



Preliminary Plan Amendment 11995106A – in Response to a Violation – Potomac Chase Lots 14, 15, 20 & 21, Block Q

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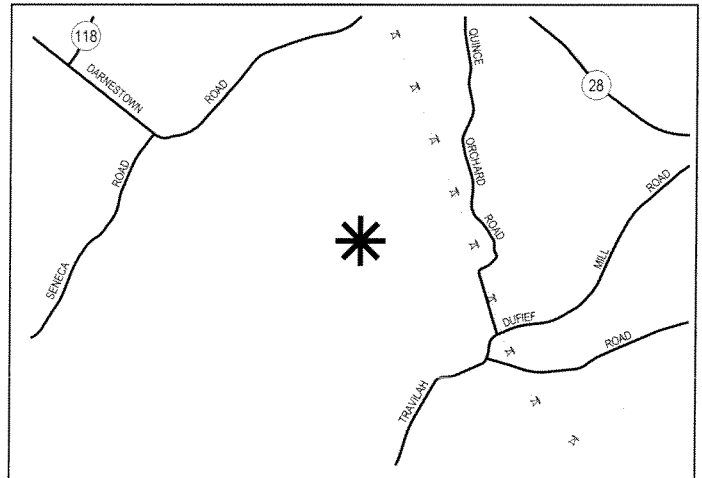
 Mark Pfefferle, Chief, DARC, Mark.Pfefferle@montgomeryplanning.org, 301-495-4730

Completed: 05/23/14

Description

Limited Amendment, Preliminary Plan No. 11995106A, Potomac Chase Lots 14, 15, 20 & 21, Block Q (in response to a violation)

- Located on Altice Court in Darnestown
- Within Potomac Subregion Master Plan
- Applicant: John & Teresa Messina, Robert & Patricia Adams, Joseph Mathai & Patricia Kollappallil and Lawrence & Colleen Opack
- Submitted on September 18, 2013



Summary

- Request to remove 8,062 square feet of Category I Conservation Easement from Lot 14 and 2,374 square feet of Category I Conservation Easement from Lot 15 and mitigate offsite at an M-NCPPC approved forest conservation bank. Mitigation to equal twice the area of conservation easement removed.
- Request to remove a 7,836 square feet of Category I Conservation Easement from Lot 20 and 8,900 square feet of Category I Conservation Easement from Lot 21 and provide the following mitigation equal to twice the area of conservation easement removed:
 - Lot 20 mitigation includes acquiring 11,230 square feet of offsite forest bank credit and establishing and planting a 4,442 square feet Category II Conservation Easement onsite.
 - Lot 21 mitigation includes acquiring 13,446 square feet of offsite forest bank credit and establishing and planting a 4,354 square feet Category II Conservation Easement onsite.

STAFF RECOMMENDATION AND CONDITIONS

Approval of the limited amendment to the Preliminary Plan subject to the following conditions.¹ All other conditions of Preliminary Plan No. 119951060, as contained in the Montgomery County Planning Board's Opinion dated November 20, 1995, would remain in full force and effect except as modified below.

Common Conditions for Lot 14, Lot 15, Lot 20 and Lot 21

1. No later than ninety (90) days from the mailing date of the Resolution, the Applicants must submit a complete Record Plat application that delineates and references the new Category II Conservation Easements. The Record Plat must be approved and recorded in the Land Records of Montgomery County, Maryland within nine (9) months of the mailing date of this Planning Board Resolution. The existing Category I Conservation Easement remains in full force and effect until the Record Plat is recorded in the Land Records of Montgomery County, Maryland.
2. The Record Plat must reference the standard Category II Conservation Easement agreement as recorded at liber 13178, folio 421 in the Land Records of Montgomery County, Maryland.

Specific Condition for Lot 14

3. Within six (6) months of the mailing date of the Resolution, the Owner of Lot 14 must record in the Land Records of Montgomery County, Maryland a certificate of compliance, approved by the M-NCPPC Office of General Counsel, to use an offsite mitigation bank. The Certificate of Compliance must provide 16,124 square feet of forest bank credit for the removal of 8,062 square feet of conservation easement from Lot 14.

Specific Condition for Lot 15

4. Within six (6) months of the mailing date of the Resolution, the Owner of Lot 15 must record in the Land Records of Montgomery County, Maryland a certificate of compliance, approved by the M-NCPPC Office of General Counsel, to use an offsite mitigation bank. The Certificate of Compliance must provide 4,748 square feet of forest bank credit for the removal of 2,374 square feet of Category I Conservation Easement from Lot 15.

Specific Conditions for Lot 20

5. The Owner of Lot 20 must establish and plant the Category II Conservation Easement as shown on the approved Forest Conservation Plan with two (2), two-inch caliper white oak trees and one (1), two-inch caliper redbud tree. Prior to installation of the Category II Conservation Easement plantings on Lot 20, the Owner of Lot 20 or his or her agent must attend a pre-planting meeting with the M-NCPPC inspector. The Owner of Lot 20 must install, and the M-NCPPC inspector must inspect and approve, the plantings prior to November 30, 2014. The plantings must meet the survivability requirements of Section 22A.00.01.08 of the Forest Conservation Regulations.

¹ For the purposes of these conditions, the term "Applicants" refers to the owners of Lots 14, 15, 20 and 21, or any successors in interest to those owners, jointly and severally. The term "Owner" refers severally to the owner or owners of the specified lot, or any successors in interest to that specific owner or owners.

6. Within six (6) months of the mailing date of the Resolution, the Owner of Lot 20 must record in the Land Records of Montgomery County, Maryland a certificate of compliance, approved by the M-NCPPC Office of General Counsel, to use an offsite mitigation bank. The Certificate of Compliance must provide 11,230 square feet of forest bank credit for the removal of 7,836 square feet of Category I Conservation Easement from Lot 20.
7. The privacy fencing on Lot 20 cannot be installed until after the approved Record Plat is recorded in the Land Records of Montgomery County, Maryland.

Specific Conditions for Lot 21

8. The Owner of Lot 21 must establish and plant 4,354 square feet of Category II Conservation Easement as shown on the approved Forest Conservation Plan with two (2), two-inch caliper redbud trees in between existing oak and hickory trees. Prior to installation of the Category II Conservation Easement plantings on Lot 21, the Owner of Lot 21 or his or her agent must attend a pre-planting meeting with the M-NCPPC inspector. The Owner of Lot 21 must install, and the M-NCPPC inspector must inspect and approve, the plantings prior to November 30, 2014. A pre-planting meeting with the M-NCPPC inspector is to occur prior to planting the Category II Conservation Easement planting on Lot 21. The plantings must meet the survivability requirements of Section 22A.00.01.08 of the Forest Conservation Regulations.
9. Within six (6) months of the mailing date of the Resolution, the Owner of Lot 21 must record in the Land Records of Montgomery County, Maryland a certificate of compliance, approved by the M-NCPPC Office of General Counsel, to use an offsite mitigation bank. The Certificate of Compliance must provide 13,446 square feet of forest bank credit for the onsite removal of 8,900 square feet of Category I Conservation Easement from Lot 21.

Site Description

This site is located on Altice Court at the intersection with Jones Lane in Darnestown. Figure 1 below shows the Potomac Chase II Subdivision and the Category I Conservation Easements areas. Lot 13, 14 and 15 have conservation easements for the protection of planted forest at the rear of the properties. There are surviving trees from the initial forest conservation planting on Lot 13. Mowing is occurring within the Category I Conservation Easement on lot 13 but the Property Owner is implementing an M-NCPPC directed reforestation planting program. As a result, there are no current violations on Lot 13. Currently, the Category I Conservation Easement on Lot 14 contains some oak and ornamental evergreen trees but is mostly mowed yard. The Category I Conservation Easement on Lot 15 contains one oak tree and otherwise is a mowed side yard area. There is an M-NCPPC approved fence with the Category I Conservation Easement on Lot 15. The mowing occurring within the Category I conservation easements of Lot 14 and Lot 15 is a violation. The mowing is cutting naturally regenerating trees and shrubs and the property owners are not implementing an M-NCPPC-directed reforestation planting program.

The Category I Conservation Easement on Lot 20 and Lot 21 consists of an open oak and hickory forest. Deer are eating the understory shrubs and eliminating the native understory plant habitat that otherwise would exist. There is very little forest floor, some leaf litter and some non-native invasive shrubs. There are landscape areas and play area within the Category I Conservation Easement on Lot 21. There is a wooden tree house and zipline entirely within the Category I Conservation Easement on

Lot 21 (see Figure 2). There is also an M-NCPPC approved fence within the Category I Conservation Easement on Lot 21. The wooden tree house and zipline on Lot 21 are violations of the Category I Conservation Easement. There is some mowing of grass that is occurring within the Category I Conservation Easement of Lot 20 that is a violation of the Category I Conservation Easement agreement.

Figure 1 : Potomac Chase II Subdivision: March 2013 Aerial Photo

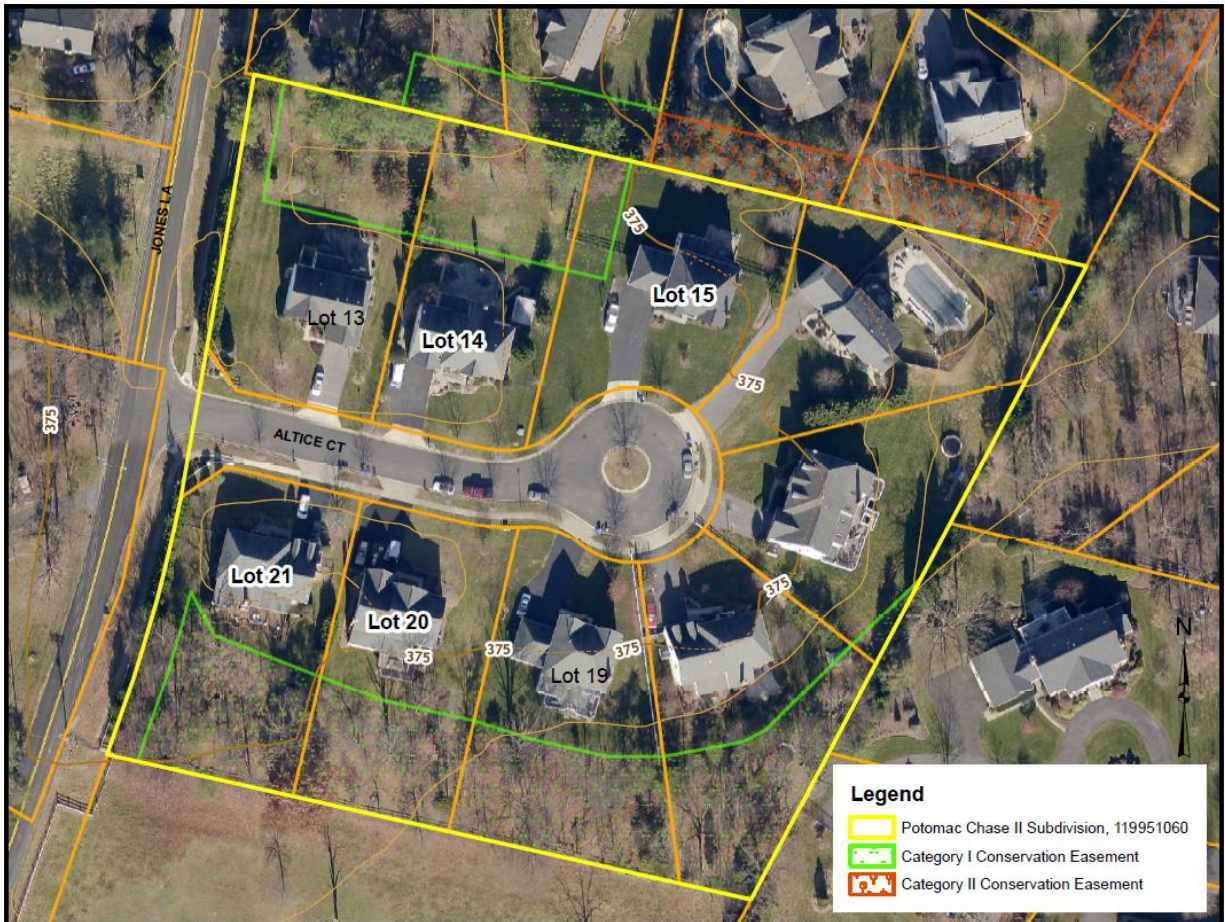


Figure 2: Wooden Tree House in Category I conservation easement on Lot 21



Background

The Montgomery County Planning Board approved Preliminary Plan No. 119951060 “Potomac Chase II” by Opinion mailed on November 20, 1995, for nine lots on 5.30 acres of land in the R-200 Zone. The approval was limited to nine single family-family dwelling units. The Plan was approved in accordance with the Chapter 50 Subdivision Regulations. The Montgomery County Planning Board Opinion is included as Attachment 1. All nine lots front Altice Court.

The approved Forest Conservation Plan protected 0.87 acres of the 1.8 acres of existing forest onsite and required a 0.43 acre planting area. All planted and retained forest areas became Category I Conservation Easements. The approved Forest Conservation Plan shows forest planting on Lot 13, Lot 14 and Lot 15 and retained forest on Lot 17, Lot 18, Lot 19, Lot 20 and Lot 21 (Attachment 2). The Conservation Easements are shown on Record Plat number 19978, which was recorded on January 23, 1996 (Attachment 3). The Category I Conservation Easement Agreement is attached (Attachment 4).

The developer planted the required 0.43 acre planting and M-NCPPC inspected the plantings. In 1999 and 2002, the M-NCPPC inspector met with the homeowners on Altice Court and discussed the Conservation Easements. These meetings included the current property owners of Lot 14, Lot 15, and Lot 21.

M-NCPPC inspections in 2008 confirmed that only about 10% of the original planting had survived. The M-NCPPC inspector reviewed the approved plan and aerial photographs and noted multiple violations within Category I Conservation Easements including mowing and a shed on Lot 14 and mowing on Lot 15. The sheds was subsequently removed from the Category I Conservation Easements.

On May 8, 2013, the M-NCPPC inspector, after failing to get a property owner to remove a structure via meetings and emails, issued a notice of violation to the Owner of Lot 21 requiring the structural improvements within the Category I Conservation Easement to be removed (Attachment 5). In a subsequent staff meeting with the Owner of Lot 21 and other Altice Court Property Owners, M-NCPPC Staff discussed the option of pursuing a limited Preliminary Plan Amendment for forest conservation purposes to resolve the on-going violations. The Owners of Lots 14, 15 and 20 joined the Preliminary Plan Amendment application to amend the Conservation Easements.

Applicants Proposal

The Applicants propose to remove the Category I Conservation Easement from Lot 14, Lot 15, Lot 20 and Lot 21 and to mitigate the removal offsite and onsite with a Category II Conservation Easement on Lot 20 and Lot 21. Figure 3 shows the proposed Category I Conservation Easement removal and Category II Conservation Easement establishment as presented on the Preliminary Plan Amendment and Final Forest Conservation Plan Amendment. The Preliminary Plan Amendment and Final Forest Conservation Plan Amendment submitted for Planning Board approval are attached (Attachments 6 and 7). The Category II Conservation Easement Agreement for the proposed Category II Conservation Easement on Lot 20 and Lot 21 is attached (Attachment 8). Figure 3 also illustrates the following lot by lot description of the proposal. Figure 4 summarizes the proposed conservation easement changes.

Figure 3: Proposed Conservation Easement Changes, 11995106A



Figure 4: Summary of Proposed Conservation Easement Changes

SUMMARY OF PROPOSED ACTIONS				
	LOT 14 (12707 Altice Court)	LOT 15 (12705 Altice Court)	LOT 20 (12706 Altice Court)	LOT 21 (12708 Altice Court)
Area of Existing Category I Easement	8,062 sf	2,374 sf	7,836 sf	8,900 sf
Action Proposed	Remove 8,062 sf of easement	Remove 2,374 sf of easement	Remove 7,836 sf of category I easement & establish 4,442 sf of category II easement	Remove 8,900 sf of category I easement & establish 4,354 sf of category II easement
Proposed Remediation	Acquire 16,124 sf of forest bank credit	Acquire 4,748 sf of forest bank credit	Acquire 11,230 sf of forest bank credit. Establish and plant 4,442 sf Category II Conservation Easement	Acquire 13,446 sf of forest bank credit. Establish and plant 4,354 sf Category II Conservation Easement

Lot 14 and Lot 15:

The Owners of Lot 14 and Lot 15 propose removing the entire Category I Conservation Easement area and mitigate offsite. Specifically, the Owner of Lot 14 proposes to remove the 8,062 square feet conservation easement and mitigate with 16,124 square feet of credit at an offsite M-NCPPC-approved forest conservation bank. The Owner of Lot 15 proposes to remove the 2,374 square feet conservation easement and mitigate with 4,748 square feet of credit at an offsite M-NCPPC-approved forest conservation bank.

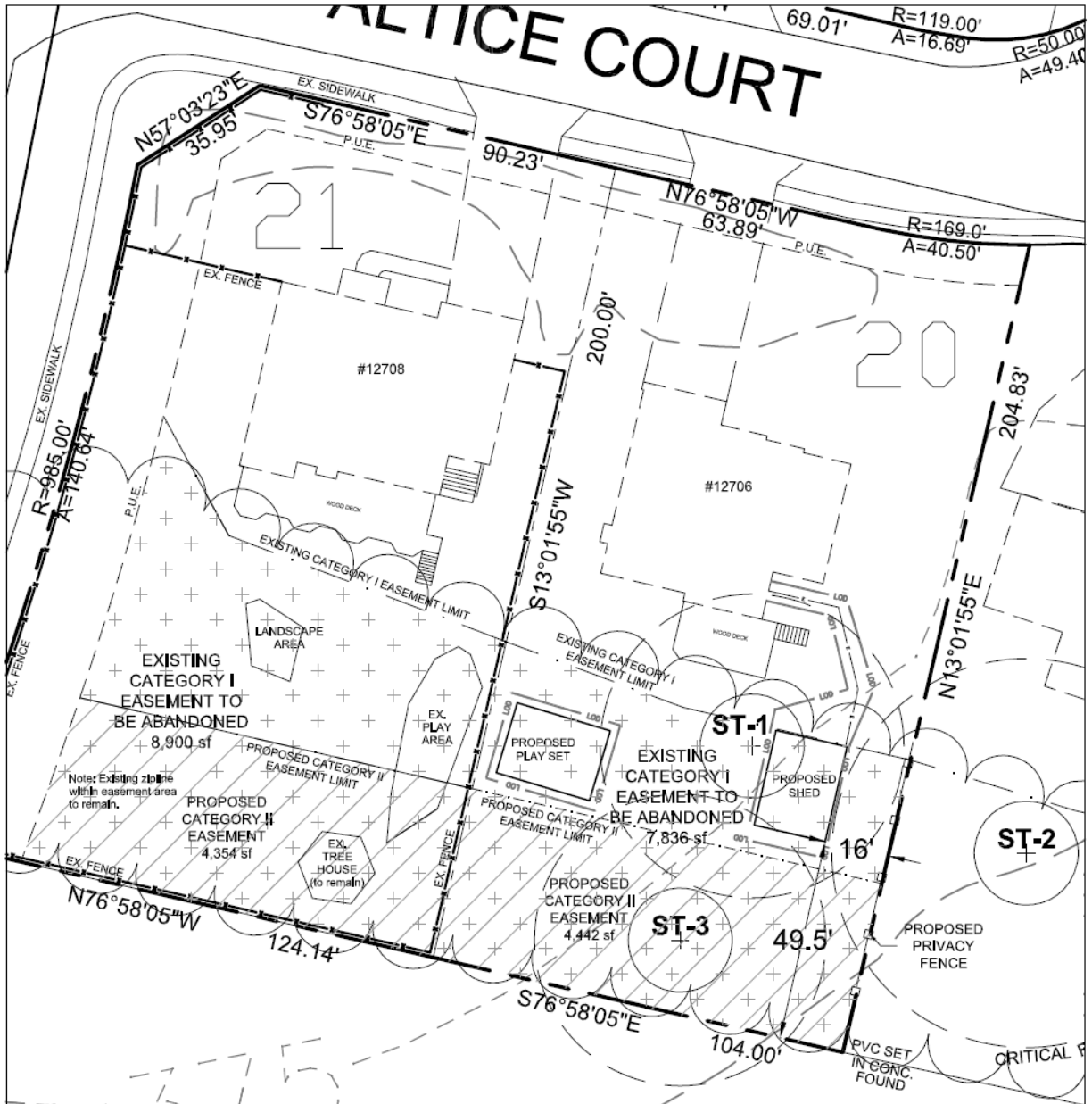
Lot 20:

The Owner of Lot 20 proposes to remove the entire Category I Conservation Easement area, 7,836 square feet, from the property. As mitigation, the Owner offers the establishment and supplemental planting of 4,442 square feet of Category II Conservation Easement onsite and agrees to acquire 11,230 square feet of credit at an offsite M-NCPPC-approved forest mitigation bank. Figure 5 shows a detail view of the proposed conservation easement changes on Lot 20. Two (2), two-inch caliper white oak trees and one (1), two-inch caliper redbud tree are to be planted within the new Category II Conservation Easement and these plantings will supplement the existing trees in the area. The Owner proposes to construct a play set and shed within the removed area of Category I Conservation Easement (Figure 5). A variance request was submitted and reviewed for impacts to a portion of the root system of Tree # 2, a 32" dbh (diameter at breast height) white oak growing on Lot 19. The Applicant has amended their proposal and there is now no proposed impact to the critical root zones of Tree #2. Therefore a variance is not needed. The Owner requests permission for a privacy fence at the edge of the property near the property line with lot 19 and within the proposed Category II Conservation Easement. This privacy fence is shown on Figure 5 and the Final Forest Conservation Plan Amendment with notes required tree preservation measures during fence construction.

Lot 21:

The Owner of lot 21 proposes to remove the entire Category I Conservation Easement area, 8,900 square feet, from the property. Figure 5 shows a detailed view of the proposed conservation easement changes on Lot 21. As mitigation, the Owner offers the establishment and planting of 4,354 square feet of Category II Conservation Easement onsite and agrees to acquire 13,446 square feet of credit at an offsite, M-NCPPC-approved forest mitigation bank. Two (2), two-inch caliper redbud trees are to be planted in between the existing oak and hickory trees in the Category II Conservation Easement. The Owner requests the existing tree house, zipline and portion of a play area remain within the Category II Conservation Easement. With M-NCPPC permission structures are allowed within a Category II Conservation Easement. Currently, these structures are not harming existing trees.

Figure 5: Detail View of Forest Conservation Plan Amendment for Lot 20 and Lot 21



A new Record Plat will be required to show the removal of existing Category I Conservation Easement and establishment and placement of Category II Conservation Easements on Lot 20 and Lot 21.

PLANNING BOARD REVIEW AUTHORITY

The Planning Board approved Preliminary Plan 119951060 "Potomac Chase II" and required the establishment of the conservation easements in the subdivision. The Planning Board has authority under Subdivision Regulations (Chapter 50 of the Montgomery County Code) to hear an amendment that proposes changes to the conservation easements.

In addition, the Planning Board has directed Staff to bring all requests for modifications to conservation easements before them to be considered in a public forum.

STAFF REVIEW

This limited amendment to the Preliminary Plan is in response to violations to the Category I Conservation Easement. The M-NCPPC inspector issued a Notice of Violation to the Property Owner of Lot 21 for erecting a tree house within a Category I Conservation Easement. The Notice of Violation directed the Property Owner to remove the wooden tree house from the conservation easement. The Property Owner failed to remove the tree house and at a meeting with Planning Department staff, M-NCPPC agreed that the Property Owner could submit a Preliminary Plan amendment to change the conservation easements. M-NCPPC agreed that the tree house could remain in the Category I Conservation Easement while this amendment was under review.

The Property Owners of Lot 14, 15, and 20 joined the Preliminary Plan amendment. There are violations of the Category I Conservation Easement agreement on these properties as well.

The Amendment will remove the entire Category I Conservation Easement from Lot 14 and 15. These Category I Conservation Easement areas are failed planting areas. The proposed mitigation is equal to twice the area of conservation easement removed. Abandonment of existing Category I Conservation Easement will resolve the conservation easement mowing violations on lot 14 and 15. Figure 4, previously shown, summarize the proposed conservation easement changes.

Mitigation offsite and onsite compensates for the entire Category I Conservation Easement removal on Lot 20 and 21. The offsite mitigation would preserve planted or retained forest at an offsite M-NCPPC-approved forest mitigation bank. The Property Owners propose a Category II Conservation Easement from an area 40 feet from the back property line on both Lots 20 and 21. The Category II Conservation Easement will protect existing tree canopy. Supplemental trees are proposed to be planted within open areas of the Category II Conservation Easement. The total mitigation proposed is equal to twice area of conservation easement removed as is shown in Figure 4. The tree preservation measures shown on the Amendment can permit the Owner of Lot 20 to construct a portion of this fence within the Category II Conservation Easement and at the same time protect the trees within conservation easement on Lot 19 and Lot 20. The Amendment shows the wooden tree house, zipline and play area on Lot 21 and as such approval of the Amendment by the Planning Board would allow these structures to remain within a

Category II Conservation Easement. Staff believes the structures are violations of the Category I Conservation Easement but are permissible within a Category II Conservation Easement. "Restriction 6." of the Category II Conservation Easement Agreement indicates that *"the following activities may not occur without prior written consent from the Planning Director: b.) Erection of any buildings or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls."* Furthermore, *"the Planning Director may approve these activities upon a finding that the proposed activity will not interfere with the purposes stated above, and in particular with tree preservation; screening existing and proposed development from adjacent and abutting landowners, maintenance of tree cover; and preservation of open space."* Staff believes the existing zipline, tree house and play area are not harming the existing trees on Lot 21, the abutting property owners are not affected by the tree house. The tree house is built as a free standing structure with timber supports.

NOTIFICATION and OUTREACH

The Subject Property was properly signed with notification of the upcoming Preliminary Plan amendment prior to the acceptance of the application on September 18, 2013. All adjoining and confronting property owners, civic associations, and other registered interested parties were notified of the upcoming public hearing on the proposed amendment.

All residents of Potomac Chase II not part of the application have commented in writing on the proposed Preliminary Plan amendment. Letters from the Owners of Lots 13, 16, 17, and Lot 18 are attached (Attachment 8). These letters support the proposed amendment. The Owner of Lot 19 has objected strongly to the proposed amendment and the variance request. The written objections received include how the Category I Conservation Easement is "perpetual" and "forever" and that there is no compelling evidence to change the conservation easement category. The Property Owner of Lot 19 notes that the Category I Conservation Easement is indivisible and unitary and extends to all the property owners not just the applicants and as such decisions should be made for the entirety or not all. The Planning Department received this letter from the Lot 19 Property Owner on November 13, 2013. This letter is attached as Attachment 9.

Staff Response to Opposition Letter:

The Category I Conservation Easement is a private easement between the respective Property Owner and M-NCPPC and is a real covenant running with the land. The Category I Conservation Easement is a private easement and does not grant permission for others to enter into the conservation easement.

There is compelling evidence to consider changes to the conservation easement category. On Lot 14 and Lot 15, the forest planting installed in the late 1990s has failed, the conservation easement on these properties is a largely a mowed yard. On Lot 20 and Lot 21, the native understory shrubs and trees have largely disappeared. Some of the causes are repeated conservation easement encroachments. Other causes include deer browse and deer rub which are eliminating most of the native shrub and tree seedlings. A change in easement category would recognize the existing condition, which is an absence of regenerating native trees and native shrubs within the Category I Conservation Easements on Lot 20 and 21.

RECOMMENDATION

Staff recommends that the Planning Board approve this Amendment with the conditions specified above.

ATTACHMENTS

1. Potomac Chase II Preliminary Plan 119951060 Opinion
2. Approved Final Forest Conservation Plan Potomac Chase II Lots 13 thru 21, Block Q
3. Record Plat No. 19978 Lots 13 through 21, Block Q, Potomac Chase
4. Category I Conservation Easement Agreement LF13178.412
5. Notice of Violation
6. Preliminary Plan amendment submitted for Planning Board approval
7. Final Forest Conservation Plan amendment submitted for Planning Board approval
8. Category II Conservation Easement Agreement LF13178.421
9. Community Resident Letters supporting Preliminary Plan amendment
10. Community Resident Letter opposing Preliminary Plan amendment

Date of mailing: November 20, 1995



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring Maryland 20910-3760

Action: Approved Staff Recommendation
 (Motion of Comm. Richardson, seconded by Comm. Aron, with a vote of 4-0; Comms. Richardson, Aron, Holmes, and Baptiste voting in favor, with Comm. Hussmann being absent).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-95106
 NAME OF PLAN: POTOMAC CHASE II

On 06-12-95, TAMARA CORPORATION, submitted an application for the approval of a preliminary plan of subdivision of property in the R200 zone. The application proposed to create 9 lots on 5.30 ACRES of land. The application was designated Preliminary Plan 1-95106. On 11-16-95, Preliminary Plan 1-95106 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-95106 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-95106, subject to the following conditions:

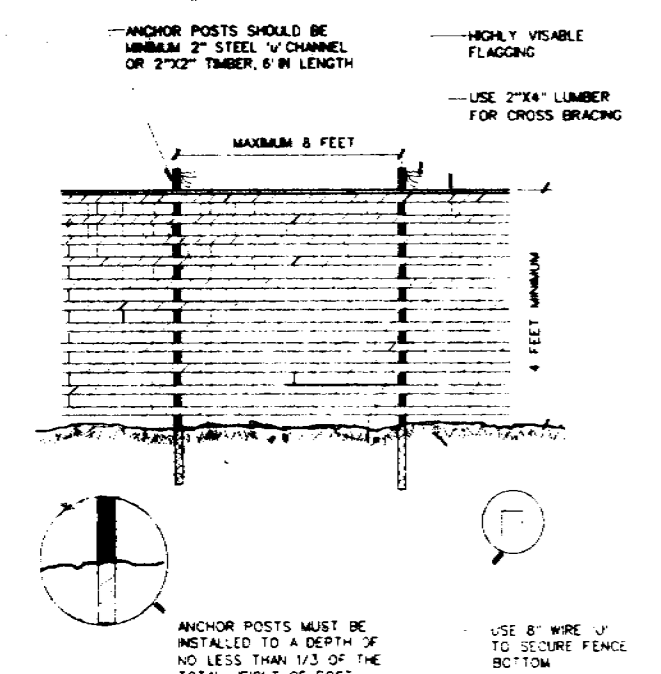
Approval pursuant to the FY 96 Annual Growth Policy Alternative Review Procedures for Limited Residential Development, subject to:

- (1) Compliance with Environmental Planning Division approval regarding the requirements of the forest conservation legislation (as part of the preliminary plan). Applicant must satisfy all conditions prior to recording of plat(s) or MCDEP issuance of sediment and erosion control permit, as appropriate
- (2) Prior to recording of plat(s) submit agreement with Planning Board and Montgomery County to limit development to 9 (nine) single-family dwelling units and provide for the payment to the County Department of Finance for these units as required pursuant to the FY 96 Annual Growth Policy prior to receipt of building permits
- (3) Access and improvements as required by MCDOT
- (4) Conditions of MCDEP stormwater management approval dated 10-22-95
- (5) Dedication of Jones Lane 35 feet off center line
- (6) Necessary easements

- (7) This preliminary plan will remain valid until December 20, 1998. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

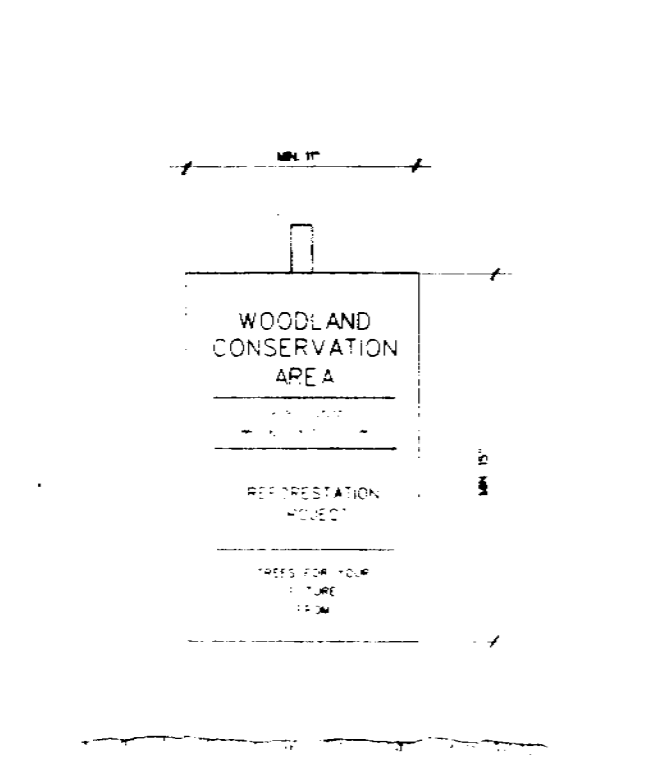
TREE PROTECTION FENCING(2)

BLAZE ORANGE PLASTIC MESH



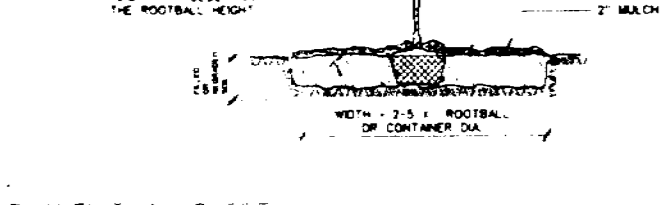
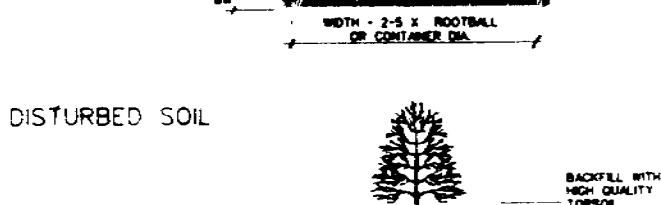
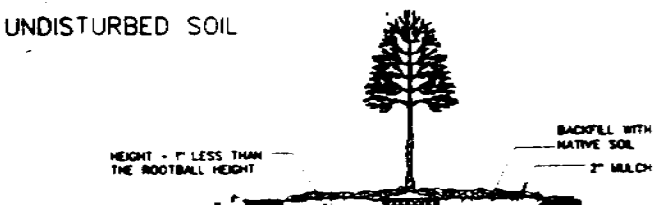
NOTES: 1. Fences should be erected... 2. Blazes should be placed... 3. Mesh should be checked... 4. Blazes should be replaced...

SIGNAGE



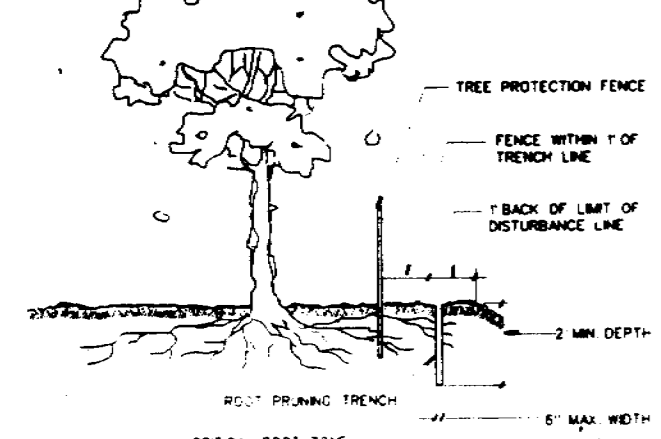
NOTE: 1. Attachment of sign to post... 2. Sign should be clearly maintained... 3. Sign should be replaced...

CONTAINER GROWN AND BALLED AND BURLAPPED STOCK



NOTE: Tree pit to be 1/2 times the rootball diameter... 1. Container grown stock... 2. Balled and burlapped stock... 3. Planting site preparation...

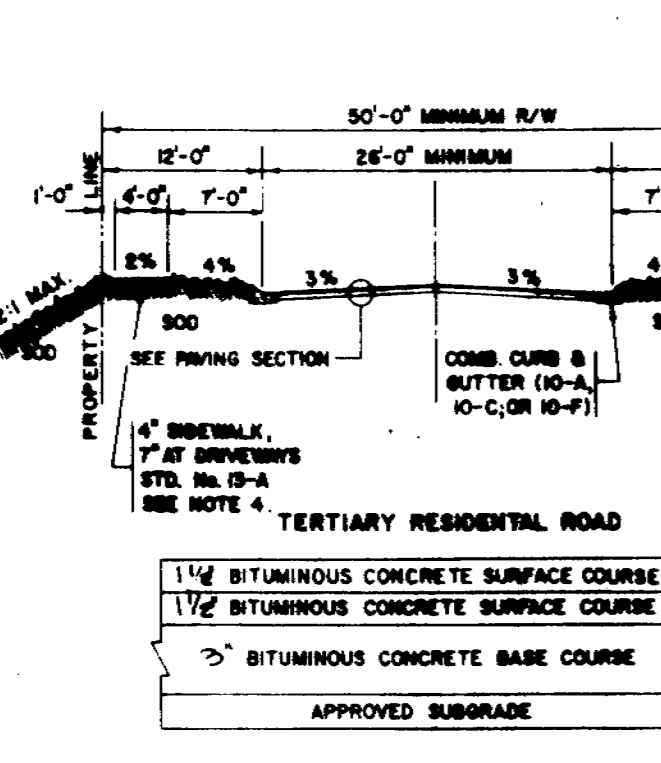
STRESS REDUCTION MEASURE(3)



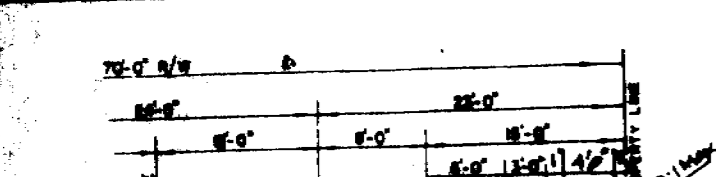
NOTE: 1. Trunk brace should be installed... 2. Trunk brace should be checked... 3. Trunk brace should be replaced...



SHRUB PLANTING: 1. Planting site preparation... 2. Mulch application... 3. Watering requirements...

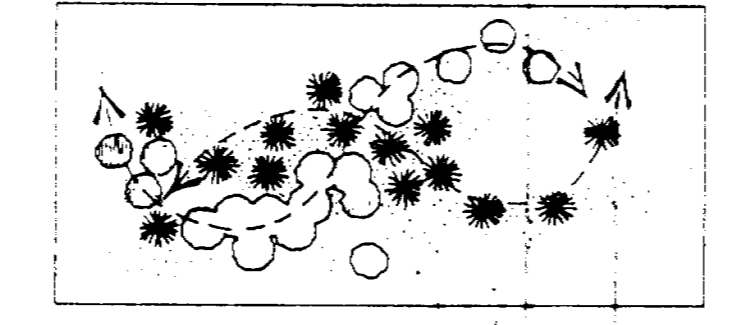


GENERAL NOTES: 1. REFER TO MARYLAND STATE HIGHWAY ADMINISTRATION... 2. SEE STANDARD NO. 54 - METHODS OF GRADING SIDE SLOPES... 3. TOP OF CURB - CENTERLINE + 0.0'

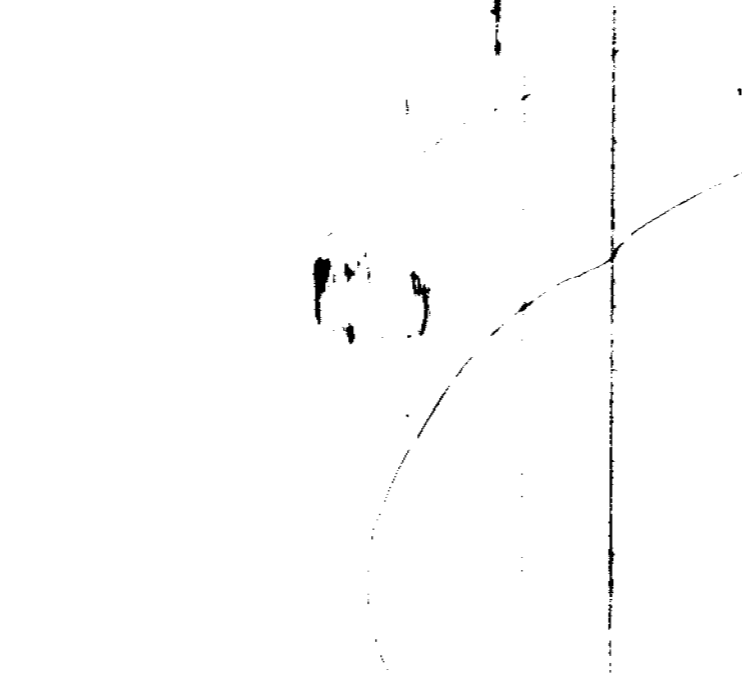


STANDARD OPEN SECTION PRIMARY ROAD STANDARD NO. 47-A: 1. 1 1/2\"

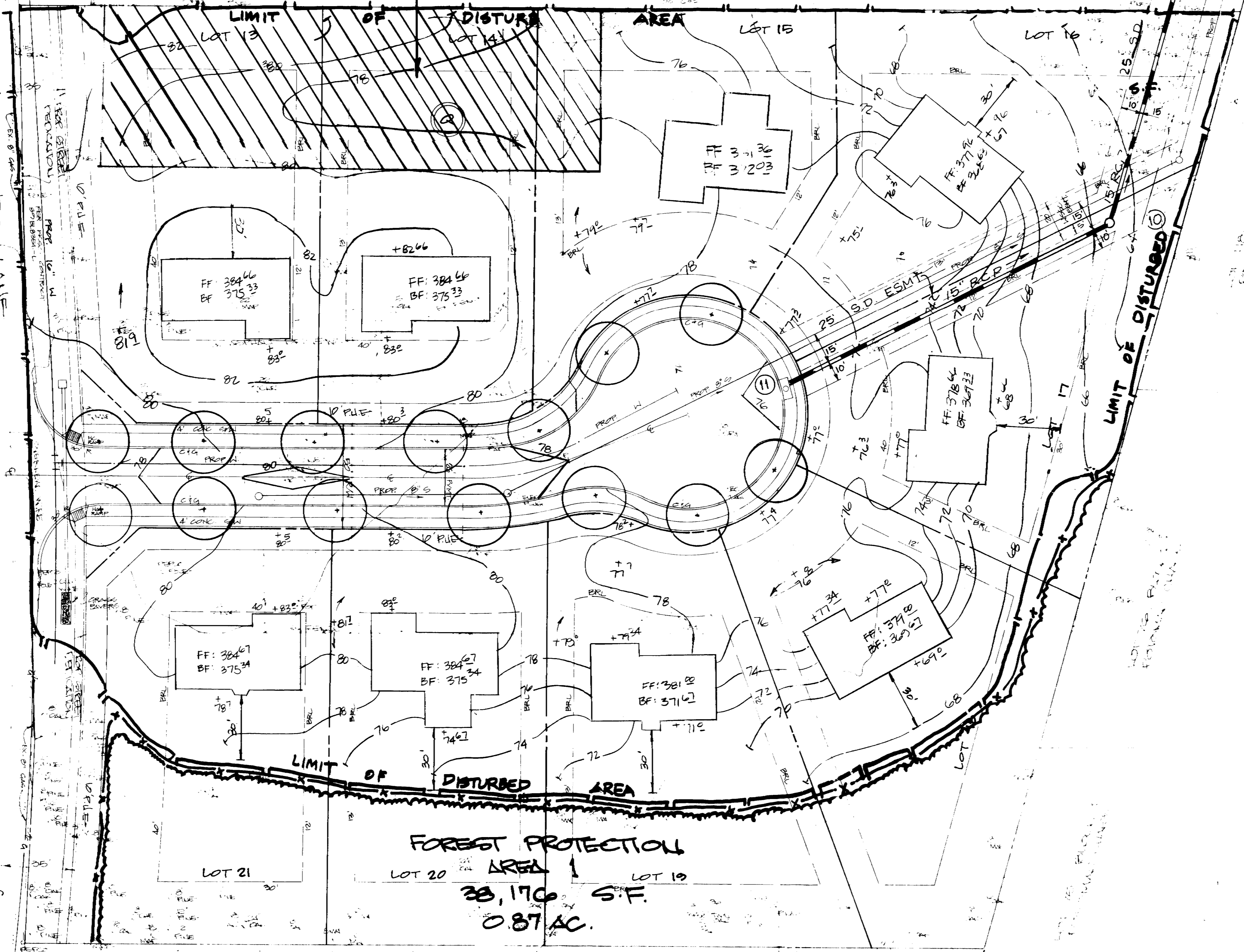
Aggregate Distribution Drift



PLANT CLUSTER GROUPING DETAIL



REFORESTATION AREA - 10,564 S.F. (0.43 AC.)



FOREST PROTECTION AREA 28,176 S.F. 0.87 AC.

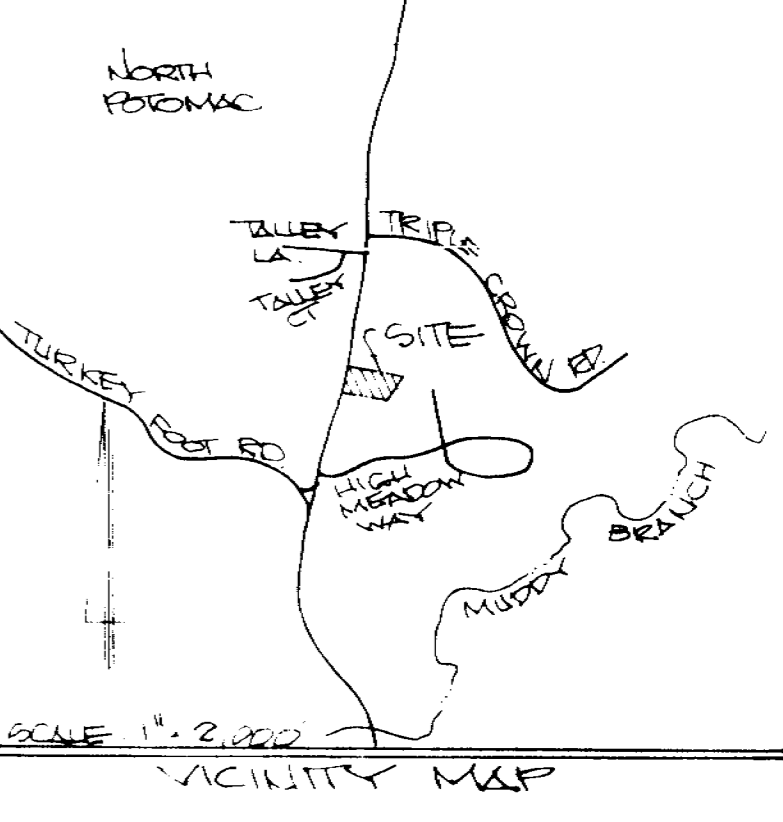
POTOMAC CHASE II FOREST CONSERVATION FOREST

Table with columns: AREA, AMOUNT, PERCENTAGE, BOTANICAL/Common Name, SERIAL STATUS. Lists various tree species and their quantities.

REFORESTATION AND TREE COVER

Table with columns: AREA, AMOUNT, PERCENTAGE, BOTANICAL/Common Name, SERIAL STATUS. Lists various tree species and their quantities.

ATTACHMENT 2



REFORESTATION NARRATIVE

- 1. PLANT MATERIAL SELECTION: All plant materials greater than 1" caliper... 2. PRE-PLANTING CONSIDERATIONS: A soil analysis will be conducted... 3. PLANT MATERIAL STORAGE: It is recommended that planting occur... 4. SITE INSPECTION: Prior to planting, planting stock... 5. PLANTING SPECIFICATIONS: A. Container Grown Stock... B. Balled and Burlapped Trees... C. Planting fields... D. Staking of trees... 6. POST-PLANTING CONSIDERATIONS: A. Soil Stabilization... B. Protective Devices...

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

FINAL FOREST CONSERVATION PLAN APPROVAL

Plan No. 1-95106, Approved by Patricia A. Richerson, 11/21/95.

- GENERAL NOTES: 1. BOUNDARY INFORMATION FROM SURVEY... 2. TOPOGRAPHIC INFORMATION FROM FIELD SURVEY... 3. THERE ARE NO WETLANDS, WATERCOURSES, OR 100-YEAR FLOODPLAINS... 4. THERE ARE NO HISTORIC RESOURCES OR UNIQUE NATURAL FEATURES... 5. SUBJECT PROPERTY IS IN TRAVELER PLANNING AREA... 6. SUBJECT PROPERTY IS IN MUDY BRANCH WATERSHED, CLASS I WATERS... 7. EXISTING BUILDINGS ON SITE TO BE REMOVED.

Table with columns: REQUIRED/PERMITTED, PROVIDED. Lists site summary details like gross site area, net site area, etc.

THIS PRELIMINARY FOREST CONSERVATION PLAN WAS PREPARED UNDER THE SUPERVISION OF PATRICIA A. RICHERSON, QUALIFIED PROFESSIONAL AS DESIGNATED BY THE MARYLAND DEPARTMENT OF NATURAL RESOURCES, PUBLIC LANDS AND FORESTRY (COMAR 08.19.01.84)

3/11/95, 2/11/95, 1/9/95, 1/9/95. REVISIONS

ENGINEER'S SEAL & SIGNATURE

PLAT NO 19978

OWNER'S DEDICATION AND CERTIFICATION

WE, THE UNDERSIGNED, OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS PLAN OF SUBDIVISION, ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES, DEDICATE THE STREETS TO PUBLIC USE, AND GRANT TO MONTGOMERY COUNTY, MARYLAND, SLOPE EASEMENTS 25 FEET WIDE, OR AS MAY BE SHOWN OTHERWISE HEREON, ADJACENT, PARALLEL AND CONTIGUOUS TO THE STREET RIGHT-OF-WAY LINES. SLOPE EASEMENTS SHALL BE AUTOMATICALLY EXTINGUISHED AFTER ALL REQUIRED PUBLIC IMPROVEMENTS ABUTTING SAME HAVE BEEN LAWFULLY COMPLETED AND HAVE BEEN ACCEPTED FOR MAINTENANCE BY MONTGOMERY COUNTY OR OTHER APPROPRIATE PUBLIC AGENCY. WE HEREBY GRANT TO MONTGOMERY COUNTY, THEIR SUCCESSORS AND ASSIGNS, EASEMENTS FOR STORM DRAINS AND APPURTENANCES SHOWN AND DESIGNATED HEREON AS "MCDOT S.D. EASEMENT".

WE HEREBY GRANT TO THOSE PARTIES LISTED IN THAT CERTAIN DECLARATION RECORDED IN LIBER 3834 AT FOLIO 457 AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND, TEN (10) FEET WIDE PUBLIC UTILITY EASEMENTS, DESIGNATED HEREON AS "P.U.E.", SUBJECT TO THE TERMS AND PROVISIONS FOR PUBLIC UTILITY EASEMENTS INDICATED WITHIN SAID DECLARATION.

WE HEREBY GRANT TO MONTGOMERY COUNTY, MARYLAND, THEIR SUCCESSORS AND ASSIGNS, TEN (10) FEET WIDE PUBLIC IMPROVEMENTS EASEMENTS, DESIGNATED HEREON AS "P.I.E.", IN ACCORDANCE WITH THE TERMS AND CONDITIONS FOUND RECORDED IN LIBER 13760 AT FOLIO 140.

WE HEREBY GRANT TO THE MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (M-NCP&PC), CONSERVATION EASEMENTS, AS SHOWN HEREON, PURSUANT TO THE FOREST CONSERVATION PLAN ILLUSTRATED ON M-NCP&PC PRELIMINARY PLAN NO. 1-95106, AND IN ACCORDANCE WITH THE TERMS, PROVISIONS AND CONDITIONS CONTAINED IN A CONSERVATION EASEMENT AGREEMENT RECORDED AMONG THE AFORESAID LAND RECORDS IN LIBER 13178 AT FOLIO 412.

AS OWNER(S) OF THIS SUBDIVISION, WE, OUR SUCCESSORS AND ASSIGNS, SHALL CAUSE PROPERTY CORNER MARKERS TO BE SET BY A REGISTERED MARYLAND LAND SURVEYOR, IN ACCORDANCE WITH SECTION 90-24(e)(2) OF THE MONTGOMERY COUNTY CODE.

FURTHER, WE GRANT TO THE WASHINGTON SUBURBAN SANITARY COMMISSION (W.S.S.C.), SUCH EXCLUSIVE RIGHTS AS NECESSARY FOR THE CONSTRUCTION, RECONSTRUCTION, OPERATION, MAINTENANCE AND REPAIR OF SANITARY SEWERS AND/OR WATER MAINS AND APPURTENANCES WITHIN ANY WATER AND/OR SEWER RIGHTS-OF-WAY/EASEMENTS SHOWN AND DENOTED HEREON AS "W & S EASEMENT", SUBJECT TO AND TOGETHER WITH THE CONDITIONS CONTAINED IN A RIGHT OF WAY DOCUMENT FROM THE GRANTORS, THEIR SUCCESSORS OR ASSIGNS TO THE W.S.S.C. TO BE RECORDED HEREAFTER.

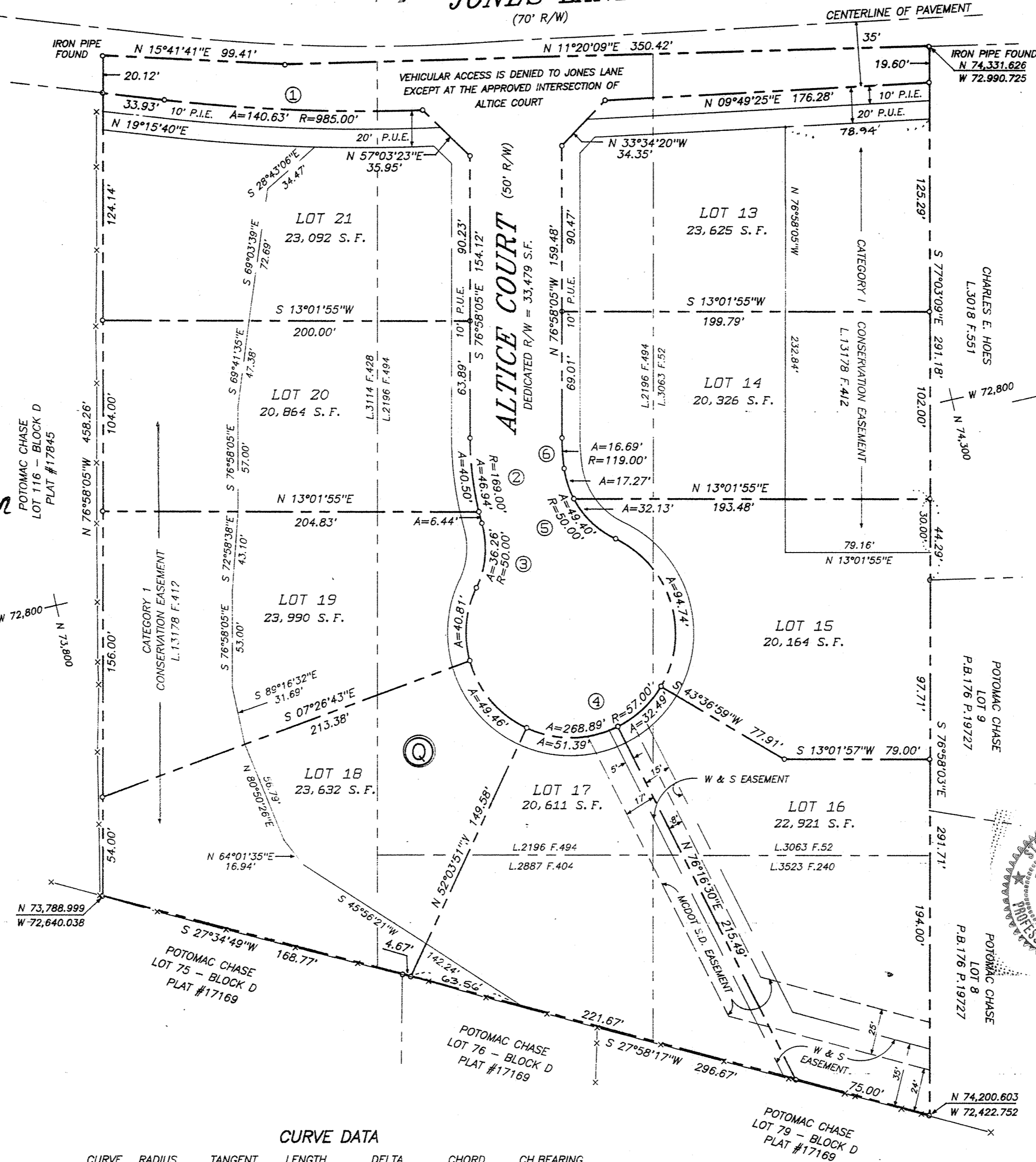
THERE ARE NO SUITS, ACTIONS AT LAW, LEASES, LIENS OR TRUSTS ON THIS PROPERTY

Law Atair 11-16-95 *Miles Frazier*
 WITNESS DATE MILES FRAZIER, OWNER
Law Atair 11-16-95 *Altice G. Frazier*
 WITNESS DATE ALTICE G. FRAZIER, OWNER
Law Atair 11-16-95 *Arthur W. Talley*
 WITNESS DATE ARTHUR W. TALLEY, OWNER

NOTES

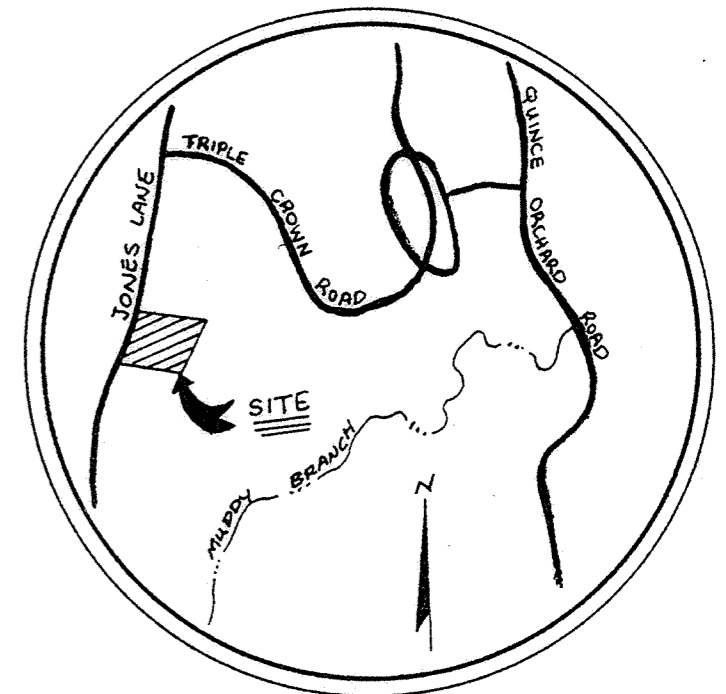
A TOTAL OF 9 LOTS INCLUDED IN THIS SUBDIVISION WERE APPROVED BY THE MONTGOMERY COUNTY PLANNING BOARD IN ACCORDANCE WITH THE ALTERNATIVE REVIEW PROCEDURES (ARP) FOR LIMITED RESIDENTIAL DEVELOPMENT PURSUANT TO THE FY 95 ANNUAL GROWTH POLICY. APPROVAL IN ACCORDANCE WITH THE ARP REQUIRES THE TIMELY PAYMENT OF A CERTAIN DEVELOPMENT APPROVAL PAYMENT (DAP). THE SPECIFIC LOTS APPROVED IN ACCORDANCE WITH THE ARP AND REQUIRED TO PAY THE DAP PRIOR TO THE RELEASE OF BUILDING PERMITS ARE SPECIFICALLY IDENTIFIED IN A CERTAIN DEVELOPMENT APPROVAL PAYMENT AGREEMENT ENTERED INTO BY AND BETWEEN THE DEVELOPER AND THE PLANNING BOARD, DATED NOVEMBER 16, 1995 (AGREEMENT). RIGHTS, DUTIES AND OBLIGATIONS OF THE DEVELOPER IN CONNECTION WITH THE ARP ARE SET FORTH IN THE AGREEMENT. THE AGREEMENT SHALL ESTABLISH THE PROCEDURES FOR SECURING THE RELEASE OF SOME OR ALL OF THE ARP OBLIGATIONS. IF A RELEASE INSTRUMENT IS EXECUTED AND RECORDED, THE OBLIGATIONS CONTAINED IN THIS NOTATION MAY TERMINATE IN WHOLE OR PART AS PROVIDED FOR IN SUCH RELEASE.

JONES LANE (70' R/W)



CURVE	RADIUS	TANGENT	LENGTH	DELTA	CHORD	CH. BEARING
1	985.00'	70.44'	140.63'	8°10'49"	140.51'	N 15°10'16"E
2	169.00'	23.62'	46.94'	15°54'47"	46.79'	S 84°55'28"E
3	50.00'	18.97'	36.26'	41°32'59"	35.47'	S 72°06'22"E
4	57.00'	-56.72'	268.89'	270°16'57"	80.41'	N 06°28'21"W
5	50.00'	26.93'	49.40'	56°36'33"	47.42'	S 66°41'27"W
6	119.00'	8.36'	16.69'	8°02'12"	16.68'	N 80°59'11"W

ATTACHMENT 3



VICINITY MAP
SCALE: 1" = 2000'

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF AND INFORMATION AND THAT IT IS A SUBDIVISION OF ALL OF THE LANDS CONVEYED BY THE FOLLOWING DEEDS RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND:

- DEED TO MILES FRAZIER AND ALTICE G. FRAZIER FROM KERMIT L. WEAVER AND HELEN B. WEAVER DATED FEBRUARY 7, 1963 AND RECORDED IN LIBER 3063 AT FOLIO 52
- DEED TO MILES FRAZIER AND ALTICE G. FRAZIER FROM LAURA TALLEY DATED JULY 1, 1966 AND RECORDED IN LIBER 3523 AT FOLIO 240
- DEED TO MILES FRAZIER AND ALTICE G. FRAZIER FROM LAURA TALLEY DATED DECEMBER 29, 1955 AND RECORDED IN LIBER 2196 AT FOLIO 494
- DEED TO MILES FRAZIER AND ALTICE G. FRAZIER FROM LAURA TALLEY DATED SEPTEMBER 13, 1961 AND RECORDED IN LIBER 2887 AT FOLIO 404
- DEED TO ARTHUR W. TALLEY FROM LAURA L. TALLEY DATED JULY 31, 1963 AND RECORDED IN LIBER 3114 AT FOLIO 428

I FURTHER CERTIFY THAT, ONCE ENGAGED AS DESCRIBED IN THE OWNER'S DEDICATION HEREON, ALL MONUMENTS SHOWN THUS (O) WILL BE SET AS DELINEATED HEREON IN ACCORDANCE WITH SECTION 90-24 (e) 2 OF THE MONTGOMERY COUNTY CODE. THE TOTAL AREA OF THIS PLAT IS 232,704 SQUARE FEET OR 5.3422 ACRES OF LAND OF WHICH 33,479 SQUARE FEET OR 0.7686 ACRES ARE HEREBY DEDICATED TO PUBLIC USE.

FOR DEWBERRY & DAVIS
Eric V. Day
 ERIC V. DAY
 PROFESSIONAL LAND SURVEYOR
 No. 1MD; REGISTRATION NO. 10771
 NOV 14, 1995
 DATE

SUBDIVISION RECORD PLAT
 LOTS 13 THROUGH 21, BLOCK Q
POTOMAC CHASE
 DARNESTOWN (6TH) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND
 SCALE: 1"=50' DATE: NOVEMBER 1995

FILED
JAN 23 1996

THE APPROVAL OF THIS PLAT IS PREDICATED ON THE ADEQUACY AND AVAILABILITY OF PUBLIC WATER AND SEWER

296102195106R2001209B

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 MONTGOMERY COUNTY PLANNING BOARD
 APPROVED: NOVEMBER 30, 1995
Chairman *Mini Wynn Fennell*
 CHAIRMAN SECRETARY TREASURER
 M-NCP&PC RECORD PLAT FILE NO. 598-14

MONTGOMERY COUNTY, MARYLAND
 DEPARTMENT OF TRANSPORTATION
 APPROVED: JANUARY 2, 1996
For Director
 FOR DIRECTOR

MONTGOMERY COUNTY, MARYLAND
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 APPROVED: JANUARY 6, 1996
For Director
 FOR DIRECTOR

RECORDED
 PLAT BOOK
 PLAT NO.

GENERAL NOTES:
 1) ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS, AND REQUIREMENTS ASSOCIATED WITH ANY PRELIMINARY PLAN, SITE PLAN, PROJECT PLAN OR OTHER PLAN, ALLOWING DEVELOPMENT OF THIS PROPERTY, APPROVED BY THE MONTGOMERY COUNTY PLANNING BOARD ARE INTENDED TO SURVIVE AND NOT BE EXTINGUISHED BY THE RECORDATION OF THIS PLAT, UNLESS EXPRESSLY CONTEMPLATED BY THE PLAN AS APPROVED. THE OFFICIAL PUBLIC FILES FOR ANY SUCH PLAN ARE MAINTAINED BY THE PLANNING BOARD AND AVAILABLE FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.
 2) THE LOTS SHOWN HEREON ARE SUBJECT TO THE MONTGOMERY COUNTY FOREST CONSERVATION LAW OF 1992 AND A FOREST CONSERVATION PLAN APPROVED PER CHAPTER 22A OF THE MONTGOMERY COUNTY CODE.
 3) THE PROPERTY SHOWN HEREON IS ZONED R-200

DEWBERRY & DAVIS
 ARCHITECTS ENGINEERS PLANNERS SURVEYORS
 804 WEST DIAMOND AVENUE
 GAITHERSBURG, MARYLAND 20878
 (301) 948-8300

CONSERVATION EASEMENT AGREEMENT

Category I

DEFINITIONS

Grantor: Fee simple owner of real property subject to a:
(i) Plan approval conditioned on compliance with a FCP; or
(ii) Plan approval conditioned on compliance with a conservation easement agreement (issued pursuant to Chapter 50 or 59, Montgomery County Code).

Grantee: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ("Commission").

Planning Board: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

Planning Director: Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, Montgomery County, or the Director's designee.

Plan: Sediment control permit approved pursuant to Montgomery County Code Chapter 19; preliminary plan approved under Montgomery County Code Chapter 50; site plan, development plan, planned unit development or special exception application approved under Montgomery County Code Chapter 59; mandatory referral reviewed pursuant to Article 28 of Maryland State Code Annotated; approved major utility construction (as defined by Washington Suburban Sanitary Commission's regulations).

Forest Conservation Plan ("FCP"): Forest Conservation Plan approved by the Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code.

Exhibit A:

- (i) FCP approved as a condition of receiving any of the Plan approval noted above; or
(ii) Approved and signed Plan referencing this Agreement.

IMP. FILING \$ 0.00
RECORDING FEE 0.00
TOTAL 0.00
RESUBMIT NO. 1999229
MCR JOB 01149
Dec 30, 1994 12:24 pm

WITNESSETH

This Agreement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor (or Grantor's agent) has obtained authority to develop pursuant to a Plan in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or other approving authority approved Grantor's Plan conditioned upon a requirement that development occur in strict accordance with a FCP approved by the Planning Board after full review of the FCP pursuant to the

94 DEC 30 P 12:27.1

FILED
MOLLY O. RUHL
CLERKS OFFICE
MONTGOMERY COUNTY

provisions of Montgomery County Code Chapter 22A (Forest Conservation); Chapter 50 (Subdivision Regulations); and/or Chapter 59 (Zoning Ordinance); and/or

the Planning Board approved Grantor's Plan conditioned upon Grantor subjecting the property to be developed ("Property") or a portion of the property to be developed to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivision Regulations), and/or Chapter 59 (Zoning Ordinance); and

WHEREAS, the location of this easement ("Easement") is as shown on Exhibit A (incorporated by reference into the terms of this Agreement); and

WHEREAS, the purpose of this Easement is to protect existing and future forest cover; individual trees; streams and adjacent buffer areas, wetlands and other sensitive natural features; and to maintain existing natural conditions to protect plant habitats, water quality and wildlife; and

WHEREAS, the purpose includes preservation of the natural beauty of the property subject to the Easement and prevention of any alteration, construction or destruction that will tend to mar or detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the area of the Easement which efforts are consistent with the terms and conditions of the approved plan and applicable law; and

WHEREAS, the Parties intend for the conditions and covenants contained in this Easement Agreement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Parties intend that a servitude be placed upon the Property to create a conservation benefit in favor of the Planning Board.

NOW, THEREFORE, the Grantor has executed this agreement for no monetary consideration but for the purpose of ensuring compliance with development standards imposed in accordance with Montgomery County law as a condition of development approval. The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an Easement on the Property of the size and location described in Exhibit A, and further described on the applicable record plat(s), of the nature and character described herein. This Easement constitutes a covenant real running with the title of the land, and is granted to preserve, protect and maintain the general topography and natural character of the land. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the parties.

2. No living trees or shrubs (of any size or type) shall be cut down, removed or destroyed without prior written consent from the Planning Board. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the Planning Board, unless such notice is not practical in an emergency situation or is undertaken pursuant to a forest management plan approved by the Planning Director or Maryland's Department of Natural Resources ("DNR").

3. No plant materials (including, but not limited to brush, saplings, undergrowth, or non-woody vegetation) shall be mowed or cut down, dug up removed or destroyed unless removed pursuant to the terms and conditions of an approved forest management plan. Noxious 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, but the method of removal must be consistent with the limitations contained within this Agreement. Vegetation removal shall be limited to noxious, exotic or invasive weeds only, and protective measures must be taken to protect nearby trees and shrubs.

4. No mowing, agricultural activities, or cultivation shall occur. Grantor may replace dead trees or undergrowth provided that new plantings are characteristic of trees or undergrowth native to Maryland.

5. Nothing in this Agreement precludes activities necessary to implement or maintain afforestation or reforestation efforts pursued pursuant to an approved forest conservation plan or maintenance agreement implemented under Chapters 19 or 22A of the Montgomery County Code.

6. The following activities may not occur at any time within the Easement Area:

- a. Construction, excavation or grading (except for afforestation and reforestation efforts conducted in compliance with an approved forest conservation plan).
- b. Erection of any building or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls.
- c. Construction of any roadway or private drive.
- d. Activities which in any way could alter or interfere with the natural ground cover or drainage

(including alteration of stream channels, stream currents or stream flow).

- e. Industrial or commercial activities.
- f. Timber cutting, unless conducted pursuant to a forest management plan approved by DNR.
- g. Location of any component of a septic system or wells.
- h. Excavation, dredging, or removal of loam, gravel, soil, rock, sand and other materials.
- i. Diking, dredging, filling or removal of wetlands.
- j. Pasturing of livestock (including horses) and storage of manure or any other suit.
- k. Alteration of stream.

7. Nothing in this Agreement shall prevent construction or maintenance of stormwater structures and/or facilities or other utilities, including, but not limited to water and sewer lines, on, over, or under the Easement Area, if said structures, facilities or utilities are (i) required to implement the Plan, (ii) shown on the approved FCP, and (iii) approved by the appropriate governing bodies or agencies in accordance with applicable laws and regulations.

8. No dumping of unsightly or offensive material, including trash, ashes, sawdust or grass clippings shall occur. Natural biodegradable materials may be allowed in a properly located, designed, managed and maintained compost pile, provided the activity does not damage adjacent trees. Upon prior written approval of the Planning Director, suitable heavy fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is covered by arable soil or humus and properly stabilized.

9. Fences consistent with the purposes of the Easement may be erected within the Easement Area only after written approval from the Planning Director

10. Unpaved paths or trails consistent with the purposes of the Easement may be created within the Easement Area if shown on the FCP or with prior written approval from the Planning Director.

11. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the land within the Easement.

12. Grantor authorizes Planning Board representatives to

enter the Property and Easement at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors or assigns have complied with the restrictions, conditions, and easements established herein. This Easement does not convey to the general public the right to enter the Property or Easement for any purpose. The Easement does not restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by applicable community or homeowner association covenants and by-laws.

13. Grantor further agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any interest in the Property is conveyed.

14. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this agreement.

15. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Agreement, the Planning Board shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to its original natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

16. All written notices required by this Agreement shall be sent to the Planning Director, M-NCPPC, 8787 Georgia Avenue, Silver Spring, Maryland 20910.

TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

* * * * *

This is to certify that the within instrument has been prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Michele Rosenfeld
Michele Rosenfeld
Associate General Counsel
M-NCPPC



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue, Silver Spring, Maryland 20910

Environmental Planning Division 301.495.4540 Fax: 301.495.1303

www.MontgomeryPlanning.Org

Issued with FAQs

ATTACHMENT 5

NOTICE OF VIOLATION

EDPNOV 0001

FOR MONTGOMERY COUNTY, MARYLAND, the undersigned issuer, being duly authorized, states that:

On, March 8, 2013 the recipient of this NOTICE, Larry Opack
Date Recipient's Name

who represents the property owner, Lawrence D. & C. S. Opack
Property Owner's Name

is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: Category I conservation easement at 12708 Altice Ct Darnestown, MD 20878

Plan No. 119951060 Explanation: Violations of category I conservation easement agreement structural improvements including a play set and wooden tree house in conservation easement

VIOLATION:	
<input type="checkbox"/>	Failure to hold a required pre-construction meeting.
<input type="checkbox"/>	Failure to have tree protection measures inspected prior to starting work.
<input type="checkbox"/>	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
<input type="checkbox"/>	Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector
<input type="checkbox"/>	Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
<input type="checkbox"/>	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
<input type="checkbox"/>	Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.
<input checked="" type="checkbox"/>	Other: <u>Violation of category I conservation easement agreement Liber 13178 Folio 412</u>

Failure to comply with this NOV by 06/12/13 may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at 301-495-4564 when the corrective action is complete. The following corrective action(s) must be performed as directed and within any time frames specified below:

<input type="checkbox"/>	Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting:
<input type="checkbox"/>	Install tree protection measures and/or tree care as directed by Forest Conservation Inspector.
<input type="checkbox"/>	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-45-4540.
<input type="checkbox"/>	Cease all cutting, clearing, or grading and/or land distributing activity. Approval from Forest Conservation Inspector is required to resume work.
<input type="checkbox"/>	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
<input type="checkbox"/>	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
<input checked="" type="checkbox"/>	Other: <u>remove play set and wooden tree house from category I conservation easement</u>

MNCPPC Inspector

Stephen Peck

Printed Name

Stephen Peck

Signature

03/11/2013

Date

RECEIVED BY:

Lawrence D. Opack

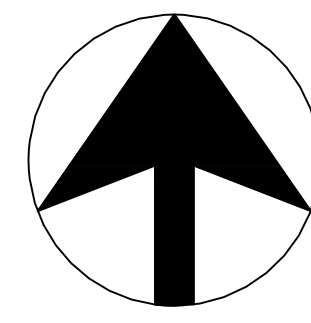
Printed Name

L. D. Opack

Signature

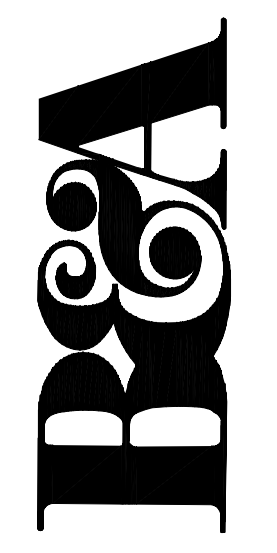
03/11/2013

Date



date: 8/7/2013
scale: 1" = 50'

Bemming & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240



PRELIMINARY PLAN (AMENDED)
POTOMAC CHASE II:
LOTS 14, 15, 20 & 21
12705, 12706, 12707 & 12708 ALTICE COURT
Montgomery County, Maryland

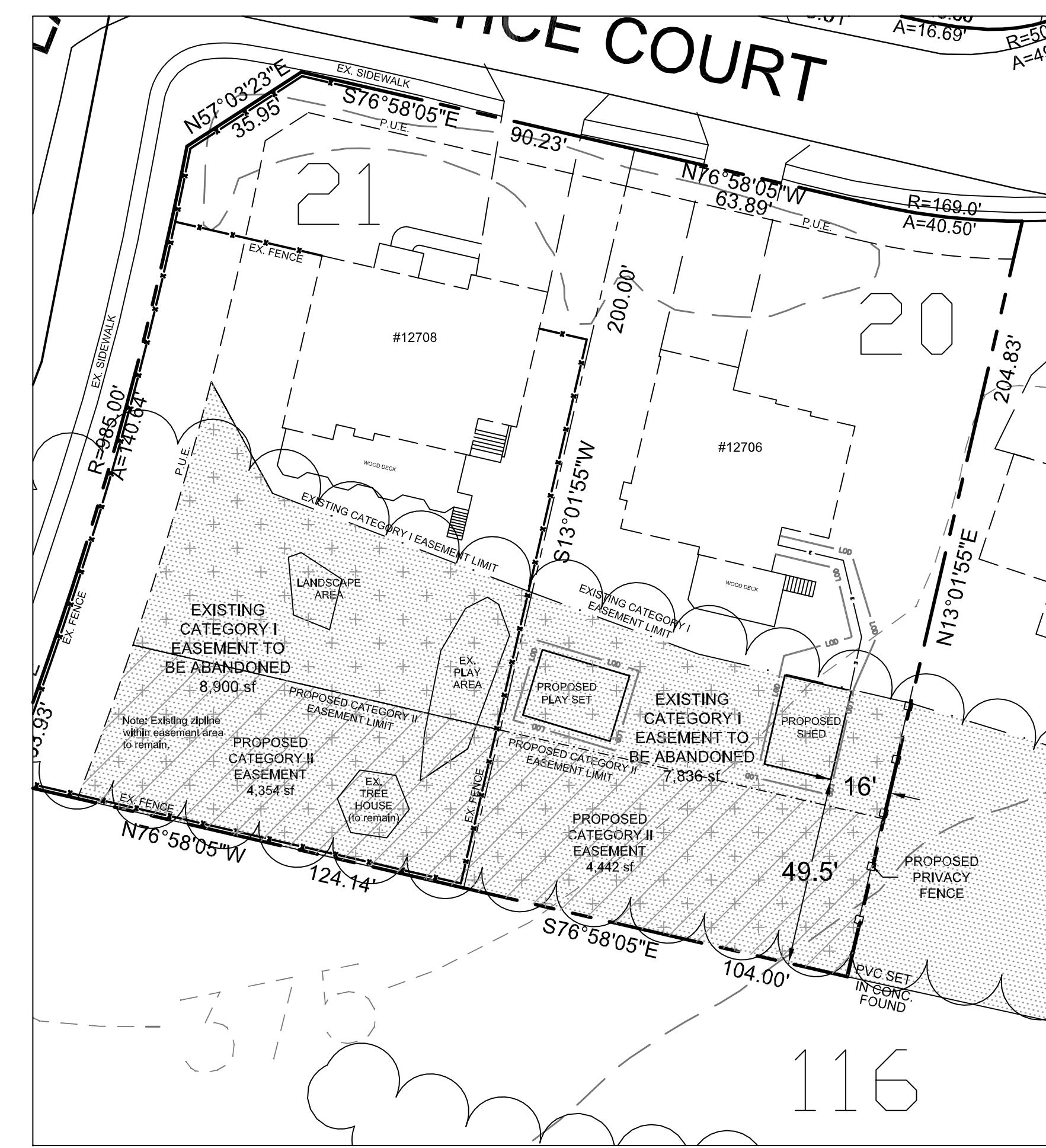
ZONING STANDARDS:

ZONE: R-200	Req.	Prov.
Lot Size	20,000 sf	20,164 sf or greater
Front Setback	40' min. or Established Building Line	40'±
Side Yard	12' min., 25' total	12' or greater
Rear Yard	30' min.	30' or greater
Building Height	40' Max.	40' or less
Lot Coverage	25% max.	25% or less
Lot Width @ Building Line	100' min.	100' or greater
Street Frontage	25' min.	25' or greater

ATTACHMENT 6

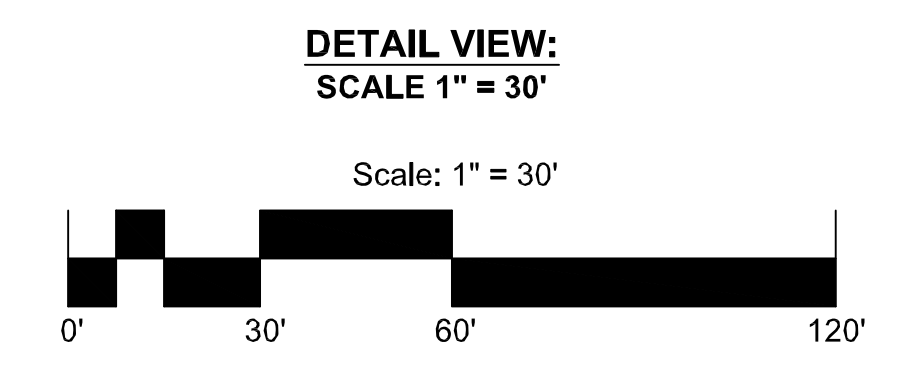
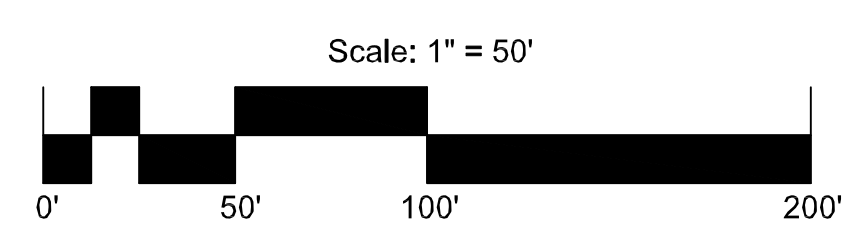
- NOTES:**
1. AREA OF PROPERTY - 84,446 SF
 2. EXISTING ZONING - R-200
 3. SITE IS SERVED BY PUBLIC SEWER AND WATER
 4. EXISTING SEWER & WATER SERVICE CATEGORIES: S-1, W-1
 5. LOCATED IN THE POTOMAC DIRECT WATERSHED
 6. PROPERTY LOCATED ON TAX MAP ER43; WSSC SHEET 219NW13
 7. UTILITIES (as available): Washington Gas, Verizon, PEPSCO

- LIST OF AMENDMENT ITEMS:**
1. REMOVAL OF THE ENTIRE CATEGORY I CONSERVATION EASEMENT ON LOT 14 & 15.
 2. ON LOT 20 ALL CATEGORY I CONSERVATION EASEMENT TO BE REMOVED AND A 4,442 SQUARE FOOT CATEGORY II CONSERVATION EASEMENT TO BE ESTABLISHED.
 3. ON LOT 21 ALL CATEGORY I CONSERVATION EASEMENT TO BE REMOVED AND A 4,354 SQUARE FOOT CATEGORY II CONSERVATION EASEMENT TO BE ESTABLISHED.



LEGEND:

PROPERTY LINE	
CANOPY COVER / FOREST	
EX. BUILDING	
EX. CATEGORY I CONSERVATION EASEMENT	
EXISTING / PROPOSED CATEGORY II CONSERVATION EASEMENT	
CONSERVATION EASEMENT TO BE ABANDONED	
PROPOSED IMPROVEMENTS	
PROPOSED LIMITS OF DISTURBANCE	
EXISTING FENCE	
PROPOSED FENCE	



SUMMARY OF PROPOSED ACTIONS

	LOT 14 (12707 Altice Court)	LOT 15 (12705 Altice Court)	LOT 20 (12706 Altice Court)	LOT 21 (12708 Altice Court)
Area of Existing Category I Easement	8,062 sf	2,374 sf	7,836 sf	8,900 sf
Action Proposed	Remove 8,062 sf of easement	Remove 2,374 sf of easement	Remove 7,836 sf of category I easement & establish 4,442 sf of category II easement	Remove 8,900 sf of category I easement & establish 4,354 sf of category II easement
Proposed Remediation	Acquire 16,124 sf of forest bank credit	Acquire 4,748 sf of forest bank credit	Acquire 11,230 sf of forest bank credit. Establish and plant 4,442 sf Category II Conservation Easement	Acquire 13,446 sf of forest bank credit. Establish and plant 4,354 sf Category II Conservation Easement

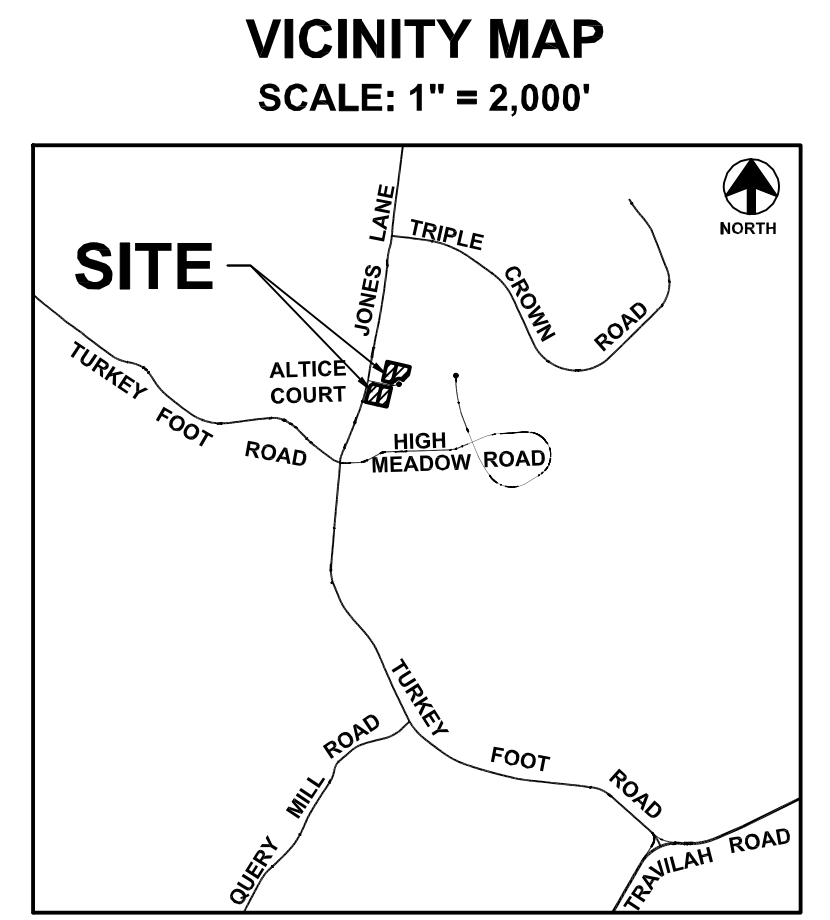
PREPARED FOR:

Robert & Patricia Adams
12705 Altice Court
Darnestown, MD 20878
301-519-6936

Joseph Mathai & Patricia Kollappallil
12706 Altice Court
Darnestown, MD 20878
301-832-1298

John & Teresa Messina
12707 Altice Court
Darnestown, MD 20878
301-343-2714

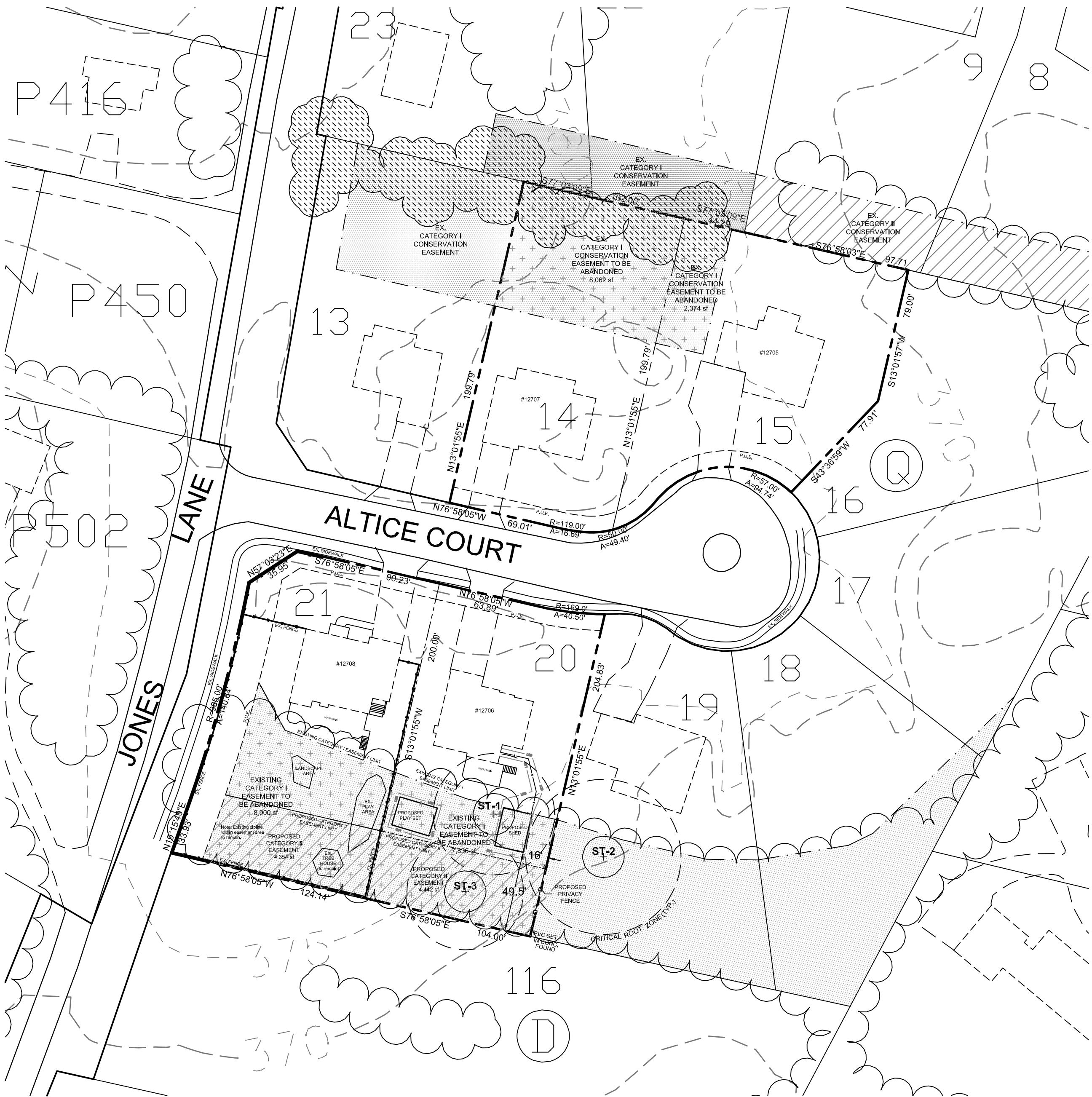
Lawrence & Colleen Opack
12708 Altice Court
Darnestown, MD 20878
301-758-5633



BOUNDARY & TEST SITE CERTIFICATION:
I hereby certify that the boundary shown hereon is correct to my best knowledge based upon available records and visual observations. Test site locations shown have been field located.

Signature: Date: 8/29/2013

STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES
REGISTRAR GENERAL
EXPIRES: 7/3/2014



- LIST OF AMENDMENT ITEMS:**
1. REMOVAL OF THE ENTIRE CATEGORY I CONSERVATION EASEMENT ON LOT 14 & 15.
 2. ON LOT 20 ALL CATEGORY I CONSERVATION EASEMENT TO BE REMOVED AND A 4,442 SQUARE FOOT CATEGORY II CONSERVATION EASEMENT TO BE ESTABLISHED.
 3. ON LOT 21 ALL CATEGORY I CONSERVATION EASEMENT TO BE REMOVED AND A 4,354 SQUARE FOOT CATEGORY II CONSERVATION EASEMENT TO BE ESTABLISHED.

FINAL FOREST CONSERVATION PLAN NOTES:

1. PLANTING IS PROPOSED WITHIN THE CATEGORY II CONSERVATION EASEMENT ON LOT 20 AND LOT 21.
2. LOCATIONS FOR THE PROPOSED TREES TO BE DETERMINED AT AN ON-SITE PRE-PLANTING MEETING WITH THE M-NCP&PC FOREST CONSERVATION INSPECTOR.

SIGNIFICANT TREE CHART

TREE NUMBER	BOTANICAL NAME	COMMON NAME	SIZE(D,B,H)	TREE CONDITION	COMMENTS	STATUS
ST-1	Quercus alba	White Oak	25' x 11"	Moderate	Deback w. water sprouts	To Remain
ST-2	Quercus alba	White Oak	32"	Good	Off-site	Off-site
ST-3	Quercus stellata	Post Oak	24"	Moderate-Poor	Deback, w. water sprouts, dead limbs w. decay, broken limbs	To Remain

* Indicates specimens for the species.

NOTE:
TREE SPECIES, SIZE AND CONDITION ARE FROM A SITE VISIT BY PATRICK PERRY ON 5/14/2013.

CATEGORY II CONSERVATION EASEMENT PLANT SCHEDULE FOR LOTS 20 AND 21

5 Trees

QUANTITY	SIZE	BOTANICAL NAME	COMMON NAME	SPACING	COMMENTS
TREES LOT 20:					
1	2"	Cercis canadensis	Eastern Redbud	T.B.D.	B&B
2	2"	Quercus alba	White Oak	T.B.D.	B&B
TREES LOT 21:					
2	2"	Cercis canadensis	Eastern Redbud	T.B.D.	B&B

LEGEND:

- PROPERTY LINE: ———
- CANOPY COVER / FOREST: [Symbol]
- EX. BUILDING: [Symbol]
- EX. CATEGORY I CONSERVATION EASEMENT: [Symbol]
- PROPOSED CATEGORY II CONSERVATION EASEMENT: [Symbol]
- CONSERVATION EASEMENT TO BE ABANDONED: [Symbol]
- SIGNIFICANT/ SPECIMEN TREE: ST-24
- CRITICAL ROOT ZONE: [Symbol]
- PROPOSED IMPROVEMENTS: [Symbol]
- PROPOSED LIMITS OF DISTURBANCE: [Symbol]
- EXISTING FENCE: X
- PROPOSED FENCE: [Symbol]



Proposed Fence (Lot 20)

- LOT 20 FENCE NOTES:**
1. NEW FENCE TO BE LOCATED AT LEAST 6" OFF PROPERTY LINE.
 2. FENCE POST HOLES ARE TO BE DUG AWAY FROM TREE TRUNKS.
 3. NO TREES ARE TO BE CUT DURING INSTALLATION OF THE FENCE.

PROFESSIONAL CERTIFICATE:
I hereby certify that these documents were prepared or approved by me and that I am a registered Landscape Architect under the laws of the State of Maryland. Registration No. 3041, Expiration date 04-26-2016.

John Owen Masel
Signature Date 05/15/2014



DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. **11995106A** including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: _____
Contact Person or Owner: **Robert & Patricia Adams**
Address: **12705 Altice Court Darnestown, MD 20878**
Phone and Email: _____
Signature: _____

DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. **11995106A** including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: _____
Contact Person or Owner: **Joseph Mathai & Patricia Kollappallil**
Address: **12706 Altice Court Darnestown, MD 20878**
Phone and Email: **301-832-1298**
Signature: _____

DEVELOPER'S CERTIFICATE

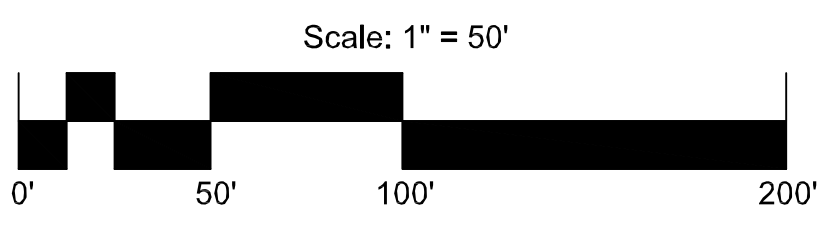
The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. **11995106A** including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: _____
Contact Person or Owner: **John & Teresa Messina**
Address: **12707 Altice Court Darnestown, MD 20878**
Phone and Email: **301-343-2714**
Signature: _____

DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. **11995106A** including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: _____
Contact Person or Owner: **Lawrence & Colleen Opak**
Address: **12708 Altice Court Darnestown, MD 20878**
Phone and Email: **301-758-5633**
Signature: _____



FINAL FOREST CONSERVATION DATA TABLE

ACREAGE OF TRACT	ACREAGE OF ROAD AND UTILITY R.O.V. REMAINING IN AGRICULTURE USE	ACREAGE OF ROAD AND UTILITY R.O.V. NOT TO BE IMPROVED	ACREAGE OF EXISTING FOREST	ACREAGE OF TOTAL FOREST CLEARED	ACREAGE OF TOTAL FOREST RETENTION	LAND USE CATEGORY	CONSERVATION THRESHOLD	AFFORESTATION THRESHOLD	FOREST WITHIN WETLANDS TO BE RETAINED	FOREST WITHIN WETLANDS TO BE CLEARED	FOREST WITHIN PRIORITY AREAS TO BE PLANTED	FOREST WITHIN 100-YEAR FLOODPLAIN TO BE RETAINED	FOREST WITHIN 100-YEAR FLOODPLAIN TO BE CLEARED	FOREST WITHIN 100-YEAR FLOODPLAIN TO BE PLANTED	FOREST WITHIN STREAM BUFFER TO BE RETAINED	FOREST WITHIN STREAM BUFFER TO BE CLEARED	FOREST WITHIN PRIORITY AREAS TO BE RETAINED	FOREST WITHIN PRIORITY AREAS TO BE CLEARED	FOREST WITHIN PRIORITY AREAS TO BE PLANTED	STREAM BUFFER-LINEAR FEET	STREAM BUFFER-AVERAGE WIDTH
1.94 ac	0.0 ac	0.0 ac	0.0 ac	0.0 ac	0.0 ac	HIGH-DENSITY RESIDENTIAL	20% = 0.39 AC	15% = 0.29 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	N/A	N/A

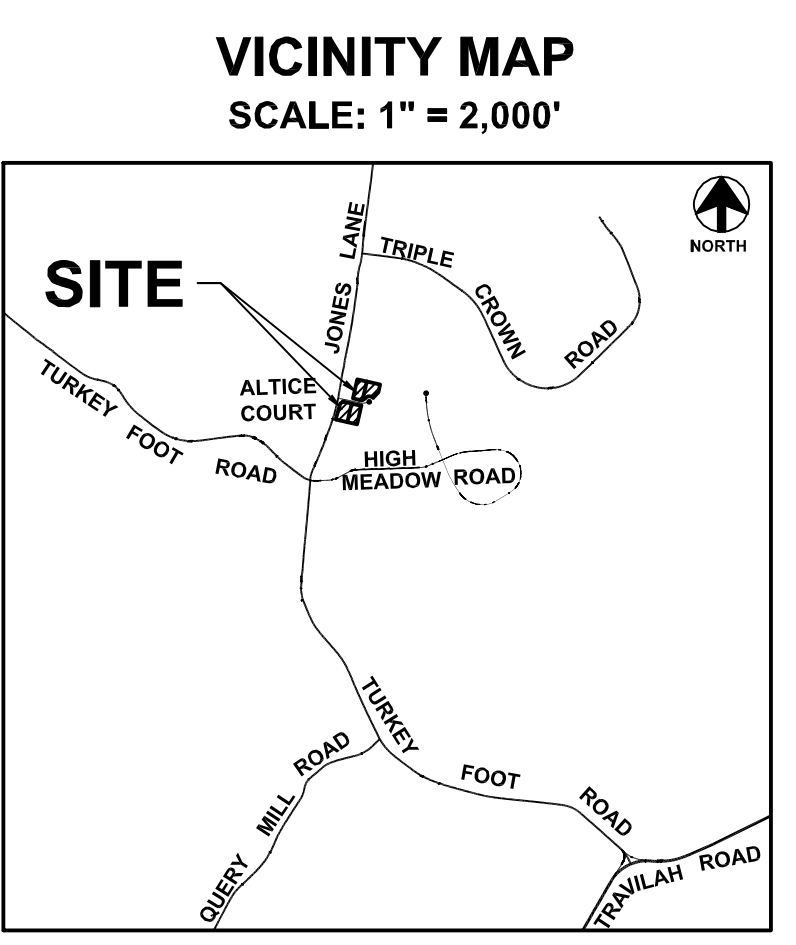
PREPARED FOR:

Robert & Patricia Adams
12705 Altice Court
Darnestown, MD 20878
301-519-6936

Joseph Mathai & Patricia Kollappallil
12706 Altice Court
Darnestown, MD 20878
301-832-1298

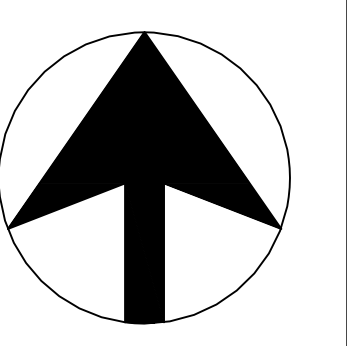
John & Teresa Messina
12707 Altice Court
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301-343-2714

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12708 Altice Court
Darnestown, MD 20878
301-758-5633



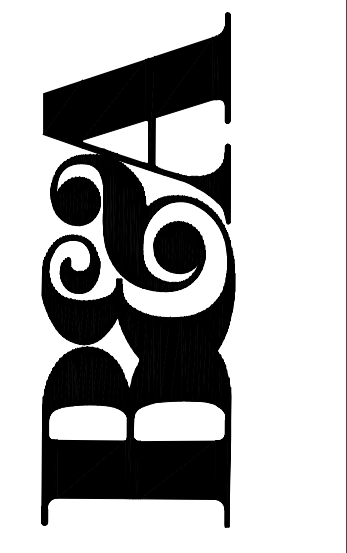
Sheet 1 of 2
Revisions

Rev. 01/07/14
Rev. 02/10/14
Rev. 05/08/14



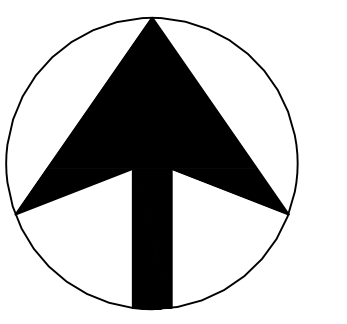
date: 8/7/2013
scale: 1" = 50'

Banning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gathersburg, MD 20877
(301)948-0240



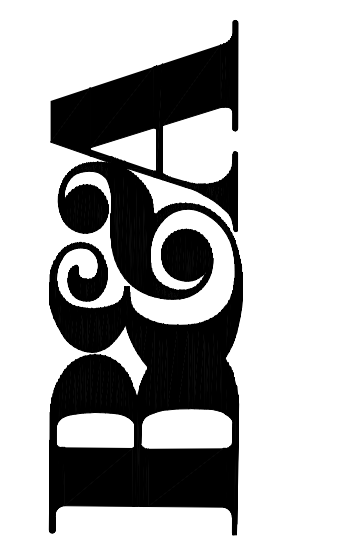
FINAL FOREST CONSERVATION PLAN (AMENDED)
POTOMAC CHASE II:
LOTS 14, 15, 20 & 21
12705, 12706, 12707 & 12708 ALTICE COURT
Montgomery County, Maryland

Revisions	
Rev. 01/07/14	
Rev. 02/10/14	
Rev. 05/08/14	



date: 8/7/2013
 scale: 1" = 50'

Benning & Associates, Inc.
 Land Planning Consultants
 8933 Shady Grove Court
 Gaithersburg, MD 20877
 (301)948-0240



PROFESSIONAL CERTIFICATE:
 I hereby certify that these documents were prepared or approved by me and that I am a registered Landscape Architect under the laws of the State of Maryland. Registration No. 3041, Expiration date 04-20-2016.
 Signature: *Joshua Owen Muesel* Date: 05/15/2014

INTERNATIONAL SOCIETY OF ARBORICULTURE

INTERNATIONAL SOCIETY OF ARBORICULTURE
 1400 WEST ANTHONY DRIVE
 CHAMPAIGN, IL 61821
 (217) 355-9411
 (217) 355-9516 FAX

DO NOT HEAVILY PRUNE THE TREE AT PLANTING. PRUNE ONLY CROSSOVER LIMBS, CO-DOMINANT LEADERS AND BROKEN OR DEAD BRANCHES. SOME INTERIOR TWIGS AND LATERAL BRANCHES MAY BE PRUNED; HOWEVER, DO NOT REMOVE THE TERMINAL BUDS OF BRANCHES THAT EXTEND TO THE EDGE OF THE CROWN.

STAKE TREES ONLY UPON THE APPROVAL OF THE LANDSCAPE ARCHITECT. SEE STAKING DETAIL.

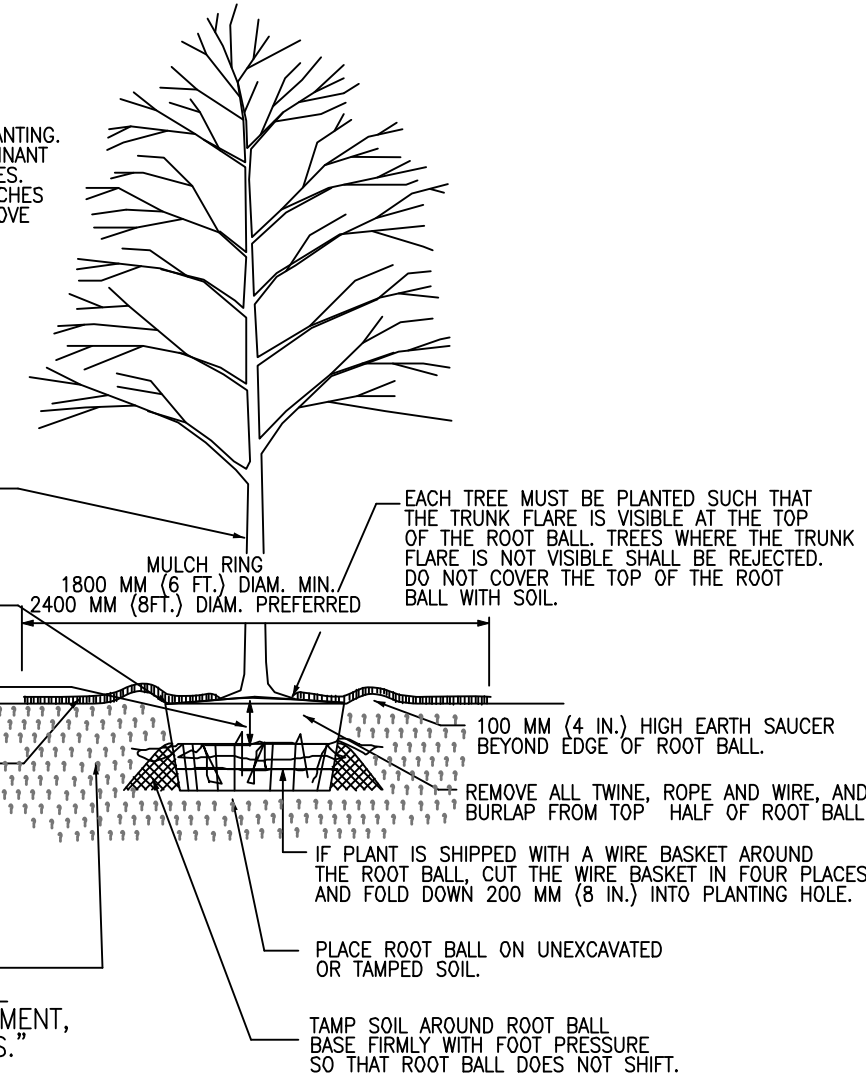
WRAP TREE TRUNKS ONLY UPON THE APPROVAL OF THE LANDSCAPE ARCHITECT. SEE WRAPPING DETAIL.

MARK THE NORTH SIDE OF THE TREE IN THE NURSERY, AND ROTATE TREE TO FACE NORTH AT THE SITE WHEN EVER POSSIBLE.

SET TOP OF ROOT BALL FLUSH TO GRADE OR 25-50 MM (1-2 IN.) HIGHER IN SLOWLY DRAINING SOILS.

50 MM (2 IN.) MULCH. DO NOT PLACE MULCH IN CONTACT WITH TREE TRUNK. MAINTAIN THE MULCH WEED-FREE FOR A MINIMUM OF THREE YEARS AFTER PLANTING.

NOTE: FOR DIMENSIONS OF PLANTING AREAS, TYPES OF SOIL AMENDMENTS, OR SOIL REPLACEMENT, SEE "SOIL IMPROVEMENT DETAILS."



TREE PLANTING DETAIL - B&B TREES IN ALL SOIL TYPES

NOTE: THIS DETAIL ASSUMES THAT THE PLANTING SPACE IS LARGER THAN 2400 MM (8 FT.) SQUARE, OPEN TO THE SKY, AND NOT COVERED BY ANY PAVING OR GRATING.

INTERNATIONAL SOCIETY OF ARBORICULTURE

INTERNATIONAL SOCIETY OF ARBORICULTURE
 1400 WEST ANTHONY DRIVE
 CHAMPAIGN, IL 61821
 (217) 355-9411
 (217) 355-9516 FAX

NOTE: FOR DETAILED REQUIREMENTS RELATED TO THE PLANTING OF THE TREE IN THE IMPROVED SOIL, SEE "TREE PLANTING DETAIL."

LOAMY SOIL

TAMP SOIL AROUND ROOT BALL. BASE FIRMLY WITH FOOT PRESSURE SO THAT ROOT BALL DOES NOT SHIFT.

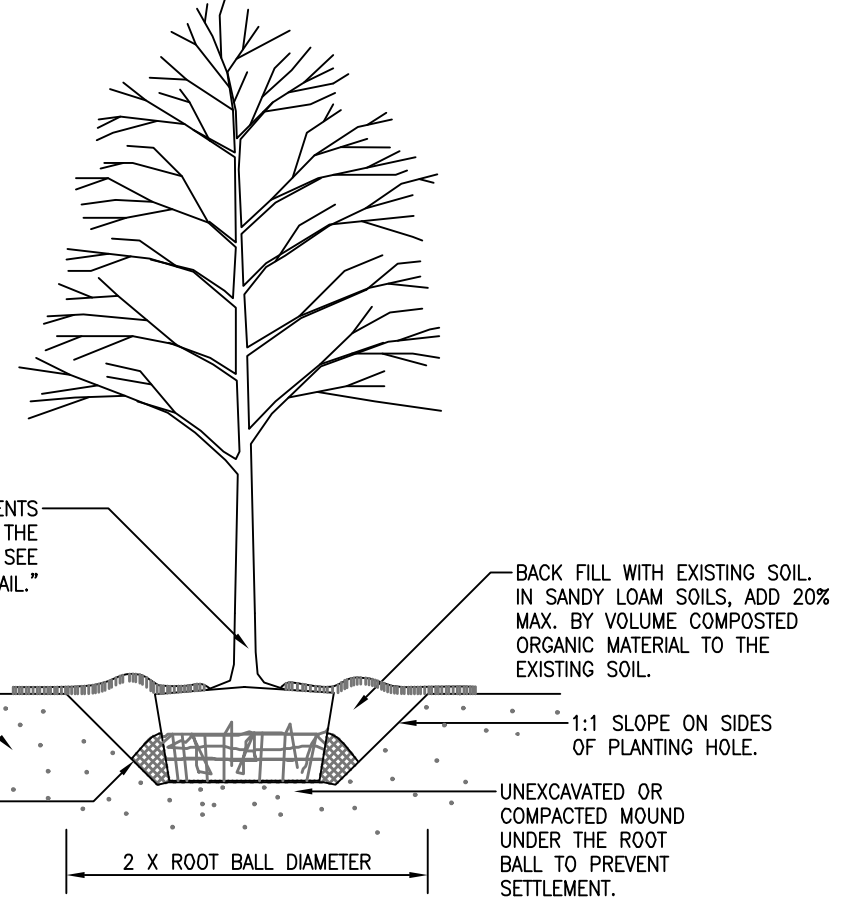
LOAMY SOILS INCLUDE THE FOLLOWING USDA TEXTURAL CLASSIFICATIONS AND HAVE A CLAY CONTENT OF BETWEEN 15 TO 27%: LOAM, SANDY LOAM AND SILT LOAM. NOTE THAT SOILS AT THE OUTER LIMITS OF THE LOAM CLASSIFICATIONS MAY PRESENT SPECIAL PLANTING PROBLEMS NOT ANTICIPATED BY THIS DETAIL.

LOAMY SOILS ARE DEFINED AS GRANULAR OR BLOCKY FRIABLE SOILS, A MIXTURE OF SAND, SILT AND CLAY PARTICLES WITH A MINIMUM OF 1.5% BY DRY WEIGHT ORGANIC MATTER. THE SOIL MUST NOT BE SO COMPACTED AS TO IMPED ROOT GROWTH OR DRAINAGE. THE SOIL STRUCTURE SHALL NOT BE PLATY OR MASSIVE. THE SOIL MUST BE TESTED FOR TEXTURE, DRAINAGE CAPABILITY, PH, AND NUTRIENT VALUES PRIOR TO DETERMINING PLANT SELECTIONS AND ANY ADDITIONAL SOIL IMPROVEMENTS.

NOTE: THIS DETAIL ASSUMES THAT THE AREA OF LOAMY SOIL AVAILABLE TO EACH TREE IS A MINIMUM OF 45 SQ. M (500 SQ. FT.)

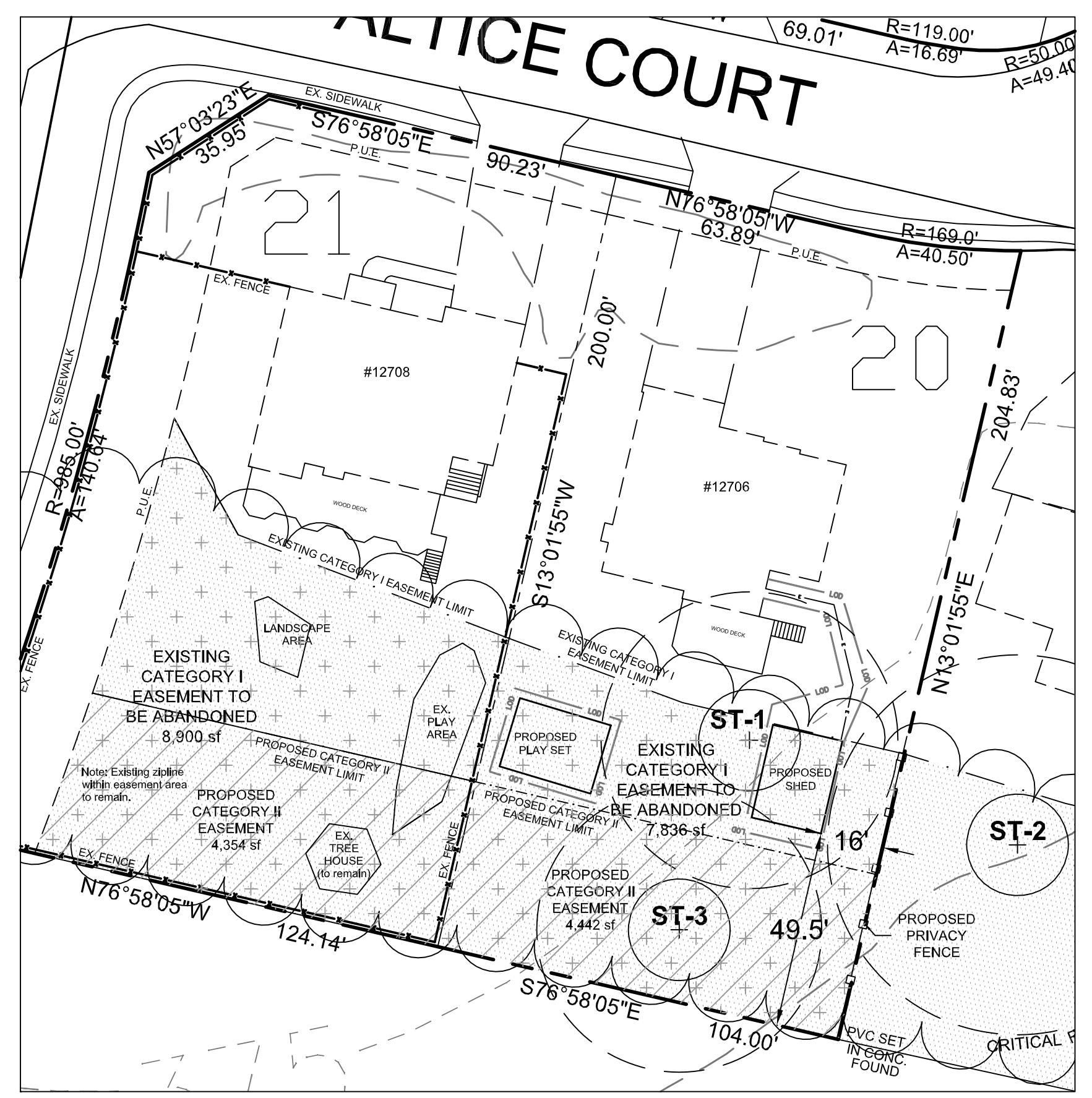
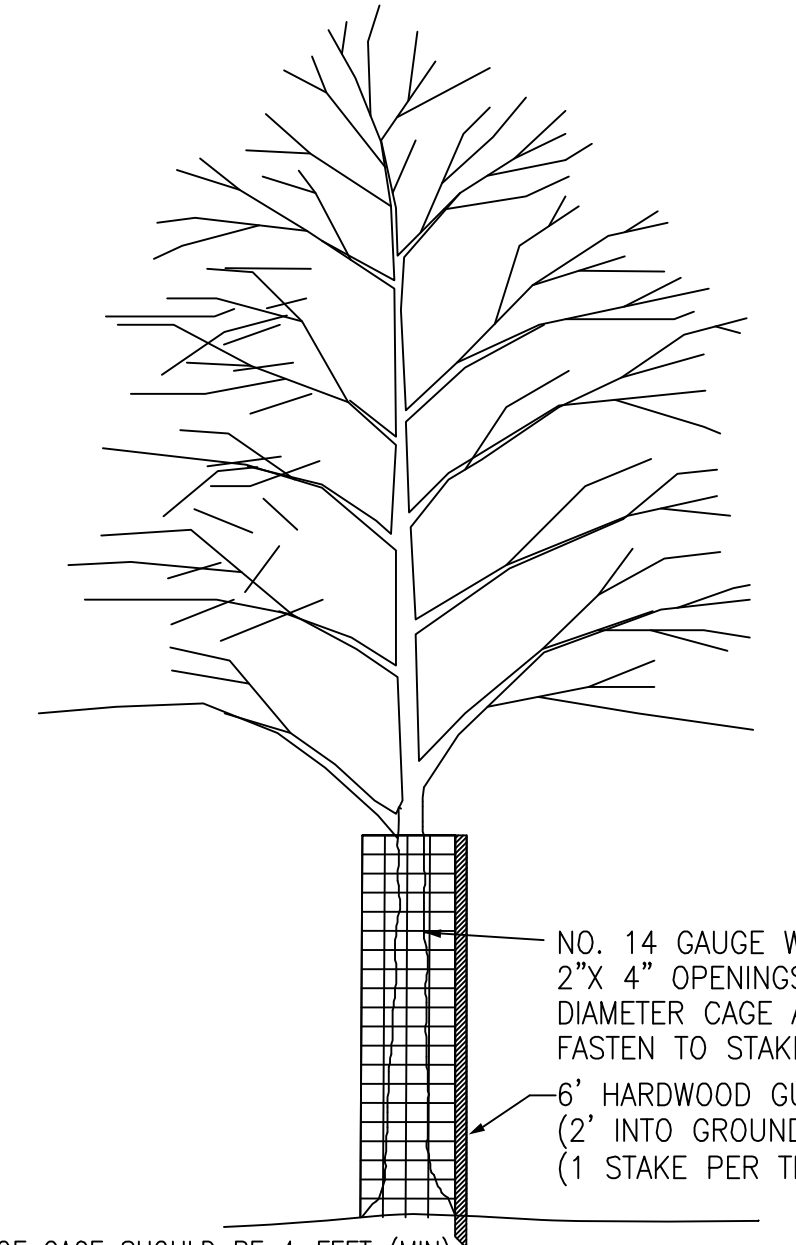
SOIL IMPROVEMENT DETAIL - TREES PLANTED IN NON RESTRICTED SOIL CONDITIONS

NOTE: THIS DETAIL ASSUMES THAT THE AREA OF LOAMY SOIL AVAILABLE TO EACH TREE IS A MINIMUM OF 45 SQ. M (500 SQ. FT.)

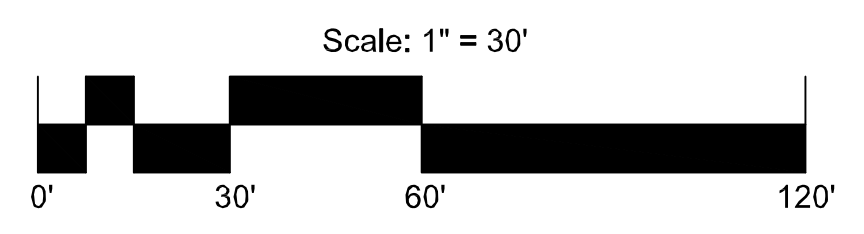


DEER PROTECTION CAGE

1. HEIGHT OF CAGE SHOULD BE 4-FEET (MIN)
 2. CAGE SHALL BE FASTENED TO STAKE WITH TWO (MIN.) 11-INCH RELEASABLE CABLE TIES (ONE AT TOP AND ONE 6" (MIN.) ABOVE THE GROUND.)
 3. DO NOT DAMAGE TREE DURING INSTALLATION.
 4. SUBSTITUTIONS MUST BE APPROVED BY FOREST ECOLOGIST.
 5. CAGES TO BE REMOVED AT DIRECTION OF FOREST ECOLOGIST.



DETAIL VIEW:
 SCALE 1" = 30'



FINAL FOREST CONSERVATION PLAN (AMENDED)
POTOMAC CHASE II:
 LOTS 14, 15, 20 & 21
 12705, 12706, 12707 & 12708 ALTICE COURT
Montgomery County, Maryland

CONSERVATION EASEMENT AGREEMENT

Category II

DEFINITIONS

Grantor: Fee simple owner of real property subject to a:
(i) Plan approval conditioned on compliance with a FCP; or
(ii) Plan approval conditioned on compliance with a conservation easement agreement (issued pursuant to Chapter 50 or 59, Montgomery County Code).

Grantee: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ("Commission").

Planning Board: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

Planning Director: Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, Montgomery County, or the Director's designee.

Plan: Sediment control permit approved pursuant to Montgomery County Code Chapter 19; preliminary plan approved under Montgomery County Code Chapter 50; site plan, development plan, planned unit development or special exception application approved under Montgomery County Code Chapter 59; mandatory referral reviewed pursuant to Article 28 of Maryland State Code Annotated; approved major utility construction (as defined by Washington Suburban Sanitary Commission's regulations).

Forest Conservation Plan ("FCP"): Forest Conservation Plan approved by the Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code.

Exhibit A:

- (i) FCP approved as a condition of receiving any of the Plan approval noted above; or
(ii) Approved and signed Plan referencing this Agreement.

IMP FD SURE \$ 0.00
RECORDING FEE 0.00
TOTAL 0.00
Res: MDR7 Rec: 12/30/94
MCK: JBJ BIL: 19
Dec 30, 1994 12:25 PM

WITNESSETH

This Agreement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor (or Grantor's agent) has obtained authority to develop pursuant to a Plan in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or other approving authority approved Grantor's Plan conditioned upon a requirement that development occur in strict accordance with a FCP approved by the Planning Board after full review of the FCP pursuant to the

94 DEC 30 P 12:27.6

FILED
MOLLY O. RUHL
CLERK OF DISTRICT COURT

provisions of Montgomery County Code Chapter 22A (Forest Conservation); Chapter 50 (Subdivision Regulations); and/or Chapter 59 (Zoning Ordinance); and/or

the Planning Board approved Grantor's Plan conditioned upon Grantor subjecting the property to be developed ("Property") or a portion of the property to be developed to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivision Regulations), and/or Chapter 59 (Zoning Ordinance) for the purposes set forth below running in favor of Grantee; and

WHEREAS, the location of this easement ("Easement") is as shown on Exhibit A (incorporated by reference into the terms of this Agreement); and

WHEREAS, the purpose includes preservation of trees and maintenance of tree cover, and preservation of the natural beauty of the property subject to the Easement and prevention of any alteration, construction or destruction that will tend to mar or detract from such natural beauty; and

WHEREAS, the purpose may include screening the approved new development from the sight of adjacent and abutting property owners to ensure maximum compatibility between existing and proposed new developments; and

WHEREAS, the Parties intend for the conditions and covenants contained in this agreement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Parties intend that a servitude be placed upon the Property to create a conservation benefit in favor of the Planning Board.

NOW, THEREFORE, the Grantor has executed this agreement for no monetary consideration but for the purpose of ensuring compliance with development standards imposed by Montgomery County law as a condition of development approval. The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an Easement on the Property of the size and location described in Exhibit A, and further described on the applicable record plat(s), of the nature and character described herein. This Easement constitutes a covenant real running with the title of the land, and is granted to preserve, protect and maintain the general topography and natural character of the land. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the parties.
2. No tree with a diameter greater than six inches (at a height of four feet from the ground) or more than thirty feet in

height (measured from the ground) ("Trees") or any tree planted as part of an afforestation or reforestation plan may be cut down, removed or destroyed without prior written consent from the Planning Board staff. Diseased or hazardous Trees or Tree limbs may be removed to prevent personal injury or property damage after a minimum of ten business days notice to the Planning Director, unless such notice is not practical in an emergency situation.

3. Understory plant materials including, but not limited to brush, shrubs, saplings, seedlings, undergrowth and vines may be cut down, removed or destroyed without prior written consent of the Planning Director, provided their removal does not damage, injure or kill Trees or create erosion or slope stability problems and provided that they were not planted as part of an afforestation or reforestation plan.

4. Fences are permitted within the Easement provided their construction and maintenance can be executed in compliance with the restrictions of this agreement.

5. Mowing may occur, provided it does not damage, injure or kill Trees. Grantor may supplement existing or replace dead Trees or undergrowth with new plantings provided that new plantings are characteristic of trees or undergrowth materials native to Maryland.

6. The following activities may not occur without prior written consent from the Planning Director:

- a. Construction (including roadways, private drives, paths and trails), excavation, grading or retaining walls.
- b. Erection of any buildings or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls.
- c. Activities which in any way could alter or interfere with soil or slope stability or drainage (including alteration of stream channels, stream currents or stream flow).

The Planning Director may approve these activities upon a finding that the proposed activity will not interfere with the purposes stated above, and in particular with tree preservation; screening existing and proposed development from adjacent and abutting landowners; maintenance of tree cover; and preservation of open space. This approval exception shall be narrowly interpreted, and the Director is under no obligation to authorize any of these activities when approval is requested.

7. Timber cutting or any other industrial or commercial activities shall not occur.

8. No posting of any advertising, including signs or

billboards, shall occur.

9. No dumping of unsightly or offensive material, including trash, ashes, sawdust or grass clippings shall occur. Natural biodegradable materials may be allowed in a properly located, designed, managed and maintained compost pile, provided the activity does not damage adjacent trees. Upon prior written approval of the Planning Director, suitable heavy fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is covered by arable soil or humus and properly stabilized.

10. The Easement shall not be used as a site for any major public utility installations such as, but not limited to, electric generating plants, electric transmission lines, gas generating plants, gas storage tanks, radio or microwave relay stations, and telephone exchanges except upon prior written consent from the Planning Director. Nothing in this paragraph prevents the construction or maintenance of (on, over or under the property) facilities normally needed to serve a residential neighborhood and which have been approved by the appropriate reviewing agencies. These facilities should be located to prevent or minimize any loss of trees.

11. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the land within the Easement.

12. Grantor authorizes Planning Board representatives to enter the Property and Easement at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors or assigns have complied with the restrictions, conditions, and easements established herein. This Easement does not convey to the general public the right to enter the Property or Easement for any purpose. The Easement does not restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by applicable community or homeowner association covenants and by-laws.

13. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Agreement, the Planning Board shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to its original natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

14. Grantor further agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any interest in the Property is conveyed.

15. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this agreement.

16. All written notices required by this Agreement shall be sent to the Planning Director, M-NCPPC, 8787 Georgia Avenue, Silver Spring, Maryland 20910.

TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

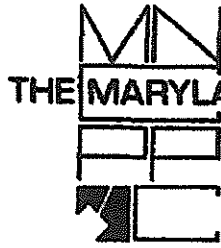
* * * * *

This is to certify that the within instrument has been prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.



Michele Rosenfeld
Associate General Counsel
M-NCPPC

LF 13178.426



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Department of Parks, Montgomery County, Maryland
9500 Brunett Avenue • Silver Spring, Maryland 20901

December 30, 1994

Clerk of the Circuit Court
Judicial Center
50 Courthouse Square
Rockville, Maryland 20850

Dear Clerk:

Please record among the Land Records of Montgomery County, Maryland the attached conservation easement on behalf of The Maryland-National Capital Park and Planning Commission. The Commission is a state-created agency authorized to buy, sell and otherwise dispose of real property interests pursuant to Article 28 of the Annotated Code of Maryland and therefore is exempt from transfer and recording fees.

Your cooperation in this regard is appreciated.

Sincerely,

William E. Gries
Land Acquisition Specialist

WG/kb
/clerk.ltr/

MONTGOMERY COUNTY PARKS

January 21, 2014

Michael Holstein
Jayne Holstein
12700 Altice Court
Gaithersburg, MD 20878

Maryland-National Capital Parks and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
Attn: Mr. Stephen D. Peck
ISA Certified Arborist
Development Applications & Regulatory Coordination

Application: Preliminary Plan Application
Plan Number: 11995106A
Subdivision: Potomac Chase II: Lots 14,15,20 & 21
Reference: Amendment to Revise Conservation Easement

Dear Mr. Peck:

We would like to inform you that we are aware of the Preliminary Plan Application as referenced above by our neighbors to have their Conservation Easements revised. We would also like to let you know that we are in full of support their efforts. We see their intent to have responsible use of their property while maintaining all conservation of the land, via purchasing separate land in protected areas, as a positive outcome for all stakeholders.

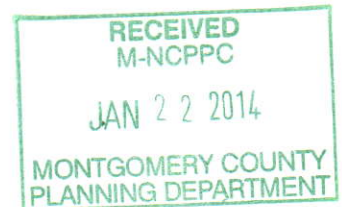
We hope the County Review Board will look kindly upon their request and hope for a successful outcome for all.

Sincerely,


Michael Holstein


Jayne Holstein

CC:
Colleen Opack
Teresa Messina
Patricia Adams
Joseph Mathai



January 21, 2014

Matthew Cornner
Sunyoung Cornner
12701 Altice Court
Gaithersburg, MD 20878

Maryland-National Capital Parks and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
Attn: Mr. Stephen D. Peck
ISA Certified Arborist
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Sincerely,

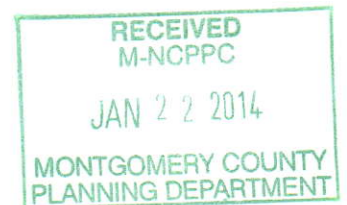


Matthew Cornner



Sunyoung Cornner

CC:
Colleen Opack
Teresa Messina
Patricia Adams
Joseph Mathai



January 21, 2014

Brian Quinn
Ann Quinn
12702 Altice Court
Gaithersburg, MD 20878

Maryland-National Capital Parks and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
Attn: Mr. Stephen D. Peck
ISA Certified Arborist
Development Applications & Regulatory Coordination

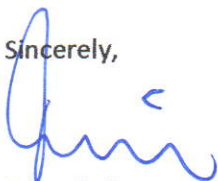
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Reference: Amendment to Revise Conservation Easement

Dear Mr. Peck:

We would like to inform you that we are aware of the Preliminary Plan Application as referenced above by our neighbors to have their Conservation Easements revised. We would also like to let you know that we are in full of support their efforts. We see their intent to have responsible use of their property while maintaining all conservation of the land, via purchasing separate land in protected areas, as a positive outcome for all stakeholders.

We hope the County Review Board will look kindly upon their request and hope for a successful outcome for all.

Sincerely,

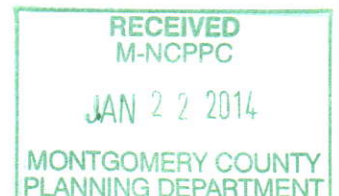


Brian Quinn



Ann Quinn

CC:
Colleen Opack
Teresa Messina
Patricia Adams
Joseph Mathai



January 21, 2014

Sanjay Rajvanshi
Niti Rajvanshi
12709 Altice Court
Gaithersburg, MD 20878

Maryland-National Capital Parks and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
Attn: Mr. Stephen D. Peck
ISA Certified Arborist
Development Applications & Regulatory Coordination

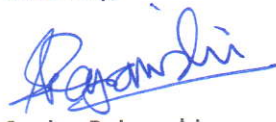
Application: Preliminary Plan Application
Plan Number: 11995106A
Subdivision: Potomac Chase II: Lots 14,15,20 & 21
Reference: Amendment to Revise Conservation Easement

Dear Mr. Peck:

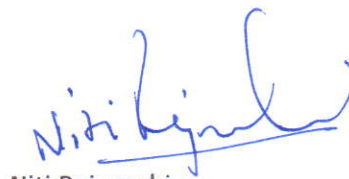
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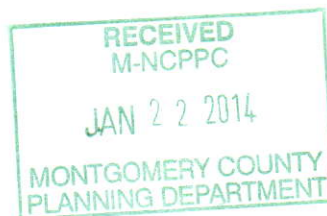


Sanjay Rajvanshi



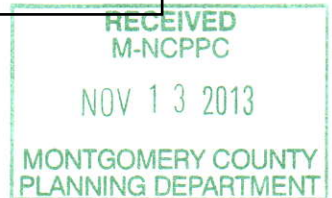
Niti Rajvanshi

CC:
Colleen Opack
Teresa Messina
Patricia Adams
Joseph Mathai



John Libeg
12704 Altice Court
Darnestown, MD 20878
301-869-6962

ATTACHMENT 10



November 3, 2013

Mr. Stephen Peck, Senior Planner
M-NCPPC - Development Review Division
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Re: Potomac Chase II, Block Q, Lot 20 (a/k/a Potomac Chase)
Request for Specimen Tree Variance
12706 Altice Court, Darnestown, Maryland 20878
And
Notice of Application #11995106A
Preliminary Plan – To Modify a Previously Approved Forest Conservation
Easement
Lots 14, 15, 20 and 21, Potomac Chase II

Dear Mr. Peck,

Along with my wife, I am the owner of Lot 19, Block Q, Potomac Chase II having the mailing address 12704 Altice Court, Darnestown, MD. On August 14, 2013, Benning & Associates, Inc. on behalf of Joseph Mathai and Patricia Kollappallil filed a request that M-NCPPC approve a Tree Specimen Variance for the purposes of constructing a shed. The proposed location of the shed is in what is now a forest conservation area over which an Easement Agreement Category I currently exists. Also, based on another letter sent to me by Benning & Associates, Inc. dated September 19, 2013, the variance is in conjunction with application #11995106A to amend a previously approved forest conservation easement on Lots 14, 15, 20 and 21, Block Q, Potomac Chase II. The Specimen Tree for which a variance is being sought is identified as ST-2 by Benning & Associates, Inc., and is located on my property. It is a large White Oak approximately 60 to 80 feet in height.

**REQUEST TO DENY THE VARIANCE
AND REQUEST FOR IMMEDIATE ACTION
ON THE PART OF MONTGOMERY COUNTY TO REMEDY
EASEMENT AGREEMENT CATEGORY I VIOLATIONS**

With this letter, I formally ask that you deny the variance on Lot 20, as well as any request by owners of any and all lots of Potomac Chase II, Block Q, to extinguish or modify the Easement Agreement Category I forest conservation easement. I also ask that the Planning Board in accordance with the easement:

1. impose civil monetary fines and seek injunctive relief in any court of competent jurisdiction to stop the destruction of understory on Lot 20 and Lot 18,

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Darnestown, MD 20878
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2. require the owners of Lots 14 and 15 to cease and desist from mowing grass within the Easement Agreement Category I conservation area, and be required to reforest the area with the trees similar to those they allowed to die when the developer originally planted them as part of the Forest Conservation Plan for Potomac Chase II. Further, to allow that area defined as Easement Agreement Category I - Reforestation Area to return to its natural state as was the intention of Montgomery County 14 years ago,
3. require the owners of Lot 20 to remove fill dirt that was placed within the conservation zone in the immediate area where the shed is proposed to be placed, and restore the natural drainage of that land so that water, now being directed upon my land by that change in topography, be allowed to return to its natural drainage path and drain to the rear of Lot 20, and not onto my lot as is currently occurring,
4. take appropriate action to require the owners of Lots 20 and 18 to immediately commence restoration of the understory in the conservation area portions of those lots by hydro-seeding or some other acceptable method so as to stop ongoing erosion. Further, move to prevent future erosion from occurring on those lots as well as the erosion occurring on my lot as a result of the intentional destruction of understory on Lot 20 by its owners,
5. levy fines on the property owners and especially landscaping companies of Lots 21, 20, 18, 15 and 14 for their, in my opinion, knowing, continuous and flagrant violation of the requirements of the Easement Agreement Category I, even after being told of the existence of the conservation easement and prohibitions against mowing in that area, and
6. that the owners of Lot 21 be required to remove the unpermitted structure surrounding a tree, children's play equipment, and other structures that have been placed in the conservation zone. Those items were placed there even after being aware of other enforcement actions that took place in Potomac Chase II several years ago and before they placed these items in the forest conservation area.

To do otherwise would be in direct contravention to the terms of the Easement Agreement Category I and spirit of the forest conservation policies promulgated by Montgomery County for the protection and preservation of forest land. Failure to enforce will also be a reinforcement of, what in my opinion, is continuous, deliberate, egregious and possibly illegal behavior on the part of certain land owners in Potomac Chase II. Failure to enforce the rules of the conservation area sets a bad precedent demonstrating to all other homeowners in Montgomery County subject to the requirements of Category I and Category II conservation easements, that the Planning Board is unwilling to adequately enforce the rules and regulations it has set forth to preserve trees and forest land within Montgomery County.

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**POTENTIAL TO DAMAGE SPECIMEN TREES
AND BUILDING IMPROVEMENTS**

Over the last 14 years, I have experienced a loss of no less than 12 trees within the conservation zone. With the permission and direction of your office and at considerable expense, I removed a number of dead trees several years ago to protect the remaining trees on my lot, and foster their growth. At least four of those trees were uprooted or toppled as a result of shallow roots or poorly developed root systems.

The roots of the Specimen Tree on my lot, identified by Benning & Associates, Inc, as ST-2 and for which my neighbor requests a variance, extend well onto the land of my neighbor on Lot 20. So do the roots of his trees on land owned by me. Construction of a shed within the area delineated by Benning & Associates, Inc. is specified as the critical root system area for ST-2, and will undoubtedly compromise its root system. The tree is sufficiently large such that, should failure of the root system occur, the tree could fall in such a way as to significantly damage my home. I estimate the tree to be 60 to 80 feet tall. The tree could easily impact my home should it fall over. The area of the roots that would be compromised is on the West Side of the tree, the same direction as the prevailing wind (generally west to east, and from the south in most severe storms). Weakening of the roots on the west or south side of ST-2 would make it more likely to topple from strong winds from the west or south should the roots of my tree on Lot 19 be compromised by actions of the owners on Lot 20. All the trees on my lot that have fallen have done so in an easterly or northeasterly direction. My house is northeast of the Specimen Tree (ST-2) on my lot putting my home into the most probable fall zone should it be uprooted.

The variance indicates that electrical power will be provided to the shed as well. Presumably, power lines would be run underground. This would also disturb and sever the root system of specimen tree ST-2 as well as other trees further placing that tree in jeopardy. Additionally considering the disturbance of land associated with the construction of a privacy fence along the property line between Lots 20 and 19 and taking into account the intrusive nature of the shed, its construction, and continual use within the confines of the Easement Agreement Category I conservation area itself, I believe that approval of this variance is not in the best interest of Montgomery County or any land owners in Potomac Chase II, even the owners of Lot 20 themselves.

While the application by the owners of Lot 20 seeks a variance for the Specimen tree (ST-2) on my lot, the variance makes no mention of the existence of two Specimen Trees on Lot 20 itself. An examination of the drawing by Benning & Associates, Inc. clearly shows the critical root system of a specimen tree on Lot 20, delineated as ST-3 and being another large White Oak. Benning & Associates, Inc. has also delineated a critical root system for that tree extending under about 40 percent (estimated) of the footprint area planned for the shed. And while the root system of a third Specimen Tree (ST-1) has not yet reached sufficient mass such that its roots are currently beneath where the proposed

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shed is requested to be placed, continued growth of that tree is likely to reach the area of the proposed shed in the not-so-distant future possibly stunting the growth of that tree, and making it vulnerable to loss.

The existence of the critical root system of one specimen tree should be sufficient for you to deny this variance. The existence of the critical root system of two specimen trees and potentially a third should be more than sufficient reason to deny this variance and deny construction of a shed in the conservation zone. In my opinion, allowing the variance has a high potential to damage, injure or kill trees and continue to create erosion and land stability problems, issues that already exist in the immediate area where the shed is requested to be situated. Discussion of those violations follows.

KNOWLEDGE OF THE EASEMENT BY OWNERS WHEN THEY PURCHASED THEIR LOTS

While the back 70 to 75 feet of the lots located on the south side of Altice Court (Lots 18, 19, 20 and 21) have an Easement Agreement Category I forest conservation easement over them, the conservation easement was a fact to be found when each lot owners, including Lot 20, purchased their property having been recorded January 23, 1996 in Liber 13178 at Folio 412 of the land records of Montgomery County, Maryland, before any home construction in Potomac Chase II ever took place or any lots were sold. Notice of the existence of a conservation easement is required in every sales contract in Montgomery County, and reference to the easement is indicated on the plat recorded for Block Q, Potomac Chase II in Plat Book 178 at Plat 19978.

Recording of both the easement and plat as well as specific reference to the plat in each sales contract and deed for Block Q beginning when the first lot was sold by the developer until now gave constructive notice to all parties interested in owning land in Block Q of the existence of the easement, and the terms and conditions it imposes on landowners, and alternatively the rights this easement confers. These recorded documents can be easily found by any competent title examiner; thereby, adequately providing constructive notice of the Easement Agreement Category I to all parties interested in owning, or financing land in Potomac Chase II. Each lot owners knows that their property is subject to the easement and is well aware of the encumbering nature it imposes on the lots over which it runs. Owners also well know the benefits the easement provides such as screening from adverse development, production of shade, providing habitat for small animals, and protection of the watershed among other benefits. Each owner also knows the easement is perpetual in nature, a covenant running with land and is binding on the property owners, its heirs, successors and assigns. By their purchase of a lot in Potomac Chase II, the owners all made a covenant to abide by the terms and conditions of the easement.

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Since purchasing their lot in Potomac Chase II, it appears some of the property owners no longer want to abide by the promise they made regarding the restrictive covenants in the Easement Agreement Category I. The request of the owners of Lot 20 to place a shed in either a Category I or Category II conservation area is an act in clear contravention to the purposes of either of the forest conservation easements as recorded.

**LACK OF COMPELLING REASON FOR THE VARIANCE
CHANGE OR EXTINGUISHMENT OF
THE EASEMENT AGREEMENT
CATEGORY I FOREST CONSERVATION EASEMENT**

There is no compelling reason for granting this variance or granting a change in the Easement Agreement Category I, certainly none so compelling as to go against the forest conservation plan originally planned for this community. Plenty of room exists on the West side of Lot 20 to the rear of the main structure for both a shed and play equipment outside the confines of the Easement Agreement Category I forest conservation area. In fact, Lot 20 at one time had a swing set to the rear of the property outside the conservation area. Preservation of forest land is the primary reason for the existence of the Easement Agreement Category I.

This easement was given to the County by the developer in exchange for certain development rights. With regard to the conservation areas, nothing has changed since the development of Block Q except the uncooperative nature of the land owners with regard to the easement. Lot owners promised to protect the area in the conservation zone. Now faced with honoring that covenant, they want to go back upon their pledge rather than correct, what in my opinion are their deliberate, egregious and ongoing violations.

The problem has been worsened by Montgomery County Planning's unwillingness to enforce even the most egregious violations of the terms of conservation easement. Rather M-NCPPC has elected to delay enforcement of the law to permit time for owners to petition to allow for changes in the forest conservation agreement itself. The Planning Board knew this might happen when the easement was created. In anticipation of such an attitude on the part of lot owners, the easement was made to be perpetual. The word "perpetual" or phrase "in perpetuity" is mentioned three times within conservation easement to describe itself. The Easement Agreement Category I was also given to the Planning Board "TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever".

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PURPOSE, INTENT, AND DURATION OF THE EASEMENT

The purpose(s) of the Easement Agreement Category I include:

1. preservation of trees and maintenance of tree cover,
2. preservation of natural beauty of the property subject to the easement,
3. prevention of any alteration, construction or destruction that will tend to mar or detract from such natural beauty, and
4. screen an approved development from the sight of adjacent and abutting property owners to ensure maximum compatibility between existing and new developments.

I have been told by one of the property owners of the farm land to the south of Lots 21, 20, 19 and 18, that abuts the easement, that he is currently pursuing plans to develop that land at some time in the not-so-distant future. Screening from other development could be a big issue with regard to development of land to the south.

The intent and duration of the Easement Agreement Category I include:

1. That the conditions and covenants contained in the agreement to run with the land in "perpetuity" and be binding on all subsequent owners and occupants of the property.

While the owners of Lot 20 have joined with the lot owners of Lot 21 to have portions of the Easement Agreement Category I modified to an Easement Agreement Category II, and to have the conservation agreement on Lots 14 and 15 extinguished entirely, an Easement Agreement Category II conservation easement is only slightly less restrictive than the Category I. Neither category permits **"....the construction of buildings, sheds, dog pens, play equipment or retaining walls" without the permission of the Planning Director.** While, according to the easement, it is within the power of the Planning Director to permit such exceptions, he may do so only:

".....upon finding that the proposed activity will not interfere with the purposes stated above, and in particular with tree preservation; screening existing and proposed development from adjacent and abutting landowners; maintenance of the tree cover and preservation of open space."

In my opinion, granting the variance does not meet either the rigid test or stated purposes of the easement regardless of whether it is a Category I or Category II, and is in direct contravention to the purposes of the easement.

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If this variance is permitted, there is no reason to have the conservation easement at all. Rather than see this variance approved in such a piecemeal fashion, I would support extinguishment of the **entire conservation easement** encompassing Potomac Chase II so long as it be extinguished without prejudice or cost to me or any further obligations on my part. Also, all costs and reforestation obligations (monetary or otherwise) be at the sole expense of the applicants of #11995106A, and the owners of the lots cited for violations of the conservation zone be required to pay the fines associated with their violations as part of the agreement to extinguish the easement.

THE PERPETUAL NATURE OF THE EASEMENT

The existing Easement Agreement Category I is very specific with regard to the intention of Montgomery County Planning Board when the easement was placed over the plat. The easement indicates that it is to be "perpetual" and "forever" and be a covenant running with the land, and was granted by the developer to M-NCPPC to preserve, protect and maintain the general topography and natural character of the land. Allowing improvements to be placed in the easement is contrary to the accomplishment of that goal. The easement was created and intended to be an encumbrance "forever" to the land **"... in perpetuity conveying and binding upon the Grantor, its heirs, successors and assigns."**

The intention of the duration of the easement is also made crystal clear by the Planning Board within the easement itself. By its reiteration of the words or phrase "**perpetual**" or "**in perpetuity**" no less than three times in the easement and the word "**forever**" to describe its duration, it is clear that it is the intention of the easement to constitute **"..... a covenant running with the title to land", and that the easement is binding on the land owners, its heirs, successors and assigns.**

CREATION OF RIGHTS IN REAL ESTATE FOR ALL OWNERS IN THE PLAT, NOT JUST THE APPLICANTS

While the easement is encumbering, it also provides positive rights in real estate to M-NCPPC and all the lot owners in Potomac Chase II. Each person owning (or even renting) a lot in Potomac Chase II has the right to believe that the protection afforded by the Easement Agreement Category I would be there to protect his property for his lifetime, and the lifetime of his children or anyone to whom the property is conveyed. This language effectively confers upon **all the owners and occupants of lots in Block O, Potomac Chase II** certain indivisible and irrevocable rights in real estate which can only be extinguished by a unanimous agreement between the lot owners and Montgomery County, or acquired by the County by a action of eminent domain. The easement running across Lot 20 Potomac Chase II was not created as an individual easement over Lot 20 or any individual lot.

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For example, the amount of tree canopy and reforestation required was not based on the size of individual lots, but rather in relationship to the 5.34 acres encompassing the plat as an aggregate. Some lots were permitted to have little or no trees on them because adequate forest was provided somewhere else on the plat.

Another easement over Potomac Chase II demonstrates this concept clearly, and provides added support for the unitary nature of the conservation easement. Consider this example.

A WSSC drainage easement runs between Lots 16 and 17 in Potomac Chase II. And while the easement does not run over any other lots in the subdivision, anything that happens to this easements not only impacts the specific lot(s) over which it runs, but directly impacts the other properties also encumbered or even affected by the easement. Were the owners of Lots 16 and 17 to apply to the county to remove the drainage easement across those lots and that easement were to be extinguished (as unlikely as this would ever be), and further the owners of those lots chose to remove the storm drains, because that easement currently serves as drainage for all lots on the street, it would not only impact drainage on Lots 16 and 17, but would impact drainage of storm water on the whole street, even though no storm drainage easement exist over the remaining lots in the plat. As the storm drains on Lots 16 and 17 serve to drain all the lots on the plat, the easement on Lots 16 and 17 is “*unitary*” to the entire plat. In the same way that this drainage easement is unitary, so it is with the Easement Agreement Category I easement encompassing the plat. Extinguishment or modification of the Category I conservation easement impacts all nine lots in the plat, not just the lots over which it runs.

Because the easement was created to encompass the entire plat and not individual lots, the easement is *unitary* in nature and *indivisible*. The mere fact that this variance is required, that is allowing adjoining neighbors to comment on actions in the conservation area adjoining their property, clearly demonstrates the unitary nature of the easement. While the owners have fee simple title to their lots, their fee simple interest is subject to the police power of the County as it relates to planning and zoning. Like the land underlying a condominium, all owners are vested in the rights and obligations of the easement in a *unitary and undivided* way such that the actions of an individual lot owners relative to the easement or plat impact all lot owners.

SUFFICIENT SPACE OUTSIDE THE EASEMENT EXISTS TO PROVIDE FOR A SHED AND PLAY AREA

The purpose(s) and intent of the lot owners is secondary to the purpose(s) of the easement. While the conservation easement does encompass approximately 70 to 75 feet of the rear portion of the lots on the south side of Altice Court (as it does mine as well),

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no lot is so limited that a shed cannot be constructed on land outside the conservation easement area. Construction of an accessory building is permitted by County zoning anywhere behind the main structure of the house as long as side yard requirements and building restriction line requirements are adequately met. Depending on how the Montgomery County Zoning Code defines the rear of the house on Lot 20, there may be as much as 3,000 to 4,000 square feet of mostly level land outside the conservation zone beyond the dominant portion of the main structure for construction of a shed and play area. While I do not know the size of the proposed shed, I expect that it will not have more than a 150 square feet footprint. As such, Lot 20 has more than sufficient space outside the confines of the easement for a shed and play area for children, negating the need to put a shed in land strictly forbidden by Easement Agreements Category I and II.

Also, there is nothing in the easement that precludes owners or their children from use of the conservation zone as long as they do not violate the other restrictions within the easement. I have witnessed children playing in the easement all last summer, most recently during the period October 27 through November 2, 2013. Easement Agreement Category I and II both explicitly forbid constructions of a shed and children's play equipment (both proposed for the conservation zone in the variance). Were there some compelling reason (such as the health and safety of owners, or temporary construction to alleviate flooding problems, etc.), I could understand the request for a variance although I still would not support construction of structures in the easement. That being said, there is no compelling reason for the shed and play area to be placed within the conservation easement, and no compelling reason for approving a variance for Lot 20 to accommodate those things. The owners merely "**wanting to**" is not a sufficient cause or reason to approve this variance given the harm the change could inflict on specimen trees, and animals that routinely and nightly visit the forest conservation area.

CURRENT VIOLATIONS

In my opinion, there are intentional, continuous and egregious violations of the current easement that exist on Lot 20, 21, 18, 14 and 15. On Lot 20, these violations include destruction of understory, mowing of grass, and alteration of grade and topography. Lot 20 has suffered significant soil erosion as a result of the loss of that lot's understory, and has resulted in storm water inundating my lot and causing additional soil erosion there. This is beside the numerous other violations about which I complained on Lots 18 and 21 of Potomac Chase II in the past 12 to 18 months. **In my opinion, the owners of Lot 20 (as well as Lots 21, 18, 14 and 15) have continuously and egregiously violated the requirements of the existing Category I conservation area. If the past is any indication of the future, it is unlikely that the owners of Lot 20, or any other owners currently in violation in Potomac Chase II, will voluntarily comply with the more lenient requirements of a less stringent conservation zone, especially if no penalties or fines are imposed upon them now for the current violations.**

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For in excess of a year, I have complained to your office about violations of the conservation zone on Lots 21, 20, 18 and 14 in Potomac Chase II. Violations include mowing of grass on Lots 20 and 14, soil erosion on Lot 20, killing of the understory on Lots 20 and 18, and play equipment and structures in the conservation zone of Lot 21.

In the past, the owners of Lot 20 also placed landscaping fabric covered with wood mulch over the entire area of the conservation zone on that lot to purposely kill the understory, and prevent its growth. That act may have prevented water from entering the soil of Lot 20 and may have already damaged the root structures of Specimen Trees ST-3 and ST-1, and prevented other trees on that lot from reaching Specimen Tree status by stunting their growth. It also limited absorption of water into the ground for understory development, and caused excessive water runoff to adjacent lots. Understory growth would have helped mitigate this problem slowing erosive water runoff, and providing for absorption of storm water within the confines of Lot 20.

INCONSISTENCY WITH MONTGOMERY COUNTY POLICY

It would seem inconsistent policy on the part of M-NCPPC to allow a shed in the conservation zone of Lot 20 when, several years ago, owners of Lots 18 and 14 were required to remove sheds illegally constructed in the same exact conservation zone. **I do not believe your office can legally or morally justify forcing those lot owners to go to the time and expense of removing sheds from the conservation zone where no trees were at risk, and then summarily allow construction of a new shed in the exact same conservation area where specimen trees are at risk.** I believe that would leave the county open to criticism or even a legal action by one of those homeowners, and your office open to controversy.

At present, there is almost no understory on either Lot 20 or 18 leaving those lots open to massive soil erosion. Additionally, in the area of Lot 20 where the shed is proposed, the owners (without permission from M-NCPPC) altered the grade of the land with fill dirt from the extension of their driveway a couple of years ago. The result of that grading, along with a redirection of water from their rainspouts, has caused that area of Lot 20, exactly where the owner proposes to put his shed and underground electric lines, to suffer substantial soil erosion. Now, water that once flowed to the back of Lot 20 to farmland to the south now flows over my lot (Lot 19) causing erosion on portions of my lot. Prior to this regrading, no soil erosion was occurring on that portion of my lot. That regrading may have already, undermined, compromised or destroyed many of the roots from the specimen tree on my lot making it vulnerable to failure in high winds.

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THE APPLICATION IGNORES EXISTING BUILDING RESTRICTION LINES (BRL)

In addition, the original Preliminary Plan of subdivision for Potomac Chase II, Preliminary Forest Conservation Plan, May 1995 by Dewberry and Davis, clearly shows a 12 foot building restriction line along the side of each lot, and a 30 foot building restriction line extending from the rear lot line of each lot. The location of the shed planned for the conservation zone on Lot 20 does not seem to take into account the building restriction line. As part of the original Preliminary Plan approval, these building restriction lines, being more onerous than the zoning requirements in the R200 zone, trump the side-yard requirements imposed by zoning making side-yard requirements in Potomac Chase II more restrictive for accessory buildings. The current plan amendment does not show the existence of these building restriction lines, and one or two owners in Potomac Chase II may already be in violation of a BRL.

In my opinion, the drawings by Benning & Associates, Inc., as were provided to me, also appear to have within them a number of inconsistencies and inaccuracies.

IN SUMMARY

I would like to emphasize the following points:

- Granting the variance and a change in easement category has the potential to damage or kill Specimen Trees on Lot 19 and Lot 20.
- The easement is "perpetual" and "forever" and was never meant to be changed.
- Granting the variance and a change in easement category is in direct contravention to the purpose(s) of the easement.
- Granting the variance and a change in the category of the easement to construct forbidden structures is inconsistent with previous actions of the Planning Board in Potomac Chase II (the exact same subdivision).
- Owners knew about the easement when they purchased their properties and pledge to obey the conservation easement.
- There is no compelling reason to change the easement category or grant the variance. "Wanting to" is not enough.
- Lot 20 has more than sufficient land in the rear yard for a shed and play area without a need to change the easement or grant a variance.
- The owners are, in my opinion, currently in violation of the easement in an egregious, continuous and deliberate manner.
- Development may be in violation of current building restriction lines around the lot.
- The easement creates "right in real estate" such that a change in the easement and granting of the variance could constitute a "taking" as an action in eminent domain for non-applicant plat lot owners. County legal should be consulted on this issue.

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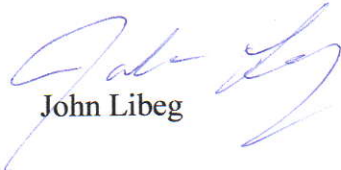
IN CONCLUSION

If after everything I have said in this letter, should the Planning Board elect to consider approval of this variance, or modify or extinguish the Easement Agreement Category I forest conservation easement, over portions of Potomac Chase II, I believe it must do so to the entire easement, not just the portions of it over the land of the applicants of #11995106A. The easement is indivisible and unitary and extends to all lot owners in the plat, not just to the applicants or lot owners over which the easement runs. To extinguish or modify the easement on one lot or any group of lots inherently impact all the other lots in the plat. The easement and plat can both be considered a "larger parcel". That being said, no changes in the Easement Agreement Category I conservation area should be made without taking into consideration the impact change has on the plat as a whole. To do so would constitute a "taking". This inclusion of the whole; that is, consideration of the "larger parcel" and "unit rule", are well accepted real estate concepts and critical elements of the bundle of rights in land ownership, especially in eminent domain actions. So to is the element of "just compensation" should my rights in this easement be diminished.

I believe the violations of the conservation zone at Potomac Chase II, as an aggregate, constitute some of the most flagrant I have seen in my career as a real estate professional. Any changes approved by the Planning Board should be at the entire expense of the applicants, regardless of the fact that changes may occur on lots not part of the application. The applicants of #11995106A should also be required to reimburse Montgomery County for any compensation required to be paid by the County, through negotiated settlement or by virtue of eminent domain, to lots owners that do not voluntarily agree with changes to the conservation zone. The owners cited in violation should also be required to pay the fines and levies for any and all violations of the conservation area. Montgomery County is at a point where it must now take a stand on these conservation areas. Either it is serious about forest conservation, or it is not. Keep the easement the same or extinguish all of it. The measure of leadership is not in how you as government leaders handle the easy issues, it's how you handle the hard ones.

Should you desire to meet with me or desire to walk over the easement so that I may show you the violations in person, I will be glad to do accommodate you. I can be reached at (301) 869-6962. I believe that after seeing the condition of the conservation zone and violations in person, you will be thoroughly enlightened about this problem so that you can make an informed decision on this issue.

Thank you for your time and consideration.


John Libeg