



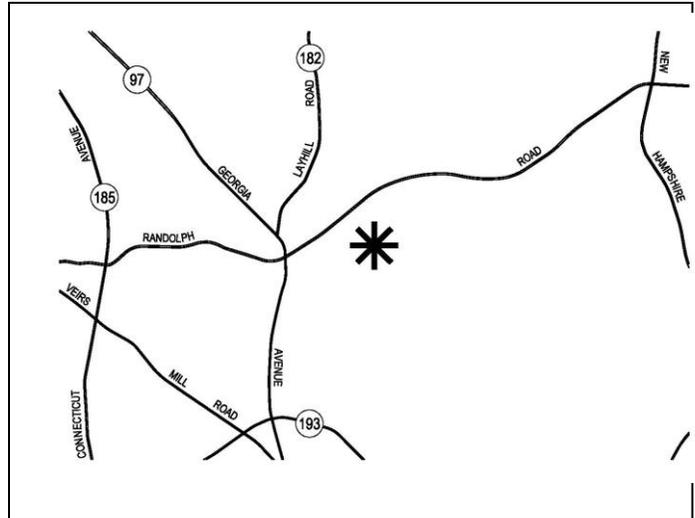
**Brookside Gardens Parking Renovation, Amended Forest Conservation Plan, PP1995001**

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**Completed: 11/21/13**

**Description**

- 1800 Glenallan Avenue;
- 60 acres, R-90 Zone;
- 1989 Master Plan for the Communities of Kensington-Wheaton;
- Amended Forest Conservation Plan for the renovation of the entrance and parking;
- Applicant: Montgomery County Department of Parks;
- Filing date: 5/15/2013.



**Summary**

- Staff recommends **approval with conditions**.
- The Forest Conservation Plan covers a portion of Wheaton Regional Park. Staff is working with the Department of Parks to develop a Forest Conservation Plan for the entire park.

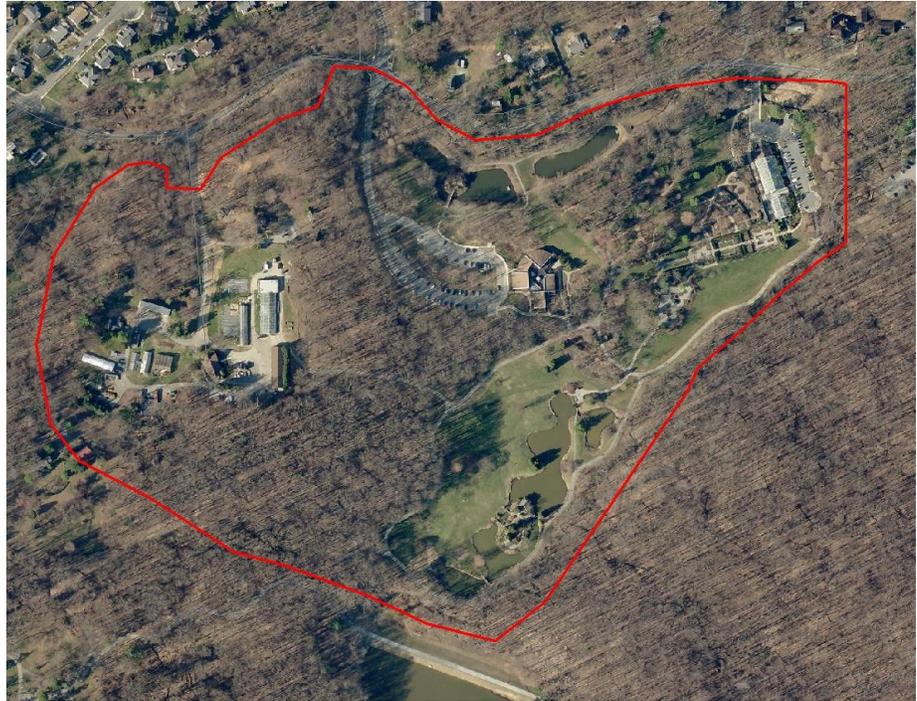
## Conditions

1. The Department of Parks must prepare a Forest Conservation Plan for the entire Wheaton Regional Park in conjunction with the Master Plan for Wheaton Regional Park and compensate for the removal of 0.66 acres of forest associated with the proposed improvements.

Pursuant to Chapter 22A of the County Code, the Board's actions on Forest Conservation Plans are regulatory and binding.

## OVERVIEW

The 60-acre Property is located within Wheaton Regional Park and developed with Brookside Gardens Visitors Center, Brookside Gardens Conservatory, Brookside Gardens Plant Propagation Area, maintenance and storage area, the Gude Gardens stormwater management facilities, and numerous trails. The Property is delineated and enclosed by a deer fence. The Planning Board approved the Brookside Gardens Master Plan on March 3, 2005 and the Facility Plan for Brookside Gardens Parking and



Access Improvements on February 25, 2010. The associated Forest Conservation Plan (FCP) was approved on June 16, 2011. This amendment to the FCP is for a refinement to the planned parking renovation and entrance and includes Americans with Disabilities Act (ADA) compliant access and stormwater management.

COMCOR 22A. (Forest Conservation Regulations) requires Planning Board action on certain types of modifications to an approved FCP. Section 22A.00.01.13 113.A(2) states:

*Major amendments which entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or Planning Director (depending on who approved the original plan).*

The proposed modifications to the Forest Conservation Plan require the removal of 28,745 square feet (0.66 ac) of forest and the Planning Board approved the original plan, therefore Planning Board action is required on this amendment.

## ANALYSIS

### Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #41941490) for the Property on March 10, 1994. The Property has 27.40 acres of forest, two perennial streams with associated floodplains, and several ponds. There are 15.89 acres of environmental buffers. The entrance gate and parking area are located between an area of forested steep slopes and ponds. The Property is in the Wheaton Park subwatershed of the Northwest Branch watershed, a Use IV watershed.

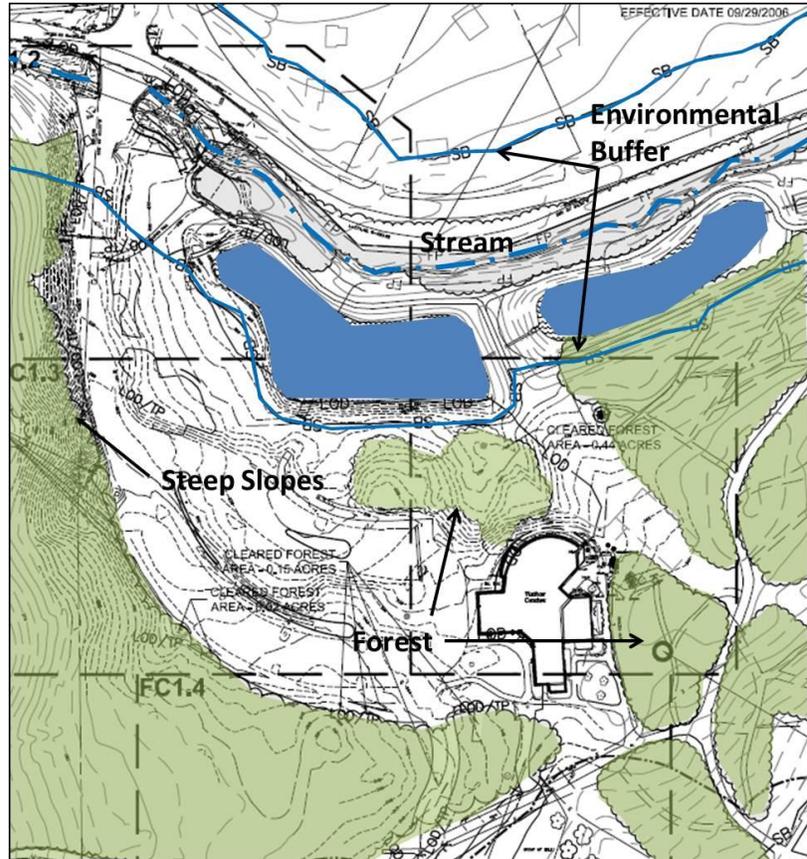
The plan proposes new pedestrian paths within the environmental buffer to connect to the existing pedestrian circulation system.

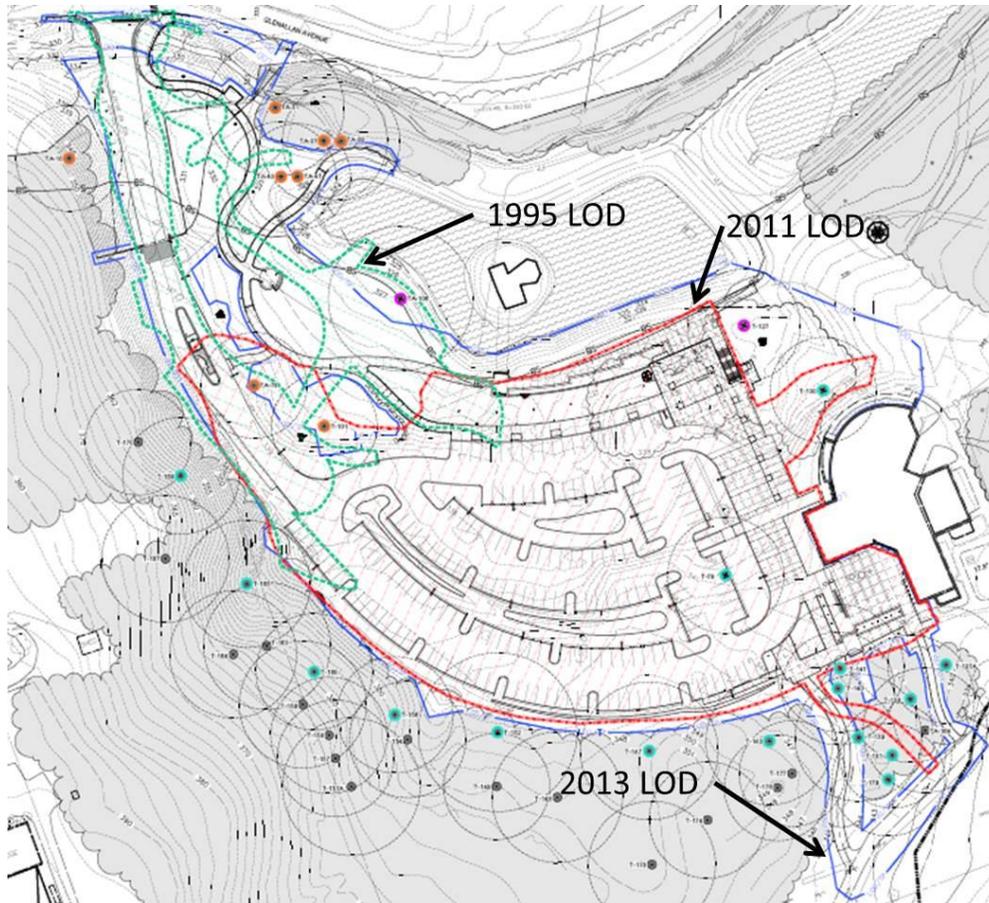
These paths will be primarily boardwalk on helical piers, except where it is necessary to connect to an existing asphalt path or to provide ADA-compliant walkways. The proposed plan also removes existing asphalt paths from within the environmental buffer. Encroachments to the environmental buffer cannot be avoided because of the need to provide connections to existing facilities and the site topography. Encroachments have been minimized through the use of minimally invasive construction techniques and mitigated with the removal of existing encroachments. Therefore, the proposed plan is in compliance with the *Environmental Guidelines*.

### Forest Conservation

This Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). The FCP initially approved in 1995 for the development of the Brookside Gardens Visitor Center showed 4.10 acres of forest clearing. The 2011 amendment for the initial parking renovation showed an additional 0.3 acres of forest clearing, for a total of 4.40 acres of forest cleared (Attachment 1). The current amendment includes an additional 0.66 acres of clearing, for a total of 5.06 acres of forest cleared and 22.34 acres of forest retained (Attachment 2). The following graphic shows the changes in the Limits of Disturbance (LOD) associated with the different approved plans.

The changes to the LOD reflect development corresponding to Phases I and II of the Brookside Gardens Facility Plan, as well as providing for ADA-compliant access to existing facilities and meeting current stormwater management regulations. In addition, the proposed plan incorporates grading and access for Phase IX, which includes the tent terraces.





The additional forest clearing is within the forest that was previously shown as retained. While the Property will still have 7.26 acres of forest retention above the break-even point (a level of forest retention that does not require the need for reforestation), the Planning Board has consistently required mitigation plantings for the loss of forest shown as retained or within easements. In order to be consistent with this policy, the Applicant would either need to plant 0.66 acres of forest within the 60.0-acre area covered by the Amended FCP, or plant a minimum of 1.32 acres of forest off-site.

Instead of following this approach, Staff is recommending a more comprehensive approach to Forest Conservation Plans on Regional Park facilities. Staff members from the Department of Parks and the Planning Department are working on a methodology for developing an FCP covering an entire regional park, thus creating an appropriate balance between the developed and the preserved areas. The Department of Parks has begun to update the Wheaton Regional Park Master Plan, and this park will be used as a pilot project for this approach to forest conservation. Staff will coordinate the Forest Conservation Plan with the Master Plan for Planning Board review and approval. Therefore, Staff is recommending that the Planning Board not require additional forest planting/protection at this time, but allow compensation to be shown on the FCP for the entire Regional Park.

### **Forest Conservation Variance**

Section 22A-12(b) (3) of the County Code provides criteria that identify certain individual trees as high priority for retention and protection. The law requires a variance for any impact, including removal or disturbance within the tree's critical root zone (CRZ), to trees that are: 30 inches or greater Diameter at Breast Height (DBH); part of a historic site or designated with a historic structure; designated as

national, State, or County champion trees; at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs and plants that are designated as Federal or State rare, threatened, or endangered species. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

The Applicant submitted a variance request for the increased impacts to high priority trees on September 5, 2013, and a revised variance request on October 23, 2013, to remove 2 trees, and impact, but retain, 25 trees that are considered high priority for retention under Section 22A-12 (b) (3) of the County Forest Conservation Law (Attachment 3).

**Priority trees to be impacted and retained**

| Tree # | Species                        | DBH   | Condition | % CRZ Impact | Comments                           | Reason for Disturbance   |
|--------|--------------------------------|-------|-----------|--------------|------------------------------------|--|
| TA-31  | <i>Liriodendron tulipifera</i> | 39"   | Good      | 45.41%       | On bank                            | Helical piers for boardwalk, construction access for bridge deck removal |
| TA-37  | <i>Liriodendron tulipifera</i> | 36"   | Good      | 34.06%       |                                    | Construction of asphalt path, helical piers for boardwalk                |
| TA-39  | <i>Liriodendron tulipifera</i> | 33.6" | Fair      | 28.65%       | Twin, average form, vines on trunk | Construction of asphalt path, helical piers for boardwalk                |
| TA-41  | <i>Liriodendron tulipifera</i> | 30"   | Good      | 66.46%       |                                    | Construction of asphalt path, helical piers for boardwalk                |
| TA-43  | <i>Liriodendron tulipifera</i> | 31.2" | Fair      | 79.39%       | Twin, Poison Ivy on trunk          | Construction of asphalt path, helical piers for boardwalk                |
| TA-78  | <i>Liriodendron tulipifera</i> | 30"   | Good      | 68.16%       | Poison Ivy on trunk                | Construction of entry drive, construction of mulch access path           |
| TA-164 | <i>Liriodendron tulipifera</i> | 36"   | Fair      | 30.49%       | Split leader                       | Construction of Flexi-Pave path, grading                                 |
| T-101  | <i>Liriodendron tulipifera</i> | 30"   | Fair      | 37.99%       |                                    | Construction of entry drive and pipe outfall                             |
| T-137A | <i>Liriodendron tulipifera</i> | 33"   | Good      | 23.15%       |                                    | Construction of South Terrace and Flexi-Pave path                        |
| T-138  | <i>Liriodendron tulipifera</i> | 32.5" | Good      | 11.44%       |                                    | Construction of Flexi-Pave path  |
| T-139  | <i>Liriodendron tulipifera</i> | 32"   | Good      | 31.94%       |                                    | Construction of Flexi-Pave path  |
| T-140  | <i>Liriodendron tulipifera</i> | 32"   | Good      | 61.69%       |                                    | Construction of South Terrace and Flexi-Pave path                        |

| Tree # | Species                        | DBH | Condition | % CRZ Impact | Comments                                | Reason for Disturbance   |
|--------|--------------------------------|-----|-----------|--------------|---|--|
| T-141  | <i>Liriodendron tulipifera</i> | 33" | Good      | 69.97%       |   | Construction of South Terrace and Flexi-Pave path  |
| T-143  | <i>Liriodendron tulipifera</i> | 32" | Good      | 26.57%       |   | Construction of accessible parking, pedestrian sidewalk, gabion wall, Flexi-Pave path, and earthwork |
| T-147  | <i>Liriodendron tulipifera</i> | 30" | Fair      | 31.30%       | Broken limbs, included bark, weak union | Construction of parking lot and gabion wall, earthwork   |
| T-152  | <i>Liriodendron tulipifera</i> | 39" | Poor      | 40.20%       | Branch decay, broken limbs              | Construction of parking lot and gabion wall, earthwork   |
| T-154  | <i>Liriodendron tulipifera</i> | 33" | Fair      | 7.21%        | Broken limbs                            | Earthwork  |
| T-156  | <i>Liriodendron tulipifera</i> | 35" | Fair      | 16.48%       | Full crown, large DW (3"+)              | Construction of parking lot and earthwork  |
| T-160  | <i>Liriodendron tulipifera</i> | 30" | Fair      | 1.75%        | Full crown, large DW (3"+)              | Construction of parking lot and earthwork  |
| T-165  | <i>Liriodendron tulipifera</i> | 36" | Good      | 9.12%        |   | Construction of parking lot and earthwork  |
| T-169  | <i>Liriodendron tulipifera</i> | 33" | Good      | 3.54%        |   | Earthwork  |
| T-176  | <i>Liriodendron tulipifera</i> | 30" | Fair      | 0.98%        | Full crown, large DW (3"+)              | Construction of Flexi-Pave path  |
| T-177  | <i>Liriodendron tulipifera</i> | 30" | Fair      | 12.39%       | Full crown, trunk decay                 | Construction of Flexi-Pave path  |
| T-179  | <i>Liriodendron tulipifera</i> | 32" | Good      | 50.56%       |   | Construction of Flexi-Pave path, grading   |
| T-181  | <i>Liriodendron tulipifera</i> | 30" | Fair      | 27.37%       | Full crown, trunk decay                 | Construction of Flexi-Pave path, grading   |

**Priority trees to be removed**

| Tree # | Species                        | DBH | Condition | % CRZ Impact | Comments      | Reason for Disturbance  |
|--------|--------------------------------|-----|-----------|--------------|---------------|---|
| TA-106 | <i>Acer rubrum</i>             | 41" | Good      | 36.75%       | Included bark | Significant earthwork within CRZ                                |
| TA-127 | <i>Liriodendron tulipifera</i> | 32" | Fair      | 99.77%       |               | Location of pedestrian concrete, structural walls for underlook |

**Unwarranted Hardship** - As per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship. In this case, the unwarranted hardship is caused by the need for the proposed improvements, which cannot be implemented without impacting these trees.

**Variance Findings** - Based on the review of the variance request and the proposed Amended Forest Conservation Plan, staff makes the following findings:

1. *Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as disturbance of the specified trees is due to the modification of the existing Brookside Gardens Visitors Center, per the approved Facility Plan. The disturbance incorporates ADA-compliant access to existing facilities and stormwater management facilities that meet current regulations. In addition, the proposed plan incorporates grading and access for future phases. Therefore, staff believes that granting this variance request is not a special privilege that would be denied to other applicants.

2. *The need for the variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on the locations of the trees and the need to redesign the Property. Development on this Property is constrained by the location of existing facilities and the forested steep slopes and environmental buffer. The disturbance shown is the minimum needed to implement the Facility Plan, as approved by the Planning Board.

3. *The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the renovation of the park and not a result of land or building use on a neighboring property.

4. *Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.*

The proposed project should improve water quality by adding modern stormwater management facilities. Additionally, the new trees proposed as mitigation for the loss of specimen trees will substantially enhance the form and function of the existing tree canopy. Trees protect water quality by reducing runoff through rainfall interception and water uptake. Additionally, trees provide shade for impervious areas and improve soil texture, which also results in improved water quality.

**Mitigation for Trees Subject to the Variance Provisions** – The proposed removal of two trees will be mitigated by additional plantings. Generally, mitigation is not recommended for trees impacted but retained. Mitigation planting is calculated at the rate of 1 caliper inch planted per 4” inch DBH lost, using a minimum 3” caliper native canopy tree. Using this ratio, the Applicant will be required to plant

seven trees. However, the Applicant has an extensive landscape plan proposed for this area, with approximately 81 native canopy trees planted, which ensures that there will be no loss of canopy on this site.

**County Arborist's Recommendation on the Variance** - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. Staff forwarded the request to the County Arborist on 10/23/2013. The County Arborist has reviewed the variance request and recommended approval (Attachment 4).

**Variance Recommendation** – Staff recommends the variance be granted.

**Conclusion**

Staff recommends that the Planning Board approve the Amended Forest Conservation Plan with the condition that the Applicant submits a comprehensive Forest Conservation Plan covering the entire Wheaton Regional Park concurrently with the Wheaton Regional Park Master Plan update. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.

**ATTACHMENTS:**

1. Revised Preliminary Forest Conservation Plan
2. Current Forest Conservation Plan
3. Variance Requests ( 10/23/13; 9/5/13)
4. County Arborist Recommendation