

PHED Committee #1
July 2, 2009

MEMORANDUM

June 30, 2009

TO: Planning, Housing, and Economic Development Committee

FROM: Marlene L. Michaelson, Senior Legislative Analyst
Shondell Foster, Research Associate

SUBJECT: Resolution to approve use of Advanced Land Acquisition Revolving Fund (ALARF) for acquisition of real property from Fairland Development LLC as parkland for Fairland Recreational Park

The Park and Planning Commission has negotiated a Land Purchase Contract to acquire the unimproved property from Fairland Development, LLC as an addition to the Fairland Recreational Park. The Planning Board is recommending that this property be acquired with monies from the Commission's Advance Land Acquisition Revolving Fund (ALARF) because there are insufficient funds available in the Non-Local Parkland Acquisition PDF to complete this purchase. The proposed acquisition from Fairland Development, LLC (The Artery Group) is shown on the map (© 15) attached to the copy of the Land Purchase Contract on © 6 to 14. The proposed acquisition is 52.88 acres, and **the approximate cost is \$8.75 million**. The Commission's rationale for the purchase is detailed in a memorandum from the Department of Parks attached at © 18 to 27.

Article 28 of the State Code authorizes the Planning Commission to use the ALARF, with the approval of the County Council, to purchase land for highways, schools, and other public uses. The intent of this section is to provide a mechanism for protecting sites planned for future public use from development by allowing rapid acquisition. ALARF is typically repaid once a capital project to construct the facility is approved. Property to be acquired under this authority must be shown on an approved and adopted master plan. In addition, sites planned for a public use other than a State highway, street, road, or mass transit facility may not be purchased with ALARF funds if the site is within a public construction program current at the time of acquisition.

This property is consistent with the guidelines established in the Maryland Code, Article 28, § 7-106 (a)(2):

The highway, street, road, mass transit facility, school site, library site, park site, recreation center site, government building site, or other public use to be acquired under this section shall be shown upon the Commission's general plan for the physical development of the regional district or an adopted plan.

This property is specifically recommended for acquisition in text, and detailed on a map, in the Fairland Master Plan. The Plan indicates that acquiring this property would “provide protection of the headwaters areas of Little Paint Branch and hardwood forest cover.” The proposed acquisition would serve as an addition to the Fairland Recreational Park and would provide for the protection of the natural resources of the Little Paint Branch Stream Valley between McKnew Local Park and Fairland Recreational Park. This property is considered to be a high priority upland forest because of its diverse geologic and soil conditions that support rare, threatened, and endangered plant population. The acquisition will help protect the existing water quality presently found in the McKnew Tributary of Little Paint Branch as recommended in the Fairland Master Plan. In addition, the acquisition will eliminate potential adverse impacts to a rare Swamp Bay Magnolia Bog. Additional information on the unique environmental attributes of this site is provided on © 21.

The Department of Parks believes that the need to purchase property for environmental mitigation has been heightened with the construction of the Intercounty Connector (ICC); this property is located within 1.5 miles north of the ICC. They note the following:

It has been suggested that there is no better place to invest this ALARF reimbursement from SHA [State Highway Administration] than for buying replacement parkland in the communities that are bearing the greatest impact of the highway project.

Staff believes the materials provided by the Commission justify the acquisition of this property for environmental protection, but the significant cost of the acquisition means the Committee must carefully consider funding issues before making a decision.

Legacy Open Space Designation

Given the environmental attributes of this site, Staff asked whether it was considered as a Legacy Open Space purchase. Department of Parks indicated that it meets the criteria for Legacy Open Space (LOS), but it was not considered as a Legacy purchase due to the property owner’s objection. There is also insufficient funding in FY10 to purchase the property. One option may be to use ALARF to provide advance funding for this acquisition and to repay ALARF using Legacy Open Space funds (which could be paid back over several years). The FY09-14 Capital Improvements Program includes funding for Legacy of approximately \$6 million per year, each year from FY10 through FY14. The determination of whether Legacy Open Space or ALARF would be the better funding source for this project depends primarily on the potential alternative uses for ALARF and LOS in the coming years, as well as M-NCPPC’s ability to issue new

ALARF bonds (see discussion below). The Committee may want to ask Department of Parks staff to comment on potential Legacy opportunities in the next few years.

ALARF Funding

While ALARF is an appropriate funding source for an acquisition that cannot otherwise be funded, the balance of the fund continues to decrease, and this purchase will reduce the fund from slightly over \$14 million to about \$5.25 million (assuming a \$5 million transfer to the Building Lot Termination Program). It is unclear whether this would trigger the need to issue new ALARF bonds or whether that is possible. The attached memorandum indicates that there is only one pending other acquisition at a cost of less than \$300,000, but there is always the possibility of new opportunities. Questions the Committee may want to consider include the following:

- What is the appropriate balance for ALARF?
- Would this purchase trigger the need to sell new ALARF bonds?
- Do ALARF bonds count against the County's bond limit? (The Office of Management and Budget has been asked to address this issue.)
- What other opportunities for ALARF are pending or may be identified over the next few years?

Staff asked whether it would be possible to purchase only a portion of the property at a reduced cost. For several reasons detailed on © 20, the property owner (The Artery Group) is not willing to consider selling a portion of the property. Artery is willing to sell the property at a cost significantly less than the appraised value.

In summary, Staff supports the purchase but believes the Committee should make its decision regarding the source of funding based on information to be provided at the worksession. Final approval of the ALARF resolution by the Council is scheduled for July 14, 2009. The contract for the purchase of the property expires on September 1, 2009.

Resolution No.:
Introduced:
Adopted:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: District Council

SUBJECT: Acquisition of Real Property from Fairland Development L.L.C., in the Burtonsville area of Montgomery County as parkland for Fairland Recreational Park.

BACKGROUND

1. The Montgomery County Council has approved the establishment of an Advance Land Acquisition Revolving Fund for the Maryland-National Capital Park and Planning Commission. The fund was originally created through a \$7 million bond issue in FY-72 and supplemented with a \$5 million bond issue in FY-90, a \$2.2 million bond issue in FY-94, and a \$2 million bond issue in FY-05.
2. The Montgomery County Council has provided for expenditures from this fund in Fiscal Year 2009.
3. The Maryland-National Capital Park and Planning Commission has requested the Council's approval to acquire the below-described real property, in the Burtonsville area of Montgomery County, as an advance land acquisition to provide parkland for Fairland Recreational Park.
4. The subject property will be acquired from a willing seller for a master planned public purpose.

ACTION

The County Council for Montgomery County, Maryland, sitting as District Council for that portion of the Maryland-Washington Regional District within Montgomery County, approves the following resolution:

The County approves the acquisition by The Maryland-National Capital Park and Planning Commission of the below described real property:

1. Part of that land under contract for sale to Fairland Development, LLC by 1325 G Street Limited Partnership and Konterra Limited Partnership by Agreement of Purchase and Sale dated May 10, 2000, consisting of 52.88 acres, unimproved, located adjacent to and west of the Prince George's County line, south of Maryland Route 198 (Spencerville-Sandy Spring Road, as generally shown in the cross hatched pattern on the attached map, said land situated in the Colesville (5th) Election District of Montgomery County.

Tax Account #05-1-274095

and

Tax Account #05-1-1700636

and

Part of Tax Account #05-1-262406

2. The subject property will be used to provide parkland for Fairland Recreational Park and is for a necessary and proper public purpose.
3. The total cost of the acquisition described in (1) above shall not exceed the sum of Eight Million Seven Hundred Fifty and .00/100 Dollars (\$8,750,000.00).
4. This action is in compliance with Maryland Code, Article 28, §7-106.

This is a correct copy of Council action.

Linda Lauer
Clerk of the Council

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Land Zoning



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

*MM.
cc
SBSF
has -> LH
JZ
has - SF*

May 29, 2009

049408



MEMORANDUM

TO: Marlene Michaelson, Legislative Analyst, M. C. Council

VIA: Mary Bradford, Director of Parks
Michael F. Riley, Deputy Director of Parks

FROM: *by* Bill Gries, M-NCPPC, Land Acquisition Specialist

SUBJECT: Proposed ALARF Acquisition
Fairland Recreational Park
Fairland Development, LLC Property (c/o The Artery Group, LLC)
52.88 acres, more or less, unimproved

2009 JUN -2 PM 3:39

MONTGOMERY COUNTY COUNCIL

The Maryland-National Capital Park and Planning Commission has negotiated a Land Purchase Contract to acquire the above referenced, unimproved property, as an addition to its Fairland Recreational Park. The property is located adjacent to and west of the Prince George's County line, immediately south of Maryland Rte. 198 (Spencerville-Sandy Spring Road), Burtonsville.

This recommended property acquisition is specifically described on page 119 of the Fairland Master Plan and is shown on the map entitled Parkland Plan, Figure 42, found on page 118 of the Plan. A copy of Figure 42 is attached with the proposed acquisition area highlighted in red. The Fairland Master Plan was approved and adopted by the Montgomery County Council on March 25, 1997. The purchase of this property as an addition to Fairland Recreational Park will provide for the protection of the important natural resource areas of the Little Paint Branch Stream Valley between the Commission's existing McKnew Local Park and Fairland Recreational Park. This is an area of high priority upland forest which is estimated to be 75 to 100 years old, it has unique biodiversity overall, and diverse geologic and soil conditions that support rare, threatened and endangered plant populations. Preserving these resources and keeping them accessible to the public is not only of countywide importance, but is regionally significant as well. In addition, this acquisition will help protect the excellent water quality presently found in the McKnew Tributary of Little Paint Branch.

The portion of the Fairland Development, LLC property recommended for ALARF funding is also shown in the cross hatched pattern shown on Exhibit "A" of the Land Purchase Contract that is attached.

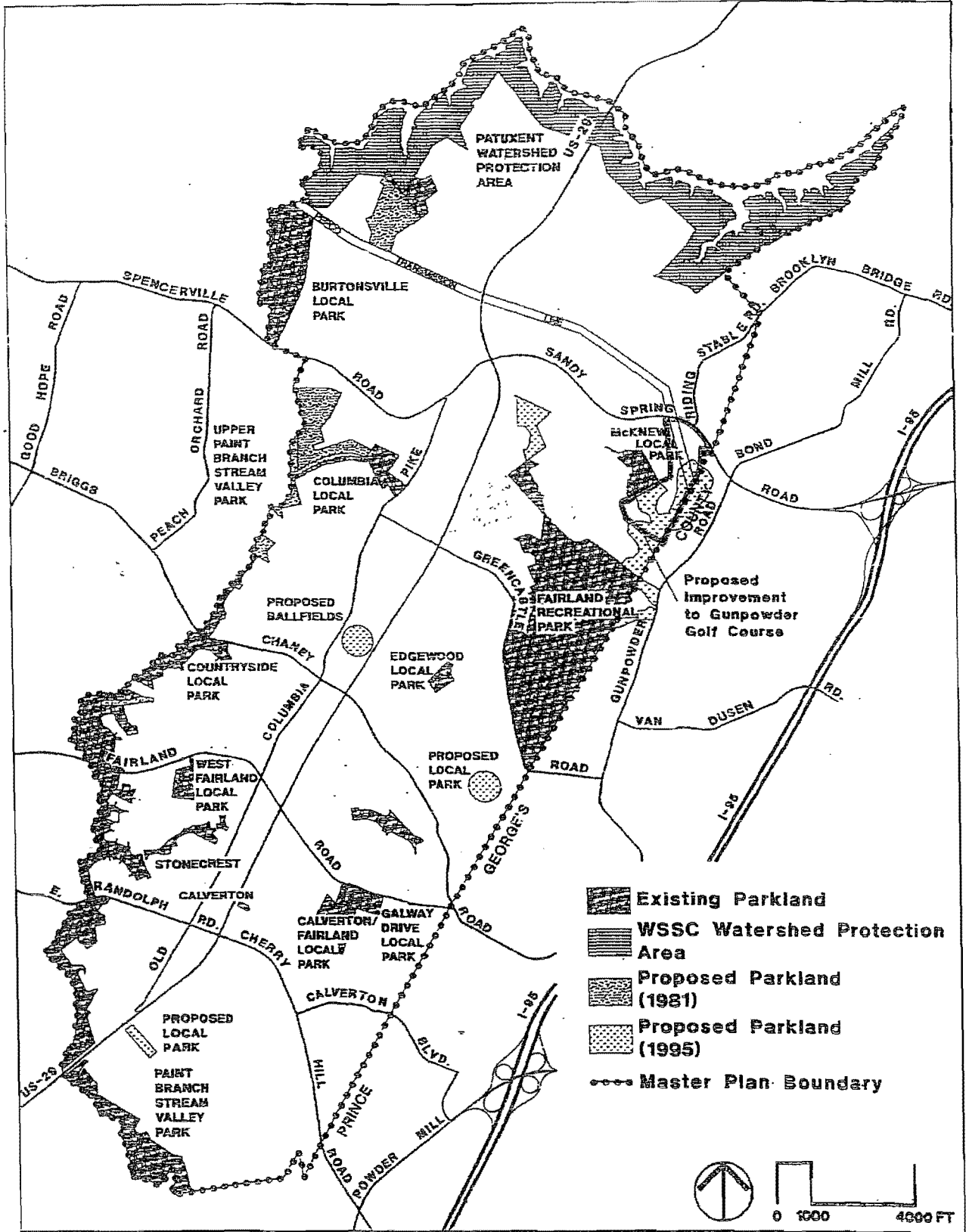
In that funds are not available in the Non-Local Parkland Acquisition PDF to complete this purchase, the Montgomery County Planning Board is recommending that this property be acquired with monies from the Commission's Advance Land Acquisition Revolving Fund (ALARF). The use of ALARF monies that were reimbursed by SHA for the ICC to acquire replacement parkland in communities bearing the greatest impact of this highway project is considered by many to be good public policy. The Fairland Development, LLC property is located less than 2 miles north of the ICC.

As required by Article 28, when ALARF funds are to be used, we first need to receive District Council approval before these monies can be spent. Would you, therefore, include this item for Council consideration during one of its next regularly scheduled meetings. It would be helpful to all concerned if this matter could come before the Council before it breaks for its summer recess.

Please let me know the date and approximate time when this matter will be scheduled before the Council so I can plan to attend to present the Planning Board's recommendation in this regard.

I have also attached a "draft" resolution that should be of help to you as you prepare your informational material for the Council.

Thank you for your attention to this matter. If you have any questions, please call me at (301) 650-2861.



GRANTOR: Fairland Development, LLC
PARK: Fairland Recreational Park

ADDRESS: c/o The Artery Group, LLC
7200 Wisconsin Avenue, Suite 1000
Bethesda, MD 20814

LAND PURCHASE CONTRACT

THIS AGREEMENT, made this _____ day of _____, 2009 by and between Fairland Development, LLC, a Maryland limited liability company, hereinafter called the "Grantor" and THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION, hereinafter called the "Commission", witnesseth:

WHEREAS, Grantor is the contract purchaser under that certain Agreement of Purchase and Sale dated May 10, 2000 (the "Prime Contract") pursuant to which 1325 G Street Limited Partnership and Konterra Limited Partnership (collectively, "Prime Seller") have contracted to sell to Seller (formerly known as Artery-Ryland Fairland, LLC) approximately 233 acres of unimproved land located south and west of the intersection of Route 198 and Gunpowder Road, of which approximately 155.5 acres are located in Montgomery County, Maryland (such acreage being referenced hereinafter as the "Prime Contract Property"); and

WHEREAS, Grantor desires to sell and the Commission desires to buy certain portions of the Prime Contract Property located in Montgomery County, Maryland, consisting of approximately 52.88 acres as shown more particularly on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, upon the terms and conditions set forth herein, Grantor is willing to sell the above described property to the Commission as per the attached Exhibit A;

NOW THEREFORE WITNESSETH, for and in consideration of the sum of TEN DOLLARS (\$10.00) as part of the purchase price to the Grantor in hand paid by the Commission,

④

at and before the execution and delivery of this Agreement, the premises, and mutual promises herein contained, and other good and valuable considerations, the receipt of which is hereby acknowledged by the Grantor, the parties hereto promise, stipulate, and agree as follows:

1. The Grantor does hereby agree to sell and convey to the Commission, as hereinafter set forth, the said property herein described.
2. The Commission agrees to purchase said property for the sum of EIGHT MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$8,750,000.00).
3. Settlement shall take place at the law offices of the settlement attorney selected by the Commission simultaneously with Grantor's settlement under the Prime Contract as described more particularly in Paragraph 11 herein (the "Simultaneous Settlement"). The deed and such other papers as are required of either party by the terms hereof shall be considered good and sufficient tender of performance of the terms hereof. Payment of full purchase price shall be by Commission check or wire transfer upon recordation of deed. If required, funds arising out of this transaction may be used to pay off existing encumbrances.
4. (a) Title is to be good and marketable. If title is satisfactory, Commission shall prepare and furnish a special warranty deed to be promptly executed and delivered by Grantor (or Prime Seller, as applicable) to said Commission; provided, however, that in the event of a Simultaneous Settlement under the Prime Contract as contemplated in Paragraph 11 herein, the form of deed to be used shall be the same form as required to be delivered by Prime Seller pursuant to the Prime Contract, and counsel for the Commission shall be afforded the opportunity to review and approve same. The premises are to be conveyed by special warranty deed, in fee simple, free and clear of all liens and encumbrances; subject only to covenants, restrictions, and conditions of record which the Commission has approved or accepted pursuant

to this Paragraph 4.

(b) Simultaneously with the execution of this Agreement, Grantor shall provide the Commission with a copy of the title commitment (together with copies of all the Schedule B-II exceptions identified therein) which Grantor has obtained in connection with the Prime Contract (the "Title Commitment"). If the Commission determines that any matter of title is unacceptable, then, by no later than July 15, 2009, the Commission shall deliver to Grantor a notice (the "Title Objection Notice") setting forth the objectionable title matters ("Objectionable Title Matters"). Within fifteen (15) days after receipt of the Title Objection Notice, Grantor shall elect, by written notice to Commission, to either (i) attempt to cure the Objectionable Title Matters, or (ii) not cure the Objectionable Title Matters. If Grantor fails to give such a notice, then Grantor shall be deemed to have elected not to cure the Objectionable Title Matters. If Grantor elects not to cure the Objectionable Title Matters, then the Commission shall elect, within ten (10) days after receipt of Grantor's notice, to either waive the Objectionable Title Matters which Grantor has elected not to cure, or terminate this Contract. If the Commission elects to terminate this Contract under the preceding sentence, then the parties shall be relieved of all further liability hereunder, at law or in equity, except with respect to the Commission's indemnification obligations pursuant to Paragraph 7 herein. If Grantor elects to cure any Objectionable Title Matters, Grantor shall promptly take necessary action to remedy such Objectionable Title Matters at the expense of Grantor, or, by agreement of the parties, the Commission shall pay the costs of remedy. If the Objectionable Title Matters cannot be remedied, then Grantor shall pay for the Commission's update of the Title Commitment (if one has been obtained by the Commission), and this Contract shall thereafter terminate and the parties shall be relieved of all further liability hereunder, at law or in equity, except with respect to the Commission's indemnification obligations pursuant to Paragraph 7 herein.

Commission reserves the right to clear title by legal action, including condemnation, if necessary in the opinion of the Commission, and the Grantor hereby agrees that the fair market value of the property for the purpose of such proceedings, if required, is the price stated in Paragraph 2. Property shall be conveyed free of notices of violations of any municipal or state orders or requirements, unless Commission consents.

5. Rent, operating expenses, water rent, utilities and interest on existing encumbrances, if applicable, shall be adjusted to date of settlement. Taxes, general and special, are to be adjusted to date of settlement (according to the certification of taxes issued by the Director of Finance for Montgomery County). All County and State transfer taxes, if any, shall be paid by the Commission. Farm Assessment Transfer taxes, if any, shall be paid by the Grantor. If the Grantor's entire parcel is to be conveyed, and there are assessments for improvements completed prior to the date of settlement, whether assessment therefore has been levied or not, they shall be paid by the Grantor or allowance made therefore at time of settlement. If only part of Grantor's land is to be conveyed, Grantor shall pay or make allowance for such assessment proportionate to property conveyed. If part of larger parcel is to be conveyed hereunder, annual front foot benefit charges of the Washington Suburban Sanitary Commission, if any, are to be adjusted to date of settlement and thereafter apportioned to the respective interest. If entire parcel is conveyed, Commission will assume or pay off such charges, if any. Grantor shall pay all costs for preparation and recordation of releases of existing liens and encumbrances. Costs of title search, preparation and recordation of necessary deed shall be assumed by the Commission.

6. Risk of loss or damage to the said property by fire or other casualty is assumed by Grantor. Grantor (or the Seller under the Prime Contract) shall maintain insurance coverage on the subject property until Commission takes possession of said property.

7. Subject in all events to the rights and obligations of the Grantor under the Prime Contract, duly authorized Commission personnel, agents or assigns, shall have the right to enter in and upon the above-described property for purposes of examination and inspection immediately upon the signing of this contract by both parties provided that (i) Grantor is provided prior notice and a right to accompany such personnel, agents or assigns, (ii) such entry shall be during normal business hours and cause no disturbance to the property or any person in possession and (iii) that such entry shall not be construed as a waiver of any objection to title. The Commission shall indemnify, defend and hold Grantor and the Prime Seller harmless against all claims, damages, costs or expenses of any kind whatsoever, including reasonable attorneys' fees and litigation costs arising out of the Commission's (or its agents' , contractors' , employees' or other representatives') entry or activities upon the Property, provided, however, that the indemnification provided under this Paragraph is limited by the notice requirements, types of liabilities and damage limits provided in the Local Government Tort Claims Act, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. The preceding sentence shall survive any settlement or termination of this Agreement.

8. Possession shall be delivered to the Commission at the time of final settlement, except as otherwise herein noted. Grantor must deliver the property free and clear of any tenancies. Buildings and improvements sold hereunder are to be left in condition as of time of this contract and no air-conditioning, furnaces, fixtures or any other items of realty, are to be removed except as may specifically appear under special conditions of this Contract. Grantor shall enter into no leases which will extend beyond the settlement date.

9. It is hereby further understood and agreed that all notices to be given under this contract will be given to Grantor at address shown herein. Notices to the Commission will be sent to the following address:

Montgomery County Department of Parks
Land Acquisition Specialist
9500 Brunett Avenue
Silver Spring, Maryland 20901

10. This Agreement shall be binding upon the Grantor, its successors, and assigns, and shall be binding upon the Commission, its successors and assigns. This Agreement may not be assigned or transferred by the Commission without the prior written consent of Grantor, which may be granted or withheld in Grantor's sole discretion.

11. This Contract is subject to the following special conditions:

- a) Grantor's obligation to close hereunder is conditioned upon the occurrence of settlement under the Prime Contract. Should settlement fail to occur under the Prime Contract for any reason whatsoever, Grantor shall give written notice to the Commission regarding such failure and this Contract shall terminate and neither party shall have any obligation to the other except with respect to the Commission's indemnification obligations pursuant to Paragraph 7 herein.
- b) Grantor and the Commission shall each make best efforts to accomplish settlement hereunder simultaneously with Grantor's settlement under the Prime Contract. Grantor shall make commercially reasonable efforts to have the Property deeded directly to the Commission by the Prime Seller under the Prime Contract and the Commission covenants to accept same. In the event that settlement occurs hereunder subsequent to the settlement of the Prime Contract due to delays caused by the Commission, the Commission shall reimburse Grantor at closing hereunder for the pro rata portion of the recordation taxes and other closing expenses paid by Grantor with respect to the Property at settlement under the Prime Contract. If the Commission fails to consummate closing hereunder simultaneously with closing under the Prime Contract, and if the Grantor, as a result thereof, elects not to consummate closing under the Prime Contract, this Contract shall terminate and neither party shall have any obligation to the other except with respect to the Commission's indemnification obligations pursuant to Paragraph 7 herein.
- c) Settlement under the Prime Contract is anticipated to occur on or after September 1, 2009. Grantor shall keep the Commission reasonably informed regarding the status of the impending settlement. If settlement has not occurred hereunder by September 1, 2011, then this Contract shall terminate and neither party shall have any obligation to the other except with respect to

the Commission's indemnification obligations pursuant to Paragraph 7 herein.

- d) The Commission acknowledges that the Property, together with the remainder of the property being conveyed pursuant to the Prime Contract, is the subject of Montgomery County Zoning Application Nos. G-813 and G-814, as amended by that certain Development Plan Amendment No. 09-1 (the "DPA") and also acknowledges that the Commission has approved a Preliminary Forest Conservation Plan, which in part covers the Property, as part of such DPA. The Commission covenants and acknowledges that the Property may be continued to be utilized subsequent to closing to satisfy any conditions which may be imposed in connection with the DPA and Forest Conservation Plan, including without limitation forest conservation area requirements, trail connections, and allowable density calculations.

12. It is further understood and agreed that the content hereof comprises the entire contract, and that no verbal representations made before or after the signing hereof or anything not herein written shall vary the terms of this contract, and that the said Commission shall have no further obligations. This contract shall not merge but shall survive recording of deed.

13. M-NCPPC is a bi-county agency empowered by the State of Maryland to acquire, develop, maintain and administer a regional system of parks within the Metropolitan District in Montgomery and Prince George's Counties. In accordance with the MD Ann. Code, Art, 28, Section 5-101, M-NCPPC may acquire land or other property located within the district by means of donations, purchases, or condemnation.

14. In the event that, on or before September 1, 2009, the Montgomery County Council does not take such action as is required in accordance with MD Ann. Code, Article 28, Section 7-106 and pass a formal resolution authorizing the Commission to purchase the Property in accordance with this Contract, this Contract shall terminate and be of no further force and effect and the parties shall be released from any and all obligations hereunder without recourse, except for those obligations which are expressly intended to survive such termination.

15. Each party hereto agrees to cooperate with each other and to take such further

actions as may be requested by the other in order to carry out the transactions contemplated herein.

16. Each party represents and warrants to the other that no broker is entitled to any brokerage commission or fee arising out of this transaction.

Signature Page Follows

Signature Page to Fairland Development, LLC Land Purchase Contract

IN WITNESS WHEREOF, the contract, made in triplicate, the Grantor hereto sets its hand and seal, and the Commission has caused these presents to be signed by its Executive Director.

Grantor: FAIRLAND DEVELOPMENT, LLC

WITNESS *Oruente*

By: *Laurie G. Ballenger* (SEAL)
Laurie G. Ballenger, Authorized Signatory

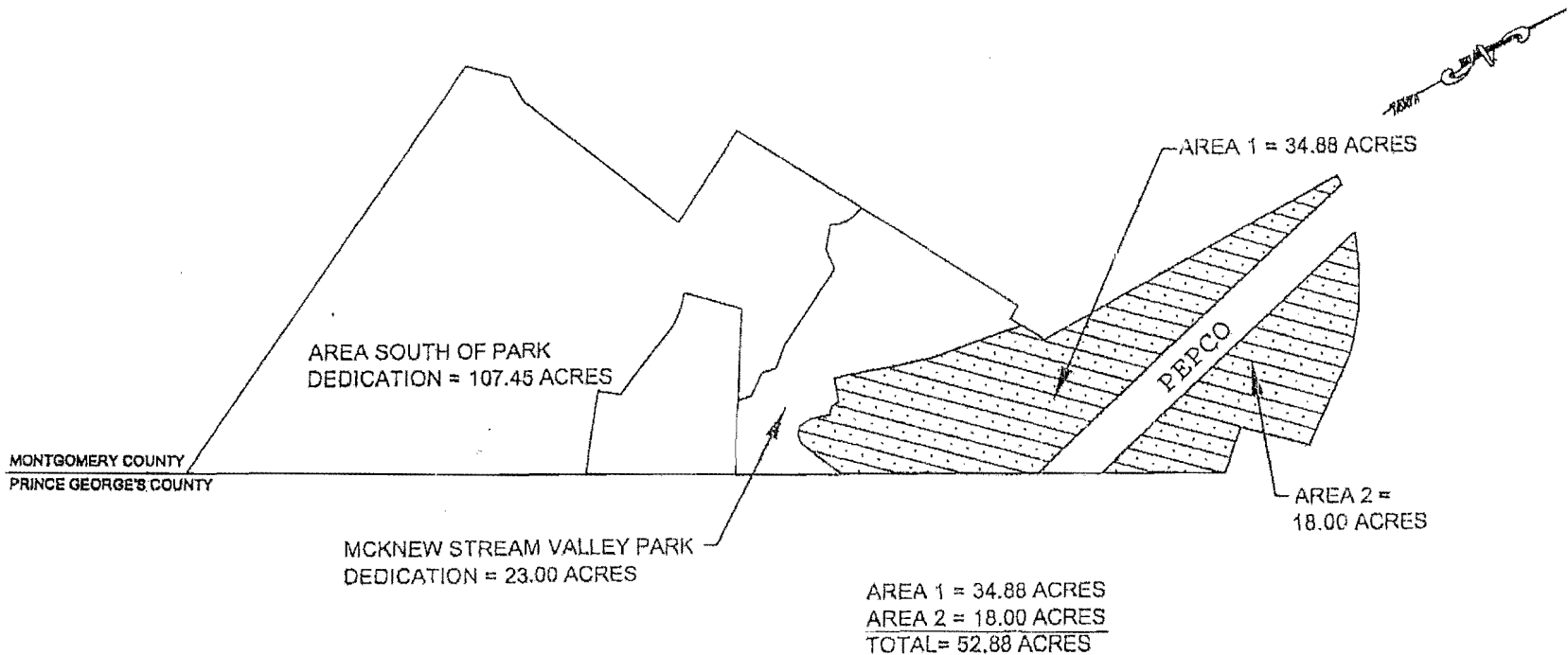
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

ATTEST:

BY: _____
Patricia Colihan Barney
Secretary-Treasurer

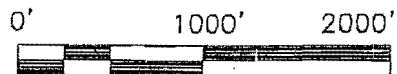
BY: _____ (SEAL)
Oscar S. Rodriguez
Executive Director

FAIRLAND PARK COMMUNITY EXHIBIT FOR MNCPPC



15

SCALE: 1"=1000'

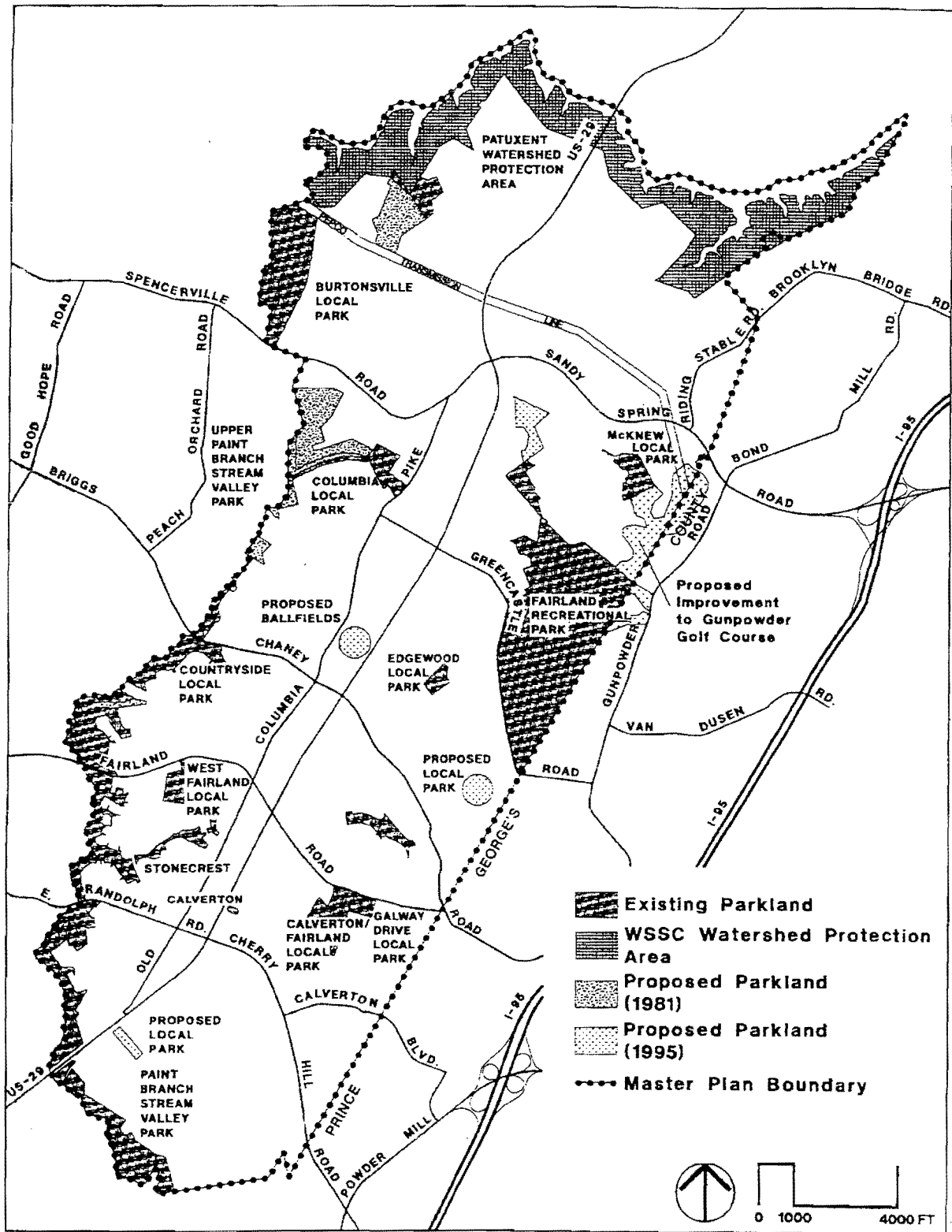


321 Ballenger Center Drive, Suite 101
Frederick, MD 21703
301.663.3158 Fax: 301.663.3679
www.dewberry.com

REV. 4

PARKLAND PLAN

FIGURE 42



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OBJECTIVE: Protect sensitive or high quality natural resources and archaeological and historical resources on parkland in the Fairland area.

RECOMMENDATIONS:

Little Paint Branch Watershed:

- The Bryan, Kinnamon, and Fehr properties (see page 48) north of existing Fairland Recreational Park contain extensive wetlands, steep slopes, seeps and springs, and areas of high-quality mature forest. Under existing regulations and zoning, these parcels are largely undevelopable. Acquisition of these properties as parkland would provide protection of the headwaters area of Little Paint Branch and hardwood forest cover.
- The stream valley between McKnew Local Park and Fairland Recreational Park, which is in the area where the Piedmont meets the Coastal Plain, contains a very diverse and unusual plant community. Although much of the area has been disturbed by quarrying, the remaining vegetation and the potential for re-vegetation make this stream valley worthy of protection as parkland. (See also golf course community, page 47.)



Right Fork of the Paint Branch Watershed:

- Dedicate portions of the Baldi property (Parcel 525) that include seeps, springs, wetlands, buffers as required, and erodible soils when the property is subdivided.
- Acquire the part of the Hunt Property (Parcel 230) that adequately protects the seeps, springs, wetlands, and hardwood forest; this may affect a significant portion of the property.
- Expand the stream valley buffer on the Hunt Property (Parcel 375) to one hundred-fifty feet along either side of the tributary with approximately a 400-foot radius around headwaters.
- Expand stream valley buffers on Gibson, Bryan, and Mosher Properties to one hundred-fifty feet, both sides of tributary, to Friendlywood Road.
- Maintain strict compliance with Planning Board's Environmental Guidelines for the development of park facilities.
- Apply aggressive education and enforcement efforts to reduce encroachment and clearing in Paint Branch Stream Valley Park north of Fairland Road.

OBJECTIVE: Locate and design park multi-use trails to support a regional recreational bikeways network.

RECOMMENDATIONS:

Alignments for trails are not designated before completing an environmental feasibility study for the subject park. Therefore, the recommendations below are subject to revision.



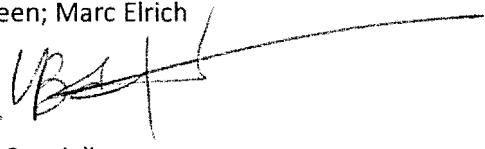
MONTGOMERY COUNTY DEPARTMENT OF PARKS
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION


PHED Committee Meeting Date: July 2, 2009

June 23, 2009

MEMORANDUM

To: Montgomery County Council Planning, Housing and Economic Development Committee
 Michael Knapp, Chair; Nancy Floreen; Marc Elrich

Via: Mary Bradford, Director of Parks 

From: William E. Gries, Land Acquisition Specialist 

Subject: ALARF Land Acquisition Recommendation
 Fairland Development, LLC (The Artery Group) Property – Fairland Recreational Park
 52.88 acres, more or less, unimproved

Recommendation:

The Montgomery County Planning Board is recommending that the County Council approve the acquisition of 52.88 acres, more or less, unimproved, from Fairland Development, LLC (The Artery Group) with Advance Land Acquisition Revolving Funds (ALARF). The purchase price is \$8,750,000.00. This recommended acquisition area is considered to be an important addition to the park system that lies between McKnew Local Park on the north and Fairland Recreational Park on the south. This memorandum is intended to provide supporting documentation that will allow the Committee to make a favorable recommendation to the full Council in this regard.

It should be noted that when the Planning Board made its decision on May 21, 2009 to recommend this acquisition to the Council, it was approved on a vote of 4 to 1, with Commissioner Alfandre dissenting. Commissioner Alfandre felt that there was something not right with an acquisition process that involved the Planning Board reviewing a Development Plan Amendment on a property that, at the same time, was under negotiation for public parkland acquisition, as was the case in this instance. The remaining Planning Board members and staff, however, felt that the process was correct as the approvability of the Development Plan Amendment on this property had to "live or die" on its own merits, irrespective of the Commission's interest in purchasing a portion of the property as parkland. After all, the Commission was only in the negotiation stage of the acquisition process and there were no guarantees that the negotiation would be successful. In fact, at this point, though we have concluded a successful negotiation, there is still no guarantee that this acquisition will be approved by the County Council and the full development of the Fairland Park Community as shown on the Development Plan Amendment is still a real possibility. Commissioner Alfandre did indicate that, notwithstanding his objection to the process, he thought the acquisition proposal had merit and that the price appeared to be favorable.

Key History:

From 2000 to 2005, The Artery Group and the Commission were joint applicants for a planned development known as Fairland Golf Community which would have reconfigured and redesigned the Commission's Gunpowder Golf Course and achieved other important goals of the Fairland Master Plan of 1997. This concept enjoyed strong support from the Fairland Citizens Advisory Committee, the Commission and the Zoning Hearing Examiner and the County Council. Although Artery received a preliminary plan and detailed site plan approval of its proposal in 2004, the plan to modify the layout of the existing Gunpowder Golf Course proved unpopular in Prince George's County. Because bi-county approvals were required in order to implement the contemplated public/private partnership between Artery and the Commission, it was agreed that the redesigned golf course component of the development would be set aside and Artery would redesign the plan as a purely private project. The Development Plan Amendment and preliminary forest conservation plan for the redesigned project, now named Fairland Park Community have been completed and were approved, with conditions, by the Planning Board on Thursday, May 7, 2009. This Development Plan Amendment is still subject to a recommendation from the Hearing Examiner and final approval by the County Council.

Commission ALARF/ BLT's/Other Future Projects:

The PHED Committee was advised in January 2009 of this potential acquisition project in Artery's renamed Fairland Park Community that could involve an expenditure of substantial amounts of ALARF money during a general discussion of uses for ALARF funds. This acquisition, albeit an expensive one, was being considered in an effort to protect, to an extent greater than that afforded through the development approval process, important natural resource areas of the Little Paint Branch Stream Valley between McKnew Local Park and Fairland Recreational Park. Knowing this anticipated demand for Commission ALARF funds was important to the Committee in its discussion regarding fund sources for buying BLT's. \$5.0 million of Commission ALARF funds were subsequently set aside for the BLT program leaving a balance of just over \$14.0 million. If this recommended acquisition is approved there will be an ALARF balance of \$5.25 million. At the present time there is only one pending acquisition project that is being considered for future ALARF funding. This is a 2.5+ acre property in Rock Creek Stream Valley Park, Unit 12, estimated to cost between \$225,000 and \$250,000. If other acquisition opportunities using ALARF funds present themselves, for whatever purpose, they will be pursued to the extent that funds are available.

If this acquisition is funded through ALARF it will mean that \$19,950,000 or 73.2% of the approximate \$27,247,000 payment the Commission received from SHA for ALARF acquired properties needed by the ICC, would have been spent to acquire replacement parkland in close proximity to the highway's impact corridor. \$7.2 million of this money was spent in buying conservation parkland within the Paint Branch Special Protection Area; \$4million was spent to acquire Piedmont Crossing Local Park, immediately north of the ICC in Derwood; while the \$8,750,000 needed for this acquisition will acquire conservation parkland that is within 1.5 miles of the Paint Branch Special Protection Area. It has been suggested that there is no better place to invest this ALARF reimbursement from SHA than for buying replacement parkland in the communities that are bearing the greatest impact of the highway project.

Artery's Initial Offer to Sell:

The potential acquisition opportunity with Artery, as proposed in January 2009 included that portion of Artery's Fairland Park Community, north of an area commonly referred to as the "stump

dump” and south of MD Rte. 198. At that time, the area Artery offered to sell contained approximately 62 acres, had an estimated development yield of 137 lots, and had an estimated market value of more than \$20 million (137 units @ \$150,000). There were 8 MPDU’s proposed within the sale area, but they were considered to have no market value. The unit count of 137 lots was an estimate made in advance of finalizing the Development Plan Amendment for this project. Artery had indicated that it would consider selling the property for approximately \$11,550,000., slightly over \$84,000 per raw, single family lot. This would have been \$9 million below its then-appraised value, assuming a lot yield of 137 could be achieved. In addition, the Commission would receive a dedication of approximately 15.7 acres, adjacent to the sale area, through the development approval process. See Map “A” attached. Artery’s favorable offer in this regard was due to the depressed housing market, the downturn of the economy in general, and Artery’s need to defray its carrying costs while the balance of its property was readied for development. Artery indicated that it had over \$23,000,000 invested in this project and that it was committed to an additional \$3 million in “stump dump” remediation costs. Artery’s need for cash was obviously driving this proposal. The PHED committee was advised that the Commission was going to continue to work with Artery to try to achieve a better deal, assuming one could be obtained, and that the final approval to any such deal would have to ultimately be obtained from the County Council.

Artery’s Revised Offer to Sell:

Since January staff has been meeting off and on with representatives of Artery to help further refine Artery’s position with respect to the sale of this land to the Commission. As a result of that work, and giving consideration to the recently approved Development Plan Amendment for the Fairland Park Community, Artery has now presented its latest offer for the sale of the land north of the “stump dump”. The sale has been modified downward in scope from the January 2009 offer to reflect the Development Plan Amendment as approved by the Planning Board. There has been an overall reduction in lot yield for the project from 396 units to 365 units. Some of this unit reduction occurred on the proposed park acquisition area north of the “stump dump”. Under its current offer, Artery will now only be selling 109 units, as opposed to 137 units; the land area included in the sale contains approximately 52.8 acres, as opposed to 61.9 acres; and, the dedication acreage adjacent to the sale area will be approximately 23.0 acres, as opposed to 15.7 acres. See Map “B”. Again, there are 8 MPDU’s proposed within the sale area, but they are considered to have no market value. Artery’s offered selling price is now \$8,750,000, slightly over \$80,000 per raw, single family lot. This favorable offer is being presented at a financially opportune moment, a moment that will pass once the economy recovers.

In an effort to reduce its acquisition costs for this property, staff asked Artery if it would be willing to sell only a portion of the area north of the “stump dump”. Artery would not consider a sale of anything less than the entire northern portion for a number of reasons: 1) the less than whole northern area suggested for acquisition by the Parks Department included the most desirable building lots in the project; 2) the remaining area would be isolated from the rest of the community and its recreational amenities; and 3) the remaining area would be left with an inefficient layout that would require costly utility extensions and road construction that would be simply uneconomical for Artery to develop.

Appraisal Values:

The Commission’s current appraisal information on this property is as follows:

<u>Appraiser</u>	<u>Date</u>	<u>Amount/Unit</u>	<u>Total Price for 109 Units</u>
David N. Lamb	December 2008	\$150,000.	\$16,350,000.

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Ryland L. Mitchell

March 2009

\$125,000.

\$13,625,000.

Artery has contracted to sell the property in question to the Commission for \$8,750,000. This is not only 46.5% below the highest appraisal, but 35.8% below the lowest appraisal. Furthermore, the sales price of \$8,750,000 is \$2,800,000 or 24.2% below the initially considered sales offer of January 2009, which was in the range \$11,550,000. There was some discussion with the Planning Board that this favorable sales transaction would have a significant tax benefit for Artery. When this matter was discussed with Artery, they indicated that they have explored this issue with its accountants and tax attorneys and were advised that the contemplated transaction would not satisfy IRS guidelines for a charitable deduction. As a result, this transaction is clearly a business decision by Artery which is not driven by benevolence but by the realization that Artery needs to improve its cash flow.

Quality of the Proposed Acquisition Area:

Included in the area considered for acquisition are high-priority upland forests, forested wetlands and bogs, steep slopes and environmental buffer areas, rare habitat and habitat for rare, threatened and endangered species. The large forest in the area to be acquired is the best example of a coastal plain forest remaining in Montgomery County. The area is of countywide importance as the coastal plain accounts for less than 5% of Montgomery County land. This acquisition will provide for a significant extension of existing parkland (McKnew Local Park) that is already designated as a biodiversity area. In addition, this acquisition will protect the excellent water quality of the McKnew Tributary of Little Paint Branch.

Further, this acquisition will eliminate potential adverse impacts to a rare Swamp Bay Magnolia Bog, which is a unique wetland association that was documented in the early 1900's. Representative examples of such bog habitats have largely been lost due to development and mining. This area is on or below the fall-line separating the piedmont physiographic province from the coastal plain. It is an area of diverse geologic and soil conditions that support unique vegetation which is highly valued by the Natural Heritage Division of the Maryland Department of Natural Resources (DNR). In its 1997 "Inventory of Rare, Threatened and Endangered Plant Populations and Significant Habitats on Selected Park Lands of the M-NCPPC in Montgomery County, Maryland" the DNR highly recommended that the area consistent with this acquisition proposal be added to McKnew Local Park. DNR further stated that "because it is an area that is more closely associated with the coastal plain than any other Montgomery County park, its potential value to the County's biodiversity should not be overlooked or undervalued".

Preserving these resources and keeping them accessible to the public is not only of countywide importance, but is regionally significant as well. While a small portion of the property has been subject to gravel mining over the years, the majority is old growth forest estimated to be more than 100 years old.

Finally, this acquisition will also help to protect the historical setting of the Burton Log House located on Birmingham Drive, adjacent to the proposed parkland acquisition area. The proximity of the Burton Log House to the Fairland Park Community was an important issue discussed with the Planning Board during its recent review of the Fairland Park Community Development Plan Amendment. Burtonsville draws its name from this family. Map "C" attached is an orthophoto that shows the existing condition of the proposed acquisition area, while Map "D" attached shows the development that will likely occur on this property if it is not acquired as parkland.

Consistency and Support for this Acquisition:

The Fairland Master Plan, approved and adopted in March 1997, specifically recommends the acquisition of the Little Paint Branch Stream Valley between McKnew Local Park on the north and Fairland Recreational Park on the south. It is not specific as to the amount of acreage recommended for acquisition, but the proposed acquisition area is generally consistent with the acquisition proposal before you and is generally shown on Map "E" attached which is identified as Figure 42, Parkland Plan, that was an exhibit included in the 1997 Fairland Master Plan.

In addition to Park staff, Historic Preservation staff, and staff from the Planning Department's Environmental Planning Division supporting this acquisition, there is strong support for this purchase from the Legacy Open Space Citizen's Advisory Group, the Maryland Native Plant Society, the Natural Heritage Division of Maryland's DNR, and the Fairland Master Plan Citizen's Advisory Committee. The proposed acquisition area is eligible for designation and funding through the Legacy Open Space (LOS) Master Plan as a Natural Resource Protection Area, but that designation and funding is not necessary as monies to complete this acquisition are available through the Advance Land Acquisition Revolving Fund (ALARF).

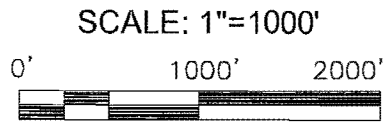
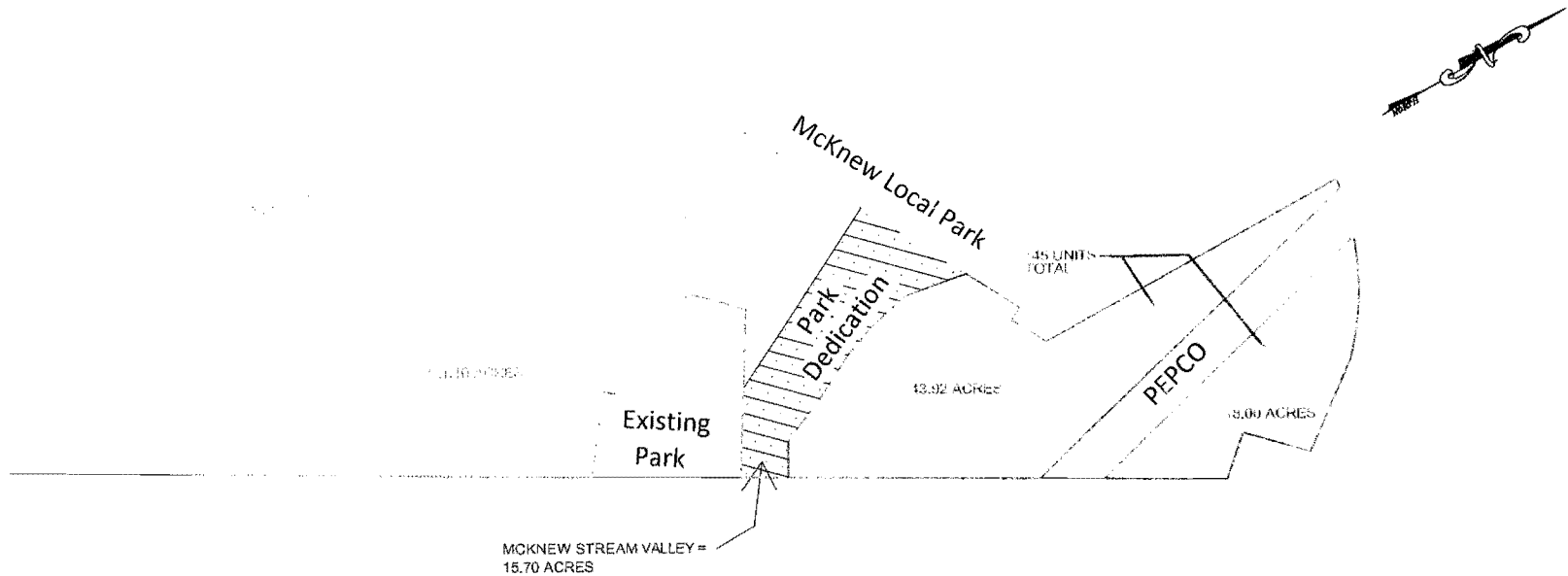
Proposed Use of the Property:

In that this is an acquisition of land intended to serve a conservation purpose, there are no proposed uses for this property other than wildlife habitat, forest conservation, nature interpretation and natural surface trail use, where appropriate.

cc: Royce Hanson, MCPB Chair

FAIRLAND PARK COMMUNITY

JANUARY 2009 SALE OFFER IN RED

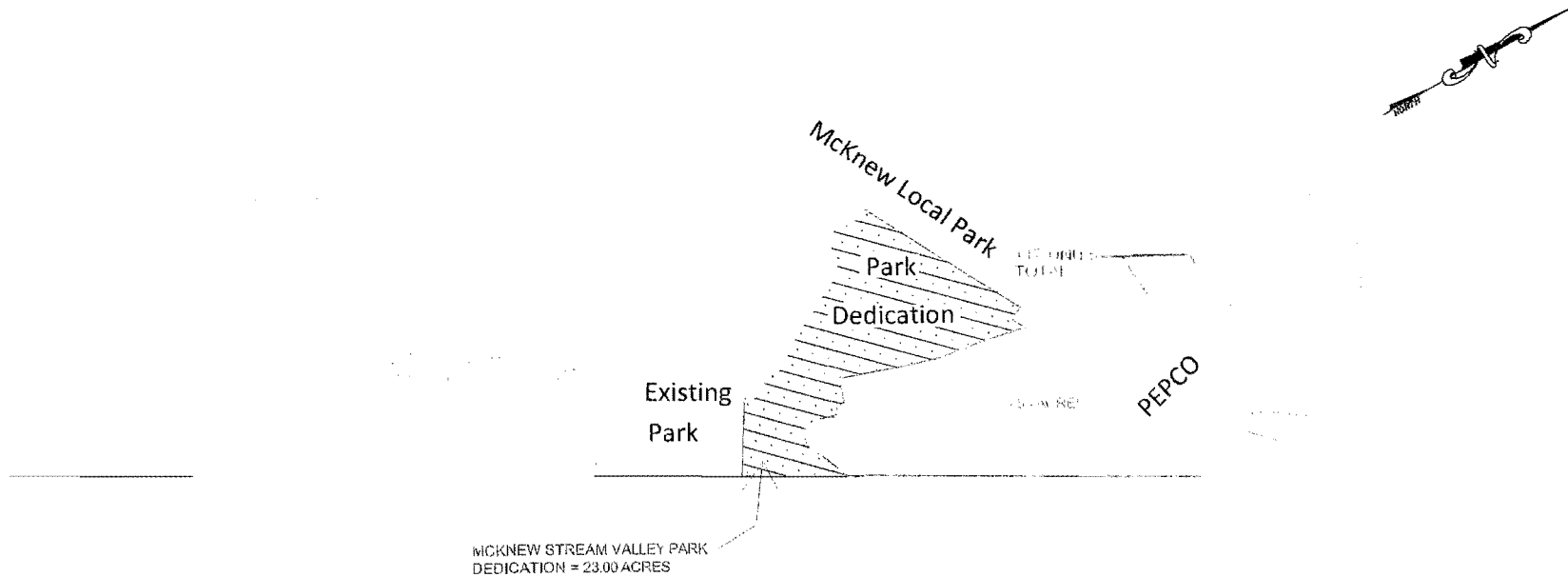


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FAIRLAND PARK COMMUNITY

APRIL 2009 SALE OFFER IN RED

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SCALE: 1"=1000'



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Fairland Park Community – Before Development



Map "C"

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Fairland Park Community – After Development



