



**Preliminary Plan Amendment, 11991094A: Bradley Farms, Lot 26, (In Response to a Violation)**

*JAP*  
*EAU*  
*JAC*

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John Carter, Chief Area 3 Planning Team

**Staff Report Date: 10-11-13**

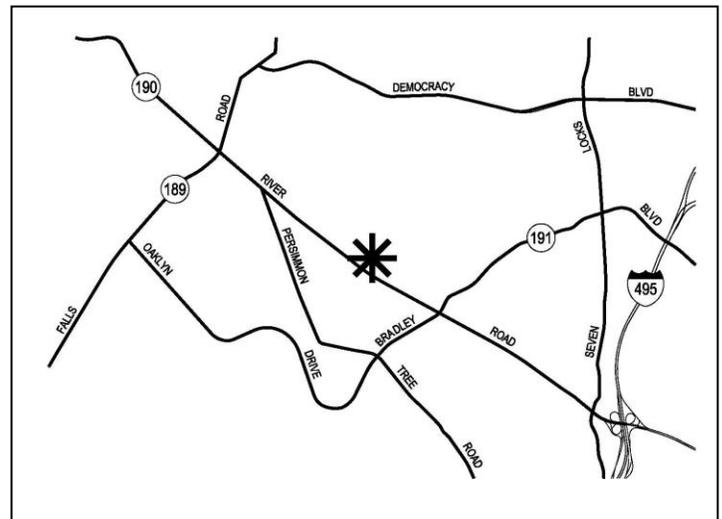
**Description**

**Preliminary Plan Amendment, 11991094A: Bradley Farms, Lot 26, (In Response to a Violation)**

Modify the Category I Conservation Easement on the property located at 9224 Inglewood Drive, 2.71 acres, RE-2 Zone, Potomac Master Plan

**Staff Recommendation:** *Approval with Conditions*

**Applicant:** David and Jessica Kramer  
**Subject Property:** Lot 26, Bradley Farms  
**Submittal Date:** May 19, 2011  
**Review Basis:** Chapter 22A



**Summary**

- Removal of 18,713.5 square feet (0.43 Ac.) of Category I conservation easement
- Mitigation Proposed:
  - Onsite: the addition of 3,056.4 square feet (0.07 Ac.) of Category I conservation easement at a 1:1 ratio.
  - Offsite: 15,557.1 square feet (0.36 Ac.) of Category I conservation easement at a 2:1 planting requirement.
- Staff has received no correspondence on this Application

**STAFF RECOMMENDATION:** Approval of the Limited Amendment to the Preliminary Plan and associated Final Forest Conservation Plan, subject to the following conditions:

1. The Applicant must submit a complete record plat application within ninety (90) days of the mailing of the Planning Board Resolution approving the limited amendment to the Preliminary Plan that delineates the revised Category I conservation easement. The existing conservation easement remains in full force and effect until the record plat is recorded in the Montgomery County Land Records by the Applicant.
2. The record plat must reference the standard Category I conservation easement as recorded at liber 13178, folio 412 in the Land Records for Montgomery County, Maryland over the areas identified to remain, as shown on the amended final forest conservation plan.
3. The Applicant must submit a Certificate of Compliance to use an M-NCPPC approved offsite forest mitigation bank within ninety (90) days of the mailing of the Planning Board Resolution approving 11991094A. The Certificate of Compliance must provide 0.72 acres of mitigation credit for the removal of 0.36 acres of Category I conservation easement.
4. The Applicant must delineate the revised Category I conservation easement boundary on the property with permanent easement markers and appropriate signage as required by 11991094A no later than ninety (90) days from the recordation of the record plat and the new conservation easement.
5. All other conditions of Preliminary Plan No. 119910940 and Forest Conservation Plan No. 119910940 that were not modified herein, as contained in the Planning Board's Opinion dated April 16, 1992, remain in full force and effect.

#### **BACKGROUND**

The Montgomery County Planning Board approved Preliminary Plan #119910940 "Bradley Farms", on April 16, 1992 for three (3) lots on 6.81 acres of land in the RE-2 zone. The original project was subject to the forest conservation law (Chapter 22A of the County Code) and a forest conservation plan (FCP) was required.

The subsequent approved final FCP was for 3 lots on 6.81 acres and showed 2.45 acres of existing forest. Of those 2.45 acres of existing forest, 0.85 acres was cleared and 1.6 acres was retained. This generated a 0.07 acre reforestation requirement which the developer of the subdivision met onsite.

On December 26, 2008, the owner of Lot 26, Bradley Farms was sent a letter from the M-NCPPC inspector outlining the Category I conservation easement on the Lot 26, Bradley Farms and highlighted the terms of the easement, specifically that mowing is not allowed.

On February 11, 2011, the property owner of Lot 26 was issued a Notice of Violation (NOV) for mowing approximately 11,000 square feet of a recorded Category I conservation easement, which is a violation of the terms of the easement agreement. The NOV (EPDNOV 001) gave the property owner until May 9, 2011, to either implement an approved reforestation plan for the mowed area, or submit a Limited Amendment of the Preliminary Plan to alter the Category I conservation easement.

The application to amend the Preliminary Plan was submitted on May 10, 2011 and accepted as complete on May 19, 2011.

**SITE DESCRIPTION**

The subject property is located at 9224 Inglewood Drive, approximately 1,500 feet southwest of the intersection with Inglewood Court, in Potomac and identified as Lot 26, Block 9, Bradley Farms, containing 2.71 acres and developed with a single family residence (“Property” or “Subject Property”). The Property contains approximately 53,439 square feet of Category I conservation easement along the west side. Topography gently slopes downhill from the east to the west. The Property is located within the Cabin John Creek watershed (Use I-P) and the Countywide Stream Protection Strategy rates the water quality in this watershed as good. There is a perennial stream and an associated 100 year floodplain on the Property’s western border. The pipe stem along the Property’s western edge is bisected by a WSSC sewer line and easement that runs within the entire length of the Property as depicted in Figure 1.



**Figure 1: Aerial Photograph Lot 26**

**PROPOSAL (Figure 2)**

On May 19, 2011, the Applicant submitted an application to amend the Preliminary Plan and Forest Conservation Plan for the Subject Property, and it was identified as Preliminary Plan #119940910, (“Amendment” or “Application”). The Amendment proposes to remove 18,713 square feet of the original 53,439 square feet of Category I conservation easement and to add (relocate) 3,056 square feet of Category I conservation easement in an area adjacent to Category I conservation easement that

remains on the Property. The remaining 15,557 square feet (0.36 acres) of Category I easement that is to be removed will be mitigated by purchasing mitigation credit at a 2:1 ratio or 31,114 square feet (0.72 acres) in an approved offsite Forest Conservation Bank. A new record plat will be required to show the revised forest easements on the Property.

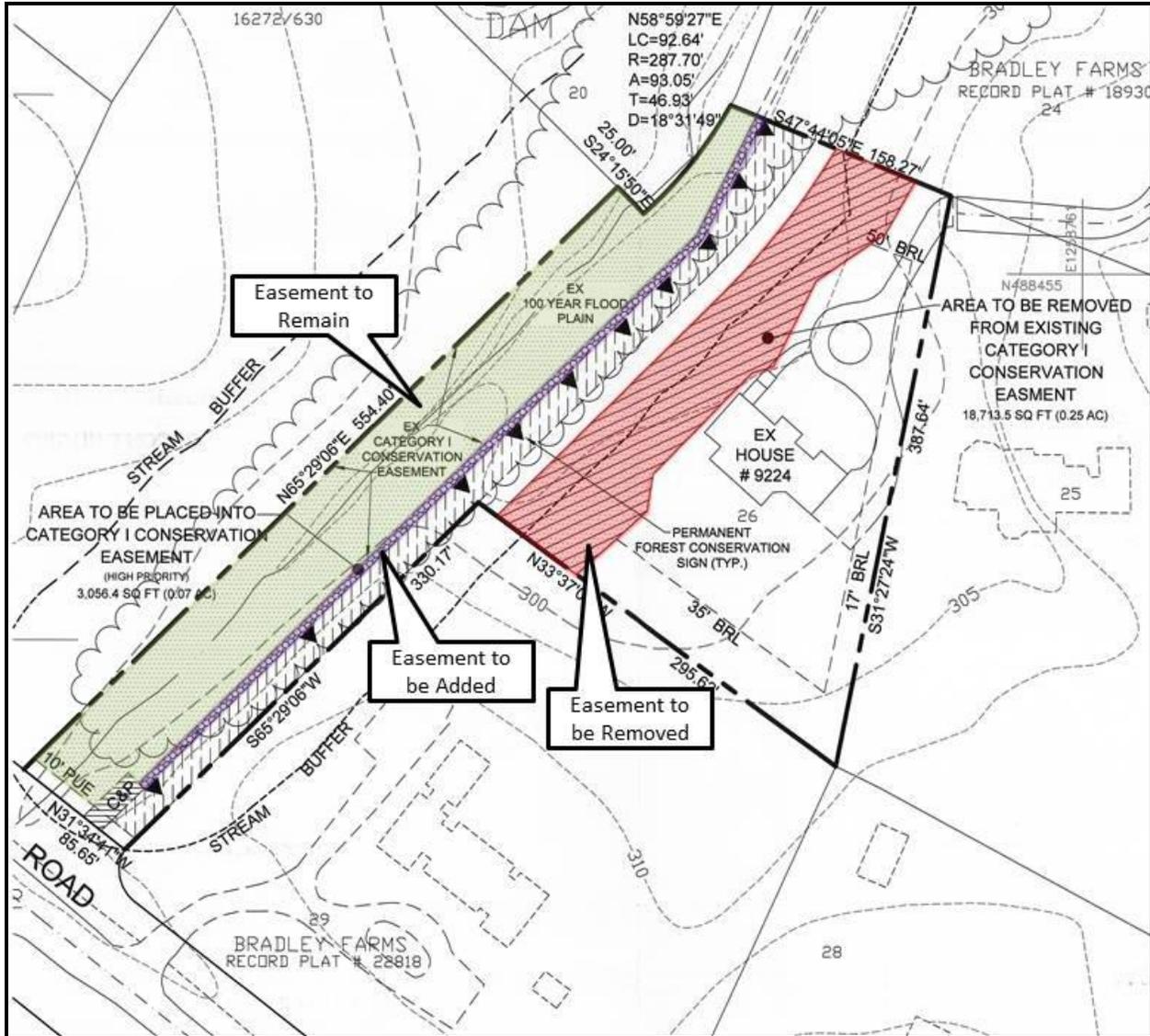


Figure 2: Proposed Easement Changes

**PLANNING BOARD REVIEW AUTHORITY**

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FCP. Section 22A.00.01.13.A of the Forest Conservation Regulation states:

*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 Planning Board has directed staff to bring all requests for modifications to existing easements before them to be considered in a public forum.

## **ANALYSIS AND FINDINGS**

The Application in this case, is in response to a violation as a retroactive process to resolve the violation and bring the Subject Property into compliance. The Applicant worked with staff to come to a mutually supportable mitigation package that meets the Planning Board's established practice for easement modification, that meets the general needs of the Homeowner, and that continues to provide protection of the natural resources.

For this Application, the configuration of the existing forest easement is rather unique. The Applicant requests to remove 18,713.5 square feet of Category I conservation easement, of which approximately 7,250 square feet is within the Stream Valley Buffer ("SVB"). What is unique to this Property is that the forest conservation easement within the SVB is bisected by two WSSC easements that run parallel to the stream, thereby creating non-contiguous forest easements on each side of the WSSC easements. The two separated forest easements do not touch and because of the unprotected nature of the WSSC sewer easements, the forest will never be able to unite across the WSSC easement as a single contiguous, protected forest.

Staff looked closely at the removal of the easement from within the SVB and considered the effect of the WSSC rights-of-way; one which is 20 feet wide and allows for the clearing of any and all vegetation at any time to maintain and replace the existing sewer line. The other is a 15 foot wide construction easement that abuts the 20 foot wide WSSC easement and which could also be cleared and utilized regardless of existing vegetation. Having two non-contiguous pieces of Category I conservation easement in the manner as it exists on the Subject Property does not provide the highest level of intended conservation benefits to water quality protection because the unprotected portion of the SVB within the WSSC easements can be cleared or disturbed at any time. The portion of the Category I forest conservation easement that contains the actual stream (to the west of the WSSC easement) is significant for the protection of the stream. The portion of forest easement that is requested for removal is diminished in its ability to protect the stream because of the intervening WSSC easement. In Staff's opinion, the nature of the easements on the Property, in conjunction with the proximity of the easement to the house and the mitigation plan proposed below provide sufficient justification to consider removal and mitigation of the easements on the Property.

### Mitigation Plan

The Planning Board's policy for the removal of a conservation easement, as determined in November of 2008, is a minimum ratio of 2:1 planting requirement if taken offsite. If the easement can be rearranged onsite, the Planning Board has found a ratio of 1:1 is acceptable. Onsite mitigation is generally preferable to offsite mitigation because it provides in-kind and in-place benefits for what is being removed.

The mitigation plan for this Application is to protect 3,056 square feet of previously unprotected forest edge that is adjacent to the forest within the easement containing the onsite stream. This will widen the more critical forest easement by five feet along its 600 foot length and increase the protection of the stream afforded by the existing easement. Staff does not believe there are any other suitable areas onsite to relocate additional easement, therefore, the remaining 15,557 square feet of easement removed, will be mitigated offsite at a 2:1 planting ratio in a forest mitigation bank.

Staff recommends permanent signage being spaced tightly, every 50 feet, along the newly established eastern edge of the Category I conservation easement where the Property widens, approximately 330 feet from River Road. Staff did not pursue higher mitigation rates because the NOV was issued for mowing in the easement and not for a more detrimental activity such as forest clearing. The base mitigation rates are commensurate with similar violations considered by the Planning Board.

### **NOTIFICATION and OUTREACH**

The Subject Property was signed with notification of the Application prior to the May 19, 2011 submission. All adjoining and confronting property owners, civic associations, and other registered interested parties will be notified of the public hearing on the Amendment. As of the date of this report, staff has not received any phone calls or correspondence in regards to this Application.

Any comments received hereafter will be forwarded to the Board

### **CONCLUSION**

Staff supports the easement removal and the mitigation proposed by the Applicant. The WSSC easement and the existing residential structure limit opportunities to replace the easement entirely onsite. The opportunity to widen the forest easement containing the onsite stream increases the protection of the water and forest resource. In Staff's opinion, the proposal is a reasonable compromise between retaining existing easements, receiving additional easement within the SVB closest to the stream, receiving offsite mitigation, and addressing a violation.

Staff recommends that the Planning Board approve the Application with the conditions specified above.

### Attachments:

- A. Original Forest Conservation Plan
- B. Opinion for Preliminary Plan No. 119910940
- C. Original Plat Preliminary Plan No. 119910940
- D. Revised Preliminary Plan/Forest Conservation Plan 11991045A



## MONTGOMERY COUNTY PLANNING BOARD

## OPINION

Preliminary Plan 1-91094  
NAME OF PLAN: BRADLEY FARMS

On 09-26-91, W.C. BULLIS & F.B. SEBRING, submitted an application for the approval of a preliminary plan of subdivision of property in the RE2 zone. The application proposed to create 3 lots on 6.81 ACRES of land. The application was designated Preliminary Plan 1-91094. On 04-16-92, Preliminary Plan 1-91094 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-91094 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-91094, subject to the following conditions:

1. Agreement with Planning Board to grade site and provide for the necessary tree preservation as shown on 9/91 plan
2. Record plat to reflect delineation of conservation easement over the stream buffer area and tree save area as depicted on 9/91 plan
3. Coordinate with C&P Telephone for the possibility of providing a 20' x 40' environmental vault easement
4. Access and improvements as required to be approved by MCDOT
5. Other necessary easements

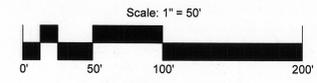
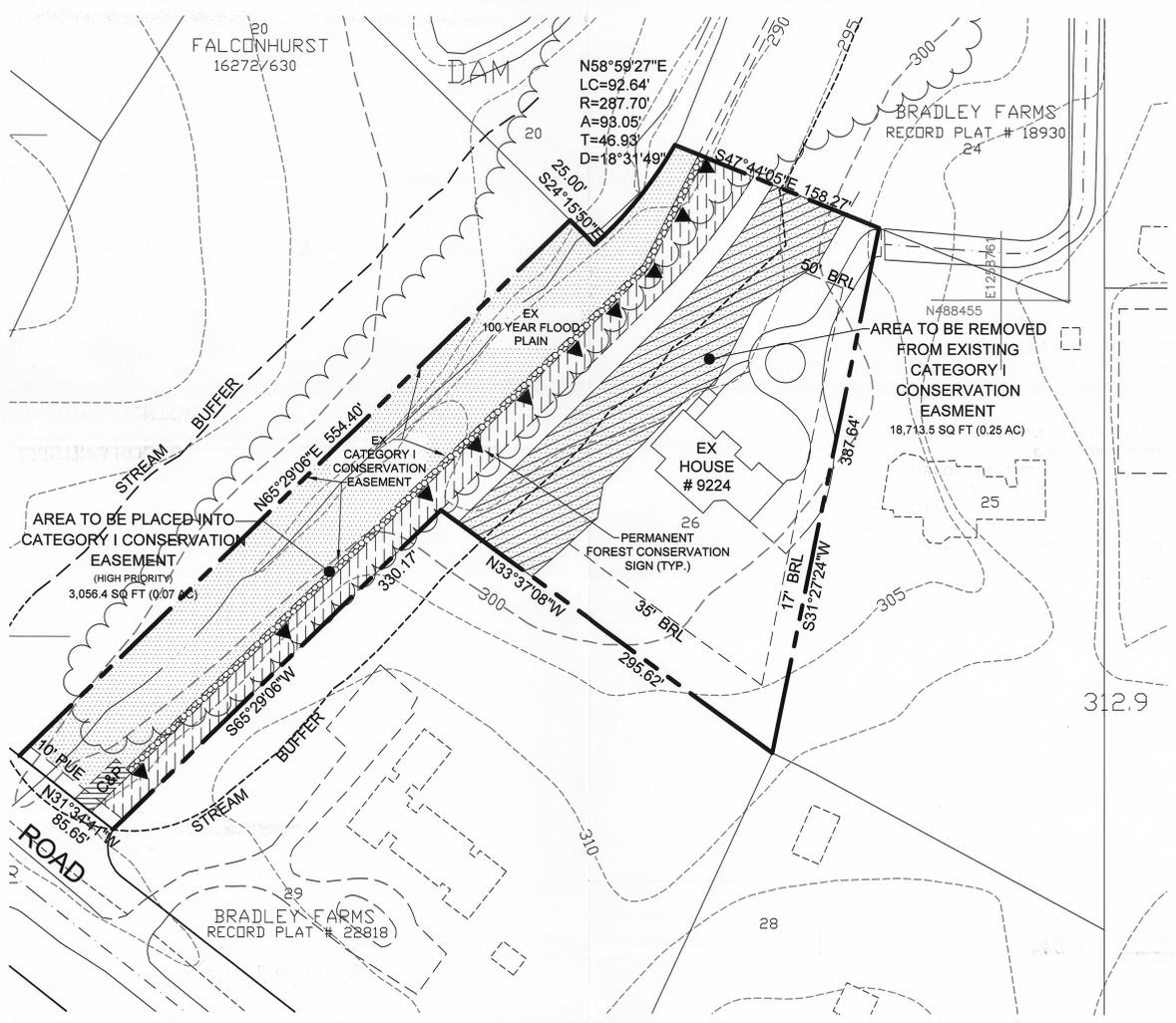


02/25/2013



date: 10/05/11  
scale: 1" = 50'

Benning & Associates, Inc.  
1893 Shady Grove Court  
Columbia, MD 21057  
(301) 948-0240



**LEGEND:**

- AREA IN EXISTING CONSERVATION EASEMENT
- AREA IN WSSC EASEMENT
- AREA NOT IN AN EASEMENT AND TO BE PLACED INTO CATEGORY I CONSERVATION EASEMENT
- AREA TO BE REMOVED FROM CATEGORY I CONSERVATION EASEMENT
- EXISTING HOUSE
- EXISTING CONTOUR
- PUE
- BRL
- LOT LINE
- PERMANENT FOREST CONSERVATION SIGN

**NOTES:**

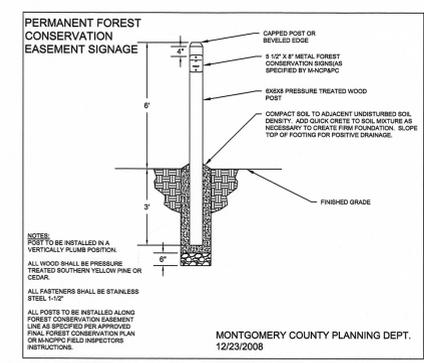
- 1) AREA TO BE REMOVED FROM CATEGORY I CONSERVATION EASEMENT - 18,713.5 SQUARE FEET (0.43 AC)
- 2) NEW AREA TO BE PLACED INTO A CATEGORY I CONSERVATION EASEMENT - 3,156.4 SQUARE FEET TOTAL (0.07 AC)
- 3) AREA TO BE MITIGATED OFF-SITE AT FOREST BANK - 15,557.1 SQUARE FEET (0.36 AC)
- 4) MITIGATION FOR REMOVAL OF THE CONSERVATION EASEMENT TO BE SATISFIED BY PURCHASING CREDITS FROM AN APPROVED FOREST CONSERVATION BANK. FOREST BANK CREDITS TO BE PURCHASED AT RATE OF 2:1 RATE FOR PLANTING, 4:1 RATE FOR RETENTION.

**LIST OF AMENDMENT ITEMS:**

1. REVISION TO EXISTING CATEGORY I CONSERVATION EASEMENT LOCATION

**NOTES:**

1. AREA OF PROPERTY - 2.71 ACRES
2. EXISTING ZONING - RE-2
3. METHOD OF DEVELOPMENT - STANDARD
4. NUMBER OF LOTS PROPOSED - 1
5. SITE IS SERVED BY PUBLIC WATER AND SEWER
6. EXISTING SEWER & WATER SERVICE CATEGORIES: S-1, W-1
7. LOCATED IN CABIN JOHN CREEK WATERSHED
8. AREA DEDICATED TO STREETS - 0.0 AC
9. PROPERTY LOCATED ON TAX MAP FP561; WSSC SHEET 211NW09
10. UTILITIES (as available): Washington Gas, Verizon, PEPCO



**DEVELOPER'S CERTIFICATE**

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 11991094A including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: \_\_\_\_\_  
Print Company Name

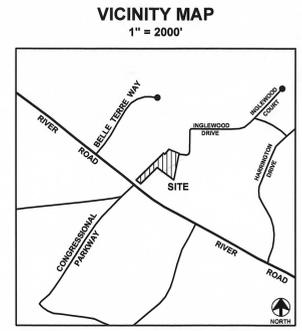
Contact Person or Owner: \_\_\_\_\_  
DAVID & JESSICA KRAMER  
Print Name

Address: 9224 INGLEWOOD DRIVE POTOMAC, MD 20854

Phone and Email: 301-520-2008

Signature:

Prepared for:  
**David & Jessica Kramer**  
9224 Inglewood Drive  
Potomac, MD 20854  
(301) 520-2008



FINAL FOREST CONSERVATION PLAN-LIMITED PLAN AMENDMENTS  
**BRADLEY FARMS, LOT 26; BLOCK 9**  
(9224 Inglewood Drive)  
Montgomery County, Maryland

RECEIVED  
M-NCPPC  
MAR - 4 2013  
MONTGOMERY COUNTY  
PLANNING DEPARTMENT