

January 21, 2021

Gwen Wright
Director, Montgomery County Planning Department
2425 Reddie Drive, 14th Floor
Wheaton, MD 20902

Re: Petition to Reconsider Approval of Creekside at Cabin Branch Preliminary Plan No. 120200050

Dear Ms. Wright,

Friends of Ten Mile Creek and Little Seneca Reservoir respectfully petitions the Planning Board to reconsider Resolution MCPB No. 20-129, concerning Creekside at Cabin Branch Preliminary Plan No. 120200050, under the Rules of Procedure, Montgomery County Planning Board, Chapter IV: Rules of Procedure for Public Hearings Section 4.12.

The petition demonstrates errors of both fact and law in that the decision to approve the preliminary plan is in violation of the Master Plan because it would exceed the 6% imperviousness cap in the most sensitive subwatersheds. It also violates the master plan's water quality principles and strategies, and fails to account for highly erodible soils because of reliance on outdated data from USDA/NRCS. These three key errors are explained in detail below.

1. The Planning Board approval is in violation of the language, intent, and spirit of both the *Ten Mile Creek Area Limited Amendment adopted in 2014*¹ (hereafter referred to as Master Plan), and the Clarksburg West Environmental Overlay Zone (CWE)².

The Master Plan explicitly "**recommends a six percent impervious surface cap for new development in the most sensitive subwatersheds to minimize risk as much as possible**".³ In the recommendations section itself, the Master Plan states, "**In particular, protect existing stream conditions in the high quality headwater subwatersheds LSTM 110 (King Spring) and LSTM 111.**"⁴

The purpose of the CWE is to "implement the recommendations of the 2014 Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan."⁵

The Creekside at Cabin Branch 326-unit housing development would be concentrated wholly in the Ten Mile Creek subwatersheds of two of the highest quality streams in Montgomery County, LSTM 110 and LSTM 111. The Master Plan singles these out as "the most sensitive and highest quality streams," with

¹ M-NCPPC. (2014). *10 Mile Creek Area Limited Amendment. Clarksburg Master Plan and Hyattstown Special Study Area. Approved and Adopted.* Montgomery County Planning Department.
https://www.montgomeryplanning.org/community/plan_areas/l270_corridor/clarksburg/documents/ten_mile_creek_approved.pdf

² Montgomery County Zoning Ordinance (2014) Chapter 59-4.9.6 Clarksburg West Environmental (CWE) Overlay Zone
https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-3551

³ Op. cit. at footnote 1, on page 17

⁴ Op. cit. at footnote 1, on pages 18-19

⁵ Op. cit. at footnote 2, section A.4

“existing low levels of imperviousness”, and supportive of many “sensitive species.” According to the Master Plan, “any development of these properties will have a negative impact on stream quality.”⁶

Below are selected passages in the Master Plan that emphasize the need for protecting existing stream conditions in the high quality and most sensitive sub-watersheds, LSTM 110 and 111, and the explicit supporting recommendation (emphasis added).

Box 1: Excerpts from the Master Plan

This area includes the **most sensitive subwatersheds**, LSTM 110 and 111...The very low existing imperviousness and long-term agricultural uses have resulted in excellent stream conditions that have been maintained since monitoring began in 1994. **Even small changes in imperviousness will likely affect these subwatersheds, but if imperviousness is kept as near to five percent as possible, stream conditions can be maintained in the good to excellent range, based on the majority opinion of environmental experts.** (p.41)

LSTM 110 (King Spring Tributary) is considered one of the highest quality streams in Montgomery County, as measured by the DEP Countywide stream monitoring program and in an assessment by the EPA using the Biological Conditions Gradient (See Appendix 9, Attachment R). (p. 66)

High quality subwatersheds with very low impervious cover, such as LSTM 110 (1.6 percent) and LSTM 111 (1.2 percent), are more sensitive to changes in impervious cover than watersheds like LSTM 206 (16.6 percent) and LSTM 202 (11 percent), which already have a significant amount of existing impervious cover and are showing signs of degradation. Recent studies (see Appendix 9, Attachment 18) have shown that **impervious cover levels as low as 5 percent are correlated with significant degradation in water quality.** (p.17)

This Plan recommends a six percent impervious surface cap for new development in the most sensitive subwatersheds to minimize risk as much as possible. While it is not possible to keep all the subwatersheds at this low level without unreasonably restricting development, this Plan provides a combination of imperviousness limits and required open space protection that would keep the overall watershed imperviousness level at slightly more than six percent, if all planned development occurs. (p.17)

Recommendation

West of I-270

- Reduce the development footprint and impervious cover, emphasizing reduced impacts to upland forested areas and stream slopes. **“In particular, protect existing stream conditions in the high quality headwater subwatersheds LSTM 110 (King Spring) and LSTM 111. (pp 18-19)**

⁶ Op. Cit. at footnote 1, on p. 41.

1.1 In violation of the Master Plan recommendations, the proposed development would raise impervious cover to 7.3% (for a total of 10.1% combined with other anticipated development) and 12.7% in the most sensitive sub-watersheds.

The proposed development would raise the impervious cover from 1.6% to 7.3% in the LSTM 110 subwatershed. If the King development also gets built, the combined impact of these two developments would raise the impervious cover to 10.1% - a more than six-fold increase in imperviousness. And in the LSTM 111 subwatershed, the development would raise the impervious cover from 1.2% to 12.7% - more than a ten-fold increase from the pre-existing imperviousness level (as shown in Table 1 below):

Table 1 Imperviousness Impact of Pulte Development on Sub-Watersheds LSTM 110 and LSTM 111

Sub-watershed of Ten Mile Creek	Acres in sub-watershed	Pre-existing imperviousness in sub-watershed	Impervious acres Pulte development would add (6% EOZ)*	Pulte's % addition to impervious cover	Percent imperviousness of sub-watershed after buildout
LSTM 110	211	1.6%	12.01	5.7%	7.3% (10.1% with King develop.)
LSTM 111	104	1.2%	12.01	11.5%	12.7

Note: *EOZ=Environmental Overlay Zone. Pulte's property size is approx. 402 acres. The maximum 6% EOZ allows for 24 impervious acres (6% of 400 acres). Pulte's proposed development evenly straddles both sub-watersheds, adding approx. 12 impervious acres to each sub-watershed, LSTM110 and LSTM 111.

1.2 The Planning Board Chair and the Staff failed to implement the Master Plan recommendation calling for a six percent impervious cap in the most sensitive subwatersheds. LSTM 110 and LSTM 111 are the only subwatersheds that the Master Plan refers to as "the most sensitive."

The Master Plan recommendation of "a six percent impervious surface cap for new development in the most sensitive subwatersheds" clearly means that the development cannot exceed the 6% impervious cap in either LSTM 110 or in LSTM 111, as these are the subwatersheds that the Master Plan refers to as "the most sensitive subwatersheds." In fact, **LSTM 110 and 111 are the only subwatersheds referred to in the Master Plan as "the most sensitive."** There are 5 other subwatersheds in the plan area West of I-270 - LSTMs 112, 201, 202/206, 203, and 204. The Master Plan does not apply that language, "sensitive," to any of these other subwatersheds.

In an in-person January 15, 2020 meeting between Friends of Ten Mile Creek, with Planning Department staff, Director Wright said that the 6% imperviousness cap applies to the development property tracts (i.e., in the Environmental Overlay Zone) in Ten Mile Creek Watershed, west of I-270, and that it was not meant to apply to subwatersheds LSTM 110 and LSTM 111. Director Wright's interpretation is clearly in conflict with the Master Plan's recommendations for "a six percent impervious surface cap for new development in the most sensitive subwatersheds"⁷, and to, "**in particular, protect existing stream**

⁷ Op. cit. see footnote 3

conditions in the high quality headwater subwatersheds LSTM 110 (King Spring) and LSTM 111.”

Director Wright’s interpretation also conflicts with the Master Plan guidance to keep “imperviousness as near to 5% as possible” in these two subwatersheds, LSTM 110 and 111⁸ (p.41), and conflicts as well with the purpose of the CWE, to “implement the recommendations of the 2014 Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan...”.

Director Wright’s interpretation, if followed, would irreparably harm these two subwatersheds.

In responses to testimony by Friends of Ten Mile Creek and other organizations, Staff and the Chair showed additional errors of interpretation in their justifications for the staff recommendation and Planning Board decision to approve the application.

First, staff did not acknowledge the explicit Master Plan recommendation to “In particular, protect existing stream conditions in the high quality headwater subwatersheds LSTM 110 (King Spring) and LSTM 111.” Instead, staff refers to the Master Plan “discussion”, and to what “they feel” the Council decided, without acknowledging what the Council actually decided – as if the Council’s decision had not been clear. However, as we show in section 1, the Council decision was clear.

The Master Plan’s discussion is talking about where limiting impervious surfaces... in combination with all these other recommendations that have been implemented are *what we feel the Council decided* would be able to protect these resources. Because it is clear when you get to the actual recommendations in the Master Plan that have also been translated into the Overlay Zone, that the 6% impervious cap for the application is what was decided on.⁹

Prior to the December 3, 2020 vote, Planning Board Chair Anderson said that the Planning Board does not have the authority to impose restrictions on this development application beyond those in the Ten Mile Creek Master Plan Amendment:

...this project is not my idea of where county should be going, honestly; it is development in a place that I would prefer that there be little or no development - probably much less than is going to be proposed here. But I don't subscribe to idea that it is appropriate or that we even have the authority to impose that judgment in light of what the plan says...

...I don't think it is consistent with the rule of law to try to impose additional restrictions beyond what were imposed by the Ten Mile Creek Master Plan Amendment...

...I don't really particularly like this project, but I just do not believe that its appropriate to try to further ratchet down the impervious requirements beyond what is required in the plan which are already highly restrictive...¹⁰

⁸ Op. cit. at footnote 1 on page 41

⁹ Staff response to testimony, Montgomery County Planning Board hearing, December 3, 2020, Item 3: Creekside at Cabin Branch Preliminary Plan No. 120200050.

<https://montgomeryplanningboard.org/agenda-item/december-03-2020/> . Livestream: https://mncppc.granicus.com/MediaPlayer.php?view_id=7&clip_id=2343 beginning at 1:58

¹⁰ Op. Cit. at footnote 44, beginning at 2:23:30

However, the Master Plan Amendment itself recommends a 6% cap on the most sensitive subwatersheds, as well as applied across the entire application area, which is consistent with the intent of the Council in approving the Master Plan. Therefore, no additional authority is needed to deny or alter the proposed plan.

1.3 The levels of imperviousness that would result from the proposed development are also inconsistent with the expectations and intent of the Council in approving the Master Plan.

Council approval of the Master Plan in 2014, which recommended the 6% cap on imperviousness for the watershed area west of I-270, was based on recommendations of two Council Committees. As shown in materials prepared for the Council Worksession on March 4, 2014, under the approved 6% impervious cap, the impervious outcomes that were modeled for the two most sensitive subwatersheds were expected to result in 6.6% imperviousness in LSTM 110 and 8.3% in LSTM 111.¹¹

However, the impervious cover in Pulte's currently proposed development far exceed these expectations. *Levels of imperviousness under the current Pulte plan are closer to those that had been proposed in the 2013 Planning Board draft (10.1% and 13.8% for LSTM 110 and 111, respectively), under a watershed cap of 10%. This was rejected by the Council in adopting the new 2014 Master Plan.*¹² (See Table 1 and associated text in section 1.1.)

Despite the 2014 Master Plan's rejection of the 1994 Clarksburg Master Plan's recommended development levels in Ten Mile Creek west of I-270, and despite the 2014 Master Plan's recommendation to protect these high quality subwatersheds with a 6% impervious surface cap, the proposed Pulte site plan approved by the Planning Board on December 3, 2020 would, at build-out, impose destructive levels of imperviousness on Ten Mile Creek's two most sensitive tributaries and their watersheds, similar to the 1994 Master Plan. An analysis of the building out of the 1994 plan showed "increases of up to 10 times in imperviousness in the most sensitive subwatersheds (LSTM 110 and LSTM 111)."¹³ Under Pulte's proposed plan, these impervious impacts would still occur. The impervious cover in LSTM 111 would go from 1.2% to 12.7%, more than a ten-fold increase in imperviousness. And the impervious cover in LSTM 110 would increase by nearly five-fold, and six-fold if the King development gets built.

Furthermore, the Council's expectation, that the 6% overlay cap would yield imperviousness levels of 6.6% and 8.3% in the two most sensitive subwatersheds, was based on the 540-acre combined Pulte/King development¹⁴ tract, with 538 dwelling units.¹⁵ In contrast, the currently proposed Pulte development (no longer associated with the King property) is a smaller, 400-acre tract with 326 dwelling units. **Though lesser both in tract size and number of homes than the combined Pulte/King**

¹¹ Ten Mile Creek Amendment, Appendix 9, March 4, 2014, County Council Worksession: Staff Report and Supporting Materials, Tables on pp. 7-9.

https://www.montgomeryplanning.org/community/plan_areas/i270_corridor/clarksburg/documents/appendix_9_materials-for_county_council.pdf

¹² Ibid, Table on p. 8

¹³ Op. Cit. at footnote 1. See p. 16.

¹⁴ Op. Cit. at footnote 1. See p. 41.

¹⁵ Op. Cit. at footnote 6 See table on p. 7.

development that the Council approved, Pulte's current proposed development would contribute a much more devastating impervious impact to LSTM 110 and 111.

1.4 The concentration of Pulte's development in LSTMs 110 and 111 subwatersheds, in combination with the small acreage of these subwatersheds, results in destructive impervious impacts.

The Council Committee's recommendation in 2014 assumed that some of the Pulte/King development would occur in LSTM 112, and that the larger acreage of the LSTM 112 subwatershed, 228 acres, would take some of the impervious impact pressure away from the smaller LSTM 110 and 111 subwatersheds, whose respective acreages are 211 and 104. But Pulte's proposed development is located entirely in LSTM 110 and 111 subwatersheds, with roughly equal portions of the development in each subwatershed. This is what leads to the unplanned and large impervious impacts to LSTM 110 and 111.

The disproportionate impervious impact on LSTMs 110 and 111 also reflects the application method of the 6% overlay zone requirement. The 6% environmental overlay zone requirement applies to the property owner's tract, and not to the subwatershed that would be impacted. Hence a 6% impervious allowance on a very large property, such as Pulte's 400-acre tract, would overwhelm the smaller subwatersheds, like LSTM 110 and 111. A 6% Environmental Overlay Zone (EOZ), applied to 400 acres, translates to 24 acres of imperviousness.

Though the bulk of Pulte's 400-acre tract is located in subwatersheds LSTMs 110, 111, and 112, **the proposed development is concentrated wholly in the much smaller LSTMs 110 and 111 subwatersheds**, with roughly equal portions of the development in each. The LSTM 111 subwatershed is only 104 acres. Thus, half of Pulte's impervious six-percent acre allowance, or 12 acres of imperviousness, would totally overwhelm this tributary. The same goes for subwatershed LSTM 110, which is 211 acres and would receive 12 acres of imperviousness. (Refer to Table 1 section 1.1)

1.5 The Planning Board's hands are not tied by Pulte's expectations from the original 1994 Plan.

In additional remarks made just prior to the December 3 2020 vote, Chair Anderson stated that he had voted for more modest downzoning in what the Planning Board proposed in 2013 when he was a Commissioner because he believes it was not appropriate to disturb the expectations that had been established in the 1994 Clarksburg Master Plan:

I voted for much more modest downzoning as part of the Ten Mile Creek Master Plan Amendment because I believe that it was not appropriate to disturb the settled expectations based on the 1994 Clarksburg plan of what could be built in this area.¹⁶

However, in a subsequent Court challenge of the amended Master Plan, both the District Court and the Court of Appeals held that "Pulte had no constitutional property interest in developing its land as it had contemplated, and the local authorities had a plausible, rational basis for their actions".¹⁷

¹⁶ Op. Cit. at footnote 44, beginning at 2:23:30

¹⁷ Pulte Home Corporation; Shiloh Farm Investments v. Montgomery County, Maryland; Maryland-National Capital Park and Planning Commission. United States Court of Appeals for the Fourth Circuit No. 17-2112, November 29, 2018

As context, the 1994 Plan directed development to occur in four stages.¹⁸ Development in the Ten Mile Creek watershed was not to occur until stage 4, and was made contingent on meeting specific conditions, which included monitoring and assessment of water quality impacts from previous stages of development, and a determination of whether Best Management Practices were sufficient to protect Ten Mile Creek. Development in this fourth stage was also made contingent upon a Council decision based on findings from that water quality review process. At this stage, the Plan also provided the Council with the option to “consider such other land use actions as are deemed necessary. Therefore, development was not guaranteed by the 1994 Plan and Pulte can be considered as what that Plan refers to as a “speculative land holder.”¹⁹

As is indicated also in the 2014 amended Master Plan:

“The Council reserved its authority to consider other land use actions, as appropriate, based on the results of this further review. This review has now been completed, and the analysis indicates that the proposed levels of development in the 1994 Plan would create a significant risk to stream quality in these sensitive subwatersheds.”²⁰

Pulte’s proposed site plan would allow a level of imperviousness in the most sensitive subwatersheds that is much closer to what the Planning Board recommended to the Council in the 2013 Planning Board Draft, which the Council rejected.

2. The Planning Board is in violation of the master plan’s water quality principles and strategies.

The Planning Board’s Resolution erroneously treats the master plan’s water quality principles and strategies as mere recommendations rather than requirements, the language adopted for the master plan by the Montgomery County Council in Resolution No. 17-1048.²¹ As a result, the Board is allowing Pulte to alter the landscape between LSTM 110 and LSTM 111 far in excess of what should have been permitted.

In approving and adopting the Ten Mile Creek Area Limited Amendment, the Montgomery County Council declared, “As a result of its unique characteristics, Ten Mile Creek warrants extraordinary protection.”²² To this end, the Council added a section **requiring** more protective environmental buffers for perennial, intermittent, and ephemeral streams; springs and seeps; wetlands; erodible soils; and steep slopes than for streams elsewhere in the County. It called for the establishment of environmental overlay zones to “reduce development footprints to protect sensitive resources.”²³ To retain stream biodiversity and health, the Council substituted the verb “**require**” for “recommend” – as had been proposed by the Planning Board in its October 24, 2013, public hearing draft submitted to the Council --

¹⁸ Clarksburg Master Plan Hyattstown Special Study Area – Approved and Adopted June 1994 - pp 197-199
<https://montgomeryplanning.org/planning/communities/upcounty/clarksburg-hyattstown/>

¹⁹ Ibid p. 146

²⁰ Op. Cit. at footnote 1, p. 41

²¹ Montgomery County Council Resolution No. 17-1048, pages 12-13,
https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/res/2014/20140401_17-1048.pdf.

²² Op. Cit. at footnote 1, on page 14.

²³ Op. Cit. at footnote 1, on page 19.

that Ten Mile Creek be given “a higher level of protection than that already provided under SPA regulations”.²⁴

The Council’s choice of the words “require” and “must” shows that the Council intended these provisions to be mandatory, requiring full compliance. Yet in this application, the Planning Board’s Resolution consistently treats them as recommendations for general compliance, not requirements, and allows Pulte to extend the footprint of its development far into the hydrologically sensitive area between LSTM 110 and LSTM 111.

The Council also changed the operative verb for the provisions pertaining to compliance with Water Quality Plans from “should,”²⁵ as proposed in the Planning Board’s draft, to “must”:

In addition to current SPA requirements, Water Quality Plans for development in the Ten Mile Creek Watershed must demonstrate the application of the following principles and strategies²⁶

One of the principles and strategies involves grading:

- Minimize grading the thin and rocky soils in Ten Mile Creek, which help sustain groundwater flows to the many springs and seeps.
- Indicate the importance of limiting grading and soil compaction as much as possible through creative site design and development staging.

In a letter to Councilmember Roger Berliner for the Council’s work session on the amendment, the Department of Environmental Protection explained the science behind this requirement and the importance to aquatic health of limiting grading:

Ten Mile Creek is a "headwater" system in which the majority of the tributary streams are small and spring fed. Abundant springs and seeps supply the cold and clean groundwater necessary to maintain high aquatic diversity. The fracture fault geology that is unique to this part of the County has influenced the stable shape of the stream channels, how the groundwater flows through the underlying layers of rock and how the springs and seeps are maintained. Land use activities that impact any of these factors can negatively impact the high aquatic diversity that they support.

Ten Mile Creek is located within an area of thin, rocky soils that is geologically different than the areas that surround other streams in most parts of the County. Relative to most streams in the County, stream beds in the Ten Mile Creek system contain smaller amounts of silt or clay and larger numbers of flat thin rocks of greenstone and Ijamsville schist. The surface area on these flat thin rocks and the absence of large amounts of silt or clay make it an ideal environment to support diverse benthic (living on the bottom) macro invertebrate communities. Streambeds with more silt or clay or other types of rock material are less friendly habitats for the benthic organisms that are a key indicator of a healthy stream and make it more difficult for them to

²⁴ Op. Cit. at footnote 1, on page 21. The Planning Board had used the verb “recommended.” See Ten Mile Creek Area Limited Amendment, Public Hearing Draft, page 20.

https://www.montgomeryplanningboard.org/agenda/2013/documents/ITEM11ATTACHMENT1_000.pdf.

²⁵ Op. Cit. at footnote 21, on page 20.

²⁶ Op. Cit. at footnote 1, page 21.

thrive. Land use activities that increase the amount of silt or clay in the stream beds can negatively impact the ability of benthic organisms to thrive.²⁷

There is nothing minimal about Pulte's regrading plan. In order to intrude so deeply into the land between subwatersheds LSTM 110 and LSTM 111, Pulte proposes to alter almost the entire natural topography of its development by bringing in massive amounts of fill, in violation of the master plan's policy to minimize grading to protect the thin, rocky soils and groundwater flow to seeps and springs. The plan shows new contour lines all around the proposed development. In several places, the proposed grade appears almost vertical. If each contour line represents a change of two feet (the amount of change is not completely clear from the small online version of the preliminary plan), the proposed development will be 28 feet higher than existing grade at the westernmost edge of the development and tower over a wetland. Elsewhere on the north and south sides, the change in elevation will be even greater.

The hydrology of subwatersheds LSTM 110 and LSTM 111 will be severely impacted by this regrading, in blatant disregard of this water quality requirement. The Board's Resolution is silent on the extent of Pulte's regrading, however. The Board's only mention of compliance with the grading requirement pertains to staging of the project:

Although the State no longer requires limiting the grading units to a 20-acre maximum, MCDPS continues to require that sediment control plans adhere to these restrictions. Therefore, this Application will be required to be phased so that only 20 acres (a grading unit) at a time will be actively disturbed. When this grading unit is 50 percent complete and stabilized, the next grading unit can be opened. This will limit active grading to no more than 30 acres at one time.²⁸

This clearly demonstrates that regrading will not be limited, but substantial, in violation of the Master Plan. Nor will the staging and soil decompaction cure the damage that would be caused to the underlying terrain and natural drainage of the area.

As for ephemeral streams, the Council's Resolution No. 17-1048, approving the master plan amendment, requires not only preserving them, along with 50-foot buffers on both sides, but also fully protecting their drainage patterns:

- Maintain natural drainage patterns, especially around zero order streams, by:
 - preserving and designing around ephemeral streams within the limits of disturbance;²⁹

²⁷ Ten Mile Creek Amendment, Appendix 9, March 4, 2014, County Council Worksession: Staff Report and Supporting Materials, pp. 54-55.

https://www.montgomeryplanning.org/community/plan_areas/l270_corridor/clarksburg/documents/appendix_9_materials-for_county_council.pdf

²⁸

https://montgomeryplanningboard.org/wp-content/uploads/2020/11/SR_120200050_Final_Staff_Report_CreeksideatCabinBranch_1120020.pdf, pages 28-29.

²⁹ Op. Cit. at footnote 1, on page 22. The phrase "as much as possible" following the word "disturbance" appears only in the online version of the Approved and Adopted Ten Mile Creek Area Limited Amendment, July 2014 at page 22, Although the phrase seems to have been included in an early Planning Department draft, it was **deleted** before the Planning Board approved the 10/24/2013 version of the draft amendment that it sent to the Council,

- maintaining existing natural topography and vegetation within 50 feet of ephemeral streams;

We are quoting here from the Council’s Resolution rather than the Planning Department’s online version of the master plan amendment because the online version erroneously includes the phrase “as much as possible” following the word “disturbance”. This phrase was never considered or approved by the Council. We ask that this unauthorized phrase be removed immediately from the Planning Department’s online version of the master plan amendment.

Instead of requiring Pulte’s adherence to these principles and strategies for ephemeral streams, the Board ignored them. A comparison of the existing conditions maps on pages 110-111 of the Master Plan’s Appendix 9 with Pulte’s Preliminary Plan shows that Pulte plans to eradicate portions of some ephemeral (zero order) streams in the LSTM 111 system by building the entrance road into the property and the community recreation facility over them, rather than preserving them and designing around them. The natural topography will not be maintained. The hydrology of LSTM 111 will be altered.

We request that the Planning Board order Pulte to reduce its development footprint in the area between LSTM 110 and LSTM 111 and reject Pulte’s water quality plan until it comes into compliance with these provisions of the Master Plan.

3. Planning Staff failed to account for three highly erodible soils units due to reliance on 25-year old erodible soils data from 1995 to assess development impacts – ignoring the fact that current data is available.

The most current soil erosion data from USDA-NRCS³⁰ indicates that there are three soil units/types present within the proposed development footprint that constitute an erosion hazard rated to be severe. However, the developer and the Planning staff relied on 25-year old USDA-NRCS erodible soils data from 1995 to assess development impacts on the land. By using outdated environmental guidelines pertaining to highly erodible soils, Planning staff and the developers failed to account for the three highly erodible soils units. **The failure to update the environmental guidelines pertaining to highly erodible soils violates guidance in the General Plan that calls for development guidelines to reflect current knowledge of the environment** as stated below.

The December 1993 General Plan Refinement of the Goals & Objectives for Montgomery, “Objective 2: Preserve natural areas and features that are ecologically unusual, environmentally sensitive, or possess outstanding natural beauty” states:³¹

- D. Ensure that development guidelines are reviewed periodically to make certain that they are environmentally sensitive and reflect current technologies and knowledge of the environment.

https://www.montgomeryplanningboard.org/agenda/2013/documents/ITEM11ATTACHMENT1_000.pdf, page 20. The phrase “as much as possible” was never considered or authorized by the Council for this provision.

³⁰ USDA-NRCS, United States Department of Agriculture-Natural Resource Conservation Service

³¹ General Plan Refinement of the Goals & Objectives for Montgomery County, Dec 1993, p. 70.

<https://montgomeryplanning.org/planning/master-plan-list/general-plans/general-plan-refinement-goals-amp-objectives-1993/>

E. Limit construction on soils and slopes not suited for development.

If current erodible soils guidelines were applied to the proposed development, in addition to reducing soil erosion, the development would be further constrained and imperviousness reduced.

Conclusion

The Creekside at Cabin Branch Preliminary Plan is not a trivial regulatory matter to be dispensed with expeditiously. While climate change will bring more frequent large rainfall events as well as more droughts, the loss of natural areas and increases in imperviousness are more significant factors affecting stream condition and water quality. This large, massive development has grave consequences for the life and quality of the streams flowing in the Ten Mile Creek Watershed – the cleanest source of water for the Little Seneca Lake Reservoir, the only nearby back-up drinking water supply for our region.

Sincerely,

Friends of Ten Mile Creek and Little Seneca Reservoir

Anne James, President
8917 Mohawk Lane
Bethesda MD 20817

cc: All Parties of Record

Appendix A

Figure 1: Ten Mile Creek Subwatersheds. (from 2014 Master Plan p. 15)

Map 4: Ten Mile Creek Subwatersheds

