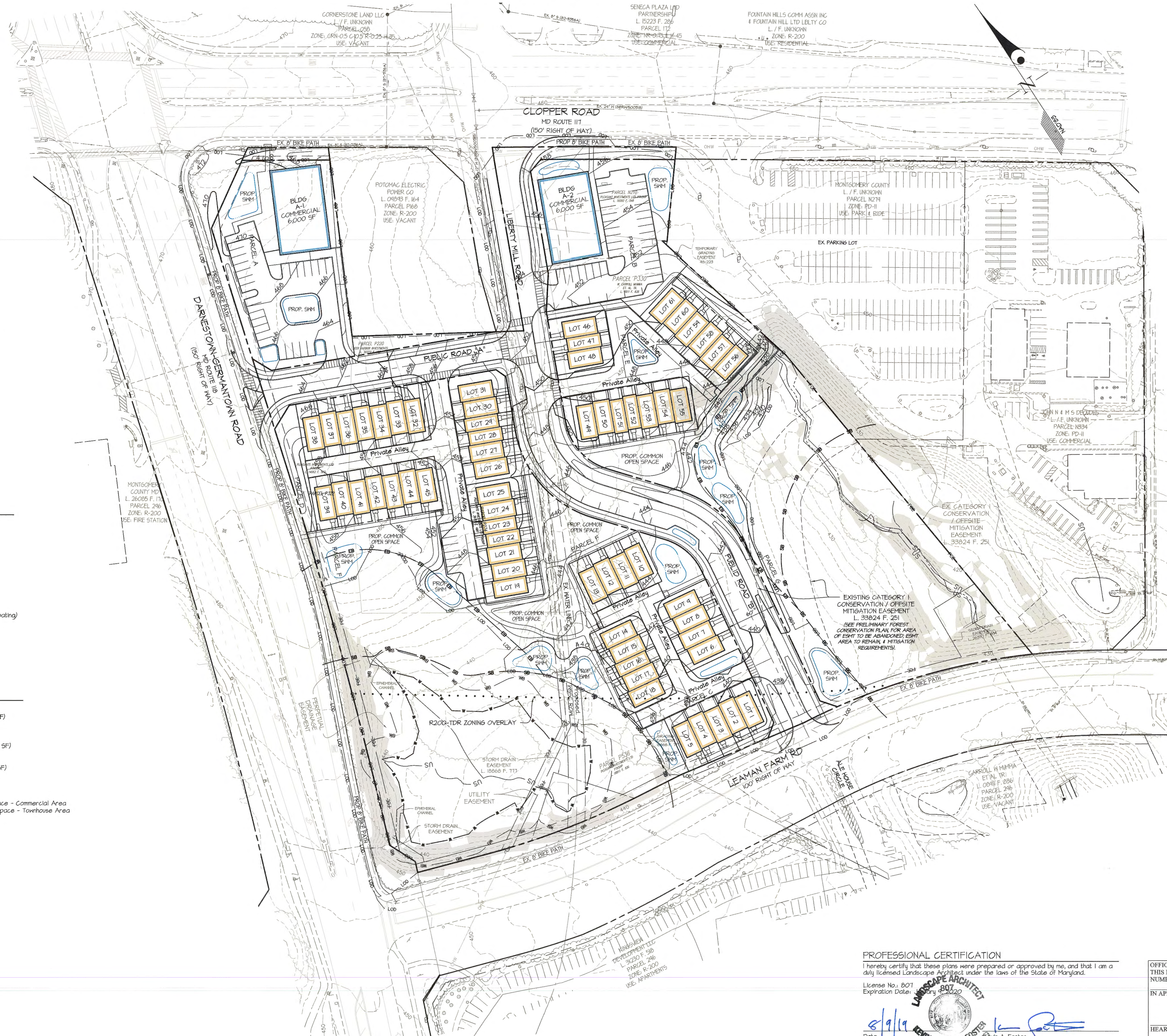
A. Plans and Drawings

Attachment-A

KINGSVIEW STATION

FLOATING ZONE PLAN



GENERAL NOTES

1. Owner/ Applicant: Kingsview Station, A Joint Venture, c/o Pleasants Development, 24012 Frederick Road Suite 200, Clarksburg, MD 20871
2. Boundary survey by: Charles P. Johnson & Associates, May 2018
3. Topography by: Charles P. Johnson & Associates, May 2018
4. Master Plan: Germantown Master Plan
5. NRI/FSD by: GLW, P.A. NRI/FSD Plan No. 420182510 Approved: August 7, 2018
6. Watershed & Use Class: Middle Great Seneca Creek (IV-P)
7. There are no known Special Protection Areas (SPA) or PMA Areas on site.
8. There is no floodplain on site per FEMA Map #24031C0170D.
9. Wetlands were flagged by Wetland Studies and Solutions, INC on May 10, 2018.
10. There are no known Rare, Threatened or Endangered Species on site.
11. The property is not listed on the Locational Atlas and Index of Historic Sites.
12. Parcel 274, 322, 330, 536, & N210
    Existing Water Category: W-3
    Existing Sewer Category: S-3
13. Parcel 220 & 274
    Existing Water Category: W-5
    Existing Sewer Category: S-5
    Proposed Water Category: W-1 (Pending)
    Proposed Sewer Category: S-3 (Pending)
14. Utility Companies: Gas - Washington Gas; Electric - PEPCO; Water & Sewer - WSSC; Telephone - Verizon; Cable -

SITE DATA

Existing Site Area:	10.28 Ac. (Includes existing R.O.W Area)
Parcel - 220	0.71 Ac.
Parcel - 274	1.00 Ac.
Parcel - 322	2.86 Ac.
Parcel - 330	4.92 Ac.
Parcel - 536	0.17 Ac.
Parcel - N210	0.42 Ac.
ROW Parcels	0.20 Ac.
Existing Zoning:	R-200 & R-200 TDR/6
Existing Use:	Vacant
Proposed Zone:	CRNF (Commercial Residential Neighborhood - Floating) (CRNF-1.00, C-0.25, R-0.75, H-55')
Proposed Use:	Commercial & Residential Townhouses
Development Program:	Single Phase
Commercial Uses:	12,000 SF
Residential Townhouses:	61 DU
MPDUs Provided (12.5%)	8 DU

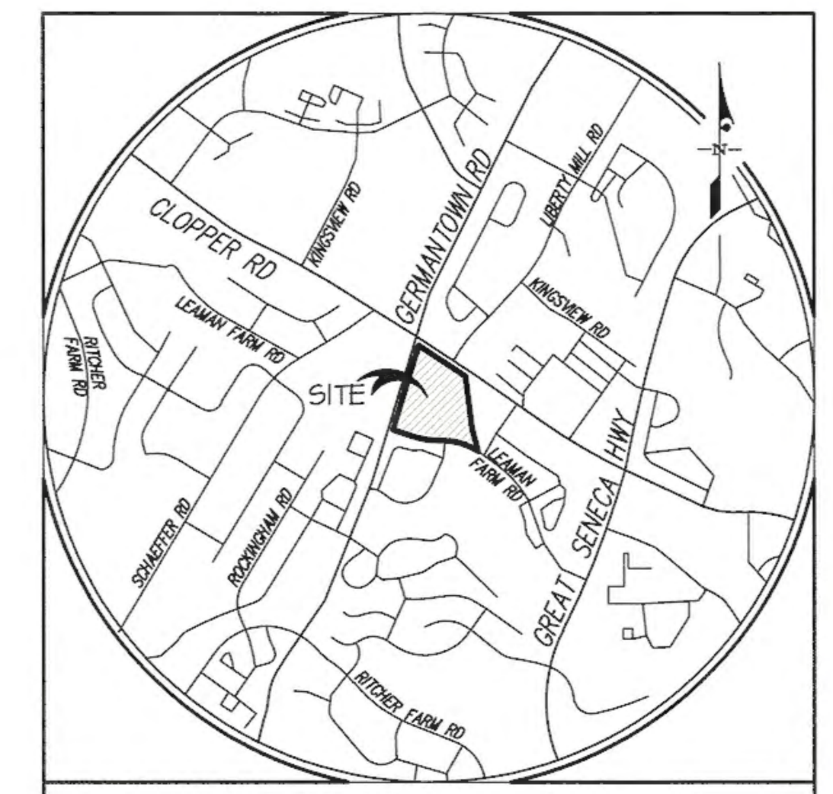
DEVELOPMENT STANDARDS - CRNF ZONE

FAR (Floor Area Ratio)	Allowed/Required	Proposed
Commercial:	Per Master Plan Village Center 170,000 SF Max.	0.25 FAR (±111,950 SF)
Residential:	Per Master Plan 11 Du/Ac	0.75 FAR (±335,850 SF)
TOTAL FAR:	N/A	1.0 FAR (+447,800 SF)
Building Height:	Per Master Plan recommendation	55' Max. Ht.
Open Space:	10% min.	10% Public Open Space - Commercial Area 10% Common Open Space - Townhouse Area

PARKING PROVIDED:
All Parking Shall Conform To Zoning Code Standards.

BINDING ELEMENTS:

1. No more than 12,000 sf of commercial building area.
2. No more than 61 townhouse dwelling units.
3. A maximum building height of 50'



VICINITY MAP

SCALE: 1" = 2,000'

WSSC GRID: 225NW13 - TAX MAP: ET343

LEGEND

- PROPOSED BUILDING
- EXISTING BUILDINGS
- PROPERTY LINE
- EX. CONTOURS
- PROP. CONTOURS
- EX. STREAM
- EX. CURB
- PROP. CURB
- EX. SIDEWALK
- PROP. SIDEWALK
- E — E — EX. ELECTRIC
- G — G — EX. GAS
- EX. SEWER
- PROP. SEWER
- EX. WATER
- PROP. WATER
- EX. STORM DRAIN
- PROP. STORM DRAIN
- LOD — LOD — LOD — PROP. LOD
- OHW — EX. OVER HEAD WIRE
- EX. UTILITY POLE
- EXISTING TREE LINE
- 2C / 16D — MAPPED SOILS BOUNDARY LINE
- FCE — FOREST CONSERVATION EASEMENT AREA
- // — // — EX. FENCE
- US — WATERS OF US
- EPHEMERAL STREAM
- SB — SB — STREAM BUFFER PER APPROVED NRI
- EB — EB — ENVIRONMENTAL BUFFER
- W — W — W — WETLAND
- WB — WB — WETLAND BUFFER
- EXISTING TREE
- CRZ #8 CRZ — FIELD SURVEYED SPECIMEN TREE & CRZ
- ▨ SLOPES 25% OR GREATER

PROFESSIONAL CERTIFICATION

I hereby certify that these plans were prepared or approved by me, and that I am a duly licensed Landscape Architect under the laws of the State of Maryland.

License No.: 807
Expiration Date: January 4, 2020

LANDSCAPE ARCHITECT 807 KEVIN ASHMORE FOSTER STATE OF MARYLAND

Date 8/9/19 [illegible]

Kevin A. Foster
Landscape Architect
Gutschick, Little & Weber, P.A.

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS CERTIFICATION
THIS IS A TRUE COPY OF THE FLOATING ZONE PLAN (EXHIBIT NUMBER ________) APPROVED BY THE DISTRICT COUNCIL ON ______________, BY RESOLUTION NUMBER ______________,
IN APPLICATION NUMBER ______________.

HEARING EXAMINER ______________ DATE ______________

HEARING EXAMINER S NAME PRINTED ______________

GLW
PLANNING | ENGINEERING | SURVEYING
3909 NATIONAL DRIVE | SUITE 250 | BURTONSVILLE, MD 20866 | GLWPA.COM
PHONE: 301-421-4024 | BALT: 410-880-1820 | DC&VA: 301-989-2524 | FAX: 301-421-4186

DESIGNED BY: KAF				
DRAWN BY: KAB				
CHECKED BY: KAF	8/8/19	Revised Layout	KAF	
	DATE	REVISION	BY	APP'R.

SCALE: 1" = 50'
0' 25' 50' 100' 200'

PREPARED FOR:
KINGSVIEW STATION, A JOINT VENTURE
c/o PLEASANTS DEVELOPMENT
24012 FREDERICK ROAD, SUITE 200
CLARKSBURG, MD 20871
ATTN: CLARK WAGNER
301-428-0800 x 1013

SCALE	ZONING	FLOATING ZONE PLAN	G. L. W. FILE No.
1"=50'	SEE SITE DATA	KINGSVIEW STATION PARCELS 210, 220, 274, 322, 330, 536	18020
DATE	TAX MAP - GRID		SHEET
DEC. 2018	ET-343	DARNSTOWN ELECTION DISTRICT No. 06 — MONTGOMERY COUNTY, MARYLAND	1 OF 1

L:\CADD\DRAWINGS\18020\PLANS BY GLW\FLOATING ZONE\18020-FZP-01.dwg, PLOTTED: 8/9/2019 5:50 AM, LAST SAVED:8/9/2019 5:50 AM, PLOTTED BY: Kevin Foster

Section 6.3.3. Allowed and Prohibited Features in Open Space

A. Allowed Features

The following table summarizes the allowed features in each type of open space:

Feature	Rural Open Space	Common Open Space	Public Open Space	Amenity Open Space
Conservation area or land trust for natural, archeological or historical resources	A	A	x	x
Open space such as a lawn, garden, ornamental planting area, patio, walk and pathway	x	A	A	A
Open space such as a plaza, promenade, arcade, urban park, or town square	x	x	A	A
Pedestrian or non-motorized multipurpose trail	x	A	A	A
Natural resource-based recreation	x	A	A	A
Facility-based recreation	x	A	A	A
Public space or amenity recommended by an approved urban renewal plan	x	x	A	x
Above-ground utility rights-of-way	A	A	A	A
Water body, such as a lake, pond, and floodway	A	A	x	x
Non-structural, natural, and ESD stormwater management facility	A	A	A	A
Utility	A	A	A	A
Other conservation-oriented use compatible with the purpose of Division 6.3	A	A	A	A

KEY: A = Allowed in open space x = Not allowed in open space

B. Prohibited Features

An open space must not include:

1. a street;
2. a parking or maneuvering area for vehicles;
3. an individual wastewater disposal area, or drain field for community systems;
4. a Transitory Use;
5. any activity prohibited by the applicable deciding body and recorded on the legal instrument providing for permanent protection; or
6. any use prohibited in rural open space under Section 6.3.4.A.4.

Section 6.3.6. Public Open Space

A. General Requirements

1. Applicability

Any development with an apartment, multi use, or general building type in a Commercial/Residential, LSC, Commercial/Residential Floating, or LSCF zone must provide the required public open space under the applicable development standards.

2. Defined

Public open space means space devoted to public use or enjoyment that attracts public appreciation due to its location and amenities.

3. Public Open Space Alternatives

a. Development with a civic and institutional use in the LSC zone may provide up to 50% of the required public open space as amenity open space under Section 6.3.7, if the Planning Board finds that the amenity open space better serves the public interest due to health and safety concerns.

b. Up to 5% of public open space may be used for outdoor café areas.

B. Design Requirements

1. Standard Method Development

Under standard method development, public open space must:

a. abut a public sidewalk or other public pedestrian route;

b. be a minimum of 15 feet wide;

c. include seating and shade;and

d. be in a contiguous space.

2. Optional Method Development

Under optional method development, public open space must:

a. abut a public sidewalk or other public pedestrian route;

b. include space for pedestrian circulation, landscaping, seating, shade, water features, artwork, or recreation; and

c. be in a contiguous space or spaces that abut other public open space or sidewalks or pedestrian routes and are not so fragmented and disconnected that they do not satisfy the intent of Division 6.3.

C. Off-Site Options

The Planning Board may find that the requirement for public open space is satisfied in whole or in part by:

1. making public park or public open space improvements in an area at least as large as the required public open space located within or near the applicable master plan area; or
2. paying all or part of the cost to design, construct, renovate, restore, install, or operate a public open space located within or near the applicable master plan area if the payment:
   a. equals the cost of constructing the same amount of public open space and any associated amenity on-site per square foot plus the fair market value of the land per square foot;
   b. implements the open space, recreation, and cultural goals of the applicable master plan; and
   c. is made within 30 days after the release of any building permit for the subject application.

Montgomery County Zoning Ordinance (2014)

Section 6.3.3. Allowed and Prohibited Features in Open Space

A. Allowed Features

The following table summarizes the allowed features in each type of open space:

Feature	Rural Open Space	Common Open Space	Public Open Space	Amenity Open Space
Conservation area or land trust for natural, archeological or historical resources	A	A	x	x
Open space such as a lawn, garden, ornamental planting area, patio, walk and pathway	x	A	A	A
Open space such as a plaza, promenade, arcade, urban park, or town square	x	x	A	A
Pedestrian or non-motorized multipurpose trail	x	A	A	A
Natural resource-based recreation	x	A	A	A
Facility-based recreation	x	A	A	A
Public space or amenity recommended by an approved urban renewal plan	x	x	A	x
Above-ground utility rights-of-way	A	A	A	A
Water body, such as a lake, pond, and floodway	A	A	x	x
Non-structural, natural, and ESD stormwater management facility	A	A	A	A
Utility	A	A	A	A
Other conservation-oriented use compatible with the purpose of Division 6.3	A	A	A	A

KEY: A = Allowed in open space x = Not allowed in open space

B. Prohibited Features

An open space must not include:

1. a street;
2. a parking or maneuvering area for vehicles;
3. an individual wastewater disposal area, or drain field for community systems;
4. a Transitory Use;
5. any activity prohibited by the applicable deciding body and recorded on the legal instrument providing for permanent protection; or
6. any use prohibited in rural open space under Section 6.3.4.A.4.

Section 6.3.5. Common Open Space

A. General Requirements

1. Applicability

Common open space is required for any:

a. optional method development in an RNC or Residential zone;

b. standard method development with a townhouse or apartment building type in a Residential Townhouse or Residential Multi-Unit zone;

c. townhouse development in a Commercial/Residential or Employment zone; and

d. Floating zone, as required under the equivalent Euclidean zone that determines uses.

2. Defined

Common open space means an outdoor area that is intended for recreational use by residents and their visitors. Common open space does not include private individual lots.

B. Design Requirements

1. Common open space must be located in a central position or central positions in the neighborhood bordered by streets or building lots. It may be public or private. Common open space may also be placed in a location taking advantage of an important adjacent natural feature or open space.

2. The minimum width for any required common open space is 50 feet unless the deciding body grants an exception for items such as a trail easement, a mid-block crossing, or a linear park, by finding that its purpose meets the intent of Division 6.3.

3. A minimum of 50% of the required common open space must be in one contiguous area or only separated by a residential street. Any other areas must be a minimum of 2,000 square feet each and connected by sidewalks, paths, or trails.

VICINITY MAP
SCALE: 1" = 2,000'

SITE DATA

Public Open Space
Commercial Area: 1.83 Ac.
Required (10%): 0.18 Ac.
Provided (15.8%): 0.29 Ac.

Common Open Space
Townhouse Area: 9.44 Ac.
Required (10%): 0.84 Ac.
Provided (12.5%): 1.06 Ac.

LEGEND

- Commercial Portion of Site
- Proposed Public Open Space (Plazas, Walks, Town Squares, Ect.)
- Residential Portion of Site
- Proposed Common Open Space

PROFESSIONAL CERTIFICATION

I hereby certify that these plans were prepared or approved by me, and that I am a duly licensed Landscape Architect under the laws of the State of Maryland.

License No.: 807
Expiration Date: January 9, 2020

8/9/19
Date

LANDSCAPE ARCHITECT
KEVIN ASHANTE FOSTER
STATE OF MARYLAND

Kevin A. Foster
Landscape Architect
Gutschick, Little & Weber, P.A.

SCALE: 1" = 50'
0' 25' 50' 100' 200'

GLW
PLANNING | ENGINEERING | SURVEYING
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PHONE: 301-421-4024 | BALT: 410-880-1820 | DCBVA: 301-989-2524 | FAX: 301-421-4186

DESIGNED BY:	DATE	REVISION	BY	APP'R.
KAF				
DRAWN BY: KAB				
CHECKED BY: KAF				

PREPARED FOR:
PLEASANTS DEVELOPMENT
24012 FREDERICK ROAD, SUITE 200
CLARKSBURG, MD 20871
ATTN: CLARK WAGNER
301-428-0800 x 1013

SCALE	ZONING
1" = 50'	CRN
DATE	TAX MAP - GRID
JUNE., 2018	ET-343

OPEN SPACE EXHIBIT
KINGSVIEW STATION
PARCELS 210, 220, 274, 322, 330, 536
DARNSTOWN ELECTION DISTRICT No. 06
MONTGOMERY COUNTY, MARYLAND

G. L. W. FILE No. 18020
SHEET 1 OF 1

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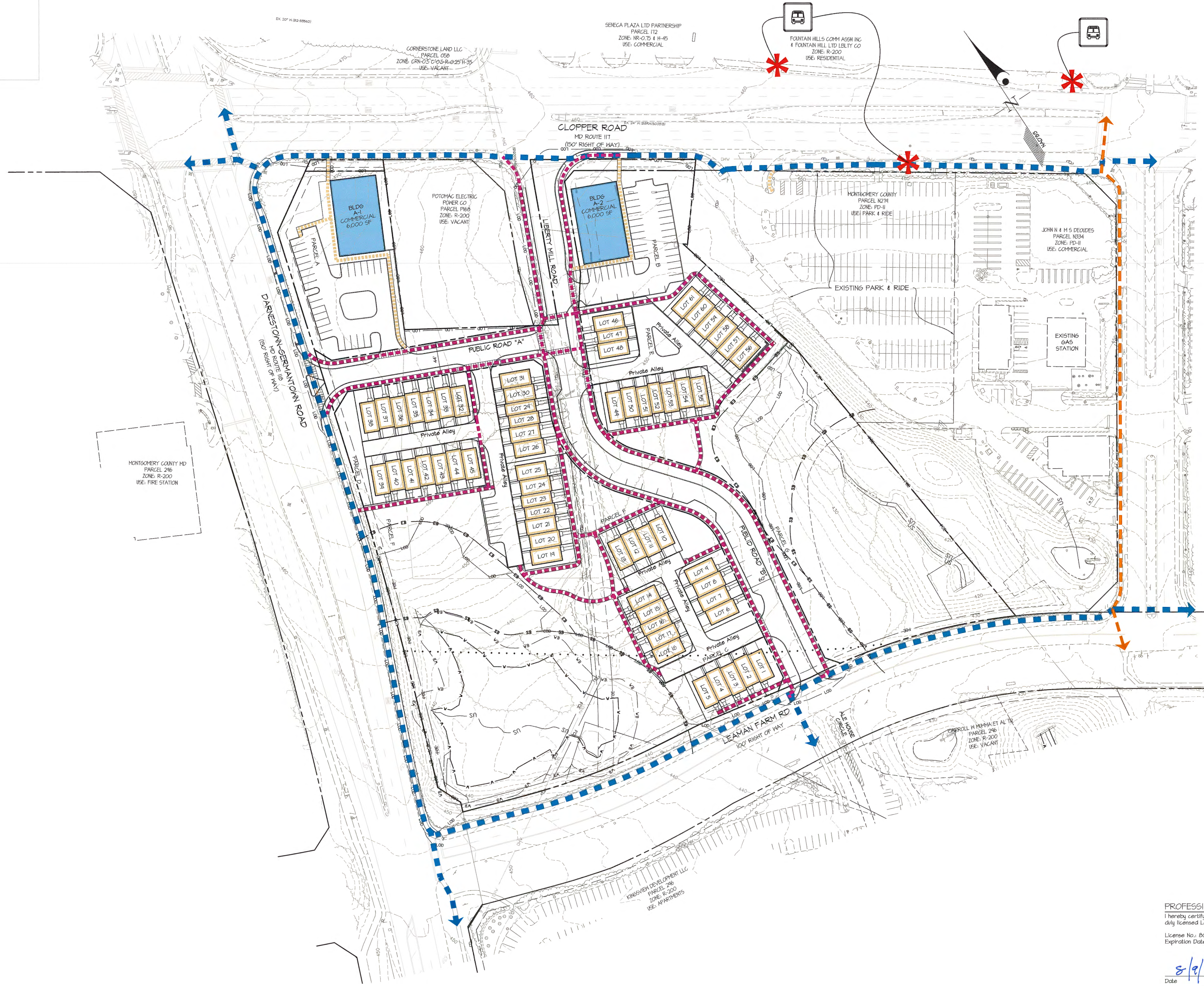

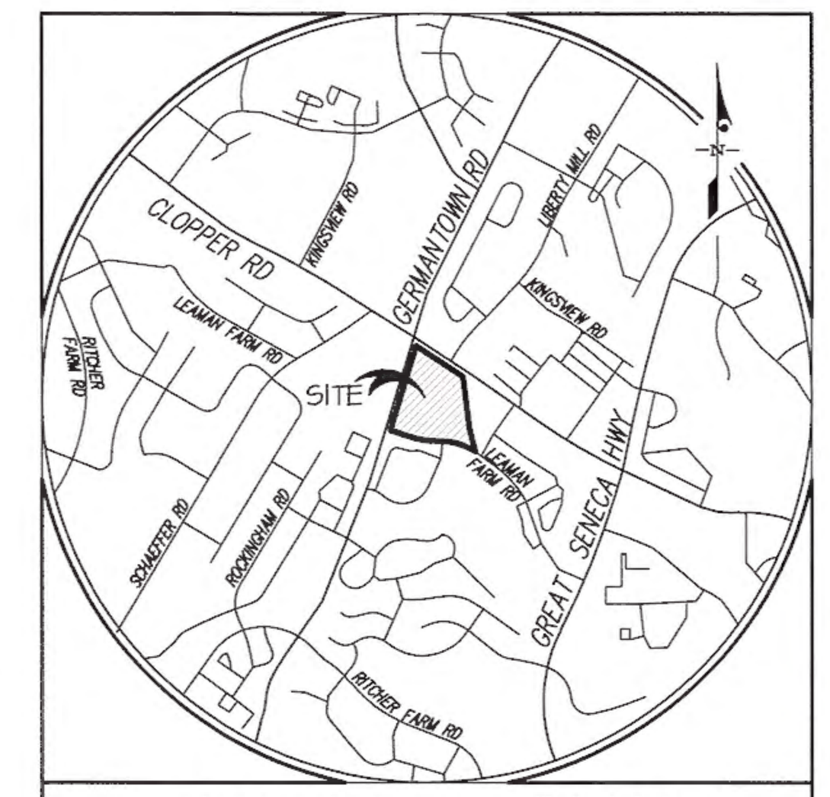

VICINITY MAP
SCALE: 1" = 2,000'

WSSC GRID: 225NW13 - TAX MAP: ET343

LEGEND

■■■■■■	PROPOSED PUBLIC SIDEWALK
■ ■ ■	EXISTING PUBLIC SIDEWALK
▪▪▪▪▪▪▪▪▪	ON-SITE SIDEWALK FOR PUBLIC USE
■ ■ ■	EXISTING SHARED BIKE/PEDESTRIAN PATH
🚌 ✱	PUBLIC TRANSPORTATION STOP
■	PROPOSED COMMERCIAL BUILDING
■	PROPOSED TOWNHOUSE

PROFESSIONAL CERTIFICATION

I hereby certify that these plans were prepared or approved by me, and that I am a duly licensed Landscape Architect under the laws of the State of Maryland.

License No.: 807
Expiration Date: January 2020

LANDSCAPE ARCHITECT 807 KEVIN ASHMORE FOSTER STATE OF MARYLAND

8/9/19 [illegible]
Date
Kevin A. Foster
Landscape Architect
Gutschick, Little & Weber, P.A.

GLW
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PHONE: 301-421-4024 | BALT: 410-880-1820 | DC&VA: 301-989-2524 | FAX: 301-421-4186

DESIGNED BY: KAF
DRAWN BY: KAB
CHECKED BY: KAF

DATE	REVISION	BY	APP'R.

SCALE: 1" = 50'
0' 25' 50' 100' 200'

PREPARED FOR:
KINGSVIEW STATION, A JOINT VENTURE
c/o PLEASANTS DEVELOPMENT
24012 FREDERICK ROAD, SUITE 200
CLARKSBURG, MD 20871
ATTN: CLARK WAGNER
301-428-0800 x 1013

SCALE	ZONING
1"=50'	SEE SITE DATA
DATE	TAX MAP - GRID
DEC. 2018	ET-343

FLOATING ZONE PLAN - CIRCULATION EXHIBIT

KINGSVIEW STATION
PARCELS 210, 220, 274, 322, 330, 536

DARNSTOWN ELECTION DISTRICT No. 06 MONTGOMERY COUNTY, MARYLAND

G. L. W. FILE No. 18020
SHEET 1 OF 1

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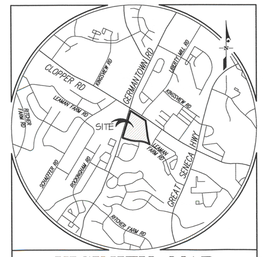


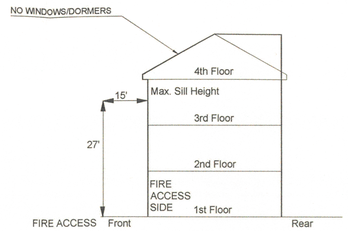
VICINITY MAP

SCALE: 1" = 2,000'

MSSC GRID: 22&NW13 - TAX MAP: ET343

LEGEND

- EX. BUILDING
- PROP. RESIDENTIAL BUILDING
- PROP. COMMERCIAL BUILDINGS
- EX. CURB
- PROP. CURB
- EX. SIDEWALK
- PROP. SIDEWALK
- EX. SEWER
- PROP. SEWER
- EX. WATER
- PROP. WATER
- EX. STORM DRAIN
- PROP. STORM DRAIN
- PROP. FIRE ACCESS ROUTE
- EX. FIRE HYDRANT
- PROP. FIRE HYDRANT
- "RXX' " PROP. TURNING RADIUS
- "20'" PROP ACCESS PAVEMENT WIDTH (CURB TO CURB)



Townhouse Unit Building Height Detail -
* FIRE HEIGHT RESTRICTED UNIT

General Notes:

1. One and two-family dwellings of three (3) stories (27' to highest sill, including false dormers) or less must provide access to the occupied interior through a main, side-hinge door within 150 feet of a fire department access route.. For units of three (3) stories or more, access must be within fifty (50) feet of access route.

HEIGHT RESTRICTIONS

FIRE CODE ENFORCEMENT

Fire Department Access Review

Review based only upon information contained on this plan. Does not cover unsatisfactory layout resulting from omissions, errors or failure to clearly indicate conditions on this plan. Correction of such unsatisfactory layout to afford required access will be required if found upon inspection after installation

BY: SAC FM: 43 DATE: 7/16/2019

PROFESSIONAL CERTIFICATION

I hereby certify that these plans were prepared or approved by me, and that I am a duly licensed Professional Engineer under the laws of the State of Maryland.

License No.: 29414
Expiration Date: January 20, 2020

9.12.2019
Date

Tim M. Longfellow
Professional Engineer
Gutschick, Little & Weber, P.A.

GLW
PLANNING | ENGINEERING | SURVEYING
3909 NATIONAL DRIVE | SUITE 250 | BURTONSVILLE, MD 20866 | GLWPA.COM
PHONE: 301-421-4024 | BALT: 410-880-1820 | DC&VA: 301-989-2524 | FAX: 301-421-4186

DESIGNED BY:	DATE	REVISION	BY	APP'R.
KAF				
DRAWN BY: KAB				
CHECKED BY: KAF				

SCALE: 1" = 50'
0' 25' 50' 100' 200'

PREPARED FOR:
KINGSVIEW STATION, A JOINT VENTURE
c/o PLEASANTS DEVELOPMENT
24012 FREDERICK ROAD, SUITE 200
CLARKSBURG, MD 20871
ATTN: CLARK WAGNER
301-428-0800 x 1013

SCALE	ZONING
1"=50'	SEE SITE DATA
DATE	TAX MAP - GRID
DEC. 2018	ET-343

FIRE ACCESS PLAN - FLOATING ZONE PLAN #F-131

KINGSVIEW STATION
PARCELS 210, 220, 274, 322, 330, 536

DARNSTOWN ELECTION DISTRICT No. 06 — MONTGOMERY COUNTY, MARYLAND

G. L. W. FILE No. 18020

SHEET 1 OF 1

B. Forest Conservation Plan Recommendation

Attachment-B

MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item No.: 5A
Date: 12-05-19

Kingsview Station, Preliminary Forest Conservation Plan H-131

Katherine E. Nelson, Planner Coordinator, Area 3 Division: Katherine.Nelson@montgomeryplanning.org, 301-495-4622

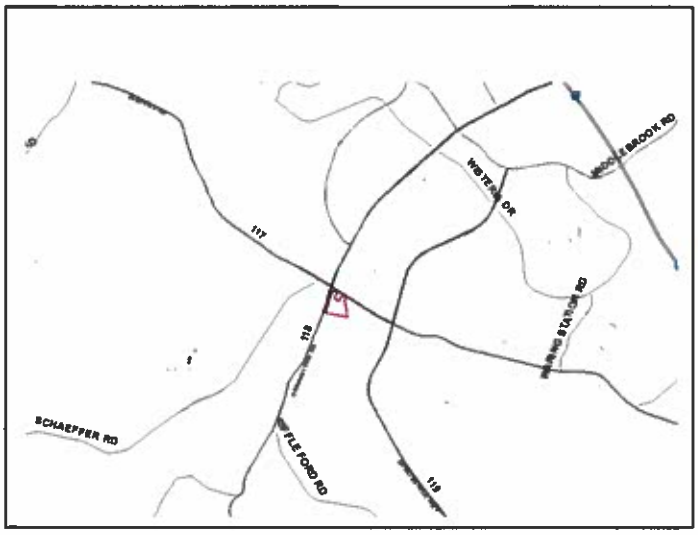
Frederick V. Boyd, Master Planner/Supervisor, Area 3 Division: Fred.Boyd@montgomeryplanning.org, 301-495-4654

Richard A. Weaver, Chief, Area 3 Division: Richard.Weaver@montgomeryplanning.org, 301-495-4544

Staff Report Date: 11/22/19

Description

Preliminary Forest Conservation Plan in conjunction with Local Map Amendment H-131; a reclassification of 6 parcels (N210, P220, P274, PT P322, PT P330, P536) and Liberty Mill Road right-of-way with a combined total of 10.27 acres of land from R-200 and R-200/TDR 6.0 Zones to the CRNF-1.0, C-0.25, R-0.75, H-55' zone for a proposed development of 61 townhouse living units and 12,000 square feet of commercial use; located at the southwest corner of the intersection of Clopper Road (MD 117) and Germantown Road (MD 118). *1989 Germantown Master Plan.*



Submittal Date: March 6, 2019
Applicant: Kingsview Station Joint Venture
Review Basis: Montgomery County Code Chapter 22A

Staff Recommendation: Approval of the Preliminary Forest Conservation Plan with conditions

Summary

Preliminary Forest Conservation Plan for a Local Map Amendment (LMA) to apply a floating zone to seven parcels, converting them from the R-200 and R-200/TDR 6.0 Zones to the CRNF-1.0, C-0.25, R-0.75, H-55' zone for a proposed development of 61 townhouse living units and 12,000 square feet of commercial use. This plan is required under Chapter 22A.

Conditions:

Forest Conservation

The Applicant must comply with the conditions of the approved Preliminary Forest Conservation Plan No. H-131.

a) The Applicant must submit and obtain approval of a Final Forest Conservation Plan at the time of Preliminary Plan that includes the following:
    i. Corrected delineation of streams, wetlands and their buffers.
    ii. Corrected areas excluded from net tract area
    iii. Corrected areas of forest planting
    iv. Corrected areas of existing forest
    v. Corrected areas of proposed Category I easement
    vi. Structures and stormwater management removed from environmental buffers
    vii. Easement encroachment mitigation located outside normal environmental buffers.
    viii. Mitigation trees for the loss of variance trees
b) The Applicant must submit and obtain approval of a revision to FFCP 81997007A prior to or concurrent with the preliminary plan of subdivision.
c) The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.
d) Mitigation for the removal of Variance trees will be accomplished with the planting of eleven, three-inch caliper shade trees.
e) The Applicant must provide financial surety to the M-NCPPC Planning Department, in a form approved by M-NCPPC Office of the General Counsel for the new forest planting as determined by the Final Forest Conservation plan prior to the start of any demolition, clearing, or grading on the Property.
f) The Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel prior to the start of any demolition, clearing or grading on the Property.
g) The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements.
h) Afforestation plantings that are located outside the limits of disturbance must occur within the first planting season following approval of the Certified Site Plan. Plantings within areas of future disturbance must occur in the first planting season following the stabilization of the applicable disturbed area.
i) The Final Sediment Control Plan must be consistent with the limits of disturbance shown on the approved Final Forest Conservation Plan.

SITE DESCRIPTION

The 10.27-acre property is located in the southeast quadrant of Clopper Road and MD 118 in Germantown. The property is currently vacant. See Figure 1.

The topography generally slopes down from north to south. Stream valleys exist on the southeastern and southwestern property boundaries. There are streams, wetlands, floodplains, and environmental buffers on the site. There are also three forest stands on site.

Environmental

Natural Resource Inventory/Forest Stand Delineation

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420182510 for this Property was approved on July 24, 2018. The NRI/FSD identifies 3.52 acres as forested. Stream valleys, wetlands and sensitive areas dominate parts of the site. There are no rare, threatened, or endangered species within the boundaries of the proposed project.

Figure 1

Forest Conservation Plan

A Preliminary Forest Conservation Plan (PFCP) H-131 for the Application was submitted as part of the Application (Attachment A and Figure 2)

This Applicant requests the CRNF Zone, which is assigned a Land Use Category of Mixed-Use Development Areas (MDP) in the Land Use Table of the Trees Technical Manual. This gives the Property an afforestation requirement of 15 percent of the net tract and a conservation threshold of 20 percent.

The NRI/FSD delineated 3.52 acres of forest within the tract area. The PFCP proposes 0.67 acres of forest retention. Some areas of forest are within existing and future utility corridors. These forested areas are not able to be permanently protected and must be considered forest loss. Mitigation should take place on site where possible. A wetland that is more than an acre in size has been delineated in the southwest quadrant of the site. Although the applicant proposes forest mitigation within this wetland, its saturated nature makes it unlikely that planted trees will survive. The specific afforestation/reforestation acreage will be determined in the Final Forest Conservation Plan as part of preliminary and site plan process. All environmentally sensitive areas retained forest and planted forest areas on the Property will be placed in Category I conservation easement.

Figure 2

Existing Easement Encroachment

In 2005, FFCP 81997007A, located directly south of the subject property, was amended to allow permanent structural sensitive area impacts. These impacts were mitigated offsite on the subject property. See Figure 3. The mitigation consisted of a 0.54-acre conservation easement that was delineated beyond the assumed future sensitive area buffer on the east side of the subject property. The applicant proposes to impact this mitigation area for their entrance from Leaman Farm Road and for stormwater management. This proposed impact must be addressed as part of another revision to FFCP 81997007A. Mitigation should take place on the subject property or within this stream system on a one-to-one basis as sensitive area protection that is in addition to normal protective measures.

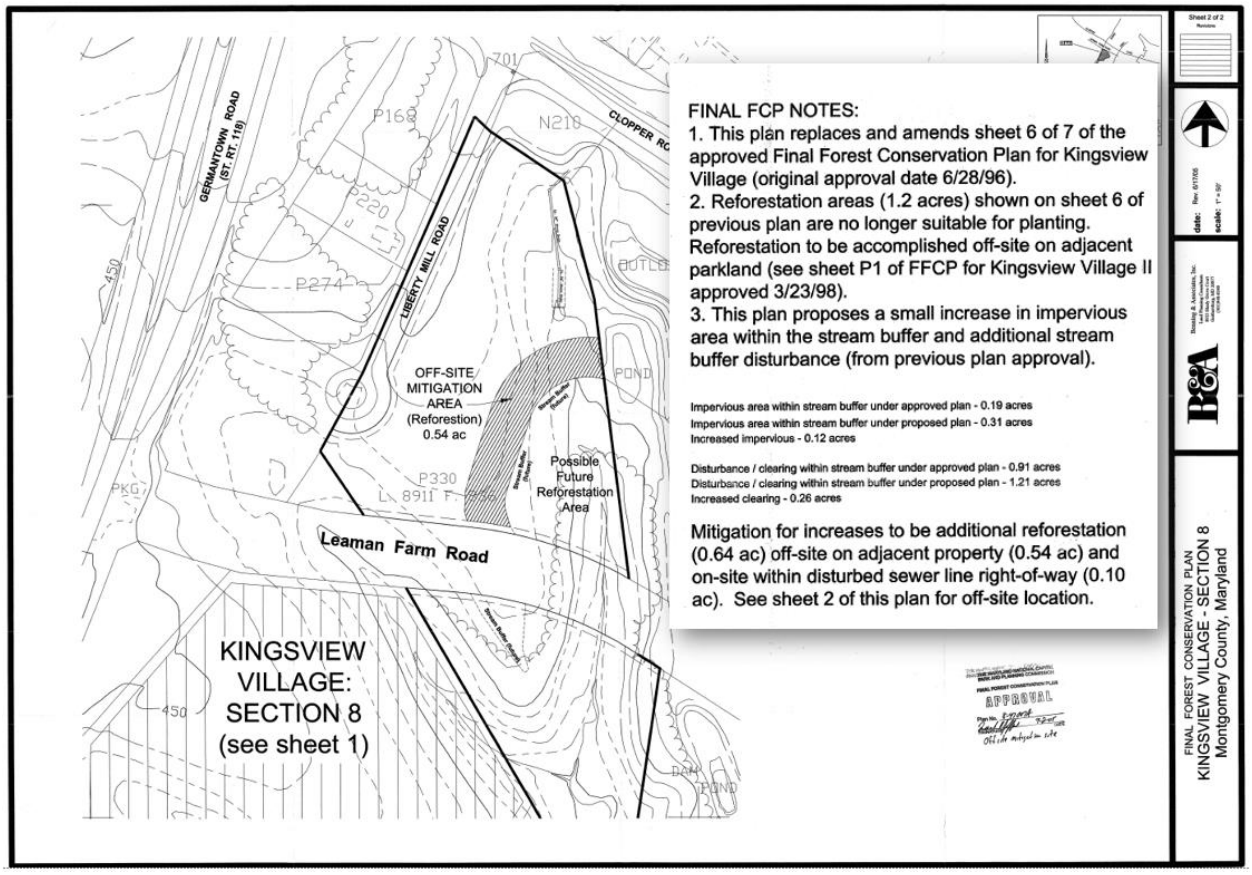


Figure 3

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an

historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The Applicant submitted a variance request in a letter dated December 26, 2018 See Attachment B. The Applicant proposes to remove three (3) trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Trees to be removed:

Tree Number	**Species**	**DBH Inches**	**Status**
1	Red Mulberry (Morris rubra)	31"	To construct an entrance road, internal public road and town homes.
5	Black Cherry (Prunus serotina)	31"	To construct an entrance road and town homes.
9	Black Cherry* (Prunus serotina)	54.5"	To construct an entrance road, parking lot and town homes.

*Montgomery County Champion Tree

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of the property. In this case, the unwarranted hardship is caused by the high-density recommendation of the 1989 Germantown Master Plan. This increase in zoning leaves very little space outside the environmentally sensitive areas for improvements. Therefore, the Applicant has a sufficient unwarranted hardship to justify a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate for a variance to be granted.

Variance Findings - The following determination has been made based on the required findings that granting of the requested variance:

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

   Granting the variance will not confer a special privilege on the Applicant as the removal of the trees is necessary to build the entrance road and develop the site. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

   The requested variance is not based on conditions or circumstances that are the result of actions by the Applicant. The requested variance is based on existing site conditions and the need to build an entrance road, internal road, parking lot and townhomes.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

   The requested variance is a result of the existing conditions on the subject property and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

   The variance will not violate State water quality standards or cause measurable degradation in water quality. The existing wetland will not be disturbed, and the stream valleys will be left in their natural condition. In addition, there will be a stormwater management plan for the entire site. Therefore, the Project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision - Mitigation for the loss of Variance trees will be eleven three-inch caliper shade trees planted outside rights of way, utility easements and forest mitigation areas. These will be shown on the Final Forest Conservation Plan.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. In a letter dated August 27, 2019, the County Arborist concurred with the recommendation to grant the variance. See Attachment C.

Letter from the Montgomery County Forestry Board

On October 7, 2019 the Montgomery County Forest Conservancy District Board wrote the Montgomery County Planning Board and to the Montgomery County Board of Appeals to request that the 54.5-inch Black Cherry Tree be considered for preservation (See Attachment D). This Board is the Chapter 22A designated "keeper" of the Champion Tree database and list used by those who implement the Forest Conservation Law. They disagree the tree is in poor condition as alleged by the applicant. They argue that most older trees are not in perfect condition, but that they can be maintained in a way that is safe for people and structures. They go on to list the many benefits of older trees as compared to the younger trees that will be planted to replace them.

Variance Recommendation - The Montgomery County Forestry Board's description of the condition and value of Tree #9, the 54.5-inch Champion Cherry Tree is correct. The difficulty with development of this site is that there are many constraints. These include the following:

- Bounded on two sides by major highways, limiting access points.

- The presence of two significant stream valleys
- The presence of a very large wetland that is part of those stream systems
- The presences of Old MD 118 (Liberty Mill Road bisecting the property with pavement water mains and overhead utilities.
- The Potomac Electric Power Company parcel in an awkward location within the site areas

These constraints are immovable, as is the Black Cherry Tree. It would take a major change of building type or a significant loss of town home units to design a community around all of these constrains as well as the tree. Therefore, staff recommends approval of the variance request.

CONCLUSION

The PFCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report.

Attachments
Attachment A – Preliminary Forest Conservation Plan
Attachment B – Tree Variance Request Letter
Attachment C – Arborist Response to Variance Request
Attachment D -Montgomery County Forestry Board Letter

Attachment C-S

Memoranda and Comments

Attachment-C

Montgomery County
FOREST CONSERVANCY DISTRICT BOARD
A Member of the Maryland Association of the Forest Conservancy District Boards

October 7, 2019

TO: Montgomery County Planning Board Members: Casey Anderson, Natali Fani-Gonzalez, Gerald Cichy, Tina Patterson, Partak Verma at MCP-Chair@mncppc-mc.org and

Montgomery County Board of Appeals members: John Pentecost, Chair, Katherine Freeman, Bruce Goldensohn, Mary Gonzalez, Jon Cook at BOA@montgomerycountymd.gov.

Re: **Zoning Application # H-131, Kingsview Station**

Dear Board Members,

The Montgomery County Forestry Board has learned that there is a zoning application in process for the subject property which is the home of the current Montgomery County Champion Black Cherry Tree (*Prunus serotina*). *We are writing to recommend denial of this application as currently designed.*

The tree on the property measures 95' high, with a canopy spread of 70' and a trunk circumference of 160", for a total point value of 273.

We have learned that the applicant has stated that this tree is in very poor shape, therefore not worth saving. They plan to take it down to accommodate their development plans of townhouses and some retail.

Several Montgomery County Forestry Board members have visited the champion black cherry tree in the last few months. A Board member who is a certified arborist found that, although this tree has some obvious problems, it remains a "magnificent tree"- and very well worth addressing and saving.

montgomeryforestryboard@gmail.com
www.mcmdforestryboard.org
17400 Annapolis Rock Road • Woodbine, Maryland 21797
301/854-6060 • Fax 410/442-2126

Montgomery County
FOREST CONSERVANCY DISTRICT BOARD
A Member of the Maryland Association of the Forest Conservancy District Boards

Our arborist went on to say that “the tree could be pruned to remove the defective limbs with a high likelihood of failure.” Therefore, given the age of the tree and the 95’ height of the tree, any development on the site would mean incorporating the tree into the required open space to avoid future risk of falling limbs.

Our County Champion trees are not just winners of a contest for the sake of it. Our grand old trees not only awe, inspire and comfort our citizens, they provide food, shelter and nesting for many species of wildlife. Additionally, they more than carry their weight by absorbing more carbon dioxide, sulfur dioxide and carbon monoxide and producing up to 600 times more oxygen than a 12” circumference tree.

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Montgomery County
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The fact is, several of Montgomery County's champion trees are in poor structural condition (as are many of our senior citizens). Restricting development around them is the best option to preserve their beauty and their contributions.

We are writing to ask that this up-zoning request be re-designed in order to preserve this Champion Black Cherry Tree. We also recommend that you engage the services of a tree risk assessment-qualified arborist to fully probe the lower stem and upper crown to determine the tree's structural quality.

Thank you for considering the input of the Montgomery County Forestry Board in this matter. Please feel free to contact us with any questions.

Most sincerely,

MONTGOMERY COUNTY FOREST CONSERVANCY BOARD

James W. Harris, Chair

Joli McCathran, Treasurer and
Champion Tree Team Leader

PS, our Board proposes exploring an alternative to the developer/applicant and the County: given the high density development surrounding this tract, this green and forested property seems ideally located for a neighborhood park which could offer a walking trail, play area, picnic areas and fenced off/restricted area to feature the champion black cherry tree as a centerpiece of "Black Cherry Park at Kingsview". Our organizations worked together in the past to create the Goshen Elm Conservation Park – perhaps we could do it again.

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D. Supplemental Information

Attachment-D

Elizabeth Rogers
301-841-3845
ecrogers@lerchearly.com

April 23, 2019

VIA ELECTRONIC AND HAND DELIVERY

Ms. Rebecca Torma, Manager
Development Review Team
Executive Office Building
Office of Transportation Policy
101 Monroe Street, 10th Floor
Rockville, Maryland 20850

Re: Kingsview Station
Local Map Amendment H-131
Request for Reconsideration

Dear Ms. Torma:

On behalf of Kingsview Station Joint Venture (the "Applicant"), we are formally requesting your reconsideration of your comments on the proposed layout and road design, in connection with the future development of the property located in the southeastern corner of the intersection of Clopper Road (MD route 117) and Germantown Road (MD Route 118) in Germantown, Maryland (the "Property").

I. Background

The Property is currently undeveloped. Liberty Mill Road is a public right-of-way that was acquired through a prescriptive easement and runs through the approximate center of the Property. As you may be aware, Liberty Mill Road was a country road that became old MD 118, a State Road. The road was effectively abandoned (and the right-of-way interest was transferred from the Maryland State Highway Administration to Montgomery County) when MD 118 was relocated in the 1980's.

What may not be fully evident from your review of the Floating Zone Plan, is that there are also significant environmental constraints on the Property. The Property is encumbered by existing wetlands and streams – these environmental features and their corresponding buffers significantly limit the developable portion of the site. Additionally, there is an existing Forest Conversation Easement that covers approximately 0.54 acres

of the Property, a portion of which will be vacated in connection with the proposed redevelopment.

The Applicant is requesting approval of a Local Map Amendment to rezone the Property from the R-200 and R-200/TDR 6.0 Zone to the CRNF-1.0, C-0.25, R-0.75, H-55' Zone. This rezoning has long been recommended by Master Plan. The *1989 Approved and Adopted Germantown Master Plan* (the "Master Plan") recommended rezoning the properties along Clopper Road, between MD 118 and Great Seneca Highway, (including the subject Property) to the PD-11 Zone.[1] This rezoning was intended to accommodate additional residential development, a park-and-ride facility, and supporting commercial uses. The subject Property, prominently located at the intersection of Clopper Road and MD 118, is effectively the last remaining undeveloped piece.

The Applicant is requesting approval of an LMA to rezone the Property to the CRNF zone, because a mixed-use zone is more appropriate for development at this location. The CRNF zone will provide the necessary design flexibility to allow for a residential community, along with commercial use at this prominent intersection of two major highways. Specifically, the Applicant is proposing to redevelop the Property with a predominately residential development, containing 60 townhouse units and up to 12,000 square feet of commercial use along Clopper Road (the "Project"). Subsequent to approval of the Local Map Amendment, the Applicant will file applications for Site Plan and Preliminary Plan approval.

The commercial development will be located along Clopper Road, with the townhomes located on the remainder of the site (to the south). The Project has been laid out in a manner so as to create a stronger sense of community, and encourage pedestrian safety through traffic-calming. As such, a majority of the townhomes have been oriented with their front doors facing the street, with individual lead walks to each unit, and garage parking typically located in the rear. The rear-garages are accessed via internal alleyways. The Project also provides for a centralized open space in the approximate center of the site, as requested by Park and Planning Staff (the exact design of which will be determined at the time of Site Plan). All of these features are critical to creating public streets and open spaces that are more pedestrian oriented.

In conformance with the requirements of Chapter 50 of the Montgomery County Code (the "Subdivision Regulations"), the Applicant has designed the Project to maximize public streets, and minimize the classification of internal streets as private. To this end, Liberty Mill Road, the main internal street that bifurcates the site, will remain public. The Project seeks to maintain the current alignment of Liberty Mill Road, to minimize the amount of right-of-way that will need to be abandoned. However, the alignment of Liberty Mill Road is dictated in large part by the environmental constraints on the site and the connection to Leaman Farm Road. The intersection of Liberty Mill

[1] The PD (Planned Development) zones cannot be applied to new properties under the recently adopted Zoning Ordinance (effective October 30, 2014). Instead, pursuant to Section 5.1.3.B. of the Ordinance, a LMA application can be filed for the "equivalent zone" (here, either the Commercial Residential Neighborhood Floating (CRNF) or Apartment Floating (AF)).

Road with Leaman Farm Road is effectively pre-determined by the intersection spacing requirements of the Subdivision Regulations – specifically, the full-movement access point along Leaman Farm Road has been aligned with Ale House Circle, directly to the south, as required by Section 50.4.3.E.2.f.ii of the Subdivision Regulations. Given the urban characteristics of the Project design, the majority of the remaining circulation on-site is accommodated through a series of private streets and alleyways (except for a proposed pubic road connection from Liberty Mill Road to Germantown Road (MD 118)).

The Applicant wanted to get DOT's input early in the design process, to ensure there were no major concerns at the subsequent Preliminary Plan Stage. Accordingly, in anticipation of filing the Application for a Local Map Amendment, the Applicant's team met with you and William Whelan on August 30, 2018 to discuss the proposed Project. Specifically, the Applicant sought feedback on the general layout proposed, classification of the internal streets (pubic versus private), and proposed abandonment of small portions of the Liberty Mill Road right-of-way.

In our meeting, the following comments were provided by you:

- Liberty Mill Road should be a public right-of-way. All other streets should be private, but should be straightened out to the extent necessary to accommodate plow access;
- Design private streets to secondary standards for pavement width and depth. Submit requests for design exceptions at time of Preliminary Plan;
- Provide sidewalks on both side of Liberty Mill Road and adjacent to on-street parking where feasible (or provide justification as to why sidewalks cannot be accommodated);
- Add ADA access ramps and crosswalks at all intersections; and
- Eliminate existing 25' truncation at the intersection of Clopper Road and Liberty Mill Road.

The Applicant addressed these comments and thereafter filed the Local Map Amendment Application, which was formally accepted by the Office of Zoning and Administrative Hearings on March 6, 2019. The Applicant elected to go through the pre-DRC process to get Agency input on the Floating Zone Plan, to proactively address any comments that would otherwise arise for the first time at Preliminary Plan.

The Applicant was surprised to learn that DOT had expressed concern with the proposed layout, as the layout reflects the changes discussed in our August 30, 2018 meeting. Accordingly, the Applicant met with you, Deepak Somarajan, and Park and Planning Area 3 Staff on April 2, 2019 to discuss these and other comments. We understand you now have the following comments:

- Provide 100-foot tangent between two curves, including where a private street (or alley) intersects with a public street (MCDOT Policy – based on 1983 Private Access Design and Location Guidelines);
- Provide a minimum 100-foot center line radius (tertiary roads) (or 150 for secondary roads) for all private and public roads (Chapter 50, Section 4.3.E.2.g);

- Eliminate 90 degree turns on Liberty Mill Road; and
- Underground existing utility lines along Liberty Mill Road.
- Prepare a completely new layout for the project.

Each one of these comments is discussed in turn below.

II. Justification

We understand that a subdivision waiver and certain design exceptions from the Montgomery County Department of Transportation's ("DOT") design standards will be required to accommodate the proposed layout. However, we believe the proposed layout provides for safe and efficient circulation, as currently designed.

1. *Provide 100-foot tangent between two curves, including where a private street (or alley) intersects with a public street;*

The Applicant's current layout has evolved based on design recommendations provided by Park and Planning Staff. In fact, the Park and Planning Staff has urged us to pursue the pedestrian-oriented design for this site that is currently shown on the Floating Zone Plan. The requirement for 100-foot tangent between driveways or an intersection is inconsistent with the pedestrian oriented community concepts that the Planning Department's policies are intending to create.

In order to improve walkability and community scale, the Applicant has proposed to provide street-fronting, rear-loaded, internal garage townhome units wherever possible. However, with these rear-garage units comes a need for a series of alleyways for access. Accordingly, each townhome lot would have to be a minimum of 100' deep in order to meet this standard, if applied where public streets and alleyways intersect.

As stated in the Private Access Design and Location Guidelines, "*It is recognized that driveway design and location is not an exact science. No one set of regulations or standards can be expected to apply to all access requirements, even for a single type of land use.*" The Applicant is seeking this flexibility, here. Given the slow design speeds and the small block groups generating very low traffic volumes, operational safety and adequate site distance can be provided through the continued design process of the Plan.

2. *Provide a minimum 100-foot center line radius (tertiary roads) (or 150 for secondary roads) for all private and public roads*;

The private road in Parcel D, as shown on the Floating Zone Plan, has a centerline radius less than 100 feet – specifically, the private road has a centerline radius of 50 feet. The road configuration is constrained by the large, existing wetland and stream area located in the southwest corner of the Property. However, importantly, the proposed centerline radius will not have any adverse impacts on vehicular/pedestrian safety, site distance, or circulation. This private street will handle very low volumes of traffic, as it serves only 13 townhome units. To look at a similar condition, a 50 foot centerline radius

was approved and constructed for three (3) locations along Windsong Lane (a public road) in the "Parkside" subdivision located in northern Montgomery County.

3. Eliminate 90 degree turns on Liberty Mill Road; and

There are no true 90 degree turns proposed on the plan. At all locations where Liberty Mill Road makes a "90 degree turn", the road intersects with a private street to create a "T" intersection. The "T" intersections will have two (2) legs that are public streets and one (1) leg that is a private street. This configuration gives a clear route for snow removal and a specific limit for road maintenance/liability. The private roads will be subject to the Declaration of Restrictive Covenants for private roads recorded at Book 54062 Page 338. The Applicant is proposing stop conditions for these "T" intersections, given the majority of community traffic will make the turning movement at the intersections. The proposed stop condition at the intersections will also provide the benefit of slowing traffic speeds and additional pedestrian safety in the community.

4. Underground existing utility lines along Liberty Mill Road.

There are cross-county transmission lines that currently run along the existing Liberty Mill Road right-of-way, through the approximate center of the site, given that Liberty Mill Road used to be a State Road (old MD 118). When MD 118 was relocated and Liberty Mill Road (old MD 118) was functionally abandoned, the utilities were not relocated. Undergrounding these lines now would result in a phenomenal cost to the developer and would essentially make the project economically infeasible. As the Planning Board has recognized in the pending MARC Rail Communities Plan, there is a disproportionate cost of undergrounding the transmission lines that remain along old MD 118 with future development. Accordingly, the Planning Board Draft of the MARC Rail Communities Plan includes qualifying language that any undergrounding must be evaluated in terms of feasibility.

It is not feasible to underground the existing transmission lines along the Property's Liberty Mill Road frontage. Given the scale of the proposed redevelopment (approximately 60 townhouse units and 12,000 square feet of commercial use), there is no nexus between the prohibitively high cost that would be required to underground these transmission lines and the Project. However, all *new* roads and the corresponding utilities, throughout the remainder of the site, will be underground. This is consistent with past County practice.

III. Conclusion

Based on the characteristics of the surrounding conditions and anticipated use, the proposed layout will be safe, adequate and efficient. The subdivision waiver and design exceptions necessitated by this layout will facilitate the development of this vacant Property with a walkable, residential community as has long been contemplated by the Master Plan. For all of the reasons articulated in this letter, we respectfully request your reconsideration of the proposed Project, as currently designed.

Please do not hesitate to contact us if you have any questions or require additional information.

Very truly yours,

Lerch, EARLY & BREWER, CHTD.

Elizabeth C. Rogers

cc: Mr. Richard Weaver
Ms. Sandra Pereira
Ms. Laura Hodgson
Mr. Clark Wagner
Mr. Kevin Foster

Land Use: 220
Multifamily Housing (Low-Rise)

Description

Low-rise multifamily housing includes apartments, townhouses, and condominiums located within the same building with at least three other dwelling units and that have one or two levels (floors). Multifamily housing (mid-rise) (Land Use 221), multifamily housing (high-rise) (Land Use 222), and off-campus student apartment (Land Use 225) are related land uses.

Additional Data

In prior editions of *Trip Generation Manual*, the low-rise multifamily housing sites were further divided into rental and condominium categories. An investigation of vehicle trip data found no clear differences in trip making patterns between the rental and condominium sites within the ITE database. As more data are compiled for future editions, this land use classification can be reinvestigated.

For the three sites for which both the number of residents and the number of occupied dwelling units were available, there were an average of 2.72 residents per occupied dwelling unit.

For the two sites for which the numbers of both total dwelling units and occupied dwelling units were available, an average of 96.2 percent of the total dwelling units were occupied.

This land use included data from a wide variety of units with different sizes, price ranges, locations, and ages. Consequently, there was a wide variation in trips generated within this category. Other factors, such as geographic location and type of adjacent and nearby development, may also have had an effect on the site trip generation.

Time-of-day distribution data for this land use are presented in Appendix A. For the 10 general urban/suburban sites with data, the overall highest vehicle volumes during the AM and PM on a weekday were counted between 7:15 and 8:15 a.m. and 4:45 and 5:45 p.m., respectively. For the one site with Saturday data, the overall highest vehicle volume was counted between 9:45 and 10:45 a.m. For the one site with Sunday data, the overall highest vehicle volume was counted between 11:45 a.m. and 12:45 p.m.

For the one dense multi-use urban site with 24-hour count data, the overall highest vehicle volumes during the AM and PM on a weekday were counted between 7:00 and 8:00 a.m. and 6:15 and 7:15 p.m., respectively.

For the three sites for which data were provided for both occupied dwelling units and residents, there was an average of 2.72 residents per occupied dwelling unit.

The average numbers of person trips per vehicle trip at the five general urban/suburban sites at which both person trip and vehicle trip data were collected were as follows:

- 1.13 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 7 and 9 a.m.
- 1.21 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 4 and 6 p.m.

BEFORE THE HEARING EXAMINER FOR MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Suite 200
Rockville, Maryland 20850

IN THE MATTER OF:	)	
KINGSVIEW STATION	)	
Applicant.	)	
	)	
Clark Wagner	)	
Kevin Foster	)	
David Little	)	
Mike Lenhart	)	Zoning Application No. H-131
Mike Klebasko	)	
	)	
For the Application.	)	
	)	
Robert G. Brewer, Esquire	)	
Elizabeth C. Rogers, Esquire	)	
Attorneys for the Applicant.	)	

APPLICANT'S PRE-HEARING STATEMENT

In accordance with the provisions of Rule 3.4 of the Rules of Procedure for Zoning Cases, the Applicant, Kingsview Station Joint Venture, submits this Pre-Hearing Statement (the "Statement"). The Applicant hereby incorporates by reference its Land Use Report, submitted with the Local Map Amendment Application, which contains additional information in support of the application and justification for the rezoning request.

I. STATEMENT OF GROUNDS UPON WHICH THE CASE IS BASED AND JUSTIFICATION FOR THE REZONING APPLICATION.

The site subject to Local Map Amendment H-131 (the "LMA") is the property located in the southeastern corner of the intersection of Clopper Road (MD Route 117) and Germantown Road (MD Route 118) in Germantown, Maryland (the "Property"). The Property is comprised of several individual parcels, generally bounded to the north by Clopper Road (MD 117), Germantown Road (MD 118) to the west, the Germantown Commuter Parking Lot and

Kingsview Village Center Commercial to the east, and Leaman Farm Road to the south.[1] The Property totals approximately 438,616 square feet (or 10.07 acres) of net lot area and 447,665 square feet (or 10.28 acres) of gross tract area.

The Property is currently zoned R-200 and R-200/TDR 6.0[2] and is currently undeveloped. The LMA seeks to rezone the Property to the CRNF-1.0, C-0.25, R-0.75, H-55' (Commercial Residential Neighborhood Floating) Zone.

As depicted on the Floating Zone Plan, submitted with the LMA Application, the Applicant seeks approval to allow for redevelopment of the Property with a mixed-use, predominately residential development (the "Project"). The requested rezoning and proposed Project fulfills all of the purposes and requirements of the CRNF Zone (Zoning Ordinance, Section 5.3) and is in substantial conformance with the *1989 Approved and Adopted Germantown Master Plan*. The requested rezoning also satisfies all necessary findings contained in Zoning Ordinance Section 7.2.1.E, for approval of a LMA. Compliance with these requirements is discussed in detail in the Applicant's Land Use Report.

The CRNF Zone and proposed development of the Property will be compatible with the surrounding development. The commercial development will be located along Clopper Road, which will help define the street character and engage the pedestrian environment. The townhomes are arranged to create a sense of community and encourage pedestrian activity. Additionally, the townhome units have been strategically arranged and oriented to ensure compatibility with the surrounding community, with the majority of the townhomes buffered from Germantown Road and Clopper Road by an expanded forested environmental buffer and the commercial buildings.

A Traffic Impact Analysis was prepared by the Applicant’s traffic consultant, Lenhart Traffic Consulting, Inc., and submitted with the LMA Application. Utilizing the updated LATR trip generation methodology, the conclusion of the Traffic Analysis prepared by Lenhart was that the proposed development will not exceed the applicable LATR standards. Lenhart concluded that all intersections in the Project area will operate at level of service “B” or better with critical lane volumes (CLVs) of less than 1350 under total traffic conditions.

Adequate public facilities and services will be available to serve the development on the Property. The roadway network surrounding the Property and the proposed vehicular and

[1] A parcel located in the southwest quadrant of the intersection of Liberty Mill Road and Clopper Road, more particularly known as part of Parcel P168 in the "Friend in Need" Subdivision, is owned by Potomac Electric Power Co. ("Pepco"), and is not included in this Application.

[2] It appears that the TDR Overlay zone was incorrectly applied to the Property. The Master Plan intended the TDR Overlay Zone to be applied to the properties south of Leaman Farm Road. However, the Master Plan showed a slightly different alignment for the road, which was farther north as compared to the as-built conditions.

pedestrian circulation are safe, adequate and efficient. The Property will be served by existing water and sewer mains. Electric, gas and telecommunications services are also available to serve the Property. Other public facilities and services – including police stations, firehouses, and health care facilities – are currently available in the vicinity of the Project.

The evidence to be presented will demonstrate: (1) that the subject LMA satisfies the requirements of the CRNF Zone as set forth in Zoning Ordinance Section 59-5.3; (2) that the available public facilities and services will be adequate to serve the proposed development under the Subdivision Staging Policy and Growth Policy standards in effect when the LMA was submitted; (3) that the LMA substantially conforms with the recommendations of the Master Plan for the Property; and (4) that approval of the LMA complies with the required findings contained in Zoning Ordinance Section 59-7.2.1.E.

II. REPORTS INTENDED TO BE INTRODUCED AT THE HEARING

1. Land Use Report; and
2. Traffic Impact Analysis prepared by Lenhart Traffic Consultants, Inc.

These reports have been submitted into the record in connection with the LMA Application.

III. SUMMARY OF EXPERT TESTIMONY

At the present time, the Applicant intends to call the following expert witnesses to testify in support of the rezoning application:

1. Timothy Longfellow, Civil Engineers with Gutschick, Little, and Webber will testify as to among other things the physical characteristics of the Property, the Natural Resources Inventory/Forest Stand Delineation Plan of the Property, the proposed Floating Zone Plan, and the proposed storm water management concept plan for the redevelopment of the Property.
2. Michael Klebasko, professional wetland scientist with Wetland Studies and Solutions, Inc. will provide additional testimony regarding the natural environmental features on the Property.
3. Kevin Foster, Registered Landscape Architect and Certified Land Planner with Gutschick, Little and Weber will testify as to the landscaping and open area provided in connection with the proposed LMA and the proposed LMA's substantial compliance with the Master Plan and compatibility with surrounding area. Kevin Foster will also testify regarding the structures' compliance with the applicable standards and requirements of the Zoning Ordinance.

4. Michael Lenhart, transportation planner with Lenhart Traffic Consulting, Inc., will testify as to the Transportation Impact Analysis prepared for the LMA, including: the number of peak hour trips to be generated and the adequacy of public facilities, in terms of road capacity, to accommodate the Project.

The resumes of the above identified expert witnesses are attached and will be submitted at the hearing. The Applicant reserves the right to call additional expert witnesses if it deems necessary.

IV. OTHER WITNESSES WHO WILL TESTIFY

In addition to the above expert witnesses, the Applicant will also have the following witness testify:

1. Clark Wagner, Vice President of Land Acquisition and Entitlement, Pleasants Development.

V. ESTIMATED TIME REQUIRED FOR PRESENTATION

It is estimated that one (1) full day will be required for the Applicant to present its case in chief.

This submission is intended to satisfy the requirement of the Rules of Procedure for Zoning Cases. If it is subsequently determined that new or supplemental information is necessary, the Applicant will make a supplemental submission in a timely fashion.

Respectfully submitted,

By: Elizabeth C. Rogers

Elizabeth C. Rogers

TIMOTHY M. LONGFELLOW

Principal
Professional Engineer
Land Surveyor – In-Training

EDUCATION

Bachelor of Science, Civil Engineering
University of Maryland, 1993
(Area of Concentration: Water Resources)

EXPERIENCE

Mr. Longfellow has performed surveying and site development engineering as well as senior project management involving special exceptions in Montgomery/Prince George's/Howard/Anne Arundel/Carroll/Baltimore/Washington Counties, Maryland for shopping centers (ranging in size from 1 to 40 acres); religious and institutional facilities; multi-family/apartment sites; public and private schools; office buildings; industrial sites; cellular telecommunications sites; public roads; water, sewer and storm drains; on-site storm water management facilities; and related projects such as site development feasibility studies.

He has been qualified as an expert witness (Civil Engineer) by the: Montgomery County Hearing Examiner, Anne Arundel County Hearing Examiner and has made project presentations to M-NCP&PC (Montgomery and Prince George's Counties), and the Planning Commissions of Washington County, Carroll County, Baltimore County, City of Bowie and City of Laurel.

PROFESSIONAL REGISTRATIONS AND MEMBERSHIPS

Professional Engineer, Maryland (2004)
Land Surveyor In-Training, Maryland
American Society of Civil Engineers
Maryland Society of Surveyors
Maryland Society of Professional Engineers

Michael J. Klebasko, PWS

Manager-Maryland Environmental Services

Firm Association

Wetland Studies and Solutions, Inc. (WSSI)

Years of Experience

With this firm: 5

With other firms: 23.5

Education:

1991: M.S.,Marine-Estuarine Environmental Sciences, University of Maryland, College Park

1990: B.A. Biology, St. Mary's College of Maryland

Registrations & Certifications

1995 - US Army Corps of Engineers Certified Wetland Delineator (#WDCP94MD0310109B)

1995 - Professional Wetland Scientist (#000777), Society of Wetland Scientists

1996 - Qualified Forestry Professional in the State of Maryland

Mr. Klebasko has more than 28 years of extensive experience and expertise in the environmental science field. He has performed both nontidal and tidal wetland delineations within the State of Maryland and the District of Columbia on well over 20,000 acres of land and has worked with the Corps of Engineers to obtain written verification on the majority of his wetland delineations. Mr. Klebasko also has expertise in performing forest stand delineations; natural resource inventory studies; rare plant surveys; submerged aquatic vegetation surveys, and stream monitoring studies, as well as providing expert environmental testimony at Federal, State, and local hearings. He has designed, overseen construction, and prepared post-construction monitoring reports on more than 115 acres of wetland creation/mitigation sites. Finally, Mr. Klebasko has prepared, submitted and obtained Federal and State wetland permits on hundreds of projects including parkland, utility lines and commercial and residential development projects.

Mr. Klebasko is responsible for overseeing a team of environmental scientists, regulatory specialists, and certified arborists for all projects within the Maryland division.

Mr. Klebasko's relevant experience includes:

Fairland Park Community, Montgomery & Prince George's Counties, MD: Delineated limits of nontidal wetlands and streams on the 400±acre property. Attended site visits with Corps of Engineers to obtain written confirmation of wetland delineation. Conducted surveys for State-listed endangered plant species. Prepared and submitted a joint wetland permit application for jurisdictional impacts, including installation of off-site sanitary sewer lines. Attended numerous interagency meetings and site visits and provided expert environmental testimony at re-zoning hearings.

BeechTree, Prince George's County, MD: Delineated the limits of nontidal wetlands and streams on the 1,200±acre property. Prepared and submitted a joint Federal/State wetland permit application for infrastructure impacts such as road crossings and utility line connections, as well as the construction of a 25-acre instream lake. Attended numerous interagency meetings, attended local, federal and state sponsored public hearings, conducted stream monthly stream monitoring for 3+ years, designed and monitored a 3.04-acre wetland creation site. Conducted Forest Stand Delineation study and prepared report. Performed stream surveys for a State-listed endangered fish.

Brandywine Community Park, Prince George's County, MD: Environmental Scientist responsible for delineating the limits of nontidal wetlands and streams on the 63-acre site for the MNCPPC – Park Planning and Development Division, and for obtaining written confirmation of the delineation from the U.S. Army Corps of Engineers. Mr. Klebasko also performed a Natural Resource Inventory (NRI) study and prepared an NRI Plan for the site which was subsequently approved by the MNCPPC – Environmental Planning Section.

Port Tobacco Wetland Mitigation Bank, Charles County, MD: Environmental Scientist responsible for designing, overseeing construction, and preparing annual post-construction monitoring reports on the 90-acre consolidated wetland mitigation bank. Delineated the limits of existing nontidal wetlands and streams on the site, obtained authorization from the Corps of Engineers and the Maryland Department of the Environment to utilize the site as a wetland mitigation bank. Responsible for managing the dissemination of mitigation credits to purchasers.

Cayuga Farms Force Main and Interceptor Sewer, Anne Arundel County, MD: Environmental Scientist responsible for delineating limits of nontidal wetlands and streams along 24,000 linear feet of proposed interceptor and force main sewer line ROW. Prepared and submitted joint wetland permit application to install underground utility lines, attended site visits with regulatory agencies to review proposed impacts, obtained Federal and State wetland permits.

KEVIN A. FOSTER, AICP, RLA
Certified Land Planner & Registered Landscape Architect

EDUCATION

1982 - **B.S. Ornamental Horticulture**
Delaware Valley University, Doylestown, Pennsylvania

1985 - **M.L.A. Master of Landscape Architecture**
University of Virginia, Charlottesville, Virginia

WORK EXPERIENCE

Mr. Foster has performed Landscape Architecture and Land Planning design services as well as project management for a variety of projects in the Baltimore/Washington Metropolitan region including Montgomery, Prince George's and Howard Counties. These projects include single-family residential communities, multi-family apartment/condominium projects, commercial office warehouse and industrial developments, schools, retail shopping centers, mixed-use residential/commercial projects, and equestrian training and show facilities.

He has testified as an expert witness (Landscape Architect and Land Planner) before the Prince George's County Zoning Hearing Examiner, the Montgomery County Board of Appeals, the Montgomery County Hearing Examiner, the City of Rockville Board of Appeals, and has made project presentations to the Maryland-National Capital Park and Planning Commission (MNCP&PC) (Montgomery and Prince George's Counties), City of Gaithersburg Planning Commission, City of Laurel Planning Commission, Howard County Board of Appeals, and the Howard County Planning Board.

PROFESSIONAL REGISTRATION AND MEMBERSHIPS

Registered Landscape Architect – Maryland
American Society of Landscape Architects
American Planning Association
American Institute of Certified Planners

MONTGOMERY COUNTY

Montgomery County Hearing Examiner – 2018/2019
H – 134 Cheng Property, Local Map Amendment, CRN to CRTF

Montgomery County Board of Appeals/Hearing Examiner – 2016
CU 17-04 Parkview at Aspen Hill, Senior Independent Living Conditional Use

Montgomery County Board of Appeals/Hearing Examiner – 2015
S-2877 Mt. Jezreel Baptist Church, Senior Housing Special Exception

Montgomery County Hearing Examiner – 2009/2010
G – 878 Germantown Park – Rezoning from C-1 to RT-12.5

Montgomery County Hearing Examiner – 2009
G-882 Foundation for the Advanced Education in the Sciences
Rezoning from R-60 to RT-8.0

Montgomery County Board of Appeals/Hearing Examiner - 2009
S-2740 Woodmont House – Children's Inn, Special Exception

Montgomery County Board of Appeals/Hearing Examiner - 2008
S-2736 Wendy's Fast Food Restaurant – Collesville, Special Exception

Montgomery County Hearing Examiner – 2004, & 2007
G- 808, Woodmont View – Rezoning from CT to PD-75, DPA 06-1 Development Plan Amendment

Montgomery County Hearing Examiner – 2007
G- 858, Montgomery College of Art & Design Property – Rezoning R-60 to RT 8.0

Montgomery County Board of Appeals/Hearing Examiner – 2007/2010
S-2712 Sunrise Senior Living - Olney , Special Exception

PRINCE GEORGE'S COUNTY

Prince George's County Zoning Hearing Examiner – 2011/2012 & 2014
SE – 4669 Robin Dale G.C. Surface Mining Application - Special Exception

Prince George's County Zoning Hearing Examiner – 2009/2010
SE – 4672 Fernwood Mobile Home Park – Special Exception

HOWARD COUNTY*

Howard County Board of Appeals - 2000
BA – 99 – 39E Express Fuel Automobile Filling Station
* Not as an expert witness

CITY OF ROCKVILLE

City of Rockville, Board of Appeals - 2010
SPX 2010-00381 Brightview Rockville Assisted Living Facility

CITY OF LAUEL

City of Laurel, Planning Commission & City Council - 2013
Map Amendment No. 829 & M-X-T Conceptual Site Plan

Lenhart Traffic Consulting, Inc.

Traffic Engineering & Transportation Planning

MICHAEL M. LENHART, P.E., P.T.O.E.

PRESIDENT

Mike Lenhart is a professional traffic engineer with over 25 years of combined technical and academic experience. Responsibilities with the firm include, but are not limited to, proposal preparation, various traffic engineering and managerial tasks in the areas of traffic impact analysis, traffic safety studies, and transportation planning, as well as providing expert witness testimony at public hearings and community meetings.

Mr. Lenhart has worked as a transportation professional in the private sector since 1999, and has provided traffic engineering and transportation planning services for over one thousand projects in numerous jurisdictions across Maryland. Previously, Mr. Lenhart served as the Chief of the Engineering Access Permits Department for the Maryland State Highway Administration (SHA). During his tenure at the SHA, Mr. Lenhart also served as the Traffic Engineer overseeing Southern Maryland. During his career, he has performed various traffic engineering tasks, including traffic signal design, highway and intersection capacity analysis, maintenance and protection of traffic design, and transportation planning. He has also participated in engineering training programs and researched transportation related topics.

Job History

2005 - Present
President – Lenhart Traffic Consulting, Inc.

2002 - 2005
Senior Project Manager - The Traffic Group, Inc.

2000 – 2002
Independent Consultant - The Traffic Group, Inc.

1999 - 2000
Senior Associate - The Traffic Group, Inc.

1998 – 1999
Division Chief – Engineering Access Permits
Maryland State Highway Administration

1990 - 1998
Traffic Engineer
Maryland State Highway Administration

Educational Background

- *Bachelors of Science in Civil Engineering -1990 (U of MD @ College Park)*
- *Masters of Science in Traffic Engineering& Transportation Planning -1998 (U of MD @ College Park)*

Affiliations

- Registered Professional Engineer (P.E.) – MD, DE
- Professional Traffic Operations Engineer (PTOE) - ITE
- Member ITE

Places where Mr. Lenhart has testified as an expert witness

Allegany County – Board of Appeals, Planning Commission
Annapolis - Planning Commission, Board of Appeals
Anne Arundel County – Annapolis Planning Commission, Board of Appeals
Baltimore County – Zoning Commissioner, Planning Board
Calvert County – Planning Commission, Board of Appeals, County Commissioners
Carroll County – Board of Zoning Appeals; Planning Board
Charles County – County Commissioners, Circuit Court, Board of Appeals, Planning Commission, Town of LaPlata Planning Commission & Town Council
City of Frederick – Planning Commission
Frederick County – Planning Commission, County Commissioners
Harford County – Circuit Court
Prince George's County – District Council, Planning Board, Zoning Examiner, Bowie City Council & Planning Commission, City of Laurel
Montgomery County – Planning Board, Zoning Examiner
Queen Anne's County – Planning Commission
St. Mary's County – Planning Commission; County Commissioners
Sussex County, DE – Planning Commission, Board of County Commissioners
Talbot County – Planning Commission
Town of Leesburg, VA – Planning Commission
Washington County – Board of County Commissioners
Worcester County – Planning Commission

MARYLAND STATE HIGHWAY ADMINISTRATION-ENGINEERING SERVICES, DISTRICT 5
High Accident Sections
Traffic Safety Studies
Traffic Signal Warrant Studies
Highway Design Consultation
Project Planning Consultation
Traffic Impact Study Review

Lenhart Traffic Consulting, Inc.
645 Baltimore Annapolis Blvd, Suite 214
Severna Park, MD 21146

Phone (410) 216-3333
Fax (443) 782-2288
email: mlenhart@lenharttraffic.com

Elizabeth Rogers
301-841-3845
ecrogers@lerchearly.com

May 24, 2019

VIA ELECTRONIC AND HAND DELIVERY

Gwen Wright, Planning Director
Montgomery County Planning Department M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Kingsview Station
Local Map Amendment H-131
Request for Reconsideration

Dear Ms. Wright:

On behalf of Kingsview Station Joint Venture (the "Applicant"), we formally request reconsideration of your staff's current position regarding the environmental features on the property located in the southeastern corner of the intersection of Clopper Road (MD route 117) and Germantown Road (MD Route 118) in Germantown, Maryland (the "Property").

I. Background

The Applicant is requesting approval of Local Map Amendment No. H-131 to rezone the Property from the R-200 and R-200/TDR 6.0 Zone to the CRNF-1.0, C-0.25, R-0.75, H-55' Zone. This rezoning has long been recommended by the Master Plan. The *1989 Approved and Adopted Germantown Master Plan* (the "Master Plan") recommended rezoning the properties along Clopper Road, between MD 118 and Great Seneca Highway, (including the subject Property) to the PD-11 Zone.[1] This rezoning was intended to accommodate additional residential development, a park-and-ride facility, and supporting commercial uses. The Property, prominently located at the intersection of Clopper Road and MD 118, is effectively the last remaining undeveloped land in this quadrant.

[1] The PD (Planned Development) zones cannot be applied to new properties under the recently adopted Zoning Ordinance (effective October 30, 2014). Instead, pursuant to Section 5.1.3.B. of the Ordinance, a LMA application can be filed for the "equivalent zone" (here, either the Commercial Residential Neighborhood Floating (CRNF) or Apartment Floating (AF)).

The Applicant is requesting approval of an LMA to rezone the Property to the CRNF zone. Because the Master Plan recommends a floating zone for the Property, no pre-requisites are required. The CRNF zone will provide the necessary design flexibility to allow for a residential community, along with commercial use at this prominent intersection of two major highways. Specifically, the Applicant is proposing to redevelop the Property with a predominately residential development, containing 60 townhouse units and up to 12,000 square feet of commercial use along Clopper Road (the "Project"). Subsequent to approval of the Local Map Amendment, the Applicant will file applications for Site Plan and Preliminary Plan approval.

In preparation for filing the LMA, a Natural Resource Inventory/Forest Stand Delineation was prepared for the Property (NRI/FSD No. 420182510). **The NRI/FSD was approved on July 24, 2018 and denotes the forested areas, existing forest conservation easement area, significant trees, existing steams, wetland areas and stream valley buffers on the Property.** (*See* Exhibit "A"). As shown on the NRI/FSD, there are two intermittent streams on the Property – one in the southwest quadrant and one in the southeast quadrant of the site – in addition to several ephemeral channels. There is also an existing Forest Conservation Easement that covers approximately 0.54 acres of the Property, and an existing Black Cherry tree, in poor condition, which is listed in the Montgomery County Register of Champion Trees.

As you are aware, the NRI/FSD is required to be approved prior to submission of a Local Map Amendment application. This timing is important, as the environmental site conditions are a significant driver of the ultimate site design. As such, it is critical that Applicants can rely on this information when moving forward with the time and expense associated with preparing the final site design and drawings, or the early approval of an NRI/FSD is effectively meaningless. In this case, the NRI/FSD was approved in July. After finalizing the NRI/FSD, and adjusting the Project layout accordingly, the Applicant held several meetings with Planning Staff and the Department of Transportation. As a result of these meetings and the feedback received (particularly from Planning Staff), the Applicant made significant revisions to the layout and design of the Project. Thereafter, when there seemed to be a consensus, amongst both Planning Staff and DOT, the Applicant proceeded with filing its LMA application. Needless to say, the Applicant was surprised to learn that Planning Staff (and DOT) had substantial, additional comments on the Plan. As discussed further below, Staff's current position regarding the stream classifications on the Property would have a significant impact on the site and the overall feasibility of this Project.

II. Environmental Staff Comments

The Applicant has met with Area 3 Planning Staff on numerous occasions for this Property, both prior to, and after submission of, the LMA. The Applicant elected to go through the pre-DRC process to get Agency comments on the Application, to proactively address any comments that would otherwise arise for the first time at Preliminary Plan. In connection with the pre-DRC process, the Applicant was given the following environmental comments:

1. Stream valley buffer too close to units at a couple of places
2. A proposed road is on top of a conservation easement
3. A site visit has revealed additional environmental features:
    a. The stream on the east side of the property extends all the way to the storm outfall.
    b. The wetland includes two streams that originate from outfalls under MD118. The southern stream is shown on the plan. The northern-most stream appears to be shown as a wetland boundary. This second stream and buffer should be shown on the layout.
    c. There are multiple existing storm drain easements throughout the site. These should be shown on the plans.

Given that the Property has an approved NRI/FSD, the Applicant was surprised to learn that Staff now proposes re-classifying two "ephemeral channels" (as shown on the NRI/FSD) as "intermittent streams" (*see* comments 3(a) and 3(b)). This classification is contrary to the historical data for the site and ignores the exceptional nature of recent weather patterns. Therefore, for the reasons discussed in detail below, the Applicant submits that these channels are most appropriately classified as ephemeral, as shown on the approved NRI/FSD.

III. Justification of Environmental Classification

A. Stream Classification

As you are likely aware, the region saw historic levels of rainfall in 2018. Put a different way – 2018 was the wettest year on record, since record keeping first began in 1871. Specifically, Montgomery County received more than 64 inches of rainfall in 2018 based on data collected at local rainfall measuring stations. As a result, the ground water tables are at historically high levels. Based on nearby ground water monitoring by USGS, the ground water elevation in September of 2018 was 41% higher than the historical average elevation (since 1952). This has created abnormally wet conditions throughout

the region. Our environmental consultants continue to observe typically upland areas in a "wet" condition throughout the State, very similar to what is occurring on this Property.

The conditions seen on the Property during Staff's recent site visits are a direct result of these abnormal conditions and also of man-made improvements, as illustrated by the previous NRI/FSD approvals for the Property and surrounding sites. The NRI/FSD for the Kingsview Village Center, approved in 1994 before the storm outfall was constructed, shows the intermittent portion of the stream on the eastern edge of the Property starting in the same location as is depicted on the NRI/FSD approved for the Property. (*See* Exhibit "B"). It should also be noted that our consultant originally delineated this stream channel approximately 15 years ago prior to the construction of the storm outfall and observed the channel in its original state. He also determined that the intermittent stream existed in the same location. His determination was based on the fact that seasonal groundwater flow intersected the channel bottom at the origin of the intermittent stream. Furthermore, the "ephemeral channel" in question in the southwest quadrant of the Property begins at a break in the existing rip-rap for the outfall under MD118. The NRI/FSD approved in 1993 (No. 4-92051) supports the classification of this channel as ephemeral, as it shows no streams in this area, prior to the relocation and construction of MD 118 (and corresponding installation of the rip-rap). (*See* Exhibit "C").

Furthermore, and importantly, the Army Corps of Engineers, after conducting a field inspection on March 6, 2019, issued a letter summarizing their Jurisdictional Determination ("JD") and verification of the delineation of waters of the United States on the Property (dated April 19, 2019). The JD, which is attached hereto as Exhibit "D", supports the classifications shown on the approved NRI/FSD.

We believe all of these factors combined clearly illustrate that this "snapshot" in time does not accurately reflect the environmentally sensitive conditions that exists on the Property. Due consideration must be given to the historical documentation of this site, as well as the exceptional weather conditions experienced over the past year, and the recent Jurisdictional Determination by the Army Corps of Engineers (just completed in March of this year).

B. Partial Vacation of Forest Conservation Easement

As mentioned above, there is an existing Forest Conservation Easement that covers approximately 0.54 acres of the Property. The Applicant is requesting approval to vacate a portion of this existing easement in connection with the proposed redevelopment. This is largely due to the intersection spacing requirements of the Montgomery County Subdivision Regulations (Section 50.4.3.E.2.f.ii), which in effect requires the access point on Leaman Farm Road to align with Ale House Circle (to the south), for safety and efficiency. In order to accommodate this preferred connection, the existing Forest Conservation Easement must be modified.

The Applicant met with Staff regarding vacating a portion of the easement several times in 2015 and 2016. While it was acknowledged and understood that a portion of the easement would need to be vacated, it was determined that this was most appropriately addressed in connection with the rezoning of the Property. As such, the Applicant is now seeking approval to vacate a portion of the existing easement, in connection with the LMA. The Applicant is proposing to provide mitigation through off-site forest banking, stream restoration and/or additional stream buffer – the specifics of the mitigation will be determined in connection with the review and approval of the Forest Conservation Plan. The Applicant is doing some feasibility work now to determine a location for the mitigation.

C. Tree Variance

There is an existing champion Black Cherry located in the northwest quadrant of the Property, which is in poor health and will need to be removed to facilitate the Project. The champion cherry tree has a diameter at breast height of 54.5". The Applicant hired Ashton Manor Environmental to conduct an assessment of the Black Cherry tree. The report, dated June 19, 2018, concluded that the Black Cherry tree was in poor condition due to multiple defects including irregular growth pattern; branch failure; major vertical structural crack/seam and multiple trunk cavities containing evidence of rot and decay. (*See* Exhibit "E"). As a result of the analysis, and due to the tree's poor condition and limited future viability, the Certified Arborist recommends that the tree should be removed. Given the tree's condition and location, the inability to remove the champion tree would result in an undue hardship on the Applicant. As such, the Applicant is seeking approval of a tree variance to allow for the removal of the champion Cherry Tree, and others as needed. (*See* Exhibit "F").

IV. Conclusion

For all of the reasons articulated in this letter, we respectfully request reconsideration of your staff's position on the stream classifications on the Property, and support for the partial vacation of the easement and removal of the champion Cherry Tree. Based on the proposed site design and layout (as submitted in connection with the LMA Application), Staff's current position regarding the stream classifications would result in a loss of *a minimum* of 15 townhome units (likely more once the internal roadways are redesigned to be located outside of the buffers). Please do not hesitate to contact us if you have any questions or require additional information or if you would like us to meet with you in person to discuss this further.

Very truly yours,

Lerch, EARLY & BREWER, CHTD.

Elizabeth C Rog

Elizabeth C. Rogers

cc: Mr. Richard Weaver
Ms. Sandra Pereira
Mr. Fred Boyd
Ms. Katherine Nelson
Ms. Elsabett Tesfaye
Mr. Chris Van Alstyne
Mr. Clark Wagner
Mr. Kevin Foster
Mr. Mike Klebasko
Mr. Robert Brewer

Exhibit A

MONTGOMERY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
APPROVED - 420182510
Doug Johnsen (douglas.johnsen@montgomeryplanning.org)
07/24/18

GENERAL NOTES

1. SITE AREA: 10.43 AC
2. ZONE: R-200
3. WATERSHED: MIDDLE GREAT SENECA CREEK
4. WATERSHED USE CLASS: IV-P
5. BOUNDARY SURVEY BY: CHARLES P. JOHNSON & ASSOCIATES, MAY 2018
6. TOPOGRAPHY BY: CHARLES P. JOHNSON & ASSOCIATES, MAY 2018
7. EXISTING WATER & SEWER CATEGORIES: S-1, W-1, S-3, W-3 & S-5, W-5.
8. THERE ARE NO KNOWN RARE, THREATENED OR ENDANGERED SPECIES ON SITE. SEE DNR ENVIRONMENTAL REVIEW LETTER LOCATED ON THIS SHEET, DATED MAY 31, 2018.
9. THE PROPERTY DOES NOT CONTAIN A SITE LISTED IN THE INVENTORY OF HISTORIC SITES OR DISTRICTS PER THE MONTGOMERY COUNTY HISTORIC PRESERVATION LOCATOR MAP.
10. THERE ARE NO KNOWN SPECIAL PROTECTION AREAS (SPA) OR PMA AREAS ON SITE PER MC-ATLAS.
11. PART OF THE PROPERTY IS WITHIN A TRANSFERABLE DEVELOPMENT RIGHTS (TDR) OVERLAY ZONE.
12. THERE IS NO FLOODPLAIN ON SITE PER FEMA MAP #24031C0170D.
13. WETLANDS WERE FLAGGED BY WETLAND STUDIES AND SOLUTIONS, INC ON MAY 10, 2018.
14. THERE IS A BLACK CHERRY TREE ON SITE THAT IS LISTED IN THE 2017-2018 REGISTER OF CHAMPION TREES, MONTGOMERY COUNTY, MARYLAND.
16. THE FIELD SURVEY WAS PERFORMED ON MAY 10, 2018 BY MIKE CLAY AND KEVIN FOSTER OF GUTSCHICK, LITTLE & WEBER P.A. TREES WERE MEASURED WITH A D-TAPE.

AREA TABULATIONS

	AREA	FOREST
SITE AREA	10.45 Ac.	3.55 Ac.
100-YR FLOODPLAIN	0.00 Ac.	0.00 Ac.
WETLANDS	0.61 Ac.	0.00 Ac.
WETLANDS BUFFER	1.10 Ac.	0.03 Ac.
INTERMITTENT & PERENNIAL STREAM	790.2 L.F.	377.4 L.F.
STREAM BUFFER	2.55 Ac.	0.71 Ac.

MAPPED SOIL TYPES

MAP UNIT	DESCRIPTION	HIGHLY ERODIBLE	HYDRIC	PRIME FARMLAND
1C	GAILA SILT LOAM 8 - 15% SLOPES	NO	NO	YES
17B	OCCOQUAN LOAM 3 - 8% SLOPES	NO	NO	YES
54A	HATBORO SILT LOAM 0 - 3% SLOPES FREQ. FLOODED	NO	YES	NO

ACCORDING TO USDA - WEB SOIL SURVEY
Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at http://websoilsurvey.nrcs.usda.gov/ accessed May 31, 2018.

SIGNIFICANT AND SPECIMEN TREE LIST

No.	COMMON NAME	SPECIES NAME	DBH	CONDITION	COMMENTS
1.	RED MULBERRY	MORUS RUBRA	31"	POOR	
2.	BLACK LOCUST	ROBINIA PSEUDOACACIA	28"	POOR	
3.	BLACK LOCUST	ROBINIA PSEUDOACACIA	23"	POOR	
4.	BACK LOCUST	ROBINIA PSEUDOACACIA	26"	POOR	
5.	BLACK CHERRY	PRUNUS SEROTINA	37"	FAIR	
6.	SUGAR MAPLE	ACER SACCHARUM	28"	GOOD	
7.	BLACK CHERRY	PRUNUS SEROTINA	28.5"	FAIR	
8.	BACK LOCUST	ROBINIA PSEUDOACACIA	26"	POOR	
9.	BLACK CHERRY	PRUNUS SEROTINA	54.5"	POOR*	Listed in MoCo Reg. of Champion Trees
10.	BLACK CHERRY	PRUNUS SEROTINA	24"	GOOD	
11.	WALNUT	JUGLANS SPS	24"	POOR	
12.	AMERICAN LINDEN	TILIA AMERICANA	26"	POOR	
13.	BLACK LOCUST	ROBINIA PSEUDOACACIA	29"	POOR	
14.	BACK LOCUST	ROBINIA PSEUDOACACIA	24"	POOR	
15.	SCARLET OAK	QUERCUS COCCINEA	29"	GOOD	
16.	BLACK CHERRY	PRUNUS SEROTINA	24"	GOOD	
17.	RED MULBERRY	MORUS RUBRA	27"	FAIR	3 TRUNKS (27", 24.5", <24")

*See Evaluation of Specimen Tree #9 letter, dated June 19, 2018 for a detailed description of tree condition.

MARYLAND DEPARTMENT OF NATURAL RESOURCES
Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Mark Belton, Secretary
Joanne Throwe, Deputy Secretary

May 31, 2018

Mr. Michael Clay
Gutschick, Little & Weber, P.A
3909 National Drive
Suite 250
Burtonsville, MD 20866

RE: Environmental Review for Kingsview Station, Tax Map ET-33, Clopper Road and Germantown Road, Montgomery County, Maryland.

Dear Mr. Clay:

The Wildlife and Heritage Service has determined that there are no official State or Federal records for listed plant or animal species within the delineated area shown on the map provided. As a result, we have no specific concerns regarding potential impacts or recommendations for protection measures at this time. Please let us know however if the limits of proposed disturbance or overall site boundaries change and we will provide you with an updated evaluation.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

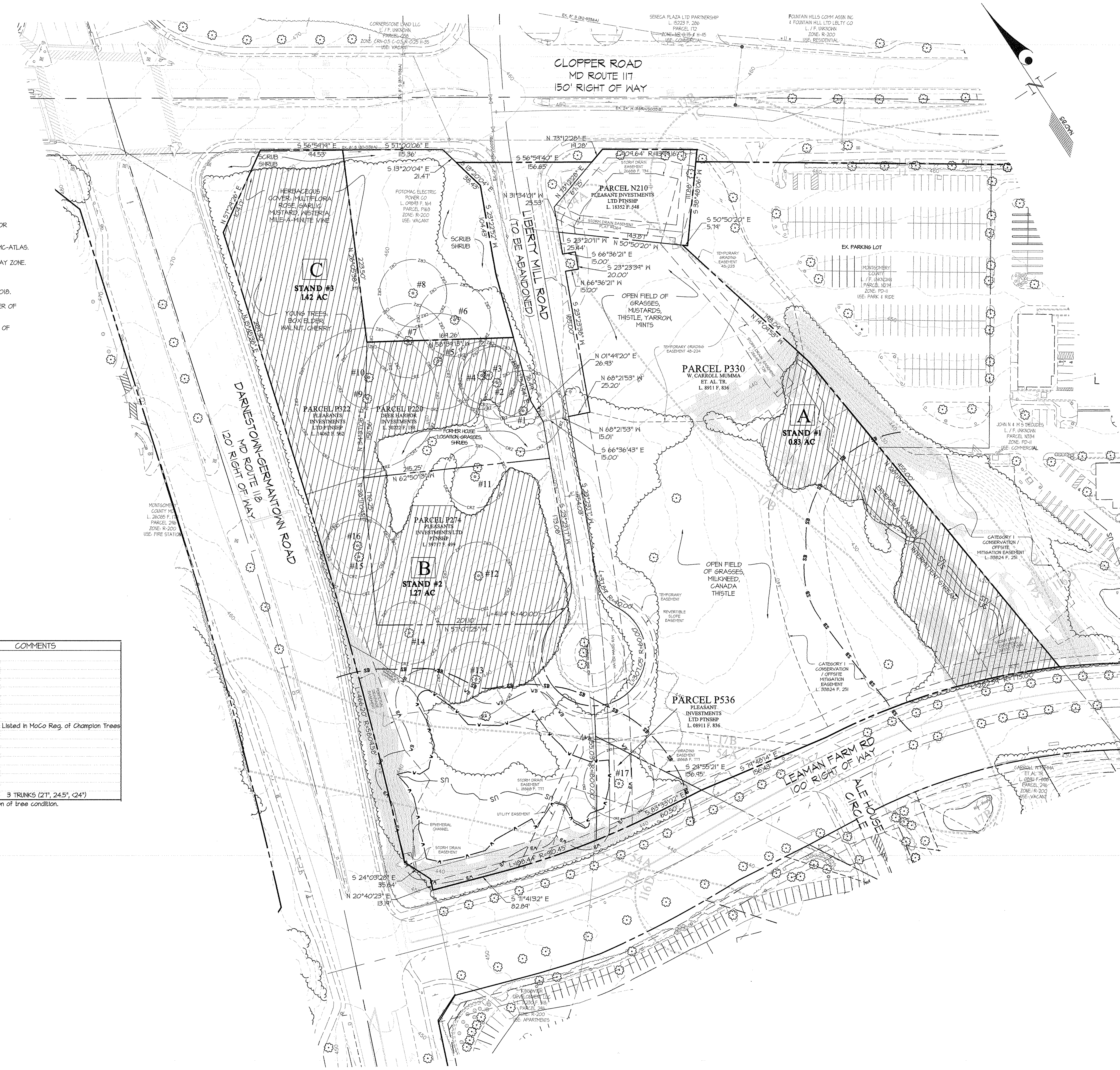
Sincerely,

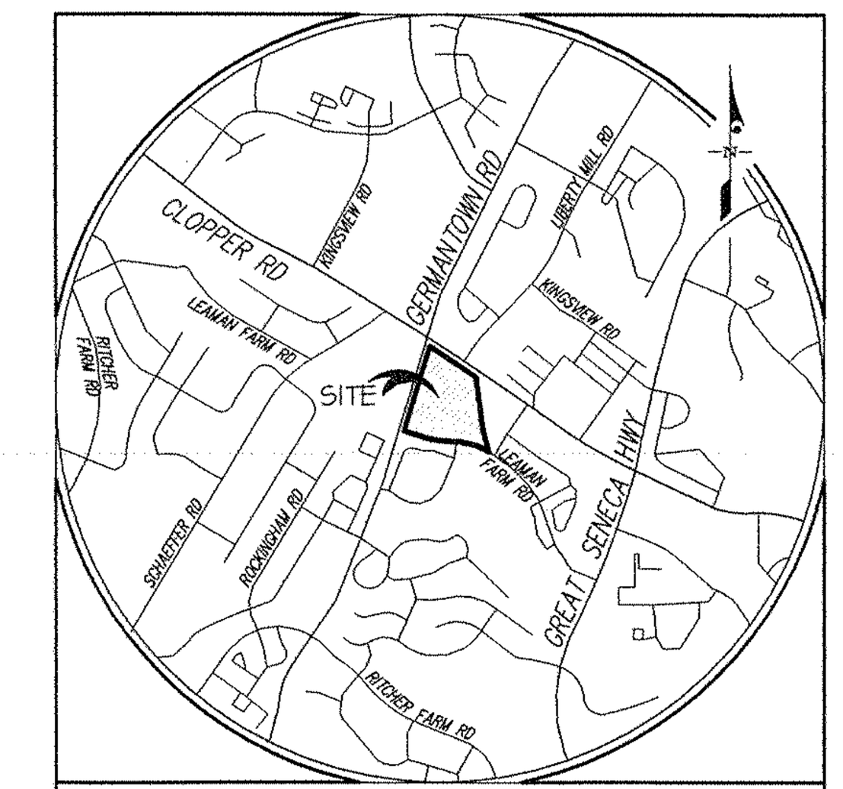
Lori A. Byrne
Lori A. Byrne,
Environmental Review Coordinator
Wildlife and Heritage Service
MD Dept. of Natural Resources

ER# 2018.0733.mo

RECEIVED
JUN 06 2018
Gutschick, Little & Weber, P.A.

Tawes State Office Building – 580 Taylor Avenue – Annapolis, Maryland 21401
410-260-8DNR or toll free in Maryland 877-620-8DNR – dnr.maryland.gov – TTY Users Call via the Maryland Relay





VICINITY MAP
SCALE: 1" = 2,000'

LEGEND

- EXISTING TREE LINE
- EXISTING CONTOURS
- MAPPED SOILS BOUNDARY LINE
- PROPERTY LINE
- EXISTING OVERHEAD WIRES
- EX. SEWER
- WATERS OF US
- EPHEMERAL STREAM
- STREAM BUFFER
- WETLAND
- WETLAND BUFFER
- EXISTING TREE
- FIELD SURVEYED SPECIMEN TREE & CRZ
- EXISTING BUILDINGS
- SLOPES 25% OR GREATER
- DATA POINT LOCATION
- FOREST STAND DELINEATION AREA

LANDSCAPE ARCHITECT 807
KEVIN ASHMORE FOSTER
STATE OF MARYLAND
7/7/18

GLW
PLANNING | ENGINEERING | SURVEYING
3909 NATIONAL DRIVE | SUITE 250 | BURTONSVILLE, MD 20866 | GLWPA.COM
PHONE: 301-421-4024 | BALT: 410-880-1820 | DC&VA: 301-989-2524 | FAX: 301-421-4186

DESIGNED BY: MFC	DRAWN BY: LME	CHECKED BY: KAF

DATE	REVISION	BY	APP'R.

SCALE: 1" = 50'
0' 25' 50' 100' 200'

PREPARED FOR:
PLEASANTS DEVELOPMENT
24012 FREDERICK ROAD, SUITE 200
CLARKSBURG, MD 20871
ATTN: CLARK WAGNER
301-428-0800 x 1013

SCALE	ZONING	DATE	TAX MAP - GRID
1"=50'	R-200	MAY, 2018	ET-343

NATURAL RESOURCE INVENTORY / FOREST STAND DELINATION
KINGSVIEW STATION
PARCELS 210, 220, 274, 322, 330, 536
DARNSTOWN ELECTION DISTRICT No. 06 — MONTGOMERY COUNTY, MARYLAND

G. L. W. FILE No. 18020
SHEET 1 OF 1

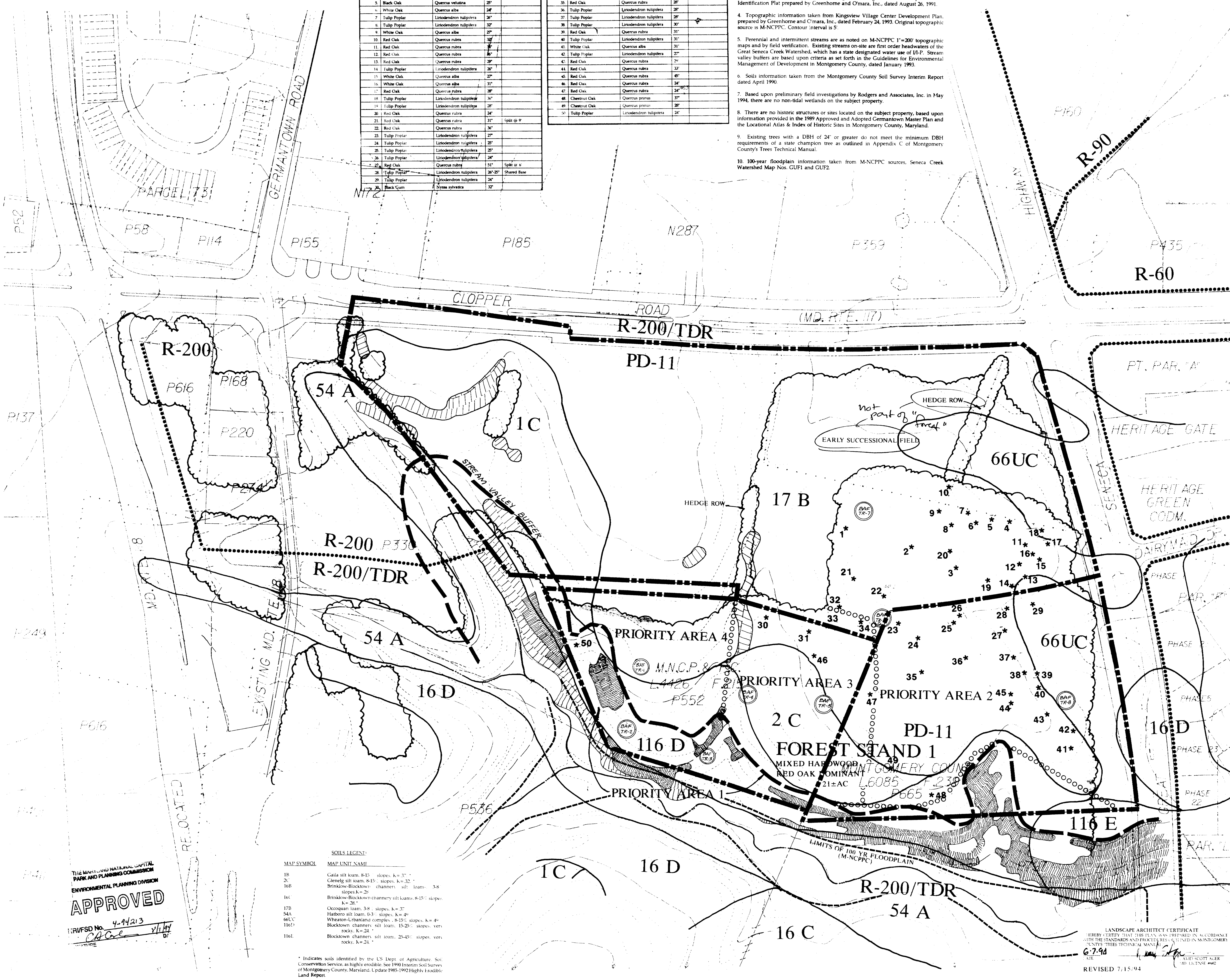
Exhibit B

TREE NO.	COMMON NAME	BOTANICAL NAME	DBH	COMMENTS
1.	White Oak	Quercus alba	26"	
2.	Red Oak	Quercus rubra	26"	
3.	Red Oak	Quercus rubra	35"	
4.	Tulip Poplar	Liriodendron tulipifera	29"	
5.	Black Oak	Quercus velutina	25"	
6.	White Oak	Quercus alba	24"	
7.	Tulip Poplar	Liriodendron tulipifera	26"	
8.	Tulip Poplar	Liriodendron tulipifera	32"	
9.	White Oak	Quercus alba	27"	
10.	Red Oak	Quercus rubra	32"	
11.	Red Oak	Quercus rubra	34"	
12.	Red Oak	Quercus rubra	36"	
13.	Red Oak	Quercus rubra	29"	
14.	Tulip Poplar	Liriodendron tulipifera	26"	
15.	White Oak	Quercus alba	27"	
16.	White Oak	Quercus alba	31"	
17.	Red Oak	Quercus rubra	28"	
18.	Tulip Poplar	Liriodendron tulipifera	36"	
19.	Tulip Poplar	Liriodendron tulipifera	28"	
20.	Red Oak	Quercus rubra	24"	
21.	Red Oak	Quercus rubra	31"	Split @ 9'
22.	Red Oak	Quercus rubra	36"	
23.	Tulip Poplar	Liriodendron tulipifera	27"	
24.	Tulip Poplar	Liriodendron tulipifera	25"	
25.	Tulip Poplar	Liriodendron tulipifera	25"	
26.	Tulip Poplar	Liriodendron tulipifera	24"	
27.	Red Oak	Quercus rubra	51"	Split @ 6'
28.	Tulip Poplar	Liriodendron tulipifera	26"-25"	Shared Base
29.	Tulip Poplar	Liriodendron tulipifera	24"	
30.	Black Gum	Nyssa sylvatica	32"	

TREE NO.	COMMON NAME	BOTANICAL NAME	DBH	COMMENTS
31.	Red Oak	Quercus rubra	26"	
32.	Red Oak	Quercus rubra	26"	
33.	White oak	Quercus alba	24"	
34.	Red Oak	Quercus rubra	26"	
35.	Red Oak	Quercus rubra	28"	
36.	Tulip Poplar	Liriodendron tulipifera	28"	
37.	Tulip Poplar	Liriodendron tulipifera	28"	
38.	Tulip Poplar	Liriodendron tulipifera	30"	
39.	Red Oak	Quercus rubra	31"	
40	Tulip Poplar	Liriodendron tulipifera	31"	
41.	White Oak	Quercus alba	31"	
42.	Tulip Poplar	Liriodendron tulipifera	27"	
43.	Red Oak	Quercus rubra	29"	
44.	Red Oak	Quercus rubra	33"	
45.	Red Oak	Quercus rubra	45"	
46.	Red Oak	Quercus rubra	24"	
47.	Red Oak	Quercus rubra	24"	
48.	Chestnut Oak	Quercus prinus	37"	
49.	Chestnut Oak	Quercus prinus	28"	
50	Tulip Poplar	Liriodendron tulipifera	24"	

GENERAL NOTES

1. Subject Property acreage is approximately 45.8 acres.
2. Existing zoning is PD-11.
3. Boundary information taken from Kingsview Village Center Development Plan Identification Plat prepared by Greenhorne and O'mara, Inc., dated August 26, 1991.
4. Topographic information taken from Kingsview Village Center Development Plan, prepared by Greenhorne and O'mara, Inc., dated February 24, 1993. Original topographic source is M-NCPPC. Contour interval is 5'.
5. Perennial and intermittent streams are as noted on M-NCPPC 1"=200' topographic maps and by field verification. Existing streams on-site are first order headwaters of the Great Seneca Creek Watershed, which has a state designated water use of I/I-P. Stream valley buffers are based upon criteria as set forth in the Guidelines for Environmental Management of Development in Montgomery County, dated January 1993.
6. Soils information taken from the Montgomery County Soil Survey Interim Report dated April 1990.
7. Based upon preliminary field investigations by Rodgers and Associates, Inc. in May 1994, there are no non-tidal wetlands on the subject property.
8. There are no historic structures or sites located on the subject property, based upon information provided in the 1989 Approved and Adopted Germantown Master Plan and the Locational Atlas & Index of Historic Sites in Montgomery County, Maryland.
9. Existing trees with a DBH of 24" or greater do not meet the minimum DBH requirements of a state champion tree as outlined in Appendix C of Montgomery County's Trees Technical Manual.
10. 100-year floodplain information taken from M-NCPPC sources, Seneca Creek Watershed Map Nos. GUF1 and GUF2.



THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION
ENVIRONMENTAL PLANNING DIVISION
APPROVED
NRI/FSD No. 4-94213
CA Cal 8/1/94
SIGNATURE DATE

SOILS LEGEND

MAP SYMBOL	MAP UNIT NAME
1B	Gaila silt loam, 8-15% slopes, K=.37 *
2C	Glenelg silt loam, 8-15% slopes, K=.32 *
16B	Brinklow-Blocktown channery silt loams, 3-8% slopes, K=.28
16C	Brinklow-Blocktown channery silt loams, 8-15% slopes, K=.28 *
17B	Occoquan loam, 3-8% slopes, K=.37
54A	Hatboro silt loam, 0-3% slopes, K=.49
66UC	Wheaton-Urbanland complex, 8-15% slopes, K=.49
116D	Blocktown channery silt loam, 15-25% slopes, very rocky, K=.24 *
116E	Blocktown channery silt loam, 25-45% slopes, very rocky, K=.24 *

* Indicates soils identified by the US Dept. of Agriculture, Soil Conservation Service, as highly erodible. See 1990 Interim Soil Survey of Montgomery County, Maryland. Update 1985-1992 Highly Erodible Land Report.

LANDSCAPE ARCHITECT CERTIFICATE
I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE STANDARDS AND PROCEDURES OUTLINED IN MONTGOMERY COUNTY'S TREES TECHNICAL MANUAL.
6-7-94 DATE
[illegible]
DAVID SCOTT AGER
MD LICENSE #602

REVISED 7/15/94

KINGSVIEW VILLAGE CENTER - PHASE I

NATURAL RESOURCES INVENTORY
FOREST STAND DELINEATION MAP

VICINITY MAP
1" = 2000'

LEGEND

- ••••••• ZONING BOUNDARY
- EXISTING TREE CANOPY
- ✱ TREES > THAN 24" DBH
- ℄ STREAM
- STREAM VALLEY BUFFER
- SOILS LINE
- SOIL DESIGNATION
- 25% > SLOPES
- 15% - 25% SLOPES WITH A "K" FACTOR > THAN 0.35
- LIMITS OF WETLANDS
- BAF 1-1 FIELD SURVEY SAMPLE POINT

KINGSVIEW VILLAGE CENTER
PHASE 1

6th ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

Prepared for:
GFS REALTY, INC.

Prepared by:

R&A
LAND USE EVALUATION • PLANNING
CIVIL ENGINEERING • SURVEYING
ENVIRONMENTAL/NATURAL RESOURCES
RODGERS & ASSOCIATES, INC.
9260 GAITHER ROAD
GAITHERSBURG, MDRYLAND 20877
PHONE: (301) 948-4700 GAITHERSBURG
(301) 253-6609 FREDERICK
FAX: (301) 948-6256

0 50' 100' 200' 400'

602-B
KINGSVIEW VILLAGE CENTER - NATURAL RESOURCE INVENTORY
n 1-8

Exhibit C

FOREST STAND DELINEATION - NARRATIVE

This property consisting of 224.2 acres is divided into two sections by State Route 118. The upper portion consists primarily of agricultural land with some scattered hedgerows and small stands of tree growth. The lower portion is evenly divided between land in agricultural use and land with substantial forest cover. The nearly twenty acres of forest was divided into six stands and field delineation sampling (random plot) was taken in order to determine the appropriate 'forest structure values'.

STAND 1 - Priority Area 1 (High)

This stand is essentially an expanded hedgerow of approximately 65' in width inside the near property line. The numerous Oaks and associated hardwoods are of significant size and in good condition. The understory is rather open and exposed in upper areas with the bulk of cover coming from the numerous Black Cherry seedlings. Retention potential is excellent. The stand is of high priority for retention due to the presence of large trees and it's value as a buffer between properties.

STAND 2 - Priority Area 1 & 2 (Moderate to High Priority)

This dense Oak/Hickory hardwood stand includes some steep slope areas immediately upgrade of a significant stream. This well-structured stand is in good condition and is covered with numerous hardwood seedlings indicating good regenerative potential. The many seedlings would also be of value as for transplant to possible reforestation areas on-site. There is no evidence of past mangement in the area. The upland part of the stand with no sensitive environmental features and relatively moderate slopes is of moderate priority for retention. The steep slope areas downgrade are of high priority for retention.

STAND 3 - Priority Area 1 (High)

This densely covered bottomland consists of numerous hardwoods such as Tulip Poplar, Oak, Red Maple, etc. and also consists of species unique to the stand such as Ironwood and River Birch. The stand is in excellent condition with numerous hardwood seedlings along the stream bank. The stand is a high priority for retention due to it's sensitive environmental location.

STAND 4 - Priority Area 1 (High)

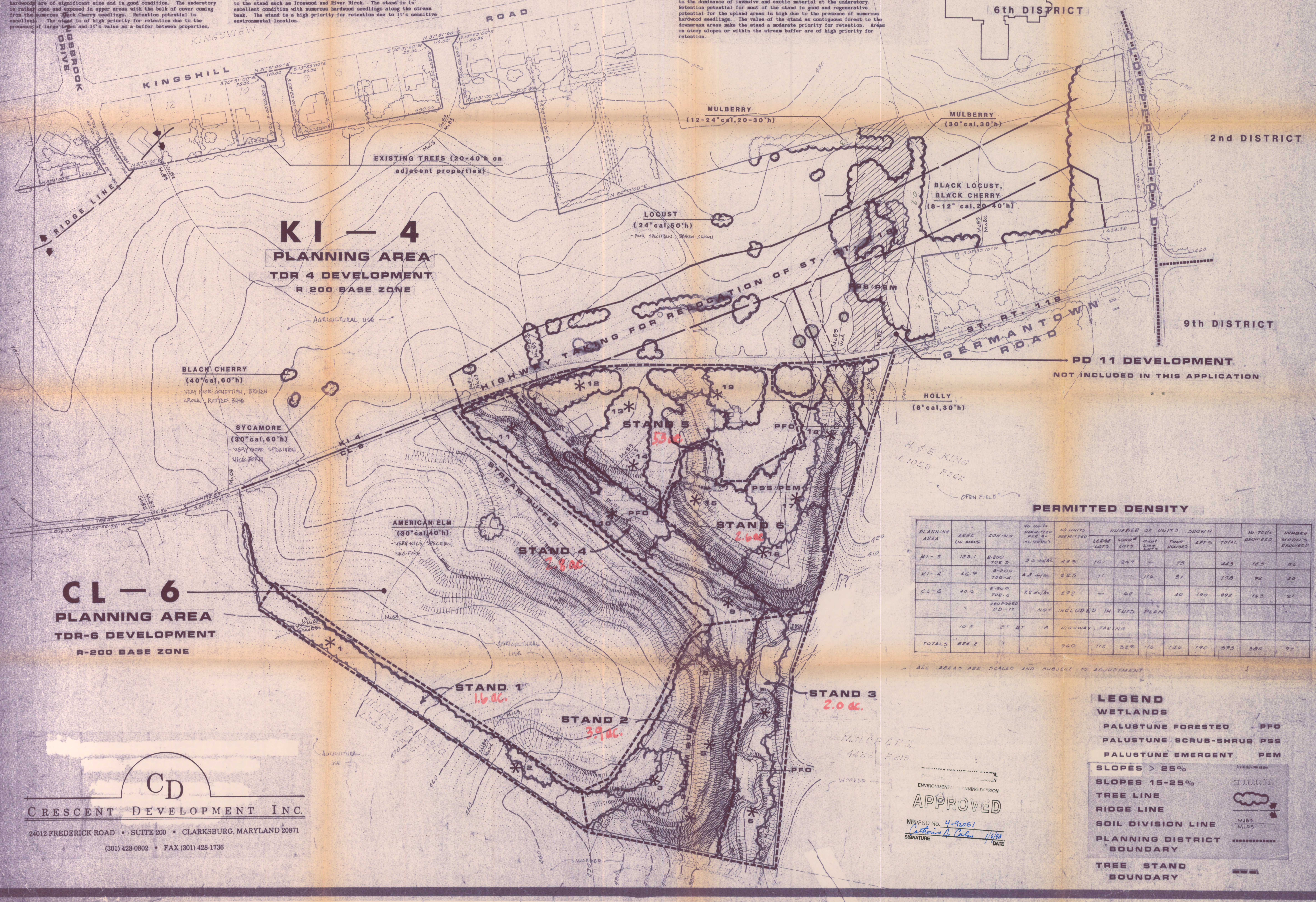
This stand is located entirely in the stream buffer area and is dominated by Tulip Poplar and associated successionary growth hardwoods. The general condition of the stand is fair to poor due to the dominance of exotic and invasive material at the understory. Retention potential is good due to the existence of the stream buffer. Protection of the stand will encourage denser canopy coverage and reduction in invasive understory coverage. The stand is of high priority for retention due to it's sensitive environmental location.

STAND 5 - Priority Area 3 (Low)

This stand consists of scattered smaller stands broken by open areas from past activity in the area. The area consists of ruins of several structures (concrete block buildings) used as part of the farming operation at one time. The stands consist primarily of Black Locust and associated hardwoods with the exception of a pure stand of young Red Maples along Route 118. In general, the stands lack structural diversity and are overrun with invasive and exotic material at the understory. The stand is of low priority for retention due to the upland location, poor diversity, and invasive dominance.

STAND 6 - Priority Area 1 & 2 (Moderate to High)

The stand is dominated by Tulip Poplar with numerous associated successionary hardwoods. The general condition of the stand is fair due to the dominance of invasive and exotic material at the understory. Retention potential for most of the stand is good and regenerative potential for the upland areas is high due to the presence of numerous hardwood seedlings. The value of the stand as contiguous forest to the downsream areas make the stand a moderate priority for retention. Areas on steep slopes or within the stream buffer are of high priority for retention.



PERMITTED DENSITY

PLANNING AREA	AREA (IN ACRES)	ZONING	No. Units PERMITTED PER Ac INC. MPDU'S	NO UNITS PERMITTED	NUMBER OF UNITS SHOWN: LARGE LOTS	6000d LOTS	0-LOT LINE LOTS	TOWN HOUSES	APT'S	TOTAL	NO. TDR'S REQUIRED	NUMBER MPDU'S REQUIRED
KI-3	123.1	R-200 TDR 3	3.6 du/Ac	443	101	267	—	75		443	123	56
KI-4	46.9	R-200 TDR-4	4.8 du/Ac	225	11	—	116	31		158	94	20
CL-6	40.6	R-200 TDR-6	7.2 du/Ac	292	—	62	—	40	190	292	163	21
		PROPOSED PD-11	NOT	INCLUDED IN THIS PLAN								
	10.5	ST RT 118		HIGHWAY TAKING								
TOTALS	224.2			960	112	329	116	146	190	893	380	97

ALL AREAS ARE SCALED AND SUBJECT TO ADJUSTMENT

LEGEND

WETLANDS

PALUSTUNE FORESTED	PFO
PALUSTUNE SCRUB-SHRUB	PSS
PALUSTUNE EMERGENT	PEM
SLOPES > 25%	
SLOPES 15-25%	
TREE LINE	
RIDGE LINE	
SOIL DIVISION LINE	MdB3 / MdD3
PLANNING DISTRICT BOUNDARY	
TREE STAND BOUNDARY	

CD
CRESCENT DEVELOPMENT INC.
24012 FREDERICK ROAD • SUITE 200 • CLARKSBURG, MARYLAND 20871
(301) 428-0802 • FAX (301) 428-1736

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION
ENVIRONMENTAL PLANNING DIVISION
APPROVED
NRI/FSD No. 4-92051
[illegible] 1/6/93
SIGNATURE DATE

complete 12/9/92

SHEET 3 OF 4

north

date: MAY 1987
NOV. 1992
scale 1" = 100'

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

NATURAL RESOURCES INVENTORY/FOREST STAND DELINEATION

project: PLEASANTS PROPERTY
SOUTH GERMANTOWN PLANNING AREA
MONTGOMERY COUNTY, MARYLAND

FILE # 190017

SCHAEFFER ROAD

RIDGE LINE

SUMAC

MULBERRY, BLACK CHERRY
(6-8"cal 15-25'h)

RIDGE LINE

MULBERRY
(6-8"cal,15-25'h)

OAK
(24"cal,60'h)

PINE
(6"cal,205'h)

RED,SUGAR MAPLE
(8-12"cal,25-40'h)

MULBERRY,etc.
(6-8"cal,20-30'h)

MULBERRY,LOCUST,BLACK CHERRY
(4-12"cal,15-40'h)

MULBERRY,LOCUST,BLACK CHERRY
(4-8"cal,15-35'h)

MULBERRY, LOCUST
(8-12"cal,40-50'h)

MULBERRY, LOCUST
(8-12"cal,25-40')

MULBERRY
(4-8" cal,15-25'h)

MULBERRY
(6-8"cal,15-25'h)

MULBERRY, LOCUST
(4-8"cal,15-25'h)

RED MAPLE
(6-10"cal,20-30'h)

PEM

PFO

PSS

RIDGE LINE

GERMANTOWN ROAD

RIFFLE FORD RD.

KI — 3
PLANNING AREA
TDR 3 DEVELOPMENT
R 200 BASE ZONE

VICINITY MAP
Scale 1" = 2000'

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION
ENVIRONMENTAL PLANNING DIVISION
APPROVED
NRI/FSD No. 4-92051
SIGNATURE
DATE

LEGEND
WETLANDS
PALUSTUNE FORESTED PFO
PALUSTUNE SCRUB-SHRUB PSS
PALUSTUNE EMERGENT PEM
SLOPES > 25%
SLOPES 15-25%
TREE LINE
RIDGE LINE
SOIL DIVISION LINE MdB3 MdB5
PLANNING DISTRICT BOUNDARY

SHEET 4 OF 4

date: MAY 1987
NOV. 1992

scale 1" = 100'

north

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

NATURAL RESOURCES INVENTORY/
FOREST STAND DELINEATION

PLEASANTS PROPERTY

SOUTH GERMANTOWN PLANNING AREA
MONTGOMERY COUNTY, MARYLAND

project:

Exhibit D

DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
ATTN: REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MD 21201

April 19, 2019

Operations Division

Kingsview Station A Joint Venture
c/o Mr. Michael J. Kelbasko
Wetland Studies and Solutions, Inc.
1131 Bensfield Boulevard, Suite L
Millersville, Maryland 21108

Dear Mr. Kelbasko:

This is in response to your client's recent request for a jurisdictional determination (JD) and verification of the delineation of waters of the United States, including jurisdictional wetlands, on the Kingsview Station property at the intersection of Clopper Road and Germantown Road in Montgomery County, Maryland. Your project has been assigned the file name, NABOP-RM (Kingsview Station JD) 2019-00222**.**

We have reviewed and concur with the JD Request for the Kingsview Station Property, Montgomery County, Maryland dated August 30, 2018, WSSI Project #: MD 1679.01 prepared by Wetland Studies and Solutions, Inc. for the approximately 12.58-acre property. In addition, a field inspection was conducted on March 6, 2019. This inspection indicated that the delineation of waters of the United States, including jurisdictional wetlands within the "Area of Review" on the enclosed drawing dated July 25, 2019 is accurate. Those areas indicated as waters of the United States, including jurisdictional wetlands, are regulated by this office pursuant to Section 10 of the River and Harbor Act of 1899 and/or Section 404 of the Clean Water Act. Enclosed is a document that outlines the basis of our determination of jurisdiction over these areas.

This letter contains an approved jurisdictional determination for your subject site. This approved jurisdictional determination is valid for five years from the date of this letter unless new information warrants revision of the determination before the expiration date, or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the North Atlantic Division Office at the following address:

Mr. Jim Haggerty
Administrative Appeals Review Officer
North Atlantic Division, Corps of Engineers
Fort Hamilton Military Community
General Lee Avenue Building 301
Brooklyn, NY 11252-6700

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit a RFA form, it must be received at the above address by June 19, 2019. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

Please be advised that various development activities, within waters of the United States, including jurisdictional wetlands may be regulated by the Corps. Wetlands and other waters under the jurisdiction of the Maryland Department of the Environment (MDE) may also be located on the parcel. You may contact the MDE at (410) 537-3768.for information regarding jurisdiction and permitting requirements.

You are reminded that any grading or filling of waters of the United States, including jurisdictional wetlands, is subject to Department of the Army authorization. State and local authorizations may also be required to conduct activities in these locations. In addition, the Interstate Land Sales Full Disclosure Act may require that prospective buyers be made aware, by the seller, of the Federal authority over any waters of the United States, including wetlands, being purchased.

In future correspondence and permit applications regarding this parcel, please include the file number located in the first paragraph of this letter.

A copy of this letter is being furnished to the Maryland Department of the Environment for informational purposes. If you have any questions concerning this matter, please call Mr. Steven Harman of this office at (410) 962-6082.

Sincerely,

Steven Harman
Acting Chief for

Kathy B. Anderson
Chief, Maryland Section Southern

Enclosures

To identify how we can better serve you, we need your help. Please take the time to fill out our new customer service survey at: http://www.nab.usace.army.mil/Missions/Regulatory.aspx

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): April 19, 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:CENABOP-RM (KINGSVIEW STATION JD) 2019-00222

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:MD County/parish/borough: Montgomery City: Germantown
Center coordinates of site (lat/long in degree decimal format): Lat. 39.160278° **N**, Long. -77.281944° **W**.
Name of nearest waterbody: Great Seneca Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Potomac River
Name of watershed or Hydrologic Unit Code (HUC): 020700080802

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date: Field
☒ Determination. Date(s): 6 March 2019

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area (check all that apply): [1]
☐ TNWs, including territorial seas
☐ Wetlands adjacent to TNWs
☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
☒ Non-RPWs that flow directly or indirectly into TNWs
☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
☐ Impoundments of jurisdictional waters
☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:
Non-wetland waters: 700 linear feet: 6 width (ft) and/or 0.13 acres.
Wetlands: 0 acres.

c. Limits (boundaries) of jurisdiction based on: **Established by OHWM.**
Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):[3]
☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: 12.58 **acres**
Drainage area: 12.58 **acres**
Average annual rainfall: 43.04 inches
Average annual snowfall: 18.71 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **5-10** river miles from TNW.
Project waters are **2-5** river miles from RPW.
Project waters are **5-10** aerial (straight) miles from TNW.
Project waters are **2-5** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: Flows from unnamed tributary to Gunners Branch to Great Seneca Creek to Potomac River.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: Unnamed intermittent tributary to Hammond Branch to Little Patuxent River to the Patuxent River..

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Ephemeral channel originated after a culvert was installed at the southside of a parking lot along Clopper Road .

Tributary properties with respect to top of bank (estimate):
Average width: 6 feet
Average depth: 3 feet
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

☒ Silts	☐ Sands	☐ Concrete
☒ Cobbles	☒ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: It is highly roding banks due to runoff from the adjacent farm fields..

Presence of run/riffle/pool complexes. Explain: There were no riffle, pool complexes observed along the ephemeral stream.

Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**
Estimate average number of flow events in review area/year: **11-20**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Confined.** Characteristics: .

Subsurface flow: **No**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☒ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☒ leaf litter disturbed or washed away	☒ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☒ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☒ Riparian corridor. Characteristics (type, average width): 100 feet.
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 0 acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: Influenced by seasonal water table.

Surface flow is**: Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water was clear, and no obvious pollutants were observed.

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width):Palustirne forested wetland, approximately 5-15 feet wide.
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: This is a more defined channel that remains the same depth and width as it continues downstream. It ranges from two to three feet wide at top of slope and contains almost vertical banks. There is some sorting of bed material and no leaflitter in the channel. Woody debris crosses over the channel. There is also some cobble present in the stream. The channel contains slight sinuosity throughout and some substrate sorting. There is an abutting wetland which an ephemeral channel flows into. There are no boulders or stone in the channel and there are no pool areas. The following stream geomorphology was absent: riffle-pool sequence; depositional bars or benches; braided channels; and grade controls. The upper limits of the ephemeral channel originate at a strom drain outfall and the channel deepens as it moves downhill. There was no water in the ephemeral channel (though the intermittent channel contained water). There were no sitings of crayfish, snails, fish, amphibians or wetland vegetation in the channel.
   There is no evidence that this system is fed by groundwater and there is some erosion with leaf litter and some clay sediment in the bottom. The channel is located within a forested area and the forested drainage area is less than five acres. There is OHWM and bank and bed material. The ephemeral channel has jurisdictional stream characteristics.
   Aquatic Life (Organisms): No aquatic species or indicators of aquatic species such as crayfish chimneys were observed during the site visit.
   Habitat for Wildlife -A detailed assessment of the quality of wildlife habitat was not performed. The ephemeral stream corridor and adjacent upland areas provide habitat for a variety of upland wildlife species.
   Support Nutrient Cycling -This area of review supports nutrient cycling. The riparian forested corridor manages the nutrients from the adjacent forested land. The deciduous forest also inputs detritus into this ephemeral system. The opportunity to perform this function within the ephemeral channel is limited since there is less than one acre of forest that drains to the channel and the channel lacks the plant cover to cycle the nutrients in the detritus.
   Sediment Transport-This ephemeral reach carries some sediment from the stromdrain outfall the empties into the ephemeral channel. The stream maintains minimal the capacity to transport sediments from the abutting forest.
   Pollutant Trapping - The opportunity to perform this function is poor since there is minimal forest adjacent to the channel and the

channel lacks the plant cover to cycle the nutrients in the detritus.
Water Quality Improvement: This reach, with abutting forested uplands, filters some runoff.
Temperature - Although the ephemeral channel is located in a forested area, the channel banks lack the vegetative cover to shade the water column in the stream. The channel does not influence the cold and hot weather conditions of waters downslope of the ephemeral channel.
Flood Storage - There is little opportunity for this reach to provide this function. This channel bed is depressed and not connected to the adjacent uplands; the slope of this channel is about 0.5%.
Groundwater Discharge: This function was not confirmed in the field. It is likely that groundwater discharges may occur infrequently. Due to the steepness of the 0.5% slope of the channel bed, there is little opportunity time for the water to infiltrate through the channel bed to the underlying water table below.
Groundwater recharge: This channel does not store water to slowly release it for groundwater recharge, which could possibly contribute to the flow to surface water systems onsite during dry periods. In addition, the small size of the channel and contributing drainage area would not contribute ample groundwater recharge.
Commerce - This channel, on private property, has limited opportunities; however, it flows into Great Seneca Creek which does support fishing activities approximately 4 miles from this area.
Navigation - This reach is not navigable.
Recreation -This reach, on private property, bas limited recreational opportunities because of its small size and lack of regular or seasonal water flow regime; however, if allowed, could support recreational activities such as hiking and bird watching proportionate to the riparian forested habitat, if the site is not developed.
Public Health -The water quality functions of this reach, although limited, directly influences downstream areas; therefore, providing a direct benefit to the overall public health.
Significant Nexus - Based on the above and field experience in Northern Maryland, this ephemeral channel has significant nexus with the physical, chemical or biological integrity of the palustrine emergent wetland and the intermittent stream channel that it feeds.This ephemeral channel reach originates at an existing storm drain outfall.

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: This ephemeral channel reach originates at a head cut at the base of the palustrine emergent wetland located at the northern end of the wetland stream system located on the western portion of the propert .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Visual observation indicates that tributary has seasonal baseflow.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☒ Tributary waters: **543** linear feet **3** width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: **200** linear feet **2** width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: **.**

[8]See Footnote # 3.

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [X] Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - [X] Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **.**
     - [ ] Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: **0.69** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - [ ] Demonstrate that impoundment was created from "waters of the U.S.," or
   - [ ] Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - [ ] Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

- [ ] which are or could be used by interstate or foreign travelers for recreational or other purposes.
- [ ] from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- [ ] which are or could be used for industrial purposes by industries in interstate commerce.
- [ ] Interstate isolated waters. Explain: .
- [ ] Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- [ ] Tributary waters: linear feet width (ft).
- [ ] Other non-wetland waters: acres.
  - Identify type(s) of waters: **.**
- [ ] Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- [ ] If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- [ ] Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

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[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .

☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

☐ Lakes/ponds: acres.

☐ Other non-wetland waters: acres. List type of aquatic resource: .

☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).

☐ Lakes/ponds: acres.

☐ Other non-wetland waters: acres. List type of aquatic resource: .

☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☒ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps: .

☐ Corps navigable waters' study: .

☐ U.S. Geological Survey Hydrologic Atlas: .

☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name: Germantown, MD.

☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .

☒ National wetlands inventory map(s). Cite name:Kingsview Station .

☐ State/Local wetland inventory map(s): .

☐ FEMA/FIRM maps: .

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☐ Aerial (Name & Date): .

or ☒ Other (Name & Date):05/07/18.

☐ Previous determination(s). File no. and date of response letter: .

☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .

☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 19 April 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENABOP-RM (Kingsview Station) 2019-00222

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:MD County/parish/borough: Montgomery City: Germantown
Center coordinates of site (lat/long in degree decimal format): Lat. 39.160278° **N**, Long. -77.281944° **W**. Universal Transverse Mercator:
Name of nearest waterbody: Great Seneca Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Potomac River Name of watershed or Hydrologic Unit Code (HUC): 020700080802

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date: Field
☒ Determination. Date(s): 6 March 2019

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** *"waters of the U.S."* within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area (check all that apply): [1]
☐ TNWs, including territorial seas
☐ Wetlands adjacent to TNWs
☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
☒ Non-RPWs that flow directly or indirectly into TNWs
☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
☒ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
☐ Impoundments of jurisdictional waters
☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:
Non-wetland waters: 543 linear feet: 3 width (ft) and/or 0.06 acres.
Wetlands: 0 acres.

c. Limits (boundaries) of jurisdiction based on: **Established by OHWM.**
Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):[3]
☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: 12.58 **acres**
Drainage area: 12.58 **acres**
Average annual rainfall: 43.04 inches
Average annual snowfall: 18.71 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **5-10** river miles from TNW.
Project waters are **2-5** river miles from RPW.
Project waters are **5-10** aerial (straight) miles from TNW.
Project waters are **2-5** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: Flows from unnamed tributary to Gunners Branch to Great Seneca Creek to Potomac River.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: Unnamed intermittent tributary to Hammond Branch to Little Patuxent River to the Patuxent River..

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: Ephemeral channel originated after a culvert was installed at the southside of a parking lot along Clopper Road .

Tributary properties with respect to top of bank (estimate):
Average width: 2 feet
Average depth: 1 feet
Average side slopes: **3:1 .**

Primary tributary substrate composition (check all that apply):

☐ Silts	☒ Sands	☐ Concrete
☒ Cobbles	☒ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: It is highly roding banks due to runoff from the adjacent farm fields..

Presence of run/riffle/pool complexes. Explain: There were no riffle, pool complexes observed along the ephemeral stream.

Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**
Estimate average number of flow events in review area/year: **11-20**
Describe flow regime: Intermittent.
Other information on duration and volume: .

Surface flow is: **Confined.** Characteristics: .

Subsurface flow: **No**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☒ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☒ leaf litter disturbed or washed away	☒ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☒ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): 100 feet.
☐ Wetland fringe. Characteristics: .
☐ Habitat for:
- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: 0.60 acres
Wetland type. Explain: Palustrine forested and palustrine emergent wetlands.
Wetland quality. Explain: Moderate quality .
Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:
Flow is: **Intermittent flow**. Explain: Influenced by seasonal water table.

Surface flow is**: Confined**
Characteristics: .

Subsurface flow: **No**. Explain findings: .
☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☒ Directly abutting
☐ Not directly abutting
- ☐ Discrete wetland hydrologic connection. Explain: .
- ☐ Ecological connection. Explain: .
- ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW
Project wetlands are **5-10** river miles from TNW.
Project waters are **2-5** aerial (straight) miles from TNW.
Flow is from: **Wetland to navigable waters.**
Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water was clear, and no obvious pollutants were observed.
Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

☒ Riparian buffer. Characteristics (type, average width):Palustirne forested wetland and palustrine emergent wetland, approximately 100 feet wide.

☐ Vegetation type/percent cover. Explain: Vegetation cover is approximately 95-100%. The forested wetland is dominated by Salix nigra and Onoclea sensibilis. The palustrine emergent wetland is dominated by Onoclea sensibilis .

☐ Habitat for:
- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **2**
Approximately (0.60.) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y	0.19		
Y	0.41		

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: This ephemeral channel reach originates at a head cut at the base of the palustrine emergent wetland located at the northern end of the wetland stream system located on the western portion of the propert

   This is a more defined channel that becomes deeper and wider as it continues downstream. It ranges from three to six feet wide at top of slope and contains almost vertical banks. There is some sorting of bed material and there is leaflitter in the channel. Woody debris crosses over the channel. Closer to the bottom of the channel, there is some cobble. The channel contains slight sinuosity throughout and some substrate sorting. There is an abutting wetland from which the ephemeral channel originates. There are no boulders or stone in the channel and there are no pool areas. The following stream geomorphology was absent: riffle-pool sequence; depositional bars or benches; braided channels; and grade controls. The upper limits of the ephemeral channel are characterized by a 1-foot deep headcut with a streambed that deepens as it moves downhill with distinct stream banks that are approximately 3.5- feet high when it reaches the intermittent stream channel. There was no water in the ephemeral channel (though the intermittent channel contained water). There were no sitings of crayfish, snails, fish, amphibians or wetland vegetation in the channel.

   There is no evidence that this system is fed by groundwater and there is some erosion with leaf litter and some clay sediment in the bottom. The channel is located within a forested area and the forested drainage area is less than five acres. There is OHWM and bank and bed material. The ephemeral channel has jurisdictional stream characteristics. There is an associated palustrine emergent wetland that contains a significant nexus with the ephemeral channel.

   Aquatic Life (Organisms): No aquatic species or indicators of aquatic species such as crayfish chimneys were observed during the site visit.

   Habitat for Wildlife -A detailed assessment of the quality of wildlife habitat was not performed. The ephemeral stream corridor and

adjacent upland areas provide habitat for a variety of upland wildlife species.
Support Nutrient Cycling -This area of review supports nutrient cycling. The riparian forested corridor manages the nutrients from the adjacent forested land. The deciduous forest also inputs detritus into this ephemeral system. The opportunity to perform this function within the ephemeral channel is limited since there is only a few acres of forest that drain to the channel and the channel lacks the plant cover to cycle the nutrients in the detritus.
Sediment Transport-This ephemeral reach carries some sediment from the adjacent roadway above the ephemeral channel. The stream maintains minimal capacity to transport sediments from the abutting forest.
Pollutant Trapping - The opportunity to perform this function is poor since there is minimal forest adjacent to the channel and the channel lacks the plant cover to cycle the nutrients in the detritus.
Water Quality Improvement: This reach, with abutting forested uplands, filters some runoff.
Temperature - The channel banks lack the vegetative cover to shade the water column in the stream. The channel does not influence the cold and hot weather conditions of waters downslope of the ephemeral channel.
Flood Storage - There is little opportunity for this reach to provide this function. This channel bed is depressed and not connected to the adjacent uplands; the slope of this channel is about 0.5%.
Groundwater Discharge: This function was not confirmed in the field. It is likely that groundwater discharges may occur infrequently. Due to the steepness of the 0.5% slope of the channel bed, there is little opportunity time for the water to infiltrate through the channel bed to the underlying water table below.
Groundwater recharge: This channel does not store water to slowly release it for groundwater recharge, which could possibly contribute to the flow to surface water systems onsite during dry periods. In addition, the small size of the channel and contributing drainage area would not contribute ample groundwater recharge.
Commerce - This channel, on private property, has limited opportunities; however, it flows into the Great Seneca Creek which does support fishing activities approximately 4 miles from this area.
Navigation - This reach is not navigable.
Recreation -This reach, on private property, bas limited recreational opportunities because of its small size and lack of regular or seasonal water flow regime; however, if allowed, could support recreational activities such as hiking and bird watching proportionate to the riparian forested habitat, if the site is not developed.
Public Health -The water quality functions of this reach, although limited, directly influences downstream areas; therefore, providing a direct benefit to the overall public health.
Significant Nexus - Based on the above and field experience in Northern Maryland, this ephemeral channel has significant nexus with the physical, chemical or biological integrity of the palustrine emergent wetland and the intermittent stream channel that it feeds.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☐ TNWs: linear feet width (ft), Or, acres.
   ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   ☒ Tributary waters: linear fet width
   ☐(ft). Other non-wetland waters: acres.
   Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   ☒ Tributary waters: **100** linear feet **2** width (ft).

[8]See Footnote # 3.

☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: the wetland originates at the culvert where the intermittent channel originates.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.60** acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **0.60** acres.

7. Impoundments of jurisdictional waters.[9]

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

☐ Demonstrate that impoundment was created from "waters of the U.S.," or

☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or

☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ which are or could be used for industrial purposes by industries in interstate commerce.

☐ Interstate isolated waters. Explain: .

☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

---

[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: 0.60 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: 0.60 acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  ☒ Office concurs with data sheets/delineation report.
  ☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
  ☐ USGS NHD data.
  ☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: Germantown, MD.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name:Kingsview Station .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☐ Aerial (Name & Date): .
  or ☒ Other (Name & Date):05/07/18.
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Kingsview Station A Joint Venture	File Number: 2019-00222	Date: 04/19/2019
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
Mr. Frank Plewa U.S. Army Corps of Engineers Carlisle Field Office, Regulatory Branch, Baltimore District Attn: CENAB-OPR-P 401 East Louther Street, Suite 205 Carlisle, Pennsylvania 17013-2657 Telephone: (717) 249-2522 Email: Frank.plewa@usace.army.mil	Mr. James W. Haggerty Regulatory Program Manager (CENAD-PD-OR) U.S. Army Corps of Engineers Fort Hamilton Military Community 301 General Lee Avenue Brooklyn, New York 11252-6700 Telephone number: 347-370-4650

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of appellant or agent.		

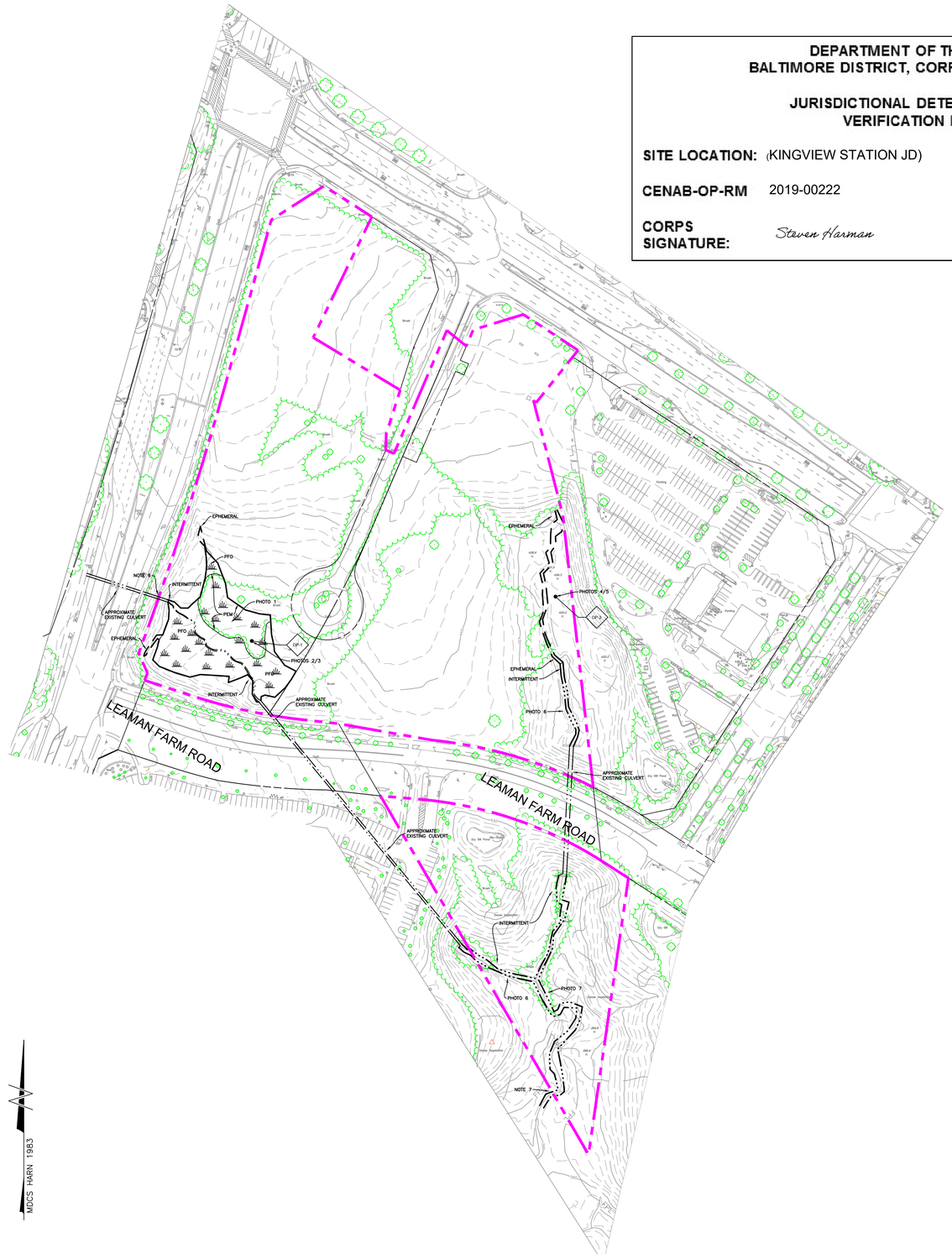
DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS

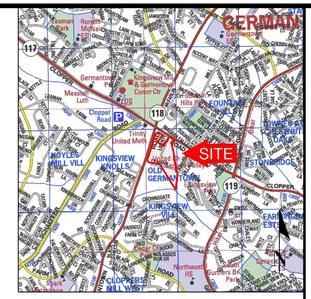
JURISDICTIONAL DETERMINATION
VERIFICATION MAP

SITE LOCATION: (KINGVIEW STATION JD)

CENAB-OP-RM 2019-00222

CORPS SIGNATURE: *Steven Harman* **DATE:** 04/19/2019





VICINITY MAP
Scale: 1" = 2000'
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WATERS OF THE U.S. DELINEATION AND SURVEY NOTES:

1. Periodic flag numbers are shown depicting the survey-located boundary of wetlands and other waters of the U.S. (i.e., streams, ponds, etc.). Waters of the U.S. flags are pink-glo in color. Data points are flagged with orange-glo and pink-glo flagging tied together.
2. Topo/boundary information obtained in digital format from Montgomery County digital data was used as a base for this Attachment.
3. This delineation was performed pursuant to the "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1 (1987 Manual) and subsequent guidance and modification by the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0)* dated April 2012.
4. The Routine On-Site Wetland Determination Method for sites more than 5 acres was used for this site, with multiple transects performed as depicted on this Attachment.
5. Field work was performed on May 7, 2018 by Kenneth R. Wallis, PWS.
6. This waters of the U.S. (stream) originates off-site, upslope.
7. This water of the U.S. (stream) continues off-site, downslope.
8. The terms "Ephemeral", and "Intermittent" used on this Attachment classify and describe the flow regime character of streams, are based on WSSI's field observations, and are only provided for state and local regulatory purposes. The flow regimes of streams are not verified by the COE; however, the geographic limits of these streams are all subject to COE jurisdiction, and the COE's approval of this delineation represents only the approval of the geographic limits of waters of the U.S.
9. WSSI has delineated the outer limits of jurisdictional areas within the project site. Many of the jurisdictional areas on the site are composed of systems containing different wetland (i.e., PFO and PEM) and stream (i.e., ephemeral and intermittent) types. The approximate limits of the different wetland and stream types within the surveyed jurisdictional areas are depicted as a thin black line of the associated line type.
10. Wetland flag locations were surveyed by Charles P. Johnson and Associates, Inc.
11. Limits of jurisdictional Waters of the U.S. have not been confirmed by the U.S. Army Corps of Engineers.
12. Total site area: 12.58 acres

COWARDIN CLASSIFICATION

R4	RIVERINE INTERMITTENT
R6	RIVERINE EPHEMERAL
PFO	PALUSTRINE FORESTED WETLAND
PEM	PALUSTRINE EMERGENT WETLAND

SUMMARY OF JURISDICTIONAL AREAS

COWARDIN CLASSIFICATION	AREA (SQUARE FEET)	AREA (ACRES)	LINEAR FEET OF STREAMBED
INTERMITTENT	6,180	0.14	888
EPHEMERAL	2,152	0.05	355
PFO	18,030	0.41	N/A
PEM	8,114	0.19	N/A
TOTAL	34,476	0.79	1,243

These numbers are based on the surveyed and approximate locations of the delineated WOTUS boundaries within the site boundary.

Wetland Studies and Solutions, Inc. a DAVEY company
1131 Benfield Boulevard, • Suite L
Millersville, Maryland 21108
Phone: 410-672-5990 • Fax: 410-672-5993
www.wetlands.com

Wetland Delineation Plan

WSSI# MD1679.01

Prepared For: Pleasants Development

KINGSVIEW STATION

Montgomery County, Maryland

REVISIONS

No.	Date	Description	Rev. By	App. By

DATE: July 25, 2018 SCALE: 1" = 100' C.I.: 2'

Horizontal Datum: MCS HARN

Vertical Datum: NAVD88

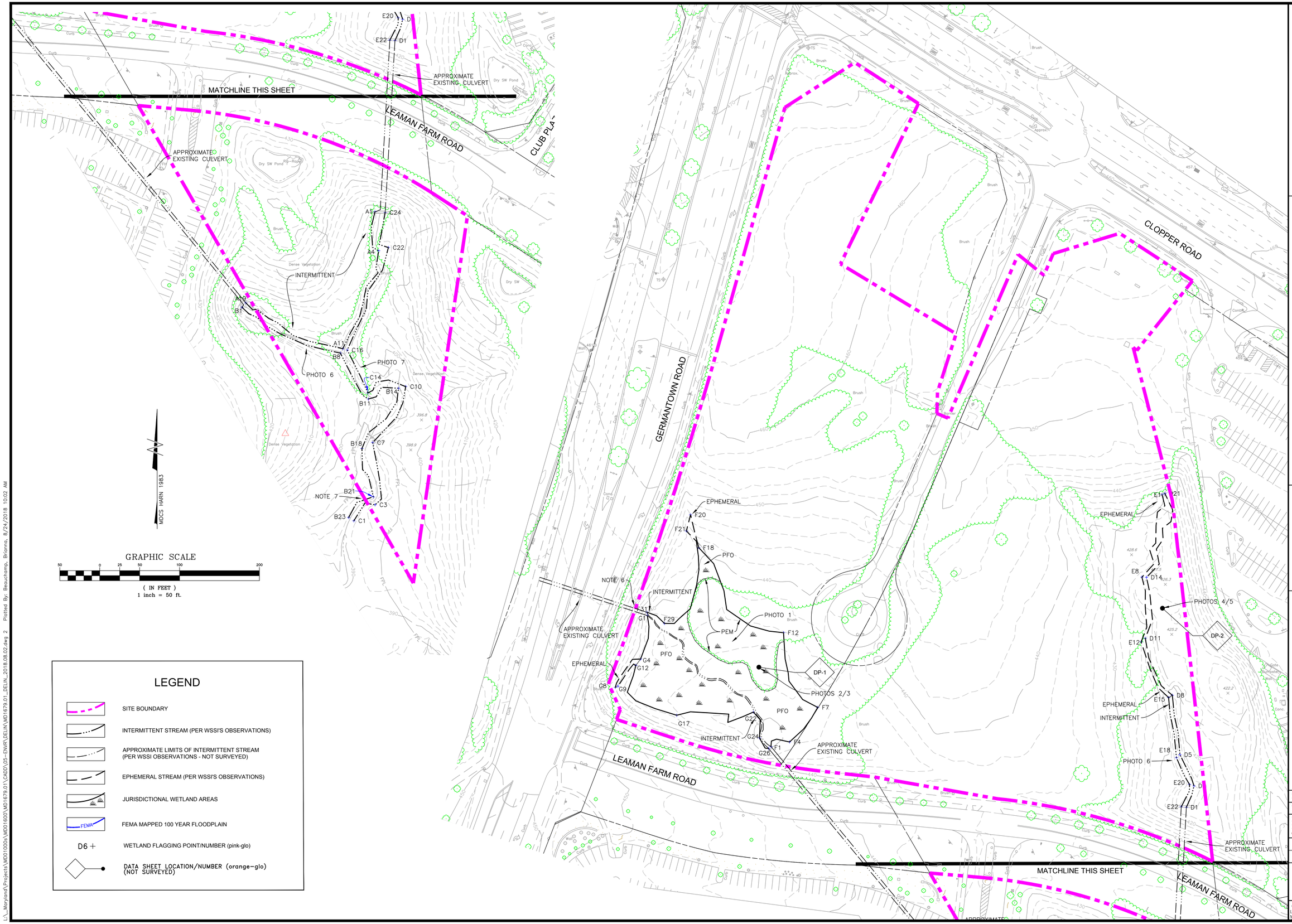
Boundary and Topo Source:
Montgomery County Digital Data
Charles P. Johnson & Associates, Inc.

Design	Draft	Approved
KW	CH	MK

Sheet # 1 of 2

Computer File Name:
L:_Maryland\Projects\MD01000s\MD01600\MD1679.01\CADD\05-ENVR\DELIN\MD1679.01_DELIN_2018.08.02.dwg

MD1679.01_DELIN_2018.08.02.dwg



GRAPHIC SCALE

50 0 25 50 100 200

(IN FEET)
1 inch = 50 ft.

LEGEND

- SITE BOUNDARY
- INTERMITTENT STREAM (PER WSSI'S OBSERVATIONS)
- APPROXIMATE LIMITS OF INTERMITTENT STREAM (PER WSSI OBSERVATIONS - NOT SURVEYED)
- EPHEMERAL STREAM (PER WSSI'S OBSERVATIONS)
- JURISDICTIONAL WETLAND AREAS
- FEMA MAPPED 100 YEAR FLOODPLAIN
- D6 + WETLAND FLAGGING POINT/NUMBER (pink-glo)
- DATA SHEET LOCATION/NUMBER (orange-glo) (NOT SURVEYED)

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Wetland Delineation Plan

WSSI# MD1679.01

Prepared For: Pleasants Development

KINGSVIEW STATION

Montgomery County, Maryland

REVISIONS				
No.	Date	Description	Rev. By	App. By

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Horizontal Datum: MCS HARN

Vertical Datum: NAVD88

Boundary and Topo Source:
Montgomery County Digital Data
Charles P. Johnson & Associates, Inc.

Design	Draft	Approved
KW	CH	MK

Sheet # 2 of 2

Computer File Name:
L:\...\MD1679.01_DELIN_2018.08.02.dwg

Exhibit E

AshtonManor
ENVIRONMENTAL

June 19, 2018

Clark Wagner
Kingsview Station JV
24012 Frederick Road, Ste. 200
Clarksburg, MD 20871

Re: Evaluation of Specimen Tree # 9 @ Kingsview Station project, located off of Liberty Mill Road in the wooded area south of Rt. 118

53" dbh, or approx. 168" Circumference, Prunus serotine, Black Cherry
Tree is the 2nd Black Cherry, listed on page 7 of the Montgomery County register of Champion Trees

Clark,

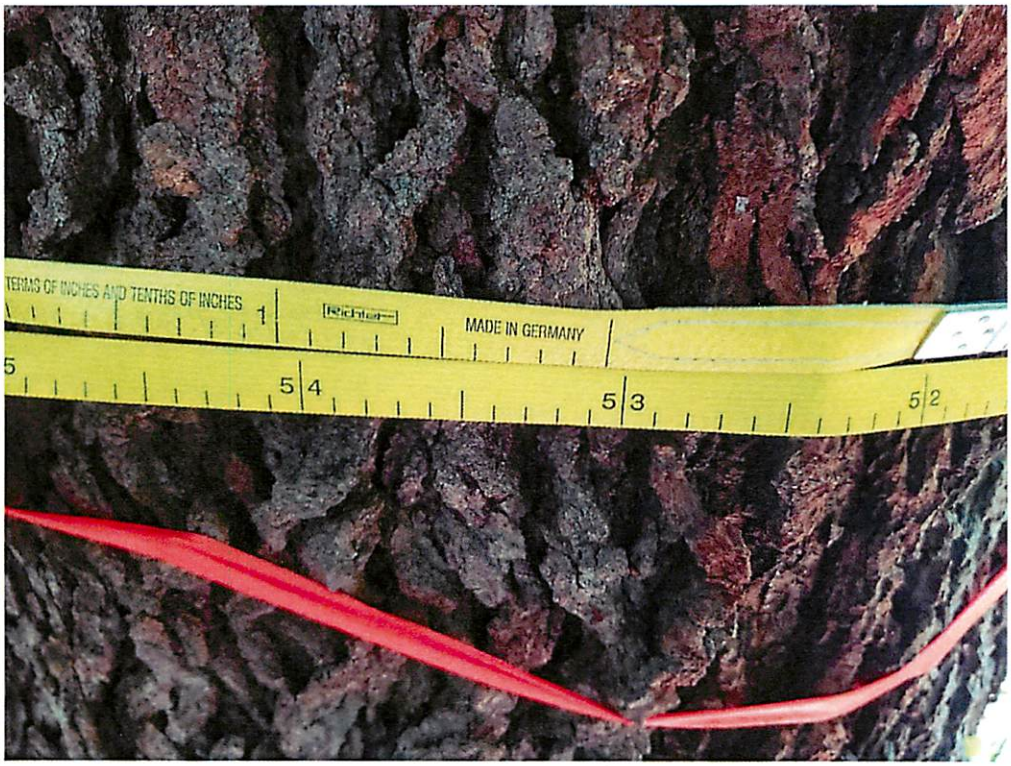
Per your request, I visited this site on 6/18/2018 to perform a complete and thorough evaluation of the above referenced Prunus serotina, Black Cherry tree.

For background purposes, I am an International Society of Arborist Certified Arborist and ISA Qualified Tree Risk Assessor (MA-4993A), a Maryland Licensed Tree Expert (License No. 825), and I also have a M.S. in Environmental Science from Johns Hopkins University.

With this tree already being listed on the 2017-2018 Register of Champion Trees, Montgomery County, MD, it is worthy of an even more thorough and careful evaluation.

From the picture below, you can see the Diameter at Breast Height ("DBH") measure of 53". I was not able to get a quality picture showing the approximate 168" circumference measurement.

This tree technically meets the definition of a County Champion if nothing else, based on it's "size" measurement alone. However, it is noteworthy to point out that this tree does not exhibit the normal/typical growth pattern for this species of tree. In it's natural environment, this tree would normally have "excurrent" branching. In general terms, you would expect this species to have one main central leader, with lateral/scaffolding branches up through the canopy. This particular specimen tree, however has more of a "decurrent" branching pattern. See photos "Defect 4, Photo I" This feature is indicative of this trees long past history and continued impacts over many years. Based on the multiple co-dominant branches, it is likely that this tree suffered both man-made mechanical impacts and/or storm related damage, that all resulted in this abnormal excurrent branching pattern we see today.


TENTHS OF INCHES AND TENTHS OF INCHES
MADE IN GERMANY
5 4
5 3
5 2

Defect #1: Seam along base of trunk, with dead-decay cavities.

Photo C below, shows on the one side of the tree, that there is a longitudinal Seam that starts at the base of the trunk and continues up through the main "platform" level where the majority of the excurrent branches are anchored. At this platform/base, there are several locations of rot/decay and accumulating organic matters.

Photo's A, B, and D show the multiple cavities with the largest one being 12-18" deep and having substantial rot/decay present.

Photo A

Photo B

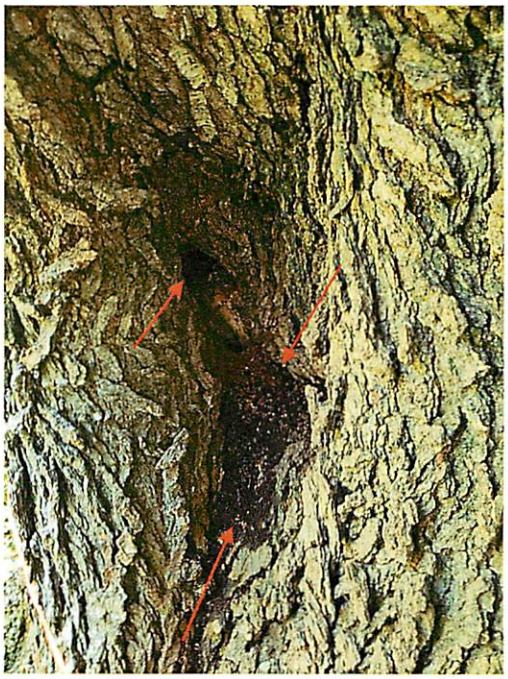
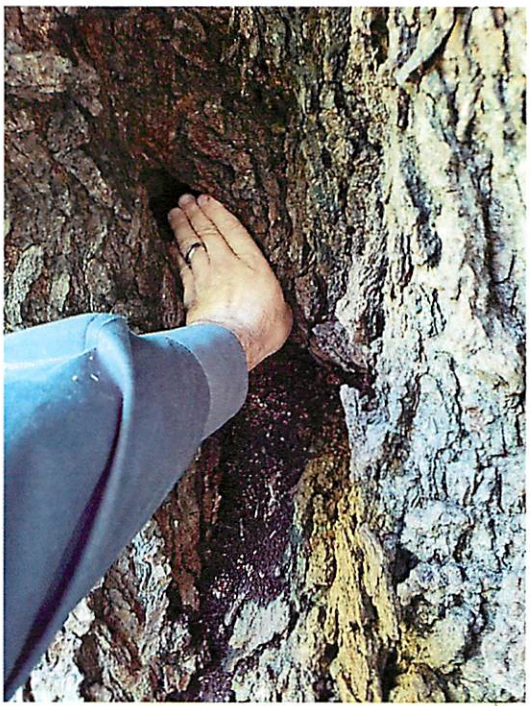


Photo C

Photo D



Defect #2: Additional example of deep, rot cavity at base

In photo's E and F, you can see the close ups of a substantial rot/cavity that has formed at the base of the trunk. This substantial cavity is negatively impacting the overall entire root plate structure and is likely to make this tree a high risk for complete wind throw failure.

Photo E

Photo F

Defect #3: Substantial seam/crack with rot/decay

Photo's G and H below show an even more substantial longitudinal cracking seam on the opposite side from the one discussed under Defect #1. This vertical crack condition is substantial and is creating a major negative impact on the overall structural stability of this tree. When you add these two cracks, to the unusual nature of the excurrent branching of this tree, it is highly prone to major failure. While there are some visible signs of old, compartmentalization, they are failing now, and have signs of rot and decay. Additionally, as noted under Defect #1, there are pockets of further rot/decay, with organic accumulations and water being held at the base/platform level where all of the excurrent branches originate.

Photo G

Photo H

Defect #4: Branch failure

Photo I shows where a substantial branch, approximately 14-17" in DBH has torn away from the tree due to rot/decay. Photo J is a close up of branch tear/injury site. There were multiple other small branches that had also fallen off the tree higher up in the canopy, but this was the most substantial. It's important to note, that this was a relatively recent occurrence, likely within the last 1-2 years. I see this as in indicator of the extent and progression of rot/decay in multiple locations throuhout the tree.

Photo I

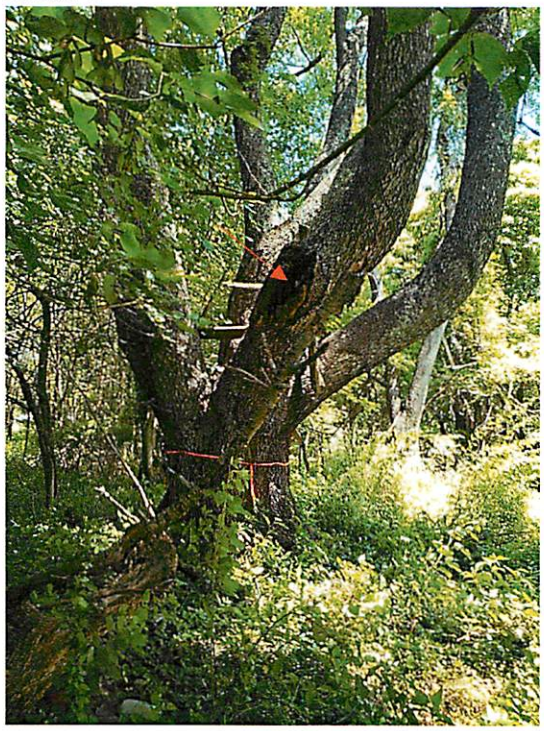
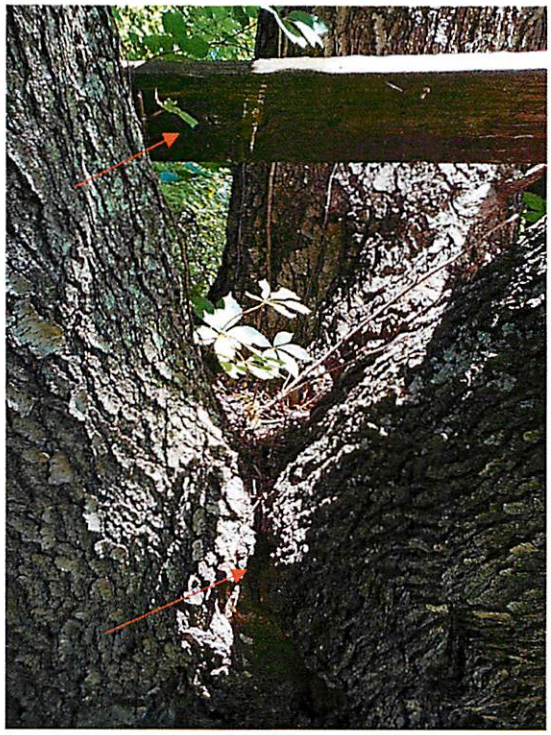


Photo J

Defect #5: Trash debris, multiple metal penetrations into multiple trunk/branches
There was evidence of past structures that have been built into this tree. The construction methods were very "rough" with no thoughts given to proper, low impact techniques that cold have minimized the harm and damage from these activities.

Photo K

Photo L



Mitigation/Preservation Options

When I evaluate a tree such as this one, I always consider what mitigation and preservation options may exist. Unfortunately, due to the numerous defects outlined above, I am not able to come up with any recommendations for measures that would realistically prolong the life of this tree to any significant degree, or improve the defective items.

Based on all of the detailed information outlined above, it is my strong recommendation that this tree be permitted to be removed, as part of this overall application.

Regards,

Jeff Schwartz, President
MD Tree Expert Lic: 825
ISA Arborist-Tree Risk Assessor:MA-4993A
MS Env. Science

Exhibit F

GLW
PLANNING | ENGINEERING | SURVEYING

December 26, 2018

Forest Conservation Program Manager
Maryland National Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Kingsview Station - Variance Request
Local Map Amendment
Preliminary Forest Conservation Plan

On behalf of the applicant, Kingsview Station Joint Venture, we are requesting a variance of Section 22A-12.(b)(3)(c) of the Montgomery County Code.

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

(C) Any tree with a diameter, measured at 4.5 feet above the ground, of:
(i) 30 inches or more; or
(ii) 75% or more of the diameter, measured at 4.5' above ground of the current State champion tree of that species.

This Variance request is being submitted in concurrence with Local Map Amendment which requests approval for the application of a Floating Zone to the Property, to rezone the Property from the R-200 and R-200/TDR 6.0 Zones to the CRNF-1.0, C-0.25, R-0.75, H-55' Zone.

The Property is located within the planning boundaries of the 1989 Germantown Master Plan which recommends PD-11 floating zoning for the property. However, applications can no longer be made for the PD-11 zone, and as a result, the current zoning ordinance identifies the CRNF as an equivalent Floating zone.

The subject property contains a net lot area of approximately 10.27 acres and is generally located in the Southeast quadrant, intersection of Clopper Road (MD 117) and Germantown Road (MD 118). The Germantown Commuter Parking Lot and Kingsview Village Center Commercial are located to the east of the Site with and Leaman Farm Road to the south. The site is comprised of six parcels which are undeveloped with an existing Forest Conservation

Easement that covers approximately 0.54 acres of the property. The only parcel not included in the application is parcel 168, located in the southwest quadrant of the intersection of Liberty Mill Road and Clopper Road, owned by Potomac Electric Power Co. ("Pepco"). The property is currently forested along the Northwest and Southeast portions of the site. Several specimen trees are located on the North side of the site. Liberty Mill Road, which is included in the proposed development, was built prior to current stormwater management regulations and do not provide any stormwater management treatment for the surface areas that flow to the Middle Great Seneca Creek.

Pursuant to the applicable provisions of Chapter 59 of the Montgomery County Code, the Local Map Amendment submitted with this variance request seeks approval for the proposed rezoning of the Property to provide 12,000 square feet of commercial use and 60 townhouse living units.

As part of rezoning of the Subject Property, the applicant is requesting a variance to affect the following trees that measures 30" or greater in diameter at breast height (dbh).

Request to remove the following trees:

Tree #	Tree type	Dbh (In.)	Condition	Reason
1	Mulberry	31"	Poor	Removed for construction of proposed Public Road 'A' and the adjacent townhouses.
5	Black Cherry	37"	Fair	Removed for construction of proposed Public Road 'A' and the adjacent townhouses.
9	Black Cherry	54.5"	Poor*	Removed for construction of the proposed Public Road 'A'.

*: See Evaluation of Specimen tree #9 letter, dated June 19, 2018 for a detailed description of tree condition.

Section 22A-21 (b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship:

The proposed rezoning for development of commercial uses and residential townhouses on the Subject property will require new building construction, associated grading, utility installation, access/ road frontage improvements, parking lot construction, on site stormwater management and other associated improvements on the property. The proposed development was designed to utilize the existing segment of Liberty Mill Road to the extent practicable, preserve the existing forest along the Southeast portion of the site, while implementing the goals of the Master Plan.

By way of background, the Master Plan recommended a Village Center to be located in the Northwest portion of the site at the intersection of Clopper Road and Germantown Road. However, the Village Center was ultimately constructed in the center of the CL-6 Analysis area of the 1989 Germantown Master Plan; which is adjacent, to the east of subject site.

In accordance with the Master Plans recommendations mentioned above, the proposed development will include a mixed-use, pedestrian oriented development with one commercial building located in the Northwest corner of the site and one along Clopper Road, in combination with the residential townhouses to the South of the proposed public road that connects Germantown Road to Liberty Mill. Furthermore, the existing storm drain system that is located onsite and associated with existing Liberty Mill Road will be upgraded to provide stormwater management treatment per current regulations.

Removal of Tree #1, 5 & 9

- Tree #1 is in poor health and will be removed for construction of proposed Public Road 'A' and the proposed adjacent townhouses.
- Tree #5 will be removed for construction of proposed Public Road 'A' and the proposed adjacent townhouses.
- Tree #9 is in poor health and will be removed for construction of proposed Public Road 'A' and the proposed adjacent townhouses.

Not being allowed to remove these trees and obtain a Specimen Tree Variance would deprive the Applicant of the reasonable and substantial use of the Property and clearly demonstrate an unwarranted hardship. The ability to provide single family attached homes, commercial uses, parking, and site construction is allowed within the proposed zoning and within a reasonable and substantial use of the Property. Not allowing disturbance in these areas would deny the Applicant the ability to meet the goals of the Master Plan. If a Variance were to be denied, the Applicant would be deprived from developing the Property for a reasonable and significant use enjoyed by virtually all others similar property owners in the community.

2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas:

The subject specimen trees are located on the Northwest portion of the site, south of existing Parcel 168. The proposed retail and residential additions, associated parking and utility improvements have been specifically designed to maximize the already improved areas of the site to maximize the development potential with the use of the existing access and utilities. The three (3) impacted Specimen trees are located in areas of road, utility, stormwater management, townhouse, and parking construction and denial of the variance would keep the applicant from fulfilling the county's goal of avoiding sprawl and locating density in already developed areas, and providing additional housing including affordable housing in Montgomery County

Not granting the variance would cause undue hardship on the applicant because development would be very limited or not possible, and therefore will deny the applicant ability

to fully use the property. By denial of a Variance, it will deprive the landowner the significant and reasonable use on the property as allowed in the zone, and as shown in the Master Plan. Granting of the variance will ultimately allow the property to be developed in a safe and efficient manner as other property owners in the community.

3. Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance:

The variance will not violate state water quality standards or cause measurable degradation in water quality. All proposed land development activities in Montgomery County require Conceptual Storm Water Management Plan approval and detailed technical Sediment Control and Storm Water Management Plan approvals by Montgomery County Department of Permitting Services. A Storm Water Management Concept Plan will be approved by the Montgomery County Department of Permitting Service. The approval of these plans confirms that the SWM Concept Plan meets or exceeds all Montgomery County and State of Maryland storm water management regulations and water quality standards through the use of micro-bio filters and other similar treatment features and therefore verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur. In addition to providing state-of-the-art "Environmental Site Design" storm water management for a site that currently has virtually no storm water management and completely uncontrolled runoff, the proposed development will add significant stormwater management to the site while also be reducing the existing uncontrolled overland flow on adjacent properties, and provide forest cover through additional site afforestation.

4. Provide any other information appropriate to support the request:

The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant has taken great care to locate development in the buildable area of the site while trying to maximize usage of existing utility lines and minimize disturbance to the significant and specimen trees. The Applicant intends to implement tree preservation measures, potentially including standard tree protection fencing, signage, root pruning, vertical mulching and fertilization to further aid in mitigating disturbance and protecting the forest line. This will be explored and identified as part of the Final Forest Conservation Plan included with the upcoming Site Plan. The applicant recognizes the value and need for mature trees and will give special attention to any construction work that may impact the critical root zones of specimen trees as noted above.

The Applicant believes that the information set forth above is adequate to justify the requested variance to remove three (3) specimen trees on the Subject Property. Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21 (d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.

2. The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the existing site conditions, including the random location of the specimen trees.

3. The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property.

4. The impact to, or loss of the requested trees will not violate State water quality standards or cause measurable degradation in water quality.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

Kevin Foster, ASLA AICP

E. Memoranda and Letters

Attachment-E

Department of Permitting Services
Fire Department Access and Water Supply Comments

DATE: 16-Sep-19

TO: Kevin Foster
Gutschick Little & Weber, PA

FROM: Marie LaBaw

RE: Kingsview Station
II-131

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **16-Sep-19** .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.

2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

***** Parking restricitons and hydrant placement to be reviewed at preliminary plan *****