



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

MCPB No. 18-016
Preliminary Plan No. 120170130
Hanson Farm
Date of Hearing: March 1, 2018

MAR 16 2018

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on January 11, 2017, Toll Brothers ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 187 lots on 170.77 acres of land in the PD-2 zone, located in the northwest quadrant of the intersections of Quince Orchard Road, Dufief Mill Road and Travilah Road ("Subject Property"), in the Rural West Policy Area and the 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Subdivision Regulation Amendment 16-01, adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19, replaced Chapter 50, Subdivision of Land in its entirety, effective February 13, 2017 ("Subdivision Regulations"); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170130, Hanson Farm ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on January 11, 2017; and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated February 16, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency

Christina Sonnet 2/28/18

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WHEREAS, on March 1, 2018, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170130 to create 187 lots on the Subject Property, subject to the following conditions:¹

- 1) This approval is limited to 187 lots for 186 new dwelling units and one existing unit, including 121 one-family detached and 66 one-family attached dwellings, including a minimum of 12.5% MPDUs.
- 2) The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120170130, approved as part of this Preliminary Plan, subject to the following conditions:
 - a. Prior to Certified Preliminary Plan, the Applicant must revise the Preliminary Forest Conservation Plan to revise the notation regarding approval of a forest bank on the Property to indicate there is potential for the creation of a forest bank for 7.02 acres of forest planting. Final approval of the amount and specific areas to be included in the bank will be determined after coordination with the M-NCPPC forest bank manager.
 - b. The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting, wetlands, and stream valley buffers, as identified on the approved Preliminary & Final Forest Conservation Plan. The areas located around the perimeter of the existing ponds and the areas identified to be dedicated to the M-NCPPC Department of Parks, may be excluded from the Category I Conservation Easement, except for the wetlands identified around the perimeter of the existing ponds which must be protected in the Easement. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel for any Category I Conservation Easement located within Phase I of the Subject Property, as identified by the phasing plan, must be recorded in the Montgomery County Land Records by deed prior to the start of any clearing or grading within the Phase I geography on the Property. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel for any Category I Conservation Easement located within Phase II of the Subject Property, as identified by the phasing plan, must be

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- recorded in the Montgomery County Land Records by deed prior to the start of any clearing or grading within the Phase II geography on the Property. The Liber Folio for the easements must be referenced on the record plat(s).
- c. In the event that the existing farm pond(s) are no longer retained, the Applicant shall protect the pond area and any associated stream valley buffer area consistent with the Environmental Guidelines with a Category I Conservation Easement. The Final Forest Conservation Plan will need to be amended to show any proposed restoration work.
 - d. Forest plantings must be provided over all unforested stream valley buffers as shown on the approved Preliminary/Final Forest Conservation Plan.
 - e. Mitigation must be provided on the Property for the removal of 28 trees subject to the variance provision. Mitigation must be provided in the form of planting native canopy trees totaling 263 caliper inches, with a minimum planting stock size of three caliper inches. The trees must be planted on the Property, in locations shown on the approved Preliminary/Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector.
- 3) The Applicant must comply with the Binding Elements of County Council Resolution No. 16-1393 approving Local Map Amendment No. G-884.
 - 4) The record plat(s) must reflect serialization and liber/folio reference for all TDRs utilized by the development.
 - 5) Final number of MPDUs and TDRs to be determined at the time of site plan.
 - 6) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 18, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 7) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
 - 8) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated February 12, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.

- 9) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated November 30, 2017, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
- 10) The Applicant must dedicate and show on the record plat the following roadway dedications:
 - a. 40 feet of dedication from the centerline of Quince Orchard Road along the Subject Property's entire frontage.
 - b. 40 feet of dedication from the centerline of Travilah Road along the Subject Property's entire frontage.
 - c. 35 feet of dedication from the centerline of Turkey Foot Road along the Subject Property's entire frontage.
- 11) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of the following bicycle and pedestrian improvements along the existing roadway frontages:
 - a. An 8-foot wide shared use path along the property frontage on Quince Orchard Road, between the southern Property boundary and the northernmost Property access (Street A) from Quince Orchard Road.
 - b. A 10-foot wide shared use path along the Subject Property frontage on Travilah Road from the new traffic circle with Turkey Foot Road and the Subject Property entrance to a location off-site approximately 300 feet east of the Subject Property boundary.
 - c. A 10-foot wide shared use path completely encircling the new traffic circle at the intersection of Travilah Road, Turkey Foot Road and the Subject Property entrance.
- 12) The Applicant must dedicate all new public road rights-of-way to the full width designated on the Certified Preliminary Plan, as specified in MCDOT's approval letter.
- 13) All new public streets must have a five-foot wide, ADA compliant sidewalk on both sides of the street except for the following segments:
 - a. The south and east sides of Street A, between the traffic circle and the intersection of Street C do not require a sidewalk
 - b. The street frontages with Parcel A block K do not require a sidewalk

- c. The north side of Street D from Street B to the new trailhead shall include an eight-foot wide shared use path in a Public Improvement Easement (PIE) located adjacent to the street right-of-way.
 - d. The sides of Street A and Street B that are adjacent to the 10-acre local park shall include an eight-foot wide shared use path in a PIE located adjacent to the street right-of-way.
- 14) The Record Plat must show all private alleys within their own parcel(s).
 - 15) The Record Plat must reflect an ingress/egress easement over all private alleys, designated for the benefit of all properties with access to the alleys.
 - 16) The Record Plat must ensure the recording of minimum 10-foot wide Public Improvement Easements along the segments of Streets A, B and D as identified on the Certified Preliminary Plan for the construction of eight-foot wide shared use paths.
 - 17) The Applicant must provide all Private Alleys, including any storm drainage facilities, private utility systems and other necessary improvements as shown on either the Preliminary Plan or the subsequent Site Plan within the private alley parcels.
 - 18) The certified Preliminary Plan must contain the following note:
“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 site plan approval. 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.”
 - 19) Final approval of the size and location of buildings and open space amenities will be determined at site plan.
 - 20) Prior to recordation of any plat, Site Plan No. 820180160 must be certified by M-NCPPC Staff.
 - 21) Record plat must show necessary easements.
 - 22) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.

- 23) The Applicant must dedicate to M-NCPPC the 19.56-acre portion of the Subject Property identified as "Parcel C, Block A" and "Parcel F, Block A" on the approved Preliminary Plan for use as a Stream Valley Park. The land to be dedicated for the Stream Valley Park must be dedicated to the MNCPPC through notation on the plat and by conveyance at the time of record plat in a form of deed approved by the Office of General Counsel. Plat(s) for the Muddy Branch Stream Valley Park must be recorded prior to or concurrently with recordation of the lots located on Block A within Phase II. At the time of conveyance, the Applicant must ensure the property is free of any trash and unnatural debris.
- 24) The Applicant must dedicate to M-NCPPC a minimum of 10 acres identified as "Parcel A, Block H" on the approved Preliminary Plan for use as a Local Park, per the Potomac Subregion Master Plan. The land to be dedicated for the Local Park must be dedicated to the MNCPPC through notation on the record plat and must be conveyed by deed approved by the Office of General Counsel in accordance with the development trigger specified in the Site Plan conditions. At the time of conveyance, the Applicant must ensure the property is free of any trash and unnatural debris, and the Applicant must have completed the improvements on the property in accordance with the Certified Site Plan.
- 25) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for 120 months (10 years) from the date of mailing of the Resolution. Within 72 months (six years), the Applicant must have pulled at least 90 building permits on the Subject Property.
- 26) The Preliminary Plan Validity period will remain valid for up to 96 months (8 years) from the date of mailing of the Resolution. The Applicant must record plats for at least 45 lots within the first 36 months (3 years) of the date of the Resolution, an additional 45 lots within 60 months (5 years) from the date of the Resolution, and must complete record plats for all 187 lots within 96 months (8 years) of the date of the Resolution.
- 27) The Certified Preliminary Plan drawings must be updated to include the increased lot area for lots 19 – 24 and 58 – 61 in Block A, and lots 3 – 11 in Block B

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. The Preliminary Plan substantially conforms to the Master Plan.

The Preliminary Plan substantially conforms with the recommendations of the Master Plan. The Subject Property is located in the North Potomac area of the Master Plan, which is recognized as a unique area because of its higher densities not typical of the rest of Potomac. The Master Plan has a specific section for the Hanson Farms, which is what the Master Plan calls the Subject Property on pages 70-75 of the Master Plan. The specific recommendations include one list of recommendations to consider during initial planning and a second list to consider during the design and development. The following are the initial planning recommendations considered by the Planning Board for consistency with the Master Plan:

- *Rezone the site from RE-2 to PD-2 with a TDR option, to encourage more compact development, expand the regional stream valley system, protect sensitive areas, provide community facilities, and promote walking and biking.*

The Subject Property was rezoned to PD-2, with TDRs with LMA G-884 in 2010. Binding elements of the development plan included additional dedication to the Muddy Branch SVP, a minimum 50% green area, dedication of a new local park. The Preliminary Plan meets these binding elements and is also requiring shared use paths along the public road frontages to contribute to the local and regional walking and biking infrastructure.

- *Limit allowable density to a maximum of 170 dwelling units, including MPDUs... TDR density incentives may be used to increase the maximum number of dwelling units by 10 percent, to 187.*

The Preliminary Plan provides for a total of 187 dwelling units, utilizing 17 TDRs.

- *Include large lots at the perimeter to buffer existing residents, generally on the south and east*

Binding elements of LMA G-884 set specific recommendations for the portions of the Subject Property adjacent to existing residential to ensure compatibility. The Preliminary Plan locates homes on two-acre lots in the southwestern portion of the Property to be compatible with existing RE-2 adjacent zones, and is only providing lots for one-family detached dwellings along the southeast border, adjacent to existing residential homes.

- *Retain both existing Hanson residences and incorporate them into the fabric of the new community*

The Application retains one of the Hanson residences and places it in the middle of an approximately 10-acre conservation parcel that is identified as the Hanson Reserve. Zoning case G-884 approved the removal of the other Hanson Farm residence to best utilize the land for the 10-acre local park.

- *Dedicate land for the North Potomac Community Recreation Center if the County Council does not select the preferred site for the center on Travilah Road.*

The community recreation center was built at the Travilah Road location; however, land is being dedicated in its place for a new 10-acre local park.

- *Maintain adequate setbacks between playing fields and the adjacent homes*

No designated playing fields are planned for the Subject Property. Binding elements of LMA G-884 were careful to ensure the open spaces adjacent to existing dwellings not contain active recreation opportunities. The local park being dedicated is separated from the existing homes by new homes proposed as part of this Application.

- *Provide links from the local park to the Muddy Branch Stream Valley Park.*

The Application is providing a direct link from the 10-acre local park to a trailhead into the Muddy Branch SVP in the form of a shared use path along Street D, alongside the Hanson Reserve property, which leads to a new trailhead feature.

The Preliminary Plan is also conforming to the following recommendations meant to guide detail during the development of the Property:

- *Development on the site should meet this Plan's general design principles*

Development of the Hanson Farm is complying with the general design principles that promote clustered development, walkability and environmental protection which are reoccurring principles within the Master Plan.

- *Cluster development away from environmentally sensitive resources*

The development on the Subject Property meets or exceeds all required stream valley buffers established by the Environmental Guidelines including buffering streams, wetlands and steep slopes. Northern portions of the Property will be dedicated to MNCPPC Parks for protection, and other stream valleys will be protected through Category I Conservation Easement.

- *Dedicate a 12-13 acre site for a community recreation center along Quince Orchard Road... if the County Council selects the preferred community recreation center site on Travilah Road, then the following guidelines apply; Dedicate a ten-acre site as a local park, sufficient to accommodate two ball fields and adequate parking.*

The Application is providing dedication of a 10-acre local park site that has adequate space for rectangular ball fields, to be developed by Parks at a later time. The development also provides 52 on-street parking spaces along the two public roads adjacent to the local park, for the use of the park.

- *Development on this site must not exceed 50% of the total site area, excluding the potential community recreation center.*

The developed portion of the site area, excluding the land dedicated for the 10-acre local park is at 49.2%, which is under the 50% maximum.

- *Expand the regional stream valley park system by dedicating forest area along northernmost tributary, including the existing farm road, which can be incorporated into the trail system, areas of sensitive features such as steep slopes and a 200-foot buffer along the Muddy Branch main stem, and forest areas adjacent to Travilah Road and adjacent stream valleys to connect with the existing stream valley park.*

This Application is providing for approximately 19.5 acres of new parkland dedication to the Muddy Branch Stream Valley Park, which maintains at least a 200-foot wide minimum buffer between the main stem of Muddy Branch and any private lots, and dedicates the northernmost forested tributary creating a new public trail head connection within this forested area. Other forested areas within stream valley buffer will be maintained as Category I Conservation Easement because while they are connected to the Stream Valley Park, they are isolated from the main stem.

Environmental recommendations in the Master Plan were also considered by the Planning Board. The Master Plan places a high priority on the protection and enhancement of forest, water and wetland resources. There is a specific recommendation to require reforestation of all unforested stream buffers, and to cluster development away from environmental resources. The Preliminary Forest Conservation Plan shows 7.02 acres of new forest to be planted within the stream valleys, and the layout of the development on the Subject Property in addition to the areas of proposed Category I Conservation Easement provide adequate protection of the existing resources. The Master Plan also seeks to protect the Muddy Branch main stem through expansion of the Muddy Branch Stream Valley Park to promote habitat for forest interior dwelling species. The Preliminary Plan

dedicates 19.5 acres to expand the Muddy Branch Stream Valley Park including existing forested resources along the norther portions of the Subject Property.

The Master Plan recommends the following transportation infrastructure improvements on or adjacent to the Subject Property:

- Quince Orchard Road – Arterial Roadway A-265, with a minimum right-of-way width of 80 feet with two vehicle travel lanes. The Quince Orchard Road right-of-way also includes a Master Plan bikeway PB-10 which is a Class I off-road bike path
- Travilah Road – Arterial Roadway A-32, with a minimum right-of-way width of 80 feet and two travel lanes. The Travilah Road right-of-way also includes a Master Planned bikeway PB-12, a Class I off-road bike path.
- Turkey Foot Road – Rustic Road R-6, with a minimum right-of-way width of 70 feet and two travel lanes.

The Preliminary Plan is providing full proportional dedication from road centerline to ensure 40 feet of right-of-way from center line along both Quince Orchard Road and Travilah Road, and ensures 35 feet from centerline along Turkey Foot Road. Along Travilah Road, a new 10-foot wide shared use path will be constructed from the proposed traffic circle at the intersection with Turkey Foot Road, across the Subject Property frontage to a location approximately 300 feet east of the Property boundary. An eight-foot wide shared use path will be constructed along Quince Orchard Road, from the terminus of an existing eight-foot wide shared use path across the Subject Property frontage to the northernmost Property road access. The Quince Orchard Road shared use path is only eight feet wide because it is matching the existing section to the south, and directly parallels the planned regional trail facility within the Exelon electric corridor between the Germantown Soccer Plex and Cabin John in Bethesda.

2. *Public facilities will be adequate to support and service the area of the approved subdivision.*

The Preliminary Plan establishes a network of all new public streets with three points of access to the existing road network, and on-site private alleys. Most of the streets are designed as secondary residential streets consistent with MCDOT section MC-2002.02, which is a 60-foot wide right-of-way with two travel lanes, parking on one side, and sidewalks on both sides. The southern portion of Street A, as well as the short streets identified as streets F, G and J are shown as tertiary streets, MCDOT section MC-2001.01 with 44-foot wide right-of-way width, two travel lanes, no street parking, and sidewalk on one side. Street A east of Street B, Street B, and Street D east of the proposed Muddy Branch trailhead are modified secondary residential streets because the 5-foot wide sidewalk on one side is being upgraded to eight feet to accommodate the expected increased demand around the 10-acre local park and the access to the Muddy Branch Stream

Valley Park. The seven alleys are private, with four being constructed at 20 feet wide to provide fire access, and the remaining three at 16 feet wide for private vehicle access only. The public street and private alley network provided is adequate to provide access to the 187 total dwelling units.

Local Area Transportation Review (LATR)

The Preliminary Plan was reviewed using the 2012 – 2016 Subdivision Staging Policy in effect through December 31, 2016. Although the official acceptance date for the Preliminary Plan was not until January 11, 2017, other elements of the submission including the transportation and other APF review documents were scoped by Staff in 2016 and therefore the Planning Board found it appropriate to review the LATR analysis under the old Subdivision Staging Policy. The changes in the Subdivision Staging Policy between 2016 and 2017 have minimal effect on the review of the Application, because the development size would have still required a traffic study for review, and the congestion thresholds in the impacted Policy Areas remained the same.

The Application for 186 new dwellings (120 new one-family detached, 66 new one-family attached), and one existing one-family detached is predicted to generate 131 new vehicle trips during the AM peak-hour during the AM peak period, and 174 new vehicle trips during the PM peak-hour during the PM peak period, based on Montgomery County trip generation rates adopted in the 2013 Local Area Policy Review and Transportation Policy Area Review Guidelines. Because the Application generates more than 30 vehicle trips during a peak-hour during a peak period, a full traffic study was required to satisfy the LATR guidelines.

The Traffic Study was submitted on January 4, 2017 and was supplemented with additional requested analysis by MCDOT on April 17, 2017 to determine the impact of the proposed development on the local transportation system. Seven existing local intersections were identified as critical intersections for analysis to determine whether they met the applicable congestion standard, as well as the two proposed Property entrances that are not located at an existing intersection. The traffic study looked at existing conditions, background conditions which include approved but unbuilt projects that may send trips through the study area intersections, and total future traffic which adds the projected impact of the subject Application to the background traffic. Because none of the critical intersections have a CLV standard that exceeds the policy area standard under the future traffic condition, no infrastructure improvements are required to satisfy the LATR guidelines.

School Adequacy

The Application was reviewed for school adequacy and the Property is located within the Wootton High School cluster, and is within the attendance area for Travilah Elementary and Frost Middle Schools.

Student Generation Rates

To calculate the number of students generated by the Application, the number of dwelling units proposed for each dwelling unit type is multiplied by the applicable student generation rates for that dwelling type, at each school level. The two dwelling types associated with this Application is the single-family detached and the single-family attached dwelling types. The Application proposes to build 120 new one-family detached units, and 66 new one-family attached units. There is one existing one-family detached dwelling on the Property that will be retained and is not in these calculations because that unit's impact to the school system already exists. Based on the trip generation rates approved by the Subdivision Staging Policy and the proposed development type, the Preliminary Plan will generate 39 new elementary school students, 20 new middle school students and 27 new high school students.

Cluster Adequacy

To test cluster adequacy, the Planning Board must look at the projected August 2022 enrollment for the Wootton Cluster at the elementary, middle and high school levels after considering the student generation of the Preliminary Plan, and compare that to the enrolment threshold that would trigger a moratorium on construction, which is 120% the programed cluster capacity. The projected enrollment in August 2022 will be below the moratorium threshold at all three school levels, therefore the Preliminary Plan passes the cluster adequacy test.

Individual School Adequacy

The individual school adequacy test is performed for the elementary and middle school that the Subject Property is within the service area for. The test was done for Travilah Elementary and Frost Middle schools. The test looks at the projected 2022 enrollments at both schools and compares it to the moratorium enrollment thresholds of 120% program capacity utilization and seat deficit levels. The projected 2022 enrollment including the Preliminary Plan of Travilah Elementary and Frost Middle is less than bot moratorium thresholds, therefore there is adequate individual school capacity.

The Preliminary Plan passed both the cluster adequacy and the individual school adequacy tests, therefore there is adequate school capacity for the Application.

APF and Plan Validity

The Applicant requested an extended APF and an extended Plan validity period for the Preliminary Plan.

APF Validity 50-20(c)(3)

The Applicant requested an APF validity period of 10 years (120) months which is longer than the minimum five years (60) months. The Planning Board may approve a validity period longer than the minimum if the Applicant provides a phasing schedule showing the amount of work predicted to be complete within five years, and the Planning Board must find it is within the public interest to extend the validity period, and may condition the approval on a phasing plan and may condition additional transportation improvements.

The Applicant submitted a request for the extended validity and provided a data table projecting how many building permits may be pulled over each of the 10 years of the validity request. On year five, the Applicant expects to have pulled at least 75 building permits, and by year six, expects to be through at least 90 building permits. The Applicant also has divided the Preliminary Plan into two phases, with Phase I containing 90 lots and Phase II the remaining 97. The Applicant's request stated that the extended validity period is within the public interest because of the large size of the project, an uncertainty in the higher end housing market, and the substantial pre-construction activities that need to occur. Staff noted that the submitted phasing plan for this Application extends beyond the minimum APF validity and the provision of the 19.56 acre stream valley park and the 10 acre local park are within the public interest and are tied to development in later phases. An extended APF validity period is essential for the Applicant to seamlessly continue development ensuring dedication of these park spaces. Staff also reported that there was adequate transportation capacity and limited future development opportunity in the area that would conflict with an extended validity. The Planning Board agreed with the Applicant and Staff's evidence for why an extended validity period to a 10-year APF validity period is appropriate, subject to the Applicant having pulled at least 90 building permits (equivalent to the end of Phase I) within six years of the date of the Resolution.

Plan Validity 50-35(h)

The standard Preliminary Plan validity period is three years (36 months) from the initiation date of the Resolution. The Applicant has requested the Preliminary Plan remain valid for as long as eight years. Section 50-35(h)(2)(B) allows for the Board to approve extended validity for multi-phase projects, so long as each phase requests no more than three years of

validity, and the cumulative Plan Validity does not exceed the APF Validity. The Applicant requested three phases of Plan Validity, Phase 1a to include the first 45 lots within three years, Phase 1b to include the next 45 lots (90 total) within two more years (five years from the Resolution date), and Phase 2 to complete the remaining 97 lots (187 total) in a final three years (eight years total since the Resolution date). The Board approves the requested Plan Validity period, conditioned on the three phases requested by the Applicant, because of the projects necessary pre-construction work, large size, and because it phases well with the approved APF Validity phasing.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, shape and orientation is appropriate for the location of the subdivision taking into account the clustered design and PD-2 zone recommendations in the Master Plan, as well as the physical topography of the Property with multiple environmental resources to protect. Locating smaller lots clustered in the center of the Property with larger lots on the periphery help meet the compatibility recommendations from the Master Plan and the LMA rezoning case. The proposed parkland dedications accomplish the Master Plan goals for expanding the Muddy Branch SVB park and for establishing a new 10-acre local park.

The lot was reviewed for compliance with the dimensional requirements for the PD-2 zone as specified in the Zoning Ordinance. The PD-2 zone sets lot size and setback at the time of Site Plan, but the Planning Board finds the lots as proposed will provide adequate dimensions for area, frontage, width, and setbacks in that zone. The Preliminary Plan has been reviewed by other applicable county agencies, all of whom have recommended approval of this layout.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

Stream Buffer Encroachment

Section IV-A1 of the Environmental Guidelines allow for some encroachments within the stream buffer under certain circumstances,

when determined by the Board that there are no reasonable alternatives and the impacts have been minimized as much as possible. The Applicant has requested stream buffer encroachment to construct stormdrain outfalls, the sewer connection, stabilization of the farm pond embankments, construction of amenities around the farm pond, removal of existing structures within the buffers, dedication of right-of-way and PUEs, and to tie out grades. Section IV-A1(e) of the Environmental Guidelines has five factors to consider when evaluating any request for stream buffer encroachment:

1. *Reasonable alternatives for avoidance of the buffer are not available.*

The proposed disturbances with the stream buffer cannot be reasonable avoided. The storm drain outfalls and sewer connection are necessary by other regulatory review agencies to avoid the creation of an erosive condition adjacent to the receiving streams, and to implement the Master Plan recommendation of connecting the Property to the existing sewer in the Muddy Branch SVB. The removal of existing structures is unavoidable because the structures to be removed are located in the stream buffer. The grade tie outs are caused by existing highly variable topography making it difficult to establish acceptable grades across the Property without extensive use of retaining walls or tying out the grade into the buffer edges. The dedication of right-of-way and public utility easement is an unavoidable requirement recommended in the Master Plan and requested by MCODET. Pursuant to standard best practices the existing dam embankments must be void of trees which may compromise their stability. The portion of the stream buffer to be excluded from the conservation easement to allow for recreational and aesthetic access to the pond cannot be reasonable avoided if approving the pond as an amenity is allowed, since the entire pond would otherwise be surrounded by a 25-foot wide buffer.

2. *Encroachment into the buffer has been minimized.*

The Applicant has made reasonable efforts to minimize the encroachments into the buffer areas. The stormdrain outfalls were coordinated with MCDPS to minimize impacts to the stream buffer to the extent practical while still complying with stormwater regulations. The number of sewer outfall connections has been reduced from two to one between the time of the LMA to now, and the Applicant is working closely with M-NCPPC Department of Parks staff to determine the alignment with the least impact to the stream buffer and existing trees. The removal of the structures is unavoidable, but the limits of

disturbance will minimize impacts to trees and the Applicant will restore the buffer in this area. Grade tie-outs into the buffer is limited to non-forested portions of the buffer that have been previously altered due to the agricultural activities, while avoiding the use of numerous retaining walls on the site, and the Applicant will reforest these impacted areas.

- 3. Existing sensitive areas have been avoided (forest, wetlands and their state designated buffers, floodplain, steep slopes, and habitat for rare, threatened, and endangered species and their associated protection buffers).*

Existing sensitive areas have been avoided with the buffer impact to the extent possible. One of the storm drain outfalls, the sewer outfall connection, and the disturbance to stabilize the pond embankments will impact forest and portions of the 100-year floodplain, but these impacts are required as part of health and safety and will be appropriately mitigated for. The lack of conservation easement around the farm ponds is around areas not currently forested, and the areas of wetland around the pond will still be protected by Category I Conservation Easement. The other buffer encroachments avoid the most sensitive environmental features.

- 4. The proposed use is consistent with the preferred use of the buffer (e.g., pervious areas such as tieouts to existing grades, slope stabilizing BMPs, etc.).*

The proposed use for the areas of buffer encroachment are consistent with the preferred uses in encroached areas. The stormwater outfalls and sewer connection are mostly pipes that do not create impervious area and are typical encroachments in a buffer. Removing existing structures in the buffer serves to enhance the buffer by removing existing impervious surfaces. The stabilization and maintenance of the existing pond embankments reduces the possibility of a dam breach, and the grading to tie out to existing grades does not result in any impervious areas within the buffer and these areas will be reforested. The areas of the stream buffer excluded from the conservation easement is and will remain a pervious area, that will continue to function environmentally as it currently does.

- 5. The plan design provides compensation for the loss of buffer function.*

Many of the proposed encroachments in the buffer will not result in loss of buffer function and mitigation is being proposed for most of the

encroachments. The areas proposed to be disturbed to tie out to existing grades and to remove the existing structures in the buffer, will be stabilized, planted as forest, and protected in a Category I Conservation Easement. Most of these tie-out areas within the stream buffer are currently unforested and used for agriculture. The Application proposes to reforest all of the existing unforested stream buffers, resulting in approximately 7.0 acres of newly forested stream buffer. The creation of riparian forest will greatly enhance the stream buffer on the Property, compensating for any loss of functions resulting from the proposed impacts. Where the Applicant proposes to exclude the farm ponds and the associated buffer from the Category I Conservation Easement, the current functions provided within the buffer will remain because no new impervious surfaces are created except for one pier, existing vegetation will remain, and supplemental landscape plantings will be required in the Site Plan.

Based on the analysis of the five considerations for buffer encroachment, the Board finds it acceptable to encroach in the buffers with the mitigation provided by the Applicant.

Forest Conservation Worksheet

A Preliminary Forest Conservation Plan ("PFCP") was submitted with the Preliminary Plan. The PFCP has a net tract area of 173.57 acres after including off-site disturbance for frontage improvements along the existing public roads and for the sewer connection. There are 53.19 acres of existing forest, and the PFCP proposes to retain 38.21 acres of forest and clear 14.98 acres. Section 22A-12(f) requires optional method projects to retain at a minimum the forest conservation threshold which is 34.71 acres, and is being met by this Application. The worksheet generates a 0.25 acre reforestation requirement which will be provided in an upland area adjacent to existing forest, and is in addition to the 7.02 acres of reforestation in the stream valley buffers. The Applicant has also requested permission to consider creating a forest bank for the 7.02 acres of stream valley planting. The Applicant will need to coordinate with the MNCPPC forest bank manager and will need to complete any forest bank transactions prior to turning the land over to the HOA or Parks.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of 85 Protected Trees and CRZ impact to 49 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance is not unique to this Applicant and will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Property in a manner recommended in the Master Plan. Many of the Protected Trees are located in the developable area of the Property outside of stream buffers and identified parkland dedication area. The Applicant has reduced the number of sewer outfall connections from the two shown on the approved Development Plan, to one, resulting in fewer impacts to trees and forest within the Muddy Branch stream buffer. Additional removal of and impacts to Protected Trees are due to required road and utility connections that would be necessary under any similar sized application for development of the Property, and disturbance within the anticipated developable area of the site. Granting a variance to allow land disturbance within the developable portion of the Property.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing Property conditions, including the location of the Protected Trees within the developable area.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for a variance is a result of the existing conditions and the proposed design and layout of the Property, and not a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. Onsite mitigation for the removal of the Protected Trees and the proposed reforestation within the currently unforested stream buffers, will ultimately replace the functions currently provided by the Protected Trees to be removed. Many of the Protected Trees are located in the forest clearing and their removal is accounted for in the Forest Conservation worksheet. In addition, the Montgomery County Department of Permitting Services (MCDPS) has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated February 12, 2018 (Attachment M). The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed. No mitigation is required for Protected Trees impacted but retained, and mitigation for trees removed within the forest clearing area is covered under the forest Conservation Worksheet. The Applicant is removing 1,050 inches of caliper at breast height that requires mitigation, resulting in the need to plant 263 caliper inches of new native canopy trees. There will be 88 new three-inch caliper trees planted on the Subject Property as a result of the variance.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

The Preliminary Plan received an acceptable recommendation for the stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on February 12, 2018, with conditions that must be worked out on subsequent design plans. The Application will meet stormwater management goals by providing ESD micro-bioretenion facilities and vegetated swales.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for up to eight years (96 months), from its initiation date (as defined in Montgomery County Code Section 50-35(h)) pursuant to the phasing as conditioned in this Resolution, and that prior to the expiration of each phase of validity, a final record plat for the equivalent number of properties as delineated on the approved Preliminary Plan must be recorded

in the Montgomery County Land Records, or a request for an extension must be filed;
and


BE IT FURTHER RESOLVED that this Resolution constitutes the written
opinion of the Board in this matter, and the date of this Resolution is
MAR 16 2018 (which is the date that this Resolution is mailed to all parties of
record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an
administrative appeal must initiate such an appeal within thirty days of the date of this
Resolution, consistent with the procedural rules for the judicial review of administrative
agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by
the Montgomery County Planning Board of the Maryland-National Capital Park and
Planning Commission on motion of Commissioner Fani-González, seconded by
Commissioner Patterson, with Chair Anderson and Commissioners Fani-González,
Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular
meeting held on Thursday, March 8, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board