

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-  
WASHINGTON REGIONAL DISTRICT IN  
MONTGOMERY COUNTY, MARYLAND  
Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:  
THE HANSON FAMILY**  
Applicant

John Hanson  
Matthew Leakan  
Wes Guckert  
Dusty Rood  
Frank Bossong

For the Application

Stuart R. Barr, Esquire  
Attorney for the Applicant

\*\*\*\*\*

Martin Klauber, Esquire  
People's Counsel

In Support of the Application

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Ken Giunta, President, Hunting Hill Estates HOA  
Matthew Morris, Board Member  
Hunting Hill Estates HOA  
Daniel Pemberton-Heard, Board Member  
Hunting Hill Estates HOA

Norman Knopf, Esquire  
Attorney for Hunting Hill Estates HOA

Alice Yeh, resident of the Versailles<sup>1</sup> Community  
Dr. Paul Goldberg, nearby resident of Potomac  
Jack Yeh, resident of the Versailles Community

In Opposition to the Application

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Before: Martin L. Grossman, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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<sup>1</sup> Although the famous region in France is known as "Versailles," the referenced section of Montgomery County is spelled "Versailles," according to the certified Zoning Maps (Exhibits 8 and 9).

Zoning Application No. G-884

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**I. EXECUTIVE SUMMARY**

Applicant:	The Hanson Family
LMA No. & Date of Filing:	G-884, filed June 1, 2009
Zoning and Use Sought:	Zone: PD-2 Use: A maximum of 187 residential units, at least 35% of which will be single-family detached and at least 35% (but not more than 45%) of which will be townhouse or attached units. The site will include a local park of at least 10 acres dedicated to M-NCPPC, and 12.5% of the units will be MPDUs. No commercial uses are proposed.
Current Zone and Use:	Zone: RE-2 Current Use: The Hanson Family Farm.
Location:	At 14100 and 14200 Quince Orchard Road and Turkey Foot Road, bordering Muddy Branch Park, Turkey Foot Road, Quince Orchard Road and Travilah Road, in Gaithersburg, Maryland.
Acreage to be Rezoned:	Approximately 170.77 acres
Base Density Permitted in Zone:	2 Dwelling Units per acre x 170.77 acres = 341.54 Dwelling Units
Density Proposed by Applicant :	Up to 187 Dwelling Units, with TDRs and 12.5% MPDUs
Green Space Required/Planned:	30% required (51.23 acres) / 56% planned (95.63 acres)
Parking Required/Planned:	374 spaces required for 187 dwelling units / 374 off-street and 244 to 258 on-street spaces are planned.
Environmental Issues:	Development is not within a Special Protection Area or Primary Management Area. According to Technical Staff, this development plan is consistent with the Master Plan's environmentally-based recommendations and Land Use and Design Guidelines. Through clustering, forest retention and dedicating parks, the proposed plan protects environmentally sensitive areas and expands the regional stream valley park system.
Consistency with Master Plan:	Project is consistent with the 2002 Potomac Subregion Master Plan.
Neighborhood Response:	There is significant community opposition to this project, which centers around compatibility and traffic concerns; however, most of the neighbors who testified are more opposed to the development plan than the rezoning, <i>per se</i> . They seek additional binding elements to further insure compatibility.
Timing of Development:	Applicant indicates that there is no plan to immediately develop the site. It will continue to farmed for the indefinite future.
Planning Board Recommends:	Approval
Technical Staff Recommends:	Approval
Hearing Examiner Recommends:	Approval

## II. STATEMENT OF THE CASE

Application No. G-884, filed on June 1, 2009, by Applicant “the Hanson Family,” requests reclassification of a 170.77-acre parcel of mostly unimproved farm land from the RE-2 Zone to the PD-2 Zone. The Applicant proposes to develop the property with 187 residential units, at least 35% of which will be single-family detached units and at least 35% (but not more than 45%) of which will be townhouse or attached units. The site will include a local park of at least 10 acres dedicated to the Maryland-National Capital Park and Planning Commission (M-NCPPC), and 12.5% of the units will be Moderately Priced Dwelling Units (MPDUs). No commercial uses are proposed.

The site is comprised of three parcels, 020, 945 and 312, located at 14100 and 14200 Quince Orchard Road, bordering Muddy Branch Park, Turkey Foot Road, Quince Orchard Road and Travilah Road, in Gaithersburg, Maryland.

The application for rezoning was reviewed by the M-NCPPC’s Technical Staff, who in a report dated February 22, 2010, recommended approval (Exhibit 49).<sup>2</sup> The Montgomery County Planning Board (“Planning Board”) considered the application on March 4, 2010 and, by a vote of 4 to 0, also recommended approval, as stated in a memorandum dated March 5, 2010 (Exhibit 52).<sup>3</sup>

Two opposition letters were received prior to the hearing. Dr Paul Goldberg, a nearby resident, wrote to oppose the development because, in his opinion, it will exacerbate traffic problems in his neighborhood<sup>4</sup> (Exhibit 44). Norman Knopf, Esquire, attorney for the Hunting Hill Estates Homeowners Association (HHE-HOA), filed a letter of opposition raising concerns about compatibility (Exhibit 51).

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<sup>2</sup> The Technical Staff Report is quoted and paraphrased frequently herein.

<sup>3</sup> In that same memorandum, the Planning Board noted that it did not believe that this stage of the proceeding was appropriate to specify the dispersal and architectural features of proposed MPDUs, which some community members had requested be determined in a binding element as part of the development plan.

<sup>4</sup> Dr. Goldberg lives on Briarbrush Lane, about a mile south of the subject site.

A public hearing was originally noticed for December 4, 2009 (Exhibit 31), but it was postponed so that the Applicant could amend its application to resolve some concerns raised by Technical Staff. The revisions resulted in less environmental impact and improved compatibility with surrounding development. Following these revisions, a new notice of a hearing date was issued on December 4, 2009 (Exhibit 41), and the hearing proceeded as scheduled on March 12 and 15, 2010.<sup>5</sup> Applicant called five witnesses, and six opposition witnesses testified, including three from the HHE-HOA. The People's Counsel participated in the proceedings and supports the application.

The record was held open until April 12, 2010, to allow the parties to make additional requests to Applicant for binding elements, to allow Technical Staff time to consider some revisions in the development plan resulting from the hearing, and to give the parties an opportunity to file final arguments. Applicant timely filed its revised documents and additional information on March 26, 2010 (Exhibit 76), and Technical Staff filed its evaluation on April 6, 2010, approving the changes in the development plan and suggesting a minor revision. Exhibit 80. Applicant then filed a slightly revised development plan in accordance with Technical Staff's suggestion (Exhibit 82(a)), as well as its April 12, 2010 closing argument (Exhibit 82). Mr. Knopf also filed a closing argument on April 12, 2010, on behalf of the HHE-HOA, and the record closed, as scheduled, on that date.

After carefully reviewing the entire record, the Hearing Examiner finds himself in agreement with the recommendations of Technical Staff and the Planning Board. The neighbors have understandable concerns about plans for a large development in their community, but the development plan is almost exactly what is called for in the 2002 Potomac Subregion Master Plan. The Applicant has been quite flexible in making changes to alleviate some of the concerns expressed by the neighbors, but refuses to specify some of the architectural and other restrictions requested by

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<sup>5</sup> References to the transcript of the March 12, 2010 hearing are designated "3/12/10 Tr. xx," and references to the March 15, 2010 hearing transcript are designated "3/15/10 Tr. xx."

some of the neighbors. The Planning Board has opined that those matters should be left for Site Plan review. For all the reasons discussed below in this report, the Hearing Examiner agrees and recommends that the Council approve this rezoning application and development plan.

### **III. FACTUAL BACKGROUND**

#### **A. Subject Property**

The 170.77-acre subject property is irregularly shaped and has approximately 600 feet of street frontage along Turkey Foot Road, 1,000 feet of frontage along Travilah Road and 1,600 feet along Quince Orchard Road. Technical Staff reports that the subject property has only a few residential or farm-related structures on the entire 171-acre site, and the property has been used as a family-operated farm for the past three generations. Exhibit 49, p. 3. Two single-family residences (with associated barns and outbuildings), and one mobile home exist in the northeastern quadrant of the property. Activities on-site have included raising cattle, harvesting grain and producing timber. The rural nature of the site can be seen in the following photo of the Hanson Farm taken from Travilah Road and Hunting Hill Way, looking north (Exhibit 63(b)):



Approximately one-third of the property is forested, with the remaining area used for crops or pasture. Two farm ponds are located in the center and southeastern corner of the site, respectively. Four intermittent tributaries exist on the property, flowing to the adjacent Muddy Branch Stream Valley Park, located north and west of the site. The site is not in either a special protection area or a primary management area. The tributary areas are generally forested, as shown on the following Google aerial photo, derived from Exhibits 68(b) and 78 (attached map):



## B. Surrounding Area and Adjacent Development

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, a somewhat heated dispute arose during the hearing as to the proper definition of the surrounding area.<sup>6</sup> The Applicant argues for a larger surrounding area boundary (about a ¼ mile distant from the site property lines), as reflected in Exhibit 53(a), than the opposition finds appropriate.

Technical Staff proposed to define the surrounding area by reference to its understanding of Applicant’s definition prior to the hearing (Exhibit 49, p. 4):

The applicant has defined the surrounding area as generally formed by the Muddy Branch Stream Valley Park to the north, the Potomac Horse Center and Travilah Elementary School to the east, and the residential properties located along Travilah Road and Turkey Foot Road to the south and west. Staff finds this area appropriate for determining whether the proposed zone will be compatible with surrounding uses since it captures virtually all nearby properties that may be affected by the rezoning and demonstrates the predominant land use patterns of the area.

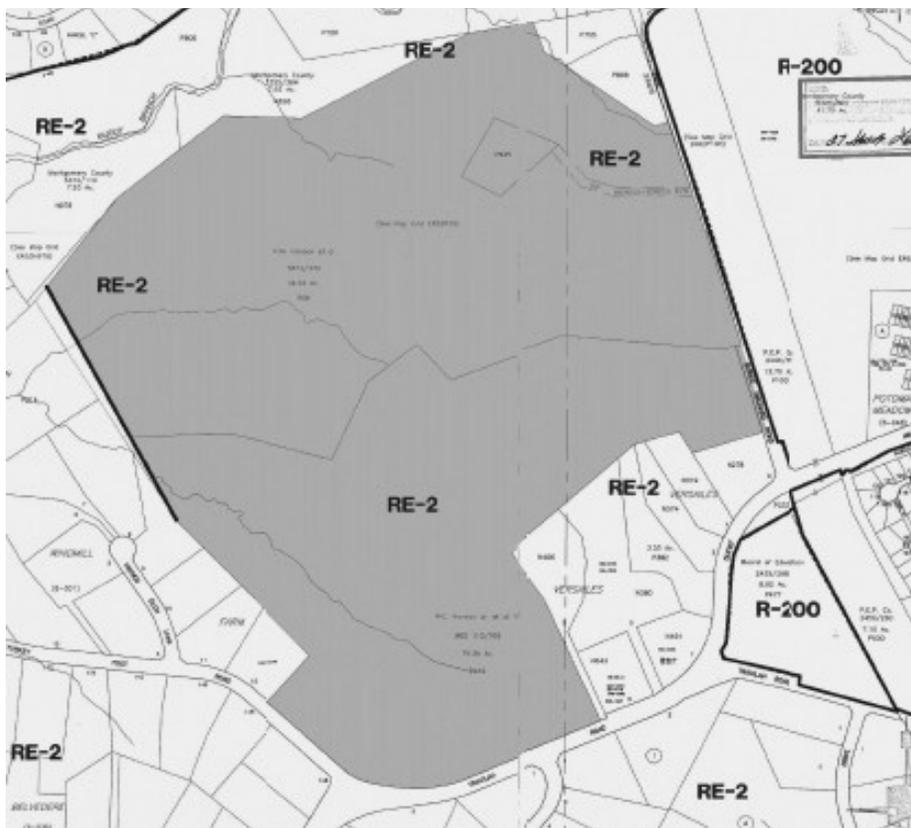
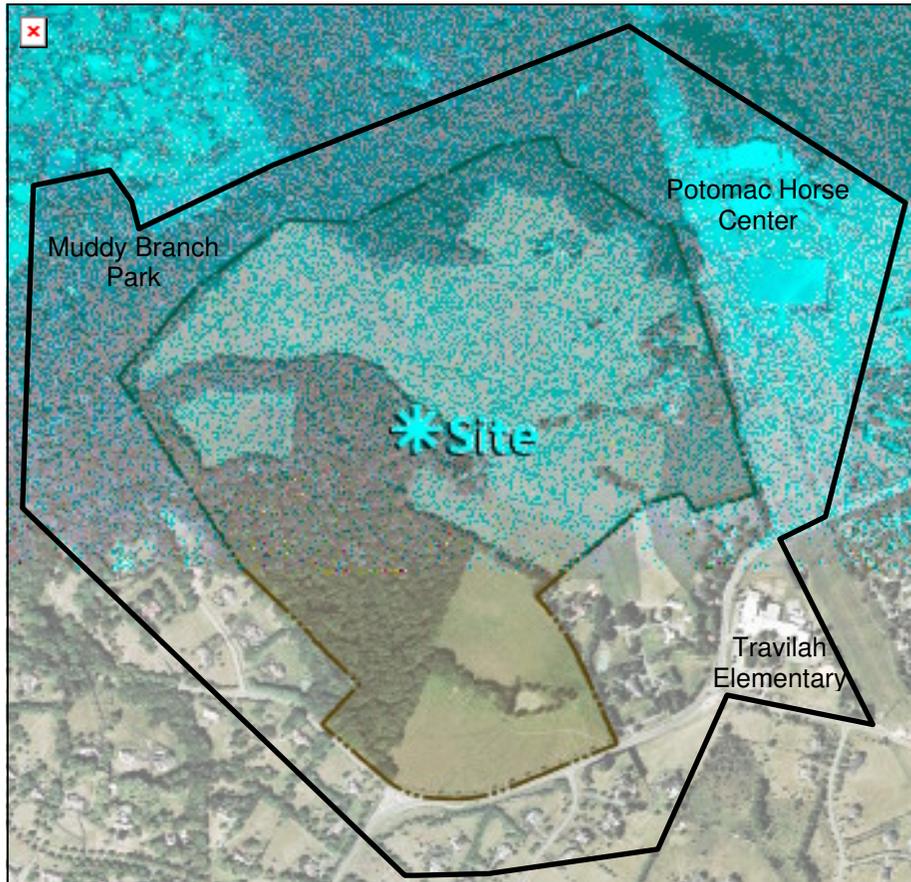
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<sup>6</sup> Initially, Applicant filed a document entitled “Site and Adjacent land Uses, Site Vicinity Map,” which by its shadings identified a darker area as “Subject Site” and a lighter area as “Surrounding Area” (Exhibit 22). The opposition, with some justification, took the area Applicant specified as “Surrounding Area” in Exhibit 22 to be Applicant’s proposed definition of the surrounding area for compatibility evaluation. Applicant’s counsel, Stuart Barr, Esquire, vigorously denied at the hearing that such an interpretation was ever intended (3/12/10 Tr. 136-144); rather, the intention of Exhibit 22 was merely to identify the Site location and the adjacent properties in compliance with the requirements for a development plan, as he explained in a letter filed a couple of days before the hearing (Exhibit 53). Accompanying that letter was a “Surrounding Area Exhibit” (Exhibit 53(a)), in which Applicant proposed a definition of the surrounding area much broader than the initially filed document (Exhibit 22) inadvertently suggested.

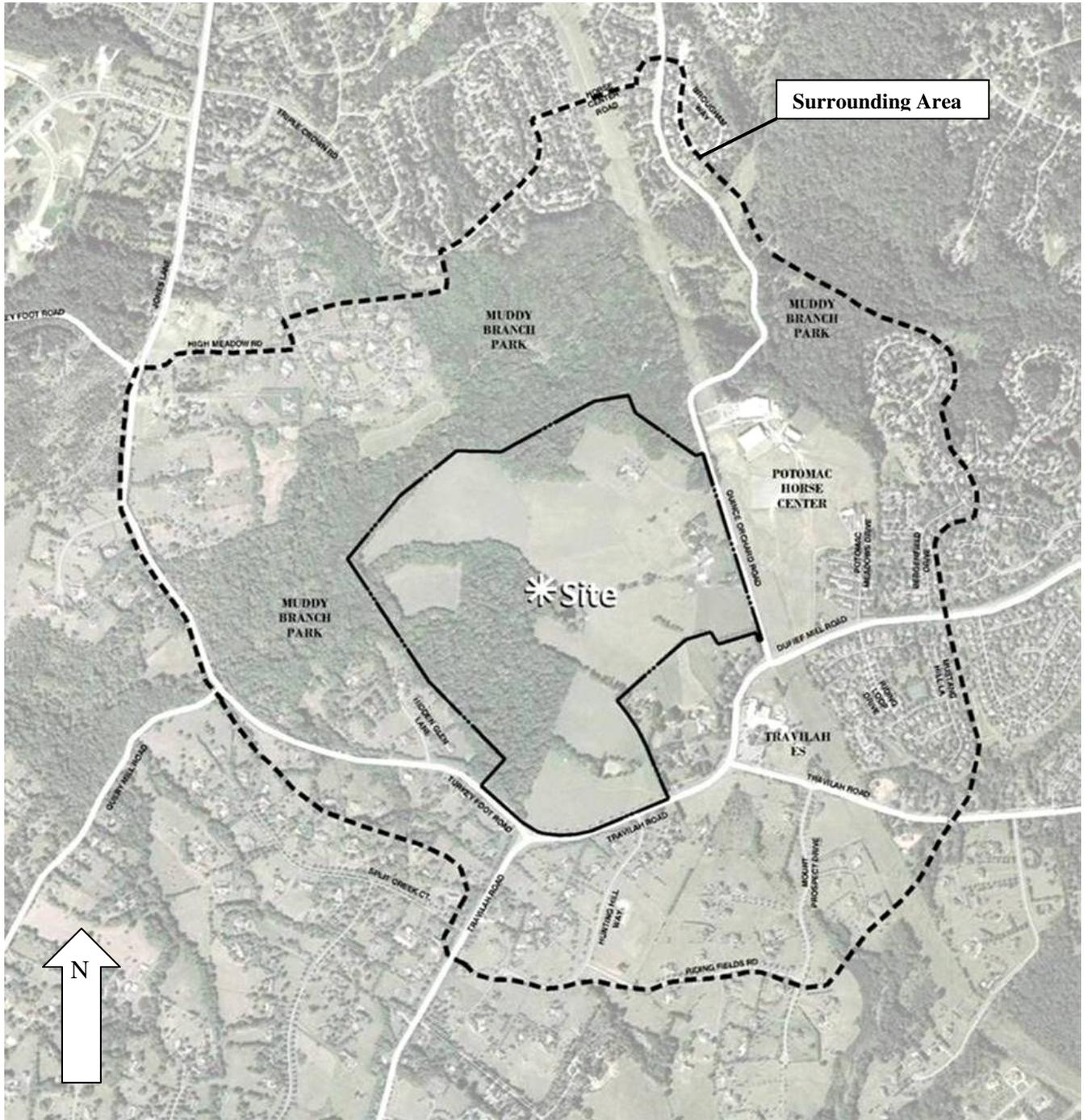
The opposition strongly objected to the broader surrounding area definition, arguing that by broadening the surrounding area definition, Applicant has now included R-200 residential development, which Applicant can then argue is more compatible with what it is proposing, than with existing development in the smaller defined area that had only RE-2 residential development. 3/12/10 Tr. 141.

As the Hearing Examiner explained at the hearing, he has no reason to doubt Mr. Barr’s candor, and accepts his explanation; however, this little side dispute is truly irrelevant to the issues before the Hearing Examiner and the Council. What is relevant is the evidence in the record regarding development around the subject site and how it will be affected by the proposed development. The surrounding area will be defined based on the evidence as to what areas are impacted, not by whether one side or the other filed a document early in the case that implied an initial opinion on the subject. 3/12/10 Tr. 142-144.

Technical Staff depicted this proposed surrounding area in two maps on page 5 of its report, the first showing the defined area and the second the zoning within it. They are reproduced below:



Shortly before the hearing, Applicant filed a “Surrounding Area Exhibit” (Exhibit 53(a)), in which Applicant proposed a definition of the surrounding area somewhat larger than Technical Staff’s proposed definition. It is reproduced below:



In support of this surrounding area definition, Applicant introduced the expert testimony of its land planner, Matthew Leakan. Mr. Leakan indicated that the text description of the surrounding area given by Technical Staff was consistent with his own view, but the map supplied by Staff did not include nearby R-200 developments that should have been included and were mentioned by Staff in its description of the surrounding area.<sup>7</sup> 3/12/10 Tr. 124-136.

Mr. Leakan testified that the surrounding area definition should be the broader one shown in Exhibit 53(a) for essentially two reasons. The first is that “. . . from a practical standpoint the demarcation of that area [in Staff’s map] is far too limiting to understand and address the scope of a project of this size.” 3/12/10 Tr. 130. He observed that the property is 171 acres, which is significant size, and given the nature of the development plan and the multiple access points, a much broader surrounding area is called for. The second is that his proposed surrounding area definition is consistent with the 2002 Potomac Subregion Master Plan’s description of the surrounding area, which notes that “the farm is surrounded by R-200 and RE-2 residential development.” Master Plan , p. 72, 3<sup>rd</sup> ¶.

Mr. Leakan suggested that a rule of thumb is that the surrounding area should reach out approximately a quarter of a mile from the site’s property line in a case like this. Also, “major physical features and other primary mobility quarters, such as road rights of way, . . . the places that people enter and exit from should be included as part of this surrounding area designations.” 3/12/10 Tr. 131-133. He included not only the Potomac Horse Center, but also the majority of the properties up to Bergenfield Drive to the east of the site, which “have a line of sight view at the property frontage, and perhaps drive through Quince Orchard Road to get to the neighborhood.” 3/12/10 Tr. 133. On cross-examination, the opposition attempted to show that Mr. Leakan had reached beyond

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<sup>7</sup> Actually, what Staff said on this point was, “Most of the surrounding area is zoned RE-2, with the horse center and elementary school zoned R-200.” Exhibit 49, p. 4. In other words, there is some R-200 zoned land within the area it proposed to define as the surrounding area, but the development on it was not actually residential.

the actual impacted areas in an effort to include R-200 residential areas within his definition; however, the opposition introduced no expert testimony to weigh against Mr. Leakan's testimony. 3/12/10 Tr. 222-258. They did introduce testimony to the effect that the overhead power lines to the east of the site provide a buffer for some of the neighborhoods included in Applicant's surrounding area definition, at least by significantly increasing the distance from the site. 3/15/10 Tr. 187-188 and 224-225. Alice and Jack Yeh, witnesses at the hearing who live in the adjacent Versailles development, provided photos looking west from ground level in the Potomac Meadows Townhouse community (which is east of the site) to demonstrate that, at least from ground level, the Hanson farm is barely visible, if at all, from the townhouse community (Exhibit 78):



Picture 2

Taken on 3/16/2010. Looking west at the power lines and toward the direction of the Hanson Farm from the end of Roan Lane, the closest point on Roan Lane to the Hanson Farm in the Potomac Meadows community.



Picture 3

Taken on 3/16/2010. Looking west at the power lines and toward the direction of the Hanson Farm from the end of Foal Lane, the closest point on Foal Lane to the Hanson Farm in the Potomac Meadows community.

While it appears from these photographs that the ground level on the Hanson farm is not currently very visible from ground level at the Potomac Meadow Townhouse community to the east of the site, that does not mean that a future development on the Hanson farm, which will, of necessity, be above ground level, will be similarly invisible from the east, as suggested by the Yehs. In fact, photographs taken by Applicant demonstrate that, at the very least, the Potomac Meadow Townhouse community to the east of the site is within viewing distance of the subject site and is quite visible at that distance (Exhibit 76(b)):

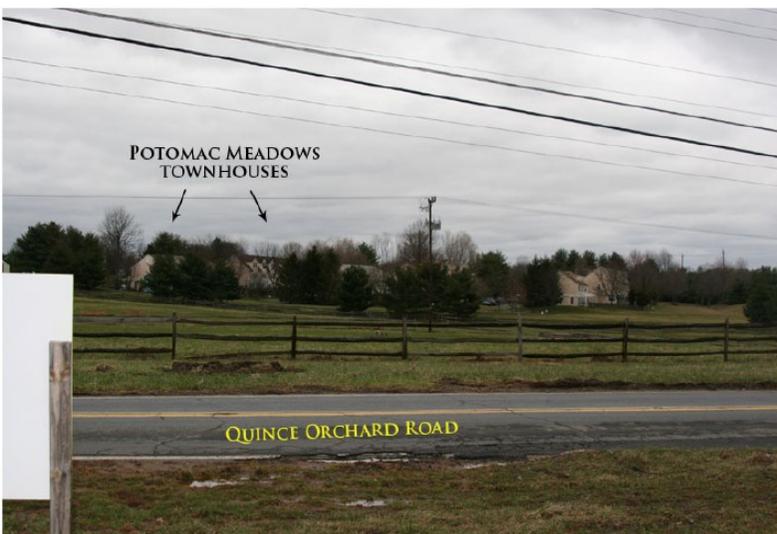


IMAGE TAKEN ON 3/15/10 FROM EDGE OF SUBJECT PROPERTY ALONG QUINCE ORCHARD ROAD AT THE APPROXIMATE PROPOSED INTERSECTION OF STREET C AND QUINCE ORCHARD ROAD. PHOTO IS DIRECTED TO THE EAST AND INCLUDES THE POTOMAC MEADOWS TOWNHOMES.



IMAGE TAKEN ON 3/15/10 FROM WITHIN PROPERTY (APPROXIMATELY 200' FROM QUINCE ORCHARD RD) TO THE EAST TOWARD POTOMAC MEADOWS TOWNHOMES. THE WHITE FENCE IS THE APPROXIMATE EASTERN EDGE OF THE PROPERTY.

It follows that the proposed development on the Hanson farm will be visible from the Potomac Meadow Townhouse community to the east of the site, once the development is constructed, and that the townhouse community should therefore be counted as within the surrounding area of the site.

Considering all the evidence, the Hearing Examiner finds that Mr. Leakan's proposed definition of the surrounding area better describes the potentially affected area than the more narrow one proposed by Technical Staff and the opposition, and it is consistent with the Master Plan reference to a surrounding area that includes R-200 residential development, not just R-200 zoning.

There is rarely a clear cut dividing line in attempting to define the surrounding area, and there

is not one in this case. One could certainly argue that the Muddy Branch Park is a sufficient insulator, and development to the northwest of the park should not be included; however, one of the access points from the development (proposed "Street A") will cause traffic directly on Turkey Foot Road, which runs right past the developments to the northwest. Moreover, there is no park to insulate residential developments to the east and south of the subject site, and many living in those areas may have some view of the development, in spite of the overhead utility lines that separate the site from the eastern developments. They certainly will be subjected to some traffic caused by the development. It seems sensible to include those nearby communities as uses that may well be impacted by the proposed development. The Hearing Examiner thus accepts Exhibit 53(a) as defining the surrounding area in this case.

Technical Staff describes development in its smaller surrounding area as follows (Ex. 49, p. 4):

Although the surrounding area is predominantly residential in character, the area contains commercial, institutional, and parkland uses. The Muddy Branch Stream Valley Park makes up the entire northern half of the surrounding area. The Potomac Horse Center, a smaller-scale commercial enterprise, and Travilah Elementary School, an institutional use, comprise the eastern boundary of the surrounding area. The larger single-family detached homes to the south and west of the site are typical of the residential character of this area. Most of the surrounding area is zoned RE-2, with the horse center and elementary school zoned R-200. . . .

Mr. Leakan describes the broader surrounding area (3/12/10 Tr. 124):

. . . the zoning immediately adjacent to and within the surrounding area of the subject site to the east is R-200 . . . single-family zoning currently in use as the Potomac Horse Center, which is a commercial use. To the south of that Potomac Meadows subdivision [is] another R-200 zoned portion of land. Immediately to the south of that [is] an R-200 TDR zoned portion, and then going around the horn again clockwise to the west R-200 for the . . . underlying zoning of the Travilah Elementary School, located at Travilah and Dufief Mill Road. Then RE-2 immediately to the south of the property comprising the Hunting Hill neighborhood, Hunting Hill Farm neighborhood, Belvedere neighborhood to the south and west, the what's described as Windmill Farm neighborhood to the south and west again, and then again RE-2 zoning[;]. . . the underlying zone of Muddy Branch Stream Valley Park parcels is RE-2 zoning with no improved residential homes. Just to the north of the RE-2 zone, again, within the surrounding area there's a cluster, RE-2 cluster zone, which transitions from the RE-2 to the R-200 just to the north of that subdivision, Potomac Chase subdivision . . . .

Photographs of some residential properties in a few of the surrounding area developments were provided by the opposition. The six images below are from Hunting Hill Estates (Exhibit 63):



The following four photographs from Exhibit 63 show homes, also in the RE-2 Zone to the southwest of the subject site, but not in Hunting Hill Estates:



It is indisputable that there are many beautiful homes in the neighborhoods surrounding the subject site. The surrounding area also contains some less majestic edifices in the form of townhouses, such as those depicted below from Mr. Yeh's letter (Exhibit 78):



The 2002 Potomac Subregion Master Plan recognized the existence of large residential lots to the south and southwest of the subject site, and recommended development of the property accordingly. The Master Plan and Applicant's proposed development of the site, in light of these existing conditions, will be discussed later in this report.

### **C. Zoning History**

According to Technical Staff (Exhibit 70), the subject property was zoned R-A dating back to 1958, the year that Upper Montgomery County was combined with the then Regional District of Montgomery County by a zoning ordinance revision and a comprehensive remapping of the County. In 1973, through Zoning Text Amendment 73013, the R-A Zone was renamed RE-2. The subject property has been zoned RE-2 ever since. Two sectional map amendments (G-247 and G-800) have involved nearby properties, but have not affected the subject site.

### **D. Proposed Development**

#### **1. Development Concept**

Applicant is proposing a 187-unit residential development that will incorporate a 10 acre local park and large open spaces. As Applicant stated in its Statement in Support of Local Map Amendment Application (Exhibit 3, pp. 3-4),

In accordance with the Potomac Subregion Master Plan recommendations, the proposed development of the Property ultimately will include a walkable, pedestrian-friendly, environmentally sensitive residential community totaling 187 residential units (including [12.5%] MPDUs). The residences, clustered away from environmentally sensitive resources, will provide a variety of unit types and lot sizes so as to provide a maximum opportunity for a variety of life styles. A minimum of 35% of the total units will be single-family detached and a minimum of 35% of the total units [but not more than 45%] will be townhouses [or other attached units] as required by Montgomery County Zoning Ordinance Section 59-C-7.131.

It should be noted that the timing of the proposed development is uncertain because the Hanson family intends to continue farming the land for the indefinite future. Technical Staff assesses the proposed development as "closely follow[ing] the goals and conceptual layout shown in

the Potomac Subregion Master Plan.” Exhibit 49, p. 6. Significantly, “the proposed layout guides development and infrastructure away from environmentally sensitive resources on the property,” and a variety of different housing types will be offered. *Id.* Staff further explains:

Larger single-family detached homes are strategically placed on the perimeter of the property to fit within the established residential patterns to the south and east of the site. Similarly, large areas of parkland and open space are proposed to the north and east of the site to fit the existing character of the area. Smaller lots and attached homes are grouped toward the center of the site, away from existing patterns of development along Travilah and Quince Orchard and buffered by forested areas. A significant portion of the property will be preserved as open space, including the creation of a ten acre local park along Quince Orchard Road. A network of pedestrian, biking, and equestrian paths will connect internal open spaces to the ten acre park, the adjacent Potomac Horse Center, and the Muddy Branch Stream Valley Park. *Id.*

The proposed development will incorporate the two existing farm ponds and the existing residence located at the northeastern corner of the site. Several greens, squares, and open spaces are planned to allow gathering space for the community. The proposed development includes significant dedications of forested area along the border of Muddy Branch Stream Valley Park and along the tributaries and stream valleys.

Three entrances are proposed to the Property – two along Quince Orchard Road and one along Travilah Road at its intersection with Turkey Foot Road. A traffic circle is proposed at the Travilah and Turkey Foot Road intersection to enhance safety and slow traffic.<sup>8</sup>

## **2. Development Plan & Binding Elements**

Pursuant to Code § 59-D-1.11, development under the PD-2 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-2 Zone. Under Code §59-D-1.3, this development plan must contain several elements:

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<sup>8</sup> Technical Staff notes that a roundabout is not typically a feature or entryway to a rustic road; however, staff recognizes that this is a unique location and the roundabout addresses concerns raised by the community. By utilizing a roundabout, the applicant is able to preserve trees on Turkey Foot Road ensuring that the rustic road will retain its character. Exhibit 49, p. 7.

- (a) A natural resources inventory;
- (b) A surrounding area map, showing the relationship to the site and use of the adjacent land;
- (c) A land use plan showing site access; locations and uses of all buildings and structures; a preliminary classification of dwelling units; locations of parking areas, including number of parking spaces; location of land to be dedicated to public use; location of land intended for common or quasi-public use but not intended to be in public ownership; and a preliminary forest conservation plan;
- (d) A development program stating the sequence of proposed development;
- (e) The relationship, if any, to the County's capital improvements program;
- (f)&(g) . . . [Inapplicable to the PD-2 Zone];
- (h) The density category applied for, as required in subsection 59-C-7.14(a), and where commercial facilities are included (which is not the case here), an economic analysis supporting their inclusion; and
- (i) . . . [Inapplicable to this case since the site is not within a special protection area].

The Development Plan in this case fulfills these requirements. The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative and conceptual elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those that the District Council will consider in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The final Land Use Plan for the present zoning application is labeled Exhibit 82(a). Although land use plans are technically only a part of the overall development plan, they are usually referred to as the "development plan," and may be so referenced in this report. It contains a site layout, a listing of all the binding and non-binding elements and other notations.

The proposed Development Plan is divided into four, color coded, "Land Bays," designated "A" through "D." Land Bay A consists almost entirely of the 10 acre local park to be dedicated to M-NCPPC and three to five acres of additional open space. Land Bay B is approximately 11 acres in size and will contain a maximum of 11 single-family detached dwelling units (*i.e.*, lots sizes of approximately one acre each). Land Bay C is approximately 15 acres in size and will contain a maximum of 4 single-family detached dwelling units, each of which will have a minimum lot size of



**DEVELOPMENT PLAN NOTES:**

**BINDING ELEMENTS:**

1. The total area to be rezoned to PD-2 is 170.77 acres+/- . The limits of the property to be rezoned are based on the Identification Plat and Metes & Bounds description.
2. The total number of residential units shall not exceed 187 units. Any units over 170 require the use of Transferable Development Rights (TDR's). A minimum of 35% of the total units will be single-family detached and a minimum of 35% of the total units will be townhouses or attached. No commercial uses are proposed.
3. The developed area of the site shall not exceed 50% of the total site area, excluding the local park. The developed area is all of the proposed residential lots and road rights of way.
4. Parking will be provided through a combination of on-lot parking (In driveways and/or garages) and on-street parking. A minimum of 51 on-street parking spaces shall be provided in Land Bay A to satisfy the parking demand for the local park. The total number of on-street parking spaces shall not exceed 193 for Land Bays B, C, and D.
5. The local park site shall be dedicated to M-NCPPC and must be at least 10 acres in size and free and clear of any existing structures as required by M-NCPPC
6. The project shall provide 12.5% of the total number of units as Moderately Priced Dwelling Units (MPDU's)
7. The dwelling units in Land Bay C shall be at least 2 stories in height and comply with the minimum side yard setbacks and height restrictions of the RE-2 zone in place at the time of this Development Plan approval.
8. Attached units, including townhouses, shall not comprise more than 45% of the total number of dwelling units for this project.
9. Vehicular access to Land Bay C for the proposed residential uses shall be located at the intersection of Travilah Road and Turkey Foot Road and shall be the only point of vehicular access from Travilah Road and Turkey Foot Road.
10. Except where Street A joins Travilah Road and Turkey Foot Road, the distance between the Street A right of way and the Travilah Road right of way shall be a minimum of 30'.
11. The existing residence located at 14200 Quince Orchard Road, as identified, shall be retained to be incorporated into the plan.
12. The open space between the Street A right-of-way and Travilah Road right-of-way shall be considered green area, as defined by the Zoning Ordinance, but shall not contain children's playgrounds or swimming pools.
13. Land Use Analysis by Land Bay

**A**

**Quince Orchard Road/Local Park & Open Space: ±15 acres**

Use	Area	# Units	On-Lot Parking	On-Street Parking
Local Park	10 Acres min.	n/a	n/a	51-65 spaces
SFD Units:	Zero (0)	Zero (0)	Zero (0)	
SFA Units:	Zero (0)	Zero (0)	Zero (0)	
MF Units:	Zero (0)	Zero (0)	Zero (0)	
Commercial:	Zero (0)	Zero (0)	Zero (0)	
Open Space:	13 Ac. +/-			

**B**

**Large Lot Residential Addressing Existing Adjacent Residences: ±11 acres**

Use	Area	# Units	On-Lot Parking (Driveway and/or garage)	On-Street Parking
SFD Units:	n/a	11 (Max)	22 (2 /lot min.)	Zero (0)
SFA Units:	n/a	Zero (0)	Zero (0)	
MF Units:	Zero (0)	Zero (0)	Zero (0)	
Commercial:	Zero (0)	Zero (0)	Zero (0)	
Open Space:	0 Ac. +/-			

**C**

**Large Lot Residential Addressing Travilah Road: ±15 acres**

Use	Area	# Units	On-Lot Parking (Driveway and/or garage)	On-Street Parking
SFD Units:	n/a	4 (Max)	8 (2 /lot min.)	Zero (0)
<i>(Lots to be min. 2 acres in size)</i>				
SFA Units:	n/a	Zero (0)	Zero (0)	
MF Units:	Zero (0)	Zero (0)	Zero (0)	
Commercial:	Zero (0)	Zero (0)	Zero (0)	
Open Space:	7 Ac. +/-			

**D**

**Internal Neighborhood: ±130 acres**

Use	Area	# Units	On-Lot Parking (Driveway and/or garage)	On-Street Parking
SFD Units:	n/a	66 - 121	132-242 (2/lot min.)	193 (max)
SFA Units:	n/a	66 - 85	132-170 (2/lot min.)	
MF Units:	Zero (0)	Zero (0)	Zero (0)	
Commercial:	Zero (0)	Zero (0)	Zero (0)	
Open Space:	71 Ac +/-			

**NON-BINDING (ILLUSTRATIVE) ELEMENTS :**

1. This Development Plan generally depicts the overall and unified concept for the Hanson Property and the conformance to the Potomac Subregion Master Plan and Zoning Ordinance.
2. Building and parking locations shown hereon are approximate. Specific building and structure locations, footprints, parking locations, roadways, trails and other design details will be refined and finalized during the Subdivision and Site Plan proceedings.
3. The exact limits of the areas to be dedicated to public use may be refined at future planning stages.
4. This plan is to be developed in one or two phases except as otherwise required to satisfy future AGP staging requirements, construction sediment control requirements, or other standards as required during future regulatory review.
5. The shading for the offsite areas are for illustrative purposes only to identify adjacent land uses.
6. There shall be no more than six (6) bedrooms per unit.
7. Rights of way for the following confronting roads will be dedicated as required at the time of Preliminary Plan approval:
  - a. Quince Orchard Road (80' right of way)
  - b. Travilah Road (80' right of way)
  - c. Turkey Foot Road (70' right of way)
8. At the Subdivision or Site Plan review stage, any units that are unable to be located within either Land Bays B or C may be relocated to Land Bay D and any reduced open space and undeveloped area within Land Bay D as a result of this transfer may be relocated to Land Bays B or C.
9. Subject to septic testing, roadway engineering, and other civil engineering analysis, the dwelling units in Land Bay C shall be designed to comply with the following RE-2 zone development requirements: minimum 150' lot width at building line, minimum 50' front yard setback, minimum 35' rear yard setback.
10. The Potomac Master Plan recommends dedication of "a ten-acre site as a local park, sufficient to accommodate two ball fields and adequate parking."

**Development Program**

Subject to further refinement at the time of Preliminary Subdivision approval, the anticipated sequence of construction is as follows:

- Mass grading of site and sediment control measures
- Installation of common infrastructure (water and sewer lines, public utilities, storm water management facilities, storm drain pipes, primary road access)
- Fine grading of site
- Construction of homes, recreational facilities

The above diagrams and text show the proposed locations of all structures, roadways, open spaces and dedicated areas, as well as additional information regarding the planned development.

However, as noted on the Development Plan, these locations are approximate and will be refined and finalized at Site Plan and Preliminary Plan review.

The base density allowed for a site of this size in the PD-2 Zone is 341.54 dwelling units. (*i.e.*, 2 dwelling units per acre x 170.77 acres). Consistent with the 2002 Potomac Subregion Master Plan, the Development Plan calls for up to 187 dwelling units, if transferable development rights (TDRs) are used. Without TDRs, the development will be limited to 170 dwelling units. As required by law, at least 12.5% of the units will be moderately priced dwelling units (MPDUs).

According to Technical Staff, the development data provided by Applicant will meet the development standards for the PD-2 Zone, including the 30% green area required by the Zone (§59-C-7.16). Exhibit 49, pp. 20-22. Applicant has depicted approximately 56% green area (*i.e.*, about

96 acres). The project also includes the 374 off-street parking spaces required for 187 dwelling units, and 244 to 258 on-street spaces are planned.

In addition to the parkland, the development plan shows illustrative street right-of-way dedications for Quince Orchard, Travilah, and Turkey Foot Roads, with final dedications to be established at the time of Preliminary Plan.

Mr. Hanson described Applicant’s vision of the proposed community on this property as a walkable, pedestrian friendly, environmentally sensitive residential community that both the new community and the existing community can be proud of. 3/12/10 Tr. 58. Shown below is Applicant’s Public Domain Plan (Exhibit 76(a)), which depicts the connecting trails and bikeways planned by Applicant for the site to help achieve this vision:



It should be noted that Applicant has been very flexible in making changes to satisfy the expressed needs of the neighbors. Seven new binding elements and two new non-binding elements were added to the land use plan as a result of the public hearing.<sup>9</sup> Technical Staff approved all of the changes, stating “Staff has no objection to the revised development plan and supports the effort to further limit development of the site in a manner compatible with the surrounding area.” (Exhibit 80).<sup>10</sup> The additional binding elements that were requested by some neighbors and not incorporated into the final plan will be discussed in Part III. E. of this report.

### **3. Conformance with the Master Plan**

The subject site is located in the area analyzed in the 2002 Potomac Subregion Master Plan. John Hanson, spokesperson for the Hanson Family, participated in the Potomac Sub-Region Master Plan process from 1998 through 2002, and from that process came a recommendation for PD-2 zoning. As described by Mr. Hanson, the PD-2 Zone presented an opportunity for a transition between higher density residential development on one side of the property, to the lower density residential on the other side; the protection of about 50 percent of the farm as open space; the addition of a public local park adjacent to the Potomac Horse Center; connected riding and hiking trails linked to the horse center and to Muddy Branch Stream Valley Park; and a variety of single-family homes to support a diverse housing need. The Master Plan recommended the use of transferable development rights if they were available at the time of development as a tool to protect up-county farm land. His instructions to the consultants for the preparation of the subject re-zoning application and the development plans were to comply with the goals and the recommendations of the Master Plan. 3/12/10 Tr. 47-48.

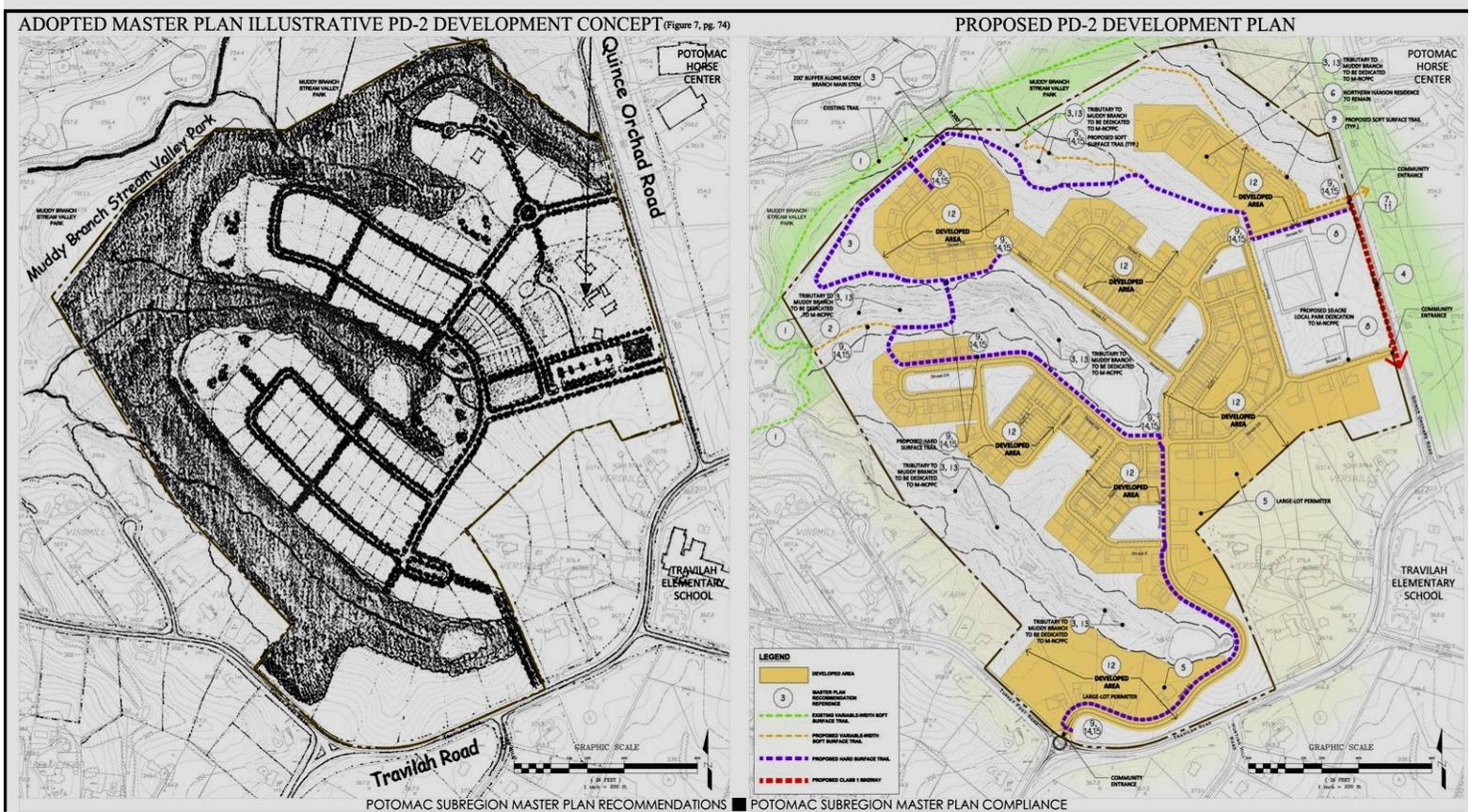
Exhibit 40(b), the Master Plan Compliance Exhibit, lists the recommendations of the Master

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<sup>9</sup> The land use plan initially presented at the hearing (Exhibit 40(a)), which had already been changed significantly in response to comments of Technical Staff, had 6 binding elements and 8 non-binding elements, while the final land use plan (Exhibit 82(a)) has 13 binding elements and 10 non-binding elements.

<sup>10</sup> Some minor wording changes recommended by Staff were incorporated into the final plan.

Plan and Applicant’s compliance therewith. It also contains a side-by-side reproduction of the Master Plan’s Concept Plan and Applicant’s Land Use Plan.<sup>11</sup> Using Exhibit 40(b) [later replaced with Exhibit 76(e), because there was a “typo” in the exhibit]<sup>12</sup>, Mr. Leakan demonstrated how Applicant’s land use plan tracks the recommendations of the Master Plan. 3/12/10 Tr. 145-150; 193-195. The diagrams from Exhibit 76(e) are reproduced below. The text, shown on the following page, is unfortunately too small to be displayed side-by-side, as in the actual exhibit:



<sup>11</sup> This is an extremely useful exhibit, which Applicant’s counsel credits to the suggestion of the People’s Counsel. 3/12/10 Tr. 196. The Hearing Examiner compliments Mr. Klauber for suggesting it and Mr. Barr for accepting the suggestion.

<sup>12</sup> The word “typo” is used for lack of a better shorthand. It consisted of the inadvertent addition of two lines superimposed on the image. (The Hearing Examiner considered using the word “imago,” but that term refers to the last stage of development of an insect, after emergence from the pupa, so he stuck with the term “typo” used by Applicant’s counsel.) Completely aside from the “typo,” it is interesting to note that the diagram from page 74 of the Master Plan used in these exhibits is actually from the “Interim Addition” of the approved and adopted 2002 Master Plan. When M-NCPPC published the final addition of the Master Plan, it “improved” the diagram on page 74 by colorizing it, thereby obscuring the important details shown on the original diagram.

**POTOMAC SUBREGION MASTER PLAN RECOMMENDATIONS**

	Provide community sewer service on the Hanson Farm only if development is clustered away from environmentally sensitive features and if an emphasis is placed on minimizing wetland disturbance caused by sewer main construction." (pg. 26)
	Reszone the site from RE-2 to PD-2 with a TDR option, to encourage a more compact development... (pg. 72)
	...expand the stream valley system, protect sensitive areas, provide community facilities, and promote walking and biking." (pg. 72)
	Limit the allowable density to a maximum of 170 dwelling units, including MIPDU... TDR density incentives may be used to increase the maximum number of dwelling units by 10 percent, to 187." (pg. 72)
	Include large lots of the perimeter to buffer existing residences, generally on the south and east." (pg. 72)
	Retain both existing Hanson residences and incorporate them into the fabric of the new community." (pg. 72)
	Dedicate land for the North Potomac Community Recreation Center if the County Council does not select the preferred site for the center on Ironfish Road." (pg. 72)
	Maintain adequate setbacks between playing fields and the adjacent homes." (pg. 72)
	Provide links from the local park to the Muddy Branch Stream Valley Park." (pg. 72)
	Cluster development away from environmentally sensitive resources." (pg. 75)
	Dedicate a 10 acre site as a local park, sufficient to accommodate two ball fields and adequate parking." (pg. 75)
	Development on the site must not exceed 50 percent of total site area, excluding the potential community recreation center." (pg. 75)
	Expand the regional stream valley park system by dedicating: <ul style="list-style-type: none"> <li>• forested area along northernmost tributary, including the existing farm road, which can be incorporated into the trail system</li> <li>• areas of sensitive features, such as steep slopes and a 200 foot buffer along the Muddy Branch main stem</li> <li>• forested areas adjacent to Ironfish Road and adjacent stream valleys to connect with the existing stream valley park." (pg. 75)</li> </ul>
	Provide paths between the community center or local park, the Potomac Horse Center, Ironfish Road, and the stream valley park." (pg. 75)
	Provide frequent pedestrian links to the trail system in the stream valley that provide community access to the park." (pg. 75)

**POTOMAC SUBREGION MASTER PLAN COMPLIANCE**

1	This Development Plan application provides community sewer service, clusters development away from environmentally sensitive features and minimizes wetland disturbance caused by sewer main construction (see Land Use Plan, Statement in Support, and Water and Sewer Exhibit).
2	This Development Plan application proposes PD-2 zoning with a TDR option to encourage a more compact development.
3	This Development Plan application proposes to dedicate Muddy Branch tributaries/buffers to expand the stream valley system, establish buffers to protect sensitive areas (streams, wetlands, steep slopes) provide community facilities in the form of a 10 acre dedication (local park), and promote walking and biking by providing multiple natural and hard surface trails and sidewalks (see Land Use Plan).
4	This Development Plan application proposes 170 base dwelling units with a 10 percent TDR increase, for a combined total of 187 d.u.'s (See Land Use Plan for calculational).
5	This Development Plan proposes large lots of the perimeter to buffer existing residences, generally on the south and east (see Land Use Plan).
6	This Development Plan application proposes to retain the northern Hanson residence. The M-NCPPC Parks Department requires this local park to be provided free and clear of any structures.
7	The County Council selected the preferred site for the community recreation center on Ironfish Road (a 10 acre dedication for a local park has been proposed with this application).
8	This Development Plan application provides adequate setbacks between playing fields and adjacent homes by lining the local park with single-loaded roads and on-street parking.
9	This Development Plan application proposes multiple points of access from the local park to the Muddy Branch Stream Valley Park including soft surface and hard surface paths.
10	This Development Plan application clusters development away from environmentally sensitive resources (see Land Use Plan and Final/Interim Forest Conservation Plan).
11	This Development Plan application proposes a 10 acre site as a local park, sufficient to accommodate a baseball field, a soccer field and adequate on-street parking (see Land Use Plan).
12	The developed area of the site, as identified on this exhibit, is less than 50% of the total site area, excluding the local park.
13	This Development Plan application expands the regional stream valley park system by proposing to dedicate: <ul style="list-style-type: none"> <li>• forested area along northernmost tributary, including the existing farm road, which can be incorporated into the trail system</li> <li>• areas of sensitive features, such as steep slopes and a 200 foot buffer along the Muddy Branch main stem</li> <li>• forested areas adjacent to Ironfish Road and adjacent stream valleys to connect with the existing stream valley park.</li> </ul>
14	This Development Plan application provides paths between the local park, the Potomac Horse Center, Ironfish Road, and the stream valley park (see Land Use Plan and Public Domain Plan).
15	This Development Plan application provides frequent pedestrian links to the trail system in the stream valley that provide community access to the park (see Land Use Plan).

As observed by Mr. Leakan, the Master Plan's Concept Plan for the site on page 74 of the Master Plan (Figure 7) clearly lays out the Master Plan's model for development of the property. The general layout of the land use plan was thus well established with guidance from the Master Plan. 3/12/10 Tr. 146. The Technical Staff report contains an excellent discussion of Applicant's compliance with the Master Plan (Exhibit 49, pp. 11-14):

. . . The Master Plan makes specific recommendations for the subject property on pages 70 through 75. In pertinent part, the Plan states:

- *“Rezone the site from RE-2 to PD-2 with a TDR option, to encourage more compact development, expand the regional stream valley system, protect sensitive areas, provide community facilities, and promote walking and biking.”*

The development plan proposes PD-2 zoning and will use the TDR option to increase density and encourage a more compact development.

- *“Limit the allowable density to maximum of 170 dwelling units, including MPDUs. The Council is considering a text amendment to provide a TDR option in the PD zone. If this change is approved, TDR density incentives may be used to increase the maximum number of dwelling units by 10 percent, to 187.”<sup>13</sup>*

The development plan proposes using the maximum of 170 dwelling units, with TDR incentives, increasing the maximum number of dwelling units by 10 percent to have 187 total dwelling units on site.

- *“Include large lots at the perimeter to buffer existing residences, generally on the south and east.”*

The development plan proposes large lots along the perimeter of the existing homes found near the southeastern portion of the site as well as large lots along the southern portion of the site near Travilah Road.

- *“Retain both existing Hanson residences and incorporate them into the fabric of the new community.”*

The development plan proposes to keep only one of the Hanson residences found on the northern portion of the site. Staff finds it acceptable that the other Hanson residence be removed from the site since it conflicts with the proposed recreation field.

- *“Dedicate land for the North Potomac Community Recreation Center if the County Council does not select the preferred site for the center on Travilah Road. (See*

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<sup>13</sup> The Council did approve such an amendment, and Zoning Ordinance §59-C-7.14(e) now provides: *The District Council may approve a density bonus of up to 10% above the maximum density specified in the approved and adopted master plan for the provision of TDRs, if the use of TDRs is recommended for the site.*

*Community Facilities Plan.)”*

The North Potomac Community Recreation Center site was selected and will be located adjacent to Big Pines Local Park on Travilah Road. The development plan proposes instead that a 10 acre local park be created [and] dedicated to MNCPPC.

- *“Maintain adequate setbacks between playing fields and the adjacent homes.”*

This development plan provides adequate setbacks between the playing fields and the adjacent homes.

- *“Provide links from the local park to the Muddy Branch Stream Valley Park.”*

The development plan provides hard surface as well as soft surface trails linking the local park to the Muddy Branch Stream Valley Park.

- *“Development on this site should meet this Plan’s general design principles.”*

This development [plan] meets the Potomac Subregion general design principles. The proposed access road on Travilah deviates from the conceptual figure, but provides a better design solution by creating a roundabout with Turkey Foot Road, Travilah Road, and the site’s entrance and avoids disrupting an existing stream.

- *“Cluster development away from environmentally sensitive resources.”*

The development plan locates development away from environmentally sensitive resources. The proposed access road also avoids the stream.

- *“Dedicate a 12- to 13-acre site for a community recreation center along Quince Orchard Road to ultimately include the existing farm. The site should accommodate a 24,000 net square foot recreation center, playing fields, and adequate parking. If the County Council selects the preferred community recreation center site on Travilah Road,[...], then the [following bullet point] appl[ies] for alternative recreation facilities at Hanson Farms.”*
- *“Dedicate a ten-acre site as a local park, sufficient to accommodate two ball fields and adequate parking.”*

A community recreational building is not in the proposal since a site was selected elsewhere in North Potomac. The development plan proposes a 10-acre local park to accommodate two ball fields with adequate on-street parking.

- *“Development on this site must not exceed 50 percent of the total site area, excluding the potential community recreation center.”*

The development on this site is less than 50 percent of the total site area.

- *“Expand the regional stream valley park system by dedicating:  
-Forested area along northernmost tributary, including the existing farm road, which can be incorporated into the trail system.  
-Areas of sensitive features, such as steep slopes and a 200 foot buffer along the Muddy Branch main stem.  
-Forested area adjacent to Travilah Road and adjacent stream valleys to connect with the existing stream valley park.”*

The development plan expands the stream valley park system by proposing to dedicate several stream valley and sensitive areas to MNCPPC as well as incorporating existing roads into a trail system.

- *“Provide paths between the community center or local park, the Potomac Horse Center, Travilah Road, and the stream valley park.”*

The development plan proposes hard and soft surface trails to the Muddy Branch Stream Valley Park as well as to the local park, the Potomac Horse Center, and Travilah Road.

- *“Provide frequent pedestrian links to the trail system in the stream valley park that provide community access to the park.”*

The development plan provides several pedestrian links to various places as stated in the above sections.

Technical Staff concluded that Applicant’s “proposal supports almost all of the Master Plan recommendations. . . . Staff finds the proposed rezoning from RE-2 to PD-2 consistent with the 2002 Potomac Subregion Master Plan.”<sup>14</sup> There is no contrary evidence in this record, and the Hearing Examiner finds that the proposed development is consistent with the recommendations, guidelines and goals of the 2002 Potomac Subregion Master Plan.<sup>15</sup>

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<sup>14</sup> Staff noted that the slight deviation in road configuration from the Master Plan’s conceptual layout was necessary to avoid an adverse environmental impact to a stream on the property and an unworkable distance between two access points.

<sup>15</sup> Applicant noted in its Statement in Support of the Application (Exhibit 3, p. 5) and in the testimony of its experts (3/15/10 Tr. 45-52) that there is a provision on page 26 of the Master Plan dealing with sewer service on the Hanson Farm development. That recommendation specifies that Applicant should “*Provide community sewer service on the Hanson Farm only if development is clustered away from environmentally sensitive features and if an emphasis is placed on minimizing wetland disturbance caused by sewer main construction.*” As indicated by Applicant, the proposed development is clustered away from environmentally sensitive features. Public water and sewer are proposed for the subject site; however, under the current plan, the homes in Land Bay C will be served by septic systems, with a possible later upgrade to pressure sewers. The sewer main extensions to serve the remainder of the site have been conceptually designed to avoid and/or minimize adverse impacts to mature trees, wetlands and other environmentally sensitive resources, as will be discussed in the next section of this report.

#### **4. Public Facilities (Traffic Impact, School Capacity and Water & Sewer Service)**

Zoning Ordinance §59-H-2.4(f), requires Applicant to produce “[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted.”

Applicant’s land planner, Matthew Leakan testified that police protection is provided by the Montgomery County Police, Rockville District. Fire and rescue services are provided by four stations identified in the Master Plan as Cabin John Park Stations 30 and 10, and Rockville Stations 31 and 33. 3/12/10 Tr. 203. Public facilities for transportation, schools and water and sewer service are treated under separate headings, below.

##### **a. Traffic Impact**

Concerns about traffic impacts were raised mostly by a nearby resident, Dr. Paul Goldberg, who testified, “While the traffic studies may look good on paper they do not really reflect what is a current every day situation on our roads.” 3/12/10 Tr. 82-83. Dr. Goldberg referenced newspaper articles and conversations with transportation officials in an effort to show that there are congestion problems in the County transportation system. He also recited his own difficulties with increased traffic on the streets near him, and summed up by saying that the proposed development adding 187 new homes “definitely will increase traffic delays, I think it will make it more difficult to get out of my neighborhood having more cars . . .” 3/12/10 Tr. 87.

Applicant’s expert in traffic engineering, Wes Guckert, testified that, in his expert opinion, the nearby roads and intersections can adequately handle the traffic proposed to be generated by this development. 3/12/10 Tr. 302-303. He conducted traffic counts initially at two locations as requested by Technical Staff. Those were MD Route 28 and Quince Orchard Road, and River Road (MD Route 190) and Piney Meeting House. Later, Staff asked him to examine Dufief Mill and

Quince Orchard Roads, and he undertook a supplemental analysis.

Mr. Guckert determined the amount of traffic projected to be generated and the direction of that traffic to and from the site. Generally, about 14 percent of the traffic will go to the north, towards Route 28; about 14 percent will go to the southeast, down towards River Road; and the balance, about 72 percent, will go east, northeast up Dufief Mill Road. These percentage projections are based upon a guideline that is mandated by the Planning Staff, pursuant to an overall computer model.

Mr. Guckert then conducted intersection capacity analyses to determine the critical lane volume (CLV), and whether or not the development would meet the critical lane volume threshold for the Rural West Area, which is 1,350. He determined that the development would meet the critical lane volume standards for Local Area Transportation Review (LATR) and reported his findings in Exhibits 17 and 36(h). Policy Area Mobility Review (PAMR), does not apply in this policy area.

Additional intersections were thereafter examined at the request of Mr. Hanson, and he did traffic counts at Travilah Road and Glen Road; River Road and Travilah Road; and Glen Road and Glen Mill Road, as reflected in Exhibit 57. Based on his observation and studies of those intersections, he concluded that the nearby roads and intersections can adequately handle the traffic proposed to be generated by this development.

Also, in his expert opinion, the proposed internal vehicular circulation systems will be safe and adequate, and the proposed points of external access, as well as the proposed round-about at Travilah Road and Turkey Foot Road, will be safe, adequate and efficient. The three proposed access points also provide an adequate sight distance. 3/12/10 Tr. 302-303. Mr. Guckert opined that public transportation facilities and services would be adequate to serve the proposed development, and the proposed uses would be in harmony with the general character of the existing neighborhood as to traffic conditions. In his expert opinion, the proposed uses would not adversely affect the existing residential community as to traffic conditions. 3/12/10 Tr. 295-316.

Both Technical Staff and Department of Transportation (DOT) staff concurred with his findings, without exception. As stated by Technical Staff (Exhibit 49, pp. 23-24 and its Attachments 5 and 6),

All existing intersections are currently operating at the acceptable congestion standard and this standard is projected to continue under total future traffic conditions. Therefore, this application meets the LATR requirements of the APF review.

The site is located in the Rural West Policy Area where there is no PAMR mitigation requirement. Therefore, the subject application also satisfies the PAMR requirements of the APF review.

Technical Staff therefore concluded that “[t]he proposed development under the PD-2 Zone will not have an adverse impact on the surrounding roadway network.” *Id.* Staff also found that “the proposed access to the site [will] be safe and adequate . . . [and] that the internal vehicular and pedestrian circulation provides for a safe and adequate movement of traffic.”

Given the review by both M-NCPPC Technical Staff and DOT Staff, and the absence of any expert evidence to the contrary, the Hearing Examiner must find that there is a reasonable probability that available public transportation facilities and services will be adequate to serve the proposed development, in spite of Dr. Goldberg’s concerns.

b. School Capacity

The subject property is located within the Wootton Cluster and is served by Travilah Elementary School, Robert Frost Middle School, and Wootton High School. In a letter dated February 17, 2010, Bruce H. Crispell, Director of Planning and Capital Programming for Montgomery County Public Schools (MCPS), reported to Technical Staff that the proposed development of 187 dwelling units is estimated to generate 57 elementary, 27 middle and 17 high school students, at full build-out.

Mr. Crispell indicated that enrollment at the elementary school is currently within capacity and is projected to remain within capacity; enrollment at Robert Frost Middle School is currently

over capacity, although enrollment is trending down and is expected to be within capacity by the 2014-2015 school year; and enrollment at Wootton High School is currently over capacity and is projected to remain over capacity. However, Mr. Crispell concluded by stating that “the current growth policy schools test (FY 2010) finds capacity adequate in the Wootton Cluster.” (Attachment 7 to Exhibit 49). There is no evidence in the record to the contrary.

Given the fact that capacity is adequate under the current growth policy schools test, the Hearing Examiner finds that it is reasonably probable that public school facilities and services will be adequate to serve the proposed development.

c. Water and Sewer Service

Frank G. Bossong, Applicant’s civil engineer testified the entire development would be served by public water, and all but Land Bay C would be served by public sewer; Land Bay C would be served by septic systems. 3/15/10 Tr. 63-65. The project is located in an area categorized as S6/W6, and Applicant is requesting S3/W3 categories, which means public water and sewer service. S1/W1 categories would mean the lines are there today, while S3/S4 means Applicant is going to bring the lines to the property.

There currently are existing water lines in Dufief Mill Road and in Travilah Road, which would be tapped for water service. 3/15/10 Tr. 63-65. The most sensitive areas of connection for the sewer would be connecting into the existing 30 inch trunk main within the stream valley area. On the northwestern portion of the site, a short connection would suffice. The other location would be directly west on the property, where Applicant would tie into the existing 33 inch sanitary sewer main.

Land Bay C is proposed to be served by a standard septic system, with each lot having its own septic field. The topography in and around Land Bay C would not lend itself to a gravity sewer in an environmentally acceptable way. Mr. Bossong therefore felt it made more sense to serve homes in

Land Bay C with a septic system, but he noted that it does not preclude the possibility of a pressure sewer for these four lots in the future. If the S3 category is granted, Land Bay C may still develop with septic fields; however, the S3 category would allow later development of a pressure sewer there.

A Washington Suburban Sanitary Commission (WSSC) memo (Attachment 4 to the Technical Staff report) indicated that the sewage “interceptor capacity is deficient.” Mr. Bossong therefore introduced Exhibit 60, a March 8, 2010 email from Bruce MacLaren, a senior hydraulic engineer for WSSC, indicating interceptor capacity is currently adequate; however, the e-mail seemed to restrict his conclusion to dry weather conditions. Applicant therefore agreed to produce a clarifying e-mail from WSSC. They did so in Exhibit 76(a), which is also not the epitome of clarity; however, it does indicate that while capacity might be exceeded for short periods under wet weather conditions, “the interceptor capacity should be sufficient to handle the generated flow.” Mr. Bossing testified that what WSSC is saying is that there appears to be sufficient capacity, but if they find a specific problem down the road and a piece of line somewhere down the trunk line is experiencing actual problems, there will be a requirement to fix the problem before this development can go forward.

Given WSSC’s statements and Mr. Bossong’s expert testimony, the Hearing Examiner finds that Applicant has demonstrated a reasonable probability that available water and sewer facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards.

## **5. Environmental Issues**

Applicant’s environmental expert, Dusty Rood, testified that the subject site drains generally to the west from the east towards the Muddy Branch Stream Valley via four tributaries that are generally on, or in the case of the northernmost tributary, adjacent to the property. These four tributaries drain offsite to the Muddy Branch main stem, generally to the north and west. The

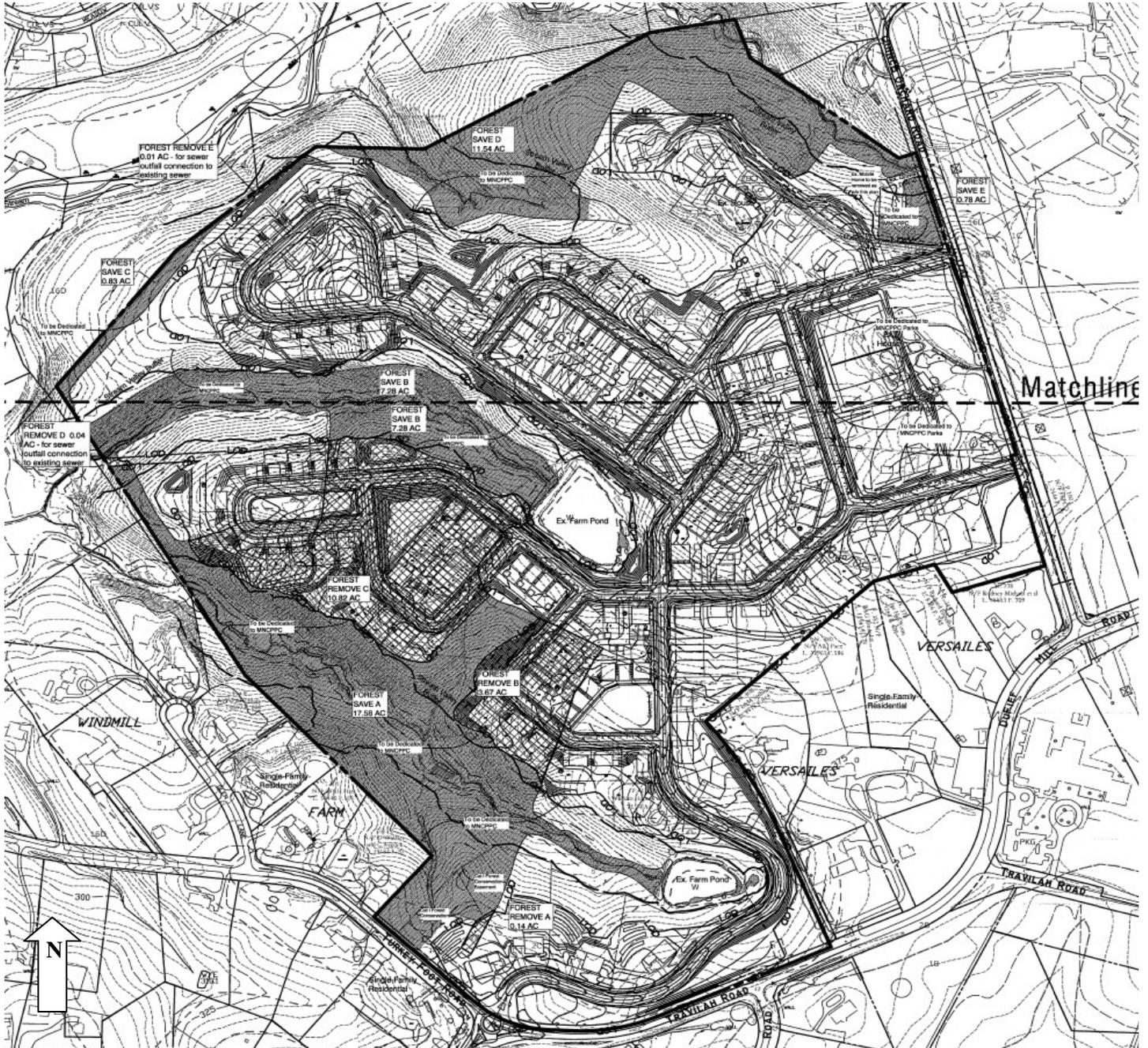
topography itself is gentle to moderately rolling terrain with steeper slopes and moderate slopes being located along and generally within the stream valley buffers of the four tributaries. There are approximately 53 acres of forested areas on the property. All of the tributaries on site contain at least some forest. There are 33.9 acres of stream valley buffer, which generally contain the site's most sensitive areas, streams, wetlands, flood planes and steep slopes, and those areas are generally around the four tributaries. None of this property is in a special protection area or a primary management area. 3/15/10 Tr. 41-42.

Applicant has submitted a Natural Resources Inventory and Forest Stand Delineation (NRI/FSD) approved by Technical Staff (Exhibits 11 and 56, in rendered form); a Stormwater Water Management Concept Plan (Exhibits 15 and 61, in rendered form) approved by the Department of Permitting Services in a letter appended to Exhibit 49 as Attachment 3; and a Preliminary Forest Conservation Plan (PFCP) (Exhibit 76(h), (i) and (j)), which will be reviewed by the Planning Board at Site Plan and Subdivision. Exhibit 49, pp. 25-27.

a. Forest Conservation

The PFCP shows 14.68 acres of forest clearing and 38.01 acres of forest retention. According to Technical Staff, "This level of forest retention exceeds the amount necessary to avoid reforestation, while also protecting priority forest within and contiguous to the stream valley buffer on site." *Id.* The approval of the PFCP is dependent upon the approval of a forest conservation "variance" for removal of certain trees, which have been identified in recent state legislation as a high priority for protection. If a forest conservation plan cannot be altered to protect these individual trees, the Applicant is required to submit a variance to remove the trees. Since the Applicant is proposing to remove 41 covered trees, it has requested a variance. Montgomery County Forest Conservation Law §22A-21 requires the Planning Board to refer a copy of each request to the County Arborist in the Montgomery County Department of Environmental Protection for a written

recommendation and to make certain findings before granting a tree variance.<sup>16</sup> Technical Staff reviewed the variance application and concluded the Planning Board should approve the tree-variance application. The PFCP (Exhibit 76(h)) is depicted below:



<sup>16</sup> §22A-21(d) provides that the variance may not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Technical Staff recommended approval of the PFCP, stating (Exhibit 49, p. 27):

This plan is in compliance with Environmental Guidelines. The proposal is consistent with the Master Plan's environmentally-based recommendations and Land Use and Design Guidelines. Through clustering forest retention and dedicating parks, the proposed plan protects environmentally sensitive areas and expands the regional stream valley park system. Environmental planning staff is supportive of the zoning change and recommends approval of the associated Preliminary Forest Conservation Plan.

b. Stormwater Management

Mr. Bossong testified that he prepared the storm water management concept plan that is in the record as Exhibit 15. He introduced a rendered version as Exhibit 61. The site was designed using the "ESD" approach, which stands for "environmental site design," in compliance with the new State of Maryland regulations. It encompasses the use of natural storm water management measures such as wells, down spout disconnects, bio-filtration facilities, infiltration facilities and quantity control measures. Attachment 3 to Technical Staff report is a letter of approval of the storm water management concept plan by the Department of Permitting Services (DPS). Even though the location of Street A changed after that approval, DPS indicated that it will not require the storm water management concept for the site to be resubmitted for review. The change in the roadway can be addressed at the detailed site plan and subdivision review stage. Exhibit 62.

Instead of having centralized storm water management facilities, there will be integrated, smaller, storm water management techniques inside of the site. This plan differs from that which had been used over the last 20 or 30 years, in that it does not rely solely on large perimeter control measures. Though there still will be perimeter measures, the new concept is to use natural features, instead of traditionally large structural storm water management facilities. Thus there will be bio-retention facilities scattered throughout the project. In Mr. Bossong's opinion, the storm water management system will provide for safe conveyance of stormwater. The design will mimic the release rate of a forest in good condition, which is actually better than the existing condition of runoff

today. It will thus reduce runoff into surrounding properties. 3/15/10 Tr. 81-89. The final determination of stormwater management will be made later (*i.e.*, at subdivision).

In sum, Applicant demonstrated great sensitivity to environmental concerns, as recommended by the Master Plan, and Technical Staff reported no environmental issues warranting denial of this application. The entire record supports a finding that Applicant's plans take due care to protect the environment.

### **E. Compatibility and Neighborhood Concerns**

The original public hearing date in this case was postponed so that Applicant could amend its application to resolve some concerns about potential environmental impact and compatibility issues. The revisions resulted in less environmental impact, larger lots with no driveway access along Travilah Road, and an increased open space buffer between the adjacent Hunting Hills community and the proposed development.

The members of the community who oppose this application are more concerned about the development plan than the rezoning, *per se*. For the most part, their opposition centers around Applicant's decision not to include some of the binding elements they would like to see in the development plan to ensure compatibility.<sup>17</sup> They recognize that Applicant has added a number of binding elements and made other changes to accommodate the neighborhood, but they fear that an as yet unknown developer who acquires rights to develop this property at some unspecified time in the future may not be as considerate of the community as the Hanson family. The Hanson family has made changes in its plans (including changes made as a result of the public hearing), but is unwilling to make every change sought by some members of the community.

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<sup>17</sup> It should be noted, however, that one member of the opposition, Dr. Paul Goldberg, premised his opposition not on compatibility concerns, but on worries about traffic that will be generated by the development. This issue was thoroughly discussed in Part III. D. 4 a. of this report, and therefore will not be addressed in this section. Based on the evidence, the Hearing Examiner concluded that Applicant had satisfied the statutory test regarding the adequacy of transportation facilities to serve the proposed development

Much of the opposition's case at the hearing was devoted to showing that the homes and lots located south of the subject site are quite large,<sup>18</sup> and arguing that the homes planned for the southern periphery of the proposed development (Land Bays B and C) should match their size to be compatible. To this end, the opposition suggested at the hearing that there ought to be a binding element requiring all homes in Land Bay C to be a minimum of 4,000 square feet. 3/15/10 Tr. 146.

In response, Mr. Hanson introduced Exhibit 65, which shows that many of the homes in Hunting Hill Estates and the nearby developments are less than 4,000 square feet in enclosed size. Mr. Hanson stated that while Applicant's vision is that the development should be compatible with these properties, he does not feel that Hunting Hill Estates is the only neighbor or the only community in this whole area with which the development must be compatible. 3/15/10 Tr. 241-252.

The fact is that the RE-2 Zone does not contain a requirement for a minimum of 4,000 square foot homes (or any minimum size home).<sup>19</sup> Since smaller homes could be built as a matter of right under the current zoning and since some of the smaller size already compatibly exist in Hunting Hills, Versailles and other nearby developments, it is hard to argue that homes of at least 4,000 square feet are a necessary requirement for the proposed development plan.

Similar considerations apply to the request of those living in the Versailles development for lots in Land Bay B that are close in size to their own two-acre lots. The Master Plan's Concept Plan does not show two acre lots in the area which is now planned for Land Bay B; rather, it shows ten lots in that area, very close in size to the 11 lots now planned for that area. It must be remembered that the intention is to use the lots on the periphery of the development as a buffer and transition to the compact development the Master Plan calls for in the center of the subject site. The Hearing Examiner finds that the planned lot sizes on the southern edge of the subject site will serve that

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<sup>18</sup> See, e.g., photographs from Exhibits 63, reproduced on pp. 15-16 of this report, and Exhibits 64 and 69, listing property sizes.

<sup>19</sup> Zoning Ordinance §59-C-1.32.

purpose well, as all the expert evidence, both Applicant's and Technical Staff's, has demonstrated. The landscaping sought by the opposition is a matter best left to site plan review.

The People's Counsel initially expressed concerns over the need for clarification of the land use plan and for additional binding elements (3/12/10 Tr. 25-29), and his cross-examination of Applicant's land planner highlighted these concerns. 3/12/10 Tr. 210-218. Ultimately, however, he supported the application after key revisions were made to the land use plan.

As mentioned earlier in this report, seven new binding elements and two new non-binding elements were added to the Land Use Plan as a result of the public hearing. Technical Staff approved all of the changes (Exhibit 80). Revisions to the Land Use Plan made as a result of the hearing included reorganizing the text for clarity; reducing the maximum number of dwelling units in Land Bay B from 15 to 11; and adding binding elements, which specified the need for TDRs before exceeding 170 dwelling units; specified the height and certain setbacks of dwelling units in Land Bay C; limited the number of attached units in the development; limited vehicular access to Land Bay C; specified the distance between Street A and Travilah Road; specified the retention of the existing residence at 14200 Quince Orchard Road; and limited the use of certain green areas. Non-binding elements were added quoting the Master Plan's call for the ten-acre local park to have two ball fields and adequate parking, and stating that, subject to septic testing, roadway engineering and other civil engineering analysis, the dwelling units in Land Bay C will be designed to comply with specified RE-2 Zone development requirements (a minimum 150 foot lot width at the building line, a minimum 50 foot front yard setback and a minimum 35 foot rear yard setback).

Nevertheless, the opposition wishes still additional binding elements. For example, HHE-HOA's closing argument (Exhibit 83) seeks the following additional binding elements:

1. The moderately priced dwelling units shall not be concentrated in one location but shall be dispersed in accordance with the intent of County policy.

2. The moderately priced dwelling units shall be of a design and exterior material and quality so as to be similar to the non-moderately priced dwelling units.
3. The current binding element number 7, providing that the new houses on Land Bay C shall be at least two stories and comply with the minimum side yard setback and height restrictions of the RE-2 zone, should be amended to supplement the binding element by providing a minimum lot width of 150' at the building line, and a minimum 50' front yard setback.<sup>20</sup>
4. Each dwelling unit in Land Bay C shall be of similar size, style and exterior materials as existing adjacent and confronting dwelling units.
5. Existing binding element number 10 be modified by adding the italicized language below, and existing binding element number 12 is to be deleted:

Except where Street A joins Travilah Road and Turkey Foot Road, the distance between the Street A right-of-way and the Travilah Road right-of-way shall be a minimum of 30', *and, this area shall be used for plantings to buffer/screen Land Bay C houses and Street A from Travilah Road in accordance with a Landscape Plan to be determined at Site Plan. (The only other permitted uses are necessary underground utilities, fences, retaining walls and signage.)*

6. Existing binding element number 8 should be modified to reduce the maximum number of attached dwelling units from 45% to 35%, which is the minimum number required by the PD zone.

Other neighbors seek the following additional binding elements:

Alice and Jack Yeh, who live in the Versailles development, which is adjacent to proposed Land Bay B, request the following binding element (Exhibit 75):

Provide a minimum 30 feet wide green space buffer along the entire border between the Versailles development and Land Bay B. The entire length of the green space shall be densely planted with a mix of tall evergreen and deciduous trees. All planted trees shall initially be a minimum height of 10 feet and at maturity shall reach a minimum height equal to or greater than a typical 2 story residential house. The density of the trees shall be consistent with a typical screening buffer of trees found along major roads to block sound and sight lines.

Gaylen and Richard Rinaudot request that the entire development be limited to lots of at least two acres, and if that is not possible, that the lots adjacent to Versailles be so limited. In any case,

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<sup>20</sup> The Land Use Plan currently has similar language in non-binding element number 9, because it is subject to septic testing, roadway engineering and other civil engineering analysis.

they request a 30 to 50 foot buffer along the length of the common property line of Versailles and the proposed development, planted with tall trees. Exhibits 77 and 79.

Applicant responds to these points in two ways (Exhibit 82). First, Applicant points out that it has made many changes in its plans to ensure compatibility with its neighbors. These changes include:

- Number of proposed detached homes reduced from 7 maximum to 4 maximum in Land Bay C (binding element #13).
- Lots to be minimum 2 acres in size in Land Bay C (binding element #13).
- Homes to be minimum two stories in height in Land Bay C (binding element #7).
- Homes in Land Bay C to comply with RE-2 Zone height restriction (binding element #7).
- Homes to comply with RE-2 Zone side yard setback distances Land Bay C (binding element #7).
- Vehicular access limited to the intersection of Travilah Road and Turkey Foot Road (binding element #9).
- Minimum of 30 foot distance between Street A right of way and Travilah Road right of way (binding element #10).
- Green area to be provided between Street A and Travilah Road (binding element #12).
- Reduced the maximum percentage of attached or townhouse units from 65% to 45% (binding element #8).
- Non-binding element #9 provides that Applicant will attempt to design the homes in Land Bay C to comply with the other RE-2 development standards (minimum lot width, front yard setback, and rear yard setback) subject to septic testing, roadway engineering, and additional civil engineering analysis.
- The number of lots permitted in Land Bay B was reduced from 15 to 11, thereby increasing lots sizes (to about one acre each) and effectively matching the size of lots shown for this area in the Master Plan.

Secondly, Applicant notes that adjoining properties do not have to be identical to be compatible, and that the rezoning stage is not the final review to ensure compatibility in this process. There are also the site plan review and the subdivision review.

Applicant's expert in land use, Matthew Leakan, testified that the planned development would be compatible with existing and proposed adjacent and surrounding land uses. As observed by Mr. Leakan, the Master Plan guidance effectively creates the framework that Applicant followed to taper the development and treat the edges very sensitively to its neighbors, creating an opportunity for a true cluster, compact development that is also internally compatible with itself. In his opinion,

what really embodies the compatibility of this site is not just the marrying of land uses, but also the natural environment, especially the integration of the farm ponds, which are a key aesthetic component that contributes to the character the surrounding area. Compatibility will also be evaluated at the review of the preliminary plan and the site plan, where additional findings regarding compatibility will be made based on more detailed information relative to exact building locations, various other improvements, additional engineering measures and other more site-specific issues. 3/12/10 Tr. 206-209. Moreover, the perimeter and margins of the property are compatible with the adjacent land uses and development. The higher intensity uses in the center of the site are mutually compatible internally, and they taper and transition to external compatibility with the adjacent area. In addition, only 50 percent of the site will have development on it. 3/12/10 Tr. 276-277.

Technical Staff similarly found (Exhibit 49, p. 15):

The proposal achieves compatibility with the surrounding uses by matching open space on the northern and western portions of the site to the open space provided from the existing Muddy Branch Stream Valley Park. Larger homes are proposed along the eastern and southern portions of the site to match existing development along Quince Orchard and Travilah. Smaller lots are clustered toward the center of the site.”

Staff also stated, “The provision of single-family detached homes and open areas around the perimeter of the development helps ensure compatibility with surrounding uses.” Exhibit 49, p. 19.

In its review of compliance with §59-C-7.15, Staff observed (Exhibit 49, pp. 21-22):

This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed previously, the proposal will be compatible both internally and with surrounding development. The provision states that where land classified under the PD Zone adjoins land that the area master plan recommends as a single-family detached zone, no building other than a single-family detached residence may be constructed within 100 feet of the adjoining land, and no building may be constructed at a height greater than its distance from the adjoining land. The proposal provides solely for single-family detached housing or vast stretches of open space around the perimeter of the development. Further, the single-family detached homes will require setback distances from the perimeter of the development that are at least as great as the height of the homes.

The Planning Board echoed Staff's finding that "the proposal is compatible with the surrounding area." Exhibit 52.

Opposition counsel cited the case of *Bigenho v. Montgomery County Council*, 248 Md. 386, 391, 237 A.2d 53, 56-57 (1968), to support his argument that Applicant should be required to be more specific in binding elements as to the dispersal of MPDUs, setbacks and architecture of proposed buildings, in order to ensure compatibility. 3/12/10 Tr. 30-31. Both Applicant and Technical Staff have opined that some of these details should await Site Plan review (Planning Board Letter, Exhibit 52 and Technical Staff supplemental report (Exhibit 80). As Applicant correctly points out, the opposition failed to mention that the court in *Bigenho* upheld the Council's grant of the rezoning in that case and dismissed the compatibility concerns of the neighbors with the following statement, 248 Md. at 396, 237 A. 2d at 60:

Also there are adequate precautions provided in Montgomery County Code (1965), Section 111-16, pertaining to uses, area requirements, access, off street parking, green area, lighting, etc. to insure a minimum interference with existing uses. This section provides for site plan approval and if specifications call for a building that would be detrimental to the surrounding area the application for a building permit could be denied. [Emphasis added.]

The Planning Board, in recommending approval of the rezoning application and its development plan, directly addressed and rejected the opposition's request for the additional binding elements discussed above (Exhibit 52):

The issue of whether the rezoning level of review is appropriate for establishing binding agreements regarding the disbursement and architectural compatibility of MPDUs was discussed at length. A nearby community representative requested the Planning Board recommend a binding element to be included on the development plan that states "[t]he moderate priced dwelling units shall not be concentrated at one location; but dispersed and shall be of a design and of exterior materials so as to look like the non-MPDU units." Since it is likely that the applicant will not be the developer of the project, the community representative was concerned that a future developer may not design the MPDUs consistent with market-rate units or disperse the MPDUs properly throughout the subdivision. Although the dispersal and design of MPDUs must be carefully reviewed, the Board believes these issues are best addressed at the site plan level of review. As a general rule, the Board prefers limiting binding elements on a development plan to those essential to a finding that the purposes of the zone are satisfied. Further, if the proposed

binding element was to be adopted, the use of the word “concentrated” is ambiguous and may establish a subjective standard that is difficult to interpret at site plan.

Technical Staff was also quite explicit on this point in its supplemental report, which approved the post-hearing changes in the Land Use Plan agreed to by the Applicant but rejected the additional ones sought by the opposition at this stage in the review process (Exhibit 80):

Hunting Hill supplied a letter to staff identifying several binding elements they would like to see added to the development plan. Staff believes that the revised development plan as proposed by the applicant adequately ensures that development of the site will be consistent with purpose of the PD zone and provides a land use arrangement that is safe, adequate and efficient, and compatible with the surrounding area. For the most part, the binding elements proposed by Hunting Hill would be best addressed at the time of site plan review. These include Hunting Hill’s interest in having the MPDUs dispersed throughout the development and of a design consistent with the market rate units. The Board was clear in its review of the proposal that these are reasonable objectives, but best addressed at the site plan stage. The applicant has agreed to be bound to the side yard setbacks and building height restrictions of the RE-2 Zone and to establish a minimum building setback of 30 feet between the Street A right-of-way and the Travilah Road right-of-way. The more detailed assurances sought by Hunting Hill for conformance with the RE-2 development standards and landscaping within the 30-foot setback area along Travilah Road are design and buffering details to be worked out at site plan. A binding element to determine the development of the local park dedication would be premature at the zoning stage. If the applicant agrees to proffer the number of bedrooms for Land Bays B, C, and D, staff would have no objection. But it is not typical for this level of construction to be set at the zoning stage.

The Hearing Examiner does not dispute that dispersal and architectural compatibility of MPDUs are generally desirable, as is landscape buffering, but in view of the opposition of Technical Staff and the Planning Board to including such requirements as binding elements, it is not surprising that Applicant chose not to do so. It is Applicant’s development plan that is before the Council, and given the availability of site plan and subdivision review, the Hearing Examiner cannot say that the decision not to include such binding elements should be a basis for denial of the application or rejection of the final development plan.

While the Hearing Examiner is cognizant of the concerns of some neighbors, the Applicant is entitled to have its application approved or disapproved based on specified standards, not on whether

it provides every one of the protections that might be desired by the neighbors. As the saying goes, we should not let the perfect be the enemy of the good. This development plan is almost exactly what is called for in the 2002 Master Plan, as demonstrated by the Master Plan Compliance Exhibit (Exhibit 76(e)), discussed earlier in this report. The Master Plan was approved only eight years ago, and its specifics were designed to assure compatibility with the neighborhood, as well as appropriate transitions to the denser development planned for the center of the subject site.

Some of the features sought by the neighbors may well become reality after site plan and subdivision reviews, but as suggested by both Technical Staff and the Planning Board, those design decisions are best left to those later stages of the development. At this stage, the Hearing Examiner finds that the great weight of the evidence (the Technical Staff report, the Planning Board evaluation and all the expert evidence in the record) supports the conclusion that the proposed development will be compatible with the surrounding development.

#### **IV. SUMMARY OF THE HEARING**

Applicant's counsel, Stuart Barr, Esquire, argued that it was unnecessary to provide all the details in binding elements sought by the opposition because later stages of review – site plan and subdivision – will require a detailed demonstration of compatibility. 3/12/10 Tr. 20-21. Applicant called five witnesses at the hearing, John Hanson, spokesperson for the Hanson Family; Matthew J. Leakan, a land planner and landscape architect; M. Dustin (Dusty) Rood, an environmental expert; Frank G. Bossong, a civil engineer; and Wes Guckert, an expert in transportation planning. At the beginning of the second day of hearing, March 15, 2010, Mr. Barr outlined the changes Applicant had made in the Land Use Plan as a result of the hearing on March 12, 2010: Revisions to the land use plan included reorganizing the text for clarity; reducing the maximum number of dwelling units in Land Bay B from 15 to 11; and adding binding elements, which specified the need for TDRs before exceeding 170 dwelling units; specified the height and certain setbacks of dwelling units in

Land Bay C; limited the number of attached units in the development; limited vehicular access to Land Bay C; specified the distance between Street A and Travilah Road; specified the retention of the existing residence at 14200 Quince Orchard Road; and limited the use of certain green areas.

Non-binding elements were added quoting the Master Plan's call for the ten-acre local park to have two ball fields and adequate parking, and stating that, subject to septic testing, roadway engineering and other civil engineering analysis, the dwelling units in land bay C will be designed to comply with specified RE-2 Zone development requirements (a minimum 150 foot lot width at the building line, minimum 50 foot front yard setback and a minimum 35 foot rear yard setback). 3/15/10 Tr. 21-28.

Norman Knopf, attorney for Hunting Hills Estates Homeowners Association (HHE-HOA), quoted from case law to support his argument that Applicant should be required to be more specific in binding elements as to the locations, setbacks and architecture of proposed buildings.<sup>21</sup> 3/12/10 Tr. 30-31. Three witnesses testified for HHE-HOA (Ken Giunta, its President; and Matthew Morris and Denielle Pemberton-Heard, Board Members); three other community members testified in opposition, Dr. Paul Goldberg, who lives about a mile from the site, and Alice and Jack Yeh, residents of the adjacent Versailles community.

Martin Klauber, Esquire, the People's Counsel, participated in the hearing, argued for changes in the land use plan (3/12/10 Tr. 25-29) and ultimately supported the application.

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<sup>21</sup> He read the following part of *Bigenho v. Montgomery County Council*, 248 Md. 386, 391, 237 A.2d 53, 56-57 (1968):  
The floating zone is different from the establishment of an Euclidian zone in that it is initiated on the instigation of a land owner within the district, rather than that of the legislative body. While this opens an avenue of attack on the basis that the action is taken for the benefit of the individual land owner, rather than the good of the community as a whole, this criticism is blunted by the fact that the floating zone is subject to the same conditions that apply to safe guard the granting of a special exception, i.e., the use must be compatible with the surrounding neighborhood, it must further the purposes of the proposed re-classification, and special precautions are to be applied to insure that there will be no discordance with existing uses. These precautions include such restrictions as building location and style, the percentage of area covered by the building, minimum green area, minimum and maximum area of use, minimum setback from streets and other uses, requirement that a site plan be approved, and a provision for revocation of the classification if the specified restrictions are not complied with.

### **A. Applicant's Case**

1. John Hanson (3/12/10 Tr. 42-80; 3/15/10 Tr. 241-252):

John Hanson testified as the spokesperson for the Hanson family for this re-zoning application. His family has owned this property for three generations, and he grew up there. They have raised cattle, hogs, timber, grains, and mixed hay. His parents, Robert and Joanne Hanson, still live on the property. His brother, Tim, and his wife, Alicia, and their two girls also live on the farm right now, and intend on living there after the rest of the property is sold and developed.

Mr. Hanson noted that the farm is actually three pieces of property. The southern portion, approximately 75 acres, is the remnant of his grandparent's farm that is held in a trust, and he is the trustee. The other major part of the property is approximately 95 acres, and that part is a portion that his parents bought for his grandparents in the 1950s; the third part, two acres, is Tim and Alicia's property, which they purchased from their parents.

Mr. Hanson further testified that his family is still farming, but they are interested in seeing the property properly developed when it ceases to be a farm. They have no full-time farmer after his father retires, and this part of Montgomery County no longer has the infrastructure to easily support agriculture as a business. Mr. Hanson indicated that he must also consider the potential impact of Federal Estate Tax laws at the death of his parents, and his responsibilities as trustee. Nevertheless, the property is not for sale at this time, and no negotiations with a builder or developer have begun; the family intends to keep on farming the property for as long as possible, but he can't predict how long that's going to be. 3/12/10 Tr. 46.

Mr. Hanson participated in the Potomac Sub-Region Master Plan process from the outset in 1998 through 2002, and from that came a recommendation for a PD-2 zoning. It presented an opportunity for a transitional zone between higher density residential on one side of the property, to the lower density residential on the other side; the protection of about 50 percent of the farm as open

space; the addition of a public local park adjacent to the Potomac Horse Center; connected riding and hiking trails linked to the horse center and to Muddy Branch Stream Valley Park; and a variety of single-family homes to support a diverse housing need. It recommended the use of transferable development rights if they were available at the time of development as a tool to protect up-county farm land. His instructions to the consultants for the preparation of the re-zoning application and the development plans were to comply with the goals and the recommendations of the Master Plan. 3/12/10 Tr. 47-48.

Mr. Hanson described his outreach efforts with the surrounding community, showing alternatives to the civic associations and neighbors, and with their comments considered modifications. The process began in August of 2008. Before they filed any applications, Applicant notified the North Potomac Citizens Association, West Montgomery County Citizens Association, and the neighbors that they had completed the environmental survey and were commencing the engineering studies for the zoning map amendment application. Applicant invited both of the civic associations to the farm, and even provided a copy of the environmental resource inventory to West Montgomery prior to filing. He has also tried to keep both organizations apprised of his findings along the way, and he solicited suggestions on how to best fulfill the spirit and letter of the Master Plan recommendations. Applicant has continued to knock on doors and talk to the neighbors about changes and modifications to the original design. About a year after the door-knocking campaign of August, 2008, Applicant began active conversations with one of the southern neighbors, the Hunting Hill Estates Homeowners Association, and those conversations continue to the present. Moreover, to address concerns about traffic, additional traffic counts were taken.

In response to comments and suggestions from the community and Technical Staff, Applicant drew up several alternatives for the Travilah Road entrance, and showed these designs to the neighbors and the North Potomac Citizens Association and asked for comments. Applicant then

incorporated several changes to the plan that are consistent with the Potomac Master Plan, are sensitive to the environment, and are responsive to the community. For example, Applicant reduced the number of lots, increased the size of the lots, and the green space along Travilah Road in order to better maintain the view shed. Applicant also modified the alignment of the entrance road from Travilah Road to address environmental concerns raised by the planning staff, while meeting the desire of the Hunting Hill Estates Homeowners Association to avoid an intersection directly opposite their entrance. The revisions also created a green buffer along Quince Orchard Road and aligned the connecting riding, bridle, and walking/hiking trails for safer street crossings and less environmental impact. In addition, Applicant reduced the total number of attached units which could be built in the property interior under the PD zone percentage ranges.

Mr. Hanson indicated he was willing to add notes to the text of the binding elements confirming that access from Travilah Road will be from the intersection of Travilah and Turkey Foot Road only, and confirming that the maximum percentage of attached units can be 45 percent. For the four units in Land Bay C, Applicant is willing to make additional binding elements that those units must be at least two stories in height and must comply with the minimum side yard set backs and height restrictions in the RE-2 zone. Applicant is also willing to commit that the distance between the Street A right-of-way and the Travilah Road right-of-way shall be a minimum of 30 feet.

Mr. Hanson further testified that he anticipated that the ultimate community on the property will have documents that show the ownership and method of assuring perpetual maintenance of common areas, such as those filed in Exhibit 48. 3/12/10 Tr. 58.

Mr. Hanson described Applicant's vision of the proposed community on this property as a walkable, pedestrian friendly, environmentally sensitive residential community that both the new community and the existing community can be proud of. 3/12/10 Tr. 58. Mr. Hanson noted that Ms.

Yeh's impression that the initial development plan called for a maximum of 10 dwelling units in Land Bay B is incorrect; it originally called for a maximum of 15 units, just as the plan presented at the hearing. [Applicant later agreed to reduce the maximum in Land Bay B to 11 units, which is what is shown on the final Land Use Plan (Exhibit 82(a)).]

On cross-examination, Mr. Hanson indicated that Applicant could not commit to some of the specifics desired by the opposition because the precise size and locations of needed septic fields for homes in Land Bay C will not be known until Site Plan. 3/12/10 Tr. 77.

Mr. Hanson introduced Exhibit 65, which lists just the properties in Hunting Hill Farm area that are less than 4,000 square feet in enclosed size. There are five on Hunting Hill Way. Mr. Hanson stated that while Applicant's vision is that these properties be compatible, he does not feel that Hunting Hill Estates is the only neighbor or the only community in this whole area with which the development must be compatible. 3/15/10 Tr. 241-252.

2. Matthew Leakan (3/12/10 Tr. 111-296):

Matthew Leakan testified as an expert in land use planning and landscape architecture. His primary role in this matter was looking at the applicable and pertinent regulatory documents, and guiding documents, the Master Plan, the zoning ordinance, for example, to ensure conformance and meet the development plan requirements.

Mr. Leakan testified as to the location of the subject site and described the surrounding area. (3/12/10 Tr. 124):

. . . the zoning immediately adjacent to and within the surrounding area of the subject site to the east is R-200 . . . single-family zoning currently in use as the Potomac Horse Center, which is a commercial use. To the south of that Potomac Meadows subdivision [is] another R-200 zoned portion of land. Immediately to the south of that [is] an R-200 TDR zoned portion, and then going around the horn again clockwise to the west R-200 for the . . . underlying zoning of the Travilah Elementary School, located at Travilah and Dufief Mill Road. Then RE-2 immediately to the south of the property comprising the Hunting Hill neighborhood, Hunting Hill Farm neighborhood, Belvedere neighborhood to the south and west, the what's described as Windmill Farm neighborhood to the south and west again, and then again RE-2 zoning[;]. . . the underlying zone of Muddy Branch Stream Valley Park

parcels is RE-2 zoning with no improved residential homes. Just to the north of the RE-2 zone, again, within the surrounding area there's a cluster, RE-2 cluster zone, which transitions from the RE-2 to the R-200 just to the north of that subdivision, Potomac Chase subdivision . . . .

Mr. Leakan indicated that the text description of the surrounding area given by Technical Staff was consistent with his own view, but the map supplied by Staff did not include nearby R-200 developments that should have been included and were mentioned by Staff in its description of the surrounding area. 3/12/10 Tr. 124-136.

Mr. Leakan testified that the surrounding area definition should be the broader one shown in Exhibit 53(a)<sup>22</sup> for essentially two reasons. The first is that “. . . from a practical standpoint the demarcation of that area [in Staff's map] is far too limiting to understand and address the scope of a project of this size.” 3/12/10 Tr. 130. He observed that the property is 171 acres, which is significant size, and given the nature of the development plan and the multiple access points, a much broader surrounding area is called for. The second is that his proposed surrounding area definition is consistent with the 2002 Potomac Subregion Master Plan's description of the surrounding area, which notes that “the farm is surrounded by R-200 and RE-2 residential development.” Master Plan , p. 72, 3<sup>rd</sup> paragraph.

Mr. Leakan suggested that a rule of thumb is that the surrounding area should reach out approximately a quarter of a mile from the site's property line in a case like this. Also, “major physical features and other primary mobility quarters, such as road rights of way, you know, the places that people enter and exit from should be included as part of this surrounding area designations.” 3/12/10 Tr. 131-133. He included not only the Potomac Horse Center, but also the majority of the properties up to Bergenfield Drive to the east of the site, which “have a line of sight view at the property frontage, and perhaps drive through Quince Orchard Road to get to the neighborhood.” 3/12/10 Tr. 133.

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<sup>22</sup> The use of Exhibit 53(a) engendered a heated dispute during the hearing as to the proper definition of the surrounding area. That dispute is detailed in footnote 5, on page 8 of this report.

Mr. Leakan described the recommendations in the Master Plan as calling for a residential development, with 170-base units and an option for 10 percent TDRs, using environmentally sensitive measures, and clustered, compact development. 3/12/10 Tr. 145-150.

The general layout of the land use plan was fairly well established with guidance from the Master Plan. The Master Plan was very clear and had a conceptual plan exhibit for the site. He divided the site into several Land Bays -- Land Bay A, which is an area on the eastern side; Land Bay B, the southeastern side adjacent to the existing Versailles neighborhood; Land Bay C, adjacent to Travilah Road; and Land Bay D with the bulk of the remaining portion of the property generally bounded by the Muddy Branch Stream Valley Park. Land Bays A, B, and C comprise the key areas focused upon by the Master Plan. Using Exhibit 40(b), the Master Plan Compliance exhibit, Mr. Leakan demonstrated how Applicant's land use plan tracks the recommendations of the Master Plan.<sup>23</sup>

Applicant proposes two vehicular access points on Quince Orchard Road and one on Travilah Road, consistent with the graphic concept plan in the Master Plan; the location of the access on Travilah Road is not in the location suggested by the conceptual layout from the Master Plan because it was not feasible from a transportation planning standpoint, considering intersection spacing and safe site distance at this location. The solution arrived at was to have proposed Street A tie into the Travilah Road, Turkey Foot Road intersection, with a traffic circle. This was a negotiated solution with Transportation Planning Staff. It is also an environmentally sensitive solution because the roadways will not impact the adjacent stream valley buffer.

The text of the Master Plan (at p. 72) recommended 170 dwelling units, including MPDUs, but noted that if the Council approved an amendment to permit TDRs in the PD Zone, then TDR density incentives may be used to increase the density by 10%, to 187 dwelling units, which is what

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<sup>23</sup> Exhibit 40(b) was later replaced with Exhibit 76(e) because there was a "typo" in Exhibit 40(b).

Applicant provides for in its land use plan. The number of MPDUs at 12.5% would be 24.

On Applicant's land use plan, the light yellow areas indicated in Land Bay B, and Land Bay C are large lots, and that's consistent with the recommendation in the Master Plan to provide large lots generally to the south and east. Darker yellow indicates lot sizes that would be smaller for single-family detached units, and the dark orange color would signify the attached or townhouse units. There are three graduated areas of green, two that relate to on-site green, one that relates to green off site. The two on-site green areas are all those areas that are not part of the developed area, which includes the portions of green located on the eastern most corner of Land Bay A, adjacent to Quince Orchard Road, the local park, the northeastern most corner adjacent to Quince Orchard Road, all that area between the lots and roads in Land Bay D, and in Land Bay C, and the dark graduated green to be dedicated to Park and Planning as recommended in the Master Plan.

Land Bay A comprises approximately 15 to 16 acres fronting along Quince Orchard Road, and the major use proposed there is the local 10-acre park, which is a Master Plan recommendation. Additionally, Applicant proposes open or green space in Land Bay A. As part of the Master Plan textual recommendations, the site was recommended to have both of the Hanson residences incorporated into the fabric of the community, but the southern residence, is located on the area designated as the local park. Applicant has offered to dedicate that residence to Park and Planning, but they declined saying they prefer just to have the park with no structures. Applicant also proposes to provide approximately 50 to 65 parallel parking spaces in Land Bay A.

Land Bay B is approximately 11 to 12 acres, and [at the time of the hearing]<sup>24</sup> Applicant depicted 15 single-family detached units within Land Bay B, with lots of about three quarters of an acre. Mr. Leakan explained that he always had depicted 15 units in Land Bay B, and that Ms. Yeh was apparently looking at the Master Plan conceptual plan, which does show 10 units in that area.

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<sup>24</sup> The Land Use Plan was revised as a result of the hearing, and Land Bay B now contains a maximum of 11 dwelling units (Exhibit 82(a)).

He explained two of the dwelling units on Land Bay B are not even directly abutting the Versailles neighborhood and that one of the dwelling units was incorporated at the request of one of the property owners in the Versailles subdivision; it was therefore very close to the recommendation made in the Master Plan concept drawing. Mr. Leakan also pointed out that the lots in the adjacent Versailles subdivision were irregular, as well as long and narrow, with the homes located along Dufief Mill Road, far from the subject site. Moreover, the dwelling units in Land Bay B will face Street C, and only their rear yards will abut the rear yards of homes in the Versailles development.

Land Bay C is approximately 15 acres, consistent with the recommendations in the Master Plan to provide large lots at the south and to the east. There are no attached units, and no more than four single-family detached dwelling units, on a minimum of two-acre lots. There is also about 7 acres of open space, including green area positioned at the front of Street A, between Travilah Road and the Hunting Hill community to the south. The limit of four lots in this Land Bay provides transition. Also, the front facades of these single-family detached dwelling units should face out onto Travilah Road, similar to the character that's created with the Versailles Subdivision on Dufief Mill Road. They will have access to Street A, but not directly to Travilah Road. In addition to meeting the needs of the neighbors for compatibility, the lots in Land Bay C will need to have septic fields, which requires more land.

Land Bay D is the bulk of the remaining portion of the property, approximately 130 to 131 acres, comprising the interior of the property, given the buffering natures of Land Bays A, B, and C, and also the Muddy Branch Stream Valley Park on the perimeter of the property, and the southern most tributary buffering the interior of the development Land Bays from the adjacent residential development on Hidden Glen Lane. Given the maximums provided in Land Bays B and C, which add up to 19 dwelling units, that leaves 168 units which will be contained within Land Bay D.

Land Bay D provides a range of units, in a cluster plan, including intermediate single-family

detached lots, and attached and/or townhouse lots. Land Bay D will contain all of the proposed townhouse or attached units. As specified in the PD-2 Zone, there will be a 35 percent minimum single-family detached lots for the gross property, and also a 35 percent minimum of attached. A binding element will limit the maximum percentage of townhouses and attached units to 45 percent. The required two off-street parking spaces per unit will be provided in garage and/or on lot or driveways. Additionally, Applicant will provide on-street parallel parking spaces in Land Bay D of approximately 193 maximum spaces. Land Bay C has zero on-street parking proposed, and Land Bay B has zero on-street parking proposed. The overall development does not include any commercial or multi-family uses, and the total developed area does not exceed 50 percent of the total site.

Using Exhibit 40(d), entitled Public Domain Plan, Mr. Leakan explained the various paths, bikeways, open spaces, and adjacent connections to the Muddy Branch Stream Valley park. It was prepared based on recommendations in the Master Plan. Mr. Leakan testified that Exhibit 40(b), the Master Plan Compliance Exhibit, lists all the recommendations of the Master Plan and Applicant's compliance therewith.

Mr. Leakan stated that he agreed with and adopted the analysis and findings of Technical Staff regarding Applicant's compliance with the PD-2 Zone's purpose clause, adding that design flexibility was key. He also noted that the proposed development complies with the purpose clause and the Zone's standards and regulations as discussed in Applicant's own Statement in Support of its Application (Exhibit 3). 3/12/10 Tr. 198-201.

Mr. Leakan further opined that the proposed development provides for the maximum safety, convenience, and amenity of the residents of the development, and the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient from a land planning standpoint. Also, the zoning application complies with the standards and

requirements for the approval of a development plan, and the granting of the zoning application would be in the public interest. It complies with the general plan, the Master Plan, and the purposes and the standards of the PD-2 zone. It is reasonably probable that the public facilities and services will be adequate to serve the proposed development, focusing just on schools, police, fire and rescue. Bruce Crispell, the long range planning director for Montgomery County Public Schools, states that the current growth policy test for the Wooten School cluster indicates adequate capacity. That letter is in the record as Attachment 7 to the Staff report. Police protection is provided by the Montgomery County Police, Rockville District, and the fire and rescue service is provided by fire stations identified in the Master Plan as Cabin John Park Station 30, 10 and Rockville Station 31 and 33. 3/12/10 Tr. 201-205.

Mr. Leakan further testified that, in his opinion, the planned development would be compatible with existing and proposed adjacent and surrounding land uses. The overriding theme is conformance to the general plan and the Master Plan, clearly with the large lots on the south and to the east, located in Land Bays B and C, a configuration agreed to by Park and Planning Staff and the Planning Board. The Master Plan guidance effectively creates the framework that Applicant follows to taper the development and treat the edges very sensitively to its neighbors, creating an opportunity for a true cluster, compact development that is also internally compatible with itself. 3/12/10 Tr. 206-209.

The land use plan locates the local park to provide the public amenity on the edge of the property along Quince Orchard Road, while also allowing more compact cluster growth directed towards the center of the site, as well as marrying land use and green areas for a seamless integration of the open space system into the Muddy Branch Stream Valley Park. The Plan also offers avenues and corridors for pedestrians to traverse in, through and out, and it responds to the State's environmental site design (ESD) standards for storm water management regulations. What really

embodies the compatibility of this site is not just the marrying of land uses, but also the natural environment, especially the integration of the farm ponds, which are a key aesthetic component that contributes to the character the surrounding area. These findings of compatibility would not change at all if the formal surrounding area that was used was consistent with that area that was identified in the Staff report. Compatibility will also be evaluated at the review of the preliminary plan and the site plan, where additional findings regarding compatibility will be made based on more detailed information relative to exact building locations, various other improvements, additional engineering measures and other more site specific issues. 3/12/10 Tr. 206-209.

Cross-examination by the People's Counsel highlighted the need for clarification of the land use plan and for additional binding elements. 3/12/10 Tr. 210-218. Most of the opposition's cross-examination attempted to show that Mr. Leakan's proposed definition of the surrounding area had reached beyond the actual impacted areas in an effort to include R-200 residential areas within his definition. It also challenged his conclusions about compatibility, noting that the land use plan does not require that the homes proposed for Land Bay C match the size of the homes to the south in Hunting Hill Estates. Mr. Leakan responded that the land use plan does call for large lots in this area, albeit the sizes of the proposed homes are not specified (a minimum of two acres each). 3/12/10 Tr. 222-258.

Mr. Leakan was also asked whether the majority of units in Land Bay D would be townhouses, and if so, how is that development compatible with all the RE-2 zoning all around this property. Mr. Leakan responded that the Master Plan recommends concentrated clustered compact development in the interior to achieve higher County goals and policies of environmental resource protection. Moreover, the perimeter and margins of the property are compatible with the adjacent land uses and development. The higher intensity uses in the center of the site are mutually compatible internally, and they taper and transition to external compatibility with the adjacent area.

In addition, only 50 percent of the site will have development on it. 3/12/10 Tr. 276-277. Mr. Leakan noted that there are townhouses to the east of the property along Dufief Mill, on Potomac Meadows Drive, and there may be a few more on Bergan Field Drive. The attached and townhouse residential types are a requirement of the PD-2 zone. 3/12/10 Tr. 281.

3. Wes Guckert (3/12/10 Tr. 295-316):

Wes Guckert testified as an expert in transportation planning and traffic engineering. He conducted traffic counts initially at two locations as requested by Technical Staff. Those were MD Route 28 and Quince Orchard Road, and River Road (MD Route 190) and Piney Meeting House. Later the Staff came back and asked him to examine Dufief Mill and Quince Orchard, and he did that and undertook a supplemental analysis.

Mr. Guckert determined the amount of traffic projected to be generated and the direction of that traffic to and from the site, and generally it was about 14 percent of the traffic to the north up towards Route 28, about another 14 percent to the southeast down towards River Road, and the balance, about 72 percent going east, northeast up Dufief Mill Road. These percentages are based upon a guideline that is mandated by the Planning Staff pursuant to an overall computer model that they run with the Council of Governments (COG).

Mr. Guckert then conducted intersection capacity analyses to determine the critical lane volume, and whether or not the development would meet the critical lane volume threshold for the Rural West Area, which is 1,350. He determined that the development would meet the critical lane volume standards for LATR. PAMR, which is policy area and mobility review, does not apply in this area.

Mr. Guckert's report was submitted to both the Planning Commission staff, and to the Department of Transportation staff, and they concurred with his findings, without exception. The local area transportation review is Exhibit No. 17, and the supplemental letter, which is Exhibit 36(h).

Additional intersections were thereafter examined as a result of a request by Mr. Hanson, the Applicant, and he examined the intersection and did traffic counts at Travilah Road and Glen Road, River Road and Travilah Road, and Glen Road and Glen Mill Road. Those counts were made in early March of 2010, 6:30 to 9:30 a.m., and 4:00 to 7:00 p.m.. Exhibit 57 is a six-page document which says at the top vehicle turning movement count summary and reflects the traffic counts (not CLV measurements) gathered from these three intersections. There's two sheets for each, the first sheet will be for cars, turning movement count, the second sheet as required by Planning staff was to see if there were any pedestrians or bicyclists at those intersections during the peak hours.

Based on his observation and studies of those intersections, in his expert opinion the nearby roads and intersections can adequately handle the traffic proposed to be generated by this development. He also agrees with the findings of Department of Transportation and the Park and Planning Transportation staff in this case, in that they concurred with him. Also, in his expert opinion, the proposed internal vehicular circulation systems will be safe, adequate, and efficient from a transportation planning standpoint, and the proposed points of external access, and the proposed round-about at Travilah Road and Turkey Foot Road will be safe, adequate, and efficient from a transportation planning standpoint. The three proposed access points are safe, as well, from a sight distance standpoint. Mr. Guckert also opined that public facilities and services in terms of transportation facilities would be adequate to serve the proposed development, and the proposed uses would be in harmony with the general character of the existing neighborhood as to traffic conditions. In his expert opinion, the proposed uses would not adversely affect the existing residential community as to traffic conditions. 3/12/10 Tr. 302-303.

Mr. Guckert did not perform any delay or queuing studies done on any of these intersections; rather he bases his conclusions on the critical lane volume standard. In his opinion, even if the intersection is failing, critical lane volume analysis will give an accurate measure because it is done

as an average over an hour interval. “Clearly, when you're at an intersection like Glen and Glen Road, and you've got a one-lane bridge, and you're waiting for people to pass, there's no question there's going to be delay. But that's short-lived, it's not a situation where it exists for an entire hour in the morning, and an entire hour in the evening. . . . [T]he fact is it does not last for throughout the peak hours, and so therefore it's not a situation that really needs to be remedied, or should be remedied because government has already made that decision, they've said these roadways are not to be widened, they're not to be improved.” 3/12/10 Tr. 305-306. Mr. Guckert also noted that the intersection discussed by Dr. Goldberg, Glen Road and Glen Mill Road, is southeast of the site, and the bulk of the traffic is going to be either heading north up to Route 28, southbound to River Road, or northeast towards Gaithersburg, not to Glen Road and Glen Mill Road. He didn't assign any trips to that intersection because the transportation model from the Technical Staff doesn't put trips in that direction. That is logical because there are no job centers in that direction.

4. M. Dustin Rood (3/15/10 Tr. 31-57):

M. Dustin Rood testified as an expert in as an expert in environmental planning. He indicated that the Potomac Subregion Master Plan makes five very explicit recommendations that deal with environmental protection elements. The first recommendation, which is found on page 72 of the Master Plan (shown below the graphic element on the left-hand side of Exhibit 40(b)), recommends rezoning the site to PD-2 from RE-2 to encourage more compact development to expand the regional stream valley system and to protect sensitive areas. Page 75 of the Master Plan recommends clustering development away from environmentally sensitive resources. Page 75 of the Master Plan also recommends a significant open space and expansion of the Muddy Branch Stream Valley Park by dedicating the forested areas along the stream valleys. Another recommendation (p. 26) is to provide community sewer service only if development is clustered away from environmentally sensitive resources and disturbance to wetlands caused by sewer main construction is minimized.

Mr. Rood prepared the NRI/FSD and the preliminary forest conservation plan (PFCP), working with the land planner, Mr. Leakan, and civil engineer, Mr. Bossong, to help design the community. The site itself drains generally to the west from the east towards the Muddy Branch Stream Valley via four tributaries that are generally on, or in the case of the northernmost tributary, adjacent to the property. These four tributaries drain offsite to the Muddy Branch main stem, generally to the north and west. The topography itself is gentle to moderately rolling terrain with steeper slopes and moderate slopes being located along and generally within the stream valley buffers of the four tributaries. There's approximately 53 acres of forested areas on the property. All of the tributaries on site contain at least some forest, There are 33.9 acres of stream valley buffer, which generally contain the site's most sensitive areas, streams, wetlands, flood planes, steep slopes, and those areas are generally around the four tributaries. None of this property is in a special protection area or a primary management area. 3/15/10 Tr. 40.

The forest conservation plan established approximately 38 acres of the forested areas to be retained and protected, much as part of a dedication to Montgomery County and the Parks Department. Some sensitive areas outside of the stream valley buffer would either be in a Category 1 Forest Conservation Easement or would be protected as part of the dedication. The forest conservation plan was submitted to the Park and Planning Technical Staff, who found it consistent with Chapter 22-A and recommended approval of it. The Planning Board did not yet act on it.

In Mr. Rood's opinion, the proposed development plans comply with the goals and recommendations of the Master Plan in terms of its environmental features. He studied the most environmentally sensitive way to connect the sewer service to the property via the offsite sewer lines which drain generally to the south and to the west. He identified that two points of connection would be the minimal number of points necessary to service the property. He also went through the natural resource inventory process to establish where the environmentally sensitive resources and

sensitive areas were located, and working with the land planner and the civil engineer, they were then able to design the development in a fashion that was compact by its nature but also compact away from the most environmentally sensitive resources.

Also, by setting aside green areas, fingers of the tributaries onto the property as they extend from the northern and westernmost Muddy Branch Stream Valley Park, there is a natural extension of those green corridors adjacent to the property and sensitive areas are protected. Mr. Rood opined that the proposed development protects environmentally sensitive areas, clusters homes away from environmentally sensitive features and dedicates forested areas to add to the Muddy Branch Stream Valley Park. Thus, the zoning that is applied for and the development plan is in substantial compliance with the Master Plan goals and recommendations in terms of environmental features. 3/15/10 Tr. 52. It also complies with the purpose clause of the PD-2 Zone in terms of environmental planning because it preserves and takes the greatest possible aesthetic advantage of trees and in doing so, minimizes the amount of grading for construction of the development. Through the early identification of those resources of trees and forests and the staying away from sensitive areas and the design of the community, the layout, the open, the single-loaded roadways which offer aesthetic opportunities of open space areas, it's very much consistent with the environmental objective of the purpose clause. It also complies with the development standards and regulations of the PD-2 Zone in terms of environmental planning. In his opinion, the currently planned location of the Street A is environmentally preferable, given that it's outside of the stream valley buffer.

5. Frank G. Bossong (3/15/10 Tr. 58-96):

Frank G. Bossong testified as an expert in civil engineering. He stated that his role in this was to design and oversee of all civil engineering aspects of the project, including roadways, storm water management, sediment control, water and sewer, grading and dry utilities. He testified that the Master Plan is looking for a cluster development and minimizing grading to prevent erosion of the

soil and to preserve natural vegetation and to meet the requirements of Chapter 19, which is the storm water management sediment control regulations in Montgomery County.

Under the current plan, the entire development would be served by public water, and all but Land Bay C would be served by public sewer; Land Bay C would be served by septic systems. Right now, the project is located in what's called a S6, W6 category, and Applicant is requesting S3, W3, which means public water and sewer service. S1, W1 means the lines are there today, while S3, S4 means Applicant is going to bring the lines to the property.

There currently are existing water lines in Dufief Mill Road and in Travilah Road. Applicant plans an extension of the water line off of Quince Orchard and Dufief Mill intersection, in a northerly direction along Quince Orchard Road to serve the subject property. On the southern side of the property, Applicant would extend the existing 60 inch water line off of Travilah Road, continue it down Travilah Road in a southwesterly direction and come back into the project, creating a looping system of water service for the property.

As to sewage, the most sensitive areas of connection for the sewer would be into the existing 30 inch trunk main within the stream valley area. On the northwestern portion of the site, there's a short connection in that location. The other location would be directly west on the property, tying into the existing 33 inch sanitary sewer main. That's how all but Land Bay C would be served by public sewer. Land Bay C is proposed to be served by a standard septic system, with each lot having its own septic field. The difference is that the topography in and around Land Bay C would not lend itself for a gravity sewer in an environmentally acceptable way. Mr. Bossong therefore felt it made more sense to leave these as a septic system, but he noted that it does not preclude the possibility of a pressure sewer for these four lots in the future. If the S3 category is granted, a portion of the project (Land Bay C) may still develop with septic fields; however, the S3 category would allow later development of a pressure sewer there.

A WSSC memo (Attachment 4 to the Technical Staff report) indicated that “interceptor capacity is deficient.” Mr. Bossong therefore introduced Exhibit 60, a March 8, 2010 e-mail from Bruce MacLaren, a senior hydraulic engineer for WSSC, indicating interceptor capacity is currently adequate; however, the e-mail seemed to restrict his conclusion to the dry weather condition and not to the wet weather condition. Applicant therefore agreed to produce a clarifying e-mail from WSSC. [They did so in Exhibit 76(a), which is also not the epitome of clarity; however, it does indicate that while capacity might be exceeded for short periods under wet weather conditions, “the interceptor capacity should be sufficient to handle the generated flow.”] Mr. Bossong testified that what WSSC is saying is that there appears to be sufficient capacity, but if they find a specific problem down the road and a piece of line somewhere down the trunk line is experiencing actual problems, there will be a requirement to fix the problem before this development can go forward.

Mr. Bossong further testified that he prepared the storm water management concept plan that is in the record as Exhibit 15. He introduced a rendered version as Exhibit 61. The site was designed, in conjunction with meetings with DPS staff, using the “ESD” approach, which stands for “environmental site design,” as prescribed by the new State of Maryland regulations. It encompasses the use of natural storm water management measures such as wells, down spout disconnects, bio-filtration facilities, infiltration facilities and quantity control measures. Attachment 3 of the Park and Planning staff report is a letter of approval of the storm water management concept plan by Department of Permitting Services. Even though the location of Street A changed after that approval, DPS indicated that it will not require the storm water management concept of the site to be resubmitted for review. The change in the roadway can be addressed at detailed plan review stage. Exhibit 62.

Instead of having centralized storm water management facilities, there will be integrated smaller storm water management techniques inside of the site instead of solely the perimeter type

measures used over the last 20 to 30 years. Though there still will be perimeter type measures, the new concept is to use natural features, grass type features, instead of traditionally large structural storm water management facilities. Thus there will be bioretention facilities scattered throughout the project. In Mr. Bossong's opinion, the storm water management system will provide for safe conveyance of stormwater. The design will mimic the release rate of a forest in good condition, which is actually better than the existing condition of runoff today. It will thus reduce runoff into surrounding properties.

Mr. Bossong also opined that the proposed internal vehicular and pedestrian circulation systems had points of external access, are designed for safety, adequacy and efficiency while achieving open space pedestrian circulation network, and that the entrances off of Quince Orchard Road and the roundabout proposed on Travilah and Turkey Foot Road are safe, with adequate sight distances. The two entrances that are depicted on Quince Orchard Road from the project are safe, adequate, and the proposed location of the roundabout is also a preferred location that is safe and adequate. The same is true of the path systems including the sidewalk system throughout the project.

In Mr. Bossong's expert opinion, the zoning that is applied for and the development plan are in substantial compliance with the Master Plan goals and recommendations in terms of water, sewer, storm water management and any other civil engineering issues. The development plan does not conflict with the general plan, the County Capital Improvements Program or any other applicable County plans or policies from a civil engineering standpoint. Also, the proposed development will comply with the purpose clause and development standards and regulations of the PD-2 Zone from a civil engineering standpoint, and the development plan complies with the purpose, standards and regulations in that the zoning provides for maximum safety, convenience and amenity of residents and adjacent development from a civil engineering standpoint. The proposed development design

will also tend to prevent erosion of the soil because the whole plan is geared around environmental protection. Finally, in his opinion, public facilities and services will be adequate to serve the proposed development regarding water, sewer and dry utilities.

### **B. Community Witnesses**

1. Alice Yeh (3/12/10 Tr. 33-42):

Alice Yeh testified that she lives at 13820 Dufief Mill Road, across from the Travilah Elementary School. Her back yard is adjacent the Hanson family farm, almost due south of the subject site, and towards the east a bit. [Her development was later identified as the Versailles subdivision.] In mid-2009, Mr. John Hanson informed her of his family's application to re-zone his family's three parcels from RE-2 to PD-2. While she appreciates the outreach, she still has concerns regarding the newest proposed development plan.

Currently all of the existing residential properties directly adjacent to the Hanson farm off Dufief Mill Road are at least two acre lots. From the original adopted Master Plan, the illustrated PD-2 concept development called for 10 large lots of residential units next to the existing adjacent residences off Dufief Mill Road. That area is designated Land Bay B in the current re-zoning application. In the most recent revisions of the application, the proposed development plan increased the residential units in Land Bay B from 10 detached single-family homes to 15 detached single-family homes. As a result, the proposed 15 homes will be about three-quarters of an acre each, and that is more than two and a half times smaller than the existing adjacent two-acre lots. She believes the transition or step down from two-acre lots to less than three-quarters of an acre is significantly different from the adjacent existing pattern of residences. She therefore asks that the re-zoning application reconsider the design of Land Bay B to create enough set backs to promote compatibility with existing homes off Dufief Mill Road.

Ms. Yeh also asked that a green space buffer with trees be created between the existing

homes and the new development. The buffer space and new trees will preserve the ambiance and environment enjoyed by current homeowners. It will mitigate the change in view for the current homeowners when the new homes are built.

2. Dr. Paul Goldberg (3/12/10 Tr. 81-119):

Dr. Paul Goldberg testified that he lives at 12300 Briarbush Lane, in Potomac. IN his opinion, in light of the current traffic conditions, it is irresponsible to allow another 175 new homes to be built. “While the traffic studies may look good on paper they do not really reflect what is a current every day situation on our roads.” 3/12/10 Tr. 82-83. Dr. Goldberg referenced newspaper articles and conversations with transportation officials in an effort to show that there are congestion problems in the County transportation system.

Dr. Goldberg would like it see “an honest decision based on a valid and truthful traffic study that shows how much longer the waits will become at Glen Road, and Falls Road, or Piney (indiscernible) River Road, rather than, you know, the ridiculous sham that the plan does not exceed congestion standards. And it should also consider safety concerns, such as people like myself trying to make left turns from our neighborhoods onto Travilah Road, which will have an endless stream of cars.” 3/12/10 Tr. 86. He also thinks that the property values decrease because people get tired of sitting in traffic, and they move into the cities, abandoning the suburbs. He feels that the additional traffic will create more pollution, as well.

Dr. Goldberg recited his own difficulties with increased traffic on the streets near him, and summed up by saying that the proposed development adding this number of new homes “definitely will increase traffic delays, I think it will make it more difficult to get out of my neighborhood having more cars . . .” 3/12/10 Tr. 87. [In answer to a question posed by Dr. Goldberg, Mr. Klauber reported that Royce Hanson, Chairman of the Planning Board, had stated that there is no relationship between him and the Applicant Hanson family, at least not in recent memory.]

On cross-examination, Dr. Goldberg indicated that he was not aware that Applicant's traffic consultant had studied additional intersections as a result of concerns expressed by the neighbors.

3. Ken Giunta (3/15/10 Tr. 100-110; 199-222):

Ken Giunta testified that he resides at 13541 Hunting Hill Way. He stated that he is the president of the Hunting Hill Estates Homeowners Association and is testifying on behalf of the HOA as well as individually as a homeowner at Hunting Hill Estates, which is located directly across Travilah Road from Land Bay C.

The community has had major concerns, principally regarding compatibility of this development with Hunting Hill Estates. The Planning Board staff, the Planning Board and the applicant's witnesses have all concluded this project from their perspective as compatible. However, he feels that the conclusion is based upon various assumptions that remain, to a certain degree, conceptual rather than binding elements of the plan, and the plan presented, to a large degree, still remains conceptual. If those features of the proposed development which are essential for making the project compatible with Hunting Hill Estates are made binding elements so as to assure that they will in fact be part of the ultimate build-out of the development of Hanson Farm, then Hunting Hill Estates has no objection to the proposal. He thanked the Hanson Family for the revised development plan presented that day and for the several additional binding elements committed to in the plan, but he doesn't trust the process will protect his community's interests without the additional binding elements the HOA requests.

Mr. Giunta questioned Mr. Leakan's conclusions about compatibility. He believes his requests for binding elements are not unreasonable and are consistent with what the applicant has stated publicly during community meetings held in June as well as during subsequent discussion with the Board of Hunting Hill HOA. His fear is that the applicant is not the developer. The property will be sold to a developer for build-out. It's unknown when a sale will occur but it could

be some considerable time from now. The community believes it would be helpful in assuring certainty of the implementation of these principles that there be expressed binding elements. The community also believes that it will be helpful to the future builder and avoid possible disputes later if these conditions are expressly put forth so as to clearly place any purchasing developer on notice.

Mr. Giunta argues that the required finding of compatibility cannot be made absent these binding elements. He recited various provisions of the Zoning Ordinance requiring a finding of compatibility. In addition to compatibility concerns, the HOA has some road safety concerns that may also be resolved by supplementary binding elements.

Mr. Giunta further testified that the HOA is not against MPDUs at all, but it has a concern about how they're placed and what they look like. He noted that one of the purposes of the PD Zone which must be satisfied by this proposal is that there be, quote, "integration of mutually compatible uses," Section 59-C-7.11, paragraph 1. Integration, compatibility and implementation of County policies require that the moderate priced dwelling units be dispersed rather than all located or many of them bunched in one particular location. Similarly, it requires that the MPDUs look similar to non-MPDUs so as to avoid any isolation or stigmatization of such units. It is the County policy not to place all MPDUs at one location and to make such units indistinguishable from non-MPDUS.

According to Mr. Giunta, at the Planning Board hearing, all commissioners confirmed that this was the County's policy. However, all four commissioners decided not to endorse it as a binding element. It also emerged at the hearing that the County policy was one of practice rather than a binding written policy and existed, at best, as guidelines and as such, this policy has frequently not been implemented. Mr. Giunta then cited examples of this occurring in other cases in the past. [Mr. Knopf introduced a June 13, '97 technical staff report for the "Mills property site plan review" (Exhibit 66), and referring to page 12, Mr. Knopf stated that the staff believes the MPDUs can be lumped together because they're allowed to be clustered to take advantage of production and

marketing efficiencies.] Mr. Giunta noted that the Mills development is just a short distance away from his development and Hanson Farm on Travilah Road.

Mr. Giunta also cited precedent for placing dispersal requirements in binding elements, as such a requirement appears in development plan amendment DPA 09-1, Fairland Development, LLC, approved of the binding element that limited MPDUs to no more than 16 units in one location in a 365 unit development. To better ensure that the County's policy of dispersal and integration is met, Mr. Giunta suggested that the following binding element be added. "The moderate priced dwelling units shall not be concentrated at one location but dispersed and shall be of a design and exterior material and quality so as not to be unlike the non-MPDU units." 3/15/10 Tr. 208.

[Mr. Barr responded: "The problem with making it a binding element is that five or ten years from now, all of us here in this room could be sitting in the Planning Board auditorium and we could have a site plan in front of us that showed exactly where the MPDUs are going to go and how they're going to look. And all of us could agree that the way they're being dispersed and the way they appear from the exterior is acceptable and compatible. All of us could agree on that. Yet, if it doesn't comply with the language of the binding element, the applicant is still required to go through a very time consuming and expensive amendment process to change a binding element that everyone may agree is no long applicable. That is really the crux of the problem with making a binding element at this stage." 3/15/10 Tr. 213-214.]

Another binding element sought by the HHE-HOA is "That the exterior facades of all dwellings built on the Hanson Farm as part of the plan be brick, stone, wood or a product of like quality." 3/15/10 Tr. 215. Mr. Giunta testified that the HOA seeks the following language as either a binding element or a non-binding note on the Land Use Plan regarding Land Bay A: "All vehicular parking should be accommodated by parking along the park roadways rather than in a separate parking lot . . . [, a]nd the ball fields should not be lighted." 3/15/10 Tr. 216. He noted that the

suggested parking would be more compatible in terms of impervious surface and aesthetics, and that lighting is incompatible with adjacent the development and the quiet, rustic, rural character of the area. So essentially, the park would close at dusk or evening.

Mr. Giunta indicated that the community would have preferred that the Hanson Farm remain a farm or be developed as RE-2, but that's not he is arguing about. He simply wants to assure, by the only means available, the binding elements, that the development is well implemented and compatible with the existing neighborhoods. Mr. Giunta suggested that one mile south on Travilah Road is a development where the homes are "poorly constructed [and] ridiculously close together, clustered MPDUs that look substantially different from the other homes in the neighborhood." 3/15/10 Tr. 218. He wants the process to prevent this from happening on the Hanson Farm.

4. Matthew Morris (3/15/10 Tr. 110-166; 194-199):

Matthew Morris testified that he lives at 13537 Hunting Hill Way. He is a member of the Hunting Hill Board of Directors and a resident of the community, and is appearing both on behalf of the HOA and personally. Mr. Morris introduced a number of photographs of the site and surrounding area. Exhibits 63(a) – (o). He identified each photo. Many are typical homes in Hunting Hill Estates; others are of nearby homes not in Hunting Hill Estates; and two are of trees buffering Travilah Road.

Mr. Morris also submitted a summary of lot acreage and home size in square feet of properties in Hunting Hill Estates (Exhibit 64). He noted that the average square foot of the homes in Hunting Hill Estates is 4,528 square feet on an average of 2.71 acres. Only one of the homes is at the minimum two acres required in the RE-2 Zone, and all the rest are beyond that, with one at six acres and one at eight acres. 3/15/10 Tr. 123-126. The purpose of his testimony, in showing these photos and property analysis, is to demonstrate the type of homes that were typical in this area of, in Hunting Hill Estates and adjacent communities. They're large homes, minimum two-stories on large

acre lots with lots of trees in a rural setting. 3/15/10 Tr. 134.

The association is also seeking, for compatibility, to have buffering, screening in the area in Land Bay C between Travilah Road and proposed Street A, similar to that on Travilah Road as depicted in Exhibits 63(n) and (o) 3/15/10 Tr. 139. Mr. Morris indicated he would like a binding element mandating a 50 foot wide, heavily screened, buffer. He added that if driveways that went from the homes in Land Bay C directly to Travilah, that would be inconsistent with what is needed for buffering.

Mr. Morris further testified that the community would like to see a binding element specifying that the minimum square footage for the homes in Bay C would 4,000 square feet, with a minimum lot width of 150 feet at the building line. 3/15/10 Tr. 146. He feels that the testing necessary for septic fields might what might result in having to squeeze the homes together, which would hurt compatibility. On cross-examination, Mr. Morris admitted that even the RE-2 Zone does not contain a requirement for a minimum of 4,000 square foot homes (or any minimum size home) and that some of the homes in Hunting Hill Estates are under 4,000 square feet, but nevertheless he felt such a requirement in this case would help ensure compatibility. 3/15/10 Tr. 151-155.

Mr. Morris concluded (3/15/10 Tr. 148):

I don't believe our requests for these binding elements are unreasonable. I also don't think they're inconsistent with the Hanson's public statements about the property in which they want to develop. The closer we can get and put these binding elements together now, the less we're going to have to deal with in the future. We want this to go through as smoothly as possible as well but we want some assurances that once the developer takes over, that we're not left with something that's incompatible with our current neighborhood.

5. Denielle Pemberton-Heard (3/15/10 Tr. 166-194):

Denielle Pemberton-Heard testified that she lives at 13528 Hunting Hill and is a member of the Hunting Hill Homeowners Association Board. She feels that the planners' conclusion of compatibility is based upon mere concepts and assumptions rather than features which are required

by binding elements. “The so-called compatibility is therefore ethereal unless reduced to binding elements.” 3/15/10 Tr. 166. She notes that the Planning Board staff report, page 14, finds compatibility by noting the larger homes planned for Land Bay C, but nothing in the binding elements actually requires larger homes.

Ms. Pemberton-Heard believes that much of the confusion regarding compatibility could be addressed if we were to just hone in and focus on a size, taking into account that the vast majority of the homes in the area are of a certain size and style. She feels that larger homes on these lots, well spaced and similar to the existing development in Hunting Hill Estates, Belvedere and the other surrounding communities, would be a benefit to all. This would also be consistent with the fact that both Turkey Foot and Quince Orchard Road have been designated by the County as rustic roadways which again, is compatible with the notion of large rural homes in pastoral settings.

Also, the requirements of the development plan requires a preliminary classification of dwelling units by type and by number of bedrooms, and there is nothing in the applicant's documentation defining the number of bedrooms.

Ms. Pemberton-Heard also seeks a binding element requiring a 50 foot buffer space, planted with sufficient plantings to screen Land Bay C homes from those traveling along Travilah Road as well as the view of Hunting Hill Estates.

A third area where the HOA would ask the applicant for a binding element is for minimum quality standards of construction and design to ensure compatibility with the surrounding community. Given the need to conform to compatibility to adjacent communities, the townhomes and single-family detached homes for Bay D should also adhere to certain standards relative to size and quality which should also be approved as binding elements in the plan. She recognizes that under the PD Zone, the applicant is required to have at least 35 percent of the dwellings to be townhomes. Of the 187 units, 85 will be townhomes, which will be 51 percent townhomes in Bay

D. Based on the requirements for MPDUs, she has a real concern about what that would look like.

Ms. Pemberton-Heard introduced two photographs showing MPDU concentrations in the Potomac Edge Development about a mile and a half south on Travilah Road (Exhibits 63(p) and (q)). She explained that these are photos of MPDU units that were put in a community of brick front single-family homes with square footage of in excess of 3500 square feet on two levels. They are not consistent with the structure of the existing community and they are not consistent, in her view, of what would be deemed compatible in her community.

When asked by the Hearing Examiner, Ms. Pemberton-Heard stated that she did not feel that any townhouses would be compatible with her community, but she recognized that the PD-2 Zone requires them. She would like to see a maximum of 35% townhouses, the statutory minimum, but Applicant has set the maximum at 45%.

Ms. Pemberton-Heard emphasized her agreement with the revision to the plans which moved the Travilah Road access to the intersection with Turkey Foot Road, rather than the original plan which had it further east. She also noted that she disagreed with the applicant's "last minute attempt to bring in neighborhoods east of Travilah Road to be deemed part of the neighborhood." 3/15/10 Tr. 185. She assumed that was done because some of those neighborhoods do in fact have townhomes, but in her opinion they're not part of "our neighborhood aesthetic." *Id.* They also, just logically in terms of natural boundaries of both Quince Orchard Road and power lines, do not necessarily fall into the same community.

On cross-examination, Ms. Pemberton-Heard admitted that her home at 13528 Hunting Hill is listed in the oppositions own Exhibit 64 as having a floor area of 3,668 square feet (possibly not including the sunroom).

6. Jack Yeh (3/15/10 Tr. 222-241):

Jack Yeh testified that he lives at 13820 Dufief Mill Road in the Versailles development. He

thanked Mr. Hanson for coming to talk with him, and stated his preference that the site remain in the RE-2 Zone because it is a very country and rural setting. Mr. Yeh believes it's fairly apparent that the Muddy Branch Stream Valley is a natural border and the wide swath of high-power tension lines (very large Pepco towers, with two of them in parallel) appear to be very natural boundaries. Everything to the west of that is on two acre lots all the way down to the river.

Mr. Yeh's second preference, since he lives in the Versailles development, is that all the lots adjacent to him be at least two acres, to preserve a transition into a much more dense building situation. He produced two Google aerial photos of the area (Exhibits 68(a) and (b)). Exhibit 69 lists Versailles lot sizes. There are eight lots that make up Versailles, and the average lot size is 2.73 acres. He noted that the lots now planned for Land Bay B would be about 1 acre in size, which is a large step down from the lot sizes in Versailles. He would like to see six two-acre lots there.

Mr. Yeh had some wishes about the locations and plans for the new homes in Land Bay B, and also would like a binding element requiring a landscape buffer with large trees between Versailles and Land Bay B.

### **C. People's Counsel**

People's Counsel, Martin Klauber, did not call any witnesses, but he participated in the hearing in support of the petition. The People's Counsel initially expressed concerns over the need for clarification of the land use plan and for additional binding elements (3/12/10 Tr. 25-29), but changes and clarifications were made to the land use plan, and he ultimately supported the revised application. He also opined on the meaning of "surrounding area" in a floating zone case (3/12/10 Tr. 292-293):

So, an analysis area, and the term surrounding area was developed by that Hearing Examiner. The original concept of surrounding area had no boundaries, there were no lines drawn. The only thing that was encompassed in a surrounding area was a listing of the surrounding uses that were going to be impacted. Contrary to a neighborhood in a Euclidean zone there were no lines on a map.

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Standards for Council Review

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning, to consider whether the application, including the development plan, fulfills the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, the law expressly requires the District Council to make five specific findings, “in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification.” Therefore, these findings are an essential part of the Hearing Examiner’s Report and Recommendation.

The five specific findings required by §59-D-1.61 of the Zoning Ordinance are:

(a) *[That t]he proposed development plan substantially complies with the use and density indicated by the Master Plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies . . .*<sup>25</sup>

(b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

(c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

(d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

(e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

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<sup>25</sup> The remaining language of this provision addresses additional height and density based on the inclusion of on-site MPDUs and workforce housing. That language is inapplicable in this case because it pertains to zones permitting a higher density than that which is permitted in the PD-2 Zone.

Because the general requirement of the law – that the application must fulfill the “purposes and requirements” of the new zone – is subsumed in the language of the five specific required findings (especially in subsection (b)), a determination that the five findings have been satisfied would satisfy the Montgomery County Zoning Ordinance. However, in addition to these five findings, Maryland law also requires that the proposed rezoning be in the public interest. As stated in the State Zoning Enabling Act applicable to the County, all zoning power must be exercised:

*“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].*

In sum, there are six findings required (§59-D-1.61(a) through (e) and the public interest). The “Required Findings” in the next part of this Report and Recommendation are organized in the order set forth in the statute to facilitate review.

## **B. Required Findings**

### *1. County Plans and Policies*

The first required finding is:

*[That t]he proposed development plan substantially complies with the use and density indicated by the Master Plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. . . .*

#### a. The Applicable Master Plan or Sector Plan

The subject site is located in the area analyzed in the 2002 Potomac Subregion Master Plan. The Master Plan, at pp. 26 and 70-75, specifically addresses the subject site (known as the Hanson Farm) and recommends the PD-2 Zone. The Master Plan sets forth a “Concept Plan” for the site that was closely adhered to by the Applicant. For the reasons discussed at length in Part III. D. 3. of this report, the Hearing Examiner finds that Applicant’s Development Plan is in substantial compliance

with the Master Plan's use and density recommendations, as "Finding (a)" requires.

b. The General Plan and the County Capital Improvements Program

The 2002 Potomac Subregion Master Plan is, by its own terms, an amendment to the General Plan which carries out, with greater specificity, the General Plan's "Wedges and Corridors" approach to planning for the County. *See* Master Plan, p. i and p. 8. As stated by Matthew Leakan, Applicant's land planner, "the recommendations in the Master Plan are consistent with the general plan recommendation for this to be a suburban . . . , residential development." 3/12/10 Tr. 145. Since the proposed development complies with the recommendations of the Master Plan, it is consistent with the General Plan. There is no evidence that this proposal conflicts with the County's capital improvements program, or impacts it in any way. *e.g.*, 3/12/10 Tr. 196.

c. Other County Policies (Growth Policy and Adequate Public Facilities Ordinance)

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board's application of the APFO is limited by parameters that the County Council sets in its Growth Policy. While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case, as spelled out in Zoning Ordinance §59-H-2.4(f).

Section 59-H-2.4(f) requires Applicant to produce "[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted." In this case, the application was submitted on June 1, 2009, so the 2007-2009 Growth Policy adopted November 13, 2007 (Resolution 16-376) will apply to the rezoning determination.

The 2007-2009 Growth Policy provides, at pp. 22-23, “[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” There is no such evidence in this case. The remaining three public facilities – transportation, schools and water and sewer service – were discussed at length in Part III.D.4 of this report.

Based on that discussion, the Hearing Examiner finds that Applicant has demonstrated a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted. In sum, the requested rezoning does not conflict with “other applicable County plans and policies.”

2. *Zone Requirements, Safety, Convenience and Amenity of Residents and Compatibility with Adjacent Development*

The second required finding is:

*That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

a. Compliance with Zone Purposes, Standards and Regulations

The requirements for the PD-2 Zone are found in Code §59-C-7.1. The PD-2 Zone is a “floating zone,” which is a flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose and regulations of the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design

flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications must be spelled out on a development plan, however, to assure appropriate zoning oversight by the District Council. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones.

*i. Purposes of the PD-2 Zone*

The purpose clause for the PD-2 Zone (as well as the other PD Zones) is found in Code §59-C-7.11. It is set forth in full below, with relevant analysis and conclusions following.

*It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area Master Plans by permitting unified development consistent with densities proposed by Master Plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area Master Plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.*

*It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area Master Plan, and related public and private facilities.*

*It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.*

*Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.*

*It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.*

*It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.*

*Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.*

*It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.*

*This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and Master Plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.*

As discussed in Parts III.D.3 and V.B.1.b, above, the proposed development will be in substantial compliance with the 2002 Potomac Subregion Master Plan. Accordingly, the requested reclassification will comply with the first element of the purpose clause by allowing implementation of applicable Master Plan objectives.

The second paragraph of the purpose clause calls for a design which will facilitate social and community interaction, create a distinctive visual character, and offer a balanced mix of uses. As observed by Technical Staff (Exhibit 49, pp. 17-20), the proposed development will provide several greens, squares, and open spaces to allow gathering space for the community and encourage social and community interaction. The proposal will also incorporate two existing ponds and various tributary areas into the fabric of the community. These natural features will contribute to the desired “distinctive visual character” of the development. Added to this will be a local park with ball fields to be located along Quince Orchard Road, and a network of pedestrian and equestrian paths which will connect the open areas to the proposed residences and to adjacent developments, thereby maximizing social and community interaction. There will be no commercial uses on site because the Master Plan does not envision any, but there will be a mix of residential and recreational uses.

The third paragraph of the purpose clause encourages “a broad range of housing types.” The proposed development will provide for a range of different sized single-family detached homes, single-family attached units and townhouse units on differing sized lots. It will thus provide a broad range of housing choices.

The fourth and fifth paragraphs address trees, grading and open space. The areas to be developed as part of this proposal are primarily on existing open fields, thereby preserving much of the existing forest on the property. As already mentioned, the proposal will provide a great deal of open space, including several greens, squares, and a 10 acre local park with ball fields to allow an area for community recreation.

The sixth paragraph calls for pedestrian circulation networks to minimize reliance upon automobiles. The development plan here provides for a network of pedestrian, biking, and equestrian paths which will clearly reduce reliance upon automobiles.

The large scale advocated in the seventh paragraph of the purpose clause is provided by a development of over 170 acres in size.

The eighth paragraph of the purpose clause calls for a development which provides for safety, convenience, amenity, and compatibility, and the ninth paragraph reiterates the need for a development that will be proper for the comprehensive and systematic development of the County, and consistent with the Master Plan and the Zone. Safety was discussed in connection with transportation facilities in Part III.D.4.a. of this report, and as noted there, the proposed access ways and internal circulation systems will be adequate and safe. Convenience and amenities include the pedestrian, bike and equestrian networks and park areas which were discussed above in this section.

Compatibility was discussed at length in Part III.E. of this report, and despite concerns expressed by the community, the Hearing Examiner found that the overwhelming weight of the evidence established that the proposed development will be compatible with surrounding uses, subject to the later detailed review at Site Plan and Subdivision. This is not to say that the Council need not address compatibility at this stage. Certainly, it must; however, it should not dictate a land use plan in such detail that sensible later planning is foreclosed when all the engineering and planning issues are reviewed at Site Plan. That is precisely what Site Plan review is designed to do.

The development proposed here is almost identical to the conceptual plan set forth in the Master Plan for this very property. That conceptual plan called for the same zone and classification applied for (PD-2) and the same number of units proposed in this development plan, arranged in almost the same way, as is evident from Exhibit 76(e) reproduced on pp. 25-26 of this report.

The PD Zone requires that a certain percentage of the units be townhouse or attached, and it is therefore obvious that the Planning Board and Council, in approving that Master Plan, considered this type of development to be generally compatible with its surroundings, even though the surrounding developments include large residences in the nearby Hunting Hill Estates and Versailles

communities. That is why the whole argument about the size of the defined surrounding area, pressed so hard by the opposition at the hearing, made little difference – whether or not it included R-200 residential development in addition to RE-2 residential development, the Council, in approving a Master Plan which specifically addressed this site in detail, clearly considered its recommended development for this site to be compatible with surrounding development.

Technical Staff concluded that the development plan would satisfy the zone’s purpose clause, including compatibility with the surrounding area (Exhibit 49, p. 15), and the Planning Board adopted Technical Staff’s findings (Exhibit 52). The Hearing Examiner agrees. The subject development will provide the kind of housing mix and general-benefit open space recommended by the Purpose Clause, as well as pedestrian interconnectivity and compatibility with its surroundings.

In sum, the proposed development is consistent with the intent and purposes of the PD-2 Zone. We next look to the “standards and regulations” of the PD-2 Zone.

*ii. Standards and Regulations of the PD-2 Zone*

The standards and regulations of the PD-2 Zone are spelled out in Code Sections 59-C-7.12 through 7.18.

Section 59-C-7.121, Master Plan

Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted Master Plan which shows such land for a density of 2 dwelling units per acre or higher.” The applicable Master Plan, the 2002 Potomac Subregion Master Plan, recommends that the subject property be developed under the PD-2 Zone, which permits 2 dwelling units per acre. Accordingly, this provision is satisfied in this case.

Section 59-C-7.122, Minimum Area

Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. Alternative criterion (a) requires that the site “contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted.” The subject property contains 170.77 acres, more than large enough to construct 50 dwelling units. It is in fact recommended for at least 170 dwelling units by the Master Plan, and up to 187 dwelling units if TDRs are employed.

Section 59-C-7.13 and 7.131, Residential Uses Permitted

Pursuant to Code §59-C-7.131, single-family attached (including townhouses) and detached units are permitted in the PD-2 Zone, but it also specifies that in a development of fewer than 200 units, multi-family dwellings are not permitted. Moreover, a minimum of 35% of the units must be detached and a minimum of 35% must be attached or townhouse. Here, the proposed Development Plan provides for at least 35% single-family detached units and at least 35% single-family townhouse and attached units, satisfying this requirement (Binding Element 2). It also contains a binding element setting the maximum percentage of attached and townhouse units at 45% (Binding Element 8).

Section 59-C-7.132, Commercial Uses

There are no commercial uses proposed here.

Section 59-C-7.133, Other Uses Permitted

Under subsection (a) of this provision of the PD Zone, recreational facilities intended for the exclusive use of the residents and their guests are permitted. Moreover, under subsection (b), any nonresidential, noncommercial use is permitted at the discretion of the District Council on a finding that such use is compatible with the planned development and surrounding development under the strictures of §59-C-7.15.

Technical Staff indicates that the 10 acre park proposed for Land Bay A could be considered a nonresidential, noncommercial use; however, since the park will be open to the public and is not intended for the exclusive use of the residents of the proposed development, Staff asserts that no findings are necessary. Exhibit 49, pp. 20-21. The Hearing Examiner respectfully disagrees with Staff on this point. Because the proposed park will not be for the exclusive use of the residents, it clearly does not fall under subsection (a). To be permitted, then, it must fall under subsection (b), which does require a finding of compatibility. Nevertheless, there is nothing about the proposed 10 acre park that would be incompatible either with the proposed development or with existing or planned development in the surrounding area. The Hearing Examiner so finds. The particulars specified in §59-C-7.15 will be discussed below.

#### Section 59-C-7.14, Density of Residential Development

Three subsections (a), (b) and (e) apply to this case. Subsection (a) sets forth the available density categories for residential development in a PD Zone. In this case, the density category specified in the development plan is PD-2, which is the category recommended in the 2002 Potomac Subregion Master Plan.

Subsection (b) provides, in relevant part:

*(b) The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide moderately priced dwelling units in accordance with Chapter 25A of this Code, as amended, and such other information as may be relevant. . . .*

Subsection (e) provides:

*(e) The District Council may approve a density bonus of up to 10% above the maximum density specified in the approved and adopted master plan for the provision of TDRs, if the use of TDRs is recommended for the site.*

The density category applied for, PD-2, is the lowest density available in the PD Zones, and is specifically recommended in the 2002 Potomac Subregion Master Plan. Consistent with the Master Plan and Subsection (e), the Development Plan calls for up to 187 dwelling units, if transferable development rights (TDRs) are used. Without TDRs, the development will be limited to 170 dwelling units.<sup>26</sup> The effective density of placing 187 units on a site of 171 acres is 1.09 dwelling units per acre. As required by law, at least 12.5% of the units will be moderately priced dwelling units (MPDUs).

#### Section 59-C-7.15, Compatibility

*(a) All uses must achieve the purposes set forth in section 59-C-7.11 and be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development.*

*(b) In order to assist in accomplishing compatibility for sites that are not within, or in close proximity to a central business district or transit station development area, the following requirements apply where a planned development zone adjoins land for which the area master plan recommends a one-family detached zone:*

*(1) No building other than a one-family detached residence can be constructed within 100 feet of such adjoining land; and*

*(2) No building can be constructed to a height greater than its distance from such adjoining land.*

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*(e) Compliance with these requirements does not, by itself, create a presumption of compatibility.*

As previously discussed, Technical Staff, the Planning Board and the Hearing Examiner found that the proposed development will be compatible with surrounding development. Moreover, as noted by Technical Staff (Exhibit 49, pp. 21-22), “The proposal provides solely for single-family detached housing or vast stretches of open space around the perimeter of the development. [*i.e.*,

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<sup>26</sup> The Master Plan called for a maximum of 170 dwelling units unless the Council approved a text amendment to provide a TDR option in the PD zone, in which case, it allowed that TDR density incentives could be used to increase the maximum number of dwelling units by 10 percent, to 187 dwelling units. The Council did approve such an amendment, which is codified in Zoning Ordinance §59-C-7.14(e).

there will be no buildings other than single-family residents within 100 feet of the adjoining land.] Further, the single-family detached homes will require setback distances from the perimeter of the development that are at least as great as the height of the homes.” Thus, the Hearing Examiner finds that all the setbacks proposed for this development comply with the provisions of this section.

#### Section 59-C-7.16, Green Area

This section of the Ordinance requires 30% green space for the PD-2 Zone, and the Development Plan more than satisfies that requirement with a minimum of 50% green space (Binding Element 3). Technical Staff found that “The proposed development plan depicts green area at 56 percent of the property, which calculates to approximately 96 acres.” Exhibit 49 p. 22.

#### Section 59-C-7.17, Dedication of Land for Public Use

This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated in accordance with regulations and the Master Plan, with such dedications shown on all required development plans and site plans. The development plan in this case depicts a 10 acre local park and a substantial amount of tributary area associated with the Muddy Branch Stream Valley Park being dedicated to M-NCPPC. In addition to the parkland, the development plan shows illustrative street right-of-way dedications for Quince Orchard, Travilah, and Turkey Foot Roads, with final dedications to be established at the time of Preliminary Plan.

#### Section 59-C-7.18, Parking Facilities

This section requires that off-street parking be provided in accordance with Zoning Ordinance Article 59-E. Under §59-E-3.7, two parking spaces are required for each single-family dwelling unit. As shown on the Development Plan, the proposed project will provide two off-street spaces for each dwelling unit proposed, and ample on-street parking throughout the development and adjacent to the local park.

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<sup>27</sup> Subsections (c) and (d) pertain to waivers, which are not requested in this case.

In sum, the Hearing Examiner concludes that the proposed rezoning and the Development Plan will be consistent with the purpose clause and all applicable standards for the PD-2 Zone.

b. Safety, Convenience and Amenity of Residents

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-2 Zone, it has been discussed in that context in this report. The Hearing Examiner finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

c. Compatibility with Adjacent Development

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose Clause of the PD-2 Zone, and at length in Part III. E. of this report, the Hearing Examiner concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned development.

3. Internal Vehicular and Pedestrian Circulation Systems and Site Access

The third required finding is:

*That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

As discussed in Part III.D.4(a) of this report, Applicant’s traffic engineer, Wes Guckert, opined that the proposed internal vehicular circulation systems will be safe and adequate, and the proposed points of external access, as well as the proposed round-about at Travilah Road and Turkey Foot Road, will be safe, adequate, and efficient. The three proposed access points also provide

adequate sight distances. 3/12/10 Tr. 302-303. Applicant's land planner testified that the pedestrian systems were also safe and adequate. 3/12/10 Tr. 201. Technical Staff also found that "[t]he development plan maximizes safe connections between the proposed development and the surrounding area." Exhibit 49, p. 19.

Accordingly, the Hearing Examiner finds that the proposed circulation systems and site access would be safe, adequate and efficient.

#### 4. Preventing Erosion, Preserving Vegetation, Forest Conservation and Water Resources

The fourth required finding is:

*That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

As discussed in Part III.D.5. of this report, the subject site is not within a Special Protection Area or Primary Management Area. Technical Staff stated that the site has been designed with the natural features of the property in mind and that the proposed development and infrastructure have been situated away from natural tributaries and forested land. Staff recommended approval of a "tree variance" and the proposed Preliminary Forest Conservation Plan. DPS has approved the stormwater management concept plan, and both plans will be reviewed in connection with site plan and subdivision. As observed in Part III.D.5. of this report, Applicant has been sensitive to environmental concerns, and the entire record indicates that Applicant's plans take due care to protect the environment.

In sum, the Hearing Examiner finds that Applicant has demonstrated the environmental controls called for by the fourth required finding.

### 5. Ownership and Perpetual Maintenance

The fifth required finding is:

*That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

The Hanson family is the Applicant and the owner of the subject site, as indicated in the public tax records. Applicant submitted an illustrative homeowners association declaration of covenants that describes the proposed ownership and maintenance of common areas by a homeowners association, after development. Exhibit 48(b), Section 3.1.

The Hearing Examiner finds that Applicant has sufficiently demonstrated both its interest in the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

### 6. The Public Interest

The final finding which is required under Maryland law is that the proposed rezoning will be in the public interest. When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and public benefits such as provision of affordable housing.

The issue of Master Plan conformance was considered in Part III.D.3. of this report. As outlined therein, Applicant's proposal is consistent with the recommendations, goals and objectives of the 2002 Potomac Subregion Master Plan. The Planning Board and its Technical Staff both support the proposed rezoning. The impact on public facilities was discussed in Part. III. D.4. of this report. The evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development.

The proposed project will offer a mix of housing opportunities, including affordable housing, in a manner which is sensitive to the environment and compatible with the surrounding area. It will also provide a new ten acre public park and substantial open space which will benefit the community.

For the reasons discussed at length in this report, the Hearing Examiner concludes that the proposed development would be in the public interest.

### **C. Conclusion**

Based on the foregoing analysis, and after a thorough review of the entire record, I reach the following conclusions:

1. The proposed development satisfies the intent, purpose and standards of the PD-2 Zone, and meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance;
2. The application proposes a development that would be compatible with development in the surrounding area; and
3. The requested reclassification to the PD-2 Zone has been shown to be in the public interest.

## **VI. RECOMMENDATION**

I therefore recommend that Zoning Application No. G-884, requesting reclassification from the RE-2 Zone to the PD-2 Zone, of a 170.77-acre parcel of land, known as Parcels 020, 945 and 312, located at 14100 and 14200 Quince Orchard Road, bordering Muddy Branch Park, Turkey Foot Road, Quince Orchard Road and Travilah Road, in Gaithersburg, Maryland, be approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 82(a), provided that the Applicant submits to the Hearing Examiner for certification a

reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.<sup>28</sup>

Dated: May 18, 2010

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner

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<sup>28</sup> A five vote majority is required because six votes are mandated by Zoning Ordinance §59-D-1.62 only when a PD Zone is sought with a density category greater than that recommended in the Master Plan. That is not the case here.