

AGENDA ITEM # 4
June 16, 2009

Introduction

M E M O R A N D U M

June 12, 2009

TO: County Council

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

SUBJECT: **Introduction**- 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 have 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 is shown on the map (©15) attached to the copy of the Land Purchase Contract on ©6 to 15. The proposed acquisition is 52.88 acres and **the approximate cost is \$8.75 million**. This acquisition will be considered by the Planning, Housing, and Economic Development Committee on Thursday, July 2, 2009.

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 acquisition 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.

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 specifically described in text, and detailed on a map, in the Fairland Master Plan (©16 and 17). The Plan indicates that acquiring this property would “provide protection of the headwaters areas of Little Paint Branch and hardwood forest cover.” This property is also considered to be of high priority upland forest because of its diverse geologic and soil conditions that support rare, threatened, and endangered plant populations and will protect the existing water quality presently found in the McKnew Tributary of Little Paint Branch as recommended in the Fairland Master Plan.

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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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Law 2009-14

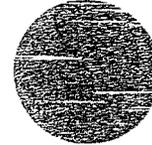


MONTGOMERY COUNTY DEPARTMENT OF PARKS
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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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: Bill Gries, *by* 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,

(6)

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 *[Handwritten Signature]*

By: *[Handwritten Signature]* (SEAL)
Laurie G. Ballenger, Authorized Signatory

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

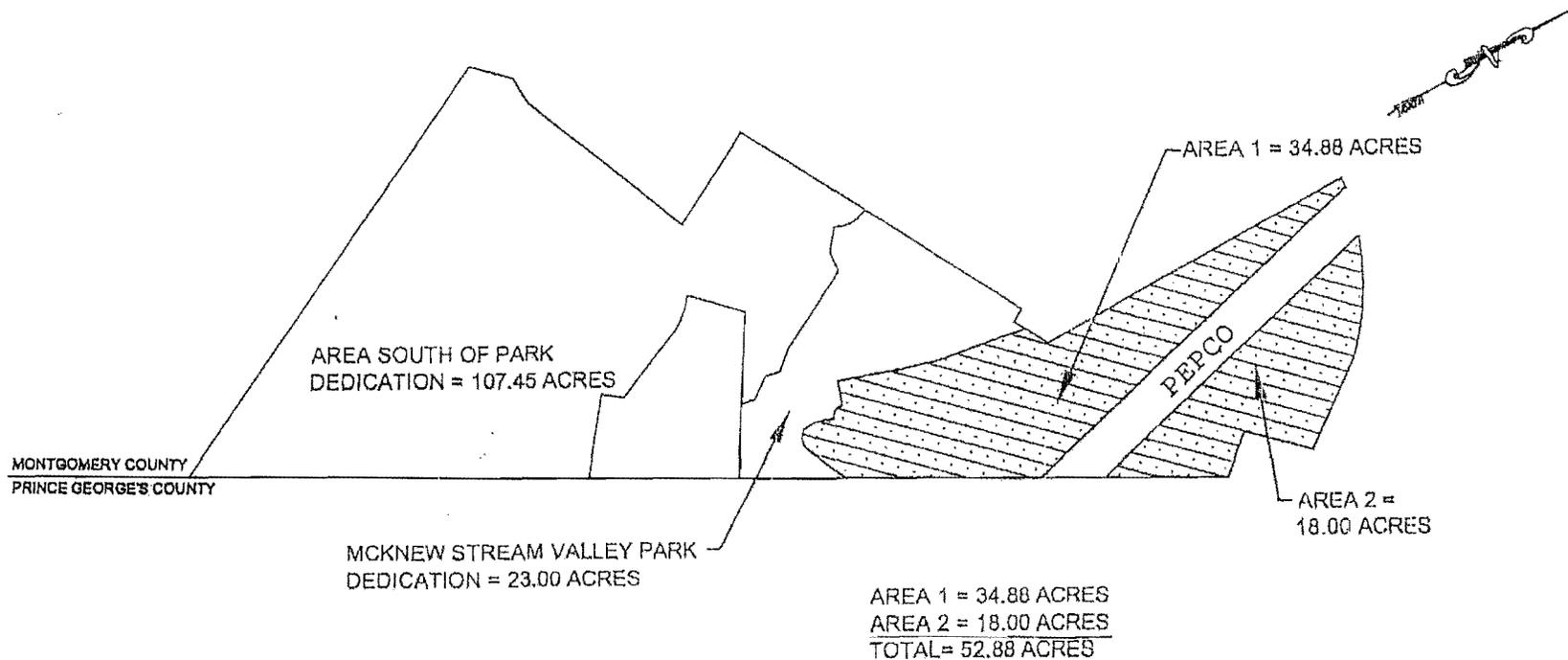
ATTEST:

BY: _____
Patricia Colihan Barney
Secretary-Treasurer

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

FAIRLAND PARK COMMUNITY EXHIBIT FOR MNCPPC

15



SCALE: 1"=1000'

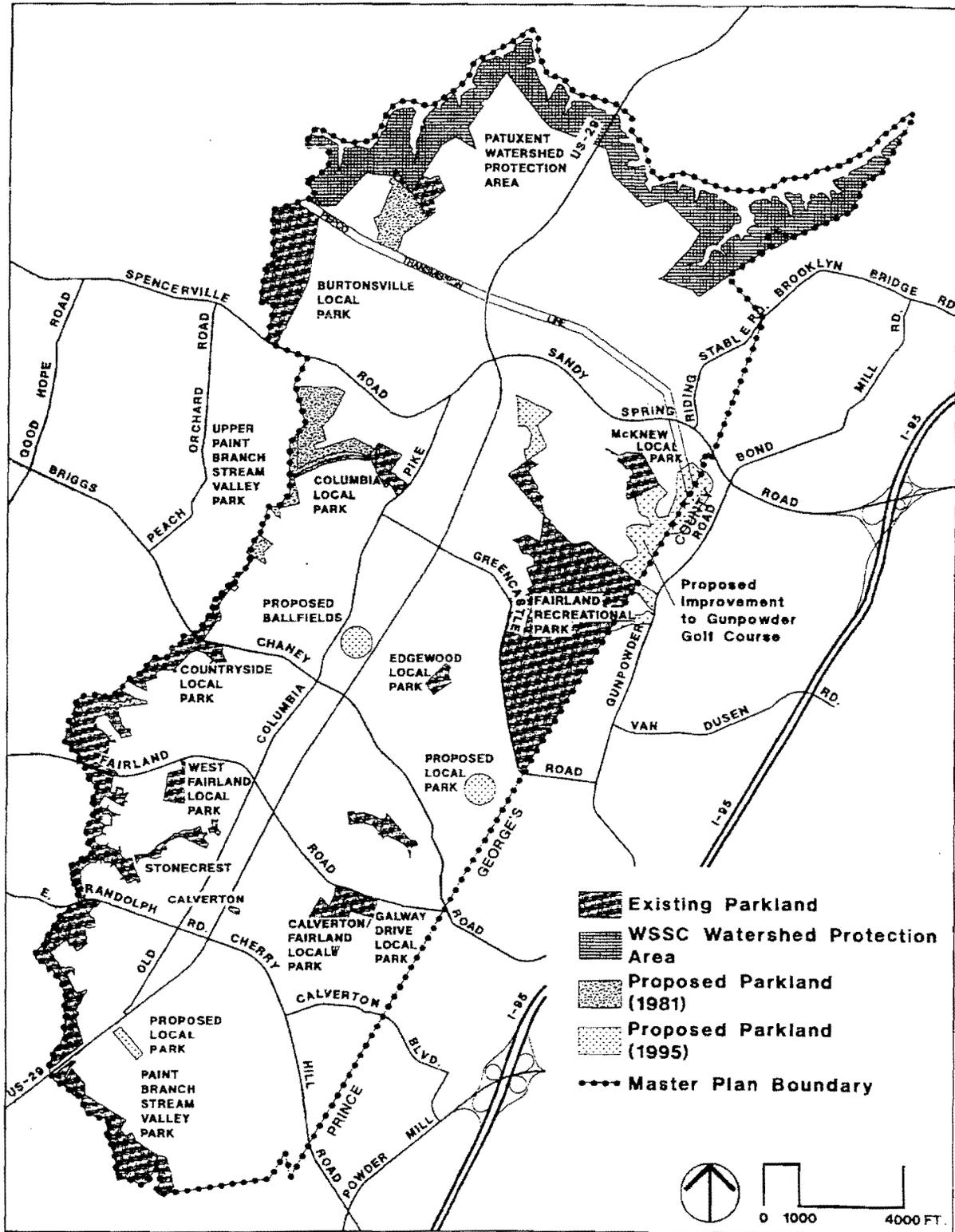


321 Ballenger Center Drive, Suite 101
Frederick, MD 21703
301.663.3158 Fax: 301.663.3679
www.dewberry.com

EXH. A

PARKLAND PLAN

FIGURE 42



16

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.