

25004 Little Bennett Court, Preliminary Plan, 11997035A



Doug Johnsen, Senior Planner, douglas.johnsen@montgomeryplanning.org 301-495-4712



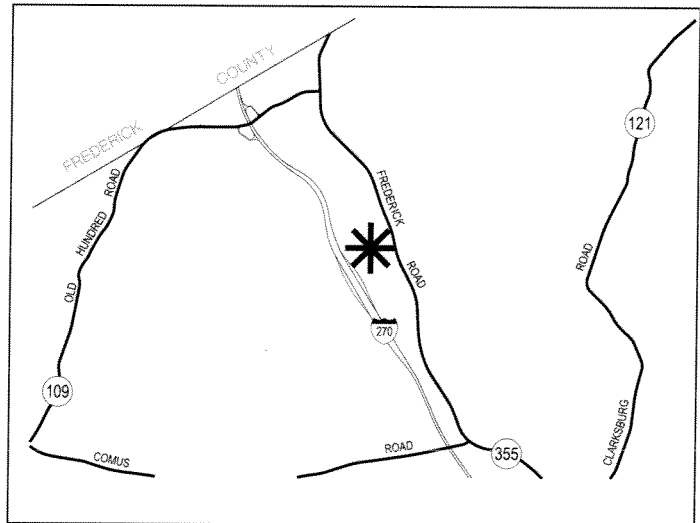
Mark Pfefferle, Chief, mark.pfefferle@montgomeryplanning.org 301-495-4730

Completed: 05/22/15

Description

Limited Amendment, Preliminary Plan Number 11997035A, Lot 15

- Property is located at 25004 Little Bennett Court, 1100 feet west of the intersection of Little Bennett Drive and Frederick Road (MD 355) in Clarksburg, MD.
- Property is a 2.12 acre residential lot in the RE-2 Zone, Clarksburg Vicinity Master Plan.
- Applicants request to remove 3,424 square feet of Category I Conservation Easement.
- Applicants: Larry and Linda Vance; 25004 Little Bennett Court, Clarksburg, MD 20871
- Submittal Date: January 15, 2015



Summary

- Staff Recommendation: **Approval with Conditions**
- Proposal to remove approximately 3,424 square feet (0.08 acres) of Category I Conservation Easement.
- Proposal to purchase 2:1 mitigation credits equal to 6,848 square feet at an off-site forest mitigation bank 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:

Conditions:

1. Within ninety (90) days of the mailing date of the Planning Board Resolution, a new Category I Conservation easement over all onsite forest conservation areas must be recorded in the Montgomery County Land Records by deed. The Category I Conservation Easement must be approved by the M-NCPPC Office of the General Counsel before recordation of the easement.
2. Within ninety (90) days of the mailing date of the Planning Board Resolution approving the limited amendment to the Preliminary Plan, Applicants must submit a complete record plat application that delineates the revised conservation easements and references the Liber/Folio of the recorded deed. The existing easements remain in full force and effect until the new conservation easements are recorded.
3. Prior to Planning Board approval of the record plat, the Applicants must submit a certificate of compliance to use an offsite forest mitigation bank. The certificate of compliance must provide 6,848 square feet of mitigation credits for onsite conservation easement removal of 3,424 square feet.
4. All other conditions of Preliminary Plan No, 119970350 as contained in the Planning Board's Resolutions mailed March 28, 1997 that were not modified herein, remain in full force and effect.

BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan No. 119970350 "Little Bennett Estates", on March 27, 1997 and issued a written opinion on March 28, 1997. The approval was for twenty-one (21) lots on 70.76-acres of land in the RE-2 zone of which Lot 15, Block A was a part (see Figure 2). 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 15 of the 21 lots, including the subject lot. The Preliminary Plan opinion dated March 28, 1997 required that the Category I conservation easements be shown on the record plat. The conservation easements for the subject lot are shown on Plat numbered 20563 approved by the Planning Board on May 29, 1997.

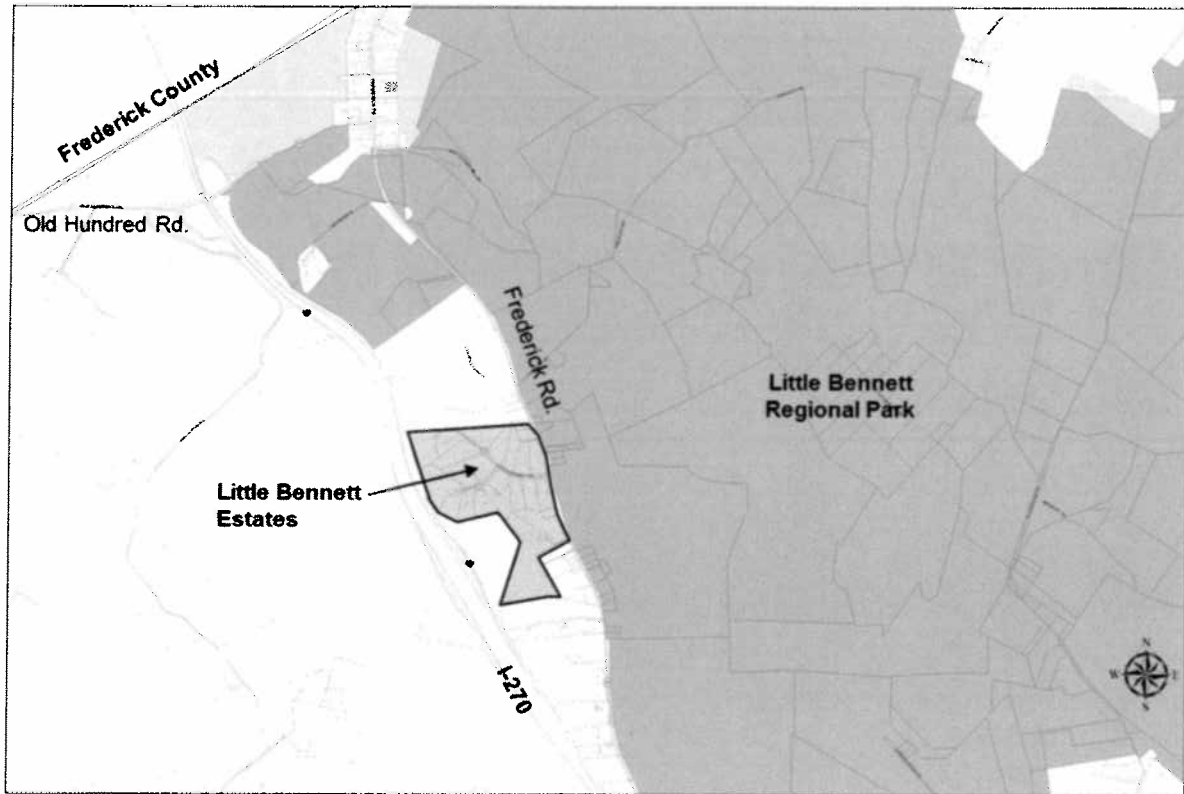


Figure 1: Little Bennett Estates Subdivision

An onsite easement inspection was conducted on July 29, 2014 by Staff as part of the requirement to monitor and verify the integrity of all conservation easements at least once every 3 years. At this time it was discovered that Lot 15 was not in compliance with the terms of the conservation easement (Figure 3). The Applicant was issued a Notice of Violation (NOV) (Attachment A) on July 29, 2014 for the encroachments and violations of the terms of the easement agreement. These violations consist of placing structures (fencing, a portion of a swimming pool, a portion of a shed), turf grasses and mowing 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, the NOV requested that the Applicant remove the installed structures within the easement areas and/or contact MNCPPC offices within 30 days to discuss removal of a portion of the conservation easement. The property owner contacted Staff, within the 30 day period, to start the process to amend the Preliminary Plan of Subdivision for forest conservation purposes.

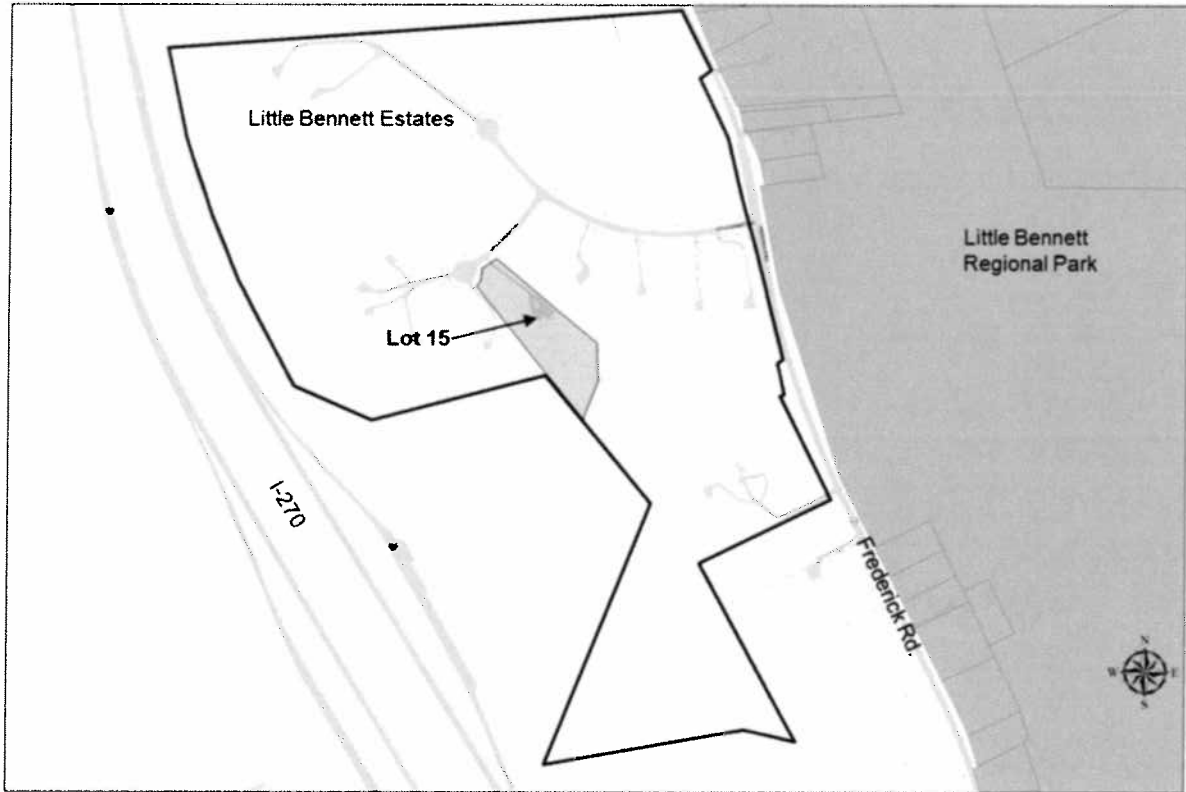


Figure 2: Lot 15 of Little Bennett Estates Subdivision

SITE DESCRIPTION

The subject lot is located at 25004 Little Bennett Court, Lot 15, Block A of Little Bennett Estates (Figure 3). The lot was developed with a single family home in the middle of the property. The septic field is located in the forward third of the lot. Lot 15 is narrower and deeper than the typical residential lot in the RE-2 zone. There are no streams, wetlands, floodplain, or environmental buffers on or immediately adjacent to Lot 15, but this lot did contain existing forest at the time of development. The Little Bennett Estates subdivision generally drains to the west into the Little Bennett Creek - Wildcat Branch, which drains to Little Bennett Creek, which flows into Lower Monocacy River, and eventually into the Potomac River. The stream condition is considered to be Excellent per Montgomery County Department of Environmental Protection. The stream condition was last evaluated in 2008.

The lot is 2.12 acres (92,569 square feet) in size and currently encumbered by approximately 37,383 square feet of Category I conservation easement. The conservation easement comprises approximately 40% of the total lot area. Some existing forest cover may have been removed to install the pool and fence since the original Final Forest Conservation Plan shows this portion of the conservation easement as containing trees, but not being completely forested. The homeowner installed the fence along the existing forest line that was inside the conservation easement.

The violations currently existing on this lot and identified on the amended Preliminary Plan involve the installation of fencing, a portion of an in-ground pool, a portion of a shed, installation of turf grass and

mowing within the Category I Conservation Easement. The conservation easement was recorded in the Land Records at Liber 13178/Folio 412 dated May 29, 1997. The easement precludes these types of activities 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 (Attachment B). Permit number 269880 was applied for on February 20, 2002 and issued on February 20, 2002. There is no clear evidence that the property owner applied for permits to locate the shed 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: Lot 15, Block A

PROPOSAL

On January 15, 2015, the Applicants submitted an amendment to Preliminary Plan of subdivision 11990350 to modify the Category I conservation easement on their lot. The Applicants propose to remove 3,424 square feet of existing conservation easement on Lot 15 and mitigate the loss by relocating 1,998 square feet to an on-site location and taking the remaining 1,426 square feet to an off-site forest mitigation bank at a 2:1 rate.

The property owners for Lot 15 are 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 4). The applicants would leave in place the portion of easement located on the remainder of the property.

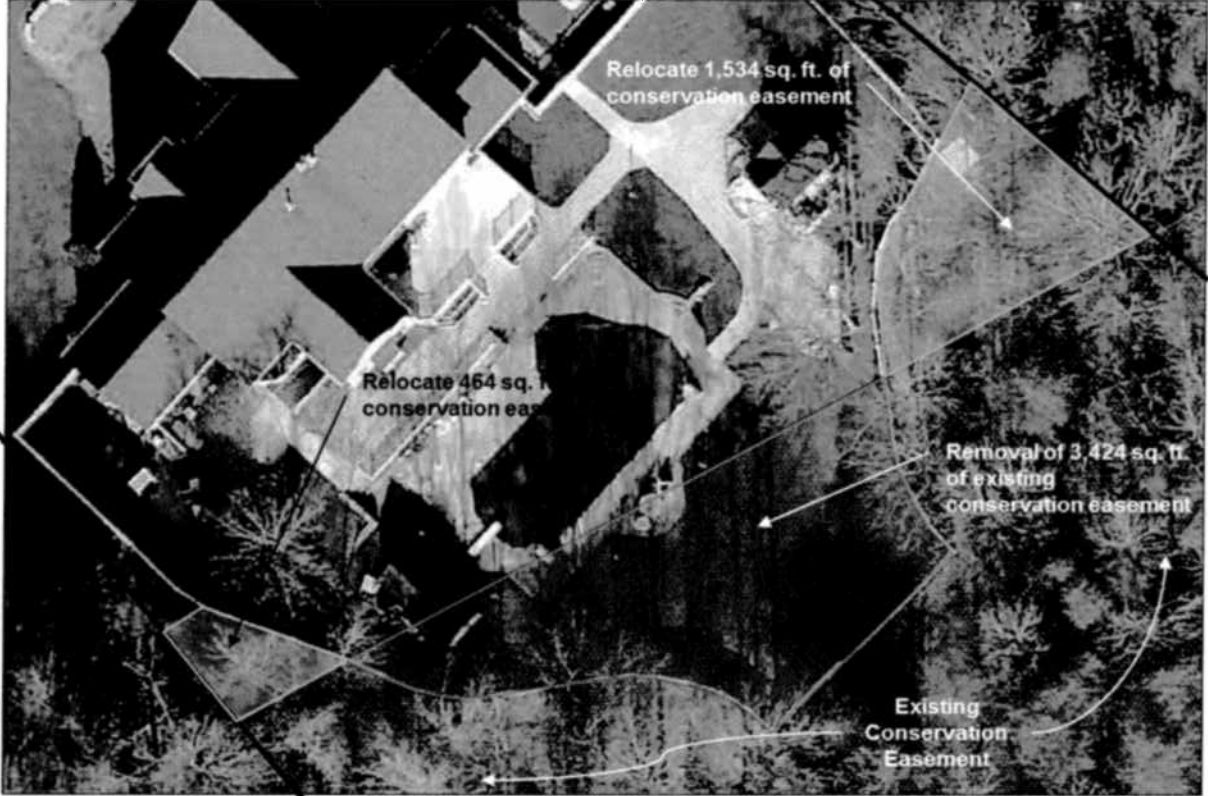


Figure 4: Lot 15 showing Applicant’s proposal for portion of easement removed for relocation

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 3,424 square feet (0.08 acre), but it has been Planning Board practice 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 NOV allows the Applicant the option to modify the conservation easement.

Lot 15 has no environmentally sensitive areas within the conservation easements; the easement areas shown on the original forest conservation plan were created to meet the developer's forest conservation requirements and to protect existing forest within the Wildcat Branch of the Little Bennett Creek watershed.

Staff supports the removal of 3,424 square feet of Category I conservation easement, while keeping the remainder of the Category I over the existing forest. However, Staff does not support the on-site relocation of 1,998 square feet of new conservation easement while taking the balance of 1,426 square feet of conservation easement to an off-site forest conservation bank. Staff's position is to recommend that the entire 3,424 square feet of conservation easement be taken to an off-site approved forest conservation bank at a 2:1 rate.

Staff supports the removal of the entire 3,424 square feet of conservation easement to an off-site forest conservation bank for several reasons. First, the addition of these two very small areas would create a somewhat confusing easement boundary line with two small bump-outs along an otherwise contiguous, straight line. In addition, these two separate areas are so small that adding our standard conservation easement signage would seem unacceptable. This in turn could complicate conservation easement enforcement actions in the future in the event the existing border fencing is ever removed. In addition, staff's recommendation also gives the current and any future owner of this property the ability to expand the backyard area.

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 January 15, 2015 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

- A. Notice of Violation; Lot 15, 25004 Little Bennett Court
- B. DPS Pool Permit dated 2/20/2002
- C. Amended Preliminary Plan of Subdivision
- D. Amended Final Forest Conservation Plan



ATTACHMENT A

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, 07-29-2014 the recipient of this NOTICE, MR. LARRY L. VANCE
Date Recipient's Name
who represents the property owner, SAME AS ABOVE
Property Owner's Name

is notified that a violation of the Montgomery County Forest Conservation Law (Chapter 22-A) exists at the following location: 25004 LITTLE BENNETT CT.

Plan No. <u>119970350</u>	Explanation: <u>FENCE & SMALL PORTION OF POOL STRUCTURE IN EASEMENT</u>
VIOLATION:	
<input type="checkbox"/>	Failure to hold a required pre-construction meeting.
<input type="checkbox"/>	Failure to have tree protection measures inspected prior to starting work.
<input type="checkbox"/>	Failure to install or maintain tree protection measures per the approved Forest Conservation or Tree Save plan.
<input type="checkbox"/>	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
<input type="checkbox"/>	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.
<input type="checkbox"/>	Failure to comply with reforestation or afforestation requirements of a Forest Conservation Plan.
<input type="checkbox"/>	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>STRUCTURES IN FOREST CONSERVATION EASEMENT; POOL, FENCE & YARD</u>
Failure to comply with this NOV by <u>07-29-14</u> 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:	
<input type="checkbox"/>	Stake out limits of disturbance (LOD) and contact Forest Conservation Inspector for a pre-construction meeting:
<input type="checkbox"/>	Install tree protection measures and/or tree care as directed by Forest Conservation Inspector.
<input type="checkbox"/>	Submit required application for compliance with Chapter 22A of the County Code. Contact Environmental Planning at 301-45-4540.
<input type="checkbox"/>	Cease all cutting, clearing, or grading and/or land distributing activity. Approval from Forest Conservation Inspector is required to resume work.
<input type="checkbox"/>	Schedule a pre-planting meeting with the Forest Conservation Inspector prior to the reforestation of afforestation planting.
<input type="checkbox"/>	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>MR. VANCE WILL REQUEST PLANNING BOARD REMOVAL OF EASEMENT.</u>

MNCPPC Inspector DOUG JOHNSON Douglas P. Johnson 7-29-2014
Printed Name Signature Date

RECEIVED BY: LARRY L. VANCE [Signature] 7-29-2014
Printed Name Signature Date

[DPS > Online > Search Application Online](#)

Department of Permitting Services

Online Services - Data Search

If you have trouble scheduling next day commercial inspections (before 12:00 PM), please call the Montgomery County Service Center at 240-777-0311 and ask to speak with a DPS Permit Technician to schedule your commercial inspections.

Please select one of the Search By methods below and define your search criteria first. Then, click the Search button to display the results. Fields with * are required items.

Search By:

Application

Permit Number	269880	Type	Building Residential Permit
Application Date	02/20/2002	Issue Date	02/20/2002
Final Date		Status	Permit Issued
Work Type	Construct Swimming Pool	Site Address	25004 LITTLE BENNETT CT CLARKSBURG, MD 20871-3103
Square Footage	2,320	Value	\$56,000.00
Subdivision	Clarksburg Outside	Lot/Block	15/A

Reviews

Description	Status	Reviewer	Start Date	Completed Date
Architectural2	Approved	David Ferro	02/20/2002	02/20/2002
Dps Zoning Review	Approved	Delvin Daniels	02/20/2002	02/20/2002
Mechanical	Waived	David Ferro		
Septic Review2	Approved	John Hancock	02/20/2002	02/20/2002
Structural1	Approved	David Ferro	02/20/2002	02/20/2002
Wash Suburb Sanitation Commsn	Passed	Angela Bell	02/20/2002	02/20/2002
Well Review1	Approved	John Hancock	02/20/2002	02/20/2002



Select Language

Translate

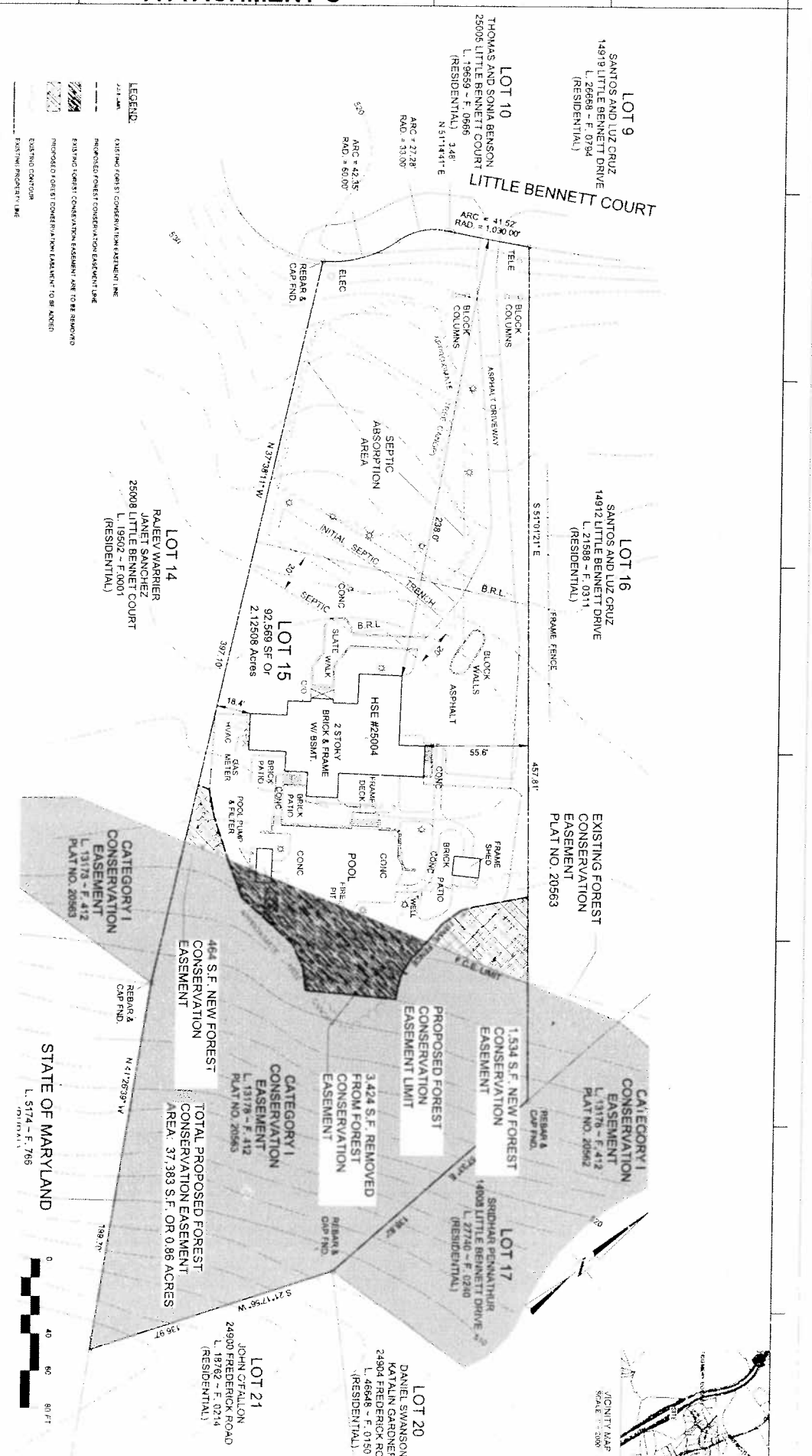


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Last Edited: 04/21/2014

ATTACHMENT C

- LEGEND**
- 1. 1/2" LINE (20' CONSERVATION EASEMENT LINE)
 - 2. 1/4" LINE (10' CONSERVATION EASEMENT LINE)
 - 3. 1/8" LINE (5' CONSERVATION EASEMENT LINE)
 - 4. DOTTED LINE (PROPOSED FOREST CONSERVATION EASEMENT LINE)
 - 5. DOTTED LINE (PROPOSED FOREST CONSERVATION EASEMENT LINE TO BE REMOVED)
 - 6. DOTTED LINE (EXISTING FOREST CONSERVATION EASEMENT LINE)
 - 7. DOTTED LINE (EXISTING FOREST CONSERVATION EASEMENT LINE TO BE REMOVED)
 - 8. DOTTED LINE (EXISTING FOREST CONSERVATION EASEMENT LINE)
 - 9. DOTTED LINE (EXISTING FOREST CONSERVATION EASEMENT LINE)
 - 10. DOTTED LINE (EXISTING FOREST CONSERVATION EASEMENT LINE)
- NOTES**
1. LOT 14: 25008 LITTLE BENNETT COURT, RAJEV WARRIER, JANET SANCHEZ, L. 19502 - F. 0001 (RESIDENTIAL)
 2. LOT 15: 92,589 SF OF 2.12508 ACRES
 3. LOT 16: 14912 LITTLE BENNETT DRIVE, SANTOS AND LUZ CRUZ, L. 21588 - F. 0311 (RESIDENTIAL)
 4. LOT 17: 4808 LITTLE BENNETT DRIVE, SRDHAR PENNAHUR, L. 27740 - F. 0240 (RESIDENTIAL)
 5. LOT 20: 24904 FREDERICK ROAD, DANIEL SWANSON, KATALIN GARDNER, L. 46648 - F. 0150 (RESIDENTIAL)
 6. LOT 21: 24900 FREDERICK ROAD, JOHN O'FALON, L. 19762 - F. 0214 (RESIDENTIAL)

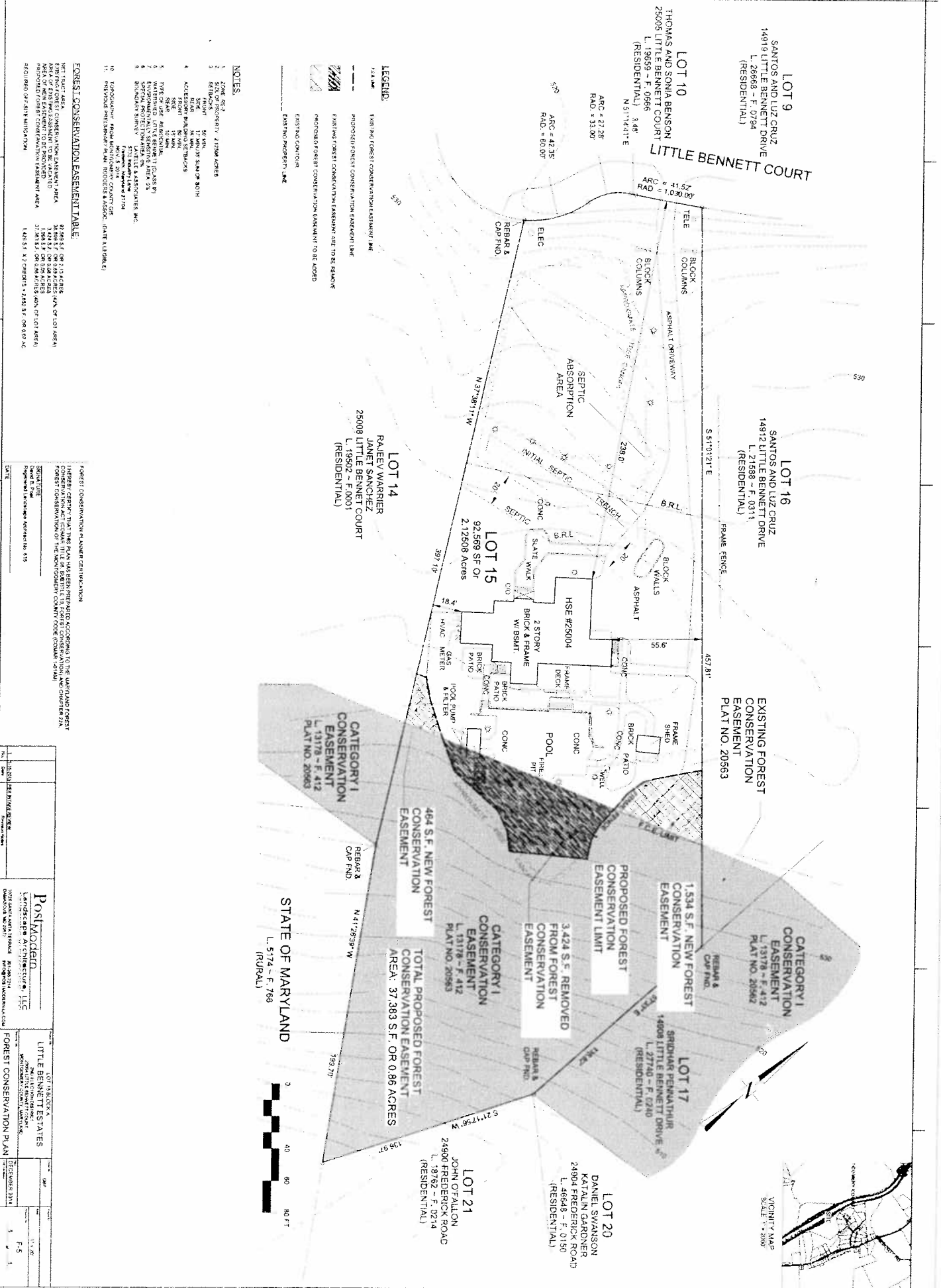


PostModern
LANDSCAPE ARCHITECTURE, LLC
10735 WOODLAND DRIVE, SUITE 201
CROFTON, MD 21114

LITTLE BENNETT ESTATES
PRELIMINARY PLAN

SCALE MAP
SCALE: 1" = 200'

ATTACHMENT D



- LEGEND**
- 1. VACANT FOREST CONSERVATION EASEMENT LIMIT
 - 2. PROPOSED FOREST CONSERVATION EASEMENT LIMIT
 - 3. EXISTING FOREST CONSERVATION EASEMENT LIMIT
 - 4. PROPOSED FOREST CONSERVATION EASEMENT TO BE ADDED
 - 5. EXISTING FOREST CONSERVATION EASEMENT TO BE ADDED
 - 6. EXISTING PROPERTY LINE

- NOTES**
1. ZONE RECALL PROPERTY: 2700A ACRES
 2. REBAR & CAP PND.
 3. SEWER
 4. ACRES: 2.12508 ACRES
 5. FRONT: 387.10'
 6. SIDE: 139.70'
 7. REAR: 139.70'
 8. INTERIOR: 139.70'
 9. INTERIOR: 139.70'
 10. INTERIOR: 139.70'
 11. INTERIOR: 139.70'

FOREST CONSERVATION EASEMENT TABLE

NO.	DESCRIPTION	ACRES
1	NEW FOREST AREA	1.534
2	REMOVED FROM FOREST AREA	3.424
3	NEW FOREST AREA	0.86
4	TOTAL FOREST CONSERVATION EASEMENT AREA	5.818

FOREST CONSERVATION EASEMENT CERTIFICATION

I HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED ACCORDING TO THE MARYLAND FOREST CONSERVATION ACT (COMAR TITLE 26 SUBTITLE 13) AND THAT THE FOREST CONSERVATION EASEMENT IS IN ACCORDANCE WITH THE MARYLAND FOREST CONSERVATION ACT AND CHAPTER 22A.

DATE: 1/15/2011

NAME: DANIEL SWANSON

ADDRESS: 101 EAST LANTANA ROAD, SUITE 1115, WEST PALM BEACH, FL 33411

PHONE: 561-833-1115

PostWooden

101 EAST LANTANA ROAD, SUITE 1115, WEST PALM BEACH, FL 33411

561-833-1115

LITTLE BENNETT ESTATES

25005 LITTLE BENNETT COURT, L. 19659 - F. 0566 (RESIDENTIAL)

FOREST CONSERVATION PLAN

DATE: 1/15/2011

SCALE: 1" = 40'

