



DEPARTMENT OF PLANNING & ZONING
COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

AGENDA

WASHINGTON COUNTY PLANNING COMMISSION

May 4, 2020, 7:00 PM

WASHINGTON COUNTY ADMINISTRATIVE COMPLEX

100 WEST WASHINGTON STREET

2ND FLOOR, PUBLIC MEETING ROOM #2000

CALL TO ORDER AND ROLL CALL

MINUTES

1. March 2, 2020 Planning Commission meeting minutes *

NEW BUSINESS

MODIFICATIONS

1. **Herbert and Joyce Nusbaum [OM-20-005]** – Modification request for a panhandle length to exceed 400 feet and to permit the additional stacking of a third lot between two existing lots on property located at 20148 Toms Road, Boonsboro; Zoning: A(R) – Agricultural Rural; Planner: Lisa Kelly *

LAND PRESERVATION

1. **Recertification of the Maryland Agricultural Land Preservation program** – Chris Boggs *

FOREST CONSERVATION

1. **17119 Virginia Avenue LLC [FP-20-003]** – Request to use a payment-in-lieu to meet forest conservation requirements for property located at 17119 Virginia Avenue; Zoning: IR (Industrial Restricted) and BG (Business General); Planner: Travis Allen *

OTHER BUSINESS

1. **Update of Staff Approvals** – Ashley Holloway
2. **Changes to the City of Hagerstown MRGA boundary** – Jill Baker *
3. **CIP Recommendation** - Jill Baker
4. **Director's Comment** – Jill Baker *

ADJOURNMENT

UPCOMING MEETINGS

1. Monday, June 1, 2020 – Washington County Planning Commission regular meeting

**a t t a c h m e n t s*

The Planning Commission reserves the right to vary the order in which the cases are called. Individuals requiring special accommodations are requested to contact the Washington County Planning Department at 240-313-2430, to make arrangements no later than ten (10) days prior to the meeting. *Notice is given that the Planning Commission agenda may be amended at any time up to and including the Planning Commission meeting.*

SM-20-005

RECEIVED



Washington County
MARYLAND

RECEIVED

MAR 20 2020

WASHINGTON COUNTY
PLANNING DEPARTMENT

DIVISION OF
PLAN REVIEW & PERMITTING

WASHINGTON COUNTY
PLAN REVIEW DEPARTMENT

**WASHINGTON COUNTY PLANNING COMMISSION
APPLICATION FOR SUBDIVISION ORDINANCE MODIFICATION**

APPLICANT

NAME Herbert E. Nusbaum, Sr. & Joyce B. Nusbaum

MAILING ADDRESS 105 Young Avenue, Boonsboro, MD 21713

TELEPHONE (301) 432-8610
(home) (work) (cell)

PROPERTY OWNER

NAME Herbert E. Nusbaum, Sr. & Joyce B. Nusbaum

MAILING ADDRESS 105 Young Avenue, Boonsboro, MD 21713

TELEPHONE (301) 432-8610
(home) (work) (cell)

CONSULTANT

NAME Fox & Associates, Inc.

ADDRESS 981 Mt. Aetna Road, Hagerstown, MD 21740

TELEPHONE (301) 733-8503

DESCRIPTION OF PROPERTY

TAX ACCOUNT ID # (Required) ⁰⁶ 009360

PARCEL REFERENCE: MAP 0063 GRID 0016 PARCEL 0006

PROPOSED LOT ACREAGE 5.626 TOTAL SITE ACREAGE 32.028

ZONING DISTRICT 06 ROAD FRONTAGE (FT) 55

9/24/18

Page 1 of 7

80 West Baltimore Street | Hagerstown, MD 21740-6003 | P: 240.313.2460 | TDD: 711

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To the best of my knowledge, the information provided in this application and other material submitted is correct.

Jorge B. Nusbau 3/5/2020
Applicant's Signature Date

Jorge B. Nusbau 3/5/2020
Property Owner's Signature Date

STAFF USE ONLY:

STAFF PLANNER: _____ DATE RECEIVED: _____

NUMBER: _____

MEETING DATE: _____



WASHINGTON COUNTY DIVISION OF PLAN REVIEW & PERMITTING

80 West Baltimore Street | Hagerstown, MD 21740-6003 | P: 240.313.2460 | F: 240.313.2461 | Hearing Impaired: 7-1-1

SUBDIVISION MODIFICATION REPORT

Date: 04-16-2020

Record Number : OM-20-005
Type : Regular
Reason : Irregular Shape Immediate Family Member Modification to create a panhandle in excess of the maximum 400 feet and the stacking of a third lot behind two lots
Owner : NUSBAUM HERBERT E SR ET UX
Applicant : FOX & ASSOCIATES INC
Location : North side of Toms Road
Parcel : 06009360
Zoning : Agricultural, Rural
Land Use : Agriculture

Proposal:

Lots : 2
Acres : 7.0
Remainder :
Panhandles : 1
Land Use : Residential

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APR 21 2020

WASHINGTON COUNTY
PLANNING DEPARTMENT

MODIFICATION(S):

405.11G.1 & 405.11.G.2: To create Lot 3 with a panhandle in excess of 400 feet (692 feet) and permit the stacking of a third lot behind two existing lots.

CONDITIONS:

Not Applicable

LAK/LAK



Washington County

M A R Y L A N D

DIVISION OF
PLAN REVIEW & PERMITTING

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APR 21 2020

WASHINGTON COUNTY
PLANNING DEPARTMENT

MEMORANDUM

TO: Lisa Kelly, Senior Planner

FROM: Rebecca Calimer, EIT, CFM, Chief of Plan Review

DATE: April 14, 2020

SUBJECT: OM-20-005
North side of Toms Road, BO

I have reviewed the request for a MODIFICATION FOR A PANHANDLE LENGTH TO EXCEED THE MAXIMUM OF 400 FEET AND TO PERMIT THE ADDITIONAL STACKING OF A THIRD LOT BEHIND TWO EXISTING LOTS.

I have no comments on this request.

Staff Report
2019 MALPF ReCertification
Chris Boggs, Land Preservation

Washington County is what the Maryland Dept. of Planning (MDP) and Dept. of Agriculture classify as a “Certified County.” Certified counties retain 75% of their State Agricultural Transfer Tax, as opposed to uncertified counties which only retain 33% of their Ag Transfer Tax.

In order for Certified counties to retain their certification, a Final Certification Report must be submitted to MDP every three years. The report is based on questions developed at the State level to assess the County’s Land Preservation Program and compliance with the Comprehensive Plan. While the certification report addresses all the county land preservation programs, Washington County has traditionally used 100% of the funds for the 60/40 match component of MALPP

The County’s final certification report addresses several main items from the interim certification report which the State feels need to be clarified. These items are located on page 3-4 (adoption of PPAs), page 4 (update on TDRs), page 4 (update on clustering provision), page 4 (update on setbacks) and page 5 (updated Program Development Strategy). The report discusses our plans to achieve a goal of 50,000 acres in permanent preservation. MDA and MDP understand that factors affecting our strategy will change over time and we will have on-going opportunity to update and modify our land preservation plans.

The County’s Agricultural Land Preservation Advisory Board has approved the Final ReCertification Report unanimously. The Dept. of Planning and Zoning is requesting approval from the Planning Commission, giving us the ability to request County Commissioner approval.

Based on COMAR Title 34 Department of Planning, Subtitle .03 Land Use, Chapter .03
Certification of County Agricultural Land Preservation Programs

DATE: October 24, 2019

COUNTY: Washington

DATE OF TRANSMITTAL:

October 1, 2019

CHECKLIST FOR CERTIFIED COUNTIES' ANNUAL REPORTS¹ - FYs 2017-2019

I. The county agricultural preservation advisory board, the county office of planning, or the county planning commission, as designated by the county, and the governing body of the county:

_____ A. Have approved the application for (re)certification of the county program (.05(A)(2)).

Letters will be coming from Jeffrey A. Cline, President, Board of County Commissioners of Washington County, MD; and Robert Meyers, Chairman, Agricultural Land Preservation Advisory Board

II. Financial Reporting. Both annual reports shall provide a financial report that includes:

OK A. Estimated revenues and expenditures for the county's agricultural land transfer tax account for fiscal years that have transpired in their entirety during the certification period (.10(B)(1)(a));

	Ag Land Transfer Tax Collected	Remitted to State	Retained	Funds without Certification	Funds Gained through Certification
FY 2017	\$80,093	\$20,023	\$60,070	\$26,431	\$33,639
FY 2018	\$140,311	\$35,078	\$105,233	\$46,302	\$58,930
FY 2019	\$102,705	\$25,676	\$77,029	\$33,893	\$43,136
TOTAL	\$323,109	\$80,777	\$242,332	\$106,626	\$135,706

OK B. Revenue sources for, and estimated expenditures of, any other fund used to purchase development rights, provide financial enhancements to purchases of development rights, or administer the county's agricultural preservation program (.10(B)(1)(b)).

Actual expenditures of county funds for the certification period are as follows:

Expenditure of "Other" County Funds			
	FY 2017	FY 2018	FY 2019
Installment Payments	\$272,354	\$208,541	\$211,525
Tax Credits on Easement Properties	\$185,353	\$193,024	\$199,059
TOTAL	\$457,707	\$401,565	\$410,584

¹ Note: The first report is due on October 1 following the completion of the first full fiscal year of the certification period, except as extended by MDP for reasonable cause.

The second report is due on October 1 following completion of the second full fiscal year of the certification period, except as extended by MDP for reasonable cause.

- OK C. Information necessary for MDP and MALPF to determine if the county is meeting its commitment of qualifying expenditures in an amount at least equal to the additional funds available to the county as a result of certification (a financial reporting form for this purpose is available from MDP) (05(D); .10(B)(2)).

The figures above show that the County is more than meeting its matching requirements.

- OK D. All expenditures reported shall be identified as qualifying or non-qualifying expenditures (.10(B)(3)).

- OK E. Financial reports shall be verified and signed by the county's chief financial officer or by an independent auditor (.10(B)(4)).

The financial report for FY 2017 was signed by SB & Company, LLC. The financial report for FY 2018 was signed by Todd L. Hershey, County Treasurer. The financial report for FY 2019 was signed by SB & Company, LLC.

III. In addition to the financial report above, the FIRST and SECOND annual report of each certification period shall include:

- OK A. Demonstrate that the county has maintained a successful program of purchase of development rights or financial enhancements related to the purchase of development rights (11(B)(1)(a));

See III.C, below.

- OK B. An inventory of properties which have been permanently preserved by an agricultural land preservation easement during the reporting period (.10(C)(2)).

See Attachment D.

- OK C. The total number of easements purchased and acreage preserved through the county and State agricultural land preservation easement purchase programs during the reporting period (.10(C)(3)).

During the certification period, Washington County preserved 3,383.4 acres:

Washington County Land Preserved by Easement FY 2017-2019							
FY	MALPF	Rural Legacy	MET	CREP	IPP*	NGFAP**	Other
2017	0.00	209.03	56.85	211.46	394.06	0.00	0.34
2018	135.51	334.83	0.00	102.14	0.00	352.34	0.00
2019	456.76	824.11	0.00	302.47	0.00	0.00	0.00
TOTAL	592.28	1,367.97	56.85	616.07	394.06	352.34	0.34

* Installment Purchase Program of County PDR program.

** MARBIDCO's Next Generation Farmland Acquisition Program

Washington County Number of Easements Purchased FY 2017-2019							
FY	MALPF	Rural Legacy	MET	CREP	IPP	NGFAP	Other
2017	0	5	3	3	3	0	1
2018	1	3	0	2	0	3	0
2019	3	7	0	4	0	0	1
TOTAL	4	15	3	9	3	3	2

OK D. An update on progress made to reach the milestones established in the county's most recent program development strategy (.10(C)(4)).

Provided elsewhere in checklist.

IV. In addition to the financial report and the information required in the first annual report, above, the SECOND annual report of each certification period shall include:

_____ A. A map of all agricultural lands preserved in the county, including those preserved both during and before the certification period, showing those properties in relation to priority preservation areas (.10(D)(2)).

Attachment A.

OK B. A description of the programs the county has established to encourage participation of farmers in agricultural land preservation efforts, including purchase of development rights or financial enhancements related to the purchase of development rights, outside of MALPF (.05(B));

Washington County uses a full array of easement programs: MALPF, MET, Rural Legacy, MARBIDO-NGFAP, local PDRs with an IPP option, CREP, and other federal programs such as transportation scenic easements.

OK C. An update on: The method, evaluation, shortcomings, and future actions the county is using or will use to achieve preservation goals (as required under Regulation .05E and F) that demonstrates significant progress toward achievement of the preservation goals in the priority preservation area (.11(B)(2));

Washington County's PPA contains 72,693 acres of undeveloped land; its preservation goal is 50,000 acres countywide. The great majority of the County's easements are in the PPA and location in the PPA adds points to easement ranking (though only 59% of easements acquired during the reporting period were located in the PPA). When the state approved Washington County's initial certification application, the PPA was smaller and the acreage goal there was 30,000 acres. Today, however, even if 50,000 acres were preserved in the PPA alone, that would equal only 68.8% of the unprotected land there. We encourage the county to expand its PPA preservation acreage goal to equal 80% of the unprotected land in the current PPA.

That said, Washington County is well on its way to reaching its 50,000-acre goal. Based on preservation and land conversion trends over the past decade, as the chart in IV.C.2

Commented [JD1]: The law (Agriculture Article Section 2-518 only requires that "A county's acreage goal for land to be preserved through easements and zoning within [a PPA] shall be equal to at least 80% of the remaining undeveloped land in the [PPA], as calculated at the time of application for State certification of [a PPA]."

So there is no legal requirement to increase the county's PPA preservation acreage goal when a PPA is expanded.

For now, the 30,000-acre PPA preservation acreage goal discussed in the county's 2008 program development strategy (PPA Element) still applies and meets what was then the 80% requirement.

That said, we could encourage counties to expand their PPA preservation acreage goal whenever the PPA is expanded.

Please ask the county to provide their thoughts on whether they will consider expanding their PPA preservation acreage goal as part of the 2040 comprehensive plan update.

shows, the county is projected to reach its goal in 2041, with 20,000 acres to spare. The PPA will be expanded to incorporate the expansion of the Rural Legacy Area.

The PPA plan, adopted in 2008, included the following goals (updates follow in red font):

- *Incorporate PPA into the Agricultural Preservation Priority Ranking System. Done. The ranking system also allots 25% of the points for proximity to other easements, which also favors easements in the PPA.*
- *“Continue to evaluate a 2007 consultant report with regard to whether TDRs are an appropriate mechanism for land preservation in Washington County and coordinate such a program to be compatible with the goals and objectives of land use and land preservation programs and policies already existing in the County.” Chris, please provide an update on this. The County is no longer actively working to implement a TDR program in the County. We continue to monitor local needs and changes in economy that may facilitate the need to revive this option.*
- *Maintain ten-year agricultural districts “to help protect against development pressure. Ten-year districts have been maintained.*
- *“Amend the clustering provision section in the Zoning Ordinance to maximize clustering options in the Rural Area zoning districts.” Chris, please provide an update on this. The County has no plans to update the clustering provision in the Zoning Ordinance.*

The recommendations for agriculture in the 2002 Comprehensive Plan before the PPA Plan element was adopted include the following:

- *Establish a minimum target threshold of the total land area of the County to remain in agricultural production. Continue efforts to develop permanent funding sources that can sustain agricultural easement and development rights acquisition program. Done. The PPA established the threshold of land area to remain in agricultural production, and for funding the county has a 2% piggyback ag transfer tax.*
- *Continue the Agricultural District program as an interim program to support agricultural preservation until agricultural easements can be acquired. Done.*
- *Develop setbacks, screening and buffering for residential development proposed adjacent to agricultural preservation districts or easements that would require mitigation to protect the integrity of the agricultural property and not the proposed residential development. Chris, please provide an update on this. The County has already adopted larger setbacks to agricultural easements and agriculturally assessed land. We don’t have plans to expand that any further.*

Chris, please provide some text regarding any shortcomings or strengths of the program development strategy, and whether the county will consider any different future actions (i.e., a modified program development strategy) at this time.

1. The ability of the county's zoning and other land use management tools to do the following in the county's priority preservation area (.05(E)(1)(a)):

OK

- a. Limit the amount and geographic distribution of subdivision and development in accordance with established agricultural land preservation goals (.05(E)(1)(a)(i));

When first certified, Washington County had a more liberal 1:1 or 1:3 lot allowance in the rural areas. In 2005, the county made its zoning significantly more protective by changing it from 1:1 (Agriculture) or 1:3 (Conservation) to the following:

1:5 (+3 lots) Agricultural zone,

1:20 (+ 3 lots) Environmental Conservation zone,

1:30 (+ 3 lots) Preservation (Rural Legacy) zone. Plus 2 more lots at 1:50.

Furthermore, the Growth Tier Map law allows for a maximum of only 7 development rights per parcel in the above zoning districts.

- IV. C. An update on: The method, evaluation, shortcomings, and future actions the county is using or will use to achieve preservation goals (as required under Regulation .05E and F) that demonstrates significant progress toward achievement of the preservation goals in the priority preservation area (.11(B)(2));

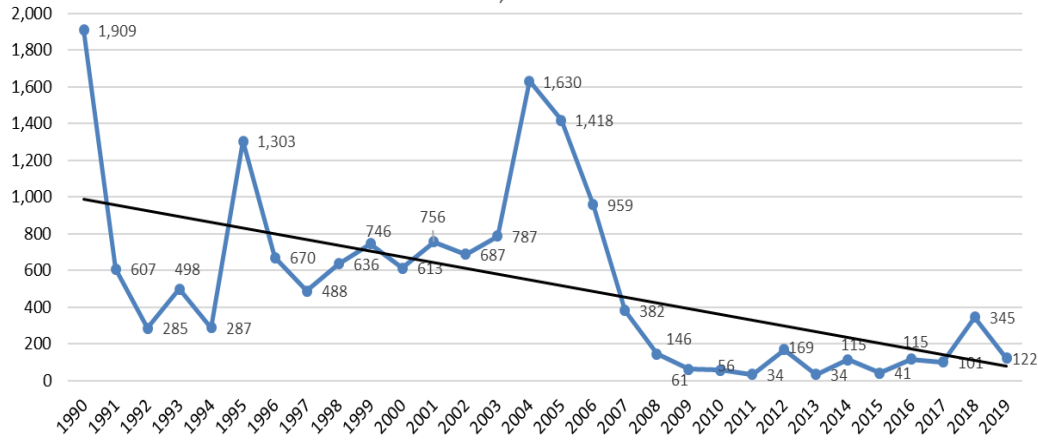
1. The ability of the county's zoning and other land use management tools to do the following in the county's priority preservation area (.05(E)(1)(a)) **CONTINUED:**

OK

- b. Stabilize the land base (.05(E)(1)(a)(ii));

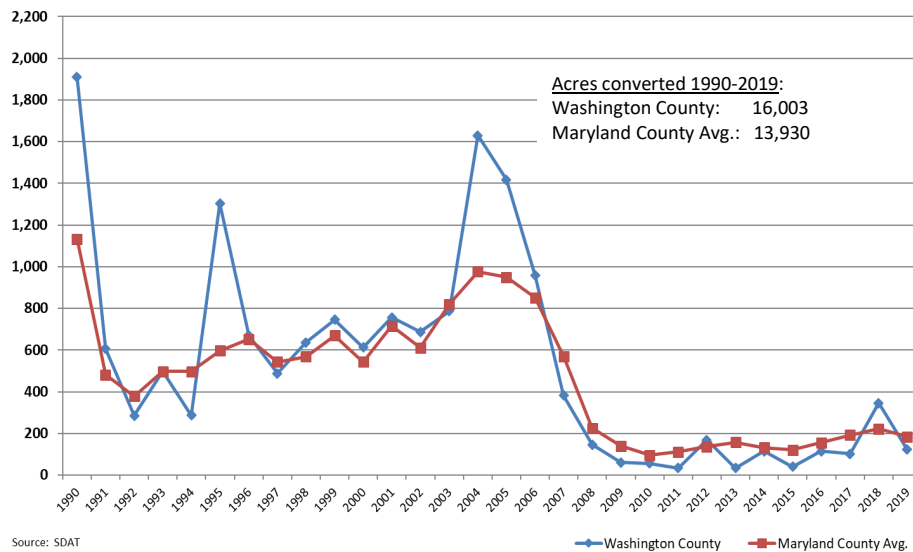
The two charts below show that though Washington County has converted more farmland than the average Maryland County, little land has been subject to ag land transfer tax in the past ten years and that since spiking early in the aughts, Washington County has usually lost less land per year than the average Maryland County.

Acres Subject to Ag Land Transfer Tax In Washington County,
 1990-2019, with Trendline



Source: SDAT

Acres Subject to Ag Land Transfer Tax in Washington County
 Vs. MD "Average" County, 1990-2019



Source: SDAT

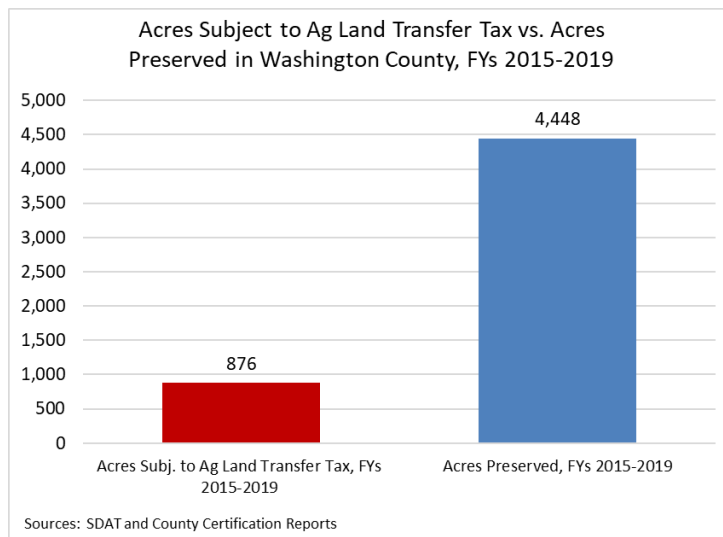
Washington County Maryland County Avg.

- OK c. Provide time for agricultural land preservation easement acquisition to achieve State and local preservation goals before the agricultural land resource is excessively compromised by development (.05(E)(1)(a)(iii)).

See IV.C.2 below.

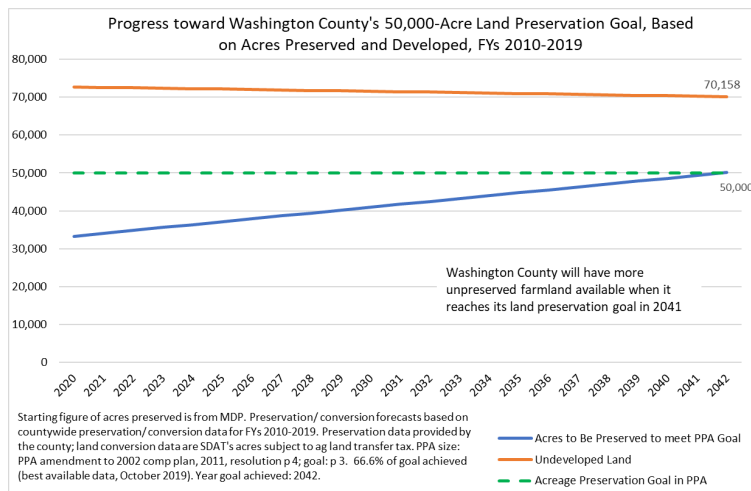
- OK 2. The ability of combined State, local, and other agricultural land preservation easement acquisition programs to permanently preserve lands in the county's priority preservation area at a rate sufficient to achieve State and local preservation goals (.05(E)(1)(b)).

The chart below shows that over six acres were preserved for each acre subject to ag land transfer tax for the last five fiscal years. The County reports that from 7/1/2014 to 6/30/2019 Washington County lost only 82 acres of converted farmland in the entire PPA. [This measure may not be acres subject to ag land transfer tax. As the county reports later, "A total of 59 parcels were subdivided in the PPA in the most recent 5-year



period, though the majority of those were not in the prime agricultural areas" (recertification application, page 6).]

Washington County reports that 972 of 1,637 acres preserved in FY 2019 were inside the PPA (59.4%). "This number is greater than previous years, mainly because the CREP program has been opened up to the entire County (not just the Rural Legacy Area) and funding has increased for MALPP easements, thereby providing the County with the ability to preserve more farms, some of which are outside of the PPA. That said, the County has recently approved the expansion of the its Rural Legacy Area (RLA) by over 12,000 acres, more than three-quarters of which are in the PPA. The County expects the State to add their approval to the expansion later in FY 2020, and will be able to follow that up with several high-quality easements in the newly-configured RLA" (recertification application, pages 5-6).



The graph above

shows that given the acreage already preserved in Washington County, and projecting future land preservation and conversion based on ten-year trends, Washington County should meet its 50,000-acre preservation goal by 2041, with plenty of land available afterward for further preservation.

IV. C. An update on: The method, evaluation, shortcomings, and future actions the county is using or will use to achieve preservation goals (as required under Regulation .05E and F) that demonstrates significant progress toward achievement of the preservation goals in the priority preservation area (.11(B)(2)) **CONTINUED;**

OK 3. The degree to which county land use and other ordinances and regulations restrict or otherwise interfere with the conduct of normal agricultural activities in the priority preservation area (.05(E)(1)(c)).

The county reports that in addition to the right-to-farm ordinance, "There are no restrictions on normal agricultural activities" (recertification application, page 6).

- OK 4. The ability of county zoning, subdivision, and development regulations and policies to minimize the degree to which development in the priority preservation area interferes with normal agricultural activities ((.05)(E)(1)(d)).

The County has a right-to-farm law. As mentioned in IV.C.1.a above, the Growth Tier Map law has countered the effects of the liberal 1:5 agricultural zoning, while the Environmental Conservation zoning and Preservation zoning further limit development in rural areas, including PPAs. "Further, the County has recently approved an expansion of its Rural Legacy Area, in which more than three quarters of the expanded area consists of Priority Preservation Areas" (recertification application page 5).

- OK 5. The ability of county and other farming assistance programs to support profitable agriculture and forestry activities in the priority preservation area (05.(E)(1)(e)).

Washington County reports that it administers "a complete package of farmer assistance programs, including Soil Conservation, Farm Services Agency, Extension Service, an Ag Marketing Specialist, as well as an active farmland preservation program. In addition, the County has encouraged farm support services such as feed and equipment dealers to maintain a strong presence in the County" (recertification application (page 5).

6. Statistics and other factual information necessary to evaluate the county's agricultural land preservation program, such as:

- OK a. A description of the amount of subdivision and development allowed on land within zoning districts comprising the priority preservation area, including base density and additional lots allowed for clustering, density transfers between parcels, and any other provisions affecting lot yields (.05(E)(2)(a));

See IV.C.1.a, above

IV. C. An update on: The method, evaluation, shortcomings, and future actions the county is using or will use to achieve preservation goals (as required under Regulation .05E and F) that demonstrates significant progress toward achievement of the preservation goals in the priority preservation area (.11(B)(2)) **CONTINUED**;

6. Statistics and other factual information necessary to evaluate the county's agricultural land preservation program, such as **CONTINUED**:

- OK b. The numbers and locations of residential parcels and acres subdivided and developed within the priority preservation area during the most recent 5-year period (.05(E)(2)(b));

IV.C.2 above shows that a total of 876 acres were subject to ag land transfer tax during the most recent 5-year period. The county reports that "59 parcels were subdivided in the PPA in the most recent 5-year period, though the majority of those were not in the prime agricultural areas" (recertification application, page 6).

- OK c. The total acreage and locations of farms and parcels permanently preserved through agricultural land preservation easements recorded in the land records of the county during the most recent 5-year period (.05(E)(2)(c));

[An attachment to come in the final report will show 4,448.305 acres and list all the easements] See Attachment D.

- OK d. The constraints and restrictions placed by county ordinances and regulations on normal agricultural activities, such as minimum setbacks from property boundaries (.05(E)(2)(d)); and

There are no restrictions on normal agricultural activities. In fact, the County's Right-To-Farm Ordinance specifically protects agricultural activities from nuisance complaints.

- OK e. The constraints and restrictions placed by county ordinances and regulations on non-agricultural development activities, in order to minimize conflicts with normal agricultural activities within the priority preservation area (.05)(E)(2)(e)).

Setbacks require a 50-foot buffer.

D. The Department and Foundation:

- N/A 1. Planning has determined that the county update of its program development strategy is adequate (.11 (3)(a));

Washington County has not updated its program development strategy.

2. Determine that the latest local plan update includes an evaluation of:

The 2002 Washington County Comprehensive Plan is still in effect, though it looks as if an update is underway.

- N/A (a) The county's progress toward meeting the goals of the Foundation (.11 (3)(b)(i));

- N/A (b) Any shortcomings in the county's ability to achieve the goals of the Foundation (.11 (3)(b)(ii)); and

- N/A (c) Past, current, and planned actions by the county to correct any shortcomings identified as part of the evaluation (.11 (3)(b)(iii)); and

- OK 3. Determine that the priority preservation area identified in the priority preservation area element of the county's local plan continues to meet the requirements of the certification program (11.(3)(c)).

- E. An inventory, in digital or tabular form, of the properties which have been permanently preserved by a recorded conservation easement, which:

An inventory will arrive with the final report. See Attachment C

- _____ 1. If in digital form, is approved by MDP for content and format (.05(G)).
- _____ 2. If in tabular form, includes, for each property:
- _____ a. The number of each tax map on which each parcel comprising the easement occurs (.05(G)(2)(a));
- _____ b. Each grid cell number of each tax map for each parcel comprising the easement (.05(G)(2)(b));
- _____ c. Each parcel number through which the property can be identified on each tax map (.05(G)(2)(c));
- _____ d. The total number of acres of each easement property (.05(G)(2)(d));
- _____ e. The date on which the easement became effective (.05(G)(2)(e));
- _____ f. The preservation program which holds the easement (.05(G)(2)(f));
- _____ g. The means through which the easement was acquired, such as purchase, transfer of development rights between private parties, or another means specified by the county (.05(G)(2)(g)); and
- _____ h. The easement purchase price, if the easement was purchased through or with financial assistance from a government program (.05(G)(2)(h)).
- N/A F. A description of any changes in the county priority preservation area and the priority preservation area element of the local plan (.10(D)(4)).
- G. During the certification period, the county:
- OK 1. Has made reasonable progress on the recommendations and improvements scheduled in its most recent program development strategy, or can justify deviation from that strategy (.11(1)(B)(1)(c)).
- See IV.C, above. Also, the county reports the following: "Washington County continues to make great strides in all programs since the last reporting period. The County has surpassed 34,000 acres of preserved land. Funding and interest in our programs continues to rise and we are optimistic of reaching our 50,000-acre goal of permanently preserved land in the next 20 years" (recertification application, page 7).*
- OK 2. Has been reasonably successful in preserving agricultural land and controlling subdivisions and conversion of agricultural land consistent with State and

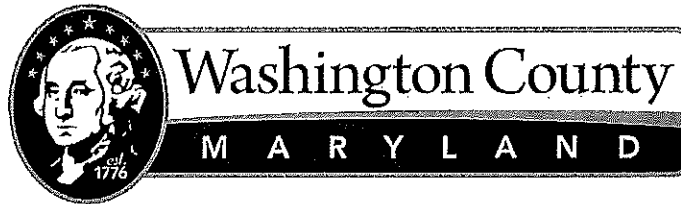
county goals and plans to preserve agricultural land and to protect environmental quality (.11(1)(B)(1)(d)).

See IV.C.2, above.

- OK
3. Has made significant attempts to coordinate agricultural preservation efforts with those of neighboring counties, when appropriate, and MDP and MALPF (.11(1)(B)(1)(e)).

Page 8 of the recertification application reports the following:

Washington County works with other Maryland counties on a regular basis through a variety of programs. Generally, it is in the form of providing guidance for, and trouble-shooting, different nuances of the many preservation programs available. We especially have a great working relationship with our Frederick County counterparts whom we speak with regularly. Further, Chris Boggs [program administrator] has volunteered to sit on the MALPF EVS Committee, and has been involved with the Heart of Maryland RCP initiative.



DEPARTMENT OF PLANNING & ZONING
COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

MEMORANDUM

TO: Washington County Planning Commission

FROM: Travis Allen, Comprehensive Planner

DATE: April 16, 2020

RE: Forest Conservation Payment in Lieu Request for Valley Car Wash (FP-20-003)

Attached you will find supporting documentation for a request by the owner/developer to utilize payment in lieu (PIL) option to meet forest conservation requirements for properties occupied or surrounding Valley Car Wash near Williamsport. Enclosed for your review are three documents in support of the applicant's request. These include copies of the current preliminary/final forest conservation plan (FP-20-003); the original forest conservation plan developed for the parcel in 2004 which was never recorded for reasons unknown; and a justification letter from Qualified Professional Shannon Stotler dated March 16, 2020.

Our office became aware of forest clearing without prior County approval that occurred at the Valley Car Wash location in January 2019. At that time, we became aware that both the new forest clearing, and the development of the Car Wash had not met forest conservation mitigation requirements due to the failure to record the previous forest conservation plan.

The current plan retains less forest than the one from 2004, due to the premature clearing, and proposes to meet its remaining mitigation requirements via the PIL option. The PIL option is the least preferred technique in Article 10 Preferred Sequence of Mitigation Techniques in the Washington County Forest Conservation Ordinance. It is at the Commission's discretion whether to approve this technique or recommend that they choose an alternate method of mitigation on or off the development site.

If you have questions or comments regarding this request, please contact me using the information provided below.

Travis Allen
Comprehensive Planner
(240) 313-2432
tallen@washco-md.net

100 West Washington Street, Suite 2600 | Hagerstown, MD 21740 | P: 240.313.2430 | F: 240.313.2431 | TDD: 7-1-1

MEMO — Pay-in-Lieu Request

SUBJECT — FCP for 17119 Virginia Ave., LLC
FP-20-003

TO — Washington County Planning Commission

DATE — March 16, 2020

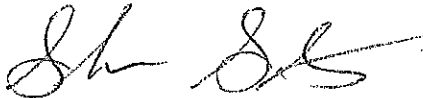
FROM — Shannon Stotler

REMARKS:

This site consist of three (3) parcels totaling approximately 7.61 acres with 4.79 acres of forest. Previous development from 2004 (Valley Car Wash) required forest mitigation. An Easement Plat was started but never approved or recorded. During the construction of Valley Car Wash, a portion of forest was cleared for a garden, since then however, the garden was abandoned with new forest taking up the majority of that was previously cleared. In the summer of 2019, the property owner started clearing forest to discourage vagrants as they started settling within the forest.

The forest that remains on site is being locked up in an easement (1.04 acres). Future development for this site would be greatly hindered if additional forest is replanted along with the potential problem of vagrants coming back. On behalf of the property owner, I request the remaining mitigation be addressed by payment-in-lieu.

Sincerely,



Shannon Stotler

Clearing of forested areas shown on this plat have been reviewed and approved by the Washington County Planning Commission and are in compliance with the requirements of the Washington County Forest Conservation Ordinance. Clearing of other forested areas have not been reviewed. Those areas not shown on this plat and not to be disturbed by a regulated activity as defined in the Forest Stewardship Act are not to be disturbed by a regulated activity and its associated forest disturbance in the Forest Conservation Ordinance and that regulated activity and its associated forest disturbance is not reviewed and approved by the Washington County Planning Commission according to the requirements and standards of the Forest Conservation Ordinance in effect at the time.

[illegible]

1. None of the soils listed are classified as a hydric soil in the Maryland Department of

2. There is a 100 year flood plain as shown per FEMA Panel number Z40070 0090 B dated September 30, 1982, however there are no non-tidal wetlands, stream buffers, critical habitats, cultural features or historic sites present.

□ All temporary protection devices (Wire Ties Protection Fence) and permanent devices (Concrete) be be suit to place.


- A pre-construction meeting will be required after finalization of the final design and construction documents. The meeting will be held at the project site and will involve any disturbance how some place on site. It is the owner and/or developer's responsibility to arrange for the Washington County Planning Department to be present at the meeting. The meeting will be held at least five (5) days notice.
- Grading and/or grades of area for construction of street and utility and building areas.
- Protection devices shall be maintained throughout construction.
- All protection devices shall remain in place until all construction has ceased in the immediate vicinity.
- Temporary protection systems to be removed after construction has been placed.
- And to have all permanent systems put in place (slopeways).


NUMBER	DIRECTION	DISTANCE
FL1	S 32°33'45" W	18.13'
FL2	S 57°26'15" E	50.00'
FL3	S 32°33'56" W	70.00'
FL4	N 76°00'47" W	418.84'
FL5	N 18°21'52" E	200.95'
FL6	S 73°22'41" E	389.99'
FL7	S 29°41'58" W	57.13'
FL8	S 05°49'43" W	29.73'

I certify that I am a qualified professional per requirements of COMAR 08.19.06.01 for qualified professional status and, therefore, am qualified to prepare the attached Forest Conservation Plan. I further certify that this plan was prepared by me or under my supervision using the methods provided by the Washington county Forest Conservation Ordinance and Forest Conservation Manual. I certify that this Forest Stand Delimitation is accurate and complete.

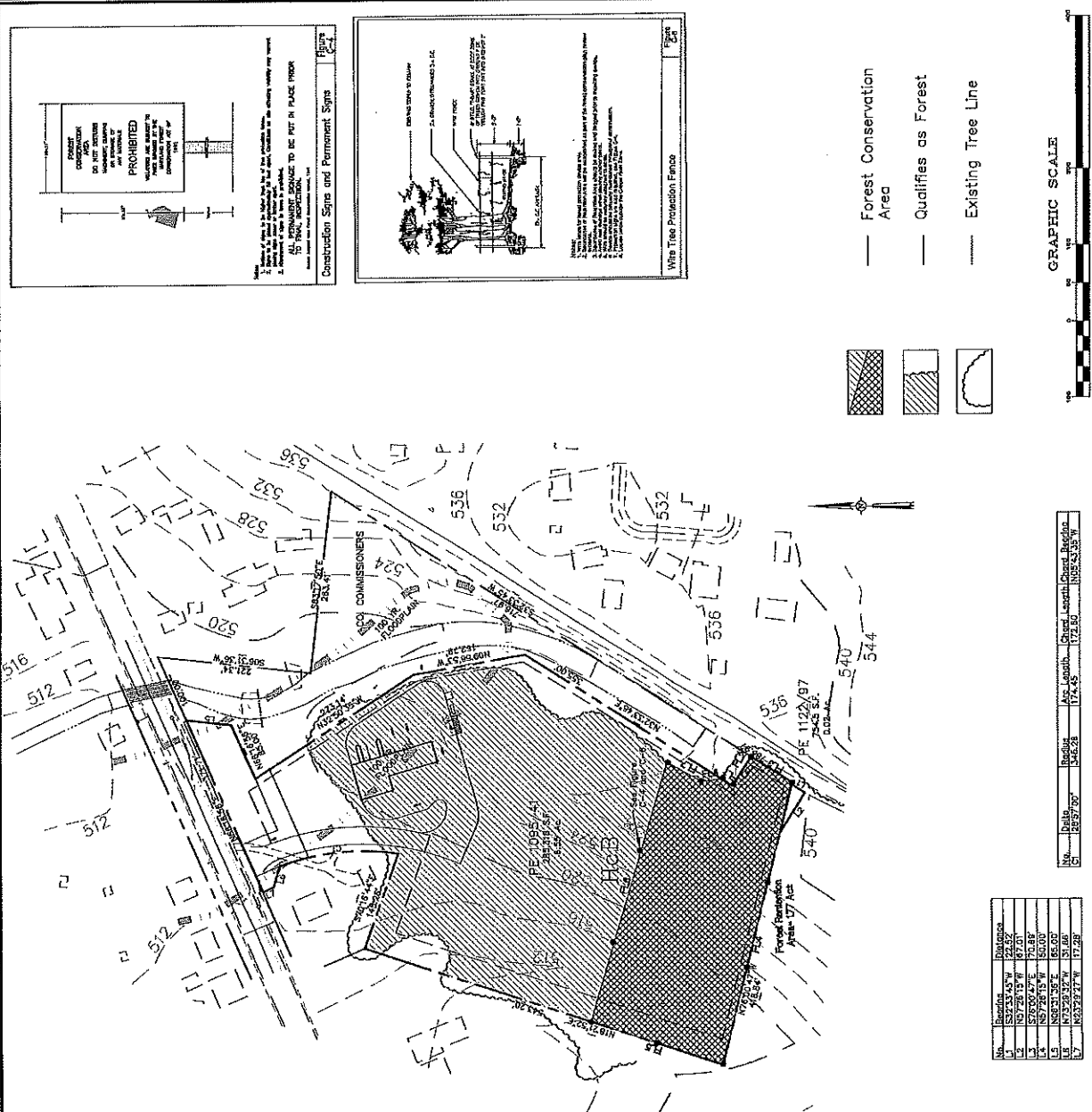
3/26/04
Date

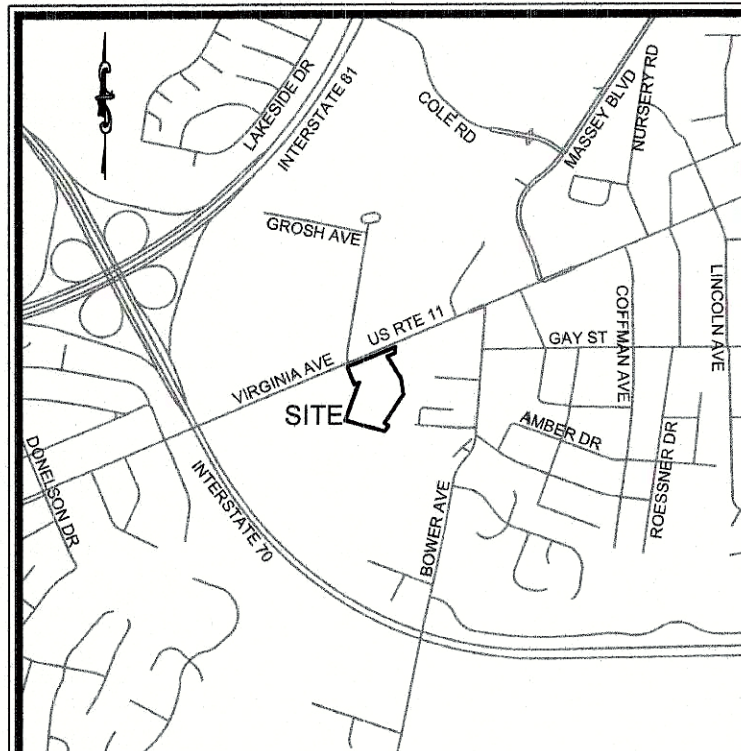
Owner/Developer:
Todd Snook
127 Britner Ave.
Williamsport, MD
(301) 582-3320

 FREDERICK SEIBERT & ASSOCIATES, INC.		CIVIL ENGINEERS SURVEYORS LAND 128 SOUTH POTOMAC STREET, 10 WEST BALTIMORE STREET, G BALTIMORE, MARYLAND 21201	
DATE MAY 24 - 24 - 309		DRAWING NUMBER 2 OF 2	
DRAWING NUMBER 2 OF 2		DATE March 26, 2004	
DRAWING NO.		DATE	
TITLE		CHECKED BY	
SCALE		1" = 40'	

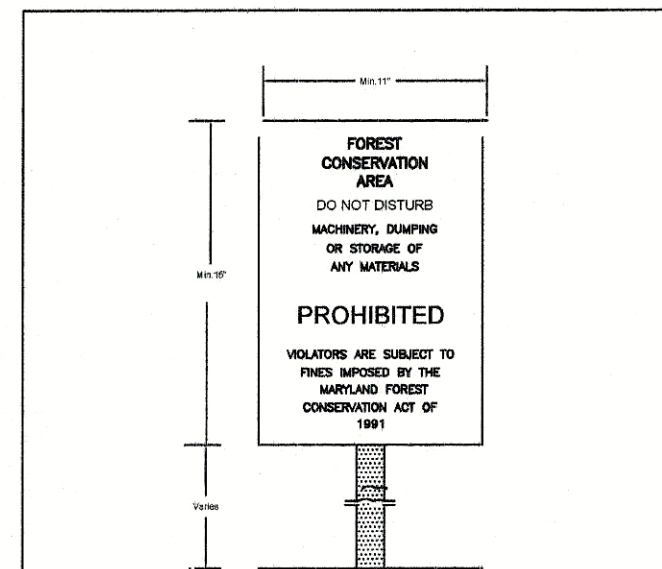
**FREDERICK
SEIBERT &
A ASSOCIATES, INC.**  **CIVIL ENGINEERS SURVEYORS LANDSCAPE ARCHITECTS LAND PLANNERS**
128 SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740
10 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225

Forest Conservation
Plan
for
Valley Car Wash
situate along the South side of US Route
11 (Virginia Ave.)
WASHINGTON COUNTY, MARYLAND





VICINITY MAP SCALE: 1" = 2,000'



Notes:
 1. Bottom of signs to be higher than top of tree protection fence.
 2. Signs to be placed approximately 50 feet apart. Conditions on site affecting visibility may warrant placing signs closer or further apart.
 3. Attachment of signs to trees is prohibited.
 • RETENTION AREA PROTECTIVE MEASURES SHALL BE INSTALLED WITHIN 30 DAYS OF SUBDIVISION PLAT APPROVAL.
 • AFTER INSTALLED NOTIFY PLANNING DEPARTMENT (240-313-2430) FOR AN INSPECTION.
 (Source: Maryland Forest Conservation Act of 1991)

Construction Signs and Permanent Signs Figure C-4

FOREST CONSERVATION WORKSHEET 2.2

NET TRACT AREA	
A. Total Tract Area.....	= 7.61 Ac.
B. Deductions.....	= 0.00 Ac.
C. Net Tract Area.....	= 7.61 Ac.
LAND USE CATEGORY CIA	
D. Afforestation Threshold (Net Tract Area x 15%).....	= 1.14 Ac.
E. Conservation Threshold (Net Tract Area x 15%).....	= 1.14 Ac.
EXISTING FOREST COVER	
F. Existing Forest Cover within the Net Tract Area.....	= 4.79 Ac.
G. Area of Forest Above Conservation Threshold.....	= 3.65 Ac.
BREAK EVEN POINT	
H. Break Even Point.....	= 1.67 Ac.
I. Forest Clearing Permitted Without Mitigation.....	= 2.92 Ac.
PROPOSED FOREST CLEARING	
J. Total Area of Forest to be Cleared.....	= 3.75 Ac.
K. Total Area of Forest to be Retained.....	= 1.04 Ac.
PLANTING REQUIREMENTS	
L. Reforestation for Clearing Above the Conservation Threshold.....	= 0.91 Ac.
M. Reforestation for Clearing Below the Conservation Threshold.....	= 0.20 Ac.
N. Credit for Retention above the Conservation Threshold.....	= 0.00 Ac.
P. Total Reforestation Required.....	= 1.12 Ac.
Q. Total Afforestation Required.....	= 0.00 Ac.
R. Total Planting Requirement.....	= 1.12 Ac.

or 48,787.2 S.F.



Proposed Forest Clearing = 3.75 Ac.±

Note: The purpose of this plan is to provide forest mitigation for Parcels 309, 797 and 140. The total acreage of all three (3) parcels have been combined as the total tract area as stated above in the Forest Conservation Worksheet.

General Notes:

Forest areas shown herein have been reviewed and approved by the Washington County Planning Commission and are in compliance with the requirements of the Washington County Forest Conservation Ordinance. Clearing of forested areas have not been approved. Those areas noted as "Forest Retention Areas" are not to be disturbed by a regulated activity as defined in the Forest Conservation Ordinance until that regulated activity and its associated forest disturbance is reviewed and approved by the Washington County Planning Commission according to the requirements and standards of the Forest Conservation Ordinance in effect at the time.

Property owners are advised that there are penalties and fines associated with violation of these restrictions. Activities of a recreational or passive nature, as long as there is no forest disturbance, removal of the existing forest, or inhibition of its natural growth processes are permitted in these forest areas.

This note or reference to its existence on this plat shall be included in each and every deed of conveyance for any lot shown on this plat.

The Retention Area shown on this plat is to be retained by the respective property owners in a natural forested condition, pursuant to the Washington County Forest Conservation Ordinance of 1993. Furthermore, the use of the Retention and Planting Area shall be limited to forest conservation practices activities which are consistent with the preservation of the Retention Area as natural forest land, as stipulated by the same Ordinance.

FOREST CONSERVATION SEQUENCE OF CONSTRUCTION

- All temporary protection devices and/or permanent devices shall be put into place.
 - Permanent signage will be placed as shown on the plan around the perimeter of the entire Forest Area within 30 days of subdivision plat approval and/or completion of construction.
 - During any building or site construction, the forest retention area(s) shall be protected by highly visible, well anchored temporary fencing.
 - All temporary fencing shall be in place prior to any grading or land clearing.
 - All temporary fencing shall be maintained throughout construction and until all graded areas have been stabilized.
 - Attachment of signs or any other objects to trees is prohibited.
 - No equipment, machinery, vehicles, materials or excessive pedestrian traffic shall be allowed within protected areas.
- A pre-construction meeting will be required after the boundaries of the limits of disturbance have been staked and flagged, the forest protection devices have been installed, and before any disturbance has taken place on the site. It is the owner and/or developer's responsibility to arrange for the pre-construction meeting. The owner and/or developer shall contact the Washington County Planning and Zoning Department (240-313-2430) for inspection of the installed devices prior to the start of construction with at least five (5) days notice. If the inspection reveals improperly installed protection devices, corrections will have to be made and re-inspected prior to the start of construction.
- Once approval has been granted by the Washington County Plan Review & Permitting Department, clearing and/or grading of the site for construction of street, utility, and building areas may commence.
- A post-construction meeting will be required after all construction has ceased and graded areas have been stabilized, all temporary protective devices shall be removed and replaced with the appropriate permanent signage. It is the owner and/or developer's responsibility to arrange for the post-construction meeting. The owner and/or developer shall contact the Washington County Department of Plan Review and Permitting (240-313-2430) for inspection of the final installed devices with at least five (5) days notice. If the inspection reveals improperly installed permanent protection devices, corrections will have to be made and re-inspected prior to the completion of site stabilization.

I certify that I am a qualified professional per requirements of COMAR 08.19.06.01 for qualified professional status and, therefore, am qualified to prepare the attached Forest Conservation Plan. I further certify that this plan was prepared by me or under my supervision using the methods provided by the Washington County Forest Conservation Ordinance and Forest Conservation Manual. I certify that this Forest Conservation Easement Plat is accurate and complete.

Shannon Stotler 1-22-2020
 Shannon Stotler Date

MISC PLAT NO _____
 DATE _____
 WASHINGTON COUNTY

Certificate of Approval
FINAL APPROVAL GRANTED

DATE: _____

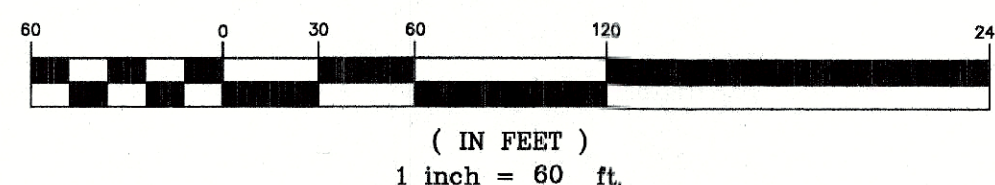
By: _____
 Washington County Planning Commission
 Final Approval good for one hundred
 eighty (180) days from above date

FORESTATION TABLE

Tract Area for Mitigation.....	7.61 Ac.
Forest to be Cleared.....	3.75 Ac.
Forest to be Retained (Easement).....	1.04 Ac.
Total Planting/Mitigation Required.....	1.12 Ac. or 48,787.2 S.F.

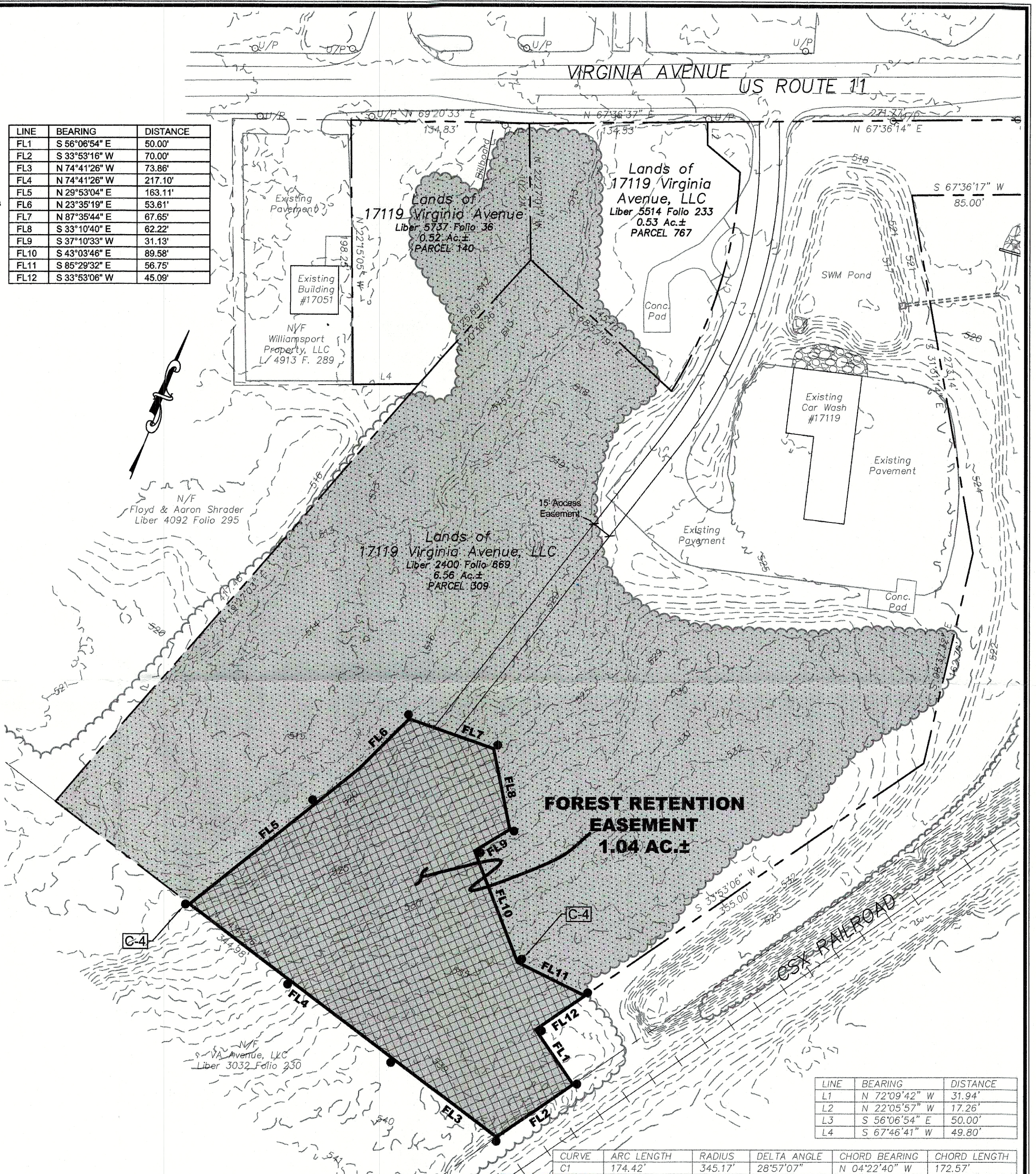
The owner has elected to pay-in-lieu into the Washington County Forest Conservation Fund in the amount of \$14,636.16. This rate is based on 30 cents per square foot of total forest planting required.

GRAPHIC SCALE



Owner/Developer:
 17119 Virginia Ave., LLC
 127 Britner Ave.
 Williamsport, MD 21795

LINE	BEARING	DISTANCE
FL1	S 56°06'54" E	50.00'
FL2	S 33°53'16" W	70.00'
FL3	N 74°41'26" W	73.86'
FL4	N 74°41'26" W	217.10'
FL5	N 29°53'04" E	163.11'
FL6	N 23°35'19" E	53.61'
FL7	N 87°35'44" E	67.65'
FL8	S 33°10'40" E	62.22'
FL9	S 37°10'33" W	31.13'
FL10	S 43°03'46" E	89.58'
FL11	S 85°29'32" E	56.75'
FL12	S 33°53'06" W	45.09'



LINE	BEARING	DISTANCE
L1	N 72°09'42" W	31.94'
L2	N 22°05'57" W	17.26'
L3	S 56°06'54" E	50.00'
L4	S 67°46'41" W	49.80'

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	174.42'	345.17'	28°57'07"	N 04°22'40" W	172.57'

TAX MAP 48-24-309 DISTRICT 26

DRAWING NUMBER 1 OF 1

DRAWN BY: DWH DATE: 1/21/2020

CHECKED BY: DATE:

SCALE: 1" = 60'

FSA
 FREDERICK, SEIBERT & ASSOCIATES, INC.
 CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS

128 SOUTH POTOMAC STREET
 HAGERSTOWN, MD 21740
 301.791.3650

20 WEST BALTIMORE STREET
 GREENCASTLE, PA 17225
 717.597.1001

505 SOUTH HANOVER STREET
 CARLISLE, PA 17013
 717.701.8111

5201 SPRING ROAD
 SHERMANS DALE, PA 17090
 717.567.3690

Preliminary / Final Forest Retention
 Easement Plat
 for
17119 Virginia Ave., LLC
 situate along the southern side of Virginia Ave., US Rte. 11
 west of CSX Railroad and east of Hickory School Road
 WASHINGTON COUNTY, MARYLAND

JOB NUMBER 4612

RECEIVED FEB 21 2020

FP-20-003

MRGA Prioritization Analysis (April 2020)

Areas to be Included:

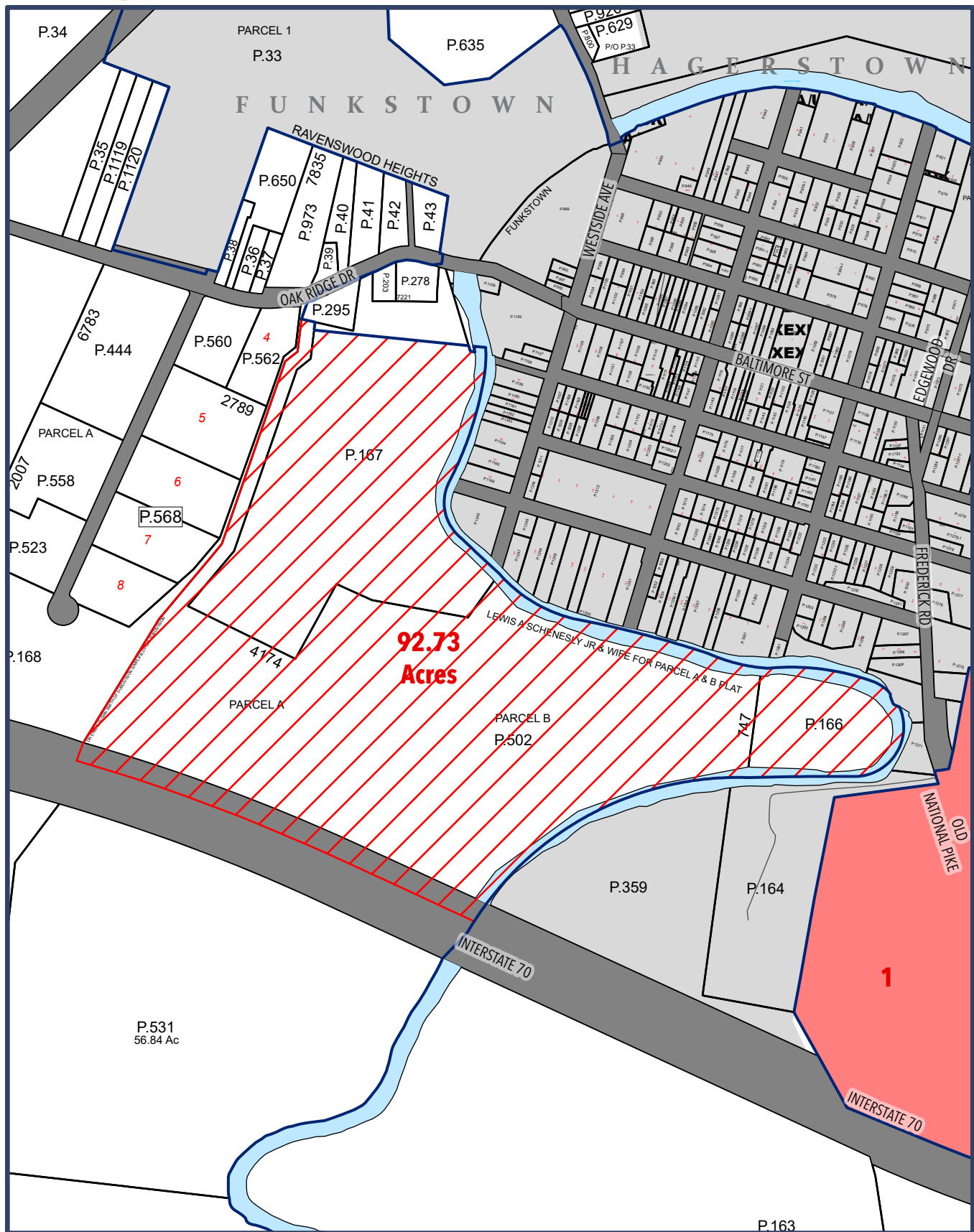
Area	Total Acreage	Developed/W-1 Acreage	Un/Under Developed or not W-1 Acreage	Potential EDUS
A	171.3	72.69	98.61	118.33
B	1022.11	605.03	417.08	500.50
C	99.35	89.56	9.79	11.75
D	411.39	288.87	122.52	147.02
E	23	0	23	27.60
F	147.79	14.52	133.27	378.26
G	302.2	6	296.2	355.44
Totals	2177.14	1076.67	1100.47	1538.90

Areas to be Removed:

Area	Total Acreage	Developed/W-1 Acreage	Un/Under Developed or not W-1 Acreage	Potential EDUS
1	127.89	105.86	22.03	82.75
2	87.05	0	87.05	522.30
3	129.78	6.45	123.33	148.00
4	69.14	0	69.14	241.99
5	65.25	0	65.25	228.38
6	86.19	6.4	79.79	279.27
7	23.91	9.55	14.36	50.26
Totals	589.21	128.26	460.95	1552.95

City Residential Projection Rates	
Districts	Unit Density
RT	3.5
RS	3.5
RU	6
RM	12
Com	1.2

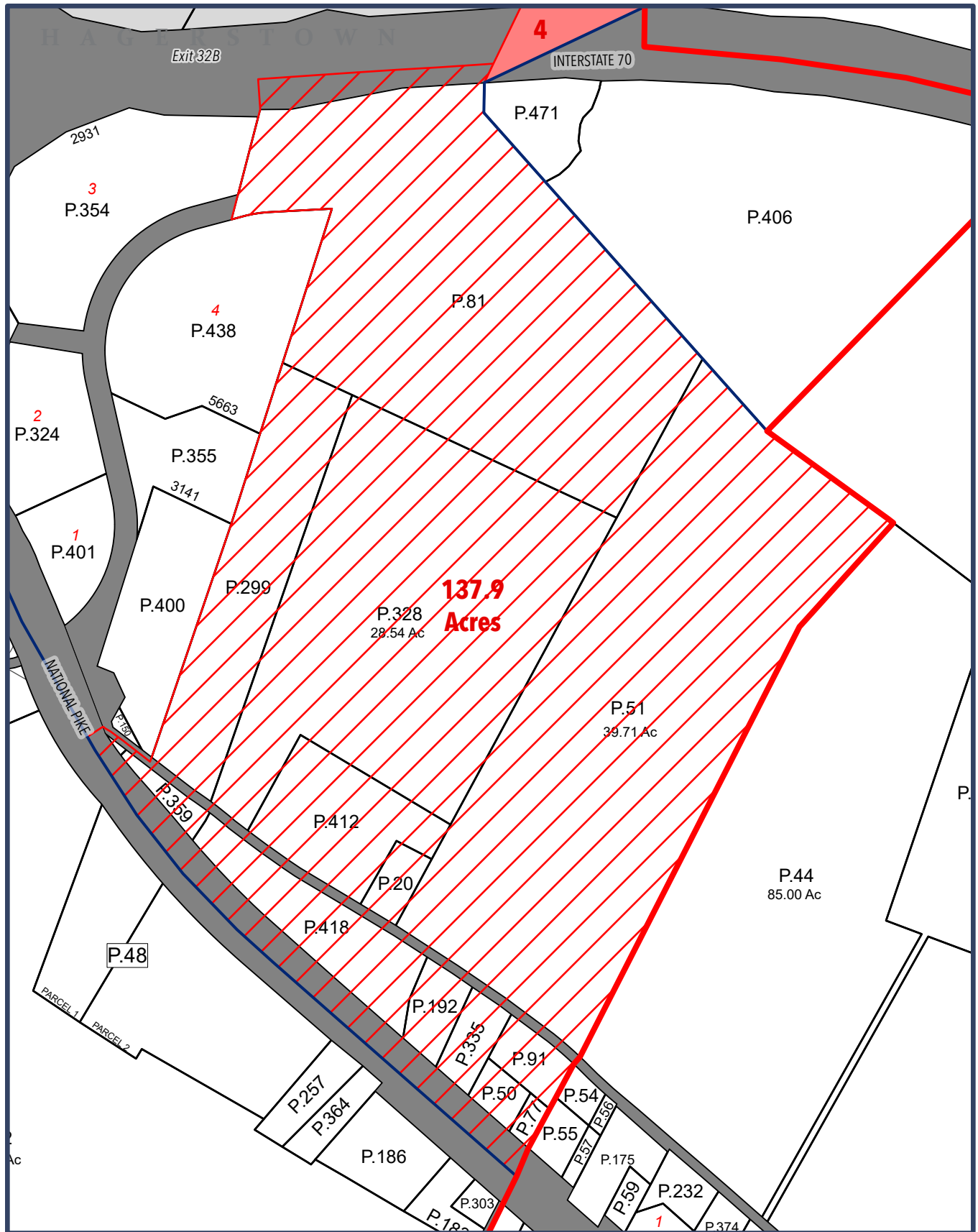




- County Urban Growth Area
- Adjacent to be Removed
- Existing Boundary
- Municipal Boundaries
- Subject to be Removed

N 0 300
Feet

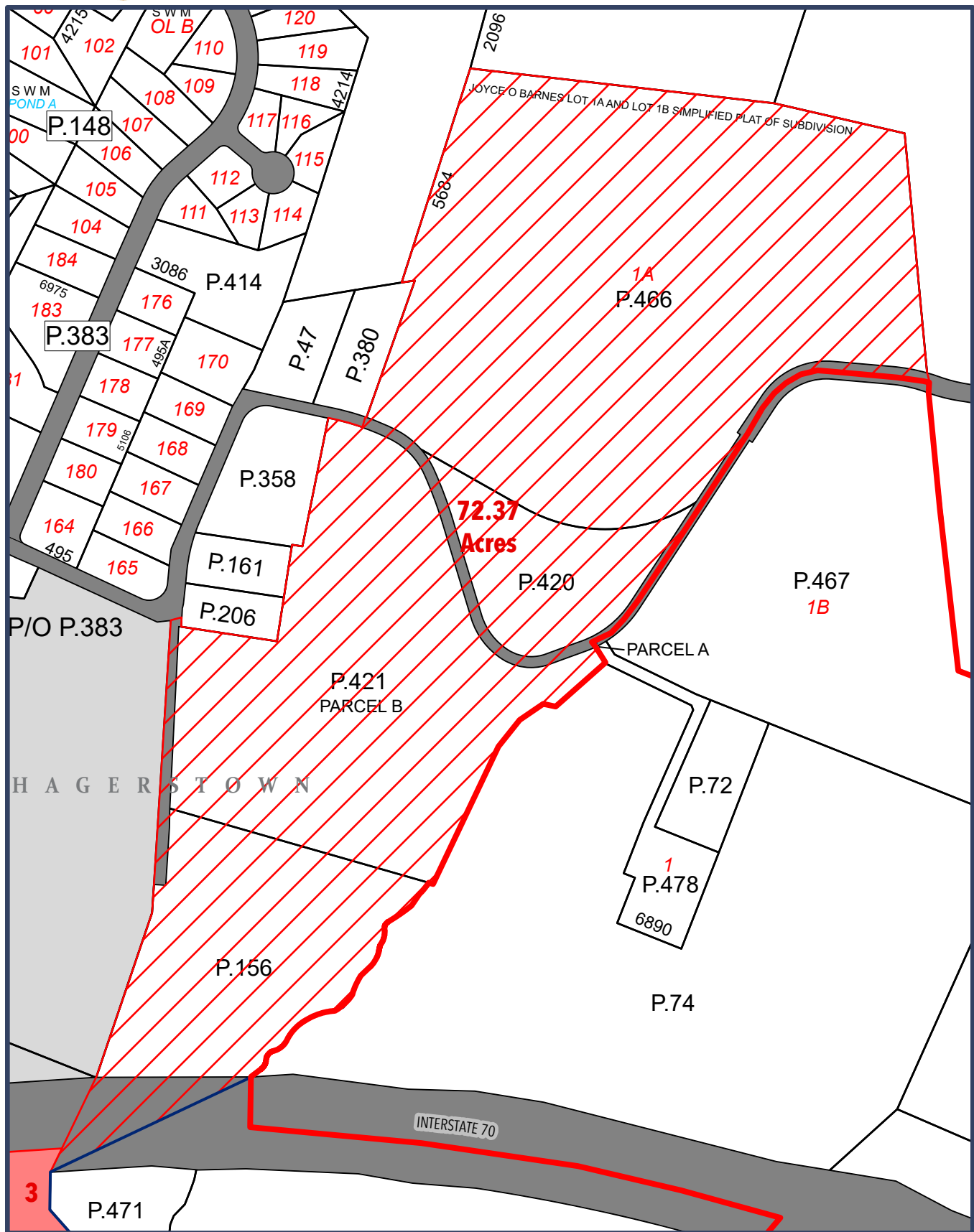








- County Urban Growth Area
- Adjacent to be Removed
- Existing Boundary
- Municipal Boundaries
- Subject to be Removed

N 0 250
Feet





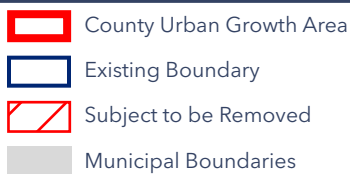


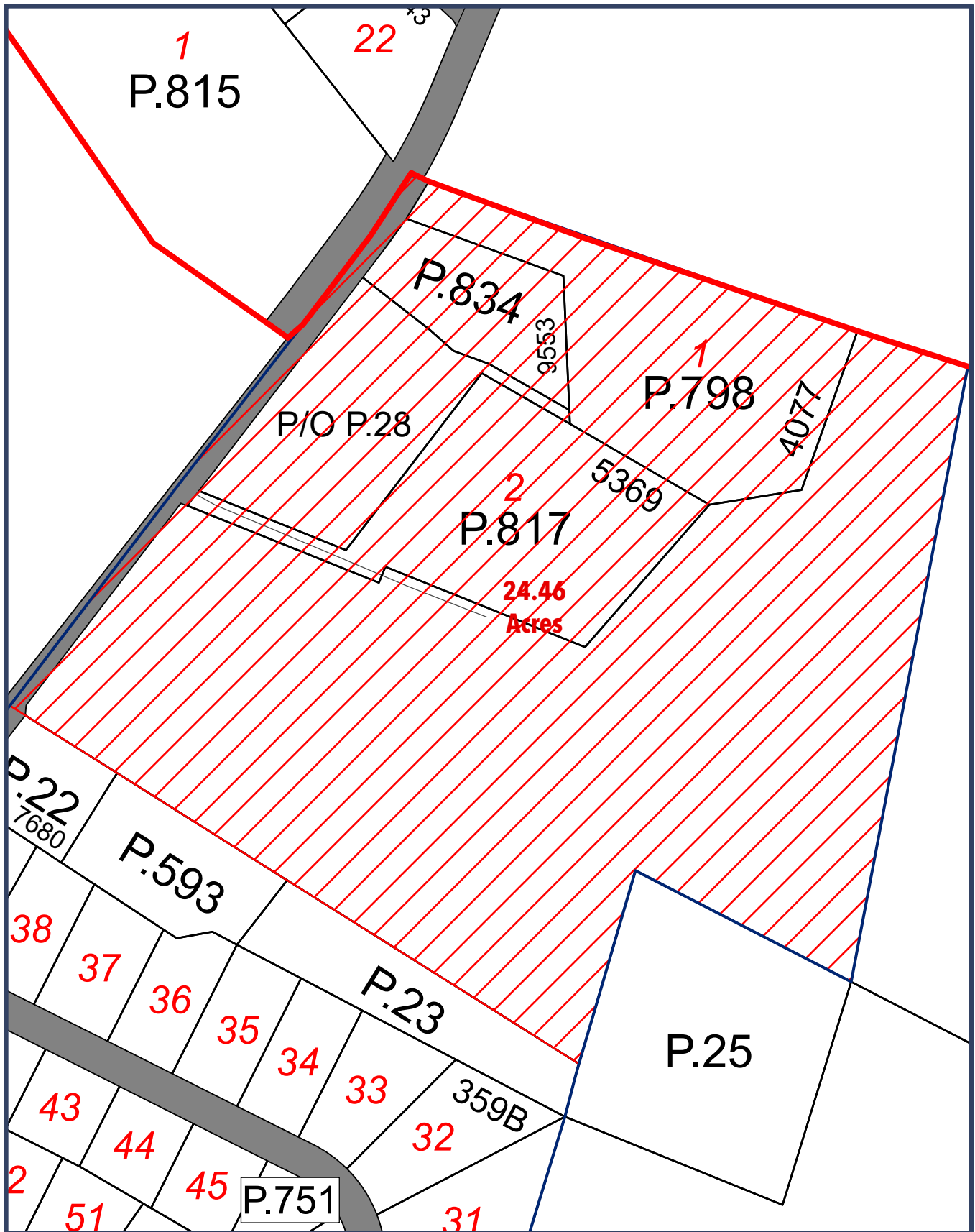
-  County Urban Growth Area
 Existing Boundary
 Subject to be Removed
 Municipal Boundaries





Area: Remove 6





- County Urban Growth Area
- Existing Boundary
- Subject to be Removed
- Municipal Boundaries

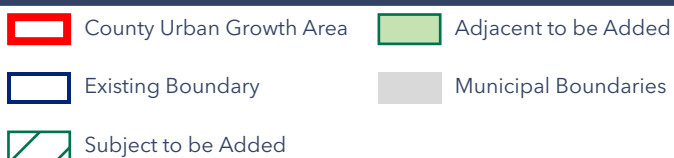
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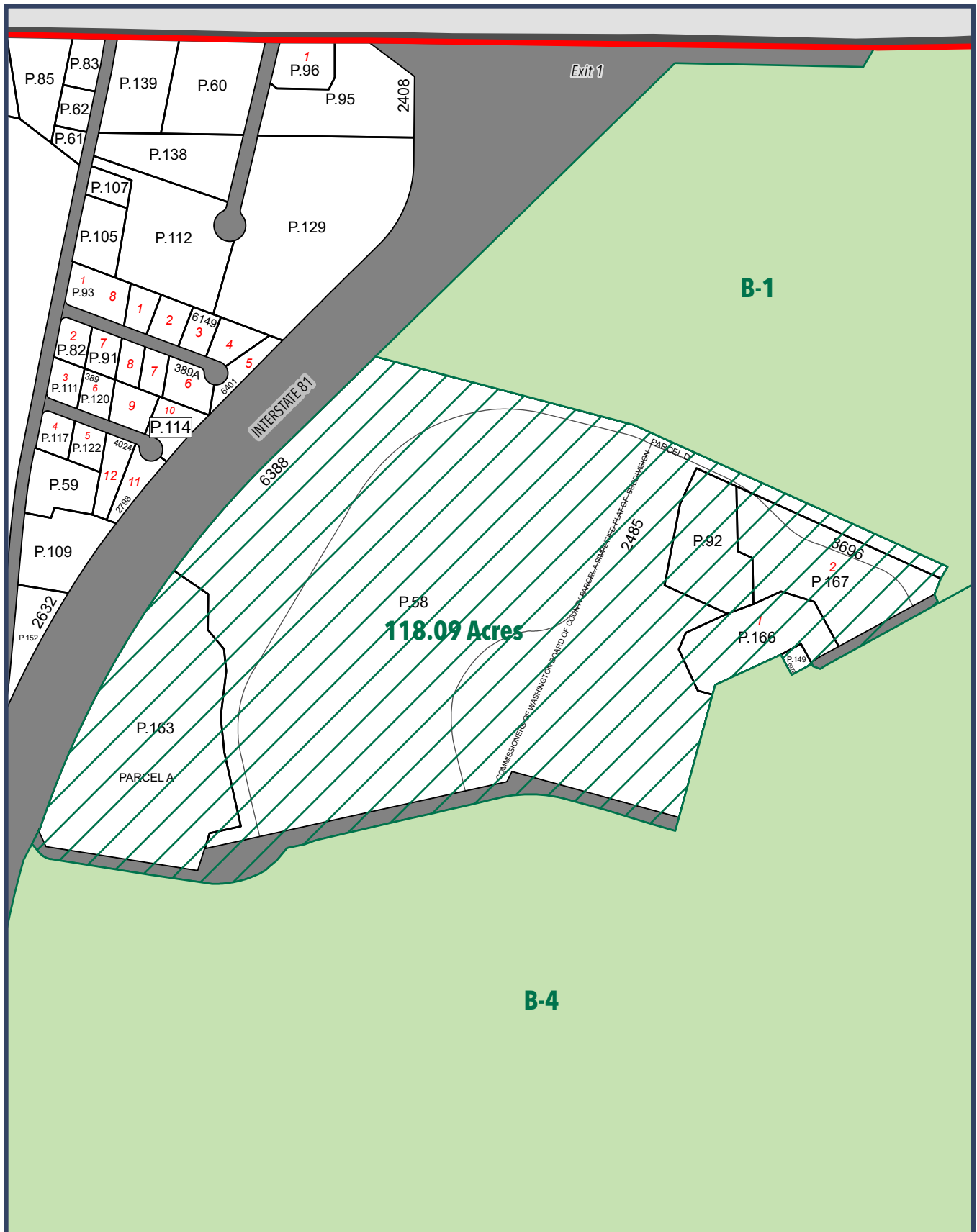
Area: Addition B-1







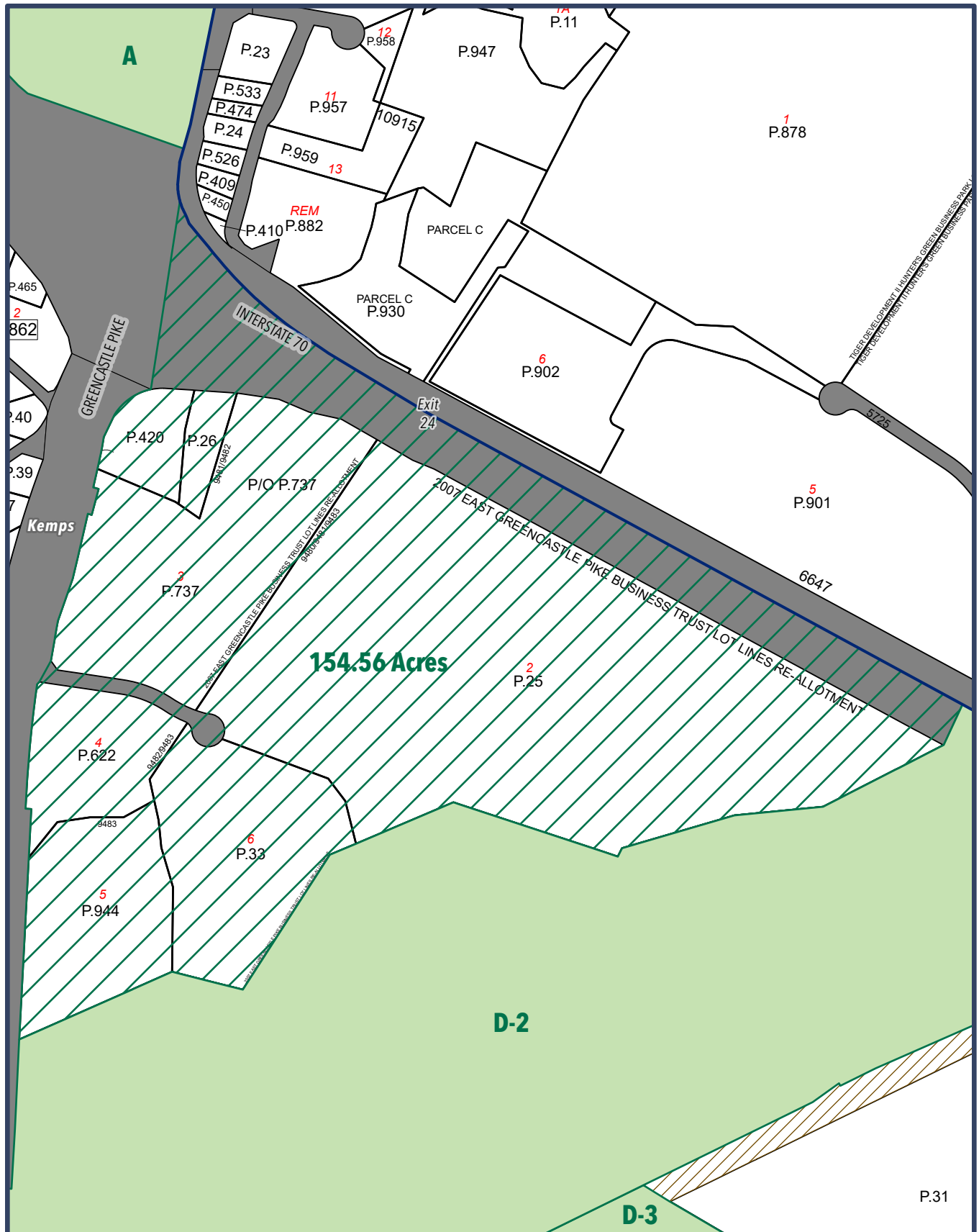




- County Urban Growth Area
- Adjacent to be Added
- Existing Boundary
- Municipal Boundaries
- Subject to be Added

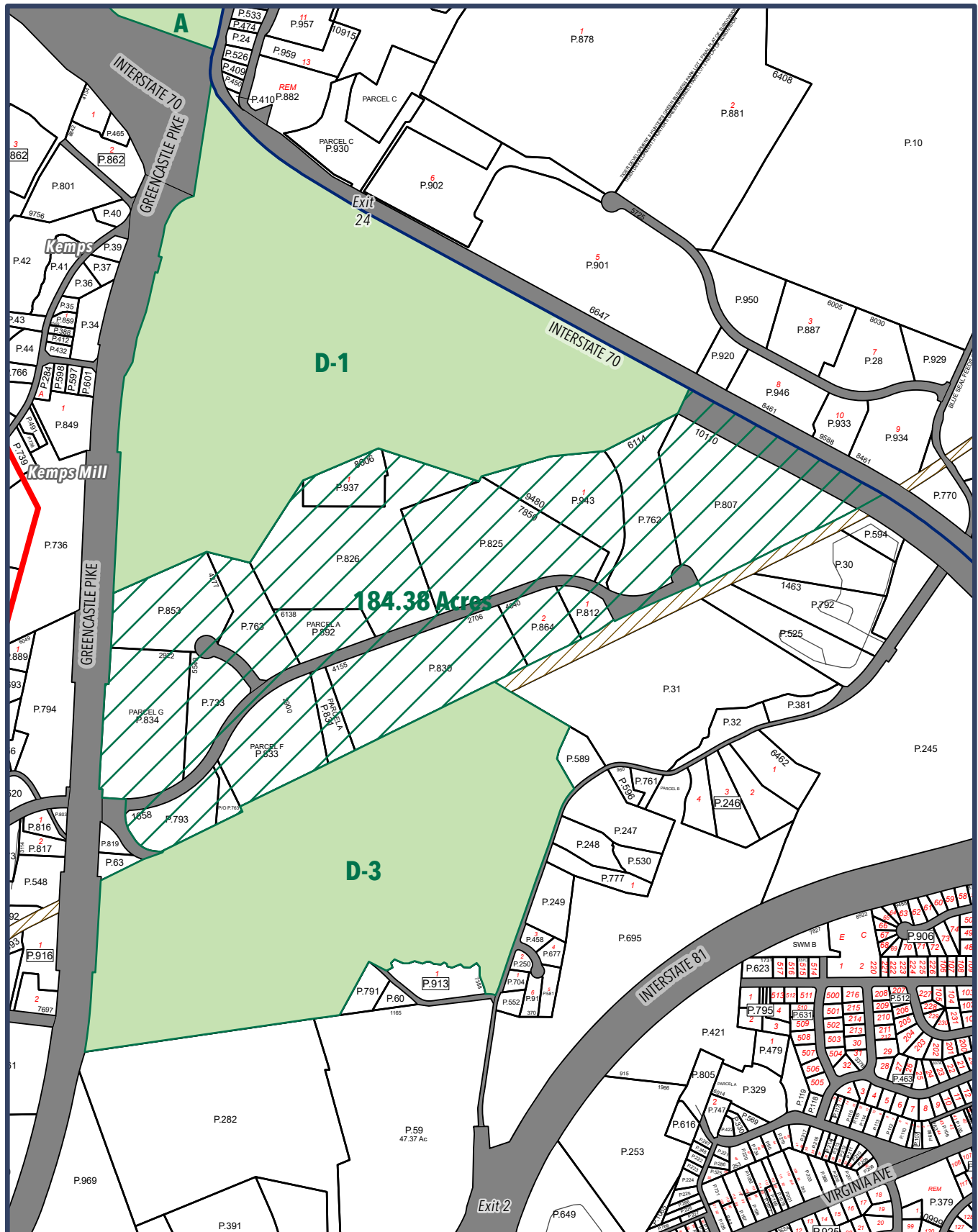






- County Urban Growth Area
- Adjacent to be Added
- Existing Boundary
- Municipal Boundaries
- Subject to be Added

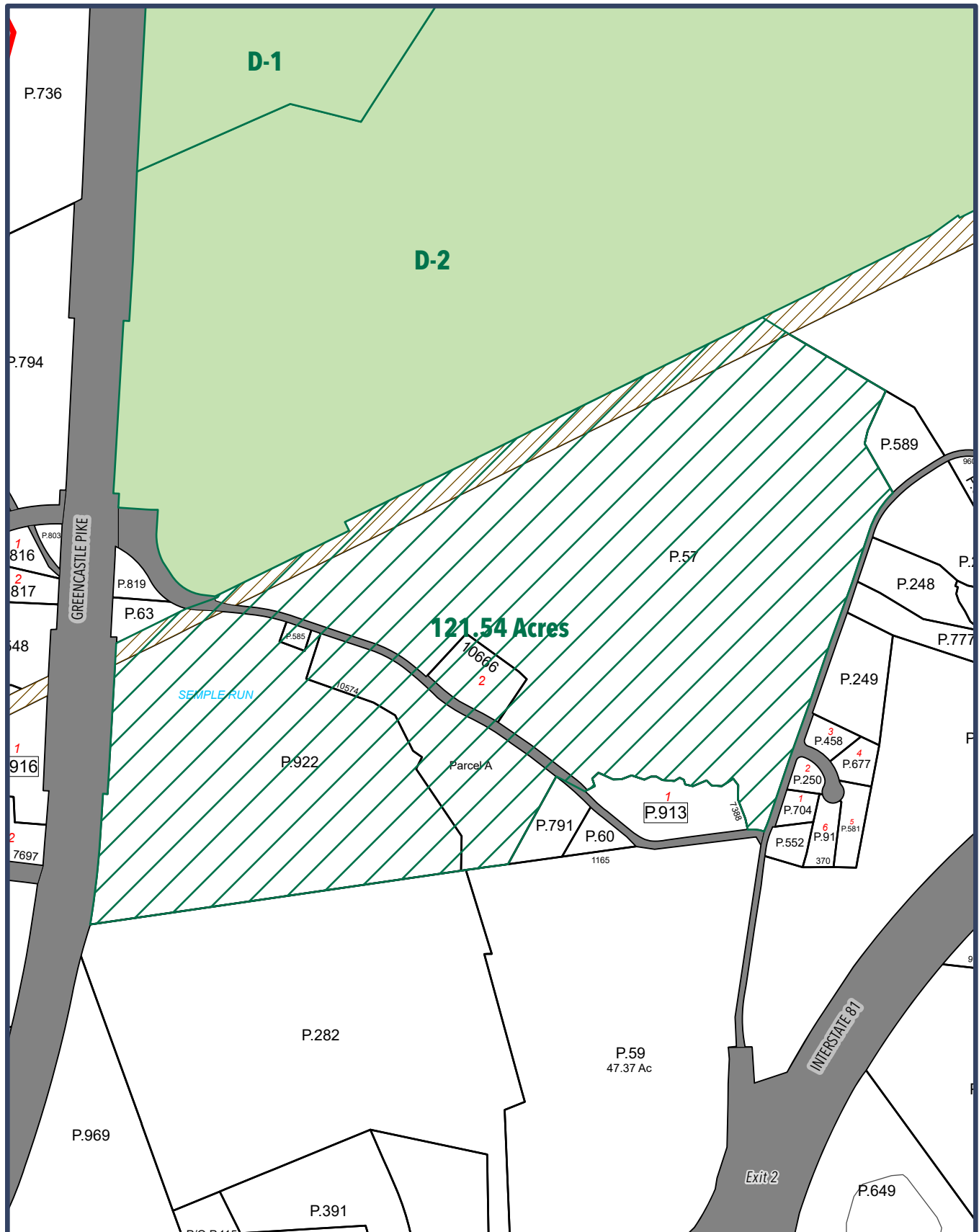









- County Urban Growth Area
- Adjacent to be Added
- Existing Boundary
- Municipal Boundaries
- Subject to be Added

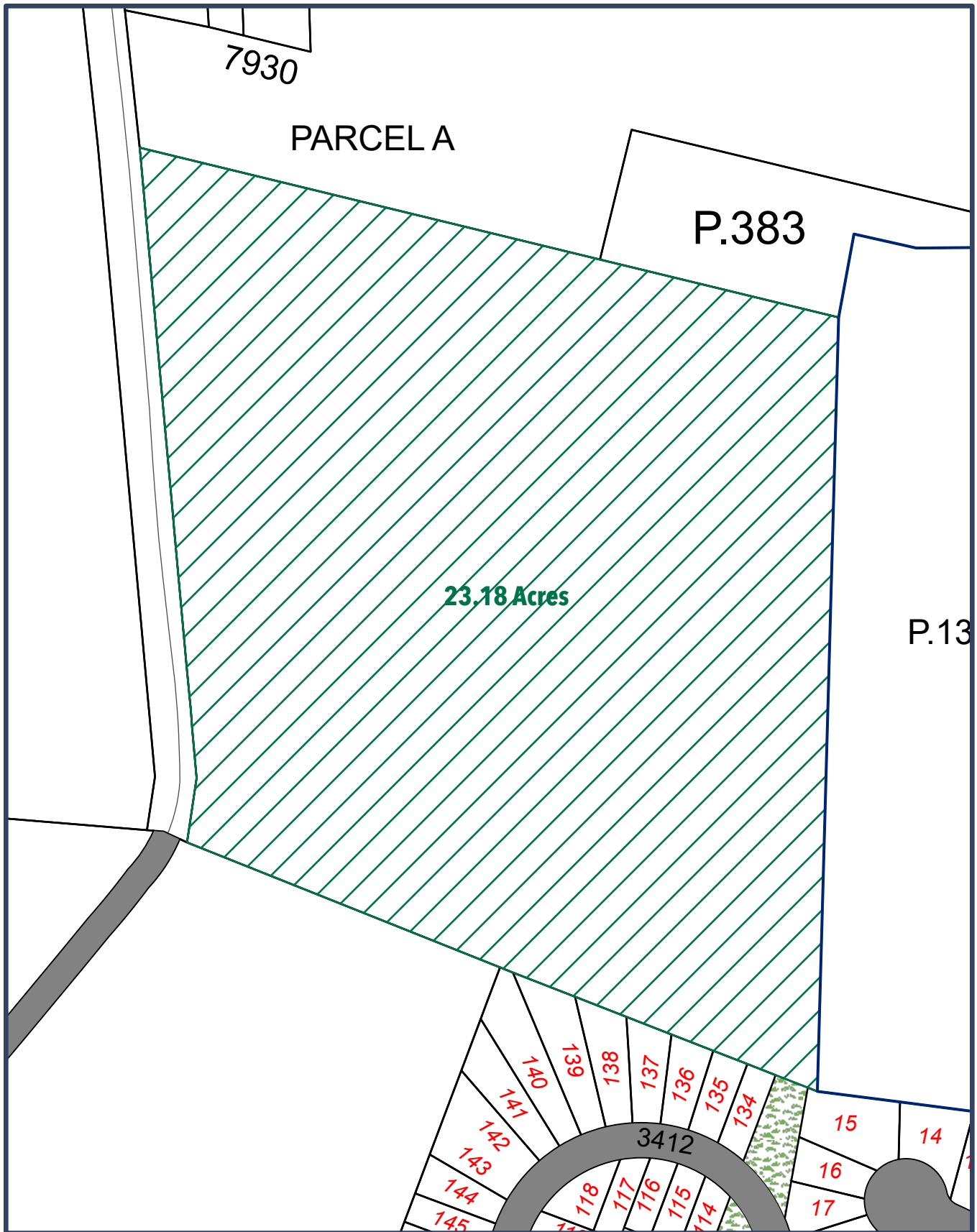
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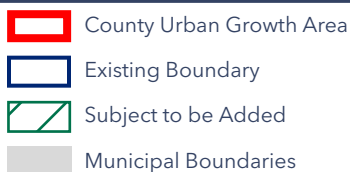
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  Adjacent to be Added
-  Existing Boundary
  Municipal Boundaries
-  Subject to be Added

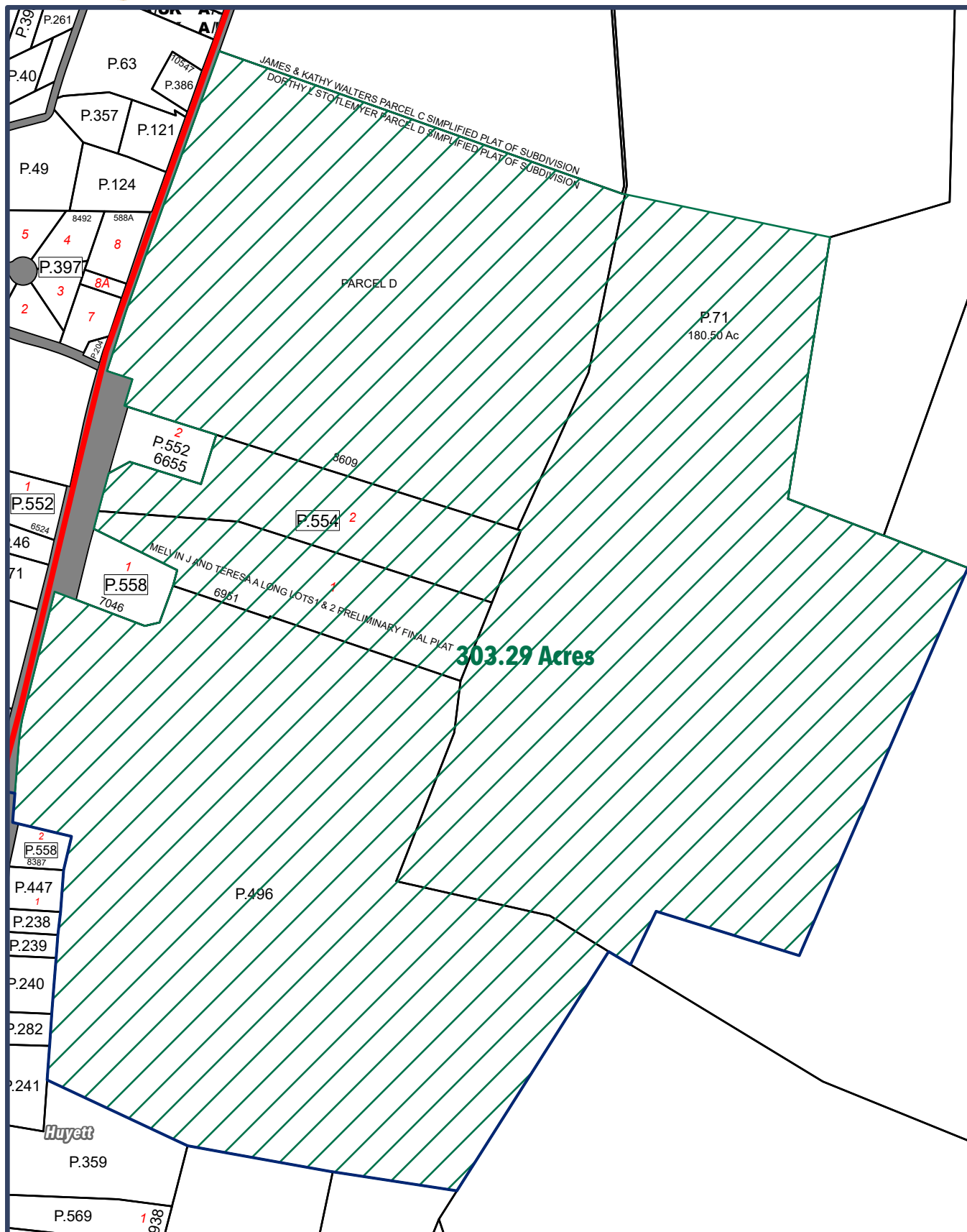




- County Urban Growth Area
- Existing Boundary
- Subject to be Added
- Municipal Boundaries

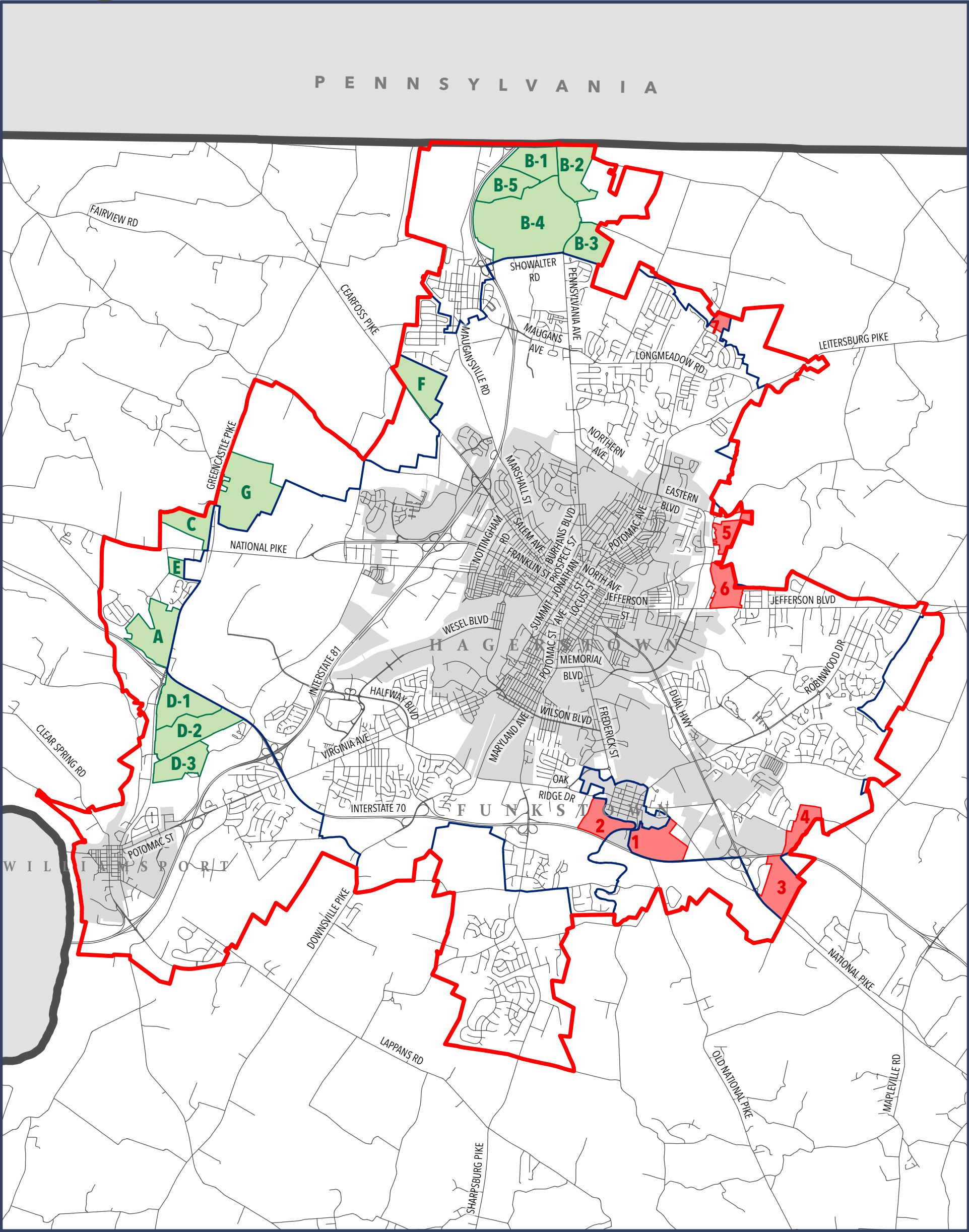






- County Urban Growth Area
- Existing Boundary
- Subject to be Added
- Municipal Boundaries





Reference Name	Area to be Added/Removed	Acreage	Reference Name	Area to be Added/Removed	Acreage
A	Addition	182.65	E	Addition	23.18
B-1	Addition	128.61	F	Addition	147.8
B-2	Addition	147.35	G	Addition	303.29
B-3	Addition	115.23	1	Remove	143.76
B-4	Addition	543.15	2	Remove	92.73
B-5	Addition	118.09	3	Remove	137.9
C	Addition	102.34	4	Remove	72.37
D-1	Addition	154.56	5	Remove	66.42
D-2	Addition	184.38	6	Remove	98.69
D-3	Addition	121.54	7	Remove	24.46



Area to be Added/Removed	Area Count	Sum of Acreage
Addition	13	2272.17
Remove	7	636.32



Circuit Court for Washington County
Case No. C-21-CV-18-000377

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3298

September Term, 2018

BOWMAN SPIELMAN, LLC

v.

JANE HERSHEY, ET AL.

Kehoe,
Nazarian,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: March 16, 2020

*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104

This appeal arises from a judicial review by the Circuit Court for Washington County reversing approval by the Board of Appeals (the “Board”) of a site plan proposing to develop appellant, Bowman Spielman’s, property for a mixed use. In July 2017, the Washington County Planning Commission (the “Commission”) approved a site plan in which, appellant proposed to develop 9.11-acres of land into a restaurant, office space, and mixed retail sales of food and fuel. Appellees, Jane Hershey, et al, appealed. Following a *de novo* hearing, the Board approved the site plan. Appellees then appealed to the Circuit Court for Washington County. The circuit court reversed the Board’s decision. Appellant presents the following question for our review:

1. Did the circuit court err in reversing the decision of the Board where the Board’s interpretation of the zoning ordinance definition for “truck stop” was consistent with the tenets of statutory construction and further supported by the legislative history of the definition?

For reasons set forth below, we affirm.

BACKGROUND

Appellant has owned approximately 9.11-acres of land in Washington County since June 2000. The land is located at the intersection of Lappans Road (Md. Route 68) and Spielman Road (Md. Route 63). The property is zoned HI (Highway Interchange) by the Zoning Ordinance for Washington County, Maryland (the “Zoning Ordinance”). In February 2016, appellant submitted a site plan (the “Site Plan”) proposing to improve the property for a mixed-use by building a restaurant, a store for selling food items, a car wash, 16 fueling stations for cars and motorcycles, 107 parking spaces for cars and motorcycles,

6 fueling stations for trucks, and 4 parking spaces for trucks. The Commission approved the Site Plan. Subsequently, appellees appealed the Commission’s approval to the Board, asserting that the intended use proposed in the Site Plan constitutes a “truck stop” as defined by the Zoning Ordinance, which requires a Special Exception¹ to be permitted in the HI zoning district.

A hearing was held in April 2018. After reviewing the site plan and hearing testimony, the Board made the following findings of facts:

1. Bowman Spielman LLC, the Applicant for site plan approval, submitted a proposed site plan (SP-1 6-005) for a “Mixed Use Food Sales/Retail/Office/Fuel Sales” facility on the subject property.
2. The property is 9.11 acres in area, more or less, and is zoned “Highway Interchange.
3. The site plan showed a building of 11,800 square foot gross area, with a 5,000 square foot restaurant area; a 4,322 square foot food and fuel [and retail] sales area; and 1,858 square foot office area.
4. The proposed facility has 16 fueling stations for cars and motorcycles and six fueling stations for trucks.
5. All fueling stations are located under canopies.
6. There are 107 proposed parking spaces for cars and motorcycles.
7. There are four proposed parking spaces for tractor trailers.
8. There are no provisions for showers or overnight accommodations for truck drivers.
9. There is no truck repair, maintenance, service, or truck wash proposed for the site.
10. There is a car wash proposed for a portion of the site.
11. Retail sales are proposed to accommodate motorists and travelers.
12. A restaurant use is proposed to service motorist, travelers, and other customers.

¹ Special Exception is defined as “A grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.”

In concluding the proposed use did not constitute a “truck stop,” the Board found “the facility, considered as a whole, is not ‘proposed to be used primarily for the sale of fuel for trucks.’” In interpreting the meaning of “truck stop” as defined in the Zoning Ordinance, the Board noted the use of the word “primarily” in the first clause of the statute. Interpreting the dictionary definition of the word “primarily,” the Board stated:

“primarily” [is classified] as an adverb that means, “for the most part: mainly.” Thus, the adverbial use of “primarily” qualifies the preceding verb “used,” so the definition of “Truck Stop” can be read as requiring “structure or land” used mainly for the “sale of fuel for trucks,” and one or more of the additional uses set forth following the first use of the word “and” in the definition.

The Board held that the sale of fuel for trucks is not the main use of the property, but is merely one of a multitude of uses occurring thereon, including retail sales, food sales, and office uses.” As such, the Board held the proposed use “is not a ‘Truck Stop’ as defined in Article 28A of the Ordinance.”

The Board’s decision was then appealed to the Circuit Court for Washington County. The circuit court reversed the Board’s decision, finding that “the Board erred in its conclusions of law.” In its interpretation of the definition of “truck stop,” the court did not give weight to the word “primarily” and instead focused on the wording of the second clause, stating:

The definition of truck stop offers two descriptions. The first clause specifies that the use be “intended to be used, primarily for the sale of fuel for trucks. . . .” The second clause is an independent description, noting that it is a distinct alternative by the use of the word “or.” Its phrase “such a use” refers to the sale of fuel for trucks. It does not use the modifier “primarily.” Had that been the intent of the drafters, a second clause would be mere surplusage; the drafters would have completed the definition in one clause, incorporating all of the intended uses.

The court noted further “the Board read the two descriptions as if they were one and, concluding that the sale of truck fuel was not the primary intended use, ended its analysis.” The court reasoned that the Board should have interpreted the proposed use under the second clause of the truck stop definition, stating, “the intended uses on the site plan fit the second description of a truck stop” because it “include[s] the sale of fuel for trucks, truck parking, and an eating facility.” The court found the Board instead ignored the existence of truck parking and restaurant facilities in its reasoning, and thus, erred in its conclusion. As such, the court found “the uses on the proposed site plan constitute a truck stop.” This timely appeal followed.

STANDARD OF REVIEW

When analyzing a judicial review proceeding, the issue before this Court “is not whether the circuit . . . court erred, but rather whether the administrative agency erred.” *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010). Therefore, we “look through” the decision of the circuit court in order to “evaluate the decision of the agency” itself. *People’s Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008). Our review is “limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Montgomery v. Eastern Correctional Inst.*, 377 Md. 616, 625 (2003) (quoting *United Parcel Serv., Inc. v. People’s Counsel for Baltimore County*, 336 Md. 569, 577 (1994)). Statutory interpretation is normally deemed a question of law. *Bayly*, at 137. However,

“[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency.” *Eastern Correctional*, at 625 (citations omitted). Thus, we “ordinarily give considerable weight to the administrative agency’s interpretation and application of the statute that the agency administers.” *Id.*

I. The circuit court did not err in reversing the Board’s decision.

Appellant contends the circuit court erred in reversing the Board’s decision because the Board correctly interpreted the definition for “truck stop.” Specifically, appellant argues, the Board did not err in concluding “the phrase ‘such a use’ in the second part of the ‘Truck Stop’ definition means a use ‘primarily for the sale of fuel for trucks,’ the same as provided in the first part of the definition.” Conversely, appellees argue “the group of uses proposed by appellant is, by definition, a truck stop, requiring Board of Appeals approval of a special exception in the HI Zone,” thus, the circuit court properly reversed the Board’s decision.

The Washington County Zoning Ordinance provides for various zoning districts, in which certain specified uses are permitted. These uses are classified as either principal permitted uses or special exception uses. Section 19.2 provides that the principal permitted uses in the HI zoning district are:

- a) All Principal Permitted Uses allowed in the BL, BG, PB, and ORT Districts. Also permitted are all Principal Permitted Uses in the IR District except heliports and Commercial Communications Towers.
- b) Agriculture, as defined in Article 28A, including animal husbandry facilities, as defined in Article 28A, which shall be subject to the requirements set forth in Article 22, Division IX.

Section 19.3 lists special exception uses in the HI zoning district requiring authorization by the Board and a public hearing. This list includes “truck stops.”

When presented with a question involving statutory interpretation, we look first to the words of the applicable ordinance “since the words of the [ordinance], construed according to their ordinary and natural import, are the primary source and most persuasive evidence of legislative intent.” *Lanzaron v. Anne Arundel County*, 402 Md. 140, 149, 935 A.2d 689, 694 (2007). Our goal “is to ascertain and effectuate the intent of the legislature.” *Comptroller of the Treasury v. Science Applications Int’l Corp.*, 405 Md. 185, 198 (2008). We will “neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute.” *Maryland Overpak Corp. v. Mayor & City Council*, 395 Md. 16, 47 (2006) (quoting *Kushell v. Dep’t of Natural Res.*, 385 Md. 563, 576–77 (2005)). “We construe the ordinance so as to give effect to each word so that no word, clause, sentence or phrase is rendered superfluous or nugatory.” *Foley v. K. Hovnanian at Kent Island, LLC*, 410 Md. 128, 152 (2009) (quoting *Kushell*, 385 Md. at 577). Thus, if an ordinance is clear and unambiguous when construed according to its ordinary and everyday meaning, we give effect to the statute as it is written. *Id.* If, however, the language in an ordinance is ambiguous, we will look to external sources in an effort to discern legislative intent. *Id.*

Here, the parties differ as to whether appellant’s proposed use constitutes a “truck stop.” Article 28A of the Zoning Ordinance defines a truck stop as:

A structure or land used or intended to be used primarily for the sale of fuel for trucks and, usually long-term truck parking, incidental service or repair of trucks, overnight accommodations, or restaurant facilities open to serve

the general public; or a group of facilities consisting of such a use and attendant eating, repair, sleeping or truck parking facilities. As used in this definition, the term “trucks” does not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration.

The parties agree the definition of “truck stop” is separated into two clauses by a semicolon. The use of a semicolon indicates the legislature intended there to be two similar, yet, non-synonymous clauses. The “or” following the semicolon generally has a disjunctive meaning and usually indicates an alternative or separate description. “Normally, use of a disjunctive indicates alternatives and requires that they be treated separately unless such a construction renders the provision repugnant to the [statute].” *George Hyman Construction Co. v. Occupational Safety & Health Review Comm’n*, 582 F.2d 834, 840 n. 10 (4th Cir.1978). Thus, the drafters intended the second clause to have a meaning different than the first.

The phrase “such a use” in the second clause refers back to the use described in the first clause, “the sale of fuel for trucks.” The second clause, however, does not include the modifier “primarily.” Our role as an appellate court is not to add words to a statute when the legislature did not do so expressly. To read the word “primarily” into the second clause, as appellant suggests, would result in a forced interpretation in an attempt to limit the statute’s meaning, and thus, is not reflective of the legislature’s intent as evidenced by the plain language. *See Bellard v. State*, 452 Md. 467, 481–82 (“we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the [legislature] used or engage in forced or subtle interpretation in an attempt to extend or limit the statute’s meaning.”). Further, reading “primarily” into the second clause would

be surplusage and render the second clause meaningless. To read it as such would virtually provide no distinction between the two clauses, other than the first clause referring to “a land or structure” and the second “a group of facilities.”

Thus, we hold, the Board incorrectly concluded appellant’s proposed use was not a “truck stop.” The Board focused its interpretation on the use of the word “primarily” and determined that the proposed use was not “a group of facilities.” The site plan, however, shows there will be a building that will serve food and other items, several canopies to house the fuel pumps, truck parking, and a separate structure for a car wash, thus the proposed use describes “a group of facilities.” Appellant is proposing to develop a group of facilities consisting of the sale of fuel for trucks as well as attendant eating, truck parking, and a car wash. The proposed use constitutes a “truck stop” under the second clause of the Zoning Ordinance.

**JUDGMENT OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**