

AGENDA ITEM #2A  
April 13, 2010  
**Action**

**M E M O R A N D U M**

April 9, 2010

TO: County Council

FROM: Glenn Orlin, <sup>Go</sup>Deputy Council Staff Director

SUBJECT: **Action**—resolution to approve the abandonment of a portion of Black Hills Road near Boyds

A portion of Black Hills Road near Boyds has been proposed for abandonment by the Parks Department. The right-of-way proposed for abandonment lies entirely within Black Hill Regional Park. The Parks Department has requested the abandonment of Black Hills Road's eastern segment so that it would no longer be a public road.

The hearing record includes testimony from Mr. Michael J. Patten who lives in the neighboring subdivision, Black Hills Estates. Mr. Patten reports that Parks Department trucks using the unpaved portion of the road generate noise and clouds of dust; he wants the road to be paved. Parks staff has advised Council staff that Parks may wish to pave the road eventually, but with severe budget cutbacks paving is not likely in the near future.

**T&E Committee (and Council staff) recommendation: Approve the abandonment as recommended by the Executive and Hearing Examiner.**

Attachments

Executive's transmittal letter	©1
Draft adoption resolution	©2-3
Maps noting location of proposed abandonment	©4-5
Application letter	©6
Hearing Examiner's report	©7-12

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Isiah Leggett  
County Executive

OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

MEMORANDUM



March 15, 2010

TO: Nancy Floreen, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive  
Office of the County Executive

SUBJECT: DPWT Docket No. AB723, Portion of Black Hills Road  
Black Hills Regional Park, Boyds  
2<sup>nd</sup> Election District

ACK AGN  
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For your consideration, attached herewith is a proposed Resolution whereby the County Council may approve the abandonment of a portion of Black Hills Road within Black Hills Regional Park in Boyds. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment from the Montgomery County Department of Parks, the Applicant
3. A Public Hearing was held on July 13, 2009, as announced by Executive Order No. 144-09.
4. The Hearing Examiner's Report and Recommendation
5. A location map and tax map for reference

Attachments

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MONTGOMERY COUNTY  
COUNCIL

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Resolution No: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By County Council

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**SUBJECT:** DPWT Docket No. AB723  
Abandonment – Portion of Black Hills Road  
Black Hills Regional Park  
Boys, Maryland

**Background**

1. By letter dated December 8, 2008, the Montgomery County Department of Parks, the Applicant, requested the County to abandon a portion of Black Hills Road within the Black Hills Regional Park in Boys, Maryland. The portion of Black Hills Road right-of-way for which abandonment is sought beginning on the west at a point 790+/- feet east of the intersection of Black Hills Road and Maryland Rte. 121, this point being in line with the west property boundary of a parcel of private land identified as P980 on Tax Map EV and ending on the east at the point where Black Hills Road leaves a parcel of Maryland-National Capital Park and Planning Commission-owned property identified as Par. "A", Block "A", Black Hills Estates, also shown on Tax Map EV.
2. A Public Hearing to consider the abandonment proposal was held on July 13, 2009, by the designee of the County Executive.
3. Washington Gas had no objection.
4. Washington Suburban Sanitary Commission had no objection.
5. VERIZON did not respond within 60 days and therefore, concurrence is presumed.
6. The Montgomery County Planning Board recommended approval.
7. The Department of Transportation recommended approval conditioned upon: a) Applicant must provide right-of-way dedication and construct a cul-de-sac (MC-222.01), modified to accommodate emergency vehicle turning requirements, at the proposed terminus of Black Hills Road (at the western end of the proposed abandonment). This improvement must be coordinated with Preliminary Plan No. 120090070 (Black Hills Estates) which was conditionally approved by the Montgomery County Planning Board on March 19, 2009. If necessary to avoid encroachment on nearby private property, the Applicant could construct an offset

cul-de-sac (which would place the bulb of the cul-de-sac entirely within the existing park property); and b) Applicant must grant necessary public utility easements for any existing or proposed facilities within the area of the proposed abandonment.

8. The Department of Fire and Rescue Services had no objection.
9. The Police Department did not respond within 60 days and therefore, concurrence is presumed.
10. Allegheny Power did not respond within 60 days and therefore, concurrence is presumed.
11. The County Executive recommends approval of the proposed abandonment.

#### Action

The County Council for Montgomery County, Maryland, finds that the portion of Black Hills Road proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment, subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

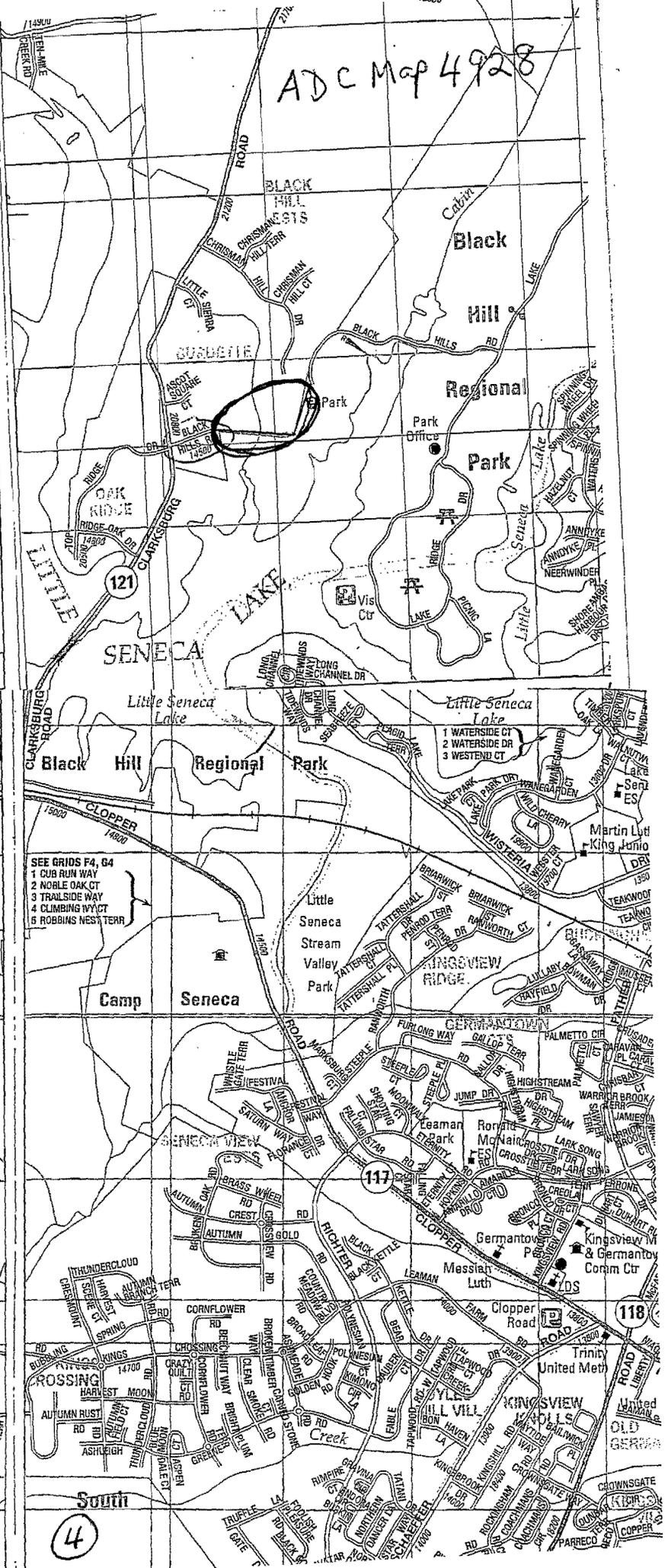
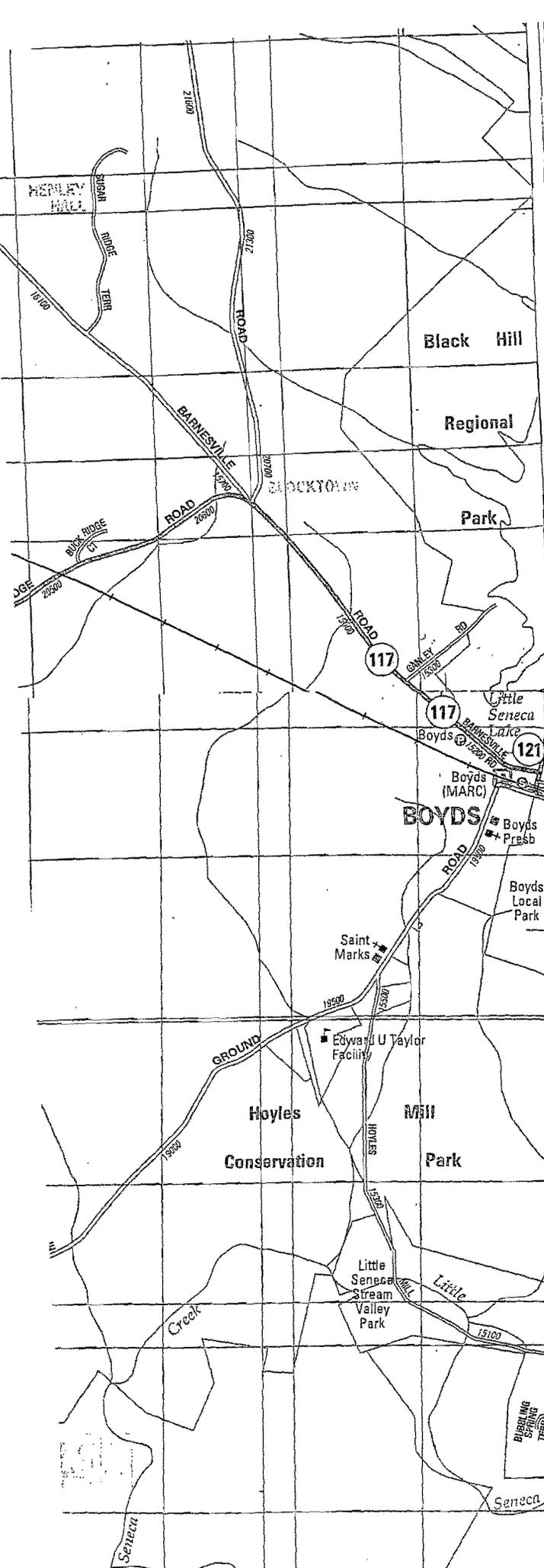
1. Applicant must provide right-of-way dedication and construct a cul-de-sac modified to accommodate emergency vehicle turning requirements, at the proposed terminus of Black Hills Road (at the western entrance of the proposed abandonment) entirely within the existing park property.
2. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.
3. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.

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Linda M. Lauer, Clerk of the Council

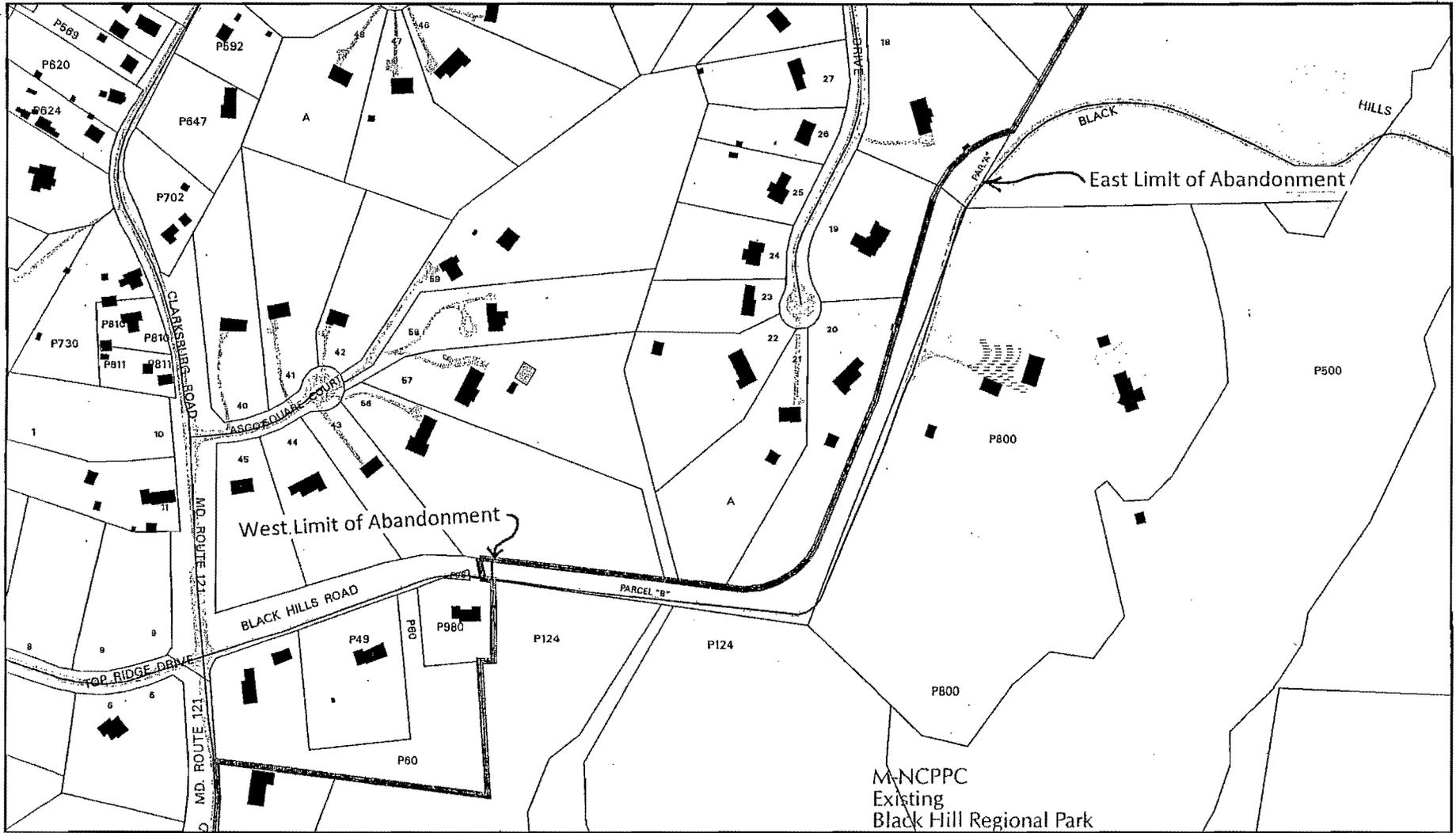
ADC Map 4928



- SEE GRIDS F4, G4
- 1 CUB RUN WAY
  - 2 NOBLE OAK CT
  - 3 TRAILSIDE WAY
  - 4 CLIMBING WYCT
  - 5 ROBBINS NEST TERR

4

# BLACK HILLS ROAD



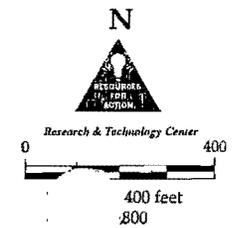
Map compiled on December 03, 2008 at 9:05 AM | Site located on base sheet no - 228NW14

## NOTICE

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998



Map "A"

AB 723

Exh. B.T. 1



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

December 8, 2008

The Honorable Isiah Leggett  
Montgomery County Executive  
Executive Office Building  
101 Monroe Street, 2<sup>nd</sup> Floor  
Rockville, Maryland 20850

Re: Abandonment Request for a portion of Black Hills Road  
Boys, Maryland

Dear Mr. Leggett:

Please accept this correspondence as the Maryland-National Capital Park and Planning Commission's official request that the County's Department of Transportation take whatever steps are necessary to effect the abandonment of that portion of Black Hills Road, east of Maryland Rte. 121, which lies within the boundaries of Black Hill Regional Park. The limit of the requested abandonment area is shown highlighted in yellow on enclosed Map "A". It is further described as that portion of Black Hills Road beginning on the west at a point 790+/- feet east of the intersection of Black Hills Road and Maryland Rte. 121, this point being in line with the west property boundary of a parcel of private land identified as P980 on Tax Map EV, a copy of which is attached as Map "B", and ending on the east at the point where Black Hills Road leaves a parcel of Commission owned property identified as Par. "A", Block "A", Black Hills Estates, also shown on Tax Map EV. That portion of Black Hills Road lying east of Par. "A" was abandoned more than 25 years ago pursuant to Resolution 10-36 adopted by the County Council on January 11, 1983.

The portion of Black Hills Road requested for abandonment is located on land that is in the fee simple ownership of the Commission. This land was conveyed to the Commission in late 1984 as a condition of subdivision approval for a development known as Black Hills Estates. In that this underlying land is in the ownership of the Commission and the portion of Black Hills Road requested for abandonment is used as a park access road and not used as a public thoroughfare, it makes imminent sense for this road to be abandoned as a public roadway. This abandonment action will administratively confirm that all of Black Hills Road, within Black Hill Regional Park, is not a County public Road.

In that the Commission is a government agency, it is our understanding that any normal application and/or processing fees for this abandonment request will be waived.

Thank you for your help and attention to this matter.

Sincerely,

William E. Gries  
Land Acquisition Specialist

cc: Michael Cassidy, DOT  
Mary Bradford, Director of Parks  
Jim McMahon, Park Manager

**RECEIVED**

DEC 09 2008

OFFICE OF THE  
COUNTY EXECUTIVE

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**OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND**

**IN THE MATTER OF:**

PETITION OF MONTGOMERY COUNTY	*	DEPARTMENT OF
DEPARTMENT OF PARKS	*	TRANSPORTATION
MNCPPC	*	
Applicant	*	
	*	
ABANDONMENT OF A PORTION OF	*	
BLACK HILLS ROAD in the	*	PETITION NO. AB 723
Black Hill Regional Park	*	
	*	

BEFORE: Mohammad Siddique, Public Hearing Officer

**PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION**

**I. Background**

The hearing and public comments in the captioned matter pertain to a request dated December 8, 2008, from the Montgomery County Department of Parks of the Maryland-National Capital Park and Planning Commission ("Parks" or "Applicant") to abandon a portion of Black Hills Road in the Black Hill Regional Park in Damascus, Maryland.

Abandonment Petition No. AB723 seeks abandonment of a portion of Black Hills Road, on the south east periphery of the Black Hills Estate Subdivision (the "Abandonment Area"), see Exhibit 1. The starting point of the Abandonment Area starts at 790 feet east of the intersection of the Black Hills Road and Maryland Route 121 and extends east to the portion

of the Black Hills Road already abandoned in 1983 and now part of the Black Hill Regional Park.

The Abandonment Area was dedicated for public use as part of the 1984 Black Hills Estates Subdivision and is located on land that is owned in fee simple by the Parks. A portion of the road in the Abandonment Area is paved. If the abandonment is approved the land would revert to the Parks. The Abandonment Area is currently used as park access by applicant's vehicles and is not used for public thoroughfare. Applicant has thus sought abandonment on the basis that the Abandonment Area is no longer necessary for public use as a road under Montgomery County Code 49-63(c)(1).

Pursuant to section 49-62(f) of the Montgomery County Code, a public hearing on the proposal was held at approximately 1:00 pm on July 13, 2009, in the Lobby Level Auditorium of the Executive Office Building, 101 Monroe Street in Rockville, Maryland. Notice of Hearing was mailed to neighboring properties and was published in the *Montgomery County Sentinel* newspaper on July 2, 2009 and July 9, 2009, Exhibit 4. Testimony was received at the hearing and Exhibits 1-9 were entered into the record. The record was held open for three weeks until 5:00 pm on August 3, 2009. Record was kept open an extra week so that some neighbors who did not get the notice could be notified. Comments from the Planning Board and Montgomery County Department of Transportation were received during the comment period and were entered as Exhibits 10 and 11.

## II. Summary of Testimony and Comments

Mike Cassedy of the Montgomery County Department of Transportation identified the proposed Abandonment Area and the reason given by applicant for the proposed abandonment. Mr. Cassedy described that his office requested comments from the public,

appropriate governmental agencies, and public utility companies that might be affected by the proposed abandonments. Mr. Cassidy listed Exhibits 1 – 9 that were entered as part of the hearing record. Mr. Cassidy noted that, at the time of hearing, comments were missing from the Department of Transportation, Police Department, Allegheny Power, and Planning Board and that comments were expected from the Department of Transportation and Montgomery County Planning Board.

Mr. Michael J. Patten, who lives in the Black Hills Estate on Chrisman Hill Drive, spoke on his own behalf. He indicated he uses the road for walking his dogs; other people walk, jog and ride bikes. Mr. Patten mentioned that when Parks trucks use the road to access the park they create a cloud of dust as if a tornado has hit the area and voiced a concern that the trucks cause noise pollution as the road is not paved. He requested that if the road will be abandoned, it should be paved so that dust and noise are reduced. Mr. Patten's property abuts the proposed Abandonment Area.

In administering the abandonment provisions of Chapter 49, the County Executive is required to solicit a response on the abandonment proposal from a variety of public agencies including each public utility authorized by the Public Service Commission to provide service within the area and any grantee of a franchise if the grantee is authorized to use or install facilities in the right-of-way. In response to a request for comments, Washington Gas indicated no objection to the abandonment and that it has no gas line in the right of way; Exhibit 7.

Washington Suburban Sanitary Commission ("WSSC") indicated that it has no facilities within the proposed Abandonment Area and granted its approval of the abandonment; Exhibit 8. County Department of Fire and Rescue Services has indicated no objection to

abandonment; Exhibit 9. Police Department, Verizon and Allegheny Power have not submitted any comments. Under Montgomery County Code 49-62(g), if an agency or other party does not respond within 60 days after notice is first published pursuant to section 49-62(e), the County Executive must presume that the agency or other party does not oppose the proposal. More than 60 days have elapsed since comments were requested from the Police Department, Verizon and PEPCO and therefore it must be presumed that they do not oppose the proposed abandonment.

During the comment period, comments were received from the Montgomery County Department of Transportation (DOT) and the Planning Board. DOT has recommended approval of the abandonment conditioned upon; 1) Applicant must provide right-of-way dedication and construct a cul-de-sac modified to accommodate emergency vehicle turning requirements, at the proposed terminus of Black Hill Road (at the western entrance of the proposed abandonment). This improvement must be coordinated with Preliminary Plan No. 120090070 (Black Hills Estate) which was conditionally approved by the Montgomery County Planning Board on March 19, 2009. If necessary to avoid encroachment on nearby private property, the Applicant could construct a cul-de-sac which would place the bulb of the cul-de-sac entirely within the existing park property. 2) Applicant must grant necessary public utility easement for any existing or proposed facilities within the area of the proposed abandonment; Exhibit 11. The Planning Board recommended abandonment.

No comments were received opposing the proposed abandonment.

### **III. Conclusions and Recommendations**

The abandonment of rights-of-way is governed by the provisions of Montgomery County Code sections 49-62 and 49-63. Section 49-62 permits application for abandonment of a

right-of-way by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. The hearing and notice procedures have been satisfied, and the public agencies and utility companies have been given an opportunity to review the petition for abandonment as described above.

Section 49-63 allows abandonment if the right-of-way is not needed for public use or if abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood. Section 49-63(d) precludes abandonment of a right of way which is the sole means of access to any property.

Applicant has requested this abandonment for the road which is currently used by Parks vehicles to access the parks facilities and is not being used as a public thoroughfare. The road traffic is restricted, except for emergency vehicles, by the Parks management with "Do Not Enter" signs on both ends of the road within the Abandonment Area. The road is located on land that is in fee simple ownership of the Parks. This abandonment will administratively confirm that all of Black Hills Road from the east of terminus point within the Black Hill Regional Park is not a County Public Road. One of the comments received was to pave the road to eliminate dust generated due to the fact that most of the road in the abandonment area is not paved. The question of whether the road should be paved is beyond the scope of this hearing.

Based on a thorough review of the testimony and evidence of record, I find that the Abandonment Area is not needed for as a public roadway purposes as it was initially dedicated but not used as a public roadway, and that it is in the public interest for Applicant to formally incorporate the Abandonment Area into the Black Hill Regional Park. For the

foregoing reasons and based on a full consideration of the information presented, I recommend that the request for abandonment be granted subject to the following condition:

1. Applicant must provide right-of-way dedication and construct a cul-de-sac modified to accommodate emergency vehicle turning requirements, at the proposed terminus of Black Hill Road (at the western entrance of the proposed abandonment) entirely within the existing park property

Respectfully submitted,

Date: 12-18-09

M. Siddique  
Mohammad Siddique  
Public Hearing Officer

The Public Hearing Officer's Recommendation for AB723 has been reviewed and the recommendation for approval of the abandonment request is approved with the stated conditions.

Date: 01-12-2010

Isiah Leggett  
Isiah Leggett, County Executive