


May 13, 2011

REQUEST FOR RECONSIDERATION**MEMORANDUM**

TO: Montgomery County Planning Board

FROM: Carol S. Rubin, Associate General Counsel 
301-495-4646

RE: Reconsideration Request for Downcounty Consortium School #29
(McKenney Hills)
Final Forest Conservation Plan No. MR2010720
MCPB Resolution No. 11-19

With this memorandum I forward for the Board's review a Petition to Reconsider MCPB No. 11-19, the Final Forest Conservation Plan ("FCP") approval of the Downcounty Consortium School #29 (McKenney Hills) submitted by Thomas C. Gleason on behalf of the McKenney Hills Forest Preservation Group ("MHFPG") (**Attachment 1**). The Petition to Reconsider was received on March 30, 2011, within the required ten days of the Resolution mailing date.

I. BACKGROUND

On February 17, the Planning Board voted to approve the Final FCP for the Downcounty Consortium School #29 (McKenney Hills) with a vote of 4-0; Commissioners Carrier, Dreyfuss, Presley, and Wells-Harley all voting in favor. Commissioner Alfandre was absent from the hearing. The Resolution memorializing the Board's approval was mailed on March 24, 2011 (**Attachment 2**).

The Planning Board had previously reviewed, and on October 28, 2010, approved a Preliminary FCP in conjunction with a mandatory referral review for the construction of McKenney Hills Elementary School. A Final FCP is a refinement of a Preliminary FCP, and is generally reviewed and approved administratively. The Final FCP for McKenney Hills qualified for such administrative approval, however, staff brought the Final FCP to the Board for review and approval because i) the addition of a sewer connection increased the amount of forest clearing within the stream valley

buffer, ii) the additional specimen tree impacts required further variances under Section 5-1607(c) of the Natural Resources Article of the MD Ann Code, and iii) Planning Board review of the Final FCP assured transparency in the project to match the level of public interest in this plan.

II. APPLICABLE RULES

A reconsideration request must “specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.” The Board is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

In accordance with Rule 4.12.2, only a Board member who voted in the majority of the decision that is the subject of the request for reconsideration can move to reconsider the decision. And any motion to reconsider must be supported by a majority of the Board members who either participated in the previous decision or read the record on which it was based. In this case, any of the Commissioners except Commissioner Alfandre are eligible to move for reconsideration and participate in the decision whether to reconsider. However, Commissioner Alfandre may participate in the decision if he reviews the record of the proceeding. If there is no motion for reconsideration, the request for reconsideration fails, and no further action is necessary. However, if the Board grants the reconsideration request, the Resolution approving the Final FCP is void, and a new hearing on the FCP must be scheduled¹.

III. RECONSIDERATION REQUEST

A copy of the Request for Reconsideration is attached for your review. MHFPG raised three basic grounds. It alleges:

1. The Applicant, Montgomery County Public Schools (“MCPS”) began land disturbing activities (tree clearance) before the Cat I Easement was recorded;
2. Section 22A-21(d) of the Montgomery County Code (Forest Conservation Law) sets forth the “minimum” criteria for granting a variance, but the Board did not expressly find that failure to grant the variance would result in “unwarranted hardship” to the Applicant as required by MD Ann Code, Natural Resources Article, §5-1611(a); and
3. Discovery of errors and omissions in the NRI/FSD.

When considering whether to reconsider the Board’s previous action approving the Final CP, the Board must determine if the grounds raised in the Request contain some mistake, inadvertence, surprise, fraud, or other good cause for review.

¹ Under Planning Board Rules of Procedure, if the Board votes to reconsider, the reconsidered Resolution is void, and the Chair must promptly schedule a public hearing. (Rules 4.12.2 and 4.12.3)

IV. DISCUSSION/RECOMMENDATION

The Legal Department has reviewed the specific grounds raised in the Request for Reconsideration, and after consultation with staff does not believe there is any mistake, inadvertence, surprise, fraud, or other good cause for the Planning Board to revisit its prior approval of the Final FCP for the Downcounty Consortium School #29 (McKenney Hills).

- A. *Whether MCPS began land disturbing activities (tree clearance) before the Cat I Easement was recorded in violation of Condition No. 1 is not grounds for reconsideration, but rather a question of enforcement of the Board's action.*

Although not relevant to the question of reconsideration, on March 29, 2011, MCPS provided a fully executed Cat I Easement to the Planning Department, and on March 31, 2011 provided evidence of its recordation in the land records. (**Attachment 3**). The Department has had inspectors visit the site on a regular basis, and to date, there have been no activities that would warrant either a notice of violation or citation to be issued for any violations of the Final FCP.

- B. *Section 22A-21(d) of the Montgomery County Code (Forest Conservation Law), which sets forth the "minimum" criteria for granting a Section 5-1607 variance, is the basis on which the Planning Board has applied the "unwarranted hardship" test as set forth in MD Ann Code, Natural Resources Article, §5-1611(a).*

This particular question was specifically raised by Mr. Gleason at the Hearing and discussed with the Board. In fact, at the Hearing it was pointed out to the Board that Planning Staff had met with staff from both the Montgomery County Department of Environmental Protection ("DEP") and the Department of Natural Resources ("DNR"), the state agency tasked with overseeing forest conservation practices throughout the state, to coordinate our respective interpretation of the Section 22A-21(d) variance procedures, and its application to Section 5-1607 tree variances. At that meeting held March 19, 2010, agreement was reached that the proposed disturbance of trees or other vegetation regulated under Section 5-1607 would not be considered a condition or circumstance that is the result of the actions by an applicant developing a property within the master plan or zoning designation for the property, as long as 1) the applicant demonstrates it has taken reasonable steps to minimize the disturbance, and ii) appropriate mitigation is provided for the resources disturbed.

At the Hearing, MCPS i) provided ample evidence that it had taken reasonable steps to minimize the impact to the impacted trees (adjustment to access points, co-location of geothermal fields, hand removal of pervious surfaces to minimize disturbance to trees), and ii) proffered additional planting over and above the minimum requirements for forest removal.

Furthermore, the Planning Board's application of the minimum criteria set forth in Section 22A-21(d) to grant a variance to the Forest Conservation Law has been applied since the genesis of the County's Forest Conservation Law. Using the same time-tested criteria as applied to a new provision of Forest Conservation Law, the Section 5-1607 individual tree protection has been accepted by DNR as an appropriate measure of "unwarranted hardship" to the applicant.

C. Petitioner's allegation of errors and omissions in the NRI/FSD are either incorrect, or were not relevant to Staff's recommendation for approval of the Final FCP.

MHFPG alleges six categories of errors or omissions in the NRI/FSD, Preliminary FCP, or Final FCP, each of which is summarized below and has been considered by staff.

1. The NRI/FSD submitted by MCPS was for and addition to an existing school as opposed to development for a new school.

NRI/FSD are not tied to a specific development plan but to the property itself. In fact, the proposed development is not required to be disclosed at all, as per COMCOR 22a.00.01.06.A. Section 22A-10(b)(4) of Forest Conservation Law states "An approved forest stand delineation is not valid after 2 years unless: (A) a forest conservation plan has been accepted as complete; or (B) the delineation had been recertified by the preparer." NRI/FSD 420091330 was initially approved on 4/17/2009 and a revised NRI/FSD was approved on 11/16/2009. The Forest Conservation Plan associated with MR2010720 was accepted as complete on 8/26/2010, which is within the two year validity period for the NRI/FSD.

2. Forest samples were not performed on the MCPS-owned portion of the site, but instead on MNCPPC's adjoining property.

Forest samples were not required with the original NRI/FSD because every attempt was being made to avoid impacts to the forest. A detailed Forest Stand Delineation was performed and all forest rated as a high priority for retention. As per Section 22A-10(b)(3) "The Planning Director may waive any requirement for information that is unnecessary for a specific site." As this information was not needed due to the goal of retaining all forest on-site, staff did not require the information. Forest sample sheets were included with the revised NRI/FSD for Park property because forest impacts were anticipated if a land swap were to have occurred.

3. The NRI/FSD does not show the 100 year floodplain on the site.

A detailed floodplain study and analysis was done as part of the Final FCP. As the floodplain delineation did not change the stream valley buffer, it was not

necessary to update the NRI/FSD. The detailed design of the two bridges proposed for the floodplain area is being done in conjunction with the detailed floodplain study, so that there are no environmental impacts associated with the work.

4. The NRI/FSD did not identify the location of the wetlands.

When the NRI/FSD was revised to include adjacent parkland, wetlands were found. These wetlands are shown on the revised NRI/FSD, with an amended stream valley buffer. These wetlands are not shown on either the Preliminary FCP or Final FCP, as the Park property was not included in the development plan.

5. The MHFPG has raised concerns about several of the encroachments into the stream valley buffer.

Although the issues are summarized below, they were already covered at great length during the Planning Board Hearings on both the Preliminary and Final FCPs.

WSSC Sewer Line – The need for a sewer line required the additional clearing of approximately 425 square feet of forest within the stream valley buffer. As per the Planning Board’s Environmental Guidelines, “minimized buffer intrusions are allowed for construction of suitable SWM facilities or non-erosive storm drain outfalls, and unavoidable and consolidated sanitary sewer constructions.” The area of disturbance for the stormwater management outfall and sewer line will be reforested, as per the Final FCP.

Stairs on Northeastern Slope – A set of stairs are shown on the plans, leading to the school from the paths within the forest. These stairs are to replace the connectivity lost by the removal of the concrete stairs in poor condition. No further disturbance is required or allowed for the installation of these stairs, as they are being installed in an area of erosion repair. The erosion repair and stairs were designed to minimize impacts on the surrounding trees. No clearing or grading is necessary for either action.

6. Whether differences in the Final FCP go beyond “refinement” of the Preliminary FCP.

A Final FCP is usually a refinement of a Preliminary FCP, and is generally reviewed and approved administratively. The Final FCP for McKenney Hills qualified for such administrative approval, however, staff brought the Final FCP to the Board for review and approval because i) the addition of a sewer connection increased the amount of forest clearing within the stream valley buffer, ii) the additional specimen tree impacts required further variances

under Section 5-1607(c) of the Natural Resources Article of the MD Ann Code, and iii) Planning Board review of the Final FCP assured transparency in the project to match the level of public interest in this plan. The differences between the Preliminary FCP and Final FCP were fully discussed at the Planning Board hearing.

If the Board determines that MHFPG's reconsideration request demonstrates that there was a mistake, inadvertence, surprise, or fraud in its earlier decision, or that MHFPG has shown other good cause for reconsideration, the Board may grant the request.

IV. ATTACHMENTS

Attachment 1 –Petition for Reconsideration

Attachment 2 –Planning Board Resolution (MCPB 11-19)

Attachment 3 –Cat I Easement and Receipt from Clerk of the Court

March 29, 2011

Rollin Stanley, Director
Montgomery County Planning Department
8787 Georgia Ave
Silver Spring, MD 20910
Rollin.Stanley@mncppc-mc.org

Re: Petition to Reconsider Resolution MCPB No. 11-19, Forest
Conservation Plan MR 2010720
Downcounty Consortium School #29 (McKenney Hills)

Dear Director Stanley:

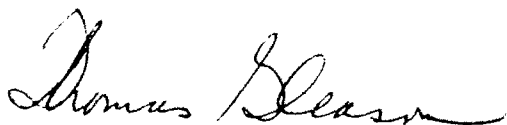
The McKenney Hills Forest Preservation Group hereby Petitions to Reconsider the above-referenced Resolution. We request that the Board correct an error in the Resolution, the details of which are included in the following Reconsideration Request.

We also urgently request that the Montgomery County Planning Board expeditiously rule on this matter because, as of the date of this request, the Montgomery County Public Schools has begun cutting down trees in the McKenney Hills Forest.

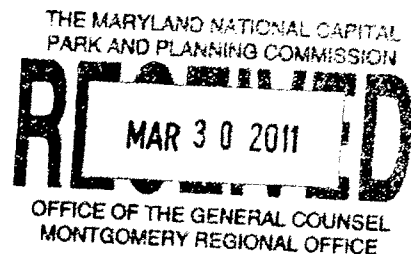
According to Mr. Marc Pfefferle of M-NCPPC Planning Department, as of March 28, 2010, M-NCPPC had not yet received a signed copy of the Category I Conservation Easement. The Planning Board the receipt of such a signed easement a specific condition for its approval of MCPS' FFCP. That condition is contained in the MCPB No. 11-19. This constitutes an important reason for the Planning Board to request that MCPS immediately cease its illegal removal of trees from the McKenney Hills Forest and not resume such activities until the Board rules on our request for reconsideration.

Thank you for your consideration of our request.

Sincerely,



Thomas Gleason
McKenney Hills Forest Preservation Group
10209 Menlo Avenue
Silver Spring, MD 20910



**McKENNEY HILLS FOREST PRESERVATION GROUP
RECONSIDERATION REQUEST
MARCH 29, 2011**

The McKenney Hills Forest Preservation Group hereby requests that the Montgomery County Planning Board reconsider its approval of the Final Forest Conservation Plan for the McKenney Hills ES submitted by the Montgomery County Public Schools as stated in MCPB Resolution No. 11-19. This request for reconsideration is based on the premise that the Planning Board erred in its approval of that plan. The legal error concerns the criteria for the granting of variances for the removal of specimen trees.

Although I realize that I made a similar argument in previous testimony before the Planning Board on February 17, 2011, I made some mistakes in that testimony that I am now correcting in unambiguous terms so that the Board will have a clear statement of the law upon which to base its judgment regarding the criteria for granting variances.

Another reason for this request is that we did not obtain the FFCP until one week before the February 17th hearing even though MCPS had promised us copies as soon as the FFCP was submitted to M-NCPPC several weeks earlier. Therefore, we did not have sufficient time to review the document and we did not find its many errors and omissions and the many errors and omissions in related documents until after the hearing.

This request for reconsideration also points out in detail those many errors and omissions in MCPS' forest conservation planning documents including the Natural Resources Inventory/Forest Stand Delineation and Preliminary Forest Conservation Plan that were carried over into the Final Forest Conservation Plan. Those errors and omissions render the FFCP so inaccurate, deficient and incomplete that they constitute a separate set of reasons for the Board to reconsider the FFCP.

It is the Planning Board's sole responsibility to correctly apply the Forest Conservation Law. The Board is the legal guardian of Montgomery County's forests. If the Board applies the law correctly in this case, it will require MCPS to make reasonable changes to its plans that will result in saving many if not most of the 93 trees it plans to cut down and the 38 it plans to seriously damage. I will point out these options to the Board in this request after discussing the variance issue and problems with the FFCP and related documents that all add up to a compelling case for the Planning Board to reconsider MCPS' FFCP.

Variance Issue: Legal Framework

Regarding the granting of variances, the Montgomery County Forest Conservation Law ("FCL")(Ch 22A), states the following. The most important parts of this section are in **bold text**.

22A-21. Variances

(a) ***Written request.*** An applicant may request in writing a variance from this Chapter or any regulation adopted under it if the applicant shows that enforcement would result in unwarranted hardship. A request for a variance suspends the time requirements in Section 22A-11 until the Planning Board or Planning Director acts on the request.

(b) *Application requirements.* An applicant for a variance must:

(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;

(2) describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;

(d) ***Minimum criteria.*** A variance may only be granted if it meets the criteria in subsection (a). However, 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 result from the actions by the applicant;

(3) is based on 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.

(e) *Approval procedures; Conditions.* **The Planning Board must find that the applicant has met all requirements of this Section before granting a variance.**

This section of the FCL could hardly be clearer in specifying that the primary requirement to be met to warrant a variance is the demonstration by the applicant that denial would result in "unwarranted

hardship.” The “minimum criteria” in subsection (d) are plainly not a substitute for this demonstration, as the first sentence in (d) makes completely clear. They are best understood as additional matters that must be addressed, where a positive finding would mandate denial. The staff approach here, and in other cases apparently, is that negative findings on all four matters mandates grant of the variance. But when one looks at why the variance is needed, this makes no sense at all.

The variance requirement is triggered by section 12(b)(3), which identifies categories of trees and areas that are “priority for retention and protection” that “must be left in an undisturbed condition” absent qualifying for a variance. This provision must be read in light of section 12(b)(1), which states that the FCP’s “primary objective” is “to retain existing forest and trees”. This section also makes clear that the retention objective is not subordinated to the development objective unless the Planning Director finds that “the development proposal cannot be reasonably altered” and that “reasonable efforts have been made” toward protection of the specific areas and trees identified. Section 12(b)(1)(B,C).

In my testimony at the FFCP hearing, I noted that the term “unwarranted hardship” has a precise legal meaning in Maryland variance law. The Maryland Court of Appeals concluded in 1999 that it meant demonstrating that not being given a variance would amount to “denial of reasonable and significant use of the property.” Belvoir Farms HOA v. North, 355 Md. 259, 734 A.2d 227, 240 (1999). This is the rule for area variances in a zoning context; there are no cases interpreting the “unwarranted hardship” test in the context of tree variances. While a good case could be made that specimen trees are deserving of just as exacting a standard as yard setbacks in the zoning context, the Board does not have to go that far in deciding that, in this case, there has been no showing of “unwarranted hardship.”

This is because however exacting the Board might decide the degree of “hardship” must be to deserve the approbation “unwarranted,” it cannot be the case, in light of section 12(b)(1), that a hardship is unwarranted if the applicant has not exhausted “reasonable efforts” to alter the development proposal to save trees for which the variance is sought. But there is nothing in the four “minimum criteria” of variance section 21(d) that requires MCPS to address this question, and the staff has never answered it in any event. What we heard at the hearing on FFCP approval was that the County FCL has the blessing of the Maryland Department of the Environment. This may in fact be so, but endorsement of the law as **written** is not an imprimatur of how it has been **applied**.

At the FFCP hearing, I argued that MCPS could not show unwarranted hardship as to any of the specimen trees, because MCPS has always had the option of constructing a new school of a similar size and footprint as the old. Had they chosen that option the new school would also have been able to co-exist with the surrounding forest without significantly impacting it. Any unwarranted hardship MCPS may experience from being denied a variance would be brought about by its own decision to construct too large a school on a site with a forest that under state and county law must be protected. I am not repeating that argument in this request for reconsideration; I am assuming that the Board would decide, if it did start to apply the "unwarranted hardship" test as intended, that this would be deemed too harsh and demanding a way to look at the new school proposal, in light of MCPS programmatic needs and goals. But as indicated above, with more time to review and analyze the FFCP, it has become quite apparent that through reasonable changes to its current development plans, MCPS could still avoid the removal of a large number of trees.

Therefore, we urge the Planning Board to reconsider its grant of a variance to MCPS to remove a large number of specimen trees on the basis that it does not meet the standard under Maryland law for the granting of such variances.

The McKenney Hills forest consists of 50 acres of publicly-owned forest, including MCPS' parcel. It is both spectacular and unique in the downcounty area because of the extraordinary size, quality, and mix of hardwood tree species. There is no other high-quality climax forest of this richness and quality in the downcounty area that is not yet fully protected. Unlike other hardwood forests in the area, this forest is not dominated by tulip poplars but, rather, by oaks – along with basswood, beech, and other species. Cutting down any of these mature trees will seriously compromise the integrity of the forest, causing it great harm.

The McKenney Hills Forest clearly more than meets the criteria for protection as a high priority forest under the Forest Conservation Law. Under the law, the McKenney Hills Forest must be accorded the highest priority for retention and protection and must be left in an undisturbed condition.

We do not believe that the Planning Board has adequately considered the fact that the McKenney Hills Forest is the very definition of a high priority forest that must be protected under the Priorities For Forest Stand Retention section of the law. If it had done so it would have required that MCPS alter its development plans in a reasonable manner to significantly reduce the number of trees slated for removal under the FFCP. The FFCP states that a total of 93 trees will be removed and 38

will be so damaged that many of those trees may also have to be removed. Because this will devastate this high priority forest it is against the law and the Board should not allow it.

Variance Issue – Reasonable Changes to MCPS Development Plans

There are many reasonable site design options MCPS could have included in its PFCP and FFCP that could save significant numbers of trees. The fact that they were **not included** constitutes a failure to meet the criteria which must be met if trees in a high priority forest are to be cleared. The fact that the FFCP was approved without their having even been **considered** constitutes the Board's legal error warranting reconsideration. We have developed a list of options that were not considered, each of which has the potential to save numerous trees that are a priority for retention. These options are per se reasonable, since they are common practice or are achievable without having to significantly alter the existing design of the school building. These options are addressed in the Appendix to this Request for Reconsideration titled: "Reasonable Forest Conservation Options Not Considered By MCPS and the Board"

Errors and Omissions In MCPS' Natural Resources Inventory/Forest Stand Delineation, Preliminary Forest Conservation Plan and Final Forest Conservation Plan

1). NRI/FSD For Addition To Old School Not For New Development

MCPS' Revised Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for the McKenney Hills Alternative Learning Center was submitted in September of 2009 and approved November 11, 2009 by M-NCPPC. As is self-evident, this NRI/FSD was done for an addition to the old school: the McKenney Hills Alternative Learning Center. The section of this document titled "Site Narrative and Forest Summary" states the following: "**This project is for an addition to the existing school only.**"

MCPS subsequently demolished the old school and developed plans to build a much larger school with a substantially larger footprint. When a developer makes such a substantial change in a development plan, a new NRI/FSD must be completed reflecting the new conditions. FCL, Section 11(b)(1) & (e)(1). That was not done in this case. As a result, the NRI/FSD used in this case was outdated and a new NRI/FSD should have been completed. If staff takes the position that the NRI/FSD has an initial validity period of two years, as stated in FCL section 10(b)(4), that validity must be understood in light of section 11's requirements to apply only to the project for which it was submitted.

Consistent with this, MNCPPC approved MCPS NRI/FSD in a letter from Amy Lindsey of MNCPPC to James Song of MCPS on April 17, 2009, stating that if there are any subsequent modifications to the approved plan, not including changes initiated by a government agency, a separate amendment must be submitted to M-NCPPC for review and approval prior to the submission of a forest conservation plan." There is no mention of any such "amendment" submitted to M-NCPPC and even if there was such an amendment it would not substitute for a valid NRI/FSD and would be contrary to the Forest Conservation Law.

There are serious problems with MCPS' NRI/FSD stemming from the fact that it was done for a development plan that was rendered obsolete as soon as MCPS demolished the old school and began to plan for a new structure on this same site. As a consequence of that, the problems with the NRI/FSD were carried over into subsequent plans including the Preliminary Forest Conservation Plan and the Final Forest Conservation Plan. The reason why these plans are so problematic for the conservation of the McKenney Hills Forest is that they were based on an improper inventory of the individual trees, the individual forest stands and of the overall forest.

The fact that an NRI/FSD was not done in conjunction with the new development constitutes a serious legal error that should be sufficient for the Planning Board to require that before MCPS proceeds with development of the site it should perform a new NRI/FSD that meets all legal requirements. This is particularly appropriate in this case because the NRI/FSD in question did not even consider the fact that a new building would be constructed on the site and that it would have any impacts on the forest whatsoever when, in fact, the exact opposite is the case.

2). Samples Not Performed/Impacts To The Forest Not Anticipated

One requirement of an NRI/FSD is that sample points be performed on the actual site that is intended for development. However, in the MCPS NRI/FSD, in the section titled "Tree/Forest Stand Delineation", in paragraph 1, it is stated that: "**Sample points were not performed on the school-owned portion of this site as impacts to the forest are not anticipated.**"

Instead, sample points of the forest were performed on adjoining M-NCPPC property and applied to the NRI/FSD done for the MCPS site. This is contrary to the requirements of the State of Maryland that sample data points and surveys of actual, site-specific conditions be included in an NRI/FSD. Most importantly, however, the reason stated for not undertaking the sampling as required by law was that "impacts to the

forest are not anticipated.” This is most emphatically not the case with the current proposed development.

3). Floodplain Issue

The NRI/FSD does not show the 100 year floodplain on the site. This error was repeated in the PFCP but was subsequently corrected in the FFCP which shows that the 100 year floodplain around both the eastern and western tributaries.

The reason why the floodplain issue is important is that MCPS' FFCP shows plans for stairs on the northeastern slope descending from the entrance of the school and terminating very near the floodplain on the western bank of the eastern tributary. The PFCP did not show any bridge connecting the stairs to the opposite stream bank. In addition, this is not shown in the FFCP. However, it is mentioned in the Planning Department's Memorandum to the Planning Board of February 7, 2011. In addition, there is no mention in either the PFCP or the FFCP of any improvements to the trails along the eastern bank or the impacts to trees that are likely to occur if the bridge is constructed. The same can be said of MCPS' plans to replace an existing bridge over the same tributary at the site's southeast corner. This bridge will also be constructed within the floodplain.

The differences between the PFCP and the FFCP are required to be minor. Specifically, the FFCP is supposed to be a refinement of the PFCP. We submit that because the bridges were not mentioned in the PFCP but were in the FFCP amounts to a major and material change between the PFCP and the FFCP.

The reason why this is important is that construction of the 2 bridges will clearly take place within the 100 year floodplain and it is evident that a number of trees will have to be removed to accommodate the construction of both bridges. This construction activity and tree removals have the potential to cause a significant amount of damage to the already seriously eroded stream banks and to exacerbate the already serious flooding that frequently takes place within this stream valley.

The Board should also be aware that the Sector Plan For Capitol View and Vicinity contains a much detail concerning development and environmental disturbance to the land covered by the FFCP and recommends that this land be preserved in its natural state. The primary reason for this recommendation is the significant potential for flooding and erosion that would result from such development and disturbance.

That plan can be found on the following webpage:

<http://www.montgomeryplanning.org/community/area2.shtm>

Click on “Capitol View” and “Sector Plan For Capitol View and Vicinity”.

The floodplain issue is not an insignificant legal technicality because in order to construct the stairs and the bridges a many trees will have to be removed that are located both in the stream valley buffer and in the floodplain. In some cases tree removals are noted in the FFCP but in others, particularly with regard to the trees on the eastern bank, they are not. If carried out, the planned removal of many trees from the floodplain will only exacerbate the already significant amount of flooding and erosion that occurs within the floodplain of the eastern tributary.

The plans for construction within the floodplain and the removal of many trees within it has important implications for exacerbating the already serious erosion evident throughout the extent of the eastern tributary that has the potential to damage both adjacent properties, and properties and structures located downstream. This omission of many necessary details in the FFCP and the material change between the PFCP and the FFCP should be reason for the Board to reconsider its approval of MCPS' FFCP.

In addition, we do not know if MCPS has acquired the requisite permits for construction in a floodplain such as a “General Waterway Construction Permit” from the Maryland Department of Environment. The Board should obtain the details of any such application for a permit to determine what the stated impacts of the planned construction activities and tree removals will be and compare them to the relevant details in the FFCP to better determine the resulting impacts that can be expected to occur within the floodplain as a result of bridge construction and tree removals within the floodplain.

4). Wetlands

The NRI/FSD “Site Narrative and Forest Summary”/“Environmental Features”/“Non Tidal Wetlands” section states that **“Wetlands exist on and offsite as observed during the field investigation.....There is a small drainage area...”**

Although the NRI/FSD did not identify the location of this wetland, the area it refers to is likely the same area where MCPS plans to locate its sewer extension at the base of the site’s western slope. If so, then MCPS’ plans to build the sewer line would entail a large amount of excavation and construction within a wetland. This would constitute yet another error in the FFCP rendering it incomplete on yet another point.

It is important to note that although the NRI/FSD mentions the existence of a drainage area, which apparently qualifies as a wetland, no mention is made of this fact in either the PFCP or the FFCP.

The Board should review this issue during the course of its reconsideration of MCPS' FFCP and if the construction of the sewer is planned to take place within a wetland appropriate measures should be undertaken to ensure that environmental impacts are minimized. It should also be determined if a General Waterways Construction Permit has been obtained for connecting the sewer line into the WSSC sewer line and review its stated environmental impacts.

5). Steep Slopes and Stream Valley Buffers

The NRI/FSD "Site Narrative and Forest Summary"/"Environmental Features"/"Streams and Drainageways" section contains the following language. **"There are perennial streams present on and through the site. In addition, the site is flanked on three sides by streams offsite as well. The site is within the Lower Rock Creek Watershed, Use 1. Due to slopes greater than 25%, the stream buffer is 150' and covers two-thirds (2/3) of the site."** This statement is important because MCPS' FFCP shows several structures extending deep into this buffer including the northeastern slope stairs; and stormwater and sewer lines on the western slope.

Although the stormwater line may be permitted as it is a necessity, it is not necessary to locate the sewer line on the steep western slope because the option exists to tie into an existing sewer line located near the school entrance. Although the Planning Department's Memorandum to the Planning Board of February 7, 2011 stated that this was not possible because of a lack of space on the site, no evidence was presented to validate that claim. In fact, MCPS told our group that the only reason for electing to connect the sewer line to the manhole on the eastern bank of the western tributary was to avoid the additional costs that would have been incurred for a sewage grinding and pumping system required by WSSC. Therefore, it can be concluded that the additional environmental impacts and tree removals that will result from this activity can be avoided by installing the grinding and pumping system required by WSSC and tying into the existing sewer line near the entrance of the school which was also used by the old school.

In addition, the stairs on the northeastern slope are located almost entirely within the stream valley buffer. They are also not necessary because the main route to the school is via Hayden Drive. There is also a large number of specimen and other trees that are slated for removal within the Stream Valley Buffer which is contrary to the intent of such a

designation. The stream valley buffer exists to avoid construction within it and removal of trees within it that will result in erosion of steep slopes and stream banks. The Board should consider requiring MCPS to remove all unnecessary construction from the stream valley buffer and the conservation of as many trees as possible that are located within it to avoid such impacts.

6). Significant Differences Between The PFCP and The FFCP

The FFCP is supposed to be a refinement of the PFCP. We interpret this requirement to mean that there are not supposed to be significant differences in terms of tree removal and forest impacts between these two documents. However, this does not appear to have been the case with MCPS' PFCP and FFCP.

The impacts to specimen trees were listed in the Planning Department's Memorandum to the Planning Board of October 25, 2010, Re: Downcounty Consortium School #29 (McKenney Hills), Preliminary Forest Conservation Plan. This memorandum stated that a total of 8 specimen trees would be removed and another 21 would experience significant impacts that may require their removal at a later date. These trees were placed in the "Save and Monitor" category.

However, MCPS' Final Forest Conservation Plan tells a very different story about the impact to the forest of its development plan. The FFCP states that a total of 15 specimen trees will be removed and 19 will be significantly damaged and may have to be removed at a later date. These damaged trees were placed in the "Save and Monitor" category.

The FFCP also detailed the impacts to significant trees (24-29" DBH) for the first time in any document pertaining to MCPS' forest conservation plans of which we are aware. It showed a total of 18 significant trees to be removed and another 12 that will be significantly damaged and may have to be removed at a later date. These damaged trees were placed in the "Save and Monitor" category.

The FFCP also listed the impacts to the numbers of trees between 6" and 23" located within 25' of the LOD. A listing of the impacts to those trees did not appear in any previous document pertaining to MCPS' forest conservation plans of which we are aware. However, in the FFCP, the numbers of those trees listed as to be removed was 60 and the number damaged and placed in the Save and Monitor category was 7. This should have been disclosed in the PFCP. Instead, these forest impacts were not disclosed to either the community or the Planning Board prior to the FFCP and the necessity for their removal has not been subjected to scrutiny, warranting reconsideration.

Although no specific listing of the extent of the damage to the 6" to 23" trees appeared in the FFCP, a listing of the extent of the damage to the critical root zones of specimen and significant trees was presented. It is dubious to assert that trees with over a 40% impact to their critical root zones will survive and many of the trees placed in this category are expected to experience even greater impacts, some as high as 84%. Therefore, we expect many specimen and significant trees in the Save and Monitor category will be so damaged that they are also likely to be removed.

Thus, the total number of trees to be removed listed in the FFCP was 93 with a total of 38 trees damaged as a result of construction that were placed in the Save and Monitor category.

When these numbers are compared with the 8 specimen trees the PFCP stated would be removed and the 21 specimen trees it stated would be seriously damaged and placed in the Save and Monitor category, it is clear that there is a huge difference between the two plans in the absolute numbers of trees that will be removed and seriously impacted and, moreover, in the magnitude of the impacts of the proposed development on the McKenney Hills Forest.

We request that the Board consider if these substantial differences between the PFCP and the FFCP amount to such an error and omission concerning the impacts of the development plan on the forest as to require the Board's reconsideration of MCPS' FFCP.

Moreover, the belated revelation that an additional 57 trees of 6" to 23" DBH are slated to be cut down outside the LOD does not include any details of how MCPS will seek to mitigate the serious additional damage to the forest edge that such actions will certainly cause, including pushing that edge much further into the steep erosion-prone slopes to the east and west of the site. This will result in the proliferation of invasive plants along the forest edge, heat effects, erosion and the death of many more trees over time. These impacts have not been adequately considered in any of MCPS' plans submitted to date and amount to yet another example of the incompleteness of MCPS' FFCP.

We have consulted with a professional arborist about these impacts. His conclusion is that an inordinately large number of trees appear to be impacted outside the LOD. This unusually wide impact has been attributed to an insufficient attention to the use of advanced techniques for tree conservation. The FFCP should also have contained a detailed "Tree Save Plan" but given the amount of tree removal and damage that is planned under the FFCP it is difficult to imagine that sufficient

attention was given to this requirement. In its reconsideration of the FFCP, the Planning Board should require MCPS to detail, via a licensed arborist, the extent to which advanced techniques for tree conservation can be applied to significantly reduce the number of trees that need to be removed from outside the LOD in order to maximize the conservation of all such trees.

7). Category I Easement Issue

The Planning Board has required that MCPS grant to the Board a Conservation Deed Of Easement Category I to cover the forest retention areas delineated in the FFCP. This was a specific condition contained in the Board's approval of the FFCP in MCPB No. 11-19. However, according to Mr. Marc Pfefferle of M-NCPPC, as of the date of this document M-NCPPC has not received a signed copy of the requisite easement from MCPS. This is in complete contravention of the Board's requirements and constitutes another reason for reconsideration.

We have reviewed Montgomery County's Category I Conservation Easement language; MCPS' Conservation Deed Of Easement Category I; and the county's Category II Conservation Easement language. The intent of a Conservation Deed Of Easement Category I is stated, in part, as follows.

“WHEREAS, the purpose of this Easement is to protect existing and future forest cover; individual trees; streams and adjacent buffer areas, wetlands and other sensitive natural features; and to maintain existing natural conditions to protect plant habitats, water quality and wildlife; and

WHEREAS, the purpose includes preservation of the natural beauty of the Property subject to the easement and prevention of any alteration, construction or destruction that will tend to mar or detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the area of the Easement which efforts are consistent with the terms and conditions of the approved Plan and applicable law; and...”

Furthermore the easement language also includes the following requirements.

2. No living trees or shrubs (of any size or type) shall be cut down, removed or destroyed without prior written consent from the Planning Board. Diseased or hazardous trees or limbs may be removed

to prevent personal injury or property damage after reasonable notice to the Planning Board, unless.....removal of trees is undertaken pursuant to a forest management plan approved by the Planning Director.

3. No plant materials (including, but not limited to brush, saplings, undergrowth, or non-woody vegetation) shall be mowed or cut down, dug up, removed or destroyed unless removed pursuant to the terms and conditions of an approved forest management plan. Vegetation removal shall be limited to noxious weeds only, exotic and invasive weeds only, and protective measures must be taken to protect nearby trees and shrubs.

The strict prohibitions of this Category I easement language forbidding the removal of any living trees or shrubs reflects the intent to apply such protections to forested land that is to be kept in its natural state. MCPS' easement is being applied to forested land which, after implementation of the current FFCP, will be so damaged that we believe it will not qualify for a Category I Easement. To apply Category I Easement protection to land that is to undergo a significant amount of upheaval in the construction process only gives the illusion of such protection.

This is evidenced by the substantial amount of removal of specimen, significant and smaller trees from the site that is planned under the FFCP and the fact that a significant amount of construction is planned to take place within areas covered by MCPS' Category I Easement including the northeastern stairs, two bridges to be built in the floodplain, the sewer line to be constructed on the western slope and the large number of trees slated for removal around the perimeter of the site. It is clear that the result of all of the tree removals and construction activity planned for the areas to be covered by a Category I Easement will result in the significant environmental degradation of those areas. The end result of those activities will be to so degrade the forest intended for protection under the Category I Easement that we consider that the land covered by the easement will only qualify for a Conservation Easement, Category II.

We urge the Planning Board to consider the proposition that a Category I Easement has been inappropriately applied to the McKenney Hills Forest. This land is not really getting the protection it deserves. The Board is being misled into thinking that this land has been given true Category I protection when it clearly has not. If the Board finds this to be the case, it should require MCPS to modify its FFCP in ways that significantly reduce impacts to this high priority forest so that the requirements of the Category I Easement can be met.

Appendix
Reasonable Forest Conservation Options
Not Considered By MCPS And the Planning Board

1). Eliminate Access Points To The School Through The Forest

MCPS' FFCP shows 3 access points to the new McKenney Hills ES. One is from Hayden Drive to the entrance of the school. According to M-NCPPC's transportation study Hayden Drive can accommodate all the vehicular and pedestrian traffic to and from the school.

However, MCPS has also included 2 additional access points for foot traffic through the forest to the school entrance at the northeastern slope and at the southern end of the site. There are multiple problems with these access points because of their impacts on the forest.

The northeastern stairs are particularly problematic since almost the entire length of these stairs is within the stream valley buffer. Moreover, the bridge connecting the stairs with the opposite stream bank is inside the floodplain. The construction of both structures will require the removal of many trees and also has the potential to cause significant erosion of the stream and its banks. MCPS also plans to build another foot bridge over the eastern tributary at the southeastern portion of the site to replace an existing bridge. This bridge will also result in the removal of many trees on both the western and eastern banks.

In addition, MCPS has stated on two occasions to members of our group that to eliminate the possibility of injury from falling trees to children walking over the paths, bridges, and stairs in the forest, it will not hesitate to remove any tree along such routes that it considers to be a hazard. Such a policy would deliver yet another blow to the forest since damaged and dead trees are a normal part of a healthy natural forest, supplying habitat and food to birds and other forest animals.

In addition, some of the "dangerous" trees MCPS that are likely to be removed under this policy are on Legacy Open Space land nearby the southern access point. This could establish a particularly bad precedent since it communicates to other developers that even Legacy Open Space property cannot be protected by our county's Forest Conservation Law.

One option that could be implemented to avoid the impacts of the two access points on the forest would be to eliminate them. In addition, we have been told that students from the Capitol View neighborhood will likely be attending Oakland Terrance and not the McKenney Hills ES. If so, the southern access point is already completely unnecessary.

Certainly MCPS has not demonstrated that it would be unreasonable to eliminate these access points and they are not essential for children to walk to school. Therefore, foregoing them would not constitute an unreasonable hardship for MCPS since it would still be able to construct the school and provide access via Hayden Drive.

In its reconsideration of MCPS' FFCP, the Planning Board should either require the elimination of the two access points through the forest, the northeastern stairs and the northeastern bridge across the eastern tributary, or insist on a detailed demonstration from MCPS as to why this change would be unreasonable in terms of MCPS' program goals. The Planning Board should consider if replacement of the southeastern bridge should be allowed only after MCPS includes plans for this bridge in a revised FFCP and shows how it will construct it in a way that minimizes erosion and tree removal. The fact that the construction of such a bridge would take place within the floodplain also deserves special attention to ensure that it is constructed in a manner appropriate to those circumstances.

2). Reduce The LOD By Aligning It With The Existing Forest Edge

MCPS could have aligned the LOD with the existing forest edge and still constructed a school of the same size as the one currently planned. This could still be largely accomplished and would not constitute an unreasonable hardship because the site would still be able to accommodate the new school and all necessary facilities. There are two relatively minor changes to the project that would accomplish this which are detailed below.

a). Geothermal System

MCPS chose to site an extensive geothermal heating and cooling system under the playing field that required more space than the existing cleared area. This caused an expansion of the cleared area far into the existing forest. The geothermal system is not necessary for the efficient, effective and economical heating and cooling of the school. A more conventional HVAC system can be used instead that would be reasonably energy efficient and also most likely more economical. Alternatively, the geothermal system could be downsized and supplemented with more conventional but still efficient and economical electrical HVAC system.

One objection to such a substitution is that the HVAC system would have to be sited on the roof of the building and this would eliminate the space for the "green roof". However, mature trees and a healthy forest will do a much better job of infiltrating stormwater into the subsoil and preventing runoff and attendant erosion that any green roof ever could.

Of all the commercial and institutional buildings in the Washington area it is likely that 99% or more use conventional HVAC systems and thus it would not constitute a hardship for MCPS to also utilize such a system. The result of such a substitution, in whole or in part, is that there would likely be little need to expand the cleared area currently slated to be occupied by the geothermal system beyond that which is already cleared.

b) Recreation Areas

MCPS has also argued that the cleared field area must be expanded into the forest to accommodate playing fields. Although there may be an ideal amount of area for playing fields based on number of students, there is no minimum requirement and many schools have smaller play areas.

Moreover, many Montgomery County schools are located next to public parks and often use them for recreation. The McKenney Hills Park, immediately adjacent to the school was used by the previous school for recreation. The new school could also use the adjacent parkland for recreation. Students would only have to walk a short distance to get to the park along paved sidewalks that at no point traverse any streets. This could be allowed for older children, while the recreation needs of younger children could be met on play areas on school grounds.

The adjacent park has a playground, open field, paved basketball court, and tennis court. The school should utilize these existing facilities and avoid duplicating them, especially since that will enable MCPS to shrink the footprint of its site plan, thus avoiding forest encroachment.

Although MCPS considered this option it apparently felt free to reject it, due to the misapplication of the variance criteria, as detailed above. One objection to this option was that the park is not ADA compliant. However, no information was presented by MCPS to show that it could not be made ADA compliant. If slopes within the park present problems for access by disabled children, grade changes could be made to make access ADA compliant. It has also been stated that the park is not within line of sight of the school. However, adequate adult supervision of children playing in the park should eliminate this concern. It is also well known that the Parks Department is amenable to this use of the park for school recreation purposes.

We urge the Planning Board to require MCPS to determine how they can incorporate these options in the course of formulating a revised FFCP that meets the requirements of the Montgomery County Forest Conservation Law and preserves as much of the high priority McKenney Hills Forest as possible.

MAR 24 2011

ATTACHMENT 2



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

MCPB No. 11-19
Final Forest Conservation Plan No. MR2010720
Downcounty Consortium School #29 (McKenney Hills)
Date of Hearing: February 17, 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review forest conservation plan applications; and

WHEREAS, on December 8, 2010, Montgomery County Public Schools ("Applicant"), filed an application for approval of a final forest conservation plan on approximately 12.6 acres of land located at the terminus of Hayden Drive ("Property" or "Subject Property"), in the Kensington-Wheaton master plan area ("Master Plan"); and

WHEREAS, Applicant's final forest conservation plan application was designated Forest Conservation Plan No. MR2010720, Downcounty Consortium School #29 (McKenney Hills) ("Final Forest Conservation Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated February 7, 2011, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, the Planning Board held a public hearing on the Application (the "Hearing") on February 17, 2011; and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on February 17, 2011, the Planning Board approved the Final Forest Conservation Plan subject to certain conditions, on motion of Commissioner Wells-Harley; seconded by Commissioner Presley; with a vote of 4-0, Commissioners Carrier, Wells-Harley, Presley, and Dreyfuss voting in favor and Commissioner Alfandre being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions

Approved as to
Legal Sufficiency:

 3/3/11

8787 Georgia Avenue, NCFRC Legal Department 2010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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of Montgomery County Code Chapter 22A, the Planning Board approved Final Forest Conservation Plan No. MR2010720 on the Property, subject to the following conditions, which Applicant shall satisfy prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits and any land disturbing activities, including clearing or grading onsite:

1. As per Planning Board approval of the preliminary Forest Conservation Plan (MCPB Resolution No. 10-150), applicant must record a Category I conservation easement over all areas of forest retention.
2. Inspections consistent with Section 22A.00.01.10 of Forest Conservation Regulations.
3. A two year maintenance and management agreement must be approved and fully executed prior to MNCPPC accepting any on-site planting.
 - a. Maintenance and management agreement must include a three year monitoring plan for impacted trees.
 - b. A copy of the maintenance and management agreement must be kept on-site and given to MCPS maintenance staff to ensure compliance with conditions of the Final Forest Conservation Plan.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *Applicant has met all criteria required to grant a variance to Section 5-1607(c) of the Natural Resources Article, MD Ann. Code in accordance with Section 22A-21 of the Montgomery County Code.*

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance. The following Protected Trees require a variance for disturbance within their CRZ:

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 Forest Conservation Plan No. MR2010720
 Downcounty Consortium School #29 (McKenney Hills)
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Tree #	Species	D.B.H (inches)	Tree Condition	Ownership	% Impact on Trees to Remain	Status
2	WHITE PINE	32	FAIR	SCHOOL		REMOVE
18	YELLOW POPLAR	35	DEAD	SCHOOL		REMOVE
29	RED OAK	33	GOOD	SCHOOL		REMOVE
30A	YELLOW POPLAR	30	POOR	SCHOOL		REMOVE
31	YELLOW POPLAR	30	GOOD	SCHOOL		REMOVE
32	RED OAK	34	GOOD	SCHOOL		REMOVE
59	YELLOW POPLAR	42	GOOD	SCHOOL		REMOVE
77	YELLOW POPLAR	34	GOOD	CO-OWNED		REMOVE
78	BLACK LOCUST	37	POOR	CO-OWNED		REMOVE
79	BLACK LOCUST	31	FAIR	CO-OWNED		REMOVE
102	BLACK LOCUST	33	DEAD	PARK PROPERTY		REMOVE
302	YELLOW POPLAR	32	GOOD	SCHOOL		REMOVE
308	YELLOW POPLAR	42	GOOD	SCHOOL		REMOVE
310	WHITE OAK	41	GOOD	SCHOOL		REMOVE
403	WHITE OAK	38	DEAD	PARK PROPERTY		REMOVE
4	BLACK CHERRY	46	FAIR	SCHOOL		SAVE WITH PERMISSION TO REMOVE
5	YELLOW POPLAR	32	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
7	YELLOW POPLAR	34	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
44	YELLOW POPLAR	33	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
45	YELLOW POPLAR	30	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
46	YELLOW POPLAR	33	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
301	YELLOW POPLAR	37	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
315	YELLOW POPLAR	34	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE

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Tree #	Species	D.B.H (inches)	Tree Condition	Ownership	% Impact on Trees to Remain	Status
323	YELLOW POPLAR	36	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
402	RED OAK	39	FAIR/PO OR	PARK PROPERTY		SAVE WITH PERMISSION TO REMOVE
404	RED OAK	31	GOOD	PARK PROPERTY		SAVE WITH PERMISSION TO REMOVE
405	WHITE OAK	30	GOOD	PARK PROPERTY		SAVE WITH PERMISSION TO REMOVE
406	RED OAK	36	GOOD	PARK PROPERTY		SAVE WITH PERMISSION TO REMOVE
407	LINDEN	34	GOOD	PARK PROPERTY		SAVE WITH PERMISSION TO REMOVE
T515	YELLOW POPLAR	33	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
T517	YELLOW POPLAR	45	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
T573	YELLOW POPLAR	37	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
T574	YELLOW POPLAR	46	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
T576	YELLOW POPLAR	44	GOOD	SCHOOL		SAVE WITH PERMISSION TO REMOVE
11	YELLOW POPLAR	33	GOOD	SCHOOL	17% IMPACT	IMPACTS ONLY
16	YELLOW POPLAR	44	GPPD	SCHOOL	<1% IMPACT	IMPACTS ONLY
36	RED OAK	36	GOOD	SCHOOL	<1% IMPACT	IMPACTS ONLY
53	YELLOW POPLAR	39	GOOD	SCHOOL	9% IMPACT	IMPACTS ONLY
58	RED OAK	58	GOOD	PARK PROPERTY	16% IMPACT	IMPACTS ONLY
66	RED OAK	32	GOOD	SCHOOL	<1%	IMPACTS ONLY
67	PIN OAK	36	GOOD	SCHOOL	8% IMPACT	IMPACTS ONLY
68	WHITE OAK	34	GOOD	SCHOOL	22% IMPACT	IMPACTS ONLY
69	YELLOW POPLAR	38	GOOD	SCHOOL	14% IMPACT	IMPACTS ONLY
70	RED OAK	40	GOOD	SCHOOL	16% IMPACT	IMPACTS ONLY
103	YELLOW POPLAR	30	GOOD	PARK PROPERTY	7% IMPACT	IMPACTS ONLY

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Tree #	Species	D.B.H (inches)	Tree Condition	Ownership	% Impact on Trees to Remain	Status
106	YELLOW POPLAR	30	GOOD	PARK PROPERTY	2% IMPACT	IMPACTS ONLY
115	WHITE OAK	34	GOOD	SCHOOL	14% IMPACT	IMPACTS ONLY
118	YELLOW POPLAR	46	GOOD	SCHOOL	7% IMPACT	IMPACTS ONLY
142	BLACK LOCUST	37	GOOD	PARK PROPERTY	<1% IMPACT	IMPACTS ONLY
322	RED OAK	46	GOOD	SCHOOL	7% IMPACT	IMPACTS ONLY
401	RED OAK	41	GOOD	PARK PROPERTY	<1% IMPACT	IMPACTS ONLY

In accordance with Section 22A-21(e), the Board finds that the Applicant has met all of the following criteria required to grant the variance.

- a. *Will not 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. The Applicant has made considerable efforts to minimize impacts to the Protected Trees by restricting limits of disturbance as more specifically detailed by the following steps:

- a) Using a compact building form that works with the natural landform. The proposed school is a three-storey building that takes advantage of the natural grade in the design of outdoor spaces associated with the building and the needed ingress/egress points.
- b) Reducing the parking constructed to support the school by working with the adjacent Glenwood Recreation Club to share an existing parking lot on the recreation club's property.
- c) Minimizing outdoor recreation facilities associated with the school. An optimal elementary school facility incorporates two softball fields (with a 200' radius) and one soccer field (sized 150' x 240') superimposed over them. This school proposes only one multipurpose field (sized 85' x 160'), with a single backstop (with a 80' radius).
- d) Using facilities provided to meet multiple functions. For example, the basketball courts also serve as required turnarounds for fire and rescue equipment.

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- e) Field locating the stormwater management outfall and new sewer line. The exact placement of the necessary outfall and conveyance was determined in the field to minimize tree loss and the design takes advantage of the natural landform by using an existing gully.
- f) Using an arborist to provide detailed and specific tree protection measures to retain trees impacted by development.
- g) Developing a detailed planting plan to replant areas of clearing, where possible, and minimize further tree loss due to the creation of new forest edges.
- h) Using construction techniques that minimize damage to tree critical root zones.

Any development of this site would have required significant restrictions on the limits of disturbance, similar to what is being required of the Applicant. This site was previously developed as a public elementary school, and it is being redeveloped for the same use, albeit for many more students without significant enlargement of the limits of disturbance.

b 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 which are the result of actions by the Applicant. The inherent site characteristics of stream valley buffer and steep slopes with highly erodible soils severely limit the development footprint of the school. The Board finds that the Applicant has dealt with the site conditions by using non-standard engineering and construction techniques to minimize impact to the Protected Trees.

c Does not arise 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 site design and layout on the Subject Property and not a result of land or building use on a neighboring property.

d. Will not violate Site 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. While some trees are proposed to be removed within the stream valley buffer, the site currently

has no stormwater management controls on it. On balance, development of this site should be a positive contribution to water quality, even with the loss of trees.

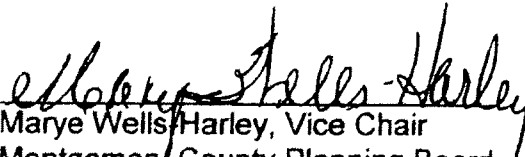
- 2. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and Forest Conservation Regulations Section 1.09(B) (COMCOR 22a.00.01.09B).*

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is MAR 24 2011 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss voting in favor of the motion, and with Commissioner Presley absent, at its regular meeting held on Thursday, March 10, 2011, in Silver Spring, Maryland.


Marye Wells-Harley, Vice Chair
Montgomery County Planning Board

Circuit Court for
MONTGOMERY COUNTY
Clerk of the Court,
LORETTA E. KNIGHT
50 MARYLAND AVENUE
ROCKVILLE, MD 20850-2393
(240) 777-9400

*** NO CHARGE ***

EASEMENT	AMOUNT
IMP FD SURE	0.00
RECORDING FEE	0.00
TR TAX STATE	0.00
TOTAL CHARGED:	0.00

*** NO CHARGE ***

Cashiers: YHM Reg # M008
Rcpt # 999999
Date: Mar 31, 2011 Time: 04:09 pm

CONSERVATION DEED OF EASEMENT ("Easement")

Category I

DEFINITIONS

Grantor: Fee simple owner of real property subject to a:

- (i) Plan approval conditioned on compliance with a FCP, whether or not the applicant is the fee simple owner of the property; or
- (ii) Plan approval conditioned on compliance with a conservation easement agreement (issued pursuant to Chapter 50 or 59, Montgomery County Code).

Grantee: Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Commission").

Property: Parcel P234 on tax assessment grid HP62 and recorded among the Land Records of Montgomery County, Maryland at Liber 1286 folio 338.

Planning Board: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

Planning Director: Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, Montgomery County, or the Director's designee.

Plan: Mandatory referral reviewed pursuant to Article 28 of Maryland State Code Annotated; approved major utility construction (as defined by Washington Suburban Sanitary Commission's regulations).

Forest Conservation Plan ("FCP"): Forest Conservation Plan No. 2010720 approved by the Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code.

Exhibit A:

FCP approved as a condition of receiving any of the Plan approval noted above.

Exhibit B:

Description and sketch of the easement over and across property to be developed.

WITNESSETH

The Easement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor has obtained authority to develop pursuant to a Plan in accordance with Montgomery County, Maryland laws; and

Grantor Initials



WHEREAS, the Planning Board or other approving authority approved Grantor's Plan conditioned upon a requirement that development occur in strict accordance with an FCP approved by the Planning Board after full review of the FCP pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); Chapter 50 (Subdivision Regulations); and/or Chapter 59 (Zoning Ordinance); and/or

WHEREAS, the Planning Board approved Grantor's Plan conditioned upon Grantor subjecting the property to be developed ("Property") or a portion of the Property to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivision Regulations), and/or Chapter 59 (Zoning Ordinance); and

WHEREAS, the location of this Easement is as shown on Exhibit A attached hereto and incorporated by reference into the terms of this Easement; and

WHEREAS, the purpose of this Easement is to protect existing and future forest cover; individual trees; streams and adjacent buffer areas, wetlands and other sensitive natural features; and to maintain existing natural conditions to protect plant habitats, water quality and wildlife; and

WHEREAS, the purpose includes preservation of the natural beauty of the Property subject to the easement and prevention of any alteration, construction or destruction that will tend to mar or detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the area of the Easement which efforts are consistent with the terms and conditions of the approved Plan and applicable law; and

WHEREAS, the Grantor and Grantee (collectively referred to as the "Parties") intend for the conditions and covenants contained in this Easement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Grantor intends that a servitude be placed upon the Property to create a conservation benefit in favor of the Planning Board.

NOW, THEREFORE, the Grantor has executed this Easement for no monetary consideration but for the purpose of ensuring compliance with development standards imposed in accordance with Montgomery County law as a condition of development approval. The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an easement on the Property of the size and location described in Exhibit B attached hereto and incorporated by reference into the terms of this Easement, and further described on the applicable record plat(s), of the nature and character described herein. This Easement constitutes a covenant real running with the title of the land, and is granted to preserve, protect and maintain the general topography

Grantor Initials



and natural character of the land. The Grantor does hereby waive any challenge to the validity of this easement whether or not shown on a plat. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the Grantor.

2. No living trees or shrubs (of any size or type) shall be cut down, removed or destroyed without prior written consent from the Planning Board. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the Planning Board, unless such notice is not practical in an emergency situation or removal of trees is undertaken pursuant to a forest management plan approved by the Planning Director.

3. No plant materials (including, but not limited to brush, saplings, undergrowth, or non-woody vegetation) shall be mowed or cut down, dug up, removed or destroyed unless removed pursuant to the terms and conditions of an approved forest management plan. Noxious weeds (limited to those weeds defined as "noxious" under Maryland State or Montgomery County laws or regulations and "exotic or invasive plants" in the Montgomery County *Trees Technical Manual*) may be removed as required by law, but the method of removal must be consistent with the limitations contained within this Easement. Vegetation removal shall be limited to noxious weeds only, exotic and invasive weeds only, and protective measures must be taken to protect nearby trees and shrubs.

4. No mowing, agricultural activities, or cultivation shall occur. Grantor may replace dead trees or undergrowth provided that new plantings are characteristic of trees or undergrowth native to Maryland.

5. Nothing in this Easement precludes activities necessary to implement an afforestation or reforestation efforts pursued pursuant to an approved forest conservation plan or maintenance agreement implemented under Chapters 19 or 22A of the Montgomery County Code.

6. The following activities may not occur at any time within the Easement area:

- a. Construction, excavation or grading (except for afforestation and reforestation efforts conducted in compliance with an approved forest conservation plan).
- b. Erection of any building or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls.
- c. Construction of any roadway or private drive.

Grantor Initials



- d. Activities which in any way could alter or interfere with the natural ground cover or drainage (including alteration of stream channels, stream currents or stream flow).
- e. Industrial or commercial activities.
- f. Timber cutting, unless conducted pursuant to an approved forest management plan approved by the Planning Director and the Department of Natural Resources for the State of Maryland.
- g. Location of any component of a septic system or wells.
- h. Excavation, dredging, or removal of loam, gravel, soil, rock, sand and other materials.
- i. Diking, dredging, filling or removal of wetlands.
- j. Pasturing of livestock (including horses) and storage of manure or any other effluent.
- k. Alteration of stream.

7. Nothing in this Easement shall prevent construction or maintenance of stormwater structures and/or facilities or other utilities, including, but not limited to water and sewer lines, on, over, or under the easement area, if said structures, facilities or utilities are (i) required to implement the Plan, (ii) shown on the approved FCP, and (iii) approved by the appropriate governing bodies or agencies in accordance with applicable laws and regulations.

8. No dumping of unsightly or offensive material, including trash, ashes, sawdust or grass clippings shall occur. Natural biodegradable materials may be allowed in a properly located, designed, managed and maintained compost pile, provided the activity does not damage adjacent trees. Upon prior written approval of the Planning Director, suitable heavy fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is covered by arable soil or humus and properly stabilized.

9. Fences consistent with the purposes of the Easement may be erected within the Easement area if shown on the FCP or only after written approval from the Planning Director.

10. Unpaved paths or trails consistent with the purposes of the Easement may be created only after written approval from the Planning Director. Pursuant to Montgomery County Planning Board Resolution No. 11-19 of the Forest conservation Plan No. MR 10720-MCPS-01, the effective date of which is 3/24/2011, and the Category I Conservation Easement Area shown

Grantor Initials



on the attached Exhibits A and B, this Easement Agreement allows for the existing dirt path through the Easement area to remain and to be enhanced through the use of natural materials (e.g. mulch) as necessary to prevent erosion and improve all weather utility, subject to approval by the M-NCPPC inspector.

11. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the land within the Easement.

12. Grantor authorizes Planning Board representatives to enter the Property and easement area at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors or assigns have complied with the restrictions, conditions, and easements established herein. Prior to entry, authorized representatives must check in at the main office of the school and display identification at all times. This Easement does not convey to the general public the right to enter the Property or easement area for any purpose. This Easement does not restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by applicable community or homeowner association covenants and by-laws.

13. Grantor agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any possessory or equitable interest in the Property is conveyed.

14. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this Easement.

15. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Easement, the Planning Board shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to its original natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

Grantor Initials



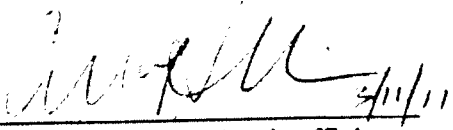
16. All written notices required by this Easement shall be sent as follows:

Planning Director, M-NCPPC,
8787 Georgia Avenue
Silver Spring, Maryland 20910

Board of Education of Montgomery County
850 Hungerford Drive
Rockville, Maryland 20850
Attention: Director of Facilities Management

TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

[SIGNATURE PAGE FOLLOWS]


Approved for legal sufficiency
Office of the General Counsel, MNCPPC

Grantor Initials

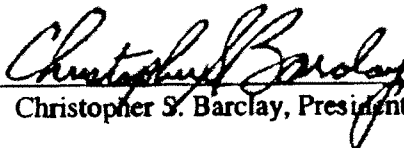


IN WITNESS WHEREOF, Grantor has caused to be executed this Easement to be signed by itself or its duly authorized officer as of this 29 day of March, 2011.

WITNESS:

GRANTOR:
The Board of Education
of Montgomery County, Maryland


Jerry D. Weast, Secretary

By: 
Christopher S. Barclay, President

Approved by the Board of Education of Montgomery County


Jerry D. Weast, Superintendent of Schools

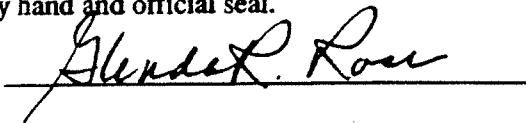
STATE OF MARYLAND

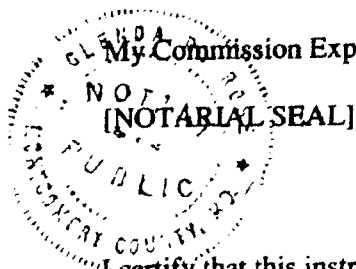
COUNTY OF Montgomery to wit:

I HEREBY CERTIFY that on this 29th day of March, 2011, before me, a Notary Public in and for the State and County aforesaid, personally appeared Christopher S. Barclay, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

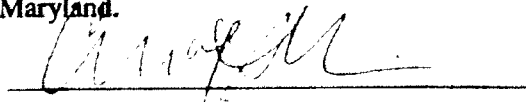
My Commission Expires: 8/16/14


Glenda R. Rose



ATTORNEY CERTIFICATION

I certify that this instrument was prepared under the supervision of the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.



Grantor Initials CSB

Exhibit A-1

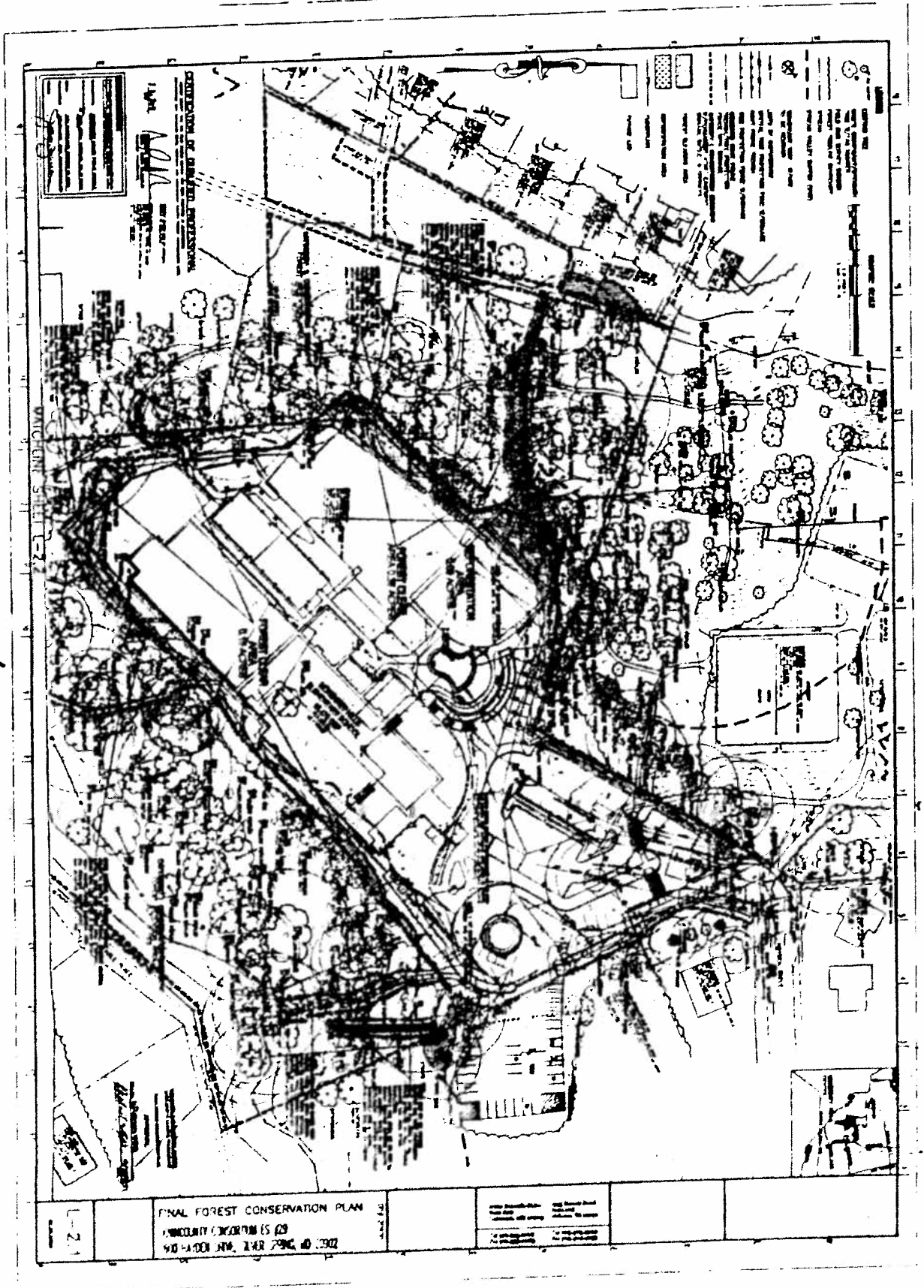


Exhibit A-5

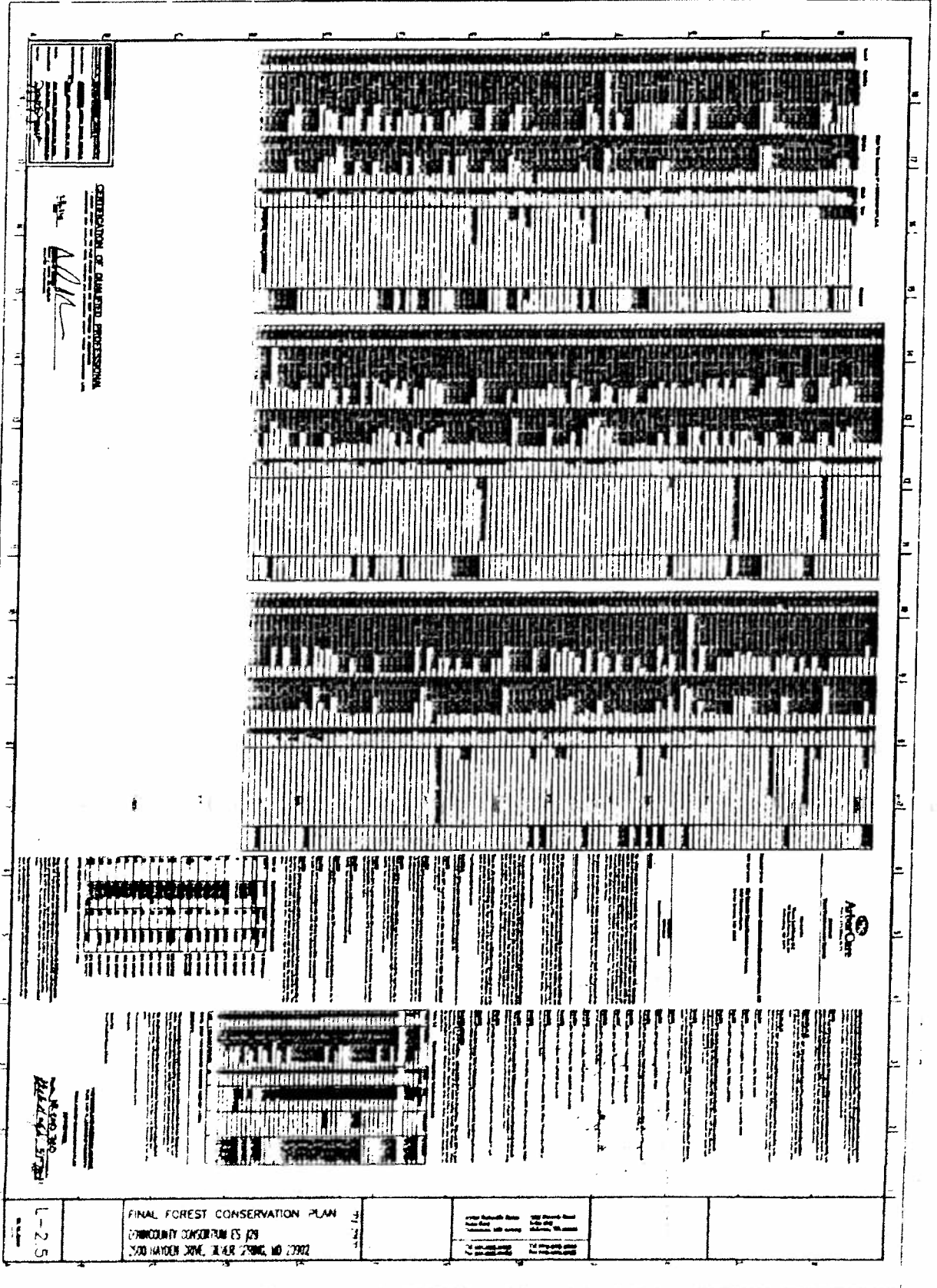


EXHIBIT "B"

DESCRIPTION OF A CATEGORY I FOREST CONSERVATION EASEMENT

**OVER AND ACROSS THE PROPERTY
OF**

**THE BOARD OF EDUCATION OF MONTGOMERY COUNTY
LIBER 1286 FOLIO 338**

Being five a pieces or parcels of land hereinafter described in, through, over and across the property acquired by the owner from Robert L. McKeever and Regina I. McKeever, his wife, by deed dated August 22, 1949, as recorded among the Land Records of Montgomery County, Maryland in Liber 1286 at Folio 338, being more particularly described as follows:

PART ONE

Beginning for aforesaid piece or parcel of land at a point on the 18th or North 02°11'00" West 677.40 foot line of said Liber 1286 at Folio 338, said point being 31.65 feet from a concrete monument found at the end of said deed line, said point of beginning having coordinate values of N 492342.0999 feet E 1296543.2010 feet , and thence running in the Meridian of the North American Datum 1983 as corrected in 1991 adjustment as now surveyed, and running over and across said Liber 1286 at Folio 338 the following 21 courses and distances

1. South 11°48'13" East 114.00 feet to a point, thence
2. South 57°50'05" East 8.00 feet to a point, thence
3. South 00°29'08" East 23.34 feet to a point, thence
4. South 46°46'48" East 23.86 feet to a point, thence
5. South 83°40'14" East 31.87 feet to a point, thence
6. South 42°42'57" East 31.00 feet to a point, thence
7. North 51°15'34" East 21.00 feet to a point, thence
8. North 65°05'48" East 41.00 feet to a point, thence
9. North 47°44'42" East 41.00 feet to a point, thence
10. North 09°48'14" East 11.00 feet to a point, thence
11. North 44°14'07" East 68.00 feet to a point, thence
12. North 48°22'53" East 68.00 feet to a point, thence
13. North 60°02'39" East 31.00 feet to a point, thence
14. North 47°51'10" East 41.00 feet to a point, thence
15. North 47°07'42" East 97.00 feet to a point, thence
16. South 42°52'18" East 6.00 feet to a point, thence

17. North 47°07'42" East 33.00 feet to a point, thence
18. North 69°00'59" East 33.00 feet to a point, thence
19. North 44°40'16" East 43.00 feet to a point, thence
20. North 53°39'32" East 88.00 feet to a point, thence
21. North 76°24'08" East 36.34 feet to a point on the 7th line of said Liber 1286 at Folio 338, thence running with part of said 7th deed line
22. South 22°50'38" East 250.66 feet to a point, thence leaving said 7th deed line and running over and across said Liber 1286 at Folio 338 the following five courses and distances
23. South 77°29'39" West 124.98 feet to a point, thence
24. South 43°18'13" West 367.99 feet to a point, thence
25. South 43°43'45" West 300.96 feet to a point, thence
26. South 43°43'45" West 130.51 feet to the point, thence
27. South 02°07'06" West 10.08 feet to a point on the 17th line of said Liber 1286 at Folio 338, thence running with part of said 17th deed line
28. South 43°29'12" West 11.96 feet to a point at the beginning of said 18th deed line, thence with part of said 18th deed line
29. North 02°10'09" West 645.75 feet to the point of beginning, containing 214,192.8921 square feet or 4.9172 acres of land.

PART TWO

Beginning for aforesaid piece or parcel of land at a concrete monument found at the beginning of the 15th line of said Liber 1286 at Folio 338, said point of beginning having coordinate values of N 491758.0565 feet E 1296749.2130 feet, and thence running in the Meridian of the North American Datum 1983 as corrected in 1991 adjustment as now surveyed, and running with part of said 15th deed line

1. North 58°43'28" West 85.63 feet to a point, thence leaving said 15th deed line and running over and across said Liber 1286 at Folio 338
2. North 43°43'45" East 259.81 feet to a point on the 10th line of said Liber 1286 at Folio 338, thence running with part said 10th deed line
3. South 45°13'28" East 58.00 feet to a point on the 11th line of said Liber 1286 at Folio 338, thence running with part of said 11th deed line
4. South 16°16'32" West 16.50 feet to a point, thence running over and across said Liber 1286 at Folio 338 the following five courses and distances

5. North 73°14'01" West 51.15 feet to a point, thence
6. South 50°45'59" West 52.32 feet to a point, thence
7. South 39°14'01" East 20.00 feet to a point, thence
8. North 50°45'59" East 41.68 feet to a point, thence
9. South 73°14'01" East 40.68 feet to a point on said 11th deed line, thence running with part of said 11th deed line and with 12th through 14th lines of said Liber 1286 at Folio 338
10. South 16°16'32" West 40.00 feet to a point, thence
11. South 31°16'32" West 30.00 feet to a point, thence
12. South 39°16'32" West 40.00 feet to a point, thence
13. South 54°16'32" West 105.00 feet to the point of beginning, containing 20567.0516 square feet or 0.4722 acres of land.

PART THREE

Beginning for aforesaid piece or parcel of land at a concrete monument found at the beginning of the 1st line of said Liber 1286 at Folio 338, said point of beginning having coordinate values of N 492373.7305 feet E 1296542.0029 feet, and thence running in the Meridian of the North American Datum 1983 as corrected in 1991 adjustment as now surveyed, and running with part of said 1st deed line

1. South 89°32'22" West 211.39 feet to a point, thence leaving said 1st deed line and running over and across Liber 1286 at Folio 338 the following three courses and distances.
2. North 23°20'28" East 118.61 feet to a point, thence
3. North 15°22'52" East 272.26 feet to a point, thence
4. North 21°00'42" East 35.01 feet to a point on the 5th line of said Liber 1286 at Folio 338, thence running with part of said 5th deed line
5. North 70°01'38" East 382.00 feet to a point, thence leaving said 5th deed line and running over and across said Liber 1286 at Folio 338 the following nine courses and distances
6. North 80°16'49" West 84.00 feet to a point, thence
7. North 88°44'02" West 56.00 feet to a point, thence
8. South 47°49'46" West 47.59 feet to a point, thence
9. South 21°53'23" West 30.00 feet to a point, thence
10. South 07°22'20" East 27.54 feet to a point, thence
11. South 47°02'58" West 165.27 feet to a point, thence

12. South 20°23'30" West 15.00 feet to a point, thence
13. South 40°59'23" East 42.00 feet to a point, thence
14. South 02°10'09" East 42.00 feet to the point of beginning, containing 78688.6808 square feet or 1.8064 acres of land.

PART FOUR

Beginning for aforesaid piece or parcel of land a iron pipe found at the beginning of the 3rd line of said Liber 1286 at Folio 338, said point of beginning having coordinate value of N 492776.1193 feet E 1296462.3754 feet, and thence running in the Meridian of the North American Datum 1983 as corrected in 1991 adjustment as now surveyed, thence running with part of said 3rd deed line

1. South 70°46'18" East 36.18 feet to a point, thence leaving said 3rd deed line and running over and across said Liber 1286 at Folio 338 the following three courses and distances
2. South 15°22'52" West 184.22 feet to a point, thence
3. North 89°32'15" West 66.02 feet to a point, thence
4. North 75°16'11" West 22.95 feet to a point on the 2nd line of said Liber 1286 at Folio 338, thence running with part of said 2nd deed line
5. North 29°19'42" East 210.10 feet to the point of beginning, containing 11919.1782 square Feet or 0.2736 acres of land

PART FIVE

Beginning for aforesaid piece or parcel of land at a iron pipe found at the beginning of the 2nd line of said Liber 1286 at Folio 338, said point of beginning having coordinate values of N 492371.0556 feet E 1296209.2937 feet, and thence running in the Meridian of the North American Datum 1983 as corrected in 1991 adjustment as now surveyed, and running with part of said 2nd deed line

1. North 29°19'42" East 93.00 feet to a point, thence leaving said 2nd deed line and running over and across said Liber 1286 at Folio 338 the following four courses and distances
2. South 60°40'18" East 28.00 feet to a point, thence
3. North 29°19'42" East 45.00 feet to a point, thence
4. South 89°32'15" East 61.61 feet to a point, thence
5. South 23°20'28" West 114.61 feet to a point on the 1st line said Liber 1286 at Folio 338, thence running with part of said 1st deed line
6. South 89°32'32" West 108.21 feet to the point of beginning, containing 9652.3280 square Feet or 0.2216 acres of land.

Parcel I.D. NO. 13-00954013

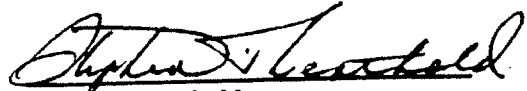
RECORD LEGAL DESCRIPTION: TAX MAP IIP 562 PARCEL 234

STREET ADDRESS OF PARCEL: 2600 HAYDEN DRIVE

**NAME AND ADDRESS OF PARTIES TO
INSTRUMENT AND THEIR INTEREST:**

**THE BOARD OF EDUCATION OF
MONTGOMERY COUNTY
850 HUNGERFORD DRIVE
ROCKVILLE, MARYLAND 20850**

The licensee below was in responsible charge over the preparation of this metes and bounds description and the surveying work reflects in it, all compliance with the requirements set forth on COMAR Title 9, Subtitle 13, Chapter 6, Regulation 12 of the minimum standards and practice for Land Surveyors.



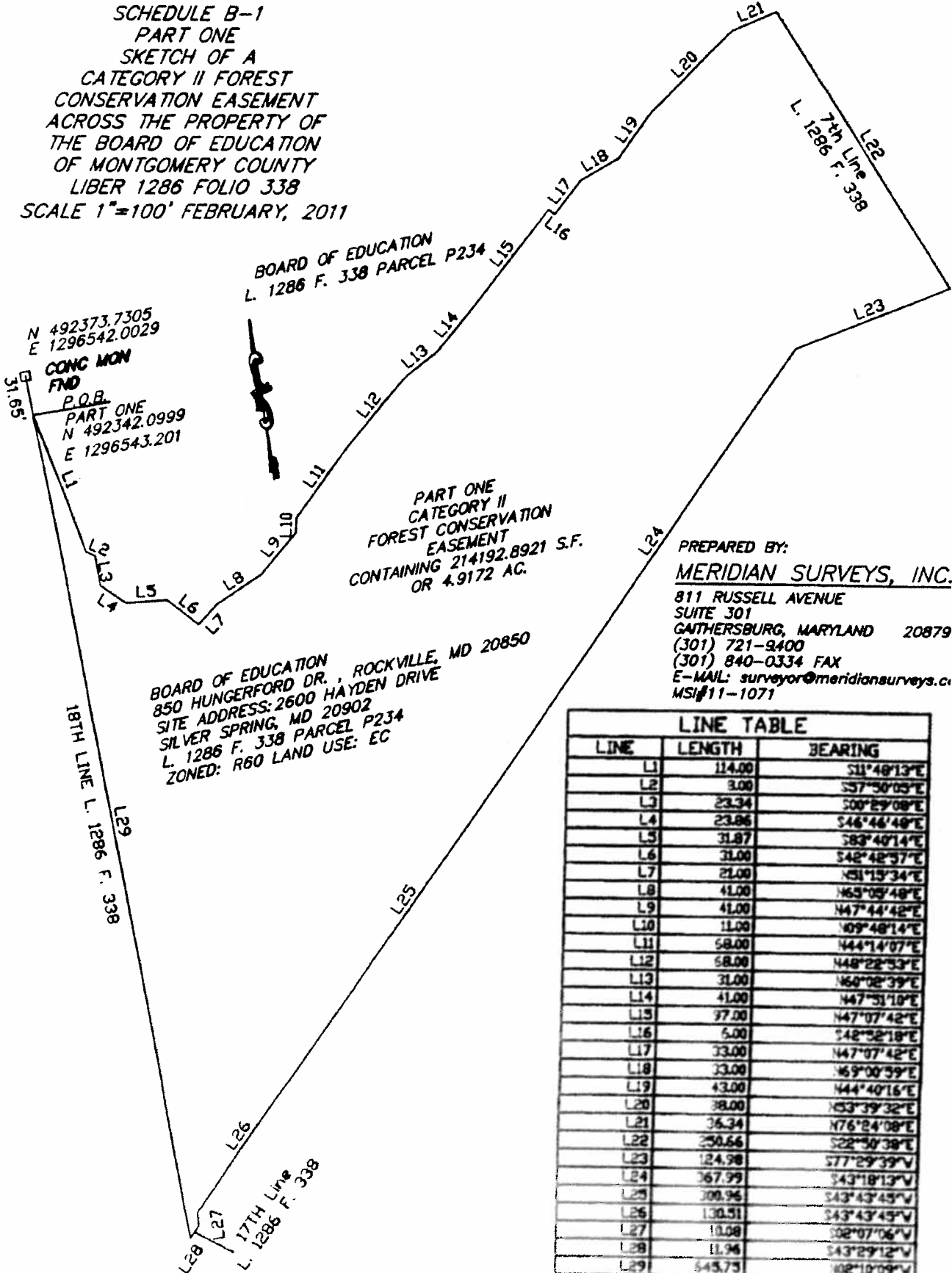
**Stephen Wenthold
Professional Land Surveyor
Maryland Reg No. 10767**



Downcounty Consortium ES #29

11-1071

SCHEDULE B-1
 PART ONE
 SKETCH OF A
 CATEGORY II FOREST
 CONSERVATION EASEMENT
 ACROSS THE PROPERTY OF
 THE BOARD OF EDUCATION
 OF MONTGOMERY COUNTY
 LIBER 1286 FOLIO 338
 SCALE 1"=100' FEBRUARY, 2011



N 492373.7305
 E 1296542.0029
CONC MON FND
 P.O.B.
 PART ONE
 N 492342.0999
 E 1296543.201

BOARD OF EDUCATION
 L. 1286 F. 338 PARCEL P234

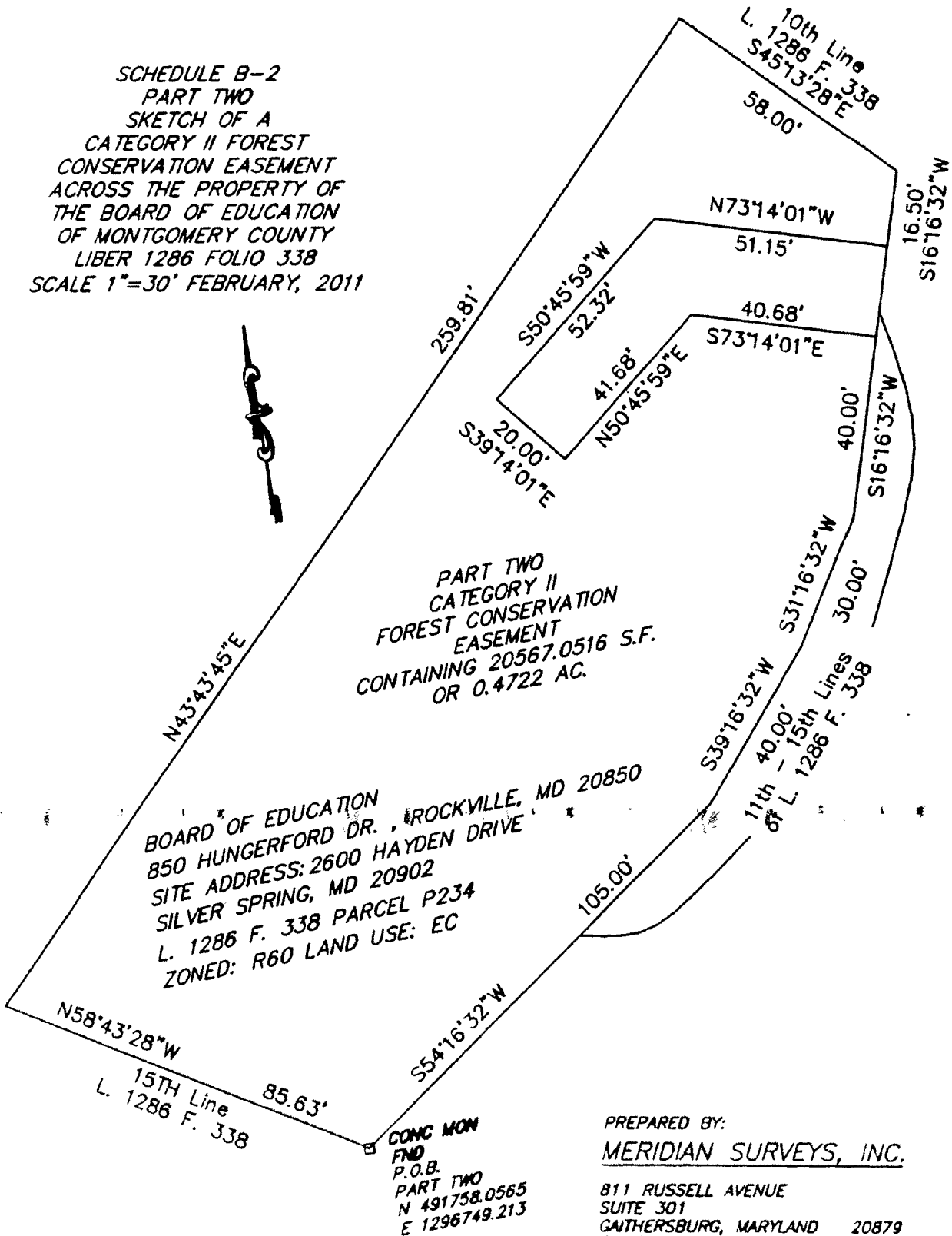
PART ONE
 CATEGORY II
 FOREST CONSERVATION
 EASEMENT
 CONTAINING 214192.8921 S.F.
 OR 4.9172 AC.

BOARD OF EDUCATION
 850 HUNGERFORD DR., ROCKVILLE, MD 20850
 SITE ADDRESS: 2600 HAYDEN DRIVE
 SILVER SPRING, MD 20902
 L. 1286 F. 338 PARCEL P234
 ZONED: R60 LAND USE: EC

PREPARED BY:
MERIDIAN SURVEYS, INC.
 811 RUSSELL AVENUE
 SUITE 301
 GAITHERSBURG, MARYLAND 20879
 (301) 721-9400
 (301) 840-0334 FAX
 E-MAIL: surveyor@meridiansurveys.com
 MS#11-1071

LINE TABLE		
LINE	LENGTH	BEARING
L1	114.00	S11°48'13"E
L2	3.00	S37°50'05"E
L3	23.34	S00°29'08"E
L4	23.86	S46°44'48"E
L5	31.87	S83°40'14"E
L6	31.00	S42°42'57"E
L7	21.00	N51°15'34"E
L8	41.00	N63°05'48"E
L9	41.00	N47°44'42"E
L10	11.00	N09°48'14"E
L11	58.00	N44°14'07"E
L12	58.00	N48°22'53"E
L13	31.00	N60°02'39"E
L14	41.00	N47°31'10"E
L15	37.00	N47°07'42"E
L16	5.00	S42°52'18"E
L17	33.00	N47°07'42"E
L18	33.00	N69°00'39"E
L19	43.00	N44°40'16"E
L20	38.00	N53°39'32"E
L21	36.34	N76°24'08"E
L22	250.66	S22°50'38"E
L23	124.98	S77°29'39"V
L24	367.99	S43°18'13"V
L25	308.96	S43°43'45"V
L26	130.51	S43°43'45"V
L27	10.08	S02°07'06"V
L28	11.96	S43°29'12"V
L29	545.73	N02°10'09"V

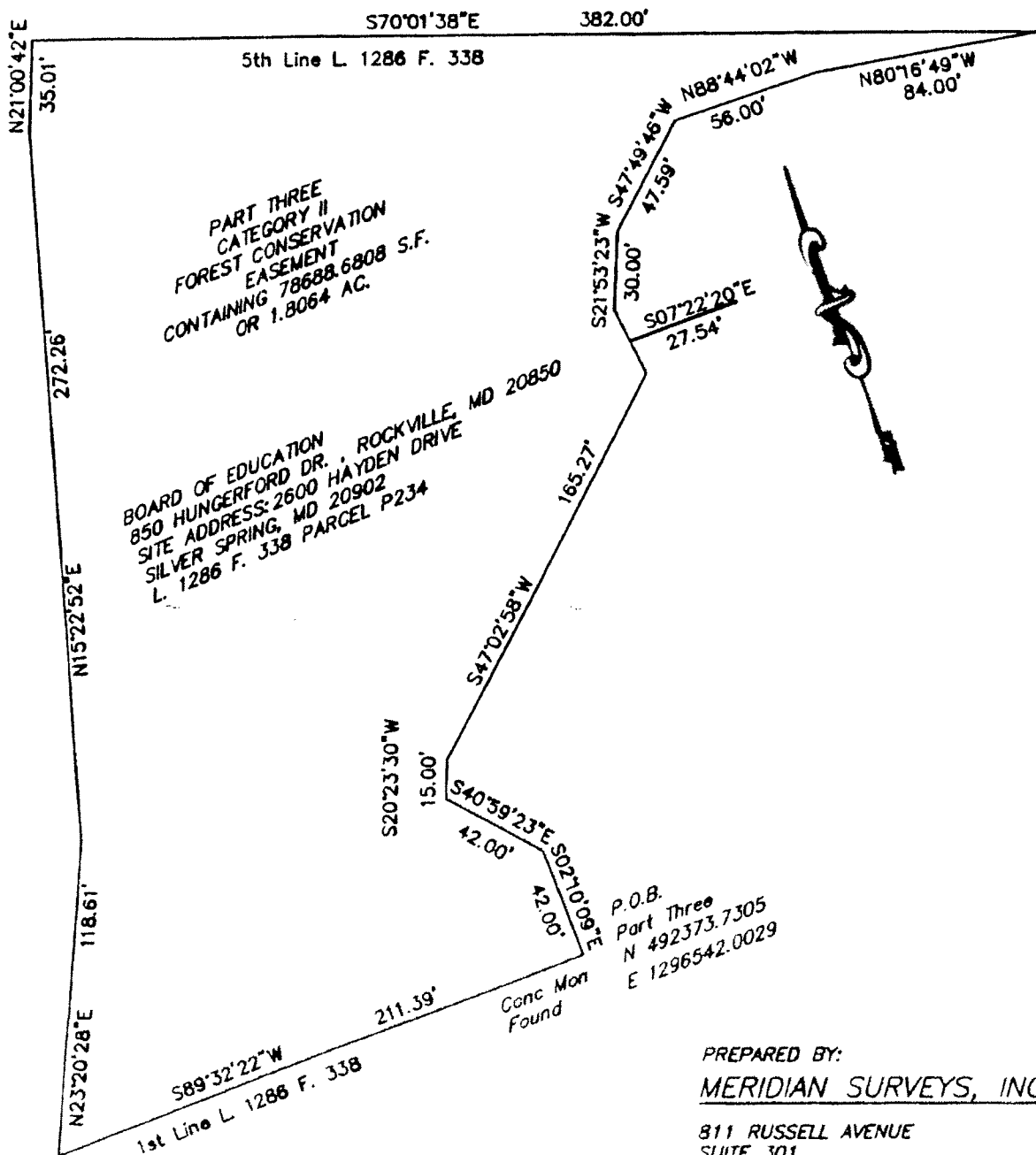
SCHEDULE B-2
PART TWO
SKETCH OF A
CATEGORY II FOREST
CONSERVATION EASEMENT
ACROSS THE PROPERTY OF
THE BOARD OF EDUCATION
OF MONTGOMERY COUNTY
LIBER 1286 FOLIO 338
SCALE 1"=30' FEBRUARY, 2011



PREPARED BY:
MERIDIAN SURVEYS, INC.

811 RUSSELL AVENUE
SUITE 301
GAITHERSBURG, MARYLAND 20879
(301) 721-9400
(301) 840-0334 FAX
E-MAIL: surveyor@meridiansurveys.com
MSI#11-1071

SCHEDULE B-3
 PART THREE
 SKETCH OF A
 CATEGORY II FOREST
 CONSERVATION EASEMENT
 ACROSS THE PROPERTY OF
 THE BOARD OF EDUCATION
 OF MONTGOMERY COUNTY
 LIBER 1286 FOLIO 338
 SCALE 1"=60' FEBRUARY, 2011



PREPARED BY:
MERIDIAN SURVEYS, INC.

811 RUSSELL AVENUE
 SUITE 301
 GAITHERSBURG, MARYLAND 20879
 (301) 721-9400
 (301) 840-0334 FAX
 E-MAIL: surveyor@meridiansurveys.com
 MSI#11-1071

SCHEDULE B-4
PARTS FOUR
SKETCH OF A
CATEGORY II FOREST CONSERVATION
EASEMENT ACROSS THE PROPERTY OF
THE BOARD OF EDUCATION OF
MONTGOMERY COUNTY
LIBER 1286 FOLIO 338
SCALE 1"=30' FEBRUARY, 2011

P.O.B.
PART FOUR
N 482778.1193
E 1298462.3754

3rd Line L. 1286 F. 338
S70°46'18"E

36.18'

184.22'

210.10'

PART FOUR
CATEGORY II
FOREST CONSERVATION
EASEMENT
CONTAINING 11919.1782 S.F.
OR 0.2736 AC.

S15°22'52"W

N29°19'42"E

66.02'

22.95'

N89°32'15"W

N75°16'11"W

2nd Line L. 1286 F. 338

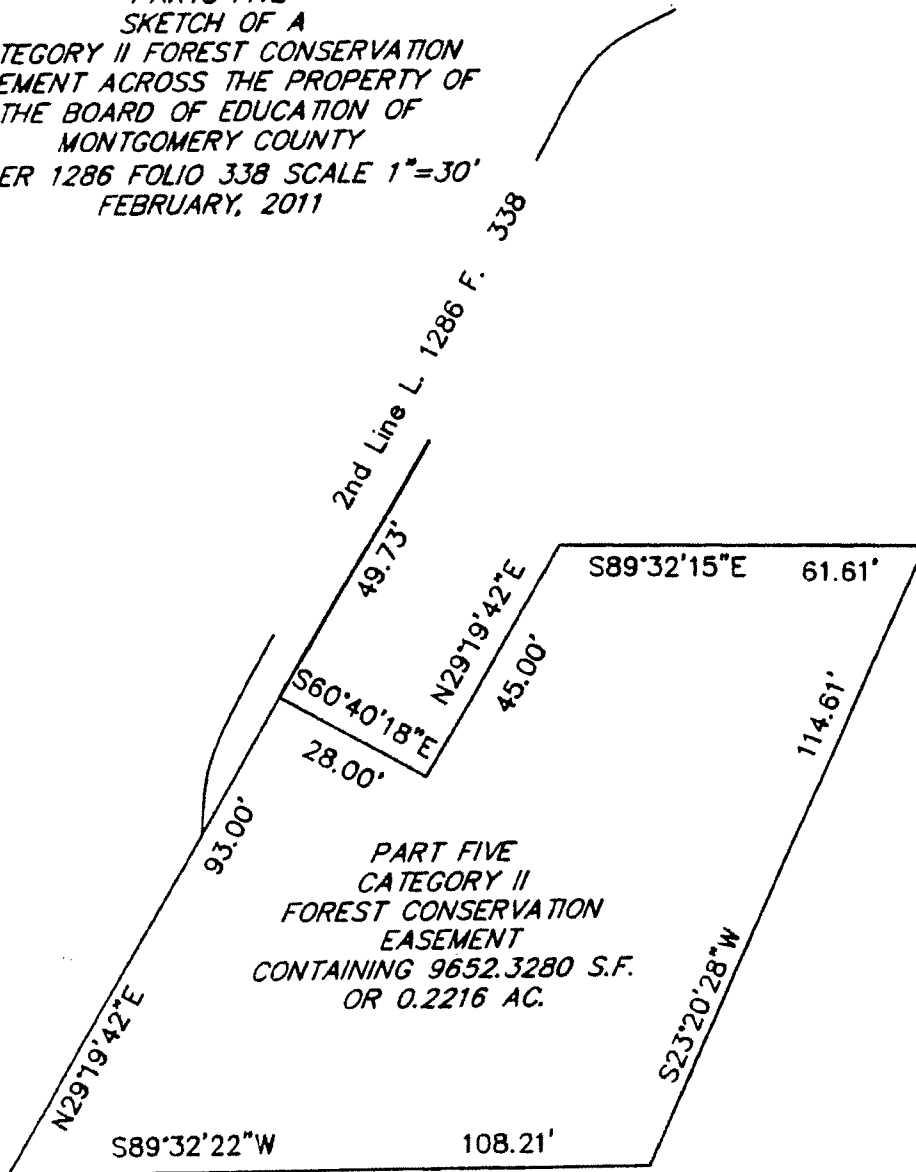
49.73'



PREPARED BY:
MERIDIAN SURVEYS, INC.

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SCHEDULE B-5
PARTS FIVE
SKETCH OF A
CATEGORY II FOREST CONSERVATION
EASEMENT ACROSS THE PROPERTY OF
THE BOARD OF EDUCATION OF
MONTGOMERY COUNTY
LIBER 1286 FOLIO 338 SCALE 1"=30'
FEBRUARY, 2011



P.O.B.
PART FIVE
N 492371.0556
E 1298209.2937

1st Line L. 1286 F. 338

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