



College Heights Estates Association
Fall 2020
President's Letter and CHEA Newsletter
WWW.CHEAMD.ORG

June 25, 2021

Via email PublicInformationAct@umd.edu

Ms. L. Wright
Office of General Counsel,
University of Maryland, College Park
2117 Seneca Bldg.
College Park, MD 20742

Re: Public Information Act Request: Western Gateway Project

Dear Ms. Wright:

This is a request under the Maryland Public Information Act (PIA), §§ 4-101 through 4-601, Annotated Code of Maryland, from the College Heights Estates Association (CHEA), a non-profit, civic organization, representing 220-single family homes. Our residents live adjacent to the University of Maryland (UMD or University) and are part of an unincorporated area of the City of Hyattsville, Maryland. Our community, as well as surrounding communities, have a broad array of interests (i.e., enjoyment of the forest referred to as "Guilford Woods," climate stewardship, and fair value for public land) in understanding the University's actions regarding the public land the University appears to be transferring and/or leasing to a private developer, Gilbane Development Company (Gilbane) for what is known as the "Western Gateway Project." See [here](#), pages 228-231, and as generally described by Gilbane [here](#).

Importantly, the Western Gateway project appears to have already been incorporated into a preliminary draft of the county's sector plan (see attached screenshot), and the project appears to have proceeded without any public input or competitive bidding; the closure of which appears imminent. Therefore, your expedited response (as requested below) is crucial, as is the University's voluntary transparency.

REQUESTED RECORDS

CHEA respectfully requests the following records that are dated, sent, or received on or after January 1, 2017:

- (1) Any and all emails, phone texts and other electronic communications between UMD Assistant Vice President Edward Maginnis, Jr., and Gilbane and/or its employees (including, but not limited to, Christian Cerria and Russell Broderick) – that reference or pertain to the Western Gateway Project or the land related to that project.

[Please use the following search terms for each UMD employee’s electronic communications searches, but not limited to: Gilbane, Gilbane Development, Western Gateway, Project, Cerria, Broderick, as well as other terms known to relate to the Western Gateway Project (i.e., descriptions of the relevant properties).]

- (2) Any and all emails, phone texts and other electronic communications between UMD Vice President and Chief Financial Officer Carlo Collela and Gilbane and/or its employees (including, but not limited to, Christian Cerria and Russell Broderick) – that reference or pertain to the Western Gateway Project or the land related to that project.
- (3) Any and all emails between former UMD Senior Vice President and Provost Mary Ann Rankin and Gilbane and/or its employees (including, but not limited to, Christian Cerria and Russell Broderick) – that also reference or pertain to the Western Gateway Project or the land related to that project. (See “Narrowing Request” section below.)
- (4) Any and all emails between former UMD President Wallace Loh and Gilbane and/or its employees (including, but not limited to, Christian Cerria and Russell Broderick) – that also reference or pertain to the Western Gateway Project or the land related to that project. (See “Narrowing Request” section below.)
- (5) Any and all emails between UMD President Darryll J. Pines and Gilbane and/or its employees (including, but not limited to, Christian Cerria and Russell Broderick) – that reference or pertain to the Western Gateway Project or the land related to that project. (See “Narrowing Request” section below.)

As a reminder, the PIA and state, local or University record schedules require the University to preserve the records requested herein. If individual emails appear incomplete, we request that the University use backup drives for the email and electronic communication searches.

- (6) Any and all approvals by the USM Board of Regents pertaining to public land considered for the public/private partnership between the University and Gilbane or related to the Western Gateway Project (other than the April 19, 2019, meeting linked above), including, but not limited to, approval of any competitive or other public/private (P3) requirements).
- (7) Any and all final arrangements between the University and Gilbane relating to the Western Gateway Project, including partnership arrangements.
- (8) Any and all land use evaluations Gateway or documents relating to the University’s land that would be part of the proposed Western Project.

- (9) Any and all records (including, but not limited to, any applications, notices, hearings or established regulations) pertaining to the use of the public-private partnership process, including the “P3” process, as it relates to the use of UMD land for the Western Gateway Project. (This is meant to be in addition to part (6) above.)
- (10) Any and all appraisals of state land related to the Western Gateway Project.

We strongly encourage and request the University to (a) voluntarily release any and all non-mandatory exempt materials and (b) otherwise redact the minimal amount of exempted information and provide us with a redacted version. Not to do so to the extent of its legal ability and ethical responsibility, the University would create an appearance that the University has something to hide.

NARROWING REQUEST

To facilitate the timely and expedited release of these records, CHEA agrees (without limits on subsequent requests) that the University may (without the need to call upon an exemption or to include as responsive to this request):

- (A) redact personal or sociological information, except for the names of UMD and Gilbane employees (these are not protected);
- (B) exclude draft documents;
- (C) exclude non-substantive records (i.e., lacking information that would indicate what UMD is doing regarding the Western Gateway Project or the land associated with it); and
- (D) exclude intra-agency memoranda or letters (GP § 4-344). We do seek, however, any record of final actions taken by or signed by an University employee who has the actual or apparent authority to take that action, thereby creating a final decision or action (which is no longer protected as “intra-agency” or predecisional). This exclusion also would not apply to any record signed or viewed by a third party, as privilege would be waived.

(Note: Neither this request nor CHEA’s agreement to narrow this request is intended to exclude a broader or more detailed request on the same subject matter in the future, especially if the released records fail to afford the transparency expected of a large, respected university involved in the use or transfer of public land. The primary purpose of our agreement to narrow is to reduce the burden on the University and ensure expedited processing.)

PIA STANDARDS

Under the PIA, the University is prohibited from denying requests for information under the PIA unless the University reasonably believes release of the information will harm an interest that is protected by the exemption. Should you decide to invoke a PIA exemption, please include

sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

- a. basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item;
- b. basic explanation for any redaction of information not agreed to by requester; and
- c. complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the records requested are exempt from disclosure, we again request that you segregate the exempt portions and release to us the non-exempt portions of such records. We urgently request that the University provide us records on a rolling basis, if it is unable to release all of the records before the statutory deadline.

EXPEDITED REQUEST

Please be aware that this information is relevant and important to the competitive sale and development of public University land. This land is currently being proposed for development and is being incorporated in a draft county sector plan, which is expected to be issued in the Fall of 2021. These records are crucial to the public's understanding of whether public lands are being traded, transferred, partnered, or sold at below fair market value before the transactions can be completed. Further, these records are relevant to injury to the people of the State of Maryland, the University, and local land management, especially if this land is proceeding toward development before these records may even be reviewed by the public. Therefore, there is reason for this request to be expedited and prioritized and that these records be released immediately, including where a mandatory exemption does not apply and voluntarily release may be made by the University.

Specifically, CHEA strongly urges the University to voluntarily release the contents of any responsive real estate record or appraisal made for a public agency about a pending acquisition, GP § 4-349. It should be released in time for the public to understand the University's actions. While the University must release such records if and when any pending acquisition is complete, it is likely that such a release will be too late. Nor should this exemption apply to non-acquisition or non-competitive arrangements, such as any public/private partnership arrangements that do not follow all procedures, rules and regulations but were put in place anyway.

REQUEST FOR FEE WAIVER

The PIA was designed to provide anyone a broad right to access state and local records. Under the PIA, it is important that the University's actions, via its records, be open to the light of public

scrutiny. We should be able to know if the University is acting in the State's and the public's best interest. We should know what it is up to. Under the PIA, a fee waiver should be granted as in the "public interest," if, as the Maryland Attorney General PIA manual suggests:

disclosure of records will shed light on 'a public controversy about official actions,' or on 'an agency's performance of its public duties.'" Id. at 557 (quoting 81 Opinions of the Attorney General 154, 3 (1996)). In considering what factors are relevant when deciding whether to waive a fee, an official custodian may also find it helpful to look at case law interpreting the comparable FOIA provision, 5 U.S.C. § 552(a)(4)(A).

The PIA manual goes on to suggest that:

one consideration that is important under FOIA is whether "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). In determining whether a request meets this test, federal courts consider the following factors: (1) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government"; (2) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and (4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

Based on these standards, CHEA qualifies for a fee waiver for the following reasons:

- (a) The records here relate to how the University is dealing with public land that the University is corroborating with a single developer to develop. Clearly, transactions dealing with public land by state employees of a state university constitute an operation or activity of government.
- (b) CHEA is requesting these records because, at the present, we can only speculate on what deals the University is making with a single developer for the use of public land entrusted to it, and disclosure to CHEA is likely to contribute to its understanding of the University's operations and activities as well as the broader interested public (i.e., the University's students, faculty, alumni and administrators, as well as other college faculties and administrators and the public in the DC region).
- (c) CHEA is comprised of 220 separate families and is in communication with other larger localities and civic organizations. Our communities include thousands of Maryland residents. Most of us reside in an area that is directly contiguous to the land at issue in the records requested or within walking distance. Indeed, CHEA is directly contiguous with most of the southern portion of this state land. Moreover, CHEA is committed to share these records with other localities and civic associations, and it will post them on its

website at www.cheamd.org. Further, the fiduciary duties of a state flagship University are an area of interest to a reasonably broad segment of the public, given the size of the University.

- (d) CHEA has communicated with several other localities and civic associations, and we are making this request because none of our brother and sister towns or communities know what the University has negotiated and whether it has used an appropriate and ethical process to transfer or use the subject public land.
- (e) The requested documents, it is hoped, will demonstrate to the public that the University is using public land fairly and getting fair market value for it. This is entirely unclear at this point. (There appears to be little to show that this was a public, competitive process.)
- (f) CHEA stands ready to provide additional information about how it would disseminate the records it will receive from the University. It also stands ready to explain how our organization works as a clearinghouse for information to our residents, who do not live in an incorporated part of a city or town.
- (g) CHEA does not have any commercial interest in the records requested.

AGREEMENT TO PAY FEES

In order to avoid any delay in processing this request, CHEA agrees to pay up to \$350 in PIA fees, in addition to its free search time. (Note: The State Public Information Act Compliance Board is charged with resolving complaints that a custodian has charged an unreasonable fee of more than \$350.) Moreover, we are willing to pay more, but would ask that the University indicate in a timely manner how many additional fees (in detail) are required. If you require payment, inform us through the contact below, and we will pay immediately – AGAIN, this request should not be a reason to delay processing our PIA requests immediately. It should also be important that we are only agreeing to pay fees so there will be no need to delay processing this request while UMD evaluates our fee waiver request and, if necessary, our fee waiver appeal. Therefore, there should be no inconsistency between our expedited request and our well-deserved fee waiver.

If the University denies our fee waiver request (even as it works on our request and charges us fees), we would ask for a full explanation and justification for its denial, addressing the factors above, and providing immediate instructions for making an administrative appeal and secondary appeal.

RECORD DELIVERY

We greatly appreciate your help in expeditiously deciding on the requested records. We anticipate a reply within 30 days. Failure to comply within the statutory timeframe may result in CHEA taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. Please PDF the requested records (converted from email or from hard copy records) (or, if that is too burdensome, contact me for arrangements)

and email the requested records to CHEA.president@gmail.com with a copy to oehrle@verizon.net. My contact information is below.

c/o Chris Oehrle, President
College Heights Estates Association
3918 Commander Dr.
Hyattsville, MD 20782
CHEA.president@gmail.com
(with copy to oehrle@verizon.net)
(301) 706-9365

Finally, please feel free to contact me to discuss this request further, if you find the search too large. However, we would first ask that you explain exactly what part of this request creates a problem and why. We will make every effort to be reasonable and practical. Thank you again.

Sincerely,

A handwritten signature in blue ink that reads "C Oehrle".

Chris Oehrle
President, CHEA (pro se)

Screen shot of sector plan from June 3, 2021 meeting
With MNCPPC

The screenshot shows a Microsoft Teams meeting interface. The main window displays a presentation slide titled "SECTOR PLAN SCENARIO #1 - Natural Environment" with the Spanish translation "ESCENARIO DEL PLAN SECTORIAL #1 - Entorno natural". The slide features a map of a campus area with various green spaces highlighted. A legend on the right side of the slide lists the following categories and values:

- Plaza (Plaza) - Yellow square
- Park (Parque) - Green square
- Passive Open Space (Espacio Abierto Pasivo) - Light green square
- Impervious Surface Superficie impermeable - 46 acres
- Tree Canopy Retained Copas de árboles retenidas - 51%

Below the legend, there are two small images: one showing a path through trees and another showing a dense forest. The presentation is by Stantec. A small video feed of a woman is visible in the bottom right corner of the presentation area.

On the right side of the Teams window, there is a "Live event Q&A" chat window. It contains a question from a user:

Within 7.5 years of our northern boundary, I am disappointed that this plan seems to assume that this project will be approved. There are many issues to be addressed. What is the best way to share our concerns and for them to be incorporated in the sector plan? (BTW, Teams is now frozen for me.) Thanks, Chris.

Below the question, there is a "Reply" button and a response from "Chris Oehrle -- Pres. CHEA (You)" at 7:37 PM, which says: "Those green areas are very narrow." There is another "Reply" button below the response. At the bottom of the chat window, there are options to "Ask a question" and "Post as anonymous".

The Windows taskbar at the bottom shows the time as 7:38 PM on 6/3/2021. The Windows search bar contains the text "Type here to search".