

September 29, 2025

Donna Brown
Clerk of the Prince George's County Council
1301 McCormick Drive
Largo, Maryland 20774



Subject: Request to Disapprove or Remand Detailed Site Plan 22001 – McDonald's on Ager Road

Dear Ms. Brown,

For the reasons below and others, I respectfully urge the District Council to disapprove Detailed Site Plan 22001 – McDonald's on Ager Road (DSP 22001).

I am attaching to these comments:

1. Relevant Sections of the Zoning Ordinance.
2. Comments that I submitted to the Planning Board regarding the Planning Board's and Health Department's treatment of the project's potential health impacts.
3. Comments that I submitted to the Planning Board regarding the proposed project's potential trip generation.
4. A list of conditions the County should impose to begin to mitigate some of the project's damaging impacts on the community and the environment.
5. A copy of the Maryland Court of Special Appeals decision in *Southland Corp. v. City of Laurel*.

In general, I believe that the Planning Board failed to examine this project's potential impacts on the environment, public safety (particularly road safety for the most vulnerable users: cyclists and pedestrians), traffic congestion, public health, historical preservation, or climate change. The Planning Board also failed to examine whether this project is consistent with the purposes and goals of the Zoning Ordinance, the County's General Plan (Plan 2035), the relevant Sector Plan, relevant Functional Master Plans, the County's Climate Action Plan, and other relevant policy documents, especially those focused on healthy food, food equity, and public health.

Please ensure that these comments are included in the public record for DSP 22001.

I am filing these supplemental comments for protective and cautionary reasons, and their filing does not preclude the raising of these and any other issues before the District Council.

Issues and Objections

1. Based upon the facts below and other evidence in the record, the Applicant has failed to meet the burden of proof imposed by Section 27-142 of the Zoning Ordinance, and has failed to demonstrate that this project is consistent with, conforms to, or supports the attainment of purposes and goals of Zoning Ordinance, the County's General Plan (Plan 2035), relevant

Functional Master Plans, the County's Climate Action Plan, and other relevant policy documents, especially those focused on healthy food, food equity, and public health. In fact, there is ample evidence that this project would undermine the attainment of multiple goals and policies laid out in the Zoning Ordinance, county plans, and other county policy documents.

2. The Planning Board erred in refusing, generally, to consider off-site impacts and refusing to consider significant aspects of the site's context, including those related to transportation safety and public health.
3. The Planning Board erred when it decided not to consider the potential public health impacts of this project in a community documented to be burden with multiple social, economic, environmental, and health stressors.

Section 27-284 of the Zoning Ordinance *requires* a DSP to be referred to the Health Department and charges the Department with assessing *the distribution of potential health impacts in the community (within the population)*. In this case, those impacts fall upon a community that already is burdened with multiple social, environmental, and economic stressors, so many that it appears to be an Environmental Justice Community, based on screening tools offered by the US Environmental Protection Agency, the Maryland Department of the Environment, and the University of Maryland School of Public Health.

Yet, inexplicably, the Planning Board failed to examine which impacts the Health Department assessed, how the Health Department assessed them, or what the Health Department found.

Risk factors and stressors already burdening the neighboring community include:

- very high percentages of residents who are person of color;
- relatively low income;
- high heat since this community is located in an intense urban heat island;
- high traffic volumes and high concentrations of toxic and carcinogenic traffic-related air pollution;
- high asthma rates;
- lack of health insurance;
- high percentages of people who do not speaking English,
- high percentages of children under five years old;
- an over-abundance of unhealthy food options and a lack of healthy food options; and
- unsafe conditions for pedestrians and bicyclists.

The cumulative impacts of these existing stressors and the added incremental impacts from this project should be examined. The damaging impacts of fast-food drive throughs are significant enough that, for a variety of reasons, jurisdictions are banning new drive throughs. Those jurisdictions include the City of Minneapolis, towns in California, Missouri and New Jersey, and most probably most recently, the City of Annapolis, which in December 2024, passed an ordinance prohibiting drive-through windows for new fast-food restaurants.

A Few Relevant Sections of the Zoning Ordinance

Sec. 27-284. Referral.

- (a) Prior to taking action on the Detailed Site Plan, the Planning Board shall refer the plan to the Historic Preservation Commission (Part 14), when appropriate, and to all agencies which the Planning Board deems appropriate for review and comment. The agencies shall include all of those whose action is likely to have a substantive effect on the plan under review. The Planning Board shall maintain a list of referral agencies. The plan shall also be referred to:
 - (1) the Prince George's County Police Department for review and comment. The Police Department may comment on issues relevant to their mission, including opportunities to implement crime-prevention measures, and to enhance the safety and security of residents, employees and other users of a project through implementation of the principles of Crime Prevention Through Environmental Design (CPTED); and
 - (2) **the Prince George's County Health Department. The Health Department shall perform a health impact assessment review of the proposed development identifying the potential effects on the health of the population, and the distribution of those effects within the population, including recommendations for design components to increase positive health outcomes and minimize adverse health outcomes on the community.**

Section 27-107.01(112.2) Health Impact Assessment Review: In this preliminary stage of implementing the health impact assessment review, it is defined as a tool that may include a combination of procedures, methods and tools by which a policy, program or project may be evaluated as to its potential effects on the health of a population, the distribution of those effects within the population, and provide a platform to make our communities healthier.

4. Concerns Regarding the Project's Potential Environmental, Community, and Public Health Impacts

Impacts on Sligo Creek and the Northwest Branch

The project site is within roughly 500 feet of Sligo Creek, which is a major tributary of the Northwest Branch of the Anacostia River. Areas downstream of the site are prone to flooding. FEMA 100-year floodplain delineations include the area where Sligo Creek passes under Riggs Road just south of the intersection of Riggs Road and East-West Highway.

Under Section 303(d) of the Clean Water Act, the Maryland Department of the Environment list the lower Northwest Branch and the Anacostia River as impaired for total suspended solids, biological oxygen demand, phosphorus, nitrogen, heptachlor epoxide, enterococcus, trash, and PCBs. The lower Northwest Branch may also be impaired for habitat alterations, lack of riparian buffer, chloride, and sulfate. Any additional loadings of those pollutants or degradation of those conditions should be avoided.

At hearing, the Applicant's consultant was unable to state whether stormwater from this site would be discharged to Sligo Creek or the Northwest Branch.

Maps provided by the Trust for Public Lands show the site and much of the surrounding area is part of an intense urban heat island, due to the replacement of forests and tree canopy with buildings and pavement.

Cars idling in the drive-through queue will emit a toxic stew of air pollutants including carbon monoxide, nitrogen dioxide, and polycyclic aromatic hydrocarbons, and fine and ultrafine particles that penetrate deeply into the lungs. They also will emit planet-heating carbon dioxide.

If the applicant has significantly understated the number of trips the project will generate throughout the day and during morning and evening peak traffic hours, this necessarily will lead to an underassessment of the project's potential impacts on congestion, safety, local air quality, public health, and greenhouse gas emissions.

The Technical Staff Report, Staff Report Addenda, and the Technical Referral Memorandum submitted by the County Department of Health fail to address environmental justice or the distinct and cumulative impacts of these socio-economic factors, air pollution, excessive heat, the relative lack of access to healthy food options in this Food Swamp, and the excessive number of traffic accidents and injuries.

Please see the attached maps from the US EPA screening tool.

The Planning Board should require the applicant's plans and M-NCPPC's review to account for climate change as fully as possible, and should apply the best available data, information, analysis, science, and policies.

There is no evidence in the published record to demonstrate that applicant's current application and stormwater management plans account for clear evidence that climate change already is bringing more extreme weather – include more frequent, more severe storms – and that this trend will continue and possibly accelerate.

In its 2023 study, *The Precipitation Problem*, the First Street Foundation found that, due climate change, so-called 100-year storms now occur every 14 years in Baltimore and every 21 years in Washington, DC, and are likely to become more frequent over the next 30 years.

Data presented by the National Oceanic Atmospheric Administration in its *New Normals* show that total annual precipitation and the frequency and intensity of storms have increased in our region. For example, annual rainfall totals at BWI airport increased by nearly five and a half inches from the 1981-2010 period to the 2006-2020 period, which the Chesapeake Legal Alliance rightly describes as “an astounding rate of change in a climatological blink of an eye.”

NOAA's New Normal data sets for annual precipitation, maximum temperatures, and average annual temperatures in Prince George's County and the District of Columbia show increases in all three metrics with decent years and decades generally showing the highest values.

Prince George's County and the State of Maryland are well aware that we face new climate normal. MDE is well aware that the data relied on for stormwater permits, flood plain permits and compensatory mitigation, erosion and sediment control plans, and other critical plans and decisions are obsolete, and have been obsolete for decades. MDE's Water and Science

Administration refers the public to RAND's analysis of Atlas 14 data. RAND's robust demonstrates that Atlas 14 data and intensity duration, and frequency curves have under-forecast trends in recent years, and that they underestimate projected storms and precipitation.

Thank you for your time and consideration.

Sincerely,

Greg Smith

3103 Bunker Hill Road
Mount Rainier, Maryland 20712
gpsmith@igc.org
240-605-9238

DSP 21001 McDonald's on Ager Road Hearing

June 10, 2025

Submitted by Greg Smith

Zoning Ordinance Basics

Section 27-104. Minimum requirements.

In interpreting and applying the provisions of the Zoning Ordinance, they are the *minimum* requirements for the promotion of the purposes of this Subtitle.

Section 27-142. Burden of proof.

The burden of proof in any zoning case shall be the applicant's.

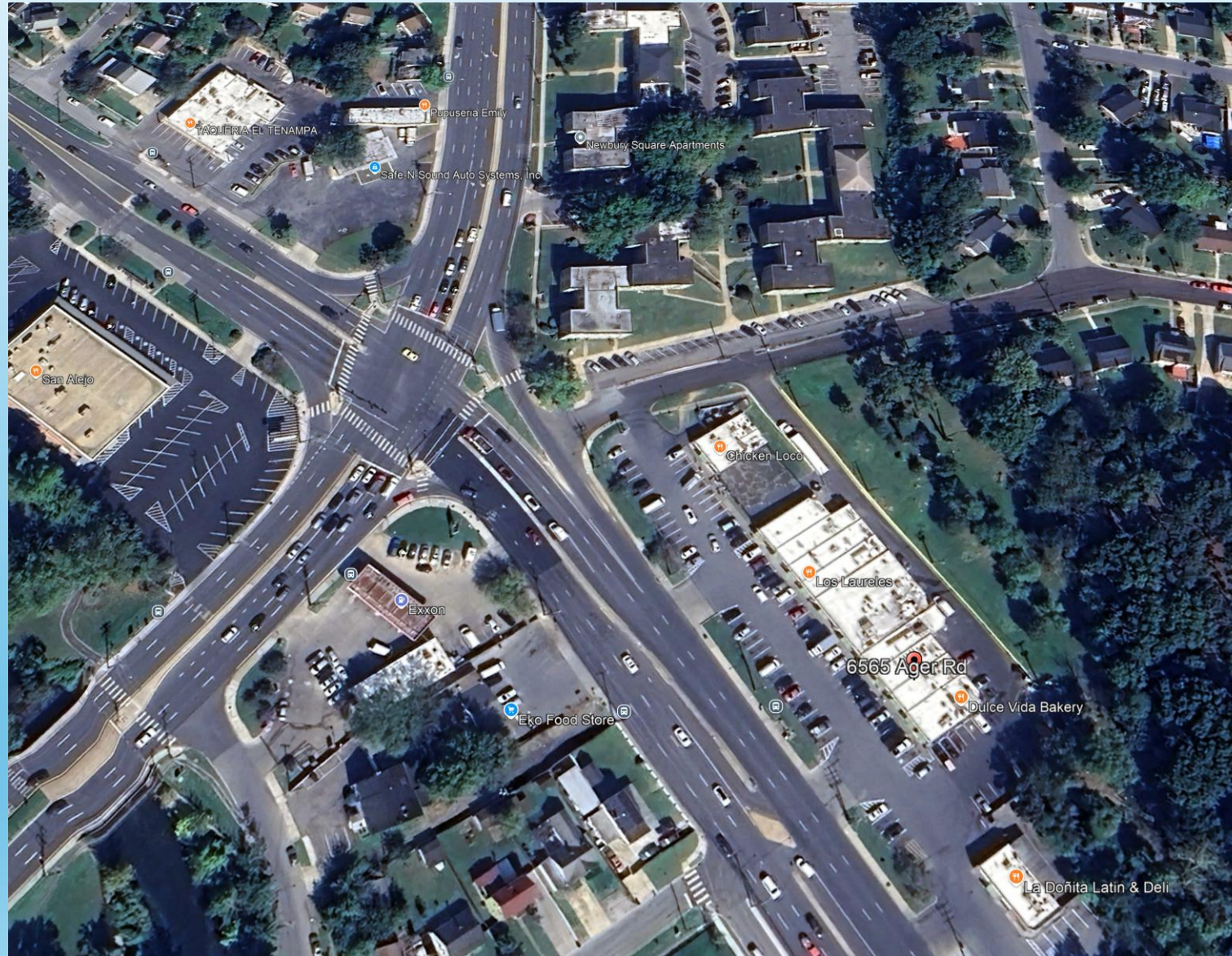
Section 102. Purposes of the Ordinance

- (1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;
- (2) To implement the General Plan, Area Master Plans, and Functional Master Plans;
- (3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;
- (5) To provide adequate light, air, and privacy;
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;
- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;

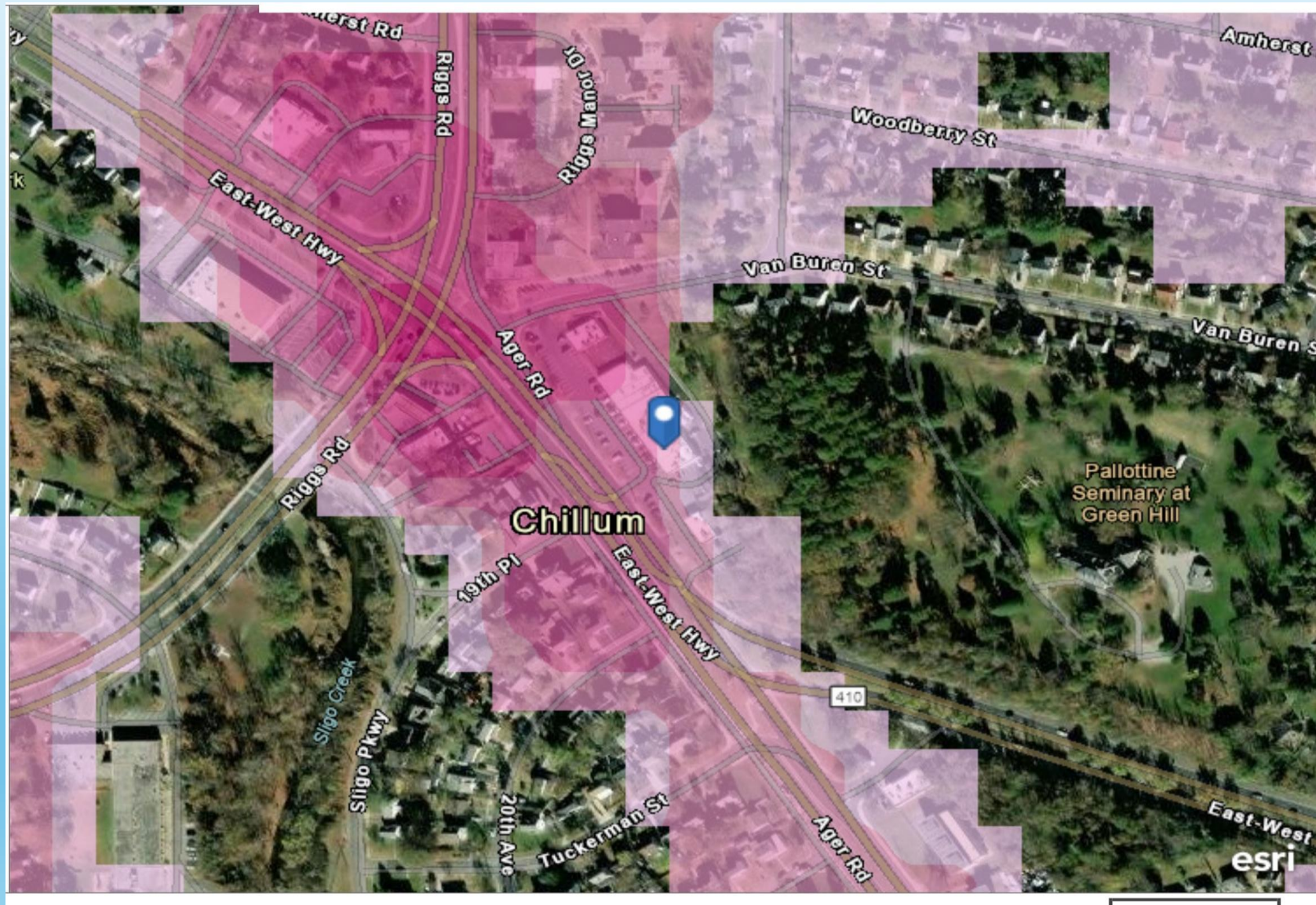
Section 102. Purposes of the Ordinance

- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (10) To prevent the overcrowding of land;
- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;
- (12) To insure the social and economic stability of all parts of the County;
- (13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;
- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

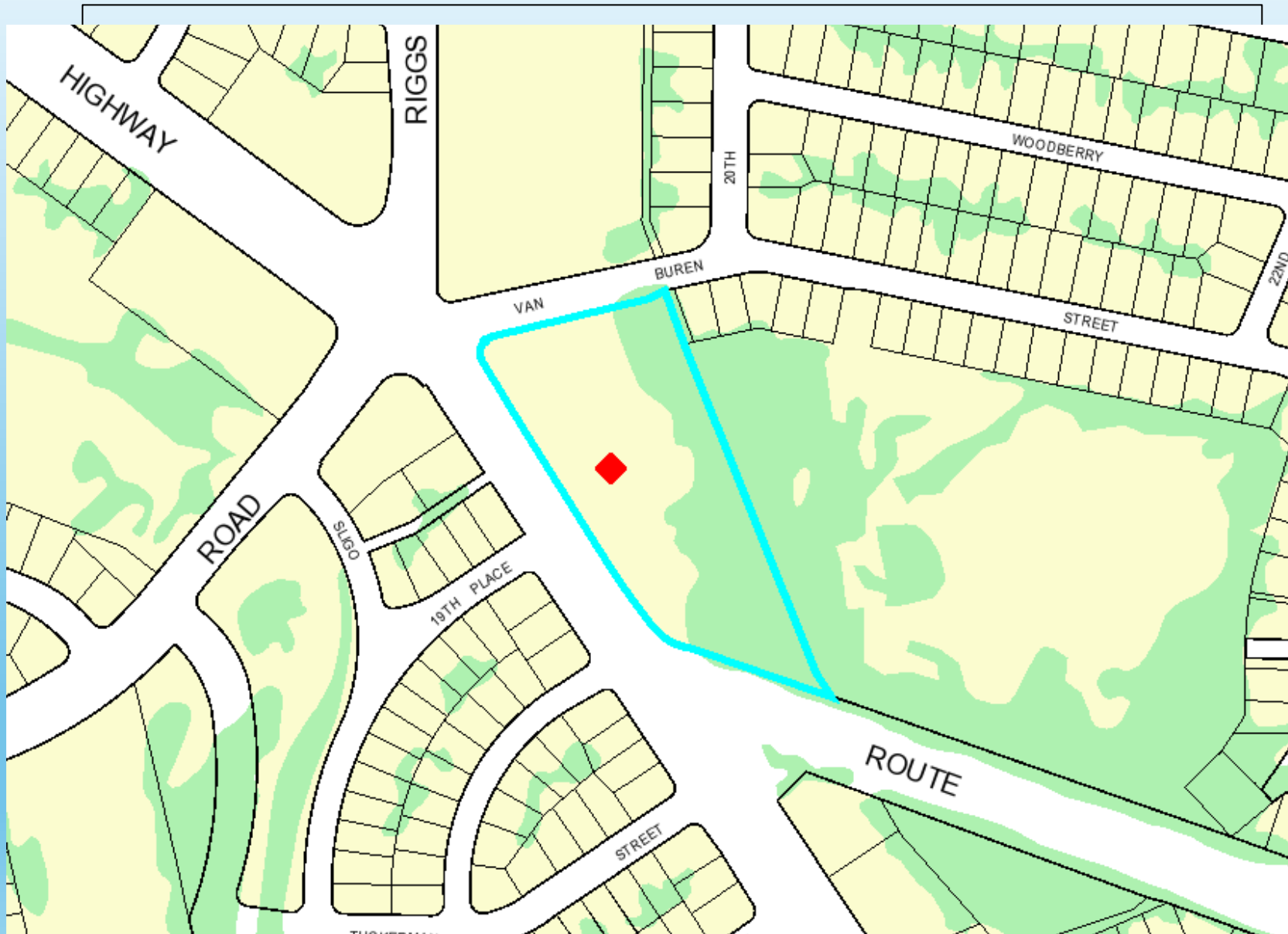
A Dangerous, Congested, Hot Five-Point Intersection



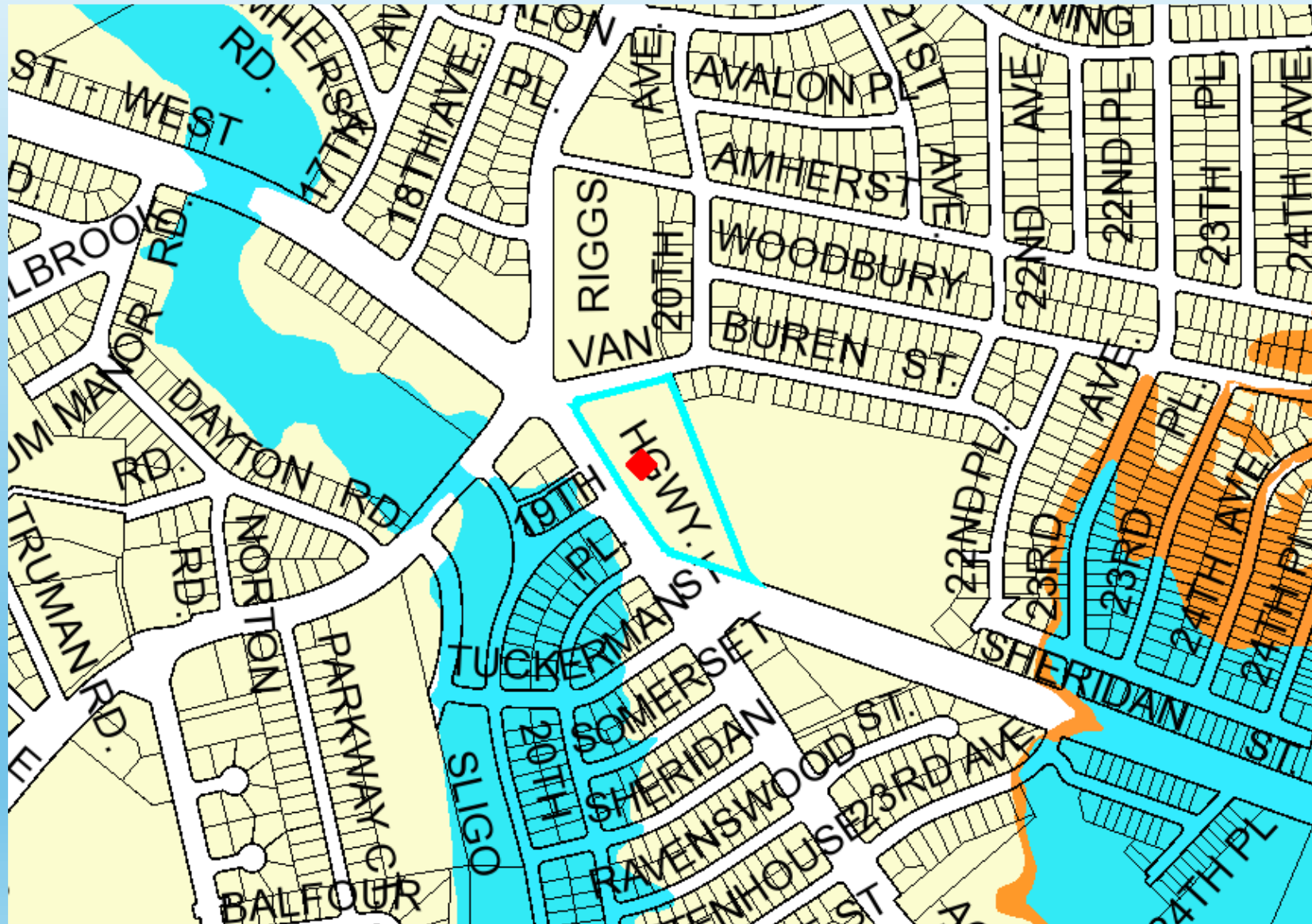
Urban Heat Island Map – Trust for Public Lands



6565 Ager - Tree Canopy



6565 Ager Road – FEMA Floodplain



Social, Economic, Environmental and Climate Justice

The project targets a community that already is over-burdened with multiple social, economic, environmental and climate stressors.

Heavy traffic, traffic congestion, and unsafe streets.

Elevated levels of traffic-related air pollution, including NO₂ and diesel particulates.

An intense urban heat island due to extraordinary forest loss and excessive pavement and buildings.

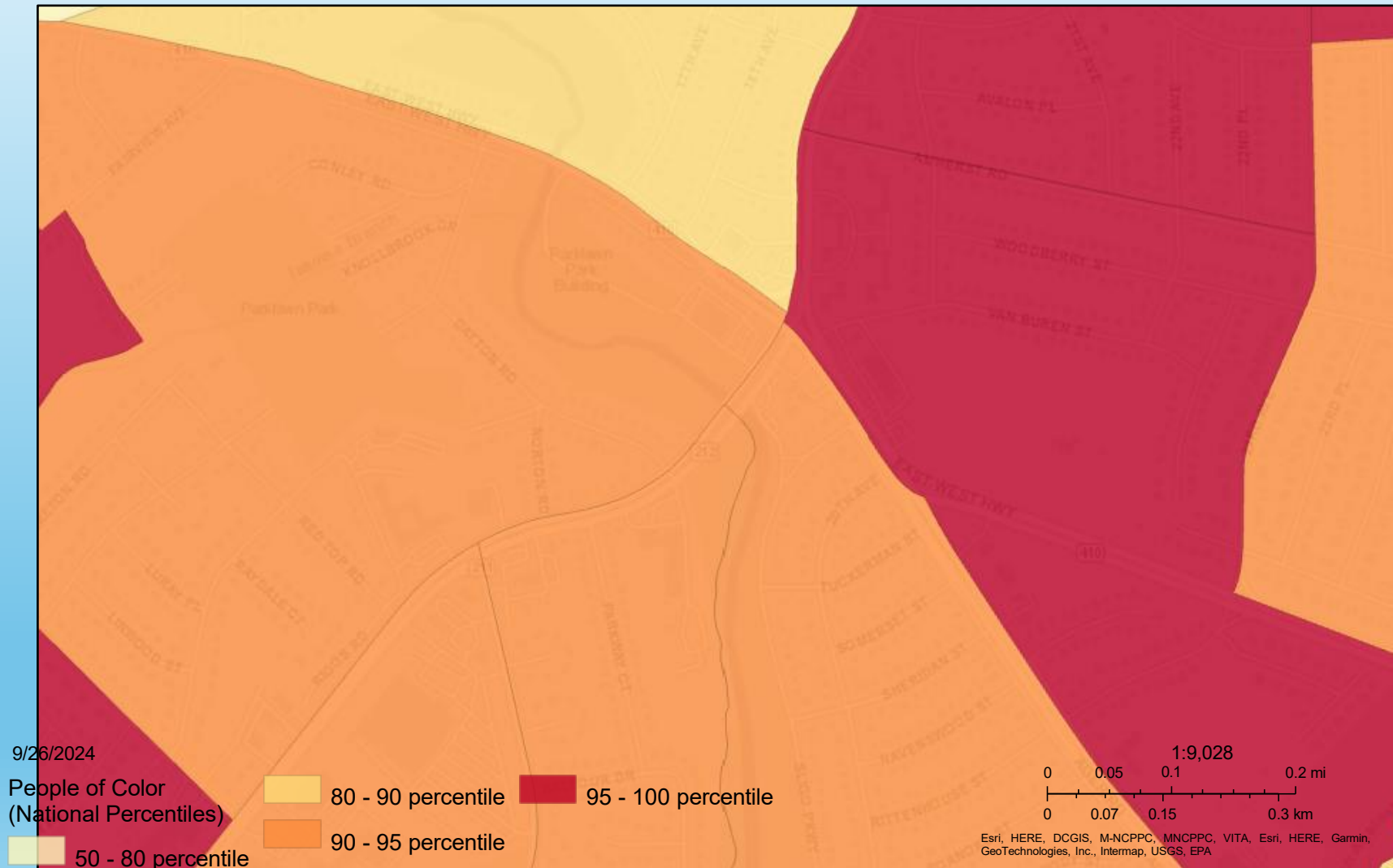
The Zoning Ordinance Requires a Health Impact Assessment

Sec. 27-284. Referral.

(a) Prior to taking action on a DSP, the Planning Board shall refer the plan to;

The Prince George's County Health Department. The Health Department shall perform a health impact assessment review of the proposed development identifying the potential effects on the health of the population, and the distribution of those effects within the population, including recommendations for design components to increase positive health outcomes and minimize adverse health outcomes on the community.

6565 Ager - People of Color - US

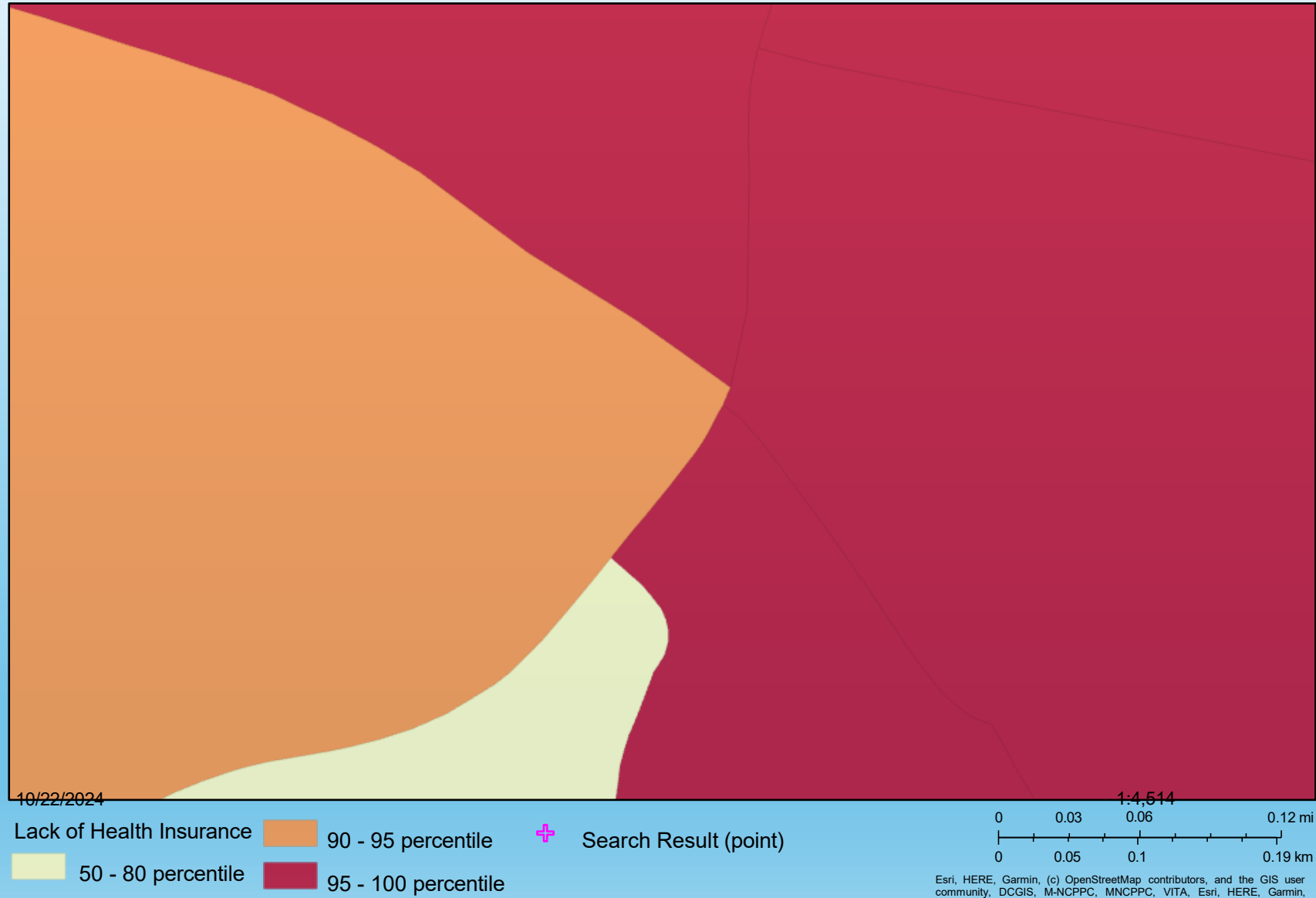


Less Than High School Education (State Percentiles)

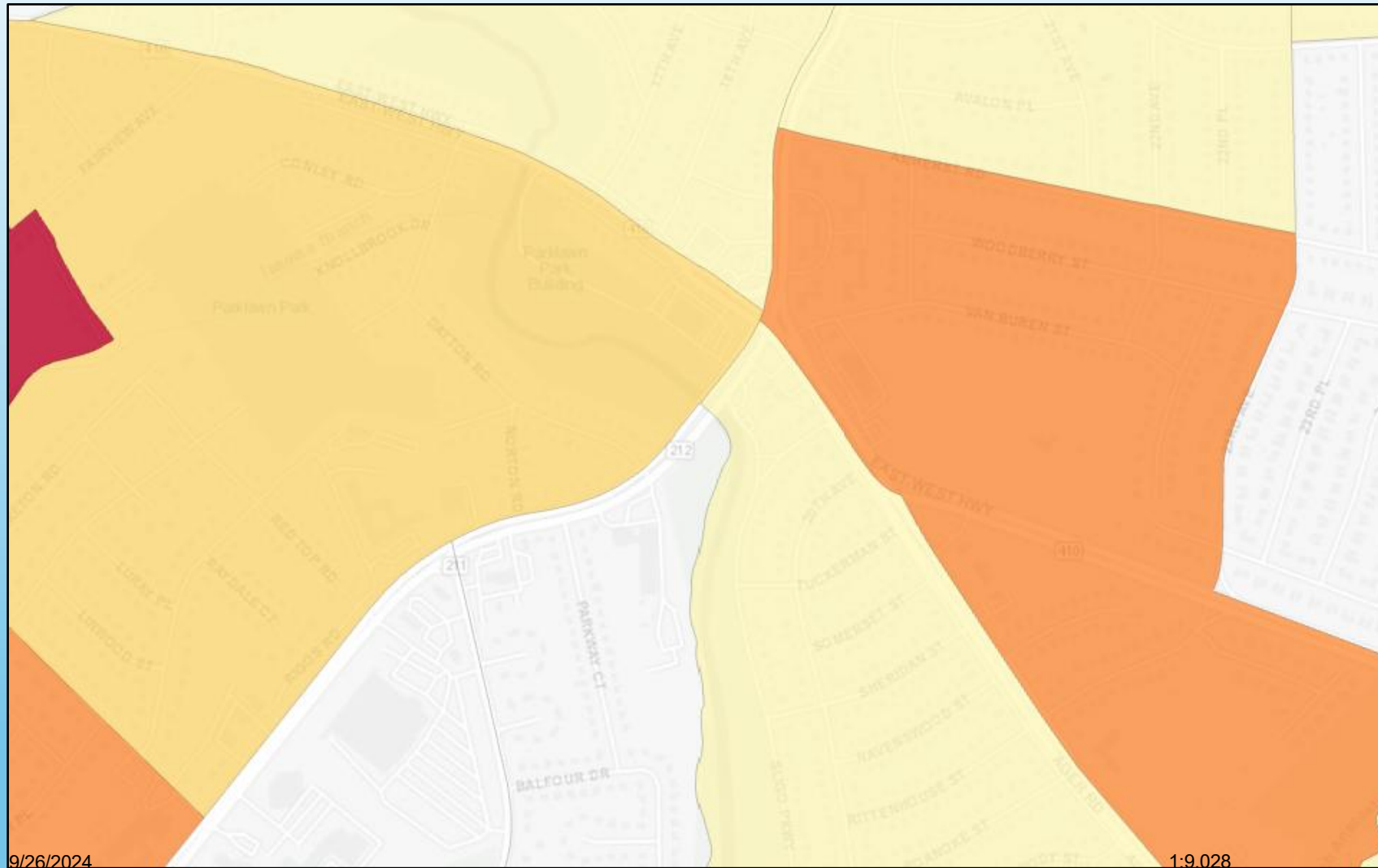
 90 - 95 percentile
 95 - 100 percentile

Esri, HERE, DCGIS, M-NCPPC, MNCPPC, VITA, Esri, HERE, Garmin,
GeoTechnologies, Inc., Intermap, USGS, EPA

Lack of Health Insurance



6565 Ager – Children Under 5 - State



Under Age 5
(State Percentiles)

Less than 50 percentile

50 - 80 percentile

80 - 90 percentile

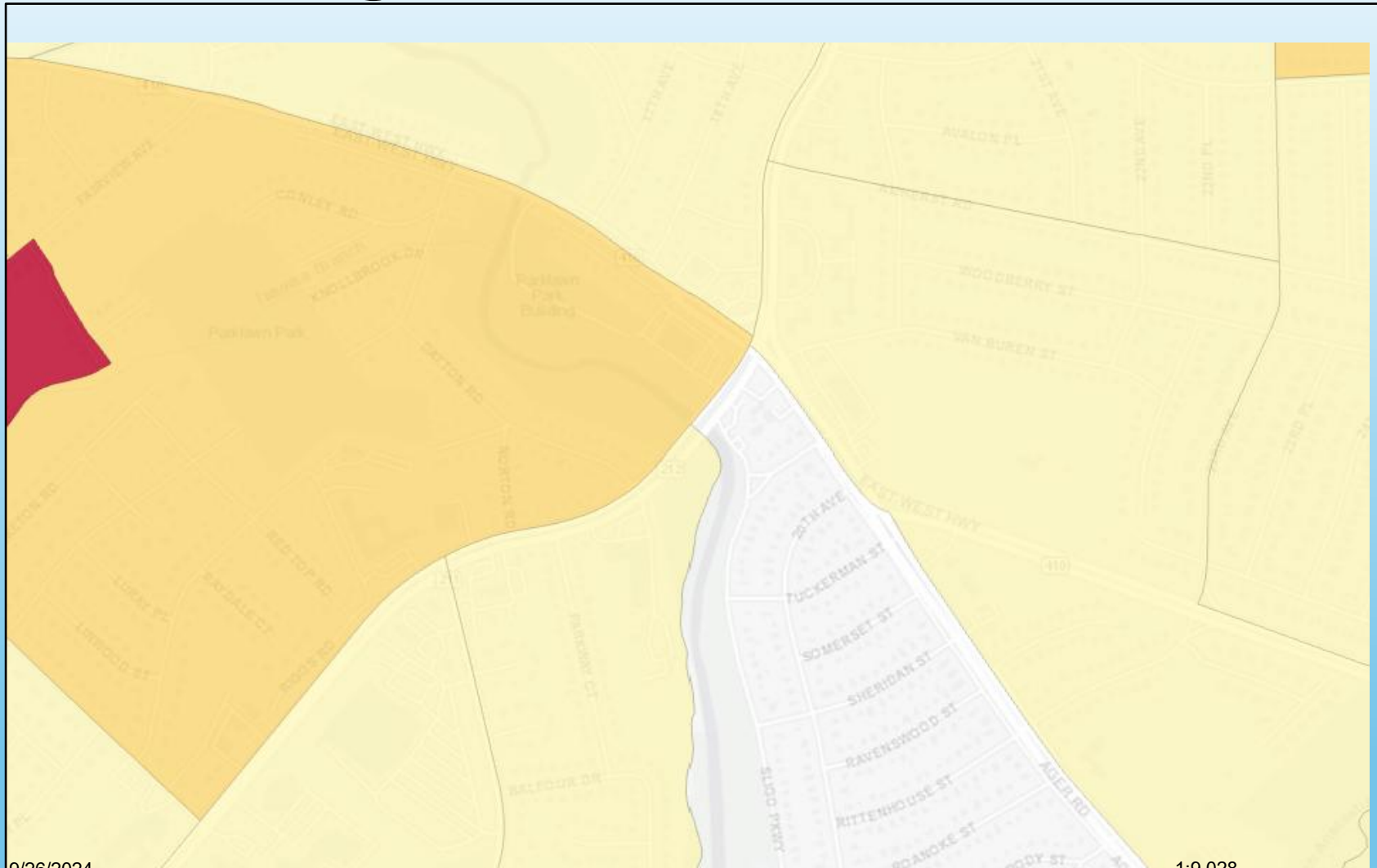
90 - 95 percentile

95 - 100 percentile

0 0.05 0.1 0.2 mi
0 0.07 0.15 0.3 km

Esri, HERE, DeLorme, Mapbox, MNCPPC, MNCPPC, VTA, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, EPA

6565 Ager - Low-Income - State



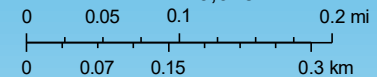
Low Income
(State Percentiles)

Less than 50 percentile

50 - 80 percentile

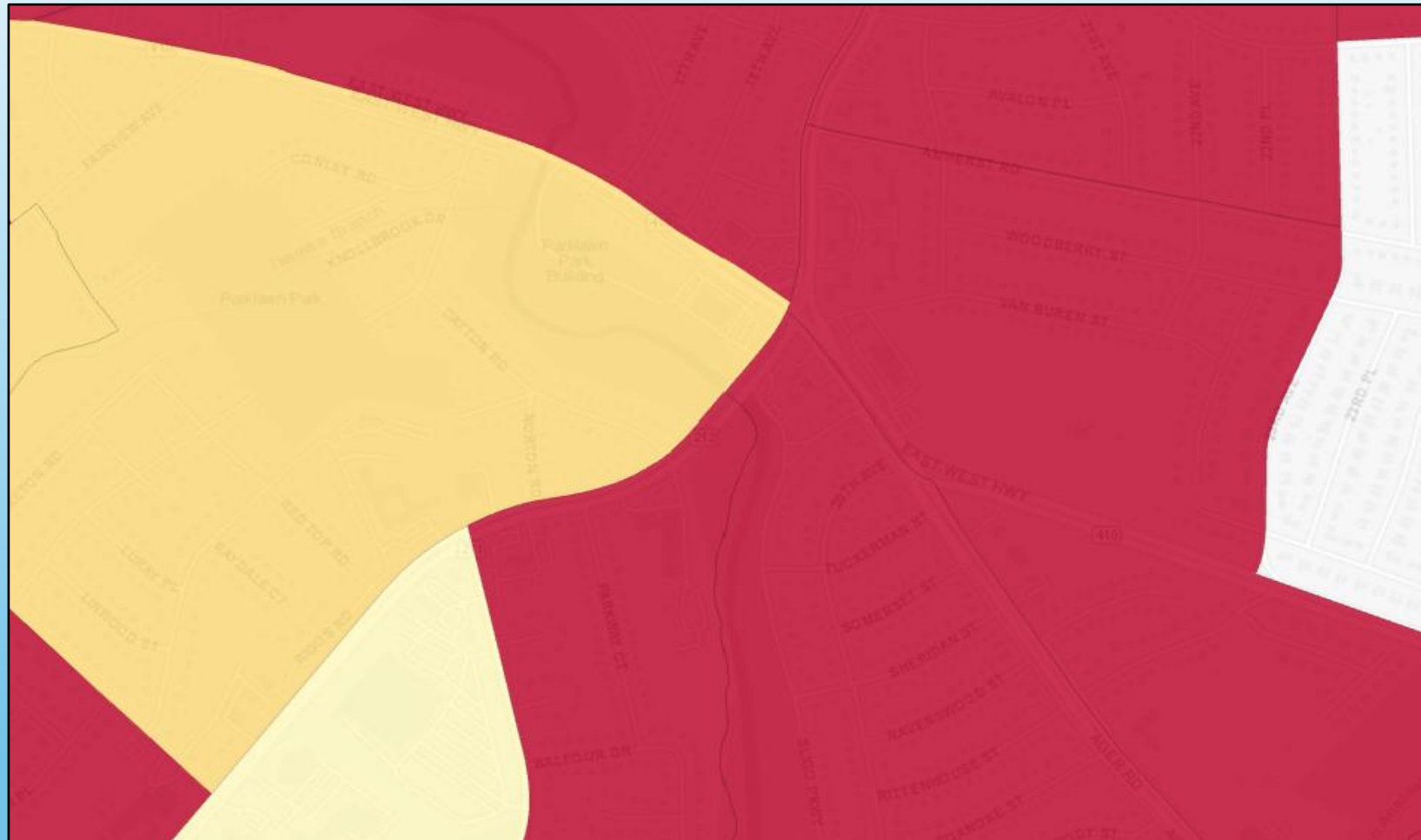
80 - 90 percentile

95 - 100 percentile



Esri, HERE, DeLorme, Mapbox, MNCPPC, MNCPPC, VTA, Esri, HERE, Garmin,
GeoTechnologies, Inc., Intermap, USGS, EPA

6565 Ager - Limited English - State



9/26/2024

Limited English Speaking (State Percentiles)

☐ Less than 50 percentile

 50 - 80 percentile

 80 - 90 percentile

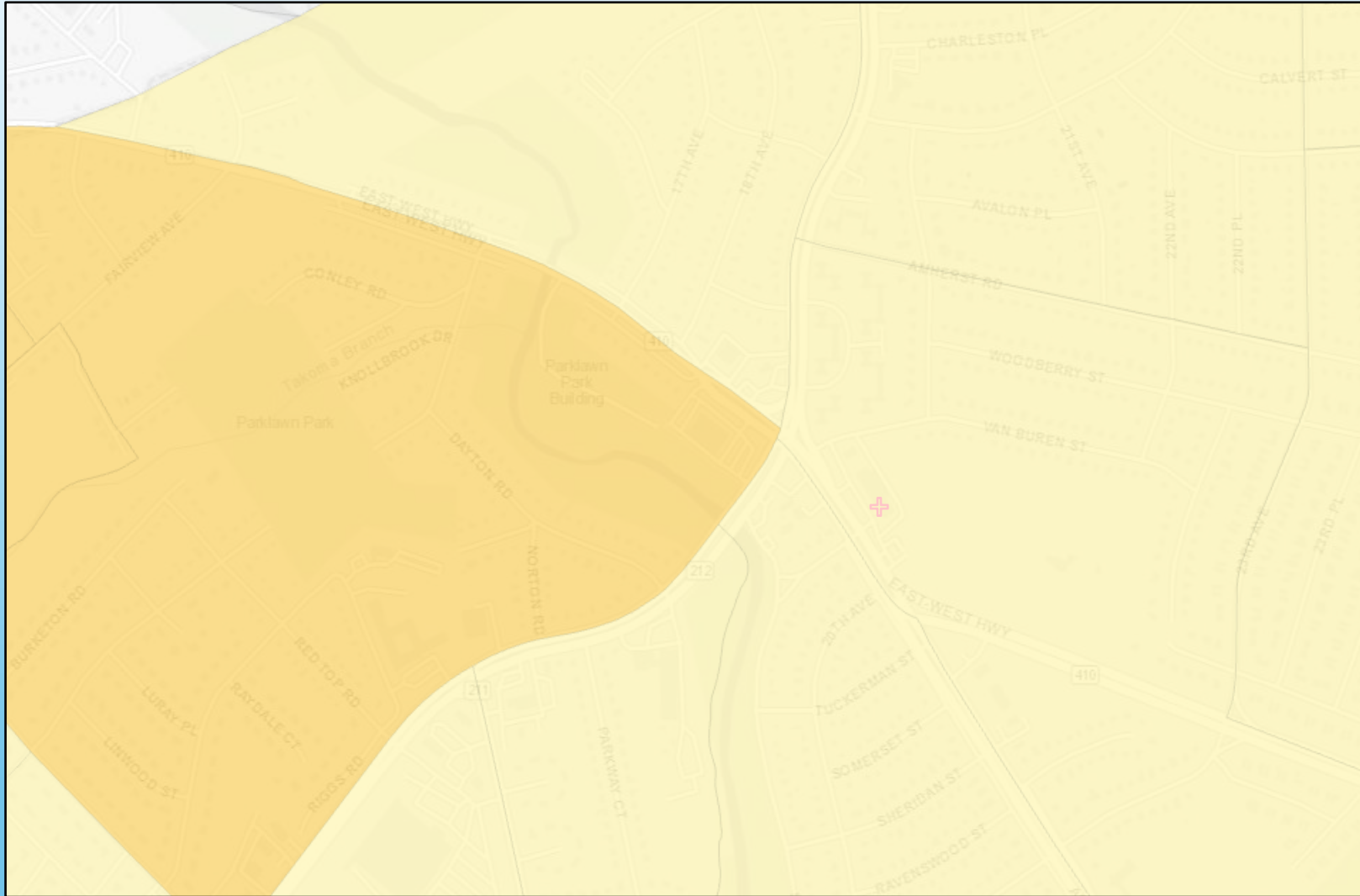
 95 - 100 percentile

1:9,028

A number line with two scales. The top scale is labeled in miles (mi) and has major tick marks at 0, 0.05, 0.1, and 0.2. The bottom scale is labeled in kilometers (km) and has major tick marks at 0, 0.07, 0.15, and 0.3. The scales are aligned such that 0.1 miles corresponds to 0.15 kilometers.

Esri, HERE, DCGIS, M-NCPPC, MNCPPC, VITA, Esri, HERE, Garmin,
GeoTechnologies, Inc., Intermap, USGS, EPA

6565 Ager - Asthma



9/26/2024

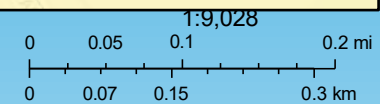
Current Asthma

Less than 50 percentile

50 - 80 percentile

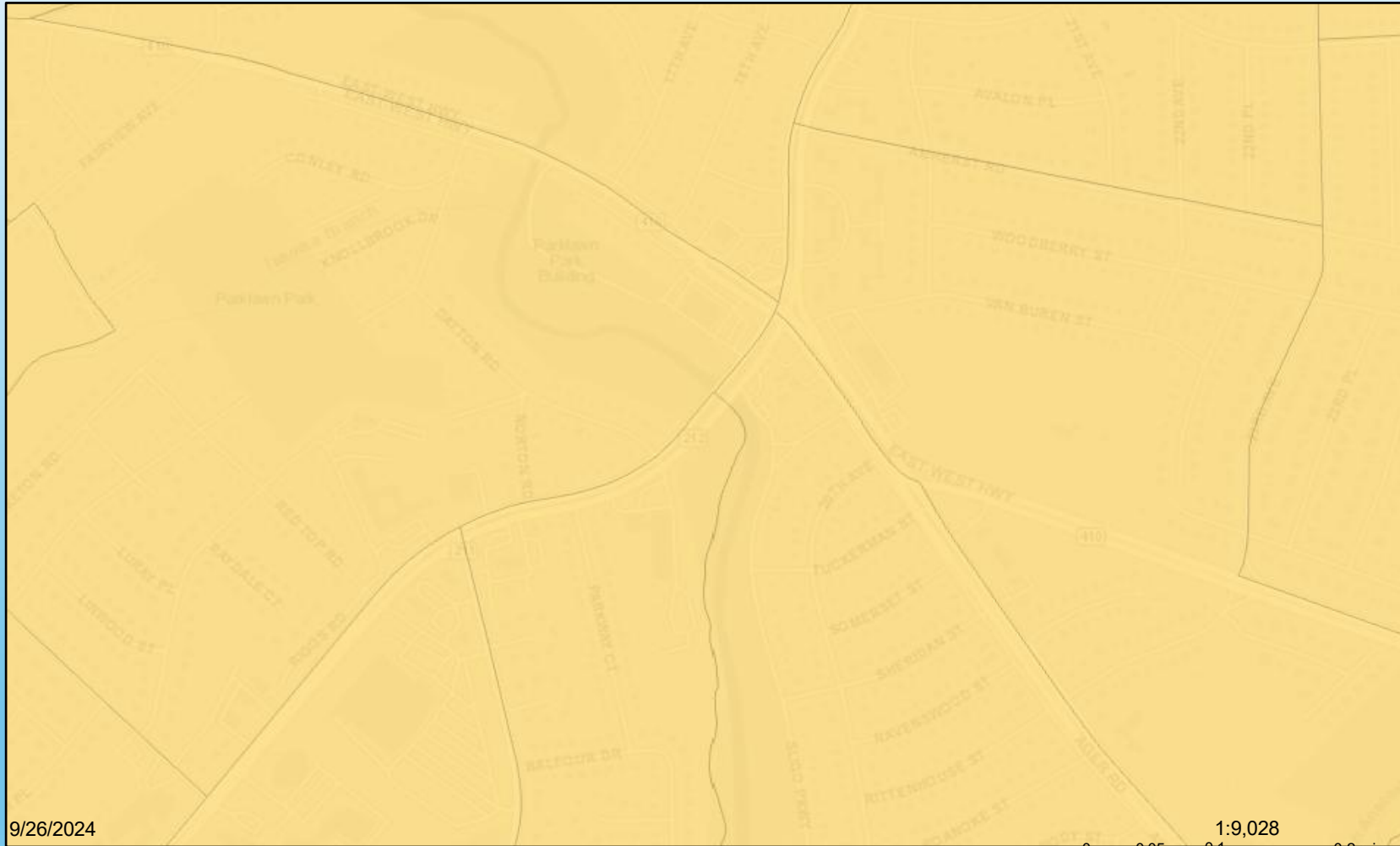
80 - 90 percentile

+ Search Result (point)



EPA OMS, OEJ, Esri, HERE, DeLorme, MNCPPC, MNCPPC, VITA, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, EPA

6565 Ager - Traffic Proximity



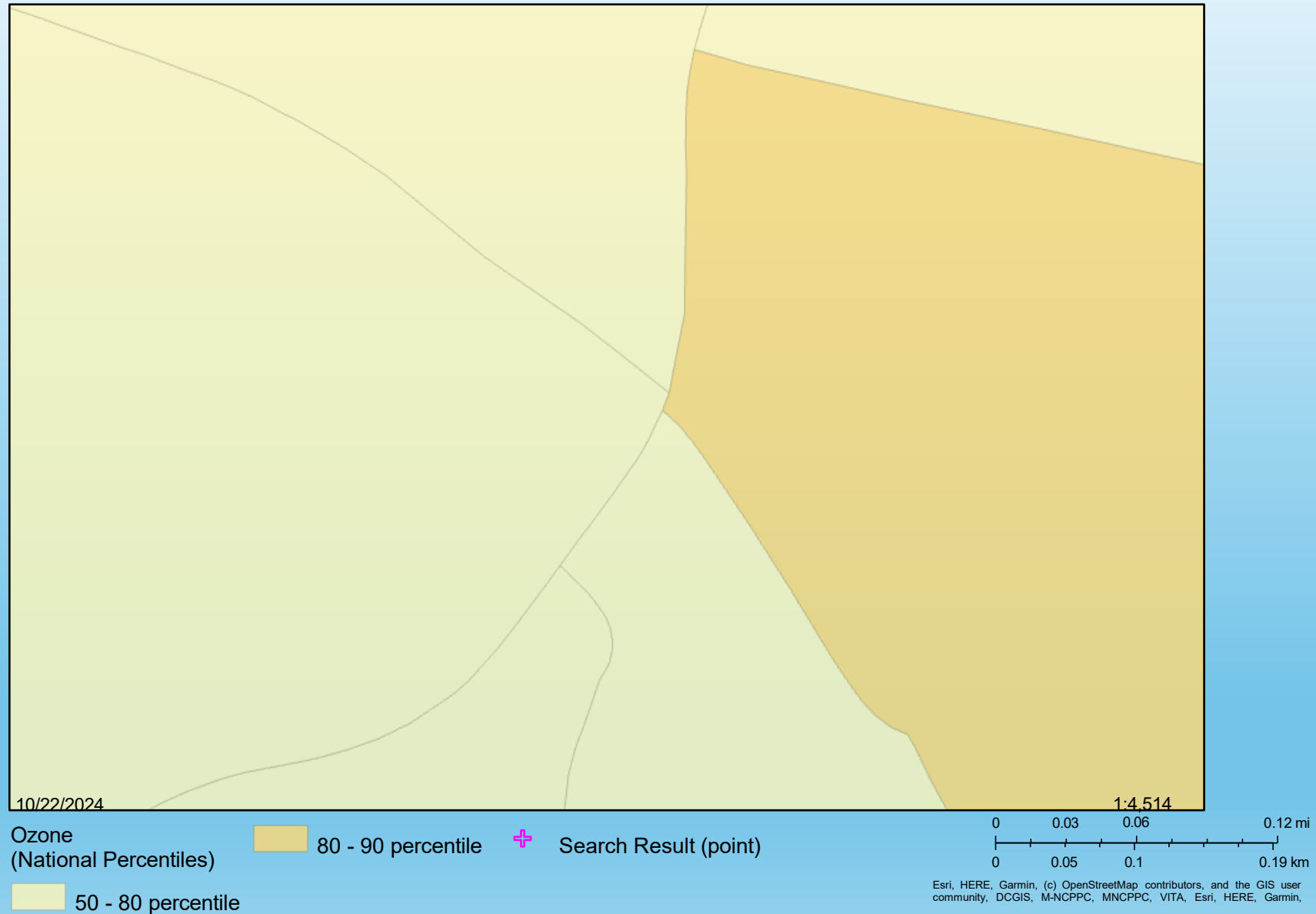
9/26/2024

Traffic Proximity
(National Percentiles)

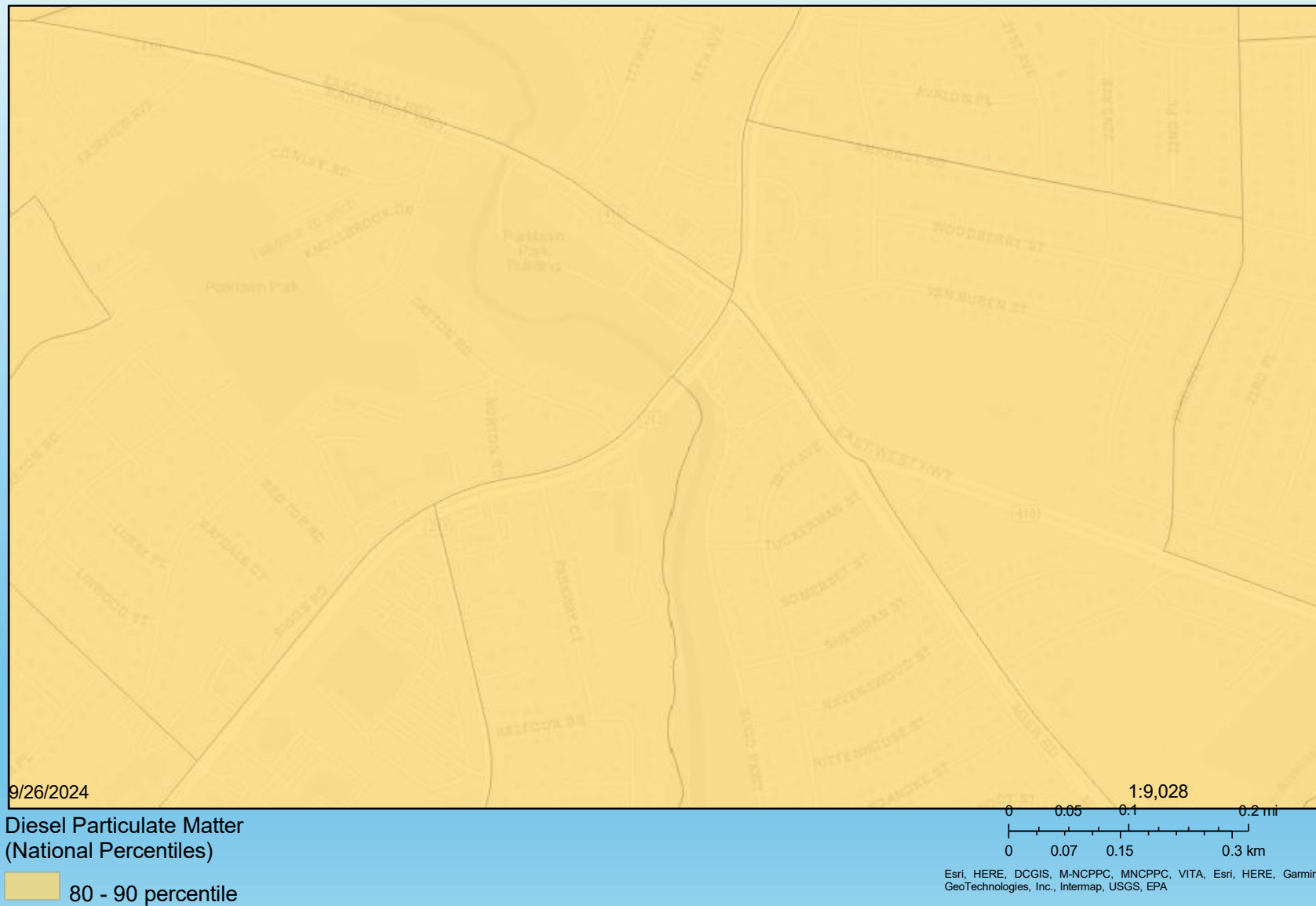
80 - 90 percentile

1:9,028
0 0.05 0.1 0.2 mi
0 0.07 0.15 0.3 km
Esri, HERE, DeLorme, Mapbox, MNCPPC, MNCPPC, VTA, Esri, HERE, Garmin,
GeoTechnologies, Inc., Intermap, USGS, EPA

6565 Ager – Ozone Pollution



6565 Ager - Diesel Particulates



6565 Ager – Nitrogen Dioxide 02



9/26/2024

Nitrogen Dioxide (NO₂)
(National Percentiles)

50 - 80 percentile

Esri, HERE, DeLorme, Mapbox, MNCPPC, MNCPPC, VTA, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, EPA

Contributors to Urban Heat Islands

“This temperature differential, which can exceed 10°C, results from several factors:

- loss of vegetation with accompanying loss of evapotranspiration;
- dark surfaces with low albedo (i.e., surface reflectivity), which absorb and then reradiate heat;
- building configurations that trap heat; and
- the concentrated generation of heat from generators, vehicles, and other sources.”

(Oke T. 1982. The energetic basis of the urban heat island. Q J Roy Meteorol Soc 108(455):1–24.).

Heat Islands and Disparate Impacts

The historical (1950 – 2010) average daily maximum temperature in Prince George's County has been 66°F. This is projected to increase by about 8°F by 2040 and by 10°F by 2060.

The impacts of this increase in extreme heat will not be felt equally across the County – **areas located in urban heat islands will feel the impacts of heat more severely** and heat-sensitive residents (e.g., outdoor workers, residents with respiratory illnesses, energy-burdened households) are also disproportionately at risk. (County Climate Action Plan)

Heat Islands and Human Health

In addition to higher annual temperatures, the County is projected to experience more frequent, intense, and longer-lasting heat waves. (page 39)

Projected increases in extreme heat events in Prince George's County are expected to cause 22% more hospitalizations from heart attacks and 75% more hospitalizations from asthma attacks by 2040 compared to 2010. (County Climate Action Plan)

Heat Islands and Human Health

During extreme heat events in Maryland, we already see an 11% overall increase in heart attack hospitalizations, and this figure is even worse for people of color. The increased risk of hospitalization for heart attacks during extreme heat events is 27% for blacks – three times the rate for whites (9%).

During heat waves, residents living in urban heat islands are disproportionately impacted, because temperatures are higher where there is less shade and more pavement. These same neighborhoods tend to have higher rates of poverty, higher proportions of minority populations, and higher rates of homelessness – some of the factors that already contribute to high health risk. (County Climate Action Plan)

Heat Islands, Human Health, and Tree Loss

In many of the County's underserved neighborhoods, residents lack access to natural areas and green spaces that could offer vital opportunities for physical activity, recreation, and mental, emotional, and social well-being.

These neighborhoods often have a high percentage of impermeable surfaces and a low level of tree canopy coverage. Lack of shade increases risk of heat-related illness, and an excess of paved surfaces increases risk of floods, water-borne illness, and vector-borne diseases. (County Climate Action Plan)

Increasing Tree Canopy and Forest Cover Must Be a Priority

As the effects of climate change worsen and development pressures increase, maintaining, replacing, and even ***increasing*** the number of trees and tree cover must be prioritized.

Especially within our urban communities, which will struggle with heat island impacts, **trees will provide the most cost-effective, long-lasting, and beneficial climate strategy available to reduce carbon and support resilience.**

(County Climate Action Plan)

Forest Loss in Hyattsville and the County

From 2012 to 2018, Hyattsville lost 30 percent of its tree canopy due to development, drought and heat stress.

Between 2013 and 2018, Prince George's County lost more acres of tree canopy and forest than any the county in Maryland.... and possibly more than any county in the Chesapeake Bay Watershed.

“According to a recent analysis performed by the Low Impact Development Center, the County lost more than 7,100 acres of tree canopy between 2014 and 2018.” (County Climate Action Plan)

Potential Impacts on Impaired Streams

The site is roughly 500 feet from Sligo Creek, a major tributary of the Northwest Branch. Areas downstream of the site are prone to flooding.

Maryland lists the lower Northwest Branch and the Anacostia River as impaired for total suspended solids, biological oxygen demand, phosphorus, nitrogen, heptachlor epoxide, **enterococcus, trash,** and PCBs.

The lower Northwest Branch may also be impaired for habitat alterations, lack of riparian buffer, chloride, and sulfate.

Additional loadings of those pollutants or degradation of those conditions should be avoided.

Climate Change, Stormwater and Flooding

In its 2023 study, *The Precipitation Problem*, the First Street Foundation found that, due climate change, **so-called 100-year storms now occur every 14 years in Baltimore** and every 21 years in Washington, DC, and are likely to become more frequent over the next 30 years.

There is little to no evidence in the published record to demonstrate that applicant's current application and stormwater management plans account for clear evidence that climate change already is bringing more extreme weather – include more frequent, more severe storms – and that this trend will continue and possibly accelerate.

The Maryland Energy Administration is offering grants to support solar parking canopies.

Picture: Solar parking canopies and rooftop solar array at the IKEA Baltimore location.



Recommendations for Mitigating Some of the Project's Damaging Impacts

The following conditions would help reduce or mitigate the project's damaging impacts on the community, public health, and the environment:

1. Eliminating the drive-through.
2. Reducing emissions of global warming pollution by fully electrifying the facility, using no natural gas, and using geothermal energy, if possible, to heat and cool the facility.
3. Shading the parking area by:
 - a. Planting heat- and drought-resistant native trees; and
 - b. Installing high-efficiency, canopy-mounted solar panels over the parking area.

The Maryland Energy Administration accepts applications for significant grants to support parking lot solar, preferably linked to community solar to provide low-income subscribers with access to solar energy.

URL: [Maryland Energy Administration FY 2026 Grants and Incentives](https://energy.maryland.gov/business/pages/incentives/pvevprogram.aspx)

<https://energy.maryland.gov/business/pages/incentives/pvevprogram.aspx>

4. Installing roof-mounted solar panels and/or a green roof on the restaurant building.
5. Reducing the number of parking spaces.
6. Installing permeable pavement throughout the site, with a reliable plan to maintain and rehabilitate this pavement so it continues to work efficiently.
7. Designing all proposed stormwater management infrastructure is designed to handle 100-percent of 100-year storm of **at least 8.5"** – and preferably more – over 24 hours to account for climate change. Ensuring that all proposed stormwater management infrastructure is designed to handle shorter, flashier, more-intense storms.
8. Implementing a reliable plan to maintain all stormwater management infrastructure at peak efficiency throughout the lifetime of the facility.
9. Removing all invasive, non-native plants on the property, and to restoring and maintaining a forested area of all-native trees and under-story shrubs of at least 1.5 to two acres.
10. Implementing a plan to ensure that all trees on the property thrive.
11. Implementing a litter prevention and removal plan to prevent any litter from leaving the site.

12. Implementing a reliable plan to minimize solid waste and help achieve the County's zero-waste goals by:
 - a. Recovering all compostable food waste, including compostable paper products, and delivering it to the County's composting facility or to another certified food composting facility.
 - b. Eliminating or minimizing the use of single-use plastic and other non-recyclable materials.
 - c. Collecting and delivering to the County's Materials Recycling Facility or another certified recycling facility all recyclable materials generated or used on site.

DSP 22001 – McDonald’s on Ager Road

Testimony on Trip Generation, Transportation and Safety Impacts

From Greg Smith

There is no evidence in the record that whatever traffic impact analysis was done here accounts for approved projects in the Development Pipeline.

There is no evidence in that the record the ITE trip generation rates relied on here are representative of McDonald’s or fast food drive-through rates in Prince George’s County or regionally or nationally.

COVID drove a shift from in-house ordering and eating to drive-through. There is no evidence in the record to indicate whether the ITE’s trip generation rates used here are based on data gathered before COVID, during peak COVID, or after peak COVID.

The applicant’s trip generation calculation assumes that 50 percent of the trips would be “pass-by” trips. There’s no clear basis in the record for that assumption, and no analysis of what happens to the overall number of peak trips into and out of the site if the number of trips if the pass-by percentage is higher or lower.

The shopping center will have 75 parking spaces and the McDonald’s will have another 54 – for a total of 129. This McDonald’s will have a queuing capacity of approximately 20 vehicles. So how does the applicant justify such low peak-hour trip generation rates, especially when a significant share of the revenue for fast food outlets, perhaps a majority of revenues, comes from drive-through customers?

How many trips would be generated if the drive-through is busy and the parking lot is full or nearly full? How would that affect on-site circulation and safety? How would it affect congestion and safety on local roads?

The applicant’s trip generation calculation focuses on morning and evening “peak” hours, presumably on weekdays. But what about weekend days, when youth sporting events or faith services tend to generate a lot of traffic, and may generate a lot of trips to this McDonald’s?

June 11, 2025

To: Prince George's County Planning Board

Subject: Detailed Site Plan 22001 – McDonald's on Ager Road

Supplemental Comments re. Health Impact Assessments and Fast Food

Dear Planning Board Members,

I respectfully submit the attached November 3, 2022, letter from the Prince George's County Health Department to the County Planning Department, in which the Health Department offered the following comments on Suffrage Pointe DSP 21001.

“The Environmental Engineering / Policy Program of the Prince George's County Health Department has completed a desktop health impact assessment review of the detailed site plan submission for Suffrage Point and has the following any comments/recommendations:

1. Health Department permit records indicate there are approx. 5 carry-out/convenience store food facilities within a ½ mile radius and one markets/grocery stores within a one-mile radius of this location. Research has found that people who live near an abundance of fast-food restaurants and convenience stores compared to grocery stores and fresh produce vendors, have a significantly higher prevalence of obesity and diabetes.
2. The applicant should submit a raze application with the Department of Permits Inspection and Enforcement to remove the abandoned building indicated in the justification statement.
3. During the demolition/construction phases of this project, noise should not be allowed to adversely impact activities on the adjacent properties. Indicate intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code.
4. During the demolition/construction phases of this project, no dust should be allowed to cross over property lines and impact adjacent properties. Indicate intent to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.”

Please note a few key points.

1. You may recall that Werrlein's Suffrage Pointe DSP 21001 proposed to build 41 luxury townhouses (probably to be marketed at more than \$700,000 per townhouse) in the floodplain of the Northwest Branch of the Anacostia River. For some reason, the Health Department chose to quantify the number of existing carry-out/convenience store food facilities within one-half mile of the Suffrage Pointe site, but chose not to offer the same

analysis of the number of carry-out/convenience store food facilities within the one-half mile (or any distance) of the proposed McDonald's on Ager site even though:

- a. the proposed McDonald's site is located in what the Health Department and other county agencies classify as a Food Swamp;
 - b. the proposed McDonald's site is in the midst of a community already subject to multiple socio-economic, health, and environmental stressors; and
 - c. as the Health Department notes in its Suffrage Pointe letter, "people who live near an abundance of fast-food restaurants and convenience stores compared to grocery stores and fresh produce vendors, have a significantly higher prevalence of obesity and diabetes", a point that DSP 22001 opponents have made.
2. Recommendations 2 through 4 in the Health Department's November 2022 Suffrage Pointe are nearly identical to the same boilerplate recommendations that the Health Department made in its January 30, 2024 letter on McDonald's DSP 22001. This boilerplate language adds little to nothing of value, merely noting that the applicant should secure certain permits and follow certain laws. The Hyattsville community's Suffrage Pointe experience has made crystal clear that there is no certainty that a developer will secure required permits or follow certain laws, or that county agencies will require or enforce them. Notably, in commenting on Suffrage Pointe DSP 22001, the Health Department made Recommendations 2 through 4 more than three years after Werrlein had torn down the WSSC headquarters building and ground it up into rubble on site without taking effective actions to control dust and noise.

As always, thank you for your time and your consideration, and for your service to the community.

Sincerely,

Greg Smith
4204 Farragut Street
Hyattsville, MD 20781
gpsmith@igc.org
(240) 605-9238



Division of Environmental Health/Disease Control

Date: November 3, 2022

To: Jill Kosack, Urban Design, M-NCPPC

From:  Adebola Adepoju, Environmental Health Specialist, Environmental Engineering/ Policy Program

Re: DSP-21001 SUFFRAGE POINT

The Environmental Engineering / Policy Program of the Prince George's County Health Department has completed a desktop health impact assessment review of the detailed site plan submission for Suffrage Point and has the following any comments/recommendations:

1. Health Department permit records indicate there are approx. 5 carry-out/convenience store food facilities within a ½ mile radius and one markets/grocery stores within a one-mile radius of this location. Research has found that people who live near an abundance of fast-food restaurants and convenience stores compared to grocery stores and fresh produce vendors, have a significantly higher prevalence of obesity and diabetes.
2. The applicant should submit a raze application with the Department of Permits Inspection and Enforcement to remove the abandoned building indicated in the justification statement.
3. During the demolition/construction phases of this project, noise should not be allowed to adversely impact activities on the adjacent properties. Indicate intent to conform to construction activity noise control requirements as specified in Subtitle 19 of the Prince George's County Code.
4. During the demolition/construction phases of this project, no dust should be allowed to cross over property lines and impact adjacent properties. Indicate intent to conform to construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.

If you have any questions or need additional information, please contact me at 301-883-7677 or aoadepoju@co.pg.md.us.



Environmental Engineering/Policy Program
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A Few Relevant Sections of the Zoning Ordinance

Section 27-142. Burden of proof.

The burden of proof in any zoning case shall be the applicant's.

Section 27-104. Minimum requirements.

In interpreting and applying the provisions of the Zoning Ordinance, they are the minimum requirements for the promotion of the purposes of this Subtitle.

Note: This principle is so important that similar language appears, if I recall correctly, in the County's Subdivision Regulations, Water Resources Protection and Grading Ordinance, and Tree and Vegetation Ordinance.

To my knowledge, nothing in the Zoning Ordinance prevents the Planning Department or the Planning Board from requiring more and better from the applicant, especially in a community that clearly is already so over-burdened with multiple environmental, public health, social, and economic stressors.

Sec. 27-141. – Based on record.

The final decision in any zoning case shall be based only on the evidence in the record, and shall be supported by specific written findings of basic facts and conclusions. In addition, the Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision.

Sec. 27-284. Referral.

- (a) Prior to taking action on the Detailed Site Plan, the Planning Board shall refer the plan to the Historic Preservation Commission (Part 14), when appropriate, and to all agencies which the Planning Board deems appropriate for review and comment. The agencies shall include all of those whose action is likely to have a substantive effect on the plan under review. The Planning Board shall maintain a list of referral agencies. The plan shall also be referred to:
 - (1) the Prince George's County Police Department for review and comment. The Police Department may comment on issues relevant to their mission, including opportunities to implement crime-prevention measures, and to enhance the safety and security of residents, employees and other users of a project through implementation of the principles of Crime Prevention Through Environmental Design (CPTED); and
 - (2) **the Prince George's County Health Department. The Health Department shall perform a health impact assessment review of the proposed development identifying the potential effects on the health of the population, and the**

distribution of those effects within the population, including recommendations for design components to increase positive health outcomes and minimize adverse health outcomes on the community.

Section 27-107.01(112.2) Health Impact Assessment Review: In this preliminary stage of implementing the health impact assessment review, it is defined as a tool that may include a combination of procedures, methods and tools by which a policy, program or project may be evaluated as to its potential effects on the health of a population, the distribution of those effects within the population, and provide a platform to make our communities healthier.

Section 27-102. Purposes.

(a) The purposes of the Zoning Ordinance are:

- (1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;
- (2) To implement the General Plan, Area Master Plans, and Functional Master Plans;
- (3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;
- (5) To provide adequate light, air, and privacy;
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;
- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (10) To prevent the overcrowding of land;
- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;
- (12) To insure the social and economic stability of all parts of the County;
- (13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;
- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

Sec. 27-281. Purpose of Detailed Site Plans.

(b) General purposes.

(1) The general purposes of Detailed Site Plans are:

(A) To provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan;

(B) To help fulfill the purposes of the zone in which the land is located;

(C) To provide for development in accordance with the site design guidelines established in this Division; and

(D) To provide approval procedures that are easy to understand and consistent for all types of Detailed Site Plans.

Southland Corp. v. City of Laurel

[Annotate this Case](#)

75 Md. App. 375 (1988)

541 A.2d 653

SOUTHLAND CORPORATION 7-ELEVEN STORES v. MAYOR & CITY COUNCIL OF LAUREL.

No. 617, September Term, 1987.

URL: <https://law.justia.com/cases/maryland/court-of-special-appeals/1988/617-september-term-1987-0.html>

Court of Special Appeals of Maryland.

June 3, 1988.

Robert H. Levan and Bernard A. Cook (Levan, Schimel, Richman & Belman, P.A., on the brief),
Laurel, for appellant.

James F. Maher, City Sol. (Dwight W. Clark and Maher & Maher, Chartered, on the brief),
Laurel, for appellee.

Argued before GARRITY, ALPERT and ROBERT M. BELL, JJ.

GARRITY, Judge.

We are asked to decide whether the City of Laurel may properly reject a use of real property through its site development review procedure, even though the proposed use is generally "permitted" under the applicable zoning ordinance.

Facts

The subject property (the Property) is located in the northwest quadrant of the intersection of Route 1 (southbound) and Main Street, within the City of Laurel (City). The Property is zoned General Commercial (C-G) and is located in the city's historic district. U.S. Route 1 is a divided highway with various businesses located in the median between the northbound and southbound lanes, each consisting of four lanes. Main Street, which is perpendicular to and intersects at both the southbound and northbound lanes of Route 1, runs in an east-west direction. There are traffic signals located at both of these intersections. Main Street abuts the southerly boundary of the Property, and U.S. Route 1 southbound abuts its easterly boundary. The northerly portion of the

Property is bounded by Tolson Alley. Tolson Alley intersects with southbound Route 1 and runs westerly, where it crosses "A" Street.

Southland Corporation, 7-Eleven Stores (Southland) purchased the property with the intent to improve it with a 7-Eleven convenience store. To this end, Southland submitted a site plan in conjunction with a building permit application to the Laurel Planning Commission in October of 1985. It is undisputed that the convenience store, retailing foods and beverages and containing less than 5,000 square feet of retail space, is permitted under the C-G zoning classification set forth in Section 20-27.04.a.(1) of the City of Laurel Zoning Ordinance.

Southland's proposal met all of the preliminary regulations which led to a recommendation of approval by the Laurel Planning Staff. **This recommendation was rejected, however, by the Planning Commission on November 12, 1985. Traffic safety was the paramount concern of the Planning Commission.**

Shortly thereafter, Southland submitted a modified site plan. **On February 11, 1986, this plan was also rejected by the Planning Commission due to traffic safety concerns.** Southland then submitted a revised final site plan, **which was again rejected on May 13, 1986, by the Planning Commission. Again, the primary reason articulated for its rejection was that the site plan, if instituted, would create a hazard to vehicular and pedestrian traffic.**

Southland, in the meantime, had acquired approval from all other requisite city and state committees including the Historical District Commission, the Public Works Department of the City of Laurel, and the State Highway Commission. Southland appealed the Planning Commission's determination to the Board of Appeals for the City of Laurel which conducted a de novo hearing. The Board of Appeals upheld the Planning Commission's decision. Thereafter, the Circuit Court for Prince George's County (Blackwell, J.) affirmed the action of the Board of Appeals.

Discussion

Southland argues, in essence, that the "impact of uses" is a matter that is decided by the City's legislative body at the zoning stage. Once that decision is made, regardless of adverse effects, a property may be developed in accordance with any of the permitted uses. Thus, the Planning Commission and the Board of Appeals, acting as quasi-judicial rather than legislative bodies, "cannot, as a rationale for denying a building permit, determine that a permitted use is inappropriate for a site."

The City argues, on the other hand, that it has exclusive planning and zoning authority within its corporate boundaries. Thus, it has the authority to delegate to its Planning Commission the right to make decisions as to the "use of property" in connection with the site development process pursuant to standards set forth in the ordinance, which includes the satisfaction of safety conditions.

The City of Laurel, a municipal corporation, has been granted very broad home rule powers pursuant to Article XI-E, Section 3, of the Maryland Constitution and Article 23A of the

Annotated Code of Maryland. Article 23A, Section 2, provides in pertinent part, that municipalities shall have general power to pass such ordinances not contrary to the Constitution of Maryland, public general law or ... public local law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality.... (emphasis added).

This court stated in *Campbell v. Mayor and Aldermen of the City of Annapolis*, 44 Md. App. 525, 532, [409 A.2d 1111](#) (1980):

One of the objectives of home rule was to assure Maryland municipalities the power of self-government.... The intent of Article XI-E was specifically to grant Maryland municipalities the power to control their own local affairs, and was designed to permit local legislation to be enacted solely by those directly affected. ... (emphasis added).

The Court of Appeals noted in *Mayor and Aldermen of the City of Annapolis v. Annapolis Waterfront Company*, 284 Md. 383, 396 A.2d 1080 (1979):

Article 23A, implementing Article XI-E, Section 3, only establishes minimum requirements regarding municipal affairs. Municipalities are free to provide for additional standards and safeguards in harmony with concurrent state legislation. Thus, where a municipal legislative body has enacted a zoning ordinance under the powers granted by the General Assembly, a presumption of validity attaches to that act as an exercise of the police power. (citations omitted). Further, we have held that the courts of this state are without power to interfere with "any exercise of the legislative prerogative within constitutional limits, or with the lawful exercise of administrative authority or discretion.

See also *Joy v. Anne Arundel County*, 52 Md. App. 653, 657, [451 A.2d 1237](#) (1982).

As to the City of Laurel in particular, it is clearly established that it is empowered with exclusive planning and zoning authority within its corporate boundaries. *Prince George's County v. Mayor and City Council of Laurel*, 262 Md. 171, 277 A.2d 262 (1971). Pursuant to that authority, the City enacted a site development review process. That process, in accordance with the Laurel Zoning Ordinance, is an integral part of the building permit/use and occupancy permit procedure. Section 20-8.03 of the Laurel Zoning Ordinance requires that the site and development plans be submitted to the Planning Commission to allow its evaluation of the building or development. Section 20-8.04, entitled "Conditions," provides:

a. The use and occupancy permit shall be issued only upon a finding that the use proposed in the application will not: (1) Affect adversely the health, safety, or morals of persons residing or working in the neighborhood of the proposed use. (2) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood. (3) Constitute a violation of any provision of this ordinance. b. The planning commission or the Director of Planning, Zoning, and Permits may attach such conditions to the approval of the use permit as it deems reasonable and

necessary to assure that the proposed use will be consistent with the purpose and intent of this ordinance.

In *Tighe v. Osborne*, 150 Md. 452, 133 A. 465 (1926), it was held that the City of Baltimore could delegate limited discretion to its Zoning Commissioner to determine whether a proposed building or use would menace the public security, health or morals. The Court observed:

[I]t has been found practically impossible to provide in laws and ordinances specific rules and standards by which every conceivable situation can be measured and determined. The result has been that we have turned more and more to the plan of providing in our laws and ordinances general rules and standards, and leaving to administrative boards and agencies the task of acquiring information, working out the details, and applying these rules and standards to specific cases. This is not considered a delegation of legislative authority though it probably does represent an expansion of administrative power. Such ordinances represent no change in principle. They merely indicate that the courts, faced by at least an apparent necessity, have relaxed to some extent the particularity with which they formally required the laws and ordinances to set out the rules and standards by which the delegative power was to be limited, and whatever may be said of the wisdom of this relaxation no doubt can now be entertained as to its sanction by the great weight of authority in this country.

Id. at 463, 133 A. 465.

There is no question that the City of Laurel has the authority, by virtue of its police power, to enact a zoning ordinance in the interests of public safety. We hold, in furtherance of that mission, it may properly delegate to its Planning Commission the authority to determine whether a proposed building or use, due to its proposed location, would create a public safety hazard.

A similar question to that we are dealing with in the case sub judice was posed by Southland to the California Court of Appeals in *Wesley Investment Co. v. County of Alameda*, [151 Cal. App. 3d 672](#), [198 Cal. Rptr. 872](#) (1984). In *Wesley*, Southland sought to construct a 7-Eleven store in an area zoned for retail stores, as in the case at bar. So too did that ordinance provide that any applications were subject to site development review. The purpose of the ordinance was cited as follows:

[T]o promote orderly, attractive, and harmonious development, recognize environmental limitations on development, stabilize land values and investments, and promote the general welfare by preventing establishment abuses or erection of structures having qualities which would not meet the specific intent clauses or performance standards of this Chapter or which are not properly related to their sites, surroundings, traffic circulation, or their environmental setting. Where the use proposed, the adjacent land uses, environmental significance, or limitations, topography, or traffic circulation is bound to so require, the planning director may establish more stringent regulations than those otherwise specified for the District.

Id. at 676, [198 Cal. Rptr. 872](#).

The Court pointed out that a permitted use under the ordinance did not equate to an absolute right to erect a convenience store. On the issue of the delegation of power to the Planning Director, the Court observed:

Wesley claims that the county has improperly delegated its zoning legislative power by giving the department, the director, and the commission the right to deny a "'permitted' use." In particular, Wesley questions "... the validity of a 'general welfare' standard which allows the administrative body to ignore the legislature's mandate and to legislate new zoning policy into existence." We agree with the county's position on this point: "Neither the Planning Director nor the Planning Commission on appeal, (acting as administrative bodies) are 'ignoring the legislature's mandate.' The direct opposite is the fact; that is, they are following the mandate of the ordinance which allows them to exercise their judgment so as to deny a Site Review application. In no way are they either authorized nor are they pretending here to 'legislate new zoning policy.' All they are doing is administering existing zoning policy, which policy is set forth in the Site Review sections of the county ordinance."

Id. at 679, [198 Cal. Rptr. 872](#).

Having concluded that the ordinance empowered the Planning Commission to make such a decision, we must now determine whether there was sufficient evidence before the Board of Appeals to make the issue of traffic safety fairly debatable. In other words, we will not substitute our judgment for that of the Board of Appeals if the issue is fairly debatable and the record contains substantial evidence supporting the decision of the Planning Commission.

The standard for reviewing administrative actions is set forth in *Annapolis v. Annap. Waterfront Co.*, 284 Md. 383, 395-96, 396 A.2d 1080 (1979), and is as follows:

When reviewing an administrative decision for arbitrariness or capriciousness, a court must first determine whether the question before the agency was "fairly debatable": We have made it quite clear that if the issue before the administrative body is "fairly debatable", that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body, in the absence of an unconstitutional taking of private property for public use without the payment of just compensation. *Brouillet v. Eudowood Shopping Plaza, Inc.*, 249 Md. 606, 241 A.2d 404 (1968); *Creative Country Day School, Inc. v. Montgomery County Board of Appeals*, 242 Md. 552, 219 A.2d 789 (1966); *County Council for Montgomery County v. Gendleman*, 227 Md. 491, 177 A.2d 687 (1962).

Part of the evidence presented to the Board of Appeals included testimony by traffic experts: John W. Guickert testified on Southland's behalf and Kenton J. Balenske testified on behalf of the City of Laurel. Both experts conducted traffic counts. Mr. Guickert testified that there was no site distance problem, and, absent that, he did not see the need to prepare an accident analysis report. Mr. Guickert also admitted that the study did not specifically address traffic safety, but he stated that the traffic impact analysis and traffic safety go "hand-in-hand."

Mr. Balenske, on the other hand, in addition to conducting traffic counts, conducted turning movement counts and a queuing analysis to determine the number of cars which would be queued at the nearby intersections during peak traffic hours. Mr. Balenske, in his report dated December 17, 1985, observed:

A queuing analysis was performed during lunch and PM peaks. A queue of 5 or more cars effectively blocks both the alley and the driveway from the proposed site. During the lunchtime peak hour, approximately 75% of the cycles on southbound Route 1 experienced queues of 5 or more passenger vehicles with over 90% in the peak 30 minutes. During the PM peak hour, over 95% of the cycles had queues in excess of 5 cars. In the peak 15 minutes, every cycle experienced queues in excess of 15 vehicles. During these periods, it would be virtually impossible to exit the site and cross Rt. 1 to turn left on Main; the turn onto southbound Rt. 1 would be difficult but possible. In summary, this location and use present several potential traffic safety problems. The close proximity of the driveways from this site to southbound Rt. 1 combined with the long queues experienced during the peak periods will result in potentially hazardous conflicts on southbound Rt. 1. These conflicts are magnified by this usage which has very high peak hour generation which tends to correspond with the peaks in the adjacent road. Thirdly, increases of traffic in the alley are undesirable due to inadequate width and sight distance at the point where the alley meets "A" Street. Finally, the high historical traffic increases (which are expected to remain high) will cause increased queues and further conflicts in the short-term future. From a traffic safety standpoint, a user with lower generations on off peak generation rates would be more desirable.

In a later report, Mr. Balenske conducted tests with respect to the trip generation peaks and concluded that they coincided with the peaks in traffic during rush hours. Again, he concluded:

U.S. Route 1 experiences very sharp peaks in the AM, PM, and lunch rush hours. ITE generation rates for convenience stores indicate in excess of 120 trips in the AM and PM breaks with the lunch peaks probably higher. Since the street peaks and generated peaks coincide, the potential conflicts are high. The future increases in traffic along Route 1 will heighten these conflicts. As a result, virtually every car which exits the proposed site will have to weave out across the right lane of southbound Washington Boulevard (used primarily by moving right turning vehicles) and merge into a queue of stopped vehicles in the second lane. We feel the proposed location will be highly hazardous and that accident occurrence will rise greatly if a high peak hour generator is allowed on this site.

Mr. Frank Persico testified as a resident of Laurel and on behalf of the City of Laurel Public Safety Committee (hereinafter "PSC") of which he was a member. He introduced a letter from the PSC dated June 19, 1986, recommending against the proposed use because it was the PSC's opinion that the traffic generated by the use would present a public safety hazard. Mr. Persico noted that the PSC is made up of citizens, including members of the Laurel Volunteer Rescue Squad, the Laurel Fire Department, the Laurel Police Department, and City Council members, that this matter was considered by the committee on at least three occasions, and that it had reviewed the traffic reports.

Mr. Persico and William Souders, another resident of Laurel, both testified that based upon their personal observations, the construction of the 7-Eleven at the corner would present a significant traffic hazard. Both pass by the intersection several times a day. They further testified that if truck drivers parked illegally to frequent the store, as they do at several other 7-Eleven locations, that would also create a severe traffic problem.

We hold that there was sufficient evidence presented to the Board of Appeals to make the issue of whether the proposed use would create a public safety hazard at the site, due to traffic concerns, fairly debatable. We, therefore, shall affirm the judgment of the Circuit Court for Prince George's County.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

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