

**DISTRICT COUNCIL FOR PRINCE GEORGE’S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

ZONING MAP AMENDMENT

A-10059

DECISION

Application:	R-E and R-A to R-S/LCD
Applicant:	D.R. Horton, Inc./Dobson Farms
Opposition:	Evelyn Williams
Date:	March 2, 2022
Examiner:	Joyce B. Nichols
Recommendation:	Approval of the R-S Zone Denial of LCD Zone

NATURE OF REQUEST

(1) A-10059 is a request for the rezoning of approximately 581.06 acres of R-E (Residential Estates) and R-A (Rural Agricultural) zoned land to the R-S (Residential Suburban Development) or LCD (Legacy Comprehensive Design) Zone. The Subject Property is located south of McKendree Road and west of Timothy Branch, approximately 1400 feet west of Crain Highway. On the south, the Property runs along the north side of Mattawoman Creek to Gardner Road and expands northward, west of McKendree Village. The Property is also identified as Tax Map 154 and 164 (7 lots and 52 parcels) (see Exhibit 38, Appendix A for specifics).

(2) The Technical Staff recommended that the Application be approved without conditions. (Exhibit 48) The Planning Board made the same recommendation. (Exhibit 45) Ms. Evelyn Williams testified in opposition (T.p. 88-89)

(3) At the conclusion of the evidentiary hearing, the record was kept open for the receipt of the updated Traffic Study (Exhibit 82) and the record was closed on March 4, 2022.

(4) Shortly after receipt of the Application by the Office of the Zoning Hearing Examiner, the Application was tolled pending final District Council action on the Countywide Map Amendment (“CMA”). On November 29, 2021, the District Council adopted CR-136-2021, thereby approving the CMA, with an effective date of April 1, 2022. On December 20, 2021, Applicant submitted a written request that the consideration of its Application proceed as amended to request a rezoning to the LCD (“Legacy Comprehensive Design”) Zone, and revised its Basic Plan accordingly. On February 19, 2022, the Technical Staff submitted an email noting that its recommendation of approval would not change if the property were rezoned to the LCD Zone. (Exhibit 55)

FINDINGS OF FACT

Subject Property

(1) The original Application requested to approve a zoning change to a 731.70-acre site in the Residential-Agricultural (R-A), Residential-Estate (R-E), and Rural Residential (R-R) Zones to the Residential Suburban Development (R-S) Zone. The request was amended by letter dated May 20, 2021, and the area and development were reduced by removing the R-R Zoned property. The request is now for a 581.06-acre property found on Tax Map 164, in the southern portion of Prince George's County. The property is located on the south side of McKendree Road, about 230 feet west of its intersection with US 301 (Crain Highway). The Property is west of Timothy Branch and runs along the north side of Mattawoman Creek to Gardener Road. Access to the Property would be provided from a single access point on McKendree Road.

History

(2) The Property was retained in the R-A and R-E Zones in the 2013 Approved Subregion 5 Master Plan and Sectional Map Amendment (Master Plan). Portions of the Property have been farmed extensively. More recently, certain parts of the Property were the site of Surface Mining operations. While the central portion of the Property has been cleared for the mining operation, the northern, eastern, and southern areas remain generally wooded, especially along Mattawoman Creek and Timothy Branch.

In 1968, the Prince George's County District Council approved SE-1719, for the expansion of the Golf Course and construction of ponds on the Property.

In 1969, the District Council approved SE-2004, to permit a Golf Course, Country Club, and concession stand on the Property.

In 1978, the District Council approved SE-2970, to permit the Mining of Sand and Gravel for five years on a tract of 102 acres on the Property.

In 1997, the District Council approved SE-4218, to permit the Mining of Sand and Gravel on the Property.

In 2003, the District Council approved SE-4479, to permit the extension of the Mining of Sand and Gravel on a tract of 65 acres for three years on the Property.

In 2011, the District Council approved SE-4669, to permit the extension of the Mining of Sand and Gravel for six years on the Property.

Neighborhood and Surrounding Uses

(3) Significant natural features or major roads usually define neighborhoods. The following roadways define the boundary of this neighborhood:

North— Accokeek Road (MD 373), a local scenic and historic road;

South— Mattawoman Creek;

East— Crain Highway, a scenic and historic highway; and

West— Gardener Road, a scenic and historic collector road

(4) The following uses and roadways immediately surround the site:

North— Vacant land in the R-E Zone and surface Mining; Sand and Gravel Wet-Processing in the R-A Zone.

South— Single-family detached and multifamily dwellings in Charles County.

East— Single-family detached dwellings in the R-E Zone, single-family detached dwellings in the R-M (Residential Medium Development) Zone, vacant land in the R-R, R-E, and Townhouse Zones.

West— Single-family detached dwellings and surface Mining; Sand and Gravel Wet-Processing and vacant land in the R-A Zone.

Master Plan/Sectional Map Amendment

(5) The northern, southern, and eastern portions of the Property are in the Established Communities policy area, as defined by the 2014 Plan Prince George's 2035 Approved General Plan (Plan 2035). The vision for Established Communities is context-sensitive infill and low- to medium-density development. The Generalized Future Land Use Map in Plan 2035 specifically recommends Residential Low land use for the northern, southern, and eastern portions of the Property. Plan 2035 defines Residential Low land use as primarily single-family detached residential areas up to 3.5 dwelling units per acre.

The western portion of the Property is in the Rural and Agricultural Areas policy area, as defined by Plan 2035, and placed in the Priority Preservation Area. The vision for rural and agricultural areas is the protection of large amounts of land for low-density residential uses with areas of agricultural and forestry production, including agricultural land (cropland, pasture, farm fields), forest, and very low-density residential. Plan 2035 recommends rural and agricultural land use for the western portion of the Property of less than 0.5 dwelling units per acre.

The property is not within a Regional Transit District, a Local Center, or an Employment Area, as defined in Plan 2035.

Plan 2035 established the following policies and strategies that are relevant to this Application:

Policy 1: Direct a majority of projected new residential and employment growth to the Regional Transit Districts, in accordance with the Growth Policy Map (Map 11, pages 107--108) and the Growth Management Goals set forth in Table 17 (Land Use, page 110).

Policy 8 (page 115): Strengthen and enhance existing residential areas and neighborhoods in the Plan 2035 Established Communities.

Policy LU8.2 (page 115): Use conservation subdivisions in areas adjacent to Rural and Agricultural Areas to transition density and to encourage preservation of green infrastructure corridors, as defined by the County's Green Infrastructure Plan.

Policy 11 (page 117) Preserve and protect the Rural and Agricultural Areas to conserve agricultural and forest resources.

Policy 13 (page 218): Preserve and enhance the County's rural and agricultural character.

Policy HD13.3 (page 218): Use conservation subdivisions or other site planning and landscape conservation tools when developing in Established Communities near Rural and Agricultural Areas to cluster development and preserve land for resource protection or open space.

2013 Approved Subregion 5 Master Plan

The Master Plan's Future Land Use Map (Map IV-1, page 32) splits the Property in three general land use classifications. Each of the classifications have their own density recommendations: Residential Low, Residential Low Transition, and Rural.

Residential Low

The Master Plan indicates that property classified as Residential Low "is intended for single-family detached residential development that may have up to 3.5 dwelling units per acre."

Residential Low Transition

Per Table IV-1 in the Master Plan, Residential Low Transition areas are intended for residential areas up to two dwelling units per acre and for primarily single-family detached dwellings with a minimum of 60 percent open space through required conservation subdivisions. The Master Plan indicates that Residential Low Transition areas "support the 2005 Approved Countywide Green Infrastructure Plan and its designation of a portion of the Mattawoman watershed as a Special Conservation Area by encouraging residential subdivision designs that incorporate large, natural, undeveloped areas." The Master Plan emphasizes that in these areas "the conservation subdivision technique is strongly recommended."

Rural

Table IV-1 in the Master Plan explains that in Rural land use classification, "[n]ew residential development is permitted at densities that generally range from .5 to .2 dwelling units per acre." The Master Plan also states that rural areas are "envisioned to protect large amounts of land for woodland, wildlife habitat, recreation and agricultural pursuits, and to preserve the rural character and vistas that now exist." Furthermore, the Plan states that the "county's intent is for these areas to remain rural and to conserve these areas' natural resources, primarily forest and forest resources, for future generations."

The Basic Plan conforms to the density requirements for Residential Low and Residential Low Transition Areas.

About 141 acres of the Property is in the Master Plan's Residential Low land use designation. This designation allows up to 3.5 residential dwelling units per acre. Based on this density, the development of 496 residential dwellings would be consistent with the Master Plan's recommendation on this portion of the Property. There are 369–496 residential dwelling units included on the Basic Plan in this area of the Property.

While the Basic Plan does not include the conservation subdivision technique for the on-site Residential Low Transition areas, the Basic Plan conforms to the Master Plan's density recommendations. Residential Low Transition Areas permits up to 2.0 residential dwellings per acre and covers about 305 acres of the Property. Therefore, the development of 610 residential dwellings would be consistent with the Master Plan's recommendation on this portion of the Property. The Basic Plan includes between 488–610 residential dwellings in this area of the Property.

About 134 acres of the Property are within the Master Plan's Rural area. This area permits up to 0.5 dwellings per acre. Therefore, the development of 67 residential dwelling units would be consistent with the Master Plan's recommendation on this portion of the Property. There are no residential dwelling units included on the Basic Plan in this area of the Property. This provides a wooded buffer between the development and properties to the west.

2017 Countywide Green Infrastructure Plan

According to the 2017 Green Infrastructure Plan of the Approved Prince George's County Resource Conservation Plan: A Countywide Functional Master Plan (Green Infrastructure Plan), the southern portion of the Property is within the Special Conservation Area, and a majority of the site is within the Evaluation Area and Regulated Area designations. Special Conservation Areas should be carefully considered when land development proposals are reviewed in the vicinity to ensure that their ecological functions are protected or restored and that critical ecological connections are established and/or maintained in those areas. Evaluation Areas contain environmentally sensitive features, such as interior forests, colonial waterbird nesting sites, and unique habitats, that are not regulated (i.e., not protected) during the land development process. Regulated areas, however, contain environmentally sensitive features, such as streams, wetlands, 100-year floodplains, severe slopes, and their associated buffers, that are regulated (i.e., protected) during the land development process. The referral from the Environmental Planning Section (Nickle to Spradley, dated June 15, 2021), which is incorporated herein, outlines policies that support the stated measurable objectives of the Green Infrastructure Plan.

Existing Conditions/Natural Resources Inventory (NRI)

A NRI is not required as part of a Zoning Map Amendment Application.

Woodland Conservation

The Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) provides minimum Woodland Conservation and afforestation thresholds. This Property is subject to the provisions of the WCO because the Property is greater than 40,000 square feet in size and it contains more than 10,000 square feet of existing woodland.

The Basic Plan indicates that the total acreage of the site is 581.06 acres, with a floodplain area of 213.84 acres resulting in a net tract area of about 367.22 acres (Net Tract Area = Gross Tract Area - Floodplain). The Basic Plan shows 183.80 acres of net tract woodland and 203.56 acres of wooded floodplain. PGAtlas maps the floodplain over the R-A Zoned property (Parcels 6, 8, and 10). Using these estimates, a draft standard Woodland Conservation Worksheet was processed utilizing the existing zones of the property and the existing woodland and floodplain estimates provided by the Applicant. The resulting Woodland Conservation threshold under the current zoning would be 45.92 percent, or 168.61 acres. This Zoning Map Amendment to rezone the property to the R-S Zone would result in a reduced Woodland Conservation threshold to 20 percent, or 73.44 acres, resulting in an estimated loss of almost 95.17 acres of Woodland Conservation requirement.

The requested change in use will result in a significant decrease to the Woodland Conservation threshold, which is currently 50 percent in the R-A Zone and 25 percent in the R-E Zone. While this potential reduction of a minimum Woodland Conservation requirement is not generally supported within the Special Conservation Area of the Mattawoman Stream Valley, the Applicant proffers that the development would have a stream corridor assessment survey with the NRI review, to meet the entire Woodland Conservation requirement for the proposed R-S Zone on-site, the creation and enhancement of wetlands with adjoining meadows focusing on providing wildlife habitat, selective woodland understory enhancement focusing on habitat and biodiversity, ecological enhancement through selective environmental site design planting motifs that both replicate and increase the biodiversity of the local ecology, and to develop and foster an interconnected community of complimentary micro-ecosystems, established through local hydrology that benefits the overall health of the Mattawoman's floodplain biome. The proffer by the Applicant would provide expanded wildlife habitat that builds on the Mattawoman and Timothy Branch Stream Valleys. All future applications will require Tree Conservation Plans in accordance with the current regulations and to include the Applicant's proffers.

With the requested rezoning of the property to the R-S Zone, the Applicant proffers the following:

- Provide a stream corridor assessment survey with a NRI plan review.
- Meet the entire woodland conservation requirement for the proposed R-S Zone on-site.
- Create new wetland and enhance existing wetlands with adjoining meadows focusing on providing wildlife habitat.
- Provide selective woodland understory enhancement focusing on habitat and biodiversity.

- Provide ecological enhancement through selective environmental site design planting motifs that both replicate and increase the biodiversity of the local ecology.

Adherence to these proffers will develop and foster an interconnected community of complimentary micro-ecosystems, established through local hydrology that benefits the overall health of the Mattawoman's floodplain biome.

Site Description

Plan 2035's Watershed Map (Map 15, page 170) shows that the Property is entirely located within the Mattawoman Creek Watershed. In addition, the main stem of the Mattawoman Creek is located on the southern portion of the site. Plan 2035 and the Master Plan provide principles and guidelines for protecting these important environmental features. On page 70, the Master Plan explains that the "largest continuous forest tracts are located along Piscataway Creek and the Mattawoman Creek Valley, in the south-central portion of the subregion" and that "[m]uch of the subregion's woodlands are included in the green infrastructure network." That notwithstanding, the Master Plan stresses that "[u]rban and rural forests and woodlands have been damaged and continue to be threatened by human and natural forces, such as sprawling development, insufficient care or maintenance, poor harvesting practices, wildfire, and insects and disease putting ecosystem viability at risk." Furthermore, the Plan states, "[w]hen trees and forests are damaged, ecological features such as air and water quality or wildlife and fish habitats are degraded, and nearby communities suffer, sometimes showing signs of economic and social decline."

The majority of the site is within the Environmental Strategy Area 2 (formerly the Developing Tier), and the westernmost parcels, Parcels 6 and 8, are within the Environmental Strategy Area 3 (formerly the Rural Tier), as designated by Plan 2035. Parcels 6 and 8 are in the Priority Preservation Area.

The mapped Green Infrastructure network on this site contains regulated and evaluation areas over a majority of the site. The regulated areas are mapped in association with the Mattawoman Creek and its tributaries, and the evaluation area is associated with the woodland adjacent to the stream valleys which provides wildlife connections between the streams. The Mattawoman Creek Stream Valley is identified in the Green Infrastructure Plan as Special Conservation Area No. 10, containing unique environmental features requiring careful consideration when proposing land development. According to available information from the Maryland Department of Natural Resources Natural Heritage Program (DNR NHP), rare, threatened, and endangered species are not mapped on site; however, confirmation from DNR is required to be provided during the development review process. The site fronts on McKendree Road and Gardner Road, which are designated as scenic and historic roads. The 2009 Approved Countywide Master Plan of Transportation designates Gardner Road as a Collector roadway (C-532), and the eastern portion of McKendree Road as a Major Collector (MC-502).

The site is 581.06 acres, with about 387.36 acres of existing woodlands. The northern portion of Parcel 8 is subject to SE-2970, a reclaimed mining site, currently used for agriculture. SE-4669 was approved for a haul road across the site to serve the abutting Robindale Mining site. A Forest Stand Delineation was submitted with this Application for informational purposes only. The Forest Stand Delineation will be reviewed with the NRI plan. The Property contains mapped regulated environmental features including streams, wetlands, and 100-year floodplain.

The site contains mapped forest interior dwelling species habitat. Marlboro Clays and Christiana Complexes are not mapped on site. The Mattawoman Creek is designated by the state as a Tier II waterway, which are those waters that have an existing water quality that is significantly better than the minimum water quality standards. The Environmental Technical Manual requires the delineation of Tier II buffers as part of the NRI.

The Property is not located within the Chesapeake Bay Critical Area

Plan Principles and Guidelines General

General Plan

At the top of page 163 of Plan 2035, the first page of the Natural Environment chapter, Plan 2035 states that its goal, which guides the remainder of the section, is to “[p]reserve, enhance, and restore our natural and built ecosystems to improve human health, strengthen our resilience to changing climate conditions, and facilitate sustainable economic development.” The plan emphasizes that one of its core principles is to “preserv[e] the remaining resources and restor[e] lost and degraded areas by developing strategically and compactly” and that strategy is “essential to provid[e] economic and social benefits for current and future generations.”

Plan 2035 also identifies several legislative efforts to protect forests and Tree Canopy Coverage in the County, including the WCO and Green Infrastructure Plan. On page 168, with specific reference to the Green Infrastructure Plan, Plan 2035 explains that this “functional Master Plan contains policies and strategies to be implemented to preserve, protect and enhance the designated network of natural resources of countywide significance.”

Regarding forests and Tree Canopy Coverage, Plan 2035, on page 169, identifies the Forest Preservation Act of 2013, which “set a ‘no net loss’ goal of 40 percent forest and Tree Canopy in Maryland.” Plan 2035 “recommends sustaining the County’s combined forest and Tree Canopy Coverage at 52 percent.” In addition, Plan 2035 explains that “the State of Maryland has focused on the reforestation of buffers along streams specifically in order to improve water quality” and that those buffers “improve water quality, provide additional forest canopy, and facilitate green infrastructure connectivity.”

In addition to these stated principles and guidelines, Plan 2035 lists environmental policies that are relevant to this Application and clearly recognize the need to protect water quality and to preserve and enhance existing forest and Tree Coverage:

Policy NE 2: Improve and maintain water quality through stormwater management and water resource protection.

Policy NE 2.5: Identify strategies to reduce impervious surfaces by amending County codes and coordinating County agencies.

Policy NE 2.6: Develop a program to utilize vacant land (both publicly and privately owned) for stormwater management. Acquire land to serve the dual purpose of green infrastructure/stormwater infiltration and recreational/open space.

Policy NE 5: Preserve and enhance existing forest and tree canopy coverage levels.

Policy NE 5.1: Prepare a comprehensive forest and tree canopy coverage strategy that supports Plan 2035’s vision, goals, and development pattern.

Policy NE 5.3: Annually evaluate tree canopy and woodland conservation metrics. This includes data on fee-in-lieu, off-site tree plantings, and mitigation. Report findings to the Planning Board, County agencies, and elected officials.

Policy NE 5.4: Update the 2005 Green Infrastructure Plan to reflect updates and amendments to the regulated areas. This update should include policies and strategies that support the Plan 2035 development pattern and increase green infrastructure connectivity throughout the County and should delineate Natural Resource and Climate Change Impact Areas pursuant to the Plan Maryland’s Preservation/Conservation Planning Areas.

Policy NE 5.5: Integrate into the work programs of all county agencies the priority status of the designated green infrastructure network as the County’s highest priority areas for preservation, restoration, and enhancement of natural resources.

Master Plan

On page 67 of the Master Plan, the beginning of the chapter addressing Subregion 5’s environment, the Plan states that “Subregion 5 contains environmental assets of County and State importance, especially the Mattawoman Creek Watershed,” where the Property is located. The Plan explains that the “primary environmental issues that are addressed in this chapter are protection of the Mattawoman Creek Watershed, connectivity of the green infrastructure network, and water quality.” To that end, the Plan highlights two goals:

- **The natural environment and its associated ecological functions are preserved, enhanced, and restored as a fundamental component of sustainable development.**
- **A development pattern that complements the natural systems, incorporating open space and green infrastructure connectivity into growth strategies.**

The requested rezoning will decrease the Woodland Conservation threshold significantly. With respect to woodlands, wildlife, and habitats, the Master Plan, on page 71, identifies strategies that serve as environmental guidelines to implement the Master Plan’s desired development pattern; ensure that new development incorporates open space, environmentally sensitive design, and mitigation activities; and protects, preserves, and enhances the identified Green Infrastructure network.

- **Protect primary corridors (Mattawoman Creek, Piscataway Creek, and Tinkers Creek) during the review of land development proposals to ensure the highest level of preservation and restoration possible. Protect secondary corridors to restore and enhance environmental features, habitat, and important connections.**

- **Protect the portions of the green infrastructure network that are outside the primary and secondary corridors to restore and enhance environmental features, habitat, and important connections.**
- **Preserve or restore regulated areas designated in the green infrastructure network through the development review process for new land development proposals.**
- **Evaluate land development proposals in the vicinity of SCAs to ensure the SCAs are not impacted and that green infrastructure connections are either maintained or restored.**
- **Continue to implement the County’s Woodland Conservation and Tree Preservation Ordinance, which places a priority on the preservation of woodlands in conjunction with floodplains, wetlands, stream corridors, and steep slopes and emphasizes the preservation of large, contiguous woodland tracts.**
- **Preserve habitat areas to the fullest extent possible during the land development process.**
- **Target public land acquisition programs within the designated green infrastructure network to preserve, enhance, or restore essential features and special habitat areas.**
- **Increase areas for native grasslands on public lands to provide habitat for ground-nesting birds and other species, particularly opportunities in Piscataway Creek Stream Valley Park.**
- **As agricultural needs change, support the transition of pasture land to native grassland.**

Green Infrastructure Plan

The Master Plan identifies Mattawoman Creek as one of three Green Infrastructure Primary Corridors. Notably, the Master Plan identifies the Green Infrastructure Plan as “a comprehensive vision for conserving significant environmental ecosystems in Prince George’s County” and includes a lengthy discussion concerning that Plan; thus, the principles and guidelines within the Green Infrastructure Plan are relevant to approval of the subject Application. The principles and guidelines that are relevant to the Property include:

Preserve, enhance, and where appropriate, restore environmentally sensitive features through the identification of green infrastructure elements.

Implement the desired development pattern throughout the county while protecting sensitive environmental features and meeting the full intent of environmental policies and regulations.

Restore and enhance water quality in areas that have been degraded by a high percentage of impervious surfaces, and preserve water quality in areas not degraded.

Preserve some portions of the county from future development, improve water quality, and restore important ecological functions to degraded ecosystems.

POLICY 1: Preserve, enhance, and restore the green infrastructure network and its ecological functions while supporting the desired development pattern of Plan 2035.

- 1.1 Ensure that areas of connectivity and ecological functions are maintained, restored and/or established by:**
 - a. Using the designated green infrastructure network as a guide to decision-making and using it as an amenity in the site design and development review processes.**
 - b. Protecting plant, fish, and wildlife habitats and maximizing the retention and/or restoration of the ecological potential of the landscape by prioritizing healthy, connected ecosystems for conservation.**
 - c. Protecting existing resources when constructing stormwater management features and when providing mitigation for impacts.**
 - d. Recognizing the ecosystem services provided by diverse land uses, such as woodlands, wetlands, meadows, urban forests, farms and grasslands within the green infrastructure network and work toward maintaining or restoring connections between these landscapes.**
 - f. Targeting land acquisition and ecological restoration activities within state-designated priority waterways such as stronghold watersheds and Tier II waters.**
- 1.2 Ensure that Sensitive Species Project Review Areas and Special Conservation Areas (SCAs), and the critical ecological systems supporting them, are preserved, enhanced, connected, restored, and protected.**
 - a. Identify critical ecological systems and ensure they are preserved and/or protected during the site design and development review processes.**

- b. **Prioritize use of public funds to preserve, enhance, connect, restore, and protect critical ecological systems.**

POLICY 2: Support implementation of the GI Plan throughout the planning process.

- 2.3 **Strengthen regulations where environmental conditions warrant and provide greater flexibility where development is targeted.**
 - a. **Strictly limit development impacts to regulated environmental features to activities that are absolutely necessary and unavoidable for construction of road crossings, the installation of necessary public utilities, or the placement of stormwater outfalls when no alternatives are feasible.**
 - b. **Allow impacts to regulated environmental features as appropriate to accommodate new development and redevelopment within designated Downtowns, Regional Transit Districts, the Innovation Corridor, and Local Centers and where needed to accommodate planned development on constrained sites. Mitigation for these impacts should be provided as close to the area of impact as possible.**

POLICY 3: Ensure public expenditures for staffing, programs, and infrastructure to support the implementation of the GI Plan.

- 3.2 **Ensure that immediate and future impacts to the green infrastructure network are minimized, if not avoided, when public facilities and infrastructure are constructed.**
- 3.4 **Ensure full compliance with and enforcement of all existing regulations including the Chesapeake Bay Critical Area (CBCA) and the Woodland and Wildlife Conservation Ordinance.**
- 3.5 **Encourage interior forest restoration and preservation by creating exclusion or limited use areas where forest interior dwelling bird species (FIDS) habitat is present on public lands.**

POLICY 5: Improve water quality through stream restoration, stormwater management, water resource protection, and strategic conservation of natural lands.

POLICY 7: Preserve, enhance, connect, and restore forest and tree canopy coverage.

With the addition of the Applicant's proffers, the requested zoning change is found in conformance with the Woodlands, Wildlife and Habitat Policy of the Environmental Infrastructure Section within the Master Plan.

Applicant's Request

(6) The State Department of Assessment and Taxation certifies that Applicant is in good standing and authorized "to transact interstate, intrastate and Foreign Business in Maryland." (Exhibit 33) The Application seeks the rezoning of the property, 581.06 acres, from the R-A and R-E Zones to the R-S Zone to permit a residential development with 758 single-family attached and 1,232 detached dwellings.

(7) On December 20, 2021, subsequent to the District Council's adoption of the Countywide Map Amendment ("CMA "), Applicant submitted its notice of intention to proceed and revised its request to ask for the new LCD (" Legacy Comprehensive Design ") Zone :

[A]s a result of the approval of the CMA ... the Applicant and owner hereby request to replace the requested R-S Zone with the new LCD Zone. [I]t has been determined by M-NCPPC and its Principal Counsel that the replacement of the requested R-S Zone with the LCD Zone does not require an amendment to A- 10060 since the LCD Zone is the appropriate new zone directed by the Approved Guide to New Zones. It has further been determined by M-NCPPC that neither a new Technical Staff Report nor Planning Board hearing will be required since the Applicant is now requesting the LCD Zone, which, again is the appropriate replacement zone to the R-S Zone, as directed by the Approved Guide to New Zones. Finally, M-NCPPC confirmed that this application will proceed pursuant to the transitional provisions provided in Section 27- 1703 (a), which allows the pending zoning request to be reviewed and decided under the current Zoning Ordinance even after the effectuation date of the new Zoning Ordinance. Therefore, the restrictions in Section 27-3601 (b) (2) are not applicable....

(Exhibit 51)

APPLICABLE LAW

(1) Applicant's request for a rezoning to the R-S Zone must satisfy the provisions of Section 27-195 of the Zoning Ordinance. This Section provides, in pertinent part, as follows:

(a) **In general.**

(1) The District Council may approve or deny the application (including the Basic Plan). Approval shall be an approval of the general land use types; range of dwelling unit densities, including the base, minimum, and maximum densities; and commercial/industrial intensities, general circulation pattern, general location of major access points and land use relationships shown on the Basic Plan. Whenever an Applicant designates a limitation of uses within an application, the District Council may approve specific land use types and their general locations within the development, in accordance with the Applicant's designation, as part of its approval of the Basic Plan, in order to ensure overall compatibility of land use types within the proposed development and with surrounding land uses. Such an approval by the District Council shall become a part of the approved Basic Plan. The District Council may also specify certain planning and development matters (known as "considerations") for the Planning Board and Technical Staff to consider in later Comprehensive Design Plan, Specific Design Plan, or subdivision plat review. The specifics of the considerations shall be followed, unless there is a clear showing that the requirement is unreasonable under the circumstances.

(2) The finding by the Council of adequate public facilities shall not prevent the Planning Board from changing or modifying this finding during its review of Comprehensive Design Plans, Specific Design Plans, or subdivision plats. The Planning Board shall, at each phase of plan or subdivision review, find that the staging of development will not be an unreasonable burden on available public facilities or violate the planning and development considerations set forth by the District Council in the approval of the Basic Plan.

(b) Criteria for approval.

(1) Prior to the approval of the application and the Basic Plan, the Applicant shall demonstrate, to the satisfaction of the District Council, that the entire development meets the following criteria:

(A) The proposed Basic Plan shall either conform to:

(i) The specific recommendation of a General Plan map, Area Master Plan map; or urban renewal plan map; or the principles and guidelines of the plan text which address the design and physical development of the property, the public facilities necessary to serve the proposed development, and the impact which the development may have on the environment and surrounding properties; or

(ii) The principles and guidelines described in the Plan (including the text) with respect to land use, the number of dwelling units, intensity of nonresidential buildings, and the location of land uses.

(B) The economic analysis submitted for a proposed retail commercial area adequately justifies an area of the size and scope shown on the Basic Plan;

(C) Transportation facilities (including streets and public transit) (i) which are existing, (ii) which are under construction, or (iii) for which one hundred percent (100%) of the construction funds are allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or will be provided by the Applicant, will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved General or Area Master Plans, or urban renewal plans;

(D) Other existing or planned private and public facilities which are existing, under construction, or for which construction funds are contained in the first six (6) years of the adopted County Capital Improvement Program (such as schools, recreation areas, water and sewerage systems, libraries, and fire stations) will be adequate for the uses proposed;

(E) Environmental relationships reflect compatibility between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District.

(2) Notwithstanding subparagraphs (C) and (D), above, where the application anticipates a construction schedule of more than six (6) years (Section 27-179), public facilities (existing or scheduled for construction within the first six (6) years) will be adequate to serve the development proposed to occur within the first six (6) years. The Council shall also find that public facilities probably will be adequately supplied for the remainder of the project. In considering the probability of future public facilities construction, the Council may consider such things as existing plans for construction, budgetary constraints on providing public facilities, the public interest and public need for the particular development, the relationship of the development to public transportation, or any other matter that indicates that public or private funds will likely be expended for the necessary facilities.

* * * *

(c) Conditional approval.

(1) When it approves the Zoning Map Amendment, the District Council may impose reasonable requirements and safeguards (in the form of conditions) which it finds are necessary to either:

(A) Protect surrounding properties from the adverse effects which might accrue from the Zoning Map Amendment; or

(B) Further enhance the coordinated, harmonious, and systematic development of the Regional District.

(2) In no case shall these conditions waive or lessen the requirements of, or prohibit uses allowed in, the approved zone, except as provided in subparagraph (a)(1), above.

(3) All building plans shall list the conditions and shall show how the proposed development complies with them.

(4) Conditions imposed by the District Council shall become a permanent part of the Zoning Map Amendment, and shall be binding for as long as the approved zone remains in effect on the property (unless amended by the Council).

(5) If conditions are imposed, the Applicant shall have ninety (90) days from the date of approval to accept or reject the rezoning as conditionally approved. He shall advise (in writing) the Council, accordingly. If the Applicant accepts the conditions, the Council shall enter an order acknowledging the acceptance, and approving the Map Amendment, at which time the Council's action shall be final. Failure to advise the Council shall be considered a rejection of the conditions. Rejection shall void the Map Amendment and revert the property to its prior zoning classification. The Council shall enter an order acknowledging the rejection, voiding its previous decision, and reverting the property to its prior zoning classification, at which time the Council's action shall be final.

(6) All Zoning Map Amendments which are approved subject to conditions, shall be shown on the Zoning Map with the letter "C" after the application number.

* * * *

(2) The Application must also further the purposes of the R-S Zone, found in Section 27-511 of the Zoning Ordinance. This Section provides as follows:

(a) The purposes of the R-S Zone are to:

- (1) Establish (in the public interest) a plan implementation zone, in which (among other things):
 - (A) Permissible residential density is dependent upon providing public benefit features and related density increment factors; and
 - (B) The location of the zone must be in accordance with the adopted and approved General Plan, Master Plan, or public urban renewal plan;
- (2) Establish regulations through which adopted and approved public plans and policies (such as the General Plan, Master Plans, and public urban renewal plans) can serve as the criteria for judging individual development proposals;
- (3) Assure the compatibility of proposed land uses with existing and proposed surrounding land uses, and existing and proposed public facilities and services, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District;
- (4) Encourage amenities and public facilities to be provided in conjunction with residential development;
- (5) Encourage and stimulate balanced land development; and
- (6) Improve the overall quality and variety of residential environments in the Regional District.

(3) Pursuant to Section 27-1905 of the Zoning Ordinance (2019 Edition) the Applicant has requested that the Application be revised to seek the LCD Zone. This necessitates a review of Sections 27-1703 (a), 27-3601(b) and 27-4205 (a) and (c) of the Zoning Ordinance (2022 Supplement). These Sections provide as follows:

Sec. 27-1905. Planning Board Action and Transmittal.

- (a) The Planning Board shall endorse the proposed CMA at a public meeting and issue a Resolution of endorsement, as appropriate, in accordance with applicable law.
- (b) The Board's Resolution and a copy of the endorsed CMA shall be transmitted to the District Council, the County Executive, and all municipalities and any governed special taxing districts in the County within ten (10) days of the date of adoption of the Resolution of endorsement by Planning Board.
- (c) Pending Zoning Map Amendment applications.

(1) Upon transmittal of the endorsed CMA to the District Council, the Planning Board and Zoning Hearing Examiner shall postpone accepting or processing any Zoning Map Amendment application within the area of the proposed CMA until after any final action by the District Council. As such, any applications pending before the District Council in the CMA area shall be remanded to and held in abeyance by the Zoning Hearing Examiner, unless the application includes a site plan that is grandfathered pursuant to the specified terms set forth within CB-013-2018, as approved by the District Council.

(2) Upon approval of the CMA by the District Council, all Applicants who wish to proceed with a postponed application or an application remanded to the Zoning Hearing Examiner may notify the Planning Board or Zoning Hearing Examiner, as appropriate, regarding their intention as to whether to proceed with their Zoning Map Amendment application, and only to seek a zoning classification embodied within the approved replacement Zoning Ordinance. Such amended applications shall be processed in accordance with all procedures and requirements which normally apply to Zoning Map Amendment applications under this Zoning Ordinance. Failure of an Applicant to amend their application or to notify the Planning Board or Zoning Hearing Examiner of their intent to proceed within thirty (30) days after the CMA is approved shall constitute a withdrawal of the application.

(3) Where a Zoning Map Amendment Applicant elects to proceed with an application before the Zoning Hearing Examiner, the Examiner shall (by reference) introduce in the record and take administrative notice of the CMA. The Hearing Examiner shall hold additional hearings or otherwise ascertain the facts and issues raised or presented in the record of CMA proceedings.

(4) In the event that the proposed CMA is disapproved by the District Council, the Planning Board and Zoning Hearing Examiner shall resume the processing of all postponed applications.

27-1703. Applications Pending Prior to the Effective Date of this Ordinance

(a) Any development application, including a permit application or an application for zoning classification, that is filed and accepted prior to the effective date of this Ordinance may be reviewed and decided in accordance with the Zoning Ordinance and Subdivision Regulations in existence at the time of the acceptance of said application. An application for zoning classification decided after the effective date of this Ordinance must result in a zone set forth within this Ordinance.

27-3601. Zoning Map Amendment (ZMA)

(b) Applicability

The procedures and standards of this Section apply to any amendment to the Official Zoning Map that involves a specific parcel of land (commonly known as a "rezoning").

(1) Under no circumstance shall a zoning map amendment be approved to reclassify lands wholly or partially within the Safety Zones of the MIO Zone into the following zones: any Transit- Oriented/Activity Center base zone, any Planned Development (PD) zone, or the RMF-12, RMF-20, RMF-48, IE, CGO, CN, or CS zones.

(2) Under no circumstance shall a zoning map amendment be approved to reclassify lands to any of the following zones: RMH, LCD, LMXC, or LMUTC.

(3) No application shall be filed requesting more than one zone.

27-4205. Other Base Zones

(a) Zoning of Land to RMH, LCD, LMXC, or LMUTC Zones Prohibited

A Zoning Map Amendment (ZMA) in accordance with Section 27-3601, Zoning Map Amendment (ZMA), or a Sectional Map Amendment (SMA) in accordance with Section 27-3503, Sectional Map Amendment (SMA), shall not change the zoning classification of any land to the Planned Mobile Home Community (RMH) Zone, Legacy Comprehensive Design (LCD) Zone, Legacy Mixed-Use Community (LMXC), or Legacy Mixed-Use Town Center (LMUTC) Zone.

(c) Legacy Comprehensive Design (LCD) Zone

(1) Purpose

The purpose of the Legacy Comprehensive Design (LCD) Zone is to recognize comprehensive design zones established prior to April 1, 2022 for which a Basic Plan, Comprehensive Design Plan (CDP), or Specific Design Plan (SDP) was approved prior to April 1, 2022.

(2) Establishment of Legacy Comprehensive Design (LCD) Zone

The LCD Zone includes all lands located within the following Comprehensive Design zones on April 1, 2022 for which a Basic Plan, CDP, or SDP was approved prior to April 1, 2022, if either the land in the zone is fully developed in accordance with the approved Basic Plan, CDP, or SDP prior to April 1, 2022, or 2) the approved Basic Plan, CDP, or SDP remains valid in accordance with Section 27-1700, Transitional Provisions, on April 1, 2022:

- (A)** The Major Activity Center (M-A-C) Zone;
- (B)** The Local Activity Center (L-A-C) Zone;
- (C)** The Employment and Institutional Area (E-I-A) Zone;
- (D)** The Residential Urban Development (R-U) Zone;
- (E)** The Residential Medium Development (R-M) Zone;
- (F)** The Residential Suburban Development (R-S) Zone;
- (G)** The Village-Medium (V-M) Zone;
- (H)** The Village-Low (V-L) Zone; and
- (I)** The Residential Low Development (R-L) Zone.

(3) Legacy Comprehensive Design (LCD) Zone Standards and Permitted Uses

Development within the LCD Zone shall comply with the applicable approved Basic Plan, CDP, and SDP, and with the standards applicable in the zone listed in Subsections (2)(A) through (2)(I) above in which the development was located prior to April 1, 2022, in accordance with Section 27-1700, Transitional Provisions. Uses permitted in the LCD Zone shall comply with the uses permitted in the zone listed in Subsections 2(A) through 2(I) above in which the development was located prior to April 1, 2022.

(4) Transition Upon Invalidation of Approved Plans

If prior to land in the LCD Zone being fully developed in accordance with an approved Comprehensive Design Plan and Specific Design Plan, the Comprehensive Design Plan or Specific Design Plan become invalid (see Sec. 27-1700, Transitional Provisions), the land shall immediately be placed in the RR Zone until the District Council approves a Zoning Map Amendment for the property. No applications for development approvals or permits shall be accepted, reviewed, or acted upon in accordance with Division 27-3: Administration, in the period of time prior to the District Council's decision on a Zoning Map Amendment (ZMA) application.]

CONCLUSIONS OF LAW

(1) The Application must be found to comply with the above referenced requirements of Section 27-195 and the purposes of the R-S Zone found in Section 27-511. Compliance with each provision of law will be addressed seriatim.

(2) In order to approve a Basic Plan, the District Council must find, among other things, that the proposed Basic Plan conforms to either Section 27-195(b)(1)(A)(i), (ii), or (iii). The proposed Basic Plan does meet the criteria in Section 27-195(b)(1)(A).

Section 27-195(b)(1)(A)(i) is drafted in the disjunctive, providing two alternative bases for approval, separated by a semi-colon. With respect to the first, the Basic Plan conforms to the specific recommendations of the General Map Plan, the Area Master Plan Map, or the Urban Renewal Plan Map.

Plan 2035's Future Land Use Map (page 101) classifies the eastern portion of the Property as Residential Low, which the Plan, on the preceding page, states is appropriate for primarily single-family detached dwellings up to 3.5 dwelling units per acre. The R-S Zone permits a residential density of 1.6–3.5 dwelling units per acre. The Statement of Justification (SOJ) states that the Applicant plans to construct between 758 and 1,232 single-family attached and detached dwellings. The density and housing types included in this Plan conforms to the recommendation of Plan 2035.

The majority of the Property is within the Established Communities category on the Growth Policy Map (Map 11), and Plan 2035 identifies this as a land use policy that is intended as a guideline for future development and an area to direct a majority of projected new residential and employment growth to the Regional Transit Districts. The Property is near the Brandywine Local Center; however, it is not within its boundaries. Plan 2035 encourages the use of conservation subdivisions or clustered development in areas adjacent to Rural and Agricultural Areas, like the property, to transition density and to encourage preservation of Green Infrastructure corridors, as defined by the Green Infrastructure Plan. The Basic Plan does not include cluster development design strategies; however, the Basic Plan conforms to the Master Plan's density recommendations.

The Master Plan, in its Future Land Use Map, includes a third classification on the property: Residential Low Transition. The Master Plan states, on page 31, that this classification is intended for residential areas up to two dwelling units per acre, primarily for single-family detached dwellings. In addition, on page 33, the Master Plan states that, “[i]n a transition area the

conservation subdivision technique is strongly recommended” and that “[c]onservation subdivisions are required to be clustered, to be built in less environmentally sensitive areas, and to have a minimum conservation requirement of 60 percent in the O-S Zone, 50 percent in the R-A Zone, and 40 percent in the R-E and R-R zones.” Clustered development is encouraged because it reduces impervious surfaces and pollutant loads from runoff. The Basic Plan does not include a conservation subdivision design layout. However, the rezoning request conforms to the to 2.0 residential dwellings per acre and covers about 305 acres of the property. Therefore, the development of 610 residential dwellings would be consistent with the Master Plan’s recommendation on this portion of the Property. The Basic Plan includes between 488–610 residential dwellings in this area of the Property.

There are no residential dwelling units included on the Basic Plan in the Rural areas recommended in the Master Plan. The SOJ indicates that that area provides a wooded buffer between the development and properties to the west.

With respect to the criteria requiring conformance to the “Urban Plan Map,” there is no such Map applicable to this Application.

As for the second half of Section 27-195(b)(1)(A)(i)—the principles and guidelines of the Plan text that address the design and physical development of the property, the public facilities necessary to serve the proposed development, and the impact that the development may have on the environment and surrounding properties—which is drafted in the conjunctive (i.e., and), the relevant portion is “the impact the development may have on the environment and surrounding properties.” Rezoning the property to R-S would significantly reduce the Woodland Conservation threshold, resulting in approximately 95.17 acres losing protection that would otherwise be in place under the current zoning *supra*. To address this reduction in the Woodland Conservation threshold, the Applicant proffered the following:

- Provide a stream corridor assessment survey with a NRI plan review.
- Meet the entire woodland conservation requirement for the proposed R-S Zone on-site.
- Create new wetland and enhance existing wetlands with adjoining meadows focusing on providing wildlife habitat.
- Provide selective woodland understory enhancement focusing on habitat and biodiversity.
- Provide ecological enhancement through selective environmental site design planting motifs that both replicate and increase the biodiversity of the local ecology.

The Environmental Planning Section determined that with the addition of the Applicant’s proffers and recommended conditions, the requested zoning change to the R-S Zone can be found in conformance with the Woodlands, Wildlife and Habitat Policy of the Environmental Infrastructure Section within the Master Plan for the reasons outlined above. Therefore, the requested rezoning would not have a significant negative impact on the environment, and it aligns with the Master Plan’s goals of protecting the Mattawoman Creek Watershed. The Master Plan calls for the maintenance of the natural hydrologic patterns during development to the maximum extent practicable. The requested added density does not negatively affect the natural

hydraulic patterns post development.

The District Council may also approve the Basic Plan if it meets Section 27-195(b)(1)(A)(ii)—that is if it finds that the proposed Basic Plan conforms to the “principles and guidelines described in the plan (including the text) with respect to land use, the number of dwelling units, intensity of nonresidential buildings, and the location of land uses.” Much of the discussion for Section 27-195(b)(1)(A)(i) could apply to this criterion as well. The Basic Plan, which does not include clustered development but requests a density that conforms to the Master Plan’s recommended density, satisfies this criterion. Specifically, the Basic Plan conforms to the principles and guidelines with respect to the number of dwelling units for Residential Low and Residential Low Transition areas.

Section 27-195(b)(1)(A)(iii) allows approval of a Basic Plan if “The regulations applicable to land zoned R-S and developed with uses permitted in the E-I-A Zone as authorized pursuant to Section 27-515(b) of this Code.” This criterion is inapplicable because the Property is not currently zoned R-S or developed with uses permitted in the E-I-A Zone, as authorized, pursuant to Section 27-515(b) of the Zoning Ordinance.

The District Council may also approve a Basic Plan if the entire development meets Section 27-195(b)(1)(E), which provides:

(E) Environmental relationships reflect compatibility between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District.

As discussed *supra*, the rezoning would significantly reduce the Forest Conservation threshold, and the Master Plan, on page 70, states that the largest forest tracts are within the Mattawoman Creek Stream Valley. It states further that “[w]hen trees and forests are damaged, ecological features such as air and water quality or wildlife and fish habitats are degraded, and nearby communities suffer, sometimes showing signs of economic and social decline.” The Applicant has provided proffers to address the Woodland Conservation threshold. Adherence to such a condition reduce the possible impact to the existing woodlands and improve the effect that the development would have on the natural hydraulic patterns in the watershed. The Basic Plan satisfies Section 27-195(b)(1)(E).

The Property is outside of a Village-Medium or Village-Low Zone.

- (3) Section 27-195(b)(1)(B) is inapplicable since no commercial uses are proposed.
- (4) The proposed Application proposes a maximum residential density of 2.6 dwelling units per acre, that is contingent upon the incorporation of public benefit features.

The location of the R-S Zone on the Property is in accordance with the following:

- (1) the Residential Low land use recommendation from Plan 2035;
- (2) the Residential Low and Residential Low Transition areas land use recommendation from the Master Plan; and
- (3) the reduction of the minimum woodland conservation threshold of 95.17 acres, along with the proffers and recommended conditions conforms to the

recommendations of the Green Infrastructure Plan.

Per Section 27-515(b), the request for single-family detached and attached dwelling units is a permitted use for the R-S Zone. §27-511(a)(1)

(5) The R-S Zone establishes the density ranges and regulations. The Basic Plan will establish the range, as allowed by the R-S Zone. The Comprehensive Design Plan will establish an exact density and apply the other R-S Zone regulations. §27-511(a)(2)

(6) As an overall use, the proposed single-family attached and detached homes are compatible with the existing and proposed surrounding land uses, with undeveloped single-family residential land and single-family homes immediately adjacent to the property. Adequate existing public facilities and services are available to the property. §27-511(a)(3)

(7) The Basic Plan has incorporated open space areas and passive and active recreational facilities and trails that creates opportunities for an active environment for residents that eases the impact on the public park system. §27-511(a)(4)

(8) The Basic Plan conforms with the recommendations of Plan 2035, the Master Plan, and the Green Infrastructure Plan. Therefore, it encourages and stimulates balanced land development for the immediate adjacent areas. There are no commercial uses included on the Basic Plan for the property. §27-511(a)(5)

(9) There are single-family residential and large vacant single-family residential lands surrounding the Property. The Basic Plan incorporates between 758 and 1,232 single-family detached residential units that could improve the overall quality and variety of residential environments in the Regional District. The variety and quality of the residential units proposed for the property will need addressing during the Specific Design Plan stage. §27-511(a)(6)

There are no commercial uses included on the Basic Plan. §27-511(a)(7)

(8) The Applicant and Staff believe that the LCD Zone should be approved for the Subject Property. Pursuant to the general tenets of statutory construction, all provisions must be read in a manner that is reasonable, that will not render any portion thereof nugatory, and will, if possible, further the intent of the legislative body. Clear and express language must be followed. As noted by the Court of Appeals in Polonski v. Mayor & City Council of Baltimore, 344 Md. 70, 75-76 (1996):

Where the legislative will is not apparent from the language of the statute, we employ the canons of statutory construction to guide our inquiry.... When, however, the language of the statute is clear, further analysis of legislative intent is not required..., and we give the words of the statute their ordinary and common meaning within the context in which they are used ..., while keeping in mind the overall purpose of the act being construed....

(9) Applicant filed its request for the R-S Zone in a timely manner and the Technical Staff and the Planning Board were able to forward their recommendations that the request be approved prior to the Planning Board's endorsement of the Countywide Map Amendment. Once the endorsement was forwarded to the County Council all hearings were tolled until after the District Council's final action on the Countywide Map Amendment.

(10) On November 29, 2021, the District Council adopted CR-136 -2021 thereby enacting the Countywide Map Amendment but holding its effective date until April 1, 2022. At that point the Applicant asked that the Examiner’s review of its Application be continued but asked that the LCD Zone be considered in lieu of the R-S Zone, since the R-S Zone would not be carried over in the 2022 Supplement of the Zoning Ordinance. Applicant and the Technical Staff submitted exhibits noting that each believed that it would be proper to request the new zone since the new Section 27-1703 allowed the Application to be considered utilizing the provisions of the 2019 Edition of the Zoning Ordinance, and Section 27-3601 (b) would, therefore, not apply.

(11) Applying the statutory construction canons in the manner noted *supra* (reading all the sections together and honoring the express provisions) requires the conclusion that the R-S Zone may be imposed, but the LCD Zone may not. The Council noted in two separate, express provisions of the recently revised Zoning Ordinance (Sections 27-3601 (b)(2) and 27-4205 (a) and (c)) that, going forward, the LCD Zone may **not** be implemented via a piecemeal rezoning request (such as the instant Application) or a Sectional Map Amendment, and that the purpose of the LCD Zone is to recognize Comprehensive Design Zones for which a Basic Plan, Comprehensive Design Plan or Specific Design Plan was **approved** prior to April 1, 2022. One would have to ignore the clear language in these sections to impose the LCD Zone at this point since it was not done as part of the CMA , and since the District Council did not have the opportunity to approve any plan for the R-S Zone prior to April 1, 2022- both because the Application was not before it and because the new provisions of the Zoning Ordinance were not enacted in a manner to apply them retroactively and therefore had no effect until April 1, 2022.

(12) The fact that the LCD Zone cannot be imposed will have no true impact on the Applicant’s request since, for all practical purposes, the zones are equivalent. As noted, *supra*, the new provisions governing the LCD Zone only require that development comply with the zone and use standards for the R-S Zone found in the 2019 Edition of the Zoning Ordinance. The District Council can still approve the R-S Zone because the language in Section 27-1703 is not as clear as the two sections noted above, and can therefore, be “interpreted” and the Section be rendered nugatory unless it is interpreted to allow an Applicant that started its quest to rezone to the R-S Zone over two years ago (far in advance of the adoption of the CMA), to finally have it considered and decided by the District Council.

RECOMMENDATION

APPROVAL of A-10059, subject to the following Conditions, Development Data, and all other information shown on the Basic Plan:

Development Data Table

Gross Tract Area	581.06 ac.
100-year Floodplain	213.84 ac.
½ Floodplain	106.92 ac.
Net Tract Area*	474.14 ac.

*Net Tract Area=Gross Tract Area-1/2 Floodplain

Base Density recommended 474.14ac@1.6DU/ac 758 Units
 Max. Density recommended 474.14ac@2.6DU/ac 1,232 Units
Density Proposed 857-1,106 Units

Parcel Identification Table

Tax Map	Grid	Parcel	Lot	Block	Parcel ID
164	C2		8		11-1156447
164	E1		35		11-1156454
164	E1			1A	11-1156462
164	E1			2B	11-1156470
164	E1			3B	11-1156488
164	E1			4B	11-1156496
164	D1			5B	11-1156504
164	E1	Outlot A		C	11-1156512
164	D1			1C	11-1156520
164	D1			2C	11-1156538
164	D1			3C	11-1156546
164	D1			4C	11-1156553
164	D1			6C	11-1156561
164	D1			7C	11-1156579
164	E1			8C	11-1156587
164	D1			1D	11-1156595
164	D1			2D	11-1156603
164	D1			3D	11-1156611
164	D1			4D	11-1156629
164	D1			5D	11-1156637
164	D1			7D	11-1156645
164	D1			8D	11-1156652
164	D1			9D	11-1156660
164	D1			10D	11-1156678
164	D1			11D	11-1156686
164	D1			1E	11-1156694
164	D1			2E	11-1156702
164	D1			3E	11-1156710
164	D1			1F	11-1156728
164	D1			2F	11-1156736
164	D1			3F	11-1156744
164	D1			11G	11-1156751
164	D1			12G	11-1156769
164	D1			13G	11-1156777
164	D1			14G	11-1156785
164	D1			15G	11-1156793
164	D1			16G	11-1156801
164	D1			17G	11-1156819
164	D1			1H	11-1156827
164	D2			2H	11-1156835
164	D1			3H	11-1156843
164	D1			4H	11-1156850
164	D2			5H	11-1156868
164	D2			6H	11-1156876
164	E1	Outlot A		K	11-1156884

Conditions:

1. The Applicant shall provide a stream corridor assessment survey with a NRI plan review.
2. The Applicant shall meet the entire Woodland Conservation requirement for the proposed R-S Zone on-site.
3. The Applicant shall create new wetland and enhance existing wetlands with adjoining meadows focusing on providing wildlife habitat.
4. The Applicant shall provide selective woodland understory enhancement focusing on habitat and biodiversity.
5. The Applicant shall provide ecological enhancement through selective environmental site design planting motifs that both replicate and increase the biodiversity of the local ecology.

The Approved Basic Plan is Exhibit 56.