



## Allan Noble

---

**From:** Rubin, Carol <carol.rubin@mncppc.org>  
**Sent:** Thursday, April 10, 2014 10:33 AM  
**To:** Allan Noble; Wright, Gwen  
**Subject:** Green Tree Plat (formerly Barnesville Oak): Condition #3  
**Attachments:** Plat Note FINAL FOR SUBMISSION.PDF; Barnesville\_Oak\_PUTE (FINAL 3.5.14).pdf; PublicUseTrailEasement(01-28-14).pdf; Barnesville\_Oak\_PUTE (CSR rev 4.1.13).doc

As promised yesterday, attached are the following documents (in no particular order):

- Draft Easement "prepared" by C. Rubin (draft reference 4/1/14). NOTE: The Easement was initially drafted by the Property Owner and reviewed by me. As I now recall from reviewing my past notes, the first draft was to be presented by the Property Owner as is our practice for regulatory agreement review when we do not have a template.
- Draft Easement prepared by S. Orens as the Property Owner's "final", reviewed by me and submitted to EPIC for approval on 3/6/14 (draft reference is 3/5/14)
- Special Note prepared by C. Rubin as alternative to Easement
- Draft Easement prepared by A. Noble (draft reference 1/28/14)

For ease of reference, what follows is the relevant Condition #3 to the Preliminary Plan.:

A Public Use Trail Easement ("PUTE") must be created on the Property as shown on the preliminary plan. The PUTE will name Equestrian Partners in Conservation ("EPIC"), a 501c3 non-profit corporation, its successors or assigns, or another suitable entity identified by MNCPPC staff, as the Grantee and must include, at a minimum: (i) the conditions and restrictions governing uses that are within the definition of "Recreational Purpose" as defined in the MD Ann. Code, Natural Resources Article, §5-1101; (ii) the right of Grantee to construct, maintain and repair the trail, with no obligation by either Grantee or the Grantor to do so; and (iii) rights of enforcement by both the Grantor and the Grantee, with no obligation on either to do so. The PUTE must be approved by the Commission's Office of the General Counsel which approval may not be delayed beyond 120 days following adoption of the MCPB Resolution of approval of the Preliminary Plan but no less than 90 days after submission of a reasonable draft for review. Prior to recordation of the initial plat, the applicant must record the PUTE in the land records and the plat must include a reference to the Liber and Folio of the recorded PUTE. Should the designated Grantee as specified herein decline to accept the PUTE, the record plat may be recorded without the reference.

Allan,

Please pass these along to Tom and Michael, as I do not have their email addresses.

**Carol S. Rubin**

Associate General Counsel

Maryland-National Capital Park and Planning Commission

8787 Georgia Avenue, Suite 205

Silver Spring, Maryland 20910

tel: 301-495-4646; fax: 301-495-2173

email: [carol.rubin@mncppc.org](mailto:carol.rubin@mncppc.org)

This e-mail message is intended only for the addressee and may contain confidential and/or privileged material. Any interception, review, retransmission, dissemination, or other use of, or taking of any action upon this information by persons or entities other than the intended recipient is prohibited by law and may subject them to criminal or civil liability. If you received this communication in error, please contact us immediately at the direct

dial number set forth above, or at (301) 495-4646 , and delete the communication from any computer or network system.

## SPECIAL NOTES

1. These Special Notes comply with Condition Number 3 of MCPB Resolution No. 10-129 approving Preliminary Plan No. 120090110. Condition Number 3 established the location of an equestrian trail for use by the general public as shown on the Planning Board approved Preliminary Plan. The equestrian trail may be used by the general public without charge solely for recreational horseback riding. Such use is expressly restricted to horseback riding within the boundaries of the Planning Board approved equestrian trail as depicted hereon. The equestrian trail is on private property and any activity outside of the boundaries of the approved trail as depicted on this Plat is strictly prohibited. Use of the equestrian trail by members of the general public is at the user's own risk. The owners of the Property and their employees, agents and representatives are not liable for any death or injury to persons or property damage arising out of a person's use of the trail. Use of the equestrian trail is also subject to the provisions and property owner protections enumerated in Subtitle 11 of Title 5, Sections 5-1101 through 5-1104 of the Natural Resources Article of the Maryland Annotated Code. Smoking and fires of any kind are strictly prohibited on the trail. **The equestrian trail is privately owned and is not owned, operated or maintained by the Parks Department, the Maryland-National Capital Park and Planning Commission, or any other governmental entity. Unless expressly authorized by the Property owner, no entity or individual is authorized to operate, maintain or manage the equestrian trail and, in accordance with Section 5-1103 of the Natural Resources Article, the landowner is not required to maintain the trail or keep it safe for entry or use by members of the general public.**

2. **The Equestrian Trail shall be posted with a Notice listing use restrictions at locations approved by the Planning Department.**

**EQUESTRIAN TRAIL EASEMENT**  
**FOR USE BY THE GENERAL PUBLIC**

THIS EASEMENT to establish an Equestrian Trail for use by the general public is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between BARNESVILLE OAK FARMS, LLC, a Maryland Limited Liability Company, its successors and assigns (“BOF” or the “Grantor”) in its capacity as agent for the Balsamah Corporation, N.V. a Netherlands Antilles corporation, its successors and assigns, (“Balsamah”) authorized to do business in the State of Maryland (collectively “Grantor”) and EQUESTRIAN PARTNERS IN CONSERVATION, INC., a Maryland 501(c)3 non-profit corporation, (“EPIC” or “Grantee”).

**WITNESSETH**

WHEREAS, the Balsamah Corporation, N.V. a Netherlands Antilles corporation (“Balsamah”), authorized to do business in the State of Maryland, is the owner of that certain parcel of land containing 840 acres located on the east and west sides of Peach Tree Road in Barnesville, Montgomery County, Maryland, as more particularly described in the attached Exhibit A (the “Property”); and

WHEREAS, the Property is known of record as Parcel P 579 on Tax Map DU13; and

WHEREAS, Balsamah duly authorized BOF to act on its behalf to submit and process an application for approval of a Preliminary Plan of Subdivision for the Property; and

WHEREAS, on September 28, 2010, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ( “MNCPPC” or “the Planning Board”) issued Resolution Number 10-129 approving Preliminary Plan No. 120090110 (“the Preliminary Plan”), subject to conditions; and

WHEREAS, pursuant to Section 50-30(c)(3) of the Montgomery County Subdivision Regulations, being also Chapter 50 of the Montgomery County Code 2004 as amended, the Planning Board is empowered to require the dedication of equestrian trails for use by the general public; and

WHEREAS, under Condition No. 3 in Resolution Number 10-129, Grantor must create a an equestrian trail for use by the general public on the Property precisely as shown on the approved Preliminary Plan (the “Equestrian Trail”); and

WHEREAS, The Planning Board selected Equestrian Partners in Conservation (“EPIC”) to be the Board’s designated Grantee of the easement in Condition No. 3 of Resolution Number 10-129.; and

WHEREAS, EPIC has agreed to accept the grant of this Easement and by accepting this Grant of Easement, subject to all the terms and conditions herein, has acknowledged and accepted its fiduciary obligation to act as trustee for the general public and to preserve the property rights of the Grantor and owners of the Property and assure that the anticipated general

public users of the equestrian trail observe all rules and regulations applicable to use of the trail; and

WHEREAS, by signing this Agreement, EPIC confirms it now accepts the precise location of the Equestrian Trail Easement approved by the Planning Board as shown on the Preliminary Plan; and

WHEREAS, in the event EPIC fails to meet its fiduciary duties to the Grantor and property owner or does not enforce the rights and obligations granted herein, without the need for further action by Grantor or Grantee, this Easement and the rights and obligations hereunder shall automatically terminate **as to EPIC** and the Equestrian Trail shall continue to be available to the general public for recreational equestrian use pursuant to the Plat Note; and

WHEREAS, the Preliminary Plan attached as Exhibit B hereto, and the terms set forth herein, depicts the location of the approved Equestrian Trail and specifically states it is a *20 foot Public Use Equestrian Easement*; and

WHEREAS, MNCPPC is charged by the Land Use Article of the Annotated Code of Maryland, with responsibility for the establishment, maintenance and operation of a public park system within the Metropolitan Regional District; and

WHEREAS, the Land Use Article authorizes MNCPPC to attain an easement for the purpose of public recreation and public recreational facilities; and

WHEREAS, Subtitle 11 of Title 5 of the Natural Resources Article of the Maryland Annotated Code, among other things, encourages landowners to permit the public use of private property under certain limited circumstances, and pursuant to Subtitle 11 of Title 5, §5-1103, *et seq.*, limits the liability and eliminates any duty of a landowner who permits such use of private land without charge; and

WHEREAS, Grantor is willing to permit the general public to use the Equestrian Trail under the grant of an easement to Grantee only under conditions of immunity as hereinafter set forth in Section 2 of this Easement, from liability for any injury, death or property damage resulting from the use of the Equestrian Trail in addition to the immunity to which Grantor is entitled pursuant to the Natural Resources Article of the Maryland Annotated Code, and the other protections of Maryland law; and

WHEREAS, Grantee has the authority under this Easement to construct, and maintain the rustic natural surface Equestrian Trail in the precise location designated on the Preliminary Plan for public passage by horse.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), and other valuable consideration including the above recitals each of which is incorporated herein as if hereinafter set forth, the covenants, terms, and restrictions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged by the Parties, Grantor hereby grants and conveys unto Grantee an Easement over the Equestrian Trail in the precise location shown on Exhibit B for the benefit

of and use by the general public for equestrian purposes pursuant to the express terms and conditions set forth below:

1. Grantee shall construct, maintain, mark and use the rustic natural surface Equestrian Trail restricted to the precise location shown on Exhibit B, including the construction of bridges, boardwalks, and fences where necessary to facilitate equestrian passage, provided it does not conflict with agricultural use, the approved subdivision, and all other permitted uses, subject to the following conditions:
  - (a) Any construction by Grantee shall become and remain the property of the Grantor, and Grantee shall bear sole responsibility for the cost of any such construction and maintenance.
  - (b) In the event a court of competent jurisdiction finds that the approved Equestrian Trail conflicts with any rule or requirement of the Americans with Disabilities Act ("ADA"), a deviation from the location of the approved Equestrian Trail is required to comply with that court decision, Grantee shall bear the sole responsibility and any cost associated with ensuring the Equestrian Trail complies with the decision of the court, and such deviation shall not encroach on or conflict with agricultural uses or areas, or any other permitted uses on the Property including the approved subdivision development pursuant to the Preliminary Plan, and the Equestrian Trail shall remain located on the border of the Property and as close to the approved Equestrian Trail as possible.
  - (c) The general public shall have the right to pass over the Equestrian Trail on horse during daylight hours only and subject to such rules and regulations as the Grantor shall deem appropriate and necessary provided such rules and regulations include the following prohibitions:
    - (i) Access to the Equestrian Trail by motorized or non-motorized vehicles of any kind whatsoever, including, without limitation, snowmobiles, dirt bikes, motorcycles, bicycles and all-terrain vehicles is strictly prohibited, except as required by the ADA;
    - (ii) Access to any portion of the Property outside of the Easement Area boundaries is strictly prohibited;
    - (iii) Littering, removing or damaging plants or trees, injuring, interfering or harassing livestock or wildlife, building of fires, hunting and trapping, or any other non-equestrian activity, is strictly prohibited;
    - (iv) Charging or collecting use or admission fees, or donations, the collection of funds, or fundraising, selling Equestrian Trail naming rights or signage, whether for profit or not for profit, in connection with the use of the Equestrian Trail are strictly prohibited;

- (v) Camping, smoking, fire, picnicking and drinking alcoholic beverages are strictly prohibited;
- (vi) Disrupting the safety, peace and privacy of residents or workers on the Property is strictly prohibited;
- (vii) Interference with agricultural or other permitted uses of the Property, including the approved subdivision, is strictly prohibited.
- (d) Grantee must post the Equestrian Trail with conspicuous notices stating the rules and regulations governing its use by the general public, and stating further that use of the trail is exclusively at the rider's own risk, that the property over which it passes is private and that, in permitting its use by the general public, the liability of the landowner is limited by the Natural Resources Article of the Maryland Annotated Code, Section 5-1103, *et seq.*, as amended.
- (e) Grantee must post all entrances to the Equestrian Trail during hunting season, warning the general public that hunting season is in progress, and encouraging the use of blaze orange clothing or other protective coloration.
- (f) So long as the Equestrian Trail is accessible for use by the general public, Grantee shall use reasonable efforts to enforce all rules and regulations of the Equestrian Trail, maintain the Equestrian Trail, discourage littering and other acts that would encroach upon the natural features of the Equestrian Trail corridor or diminish its attractiveness, take steps to educate users in trail etiquette, and include guidelines for users in maps and other trail publications.
- (g) If at any time Grantor is dissatisfied with the condition, use, management, location or policing of the Equestrian Trail, or otherwise aggrieved, they may file an appropriate action in the Circuit Court for Montgomery County seeking enforcement or termination of this Easement.
- (h) So long as the Equestrian Trail is accessible for use by the general public and the Grantee is not terminated, Grantee shall maintain a general liability insurance policy ("Umbrella Policy") that includes general liability, workman's compensation, and property damage coverage for the Equestrian Trail, with limits of no less than One Million (\$1,000,000) Dollars coverage for each occurrence and no less than Two Million (\$2,000,000) Dollars in the aggregate for claims. Such policy shall be updated annually and must name Balsamah and Barnesville Oak Farms, LLC, their successors and assigns, as additional insured parties and, upon request, provide each with a certificate of insurance at Grantee's cost.
- (i) Grantee shall at all times remain a registered Maryland 501(c)(3) entity, in good standing with the Internal Revenue Service and the State of Maryland. If at any time, Grantee's 501(c)(3) status lapses or is suspended or revoked, or EPIC is not in good standing with the State of Maryland, this Easement shall automatically



terminate as to EPIC, and the Equestrian Trail shall continue to be available to the general public for recreational equestrian use pursuant to the Plat Note.

- (j) The Grantor and Grantee shall have the right, but not the obligation, to enforce any of the terms and conditions stated herein by filing an appropriate action in the Circuit Court for Montgomery County, Maryland.
- (k) The parties to this Easement agree it is entered into subject to the limitations on Grantor's liability pursuant to Section 5-1103, *et seq.*, of the Natural Resources Article of the Maryland Annotated Code, as amended and the provisions of the Land Use Article of the Maryland Annotated Code.
- (l) By accepting this Easement, the Grantee expressly agrees to indemnify and hold harmless Grantor from any and all claims suits or damages of any kind in connection with the Equestrian Trail.
- (m) Any party found to be in breach of the Easement shall reimburse the prevailing party for all reasonable attorneys' fees and costs, within thirty days of the Court decision.

## 2. Immunity.

(a) Grantor has no obligation or duty of care to keep the premises safe for entry, give any warning of a dangerous condition, use, structure, or activity and extends no assurance that the premises are safe for any purpose. In the absence of Grantor's willful or malicious conduct, Grantor is absolutely immune from liability for any damage to property or injury or death resulting from the use of the Equestrian Trail by the Grantee, by any individual or group or by members of the general public.

(b) In addition, the right to use the Equestrian Trail is subject to the provision of Subtitle 11 of Title of the Natural Resources Article of the Maryland Annotated Code, as amended and the provisions of the Land Use Article of the Maryland Annotated Code. Use of the Equestrian Trail by the general public for horseback riding shall be at the user's own risk. Any other use of the Equestrian Trail is strictly forbidden.

(c) Grantor does not assume any responsibility for or incur any liability whatsoever as a result of any injury to any person or damage to property by an act or omission of such person.

## 3. Grantor expressly reserves the right to take all actions on any segment of the Equestrian Trail to conform to State and/or County requirements, to service the Property and the agricultural and permitted uses of the Property, including the approved subdivision. These rights include but are not limited to the right to pave portions of the Equestrian Trail where required under State and/or County laws and to grant utility easements and to take any action to implement the approved subdivision, agricultural or other permitted

uses. Grantor shall use its best efforts to restore access to the Equestrian Trail as soon as feasible following the actions taken under this Section.

4. Grantor is entitled to recover reasonable damages, attorney's fees and costs incurred in the event of any violation of the terms and restrictions of this easement by Grantee and any litigation instituted to enforce this Easement or its termination in the event a court finds Grantee is in violation of the Agreement. In the event of termination, the Equestrian Trail shall continue to be available to the general public for recreational equestrian use pursuant to the Plat Note.
5. This conveyance is subject to existing easements of record for public roads, private drives and highways, public utilities, and pipelines. This conveyance also is subject to future easements granted in connection with the development of the Property, including but not limited to public roads, private drives and highways, public utilities, pipelines, and ingress/egress easements.
6. This Easement is not a grant of any interest in the Property to EPIC or to any other person or entity and nothing in this Easement may be construed as a grant of any property interest in the Property, the title to the Property, or to the Equestrian Trail. Grantor reserves all other rights not expressly delegated herein, including the right to transfer, encumber, mortgage or otherwise convey any portion of the Property, including the Equestrian Trail or any Transferable Development Rights, at any time without requiring the consent of the Grantee to said transaction.
7. Nothing in this Easement may be construed, interpreted or enforced in any manner that would impinge, restrict, conflict with or impede in any way whatsoever the agricultural uses, the approved subdivision, or other permitted uses of the Property. The terms of this Easement shall be construed, interpreted and enforced in a manner that protects Grantor, its interest, the Property, agricultural uses, the approved subdivision development, other permitted uses, property rights and peace.
8. This Easement shall be construed, interpreted and enforced according to the laws of the State of Maryland.
9. This Easement may only be modified in a writing signed by the Grantor and Grantee.
10. No improvement may be made, including cutting of trees, to the approved Equestrian Trail without prior written approval from Grantor and all necessary permits from Montgomery County, and/or MNCPPC, as required.
11. Grantee shall be bound by the terms and conditions of the Preliminary Plan, including the final forest conservation plan. In the event that a violation of any approved Preliminary Plan conditions is discovered, and such violation was a result of actions, inactions, or improvements made by the Grantee, Grantee shall indemnify Grantor for any and all loss, violations, penalties, fines, and processes required including but not limited to legal fees incurred by Grantor to correct and remedy said violation, and Grantee shall promptly,

diligently, and affirmatively take action to remedy the violation.

12. Grantee may not assign this Easement or any of Grantee's obligations or responsibilities as set forth herein.
13. The provisions of this Easement which is executed under seal shall be binding upon and may be enforced against the Grantor or Grantee.
14. This Easement shall run with the land and shall be recorded by Grantor among the Land Records of Montgomery County, Maryland. The cost of recordation shall be promptly borne by the Grantee.
15. The use of the Equestrian Trail under this Easement is covered by Section 5-1103 *et seq.* of the Natural Resources Article of the Maryland Annotated Code, as amended and the provisions of the Land Use Article of the Maryland Annotated Code, so that Grantor is held harmless in accordance with the above referenced Maryland Code, and nothing herein may be interpreted or construed otherwise.
16. Communications between the Grantor and the Grantee shall be solely with the Grantor's counsel identified below or their successors and assigns. The Grantee shall promptly pay, within thirty calendar days of the date of invoice, any and all costs, including but not limited to reasonable attorneys' fees, associated with such communications relating to the Easement, to correct a violation of the Easement, to terminate the Easement, or the maintenance or operation of the Equestrian Trail or the enforcement of the terms herein.

Grantor's Counsel:  
Stephen J. Orens, Esquire  
Rebecca D. Walker, Esquire  
Miles & Stockbridge P.C.  
11 North Washington Street, Suite 700  
Rockville, Maryland 20850

17. Grantee further agrees that this Easement shall become null and void in the event that (a) the Planning Board fails to approve each and every Final Record Plat Application for the Property or (b) the approval of any of the Record Plats for the Property is challenged in any judicial or administrative forum.
18. Access to the Equestrian Trail by Grantee and/or the general public shall be permitted only after:
  - (a) This Easement is fully executed and recorded;
  - (b) Grantee has furnished to Grantor's counsel valid proof of insurance as required herein;
  - (c) The final record plats are approved and recorded for the approved subdivision, and all appeal periods related thereto have expired; and
  - (d) Grantee has furnished to Grantor's counsel the Surety Bond, as set forth hereunder.

19. In recognition of Grantee's fiduciary obligations to Grantor and its obligation to fully indemnify and hold harmless the Grantor and Property Owner from any and all costs and damages which Grantor or the Property Owner may suffer as a result of any claim or cause of action arising out of the actions of the Grantee, or the use of the Equestrian Trail by the general public, or any other costs related to the Equestrian Trail, Grantee agrees that by accepting the terms of this Easement and by undertaking the obligations set forth herein, Grantee shall furnish a bond ("Surety Bond") securing Grantee's obligations herein. Said Surety Bond shall be in a form acceptable to Grantor, in a sum of not less than Five Hundred Thousand (\$500,000) Dollars with a surety or sureties identified by the Maryland-National Capital Park and Planning Commission as "Acceptable Sureties." The Surety Bond shall be replenished, within thirty (30) calendar days, to the full amount whenever it falls below a cash value of Four Hundred Thousand (\$400,000). The cost of any such Surety Bond and the renewal of such shall be the sole obligation of Grantee. In the event that the Surety Bond required by this Easement is not furnished and maintained in effect as hereinabove required, this Easement shall automatically terminate as to Grantee and all of Grantee's rights hereunder shall be forfeit.

IN WITNESS THEREOF, the parties hereto have executed this Easement this \_\_\_\_ day of \_\_\_\_\_, 2014.

GRANTOR:  
BARNESVILLE OAK FARMS, LLC

GRANTEE:  
EQUESTRIAN PARTNERS IN  
CONSERVATION, INC.

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

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

Title: \_\_\_\_\_  
Authorized Agent

Title: \_\_\_\_\_  
Authorized Agent

STATE OF MARYLAND :  
COUNTY OF MONTGOMERY :

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public personally appeared \_\_\_\_\_ and proved to me through satisfactory evidence of identification, which consisted of \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

STATE OF MARYLAND :  
COUNTY OF MONTGOMERY :

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public personally appeared \_\_\_\_\_ and proved to me through satisfactory evidence of identification, which consisted of \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

**CERTIFICATIONS**

Approved for legal sufficiency by the Office of General Counsel for the Maryland-National Capital Park and Planning Commission on this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

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

**THE UNDERSIGNED**, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him or under his immediate supervision.

\_\_\_\_\_  
Stephen J. Orens

## PUBLIC USE TRAIL EASEMENT

THIS PUBLIC USE TRAIL EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between **BARNESVILLE OAK FARMS, LLC**, a Maryland Limited Liability Company, its successors and assigns ("BOF" or the "Applicant") in its capacity as agent for the Balsamah Corporation, N.V., a Netherlands Antilles Corporation, its successors and assigns, ("Balsamah") authorized to do business in the State of Maryland (collectively "Grantor") and **EQUESTRIAN PARTNERS IN CONSERVATION, INC.**, a Maryland 501(c)(3) Non-Profit Corporation, its successors and assigns ("EPIC" or "Grantee").

### WITNESSETH

WHEREAS, the Balsamah Corporation, N.V. a Netherlands Antilles Corporation ("Balsamah"), authorized to do business in the State of Maryland, is the owner of that certain parcel of land containing 840 acres located on the east and west sides of Peach Tree Road in Barnesville, Montgomery County, Maryland, as more particularly described in the attached Exhibit A (the "Property"); and

WHEREAS, the Property is known of record as Parcel P 579 on Tax Map DU13; and

WHEREAS, Balsamah duly authorized BOF to act on its behalf to submit and process an Application for approval of a Preliminary Plan of Subdivision for the Property; and

WHEREAS, on September 28, 2010, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ( "MNCPPC" or "the Planning Board") issued Resolution Number 10-129, a copy of which is attached and incorporated as Exhibit A, approving Preliminary Plan No. 120090110 ("the Preliminary Plan"), subject to conditions; and

WHEREAS, pursuant to Section 50-30(c)(3) of the Montgomery County Subdivision Regulations, being also Chapter 50 of the Montgomery County Code 2004 as amended, the Planning Board is empowered to require the dedication of equestrian trails for use by the public; and

WHEREAS, under Condition No. 3 in Resolution Number 10-129 (Exhibit A), Grantor must create a Public Use Trail Easement ("PUTE") on the Property as shown on the Preliminary Plan, naming EPIC as the grantee hereunder, or should EPIC decline to accept the PUTE, MNCPPC staff may identify another suitable entity as the Grantee; and

WHEREAS, the purpose of naming EPIC as the Grantee is that its mission is for the furtherance of equestrian recreational opportunities, and as such EPIC will act as Trustee for the general public to preserve the rights and meet the obligations of the anticipated users and beneficiaries of the PUTE; and

WHEREAS, the Preliminary Plan attached as Exhibit B hereto, depicts the location of the approved Equestrian Trail and specifically states it is a *20-foot Public Use Equestrian Easement*; and

WHEREAS, MNCPPC is charged by the Land Use Article of the Annotated Code of Maryland, with responsibility for the establishment, maintenance and operation of a public park system within the Metropolitan Regional District; and

WHEREAS, the Land Use Article authorizes MNCPPC to attain an easement for the purpose of public recreation and public recreational facilities; and

WHEREAS, Subtitle 11 of Title 5 of the Natural Resources Article of the Maryland Annotated Code encourages landowners to permit the public use of private property under certain circumstances and limits the liability of an owner as defined in Subtitle 11 of Title 5, and the circumstances as described therein.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), and other valuable consideration, including the above recitals, each of which is incorporated herein as if hereinafter set forth, the covenants, terms, and restrictions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged by the Parties, Grantor hereby grants and conveys unto Grantee a Public Use Trail Easement on the Equestrian Trail in the location shown on Exhibit B for the benefit of the general public for equestrian purposes pursuant to the terms and conditions set forth below:

1. The public shall have the right to use the Equestrian Trail for equestrian uses only.
2. Equestrian usage shall comply with the conditions and restrictions governing uses that are within the definition of "recreational purpose" as defined in Maryland Annotated Code, Natural Resources Article, Section 5-1101.
3. [ The Grantee shall have the right to construct, maintain, and repair the Equestrian Trail. However, this right shall impose no obligation on either the Grantee or the Grantor to construct, maintain, or repair the Equestrian Trail. ]
4. Both the Grantor and/or the Grantee have the right to enforce the terms of this easement, but have no obligation to do so.
5. To the extent that the terms of this Easement conflict with the terms of Resolution No. 10-129 (Exhibit A), then the terms of the Resolution shall

control.

6. This Easement shall be construed, interpreted and enforced according to the laws of the State of Maryland.
7. This Easement may only be modified in writing, signed by the parties, their successors or assigns and approved by the MNCPPC.
8. Grantee agrees that it may not assign its responsibilities without the prior written consent of the MNCPPC.
9. MNCPPC may designate a new Grantee if the Grantee is unable or unwilling to fulfill its obligations under this Easement for any reason, including but not limited to, its dissolution or bankruptcy.
10. This Easement shall run with the land and shall be recorded by Grantor among the Land Records of Montgomery County. The cost of recordation shall be borne by the Grantor.
11. The use of the Equestrian Trail under this Easement is covered by, and subject to the provision of, Section 5-1104 of the Natural Resources Article of the Maryland Annotated Code, as amended.

IN WITNESS THEREOF, the parties hereto have executed this Public Use Trail Easement on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.



**GRANTOR:**

**BARNESVILLE OAK FARMS, LLC**

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

**GRANTEE:**

**EQUESTRIAN PARTNERS IN CONSERVATION, INC.**

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

STATE OF MARYLAND :  
COUNTY OF MONTGOMERY : TO WIT:

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned Notary Public personally appeared \_\_\_\_\_ on behalf of **BARNESVILLE OAK FARMS, LLC**, and proved to me through satisfactory evidence of identification, which consisted of \_\_\_\_\_, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

STATE OF MARYLAND :  
COUNTY OF MONTGOMERY : TO WIT:

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned Notary Public personally appeared \_\_\_\_\_ on behalf of **EQUESTRIAN PARTNERS IN CONSERVATION, INC.** and proved to me through satisfactory evidence of identification, which consisted of \_\_\_\_\_, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

**CERTIFICATIONS**

Approved for legal sufficiency by the Office of General Counsel for the Maryland-National Capital Park and Planning Commission on this \_\_\_\_ day of \_\_\_\_\_, 2014.

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

**THE UNDERSIGNED**, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him/her or under his/her immediate supervision.

\_\_\_\_\_

## PUBLIC USE TRAIL EASEMENT

THIS PUBLIC USE TRAIL EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between BARNESVILLE OAK FARMS, LLC, a Maryland Limited Liability Company, its successors and assigns ("BOF" or the "Applicant") in its capacity as agent for the Balsamah Corporation, N.V. a Netherlands Antilles corporation, its successors and assigns, ("Balsamah") authorized to do business in the State of Maryland (collectively "Grantor") and EQUESTRIAN PARTNERS IN CONSERVATION, INC., a Maryland 501c3 Non-Profit Corporation, its successors and assigns ("EPIC" or "Grantee").

### WITNESSETH

WHEREAS, the Balsamah Corporation, N.V. a Netherlands Antilles corporation ("Balsamah"), authorized to do business in the State of Maryland, is the owner of that certain parcel of land containing 840 acres located on the east and west sides of Peach Tree Road in Barnesville, Montgomery County, Maryland, as more particularly described in the attached Exhibit A (the "Property"); and

WHEREAS, the Property is known of record as Parcel P 579 on Tax Map DU13; and

WHEREAS, Balsamah duly authorized BOF to act on its behalf to submit and process an application for approval of a Preliminary Plan of Subdivision for the Property; and

WHEREAS, on September 28, 2010, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("MNCPPC" or "the Planning Board") issued Resolution Number 10-129 approving Preliminary Plan No. 120090110 ("the Preliminary Plan"), subject to conditions; and

WHEREAS, pursuant to Section 50-30(c)(3) of the Montgomery County Subdivision Regulations, being also Chapter 50 of the Montgomery County Code 2004 as amended, the Planning Board is empowered to require the dedication of equestrian trails for use by the public; and

WHEREAS, under Condition No. 3 in Resolution Number 10-129, Grantor must create a Public Use Trail Easement ("PUTE") on the Property as shown on the Preliminary Plan, naming EPIC as the grantee hereunder, or should EPIC decline to accept the PUTE, MNCPPC staff may identify another suitable entity as the grantee; and

WHEREAS, the purpose of naming EPIC as the grantee is that its mission is for the furtherance of equestrian recreational opportunities, and as such EPIC will act as trustee for the general public to preserve the rights and meet the obligations of the anticipated users and beneficiaries of the PUTE; and

WHEREAS, by email dated September 13, 2012 (copy attached hereto as Exhibit B), EPIC confirmed that is willing to accept the PUTE as shown on the Preliminary Plan; provided however, in the event EPIC does not accept the terms of this PUTE, or does not enforce the

rights and obligations granted herein, without the need for further action by Grantor or Grantee, this PUTE and the rights and obligations hereunder shall automatically be assigned to another similar whose mission is for the furtherance of equestrian recreational opportunities organization, as identified by MNCPPC staff; and

WHEREAS, the Preliminary Plan attached as Exhibit C hereto, depicts the location of the approved equestrian trail and specifically states it is a *20 foot Public Use Equestrian Easement*; and

WHEREAS, MNCPPC is charged by the Land Use Article of the Annotated Code of Maryland, with responsibility for the establishment, maintenance and operation of a public park system within the Metropolitan Regional District; and

WHEREAS, the Land Use Article authorizes MNCPPC to attain an easement for the purpose of public recreation and public recreational facilities; and

WHEREAS, Subtitle 11 of Title 5 of the Natural Resources Article of the Maryland Annotated Code encourages landowners to permit the public use of private property under certain limited circumstances and limits the liability of a landowner who permits such use of private land without charge; and

WHEREAS, Balsamah and BOF as Grantor is willing to permit the public equestrian use of the Equestrian Trail under the grant of an easement, pursuant to the Natural Resources Article of the Maryland Annotated Code, to Grantee; and

WHEREAS, Grantee has the authority under this Easement to construct, and maintain the natural surface public use Equestrian Trail in the location designated on the Preliminary Plan for public passage by horse.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), and other valuable consideration including the above recitals each of which is incorporated herein as if hereinafter set forth, the covenants, terms, and restrictions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged by the Parties, Grantor hereby grants and conveys unto Grantee a Public Use Trail Easement on the Equestrian Trail in the exact location shown on Exhibit C for the benefit of the general public for equestrian purposes pursuant to the express terms and conditions set forth below:

1. Grantee shall construct, maintain, mark and use the rustic natural surface Equestrian Trail restricted to the exact location shown on Exhibit C, including the construction of bridges, boardwalks, and fences where necessary to facilitate equestrian passage, provided it does not conflict with agricultural and all other permitted uses, subject to the following conditions:
  - (a) Any construction by Grantee shall become and remain the property of the Grantor, and Grantee shall bear sole responsibility for the cost of any such construction and maintenance.

- (b) Grantee shall bear the sole responsibility and any cost associated with ensuring the Equestrian Trail complies with the rules and requirements of the Americans with Disabilities Act (“ADA”). In the event a court finds the approved Equestrian Trail conflicts with any rule or requirement of the ADA, if any deviation from the location of the approved Equestrian Trail is necessary to comply with the ADA, such deviation shall not cross or conflict with agricultural uses or areas, or any other permitted uses on the Property including the Preliminary Plan, and the Equestrian Trail shall remain located on the border of the Property and as close to the approved Equestrian Trail as possible.
- (c) The public shall have the right to pass over the Equestrian Trail on horse during daylight hours only and subject to such rules and regulations as the Grantor shall deem appropriate and necessary provided such rules and regulations include the following prohibitions:
- (i) Access to the Equestrian Trail by motorized or non-motorized vehicles of any kind whatsoever, including, without limitation, snowmobiles, dirt bikes, motorcycles, bicycles and all terrain vehicles is strictly prohibited, except as required by the ADA;
  - (ii) Access to any portion of the Property outside of the Easement Area boundaries is strictly prohibited;
  - (iii) Littering, removing or damaging plants or trees, injuring, interfering or harassing livestock or wildlife, building of fires, hunting and trapping, or any other non equestrian activity, is strictly prohibited;
  - (iv) Charging or collecting use or admission fees or donations, the collection of funds, or fundraising, whether for profit or not for profit, in connection with the use of the Equestrian Trail are strictly prohibited;
  - (v) Camping, picnicking and drinking alcoholic beverages is strictly prohibited;
  - (vi) Disrupting the safety, peace and privacy of residents or workers on the Property is strictly prohibited;
  - (vii) Interference with agricultural or other permitted uses of the Property is strictly prohibited.
- (d) Grantee must post the Equestrian Trail with conspicuous notices stating the rules and regulations governing its use by the public, and stating further that the property over which it passes is private and that, in permitting its use by the public, the liability of the landowner is limited by the Natural Resources Article of the Maryland Annotated Code, Section 5-1104, as amended.

- (e) Grantee must post all entrances to the Equestrian Trail during hunting season, warning the public that hunting season is in progress, and encouraging the use of blaze orange clothing or other protective coloration.
  - (f) So long as Grantee invites the public to use the Equestrian Trail, Grantee shall use reasonable efforts to maintain the Equestrian Trail, discourage littering and other acts that would encroach upon the natural features of the Equestrian Trail corridor or diminish its attractiveness, take steps to educate users in trail etiquette, and include guidelines for users in maps and other trail publications.
  - (g) If at any time Balsamah or BOF, or their successors or assigns, is dissatisfied with the condition, use, management, location or policing of the Equestrian Trail, they may file an appropriate action in the Circuit Court for Montgomery County seeking enforcement of this Easement, or its termination pursuant to Paragraph 10 below.
  - (h) So long as Grantee invites the public to use the Equestrian Trail, the Grantee, its successors or assigns, shall maintain a liability insurance policy that includes coverage of the trail, with limits of at least the minimum coverage required by law for each occurrence and at least the minimum coverage required by law in the aggregate, updated annually, which policy shall name MNCPPC, Balsamah and Barnesville Oak Farms, LLC, their successors and assigns, as additional insured parties and upon request provide each with a certificate of insurance.
  - (i) The Parties to this Easement, and their successors and assigns, shall have the right, but not the obligation, to enforce any of the terms and conditions stated herein by filing an appropriate action in the Circuit Court for Montgomery County, Maryland.
  - (j) The parties to this Easement agree it is entered into subject to the limitations on Grantor's liability pursuant to Section 5-1104 of the Natural Resources Article of the Maryland Annotated Code, as amended and the provisions of Article 28 of the Maryland Annotated Code.
  - (k) By accepting this Easement, the Grantee and their successors and assigns expressly agree to indemnify and hold harmless Grantor its successors and assigns from any and all claims suits or damages of any kind in connection with the Equestrian Trail.
  - (l) Any party found to be in breach of the Easement shall reimburse the prevailing party for all reasonable attorneys fees and costs.
2. Grantor expressly reserves the right to take all necessary actions on any segment of the Equestrian Trail to conform with State and/or County requirements, to service the Property and the agricultural and permitted uses of the Property. These rights include but are not limited to the right to pave portions of the Equestrian Trail where required

under State and/or County laws and to grant utility easements. Grantor shall use its best efforts to restore access to the Equestrian Trail as soon as feasible following the necessary actions taken under this Section.

3. This conveyance is subject to existing easements of record for public roads, private drives and highways, public utilities, and pipelines. This conveyance also is subject to future easements granted in connection with the development of the Property, including but not limited to public roads, private drives and highways, public utilities, pipelines, and ingress/egress easements.
4. Nothing in this Easement may be construed, interpreted or enforced in any manner that would impinge, restrict, conflict with or impede in any way whatsoever the agricultural or other permitted uses of the Property.
5. This Easement shall be construed, interpreted and enforced according to the laws of the State of Maryland.
6. This Easement may only be modified in a writing signed by the parties, their successors or assigns.
7. No improvement may be made, including cutting of trees, to the approved Equestrian Trail without prior written approval from Grantor and all necessary permits from Montgomery County, and/or MNCPPC, as required. Subsequent access to the Property shall be strictly limited to the precise location of the approved Equestrian Trail as shown on the Preliminary Plan and by acceptance of this Easement.
8. Grantee shall be bound by the terms and conditions of the Preliminary Plan, including the final forest conservation plan. In the event that a violation of any approved Preliminary Plan conditions is discovered, and such violation was a result of actions, inactions, or improvements made by the Grantee, Grantee shall indemnify Grantor for any and all loss, violations, penalties, fines, and processes required to correct said violation, and Grantee shall promptly and affirmatively take action to remedy the violation.
9. Grantee agrees that it may not assign its responsibilities without the prior written consent of Grantor.
10. MNCPPC may designate a new Grantee upon notice to, or from Grantor, its successors and assigns, if the Grantee is unable or unwilling to fulfill its obligations under this Easement for any reason, including but not limited to its dissolution, bankruptcy, or being found by a Court to be in breach of this Easement and incorporating all of the terms and conditions of this Easement. The Equestrian Trail shall not be used unless MNCPPC designates a new grantee. During such period the Equestrian Trail will be considered closed to public use and any equestrians using the trail will be considered to be trespassers and be subject to removal from the trail by Grantor.

11. The provisions of this Easement which is executed under seal, shall be binding upon and may be enforced against the Grantor and Grantee and their successors and assigns.
12. This Easement shall run with the land and shall be recorded by Grantor among the Land Records of Montgomery County. The cost of recordation shall be borne by the Grantee.
13. The use of the Equestrian Trail under this Easement is covered by Section 5-1104 of the Natural Resources Article of the Maryland Annotated Code, as amended and the provisions of Article 28 of the Maryland Annotated Code, so that Grantor is held harmless in accordance with the above referenced Maryland Code, and nothing herein may be interpreted or construed otherwise.

IN WITNESS THEREOF, the parties hereto have executed this easement this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

GRANTOR:

BARNESVILLE OAK FARMS, LLC

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

Its \_\_\_\_\_

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned notary public personally appeared \_\_\_\_\_ and proved to me through satisfactory evidence of identification, which consisted of \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

**CERTIFICATIONS**

Approved for legal sufficiency by the Office of General Counsel for the Maryland-National Capital Park and Planning Commission on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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

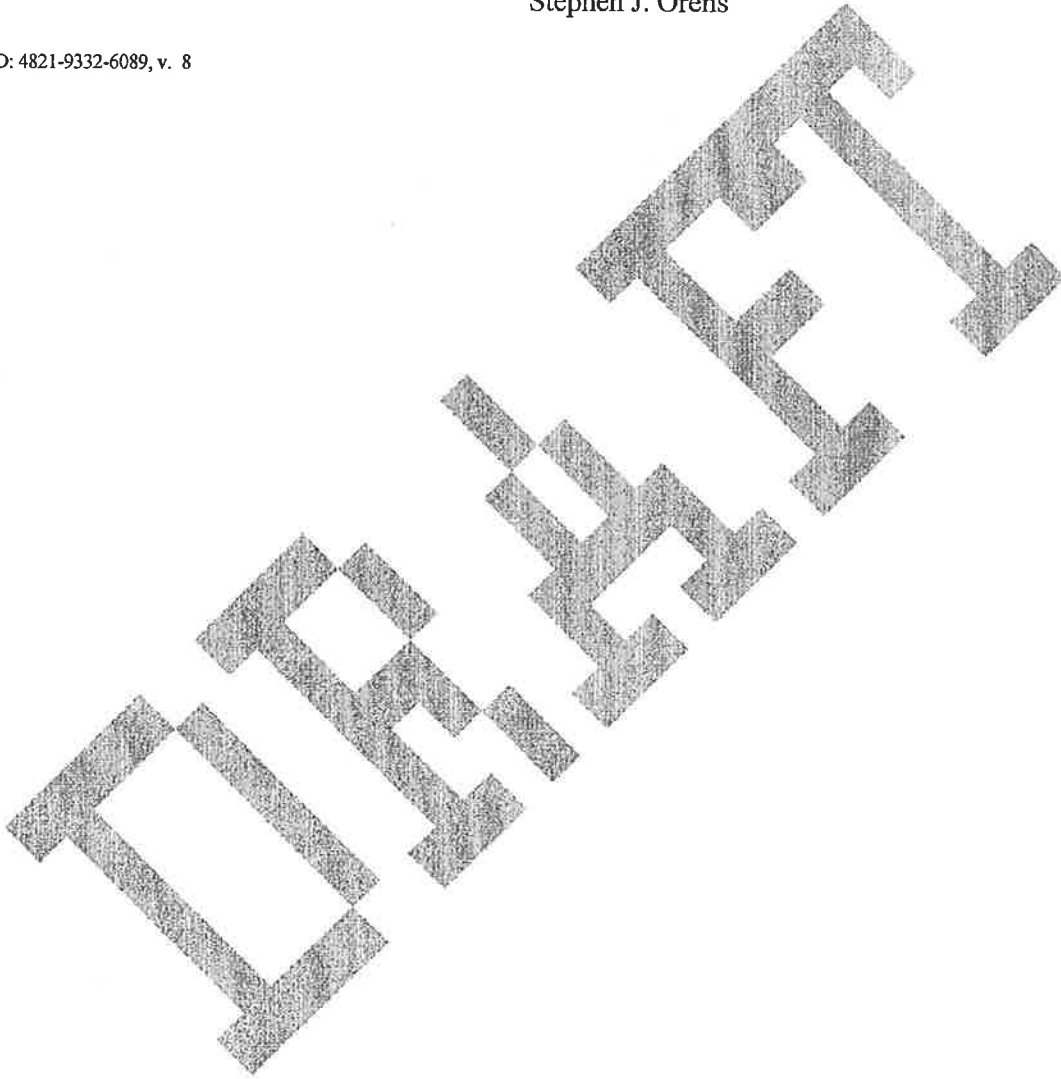


**THE UNDERSIGNED**, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him or under his immediate supervision.

---

Stephen J. Orens

ND: 4821-9332-6089, v. 8





**From:** "Tobin, David" <[David.Tobin@montgomeryparks.org](mailto:David.Tobin@montgomeryparks.org)>  
**Date:** September 27, 2010 at 11:12:17 AM EDT  
**To:** "Rogers, Derrick" <[derrick.rogers@mncppc.org](mailto:derrick.rogers@mncppc.org)>  
**Cc:** "Rubin, Carol" <[carol.rubin@mncppe-mc.org](mailto:carol.rubin@mncppe-mc.org)>, "Weaver, Richard" <[Richard.Weaver@mncppe-mc.org](mailto:Richard.Weaver@mncppe-mc.org)>  
**Subject:** FW: Barnesville Oak Farms -- Future Trail Easement

Derrick: I'm going to set up a meeting to discuss this.

David Tobin  
Liaison Officer  
Montgomery County Parks Foundation  
Maryland-National Capital Park & Planning Commission  
Montgomery Parks  
9500 Brunett Avenue  
Silver Spring, Maryland 20901  
office (301) 495-2478  
cell (240) 338-0072  
fax (301) 585-1921

PI Please consider the environment before printing this e-mail. Thank you.

-----Original Message-----

From: Katharine Sexton [<mailto:sextonkrs@yahoo.com>]  
Sent: Monday, August 02, 2010 4:39 PM  
To: Tobin, David  
Subject: Barnesville Oak Farms

Dear Mr. Tobin, I am pleased to hear that the easement approved by the Planning Board is unobstructed other than some clearing in a short segment as expected. As you know, this easement was voluntarily offered to the County, in response to the County's request for a public trail to connect from east to west, and was reviewed by the main farmer on the property, Josh Penn, Sarah Navid, Doug Powell and Rich Weaver to ensure no adverse impacts to the farm fields, farming operations, environmental resources, and rustic roads resources. With that in mind, we will be happy to review your ideas and I will get back to you.

In light of your walk through the easement on Saturday, I do not see the need for us to walk through again. Please do not hesitate to contact me if you believe it is necessary that we walk the easement again.

I would appreciate it if you would notify me in advance if you or any other representatives from EPIC wish to walk the easement again so I may notify the farm managers and thereby ensure authorized access.

I am sorry I missed you and Mr. Gutierrez on Saturday as you must have had a lovely walk-through with such great weather. Thank you, Katharine Sexton 202-246-6618

-----Original Message-----

From: Tobin, David

Sent: Monday, August 02, 2010 12:49 PM

To: 'Katharine Sexton'

Subject: RE: Barnesville Oak Farms -- Future Trail Easement

Ms. Sexton: Tom Gutierrez and I had an opportunity to walk the Barnesville Oak easement on Saturday. We found the trail easement in good shape. On attached red shows the easement as provided by you. There is only one area that requires clearing (see dark green circles on north side) -- it is not accessible at present. We also want to recommend some modifications: 1.

Addition of a loop (see bright green on pic on south portion), 2. Re-route of trail along Peach Tree, instead of riding south west along Peach Tree and northwest at edge of cluster (in blue) we propose (see bright green) north east along Peach Tree then on edge of crop field along tree line, south west toward existing 2 Sister driveway and continuing southwest to easement. 3. If this trail is to be used by general public it requires a trail head. Pic shows a proposed gravel trail head off existing 2 sisters driveway near 109, then trail heading south west between field to easement.

I also have some questions about the logistics of Thursday, including the time (which I prefer be in late afternoon). Please give me a call on my cell. Thank you.

David Tobin

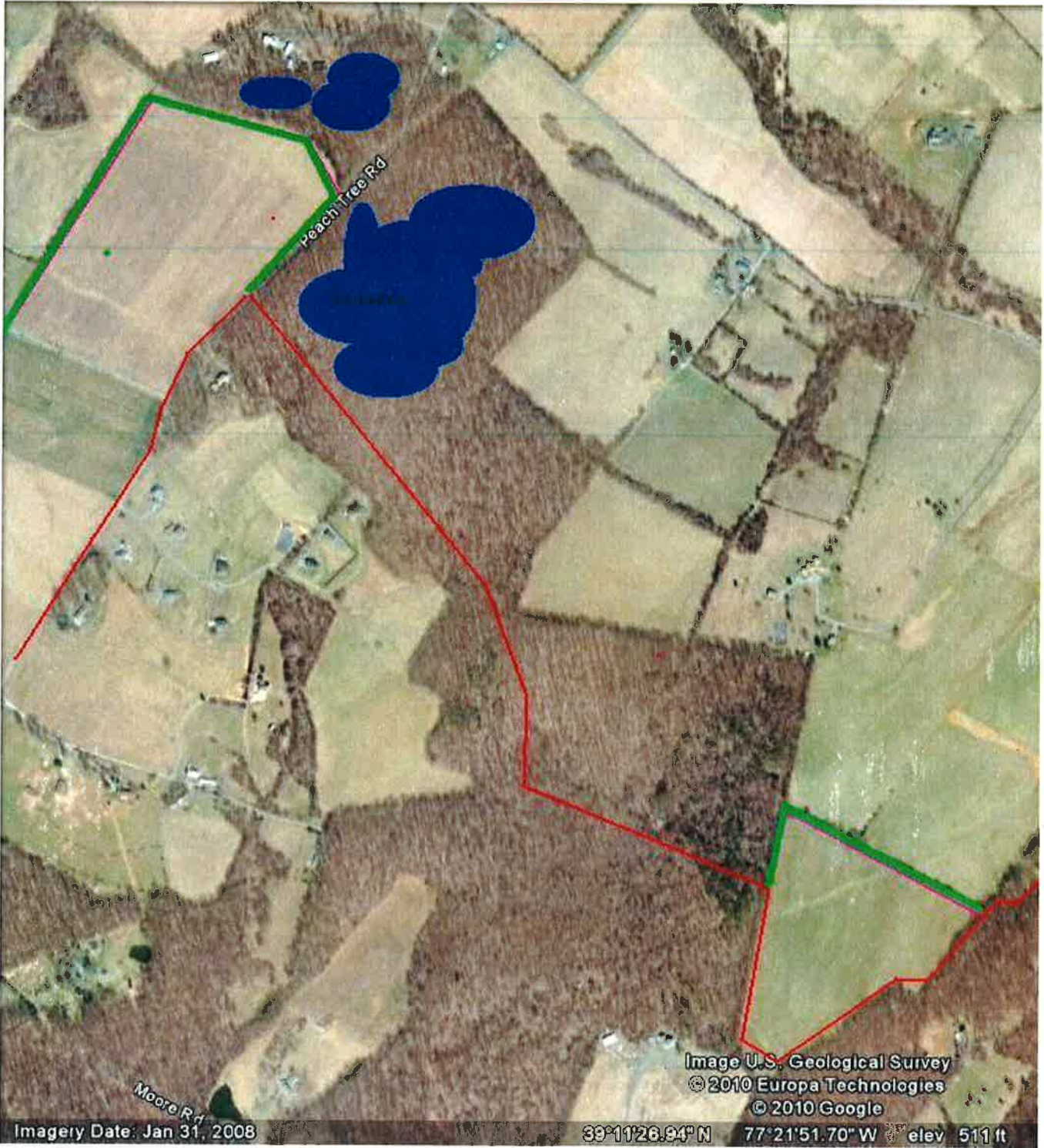
office (301) 495-2478

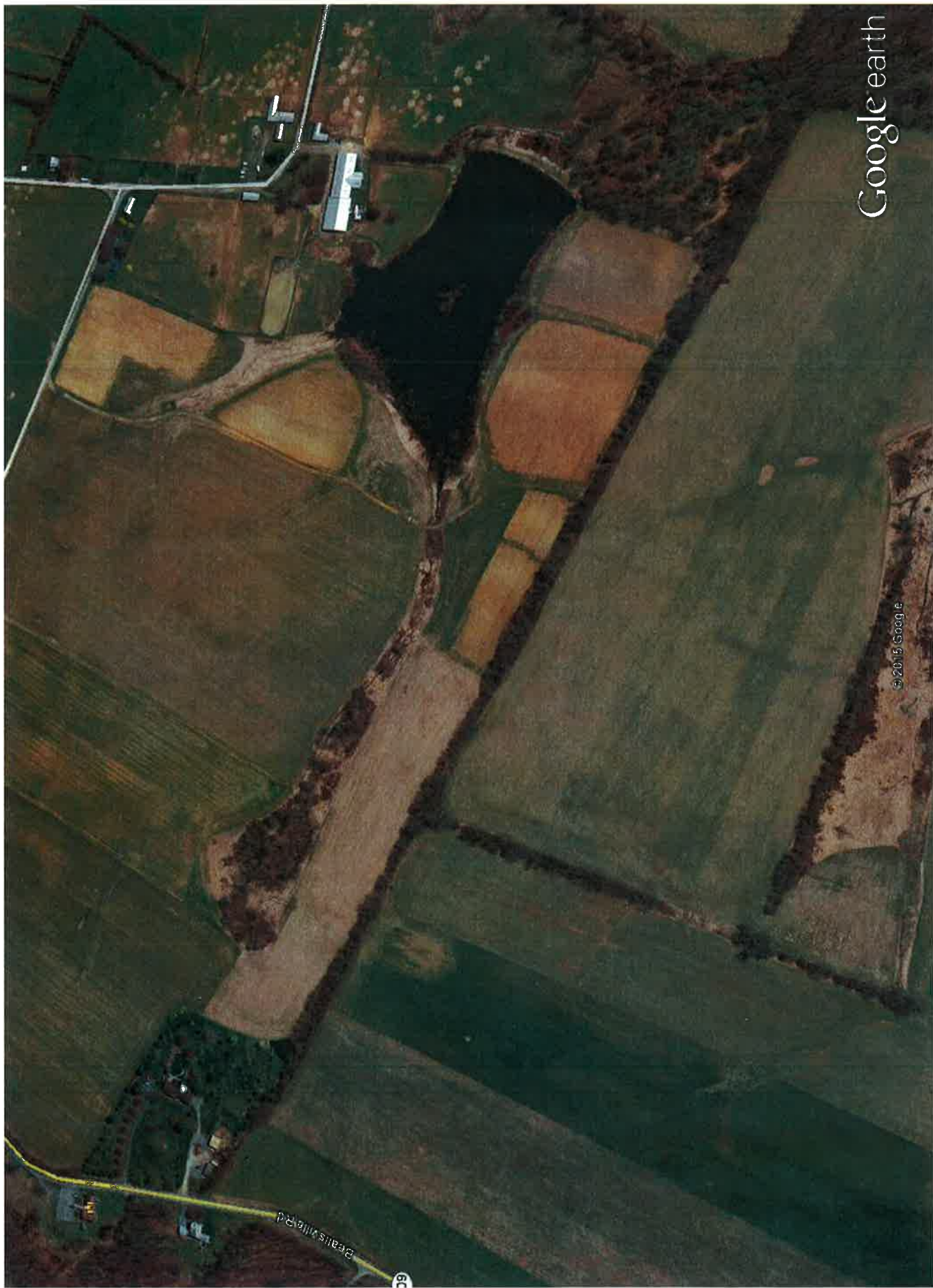
cell (240) 338-0072

fax (301) 585-1921

Π Please consider the environment before printing this e-mail. Thank you.







Google earth

© 2015 Google

Google earth

feet  
meters

2000  
600

