

July 13, 2006

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Faroll Hamer, Acting Director, *FH*
Department of Park and Planning

Rose Krasnow, Chief *RK*
Development Review Division

Michael Ma, Supervisor *Ma*
Development Review Division

Gwen Wright, Acting Chief *GW*
Countywide Planning Division

Jorge A. Valladares, P.E., Chief *JAV*
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Environmental Planning, Countywide Planning Division

FROM: Candy Bunnag, *cb* Planner Coordinator, Environmental Planning
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Doug Johnsen, Planner Coordinator
Development Review Division (301) 495-4571

SUBJECT: Hearing on civil citation #DRD0000003, administrative civil penalty
#05-02 and administrative order in accordance with Chapter 22A of the
Montgomery County Code (Forest Conservation Law) for:
Mr. Anthony Mereos, 17900 Trundle Road, Dickerson, MD. 20842
(Parcel P120)

STAFF RECOMMENDATION

Staff's recommendation remains the same as that presented at the Planning Board hearing on June 15, 2006: Impose a civil penalty of \$1.00 per square foot of forest cleared, or \$83,000, on Mr. Anthony Mereos ("Respondent"), in accordance with Section 22A-16(d) of the Montgomery County Code (administrative civil penalty under the Forest Conservation Law), for clearing approximately 83,000 square feet (1.9 acres) of forest, on and adjacent to 17900 Trundle Road, Dickerson, MD. without an approved forest conservation plan or exemption from the forest conservation plan requirements. Staff's recommended penalty is in addition to the Administrative Order for restoration of the site issued by the Planning Director on March 2, 2006.

INTRODUCTION

This staff memorandum is an update to the staff memorandum dated June 2, 2006, which is included in this staff packet as Attachment A. The current memorandum includes a summary of the previous Planning Board hearing, questions from the Planning Board and staff responses, discussion of specific points raised by the Board and the Respondent, and staff's recommendation for a civil penalty.

PREVIOUS PLANNING BOARD HEARING

This hearing is a continuation of the Planning Board hearing of June 15, 2006. The major items that were covered are as follows:

- In October 2005, the Respondent had contested the civil citation and \$1000 fine and had requested a trial. At the Planning Board hearing, he requested that the hearing be deferred until a trial in District Court could be conducted. The Planning Board denied the request. The Board determined that the Forest Conservation Law provides several types of enforcement actions for a violation that may be pursued independently of each other. The Board did not find any grounds to defer the hearing for the civil administrative penalty.
- Staff recommended a \$1.00 per square foot civil penalty rate, which was the highest rate allowed in the Forest Conservation Law at the time that the forest clearing activity was identified. Staff's recommendation was based on the following assertions: the Respondent was responsible for the forest clearing; he had entered into a contract to purchase or owned the subject property at the time of the clearing; he was aware of the County Forest Conservation Law; he had prior knowledge that the property was forest and was within a wetland; he had prior knowledge that he needed to contact M-NCPPC and other regulatory agencies before any clearing could occur on the site. Further, the clearing of approximately 1.9 acres of forested wetlands is large and egregious and can significantly impact the water quality and habitat conditions of this environmentally-sensitive area.

- The Respondent presented his position. He stated that he did not clear the forest. He stated that he was only trying to “clean up” trees and debris that had already been cut and cleared by someone else and that he was directed to stabilize and “clean up” the property by inspectors from the Montgomery County Department of Permitting Services (DPS) and Maryland Department of the Environment (MDE). He stated that he did not know who cleared the forest and that between the time that he entered into a contract to purchase the property and the time that he met with the DPS inspector, he rarely visited the property.
- Six individuals¹ testified, including Mr. Mark Etheridge (Montgomery County DPS Senior Permitting Services Specialist) and Mr. Wojciechowski, a neighbor to Mr. Mereos. Mr. Etheridge stated that on June 28, 2005, he informed Mr. Anthony Mereos of that the property the entire property was shown on the GIS system as a forested wetland and that Mr. Mereos needed to contact various governmental agencies, including M-NCPPC, before proceeding with any construction activities on the site. Additionally, Mr. Etheridge told the Board that he had denied the sediment control permit application submitted by Mr. Mereos for the site. Mr. Wojciechowski testified that he has been familiar with the property for about thirty years and that it was partially cleared. He also stated that the site was cleared by the previous owner to make room for cat cages, a bus, and motorcycles. He stated that the previous owner cleared the understory.
- Planning Board members raised various questions. These questions and Planning staff’s responses are provided in the sections that follow.
- The Planning Board Chairman determined that the public record would remain open until the close of business June 28, 2006.

QUESTIONS RAISED BY THE PLANNING BOARD

Using information collected for the June 15th hearing, as well as information obtained between that hearing and June 28th, Planning staff has prepared responses to questions 1 through 8. These responses are provided in the Analysis Section of this memorandum.

1. The Planning Board requested staff to confirm or disavow information that contradicts staff’s assertions, such as those related to prior enforcement proceedings against the Respondent.
2. An aerial photograph was presented by staff (Attachment 13 of the June 2nd staff memorandum). It showed the property with full forest cover in June 2005. The Planning Board wanted verification of the source and date of the photograph.

¹ Ms. Caren Madsen representing the Montgomery County Civic Federation, Mr. Wayne Goldstein, Mr. Steve Kanstoroom, Mr. Robert Miles Wojciechowski, Mr. Mark Etheridge, Ms. Judy Koenick.

3. Could any of the features on the June 2005 aerial photograph indicate cleared areas? Can the aerial photograph identify the extent to which forest clearing that may have already occurred by June 2005?
4. Are there any other aerial photographs of the subject property between June 2005 and the present?
5. Provide clarification on the scale and extent of forest clearing and the size of the property.
6. Provide information about the prior owner to help establish the condition of the property prior to its sale.
7. M-NCPPC Development Review Division staff issued a letter to Mr. Mereos dated July 5, 2005. This appears as Exhibit 17 in the June 2 staff report (for the June 15th hearing). The letter was also submitted by the Respondent to show that M-NCPPC indicated he could build one house on the property. Staff needs to explain the letter.
8. Provide information on penalties that have been assessed in other Forest Conservation Law violation cases.

Finally, the Planning Board encouraged the Respondent to file a written response to the staff report. One member requested that the Respondent also provide a written timeline to clarify when the Respondent was traveling, when he was on the site, etc. The Respondent's written response is provided in Attachment B.

STAFF ANALYSIS OF THE FOREST CLEARING ACTIVITY AND THE APPLICATION OF THE COUNTY FOREST CONSERVATION LAW

Between the June 15th hearing and June 28th, several written documents have been submitted into the public record. These documents, as well as documents available from the previous hearing, form the basis of staff's analysis.

Staff received some documents after June 28th, but they have not been included in this memorandum. In addition, staff has not used these documents as a basis for our conclusions. Staff will make these documents available to the Respondent. The documents will also be available at the public hearing of July 27th if the Planning Board chooses to consider them.

I. The Subject Property Was in Forest Cover Prior to the Respondent Taking Ownership of the Property

- a. In the Maryland Department of Assessments and Taxation database, the subject property is identified as Parcel P120, Williams Resurvey with an address of 17900 Trundle Road, Dickerson, MD. The records show the property to be 77,972 square feet, or 1.79 acres, in size (Attachment C).
- b. An April 2004 aerial photograph (Attachment D) from the M-NCPPC GIS database shows the subject property and surrounding land in forest cover. In this photograph, a rectangular structure can be seen in the southern corner of the

property. Since the photograph was taken in the spring, the canopies of trees have only partially leafed out, and, therefore, large features in the understory or on the ground are visible. It is staff's opinion that the rectangular structure is a bus that belonged to the previous property owner, Mr. Steven Houston.

- c. To help answer Planning Board question no. 6, above, staff received inspection reports from the DPS Well and Septic Section (Attachment E). These reports indicate that Mr. Houston, the previous owner, was investigated in 2004 for possible violations of various county codes. (page 15 of Attachment E). These reports indicate that within the woods there were a bus, a van, and piles of brush and tree debris from some type of lawn mowing and landscaping business that he operated. Page 10 of Attachment E also includes a photograph of a cleared area. Based on information in Attachment E, staff believes *the area within the forest that was cleared for Mr. Houston's activities was relatively limited and involved only understory material*. Staff believes the cleared area that existed when Mr. Houston owned the property is the same as the area identified by Ms. Ellie Trueman, who estimated the area to be about 100' by 100' (see her email of May 26, 2006 in Attachment F).
- d. The email from Ms. Ellie Trueman dated May 26, 2006 (Attachment F) indicates that she walked through the property several times in late summer, 2005, after Mr. Houston sold the property. She describes the property as being primarily wooded "with the exception of an approximate 100' by 100' section where he had parked his bus and two large caged areas that he had built for his cats in the wooded area." Ms. Trueman also states "without reservation, that when Steve Houston sold the property, it was wooded, largely a wetlands area, and undisturbed with the exception of 3 large cages Steve had built for his cats in the woods and a small area in front where he had parked his bus."
- e. An email from Mr. William Jones dated June 13, 2006 (Attachment G), who lives on Trundle Road, indicates that he also walked the property after Mr. Houston left. He states that the property was wooded: "...there is no question in our minds that at the time the for sale sign was removed from the property it was still in its natural, wooded, swampy state."
- f. In his email and letter of June 28, 2006 to staff, Mr. Rick Watson, the DPS sediment control inspector, states that he spoke with Mr. Houston. Mr. Watson states that Mr. Houston informed him that the property was wooded when the Respondent took ownership (page 3 of Attachment H).

After the June 15th hearing, staff obtained contact information for Mr. Houston and attempted to contact him. However, he did not respond before the close of business on June 28th.

- g. RE/MAX Realty Group, the real estate company that listed the property described the property as a "wooded lot". The listing included a small photograph showing

part of the site behind a red wooden fence with large and small trees (Attachment I). The fence is adjacent to Trundle Road.

- h. Attachment J is a complaint form submitted to various county agencies in October 2005. It includes photographs of the site before and during the forest clearing activities. The first three photographs show the bus identified in Attachments E and F. A van identified in Attachment E is also seen in one of the photographs. The two vehicles are located next to Trundle Road. The red fence next to Trundle Road and shown in the RE/MAX Realty Group listing also appears in Attachment J. As can be seen, the site was largely forested with relatively dense tree cover and understory vegetation, except for the area around the vehicles.
- i. The June 2005 aerial photograph from the USDA database (Attachment K) also shows the property and surrounding land in forest cover. In response to Planning Board question no. 2 (above), staff has included the reference information for the database from which this photograph was taken (pages 2 through 5 of Attachment K). Page 2 of Attachment K shows the flight date of the photograph is one of three possible dates in June 2005: June 8, June 18, or June 25. USDA cannot provide a specific date because the database covers a much larger area than this site and is created from photographs taken on all three dates.

The Planning Board asked whether the photograph shows any forest clearing that might have occurred prior to Mr. Mereos buying the property (Question no. 3, above). The forest cover shown in the aerial photograph is generally dark green in color. In contrast, a non-forested area that is vegetated (e.g., the field or pasture surrounding the forest) appears as lighter green or tan. Within the dark green area of the forest cover, there are areas of darker or lighter coloring. Areas that are very dark or black in a forest stand typically are the shadows of overstory trees that are taller than surrounding features. Very light colors may indicate openings in the overstory tree canopy that may be naturally-occurring (e.g., dead or fallen trees due to natural causes, shrubs or smaller trees growing in these openings that are not as tall as the overstory trees and, thus, do not create large canopy, etc.) or man-made. It should be noted that naturally-occurring, small openings in a forest stand are not unusual. In this photograph, there are some small, lighter-colored areas that are scattered both within and off the site; such areas may be openings in the forest canopy. Staff cannot distinguish between man-made and naturally occurring areas from this photograph. Regardless of any limited clearing that may be present in the June, 2005 aerial photograph (Attachment K), the September, 2005 aerial photograph (Attachment L) shows a substantially larger area of forest clearing and tree canopy loss.

II. The Area of Forest Clearing Was Large, Covered at Least the Subject Property, and Had Adverse Environmental Impacts

- a. Since the June 15th hearing, staff has obtained an aerial photograph that shows the property and surrounding land after the forest was cleared (Attachment L). This

is in response to Planning Board question nos. 4 and 5. Information from Aerials Express, the company that took the aerial photograph, indicates that the flight date for the photograph was late September 2005 (page 3 of Attachment L). The photograph clearly shows the extent and location of the clearing. (Page 1 of Attachment L is the photograph at a scale of 1" = 400'; page 2 is the same photograph at a scale of 1" = 200'). The clearing extends well outside the subject property. Based on staff's measurement of the clearing area using this photograph, the total amount of clearing is estimated to be about 82,500 s.f. or 1.9 acres. This measurement is comparable to the M-NCPPC's inspector's estimate of 83,000 s.f. that was derived from measurements taken on the ground with a measuring wheel in September 2005.

- b. As previously stated in the June 2, 2006 staff memorandum, the M-NCPPC GIS database (Attachment D) shows the entire property within a wetland. The database also shows a stream traversing the site. The presence of this stream has been verified onsite by staff and other agencies. It is a headwater tributary of Broad Run. The presence of wetlands has been verified by Maryland Department of the Environment inspection staff through an onsite evaluation (Attachment M). MDE also identified cut and grubbed trees that were piled into the stream channel and grading that occurred in the wetland area. In January 2006, MDE further reported four to six truckloads of earth were spread on the property (Attachment M). The DPS inspector also identified the truckloads of earth that were hauled into the site, as well as stone (Attachment H, page 3).
- c. Most, if not all, of the clearing area lies within the environmental buffer of this stream. Forest clearing in such an environmentally sensitive area can cause significant erosion and sediment loadings into the stream and eliminate or severely damage stream and wetland habitats. The last four photographs in Attachment I show sediment on the site and within wet areas. Attachment N contains a series of photographs taken by Environmental Planning staff on June 28, 2006. A cover memorandum and site map describe where the photographs were taken. These photographs show a large cleared area that is now devoid of vegetation except for grass cover. Any forested wetland habitat that was present in this area has been eliminated. The stream is now exposed to sunlight. This will increase stream water temperatures, which can adversely affect the health of the aquatic community. Photograph no. 30 shows the stream channel still brown with sediment, about 10 months after the clearing took place. The character and composition of forest adjoining the cleared area are also shown in the photographs (e.g., photograph nos. 12 – 16); these photographs indicate a forest that has overstory trees, understory and groundcover layers, and wetland vegetation.

III. The Respondent Is the Responsible Party for the Illegal Forest Clearing Activity

- a. Dr. and Mrs. Leak, adjacent property owners, observed the Respondent supervising other people cutting and clearing trees with chain saws, a backhoe, and a bobcat as early as the weekend of August 12, 2005 (Attachment O). Dr.

and Mrs. Leak observed the Respondent and others cutting trees on subsequent weekends in August and early September using equipment from various companies.

- b. Mr. William Davis, another resident on Trundle Road, also observed the Respondent and three others clearing the property (Attachment P).
- c. In his letter (Attachment R), Mr. Bernard Mihm indicated that sometime in August 2005, he observed Mr. Mereos and others cutting trees and clearing the area. Mr. Mihm also notes that the Respondent was “cutting down my trees.” Mr. Mihm states that he spoke with the Respondent and both agreed that the Respondent would not clear or cut “any further than he had already done.”
- d. United Rentals, one of the rental companies identified by the Leaks, submitted a letter (Attachment Q) identifying the dates that specific equipment was leased to the Respondent and delivered by United Rentals to the site. This equipment included chain saws. Mr. Thorne, the branch manager of the United Rentals store, has verbally told staff that he can only provide information related to equipment delivered by store employees to the site; United Rentals cannot provide information related to any equipment that was leased to Mr. Mereos and picked up by him at the store. The United Rentals delivery and pick-up dates for equipment leased by Mr. Mereos are in the middle of August through early September 2005 and correspond to three of the four weekends specified by the Leaks.

It should be noted that Mr. Watson, the DPS inspector, states in his letter (Attachment H) that the equipment leased to Mr. Mereos (i.e., track loader, skid loader, backhoe, chainsaws) can be used to clear trees by uprooting them and loading them on another vehicle. This inspector has operated heavy equipment for about 12 years and has used such equipment to clear trees.

Mr. Brian Murphy, who is a M-NCPPC Parks Department certified tree care expert, certified arborist, and former Fairfax County (Virginia) inspector for land development projects, is familiar with land-clearing operations that involve cutting and clearing of forest. Mr. Murphy has told staff that the equipment leased by the Respondent is commonly used to cut down and clear forest.

- e. According to the written response submitted by Mr. Mereos (Attachment B), *he entered into a contract to buy the subject property on June 26, 2005. He closed on the property on July 15, 2005 and the deed of sale of the property was recorded on July 21, 2005.* He states that he visited the property on June 26th and “observed generators, animal cages, lights and wiring, piles of cut wood, branches, and hay.” Mr. Mereos also states that “between the date of closing and September 1, 2005, he “spent a majority of time in Puerto Rico and Miami, Florida visiting family. Mereos did not visit the Property again until the middle

of August when he went to clean the Property. At that time, Mereos saw that the east side of the Property was cleared.”

There are inconsistencies with the Respondent’s statements at the June 15, 2006 hearing, statements in Attachment B, and statements made by others. At the June 15th hearing, in response to his attorney’s question asking how often he visited the property after the closing, Mr. Mereos responded that he did not visit it until Rick Watson, the DPS inspector, contacted him. The DPS inspector contacted Mr. Mereos by phone on August 30th and met him on the site on September 7, 2005, which is the date of the two DPS citations for sediment control violations. However, in Attachment B, Mr. Mereos indicates that he met Mr. Watson on September 1st, which is contrary to Mr. Watson’s statement (Attachment H) that the meeting took place on September 7th. In addition, contrary to his statement at the hearing, the Respondent states in Attachment B that he visited the property in the middle of August “when he went to clean the Property.”

- f. At the June 15th hearing, in response to a question from a Planning Board member, Mr. Mereos stated that he cut seven or eight trees when he was told that he had to clear the debris. He estimated that this was around the time that he met Mr. Watson, the DPS inspector, at the site. If Mr. Mereos had cut the trees for access into the site in response to a directive by DPS to clear debris, then the work would have had to occur no earlier than September 7th, the date that the DPS inspector met Mr. Mereos for the first time and issued the two sediment control citations. But Mr. Mereos’ written response (Attachment B) is inconsistent with this timeline since he writes that “between August 29, 2005 and September 2, 2005, Mereos rented equipment from United Rentals to clean and stabilize the Property.”

IV. The Respondent Owned the Property at the Time the Illegal Forest Clearing Activity Occurred

- a. Information contained in the written response submitted by Mr. Mereos (Attachment B) shows that he entered into a contract to buy the subject property on June 26, 2005. He closed on the property on July 15, 2005 and the deed of sale of the property was recorded on July 21, 2005.
- b. Dr. and Mrs. Leak observed the Respondent cutting trees and supervising others cutting trees starting on August 12, 2005 (Attachment O). Mr. Davis also observed the Respondent and others clearing the property from August into September 2005 (Attachment P). Mr. Mihm observed the Respondent and others cutting trees and clearing on the subject property, as well as Mr. Mihm’s property sometime in August (Attachment R). The dates of equipment delivered to the site by employees of United Rental (Attachment Q) are also in August and early September. *These dates are all after the closing on the property on July 15, 2005.*

V. The Respondent Acted in a Willful Manner and Has a Pattern of Similar Violations

- a. Mr. Mark Etheridge, DPS Senior Permitting Services Specialist, testified at the June 15th hearing and subsequently summarized his testimony in a letter (Attachment S). On June 28, 2005, he spoke with the Respondent and informed him that the GIS information showed the entire property in a forested wetland and that it might also be within a floodplain. Mr. Etheridge further indicated that the property might not be developable because State and Federal agencies might not issue permits to construct in the wetland. The Respondent indicated that “there must be something he could do to make the property not a wetland.” Even though the Respondent was told of the wetland issue, he completed a sediment control permit application on October 21, 2005 in which he indicated that the proposed land-disturbing activity is not in a designated wetland (Attachment T).
- b. Although Mr. Etheridge had told the Respondent on June 28, 2005 that there appeared to be floodplain on the property (Attachment S), the Respondent indicated on the sediment control permit application of October 21st that the land-disturbing activity was not within or near a 100-year floodplain (Attachment T). In addition, although the property is 1.79 acres in size and the Respondent has stated he cleaned up the property, his sediment control permit application showed 9,999 square feet (0.23 acre) of total disturbed area. It should be noted that the DPS fees for a sediment control permit application is higher when the total disturbed area is 10,000 square feet or more.
- c. M-NCPPC Development Review Division issued a letter dated July 5, 2005 to the Respondent stating that the property is eligible for construction of one single family residential dwelling and is not required to go through the record plat process (Attachment U). But the letter also states that the exception to the platting requirements does not waive any requirements imposed by other “governmental review agencies.” The intent of the letter is to let the reader know that there may be other permit requirements that apply to the construction of a house on the property. The Respondent did not apply for a DPS sediment control permit prior to engaging in land-disturbing activities. He did not contact State or Federal agencies to check on requirements for disturbance in wetlands even though Mr. Etheridge at DPS had indicated to the Respondent that development on the site may not be possible because such development may not meet State and Federal permit requirements.
- d. The Respondent was found guilty in a trial at District Court on December 21, 2005 on the two sediment control violation citations issued by DPS (Attachment V). The judge fined him \$200 for the two violations and issued an abatement order. However, bench warrants had to be issued before the Respondent paid the fines. In addition, the county attorney’s office has filed a petition for contempt and order to show cause for failing to comply with the provisions of the court’s abatement order.

- e. Mr. Wojciechowski testified at the June 15th hearing that he helped the Respondent stabilize the property and haul out or chip wood on the site. He also testified that the property was already cleared before the Respondent owned the property and that the previous owner had cleared understory. However, Mr. Wojciechowski also directed a truck driver foreman to dump about five or six truckloads of earth on the property in January 2006. This activity was not authorized by DPS, MDE, or COE. Mr. Rick Watson, the DPS inspector, states in his letter of June 28th, 2006 (Attachment H) that he discovered the activity because of complaints he received. Mr. Watson contacted the Respondent, who indicated that he did not know about the activity. Mr. Watson states that he talked to the truck foreman at the site and that the truck foreman told Mr. Watson that Mr. Wojciechowski directed him to dump the earth on the property.
- f. In May 2006, the M-NCPPC inspector identified several trenches that had been recently dug on the property. The trenches were draining water away from the wetland area into the stream. The Army Corps of Engineers (COE) issued a letter, dated May 24, 2006, requiring the ditches to be filled back in (Attachment W). In Attachment B, the Respondent states that he did not dig any trenches on the property. However Mr. Mihm, whose property surrounds the Respondent's property on two sides, states in his letter (Attachment R) that he saw the Respondent and others dig a ditch on Mr. Mihm's property. Dr. Leak also saw workers digging trenches on the property (Attachment O).
- g. Mr. Mihm states that the Respondent continued to work on Mr. Mihm's property even after he agreed with Mr. Mihm not to do so (Attachment R).
- h. In response to Planning Board question no. 1 regarding prior enforcement proceedings against the Respondent, staff has printed out inspection notes from the M-NCPPC Hansen system (Attachment Z). The notes were entered into the Hansen system by Mr. Robert Kronenberg who was an M-NCPPC inspector at the time. The notes indicate that on April 14, 2003, the M-NCPPC inspector investigated clearing activities on a lot on Greencastle Road and HOA land and determined that the property owner, Mr. Mereos, had cleared trees and had dumped trees into a forested area. Mr. Kronenberg met with Mr. Mereos and his wife on April 18, 2004 and Mr. Mereos agreed to plant six trees and clean up debris on his lot.

VI. Penalties Set with Other Forest Conservation Law Violation Cases (to answer Planning Board question no. 8)

- a. Attachment X is a summary of other forest conservation law violation cases where an administrative civil penalty was imposed by the Planning Board or a similar monetary penalty was set as part of a negotiated settlement between the Planning Director and the violator.

LIST OF ATTACHMENTS

- Attachment A: Staff memorandum, June 2, 2006 for Planning Board hearing of June 15, 2006
- Attachment B: Response by Mr. Anthony Mereos to staff report
- Attachment C: Maryland Department of Assessments and Taxation Records
- Attachment D: Site aerial photograph, 2004, M-NCPPC GIS Database
- Attachment E: Inspection reports and notes from the DPS Well and Septic Section case file for 17900 Trundle Road, Dickerson
- Attachment F: Email from Ms. Ellie Trueman, May 26, 2006
- Attachment G: Email from Mr. William Jones, June 13, 2006
- Attachment H: Email and letter from Mr. Richard Watson, DPS inspector, June 28, 2006
- Attachment I: RE/MAX Realty Group Listing for 17900 Trundle Road property, May 25, 2005
- Attachment J: Complaint form from Concerned Citizens of Trundle Road, undated (received in M-NCPPC Development Review Division October 13, 2005)
- Attachment K: Site aerial photograph and reference information, June 2005, USDA Database
- Attachment L: Site aerial photograph (after forest clearing) and reference information, September 2005, Aerials Express
- Attachment M: Maryland Department of the Environment (MDE) field reports
- Attachment N: Site photographs, June 28, 2006, M-NCPPC Environmental Planning, Countywide Planning Division
- Attachment O: Letter from Dr. Lee and Mrs. Eleanor Leak, June 27, 2006
- Attachment P: Email from Mr. William Davis, June 26, 2006
- Attachment Q: Letter from Mr. Rick Thorne, Branch Manager of United Rentals store in Gaithersburg, MD., June 28, 2006

- Attachment R: Letter from Mr. Bernard Mihm, June 23, 2006
- Attachment S: Letter from Mr. Mark Etheridge, Senior Permitting Services Specialist, DPS Water Resources Section, June 22, 2006
- Attachment T: Application for sediment control permit completed by Mr. Anthony Mereos, October 21, 2005
- Attachment U: M-NCPPC letter regarding an exception to platting requirements, July 5, 2005
- Attachment V: Trial summaries and bench warrants for sediment control violation citations
- Attachment W: U.S. Army Corps of Engineers field report and letter, January 2006 and May 24, 2006
- Attachment X: Table summarizing civil administrative penalties or similar monetary penalties imposed in other Forest Conservation Law violation cases
- Attachment Y: Other citizen correspondence received after June 15, 2006 hearing until the close of the public record at the close of business on June 28, 2006
- Attachment Z: M-NCPPC inspection staff entries into Hansen System related to Mr. Mereos' property on Greencastle Road

ATTACHMENT A

**Staff Memorandum, June 2, 2006 for Planning Board hearing of
June 15, 2006**



June 2, 2006

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Faroll Hamer, Acting Director, *FH*
Department of Park and Planning

Rose Krasnow, Chief *RK*
Development Review Division

Michael Ma, Supervisor *Ma*
Development Review Division

Gwen Wright, Acting Chief *GW*
Countywide Planning Division

Jorge A. Valladares, P.E., Chief *JAV*
Environmental Planning, Countywide Planning

Steve Federline, Supervisor *SF*
Environmental Planning, Countywide Planning Division

FROM: Doug Johnsen, Planner Coordinator
Development Review Division (301) 495-4571

Candy Bunnag, Planner Coordinator, Environmental Planning
Countywide Planning Division (301) 495-4543

SUBJECT: Hearing on civil citation #DRD0000003, administrative civil penalty # 05-02 and administrative order in accordance with Chapter 22A of the Montgomery County Code (Forest Conservation Law) for:
Mr. Anthony Mereos; 17900 Trundle Road, Dickerson, MD 20842
(Parcel P120)

RECOMMENDATION

A civil penalty be imposed on Mr. Anthony Mereos, in accordance with Section 22A-16(d) of the Montgomery County Code (administrative civil penalty under the Forest

Conservation Law), for **clearing approximately 83,000 square feet (1.9 acre) of forest, on 17900 Trundle Road, Dickerson, MD without an approved forest conservation plan or exemption from the forest conservation plan requirements.** M-NCPPC staff identified the violation in September 2005 when the civil administrative penalty rates for the County Forest Conservation Law ranged from \$0.30 to \$1.00 per square foot of forest cleared.¹ **Using these penalty rates, staff recommends that the penalty be set at \$1.00 per square foot of forest cleared. Based on staff's measurement of the cleared area, the recommended penalty would be \$83,000.**

BACKGROUND

SUBJECT SITE

The property that is the subject of the Forest Conservation Law violation, 17900 Trundle Road, Poolesville, MD covers 1.79 acres (Attachment 1), all of which was forested. It lies within the Broad Run watershed (Class I/I-P) of the Potomac River.

COMPLAINT OF TREE CLEARING

On August 29, 2005, the Montgomery County Department of Permitting Services (DPS) received two (2) calls regarding trees being cut down at the subject property. A DPS inspector visited the site on August 29th and 30th and observed land clearing of roughly an acre or more in size. The DPS inspector met with Mr. Anthony Mereos, the property owner, and issued a notice of violation and two (2) civil citations, which Mr. Mereos refused to take or sign.

FIELD INSPECTIONS

The DPS inspector notified Maryland-National Capital Park and Planning Commission (M-NCPPC) inspection staff of tree clearing, on August 31, 2005. To follow up on this notification the M-NCPPC inspector verified on September 1, 2005 the recent clearing of forest of approximately 83,000 square feet (1.9 acres) on the subject property. A measuring wheel was used to measure the dimensions of the cleared area. Staff measured 345 feet along the front property line and 241 feet from the front property line back to the furthest edge of the clearing near the rear of the property. The clearing appeared to roughly follow property lines with some clearing appearing to occur off-site at the rear of the property. Staff believes that a portion of the forest clearing extends beyond the property lines of this site. Our records indicate that the forest clearing was not part of an approved forest conservation plan ("FCP") or forest conservation exemption as required by Montgomery County Code ("Code"), Chapter 22A ("Forest Conservation Law" or "FCL"). The approximate limits of the forest clearing activity are shown in Attachment 2. A chronology of events related to the illegal clearing activity is found in Attachment 3.

¹ The maximum administrative civil penalty under the County Forest Conservation Law was raised to \$9.00 per square foot of forest cleared on December 13, 2005.

ISSUANCE OF CIVIL CITATION

On October 4, 2005, the M-NCPPC inspector met Mr. Mereos at the subject property and issued a civil citation for One Thousand Dollars (\$1000), in accordance with § 22A-16(a) of the County Forest Conservation Law. During this field meeting Mr. Mereos stated that he was aware of the Forest Conservation Law due to a tree clearing action at his previous address of 14503 Golden Eagle Court, Burtonsville, MD 20866.

MEETING WITH MR. MEREOS

On October 7, 2005, M-NCPPC staff met with Mr. Mereos at M-NCPPC offices. During this meeting the forest clearing action was outlined and it was explained that this unauthorized clearing activity is a violation of the Forest Conservation Law. Additionally, possible corrective actions to remediate the site were discussed. In this meeting Mr. Mereos claimed that he did not clear the forest, but that he was only cutting up the trees that were cleared by the previous owner. Later in the meeting, Mr. Mereos indicated that he had cut seven or eight trees, but not the entire forested property. During this meeting Mr. Mereos elected to challenge the October 4th civil citation. On October 13, 2005 Mr. Mereos submitted a letter to the M-NCPPC Legal Department indicating that he wanted to contest the civil citation (Attachment 4).

NOTICE OF ADMINISTRATIVE ORDER

On March 2, 2006 a notice of Administrative Order for Corrective Action in accordance with the Forest Conservation Law was issued to Mr. Mereos (Attachment 5). The administrative order also included a staff recommendation for an administrative penalty. A Planning Board public hearing date of May 4, 2006 was set in the administrative order to consider the civil penalty, as well as the civil citation.

MR. MEREOS' POSITION

On March 10, 2006 M-NCPPC staff met with Mr. Mereos, his attorney, Mr. Shawn Whittaker, and Mr. Mereos' land surveyor. Once again the site violations and penalties were discussed. Remediation measures were discussed as per the Civil Administrative Order along with associated deadlines. Mr. Mereos indicated that it was his intent to repair the environmental damages on the site even though he did not clear the forest. Staff indicated that he should submit some information to staff to demonstrate that he was proceeding in good faith towards restoration of the site. Staff also indicated we would continue to recommend a civil penalty, but that the Planning Board would ultimately decide whether or not the civil penalty would be imposed and the amount of the penalty, if imposed.

On March 24, 2006, Mr. Whittaker submitted a letter (Attachment 6) indicating that Mr. Mereos would agree to have a wetland delineation and report done if a fine would not be imposed on him. Mr. Whittaker also requested copies of aerial photographs of the subject property prior to June 26, 2005 and indicated that he had an aerial photograph of

the site from April 7, 2002 showing the property as cleared. The April 7, 2002 photograph was not attached to his letter.

On March 30, 2006 staff responded to Mr. Whittaker (Attachment 7) summarizing the information that staff requested from Mr. Mereos at the March 10th meeting. Staff had requested an outline of items that would be needed to work towards restoration of the cleared area and an estimated schedule for completion of these items. The items include a plan showing what exists on the site and the forest cover that existed before the clearing activity along with a plan proposing restoration and reforestation. Staff's letter indicated that Mr. Whittaker's letter of March 24th did not provide this information. Staff's letter also reiterated our recommendation to proceed with a civil administrative penalty. Copies of the 2002 and 2004 aerial photographs from our Geographic Information System (GIS) database that show the property as completely forested were attached to the staff's letter.

Mr. Whittaker submitted a letter dated April 26, 2006 requesting postponement of the May 4th Planning Board public hearing (Attachment 8). He wanted to meet with staff again to better understand if Mr. Mereos could work with staff to resolve the issues without the application of administrative penalties. Staff met with Mr. Whittaker, Mr. Mereos and Mr. Raj Lal, P.E. (Mr. Mereos's consultant) on May 5, 2006. Mr. Mereos and Mr. Whittaker indicated that because staff would continue to recommend a civil penalty, no further information regarding site conditions or a restoration plan would be submitted to staff.

VIOLATION OF FOREST CONSERVATION LAW

Montgomery County Code, Chapter 19, requires that a property owner obtain a sediment and erosion control permit from DPS prior to commencing any disturbance of more than 5,000 square feet of land. Before DPS may issue a sediment and erosion control permit, the property owner must comply with the requirements of the Montgomery County Forest Conservation Law (Mont. Co. Code, Sections 19-3A, 22A-4(b), 22A-11(d)(3)). The Forest Conservation Law provides that, unless exempt, a property owner must receive review and approval of a forest stand delineation and a forest conservation plan, prior to undertaking the land-disturbing activity (Mont. Co. Code, Sections 22A-4, 22A-10, 22A-11(d)). Since it is believed Mr. Mereos' activity involved the clearing of approximately 83,000 square feet of forest, the activity without being part of any approved plans, staff alleges that a violation of the Montgomery County Forest Conservation Law has occurred and may be sanctioned accordingly.

The violations that have been issued under the County's sediment control law are under the jurisdiction of DPS. The Planning Board hearing covers those matters within the Board's jurisdiction, namely the violations associated with the Forest Conservation Law.

DISCUSSION

A. Identification of Responsible Parties for the Illegal Clearing Activity

When Mr. Mereos was issued a civil citation at the subject property on October 4, 2005 he did not state that others cleared the forest. Since the October 7th meeting with staff, he has stated that he did not clear the forest. He has stated that the previous owner cleared the forest and that when he took ownership of the property in July 2005, it was already cleared. He submitted statements signed by two individuals dated October 1, 2005 that state that the property “was cleared and many trees were removed prior to Anthony Mereos Purchasing the property”. (Attachment 9).

Mr. Mereos entered into a contract to purchase the subject property on June 26, 2005. He has indicated that he purchased the property in mid July 2005. During the March 10, 2006 meeting this information was requested, but to date no confirmation has been received by this agency. However, Maryland Department of Assessments and Taxation Records show the purchase date for this property as July 22, 2005 (Attachment 10).

Staff believes that Mr. Mereos is the responsible party for the illegal forest clearing activity on the subject site. This is based on the following information:

- Aerial photographs taken in 2002 and in 2004 of the property (from M-NCPPC GIS database) show the property entirely forested (Attachments 11 and 12). Staff recently obtained an aerial photograph of the property from a U.S. Department of Agriculture (USDA) database (with aerial photography taken in June 2005) showing the entire property in forest cover (Attachment 13). Although the exact date of the USDA photograph cannot be identified, it was taken in the same month that Mr. Mereos entered into a contract to purchase the property.
- Reports of tree clearing on the subject site were received by DPS at the end of August 2005 after Mr. Mereos became the owner of the property. Neither M-NCPPC nor DPS staff received reports of tree clearing on the site before these August 2005 phone calls to DPS. Since staff has an aerial photograph taken in June 2005 showing forest cover on the property, the forest clearing activity would have occurred sometime after the June 2005 photographs.
- The M-NCPPC inspector photographed site conditions when he conducted his initial investigation of the forest clearing activity on September 1, 2005. The photographs include freshly cut tree stumps and cut trees with most of the leaves still green and vibrant (Attachments 14). These photographs have also been reviewed by Mr. Brian Murphy, an M-NCPPC

Parks Department certified tree care expert who is also a licensed arborist and has 8 years experience in both tree care and tree cutting. Both the inspector and the Parks tree expert believe that the characteristics of the tree stumps and the cut trees indicate that the trees were cut within days of the photographs and not months before. There were many more freshly cut trees than the seven or eight trees that Mr. Mereos stated he cut.

- In conversations with the manager of the United Rentals store, Mr. Rick Thorne, in Gaithersburg, the M-NCPPC inspector has learned that Mr. Mereos leased backhoes and skid loaders for delivery to the subject property between the middle of August and September 2005. The manager remembers these dates because Mr. Mereos returned some of this equipment in a damaged condition. This type of equipment is typically used in land clearing and grading activities.

<u>Date</u>	<u>Equipment Delivered</u>
8/19/05	Backhoe & Skid Loader
8/23/05	Skid Loader
8/25/05	555 Tracked Backhoe
9/2/05	Backhoe

- The DPS inspector and M-NCPPC inspector have held conversations with six of the adjoining property owners. These owners indicate that the property was forested when Mr. Mereos took ownership of the property. They indicate that Mr. Mereos cleared the forest.
- Two of the adjoining property owners have told staff that Mr. Mereos has made veiled threats against them and their properties should anyone come forward and state that they observed him clearing forest on the subject property.
- There are also individuals who have told staff that Mr. Mereos has recently been canvassing the neighborhood inquiring into who “turned him in to the county”.

B. Penalties and Enforcement Actions under the Forest Conservation Law

As stated above, staff believes that Mr. Mereos is the responsible party for the illegal forest clearing activity. In addition, staff believes the forest clearing was large, occurred in an environmentally sensitive area and was egregious. **If the Planning Board finds that Mr. Mereos is the responsible party for this forest clearing, several penalties and enforcement actions may be imposed on the violator, in accordance with Sections 22A-16 and 22A-17 of the Forest Conservation Law.**

It should be noted that staff is applying the provisions of the Forest Conservation Law as it existed at the time (September 2005) that the violation was identified by the M-NCPPC inspector. The possible penalties and actions under the Forest Conservation Law in September 2005 are discussed below. Under the law, the Commission may impose both a civil fine under a Class A violation and an administrative civil penalty.

Collected fines are deposited into the forest conservation fund. The Forest Conservation Law states that the “money deposited in this fund may be used for purposes of implementing this Chapter” (i.e, the Forest Conservation Law).

Class A Violation

Under this violation, the maximum civil fine is \$1000. Typically, violators of the Forest Conservation Law are issued civil fines. It should be noted that M-NCPPC issues in the range of a dozen violations of the Forest Conservation Law a year, and a fine of \$1000 is not unusual.

Mr. Anthony Mereos was fined \$1000 on October 4, 2005. On October 13, 2005 Mr. Mereos filed a written challenge to the civil fine with the M-NCPPC Legal Department (Attachment 4).

Civil Action²

In September 2005, the Forest Conservation Law stated that a judicial civil action may be “brought to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order” in Montgomery County Circuit Court. As of this date M-NCPPC has not brought civil action against Mr. Mereos.

Corrective Action

Section 22A-17 of the Forest Conservation Law states:

“At any time, including during an enforcement action, the Planning Director may issue an administrative order requiring the violator to take corrective action within a certain time period. The corrective action may include an order to:

- (1) stop the violation;
- (2) stabilize the site to comply with a reforestation plan;
- (3) stop all work at the site;
- (4) restore or reforest unlawfully cleared areas; or
- (5) submit a written report or plan concerning the violation.”

² The County Forest Conservation Law was amended on December 13, 2005 to allow M-NCPPC to bring a civil or criminal action to enforce the Forest Conservation Law. Prior to this amendment, the law allowed for a civil action only.

An administrative order for corrective action was issued to Mr. Mereos on March 2, 2006, in conjunction with the notice for a hearing for an administrative civil penalty (Attachment 5). This corrective action consists of the following:

- Mr. Mereos would submit a natural resource inventory/forest stand delineation plan (NRI/FSD) for M-NCPPC review and approval. The NRI/FSD would show all streams, wetlands, seeps, associated environmental buffers and the extent of the forest on the property before any clearing activities.
- Mr. Mereos would submit a Forest Conservation Plan (FCP) for the subject property following M-NCPPC approval of the NRI/FSD. At a minimum the FCP must include a reforestation plan to cover any portion of the environmental buffers that were cleared.
- Mr. Mereos would also have to implement the FCP.
- At a minimum the environmental buffers on the property would be placed in a Category I Conservation Easement.

Administrative Civil Penalty

In addition to the civil fine of \$1000, the Planning Board may impose a civil penalty. In September 2005, the Forest Conservation Law set the amount of the penalty between a mandatory minimum penalty of \$0.30 per square foot to a statutory maximum of \$1.00 per square foot of forest cleared. Section 22A-16(d) of the Forest Conservation Law at the time the violation was identified stated the following:

“(2) In determining the amount of the civil penalty, the Planning Board must consider:

- (A) the willfulness of the violation;
- (B) the damage or injury to tree resources;
- (C) the cost of corrective action or restoration;
- (D) any adverse impacts on water quality;
- (E) the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator; and
- (F) other relevant factors.

(3) The reasons for imposing a civil penalty must be provided in a written opinion of the Planning Board and included in its administrative order.”

C. Recommended Planning Board Action

Staff recommends that the Planning Board impose an administrative civil penalty of \$1.00 a square foot of forest cleared, or, a total of \$83,000. The reasons are as follows:

A. “the willfulness of the violations”

- Based on conversations between Mr. Mereos and Mr. Mark Etheridge, a DPS Water Resources plan reviewer, on June 27 and 28, 2005 Mr. Mereos was told that the site was forested and that the entire property is a recorded Federal wetland. Mr. Mereos said that there must be some way to make it not a wetland. Additionally, Mr. Etheridge informed Mr. Mereos that he could not clear forest without checking with M-NCPPC regarding requirements and criteria related to forest clearing. These conversations occurred after Mr. Mereos put the property under contract, but before he took ownership of the property.
- In May 2006, Mr. Mereos ignored stop work orders issued by DPS, the Maryland Department of the Environment (MDE) (Attachment 18) and the U.S. Army Corps of Engineers (COE) (Attachment 19) by digging a series of trenches on the site with the intent to drain water from the wetlands.

B. “the damage or injury to tree resources”

- Staff believes the clearing of approximately 1.9 acres of forest is large. The cleared area was part of a larger forest stand that includes upland and stream valley features surrounding a headwater stream system.

C. “the cost of corrective action or restoration”

- Based on an approximate cost of restoration of \$0.90 per square foot of forest planting, the estimated cost to plant the cleared area would be about \$74,830. The restored area and thus the cost of restoration may be smaller than these estimates if Mr. Mereos can obtain all the necessary approvals to build a single-family residence on the property. According to the deed history provided to M-NCPPC staff, the property qualifies for an exception to the platting requirements and is eligible for construction of one single-family residence provided that all legal requirements are met (Attachment 17). Mr. Mereos has indicated that he plans to construct a single-family residence on the property. It would have to be served by a septic system. Given that preliminary information shows the entire property in a wetland, staff is not convinced at this time that a septic system could be approved on the property.

D. “any adverse impact on water quality”

- According to M-NCPPC GIS data, the entire property, and thus the forest clearing, lie within a wetland. Site evaluation by inspection staff of the Maryland Department of the Environment (MDE) on September 23, 2005 and November 17, 2005 indicate that the property is a state-regulated nontidal wetland (Attachment 18). A headwater tributary of Broad run (Use I stream system) traverses through the property and most, if not all, of the cleared area lies within its stream buffer. Clearing of forest in such an environmentally sensitive area can cause significant erosion and

sediment loadings into the stream and eliminate or severely damage stream and wetland habitats.

- To compound the damages to these environmentally sensitive areas, cut and grubbed trees were pushed and piled into the stream channel and the wetland area was graded. In January 2006, dirt was brought into the site and spread onto the wetland area. This is documented in an MDE field inspection report dated January 30, 2006 (Attachment 18). In addition, on May 12, 2006 a neighbor verified with M-NCPPC staff that, on or about April 26, 2006, Mr. Mereos had several trenches dug on his property in order to drain the water from the wetlands located on his site causing further damage to environmentally sensitive areas.

E. “the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator”

- Mr. Mereos has been involved in a prior tree clearing action located at his previous residence of 14503 Golden Eagle Court, Burtonsville, MD 20866. M-NCPPC inspection staff responded to a DPS complaint and made Mr. and Mrs. Mereos aware of the Forest Conservation Law.
- The citation for violation of the Forest Conservation Law was issued in October 2005. In January 2006, MDE identified approximately four to six truckloads of fill dirt that were brought onto the subject property and spread over the wetland area.
- More recently, in May 2006, M-NCPPC inspection staff identified several trenches that had been recently dug on the property. The trenches were draining water away from the wetland area into a stream and drainage channel. These were reported to Ms. Tracy McCleaf (COE) and Mr. Rich Wolters (MDE). The COE issued an additional letter of compliance dated May 24, 2006 to Mr. Mereos (Attachment 19).

F. “other relevant factors”

- Some individuals have told staff that Mr. Mereos has made veiled threats against them and their property should anyone come forward and state that they observed him clearing forest on the subject property.
- There are also individuals who have told staff that Mr. Mereos has recently been canvassing the neighborhood inquiring into who “turned him in to the county”.

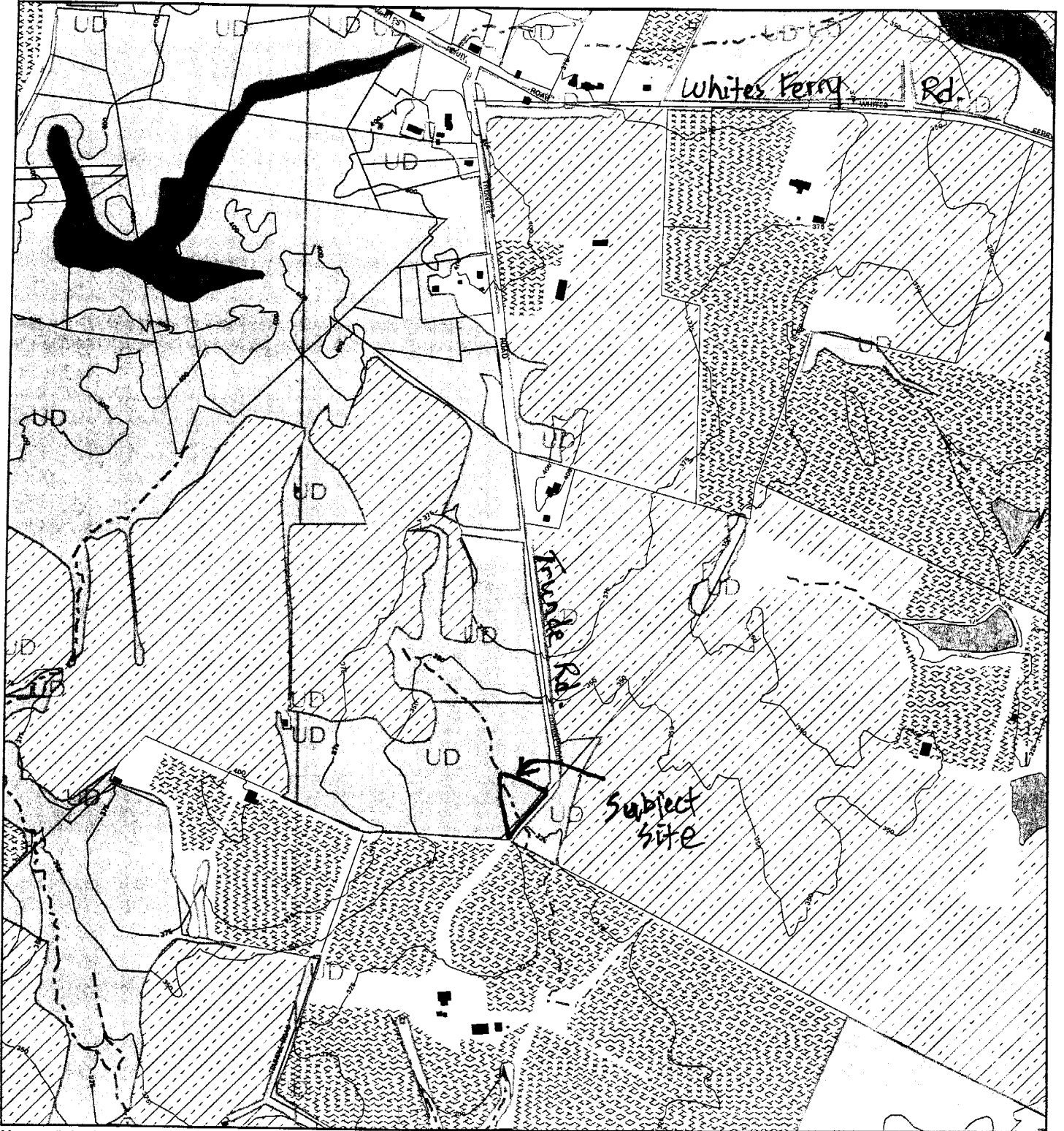
LIST OF ATTACHMENTS

- Attachment 1: Vicinity Map
- Attachment 2: Estimated area of forest clearing
- Attachment 3: Chronology of events.
- Attachment 4: October 13, 2005 letter from Mr. Mereos contesting the civil citation
- Attachment 5: M-NCPPC Administrative Order for Corrective Action
- Attachment 6: March 26, 2006 letters from Mr. Whittaker
- Attachment 7: March 30 M-NCPPC staff response letter to Mr. Whittaker
- Attachment 8: April 26, 2006 letter from Mr. Whittaker
- Attachment 9: Statements from two individuals stating that the forest clearing occurred before Mr. Mereos owned the property
- Attachment 10: Maryland Department of Assessments and Taxation Records
- Attachment 11: Site aerial photograph; 2002 M-NCPPC GIS
- Attachment 12: Site aerial photograph; 2004, M-NCPPC GIS
- Attachment 13: USDA Aerial Photograph; June 2005
- Attachment 14: Site photographs by M-NCPPC inspector; September 1, 2005
- Attachment 15: Emails from individuals regarding tree clearing
- Attachment 16: Sections 22A-16 and 22A-17 of the Montgomery County Forest Conservation Law in effect at the time the forest clearing violation was identified
- Attachment 17: M-NCPPC exemption letter from platting requirements
- Attachment 18: Maryland Department of the Environment field reports
- Attachment 19: U.S. Army Corps of Engineers field report and letter

ATTACHMENT 1

Vicinity Map

17900 TRUNDLE RD.



Map compiled on May 25, 2006 at 8:43 AM | Site located on base sheet no - 225NW22

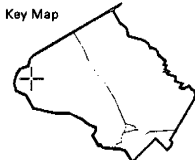
NOTICE

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

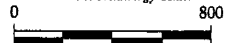
Key Map



N

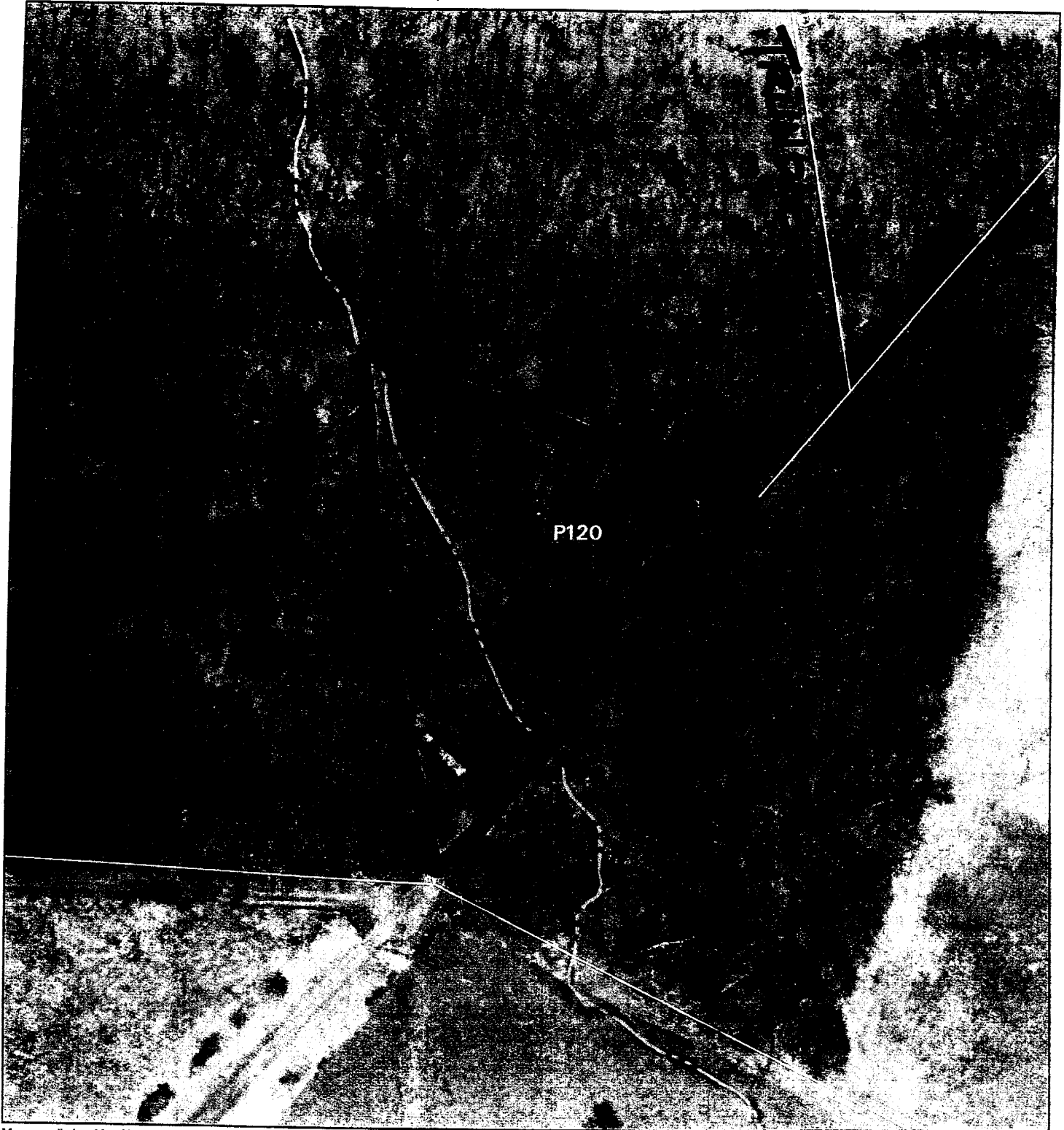


Research & Technology Center



1 inch = 800 feet
1 : 9600

17900 TRUNDLE RD. (April 2004)



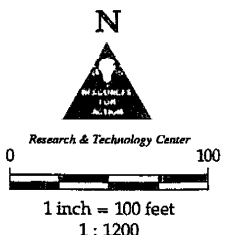
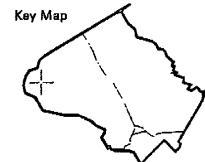
Map compiled on May 25, 2006 at 7:41 AM | Site located on base sheet no - 224NW22 | Date of Orthophotos - April 2004 | Orthophoto Images Licensed from VARGIS LLC.

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ATTACHMENT 2

Estimated Area of Forest Clearing

17900 TRUNDLE RD. (April 2004)



Map compiled on May 25, 2006 at 7:41 AM | Site located on base sheet no - 224NW22 | Date of Orthophotos - April 2004 | Orthophoto Images Licensed from VARGIS LLC.

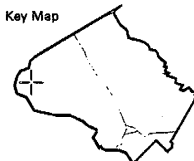
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Key Map



Research & Technology Center



1 inch = 100 feet
1 : 1200

ATTACHMENT 3

Chronology of Events

ATTACHMENT 4

October 13, 2005 Letter from Mr. Mereos contesting civil citation

ANTHONY MEREOS

**PO Box 206
POOLESVILLE, MARYLAND 20837**

PHONE: 301-518-4735

October 13, 2005

VIA FIRST CLASS AND CERTIFIED MAIL

Office of the General Counsel
8787 Georgia Avenue, Suite 205
Silver Spring MD 20910

Re: **NOTICE TO CONTEST CITATION AND STAND TRIAL**
17900 TRUNDLE ROAD DICKERSON, MD 20842

Dear General Counsel Officer:

Please be advised that this letter is to stand trial for Citation number DRD0000003(Copy enclosed).

The accusations are untrue and unfair.

Please advise in writing if you wish to meet prior to trial.

Sincerely,



Anthony Mereos

Civil Citation
The Maryland-National Capital Park and Planning Commission

vs.

Name: ANTHONY A. MEREDS
First Middle Last

Company/Position: _____

Address: PO BOX 206; POOLESVILLE, MD 20837

Phone Number: 301-518-4735 Fax Number: _____ Email: _____

Location and Description of Violation:

Address/location of site: 17900 TRUNDLE RD.; DICKERSON, MD 20842

Pursuant to the M-NCPPC's authority under Article 28 of the Annotated Code of Maryland and Chapter 50 of the Montgomery County Code, it is formally charged that the above named defendant on SEPT 1, 2005 (date) at the stated site location did commit the following:

CLEARED APPROXIMATELY 1.8 ACRES OF FOREST ON SITE

In violation of:

- Montgomery County Code, Chapter 22A
- Approval of _____ Plan No. _____
- Montgomery County Code, Chapter 59
- Other: _____

Civil Fine and Compliance:

1. (a) You shall pay a fine of \$ 1000⁰⁰ by OCT 18, 2005 (date) and complete the remedial action listed below, if any, to avoid trial.
- (b) You shall pay a daily fine of \$ _____ if the original fine has not been paid and/or the remedial action has not been completed by _____ (date). The daily fine shall accrue until the original fine is paid and all remedial action is completed.
2. You shall pay a daily fine of \$ _____ until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the Information Counter of M-NCPPC's Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, Maryland 20910, 301-495-4610. Failure to comply with this citation may result in formal court action or issuance of additional citations including additional fines. You may also elect to stand trial. If you elect to stand trial, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, Maryland 20910, within 15 days of date of citation. The District Court will thereafter notify you of the trial date.

Remedial Action:

1. CONTACT MS. CANDY BUNNAG (301-495-4543) BY OCT. 18, 2005 TO DISCUSS REMEDIAL ACTIONS. NO WORK IS TO OCCUR ON-SITE WITHOUT M-NCPPC APPROVAL. IF ENVIRONMENTAL PLANNING HAS NOT BEEN CONTACTED BY 10/18/05 THIS FINE BECOMES A \$1000 PER DAY CITATION.

by: 10/18/05 (date)

2. You have violated Chapter 22A of the Montgomery County Code, and maybe subject to an Administrative Civil Penalty, which may include an additional monetary fine in addition to corrective measures. You must contact Environmental Planning Department of M-NCPPC at 8787 Georgia Avenue, 1st Floor, Silver Spring, Maryland 20910, 301-495-4540, within 15 days of issuance of this citation.

Acknowledgement:

I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to stand trial for the offense(s) charged. If I do not exercise my right to stand trial, I agree to entry by the court of judgment on affidavit for the amount of the fine.

Defendant's Signature _____ Date _____

Affirmation:

I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters. The defendant is not now in the military service, as defined in the Soldier's and Sailor's Civil Relief Act of 1940 with amendments, nor has been in such service within thirty days hereof.

Inspector's Signature Douglas P. Johnsen Date 10/4/05
Print name: DOUGLAS JOHNSEN Phone number: 301-495-4571

District Court to send notices to M-NCPPC, Office of the General Counsel, 8787 Georgia Avenue, Suite 205, Silver Spring, Maryland 20910.

white=District Court; green=Office of General Counsel; yellow=Defendant

ATTACHMENT 5

M-NCPPC Administrative Order for Corrective Action

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

NOTICE OF ADMINISTRATIVE ORDER
IN ACCORDANCE WITH CHAPTER 22A OF
THE MONTGOMERY COUNTY CODE

March 2, 2006

Mr. Anthony A. Mereos
P.O. Box 206
Poolesville, Maryland 20837

Re: 17900 Trundle Road
Dickerson, MD 20842

Dear Mr. Mereos:

As you are aware, on September 1, 2005, an inspector for the Maryland-National Capital Park and Planning Commission (M-NCPPC) identified a recent clearing of forest of about 83,145 square feet (1.9 acres) on the property located at 17900 Trundle Road, Dickerson, Maryland 20842 of which you are the owner. Our records indicate that the forest clearing was not part of an approved forest conservation plan ("FCP") or forest conservation exemption as required by Montgomery County Code ("Code"), Chapter 22A ("Forest Conservation Law" or "FCL").

On October 4, 2005, an M-NCPPC Inspector issued you a civil citation for One Thousand Dollars (\$1000), in accordance with § 22A-16(a) of the Forest Conservation Law.

On October 7, 2005, M-NCPPC staff met with you. During this meeting the clearing violation was outlined to you along with the possible actions M-NCPPC may pursue. You stated that you did not clear the forest, but that you were only cutting up the trees that were cleared from the previous owner. You also indicated in this meeting that you had cut seven or eight trees, but not the entire forested lot.

Based on the M-NCPPC inspector's observations of site conditions and his discussions with the Dept. of Permitting Services (DPS) Sediment Control inspector as

well as an adjacent property owner, the M-NCPPC inspector has concluded that the forest clearing was done after you took ownership of the property in June 2005. Additionally, a DPS plan reviewer recalls having conversations with you on June 27 and 28, 2005 in which it was stated that your property was completely wooded.

During the October 7, 2005 meeting we explained that this unauthorized clearing activity is a violation and we discussed with you possible corrective actions. At this time you elected to challenge the civil citation issued to you on October 4, 2005. We informed you that you must contact M-NCPPC Legal Staff and file in writing an official challenge to the civil citation.

You submitted a letter dated October 13, 2005 indicating that you wanted to contest the civil citation and you wished to stand trial.

Montgomery County Code, Chapter 19, requires that a property owner obtain a sediment and erosion control permit from Montgomery County Department of Permitting Services ("DPS") prior to commencing any disturbance of more than 5,000 square feet of land in the County. Before DPS may issue a sediment and erosion control permit, the property owner must comply with the requirements of Montgomery County's Forest Conservation Law. Mont. Co. Code, §§ 19-3A, 22A-4(b), 22A-11(d)(3). The Forest Conservation Law provides, that, unless exempt, a property owner must receive review and approval of both a natural resource inventory/forest stand delineation plan and a forest conservation plan, prior to undertaking the land disturbing activity (Mont. Co. Code, §§ 22A-4, 22A-10, 22A-11(d)). According to inspections by Commission staff, you cleared a total of 83,145 square feet (1.9 acres) of forest without an approved forest conservation plan or forest conservation exemption. These violations of the Montgomery County Forest Conservation Law may be sanctioned accordingly.

The civil fine issued by the Commission on October 4, 2005 in accordance with § 22A-16(a) of the Code, fines you One Thousand Dollars (\$1000.00) for the clearing of 83,145 square feet (1.9 acres) of forest. In addition, by this letter, and in accordance with §§ 22A-16(d) and 22A-17 of the Code, the Commission is instituting the following additional enforcement actions:

- (A) As the Planning Director, and in accordance with §22A-17, I am issuing an administrative order requiring corrective action be undertaken by you as detailed in Attachment One to this letter; and
- (B) On May 4, 2006, the Montgomery County Planning Board will hold a public hearing to consider the amount of the administrative civil penalty to be imposed on you pursuant to §22A-16(d). Additionally, the Board will also consider the matter of the civil citation issued on October 4, 2005. In determining the amount of the civil penalty at the hearing, pursuant to §22A-16(d)(2), the Board will consider the willfulness of the violation; the damage or injury to tree resources; the cost of corrective action or restoration; any adverse impact on water quality; the extent to which the

current violation is a part of a recurrent pattern of the same or similar type of violation committed by the violator; and other relevant factors. As detailed in that Section, the penalty imposed by the Planning Board must be not less than \$0.30¹ and up to \$1.00² per square foot of forest cleared.

As required by §22A-20, the hearing before the Planning Board regarding the imposition of an administrative civil penalty is scheduled for May 4, 2006 in the Planning Board's Hearing Room at 8787 Georgia Avenue, Silver Spring, Maryland 20910. Staff is recommending the imposition of \$1.00 (One Dollar) per square foot of disturbance for a total of \$83,145 (Eighty Three Thousand One Hundred and Forty-Five Dollars). At this hearing, you will have an opportunity to be heard by the Board before it makes its final decision on the amount of the penalty and the status of the civil citation. Additionally, at the May 4, 2006 hearing, you may elect to have a hearing before the Board on the administrative order for corrective action, as required by §22A-20(d).

You may request to meet with staff to discuss the administrative order and staff's recommended civil penalty prior to the May 4, 2006 Planning Board hearing. If you would like to meet with staff or has any questions, please contact Ms. Candy Bunnag at (301) 495-4543 or Mr. Doug Johnsen at 301-495-4571.

Sincerely,



Faroll Hamer
Acting Director of Park and Planning

Attachment One – Corrective Action

cc: Michele Rosenfeld, M-NCPPC – Legal
✓ Candy Bunnag, M-NCPPC
Doug Johnsen, M-NCPPC
Mark Etheridge, DPS
Mike Reahl, DPS
Rick Watson, DPS
Rich Wolters, MDE

CL:CB:cb

¹ This amount is identified in §5-1608(c) of the Natural Resources Article of the Maryland Code.

² This amount is the maximum amount established by the Montgomery County Council by 1992 L.M.C., ch. 4 § 2.

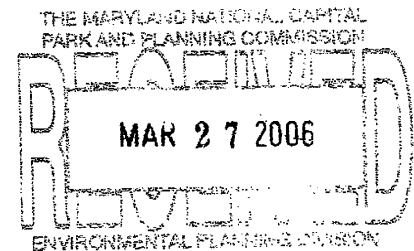
ATTACHMENT ONE
CORRECTIVE ACTION FOR ANTHONY A. MEREOS
17900 TRUNDLE ROAD; DICKERSON, MARYLAND

1. Mr. Anthony A. Mereos shall prepare, submit and obtain approval for a natural resource inventory/forest stand delineation plan (NRI/FSD) as defined in Section 22A-10 (b) of the Forest Conservation Law and the *Trees Approved Technical Manual*. The NRI/FSD must show all streams, wetlands, seeps, associated environmental buffers and the extent of the forest on the property before any clearing activities. The NRI/FSD must be submitted to M-NCPPC staff for its review and approval by June 9, 2006.
2. Mr. Mereos shall prepare and submit a Forest Conservation Plan (FCP) for the property at 17900 Trundle Road, Dickerson, MD following M-NCPPC approval of the NRI/FSD. At a minimum the FCP must include a reforestation plan to cover any portion of the environmental buffers that have been cleared. The FCP must be submitted to M-NCPPC staff for its review and approval by August 11, 2006. The FCP shall include details and specifications for land preparation, planting, and minimum two-year maintenance of the planted area. At a minimum, the planting schedule shall include three species of native one-inch caliper trees and three species of native container-grown, 18-inch tall shrubs at the rate of 200 trees/acre and 33 shrubs/acre. The planting plan shall also include measures for deer protection and non-native, invasive species control. The FCP must be consistent with any corrective actions required by the U.S. Army Corps of Engineers (COE), Maryland Dept. of the Environment (MDE) and Mont. Co. Dept. of Permitting Services (DPS)
3. The planting plan for the property at 17900 Trundle Road must be implemented and accepted by M-NCPPC between September 15, 2006 and November 15, 2006 pending approval of the FCP.
4. At a minimum the environmental buffers on the property at 17900 Trundle Road shall be placed in a Category I conservation easement. The easement must be recorded in the land records by August 1, 2006.

ATTACHMENT 6

March 26, 2006 Letter from Mr. Whittaker

THE LAW OFFICE OF
SHAWN C. WHITTAKER
SUITE 340
9055 COMPRINT COURT
GAITHERSBURG, MARYLAND 20877-1310
PHONE (301) 208-9114
FACSIMILE (301) 208-0362



ADMITTED IN MD, VA, DC

www.whittaker-law.com
shawn@whittaker-law.com

March 24, 2006

Candy Bunnag
Doug Johnson
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Anthony Mereos, 17900 Trundle Road, Dickerson, MD 20842

VIA FACSIMILE AND FIRST CLASS MAIL

Dear Mrs. Bunnag and Mr. Johnson:

This letter is written as a follow-up to our meeting of March 10, 2006. I apologize for the delay in providing you this letter, but we had a difficult time locating and obtaining a wetland expert.


Please find attached a copy of the estimate and time frame for the wetland determination and report you requested from Mr. Mereos. As can be seen by the attached estimate, it will take a maximum of 11 weeks to obtain the requested plans and reports.

Mr. Mereos is willing to incur the costs and take the measures that the County is requesting. However, before Mr. Mereos incurs these costs, we need assurance from the County that it will not impose a fine on Mr. Mereos. Mr. Mereos emphatically denies that that he cleared 1.9 acres on his property. In fact, I believe that the County can easily determine whether Mr. Mereos' property was cleared before he purchased the property. Therefore, I am requesting that the County provide me a copy of aerial photographs showing Mr. Mereos' property prior to June 26, 2005. I have located an aerial photo from April 7, 2002, showing that Mr. Mereos' property was cleared as of that date. I am attempting to obtain certified copies of aerial photographs from the US government, but surely the County has similar photographs which would show the status of Mr. Mereos' property prior to his purchasing of the property.

I look forward to your prompt response to this letter. In the interim, do not hesitate to call with any further questions or concerns.

Very truly yours,


Shawn C. Whittaker

	<p>Woodland Management Services LLC 26 Brookfield Road Pasadena, Maryland 21122-2102</p>	
	<p><i>Estimate for Requested Services</i></p>	

<p>Client Name/Address</p>
<p>Real Estate Surveyors LLC Calverton Tower Building 11875 Beltsville Drive, Suite 150, Beltsv Beltsville, MD 20708</p>

Date	3/21/2006
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Project Name:	
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Description	Total
Wetland Determination, written wetland report, map compilation	2,070.00
Jurisdictional Determination: Application to MD Department of the Environment & US Army Corps of Engineers	810.00
<p>Time Frame: the wetland delineation and report can be completed in 3-5 weeks depending on field conditions. It will require a survey of flags on the perimeter. I will require a copy of the CADD file +/- or assistance printing the map.</p> <p>If a Jurisdictional Determination is needed that will take a another 4-6 weeks for US Army Corps of Engineers to review and approve.</p> <p>Note: quote listed is a maximum figures and may be lower if extensive wetlands are not found.</p>	
Total	\$2,880.00

Phone #	(410) 746-7402	woodlandmgt.com	Fax #	(410) 437-1058
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WOODLAND MANAGEMENT SERVICES

Earl "Bud" Reaves, Licensed Forester # 336

After 17 years with the government sector as a forester, I have recently become a forestry consultant. I served 8 years as the Anne Arundel County Project Forester providing forest management assistance to forest landowners within Anne Arundel County as the Southern Region Urban Forester from October 2001 - June, 2004. In that capacity, I reviewed Forest Conservation Act (FCA) submittals for the Southern Region. I reviewed FCA submittals for state and assisted local jurisdictions with technical advice concerning the Forest Conservation Act prompt, professional service to requests for assistance. I also write the bi-weekly newsletter for the Anne Arundel County Forestry Board.

I hold the following licenses with the State of Maryland :

Registered Forester # 336; Licensed since 1990

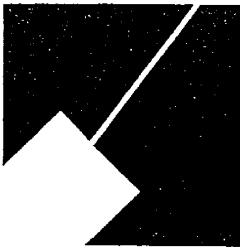
Pesticide Consultant in the categories of Forestry, Right of Way Management, Outside Ornamentals (shade tree care) License # 2821

Licensed Tree Expert # 250.

ATTACHMENT 7

March 30, 2006 M-NCPPC Staff Response Letter to Mr. Whittaker

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

March 30, 2006

Mr. Shawn C. Whittaker
Suite 340
9055 Comprint Court
Gaithersburg, Maryland 20877-1310

Re: 17900 Trundle Road,
Dickerson, Md. 20842

Dear Mr. Whittaker:

Staff has received your letter dated March 24, 2006 that you faxed. You indicate in your letter that the wetland consultant that Mr. Mereos may use to delineate wetlands on the site will take 11 weeks to complete the work and submit reports and plans. The delineation of wetlands is only one component of what staff discussed with you, Mr. Mereos, and Mr. Fitzroy Bertrand (Mr. Mereos' surveyor) at our meeting on March 10, 2006.

At the meeting, Mr. Mereos agreed that he would show good faith effort towards repairing the environmental damages resulting from the forest clearing and restoring the site. You and he agreed that you would submit a letter the week after the meeting outlining the items and an estimated schedule for the items that would be needed to work towards the repair and restoration of the site. The items included a plan that would show streams, wetlands, their buffers, previously-existing forest, and current forest (if any) and a plan that would show restoration and reforestation. Staff indicated that streams, wetlands, and buffers would usually require protection through placement of a conservation easement. Staff also indicated that if the restoration plan included a proposed use (such as a house) that would require a septic system, Mr. Mereos would need to document that the Montgomery County Department of Permitting Services had approved the septic system. Staff is skeptical that a septic system can be approved since it appears from existing mapped information and Maryland Department of Environment investigation that the entire site is wetlands.

Staff believes that your March 24th letter does not provide the information that was agreed to at the meeting. It only identifies the time frame for a wetlands delineation. There is no commitment to identify all of the environmentally-sensitive areas or to repair and restore the site and protect these areas. The letter does not indicate whether a use is proposed on the site or not. In addition, it should be noted that the consultant who provided the estimate for wetlands delineation work is a licensed forester with experience in forest-related work. However, from the information on his website, he does not appear to have any qualifications or experience in wetlands delineation.

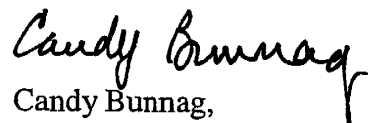
Staff continues to recommend the administrative civil penalty at the rate identified in the Administrative Order for Corrective Action of March 2, 2006. Absent a detailed wetlands delineation for the site, staff bases our evaluation of the extent and coverage of environmentally-sensitive areas on the site (streams, wetlands, buffers) on existing mapped information and the inspection findings of the Maryland Department of Environment (MDE) inspector in his report dated 11/18/2005. The MDE inspector's report states:

"An initial site investigation was completed on 9/23/05 during dry weather conditions and with no representative vegetation remaining to identify because of site grading. A further review of the National Wetlands Inventory Map, Montgomery County Soil Survey, and field analysis completed on 11/17/05 (of soils, vegetation, and hydrology) indicate that Mr. Meroeos' property is indeed a regulated nontidal wetland."

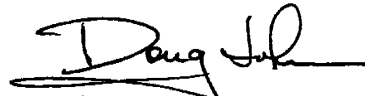
You requested aerial photography for the site. We have attached copies of the 2002 and 2004 aerial photographs from our Geographic Information System (GIS) database for your use. Both show the property as completed forested. We would like to obtain a copy of the April 7, 2002 photograph that you refer to in your letter that shows the property with no forest cover. We would like to determine why there is a discrepancy between the photograph you have the ones in our GIS database.

If you have any questions or would like to meet again, please contact either of us. (Candy at (301)-495-4543 or Doug at (301)-495-4571).

Sincerely,



Candy Bunnag,
Environmental Planner,
County-wide Planning Division



Doug Johnsen,
Lead Inspector,
M-NCPPC Development Review
Division

Attachments

cc: John Henderson
Michele Rosenfeld

ATTACHMENT 8

April 26, 2006 Letter from Mr. Whittaker

THE LAW OFFICE OF
SHAWN C. WHITTAKER

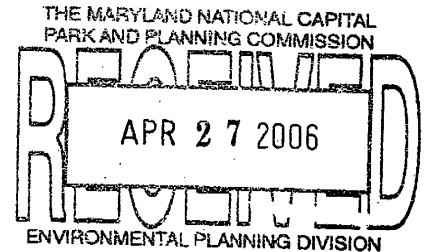
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ADMITTED IN MD, VA, DC

www.whittaker-law.com
shawn@whittaker-law.com

April 26, 2006, 2006

Candy Bunnag
Doug Johnson
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910



Re: Anthony Mereos, 17900 Trundle Road, Dickerson, MD 20842

VIA FACSIMILE AND FIRST CLASS MAIL

Dear Mrs. Bunnag and Mr. Johnson:

I have been advised that the wetland report, indicating streams, wetlands, buffers and current forest, will be finalized and submitted to your office by the end of the month. As you know, this is a busy time of year for engineers and it has caused some delay in getting you the information.

At our March 10, 2006 meeting, I stated that Mr. Mereos would devise a plan to reforest the lot if the County would remove the fine(s). Mr. Mereos disputes that he removed the trees from the lot. We have submitted notarized affidavits to you from the neighbors indicating that Mr. Mereos did not remove the trees. I have obtained pictures showing that the trees were removed prior to Mr. Mereos' purchasing the lot. However, the County has indicated absolutely no willingness to remove or decrease the fine, and it is our opinion that the County has acted with ill will and spite towards Mr. Mereos. It is puzzling why the County did not prosecute the prior property owner for clearing the forest. Admittedly, the County has no first hand knowledge the Mr. Mereos cleared the lot or whether the lot was cleared prior to Mr. Mereos purchasing the property. Instead of working with Mr. Mereos to reforest the lot, the County is dead set on fining Mr. Mereos.

Your March 30, 2006 letter requests Mr. Mereos to prepare a plan showing pre-existing forest. However, he is not aware of how the lot appeared, including where forest was placed, before he purchased the lot.

Mr. Mereos' goal is to resolve the dispute with County and he is committed to that goal. However, if the County insists on the fine, Mr. Mereos will aggressively defend himself. Furthermore, Mr. Mereos will take legal action against the County and against the individual members of the County government who have acted with ill will and spite towards Mr. Mereos.