



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Carla Reid  
Director

July 6, 2011

Amy Quant, P.E.  
Loiederman Soltesz Associates, Inc.  
2 Research Place, Suite 100  
Rockville, MD 20850

Re: Stormwater Management **CONCEPT** Request  
for Woodside USPS Property/Fenwick Station  
Preliminary Plan #: 120110400  
SM File #: 240287  
Tract Size/Zone: 1.75  
Total Concept Area: 2.2 Ac./CBD-1  
Lots/Block: pt 3, 4, 5, 6 & Lots 10, 11 /11  
Watershed: Lower Rock Creek

Dear Ms. Quant:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via ESD to the MEP by the use of green roof and micro-bioretenion.

The following **conditions** will need to be addressed **during/prior** to the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. All covered parking is to drain to the WSSC system. Provide a copy of the schematic mechanical drawings to show that covered parking areas drain to the WSSC system.
6. **At site plan submittal, please resubmit a stormwater concept to DPS that shows access for maintenance of micro-bioretenion and verification that the biofiltration tree pits are acceptable to MCDOT. Also, please verify that the architect has designed the covered parking areas to drain to the WSSC system.**
7. The greenroof, as indicated, has an 8 inch depth.

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This list may not be all-inclusive and may change based on available information at the time.  
255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY  
[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required.**

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact David Kuykendall at 240-777-6332.

Sincerely,



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

RRB: tla CN240287 Woodside USPS Property.DWK

cc: C. Conlon  
SM File # 240287

|                   |     |
|-------------------|-----|
| ESD Acres:        | 2.2 |
| STRUCTURAL Acres: | 0.0 |
| WAIVED Acres:     | 0.0 |



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Carla Reid  
Director

March 31, 2011

Mr. Edward P. Novak, Jr.  
President  
Nova-Habitat, Incorporated  
7220 Chestnut Street  
Chevy Chase, MD 20815

Re: Silver Spring Post Office Property – Grade Point for Measuring Building Height

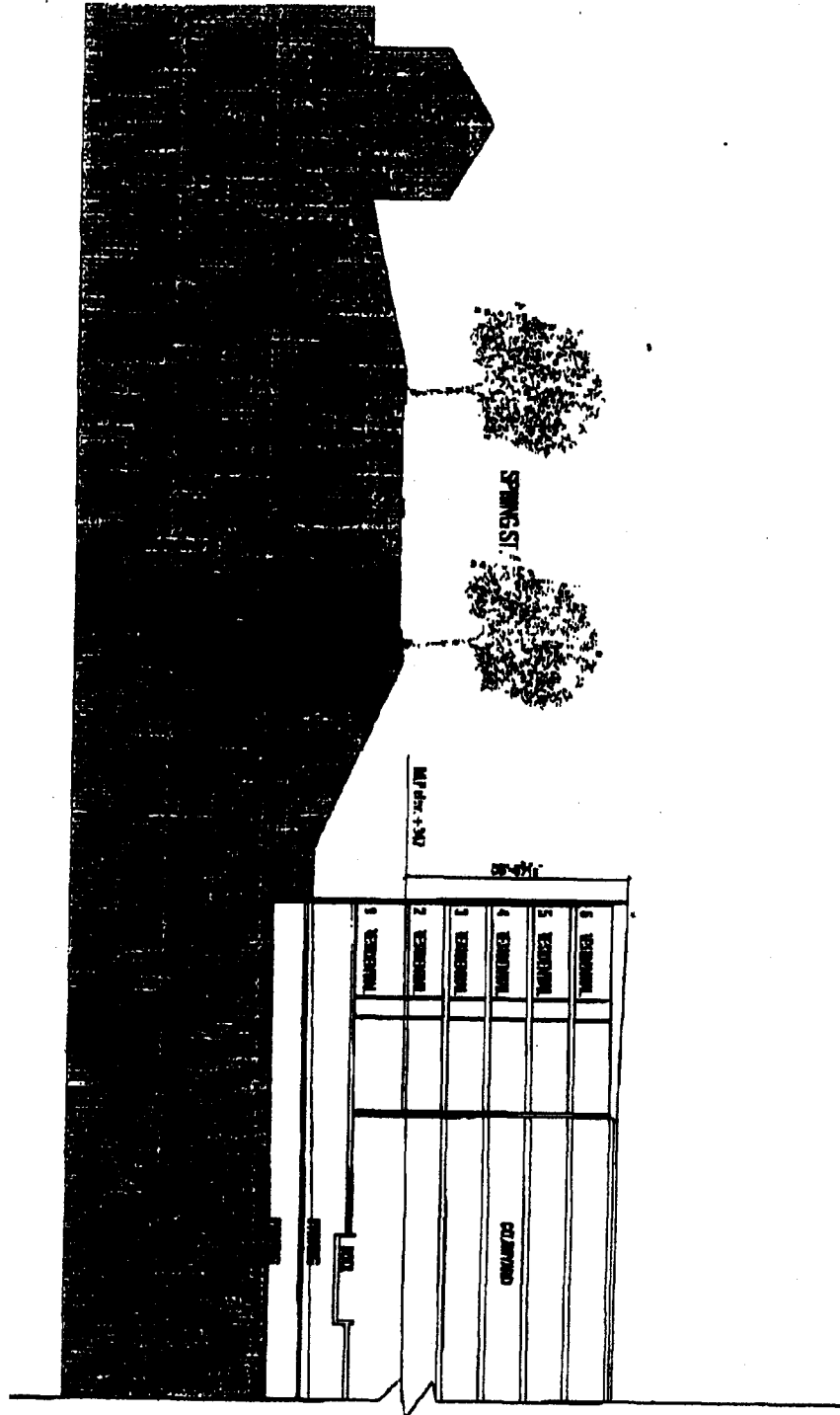
Dear Mr. Novak:

This letter shall confirm DPS agreement that the measurement of building height for your proposed multifamily redevelopment of the Silver Spring Post Office property located at the corner of Second Avenue and Spring Street may be determined from the grade point shown on the attached exhibits. Namely, the intersection of the rear property line extended to the curb edge of Spring Street at the rear property.

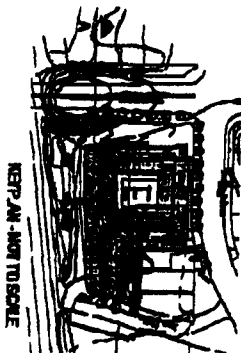
This determination is based upon the fact that the property is a corner property with frontage on both the Spring Street and Second Avenue rights of way.

Sincerely,

Mark Beall  
Permitting Services Specialist II  
Site Plan Enforcement  
Division of Building Construction  
Department of Permitting Services



SECTION A-A  
 1/8" = 1'-0"



KEEP AN EYE TO SCALE

**A**  
 1.04b

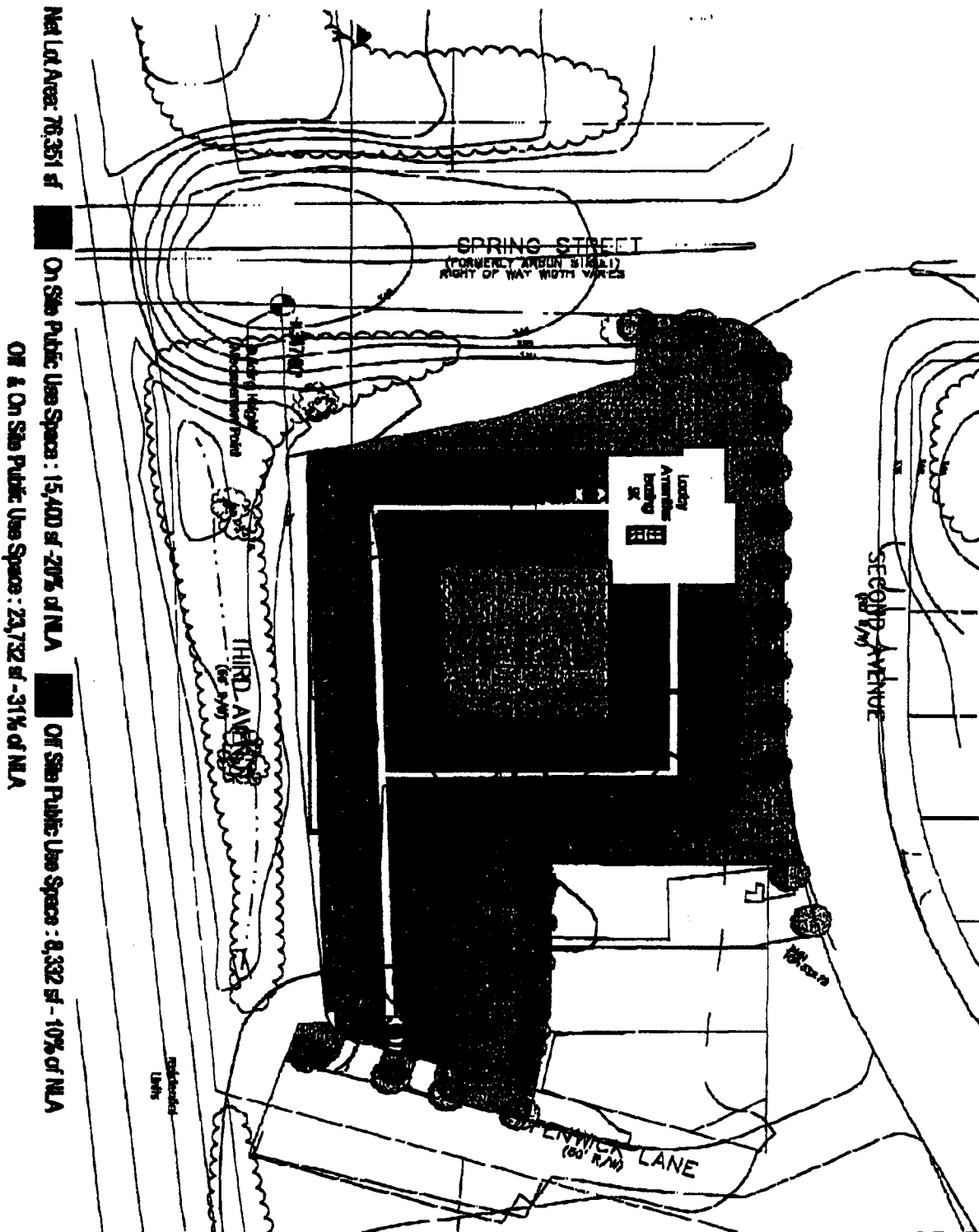
SILVER SPRING POST OFFICE SITE  
 SILVER SPRING, MD



spring street  
 section  
 Insight property group, llc

Project No: 10000  
 Job Name: 10000  
 SCALE: 1/8" = 1'-0"  
 2011-08-22





Net Lot Area: 76,351 sf

On Site Public Use Spaces : 15,400 sf - 20% of NLA

Off Site Public Use Spaces : 23,732 sf - 31% of NLA

Off Site Public Use Spaces : 8,332 sf - 10% of NLA

**A**  
1.03 b

**SILVER SPRING POST OFFICE SITE**  
SILVER SPRING, MD



open space / coverage  
exhibit  
insight property group, llc

Project No: 11-002  
Job Name: 11-002  
11-002  
2011-08-28





DEPARTMENT OF TRANSPORTATION

Isiah Leggett  
County Executive

Arthur Holmes, Jr.  
Director

September 30, 2011

Mr. Damon Orobona, Senior Analyst  
Area 1  
The Maryland-National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan No. 1-20110400  
Fenwick Station

Dear Mr. Orobona:

We have completed our review of the amended preliminary plan signed on September 12, 2011. An earlier version of this preliminary plan was reviewed by the Development Review Committee at its meeting on August 15, 2011. This preliminary plan is being reviewed concurrently with Project Plan No. 920110010.

We recommend approval of the preliminary plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Department of Permitting Services (DPS) in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Dedicate right-of-way for Second Ave and Spring Street per Master Plan and Fenwick Lane as necessary to implement proposed improvements.
2. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
3. It appears a Public Improvements Easement (PIE) will be necessary at the northwest corner of the site (to accommodate the bikeshare location) and at the southwest corner of the site (to accommodate the proposed five (5) foot wide temporary/asphalt trail). Prior to submission of the record plat, the applicant's consultant will need to determine if there is sufficient right-of-way to permit these improvements. If not, the applicant will need to either dedicate additional right-of-way or execute a Declaration of Public Improvements Easement document. That document is to be recorded in the Land Records of Montgomery County, with the liber and folio referenced on the record plat.

**Division of Traffic Engineering and Operations**

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878  
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080  
trafficops@montgomerycountymd.gov



To determine the dimensions of the additional right-of-way or PIEs, we recommend the applicant submit a more detailed schematic plan for agency review. This plan should be submitted prior to Site Plan or record plat, whichever comes first. Regarding the bikesharing facility, this plan will need to show the location of that facility with respect to the proposed extension of the Capital Crescent Trail to meet proposed ten (10) foot temporary/asphalt trail (to be built by the applicant); that plan will need to provide a satisfactory safety zone between the trail and the bikesharing facility. Within MCDOT, the review of this plan should be coordinated with Ms. Sandra Brecher of our Division of Transit Services and Ms. Gail Tait-Nouri of our Division of Transportation Engineering.

4. The sight distances study indicates insufficient visibility on Fenwick Lane for a business district road. To remedy this situation, the applicant has proposed relocating several existing metered parking spaces from Fenwick Lane to Second Avenue. We concur with this approach. Prior to approval of the record plat, the applicant will need to coordinate with Mr. Jeremy Souders of the MCDOT Division of Parking Management to implement the proposed parking meter removals. Following that removal, the consultant will need to submit an updated sight distances evaluation certification form to this Office (or DPS) which indicates satisfactory visibility. Upon completion of the improvements on Second Avenue, parking metered will be installed at new locations.
5. In accordance with Section 50-35(n) of the Montgomery County Code, we recommend the Montgomery County Planning Board require the applicant to extend the Silver Spring Green Trail with sidewalk and extend the Fenwick Lane western sidewalk off-site, with handicap ramp(s), to the intersection with Fenton Street – as shown on the amended preliminary plan.
6. For safe simultaneous movement of vehicles, we recommend the driveway pavement width for the parking garage be no less than twenty four (24) feet to allow vehicles to enter and exit the site without encroaching on the opposing (driveway) lanes. This pavement width will permit an inbound lane width of fourteen (14) feet and an exit lane width of ten (10) feet.
7. Curb radii for intersection type driveways should be sufficient to accommodate the turning movements of the largest vehicle expected to frequent the site.
8. Truck loading space requirements to be determined in accordance with the Executive Branch's "Off-Street Loading Space" policy. No loading area will be allowed within the public right-of-way.
9. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
10. Relocation of utilities along the site frontages to accommodate the required roadway improvements shall be the responsibility of the applicant.
11. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.

12. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Transportation Systems Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
13. Trees in the County rights of way - species and spacing to be in accordance with the applicable MCDOT standards. Tree planting within the public right of way must be coordinated with Mr. Brett Linkletter with Division of Highway Services, Tree Maintenance Section. Mr. Linkletter may be contacted at (240) 777-7651.
14. If the applicant is required to install Silver Spring CBD streetscaping amenities along the site frontages – prior to approval of the record plat by DPS, execute and record a Declaration of Covenants (for Maintenance and Liability) or enter into an agreement with the Silver Spring Urban District for the maintenance of those items.
15. Please coordinate with Ms. Stacy Coletta of the MCDOT Division of Transit Services regarding project impacts on the RideOn bus network and any transit-related improvements requirements. Ms. Coletta may be contacted at 240-777-5836.
16. In addition to elements already incorporated into the design, we recommend the following measures be considered in the final design to promote multi-modal, transit-oriented development:
  - Design parking facilities to provide flexibility in use of parking;
  - Design to promote use of transit: main entrances of buildings should be oriented to transit; design building frontages/lobbies to provide two-way visibility; if port-cocheres (covered entryways) are used, ensure height is adequate to accommodate transit buses; ensure that the height of landscaping selected does not obscure visibility of transit; provide displays for transit and other TDM information in employee and visitor entrance areas;
  - Incorporate planning for other modes, i.e., shuttles, taxis, etc.
17. Prior to approval of the record plat, we recommend the applicant be required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and Department of Transportation. The trip reduction elements should be coordinated with Ms. Sandra Brecher, Chief of our Division of Transit Services/Commuter Services Section. Ms. Brecher may be contacted at 240-777-5800.

Please send an electronic version of the draft document to Ms. Brecher and this office to facilitate our joint review of the document.

We believe the trip reduction measures in that Agreement should include:

- Include space for a small display area in lobby and parking facility for residents and on-site employees. Displays will contain materials explaining transportation options in the Silver Spring area and the region.



- Provide bike racks and lockers in well-lit, weather-protected location and in proximity to bike trail connection.
  - Bike Sharing. Provide space in the Project for a bike sharing docking station (or similar provision required by the bike sharing system) to enable this form of transportation to be used by residents, employees and visitors at the Project. The location of this docking station will be selected by the Applicant with approval of the TMD, based upon the requirements of the bike sharing system and must be in a highly-visible, convenient and well-lit location on the Project. If zoning regulations or other provisions adopted prior to building permit so provide, the Project shall be required to pay the capital cost of such station and five years of operating expenses in return for offsetting parking reductions or other benefits.
  - Designate a point of contact to which County and Silver Spring Transportation Management District staff can send updates on transportation-related issues to be posted or distributed to office/retail tenants.
18. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
- A. Along Second Avenue (between Spring Street and the existing inlet on the west side of the intersection with Fenwick Lane), reconstruct the curbline to provide a buffer panel with street trees in amended soil panels, enclosed storm drainage, and implement the Silver Spring Green Trail [eight (8) foot bikepath with five (5) foot wide sidewalk]. At the Site Plan or record plat stage, whichever comes first, work with Ms. Gail Tait Nouri (the Manager of our Division of Transportation Engineering's Bikeway Program) to identify appropriate materials to differentiate the Green Trail from the sidewalk. Provide Silver Spring CBD Streetscaping amenities if required by the Planning Board.
  - B. Street grading, variable width pavement [transition from thirty six (36) feet at Second Avenue to thirty (30) feet at the southern terminus], curbs and gutters, sidewalks and handicap ramps, storm drainage and appurtenances, and street trees along Fenwick Lane. Terminate the pavement in a Fire Department-compliant turnaround. Where the curbline is being widened on the east side of Fenwick Lane (with the concrete sidewalk adjacent to the curb), widen the sidewalk to six (6) foot minimum width and relocate the existing wall as necessary. Provide Silver Spring CBD Streetscaping amenities if required by the Planning Board.
  - C. Within the Third Avenue right-of-way (between Fenwick Lane and the County property west of the site), construct stormwater management improvements and the optional five (5) foot wide temporary/asphalt trail as proposed in the September 2, 2011 letter from Mr. Edward P. Novak, Jr. of Nova-Habitat, Inc. to Mr. Edgar Gonzalez of MCDOT.
  - D. Within the County property between Spring Street and the western property line of the site, construct the ten (10) foot wide temporary/asphalt trail from the Third Avenue right-of-way to terminate near the future Capital Crescent Trail and bikeshare facility. The interim design and construction needs to provide an Americans with Disabilities Act-compatible access between Second Avenue and the temporary terminus of the applicant-installed trail.
  - E. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will

Mr. Damon Orobona  
Preliminary Plan 120110400  
September 30, 2011  
Page 5

comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.

- F. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Division of Traffic Engineering and Operations.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at [greg.leck@montgomerycountymd.gov](mailto:greg.leck@montgomerycountymd.gov) or at (240) 777-2197.

Sincerely,



Gregory M. Leck, P.E. Manager  
Development Review Team

m:/subdivision/farhas01/preliminary plans/ 1-20110400, FINAL.doc

cc: Michael Blum, EPN-SSPO, LLC  
Edward P. Novak, Jr.; Nova-Habitat, Inc.  
Stephen Roth, US Post Office  
Robert R. Harris; Lerch, Early & Brewer  
Amy Quant, P.E.; Loiederman Soltesz Associates, Inc  
Rose Krasnow M-NCPPC Area 1  
Robert Kronenberg; M-NCPPC Area 1  
Cherian Eapen; M-NCPPC Area 1  
Preliminary Plan Folder  
Preliminary Plan Letters Notebook

cc-e: Atiq Panjshiri; MCDPS RWPR  
Sam Farhadi; MCDPS RWPR  
Marie LaBaw; MCFRS FMO  
Edgar Gonzalez; MCDOT DO  
Gary Erenrich; MCDOT DO  
Bruce Johnston, MCDOT DTE  
Gail Tait-Nouri; MCDOT DTE  
Michael Mitchell, MCDOT DTE  
Jeremy Souders; MCDOT DPM  
Sandra Brecher; MCDOT DTS  
Beth Dennard; MCDOT DTS  
Stacy Coletta; MCDOT DTS  
Dan Sanayi; MCDOT DTEO  
Bruce Mangum; MCDOT DTEO  
Fred Lees; MCDOT DTEO  
Khursheed Bilgrami; MCDOT DTEO  
Will Haynes; MCDOT DTEO

**Nova-Habitat, Inc.**

7220 Chestnut Street  
Chevy Chase, MD 20815,  
301-656-5901  
E-Mail: enovak@nova-habitat.com

September 2, 2011

Mr. Edgar Gonzalez  
Deputy Director for Transportation Policy  
Montgomery County Department of Transportation  
101 Monroe Street, 10<sup>th</sup> Floor  
Rockville, MD 20850

**Re: Fenwick Station (Silver Spring Post Office) – Memo of Understanding**

Dear Mr. Gonzalez,

As a result of our meeting with you and Michael Mitchell on August 19th, 2011, we would propose to undertake the following improvements within DOT's "Third Avenue Right of Way" behind the Post Office property we will be redeveloping. These improvements are intended to help mitigate a pre-existing flooding condition on and around this DOT property, as well as improve the aesthetics of the property.

It is understood by us that final approval of construction plans by DOT, DPS and possibly other agencies will be required prior to the issuance of construction permits. We propose to show such improvements in conceptual form during our project plan and preliminary plan review process and then to seek such final engineering approvals and permits concurrently with our final site plan and building permit approvals for our redevelopment of the Post Office site. We would construct such improvements contingent upon receipt of all required permits and during the actual construction of our project.

**Stormwater Management Improvements to Third Avenue Right of Way:** Based upon studies by both the County's consultant and our engineering firm (LSA), reviewed with DOT on August 19, 2011, it was concluded that the best option for mitigating future flooding potential was a series of improvements designed to maintain a "free flow" condition at the storm drain and culvert located behind the rear corner of the Post Office property (Structure #60). We propose to undertake, at our expense, the following:

- Existing upstream outfall: We would remove the existing headwall, extend the pipe approximately 30 feet to the north and construct a new outfall with a design that would reduce the stormwater velocity.
- Channel: We would reconstruct the open channel that currently exists by (a) moving it to the west, away from the Post Office property line, (b) widening it to approximately 10 feet in width, (c) lining it with rip rap, river rock and/or boulders to stabilize it and further reduce erosion and sediment transport.

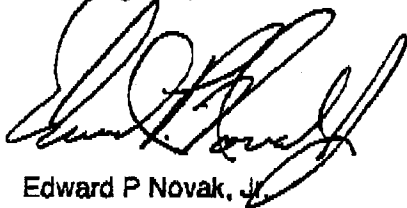
- **Brush and Tree Removal:** We would remove underbrush and non-native, non-specimen trees in the ROW.
- **Erosion and Sediment Controls:** As part of the reconstruction of the open channel, we would install additional sediment controls further upstream and deepen/enlarge the holding area in the vicinity of Structure 60 to further reduce the likelihood of blockage.
- **Re-burying of Utilities:** Presently, there is a partially exposed WSSC water line and sanitary sewer line running through the ROW. To the extent possible, we would seek to re-grade the property as part of the channel improvements to rebury the exposed water line in accordance with WSSC standards.
- **Investigation of a Closed Pipe System:** As an alternative to relocating and improving the existing open channel as described above, we will further investigate of a closed pipe system and riser and present the findings of our analysis to DOT for further discussion and mutual determination of the preferred alternative.

**Optional Pedestrian Path:** Pursuant to our meeting on August 19, we will include in our concept plans an "optional" 5 foot wide pedestrian path located in the DOT right of way, paralleling the rear of the Post Office property. This path would be intended to connect an informal path on the other side of the Spring Street overpass to Fenwick Lane. However, we understand that DOT must carefully consider any potential liability issues associated with this path and has the final discretion as to whether to approve its construction. If approved, we would construct it as part of our improvements and proffer to maintain it upon completion.

**Construction / Maintenance:** EPN-SSPO, LLC would construct the improvements described above at its expense. It is anticipated that, upon completion, DOT would accept these improvements into its annual maintenance program, with the exception of the optional pedestrian trail, which EPN-SSPO, LLC or its successors would continue to maintain in perpetuity.

We believe this memo of understanding summarizes the agreement reached on August 19. We greatly appreciate DOT's understanding and cooperation regarding this matter and are confident that our mutual efforts will result in a solution that will benefit DOT, our future residents, and the nearby Woodside neighborhood.

Best Regards,



Edward P. Novak, Jr.  
President  
Nova-Habitat, Inc.

Member  
EPN-SSPO, LLC

**NOTE: DRAFT SUBJECT TO REVISION DURING  
REVIEW OF PRELIMINARY PLAN, PROJECT PLAN, AND SITE PLAN**

After recording, return to:  
Holland & Knight, LLP  
3 Bethesda Metro Center, Suite 800  
Bethesda, Maryland 20814  
Attn. Robert R. Harris, Esq.

Parcel Identification No. \_\_\_\_\_

**TRAFFIC MITIGATION AGREEMENT**

THIS TRAFFIC MITIGATION AGREEMENT ("Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and among (a) EPN-SSPO, LLC, a Maryland limited liability company ("Applicant"); (b) MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION ("DOT"); and (c) MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ("Planning Board"), a Maryland public body corporate.

**RECITALS:**

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. Applicant is the owner of a certain 1.75 acre tract of land in the CBD-1 zone, located at the southwestern quadrant of Spring Street and 2<sup>nd</sup> Avenue in Silver Spring, Montgomery County, Maryland (the "Property").

B. Applicant proposes to redevelop the Property with a building consisting of 299 multi-family residential units (the "Project"), which was the subject of an Application for Preliminary Plan of Subdivision that was captioned Preliminary Plan No. \_\_\_\_\_ (the "Preliminary Plan").

C. The Project is located in the Silver Spring Metro Station Policy Area and in the Silver Spring Transportation Management District ("TMD").

D. On \_\_\_\_\_, 201\_\_ the Planning Board approved the Preliminary Plan for the Project. Attached hereto as Exhibit "A" is copy of the Planning Board's Opinion dated \_\_\_\_\_, 201\_\_ (the "Opinion").

E. The Opinion contains the following requirement for the Applicant:

**[TO BE PROVIDED AFTER RESOLUTION ISSUANCE]**

NOW, THEREFORE, in consideration of the above Recitals, each of which is made a part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto acknowledges, and intending to be legally bound thereby, the parties hereby agree to the following in compliance with the above requirements:

1. Commencement. The obligations and requirements set forth in this Agreement shall commence upon issuance of the first Certificate of Use and Occupancy ("U & O Certificate") for the Project. Applicant shall notify DOT and the Planning Board when receipt of the initial U & O Certificate is estimated to be within six weeks, and again when the U & O Certificate is received.

2. Participation in TMD. Applicant agrees to participate with the TMD to encourage and assist the TMD in achieving and maintaining the 50% non-driver mode share goal for both the morning and evening peak periods in Silver Spring, as well as other TMD goals.

3. Appointment of Transportation Benefits Coordinator. Applicant shall designate in writing to the TMD a Transportation Benefits Coordinator ("TBC") who will assist residents and employees in exercising commuting options and serve as a point of contact for TMD staff. Applicant shall arrange for an initial meeting between the TBC and TMD Staff and provide the opportunity for subsequent meetings as needed. The TBC shall plan and coordinate with the TMD staff and monitor achievement of traffic mitigation as anticipated by the Silver Spring CBD Sector Plan. On an ongoing basis, the TBC will interact with TMD Staff in promoting ridesharing and other alternative transportation programs in order to maximize the participation of residents and employees at the site in such programs to help the TMD meet its goals. The TBC may be a property manager or other employee with other employment duties. Applicant will ensure the TBC attends periodic meetings and training sessions held by DOT and/or other local or regional agencies which are related to performance of these duties and coordination with other traffic mitigation programs. Applicant will promptly notify the TMD in writing of the designated TBC(s) and any subsequent change in the TBC(s) or contact information.

4. Activities of Transportation Benefits Coordinator.

(a) Promotional Programs. The TBC will cooperate with staffs from DOT and the Planning Board on an ongoing basis to conduct promotional activities and information distribution for all features of the TMD program at the Project; facilitate access to residential and commercial tenants/employers and employees, and residents for purposes of informing and educating about programs and services available in the TMD; and assist with the distribution of "Welcome Packets" with information about commuting alternatives or other materials to be provided by the TMD or the County to new tenants, new employers, and new employees and residents. Applicant will provide the TMD with an updated list of tenants/employers on a semi-annual basis. Upon request, this information will be kept confidential by the TMD. Applicant will insure that all activities required of the TBC will be supported by adequate budgetary allocations so that efforts to help meet trip reduction goals of the TMD are feasible.

Promotional activities will include distribution of TMD and County information to employers and employees, and residents, through the use of displays, bulletins, brochures, notices, and the periodic hosting of ridesharing days and contests, prepared or conducted solely by the Applicant or in concert with the TMD and/or County. Applicant and the TBC will provide and facilitate use of space in the development on a periodic basis (by prior arrangement) for marketing and promotional activities of the TMD. Upon request by the County and/or TMD the TBC will also promote and arrange for the sale of

discounted passes, tickets and tokens, including Ride-On passes, Metrorail Fare Cards, Metrobus passes, MARC commuter rail tickets, or other incentive programs provided by public or private institutions.

(b) Surveys. The TBC, in cooperation with the TMD and DOT, shall facilitate employer/employee participation in the TMD Annual Commuter Survey using a survey instrument provided by the TMD or the County. The survey shall be conducted of the transportation choices of residents and employees and related issues. Applicant and the TBC shall use commercially reasonable efforts to achieve an \_\_\_\_\_% response return rate from among employees and residents in the development. The TMD will tabulate and analyze this information, and provide results on the aggregate mode share profiles of employers/employees and residents in the Project upon request.

5. Displays. Applicant shall provide a permanent information display in a highly-used location on the Property for commuter information and promotional material on transportation management programs in the TMD, the County and the region. If the Project has different primary access points for visitors and members of the public from those access points for employees and/or residents, a display shall be provided in each of the primary access areas to reach each of these target markets.

6. Bicycle Facilities. Applicant shall provide a secure weatherproof area in a conveniently-located, well-lit, high traffic part of the parking facility to house bicycles. Bicycle storage shall be provided for the number of bicycle parking facilities specified in Planning Board approvals or sufficient to meet demand in the event demand exceeds the number specified. No charges shall be imposed for bicycle parking.

7. Silver Spring Transportation Management Organization Assistance. The TMD staff shall be available to provide transportation information, technical advice, and other forms of assistance normally provided by the TMD to sites within the Silver Spring Metro Station Policy Area to the extent feasible within the constraints of staff and fiscal resources.

8. Annual Report. Applicant shall provide an annual summary report (1-2 pages) to DOT, with a copy of the TMD, on or about the anniversary of this agreement, or at another regular interval as designated by DOT. This report will outline the traffic mitigation program and activities conducted with the TMD during the course of the previous year, and will include the name and contact information for the current Transportation Benefits Coordinator.

9. Fees. Applicant shall pay all transportation management fees as required by law, without regard to whether this development would be construed as "new" or "existing" development at that time.

10. Duration. The provisions of this Agreement shall continue in force in perpetuity or until the Planning Board evaluates, after receipt of recommendations from DOT, the progress of the program and determines that components of the program, in whole or in part, are no longer appropriate or necessary.

11. Enforcement. If Applicant fails to comply with the terms and conditions of this agreement, DOT or the Planning Board shall be entitled to take such enforcement action against Applicant as may be permitted under the Code and other applicable law.

12. County Information Obligations. Upon request, and to the extent feasible within the constraints of staff and fiscal resources, DOT shall respond to inquiries from the Applicant regarding available transportation systems and facilities and shall provide the Applicant with any existing information, including printed and/or electronic materials, which DOT may have concerning Ride On Bus, Metrobus, Metrorail, MARC, Share-A-Ride, and any other public transportation systems or carpool and vanpool matching services now or hereafter serving the Project, in quantities sufficient to allow the Applicant to distribute to its employees, residents, and visitors.

13. Applicant's Obligations. The obligations of Applicant under this Agreement shall apply only during the period when it is the owner of the Property or any part thereof, and only to land it leases or owns. At such time as Applicant ceases to hold an ownership or leasehold interest in the Property or any part thereof, the obligations and liabilities thereafter accruing (but not any accrued and unperformed obligations and liabilities) shall be the obligations of Applicant's successors and/or assigns, to the extent permitted by law.

14. Assignment. This Agreement is assignable, in whole or in part, by Applicant, without the consent of the Planning Board or Montgomery County. Applicant's successor(s) in interest or assignee(s) shall sign the Assignment form, attached hereto as Exhibit "B", indicating their obligation to be bound by the terms and conditions of this Agreement. A copy of the executed Assignment form shall be mailed to the Planning Board, to DPWT, and to the TMD.

15. Notices. All notices and other communications required to be given by any party under this Agreement shall be in writing and shall be deemed duly given by Certified Mail, Return Receipt Requested, Postage Prepaid, as follows:

(a) If to Applicant to:

EPN-SSPO, LLC  
8270 Greensboro Drive, Suite 810  
McLean, Virginia 22102  
Attn: Michael Blum

with a copy to:

Holland & Knight, LLP  
3 Bethesda Metro Center, Ste. 800  
Bethesda, Maryland 20814  
Attn: Robert R. Harris, Esq.

(b) If to the Planning Board to: Chairman, Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, 8787 Georgia Avenue, Silver Spring, Maryland 20910, with a copy to



Associate General Counsel, Office of the General Counsel, 8787 Georgia Avenue, Suite 205, Silver Spring, Maryland 20910.

- (c) If to the DOT to: Director, Montgomery County Department of Transportation, Executive Office Building, 101 Monroe Street, 10th Floor, Rockville, Maryland 20850, with a copy to County Attorney's Office, 101 Monroe Street, 3<sup>rd</sup> floor, Rockville, Maryland 20850.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties and no party is liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements or representations pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements or representations are expressly and specifically set forth in this Agreement.

17. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same Agreement.

18. Amendments/Modifications. This Agreement can be modified only in writing signed by all the parties hereto, their heirs, successors, assigns or their designees hereunder.

19. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland.

20. Recordation. This Agreement will be recorded in the Land Records of Montgomery County.

[SIGNATURE PAGE FOLLOWS ]

IN WITNESS WHEREOF, Applicant, the Planning Board and DOT have entered into this Agreement on the day and year first written above.

ATTEST/WITNESS:

EPN-SSPO, LLC, a Maryland limited liability company

\_\_\_\_\_

By: \_\_\_\_\_

\* \* \*

STATE OF

\*

COUNTY OF

\*

to wit:

\*

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_ and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation, as a member of the limited partnership.

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

ATTEST:

MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate

\_\_\_\_\_

By: \_\_\_\_\_

\* \* \*

STATE OF

\*

COUNTY OF

\*

to wit:

\*

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the Development Review Chief of Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, a public body corporate, and that such Development Review Chief, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said public body corporate.

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

MONTGOMERY COUNTY  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

By: \_\_\_\_\_  
Arthur Holmes, Jr., Director

\* \* \*

STATE OF

\*

COUNTY OF

\*

to wit:

\*

I HEREBY CERTIFY that on this this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the Director of the Montgomery County Department of Transportation, and that such officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said Montgomery County Department of Transportation in his capacity as aforesaid.

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

**ATTORNEY'S CERTIFICATE**

I HEREBY CERTIFY that this Agreement was prepared under my supervision, and that I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

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**EXHIBIT A**

**[PRELIMINARY PLAN RESOLUTION]**

**EXHIBIT B**

**ASSIGNMENT**

\_\_\_\_\_, successor in interest and/or assignee of Applicant, hereby agree to be bound by the terms and provisions of the Traffic Mitigation Agreement dated \_\_\_\_\_, 201\_\_, by and among EPN-SSPO, LLC, a Maryland limited liability company, the Montgomery County Department of Transportation, and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

\_\_\_\_\_

\* \* \*

STATE OF

\*

to wit:

COUNTY OF

\*

\*

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_ and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation, as a member of the limited partnership.

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

RECEIVED  
0746  
SEP 23 2011

**MCP-CTRACK**

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

**From:** Steven Warner [sdwarner@verizon.net]  
**Sent:** Thursday, September 22, 2011 5:08 PM  
**To:** MCP-Chair  
**Subject:** Development concerns in silver Spring and in Kensington regarding apartments

I write to express concerns on a proposal by Nova Habitat regarding a site now occupied by the US Postal service on Second avenue in silver spring, as \$2011 a month rent is excessive in reference to excessive leniency shown developers and the wealthy nationwide, as if Nova Habitat as well as a development proposal in Kensington where Hardware City, chipotle and a 7 eleven anchor the Kensington Shopping Center on Connecticut at Knowles Avenues do not provide far more that the required 12% affordable low income housing as well as housing for persons with disabilities I will conscientiously oppose both proposals as well as others as a high end ghetto is not what I would like to see, only need to look at the controversial development at Riderwood on cherry Hill road as what not to do as exclusive development tailored to any one group is not what I favor as a sense of community which caters to all incomes, ability/disability and all segments and age groups.

Steve Warner  
Silver spring