



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

**MCPB 07/31/08**  
**Item No. \_\_\_\_\_**

July 17, 2008

**MEMORANDUM**

**TO:** Montgomery County Planning Board

**VIA:** Gwen Wright, Chief  
Countywide Planning Division *DKH for*

Dan Hardy, Acting Chief  
Transportation Planning *DKH*

Bill Barron, Team Leader  
Community-Based Planning *[Signature]*

**FROM:** <sup>*CB*</sup> Candy Bunnag: 301-495-4543, for Environmental Planning, and  
Larry Cole: 301-495-4528, for Transportation Planning *LC*

**PROJECT:** Cape May Road and Good Hope Road Sidewalks:  
CIP No. 506747

**REVIEW TYPE:** SPA Preliminary/Final Water Quality Plan, and Mandatory Referral No.  
04816-DPW&T-1

**APPLICANTS:** Montgomery County Department of Transportation (MCDOT)

**APPLYING FOR:** Plan Approval

**COMMUNITY-BASED PLANNING TEAM AREA:** Eastern County

**RECOMMENDATIONS:**

**SPA Preliminary/Final Water Quality Plan**

Staff recommends that the Board approve the combined SPA Preliminary/Final Water Quality Plan for the proposed project (see Attachment 1: Vicinity Map) with the following conditions:

1. Total impervious surfaces on the site will cover no more than 13,523 square feet, as shown on the sidewalk plan, dated October 22, 2007.
2. Applicant will conform to the conditions as stated in DPS' water quality plan approval letter dated June 5, 2007, with the modification that the impervious surfaces to be removed must not be on park property.
3. Native trees and shrubs will be planted on the MCDOT Maintenance Facility site no later than April 1, 2009. Native trees and shrubs to be planted will be consistent with the proposed landscape plan dated July 2008.
4. Tree protection measures, as shown on the tree preservation plan, must be implemented as part of the completion of the sidewalk construction.
5. Prior to restarting the sidewalk project, MCDOT must complete the following items:
  - a. Submit plans for removing 10,453 square feet of impervious surfaces within the Upper Paint Branch SPA for M-NCPPC staff review and approval. Plans must include specifications for restoration of these areas to pervious vegetated natural surfaces. MCDOT must obtain the necessary permits for the work and conduct a pre-construction meeting with inspection staff from M-NCPPC and DPS.
  - b. Removal of these impervious surfaces.

### **Mandatory Referral**

Staff recommends that the Board approve the proposed project with the following comments:

1. A Park permit is required for construction on Park property.
2. MCDOT should retain maintenance responsibility after construction for the sidewalk in the proposed easement area on park property.
3. Any grading on Park property outside the public right-of-way shall not be steeper than 3:1.
4. A Park approval block will be needed on Title Sheet and all other drawings which show impact on Park property.
5. A note is required on the plans that "No storage of materials and equipments will be allowed on Park property without a prior approval from our Park Manager and/or Park Inspector."

**PREVIOUS BOARD ACTION:** None.

## **DISCUSSION**

There are two items for Planning Board review for the Cape May Road/Good Hope Road sidewalk project: the Mandatory Referral and the Special Protection Area (SPA) Combined Preliminary and Final Water Quality Plan. No forest conservation plan approval is required, since this project is exempt from that requirement.

*The Board's action on the SPA Water Quality Plan is regulatory and binding. The Planning Board must act on the SPA Water Quality Plan before it can act on the mandatory referral.*

**HISTORY:** The proposed project was initiated in 1999 through a request from the East County Action Group to enhance pedestrian safety. MCDOT first submitted plans to Montgomery County Department of Permitting Services (DPS) and M-NCPPC in December 2002 and January 2003, respectively. This project was submitted for Mandatory Referral in early 2006, but the Mandatory Referral was put on hold pending submission of a Water Quality Plan.

In October 2007, construction began without a sediment control permit, and without a submission of the Water Quality Plan or a Forest Conservation Plan to MNCPPC. Our Site Inspector issued a stop-work order on October 12, 2007 as a violation under the Forest Conservation Law (see section on the County Forest Conservation Law, below), and the site was stabilized on October 15, 2007. At that time, MCDOT agreed that the following items were needed to proceed with construction:

- Obtaining a survey of the park property.
- Acquiring a sediment control permit from DPS.
- Approval of a landscaping/forest conservation plan from MNCPPC.
- Determining additional impervious areas to be removed from the SPA.
- Scheduling Mandatory Referral.

Residents in the area have been very anxious to see the proposed sidewalks built for public safety reasons and we committed to them that we would expedite our review once the necessary info was received. The final piece of information was provided to us by MCDOT on July 11, 2008.

## **PROJECT AND SITE DESCRIPTION**

This project would construct sidewalks along segments of two roadways:

Cape May Road: A 5' wide sidewalk with a 5' wide landscape panel would be constructed along the east side of Cape May Road from New Hampshire Avenue (MD 650) to Good Hope Road, a distance of about 1,800 feet.

Good Hope Road: A 4' wide sidewalk would be built along the east side of Good Hope Road from Cape May Road to about 1,250 feet east of Cape May Road. The sidewalk would be separated from the roadway by a variable-width landscape panel or a guardrail.

The western segment of the project (between New Hampshire Avenue and the MCDOT Colesville Maintenance Depot) and a segment to the west of the Maintenance Depot lie within M-NCPPC parkland and the intersection of the two subject roads are bordered entirely by parkland.

The project lies within the Upper Paint Branch Special Protection Area (SPA) and drains to the Good Hope Tributary, which is the primary trout-spawning tributary of the Paint Branch stream system.

## **STAFF ANALYSIS**

### **Pedestrian Accommodation**

This sidewalk retrofit project would provide a great benefit to residents of this area, providing a safe off-the-road connection between New Hampshire Avenue and the Good Hope United Methodist Church and Upper Paint Branch Park. The proposed sidewalk will also minimize the conflicts between pedestrians and the large vehicles associated with the MCDOT maintenance facility on Cape May Road.

Bus stops exist on either side of New Hampshire Avenue just north of the intersection with Cape May Road, Cape May Road just east of the intersection with New Hampshire Avenue, and Good Hope Road at Good Hope Manor. The proposed sidewalk would improve safety and accessibility for transit patrons.

### **Street Trees**

No street trees are normally provided as part of sidewalk projects and none are proposed on this project.

### **Parks Impact**

The project would impact Upper Paint Branch Park and would require a temporary construction easement of 7,021 square feet (0.16 acre) and a permanent easement of 4,162 square feet (0.096 acre). The ROW plats have not yet been completed so a Park permit is required to construct the project in a timely manner.

Parks staff's comments are as follows:

- A Park permit is required for construction on Park property
- MCDOT should retain maintenance responsibility after construction for the sidewalk in the proposed easement area on Park property.

- Any grading on Park property outside the public right-of-way shall not be steeper than 3:1.
- A Park approval block will be needed on Title Sheet and all other drawings which show impact on Park property.
- A note is required on the plans that “No storage of materials and equipments will be allowed on Park property without a prior approval from our Park Manager and/or Park Inspector.”

### **Public Outreach**

A public hearing for this project was held in early 2007.

### **ENVIRONMENTAL REVIEW FOR CONFORMANCE TO THE SPA REQUIREMENTS**

As part of the requirements of the Special Protection Area Law, a SPA water quality plan should be reviewed in conjunction with a Mandatory Referral<sup>1</sup>. Under the provision of the law, the Montgomery County Department of Permitting Services (DPS) and the Planning Board have different responsibilities in the review of a water quality plan. DPS has reviewed and approved the elements of the preliminary water quality plan under its purview. The Planning Board’s responsibility is to determine if environmental buffer protection, SPA forest conservation and planting requirements, and site imperviousness limits have been satisfied.

Environmental Planning Staff has reviewed the elements of the SPA water quality plan under the Planning Board’s purview and recommends approval with conditions.

### **Site Imperviousness**

Impervious surface restrictions for new development projects in the Upper Paint Branch SPA are set forth in the Environmental Overlay Zone for the Upper Paint Branch SPA (Zoning Ordinance Section 59-C-18.15). The Environmental Overlay Zone limits impervious surface to no more than 8 percent of a project site. There is also a provision for projects with existing impervious surfaces lawfully existing pursuant to a building permit issued before July 31, 2007 that already exceed the 8 percent and are proposing reconstruction; such projects may keep, but not increase, impervious surface coverage.

Section 59-C-18.152 (a) (1) of the Montgomery County Code states:

*“Any development must not result in more than 8 percent impervious surface of the total land area under application for development.*

*“(A) Any impervious surface lawfully existing pursuant to a building permit issued before July 31, 2007 that exceeds the 8 percent restriction, may continue or be reconstructed under the development standards in effect when the building permit was issued.”*

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<sup>1</sup> Section 19-62 (c) of the Montgomery County Code states that “before engaging in any land disturbing activity on publicly owned property in an area designated as a special protection area, the applying agency or department should prepare a combined preliminary and final water quality plan.”

Staff has defined this project as new construction since it is constructing a new sidewalk. Staff defines the parameters for review of conformance to the impervious surface provisions of the Environmental Overlay Zone as follows:

- Impervious Area: Count only proposed new impervious surfaces (i.e., the sidewalk), which is 13,523 square feet.
- Total Tract Area: Count the land area within the existing road ROW which is currently pervious from the near edge of the existing roadway to the closest ROW edge, or use the limits of disturbance when disturbance occurs outside the ROW. This land area is 38,380 square feet.

With these parameters, the project's imperviousness is proposed at 35.2 percent. To meet the 8 percent imperviousness limit, 10,453 square feet of existing impervious surface would have to be removed within the SPA to offset an equal amount of new sidewalk pavement. This priority was established by the Board during its review and approval of the Water Quality Plan for Cloverly Elementary School in this SPA.

Following MCDOT's submission of plans to DPS and M-NCPPC in late 2002 and early 2003, discussions between staffs of MCDOT, M-NCPPC, and MCDPS regarding the impervious surface limits and SPA water quality plan requirements occurred. With respect to impervious surface limits, MCDOT had indicated that it wanted to remove impervious surfaces in the SPA not only to credit towards this sidewalk project, but additionally, to use as credit for other, future sidewalk projects along County roads in this SPA and for the SHA mandatory referral project for US 29 at Briggs Chaney Road (Mandatory Referral No. 02802-SHA-1 reviewed by the Planning Board on June 20, 2002). At the time, an area in Upper Paint Branch Park had been identified as an area with unused impervious surfaces that could be removed.

MCDOT has proposed to get credit for removing impervious surfaces in Upper Paint Branch Park. In July 2007, MCDOT removed impervious surfaces from this park and the adjoining right-of-way for the Intercounty Connector (ICC) without prior approval from MNCPPC Department of Parks and without a sediment control permit from DPS. In the same time period, SHA agreed with the Department of Parks to remove the same unneeded pavement as part of their removal of nearby buildings for the ICC project. Therefore, the pavement removed by MCDOT from M-NCPPC parkland did not accrue any long-term net benefit to the Upper Paint Branch SPA. If the Parks permit process had been followed, Parks staff could have provided notification of this.

Staff does not recommend that MCDOT receive credit for the removal of impervious surfaces in Upper Paint Branch Park. The use of parkland for impervious surface removal is no longer an option since the Department of Parks' current policy is that no new mitigation for non-Parks projects is allowed on park property. Staff recommends that before the sidewalk project can continue, MCDOT must identify, and M-NCPPC staff must approve, a total of 10,453 square feet of impervious surfaces that can be removed within the public ROW or on property otherwise controlled by the Executive in this SPA. In addition, staff recommends that the MCDOT remove these impervious surfaces before the sidewalk work can continue.

## **Environmental Buffers**

The Good Hope Tributary flows under Good Hope Road at approximately Station 4+00. The proposed sidewalk will cross the stream over an existing culvert that lies under the road and right-of-way. Although this section of the sidewalk lies within the environmental buffer associated with the stream, the crossing is unavoidable and necessary to establish a continuous sidewalk system. The sidewalk crossing through the environmental buffer is within an already disturbed area of the right-of-way. This segment of the sidewalk does not require the clearing of trees or forest. Staff finds that the crossing of the proposed sidewalk through the environmental buffer is acceptable.

## **County Forest Conservation Law**

### *Forest Conservation Law Violation*

In October, 2007, MCDOT started construction of the sidewalk (i.e., conducted land-clearing activities) prior to obtaining a sediment control permit or approvals under the Forest Conservation Law. On October 15, 2007, MCDOT (at that time, the agency was known as DPWT) was cited for clearing approximately 8,000 square feet of forest near New Hampshire Avenue. The citation included several remedial action steps that were supposed to have been completed by November 13, 2007. Not all of these steps were completed by the specified date. The M-NCPPC inspector issued a \$500 fine, which has not been paid. Staff will pursue the collection of the fine as part of the Forest Conservation Law violation process and not through the SPA Water Quality Plan process.

Although the citation (Attachment 2) requires that DOT submit a Forest Conservation Plan, the project qualifies for an exemption from the requirements of a forest conservation plan (see below). The project proposes to plant an approximately 4,800 square foot grassy area next to forest in parkland. DOT proposes 16 overstory, native trees and 6 understory trees and shrubs. Staff believes the proposed planting should be counted as part of the remedy for the Forest Conservation Law violation in lieu of a forest conservation plan. Staff recommends that the trees and shrubs should be planted no later than April 1, 2009.

### *Forest Conservation Plan Exemption*

The project qualifies for an exemption from the requirements of a forest conservation plan. It meets the requirements of Section 22A-5(e) of the County Forest Conservation Law:

“a State or County highway construction activity that is subject to Section 5-103 of the Natural Resources Article of the Maryland Code, or Section 22A-9”

The project meets Section 22A-9(a) of the Forest Conservation Law, which states:

- “(1) This section applies to construction of a highway by the County as part of an approved Capital Improvements Program project.
- (2) The construction should minimize forest cutting or clearing and loss of specimen or

champion trees to the extent possible while balancing other design, construction, and environmental standards. The constructing agency must make a reasonable effort to minimize the cutting or clearing of trees and other woody plants.”

### **County DPS Special Protection Area Review Elements**

DPS has reviewed and conditionally approved the elements of the SPA water quality plan under its purview with a synopsis provided below (see Attachment 3).

#### *Site Performance Goals*

As part of the water quality plan, the following performance goals were established for the site: minimize storm flow runoff increases and minimize sediment loading.

#### *Stormwater Management Concept*

DPS finds that channel protection measures are met via flow dispersion. DPS further finds that water quality and groundwater recharge will be provided via the use of pervious concrete for the sidewalks.

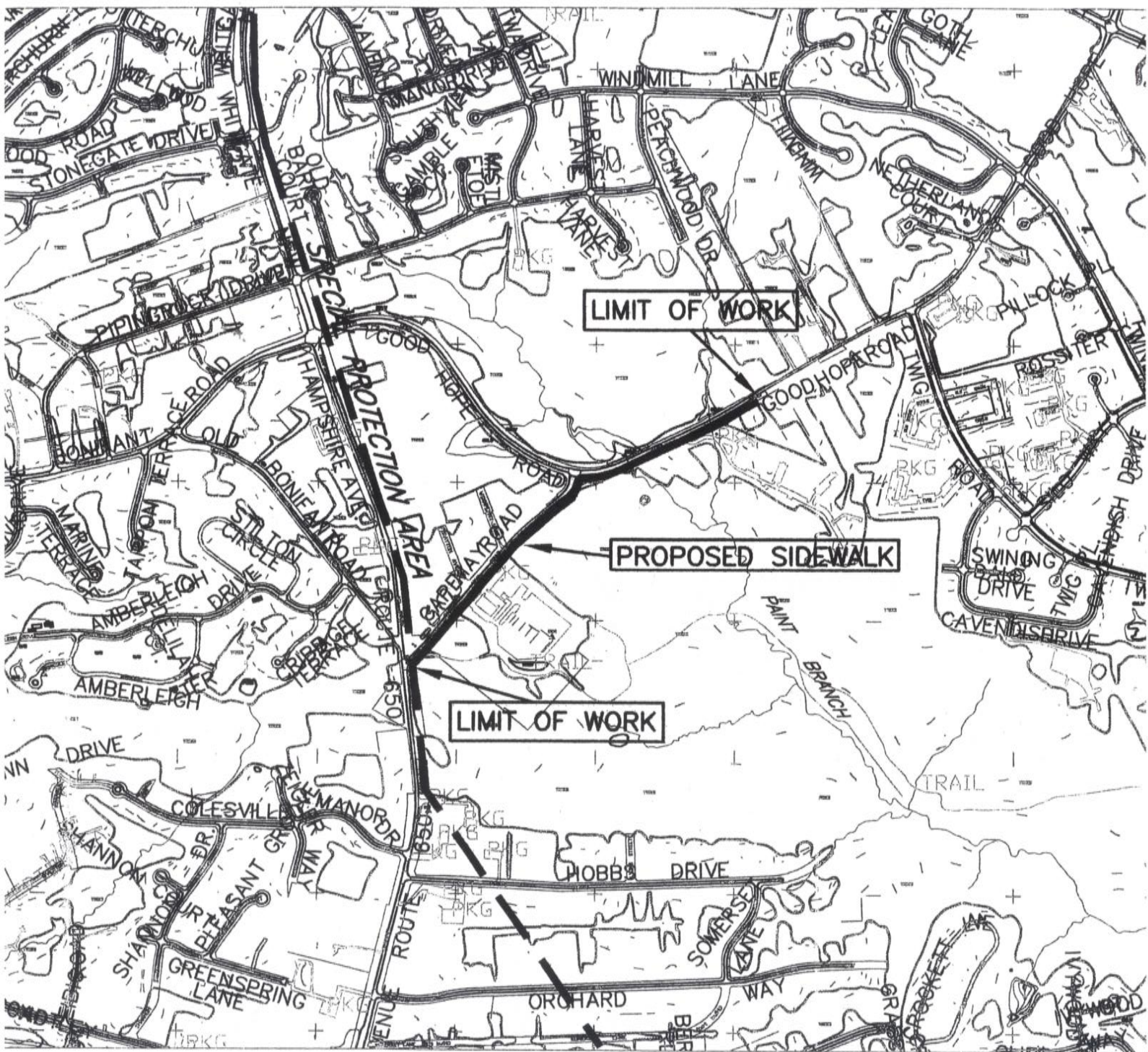
#### *Sediment and Erosion Control*

DPS is requiring that all disturbed areas must be stabilized with topsoil and sod as soon as possible and as work progresses.

#### *Monitoring of Best Management Practices*

DPS has determined that this project does not need to conduct any stormwater monitoring.





# VICINITY MAP

SCALE : 1" = 1000'



**Civil Citation**  
**The Maryland-National Capital Park and Planning Commission**

vs.

Name: Richard Earp  
First Middle Last  
 Company/Position: Program Manager, sidewalk program Montgomery County DPWT  
 Address: 101 Monroe St, 9th Floor, Rockville, MD, 20850  
 Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Location and Description of Violation:**

Address/location of site: 17357 Cape May Rd, Silver Spring, MD, 20904

Pursuant to the M-NCPPC's authority under Article 28 of the Annotated Code of Maryland and Chapter 50 of the Montgomery County Code, it is formally charged that the above named defendant on October 15, 2007 (date) at the stated site location did commit the following:

Cleared a approximately 8,000 sq. ft. of forest, in violation of the Montgomery County Forest Conservation Act failed to obtain approved plans, and failed to have a required pre-construction meeting.

In violation of:

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

**Civil Fine and Compliance:**

1. (a)  You shall pay a fine of \$ 500.00 by November 5, 2007 (date) and complete the remedial action listed below, if any, to avoid trial.
- (b)  You shall pay a daily fine of \$ 50.00 if the original fine has not been paid and/or the remedial action has not been completed by November 13, 2007. The daily fine shall accrue until the original fine is paid and all remedial action is completed.
2.  You shall pay a daily fine of \$ \_\_\_\_\_ until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

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

**Remedial Action:**

1. 
  1. Survey property line for entire length of sidewalk,
  2. Submit mandatory wetland and forest conservation plan to Environmental Planning,
  3. Submit water quality plan to Environmental Planning,
  4. Contact Joe Markovitch (Parks Department) to determine if a Parks permit is required  
# 240-304-8079

by: November 13, 2007 (date)

2.  You have violated Chapter 22A of the Montgomery County Code, and maybe subject to an Administrative Civil Penalty, which may include an additional monetary fine in addition to corrective measures. ~~You must contact Environmental Planning Department of M-NCPPC at 8787 Georgia Avenue, 4<sup>th</sup> Floor, Silver Spring, Maryland 20910, 301-495-4540, within 15 days of issuance of this citation.~~

**Acknowledgement:**

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

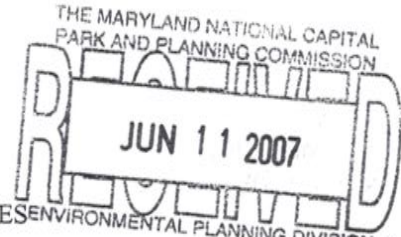
Rand Earp 10/15/07  
 Defendant's Signature Date

**Affirmation:**

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

David Wigglesworth October 15, 2007  
 Inspector's Signature Date  
 Print name: David Wigglesworth Phone number: 301-495-4581

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



DEPARTMENT OF PERMITTING SERVICES ENVIRONMENTAL PLANNING DIVISION

Carla Reid Joyner  
Director

Isiah Leggett  
County Executive

June 5, 2007

Mr. Barry Fuss  
Montgomery County  
Department of Public Works and Transportation  
Rockville, Maryland 20850

Re: **Preliminary/Final Water Quality Plan**  
for the Good Hope Rd. and Cape May  
Rd. Sidewalks  
SM File #: 224703  
Tract Size/Zone: 1 acre / Sidewalk  
Watershed: Upper Paint Branch

**SPECIAL PROTECTION AREA**

Dear Mr. Fuss:

Based on a review by the Department of Permitting Services, the Preliminary/Final Water Quality Plan (PFWQP) for the above mentioned project is conditionally approved. This approval is for the elements of the Final Water Quality Plan of which DPS has lead agency responsibility, and does not include limits on imperviousness or stream valley buffer encroachments.

**Site Description:** The project consists of construction of new sidewalks along portions of Good Hope Road and Cape May Road in order to improve pedestrian safety. The project area is tributary to the Upper Paint Branch. This watershed and has been designated as a Special Protection Area.

**Stormwater Management:** Channel protection measures are met via flow dispersion. Quality control and groundwater recharge will be provided via the use of pervious concrete sidewalks throughout the project.

**Sediment Control:** Strict sediment control is to be used throughout the project. The following features are to be incorporated into the sequencing of the detailed sediment control plans:

- 1. All disturbed areas must be stabilized with topsoil and sod as soon as soon as possible and as work progresses.

**Performance Goals:** The performance goals that were established at the pre-application meeting are to be met as specified in the Preliminary and Final Water Quality Plan. They are as follows:

- 1. Minimize storm flow run off increases.
- 2. Minimize sediment loading.

**Attachment 3**

Mr. Barry Fuss  
June 5, 2007  
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3. **Monitoring:** There are no monitoring requirements for this project.

**Conditions of Approval:** The following conditions must be addressed in the initial submission of the detailed sediment control/stormwater management plan. This list may not be all inclusive and may change based on available information at the time of the subsequent plan reviews:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. In order to meet the impervious area limitations within this Environmental Overlay Zone, the applicant has proposed removal of existing impervious surfaces at Upper Paint Branch Park as an offset for the proposed new impervious sidewalk areas. This work must be completed and MNCPPC approval of impervious area calculation conditions must be submitted to DPS prior to the approval of detailed plans for sidewalk construction.

Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended Water Quality Plan requirements.

If you have any questions regarding these actions, please feel free to contact Mark Etheridge at (240) 777-6338.

Sincerely,



Richard R. Brush, Manager  
Water Resources Section  
Division of Land Development Services

RRB:dpm:CN224703

cc: C. Bunnag (MNCPPC-ED)  
M. Sommerfield (MCDEP)  
SM File # 224703

Qn: on-site 1 ac.  
Ql: on-site 1 ac.  
Recharge is provided on-site