

R E S O L U T I O N

WHEREAS, Faison-Brandywine, LLC. is the owner of a 31.28-acre parcel of land known as Outparcels 6 and 8, and a residue parcel recorded in land records in November 2007 (PM 224@54); Lots 9–18, and the 50-foot right-of-way of Brandywine Road recorded in 1941 (BB 8@83); and Parcels 7 and Parcel A recorded in land records in 2001 (CH 191@98), located on Tax Map 154 and 155 in Grids F-3 and A-3, said property being in the 11th Election District of Prince George's County, Maryland, and being zoned C-S-C; and

WHEREAS, on March 6, 2008, Faison – Brandywine, LLC. filed an application for approval of a Preliminary Plan of Subdivision (Staff Exhibit #1) for 5 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Plan of Subdivision, also known as Preliminary Plan 4-07112 for Brandywine Crossing, Phase II 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 July 10, 2008, 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 July 10, 2008, 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/26/91), and further APPROVED Preliminary Plan of Subdivision 4-07112, Brandywine Crossing, Phase II, including a Variation from Sections 24-130 and Section 24-121(a)(3) for Parcels 1-5 with the following conditions:

1. Prior to signature approval of the preliminary plan of subdivision, the following technical corrections shall be made:
  - a. Delineate all required WSSC right-of-way easements.
  - b. Revise General Note 14 to remove language “per proposed plan.”
  - c. Add a general note restating condition which requires MIHP form.

- d. Provide reference to the request for a variation (Section 24-121) for direct access to US 301 and the Planning Board decision.
  - e. Locate and label the location of the deep and shallow wells.
  - f. Locate and label the location any septic system, if available.
  - g. Accurately reflect and indicate the limit of the pending SE 4612 for the Safeway gas station.
  - h. Remove the label on Timothy Brach that the "ROW varies" it has been platted.
  - i. Delineate the limit of A-9990-C and A-9980-C, and revise general notes to add conditions of A-9980-C.
  - j. Provide the location of any entrance monuments and extent of the sign easements in accordance with Section 24-624 of the Zoning Ordinance.
2. A Type II Tree conservation plan shall be approved with the detailed site plan.
  3. Development of this site shall be in conformance with the Stormwater Management Concept Plan, No. 433666-2007-00 and any subsequent revisions.
  4. Provide a standard sidewalk along the subject site's entire frontage of Mattapeake Business Drive and Timothy Branch Drive, unless modified by DPW&T.
  5. 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.
  6. 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.
  7. Prior to signature approval of this preliminary plan, Phase I (Identification) archeological investigations in accordance with the Planning Board's "Guidelines for Archeological Review"(May 2005) shall be submitted for the above-referenced property to determine if any cultural resources are present. Evidence of M-NCPPC concurrence with the final Phase I report and recommendations is required. The area that is the subject of the Phase I survey is approximately 4 acres in size and located on the west side of Parcels 8 and 9. The remainder of the property shall be examined to determine if there are other undisturbed areas that should be tested. The applicant shall submit a Phase I Research Plan for approval by the staff archeologist prior to commencing Phase I work.

8. Prior to the approval of the detailed site plan if it is determined that potentially significant archeological resources exist in the project area, (based on the Phase I report) the applicant shall:
  - a. Provide a plan for:
    - i) Evaluating the resource at the Phase II level, or
    - ii) Avoiding and preserving the resource in place.
  - b. If a Phase II and/or Phase III archeological evaluation or mitigation is necessary the applicant shall provide a final report detailing the Phase II and/or Phase III investigations prior to the approval of the detailed site plan and ensure that all artifacts are curated in a proper manner, prior to any ground disturbance or the approval of any grading permits.
  - c. Depending upon the significance of findings (at Phase I, II, or III level), the applicant shall provide interpretive signage. The location and wording shall be subject to approval by the staff archeologist prior to the approval of the detailed site plan.
  - d. Section 106 review may also require archeological survey for state or federal agencies. Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties, to include archeological sites. This review is required when state or federal monies or permits are required for a project.
9. Prior to the issuance of grading permits the applicant shall demonstrate that the existing houses to be razed on Parcels 1 and 3 have been recorded together on one Maryland Inventory of Historic Properties form prior to their demolition. The MIHP form shall include a floor plan and representative interior and exterior photographs for each structure. A copy of the form shall be submitted to Historic Preservation staff for review and approval.
10. 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/26/91-01), 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 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, Environmental Planning Section.”
11. Prior to the issuance of grading permits the applicant shall demonstrating that the abandoned deep and shallow wells associated with the existing houses (two deep wells and six shallow wells

observed) and any abandoned septic system must be backfilled and sealed in accordance with COMAR 26.04.04 by a licensed well driller or witnessed by a representative of the Health Department as part of the raze permit.

12. Prior to the removal of any of the structures on site a raze permit is required. A raze permit can be obtained through the Department of Environmental Resources, Office of Licenses and Permits. Any hazardous materials located in any structures on site shall be removed and properly stored or discarded prior to the structures being razed.
13. One direct temporary right in only vehicular access point to US 301/MD 5 shall be permitted subject to SHA approval and under the following condition:

The access will be closed when one of the following occurs: the final construction of the spine road system to the north is complete, the US 301 upgrade is implemented, or if accidents at the access are above the state average. In any case, the developer must close the access within six (6) months of notice from SHA.

14. The applicant and/or the applicant's heirs, successors, or assignees shall contribute toward and participate in the construction of certain additional off-site transportation improvements as identified hereinafter. These improvements shall be funded and constructed through the formation of a road club that will include the applicant, the Montgomery Wards Brandywine Distribution Center, the Brandywine Commerce Center, the Mattawoman-Brandywine Commerce Center, the Brandywine Business Park, the Brandywine/301 Industrial Park, the Hampton CDZ, and other property owners in the area designated as Employment Area "C" in the Subregion V master plan, as well as any properties along US 301/MD 5 between T.B. (the intersection of US 301 and MD 5 in Prince George's County) and Mattawoman Creek, and any other properties for which participation is deemed necessary by the Planning Board. For development on the subject property, the applicant's sole funding responsibility toward the construction of these off-site transportation improvements shall be the payment of the following:

- A fee calculated as  $\$2.07$  per gross square foot of space X (Engineering News-Record Highway Construction Cost index at time of payment) / (Engineering News-Record Highway Construction Cost Index for first quarter, 1993).

Payment is to be made in trust to the road club escrow agent and shall be due, on a pro rata basis, at the time of issuance of building permits. Prior to issuance of any building permit(s), the applicant shall provide written evidence to M-NCPPC that the required payment has been made.

The off-site transportation improvements to be constructed are set forth below. Construction of these improvements shall occur in the numerical sequence in which they appear. Each improvement shall be constructed if and only if sufficient funds for engineering, full design, and construction have been deposited into the road club escrow account by road club members or said

funds have been provided by public agencies. The off-site transportation improvements shall include:

- a. Widen US 301/MD 5 from a four-lane road to a six-lane road beginning at Timothy Branch (north of Cedarville Road) and extending northerly to the US 301/MD 5 interchange (at T.B.). The construction shall be in accordance with presently approved SHA plans.
  - b. Install a traffic signal at the A-63/Cedarville Road intersection, provided said signal is deemed warranted by DPW&T.
  - c. Make minor widening/striping improvements to the US 301/MD 5 interchange ramps.
  - d. Widen US 301 from a four-lane road to a six-lane road beginning at the T.B. interchange (US 301/MD 5) and extending northerly to a point approximately 2,500 feet north of MD 381.
  - e. Reconstruct the traffic signal at US 301/MD 381.
  - f. Install a traffic signal at the MD 381/A-63 intersection, provided said signal is deemed warranted by DPW&T and SHA.
  - g. Provide a grade separation at the point the spine road crosses US 301 northeast of T.B.
  - h. Reconstruct the traffic signal at MD 5/Brandywine Road.
  - i. Construction of an interchange in the area of US 301/MD 5 and Cedarville/McKendree Roads.
  - j. Construction of an interchange in the area of MD 5 and A-63 north of T.B.
  - k. Construction of A-63 as a six-lane arterial roadway (where off site) between the US 301/MD 5/Cedarville Rd./McKendree Rd. intersection and MD 5 north of T.B.
  - l. Widen US 301/MD 5 from a six-lane road to an eight-lane road beginning at the T.B. interchange (US 301/MD 5) and extending southerly to Mattawoman Creek.
  - m. Widen MD 5 from a four-lane road to a six-lane road beginning at the T.B. interchange (US 301/MD 5) and extending northerly to a point approximately 2,500 feet north of the planned intersection with A-63.
15. Following the connection of Matapeake Business Drive to the A-63 facility and the opening to traffic of A-63 between Matapeake Business Drive and another public street providing access to US 301/MD 5, the applicant, his successors, or assigns shall construct channelization at the US

301/MD 5/Matapeake Business Drive/Clymer Drive intersection which will prohibit the following movements (unless at that time, the State Highway Administration requires different improvements):

- a. Left turn from southbound US 301/MD 5 onto eastbound Matapeake Business Drive;
- b. Left turn from westbound Matapeake Business Drive onto southbound US 301/MD 5;
- c. Eastbound through;
- d. Westbound through.

In the event that a traffic signal has been installed at this location following approval of this plan, and modification or removal of the signal is required as directed by SHA following installation of the channelization, such modification or removal shall be at the sole expense of the applicant, his successors, or assigns.

16. Following the connection of Matapeake Business Drive to the A-63 facility and the opening to traffic of A-63 between Matapeake Business Drive and another public street providing access to US 301/MD 5, the applicant, his successors, or assigns shall construct channelization at the US 301/MD 5/Chadds Ford Drive/Timothy Branch Drive intersection which will prohibit the following movements (unless at that time, the State Highway Administration requires different improvements):

- a. Left turn from southbound US 301/MD 5 onto eastbound Timothy Branch Drive;
- b. Left turn from westbound Timothy Branch Drive onto southbound US 301/MD 5;
- c. Eastbound through;
- d. Westbound through.

In the event that a traffic signal has been installed at this location following approval of this plan, and modification or removal of the signal is required as directed by SHA following installation of the channelization, such modification or removal shall be at the sole expense of the applicant, his successors, or assigns.

17. Prior to the issuance of any building permits within the subject property, the following road improvements shall have full financial assurances, have been permitted for construction, and have an agreed-upon timetable for construction with SHA:

- a. At US 301/MD 5 at Chadds Ford Drive/Timothy Branch Drive, along the eastbound Chadds Ford Drive approach, provide a four-lane approach with two left-turn lanes, a shared through/left-turn lane, and a right-turn lane.

- b. At US 301/MD 5 at Clymer Drive/Matapeake Business Drive, along the eastbound Clymer Drive approach, provides a three-lane approach with a left-turn lane, a shared through/left-turn lane, and a right-turn lane.
18. Total development of the overall Brandywine 301 Industrial Park site (the areas covered by Preliminary Plan of Subdivision 4-97124) plus the areas encompassing Longs Subdivision, Lots 8 through 23 (as existing in 1997) shall be limited to uses that would generate no more than 794 AM and 1,836 PM peak-hour vehicle trips. Areas containing C-S-C zoning as of the date of the resolution approving this plan shall be limited to uses that would generate no more than 309 AM and 1,390 PM peak hour vehicle trips. Areas containing I-3 or I-1 zoning as of the date of the resolution approving this plan shall be limited to uses that would generate no more than 485 AM and 446 PM peak-hour vehicle trips. Any development generating an 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.
19. At the time of the Final Plat for the subject plan, as a means of ensuring that the revision of the trip cap, as understood on the date of the plan approval, is properly applied to the land within Preliminary Plan of Subdivision 4-97124, Condition 18 above shall be added as a note to all record plats within Brandywine 301 Industrial Park (plats 191-098, 195-006, 198-028, 198-051, 203-050, and 203-051) with an indication that this condition supersedes Condition 11 of Prince George's County Planning Board Resolution No. 98-84.
20. The detailed site plan shall provide a vehicular access easement between Matapeake Business Drive and the area encompassing Lots 1 through 8 of Longs Subdivision. The exact location and width of this easement shall be determined during detailed site plan review and shown on the appropriate Record Plat.
21. Prior to the approval of the final plat of subdivision, in accordance with Section 24-112 of the Subdivision Regulations, the applicant shall vacate that portion of Brandywine Road (BB 8@83) necessary for the implementation of the subdivision.
22. Prior to the issuance of any permits which impact jurisdictional wetlands, wetland buffers, streams or Waters of the U.S., the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.
23. Prior to approval of the detailed site plan for development adjacent to US 301, which is classified as a freeway, the applicant shall evaluate noise impacts to the site and identify methods of noise mitigation necessary to mitigate interior noise levels in office space to no more than 55 dBA (Ldn). If noise mitigation is required, prior to the approval of building permits for noise impacted structures, a certification by a professional engineer with competency in acoustical analysis shall be placed on the building permit stating that building shells of structures within prescribed noise corridors have been designed to reduce interior noise levels to 55dBA (Ldn) or less.

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 subject site is located in the north east quadrant of the intersection of Timothy Branch Drive and Crain Highway (US 301), on the west side of Matapeake Business 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)	Single-family dwellings to be razed	266,000 square feet of Commercial retail
Acreage	31.29	31.29
Lots	10	0
Outparcels	2	0
Parcels	2	5
Public Safety Mitigation Fee		No

4. **Environmental**—The Environmental Planning Section has reviewed the above preliminary plan stamped as received on April 14, 2008, a revised TCPI stamped as received on June 10, 2008, and a variation request stamped as received on June 9, 2008.

A portion of this site was previously evaluated by the Environmental Planning Section in conjunction with the review and approvals of Zoning Map Amendment A-9502-C, Preliminary Plan of Subdivision 4-91030, Preliminary Plan 4-97124 and Type I Tree Conservation Plan (TCPI/26/91), and Preliminary Plan 4-06131 and Type II Tree Conservation Plan (TCPI/26/91-02), all of which were approved. A Type II Tree Conservation Plan (TCPII/133/91) for the entire Brandywine 301 Industrial Park was approved on July 13, 1998. Detailed site plan approval has occurred for several lots within the Brandywine Business Park, but not for the lots and parcels currently proposed for subdivision.

The 1978 Brandywine-Mattawoman Sectional Map Amendment rezoned the property from the R-R (Rural Residential) Zone to the E-I-A (Employment and Institutional Area) Zone. The property was later rezoned through Zoning Map Amendment A-9502-C from the E-I-A Zone to the I-1 and I-3 Zones in 1985. The 1993 Subregion V Approved Master Plan & Sectional Map Amendment retained the property in the I-1 and I-3 zoning categories. The District Council approved ZMA-9980-C on September 26, 2006, subject to conditions contained in Zoning Ordinance No. 16-2006 which proposed rezoning Lots 19-23 Long's Subdivision (Plat Book 8-93) and Parcels 1 through 6, Block A and Parcels 1 through 6 and 8, Block B, Brandywine 301



Industrial Park, from the I-1 and I-3 Zones to the C-S-C Zone.

The Environmental Planning Section has not previously reviewed the portion of the application that is referenced as Long's Subdivision, Lots 9-18, until the review of zoning application ZMA-9990, which the District Council approved on November 5, 2007 subject to conditions. The current preliminary plan of subdivision application expands the limits of the Brandywine Crossing development to incorporate ten additional lots which were recently rezoned (Lots 9 through 18) from Long's Subdivision into the Brandywine Crossing, Phase II development.

No floodplain, streams for nontidal wetlands are located on the site. Crain Highway is classified as a freeway and is a nearby source of traffic-generated noise. The soils found to occur according to the "Prince George's County Soil Survey" are in the Beltsville, Bibb, Chillum, Galestown, Leonardtown and Sassafras soil series. Some of these soils are hydric, and may be affected by perched water tables, impeded drainage, and poor drainage. According to available information, Marlboro clay does not occur on or in the vicinity of this site. According to the Sensitive Species Project Review Area (SSSPRA) map received from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. There are no designated scenic and historic roads in the vicinity of this application. This property is located in the Mattawoman Creek watershed of the Potomac River basin and in the Developing Tier as reflected in the adopted General Plan. According to the approved Countywide Green Infrastructure Plan, the site does not contain Regulated Areas, Evaluation Areas and Network Gaps.

#### **CONFORMANCE WITH THE MASTER PLAN**

The subject property is located within the Subregion V Approved Master Plan & Sectional Map Amendment (1993). Environmental features were protected is in conformance with the guidance provided by the Master Plan at the time of the previous approvals of the preliminary plan, Type I and Type II tree conservation plans.

#### **CONFORMANCE WITH THE COUNTYWIDE GREEN INFRASTRUTURE PLAN**

The site contains Regulated Areas, Evaluation Areas, and Network Gaps identified in the Countywide Green Infrastructure Plan, which are consolidated along the stream corridor located along the eastern and southern borders of this site. Much of the site has already been cleared under previous approvals; however, the most current revised TCPI shows preservation to be provided adjacent to the Regulated Areas, and provides conformance, to the maximum extent possible, with the Green Infrastructure Plan.

## CONDITIONS OF PREVIOUS ZONING APPROVALS

**Brandywine-Mattawoman SMA:** The 1978 Brandywine-Mattawoman Sectional Map Amendment rezoned the Property from the R-R (rural Residential) Zone to the E-I-A (Employment- Industrial-Area) Zone.

**Special Exception SE-3272:** In 1982, the District Council granted approval of Special Exception SE-3272 on the northern portion of the Brandywine 301 Industrial Park (not part of this preliminary plan) for the excavation of sand and gravel. At that time, the southern portion was already an active sand and gravel operation under Special Exception SE-3064.

**ZMA-9502:** In 1984, the approval of Zoning Map Amendment ZMA-9502 by the District Council granting the rezoning of portions of this application from the E-I-A Zone to I-1 and I-3 Zones was based on specific findings, as stated in the Final Conditional Zoning Approval:

**“Finding 3. In order to protect those properties located across MD Route 301 from the subject property and to preserve the character and development of the MD Route 301 corridor, the District council finds that the portion of the subject property, 500 in depth, bordering MD Route 301 should be in the I-3 Zone.**

**“Finding 4. In order to protect those sections of the subject property’s neighborhood which will be residentially developed in the future, and in order to guide and control development on the subject property, this rezoning is granted with conditions, as stated below.”**

As a result of these findings, ZMA-9502 was approved from the E-I-A Zone to the I-1 Zone, excluding the portion of the subject property, 500 feet in depth, bordering US 301, which was rezoned from the E-I-A to the I-3 Zone.

The following conditions were also approved:

- “1. No corrugated metal or cinder block structures shall be visible from either MD Route 301 or Cedarville Road.**
- “2. All lots fronting on Cedarville Road shall conform to the development standards of the I-3 Zone.**
- “3. The initial 25 feet along the entrance road to the subject premises be landscaped and planted with trees.”**

**Subregion V Approved Master Plan and SMA:** The 1993 Subregion V Approved Master Plan and Sectional Map Amendment retained the property in the I-1 and I-3 zoning categories.

**ZMA-9980-C:** Zoning Map Amendment ZMA-9980-C rezoning portions of the subject application from the I-3 Zone to the C-S-C Zone was approved subject to the following environmental conditions:

- 1. Development of the site shall conform with the approved Tree Conservation Plans (TCPI/26/91 and TCPII/133/91).**

**Comment:** TCPI/26/91-03 will be reviewed as part of the current application, and a revised TCPII will be required at the of Detailed Site Plan review.

- 2. Detailed Site Plan approval is required before issuance of building and grading permits, to ensure compatibility with surrounding industrially zoned properties and conformance with the purposes of the C-S-C Zone.**

**Comment:** A detailed site plan is required for the C-S-C zoned portion of this property.

#### **CONDITIONS OF PRIOR PRELIMINARY PLAN APPROVALS**

The 170.5-acre parcel known as Brandywine 301 Industrial Park was subdivided as part of 4-91030 (PGCPB No. 91-256). Parcels 1 through 6, Block A and Parcels 1 through 6, Block B of the Brandywine 301 Industrial Park are the subject of Plat Book 203-51, pursuant to Preliminary Plan 4-97124, which made minor changes to the prior approval. The following conditions of approval of the preliminary plan (4-97124, PGCPB 98-84) are environmental in nature:

- 1. Development of this site shall be in conformance with the approved Type I Tree conservation Plan (TCPI/26/91) as revised.**

**Comment:** TCPI/26/91 is being revised under the current application to include the additional area proposed, and to show how the woodland conservation requirement will be met for the entire acreage now included.

- 2. The following note should be on the Final Plat of Subdivision:**

**“Development is subject to restrictions shown on the approved Type I Tree Conservation Plan (TCPI/26/91), or as modified by the Type II Tree Conservation Plan, which precludes disturbance ore installation of structures within specified areas. Failure to comply with an approved Tree Conservation Plan is a violation requiring mitigation under the woodland Conservation/Tree Preservation Policy and Subtitle 25.”**

**Comment:** Any plat filed pursuant to the approval of this subdivision application shall include a plat note referring to the appropriate TCP number.

3. **Prior to Detailed Site Plan approval, the applicant shall revise the Type II Tree Conservation Plan for the property to address the requirements as established by TCPI/26/91.**

**Comment:** Revisions to the Type II Tree Conservation Plan (TCPII/133/91) to address the revised requirements of TCPI/26/91-03 will be addressed during detailed site plan review.

4. **Prior to Detailed Site Plan approval for Parcel 1, Block A and Parcels 1 & 2, Block B, the applicant shall demonstrate to the satisfaction of the Natural Resources Division that the noise levels for all interior office space does not exceed 55 dBA.**

**Comment:** This condition should be applied at time of DSP for the parcels fronting on US 301. This condition may also be appropriately applied to a new preliminary plan for Long's Subdivision, Lots 9 through 18, which also front on Crain Highway. The Natural Resources Division is now known as the Environmental Planning Section, within the Countywide Planning Division. Prior to Detailed Site Plan approval for development adjacent to US 301, which is classified as a freeway, the applicant should evaluate noise impacts to the site, and identify methods of noise mitigation necessary to mitigate interior noise levels in office space to no more than 55 dBA (Ldn).

5. **Prior to the issuance of any grading permits which impacts wetlands, wetland buffers or streams, the applicant shall provide the Natural Resources Division with copies of all require Federal and/or State authorizations (permits) for these disturbances.**

**Comment:** MDE Permit No. 97-NT-0870 previously authorized wetland impacts for with the overall Brandywine Crossing development, but that approval has expired. The current application site contains no streams, wetlands or wetland buffers for which permits are required. Impacts to the expanded buffer are proposed for construction of a stormwater management facility for the proposed development on abutting Outlot A, Brandywine Crossing. Proposed impacts to the expanded buffer are discussed below.

22. **Prior to submission of the final plat, a floodplain study shall be approved by the Department of Environmental Resources (DER), Watershed Protection Branch.**

**Comment:** This condition was addressed prior to the platting of Brandywine 301 Industrial Park.

The preliminary plan application has a revised signed Natural Resources Inventory (NRI/158/06-02) that was approved on June 16, 2008. The revised TCPI and the preliminary plan show all the required information correctly and in conformance with the revised signed NRI. Two areas of wetlands have been removed from the NRI based on a determination by the U.S.A. C.O.E and documentation submitted for review with the revised NRI. No further information is required with regard to the revised NRI.

This property is subject to the provisions of the Prince George's County Woodland Conservation Ordinance because there are previously approved Tree Conservation Plans for the site. A revision to the approved Type I Tree Conservation Plan (TCPI/26/01-03), stamped as submitted on March 7, 2008, was submitted with the preliminary plan application to expand the area of the original TCPI, and has been reviewed. The gross tract area of the TCPI is now 178.93 acres, which encompasses all parcels of the original TCPI and additional lots from Long's Subdivision. The Woodland Conservation Threshold for the overall site is 24.07 acres, based on a 15 percent woodland conservation threshold in the C-S-C Zone. The total amount of required woodland conservation based the proposed clearing on-site and off-site clearing, is 33.41 acres.

The TCPI as currently designed, proposes to meet the requirement with 16.87 acres of on-site preservation, and 16.54 acres of off-site mitigation. The previously approved TCPI proposed 4.60 acres of off-site mitigation. The increased off-site woodland conservation requirement is the result of expanding the limits of the TCPI to include the wooded lots of Long's Subdivision, the proposed use of these lots, and construction of an additional stormwater management facility. Because the other lots within the TCPI have been sold, were previously developed, or are not included in this preliminary plan, the additional woodland conservation requirement cannot be provided elsewhere on the site.

The provision of off-site woodland conservation mitigation should therefore be fulfilled with the development and grading of the Detailed Site Plan for Phase II. There may be potential for the provision of afforestation on-site, which should be considered during the preparation of the TCPII in order to reduce the off-site mitigation requirement, since the threshold has not been met on-site. A portion of tree preservation No. 6 is located in the 100-year floodplain. Revise the TCPI to remove tree preservation from the 100-year floodplain and revise the parcel by parcel table.

The revised TCPI will meet the technical requirements for approval of a Type I Tree Conservation Plan, with one minor exception. All additional off-site mitigation requirements must be obtained prior to the issuance of grading permits for Phase II. Prior to signature approval of the preliminary plan, the TCPI shall be revised to remove tree preservation in area No. 6, which is located in the 100-year floodplain, and revise the parcel-by-parcel chart accordingly.

The stormwater management concept plan submitted with the application, shows different environmental features and a different development footprint than the revised NRI and the revised TCPI. An approved stormwater management concept approval letter has not been submitted. Prior to signature approval of the preliminary plan, a revised stormwater management concept approval letter and associated plans should be submitted which correctly reflect the environmental features of the site as reflected on the NRI, and show a development footprint consistent with the TCPI.

Development of this subdivision shall be in compliance with the Type I Tree Conservation Plan (TCPI/26/91-03) approved as part of this application.

### **Request for Variation Request**

In a letter dated June 5, 2008, Nick Linehan, Loiederman Soltesz Associates, Inc. acting on behalf of the applicant, requested a variation for two areas of off-site impact to an environmental buffer as defined in Section 24-130, for a total of 6,325 square feet of permanent impact for outfalls from a stormwater management facility.

Impacts to expanded buffers are restricted by Section 24-130 of the Subdivision Regulations unless the Planning Board grants a variation to the Subdivision Regulations in accordance with Section 24-113. Even with the approval of the Planning Board, the applicant will need to obtain federal and state permits prior to the issuance of any grading permit. For purposes of discussion relating to Section 24-113(a) of the Subdivision Regulations the two storm drain outfall impacts were discussed together.

Section 24-113(a) of the Subdivision Regulations sets forth the required findings for approval of variation requests. Section 24-113(a) reads (in bold):

**Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon evidence presented to it in each specific case that:**

The approval of the applicant's request does not have the effect of nullifying the intent and purpose of the Subdivision Regulations. In fact, strict compliance with the requirements of Section 24-130 could result in practical difficulties to the applicant that could result in the applicant not being able to develop in accordance with the Prince George's County Code.

- (1) The granting of the variation request would not be detrimental to public safety, health or welfare and does not injure other property;**

The installation of the storm drain outfalls is required by other regulations to provide for public safety, health and welfare. All designs of these types of facilities are reviewed by the appropriate agency to ensure compliance with the regulations. These regulations require that the designs are not injurious to other property.

- (2) The conditions on which the variations are based are unique to the property for which the variation is sought and are not applicable generally to other properties;**

Stormwater, which will be managed by the newly proposed SWM Pond No. 3, requires outfalls to

allow the conveyance of surface runoff into the adjacent stream system. The topography of the subject property, as well as the property's position in relation to SWM Pond No. 3 and the adjacent stream system, distinguish this property from other area properties.

**(3) The variation does not constitute a violation of any other applicable law, ordinance or regulation; and**

The installation of the stormwater outfalls is required by other regulations. Because permits from other local, state and federal agencies are required by their regulations, the approval of this variation request would not constitute a violation of other applicable laws.

**(4) Because of the peculiar physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulation is carried out.**

Design of stormwater management outfalls require that they be placed where they will provide the proper drainage; the specific topography of the site dictates the location.

The Planning Board approves the variation requests for the reasons stated above.

### **Water and Sewer Categories**

The water and sewer service categories are W-3 and S-3 according to water and sewer maps obtained from the Department of Environmental Resources (DER) dated June 2003, and will therefore be served by public systems.

5. **Community Planning**—The 2002 General Plan locates this property in the Developing Tier. This application is not inconsistent with the 2002 General Plan Development Pattern Policies for commercial land use in the Developing Tier but it is inconsistent with planning objectives for a possible future Center; in that it lacks connections to the surrounding neighborhoods and any components of transit-oriented design. The proposed commercial land uses are not inconsistent with the range of uses in the possible future Community Center identified in the 2002 General Plan in the Brandywine area. However, the policy for centers is to promote the development of mixed residential and nonresidential uses at moderate to high densities and intensities in context with surrounding neighborhoods and with a strong emphasis on transit-oriented design. In this regard, future development plans should set aside an area for a future transit station to serve commuters and propose a pedestrian component that provides sidewalks for persons living or working in adjoining areas, to meet the planning objectives of the master plan.

The land use recommendation of the 1993 *Approved Subregion V Master Plan and SMA* is for light industrial and planned industrial/employment park. In 2007 this property was rezoned from the I-1 and I-3 Zones to the C-S-C Commercial Shopping Center Zone. The land use proposed by this application conforms to the recently approved rezoning (A-9990-C and A-9980-C) to the

C-S-C (Commercial Shopping Center) Zone.

The area in which this application is located is identified in the master plan as Employment Area C in the 1993 *Subregion V Master Plan and SMA*. “Employment Area ‘C’ is a large, light and heavy industrial employment park which has direct access to regional highway and railroad systems. It has long been planned to develop with a mix of industrial land uses that can take advantage of the location...It is one of the last large, uncommitted, general industrial areas remaining in the first tier of suburban jurisdictions surrounding Washington, DC. The landowners, the County, and the State, should not squander the opportunity to achieve development of regional significance.” (p. 81) The Plan also states, “Every effort should be made to ensure that only high image development takes place along the regional highway corridor.” (p. 81)

The 1993 *Subregion V Master Plan and SMA* also includes guidelines for employment areas. The following guidelines apply to this application:

- “3. Employment areas should be designed to be easily accessible by public transportation systems.
8. During the plan review of properties located in the industrial zones, extraordinary attention should be paid to the aesthetics of proposals adjoining major roads.” (p. 68)

Since this property was rezoned to the C-S-C Zone in 2007 the following master plan guidelines apply:

- “1. Commercial areas as they are developed, renewed, and/or expanded should be subjected to high standards of site design and should be designed in relation to surrounding areas so as to provide safe, visually pleasing vehicle and pedestrian access. Site plan review should be required for all new commercial development.”
3. Façades, architectural screening (walls, fences, parapets, etc.) and a unified landscape treatment should be consistent and help create an identifiable activity center.
4. The design of commercial areas as they are developed, renewed, and/or expanded should be subject to aesthetic as well as functional design review criteria and, where possible, should include open space such as parks, malls, plazas, and similar areas. Natural amenities should be preserved and incorporated into the design of commercial facilities.
9. Where appropriate, the sharing of parking facilities and the provision of commuter lots should be encouraged.
10. Innovative site design and/or ample landscaping should be used within and around new, renewed and/or expanding commercial areas, to enhance the aesthetic qualities of the areas and to break up the otherwise monotonous, barren look of parking areas.



11. All commercial activities should be located to benefit from access afforded by major streets without impairing the efficiency and operation of these streets. The use of frontage roads and of as few curb cuts as possible are explicitly recognized as primary means of achieving this guideline.
12. Off-street parking facilities should be designed to allow on-site vehicular circulation, in order to eliminate the need to back onto highways and to prevent the blocking of public rights-of-way. No departure from design standards should be granted which conflict with this guideline.
13. Adequate off-street loading and unloading space should be provided and located where public ways will not be blocked.
14. Signs at all commercial centers should be designed and sited so as to minimize the visual impact on the surrounding area and access road.
15. A gas station or other freestanding structure, locating in a new commercial, renewed and/or expanded area, should be an unobtrusive element in an overall site plan and should be of similar architectural design, building material, texture, and design to other buildings in the area” (pp. 63-64).

### **Globe COM Communications Center**

The 1993 *Subregion V Master Plan and SMA* also states, “As development occurs in Employment Area ‘C’, and also ‘D’, some sensitivity needs to be exercised with respect to the Globecom Communications Center adjoining to the east. An important link of the U.S. Military Worldwide Communications Network, the Globe COM facility has some sensitivity to high levels of electromagnetic interference that can be produced during industrial and general business operations. To ensure compatibility of proposed land uses in this area, prospective occupants need to contact U.S. Air Force officials at Andrews Air Force Base to determine how specific uses can be designed to reduce generation of electromagnetic fields to acceptable levels. This compatibility issue needs to be arbitrated between the Air Force and private land users. The county is not in a position to evaluate, arbitrate, or enforce these compatibility conflicts, but should ensure that each affected party is aware of development proposals and conflict potential.” (p. 81)

The preliminary plan has been referred to the Planning Office at Andrews Air Force Base for their information and review. A referral dated June 4, 2008, was received (Munkers to M-NCPPC) which noted that there are no compatibility issue with the proposed development.

6. **Parks and Recreation**—In accordance with Section 24-134(a) of the Subdivision Regulations, this subdivision is exempt from the requirements of mandatory dedication of parkland because it consists of nonresidential development.

7. **Trails**—There are no master plan trails issues identified in the adopted and approved Subregion V aster Plan that impact the subject site. Existing Mattapeake Business Drive is a closed section but only has a sidewalk along the north side, across the street from the subject site. Staff recommends sidewalk construction along the subject site’s entire frontage of Mattapeake Business Drive. A sidewalk is also recommended along the subject site’s frontage of Timothy Branch Drive, if road construction is required at this time or as modified by the Department of Public Works and Transportation (DPW&T).
  
8. **Transportation**—The applicant proposes a commercial development of retail uses. The site encompasses two recorded parcels plus an outlot of Brandywine 301 Industrial Park, and these were created pursuant to Preliminary Plan 4-97124. It also encompasses ten lots of Longs Subdivision which were recorded in 1941.

Primarily because the applicant wished to expand the trip cap for 4-97124 to include the subject property, a traffic study was prepared. The resulting study has been referred to the County Department of Public Works and Transportation (DPW&T) and the Maryland State Highway Administration (SHA). 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 “Guidelines for the Analysis of the Traffic Impact of Development Proposals,” and in consideration of findings made in connection with past applications.

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

The subject property is in 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 traffic impact study prepared and submitted on behalf of the applicant analyzed the following intersections:

- US 301/MD 5 and Chadds Ford Drive/Timothy Branch Drive (signalized)
- US 301/MD 5 and Clymer Drive/Matapeake Business Drive (signalized)

Existing traffic conditions were based on traffic counts done in May 2007. Existing conditions within the study area are summarized as follows:

<b>EXISTING TRAFFIC CONDITIONS</b>				
Intersection	Critical Lane Volume (AM & PM)		Level of Service (LOS, AM & PM)	
	US 301/MD 5 and Chadds Ford Drive/ Timothy Branch Drive	1,344	1,431	D
US 301/MD 5 and Clymer Drive/ Matapeake Business Drive	1,314	1,419	D	D

This information is noted for the record; unfortunately, there is a high likelihood that the traffic counts are suppressed due to persistent forced traffic flow. Stop-and-go traffic flow is routine at these intersections, particularly during the PM peak hour. It is noted that the applicant seeks to employ mitigation. Because mitigation is a means of providing improvements that offset a site traffic impact rather than a requirement to meet a strict standard, it was determined that the study could be accepted for the purpose of determining a set of mitigation improvements.

The submitted traffic study provides an analysis for assessing the background traffic situation. This study considered the following:

- A 3.0 percent annual growth factor for through traffic along US 301/MD 5. This is slightly higher than has been used by past studies in the area, but consistent with historical data.
- Background development in the area should be noted that approximately 6.5 million square feet of approved industrial development within Employment Area C, as defined in the *Subregion V Master Plan*, has expired without recordation, and is not included. It is also noted that the study includes about 2,350 residences in background, while about 900 is more appropriate given the defined study area and recent construction in the area. In particular, the development identified as McKendree Village was completed well before the traffic counts dated May 2007 were taken, and it is misassigned to the roadway network. Staff has taken the step of removing that development from the analysis.
- Roadway improvements to be constructed by Brandywine Crossing, Phase I, which was approved as 4-06131. Construction under Phase I have begun, and the roadway improvements are secured in accordance with the Planning Board's conditions on that plan.
- Roadway improvements to be constructed by 301 Commercial Center, which was

approved as 4-06142, are also included within background. However, no evidence is available that indicates that construction is moving forward on that site, and no evidence is supplied that they are bonded. Given that they were assumed as a part of the traffic study, they will be assumed to be constructed by this applicant.

Background conditions are summarized as follows:

<b>BACKGROUND TRAFFIC CONDITIONS</b>				
Intersection	Critical Lane Volume (AM & PM)		Level of Service (LOS, AM & PM)	
	US 301/MD 5 and Chadds Ford Drive/ Timothy Branch Drive	1,526	1,743	E
US 301/MD 5 and Clymer Drive/ Matapeake Business Drive	1,228	1,856	C	F

The site is proposed for a retail center of 215,000 square feet plus a 71,000-square-foot theater with over 3,000 seats. As a clarification, the applicant has presented this proposal as a shopping center and a theater, and has utilized standard retail trip generation rates for the shopping center and rates from the Institute of Transportation Engineers' "Trip Generation Manual" for the theater. It is not uncommon at a specific design plan or detailed site plan stage for a number of specific uses to be shown on a plan, and many of these uses have specific rates of trip generation associated with them. In consideration that trip generation for shopping centers is measured at sites that include a variety of stores, eating establishments, and services, staff has determined during review of many other cases that overall retail square footage may be used for determining trip cap conformity. It is also correct to analyze the theater use separately, as that use would not have trip rates which are typical of general retail uses.

The site is a part of a larger application that has preliminary plan approval under 4-97124, and has been recorded. The site also includes a significant area outside of that plan. This area was never subjected to a preliminary plan of subdivision review, was recorded as residential lots in 1941, and was subsequently rezoned to I-3 and later to C-S-C. The traffic study has computed the proposed trip generation for the retail center, which is about 30 percent of the overall acreage for 4-97124. Phase I of Brandywine Crossing was analyzed under 4-06131, and included approximately 497,800 square feet of retail space on 53 acres. When 4-06131 was reviewed, it was assumed that the retail center would absorb about 30 percent of the overall vested trip cap based on acreage, and the remaining 70 percent of the vested trip cap was retained on the non-retail portion of 4-97124. Consequently, the 4-06131 application increased its assigned portion of the vested trip cap to allow full development of the retail center.

Similarly, the subject plan, Phase II, includes another 286,000 square feet of retail and theater space. It encompasses approximately 17 percent of the acreage of 4-97124. Rather than drawing upon 17 percent of the trips associated with 4-97124, the applicant has analyzed the remaining acreage and development potential of 4-97124 and drawn upon the remaining trips. The

information in the following table is presented in three separate tables in the traffic study, and is presented herein to indicate general agreement with the methodology:

Description of Area	Acreage	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
4-97124 + 4-06131 (current trip cap)	178.93	588	206	794	557	883	1440
- Brandywine Crossing, Ph I	53.98	153	97	250	448	448	896
- Brandywine Crossing, Ph II – retail	30.35	35	24	59	194	194	388
- Brandywine Crossing, Ph II – theater	--	0	0	0	45	61	106
- Potential Brandywine Crossing, Ph III	18.60	216	30	246	44	188	232
- Outlots and Public R/W	44.11	0	0	0	0	0	0
- Residue of 4-97124	31.89	171	43	214	43	171	214
Overall Trip Generation		575	194	769	774	1062	1836
Needed Increase in Trip Cap - 4-07112		0	0	0	217	179	396
Proposed Trip Cap				794			1836

The traffic study assumed that the theaters would have 50 percent internal capture, and then an additional 40 percent trip reduction due to pass-by traffic (i.e., trips accessing the use that is already on the road). While it may be reasonable to indicate that 50 percent of theater-goers are accessing other uses within the overall shopping complex, it is unreasonable to suggest that another significant trip reduction be applied for pass-by traffic. That is to say, it is not believable that travelers along US 301/MD 5 during a weekday peak hour will see the theater while driving past, turn in, and commit two to three hours to sit and watch a movie, and then leave and continue to their ultimate destination.

It is noted that the areas of 4-97124 not covered by Brandywine Crossing account for 28 percent of the acreage of 4-97124 but have been allocated slightly over 57 percent of the trip cap on that preliminary plan through the above methodology.

It is noted that several lots within Longs Subdivision are being incorporated into the subdivision, and the trip cap is assumed to be apply to these lots as well. Also, several site plans have been filed that have consumed a portion of the trip cap within the area of 4-97124, but each of these site plans have occurred outside of the area of the retail center, and so any trips generated by those site plans can be offset against the cap associated with the residual of 4-97124.

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)		Level of Service (LOS, AM & PM)	
US 301/MD 5 and Chadds Ford Drive/ Timothy Branch Drive	1,537	1,790	E	F

US 301/MD 5 and Clymer Drive/ Matapeake Business Drive	1,238	1,874	F	F
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Given these analyses, both critical intersections would operate unacceptably in at least one peak hour.

***US 301/MD 5 and Chadds Ford Drive/Timothy Branch Drive***

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 westbound Chadds Ford Drive approach, provide a four-lane approach with two left-turn lanes, a shared through/left-turn lane, and a right-turn lane.
- B. The other improvements which were required as conditions on 4-06131 are bonded and will soon be under construction. These improvements were part of background.

DPW&T and SHA 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>				
Intersection	LOS and CLV (AM & PM)		CLV Difference (AM & PM)	
<b>MD 5 and Chadds Ford Drive/Timothy Branch Drive</b>				
Background Conditions	C/1228	F/1743		
Total Traffic Conditions	C/1238	F/1790	OK	+47
Total Traffic Conditions w/Mitigation	C/1223	F/1723	OK	-67

The options for improving this intersection to LOS D, the policy level of service at this location, are very limited. Additional through lanes along US 301/MD 5 through the intersection would not be effective. The only identifiable improvement that would result in LOS D operations at this location would be the construction of the planned interchanges along US 301/MD 5 north and south of this area. These interchanges are being considered within an environmental study of US 301 options within the Waldorf area, but there has been no funding to date for design or construction of the needed ramps, overpasses, and connector roadways.

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 the critical PM peak hour (the AM peak hour is shown to operate acceptably with all improvements in place). This table also indicates that the resulting CLV under total traffic with the mitigation improvements is 1,813 or less in the PM peak hour. The table indicates that the proposed mitigation action would mitigate about 140 percent of the trips generated by the subject property in the PM peak hour. **Therefore, the applicant’s proposed mitigation at MD 5 and Chadds Ford Drive/Timothy Branch Drive 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 comment 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, and the recommendation will include the applicant’s proffer of the mitigation actions as a condition of approval for this application.

***US 301/MD 5 and Clymer Drive/Matapeake Business Drive***

In response to the inadequacy at this intersection, the applicant has spoken to the utilization of the concept of mitigation by indicating that the improvements proffered by the applicant “fully mitigate the impacts of Phase I and II of Brandywine Crossing” (December 27, 2007 traffic study, page 24). This was not proven by the submitted traffic study; furthermore, the final result utilized an improvement as a part of background for which no evidence was provided of bonding, design, or construction schedule.

By means of correcting the background assignment and considering assignment of the unbonded improvement for assignment to this applicant, it is determined that the improvement can mitigate the impact of this applicant. This intersection is eligible for mitigation under the fourth criterion in the “Guidelines for Mitigation Action” (approved as CR-29-1994). The following is recommended as mitigation:

- A. On the eastbound Clymer Drive approach, provide a three-lane approach with a left-turn lane, a shared through/left-turn lane, and a right-turn lane.
- B. The other improvements which were required as conditions on 4-06131 are bonded and will soon be under construction. These improvements were part of background.

DPW&T and SHA 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, and actually included this improvement as a part of their recommendation. The impact of the mitigation actions at this intersection is summarized as follows:

IMPACT OF MITIGATION				
Intersection	LOS and CLV (AM & PM)		CLV Difference (AM & PM)	
MD 5 and Clymer Drive/Matapeake Business Drive				
Background Conditions	E/1526	F/1856		
Total Traffic Conditions	E/1537	F/1874	+11	+18
Total Traffic Conditions w/Mitigation	D/1448	F/1808	OK	-66

The options for improving this intersection to LOS D, the policy level of service at this location, are very limited. Additional through lanes along US 301/MD 5 through the intersection would not be effective. The only identifiable improvement that would result in LOS D operations at this location would be the construction of the planned interchanges along US 301/MD 5 north and south of this area. These interchanges are being considered within an environmental study of US 301 options within the Waldorf area, but there has been no funding to date for design or construction of the needed ramps, overpasses, and connector roadways.

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 the critical PM peak hour (the AM peak hour is shown to operate acceptably with all improvements in place). This table also indicates that the resulting CLV under total traffic with the mitigation improvements is 1,813 or less in the PM peak hour. The table indicates that the proposed mitigation action would mitigate about 350 percent of the trips generated by the subject property in the PM peak hour. **Therefore, the proposed mitigation at MD 5 and Clymer Drive/Matapeake Business Drive 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 action, and included it within their list of recommendations; DPW&T offered no comment on the mitigation action. Once again, 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, and the recommendation will this mitigating improvement as a condition of approval for this application.

The traffic study proffers the payment of fees toward the Brandywine Road Club. This was a condition on preliminary plan 4-97124. The Brandywine Road Club has posed several issues for the Planning Board in the past, and these issues are briefly summarized below:

- a. The use of the Brandywine Road Club in approving a development poses an issue of



concurrency. In other words, Section 24-124 of the Subdivision Ordinance (the section that governs findings of adequate transportation facilities) is intended to ensure that needed transportation facilities occur concurrently with development or within a reasonable time thereafter. However, transportation inadequacies in the area have been documented since 1989. Many properties have been approved with a condition to pay funds toward a Brandywine Road Club, beginning in 1990. But since those initial approvals, no improvements have been constructed. Furthermore, there is nothing in either the current county Capital Improvement Program (CIP) or the state's Consolidated Transportation Program (CTP) that suggests that needed improvements are funded for construction, although one improvement in the area has been designed, and other improvements are under environmental study.

- b. Council Resolution CR-60-1993 approved the master plan and the sectional map amendment for the *Subregion V Master Plan*. As a part of that resolution, Zoning Map Amendment A-9878 for Brandywine Village was approved with conditions that allow particular property to participate in the Brandywine Road Club as a means of determining transportation adequacy. The same condition allows such road club participation by "any properties along US 301/MD 5 between T.B. (the intersection of US 301 and MD 5 in Prince George's County) and Mattawoman Creek." This has been carefully considered, and it has been determined by staff that the subject property is along the identified section of US 301/MD 5. Therefore, the use of the Brandywine Road Club for this site would appear to be consistent with the intent of the Council Resolution.
- c. The site included under the current preliminary plan was subdivided under applications 4-91030 and 4-97124 conditional upon contribution to the Brandywine Road Club. The Road Club has always involved the construction of interchanges north and south of the study area, along with north-south roadways connecting properties to those intersections that would eliminate existing signals and provide adequacy. The Road Club was implemented in recognition that the scope and cost of these improvements would far exceed the ability of an individual applicant to fund them.

For the reasons described above, and given that development under the existing cap can proceed with the payment of fees under the Brandywine Road Club, the use of the Brandywine Road Club as a means, in part, of finding adequacy for the expanded trip cap would be acceptable. Nonetheless, the traffic study indicates that the payments "are to be offset accordingly to account for the physical improvements being constructed along US 301." This credit was not written into the resolution approving 4-97124 or 4-06131, and access improvements for individual properties along US 301/MD 5 are not germane to the intent of the Brandywine Road Club. Any such credit must be agreed upon between the applicant and DPW&T when permits are required.

### **Plan Comments**

The site is adjacent to US 301/MD 5, which is a master plan freeway facility, and Matapeake Business Drive, which is an industrial/commercial facility within a 70-foot-right-of-way. All

required dedication has already occurred with past plans, and no further dedication is required of the subject plan unless otherwise needed to construct needed improvements.

### **Vacation of Brandywine Road (BB 8@83)**

Regarding this applicant's proposed access to US 301/MD 5, it has been noted that there exists a duly created public right-of-way termed "Brandywine Road" which was created at the time that Longs Subdivision was platted. It is noted that this right-of-way was addressed within the resolution approving Preliminary Plan of Subdivision 4-97124 for Brandywine 301 Industrial Park (PGCPB No. 98-84). The third paragraph of finding 7 on page 11 of the resolution notes this access as an "existing access from the northern part of the subject property to US 301." The finding continues by stating, "This access shall not be used as a part of this subdivision approval."

While there is no corresponding condition (a reasonable position given that the right-of-way was not a part of 4-97124), the finding makes clear that there was no intent to allow access from this site by means of Brandywine Road. No other platted right-of-way existed at that time. Given that the subject plan is relying, in large measure, on the 4-97124 approval and the resulting plats, it is appropriate that access be denied at this location, and the zoning condition underscores the intent. As a means of ensuring that the Brandywine Road right-of-way is not considered for utilization in the future, it is recommended that the right-of-way be vacated as a condition of the approval of this plan.

### **Variation to Section 24-121**

Section 24-121(a)(3) of the Subdivision Regulations establishes design guidelines for lots that front on arterial roadways. This section requires that these lots be developed to provide direct vehicular access to either a service road or an interior driveway when feasible. This design guideline encourages an applicant to develop alternatives to direct access onto an arterial roadway.

The subject property has frontage on and proposes direct vehicular access via US 301, when the property also has frontage on two existing 70-foot-wide-rights-of-way, Timothy Branch Drive and Matapeake Business Drive. Timothy Branch Drive and Matapeake Business Drive are referred to as the "interior Spine Road system which has been developed to serve Employment Area C."

Section 24-113 of the Subdivision Regulations (in bold) sets forth the required findings for approval of variation requests. Staff does not support the variation to allow access to a proposed freeway in this case and makes the following findings:

**Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that**

**substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon evidence presented to it in each specific case that:**

The approval of the applicant's request does have the effect of nullifying the intent and purpose of the Subdivision Regulations permanent access. In fact, the site has frontage on two other 70-foot-wide-rights-of-way that are located to serve development of this property. Strict compliance with the requirements of Section 24-121(a)(3) would not result in practical difficulties to the applicant because adequate access exists to serve the site if access is denied to US 301. In fact, the approval of the rezoning of this property to C-S-C was conditioned (A-9990-C) that no access to US 301 be provided.

At the Planning Board hearing on July 10, 2008 the Planning Board found that the approval of a variation for temporary access to US 301/MD 5 was not contrary to the conditions of the District Council order in A-9990C. The Planning Board found that the approval of a right-in only and conditions established by the State Highway Administration in their memorandum dated June 3, 2008 (Foster to Chellis) ensures that access is temporary. The conditions of the SHA are made a part of the conditions of approval for this preliminary plan.

Specifically, the District Council Zoning Ordinance 12-2007 Condition 3 stated:

“The portion of the site within Long's Subdivision shall be subject to the transportation conditions imposed by the Planning Board in its approval of Preliminary Plan 4-97124.”

PGCPB Resolution 98-84 (File 4-97124) Condition 13 states “No lot which is part of the subject property shall have direct access to US 301/MD 5. A note shall be placed on the final plat to this effect.”

The applicant is proposing temporary direct access to US 301 from the portion of the site located within the Long's Subdivision.

- A. **That the granting of the variation will not be detrimental to the public safety, health or welfare, or injurious to other property.** One of the purposes of limiting access to an arterial is to enhance public safety, health and welfare. In this case, SHA has provided a memo granting conditional approval to the driveway, which the Planning Board has adopted as conditions in this case.
- B. **The conditions of which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties.** Longs Subdivision was platted as a residential subdivision prior to Subtitle 24 and prior to there being a master plan for US 301/MD 5. Arguably, the many access points for Longs Subdivision should have been fully

consolidated at Timothy Branch Drive. Generally, there no longer exists single-family lots with frontage on US 301/MD 5 which results in the property being unique to the surrounding properties.

- C. **The variation does not constitute a violation of any other applicable law, ordinance, or regulation.** Zoning Map Amendment A-9990-C includes a condition that, “The portion of the site within Long’s Subdivision shall be subject to the transportation conditions imposed by the Planning Board in its approval of Preliminary Plan 4-97124.” Condition 13 of the referenced preliminary plan states that, “No lot which is a part of the subject property shall have direct access to US 301/MD 5.” The third access point is proposed at existing Lot 12 of Longs Subdivision, and it would serve proposed Parcel 6 of the subject application. The Planning Board has found that the granting of this variation would not violate Zoning Map Amendment A-9990-C.
- D. **Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out.** The applicant’s justification statement that, “the Spine Road cannot provide all of the appropriate access points” is very telling, along with the statement that, “denying the access would create a practical difficulty to the property owner in that the proposed use would be far improved with increased access and proper visibility.” The circulation system for this area was determined in 1993 through the Subregion V Master Plan. This site was rezoned from I-3 to C-S-C, a zone requiring more access and higher visibility, in September, 2006 and November, 2007. This applicant bought these properties in February, 2008. This applicant and those persons working for the applicant knew the rules and knew what facilities were planned long in advance of the rezonings and long before the subject site was purchased. The County’s written opposition to a western Waldorf Bypass through CR-72-2001 only serves to increase the importance of US 301/MD 5 in the overall plan for the area. The Planning Board has found that a temporary access to US 301/MD 5 would not hinder the Waldorf bypass plans.

The District Council in the approval of A-9990-C specifically addressed the applicants proposal to provide a third connection to US 301 from the Long’s Subdivision. Additionally, Condition 18 (PGCPB Resolution 98-84), adopted by the District Council stated the following:

- “18. At the time of final plat approval, the applicant shall dedicated right-of-way along Matapeake Drive in accordance with the limits shown on the submitted Preliminary Plan. Improvements within this dedicated right-of-way shall be determined by the DPW&T.

In addition, the applicant shall set aside Parcel A for the purpose of connecting the Long's Subdivision properties to the interior Spine Road system which has been developed to serve Employment Area C. Parcel A shall be dedicated for this purpose by the applicant upon request from DPW&T to the owner of Parcel C at the time either of the following conditions are fulfilled:

- a. Any of the properties contained within Long's Subdivision. Lots 4 through 23, shall have received approval of a Preliminary Plat of Subdivision under the I-3 zoning and shall have joined the Brandywine Road Club as an off-site member as defined in the Road Club agreement.
- b. US 301/MD 5 is upgraded to freeway standards making the current access via individual driveways to Long's Subdivision, Lots 4 through 23, undesirable or impractical.

The public street which would be built within Parcel A connecting Long's Subdivision to Matapeake Drive shall be designed to industrial street standards. The street shall not provide a through connection between Matapeake Drive and US 301/MD 5. It is the intent that such a street shall end as a cul-de-sac or stub within Long's Subdivision. The applicant shall not be responsible for construction of the public street in Parcel A."

The applicant has proposed to extend "Parcel A," a dedicated public street within the Long's Subdivision, known as Brandywine Road (BB 8@93), to provide access to US 301. Staff believes that this is contrary to the above condition.

The Brandywine Crossing development has the internal spine road which provides two public street connections to serve the development, Timothy Branch Drive and Matapeake Business Drive. The third connection proposed by the applicant and that which is the subject of the variation request is for convenience.

Based on the preceding findings the Planning Board approves temporary direct right in only access to US 301/MD5, pursuant to the SHA grant of temporary access based on the conditions of their memorandum dated June 3, 2008 (Foster to Chellis) and the conditions made a part of this approval.

There remain a number of transportation-related conditions on the current underlying subdivision, preliminary plan 4-97124. The status of these conditions is summarized below:

**4-97124:**

- Condition 6c. Prohibits direct vehicular access to US 301 from all lots. This subdivision has been reviewed in that context, and the condition should be made a part of the current approval. The Planning Board has found that temporary access is not in

conflict with this condition.

- Condition 10. Requires that the applicant contribute to a number of transportation improvements in the area on a pro-rata basis. This is the Brandywine Road Club condition that has been discussed at length earlier in this memorandum, and it is being made a part of this approval as well.
- Condition 11. Establishes a trip cap for the overall property of 778 AM and 779 PM peak-hour trips. This cap was subsequently expanded under 4-06131, and this subdivision and traffic study have been filed in a large part to expand that trip cap. Nonetheless, once the trip cap is rewritten into a resolution approving the subject subdivision, even though the applicant intends that it apply to the entire area of preliminary plan 4-97124 it can only apply to the area of the subject preliminary plan. In order to apply to all portions of 4-97124, this condition must be applied to all record plats within the Brandywine 301 Industrial Park (plats 191-098, 195-006, 198-028, 198-051, 203-050, and 203-051) must be rerecorded with a revision of Condition 11 on them.
- Condition 12. Requires dedication along the future alignment of A-63. The portion of the site where this dedication would occur is not a part of the current preliminary plan, and is not needed for the current approval.
- Condition 13. This condition is essentially a restatement of Condition 6c.
- Condition 14. Requires the study of signalization at the intersection of US 301/MD 5 and Matapeake Business Drive/Clymer Drive. The required signal was warranted and is installed and operational; therefore, this condition need not be carried forward.
- Condition 15. Requires the construction of a roadway connection between the subject property and A-63 to the northeast. The portion of the site where this dedication would occur is not a part of the current preliminary plan, and is not needed for the current approval.
- Condition 16. Requires the median closure at US 301/MD 5 and Matapeake Business Drive in the event that an alternative connection to US 301/MD 5 is available. The redirection of traffic away from the current traffic signal at this location is an essential part of the master plan recommendations for US 301/MD 5 and is also an essential part of the use of the Brandywine Road Club for finding transportation adequacy within the study area. Therefore, this condition should be carried forward as a part of any approval for this site.
- Condition 17. Requires dedication along the frontage of US 301/MD 5. The needed right-of-way has previously been dedicated; therefore, this condition need not be carried forward.

Condition 18. Requires accommodation of a street connection between Matapeake Drive and Longs Subdivision, which abuts the 4-97124 subdivision on the west. There remains a portion of the Longs Subdivision—eight lots—which is zoned I-3 and left with frontage only on US 301/MD 5. The Parcel A referenced by this condition is a part of this site, and it is being developed. As a means of replacing Parcel A, the subject plan shall be modified to indicate an easement to serve the remaining lots of Longs Subdivision. The exact location of this easement shall be determined during detailed site plan review and shown on the appropriate Record Plat.

Condition 20. Requires accommodation of a vehicular connection between Matapeake Business Drive and the Schwein Property, which abuts the overall 4-97124 property on the south, under certain conditions. The subject subdivision is the portion adjacent to the Schwein Property. The plan shows this easement relocated slightly. This relocation is supported, and the condition should be carried forward with the current approval.

Based on the preceding findings, 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**—There are no residential dwelling units proposed; therefore, no anticipated impacts on schools.
10. **Fire and Rescue**—The Historic Preservation & Public Facilities Planning Section has reviewed this subdivision plan for adequacy of 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.
  - a. The existing fire engine service at Upper Marlboro Fire Station, Company 20 located at 14815 Pratt Street has a service travel time of 1.80 minutes, which is within the 3.25-minutes travel time guideline.
  - b. The existing paramedic service at Upper Marlboro Fire Station, Company 20 located at 14815 Pratt Street has a service travel time of 1.80 minutes, which is within the 7.25-minutes travel time guideline.
  - c. The existing ladder truck service at Upper Marlboro Fire Station, Company 45 located at 7710 Croom Road has a service travel time of 9.03 minutes, which is beyond the 4.25-minutes travel time guideline.

In order to alleviate the negative impact on fire and rescue services due to inadequate service discussed, 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.

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 which is 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 V Clinton.

12. **Health Department**—The Environmental Engineering Program has reviewed the preliminary plan of subdivision and has the following comments to offer:
  - a. The abandoned deep and shallow wells associated with the existing houses (two deep wells and six shallow wells observed) must be backfilled and sealed in accordance with COMAR 26.04.04 by a licensed well driller or witnessed by a representative of the Health Department as part of the raze permit. The location of the deep and shallow wells should be located on the preliminary plan.
  - b. Any and all abandoned septic tanks associated with the existing houses (three septic tanks were observed) must be pumped out by a licensed scavenger and either removed or backfilled in place as part of the grading permit. The location of the septic systems should be located on the preliminary plan.
  - c. A raze permit is required prior to the removal of any of the structures on site. A raze permit can be obtained through the Department of Environmental Resources, Office of Licenses and Permits. Any hazardous materials located in any structures on site must be removed and properly stored or discarded prior to the structures being razed. A note needs to be affixed to the preliminary plan that requires that the structures are to be razed and the wells and septic systems properly abandoned before the release of the grading permit.
13. **Stormwater Management**—The Department of Public Works and Transportation (DPW&T), Office of Engineering, has determined that on-site stormwater management is required. A Stormwater Management Concept Plan, No. 433666-2007-00 has been approved with conditions to ensure that development of this site does not result in on-site or downstream flooding. However, the stormwater management concept plan submitted with the application, shows different environmental features and a different development footprint than the NRI and the



TCPI. At the time of submittal of the detailed site plan a revised concept or technical stormwater management plan should be submitted which reflects the current development. Development must be in accordance with this approved plan.

14. **Historic**—The subject property is located near Timothy Branch which runs along the eastern boundary of the larger development property. The subject property is located on a flat terrace near a tributary to Timothy Branch. Prehistoric sites have been found in similar settings and the probability of identifying prehistoric archeological resources is moderate.

The 1861 Martenet map shows the residence of Zadoch Robinson, known as Pheasant's Thicket, to the west of the subject property. No structures appear on the subject property in the 1861 Martenet or 1878 Hopkins maps. During the 19<sup>th</sup> century, the subject property was part of the larger Pheasant's Thicket plantation. Aquilla Robinson, a grandson of Zadoch Robinson, acquired the Pheasant's Thicket farm by the end of the 19<sup>th</sup> century. After Aquilla Robinson's death around 1925, his children divided the Pheasant's Thicket farm and Grace Robinson was allotted a 126 acre tract known as Lot 7 on the east side of the state road. Grace Robinson married S. Welty Long and in 1941 platted Long's Subdivision along the east side of the state highway (US 301), which is on the west side of the subject property. According to tax records, the existing dwellings on Parcels 1 and 3 were built in 1954, the house on Lot 13 (Parcel 1) in 1955, the house on Lot 9 (Parcel 3) in 1958, and the house on Lot 12 (Parcel 1) in 1969.

Four archeological sites, 18PR416, 18PR542, 18PR543, and 18PR601, are located within a one-mile radius of the subject property. These sites include prehistoric lithic scatters and 18<sup>th</sup>-20<sup>th</sup> century domestic sites. There are no County Historic Sites or Historic Resources within a one-mile radius of the subject property.

A portion of the property has been previously impacted by modern grading and construction. Only a small portion of the property on the western side of Parcels 8 and 9 appear to have remained undisturbed.

In accordance with the Planning Board's directives, as described in the "Guidelines for Archeological Review," May 2005, and consistent with Subtitle 24-104, 121(a)(18), and 24-135.01, the subject property should be the subject of a Phase I archeological investigation to identify any archeological sites that may be significant to the understanding of the history of human settlement in Prince George's County, including the possible existence of slave quarters and slave graves, as well as archeological evidence of the presence of Native American peoples.

15. **Commercial Use**—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 subdivision, a new preliminary plan should be required if residential development is to be considered.
16. **Background**—The subject property is located on Tax Map 154 and 155, Grids F-3 and A-3 and

is known as Outparcels 6 and 8, and a residue parcel recorded in land records in November 2007 (PM 224@54); Lots 9–18, and the 50-foot right-of-way of Brandywine Road recorded in 1941 (BB 8@83); and Parcels 7 and Parcel A recorded in land records in 2001 (CH 191@98).

The property is 31.29 acres and zoned C-S-C. The applicant is proposing to develop the property with 266,000 square feet for a commercial retail center, which includes a 71,000-square-foot theater with over 3,000 seats. Approximately 30.35 acres of the site was rezoned pursuant to the approval of A-9990-C (Zoning Ordinance 12-2007). Existing outparcels 6 and 8, and a residue (40,750± square feet), which is located in the south west quadrant of the intersection of US 301 and Timothy Branch Drive, are the subject of A-9980-C (Zoning Ordinance 16-2006).

Conditions of both zoning map amendments require the review and approval of a detailed site plan prior to the approval of building or grading permits. That portion of proposed Parcel 1 at the intersection of US 301 and Timothy Branch Drive is the subject of a pending special exception for a Safeway gas station (SE-4612), accepted on October 9, 2007. This area of the site was originally included in DSP-06077 but was removed from the limit of the DSP due to the applicant's proposal to develop that area with a gas station use. If the special exception is not approved, that area of the site is subject to a DSP review pursuant to the conditions of A-9980-C.

The current preliminary plan application expands the limits of the Brandywine Crossing development and incorporates ten lots which were recently rezoned through A-9990-C. The remaining portion of the site was previously the subject of Preliminary Plan 4-97124 (PGCPB No. 98-84). This preliminary plan proposes to re-subdivide the property into five parcels.

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, July 10, 2008, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 4th day of September 2008.

Oscar S. Rodriguez  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

OSR:FJG:WC:bjs