



MEMORANDUM

DATE: December 31, 2009
TO: Montgomery County Planning Board
VIA: Mark Pfefferle, Acting Chief, Environmental Planning *MP*
FROM: Josh Penn, Senior Planner, Environmental Planning *J.P.*
REVIEW TYPE: Forest Conservation Plan for Mandatory Referral
PLAN NAME: Goshen Road Improvement
PLAN NUMBER: MR2009805-DPWT-1
PLAN TYPE: Preliminary Forest Conservation Plan
REVIEW BASIS: Forest Conservation Regulations, Section 113.A.(2),
Regulation No. 1-01AM (COMCOR) 18-01AM
LOCATION: Goshen Road from the Gaithersburg City Limits north to
Warfield Road.
APPLICANT: Montgomery County Department of Transportation
ATTORNEY: N/A
HEARING DATE: January 14, 2009

STAFF RECOMMENDATION: Staff recommends approval Preliminary Forest Conservation Plan, subject to the following conditions:

1. The applicant must submit and obtain approval from Environmental Planning of a final forest conservation plan prior to the issuance of a sediment and erosion control permit by Montgomery County.

Project Description

The Montgomery County Department of Transportation is proposing to widen the existing undivided two-lane Goshen Road to four lanes. The project extends from 650 feet south of Girard Street to 1,000 feet north of Warfield Road for a distance of approximately 3.5 miles. The segment from the southern limit to Odendhal Avenue is entirely within the City of Gaithersburg (about 0.2 mile). The segment from Odendhal Avenue to Emory Grove Road is bordered by the City of Gaithersburg on the east side of the right-of-way; the right-of-way and the west side is in Montgomery County (about 0.5 mile). The rest of the project is within Montgomery County.

The project will also include five-foot-wide on-road bike lanes, an eight-foot-wide shared use path would be constructed on the west side of the road and a five-foot-wide sidewalk would be constructed on the east side of the road. The project also includes the

construction of new stormwater management facilities and the relocation of existing utilities.

The mandatory referral and forest conservation plan is limited to that portion of the project that is within Montgomery County and does not include any portions within the City of Gaithersburg.

DISCUSSION

Environmental Guidelines

Environmental Planning staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) (#420071410) on February 10, 2009. By their nature, roadway projects are linear and therefore the net tract area is considered equal to the Limits of Disturbance (LOD). The NRI/FSD shows detailed information for the LOD plus 50 feet outside of the LOD. The net tract area for the portion of the project outside the city limits of Gaithersburg is 72.69 acres. The project stretches from the Gaithersburg City Limits to Warfield Road. The project contains many various soil types and contains slopes of all types including some steep slopes. However, the majority of the project is on flat level ground adjacent the existing Goshen Road right-of-way.

The Goshen Elm (english elm) tree, the state and county champion for its species, is located adjacent to this project at the intersection of Goshen Road and Rock Elm Way. Specific tree protection measures for the Goshen Elm are required by as a result of a Memorandum of Understanding between the Commission and County. The MOU requires close association between M-NCPPC Environmental Planning, M-NCPPC Parks, and Montgomery County Department of Transportation.

The project is within the Middle Great Seneca Creek watershed; a Use I-P watershed. The Countywide Stream Protection Strategy (CSPS) rates streams in this watershed as fair.

The proposed project will have environmental impacts when the roadway crosses streams, 5 streams within the project area, and is adjacent to environmental sensitive areas. The applicant has minimized the impacts to environmental features as much as possible, while maintaining all design and safety objectives for the roadway and pedestrian access. The roadway was designed using the County's new Road Code standards. As much as practicable, environmentally sensitive areas have been avoided and minimized with design reductions and enhancements while providing the required project needs and level of safety. Specific methods of design reductions and enhancements include:

- Minimized impacts due to slopes by using retaining walls or 2:1 maximum side slopes.
- Eliminated landscape panels where needed.
- Minimized median widths from 18 feet to 4 feet in vicinity of the Goshen Elm and the bridge over Cabin Branch.

- Minimized culvert lengths by locating headwalls adjacent to trails and sidewalks.

At the current design phase there are some stormwater management (SWM) facilities located within the stream buffer along Goshen Road. All SWM facilities were removed from the stream buffers when it was technically feasible. The Department of Transportation plans to continue working with Commission staff during the final design process to study further avoidance and minimization measures that may be possible as more detailed designs are developed.

Forest Conservation

The Goshen Road Improvement project is a County Highway project that is part of an approved Capital Improvement Program. Goshen Road Improvement project is CIP # 509337. As a County Highway project this project is subject to Section 22A-9 of the County Code (Forest Conservation Law).

Sec. 22A-9. County Highway Projects.

(a) General.

- (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.*

(b) If the forest to be cut or cleared for a County highway project equals or exceeds 40,000 square feet, the constructing agency must reforest a suitable area at the rate of one acre of reforestation for each acre of forest cleared.

(c) Reforestation for County highway projects must meet the standards in subsections 22A- 12(e), (g) and (h).

(d) Any mitigation requirement for loss of specimen or champion trees must be based on the size and character of the tree. (2001 L.M.C., ch. 19, § 1.)

The project proposes the removal of 5.54 acres of existing forest after all minimizations and enhancements to avoid environmental features and forest loss are implemented,. Under County Code Chapter 22A-9, once the project exceeds 40,000 square feet in of forest removal the applicant is required to replant forest at a 1:1 ratio. EP staff believes the applicant has minimized forest removal to the greatest extent possible while balancing other design, construction, and environmental standards. This project would then generate a 5.54 acre planting requirement. The applicant proposes to meet this requirement by using an off-site forest conservation bank.

EP staff supports the applicant's proposal to meet the planting requirement off-site because this is a linear project and only the area within the LOD is considered within the net tract area or on-site. Final off-site location will be determined with the Final Forest Conservation Plan.

The applicant is proposing to remove 23 trees 30 inches diameter at breast height (DBH) and greater along Goshen Road outside of the city limits of Gaithersburg north to Warfield Road. The trees are variety of species ranging in size from 30" DBH to 49" DBH (for a full listing of trees please see attachment A). Of the 23 specimen trees to be removed 14 trees are not within forest and 9 are within the 5.54 acres of forest to be cleared.

Since the project is subject to a forest conservation plan and it is proposing to remove trees 30 inches and greater DBH the applicant is required to obtain approval of a variance to remove those trees.

Forest Conservation Variance

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria to be incorporated into all local forest conservation laws. Bill 666 identifies certain individual trees as high priority for protection. If a forest conservation plan cannot be altered to protect these individuals, the applicant is required to submit a variance to remove trees. In general, the variance provision of Bill 666 applies to: all trees 30" DBH and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the applicant is proposing to remove twenty-three trees greater than 30 inches DBH, a variance is required. The applicant has requested a variance to remove 23 trees that are a variety of species ranging in size from 30" DBH to 49" DBH (for a full listing of trees please see attachment A).

Montgomery County Code 22A (Forest Conservation Law (FCL)) Section 22A-21(c) requires the Planning Board to refer a copy of each request to the County Arborist in the Montgomery County Department of Environmental Protection and other appropriate officials or agencies for a written recommendation prior to acting on the request. The variance request was referred to the Montgomery County Arborist on December 17, 2009. The County Arborist has elected not to review the variance request (see Attachment B).

Section 22A-21(e) of the County code states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. FCL Sect. 22A-21(d) states that a variance must *not* be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;

3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Findings

1. *Will confer on the applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. Furthermore, unlike a typical subdivision or other development project, this roadway project has a limited, narrow right-of-way, and it is not possible to eliminate features, requirements, relocate the proposed activity since it is an improvement to an existing roadway and must meet the current county guidelines. None of the trees proposed for removal are champion trees or 75% of the DBH of the state champion tree for that species. The circumstances related to this variance are not unique nor avoidable, except by denying development. Therefore, staff believes that is not a special privilege that would be denied to other applicants.

2. *Is 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 which are the result of actions by the applicant. The requested variance is based on a master planned roadway and Capitol Improvement Project and has been deemed a necessary public improvement.

3. *Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is a result of the proposed roadway design and not as a result of land or building use on a neighboring property.

4. *Will violate State water quality standards or cause measurable degradation in water quality.*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality.

Recommendation

Staff recommends approval Preliminary Forest Conservation Plan with conditions.

Attachments:

1. Written request from DOT for a variance request
2. County Arborist's response to the variance request



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

November 17, 2009

Mr. Josh Penn, Senior Planner
Environmental Planning Division
Montgomery County Planning Department, M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760



Re: Goshen Road Improvement
C.I.P. No. 509337
Preliminary Forest Conservation Plan – Variance Request

Dear Mr. Penn:

To meet the new Maryland State Bill 666-Natural Resources (No Net Loss of Forest Policy – Forest Conservation Act) that took effect on October 1, 2009, the Montgomery County Department of Transportation hereby submits this request for a variance pertinent to removal of certain vegetation described herein.

The new regulation stipulates that a variance is required for the removal of any tree greater than 30 inches in diameter at breast height (dbh), any tree with a dbh equal to or greater than 75% of the current state champion, trees that are part of an historic site or associated with an historic structure, any tree designated as the county champion tree, any tree, shrub or plant identified on the list of rare, threatened and endangered (RTE) list of the U.S. Fish and Wildlife Service or the Maryland Department of Natural Resources.

The Goshen Road Improvement Project will impact and remove trees greater than 30 inches (dbh) as listed in Table 1 enclosed and at the locations indicated.

The project will not remove or impact any tree equal to or greater than 75% of the state champion, any tree designated as the county champion tree, or any tree, shrub or plant identified on RTE list of the U.S. Fish and Wildlife Service or the Maryland Department of Natural Resources.

Special conditions peculiar to this roadway project are as follows:

1. Unlike a typical subdivision or other development project, this transportation project has a limited, narrow right-of-way, and it is impossible to eliminate features and required components of the project, such as a travel lane, to avoid the removal of an existing specimen tree. This project, which is called for in the Master Plan, will provide a great benefit to the public.

Division of Transportation Engineering

2. Enforcement of the new regulation to avoid removal of any of the listed specimen trees would create undue hardship: the project can not be implemented.
3. The proposed roadway improvements will not degrade water quality standards. The project will implement a high level of qualitative storm water management to meet State's (MDE) and County's SWM requirements whose purpose is to safeguard the quality of water (surface and groundwater).
4. Other information pertinent to the project includes:
 - DNR's letter indicating that no RTE's exist in the corridor (see enclosed).
 - The County's Context Sensitive Road Code standards will be met to ensure that the new roadway will be safe for all users, including pedestrians, on road and off road bicyclists, and motorists-- without imposing unrealistic financial burdens on Montgomery County taxpayers.
 - The Goshen Elm will not be impacted by this project.
 - Reforestation and individual tree planting will be performed to mitigate for removed trees.
 - The "Black and White Inn," a designated historic structure, will be relocated within its parcel - to where the existing garage is currently located. Miscellaneous ornamental vegetation will be removed as a result (approximately six to eight shrubs or small trees or evergreens). Two specimen trees at this site, No.'s 103 and 104, will be removed for the Goshen Road Improvements. The proposed road alignment was closely coordinated with M-NCPPC's Historic Preservation Commission, and the relocation of that structure is as per HPC's recommendation.

I thank you for your consideration of this variance request. Should you have any questions, please contact me at 240-777-7262.

Sincerely,



Michael F. Mitchell, P.E.
Senior Engineer

MFM:gl

Enclosure

cc: Girum Awoke
Rob Galla
Romaine Kesecker

GOSHEN ROAD IMPROVEMENTS

November 17, 2009

TABLE 1				
EXISTING SPECIMEN TREES TO BE REMOVED				
SPECIMEN TREES (30" OR GREATER) WITHIN MONTGOMERY COUNTY				
FCP SHEET NO.	EXISTING TREE KEY NO.	COMMON NAME	DBH (INCHES)	STATION AND OFFSET
3	21	White Oak	37	417+43, 95 LT.
4	27	Black Oak	37	419+37, 126 LT.
9	38	Sycamore	30	451+72, 47 RT.
9	40	Black Walnut	31	453+50, 61 RT.
9	41	Hickory	48	453+66, 51 RT.
11	47	Silver Maple	30	465+41, 44 RT.
12	56	White Pine	33	469+19, 76 LT.
14	64A	Red Maple	32	486+94, 189 RT.
14	65	Silver Maple	31	486+43, 115 RT.
14	66	Elm sp.	45	488+00, 35 LT.
14	67	English Elm	45	487+54, 38 LT.
18	77	White Oak	40	512+54, 46 LT.
18	79	Red Oak	38	514+83, 19 LT.
22	83	Sycamore	34	540+77, 122 LT.
25	88	Tulip Poplar	30	547+32, 65 RT.
25	95	Red Maple	36	550+30, 58 RT.
25	97	Red Maple	30	549+80, 30 RT.
25	99	Red Maple	39	550+07, 26 RT.
27	103 Black and White Inn	Tulip Poplar	49	564+74, 40 RT.
27	104 Black and White Inn	Red Maple	36	564+80, 26 RT.
27	105	Red Oak	34	564+17, 54 LT.
27	122	Silver Maple	31	559+35, 79 LT.
29	130	Tulip Poplar	49	952+76, 14 LT.

Note: At "Black and White Inn" property approximately six to eight ornamental shrubs or small trees to be removed or transplanted in conjunction with relocation of the structure within that property.



*Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
John R. Griffin, Secretary
Eric Schwaab, Deputy Secretary*

April 11, 2007

Ms. Joanna Hiebler
URS Corporation
4 North Park Drive, Suite 300
Hunt Valley, MD 21030

RE: Environmental Review for Goshen Road Widening: Odenhal Road to Girard Street, Montgomery County, Maryland.

Dear Ms. Hiebler:

The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. As a result, we have no specific comments or requirements pertaining to protection measures at this time. This statement should not be interpreted however as meaning that rare, threatened or endangered species are not in fact present. If appropriate habitat is available, certain species could be present without documentation because adequate surveys have not been conducted.

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

ER #2007.0627.mo



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

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OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Robert G. Hoyt
Director

December 24, 2009

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Buffington Property – Clarksburg FCP, DAIC 820100010, NRI/FSD applied for on 4/19/2007
DOT CIP Goshen Road, MR2009805, NRI/FSD applied for on 12/26/2006

Dear Dr. Hanson:

As stated in a letter to you from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief