MD 97 Brookeville Project Smart Growth Package

Maryland Department of Transportation

SHA State Highway Administration Maryland Department of Transportation

MDP

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Review Request

Maryland Department of Transportation (MDOT) and the State Highway Administration (SHA) are formally requesting that the Board of Public Works (BPW) determine that the Brookeville Project presents an "extraordinary circumstance" as defined in the State Finance and Procurement Article 5-7B-05. The Brookeville Project is a proposed new roadway alignment in the Town of Brookeville, in Montgomery County, Maryland, of which approximately 45% would be located outside of the designated "Priority Funding Area." The project was presented to the Smart Growth Sub-Cabinet on September 21, 2011, but must receive a determination by the Board of Public Works as presenting an "extraordinary circumstance" to receive state funding for construction.

Specifically, MDOT and the SHA are requesting from the BPW the approval of this project as an "extraordinary circumstance" under *Article – State Finance and Procurement, §5-7B-05 (a)(1)(i); and §5-7B-05 (a)(2)(i) and (ii):*

(a) In general-

(1) The State may provide funding for a growth-related project not in a priority funding area if:

(i) the Board of Public Works determines that extraordinary circumstances exist in accordance with the requirements of paragraph (2) of this subsection; or

(2) In order to determine that extraordinary circumstances exist under paragraph (1) of this subsection, the Board shall determine by a majority vote that:

(i) the failure to fund the project in question creates an extreme inequity, hardship, or disadvantage that clearly outweighs the benefits from locating a project in a priority funding area; and

(ii) there is no reasonable alternative for the project in a priority funding area in another location within the county or an adjacent county.

Summary

This paper provides background on the MD 97 Brookeville project and presents justification for funding this project as an “extraordinary circumstance” worthy of exception from the Smart Growth and Neighborhood Conservation Act passed in 1997.

This package includes an overview of the project; a justification for smart growth exception; and a review of alternatives analyzed as part of project planning. Relevant documentation of this process is also attached.

The Board's concurrence with the finding that the project presents an “extraordinary circumstance” would allow the project to be considered for state funding assistance. The recommendation that the project be treated as an “extraordinary circumstance” is based on the following factors:

1) Failure to support the project would result in an extreme hardship, inequity, disadvantage, specifically with regard to:

    A. The extensive and long-term coordination effort among the State, Montgomery County, and the Town of Brookeville, who have acted in good faith for over 10 years, for the specific purpose of developing a roadway project that would mitigate the traffic impacts to the Town and potential adverse growth impacts associated with the Project ;
    B. Increasing traffic congestion and associated safety concerns, specifically poor horizontal and vertical geometries on existing MD 97 compounding with increasing traffic volume over the years, have combined to create unsafe conditions for vehicles and pedestrians in the Town. This has resulted in accident rates that are higher than the statewide average for several specific accident types, including fixed-object, opposite direction, trucks, and wet surface;
    C. Residents’ concerns on the traffic volume, noise, vibration impacts on the historical characteristics of Brookeville, a historic district listed on the National Register of Historic Places in 1979.

2) There are no reasonable alternatives for the project inside a priority funding area that would meet the purpose and need of the project.

Since 1990, 13 alternatives have been studied, but no viable alternatives could be identified totally within the Priority Funding Area (PFA). Improving the existing MD 97 within the Town of Brookeville which is inside the PFA was deemed inappropriate for detailed study, because this approach would result in significant adverse effect on historic Brookeville. After due consideration, Alternative 7 Modified was selected and would consist of less than 1 mile of a new two-lane roadway with limited capacity expansion. More than fifty percent of the proposed alignment is inside the PFA and the roadway will have controls limiting access to properties outside of the PFA.

Project Overview

The MD 97 Brookeville Project was initiated in January of 1995 to address the effect that increasing traffic volumes were having on the historic Town of Brookeville, by improving safety and traffic operations on existing MD 97 (Georgia Avenue). The project limits extend for approximately 0.72 miles on MD 97 from south of Gold Mine Road to north of Holiday Drive *(Figure 1).*

The project was placed on hold in 1998 due to its incompatibility with the newly passed Smart Growth legislation. The project was reinitiated after Montgomery County and the Governor's office reached agreement on specific criteria that the project would have to meet in order to meet the requirements of the Smart Growth legislation. The Final Environmental Impact Statement (FEIS) was prepared recommending Alternative 7 Modified as the preferred alternative. A Record of Decision was approved and Location Approval was granted by the FHWA in October 2004.

Purpose and Need for the Project

The purpose and need for the project is not to add capacity, but to remove the continually increasing traffic volumes from the Town of Brookeville, improve traffic operations and safety conditions on existing MD 97, and preserve the historic character of the town. This project is also supported by the *Comprehensive Plan for the Town of Brookeville*, October 2010 and the approved *Olney Master Plan* approved and adopted in April 2005 by the Montgomery County Council.

The effects of increasing traffic volumes are exacerbated by the presence of a 90-degree bend in the horizontal alignment of existing MD 97 and an accompanying steep vertical grade in the heart of Brookeville. In order to address these substandard geometrics, the adopted 2005 Olney Comprehensive Plan confirms the 1980 Olney plan recommendation for the relocation of MD 97 (the Brookeville Project) and identifies it as a planned transportation priority.

Project Planning Studies

A total of 13 alternatives were initially investigated as part of a feasibility study performed in 1990. A formal Project Planning Study began in 1995, an Informational Public Workshop was held in June 1995. After public outreach and coordination with state and federal resource agencies in 2000, SHA developed four alternatives which were studied in detail *(see Figure 2).* A Draft Environmental Impact Statement was developed and approved by the FHWA to evaluate the potential impacts and benefits of these alternatives, and a Public Hearing was held on the project in October 2001.

Selected Alternative 7 Modified

Following the Public Hearing, Alternative 7 Modified *(see Figure 3)* was chosen as SHA's Selected Alternative. The Alternative is a less than one-mile long two-lane new road with shoulders, with a 40 mph design speed, and roundabouts at the northern and southern termini, which will help limit traffic capacity and serve as safe traffic calming points. The Town of

Brookeville supports the Alternative 7 Modified, because it is consistent with their local goals, minimizes environmental impacts, is least intrusive to the community, and best addresses the purpose and need of the project *(Attachment A).*

Funding Status

Montgomery County has funded $10 million for engineering, design and right-of-way acquisition beginning in FY13. An MOU between SHA and Montgomery County on November 7, 2012 was executed. The criteria identified in the March 5, 1999 Governor's letter and Smart Growth Exception section were referenced as conditions of the MOU. Pending Smart Growth Approval from the BPW and funding availability, the SHA would be able to move forward with construction on this project.

Justifications for a Determination of "Extraordinary Circumstance"

As a result of the Smart Growth and Neighborhood Conservation Act passed in 1997, State funds cannot be spent on major transportation infrastructure that support or encourages growth outside of established PFA *(Figure 2).* The Town of Brookeville is located within a PFA; however, portions of the Alternative 7 Modified alignment are not. In order to advance this project, the MDOT/SHA will seek to identify remedial actions to the BPW under the "extraordinary circumstances" provision of the 1997 Smart Growth Act that will mitigate the traffic impacts to the Town of Brookeville and the potential adverse growth impacts of the Brookeville Project.

Maryland Department of Transportation (MDOT) and the State Highway Administration (SHA) are formally requesting that the Board of Public Works (BPW) determine that the Brookeville Project presents an "Extraordinary Circumstance" as defined in the State Finance and Procurement Article 5-7B-05. The justification for the "Extraordinary Circumstance" is based on the unique project history and extensive coordination between the State and the local governments acting in good faith over the years to address transportation and land use solutions to mitigate the traffic impacts to the Town and potential adverse growth impacts associated with the project. The concerns resulted from increasing traffic and related safety issues and their impacts on the significant historical characteristics of Brookeville, and the project study conclusion that there isn't an reasonable project alternative locating inside a priority funding area that would meet the purpose and need of the project. Support for a finding of "extraordinary circumstance" is outlined below:

Justification One – Coordination & Planning

Failure to support the project would undermine a sustained and long-standing cooperation between representatives of the State, Montgomery County, and the Town of Brookeville who have acted in good faith over the years to provide transportation and land-use planning policies and regulations, and engineering solutions to mitigate the traffic and growth impacts associated with the project.

Since project planning began prior to passage of the Smart Growth and Neighborhood Conservation Act (1997), there was early recognition that provisions would need to be made to ensure a level of consistency with the proposed intent of this policy. Accordingly, in March 1999,

Governor Parris Glendening and Montgomery County representatives agreed in writing to four conditions that the MD 97 Brookeville Project would be required to meet to ensure that the project would be consistent with the anti-sprawl objectives and requirements of the Act. Since that time Montgomery County and the SHA have acted in good faith to meet the stipulations elaborated in the agreement, to help prevent unintended growth, mitigate environmental impacts, and preserve the historic integrity of the town. Montgomery County agreed to the following four conditions in an MOU executed November 7, 2012 and has advanced $10 million for the design and right-of-way phases of the Brookeville Project, which began in FY 13.

As provided in the MOU, the four conditions have been or shall be met:

Condition #1: Under local ordinance, the County is to adopt through appropriate enforceable action restrictions that will prevent this new road from allowing sprawl development. Any capacity that the project might add to the roadway network cannot be used as a basis to allow development outside the current boundaries of the Town of Brookeville.

> *Action: An amendment to the Annual Growth Policy was adopted on April 16, 1999 by the Montgomery County Council and has been included in each subsequent biennial Growth Policy (most recently adopted as the resolution number 16-1187) clearly stating: "To discourage sprawl development, no capacity for new development may be counted outside the boundary of the Town of Brookeville as of March 9, 1999, as result of relocating MD 97 around Brookeville."*
>
> *Montgomery County also took further action to reduce the ultimate capacity of Georgia Avenue (MD 97) north of Brookeville to two through lanes with a planned right-of-way to 80 feet in width to help to limit development outside PFA. This was stated in its 2005 Olney Master Plan. In addition, the County designated Brookeville Road as a Rustic Road as it connects to the proposed roadway through a roundabout. This designation will help the County to preserve historic and scenic roads, in the area's agricultural character and rural origins.*
>
> *With the limited capacity improvement provided by the relocated MD 97 and provisions of the County land use and transportation policy, the potential for induced sprawl development will be minimal.*

Condition #2: The SHA will designate "Right-of-Way of Through Highway" for the entire new road to help ensure that no future access, widening, or connection to the new road is possible. In addition, the SHA will note on the plat a reference to the eventual agreement and the intent to disallow access.

> *Action: Criteria 2 originally, read as follows: "Permanent easement to be held by an entity such as the Maryland Environmental Trust must border the entire roadway to ensure no future access, widening, or connection to the roadway is possible." The MDOT and MDP now propose that Criterion 2 be modified to identify SHA as the agency which would create a protective "easement" by designating a Right-of-Way of Through Highway for the entire project. This change is proposed because of potential conflict of interest issues that could arise should another State agency, such as the Maryland Environmental Trust, be designated as the easement holder.*

Condition #3: If for any reason these controls fail, Montgomery County will reimburse the State for the full cost of the new road.*

Action: This provision will be included in an MOU with the County. It serves to further ensure that rural areas and open space are preserved, the environment is healthy, and thriving communities enjoy their quality of life.

*To date, SHA has spent approximately $2 million dollars on project planning. Montgomery County has advanced $10 million for the engineering and right-of-way phases.

Condition #4: Montgomery County, the Maryland Department of Transportation, and Howard County government will work out a safe traffic calming point north of the project which limits traffic capacity to the current capacity of MD 97 through Brookeville.

Action: Roundabouts will be constructed at the northern and southern termini of the new road to provide traffic calming. The new roadway will be a 2-lanes (1-lane in each direction) with speed limit of 40 mph. These design features help to ensure that the new roadway will maintain the traffic capacity of the existing segments of MD 97.

Criteria 1, 3 and 4 have remained unchanged. Criteria 2 originally, read as follows: "Permanent easement to be held by an entity such as the Maryland Environmental Trust must border the entire roadway to ensure no future access, widening, or connection to the roadway is possible." The MDOT and MDP now propose that Criterion 2 be modified to identify SHA as the agency which would create a protective "easement" by designating a right-of-way of through highway for the entire project. This change is proposed because of potential conflict of interest issues that could arise should another State agency, such as the Maryland Environmental Trust, be designated as the easement holder. The SHA sent a letter to the County requesting concurrence on the modification for Criteria 2 on April 9, 2010. The County has replied back favorably to the modification on April 30, 2010 *(Attachments E and F).*

The annual Montgomery County Priority Letters to MDOT have consistently placed the MD 97 Brookeville as a top priority and for 2011, placed this project as the third highest priority for Construction. In October 2008, the County committed $10 million for engineering and right-of-way funds. A memorandum of understanding (MOU) with the State Highway Administration (SHA) in November, 2012 to fund up to $10 million toward engineering and right-of-way costs for this project. It is expected that engineering and right-of-way can be fully completed with the County contribution. The criteria identified in the Smart Growth Exception section are included as a part of the MOU.

Justification Two – Traffic & Safety

Without the relocation of the roadway, safety issues on MD 97 cannot be improved without incurring impacts to the Town of Brookeville. The roadway network within the Town of Brookeville conforms to the existing terrain and has evolved, relatively unplanned over time, resulting in poor horizontal and vertical geometry, which limits sight distance. Existing MD 97 through Brookeville is narrow (22 to 24 wide) with intermittent shoulders and sidewalks, frequent driveway access, historic buildings in close proximity to MD 97, and an "S" curve

along High Street and Market Street which requires a stop condition for northbound traffic. The volumes of through traffic on MD 97 passing through Brookeville have been increased over the years. Average Daily Traffic volumes on MD 97 have increased approximately 25% since 1995 to 11,500 vehicles per day and are forecasted to increase another 25% to between 14,000 to 15,000 vehicles per day by 2030. The geometric roadway conditions compounded with increasing traffic and poor-sight distance at the intersection for turning vehicles contribute to accident rates that are higher than the statewide average for the following accident types: fixed-object (collisions with trees, buildings, fences, etc.), opposite direction (due to vehicles crossing the center line), wet surface (resulting from vehicles sliding on wet pavement due to rain, ice, snow, etc.), and trucks (collisions attributed to larger vehicles attempting to maneuver on the narrow, curving roadway).

Justification Three – Historic Character

Without improvements to traffic operation and roadway safety, the historic character of the Town of Brookeville would be significantly compromised as traffic volumes (and associated secondary effects, e.g., noise and vibration) increase. The Town of Brookeville is a 19th century crossroads village with many individually significant historic houses located along the two main streets (Market and High), in close proximity to existing MD 97. Brookeville is distinguished from modern development to the south by its curving, tree lined streets which are unaltered from its original layout. The town is significant for its architecture and as an early commercial service center for the surrounding agricultural areas, but many best known for briefly serving as the nation's capital for a day during the war of 1812 when President James Madison sought refuge in Brookeville when British troops burned the White House. The Town of Brookeville is recognized by Montgomery County as a historic district and was listed on the National Register of Historic Places in 1979.

Justification Four – No Alternatives Inside PFA

SHA has conducted the extensive engineering and planning studies performed in cooperation with the FHWA, have determined that no reasonable alternative exists within the PFA due to geometric limitations inherent in the historic neighborhoods of Brookeville. Furthermore, the SHA does not have any planned or proposed highway projects to the east or west that would offer meaningful congestion relief to Brookeville.

Started in 1990, the Feasibility Study for the project evaluated 13 alternatives. The 1995 project Planning study began with 6 build alternatives. With the passage of the 1997 Smart Growth Legislation, the Project Planning study was placed on hold because there were no viable alternatives within the PFA. The study was reinitiated in 2000 with 4 build alternatives which were studied in detail. These included Alternative 5C proposed east of Brookeville, Alternatives 7, 8A, and 8B west of Brookeville *(Figure 2).* Existing road alternatives were not retained for detailed study, because they would result in an adverse effect on historic Brookeville.

Alternative 7 received the most support at the 2001 Public Hearing. Alternative 7 was revised to address public and agency concerns, was re-designated as Preferred Alternative 7 Modified, and ultimately selected. The Selected Alternative will improve the substandard geometrics and operational capacity of MD 97 while diverting a substantial portion of the anticipated increases

in traffic volume around historic Brookeville. Upon completion, the resulting roadway will be a more efficient facility that supports the Town of Brookeville's efforts to preserve its cultural, historic, and environmental resources.

Conclusion

Based on in-depth review of the past and present transportation and land-use planning processes and proposals associated with this project, MDP, MDOT, and SHA, find that the currently proposed MD 97 Brookeville project meets the anti-sprawl objectives and requirements of the Smart Growth legislation. On these grounds, MDP, MDOT, and SHA recommend that the project be forwarded for final approval by the Board of Public Works, as an "extraordinary circumstance" due to the extensive and long-term coordination efforts between the State, Montgomery County, and the Town of Brookeville to preserve the historic character of the Town of Brookeville, warranting exception from the PFA legislation.

The remaining sections of this paper elaborate further the purpose and need for the MD 97 Brookeville project and identifies remedial or mitigation actions if the project is approved by the Board of Public Works. The Selected Alternative will improve the substandard geometrics and operational conditions of MD 97 while diverting a substantial portion of the anticipated increases in traffic volume around historic Brookeville. Upon completion, the resulting roadway will be a more efficient facility that supports the Town of Brookeville's efforts to preserve its cultural, historic, and environmental resources.

Figure 1: Project Location

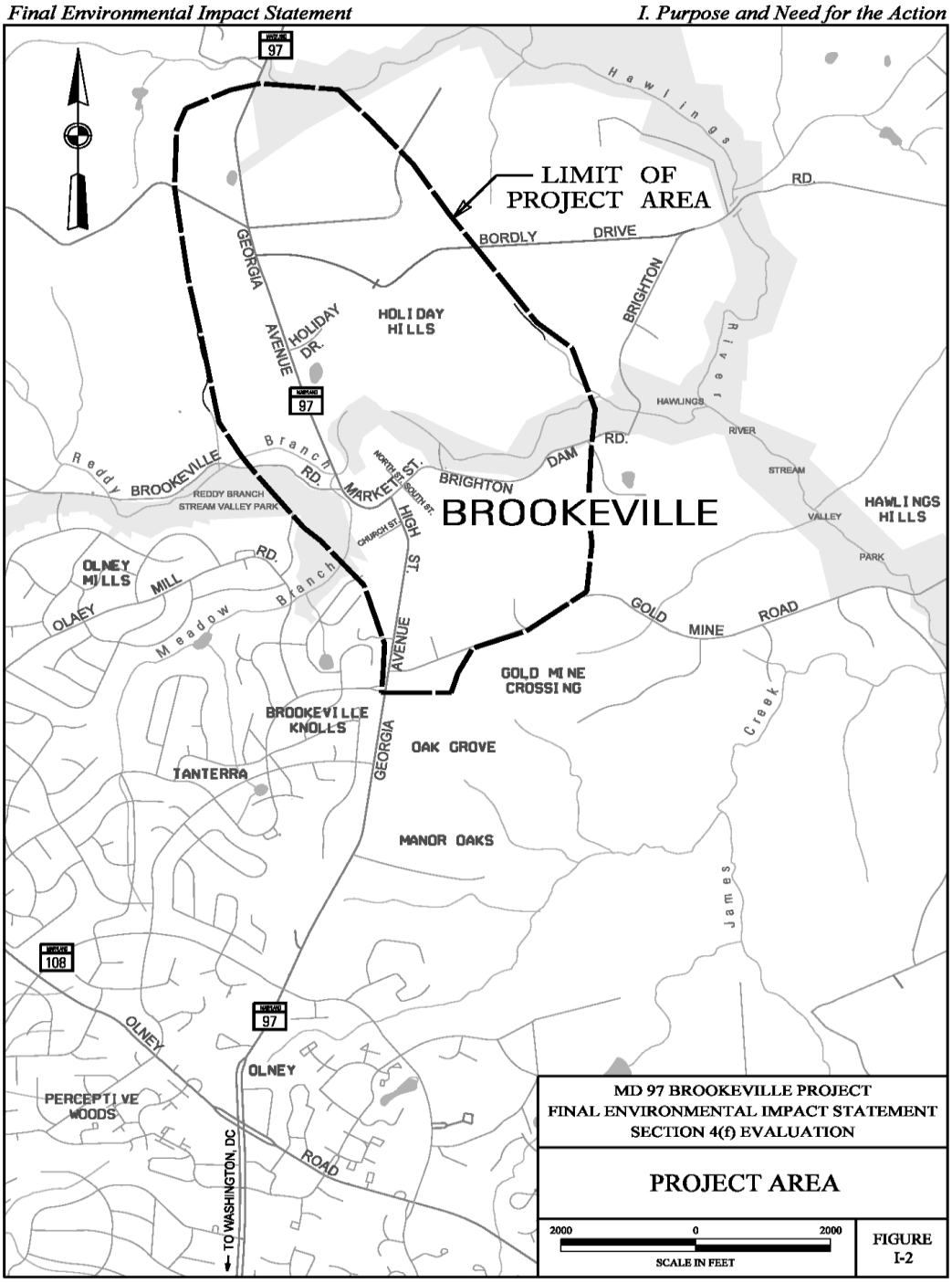
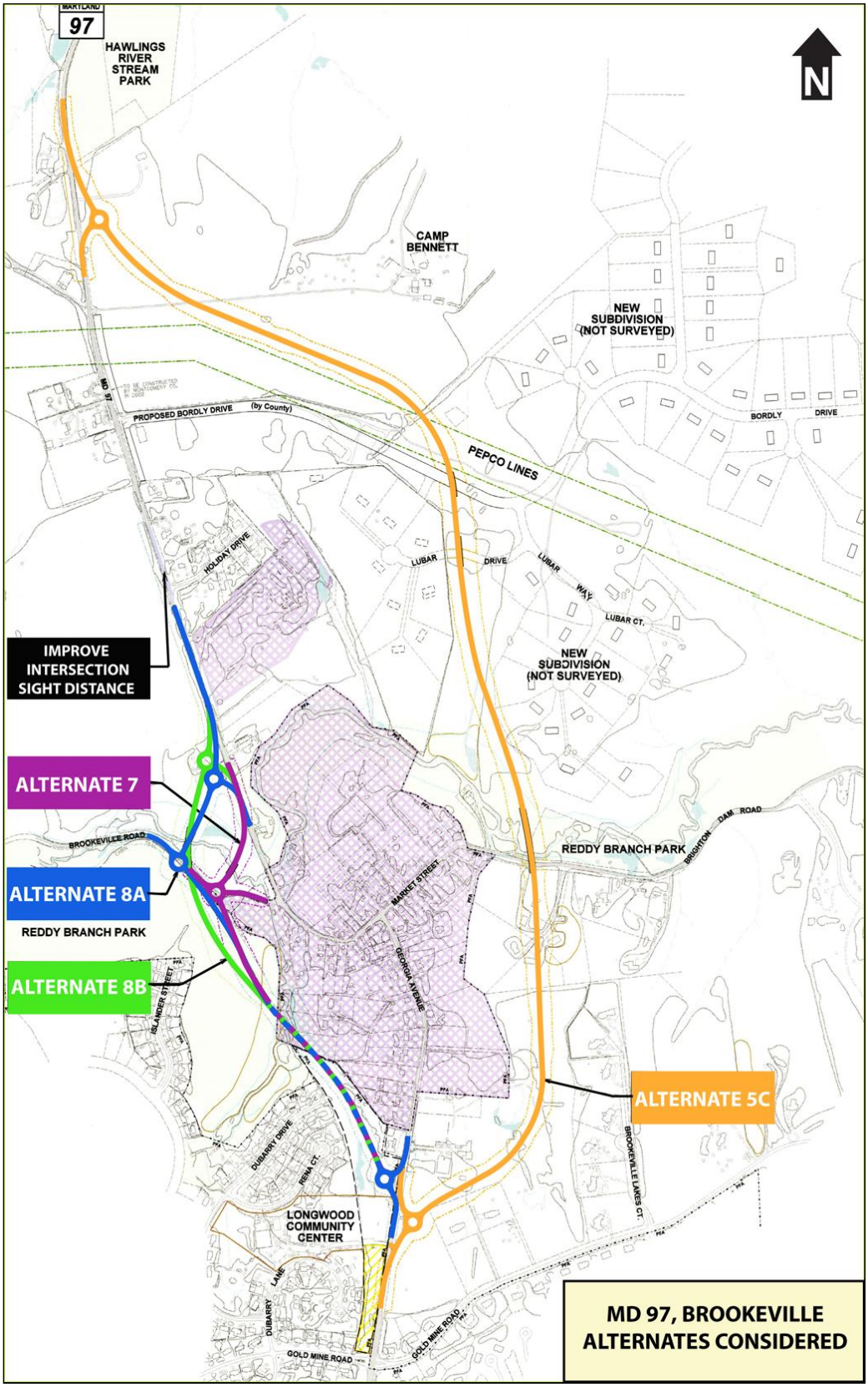
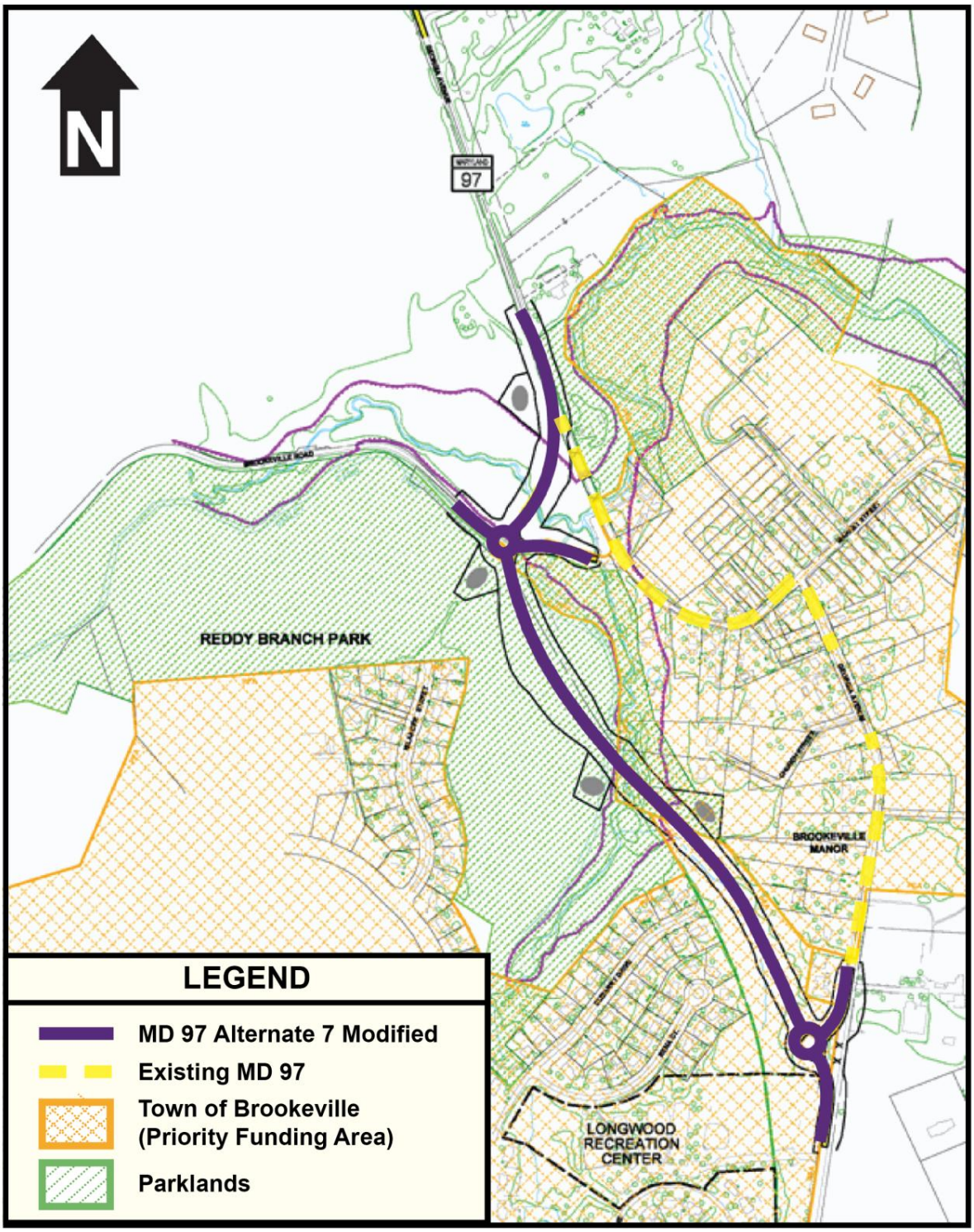


Figure 2: FEIS Alternatives Retained for Detailed Study



MD 97, BROOKEVILLE ALTERNATE 7 MODIFIED



and make the right turn from Market Street to High Street without either crossing over the centerline, or encroaching upon privately owned historic property.
Within the Town of Brookeville, MD 97 is part of a T-intersection at Market Street and High Street. MD 97 forms the western and southern legs of this intersection while Market Street/Brighton Dam Road forms the eastern leg. Northbound MD 97 traffic is controlled at the intersection by a stop sign which allows traffic to enter the intersection from the minor road (Market Street), at the expense of the major road (MD 97). During the evening peak hour, queues (lines) up to 25 vehicles have been observed on northbound High Street waiting to turn left at Market Street.

The crash history dates from January 2008 to December 2009 reveal a total of 16 crashes with no fatalities reported in the project area (MD 97, from Gold Mine Road to Holiday Drive). The study area rate for crashes is 51.5 accidents per 200 million vehicle miles of travel. Although the rate is lower than the state average rate of 148.7 for all similarly designed highways maintained by the State, this lower rate can primarily be attributed to the radical decrease in speed required to pass through the center of town.

Of the 16 reported crashes, seven were fixed object collisions, with five of these being along Church Street to north of Market Street. This fixed object crash rate is higher than the statewide average and although not significantly elevated, reflects the dangerous conditions created by limited sight distance, need for rapid deceleration, and sharp turns. The other significantly high categories were three heavy truck related accidents which represent almost 19% of all crashes.

Final Environmental Impact Statement (FEIS) & Summary of Environmental Impacts

The Project Planning Study was placed on hold after Maryland's Smart Growth Legislation was passed in 1997, because there were no viable alternatives within the PFA. The study was reinitiated in 2000 with 4 build alternatives which were studied in detail. The alternatives improving existing MD 97 within the Town and PFA were not selected for detailed study, because they would result in a significant adverse effect on historic Brookeville. At the end the Alternative 7 Modified, a less than 1 mile and 2-lane new road with limited capacity expansion, as selected for the Project.

A FEIS was prepared, resulting in a Record of Decision and Location Approval granted by the FHWA in October 2004. Table 1 shows a summary of impacts by Alternative. Alternative 7 Modified is located on the west side of Brookeville and proposes a two-lane roadway, which departs from existing MD 97 south of the Longwood Community Center. It passes through a roundabout located near the northern edge of the community center, providing access to existing MD 97 and the Town of Brookeville. The alignment then continues in a northwesterly direction through Montgomery County and Maryland-National Capital Park and Planning Commission (M-NCPPC) property, which is reserved for transportation use, and through the Reddy Branch Park. It intersects Brookeville Road west of existing MD 97 at a roundabout, and then continues in a northeasterly direction. The roundabout at Brookeville Road has four legs, two legs provide for the north and south movements and two legs provide for the east and west movements. The proposed road ties into existing MD 97 north of Brookeville Road. The portion of existing MD 97 between the new connection and the Reddy Branch Park would be closed off to vehicular traffic.

The design speed will be 40 mph with an open typical section consisting of two travel lanes and shoulders. The proposed road includes roundabouts at the northern and southern termini, which will help limit traffic capacity and serve as safe traffic calming points. As the project advances through the design phase, additional evaluation will be required to address and incorporate the new Maryland Department of Environment (MDE) stormwater regulations into the project design.

Table 1: FEIS Summary of Impacts by Alternative

ENVIRONMENTAL IMPACT SUMMARY

FEATURE	ALTERNATES EVALUATED IN THE FEIS					
	Alternate 1 No-Build	Alternate 5C East Bypass [5]	Alternate 7 West Bypass	Alternate7 Modified West Bypass	Alternate 8A At-Grade West Bypass	Alternate 8B Grade Separated West Bypass
		Open Section	Open Section	Open Section	Open Section	Open Section
Length (miles) [1]	0	2.12	0.72	0.72	0.95	0.95
Cost (millions-2001 dollars)	0	$ 34.2	$ 12.2	Approximately $12.5 (assuming retaining wall along Brookeville Road	$ 13.7	$ 18.0
Socio-Economic Resources						
Residential Relocations (no.)	0	5	0	0	0	0
Business Displacements (no.)	0	1	0	0	0	0
Affected Properties (no.)	0	26	11	11	14	14
Comprehensive Plan Compatibility	No	No	Yes	Yes	Yes	Yes
Recreational Facilities (acres)	0	4.55	6.65	5.62	7.22	7.64
Historic District (acres)	0	0	2.24 [3, 4]	1.66 [3, 4]	1.84 [3, 4]	2.00 [3, 4]
Section 106 Adverse Effects	Yes	Yes	Yes	Yes	Yes	Yes
Total Section 4(f) [6] (acres)	0	4.55 [2 parks]	6.65 [1 park]	5.62 [1 park]	7.22 [1 park]	7.64 [1 park]
Impacted Waste Sites (no.)	0	0	1	1	2	1
Air Quality (SIP Conformance)	0	Yes	Yes	Yes	Yes	Yes
Noise Receptors (no.) [2]	0	8	10	10	10	10
Natural Resources						
Prime Farmland Soils (acres)	0	25.88	4.84	4.53	5.50	5.34
Statewide Important Soils (acres)	0	5.63	1.79	1.63	7.50	8.51
Wetlands (acres)	0	0.21	0.13	0.12	0.11	0.17
Streams [7] (linear feet)	0	482.12	1169.2	1211.8	1067.32	1191.72
FEMA 100-year Floodplains (acres)	0	2.59	3.34	3.22	3.03	3.34
Forest Cover (acres)	0	11.50	10.47	9.02	13.53	14.2

NOTES:

1 Alignment length does not include frontage, access roads and exclude additional length for traffic roundabouts.
2 Noise levels 66 dBA or greater or those which increase 10 dBA or more over ambient levels.
3 Included within Reddy Branch Stream Valley Park Acreages.
4 One park property, two locations.
5 For this alternate, impacts do not include right-of-way needed for storm water management. All other alternates include right-of-way impacts for storm water management ponds.
6 Includes overlapping acreage of the Brookeville Historic District within impacted Public Parkland.
7 Based on re-evaluation, the impact numbers decreased from the Selected Alternate and Conceptual Mitigation Package.

Natural Environment

Less than one-quarter acre of wetlands would be impacted with Alternative 7 Modified. The Selected Alternative 7 Modified would cross two streams, Meadow Branch and Reddy Branch, with impacts of approximately 1,211.8 linear feet. These streams in the Hawlings River sub-watershed and the Patuxent River watershed are Use IV waters (Recreational Trout) and may require an in-stream work restriction from March 1 to May 31. SHA's Selected Alternative would impact approximately 3.2 acres of floodplain. The proposed MD 97 structure over Reddy Branch will be designed to accommodate wildlife passage along Reddy Branch by providing an eight-foot vertical and 25-foot horizontal clearance along one side of the stream as agreed to by the agencies. SHA will evaluate the north side passage option during final design when topographic survey of the area is completed. Conceptual design of the Meadow Branch crossing

consists of a box culvert in accordance with the MDE design criteria. Design of the Reddy Branch Bridge and Meadow Branch culvert will be coordinated with the federal and state resource agencies as part of the permitting requirements

Publicly Owned Parks and Recreation Areas

SHA's Selected Alternative would impact 5.6 acres of Reddy Branch Stream Valley Park, compared to 5.3 acres for Alternative 7. SHA met with M-NCPPC on May 5, 2003 to discuss mitigation within Reddy Branch Stream Valley Park. Mitigation for both the temporary and Section 4(f) permanent use of public parkland was addressed in the FEIS. The Section 4(f) Evaluation includes M-NCPPC's signed concurrence of parkland mitigation as presented in the SHA correspondence dated November 25, 2003.

Historic Resources

The Town of Brookeville is a historically significant 19th century crossroads village in Upper Montgomery County, Maryland, approximately 18 miles north of the District of Columbia. The Town was founded in 1794 by Richard Thomas, on land inherited by his wife Deborah Brooke from her father Roger Brooke, IV, son of James Brooke, an influential Quaker settler and the largest land holder in what was to become Montgomery County. In 1979, the entire town was listed on the National Register of Historic Places as a historic district and includes many individually significant historic houses located along the two main streets (Market and High), in close proximity to existing MD 97.

The town is significant for its architecture and as an early commercial service center for the surrounding agricultural areas. For many it is best known, however, for briefly serving as the nation's Capital during the war of 1812 as President James Madison fled Washington, D.C. Brookeville is unique for having largely retained this historic character, and is distinguished from modern development to the south by its curving, tree-lined streets lined with buildings with limited set-backs. Although the road has become a major thoroughfare, the road and right-of-way have been virtually unaltered from their original layout. Brookeville residents maintain that increasing traffic noise, vibration, and congestion are undermining the town's historic character and negatively affecting their quality of life. The proposed bypass project has been designed to help address the effect of increasing traffic volumes on the historic Town of Brookeville, by improving safety and traffic operations on existing MD 97 (Georgia Avenue), and ultimately preserving the historic character of the town. Specifically, because truck traffic represents 12% of the traffic, noise and vibration pose negative impacts to the homes.

Archeological Resources

The SHA Selected Alternative 7 Modified will have an adverse effect on the National Register eligible Newlin/Downs Mill Complex (Site 18MO368), which is significant both individually and as a contributing resource to the Brookeville Historic District. The SHA's Selected Alternative was shifted to the west by 30-40 feet in order to minimize impacts to the site. Approximately 700 linear feet of the millrace system would be affected, but not the identified features and significant archeological deposits associated with the mill and miller's house. A memorandum of agreement between SHA, FHWA, and the MHT was executed to address the

adverse effects of the project on the Brookeville Historic District and identifies measures to mitigate these effects.

Land Use

No displacements would occur under SHA's Selected Alternative. No land use changes are anticipated as the result of the project. Land use *(Figure 4)* within the project area includes a mixed use of residential, commercial, parkland, forest, croplands, and open grasslands. Residential areas include the historic Town of Brookeville, the Holiday Drive subdivision, and numerous individual homes throughout the project area. Commercial development in the project area consists of six small businesses located on Georgia Avenue, one located on Brighton Dam Road, and one located on Bordly Drive. The Reddy Branch Stream Valley Park covers a significant percentage of the project area and is located along either side of Reddy Branch. The park is predominantly forested. Within the Town of Brookeville, there are two land use categories: Historic Village Residential and Historic Village Commercial.

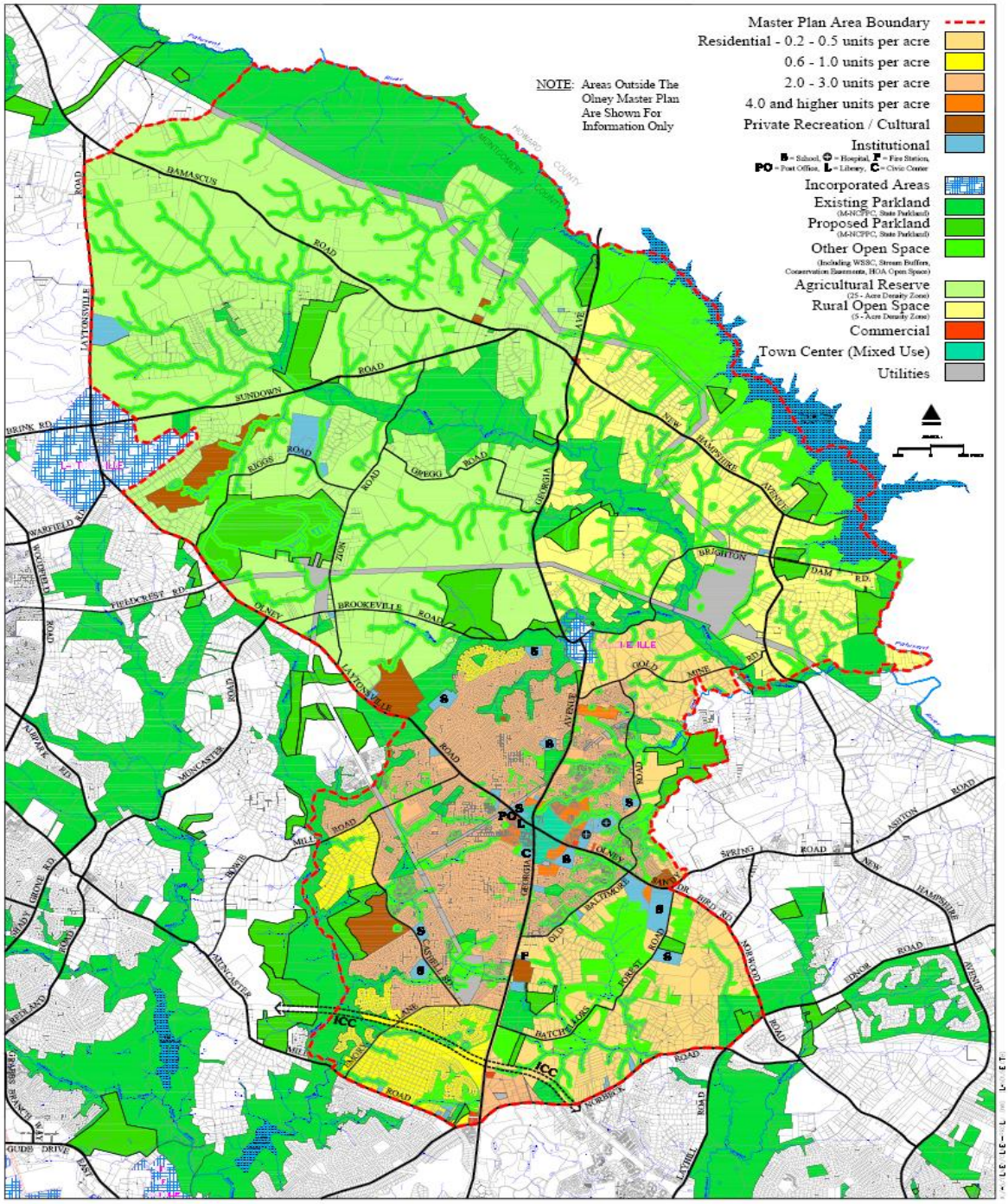
The M-NCPPC has adopted a *Functional Master Plan for the Preservation of Agriculture and Rural Open Space* (M-NCPPC, 1980, updated 1986). The plan recommends techniques to protect and preserve farmland and rural open space. The project area is located within two agricultural protection areas of the county. The project area west of the existing MD 97 is within the County's Agricultural Reserve Zone with one dwelling unit per 25 acres of farmland. The project area east of existing MD 97 is located within the Rural Cluster Zone. In this zone, overall density is one dwelling unit per five acres and the tract is 100 acres in size. The number of permitted dwelling units is 20. The cluster option would allow these 20 units to be grouped on lots as small as two acres on approximately 40 percent of the parcel, or 40 acres.

Future land use within the project limits is consistent with the existing land use conditions, in that growth is limited to areas adjoining ongoing development and not within the extensive Reddy Branch Stream Valley Park. The Town of Brookeville Zoning Ordinance is designed to preserve and protect its historic heritage, and allow reasonable flexibility for new development, changes in existing structure, and current and future uses throughout the Town in a manner consistent with the goals and objectives of the Brookeville Comprehensive Plan, adopted by the Town of Brookeville Commissioners on September 17, 2010.

The relocation of MD 97 is identified in the 1980 Olney Master Plan as well as the 2005 Olney Master Plan that is prepared by the M-NCPPC. Because portions of SHA's Selected Alternative would be located outside of the county defined Priority Funding Areas (PFA), the SHA must receive the BPW approval of this project as a special exception before the project can enter final design.

Figure 4: MNCPPC Olney Master Plan Land Use Map

Land Use



OLNEY MASTER PLAN

Attachments

A. Testimony from Town of Brookeville, October, 2011
B. Original Smart Growth Criteria from Governor Glendening, March 5, 1999
C. Montgomery County Council Reply – March 9, 1999
D. County Council for Montgomery County Maryland: Resolution #:16-376 - Adopted 13, 2007
E. Letter from SHA to Montgomery County presenting the four conditions - April 9, 2010
F. Letter from Montgomery County accepting all four conditions - April 30, 2010
G. Signed Montgomery County/SHA Design & Right-of-way MOU - November 7, 2012

Attachment A: Testimony from Town of Brookeville, October, 2011

http://www.townofbrookevillemd.org/testimony10_01.html

TESTIMONY
MD 97
BROOKEVILLE TRANSPORTATION STUDY
LOCATION/DESIGN PUBLIC HEARING
BY
RICHARD S. ALLAN
PRESIDENT OF COMMISSIONERS
TOWN OF BROOKEVILLE
OCTOBER 3, 2001

Good evening. My name is Richard S. Allan. I am testifying here tonight in my capacity as President of Commissioners for the Town of Brookeville.

The public record with regard to the Brookeville Bypass Bypass is a lengthy one. The Draft Environmental Impact Statement that has been prepared by the Federal Highway Administration and the Maryland State Highway Administration as a required part of the Bypass study process notes Bypass discussions as far back as the 1960's. Those of us who have had immediate experience with the Bypass project as public officials certainly are acutely aware of the correspondence, town meetings, focus groups, special studies, consultants, bus and walking tours, interviews, videos, telephone calls, letters-to-the-editor, and in-your-face lobbying that has been a significant part of our work and lives for at least, in my case, almost the past twenty years. This location/design public hearing represents a major affirmation in my view of the importance of the values of perseverance and keeping on message.

The Town of Brookeville's message here tonight simply and succinctly put is build the Bypass now, locate it west of town, and take all due care to use whatever necessary resources are reasonably available to mitigate the socio-economic, cultural, and natural environmental impacts that might result. The bypass is crucial to the future of the town and its residents. There can be no argument about this fundamental statement of fact. Without the bypass, the Town of Brookeville will be utterly consumed by commuter and truck traffic gridlock with all its safety and health implications. As a viable community, Brookeville will wither away like a fallen leaf. We therefore strongly urge the State Highway Administrator, the State Secretary of Transportation, and the Governor to do everything within their collective means to expedite this project so that we may proceed with actual construction in the shortest possible timeframe.

I would like to briefly outline our views with respect to our recommendation for a Bypass alternate. The Town Commissioners believe that the Alternate 7 alignment represents the preferred placement or location for the Bypass. We have walked this particular alignment several times with State Highway Administration staff, local residents and representatives of citizen and homeowner associations, elected officials and their staff. We have asked many questions about how it would fit and what it would look like from people's homes, what it might sound like, how it would affect the Longwood ballfield, whether it could be designed to minimize its impact on the woodland and wetlands it would traverse. We have asked to what extent the roadway could be designed to accommodate and integrate the historic Newlin Mill Race and the proposed trailways to the Oakley Cabin with the Brookeville Historic District and its historic and natural assets, including the Reddy Branch Stream Valley Park. We have explored the various roundabout configurations and how they would affect traffic flow, especially east to west. The answers we received to our questions and from our discussions have provided the underlying reasons for our conclusion that Alternate 7 should be recommended to the State Highway Administrator.

We believe that alternate 7 would be least intrusive to residents immediately east and west of the project. I would note at this point a very unusual fact, almost an anomaly, that Town residents whose properties would be adjacent to Alternate 7 nonetheless have been supportive of

building a Bypass from the very beginning. That isn't to imply that if they had their druthers, they wouldn't want the road somewhere else. They have understood realistically, however, that the importance of the project to the wider community transcended any individual concerns about such a road, even one near their own homes. I think that is really what community is all about and their support is commendable.

The Commissioners are satisfied that Alternate 7 can be designed and engineered and enhanced by various mitigation techniques to keep noise and visual impacts at a generally acceptable level to residents on both sides of the project. With regard to concerns raised by the Maryland Historic Trust on Historic District impact, we believe that these too can be reasonably mitigated. The Town itself sought historic preservation protections afforded under the Montgomery County Historic Preservation Ordinance the Town Commissioners enacted in 1985. We sought full inclusion of the Town's corporate boundaries in the resultant Historic District. This action supplemented the voluntary citizen-led efforts in 1979 to have Brookeville designated on the National Register of Historic Places. We did this in full recognition of the fact that we also as a matter of policy supported the western Bypass alternate in both our Comprehensive Master Plan and the Olney Master Plan. We don't see any irresolvable issues here.

The Commissioners also would specifically note their support of a roundabout at grade at Brookeville Road that would ensure smooth east-west and of course north-west traffic flow. We believe this would not have any particular negative impact on Brookeville Road. While Brookeville Road is an attractive rustic road, it has been and still is to some extent a working farm road. The subject roundabout would not make it less so. As Montgomery County plans to commence construction of a Bordly Drive extension to Rt. 97 during the summer of 2001, it is reasonable to speculate that most east- west traffic that now flows through Brookeville will opt to take the extension to Rt. 97 and ultimately the Brookeville Road roundabout south or west.

The Commissioners believe that it is vital that Alternate 7 be designed to maximize its potential to take advantage of, so to speak, to the degree possible, its location in park settings [although the úparkô land was set aside years earlier for use as a transportation corridor] in the midst of historic structures, trails, and archaeological remnants. We believe that through creative design and collaboration among all the different interests and agencies that a road can be constructed that will synergistically and positively impact on its surroundings and not just act as a one-dimensional conduit for vehicles.

Finally, I would be remiss if I didn't acknowledge the truly professional SHA project staff it has been our pleasure to work with over these many years. All have been a credit to the SHA and public employees anywhere.

Thank you very much for this opportunity to testify.

Back to Build The Bypass!

Attachment B: Original Smart Growth Criteria from Governor Glendening, March 5, 1999

ATE OF MARYLAND
ICE OF THE GOVERNOR

PARRIS N. GLENDENIN
GOVERNO

ANNAPOLIS OFFIC
STATE HOU
100 STATE CIRCL
ANNAPOLIS, MARYLAND 214
(410) 974-39
(TOLL FREE) 1-800-811-8

WASHINGTON OFFIC
SUITE 33
444 NORTH CAPITOL STREET, N.W.
WASHINGTON, D.C. 2000
(202) 624-14

TDD (410) 333-70

March 5, 1999

The Honorable Isiah Leggett
President
Montgomery County Council
100 Maryland Avenue
Rockville MD 20850

Dear Ike:

As a follow up to our conversation last week, I appreciate your desire to find a positive solution to the Brookeville bypass issue. Your recognition of the statewide implication of my decisions about the bypass and the need to control sprawl development across County lines is appreciated.

The ideas we discussed about Montgomery County being able to guarantee that no sprawl development would result from the construction of the bypass speak directly to the real policy issues at stake. We must curtail the unbridled sprawl that has chewed up fertile rural areas and valuable open space, harmed our environment and damaged our quality of life.

Following up on our discussion, I have developed a proposal that could allow the future construction of the bypass without encouraging sprawl development north of Brookeville. If the County could implement the four items listed below, we would meet the anti-sprawl objectives and requirements of the Smart Growth legislation:

(1) Under local ordinance, the County is to adopt through appropriate enforceable action restrictions that will prevent this bypass from allowing sprawl development. Any capacity a bypass might add to the road network cannot be used to allow development outside the current boundaries of the town of Brookeville.

(2) Permanent easement to be held by an entity such as the Maryland Environmental Trust must border the entire roadway to ensure no future access, widening or connection to the bypass is possible.

(3) If for any reason these controls fail, Montgomery County will reimburse the State for the full cost of the bypass.

(4) Montgomery County, the Maryland Department of Transportation and Howard County government will work out a safe traffic calming point north of the bypass which limits traffic capacity to the current capacity of MD 97 through Brookeville.

Page Two

These four actions will enhance our anti-sprawl effort while allowing the bypass under the Smart Growth law. I realize it will take some time for the County Council to consider these points and implement such ideas. With your leadership, I am confident success will be achieved rapidly. At that point, I could put the bypass back into the Consolidated Transportation Program as it was last year and support a waiver of the funding prohibition. Until these four conditions are assured, I cannot consider funding even the planning monies for the bypass.

Let me reaffirm my commitment to implementing our Smart Growth initiatives. Our children and grandchildren deserve to inherit a State where rural areas and open space are preserved, the environment is healthy, and thriving communities enjoy their quality of life. This is my vision for Maryland

Ike, your willingness to work cooperatively to achieve our shared policy goal of limiting sprawl, and your practical suggestions on how to achieve our goal is very much appreciated. I look forward to your reply.

Sincerely,

Parris N. Glendening
Governor

Attachment C: Montgomery County Council Reply – March 9, 1999

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

March 9, 1999

The Honorable Parris N. Glendening
Governor, State of Maryland
State House
Annapolis, MD 21401

Dear Governor Glendening:

I am writing to express the Montgomery County Council's appreciation for your very favorable response to our request for reconsideration of the Brookeville Bypass study. We were very pleased to receive your March 5, 1999 letter outlining this proposal. The Council unanimously concurs in principle with the conditions you have identified. We are in strong agreement with your anti-sprawl objectives as required in the Smart Growth legislation and want to work with you to accomplish these important goals.

Our staff will proceed immediately to coordinate the details of implementation with officials from the Town of Brookeville, the Maryland Department of Transportation, the County Department of Public Works and Transportation, and the Maryland-National Capital Park and Planning Commission. Our staffs, working together over the next two weeks, will determine the specific steps needed to implement these conditions. Our hope is that at that time the Brookeville Bypass project planning study would proceed.

Once again, thank you for your thoughtful review of this matter. I believe we have the outline of an agreement that will forward our common objectives of discouraging sprawl while promoting the livability and safety of residents in the Town of Brookeville.

Sincerely,

Isiah Leggett
Council President

Copies: The Honorable Kumar Barve, Chair, Montgomery County House Delegation
The Honorable Ida Ruben, Chair, Montgomery County Senate Delegation
The Honorable Douglas Duncan, Montgomery County Executive
Mr. John Porcari, Secretary, Maryland Department of Transportation
Mr. William Hussmann, Chair, Montgomery County Planning Board

Attachment D: County Council for Montgomery County Maryland:
Resolution No.: 16-376 - Adopted 13, 2007

development capacity, it is prudent to approach the additional capacity from these systems conservatively, particularly with respect to the timing of capacity and the amount of the capacity recognized. Therefore, the capacity from any operable segment of any of these transit systems must not be counted until that segment is fully funded in the first 4 years of the County or State capital improvements program.

To discourage sprawl development, no capacity for new development may be counted outside the boundary of the Town of Brookeville as of March 9, 1999, as a result of relocating MD 97 around Brookeville.

Planning staff must keep a record of all previously approved preliminary plans and other data about the status of development projects, and must continuously update the pipeline number of approved preliminary plans. The updated pipeline must be the basis for the annual PAMR.

TP3 Mitigation for Applications in Policy Areas with Inadequate PAMR

The Planning Board, after considering any recommendation of the County Executive, may approve a preliminary plan application in a policy area found by Policy Area Mobility Review to be acceptable with full mitigation or acceptable with partial mitigation, as provided in this section. In approving plans in acceptable with full mitigation policy areas, the Board should ensure that the average level of service for the relevant policy area is not adversely affected. Except as otherwise expressly stated in **TP4**, the same level of service criteria must be used in evaluating an application under this section.

The following options to mitigate the traffic impacts of development approved in a preliminary plan may be used, individually or in combination:

- *Trip Mitigation.* An applicant may sign a binding Trip Mitigation Agreement under which up to 100% of the projected peak hour vehicle trips would be removed from the roadway by using Transportation Demand Management techniques to reduce trips generated by the applicant's development or by other sites, so that an applicant could still generate a certain number of trips if the mitigation program removes an equal number of trips from other sites in the same policy area.
- *Trip Reduction by Providing Non-Auto Facilities.* An applicant may mitigate a limited number of trips by providing non-auto facilities that would make alternative modes of transit, walking, and bicycling safer and more attractive. The Planning Board must specify in its *LATR Guidelines* the allowable actions and number of trips associated with them, as well as the maximum number of trip credits allowable for each action, which will partly depend on the congestion standards for the policy area where the proposed development is located.
- *Adding Roadway Capacity.* An applicant may mitigate trips by building link-based roadway network capacity. The conversion rate between vehicle trips and lane miles of roadway is shown in Table 2. The values in that table are derived from regional estimates of vehicle trip length by trip purposes and uniform per-lane capacities for roadway functional classes that should be applied countywide. Several conditions apply:
    - The number of lane miles in Table 2 reflects total capacity provided, so that if an applicant widens a roadway by one lane in each direction, the total minimum project length would be half the length listed in the table.

Attachment E: Letter from SHA to Montgomery County presenting the four conditions – (April 9, 2010)

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*

SHA
State Highway Administration
MARYLAND DEPARTMENT OF TRANSPORTATION

Beverley K. Swaim-Staley, *Secretary*
Neil J. Pedersen, *Administrator*

April 9, 2010

Arthur Holmes, Director
Montgomery County Department of Transportation
5th Floor
101 Monroe Street
Rockville MD 20850-2540

Dear ~~Mr. Holmes~~: Art

The Maryland State Highway Administration (SHA) appreciates Montgomery County's contribution of $10 million beginning FY 2011, for the design and right-of-way acquisition of the MD 97 Brookeville Bypass project, especially during these tough economic times. In order to advance this project, SHA will seek the Maryland Board of Public Works' (BPW) approval for the MD 97 Brookeville Bypass as a "Special Exception," as required under the Smart Growth Act of 1997.

According to our records, on March 5, 1999, Governor Parris Glendening sent a letter to Montgomery County Council President, Isiah Leggett, outlining four criteria intended to mitigate the potential effects of the proposed MD 97 Brookeville Bypass project. The County responded favorably to these criteria. Recently, SHA, in coordination with the Maryland Department of Planning, reviewed the original criteria and now recommends a change to Criterion 2. That criterion had originally read, "*Permanent easement to be held by an entity such as the MD Environmental Trust must border the entire roadway to ensure no future access, widening, or connection to the bypass is possible.*" We recommend that the wording be modified to identify SHA as that agency. This change would create a stronger protective "easement," by designating a right-of-way through highway, for the entire bypass, that is held by a single state agency. Below are the original criteria and associated actions, as well as the revised version of Criterion 2:

1. Under local ordinance, the County is to adopt through appropriate enforceable action restrictions that will prevent this bypass from allowing sprawl development. Any capacity a bypass might add to the road network cannot be used to allow development outside the current boundaries of the Town of Brookeville.

   Action: An amendment to the Annual Growth Policy was adopted on April 16, 1999 by the Montgomery County Council. Subsequently, the adopted 2007-2008 Growth Policy (resolution number 16-376) also reaffirms this action by clearly stating: "To discourage sprawl development, no capacity for new development may be counted outside the boundary of the Town of Brookeville as of March 9, 1999, as result of relocating MD 97 around Brookeville."

My telephone number/toll-free number is 410-545-0400 or 1-800-206-0770
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • *Phone* 410.545.0300 • www.sha.maryland.gov

Mr. Arthur Holmes
Page Two

2. **1999 Version:** Permanent easement to be held by an entity such as the Maryland Environmental Trust must border the entire roadway to ensure no future access, widening or connection to the bypass is possible.

   New: The SHA will designate right-of-way of through highway for the entire new road to help ensure that no future access, widening, or connection to the new road is possible. In addition, the SHA will note on the plat a reference to the eventual agreement and the intent to disallow access.

   Action: This will ensure that no future access, widening, or connection to the bypass is possible.

3. If for any reason these controls fail, Montgomery County will reimburse the State for the full cost of the bypass.*

   Action: This serves to further ensure that rural areas and open space are preserved, the environment is healthy, and thriving communities enjoy their quality of life.

   *To date, SHA has spent approximately $2 million on project planning. Remaining unfunded costs are approximately $6.5 million for Right-of-Way, $3.5 million for engineering, and $21 million for construction. Of this amount, the County is proposing to advance $10 million in FY 11.

4. Montgomery County, the Maryland Department of Transportation and Howard County government will work out a safe traffic calming point north of the bypass which limits traffic capacity to the current capacity of MD 97 through Brookeville.

   Action: Roundabouts will be constructed at the northern and southern termini of the new road to provide traffic calming.

If Montgomery County agrees with the suggested changes to Criterion 2, we would appreciate receiving a formal letter of concurrence. In the coming weeks, SHA also will draft a memorandum of understanding that formalizes these conditions.

Again, thank you for partnering with the State of Maryland to move the Brookeville project forward. If you have any questions, please do not hesitate to contact Mr. Roy Gothie, Assistant Regional Planner, at 410-545-5654, toll-free 1-888 204-4828 or via email at rgothie@sha.state.md.us.

Sincerely,

Neil J. Pedersen

Neil J. Pedersen
Administrator

cc: Mr. Roy Gothie, Assistant Regional Planner, SHA
Mr. Gregory I. Slater, Director of Planning and Preliminary Engineering, SHA

Attachment F: Letter from Montgomery County accepting all four conditions - April 30, 2010

DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

April 30, 2010

Mr. Neil Pedersen, Administrator
Maryland State Highway Administration
707 North Calvert Street,
Baltimore, Maryland 21202

Dear Mr. Pedersen:

Thank you for your letter of April 9, 2010, regarding the Brookeville Bypass. In particular, your letter contained a revised version of one code of the four criteria pertaining to the Brookeville Bypass. We have reviewed the recommended changes to Criterion 2 contained in the letter, and concur with them. We look forward to working with you on the Memorandum of Understanding (MOU) that will formalize all four of the criteria related to the Brookeville Bypass project.

Please contact me, at 240-777-7168, or Edgar Gonzalez, Deputy Director for Transportation Policy, at 240-777-7185, for further coordination on the MOU. Your ongoing assistance with this project is appreciated.

Sincerely,

Arthur Holmes, Jr.
Director

AH:lh

cc: Edgar Gonzalez, MCDOT
Gregory Slater, MSHA

Office of the Director

101 Monroe Street, 10th Floor • Rockville, Maryland 20850 • 240-777-7170 • 240-777-7178 FAX
www.montgomerycountymd.gov
Located one block west of the Rockville Metro Station

Attachment G: Signed Montgomery County/SHA Design & Right-of-way MOU - 11/7/2012

P00 739 C.1

MEMORANDUM OF UNDERSTANDING

for the

MD 97 / BROOKEVILLE PROJECT

by and between

Montgomery County

and

Maryland State Highway Administration

THIS MEMORANDUM OF UNDERSTANDING (MOU), executed in quadruplicate, made and entered into this 7th day of November, 2012, by and between State Highway Administration of the Maryland Department of Transportation acting for and on behalf of the State of Maryland, hereinafter called **"SHA"**, and Montgomery County, Maryland, a body corporate and politic, hereinafter called the **"COUNTY"**.

WHEREAS, the Town of Brookeville is located in northern Montgomery County and is traversed by MD 97; and

WHEREAS, SHA and the COUNTY desire to deter commuter traffic through the Town of Brookeville; and

WHEREAS, SHA and the COUNTY have agreed on an alignment for the construction of a relocation of MD 97 to the west of Brookeville to enhance safety and protect the historic Town of Brookeville, hereinafter called the **"PROJECT"**; and

WHEREAS, in order to comply with the State of Maryland's Smart Growth and Neighborhood Conservation Act (**"Smart Growth Act"**), SHA and the COUNTY have agreed to certain conditions (**"CONDITIONS"**) for the construction of the PROJECT; and

WHEREAS, the COUNTY has agreed to fund the costs of design and right-of-way acquisition of the PROJECT in the amount of Ten Million Dollars ($10,000,000), hereinafter called the **"COUNTY Funding"**; and

WHEREAS, SHA has agreed to design and acquire all of the necessary right-of-way for the PROJECT up to the amount of the COUNTY Funding; and

WHEREAS, the COUNTY has agreed to dedicate to SHA any portion of COUNTY owned land required for the PROJECT separate and apart from the COUNTY Funding; and

WHEREAS, SHA and the COUNTY agree the PROJECT will be a benefit to all parties of this MOU and will promote the health, safety and general welfare of the citizens of the State and COUNTY.

NOW THEREFORE, THIS MEMORANDUM OF UNDERSTANDING
WITNESSETH: that for and in consideration of the mutual covenants and promises between the parties hereto, and in further consideration of the sum of One Dollar ($1.00) paid to each party by the other, the adequacy and receipt of which is hereby acknowledged, the parties hereto agree as follows:

MOU FINAL
2012-10-12

1

I. CONDITIONS

A. In a letter addressed to then-Montgomery County Council President, Isiah Leggett, dated March 5, 1999, then-Governor Parris N. Glendening set forth the CONDITIONS under which the PROJECT could be constructed to meet the objectives of the Smart Growth Act. The March 5, 1999 letter is attached hereto and incorporated herein as Attachment 1.

B. The CONDITIONS have been, or shall be, met by the following:

1. On November 13, 2007, the COUNTY adopted its 2007-2009 Growth Policy **("Growth Policy")** (Resolution No: 16-376) specifically stating that, "To discourage sprawl development, no capacity for new development may be counted outside the boundary of the Town of Brookeville as of March 9, 1999, as a result of relocating MD 97 around Brookeville."

2. SHA shall designate the right-of-way necessary for the PROJECT as "Right-of-Way of Through Highway" (denial of vehicular access) for the entire limits of the PROJECT to ensure no future access, widening or connection to the PROJECT. SHA shall add notes to the plats referencing the special condition of the Growth Policy and this MOU requiring the Right-of-Way Line of Through Highway.

3. SHA shall place a traffic calming roundabout at the northern end of the PROJECT.

II. DESIGN PHASE

A. SHA Responsibility

1. With respect to paragraphs 2 through 5 of subsection II.A., SHA's responsibility is limited by the amount of COUNTY Funding received.

2. SHA shall perform all activities necessary to design the PROJECT.

3. SHA shall provide the COUNTY with six (6) sets of design plans and estimates for the COUNTY's review and comment at the following stages of design: preliminary, semi-final and final plans.

4. SHA will respond to the County's comments within 20 working days of the State's receipt.

5. In the event the COUNTY desires to revise the PROJECT plans for the PROJECT subsequent to final design plan approval, the COUNTY shall provide such proposed revisions including estimated costs to SHA in writing. SHA may, in its sole discretion, incorporate the COUNTY's revisions into the PROJECT plans provided the revisions comply with SHA's specifications and policies for highway design or SHA may not include the revision, in SHA's discretion. In such case, the SHA will notify the County of the reasons for rejecting the County's revisions within 20 days of receipt.

B. COUNTY Responsibility

1. The COUNTY shall be responsible for reviewing and providing comments to SHA within twenty (20) working days following the COUNTY's receipt of all data, material, and design plans from SHA.

2. In the event the COUNTY desires to revise the PROJECT plans subsequent to SHA'S final design plan approval, the COUNTY shall provide SHA with written notification of the proposed revision including estimated costs. Any additional design costs associated with the COUNTY's revisions shall be paid from the $10 Million funding by the COUNTY.

3. The COUNTY shall provide any and all relevant information and data the COUNTY may have in its possession as may be requested by SHA to assist SHA in the design of the PROJECT.

III. RIGHT-OF-WAY PHASE

A. SHA Responsibility

1. With respect to paragraphs 2 through 4 of subsection III.A., SHA's responsibility is limited by the amount of COUNTY Funding received.

2. In accordance with SHA's standard procedures and all applicable Federal and State laws, SHA shall accomplish all tasks necessary to acquire in SHA's name all rights-of-way and property interests that are not owned by SHA, and that are required for the PROJECT including, but not limited to, payment of the just compensation amount for each property and all property interests, construction easements, drainage easements, rights-of-entry and fee simple property acquisition. These tasks shall include, but not be limited to, title examinations and reports, appraisals, appraisal reviews, plat preparation, negotiation services, possible condemnation proceedings, settlements and deed preparation.

3. SHA shall accomplish all tasks necessary to acquire in SHA's name all rights-of-way and property interests required for any utility relocations necessary for the PROJECT in accordance with SHA's standard utility policy and prior rights.

4. SHA shall designate the necessary right-of-way for the PROJECT as a "Right-of-Way of Through Highway" (denial of vehicular access) for the entire limits of the PROJECT.

B. COUNTY Responsibility

1. In the event any COUNTY owned land, or portion thereof, is required for the PROJECT the COUNTY shall dedicate the necessary land to SHA by Deed of Dedication at no cost to SHA.

IV. PROJECT FUNDING

A. The COUNTY has agreed to provide funding in advance of SHA initiating any work for the costs of design and right-of-way acquisition of the PROJECT in the amount of Ten Million Dollars ($10,000,000) ("COUNTY Funding"). The COUNTY has appropriated the COUNTY Funding in the COUNTY'S State Transportation Participation project, budgeted as follows:

Six Million Five Hundred Thousand Dollars ($6,500,000) for FY 2013 and up to Three Million Five Hundred Thousand Dollars ($3,500,000) for FY 2014.

B. SHA Responsibility

1. To receive the COUNTY Funding for the PROJECT, SHA shall provide invoices to the COUNTY as follows:

a. Within thirty (30) days of execution of this MOU, SHA shall submit an invoice to the COUNTY in the amount of Two Million Dollars ($2,000,000) for FY 2013.

b. After January 1, 2013 (FY2013), SHA shall submit a second invoice to the COUNTY in the amount of Four Million Five Hundred Thousand Dollars ($4,500,000).

d. After July 1, 2013 (FY 2014), SHA shall submit a third invoice to the COUNTY in the amount of One Million Dollars ($1,000,000).

c. The final invoice to the COUNTY will be submitted by SHA with the estimated amount to complete design and right-of-way acquisition portions of the PROJECT. Such amount, which is not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000) will be presented to the COUNTY when SHA has a firm schedule for right of way acquisition of remaining properties, if any; but not earlier than January 1, 2014 (FY 2014).

2. In the event SHA does not receive payment of invoices within thirty (30) days after the COUNTY has received an invoice, SHA will notify the COUNTY of the overdue invoice and provide the COUNTY the opportunity to pay such overdue invoices. If payment of the overdue invoice is not received within thirty (30) days of SHA notification, SHA will discontinue work beyond that for which it has received COUNTY Funding. In no case will SHA continue with any phase of the PROJECT when County Funding has been depleted.

3. The invoices set forth in paragraph 1 will include estimates based on design and acquisition of right-of-way for the PROJECT, including SHA direct salaries, payroll burden and overhead and other direct costs such as consultant services and materials. Once SHA has completed design and right-of-way acquisition, SHA shall make an accounting of all expenditures and notify the COUNTY of any unexpended COUNTY funds that can be used for construction.

4. All invoices received from the COUNTY for COUNTY staff costs (direct salaries, payroll burden and overhead) incurred in conveying any COUNTY-owned property interests to SHA, will be deducted from the COUNTY Funding and such funds returned to the COUNTY.

C. COUNTY Responsibility

1. Within thirty (30) days following the receipt of the invoices set forth in section IV.B.1. above, the COUNTY shall pay such invoices.

2. The COUNTY acknowledges and agrees that if payment of any overdue invoice is not received within thirty (30) days of SHA sending notification to the COUNTY of such overdue invoice, SHA will discontinue work beyond that for which it has received COUNTY Funding.

3. The COUNTY shall submit an invoice to SHA for all COUNTY staff costs (direct salaries, payroll burden and overhead) incurred in conveying any COUNTY-owned property interests to SHA, which amount will be deducted from the COUNTY Funding and such funds returned to the COUNTY.

V. GENERAL

A. The parties hereto acknowledge that completion of the Design and Right-of-Way phases of the PROJECT shall in no way guarantee or imply that further phases of the PROJECT (i.e., construction) shall be funded or performed by either party following completion of the design and Right-of-Way acquisition. However, SHA and the COUNTY may execute additional agreements or make amendments to this MOU to fund additional phases of the PROJECT.

B. The parties hereto acknowledge that the completion of the Design and Right-of-Way phases of the PROJECT are solely funded by the COUNTY and that no SHA or State of Maryland funds are available.

C. The parties hereto acknowledge that future phases of the PROJECT may require the prior approval of the Board of Public Works of Maryland.

D. The recitals (WHEREAS clauses) are incorporated herein as a substantive part of this MOU.

E. The parties hereby agree and affirm that the persons executing this MOU on their respective behalf are authorized and empowered to act on behalf of the respective parties. The parties hereby further warrant and affirm that no cause of action challenging the existence, scope or validity of this MOU shall lie on the grounds that the persons signing on behalf of the respective parties were neither authorized or empowered to do so.

F. This MOU and the obligations and responsibilities herein shall inure to and be binding upon the parties hereto, their respective agents, successors and assigns.

G. Each notice, demand, request, consent, approval, disapproval, designation or other communications (all of the foregoing are herein referred to as "notice") that a party gives to any other party shall be in writing and shall be given or made or

communicated by United States Mail. All notices and/or invoices, if to the COUNTY, shall be addressed to:

Mr. Edgar Gonzalez
Deputy Director for Transportation Policy
Montgomery County
101 Monroe Street, 10th floor
Rockville, MD 20850
Phone: 240-777-7185
E-Mail: edgar.gonzalez@montgomerycountymd.gov

In the case of the SHA, addressed to:

Mr. Gregory Slater, Director
Office of Planning and Preliminary Engineering
State Highway Administration
707 N. Calvert Street
MS CO-411
Baltimore, MD 21202
Phone: (410) 545-0412
Fax: (410) 209-5014
E-mail: gslater@sha.state.md.us

With a copy to:

Mr. E. Glenn Klaverweiden
Agreements Coordinator
State Highway Administration
707 N. Calvert Street
MS C-502
Baltimore, MD 21202
Phone: (410) 545-5675
Fax: (410) 209-5025
E-mail: gklaverweiden@sha.state.md.us

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by their respective duly authorized officers on the day and year first above written.

MARYLAND STATE HIGHWAY ADMINISTRATION

WITNESS

By: _____ (SEAL)
Melinda B. Peters Date
Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Assistant Attorney General

RECOMMENDED FOR APPROVAL:

Gregory D. Welker
Deputy Administrator/Chief Engineer
for Operations

Douglas H. Simmons
Deputy Administrator/Chief Engineer
for Planning, Engineering, Real Estate and Environment

Lisa B. Conners
Director
Office of Finance

MOU FINAL
2012-10-12

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MONTGOMERY COUNTY, MARYLAND
a body corporate and politic

WITNESS

BY: (Seal)
for Thomas Street Date
Assistant Chief Administrative Officer

APPROVED AS TO FORM AND LEGALITY
OFFICE OF COUNTY ATTORNEY:

11/5/12
Assistant County Attorney

RECOMMENDED FOR APPROVAL:

11-2-12
for Arthur Holmes, Jr. Date
Director
Department of Transportation

MOU FINAL
2012-10-12

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