



Preliminary Plan Amendment 12000094B in Response to a Violation – Tomahawk Estates

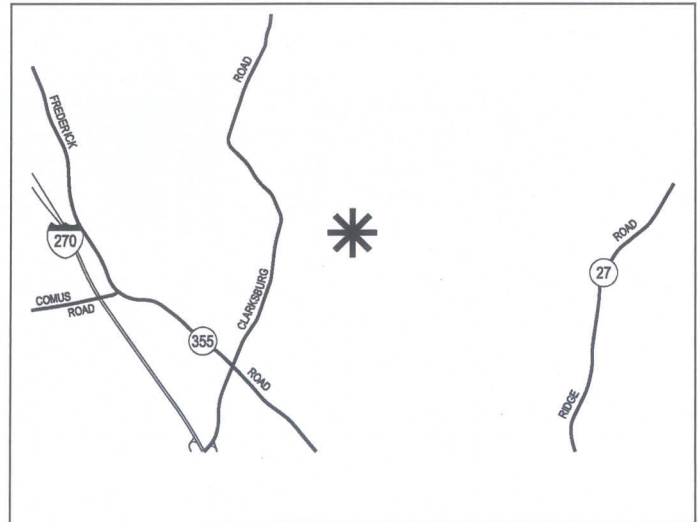
- dj Doug Johnsen, Senior Planner, DARC, douglas.johnsen@montgomeryplanning.org, 301-495-4712 dj
- mp Mark Pfefferle, Chief, DARC, Mark.Pfefferle@montgomeryplanning.org, 301-495-4730
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-

Completed: 08/28/15

Description

Limited Amendment, Preliminary Plan No. 12000094B; Lots 107, 108, and 113

- Located 3750 feet northeast of the intersection of Burnt Hill Road & Snowden Farm Parkway in Clarksburg, MD
- On 48.15 acres in the Damascus Master Plan 1985.
- Applicants: Mr. Chris Brown (Lot 107), Mr. David Pleasants (Lot 108), and Mr. David Schellhardt (Lot 113).
- Submitted on October 31, 2012



Summary

- Staff recommendations: **Approval with conditions.**
- Proposal to remove 1.97 acres of Category I conservation easement on three lots by relocating 1.35 acres of new Category I conservation easement on site and taking 0.62 acres to an off-site location at a 2:1 rate.
- Proposal to plant 1.35 acres of land and protect with a Category I conservation easement
- Proposal to plant 0.85 acres of currently unforested Category I conservation easement.

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

Conditions Common to all Lots

1. Within thirty (30) days from the mailing date of the Planning Board Resolution approving this amended Preliminary Plan, Applicants must submit, to the Montgomery County Planning Department, Category I conservation easement documents for approval in the standard M-NCPPC approved form, with metes and bounds, describing the location of the new and existing conservation easements to remain on the Property.
2. Within ninety (90) days from the mailing date of the Planning Board Resolution approving this amended Preliminary Plan, Applicants must record the new conservation easements in the Montgomery County Land Records and provide proof of recording to Staff. The existing easements remain in full force and effect until the new easements are recorded. Applicants must file for release of the existing Category I conservation easement(s) on their respective properties.
3. Within 12 months of the mailing date of the Resolution, Applicants must:
 - a. Provide evidence to Staff that each Lot has a TDR assigned to it, and
 - b. Submit a complete record plat application(s) that delineates and references the liber and folio of the Category I conservation easements as recorded.
4. Within ninety (90) days from the mailing date of the Resolution Applicants must delineate all existing and new Category I conservation easement boundaries with permanent easement markers and appropriate signage.
5. Within 12 months from the date of mailing of the Resolution, Applicants must have all required afforestation plantings installed and accepted by M-NCPPC Staff.
6. Prior to the acceptance of the required forest plantings by Staff,
 - a. Applicants must submit financial securities as specified in Forest Conservation Law 22A-12(i) for Staff approval; and
 - b. Applicants must submit Maintenance and Management Agreements as specified in 22A-12(h) for Staff approval.

Specific Conditions for Lot 107

1. Within ninety (90) days from the mailing date of the Planning Board Resolution Applicant must install pasture fencing, or staff approved equivalent, as shown on the amended Final Forest Conservation.
2. Applicant must remove and relocate on-site 0.17 acre of Category I Conservation Easement.
3. Applicant must afforest the newly created 0.17 acre of Category I Conservation Easement in accordance with the amended Final Forest Conservation Plan.

Specific Conditions for Lot 108

1. Within ninety (90) days from the mailing date of the Planning Board Resolution Applicant must install new pasture fencing, or Staff approved equivalent, as shown on the amended Final Forest Conservation Plan.
2. Applicant must remove and relocate on-site 1.18 acres of Category I Conservation Easement.
3. Applicant must afforest the newly created 1.18 acres of Category I Conservation Easement in accordance with the amended Final Forest Conservation Plan.
4. Applicant must afforest 0.65 acre of existing on-site Category I Conservation Easement.

Specific Conditions for Lot 113

1. Within ninety (90) days from the mailing date of the Planning Board Resolution Applicant must submit a certificate of compliance to use an off-site forest mitigation bank. The certificate of compliance must provide 1.24 acres (54,014.4 square feet) of off-site forest credit mitigation credits for the removal of 0.62 acre (27,007.2 square feet) of on-site conservation easement.
2. Applicant must afforest 0.85 acre of existing on-site Category I Conservation Easement in accordance with the amended Final Forest Conservation Plan.
3. Prior to the installation of the afforestation material Applicant must remove all turf grass style plant material within the existing conservation easement areas and reseed with an M-NCPPC approved Maryland native meadow seed mix endemic to the Piedmont region of Maryland.

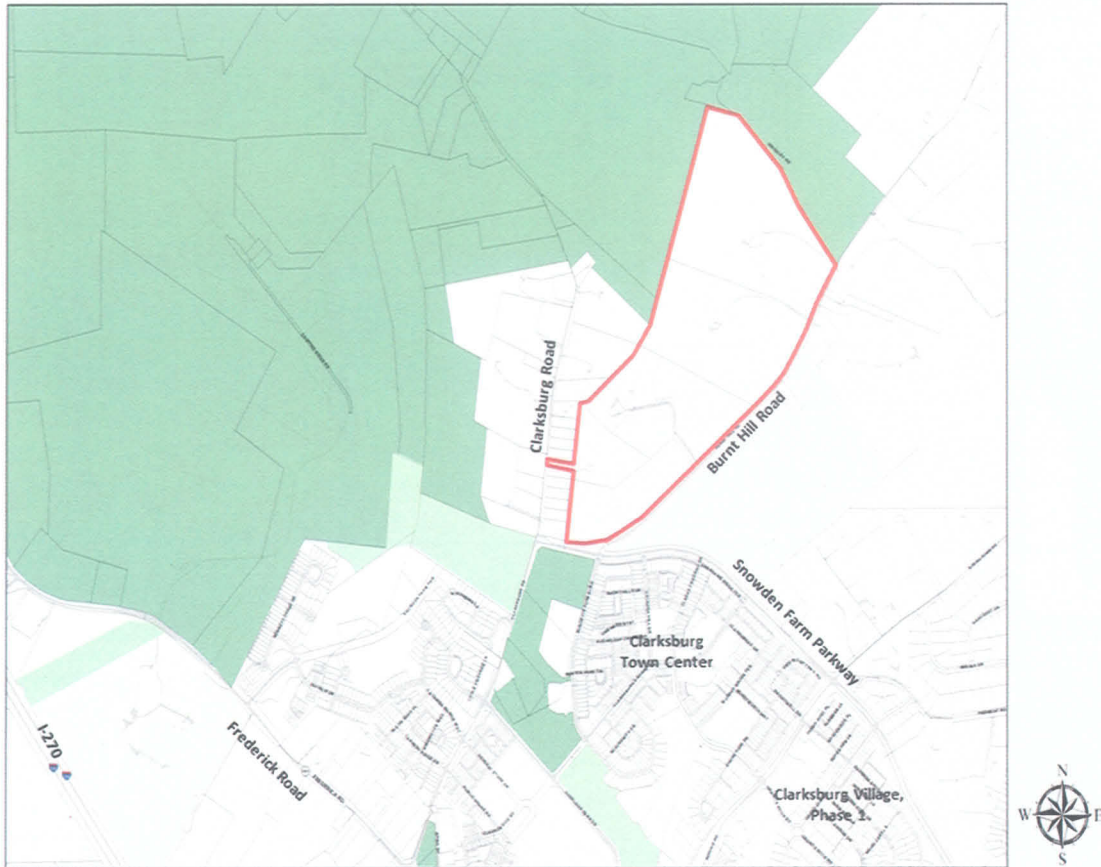


Exhibit 1: Tomahawk Estates Subdivision

BACKGROUND

The Montgomery County Planning Board approved Preliminary Plan No. 120000940 “William D. Pleasants, Jr. Property” (aka Tomahawk Estates), on July 5, 2001 and issued a written opinion on August 9, 2001. The approval was for nine (9) lots on 126.30 acres of land in the RDT zone including 4 child lots pursuant to Section 59C-9.74(b)(4) of the Montgomery County Zoning Ordinance (Exhibit 1). As part of the approval process for the Preliminary Plan of Subdivision the Planning Board approved a Forest Conservation Plan (FCP). The Preliminary Plan of subdivision and the FCP show Category I conservation easements on all lots within the subdivision. The conservation easements include all existing forest and all stream buffers. The Preliminary Plan opinion required that the Category I conservation easements be shown on the record plat. The conservation easements for Lots 107, 108, and 113 are shown on Plats 22829, 22830, 23180 and 22828 respectively.

Site Issues

During investigation of the forest conservation easement violations, MNCPPC Staff determined that the transfer development rights (TDRs) associated with the subdivision had not been properly reflected on the plats. After discussion with the Applicants’ counsel and the County Attorney’s Office, there is some

concern about the number of TDRs severed from the parent tract when the subdivision was initially created, and this discrepancy may have created a title defect in the subdivision as a whole.¹ Until the title issue is resolved, the Planning Board cannot approve a new plat for any of the properties in this subdivision. However, in the interest of moving the easement violation matter forward, Staff has determined that delaying the need for plat approval will give the Applicant time to resolve the title issue. Therefore, this staff report and the action of the Board is strictly related to resolving the conservation easement violations on each lot within this preliminary plan amendment application.

The new Category I conservation easements will be effective immediately upon their recording. The Applicants will be required to reflect the recorded easements on a revised plat after they have had time to resolve the title defects.

Forest Conservation Violations

On-site easement inspections were conducted on November 14, 2011 and November 21, 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 these inspections Staff discovered that Lots 107, 108, 111, 113 and 114 were not in compliance with the terms of the conservation easement located at Liber 13176 Folio 412 in the Montgomery County Office of Land Records. The Applicants were issued Notices of Violation (NOV) (Attachment 1) on December 8, 2011 for the encroachments and violations of the terms of the easement agreement. These violations consist of mowing, conducting agricultural activities and having structures within the conservation easements. The NOV carries no financial penalty, but does outline the violation and requests particular remedial actions. In this case, the NOV requested that the property owners cease all activity within the easement not prescribed by the easement agreement and to install permanent conservation easement signage along the boundary of the conservation easement or submit a preliminary plan amendment to change/alter the conservation easements. Some property owners decided to comply with the terms of the conservation easement and others decided to pursue an amendment to the approved Preliminary Plan.

The property owners of Lots 107, 108, 111, 113 and 114 decided to join together to submit one preliminary plan amendment. The initial application was revised on March 30, 2015 when the owners of Lots 111 and 114 decided to remove themselves from the application and adhere to the terms of the existing Category I Conservation Easements on their lots.

¹ When the Tomahawk Estates Subdivision was created, at 1 TDR per 5 acres of land, the property had 25 available TDRs. For the 9 lots created, 9 TDRs needed to be retained or "not severed from the property". A TDR easement was recorded in the Montgomery County Land Records on December 16, 1999 serializing a total of 24 TDRs under Liber 17752/Folio 799. One TDR was retained on the property for the existing home. The issue is whether the 24 TDRs serialized by the easement also had the effect of severing them from the property. This matter is currently under investigation by MNCPPC Legal Counsel, the Montgomery County Attorney's Office, and legal counsel for the homeowners.

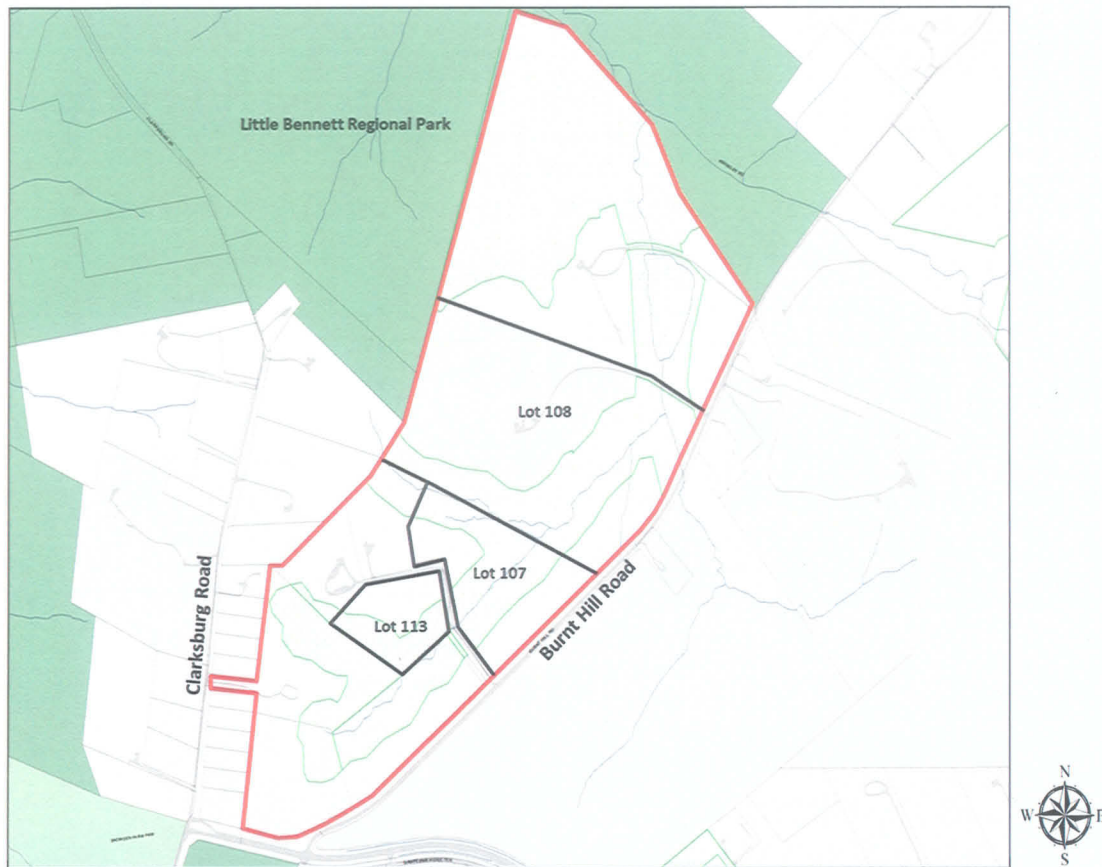


Exhibit 2: Lots 107, 108, and 113

Lots 107, 108 and 113 of Tomahawk Estates are 3 of the 9 lots created by this subdivision. The Tomahawk Estates subdivision drains north into the Kingsley Tributary, a tributary to the Middle Little Bennett Stream. The Countywide Stream Protection Strategy (CSPS) rates the Little Bennett and its tributaries in good condition. Each lot is served by an individual well and septic system located in close proximity to the houses.

Below is a discussion of each lot subject to this amendment. The sections identify the areas not currently in compliance with the terms of the conservation easements, the Applicants proposed response to the violation and Staff recommendations for each of the 3 lots.

LOT 107- 24020 Burnt Hill Road

Description

This lot is located at 24020 Burnt Hill Road (Exhibit 3). The lot is 10.94 acres in size of which 5.96 acres (54.4%) is encumbered by a Category I conservation easement which was placed over the two stream buffers on the lot at time of original development.



Exhibit 3: Lot 107

Of the 5.96 acre conservation easement area, 4.70 acres is contiguous forest located behind and to the east side of the house. The remaining 1.24 acres of conservation easement is unforested stream buffer located on the east side of the existing forest between the stream and Burnt Hill Road. This area of the property east of the existing forest comprises a portion of the larger front pasture area the owners use for their horses. The current front pasture area is 4.42 acres in size including the 1.24 acres of easement that was being pastured.

The violations on this lot involve the presence of a gravel driveway, a paddock style fence, and agricultural activities within the conservation easement area (Exhibit 3). The agricultural activities consist of pasturing horses within the conservation easement area on the east side of the existing forest. There is also a fenced pass through area that goes from the barn side of the property to the front pasture side of the property passing through the conservation easement area and over the existing stream. The Category I conservation easement agreement specifically prohibits driveways, fences, and the pasturing of livestock within the easement. The property owners did cease pasturing their animals in the conservation easement shortly after receiving the NOV.

Proposal

On October 31, 2012, the Applicant submitted an amendment to Preliminary Plan of Subdivision 120000940 to modify the Category I conservation easement on their lot. The Applicant proposes to abandon and relocate on-site a total of 0.17 acres of unforested Category I conservation easement on their lot for the purposes of bringing their lot into compliance with the forest conservation law by moving the portion of easement area which overlays the agricultural activities.

The Applicant proposes to abandon 0.17 acres of easement where the gravel access drive is located in order to bring this structure out of the easement and to give the owner access to the barn for hay, feed and horse trailer deliveries. The removal of the easement does not entail any loss of forest canopy cover since this area is unforested stream buffer. The 0.17 acres will be relocated to a strip of area behind the barn running over to the house thereby expanding the existing conservation easement by approximately 20 to 30 feet. The Applicant proposes to plant this new 0.17 acre area thereby increasing the existing forest cover adjacent to this stream.

The Applicant will continue to forgo the horse pasturing area on the east side of the existing forest and install a new paddock style fence along the existing easement boundary line keeping the horses from grazing in the conservation easement. However, this area is not required to be reforested since the originally approved Final Forest Conservation Plan did not specify any plantings in this area.

In addition, the Applicant has asked to retain two existing horse access paths within the existing conservation easements. One path leads from the small horse barn to the front pasture area along Burnt Hill Road. The second path runs from behind the barn through the easement over to Lot 108. Each path will be fenced and gated to prevent the horses from grazing in the easements as they move from one area to another.

Staff Review

On October 31, 2012, the Applicant submitted an amendment to Preliminary Plan of Subdivision 120000940 to modify the Category I conservation easement on their lot. The layout of the Applicant's lot along with the location of the house, septic system, wells, and conservation easements limit the opportunities to use the property in a manner that the homeowner intended. The Applicant had purchased this lot with the sole intention of using the property to assist in the rehabilitation of abused and neglected horses. The front pasture area was seen as an asset for the grazing of horses as they recover and the location of the small barn with the paddock area provides the applicant ease of access while caring for the horses. Due to the location of the septic system this pushed the barn back into the only open corner of the property adjacent to the easement and dictated that the gravel access path be located within the easement.

The Applicant has proposed the abandonment of 0.17 acres of existing conservation easement and to relocate this directly on-site adjacent to existing easement. This request is the minimum that the

Applicant needs to bring their lot into compliance with the terms of the conservation easement. In addition, the Applicant has offered to install new fencing along the easement boundary to deter the grazing of horses within the easement and to plant the new 0.17 acres of conservation easement.

Staff recommends approval with conditions of the Applicant's request to alter the conservation easements on their lot.

LOT 108 - 24230 Burnt Hill Road

Description

This lot is located at 24230 Burnt Hill Road (Exhibit 4). The lot is 32.60 acres in size of which 11.56 acres (35.5%) is encumbered by a Category I conservation easement which was placed over the two stream buffers and existing forest on the lot at time of original development. Of the 11.56 acre conservation easement area, 4.18 acres is contiguous forest and the remaining 7.38 acres of conservation easement is unforested stream buffer.

The violations on this lot include: mowing, installation of a drainage outfall structure which changes the natural topography, pasturing of livestock, and the installation of an unapproved fence (Exhibit 4). The Category I conservation easement agreement specifically prohibits mowing, changing of grades, and the pasturing of livestock within the easement.

Proposal

On October 31, 2012 the Applicant submitted an amendment to Preliminary Plan of Subdivision 120000940 to modify the Category I conservation easement on their lot. The Applicant proposes to abandon and relocate on-site a total of 1.18 acres of unforested Category I conservation easement by removing those portions of the conservation easement which overlap with the agricultural activities.

The Applicant proposes to abandon a total of 1.18 acres of easement in two separate areas of the property and create 1.18 acres of new conservation easement onsite. The first area is a 1.08 acre segment which lies adjacent to and south of the existing barn and riding ring from the current easement line down to the existing tree line where the pasture fence is located. The second area is a 0.10 acre segment located along the south side of the main entry drive.

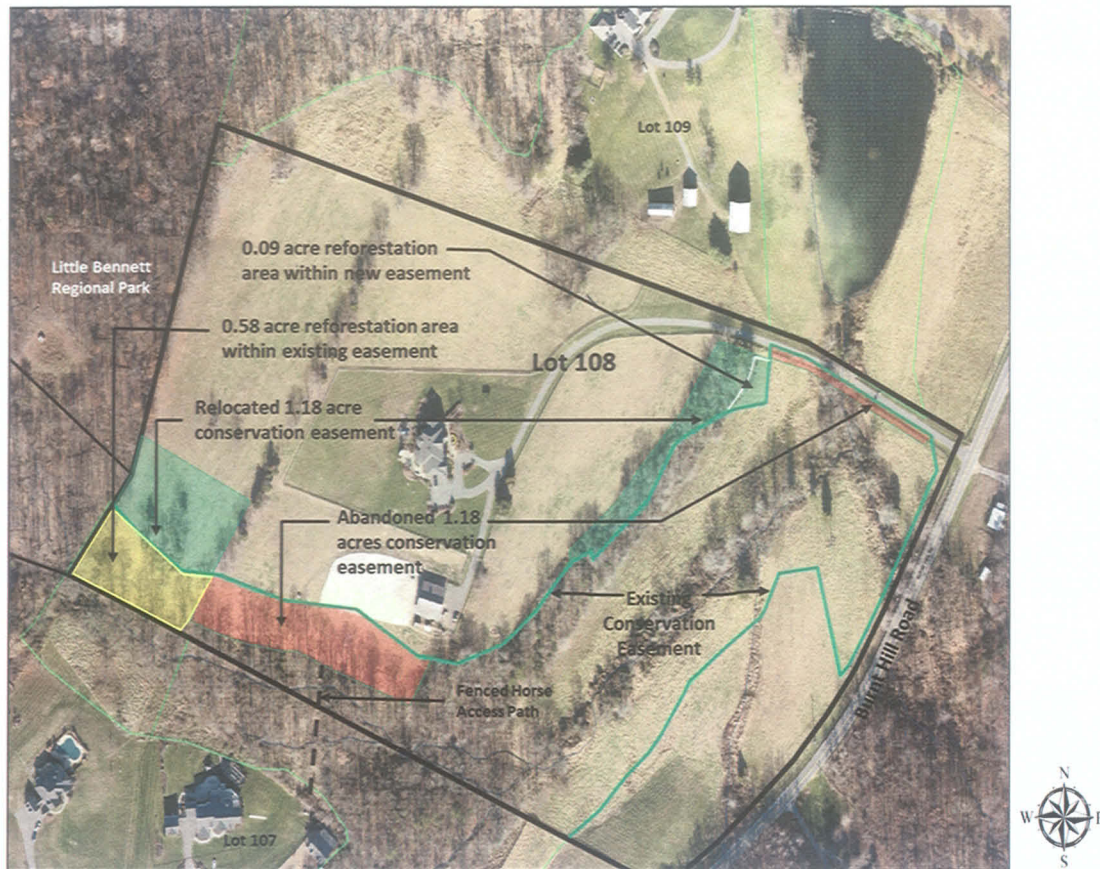


Exhibit 4: Lot 108

To compensate for the removal of 1.18 acres of conservation easement the Applicant proffers to add 1.18 acres of new conservation easement area on the property. An area of 0.60 acres will be added at the rear southwest corner of the property adjacent to the existing conservation easement. In addition to the 0.60 acres at the rear of the property, the Applicant also proposes an area of 0.58 acres of new easement to be added at the front of the property adjacent and along the western side of the existing conservation easement to bring the total area of new conservation easement to 1.18 acres.

The Applicant has also proffered to plant a 1.20 acre area at the southwest corner of the property consisting of the 0.60 acre area of new conservation easement and a 0.58 acre area of existing unforested conservation easement. The Applicant also proposes to plant an additional 0.09 acre area of unforested new easement area along the access driveway at the front of the property.

The Applicant is requesting the retention of an existing horse access path within the conservation easement. The path connects Lots 107 and 108 enables the owners of Lot 107 to utilize pastures on lot 108. The horse access path will be fenced and gated to prevent the horses from grazing in the easements as they move from one area to another.

The Applicant will also abandon the horse pasturing area now within the conservation easement on the east side of the existing forest along Burnt Hill Road and install a new paddock style fence along the existing easement boundary line keeping the horses from grazing in the conservation easement

Staff Review

The major portion of the conservation easement removal consists of the 1.08 acre area adjacent to the existing riding ring and 0.10 acres along the existing entry driveway as shown on the submitted Amended Preliminary Plan dated July 22, 2015. The primary reason stated for the removal of the 1.08 acres is to provide pastureland for the farm's livestock operations. The removal of the 0.10 acres along the driveway is to allow for aesthetic maintenance and that the inability to use these areas has a detrimental impact on those operations as outlined in the Statement of Justification, Lot 108 (Attachment 3).

The Applicant has proposed the abandonment of 1.18 acres of existing conservation easement and to relocated this directly on-site adjacent to the existing easement. The Applicant will plant new forest within both the 0.60 acre and the 0.09 acre areas of newly created conservation easement resulting in a 0.69 acre of forest within what is now open area. In addition, the Applicant has proposed to reforest 0.58 acres of existing conservation easement that is currently open meadow. This results in a total of 1.27 acres of newly planted forest within existing and new conservation easement areas. The Applicant has also offered to install new fencing along the easement boundary to deter the grazing of horses within the easement.

Staff recommends approval with conditions of the Applicant's request to alter the conservation easements on their lot.

LOT 113 - 24014 Burnt Hill Road

Description

This lot is located at 24014 Burnt Hill Road (Exhibit 6). The lot is 5.06 acres in size of which 2.57 acres (50.8%) is encumbered by a Category I conservation easement which was placed over the two stream valley buffers and existing forest on the lot at time of original development. Of the 2.57 acre conservation easement area, 1.08 acres is contiguous forest and the remaining 1.49 acres of conservation easement is unforested stream buffer.



Exhibit 6: Lot 113

The violations on this lot involve mowing within the conservation easement and the installation of a shed structure, and a golf tee box and putting green (Exhibit 6). The Category I conservation easement agreement specifically prohibits both the mowing and the installation of structures within the conservation easement.

Proposal

On October 31, 2012, the Applicant submitted an amendment to Preliminary Plan of Subdivision 120000940 to modify the Category I conservation easement on their lot. The Applicant proposes to abandon and relocate a total of 0.65 acres of Category I conservation easement on their property located to the rear and the left side of the house. This request is made in order to increase the useable area of side and rear yard.

The Applicant has proposed to relocate 0.65 acres on-site to an off-site location at a 2:1 rate. In addition, the Applicant has offered to reforest the 0.85 acres of existing easement that is currently turf grasses.

Staff Review

The Applicant has proposed the abandonment of 0.65 acres of existing conservation easement in order to increase the size of the useable back and side yards of the property and to take this to an off-site location at a 2:1 rate. The Applicant has also proffered to provide plant 0.85 acres of existing conservation easement that is currently unforested.

Staff recommends approval with conditions of the Applicant's request to abandon and relocate 0.65 acre of Category I conservation easement.

PLANNING BOARD REVIEW AUTHORITY

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved Forest Conservation Plan. Section 22A.00.01.13(A)(2) of 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 total of 2.00 acres (87,120.00 square feet) of Category I conservation easement on three lots within the subject site. 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.

OVERALL STAFF REVIEW

This limited amendment to the Preliminary Plan is in response to forest conservation violations. The Planning Department Order allows the Applicant to either modify the conservation easement, or comply with the terms of the easement.

Each lot, in this application, has environmentally sensitive areas, i.e. stream buffers and existing forest within the conservation easements. The conservation easement areas shown on the original forest conservation plan were created to meet the developer's forest conservation requirements and to protect the stream buffer to the Kinsley Tributary of the Middle Little Bennett watershed in an undisturbed state.

Unforested stream buffer easement relocation

The 2.00 acres of conservation easement proposed for removal from these three lots are within stream buffers. Typically, removal of conservation easements over a sensitive environmental feature such as a stream buffer is not allowed. Staff supports the relocation of 2.00 acres conservation easement because site specific circumstances have dictated that the removal and relocation of the conservation easement from these locations will improve the character and usability of the lots. This area was not shown to be planted on the originally approved FCP dated December 27, 2001 and is currently still unforested.

The total 2.00 acres of easement removal is composed of the relocation on-site of 1.35 acres on Lots 107 and 108 and the relocation off-site of 0.65 acres from Lot 113. The relocation of the 1.35 acres on-site will be adjacent to existing forest allowing for this acreage to be planted and to increase the overall forest cover on the site. The relocation off-site of the 0.65 acres will be compensated for in two ways. The first way is through the requirement of compensating for the area of easement removal at a 2:1 rate. The second way is through the Applicant afforesting 0.85 acres of currently existing easement. This will increase the amount of forested stream valley buffer on Lot 113 and the overall forest cover for the site. The amended FCP is enclosed (Attachment 2).

Staff believes that the proposed amendments to this Preliminary Plan are appropriate and adequate to compensate for the removal and relocation of 2.00 acres of conservation easement.

NOTIFICATION and OUTREACH

The subject property was properly signed with notification of the upcoming Preliminary Plan amendment prior to the October 22, 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 and conservation easements on the Lots 107, 108 and 113 with the conditions specified above.

ATTACHMENTS

1. Amended Preliminary Plan of Subdivision
2. Amended Final Forest Conservation Plan
3. Statements of Justification; Lots 107, 108, and 113

ATTACHMENT 1

Amended Preliminary Plan of Subdivision

DATE	09/06/13
SCALE	1"=100'
PROJECT	PRELIMINARY PLAN - LIMITED PLAN AMENDMENT
CLIENT	TOMAHAWK ESTATES, LOT 107, 108 & 113
DRAWN BY	[Signature]
CHECKED BY	[Signature]
DATE	09/06/13



DATE: 09/06/13
SCALE: 1"=100'

Beating & Associates, Inc.
1113 Third Street, Suite 100
Columbia, MD 21047
(410) 734-0288



PRELIMINARY PLAN - LIMITED PLAN AMENDMENT
TOMAHAWK ESTATES, LOT 107, 108 & 113
(a.k.a. William D. Pleasants, Jr. Property)
Montgomery County, Maryland



LIST OF AMENDMENT ITEMS:

LOT 107.
1. THIS PLAN PROPOSES THE REMOVAL OF 0.11 AC OF EXISTING CATEGORY I CONSERVATION EASEMENT AND REPLACEMENT OF THIS AREA WITH 0.17 AC OF NEW EASEMENT ON-SITE. NEW EASEMENT AREA TO BE PLANTED.

LOT 108.
1. THIS PLAN PROPOSES THE REMOVAL OF 1.18 AC OF EXISTING CATEGORY I CONSERVATION EASEMENT AND REPLACEMENT OF THIS AREA WITH 1.3 AC OF NEW EASEMENT ON-SITE. NEW EASEMENT AREA TO BE PLANTED. THE REMOVED EASEMENT ON-SITE WHICH IS CURRENTLY UNFORESTED IS TO BE PLANTED.

LOT 113.
1. THIS PLAN PROPOSES THE REMOVAL OF 0.62 AC OF EXISTING CATEGORY I CONSERVATION EASEMENT. THE REMOVED EASEMENT ON-SITE WHICH IS CURRENTLY UNFORESTED IS TO BE PLANTED.

NOTES:

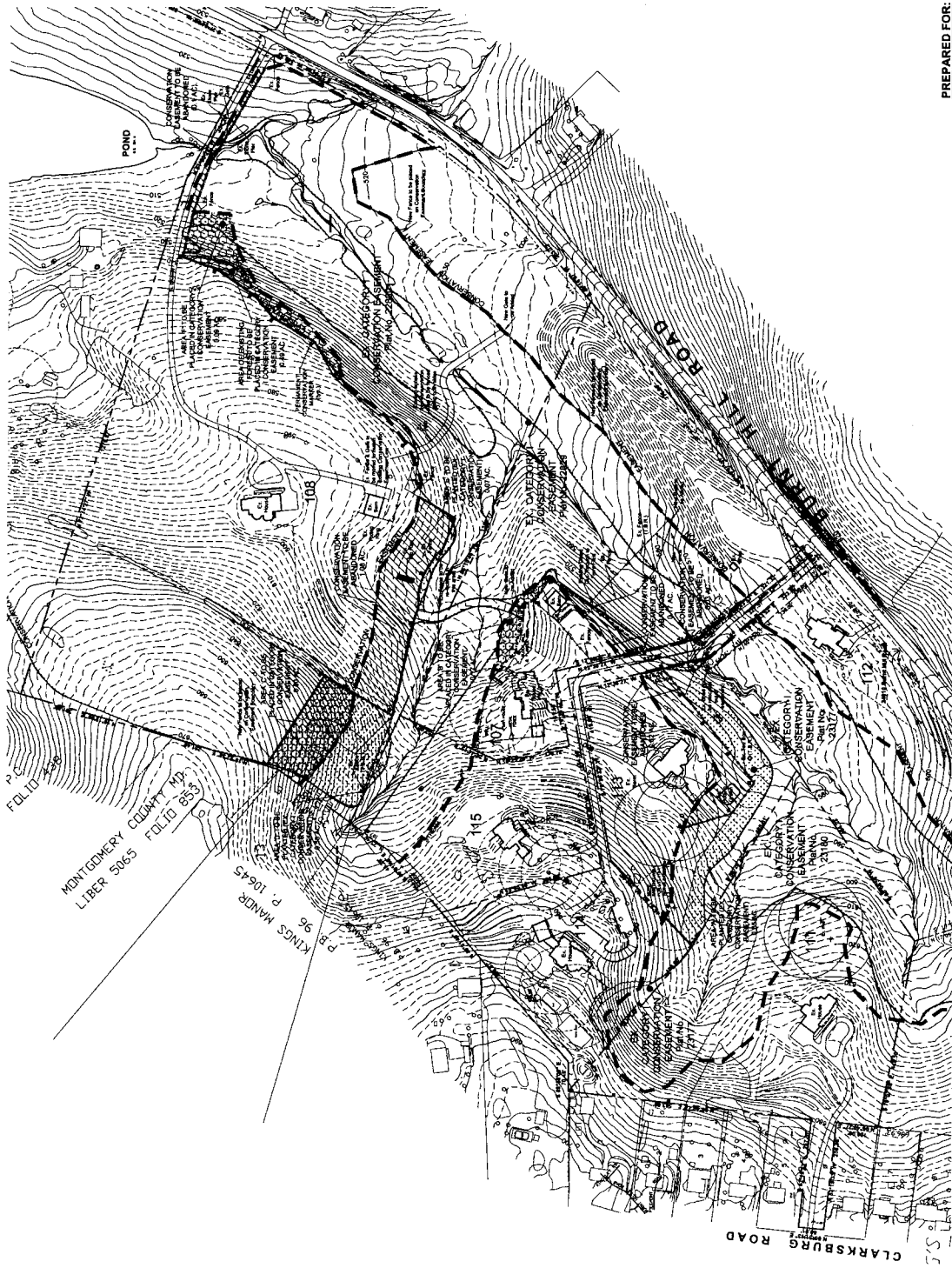
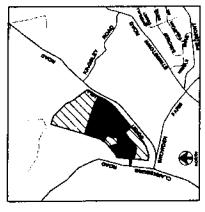
1. AREA OF PROPERTY - 128.3 ACRES
 2. NUMBER OF LOTS PERMITTED - 5 + 4 CHILD LOTS (Pw 59-C-9.7A)
 3. NUMBER OF LOTS SHOWN - 9
 4. SITE TO BE SERVED BY INDIVIDUAL WELLS & ON-SITE SEPTIC SYSTEMS
 5. WATER SERVICE CATEGORIES: S4, W4
 6. LOCATED IN LITTLE BENNETT CREEK WATERSHED
 7. REQUIRED SETBACKS:
Residential - 35'
Sideyards - 20'
 8. AREA DEDICATED TO PUBLIC STREET - 2.0 AC
 9. UTILITY SERVICE BY: PEPCO, BELL ATLANTIC
- * the subject lots are a portion of the total acreage of the original subdivision.

LEGEND:

- LOT BOUNDARY
- CONSERVATION EASEMENT BOUNDARY
- CONSERVATION EASEMENT
- CONSERVATION EASEMENT TO BE REMOVED
- NEW AREA PLACED INTO CONSERVATION EASEMENT
- NEW EASEMENT
- WELL CAPACITY ADJUSTMENT

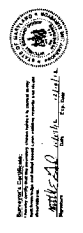
THIS PLAN IS AN AMENDMENT TO APPROVED LIMITED PLAN # 20000940

VICINITY MAP
1" = 200'



PREPARED FOR:

- Lot 107 - Christopher & Lujin Brown
24025 Burnt Hill Road
Clarksville, MD 20671
301-615-6506
- Lot 108 - William D., III & Nevada Pleasants
24230 Burnt Hill Road
Clarksville, MD 20671
301-646-3923
- Lot 113 - David & Theresa Schellhardt
24914 Burnt Hill Road
Clarksville, MD 20671
301-618-4878



ATTACHMENT 2

Amended Final Forest Conservation Plan

DATE	09/08/13
SCALE	1"=100'
PROJECT	FINAL FOREST CONSERVATION PLAN (AMENDED)
CLIENT	(a.k.a. William D. Pleasants, Jr. Property)
DRAWN BY	...
CHECKED BY	...
DATE	...



DATE: 09/08/13
SCALE: 1"=100'

Planning & Associates, Inc.
14000 Rockville Pike
Suite 200
Rockville, MD 20850
(301) 414-4278



FINAL FOREST CONSERVATION PLAN (AMENDED)

TOMAHAWK ESTATES: Lot 107, 108, & 113

(a.k.a. William D. Pleasants, Jr. Property)

Montgomery County, Maryland



LIST OF AMENDMENT ITEMS:

LOT 107

1. THIS PLAN PROPOSES THE REMOVAL OF 0.17 AC OF EXISTING CATEGORY I CONSERVATION EASEMENT AND REPLACEMENT OF THIS AREA WITH 0.17 AC OF NEW EASEMENT ON-SITE. NEW EASEMENT AREA TO BE PLANTED.

LOT 108

1. THIS PLAN PROPOSES THE REMOVAL OF 1.18 AC OF EXISTING CATEGORY I CONSERVATION EASEMENT AND REPLACEMENT OF THIS AREA WITH 1.18 AC OF NEW EASEMENT ON-SITE. NEW EASEMENT AREA TO BE PLANTED.

2. NEW EASEMENT AREA TO BE PLANTED.

3. ALL EXOTIC AND INVASIVE SPECIES TO BE REMOVED FROM AREAS TO BE PLANTED.

LOT 113

1. THIS PLAN PROPOSES THE REMOVAL OF 0.88 AC OF EXISTING CATEGORY I CONSERVATION EASEMENT. THE REMOVAL WILL BE MITIGATED OFF-SITE WITH THE PURCHASE OF FOREST CONSERVATION EASEMENT, 0.88 AC OF EXISTING EASEMENT ON-SITE WHICH IS CURRENTLY UNRESTRICTED IS TO BE PLANTED.

FINAL FOREST CONSERVATION PLAN NOTES:

1. PROPERTY IS PART OF APPROVED FINAL FOREST CONSERVATION PLAN 1-20000946.

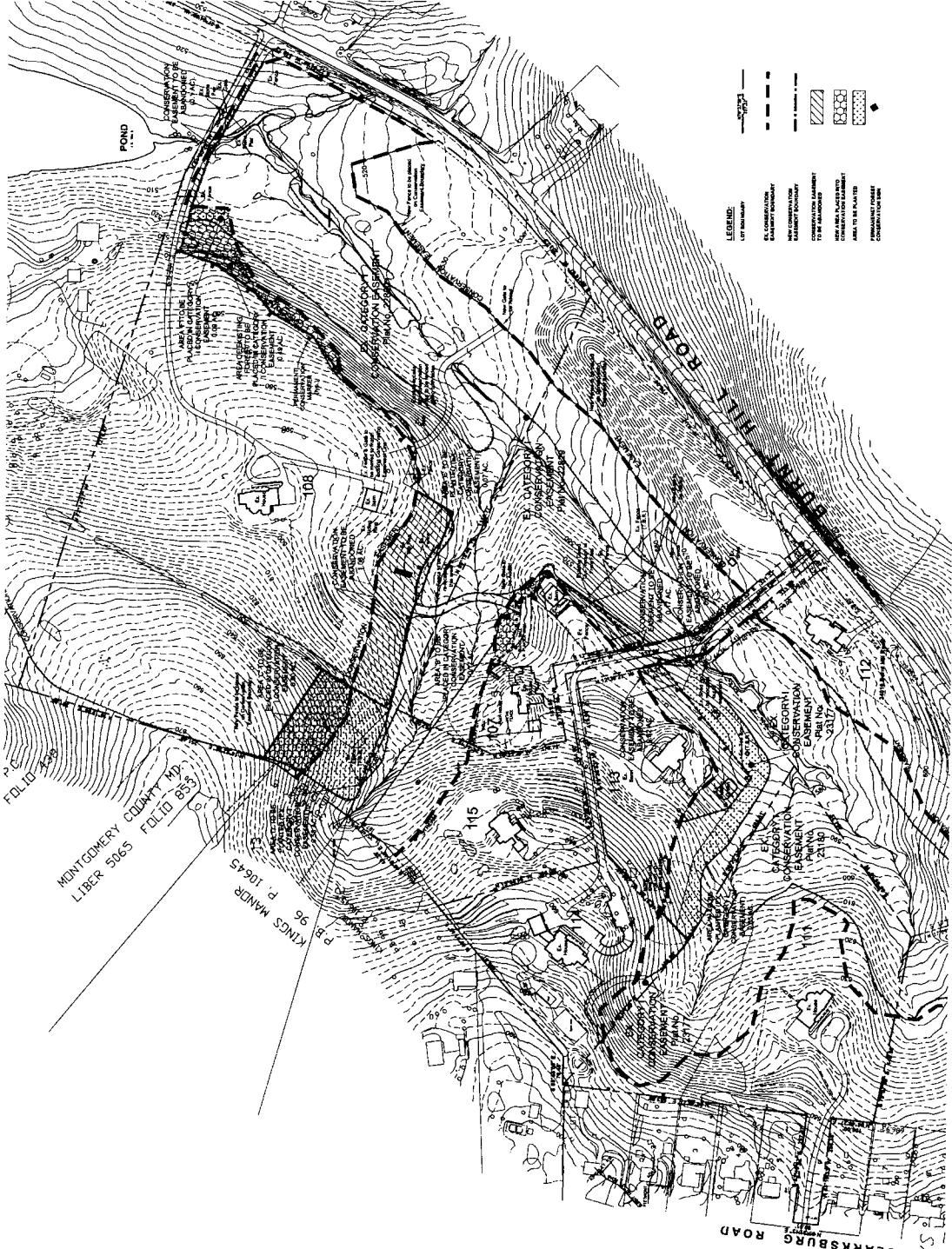
2. EXISTING CATEGORY I CONSERVATION EASEMENT ON LOTS TO BE REMOVED: 2.0 AC.

3. NEW CATEGORY I CONSERVATION EASEMENT TO BE ADDED ON-SITE: 1.35 AC.

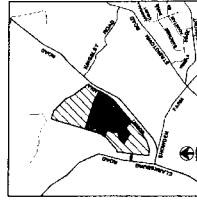
4. NEW EASEMENT AREAS NOT CURRENTLY FOREST TO BE PLANTED: 0.86 AC.

5. A TOTAL OF 1.50 AC OF EXISTING CATEGORY I CONSERVATION EASEMENT NOT CURRENTLY FOREST TO BE PLANTED.

6. ALL EXOTIC AND INVASIVE SPECIES TO BE REMOVED FROM AREAS TO BE PLANTED.



VICINITY MAP
1" = 200'



PREPARED FOR:

- Lot 107 - Christopher & Lynn Brown**
2420 Burnt Hill Road
Clarksburg, MD 20871
301-515-8556
- Lot 108 - William D. III & Nevada Pleasants**
2420 Burnt Hill Road
Clarksburg, MD 20871
301-546-3993
- Lot 113 - David & Theresa Schellhardt**
24014 Burnt Hill Road
Clarksburg, MD 20871
301-414-4278

DEVELOPER CERTIFICATE

This Individual agrees to provide and maintain the information of the Approved Final Forest Conservation Plan (No. 12000946) and to provide and maintain the information of the Final Forest Conservation Plan (No. 12000946) and to provide and maintain the information of the Final Forest Conservation Plan (No. 12000946).

Developer's Name: _____
 Contact Person or Owner: **David & Theresa Schellhardt**
 Address: 24014 Burnt Hill Road, Clarksburg, MD 20871
 Phone and Email: 301-414-4278
 Signature: _____

DEVELOPER CERTIFICATE

This Individual agrees to provide and maintain the information of the Approved Final Forest Conservation Plan (No. 12000946) and to provide and maintain the information of the Final Forest Conservation Plan (No. 12000946) and to provide and maintain the information of the Final Forest Conservation Plan (No. 12000946).

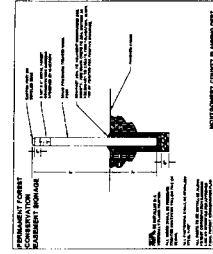
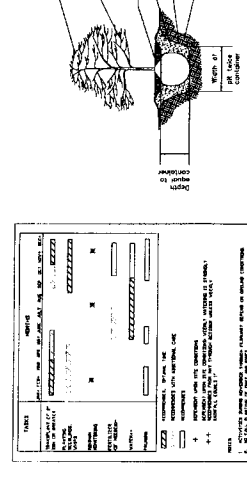
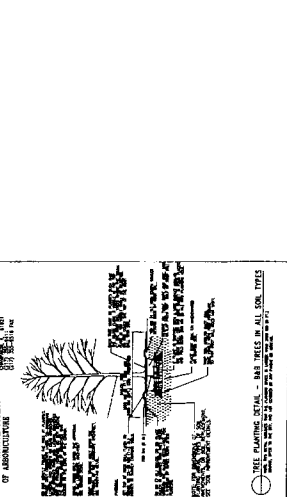
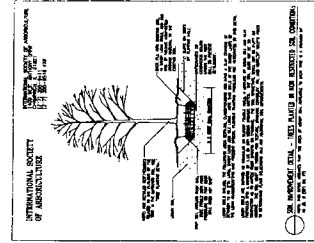
Developer's Name: _____
 Contact Person or Owner: **William D. III & Nevada Pleasants**
 Address: 2420 Burnt Hill Road, Clarksburg, MD 20871
 Phone and Email: 301-546-3993
 Signature: _____

DEVELOPER CERTIFICATE

This Individual agrees to provide and maintain the information of the Approved Final Forest Conservation Plan (No. 12000946) and to provide and maintain the information of the Final Forest Conservation Plan (No. 12000946) and to provide and maintain the information of the Final Forest Conservation Plan (No. 12000946).

Developer's Name: _____
 Contact Person or Owner: **Christopher & Lynn Brown**
 Address: 2420 Burnt Hill Road, Clarksburg, MD 20871
 Phone and Email: 301-515-8556
 Signature: _____

Table with 4 columns: Item, Description, Quantity, and Unit.



PLANTING DETAIL - SHRUB Container Grown

FINAL FOREST CONSERVATION PLAN (AMENDED)
TOMAHAWK ESTATES: LOT 107, 108, & 113
a.k.a. William D. Pleasants, Jr. Property
Montgomery County, Maryland



DEVELOPER CERTIFICATE
The undersigned agrees to accept all terms of the Approved Final Forest Conservation Plan No. 17000-00486 for the following project:
Tomahawk Estates, Montgomery County, Maryland
Developer's Name: **David & Theresa Schellbarth**
Contact Person or Owner: **David & Theresa Schellbarth**
Address: **24230 Burr Hill Road, Clarksville, MD 20711**
Phone and Email: **301-460-3993**

DEVELOPER CERTIFICATE
The undersigned agrees to accept all terms of the Approved Final Forest Conservation Plan No. 17000-00486 for the following project:
Tomahawk Estates, Montgomery County, Maryland
Developer's Name: **Christopher & Lynn Brown**
Contact Person or Owner: **Christopher & Lynn Brown**
Address: **24230 Burr Hill Road, Clarksville, MD 20711**
Phone and Email: **301-515-9589**

DEVELOPER CERTIFICATE
The undersigned agrees to accept all terms of the Approved Final Forest Conservation Plan No. 17000-00486 for the following project:
Tomahawk Estates, Montgomery County, Maryland
Developer's Name: **David L. Pleasants, Esq.**
Contact Person or Owner: **David L. Pleasants, Esq.**
Address: **24230 Burr Hill Road, Clarksville, MD 20711**
Phone and Email: **301-460-3993**

CONSERVATION AREA	TOTAL ACRES	ACRES OF FLOODPLAIN	ACRES OF WETLANDS	AGRICULTURAL RESOURCE AREA	LAND USE CATEGORY	CONSERVATION THRESHOLD	FOREST WITHIN WETLANDS TO BE CLEARING		FOREST WITHIN FLOODPLAIN TO BE CLEARING		FOREST WITHIN STREAM BUFFER PLANTED		STREAM BUFFER WIDENING	
							TO BE CLEARING	REMOVED	TO BE CLEARING	REMOVED	BE PLANTED	BE PLANTED	LINEAR FEET	WIDENING
1	17.41	0.00	0.00	NA	AF	1.00	0.00	0.00	0.00	0.00	0.00	7.43*	15*	

PLANT SCHEDULE - RECOMMENDED SPECIES LIST

CONSERVATION AREA	SPECIES	COMMON NAME	SIZE	COMMENTS
1	Q. ROBUR	RED OAK	12-14"	Common
1	L. STYRACIA	LIVE OAK	12-14"	Common
1	S. BALSAMIFERA	SOUTHERN BAYONET	12-14"	Common
1	V. SPINOSA	VITIS SPINOSA	12-14"	Common
1	C. FLORENTINA	CHRISTOPHER BERRY	12-14"	Common
1	A. NIGRA	AMERICAN HONEYLOCUST	12-14"	Common

PLANT SCHEDULE - RECOMMENDED SPECIES LIST

CONSERVATION AREA	SPECIES	COMMON NAME	SIZE	COMMENTS
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1	V. SPINOSA	VITIS SPINOSA	12-14"	Common
1	C. FLORENTINA	CHRISTOPHER BERRY	12-14"	Common
1	A. NIGRA	AMERICAN HONEYLOCUST	12-14"	Common

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1	C. FLORENTINA	CHRISTOPHER BERRY	12-14"	Common
1	A. NIGRA	AMERICAN HONEYLOCUST	12-14"	Common

PLANT SCHEDULE - RECOMMENDED SPECIES LIST

CONSERVATION AREA	SPECIES	COMMON NAME	SIZE	COMMENTS
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1	C. FLORENTINA	CHRISTOPHER BERRY	12-14"	Common
1	A. NIGRA	AMERICAN HONEYLOCUST	12-14"	Common

PLANTING NOTE:
ALL EXOTIC AND INVASIVE PLANT MATERIAL IN DESIGNATED PLANTING AREAS TO BE REMOVED PRIOR TO ANY PLANTING.

Sequence of Events for Property Owners Required to Comply With Forest Conservation and/or Tree-Save Plans

1. An on-site construction meeting is required after the initial site disturbance has been completed. This meeting shall be attended by the applicant, the Forest Conservation Inspector, and the Montgomery County Planning Department Inspector. The meeting shall discuss the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan. The applicant shall provide a copy of the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan to the Forest Conservation Inspector and the Montgomery County Planning Department Inspector. The meeting shall conclude with the completion of the pre-construction meeting.
2. No clearing or grading shall begin until after the Forest Conservation Inspector has reviewed and approved the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan. The Forest Conservation Inspector may require the applicant to provide additional information or documentation to support the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan. The Forest Conservation Inspector may also require the applicant to provide additional information or documentation to support the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan. The Forest Conservation Inspector may also require the applicant to provide additional information or documentation to support the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan.
3. A. An on-site construction meeting is required after the initial site disturbance has been completed. This meeting shall be attended by the applicant, the Forest Conservation Inspector, and the Montgomery County Planning Department Inspector. The meeting shall discuss the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan. The applicant shall provide a copy of the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan to the Forest Conservation Inspector and the Montgomery County Planning Department Inspector. The meeting shall conclude with the completion of the pre-construction meeting.

Inspections:
All field inspections must be requested by the applicant. Inspections must be conducted as follows:
1) After the limits of disturbance have been staked and flagged, but before any clearing or grading begins.
2) After the applicant has completed the required reforestation and afforestation planting measures, but before any clearing or grading begins.
3) Upon completion of all construction activities to determine the level of compliance with the provisions of the Forest Conservation Plan.

Tree-Save Plans and Forest Conservation Plans without Clearing Requirements:
After the limits of disturbance have been staked and flagged, but before any clearing or grading begins, the applicant shall submit to the Forest Conservation Inspector a copy of the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan. The Forest Conservation Inspector shall review the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan to determine if the applicant is in compliance with the provisions of the Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan. If the applicant is not in compliance, the Forest Conservation Inspector shall require the applicant to provide additional information or documentation to support the approved Forest Conservation Plan, the approved Tree-Save Plan, and the approved site plan.

Additional Requirements for Plans with Planting Requirements:
1) Before the start of any required reforestation and afforestation planting.
2) After the applicant has completed the required reforestation and afforestation planting measures, but before any clearing or grading begins.
3) Upon completion of all construction activities to determine the level of compliance with the provisions of the Forest Conservation Plan.

ATTACHMENT 3

Statements of Justification



THE LAW OFFICE OF
Michele
Rosenfeld LLC

July 10, 2015

Mr. Douglas Johnsen, RLA
Development Applications and Regulatory Coordination Division
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring MD 20910

RE: Tomahawk Estates:
Lot 107 (Christopher and Lynn Brown)
Lot 108 (William D. III and Navada Pleasants)
Lot 113 (David and Theresa Schellhardt)

Removed from prior submissions: Lots 111 and 115

Statement of Justification

Dear Mr. Johnsen:

On behalf of my clients Mr. and Mrs. Brown, Mr. and Mrs. Pleasants and Mr. and Mrs. Schellhardt, please accept the revised Preliminary and Forest Conservation Plan amendments that were filed by Benning and Associates, Inc., in June. The changes are summarized as follows:

1. Lots 111 and 115, which were included in all prior submissions of this plan, have been removed from the request for relocated easement boundaries altogether, substantially reducing the overall amount of easement area affected.
2. The changes to Lot 107 as shown on the resubmission are the same as those that have been supported by staff since the original submission.
3. Lot 108 has been refiled in the same configuration as the last plan. This Lot is actively farmed, including raising livestock. It is our position that extensive mitigation has been proffered in the form of additional easement area and planting, and further encumbrance of the property will unduly restrict the agricultural activities on the property, as explained more fully in the Statements of Justification filed previously in support of this application.

4. As explained more fully in a separate and revised Statement of Justification for Lot 113, these property owners have proffered additional mitigation in support of their proposal.

The removal of Lots 111 and 115 in their entirety, together with the additional mitigation proffered in connection with Lot 113, represent a significant overall reduction in the amount of easement that has been requested for removal and an increase in the amount of mitigation proffered. With these material modifications, we ask that the staff recommend approval of the proposed amendments and that this matter be scheduled for Planning Board review at staff's earliest convenience.

Sincerely,

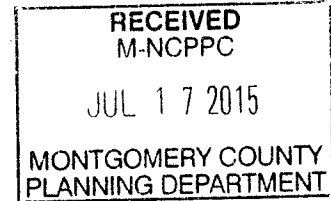


Michele Rosenfeld

Cc: Christopher and Lynn Brown
William D. III and Navada Pleasants
David and Theresa Schellhardt
Dave McKee, Benning & Associates, Inc.



THE LAW OFFICE OF
**Michele
Rosenfeld** LLC



July 10, 2015

Mr. Douglas Johnsen, RLA
Development Applications and Regulatory Coordination Division
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring MD 20910

RE: Tomahawk Estates: Lot 113
David and Theresa Schellhardt
Statement of Justification

Dear Mr. Johnsen:

Please accept this revised Statement of Justification in support of the revised Preliminary Plan and Forest Conservation Plan amendments filed in June by Benning & Associates, Inc., for the above-referenced property. The plan shows removal of 0.65 acres of Category I Forest Conservation Easement from the property with .65 acres of mitigation in an off-site forest bank at a 2:1 credit ratio, consistent with other mitigation arrangements. Additionally, the property owner will plant .85 acres of the remaining easement and install signage along the easement boundary as reflected on the plan submission. The boundary has been shifted to encompass more of the stream buffer than had been included in the prior submission, as well, while at the same time leaving an area of useable "back yard" for the property owner.

These revisions are provided in response to staff's conclusion that the mitigation package associated with the prior submission was inadequate. This revised plan provides double the amount of on-site planting that had been proposed. Please consider this Statement of Justification for this property in conjunction with the Statement of Justification (also dated July 10, 2015) for the overall Preliminary Plan and Forest Conservation Plan amendment submission for the Tomahawk Estates subdivision.

We ask that staff present these amendments to the Planning Board for its consideration with a recommendation of staff approval at your earliest convenience.

Sincerely,

Michele Rosenfeld

Cc: David and Theresa Schellhardt
Dave McKee, Benning & Associates, Inc.