



### **Finding Of No Significant Impact**

## **GRANTING OF RIGHT OF WAY ACCESS BY NATIONAL PARK SERVICE TO ANNE ARUNDEL COUNTY, MARYLAND FOR THE INSTALLATION OF UTILITIES BENEATH THE BALTIMORE-WASHINGTON PARKWAY AT THE MARYLAND ROUTE 198 INTERCHANGE AND FOR THE ACQUISITION OF ADDITIONAL PROTECTIONS FOR THE PARKWAY AND PATUXENT RESEARCH REFUGE**

### **LAUREL, MARYLAND**

In response to requests from Anne Arundel County, Maryland (County), state and local elected officials, and adjacent property owners, the National Park Service (NPS) proposes to issue a Right-of-Way (ROW) permit to the County for the installation of public utilities, including water and sanitary sewer, beneath the historic Baltimore-Washington Parkway (Parkway). The utility crossing would be located on the north side of Maryland Route 198 (MD 198) at its intersection with the Parkway. As part of the issuance of this ROW permit, the NPS would in turn receive mitigation requirements imposed on any future development within the project area that connect to these utilities (i.e., easements, building setbacks, height restriction, architectural guidelines) aimed at protecting the natural and cultural resources of the Parkway and the Patuxent Research Refuge (Refuge).

The purpose of this action is to provide resource protection to the Parkway and Refuge in light of future development of adjoining properties while allowing the County to meet its master plan utility service goals. It would also provide water and sewer services to the MD 198 corridor and provide redundant water supply to the Maryland City Service Area west of the Parkway.

The NPS completed an environmental assessment (EA) that analyzes the environmental consequences of the alternatives considered. This EA was prepared in accordance with National Environmental Policy Act of 1969, as amended (NEPA), its implementing regulations by the Council on Environmental Quality (CEQ), at 40 CFR 1500-1508, and NPS Director's Order #12, Conservation Planning, Environmental Impact Analysis and Decision-Making, and accompanying Handbook (DO-12).

### **SELECTED ALTERNATIVE**

Based on the analysis presented in the EA, the NPS alternative selected is Alternative 2 (the NPS Preferred Alternative) for implementation. Under the selected alternative, the NPS will grant a ROW permit to the County for the installation, operation and maintenance of utilities beneath the Parkway at the MD 198 interchange in exchange for additional protections for the Parkway and the Refuge. Utilities that will be installed include a 16-inch water main and a 16-inch sanitary sewer force main. Directional drilling will be used for the installation of these utilities underneath the Parkway. No grading work will occur on NPS property. Utility installation from the proposed pump station to the Parkway boundary will be installed by cutting an open trench alongside MD 198. The water main will connect the existing waterline located at the intersection of MD 198 and Maryland Route 32 (MD 32) from the east to the west of the Parkway, and the sanitary sewer force main will provide a sewer connection to the MD 198 corridor from the Maryland City Water Reclamation Facility, located west of Maryland City.

As part of the ROW permit, the NPS will impose certain restrictions on the County designed to preclude visual intrusions to the Parkway's viewshed and afford specific resource protections to the Refuge. The County, in turn, will enforce these requirements on users of the new sewer line. Specific restrictions will include building setback and height restrictions, the use of forested buffers, and guidelines regarding the exterior finishes of buildings constructed on neighboring properties located within specified distances from the Parkway boundary.

In addition to imposing building restrictions, NPS, in coordination with the U.S. Fish and Wildlife Service (FWS), will also seek to mitigate the potential impacts of land development through implementing a series of enhancements designed to protect, as well as supplement, the existing resources within the boundaries of the Parkway and the adjoining Refuge. Possible enhancements may include fencing along the Refuge boundary, land transfers and/or exchanges near the Refuge, stormwater

management features to limit runoff to predevelopment conditions, improvements to Bald Eagle Drive at its crossing of the Little Patuxent River to minimize flood potential, and the creation of buffers preventing development within identified distances from the Refuge boundary. A water quality monitoring program will be created to ensure that future development within the project area keep the water quality within the Refuge within standards. Reforestation efforts on the neighboring private property associated with requirements of Maryland's Forest Conservation Act will be strategically located, preferably adjacent to the refuge to minimize fragmentation of forest resources adjacent to the Refuge, if needed.

#### OTHER ALTERNATIVES CONSIDERED

The EA also analyzed the no action alternative. Under the no action alternative, no action would be taken by NPS to issue a ROW permit for the extension of utilities across the Parkway. The no action alternative acknowledges that future development within the study area could occur in accordance with the current industrial and commercial zoning. Development would require connecting to the existing public water line within the MD 198 corridor and either using an on-site sewage disposal system as public sewer (currently unavailable), or extending sewer lines to the Piney Orchard Waste Water Treatment Plant. Under the no action alternative no restrictions on development within the project area beyond existing zoning and state and county regulations would be imposed that would preclude visual intrusions to the Parkway's viewshed and afford specific resource protections to the Refuge would be imposed.

#### ENVIRONMENTALLY PREFERABLE ALTERNATIVE

The NPS is required to identify the environmentally preferable alternative in its NEPA document for public review and comment. The NPS, in accordance with the Department of the Interior policies contained in the Departmental Manual (516 DM4.10) and the Council on Environmental Quality's (CEQ) *NEPA's Forty Most Asked Questions*, defines the environmentally preferable alternative as the one that "causes the least damage to biological and physical environment". It is the alternative "which best protects, preserves, and enhances historic, cultural and natural resources" (Q6a).

After completing the environmental impact analysis, the NPS identified Alternative 2 (the selected alternative) as the environmentally preferable alternative, since it is the one that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources. The selected alternative provides new protection to the natural and cultural resources of the Parkway and Refuge that would not be available under the no action alternative.

#### MITIGATION MEASURES

The NPS places a strong emphasis on avoiding, minimizing, and mitigating potentially adverse environmental impacts. To help ensure the protection of natural and cultural resources and the quality of the visitor experience, the following protective measures would be implemented as part of the selected action alternative.

Mitigation Measures of the Selected Alternative	
Resource Area	Mitigation Measures
Soils	Maintain erosion and sedimentation controls according to all state and local regulations.
	Re-vegetate all disturbed soil with native seed mix or vegetation in a timely manner.
	Remove all waste material to an approved upland waste site.
Visitor Use and Experience	Utility construction activity would be conducted as to not be visible from the Parkway.
Water Quality	The project would apply for registration coverage under the Maryland's NPDES General Permit for Construction Activity.
	Avoid impacts to streams associated with the utility placement where possible.
	Implement the water quality monitoring program.
	Restore any temporary impacts to streams to pre-existing contours and conditions as required by Maryland Department of the Environment (MDE) or US Army Corps of Engineers (USACE) permits.
Wetlands	Minimize erosion using silt fence and/or erosion control methods in accordance with Maryland Standards & Specifications for Soil Erosion & Sediment Control (MDE 1994).
	Restore any temporary impacts to wetlands to pre-existing contours and conditions as required by MDE or USACE permits.
Cultural Resources	Obtain all state and federal permits for the temporary crossings along MD 198.
	If during construction archaeological resources are discovered, all work in the immediate vicinity shall cease until such resources can be identified and documented and an appropriate mitigation strategy developed, if necessary. In the unlikely event that human remains, funerary objects, sacred objects or objects of cultural patrimony are discovered during construction, provisions outlined in the Native American Graves Protection and Repatriation Act (25USC3001) of 1990 would be followed.

Mitigation Measures of the Selected Alternative	
Resource Area	Mitigation Measures
Vegetation	Minimize cutting trees whenever possible along MD 198.
	Re-vegetate disturbed areas in a timely manner with native seed mix or plants.
	Ensure that all protection measures are clearly stated in the construction specifications and that workers be instructed to avoid conducting activities outside the construction zone.
	Adhere to the Forest Conservation Act and replant with native species if necessary.
	Preclude development within specified distances from the Parkway to protect existing forested/vegetated areas.
Transportation	Develop a traffic routing plan for the areas of MD 198 that would be affected by open trench construction.
	Develop a safety plan to protect motorists, pedestrians and construction workers during construction activities.

## WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

As documented in the EA, the NPS has determined that the selected alternative, Alternative B (NPS preferred alternative), can be implemented without significant adverse effects. As defined in 40 CFR §1508.27, significance is determined by examining the following criteria:

***Impacts that may have both beneficial and adverse aspects and which on balance may be beneficial, but that may still have significant adverse impacts that require analysis in an Environmental Impact Statement (EIS):*** Soils, visitor use and experience, water quality, historic districts and structures, vegetation, and wildlife and habitat will experience both beneficial and adverse impacts as a result of implementing the selected alternative, however, no significant impacts were identified that will require analysis in an EIS. Impacts to these resources were assessed for both the construction and operational phases of this project.

Implementation of the selected alternative will result in short-term negligible adverse impacts to soils from the actions associated with installing the utility line via directional boring. However, over the long-term there will be beneficial impacts as those soils found within the protected buffer will be protected from development. The selected alternative will also have long-term beneficial impacts to visitor use and experience by creating buffers and building restrictions that will protect the viewshed of the Parkway from adjacent development.

Direct adverse impacts to water quality within project area resulting from the implementation of the selected alternative will likely be long-term and negligible. Over the long-term, a water quality monitoring plan will be implemented that examines various factors before, during and after construction to ensure that the integrity of the water quality of the streams within the watershed is maintained. Should a problem be detected, corrective action can be taken immediately.

The selected alternative will protect the contributing scenic features of the Baltimore Washington Parkway Historic District, creating long-term beneficial impacts. Short-term negligible adverse impacts will occur from the installation of the utilities line beneath the Parkway, which will have no adverse effect under Section 106.

The selected alternative will result in short-term negligible adverse impacts to vegetation from the installation of the utilities line beneath the Parkway. While the action alternative will protect approximately 20-30 forested acres within the buffers, development within the Arundel Gateway area will most likely occur, as a condition of the proposed mixed-use development, resulting in long-term minor adverse impacts to vegetation outside the Parkway, but within the project area. While the action alternative provides habitat protection along the Parkway and Refuge boundaries, there will be long-term negligible to minor adverse impacts to wildlife and wildlife habitat within the project area from the development that could occur.

***Degree of effect on public health or safety:*** The selected alternative will not have a noticeable impact on the health or safety of people using either the Parkway or the Refuge. Any construction along a roadway will require adequate signage and safety measures to protect both the workers and the traveling public. Since corridors are available to achieve both water and sewer service to the county residents with or without the NPS approval, the provision of service will not be a health issue.

***Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, wetlands, prime farmlands, wild and scenic rivers, or ecologically critical areas:*** The Parkway

was entered onto the *National Register of Historic Places* in May 1991. No wetlands, prime farmlands, wild and scenic rivers, ecologically critical areas, or significant ethnographic resources occur within the project area.

The selected alternative will result in short-term negligible adverse impacts to the Baltimore Washington Parkway Historic District as a result of the limited disturbance associated with the installation of the utility lines beneath the Parkway, which will have no adverse effect under Section 106. However, over the long-term there will be beneficial impacts since contributing scenic features of the Baltimore Washington Parkway Historic District will be protected.

***Degree to which effects on the quality of the human environment are likely to be highly controversial:*** No highly controversial effects in terms of scientific uncertainties as a result of the selected alternative were identified during the preparation of the EA or by the public during the public comment period.

***Degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks:*** No highly uncertain, unique, or unknown risks were identified during either preparation of the EA or through public comment.

***Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration:*** The selected alternative neither establishes a NPS precedent for future actions with significant effects nor represents a decision in principle about a future consideration.

***Whether the action is related to other actions with individually insignificant but cumulatively significant impacts:*** Implementation of the selected alternative will have no significant cumulative impacts. As described in the EA, future actions and projects within the project area that could affect soils, visitor use and experience, water quality, historic districts and structures, vegetation, wildlife and habitat include the Fort George G. Meade and Base Realignment and Closure (BRAC) expansion, the widening of MD 198, and the Arundel Gateway Property Development.

Construction activities and development on the sites adjacent to the project area could increase erosion and permanently reduce and/or eliminate soil productivity in the areas of development. The implementation of these projects, in combination with the short-term negligible adverse and beneficial impacts from the selected alternative could result in long-term minor to moderate adverse cumulative impacts to soil resources.

The BRAC expansion of Fort Meade and the widening of MD 198 will likely result in increased traffic within the Parkway corridor, which in turn may affect the experience of those people who use the Parkway for its scenic qualities. In addition, the widening of MD 198 could affect the Refuge near Wildlife Loop's intersection with MD 198, depending upon the type of improvements and the side to which widening will occur. Although this is a small portion of the Refuge, the possibility exists for the loss of trees and other vegetation, a change in the appearance of the Refuge entrance, and a loss in land due to the road expansion. These impacts, when added to the impacts of the selected alternative will result in long-term minor adverse cumulative impacts to visitor use and experience.

While impervious surfaces will likely increase, it is assumed that throughout the MD 198 widening and Fort Meade expansion all stormwater regulations will be followed during construction and operations of these facilities that will minimize adverse impacts to water qualities. These impacts, when added to the long-term negligible adverse impacts of the selected alternative will result in long-term negligible to minor adverse cumulative impacts to water quality.

Widening and/or improving MD 198 will extend across the Parkway. While final plans are not known, it is understood that the State of Maryland will have to comply with Section 106 and any additional terms imposed by the NPS regarding use of parkland for transportation projects. It can be assumed that the MD 198 project will directly impact the Parkway because they intersect, but the impacts may be long-term and minor, depending on the final scope of work and the length of the construction schedule. Fort Meade, as a federal installation, is also obligated to follow the federal environmental review process and mitigate any potential impacts to historic resources. All construction and land use for the BRAC expansion will be conducted in accordance with NEPA and Section 106 regulations, protecting the cultural resources in the area. The BRAC expansion, due to its distance from the Parkway, will not directly impact the Parkway as

a historic resource. These impacts in combination with the potential impacts of the selected alternative will result in long-term negligible to minor adverse cumulative impacts.

Removal of vegetation and trees associated with the Fort Meade and BRAC expansion along with the potential to remove trees in actions associated with the widening of MD 198 when combined with the short-term negligible adverse impacts to vegetation from the installation of the utilities line beneath the Parkway will result in long-term moderate adverse cumulative impacts to vegetation.

The widening of MD 198 and the construction activities at Fort Meade will result in the loss of habitat in the general area. The MD 198, if widened to the south side of the road, will remove some habitat from the edge of the Refuge. This will create a long-term, minor adverse impact due to the small amount of habitat loss, located in the highway corridor, in relation to the overall size of the Refuge. The Fort Meade construction is not directly adjacent to the Parkway or Refuge and the loss of habitat there is expected to have negligible impacts on these wildlife and wildlife habitat resources. These impacts in combination with the impacts associated with the selected alternative will result in long-term minor adverse cumulative impacts.

***Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed on National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources:*** The Baltimore Washington Parkway Historic District achieves state and local significance in the areas of transportation and landscape architecture. It is associated with urban development of the national capital as a federal center; it exemplifies the last period of construction for this type of road, and is the only fully developed parkway of its kind in Maryland. Its enabling legislation intends for the Parkway to serve as a major scenic artery within the park and parkway system of the nation's capital; as a formal entrance to the city of Washington, D.C.; as a defense/military route among suburban federal installations and the city; and as a contributing element to the commercial and residential development of the Baltimore-Washington corridor. The Parkway maintains its original integrity of setting, design, and associated characteristic of the earliest parkways designed for pleasure motoring as seen in the preservation of natural topography and vegetation for scenic purposes coupled with "high-speed" elements of modern freeway design.

As stated in the EA, Because of the limited disturbance associated with the installation of the utility lines beneath the Parkway and the fact that those disturbed areas will be restored to their original condition after the installation is complete, there will be only short-term negligible adverse impacts to the Baltimore Washington Parkway Historic District, no adverse effect under Section 106. In a letter dated April 22, 2009, the State Historic Preservation Officer concurred that the actions proposed under this alternative will have no adverse effect to any historic properties. Once implemented, the selected alternative will protect the contributing scenic features of the Baltimore Washington Parkway Historic District, creating long-term beneficial impacts.

***Degree to which the action may adversely affect an endangered or threatened species or its critical habitat:*** In accordance with Section 7 of the Endangered Species Act of 1973, NPS sent a letter to solicit comments from the FWS and the Maryland Department of Natural Resources (MDNR) regarding potential occurrences of federal- and state-listed species within the project area that could be adversely impacted by the proposed alternatives. The FWS responded on May 18, 2009, stating that there were no documented occurrences of any federally listed species within the project area. As a result, no adverse affects to any federally listed species will occur from the selected alternative.

A letter from MDNR, dated January 30, 2008, documents that MDNR's database indicates that there are records for the glassy darter (*Etheostoma vitreum*) immediately downstream of the proposed project site in nearby Little Patuxent River. Adverse impacts to this species will be negligible to minor as a result of the efforts taken to minimize impacts to water quality (i.e., establishing forested buffers; enacting strict stormwater management requirements for the development beyond those of the state and local regulations; and requiring robust erosion and sediment control plans), and the commitment for establishing a long-term water quality monitoring program.

***Whether the action threatens a violation of federal, state, or local environmental protection law:*** The selected alternative violates no federal, state, or local environmental protection laws.

## IMPAIRMENT OF PARK RESOURCES OR VALUES

The NPS has determined that the implementation of the selected alternative will not constitute an impairment to the resources or values of the Parkway. This conclusion is based on consideration of the thorough analysis of the environmental impacts described in the EA, relevant scientific studies, the comments provided by the public and others, and the professional judgment of the decision-maker guided by the direction in *NPS Management Policies 2006*. As described in the EA, implementation of the NPS selected alternative will not result in impairment of park resources or values whose conservation is (1) necessary to fulfill specific purposes identified in the park's establishing legislation, (2) key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or (3) identified in the park's management plan or other relevant NPS planning documents as being of significance.

While the purpose of the selected alternative is to protect both cultural and natural resources of the Parkway from the impacts of future development on adjoining properties, there will be short-term to long-term negligible to minor adverse impacts on some of the park's resources (soils, water quality, cultural resources, vegetation, wildlife or wildlife habitat). Adverse impacts will be mitigated to the greatest extent possible. Those impacts that cannot be fully mitigated, however, are not key to the overall natural or cultural resources of the park and will not hamper opportunities to enjoy the park. In addition, while the selected action will not adversely affect park resources identified in park management documents as being significant.

## PUBLIC INVOLVEMENT

The 2009 EA was made available for public review and comment on October 9, 2009. It was also announced by email to the park's mailing list of approximately 40 individuals and organizations, and a notice of availability letter was sent out to a mailing list of also about 40 interested stakeholders. The EA was also placed on the NPS' PEPC website.

The comment period concluded on November 20, 2009 with the NPS receiving six separate letters commenting on the proposed action (see attached). Four of the letters expressed support for the selected alternative, one letter from the FWS re-emphasized their concerns regarding future development and the need to carry forward the protections that could be carried forward with the Refuge, and one letter from an adjacent landowner stated that several maps were ambiguous and asked for clarification. The NPS responded to the FWS in a letter supporting their position, however noting that the specific conditions of those mitigations aimed at protecting the resources of the Refuge will be determined as part of future negotiations and cannot be made as part of this record of decision.

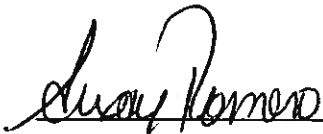
In response to the request for clarifications, those comments that resulted in changes or additions to the EA are contained in the attached errata sheets. No changes to the selected alternative or the impact analysis were made as a result of public comment.

## CONCLUSION

The NPS has selected Alternative B for implementation. The impacts that will result from the selected alternative will not impair any park resources and values. This determination is based on what we have learned in considering this proposal. The selected alternative does not constitute an action that normally requires preparation of an EIS. The selected alternative will not have a significant effect on the human environment. Negative environmental impacts that could occur are negligible to moderate in intensity. There are no significant impacts on soils, visitor use and experience, water quality, historic districts and structures, vegetation, and wildlife and habitat. The proposed action will not cause highly uncertain or controversial impacts, unique or unknown risks, or significant cumulative effects. Implementation of the selected alternative will not violate any federal, state, or local environmental protection law.


The selected alternative does not constitute a major federal action that significantly affects the quality of the human environment. Based on the foregoing an EIS is not required for this action and thus will not be prepared. Based on the findings of the 2009 EA, as well as all of the previous planning that has occurred, this is a finding of no significant impact.


Recommended:

  
George Liffert  
Acting Superintendent  
National Capital Parks - East

  
Date

Approved:

  
Margaret O'Dell  
Regional Director  
National Capital Region

  
Date

## NATIONAL CAPITAL PARKS – EAST:

### BALTIMORE-WASHINGTON MEMORIAL PARKWAY

#### Environmental Assessment

#### *Errata*

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The following changes have been made to the *GRANTING OF RIGHT OF WAY ACCESS BY NATIONAL PARK SERVICE TO ANNE ARUNDEL COUNTY, MARYLAND FOR THE INSTALLATION OF UTILITIES BENEATH THE BALTIMORE-WASHINGTON PARKWAY AT THE MARYLAND ROUTE 198 INTERCHANGE AND FOR THE ACQUISITION OF ADDITIONAL PROTECTIONS FOR THE PARKWAY AND PATUXENT RESEARCH REFUGE Environmental Assessment* (September 2009) to clarify minor statements of fact. All changes in the text are in bold, with additions to the text are identified by underlines and deletions are marked by strikeout unless otherwise noted.

## 1.0 PURPOSE, NEED, AND SCOPE

### 1.1 Purpose , Need, AND SCOPE, Page 3

On page 3, added footnote to the caption of Figure 1-2 for clarification of the project location.

#### Figure 1-2 Project Location Map<sup>1</sup>

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<sup>1</sup> Figure 1-2 provides the general location of the area affected by the proposed project. As part of the agreement between NPS and Anne Arundel County, any future user of the new utility lines within this area, would be subject to the easements, building setbacks, height restriction, architectural guidelines and/or any other mitigation requirements aimed at protecting the natural and cultural resources of the Baltimore-Washington Memorial Parkway and the Patuxent Research Refuge.

## 2.0 DESCRIPTION OF ALTERNATIVES

### 2.2 PROPOSED ACTION ALTERNATIVE (EXTENSION OF UTILITY LINES THROUGH THE PARKWAY WITH ADDITION PRESERVATION), PAGE 31

On page 31- Section 2.2, clarified description of project area.

The project area is the Parkway ROW corridor and the adjacent parcels ~~scheduled for development, also known as the Ribera Property, or Arundel Gateway that may in sometime in the future be developed.~~ Properties within the project area that choose to connect to the proposed utility lines would be subject to the easements, building setbacks, height restriction, architectural guidelines



and/or any other mitigation requirements aimed at protecting the natural and cultural resources of the Baltimore-Washington Memorial Parkway and the Patuxent Research Refuge.

## 4.0 ENVIRONMENTAL CONSEQUENCES

### 4.4 Visitor Use and Experience, page 48

On page 48, the description of the project area was clarified.

As a condition of granting the ROW easement, the NPS would stipulate that the owner of property located within specifically identified distances from the Parkway proposing to connect to the proposed utility lines would first need to agree in writing to certain restrictions designed to protect the Parkway's viewshed. Such restrictions would include building setbacks, height limits, and guidelines regarding the exterior finishes of buildings constructed on neighboring properties located within specified distances from the Parkway ROW boundary. For properties located beyond ~~these identified parameters, the~~ specifically identified distances, or choosing not to connect to the proposed utility lines, no restrictions would apply.

### 4.6 Cultural resources – Historic Structures and Districts, PAGE 54

On page 54, the description of the project area was clarified.

~~The project area is currently wooded and the results of the balloon tests~~ As a result of the project area being wooded, the visual effects evaluation indicate that the visibility of any future development on properties within the project area that were subject to the mitigation requirements aimed at protecting the natural and cultural resources of the Baltimore-Washington Memorial Parkway and the Patuxent Research Refuge would be minimized by the presence of the tree buffer even at the narrowest proposed buffer of 200 feet. The existing mature trees are approximately 60 feet tall in most places and would significantly minimize the view of any development. Only Balloon #1 at a 200-foot offset was visible below the tree line at a height of 45 feet. The trees were not fully foliated during this study further indicating that during the months of full foliage, visual effects would be minimal or nonexistent.



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Patuxent Research Refuge  
12100 Beech Forest Road, Suite 138  
Laurel, Maryland 20708



NOV 13 2009

Ms. Gayle Hazelwood, Superintendent  
National Capital Parks - East  
Re: Baltimore-Washington Parkway/MD Rt 198 Utility ROW EA  
1900 Anacostia Drive, S.E.  
Washington, D.C. 20020

Dear Ms. Hazelwood:

On behalf of the U.S. Fish and Wildlife Service's (Service) Patuxent Research Refuge, this responds to the recently published draft Environmental Assessment entitled *Granting of Right of Way Access By National Park Service to Anne Arundel County, Maryland, for the Installation of Utilities Beneath the Baltimore-Washington Parkway at the Maryland Route 198 Interchange and for the Acquisition of Additional Protection for the Parkway and Patuxent Research Refuge, Laurel, Environmental Assessment, 2009*. Our comments identify potential impacts associated with the granting of a revocable Right-of-Way permit to Anne Arundel County to extend existing public water and sewer lines underground across the Parkway, with particular emphasis on those that may affect the refuge and the purposes for which it was established.

The mission of the Service's National Wildlife Refuge System (NWRS) is to administer our lands for the conservation, management, and restoration of fish, wildlife, and plant resources for the benefit of present and future generations of Americans. Patuxent's specific refuge purposes are to support wildlife research, manage for migratory birds and other wildlife, and provide wildlife-dependent public uses such as hunting, fishing, environmental education, interpretation, and nature observation. It is imperative the proposed action not compromise the nationally significant resources for which we are responsible and the purposes for which the refuge was established.

Our primary concern with the proposed extension of utilities across the Parkway relates to the potential for indirect and cumulative impacts in the form of development of several hundred acres of largely undeveloped forested lands adjacent to the refuge. The first example of this is the proposed Arundel Gateways Development project in Anne Arundel County, Maryland. This project lies just north of the refuge's boundary, and much of the project shares a property boundary with refuge lands. Unless appropriate protections are established, the potential for adverse impacts to refuge resources from a project of this magnitude is high.

We have previously expressed our concerns over adverse impacts likely to be advanced by granting of this right of way, at the public scoping meeting on January 8, 2008, and in subsequent correspondence and meetings. The following list reiterates those concerns:

- 1) The loss of forested habitat adjacent to refuge lands. The refuge is one of the major landowners of the largest block of forest habitat in the Baltimore-Washington corridor. Loss of forested habitat near the refuge could reduce the suitability of adjacent refuge lands to wildlife, particularly migratory birds. Fragmentation of forest habitats can be detrimental to a number of forest-interior dwelling bird species, many of which find haven in the refuge's undisturbed forests and adjacent forest habitat outside our boundary.
- 2) Potential water quality and quantity issues, due to increased runoff from parking lots, driveways, and other impervious surfaces, and turf grass lawns, carrying a variety of contaminants, including salt, petroleum products, fertilizers, pesticides, and herbicides. The majority of this potential additional runoff would empty into an unnamed drainage that runs into the Little Patuxent River west of Tipton Airport. This drainage flows through a culvert on Bald Eagle Drive, the only public access road to the North Tract. This road floods now during rain events, resulting in closure of 8,100 acres of the refuge until flooding recedes. Any additional water coming down this drainage as a result of this development - and the quality of the water - is of great concern.
- 3) Trespass and illegal dumping. This could occur along the largely unfenced refuge boundary adjacent to the proposed development - by people, domestic animals, ATVs, etc. This trespass could impact refuge resources, as well as pose a safety/liability concern, due to the presence of unexploded ordnance on the refuge, dating back to when this acreage was part of Fort Meade and its weapons training programs. Also, there is the potential for the refuge to become a dumpsite for tires, carpet, and appliances.
- 4) Potential impacts to the refuge's hunting program, one of six priority wildlife-dependent public uses we are mandated to accommodate, when at all possible. Any development of structures within 150 yards of the refuge boundary would preclude the discharge of firearms, per state regulations, limiting our ability to properly manage our white-tailed deer population within their carrying capacity. This, in turn, could degrade refuge habitats, create a greater chance of car/deer collisions and Lyme Disease transmission, and lead to the destruction of neighborhood lawns and gardens as deer search for food.
- 5) Increased traffic on Highway 198 causing hazardous conditions at the already often traffic-congested North Tract entrance at Bald Eagle Drive.
- 6) The potential for more wildland fire-urban interface issues. While the history of wildfires in this area shows they have been a rare occurrence to date, given climate change and the likelihood of hotter, drier seasons, as development close to the refuge boundary increases, so does the chance for fire-related issues.

We have appreciated the ongoing dialogue with the NPS and Ribera Development, LLC regarding these issues. It is imperative that protections cited in Section 2.2 for mitigating impacts to the refuge are

included within the permit issued to Anne Arundel County and/or within a binding mechanism such as a Memorandum of Agreement with the developer. To summarize, these protections include:

- 1) stormwater management features, including a long-term monitoring plan, utilizing Low Impact Development techniques such as bioretention, biofiltration, and rainwater harvesting, to ensure runoff is limited to predevelopment conditions;
- 2) security fencing along the refuge boundary to minimize trespass and illegal dumping;
- 3) improvements to Bald Eagle Drive to reduce flooding, particularly at the road crossing near the refuge's entrance gate;
- 4) land transfers of Ribera Development, LLC-owned lands to the refuge to provide perpetual protection of currently forested lands adjacent to the refuge and the previously mentioned unnamed tributary which has a high biodiversity index, and to provide unencumbered access along a secondary road currently not entirely in refuge ownership;
- 5) and a commitment to minimal construction within 150 yards of the refuge boundary, to minimize impacts from forest fragmentation, and to limit impacts to the refuge's hunting program.

Thank you for this opportunity to offer these comments. If you have any questions or comments, please contact me at 301-497-5582.

Sincerely,



Brad Knudsen  
Refuge Manager

cc: Susan McMahon, Deputy Chief, National Wildlife Refuge System, Region 5



11/10/2009

12312 Conway Road • P.O. Box 423  
Beltsville, MD 20704-0423  
(301) 419-2260 • Fax (301) 419-3059

SCOTT K. BRYAN  
President  
JOHN R. GLASGOW  
Vice President

Dear Superintendent Hazelwood:

I am pleased to hear the easement that will bring public utilities east of the Baltimore Washington Parkway may soon be granted. My family intends to build a new shop on property we have owned for over 15 years in the area that will be serviced by these utilities. We have worked with National Park Service on several proposals over the last couple of years. Hopefully this will be last hurdle in getting our project underway.

We have been located in Beltsville for 29 years at a facility that does not currently meet our needs. A large part of our business is renovating and building new Anne Arundel Public Schools, This will let us better serve these customers.

Any additional information on this utility crossing would be greatly appreciated.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke.

Ronald Bryan

# Holland & Knight

2099 Pennsylvania Avenue, N.W., Suite 100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | [www.hklaw.com](http://www.hklaw.com)

Lawrence R. Liebesman  
301.419.4477  
[lliebesman@hklaw.com](mailto:lliebesman@hklaw.com)

November 20, 2009

## VIA ELECTRONIC TRANSMITTAL AND REGULAR MAIL

Mr. Stephen Syphax  
National Capital Parks - East  
1900 Anacostia Drive, SE  
Washington, DC 20020

Re: National Park Service Environmental Assessment — Granting of Right of Way  
Access to Anne Arundel County, Maryland, for Installation of Utilities Beneath the  
Baltimore-Washington Parkway

Dear Mr. Syphax:

On behalf of our client, Russett Center Limited Partnership ("RCLP"), we respectfully submit the following comments regarding the above referenced Environmental Assessment ("EA"). The EA was issued by the National Park Service ("NPS") in connection with a request by Anne Arundel County (the "County") for issuance of a Right Of Way (ROW) permit for installation of public utilities, including water and sanitary sewer beneath the Baltimore-Washington Parkway near the Maryland Route 198 interchange (the "Utilities Crossing Project").

RCLP is the owner of certain properties located to the northeast of the Baltimore-Washington Parkway/Route 198 interchange that are depicted within the EA Project Area as Parcels 17 and 18 (the "RCLP Properties"). RCLP supports the Utilities Crossing Project and believes the EA is substantially adequate for purposes of meeting the general objectives of the National Environmental Policy Act ("NEPA"). The EA provides sufficient evidence and analysis of the direct, indirect and cumulative impacts associated with the Utilities Crossing Project to satisfy NEPA. It also appears that with the mitigation measures identified for the environmentally preferred alternative (#2), the National Park Service can support issuance of Finding of No Significant Impact ("FONSI") for that alternative.

Nonetheless, RCLP is concerned that the EA contains certain ambiguities with regard to the circumstances under which the NPS would require the County to impose property

dedications/easements, building setbacks, height restrictions, architectural guidelines and/or other mitigation measures on the RCLP Properties. Whereas the text of the EA identifies and states in plain terms that the County would only be required to enforce such requirements against "users of the new sewer line" installed within the right-of-way (EA, at p. 31), or owners "proposing to connect to the proposed utility lines" (EA, at p. 48), certain graphic depictions included in the EA show dedication/easement and height restrictions that would impact the RCLP Properties (see EA at p. 49 Figure 4-2, NPS Proposed Conveyance Areas, and EA, at p. 56 Figure 4-3, Viewshed Analysis, both proposing development restrictions on the RCLP Properties). Because these graphics do not clearly indicate that such proposed development restrictions would only be applied in the event that the RCLP Properties actually connect to the Utilities Crossing Project, we are concerned that the EA creates the possibility for future confusion with regard to the County's administration of conditions that may be imposed pursuant to the Utilities Crossing Project. The EA also repeatedly defines the "project area" as consisting of the right of way corridor and the Arundel Gateway parcels which are "scheduled for development" (EA, at p. 31), although certain drawings included with the EA mistakenly suggest that the RCLP Properties are also part of the studied "project area" (see EA p. 3 Figure 1-2 which depicts the project area as including RCLP properties to the north of Md. Rt. 198). This also creates potential confusion with regard to the RCLP Properties by suggesting that applications for connecting to the new utility lines are imminent (when, in fact, there are no such plans at the present time).

We believe that these ambiguities contravene certain best practices set forth for NPS in Director's Order #12 and the Handbook for Environmental Impact Analysis. More particularly, Section 1.4(N) of the Handbook recommends that environmental assessments should be ultimately site-specific, while Section 2.8(A) recommends that drawings of analysis boundaries that include resources not likely to be affected by alternatives should be avoided. Regardless, based on recent conversations with NPS and County representatives, we believe that revisions to the EA will not be necessary if the NPS includes specific language in any forthcoming FONSI and Right of Way Permit issued for the Utilities Crossing Project to clarify that the above-stated conditions will not be required for properties developed for well and septic system service. We propose the following:

*As a condition of granting the Right of Way Permit, the NPS may require Anne Arundel Count to impose easements, building setbacks, height restrictions, architectural guidelines and/or other mitigation requirements, as may be allowed by applicable law, on certain properties located in proximity to the eastern boundary of the Baltimore-Washington Parkway that will be serviced by the new water and/or sewer utilities located within the right-of-way area. Any such restrictions would be imposed upon properties and projects that actually connect and are granted rights of use and access to the new water and/or sewer utilities. Such restrictions will not be imposed upon development that does not actually connect to water and sewer utilities covered by this Right of Way Permit, including*

Mr. Stephen Syphax  
November 20, 2009  
Page 3

*development that relies upon onsite well and septic systems for water and sewer service.*

We appreciate the opportunity to comment and hope that you will not hesitate to contact us if you have any questions or require additional information.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, reading "Lawrence R. Liebesman". The signature is written in a cursive style with a large initial "L" and a distinct "R".

Lawrence R. Liebesman





November 11, 2009

Gayle Hazelwood  
Superintendent  
National Capital Parks-East  
1900 Anacostia Drive, SE  
Washington, DC 20242

***Re: Baltimore-Washington Parkway / MD Route 198 Utility ROW / EA***

Dear Superintendent Hazelwood:

The purpose of this letter is to provide the National Park Service with comments on the Environmental Assessment ("EA") entitled "*Granting Of Right Away Access By National Park Service To Anne Arundel County, Maryland For The Installation Of Utilities Beneath The Baltimore-Washington Parkway At The Maryland Route 198 Interchange And For The Acquisition Of Additional Protection For The Parkway And Patuxent Research Refuge*". I am writing on behalf of 3366 Laurel Ft. Meade Road, LLC, an affiliate of The Wilkes Company, and the owner of approximately twenty (20) acres of property on Route 198 near The Baltimore-Washington Parkway.

First, we want to express our deep appreciation to the authors of the EA for their thoroughness, intellectual rigor and attention to detail in the EA's preparation. It's clear from our reading that every possible impact associated with the proposed issuance of a Right-of-Way ("ROW") was studied and examined without bias or predetermination. This is a document built on facts and good science – not opinion or conjecture. It is also fortuitous that a matter-of-right development under current zoning, without reference to, or any need for, the proposed ROW, is sufficiently imminent and foreseeable to provide, for comparison purposes, two well-articulated development scenarios ("no action/action"). The two alternatives are very different and, not surprisingly, so would be their impacts on the environment and on the Patuxent Research Refuge and the Parkway's viewshed, in particular. The value of water and sewer line redundancy was also given proper weight but viewed, appropriately, as a secondary consideration.

Accordingly, the following conclusions in the EA are ones that give us the greatest comfort and reassurance that the proposed ROW presents a unique opportunity to not only protect the environment, but to actually enhance and sustain it:

1. The absence of any impacts on cultural resources was crucial. Possible damage to any such resources would have, in our view, eliminated the need for any further study.
2. By specifically conditioning any grant of the ROW and thereby protecting the viewshed from the Parkway, future generations will be able to enjoy the beautiful landscaped setting of the Parkway. It is impossible to put a price on this enormously important benefit.
3. While the "no action" alternative in the EA was deemed to be only marginally harmful to (a) wildlife and (b) wildlife habitat, we believe that, without the contemplated NPS restrictions, both would suffer substantial adverse impacts – impacts that simply can't be reversed. Hence, the forested buffers and forest conservation areas that will be required as part of the "action" alternative constitute a huge victory for the Refuge since they would not be required as part of the "no action" alternative.

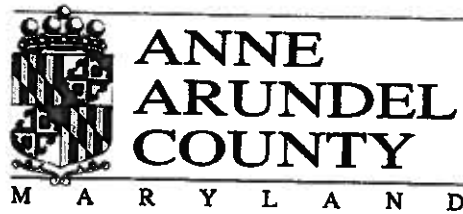
For these reasons, we believe that the EA makes a powerful and compelling case for the "action" alternative. We want to thank the Park Service for helping all of us see both alternatives clearly and for helping us achieve a deeper understanding of the long-term benefits and/or consequences of each. We believe it is now time to move forward.

Sincerely yours,



Charles C. Wilkes  
Chairman

cc: Stephen Syphax



Office of Planning and Zoning  
P.O. Box 6675  
2664 Riva Road  
Annapolis, Maryland 21401

November 19, 2009

Mr. Stephen Syphax  
National Capital Parks-East  
1900 Anacostia Drive, SE  
Washington, DC 20020

RE: Granting of Right of Way Access by National Park Service to Anne Arundel County, Maryland for the Installation of Utilities beneath the Baltimore-Washington Parkway at Maryland Route 198 Interchange and for the Acquisition of Additional Protections for the Parkway and Patuxent Research Refuge—Review and Comments

Dear Mr. Syphax:

Thank you for allowing Anne Arundel County, Maryland the opportunity to review and provide comments regarding the Environmental Assessment (EA) for this proposed Federal action, as presented in the document, dated September 2009, and identified above. The proposed Federal Action would permit directional drilling beneath the Baltimore Washington Parkway, a Federally-owned cultural resource.

This drilling would permit the installation of utility services for water and sanitary sewer, which would be constructed by private parties under agreement with the County's Department of Public Works. The properties that would be served by the extension of utilities are currently zoned and can be developed without the extension. However, more efficient uses of the land and better design of those uses are possible if utilities are extended to the parcels. At present, the adopted *2007 Master Plan for Water Supply and Sewerage Systems* identifies that the area is located in a Planned Service category for both water and sanitary sewer and is shown on W4 (water map) and S4 (sanitary sewer map) of the Master Plan. Extension of utilities is consistent with adopted plans and policies of Anne Arundel County, Maryland. For these reasons, the County supports the Proposed Action Alternative as noted in Section 2.2 on page 27 of the EA.

Should you have any questions or concerns about the comments presented, please contact George Cardwell, Planning Administrator via phone at (410) 222-7440, or via e-mail at [pzcard44@aacounty.org](mailto:pzcard44@aacounty.org)

Sincerely,

A handwritten signature in black ink, appearing to read "Larry R. Tom". The signature is fluid and cursive, with the first name "Larry" being more prominent.

Larry R. Tom  
Planning & Zoning Officer

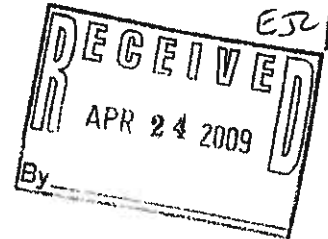
cc: Ronald Bowen, Director, Department of Public Works  
Jonathan Hodgson, County Attorney



IN REPLY REFER TO:

200901396  
United States Department of the Interior

NATIONAL PARK SERVICE  
National Capital Region  
1100 Ohio Drive, S.W.  
Washington, D.C. 20242



L14 (NCR-LRP)

APR 22 2009

Ms. Dixie Henry  
Maryland Historical Trust  
Division of Historical and Cultural Programs  
Review and Compliance  
100 Community Place  
Crownsville, Maryland 21032

Dear Ms. Henry:

We are writing to inform you that the National Park Service (NPS), in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, is preparing an Environmental Assessment (EA) concerning the proposed installation of underground utilities beneath a portion of the Baltimore-Washington Parkway (Parkway) at its intersection with Maryland Route 198. In conjunction with our EA, and as prescribed by Section 106 of the National Historic Preservation Act (Section 106), we have also undertaken a Phase 1 Archeological Survey (Survey) of the proposed underground utility corridor. By means of this correspondence, we wish to initiate our consultation with the Maryland Historical Trust under Section 106 regarding this proposal, and have enclosed a copy of the report documenting the findings of the recently completed Survey for your review.

In response to requests received on behalf of Anne Arundel County, Maryland (County), and from local elected officials to extend the existing network of public utilities across the Parkway, the NPS has undertaken the aforementioned EA. It is the desire of the County to provide a redundant source of public water to residents and businesses located within the portion of the Maryland City Service Area west of the Parkway, and to extend public sanitary sewer facilities eastward along the Maryland Route 198 corridor. While we acknowledge the need for these utilities, we must balance any future utility installation with ensuring adequate resource protections are afforded to the Parkway as well as to the neighboring Patuxent Research Refuge.

Our EA evaluates the potential environmental impacts associated with 2 alternatives; the "No-Build" alternative and the "Utility Connection Under the Parkway" alternative. In connection with the latter alternative, the NPS, in consultation with the U.S. Fish and Wildlife Service (FWS), would issue a right-of-way permit to Anne Arundel County, Maryland, for the installation, operation and maintenance of the aforementioned utility lines, subject to a series of restrictions intended to minimize resource impacts. Such restrictions would include the requirement that the lines be installed by means of directional bore technology, the implementation of building setbacks and height limitations within prescribed distances from the

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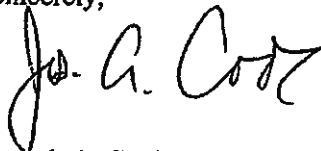
2<sup>nd</sup> JFS  
5/12/09

Parkway boundary, and a series of mitigation measures aimed at protecting/enhancing the Patuxent Research Refuge.

As the Survey's findings document an absence of cultural materials or standing structures, and the generally disturbed character of the project area, no further investigations are recommended. Thus, we hope you will concur with our determination that no historic properties will be affected by the proposed project. Should you be willing to provide your concurrence, we ask that you execute one of the enclosed originals and return it to us at your earliest convenience. The second original is provided for your files.

Thank you in advance for your time and attention to this matter. If you have any questions or require further information, please contact me on (202) 619-7034.

Sincerely,



Joseph A. Cook, Chief  
Land Resources Program Center

Enclosure

I concur with the National Park Service's determination that as a result of the findings of the "Phase 1 Archeological Survey of the Proposed Installation of Underground Utility Lines at the Intersection of the Baltimore-Washington Parkway and Maryland Route 198 in Anne Arundel County, Maryland" completed by Cultural Resources, Inc. and dated October 2008, no historic properties will be affected by the proposed project:

 5/12/09  
State Historic Preservation Officer

Enclosures