

Action

MEMORANDUM

October 30, 2009

TO: County Council

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

SUBJECT: Action - Resolution to approve use of Advanced Land Acquisition Revolving Fund (ALARF) for acquisition of real property: Jo Anne Morris, Trustee property in Derwood

The Park and Planning Commission have negotiated a Land Purchase Contract to acquire the improved property from Jo Anne Morris, Trustee property in Derwood as an addition to the Rock Creek Stream Valley 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 Parks Capital Improvements Program to complete this purchase. The proposed acquisition is shown on the map (© 10) attached to the copy of the Land Purchase Contract on © 5 to 9. The proposed acquisition is approximately 1.5 acres and the approximate cost is \$240,000. Council Staff supports the request.

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 property proposed for acquisition falls within the Upper Rock Creek Special Protection Area (SPA) which recognizes the water resources as being of high quality and unusually sensitive. It is also the only section of Rock Creek from the Potomac River on the south, to the Agricultural History Farm Park on the north, which is not public parkland. **(This property is specifically recommended for acquisition in the Upper Rock Creek Area Master Plan (see © 11).)** The Plan indicates that acquiring this property would “provide a safe trail connection outside of sensitive natural area.”

The property to be acquired has an existing single family home that the Planning Board has proposed to demolish so that the property can serve as parkland. The improvement is a two story home with approximately 912 square feet of living space, including a full basement and two small sheds. The condition of the improvement is said to be fair. The Council, during the review of the Hillmead property, requested that if M-NCPPC seeks to acquire property through the use of ALARF that M-NCPPC evaluate any existing improvements for public uses that are compatible with parkland. The Department of Housing and Community Affairs (DHCA) was consulted as to whether DHCA has an interest in the reuse of this house. DHCA indicates that it is not interested in pursuing any reuse of this property due to its size, condition, and location (see © 13).

Council Staff recommends approval.

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: Acquisition of Real Property from Jo Anne Morris, Trustee Property in the Derwood Area of Montgomery County as Parkland for Rock Creek Stream Valley 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 FY72 and supplemented with a \$5 million bond issue in FY90, a \$2.2 million bond issue in FY94, and a \$2 million bond issue in FY05.
2. The Montgomery County Council has provided for expenditures from this fund in Fiscal Year 2010.
3. The Maryland-National Capital Park and Planning Commission has requested the Council's approval to acquire the below-described real property, in the Olney Election District of Montgomery County, as an advance land acquisition to provide parkland for Rock Creek Stream Valley 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. The entirety of two pieces or parcels of land conveyed to Jo Anne Morris, Trustee, from Jo Anne Morris, Personal Representative of the Estate of Priscilla Mary Auvil, deceased, by Personal Representative's Deed dated August 1, 2002 and recorded on January 24, 2003 in Liber 22889 at Folio 131 among the Land Records of Montgomery County, Maryland, consisting of 1.5 acres, more or less, improved, said land being located in the Olney (8th) Election District, situated on the south side of Muncaster Road, east of its intersection with Hollingsworth Drive, having a street address of 18251 Muncaster Road, Derwood, Maryland 20855-1334.

Tax Account #08-502-700892

and

Tax Account #08-502-700904

2. The subject property will be used to provide parkland for Rock Creek Stream Valley Park, Unit 12 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 Two Hundred Forty Thousand and .00/100 Dollars (\$240,000.00).
4. This action is in compliance with Maryland Code, Article 28, §7-106.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



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

September 25, 2009

MEMORANDUM

TO: Marlene Michaelson, Legislative Analyst, Montgomery County Council

VIA: Mary Bradford, Director of Parks *MB*

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

SUBJECT: Proposed ALARF Acquisition -
 Rock Creek Stream Valley Park, Unit 12
 Jo Anne Morris, Trustee Property
 1.5 acres, more or less, improved

2009 OCT -1 PM 3:28
 RECEIVED
 MONTGOMERY COUNTY
 COUNCIL

The Maryland-National Capital Park and Planning Commission has negotiated a Land Purchase Contract to acquire the above referenced, improved property, as an addition to Rock Creek Stream Valley Park, Unit 12. A copy of the Land Purchase Contract is attached as Exhibit "A".

The Jo Anne Morris, Trustee property is located immediately south of Muncaster Road, directly across from the Agricultural History Farm Park. Except for its Muncaster Road frontage, the property is entirely surrounded by existing parkland. This property, un-forested for the most part, has a few scattered trees, and is bisected by approximately 200 linear feet of Rock Creek. This is the only section of Rock Creek from the Potomac River on the south, to the Agricultural History Farm Park on the north that is not in public parkland status.

This acquisition is specifically recommended on pages 98 and 99 of the Upper Rock Creek Area Master Plan, approved and adopted by the Montgomery County Council on February 24, 2004. Copies of pages 98 and 99 of the Plan are attached as Exhibit "B". It should also be noted that this acquisition falls within the Upper Rock Creek Special Protection Area (SPA) which includes that portion of the Upper Rock Creek Watershed lying north of Muncaster Mill Road to Olney-Laytonsville Road (MD Rte. 108). The SPA designation recognizes the water resources, including the Use III stream and associated forests and wetlands, as being of high quality and unusually sensitive.

The property is improved with a small 1940's era two story stucco frame home with a total gross living area of approximately 912 square feet. There are a living room and kitchen located off a vestibule on the first floor and two bedrooms and a bath on the second floor. The house has no attic, but it has a full basement. There is no garage, but there are two small garden sheds. The overall condition of the property is considered to

be fair. This acquisition is possible at this time as the owner/occupant has decided to move from the area and is a willing seller.

Due to funds not being available in the Commission's Acquisition: Non-Local Parks CIP, the Montgomery County Planning Board is recommending that this purchase be funded through the Commission's Advance Land Acquisition Revolving Fund (ALARF). 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 an upcoming meeting convenient to the Council's current work program. It is important that this matter come before the Council just as soon as possible so that settlement in this regard can move forward in a timely manner.

When the County Council approved the acquisition of the improved Piotrow property at Hillmead Neighborhood Park in June of 2008, the Council directed the Commission to evaluate any improvements on all future ALARF acquisitions for other public uses compatible with parkland, prior to presenting such a recommended acquisition to the Council for approval. This is the first time since the Piotrow case that an ALARF property, with an improvement, is being recommended for acquisition. The Commission has made the required outreach to the County's Department of Housing and Community Affairs (DHCA) and has received a response from its Director, Richard Y. Nelson, Jr., which is included as Attachment "C". In that it is clear from Mr. Nelson's review that that DHCA is not interested in pursuing any reuse of this property due to its size, condition and location, the Commission, unless directed otherwise by the Council, intends to demolish the improvement on this property following its acquisition.

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 attached as Exhibit "D" a "draft" resolution for this item 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.

OWNER: Jo Anne Morris, Trustee

PARK: Rock Creek Stream Valley, Unit 12

ADDRESS: 20443 Kings Crest Boulevard
Hagerstown, Maryland 21742

LAND PURCHASE CONTRACT

THIS AGREEMENT, made this 2 day of Sept., 2009 by and between Jo Anne Morris, Trustee, hereinafter called "Grantor" and THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, hereinafter called the "Commission", witnesseth:

WHEREAS, Grantor desires to sell and the Commission desires to buy certain property located in Montgomery County, Maryland, more particularly described as follows:

All those two pieces or parcels of land conveyed to Jo Anne Morris, Trustee, from Jo Anne Morris, Personal Representative of the Estate of Priscilla Mary Auvil, deceased, by Personal Representative's Deed dated August 1, 2002 and recorded on January 24, 2003 in Liber 22889 at Folio 131 among the Land Records of Montgomery County, Maryland, consisting of 1.5 acres, more or less, improved, said land being located in the Olney (8th) Election District, situated on the south side of Muncaster Road, east of its intersection with Hollingsworth Drive, having a street address of 18251 Muncaster Road, Derwood, Maryland 20855-1334, and as shown outlined in red on Exhibit "A" attached hereto and made a part hereof.

Tax Account # 08-502-700892

Tax Account # 08-502-700904

and

WHEREAS, Grantor is willing to sell the above described property to the Commission as per the attached map;

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, 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 TWO HUNDRED FORTY THOUSAND AND .00/100 DOLLARS (\$240,000.00). Settlement, hereunder, shall occur within ninety (90) days from the date hereof or as soon as possible thereafter, as any attorney-at-law to be promptly selected by the Commission, reports upon the title of the land purchased and is ready to make settlement.

3. Settlement shall take place at the law offices of the settlement attorney selected by the Commission at a date and time mutually convenient to the parties. 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. Title is to be good and marketable. If title is satisfactory, Commission shall prepare and furnish a deed to be promptly executed and delivered by Grantor to said Commission. The premises are to be conveyed by deed, in fee simple, free and clear of all liens and encumbrances; subject only to covenants, restrictions, and conditions of record which will not in any way interfere with Commission's proposed use of property. If the title is defective, Grantor shall promptly take necessary action to remedy at expense of Grantor or shall pay costs of remedy by Commission. If title cannot be remedied, Grantor will pay title search. 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 and Grantor shall maintain insurance coverage on the subject property until Commission takes possession of said property pursuant to paragraph 9 herein.

7. 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 such entry shall be during normal business hours and cause no disturbance to the property or any person in possession and provided that such entry shall not be construed as a waiver of any objection to title.

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. This contract is subject to the following special conditions:

a.) Grantor shall be permitted to retain possession of the premises, rent free, for a period of 30 days following the date of settlement. During the period of retained possession, Grantor shall be responsible for all utilities, maintenance and insurance costs on the premises. For the right to retain possession after settlement, 1% of the purchase price or \$2,400.00 shall be held in escrow. After possession of the property is delivered to the Commission, the money held in escrow shall be paid to the Grantor. Failure to deliver the property to the Commission by the end of the 30 day retained possession period shall cause the Grantor to forfeit the escrow amount and the Commission may pursue whatever legal means are available to it to obtain possession.

b.) Grantor shall be permitted to remove from the premises any and all appliances as well as small ornamental landscape materials such as flowers, plants and shrubs, during the period of 30 days, following the date of settlement.

c.) Grantor shall leave the premises in a locked and secured condition and any excavation resulting from the removal of landscape materials shall be appropriately backfilled and stabilized.

10. 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

11. This Agreement shall be binding upon the Grantor, her successors, and assigns, and shall be binding upon the Commission, its successors and assigns.

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. The property was purchased in lieu of condemnation.

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

WITNESS: Earl H. Stevens BY: Jo Anne Morris (SEAL)
Jo Anne Morris, Trustee (Grantor)

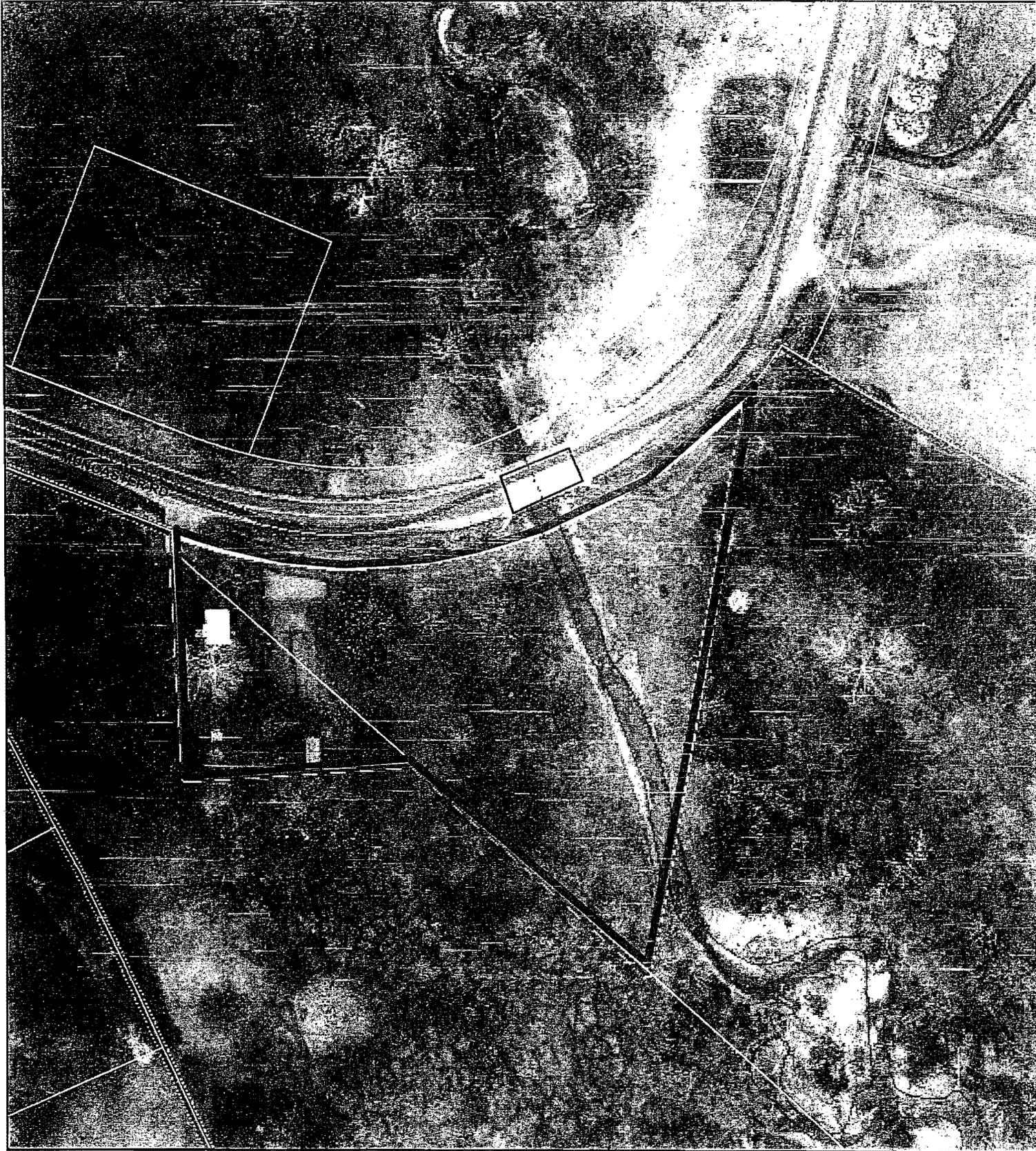
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

ATTEST:

BY: _____
Patricia Colihan Barney
Secretary-Treasurer

BY: _____
Oscar S. Rodriguez
Executive Director

Exhibit A



1" = 100'

Plan Boundary
Property
Easement
Right-of-Way
Proposed

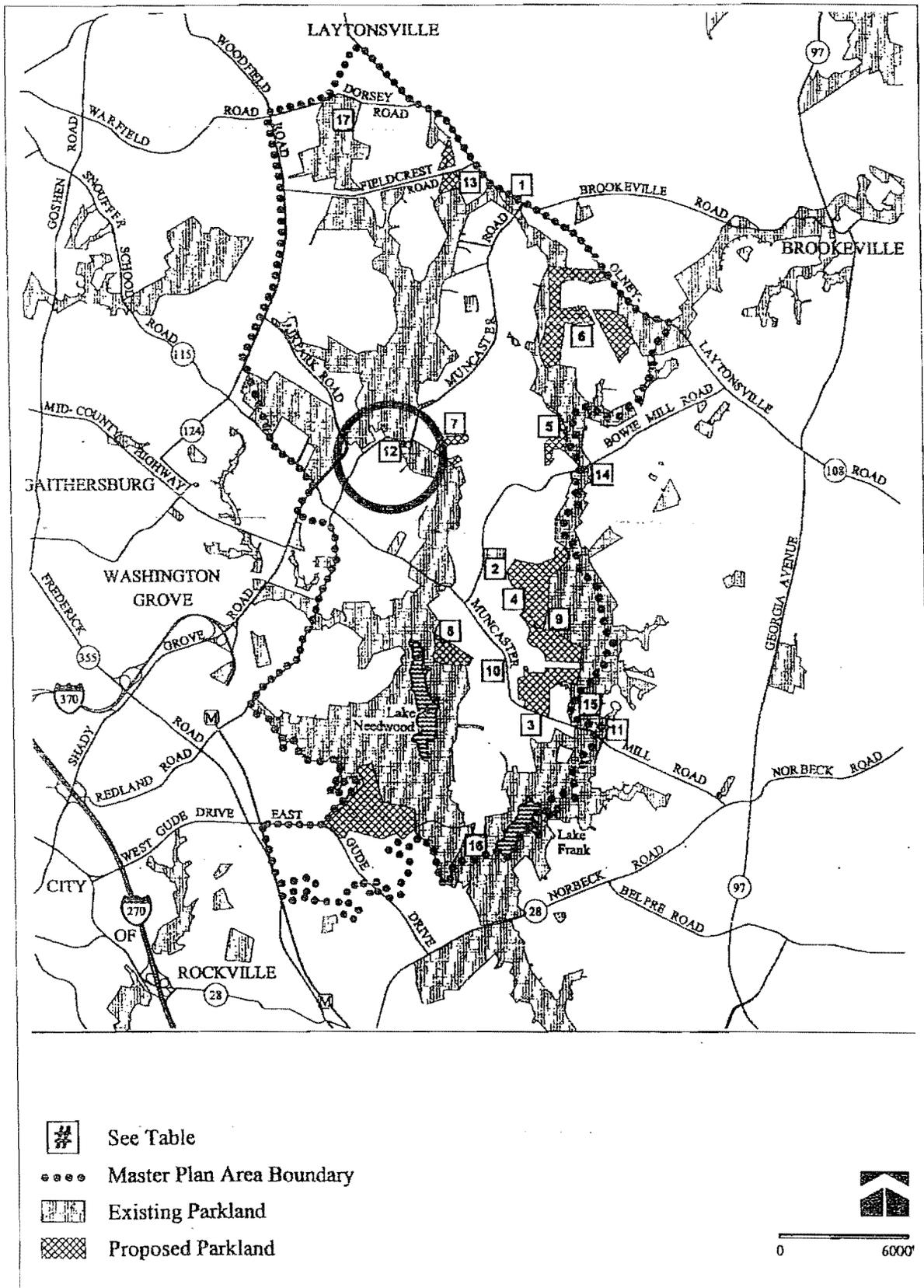
Today's Date: 5/26/09
Sources: M-NCPPC, 2008

Summary of Additional Parkland Recommendations

Name of Property	Recommendation
Recreation Opportunities	
1. Upper Rock Creek Local Park	Re-designate portion of Rock Creek Unit 16 at MD 108 and Muncaster Road to serve local recreation needs.
2. Casey	Obtain small dedication from Casey property to enlarge ballfields at Bowie Mill Local Park.
Resource Protection	
3. Dungan	Protect for resource protection.*
4. Casey	Protect portion that drains to North Branch for watershed protection.*
5. Fraley	Protect area along east and south sides to protect stream buffer.*
6. Freeman	Protect forested areas, stream buffers, and wetlands.*
7. Hendry	Protect portions of two forested stream buffers.*
Trail Corridors	
8. Woodlawn	Seek dedication to provide trail connection between Needwood Road and ICC.
9. North Branch	Expand parkland where feasible to locate potential future hard surface trail outside of environmental buffers.
10. ICC right-of-way	Locate bikeway in ICC right-of-way, whether or not the road is built, with flexible design to minimize environmental impacts.
11. Emory Lane/ North Branch trail connection	Acquire parkland at Muncaster Mill Road and Emory Lane if necessary to provide safe trail connection outside of sensitive natural area.
12. North Branch/Ag History Farm Park Connection	Acquire property south of Muncaster Road to increase natural surface trail options and incorporate natural features into park.
13. Rock Creek/ Oaks Landfill Connector	Acquire parkland to provide safe, attractive trail connection from Rock Creek trail to Oaks Landfill trail.
Settings for Historic, Archeological Cultural Centers	
14. Bowie Mill	Protect and provide interpretive opportunities for historic Bowie Mill Site.
15. Muncaster Mill	Protect and provide interpretive opportunities for historic Muncaster Mill Site.
16. Horner's Mill	Protect and provide interpretive opportunities for historic Horner's Mill Site.
17. Dorsey Spring	Work with Revenue Authority to assure protection of this historic site.

* The proper form of protection should be determined at the time of development and may include dedication, acquisition, easements or other options to be determined.

PARKLAND RECOMMENDATIONS





DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

Richard Y. Nelson, Jr.
Director

September 24, 2009

Mr. William E. Gries
Land Acquisition Specialist
Montgomery County Department of Parks
9500 Brunett Avenue
Silver Spring, MD 20901

Dear Mr. Gries:

Thank you for your notice that M-NCPPC is about to contract for the acquisition of improved property at 18251 Muncaster Road, Derwood, MD. The Department of Housing and Community Affairs (DHCA) has reviewed the appraisals of the property and other material submitted for our evaluation. DHCA is not interested in pursuing any reuse of this property due to its size, condition, and location.

Thank you again for ascertaining our interest in this property prior to recommending acquisition of the site to the County Council.

Sincerely,

Richard Y. Nelson, Jr.
Director

RYN:sns

Office of the Director

100 Maryland Avenue, 4th Floor • Rockville, Maryland 20850 • 240-777-3600 • 240-777-3679 TTY • 240-777-3677 FAX
www.montgomerycountymd.gov

DRAFT

Resolution No.:
 Introduced:
 Adopted:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: District Council

SUBJECT: Acquisition of Real Property from Jo Anne Morris, Trustee, in the Derwood area of Montgomery County as parkland for Rock Creek Stream Valley Park, Unit 12.

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 2010.
3. The Maryland-National Capital Park and Planning Commission has requested the Council's approval to acquire the below-described real property, in the Derwood area of Montgomery County, as an advance land acquisition to provide parkland for Rock Creek Stream Valley Park, Unit 12.
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. All those two pieces or parcels of land conveyed to Jo Anne Morris, Trustee, from Jo Anne Morris, Personal Representative of the Estate of Priscilla Mary Auvil, deceased, by Personal Representative's Deed dated August 1, 2002 and recorded on January 24, 2003 in Liber 22889 at Folio 131 among the Land Records of Montgomery County, Maryland, consisting of 1.5 acres, more or less, improved, said land being located in the Olney (8th) Election District, situated on the south side of Muncaster Road, east of its intersection with Hollingsworth Drive, having a street address of 18251 Muncaster Road, Derwood, Maryland 20855-1334.

Tax Account #08-502-700892

and

Tax Account #08-502-700904

2. The subject property will be used to provide parkland for Rock Creek Stream Valley Park, Unit 12 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 Two Hundred Forty Thousand and .00/100 Dollars (\$240,000.00).
4. This action is in compliance with Chapter 780, Laws of Maryland, as amended.

This is a correct copy of Council action.

Linda Lauer
Clerk of the Council