



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

Intercounty Connector
Mandatory Referral No. 06809-SHA-1
Status Report #9

Prepared 8/31/07 for discussion at the 9/06/07 Planning Board Roundtable

This memorandum is ICC Status Report #9 to the Planning Board under condition #16 of the ICC mandatory referral. During the evening of September 6, the Planning Board is holding a public hearing on a proposed staff revision to the limits of disturbance affecting parkland at the Lower Oak Springs stormwater management pond (Item #22 on the Board's agenda).

There is no separate roundtable discussion item for the ICC on the printed September 6 agenda. Staff will be ready to discuss this information with the Board either during Item #22 or immediately after Item #22 as part of the roundtable discussion. The information in this status report is unrelated to the staff recommendation for Item #22.

This status report summarizes two items that have occurred since Status Report #8 on July 12, 2007.

- Seven members of the County Council submitted August 3 correspondence to the Chairman requesting an update on the ICC design and implementation process. We have proposed that these questions form the focus of Status Report #10, tentatively scheduled for October 11, 2007. The incoming correspondence and Chairman's response are attached to this status report.
- SHA is conducting an evaluation of the suitability of using portions of the Winchester Homes property in the vicinity of Needwood Road, but outside the ROD limits of disturbance, for potential construction staging and reforestation uses. SHA has acquired the entire property of approximately 75 acres. Approximately 28 acres of the property are needed for ICC construction per the ROD. Staff is coordinating with SHA on both the interim uses and ultimate ownership for various portions of the property.

Staff is coordinating with SHA on schedules for several Planning Board actions anticipated during the next two months, including:

- September 20 – ICC Master Plan amendment Purpose and Outreach Strategy Report
- October 11 – Status Report #10 focusing on County Council correspondence
- October 18 – Park CIP items related to ICC
- November 29 - Llewellyn Field / Northbranch park concept plan
- TBD: Contract B and C parkland transfer, requires concurrence on:
 - SPA analysis details
 - Reforestation details
- TBD: Upper Rock Creek SPA water quality plan / environmental review



MONTGOMERY COUNTY COUNCIL

ROCKVILLE, MARYLAND

MEMORANDUM

August 3, 2007

TO: Royce Hanson, Chair
Montgomery County Planning Board

FROM: Councilmembers Marilyn Haisner, Phil Andrews, Roger Berliner,
Valerie Ervin, Nancy Foreen, Duchy Trachtenberg, and Marc Elrich

SUBJECT: The ICC

In light of the approaching scheduled start date for construction of the ICC, we are writing to request an update regarding environmental issues. A review of these issues seems appropriate, given the potential for problems resulting from a large project with multiple subcontractors and the fact that the road is proposed to be built in some of the County's most sensitive environmental areas, including the Upper Rock Creek and Upper Paint Branch Special Protection Areas. In particular, we would like to understand how the Planning Board and Planning staff will monitor and weigh in on the following:

- Implementation of stream restoration projects, wetland creation sites, stormwater management retrofits, and Special Protection Area "best management practices" as described in Attachment A: Selected Environmental Stewardship Activities of the ICC Record of Decision. According to the SHA website, this list is "subject to change." Therefore, we should know which projects will be implemented, whether they will be implemented as proposed or with changes, and whether some will be dropped and why. It is unclear how elected officials and the community will be kept informed.
- Revisions to design-build plans proposed during final design engineering or when construction is underway that have potential environmental impacts (such as changes to pavement design or stormwater management treatment).
- Methods for clearing in Special Protection Areas. We raise this because at one time we had heard that the use of herbicides was under consideration and because of concerns that continue to be raised regarding clearings for other projects.
- Planned reforestation along stream banks, in the right-of-way, and on public land in the county and affected watersheds.

We would also appreciate information on the following:

- The "Ecological Project Monitor." It is our understanding that this position was created and funded by the SHA and placed within the Parks Department. What was the selection process for this position? What are this person's responsibilities? To whom does this person report? How does this person interact with Planning staff and the Planning Board?
- Information flow. What process has been put in place to establish a timely flow of information from the State Highway Administration (SHA) to Planning staff so that they can review and comment on the issues outlined at the beginning of this memo? What mechanisms allow Planning staff to indicate whether environmental protection measures are adequate or whether additional measures are needed? What channels of communication have been established between Planning staff and SHA? How will updates on the project be provided to County Council?
- Local laws and mandatory referral. We realize that the SHA is not required to follow local laws and that mandatory referral is advisory. However, there have been instances of voluntary compliance on other State and federal projects that have proven beneficial to the environment. We would like to know whether SHA has indicated to the Planning Board or staff their intentions with regard to compliance with local laws, particularly those related to the Special Protection Areas.
- Environmental incidents. Is there a "chain of command" for reporting and responding to environmental incidents during construction? Are local agencies involved? How can we be assured that the response will adequately accommodate the seriousness of these issues? Where does the authority rest to stop work if necessary?

Given the size of the ICC footprint in Montgomery County, we believe that ongoing local review is essential for the protection of the environment. We are anxious to take whatever steps are necessary to facilitate that review. We look forward to hearing from you in the near future. Thank you.



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

OFFICE OF THE CHAIRMAN

August 29, 2007

The Honorable Marilyn Praisner
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Ms. Praisner

I appreciate the concern that you and your fellow Council members have shown regarding the implementation of the Intercounty Connector (ICC). The construction of this facility by the State Highway Administration (SHA) is a significant component of our master planned transportation network. The Planning Board and staff of both Planning and Parks Departments share your concerns and are working with state, federal, and other local agencies to ensure that the design and construction of the selected alternative proceeds as smoothly as possible. As a condition of the ICC mandatory referral, we hold monthly status reports with the state's ICC management team and we would like to invite all interested Council members to join us for the October status report, scheduled for October 11. This status report will be oriented to the issues raised in your memorandum and provide the opportunity for direct conversation with the appropriate state representatives.

This letter provides an initial response to the items in your August 3 correspondence. However, I do not expect that a single letter or report will provide satisfying answers, due simply to the many procedural and technical details associated with the ICC. This level of complexity is one reason that the Planning Board and SHA agreed during the mandatory referral review last summer to a continuing series of status reports. These reports, typically conducted as part of our roundtable discussions, have allowed us to monitor and, where appropriate, guide the implementation process.

Since the July 2006 mandatory referral public hearing, we have held three public hearings regarding transfer of Commission property and eight status reports covering all aspects of the ICC implementation process. Our next public hearing related to the ICC is scheduled for September 6 to consider a staff recommendation for a parkland boundary revision. The Planning Board's continuing involvement in the ICC process is summarized on our website at: <http://www.mcparkandplanning.org/Transportation/icc/index.shtml>

The federal, state, and local agencies involved in ICC implementation have a comprehensive process for managing the process, briefly summarized below:

- The ICC Record of Decision (ROD) was developed to reflect the design-build implementation process. Appendix E of the ROD summarizes the 160 project commitments. Contractors have incentives to further reduce impacts from those documented for the selected alternative (Corridor 1) defined during the environmental impact statement process. Any changes in impacts are re-evaluated in accordance with the Code of Federal Regulations.
- SHA has established an Environmental Management Plan (EMP) and an Environmental Management Team (EMT) to implement the EMP. We are represented on the EMT.
- The Inter-Agency Working Group (IAWG) established in 2003 to guide the planning process will continue to provide review and guidance during project implementation. The IAWG consists of 21 federal, state, and local agencies, including representation from M-NCPPC and the County Executive branch.
- SHA and M-NCPPC have a Memorandum of Understanding that guides our working relationship.

Your first four questions relate generally to the Planning Board and Planning staff involvement in design and construction of the ICC and its related compensatory mitigation (CM) and environmental stewardship (ES) projects.

- As you have noted, ES projects described in the ROD may be amended based on project feasibility. These ES projects are not part of the design-build delivery process for the roadway itself. The IAWG makes technical recommendations on project feasibility to SHA. The Federal Highway Administration (FHWA) must approve any changes to these projects. The Planning Board will hold independent mandatory referral public hearings covering all of the compensatory mitigation and environmental stewardship projects in Montgomery County.
- As described above, the ROD anticipates that design changes will occur and has a re-evaluation process to determine if the changes are consistent with the ROD and to document impacts and benefits of the change. Design changes discussed by the Planning Board since the ROD was published include the proposed relocation of the Western Maintenance Facility and two revisions to limits of disturbance affecting park property for Contract A. As noted above, we have scheduled a public hearing for September 6 for the Planning Board to consider a similar revision to limits of disturbance affecting park property for Contract B.

- Details regarding clearing methods and schedules for the design-builder are incorporated within the contract for the design-builder and specifically within the Erosion and Sediment Control (ESC) design and approvals requirements of the contract performance specifications. Permits are required from the Maryland Department of the Environment (MDE) for this work. Staff will be coordinating with SHA on the proposed ESC and stormwater management designs in the Upper Rock Creek Special Protection Area (SPA).
- Details regarding planned reforestation vary based on the location and purpose of reforestation activities. We have a permitting role for reforestation activities that occur on parkland. For reforestation on other public lands, the permitting role belongs to the Department of Natural Resources and our role is advisory through the IAWG and EMT.

You also asked for information on four topics of a more procedural nature:

- Kyle Spendiff is our Ecological Project Monitor. Kyle has joined the ICC Corridor Partners from the New Jersey Meadowlands Commission, where he served as a Wetland Specialist / Park Naturalist and represented the Commission on the Meadowlands Interagency Mitigation Advisory Committee, as he now represents M-NCPPC on the ICC EMT. Kyle has 13 years of experience in fisheries and wildlife research, wetlands mitigation and construction, reforestation, and landscape construction. On ICC activities, Kyle reports to Mitra Pedoeem, Chief of Construction in the Parks Development Division. He is our representative on the EMT and is fully applied to ICC design and environmental monitoring activities, including participation in Planning Board status reports and project briefings.
- Information flow on the project has a hierarchical structure. We have fifteen functional area leaders on the ICC team who participate through a variety of both regular meetings and informal communication. Dan Hardy serves as our ICC Coordinator to manage formal interagency recommendations.
- The sensitive nature of the Upper Rock Creek and Upper Paint Branch SPAs has been of primary concern to all agencies during the planning process and will continue to be an area of focus during design and construction. The shared desire of federal, state, and local agencies to reduce overall impacts to water resources in SPAs is demonstrated throughout the ROD and indicated by commitments relating to roadway design and construction, mitigation and stewardship project selection, and procedural details. The local agency involvement includes staff level review of design details within SPAs and concurrence that the local criteria are being achieved by the Montgomery County Department of Permitting Services (DPS). As part of the Contract A parkland transfer discussions, SHA agreed with our proposal that the Planning Board hold public hearings on the water quality related aspects of the design

for both SPAs. These hearings will allow the Board to provide comments to MDE for consideration in their permitting decisions.

- We have a chain of command linking the Park and Planning Departments, the EMT, and SHA for reporting and responding to environmental incidents. The chain of command starts with staff working in the field that can progress in a matter of hours to Department project managers and Directors. SHA has a similar chain of command so that, if necessary, I will work directly with the SHA Administrator Neil Pedersen. The primary objective shared by all agencies is to follow the established EMP designed to prevent incidents and respond quickly and effectively to minimize damage should an incident occur. So while the Commission's legal authority to stop work rests only in the event of unauthorized access on parkland, our practical ability to affect environmentally sensitive work has more rapid and greater influence through our role on the EMT.

In summary, we have an effective means for participating in the ICC implementation process, which has served us well during the first year of the process. We also appreciate the active participation of staff from the Department of Environmental Protection, the Department of Permitting Services, and the Department of Public Works and Transportation in the SHA implementation process.

We continue to monitor and plan for an appropriate level of staffing and CIP resources needed to maintain our participation in the implementation of the ICC itself and the CM and ES projects affecting parkland. I appreciate your statement of support in that regard.

I look forward to discussing these topics with you and SHA on October 11. Please feel free to contact either Dan Hardy or me in the interim.

Sincerely,



Royce Hanson
Chairman

cc: Melinda Peters
2007-0961