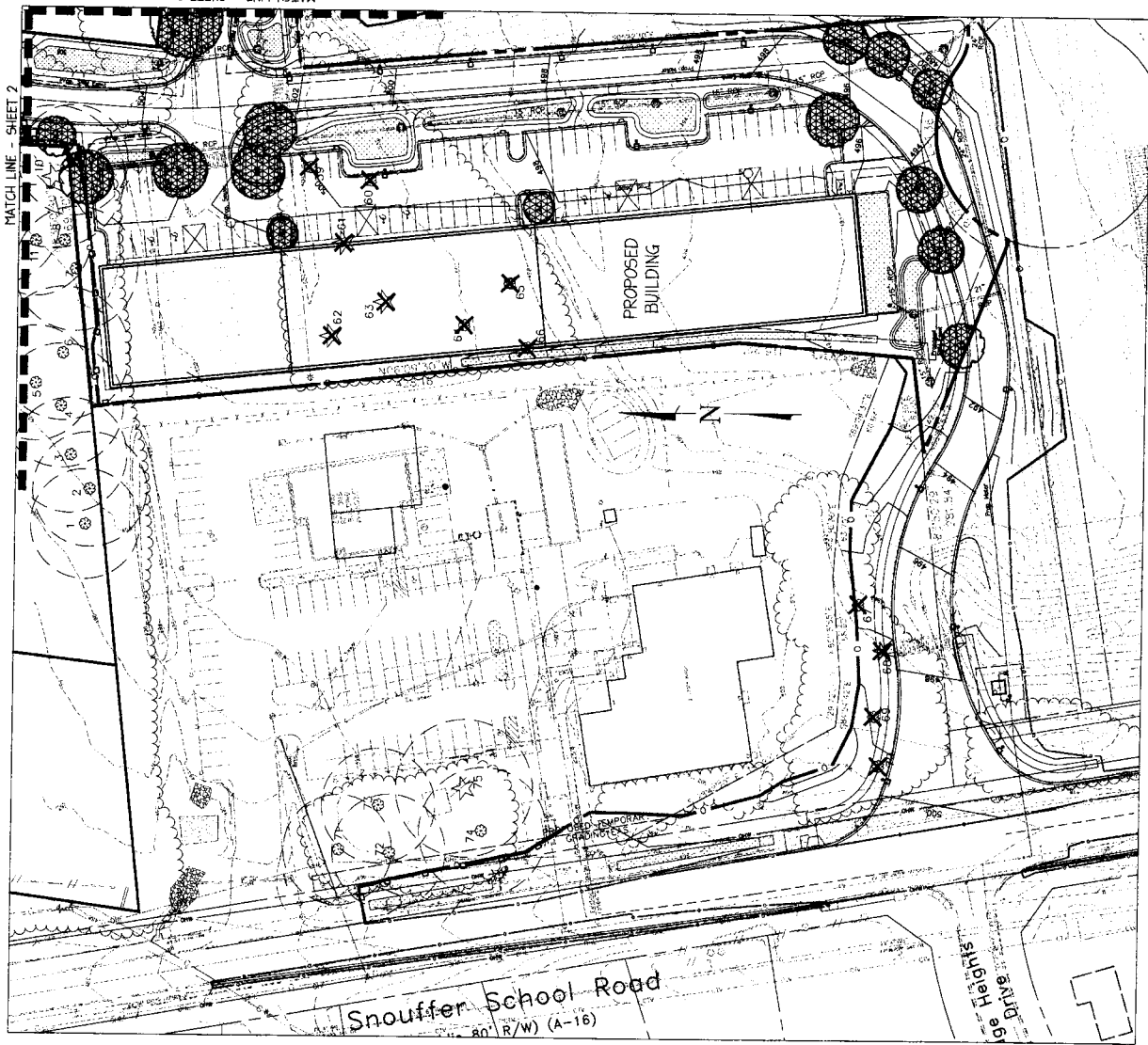
MHG
Montgomery Handicrafts & Glassworks, P.A.
1000 Montgomery Road, Suite 100
P.O. Box 100
20884-1000
Tel: 410-261-1000
Fax: 410-261-1001
www.mhgc.com



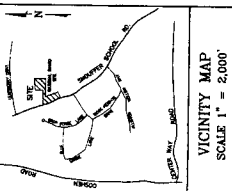
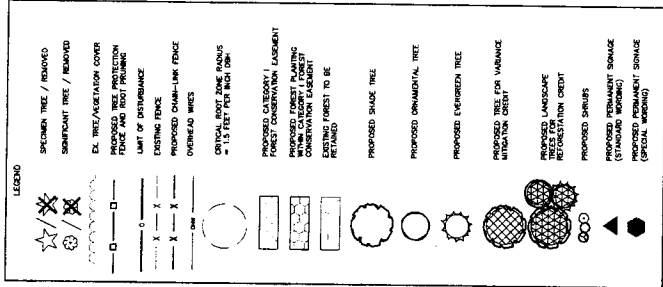
TREES SHOWN FOR PLANTING WITHIN THE UNDISTURBED PORTIONS OF THE FOREST CONSERVATION EASEMENT ARE SUPPLEMENTAL TO THE EXISTING FOREST. AT PLANTING TIME, THESE TREES SHALL BE PLANTED IN A MANNER THAT AVOIDS CONFLICTS WITH EXISTING TRAILS. PLANT CAREFULLY AROUND EXISTING TREES TO MINIMIZE IMPACTS TO THE ROOTS. WHEN ROOTS ARE ENCOUNTERED, SHIFT PLANTING LOCATIONS AS NEEDED AND/OR MINIMIZE THE SIZE OF THE PLANTING PIT.



NO.	DATE	DESCRIPTION



MATCH LINE - SHEET 2



QUALIFIED PROFESSIONAL CERTIFICATION
I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT AND THAT I AM A LICENSED PROFESSIONAL LANDSCAPE ARCHITECT IN THE STATE OF MARYLAND.
DATE: 04/26/13
FRANK C. ZIMMERS
P.L.L.C.
100 W. 200' N. 30' E. MOUNTAIN RECREATION
COURSE #21108-07

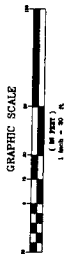
TAX MAP OFFICE WESC 2279909

PRELIMINARY FOREST CONSERVATION PLAN
PARCELS 440, 540 & 649
RESERVE BUSINESS CENTER

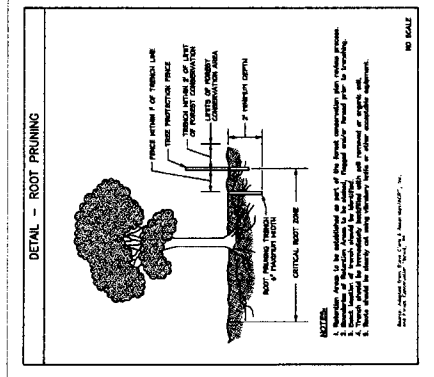
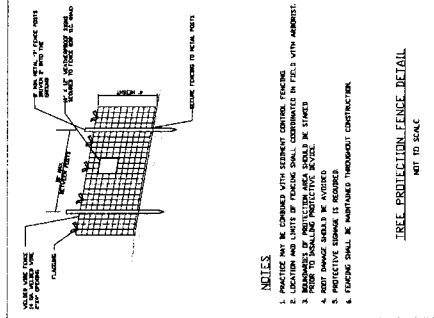
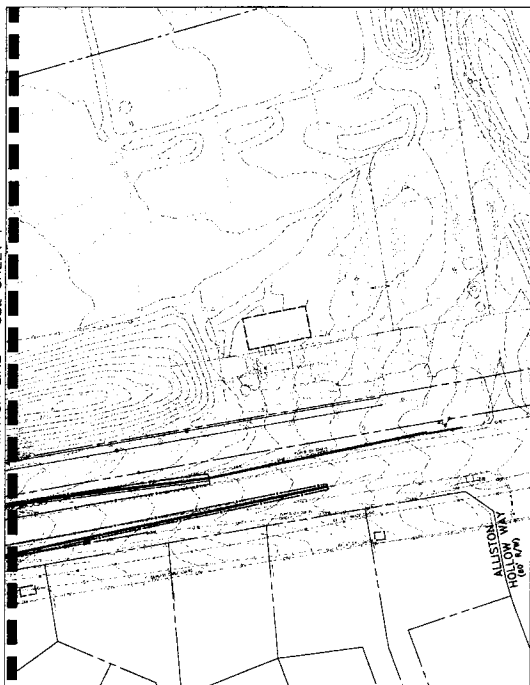
1ST ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

FMHG
Francis M. Hendershott & Associates, P.A.
Engineers, Planners & Architects
1000 Highlands Road, Suite 100
Cockeysville, MD 21030
Phone: 301.683.0800
Fax: 301.683.0801
www.fmhg.com

Proj. No. 0201
Sht. No. 0201
Date: 4/25/13
Project No. 13-007
Sheet No. 0201 of 02



MATCH LINE - SEE SHEET 1



NO.	TOTAL CITY	BOTANICAL NAME	COMMON NAME	SIZE	FOREST CATEGORIES	2018 FOREST CITY	2019 FOREST CITY	2020 FOREST CITY
1	1	...	...	...	...	...	...	...
2	1	...	...	...	...	...	...	...
3	1	...	...	...	...	...	...	...
4	1	...	...	...	...	...	...	...
5	1	...	...	...	...	...	...	...
6	1	...	...	...	...	...	...	...
7	1	...	...	...	...	...	...	...
8	1	...	...	...	...	...	...	...
9	1	...	...	...	...	...	...	...
10	1	...	...	...	...	...	...	...

* Check the website for the latest updates on the proposed zoning. Company members are advised to check the website for the latest updates on the proposed zoning. Company members are advised to check the website for the latest updates on the proposed zoning.

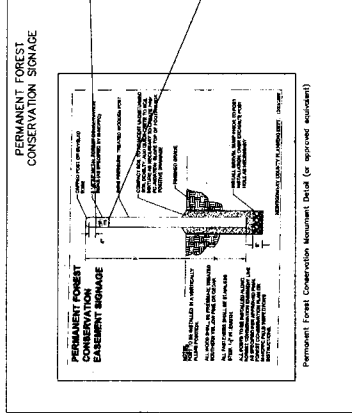
NO.	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
1
2
3
4
5
6
7
8
9
10

CHECKS FOR INFORMATION / INFORMATION
 5.00 @ 1.00 = 5.00
 1.00 @ 1.00 = 1.00
 1.00 @ 1.00 = 1.00
 1.00 @ 1.00 = 1.00
 1.00 @ 1.00 = 1.00
 1.00 @ 1.00 = 1.00

FOREST CONSERVATION DATA TABLE
 15.50 Acres*
 Forest in 10-year Floodplain
 Forest in 10-year Floodplain
 Forest in 10-year Floodplain
 Forest in 10-year Floodplain

NO.	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
1
2
3
4
5
6
7
8
9
10

NO.	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
1
2
3
4
5
6
7
8
9
10



NO.	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
1
2
3
4
5
6
7
8
9
10

PERMANENT FOREST CONSERVATION SIGNAGE
 1. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 2. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 3. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 4. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 5. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.

PERMANENT FOREST CONSERVATION SIGNAGE
 1. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 2. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 3. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 4. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 5. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.

PERMANENT FOREST CONSERVATION SIGNAGE
 1. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 2. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 3. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 4. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 5. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.

PERMANENT FOREST CONSERVATION SIGNAGE
 1. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 2. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 3. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 4. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
 5. SIGNAGE SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.

1512 2770012
 PRELIMINARY FOREST CONSERVATION PLAN
 PARCELS 440, 540 & 649
 RESERVE BUSINESS CENTER
 1ST ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND
 MHC
 Monte, Henriobas & Glascock, P.A.
 Engineers & Planners
 12226 National Road, Suite 100
 Laurel, MD 21112
 Phone: 410-326-7800
 Fax: 410-326-7801
 Project No.: 1512 2770012
 Date: 12/11/13

Macris, Hendricks & Glascock, P.A.
Engineers • Planners • Surveyors • Landscape Architects

9220 Wightman Road, Suite 123
Montgomery Village, Maryland
20886-1279



Phone 301.670.0840
Fax 301.948.0693

April 2, 2013

Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Reserve Business Center
Preliminary Forest Conservation Plan
MHG Project No. 06.220.13

To Whom It May Concern:

On behalf of Airpark North LLC, the applicant of the above referenced Forest Conservation Plan, we hereby request a variance for removing four specimen trees and impacting the root zones of six specimen trees, as required by the revisions to the Maryland Forest Conservation Act, effective October 1, 2009, outlined in Senate Bill 666. In accordance with Chapter 22A-21(b) of the Montgomery County Code, the proposed removal/impact of ten trees over thirty inches in diameter would satisfy the variance requirements.

1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

The subject property has a tract area of 13.74 acres along Snouffer School Road. An additional 2.67 acres off-site is expected to be disturbed for grading for the construction of access roads associated with this project. The total tract area, including off-site areas of disturbance, is 16.41 acres.

The property is currently vacant, but parts of it were previously developed, and remnants of earlier structures and parking areas still remain. 5.92 acres of forest exist on the site, along with areas of patchy tree and shrub cover. Specimen trees on site are limited to a single tree in the far northeastern corner (#54), and three within Parcel 649 (#61, 62, and 63). However, a number of significant and specimen trees exist on surrounding properties within 100' of the subject property.

In order to provide some of the required on-site forest, and to maintain adequate screening and buffering from the residences to the north, a significant part of the largest forest area is to be retained within a forest conservation easement. This protects specimen

tree #54 and also avoids disturbance to three other specimen trees and a number of significant trees that exist on or just beyond the northern property boundary and whose root zones lie partially within the proposed easement.

However, in order to develop this property to the standards allowed, conserving the forest on the north side also results in the construction of buildings and parking facilities that disturb specimen trees near other parts of the perimeter (none of which will be removed).

Furthermore, given the dimensions of Parcel 649, and the need to use it for access to the property, the inability to remove trees #61-63 for building #1, would cause unwarranted hardship in that it would severely limit the use of a significant percentage of the entire tract. Finally, the necessary alignment of the access drive at Snouffer School Road essentially requires the removal of tree #68.

2. *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*

The inability to disturb or remove the subject trees would limit the development of the property to a level well below what is otherwise permitted. This creates a significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by similar properties not subject to this approval process.

3. *Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance;*

A Stormwater Management will be submitted for the proposed improvements. Approval of this plan will confirm that the goals and objectives of the current state water quality standards are being met.

4. *Provide any other information appropriate to support the request.*

As required, all specimen trees to be removed that exist outside of defined forest areas will be mitigated. A copy of the Forest Conservation Plan and a variance tree spreadsheet has been provided as part of this variance request. Please let us know if any other information is necessary to support this request.

Please contact me via email at fjohnson@mhgpa.com or by phone, at (301) 670-0840 should you have any additional comments or concerns.

Thank you,



Frank Johnson

SPECIMEN TREE VARIANCE TABLE

Specimen Trees to be disturbed:

- Tree #10 (off-site) – 40% root zone impact
- Tree #14 (off-site) – 10% root zone impact
- Tree #16 (off-site) – 21% root zone impact
- Tree #17 (off-site) – 25% root zone impact
- Tree #18 (off-site) – 4% root zone impact
- Tree #32 (off-site) – 15% root zone impact

Specimen Trees in Forest to be removed (no mitigation required)

- Tree #61
- Tree #62
- Tree #63

Specimen Trees to be removed requiring mitigation:

Tree #68 (off-site): 32" Red Oak $32/4 = 8"$ required to be mitigated

Total mitigation required: = 8.00"

3 Trees @ 3" each = 9" provided for mitigation

VARIANCE MITIGATION TREES TO BE PLANTED

KEY	QTY	BOTANICAL NAME	COMMON NAME	CAL	ROOT
AM	3	Acer saccharum 'Green Mountain'	Green Mountain Sugar Maple	3-3½"	B&B



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

April 26, 2013

Françoise Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Reserve Business Center, DAIC 120130100, NRI/FSD application accepted on 1/6/2012

Dear Ms. Carrier:

The County Attorney's Office has advised that Montgomery County Code Section 22A-12(b)(3) applies to any application required under Chapter 22A submitted after October 1, 2009. Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, is not interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

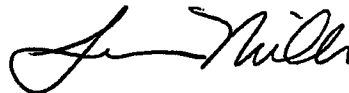
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that revisions to the LOD are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Chief

**Voluntary Cleanup Program Application Package
Reserve Business Center/Former Nike Missile Launch Area
Snouffer School Road
Gaithersburg, Maryland 20882**

Submitted to:

Maryland Department of the Environment
P.O. Box 1417
Baltimore, Maryland 21203
Attn: Voluntary Cleanup Program

Submitted by:

Hillis-Carnes Engineering Associates, Inc.
10975 Guilford Road, Suite A
Annapolis Junction, Maryland 20701

On Behalf of Applicant:

M&D Real Estate, LLC
8000 Beechcraft Drive
Gaithersburg, Maryland 20879

April 23, 2013

SECTION 1

Voluntary Cleanup Program (VCP) Application

VOLUNTARY CLEANUP PROGRAM APPLICATION

I. PROPERTY	
Property Name: Reserve Business Center/Former Nike Missile Launch Area	
Address: Snouffer School Road	
City: Gaithersburg	County: Montgomery Zip Code: 20879
Tax Parcel Number: Tax Map GU122; Parcels 491 (Tax Account Number # 01-00010112) & Parcel 649 (Tax Account Number 01-03467902) Acreage: 13.76	
List any other names (i.e. aliases) for this property that could help identify historical environmental records: Former Gaithersburg Nike Missile Launch Area; Former Gaithersburg Research Facility	
Please check one of the following, if applicable:	
<input checked="" type="checkbox"/> This application is for multiple contiguous parcels. Please include the tax parcel number and the acreage for each individual parcel. If parcels are not contiguous, a separate application accompanied by another \$6000 application fee must be filed for each non-contiguous parcel.	
<input type="checkbox"/> This property has already applied to the VCP under a different applicant.	
<input type="checkbox"/> This property is adjacent to a property that has already applied to the VCP and both properties are part of the same planned unit development or similar development plan.	
NOTE: Pursuant to Maryland law, properties that are listed on the National Priorities List, subject to a controlled hazardous substance permit issued by the State, or owned by a "responsible person" and contaminated after October 1, 1997, are <u>not</u> eligible for this Program.	
II. APPLICANT	
Attachment III of the application provides a checklist of the information that should be included in the VCP application package. Although not mandatory, applicants are encouraged to complete the checklist and submit it with the application.	
Name(s) of Representative(s): Mr. Michael Miller Title: Managing Member	
Organization: M&D Real Estate, LLC	
Mailing Address: 8000 Beechcraft Avenue	
City: Gaithersburg	State: MD Zip Code: 20879
Telephone: (301) 948-4450 Fax: (301) 948-8273 E-mail: mjmiller@concretegeneral.com	
Federal Tax Id. No.: 202896966	
(A) Indicate the legal form of the applicant's organization and provide the date founded. M&D Real Estate, LLC is a limited liability company, founded on May 23, 2005.	
III. APPLICANT'S INTEREST IN PROPERTY	
(A) Indicate the interest in the property by checking all the applicable box(es) below.	
<input checked="" type="checkbox"/> Currently own property	<input type="checkbox"/> Under contract for option to purchase property
<input type="checkbox"/> Currently renting or leasing property	<input type="checkbox"/> Under contract for conditional sale of property
<input type="checkbox"/> Considering purchasing property	<input type="checkbox"/> Considering making a loan or investment to a purchaser for the acquisition of the property
<input type="checkbox"/> Considering renting or leasing property	<input type="checkbox"/> Holder of a mortgage, deed or trust or other security interest
<input type="checkbox"/> Other (explain):	
(B) If purchasing the property and a contract offer has been accepted, has a settlement date been scheduled?	
<input type="checkbox"/> Yes <input type="checkbox"/> No Date:	
(C) If considering renting or leasing the property, has the applicant entered into a lease option or lease agreement?	
<input type="checkbox"/> Yes <input type="checkbox"/> No Date term of lease option expires or lease begins:	

IV. DEPARTMENT ACTION SOUGHT BY APPLICANT (Check only one)

“No Further Requirements Determination”: A “No Further Requirements Determination” is a notice by the Department that it has no further requirements related to the investigation of controlled hazardous substances at the eligible property. Please be aware that the “No Further Requirements Determination” will be conditioned on a specific property use (residential, industrial or commercial) and might include land use controls that include, but are not limited to: maintenance of existing pavement or ground covering; use of air monitoring instruments during excavation; and, a deed restriction on use of groundwater beneath the property for any purpose.

“Certificate of Completion”: A “Certificate of Completion” is a notice issued by the Department after satisfactory completion of an approved response action plan stating: the requirements of the response action plan have been completed; implementation of the response action plan has achieved the applicable cleanup criteria; the Department may not bring an enforcement action at the eligible property; the participant is released from further liability for remediation of the eligible property for any contamination identified in the environmental site assessment; and the participant will not be subject to a contribution action instituted by a responsible person. Please be aware that the “Certificate of Completion” may be conditioned on a specific property use (residential, industrial or commercial) and might include land use controls that include, but not limited to: continual maintenance of controls (e.g., cap); use of air monitoring instruments during excavation; a deed restriction on groundwater use beneath the property for any purpose; periodic inspection of controls; and, submittal of periodic inspection reports to the Department.

V. PARTICIPANT STATUS SOUGHT BY APPLICANT (Check only one)

“Responsible Person”: A responsible person is defined as any person who: 1) is the owner or operator of a vehicle or site containing a hazardous substance; 2) at the time of disposal of any hazardous substance, was the owner or operator of any site at which the hazardous substance was disposed; 3) by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or operated by another party or entity and containing such hazardous substances; or 4) accepts or accepted any hazardous substances for transport to a disposal or treatment facility or any sites selected by the person. Please note that there are numerous exceptions to the definition of responsible person set forth in Section 7-201 (x)(2) of the Environment Article, Annotated Code of Maryland.

“Inculpable Person”: An inculpable person is defined as any person who has no prior or current ownership interest in an eligible property and has not caused or contributed to contamination at the eligible property at the time of application to participate in the Voluntary Cleanup Program. **An applicant seeking inculpable person status must complete the Application Attachment II: “Inculpable Person Affidavit.”**

Expedited inculpable person approval is requested (additional \$2,000 fee required).

VI. CURRENT PROPERTY OWNER (if different from applicant)

Organization: **Same as Applicant**

Name(s) of Representative(s):

Title:

Mailing Address:

City:

State:

Zip Code:

Telephone: () -

Fax: () -

E-mail:

(A) Indicate the legal form of the applicant's organization and provide the date founded.

VI. CURRENT PROPERTY USE

(A) Describe all current property uses (e.g. residential, retail, office space, warehousing, industrial, manufacturing, etc.).

Property is not currently being used for a specific purpose; no tenants or operations are currently associated with the Property

(B) Provide the property's current zoning classification:

I-4 Low Intensity, Light Industrial

(C) Are any requests for zoning variances, special exceptions or reclassification pending? If yes, explain.

Yes No

(D) Has the property been subdivided during the present ownership? If yes, attach an explanation and provide the date and zoning classification of the subdivision.

Yes

No

Subdivision application pending

VII. FUTURE PROPERTY USE

(A) Indicate the intended future use of the property as defined by the VCP land use definitions.

This section must be completed because the selected cleanup criteria and issuance of a No Further Requirements Determination or a Certificate of Completion will be contingent upon the future use of the property. If this section is not completed, the property will be evaluated under the most conservative scenario of Tier 1 (Residential). (Check one.)

- Tier 1 (Residential)** Planned use of the property that allows exposure and access by all populations including infant, children, elderly, and infirmed populations. Tier 1 properties typically include single-family and multi-family dwellings, hospitals and health care facilities, education facilities, day care facilities, playgrounds and other recreational areas.
- Tier 2 (Commercial)** Planned use of the property that allows exposure and access by the general public, workers, and other expected users, including customers, patrons, or visitors. Commercial purposes allow access to the property and duration consistent with a typical business day. Tier 2 properties typically include shopping centers, retail businesses, vehicle service stations, medical offices, hotels, office space, religious institutions and restaurants.
- Tier 3 (Industrial)** Planned use of the property by workers over the age of 18, adult workers and construction workers, and other potential expected users. Industrial purposes allow access to the property at a frequency and duration consistent with a typical business day. Tier 3 properties typically include manufacturing facilities, maritime facilities, metal working shops, oil refineries, chemical and other material plants.
- Tier 4 (Public Recreational Areas)** Planned use of the property by all populations for recreational uses. Sub-category must be selected based on frequency of use.
- High Frequency Use:** A high frequency public recreational area is any area that is available for recreational use by all populations at the highest potential exposure frequency (youth, child, adult, senior, etc.). Examples may include, but are not limited to, playgrounds, day care facilities, schools, golf courses, and picnic areas. The frequency of visits by all populations is 250 days per year or less.
- Medium Frequency Use:** A moderate frequency use public recreational area is any area that is available for recreational use by all populations but the frequency of use is less than a high frequency use public recreational area. Such areas may be restricted through the use of fencing, permitting requirements, or other similar restrictions that prevent or hinder unimpeded access to the recreational area. Examples include, but are not limited to, outdoor aquatic facilities, athletic facilities, dog parks, and limited access parks. The frequency of visits by all populations is 182 days per year or less.
- Low Frequency Use:** An open space public recreational use area is defined as any area where access and use is restricted by a combination of: (a) Covenants or other legal restrictions that prohibit the use of the property where such use may impair the flora and fauna in the open space; and (b) Physical environmental barriers impede the use of the open space, including but not limited to swamps, marshes, dense vegetation, and areas with steep inclines that limit the use of open space. The frequency of visits by all populations is 52 days per year or less.

(B) Indicate whether any land use controls are part of the anticipated future use of the property. "Land Use Controls" means any restriction or control that serves to protect human health and the environment by limiting use of or exposure to any portion of the property, including water resources. These controls may include engineering controls and institutional controls. See Section IV of the application for examples of land use controls. If this section is not completed, the property will be evaluated under the most conservative scenario of unrestricted use (Check one).

- A (Unrestricted)** No land use controls are imposed on the property for residential, commercial, or industrial use, as applicable.
- B (Restricted)** One or more land use controls are imposed on the property as a condition for residential, commercial, or industrial use, as applicable. If your development plans or funding do not allow for specific land use controls, these requirements should be communicated to the VCP since additional sampling or additional cleanup may be required.

See Section VII of attached Work Plan for description of existing restrictions

(C) Based on future use of the property, please describe any anticipated physical changes to the property (e.g., building demolition, building expansion, paving, changes in site operations, etc.)

Planned development includes the construction of two office/warehouse structures (approximately 550 feet by 145 feet each) and a smaller office/warehouse building (approximately 80 feet by 490 feet). The structures will be bordered by paved parking and driveway areas.

Current asphalt-paved parking areas and concrete building pads associated with three underground missile silos and the aboveground features (access hatches, air vents, etc.) will be removed in association with future development plans.

VIII. FUTURE PROPERTY USE (Continued)

(D) Will a day care facility be located on the property? (Note: A day care facility is included under the Tier 1 (Residential) or Tier 4 (Public Recreational High Frequency Use) category in the VCP land use definition and is not permitted under Tier 2 or Tier 3 land use categories.) Yes No

(E) If known, describe the number and types of businesses that will be operating at the property after completion of the Voluntary Cleanup Program.
Three office/warehouse buildings will be developed for commercial use. The exact number and types of businesses that will operate at the property is unknown at this time.

(F) If known, provide the estimated cost of property redevelopment, number of jobs created, and the approximate increase in the property tax after redevelopment.
The cost of property redevelopment, including site work and construction, is estimated to be 30 million dollars. The number of jobs created is estimated at 400, including construction workers and permanent jobs at future buildings. The increase in property tax after redevelopment is unknown at this time.

IX. INVOLVEMENT WITH OTHER REGULATORY PROGRAMS

(A) Based on information known to the applicant, describe any prior contact with federal, State, or local environmental regulatory agencies regarding this property. Prior contact includes any permits, notices of violation, consent orders, and other enforcement actions that have been issued for the property, as well as any applications, remediation plans, sampling data, or reports that have been submitted for the property.
Applicant is not aware of any permits, notices of violation, consent orders or enforcement actions or remediation plans associated with the Property that have resulted from contact with federal, State or local environmental regulatory agencies. Sampling data and environmental reports, including reports prepared on behalf of regulatory agencies, are associated with the Property (refer to Section 5.4.1 of Hillis-Carnes' November 12, 2012 Phase I Environmental Site Assessment report).

(B) List all processes, discharges, tanks, and activities at the property that require an environmental permit. For each permit, include the appropriate regulatory agency contact information, the relevant permit identification number, and confirm the permit's compliance status. Please be advised that if the VCP identifies permits that are out of compliance or processes, discharges, tanks, or activities that may not be properly permitted, VCP will notify the appropriate regulatory agency or program.
There are no current processes, discharges, tanks or any other activities at the Property that require an environmental permit.

(C) Has the applicant ever been convicted in any Maryland state court of a criminal offense under either the Annotated Code of Maryland, Environment Article, Title 7 (Hazardous Materials and Hazardous Substances) or any Code of Maryland Regulations (COMAR) provision promulgated under the Annotated Code of Maryland, Environment Article, Title 7? If yes, attach an explanation. Yes No

(D) Has the applicant ever been convicted in a criminal court of any other state of knowingly or willfully violating that particular state's laws or regulations governing hazardous materials, hazardous substances or hazardous wastes? If yes, attach an explanation. Yes No

(E) Has the applicant ever been convicted in any federal court of a criminal offense under the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)? If yes, attach an explanation. Yes No

X. BROWNFIELD INCENTIVE PROGRAMS

(A) Is the applicant applying, or does the applicant plan to apply, for grants, loans or property tax credits available through the Brownfields Revitalization Incentive Program? (For more information about this program, please contact Jim Henry at the Department of Business and Economic Development at 410-767-6353.) Yes No

(B) Is the property located in a State designated enterprise zone? Contact the Maryland Department of Business and Economic Development at 410-767-6438 for information on location of enterprise zones. Yes No

XI. OTHER CONTACTS

(A) Consultant

Organization: **Hillis-Carnes Engineering Associates**

Name(s) of Representative(s): **Ms. Gina Galimberti** Title: **Environmental Services Manager**

Mailing Address: **10975 Guilford Road, Suite A**

City: **Annapolis Junction** State: **MD** Zip Code: **20701**

Telephone: **(410) 880-4788** Fax: **(410) 880-4098** E-mail: **ggalimberti@hcea.com**

Send copies of correspondence to this contact in addition to the applicant.

(B) Other (e.g., Project Manager, Attorney)

Organization: **Linowes & Blocher LLP**

Name(s) of Representative(s): **James Witkin** Title: **Attorney**

Mailing Address: **7200 Wisconsin Avenue, Suite 800**

City: **Bethesda** State: **MD** Zip Code: **20814**

Telephone: **(301) 961-5189** Fax: **(301) 654-2801** E-mail: **jwitkin@linowes-law.com**

Send copies of correspondence to this contact in addition to the applicant.

Attach additional contacts as necessary.

XII. REQUIRED ENVIRONMENTAL INFORMATION

Pursuant to Maryland Law, each applicant to the Voluntary Cleanup Program is required to submit the following three items:

(A) A detailed report of all available relevant information on environmental conditions including contamination at the property known to the applicant at the time of the application.
(The report must include all information known about all controlled hazardous substances and oil contamination and a statement that all known environmental information about the property has been provided to the Department. If information provided by the detailed report will be provided as part of the Phase I and Phase II assessments, an applicant may, in lieu of the report, submit a statement that all known environmental information for the property is being provided to the Department as part of the Phase I and Phase II site assessment.)

All known environmental information for the property is being provided to the Department as part of the following reports (list reports. If additional space is needed, attach a separate sheet.):

<u>TITLE</u>	<u>PREPARED BY</u>	<u>DATE</u>	<u>NO. OF PAGES</u>
Phase I Environmental Site Assessment	Hillis-Carnes Engineering Associates, Inc.	11/12/2012	<u>997</u>
Phase II Environmental Site Assessment	Hillis-Carnes Engineering Associates, Inc.	12/28/2012	<u>66</u>
Work Plan for Additional Environmental Evaluations	Hillis-Carnes Engineering Associates, Inc.	4/23/2013	<u>16</u>

(B) An environmental Phase I and Phase II site assessment that: (1) includes established Phase I and Phase II environmental site assessment standards; (2) follows the most current principles established by the American Society for Testing and Materials; and (3) demonstrates that the assessment has adequately investigated all potential sources and areas of contamination.

(A discussion of the requirements for the Phase I and Phase II site assessments is provided in the MDE/VCP Guidance Document available on-line at http://www.mde.state.md.us/Programs/LandPrograms/ERRP_Brownfields/vcp_info/index.asp).

Phase I assessment enclosed Phase II assessment enclosed Phase II work plan enclosed

(C) A summary description of the proposed voluntary cleanup project including the following information:
 To be provided at a later date, as applicable

- | | |
|--|---|
| <input type="checkbox"/> Source(s) of contamination | <input type="checkbox"/> Exposure pathways |
| <input type="checkbox"/> Need for additional investigation (e.g., sampling), if applicable | <input type="checkbox"/> Proposed cleanup criteria |
| <input type="checkbox"/> Proposed remedial alternatives | <input type="checkbox"/> Map depicting areas of the property to be remedied |
| <input type="checkbox"/> Future land use of the property | |

XIII. OVERSIGHT COSTS

- (A) The application must be accompanied by an initial application fee of \$6,000, or a \$2,000 fee for each application submitted subsequent to the initial application for the same property, or a \$2,000 fee for each application submitted subsequent to the initial application for contiguous or adjacent properties that are part of the same planned unit development or a similar development plan. The appropriate application fee shall be made payable to the Voluntary Cleanup Fund and will be used by the Department for activities related to the review of proposed voluntary cleanup projects and the direct administrative oversight of voluntary cleanup projects.
- (B) If the application is accepted and a response action plan is approved, the participant will be required to file a performance bond or other security with the Department prior to commencement of any work on the property and that there is a \$2000 fee for issuance of an NFRD or COC with land use controls.

XIV. STATEMENT OF CERTIFICATION

"I, the applicant, certify under penalty of law that the information provided on this application form and within the documents of the application package is, to the best of applicant's knowledge and belief, accurate and complete. I, the applicant, am aware that there are significant penalties for falsifying any information required by the Department under Title 7, Subtitle 5 of the Environment Article, Annotated Code of Maryland, Voluntary Cleanup Program, and that the information in this application is required for the Voluntary Cleanup Program authorized by Title 7, Subtitle 5 of the Environment Article, Annotated Code of Maryland.

I certify I am an authorized representative of the applicant.

I certify that all information on environmental conditions relevant to the property and known to the applicant is provided as part of this application."

Printed Name Michael Miller Title Managing Member
Signature _____ Date _____

(Please note that another signed Statement of Certification must accompany any documents, maps, reports, or other information submitted to the Department subsequent to the initial application. Multiple items can be submitted under a single Statement of Certification; however, an accurate description of the items being submitted should be included in the cover letter.)

SECTION 2

VCP Application Checklist

VCP Application Checklist

Although not mandatory, applicants are encouraged to complete this checklist to help expedite review of the application package. VCP staff will use the checklist to verify that an application package is complete and will notify the applicant of missing items and any other deficiencies.

Property Name: Reserve Business Center

Applicant: Mr. Michael Miller

Date: April 23, 2013

III. APPLICATION

A. Completed Application Form

Each application question must be completed.

B. Statement of Certification

An original, signed Statement of Certification, must be included with the application and with each subsequent submission of information regarding the property.

C. Application Fee

Please mail the application fee to the address listed in Attachment I of the application.

D. Inculpable Person Status Affidavit

For those applicants seeking inculpable person status (see Section V of the application), please complete and include Attachment II, "Inculpable Person Affidavit," with the application. Applicants requesting an expedited (within five business days) inculpable person determination must submit the \$2,000 fee to the address listed on Application Attachment I.

II. ENVIRONMENTAL SITE ASSESSMENTS

For each item, indicate the location of the requested information (e.g., attachment number or document title with date and page numbers).

A. Current Property Conditions

Document the property conditions existing at the time of application and summarize any changes that have occurred at the property since the most recent Phase I site assessment.

Location: Phase I ESA - pages 14 and 15 (Section 3.2) - no changes Phase I ESA – Figure 2

B. Current and Past Uses of the Property

1. Provide a complete listing of the entities that have owned and/or occupied (including tenants) the property from the time of first agricultural, commercial, or industrial use or 1940, whichever is earlier. Identify the name and type of each business, the years of occupancy, and the nature of the on-site operations.

Location: Phase I ESA - pages 52 and 53 (Section 5.4.10)

2. Describe the controlled hazardous substances and petroleum products each business stored and handled (or was likely to have stored and handled at the property).

Location: Phase I ESA - page 21-24 (Section 5.1 and 5.2)

3. Provide an abstract of a property title search summarizing recorded land title records, including records of ownership, leases, land contracts, easements, liens, and other encumbrances on the property. Identify whether any environmental cleanup liens are recorded against the property.

Location: Phase I ESA – pages 51 and 52 (Section 5.4.8) and Section 5 of this Application Packet

4. Summarize the standard and supplementary historical sources used to determine the history of the property from the present back to the property's first developed use or 1940, whichever is earlier.

Location: Phase I ESA - page 26-52 (Section 5.4.1 through 5.4.9)

5. Define the current zoning of the property. Describe any requested changes in zoning and detail the status of the request.

Location: I-4, Low Intensity, Light Industrial

C. Historical Maps, Site Plans and Aerial Photographs

Provide legible copies of all available historical maps, including Sanborn Fire Insurance Maps, site plans and aerial photographs. The approximate boundaries of the property must be indicated on each historical map and aerial photograph provided to the Department. Summarize the review of historical site plans to help identify historic on-site work areas, process areas, manufacturing operations, chemical and hazardous waste handling activities, aboveground and underground storage tanks, and spills or releases that may have resulted in environmental contamination at the property.

Location: Phase I ESA - Appendix I, J, L, and M

D. Property Investigations

1. Discuss the federal and State environmental records, and any additional environmental reports and records reviewed for the assessment.

Location: Phase I ESA - Appendix D and E

2. Chronologically summarize all environmental property investigations.

Location: Phase I ESA – Section 5.4.1 (pages 26-48)

3. Submit one copy of each environmental report previously prepared for the property, including site assessments, subsurface investigations, and groundwater sampling reports. Include all applicable analytical data reports and quality assurance / quality control documentation for the laboratory analyses. Review these documents to ensure that there are no missing pages, figures, or appendices.

Location: Phase I ESA – Appendix E

E. Current and Past Uses of Adjoining Properties

Summarize the historical and current uses of all adjoining properties.

Location: Current - Phase I ESA - pages 16 and 17 (Section 3.5); Former - Phase I ESA - pages 52, 53, and 54 (Section 5.4.10)

F. Property Hydrology

1. Describe the property's topography, surface drainage pathways (including man-made channels and drains) and receiving surface water bodies (e.g., wetlands, seeps, streams, rivers, lakes, ponds). Discuss local surface water uses (e.g., reservoir, recreational, irrigation, commercial).

Location: Phase I ESA - pages 24 and 25 (Section 5.3)

2. Provide a site plan that identifies the location of each swale, trench, culvert, catch basin, sewer, drainage pathway, interior drain, and sump on the property and describe the nature and source of the historic and current runoff or release to each identified feature.

Location: Phase I ESA - Appendix M and Section 6 of the VCP Application Packet

3. Describe the point of discharge (e.g., a drain field, a named or unnamed surface water body, the municipal sanitary sewer, etc.) for each identified feature.

Location: Phase I ESA – Section 6.2 (pages 55-58)

G. Property Geology and Hydrogeology

Describe the property's soil conditions, geology (including fill materials), depth to groundwater, groundwater flow direction, and potential subsurface contaminant migration pathways. Discuss regional geologic and hydrogeologic conditions.

Location: Phase I ESA - pages 24 and 25 (Section 5.3) and Section 4 of the VCP Application Packet (Geotechnical Boring Logs)

H. Scaled Site Plan

Provide a scaled site plan which clearly shows the legal boundaries and acreage of the property and the locations of all existing buildings, paved areas, monitoring wells, tanks, surface water bodies, rail spurs, and other notable structures.

Location: Refer to Section 6 of this Application Packet

I. Site Plan with Utilities

Provide a site plan showing the approximate location and depth of each water, sanitary, storm sewer, and natural gas pipeline currently on the property. List service providers for each utility.

Location: Refer to Section 6 of this Application Packet

J. Tax Parcel Map

Provide a current tax parcel map that clearly defines the property boundaries. If a current tax map is not obtainable, please provide a current land survey.

Location: Refer to Section 6 of this Application Packet

K. Groundwater Use Investigation

1. Provide written documentation from the county, municipality, and/or water authority concerning existing potable wells, the availability of municipal water, and potential future groundwater use areas within 0.5-miles of the property boundary.

Location: To be provided at a later date, if required; Refer to Work Plan for Additional Environmental Evaluations

2. Provide a copy of the county and/or municipality water plan map that depicts existing service areas, planned service areas, and no-service-planned areas within a minimum of 0.5-miles from the property boundary.

Location: To be provided at a later date, if required; Refer to Work Plan for Additional Environmental Evaluations

3. Contact the Department's Water Supply Program at 410-537-3702 and Water Rights Division at 410-537-3714 to request a survey for all area wells and other available information pertaining to groundwater use in the vicinity of the proposed property. Please note that commercial information search services do not include sufficient information on municipal and/or domestic wells and are not appropriate substitutes for contacting state and local authorities.

Location: To be provided at a later date, if required; Refer to Work Plan for Additional Environmental Evaluations

4. Locate each identified well (excluding test or observation wells) on a scaled map. If available, provide the permit number, screen depth, and current use of each well. If exact well addresses are unavailable, delineate likely groundwater use areas based on reported street names, subdivision names, and other information available in the well survey and other sources. Provide written documentation from the local health department, engineering department, or water authority, confirming whether or not these wells are being used.

Location: To be provided at a later date, if required; Refer to Work Plan for Additional Environmental Evaluations

L. Groundwater Map

Provide a current (i.e., less than a year old) scaled groundwater contour map for the site.

Location: Refer to Section 6 of this Application Packet

M. Future Development Plans

Provide the anticipated future use of the property and any development plans. Detail any planned future improvements (pavement, landscaped areas, buildings, etc.) and/or any changes in current operations (e.g. number of employees that will work on the property, type of work future employees will perform) anticipated for this property. Discuss any proposed alterations to the property, such as grade changes, demolition of buildings, construction of new structures or additions, extensions of public water or sewer, and installation of storm water management systems.

Location: Refer to Section 6 of this Application Packet

N. Property Reconnaissance

Summarize the methodology, limitations, and findings of the property reconnaissance, and discuss the interior and exterior conditions observed at the property and exterior conditions observed on the adjoining properties. The site inspection should verify the location of all areas that could be potential discharge points. The report should also discuss any limiting site conditions that could affect the results of the reconnaissance such as snow cover, thick vegetation, locked buildings, unsafe areas to enter etc.

Location: Phase I ESA - pages 55-60 (Section 6.0) and pages 16 and 17 (Section 3.5)

O. Interviews

Summarize interviews with individuals having knowledge of the past uses of the property including past and present owners, operators and occupants of the property. A separate interview should also be conducted with the user of the Phase I in order to identify any environmental cleanup liens that have been recorded against the property and to help identify possible RECs.

Location: Phase I ESA - pages 61-63 (Section 7.0)

P. Required Information From Other Regulatory Programs

Applicants applying to the VCP with properties that have information regarding other regulatory agencies must identify the programs and regulated items or processes.

Q. Phase II Environmental Assessments

1. Provide a copy of a recent Phase II site assessment for the property.

Location: Refer to Section 4 of the Application Packet

2. Provide a copy of a work plan for Phase II site characterization of the property for review.

Location: Refer to Section 7 of this Application Packet

3. Documentation that sufficient site characterization has been performed to waive Phase II requirement.

Location: 2012Phase I ESA (with data from prior assessments) and 2012 Phase II ESA attached

SECTION 3

VCP Application Fee Form
(with copy of check submitted to MDE at P.O. Box 1417, Baltimore, MD)

Maryland Department of the Environment
Voluntary Cleanup Program

APPLICATION FEE FORM

This form must be completed and mailed with the appropriate applicable fee(s) to the following address, except as noted below*:

Maryland Department of the Environment
P.O. Box 1417
Baltimore, Maryland 21203

Please indicate which fees are included and make the check payable to the "Voluntary Cleanup Fund."

- | | |
|---|---|
| <input checked="" type="checkbox"/> \$6,000 initial application fee | <input type="checkbox"/> \$2,000 application fee for a subsequent application for the same property |
| <input type="checkbox"/> \$2,000 application fee for a contiguous or adjacent property that is part of the same planned unit development or a similar development plan and an active VCP application is already submitted to the Department | <input type="checkbox"/> \$2,000 fee for expedited inculpable person approval (<i>*please send payment directly to MDE/VCP</i>) |
| <input type="checkbox"/> \$2,000 fee for issuance of a No Further Requirements Determination conditioned on certain use of the property or on the maintenance of certain conditions | <input type="checkbox"/> \$2,000 fee for issuance of a Certificate of Completion on the permissible use of the property |

APPLICANT

Applicant's Name: **Mr. Michael Miller**

Organization: **M&D Real Estate, LLC**

Mailing Address: **8000 Beechcraft Avenue**

City: **Gaithersburg**

State: **MD**

Zip Code: **20879**

Federal Tax Id. No.: **202896966**

PROPERTY

Property Name: **Reserve Business Center/Former Nike Missile Launch Area**

Property Address: **Snouffer School Road**

City: **Gaithersburg**

State: **MD**

Zip Code: **20879**

PCA #
AOBJ #5650
SUFFIX#630



MONTGOMERY VILLAGE FOUNDATION, INC.

10120 APPLE RIDGE ROAD
MONTGOMERY VILLAGE, MARYLAND 20886-1000

(301) 948-0110 FAX (301) 990-7071 www.montgomeryvillage.com

June 5, 2013

By email: BBrown@mde.states.md.us

Ms. Barbara Brown, Project Manager
Maryland Department of the environment
Waste Management Administration
Voluntary Cleanup Program
1800 Washington Blvd., Suite 625
Baltimore, MD 21230

**Re: Comments on Voluntary Cleanup Program Application
Former Nike Missile Launch Area -- Snouffer School Road; Gaithersburg, MD
Property Owner: M & D Real Estate, LLC**

Dear Ms. Brown:

Enclosed are comments on the above-referenced application on behalf of the Montgomery Village Foundation (MVF).

Our most important comment is this:

This project is located very close to an existing residential community. For the project to succeed, the entire community must be assured that MDE has identified and monitored the environmental concerns exhaustively, so that the community can be confident that there is no lingering or latent contamination at the site that will harm the neighbors or their properties.

MVF's relationship to the Nike site

The former Nike Missile Launch site on Snouffer School Road in Gaithersburg is directly adjacent to a community known as East Village. Some of the properties in East Village appear to be as close as 100 feet to boundary of the site, and East Village common areas even closer. East Village is one of 25 homeowners associations, condominiums, and rental communities that make up the larger community of

Ms. Barbara Brown

June 5, 2013

Page 2

Montgomery Village. Montgomery Village has an estimated population of 40,000 people living in approximately 12,000 dwelling units.

The Montgomery Village Foundation (MVF) maintains and manages the common elements and amenities shared by all of the communities in Montgomery Village, and we also monitor development activities, real estate industry trends, transportation issues, and other matters so that we can support actions that will promote the health and welfare of all of the communities in Montgomery Village.

I understand that you have visited the site of the proposed development and met directly with representatives and residents of East Village to discuss the environmental conditions of the property and their concerns for protecting the health of the neighbors and their properties as the site is re-developed.

As the President of the Board of Directors of MVF, I want to reiterate the concerns of the East Village residents you have met with. But additionally, because communities in Montgomery Village are connected to each other both physically through shared open spaces, paths and roads, and socially through shared obligations and recreational activities, I want to emphasize that **the safe development of the property is important to the entire Montgomery Village community.**

In October 2012, the MVF Board of Directors appointed a Joint Committee to Review Recommendations on the Former Nike Site, to identify issues relating to development of the site. The Committee was led by Dick Wright, a civil engineer, researcher and educator, formerly at NIST, and it also included MVF Board members and residents who brought expertise from many disciplines to the review. The Committee conducted four meetings; M & D Real Estate LLC, the property owner, and/or its attorney participated in three of the meetings. Over the course of the meetings, the property owner indicated its commitment to addressing the community's concerns, ranging from building design and use issues, buffering the commercial use from the nearby residences, to noise and other construction issues, including environmental monitoring.

I have attached the Committee's final recommendations, dated May 10, 2013. The MVF Board of Directors reviewed and adopted the recommendations of the Committee, acknowledging that it could support the developer's proposal with certain conditions. Many of the conditions address development features of the project, (see concerns #2-#9), but the Committee's paramount concern (see concern #1) and recommendation was to have an on-site geotechnical engineer during construction to monitor and address previously unknown conditions that arise during construction. The Committee and the MVF Board also endorsed the developer's participation in the Voluntary Cleanup Program.

Ms. Barbara Brown

June 5, 2013

Page 3

Response Action Plan

While MVF has endorsed the participation in the Voluntary Cleanup Program, MVF does not believe that the “No Further Requirements Determination” sought in the application is appropriate at this time. There are many more facts and data to be collected, and MVF believes that completion of a detailed Response Action Plan (RAP) is appropriate.

As in other RAPs required by MDE, MVF trusts that MDE will require that the applicants be required to have an environmental consultant or geotechnical engineer present on the site to monitor conditions, notify MDE of developments, and ensure further data collection and remedial action.

Notwithstanding the general conclusion issued in the Phase II study of the property issued on December 28, 2012, (“ . . . additional environmental investigation at the Site with regard to hazardous substance and/or petroleum products in soil or groundwater does not appear warranted.”) MVF notes that a work plan was submitted with the VCP application that would (1) investigate groundwater use near the site (to confirm the hypothesis that public water system is and will be the primary source of water in the area); (2) require a survey of the site for hazardous materials (asbestos, lead paint, PDBs, mercury, other chemicals) prior to demolition of the silos); (3) monitor dust created by demolition; and (4) watch for pipes and underground structures exposed during the demolition of the silos.

Because of the variability of conditions on Nike sites reflecting different hazards for different rocket types, varying local operational and maintenance practices, the possibility that military records are incomplete or incorrect, and the short distance to residential properties, MVF encourages MDE to require a more detailed work plan for the demolition, with a suggested sequence of events and critical milestones that would be disclosed to the community. Of particular interest to East Village would be MDE’s review of military records of chemical deliveries to the site that are available, to see whether those records suggest the need for additional investigation by MDE.

MFV suggests that it would be appropriate to include in the work plan a requirement for soil gas tests to compliment the tests that have been done so far that indicate no hazardous materials are present.

With such a project, there always remains the possibility that significant hazards may be revealed. If MDE has worked with other applicants or other communities to develop agreements as part of Response

Ms. Barbara Brown

June 5, 2013

Page 4

Action Plans that will require the applicants to provide remedies and resources for the neighboring property owners, MFV requests that similar provisions be included in the Response Action Plan.

Finally, MVF believes that it is very important for MDE to establish a liaison that the community can contact to report concerns and receive up-to-date accurate information.

If I can provide additional information, please don't hesitate to contact me.

Sincerely,



Robert Hydorn, President
Montgomery Village Foundation

Enclosure

cc: MVF Board of Directors
Joint Committee Members
East Village Board of Directors
Dave Humpton, Executive Vice President
C. Hitchens, MVF General Counsel
Hon. Nancy Navarro
Ms. Francoise Carrier
Stuart Barr, Esquire



MONTGOMERY VILLAGE FOUNDATION, INC.

10120 APPLE RIDGE ROAD
MONTGOMERY VILLAGE, MARYLAND 20886-1000

(301) 948-0110 FAX (240) 243-2302 www.montgomeryvillage.com

May 10, 2013

MEMORANDUM

TO: MVF Executive Committee

FROM: Sharon Levine, Director of Government Relations

SUBJECT: Recommendations on Proposed Reserve Business Center

Background: At its May 6 meeting, the Joint Committee to Review and Make Recommendations on the Proposed Reserve Business Center (former Nike site) recommended that the Montgomery Village Foundation can concur with the applicant's proposal for Reserve Business Center subject to the following conditions:

Environmental Concerns

1. In order to avoid hazards to neighbors and workers, the Developer and the contractors involved in site development should: have a geotechnical engineer on site to identify significant and previously unknown conditions, stop potentially hazardous work, engage environmental consultants to assess needs and prepare appropriate remedial measures, conduct needed remedial work, test the soil in the pit below the silo, test the concrete (that will be disturbed) for asbestos, and carry out appropriate measures to ensure compliance with state and federal regulations for disposal. MVF endorses the applicant conforming with the Maryland Department of the Environment's Voluntary Cleanup Program.
2. The Applicant should provide an easement allowing public use, in perpetuity, of the existing public path at the north of the site, and its maintenance by the East Village Homes Corporation.
3. The conservation easement at the north of the site should have evergreens planted within a year of plan approval and maintained to screen the buildings from adjacent residential areas. It is understood that the conservation easement is to be in a natural habit – no mowing or understory maintenance, but initial maintenance will be required to establish the evergreens and for two years following occupancy.
4. An 8 foot high precast concrete wall should be constructed at the north and west of Building 3 to prevent the intrusion on neighboring residential areas of lights and sounds from cars using the parking area at the north of Building 3 and extending 200 feet along the western border of the driveway/parking. The plans should be reviewed by

MVF's Commercial Architectural Control Committee (CARC) for aesthetics and functionality.

5. The height of Building 3 should be limited to 29 feet and equipment on its roof screened to limit the visual and acoustical intrusions on neighboring residential areas.
6. The Montgomery Village Foundation Commercial Architectural Review (CARC) shall review and comment on facades facing East Village property, and the Applicant/Developer shall respond substantively to the comments.
7. Required off-site Forest Conservation plantings should be conducted on nearby properties that will be provided by the East Village Homes Corporation.
8. Lighting at the north of the site should be designed, installed and maintained to minimize visual impacts on neighboring homes. Overall lighting should conform to the Illuminating Engineering Society of North America (IES) Model Lighting Ordinance for Lighting Zone 1 (the default lighting zone for residential and small towns). Overall lighting on the site should be designed, installed and maintained for energy efficiency and environmental quality, including controls to automatically dim lights to less than 50% during periods of inactivity.

Traffic Concerns

9. A traffic light should be installed at the Ridge Heights Drive intersection. Although it is uncertain that a traffic light would be approved so close to the one approved for Alliston Hollow Way, there is a precedent for installing traffic lights in close proximity, as in the case of the light at Lake Shore Drive, which is close to the light at Midcounty Highway. The Applicant, Developer, construction contractors and future tenants, in perpetuity, also should comply with the Truck Route Protocol established by Montgomery County for truck operations related to the adjacent County Services Park. To enforce this protocol, a traffic sign at the exit to the site should say "No Right Turn 3+ Axle Trucks" and a traffic sign for traffic going southeast on Snouffer School Road at the entrance to the site should say "No Left Turn 3+ Axle Trucks."

The proposed development of Reserve Business Center (former Nike Missile site) is located at 8791 Snouffer School Road near the intersection of Snouffer School Road and Ridge Heights Drive. The property is located immediately east and south of the Webb Tract. Immediately to the north of the property are single family detached homes in East Village. The parcel is zoned I-4, light industrial.

The proposed development would consist of 200,000 square feet of light industrial warehouse and accessory office uses to be housed within three proposed buildings with associated parking and loading areas. The three buildings proposed are: Building 1, the smallest of the three and nearest to Snouffer School Road, 500 ft. long by 80 feet wide (approximately 40,000 square feet). Buildings 2 (south side) and 3 (north side) are parallel to each other, are similar in size, approximately 550 feet long by 145 feet wide (80,000 square feet each) and are configured in an east-west direction.

The applicant plans for the building design characteristics and materials to be modern warehouse institutional quality painted concrete with steel support that looks like white stucco with trim. The design has not been finalized.

Most of the 318 proposed parking spaces of the 317 spaces required will be located in front of Building 1 and around the perimeter of the property. The area between buildings 2 and 3 are situated to provide a common loading court between the two buildings. This will provide a noise buffer and loading docks for both buildings will face each other in an internal courtyard.

The property was previously owned by the U.S. Army and used as a Nike Missile Launch Area site between 1956 and 1962. The launch area was constructed with three missile launching pads and various underground missile silos. In 1962, the facility was transferred to the Department of the Navy and was used for communications research. Over the next 20 years, the site had various uses and in the 1980s the launch area was decommissioned and most of the structures on the property were removed, except for three underground missile silos and launching pads.

Access to the parcel is problematic. The applicant had hoped to get county approval to use the county's internal service road at the planned Multi-Agency Service Park on the Webb Tract, but the county said no. Thus, the applicant plans to create an entrance/exit opposite Ridge Heights Drive and, hopefully, also, a traffic light there.

The joint committee, comprised of two members each of the East Village Board, COE, TD&PF, and CARC, met four times between February and May. The first meeting was to familiarize committee members with the proposed development, review the Preliminary Plan of Subdivision and the Phase II Environmental Site Assessment, create a list of questions and issues for the applicant about the proposed development and create a committee work plan. At the second meeting, the committee and applicant discussed the list of 35 questions/issues. At subsequent meetings, the list of 35 questions/issues was reduced to about nine concerns. The applicant attended most of the meetings and has worked well with the committee to deal with the concerns.

The main unresolved issue has to do with the fact that the applicant is unable to agree to comply with a truck route protocol that requires drivers going to and from Reserve Business Center to use only certain county roads so as to avoid having heavy truck traffic on residential roads in the Village. Whereas a county agency can insist that vendors follow a route protocol, a private entity like Reserve Business Center can only encourage vendors to do so.

Also, there are environmental concerns, but the committee has created a condition to deal with these.

All committee meetings were advertised in the Village News and were open to the community. The committee worked hard, and so did the applicant to try to come to consensus. At committee meetings, all members of the audience were encouraged to participate in the discussions among committee members, and did so.

The nine conditions noted above are those that the committee believes the Board should insist upon, if possible, before it concurs with the proposed development for Reserve Business Center.

The Subdivision Plan goes before the Planning Board for a public hearing on June 27. Since Reserve Business Center will be located in the I-4 (light industrial) zone, there is no site plan requirement. The process for informing the public and coming to some consensus has been ongoing since July 2012, when the applicant held its first

informational meeting. Now, almost a year, the application will be going before the Planning Board on June 27. At this time, a public hearing will be held, so the joint committee felt it necessary to get its recommendations into the May MVF Board cycle in order for the Board to prepare written testimony to be presented on June 27.

Action Needed: Approve recommendation to concur with proposed development of Reserve Business Center if the applicant meets the nine (9) conditions noted above.

Attachments:

List of 35 Questions/Issues proposed at the 2/11/13 meeting of the Joint Committee
Work Plan of the Joint Committee

**Questions/Issues of MVF Joint Committee to Review and Make
Recommendations on Proposed Reserve Business Center
Input to Meeting of April 3, 2013**

Legend

Question/Issue from JC Meeting of 2/11/13
Applicant's Responses of 3/4/13
Joint Committee 3/4/13 and later

Environmental Concerns

1. What additional analysis beyond Phase II Environmental Site Assessment?
The extent of the Phase II Environmental Site Assessment was appropriate (e.g., with regard to the number of sample locations, the number of samples analyzed, the types of analytical tests performed, etc.), and based on the findings of the Phase II ESA and the other environmental studies that were conducted previously, additional analysis beyond what was conducted in association with the Phase II ESA does not appear warranted.

2. Are there issues with the elements detected in the soils? Is there need for more study? What rationale guided the standards used?
Based on the findings of the environmental assessments that have been conducted at the Property, the environmental conditions of the Site, including the constituents that have been detected in on-site soils, do not appear to present an impediment to the redevelopment of the site as it is currently planned. The comparative standards utilized to formulate this conclusion (i.e., the Maryland Department of the Environment's Cleanup Standards for Non-Residential Soils) are appropriate for this evaluation and are recognized in the environmental consulting industry as such.

3. Is continued environmental monitoring during the construction needed? Is there a protocol for environmental monitoring during construction?
Based on the findings of the Phase II ESA and the other environmental studies conducted at the Property, environmental monitoring during the construction phase does not appear warranted. In the event that the Developer discovers a "previously unknown condition" during construction (e.g., an underground storage tank is uncovered, soil that exhibits odors or staining apparently resulting from a release of chemicals/wastes is encountered, etc.), an environmental consultant will be contacted to obtain appropriate guidance with regard to the condition.

- A geotechnical consultant will be on site during construction to identify unexpected conditions. What are current elevations at the site? How much cut and/or fill are planned?
4. Look at the earlier environmental studies. Look at experience at other sites.
The environmental studies that have been conducted at the Property are typical of the types of environmental studies conducted at other Nike Missile Launch Sites.
There are 24 other Nike sites in Maryland. More information can be found at www.ed-thelen.org/loc-m.html.
 5. What requests should MVF make for Montgomery County analysis/review?
The Maryland-National Capital Park and Planning Commission (M-NCPPC) and various Montgomery County agencies will review the subdivision application thoroughly.
 6. Do the current owners have any rights for the Army to provide remediation?
There is an agreement between M&D and the Army, but there does not appear to be any reason to assert any rights at this point.

Storm Water Management

1. What are the issues leading to rejection of the stormwater management plan? How will they be resolved?
The County just needed additional information in order to confirm the tributary drainage areas and sizing of the proposed facilities were adequate.
The Committee asks for the current SWM plan.
Comments from John Kraus and David Post
We have received 3/18/13 concept plan. Obviously not approved, as just submitted showing a new "Drive Entrance". Traffic concerns obvious is acceleration lane heading north on Snouffer School Road and road widening. Full turn intersection creates major traffic concerns with left turn.

There is grading shown in the Tree Save area. This will damage or kill the trees. Relocate all grading from the tree save areas. There is much grading without controls (south east) removing existing landscape on "others" land. How does this get stabilized? Need to see the plan but agree in principle.
2. Does the DRC question about environmental site assessment relate to stormwater management? (see DRC Hydraulic Comments).

The Environmental Site Assessment review is separate from the review of stormwater management.

Comments from John Kraus and David Post

I am really confused on this????? The ESA is a different review from the storm water management. The question may be whether there is anything in the ESA report that would affect groundwater and thereby dictate some of the storm water management design. I don't think there is.

Design Concerns

1. Action on East Village path at north of site? MC staff prefers relocation.

We can ask to keep present alignment.

The design team will work with MNCP&PC Environmental Planning to clarify the citizens/MVF desire for the existing path and fence to remain. It is the applicant's intent to maintain the path and fence in its present location. Reconstruction of the path or fence will result in additional disturbance and possible damage to the existing mature trees.

Comments from John Kraus and David Post

The fence needs to be replaced with new, but keep alignment. The design of that fence is an issue to be discussed (solid or open) and materials. My opinion here would be for an open fence (chain link) so that the residents can enjoy the view of the woods.

2. Is the screening fence to be near the building, the chain link fence at the property line?

The applicant intends to install an eight foot solid fence or screen wall along the southern boundary of the proposed forest conservation easement. The proposed fence/wall will be built parallel to the proposed curb line to screen headlights and buffer views into the site.

Comments from John Kraus and David Post

Good. The solid wall (to be discussed) should also turn the corner for the screening from Ivyberry Way as there is parking there as well. Agreed.

3. Keep lighting of parking and building from view of neighbors.

The applicant has prepared a lighting and photometric plan indicating a maximum of 0.1 foot candles at the property line adjoining the residential properties. Additional plantings within the forested areas will also dissipate the lights.

The Committee requests the light pollution prevention plan.

Comments from John Kraus and David Post

In the review of the photometrics, it was noticed that: there is NO lighting between the existing Army building and the new proposed building, as well as no lighting on the north side of the proposed building.

4. Consider effects of headlights of vehicles entering.
In addition to the proposed 100' forest buffer provided along the northern property line, supplemental evergreen plantings will be included to provide a year round screen. A continuous eight foot solid screen fence/wall will be added between the proposed curb and forest buffer.

Comments from John Kraus and David Post

Good. The solid wall (to be discussed) should also turn the corner for the screening from Ivyberry Way as there is parking there as well.

5. Can parking be avoided at north of Building 3 without moving building? *The minimum number of parking spaces is proposed to support the 200,000 square foot light industrial development. The two larger buildings were placed parallel to the north property line adjoining the residential properties to screen views and obstruct noise within the loading court.*

Comments from John Kraus and David Post

Okay, so no is the answer.

6. Can building facades be made more consistent with neighborhood in scale/orientation?

We can consider various textures, architectural concrete features, or stains that could potentially break up the building façade facing the neighborhood.

Comments from John Kraus and David Post

The CARC will provide recommendations on the building façade.

OK, so no is the answer, except in surface treatment. I find this most troublesome. I do not believe 42 feet is a reasonable height for all buildings given they are single story, and 12,000gsf is office use.

7. Can the size, orientation or height of building 3 be reduced?

We cannot change the length of building #3 without economically impacting the project. The orientation cannot be changed because the loading court would be exposed to the neighborhood. The height of building #3 may possibly be reduced.

Comments from John Kraus and David Post

The Committee will recommend a reduction of the height of building #3.

OK, so no is the answer. It sounds like maybe the height could be lower to me.

8. Does the 42 foot building height allow equipment and parapet above this? *There are limited exceptions for certain mechanical equipment above the height limit. We will attempt to locate such equipment on the roof as far away from the north property line as possible.*

Comments from John Kraus and David Post

Okay, so yes is the answer. I would then recommend that 42 feet is top of the screen wall and all roof-top equipment be less than 42 feet. Agreed.

9. Would building plan area be reduced for multi-story construction?

No multi-story construction is proposed.

Comments from John Kraus and David Post

Okay, so no two story construction or mezzanines, then why 42 feet tall as this makes no sense. It becomes unreasonable and therefore not approvable.

10. Are 317 parking spaces really required?

317 spaces are required for the intended use.

Comments from John Kraus and David Post

Okay, so yes is the answer.

11. Does the landscaping plan provide screening within a reasonable time?

Although no additional planting is required within the proposed Forest Conservation area, the applicant has agreed to provide supplemental evergreen plantings. Plan material will be installed at 1 ½ - 2" caliper for trees and 30-36" for shrubs. The plantings should mature to full height within 3 years.

Comments from John Kraus and David Post

Okay, sounds like it will with a mix of trees types. Old nurseryman's proverb: First year, no show. Second year, slow grow. Third year, watch it go." By year three, you will see growth and maturity is generally reached in 20 years, not 3. The plant sizes are generous. Maintenance will be the key. I recommend a maintenance contract that includes monitoring the trees in the forest area including after the final county inspection after year 2.

12. What is planned for the adjacent property west of site? Might it connect through the project's access?

We are not aware of any specific plans for the adjacent property. At this point, we are not proposing access to that property.

Comment from John Kraus

Okay, so no is the answer.

13. Be aware that the actual developer may/will not be Miller. Can limitations carry forward to subsequent owners?

Conditions or limitations that are placed on the project approval will be part of any property transfer. Any potential changes to conditions or limitations would require an amendment application.

Comment from John Kraus

Okay.

14. Why can't forest conservation be met onsite?

Due to the unusual shape of the lot and proposed building requirements, it was not feasible to meet the forest requirements on-site while still generating enough building area to develop the property.

Comment from John Kraus

Okay, so no, the forest conservation will not be met on site.

15. Can the offsite forest preservation benefit East Village?

In order to qualify planting areas as "forest" the area must be a minimum of 10,000 square feet with a planting diversity of 100 trees per acre. Any forest area counted toward the request typically need to be placed in a perpetual easement and maintained for at least three years. This may not be feasible.

Comments from John Kraus and David Post

OK, so East Village is working on this. I spoke to Lynn Knagg at M-NCPPC, who indicated that they would prefer to see proposed planting in a 10,000 SF forest but that it can be on any HOA property. It will be put into an easement. When asked about planting individual trees instead of forest, there was hesitation but possible consideration as long as it occurs in natural areas and not as street trees, for example.

Site Construction

1. What happens to missile silos? How much earth moving will occur?

The missile silos are concrete and will be broken up and left in place.

Comments from John Kraus and David Post

OK, so no further actions required. I think they are missing an opportunity for something unique. Maybe secure underground document storage.

2. Action on former fuel tanks?

Additional action to address the former underground storage tank is not warranted. The tank was removed in 1996. The State was present for the removal, evidence of contamination was not present, and the State had no further requirements. The documentation does not indicate the presence of additional underground tanks.

Comment from John Kraus

Okay, so no further needs are required.

3. What measures will control dust during construction?

When necessary, we will wet down the dirt during construction to minimize dust.

Comment from John Kraus

Okay, so no measures in place.

4. Security concerns during construction and use: augment existing chain link fence.

Depending on whether the neighborhood wants to keep the existing chain link fence or install a board-on-board fence, we will repair or install it before work starts. The existing chain link fence outside of this area will be tied in to the fence and repaired where necessary.

Comment from John Kraus

The fence needs to be replaced with new, but keep alignment. The design of that fence is an issue to be discussed (solid or open) and materials.

The existing chain link fence is too much damaged to be repaired.

5. What are easements for offsite grading?

The off-site grading easement will be a private agreement between the applicant and Montgomery County to allow the applicant to enter the adjoining property for purposes of excavation. The easement would be temporary during the construction phase of work to avoid costly and unsightly retaining walls.

Comments from John Kraus and David Post

The grading shows a 28-foot slope with no means of containing or controlling run-off. Temporary or permanent stabilization should be required.

Traffic Concerns

Note: comments are from Linda Moore

1. Access to Snouffer School Road – how will it be aligned with Ridge Heights Drive?

The applicant has recently obtained an access easement from the Army Reserve property which enables the proposed driveway to align directly with Ridge Heights Drive. This permanent access easement will enable full movement access from the Hunters Woods Subdivision to be maintained. No turn restrictions are proposed into or out of Ridge Heights Drive in conjunction with this preferred access option.

The Committee asks for the detailed intersection plan.

Comments by Linda Moore

Why is this the most desirable alignment? Is this the alignment that will have the least impact on the residential vehicular movement in the area surrounding the development?

When the improvements associated with prior approvals are made may determine the impact of the traffic generated by the proposed development project. What assurances can the developer give regarding scheduled improvements?

Additionally, plans made based on proposed improvements not currently approved have to be considered in assessing the impact of the proposed access scheme.

Should the Montgomery Village/Airport Park Policy Areas have something like a Policy Area Mobility Review mitigation requirement so that if proposed improvements by others do not happen or the improvements to be made by the developer are not timely, the developer will have to mitigate the inconveniences in some way?

2. Adequacy of intersection of access drive with Snouffer School Road?
Are there sight distance problems?

The site driveway intersection opposite Ridge Heights Drive will be designed to County safety standards. As part of the access approval, a site distance study must be prepared and presented to the County for approval.

The adequacy of the intersection of access drive with Snouffer School Road was one of the concerns raised in reviewing the traffic impact of the development on the surrounding community.

What are the specifications that would better clarify the comment from the MDOT that two large trucks should be able to move in opposite directions using the driveway? What is the required width of a driveway that can accommodate an emergency fire truck? Are these standards that the County will require?

Descriptions of specific sight distance problems would ensure that the study addresses all the current concerns and questions. The developer responded that the site driveway intersection opposite Ridge Heights Drive will be designed to County safety standards.

A site distance study must be prepared and presented to the County for approval as part of the access approval process.

3. Are there limits of truck use outside of normal business hours?
It is anticipated that any truck traffic will occur within the normal working hours and not precede the start of the AM peak period (6:30 AM) or after the end of the PM peak period (7:00 PM). However, no formal restrictions are proposed.

A primary concern of the residents and the committee reviewing the Reserve Business Center development plans is the number and size of trucks entering and exiting the center. The developer's response is based on assumptions with no guarantees. Without knowledge of the tenants and their operations, there are no assurances that truck traffic will occur within the normal working hours not preceding the start of the AM peak period (6:30 AM) or after the end of the PM peak period (7:00 PM). The Developer does not anticipate formal restrictions. As with the route protocol, the developer can provide site tenants with suggested hours of truck traffic. Can MVF recommend and Montgomery County Planning place these restrictions as part of the approval of the development plan?

4. Possibility of truck route protocol?
A map of suggested truck routes can be provided to the site tenants.
The truck protocol applied by Montgomery County for the adjacent County Services Park (Webb Tract) will be considered for the Reserve Business Center. An alternative or complement to a protocol is a sign **No Left Turn**

for 3+ Axle Vehicles going southeast on Snouffer School Road to enter the site.

These are issues that can be posed to Montgomery County Planning Department.

5. Look for issues in the traffic impact studies. Does it account for Webb Tract use?
The Reserve Traffic Study incorporated the trip assignments from the County Service Park Traffic study that was provided by M-NCPPC transportation staff.
6. Will Snouffer School Road be widened from Ridge Heights Drive to Goshen Road? It was noted that the County's Master Plan includes an agreement with the purchaser of the land between Ridge Heights and Goshen Road that the purchaser will widen the road, and that the purchaser is in charge of proposing a plan to widen the road.

Widening Snouffer School Road from Ridge Heights Drive to Goshen Road was not mentioned in the Reserve Business Center Traffic Study. The scope letter (dated January 9, 2012) from Montgomery County Planning does make reference to a current project to widen Snouffer School Road along the Webb Tract frontage. Is this a question for the Montgomery County Planning Department?

Operational Concerns

1. Would equipment produce disturbing noise (archive use)?
There are limited exceptions for certain mechanical equipment above the height limit. We will attempt to locate such equipment on the roof as far away from the north property line as possible.
2. Is more than the requirement of the County Noise Ordinance required?
In terms of noise restrictions, we are only aware of the County noise ordinance and regulations.
3. What limitations are needed on hours of noisy use?
We expect proposed building #3 to shield most, if not all, potential noise impacts.

March 22, 2013

Steve Findley
Planner Coordinator, Area 2
M-NCPPC, Montgomery County, Maryland
8787 Georgia Avenue
Silver Spring, Maryland 20910

Hi,

Just wanted to keep you and your team in the loop – enclosed a copy of our Executive Summary (Dated March 12, 2013). The information enclosed will be presented to the Maryland Department of Environment on May 17, 2013 at 11:00 AM in Baltimore.

We tried to send by email – but bounced back – (File to Big)

We will be meeting with Horacio A. Tablada – Director - Land Management Administration, James R. Carroll – Manger – Land Restoration Program, Barbara Brown, Chief – Voluntary Clean-Up Division.

MCCA would like to thank you again for all of your help - your team has been great.

All input has been helpful.

Terry
Mid County Citizens Alliance
301-204-5117 – Cell
202-684-7457 x 239 – WK
301-924-2388 – HM

togradyterr@aol.com

Tuesday, March 12, 2013

**Responsible Redevelopment of the Gaithersburg Nike Missile
Launch Site: A Retrospective Analysis of Previous Environmental
Assessment Study Results**

**Jonathan W. Martin, T. O'Grady, R. Bevington, C. Job, D. Sheehan, G.
Donegan and R. Hincke**

Executive Summary

The Gaithersburg Nike Missile Launch Site is located in the midst of several large residential communities. Houses in the residential community on the north side abut the Site and have been built within 200 feet of the underground silos and within 100 feet of the missile testing and assembly building, the two most active toxic chemical use structures on a Nike missile launch site. To date, three owner-sponsored environmental assessments have been performed in which the presence of contaminants in the groundwater and soil have been investigated. This report presents a residential perspective of these previous environmental assessments. Specifically, it examines historical documents related to the Site and retrospectively analyzes the raw data from the previous assessments. The purpose of this retrospective analysis is to identify information gaps and outstanding technical concerns regarding the Site. A large number of information gaps and concerns have been identified.

The most notable information gap is the near total lack of public knowledge regarding the use of toxic chemicals at the Site from 1962 to 1979. The Site (and in particular the silos), during this time, was used for high profile in-flight radar research--a national Cold War research priority. Radar research is not an environmentally benign activity. Large volumes of toxic chemicals including polychlorinated biphenyl (PCB), heavy metals and chlorinated solvents are commonly used in radar research. Little or no effort was expended in the three published environmental assessments in elucidating how these chemicals were disposed.

The three environmental assessments have also raised a number of consequential technical concerns. They are as follows:

- 1) All three environmental assessments prominently use the entry 'ND' meaning 'not detected at a concentration greater than the Practical Quantitation Level or PQL'. ND is interpreted in the assessments as connoting that a chemical is not present at a Site or is not present at a concentration above its respective cleanup standard and, thus, can be ignored. This is an erroneous interpretation. The practical quantitation level (PQL) is a measurement statistic having no connection to regulatory cleanup limits. Instead, it is a quality control measure used by regulatory bodies indicating the measurement capabilities of an analytical laboratory. Thus, for example, if an analytical laboratory's is equipped with an out-of-date, poorly maintained gas

chromatograph/mass spectrometer (GC/MS), then the PQL for a chemical will more than likely be high relative to laboratories measuring the same chemical that are equipped with a newer, better maintained GC/MS. It is indeed possible for the PQL to be greater than a chemical's cleanup standard value.

- 2) The raw data from the three environmental assessment studies of the Site were retrospectively analyzed against 2008 Maryland Department of the Environment (MDE) cleanup standards for soil, groundwater, and aquatic streams. From this analysis, 40 groundwater chemicals exceeded current cleanup standards and 26 of these chemicals were detected in a nearby tributary crossing close to the southern border of the property. Sixteen chemicals exceeded current MDE 'soil groundwater protection' cleanup standards. All of the chemicals are toxic; several are Group 1, Group 2A, and Group 2b carcinogens. Reanalysis of the raw data from the two succeeding assessments were compared to the results from the first study. The review found that the majority of the chemicals identified in the 1990 study as having exceeded a cleanup standard were not measured in the follow-up studies. Hence, it is not known whether these chemicals are still present at concentrations requiring environmental remediation.
- 3) Toxic chemicals were likely injected directly into the groundwater through a silo elevator floor drain. Injection of chemicals through this drain may have continued for the entire time that the Site was operational; i.e., 24 years. Chemicals reported to have been poured down this drain include hydraulic fluid, paint, battery electrolyte, solvents and, perhaps, PCBs, when the Site was used for radar research. The elevator floor drain opens into a pit under the silo floor. The bottom of the drain pit is at a depth lower than the groundwater table; hence, any chemicals entering the drain pit mixed directly with the groundwater. None of the three environmental studies examined this possibility. Hence, the impact of injecting chemicals into the groundwater to adjacent properties and to potential down gradient or downstream receptors including people, wildlife and plants has not been investigated.
- 4) Finally, two other environmental concerns have been identified. First, the silos were probably constructed from asbestos concrete. Asbestos concrete is a friable material and asbestos is a toxic substance. The second concern is the continued presence of a 1000 gallon diesel fuel underground storage tank (UST) on the Site. In 1996, a 4000 gallon UST was removed from the Site, but this tank was located 40 feet from its northwest corner. The 1000 gallon diesel fuel UST supplying the electrical generator building is located more than 200 feet from the northwest corner of the Site and, thus, is probably still in the ground and may be filled with fuel.

From the above list of concerns, it seems reasonable to conclude that the previously conducted environmental assessments were preliminary and incomplete and that any excavation or construction of the site at this time would place the health and well-being of residential communities both close to the Site and downstream from the Site at risk. It is highly recommended that a more thorough and comprehensive environmental assessment plan for the Site be generated and its execution be supervised by MDE or EPA personnel.

1.0 INTRODUCTION

2.0 BACKGROUND

3.0 BASIC NEEDS FOR COMPARING ENVIRONMENTAL ASSESSMENTS

3.1 Characterization of Toxic Chemicals at a Site

3.2 Cleanup Standards Over Time and Selection of a Standard List of Chemicals

3.3 Laboratory Practical Quantitation Limit (PQL)

4.0 RETROSPECTIVE ANALYSIS OF PREVIOUS SITE ASSESSMENT RESULTS

4.1 EA Engineering 1990 Report

4.2 Bay Associates Inc., 2004 Site Characterization Report

4.3 Hillis-Carnes 2012 Phase II Report

5.0 INJECTION OF CONTAMINANTS DIRECTLY INTO THE GROUNDWATER

6.0 ASBESTOS CONCRETE

7.0 UNDERGROUND STORAGE TANK (UST)

8.0 CONCLUSIONS

9.0 CITATIONS

FIGURES:

1. Schematic depicting the type and volume entering a typical Nike Launch Site and the location of their use.
2. Cross-sectional view of standard silo displaying the drainage pit and the depths below surface level.
3. Several Images of the Floor Drain at the bottom of the silo elevator floor. In figure 3a note the six foot ladder while in figure 3b note the large diameter of the drain.

APPENDICES

- A. Summary sheets from all three environmental assessments of the chemicals detected at the Gaithersburg Launch Site. Summary sheets taken from Hillis-Carnes Phase I and II reports.
- B. 1990 EA Engineering Report Groundwater and Stream Water Chemical Analysis Results
- C. 1990 EA Engineering Report Soil Bore Hole Chemical Analysis Results
- D. 1990 EA Engineering Report Chemicals That Exceed their Respective Groundwater Cleanup Values
- E. Comparison of Groundwater and Soil Results from All Three Environmental Assessments

1.0 INTRODUCTION

The primary mission of any environmental assessment study is to support protecting human health and the environment. This is particularly important in the case of the Gaithersburg Nike Missile Launch Site (hereinafter called the Gaithersburg Launch Site or the Site) due to wide range, variety, volume and toxicity of the chemicals imported, used, and disposed of at this Site from 1955 through 1979; its proximity to several large residential neighborhoods; and strong evidence that toxic chemicals may be leaking into a tributary flowing across the southern border of the Site and into one of Montgomery County's major fishery and recreation streams, Great Seneca Creek.

The Hillis-Carnes Phase I and II reports are the latest of eight environmental assessments regarding the Gaithersburg Launch Site. Only three of these eight reports investigated the chemical toxicity of the groundwater, the surface water of a nearby tributary, and the soil at the Site. The Phase I Hillis-Carnes summarizes the results from the first two studies while the Phase II Hillis-Carnes 2012 Report generated new groundwater and soil toxicity data for the Site. In this report, the data from all three reports are compared in an effort to better understand the extent of contamination at the Site and to identify potential information gaps and environmental concerns.

In reviewing the three environmental assessment reports, a number of concerns and information gaps were identified. These concerns include the following:

1. The absence of information in all three environmental assessments regarding the contamination contribution to the groundwater and soil made by the US Navy and Harry Diamond Laboratories during their occupation of the Site from 1962 to 1979.
2. The dubious presumption that the acronym 'ND' meaning "not detected at a concentration exceeding the laboratory's practical quantitation limit" or "not detected at a concentration exceeding the reporting limit" implies that a contaminant is not present in the soil or in the groundwater at a concentration above its respective cleanup standard.
3. The lack of comparability of the environmental surveys due to the use of different versions of cleanup standards, the analysis of different sets of chemicals and the use of different analytical protocols.
4. The possibility that toxic contaminants have entered the tributary crossing the southern border of the Site via injection of contaminants directly into the groundwater through the drain located in the floor of each silo elevator.
5. Evidence that the magazine silos were constructed from asbestos concrete, a toxic, friable material.
6. The presence of a 1000 gallon underground storage tank (UST) supplying the electrical generator building.

These concerns are addressed forthwith.

2.0 BACKGROUND

The Gaithersburg Launch Site was a functioning site from 1955 through 1979. From 1955 to 1962, it was one of 12 Maryland Nike Missile Launch Sites protecting Washington, DC from attack by bombers during the Cold War. In 1962, it was decommissioned and turned over to the US Navy, which used the Site for radar research; presumably, radar for ships and ship-to-ship missiles. In 1968, the Site was transferred from the US Navy to Harry Diamond Laboratories. Harry Diamond Laboratory used the launch site structures for in-flight radar research from 1968 through 1979. In 1979, Harry Diamond Laboratory moved its radar research activities to its newly constructed central research laboratory facility in Adepfi, MD. The Site was basically abandoned after 1979. Sometime between 1979 and 1984, most of the structures on the Site were razed, except for the three underground missile silos. Starting the in 1980's, residential communities began to be built around the Site. The houses for one residential community, Montgomery Village, are located within 200 feet or less from the silo elevator doors.

The day-to-day operations of a Nike Missile Launch site, including the type and volume of chemicals entering a launch site, have been documented in two comprehensive US Army Toxic and Hazardous Materials Agency (USATHAMA) publications dated 1984 and 1986. These reports describe the layout of a generic site, its design, construction and the function of each of the buildings on a Site along with the volumes, types and dispositions of chemicals that entering a Site in a typical year, along with the building or structure in which these chemicals were used and disposed.

Chemicals entering a typical Nike Missile Launch Site fall into four broad categories and include:

- 1) paints and semi-volatile organic materials,
- 2) heavy metals,
- 3) hydrocarbons and
- 4) missile propellant and munitions.

Unopened missile propellant and munitions containers were meticulously inventoried upon entering the Site and, if they degraded or were no longer needed, they were returned to Depot for disposal following strict disposal procedures. As such, these chemicals are not of major concern here. The remaining three categories of chemicals, categories 1 through 3, comprised the greatest variety and the largest volume of chemicals entering a launch site. The volume of these chemicals was approximately equivalent to five 18-wheel truckloads of chemicals each year. The amount of each chemical and the location on a launch site in which each was used are

displayed in Figure 1. Note, that the missile silos followed by the missile assembly and testing building handled the greatest variety and volume of chemicals. Many of these chemicals were both toxic and persistent, i.e., the chemicals do not degrade, or degrade very slowly, over time when exposed outdoors. As an indication of the toxicity of these chemicals, many of them have been banned from production and use in the US starting in the early 1970s.

Semi-volatile organic compounds were used in metal cleaning, munitions, fuels and oils, and as insecticides, herbicides and rodenticides. These chemicals are toxic to humans, plants and wildlife and are highly persistent. Heavy metals, including lead and cadmium, were commonly used in corrosion control coatings, electrical battery applications and electronic components. Like the semi-volatile organic compounds, heavy metals are often highly toxic but do not degrade in the environment. Hydrocarbons include fuels, oils, hydraulics, grease, lubricants and solvents.

The 1984 and 1986 Reports provide numerous observations from former Nike missile launch site operators regarding disposal practices of chemicals at the time that the Nike Missile Program was in operation. Observations include:

- 1) "Dumping of various wastes was reported as common at NIKE sites. The primary factor affecting the incidence of dumping was convenience. On-site dumps were secluded locations which would evade the attention of inspecting military officers. Off-site dumps could have made use of virtually any nearby ravine or water course." [Law Engineering, 1986, p 22].
- 2) "Disposal of hydraulic fluid from missiles varied, dependent again on the individual battery. Sometimes the fluid was flushed into drums for turn-in, flushed into a ground sump, or used for weed control around buildings and fences. Most of the hydraulic fluid used was contained in missile launchers. This fluid was changed annually or more frequently, in some cases. Quantities of hydraulic fluid dumped reportedly ranged from 1,900 to 3,785 gallons per year. In addition, hydraulic fluid spills in the magazines and at launch pads were common, both from routine maintenance and rupture of lines." [McMaster et al, 1984, p 6.4]
- 3) "Solutions [of chromium dichromate] used for decorrosion were undoubtedly washed into sumps and allowed to leach into the soil. It is also possible that significant dumping of chromium trioxide may have occurred during deactivation." [Law Engineering, 1986, p 31]
- 4) "...electrical batteries were changed-out monthly (one battery per missile). Battery acid was disposed of in a variety of ways, including dumping into a ground sump, dumping into a soda pit, pouring into a soda drum, or pouring into the latrine." [<http://www.nps.gov/gate/historyculture/upload/holmes-ronald.pdf>, p 6.4]
- 5) "It was also frequently necessary during a conversion or deactivation process to dispose of fuels and other chemicals in excess of recorded inventory. This material was generally dumped onsite in a ground sump or on the surface. Some instances

were reported where excess material was transported offsite and dumped in open areas nearby, and limited instances of full DDMH [unsymmetrical dimethyl hydrazine, a liquid rocket propellant] containers being found buried at old Nike sites have been documented.” [McMaster et al, 1986, p 6-7]”.

Disposed contaminants pose health risks to humans, plants and animals. Health risks are known to be accentuated during excavation of a site prior to construction through dust inhalation and surface runoff and possibly through acceleration of the migration of chemical plumes in groundwater.

Although the chemicals used and disposed annually at a Nike missile launch site are generally known, equivalent information is lacking for the chemicals used during radar research by the US Navy and by the Diamond Ordnance Fuze Laboratory (later called the Harry Diamond Laboratory). Harry Diamond Laboratory had to vacate its Washington, DC site in 1968 to make room for the University of District of Columbia. Upon vacating their former site in Washington, DC, Harry Diamond Laboratory established radar centers at multiple locations throughout the Washington DC area. The research emphasis at the Gaithersburg Launch Site was in-flight radar research for the US Army which presumably included radar for 1) aircraft, 2) air-to-air, surface-to-air and air-to-surface missiles, and 3) detecting intercontinental ballistic missiles (ICBMs). The national importance of this research can be gauged by the security at the Site. A Specialist 5, who worked at the Site as a technician from 1970 to 1972, indicated that the Gaithersburg Launch Site was a ‘war ready’ firing battery equipped with military police and guard dogs [Potomac-Hudson Environment, Inc. Report, 2004, page 12] indicating that the Site was an active research facility and it probably performing top secret military research. A 1970 aerial photograph provides visual proof that the Gaithersburg Launch Site was an active research site. Clusters of vehicles, containers and temporary structures surround the three silos, indicating that the locus of this research took place inside the silo bays.

As mentioned above, little is known about the use of chemicals during this 17 year period. What is known is that radar research uses large volumes of toxic chemicals including PCBs, heavy metals and chlorinated compounds [see radar site contamination in 2002 GAO report]. The disposal of these chemicals has not been investigated, although it is highly possible that these chemicals were disposed of on the Site and some of these chemicals were poured down the silo elevator floor drain.

3.0 BASIC NEEDS FOR COMPARING ENVIRONMENTAL ASSESSMENTS

The Hillis-Carnes Report Phase I indicated that eight environmental assessments (the Phase I Environmental Site Assessment Report conducted by Environmental Consultants and Contractors, Inc., relates to a property adjoining the northwest corner of the Site) have been published related to the Gaithersburg Launch Site. Of these 8 reports, only three deal with

chemical environmental assessments of the soil and groundwater at the Gaithersburg Launch Site. The three assessments are:

1. Preliminary Assessment/Site Inspection (PA/SI); Gaithersburg Nike Control and Launch Areas; Prepared by EA Engineering, Science and Technology, Inc., January 1990—hereafter referred to as the 1990 EA Engineering Report
2. Site Characterization Report; Gaithersburg Nike Launch Site; Prepared by Bay Associates Environmental, Inc., May 15, 2002—hereafter referred to as the Bay Associates Report.
3. Hillis-Carnes Engineering Associates Phase I and II Environmental Site Assessment, Environmental Site Assessment Former Gaithersburg Nike Missile Launch Site Snouffer School Road, Gaithersburg, MD; November and December 2012—hereafter referred to as the Hillis-Carnes 2012 Phase II Report.

3.1 Characterization of Toxic Chemicals at a Site

Groundwater and soil contaminant summary tables from the 1990 EA Engineering, the 2002 Bays Associate and the 2013 Hillis-Carnes Phase II reports are displayed in Appendix A. For the sake of presentation uniformity, all of the summary tables were taken from the Hillis-Carnes Phase I and II Reports. In an effort to compare data from the three environmental assessments, a common list of cleanup standards and chemicals for groundwater and soil are required. Section 3.2 discusses the selections of the reference cleanup standards and the reference chemical database. The most prevalent entry in the summary tables is 'ND'. The meaning and implications of this entry are discussed in section 3.3.

3.2 Cleanup Standards Over and Selection of a Standard List of Chemicals

The maximum contamination levels (mcl) or other relevant cleanup standards are the legal threshold limits of the amount of a hazardous or toxic substance allowable in drinking water, in soil and streams under the Safe Drinking Water Act. Cleanup standards reflect a consensus agreement regarding the concentration of a chemical above which the health risks to humans, plants and animals are intolerable. As such, they change over time as our knowledge of the health effects of a toxic chemical improve. Cleanup standards also need to be operable, in that in setting a cleanup standard, considerable effort and consideration are given to ensuring that commercial analytical equipment and test methods are commercially available that are capable of accurately and precisely measuring the concentration of a chemical in a field sample at a value less than the cleanup standard concentration.

In comparing results from different site assessments, a reference cleanup standard dataset is needed. At the time that the 1990 EA Engineering report was published, the US Environmental Protection Agency (EPA) had only assigned cleanup standard values to 29 of the 123 chemicals evaluated in this report. By 2008, at the time that the property was purchased by the current owner, EPA and the Maryland Department of the Environment (MDE) had assigned

cleanup values to nearly all of the chemicals investigated in 1990. The 2008 MDE list of environmental cleanup standards will be used as the reference cleanup standard dataset. This is justified, in part, because the last ownership exchange of the Site took place in 2008.

In addition to a reference list of environmental cleanup standards, a second reference list of chemicals for comparing environmental assessments had to be identified. The chemicals investigated in the 1990 EA Engineering Report included nearly all those cited in McMasters et al. [1984] and Law Engineering [1986]. It is also the largest list of analyzed chemicals and this dataset that is most consistent with Exhibit A-1 – Contaminant Groups and Subgroups for the Analysis of Contaminants at NPL and DOD Sites published in EPA [2004]. For this reason, it will be used as the reference list of chemicals for assessing the comparability of different environmental assessment reports.

3.3 Laboratory Practical Quantitation Limit (PQL)

The most prevalent entry in both ground and surface water contamination summary sheets is 'ND' (see Appendix A this report). From the table legend, ND is defined as "not detected at a concentration exceeding the laboratory's practical quantification limit" or, in the case of the Hillis-Carnes Phase II report, "not detected at a concentration exceeding the laboratory's reporting limit". The practical quantification limit is typically denoted by 'PQL'¹. 'ND' is used as the criterion in the summary sheets indicating that a chemical is NOT present at a site at quantifiable concentrations. This criterion is of dubious relevance, since it has nothing to do with a cleanup standard. Indeed, it is quite that the chemical is present at a concentration greater than its cleanup limit and less than its PQL!! Hence, 'ND' is an inappropriate environmental assessment criterion.

The practical quantification level, PQL, for a chemical represents the routinely achievable quantitation limit for a chemical achievable by an analytical laboratory. The PQL is highly dependent on the chemical being measured, the test method and the analytical laboratory. As such, the PQL for a chemical is often used by environmental regulatory bodies as an indication of the measurement quality of an analytical laboratory. The higher the PQL concentration for a chemical, the lower is the measurement capability for an analytical laboratory. Thus, for example, if the concentration of a chemical is being measured using an old gas chromatograph/mass spectrometer (GC/MS) that is equipped with old columns and is poorly maintained, then the laboratory's PQL for this chemical will more than likely be high relative to a laboratory that is equipped with a new, well-maintained GC/MS, equipped with new columns.

The PQL is computed from the minimum detectable level (MDL). The MDL is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the concentration of an analyte in a test sample is greater than zero. The MDL can either be estimated experimentally by an analytical laboratory or, alternatively, it can be approximated using the instrument detection limit (IDL) value which is commonly supplied by the manufacturer of an analytical instrument. Once a MDL value is available, the PQL is

¹ The reporting limit is discussed in section 4.3 of this report.

computed by multiplying the MDL value by a factor between 2 and 10. The selection of the factor is at the discretion of the analytical laboratory. The most commonly chosen factor is 5; i.e., $PQL = MDL \times 5$.

Obviously, the multiplication factor has a large impact on the PQL and, hence, 'ND'. The higher the value of the multiplication factor, the higher is the PQL concentration and, correspondingly, the greater the chance that the PQL value will exceed the cleanup standard for a chemical. In none of the three environmental surveys of the Gaithersburg Launch Site were either the PQL or the multiplication factor specified. In an effort to tighten the quality of the output from analytical laboratories, several state departments of the environment (e.g., Wisconsin and California) have mandated that maximum MDL values for a number of chemicals be stipulated, such that if the MDL for an analytical laboratory is greater than this value, the analytical laboratory is disqualified from analyzing for this chemical. Many more state departments of the environment have also demanded that analytical laboratories must explicitly provide 1) the MDL and PQL values for each chemical, 2) the measured concentration for each chemical, and 3) the list of the chemicals that were investigated during a site assessment in their environmental assessment or otherwise the report will not be accepted.

The critical point is that the entry 'ND' does not indicate whether the concentration of a chemical in a test sample has exceeded its cleanup standard and, unless the report indicates the PQL for each chemical, it is not possible for an independent reviewer to determine whether any cleanup standards have been exceeded.

4.0 RETROSPECTIVE ANALYSIS OF PREVIOUS SITE ASSESSMENT RESULTS

4.1 EA Engineering 1990 Report

The 1990 EA Engineering Report was one of the earliest environmental site assessments performed by USATHAMA (United States Army Toxic and Hazardous Materials Agency) under CERLA (Comprehensive Environmental Response, Compensation and Liability Act). Prior to the release of the 2012 Hillis-Carnes Report Phase II Report, the 1990 EA Engineering Report was the only one that provided raw data and MDL values. This report did not, however, include PQL values for either the groundwater or soil samples.

The groundwater chemical analysis raw data values are presented in three tables in Appendix B of this report. The first table is for volatile organic materials, the second for semi-volatile organics, and the third is for heavy metals. Columns 1 through 3 are taken from the 2008 MDE cleanup standards. Columns 4 through 12 are raw chemical data taken directly from Appendix D of the 1990 EA Engineering Report. The concentrations in these columns are the same as those in the original report; the only difference is that the raw data have now been placed in a worksheet format. Columns 13 through 17 are logical operations performed on the raw data, the results from which are discussed below.

In retrospectively analyzing the 1990 EA Engineering ground water raw chemical data, a number of deficiencies were identified including:

1. **22% of groundwater chemicals investigated were measured using two different test methods:** Two different test methods were used in measuring the concentrations of a subset of the semi-volatile and non-volatile organic chemicals (see column 13—‘2 meas.’). The 25 chemicals measured using the two different test methods are indicated by a “yes” in column 13 of Appendix B. The test method generating the lower concentration was selected by the 1990 EA Engineering Report authors in making their site contamination decisions. No explanation was given as to why two test methods were used or as to why the lower concentration value was selected in making contamination decisions². It seems more reasonable to select the test method result yielding the higher, more conservative concentration value as opposed to the lower value for further analysis. After all, these chemicals are both toxic and persistent. In the forthcoming analysis, the higher concentration value for each chemical was used.

2. **15% of groundwater chemicals had MDL greater than the cleanup standard:** For groundwater environmental assessments, the Certified Reporting Limit (CRL)³ or, equivalently, the MDL value exceeded the cleanup standard value for 19 of the chemicals investigated (see Column 14 of Appendix B entitled MDL \geq cleanup standard). Since, by definition, the MDL is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the concentration of an analyte is greater than zero, it was possible for the analytical method to detect these chemicals. These chemicals were designated as ‘ND’ in the 1990 EA Engineering Report.

3. **36% of the blanks concentrations were greater than the MDL:** The Maximum Blank concentration exceeded MDL for 44 of the investigated chemicals [see column 15 of the tables in Appendix B]. Blanks are commonly employed for quality control purposes and are analyzed using the same test method protocol as used in analyzing a test sample, except that distilled water was used with no analyte present. Hence, the blanks are being used to determine if a contaminant has been introduced into the test method. When a high blank concentration is detected, USATHAMA protocols dictate that the analysis should be stopped and the contaminant eliminated from the test method before further analyses are made. In the 1990 EA Engineering Report it appears that chemicals having a high blank concentration were considered not to be present.

² A Freedom of Information Request was sent to the Commander of USATHAMA in October 2012 requesting an explanation as to why two test methods were employed and as to why the lower concentration value from the two test methods was selected. USATHAMA has not responded to this request.

³ The Certified Reporting Limit (CRL) is an archaic term. It is closely akin to the minimum detectable limit (MDL). For this reason, MDL will be substituted for CRL in the remainder of this report.

4. **33% of the drinking water chemicals investigated were non-compliant with current MDE cleanup standards:** 40 chemicals exceeded the drinking water cleanup standard [column 16 of the tables in Appendix B]. These 40 chemicals are listed Appendix D of this report.
5. **21% of the surface water chemicals investigated were non-compliant with current MDE cleanup standard:** 26 of the total number of chemicals investigated exceeded the surface water cleanup standard [column 17 of the tables in Appendix B]. The number of surface water exceedances is less than the number of drinking water exceedances since fewer cleanup standard assignments have been made for surface water that have been made for groundwater.

In retrospectively analyzing the 1990 EA Engineering soil data, a number of deficiencies were identified including

1. **4% of soil chemicals investigated were measured using two different test methods:** Of the 47 soil chemicals investigated, only two heavy metals, selenium and thallium, were measured using two different test methods (see column 12 in Appendix C). As was the case for the groundwater samples, the higher of the two test method values was selected for further analysis.
2. **25% of soil chemicals had MDL were greater than the cleanup standard for either non-residential or for protecting the groundwater cleanup standard:** The minimum detection level (MDL) was greater than either the non-residential soil MDE cleanup standard or the soil groundwater protection standard (see column 13 in Appendix C) for 12 chemicals. This implies that these chemicals could not have been detected even if they were present at concentrations equal to the MDE cleanup standard value. The groundwater protection cleanup standard is referenced here because the concentrations of 26 chemicals in the stream water crossing close to the southern border of the Site exceeded their respective 2008 Cleanup Standards assignments.
3. **28% of the blanks concentrations were greater than the MDL:** Unlike the groundwater samples, only a method blank was taken for the soil samples. The concentration of a chemical in the method blank exceeded the MDL for that chemical in 13 of the 47 chemicals [see column 15 of the tables in Appendix C]. There is no indication in the 1990 EA Engineering Report that EA Engineering analysts attempted to identify or correct the source of this test method contamination.
4. **4% of the soil chemicals investigated had concentrations greater than the MDE non-residential cleanup standard:** The soil sample concentration of two heavy

metals exceeded MDE non-residential cleanup standard for soil. The two heavy metals were arsenic and thallium. In the US, thallium was commonly used as a rodenticide during the 1950's.

5. **23% of the soil chemicals investigated had concentrations greater than the MDE protection of groundwater cleanup standard:** The soil concentration of 16 chemicals exceeded MDE's protection of groundwater cleanup standards. The protection-of-groundwater-cleanup standards are applied here due to the presence of contaminants in the surface water of the tributary flowing across the southern border of the site.

4.2 Bay Associates Environmental Inc. 2004 Site Characterization Report

The 2004 Bay Associates Environmental Inc. Site Characterization Report only contained summary tables (see Appendix A). The summary tables did not indicate either MDL or PQL concentration values and only provided measured concentration values for a few chemicals. The list of chemicals investigated was also not included. Without the MDL and PQL values and the raw data, this report is of limited usefulness as an environmental assessment. In particular, it cannot be used in determining which, if any, chemicals exceeded their cleanup standard values. Appendix E compares the Bay Associates results against the results from the other environmental assessments. Note that the Bay Associates study did not sample the surface water of the tributary crossing the southern border of the property. Finally, without the raw data, it was impossible to know which chemicals were investigated with the exception of those for which chemical concentrations were displayed.

4.3 Hillis-Carnes 2012 Phase II Report

The 2012 Hillis Carnes Phase II Report contained summary tables, the raw chemical data, and reporting limits [RL] for the chemicals. Unfortunately, the authors did not provide a definition for 'reporting limit'.

According to the Wisconsin Department of Natural Resources (1996, p 2), the reporting limit is defined as

“an arbitrary number below which data is not reported. The reporting limit may or may not be statistically determined, or may be an estimate that is based upon the experience and judgment of the analyst. Analytical results below the reporting limit are expressed as “less than” the reporting limit. **Reporting limits are not acceptable substitutes for detection limits unless specifically approved by the Department for a practical test.**”⁴

⁴ Bold emphasis taken directly from the publication.

The California Regional Water Quality Control Board – Los Angeles Region defines reporting limit

“as a limit imposed upon the reporting laboratory. The RL is usually demanded by the client or regulatory guidelines and is basically associated with method detection limits (MDLs) or practical quantification limits (PQLs)”.

Thus, the meaning of the reporting limit in the Hillis-Carnes Phase II report may or may not be comparable to the PQL. It is unclear.

The analysis of the chemicals in the Hillis-Carnes Phase II Report appeared to be accurate and, according to the report, it used the 2008 MDE cleanup values. The biggest difference between the Hillis-Carnes Phase II Report and the 1990 EA Engineering Report is the chemicals investigated. Of the 123 chemicals investigated in the 1990 EA Engineering Report, the Hillis-Carnes Phase II report only investigated 53. In particular, few semi-volatile and pesticide organic materials analyzed in the 1990 EA Engineering Report were analyzed in the Hillis-Carnes Phase II study. Hence, the two environmental assessment datasets are not comparable. More importantly, a large number of the 40 chemicals identified as exceeding their respective cleanup limits in the 1990 EA Engineering Report were not analyzed in the Hillis-Carnes Phase II Report.

4.4 Review of Groundwater and Soil Results from all Three Environmental Assessment Studies

The list of chemicals in the 1990 EA Engineering is used as the reference list against which the other two environmental assessment reports are compared. The use of this list is justified in that this dataset closely approximates the chemicals cited in both the McAllister et al. [1984] and the Law Engineering [1986] reports as being chemicals commonly used at Nike Missile Launch Sites. It is also the largest list of chemicals investigated from the three Site surveys and all of the chemicals in the 1990 report are included in Exhibit A-1 – Contaminant Groups and Subgroups for the Analysis of Contaminants included in the 2004 EPA report entitled “Cleaning Up the Nation’s Waste Sites: Markets and Technology Trends”.

Of the 123 groundwater and surface water chemicals investigated in the 1990 EA Engineering Report, 40 of these chemicals exceeded the 2008 MDE groundwater cleanup standard and 26 exceeded at least one of the 2008 MDE surface water cleanup standard. The majority of these exceedances occurred in the semi-volatile and pesticide organic materials categories (see Appendix E, Table 1). The Bay Associates 2002 Report did not include a list of chemicals analyzed, so it was not possible to determine whether any of the chemical exceedances observed in the 1990 EA Engineering Report were analyzed in the Bay Associates Report. The Hillis-Carnes 2012 Report included a list of the chemicals analyzed, but that assessment only analyzed 12 of the 40 chemicals identified as having exceeded a groundwater or surface water cleanup standard in the 1990 EA Engineering Report.

Of the 50 soil chemicals investigated in the 1990 EA Engineering Report, 16 exceeded the soil cleanup standard for groundwater protection. It was unclear whether the Bays

Associates Report analyzed the soil samples for these chemicals, while the Hillis-Carnes 2012 Phase II Report investigated 10 of the chemicals, but did not provide concentration data for 6 of them, so it was not possible to determine whether the respective soil cleanup standards for groundwater protection for these chemicals were exceeded.

Appendix D of this report provides a table listing the health hazards associated with chemicals that exceeded their cleanup standards in the 1990 EA Engineering Report. Most of the chemicals surveyed were semi-volatile organics. The table includes additional data for each chemical including its date of commercialization and the date it was banned in the US from further production. Also included for each chemical is information on its use. It should be noted that three of these chemicals (benzo (a) pyrene, cadmium, and pentachloro-phenol (PCP) are group 1 carcinogens⁵, one chemical is a group 2A carcinogen and 13 are group 2B carcinogens. All of the other chemicals in Appendix D are toxic and persistent.

5.0 INJECTION OF CONTAMINANTS DIRECTLY INTO THE GROUNDWATER

“In the magazine, waste materials -- solvents, paints, and hydraulic fluid -- were often washed to the magazine sump located at the bottom of the elevator shaft. Leakage of fluid from elevator hydraulics could produce a considerable volume for disposal to the sump. Hydraulic system "blow-outs" occurring during operation of any hydraulic equipment would cause instant release of fluid.” [Law Engineering, 1986, p 34]

Of all of the structures on a Nike Launch Site, the silos exhibit the least site-to-site variation in both their design and construction. A cross-sectional schematic of a typical silo is shown in Figure 2. Each silo is equipped with a drain in the elevator floor (see Figure 3). This drain opens into a drainage pit that extends down 33 ft below the surface of the launch pad. The drainage pit was filled with rocks and equipped with a float-valve sump pump. The sump pump turned on whenever the water rose and the float value set point was exceeded, whereupon the water and effluent was pumped from the drainage pit to a seepage ditch located next to the silo near the ground surface.

From numerous testimonials, it was common practice to dump chemicals into the silo elevator floor drain [MacMasters et al, 1984; Law Engineering, 1986]. These chemicals included, but were not limited to, paints, hydraulic fluids, battery electrolytes, solvents, pesticides and probably PCBs when the site was used in radar research. Pouring contaminants down the elevator floor drain raises the interesting question whether the chemicals were poured directly into the groundwater. As shown in Figure 2, the bottom of the drain pit was 33 feet below the launch pad surface. The groundwater depth reported at the Gaithersburg Launch Site (1990 EA Engineering, Appendix A: Soil Boring Logs and Well Completion Diagrams) ranged from 25 to 35 feet below the surface. Hence, most of the time, the contaminants were injected directly into the groundwater. Once the chemicals entered the groundwater, they would have formed a plume. The movement dynamics of this plume are not known, other than toxic chemicals have been detected in the tributary on the southern side of the Site and in the soil and groundwater next to the tributary. The movement of these chemicals in groundwater have not

⁵ According to the IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Group 1 chemicals are carcinogenic to humans, Group 2A are probably carcinogenic to humans, Group 2B chemicals are possibly carcinogenic to humans, while Group 3 chemicals are not classifiable as to their carcinogenicity to humans.

been a part of any environmental assessment. As a result, impacts to adjacent properties are not understood. Additionally, no assessment has been made of impacts to potential human and wildlife downstream receptors.

Surprisingly, none of the three environmental studies sampled the groundwater or the soil inside the silo drains. Also, none of the three studies searched for or sampled the soil in the seepage ditch connected to each silo drain pump⁶. According to the Potomac-Hudson Environmental Inc. Environmental Baseline Survey Report [2004, p 6], DoD recognized the importance of making such measurements. Specifically, the authors of this study found an “internal Army memorandum from 1997 indicating that one soil sample from the missile silo sump outfall, one solid waste sample of the debris in the silos, and one aqueous sample from the water accumulated in the missile silo sump was recommended; however, it is unknown whether this sampling ever took place.”

6.0 ASBESTOS CONCRETE

It is highly probable that underground structure of the silo was constructed using asbestos concrete. During this period, asbestos was commonly included in concrete construction to minimize cracking; hence, it is perfect for underground construction. Asbestos is considered by EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) to be a toxic substance. Asbestos concrete contains between 8% and 40% asbestos by volume. It is a highly friable material, i.e., it crumbles upon impact releasing asbestos fibers into the atmosphere. Thus, any demolition of a structure containing asbestos concrete is subject to EPA, MDE, and local regulations.

Per the Hillis-Carnes Report (page 16), “Mr. Miller [a co-owner of the Gaithersburg Launch Site] informed Hillis-Carnes that portions of the underground missile silos will be removed in association with the future grading of the Site, which will include an approximate cut of ten feet in the area of the missile silos. However, not all portions of the underground missile silos, which are currently approximately 17 feet deep, will be removed. The void of the missile silos will reportedly be filled with engineered fill in association with the redevelopment activities.” Other correspondence from the owner has mentioned that they planned to demolish the silos.

Prior to demolishing the Libertyville, IL, missile silos located in Vernon Hills, IL (designated C-92/C-94), it was discovered that the underground portions of the missile magazines (i.e., floors, walls, and roof) were constructed using asbestos concrete [http://www.envfield.com/CaseStudies/MissileMagazine_VernonHills.html]. Asbestos abatement was also required in the demolition of five silos in Oxford, OH, and three silos near Irwin, PA [<http://www.vrhabilis.com/project/nike-missile-magazine-demolition/>]. A demolition plan for the Gaithersburg Launch Site silos needs to be completed, if the silos are constructed from asbestos concrete.

⁶ It should be relatively easy to locate the seepage ditch. The pipes leading from the float valve pumps to the seepage ditch are more than likely still in place. It should be relatively easy to find the seepage ditch by snaking a wire up through this pipe which should provide a rough estimate of the seepage ditch location.

7.0 UNDERGROUND STORAGE TANK (UST)

It is likely that the 1000 gallon underground storage tank (UST) cited in the 1990 EA Engineering Report has not been removed from the Site. The bases for this assertion are as follows:

- 1) The 1990 EA Engineering Report (page 1-1) indicates that "...a 1000-gal fuel oil underground storage tank (UST) was not removed from the Launch area during the course of this investigation."
- 2) A 1996 UST Removal Document was attached to the Hillis-Carnes 2012 Phase I report. This report indicates that a 4000 gallon UST was removed from the site, but it provides no information as to the location of the UST.
- 3) According to the Hillis Carnes Report (page 3/74), it was reported in a 2004 Environmental Baseline Report of the Site that "no evidence that underground storage tanks (USTs) or above ground storage tanks (ASTs) are currently present or in use" at the Site." Presumably, the inspectors did not observe a conning tower or depression indicating the existence of an UST.
- 4) A 2006 Environmental Consultants and Contractors, Inc. Phase I Environmental Site Assessment Report of the orphan property adjoining the northwest border of the Gaithersburg Launch Site reported that a 4000 gallon UST was removed from the east-adjacent Nike Missile Launch site in November 1996 and that "the tank was formerly located approximately 40 feet northeast of the Subject Property"; i.e. the orphan property. [Environmental Consultants and Contractors, Inc, 2006, p 14]

Evidence that the 1000 gal UST still exists on the Site include the following:

- 1) A 1000 gallon UST supplying the electrical generator building is noted in a map dated circa 1957 of the Gaithersburg Launch Site.
- 2) This UST supplying the electrical generator building is located over 200 feet from the location that the 4000 gal tank was removed.
- 3) It is highly probable that the electrical generator UST did not have a conning tower, since it was located within 20 feet of the cement path upon which fully fueled and armed Nike missiles were transported. If the Nike missile transport veered off the cement path it could easily shear the conning tower off of the UST resulting in a possible fire hazard.
- 4) Since 1989, adjoining residents have lived within 100 feet of the electrical generator UST and a recreational path passes within 60 feet of the UST location. No resident recalls any excavation to have occurred in the area of the Electrical Generator Building in 1996.

8.0 CONCLUSIONS

It is generally agreed that the Gaithersburg Nike Missile Launch Site is contaminated. The property was sold to the current owner in 2008 with specific us restrictions on groundwater and prohibitions on the construction of residential houses. The key questions, therefore, is not whether the site is contaminated, but, instead, whether the previous environmental assessments of the Site are complete and definitive and whether the Site needs to be remediated.

Three environmental assessments studies have been performed on the Site since 1990. The latest assessment was published by Hillis-Carnes in 2012. The Hillis-Carnes 2012 Phase I Report reviewed the previous two environmental assessments while the Phase II Hillis-Carnes Report included the results of its own Phase II environmental assessment. The purpose of this report was to conduct a retrospective analysis of these three published reports and to identify gaps in the information and concerns that have not been addressed.

A number of concerns and information gaps exist in the three environmental assessment reports of the Site. The first concern is an information gap. None of the three published environmental assessments investigated the use of the Site from 1962 through 1979 (a period of time that was two and a half times longer than it was used as a Nike Missile Launch Site) when it was used for in-flight radar research by both the US Navy and Harry Diamond Laboratory. Radar research employs, generates and disposes of large volumes of hazardous and toxic chemicals, including PCBs, solvents, and heavy metals. Evidence of the use of these chemicals at radar sites is provided in a GAO report (2002). The radar research conducted by the US Navy and Harry Diamond Laboratory was high priority, more than likely top-secret, military research. Specifically, radar had to be modularized and miniaturized to fit into aircraft, into air-to-air, air-to-surface, surface-to-air, and ship-to-ship rockets, as well as into intercontinental ballistic missiles. Radar research uses considerable volumes of toxic chemicals. The disposition of the chemicals is unknown. What is known is the most of this research was performed in the silos and it was common practice during this period of time to dispose of toxic chemicals on the Site.

The three environmental assessments raise a number of technical concerns. All three environmental assessments prominently use the entry 'ND' which means 'not detected at a concentration greater than the Practical Quantitation Level or PQL' or 'not detected at a concentration greater than the Reporting Limit or RL' in their summary tables. 'ND' does NOT indicate whether the chemical is present at concentrations greater than its cleanup limit, which is the critical criterion in an environmental assessment; hence, 'ND' is an irrelevant measurement statistic. A high PQL for a chemical implies that an analytical laboratory's measurement capabilities may need improvement. For example, if a gas chromatograph/mass spectrometer (GC/MS) is equipped with old columns and is poorly maintained, then PQL for a chemical will be high. What is important here is to note that it is not uncommon that the PQL value is greater than a cleanup concentration for a chemical.

In this review, an independent evaluation of raw chemical data appended to the 1990 EA Engineering Report, the first environmental assessment, was performed using 2008 MDE cleanup standards as the regulatory limits. Such an analysis is legitimate, since the raw chemical data are still valid and provide an accurate assessment of the contamination state of the Site in the late 1980's. From this analysis, 40 chemicals were deemed to have exceeded current groundwater cleanup standards, 26 of these chemicals were detected in the tributary close to the site at concentration greater than MDE's aquatic cleanup standards, and 16 chemicals exceeded current MDE soil groundwater protection cleanup standards. Several of these chemicals exceeding groundwater cleanup standards are Group 1, Group 2A, and Group 2b carcinogens. Following this analysis, the two succeeding environmental assessment reports were available to determine if the concentrations of the chemicals exceeding cleanup standards were still high. The majority of the chemicals were NOT measured, indicating that the lists of chemicals measured in different environmental assessments are not comparable. Hence, it is unknown as to

whether these chemicals are still present at concentrations greater than their current cleanup standards.

Most of the chemical activity at a Nike Missile Launch Site occurred within the silos. Each silo is equipped with an elevator floor drain. It has been reported in the literature that chemicals (hydraulic fluid, paint, battery electrolyte, solvents and, perhaps, PCBs, when the Site was used for radar research) were poured down this drain. The drain opens into a drain pit. The bottom of the drain pit is lower than the groundwater table; hence, any chemicals poured down the drain immediately mixed with the groundwater. None of the environmental studies sampled the soil or groundwater in the drainage pit or in the seepage pit connected to the drainage pit via a pipe. In addition, none of the three environmental assessment studies monitored the groundwater flow from the drainage pit and none of the environmental studies investigated possible impacts of groundwater contamination on adjacent properties or potential down gradient or downstream receptors including people, wildlife, and plants. These oversights raise questions as to the completeness of the previous environmental assessment studies.

There are two additional concerns that need attention. Strong evidence exists that the silos were constructed using asbestos concrete. Asbestos concrete contains between 8 % and 40 % by volume of asbestos fibers. The current owners have indicated that they plan to demolish the silos during excavation of the site. Asbestos concrete is a friable material and a hazardous waste and, as such, its demolition must be managed. Asbestos is a toxic substance. Finally, the 1990 EA Engineering Report cites the existence of a 1000 gallon diesel fuel tank. This tank is believed to be the underground storage tank (UST) supplying the Nike Missile Launch Site electrical generator building with fuel. In 1996, a 4000 gallon UST was removed from the site. The removed tank was reported to have been located 40 feet from the northwest corner of the Site. The electrical generator UST is located over 200 feet from the northwest corner of the Site. As such, it is believed that the generator building UST is still in the ground and may be filled with fuel.

From the above concerns and information gaps, it seems reasonable to conclude that the previously conducted environmental assessments were inadequate and that any excavation and construction on the site at this time would place nearby residential communities at risk. Residences are within 100 feet of the proposed construction area and within 200 feet of the silos. It is highly recommended that a more thorough and comprehensive environmental assessment study be conducted and that only an EPA Approved Laboratory be selected to conduct the chemical analysis of the groundwater and soil samples under MDE or EPA oversight.

9.0 CITATIONS

Bay Associates (2003) Hydraulic Fluid Tank Removal and Monitoring Well Closure: Gaithersburg Nike Launch Area, Gaithersburg, MD 20879, January 6, 2013, USACE contract no. DACA65-01-D-0017.

California's Surface Water Ambient Monitoring Program (2011) Quantitation and Reporting Limits 101,
http://www.waterboards.ca.gov/mywaterquality/monitoring_council/collaboration_network/docs/bvanbuuren_jan2012.pdf

EA Mid-Atlantic Regional Operations EA Engineering, Science, and Technology Inc. (1990) US Army Toxic and Hazardous Materials Agency, **Gaithersburg Nike Control and Launch Area Preliminary Assessment/Site Inspection**, Gaithersburg, MD, Final Report, EA Report 10559.04. <http://www.dtic.mil/dtic/tr/fulltext/u2/a217791.pdf>

Environmental Assessment (2006) Real Property Exchange, ECC Project No. 05-7792, July 19, 2006.

Environmental Consultants and Contractors, Inc. (2006) Phase I Environmental Site Assessment of the Webb Tract Montgomery County, MD., ECC Project No. 05-8206.

EPA (2004) Cleaning Up the Nation's Waste Sites: Markets and Technology Trends, <http://www.clu-in.org/download/market/2004market.pdf>

EPA Office of Water (2011) A Laboratory Study of Procedures Evaluated by the Federal Advisory Committee on Detection and Quantification Approaches and Uses in Clean Water Act Programs, http://water.epa.gov/scitech/methods/cwa/det/upload/fac_report_2009.pdf

EPA (2012) Drinking Water Contaminants, water.epa.gov/drink/contaminants/index.cfm

GAO (2002) Environmental Contamination: Corps Needs to Reassess Its Determinations that Many Former Defense Sites Do Not Need Cleanup, US General Accounting Office, GAO-02-658.

Florida Department of the Environmental Protection (2009) Laboratory Data MDLs/PQLs, <http://www.fipaonline.com/documents/Presentations/Laboratory%20Data%20MDL's%20&%20PQL's%20.pdf>

Hillis-Carnes Engineering Associates (2012) Phase I Environmental Site Assessment Future Reserve Business Center Former Gaithersburg Nike Missile Launch Site Snouffer School Road, Gaithersburg, MD, Prepared for Robert Borris, Menard Doswell & Company, PO Box 126, Great Falls, VA 22066.

Law Engineering Testing Company (1986) Investigation of Former Nike Missile Sites for Potential Toxic and Hazardous Waste Contamination Vol. 1, paper prepared for the Department of the Army, Huntsville Division, Corps of Engineers, Contract #DACA87-85-C-0104. http://www5.hanford.gov/pdw/fsd/AR/FSD0001/FSD0037/D199050026/D199050026_19154_198.pdf

Maryland Department of the Environment (xxx) Title 26, Subtitle 08 Water Pollution, Chapter 2, Water Quality,

Maryland Department of the Environment (2008) State of Maryland Department of the Environment Cleanup Standards For Soil and Groundwater

[[http://www.mde.maryland.gov/assets/document/Final%20Update%20No%202.1%20dated%205-20-08\(1\).pdf](http://www.mde.maryland.gov/assets/document/Final%20Update%20No%202.1%20dated%205-20-08(1).pdf)]

McMaster, B.N., Sosebee, J.B., Fraser, W.G., Govro, K.C., Jones, C.F., Grainger, S.A., and Civitarese (1984) Historical Overview of the Nike Missile System, US Army Toxic and Hazardous Materials Agency, Assessments Division, Aberdeen Proving Grounds, MD 21010, Report DRXTH-AS-IA-83016 Nike Missiles

http://www5.hanford.gov/pdw/fsd/AR/FSD0001/FSD0037/D199049898/D199049898_19126_147.pdf.

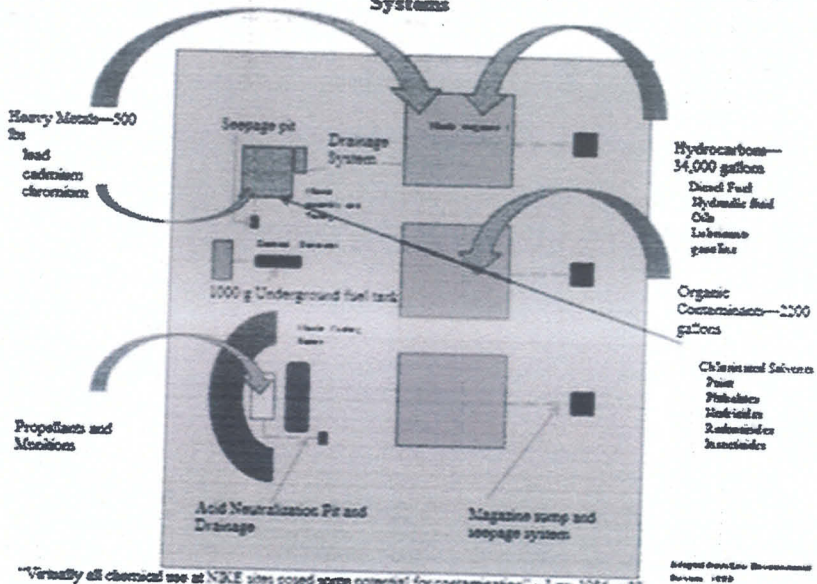
Potomac-Hudson Environmental, Inc. (2004) Environmental Baseline Survey MG Benjamin L. Hunton Memorial US Army Research Center 8791 Snuffer School Road, Gaithersburg, Maryland, report prepared for the US Army Corps of Engineers.

Van Buuren, B.H (2011) Quantitation and Reporting Limits 101, http://www.waterboards.ca.gov/mywaterquality/monitoring_council/collaboration_network/docs/bvanbuuren_jan2012.pdf

Wisconsin Department of the Natural Resources (1996) Analytical Detection Limit Guidance & Laboratory Guide for Determining Method Detection Limits, Report No. PUBL-TS-056-96.



Figure 1: Generalized Launch Site Highlighting Annual Chemical Input and Seepage Systems



Cross Section Missile Silo Indicating Depth to Bottom of Floor Drain

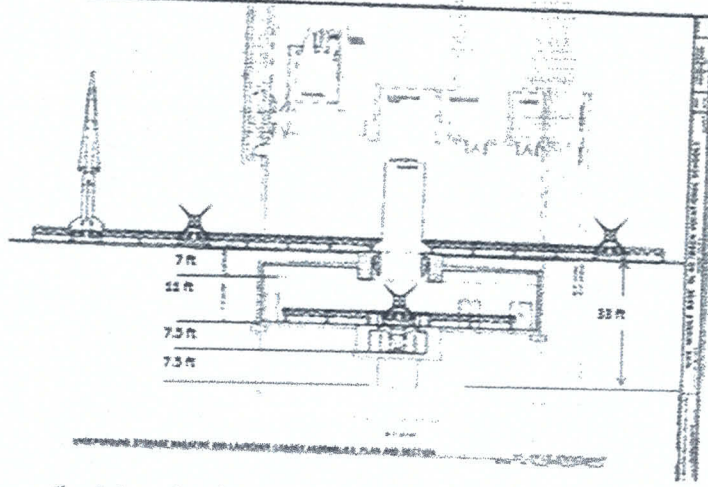


Figure 2: Cross-sectional view of a typical Nike Missile silo with depth from surface measurement shown. Taken from www.mequetand.com/v2/index.php?page=vision&id=1326.

Figure 3: Several images of the Floor Drain at the bottom of the silo elevator floor. In figure 2a note the six foot ladder while in figure 2b note the large diameter of the drain.



Figure 1: Gaithersburg Nike Missile Launch Site and Surrounding Residential Neighborhoods
Circa 2012

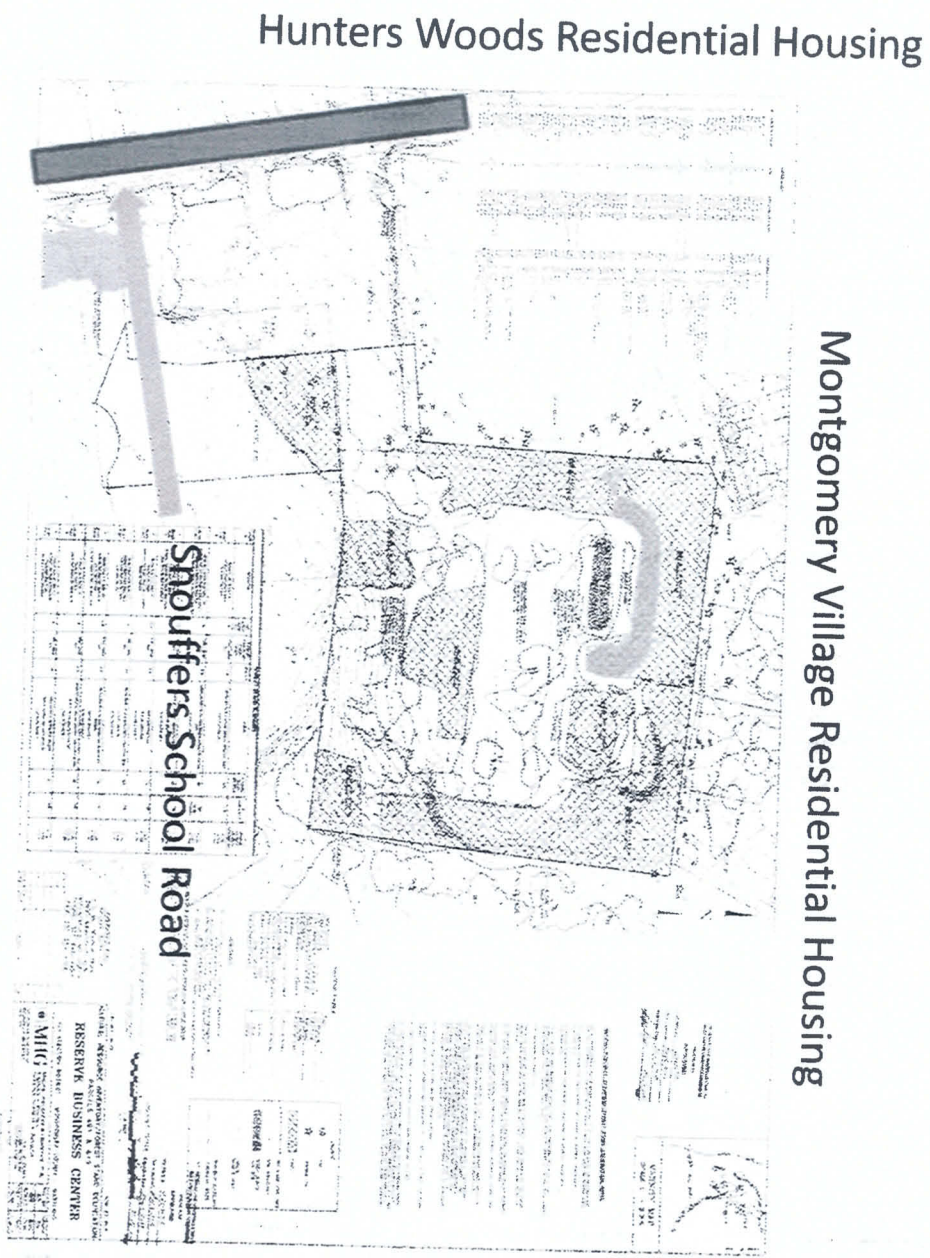
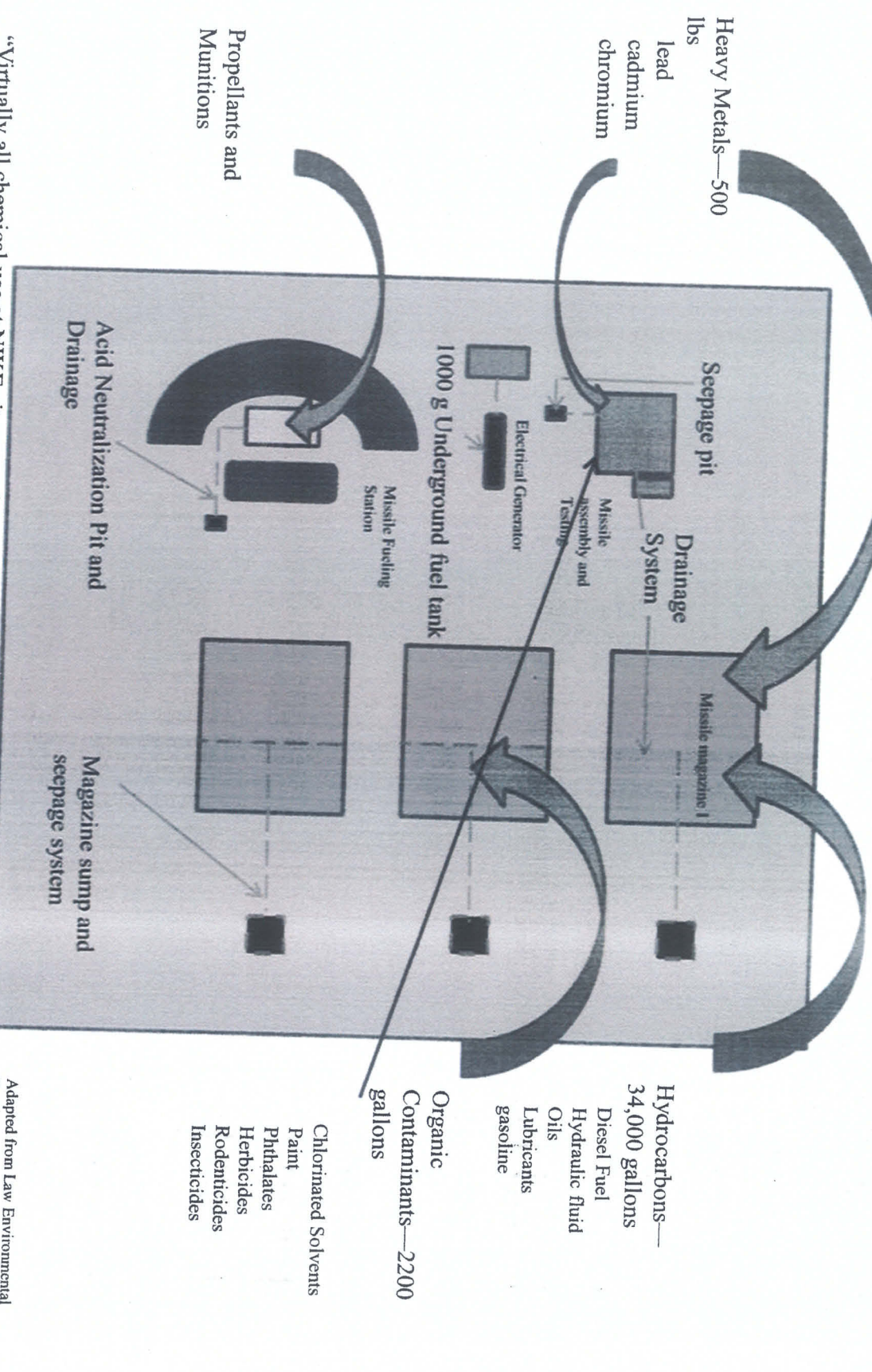


Figure 1: Generalized Launch Site Highlighting Annual Chemical Input and Seepage Systems



“Virtually all chemical use at NIKE sites posed some potential for contamination” – Law, 1986, p 27

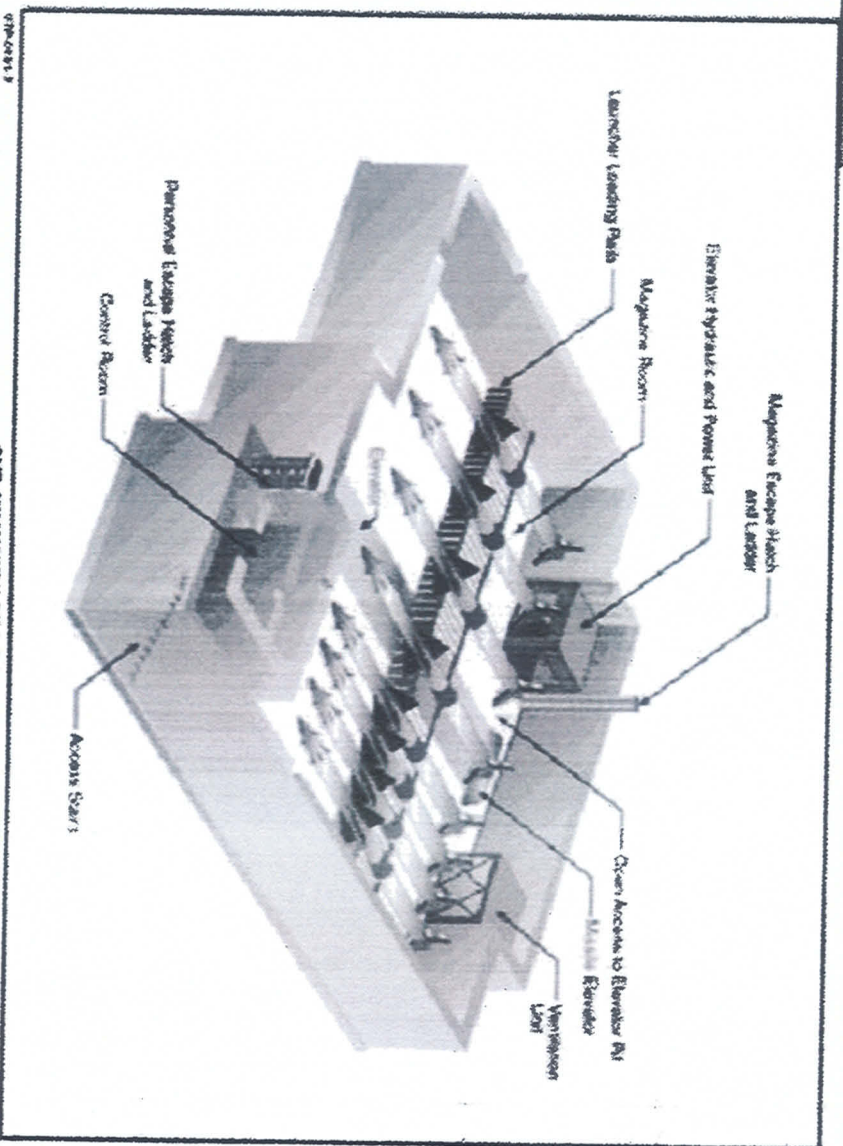
Adapted from Law Environmental Services, 1986

**Gaithersburg Nike Launch Site:
Drain Depth vs. Depth of Ground
Water**

Jonathan W. Martin

Generalized Schematic Nike Missile Magazine

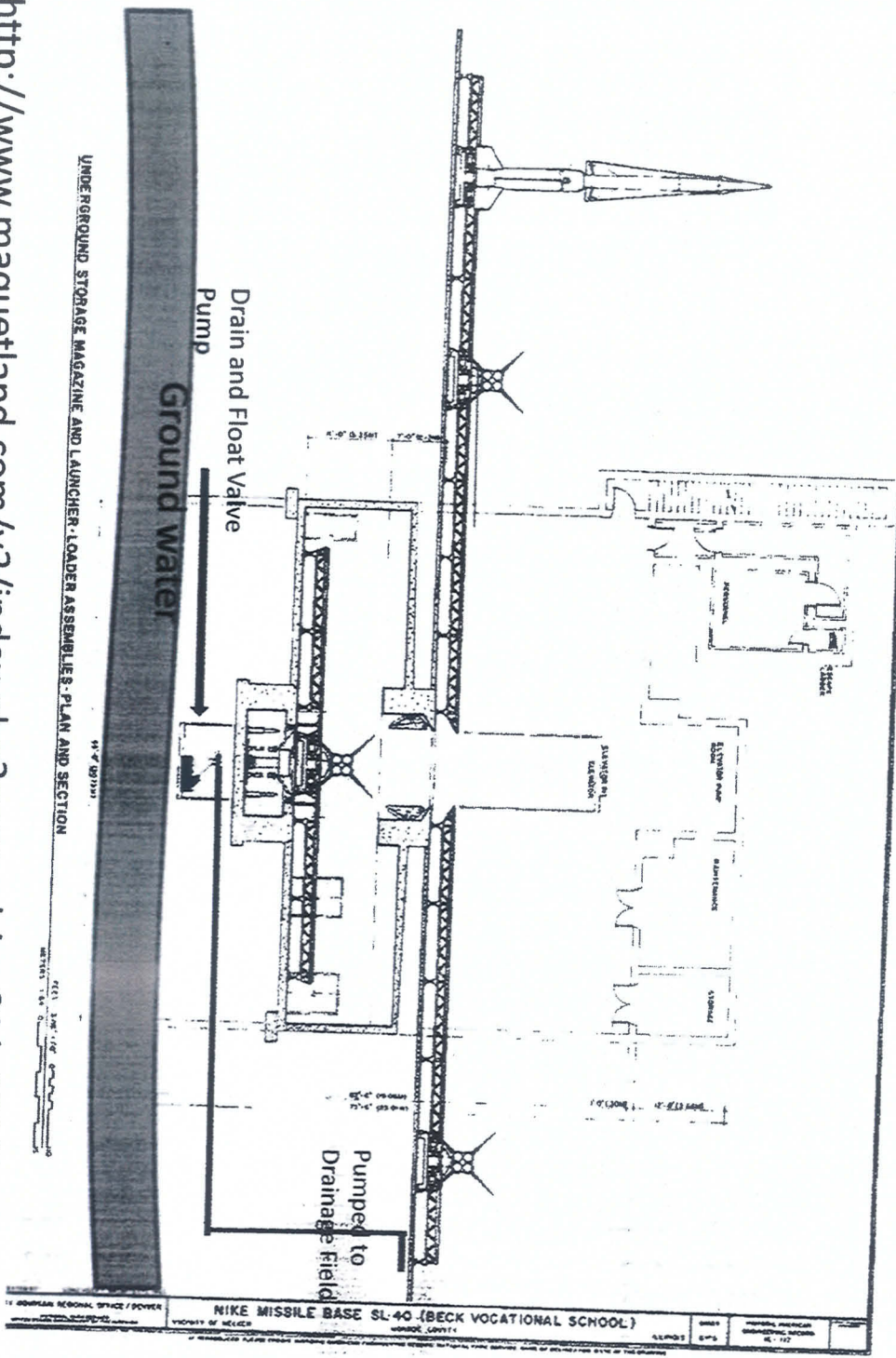
Typical Magazine Configuration



**CUTAWAY VIEW OF A TYPICAL
NIKE LAUNCH FACILITY MAGAZINE**

DTIC 67-113

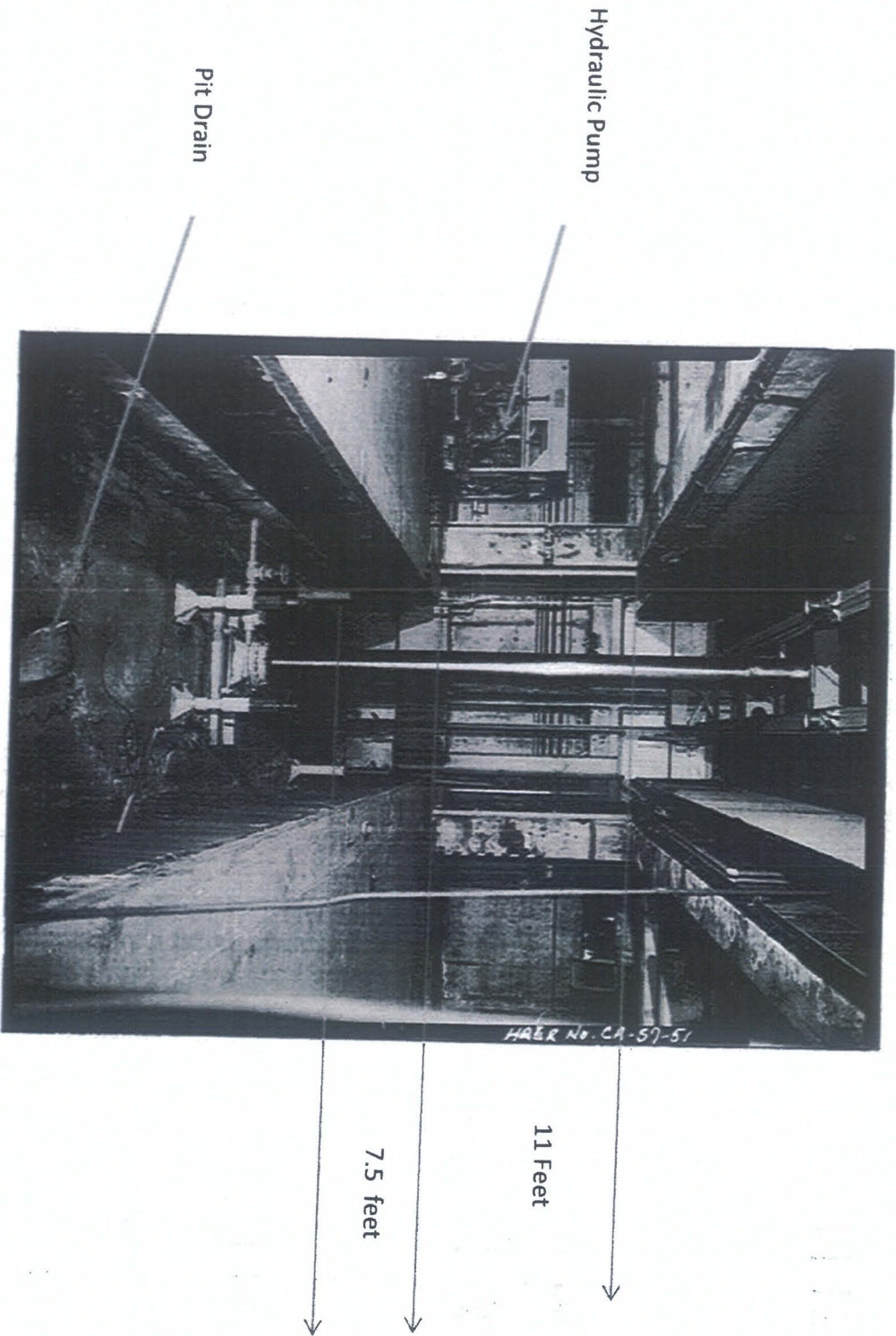
<http://www.maquetland.com/v2/index.php?page=vision&id=1326>



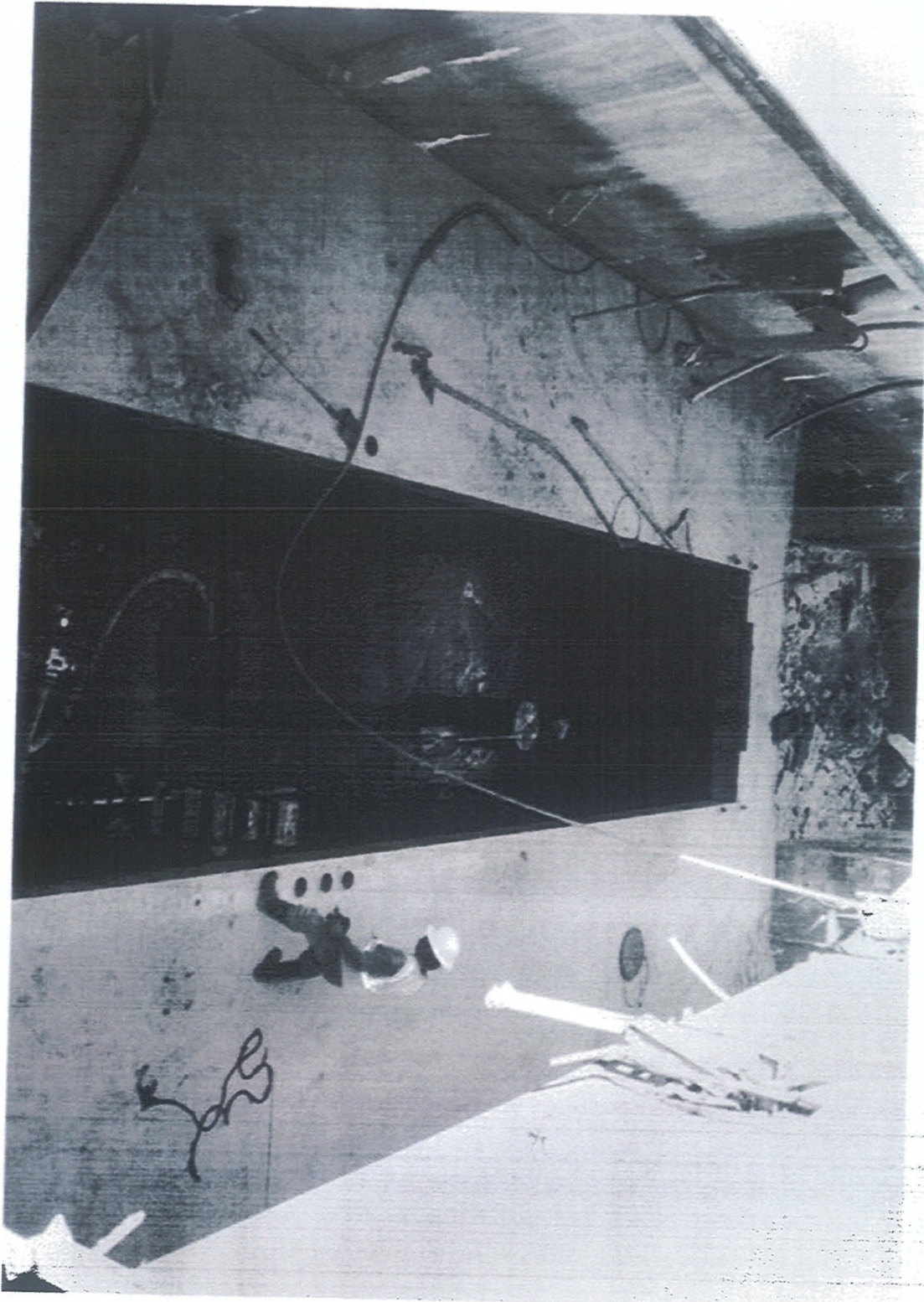
Elevator Down/Launch Doors Open – SL40 Nike Missile Site



Pit and Hydraulic Lift (elevator up) – Mount Gleason, CA



Elevator Removed Revealing Floor Drain



Pumping Out Contaminants From Floor Drain



Workman In Floor Drain



Depth to Water Gaithersburg Launch Site

Well Number	Depth to Water (average, range)
GNL-1 (Missile Fueling Station)	33.2 ft [31.5, 34.2]
GN-2 (Missile Testing and Assembly Bld)	26.6 ft [23.1, 28.2]
GN-3 (Near Missile Magazine)	34.2 ft [31.7, 35.6]

Conclusions

- Gaithersburg Missile Magazine Elevator Pit Drain About the Same Depth or Deeper Than Groundwater Depth
- Hence, Contaminants May Have Been Directly Injected Into the Ground Water at the Gaithersburg Nike Magazine

Subj: **addendum to May 24 e-mail regarding Gaithersburg Nike Launch Site**
Date: 6/3/2013 12:47:19 P.M. Eastern Daylight Time
From: martinjonathanw@yahoo.com
To: bbrown@mde.state.md.us, Togradyterr@aol.com, bevingtonroy@msn.com,
candsjob@comcast.net, Denise.Sheehan@LNF.com, rhincke@comcast.net,
gerald.donegan@verizon.net

June 3, 2013

Barbara Brown
Section Head
MDE-Voluntary Cleanup Program
Land Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230

RE: Gaithersburg Nike Missile Launch Site

Dear Ms. Brown:

Please accept the enclosed addendum to the three papers that Chuck Job and I sent to you on May 24, 2013 regarding the Gaithersburg Nike Missile Launch Site. The addendum is

Martin, J.W., Job, C. O'Grady, T., Bevington, R., Sheehan, D., Donegan, G. and Hinke, R., Responsible Redevelopment of the Gaithersburg Nike Missile Launch Site: Need for Polychlorinated Biphenyl (PCB) Measurements.

It addresses the need for an often missed measurements for structures constructed during the 1950's, the prevalent use of PCBs in paint, caulks, and PCB contamination of concrete. These measurements are highly relevant due to the stated need of the current owners to demolish part or all of the silos which has the strong possibility of releasing contaminated dust into the surrounding communities.

Thank you for your department's consideration of our comments. I will send you a signed copy by mail in the following few days.

Sincerely,

Charles A. Job
8504 Silverfield Circle
Montgomery Village, MD 20886

Jonathan W. Martin
8505 Silverfield Circle
Montgomery Village, MD 20886

Enclosures (1)

Friday, May 31, 2013

Responsible Redevelopment of the Gaithersburg Nike Missile Launch Site: Need for Polychlorinated Biphenyl (PCB) Measurements

**Jonathan W. Martin, C. Job, T. O'Grady, R. Bevington, D. Sheehan, G. Donegan and R. Hincke
Montgomery County Citizens Alliance**

A need exists to test the Nike missile silos and surrounding launch site area for construction materials containing polychlorinated biphenyl (PCB). Materials requiring assessment include, but are not limited to, the concrete pad on top of each silo and the concrete walls and floor of the silo interiors, caulks, and paints.

The Gaithersburg Launch site was operational from 1955 through 1979. It functioned as one of 12 Maryland Nike Missile Launch sites protecting Washington, DC from 1955 to 1962. In 1962, the Site was turned over to the US Navy for radar research and again turned over to Harry Diamond Laboratories, a US Army research laboratory, for radar research. In 1979, the Site was abandoned. Sometime between 1979 and 1984, most of the structures on the Site were razed, except for the three underground missile silos. Starting in the late 1980's, residential houses were built around the Site. Some homes are located within 50 feet from the launch site property.

Health Effects

"Polychlorinated biphenyls (PCBs) are a mixture of individual chemicals which are no longer produced in the United States, but are still found in the environment. Health effects that have been associated with exposure to PCBs include acne-like skin conditions in adults and neurobehavioral and immunological changes in children. PCBs are known to cause cancer in animals. PCBs have been found in at least 500 of the 1,598 National Priorities List sites identified by the Environmental Protection Agency (EPA)." (ATSDR, 2013) Additionally, infants born to women who consumed PCB in food had lower weight, memory loss and immune system issues. (ATSDR, 2013)

PCB at Nike Missile Sites

PCB oils were commonly used in electric motors as a cooling fluid and added to hydraulic fluids in a wide assortment of equipment throughout the period that the launch site was operational. PCB oil has many ideal physical properties including the ability to operate at high temperatures without breaking down or burning, a very positive attribute for military applications like those occurring on a Nike launch site. Examples of motors operating at high temperatures and power include radar generators (motors generating power greater than 5000 volts), radar vacuum pumps, and compressors. In addition the use of PCB in motor oil, hydraulic fluids were pervasive throughout the launch site. These fluids were used in silo missile elevators, missile

launchers, missile guidance systems, and fork lift trucks. The addition of PCB to hydraulic fluid allowed hydraulic equipment to operate at higher temperatures and minimized the chance that the hydraulic fluid would contribute to an unintentional fire (e.g., <http://www.PCBdisposalinc.com/images/pdfs/PCB%20Site%20Remediation.pdf>). Although the electrical and hydraulic equipment have been removed from the Site for a long time, it is possible that the concrete upon which this equipment was positioned or moved may have been contaminated by PCB. PCB readily permeates into concrete, but, once absorbed, it is reemitted very slowly into the atmosphere; i.e., it is a good sink for contaminants (Guo et al, 2012). Concrete of interest include the launch pad and the silo magazine walls and floor. It is also possible, that the soil underneath the concrete launch pad may have been contaminated. This concrete is of great concern because the current owners have indicated that they plan to demolish the silo in preparation for construction of their proposed warehouses.

From 1950 through the mid-1970's, PCB additives were also added to construction materials to enhance their properties and, in the process, satisfy military mission requirements. PCB containing construction materials included paints (containing PCB concentrations between 1 and 97000 ppm), caulks (containing PCB concentrations up to 33000 ppm), flame retarders, adhesives, insulators, and asphalts (see citations below). In addition to providing heat and flame resistance to these materials, PCB containing materials also provided fungicide, mildewcide, and algacide resistance to underground structures. This was important in the silo magazine chamber since the floor of these structures were 25 feet underground.

Bay Associates (2003) reported that they sampled for PCB in the hydraulic fluid tank inside each silo prior to their removal. The authors of this report, however, provided no information as to how they made these measurements or as to their precision and accuracy. Indeed, the Hillis-Carnes Phase I report (2012, p. 60) described this measurement as follows: "As previously reported, the underground missile silos include hydraulic lifts. The oil in one of the lifts (the other two were reportedly dry) **was reported sampled** when the lifts were closed in December 2002 and the oil was determined to not contain PCBs. Based on the sampling information and closed status, the hydraulic lifts **do not appear to represent REC to the Site.**¹" Since the Hillis-Carnes statements are based on unsubstantiated previous measurements, the veracity of the conclusion that PCB was absent from the hydraulic fluid tanks is suspect.

CITATIONS:

Anonymous, PCB Site Remediation,

<http://www.PCBdisposalinc.com/images/pdfs/PCB%20Site%20Remediation.pdf>

Agency for Toxic Substances and Disease Registry (ATSDR). 2013. Toxic Substances Portal.

<http://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=140&tid=26>

¹ Emphasis has been added and was not present in the original document.

Bay Associates Environmental Inc, (2003) Hydraulic Fluid Tank Removal and Monitoring Well Closure: Gaithersburg Nike Launch Area, Gaithersburg, MD 20879, prepared for the US Army Corp of Engineers, Norfolk District.

Guo, Z. et al. (2012) Laboratory Study of Polychlorinated Biphenyl (PCB) Contamination and Mitigation in Buildings, EPA/600/R-11/156A.

Hillis-Carnes Engineering Associates (2012) Phase I Environmental Site Assessment Future Reserve Business Center Former Gaithersburg Nike Missile Launch Site Snouffer School Road Gaithersburg, MD.

May, R.L. Jr. (2011) PCBs in Building Materials: A Consultant Perspective, http://www.ebcne.org/fileadmin/pres/1-6-11_May.pdf

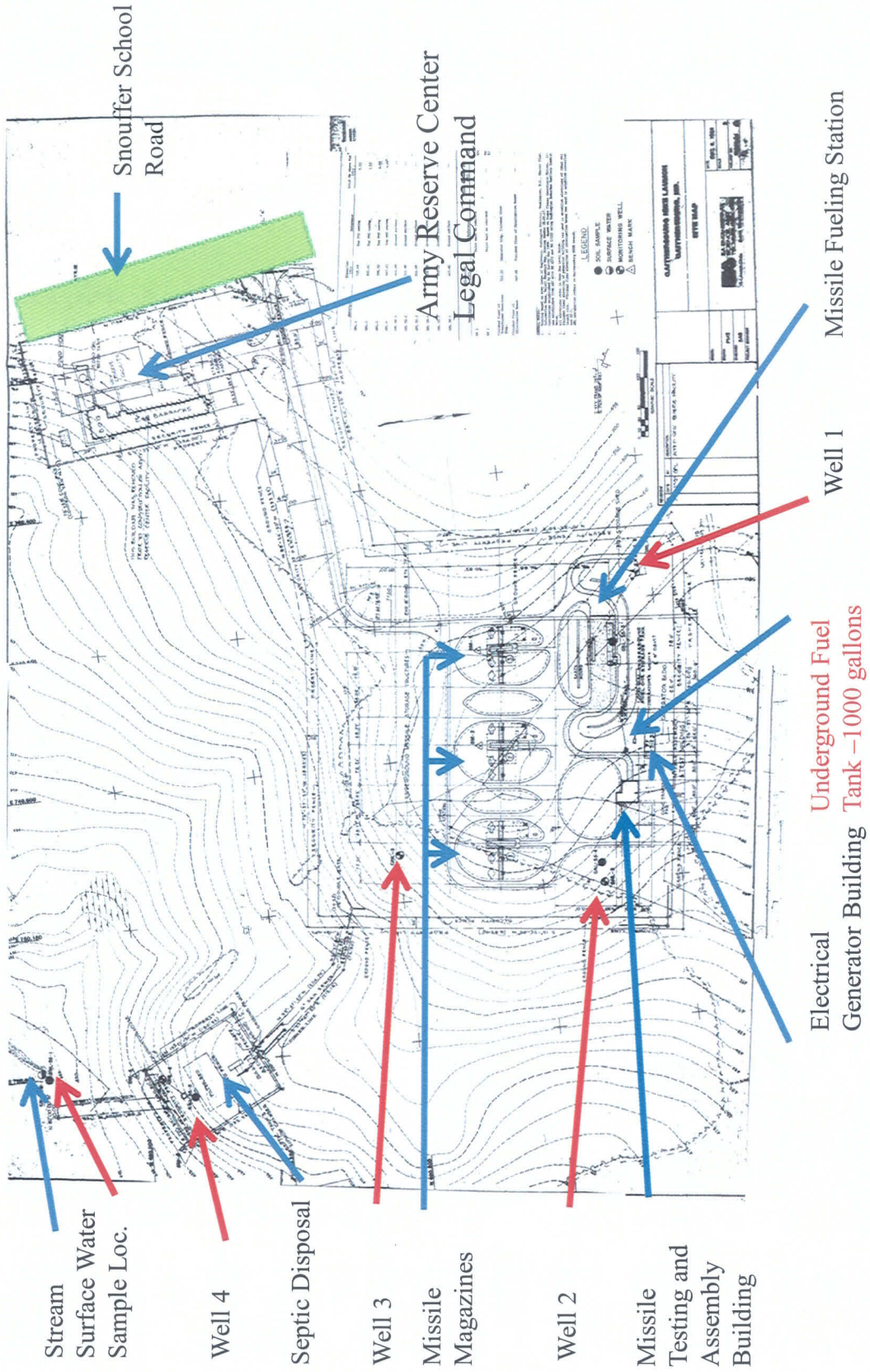
Rodriguez, G. (2010) PCBs in Caulk and Paint, US Army Corp of Engineers <http://e2s2.ndia.org/pastmeetings/2010/tracks/Documents/9922.pdf>

Herrick, R.F. et al. (2004) An Unrecognized Source of PCB Contamination in Schools and Other Buildings, <http://www.ncbi.nlm.nih.gov/pubmed/15238275>

EPA (2012) Facts about PCB in Caulks, <http://www.epa.gov/PCBsincaulk/guide/guide-sect1.htm>

Figure 2: Gaithersburg Nike Launch Site Map

Circa 1960



Nike Site Lighting Recommendations

- 1) Reduce light output from 3.9 lumens per square foot of hardscape to 1.5 lumens per square foot of hardscape.
 - Conform to the Model Lighting Ordinance for Lighting Zone LZ1. LZ1 is the default lighting zone for residential and small towns.
 - Current design is 3.9 lumens per square foot of hardscape, which is close to the light level for LZ3, the default design level for large city commercial districts, the highest ambient light zone short of LZ4, which is a unique category for zones like the Las Vegas Strip.
- 2) Implement automatic controls to provide lighting reduction to less than 50% during unoccupied and unused hours.
 - Reduced glare, light trespass, and annoyance when light is not needed.
 - Restoration to full output upon occupancy alerts neighbors to presence of unusual nighttime activity or potential trespassers.
 - Reduces energy use by more than 50% when light is not needed.
- 3) Turn orientation of fixtures so house-side shield is shielding the residents' houses.
 - Current orientation shields the building, not the property line.
 - Move fixtures to exterior perimeter of hardscape so fixtures can be oriented with shielding of the residents' houses.
- 4) Maintain flat lenses, not sag lenses.
 - Provides less glare.
- 5) Reduce pole height from 14' to 12' on house-side perimeter.
 - Less light trespass and glare in neighboring residents' yards.

FR:
Name:
Address:

Jennifer Alfonso
301-244-8090

manageyouranger@
gmail.com

TO:
Maryland Department of the Environment
Waste Management Administration
Voluntary Cleanup Program
1800 Washington Blvd, Suite 625
Baltimore, MD 21230
Phone: 410-537-3493
Fax: 410-537-3472

RE:
Property Name: Reserve Business Center/Former Nike Missile Launch Area
Address: Snouffer School Road, Gaithersburg, MD 20879 Montgomery County
Tax Parcel Number: Tax Map GU122: Parcels 491 & Parcels 649
Other Names: Former Gaithersburg Nike Missile Launch Area; Former Gaithersburg Research Facility

Dear Gentleperson:

I am writing to express concern regarding the development of the above referenced property without proper clean up. While the applicant intends to use the property for commercial use, it borders areas where there would be exposure to all populations including infants, children, the elderly, and the infirmed. This property shares a border with single family units and community walking trails and is close to town homes. In other words, this property is directly adjacent, with no real separation, to single family units and community walking trails and any rain water run-off, chemical "migration" and dust from development can easily impact the residential community.

A simple Google search shows that Former Nike Missile Sites where tier one exposure could occur instituted a cleanup before land was developed.

The applicant already commissioned two studies by Hills Carnes. There is an inherent problem with these studies as they did not thoroughly address concerns related to exposure of those residents who border the property during development and did not appear to address historical information regarding the cleanup of other Nike Missile Sites that had potential for tier one exposure.

Due to the aforementioned, I have grave concerns because this property, intended for commercial use, is in such close proximity to residential areas and community walking trails. Developing this property without proper cleanup could cause a negative impact on the residents who are directly adjacent to the property and could potentially cause exposure to air and land contaminants if not properly cleaned.

Lastly, previous government studies conducted several years ago showed ground water contamination.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

Gilbert, Carlton

From: Janet <jsgueo@comcast.net>
Sent: Sunday, June 09, 2013 5:00 PM
To: Findley, Steve; Gilbert, Carlton
Subject: Gaithersburg Nike Missile Launch Site Development Proposal

Dear Mr. Findley and Mr. Gilbert

I have these same concerns. My property is located at 8500 Silverfield Circle. Obviously, the contaminants are at the top of the list for me. I also travel Snouffer School Road every day and traffic is already an issue in the morning.

I am not opposed to building on the property but please listen to our issues and keep our homes safe.
Janet W. Sgueo

Dear Mr. Findley and Mr. Gilbert,

I am writing to voice concerns about the proposed development of the Gaithersburg Nike Missile Launch Site.

- 1) I have grave concerns about the likelihood of contaminants in the soil and structures; so it is paramount to have the MDE test the site and determine the presence or absence of contaminants. If there are contaminants, adherence to prescribed environmentally safe removal procedures need to be followed.
- 2) The contractor has stated that he has the rights to army reserve property to allow smooth traffic flow into and out of the property. The question is whether that claim has a legal basis.
- 3) The county is requiring the contractor to negotiate with owners of the orphan property to allow access from that property to Snouffer School Road. The question is whether there is an agreement.
- 4) The contractor has not been willing to enforce the truck route protocol.

Thanks for your consideration of these concerns,

Respectfully, Janet Martin

June 9, 2013

Demolition of the Gaithersburg Nike Missile Silos

Jonathan W. Martin
8503 Silverfield Circle
Montgomery Village, MD 20886

The missile silos are the last visage of the Gaithersburg Nike missile launch site that shielded Washington, DC from possible soviet bomber attack during the early part of the Cold War. The silos are imposing structures and, throughout the 24 year operational history of the Site, the silos were the locus of activity (particularly chemical activity) at the Site. Surprisingly, however, the contamination level of the silos has not been environmentally assessed. This is troublesome, because, before the proposed warehouses can be constructed, the silos will have to be partially or completely demolished. Demolished silos have the potential of becoming a major contaminant emitter.

Demolition of the silos will blanket the surrounding communities with excavation dust. It is highly possible that this dust could include asbestos, PCBs, heavy metals, as well as many other toxic organic materials. For example, PCBs were commonly used in radar vacuum pumps and power sources and in hydraulic fluid; PCB-containing construction materials were commonly used in military structures as fire retardants and algacides on the concrete launch pad and the interior walls of the magazine chamber; asbestos concrete was used in constructing the walls, floor, and ceiling of Nike missile silos; while heavy metals, including lead and chromate pigments, were commonly used in paints.

In addition to contaminants in construction materials, high volumes of toxic chemicals were used on the launch pad and inside the magazine chamber. Toxic chemicals were used in maintaining the missiles, leaked from the rockets and hydraulic lifts pumps, and were poured down the drain with each monthly change of the battery electrolytes (each of the 42 missiles had one battery while the hydraulic elevator used lift the missiles to the surface had several batteries; the electrolyte in every battery had to be changed each month). DoD documents disclose that toxic chemicals were poured down the drain in the center of each missile elevator floor and these contaminants directly entered the groundwater a short distance below the silo floor via a drainage pit.

In the absence of knowledge of the contamination level of the silos, approval of the construction plans for the Site is premature. As mentioned above, the silos are imposing structures and their demolition will dominate the excavation process. Even a partial demolition of these structures will have to be carefully thought-out and implemented to minimize dust contamination of residential houses that are only 50 feet from the Site property line. If the silos are contaminated, it seems likely that the design and construction of the proposed warehouses will be affected and, perhaps, need substantial revision. For this reason alone, approval of the preliminary plans, site plans and other development application for the Gaithersburg Nike launch site is premature.

Statement of Charles Job (8504 Silverfield Circle) on Hydrologic and Underground Chemical Considerations Relative to the Gaithersburg Nike Missile Launch Site, June 12, 2013, to the Montgomery County MD Planning Board

Background. The Gaithersburg Nike Launch Site, located behind the currently operating Army Reserve Center on Snouffer School Road in Gaithersburg, MD, is proposed to be developed for commercial operations. The site was an active defense and defense research site from 1955 to 1979. The equivalent of 5-6 liquid tankers of these chemicals were delivered annually to the site that were not removed from the site. [Law Engineering, 1986; McMaster et al, 1984] Past subsurface explorations and sampling have revealed that the chemicals are present in the underground environment of the site. (EA Engineering, 1990) Over 100 volatile and semi-volatile organic chemicals were tested in 1990 at the Gaithersburg Nike Missile Launch Site. Based on the analytical results, it is difficult to determine whether these chemicals are at the site in significant amounts but 23% of these and other chemicals were observed from samples of the soil at concentrations greater than the Maryland Department of the Environment groundwater cleanup standards. (Martin, et al, 2013) Many of these chemicals are carcinogens. (ATSDR, 2013) None of the investigations of the Gaithersburg Nike Missile Launch Site have addressed the volatilization of the organic chemicals delivered to, used, released and disposed at the site nor the potential to affect the health of adjacent residents now and in the future.

Assessment Needed. A comprehensive understanding of the ground water flow and quality at the site and under adjacent properties is needed. None of the Phase I or II site assessments provided an adequate characterization of the area's hydrogeology. No network of monitoring wells exists beyond the site on the County's property to the east and south nor on the residential area to the north and northeast of the site. Given that contamination reached the stream from the missile site, further investigation of the ground water flow and contaminant migration is needed in all directions from the site. Based on the fundamental principles of hydrology that ground water flows from high potential energy to lower energy zones (in this case, from high elevation to low elevation) and can carry dissolved and undissolved chemical and biological constituents with it, the following questions are raised because they are not addressed in any reports of investigations of the missile site:

- (1) Which are and what is the volume of the volatile and semi-volatile organic chemicals used and disposed at the Gaithersburg Nike Missile Launch Site?
- (2) What are the directions of ground water flow from the missile site?
- (3) Have toxic contaminants moved from the underground zone below the missile site to the adjacent residential properties? If so, what is the configuration of the contaminant plumes?
- (4) Would extended heavy rainfalls cause the water table to rise such that contaminated ground water would enter the homes adjacent to the site to the north and northeast? What are the possible health effects and costs of releasing the contaminants in this way?
- (5) What is the quantity of volatile and semi-volatile organic contaminants from the site that could potentially migrate through the soil and be released into the adjacent homes through their foundations and contribute to unhealthful indoor air concentrations?
- (6) Will construction on the County property be constrained by contaminated ground water that may exist in a shallow position below the property's ground surface?
- (7) Since the stream is a discharge point for ground water in this area, what contaminants have been and are being released by ground water to the stream?
- (8) As the County's property borders the missile site and is in the valley of the stream, to what extent is the County property's subsurface contaminated and contributing as a pathway for contaminants to reach the stream? What is the effect on wildlife watering from the stream and on aquatic life of the stream? What is the extent of impact on downstream water users? Will this circumstance limit the development of the County property or its planned use?

It seems premature to authorize development of this property until all environmental and public health issues have been addressed and resolved.

References

- Agency for Toxic Substances and Disease Registry (ATSDR). 2013. Toxic Substances Portal. <http://www.atsdr.cdc.gov/toxprofiles/index.asp>
- EA Mid-Atlantic Regional Operations EA Engineering, Science, and Technology Inc. 1990. US Army Toxic and Hazardous Materials Agency, **Gaithersburg Nike Control and Launch Area Preliminary Assessment/Site Inspection**, Gaithersburg, MD, Final Report, EA Report 10559.04. <http://www.dtic.mil/dtic/tr/fulltext/u2/a217791.pdf>
- Law Engineering Testing Company. 1986. Investigation of Former Nike Missile Sites for Potential Toxic and Hazardous Waste Contamination Vol. 1, paper prepared for the Department of the Army, Huntsville Division, Corps of Engineers, Contract #DAC87-85-C-0104. http://www5.hanford.gov/pdw/fsd/AR/FSD0001/FSD0037/D199050026/D199050026_19154_198.pdf
- Martin, Jonathan W., Grady, T., Bevington, R., Job, C., Sheehan, D., Donegan, G., and Hinke, R. 2013. Responsible Redevelopment of the Gaithersburg Nike Missile Launch Site: A Retrospective Analysis of Previous Environmental Assessment Study Results. Montgomery Village, Maryland. 42p.
- McMaster, B.N., Sosebee, J.B., Fraser, W.G., Govro, K.C., Jones, C.F., Grainger, S.A., and Civitarese. 1984. Historical Overview of the Nike Missile System, US Army Toxic and Hazardous Materials Agency, Assessments Division, Aberdeen Proving Grounds, MD 21010, Report DRXTH-AS-IA-83016Nike Missiles http://www5.hanford.gov/pdw/fsd/AR/FSD0001/FSD0037/D199049898/D199049898_19126_147.pdf.

EASEMENT No. DACA-31-2-2013-184

DEPARTMENT OF THE ARMY
EASEMENT FOR PUBLIC ROAD OR STREET
LOCATED ON
MG Benjamin L. Hunton Memorial USARC
Montgomery County Maryland

THE SECRETARY OF THE ARMY under and by virtue of the authority vested in the Secretary by Title 10, United States Code Section 2668, having found that the granting of this easement will not be against the public interest, hereby grants to **M&D Real Estate, LLC** hereinafter referred to as the "**Grantee**", an easement for a road or street, containing approximately .47184 of an acre on Tract No(s). A-100-1, hereinafter referred to as the facilities, over, across, in and upon the lands of the United States as identified in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS EASEMENT is granted subject to the following conditions:

1. TERM

This easement is granted in perpetuity.

2. CONSIDERATION

The consideration of this easement shall be the construction, operation and maintenance of a public road for the benefit of the United States and the general public in accordance with the terms herein set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the Grantee, to M&D Real Estate, LLC c/o Concrete General Co., 8000 Beechcraft Avenue, Gaithersburg, Maryland 20879-1624, and if to the United States, to the **District Engineer, Attention: Chief, Real Estate Division, U.S. Army Corps of Engineers, Baltimore District, P. O. BOX 1715, Baltimore, Maryland 21203-1715**, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized

representatives. Any reference to "Grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the District Engineer, Baltimore District, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The Grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The Grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefore by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, to flood the premises and/or to make any other use of the lands as may be

necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. RIGHT TO CONNECT

The United States reserves the right to make such connections between the road or street herein authorized and roads and streets on other government lands as said officer may from time consider necessary, and also reserves to itself rights-of-way for all purposes across, over or under the right-of-way hereby granted; provided that such rights shall be used in a manner that will not create unnecessary interference with the use and enjoyment by the Grantee of the right-of-way herein granted.

12. OTHER AGENCY AGREEMENTS

It is understood that the provisions of the conditions on SUPERVISION BY THE DISTRICT ENGINEER and RIGHT TO ENTER above shall not abrogate or interfere with any agreements or commitments made or entered into between the Grantee and any other agency of the United States with regard to financial aid to the Grantee in connection with the construction, maintenance, or repair of the facilities herein authorized.

13. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the Grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the Grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

14. SOIL AND WATER CONSERVATION

The Grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Grantee during the term of this easement, and the Grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the Grantee shall be corrected by the Grantee as directed by said officer.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal,

state, interstate or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state, interstate, and local laws and regulations. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

16. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. NON-DISCRIMINATION

a. The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

b. The Grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

18. RESTORATION


On or before the termination or revocation of this easement, the Grantee shall, without expense to the United States and within such time as said officer may indicate, restore the premises to the satisfaction of said officer. In the event the Grantee shall fail to restore the premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

19. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the premises.

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, the GRANTOR has caused this Easement to be executed in its name by the Chief of Real Estate, U.S. Army Engineering District Baltimore, this the 20th day of January 2013.

By: 
James S. Turkel
Real Estate Contracting Officer
Chief, Real Estate Division
U.S. Army Corps of Engineers
Baltimore District

ACKNOWLEDGEMENT

Baltimore ~~City~~ *County*)
STATE OF MARYLAND) SS
)

BEFORE ME, a Notary Public in and for the jurisdiction stated above, personally appeared James Turkel, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he)(she)_ executed the said instrument by authority of the Secretary of the Army for the purposes therein expressed as the act and deed of the United States of America.

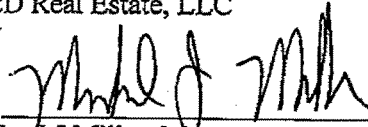
GIVEN under my hand and seal, this day of January 28, 2013.

Mary E. Daly
NOTARY PUBLIC

(SEAL)
My Commission Expires 5/12/16

THIS EASEMENT is also executed by the Grantee this 18 day of January, 2013

M&D Real Estate, LLC

By: 
Michael J Miller, Manager

CORPORATE CERTIFICATE

I Daniel Miller certify that I am the (Secretary or Appropriate officer) of M&D Real Estate, LLC, that Michael Miller who signed the foregoing instrument on behalf of the company was then manager of the company. I further certify that the said officer was acting within the scope of powers delegate to this office by the governing body of the corporation in executing said instrument.

Date 1-18-13



Daniel Miller
Corporate Secretary or Appropriate Officer

ACKNOWLEDGEMENT

County of Montgomery)
STATE OF MARYLAND) SS
)

BEFORE ME, a Notary Public in and for the jurisdiction stated above, personally appeared Michael Miller, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he)(she) executed the said instrument by authority of the Grantee.

GIVEN under my hand and seal, this day of January 18, 2013.

Jennifer Johnson
NOTARY PUBLIC

(SEAL)
My Commission Expires May 7, 2015

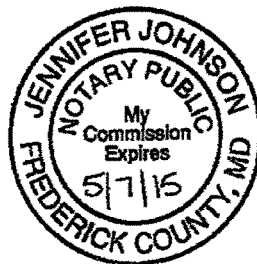


Exhibit A
LEGAL DESCRIPTION

SCHEDULE A

DESCRIPTION OF AN ACCESS EASEMENT

Being a parcel of land, located in Election District No. 1 of Montgomery County, Maryland, hereinafter described in, through, over and across the property being part of a tract of land designated as Tract No. A-100-1 as stipulated in Civil Case No. 8628 by and between the United States of America and John C. Webb, et al, by Declaration dated December 21, 1955 and recorded among the Judgment Records of Montgomery County Maryland in Liber 104 at Folio 293 and also being part of the property conveyed by M & D Real Estate, LLC to the United States of America by deed dated May 12, 2008 and recorded among the Land Records of Montgomery County, Maryland in Liber 35700 at Folio 567 and being more particularly described by Macris, Hendricks and Glascock, P.A. on September 11, 2012 in the Maryland State Plane NAD 83/91 datum as follows:

Beginning at a point at the beginning of the fifth or South 83°51'05" West, 62.00 foot line, then binding with said 5th line and part of the 6th or North 88°26'50" West, 271.06 foot line of said Judgment

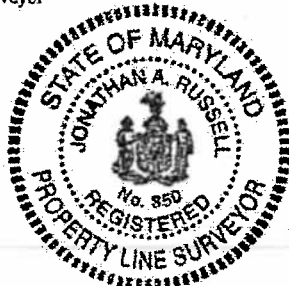
1. South 83°50'29" West, 281.84 feet to a point on the easterly right-of-way line of Snouffer School Road as delineated on a plat of dedication entitled "SNOUFFER SCHOOL ROAD" and recorded among said Land Records as Plat No. 5352, then leaving said 6th line and binding with part of said easterly right-of-way line and crossing to include part of said Tract No. A-100-1
2. North 09°49'26" West, 219.52 feet to a point, then leaving said easterly right-of-way line of Snouffer School Road and continuing to cross and include part of said Tract No. A-100-1
3. South 28°48'20" East, 157.22 feet to a point, then
4. South 84°54'42" East, 29.72 feet to a point, then
5. North 85°15'55" East, 68.90 feet to a point, then

6. South 85°46'30" East, 63.79 feet to a point, then continuing to cross and include part of said Tract No. A-100-1 and part of said Liber 35700 at Folio 567
7. South 69°04'37" East, 89.21 feet to a point on and 15.65 feet from the end of the 4th or South 04°21'09" West, 115.22 foot line of said Liber 35700 at Folio 567, then binding with part of said 4th line
8. South 04°20'34" West, 15.65 feet to the point of beginning; containing an area of 20,553 square feet or 0.47184 of an acre of land and as delineated on Schedule B, attached hereto and made a part hereof by this reference.

Certified correct to the best of our professional knowledge, information and belief and this description was performed by me or under my supervision and is in conformance with Title 9, Subtitle 13, Chapter 6, Section 12 of the Minimum Standards of Practice for Land Surveyors. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document does not apply to any other document.

Maury, Hendricks and Glascock, P.A.
Jonathan A. Russell, Property Line Surveyor
Md. Registration No. 350
Expiration Date: 10/15/2012

SA_EAS-ACC_JR-2012-09-19.doc
06.220.13



UNITED STATES OF AMERICA
 EQUITY CASE
 L. 104 F. 293
 TRACT NO. A-100-1

UNITED STATES OF AMERICA
 L. 35700 F. 567

ACCESS EASEMENT
 20,553 sq. ft.

LOT 11, BLK. A
 AIRPARK NORTH
 BUSINESS PARK
 P.No. 23660

M&D REAL
 ESTATE, LLC
 L. 28862 F. 221

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 04°20'34" W	15.65'

SCHEDULE B
 ACCESS EASEMENT
 PART OF THE
 UNITED STATES OF AMERICA PROPERTY

SCALE: 1" = 50' SEPTEMBER, 2012
 MONTGOMERY COUNTY, MARYLAND



MHG

Macris, Hendricks & Glascock, P.A.
 Engineers • Planners
 Landscape Architects • Surveyors

9220 Wightman Road, Suite 120
 Montgomery Village, Maryland
 20886-1279

Phone 301.670.0840
 Fax 301.948.0693
 www.mhgpca.com

2006.220.13

Parcel Identification Numbers: 01-03600014
 01-03467902
 01-00010112

Title Insurer: None

After recordation,
 Please return original to:
 Stuart R. Barr, Esq.
 Lerch Early & Brewer
 3 Bethesda Metro Center, Suite 460
 Bethesda, Maryland 20814

EASEMENT AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND ACCESS

This Easement Agreement for Construction, Maintenance and Access (“Easement”) is made as of the 13th day of June, 2013, by and between **MONTGOMERY COUNTY, MARYLAND**, a political subdivision of the State of Maryland having a mailing address of 101 Monroe Street, 10th Floor, Rockville, Maryland 20850 (the “County”) and **M&D REAL ESTATE, LLC**, a Maryland limited liability company having a mailing address of c/o Concrete General, Inc., 8000 Beechcraft Avenue, Gaithersburg, Maryland 20879-1624 (“M&D”).

Background

WHEREAS, the County is the owner, in fee simple, of record and in fact, of certain real property located in Montgomery County, Maryland, formerly known as Lot 11, Block A (“Lot 11”) and *Lilienthal Court* (“*Lilienthal Court*”) as delineated on a plat of subdivision entitled “AIRPARK NORTH BUSINESS PARK” as per plat recorded as Plat 23660 among the Land Records of Montgomery County, Maryland (Lot 11 and *Lilienthal Court* hereinafter collectively referred to as the “County Property”). The County Property being a part of that land conveyed to

the County by Webb Tract, LLC by Deed dated October 1, 2009 and recorded among the Land Records of Montgomery County at Liber 38122, folio 36.

WHEREAS, M&D is the owner, in fee simple, of a certain parcel of real property located adjacent to the County Property, identified as Parcel P649 on Tax Map GU12, as well as a certain parcel of real property identified as Parcel P491 on Tax Map GU12 (collectively, the "M&D Property"). M&D intends to develop the M&D Property for warehouse/ industrial use purposes in accordance with its development approvals (the "Project").

WHEREAS, the County has agreed to provide certain access and other rights to M&D across the County Property as set forth in this Easement in furtherance of the development, construction, leasing and operation of the Project.

NOW, THEREFORE, in consideration of the respective grants and agreements contained herein, and other good valuable consideration the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the County does hereby grant the following easements and the parties hereto enter into the following agreements:

1. Construction and Maintenance Easement. The County hereby grants to M&D a construction easement over, on, across and through a portion of the County Property as shown and described as "Ingress-Egress and Utilities Easement" on *Exhibit A* attached hereto (the "Easement Area") for the construction and placement of a private roadway and associated roadway improvements, including, but not limited to, sidewalks, lighting, landscaping, signage including entrance signage, sediment control, stormwater management, storm drainage and other related improvements (collectively "Roadway Improvements") in order to facilitate vehicular and pedestrian ingress and egress to and from the Project. The County further grants to M&D, its successors and assigns, a perpetual easement to maintain, at its own expense, the Roadway

Improvements in good condition and to repair and replace the Roadway Improvements as necessary to provide vehicular and pedestrian ingress and egress to the Project, and M&D agrees to so maintain, at its own expense, the Roadway Improvements in good condition and to repair and replace the Roadway Improvements as necessary to provide vehicular and pedestrian ingress and egress to the Project.

2. Ingress and Egress Easement. The County hereby grants, for the benefit of M&D, its successors, assigns and invitees, and the Project, an exclusive perpetual easement over, on, across and through the Easement Area for vehicular and pedestrian ingress and egress to and from the Project subject to the County's right to enter the Easement Area, upon reasonable notice to M&D, to inspect the Easement Area and, in the event of a bona fide emergency situation, to temporarily close vehicular and/or pedestrian access to the Easement Area for such time as is necessary to resolve the emergency situation. Otherwise, the County shall not erect any walls, fences, barriers or other obstructions in the Easement Area so as to interfere with the free flow of vehicular and pedestrian traffic without M&D's consent.

3. Insurance/ Indemnification. M&D agrees to maintain liability insurance coverage for its activities in the Easement Area, and to defend, indemnify and hold harmless the County for any claims brought against the County for damages or liabilities arising out of the activities of M&D, its employees, agents, contractors or its invitees in the Easement Area unless arising from the gross negligence or intentional misconduct of the County.

4. Run With The Land. Each of the easements granted herein shall be deemed covenants running with the land. The provisions of this Easement, and the granting and creating of the easements hereunder, are not and will not be construed as a dedication of any portions of the Property for public purposes, but are intended only to provide the private rights set forth

herein. This Easement shall be recorded among the Land Records of Montgomery County, Maryland at M&D's expense.

5. Further Assurances. The County warrants specially the Easement Area and agrees to execute such further assurance of the same as may be requisite. Each of the parties hereto shall, at the request and at the expense of the other, execute, acknowledge and deliver such further documents, and take such other actions as may be necessary or desirable to evidence or implement the terms of this Easement.

6. Amendment; Termination. No modification, waiver, or termination of this Easement shall be effective unless it is in writing signed by the party against whom such modification, waiver and termination is sought to be enforced. Notwithstanding the preceding sentence, if the Easement Area ceases to be used or maintained for the purposes set forth herein, this Easement shall automatically terminate and the property subject to this Easement shall revert back to the County. Before termination can take effect, the County must provide M&D with at least 90 days advance written notice in the event the County believes the Easement Area is no longer used or maintained, in order to allow M&D the opportunity to respond. In the event that this Easement is terminated, either by agreement of the parties or automatically as described herein, M&D, and its successors and assigns, agree to remove any and all of the Roadway Improvements and to restore the Easement Area to substantially the same condition as existed prior to this Easement being granted.

7. Titles. Titles, headings and captions in this Easement are only for convenience and shall not be deemed to modify the intent of this Easement.

8. Severability. The terms and provisions of this Easement are severable and in the event that any term or provision of this Easement is invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.

9. Notices. Any notices given pursuant to this Easement shall be effective and valid if in writing, signed by the party giving such notice and delivered in person, sent by a nationally recognized overnight courier or delivery service, or sent by certified mail, postage prepaid, return receipt requested, to the following address:

To Montgomery County: Ramona Bell-Pearson
 Assistant Chief Administrative Officer
 101 Monroe Street, 2nd Floor
 Rockville, Maryland 20850

With a copy to: Office of the County Attorney
 101 Monroe Street, 3rd Floor
 Rockville, Maryland 20850
 Attention: County Attorney

To M&D: Michael J. Miller
 M&D Real Estate, LLC
 c/o Concrete General Co.
 8000 Beechcraft Avenue
 Gaithersburg, Maryland 20879-1624

With a copy to: Stuart Barr, Esq.
 Lerch Early & Brewer, Chtd.
 3 Bethesda Metro Center, Suite 460
 Bethesda, MD 20814-5367

All such notices shall be considered given on the date when delivered, if delivered in person, the day after deposit with the delivery service, if sent by an overnight courier or delivery service, or, three (3) days after deposit in the United States mail if sent by certified mail addressed to the parties to be notified at the addresses set forth above or to any other address as any party may hereafter specify to the others by like notice.

10. Counterparts. This Easement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

11. Successors and Assigns. The rights, benefits and obligations hereunder shall extend to the respective successors and assigns of the parties hereto.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the parties has signed, sealed and delivered this Easement, as its own respective free act and deed, as of the date first written above.

Approved as to Form and Legality
Office of the County Attorney

MONTGOMERY COUNTY:

By: [Signature]

By: Ramona Bell-Pearson
Ramona Bell-Pearson
Assistant Chief Administrative Officer

STATE OF Maryland :

:
: ss:

COUNTY OF Montgomery :

I HEREBY CERTIFY THAT on this 13th day of June, 2013, before the undersigned, a Notary Public of the State and County aforesaid, personally appeared Ramona Bell-Pearson, who acknowledged himself/herself to be the ACAO of MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland, and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Julie L. White

Notary Public

MY COMMISSION EXPIRES:

4/30/2017

M&D REAL ESTATE, LLC:

By: Michael J. Miller
Michael J. Miller
Title: Managing Member

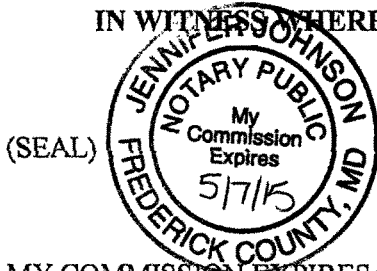
STATE OF Maryland :

: SS:

COUNTY OF Frederick :

I HEREBY CERTIFY THAT on this 24th day of May, 2013, before the undersigned, a Notary Public of the State and County aforesaid, personally appeared Michael J. Miller, who acknowledged himself/herself to be the Managing Member of M&D REAL ESTATE, LLC, a Maryland limited liability company, and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Jennifer Johnson
Notary Public

MY COMMISSION EXPIRES: May 7, 2015

ATTORNEY CERTIFICATION

This Easement was prepared by or under the supervision of an attorney admitted to practice before the Court of Appeals of Maryland.

Stuart R. Barr
Stuart R. Barr

SCHEDULE A

DESCRIPTION OF AN INGRESS-EGRESS AND UTILITIES EASEMENT

Being a parcel of land, located in Election District No. 1 of Montgomery County, Maryland, hereinafter described in, through, over and across the property conveyed by WEBB TRACT, L.L.C. to Montgomery County, Maryland by deed dated October 1, 2009 and recorded among the Land Records of Montgomery County, Maryland in Liber 38122 at Folio 036; and also being part of Lot 11, Block A and Lilienthal Court, as delineated on a plat of subdivision entitled "AIRPARK NORTH BUSINESS PARK as recorded among said Land Records as Plat No. 23660 and being more particularly described by Macris, Hendricks and Glascock, P.A. in the Maryland State Plane NAD83/91 datum as follows:

Beginning at a point on and 115.74 feet from the end of the westerly or North 09°48'21" West, 605.23 foot plat line of said Lot 11, Block A; said point also being on the easterly right-of-way line of Snouffer School Road, then binding with part of said westerly line of Lot 11, Block A and the easterly right-of-way line of Snouffer School Road

1. North 09°48'21" West, 115.74 feet to a point on the southerly limits of the United States of America property acquired by Equity Case as filed in Liber 104 at Folio 293, then binding with part of the southerly limits of said USA property and the northerly line of said Lot 11, Block A
2. North 83°50'29" East, 211.64 feet to a point at the northeasterly corner of said Lot 11, Block A and the southwesterly corner of a conveyance from WEBB TRACT, L.L.C. to M&D REAL ESTATE, LLC by deed dated December 10, 2004 and recorded among said Land Records in Liber 28862 at

Folio 221, then binding with the northerly limits of said Lot 11, Block A and the southerly limits of said Liber 28862 at Folio 221

3. South $68^{\circ}50'12''$ East, 149.70 feet to a point on the northerly right-of-way line of Lilienthal Court as delineated on said Plat No. 23660, then continuing to bind with the southerly limits of said Liber 28862 at Folio 221 and the northerly limits of said Lilienthal Court
4. 136.46 feet along the arc of non-tangent curve deflecting to the right, with a radius of 75.00 feet and a chord bearing and distance of North $73^{\circ}17'05''$ East, 118.40 feet to a point, then
5. 28.72 feet along the arc of tangent curve deflecting to the left, with a radius of 35.00 feet and a chord bearing and distance of South $78^{\circ}06'04''$ East, 27.92 feet to a point, then
6. North $78^{\circ}23'30''$ East, 6.24 feet to a point at the southwest corner of Lot 9, Block A as delineated on said Plat No. 23660, then leaving said corner and the southerly limits of said Liber 28862 at Folio 221 to cross and include part of said Lilienthal Court
7. South $05^{\circ}12'10''$ East, 10.00 feet to a point, then continuing to cross and include part of said Lilienthal Court and Lot 11, Block A
8. South $80^{\circ}52'19''$ West, 388.79 feet to a point, then

9. South 66°40'01" West, 102.57 feet to the point of beginning; containing an area of 28,773 square feet or 0.66054 of an acre of land and as delineated on Schedule B attached hereto and made a part hereof by this reference.

Certified correct to the best of our professional knowledge, information and belief and this description was performed by me or under my supervision and is in conformance with Title 9, Subtitle 13, Chapter 6, Section 12 of the Minimum Standards of Practice for Land Surveyors. The seal and signature are non-faded colored; the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document does not apply to photocopies.

Matthew Henderson and Gascook, P.A.
Jonathan A. Russell, Property Line Surveyor
Registration No. 350
Expiration Date: 10/15/2012

SA_EAS-1-E_JR-2012-01-11.doc
06.220.13



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 78°23'30" E	6.24'
L2	S 05°12'10" E	10.00'



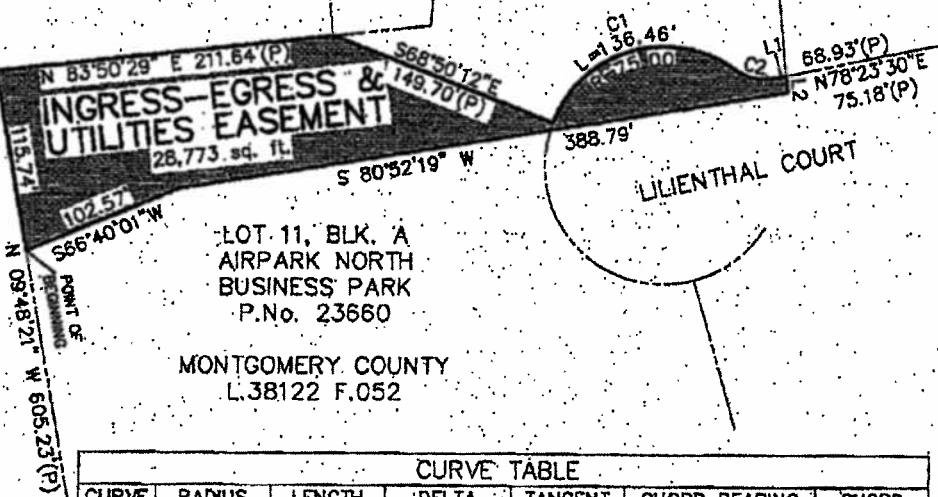
USA
EQUITY CASE
L. 104 F. 293
TRACT NO. A-100-1

UNITED STATES OF AMERICA
L. 35700 F. 567

PROPOSED LOT 10
M&D REAL ESTATE, LLC
L. 28862 F. 221

LOT 9, BLK. A
AIRPARK NORTH BUSINESS PARK
P.No. 23660

SNUFFER SCHOOL ROAD
P.No. 5353 & 5354



CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
C1	75.00'	136.46'	104°14'47"	98.42'	N 73°17'05" E	118.40'
C2	35.00'	28.72'	47°00'49"	15.22'	S 78°06'04" E	27.92'

SCHEDULE B
INGRESS-EGRESS & UTILITIES EASEMENT
PART OF BLOCK A
AIRPARK NORTH BUSINESS PARK

SCALE: 1" = 100' JANUARY, 2012
MONTGOMERY COUNTY, MARYLAND

MHG Macris, Hendricks & Glascock, P.A.
Engineers & Planners
Landscape Architects & Surveyors

8229 Whitman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.870.0640
Fax 301.888.0983
www.mhgsa.com

JOB NO. 06.220.13

P:\06220\06220_13_01.dwg Copyright © 2011 Macris, Hendricks & Glascock, P.A.

DECLARATION OF PUBLIC UTILITY EASEMENT

THIS DECLARATION OF PUBLIC UTILITY EASEMENT (“Declaration”) is made this 18th day of June, 2012, by Montgomery County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland (hereinafter referred to as the “County”).

WITNESSETH:

WHEREAS, the County is the owner, in fee simple, of record and in fact, of a certain parcel of real property located in Montgomery County, Maryland, formerly known as Lot 11, Block A (“Lot 11”) and Lilienthal Court (“Lilienthal Court”) as delineated on a plat of subdivision entitled “AIRPARK NORTH BUSINESS PARK” as per plat record as Plat 23660 among the Land Records of Montgomery County, Maryland (Lot 11 and Lilienthal Court hereinafter collectively referred to as the “County Property”). The County Property being a part of that land conveyed to the County by Webb Tract, LLC by Deed dated October 1, 2009 and recorded among the Land Records of Montgomery County at Liber 38122, folio 36;

WHEREAS, M&D is the owner, in fee simple, of a certain parcel of real property located adjacent to the County Property, identified as Parcel P649 on Tax Map GU12, as well a certain parcel of real property identified as Parcel P491 on Tax Map GU12 (the “M&D Property”). M&D intends to develop the M&D Property for warehouse/ industrial use purposes (the “Project”) in accordance with its development approvals;


WHEREAS, by even date herewith, the County and M&D have entered into an Easement Agreement for Construction, Maintenance and Access whereby the County is granting to M&D an Easement on, over, through and across a portion of the County Property as more particularly described in Exhibit A attached hereto (the “Easement Area”), for the purpose of constructing a private driveway and associated roadway improvements to the Project, together with the right to access and maintain the Easement.

WHEREAS, County and M&D also desire to establish an easement over the Easement Area for the installation, maintenance, repair and replacement of public utility lines by the applicable utility companies.


NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County hereby grants to all applicable utility companies, their respective successors, agents and assigns, an easement for use as a Public Utility Easement in, on and over the Easement Area, as is more particularly described on Exhibit A. Such grant herein shall be upon those terms and conditions set forth in a certain document entitled “Declaration of Terms and Provisions for Public Utility Easements” and recorded among the Land Records of Montgomery County, Maryland in Liber 3834 at Folio 457.

IN WITNESS WHEREOF, County has executed and acknowledged this Declaration, on the day and year first above written.

Approved as to form and legality
Office of the County Attorney



MONTGOMERY COUNTY:


Ramona Bell-Pearson
Assistant Chief Administrative
Officer

STATE OF MARYLAND

*


*

COUNTY OF MONTGOMERY

*

I HEREBY CERTIFY that on this 13th day of June, 2013, before me, the subscriber, a Notary Public in and for the aforesaid jurisdiction, personally appeared Ramona Bell-Pearson, Assistant Chief Administrative Officer of Montgomery County, Maryland, who executed the foregoing document on behalf of Montgomery County, Maryland, for the purposes therein contained, and further acknowledged the foregoing document to be the act and deed of said Montgomery County.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public

My Commission Expires: 4/30/2017

Property Address:
Parcel ID No.:

AFTER RECORDING, PLEASE MAIL TO:

Montgomery County Government
Attn: Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850

ATTORNEY CERTIFICATION

This Declaration was prepared by or under the supervision of an attorney admitted to practice before the Court of Appeals of Maryland.

Stuart R. Barr

SCHEDULE A

DESCRIPTION OF AN INGRESS-EGRESS AND UTILITIES EASEMENT

Being a parcel of land, located in Election District No. 1 of Montgomery County, Maryland, hereinafter described in, through, over and across the property conveyed by WEBB TRACT, L.L.C. to Montgomery County, Maryland by deed dated October 1, 2009 and recorded among the Land Records of Montgomery County, Maryland in Liber 38122 at Folio 036; and also being part of Lot 11, Block A and Lilienthal Court, as delineated on a plat of subdivision entitled "AIRPARK NORTH BUSINESS PARK as recorded among said Land Records as Plat No. 23660 and being more particularly described by Macris, Hendricks and Glascock, P.A. in the Maryland State Plane NAD83/91 datum as follows:

Beginning at a point on and 115.74 feet from the end of the westerly or North 09°48'21" West, 605.23 foot plat line of said Lot 11, Block A; said point also being on the easterly right-of-way line of Snouffer School Road, then binding with part of said westerly line of Lot 11, Block A and the easterly right-of-way line of Snouffer School Road

1. North 09°48'21" West, 115.74 feet to a point on the southerly limits of the United States of America property acquired by Equity Case as filed in Liber 104 at Folio 293, then binding with part of the southerly limits of said USA property and the northerly line of said Lot 11, Block A
2. North 83°50'29" East, 211.64 feet to a point at the northeasterly corner of said Lot 11, Block A and the southwesterly corner of a conveyance from WEBB TRACT, L.L.C. to M&D REAL ESTATE, LLC by deed dated December 10, 2004 and recorded among said Land Records in Liber 28862 at

Folio 221, then binding with the northerly limits of said Lot 11, Block A and the southerly limits of said Liber 28862 at Folio 221

3. South $68^{\circ}50'12''$ East, 149.70 feet to a point on the northerly right-of-way line of Lilienthal Court as delineated on said Plat No. 23660, then continuing to bind with the southerly limits of said Liber 28862 at Folio 221 and the northerly limits of said Lilienthal Court
4. 136.46 feet along the arc of non-tangent curve deflecting to the right, with a radius of 75.00 feet and a chord bearing and distance of North $73^{\circ}17'05''$ East, 118.40 feet to a point, then
5. 28.72 feet along the arc of tangent curve deflecting to the left, with a radius of 35.00 feet and a chord bearing and distance of South $78^{\circ}06'04''$ East, 27.92 feet to a point, then
6. North $78^{\circ}23'30''$ East, 6.24 feet to a point at the southwest corner of Lot 9, Block A as delineated on said Plat No. 23660, then leaving said corner and the southerly limits of said Liber 28862 at Folio 221 to cross and include part of said Lilienthal Court
7. South $05^{\circ}12'10''$ East, 10.00 feet to a point, then continuing to cross and include part of said Lilienthal Court and Lot 11, Block A
8. South $80^{\circ}52'19''$ West, 388.79 feet to a point, then

9. South 66°40'01" West, 102.57 feet to the point of beginning; containing an area of 28,773 square feet or 0.66054 of an acre of land and as delineated on Schedule B attached hereto and made a part hereof by this reference.

Certified correct to the best of our professional knowledge, information and belief and this description was performed by me or under my supervision and is in conformance with Title 9, Subtitle 13, Chapter 6, Section 12 of the Minimum Standards of Practice for Land Surveyors. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document does not apply to photocopies.

Morris, Hennessy and Glascock, P.A.
Jonathan A. Russell, Property Line Surveyor
No. Registration No. 350
Expiration Date: 10/15/2012

SA_EAS-I-E_JR-2012-01-11.doc
06.220.13



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 78°23'30" E	6.24'
L2	S 05°12'10" E	10.00'



USA
EQUITY CASE
L. 104 F. 293
TRACT NO. A-100-1

UNITED STATES OF AMERICA
L. 35700 F. 567

PROPOSED
LOT 10
M&D REAL ESTATE, LLC
L. 28862 F. 221

LOT 9, BLK. A
AIRPARK NORTH
BUSINESS PARK
P.No. 23660

SNUFFER SCHOOL ROAD
P.No. 5353 & 5354

N 83°50'28" E 211.64'(P)
S 68°50'12" E 149.70'(P)
INGRESS-EGRESS & UTILITIES EASEMENT
28,773 sq. ft.

115.74
102.57
S 66°40'01" W
POINT OF BEGINNING
N 08°48'21" W 605.23'(P)

LOT 11, BLK. A
AIRPARK NORTH
BUSINESS PARK
P.No. 23660

MONTGOMERY COUNTY
L. 38122 F. 052

L1 36.46'
L2 75.00'
C1
C2
68.93'(P)
N 78°23'30" E
75.18'(P)

LILIENTHAL COURT

CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
C1	75.00'	136.46'	104°14'47"	96.42'	N 73°17'05" E	118.40'
C2	35.00'	28.72'	47°00'49"	15.22'	S 78°06'04" E	27.92'

SCHEDULE B
INGRESS-EGRESS & UTILITIES EASEMENT
PART OF BLOCK A
AIRPARK NORTH BUSINESS PARK

SCALE: 1" = 100' JANUARY, 2012
MONTGOMERY COUNTY, MARYLAND



Macris, Hendricks & Glascock, P.A.
Engineers • Planners
Landscape Architects • Surveyors

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1270

Phone 301.670.8640
Fax 301.948.0983
www.mhga.com

JOB NO. 06.220.13