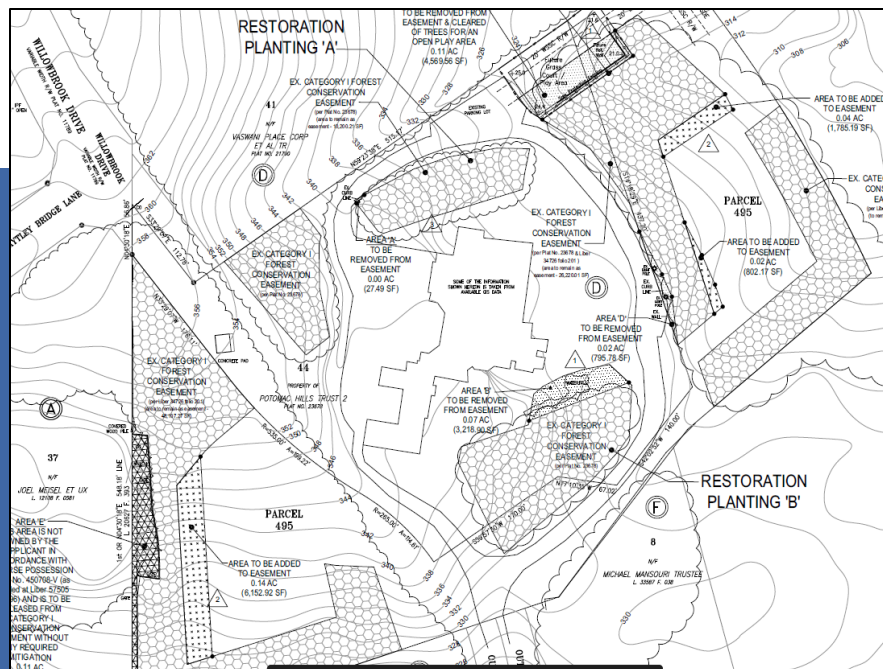


# Montgomery Planning

## KENTSDALE ESTATES LOT 44 AND PARCEL 495 BLOCK D

### FOREST CONSERVATION PLAN AMENDMENT

NO. 11997056C



#### Description

In response to a forest conservation violation, this Amendment proposes removal of 0.20 acres (8,612 square feet) of Category I Conservation Easement from Lot 44 and Parcel 495 in the Kentsdale Estates Subdivision and provides 0.20 acres (8,740 square feet) of mitigation onsite.

In addition, the Amendment proposes release of 0.11 acres (4,852 square feet) of Category I Conservation Easement from the west side of Parcel 495 that was improperly placed on property not owned by the Applicant.

No. 11997056C

Completed: 12-09-2022

MCPB

Item No. 4  
12-22-2022

2425 Reddie Drive

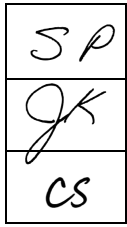
Floor 14

Wheaton, MD 20902

[Montgomeryplanning.org](http://Montgomeryplanning.org)

Kentsdale Estates Lot 44 and Parcel 495, Plan No. 11997056C

## Planning Staff



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### Summary:

Staff recommends approval of the Forest Conservation Plan Amendment, which will resolve two forest conservation citations issued on June 3, 2020, to the Property Owner for cutting, clearing and constructing within a forest conservation easement.

It also removes a portion of the easement that was incorrectly placed on a portion of the property that was not owned by the Applicant.

The Amendment proposes:

- Removing 8,612 square feet (0.20 acres) of forest conservation easement from the Property.
- Adding 8,740 square feet (0.20 acres) of forest conservation easement to the Property.
- Restoration planting and maintenance program.
- Permanent conservation easement markers.

In addition, the Amendment releases 4,792 square feet (0.11-acre) of forest conservation easement area from Parcel 495 that was recorded in error, and an additional 3,049 square feet (0.07-acre) of planting is to be completed by the Applicant, by a fee-in-lieu payment at the current fee-in-lieu of planting rate.

As of the date of the Staff Report, Staff has not received any community correspondence related to this Amendment.

#### LOCATION / PROPERTY

10423 Willowbrook Drive

Kentsdale Estates Lot 44 and Parcel 495

#### MASTER PLAN

*2002 Potomac Subregion Master Plan*

#### ZONE

RE-2

#### PROPERTY SIZE

9.49 acres

#### Applicant

Potomac Hills Trust 2

Dr. Inder Chawla & Vera Chawla

#### REVIEW ACCEPTANCE DATE

April 12, 2022

#### REVIEW BASIS

Chapter 22A

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## SECTION 1: OVERVIEW

The Montgomery County Planning Department administers Chapter 22A, Forest Conservation Law with the goal of saving, protecting, and maintaining planted trees and forest areas. Developers who propose applicable development activities like new subdivisions of land require approval of a forest conservation plan prior to clearing and grading. The forest conservation law outlines the steps to satisfy forest retention and planting requirements. The forest conservation worksheet, a step-by-step guide on the approved forest conservation plan, outlines the specific forest retention and planting requirements based on the tract area and land use.

In administering the forest conservation law, approved forest conservation plans require establishment of long-term protection measures, like conservation easements. These conservation easements are granted to the Montgomery County Planning Board. The Planning Department under direction of the Planning Director enforces the forest conservation law and the Planning Department Inspectors are the front-facing team administering the day-to-day inspections and meeting requests.

Sometimes, developers and property owners propose changes to an approved forest conservation plan. If the changes include proposed changes to forest retention areas and conservation easements, the forest conservation plan is reviewed by the Planning Board for decision.

The Planning Board must authorize any change to a conservation easement. Section 22A.00.01.13 of the Montgomery County Forest Conservation Regulations states that “removal of any conservation easement must be reviewed by the Planning Board”.

This Staff Report is for a forest conservation plan amendment proposing conservation easement changes because of encroachments into existing easement areas and a desire to have a level play area, and removal of an easement area that was placed in error.

Staff recommends approval of the Forest Conservation Plan Amendment.

The Amendment proposes:

- Removing 8,612 square feet (0.20 acres) of forest conservation easement.
- Adding 8,740 square feet (0.20 acres) of forest conservation easement.
- Restoration planting and maintenance program.
- Installation of permanent conservation easement markers.

The Amendment also proposes:

- Releasing 4,792 square feet (0.11-acre) of forest conservation easement area which was located on property not owned by the Applicant (which was determined by an adverse possession ruling by the Circuit Court).
- Adding 3,049 square feet (0.07-acre) of forest planting through fee-in-lieu by the Applicant to account for this reduction in the easement area (which reduces the Property's net tract area).

The Planning Board has an established policy for how much forest should be provided as mitigation for release of an area of forest conservation easement. The policy requires a minimum of 1 square foot of onsite forest planting or forest retention for every 1 square foot of conservation easement removed. If mitigation is not available or suitable onsite, the Planning Board policy requires a minimum of 2 square feet of forest plantings offsite for every 1 square feet of forest removed. This Amendment meets this policy by providing a ratio of 1 to 1 mitigation onsite for the removal of a Category I conservation easement. The adverse possession area is being released without the standard mitigation because it was put into easement in error because the land was not owned by the Applicant. However, an additional 3,049 square feet (0.07 acres) must be planted or a fee-in-lieu paid to account for the reduction in the tract area.

## SECTION 2: RECOMMENDATIONS AND CONDITIONS

### FOREST CONSERVATION PLAN AMENDMENT NO. 11997056C

Staff recommends approval of Forest Conservation Plan Amendment No. 11997056C (“FCP Amendment”, “Amendment”, or “FCP”) subject to the conditions listed below. All other conditions of Preliminary Plan No. 119970560, as contained in the Montgomery County Planning Board’s Opinion dated May 28, 1997, remain in full force and effect.

1. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 11997056C, the Applicant must record a new Category I Conservation Easement Agreement reflecting the entire easement area, excluding the area that is authorized to be removed, as specified on the approved Final Forest Conservation Plan. The new Category I Conservation Easement must be in a form approved by the Maryland-National Capital Park and Planning Commission (M-NCPPC) Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed prior to recordation of the Deed of Release of Conservation Easement for the existing conservation easement. The existing Category I Conservation Easement remains in full force and effect until the new Conservation Easement Agreement is recorded.
2. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 11997056C, the Applicant must submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easements on Kentsdale Estates Lot 44 and Parcel 495, as recorded on Record Plat No. 23678 and filed among the County Land Records on August 27, 2007, at Book 13178, Page 412 and on August 15, 2007 at Book 34726, Page 201. The Deed of Release must be in a form approved by the M-NCPPC Office of General Counsel and recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release cannot be approved by M-NCPPC until the new easement is recorded and the forest planting mitigation is satisfied.

3. Within ninety (90) days of the mailing of the Planning Board resolution for Forest Conservation Plan Amendment No. 11997056C, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the new onsite forest conservation and supplemental planting, planting maintenance, including invasive species management controls, and conservation easement markers. A cost estimate must be approved by Staff prior to submitting the financial security.
4. Within ninety (90) days of the mailing of the Planning Board resolution for Forest Conservation Plan Amendment No. 11997056C, the Applicant must submit fee-in-lieu payment for the 0.07-acre forest conservation planting requirement at the current fee-in-lieu rate.
5. Within one hundred twenty (120) days of the mailing date of the Planning Board Resolution approving the Forest Conservation Plan Amendment, the Applicant must submit a Minor Subdivision Application for a Plat of Correction that delineates the revised conservation easement and references the Book/Page of the recorded deed for the new Category I Conservation Easement. The Plat of Correction must be recorded in the Montgomery County Land Records within two hundred ten (210) days of the mailing date of the Planning Board Resolution approving the Amendment.
6. Within one hundred twenty (120) days of the mailing of the Planning Board Resolution for Forest Conservation Plan Amendment No. 11997056C, the Applicant must execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all treatment and plantings areas specified on the FCP Amendment. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
7. The Applicant must schedule the required site inspections by the M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
8. The Applicant must install the plantings as shown on the approved Forest Conservation Plan within six (6) months of the mailing of the Planning Board Resolution approved Forest Conservation Plan Amendment No. 11996056C, or as directed by M-NCPPC Forest Conservation Inspection Staff.

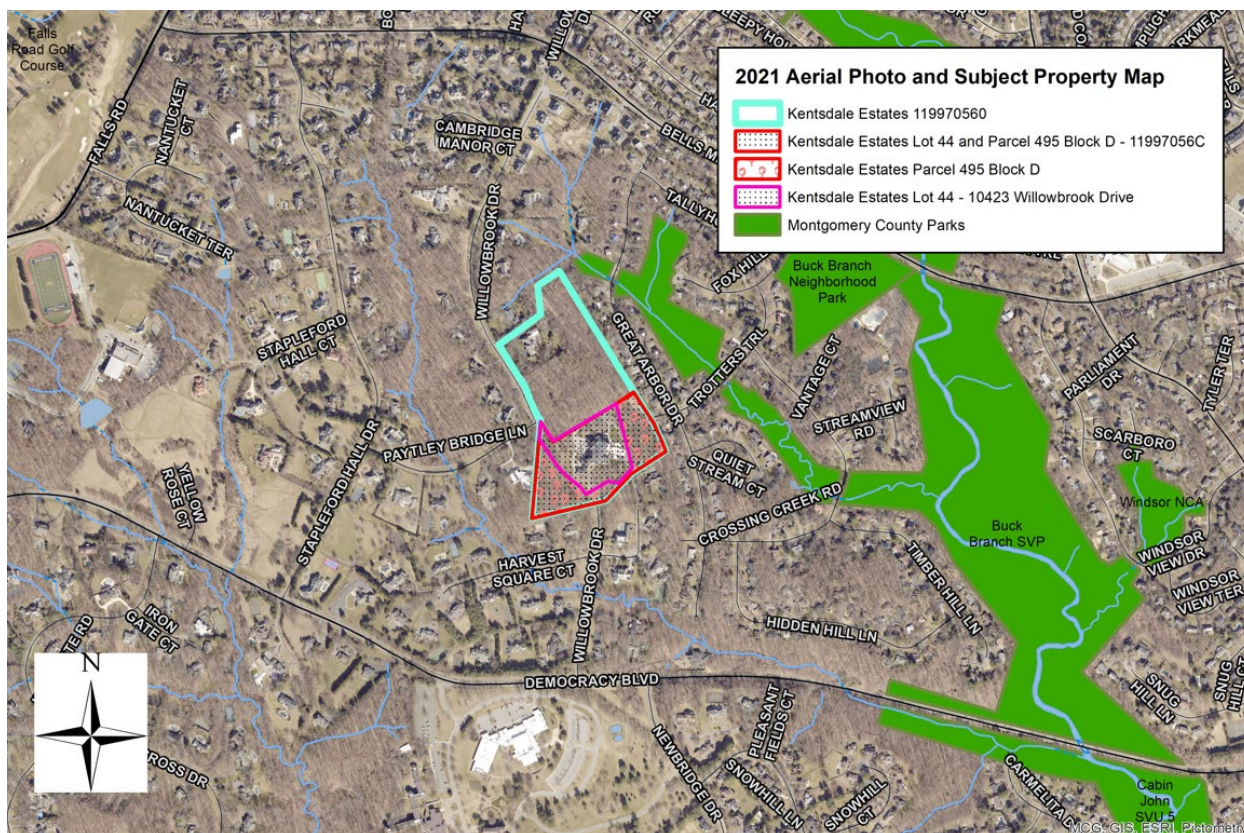
### SECTION 3: SITE DESCRIPTION

#### VICINITY

The Property is known as Lot 44 and Parcel 495 in Block D of Kentsdale Estates and is located at 10423 Willowbrook Lane in Potomac, Maryland (Figure 1) (“Property” or “Subject Property”). The Property is



situated off Willowbrook Lane north of Democracy Boulevard. The residence is on Lot 44 and is shown in stipple polygon on Figure 1. Parcel 495 is wing-shaped and is represented as a circle filled polygon on either side of Lot 44 on Figure 1. The Property is within Cabin John Stream Watershed, the RE-2 Zone and the *Potomac Subregion Master Plan*.

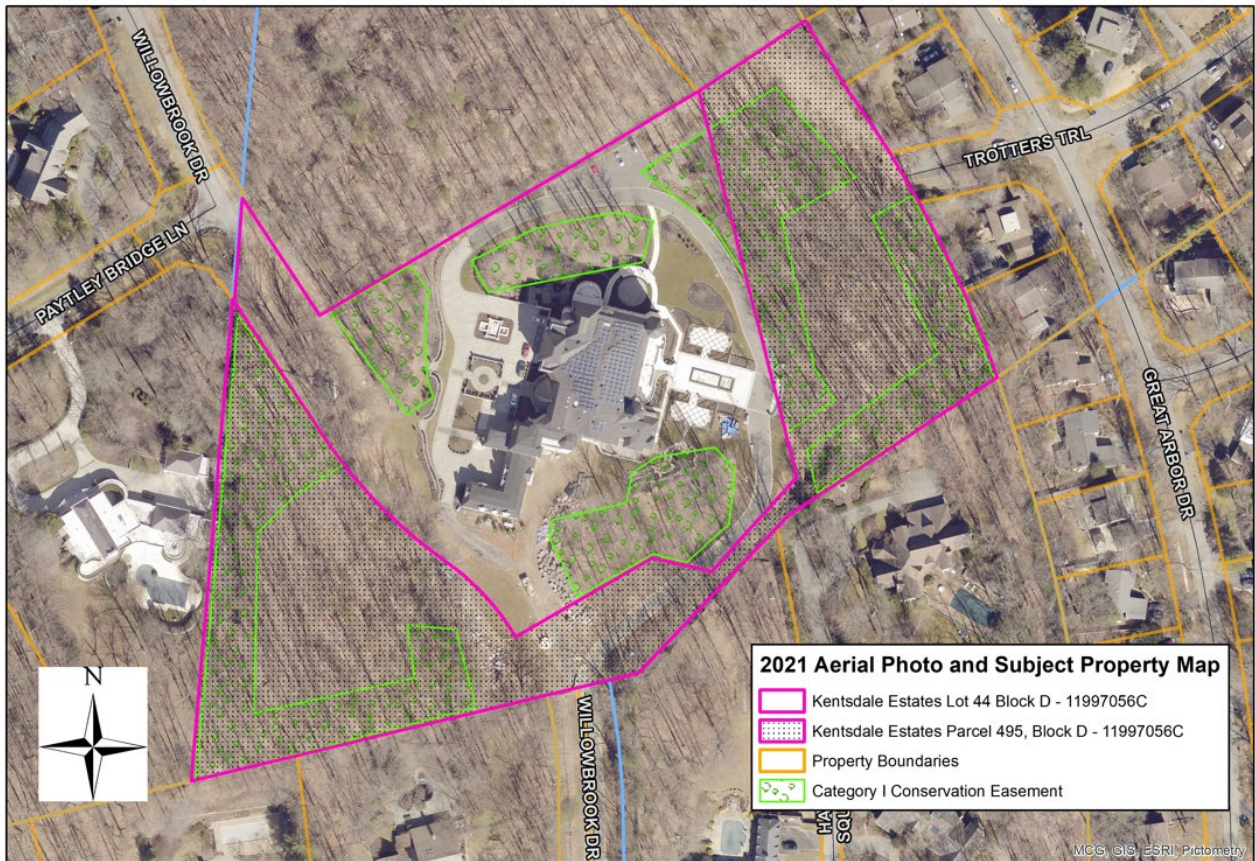


**Figure 1 – Vicinity Map- Subject Property is situated in the Cabin John Watershed north of Democracy Boulevard and on Willowbrook Drive in Potomac, Maryland**

## PROPERTY DESCRIPTION

The configuration of the house, driveway and forest retention areas were established with approval of the December 7, 2006, Final Forest Conservation Plan for Lot 44 and Parcel 495 (Attachment 1) and the August 26, 2007 filing of Record Plat No. 23678 among the Land Records of Montgomery County, Maryland (Attachment 2). Record Plat No. 23678 delineates 1.13 acres of forest save areas on Lot 44 as Category I Conservation Easement. The terms of the Category I Conservation Easement Agreement are recorded among land records at Book 13178, Page 412 (Attachment 3). The Applicant signed Record Plat no. 23678.





**Figure 2 – Subject Property- Kentsdale Estates Lot 44 and Parcel 495 Block D**

The Applicant signed and recorded a deed of Category I Conservation Easement for Parcel 495 in August 2007 (Attachment 4). The Category I Conservation Easement on Parcel 495 protects 2.23 acres of forest.

Figure 2 shows the area of forest retention Category I Conservation Easement on the Subject Property. The Category I Conservation Easement protects a mixed hardwood forest consisting of tulip poplar, American beech, maple, Virginia pine and oak trees. There are no stream valley buffers, 100-year floodplains or wetlands on site.

## SECTION 4: BACKGROUND

### PREVIOUS APPROVALS/BACKGROUND



The Montgomery County Planning Board approved Preliminary Plan No. 119970560, “Kentsdale Estates” by Opinion mailed on May 28, 1997, to create 7 lots on 20.07 acres of land in the RE 2 Zone (Attachment 5). Prior to submission of Preliminary Plan No. 119970560, Planning Staff reviewed and approved a Natural Resource Inventory / Forest Stand Delineation (NRI/FSD) showing forest canopy and existing features of the Subject Property (Attachment 6). A Final Forest Conservation Plan for Kentsdale Estates was approved in 2001 (Attachment 7).

The Final Forest Conservation Plan for the Subject Property was approved in December 2006 (See Attachment 1). This approved Forest Conservation Plan shows the current layout of protected forest conservation easements and the areas approved to be cut, cleared and developed.

The previous amendments to the forest conservation plan were approved for Lot 41 (FCP No. 11997056A) in 2010 and for Lot 38 (11997056B) in 2016.

In April 2019, Montgomery County Circuit Court found that the Owner of 9100 Paytley Bridge Lane had adverse possession of 0.11 acres (4,852 square feet) of Parcel 495 (Attachment 8). This area has been maintained by the neighbor since before establishment of the Kentsdale Estates Subdivision. Since the area of the property was determined by the court to have been owned by the neighbor prior to the creation of the Conservation Easement, the area was put into tree save and Category I Conservation Easement in error.

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## CITATIONS

At a June 1, 2020, property inspection, the Forest Conservation Inspector found violations of the approved forest conservation plan and recorded Category I Conservation Easement between the house and the driveway. The Forest Conservation Inspector issued two Citations to the Property Owner: the first was for cutting down and removing trees and shrubs from 29,000 square feet of the Conservation Easement and for mowing grass within 10,000 square feet of the Conservation Easement (Attachment 9). The second was for building and maintaining a rock and water feature, water pipes, electric wires, pumps, electric boxes and portions of a paved driveway and parking area within a Category I Conservation Easement (Attachment 10). The Property Owner did not receive, nor would have received permission from M-NCPPC to complete this cutting, clearing and grading and new construction. The Citations directed the Property Owner to completely remove improvements, restore natural grades and replant native trees to bring affected forest areas into compliance.

The Property Owner paid the Citation fines and requested time for a forest conservation plan amendment to be considered as means of resolving the forest conservation easement clearing and encroachment violation.



***Photo 1 – Waterfall encroachment into Category I Conservation Easement – an approximate 0.08-acre area of cut and rock fill, with water pumps and electric wire in a forest conservation easement. Photo taken in spring of 2020.***



**Photo 2: Understory forest clearing within Category I Conservation Easement – South of house and adjacent to waterfall feature. Photo taken in spring of 2020.**





**Photo 3: Mowed turf being cut and maintained in a Category I Conservation Easement north of house and between the house and driveway. Photo taken in spring of 2020.**

## SECTION 5: PROPOSAL

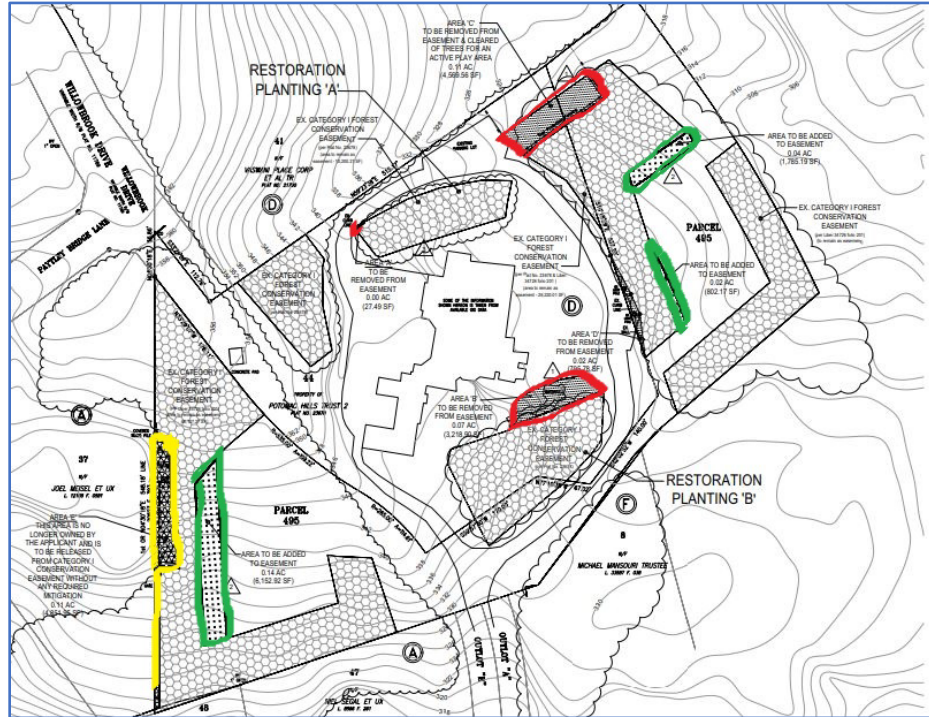
### PROPOSAL

The Applicant wishes to address the forest conservation easement violation and resolve the forest conservation issues related to the adverse possession case with the submitted Forest Conservation Plan Amendment. The Amendment proposes releasing 0.20 acres of Category I Conservation Easement to allow existing improvements to remain and create a maintained yard space and releasing 0.11 acres of Category I Conservation Easement that was the incorrectly placed on land that was the subject of the adverse possession ruling (Attachment 11, Figure 1, and Table 1).

Approximately 0.20 acres of new forest Conservation Easement area is proposed to compensate for the encroachments into the Conservation Easement areas. Regarding the release of the 0.11 acres of Conservation Easement that were placed in error, the Applicant will be required to pay a fee-in-lieu to account for the loss of land and reduction in the tract area.

Figure 1 highlights the proposed conservation easement changes. In a diagonal slash pattern and outlined in red are the four (4) areas of proposed Category I Conservation Easement removal, totaling 0.20 acres. In a dot pattern and outlined in green are the three (3) new areas of proposed Category I Conservation Easement, totaling 0.20 acres. In a crosshatch pattern and outlined in yellow is the 0.11-acre area of Conservation Easement placed in error (related to the adverse possession).

Table 1 lists the forest conservation plan amendment items. The items consist of areas of existing Category I Conservation Easement encroachment, a proposed area of clearing of conservation easement for a play area, three new areas of forest Conservation Easements and an area of Conservation Easement that was placed in error.



**Figure 1: Forest Conservation Plan Amendment 11997056C**

Location	Description	Type	Area	Amendment	Mitigation
Lot 44	Waterfall feature	Encroachment (Red outline and slash pattern on Figure 1)	3,218.90 square feet	Proposed release	Onsite forest retention mitigation on Parcel 495
Lot 44 and Parcel 495	Driveway, parking pavement or lighting	Encroachment (Red outline and slash pattern on Figure 1)	823.27 square feet	Proposed release	Onsite forest retention mitigation on Parcel 495
Lot 44 and Parcel 495	Proposed grass court/ open play area	New land disturbance (Red outline and slash pattern on Figure 1)	4,569.56 square feet	Proposed release	Onsite forest retention mitigation on Parcel 495

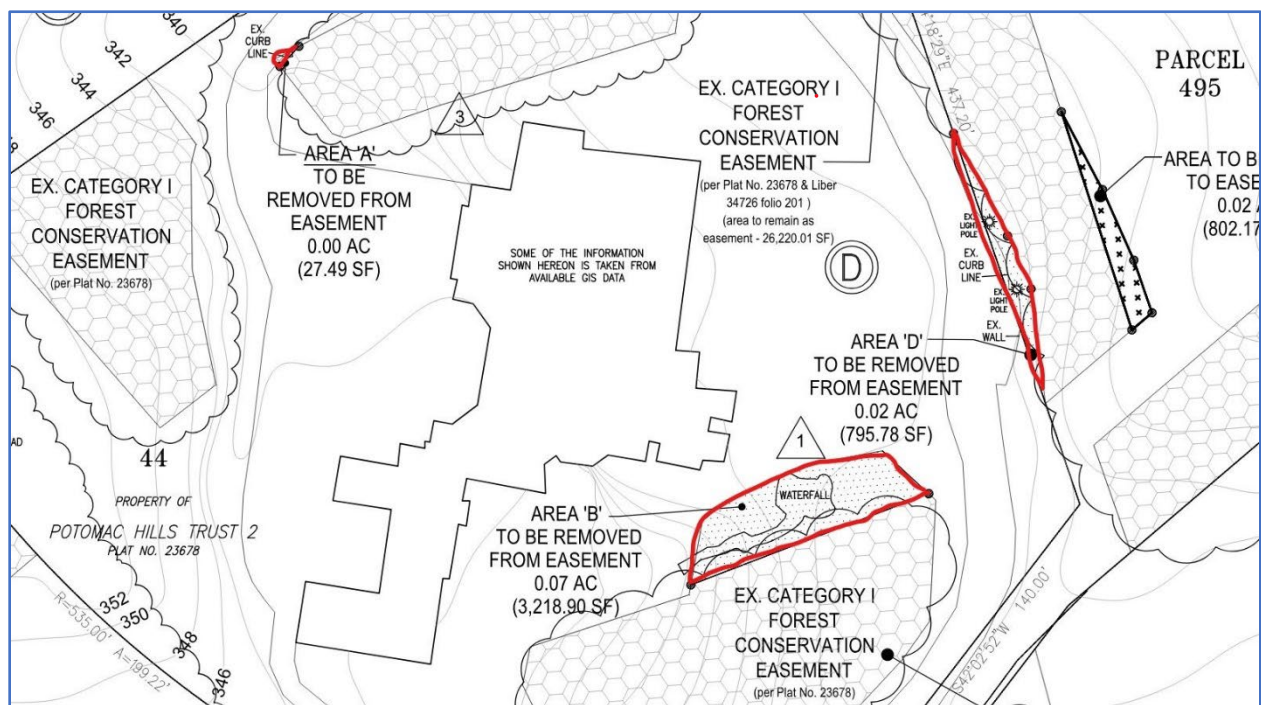


Parcel 495	Three (3) green highlighted existing forest areas	Existing forest	8,740 square feet	Proposed Addition	Existing Forest Mitigation on Parcel 495
Former Parcel 495	No longer part of Subject Property	Adverse possession case (Yellow outline and crosshatch pattern on Figure 1)	4,852 square feet	Proposed release	0.07 acres payment of fee-in-lieu to reduction in tract area

**Table 1: Forest Conservation Plan Amendment 11997056C – the total area of red areas equals the total area of green areas – each 0.20 acres; the adverse possession area is 0.11 acres**

## ENCROACHMENTS

The Applicant proposes removing three areas of encroachment from Category I Conservation Easement. These areas include Area “A” a 27 square feet area of driveway, Area “B” a 3,219 square feet area of cut and fill, where a rock and waterfall feature was built and Area “D” a 796 square feet area of driveway where fill dirt, pavement and lighting was installed. Figure 3 outlines the areas to be released in red.

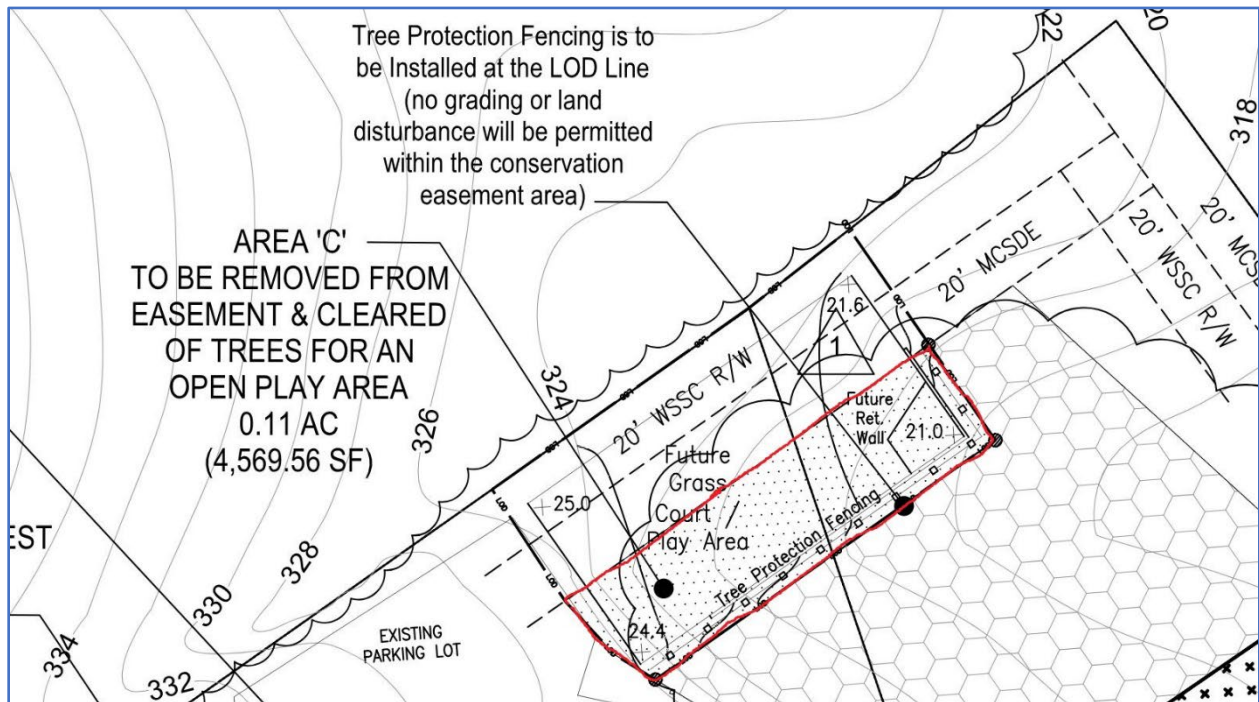


**Figure 3 – Encroachments of Hardscapes and Driveway into Category I Conservation Easement**

Mitigation is proposed on Parcel 495 with protection of existing forest previously shown to be cleared, as discussed further, below.

### PROPOSED PLAY AREA

The Applicant proposes removal of 4,570 square feet of Category I Conservation Easement in the northeast corner of the site to allow for a future grass court and play area. Figure 4 shows this area of proposed Conservation Easement removal as Area “C” and illustrates the proposed play area. Figure 4 also notes how tree protection fencing is required during construction of the terraced play area and retaining wall.



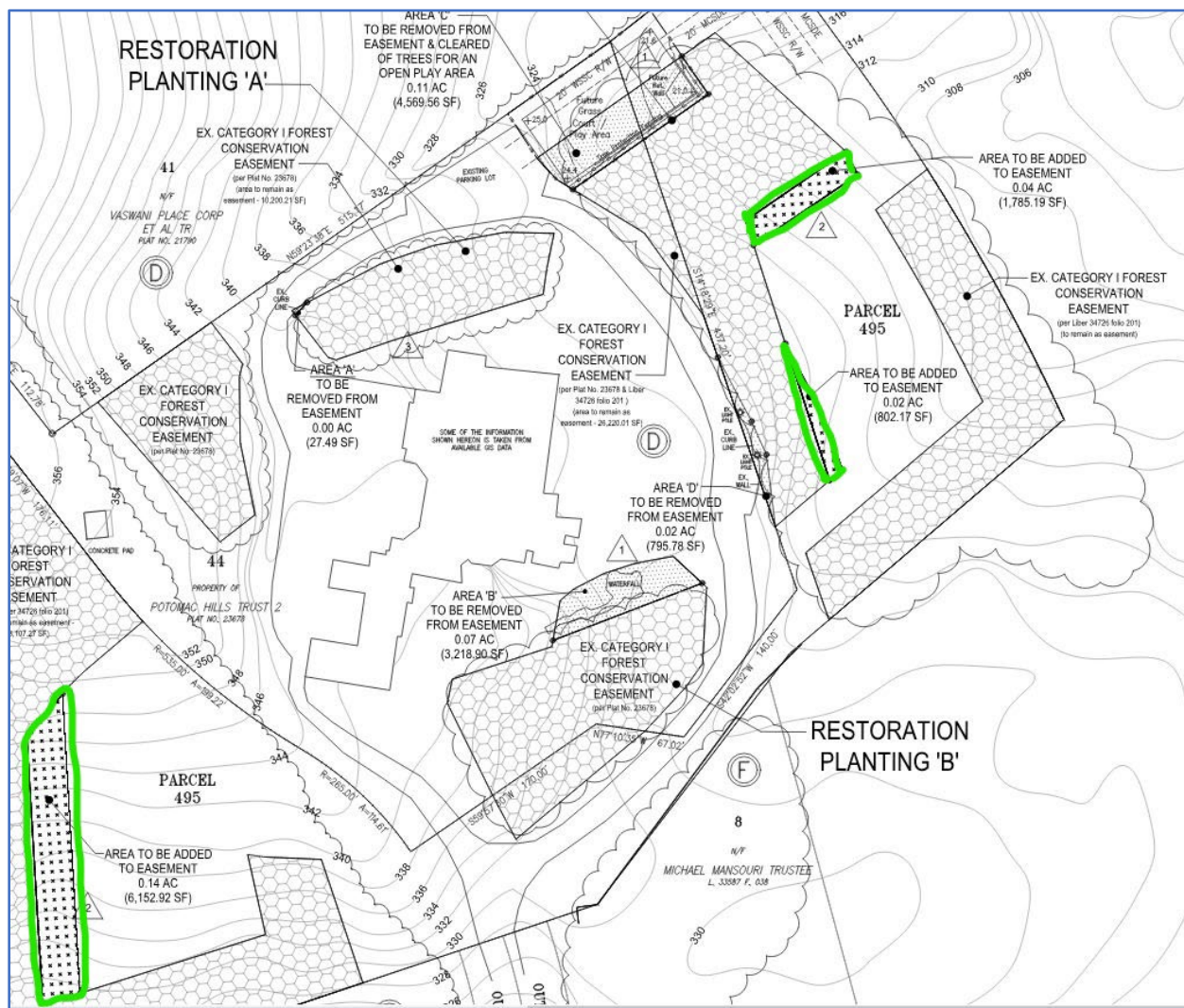
**Figure 4 – Proposed Play Area**

### MITIGATION AND RESTORATION PLANTING

The Amendment includes one to one (1:1) onsite mitigation for the Category I Conservation Easement encroachments and removal for a proposed play area. This mitigation is in compliance with the Planning Board policy for easement removal to receive at least one square foot of forest planting or forest retention onsite for every square foot of forest retention removed (1:1 onsite mitigation rate) or

two square feet of forest planting for every 1 square feet of forest retention removed (2:1 offsite mitigation rate). Figure 5 outlines in green the 0.20 acres of newly proposed Category I Conservation Easement over existing forest on Parcel 495 that was not previously included in the easement area.

Figure 5 also depicts two Restoration Areas, Restoration Area “A” and Restoration Area “B”. These Restoration Areas are Category I Conservation Easements that were cut and cleared in the spring of 2020 and this Amendment proposes restoring the affected areas to forest conditions. To resolve the forest clearing violation, the retained areas of forest will be restored and replanted. All turf grass, and lighting will be removed from within the Restoration Areas. Sixteen (16) shrubs and eight (8) trees will be planted in Restoration Planting Area “A” and twenty (20) trees and seven (7) shrubs will be planted in Restoration Planting Area B.

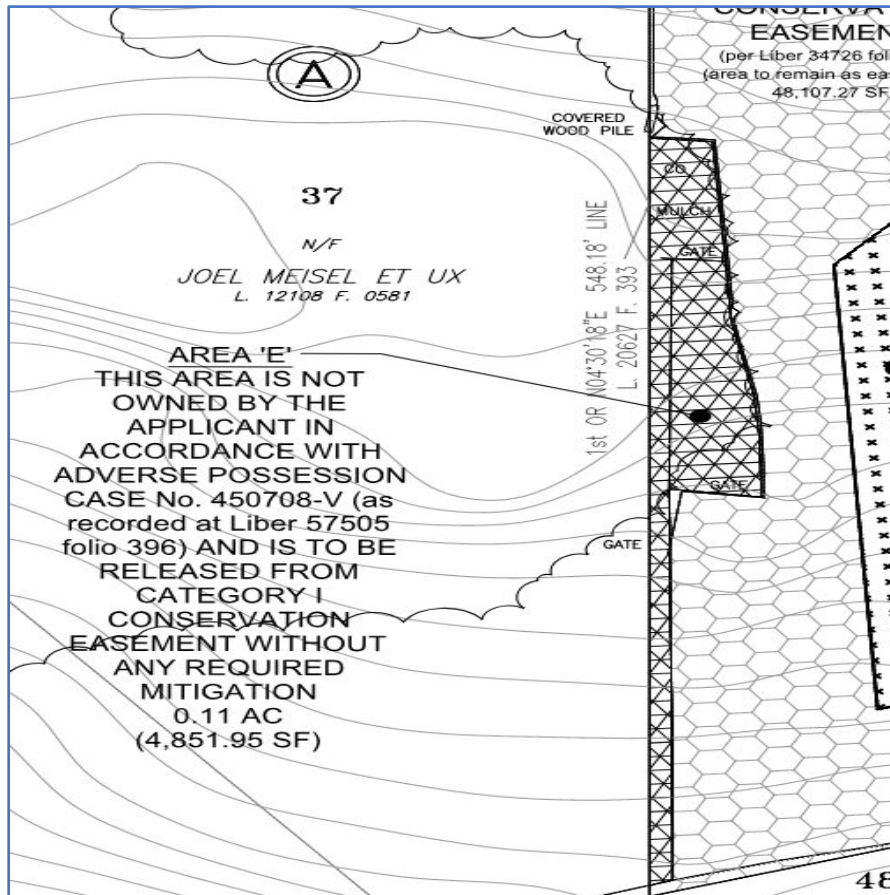


**Figure 5 – New Forest Retention and Restoration**



## ADVERSE POSSESSION CASE – 0.11 ACRE CONSERVATION EASEMENT FIX

The Amendment updates the forest conservation plan to account for the Court Order of Adverse Possession Case No. 450708-V and releases the area subject to adverse possession from Category I Conservation Easement. Figure 6 illustrates the 0.11 acre adverse possession area which is at the west side of Parcel 495 adjacent to the house on 9100 Paytley Bridge Lane. No mitigation is proposed for release of the area of Category I Conservation Easement subject to Adverse Possession; however, a fee will be paid to account for this area.



**Figure 6 – Adverse Possession Area – Category I Conservation Easement over 0.11-acre adverse possession area is proposed to be released**

Because there is a reduction in tract area subject to the FCP and the reduction in retained forest area, the forest conservation plan worksheet must be revised to address the 0.11 loss of tract area. The forest conservation worksheet is a step-by-step form for determining compliance with the requirements of the forest conservation law based on factors such as the net tract area of the site, the amount of forest being cleared, and the amount of forest being retained. The additional 0.07 acres of forest planting that results from a smaller forest conservation plan tract area is to be satisfied by the Applicant with a fee in lieu payment. This fee-in-lieu payment will bring the Forest Conservation Plan into compliance with the Forest Conservation Law by addressing the reduction in tract area.



## SECTION 5: ANALYSIS AND FINDINGS

### STAFF REVIEW

Section 22A.00.01.13 of the Montgomery County Forest Conservation Regulations states that “removal of any conservation easement must be reviewed by the Planning Board”. Onsite mitigation of easement removal is generally preferable to offsite mitigation because it provides in-kind replacement for the removal.

Onsite mitigation at a 1:1 mitigation rate is provided for 0.20 acres of forest conservation easement removal for areas next to the driveway and house. No mitigation is provided for release of the 0.11 acres of Category I Conservation Easement that is part of Adverse Possession Case No. 450708-V.

The proposed conservation easement changes address the pending forest encroachment and clearing violation, the Applicant’s request for open yard space, and the adverse possession of 0.11 acres along the west property line of Parcel 495.

#### **Forest Conservation Encroachment Violation**

While the forest conservation inspector required removal of the encroaching driveway, as well as removal of the lighting and waterfall features from the Category I Conservation Easement, the Amendment is the opportunity to determine if these improvements can remain and new forest retention can be established. The 2006 Forest Conservation Plan Approval for Lot 44 and Parcel 495 did not provide open yard space or a wide driveway typical of a many large residential properties in Potomac, Maryland. The Owner’s explanation for the violation clearing within part of the conservation easement was to create an open space for their grandchildren to play. Understory clearing occurred in 2020 in Restoration Planting Area A and B and this Amendment proposes planting in this area to reestablish forest conditions. Since the site meeting in 2020, the Owner has removed electric wiring and allowed natural leaf litter conditions to return to Restoration Planting Area A and B.

Photo 4 and Photo 5 are November 2022 photos of Restoration Planting Area A and B. They illustrate the Applicant’s initial efforts to restore forest conditions to areas of cut and cleared forest conservation easement.



***Photo 4 – November 2022 Applicant photo of Restoration Planting Area A - North of House***



***Photo 5 –November 2022 Applicant photo of Restoration Planting Area B – South of House***



### **Open Space Area**

The proposed open space area may require a sediment control permit for land disturbing activity. All proposed improvements are shown in the Amendment and the project involves clearing trees, building a retaining wall and creating a level playing area. No specimen trees or environmental buffers would be impacted by this project. New forest retention equal to the area of forest clearing is proposed on Parcel 495. The Amendment requires forest conservation inspections and tree protection fencing to limit disturbance activity.

### **Adverse Possession**

The Applicant proposes releasing the adverse possession area from Category I Conservation Easement with no mitigation. The adverse possession area has been maintained as a dog run prior to establishment of the subdivision in 1997. The forest conservation plan overlooked the existing condition when establishing the area as a tree save and forest conservation area. The area is not forest and was included in the conservation easement in error.

As the 0.11 acres subject to adverse possession is not part of the Subject Property and the Amendment includes a forest conservation worksheet adjustment for the 0.11-acre loss of tract area. The reduced tract area results in an additional requirement of 0.07 acres of forest planting, which the Applicant proposes to satisfy with a 0.07-acre fee-in-lieu of planting payment.

## **SECTION 6: NOTIFICATION AND OUTREACH**

The Applicant has met all proper signage and noticing requirements for the submitted Application. As of the date of this Staff Report, Staff has not received any correspondence related to this Application.

## **SECTION 7: CONCLUSION**

As conditioned, the Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. Therefore, Staff recommends approval of the Forest Conservation Plan Amendment No. 11997056C to amend the Forest Conservation Plan with conditions cited in the Staff Report, to reconfigure 0.20 acres of Category I Conservation Easement onsite and remove a 0.11 acre conservation easement area subject to adverse possession.

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## ATTACHMENTS

*Attachment 1: December 7, 2006 Approved Final Forest Conservation Plan for Lot 44 and Parcel 495*

*Attachment 2: Record Plat NO. 23678*

*Attachment 3: Category I Conservation Easement Agreement – B. 13178 P. 412*

*Attachment 4: Parcel 495 Deed of Category I Conservation Easement Agreement - B.34726 P. 201*

*Attachment 5: 119970560 Kentsdale Estates Opinion*

*Attachment 6: Approved Natural Resource Inventory / Forest Stand Delineation*

*Attachment 7: 2001 Approved Final Forest Conservation Plan*

*Attachment 8: Adverse Possession Order Civil No. 450708-V*

*Attachment 9: Administrative Citation No. EPD 000382*

*Attachment 10: Administrative Citation No. EPD 000383*

*Attachment 11: Forest Conservation Plan Amendment No. 11997056C*