WSA-S-1829-5388

Martin O'Malley

Governor

Anthony G. Brown Lt. Governor



Margaret G. McHale

Ren Serey
Executive Director

STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401 (410) 260-3460 Fax: (410) 974-5338 www.dnr.state.md.us/criticalarea/

March 6, 2008

Ms. Lori Allen Anne Arundel County Office of Planning and Zoning 2664 Riva Road, MS 6305 Annapolis, Maryland 21401

Re: Cedar Hill Planned Unit Development Sketch Plan

S2007-003; P2007-0006

Dear Ms. Allen:

Thank you for submitting the above referenced subdivision for review and comment. The applicant is proposing a Planned Unit Development (PUD) over a 163 acre site. Approximately 18.725 acres is located in the Resource Conservation Area (RCA). Currently, the sketch plan shows only two potential access ways through the RCA portion of the plan. This office last provided comments on November 27, 2007. Based on the information provided, the following comments remain:

- 1. Previously, this office did not oppose a secondary access through the RCA based on the understanding that the necessary traffic study would require the outlet. The applicant's response dated January 31st states that the traffic study for the PUD does not require this second connection to Baltimore City. If a feasible alternative does exist, this office would oppose the plating of either extension shown. The applicant should clarify the results of the traffic study for this office.
- 2. The sketch plan appears to state that the applicant will pursue the extension of Cedar Hill Boulevard through Parcel 247 in the future. If a future extension is determined to be necessary this office supports the alignment that would have the least impact to Habitat Protection Areas (HPAs) and Forest Interior Dwelling Species (FIDS). It is difficult to ascertain which extension this may be with the information provided, though it does appear at this time to be the extension through Parcel 247. If an extension is to be pursued, this office recommends clarifying the impacts to FIDS and the HPAs.

Ms. Lori Allen S2007-003, P2007-0006 March 6, 2008 Page 2 of 2

3. The delineation of wetlands and streams within the Critical Area portion of the sketch plan is confusing. A 100-foot Buffer is required around all intermittent and perennial streams identified in the Critical Area. The applicant should clarify whether the 'Waters of the US' that are shown may be classified as intermittent or perennial. If they meet this definition, than the stream buffer should be adjusted from the 50 feet shown to 100 feet.

Thank you for the opportunity to provide comments. Please contact me at (410) 260-3475 if you have any questions.

Sincerely,

Kate Schmidt

Natural Resource Planner

Kate Schmidt

AA57-06

Martin O'Malley Governor

inthony G. Brown Lt. Governor



Margaret G. McHale Chair

Ren Serey
Executive Director

STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401 (410) 260-3460 Fax: (410) 974-5338 www.dnr.state.md.us/criticalarea/

September 23, 2007

Mr. Chris Soldano Anne Arundel County Office of Planning and Zoning 2664 Riva Road, MS 6305 Annapolis, Maryland 21401

Re: Cedar Hill PUD

S 07-003, P 07-0006

Dear Mr. Soldano:

I have received the resubmittal for the above-referenced project. The applicant addressed my letter dated February 22, 2007, but it does not appear the comments of Megan Sines letter of February 5, 2007 were addressed. I have enclosed that letter in case it did not reach your office. I have outlined my remaining comments below.

- 1. The plans provided show two future access roads to Pennington Avenue. Both alignments will cross the Resource Conservation Area (RCA), and potentially Forest Interior Dwelling Bird (FIDS) habitat. It is my understanding the applicant's consultant has not yet completed the FIDS analysis for this property. Please forward that information once it becomes available.
- 2. As stated in previous letters, the access through the RCA and FIDS habitat must be the only feasible alternative. Therefore, only one alignment can be selected for access for this side of the PUD. All impacts to FIDS habitat will require creation of new FIDS habitat.
- 3. We recommend the applicant's consultant perform to FIDS analysis to determine which secondary access road will have the least impacts to FIDS and HPAs.
- The plans provided show wetland buffer and tributary stream Buffers that will be impacted by the alternative route. If this access road will be public, it may cross Habitat Protection Areas (HPAs) provided no feasible alternative exists. If the access roads will be private, variances to cross these HPAs will be required.

Mr. Soldano September 23, 2007 Page Two

- 5. In addition to those issues stated in Ms. Sine's letter, impervious surface, clearing, sediment and erosion control and stormwater management will need to be addressed once the secondary access road is selected.
- 6. It appears at least one open area inside the Critical Area will be used to satisfy reforestation requirements for the Forest Conservation Act. We recommend a note be added to the final plat indicating any future clearing of this area will require Critical Area reforestation.

Thank you for the opportunity to provide comments. Please telephone me if you have any questions at (410) 260-3478.

Sincerely,

Lisa A. Hoerger, Chief

Project Evaluation Division

Enclosure

cc: AA 57-06



STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401 (410) 260-3460 Fax: (410) 974-5338 www.dnr.state.md.us/criticalarea/

February 22, 2007

Mr. Chris Soldano Anne Arundel County Office of Planning and Zoning 2664 Riva Road, MS 6305 Annapolis, Maryland 21401

Re:

Cedar Hill - Pre-file PUD # 01-2006

Supplemental Comment

Dear Mr. Soldano:

Our office recently received an Environmental Review letter from the Department of Natural Resources concerning the above-referenced project (enclosed). It states the site may contain Forest Interior Dwelling Bird (FID) habitat; therefore, the applicant must address this issue in their resubmittal to the County.

Thank you for the opportunity to comment. Please telephone me if you have any questions at (410) 260-3478.

Sincerely,

Lisa A. Hoerger, Chief

Project Evaluation Division

Susa a. Hoeiger

Enclosure

cc:

AA 57-06



STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401 (410) 260-3460 Fax: (410) 974-5338 www.dnr.state.md.us/criticalarea/

February 5, 2007

Mr. Chris Soldano Anne Arundel County Office of Planning and Zoning 2664 Riva Road, MS 6305 Annapolis, Maryland 21401

Re: Cedar Hill – PUD #01-2006

Dear Mr. Soldano:

I have received the above-referenced Planned Unit Development (PUD) request for review and comment. The only development within the Critical Area limits is a secondary access road of which a portion will pass through the Resource Conservation Area (RCA). I have outlined my comments below.

- 1. It is our understanding that this PUD will require a minimum of two main access roads and that the one that crosses the RCA has been minimized and there is no other alternative location to situate another access road outside the Critical Area.
- 2. It is stated that no new impervious coverage will be in the Critical Area; however, there will be impervious surfaces associated with the road. This area should be measured and noted to ensure that it is under the 15% impervious surface limitation.
- 3. We recommend that the County require additional stormwater management in the Critical Area since the road is in the RCA and its runoff will impact the wetlands nearby.

Thank you for the opportunity to comment. Please telephone me at (410) 260-3476 or Lisa Hoerger at (410) 260-3478 if you have any questions.

Sincerely,

Megan J. Sines

Natural Resources Planner

cc:

AA 0057-06

Robert L. Ehrlich, Jr. Governor

Michael S. Steele



Martin G. Madden Chairman

Ren Serey
Executive Director

STATE OF MARYLAND CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401 (410) 260-3460 Fax: (410) 974-5338 www.dnr.state.md.us/criticalarea/

February 24, 2006

Ms. Lois Villemaire Anne Arundel County Office of Planning and Zoning 2664 Riva Road, MS 6301 Annapolis, Maryland 21401

Re: Cedar Hill - Pre-file PUD # 01-2006

Dear Ms. Villemaire:

I have received the above-referenced PUD information for review and comment. We recognize this project is at the pre-filing stage. Since the information provided at this stage is very general, I will provide some preliminary comments below.

- 1. The area of the parcel inside the Critical Area is in the Resource Conservation Area (RCA). The current information provided on the Administrative Site Plan suggests this portion of the site will be used for open space and community recreation. The applicant should be advised that the Zoning Ordinance permits only passive recreational uses in the RCA (27-13-206 (10)).
- 2. Of course, any proposed residential development activities are limited by the one dwelling unit per twenty acre density requirement.
- 3. There are three small areas on the Administrative Site Plan that are shaded as "proposed development area(s)." Please have the applicant describe what is contemplated for these small areas.
- 4. The plans submitted show a major access road that bisects the site and the eastern end exits through the Resource Conservation Area. Generally, new roads should not cross the RCA unless it is the only way to access the site. Please have the applicant provide information regarding the need for the road through the RCA.

Ms. Villemaire February 24, 2006 Page Two

- 5. We recommend the applicant initiate an Environmental Review by the Department of Natural Resources Wildlife and Heritage Division to determine whether there are any threatened or endangered species issues on this site.
- 6. The sketch plan should show all required buffers to nontidal wetlands, tidal wetlands, perennial and intermittent streams and tidal waters that may be on the site in the Critical Area regardless of whether this portion of the site is contemplated for development.
- 7. The existing and proposed impervious surfaces and existing forest area and proposed clearing inside the Critical Area should also appear on the Sketch Plan.
- 8. The required forest area that is to remain in the Critical Area should be clearly identified on the Sketch Plan and protected with a perpetual easement. We recommend a note be placed on the plat indicating this area may not be disturbed, cleared, etc.
- 9. All required stormwater management facilities must be located outside the RCA and the Critical Area if these facilities are serving development activities associated with the portion of the development that will be outside the RCA and the Critical Area.

Thank you for the opportunity to comment. As always, we will provide further detailed review when that information becomes available. Please telephone me if you have any questions at (410) 260-3478.

Sincerely,

Lisa A. Hoerger

Natural Resources Planner

Lisa a. Holiger

cc: AA 57-06

MORRIS & RITCHIE ASSOCIATES. INC.





January 31, 2008

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

Attn: Mr. Bill Love

Re: Cedar Hill Planned Unit Development

Sketch Plan Re-submittal

Point-by-Point Response Letter

Subdivision #S2007-003 Project #P2007-0006



FP07-0006...

Dear Mr. Love:

The following is in response to your summary letter dated December 18, 2007.

I. Agency Comments

OPZ/Planning & Environmental, Bill Love, dated October 3, 2007

Planning

1. Clarify if the future incorporation of Parcel 247, inclusive of the proposed road alignment alternative, shall be included as part of the "existing" PUD. If so, a modification of the approved Special Exception shall be required.

Response: Parcel 247 should not be included as part of the existing PUD. The special exception for the Cedar Hill PUD included a road extension to Baltimore City that traversed through the critical area along the northern property line of the PUD. This alignment is shown on the sketch plans for future extension. The traffic study for the PUD does not require this second connection to Baltimore City. Therefore the alignment is shown for future purposes in conformance with the special exception and no disturbance is proposed with the sketch plan for this road extension. Cedar Hill Boulevard is proposed to terminate in a temporary culde-sac until the road extension is warranted. The future road alignment through

Anne Arundel County Re: Cedar Hill PUD Sketch Re-submittal January 31, 2008 Page 2 of 23

Parcel 247 will not be constructed as part of this sketch plan. The alignment is only shown on the sketch plan as a future alternative. In the future a special exception will be requested to include Parcel 247 in the Cedar Hill PUD. At that time the road extension that traverses through the critical area along the northern property line of the current Cedar Hill PUD will be eliminated and the Parcel 247 extension will be utilized. Showing both future alignments was agreed to by Chris Soldano in a meeting we had in May 2007. Notes have been added to the sketch plan cover sheet noting the above explanation.

2. The submitted Noise Study has been forwarded to our Transportation Division for review and comment. In addition, this Office has not received any formal comment from SHA regarding acceptability. Sketch approval is withheld pending receipt of comments.

Response: Contained within the Oct. 17, 2007 letter from MSHA is the approval of the Noise Study along with a recommendation to include a note on the Record Plat. The note will be provided on the record plat as requested.

3. Provide formal agreement from Colonial Pipeline that the proposed realignment is acceptable per previous comments.

Response: An agreement letter from Colonial Pipeline will be forwarded under separate cover.

4. M#9534 for reduction of Action Recreation Area (and Specimen Tree removal) shall be addressed under separate cover.

Response: Acknowledged.

5. M#9700 for cul-de-sac terminus shall be addressed under separate cover after the Department of Public Works has completed their respective review.

Response: Acknowledged.

Anne Arundel County Re: Cedar Hill PUD Sketch Re-submittal January 31, 2008 Page 3 of 23

Critical Areas

Address how the Critical Area portion of the site shall be platted. Specifically, the
maximum allowable forest clearing limit is 20%, with the remaining forest to be
placed in a Forest Conservation Easement. If the approved ROW alignment is to
be platted/utilized, all forest clearing within the ROW and associated mitigation
must be addressed prior to subdivision approval.

Response: The future right-of-way shown within Parcel 247 is for informational purposes only and is not part of the Cedar Hill PUD at this time. The Future Cedar Hill right-of-way, within the critical area along the northern property line, is not intended to be platted. We have included the alignment to show conformance with the special exception. According to the traffic study the road extension is not necessary to provide access for the maximum density in the current PUD. We have designated the Cedar Hill future right-of way as phase 4 of the development. Phase 4 will be several years away from occurring and in the meantime the developer will be processing Parcel 247 through the special exception process and will be eliminating this right-of way. If for some reason plans for developing Parcel 247 are halted and a secondary road connection is desirable, forest clearing and mitigation associated with the right-of-way can be addressed with the Phase 4 final plans and plats. An updated phasing plan identifying Phase 4 is included in this re-submittal.

2. The Critical Area portion of the site shall be of the highest priority for reforestation. Additional reforestation shall be relocated within the on-site Critical Area at Final. The Critical Areas report shall be revised to identify areas for replanting to enhance potential FIDS habitat, in addition to compliance with the CAC guidelines entitled "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area". Once calculated, it is recommended that fragmented forest areas be identified and replanted for FID habitat enhancement. This office acknowledges that a FIDS study is being conducted to determine the applicability of the Guidelines and identification of potential additional reforestation areas.

Response: Acknowledged. Conceptual reforestation area locations within the critical area have been identified on the sketch plan.

Anne Arundel County Re: Cedar Hill PUD Sketch Re-submittal January 31, 2008 Page 4 of 23

Forest Conservation

1. The Forest Conservation Worksheet and calculations indicate that the *current* project meets requirements for retaining the forest conservation threshold for Sketch approval. Detailed reforestation plans shall be included in a complete Forest Conservation Plan at Final.

Response: Acknowledged.

2. A Modification is necessary at Final to pay the fee-in-lieu for any remaining reforestation requirement. Please note that the modification can only be granted when it is adequately demonstrated that all on-site and off-site planting areas have been utilized.

Response: Acknowledged.

3. M#9534 shall be addressed under separate cover. The modification approval is a condition of Sketch approval.

Response: Acknowledged.

Wetlands

1. The on-site non-tidal wetlands have been delineated and jurisdictional determination (JD) approval/verification was issued on April 4, 2006 by the Corps of Engineers under CENAB-OP-RMN (Cherrywood Development/Glen Abbey/JD) 06-61095-18, a copy of which has been provided. The delineation and associated buffer shall be placed on the Record Plat at FINAL. Ensure that the off-site areas are investigated and approved as well. All applicable Federal/State wetland authorizations shall be required prior to Plat approval.

Response: Acknowledged.

Landscape

1. The Preliminary Landscape Plan is acceptable. A detailed plan shall be required at Final pursuant to the Landscape Manual

Response: Acknowledged.

MORRIS & RITCHIE ASSOCIATES, INC.





August 9, 2007

Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis MD 21401

Attn: Vivian C. Marsh

Planner

Re: Cedar Hill Planned Unit Development

Sketch plan

Re-submittal Point by Point Response

Subdivision # 2007-003 Project # 2007-0006



RECEIVED

AUG 16 2007

CRITICAL AREA COMMISSION

Dear Mr. Marsh,

The Following is a point by point response to your letter dated August 8, 2007.

I. Agency Comments

OPZ/Planning, Vivian Marsh, dated February 10, 2007

1. It is unclear as to phasing that is shown on some of the exhibits. Are there two phases or just one overall plan? The SDP cover sheet indicates Cedar Hill Boulevard connects through an adjoining property to the north that is not part of this submittal but is labeled as phase 2.

Further, the Special Exception (2006-0150-S) indicates that the project (not including the above mention W2 zoned property) will be phased in groups of 250 units to be built out through December 31, 2021. Provide a phasing plan for the units.

Response: A color coded phasing plan has been included in the resubmittal package. Currently the developer would like to separate the project into three phases as shown on the plan.

The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. This statement should not be interpreted however as meaning that rare, threatened or endangered species are not in fact present. If appropriate habitat is available, certain species could be present without documentation because adequate surveys have not been conducted. It is also important to note that the utilization of state funds, or the need to obtain a state authorized permit may warrant additional evaluations that could lead to protection or survey recommendations by the Wildlife and Heritage Service. If this project falls into one of these categories, please contact us for further coordination.

Our analysis of the information provided also suggests that the forested area on the project site contains Forest Interior Dwelling Bird habitat. Populations of many Forest Interior Dwelling Bird species (FIDS) are declining in Maryland and throughout the eastern United States. The conservation of this habitat is mandated within the Critical Area and must be addressed by the project plan.

Response: Milt McCarthy is in the process of conducting a FIDB study within the critical area.

Critical Area Commission, Megan J. Sines, dated February 5, 2007

1 It is our understanding that this PUD will require a minimum of two main access roads and that the one that crosses the RCA has been minimized and there is no other alternative location to situate another access road outside the Critical Area.

Response: The second access to Aspen Street is not required to build-out the density that is shown on the sketch plan. Traffic Concepts has revised their TIS to show that all of the vehicular trips can access MD Rte 2. In the future, additional property north of Cedar Hill will be added to the PUD. At that time a connection will need to be made to Aspen Street. The sketch plan now shows two future alternative road connections, which include the access as shown on the special exception or a connection through parcel 247.

2. It is stated that no new impervious coverage will be in the Critical Area; however, there will be impervious surfaces associated with the road. This area should be measured and noted to ensure that it is under the 15 % impervious surface limitation.

Response: The developer's preference is to construct the road within the second future alignment.

3. We recommend that the County require additional stormwater management in the Critical Area since the road is in the RCA and its runoff will impact the wetlands nearby.

Response: Acknowledged

Critical Area Commission, Lisa A. Hoerger, dated February 22, 2007

Our office recently received an Environmental Review letter from the Department of Natural Resources concerning the above-referenced project (enclosed). It states the site may contain forest Interior Dwelling Bird (FID) habitat; therefore, the applicant must address this issue in their re-submittal to the County.

Response: Milt McCarthy is in the process of conducting a FIDB study within the critical area.

DPW/Utilities, Bruce Wright, dated April 28, 2007

Based on this review the following comments are made:

I. DPW Utility Design Comments (Christopher Murphy)

On the Engineering Report for Water Supply and Distribution

- 1. The water system lacks specifics on the proposed waterline layout. A SWAMP analysis was completed for this project concurrently with this review. The plans submitted with the SWAMP analysis request provide greater depth and detail concerning the waterline layout then is provided with the Engineering Report for Water Supply and Distribution. Based on the Results of the SWAMP analysis the following recommendations were made in order to achieve adequate fire flow and pressure on-site:
 - Provide an additional connection to the existing 12" water main in Ritchie Highway via a proposed 12" diameter pipe from Ritchie Highway to the proposed 10" main on-site.
 - Upsize the existing 8" main in Cedar Hill Lane to a 12" main from Ritchie Highway to the tee with the proposed 10" water main.
 - Extend the proposed 8" main in Road 6-B (Parcel 6) to the proposed 8" in Road 5-A (Parcel 5) in order to complete a loop, and provide adequate fire flow.

RE: An Appeal From A Decision Of The Administrative Hearing Officer

AUG 1 3 2007

GLEN ABBEY, LLC

PERTONENG AND ZONING
DEVELOPMENT

BEFORE THE

COUNTY BOARD OF APPEALS

OF ANNE ARUNDEL COUNTY

CASE NO.: BA 52-06R (2006-0106-R)

Hearing Date: February 8, 2007

RECEIVED

MEMORANDUM OF OPINION

AUG 16 2007

Summary of Pleadings

CRITICAL AREA COMMISSIOI

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a zoning reclassification from C1-Commercial to R10-Residential District, for property located 275 feet along the east side of MD Route 2; 120 feet north of MD Route 695, Glen Burnie.

Summary of Evidence

Mr. Torghen Agesen testified by proffer that he works for Cherrywood, LLC, which is developing the property. The property is located in the northeast quadrant of the intersection of Routes 2 and 695. The Glen Abbey development project commenced approximately 5 years ago. The plan is to construct a large, residential development on the property. He described the property and the surrounding community. There are also plans to acquire two adjacent parcels—there are issues regarding hazardous waste and "brownfields". The property has been approved for 1,331 dwelling units as part of the Planned Unit Development special exception. If the requested R10 zoning were granted, up to 1,334 dwelling units could be constructed on the property. However, the Petitioner is proposing 1,321 dwelling units. One of the functions of a Planned Unit Development is to provide a full range on community services to the residents. During the processing of the applications, the Planned Unit Development regulations were

Konikh

04/23/2007

revised so that commercial uses were not permitted for a Planned Unit Development of the size proposed. Accordingly, an area of C1 zoning within the property was proposed so that the community commercial uses could be appropriately accommodated. The Office of Planning and Zoning supported the placement of the C1 district, which was accomplished as part of the last comprehensive rezoning. Subsequently, the Zoning Regulations were amended to insert appropriate commercial uses into Planned Unit Developments. Therefore, the reason for the earlier placement of C1 district into this community no longer exists. The Petitioner requests the removal of the C1 zoning designation and the re-designation of that site to be R10 district. The commercial area can then be shifted to appropriately meet the needs of the residents of the Planned Unit Development as the development plans are amended. With the requested rezoning, the placement of the commercial area can be more flexible.

Ms. Melanie Mozer, an expert landscape architect and land planner, testified that there was a mistake in the last comprehensive rezoning regarding the placement of the Cl district on the Planned Unit Development parcel. She provided the Board with an excerpt from the Small Area Plan and noted that the General Development Plan provides that this site be developed "medium density residential". The proposal to rezone the C1 property to the R10 district is consistent with both the GDP and the Small Area Plan. A Planned Unit Development is permitted in all residential zones, but not permitted in any commercial (including the C1 district) or industrial district. She pointed to several issues that resulted in the occurrence of a mistake in this case. A Planned Unit Development is not permitted in the C1 district. The imposition of the C1 district does not match the General Development Plan or the Small Area Plan. The C1 district does not match the zoning code requirements. The C1 district will also be at odds with the ultimate subdivision and the idea of creating a heart of the community within it. Rezoning will promote the health, safety and welfare of the community. R10 and R15 zoning surrounds the area proposed to be rezoned.

Mr. Michael Camp, an area resident, testified in opposition to the request. He described the neighborhood. Many of the families in the community have lived there for more than 100 years. He is a member of the fourth generation of his family to live in the community. He does not believe that townhomes, more residents and increased traffic will meet the needs of his community. He feels that the existing community is not well represented in the plan for the development of this area.

Ms. Lori Rhodes, a planner with Office of Planning and Zoning, explained that the Petitioner is requesting a rezoning from the C1 to the R10 district for property located in Cedar Hill. The site comprises 1.37 acres. The site was rezoned as part of the 2005 comprehensive rezoning, which placed it in the C1 district. She described the neighborhood for the property. During the initial development planning, the C1 zoning was placed on the proposed rezoning map by the Planning and Zoning Officer as part of Council Bill 72-05. The C1 zoning was Subsequently, Council Bill 78-05 amended the Code to permit an appropriate commercial center for Planned Unit Developments with 1,001 to 1,500 dwelling units. Following the Code change, the C1 district was no longer needed to serve this Planned Unit Development. Ms. Rhodes explained that the County Council was unaware that the County Code would be changed to permit the commercial uses when the property was placed in the C1 district. Ms. Rhodes described the comments of the other reviewing agencies. She recommended that the Board approve the requested rezoning. The rezoning will permit greater flexibility within the Planned Unit Development so that the community conveniences can be appropriately located.

Mr. Carl Brooks testified that he is the president of a local community association. They have a contract with the developer of the Glen Abbey site. He attended the hearing to ensure that the Petitioner is abiding by the terms of their contract. To date, the developer had abided by all its terms.

Mr. Sager A. Williams, Jr., testified that he is the representative of Sanctuary Properties, a nearby landowner. He agreed that the County Council could not have foreseen the later change to the Code when the subject property was placed in the CI district.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

The Petition has been planning a Planned Unit evelopment for 164 acres of land in the Cedar Hill area. The proposed development was under review during the comprehensive rezoning process for the Brooklyn Park Small Area, and was known to the Common Common Accordingly, the Council reviewed the site and chose to rezone comprehensively the property from the R1 and R5 districts to the R10 and C1 districts. The 1.37 acre C1 parcel is the subject of this application for rezoning to the R-10-Residential district.

Planned Unit Developments are a mix of residential dwelling unit types and contain service commercial/community centers to serve the residents. Curiously, the County Code, in effect at the time of the comprehensive rezoning, failed to provide sufficient permitted uses to create a viable community center in Planned Unit Developments with the range of housing density proposed for Cedar Hill's density. Therefore, the Planning and Zoning Officer proposed, and the Council accepted, the rezoning of 1.37 acres of property to the C1 district so that a viable community center could be created at Cedar Hill.

The Anne Arundel County Code (the "Code"), Section 3-1-205² provides that a rezoning may not be granted unless there are affirmative findings that: (1) there was a mistake in the zoning map or the character of the neighborhood has changed to such an extent that the zoning

The Special Exception for the Planned Unit Development was approved on July 13, 2006 (Case No. 2006-0150-S).

See also, Section 18-16-303.

should be changed; (2) the new zoning classification conforms to the County General Development Plan in relation to land use, number of dwelling units or type and intensity of nonresidential buildings, and location; (3) there is compatibility between the uses of the property as reclassified and the surrounding land uses so as to promote the health, safety, and welfare of present and future residents of the County; and, (4) if located in the Critical Area, that the permitted use in the proposed zoning classification is compatible with the Critical Area land use designation and development standards of the property.

In the instant case, the applicant, Glen Abbey, LLC, argued that the placement of this small parcel resulted in a mistake³ at the time of the last comprehensive rezoning.

In any zoning action, the County Council is presumed to have acted correctly. It is clear from the facts, in this case, that the Council was correct in rezoning this site to the CI district. While we believe that the Council was correct in rezoning the property to the CI district in 2005, the assumptions and premises upon which the Council could rely at that time proved subsequently incorrect—and that a legal mistake, therefore, occurred, despite the short interval between the 2005 comprehensive rezoning and this hearing.

In recent years, the Zoning Regulations (and the County Code as a whole) have undergone comprehensive review, resulting in sweeping changes and a redesign. Because of the complexities of this process, some issues in the recodification required further review and revision. This project, and Planned Unit Developments generally, deserved and received a close legislative look. One of the issues examined was the need for a proper "community center" in Planned Unit Developments. Without a community meeting point, for services and social interaction, a Planned Unit Development functions as an enormous subdivision with all residents needing to drive on the public roads to seek the services they need. As a result, the Code was amended to include community center uses as part of permitted uses within a Planned Unit

We agree with the Petitioner's assertion that the property in the neighborhood has been used according to the underlying zoning. There is no evidence of "change" within the neighborhood.

Development. Interestingly, the approved Planned Unit Development for Cedar Hill is not permitted within the 1.37 acres of C1 land that was "reserved" for the community center.

The legal mistake here is the placement of the 1.37 acre site in the C1 district, which does not permit Planned Unit Developments. The Cedar Hill Planned Unit Development project was "reasonably foreseeable of fruition in the future" and, as the Petitioner asserted, was one that the Council deliberately intended to encourage by the rezoning of the subject site to the C1 district. Given the plain language of the then Zoning Regulations, this zoning designation was a mistake.

We find further that the requested R10-Residential zoning classification conforms to the County's General Development Plan ("GDP"). See, Section 3-1-205(a)(2). The General Development Plan, as amended by the Small Area Plan, indicates the property to be within the Residential Medium Density area. The Brooklyn Park Small Area Plan designates the property as residential. The requested R10-Residential zoning classification is consistent with that designation. In contrast, the C1-Commercial designation is inconsistent with the GDP and Small Area Plan.

There is compatibility between the uses of the property as reclassified to the R10 zone and the surrounding land uses so as to promote the health, safety, and welfare of present and future residents of the County. Section 3-1-205(a)(3). The subject site is wholly surrounded by other land in the Cedar Hill Planned Unit Development; and if the property were reclassified to the R10 district, its zoning designation would match the surrounding property. The approved special exception for a Planned Unit Development would be permitted on the rezoned property. While a protesting neighbor voiced opposition for the plan, the opposition pertained to the wisdom of the Planned Unit Development as a whole. The efficacy of the Planned Unit Development is not before this Board. The special exception has been approved and we cannot consider whether the development (as a whole) is appropriate.

Since this property is not located within the Chesapeake Bay Critical Area, we need not consider the requirements of Section 3-1-205(a)(4).

The Petitioner met its burden of proof relative to the several requirements of Section 3-1-205. This property should be placed in the R10 district so that the various planning goals of the Planned Unit Development program can be met with the greatest efficiency for the future residents of the Cedar Hill community.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 247 day of APRIL, 2007, by the County Board of Appeals of Anne Arundel County, ORDERED, that that the Petitioner's request for a zoning reclassification of 1.37 acres of land within Tax Map 5, Parcel 43 from the C1-Commercial to the R10-Residential district is hereby GRANTED.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

COUNTY BOARD OF APPEALS OF ANNE ARUNDEL COUNTY

William C. Knight, III, Chairman

Carroll P. Hicks, Jr., Member

William Moulden, Member

dames E. Rzepkowski, Member

(Andrew C. Pruski, Member, did not participate in this appeal.)

DISSENT

We cannot support the requested rezoning because it does not meet the "mistake" test (the Petitioner concedes that there has been no change in the neighborhood). In this case, it is clear that the Council knew that there was an issue with the community center options for the Cedar Hill Planned Unit Development. Accordingly, they acted, in 2005, at the urging of the Planning and Zoning Officer, to place 1.37 acres of land in the C1-Commercial district. This zoning designation gave the developer of the Planned Unit Development all opportunity to develop an appropriate community center. The developer then set about to do the same and secured approval of the Cedar Hill Planned Unit Development in July 2006.

As the evidence shows, the Petitioner then became the likely purchaser of certain Baltimore City owned "brownfields" to the east of Cedar Hill proper. The Petitioner then changed its plan for the development and wanted to move the community center elsewhere on the property. The only justification for the current rezoning request is the Petitioner's desire to revise its plan. There is no evidence that the Council was mistaken.

The Council clearly considered this development and the likely trends. In fact, the Council is the only body that could have acted to change the Planned Unit Development

legislation to add more community center uses to this, and similar, Planned Unit Developments. Indeed, the Council later revised the statute. If the Council could not have foreseen the possibility that the legislation would change, then who could have? It is the exclusive jurisdiction of the County Council to enact legislative changes.

Furthermore, the case law has established that there is "a strong presumption of correctness of original zoning and comprehensive rezoning" and that "there must be produced strong evidence of a mistake" in order to permit the piecemeal rezoning of a property. See, Anne Arundel Co. v. Maryland National Bank, 32 Md. App. 437, 361 A.2d 134 (1976). There is no strong evidence of mistake, here. There is only strong evidence that the Council supported the development of the project; and the Petitioner has since changed its mind regarding the appropriate location for the community center.

Arnold W. McKechnie, Vice Chairman

John W. Boring, Memba



Martin O'Malley, Governor Anthony G. Brown, Lt. Governor John R. Griffin, Secretary Eric Schwaab, Deputy Secretary

October 9, 2007

Anne Arundel County Office of Planning and Zoning 2664 Riva Road Annapolis, MD 21401

RE: Environmental Review for Cedar Hill PUD, Subdivision No. S07-003, Project No. P07-0006, MD Route 695 and Route 2, Anne Arundel County, Maryland.

Dear Sir or Madam:

The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. This statement should not be interpreted however as meaning that rare, threatened or endangered species are not in fact present. If appropriate habitat is available, certain species could be present without documentation because adequate surveys have not been conducted.

Our analysis of the information provided also suggests that the forested area on the project site contains Forest Interior Dwelling Bird habitat. Populations of many Forest Interior Dwelling Bird species (FIDS) are declining in Maryland and throughout the eastern United States. The conservation of this habitat is mandated within the Chesapeake Bay Critical Area and must be addressed by the project plan. Specifically, if FIDS habitat is present, the following guidelines should be incorporated into the project plan:

- 1. Restrict development to nonforested areas.
- 2. If forest loss or disturbance is unavoidable, concentrate or restrict development to the following areas:
 - a. the perimeter of the forest (i.e., within 300 feet of existing forest edge)
 - b. thin strips of upland forest less than 300 feet wide
 - c. small, isolated forests less than 50 acres in size
 - d. portions of the forest with low quality FIDS habitat, (i.e., areas that are already heavily fragmented, relatively young, exhibit low structural diversity, etc.)
- 3. Maximize the amount if forest "interior" (forest area >300 feet from the forest edge) within each forest tract (i.e., minimize the forest edge: area ratio). Circular forest tracts are ideal and square tracts are better than rectangular or long, linear forests.
- 4. Minimize forest isolation. Generally, forests that are adjacent, close to, or connected to other forests provide higher quality FIDS habitat than more isolated forests.
- 5. Limit forest removal to the "footprint" of houses and to that which is necessary for the placement of roads and driveways.
- 6. Minimize the number and length of driveways and roads.

- 7. Roads and driveways should be as narrow and as short as possible; preferably less than 25 and 15 feet, respectively
- 8. Maintain forest canopy closure over roads and driveways.
- 9. Maintain forest habitat up to the edges of roads and driveways; do not create or maintain mowed grassy berms.
- 10. Maintain or create wildlife corridors.
- Do not remove or disturb forest habitat during April-August, the breeding season for most FIDS. This seasonal restriction may be expanded to February-August if certain early nesting FIDS (e.g., Barred Owl) are present.
- 12. Landscape homes with native trees, shrubs and other plants and/or encourage homeowners to do so.
- 13. Encourage homeowners to keep pet cats indoors or, if taken outside, kept on a leash or inside a fenced area.
- 14. In forested areas reserved from development, promote the development of a diverse forest understory by removing livestock from forested areas and controlling white-tailed deer populations. Do not mow the forest understory or remove woody debris and snags.
- 15. Afforestation efforts should target a) riparian or streamside areas that lack woody vegetative buffers, b) forested riparian areas less than 300 feet wide, and c) gaps or peninsulas of nonforested habitat within or adjacent to existing FIDS habitat.

The Critical Area Commission's document "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area" provides details on development standards and information about mitigation for projects where impacts to FIDS habitat cannot be totally avoided. Mitigation plantings for impacts to FIDS habitat may be required under the local government's Critical Area Program. The amount of mitigation required is generally based in whether the guidelines listed above are followed. We are willing to provide further technical assistance regarding these guidelines, if necessary, after the FIDS survey results mentioned in the County's review request are received by the County.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

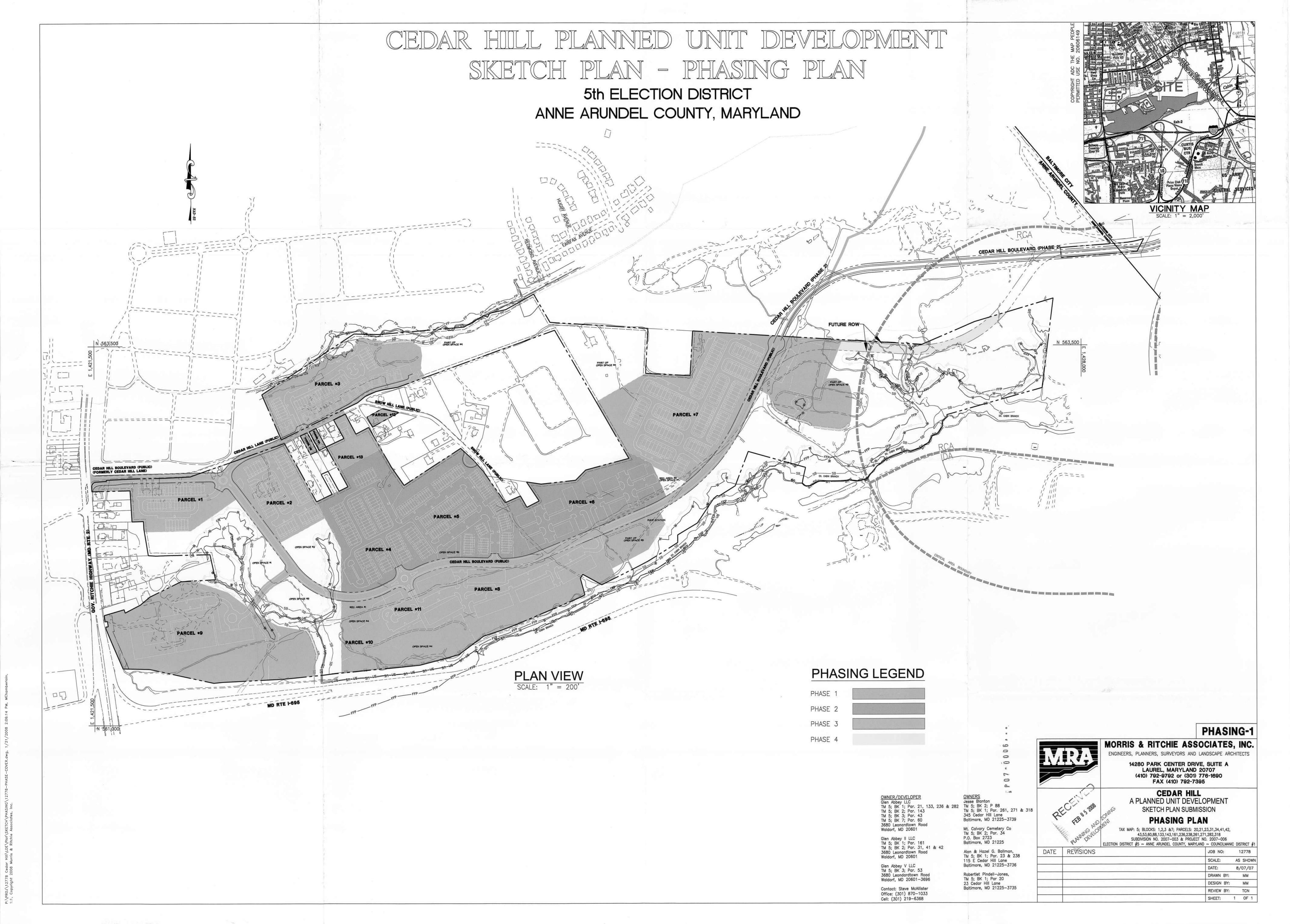
Sincerely, Loui a. By

Lori A. Byrne,

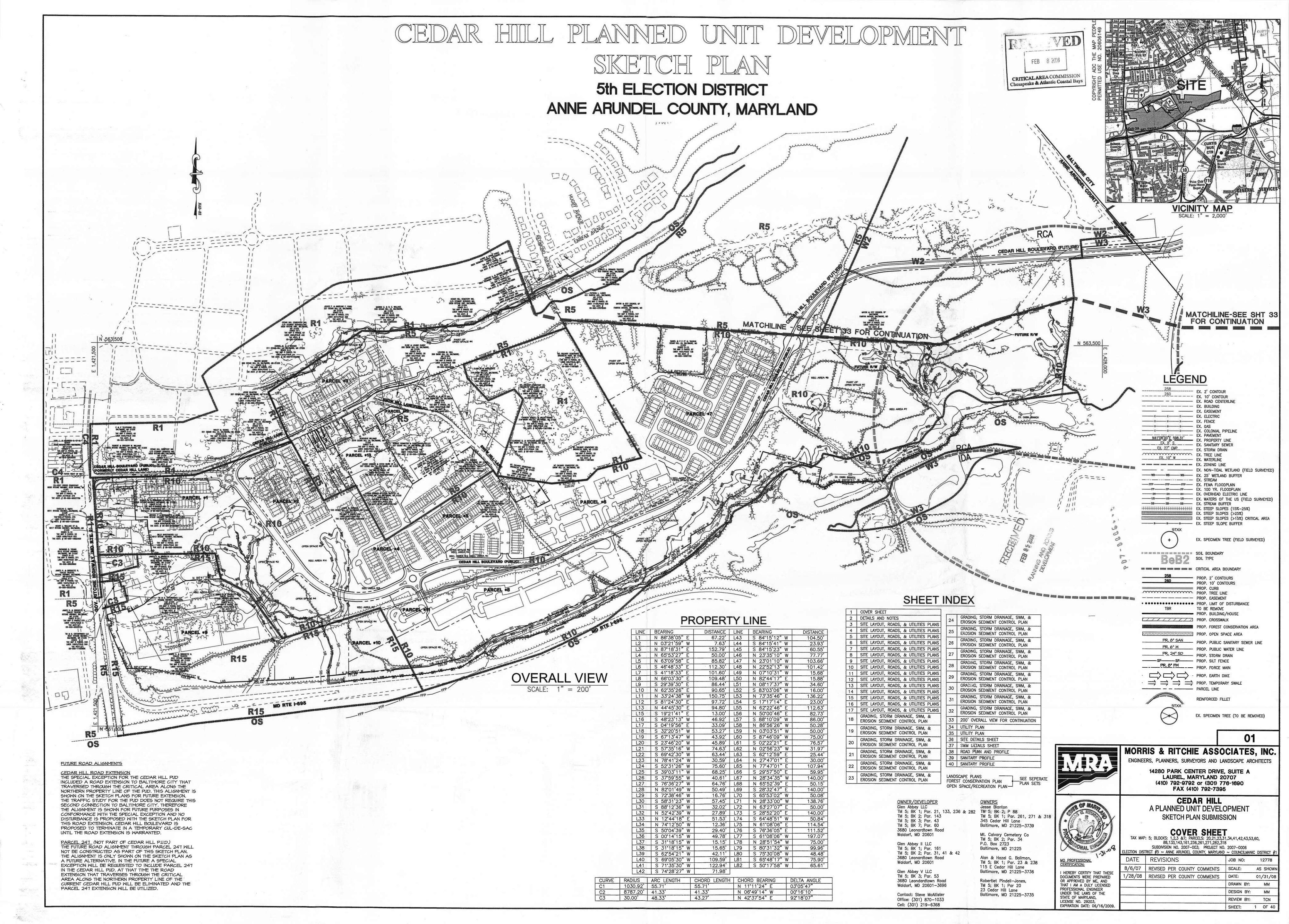
Environmental Review Coordinator Wildlife and Heritage Service

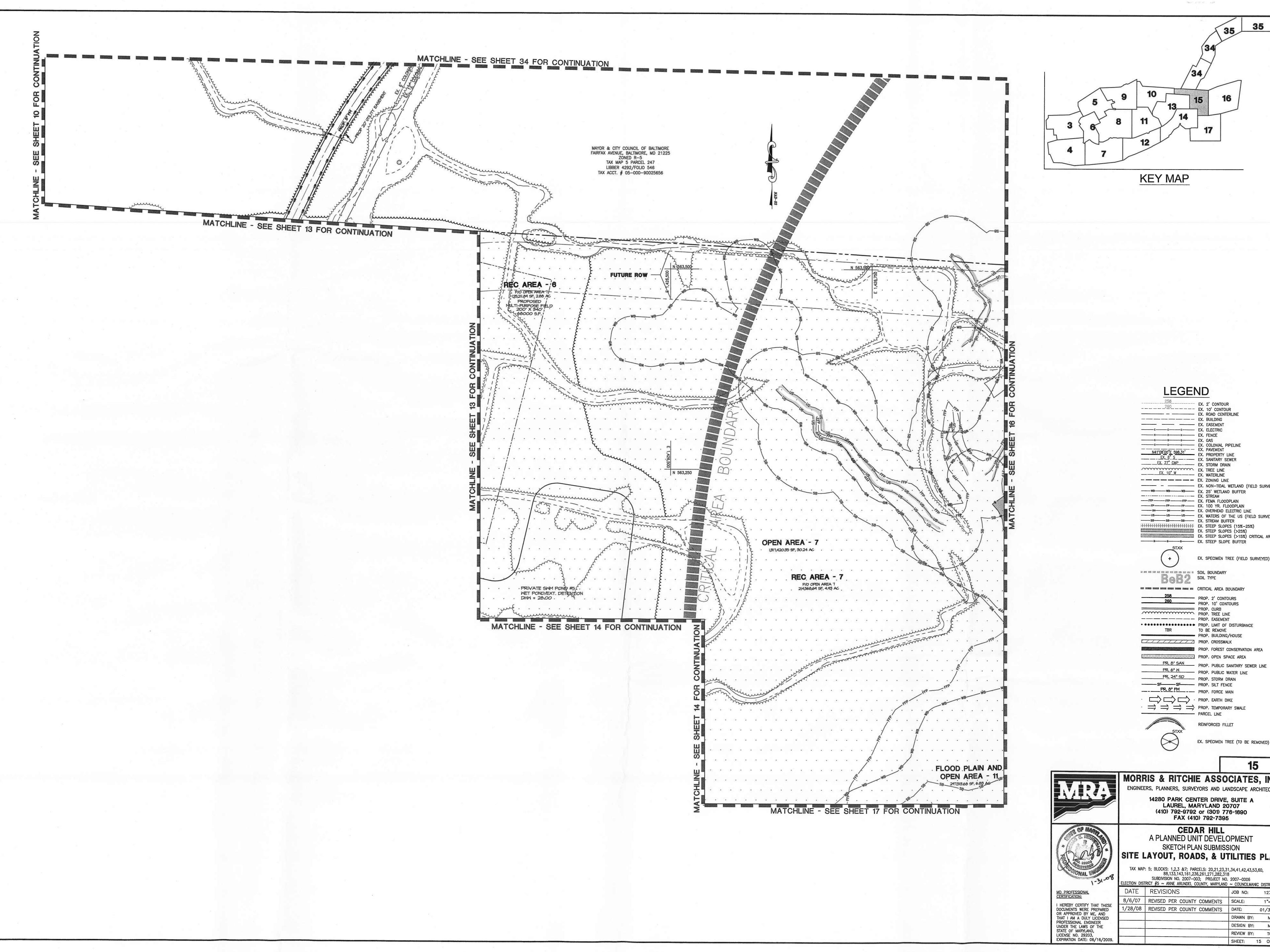
MD Dept. of Natural Resources

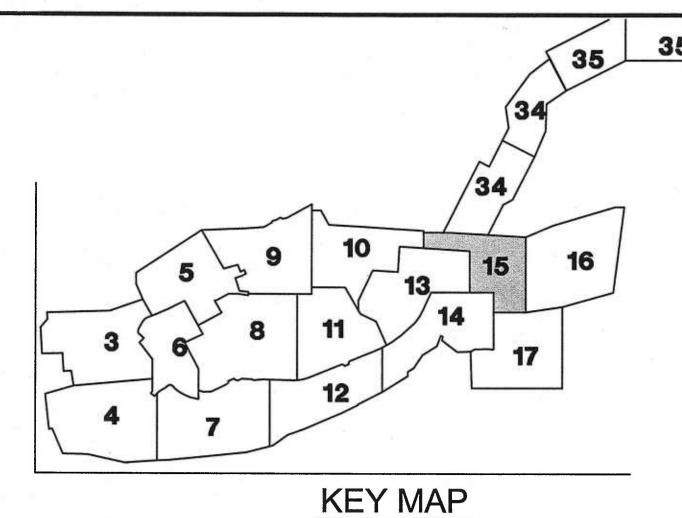
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LEGEND

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EX. STORM DRAIN EX. TREE LINE EX. WATERLINE EX. ZONING LINE EX. NON-TIDAL WETLAND (FIELD SURVEYED) EX. STREAM --- FFP---- FFP---- EX. FEMA FLOODPLAIN OH OH OH EX. OVERHEAD ELECTRIC LINE ----sB-----sB----- EX. STREAM BUFFER EX. STEEP SLOPES (15%-25%) EX. STEEP SLOPES (>25%) EX. STEEP SLOPES (>15%) CRITICAL AREA B-B-B-EX. STEEP SLOPE BUFFER EX. SPECIMEN TREE (FIELD SURVEYED) SOIL BOUNDARY BeB2 SOIL TYPE CRITICAL AREA BOUNDARY PROP. 2' CONTOURS PROP. 10' CONTOURS PROP. CURB PROP. TREE LINE • • • • • • • • • • • • • • • PROP. LIMIT OF DISTURBANCE TO BE REMOVE PROP. BUILDING/HOUSE PROP. CROSSWALK PROP. FOREST CONSERVATION AREA

REINFORCED FILLET

EX. SPECIMEN TREE (TO BE REMOVED)

SHEET: 15 OF 40

PROP. OPEN SPACE AREA

PR. 6" W PROP. PUBLIC WATER LINE

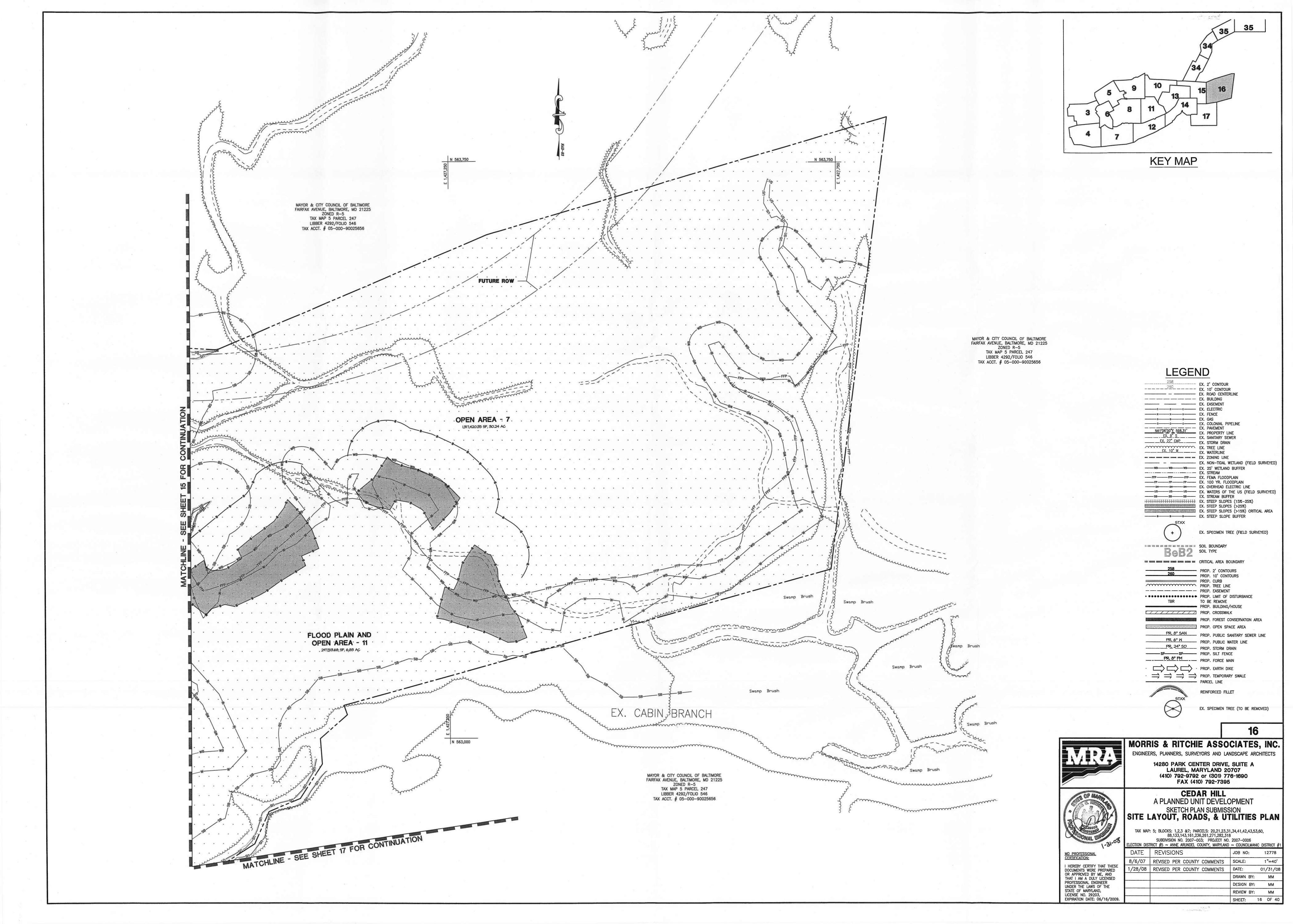
⇒ ⇒ ⇒ PROP. TEMPORARY SWALE PARCEL LINE

14280 PARK CENTER DRIVE, SUITE A LAUREL, MARYLAND 20707 (410) 792-9792 or (301) 776-1690 FAX (410) 792-7395

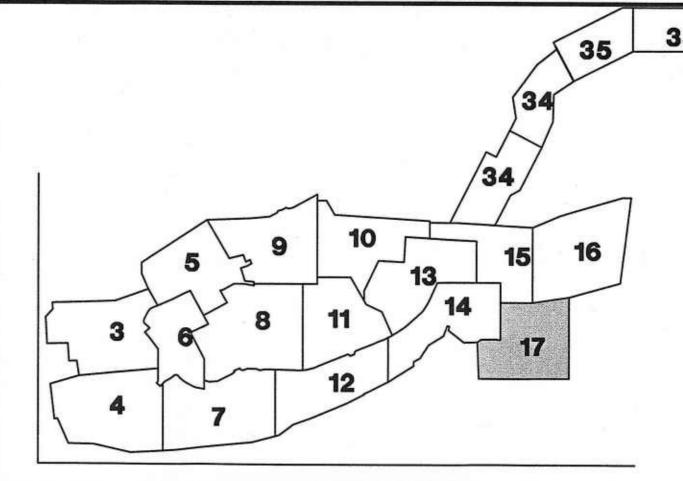
CEDAR HILL A PLANNED UNIT DEVELOPMENT SKETCH PLAN SUBMISSION SITE LAYOUT, ROADS, & UTILITIES PLAN

TAX MAP: 5; BLOCKS: 1,2,3 &7; PARCELS: 20,21,23,31,34,41,42,43,53,60, 88,133,143,161,236,261,271,282,318
SUBDIVISION NO. 2007-003; PROJECT NO. 2007-0006
ELECTION DISTRICT #5 ~ ANNE ARUNDEL COUNTY, MARYLAND ~ COUNCILMANIC DISTRICT #1

DATE REVISIONS JOB NO: 8/6/07 REVISED PER COUNTY COMMENTS | SCALE: 1"=40' 1/28/08 REVISED PER COUNTY COMMENTS DATE: 01/31/08 DRAWN BY: MM DESIGN BY: MM REVIEW BY: TCN







KEY MAP

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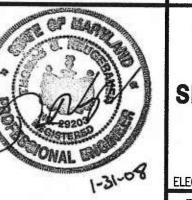
MORRIS & RITCHIE ASSOCIATES, INC. ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

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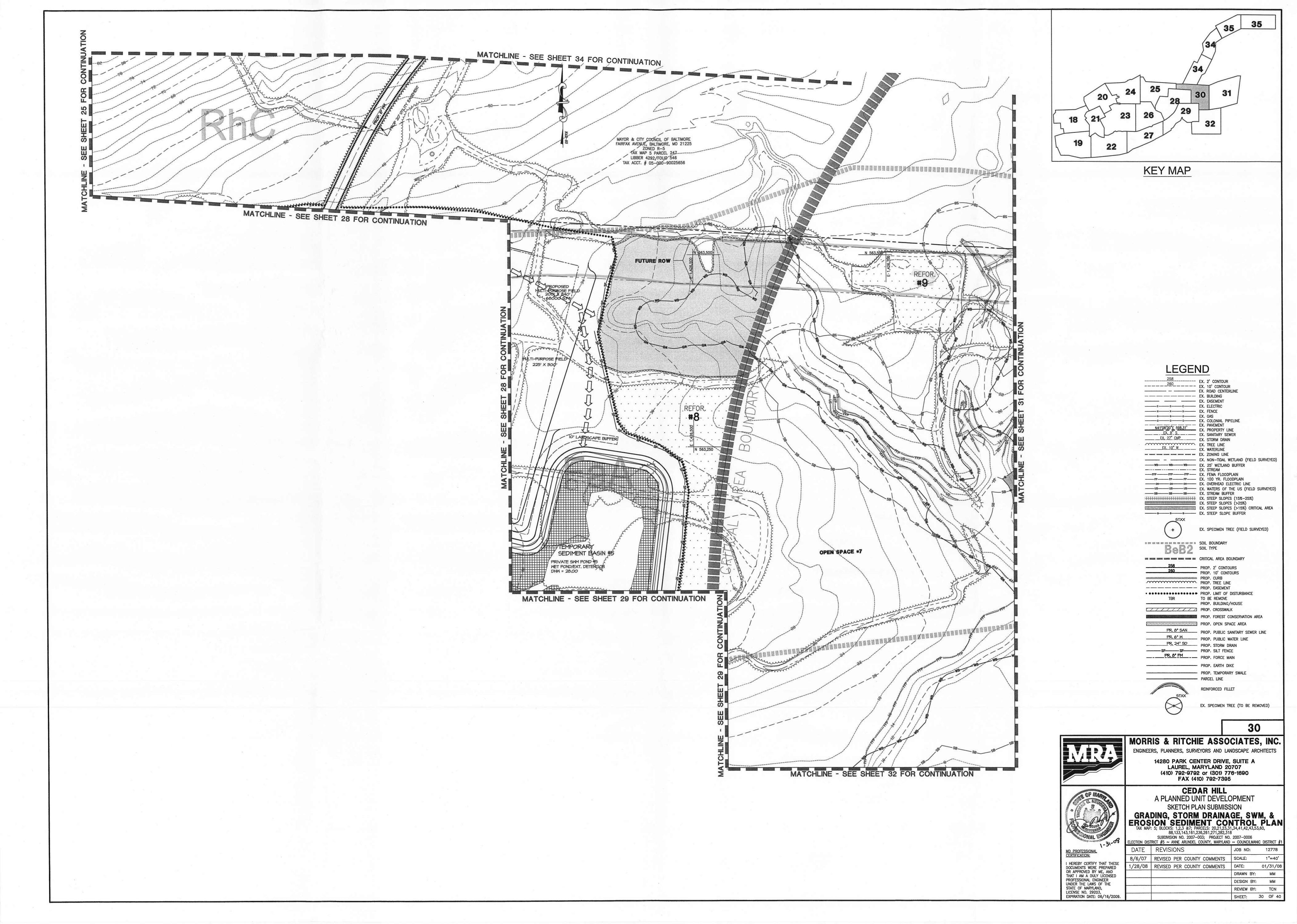
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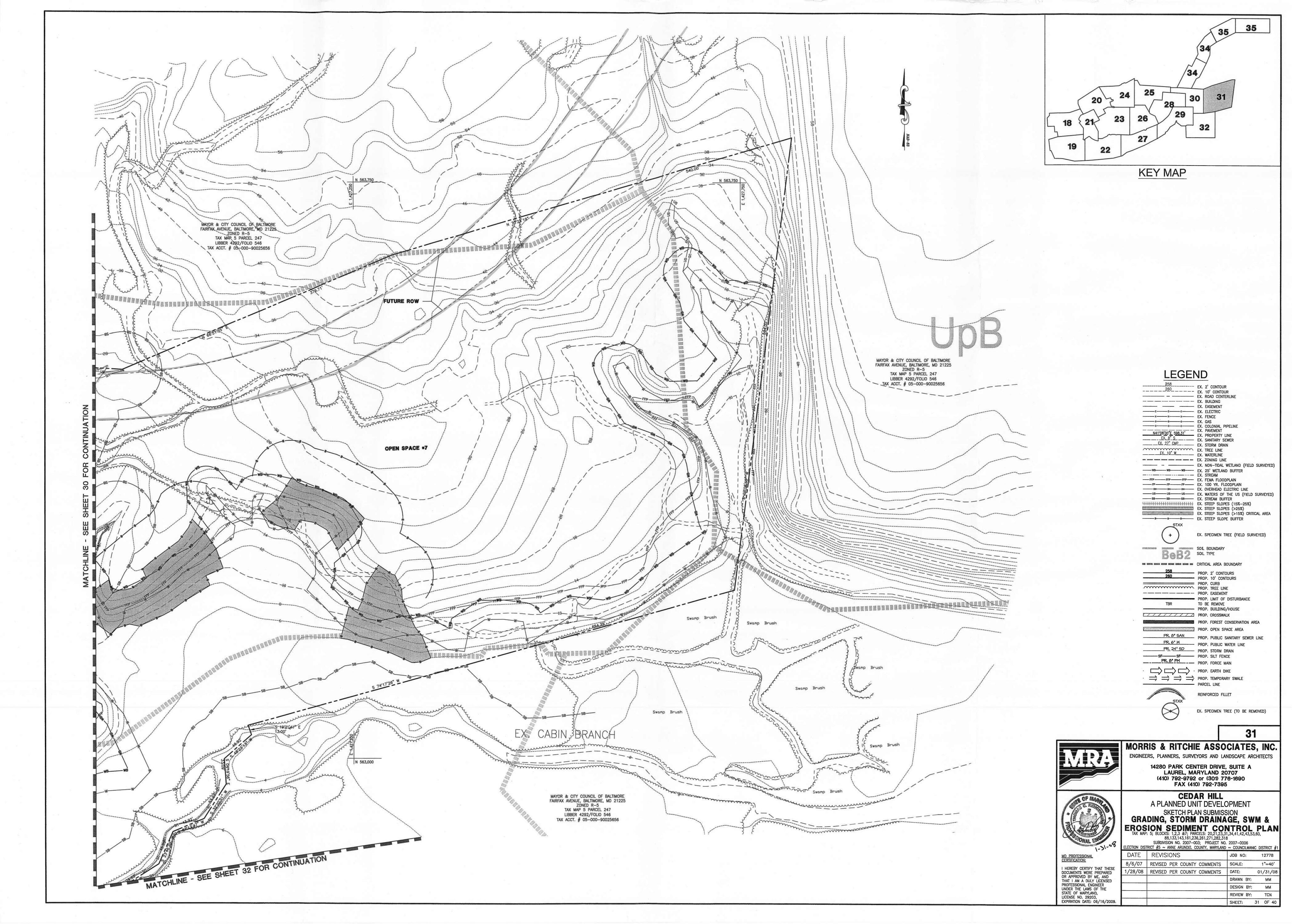
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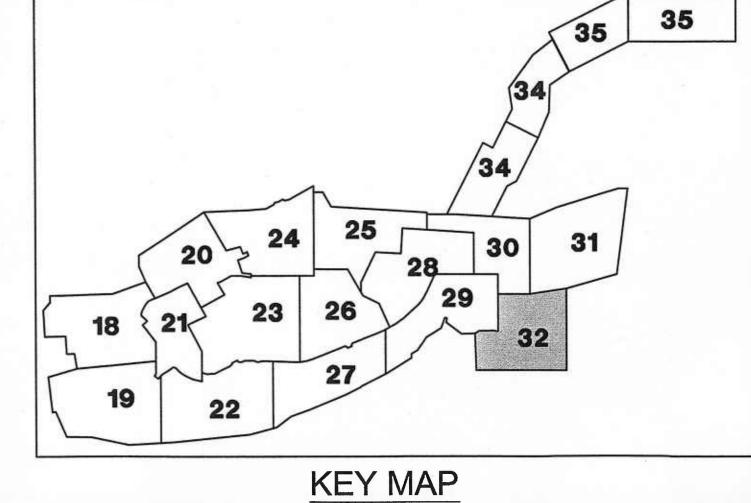
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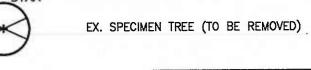
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REINFORCED FILLET



1"=40'

01/31/08



MORRIS & RITCHIE ASSOCIATES, INC. ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

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