



**Preliminary Plan Amendment 11990016A in Response to a Violation – Kimble Estates, Lot s 14 & 15, Block A**

Doug Johnsen, Senior Planner, DARC, [douglas.johnsen@montgomeryplanning.org](mailto:douglas.johnsen@montgomeryplanning.org), 301-495-4712

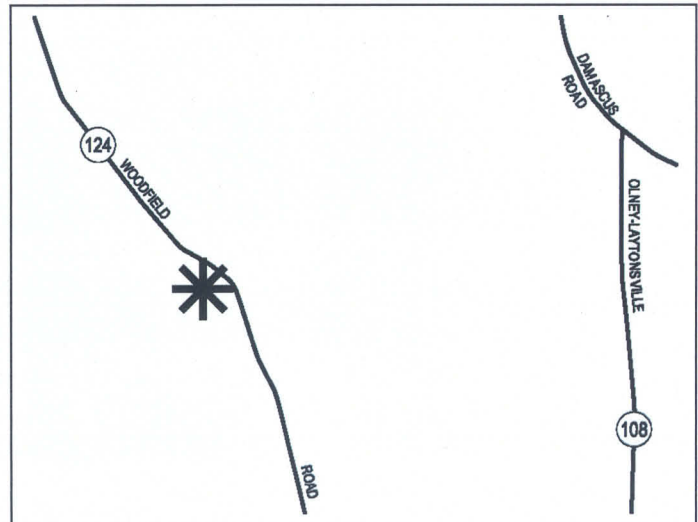
Mark Pfefferle, Chief, DARC, [Mark.Pfefferle@montgomeryplanning.org](mailto:Mark.Pfefferle@montgomeryplanning.org), 301-495-4730

Completed: 12/16/12

**Description**

**Limited Amendment, Preliminary Plan No. 11990016A, Lots 14 & 15, Block A**

RE-2 zone; 37.03 acres; two existing lots containing single-family residential dwellings; request to remove a portion of the existing Category I conservation easement; located at 9007 and 9009 Kimblehunt Drive, 2200 feet northwest of the intersection of Watkins Road & Woodfield Road in Gaithersburg, MD; Damascus Master Plan.



**Summary**

- Staff Recommendation: **Approval with Conditions.**
- Proposal to remove approximately 15,070 square feet (0.35 acre) of Category I Conservation Easement on two lots.
- Proposal to purchase 2:1 mitigation credits at an off-site forest mitigation within the same watershed.

**STAFF RECOMMENDATION:** Approval of the limited amendment to the Preliminary Plan and associated Forest Conservation Plan, subject to the following conditions:

**Common Conditions for both Lots**

1. Applicants must submit a complete record plat application within three (3) months of the mailing date of the Planning Board Resolution approving the limited amendment to the Preliminary Plan that delineates the revised conservation easement. The existing easements remain in full force and effect until the new record plat is recorded.
2. Applicants must delineate the Category I conservation easement boundary with permanent easement markers and appropriate signage within three (3) months of the mailing date of the Planning Board Resolution.
3. All other conditions of Preliminary Plan No. 119900160 that were not modified herein, as contained in the Planning Board's Resolution mailed December 11, 1992, remain in full force and effect.

**Specific Conditions for Lot 14**

1. Prior to Planning Board approval of the record plat, the Applicant must submit a certificate of compliance to use an offsite forest mitigation bank. The certificate of compliance must provide mitigation credits for onsite conservation easement removal of 7,521.3 square feet at a rate of 2:1.
2. Applicant must install a mix of understory and canopy trees for a total of four (4) trees native to the Piedmont region of Maryland within the open area of the retained Category 1 conservation easement by the first planting window following the date of mailing of the Planning Board Resolution. These trees must meet the survivability requirements under 22A.00.01.08 of the Forest Conservation Requirements.

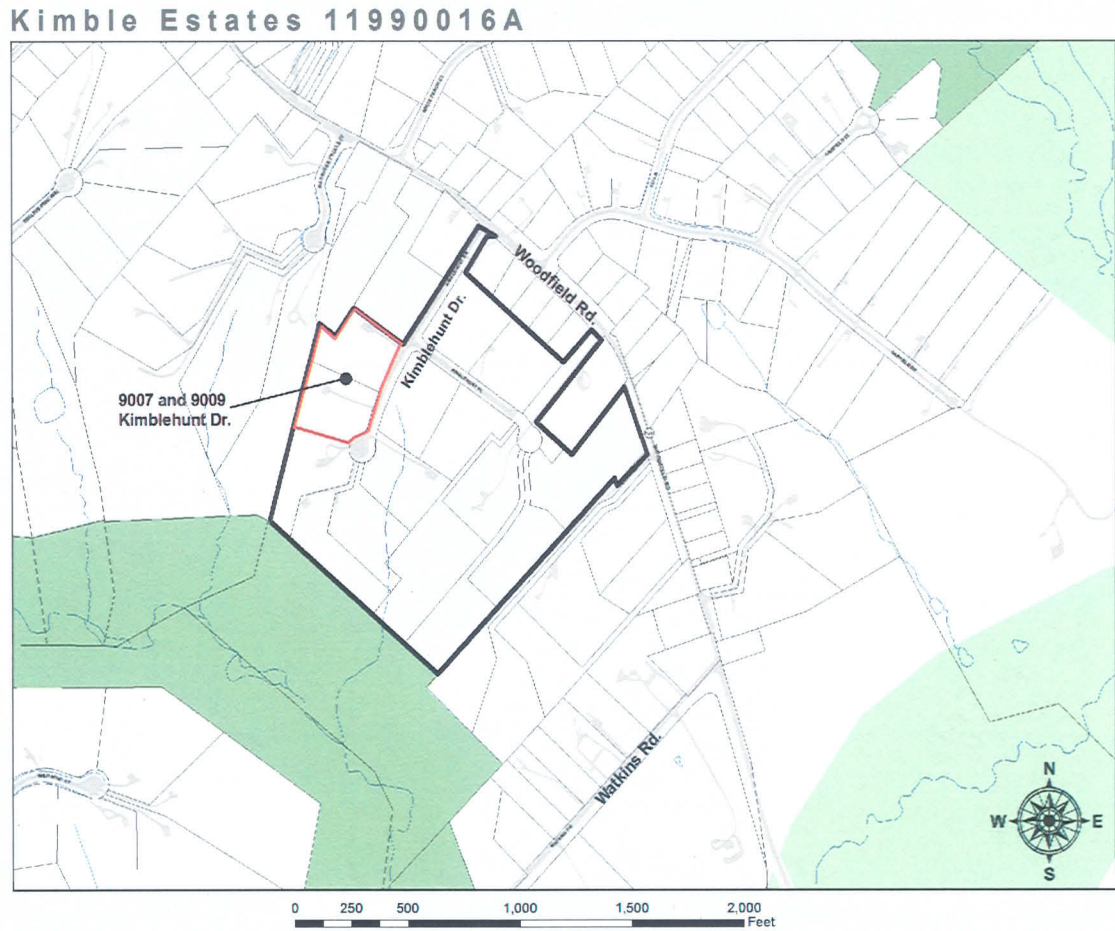
**Specific Conditions for Lot 15**

1. Prior to Planning Board approval of the record plat, the Applicant must submit a certificate of compliance to use an offsite forest mitigation bank. The certificate of compliance must provide mitigation credits for onsite conservation easement removal of 7,547.6 square feet at a rate of 2:1.
2. Applicant must install a mix of understory and canopy trees for a total of ten (10) trees native to the Piedmont region of Maryland within the open area of the retained Category 1 conservation easement by the first planting window following the date of mailing of the Planning Board Resolution. These trees must meet the survivability requirements under 22A.00.01.08 of the Forest Conservation Requirements.

**BACKGROUND**

The Montgomery County Planning Board approved Preliminary Plan No. 119900160 "Kimble Estates", on December 3, 1992 and issued a written opinion on December 11, 1992. The approval was for eleven (11) lots on 37.03-acres of land in the RE-2 zone of which Lots 14 and 15, Block A were a part. Before

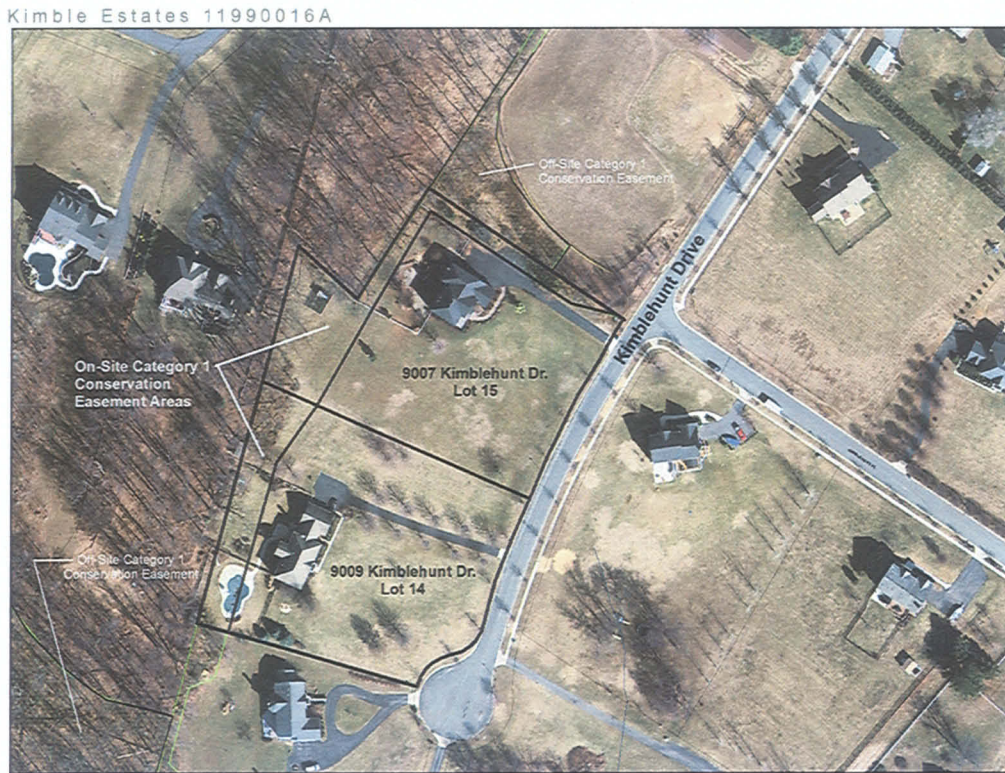
the record plat was approved Lots 14 and 15 were identified as Lots 1 and 2 on the preliminary plan of subdivision. As part of the approval process for the Preliminary Plan of Subdivision a forest conservation plan (FCP) was required and approved by the Planning Board. The Preliminary Plan of subdivision and the FCP show Category I conservation easements on 7 of the 11 lots with the two subject lots having conservation easements on them. The Preliminary Plan opinion dated December 11, 1992 required that the Category I conservation easements be shown on the record plat. The conservation easements for the subject lots (Lots 14 and 15, Block A) are shown on Plats numbered 19040 and 19039 respectively.



**Figure 1: Kimble Estates Subdivision**

An onsite easement inspection was conducted on December 6, 2011 by Staff as part of the requirement to monitor and verify the integrity of each of the conservation easements at least once every 3 years. At this time it was discovered that Lots 14 and 15 were not in compliance with the terms of the conservation easements (Figure 2). The Applicants were both issued Notices of Violation (NOV) (Attachments 1 and 2) for the encroachments and violations of the terms of the easement agreement. These violations consist of placing structures (swimming pool, sheds and play equipment) and having a portion of a driveway within the easement. Although mowing was not expressly identified on the NOV,

this action is still contrary to the terms of the easement agreement. The issuance of an NOV carries no financial penalty, but does outline the violation and requests particular remedial actions. In this case, both NOVs requested that the Applicants remove the installed structures within the easement areas and/or contact MNCPPC offices within 30 days. Both property owners contacted our offices to start the process to amend the Preliminary Plan of Subdivision for forest conservation purposes within the 30 day period.



**Figure 2: Lots 14 & 15 of Kimble Estates Subdivision**

#### **SITE DESCRIPTION**

Lots 14 and 15 of Kimble Estates are both developed with single family homes in the back half of the property. There are no streams, wetlands, floodplain, or environmental buffers on or immediately adjacent to either lot. The Kimble Estates subdivision drains to the southwest into the Magruder Branch which then drains to the Upper Great Seneca Creek. The Countywide Stream Protection Strategy (CSPS) rates the Magruder Branch watershed in poor condition and the Upper Great Seneca watershed in fair condition. Both lots are served by septic systems which are located in the front half of each lot.

#### **Lot 14: 9009 Kimblehunt Drive**

The first lot subject to the amendment to the preliminary plan of subdivision is located at 9009 Kimblehunt Drive, Lot 14, Block A (Figure 3). The lot is 2.0 acres (87,120 square feet) in size and currently encumbered by approximately 12,413 square feet of Category I conservation easement. The conservation easement comprises approximately 14% of the total lot area.

The violations currently existing on this lot and identified on the amended Preliminary Plan involve the installation of a portion of an in-ground pool, a shed, a small playground, fencing and mowing within the Category I Conservation Easement. The conservation easement was recorded in the Land Records at Liber10728/Folio 501. The easement precludes these types of activity within the easement boundaries.

The current property owner received a permit from the Montgomery County Department of Permitting Services (DPS) to install a pool and fence on the property. Permit number 268806 was issued on February 5, 2002 and finalized on June 13, 2002. There is no clear evidence that the property owner applied for permits to locate either of the sheds within the easement. The current violations were created in large part by DPS granting a permit for installation of a pool and fence within an existing Category I conservation easement. M-NCPPC does not review pool permits nor was M-NPPC asked to attend a pre-construction meeting for the installation of the pool.



**Figure 3: Kimble Estates Subdivision, Lot 14, Block A**

**Lot 15: 9007 Kimblehunt Drive**

The second lot subject to the amendment to the preliminary plan of subdivision is located at 9007 Kimblehunt Drive, Lot 15, Block A (Figure 4). The lot is 2.0 acres (87,120 square feet) in size and currently encumbered by 19,780 square feet of Category I conservation easement. The conservation easement comprises approximately 23% of the total lot area.

The violations currently existing on this lot and identified on the amended Preliminary Plan involve the installation of a portion of a driveway apron, a shed, play equipment, fencing and mowing within the Category I Conservation Easement. The conservation easement was recorded in the Land Records at Liber 10728/Folio 501. The easement precludes these types of activities with the easement boundaries. The driveway apron, fencing and play equipment violations pre-existed on this lot when the applicant purchased the property in June of 2006 and the owner unknowingly inherited the forest conservation violations from the previous owner. The mowing within the easement is an ongoing violation performed by the current property owner.



**Figure 4: Kimble Estates Subdivision, Lot 15, Block A**

#### **PROPOSAL**

On October 1, 2012, the Applicants submitted an amendment to Preliminary Plan of subdivision 119900160 to modify the Category I conservation easement on their lots. The applicants propose to remove 7,521 square feet of conservation easement on Lot 14 and 7,548 square feet of conservation easement on Lot 15 for a total of 15,069 square feet of conservation easement removed to an off-site location. Staff supports the request to amend the Preliminary Plan of Subdivision and the Forest Conservation Plan.

The property owner for Lot 14 is proposing to remove the portion of the category I conservation easement directly behind the house structure and the portion of easement in which the pool and fencing are located (Figure 5). The applicant would leave in place the portion of easement located on

the remainder of the property. This remaining portion of easement is immediately adjacent to the portion of remaining easement area for Lot 15. The easement areas proposed to be relocated measure 37-foot wide and are located approximately 28-feet off of the rear face of the house. The location of this portion of the easement curtails the type and range of backyard recreational activities that may occur in a residential neighborhood. There is no segment of protected forest off-site immediately adjacent to this segment of easement.



**Figure 5: Lot 14 showing portion of easement removed for relocation**

The property owner for Lot 15 is proposing to remove the portion of the category I conservation easement directly behind the house structure and the portion of easement adjacent to the entry drive (Figure 6). The applicant would leave in place the easement where the play equipment is currently located, but will remove said play equipment. This remaining portion of easement is immediately adjacent to the portion of remaining easement area for Lot 14. The easement areas proposed to be relocated are exceptionally narrow. The easement directly behind the house structure measures 20-foot wide at its widest point down to 13-foot wide at its narrowest. This segment of easement is located 50-foot off of the rear face of the house structure, but is only 6-foot off of the rear patio of the home. In addition, there is no segment of protected forest immediately adjacent to this segment of easement. The portion of easement adjacent to the entry drive measures 20-foot wide although it does adjoin an off-site category I conservation easement and due to this connection it is considered forest.



**Figure 6: Lot 15 showing portion of easement removed for relocation**

The Applicants propose to mitigate for the area of easement removed by purchasing credits at the MDR-Shiloh forest conservation bank at a 2:1 ratio. The MDR-Shiloh forest mitigation bank is within the same watershed as these properties.

#### **PLANNING BOARD REVIEW AUTHORITY**

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FCP. COMCOR 22A.00.01.13 A (2), the Forest Conservation Regulations, state:

*Major amendments which entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or the Planning Director (depending on who approved the original plan).*

The applicants propose to modify a segment of the category I conservation easement on the subject site, which is 15,070 square feet (0.35 acre), therefore; the plan must be reviewed by the Planning Board. Additionally, the Planning Board has requested to review all plans that remove or significantly change a conservation easement.

#### **STAFF REVIEW**

This limited amendment to the Preliminary Plan is in response to a forest conservation violation. The Planning Department Order allows the Applicant the option to modify the conservation easement.



Lots 14 and 15 have no environmentally sensitive areas within the conservation easements; the easement areas shown on the original forest conservation plan was created to meet the developer's forest conservation requirements and to protect forest within the Magruder Branch of the Upper Great Seneca watershed.

Staff supports the removal of 15,069 square feet of Category I conservation easement, while keeping the remainder of the Category I over the existing trees, forest and grass. The proposal still leaves a forest stand that is 50 feet wide thereby meeting the minimum standard required by the Forest Conservation Law. The amended FCP is enclosed (Attachment 4).

Staff believes that the proposed 2:1 purchase of credits in an off-site approved forest conservation bank is appropriate mitigation for the amount of easement requested to be removed and complies with the Planning Board's policy to mitigate for the removal of conservation easements.

#### **NOTIFICATION and OUTREACH**

The subject property was properly signed with notification of the upcoming Preliminary Plan amendment prior to the October 1, 2012 submission. All adjoining and confronting property owners, civic associations, and other registered interested parties will be notified of the upcoming public hearing on the proposed amendment. As of the date of this report, Staff has received no inquiries. Any comments received hereafter will be forwarded to the Board.

#### **RECOMMENDATION**

Staff recommends that the Planning Board approve this limited Preliminary Plan of subdivision to revise the Forest Conservation Plan with the conditions specified above.

#### **ATTACHMENTS**

1. Notice of Violation; Lot 14, 9009 Kimblehunt Drive
2. Notice of Violation; Lot 15 9007 Kimblehunt Drive
3. Amended Preliminary Plan of Subdivision
4. Amended Final Forest Conservation Plan



# MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue, Silver Spring, Maryland 20910  
Environmental Planning Division 301.495.4540 Fax: 301.495.1303  
[www.MontgomeryPlanning.Org](http://www.MontgomeryPlanning.Org)

## NOTICE OF VIOLATION

EDPNOV 0001

FOR MONTGOMERY COUNTY, MARYLAND, the undersigned issuer, being duly authorized, states that:

On, DEC. 6 2011 the recipient of this NOTICE, SENT CERTIFIED MAIL  
Date Recipient's Name

who represents the property owner, RICHARD AND TAMMY MONARCH  
Property Owner's Name

is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 9009 KIMBLEHUNT DR.

Plan No.	Explanation:
<u>119900160</u>	
<b>VIOLATION:</b>	
	Failure to hold a required pre-construction meeting.
	Failure to have tree protection measures inspected prior to starting work.
	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
	Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector
	Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
	Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.
<input checked="" type="checkbox"/>	Other: <u>INSTALLED 2 SHEDS, FENCING &amp; A POOL WITHIN A CAT. I EASEMENT IN VIOLATION OF THE TERMS OF THE EASEMENT LOCATED AT LIBER/Folio 10728/501</u>
<b>Failure to comply with this NOV by _____ may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at <u>301-495-4712</u> when the corrective action is complete. The following corrective action(s) must be performed as directed and within any time frames specified below:</b>	
	Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting:
	Install tree protection measures and/or tree care as directed by Forest Conservation Inspector.
	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-45-4540.
	Cease all cutting, clearing, or grading and/or land distributing activity. Approval from Forest Conservation Inspector is required to resume work.
	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
<input checked="" type="checkbox"/>	Other: <u>REMOVE STRUCTURES OR CALL OUR OFFICES w/in 30 days OF THE DATE OF THIS NOTICE.</u>

MNCPPC  
Inspector

DOUG JOHNSON  
Printed Name

Douglas Johnson  
Signature

12/6/2011  
Date

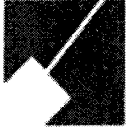
RECEIVED  
BY:

Printed Name

Signature

Date

# Attachment 2



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
 8787 Georgia Avenue, Silver Spring, Maryland 20910  
 Environmental Planning Division 301.495.4540 Fax: 301.495.1303  
 www.MontgomeryPlanning.Org

**NOTICE OF VIOLATION**

**EDPNOV 0001**

FOR MONTGOMERY COUNTY, MARYLAND, the undersigned issuer, being duly authorized, states that:

On, DEC. 6, 2011 the recipient of this NOTICE, LINDA NESBITT  
Date Recipient's Name

who represents the property owner, CURTIS AND KELLY SHIFLETT  
Property Owner's Name

is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 9007 KIMBLEHUNT DR.

Plan No.	Explanation:
<u>119900160</u>	
<b>VIOLATION:</b>	
	Failure to hold a required pre-construction meeting.
	Failure to have tree protection measures inspected prior to starting work.
	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
	Failure to comply with terms, conditions and/or specifications of an approved Forest Conservation plan or Tree Save plan, or as directed by Forest Conservation Inspector
	Failure to obtain an approved Forest Conservation plan or Tree Save plan prior to cutting, clearing, or grading 5,000 square feet on a property of 40,000 square feet or greater.
	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
	Failure to obtain written approval for a fence permit prior to installing a fence that passes through or around a conservation easement.
<b>X</b>	Other: <u>INSTALLED STRUCTURES (SHED &amp; WOODEN PLAY STRUCTURE) IN CAT. I EASEMENT IN VIOLATION OF TERMS OF EASEMENT LOCATED AT LIBER/FOLIO 10728/501</u>
<p><b>Failure to comply with this NOV by _____ may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at _____ when the corrective action is complete. The following corrective action(s) must be performed as directed and within any time frames specified below:</b></p>	
	Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting:
	Install tree protection measures and/or tree care as directed by Forest Conservation Inspector.
	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-45-4540.
	Cease all cutting, clearing, or grading and/or land distributing activity. Approval from Forest Conservation Inspector is required to resume work.
	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.
<b>X</b>	Other: <u>REMOVE STRUCTURES FROM EASEMENT W/IN 30 days OF THIS NOTICE</u>

MNCPPC Inspector

DOUG JOHNSON  
Printed Name

Douglas Johnson  
Signature

12/6/2011  
Date

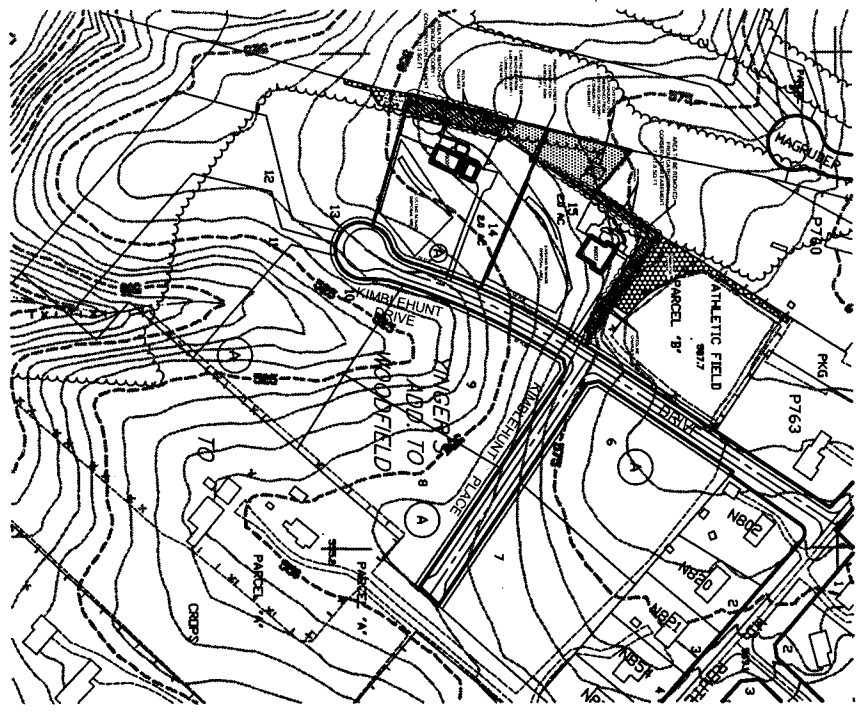
RECEIVED BY:

LINDA NESBITT  
Printed Name

Linda M. Nesbitt  
Signature

Date

Attachment 3



**DEVELOPER CERTIFICATION - LOT 15**

The undersigned certifies that the information contained in the attached Preliminary Plan is true and correct to the best of the developer's knowledge and belief, and that the information is complete and accurate as of the date of the filing of this Preliminary Plan.

Developer Name: **Richard & Kelly Shirett**

Current Project Name: **Kimble Estates**

Address: **307 Kimble Hunt Drive, Gaithersburg, MD 20882**

Phone and Email: **301-253-0854 / 301-253-0854**

**DEVELOPER CERTIFICATION - LOT 14**

The undersigned certifies that the information contained in the attached Preliminary Plan is true and correct to the best of the developer's knowledge and belief, and that the information is complete and accurate as of the date of the filing of this Preliminary Plan.

Developer Name: **Richard & Kelly Shirett**

Current Project Name: **Kimble Estates**

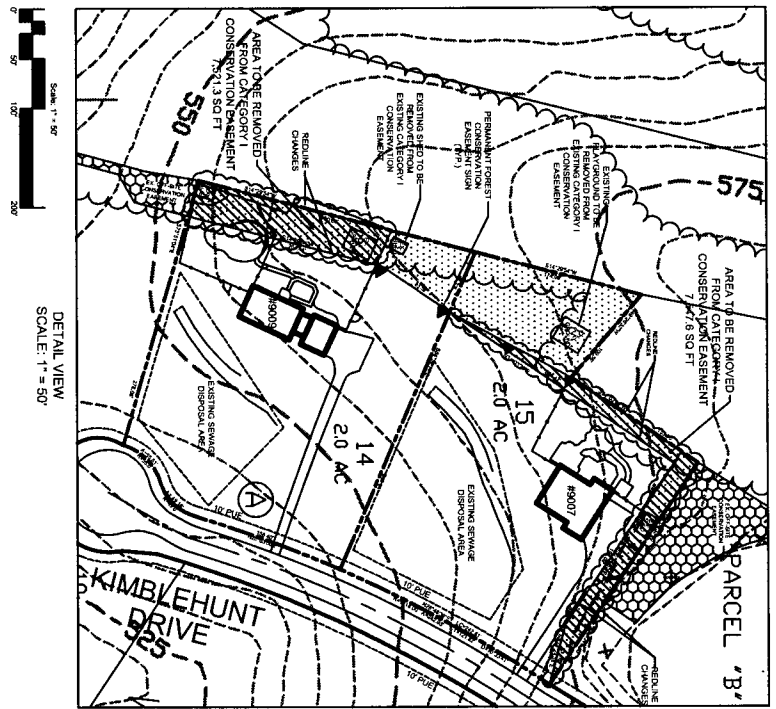
Address: **307 Kimble Hunt Drive, Gaithersburg, MD 20882**

Phone and Email: **301-253-0854 / 301-253-0854**

**Historical Certificate**

This map was prepared from the original survey records of the property and the information contained herein is based on the records of the Montgomery County Department of Planning and Zoning.

Date: **06/25/12**



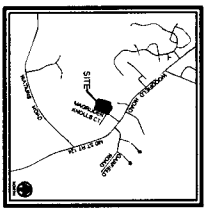
- NOTES:**
1. AREA OF LOT 14 - 3.8 AC
  2. AREA OF LOT 15 - 3.2 AC
  3. EXISTING ZONING - RE-2
  4. SITE IS SERVED BY PUBLIC SEWER AND WATER
  5. EXISTING PUBLIC WATER AND INDIVIDUAL SEWAGE DISPOSAL SYSTEMS
  6. SERVICE CONNECTIONS: 8" x 4" WATER SERVICE, 4" x 4" SEWAGE SERVICE
  7. PROPERTY LOCATED ON TAX MAP PW982; WESC SHEET 233009
  8. UTILITIES (as available): Washington Gas, Verizon, PEPCO

DETAIL VIEW  
SCALE: 1" = 50'

PREPARED FOR:

**Curtis & Kelly Shirett**  
307 Kimble Hunt Drive  
Gaithersburg, MD 20882  
301-253-0854

**Richard & Tammy Monarch**  
Gaithersburg, MD 20882  
301-253-0044



**PRELIMINARY PLAN (AMENDED)**  
**Kimble Estates**  
(Lots 14 & 15; Block A)  
**Montgomery County, Maryland**



date: 09/25/12  
scale: 1" = 100'




Sheet 1 of 1  
Revisions

