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Sent: Wednesday, November 13, 2013 10:25 AM
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Subject: Wild Acre- Invasive Species

Thank you for providing us the opportunity to explain our views on invasive species management in the LOS area. EYA is seeking preliminary plan and site plan approval to redevelop the Grosvenor Wild Acres estate. As part of its development applications, EYA proposed dedicating approximately 11.9 acres of the subject property to Montgomery County's Legacy Open Space Program in accordance with its initial discussions with staff. During the review of EYA's development proposal, Park and Planning staff indicated that it preferred the dedication of 11.17 acres of this LOS area to Park and Planning at no cost and protecting a small portion of the LOS area along I-270 containing approximately .73 acres through a Category I conservation easement, instead of dedication. EYA agreed to accommodate staff's request and dedicate the larger LOS area while subjecting this smaller area to a Category I conservation easement.

Staff has also requested that EYA provide invasive species management in both the dedicated Legacy Open Space and the area subjected to the Category I conservation easement. County law, however, does not create an obligation to remove invasive species from either dedicated Legacy Open Space or the LOS area subject to a Category I conservation easements. Additionally, forest conservation regulations permit a forest management plan for retained property as part of a long-term protection agreement, if found to be appropriate by the Planning Director, but do not specifically require invasive species management as a component of one. See COMAR 22A.00.01.15.A(2). Additionally, a "forest management plan" is defined under the forest conservation regulations as "a plan establishing conservation and management practices for a **landowner** after assessment of the resource values of forested properties." COMAR 22A.00.01.03.B(22) (Emphasis added). Thus, assuming that a forest management plan may be authorized by the Planning Director under certain circumstances, and that it can include invasive species management as a component, EYA should not be required to provide such invasive species management within Legacy Open Space area dedicated to the County. As discussed, this is a large area which is being conveyed to the County at no cost. EYA is not in a position to dedicate the land and accept the financial responsibility for such invasive species management control.

With regard to the area protected by easement, a Category I conservation easement also does not create an affirmative obligation to provide invasive species management. Under the most relevant provision of the standard Category I conservation easement, "[n]oxious weeds (limited to weeds defined as "noxious" under Maryland State or Montgomery County laws or regulations and "exotic or invasive plants" in the Montgomery County Trees Technical Manual) **may** be removed as required by law or according to an approved management plan[.]" (Paragraph No. 3, pg. 3 of standard Category I Conservation Easement). The use of "may," as opposed to "must" connotes discretion that an owner who wishes to remove invasives and would otherwise be prohibited by the terms of the easement from doing so may exercise. Thus, the landowner subject to the conservation easement can remove invasive species, but is not required to do so. Moreover, the Category I easement is being placed on this LOS area at the request of staff and their agreement to do so should not be used as a reason for requiring Invasive species management.

EYA strongly recognizes the importance of protecting valuable forested land and supports preserving the subject Property's Legacy Open Space areas, whether through dedication to the County, or by subjecting certain areas to a Category I conservation easement. Invasive species management, however, is not compulsory under the law and would in our judgment be unreasonable, constituting an excessive exaction.

Please let us know if you would like to discuss this further or require further information. Thank you again. Barbara.

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