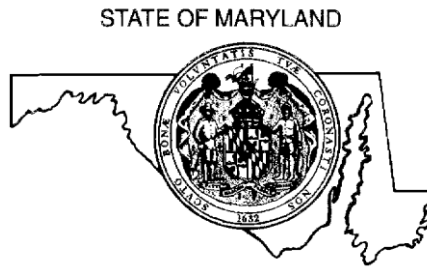


**Craig P. Tanio, M.D.**  
CHAIR



**Ben Steffen**  
EXECUTIVE DIRECTOR

**MARYLAND HEALTH CARE COMMISSION**

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

September 27, 2013

Anne Langley, Director  
Health Policy Planning  
Health Care Transformation and Strategic Planning  
Johns Hopkins Medicine  
3910 Keswick Road, Suite N-2200  
Baltimore, Maryland 21211

Re: Suburban Hospital – Determination of  
Coverage – Demolition, Site Work, and  
Parking Garage

Dear Ms. Langley:

I write in response to your letter of September 17, 2013, in which you provided additional information and clarification in support of the request for a determination that Suburban Hospital (“Suburban”) may proceed to undertake a \$51 million capital expenditure for demolition, site work, and construction of a new parking garage without Certificate of Need (“CON”) approval. I also considered your email of September 26, 2013 and the information provided in your initial request of February 13, 2013.

In your letter of February 13<sup>th</sup> you describe this work as being comprised of two projects. “Project 1” is described as site work including road and sidewalk improvements along site perimeters, relocation of utilities located under Lincoln Street to allow demolition of the street and construction of a temporary parking lot, and demolition of an existing parking garage and administrative building at an estimated cost of \$19 million. Project 1 also includes the construction of a new driveway off McKinley Street accessing the back of the hospital and the loading dock, replacing access from Lincoln Street, which will be closed as confirmed by your September 26<sup>th</sup> email. “Project 2,” as described in your February 13<sup>th</sup> letter, has an estimated cost of \$32 million, and was described as including construction of a new parking garage and removal of the temporary parking lot. In your September 17<sup>th</sup> letter you state that all of the site work is necessary for the construction of the replacement garage.

Your letter of September 17, 2013 also addresses issues raised in my letter of July 23, 2013 in which I determined that Projects 1 and 2 are component parts of a larger redesign of the Suburban Hospital campus that includes the construction of a hospital addition identified as

“Project 3”. My previous determination relied heavily on COMAR 10.24.01.02C, which provides that a person may not divide a project into component parts. You correctly point out that this provision of the Commission’s regulation provides that the Commission shall, on request, issue a determination regarding whether two or more apparently individual projects actually represent component parts of a single project, considering the timing of the projects, the functional areas of a facility to be affected, the number of construction contracts to be entered into, and whether expenditures under one contract depend on the completion of a prior contract.

Regarding the timing of the three projects you point out that the timing of the construction of the building addition is not linked to the timing of the site work and parking garage work of Projects 1 and 2 from a program perspective. You also state that the submission of a CON application covering all three projects as one project would require that the plans for the building addition would have to be submitted for review four years before the start of construction versus 2.25 years, if the projects are allowed to proceed separately.

Regarding the functional relationship of the areas that will be affected by each project, you point out that the existing parking garage and the proposed parking garage are physically and functionally separate from the planned building addition. You also point out that the site work for the parking garage and the garage itself will have separate construction contracts and that there will be a separate construction contract for the building addition. Lastly, you state that the building addition project does not depend upon completion of the garage replacement project.

While the Commission regulation concerning the division of a project into component parts specifies four factors for the Commission to consider, I do not consider these factors to be of equal importance or the only factors that may be considered in such a determination. While the fact that component parts of a capital project are constructed through a single contract would be a very strong indication that there is only one capital project, the fact that the component parts are under separate contracts is not a strong indicator that the components are separate projects, only that they can be easily divided into component parts for construction contracting purposes. The importance of the timing of the projects depends on the functional relationship of one component to another and whether the expenditures for one component are dependent on the completion of a prior contract.

In the case of the Suburban projects, the fact that they will be constructed under separate contracts is not persuasive. I am also not particularly persuaded that the long schedule to complete all the projects leads to a determination that they are not component parts of one project. Long time frames are the norm for the redesign of hospital campuses. The fact that the site work and work on the parking garages will not be functionally related to the hospital addition in terms of creating space for hospital functions in the new parking garage building that will accommodate the relocation of functions from the hospital that will be followed by renovation of the vacant space supports a finding that the projects are not components of a larger project from the perspective of the CON review process. However, in this case the degree to which the expenditures under one project are dependent on the completion of another project is the most important consideration. The projects are being constructed in what appears to be the most logical order with construction of a temporary parking lot as part of Project 1 to meet hospital parking needs during Project two, which includes replacement of the parking garage, to be followed by construction of the building addition, or Project 3, on the land that will be

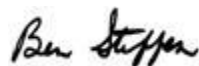
occupied by the temporary parking lot. This would suggest that the expenditures under one contract are dependent on the completion of the prior contract. However, it is conceivable that the building addition could be constructed before or at the same time as the parking garage. This would require finding another parking location, probably off-campus, during the replacement of the parking garage. I am also cognizant of the fact that parking garages are often built separately from the CON reviewed project, though by a third party, in many cases. Moreover, the costs of parking garages have not been recognized by the Hospital Cost Review Commission for rate regulation. Therefore, such costs do not impact hospital rates. For these reasons, I conclude that the proposed expenditures on parking and related and required site work are not component parts of the building addition project contemplated by Suburban Hospital, for which the need to obtain CON review and approval is anticipated.

However, the capital expenditures for each of these projects separately (\$19 million for Project 1 and \$32 million for Project 2) and more appropriately combined (\$51 million) exceed the current threshold of \$11,550,000. Therefore, CON approval would ordinarily still be required. However, as you pointed out in your February 13, 2013 letter, Maryland Health-General §19-120(k)(6) lays out exceptions to the requirement that an expenditure made as part of a replacement of any plant and equipment of a hospital exceeding \$10 million, as adjusted for inflation (currently \$11,550,000), requires a CON. One of those exceptions, Health-General §19-120(k)(6)(vii), is for the expenditure of funds for equipment, construction or renovations that are not directly related to patient care and do not increase patient charges or hospital rates. The requested determination is for work that satisfies these two requirements for an exception to the CON requirement.

Therefore, in terms of the timing of each project, functional areas of the facility affected by each project, the number of construction contracts, and my finding that the expenditures under Project 3 are not dependent on the completion of Projects 1 and 2, I find that Projects 1 and 2 can be viewed as a distinct from Project 3. I further find that Projects 1 and 2 are not directly related to patient care and will not increase patient charges or hospital rates. Therefore, Projects 1 and 2 qualify for the exception from the requirement that an expenditure made as part of a replacement of any plant and equipment of a hospital exceeding \$10 million, as adjusted for inflation, requires a CON.

If you have any questions concerning this matter, please call Joel Riklin at 410-764-5596.

Sincerely yours,



Ben Steffen  
Executive Director

cc: Donna Kinzer, Acting Executive Director, HSCRC  
Margaret Fitzwilliam, Suburban Hospital  
Ulder J. Tillman, M.D., Health Officer, Montgomery County

Anne Langley  
Director  
Health Policy Planning

Health Care Transformation  
and Strategic Planning  
3910 Keswick Road, Suite N-2200  
Baltimore MD 21211  
443-997-0727 Telephone  
443-997-0731 Fax  
alangle2@jhmi.edu



September 17, 2013

Paul Parker, Director  
Center for Hospital Services  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215-2299

Re: Additional Information Regarding Suburban Hospital's Request for a  
Determination of Non-coverage by Certificate of Need Review for Site Work and  
the Replacement of a Parking Garage

Dear Mr. Parker:

Thank you for taking the time to meet with us August 28<sup>th</sup> to discuss our recent correspondence regarding Suburban Hospital's ("Suburban's") February 13, 2013 request for a determination that Certificate of Need review is not required for capital expenditures related to site work and the construction of a new garage on the Suburban Hospital campus. The purpose of this letter is to provide additional information and clarification in support of this request.

First, we would like to clarify that all of the site work included in this request is necessary for the construction of the replacement garage.

Second, we would like to address the issues raised in the letter from Ben Steffen, Executive Director of the Maryland Health Care Commission ("MHCC"), in response to our initial February 13, 2013 request, regarding the application of COMAR 10.24.01.02C to this matter. COMAR 10.24.01.02C states:

"A person may not divide a project into component parts except as permitted by this chapter. The Commission shall, on request, issue a determination regarding whether two or more apparently individual projects actually represent component parts of a single project, considering factors such as the timing of the projects, the functional areas of a facility to be affected, the number of construction contracts entered into, and whether expenditures under one contract depend upon the completion of a prior contract."

The factors that determine whether two or more apparently individual projects represent component parts of a single project, and their applicability to this request, are discussed below.

### 1. Timing

The specific timing of the three projects (Site Work, Replacement Garage, and Building Addition) is not “required” for the projects themselves. Though much of the site work needed for the garage overlaps with the site work for the construction of Suburban’s building addition, this overlap is coincidental and does not then mean that the projects are necessarily component parts. And although the building project must begin soon after the construction of the parking to ensure compliance with the zoning approval, it not required from a program perspective. In other words, we can separate these projects from a timing perspective and in no way manipulate or circumvent optimal CON planning processes, rules, or policies.

### 2. Functional areas affected

The existing garage and the new garage are physically separate and functionally separate from the hospital building. The garage is overdue for replacement, as there is a severe parking shortage on campus. The need for the building project, which will be described in detail in the CON application, is completely independent of the need for a replacement parking garage. In short, there is no overlap of functional areas of the facilities.

### 3. Number of construction contracts

The site work for the garage project and the garage itself will have separate contracts, and the building addition will have its own contract.

### 4. Whether expenditures under one contract depend upon the completion of a prior contract

The building addition project does not depend upon the completion of the garage replacement project. The fact that much of the site work required for the garage replacement project is also required for the building addition project is coincidental. Thus, the expenditures under one contract do not depend upon the completion of a prior contract.

Finally, COMAR 10.24.01.02C was put into place to serve the public policy purpose of preventing the manipulation of the CON rules in ways that impede effective health planning. As demonstrated above, the facts in this case do not support the applicability of this regulation, and public policy is not served either. There is, on the other hand, a public policy argument against artificially requiring that the building addition project and the garage replacement be bundled together. Doing so in this case means that the planning for the building addition, a major and long-awaited project for Suburban, must be completed 4 years before the start of construction, versus 2.25 years if the projects are separate. Given this extended time frame, we can predict with certainty at least one if not two modifications to the CON, at a minimum. There is no public policy served by extended time frames between the planning and review of a project and construction. It results in wasted time and effort on our part and on the part of the MHCC staff reviewing the project.

Based on the additional information provided, Suburban respectfully requests that the Commission issue a determination that Certificate of Need review is not required for the capital expenditures associated with the site work for the garage project and the garage replacement project.

Thank you for your consideration of this matter. If you have any questions or need additional information, please do not hesitate to contact me at 443-997-0727.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne Langley', with a stylized flourish at the end.

Anne Langley

cc: Ulder J. Tillman, M.D., Health Officer, Montgomery County  
Margaret Fitzwilliam, Suburban Hospital

Craig P. Tanio, M.D.  
CHAIR

STATE OF MARYLAND



Ben Steffen  
EXECUTIVE DIRECTOR

**MARYLAND HEALTH CARE COMMISSION**

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

July 23, 2013

Anne Langley, Director  
Health Policy Planning  
Health Care Transformation and Strategic Planning  
Johns Hopkins Medicine  
3910 Keswick Road, Suite N-2200  
Baltimore, Maryland 21211

Re: Suburban Hospital – Determination of  
Coverage – Demolition, Site Work, and  
Parking Garage

Dear Ms. Langley:

I write in response to your letter of February 13, 2013, in which you requested a determination that Suburban Hospital (“Suburban”) may spend a total of \$51 million on demolition, site work, and construction of a new parking garage without Certificate of Need (“CON”) approval. I also considered the additional information attached to your May 9, 2013 email concerning the approval of the special exception modification by the Board of Appeals for Montgomery County.

You describe this work as being comprised of two projects. “Project 1” is described as site work including road and sidewalk improvements along site perimeters, relocation of utilities located under Lincoln Street to allow demolition of the street and construction of a temporary parking lot, and demolition of an existing parking garage and administrative building at an estimated cost of \$19 million. It also appears that Project 1 would include demolition of a number of houses along Lincoln Street. “Project 2,” at an estimated cost of \$32 million, is described as including construction of a new parking garage and removal of the temporary parking lot. It will also include the construction of a new driveway off McKinley Street accessing the back of the hospital and the loading dock, replacing access from Lincoln Street, which will be closed. You stated that, while this work is prerequisite to the construction of the building addition identified as Project 3, with an estimated cost of \$171 million, for which Suburban will seek a CON, it is not a component part of that project. You state that almost all of the work would be required, if Suburban were only to replace its parking garage, which is

necessary to correct an existing shortage of campus parking. You also state that this work is not directly related to patient care, and will not increase patient charges or hospital rates; thus, you believe that a CON is not required.

Maryland Health-General §19-120(k)(6) lays out exceptions to the requirement that an expenditure made as part of a replacement of any plant and equipment of a hospital exceeding \$10 million, as adjusted for inflation (currently \$11,550,000), requires a CON. One of those exceptions, Health-General §19-120(k)(6)(vii), is for the expenditure of funds for equipment, construction or renovations that are not directly related to patient care and do not increase patient charges or hospital rates. While the requested determination is for work that appears to satisfy these two requirements for an exception to the CON requirement, this exception is intended for expenditures that stand on their own as individual separate projects. More to the point is COMAR 10.24.01.02C, which provides that a person may not divide a project into component parts. Among the factors that the regulation directs the Commission to consider in determining whether two or more projects represent component parts of a single project is whether expenditures under one contract depend upon the completion of a prior contract.

You have referenced, as an applicable precedent, the Commission's April 6, 2004 determination that a proposed expenditure for the construction of a multi-use facility by Johns Hopkins Hospital did not require CON review or a determination of coverage by the Commission. The construction of the multi-use facility created space for vacating buildings to be demolished and this demolition cleared the site for a JHH project that required CON approval. Thus, that determination allowed a capital expenditure for work that was prerequisite to the construction of hospital facilities replacement and expansion, as is the garage construction and site work proposed here by Suburban Hospital. I note that the April 6, 2004 letter makes no reference to COMAR 10.24.01.02C, which provides that a person may not divide a project into component parts.

While you state that most of the work to be performed in Projects 1 and 2, "would be required if the campus plan consisted solely of the construction of the replacement garage", the campus plan is not limited to the replacement of the parking garage, but includes the construction of a large building addition identified as Project 3. This is exemplified by the application for modification of the special exception in existence for the campus considered by the Board of Appeals of Montgomery County. The campus plan is identified in this application as construction of a four-story 235,597 square foot building addition, the "Project 3" referenced earlier in this letter, as well as demolition of the existing parking garage and construction of a new one, incorporation of 36,126 square feet of the Lincoln Street right-of-way, development of an improved pedestrian and vehicular circulation system, wider sidewalks along all perimeters, a wider pedestrian refuge and a realigned crosswalk on Old Georgetown Road. You believe that all work to be performed as part of Projects 1 and 2 is exempt from CON review.

The facts indicate that Projects 1, 2, and 3 are component parts of a single project because Project 3 depends upon the completion of work performed in Projects 1 and 2. These latter projects are more accurately viewed as the first phases of a campus redesign purposely planned

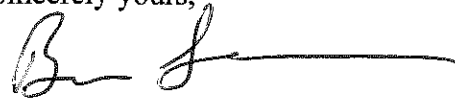


Anne Langley  
July 23, 2013  
Page 3

to prepare the way for expansion of the hospital proper rather than as freestanding and unrelated projects. For this reason, I must find that the proposed expenditure requires CON approval. .

If you have any questions concerning this matter, please call Joel Riklin at 410-764-5596.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ben Steffen', followed by a long horizontal line extending to the right.

Ben Steffen  
Executive Director

cc: Margaret Fitzwilliam, Suburban Hospital  
Ulder J. Tillman, M.D., Health Officer, Montgomery County

Anne Langley  
Director  
Health Policy Planning

Health Care Transformation  
and Strategic Planning  
3910 Keswick Road, Suite N-2200  
Baltimore MD 21211  
443-997-0727 Telephone  
443-997-0731 Fax  
alangle2@jhmi.edu



February 13, 2013

Paul Parker, Director  
Center for Hospital Services  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215-2299

Re: Suburban Hospital, Inc – Determination of Non-coverage by Certificate of Need  
for Capital Project

Dear Mr. Parker:

The purpose of this letter is to request a determination that Certificate of Need approval is not required for capital expenditures related to site work and the construction of a new garage on the Suburban Hospital campus. While this work is prerequisite to the construction of a building addition, for which Suburban will seek a Certificate of Need, it is not a component part of that project. Further, this work is not directly related to patient care, and will not increase patient charges or hospital rates, and therefore a Certificate of Need is not required. Maryland Health-General, §19-120k(6)(vii)(2012 Suppl.).

#### Background

Suburban Hospital's ("Suburban") principal address is 8600 Old Georgetown Road, a 7.1 acre parcel on the south side of Lincoln Street in Bethesda, Montgomery County, Maryland. Suburban operates surface and garage parking and a small administrative building on 2.9 acres on the north side of Lincoln St. Additionally, Suburban owns 26 residential homes within the two blocks surrounding the hospital, including all of the houses along one block of Lincoln Street. Including the abandonment of one block of Lincoln Street, Suburban owns 14.6 contiguous acres.

Suburban is located on property that is zoned residential (zone R-60) and operates, as a hospital use, on the property pursuant to a special exception originally granted in 1955. For this reason, any time Suburban desires to make a change impacting anything external to the building or campus, Suburban is required to apply for and receive approval of a modification to the existing special exception from the Montgomery County Board of Appeals ("BOA"). Accordingly, due to the historically contentious nature of modification requests, Suburban has made limited changes to its external facility since the late 1970s.

In 2006 Suburban engaged consultants to prepare a long term campus and facility plan. Based on the significant deficiencies identified in the study, it became evident that the necessary improvements could not be accommodated within the envelope of the existing special exception, and we expanded our thinking to explore the incorporation of one block of Lincoln Street and of selected residential properties into the hospital's existing special exception. The long term plan that was ultimately developed provides a campus approach, eliminating one block of Lincoln Street and removing houses. It includes a new multi-level parking garage, substantial modification to pedestrian and vehicular circulation on the property, and a 236,000 square foot building addition.

Suburban submitted the project for zoning approval in an application for modification of Suburban's special exception in March of 2008 and an application for the abandonment of Lincoln Street in April of 2008. Despite our history with the process and careful planning, the special exception process was far more onerous and lengthy than originally anticipated. The application required 34 days of hearings in front of a hearing examiner held from November of 2008 through July of 2009. The Hearing Examiner did not issue a recommendation to the BOA until June, 2010. The BOA approved the project with conditions in October, 2010. That decision was subsequently appealed by a local neighborhood association to the Montgomery County Circuit Court, which upheld the BOA's decision in June, 2011. This decision was then appealed to the Maryland Court of Special Appeals, which heard the case in September, 2012. A decision is anticipated in early 2013. We are optimistic that this will be the end of the appellate process.

The Road Abandonment process, while less onerous, has also been lengthy. Approval from the Montgomery County Council was provided in July, 2011. This decision was not appealed.

During the special exception appeal process, Suburban has proceeded with other zoning requirements. Suburban applied for the necessary variances and received approval from the BOA in July, 2012. Also submitted for review and approval are the Site Plan and Preliminary Plan applications with the Maryland-National Capital Park & Planning Commission. We anticipate approval of these applications in the spring of 2013.

#### Implementation of New Campus Master Plan

Due to our very constrained campus, implementation of the campus plan must be staged in order to ensure ongoing operations of the hospital and provision of required on-campus parking. Based on preliminary estimates, execution of the entire campus plan is anticipated to require 59 months. From a high-level perspective, there are three sets of work:

Project	Description	Unescalated Costs	Months
I	Demolition, sitework and construction of temporary surface parking	\$19M	17
II	Parking garage construction and removal of temporary surface parking	\$32M	17
III	Hospital addition construction and remaining sitework	\$171M	25

#### Project I: Initial Site Work

The work to be performed in what is labeled Project I above, with the exception of limited electrical cabling, will support the new hospital addition, but would be required if the campus plan consisted solely of construction of a replacement garage. The initial demolition and site work are primarily related to the need to build a temporary parking surface lot (containing 413 parking spaces) to maintain the current level of parking on site during construction of the new garage. The following additional work is included in Project I:

- Relocation of utilities located under Lincoln Street that support the current hospital to allow for the demolition of Lincoln Street and construction of the temporary parking lot
- Relocation of the existing tank farm on campus to accommodate the new driveway
- Upgrade of McKinley Street to support use by large trucks such as tractor-trailers

In addition to on-campus site work, Project I includes some road and sidewalk improvements to the corners of Old Georgetown Road and Lincoln Road, Old Georgetown Road and McKinley Street and the Old Georgetown Road median. Per discussions with our zoning attorney, this level of work would be expected even if Suburban had limited its application only to the parking garage and related circulation improvements.

#### Project II: Parking Garage Construction and Removal of Temporary Surface Parking

Insufficient on-campus parking was identified as a significant problem during the campus planning process. Currently, Suburban parks over 200 employees off campus daily in 7 parking lots. Parking off-site has become a significant barrier to employee recruitment and retention. The only way identified to adequately address the need for additional parking is to close Lincoln Street and remove houses along Lincoln Street. A new driveway accessing the back of the hospital and the loading dock off of McKinley Street on the south side of the hospital will be built in order to maintain access to the existing loading dock, which currently is accessed from Lincoln Street. Upon completion of the new parking garage, the temporary lot will be removed.

### Project III: Hospital Construction and Remaining Site Work

Once the new parking garage is complete and the temporary surface lot has been removed, Suburban will move forward with the construction project that includes the building addition, connection and renovation to the existing facility and remaining site work. Based on the long term facility analysis, Suburban is undersized by approximately 250,000 square feet based on current volumes and building requirements, and the current facility footprint lacks flexibility to expand to meet current and future needs. The building addition will include:

- Replacement of the existing operating room suite
- New main entrance
- Medical office space (38,000 square feet)
- A floor of nursing units accommodating 54 beds to decant existing semiprivate rooms and create more private patient rooms
- One floor of shell space
- Underground floor to accommodate new central sterile and chiller plant to serve the building addition
- Renovations to the existing facility including connections on three floors to the existing facility

The remaining site work will involve:

- Creating a new access point from McKinley Street to accommodate a separate ambulance entrance
- Reconfiguring surface parking along Old Georgetown Road and McKinley Street
- Modifying water retention systems along Old Georgetown Road
- Substantial landscaping
- Creation of a publically accessed pathway through the hospital campus

### Relevant precedent

On October 1, 2003, The Johns Hopkins Hospital (“JHH”) submitted to the Commission a request for a determination of non-coverage for a similar set of activities and expenditures. In preparation for the construction of the Replacement Facilities on the JHH campus, JHH proposed to construct a mixed-use facility, to include 2,200 parking spaces as well as medical and solid waste operations, central loading dock, materials handling, and power plant functions. JHH would then demolish the three buildings where these activities were previously located in order to make way for construction of the Replacement Facilities. In a letter dated April 6, 2004, Barbara McLean, then Executive Director of the Commission, found that the capital expenditures for this mixed-use facility were covered under Health-General, §19-120(k)(5)(vii)<sup>1</sup> as not directly related to patient care and not resulting in an increase in patient charges or hospital rates, and therefore Certificate of Need review was not required.

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<sup>1</sup> Provision now found at Maryland Health-General, §19-120k(6)(vii) (2012 Suppl.).

An analogous situation is presented here. Projects I and II of the Suburban campus redevelopment plan are not directly related to patient care and will not result in an increase in patient charges or hospital rates.

Conclusion

Based on the information provided above, Suburban respectfully requests that the Commission issue a determination that Certificate of Need review is not required for the capital expenditures associated with the site work and garage construction described above as Projects I and II.

Thank you for your consideration of this matter. If you have any questions or need additional information, please do not hesitate to contact me at 443-997-0727.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne Langley', with a stylized, flowing script.

Anne Langley

cc: Ulder J. Tillman, M.D., Health Officer, Montgomery County  
Margaret Fitzwilliam, Suburban Hospital