

**THE MARYLAND-NATIONAL CAPITAL PARK AND
PLANNING COMMISSION**

Department of Park & Planning, Montgomery County, Maryland
8787 Georgia Avenue, Silver Spring, Maryland 20910

MEMORANDUM

TO: Malcolm Shaneman, Supervisor, Development Review

FROM: Mark Pfefferle and Cathy Conlon, Planning Coordinators,
Countywide Planning Division-Environmental Planning

DATE: March 7, 2003

SUBJECT: Preliminary Plan 1-03009
Burgundy Park/Srour Center

Environmental Planning staff has reviewed the preliminary plan referenced above. We recommend approval of the preliminary plan of subdivision with the following conditions.

- **Compliance with the conditions of approval of the preliminary forest conservation plan prior to issuance of sediment and erosion control and building permits. Conditions include submission and approval of a final forest conservation plan which includes forest restoration/enhancement measures within the designated stream valley buffer.**
- **Prior to Montgomery County Planning Board release of building permit applicant shall pay to the Department of Park and Planning the sum of \$30,000, as required by the Contribution Agreement dated April 30, 1990, between Farid Srour and the M-NCPPC. Applicant may deduct, from the \$30,000, the cost of forest enhancement on the subject property implemented in that portion of the stream valley buffer within 75 feet of the stream bank.**

Background

The subject property is a 10.19 acre site, northeast of Rockville within I-2 and I-4 zones. The site is bounded by Southlawn Lane to the west, a gas easement to the east, Southlawn Branch, a Class IV (recreational trout stream) tributary to Rock Creek on the south, and Burgundy Park to the west. The property includes five different soil types including two highly erodible soils. The topography of the site drops sharply to the east and west, from the high point in the middle of the property. Slopes greater than 25 percent are created by this drop-off. The stream valley slopes along the stream on the eastern boundary of the site are between 15 and 25 percent. Pursuant to the Environmental Guidelines, a stream buffer of 125 feet is required.

A preliminary plan (1-88333) for this property was previously submitted and approved by the Planning Board on April 12, 1990 (Original Preliminary Plan). At the time of submission of this plan, the site contained a mixed hardwood, medium-aged forest. During staff review of this original preliminary plan

submission, the forest was completely cleared. This clearing resulted in loss of forest within the stream valley buffer (75 feet from the stream bank was the requirement at the time), and negative impacts to the tributary stream and its downstream reaches, as described in the April 9, 1990 memo from Environmental staff reviewing the plan at the time (Attachment 1). To mitigate the impacts of the clearing which occurred on the site, the applicant offered to contribute \$30,000 to be used for reforestation both on- and off-site in downstream park land. An agreement regarding this contribution was made a condition of the original approval of the plan, and is referenced on the existing record plat for the property.

Since the time of the tree clearing, natural regeneration of vegetation and trees has occurred on the property. Today, early successional forest tree species are present on the site along with the felled trees and stumps from the clearing. This forest covers approximately 7.6 acres and is mostly composed of black cherry trees with various types of invasive species understory vegetation. The value of this forest is low and the presence of invasive species limits the opportunities for growth of tree species other than the early-established black cherries.

Discussion

The proposed preliminary plan includes complete regrading of the property outside a 125' stream valley buffer established per the latest version of the environmental guidelines. The steep slopes will be eliminated and the State has granted permission for a wetland along Southlawn Lane to be filled as part of construction of stormwater management for the site. The re-clearing of the naturally regenerated forest area on the property is subject to county forest conservation requirements.

Environmental Planning staff recommend approval of the proposed plan with conditions for approval of a final forest conservation plan, and for contribution of the money conditioned in the original Board approval of the plan. The negative impacts to the Rock Creek stream system from the site clearing in 1988-89 have never been mitigated. The \$30,000 may be spent on restoration and enhancement within the stream buffer on site (1990 stream buffer limits). Any remaining money shall be paid to the Department of Park and Planning and earmarked for reforestation or other necessary stream improvement projects in parkland downstream.

cc: Tariq El-Baba
Michele Rosenfeld

MEMO



Attachment 1

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

AGENDA ITEM #27
4/12/90

April 9, 1990

TO: Montgomery County Planning Board
FROM: Environmental Planning Division
SUBJECT: Contribution Agreement for Srour Center,
Preliminary Plan #1-88333

Recommendation: APPROVAL WITH CONDITIONS

During the 1989 review of the pending preliminary plan, the Environmental Planning Division voiced objections to unnecessary tree removal on the Srour Center site, especially within the stream buffer area. The site was completely clear-cut without proper sediment control practices or permits. The increased runoff, increased water temperatures and heavy sediment loads resulting from the insensitive treatment of the site has stressed the Rock Creek system for the past year. In response to staff's concerns, the applicant has offered to provide \$30,000 to be used for restoration of the site's stream buffer and for an off-site stream valley reforestation project in Rock Creek Regional Park. Both Planning and Parks Department staff agree that this would provide acceptable mitigation for the damage caused to Rock Creek downstream of the site and recommend the Planning Board's approval of the proposal and the related condition.

BACKGROUND

The Environmental Planning Division (EPD) staff has reviewed the preliminary plan submittal for the Srour Center, a 10.19 acre site that falls within the I-2 and I-4 zones. The site is northeast of Rockville, located on the east side of Southlawn Lane to the south of Incinerator Lane. The site was originally completely wooded with large, mixed hardwood trees (primarily white and red oak and tulip poplars, 30-32 years old and ranging from 12 to 30 inches in diameter at breast height.) A tributary to the Class IV (recreational trout stream) portion of Rock Creek intersects the east property boundary.

In late December, 1988, EPD staff first visited the site and found that the applicant was in the process of clearing the site. About one third of the site had been cleared, with no sediment control or best management practices in place, and no sediment control permits as far as staff could ascertain. At the Subdivision Review Committee meeting of 1/17/89, the applicant and his engineer were informed that clearing operations should be halted while the property was under review, to allow incorporation of tree preservation in the proposed development. It was unclear at the time where the stream was located in relation to the property boundary; a drainage area map to clarify this was requested from the applicant.

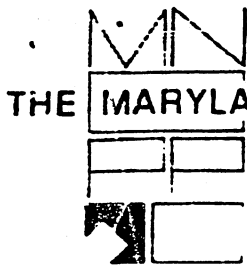
In May, 1989, EPD staff discovered that the rest of the site had been clear-cut as well. Staff met with the applicant's engineer to agree on recommended conditions of plan approval. The applicant was unwilling to reduce the scale of the project to allow for extensive reforestation on-site to mitigate the loss of mature trees. The development also extended into the stream buffer, as defined by Planning Board guidelines, so that a full reforested buffer at natural grade can not be achieved. The tree removal turned the steeply sloped (25-40%) site to mud, which increased the sediment load into Southlawn Branch. Removal of tree cover has increased runoff from the site and also exposed the stream to direct sunlight, which can warm the water beyond Class IV water quality standards set by the State.

EPD staff suggested an alternative reforestation plan which would provide that trees be established in a Rock Creek stream valley buffer on Department of Parks property. After lengthy negotiations with both EPD and Parks staff, the applicant agreed to fund this off-site reforestation plan at a cost not to exceed \$30,000. Parks Department staff has prepared a conceptual proposal, which includes possible locations for reforesting and suggested species mix. The agreement also provides for re-naturalization of the on-site stream buffer area, as required by staff. Landscape plans for this area will be approved by M-NCPPC staff and the cost of stream buffer restoration will be taken from the \$30,000.

Under the circumstances, staff considers this to be an acceptable mitigation project for the damage caused by the destruction of the Srouer Center's forested stream buffer and the increased sediment load to this part of the Rock Creek watershed. Since there was no clear regulation prohibiting tree removal at the time of disturbance, staff recognizes that the Board cannot require the applicant to enter into this agreement. However, staff asks the Board to endorse the voluntary agreement set forth by the applicant.

JAV:LS:ls

cc: N. Baig
J. Hench, Parks Dept.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation with Modifications, (Motion of Comm. Keeney, seconded by Comm. Floreen, with a vote of 4-0; Commissioners Keeney, Floreen, Hewitt and Bauman voting in favor and Comm. Henry being temporarily absent).

MONTGOMERY COUNTY PLANNING BOARD

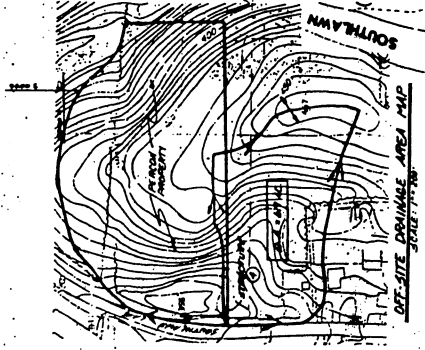
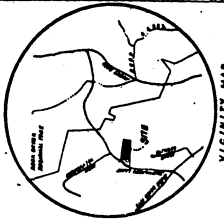
OPINION

Preliminary Plan 1-88333
NAME OF PLAN: SROUR CENTER

On 12-27-88, F.J.S. SROUR, submitted an application for the approval of a preliminary plan of subdivision of property in the I2 zone. The application proposed to create 1 lots on 10.19 ACRES of land. The application was designated Preliminary Plan 1-88333. On 04-12-90 Preliminary Plan 1-88333 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-88333 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-88333, subject to the following conditions:

1. Agreement with Planning Board limiting development to 172,800 square foot warehouse and participate in the road improvements as outlined in Transportation Division memo dated 2/21/90. Agreement shall stipulate applicant shall not request nor receive any building permits until initiation of road improvements has been verified
2. Agreement with Planning Board to provide reforestation as specified by applicant and staff approval per 3/21/90 contribution agreement
3. Conditions of DEP stormwater management concept dated 2/28/90
4. Dedication of Southlawn Lane 40' off center line
5. Necessary easements

Date of Mailing: April 16, 1990

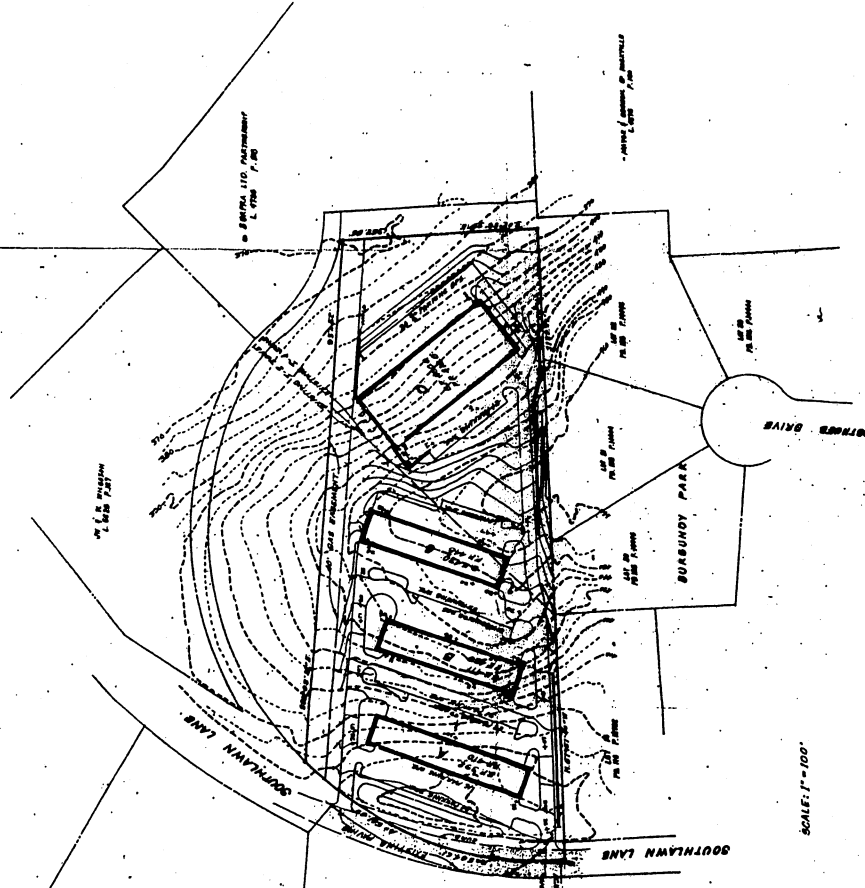


SRROR CENTER NOTES:

1. Property Zoned I-2 & I-4
2. Area This Plan - 10.19 AC.
3. Proposed Use - Light Warehouse/Manufacturing Space With Associated Offices
4. Building Area: Bldg A = 36,000
B = 36,400
C = 36,400
D = 36,400
Total = 145,200 Sq. Ft.
5. Parking Required: 1 PS For Each 1.5 Employees
1 PS For Each Commercial Vehicle
Parking Provided - 273
6. Setbacks: I-2: 10' From Street Other Line
I-4: 20' From Any Commercial or Industrial Zone
25' From Any Arterial Road
7. Bldg. Limits: I-2 = Height 30'
Green Space Not Less Than 10%
I-4 = Height 40'
Green Space Not Less Than 20%

1-88333

6114



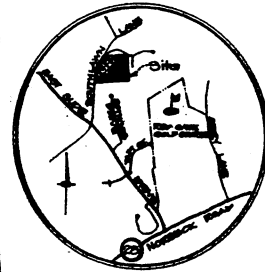
SHAPIRO BAYTA & ASSOC., INC.
 ARCHITECTS-PLANNERS-ENGINEERS
 1000 BROADWAY, SUITE 2000
 NEW YORK, N.Y. 10018
 (212) 693-7700



PRELIMINARY PLAN
SRROR CENTER
 1000 BROADWAY, SUITE 2000
 NEW YORK, N.Y. 10018
 (212) 693-7700



| NA | Radius | Arc | Chords | Chord Bearing | Chord |
|----|---------|-------|---------|---------------|-----------------------|
| 1 | 1054.50 | 37.04 | 20.2743 | 211.05 | N 12° 24' E 314.71 |
| 2 | 504.24 | 22.45 | 10.8921 | 48.80 | N 40° 28' 48" E 20.87 |



VICINITY MAP
Scale: 1" = 200'

BURFRA LIMITED PARTNERSHIP
L. 4729 P. 018

MAYOR & COUNCIL OF ROCKVILLE
L. 4375 P. 130

SURVEYOR'S CERTIFICATE:

I hereby certify that the plan shown herein is correct, that it is a subdivision of all the land covered by Records and a Maryland Corporation to BURFRA, Partnership, a Maryland General Partnership by deed dated December 10, 1990 and recorded among the Land Records of Montgomery County, Maryland in Liber 506 at Folio 600, and also a subdivision of part of Lot 15 as shown on a plan of subdivision entitled "Map of Burgundy Park" and recorded among the aforesaid Land Records in Plat Book 128 at Plat No. 14443 and that the map shown hereon is in place where shown on the plan and that the total area included in the plan of subdivision is 482,485 sq. ft. or 0.0275 acres of land.

date: August 21, 1992

Mitchell E. Goode
MITCHELL E. GOODE
PROPERTY LINE SURVEYOR
MONTGOMERY CO., MARYLAND
No. 444

NOTES:

- 1) Property Zoned I-E & I-4
- 2) Preliminary Plan No. 1-00000
- 3) Approval of this plan is predicated on the adequacy and availability of public water and sewer.

OWNER'S DEDICATION:

We, BURFRA, Partnership, a Maryland General Partnership, owners of the property shown and described hereon, hereby adopt this plan of subdivision, establish the minimum building restriction lines and establish a ten (10) foot wide public utility easement shown as U.P.U.E. in accordance with the Declaration of Terms and Provisions of the Public Utility Easements' recorded among the Land Records of Montgomery County, Maryland in Liber 506 at Folio 487.

There are no encumbrances of law, leases, liens, trusts or mortgages on the property shown hereon except for a certain deed of trust recorded among the aforesaid Land Records in Liber 504 at Folio 615 and the purchase in interest thereto has hereon indicated their consent to this plan of subdivision.

BURFRA, PARTNERSHIP

9/14/92 *M. S. G.* *F. S. G.*
WITNESSES *Mitchell E. Goode* *F. S. G.*

NOTE: DEVELOPMENT SUBJECT TO AGREEMENTS WITH THE
MONTGOMERY CO. PLANNING BOARD REGARDING ADDRESS
PUBLIC UTILITIES AND RECREATION

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Montgomery County, Maryland
APPROVED: JULY 20, 1992

RECORDED: 9-26-92
PLAT BOOK: 128
PLAT NO.: 14443

Drawn: M. Hoban
Checked: D. Floyd
Credent: M. Goode

MARYLAND NATIONAL CAPITAL PARK & PLANNING COMMISSION
Montgomery County Planning Board
APPROVED: SEPTEMBER 27, 1992

MONTGOMERY COUNTY, MARYLAND DEPARTMENT OF TRANSPORTATION
APPROVED: JULY 8, 1992

Thomas C. Higgins
COMMISSIONER
M.N.C.P. & P.C. Record File No. 589-63

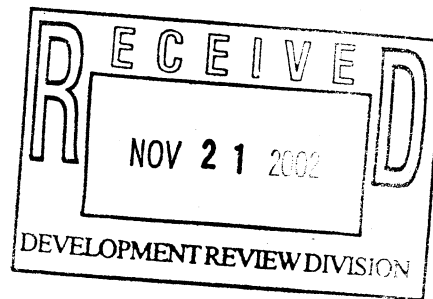
Mitchell E. Goode
P.L. Director

LOT 24 BLOCK B
BURGUNDY PARK
ROCKVILLE ELECTION DISTRICT NO. 4
Montgomery County, Maryland
Scale: 1" = 100'
August, 1992

Prepared By:
SHEPHERD BENTLEY ASSOCIATES, INC.
Civil Engineers - Land Planning - Surveyors
2041 Wind River Lane
Gaithersburg, Maryland 20878
(301) 477-7044

November 15, 2002

Michele Rosenfeld, Esq.
Associate General Counsel
Office of The General Counsel
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910



Re: Preliminary Plan Application No. 1-03009, Burgundy Park

Dear Ms. Rosenfeld:

We represent F.D.R. Srouer Partnership, the applicant for approval of the above-referenced Preliminary Plan of Subdivision. You may recall that we spoke briefly about this case last week. The issue we need addressed is the current status of two agreements that were entered into by this applicant and the Maryland-National Capital Park and Planning Commission (M-NCPPC) in 1990. The agreements in question arose out of the Planning Board's approval of a now expired Preliminary Plan of Subdivision, Preliminary Plan No.1-88333.

By way of background, in 1990 Preliminary Plan No.1-88333 was approved allowing the development of the subject industrial property with a 172,800 square foot warehouse. A final plat was subsequently recorded but no construction occurred and the subdivision adequate public facilities approval expired. After inquiry to the Development Review Division it was determined that M-NCPPC considered the approved Preliminary Plan as expired necessitating the submission and approval of a new preliminary plan of subdivision.

Two agreements were executed in 1990; one was an "Adequate Public Facilities Agreement ("APFO") that required the applicant to participate in certain road improvements prior to the issuance of building permits. Those improvements have been completed and the applicant has submitted new traffic studies and will be subject to whatever requirements current conditions warrant.

The second 1990 agreement was a "Contribution Agreement" precipitated by an approved "Forest Harvest" operation that occurred in February 1989. A permit issued on February 17, 1989 by the Montgomery County Soil Conservation District approved that pre-application logging operation on the subject property. A copy of the permit is enclosed. Farid Srouer, in 1990, "volunteered to commit certain funds to be used for the purpose of undertaking reforestation efforts" both on and off site in connection with the processing of Preliminary Plan No. 1-88333. The amount of money that the Contribution Agreement recites was to be voluntarily contributed was Thirty Thousand Dollars (\$30,000.00). In the twelve years following the approval of the now expired preliminary plan approval, the property has naturally reforested.

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Bethesda, Maryland 20814

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Fax 301.656.3740

Michele Rosenfeld, Esq.

November 15, 2002

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The Environmental Planning Division, at the Development Review Committee (DRC) meeting characterized the \$30,000 contribution as a "penalty." Nowhere in the Contribution Agreement is the voluntary contribution, which was tied to the development approved by the expired Preliminary Plan referred to as a penalty. The minutes of the October 7, 2002 DRC meeting reflect that the Environmental Planning Division requested that the pending Preliminary Plan not be scheduled for Planning Board action until the "penalty" is paid.

We have found no evidence that the M-NCPPC imposed a penalty in 1990 under any law, regulation, adopted guideline or procedures then applicable. The voluntary character of the 1990 Contribution Agreement and that Agreement's current invalidity are consistent with the provisions of the Montgomery County Code in February 1989 when the Soil Conservation District issued a Forest Harvest Operations Permit allowing the site to be cleared. If one were to assume hypothetically that the approved logging operation was not permitted, the M-NCPPC did not, in February 1989, have the power to impose penalties for tree clearing or violations of forest conservation laws. The first emergency bill enacted by the Montgomery County Council to regulate tree removal and require forest conservation became effective on October 30, 1989.

All of the permitted logging activity referenced in the 1990 Contribution Agreement was within the boundaries of the subject property and occurred in February 1989. The Forest Harvest Operations did not violate any County law or ordinance and was not subject to any penalty. If hypothetically it were, the Maryland-National Capital Park & Planning Commission lacked the requisite statutory authority to impose a penalty for any alleged improper tree clearing. In a legal opinion to the Tree Ordinance Drafting Group dated April 9, 1990 The County Attorney for Montgomery County opined that: "M-NCPPC lacks the power to issue citations or otherwise call immediate attention to a violation of the Tree Ordinance." The County Attorney further opined that an amendment to the Regional District Act was required to authorize M-NCPPC to take such action.

The Forest Harvest activities were pursuant to a valid permit. The Contribution Agreement reflecting the applicant's willingness to make a voluntary payment was specifically dependant on a Preliminary Plan of Subdivision that M-NCPPC has declared to be void, requiring submission and approval of a new application. We would appreciate confirmation that the Contribution Agreement as well as the APF Agreement both became invalid when Preliminary Plan No 8-88333, to which both were tied, became invalid.

Michele Rosenfeld, Esq.

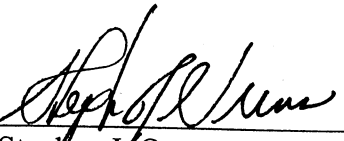
November 15, 2002

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We appreciate your attention to this question and are available to meet or discuss the matter should you consider that necessary or appropriate.

Very truly yours,

DUFOUR & KOHLHOSS, CHTD.

By: 

Stephen J. Orens

Encl

cc: Mr. Robert Srour
Mr. Phil Wilk
Mr. A. Malcolm Shaneman
Mr. Steve Federline

U:\D&K\Land Use & Zoning\554\554.3\Rosenfeld letter re contribution agreement V3. 11.14.02.doc

STANDARD EROSION AND SEDIMENT CONTROL PLAN
FOR
FOREST HARVEST OPERATIONS

I. Site Information

A. Location

SOUTHLAWN LANE

Rockville, Md.

(Include sketch map of property)

B. Nature of Operation

Logging - woodchipping, FIRE
(logging, woodchipping, firewood)

Acres Harvested 10

II. Landowner and Operator Information

A. Landowner

FARID SPOUR

Phone 983-1400

Address

10209 Sorrel Ave

POTOMAC, MD 20854

B. Operator

Address

Phone

Current F.P.O. Lic. #

1. List the names of other operators who will be involved in the harvest and the nature of their operations. N/A

2. If you are subcontracting to any of the operators listed above, do you assume responsibility for ensuring their compliance with this plan? advance of their operations. If you answered no, they must obtain a separate plan in

III. Agreement

A. I/We agree to adhere to the terms of the attached Standard Plan for Forest harvest Operations and to grant inspectors the right of entry to the site to monitor compliance.

B. I am aware of the landowner's responsibility in preventing accelerated erosion and sedimentation during and subsequent to forest harvest operations as mandated by the rules and regulations adopted by the State of Maryland and local jurisdictions.

C. I agree to require that all operators conducting forest harvest operations on my property adhere to the requirements of the standard plan.

Farid Spour 1/27/89
Landowner Date

Operator Date

D. Approved: Marshall Scott Rea /rv
Soil Conservation District

2/17/89
Date

F.S. PEOPLES REALTY, CO.
14672-O SOUTHLAWN LANE
ROCKVILLE, MD 20850
PHONE: (301)294-8773 FAX: (301)294-8775

COVER SHEET

NAME:

Steve Orens

COMPANY:

DuFour & Kohlross

DATE:

11-14-02

FROM:

Robert Stour

FAX #:

(301) 656-3740

PAGES & COVER:

M E M O R A N D U M

April 9, 1990

TO: The Tree Ordinance Drafting Group (TODG)

FROM: Carol S. Rubin *CRubin*
Assistant County Attorney

RE: Legislative Requirements for Enforcement of the
Conservation Plans

Recommendations by TODG include enforcement responsibilities to be handled by M-NCPPC. The Regional District Act, Md. Ann. Code, Art. 28, created M-NCPPC and set forth its express powers. The current enforcement capabilities of M-NCPPC are not broad enough to follow through with TODG recommendations for swift and heavy measures.

Prior to issuance of a building permit by the Department of Environmental Protection, every affected agency must sign off on its appropriate approvals. In the event a site plan is required, M-NCPPC must approve that plan prior to issuance of the permit. Upon violation of the site plan, M-NCPPC must request a hearing in front of the Planning Board for the developer to "show cause" why the site plan was violated. Failure to show cause will result in revocation of the site plan, and by operation of law, the building permit is immediately declared invalid. All work must stop immediately. Unfortunately, the Planning Board rarely takes such harsh action, and the two to three week delay prior to the hearing diminishes the effect of enforcement.

Even if no site plan is required, M-NCPPC must sign off on the subdivision approval prior to issuance of the building permit. Obviously, if the Tree Conservation Plan is not approved, M-NCPPC will not approve the subdivision plan and the permit will not be issued. However, once a permit is issued and construction is started, M-NCPPC's power to enforce the Tree Conservation Plan is severely limited. M-NCPPC must either request that the Department of Environmental Protection revoke the building permit for failure to comply with the conditions thereof, or M-NCPPC must file an injunction proceeding in Circuit Court. Again, the delays involved limit the enforcement abilities of M-NCPPC and severely hamper the importance of the TODG recommendations.

(2) Right-of-way widths. A waiver of right-of-way width may be granted whenever there is a finding that the proposed right-of-way connects with an existing right-of-way of substandard width which was lawful when established, but a waiver shall not be granted for any part of such right-of-way which is beyond a four-way intersection or any other logical point of widening. A waiver may be granted upon a finding that the proposed right-of-way is the connecting link of a street and the right-of-way at each end is of a substandard width which was lawful when established. A waiver may also be granted when there is clear and convincing evidence that the applicant has made every reasonable effort to acquire additional right-of-way and has been unable to do so. A waiver may be granted by the director of the department of transportation if the development being served has been specifically designed to preserve existing stands of mature trees, the trees have been designated for preservation on the tree preservation plan and the reduced right-of-way width can be shown to save existing mature trees.

* * *

(6) Full-width grading. The requirement for full-width grading may be waived if one of the following conditions exists:

a. A [a] grading permit was issued prior to August 15, 1950, [and] all grading required by such permit was done, [and] sidewalks are not required or are waived, and further grading is not required to construct the pavement or curbs and gutters; [, but no such waiver shall be granted if a majority of the lots abutting the proposed road are undeveloped.]

b. In the case where a majority of the lots abutting the proposed road are undeveloped, the waiver of full-width grading may be granted by the director of the department of transportation if the waiver will result in the protection of specimen trees or significant stands of trees recommended for protection in an approved tree conservation plan;

c. [As an additional ground for waiver, in] In the case of secondary residential roads only, [the requirement for full-width grading may be waived; provided, that] the applicant proposes to construct the extension of an existing paved road which ends short of an intersection and the right-of-way containing the existing paved road is not graded to its full width[;] and [provided, that] the waiver [shall] does not apply beyond the intersection.

* * *

[The road standards in Chapter 49 and Chapter 50, title "Subdivision" conflict with one another. These will need to be amended to make them consistent with one another or there will be confusion as to what "reduced right-of-way width" is.]

February 27, 2003

The Honorable Derick Berlage, Chairman
The Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Preliminary Plan Application No. 1-03009, Burgundy Park

Dear Chairman Berlage:

On February 17, 1989, the Montgomery County Soil Conservation District issued a Forest Harvest Operations Permit to Farid Srour. As authorized by that permit, a tree harvesting operation was conducted in February 1989, within the property that is now the subject of Preliminary Plan Application No. 1-03009 filed by F.D.R. Srour Partnership. On behalf of F.D.R. Srour Partnership and Robert Srour, we urge the Planning Board to reject the imposition of a \$30,000.00 "penalty" for harvesting those trees that we are informed will be recommended by the Environmental Planning Division (the "EPD") as a condition of Subdivision approval. On November 15, 2002 we requested the Office of General Counsel to look into this question and we were informed verbally on Tuesday of this week that the General Counsel agreed with EDP's position. As of yet we have not received a formal written response to our November 15, 2002 inquiry.

The recommended "penalty" is apparently viewed by the EPD as a continuing obligation under a "Contribution Agreement" tied to the approval of a preliminary plan in 1990, which the Development Review Division has concluded is expired. It is our position that if the 1990 Preliminary Plan expired and Mr. Srour has been required to submit a new plan in compliance with current regulations, there is no basis for concluding that the expired Preliminary Plan remains valid for the sole purpose of exacting a payment which was intended in 1990 to be a voluntary contribution.

In addition, there is no factual basis for the imposition of a penalty in 2003 to compensate the county for a lawful tree harvesting operation that occurred prior to the enactment of the State Forest Conservation Act in 1991 and the 1992 enactment of the County Forest Conservation Law. Further, the 1990 "Contribution Agreement" provided for a *maximum* \$30,000 contribution to reforest the stream buffer on the Subject Property. Over the last 13 years, that stream buffer has *naturally* reforested (See Photo Enclosed).

The 1990 Preliminary Plan and the current Preliminary Plan applications both relate to approval of industrial development on I-2 zoned land. As indicated above, in April, 2002, Mr. Srour's engineer, Phil Wilk, was advised by A. Malcolm Shaneman that the Adequate Public Facilities ("APF") approval for the Subject Property had expired, and that even though the 1990

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Bethesda, Maryland 20814

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Preliminary Plan was followed by the approval and recordation of a Final Record Plat, a new Preliminary Plan application was required because M-NCPPC considered the approved 1990 Preliminary Plan as expired. Shortly after Mr. Wilk met with Mr. Shaneman, the current application was filed in accordance with the DRD direction.

At the Development Review Committee meeting on this Preliminary Plan Application, the Environmental Planning Division characterized the \$30,000 contribution as a "penalty," and now seeks enforcement of that "penalty" by the Planning Commission. Nowhere in the 1990 "Contribution Agreement" is the *voluntary* contribution referred to as a penalty. The minutes of the October 7, 2002 DRC meeting reflect that the Environmental Planning Division requested that the pending Preliminary Plan not be scheduled for Planning Board action until the "penalty" is paid.

There is no evidence that the M-NCPPC in fact imposed a penalty in 1990 under any law, regulation, adopted guideline or procedures then applicable. The voluntary character of the 1990 Contribution Agreement and that Agreement's current invalidity are consistent with the provisions of the Montgomery County Code, which were applicable in February 1989 when the Soil Conservation District issued a Forest Harvest Operations Permit allowing the trees to be harvested. Even if one were to assume, hypothetically, that the submission of a subdivision application after a lawful tree harvest was a matter within the jurisdiction of the M-NCPPC in 1989-90, the M-NCPPC did not, in 1989 or 1990, have the power to impose a penalty for pre subdivision tree harvesting.

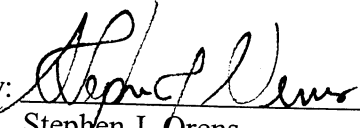
In addition to the fact that the tree harvest on the Subject Property was conducted under a valid permit, in 1990 The Maryland-National Capital Park & Planning Commission lacked the requisite statutory authority to impose a penalty for any allegedly improper tree clearing. In a legal opinion to the "Tree Ordinance Drafting Group" dated April 9, 1990, the County Attorney for Montgomery County opined that: "M-NCPPC lacks the power to issue citations or otherwise call immediate attention to a violation of the Tree Ordinance." The County Attorney further opined that an amendment to the Regional District Act was then required to authorize M-NCPPC to take such action. The Regional District Act was amended in 1992 to include such power. Chapter 643 Laws of Maryland 1992. (See Art. 28 §7-116 (h)(5)).

The Forest Harvest activities were undertaken pursuant to a valid permit. The Contribution Agreement reflecting the applicant's willingness to make a voluntary payment was specifically dependant on a Preliminary Plan of Subdivision which M-NCPPC has declared to be void, requiring submission and approval of a new application. We request that the Planning Board approve Preliminary Plan 1-03009 and reject the proposed condition imposing a \$30,000.00 penalty.

The Honorable Derick Berlage, Chairman
February , 2003
Page 3

Very truly yours,

DUFOUR & KOHLHOSS, CHTD.

By: 
Stephen J. Orens

Encl

cc: Mr. Robert Srour
Mr. Phil Wilk
Mr. A. Malcolm Shaneman
Ms. Michele Rosenfeld, Esq.

E:\D&K\Land Use & Zoning\554\554.3\Berlage letter re penalty requirement V2 2.27.03.doc

STANDARD EROSION AND SEDIMENT CONTROL PLAN
FOR
FOREST HARVEST OPERATIONS

I. Site Information

A. Location

SOUTHLAWN LANE

Rockville, Md.

(Include sketch map of property)

B. Nature of Operation

Logging - woodchipping, Firewood
(logging, woodchipping, firewood) Wood Acres Harvested 10

II. Landowner and Operator Information

A. Landowner

FARID SPOUR

Phone

983-1400

Address

16209 Sorrel Ave

POTOMAC, MD 20854

B. Operator

Address

Phone

Current F.P.O. Lic. #

1. List the names of other operators who will be involved in the harvest and the nature of their operations. N/A

2. If you are subcontracting to any of the operators listed above, do you assume responsibility for ensuring their compliance with this plan? _____. If you answered no, they must obtain a separate plan in advance of their operations.

III. Agreement

A. I/We agree to adhere to the terms of the attached Standard Plan for Forest harvest Operations and to grant inspectors the right of entry to the site to monitor compliance.

B. I am aware of the landowner's responsibility in preventing accelerated erosion and sedimentation during and subsequent to forest harvest operations as mandated by the rules and regulations adopted by the State of Maryland and local jurisdictions.

C. I agree to require that all operators conducting forest harvest operations on my property adhere to the requirements of the standard plan.

Landowner

Farid Spour

Date

Operator

Date

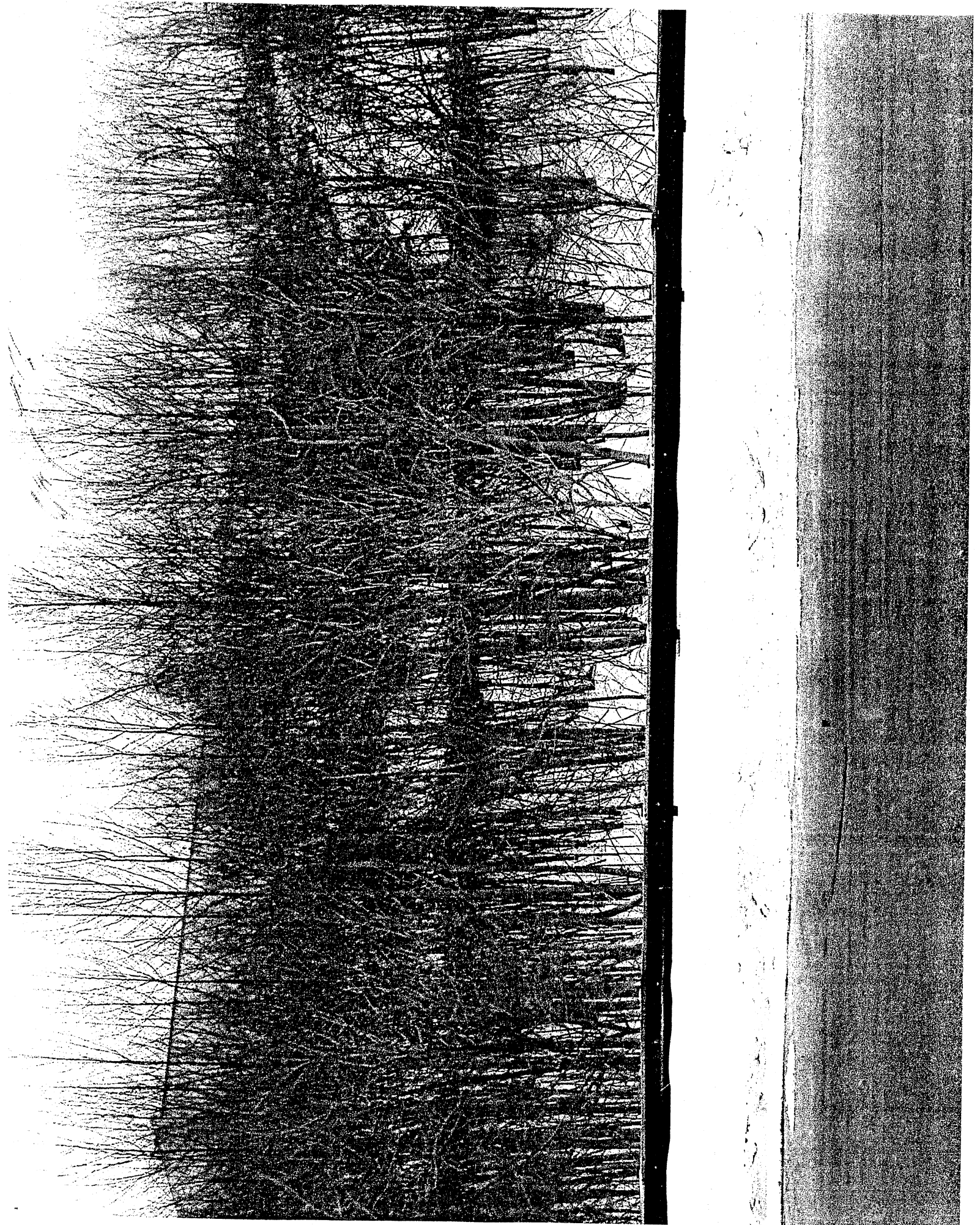
D. Approved:

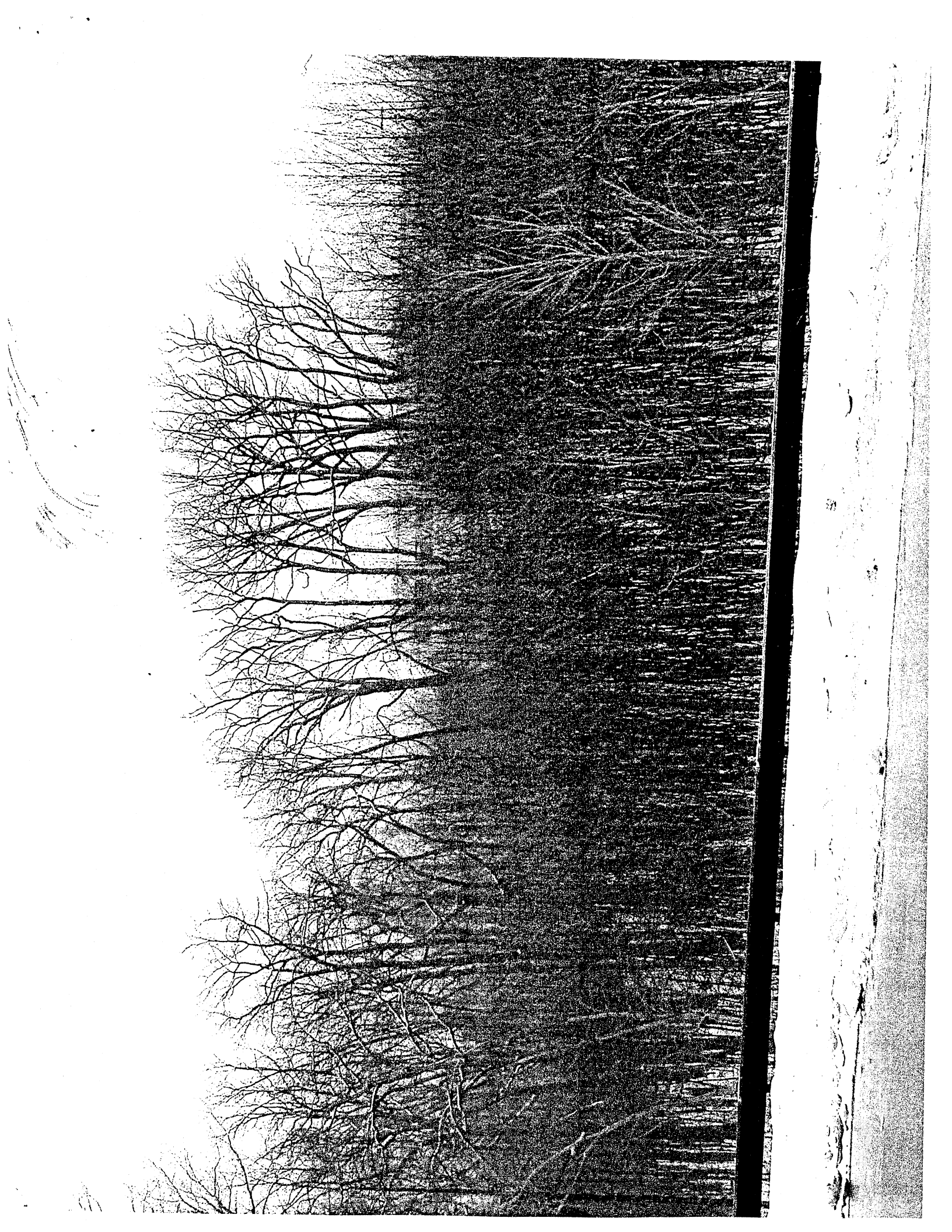
Marshall Scott Rea
Soil Conservation District

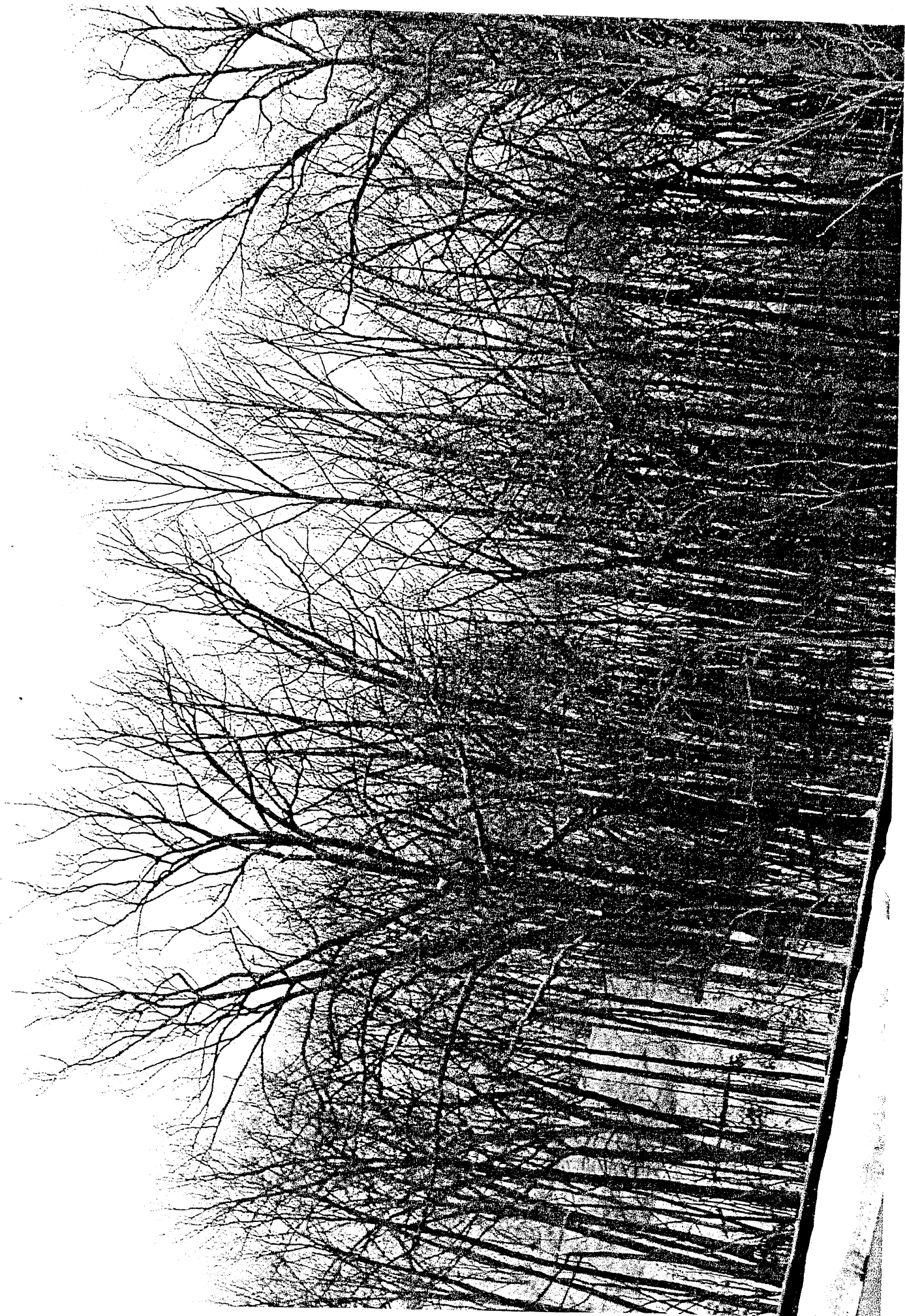
Date

2/17/89

















THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF
THE GENERAL COUNSEL

(301) 495-4646
FAX (301) 495-2173

March 7, 2003

VIA FACSIMILE & U.S. MAIL

Stephen J. Orens, Esquire
Dufour & Kohlhoss Chartered
4920 Elm Street, Suite 200
Bethesda, MD 20814

RE: Preliminary Plan No. 1-03009, Burgundy Park

Dear Mr. Orens:

Thank you for your letter dated November 15, 2002. As this office has previously verbally advised you, the Office of General Counsel concurs with Environmental Planning Division ("EPD") Staff's recommendation that your client honor both the conditions of approval of Preliminary Plan No. 1-88333 ("Original Preliminary Plan") and the terms of an agreement, dated April 30, 1990, and entered into between Farid Srour and the Montgomery County Planning Board as a condition of the latter approval ("Contribution Agreement") (ATTACHMENT ONE).

Notwithstanding any information your client, or any agent of your client, may have received to the contrary, it is the opinion of this office that the Original Preliminary Plan never expired. As you know, under the Subdivision Regulations a preliminary plan is validated upon the timely recordation of a final record plat.¹ Your letter correctly points out that a final plat for the subject property was recorded on April 26, 1993, which date falls within the validity period for the Original Preliminary Plan.² This timely recordation of the final record plat served

¹ See MONTGOMERY COUNTY CODE § 50-35(h) (Duration of Validity Period and Actions Required to Validate the Plan) (providing that, in order to avoid expiration, a final record plat must be recorded within 37 months of the date the Planning Board Opinion is mailed).

² The mailing date of the Planning Board Opinion for the Original Preliminary Plan is April 16, 1990 (ATTACHMENT TWO); and, consequently, the validity period would have expired

to validate the Original Preliminary Plan. Consequently, the Original Preliminary Plan has not "expired" and all conditions of approval of the latter plan remain in full force and effect, unless they expire by operation of law (e.g., APFO approval expires by operation of law after 12 years).

The Planning Board's approval of the Original Preliminary Plan was conditioned upon, among other things, an "[a]greement with the Planning Board to provide reforestation . . . per 3/21/90 contribution agreement."³ Furthermore, the Record Plat includes a note, which provides that development on the property is "SUBJECT TO AGREEMENTS WITH THE MONTGOMERY CO[UNTY] PLANNING BOARD REGARDING ADEQUATE PUBLIC FACILITIES AND REFORESTATION."⁴ (ATTACHMENT THREE) (emphasis added). The expiration of the adequate public facilities agreement ("APF Agreement") associated with the Original Preliminary Plan did not render the plan invalid. It is the opinion of this office that, unlike the APF Agreement, which expired because the subject property was not developed within the statutorily prescribed period of twelve years, the Contribution Agreement remains valid because, as set forth above, the underlying preliminary plan was validated through the recordation of a final plat.

In your letter to Chairman Berlage, dated February 27, 2003, you question whether the Commission has the authority to presently impose a "penalty" for "forest harvest activities" conducted in 1989. The fact is that almost thirteen years ago Mr. Srour offered to make a monetary contribution to what was then the Parks Department and signed a Contribution Agreement memorializing the terms of such contribution. Furthermore, the period for appealing the Planning Board's April 16, 1990 decision has long ago expired. Therefore, the real question is whether an agreement between the Commission and an applicant remains valid when entered into as a condition of approval of a subsequently validated preliminary plan; and, moreover, where such agreement is referenced on a record plat.

In sum, in my opinion EPD Staff properly recommends that your client honor a valid agreement that Mr. Srour voluntarily entered into with the Planning Board in 1990. In the Contribution Agreement, Mr. Srour expressly acknowledged that his earlier action of removing trees and related ground coverage from the subject property "had the potential to significantly and adversely impact directly on the stream buffer area situated in and around the Subject Property and the

on May 16, 1993, approximately three weeks after the date of recordation of the final plat.

³ See Condition No. 2, Planning Board Opinion for Preliminary Plan No. 1-88333, Srour Center (mailed on April 16, 1990).

⁴ See Record Plat No. 19003.

connected Rock Creek Stream Valley."⁵ The Agreement further expressly states that Mr. Srour "desir[ed] to mitigate" the adverse impact resulting from his "prior activities". The Contribution Agreement also explains that Mr. Srour, of his own accord, offered "to commit certain funds to be used for the purpose of undertaking reforestation efforts both on [and off the Subject Property]" It is evident that Mr. Srour freely entered into the Contribution Agreement, which is associated with a validated preliminary plan and a record plat; and, therefore, it is the opinion of this office that your client is under a contractual obligation to provide the agreed-to monetary contribution should he seek to develop the Subject Property.

You assert in your letter that Mr. Srour obtained a Forest Harvest Operations Permit in February 1989. This fact is not disputed by Planning Board Staff. However, it is apparent, as stated in an EPD Memorandum ("EPD Memo") to the Planning Board, dated April 9, 1990 (ATTACHMENT FOUR), that clearing had commenced on the site before Mr Srour applied for such permit "with no sediment control or best management practices in place." The EPD Memo documents the damage resulting from Mr Srour's clearing of the stream buffer, which damage includes an increase in the sediment load in that portion of the Rock Creek watershed and exposure of the stream to direct sunlight—potentially warming the water beyond maximum State standards. Whether or not a forest harvest operations permit was obtained is not relevant at this point in time. It is the opinion of this office that the Contribution Agreement, which Mr. Srour voluntarily entered into with the Commission remains valid and should be honored.

You further assert that the stream buffer has "naturally reforested." Environmental Staff concurs that natural regeneration has occurred on the Subject Property in the intervening 13 years following the execution of the Contribution Agreement; however, Staff has examined the regeneration area and concludes that it is dominated by invasive species, which are inhibiting tree growth. Restoration of a well-developed forest canopy along the stream valley is necessary to provide adequate stream protection, as discussed above. Additionally, Staff is concerned that the invasive species introduced as a result of Mr. Srour's original clearing of the Subject Property will spread to adjacent forest areas and parkland. Absent appropriate intervention, the adverse impact to both on and off-site areas, will continue. Therefore, Environmental Staff recommends that certain remedial measures be taken to insure the integrity of the stream valley.

Recommended Condition No. 4 of Preliminary Plan No. 1-03009, Burgundy Park, sets forth Staff's recommendation for the action your client must take to

⁵ The Rock Creek Stream Valley, downstream from the Subject Property, includes parkland owned by the Commission.

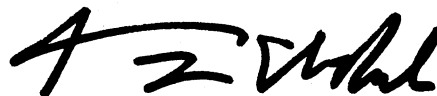
Stephen J. Orens, Esq.
3/7/03
Page 4 of 4

fulfill his obligations under the Contribution Agreement. The latter condition provides that

[p]rior to Montgomery County Planning Board release of building permit applicant shall pay to the Department of Park and Planning the sum of \$30,000, as required by the Contribution Agreement, dated April 30, 1990, between Farid Srour and the M-NCPPC. Applicant may deduct from the \$30,000 the cost of forest enhancement on the subject property implemented in that portion of the stream valley buffer within 75 feet of the stream bank.⁶

I trust this letter is responsive to your query. Should you have any additional questions, please do not hesitate to contact me at (301) 495-4646.

Sincerely,



Tariq El-Baba
Associate General Counsel

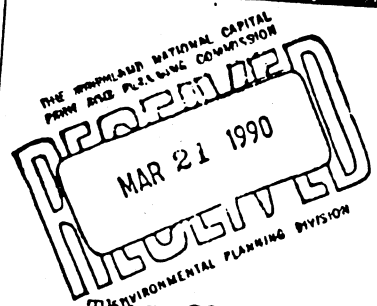
Enclosures

cc: Malcolm Shaneman, Supervisor, Development Review Division
Cathy Conlon, Planner Coordinator
Mark Pfefferle, Planner Coordinator
Michele Rosenfeld, Associate General Counsel

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⁶ The width of the stream valley buffer at the time the Original Preliminary Plan was approved was 75 feet. Under the current Environmental Guidelines, however, the stream valley buffer on the Subject Property includes all land within the area measured 125 feet from the stream bank.

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ATTACHMENT ONE

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT ("Agreement") is made this 30th day of April, 1990, by and between FARID SROUR ("Sroure") and the MONTGOMERY COUNTY PLANNING BOARD of the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board").

RECITALS

- A. Sroure is the owner of a 10.19-acre parcel of land, portions of which are zoned I-2 and I-4 respectively, located on the east side of Southlawn Lane, Montgomery County, Maryland and situated in the Rock Creek Drainage Basin (the "Subject Property").
- B. Sroure has submitted for approval by the Planning Board Preliminary Plan Application No. 1-88333, Sroure Center (the "Preliminary Plan"), which has been reviewed by the Technical staffs from the Environmental Planning Division of the Planning Board and the Natural Resources Division of the Parks Department.
- C. In the course of reviewing the Preliminary Plan and existing site conditions, staff noted that appreciable tree and related ground coverage had been removed from certain environmentally sensitive areas within the Subject Property which removal has the potential to significantly and adversely impact directly on the stream buffer area situated in and around the Subject Property and the connected Rock Creek Stream Valley, which impact is acknowledged by Sroure. Sroure, desiring to mitigate such unintended impact, has volunteered to commit certain funds to be used for the purpose of undertaking reforestation efforts both on-site and in the Rock Creek Stream Valley which Sroure believes will help offset the aforementioned adverse impact occasioned by his prior activities. Sroure will develop and present for Planning Board or staff approval an on-site reforestation plan to address conditions within the boundaries of the Subject Property and thereafter timely undertake all reforestation efforts set forth on such approved plan. Sroure will contribute certain funds to the Parks Department, which funds shall be used by the Parks Department to defray in part the cost of reforestation efforts in the Rock Creek Stream Valley, which efforts the parties agree will enhance the quality of all property in the area in terms of aesthetic appearance and erosion control.

D. The parties of this Agreement desire to set forth the terms and conditions of Sroure's proposed monetary contribution.

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth in this Agreement, the parties agree as follows:

- 1. Sroure, his heirs, successors, transferees, or assigns will make a monetary contribution to the Parks Department stream valley restoration fund subject to the following conditions:
 - a. The amount of the monetary contribution will be \$30,000.00, less the cost that Sroure incurs in replanting the stream buffer area on the Subject Property. The extent of the site replanting effort will be set forth on an approved reforestation plan.

During site conditions, staff noted that appreciable tree and related ground coverage had been removed from certain environmentally sensitive areas within the Subject Property which removal has the potential to significantly and adversely impact directly on the stream buffer area situated in and around the Subject Property and the connected Rock Creek Stream Valley, which impact is acknowledged by Srour. Srour, desiring to mitigate such unintended impact, has volunteered to commit certain funds to be used for the purpose of undertaking reforestation efforts both on-site and in the Rock Creek Stream Valley which Srour believes will help offset the aforementioned adverse impact occasioned by his prior activities. Srour will develop and present for Planning Board or staff approval an on-site reforestation plan to address conditions within the boundaries of the Subject Property and thereafter timely undertake all reforestation efforts set forth on such approved plan. Srour will contribute certain funds to the Parks Department, which funds shall be used by the Parks Department to defray in part the cost of reforestation efforts in the Rock Creek Stream Valley, which efforts the parties agree will enhance the quality of all property in the area in terms of aesthetic appearance and erosion control.

D. The parties of this Agreement desire to set forth the terms and conditions of Srour's proposed monetary contribution.

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth in this Agreement, the parties agree as follows:

1. Srour, his heirs, successors, transferees, or assigns will make a monetary contribution to the Parks Department stream valley restoration fund subject to the following conditions:

a. The amount of the monetary contribution will be \$30,000.00, less the cost that Srour incurs in replanting the stream buffer area on the Subject Property. The extent of the on-site replanting effort will be set forth on an approved reforestation plan.

b. Srour will make this contribution and perform all features on the reforestation plan prior to Srour's receipt of any building permits for the proposed structures to be constructed on the Subject Property.

c. This contribution will be used by the Parks Department to accomplish reforestation in the Rock Creek Stream Valley.

2. Srouer will submit for staff review and approval a reforestation plan for the portion of the Subject Property designated as stream buffer area prior to record plat.

IN WITNESS WHEREOF, the parties have signed this Agreement on the day and year first indicated above.

WITNESS: *Stephan P. Brundage* *Farid Srouer*
FARID SROUR

MONTGOMERY COUNTY PLANNING BOARD
OF THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

WITNESS: *Barbara A. Peltier*

By: *Charles R. Loehr*
Charles R. Loehr
Deputy Planning Director

APPROVED AS TO LEGAL SUFFICIENCY

TG17
M-NCPPC Legal Department

Date *4/30*



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-376

Action: Approved Staff Recommendation with Modification (Motion of Comm. Keeney, seconded by Comm. Floreen, with a vote of 4-0; Commissioners Keeney, Floreen, Hewitt and Bauman voting in favor and Comm. Henry being temporarily absent).

MONTGOMERY COUNTY PLANNING BOARD

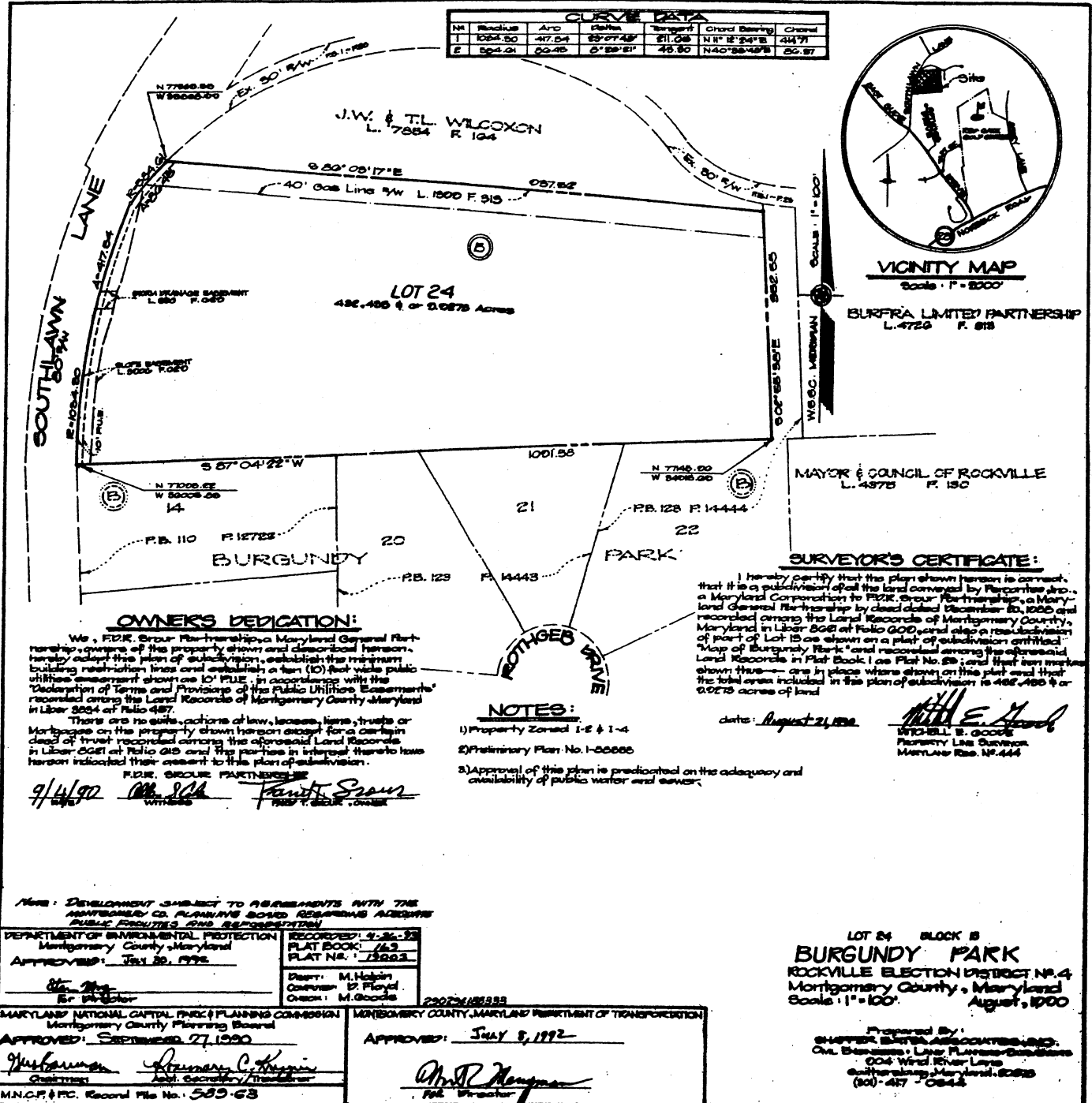
OPINION

Preliminary Plan 1-88333
NAME OF PLAN: SROUR CENTER

On 12-27-88, F.J.S. SROUR submitted an application for approval of a preliminary plan of subdivision of property in the I2 z. The application proposed to create 1 lots on 10.19 ACRES of land. The application was designated Preliminary Plan 1-88333. On 04-12-90, Preliminary Plan 1-88333 was brought before the Montgomery County Planning Board for public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on application. Based upon the testimony and evidence presented by staff on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board approves Preliminary Plan 1-88333 to be in accordance with the purposes requirements of the Subdivision Regulations (Chapter 50, Montgomery Code, as amended) and approves Preliminary Plan 1-88333, subject to following conditions:

1. Agreement with Planning Board limiting development to 172,800 square foot warehouse and participate in the road improvements as outlined in Transportation Division memo dated 2/21/90. Agreement shall stipulate applicant shall not request nor receive any building permits until initiation of road improvements has been verified
2. Agreement with Planning Board to provide reforestation as specified by applicant and staff approval per 3/21/90 contribution agreement
3. Conditions of DEP stormwater management concept dated 2/28/90
4. Dedication of Southlawn Lane 40' off center line
5. Necessary easements

Date of Mailing: April 16, 1990



MEMO

ATTACHMENT 4

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

AGENDA ITEM #27
4/12/90

April 9, 1990

TO: Montgomery County Planning Board
FROM: Environmental Planning Division
SUBJECT: Contribution Agreement for Srour Center,
Preliminary Plan #1-88333

Recommendation: APPROVAL WITH CONDITIONS

During the 1989 review of the pending preliminary plan, the Environmental Planning Division voiced objections to unnecessary tree removal on the Srour Center site, especially within the stream buffer area. The site was completely clear-cut without proper sediment control practices or permits. The increased runoff, increased water temperatures and heavy sediment loads resulting from the insensitive treatment of the site has stressed the Rock Creek system for the past year. In response to staff's concerns, the applicant has offered to provide \$30,000 to be used for restoration of the site's stream buffer and for an off-site stream valley reforestation project in Rock Creek Regional Park. Both Planning and Parks Department staff agree that this would provide acceptable mitigation for the damage caused to Rock Creek downstream of the site and recommend the Planning Board's approval of the proposal and the related condition.

BACKGROUND

The Environmental Planning Division (EPD) staff has reviewed the preliminary plan submittal for the Srour Center, a 10.19 acre site that falls within the I-2 and I-4 zones. The site is northeast of Rockville, located on the east side of Southlawn Lane to the south of Incinerator Lane. The site was originally completely wooded with large, mixed hardwood trees (primarily white and red oak and tulip poplars, 30-32 years old and ranging from 12 to 30 inches in diameter at breast height.) A tributary to the Class IV (recreational trout stream) portion of Rock Creek intersects the east property boundary.

In late December, 1988, EPD staff first visited the site and found that the applicant was in the process of clearing the site. About one third of the site had been cleared, with no sediment control or best management practices in place, and no sediment control permits as far as staff could ascertain. At the Subdivision Review Committee meeting of 1/17/89, the applicant and his engineer were informed that clearing operations should be halted while the property was under review, to allow incorporation of tree preservation in the proposed development. It was unclear at the time where the stream was located in relation to the property boundary; a drainage area map to clarify this was requested from the applicant.

In May, 1989, EPD staff discovered that the rest of the site had been clear-cut as well. Staff met with the applicant's engineer to agree on recommended conditions of plan approval. The applicant was unwilling to reduce the scale of the project to allow for extensive reforestation on-site to mitigate the loss of mature trees. The development also extended into the stream buffer, as defined by Planning Board guidelines, so that a full reforested buffer at natural grade can not be achieved. The tree removal turned the steeply sloped (25-40%) site to mud, which increased the sediment load into Southlawn Branch. Removal of tree cover has increased runoff from the site and also exposed the stream to direct sunlight, which can warm the water beyond Class IV water quality standards set by the State.

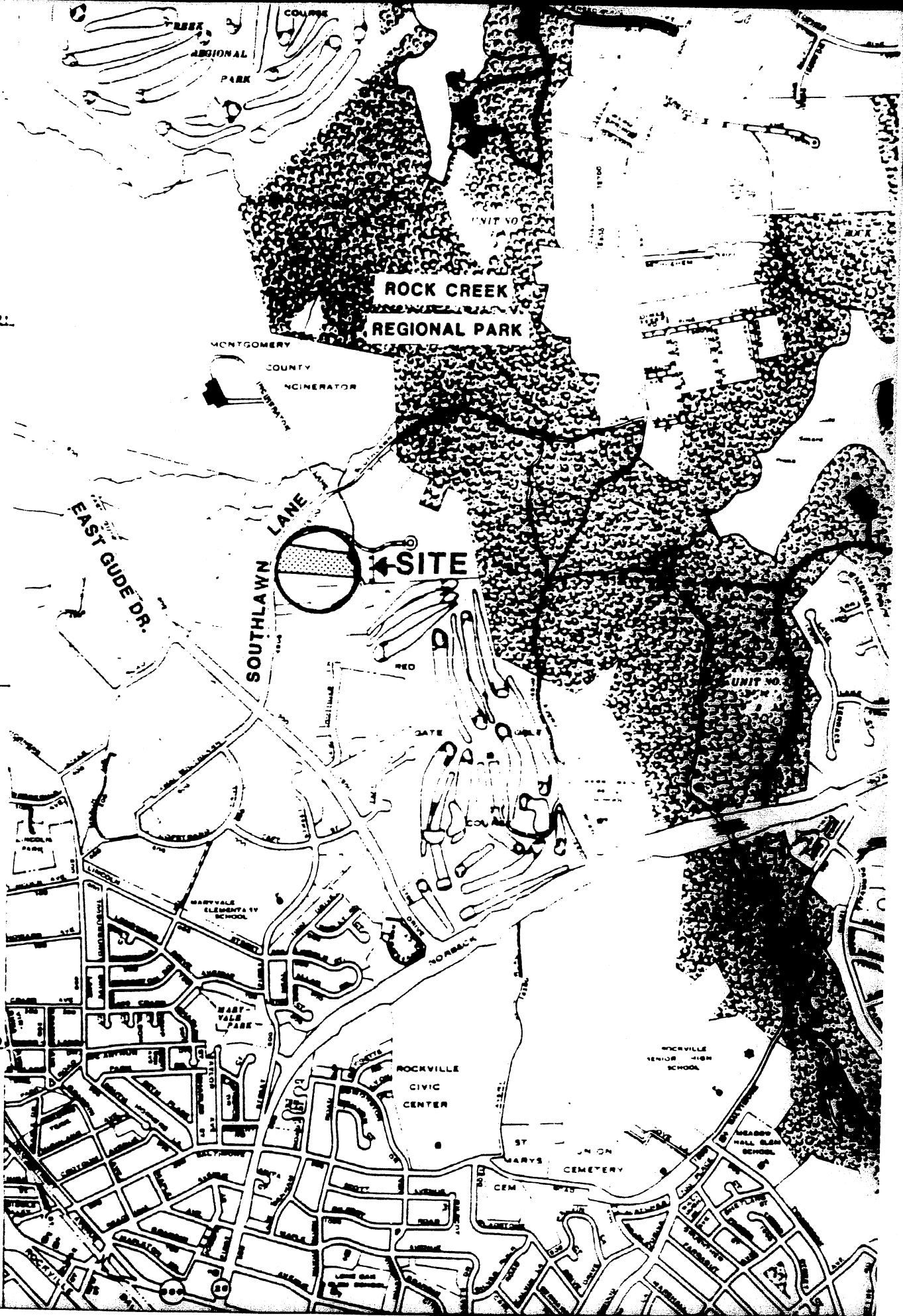
EPD staff suggested an alternative reforestation plan which would provide that trees be established in a Rock Creek stream valley buffer on Department of Parks property. After lengthy negotiations with both EPD and Parks staff, the applicant agreed to fund this off-site reforestation plan at a cost not to exceed \$30,000. Parks Department staff has prepared a conceptual proposal, which includes possible locations for reforesting and suggested species mix. The agreement also provides for re-naturalization of the on-site stream buffer area, as required by staff. Landscape plans for this area will be approved by M-NCPPC staff and the cost of stream buffer restoration will be taken from the \$30,000.

Under the circumstances, staff considers this to be an acceptable mitigation project for the damage caused by the destruction of the Srouer Center's forested stream buffer and the increased sediment load to this part of the Rock Creek watershed. Since there was no clear regulation prohibiting tree removal at the time of disturbance, staff recognizes that the Board cannot require the applicant to enter into this agreement. However, staff asks the Board to endorse the voluntary agreement set forth by the applicant.

JAV:LS:ls

cc: N. Baig
J. Hench, Parks Dept.

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