

R E S O L U T I O N

WHEREAS, Konterra Realty is the owner of a 79.25-acre parcel of land known as Parcel 10, 202 and 61, said property being in the 10th Election District of Prince George's County, Maryland, and being zoned Rural-Residential (R-R); and

WHEREAS, on March 26, 2009, Fairland Development, LLC filed an application for approval of a Preliminary Plan of Subdivision for 154 lots and 9 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Plan of Subdivision, also known as Preliminary Plan 4-09005 for Fairland Park Community Public Benefit Conservation Subdivision was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on September 10, 2009, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on September 10, 2009, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED the Type I Tree Conservation Plan (TCPI/010/01-01), and further APPROVED Preliminary Plan of Subdivision 4-09005, Fairland Park Community Public Benefit Conservation Subdivision, including a Variation from Section 24-130 for Lots 1-138 and 13 parcels with the following conditions:

1. Prior to signature approval of the preliminary plan of subdivision, the following technical corrections shall be made:
 - a. Conform to Applicant Exhibit B.
 - b. Provide a general note that there are no existing structures on-site.
 - c. Revise the title block to include "Public Benefit Conservation Subdivision."
 - d. Revise Public Roads A and B to a ROW width of 70 feet to accommodate the eight-foot-wide hiker/biker trail off of individual lots and 36 feet of travel way, or widen the ROW to a standard approved by DPW&T to accommodate these improvements as noted.
 - e. Delineate a ten-foot-wide public utility easement abutting the public and private streets.

- f. Provide the legal description and width of the existing WSSC easement over Parcel D.
 - g. Indicate future ownership of Parcels A, B, C, and D (M-NCPPC) and graphically depict an eight-foot-wide hiker/biker trail, approximately 50 feet from the ROW of Old Gunpowder Road.
 - h. Revise the parcel description table to indicate future ownership.
 - i. Provide the gross and net tract area, the density calculation, and the percentage of residential/conservation area.
 - j. Accurately reflect the dedication of Minnick Road as shown on the plat entitled "Minnicks' Industrial Park" (WWW 83@55).
 - k. Alleys are not proposed; revise to re-label as private streets within the townhouse component of the site.
 - l. Provide the legal description and width of the Washington Gas line easement on Parcel D, and clearly label its relocation.
 - m. For the townhouse component, demonstrate conformance to Section 27-433(f)(1)(C) of the Zoning Ordinance. Specifically, that each right-of-way shall contain a sidewalk at least six feet wide that connects parking areas with the individual lots.
 - n. Label all PUEs in the townhouse area.
 - o. Provide the zoning of abutting properties.
2. Prior to signature approval of the preliminary plan, the applicant, its heirs, successors and/or assignees shall submit evidence that the property is not encumbered by any prescriptive or descriptive easements which provide access to other properties. If encumbered, the applicant shall provide evidence of the agreement of those benefited properties to the abandonment or relocation of said easements. Prior to approval of the final plat, the applicant shall submit a copy of the recorded abandonment of said easement(s) if they exist. If Minnick Road is found to have been dedicated to public use on the subject property, the ROW shall be vacated in accordance with Section 24-112 of the Subdivision Regulations prior to final plat.
 3. Prior to signature approval of the preliminary plan, the Type I tree conservation plan shall be revised as follows:
 - a. Revise all sheets of the plan set to clearly indicate the scale of the plan.

- b. Revise the worksheet to include the standard rows for the “area of woodland not cleared” and “woodland retained not part of requirements,” and to show the correct woodland conservation requirement.
- c. Revise the woodland conservation summary tables on the cover sheet to include the area labels as shown on the plan (A–E, 1–5, etc.).
- d. Re-label the woodland conservation summary table currently labeled as “forest saved and counted as cleared” as “woodland retained not part of requirements.”
- e. Re-label preservation Area E as an area of “woodland retained not part of requirements” and update the hatch pattern accordingly.
- f. Replace the TCPI notes shown on the cover sheet with the standard TCPI Notes 1 through 8, updated to include all appropriate information.
- g. Provide the standard TCPI approval block on all sheets of the plan set with the original approving signature typed-in (Lori Shirley—May 4, 2004).
- h. Remove all duplicate tree lines from the plan and ensure that the tree line is shown at a consistent line type scale.
- i. Label all specimen tree numbers on the plan.
- j. Provide a note below the specimen tree table indicating how the specimen trees were located (survey or field estimated).
- k. Revise the grading as necessary to preserve specimen trees 12 and 17.
- l. Delineate the FIDS buffer on the plan.
- m. Show the expanded buffer on the northern side of the stream/wetland complex located on proposed Parcel B as shown on the signed NRI.
- n. Show the proposed outfall for the southern pond.
- o. Revise the worksheet to account for all plan revisions.
- p. After all these revisions have been made, have the qualified professional who prepared the plan sign and date it and update the revision box with a summary of the revisions made.

4. A detailed site plan shall be approved by the Planning Board in accordance with Part 3, Division 9 of the Zoning Ordinance (Subtitle 27), and the findings contained in this resolution of approval.
5. Prior to the issuance of the 69th building permit, the applicant, its heirs, successors, and/or assignees shall plat and convey Parcels A, B, C, and D, and donate \$175,000 to M-NCPPC toward both the restoration of the stream channel on the subject property and the modification of any other conditions on said parcels. The record plat shall reflect Parcels C and D for the area of right-of-way of 40 feet from the center line of Old Gunpowder Road. The final plat shall note that Parcels C and D will be conveyed to DPW&T upon demand. The applicant shall submit an original, special warranty deed for the donation of Parcels A, B, C, and D, to M-NCPPC as is, with no further expenditures required by the applicant excepting the construction of the hiker/biker trail on Parcels A and B (signed by the WSSC Assessment supervisor). The deed shall be submitted to the Subdivision Section of the Development Review Division, The Maryland-National Capital Park and Planning Commission (M-NCPPC). The applicant shall terminate any leasehold interests on property to be conveyed to the Commission.
6. Prior to the conveyance of Parcels A, B, C, and D and the donation of \$175,000 to M-NCPPC, the applicant, its heirs, successors, and/or assignees shall construct the eight-foot-wide hiker/biker trail on Parcels A and B. The location of the trail shall be determined at the time of detailed site plan review. The approval of construction drawings for the trail shall be in accordance with the *Park and Recreation Facilities Guidelines* and reviewed with the detailed site plan. The trail shall be inspected for completion by the Department of Parks and Recreation prior to the conveyance of Parcels A and B to M-NCPPC.
7. The applicant, its heirs, successors, and/or assignees agrees to allow access to Parcels A, B, C, and D as necessary for any public actions to provide for stream restoration and stabilization. The applicant shall provide a right of entry agreement and/or appropriate temporary grading easements for the sole purpose of stream restoration and stabilization during the applicant's ownership, provided that the appropriate indemnification is also provided.
8. The land to be conveyed (Parcels A, B, C, and D) shall not be disturbed or filled in any way without prior written consent of the Department of Parks and Recreation (DPR) excepting for the construction of the eight-foot wide hiker/biker trail on Parcels A and B as approved by the detailed site plan.
9. A Type II tree conservation plan shall be approved in conjunction with the detailed site plan.
10. Prior to approval of the detailed site plan, the applicant, its heirs, successors, and/or assignees shall submit an acceptable traffic signal warrant study to the Department of Public Works and Transportation (DPW&T) for signalization at the intersection of Old Gunpowder Road and Van Dusen Road. The applicant shall utilize a new 12-hour count, and shall analyze signal warrants under total future traffic as well as existing traffic at the direction of DPW&T, and examine alternatives to signalization for reducing delays from the minor street approaches. If signalization

or other traffic control improvements are deemed warranted at that time, the applicant shall bond the improvements with DPW&T prior to the release of any building permits within the subject property, and complete installation at a time when directed by DPW&T.

11. Prior to the approval of the detailed site plan, in accordance with Section 24-123(a)(3) of the Subdivision Regulations, the Public Road A connection across the Montgomery County line shall be approved by the District Council. If such approval is not granted, Public Road A shall be terminated to the west of the proposed roundabout and reflected on the record plats. If Public Road A is to connect into Montgomery County, coordination with the M-NCPPC Planning Department of Montgomery County shall occur prior to the approval of the DSP to ensure that an appropriate transition between the two counties is provided.
12. In conformance with the approved Subregion I master plan, the applicant, its heirs, successors, and/or assignees shall provide the following:
 - a. Construct the eight-foot-wide master plan trail along the subject site's entire frontage parallel to Old Gunpowder Road which will include an extension onto donated parkland (Parcels A, B, C and D).
 - b. Provide standard sidewalks along both sides of all internal roads (except where eight-foot-wide trails are proposed), unless modified by DPW&T.
 - c. Construct the proposed eight-foot-wide trail within the right-of-way along Public Roads A and B, as shown on the submitted plan.
 - d. Provide a 70-foot-wide (36 feet of pavement) public road right-of-way for both Public Roads A and B in order to accommodate the proposed eight-foot-wide trail within the right-of-way and off private lots or a modification to the ROW standard approved by DPW&T to accommodate these improvements as noted.
13. Development of this site shall be in conformance with Stormwater Management Concept Plan 42314-2004-01 and any subsequent revisions.
14. At the time of final plat, the applicant, its heirs, successors, and/or assignees shall dedicate a ten-foot-wide public utility easement along both sides of the public and private rights-of-way unless modified and approved by the public utility companies.
15. Prior to the issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency: improvements along Old Gunpowder Road at site access as required by DPW&T.

16. At time of final plat for Parcels A, B, C, and D, an archeological easement shall be described by bearings and distances on 18PR511. The easement shall be made a part of the conservation easement (Section 24-152(o) of the Subdivision Regulations) and contain the archeological site and a 50-foot nondisturbance buffer to protect the resource. The easement shall be reviewed by the Historic Preservation Section prior to approval of the final plat. The following note shall be placed on the plat:

“Archeological easements described on this plat are areas where grading, the installation of structures and roads, and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee.”

17. Archeological site 18PR511 shall be preserved in place and shall be avoided by stream restoration on Parcel A, if possible. Prior to any ground disturbance or the approval of any permits which would result in disturbance of archeological site 18PR511, if stream restoration efforts are necessary on Parcel A and impact archeological site 18PR511, the applicant and the applicant's heirs, successors, and/or assignees shall provide for the following:
- a. Evaluating the portion of site 18PR511 on proposed Parcel A on the east side of the PEPCO right-of-way at the Phase II level. The applicant and the applicant's heirs, successors, and/or assignees shall provide a final report detailing the Phase II investigations and ensure that all artifacts are curated in a proper manner.
 - b. If a Phase III archeological mitigation is necessary, the applicant and the applicant's heirs, successors, and/or assignees shall provide a final report detailing the Phase III investigations and ensure that all artifacts are curated in a proper manner.
 - c. Depending upon the significance of the findings (at Phase II or III level), the applicant and the applicant's heirs, successors, and/or assignees shall provide interpretive signage. The location and wording shall be subject to approval by the staff archeologist.
18. If state or federal monies, or federal permits are required for this project, Section 106 review may require archeological survey for state or federal agencies. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties, to include archeological sites. The applicant, its heirs, successors, and/or assignees shall provide proof to Historic Preservation staff that they have forwarded all necessary materials to the Maryland Historical Trust for their review of potential effects on historical resources on the subject property prior to approval of this preliminary plan.
19. At the time of final plat, the applicant, its heirs, successors, and/or assignees shall dedicate 3.9± acres of land to M-NCPPC, in accordance with Applicant Exhibit B, and the dedication shall not include Parcels A, B, C and D which are being donated to M-NCPPC and are not subject to the following. Said land to be conveyed shall be subject to the following:

- a. An original, special warranty deed for the property to be conveyed (signed by the WSSC Assessment supervisor) shall be submitted to the Subdivision Section of the Development Review Division (DRD), The Maryland-National Capital Park and Planning Commission (M-NCPPC), along with the final plat.
- b. M-NCPPC shall be held harmless for the cost of public improvements associated with land to be conveyed, including, but not limited to sewer extensions, adjacent road improvements, drains, sidewalks, curbs and gutters, and front-foot benefit charges prior to and subsequent to final plat.
- c. The boundaries and acreage of land to be conveyed to M-NCPPC shall be indicated on all development plans and permits, which include such property.
- d. The land to be conveyed shall not be disturbed or filled in any way without the prior written consent of the Department of Parks and Recreation (DPR). If the land is to be disturbed, DPR shall require that a performance bond be posted to warrant restoration, repair, or improvements made necessary or required by the M-NCPPC development approval process. The bond or other suitable financial guarantee (suitability to be judged by the General Counsel's Office, The M-NCPPC) shall be submitted to DPR within two weeks prior to applying for grading permits.
- e. Storm drain outfalls shall be designed to avoid adverse impacts on land to be conveyed to or owned by M-NCPPC. If the outfalls require drainage improvements on adjacent land to be conveyed to or owned by M-NCPPC, DPR shall review and approve the location and design of these facilities. DPR may require a performance bond and easement agreement prior to the issuance of grading permits.
- f. All waste matter of any kind shall be removed from the property to be conveyed. All wells shall be filled and underground structures shall be removed. DPR shall inspect the site and verify that land is in acceptable condition for conveyance, prior to dedication.
- g. All existing structures shall be removed from the property to be conveyed, unless the applicant obtains the written consent of DPR.
- h. The applicant shall terminate any leasehold interests on property to be conveyed to M-NCPPC.
- i. The land to be conveyed shall not be encumbered by prescriptive or descriptive easements that are to the benefit of other properties without the expressed written permission of DPR. If encumbered, DPR shall review the location, the rights, and privileges associated with those easements and their anticipated impact on the future development of the parkland. If appropriate, DPR may require the applicant to relocate said easements.

- j. No stormwater management facilities, or tree conservation or utility easements (other than typical PUEs associated with the edge of public right-of-way) shall be proposed on land owned by or to be conveyed to M-NCPPC without the prior written consent of DPR. DPR shall review and approve the location and/or design of these features. If such proposals are approved by DPR, a performance bond and an easement agreement may be required prior to the issuance of grading permits.
20. Prior to the approval of the detailed site plan, DPR staff shall review and approve the location, details and plant materials in the required Section 4.7 landscape buffer area on dedicated parkland (Parcel G), and the location of the six-foot-high fence along the park property line to be installed by the applicant on HOA land.
21. Prior to the approval of the final plat, the applicant, its heirs, successors, and/or assignees shall submit three original, executed Landscaping Agreements for the installation of the required Section 4.7 landscape buffer on dedicated parkland to DPR for approval. Upon approval by DPR, the agreement shall be recorded among the land records of Prince George's County, Upper Marlboro, Maryland and noted on the record plat.
22. Prior to the approval of building permits, the applicant, its heirs, successors, and/or assignees shall submit to DPR a performance bond, letter of credit, or other suitable financial guarantee for the installation of a landscaping buffer on dedicated parkland in an amount to be determined by DPR.
23. Prior to the approval of building permits, the applicant, its heirs, successors, and/or assignees shall demonstrate that a homeowners association has been established and that the common areas have been conveyed to the homeowners association.
24. The applicant, its heirs, successors, and/or assignees shall submit three original Recreational Facilities Agreements (RFA) to DRD for construction of recreational facilities, including the required six-foot-high fence and the eight-foot-wide hiker/biker trail on homeowners land, for approval prior to the submission of final plats. Upon approval by DRD, the RFA shall be recorded among the County land records.
25. The applicant, its heirs, successors, and/or assignees shall submit a performance bond, letter of credit, or other suitable financial guarantee for the construction of recreational facilities including the required six-foot-high fence and the eight-foot-wide hiker/biker trail on homeowners land, prior to the issuance of building permits.
26. Prior to the approval of building permits, the applicant, its heirs, successors, and/or assignees shall convey to the homeowners association (HOA) 9.1± acres of land. Land to be conveyed shall be subject the following:
 - a. Conveyance shall take place prior to the issuance of building permits.

- b. A copy of the unrecorded, special warranty deed for the property to be conveyed shall be submitted to the Subdivision Section of the Development Review Division (DRD), Upper Marlboro, along with the final plat.
 - c. All waste matter of any kind shall be removed from the property, prior to conveyance, and all disturbed areas shall have a full stand of grass or other vegetation upon completion of any phase, section, or the entire project.
 - d. The conveyed land shall not suffer the disposition of construction materials, soil filling, discarded plant materials, refuse, or similar waste matter.
 - e. Any disturbance of land to be conveyed to a homeowners association shall be in accordance with an approved detailed site plan or shall require the written consent of DRD. This shall include, but not be limited to, the location of sediment control measures, tree removal, temporary or permanent stormwater management facilities, utility placement, and storm drain outfalls. If such proposals are approved, a written agreement and financial guarantee shall be required to warrant restoration, repair, or improvements required by the approval process.
 - f. Storm drain outfalls shall be designed to avoid adverse impacts on land to be conveyed to a homeowners association. The location and design of drainage outfalls that adversely impact property to be conveyed shall be reviewed and approved by DRD prior to the issuance of grading or building permits.
 - g. Temporary or permanent use of land to be conveyed to a homeowners association for stormwater management shall be approved by DRD.
 - h. The Planning Board or its designee shall be satisfied that there are adequate provisions to assure retention and future maintenance of the property to be conveyed.
27. Prior to the approval of the final plat, the applicant, its heirs, successors, and/or assignees shall demonstrate the abandonment of the existing Washington Gas line easement on HOA land abutting Montgomery County and provide a copy of the recorded easement agreement for its relocation. The legal description shall be provided on the record plat.
28. Prior to the approval of the final plat for Parcels A and B, in accordance with Section 24-152(o) of the Subdivision Regulations and the findings contained in the resolution of approval, a conservation easement agreement shall be approved by the Planning Board or its designee for Parcels A and B, and be recorded in the land records of Prince George's County, consistent with the approved preliminary plan of subdivision.
29. The final plat shall include the following note:

“This subdivision is a Public Benefit Conservation Subdivision for which the subdivision of land is strictly controlled.”

30. The TCPII shall demonstrate that all specimen trees within 50 feet of the limits of disturbance have been survey located. The specimen trees that are determined to remain as part of the survey shall be evaluated for appropriate preservation measures via a condition analysis conducted by a certified arborist using the techniques described in the latest edition of “Guide to Plant Appraisal” published by the Council of Tree and Landscape Appraisers. The condition analysis shall outline any special treatments necessary for the trees to survive construction (root pruning, fertilization, etc.) including information on treatments to occur prior to, during, and after construction for all specimen trees to remain including trees 12, 17, and 18.
31. Development of this subdivision shall be in compliance with an approved Type I Tree Conservation Plan (TCPI/10/01-01). The following note shall be placed on the final plat of subdivision:

“This development is subject to restrictions shown on the approved Type I Tree Conservation Plan (TCPI/10/01-01), or as modified by the Type II Tree Conservation Plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland Conservation Ordinance. This property is subject to the notification provisions of CB-60-2005. Copies of all approved Tree Conservation Plans for the subject property are available in the offices of the Maryland-National Capital Park and Planning Commission, Prince George’s County Planning Department.”
32. Prior to signature approval of the preliminary plan, the variation request (Section 24-130 of the Subdivision Regulations) exhibits shall be revised to clearly show the location of the proposed outfall.
33. Prior to the issuance of any permits which impact jurisdictional wetlands, wetland buffers, streams, or Waters of the U.S., the applicant, its heirs, successors, and/or assignees shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.
34. At time of final plat, a conservation easement (Section 24-130 of the Subdivision Regulations) shall be described by bearings and distances and contain the expanded stream buffer on Parcel 10. The easement shall be reviewed by the Environmental Planning Section prior to approval of the final plat. The following note shall be placed on the plat:

“Conservation easements described on this plat are areas where the installation of structures, roads, the removal of vegetation, and stream restoration are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed.”

35. The applicant, its heirs, successors, and/or assignees shall submit three original Recreational Facilities Agreements (RFA) for construction of recreational trail facilities on park property (not including Parcels A and B) to the Park Planning and Development Division (PP&D). The RFA shall be approved prior to the approval of final plats. Upon approval by the PP&D, the RFA shall be recorded among the County land records and noted on the final plat of subdivision.
36. The applicant, its heirs, successors, and/or assignees shall submit a performance bond, letter of credit, or other suitable financial guarantee for the construction of recreational facilities on park property (not including Parcels A and B) prior to the approval of building permits.
37. The current, “as is” condition of Parcels A through D is acceptable to DPR. The applicant, it’s heirs, successors and/or assigns will utilize good faith efforts to prevent man made debris from being deposited on Parcels A through D from the date of the hearing through the conveyance of said parcels to DPR. DPR will be responsible for the first \$7,500 in costs to remove man made debris from said parcels with the applicant, it’s heirs, successors and/or assigns being responsible for the cost to remove man made debris exceeding \$7,500. All manmade debris shall be removed from said parcels prior to their conveyance to DPR.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. The subject properties are located along an approximately one-mile segment of Old Gunpowder Road, south of Sandy Spring Road (MD 198). The property is located to the east of the border of Montgomery County, in the southwest quadrant of the intersection of Sandy Spring Road (MD 198) and Old Gunpowder Road, west of the City of Laurel. The Gunpowder Golf Course (M-NCPPC) and Fairland Regional Park are abutting to the south. Abutting to the west is Montgomery County, and to the north is undeveloped I-3 (Planned Industrial/Employment Park) zoned land.
3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development:

	EXISTING	APPROVED
Zone	R-R	R-R
Use(s)	Vacant	Residential
Acreage	79.25	79.25
Lots	0	138 (104 SFD/ 34TH)
Parcels	3	13

Dwelling Units:		
Detached	0	104
Townhouses	0	34
Public Safety Mitigation Fee		No

Pursuant to Section 24-119(d)(2) of the Subdivision Regulations, this case was heard before the Subdivision Review Committee (SRC) on April 17, 2009. The variation to Section 24-130 of the Subdivision Regulations was received and heard at the SRC meeting on the same day, at least 30 days prior to the Planning Board date as required by Section 24-113(b) of the Subdivision Regulations.

4. The subject property is located on Tax Maps 4 and 5, in Grids F-4 and A-2, is 79.25 acres and zoned Rural-Residential (R-R). The site is comprised of parcels 10 (38.22 acres), 202 (26.43 acres), and 61 (14.62 acres). The property is narrow and located on the west side of Old Gunpowder Road and east of the Montgomery County line. The three parcels are not abutting, but are being evaluated as one site for the purposes of this subdivision application. The public benefit conservation subdivision (PBCS) is in accordance with Section 24-152 of the Subdivision Regulations. The purpose of a public benefit conservation subdivision is set forth in Section 24-152(c) of the Subdivision Regulations and defined in Section 27-107.01(184.2) of the Zoning Ordinance as follows:

Section 27-107.01. Definitions

(184.2) Public Benefit Conservation Subdivision: A conservation subdivision that prioritizes site characteristics which conserve important site features such as open space networks and contiguous woodland habitats adjacent to other existing open spaces tracts. The site design of such subdivisions should encourage connectivity between environmental characteristics of adjacent properties and should provide a continuous open space network between the proposed development layout and the adjacent properties. Intermodal trails which provide a link to adjacent properties as an enhancement of recreational opportunities are encouraged. A Public Benefit Conservation Subdivision shall provide for more tree conservation on site than required and significantly more conservation acreage in parcels more than the 40% gross tract area requirement for a conservation subdivision. (CB-32-2008)

Section 24-152. Conservation Subdivisions.

- (c) **Purpose of a Public Benefit Conservation Subdivision. The purpose of a Public Benefit Conservation Subdivision is to prioritize site characteristics which conserve important site features such as open space networks and contiguous woodland habitats adjacent to other existing open space tracts. The site design should encourage connectivity between environmental characteristics of adjacent**

properties and should provide a continuous open space network between the proposed development layout and the adjacent properties. Intermodal trails which provide a link to adjacent properties as an enhancement of recreational opportunities are encouraged.

The property is located in the Developing Tier where the use of a public benefit conservation subdivision is optional and permitted only in the R-R Zone, subject to standards. In conventional R-R zoning, the minimum lot size is 20,000 square feet and townhouses are not permitted by right. In a standard conservation subdivision the minimum lot size is 10,000 square feet and townhouses are not permitted by right. In a PBCS the minimum lot size for a single-family dwelling is 6,500 square feet and townhouses are permitted by right, but limited to no more than 25 percent of the total dwelling units.

This property is a part of the larger undeveloped Fairland Park Community abutting to the west, which is located in Montgomery County. The development is to be constructed as one community, with a common development scheme and shared facilities that include a community building, pool, playgrounds, a public park, and an integrated intermodal trail system. The primary recreational facilities are to be located in Montgomery County. That portion of the Fairland Park Community (313± acres) located in Montgomery County is the subject of an approved Development Plan Amendment (DPA-09-01).

5. **Sketch Plan**—In accordance with Section 24-152(f) of the Subdivision Regulations, the applicant filed a Sketch Plan (S-08003) for a public benefit conservation subdivision which was certified on March 4, 2009 and valid until March 4, 2011. The sketch plan documents the design process and prioritizes the characteristics of the site to be preserved in a conservation parcel. The sketch plan proposed locations for dwellings on that portion of the site determined to be least suitable for conservation. Completion of the sketch plan process is required prior to the acceptance of a preliminary plan for a conservation subdivision.

The approved Sketch Plan (S-08003) established that the subdivision proposes to protect the existing environmental, scenic, and archeology character of the site. The characteristics include wetlands, priority woodland, the Little Paint Branch stream on site, and archeology opportunities. The applicant has utilized the optional standards of public benefit conservation subdivision (PBCS) regulations to design a layout in keeping with the conservation area to the west, located within Montgomery County.

The sketch plan (dated February 4, 2009) identified five different areas of the site as having either high, moderate, or low conservation potential. The area of low potential was identified for residential development with the sketch plan. **Areas 1 and 2** were the **highest priority** for preservation. **Areas 3 and 4** were identified as having **medium priority** for preservation and **Area 5** as having **low priority** for preservation.

Priority Areas 1 (Parcel B) and 2 (Parcel A) are located north of the I-2 zoned property. These areas are identified as the areas of highest priority for conservation and contain the most

significant areas of environmental features on the site which include the Little Paint Branch stream, wetlands, floodplain, specimen trees, and an archeology site. These areas of the site offer the greatest potential to conserve important site features and are located adjacent to a large open space on the abutting property to the west (Montgomery County). In fact, on July 14, 2009, the Montgomery County Council voted to approve the acquisition of 52.88 acres from Fairland Development, LLC (The Artery Group) with Advance Land Acquisition Revolving Funds (ALARF) abutting Areas 1 and 2, to the west. The purchase price is \$8.75 million.

This area of land within Montgomery County is also the subject of an approved Development Plan Amendment (DPA-09-01) for that part of the Fairland Park Community. That approval depicts a lotting pattern on that portion of the property on which the purchase price was based. Montgomery County purchased that part of the Fairland Park Community for its conservation value.

The significant shared property line with the Fairland Park Community provides a continuous open space network between these two sites and conforms to the conservation purposes of a PBCS. The open space network is not planned to be interrupted by dwelling units and is significantly greater than would normally be required utilizing a conventional subdivision technique. The central open space network, which the entire Fairland Park Community will surround (both Montgomery and Prince George's County) includes a club house and pool facility, a public school site, playgrounds and a trail system to the public facilities within the regional public park and golf course.

The trail connections are integral to the purposes and overall concept of a public benefit conservation subdivision. Construction of the trail system was evaluated against the requirements of the mandatory dedication of parkland, Section 24-134 of the Subdivision Regulations, as well as conformance to the purposes of the PBCS. The number and extent of the trail system will exceed that required with mandatory dedication of parkland requirements to ensure conformance to the purposes of the PBCS, with the provision of an intermodal trail system.

Priority Areas 1 and 2 are calculated as a part of the required conservation area which includes the area of the Little Paint Branch stream and its expanded buffer. The entire stream and its expanded buffer would not have been appropriate for conservation without the applicant's proffer of 175,000 dollars for seed money for stream restoration. The expanded buffer on Parcels A and B is 331,251.9 square feet or 7.60 acres. The total conservation area proposed with this application would be approximately 42 percent of the gross tract area of the site (79.25 acres), if the expanded buffer was excluded:

Parcel A divided by 636,898 and Parcel B divided by 1,150,774 equals 41.04 acres
41.04 acres minus 7.60 acres of stream and expanded buffer equals 33.44 of conservation
on Parcels A and B

 $33.44 / 79.25 = 42\%$ without stream restoration.

Priority Area 2 (Parcel A) is 14.62 acres, located on the north side of the PEPCO right-of-way (ROW), and is identified as having a high priority for preservation. Parcel A contains one archeology site described as a prehistoric lithic scatter. The archeology site (18PR511) will be preserved in place. A Phase I archeological study was performed on the site. Prior to any future disturbance of this site, a Phase II and Phase III archeological study should be required. Through the PBCS design technique, this feature will be included in a conservation area and preserved by an archeology easement.

Priority Area 3 (southern area abutting the I-2 zoned property) was identified as having a moderate priority for preservation and was primarily intended for conservation to create a buffer from the abutting I-2 zoned property. Staff recognized through the review of the preliminary plan that this area was already required for a buffer (*Prince George's County Landscape Manual*), was narrow and irregularly shaped, and should not be included in the applicant's calculation for conservation area requirements (Section 24-152(f)(2)(d) of the Subdivision Regulations), a possibility which was discussed prior to the certification of the sketch plan and determined with the review of the preliminary plan. This area is appropriately included in the residential development area for the site.

Priority Area 4 is identified as having a moderate priority for preservation and is located south of the PEPCO property on proposed Parcel B, north of the I-2 zoned property, abutting Area 1. At the time of certification of the sketch plan, the applicant was advised that the limits of this area would be carefully evaluated at the time of review of the preliminary plan. Area 1, abutting Area 4, was identified as the highest priority area for preservation and included the greatest opportunity for conservation of the Little Paint Branch stream valley. Staff was concerned that development in this area could adversely impact the highest priority area for the development. The applicant was advised that increasing the limit of preservation (Area 1) in this area in excess of what would normally be required with a conventional development or a conservation subdivision would be required in the review of the preliminary plan of subdivision pursuant to the standards for a PBCS. The applicant was advised that a reduction in the residential development area originally proposed abutting Area 1 may be recommended. The final revised preliminary plan submitted by the applicant (August 5, 2009) proposes Parcel B with no development.

Priority Area 5 is identified as having a low priority for preservation and intended for a primary residential development area consistent with the preliminary plan. In a PBCS, the applicant is permitted to develop townhouses. Townhouses may not comprise more than twenty-five percent of the total number of dwelling units included in the subdivision. The applicant has indicated that they do intend to develop the site with the maximum number of townhouses. All of the residential development is located within Area 5 (138 lots). This area is abutting the Fairland Regional Park and will have excellent views of the park and golf course and pedestrian connection through the construction of an eight-foot-wide hiker/biker trail. The trail will connect to the existing trail facility within the Fairland Regional Park and extend along the entire frontage of the site along Old Gunpowder Road. Careful site planning will occur with the review of the detailed site plan. With the sketch plan, staff noted that the views from and to this property from Old Gun Powder

Road and Fairland Regional Park were important. Townhouse development in a PBCS, pursuant to Section 27-441(b) of the Zoning Ordinance, Footnote 85, is subject to a detailed site plan.

6. **Conventional Layout**—Section 24-152(1)(2) of the Subdivision Regulations requires that in addition to the information normally required for a major subdivision, the application for a public benefit conservation subdivision will include a conventional layout as a separate exhibit for any application in the Developing Tier. The exhibit must be a “reasonable and achievable lotting pattern reflecting the minimum conventional standards of the existing zoning of the property,” in this case the R-R Zone. The criteria for approval of a conservation subdivision (Section 24-152(k)(3)) also includes that because the use of the conservation subdivision technique in the Developing Tier is optional, the Planning Board shall also find that the proposed plan is “clearly superior to that which could be achieved through the use of conventional development standards and clearly meets the purposes of the Conservation Subdivision technique. Lot yield shall be a secondary consideration to achieving the purposes of the Public Benefit Conservation Subdivision in assessing whether a proposed plan is clearly superior.”

In this case, the applicant filed a conventional R-R Zone subdivision layout. The minimum lot size in the R-R Zone is 20,000 square feet, the lot width at the front building line is 80 feet, and the lot width at the front street line is 70 feet (60 feet on a cul-de-sac). The conventional layout proposes 96 lots. However, staff analysis found that only 87 lots are reasonable and achievable. Of the 96 lots proposed by the applicant on the conventional plan, seven lots do not meet the minimum lot width at the front street line, one lot does not meet the minimum lot size of 20,000 square feet, and one lot is severely restricted by a 65-foot-wide WSSC (Washington Suburban Sanitary Commission) easement. The WSSC easement divides the lot into two separate developable areas because the easement cannot be built on, and the lot is therefore, not supportable. A reasonable and attainable conventional layout based on the applicant’s conventional plan is 87 lots. Utilizing the PBCS, the applicant is proposing 138 lots (104 single-family lots and 34 townhouse lots) and has realized an increase of 51 lots or 36 percent more lots than that which could be attained with a conventional R-R subdivision.

The Department of Parks and Recreation is recommending the dedication of 3.9 acres of land and construction of a part of the intermodal trail for the fulfillment of mandatory dedication of parkland. The location of the land for dedication is consistent with the *Approved Master Plan and Sectional Map Amendment for Subregion I Planning Areas 60, 61, and 62*, and consistent with the high need in the community for developable park land. The Planning Board modified DPR Exhibit A, and redesigned this area to conform to Applicant Exhibit B. This revision results in 138 lots in the subdivision including 34 townhouses.

7. **Public Benefit Conservation Subdivision**—The purpose of a public benefit conservation subdivision (Section 24-152(c) of the Subdivision Regulations) is to prioritize site characteristics which conserve important site features such as open space networks and contiguous woodland habitats adjacent to other existing open space tracts. The site design should encourage connectivity between environmental characteristics of adjacent properties and should provide a continuous open space network between the proposed development layout and the adjacent

properties. Intermodal trails which provide a link to adjacent properties as an enhancement of recreational opportunities are encouraged. In a conservation subdivision, the allowable density remains the same as with a conventional plan, however, the minimum lot size is reduced and intended to translate into areas of conservation which may not be achieved through the use of convention standards.

In the R-R Zone, a minimum 40 percent of the gross tract area shall be designated as a conservation lot or parcel. Up to 60 percent of the gross tract area may be utilized for residential development areas. In this case, the applicant has proposed Parcels A and B as conservation parcels or 51.78 percent of the gross tract area. Of the 79.25 acres contained in this preliminary plan, 41.05 acres is proposed for conservation. With the applicant's proffer of donating 175,000 dollars to M-NCPPC for stream restoration, the conservation of Parcels A and B will be significantly more than the 40 percent established for a public benefit conservation subdivision or 51.78 percent.

The site layout has been reviewed for conformance to Section 24-152(g)(2) and (h)(2) of the Subdivision Regulations:

Section 24-152

(g) Design criteria for conservation areas.

- (A) The area of the site required for a conservation parcel or lot shall be determined based on the priorities established in the review of the sketch plan, may include areas of the site not otherwise more specifically regulated by this Subtitle, and should be one parcel or lot to the extent possible.**

Conservation parcels (Parcels A and B) are consistent with the sketch plan. This area is the highest priority for conservation and does include areas which would not otherwise be regulated.

- (B) Conservation areas shall connect with existing and potential conservation areas on abutting sites to encourage corridors of compatible site characteristics, unless it is found to be impractical due to topography, spacing or existing natural barriers.**

Parcels A and B (41.05 acres) are abutting land which has been purchased by Montgomery County for 8.75 million dollars because of its conservation value. By placing Parcels A and B in permanent conservation, this development will compliment and support those actions. The future restoration of the stream will ensure that a public benefit results from this public benefit conservation subdivision.

- (C) Naturally contiguous conservation areas shall not be divided for the sole purposes of obtaining allowable density.**

There are no conservation lots and this standard does not apply.

(D) Fragmentation of the conservation area into small, irregularly shaped conservation parcels and lots shall be avoided.

Parcels A and B are large blocks of land. The shape of these parcels is the same as the underlying property description (Parcels 61 and 202). These parcels will be donated to M-NCPPC in the configuration that they exist today. Parcels C and D are that portion of the parcels which represent 40 feet from the center line of Old Gunpowder Road. These parcels (C and D) will be conveyed to M-NCPPC and conveyed to DPW&T from M-NCPPC upon demand.

(E) Farm structures shall be retained whenever possible.

There are no farm structures existing on the property.

(F) The subdivision layout shall be designed to minimize potential adverse impacts on existing farm operations.

This site is not abutting or supporting farming operations.

(h) Residential development area.

(1) The residential development area shall include individual lots, recreational facilities, community or individual septic recovery areas, stormwater management facilities, and all easements and streets serving these lots.

The applicant has correctly calculated the residential development areas as 48 percent of the total site.

(2) Layout Design Criteria

(A) Internal streets shall be sited to maintain the existing grade as much as possible.

The area of the site to be used for residential development was a previously mined site and will require significant fill. Retention of existing grades is not appropriate in this case.

(B) Lots and the siting of dwellings shall be arranged and sufficiently set back to preserve views of the site characteristics from streets and abutting properties.

The dwellings have been located to take advantage of the proximity to Fairland Regional Park and the Gun Powder Golf Course. One of the visions for this subdivision is to provide access for the residents via intermodal trails to these regional facilities.

(C) Dwellings should not be located in the center of open fields or on a ridgeline.

This requirement is not applicable in this case. The area of the site proposed for residential development, due to its lack of features, is appropriate for the residential development.

(D) Existing farm roads and driveways should be incorporated into the internal street or trail design where possible.

An existing driveway is delineated on the preliminary plan, but the applicant has indicated that no easement exists. Record Plat WWW 83@55 for Parcel A, Block 1, Minnick's Industrial Park, abutting Parcel 10 to the north does indicate that Minnick Road does exist on the property. However, there is no evidence from DPW&T or otherwise, that the ROW was dedicated to public use. Prior to signature approval of the preliminary plan, the applicant should certify that no easement exists on the property and if Minnick Road is found to have been dedicated to public use on the subject property, the ROW shall be vacated.

(E) Access to all lots should be from interior streets and easements.

The proposed preliminary plan conforms to this regulation. Access to all of the lots is via Public Road A, which extends west from Old Gunpowder Road into the site, south of the unrelated I-2 zoned property. There are no lots proposed with direct access onto Old Gunpowder Road.

(F) Dwellings and streets should be located at the edges of woodlands or situated in a manner that will maximize the amount of contiguous wooded area left intact.

The residential development area is situated to maximize the contiguous woodland on Parcels A and B to the north. Where appropriate, with the review of the detailed site plan, the required Section 4.7 Landscape Manual bufferyard along the rear of Lots 1-10, Block A should incorporate existing woodland. The 4.7 buffer is required by the Landscape Manual on only a portion of the lots. ROW dedication occurred pursuant to WWW83@55, along the north side of Lots 1-4 or 5. The preliminary plan will be revised to reflect the actual dedication for signature approval. Therefore, technically a buffer would not be required along those rear lot lines. However, at the Planning Board hearing the applicant

proffered to provide the 4.7 buffer along the rear of the lots where it would not technically be required (Lots 1-5).

- (G) Proposed street and driveway crossings through wetlands, floodplains, steep slopes, and streams are prohibited, unless the crossing will provide more efficient lot and street layout that provides less net disturbance of these features than an alternative layout.**

There are no impacts proposed for streets or driveway crossings.

- (H) Trees on ridgelines should be preserved.**

The priority tree line has been preserved on Parcels A and B.

- (I) Dwellings should be located a minimum of forty (40) feet from any environmentally regulated area, including woodland conservation areas.**

There are no lots located within 40 feet of required woodland conservation. There are several lots located within 40 feet of woodland that is not counted toward the woodland conservation requirement on the WSSC easement. The conceptual dwelling unit location on Lot 22, Block A is 60 feet from the expanded buffer.

8. **Urban Design**—The site is subject to the requirements of Sections 4.1 (Residential Requirements), 4.6 (Buffering Residential Development from Streets), and 4.7 (Buffering Incompatible Uses) of the Landscape Manual. The preliminary plan includes both single-family detached lots and townhouses. According to Section 27-441, Footnote 85 of the Zoning Ordinance, the townhouse section is subject to the approval of a detailed site plan and the total number of townhouses may not comprise more than 25 percent of the total number of units included in the subdivision. Since there are additional design issues which include the single-family detached dwellings, a detailed site plan is required for the entire site. The plan's conformance to the *Landscape Manual* will be reviewed at the time of detailed site plan. The plan has been designed to ensure that the space requirements of the *Landscape Manual* are provided.

The lotting pattern of several single-family detached lots around the main entrance from Old Gunpowder Road will lead to the rears of future houses on the lots to be orientated toward Old Gunpowder Road, which is classified as a collector. In accordance with Section 4.6 of the Landscape Manual, a minimum 35-foot-wide bufferyard is required to buffer the rear yards of those lots from the roadway. The plan provides the required bufferyard for the lots and also extends the 35-foot-wide bufferyard to cover the site's entire frontage of Old Gunpowder Road. The intermodal trail along Old Gunpowder Road should be located within this 35-foot-wide buffer area to accommodate an off road trail. The trail should enter into the site south of the

WSSC easement and extend to the southern property line to a point identified with the detailed site plan. Where the trail is located on homeowner's association land the trail should be located within a public use easement which should be reflected on the detailed site plan and final plat of subdivision. The trail should not be located on individual lots, but moved into the right-of-way to avoid that situation. Review of the trail location will occur with the review of the detailed site plan.

The subject site is adjacent to incompatible uses along both the north and south property lines of the residential development area (existing Parcel 10). On the north side, the proposed development is adjacent to an I-2 zoned industrial park. According to Section 4.7 of the Landscape Manual, a Type "D" bufferyard is required along a portion of the property line. Type "D" bufferyards require a minimum 50-foot building setback and a minimum 40-foot-wide landscaped strip to be planted with 160 plant units per 100 linear feet of the property line. The plan shows the bufferyard on the lots with a lot depth of 135 feet. To place the bufferyard on individual lots is not uncommon especially with deep lots, as is the case. The detailed site plan should examine the siting of dwellings to ensure that usable rear yards are achieved while preserving the required Section 4.7 bufferyard. The applicant has indicated a desire to retain existing trees within this bufferyard. The 4.7 buffer is required by the Landscape Manual on only a portion of the lots. ROW dedication occurred pursuant to WWW83@55, along the north side of Lots 1-4 and possibly 5. The preliminary plan will be revised to reflect the actual dedication for signature approval. Therefore, technically a buffer would not be required along those rear lot lines. However, at the Planning Board hearing the applicant proffered to provide the 4.7 buffer along the rear of all the lots backing toward the I-2 Zoned property.

On the south side, the proposed townhouse development is adjacent to the existing Fairland Golf Course. Originally, it was thought that a driving range was abutting; however, the golf course operator (M-NCPPC) has verified that a "chip and putt" area exists along Old Gunpowder Road. The Landscape Manual requires a Type "B" bufferyard between a low-impact use (golf course) and townhouses. A minimum 30-foot building setback with a 20-foot landscape yard is required to be planted with 120 plant units per 100 linear feet of property line. The plan provides a 60-foot-wide strip of land. DPR recommended that 50 feet of the 60 feet be dedicated to M-NCPPC as a part of the mandatory dedication requirement, and 10 feet be dedicated to the homeowners association (HOA), in accordance with Applicant Exhibit B. The preliminary plan will reflect this distribution.

The 50-foot strip of land will address the errant golf balls to the extent possible, based on the errant shot study performed by DPR. DPR has agreed to allow the applicant to locate the required bufferyard on M-NCPPC property with a fence along the common property line. Since limited access is required between the proposed townhouse section and the golf course, the planting and fencing details involved in the bufferyard should be reviewed at the time of detailed site plan.

On September 2, 2009, the applicant submitted Applicant Exhibit B, which was approved by the Planning Board, and results in the approval of 138 lots (34 townhouses and 104 single-family dwellings).

Montgomery County Street Connection

The plan shows a primary street (Public Road A) extending west from Old Gunpowder Road which stubs into the western property line, the common boundary line between Prince George's and Montgomery County. The right-of-way width of the street within the subject site is 60 feet wide. Pursuant to discussions with the Montgomery County Planning Department (M-NCPPC), the street connection extending east from Montgomery County to connect to Public Road A is to be 70 feet in width, in accordance with their standard street section. Additional review should be carried out at the time of detailed site plan in order to ensure a consistent and a smooth transition of the streetscape between the two counties.

Public Road A is proposed to connect into Montgomery County at a location which is consistent with approved Development Plan Amendment DPA-09-01 for that part of the Fairland Park Community in Montgomery County. No lots are shown to be bisected by the county line and no lots or other Prince George's County properties are proposed with access by way of roads having any portion within Montgomery County.

Section 24-123(a)(3) of the Subdivision Regulations requires the approval of the District Council for a street connection between two counties when the right-of-way width is 80 feet or less. However, there is no evidence of the Prince George's County District Council approval, and this review and approval should occur prior to the approval of the detailed site plan on which the final plat is based for the road connection for Public Road A. If such approval is not granted, Public Road A should be terminated to the west of Public Road B, with the western leg of the roundabout being removed.

Section 24-123(a)(3) requires that all plats conform to the following:

- (3) All internal subdivision streets shall be wholly within the County and shall not be designed to directly connect to an adjacent county unless the applicant has obtained the prior written approval of the District Council and the appropriate land use authority of the adjacent County.**
 - (A) An applicant must file a written request for said approval. The request shall be filed with the Clerk of the District Council. The District Council must either approve or disapprove said request within forty-five (45) days from the date of filing. Failure of the District Council to act within said forty-five (45) day period shall constitute an approval of the request. For purposes of this provision an internal subdivision street shall be deemed to be a public roadway having a right-of-way width of eighty (80) feet or less.**
 - (B) After public hearing before the District Council, the Council shall not allow the proposed bi-county subdivision unless it finds that delivery of public safety services, utility services, and tax collection will be timely and adequate for the lots in Prince George's County.**

A gas easement runs through the rears of proposed Lots 11 to 22 along the southwest property line, which are small single-family detached lots. The applicant has agreed with previous review comments to relocate the 35-foot-wide gas easement off the individual lots into a parcel to be dedicated to the HOA that will be straddling the county line. The preliminary plan should clearly delineate the area of the relocation.

The Montgomery County Planning Department advised staff that they will also be requiring that lots which back up to the Prince George's County line are designed so that they are not encumbered by the Washington Gas line easement. Additional information should be provided at the time of detailed site plan, in coordination with the Montgomery County Planning Department to ensure proper treatment of the open space. If the applicant does not obtain the agreement of Washington Gas to relocate the easement off of the lots, a major revision to the layout and a loss of lots could occur to ensure that the gas easement is not encumbering individual private lots.

A stormwater management pond is located between the single-family detached lots and the townhouses in the southwest corner of the property. Given the location of the pond, it should be designed as a visual amenity with a naturalistic grading and planting arrangement, and should be reviewed at the time of detailed site plan. The applicant has indicated that they will be providing a water feature in this facility.

Due to the small lot sizes (6,500 square feet), the lotting pattern and street pattern may result in the sides and rears of dwelling units being oriented toward the streets. Elevations and house sitings on those lots that are visible from the streets should be designed to be visually attractive and functional.

Section 27-441, Footnote 85 of the Zoning Ordinance requires that townhouses in a public benefit conservation subdivision be designed in accordance with the design guidelines of Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(c) through (k). The proposed townhouse section is in general conformance with the guidelines and regulations in terms of general layout, street pattern, and lotting pattern. However, those guidelines and regulations require additional information such as lighting fixtures and architectural elevations that are only available at the time of detailed site plan. The townhouse section's conformance with the design guidelines and regulations have been evaluated with this preliminary plan as appropriate and will be reviewed at the time of detailed site plan.

24-152(h)(3) Lot specific design criteria.

- (A) Buildings and driveways shall be sited to maintain the existing grade as much as possible.**
- (B) A variety of lot sizes and lot widths should be provided within clusters of dwellings in order to prevent visual monotony. Since the variety of lot sizes and lot widths in a Public Benefit Conservation Subdivision may be limited, to the extent that such**

variation is impracticable, the applicant may provide a variety of house facades and enhanced streetscape elements for lighting, landscaping and sidewalks.

- (C) Dwellings should be sited to avoid the rears being oriented toward the fronts of other dwellings and external streets. A landscape plan may be required to provide for the buffer of views of the rear and sides of dwellings from all streets and easements and the fronts of other dwellings.**
- (D) Direct driveway access for individual lots onto perimeter streets shall be avoided unless necessary for safety reasons or for some other benefit such as environmental preservation.**
- (E) Large expanses of driveways and parking areas shall not be visible from the external streets and abutting properties.**

The residential development area is located in the southern portion of the site. This area was the subject of a previous mining operation. The existing grades are the result of the mining operation and fill required for reclamation. The applicant has provided a variety of lot sizes which range from 6,500 square feet to 13,224 square feet. However, due to the small lot sizes in this PBCS, a larger variety of lot widths is not feasible while retaining a reasonable density.

The detailed site plan review shall include, but not be limited to the following:

- a. Entrance features.
- b. Orientation of the dwelling units on all corner lots, to provide a consistent streetscape.
- c. Review of the technical stormwater management plan with concurrence from the Department of Public Works and Transportation.
- d. Details for the six-foot-tall iron-clad fence along the southern property line abutting the M-NCPPC property. The fence should be located on HOA land and include a gate for the trail connection to the Fairland Regional Park, if appropriate.
- e. Conformance to Section 27-274(a)(11) of the Zoning Ordinance.
- f. The required bufferyard (Section 4.7 of the Landscape Manual) along the rear of Lots 1-10, Block A shall incorporate existing woodland as appropriate.
- g. Lot specific design criteria of Section 24-152(h)(3) of the Subdivision Regulations.
- h. Trail locations, and triggers for construction, including Parcels A and B.

9. **Townhouses**—In a public benefit conservation subdivision, townhouses are allowed subject to the approval of a detailed site plan and subject to the design guidelines of Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(c) through (k). Townhouses may not comprise more than 25 percent of the total number of units included in a public benefit conservation subdivision. In this case, 138 lots, with 34 townhouse lots, has been approved which is consistent with the composition requirements.

Section 27-274(a)(11)(A) of the Zoning Ordinance encourages the preservation of existing mature trees. In this case, the priority for tree preservation was identified with the review of Sketch Plan S-08003. The priority tree stands are located in the northern portion of the site (Parcels A and B). The applicant has located all of the dwelling units in the southern area of the site on lots as small as 6,500 square feet, which is the permissible minimum lot size in a PBCS in the R-R Zone.

In order to develop lots of this size, in addition to the townhouse lots, significant grading of this site will be necessary. However, through the review of the DSP, the limit of disturbance should preserve existing trees along the industrially-zoned property to the north of Parcel 10, to the extent possible. However, clearing most likely will occur in this area and be unavoidable. The existing tree stand located within the 65-foot-wide WSSC easement should remain to provide an opaque screening of the rear of the townhouse lots located west of the easement.

Section 27-274(a)(11)(B) of the Zoning Ordinance encourages that townhouses should not be arranged on curving streets in long, linear strips. Where feasible, groups of townhouses should be at right angles to each other and should facilitate a courtyard design. In this case, the applicant is utilizing private streets with rear load garages which allow the fronts of units to face one another in a grid pattern. Along the southern property line, the sides of three sticks of townhouses have been oriented toward the golf course as a result of a request by DPR and the errant golf ball shot study. This orientation will protect the views from the golf course to the rears of the dwelling units while limiting the number of dwelling units which could be impacted by errant golf balls. The townhouse layout is based on the errant shot study performed by DPR which indicates a radius of 100 feet is necessary for the building setback from the green. Although the applicant submitted an errant study which indicated that 75 feet was adequate, the applicant agreed to ensure a 100-foot setback.

Section 27-274(a)(11)(C) of the Zoning Ordinance states that recreational facilities should be separated from dwelling units through techniques such as buffering, differences in grade, or preservation of existing trees. The rears of buildings, in particular, should be buffered from recreational facilities. The intermodal trail connection to the Gunpowder Golf Course and Fairland Regional Park should be designed as a trail head in the southeast quadrant of the site on dedicated parkland. The layout and landscaping in this area will be the subject of the required DSP and should include a map of the intermodal trail connections within the Fairland Regional Park and facility locations.

A six-foot-high iron-clad fence should be provided along the southern property line on HOA land as determined appropriate at the time of detailed site plan. The fence should include a gated entrance from HOA land to the public park for trail users, if appropriate. As a part of the public benefit conservation subdivision, the applicant is encouraged to include intermodal trails. In this case, the applicant is proposing to connect the eight-foot-wide hiker/biker trail along the property's entire frontage of Old Gunpowder Road to the Fairland Regional Park.

Section 27-274(a)(11)(D) of the Zoning Ordinance requires that, to convey the individuality of each unit, the design of abutting units should avoid the use of repetitive architectural elements and should employ a variety of architectural features and designs such as roofline, window and door treatments, projections, colors, and materials. In lieu of this individuality guideline, creative or innovative product design may be utilized. The development of townhouses in this case requires the review of a detailed site plan. Architectural elevations will be reviewed and approved at that time. The Planning Board is requiring a detailed site plan for the entire site, not just the townhouses.

Section 27-274(a)(11)(E) of the Zoning Ordinance states that, to the extent feasible, the rears of townhouses should be buffered from public rights-of-way and parking lots. Each application shall include a visual mitigation plan that identifies effective buffers between the rears of townhouses abutting public rights-of-way and parking lots. Where there are no existing trees or the retention of existing vegetation is not practicable, landscaping, berming, fencing, or a combination of these techniques may be used. Alternatively, the applicant may consider designing the rears of townhouse buildings such that they have similar features to the fronts, such as reverse gables, bay windows, shutters, or trim. In this case, the rears and sides of the townhouse units are oriented toward one another.

Section 27-274(a)(11)(F) of the Zoning Ordinance states that attention should be given to the aesthetic appearance of the offsets of buildings. The house sitings will be reviewed with the detailed site plan.

Section 27-433 of the Zoning Ordinance (in part), as applicable to the preliminary plan of subdivision:

(d) Dwellings.

- (1) All dwellings shall be located on record lots shown on a record plat.**
- (2) There shall be not more than six (6) nor less than three (3) dwelling units in any horizontal, continuous, attached group.**
- (3) The minimum width of dwellings in any continuous, attached group shall be at least twenty (20) feet for townhouses.**

The preliminary plan proposes no more than six dwelling units in a row. The interior lots are proposed at 22 feet wide and the exterior lots are proposed at 25 feet wide.

(e) Streets.

(1) The following requirements apply to the development of townhouses:

- (A) The tract of land used for the project involving these dwellings shall have frontage on, and direct vehicular access to, a public street having a right-of-way width of at least sixty (60) feet;**

Public Roads A and B have a minimum right-of-way width of 60 feet which connect the townhouse lots to Old Gunpowder Road. An increase in this R-O-W is required to accommodate the 8-foot hiker biker trail off of lots and within the R-O-W.

- (B) Private streets which are interior to the project (and are not dedicated to public use) shall be improved to not less than the current standards set forth in Subtitle 23 of this Code which apply to a public, twenty-six (26) foot wide secondary residential street, except that roadside trees are not required (within the street right-of-way).**

The interior private streets to the townhouse development are 26 feet wide.

- (C) Private streets shall be common areas conveyed to a homes association, and provisions for maintenance charges shall be made in accordance with Subsection (i). (For the purpose of this Section, "private streets" are internal vehicular access roadways serving the development by means of private streets approved pursuant to Subtitle 24 of this Code, except driveways which dead-end within a parking lot); and**

Interior private streets will be conveyed to the HOA prior to the issuance of the first building permit as a condition of this preliminary plan.

- (D) Points of access to public streets shall be approved by the County Department of Public Works and Transportation, State Highway Administration, or other appropriate highway authority, as applicable.**

Referrals have been received from the operating agency (DPW&T) recommending approval. Access permits will be required by DPW&T for approval.

(f) Access to individual lots.

(1) The following requirements shall apply only to the development of townhouses:

- (A) While it is not necessary that each individual lot have frontage on a street, each lot shall be served by a right-of-way for emergency and pedestrian access purposes. The right-of-way shall either be owned by a homes association and approved by the Planning Board, or a dedicated as a public right-of-way.**

Each lot has frontage on either a private street owned by the HOA or public street to be dedicated to DPW&T.

- (C) Each right-of-way shall contain a sidewalk at least six (6) feet wide which connects parking areas with the individual lots. The maximum grade of the sidewalk shall generally be not more than five percent (5%). However, when the normal grade of the land exceeds five percent (5%), ramps or steps may be utilized to remain consistent with that grade.**

Prior to signature approval the preliminary plan shall clearly label the required sidewalks. Grades will be reviewed with the detailed site plan.

- (E) For any private street or other access right-of-way to be improved, a permit shall be obtained from the County Department of Public Works and Transportation. If the right-of-way is located in a municipality which has jurisdiction over street improvements, the municipality shall issue the permit. The permit shall not be issued until construction plans are approved, the permit fees are paid, and a performance bond is posted with the Department or municipality guaranteeing installation of all streetlights and completion of all street, other access right-of-way, sidewalk (including those required for access to the front or rear of lots), and parking lot construction. Issuance of the permit and posting of the bond shall authorize the Department of Public Works and Transportation, or the municipality, to enter the development to complete the construction of the work covered by the bond, if the developer fails to complete the work within the permit period.**

The property is not located within a municipality. DPW&T requires permitting and bonding for both public and private street construction. The DSP will include the review of street lights on the private streets.

(g) Utilities.

- (1) All utility lines within an attached dwelling unit development shall be placed underground.**

The detailed site plan requires the undergrounding.

(h) Minimum area for the development.

- (1) No group of attached dwellings shall be located on a parcel of land containing less than two (2) acres.**

The townhouses are located on Parcel 10, which is 38.22 acres.

(i) Common Areas.

- (1) If common areas are provided, they shall be conveyed to an incorporated, nonprofit homes association. The association shall be created under recorded land agreements (covenants) which specify that:**

(A) Each home owner in a described land area is automatically a member; and

(B) Each home is automatically subject to a charge for a proportionate share of common area maintenance. The recorded covenants shall bind each home owner to pay his proportionate share of all assessments (including taxes), which may be necessary to maintain the common areas. The covenants shall also provide for a personal money judgment procedure against each home owner to meet the assessment charges.

- (2) If a Detailed Site Plan shows a common area, the Planning Board (as a condition of plat approval) shall place conditions on the ownership, use, and maintenance of these areas to assure that the areas are preserved for their intended purpose.**

- (3) Record plats filed on land located in an R-T Zone (or any other zone when developed in accordance with the R-T Zone) shall include a statement of the covenants or other documents concerning the ownership and maintenance of the common area, or shall include the statement by reference to liber and folio.**

Appropriate conditions have been included to ensure conformance of these regulations.

(k) Site plan.

(1) A Detailed Site Plan shall be approved for all attached dwellings, in accordance with Part 3, Division 9, of this Subtitle.

A DSP is required for the entire property in accordance with Part 3, Division 9 of the Zoning Ordinance.

10. **Conservation Parcels A and B**—The applicant has proffered the donation of Parcel A (14.62 acres) and Parcel B (26.42 acres) to MNCPPC. Originally, the area of conservation was to be conveyed to the homeowners association (HOA) and placed on individual conservation lots. The location of dwellings in these areas would have necessitated the installation of the infrastructure necessary to support the development which resulted in significant impacts to the expanded buffer, including the stream. The infrastructure included a stormwater outfall, trail construction, and sewer connections.

Ultimately, the preliminary plan has been revised by the applicant to remove all development from Parcels A and B. Essentially, Parcels A and B are the open space component of this plan required to support the development. The use of Parcels A and B are necessary for the applicant to meet the requirements of a PBCS.

Stream restoration is not recommended as a condition for mitigation of impacts to the expanded buffer. The impacts have been removed from Parcels A and B, and only a small impact is proposed in the southern area of the site as discussed in the environmental planning section.

With the review of the sketch plan and preliminary plan, the applicant proposed conservation which contains the stream which resulted in this area of the site being identified as the highest priority for conservation. The applicant was advised (Lammers to Warfel) that “if the stream segments are not stabilized, the condition of the stream on-site will continue to deteriorate to the point where its value as a feature in a public benefit conservation subdivision is measurabl[y] reduced.” The restoration of the stream will result in a “public benefit,” as a part of the PBCS.

The evaluation of the required area of conservation should not be based solely on a quantitative evaluation. The applicant was advised that the establishment of conservation includes a qualitative analysis. As with tree conservation plans, the area of woodland is also evaluated for the quality of woodland and its appropriateness to be placed in conservation. In this case, the quality of the stream would continue to erode the entire stream system on-site. However, with the conveyance of Parcels A and B, the applicant has proffered to donate \$175,000 to M-NCPPC as seed money for stabilization and restoration efforts. This donation will assure that the restoration efforts will move forward in the future.

11. **Conservation Easement**—Section 24-152 of the Subdivision Regulations sets forth the ownership and maintenance responsibilities for the conservation areas on Parcels A and B.

- (n) **Ownership/maintenance.** The conservation area shall be owned and controlled by an individual, homeowners' association, public or private organization, land trust, or corporation. The owner shall assume all responsibility for maintenance and continued protection of the conservation area. An ownership and maintenance agreement as part of the conservation easement deed shall be approved by the Planning Board, recorded among the Land Records of Prince George's County, and referenced on the record plat of subdivision.

Parcels A, B, C and D are to be donated to M-NCPPC. Parcels A and B are only subject to a conservation easement requirement. Parcels C and D are not and are to be deeded to DPW&T on demand for the future hiding of Old Gunpowder Road.

In accordance with Section 24-152, a conservation easement is required on Parcels A and B, however, in accordance with Section 24-152(o)(9)(B), an additional party to the easement is not required.

- (o) **Easements.** An easement agreement shall be recorded in the Land Records of Prince George's County for the conservation area, prior to the approval of the final plat. The easement agreement shall be approved by the Prince George's County Planning Board (or its designee) prior to recordation. The easement shall run with the land, shall be in full force and effect in perpetuity, and shall describe and identify the following:
- (1) **The location and size of the conservation areas;**
 - (2) **Existing improvements on the conservation areas;**
 - (3) **Provisions that prohibit future development of the conservation areas;**
 - (4) **The purpose of the conservation area;**
 - (5) **Provisions for a prohibition on future subdivision of the conservation area;**
 - (6) **Provisions for maintenance and ownership of the conservation area;**
 - (7) **Responsibility for enforcement of the easement;**
 - (8) **Provisions for succession in the event that one of the parties to an easement agreement should be dissolved; and**
 - (9) **Regardless of who the owner of a conservation area is or will be, there shall be an additional party to the easement in addition to the property owner:**

- (A) **A land conservation organization that is:**
- (i) **A not-for-profit, tax-exempt organization within the meaning of Section (501)(c)(3) of the Internal Revenue Service Code;**
 - (ii) **Established to promote the preservation and protection of natural, historic and agricultural resources; and**
 - (iii) **Party to a cooperative agreement with the Maryland Environmental Trust committing to follow the Land Trust Alliance's Standards and Practices in any easement it holds;**
or
- (B) **A local governmental agency, upon the demonstration by the applicant that they have exhausted all reasonable efforts to obtain an agreement with a private non-profit organization. If the conservation area is dedicated to the local government agency in fee simple, there does not have to be an additional party to the easement; however, the conservation easement shall be in perpetuity and in a form acceptable to the Maryland Environmental Trust.**

The conservation easement will be approved by the Planning Board or its designee prior to the approval of the final plat. The easement deed description should be noted on the final plat. The conservation easement should include provisions for the following sub category of easements:

- a. An archeological easement (18PR511) on Parcel A,
- b. A dominant ten-foot public utility easement for installation and maintenance.

The conservation easement shall be reviewed by the Historic Preservation Section prior to approval and should be consistent with the detailed site plan.

12. **Environmental**—The southern portion of the property (Parcel 10) is the subject of a surface mining permit issued by the Maryland Department of the Environment, Water Management Administration. Currently, the mining operation is in the reclamation phase. An approved Natural Resources Inventory, NRI/059/07, was submitted with the application. There is an expanded buffer (EB) comprised of wetlands, associated wetlands buffer, 100-year floodplain, and adjacent steep slopes. The floodplain information shown on the plans is from approved Floodplain Study 200734. The current application is a public benefit conservation subdivision for 138 lots and 13 parcels.

According to mapping research and information submitted, streams, nontidal wetlands, 100-year floodplain, severe and steep slopes on highly erodible soils, and expanded buffer are found to occur on the property. Vehicular transportation-related noise may be a concern for this property

due to the proximity of MD 198, a master plan designated arterial roadway; however, the proposed residential development area is more than 4,461 feet from MD 198 so that noise is not an issue. The soils found to occur, according to the *Prince George's County Soil Survey*, include Beltsville, Bibb, Croom, Galestown, Gravel and Borrow Pits, Keyport, Leonardtown, Matapeake, Ochlockonee, and Sandy land. According to available information, Marlboro clay does not occur in the vicinity of this property.

According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program, there are records of rare, threatened, or endangered species found to occur on this site; specifically, the Halberd-leaved Greenbrier (*Smilax pseudochina*), a state threatened species is located on Parcel B. A survey report prepared by McCarthy and Associates, Inc., dated October 4, 2001, determined that the above-referenced species is found within the limits of the site. The known locations of this species have been shown on the TCPI with the required 100-foot buffer. No impacts to the known locations of the threatened species are proposed.

There are no designated scenic or historic roads located in the immediate vicinity of this property. This property is located in the Little Paint Branch Creek watershed of the Anacostia River basin and in the Developing Tier as reflected in the *Prince George's County Approved General Plan*. Large portions of the property are located within the green infrastructure network including regulated areas, evaluation areas, and network gap areas.

Environmental Issues Addressed in the Subregion I Master Plan

The current Subregion I master plan and sectional map amendment adopted in 1990 contains no specific environmentally-related guidelines pertaining to the subject site. The master plan predates current ordinances and regulations that are reviewed with this application. The existing regulated features on the site are within the designated network of the *Approved Countywide Green Infrastructure Plan*, and the entire site is subject to the Woodland Conservation and Tree Preservation Ordinance which will ensure that the development of the site conforms to the environmental issues associated with the master plan. Other issues such as noise, stormwater management, rare, threatened, and endangered species, and FIDS habitat, are discussed in further detail.

Conformance with the Green Infrastructure Plan

According to the Countywide Green Infrastructure Plan, a functional master plan, approximately 60 percent of the site is located in a combination of regulated areas, evaluation areas, and network gap areas. The regulated area is located along a stream valley/wetland complex on the northern portion of the site (Parcels A and B). The evaluation area is located adjacent to the regulated area (Parcels A and B) where wooded steep slopes and unique forests with good species diversity are also located (Parcel B); this is an area where protection efforts should be concentrated. The western portion of the evaluation area contains a documented state threatened species (Parcel B); the Halberd-leaved Greenbrier (*Smilax pseudochina*), whose habitat is an area where protection efforts should also be concentrated.

This site is located along the border of the coastal plain and the Piedmont physiographic provinces and provides a unique location where the flora and fauna of both provinces come together and thrive together. This unique feature is rare in Prince George's County. Most of Prince George's County is located in the coastal plain, an area known geographically as a generally flat area with wide-spreading floodplains, while the Piedmont is an area generally known for hills and mountains with rocky soils. Physiographic provinces tend to blend into one another with no clear delineation between one province and another. The subject site exhibits characteristics from both provinces as evidenced by the great diversity and unique combinations of coastal plain and Piedmont species located on-site. For example, the wooded slope located south of the stream/wetland complex on Parcel B contains a unique combination of chestnut oak and mountain laurel. Additionally, this site shares its northwestern property boundaries with Montgomery County. It should be noted that the Montgomery County Council recently purchased 52.88 acres of the adjacent land from the developer at a cost of \$8.75 million based on the presence of the unique environmental features located in this area where the coastal plain and Piedmont meet, including a rare swamp magnolia bog. The Montgomery County portions of property have been nominated for the Montgomery Parks Legacy Open Space Program. The purchase and the nomination underscore the importance of this diverse ecosystem for preservation which extends onto the subject site.

The on-site stream valley is part of the headwaters of Little Paint Branch. A stream corridor assessment, using the Maryland Department of Natural Resources (DNR) Stream Corridor Assessment protocol as well as a more technical analysis considering stream hydrology and restoration opportunities, was provided and stamped as received on May 21, 2009. According to the stream corridor assessment submitted by the applicant, the approximate total length of stream on Parcel A is 800 linear feet; however, according to staff's measurements, the total length of stream on Parcel A is approximately 965 linear feet. The stream corridor assessment provides information on stabilization opportunities, both on and off-site, but does not quantify the length of stream in need of restoration. Staff has estimated approximately 695 linear feet of stream in need of stabilization on-site (445 linear feet of main channel and 250 linear feet of side channels). It is important to note that additional areas of the stream are in need of restoration; however, that area is located upstream to the north on the Gudelsky property and not the subject of this approval.

As indicated, the northern-most portion of the on-site stream (Parcel A) is severely degraded and in need of stabilization. The stream is highly incised; up to approximately 25 feet in some areas. The degradation of this stream is different from a majority of other degraded streams within the county because the channel is experiencing erosion not only from common surface sources, but a majority of the erosion is due to ground water influence. Generally, streams within the county experience erosion from surface sources, which causes down-cutting of the channel until the channel reaches a somewhat stable layer of soil, for example bedrock. This stream appears to have down-cut to a somewhat stable layer; however, the ground water influence is causing sloughing of the sides of the channel. This channel will not likely get much deeper, but will continue to have erosion along the sides of the banks extending out into the expanded buffer and increasing the width. Without stabilization efforts, the sides of this stream will likely continue to slough and not only exacerbate the existing stream stabilization issues in the current location, but

also continue to contribute a large amount of sediment to downstream segments of the stream system, both on and off-site. Sediment loads traveling downstream from the degraded portion of the stream will settle out and fill-in downstream portions of the channel. Sedimentation alters channel characteristics by making the channel shallower and tends to smother existing vegetation, such as the identified state threatened Halberd-leaved Greenbrier (*Smilax pseudochina*) and valuable benthic organisms. Continued side sloughing of the stream channel may also undermine the adjacent archeology site (18PR511). All of these conditions emphasize the need to stabilize and restore this section of the existing stream system on Parcel A.

Another unique issue causing stream degradation is a failing culvert crossing located off-site to the north on the Gudelsky Tract (Parcels 231 and 62). Three segments of culvert were historically placed in the stream channel to provide a crossing; only one segment remains in the channel today, while two segments have failed. The water exiting on the downstream side of the culvert drops approximately 20 feet in a waterfall fashion. The significant change in elevation from one side of the culvert to the other will continue to undercut the remaining culvert and cause it to fail. The failure of the final remaining culvert will result in significant impacts to the morphology of the entire stream system. Downstream of the failure, a large amount of sediment will wash through the system. Upstream, the channel will likely head-cut (in-stream erosion in an upstream direction) until the problem reaches the embankment of MD 198. It is staff's understanding that the adjacent property owner (Gudelsky) is in the process of obtaining the appropriate federal and state permits to provide short term stabilization of the culvert to prevent the remaining segment of culvert from failing. This is only a temporary measure until a comprehensive long-term stream stabilization solution is reached. The applicant's proffer of \$175,000 will create the infusion needed to initiate those efforts. The protection and restoration of the headwaters of the site's main environmental amenity will help to protect the stream and is an important factor in finding conformance with the requirements of the public benefit conservation subdivision regulations.

The use of the public benefit conservation subdivision method at this location represents a public benefit opportunity to restore and stabilize the stream to ensure long-term protection under public ownership of the sensitive environmental features located on-site, including the habitat for the state threatened species, and to retain an extensive area of existing priority woodlands on-site; all of which will contribute to the protection of the Anacostia River basin while implementing the Countywide Green Infrastructure Plan.

This preliminary plan conforms with the Countywide Green Infrastructure Plan, specifically with the following policies:

Policy 1: Preserve, protect, enhance or restore the green infrastructure network and its ecological functions while supporting the desired development pattern of the 2002 General Plan.

The subject property contains regulated, evaluation and network gap areas. The TCPI generally conforms to the Countywide Green Infrastructure Plan by preserving priority woodlands within regulated areas and portions of the adjacent evaluation areas, and by meeting its entire woodland

conservation requirement on-site; the public benefit conservation subdivision method at this location represents an opportunity to restore and stabilize the stream to ensure long-term protection of the sensitive environmental features located on-site.

This policy addresses the preservation, and where necessary, the enhancement and restoration of the network during the review of development proposals. As noted above, a section of the stream that is the focus of the conservation efforts on this site is heavily degraded and is causing the resource downstream on-site to be impacted. With the applicant's monetary contribution, stream restoration efforts will be imminent.

Policy 2: Preserve, protect, and enhance surface and ground water features and restore lost ecological functions.

Use of the public benefit conservation subdivision option for development of this site represents an opportunity to restore and stabilize the uppermost reaches of the head waters of Little Paint Branch, which will provide protection for water quality in downstream segments of the stream. The stream in question is severely degraded and has lost its ecological functions. With stabilization and restoration, the ecological functions will be restored, and conformance with this functional master plan can be found.

Protection of water quality in the future will be provided through the application of best stormwater management practices for stormwater management. The public benefit conservation subdivision regulations state that low-impact development (LID) techniques should be used. There is no stormwater management proposed for Parcels A and B and the regulations recognize that due to the small lot sizes and desire for closed section streets on Parcel 10, the use of LID is not a viable alternative. The applicant has not proposed the use of LID.

Policy 3: Preserve existing woodland resources and replant woodland, where possible, while implementing the desired development pattern of the 2002 General Plan.

The TCPI conforms to the Countywide Green Infrastructure Plan by preserving woodlands within regulated areas and adjacent evaluation areas.

Conformance with the Conservation Sketch Plan

Pursuant to Council Bills CB-4-2006, CB-32-2008, and CB-33-2008, a Sketch Plan, S-08003, was certified by the Planning Director to document the completion of the sketch plan process. The certified sketch plan showed the location of proposed development, including stormwater management, on that portion of the site determined to be least suitable for conservation. The proposed development and associated infrastructure shown on the subject preliminary plan and TCPI, as approved, is wholly within the proposed development areas.

In part, the public benefit conservation subdivision regulations (Section 27-107.01(184.2) of the Zoning Ordinance) state that "a Public Benefit Conservation Subdivision shall provide for more

tree conservation on site than required and significantly more conservation acreage in parcels than the 40% gross tract area requirement for a conservation subdivision.”

The TCPI provides more preservation on-site than is required. The woodland conservation worksheet on the plan shows that the woodland conservation threshold (WCT) for this 79.25-acre property is 20 percent of the net tract area, or 15.26 acres. The total woodland conservation requirement, based on the amount of clearing proposed, is shown on the plan as 20.02 acres; however, the requirement, based on the amount of clearing proposed, should be shown as 20.12 acres. This requirement is proposed to be satisfied with 36.82 acres of preservation; however, preservation Area E does not meet the minimum requirements to be counted as preservation, leaving 36.48 acres eligible to be counted as woodland preservation under the current lot configuration, for a total of 16.36 acres above the current requirement. This additional woodland conservation is “more” than would normally be required.

The approved sketch plan indicated that that the proposed conservation areas are made up of 45 to 47 percent of the gross tract area. However, the sketch plan does not approve the range of conservation to be provided at the time of the preliminary plan. The sketch plan is a planning tool used document a planning process in the prioritization of site characteristics. The sketch plan is certified and not an approved plan. The current preliminary plan provides a total of 51.78 percent of conservation, significantly more than 40 percent.

The restoration of the headwaters of the site’s main environmental amenity, located on Parcel A, will help to protect the stream and is an important factor in keeping with the intent of the public benefit conservation subdivision regulations; to conserve important site features and protect the character of the land.

This property is subject to the provisions of the Prince George’s County Woodland Conservation Ordinance because the site has a Type I Tree Conservation Plan (TCPI/10/01) and an associated Type II Tree Conservation Plan (TCPII/88/05). A -01 revision to the Type I tree conservation plan has been approved with the subject application.

The area proposed for mandatory park dedication is a combination of proposed Parcel G and recreational facilities. While no woodland conservation is located on the land currently proposed to be dedicated, it should be noted that the Department of Parks and Recreation (DPR) generally does not accept woodland conservation on dedicated land. Should land encumbered with woodland conservation be dedicated to DPR, then written authorization must be provided from DPR indicating acceptance of any woodland conservation on the land to be dedicated. DPR (M-NCPPC) has agreed to accept the required tree conservation on donated Parcels A and B.

The plan requires some technical changes to be in conformance with the Woodland Conservation Ordinance. The scale of the TCPI does not appear to have been shown on all sheets of the TCPI plan set. All sheets of the plan set need to be revised to clearly indicate the scale of the plan. The worksheet needs to be revised to include the standard rows for the “area of woodland not cleared” and “woodland retained not part of requirements.” The woodland conservation summary tables

shown on the cover sheet need to be revised to include the area labels as shown on the plan (A–E, 1–5, etc.) for each area. The summary table currently labeled as “forest saved and counted as cleared” needs to be re-labeled as “woodland retained not part of requirements,” and the total of these areas should be equal to the area labeled as “woodland retained not part of requirements” in the worksheet. As mentioned above, Area E does not meet the minimum requirements to be counted as preservation and needs to be re-labeled as “woodland retained not part of requirements” on the plan and counted as such in the worksheet.

The TCPI notes shown on the cover sheet need to be replaced with the standard TCPI notes, updated to include all appropriate information, and to include all optional notes, 1 through 8. A standard TCPI approval block needs to be added to all sheets of the plan set with the original approving signature typed-in (Lori Shirley—May 4, 2004).

Duplicate tree lines appear to be shown on Sheets 3 and 4 of the TCPI plan set. The duplicate tree line appears to have varying line type scales in some areas. The plan needs to be revised to show a single tree line with a consistent line type scale.

The specimen trees have been shown on the plan; however, they need to be labeled. A note needs to be added below the specimen tree table indicating how the trees were located (survey or field estimated). All specimen trees located within 50 feet of the LOD will need to be survey located at the time of TCPII review. This information is needed to ensure that design decisions are based on accurate locations and that only trees that are able to survive construction are preserved.

Specimen trees 12 and 17 are labeled as Southern red oaks, in good condition and are currently shown as being removed. Because specimen trees 12 and 17 are in good condition, are visible from the golf course, and add to the buffer between the proposed development and the golf course, efforts should be made to save these trees. It appears that the trees could be saved with minimal changes in grading. A condition analysis conducted by a certified arborist using the techniques described in the latest edition of “Guide to Plant Appraisal” published by the Council of Tree and Landscape Appraisers should to be conducted at the time of TCPII review to outline any special treatments necessary for the trees to survive construction (root pruning, fertilization, etc.). This analysis should be provided for all specimen trees “to remain” within 50 feet of the LOD, including trees 12, 17, and 18.

According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program, there is forest interior dwelling bird species (FIDS) habitat located on Parcels A and B. This area should be delineated on the plan and considered as part of woodland retention priority.

The expanded buffer line appears to be missing from the northern side of the stream/wetland complex located on proposed Parcel B. The expanded buffer in this area needs to be shown as reflected on the approved NRI. It is also unclear on the plans where the outfall for the southern pond is located. The outfall needs to be clearly shown on the plan.

An approved Stormwater Management Concept Plan and Letter (42314-2004-01) were submitted with the subject application. The concept plan shows two proposed stormwater management ponds. One of the proposed facilities, the south pond, appears to utilize an existing structure associated with the current mining and reclamation operation. The other proposed facility, the north pond, is located on what is now proposed as preservation Parcel B. The preliminary plan and TCPI no longer show stormwater management on proposed conservation Parcel B.

The public benefit conservation subdivision regulations state that low-impact development (LID) techniques should be used. However, the regulations recognize that due to the small lot sizes and desire for closed section streets, the use of LID may not be a viable alternative. The applicant has not proposed the use of LID. The only stormwater management technique currently proposed on-site is the conversion of an existing sediment control basin approved for the on-site mining and reclamation activities. The basin was used to serve the mining activities on the property and has recently been reconstructed to serve the ongoing reclamation of the mining permit and upgraded to the 1994 standard. The grading for this structure appears to impact a small segment of stream, stream buffer, wetland, and wetland buffer which comprise the expanded buffer.

This site contains natural features that are required to be protected under Section 24-130 of the Subdivision Regulations. Impacts to these features are prohibited by Section 24-130 of the Subdivision Regulations unless the Planning Board grants a variation to the Subdivision Regulations in accordance with Section 24-113 at the time of preliminary plan.

In a letter dated August 5, 2009, received August 6, 2009, the applicant provided exhibits and associated descriptions for proposed areas of impacts to the regulated areas. An overall exhibit and individual exhibit sheets were prepared for the proposed impacts. Originally, the applicant requested four impacts to the expanded buffer. Three proposed impacts were removed by the applicant as demonstrated in the revised preliminary plan and TCPI submitted on August 5, 2009 and are therefore not evaluated. The revised justification submitted on August 5, 2009 was a request for one impact as described below due to the design changes.

Impact A is a permanent impact totaling 0.35 acre (15,246± square feet) for grading of a proposed stormwater management facility as well as an outfall in the southernmost portion of the site (Parcel 10). The pond overlaps an existing sediment control basin that currently impacts the same area of environmental features. The basin was used to serve the mining activities on the property and has recently been reconstructed to serve the ongoing reclamation of the mining permit and upgraded to the 1994 standard. The pond and outfall are necessary to safely convey stormwater runoff to the stream and wetland complex; however, it is unclear from the exhibit where the outfall is located. The outfall needs to be clearly shown on the exhibit. This impact is supported because it is unavoidable for the development of the residential area of the site as identified on the sketch plan and does not create new impacts to regulated features.

Section 24-113 of the Subdivision Regulations sets forth the required findings for approval of variation requests.

- (a) **Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:**

The approval of the applicant's request does not have the effect of nullifying the intent and purpose of the Subdivision Regulations. In fact, strict compliance with the requirements of Section 24-130 could result in practical difficulties to the applicant that could result in the applicant not being able to develop this property with the required stormwater management controls.

- (1) **The granting of the variation request would not be detrimental to public safety, health or welfare and does not injure other property;**

The installation of stormwater management facilities are required by Prince George's County to provide for public safety, health, and welfare. All designs of these types of facilities are reviewed by the appropriate agency to ensure compliance with the regulations. These regulations require that the designs are not injurious to other property.

- (2) **The conditions on which the variations are based are unique to the property for which the variation is sought and are not applicable generally to other properties;**

The on-site stream valley is part of the headwaters of Little Paint Branch. The plans show a proposed stormwater management pond on Parcel 10. The pond is proposed to be converted from an existing sediment control basin approved for the on-site mining and reclamation activities. The basin was used to serve the mining activities on the property and has recently been reconstructed to serve the ongoing reclamation of the mining permit and upgraded to the 1994 standard. The impacts necessary for installation of infrastructure have been minimized to only those necessary for development. This area has been previously disturbed as a part of the mining reclamation efforts and is currently being utilized for stormwater management, a condition not shared by abutting properties.

- (3) **The variation does not constitute a violation of any other applicable law, ordinance or regulation; and**

The installation of stormwater management is required by other regulations. Because the applicant will have to obtain permits from other local, state, and federal agencies as

required by their regulations, the approval of this variation request would not constitute a violation of other applicable laws.

- (4) Because of the peculiar physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulation is carried out.**

The location of the stormwater management facility is necessitated by the topographical conditions of the site. Without the required stormwater management facilities, the property could not be properly developed in accordance with the R-R zoning.

The Planning Board approves the variation to Section 24-130 based on the findings above.

The applicant submitted a noise study dated August 10, 2001 prepared by Wyle Laboratories, which was prepared for the previous cluster subdivision on this site (4-01070). This study appears to have been prepared for both the Montgomery and Prince George's County properties. The noise study evaluated Old Gunpowder Road for existing noise levels of 65 dBA Ldn; however, because Old Gunpowder Road is a master planned collector, it is not regulated for noise in Prince George's County and the information provided in the report does not need to be shown on the plan. During the review of the previous application for a subdivision on this site (4-01070), the issue of noise from the adjacent concrete recycling plant on Parcels 224 and 226 was evaluated. It was determined that, based on the location of the concrete crusher, the 65 dBA Ldn was only a few feet onto the property along the southern property line of proposed Parcel B. The residential development area will therefore not be impacted.

13. **Community Planning**—The subject property is located within the Developing Tier and is not inconsistent with the 2002 General Plan Development Pattern policies. One of the visions for the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities. When the development is evaluated, the total density proposed is consistent with the R-R Zone (2.17 per net tract) and the low suburban residential land use recommendations.

The property is located within the 1990 master plan for Subregion I, in Planning Area 60 in the Northwestern Area community. Old Gunpowder Road (C-1) is a proposed four-lane collector with an 80-foot right-of-way. The preliminary plan is consistent with this recommendation, proposing Parcels C and D for future dedication of 40 feet from the center line of Old Gunpowder Road to DPW&T. A hiker-biker trail is proposed along the east side of Old Gunpowder Road (C-1), which is consistent with the master plan recommendations, and will extend to the Fairland Regional Park.

The 1990 sectional map amendment for Subregion I rezoned the subject properties from the I-3 Zone to the R-R Zone. The public benefit conservation subdivision is a permitted use in the R-R Zone. The application is consistent with the conservation techniques envisioned for a PBCS.

14. **Parks and Recreation**—The Department of Parks and Recreation (DPR) has reviewed the application for conformance with the recommendations of the 1990 *Approved Master Plan and Sectional Map Amendment for Subregion I Planning Areas 60, 61, and 62*, The Land Preservation and Recreational Program for Prince George's County, current zoning and subdivision regulations, and existing conditions in the vicinity of the proposed development.

The Fairland Park Community is a 79.25-acre, R-R zoned site located north of Fairland Regional Park. The park is currently developed with a golf course. The applicant has proposed a variety of single-family detached and attached dwelling units. The applicant's proposal indicates the development of 138 residential dwelling units as part of a planned development. Using current occupancy statistics for single-family and townhouse dwelling units, the proposed development will have a population of approximately 369± residents.

The 1990 Subregion I master plan for Planning Area 60 recommends the acquisition of 38 acres on the northern boundary of the Fairland Regional Park on the subject property. The Department of Parks and Recreation (DPR) has evaluated parks and recreational needs and programs in Subregion I communities and found that these communities do not meet the standard of 15 acres of neighborhood/community parks per 1,000 persons or the standard for 20 acres of stream valley and regional parkland per 1,000 persons. It has been further recognized that this area is in need for more ball fields to meet the needs of boys' and girls' clubs, organized youth leagues, and informal pick-up games.

Section 24-134 of the Subdivision Regulations, Mandatory Dedication of Parkland, requires that in all residential subdivisions, the Planning Board should require the conveyance of land to the M-NCPPC of suitable and adequate land for active or passive recreation, or the payment of a monetary fee in lieu thereof, or the provision of recreational facilities. The mandatory dedication of parkland will consist of a 50-foot wide strip of land along the southern property line abutting the Gunpowder Golf Course, the additional land shown as dedicated on Applicant Exhibit B, and construction of that portion of the intermodal trail necessary to fully comply with the requirements of mandatory dedication. Section 24-134(a)(1) establishes the amount of land required, when the allowable density is between one and four dwelling units per net tract area, as five percent of the gross tract area. In this case, based on a gross tract area of 79.25 and a density of 2.17 per net tract area, the mandatory dedication is 3.96± acres. A combination of land and the construction of a portion of the intermodal trail are required for the fulfillment of the mandatory dedication of parkland. The remaining trail construction along the properties frontage with Old Gunpowder Road will fulfill the requirements for an intermodal trail component of a PBCS. The layout of the land for dedication should be in accordance with Applicant Exhibit B, as reflected on the approved preliminary plan.

On August 5, 2009, the applicant submitted a revised preliminary plan reducing the proposed dedication and proposed a 40-foot-wide strip of land of 1.2 acres along the southern property line. The mandatory dedication of parkland should include a 50-foot-wide strip of land along the southern property line abutting the Gun Powder Golf Course in accordance with Staff Exhibit B. The recommended 50-foot-wide strip of land would provide the needed safety buffer between the

golf course and future residential housing. DPR has agreed to allow the applicant to place the required Section 4.7 Landscape Manual buffer on the dedicated parkland (Parcel G) with the addition of a 6-foot-high fence along the park property line. The extent of fencing should be determined with the review of the detailed site plan.

On July 14, 2009, Montgomery County approved the acquisition of 53 acres next to the northern portion of the subject subdivision in Montgomery County. This area represents one of the rare natural resources in Montgomery County. M-NCPPC has accepted the donation of 41.27 acres of conservation area (Parcels A and B). M-NCPPC believes that the donation of this designated open space and woodland conservation area would complement the M-NCPPC acquisition in Montgomery County. DPR has accepted the woodland conservation on the donated 41.27 acre conservation area. The property contains a blend of native forest species not typically found in this region of the county.

The segment of the Little Paint Branch stream located on Parcels A and B is degraded. It is one of the worst reaches in the Little Paint Branch and Paint Branch watersheds. Preliminary results from a study funded by DPR, the University of Maryland, and the Anacostia Watershed Society indicate that this area may be identified as the number one priority for stream restoration in the entire Little Paint Branch and Paint Branch watersheds.

DPR consulted with specialists in stream restoration (Environmental System Analysis) to evaluate the stream restoration and found that approximately 695 linear feet of stream needed to be restored on the subject property. In addition, there is a significant archeological site (18PR511) on Parcel A. The stream restoration measures may impact the archeological site which would require a Phase 2, and possible Phase 3, archeological study. Parcels A and B will appropriately be placed in public ownership, with funding being proffered by the applicant to initiate the stream restoration efforts.

In addition, the dedication of land, as shown on Applicant Exhibit B, is appropriate. The mandatory dedication at this location addresses the 1990 *Approved Master Plan and Sectional Map Amendment for Subregion I Planning Areas 60, 61, and 62* and provides needed developable land for active recreation for the residents of northern Prince George's County and future residents of the subject development.

15. **Trails**—The approved Subregion I master plan includes one trail recommendation that impacts the subject property. Old Gunpowder Road is designated as a master plan trail corridor. This trail has been implemented to the south of the subject site as part of the Ammendale Road construction project and within the Cross Creek development. This has been implemented as an asphalt sidepath along the east side of Old Gunpowder Road from MD 212 to Ammendale Road, an asphalt sidepath along the west side of Old Gunpowder Road from Ammendale Road to Denim Road, and a multi-use trail within a park corridor on the west side of Old Gunpowder Road through the Cross Creek development. In addition, an extensive network of both paved and natural surface trails exist within Fairland Regional Park, immediately to the south of the subject site in both Prince George's and Montgomery Counties.

As part of the subject application, the paved trail parallel to Old Gunpowder Road will be extended across the subject property. This trail will provide public access to the adjacent Fairland Regional Park and also serve as important segments in the north-south trail connection envisioned along the corridor. The trail location should extend onto Parcels A and B and be located at least 50 feet from the edge of the ROW. The trail will need to enter and leave the site as necessary to accommodate the abutting properties. In the southern area of the site, the trail should be located within the 35-foot-wide buffer strip as depicted on Applicant Exhibit B, and determined at the time of detailed site plan.

The applicant has submitted a comprehensive circulation plan for both the Montgomery County and Prince George's County portions of the site. This map depicts existing trails within the adjacent Fairland Regional Park, as well as planned trails in the subject development. The map indicates that sidewalks will be provided along both sides of all internal roads where eight-foot-wide hard surface trails are not being built.

The trails exhibit has been reviewed and the applicant is proposing a comprehensive trail and sidewalk network as a component of the public benefit conservation subdivision (PBCS). Specifically, Section 24-152(c) of the Subdivision Regulations states that "intermodal trails which provide a link to adjacent properties as an enhancement of recreational opportunities are encouraged." This network includes trails along roadways, standard sidewalks, paved park trail connections, and the master plan trail parallel to Old Gunpowder Road. As an important component of the PBCS, the southern portion of the site should connect to the area of mandatory dedication abutting the Fairland Regional Park and Gunpowder Golf Course. This will provide the subject site with access to the extensive trail network in Fairland Regional Park. As a part of the review of the required detailed site plan, the private trail connection on homeowners association land and public land should be located. Along Old Gunpowder Road, if the trail is located on homeowners association land it should be placed in a public use easement which should be reflected on the detailed site plan (the easement) and final plat.

The proposed intermodal trail connection in the southern portion of the site is critical to provide access to the Fairland Regional Park. The internal trail alignment is proposed to directly cross the existing 65-foot-wide WSSC easement. With the review of the detailed site plan, appropriate siting and coordination with WSSC should occur, including the triggers for the construction.

The trail along Public Roads A and B extends three feet outside of the public right-of-way and onto private lots. The public trail should not be provided on private lots. The right-of-way for both roads should be widened to accommodate the master plan trail. The trail should be completely off private lots and within the road right-of-way. Montgomery County is recommending a 70-foot-wide right-of-way with 36 feet of paving to accommodate the eight-foot-wide hiker/biker trail in Montgomery County. Prior to signature approval of the preliminary plan, Public Roads A and B should be widened to a standard 70-foot-wide right-of-way for the sole purpose of relocating the trail off of the private lots to accommodate the trail, or the applicant may obtain an approval from DPW&T to provide a lesser right-of-way width.

However, in no case should the 8-foot trail be located on private lots along the entire length of Public Road A and B.

Public Road A provides a connection from Old Gunpowder Road into Montgomery County and that portion of the Fairland Park Community, including recreational facilities that were required as part of the Fairland Park Community in Montgomery County (Development Plan Amendment (DPA-09-01)). Public Road A is the only connection to Montgomery County. In discussions with M-NCPPC Montgomery County, Development Review Division (MCDRD), they will require a 70-foot-wide ROW with 36 feet of paving, a paving width generally required for a 60-foot-wide ROW. In this case, the additional ROW will provide for street trees and the eight-foot-wide trail. The issue is the provision of an eight-foot-wide trail off private lots and providing 36 feet of paving consistent with the ROW that will be required in Montgomery County. If the applicant is able to obtain approval from the Department of Public Works and Transportation (DPW&T) for a nonstandard ROW which can accommodate the eight-foot-wide trail and 36 feet of paving within the ROW, this would be acceptable and was discussed with MCDRD.

16. **Transportation**—The property is located between Old Gunpowder Road and the Montgomery County line, north of Van Dusen Road. The transportation analysis is based on the applicant's proposal to develop the property as a residential subdivision with 138 residences (104 single-family detached residences and 34 townhouses). The property is part of a larger proposal which would include an additional 240 residences within Montgomery County.

Analysis of Traffic Impacts

Using trip rates in the "Guidelines for the Analysis of the Traffic Impact of Development Proposals," the proposed development would generate 105 AM (21 inbound and 84 outbound) and 125 PM (82 inbound and 43 outbound) weekday peak-hour vehicle trips.

The traffic generated by the proposed preliminary plan would impact the following intersections, interchanges, and links in the transportation system:

- MD 198 and Old Gunpowder Road (signalized)
- Old Gunpowder Road and north site access (future/unsignalized)
- Old Gunpowder Road and south site access (future/unsignalized)
- Old Gunpowder Road and Van Dusen Road (unsignalized)

The application is supported by a traffic study dated January 2009 provided by the applicant and referred to the Maryland State Highway Administration (SHA) and the Department of Public Works and Transportation (DPW&T). Comments from DPW&T and SHA have been received and are attached. The findings and recommendations outlined below are based upon a review of these materials and analyses conducted by the staff of the Transportation Planning Section, consistent with the guidelines.

The subject property is located within the Developing Tier, as defined in the *Prince George's County Approved General Plan*. As such, the subject property is evaluated according to the following standards:

Links and signalized intersections: Level-of-service (LOS) D, with signalized intersections operating at a critical lane volume (CLV) of 1,450 or better. Mitigation, as defined by Section 24-124(a)(6) of the Subdivision Regulations, is permitted at signalized intersections subject to meeting the geographical criteria in the guidelines.

Unsignalized intersections: *The Highway Capacity Manual* procedure for unsignalized intersections is not a true test of adequacy, but rather an indicator that further operational studies need to be conducted. Vehicle delay in any movement exceeding 50.0 seconds is deemed to be an unacceptable operating condition at unsignalized intersections. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

The following critical intersections, interchanges, and links identified above, when analyzed with existing traffic using counts taken in December 2008 and existing lane configurations, operate as follow:

EXISTING TRAFFIC CONDITIONS				
Intersection	Critical Lane Volume (AM & PM)		Level of Service (LOS, AM & PM)	
	MD 198 and Old Gunpowder Road	1,190	1,127	C
Old Gunpowder Road and north site access	future		--	--
Old Gunpowder Road and south site access	future		--	--
Old Gunpowder Road and Van Dusen Road	32.0*	27.0*	--	--
*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the Guidelines, delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as "+999" suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.				

None of the critical intersections identified above are programmed for improvement with 100 percent construction funding within the next six years in the current Maryland Department of Transportation Consolidated Transportation Program or the Prince George's County Capital Improvement Program. Background traffic has been developed for the study area using two approved developments in the area and a one percent annual growth rate in through traffic along MD 198 and Old Gunpowder Road. The critical intersections, when analyzed with background traffic and existing lane configurations, operate as follow:

BACKGROUND TRAFFIC CONDITIONS				
Intersection	Critical Lane Volume (AM & PM)		Level of Service (LOS, AM & PM)	
	MD 198 and Old Gunpowder Road	1,335	1,322	D
Old Gunpowder Road and north site access	future		--	--
Old Gunpowder Road and south site access	future		--	--
Old Gunpowder Road and Van Dusen Road	71.1*	77.4*	--	--
*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the Guidelines, delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as "+999" suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.				

The following critical intersections, interchanges, and links identified above, when analyzed with the programmed improvements and total future traffic as developed using the guidelines, including the site trip generation as described above and the distribution as described in the traffic study, operate as follow:

TOTAL TRAFFIC CONDITIONS				
Intersection	Critical Lane Volume (AM & PM)		Level of Service (LOS, AM & PM)	
	MD 198 and Old Gunpowder Road	1,353	1,342	D
Old Gunpowder Road and north site access	16.6*	16.7*	--	--
Old Gunpowder Road and south site access	19.0*	15.7*	--	--
Old Gunpowder Road and Van Dusen Road	87.5*	103.7*	--	--
*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the Guidelines, delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as "+999" suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.				

It is found that three of the critical intersections operate acceptably under existing, background, and total traffic in both peak hours, while the intersection of Old Gunpowder Road and Van Dusen Road operates unacceptably as an unsignalized intersection under background and total traffic in both peak hours. At Old Gunpowder Road and Van Dusen Road, in response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal if it is deemed warranted by the appropriate operating agency.

The warrant study is, in itself, a more detailed study of the adequacy of the existing unsignalized intersection. As a result, it is recommended that a signal warrant study be completed at this location. With the installation of a signal, the intersection would operate at LOS A in both peak hours.

The *Prince George's County Master Plan of Transportation (MPOT)* recommends, in part in Strategy 6 of Policy 2, that signalized intersections include a requirement for a minimum of two approach lanes on each approach. The Old Gunpowder Road/Van Dusen Road intersection has insufficient pavement on the northbound approach to provide a two-lane approach. If a signal is to be installed at this location, the northbound approach of Old Gunpowder Road must be widened to provide two approach lanes. However, this improvement for two approach lanes is not currently a requirement of the MPOT. DPW&T has indicated that they would require this improvement if a signal is deemed warranted.

Therefore, with the completion of a traffic signal warrant study at Old Gunpowder Road and Van Dusen Road along with the completion of any warranted improvements, the critical intersections can be found to be operating at or better than the policy service level defined for the Developing Tier.

The traffic study was referred to and reviewed by DPW&T and SHA. The responses are attached, and they raise four issues that require discussion:

- DPW&T indicated that a signal warrant study would be required at Old Gunpowder Road and Van Dusen Road, and that the applicant would be responsible for installation of the signal if found warranted. This is consistent with the recommended conditions.
- DPW&T indicated that acceleration, deceleration, and left-turn lanes should be provided at both proposed site access points. These recommendations will be carried forward; however, it is noted that such improvements can be required directly by DPW&T as a part of granting street access to the site.
- SHA questioned the use of the one percent annual growth rate instead of two percent. The lower rate was allowed because background development has a large impact in the study area. Nonetheless, SHA stated that a higher growth rate would not change the results of this study, and this fact has been substantiated by staff analysis.
- SHA questioned the use of the trip generation rates used for the Konterra East background development. However, analyses indicated that revised rates for Konterra East were acceptable when that development was reviewed, and the trip rates used in the subject study are consistent.

An issue has arisen regarding the possible need for a 70-foot-wide right-of-way along Public Road A. Further investigation has indicated that the 70-foot continuation of Public Road A in Montgomery County is intended to include a 36-foot roadway curb-to-curb (which is identical to

a primary residential roadway, which is normally platted with a 60-foot-wide right-of-way) plus an eight-foot-wide trail. For purposes of planning vehicular circulation, there is no objection to a 70-foot-wide (or a lesser size) right-of-way along Public Road A, but the needed coordination must occur with Montgomery County and with the trails planner. Also, prior to the final plat, it must be determined if DPW&T will accept the placement of an off-road trail within the public right-of-way; otherwise, Public Road A must be platted at 70 feet.

A final issue concerns the connection of Public Road A across the county line between Prince George’s and Montgomery Counties. Section 24-123(a)(3) of the Subdivision Regulations requires that plats conform to a number of requirements, including a requirement that “all internal subdivision streets shall be wholly within the County and shall not be designed to directly connect to an adjacent county unless the applicant has obtained the prior written approval of the District Council and the appropriate land use authority of the adjacent County.” In reviewing this plan, the following was determined:

The site is adjacent to Old Gunpowder Road, which is described in the current plan as a collector roadway with a right-of-way of 80 feet. It is noted that, notwithstanding the typical standard for collector roadway construction, County Council Resolution CR-19-1990 approving the Subregion I master plan includes revision 6, which indicates that Old Gunpowder Road is to be “a four-lane limited access collector road with an 80-foot right-of-way and a 20 foot landscaped median.” The plan shows that the ultimate right-of-way is 80 feet, with the creation of Parcels C and D for the future conveyance of 40 feet from the centerline along Old Gunpowder Road upon demand by DPW&T, and is acceptable.

Based on the preceding findings, adequate transportation facilities would exist to serve the proposed subdivision as required under Section 24-124 of the Prince George’s County Code.

17. **Schools**—The preliminary plan has been reviewed for impact on school facilities in accordance with Section 24-122.02 of the Subdivision Regulations and CR-23-2003 as follows:

Impact on Affected Public School Clusters

Affected School Clusters #	Elementary School Cluster 1	Middle School Cluster 1	High School Cluster 1
Dwelling Units	152 DU	152 DU	152 DU
Pupil Yield Factor	.16	.13	.14
Subdivision Enrollment	24.3	19.8	21.3
Actual Enrollment	4,994	1,578	4,018
Total Enrollment	5018.3	1,597.8	4,039.3
State Rated Capacity	4,850	1,759	4,123

Percent Capacity	103.5%	90.8%	97.9%
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Source: Prince George’s County Planning Department, M-NCPPC, April 2009

This evaluation was performed with the original application which proposed 152 lots, the preliminary plan was approved with 138 lots.

County Council Bill CB-31-2003 established a school facilities surcharge in the amounts of: \$7,000 per dwelling if a building is located between I-95/495 and the District of Columbia; \$7,000 per dwelling if the building is included within a basic plan or conceptual site plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority; or \$12,000 per dwelling for all other buildings. County Council Bill CB-31-2003 allows for these surcharges to be adjusted for inflation, and the current amounts are \$8,177 and \$14,019 to be paid at the time of issuance of each building permit.

The school facilities surcharge may be used for the construction of additional or expanded school facilities and renovations to existing school buildings or other systemic changes.

18. **Fire and Rescue**—The preliminary plan of subdivision has been reviewed for adequacy of fire and rescue services in accordance with Section 24-122.01(a)(2), Section 24-122.01(d), and Section 24-122.01(e)(1)(B) thru (E) of the Subdivision Regulations.

This preliminary plan is within the required seven minute response time for the first due fire station, Laurel, Company 10, using the *Seven Minute Travel Times and Fire Station Locations Map* provided by the Prince George’s County Fire/EMS Department.

Pursuant to CR-69-2006, the Prince George’s County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A) and (B) of the Subdivision Regulations regarding sworn fire and rescue personnel staffing levels.

The Fire/EMS Chief has reported that the Fire/EMS Department has adequate equipment to meet the standards stated in CB-56-2005.

19. **Police Facilities**—The subject property is located in Police District VI, Beltsville. The response time standard for emergency calls is ten minutes and the standard for nonemergency calls is 25 minutes. The times are based on a rolling average for the preceding 12 months. The preliminary plan was accepted for processing by the Planning Department on March 26, 2009.

Reporting Cycle	Previous 12 Month Cycle	Emergency Calls	Non-emergency Calls
Acceptance Date 3/26/2009	3/2008-4/2009	9.0 minutes	8.0 minutes
Cycle 1			
Cycle 2			

Cycle 3			
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The response time standards of ten minutes for emergency calls and 25 minutes for nonemergency calls were met on June 15, 2009.

The Police Chief has reported that the Police Department has adequate equipment to meet the standards stated in CB-56-2005. Pursuant to CR-69-2006, the Prince George's County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A, B) of the Subdivision Regulations regarding sworn police personnel staffing levels.

20. **Health Department**—The Environmental Engineering Program section of the Health Department has reviewed the preliminary plan of subdivision and has no comment.
21. **Stormwater Management**—The Department of Public Works and Transportation (DPW&T), Office of Engineering, has determined that on-site stormwater management is required. A Stormwater Management Concept Plan, 42314-2004-01, has been approved with conditions to ensure that development of this site does not result in on-site or downstream flooding. However, subsequent to the approval of the concept plan, there have been significant revisions to the proposed layout. While the concept approved for stormwater management has not changed, the number and location of the stormwater management facilities has. Therefore, the technical stormwater management plan should be reviewed with the detailed site plan and approved prior to approval of the DSP, if appropriate.
22. **Historic**—A Phase I archeological survey was conducted on the 79.25-acre Fairland Park Community property from December 2008 to February 2009. The final Phase I report, A Phase I Archeological Survey of the Fairland Property, Prince George's County, Maryland, Sketch Plan #S-08003 was received by Historic Preservation staff and was accepted on June 22, 2009. The Phase I archeological investigations on the Fairland property relocated and redefined the boundaries of a previously identified prehistoric site, 18PR511. Intact cultural deposits are present in the lower layers of the site. The boundaries of site 18PR511 were extended to the west side of the PEPCO right-of-way that runs northwest to southeast through the northern parcel. The parcel to the east of the PEPCO right-of-way is proposed Parcel A and to the west is proposed Parcel B.

The current plan submission does not propose any impacts to site 18PR511 on Parcels A and B. Site 18PR511 will remain in conservation Parcels A and B. Therefore, no further archeological investigations are necessary at this time on site 18PR511. This site contains significant archeological features, which are required to be protected under Section 24-104 and 121(18) of the Subdivision Regulations.

At the time of approval of the final plat for Parcels A, B, C, and D, an archeological easement should be described by bearings and distances. The required conservation easement should include the archeological easement as a part of the conservation description. The archeological easement should include the archeological site and a 50-foot nondisturbance buffer, necessary to

protect the resource, and reviewed by the Historic Preservation Section prior to approval of the final plat.

However, there is a possibility that the stream bordering the east and south sides of site 18PR511 will require restoration work to prevent further erosion. Stream restoration measures that may be necessary could impact the archeological site, but these measures have not been determined. In the event that the stream restoration measures are required that impact the archeological site, Phase II and/or Phase III archeological investigations should be conducted to mitigate any impacts. All additional archeological investigations should be completed and final site reports approved prior to any ground disturbance or the issuance of any permits which would result in disturbance of archeological site 18PR511. Impacts to only 50-foot non-disturbance buffer for stream restoration will not require further archeological work.

Moreover, Section 106 review may require archeological survey for state or federal agencies. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties, to include archeological sites. This review is required when state or federal monies, or federal permits are required for a project.

23. **Public Utility Easement (PUE)**—In accordance with the Subdivision Regulations Section 24-128(b)(12) for private roads, and Section 24-122(a) for public roads, when utility easements are required by a public utility company, the subdivider shall include the following statement in the dedication documents recorded on the final plat:

“Utility easements are granted pursuant to the declaration recorded among the County Land Records in Liber 3703 at Folio 748.”

The preliminary plan of subdivision should delineate a ten-foot public utility easement abutting the public and private rights-of-way as requested by the utility companies and should be reflected on the final plats prior to approval. Any deviation from the required ten feet should be approved by all of the affected utility companies including Washington Gas, PEPCO, and Verizon prior to signature approval of the preliminary plan of subdivision.

24. **Water and Sewer Categories**—Section 24-122.01(b)(1) of the Subdivision Regulations states that “the location of the property within the appropriate service area of the Ten Year Water and Sewerage Plan is deemed sufficient evidence of the immediate or planned availability of public water and sewerage for preliminary or final plat approval.”

The 2008 Water and Sewer Plan, as adopted by CR-91-2008, recognized that this property is in water and sewer service Category 4, Community System Adequate for Development Planning, and the site will therefore be served by public systems.

25. **Criteria for Approval**—Section 24-152(k) of the Subdivision Regulations states that the Planning Board shall find that the conservation subdivision:

- (1) **Fulfills the purpose and conforms to the regulations and standards for a conservation subdivision.**
- (2) **Achieves the best possible relationship between the development and the conservation of site characteristics as prioritized in the sketch plan and preliminary plan.**
- (3) **Because the use of the Conservation Subdivision technique in the Developed or Developing Tier is optional, the Planning Board shall also find that the proposed plan is clearly superior to that which could be achieved through the use of conventional development standards and clearly meets the purposes of the Conservation Subdivision technique. Lot yield shall be a secondary consideration to achieving the purposes of the Public Benefit Conservation Subdivision in assessing whether a proposed plan is clearly superior.**

The Subdivision Regulations in Section 24-110 establishes in part that “the developer has the duty to comply with reasonable conditions imposed by the Planning Board for the design, dedication, improvement, and restrictive use of the land, so as to enhance the physical and economical development of the Regional District and to protect the health, safety, and general welfare of the future lot owners in the subdivision and of the community at large.”

Section 24-130(a) of the Subdivision Regulations establishes in part that the proposed subdivisions shall be designated “to assist in the attainment and maintenance of water quality standards, and to preserve and enhance the environmental quality of stream valleys.”

In addition, Section 24-121(a)(5) of the Subdivision Regulations requires conformance to functional master plans (including plans and text). The Green Infrastructure Plan requires that the Planning Board must find that the plan adequately addresses the following policies of the Countywide Green Infrastructure Plan, a functional master plan which sets forth the following policies:

Policy 1: Preserve, protect, enhance or restore the green infrastructure network and its ecological functions while supporting the desired development pattern of the 2002 General Plan.

Policy 2: Preserve, protect, and enhance surface and ground water features and restore lost ecological functions.

Section 24-104(a)(8) of the Subdivision Regulations in part establishes purposes “to prevent the pollution of the environment; and to encourage the wise use and management of natural resources throughout the Regional District in order to preserve the integrity, stability, and beauty of the County, and the value of the land.”

The restoration and stabilization of the stream will conserve the stream and ensure that the maintenance of the stream can occur. The section of the stream that is the focus of the conservation efforts on this site is heavily degraded and is causing the resource downstream both on and off-site to be negatively impacted. On June 3, 2009, the applicant was advised (Lammers to Warfel) that “if the stream segments are not stabilized, the condition of the stream on-site will continue to deteriorate to the point where its value as a feature in a conservation subdivision is measurabl[y] reduced.”

The stream extends approximately 2,115 linear feet over Parcels A and B (Parcel A/965 feet, Parcel B/1150feet). Based on the staff analysis, approximately 695 linear feet of stream is in need of stabilization and restoration on-site (445 linear feet of main channel and 250 linear feet of side channels), or approximately 45 percent of the limit of the stream which exists on the subject property. This estimate could decrease based on a more detailed analysis.

The placement of Parcels A and B in conservation as proposed by the applicant has not deprived the property owner of the development rights associated with these parcels. In fact, by utilizing the PBCS, the applicant has retained all of the allowable density (2.17 dwelling units per acre) for the entire site (79.25 acres) and shifted those lots to the southern portion of the property (Parcel 10). Based on the staff analysis, the use of the PBCS has increased the lot yield above the previously approved cluster subdivision (120 lots) or a conventional development (87 lots) as analyzed herein. The transfer of the density to Parcel 10 from Parcels A and B has reduced the costs associated with infrastructure installation over the entire 79.25 acres and consolidated those costs to Parcel 10 (38.22 acres).

In addition to extracting the development rights associated with Parcels A and B, the applicant continues to utilize Parcels A and B to fulfill the woodland conservation requirements necessary to support the development. The applicant has realized all of the development rights associated with Parcels A and B.

Websters (2009) defines conservation as the careful preservation and protection of something; especially: planned management of a natural resource to prevent exploitation, destruction, or neglect 2: the preservation of a physical quantity during transformations or reactions.

With the donation of Parcels A and B to M-NCPPC, this important environmental area will appropriately be placed in public ownership. Public ownership will provide assurances that the land will not be subject to further neglect, and ensure preservation and protection. The applicant's monetary contribution will promote appropriate land management and conservation efforts in keeping with the requirements of a public benefit conservation subdivision.

In conclusion, when evaluated for the requirements of the PBCS and the associated ordinance text, in consideration of the analysis found herein this subdivision, fulfills the purpose of and conforms to the regulations and standards for a public benefit conservation subdivision. This preliminary plan provides more tree conservation on-site and significantly more conservation in acreage. The layout achieves the best possible relationship in the conservation of site

characteristics as prioritized in the planning process. The layout is clearly superior to that of a conventional subdivision, even when analysis shows that the applicant will obtain an increase of approximately 51 lots or 36 percent more lots than could be achieved with a conventional development.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the date of notice of the adoption of this Resolution.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Squire, seconded by Commissioner Clark, with Commissioners Squire, Clark, Cavitt, Vaughns and Parker voting in favor of the motion at its regular meeting held on Thursday, September 10, 2009, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 1st day of October 2009.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

OSR:FJG:WC:arj