

R E S O L U T I O N

WHEREAS, Livingston of Fort Washington, LLC. is the owner of a 12.27-acre parcel of land known as Parcel 151, Tax Map 132 in Grid B-2, said property being in the 5th Election District of Prince George's County, Maryland, and being zoned C-S-C; and

WHEREAS, on June 26, 2007, Livingston of Fort Washington, LLC. filed an application for approval of a Preliminary Subdivision Plan (Staff Exhibit #1) for 5 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Subdivision Plan, also known as Preliminary Plan 4-07050 for Livingston of Fort Washington, LLC. was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on December 6, 2007, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on December 6, 2007, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED the Type I Tree Conservation Plan (TCPI/127/90-01), and further APPROVED Preliminary Plan of Subdivision 4-07050, Livingston of Fort Washington, LLC, for Parcels A through E with the following conditions:

1. Prior to signature approval of the preliminary plan of subdivision the plan shall be revised as follows:
  - a. Provide the height for all proposed buildings on the TCPI.
  - b. Provide a deed reference for the 50-foot wide, private access easement currently serving Parcel 1 (CVS Pharmacy).
  - c. Continue the 50-foot buffer required by A-9739-C along the eastern corner of the property (east side of Gunpowder Drive where reforestation is proposed).
2. Prior to the issuance of permits, a Type II tree conservation plan shall be approved.
3. Development of this site shall be in conformance with the Stormwater Management Concept Plan 12498-2007-00 and any subsequent revisions.

4. Prior to signature of the preliminary plan, the Type I TCP shall be revised to:
  - a. Correct the preliminary plan number in TCP notes 1 and 6.
  - b. Remove the symbol for the proposed tree line and include a symbol for the proposed limit of disturbance.
  - c. Add a symbol for the existing tree line.
  - d. Ensure that the proposed limit of disturbance is adequate for the installation of the stormwater management pond and all required stormdrains.
  - e. Provide all woodland conservation off-site.
  - f. Revise the worksheet as needed.
  - g. Have the revised plan signed and dated by the qualified professional who prepared the plan.
5. The following note shall be placed on the final plat of subdivision:

“Development is subject to restrictions shown on the approved Type I Tree Conservation Plan TCPI/127/90-01, or as modified by the Type II tree conservation plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved tree conservation plan and will make the owner subject to mitigation under the Woodland Conservation and Tree Preservation Ordinance. This property is subject to the notification provisions of CB-60-2005. Copies of all approved tree conservation plans for the subject property are available in the offices of The Maryland-National Capital Park and Planning Commission, Prince George’s County Planning Department.”
6. Prior to final plat, the applicant, his heirs, successors, and or assignees, shall have a detailed site plan approved in accordance with Part 3, Division 9 of the Prince George’s County Zoning Ordinance. The detailed site plan shall be reviewed by both the Planning Board, and the District Council in accordance with Condition 2 of Zoning Map Amendment A-9739-C.
7. Prior to signature approval of the preliminary plan of subdivision the applicant shall submit two copies of the stormwater management concept plan, signed by DPW&T, and two copies of the approval letter. The stormwater management concept plan approval number and approval date shall be delineated on the preliminary plan and TCPI. Any required stormwater management facilities shall be shown on the TCPI. The plan shall conform to the layout shown on the preliminary plan and be consistent with the grading shown on the TCPI.

8. Prior to the issuance of building permits, the applicant, his heirs, successors and or assignees shall provide a financial contribution of \$210.00 to the Department of Public Works and Transportation for the placement of a bikeway sign along Livingston Road, designated a Class III Bikeway. A note shall be placed on the final plat for payment to be received prior to the issuance of the first building permit. If the Department of Public Works and Transportation declines the signage, this condition shall be void.
9. The applicant, his heirs, successors and or assignees shall provide standard sidewalks along the property's entire street frontage of the Indian Head Highway Service Lane unless modified by the State Highway Administration at the time of issuance of street construction permits.
10. The applicant, his heirs, successors and or assignees shall provide standard sidewalks along the property's entire street frontage of Livingston Road unless modified by the Department of Public Works and Transportation at the time of issuance of street construction permits.
11. The applicant, his heirs, successors and or assignees shall provide standard sidewalks along both sides of Gunpowder Drive unless modified by the Department of Public Works and Transportation at the time of issuance of street construction permits.
12. Total development within the subject property shall be limited to 80,000 square feet of retail space, or equivalent development which generates no more than 56 AM peak hour and 384 PM peak hour new vehicle trips, in consideration of pass-by rates for retail centers. Any development generating a traffic impact greater than that identified herein above shall require a new preliminary plan of subdivision with a new determination of the adequacy of transportation facilities.
13. **MD 210 and Livingston Road/East Swan Creek Road:** Prior to the issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances through either private money or full funding in the county's capital program, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency:
  - a. On the eastbound East Swan Creek Road approach, widen the approach to provide four lanes, with an exclusive left-turn lane, a shared left-turn/through lane, and exclusive through and right-turn lanes.
  - b. On the westbound Livingston Road approach, widen the approach to provide three lanes, with an exclusive left-turn lane, a shared left-turn/through lane, and an exclusive right-turn lane.
14. **Livingston Road and Gunpowder Drive:** Prior to the issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances through either private money or full funding in the county's capital program, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an

agreed-upon timetable for construction with the appropriate operating agency:

- a. Provision of a southbound left-turn lane along the Livingston Road approach.
  - b. Provision of two approach lanes along the Gunpowder Drive approach.
  - c. At the time of detailed site plan submission, the applicant, his heirs, successors, and or assignees shall submit an acceptable traffic signal warrant study to DPW&T for signalization at the intersection of Livingston Road and Gunpowder Drive. The applicant shall utilize a new 12-hour count, and shall analyze signal warrants under total future traffic, as well as existing traffic, at the direction of the operating agency. If a signal, or other traffic control improvements are deemed warranted at that time, the applicant shall bond the signal with the appropriate agency, prior to the release of any building permits within the subject property, and install it within a timeframe directed by that agency.
15. At the time of final plat approval, the applicant shall dedicate right-of-way along existing Livingston Road of 40 feet from centerline.
16. Prior to final plat approval, the applicant, his heirs, successors, and or assigns shall prepare a plat of reservation and shall place in reservation Parcels D and E, as right-of-way for the proposed MD 210 and Livingston Road/East Swan Creek Road interchange, as recommended in the *Henson Creek-South Potomac Master Plan*, per the requirements of Sections 24-139, 24-140, and 24-141 of the Subdivision Regulations. This reservation shall be subject to the following requirements:
- a. The reservation period shall continue for three years and commence with the recordation of a reservation plat recorded with the final plat of subdivision. The reservation area shall also be shown on the final plat. The reservation plat shall comply with all requirements for recording plats among the Land Records of Prince George's County.
  - b. At the end of the reservation period, if the reservation has not been renewed, or if the land reserved has not been acquired for public use and proceedings for acquisition have not been initiated, the reservation shall expire. Prior to the expiration of the three-year reservation period and with the written consent of all land owners, the Planning Board may renew the reservation for additional periods of time (not less than one year) if agreeable to the land owners.
  - c. With the exception of the applicant's stormwater management facility, as per the approved stormwater management concept plan, during the reservation period, no building or structure, other than validly approved utilities, roads and public infrastructure, shall be erected upon the reserved land unless otherwise approved by the Planning Board. No trees, topsoil, or cover shall be removed or destroyed, no grading shall be done, and no drainage structures shall be built so as to discharge water upon the reserved land except as provided in Section 24-140(d) of the Subdivision Regulations.

- d. All reserved land shall be maintained by the owner as required by county law. The Planning Board shall be notified immediately upon the sale of any land so reserved.
  - e. If, prior to the expiration of the reservation period, the Planning Board determines that the reservation no longer appears necessary, the Planning Board may cancel the reservation with the written consent of the owner.
17. Any residential development of the subject property shall require the approval of a new preliminary plan of subdivision prior to the approval of any building permits.
  18. An automatic fire suppression system shall be provided in all new buildings proposed in this subdivision, unless the Prince George's County Fire/EMS Department determines that an alternative method of fire suppression is appropriate.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. The property is located at the northeast corner of Livingston Road at its intersection with Indian Head Highway (MD 210), and approximately 105 feet north of Rich Hill Drive.
3. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone	C-S-C	C-S-C
Use(s)	Undeveloped	Commercial/Retail/Bank
Acreage	12.27	12.27
Square Footage	0	80,000 Square Feet
Lots	0	0
Parcels	1	5
Public Safety Mitigation Fee		N/A

4. **Environmental**—The Environmental Planning Section has reviewed the revised Preliminary Plan of Subdivision for Livingston of Fort Washington, 4-07050, and the revised Type I Tree Conservation Plan, TCPI/127/90-01, stamped as received by the Environmental Planning Section on October 30, 2007. The Environmental Planning Section recommends approval of 4-07050 and TCPI/127/90-01 subject to the conditions.

## **Background**

The Environmental Planning Section previously reviewed Preliminary Plan of Subdivision 4-90115 for the subject property and TCPI/127/90. Preliminary Plan of Subdivision 4-90115 was withdrawn prior to being heard by the Planning Board and TCPI/127/90 was never approved. Prior Preliminary Plan of Subdivision 4-03052 and TCPI/127/90 were approved for the abutting CVS Pharmacy. The 2.164-acre CVS Parcel (Parcel 1) was recorded in Land Records as REP 198 @ 19. The Planning Board's actions for Preliminary Plan 4-03052 are contained in PGCPB Resolution No. 03-180. Type II Tree Conservation Plan TCPII/54/03 was subsequently approved as part of a grading permit for the same property. The most recent prior application, Preliminary Plan 4-06083 and TCPI/127/90-01, were withdrawn on May 9, 2007, prior to being heard by the Planning Board. This proposal is for 5 parcels in the C-S-C Zone.

## **Site Description**

There are no streams, wetlands or 100-year floodplain on the property. The site eventually drains into Broad Creek in the Potomac River watershed. Current air photos indicate that the site is partially forested. The *Approved Countywide Green Infrastructure Plan* indicates Evaluation Areas and Network Gaps on the property. No scenic or historic roads are affected by this proposal. Indian Head Highway is the nearest source of traffic-generated noise. The proposed use is not expected to be a noise generator. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program, no rare, threatened, or endangered species occur in the vicinity of this property. The "Prince George's County Soil Survey" indicates that the principal soils on the site are in the Elkton, Mattapex and Othello series. Marlboro Clay does not occur in this area. The site is in the Developing Tier according to the Prince George's County Approved General Plan.

## **Environmental Issues Addressed in the Henson Creek Master Plan.**

There are no specific recommendations pertaining to the environmental elements of the master plan that relate to the subject property.

## **Countywide Green Infrastructure Plan**

The property contains Evaluation Areas and Network Gaps as identified in the *Approved Countywide Green Infrastructure Plan*. Because of the extensive master planned roads which affect the subject property, implementation of the Countywide Green Infrastructure Plan within this area is not a possibility.

### **Summary of Previously Approved Conditions**

The following text addresses previously approved environmental conditions related to the subject applications. The text in **BOLD** is the actual text from the previous cases or plans. The plain text provides the comments on the plan's conformance with the conditions.

#### **Zoning Map Amendment, A-9739C, approved September 11, 1989**

**That a 50-foot-wide buffer shall be maintained, in perpetuity, along adjacent R-E Zoned property (the eastern and southern boundaries of the subject property) and that all setbacks and other design criteria shall begin at the internal edge of the 50-foot-wide buffer and shall be calculated exclusive of this 50 foot wide buffer.**

The buffer is an important component of the site design because the residential lots to the east will be at higher elevation than the bulk of the C-S-C property, and if not property screened, will look at the second floor or roof of the proposed development. The 50-foot-wide buffer is shown along the eastern boundary; however, it is confusingly shown as both a tree preservation area and an area that will be graded. The conceptual grading shows a final slope that will be difficult to maintain as woodland. Planting of this area in conformance with the *Landscape Manual* may be a better alternative. Either the plan should be revised to increase the width of the buffer and flatten the slope, or all woodland conservation should be removed from this area. A 50-foot-wide buffer along the southern property line is not feasible due to the required location for proposed Gunpowder Drive.

### **Environmental Review**

Signed Natural Resources Inventory NRI/137/06 was submitted with the application. There are no streams, wetlands or 100-year floodplain on the property. A simplified forest stand delineation (FSD) showing four sample areas, one forest stand, and no specimen trees has been reviewed and was found to meet the requirements of the Woodland Conservation and Tree Preservation Ordinance. No further action regarding sensitive environmental features is required.

This site is subject to the provisions of the Woodland Conservation and Tree Preservation Ordinance because it has previously approved tree conservation plans. Type II Tree Conservation Plan TCPII/054/03 was approved as part of a grading permit for the property. Revised Type I Tree Conservation Plan TCPI/127/90-01 was submitted with this application. The TCP includes all 14.62 acres which were included within prior Preliminary Plan 4-03052.

Revised Type I Tree Conservation Plan TCPI/127/90-01 has been reviewed and was found to require revisions. The plan proposes clearing 8.00 acres of the existing 10.96 acres of woodland. The remaining woodlands are within the master planned right-of-way and cannot be counted towards meeting the requirement. The calculations correctly include clearing that was approved as part pf TCPII/054/03. Because the undeveloped areas of the site are highly visible, and would

provide only very small fragments of woodland, all required woodland conservation should be provided off-site.

The plan requires technical revisions. The wrong preliminary plan number is listed in TCP notes 1 and 6. Some proposed planting areas conflict with proposed stormdrain easements. Most of the proposed preservation area appears to be in an area that is proposed to be graded, and the plan was not signed and dated by a qualified professional.

Indian Head Highway is the nearest source of traffic-generated noise. However, because of the zoning of the property and the proposed commercial use, the noise level creates no significant impact. No further action regarding noise is required.

The *Prince George's County Soil Survey* indicates that the principal soils on the site are in the Elkton, Mattapex and Othello series. These soils are subject to impeded drainage and seasonally high water tables. This information is provided for the applicant's benefit. No further action is needed as it relates to this preliminary plan of subdivision review. A soils report may be required by Prince George's County during the permit review process.

Stormwater Management Concept Approval letter CSD 12498-2007-00 was submitted with this application. The letter requires that the proposed stormwater management facility be approved by the State Highway Administration (SHA). The plan submitted with the application is not an approved plan and is significantly different from both the preliminary plan and the TCPI.

The Environmental Planning Section recommends approval of 4-07050 and TCPI/127/90-01 subject to conditions.

### **Water and Sewer Categories**

The water and sewer service categories are W-4 and S-4 according to water and sewer maps obtained from the Department of Environmental Resources dated June 2003, and the site will therefore be served by public systems.

5. **Community Planning**—The subject property is located in Planning Area 80 in the South Potomac Community, and is within the limits of the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*. The master plan recommends a commercial land use for the subject property. This application proposes a commercial land use which is consistent with the land use recommendation within the 2006 Henson Creek-South Potomac Master Plan and SMA.

The 2002 General Plan locates the subject property within the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial centers and employment areas that are increasingly transit serviceable. This application proposes a commercial center and employment area that is consistent with 2002 General Plan Development Pattern policies for the Developing Tier.



The State Highway Administration's MD 210 multimodal study recommends an interchange that bisects the subject property.

The 2006 Henson Creek-South Potomac Master Plan and SMA retains the existing C-S-C Zone as approved by Zoning Map Amendment A-9739-C.

6. **Parks and Recreation**—In accordance with Section 24-134(a) of the Prince George's County Subdivision Regulations, this application is exempt from Mandatory Dedication of Parkland requirements because it consists of non-residential development.
7. **Trails**—The Henson Creek-South Potomac Master Plan and SMA recommends continuous sidewalks and designated bike lanes along Livingston Road (page 71). Due to the commercial nature of this proposal, and its proximity to residential neighborhoods, the Transportation Planning Section recommends that standards sidewalks be provided on the site's frontages of Livingston Road and the MD 210 service road, unless modified by the appropriate agency. Standard sidewalks should also be provided along both sides of proposed Gunpowder Drive unless modified by the Department of Public Works and Transportation (DPW&T). The sidewalk along the service road will ensure safe pedestrian access to the north end of the site.
8. **Transportation**—The Transportation Planning Section has reviewed the subdivision application for the Livingston of Fort Washington Property. The applicant proposes a commercial subdivision consisting of five parcels and proposes the development of 80,000 square feet of retail space. Due to the uses proposed, the Transportation Planning Section requested that a traffic study be done. The resulting study was referred to the Department of Public Works and Transportation (DPW&T), and the Maryland State Highway Administration (SHA), and comments have been received from both agencies. Therefore, the findings and recommendations outlined below are based upon a review of these materials and analyses conducted by the staff of the Transportation Planning Section, consistent with the "Guidelines for the Analysis of the Traffic Impact of Development Proposals."

#### **Growth Policy - Service Level Standards**

The subject property is located within the Developing Tier, as defined in the General Plan for Prince George's County. As such, the subject property is evaluated according to the following standards:

**Links and signalized intersections:** Level-of-service (LOS) D, with signalized intersections operating at a critical lane volume (CLV) of 1,450 or better is required in the Developing Tier.

**Unsignalized intersections:** The Highway Capacity Manual procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. Vehicle delay in any movement exceeding 50.0 seconds is deemed to be an unacceptable operating condition at unsignalized intersections. In response to such a finding,

the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

**Staff Analysis of Traffic Impacts**

The existing conditions at the critical intersections identified for review and study are summarized below:

EXISTING TRAFFIC CONDITIONS			
Intersection	Critical Lane Volume (AM & PM & Saturday)		Level of Service (LOS, AM & PM & Saturday)
MD 210 and Livingston Road/East Swan Creek Road	1,779	1,819	F F
Livingston Road and Gunpowder Drive	Future		
Livingston Road and Old Fort Road South	932	1,227	A C
*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the <i>Guidelines</i> , delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as “+999” suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.			

There are no projects funded for construction within the study area in the County Capital Improvement Program (CIP) or the State Consolidated Transportation Program (CTP). Funding for planning and right-of-way acquisition remains in the CTP for the MD 210 corridor, and there is an approved Environmental Impact Statement (EIS) for the conversion of the signalized intersection north of Piscataway Creek to grade separated interchanges. Detailed design is being funded north of this area, but no construction funding is programmed to date. Ten approved but unbuilt developments that would directly affect the critical intersections were identified. Annual through traffic growth of 2.0 percent per year was added to account for development and traffic growth in the general area. With background growth added, the following results are obtained:

BACKGROUND TRAFFIC CONDITIONS			
Intersection	Critical Lane Volume (AM & PM & Saturday)		Level of Service (LOS, AM & PM & Saturday)
MD 210 and Livingston Road/East Swan Creek Road	1,877	1,933	F F
Livingston Road and Gunpowder Drive	Future		
Livingston Road and Old Fort Road South	982	1,385	A D
*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the <i>Guidelines</i> , delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as “+999” suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.			

This application proposes a commercial subdivision consisting of five parcels, two of which, are proposed for the development of 80,000 square feet of mixed retail space. The proposed development would generate 140 AM (85 in, 55 out) and 960 PM (480 in, 480 out) peak-hour vehicle trips as determined using the “Guidelines for the Analysis of the Traffic Impact of Development Proposals.” The following comments are needed regarding the trip generation for a retail center:

- The Guidelines allow up to 60 percent of site generated traffic to be considered to be pass-by (i.e., already on the adjacent roadway). Given the location of this site, adjacent to two major commuter routes, this pass-by rate is deemed to be acceptable as used in the study. In consideration of the pass-by rate, the site would generate 56 AM (34 in, 22 out) and 384 PM (192 in, 192 out) new peak-hour vehicle trips
- The site is analyzed as general retail, which would allow for a range of retail uses that would normally be found within a retail center. Computations of trip generation for retail centers consider the inclusion of a variety of stores, eating establishments, and services, and staff has determined that overall square footage should normally be used for determining trip cap conformity. Nonetheless, in determining conformity with a trip cap, cases where a single large use might be dominant, or cases involving trip-intensive uses that are not normally found in a retail center (such as gas stations, day care centers, and stand-alone convenience stores) will require a more thorough analysis considering specific rates for certain uses.

With the site added to the local roadway network, the following results are obtained:

<b>TOTAL TRAFFIC CONDITIONS</b>				
Intersection	Critical Lane Volume (AM & PM & Saturday)		Level of Service (LOS, AM & PM & Saturday)	
	MD 210 and Livingston Road/East Swan Creek Road	1,887	2,091	F
Livingston Road and Gunpowder Drive	13.9*	124.9*	--	--
Livingston Road and Old Fort Road South	988	1,444	A	D
*In analyzing unsignalized intersections, average vehicle delay for various movements through the intersection is measured in seconds of vehicle delay. The numbers shown indicate the greatest average delay for any movement within the intersection. According to the <i>Guidelines</i> , delay exceeding 50.0 seconds indicates inadequate traffic operations. Values shown as “+999” suggest that the parameters are beyond the normal range of the procedure, and should be interpreted as a severe inadequacy.				

It is noted that the traffic study computed the critical lane volume (CLV) at the Livingston Road and Gunpowder Drive intersection. The traffic study does not propose stop control or a signal. As a means of guiding the Planning Board correctly, this intersection has been reanalyzed using the Highway Capacity Manual unsignalized intersection method as prescribed by the Guidelines.

Given these analyses, both the MD 210 and Livingston Road/East Swan Creek Road and the Livingston Road/Gunpowder Drive intersections would operate unacceptably in at least one peak hour.

**MD 210 and Livingston Road/East Swan Creek Road**

In response to the inadequacy at this intersection, the applicant has proffered mitigation. This intersection is eligible for mitigation under the fourth criterion in the “Guidelines for Mitigation Action” (approved as CR-29-1994). The traffic study recommends the following improvements:

- A. On the eastbound East Swan Creek Road approach, widen the approach to provide four lanes, with an exclusive left-turn lane, a shared left-turn/through lane, and exclusive through and right-turn lanes.
- B. On the westbound Livingston Road approach, widen the approach to provide three lanes, with an exclusive left-turn lane, a shared left-turn/through lane, and an exclusive right-turn lane.

DPW&T and SHA have reviewed this proposal. DPW&T did not oppose the mitigation, given that SHA has jurisdiction for permitting modifications at this location. SHA concurred with the

recommendations. The impact of the mitigation actions at this intersection is summarized as follows:

<b>IMPACT OF MITIGATION</b>				
<b>Intersection</b>	<b>LOS and CLV (AM &amp; PM)</b>		<b>CLV Difference (AM &amp; PM)</b>	
MD 210 and Livingston Road/East Swan Creek Road				
Background Conditions	F/1877	F/1933		
Total Traffic Conditions	F/1887	F/2091	+10	+158
Total Traffic Conditions w/Mitigation	E/1676	D/1804	-211	-287

The options for improving this intersection to a LOS D, the policy level of service at this location, are very limited. Additional through lanes along MD 210 through the intersection would not be effective. MD 210 is already three through lanes northbound and southbound at this location. The western and eastern legs of the intersection have right-of-way issues, with commercial development on each side of the highway. The only identifiable improvement that would result in LOS D operations at this location would be the construction of the planned MD 210 and Livingston Road/East Swan Creek Road interchange. This interchange was included in an environmental study of the MD 210 corridor by SHA, but there has been no funding to date for design or construction.

As the CLV at the critical intersection is above 1,813 during both peak hours, the proposed mitigation actions must mitigate at least 100 percent of the trips generated by the subject property, and the actions must reduce the CLV to no worse than 1,813 during either peak hour, according to the Guidelines. The above table indicates that the proposed mitigation action would mitigate at least 100 percent of site-generated trips during each peak hour. This table also indicates that the resulting CLV under total traffic with the mitigation improvements is 1,813 or less in each peak hour. The table indicates that the proposed mitigation action would mitigate 181 percent of the trips generated by the subject property in the PM peak hour, and an even higher percentage during the AM peak hour.

Therefore, the applicant's proposed mitigation at MD 210 and Livingston Road/East Swan Creek Road meets the requirements of Section 24-124(a)(6)(B)(i) of the Subdivision Ordinance in considering traffic impacts.

As noted earlier, SHA does concur with the mitigation that is proposed, and DPW&T offered no comments on the mitigation action. Given past actions by the Planning Board regarding mitigation proposals in this area, this appears to be a circumstance in which the Planning Board would seriously consider the use of mitigation. The Transportation Planning Section's recommendation will include the applicant's proffer of the mitigation actions as a condition of approval for this application.

### **Livingston Road and Gunpowder Drive**

This intersection operates inadequately during the PM peak hour as an unsignalized intersection. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal if it is deemed warranted by the appropriate operating agency. The warrant study is, in itself, a more detailed study of the adequacy of the existing unsignalized intersection. With a signal in place, it is estimated that the intersection would operate at LOS A in the AM peak hour with a CLV of 383, and in the PM peak hour, it would operate at LOS A with a CLV of 712.

It is noted that this analysis has been limited to a proposed retail development totaling 80,000 square feet. Other types of uses can be constructed in the C-S-C Zone that may be more trip-intensive. Although adequacy has been determined for the retail center as proposed, the plan should be approved with a trip cap consistent with the development quantity and type that has been assumed in the adequacy finding.

### **Plan Comments**

The site is adjacent to Livingston Road, which is shown as a master plan collector facility on the Henson Creek-South Potomac Master Plan and SMA. The plan must show dedication of 40 feet from centerline along Livingston Road.

More notably, the site is adjacent to an element of a planned interchange of MD 210 with Livingston and East Swan Creek Roads. In the Henson Creek-South Potomac Master Plan and SMA, the interchanges consistent with the Maryland State Highway Administration (SHA) selected alternative (Alternative 5A) for MD 210 were made a part of the overall infrastructure recommendations. Within this site, Livingston Road is proposed to be relocated across the subject property, where it would connect to ramps to and from northbound MD 210 and an overpass over MD 210.

The availability of a selected alternative is an indication that the interchange configuration has had extensive environmental and public review, along with state and federal approval. It is not yet funded for design or construction at this time. Given the impact of the right-of-way on this site, it was determined that reservation in accordance with Section 24-139 appeared desirable. Furthermore, the current submitted plan includes proposed Parcel D, which shows the approximate limits of the interchange plus Livingston Road through the property, and the plan proffers reservation for Parcel D. Referrals were sent to the county and the state regarding potential reservation of the needed right-of-way for this interchange, and 30 days were given for a response. A response was received from SHA regarding this reservation request. Dedication, not reservation, was requested by SHA. The response included a map showing the boundaries of the dedication area proposed in accordance with Section 24-139(b).

At this time, notice is taken of Zoning Map Amendment A-9739-C. The 1989 resolution approving the rezoning of the property from R-E to C-S-C includes language that requires the

relocation of Livingston Road and the extension of Gunpowder Drive to be built prior to the issuance of any permits within this property. Condition 3 of that resolution reads as follows:

**3. “That no grading, building, or use and occupancy permits shall be issued until completion of construction of the extension of Gunpowder Drive (M. P. C-225, C-231) and of the realignment of Livingston Road”.**

The presence of both facilities was given by the District Council as their second finding for the approval of the rezoning of this property from R-E to C-S-C. While a more detailed environmental study of the interchange, along with a new master plan, has altered the layout of this interchange to some extent, the impact of these planned facilities on the subject property has not changed appreciably from the expectation at the time of the rezoning approval in 1989. As a part of the hearing for A-9739-C, the applicant produced a development concept for the site that included the interchange layout at that time, plus the master plan roadways. This concept is shown as Attachment A, and the following is noted:

- Gunpowder Drive is much more central within the Attachment A concept, than it currently is now. The current plans have Gunpowder Drive moved closer to the southeastern property line. While that has eliminated a pod proposed for development, east of Gunpowder Drive, on Attachment A, the main area of development has been expanded under the current plan. In any regard, setbacks and other restrictions might have greatly reduced the viability of any development east of Gunpowder Drive.
- Livingston Road has also moved out of the center of the site, and is now closer to the western property line. At the time of the rezoning, Livingston Road stopped at Gunpowder Drive, and continued as a ramp/service roadway to the north through the site. Under the current concept, Livingston Road would continue north, about two-thirds of the way through the site, where it would turn abruptly to cross MD 210 on an overpass, and be joined from the north by ramps to and from northbound MD 210.
- The configuration shown in Attachment A is matched by testimony given during the hearing and by statements provided in the referrals from the Transportation Planning Division and the Area Plans Division (E/S). The Area Plans Division (E/S) provided a statement that anticipated that the entire property might be acquired for the future interchange. Testimony provided by the applicant’s engineer during the hearing indicated that the amount of impact was well-understood, and also an understanding that the configuration of the interchange could change in the future.

Given the information placed on the record for the rezoning application, along with the condition imposed on the site by the District Council, it is clear that since construction along the future alignments of Livingston Road and Gunpowder Drive was required, dedication of these roadways was anticipated. Attachment A is an indication of the extent of dedication that was considered. As a means of ensuring compliance with Condition 3 of the resolution approving A-9739-C, it is recommended that the right-of-way for Livingston Road relocated be dedicated.

However, it is further noted that the interchange is not necessary for the property to develop, and there are not elements of the interchange needed for access to the site. Therefore, the nexus between the development of this site and the interchange appears to be slim at best. For that reason, while the recommendation will include a requirement to dedicate the right-of-way for Livingston Road relocated as a means of conforming to the rezoning approval, within the limits of the interchange there is no apparent means of legally obtaining dedication for this property. Given that the applicant has proffered reservation of Parcel D, and given that SHA has indicated a strong need for the right-of-way, there is little reason to oppose reservation within the area of the interchange. However, Parcel D includes a portion of Livingston Road relocated (where dedication is desirable), and the footprint of the interchange (where reservation is desirable).

Therefore, an Attachment B has been prepared to show Parcel D and the areas where dedication and reservation are desirable. Dedication within the area of Livingston Road relocated is shown as a vertical hatch, and the dedication is required as a means of complying with Condition 3 of the resolution approving A-9739-C. Reservation within the footprint of the proposed interchange is shown on Attachment B as a horizontal hatch. The line between the two areas was established approximately 600 feet north of the Gunpowder Drive intersection, and at the northern end of the paved area for the adjacent retail building (CVS Pharmacy) on Parcel 1. According to current SHA plans, this represents the approximate northern end of Livingston Road before it transitions into the interchange ramps and the overpass.

While the Planning Board does not make a final determination regarding any construction within dedicated rights-of-way (the County's DPW&T makes that determination), the status and need for street construction within the dedicated area of Parcel D should be reviewed at the time of detailed site plan as a means of providing information to the District Council regarding the site's conformance to the zoning condition.

### **Transportation Staff Conclusions**

Based on the preceding findings, the Transportation Planning Section concludes that adequate transportation facilities would exist to serve the proposed subdivision as required under Section 24-124 of the Prince George's County Code.

9. **Schools**—The Historic Preservation and Public Facilities Planning Section have concluded that the review of this preliminary plan for school facilities in accordance with Section 24-122.02 of the Subdivision Regulations, CB-30-2003 and CR-23-2003 is not necessary because the development is a commercial use.
10. **Fire and Rescue**—The Historic Preservation and Public Facilities Planning Section have reviewed the preliminary plan application for fire and rescue services in accordance with Section 24-122.01(d) and Section 24-122.01 (e)(1)(B)-(E) of the Subdivision Ordinance.

The existing engine service at Allentown Road Fire Station, Company 47, located at 10900 Fort



Washington Road, has a service travel time of 1.79 minutes, which is within the 3.25-minute travel time guideline.

The existing paramedic service at Allentown Road Fire Station, Company 47, located at 10900 Fort Washington Road, has a service travel time of 1.79 minutes, which is within the 7.25-minute travel time guideline.

The existing ladder truck service at Oxon Hill Fire Station, Company 21, located at 7600 Livingston Road, has a service travel time of 6.65 minutes, which is beyond the 4.25-minute travel time guideline.

In order to alleviate the negative impact on fire and rescue services due to the inadequate service discussed, an automatic fire suppression system shall be provided in all new buildings proposed in this preliminary plan unless the Prince George's County Fire/EMS Department determines that an alternative method of fire suppression is appropriate.

The above findings are in conformance with the *Adopted and Approved Public Safety Master Plan, 1990* and the *Guidelines for the Analysis of Development Impact on Fire and Rescue Facilities*.

11. **Police Facilities**—The approved 2002 General Plan addresses the provision of public facilities that will be needed to serve existing and future county residents. The plan includes planning guidelines for police and they are:

Station space per capita: 141 square feet per 1,000 residents

The police facilities test is done on a countywide basis in accordance with the policies of the Planning Board. There are 267,660 square feet of space in all of the facilities used by the Prince George's County Police Department, and the latest population estimate is 825,520. Using the guideline of 141 square feet per 1,000 residents, 116,398 square feet of space for police is needed. The current amount of space, 267,660 square feet, is above the guideline. The proposed development is within the service area for Police District IV, Oxon Hill.

12. **Health Department**—The Environmental Engineering Program has reviewed the preliminary plan of subdivision for the Livingston of Fort Washington Property and has no comments to offer.
13. **Stormwater Management**—The Department of Public Works and Transportation (DPW&T), Office of Engineering has determined that on-site stormwater management is required. Stormwater Management Concept Plan 12498-2007-00 has been approved with conditions to ensure that development of this site does not result in on-site or downstream flooding. Development must be in accordance with this approved plan.
14. **Historic**—A Phase I archeological survey was completed on the 12.27-acre property in August,

2007. Four copies of the final report entitled, *A Phase I Archaeological Investigation of the Livingston of Fort Washington Property, Prince George's County, Maryland, Preliminary Plan 4-07050*, have been received by the Historic Preservation and Public Facilities Section and was accepted on October 4, 2007. One multi-component archeological site (18PR909), consisting of a Woodland Period short-term procurement camp and a late 19<sup>th</sup> century artifact scatter, was identified in the survey. Due to the paucity of artifacts and disturbance of the ground surface, this site has little research potential. No further archeological investigations were recommended for site 18PR909. The Historic Preservation and Public Facilities Section concurs with the report's findings that no further archeological work is necessary on the Livingston of Fort Washington Property. All archeological conditions for this property have been fulfilled.

15. The subject property is zoned C-S-C. While the subject application is not proposing any residential development, if legislation would permit such a land use, a new preliminary plan should be approved. Because there exist different adequate public facility tests and there are considerations for recreational components for residential subdivisions, a new preliminary plan should be required if residential development is to be considered.
16. **At the Public Hearing**—Within this site, Livingston Road is proposed to be relocated across the subject property, where it would connect to ramps to and from northbound MD 210, and an overpass over MD 210. Parcel D (3.65 acres) and Parcel E (.021 acres), as shown on the submitted preliminary plan, are proposed to be placed in reservation for the master-planned interchange of MD 210 with Livingston and East Swan Creek Roads.

On September 11, 1989, the District Council approved Zoning Map Amendment A-9739-C with three conditions, which rezoned the subject property from the R-E Zone to the C-S-C Zone. The conditions are as follows:

1. That a 50-foot-wide buffer shall be maintained, in perpetuity, along adjacent R-E Zoned property (the eastern and southern boundaries of the subject property) and that all setbacks and other design criteria shall begin at the internal edge of the 50-foot-wide buffer and shall be calculated exclusive of this 50-foot wide buffer.
2. That all site plans shall be reviewed for approval by both the Planning Board and the District Council.
3. That no grading, building, or use and occupancy permits shall be issued until completion of construction of the extension of Gunpowder Drive (M.P. C-225, C-231) and of the realignment of Livingston Road.

A 50-foot-wide buffer is provided on the submitted plans along the eastern boundary of the subject property. However, since the time the zoning map amendment was approved in 1989, the location of the Gunpowder Drive extension has been shifted further southward. The southerly limits of the Gunpowder Drive right-of-way is now only 10 feet from the property's southeastern property line for a majority of the roadway. The remaining 10 feet between the roadway and the

property line can only accommodate the required 10 foot wide, public utility easement (PUE), which must remain free and clear of any woodlands or preservation. Therefore, Condition 1 of ZMA 9739-C has been fulfilled to the greatest extent possible due to the revised location of Gunpowder Drive, which must be constructed on the property in accordance with Condition 3 of ZMA 9739-C.

Condition 2 of ZMA 9739-C has been addressed, and has been carried forward as a condition of approval. Condition 7 (now shown as Condition 6 within this adopted resolution) requires that prior to final plat; the applicant shall have a detailed site plan approved in accordance with Part 3, Division 9 of the Prince George's County Zoning Ordinance. The detailed site plan shall be reviewed by both the Planning Board and the District Council in accordance with Condition 2 of Zoning Map Amendment A-9739-C.

Condition 3 of ZMA 9739-C has been the subject of much discussion throughout the review of this application. Since Gunpowder Drive will be dedicated to public use as a part of this plan, that portion of Condition 3 will be satisfied. However, since the time the zoning map amendment was approved in 1989, Livingston Road has moved out of the center of the site, and is now proposed closer to the western property line. At the time of the rezoning, Livingston Road stopped at Gunpowder Drive, and continued as a ramp/service roadway to the north through the site. Under the current concept, relocated Livingston Road would continue north, about two-thirds of the way through the site, where it would turn abruptly to cross MD 210 on an overpass, and be joined from the north by ramps to and from northbound MD 210. In light of the above, the applicant believes that Condition 3 of ZMA A-9739-C related solely to the 1984 *Adopted and Approved Master Plan for Subregion VII, Henson Creek (Planning Areas 76A and 76B) and South Potomac (Planning Area 80)*, which shows Livingston Road ending at Gunpowder Drive, and not continuing across the subject property.

On November 1, 2007, the applicant submitted a letter to the Principal Counsel for the District Council requesting interpretation and clarification on Condition 3 of ZMA A-9739-C. At the time of the writing of the staff report, no response had been received from the Principal Counsel. At the scheduled public hearing on November 29, 2007, the applicant had requested that a continuance be granted to allow additional time to receive the Principal Counsel's written interpretation of Condition 3 of Zoning Map Amendment A-9739-C. The Planning Board granted a one week continuance to the December 6, 2007, public hearing, which was the last scheduled hearing date prior to the applications' expiration on December 10, 2007.

Written interpretation of Condition 3 within ZMA, A-9739-C was received from the Principal Counsel for the District Council on December 5, 2007. In summary, the Principal Counsel's letter states the following:

“Under the circumstances of this case, the requirement in Condition 3 for the “construction” of the realignment of Livingston Road may be satisfied by the owner's agreement, as reflected in the subdivision application, to reserve the right-of-way for the future roadway. Reserving the realigned Livingston Road right-of-way meets the purposes of Condition 3 because of the present uncertainty of the interchange

construction, and because without commencement of the interchange construction, it is not possible for the owner to initiate the required Livingston Road construction. Dedication of the right-of-way, which would essentially place it in public ownership indefinitely, is not necessary”

In light of the above, staff’s initial recommendation for the dedication of realigned Livingston Road and the reservation of the remaining land area within the planned interchange, was modified to require only the reservation of the land area for both facilities. This decision was coupled with the fact that neither the master planned interchange, or realigned Livingston Road were needed for access or adequacy purposes for this application.

Due to the elimination of staff’s initial recommendation for the dedication of realigned Livingston Road, the applicant’s attorney, Mr. Bill Knight, requested the deletion of Condition 17, and revisions to the language within Conditions 18 and 18 (c). The applicant had also requested a revision to Condition 6, which required SHA approval for the design, capacity, and location of the stormwater management facility to serve the proposed shopping center. The applicant’s stormwater management facility is proposed in the same location where a stormwater management pond has been identified by the SHA, as being necessary for the future planned interchange. However, the Associate General Council for the M-NCPPC had determined that Condition 6 was not legally sufficient, and therefore should be deleted from the staff recommendation. The Planning Board concurred with the deletion of Conditions 6 and 17, and the revisions to Conditions 18 and 18 (c), (which are shown as Condition 16 and 16 (c) within this adopted resolution).

BE IT FURTHER RESOLVED, that an appeal of the Planning Board’s action must be filed with Circuit Court for Prince George’s County, Maryland within thirty (30) days following the date of notice of the adoption of this Resolution.

\* \* \* \* \*

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Squire, seconded by Commissioner Clark, with Commissioners Squire, Clark, Vaughns, Cavitt and Parker voting in favor of the motion at its regular meeting held on Thursday, December 6, 2007, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 3rd day of January 2008.

Oscar S. Rodriguez  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

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