



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

Item # 6

MCPB DATE: July 7, 2011

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Mark Pfefferle, Acting Chief, DARC *MP*

DATE: June 23, 2011

REVIEW TYPE: Forest Conservation Plan Amendment

PLAN NAME: Equipment Maintenance and Operations Center Shady Grove ("EMOC")

PLAN NUMBER: MR 2010709

PLAN TYPE: Forest Conservation Plan

REVIEW BASIS: Forest Conservation Law, Chapter 22A of the County Code

LOCATION: Along Crabbs Branch Way near Shady Grove Road and I-370, Gaithersburg, MD

APPLICANT: Montgomery County Department of General Services

RECOMMENDATION: Approval of a modification to condition #3 for Forest Conservation Plan MR2010709 to:

3. Before January 1, 2012, a Memorandum of Understanding (MOU) shall be entered into between M-NCPPC and Montgomery County that establishes the process for and the amount of credits for both stream buffer encroachments and forest conservation mitigation for using parkland, which shall be 1:1 ratio. If a MOU cannot be agreed upon by January 1, 2012, the applicant must revise the final forest conservation plan by March 1, 2012 indicating how and where the planting requirements will be met. The offsite forest conservation planting requirements shall be satisfied at a 1:1 ratio and the stream buffer encroachment compensation planting requirements shall be satisfied at a 2:1 ratio.
 - a. If the applicant chooses to meet the requirements from acquiring credits in a forest mitigation bank the certificate of compliance to use an offsite bank must be

recorded in the land records by July 1, 2012. The certificate of compliance for the forest mitigation bank must be for 17.14 acre credits.

- b. If the applicant chooses to plant new forests, 17.14 acres of forest must be planted and accepted by a forest conservation inspector by December 15, 2012.
- c. If the applicant chooses to use a combination of forest mitigation bank and planting the credits must be equivalent to 17.14 acres of forest planting. The deadlines are consistent with "a" and "b" above.

SITE DESCRIPTION

The 42.12-acre site is located at the intersection of Shady Grove Road and Crabbs Branch Way on the northwest corner. The project site is composed of three parcels; Casey 6 and Casey 7 which straddle the alignment of I-370, and a portion of Roberts Oxygen. Casey 6 is located on the north side of I-370 and Casey 7 is on the south side of I-370. The project site is bounded by Shady Grove Road on the south, CSX railroad track on the west, Roberts Oxygen and the town of Washington Grove on the north, and the alignment of the ICC on the east (Figure 1). The future alignment of Crabbs Branch Way extends through Casey 6.



Figure 1: Site Overview

The applicant is proposing to construct a new Equipment Maintenance and Operations Center (EMOC) to support the maintenance and operations of the County's Ride-On buses and some heavy equipment. Casey 6 will contain a warehouse, a maintenance shop, equipment storage, parking for 89 heavy equipment vehicles, and a fueling station. Casey 7 will be comprised of covered bus parking, a fleet/heavy equipment maintenance building, a fare collections building, a fueling and washing building, a compressed natural gas (CNG) fueling yard and associated parking for heavy equipment.

BACKGROUND

The forest conservation plan approved by the Planning Board is associated with the Mandatory Referral for the EMOC facility. The Planning Board resolution for the forest conservation plan was mailed on June 21, 2010. See Exhibit 1 for the Planning Board resolution. The resolution identifies a number of conditions including one that has been difficult to fulfill. Specifically condition #3 states:

Before issuance of building permit for the EMOC project (MR2010709), a Memorandum of Understanding (MOU) shall be entered into between M-NCPPC and MONTGOMERY COUNTY that establishes the process for and the amount of credits for both stream buffer encroachments and forest conservation mitigation requirements to be granted using parkland, which shall be at a 1:1 ratio.

The County has met with the Parks Department concerning the MOU but the two parties are unable at this time to reach an agreement. The applicant wants to start construction of the new EMOC facility but is unable to satisfy all Planning Board conditions and the requirements of Chapter 22A and therefore is unable to move forward with the building construction. As a result, the applicant requests a modification to condition #3 of the Planning Board resolution to provide more time to reach a MOU with the Parks Department. If there are unable to reach an agreement there needs to be an alternative method to meet the planting requirements offsite. No other Planning Board conditions, or features of the approved plan, are being amended.

FOREST CONSERVATION

The approved final forest conservation shows a forest planting requirement of 5.52 acres. Only 1.44 acres of the planting will be met onsite and the remainder offsite. In addition, the forest conservation plan approved a 6.53 acre permanent encroachment into stream valley buffers for the EMOC facility. Stream valley buffers are to be retained in an undisturbed condition and protected by a conservation easement. As part of the forest conservation approval, the Planning Board found that the applicant was justified in encroaching into the stream valley buffers because the design and planning of the site was exhaustive and encroachments were minimized, reasonable efforts were made to protect as much stream valley buffer as possible, and the development project could not be reasonably altered. The Planning Board authorized the encroachment into the stream valley buffer provided it was compensated on parkland at a 1:1 ratio under condition #3 of the Planning Board resolution.

In the fall of 2010, the County contacted the former Acting Chief of Environmental Planning concerning the release of the building permit so that County could issue a request for proposal

(RFP) for the construction of the site. The RFP was issued but the building permit was not issued, by the Department of Permitting Services, until June 13, 2011. When the Acting Chief gave permission to release the Planning Department's review of the building permit it was with the understanding that no work would occur onsite prior to all other requirements of the Planning Board resolution and Chapter 22A were satisfied. No work has been conducted on site.

The revised condition of approval provides additional time for Montgomery County and M-NCPPC to work out an MOU that would allow County projects to use parkland to meet their forest conservation planting requirements. However, in case an agreement still cannot be reached there needs to be an end date to ensure the applicant complies with the approved forest conservation plan. Therefore, if Montgomery County and M-NCPPC are unable to achieve an agreement by January 1, 2012 staff suggests that applicant be allowed to meet the forest plantings offsite at non-parkland location.

When applicants request to permanently encroach into stream buffers staff has requested, and the Planning Board supported, additional compensation to offset the permanent loss of environmental sensitive features. The standard practice has been to request a minimum of 2:1 in compensation in land that is planted with forest that is outside of environmental buffers. Staff requests that the Planning Board modified condition #3 of the resolution that would allow the applicant to meet the requirements offsite if Montgomery County and M-NCPPC is unable to reach agreement by January 1, 2012. The 2:1 compensation would only apply to the 6.53 acres of permanent stream buffer encroachment and not the 4.08 acres (5.52 – 1.44) of offsite forest planting as identified in the forest conservation worksheet. Therefore, if Montgomery County and M-NCPPC are unable to reach an agreement by January 1, 2012, the County would be responsible for planting 17.14 acres of forest ($4.08 + (2 * 6.53)$) by December 15, 2012 to satisfy the forest conservation plan requirements.

Staff Recommendation

Staff recommends the Planning Board approve the modification to condition #3.

EXHIBITS

1. Planning Board Resolution dated June 21, 2010.
2. Applicant's request to amend forest conservation plan conditions.
3. Approved forest conservation plan dated October 29, 2010.



Exhibit 1

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

MCPB No. 10-72

JUN 21 2010

Forest Conservation Plan No. MR2010709

Equipment Maintenance and Operations Center (EMOC)

Date of Hearing: May 27, 2010

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 February 22, 2010, Montgomery County Department of General Services ("Applicant"), filed an application for approval of a Forest Conservation Plan on 42.44 acres of land known as Casey 6 and 7 located on the northwest corner of Shady Grove Road and Crabbs Branch Way, Gaithersburg, Maryland; bounded by Shady Grove Road on the south, CSX railroad tracks on the west, Robert's Oxygen and the Town of Washington Grove on the north, the Inter County Connector (ICC) along with commercial development on the east and bisected by I-370 ("Property" or "Subject Property"), in the Shady Grove Sector Plan area ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2010709, Equipment Maintenance and Operations Center (EMOC) ("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 May 21, 2010, setting forth its analysis, and recommendation for approval with conditions of the Application ("Staff Report"), and on May 27, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

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

WHEREAS, on May 27, 2010, the Planning Board approved the Preliminary Forest Conservation Plan, on motion of Commissioner Alfandre and seconded by

Approved as to
Legal Sufficiency:

8787 Georgia Ave., N.W., Suite 100, Washington, D.C. 20010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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

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Commissioner Wells-Harley; with a vote of 3-0, with Commissioners Alfandre, Hanson, and Wells-Harley voting in favor; Commissioners Dreyfuss and Presley being absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVES Preliminary Forest Conservation Plan No. MR2010709 on 42.12 acres of land known as Casey 6 and 7 located on the northwest corner of Shady Grove Road and Crabbs Branch Way, Gaithersburg, Maryland; bounded by Shady Grove Road on the south, CSX railroad tracks on the west, Robert's Oxygen and the Town of Washington Grove on the north, the Inter County Connector (ICC) along with commercial development on the east and bisected by I-370, in the Shady Grove Sector Plan area, subject to the following conditions:

1. Compliance with the preliminary forest conservation plan received on May 11, 2010.
2. Submission of a final forest conservation plan consistent with 22A.00.01.09(B) of the Forest Conservation Regulations
3. Before issuance of building permit for the EMOC project (MR2010709), a Memorandum of Understanding (MOU) shall be entered into between M-NCPPC and MONTGOMERY COUNTY that establishes the process for and the amount of credits for both stream buffer encroachments and forest conservation mitigation requirements to be granted using parkland, which shall be at a 1:1 ratio.
4. Applicant to provide for planting on parkland identified by MNCPPC staff as in critical need of afforestation, or in another non-parkland location approved by Environmental Planning staff, in either case, preferably within the same watershed, in an amount equal to the acreage of encroachment into the stream buffers for unacceptable uses (approximately 5.4 acres) as determined by the final forest conservation plan. Such planting shall be in accordance with Parks Department standards, and shall be in addition to the forest conservation plan planting requirements as determined by the final forest conservation plan worksheet.
5. Applicant to maximize onsite forest planting and consider creating slopes of less than 3:1 so more forest can be successfully planted along the drive aisle to Roberts Oxygen.
6. Applicant to record a category I conservation easement over all retained and planted forests, wetlands, and stream buffers not permanently impacted by the facility prior to any land disturbing activities occurring onsite.
7. The offsite planting area must be planted prior to the completion and occupancy of the EMOC facility.
8. If the offsite planting is not on parkland owned by and titled in MNCPPC, the applicant must record a category I conservation easement to protect the planted forests.

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

The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

BE IT FURTHER RESOLVED, that this constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is JUN 21 2010 (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 Commissioner Alfandre, seconded by Presley, with Commissioners Wells-Harley, Alfandre, Dreyfuss, and Presley voting in favor of the motion, with a four-member Board, at its regular meeting held on Thursday, June 17, 2010, in Silver Spring, Maryland.


Marye Wells-Harley, Vice Chair
Montgomery County Planning Board

Exhibit 2



DEPARTMENT OF GENERAL SERVICES

Isiah Leggett
County Executive

David E. Disc
Director

June 16, 2011

Mr. Mark Pfefferle
Environmental Planning Division
Maryland National Capital Park and Planning Commission (M-NCPPC)
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Equipment Maintenance and Operations Center
Waiver Request to Montgomery County Planning Board Resolution MCPB No. 10-72, Memo Of
Understanding

Dear Mr. Pfefferle:

On behalf of the Montgomery County Department of General Services, I am writing to request an amendment to forest conservation plan MR2010709. In particular, condition #3 is of concern and needs to be modified to allow DGS to proceed with the construction of the facility. The County is in negotiations with Parks since Jun 21, 2010 and has not reached consensus in regards to the cost nor term of the maintenance period. The Construction Contract for the new EMOC has been awarded and NTP has been issued. It is imperative that the construction starts shortly to prevent any future delays to the construction activities. We are committed to continue our negotiations in reaching an agreement with Department of Parks but the related timeline has surpassed our expectations in regards to Construction period.

For the above reasons, I respectfully request that the Final Forest Conservation Plan be amended so that we can proceed..

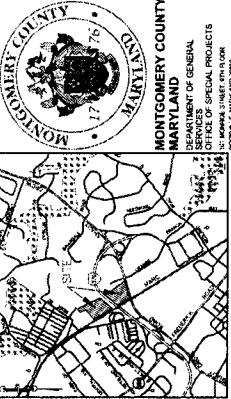
Sincerely,

A handwritten signature in black ink, appearing to read "Dir 4".

Hamid Omidvar, AIA, Chief
Office of Special Projects
Department of General Services

Cc: Rassa Davoodpour

Office of Special Projects



MONTGOMERY COUNTY
MARYLAND
1776

DEPARTMENT OF GENERAL
PROJECTS
CITY OF SPECIAL PROJECTS
1100 MARYLAND AVENUE, SUITE 100
MONTGOMERY STREET, 8TH FLOOR
MONTGOMERY, MARYLAND 20850
(301) 495-5200

PROJECT:
EQUIPMENT MAINTENANCE AND
REFURBISHMENT CONTRACTOR:
NORTHLAND EQUIPMENT RENTAL
MONTGOMERY, MARYLAND 20886

ARCHITECT:

Baker

BAKER AND ASSOCIATES
1000 MARYLAND AVENUE, SUITE 100
MONTGOMERY STREET, 8TH FLOOR
MONTGOMERY, MARYLAND 20850
(301) 495-5200

CONSULTANT:

ADTEK

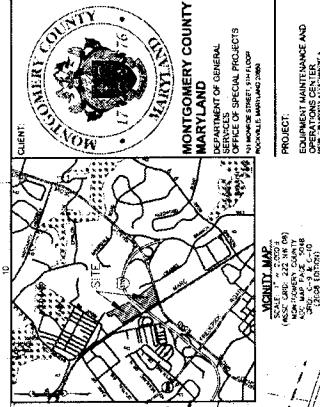
ADTEK CONSULTING ENGINEERS
1000 MARYLAND AVENUE, SUITE 100
MONTGOMERY STREET, 8TH FLOOR
MONTGOMERY, MARYLAND 20850
(301) 495-5200

REGISTRATION:

OCTOBER 1, 2010 BID SUBMISSION

NO. DATE ISSUE DESCRIPTION

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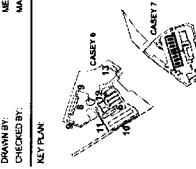
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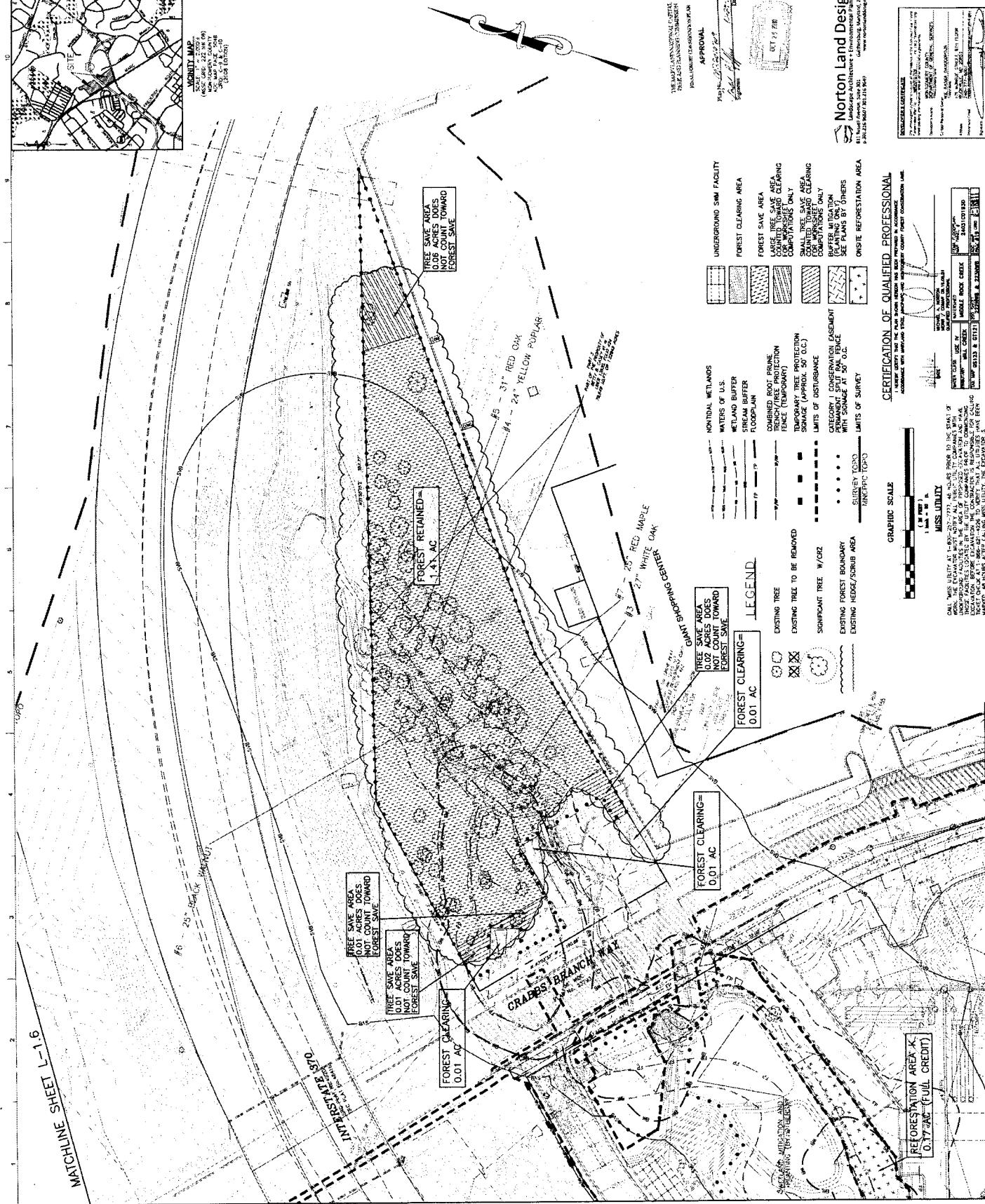
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FINISHING SYSTEMS

PROJECT NO. _____
REF ID: 0364420016



**SHEET TITLE
FINAL
FOREST
CONSERVATION
PLAN**

41





MONTGOMERY COUNTY
MARYLAND

DEPARTMENT OF GENERAL
SERVICES SPECIAL PROJECTS
PROPERTY MAINTENANCE

111 EASTON STREET, 11TH FLOOR
BETHESDA, MARYLAND 20814

PROJECT: EQUIPMENT MAINTENANCE AND
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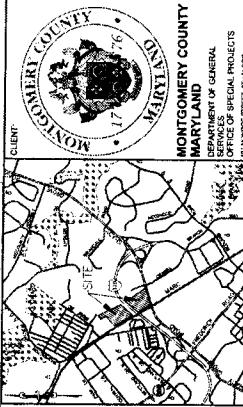
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CONSULTANT:

ADTEK

REGISTRATION:

OCTOBER 1, 2010 BY SUBMISSION

NO. [Redacted]

DATE [Redacted]

PROJECT NO. [Redacted]

REF ID: [Redacted]

MES

MAN

NEY PLAN

PROJ. NO. [Redacted]

REF ID: [Redacted]

FCP

OVERALL STREAM BUFFER

IMPACTS AND CONSERVATION EASEMENTS

SHEET NUMBER

L-1.9

FINAL FCP

OVERALL STREAM BUFFER

IMPACTS AND CONSERVATION EASEMENTS

PROJECT NUMBER

REF ID: [Redacted]

FCP

OVERALL STREAM BUFFER

IMPACTS AND CONSERVATION EASEMENTS

SHEET NUMBER

L-1.9

NORTON LAND DESIGN

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GRAPHIC SCALE:

1 inch = 50 ft.

1 mm = 5 m.

1' = 5'. 1' = 5'.

1' = 5'. 1' = 5'.

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