



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

**Intercounty Connector  
Mandatory Referral No. 06809-SHA-1  
Status Report #11**

**Prepared 12/02/07 for discussion at the 12/06/07 roundtable**

The focus of this status report is on the two areas of discussion for which resolution is needed prior to a staff recommendation to transfer remaining parkland property to SHA:

- Development of a public review process for environmental impacts within Special Protection Areas, and
- Reforestation requirements for park property

We have worked with SHA on these two issues during the past several months and are now approaching the point at which SHA has indicated that the remaining park property transfer to them is in the project's critical path. During the roundtable we will discuss options, described below, for resolution of these issues in relations to a parkland transfer schedule. While we are not asking the Board for any decisions on December 6, we welcome any guidance you will provide us.

The two topics are particularly sensitive because they involve considering the relative merits of a variety of federal, state, and local rules, regulations, and guidelines. SHA has stated that ICC planning and design process has, in nearly all areas of environmental concern, greatly exceeded resource protection or mitigation requirements established by the State of Maryland. The state has also indicated their commitment to honor the intent of a number of local laws and regulations, particularly related to protecting the environmental resources in the County's Special Protection Areas.

However, the State is not bound by the County's rules and regulations, nor are they following normal County review processes. Procedural differences, particularly regarding the Special Protection Areas, have been discussed several times with the Planning Board during the past two years. A key element of the mandatory referral process in July 2006 involved the development of a review process for the portion of the project within the SPAs.

Our challenge continues to be providing timely technical comments in a role that is advisory, a position elaborated on in the November 19 memorandum from Chairman Hanson to Council President Praisner included as Attachment A. We are clearly documenting the differences and justifying the departure from local regulations and guidelines, as we have throughout the ICC planning process.

## Section 1. Special Protection Area Review

The ICC crosses two Special Protection Areas:

- Contract A crosses the Upper Rock Creek SPA (approximately 0.5 miles in length)
- Contract B crosses the Upper Paint Branch SPA (approximately 2.4 miles in length, with 0.1 miles in Contract C)

The development of a customized process for Special Protection Area review has evolved over the past sixteen months as indicated in Attachments B through E:

- Introduced as Condition #6 in the July 2006 mandatory referral,
- Noted as an outstanding item during the Planning Board's public hearing in December 2006 regarding transfer of park properties in Contract A
- Discussed in a meeting between Chairman Hanson and SHA Administrator Neil Pedersen in January 2007
- Agreed to conceptually as reported during Status Report #5 in February 2007

We have recognized that the public review process described in these documents is not a review of an SPA water quality plan as defined in County law and regulations. However, we intended these Planning Board public hearings to serve two purposes:

- To provide public information regarding the State's proposed designs within SPAs, and
- To allow public and Planning Board review and comment to the Maryland Department of the Environment (MDE) to influence details of the roadway design prior to MDE approval of final design plans.

It is apparent, however, that given the state's proposed schedule, only the first of these two purposes will likely be achieved within the Upper Rock Creek SPA. **The schedule does not provide sufficient time to accommodate substantive Planning Board review of the detailed design approaches for environmental protection within the SPA.** MDE will likely have approved the erosion and sediment control plans which will set the limits of disturbance for the majority of the project within the Upper Rock Creek SPA prior to receipt of Planning Board comments.

Regarding the first purpose, we still intend to document how the project has protected environmental resources in the SPAs by considering the following criteria:

- Impervious limits or minimization of impervious surfaces
- Avoidance or minimization of impacts to County-defined environmental buffers
- Avoidance or minimization of impacts to forest resources.

## Current Schedule

The Intercounty Constructors (IC), the design-builder for Contract A, has revised their schedules after receiving full Notice-to-Proceed in mid-November (after the United States District Court ruling). We have determined that our environmental review should be based upon design submittals entitled Rough Grade and Drainage plans. The Rough Grade and Drainage plans contain final roadway design information except for paving details.

The IC currently anticipates the following schedule for design submittals within the Upper Rock Creek SPA.

- Submission of Rough Grade and Drainage plans to the ICC Environmental Management Team on December 12, 2007
- Submission of Rough Grade and Drainage plans to the Maryland Department of the Environment on December 24, 2007
- MDE approval of Rough Grade and Drainage plans by January 12, 2008

**Staff proposes to schedule a Planning Board public hearing on SHA's proposed approaches to environmental resource protection in the Upper Rock Creek SPA for January 10, 2008.**

Staff has an additional substantive concern. **The design-builder will be conducting clearing and grubbing activities within the SPA right-of-way in late December, prior to the Planning Board public hearing on the SPA design.** The clearing and grubbing is needed to establish a haul road from MD 115 to the North Branch of Rock Creek for bridge construction, a critical path in the implementation process. The design-builder proposes to clear and grub within the limits of disturbance to establish permanent erosion and sediment control for the construction process. This process is inconsistent with the County review process that requires public review prior to any land disturbing activities in the SPA. Review of the clearing and grubbing plans in early December will be limited to staff only given the turnaround time proposed.

## Summary

Perhaps the most substantive influence the Planning Board has exerted in the design review process in the Upper Rock Creek SPA has been:

- The revision of two stormwater facilities affecting parkland per a public hearing for Project Briefing #1 in September 2006 that resulted in less forest clearing
- The inclusion of substantive forest impact reduction incentives as a part of the design-build specifications during late 2006 and early 2007 which applies to the entire project.

**Staff has recommended that SHA incorporate our concerns from the Contract A review to ensure that the Contract B design-build RFP includes a review process for**

**the Upper Paint Branch SPA that allows Planning Board comments can be transmitted to MDE prior to land disturbing activity occurring on Contract B.** We are preparing a formal request for SHA to reconsider establishing the review process within the Contract B RFP and will share that request with the Planning Board on December 6. We have already agreed with SHA that the public review of the 0.1 mile in Contract C should be reviewed in conjunction with the Contract B even though Contract C will be constructed earlier in the process. Staff will provide comments on Contract C to SHA and the design-builder.

## **Section 2. Reforestation Requirements on Parkland**

M-NCPPC staff has reviewed and provided comments on SHA's proposal for reforestation on M-NCPPC park property. SHA has incorporated all of staff's comments with one exception. SHA has not agreed to a 5-year maintenance program for reforestation that will occur within the Special Protection Areas (SPA).

Staff recommends a 5-year maintenance program for reforestation that occurs within an SPA. This is consistent with the Planning Board's "Environmental Guidelines", which states that "the applicant will provide a five-year maintenance program of forest planting areas to better ensure forest survival, with emphasis to be placed on control of invasive species." It is also consistent with the staff's and Planning Board's recommendations to change the County Forest Conservation Law requirement for maintenance of forest planting areas from 2 to 5 years throughout the county.

Attachment F provides a comparison of SHA's proposal for reforestation on M-NCPPC parkland with state and county requirements, as well as M-NCPPC Parks Department planting requirements. Attachment G provides the proposal as last submitted to us by SHA in October.

In exchange for the 5-year maintenance period in SPAs, we would accept the 75% survival rate for smaller caliper trees also specified in the County's Environmental Guidelines.

The specifics of the proposal described as "SHA proposal" in Attachments F and G reflect substantial coordination among several SHA and M-NCPPC Parks Department and Planning Department staff. The three primary elements being considered related to the size and density of planting stock, the specific type of deer protection, and the duration and success rate required during the maintenance period. In August 2007, SHA indicated that they would not be willing to entertain a 5-year maintenance period, but would be willing to exceed County requirements for other elements such as total planting density and survivability rates at the end of the maintenance period, as reflected in Attachment F. Based on continued discussions, a carefully balanced draft proposal was crafted in October for both agencies to review and finalize.

The Planning Board stated in the mandatory referral review that protection of environmental resources in the SPA is our highest priority. With this guidance, we

decided in mid-November that the five-year maintenance period was of sufficient importance to pursue, recognizing that SHA has already indicated that in this case, they will need to regroup and revisit the entire package. The value of the Planning Board discussion on December 6 will be to discuss the relative value to the Board of these different elements. We expect SHA will develop a counter-proposal, but it may not be available by December 6.

The Record of Decision suggests that up to 368 acres of reforestation could occur on property that either already exists in the park system or that will be transferred into the park system as part of the ICC mitigation package. Staff estimates that perhaps one-third of this acreage may be in SPAs, with the largest single site being 90 acres of potential reforestation identified on the Peach Orchard Allnut Property in the Upper Paint Branch SPA.

### **Section 3. Park Property Transfer Schedules**

We have the record plat materials required to hold a public hearing on the remaining park property transfer to SHA. We propose that the public hearing for the remaining parkland within Contract B and Contract C be scheduled for January 24, 2008, two weeks following the ICC Upper Rock Creek SPA public hearing that is tentatively scheduled for January 10, 2008.

### **Section 4. Review of Other Technical Activities**

#### **Llewellyn Property**

As described with the Board during the CIP process in October, we continue to coordinate with SHA regarding park development details. We wish to pursue a park concept plan presented to the public in June and this plan contains a mix of playing fields that are different from that in the Record of Decision and includes some ancillary elements that are not in the Record of Decision. We are determining an appropriate division of responsibility for park funding and construction based on both ROD commitments and estimated capital costs. Further discussions on this subject are needed.

#### **Winchester/Needwood Property**

This property is located near the north end of Lake Needwood, on either side of Needwood Road between Rock Creek Regional Park and Muncaster Mill Road (MD 115). SHA has acquired this entire property, rather than only the portion identified in the Record of Decision. We are interested in acquiring approximately 13 acres of this property east of Needwood Road from SHA. We value this site, currently a meadow, for its value as both a short-term site for Lake Needwood dredge materials deposit and its long term value as an expansion to Rock Creek Regional Park. SHA is interested in using the same area for construction staging during Contract A implementation. We have determined that our schedules can be meshed with SHA to allow use of the property for both ICC construction (through fall 2010) and dredge deposit (beginning winter

2010/2011). Both agencies agree that the site is a good candidate reforestation site, but the state has not yet determined whether the dredging and reforestation goals are compatible. We are working on an agreement regarding acquisition details to determine whether this site can and should be acquired in time to use as a dredge material deposit site

### **Candidate reforestation sites**

The Record of Decision identifies a need for approximately 700 acres of reforestation and identifies approximately 1,100 acres of candidate sites, all of which must be on publicly owned property. Recent cultural examination of WSSC sites in the Patuxent River watershed has indicated that the 200 acres of potential reforestation identified in the ROD is not likely to be cost effective based on the extent of archeological evaluation and documentation that would be required prior to reforestation.

### **Casey at Hoyles Mill Property**

The Record of Decision identifies the Casey Property as part of the ICC mitigation package to compensate for parkland lost due to the construction of the ICC. This property includes 214 acres classified as interior forest and 118 acres of open meadow which can be reforested as a part of the mitigation package. The Casey Property consists of 458.8 acres of land which is over half of the 776.6 acres that SHA has committed to parkland mitigation.

The Casey Foundation has filed suit against SHA contesting the validity of the eminent domain associated with the ICC. We have been deposed in the case regarding our role in identifying the value of the property as an ICC mitigation site and will provide an update to the Board when the case has been resolved.

### **Section 5. County Council Coordination**

The County Council approved our supplemental funding request for FY 2008 to increase staff levels needed for oversight of both the ICC mainline design-build activities and the 90 compensatory mitigation and environmental stewardship projects.



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
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**Intercounty Connector  
Mandatory Referral No. 06809-SHA-1  
Status Report #11 – Errata**

**Prepared 12/06/07 for discussion at the 12/06/07 roundtable**

This errata sheet clarifies or corrects several items from the 12/2/07 memorandum distributed to Planning Board and County Council members and placed on our website.

1. Regarding the purpose of the SPA review public hearing process at the bottom of page 1, the last full sentence states that our process intends to “document how the project has protected environmental resources in the SPAs”. This statement should be corrected to state that the process will “document whether the project as proposed adequately protects environmental resources in the SPAs as defined by County requirements.”
2. Regarding the materials to be incorporated in the public hearing process, the three bullets at the top of page 2 should be changed from “Rough Grade and Drainage plans” to “Final Roadway Plans”. The basic difference between the two types of plans is that the Final Roadway Plans incorporate paving, signing, and marking materials. In this area of the ICC, the state and federal agencies responsible for review and approvals do not need to see the two sets of plans independently so the Intercounty Constructors does not plan to develop Rough Grade and Drainage plans for submission. This schedule is likely to slip by a week or so.
3. Regarding the bolded statement on page 3 that the contractor is likely to begin clearing and grubbing in late December, we learned at a meeting yesterday that the clearing and grubbing activities will be delayed at least until the end of January and perhaps until early March. If this delay is confirmed, it should provide the opportunity to incorporate Planning Board and public hearing testimony **before** plans are approved by MDE. This would alleviate one of our primary concerns that land disturbing activities would begin prior to the completion of the public hearing process that could result in suggested design changes. Staff recommends that we ask SHA to hold off final permit authorization for clearing and grubbing until they have given due consideration to Planning Board public hearing input.
4. Regarding the request for incorporation of a review process for the Upper Paint Branch in the Contract B Request for Proposals (referenced at the top of page 4), the staff comments transmitted to SHA as recommended inserts (for PS 310 – Environmental Performance Specification) are attached to this errata.

5. Regarding the statement on page 4 that “we would accept the 75% survival rate for smaller caliper trees also specified in the County’s Environmental Guidelines”, this statement should note that the 75% survival rate is already a requirement contained in Section 108 of the County forest conservation regulations. The 5-year maintenance period for reforestation in SPAs has been implemented consistently for all local projects within SPA’s in accord with the directives in the Planning Board’s Environmental Guidelines. Further, the 5-year maintenance period is included in the Planning Board’s recommended 2007 Forest Conservation Law amendments for countywide application both inside and beyond the SPA boundaries. .
6. Regarding the estimate of the amount of reforestation potential within SPAs and on parkland, SHA has reduced the amount of estimated potential reforestation on the Peach Orchard Allnut site from approximately 90 acres to approximately 30 acres.
7. Additional information regarding the first full paragraph on page 5: The Final EIS (January, 2006) specifies that this project will require approximately 750 acres of reforestation to mitigate for forest loss due to its construction. Of that, up to 368 acres of reforestation could occur in Montgomery County on property that either already exists in the parks system, or that will be transferred into the park system, as part of the ICC mitigation package.
8. Regarding the park property transfer schedules in Section 3, SHA has indicated that further delay in transferring the 0.2 acres of park property for Contract C (for which they selected a contractor in November) beyond a full Commission hearing in mid-January would substantially affect the development of a Notice to Proceed per the RFP, effectively delaying the project. We have subsequently recommended holding separate public hearings on two parkland transfers with the Contract C parkland (0.2 acres) tentatively scheduled for January 10, 2008 and the Contract B parkland (the remaining 50+ acres) tentatively scheduled for January 24, 2008 as stated in Status Report #11.



## PS 310 – Environmental Performance Specification

### General Comments:

- The Environmental Performance Specification should include provisions for the M-NCPPC to hold a public hearing during the design-build process to solicit public comment on the roadway design within the Upper Paint Branch Special Protection Area. To this end, the review process identified in this RFP should incorporate the public hearing process within the project critical path, including a minimum 45-day period between the submission of Rough Grade and Drainage plans to SHA and the submission of the same plans to MDE for approval.
- The environmental compliance specification should include a requirement to provide a detailed description, including mapping, of how and where the Proposer's environmental compliance team proposes to avoid or minimize impacts to environmental buffers in the Special Protection Area (SPA), as defined in the Montgomery County Planning Board's "Environmental Guidelines". The information should also include mapping at a legible scale that includes at least 5-foot contour intervals, existing and proposed forest and tree lines, soil types per the NRCS Soil Survey, seeps and springs, intermittent and perennial streams, wetlands, proposed tree protection and sediment and erosion control measures, location of sediment and erosion control measures such as ponds, silt fencing, berms, proposed grading and LODs, 24" and greater diameter trees (including tree species and diameter) within 50 feet of either side of the LOD line, which trees of these trees are proposed for protection and which trees will be cleared.
- The environmental compliance specification should include a requirement to provide plans showing cross-sections of the roadway through the SPA and measures to minimize road pavement, median widths, etc. It should also include a detailed calculation of proposed imperviousness for the project within the SPA.
- The SWM and drainage plans, the Earth Disturbance Area Plans, and the Sediment and Erosion Control Plans should show the environmental buffers in the SPA, as defined in the Montgomery County Planning Board's "Environmental Guidelines". These plans should also show how disturbance within these buffers are avoided or minimized.
- The SWM narrative should include proposer's plans to avoid or minimize disturbance within the Planning Board's environmental buffers.
- Forest planting plans and NNI plans within the SPA should include a minimum 5-year maintenance requirement.



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

November 19, 2007

**MEMORANDUM**

To: Marilyn Praisner, President, Montgomery County Council

From:  Royce Hanson, Chairman, Montgomery County Planning Board

Subject: Response to October 8 memorandum with ICC Questions

This memorandum responds to the questions in your October 8, 2007 memorandum directed to or involving the Planning Board jurisdiction or responsibilities. I want to stress two points that inform our responses:

- At recent Council discussions regarding the ICC, several Councilmembers seemed to view the Planning Board as virtually equal with the State Highway Administration (SHA) in having oversight responsibility for the ICC and for assuring that it is successfully built. The ICC is a federally approved State Highway Administration project and SHA is responsible for adherence to state and federal regulations to implement this master-planned transportation facility. We have an important and influential role on the SHA team, *but it is an advisory role*. Most of the questions, therefore, are appropriately directed to, and responses provided by, SHA.
- The Planning Board will use every means available to us to assure that this master planned road is built in a way that is as environmentally sensitive as possible and that impacts to adjacent communities and parkland are minimized. The magnitude of the ICC construction and the sensitivity of the environmental and residential communities through which it is planned will require additional staff resources if we are to respond with timely and well-grounded advice, as indicated in our supplemental funding request. Some part of these resources will be dedicated to staff responses to community and elected official queries such as this one. To be frank, some of the questions, particularly those regarding public health issues, would require substantial additional research that was not conducted during the planning and approval process. Our supplemental funding request anticipates responses such as this one, but does not anticipate either

additional planning-level research or duplication of SHA project management tracking data. Should you desire such research or duplication, we will need resources beyond those requested in the special appropriation submitted to you this fall.

Regarding **public health issues**, the County Council has the opportunity to consider the relationships among all land uses as master plans and sector plans are adopted. The master planned alignment for the ICC will serve thousands of nearby residents, as do the Capital Beltway and I-270. A comparison of the proximity of our current and proposed freeways to the County's residential population is provided in Attachment A.

Regarding the **intent of the County's environmental requirements**, we have been working with local, state, and federal agencies throughout the study process to seek successful outcomes that blend the County's interests with the state and federal regulations required by SHA. This has been challenging because SHA adheres to and is bound by state and federal regulation. Differences in the materials prepared and processes needed for each kind of review often lead SHA to ask that we use the materials they have prepared for state and federal review for our work. This has created a situation where staff is given plans that do not have all the basic information with which to review for conformance to County standards and guidelines.

The ROD does not acknowledge M-NCPPC's role in the SPA process; Neither the ROD nor the RFP reference the County environmental buffers as environmental features where adverse impacts and disturbance should be avoided or minimized.

We believe that attention to the County's resource definitions is of utmost importance within Special Protection Areas (SPA). Therefore the Planning Board succeeded in requiring development of an SPA public hearing process as part of the Mandatory Referral Review. The County's Special Protection Area (SPA) water quality plan review has two parts: DPS review of detailed stormwater management plans and Planning staff review of environmental buffer impacts, imperviousness limits and minimization, and forest impacts. The Planning Board takes action to approve a water quality plan only after DPS has signed off on a review of detailed plans. The Record of Decision (ROD) indicates that SHA will meet County stormwater management criteria in SPAs and gain Montgomery County Department of Permitting Services concurrence for water quality plans. DPS has issued their concurrence for Contract A based on materials provided by SHA which describe the stormwater management approach in concept. DPS has indicated that they will assist the Planning staff with this review, but will not be reviewing detailed plans in the same manner as they would with a county or private project submittal and will not provide an official approval of stormwater management plans to the Planning Board. DPS can provide you more information about their approach.

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The Planning staff conducts our part of the SPA review based on imperviousness limits, impacts to our County-defined environmental buffers, and impacts to forest resources. SHA has indicated that they will not prepare this information for us, but has agreed to show the County environmental buffers on public hearing plans if we will provide the buffer information to them. Once we develop this information, staff will be able to provide review comments on footprint impacts to forest resources and environmental buffers.

Forest Conservation Law compliance takes place at the state level in accordance with state law and an official Forest Conservation Plan is not being submitted to the Planning Board.

Regarding the role of MNCPPC with respect to value engineering and the effect of such actions on environmental elements of the project, this is an element of our mandatory referral review. We will monitor and comment on any changes to the Limits of Disturbance and other major changes in the Record of Decision as part of the continuing Mandatory Referral. **We have an agreement with SHA with respect to review of measures taken to protect water quality in the Special Protection Areas of the project, which includes staff review and a public hearing before the Board, after which we can advise the Maryland Department of Environment of our recommendations. Our recommendations are not binding on the State.** This covers any alternative concepts that affect water quality issues, activities on or impinging on parkland (where we have the ability to stop work), and changes in the limits of disturbance. *I emphasize that this is a State project over which we do not have control—only such influence as the merit of our advice compels.*

The rationale for including the Casey property at Hoyles Mill as part of the mitigation package is contained in the July 2005 Planning Board report you referenced that recommended the acquisition, a concept publicly introduced in summer 2004. The parkland replacement strategy includes consideration of replacement not only of parkland acreage, but also economic value, recreational value, and natural resource value. In 2004, the Planning Board agreed that interior forest was an appropriate measure of natural resource value. The Casey property at Hoyles Mill is integral to the Planning Board's parkland replacement strategy as it affords an opportunity to protect interior forest that is not available on potential parkland acquisition sites within the ICC watersheds. Despite the PEPCO line traversal, we estimated that the property contains 205 acres of interior forest compared to 181 acres of interior forest impacts on parkland. Overall, parkland mitigation includes replacement of 8 acres of parkland for each 1 acre taken for the ICC. It also includes construction of recreational facilities and relocation of others to better sites such as the Trolley Museum, at the state's cost.

Planning staff conducted a review of locations where SHA proposed right-of-way acquisition specifically for stormwater management and temporary erosion and sediment control facilities during our mandatory referral review in 2006. However, this review did not include an

assessment of how these proposed facilities might adversely impact County environmental buffers. Our preliminary review focused on whether the proposed locations would impact only forested areas. For areas with high-quality forest we suggested moving the proposed stormwater facilities. SHA made post-ROD refinements at three locations, one of which was Lower Oak Springs pond. The design-build contracts contain financial incentives to reduce forest impacts that are applicable at the remaining sites. We identified some 20 areas where we recommended changes to reduce forest impacts, but **the Lower Oak Springs site was the only location where we felt an existing pond might be usable for temporary erosion and sediment control.**

Our organizational chart and process for resolving disagreements was described in our August 29 letter to you:

- The **chain of command** for M-NCPPC participation in reporting and responding to environmental incidents and design-build coordination is included in Attachment B. M-NCPPC can stop work only on parkland.
- Kyle Spendiff, our **ecological project monitor**, is employed by Parsons-Brinckerhoff, one of SHA's consultants. Within M-NCPPC, he reports to Mitra Pedoeem, Chief of Construction in the Park Development Division. Kyle is the direct link to the Environmental Management Team. As indicated in the organizational chart, Kyle provides a direct link to the design-build contractor through the Environmental Management Team.

Through our 1989 Memorandum of Understanding (MOU) with the state, we have a more active and influential role in **reviewing design and construction activities** adjacent to parklands than we would for most development activities. We will also monitor routine construction activities associated with the ICC as we would any other project, watching for parkland encroachments and impacts where development is adjacent to the parks (such as with the ICC mainline) and regulating activities that occur in the parks (limited to selected mitigation and stewardship activities for the ICC). We also have agreements with SHA regarding the use of temporary construction easements in parks.

Regarding **public information**, our website has an ICC page that includes all measures brought to the Board since 2004 and other items of interest. It is the best source for everyone to keep up with what the Planning Board is doing with respect to the ICC. We provide a direct link to SHA's website where the most up-to-date project information is available.

All Planning Board review materials will continue to be posted on our website. Staff is continually working with submissions that require quick turnaround for comments. Staff

follows commission policies in these matters and brings appropriate items to the Planning Board for comment or action. If we do not respond promptly, our comments may not be considered.

**M-NCPPC follows the SHA lead regarding post-ROD refinements that are governed by the Code of Federal Regulations.**

**M-NCPPC has two named representatives on the Inter Agency Working Group, Dan Hardy, Transportation Planning Supervisor, and Jorge Valladares, Environmental Planning Chief. Kyle Spendiff, our Ecological Project Monitor, is also integral to IAWG activities. Other M-NCPPC staff participate in IAWG meetings as needed to cover relevant agenda topics.**

Commission staff from several sections participate in the review of ICC Issues. As is the case in nearly all Commission reviews, **differences of opinion are not unusual and our management structure encourages resolution of these differences at the staff level in order to achieve a balanced recommendation.** When staff level resolution is not achievable, differences of opinion may be reflected either formally in staff reports, or informally in status reports to and discussions with the Board. We normally take comments from staff in different divisions during updates and other reports on the ICC. Issues are resolved at staff level when possible. If they cannot be resolved at that level they are brought to the Board. In addition, any changes to the ROD, matters involving parkland, changes in the Limits of Disturbance, and property acquisition or transfers are handled by the Planning Board. Monthly discussions with the SHA project management team provide another opportunity for the Board to raise any issue of concern to any member or staff. We invite other stakeholders, such as Executive branch agencies, park tenants, and municipal representatives if the issues under discussion affect them. Since we have operated under the extension of the mandatory referral process, we have not had a practice of reporting our actions in this context to the Council on a formal basis. Staff reports and formal actions of the Board are available on our website, and if the Council wishes, we will provide separate copies of these reports and actions to the Council to ensure that you are promptly informed of them.

Unless the Council has a separate MOU with SHA for comment on changes in the ROD, or its participation is otherwise required by the ROD or other federal or state regulations, I am not sure how the Council can be ensured of an opportunity to comment. There is not always early notice of a change, but we could let you know as soon as we do that a change is proposed, and when it is scheduled to be brought before the Board. Council members are always welcome to participate in those discussions, either in person or in writing to the Board or in separate comments directly to SHA. **I have directed staff to notify the Council separately from the normal noticing procedure when any ICC item is scheduled before the Board and to send along any staff report and associated documents.**

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**Erosion and sediment control** for the ICC roadway is under the purview of the Maryland Department of the Environment. We do not have a role in reviewing sediment or erosion control plans in or out of the SPA unless the sediment and erosion control measures potentially affect parkland. Prior to the selection of the design-build team, staff reviewed plans that showed the proposed limits of disturbance with notations of where sediment and erosion control structures were proposed. Based on staff's knowledge of forest resources in the area, staff provided comments on where structures should be relocated to avoid loss of high quality forest, where possible.

We have tried to provide comments with respect to footprint impacts of proposed structures on environmental features in addition to forest resources to SHA, given the limited amount of information that has been provided to staff. This guidance is provided primarily by Tina Schneider and Candy Bunnag (for locations within SPAs) from environmental planning and Andy Frank (for locations adjacent to parklands) from the park development division.

SHA is responsible for **tracking the implementation of compensatory mitigation (CM) and environmental stewardship (ES) projects** so that FHWA can ensure that ROD commitments are met. CM/ES projects located within Montgomery County will be the subject of independent mandatory referral reviews. We can forward or post any CM/ES status materials provided to us by SHA or FHWA. Additionally, the combination of mitigation and stewardship projects along with proposed stormwater management will be considered as part of the SPA environmental review process. In summary, I appreciate your concerns regarding ICC implementation activities. We will continue to provide guidance to SHA during their implementation of this master-planned project, as we did during the project planning phase. We recognize the significance of the construction process now underway, which prompted our supplemental funding request to you. We will continue to work with SHA to secure the appropriate information for our review and will comment as resources allow on plans and reports submitted to us.

**Attachment A**  
**Health Effects of Residences Located Proximate to Freeways**

(excerpted from ICC Project Status Report #10 to the Planning Board)

On two occasions, the County Council has expressed concern that the ICC will introduce adverse localized air quality effects, citing medical journal studies identifying a link between residential proximity to a freeway and impaired lung function. In spring 2007, the Council requested information regarding the number of residences within 0.5 KM or 1.5 KM of the ICC. Staff has completed this analysis, as summarized in Table 1.

**Table 1. Number of Dwelling Units (DU) Located Proximate to County Freeways**

Freeway	Length (Miles)	Number of DU within 0.5 KM	Number of DU within 1.5 KM
I-370/ICC	16	12,000	29,000
I-270	24	39,000	50,000
I-495	14	11,000	36,000

As indicated in Table 1, the density of residential development near the ICC is generally about the same or a little lower than that near the other freeways in the County. The correlation between residence/freeway proximity and health effects requires further study. Staff proposes to consider this further during our review of sustainability measures in FY 08.

In the meantime, however, we will continue to implement master plan recommendations regarding both careful introduction of the ICC into the communities through which it has been planned, as well as the careful development of residential properties adjacent to existing freeways, such as recommended in the Shady Grove Sector Plan.



# Attachment B

	Halt Construction		Modify Construction	
	Encroachment on Park property	Episode within LOD that may affect Park property	Proactive Design change	Proactive Build methodology change
Equipment Operator	Step 1	Step 1		
Park Police	Step 2 if warranted			
Environmental Management Team	Step 3	Step 2	Step 1	Step 1
Resident/Project Engineer and DB Environmental Manager	Step 4	Step 3	Step 2	Step 2
IAWG			Step 3	Step 3
ICC Director	Step 5	Step 4	Step 4	Step 4
Chairman / SHA Administrator	Step 6	Step 5	Step 5	Step 5

10/6/06 DRAFT matrix describing implementation of 1989 MOU statement that M-NCPPC position powers will "include ways to halt and/or modify construction activities as needed to protect the (parkland) resource, especially in the case of episodic or emergency situations". Steps 1 through 6 indicate priority order of applicable process steps that may be pursued.

## ENVIRONMENTAL AND PARKLANDS RESOURCE PROTECTION

- 6) Develop an agreement as soon as possible between the Maryland State Highway Administration (SHA), the Montgomery County Department of Permitting Services (DPS), and M-NCPPC that:
  - a) Is developed expeditiously to be in place prior to commencement of further design work in Special Protection Areas (SPAs).
  - b) Establishes the process for and timing of Planning Board review and approval of SPA water quality plans to allow any Planning Board recommendations to be incorporated into the Design-Build process and final impervious waiver and mitigation package,
  - c) Outlines the content of and review processes for Water Quality Plans within the Upper Rock Creek and Upper Paint Branch SPA,
  - d) Establishes points of involvement for DPS, such as inclusion on the Interagency Working Group.
  
- 7) Provide significant financial incentives for the Design-Build contractor to further address and reduce impacts to the highest quality forests beyond the level identified in the ROD commitments, by:
  - a) Providing incentives based on specific guidance in Attachment B (comment PS310-1), and
  - b) Including in the RFP an explicit request for proposals to demonstrate how the impacts in the most sensitive areas of the right-of-way will be reduced and including the evaluation of these proposals in the establishment of the best value award.
  
- 8) Limit available planting species to reduce the threat of non-native invasive (NNI) species and commit to a limited program of NNI inspection and removal on park property (Attachment B comments PS301-1 to PS301-4)
  
- 9) Consider three levels of incorporation of comments regarding environmental resources in Attachment B. First, consider application to the entire project, as suggested. If a recommendation cannot be accepted in that regard, next consider application to the portions of the project where the LOD is bounded by park property on both sides. Finally, consider application of comments to the portions of the project within 25 feet of any adjacent park property.

## COMMUNITY PLANNING AND DESIGN

- 10) Regarding the Western Maintenance Facility, our strong preference is that the State finds another site for this facility other than either the Casey 6 or Casey 7 properties. If the facility must go on either of these properties, the best location would be on the Casey 6 property adjacent to the ICC. If the Western Maintenance Facility is located on Casey 7 it would jeopardize the housing options for the Shady Grove Sector Plan.

## ATTACHMENT C

- however, requires Federal Highway Administration approval (which is pending).
- All parties are considering the use of a design-build mechanism, which would reduce implementation timeframes but also poses different challenges to the Commission in the financial and development plan reviews.
  - SHA has provided a mechanism to advance \$100K to the Museum to complete facility planning.
  - Staff is pursuing the following elements concurrently:
    - Development of the three-party agreement for replacement facility project management and construction
    - Development of the bid and contract documents
    - Development of a PDF through which to pass state and federal funding to the museum.
    - Continuing to look for efficiencies in the review and approval processes.
- **Easement Agreements (Conditions #3B and #3C).** Staff is continuing discussions with SHA regarding easement conditions for parkland transfer. Staff will provide an update on this item on December 7.
  - **Planning Board review of Water Quality Plans in Special Protection Areas (SPA) (Condition #6).** As discussed with the Planning Board during Status Report #2 and indicated in Attachment One, SHA and DPS are continuing to coordinate on the Department of Permitting Services (DPS) review of Water Quality Plans in Special Protection Areas. SHA has prepared the concurrence letter for DPS consideration included in Attachment Two. SHA will not be following the normal process for Water Quality Plans. They have proposed instead incorporating general criteria into the Design-Build contracts, rather than submitting detailed stormwater concept plans for DPS or Planning Board review.

The letter in Attachment Two requests satisfaction of the ROD commitment for DPS concurrence based on the limited information available to date. If DPS concurs at this stage of design, then staff understands DPS would not be acting on individual water quality plans. DPS has requested that SHA provide clarification from the Federal Highway Administration regarding the intended meaning of the ROD language. This clarification has not yet occurred, so DPS has not yet determined how they will respond to the concurrence letter.

Once DPS and SHA have determined whether concurrence at this point in time is feasible, the Planning Board's role in water quality plan review will be defined. Staff maintains that the Planning Board review (following DPS review of stormwater concept plans) provides an essential function in informing the public of the components of the water quality plan.



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

**OFFICE OF THE CHAIRMAN**

January 17, 2007

**MEMORANDUM**

**TO:** Neil Pedersen, SHA  
Melinda Peters, SHA

**FROM:** Royce Hanson, MNCPPC

**SUBJECT:** Intercounty Connector—Western Maintenance Facility & Special Protection Areas

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This memorandum follows up on the discussion at the meeting of January 5, 2007 to address concerns cited by the Planning Board in tabling the December 7, 2006 request to transfer ALARF property. It also responds to your request for a more detailed description of our proposal for dealing with water quality plans for the Special Protection Areas.

**Western Maintenance Facility Location**

There seems to be agreement that the Western facility could be moved to Casey 6 if the following issues identified by MdTA can be resolved in a timely fashion:

- Documentation of any adverse impacts concerning approximately 0.25 acres of wetlands and historic resource concerns of the Town of Washington Grove for NEPA study purposes, through preparation of a Supplemental Information Report (SIR) to be prepared by EYA and approved by FHWA by March 2007.
- Assurance that the master-planned extension of Crabbs Branch Way under I-370 can be constructed to provide roadway and utility access to the Casey 6 site by March 2008

Follow up actions include:

- Melinda Peters will schedule a meeting with SHA, MdTA, EYA, COE, MDE, and MHT to address the NEPA SIR process.

D-1

- Bob Youngentob will submit a phased preliminary plan for Planning Board approval, the first phase of which will include the Crabbs Branch Way extension only to the access point needed for the Maintenance Facility.
- Coordination with DPS, DPWT, and utilities on permits will continue through the development review process, for which a tentative Planning Board date of March 22 has been established.
- Brian Alan Jackson will obtain confirmation from Bob Michael regarding the details of their proposed schedule.

### Water Quality Plan Reviews in SPAs

Our proposal to adapt the Water Quality Plan review process to fit the design-build process, includes the following steps:

- Prior to contractor selection:
  - SHA to share non-proprietary elements of SPA water quality proposals with the Interagency Working Group, plus DPS, prior to contractor selection.
  - Meeting between M-NCPPC and other county agencies to discuss comments on water quality plan proposals and to resolve any possible conflicts prior to submission of comments to SHA.
- Immediately after contractor selection:
  - Selected contractor to bring bid-level water quality plans/proposals to SPA Pre-Application meeting. This could be done at an interagency workshop at which agencies would share examples of acceptable water quality plans and share local experience of successes and lessons learned. The elements of the water quality plans would also be established. In general, the water quality plan should package SWM-related information, with information related to impervious surface quantification/accounting, mitigation (and appropriate stewardship) projects that offset imperviousness in the SPAs, elements of imperviousness waiver request, elements identifying specific measures to reduce imperviousness, forest loss, and buffer impacts in the SPAs.

Local agency staff would work collaboratively with SHA/contractor to review and comment on refined conceptual water quality plans (still at roughly 30% design). This could be done as part of IAWG or EMT meetings.

The selected contractor would submit preliminary (concept) water quality plans to DPS M-NCPPC for review and approval:

- One set of plans per contract (Upper Rock Creek for Contract A, Upper Paint Branch for Contract B)
- Well in advance of design-build critical path
- In concert with both quantitative and qualitative information from SHA on benefits of associated ICC mitigation stewardship projects in the Record of Decision.

- The Planning Board would conduct a Public Hearing on the water quality plan for the Contract.
  - DPS would provide comments on the water quality plan prior to Planning Board public hearing in a timely manner.
  - M-NCPPC staff would make recommendations to the Planning Board concerning imperviousness, mitigation, and other elements.
  - DPS comments and Planning Board recommendations would be submitted to SHA and MDE, for MDE use in approving stormwater management designs.
- Subsequent to Planning Board comment on water quality plans:
  - Staff would continue collaborative involvement in subsequent design work.
  - If SHA or MDE finds alternatives to Planning Board recommendations, SHA would document the reasons how the alternative measures achieve the same water quality protection goals.
  - The Planning Board will consider progress on water quality plan implementation during review of mandatory referrals for individual compensatory mitigation or environmental stewardship projects.
- As Neil and I discussed after the January 4 meeting, we should start this process with an initial briefing from SHA, focusing on the measures that SHA is taking to ensure effective protection of water quality in the Special Protection Areas, and the water quality goals and specifications contractors must meet. As the work proceeds after selection of a contractor, progress briefings on water quality plan concepts could be made by our staff and at the regular updates with SHA staff. The main objective is to keep the Board, and through it the public, well informed about the measures being taken to protect water quality in the SPAs. This will ensure there are no surprises for any agency, and that all agencies conclude that the water quality plans provide the best feasible approach.

## ICC Project Status Report #5

### ATTACHMENT C (2/6/07 revision)

#### Process for ICC Water Quality Plan Review in Special Protection Areas

The review process described below responds to the Condition #6 of the ICC mandatory referral.

1. MCDPS to prepare a letter of concurrence that the compilation of studies, meetings, and permit conditions focused on the SPAs during ICC planning, coupled with contract design requirements, meet the intent of the SPA regulation.
2. SHA/MdTA to prepare mandatory referral packages for M-NCPPC review and comment, including documentation of the effects of Environmental Stewardship and Compensatory Mitigation projects in each SPA and other information needed by M-NCPPC to make staff findings referenced below.
3. The selected D-B team will work collaboratively with SHA/MdTA to prepare stormwater management and erosion and sediment control plans in accordance with contract requirements and MDE review procedures. Those plans will be shared with, and reviewed by, the EMT informally during design. During the informal review process, the M-NCPPC representative on the EMT will convene local interagency staff coordination meetings to be held between MDE (invited), DPS, DEP, SHA, and M-NCPPC staff to discuss SPA stormwater management plan issues, imperviousness, forest preservation, and environmental buffer issues.
4. Prior to the time of MDE submittal, M-NCPPC's EMT member will send the draft plans to DPS and M-NCPPC staff for review and comment:
  - a. One set of Draft SWM report and plans per contract (Upper Rock Creek for Contract A, Upper Paint Branch for Contract B).
  - b. M-NCPPC staff to arrange a Planning Board Public Hearing on SPA compliance for the ICC after local agency coordination regarding the water quality plans and prior to or concurrent with SHA submittal to MDE.
    - i. SHA/MdTA will provide support as necessary for an M-NCPPC hearing.
    - ii. M-NCPPC staff would make recommendations to the Planning Board concerning imperviousness, mitigation, SPA compliance, and other elements that may include Environmental Stewardship projects that contribute to the watershed.
  - c. Receive, consider and incorporate as desired comments from Board Public Hearing into consolidated M-NCPPC comments and submit to SHA for review and consideration.
5. Conduct all formal M-NCPPC and DPS staff reviews within Design-Build submittal review timeframes and submit comments to SHA and MDE. Submittal review timeframes shall be negotiated between SHA/MdTA and the successful D-B after award and in the context of SHA's partnering process. M-NCPPC, as a member of the EMT and IAWG, will have the opportunity to comment to SHA on D-B plans within the negotiated timeframes and participate in the partnering process.

6. Subsequent to Planning Board comment on water quality plans:
  - a. M-NCPPC staff would continue collaborative involvement in subsequent design work through EMT.
  - b. If SHA/MdTA or MDE finds alternatives to Planning Board recommendations, SHA/MdTA would coordinate with the M-NCPPC representative on EMT.



## ATTACHMENT F

### SHA PROPOSAL FOR FOREST PLANTING ON M-NCPPC PARKLAND FOR THE ICC PROJECT COMPARED TO STATE AND COUNTY REQUIREMENTS

Reforestation Requirements	SHA Proposal for the ICC Project (see Attachment G)	Maryland State Forest Conservation Law (Current)	Montgomery County Forest Conservation Law (Current) and Planning Board Environmental Guidelines	2007 MNCPPC Parks "Planting Requirements for Land Disturbing Activities on MNCPPC Parkland"
<b>Maintenance Period Minimum</b>	2 years	2 years	2 years; 5 years in SPAs per the Planning Board "Environmental Guidelines"	2 years; 5 years in SPAs per the Planning Board "Environmental Guidelines"
<b>Conditions for Release from Maintenance Obligations at End of Maintenance Period</b>	100 % survival at the end of 2 years.	55% survival of whip stock (385). Percentages and numbers vary with size of stock planted.	75% survival if 0.75" to 1" caliper trees are planted. 100% survival if 1.5" to 2" caliper trees are planted.	75% survival if 0.75" to 1" caliper trees are planted. 100% survival if 1.5" to 2" caliper trees are planted.
<b>Tree Size at Planting</b>	Minimum .75" caliper at 5' minimum height + Some 2.5" caliper	Choice possible, including use of bare-root seedlings as the minimum allowed. * Whips allowed (700/acre)	Minimum .75" to 1" caliper trees. ( as per MNCPPC current review standards) Whips NOT allowed	Minimum .75" to 1" caliper trees. Whips NOT allowed

T-1

<b>Density of Trees</b>	200 trees/acre at minimum 0.75" and 5' min. height + 20 trees/acre at 2.5" caliper	Overall "Survivability Requirement" = 385 live stems/acre 2 years after planting.	Trees = 200/acre at 0.75" to 1" caliper or 100/acre at 1.5" to 2" caliper. Shrubs = 33/acre	Trees = 200/acre at 0.75" to 1" caliper or 100/acre at 1.5" to 2" caliper. Shrubs = 33/acre
<b>Shrub Size at planting</b>	No shrubs proposed	Choice possible, including use of bare-root seedlings.	Container grown, 18-24" height	Container grown, 18-24" height
<b>Deer Protection</b>	Yes	Not required	Required	Required
<b>Species Selection</b>	Native species approved by M-NCPPC Parks Forest Ecologist	MD-DNR approves species.	MNCPPC approves species	MNCPPC approves species
<b>Native Species Only</b>	Yes	Encouraged	Yes	Yes
<b>Non-Native Invasive Management</b>	Yes - using mechanical and chemical measures. Herbicide/pesticide use in parkland will be conducted only when determined to be necessary by M-NCPPC parks staff	When essential on a case by case basis.	Required on a case by case basis. Specifics of management measures depend on the site conditions.  No pesticides or herbicides allowed in the Upper Paint Branch SPA (per current M_NCPC staff review standards)	*If NNIs are present, NNI control must be initiated before re-planting is begun. *If site has heavy level of NNI infestation, NNI Control will extend into a "buffer" bordering site. *Control methods must be detailed in Reforestation Plan. *NNI Mgmt is required as part of the 2 year maintenance plan
<b>Reforestation Installation Time Limit</b>	None proposed.	Within 1 year after construction is completed.	Within 1 year after construction is completed.	Within 1 year after construction is completed.

F-2

F-3

<b>Special Situations:</b> <b>The loss of vegetation of particularly high natural value may require additional Revegetation. (e.g. specimen trees)</b>	None proposed.	No	May be required on a case by case basis.	Yes
<b>Financial Security</b>	None	None	Required for forest planting for private projects only. No financial security required for public projects.	None

\* Choice is possible in size of trees and number of trees required per acre. Choice ranges from minimal 700 whips/acre to 100 1.5" - 2" caliper B&B or container grown stock/acre.

## SHA Reforestation Proposal on MNCPPC Property (Revised October 31, 2007)

### Densities/Size:

- 200 trees/acre (5' min ht., CG)
- 20 trees/acre (2.5" cal., B&B)

### Tree Species:

- See "Planting Requirements for Land-Disturbing Activities and Related Mitigation on MNCPPC Montgomery Parkland" for tree species approved by MNCPPC (i.e., *Platanus occidentalis*, *Acer rubrum*)
- Shrubs will not be planted due to prevalence of deer predation and poor survivability

### Supplemental Tree/Shrub Seeding:

- Seeding of native trees/shrubs may be conducted at suitable sites to supplement forest establishment. Site preparation will include mowing and/or disking prior to planting
- **Herbicides/pesticides will not be applied on any sites within the Upper Paint Branch SPA.** Herbicide/pesticide use in other locations will be conducted only when it is determined by M-NCPPC parks forester or other appropriate park staff that mechanical measures are not sufficient to remove the targeted non-native invasive plant species. The specific herbicides to be used, the specific areas where herbicides will be applied, and the methods for and extent of herbicide application must be reviewed and approved by the M-NCPPC parks forester or other appropriate park staff prior to use on MNCPPC property.

### Tree Protection:

- Tree sleeves made of heavy-duty plastic open weave mesh, 4'tall, 6" diameter: <http://www.amleo.com/index/item.cgi?cmd=view&Words=bg48>
- MNCPPC will remove tree sleeves to prevent trunk damage once trees are large enough to withstand deer browse/rub (4-6 years+/-)



**Invasive Control:**

- NNI species control will be conducted prior to plant installation and during **2 year maintenance period**. Invasive species control will include mowing and manual removal.
- **Herbicides/pesticides will not be applied on any sites within the Upper Paint Branch SPA.** Herbicide/pesticide use in other locations will be conducted only when it is determined by M-NCPPC parks forester or other appropriate park staff that mechanical measures are not sufficient to remove the targeted non-native invasive plant species. The specific herbicides to be used, the specific areas where herbicides will be applied, and the methods for and extent of herbicide application must be reviewed and approved by the M-NCPPC parks forester or other appropriate park staff prior to use on MNCPPC property.

**Survival Rate/Maintenance Period:**

- **100% survival** at the end of **2-year maintenance period**.
- Maintenance will include watering, pruning, pest management, weeding, etc.