

## MODIFICATIONS TO CONDITIONS OF APPROVAL FOR CURRENT PLAN ELEMENTS COMMON TO ALL THREE USES

### A. Driveway Access Limit

3. Commercial vehicle access to the site for the three special exceptions is restricted to left turn ingress from and right turn egress onto Mt. Nebo Road via a channelized island on the southernmost driveway. The design of the channelized island for the southernmost driveway must be submitted to the Rustic Roads Advisory Committee for review and comment.

No special exception related truck or other heavy vehicle traffic to and from the site may use Mt. Nebo road to the south to reach River Road. The Petitioner must inform contractors visiting the site and companies that have delivery activities associated with any of the three uses of this restriction and the Petitioner is responsible for their adherence to this restriction.

Only employees working primarily in the business office (up to 4 employees), those with business in the office, and the 3 managing partners of the Twin Ponds, LLC may use the northernmost driveway and park in that area.

### B. Outside/Independent Contractor Access to the Property

4. For the three special exceptions, a total of one outside contractor may be on the property per day, and no more than 10 (ten) per month. Such contractor may have ~~more than one~~ up to five employees to carry out the work on the site.

The type of work that can be anticipated to be performed by outside or independent contractors on the site will include (but not necessarily be limited to) tasks related to the care and maintenance of the property, equipment, or structures; or to provide special limited and occasional services related to the business process such as maintenance of the gravel driveways, "mucking out" sediment traps and ponds on the site, or processing of large plant material. Such activities are anticipated to be infrequent, generally on an as-needed basis (usually annually or semi-annually).

No third party contractor deliveries of materials for customers or storage are permitted unless specifically authorized by the terms of the special exceptions.

### C. Vehicle Log Requirement

#### *Wholesale Nursery*

19. Petitioner shall keep a log of all vehicles (except employees' personal vehicles) entering or leaving the property, that will contain the time of day the vehicles enters and departs the site, the truck type and size, the type of load, the

truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g. Petitioner, third party contractor, etc.).

In addition to company vehicles, the log will record all vehicles delivering or picking up materials from the site as well as vehicles used by independent contractors performing maintenance or process functions on the site as defined in Condition 4.

#### *Landscape Contractor*

17. Petitioner shall keep a log of all vehicles, except employees' personal vehicles, entering or leaving the property, that will contain the time of day the vehicles enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g. Petitioner, third party contractor, etc.).

In addition to company vehicles, the log will record all vehicles delivering or picking up materials from the site as well as vehicles used by independent contractors performing maintenance or process functions on the site as limited in Condition 4.

#### *Manufacture of Mulch*

17. No more than eight (8) vehicles per day may make deliveries and/or pickups from the property, excluding deliveries and/or pickups via the 12 (twelve) vehicles used for the Landscape Contractor operation (that are anticipated to make no more than one round trip per day).

Petitioner shall keep a log of all vehicles (except employees' personal vehicles) entering or leaving the property, that will contain the time of day the vehicles enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g. Petitioner, third party contractor, etc.), and the times and dates of each delivery and/or pickup, excluding Landscape Contractor pickups and deliveries). In addition to company vehicles, the log will record all vehicles delivering or picking up materials from the site as well as all vehicles used by independent contractors performing maintenance or process functions on the site as defined in Condition 4.

#### **D. Fuel Storage Tanks**

12. The Petitioner shall install a steel double-lined 300 gallon tank for #2 diesel fuel, and a steel double-lined 300 gallon tank for gasoline as indicated on the Site Plan. ~~The tank shall~~ These tanks must be inspected regularly and replaced as needed.

## WHOLESALE NURSERY USE

### A. Extent of Operations Allowed

Original Plan - In 2002, the staff had recommended approval of all Phases of this operation, which would consist of 7.4 acres planted primarily in trees. The Planning Board recommended approval of only Phase One, consisting of approximately 2 acres of trees.

Current Plan - Recommends approval of all Phases of this operation based on a finding that this use would generate very little noise or traffic, is relatively innocuous, and would provide screening for the other two proposed uses.

*Staff Recommendation: Within the current plan the additional Phases for this use allow more acres to be planted in trees (or other plant materials), not more trucks or activity on the site. The primary concern expressed for this use seems to be the potential for unanticipated trucks to arrive to pick up this material. The Opposition continues to be concerned despite the limits put on vehicle traffic and traffic logs required in the proposed conditions. The staff sees little potential for community impact from the additional acres of trees and recommends support for the current plan.*

### B. Commercial Vehicle Access Limits

Original Plan - The Planning Board did not set vehicle delivery limits for this use. And the specific access route to this use was not evaluated.

Current Plan - Access limited to no more than two (2) vehicles per day and five (5) vehicles per week that may make deliveries to or pickups from the property - although deliveries and/or pickups via vehicles used for the Landscape Contractor Special Exception operation are exempted from this limitation.

An exception to the limits on vehicles allowed to arrive at the site noted above (2 per day and 5 per week) is that more may arrive for the initial installation of plant material for the wholesale nursery operation as a one-time authorization for the initial plantings.

For all three uses only one vehicle visit per month may be a tractor-trailer, and all other vehicles may be no larger than a 30 cubic yard capacity truck, as recommended by the Planning Board. A requirement establishing that a tractor-trailer visit may not be on the same day as a visit to one of the other uses is not included. The trees grown for this use will be loaded onto trucks in an area accessed via an existing gravel drive off the main commercial driveway. That drive is not indicated on the site plan and the access route is not specifically discussed in the current plan.

*Staff Recommendation: Clearly establishing these limits will be helpful for the surrounding neighbors, but the number of anticipated trips by the Landscape Contractor vehicles should be established. Support for the current plan is recommended, with modifications proposed to:*

- establish the number of trips anticipated by vehicles that are part of the Landscape Contractor operation*
- include a same day visit limit for tractor-trailers to achieve the goal of limiting unanticipated truck traffic.*
- restrict trucks to the access drive and commercial driveway, and modify the Site Plan to reflect that route.*

### **C. Equipment**

Original Plan - The Planning Board did not specifically address this issue in November 2002 although the staff report noted that it would have limited impact.

Current Plan - Specifies equipment to be used and notes that all equipment for this use is to be stored so that it is not visible from the street, as indicated on the Site Plan.

*Staff Recommendation: The modification is useful to the community by clarifying equipment that will be used. Support the current plan with a minor modification to verify the storage location for equipment.*

### **D. Equipment Storage Structure**

Original Plan - To clarify and limit the use of existing storage buildings on the property, the staff and Planning Board recommended that when the storage building closest to the north property line is replaced, it must be relocated to meet the 50-foot setback requirement for structures in the RDT Zone. Additional storage would be with an enclosed area and a storage structure indicated on the site plan. And it was established that moving this building would require subdivision approval for the property.

Current Plan - Adopts most of the Planning Board recommendation, but does not note the subdivision requirement. This element is referenced for both the Landscape Contractor and Wholesale Nursery Petitions.

*Staff Recommendation: It is important to establish that subdivision will be required if the structure is modified. The staff recommends adding a clause noting that moving or replacing this structure will require subdivision.*

## **E. Environmental Issues**

Original Plan - The Planning Board recommended in November 2002 for both the Wholesale Nursery and Landscape Contractor Petitions:

- a Final Forest Conservation Plan must be submitted prior to the issuance of sediment and erosion control permits, and
- an approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental staff prior to approval of the Final Forest Conservation Plan and the issuance of the sediment and erosion control permits

Current Plan - The Planning Board recommendations have been incorporated, with a caveat that qualifies compliance only if required by Chapter 22A.

*Staff Recommendation: The caveat should be removed, as these elements are required.*

## **F. Hours of Operation**

Original Plan - The hours of operation recommended in November of 2002 were 7:00 AM to 7:00 PM, Monday through Saturday.

Current Plan - Hours of 7:00 AM through 7:00 PM Monday through Friday, and 7:30 AM through 4:30 PM Saturday are proposed. No operations allowed on Sunday.

*Staff Recommendation: The hours proposed in the current plan are more restrictive on Saturday. This is better for the community. Support for this revised element is recommended.*

## **G. Employees**

Original Plan - The Planning Board did not question the submitted statement of operations declaration that this use would not have separate employees and that the work would be done as needed by the employees of the Landscape Contracting operation.

Current Plan - Specifies that the use is limited to two (2) employees, who primarily work for the Landscape Contractor use. The individual members of the Twin Ponds LLC and any outside contractors used to perform specialized tasks that cannot be performed by the employees of any of the Twin Ponds employees (defined as tasks such as pesticide application) are not employees of the use.

Credentials required for persons who work with pesticides or fertilizer are defined. This is a requirement of the Maryland Department of Agriculture.

*Staff Recommendation: Support for these refinements in the current plan, although it is unclear why requirements that are governed by other agencies are restated. Minor modifications to the proposed language are suggested to further clarify that this use has no full time employees and define the use of outside contractors.*

## Recommended Modifications to Condition for Approval for Current Plan

### A. Extent of Operations Allowed

No modification to condition of approval proposed.

### B. Vehicle Access Limits

18. No more than two (2) vehicles per day and five (5) vehicles per week may make deliveries to and/or pickups from the property (after the initial installation of all plant material), excluding deliveries and/or pickups via the 12 (twelve) vehicles used for the Landscape Contractor Special Exception operation (that are anticipated to make no more than one round trip per day). Only one vehicle per month may be a tractor-trailer, all other vehicles may be no larger than a thirty cubic yard capacity truck. Any tractor-trailer visiting the site in connection with the use may not visit the site on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.

Trucks picking up trees or other plant materials must enter via the channelized driveway and access the nursery loading area via the interior drive adjacent to the vehicle parking area. After loading they must exit via the same route. They may not use the northernmost driveway.

### C. Equipment

21. Equipment to be used for this special exception shall be stored within the equipment storage area or storage structures so that the equipment is not visible from the street, in the locations noted on the Special Exception Site Plan. Vehicles to be used and stored on the site will include the following, or similar, machinery: (1) a front-end loader and (2) a "Bobcat" with spade attachment (both of which are also used on the farm and/or mulch/composting operation).

### D. Equipment Storage Structure

22. The existing storage building closest to the north property line shall only be used for farm equipment. When and if the building is used for the Wholesale Horticultural Nursery Special Exception operation, the building must be relocated along the same axis; adjusted to meet the setback requirement in the RDT Zone; and subdivision will be required.

### E. Environmental Issues

14. ~~If required by Chapter 22A of the Montgomery County Code, a~~ A Final Forest Conservation Plan must be submitted to the M-NCPPC, CWP, Environmental Division prior to issuance of a Sediment and Erosion Control Permit and any building permit. ~~(if required by the Department of Permitting Services).~~

15. ~~If required by Chapter 19 of the Montgomery County Code,~~ an approved concept Stormwater Management Plan must be submitted to the to the M-NCPPC, CWP, Environmental Division staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.

**F. Hours Of Operation**

16. Hours of operation for delivery or pick-up related to this use are limited to 7:00 AM through 7:00 PM Monday through Friday, and 7:30 AM through 4:30 PM Saturday; provided that employees may arrive between 6:45 and 7:00 AM. Operation of machinery or departures to job sites is not permitted before 7:00 AM on weekdays or 7:30 AM on Saturday.

**G. Employees**

20. No more than two (2) employees (who are primarily employees of the Landscape Contracting operation) may be used to maintain the Nursery, excluding the three individual members of the Twin Ponds LLC and the occasional use of outside contractors used to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions (such as pesticide application, etc.) as defined and limited in Condition 4.



## LANDSCAPE CONTRACTOR USE

### A. Extent of Operations Allowed

Original Plan - Phase 1 of this operation was to establish the operation with 10 trucks, Phase 2 would replace one of the storage buildings with a larger structure and allow additional trucks (up to 15), and Phase 3 would turn the existing tenant home into a business office for the combined operations.

The staff had recommended approval of a Landscape Contracting operation with no more than 10 trucks allowed to be stored on the site, but allowing replacement of the storage building and turning the tenant home into a business office. This would utilize little more than 1 acre of the 77-acre property. The staff recommendation was made because the only element that would seem to cause impact in the area would be the additional trucks, not using an existing home or moving the storage building. And when the storage building was replaced, the property would be required to go through subdivision.

The Planning Board recommended approval of the use of 10 trucks for this use, but not replacing the storage buildings, or use of the house as an office.

Current Plan - Approval of all Phases of this operation is recommended, but with fewer trucks than previously requested. The number of requested number of trucks as been reduced to 12 (instead of 15), the house may be used for offices (and toilet facilities for workers), and compliance with RDT setbacks is required if the storage structure is moved.

This current plan is recommended because the Petitioner agreed to delete Phases 2 and 3 of the proposed Manufacture of Mulch and Composting use, agreed to numerous restrictions on the proposed Landscape Contractor use (including but not limited to reducing the number of vehicles and employees), and the Hearing Examiner saw no significant benefit in approving only one phase of the proposed use and requiring all parties to return to the Board of Appeals for what may involve many days of hearings when the Petitioner is ready to expand by 2 additional vehicles. No evidence was shown to support a conclusion that an increase from 10 vehicles to 12 vehicles would impact the neighborhood in a way that would justify imposing upon all parties the time and expense of further hearings for only 2 additional vehicles.

*Staff Recommendation: Support the current plan. Because the Petitioner deleted subsequent phases of the Mulch Manufacture use, agreed to numerous restrictions on the Landscape Contractor use (most importantly reducing the number of trucks and employees, there is little benefit to approving a use that would need require all parties to return to the Board of Appeals in order to expand by two additional vehicles.*

*Also, it is important to have the toilet facilities available for workers at the site, and subdivision would be required if the storage structure is moved or replaced. A modification to the condition is recommended to clarify that no trucks associated with the use may be stored off-site.*

## **B. Equipment, Parking and Storage Areas**

Original Plan - The Planning Board recommended that business vehicles for this use be limited to no more than 10 commercial pickup trucks or similar vehicles a maximum of 30 feet in length, with the largest having a roll-off (dump) bed with a 30 cubic yard capacity. And the trucks were to be no more than 26,000 pounds (13 tons). The parking area was to be screened with a fence.

Current Plan - Allows up to 12 vehicles for this use, with no subsequent phases. The truck size is the same as in the Planning Board recommendation. Other equipment for the use is not specified.

Evergreen trees and berms are recommended to screen the parking area instead of fencing. As a visual buffer for the Egly property, the gravel drive adjoining the parking area and the area along the Egly property line are required to be screened with evergreen trees as noted on the Site Plan. All landscaping must be installed before beginning any operations on the site, and the Petitioner must maintain the landscaping and promptly replace any dead trees.

*Staff Recommendation – The staff recommends support for the current plan allowing 12 trucks for this use, but the staff believes the parking area is too small if 12 rather than 10 trucks are to be stored there. The parking area should be expanded to accommodate 30 vehicles, and the screening for the parking area should be expanded. The anticipated equipment for this use should be specified, and the intended number of round trips per day for the trucks should be established.*

## **C. Equipment Storage Structure**

Original Plan - The Planning Board recommended that when the storage building closest to the north property line is replaced, it must be relocated to meet the 50-foot setback requirement for structures in the RDT Zone. Additional storage would be within an enclosed area and a storage structure indicated on the Site Plan. Moving this building would require subdivision approval for the property.

Current Plan – Most of the Planning Board recommendation is adopted, but not the subdivision requirement.

*Staff Recommendation: Support the current plan, but as for the Wholesale Nursery use, the notice of subdivision requirement should be included.*

## **D. Environmental Issues**

Original Plan - The Planning Board recommended for both the Landscape Contractor and Wholesale Nursery uses:

- the Final Forest Conservation Plan must be submitted prior to the issuance of sediment and erosion control permits, and
- an approved concept Stormwater Management Plan must be submitted to the M-NCPPC Environmental staff prior to approval of the Final Forest Conservation Plan and the issuance of the sediment and erosion control permits

Current Plan – The Planning Board recommendations have been incorporated, but with a caveat that qualifies compliance only if required by Chapter 22A.

*Staff Recommendation: Support the current plan, as it incorporated the Planning Board recommendation, but remove the caveat, as these elements are required.*

## **E. Hours of Operation**

Original Plan - The Planning Board recommended that hours of operation for any business vehicle (trucks) and equipment arrivals and departures from the site be limited to 6:00 AM to 8:00 PM, Monday through Saturday. This is outside peak traffic periods. The early hour allows employees to arrive before 7:00 AM when they would leave for job sites. Afternoon return trips would be spread out over a period of several hours depending on the job and distance from the property.

Current Plan - Hours of 7:00 AM through 7:00 PM Monday through Friday, and 7:30 AM through 4:30 PM on Saturday are proposed. Employees may arrive between 6:45 AM and 7:00 AM, but no machinery may be operated or employees depart for job sites until 7:00 AM.

*Staff Recommendation: Support this revised element of the current plan. The hours proposed are more restrictive, which will be preferred by the community. A minor modification to clarify weekend arrival for employees is proposed.*

## **F. Employees**

Original Plan - The Planning Board did not specifically address this issue, but the statement of operations indicated a proposal of 2 employees per truck.

Current Plan - The use may have 28 full time employees, most of the employees (24) would be on the two-person truck “teams”, although some of those would work in the Wholesale Nursery or the Mulch Manufacturing operations from time to time as needed, and the remaining 4 employees would be working in the office

within the house. Outside contractors and the Twin Ponds LLC owners are not included as employees. There are three Twin Ponds LLC owners.

*Staff Recommendation: Because the issue of limiting access by outside contractors is a major element of concern with this use the staff believes that this element should more explicitly define the nature of outside contractors authorized to come to the site.*

**G. Sanitary Facilities Availability**

Original Plan - The Planning Board did not evaluate this issue.

Current Plan - The house on the site is to provide toilets for any workers on the site, and as such the tenant who had been living there is required to move as a condition of approval for the Landscape Contractor use. The house is authorized to be an office for the combined uses.

*Staff Recommendation: Due to the need for accessible toilet facilities, support this recommendation. No modification proposed.*

*The Department of Permitting Services, Well and Septic Division has authorized the toilets in this home to be serviceable for up to 30 persons. The majority of employees authorized for these uses will not be on the site during the day. Typically those on the site would be the 4 office employees, occasionally the three Twin Ponds owners, the few employees who would be working on the Wholesale Nursery or the Mulch Manufacturing use, the Certified Compost Operator on duty, and perhaps a client on site to drop off mulch or pick up mulch or trees, or perhaps a contractor hired to perform one of the specified activities authorized in the conditions for approval.*

## Recommendations for Modifications to Conditions for Approval for Current Plan

### A. Extent Of Permitted Operations

5. Operations on the site are limited to the following, as shown on the amended Phasing Plan submitted by the Petitioner.

- a. Phases 1, 2 and 3 of the Wholesale Nursery Operation.
- b. Phases 1, 2 and 3 of the Landscape Contractor operation; however, vehicles associated with the Landscape Contracting operation shall not exceed twelve (12) vehicles, all of which must be stored on-site.
- c. Phase 1 of the Manufacture of Mulch and Composting operation.

### B. Vehicle Limits and Equipment

18. This special exception is limited to using no more than twelve (12) commercial pickup trucks, or similar vehicles, a maximum of thirty (30) feet in length weighing less than 26,000 pounds (trailers may be attached to such vehicles) that are anticipated to make no more than one round trip per day, in addition to one tractor-trailer per month to make deliveries. Any tractor-trailer visiting the site in connection with the use may not visit the site on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.

The parking /storage area for the vehicles shall be screened by evergreen trees as reflected on the Site Plan. The parking area must be expanded in area to meet the existing drive that connects to the Wholesale Nursery loading area to create a parking area for 30 vehicles. This will accommodate anticipated vehicles of workers and storage for the 12 trucks associated with this use, and occasional use by customers or contractors performing tasks as defined and limited in Condition 4.

Equipment and supplies to be used for this special exception must be stored so that the equipment is not visible from the street, in the locations noted on the Site Plan. Equipment to be stored on the site will include the following, or similar:

- 12 trailers for hauling equipment,
- lawn mowing equipment,
- snow removal equipment, and
- assorted smaller equipment.

Materials to be occasionally stored on the site will include auxiliary supplies such as mulch and plant materials required for larger jobs.

**C. Storage Building**

19. The existing storage building closest to the north property line shall only be used for farm equipment. When and if the building is used for the Landscape Contractor Special Exception operation, the building must be relocated along the same axis; adjusted to meet the setback requirement in the RDT Zone; and subdivision will be required.

**D. Environmental Issues**

14. ~~If required by Chapter 22A of the Montgomery County Code, a~~ A Final Forest Conservation Plan must be submitted to M-NCPPC, CWP, Environmental Division prior to issuance of a Sediment and Erosion Control Permit and any building permit. (if required by the Department of Permitting Services).

15. ~~If required by Chapter 19 of the Montgomery County Code, an approved concept Stormwater Management Plan must be submitted to the M-NCPPC, CWP, Environmental Division staff prior to approval of the Final Forest Conservation Plan and issuance of sedimentation and erosion control permits.~~

**E. Hours Of Operation**

16. Hours of operation are restricted to 7:00 AM through 7:00 PM Monday through Friday, and 7:30 AM through 4:30 PM Saturday; provided that employees may arrive between 6:45 and 7:00 AM. Operation of machinery or departures to job sites is not permitted before 7:00 AM on weekdays or 7:30 AM on Saturday.

**F. Employees**

21. Petitioner is limited to no more than twenty-eight (28) employees for this special exception, excluding the three individual members of the Petitioner-LLC. This use is also authorized to occasionally employ outside contractors to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions (such as pesticide application, etc.) as defined and limited in Condition 4. and outside contractors.

## MULCH MANUFACTURE USE

### A. Extent of Allowed Operations

Original Plan - The most controversial of the three operations is the Mulch Manufacturing. The Planning Board recommended approval of Phase 1 of this use, an area already in use as a permitted use. Two subsequent Phases were requested.

Current Plan - The proposed Phases 2 and 3 of the Mulch Manufacture operation are no longer requested, so the use reflects the size of operation recommended for approval by the Planning Board. This area comprises 3.65 acres, where the use as originally proposed would have used 10.4 acres of the 77-acre property.

Special Exception is required for this use to allow the Petitioner to sell the excess mulch created. The statement of operations notes that mulch will primarily be used by the Landscape Contractor operation, with excess primarily sold to customers who are already arriving to deliver organic debris. With the special exception, they would be able to leave with a load of mulch created from prior debris deliveries.

*Staff Recommendation: Special exception also allows stronger environmental oversight. The Opposition to this petition appear to believe that the proposed environmental controls are not sufficient, and that the future vehicle trips to and from the site will be much greater than stated in the submitted materials – even as limited in the proposed conditions. The staff believes the limits placed on the use are effective and sufficient. Support for the current plan is recommended as it is consistent with the Planning Board's prior recommendation.*

### B. Trip Limits

Original Plan - The original statement of operations anticipated up to 10 truck trips per day for full implementation – primarily from the Twin Ponds Landscape Contracting operation.

The Planning Board recommended in November 2002 that truck deliveries and pickups for this use be limited to Monday through Saturday. Under that recommendation the Landscape Contractor would have had 10 trucks, and this use would have 5 trucks, for a total of 15 trucks for the combined uses authorized to operate from the site.

Current Plan – Saturday activity is limited to pickups and deliveries in conjunction with the Landscape Contractor operation only. No Sunday pickups and deliveries are allowed. On weekdays no more than eight deliveries/pickups are allowed, although this does not include the trips from the Landscape Contractor

use vehicles. These trucks are subject to the vehicle log noted in the general conditions.

The 12 trucks allowed for the Landscape Contractor would be authorized to pickup up mulch, go to a site, and return with yard debris to deliver to the Mulch Manufacturing area. In addition, up to 8 additional vehicles could deliver yard debris, and then pick up mulch for their return trip out. All these vehicle trips would be noted in the required Vehicle Logs. This would authorize a minimum of 20 trips per day, more if the 12 Twin Ponds trucks were to make more than one round trip to the property per day.

*Staff Recommendation: The staff believes this element must be strengthened to clarify the extent of trips anticipated from the Landscape Contractor vehicles.*

### **C. Tractor-Trailer Access Limits**

Original Plan – This issue was not addressed previously.

Current Plan - For all three uses only one vehicle per month may be a tractor-trailer, and all other vehicles may be no larger than a 30 cubic yard capacity truck. Although a further requirement that ensures that the tractor-trailer visit is not on the same day as a visit to one of the other uses is not included for the Mulch Manufacture use.

*Staff Recommendation – Support the current plan because defining vehicle activity is important, but modify requirements to ensure that desired limits on unanticipated truck traffic.*

### **D. Equipment**

Original Plan - The Planning Board recommended in November 2002 that this use be limited to no more than 5 commercial pickup trucks or similar vehicles a maximum of 30 feet in length, with the largest having roll-off (dump) bed with a 30 cubic yard capacity. These vehicles were not to exceed 26,000 pounds (13 tons).

Current Plan - No trucks are assigned to this use. Equipment that may be used for the operations is specified, and limits on vehicles that may make deliveries or pickups to the site are set.

*Staff Recommendation: Supporting the current plan, as it is important to identify equipment that may be used for this element, but clarify storage areas for the equipment and establish consistency with related conditions.*



## **E. Buffers**

Original Plan - The November 2002 report did not require any buffers for this use. The staff report noted that the area recommended for the use was limited to the far corner of the property behind groves of trees, extensively removed from any dwellings.

Current Plan - The petitioner must install buffers along the north and south property lines near the Mulch Manufacturing operation. All landscaping must be installed before beginning any operations on the site, and the Petitioner must maintain the landscaping and promptly replace any dead trees. The recommended condition defines the type of trees required for screening the boundary line (thuja "green giant" evergreens) and the height of all trees to be planted (at least 5 feet taller than the proposed 2-3 foot berms, thus 5-7 feet above the general grade of the land).

*Staff Recommendation: Support for the current plan as it provides additional screening for adjoining uses.*

## **F. Environmental Issues**

Original Plan - The Planning Board recommended (similar to the recommendation for the Wholesale Nursery and Landscape Contractor uses but with additional requirements):

- A Final Forest Conservation Plan must be submitted prior to issuance of Sediment and Erosion Control permits. The plan must indicate placement of Category One conservation easements on all areas required for forest retention by the Forest Conservation Law.

- An approved concept Stormwater Management and Sedimentation and Erosion Control Plan must be submitted to the M-NCPPC Environmental staff prior to issuance of sedimentation and erosion control permits. All sedimentation and erosion control measures to be maximized to prevent nutrient run-off into Chisel Branch. The plan to include, but not be limited to, 50 foot wide grass swales, berms, and sediment basin. All sedimentation and erosion control measures must be located outside the stream valley buffer.

Current Plan - The current plan adopts the Final Forest Conservation Plan condition, slightly modified. The caveat stating "if required by Chapter 22A of the Montgomery County Code" is added. The Sedimentation and Erosion Control Plans are required, but not the Stormwater Management Plan. The requirement for the permits is retained.

*Staff Recommendation: Support the current plan, require the Stormwater Management Plan, and remove the caveat regarding Chapter 22A, as the staff believes the Final Forest Conservation Plan is unquestionably required for this application. Afforestation in the stream valley buffer areas is recommended although not required by the Forest Conservation law, and the Petitioner has agreed to the afforestation.*

*The environmental issue of greatest concern for this Petition is the proximity of the mulch manufacturing area to a stream that drains directly into the Potomac River. The stream carries a Use I-P MDE Classification, designating water quality suitable for human contact, fishing and for public water supply.*

*The compost facility is surrounded by a relatively small, flat, and forested drainage area. Surface drainage into the site and through the compost piles would likely carry sediment produced by the compost piles and a small amount from offsite. To manage runoff, the original recommendation (supported by the Planning Board) was for the applicant to work with the Montgomery Soil Conservation District (SCD), Natural Resource Conservation Service (NRSC) to develop a Conservation Plan for the proposed uses. A sediment basin, berms, and 50 foot grass swales were the runoff management methods recommended.*

*The Petitioner has continued to work with the NRCS and now has an approved Conservation Concept Plan. That plan includes Best Management Practices for sedimentation and erosion control to preserve water quality for the composting operation. These include providing an increased level of conservation by adding another buffer area in the form of a grassed filter strip, and utilizing some of the compost windrows as diversions. This plan will remove approximately ½ acre from compost production for conservation practices. The final plan should be consistent with the Sediment and Erosion Control, Stormwater Management, and Final Forest Conservation Plans.*

*To increase filtration, afforestation is recommended for an area formerly farmed within the stream buffer. Although this area was cleared before the Petitioner acquired the property, he has agreed to the afforestation. This action will further promote better water quality in the area.*

*The current plan does not require the Concept Stormwater Management Plan, and if less than 5,000 square feet of land area is disturbed it would not be required. However, the staff estimates that the recommended expansion of the parking area (discussed in the Landscape Contractor section) will put disturbed area over 5,000 square feet. This will also require a Sediment and Erosion Control Plan. Both of these plans must be approved by DPS.*

*Together, these measures should sufficiently filter the runoff and protect water quality. The Final Forest Conservation Plan must include the afforestation of the stream valley buffer in the area of disturbance. The Department of Permitting Services will determine the size of the sediment and erosion control basin.*

*The staff defers to the Montgomery County Department of Environmental Protection regarding groundwater protection. They see minimal potential for groundwater contamination from the proposed operation.*

## **G. Other Environmental Elements**

Original Plan – No further environmental elements were evaluated.

Current Plan - In response to the intensive analysis of this use at the hearings, the current plan proposes a number of conditions that define and limit operations for this use, most related to environmental concerns. They represent attempts to address the concerns raised by the Opposition. They do not in any way represent a more extensive use than previously recommended for approval by the Planning Board. They represent a more closely defined and limited version the use, and several just reflect elements that are already required by other permitting agencies. The additional limiting elements include:

- The Petitioner must obtain an approved Nutrient Management Plan from the Maryland Department of Agriculture within six months of approval of the special exception
- No manure may be used in the manufacture of mulch or compost
- The Petitioner must comply with Odor Control measures added to the Statement of Operations. [Montgomery County requires control of odors, but no specific standards are set. The measures proposed were worked out between the Petitioner and the Opposition during the Hearing process.]
- The Petitioner must comply with all required Montgomery County Air Pollution and Noise Pollution standards.
- Prior to abandoning this use the Petitioner must remove all materials associated with the use from the site and must re-seed and stabilize all area used for the operation
- All raw Natural Wood Waste must be processed within 30 days of its arrival on the site. [Maryland Department of the Environment (MDE) requirement]

- No additives, such as phosphates, lime and fertilizer may be added to the compost or mulch. [MDE requirement]
- The Petitioner may only accept Natural Wood Waste (defined in COMAR) but no food materials. And solid waste other than Natural Wood Waste must be stored in an appropriate container and promptly be removed from the property. [MDE requirement]
- Rows of finished compost product are not to exceed 50 feet high, 50 feet wide and 100 feet wide. This excludes product stored under the existing pole barn. [This product has a fine grain, like soil and has limited combustion potential. This requirement was negotiated between the Petitioner and the Opposition.]
- Rows of finished mulch are not to exceed 20 feet high, 20 feet wide and 100 feet wide. [This product as a coarse grain and still has limited combustion potential, so smaller rows are allowed. This requirement was negotiated between the Petitioner and the Opposition.]

*Staff Recommendation: Support the current plan, although the necessity to restate requirements of other agencies is not clear. The additional conditions better define and limit the use. A correction to the compost and mulch row specification is noted. The compost product rows are to be 50 feet wide and 100 feet long, rows of finished mulch are to be 20 feet wide and 100 feet long.*

## **H. Hours of Operation**

Original Plan - The Planning Board recommended in November of 2002 hours of 7:00 AM to 7:00 PM for this use.

Current Plan - Equipment operating hours are 8:30 AM to 4:30 PM (or daylight, whichever is less) on weekdays. Deliveries are authorized from 7:00 AM to 7:00 PM on weekdays. A sign identifying the hours of operation for deliveries and pickups and the emergency contact number must be posted at the entrance to the property.

*Staff Recommendation: Support this element of the current plan. The hours of operation for this use are more restrictive than what was proposed by the Planning Board, reflecting the intensive exploration of this use at the hearings. A minor modification to clarify the authorized number of employees for weekend operations is proposed.*

## I. Employees

Original Plan - The Planning Board did not specify employees for this use, accepting the statement of operations which stated that this use would not require full time employees, and would use the Landscape Contractor employees as needed.

Current Plan - Establishes one employee who must be available full time for this use. Employees for this use include one full-time employee to manage the operation, and up to two additional employees, excluding the members of the Twin Ponds LLC. The two additional employees are to be Twin Ponds employees of the Landscape Contractor use performing "other duties" for this use. In addition, an independent contractor will come to the site as needed to perform the material processing operation.

The full-time employee must be a qualified and certified Compost Operator (as defined in COMAR requirements) who must supervise private contractors who run the processor, those who make deliveries to the Site, and supervise the inspection and maintenance of the windrows. Because a Certified Compost Operator must be on duty or call 24 hours a day several people holding this certification are associated with the use, including one of the three members of Twin Ponds LLC. The Board of Appeals is to be given the names of all persons holding this certification who will be associated with this use.

The plan also allows up to three additional employees to assist the outside contractor who will perform the material processing operations when necessary.

*Staff Recommendation: Support the current plan with some modifications to clarify the association of the occasional employees with the Landscape Contractor.*

## J. Fire Prevention Plan

Original Plan - The original submitted statement of operations included a Fire Prevention Plan, as required by the State of Maryland for this use. The plan was prepared in consultation with local Fire and Rescue Department officials. These measures were included as a condition of approval by the Planning Board.

Current Plan - Most of the elements of the original Fire Prevention Plan are included but they are augmented with additional requirements as noted below. Language recommended by the Planning Board that was not included has a ~~strike through~~ and language added is underlined:

- No burning of wood waste permitted (*also recommended to be extended as a requirement for all three uses*).

- A "dry" fire hydrant installed along the gravel path leading into the property along the existing ponds to connect the two ponds to allow Fire and Rescue Services to draw water from the ponds for fire suppression purposes. Water from the ponds may not be used for any other purpose. to fight fires along Mt. Nebo Road and within the property.
- ~~Implementation of methods to allow water delivery form the ponds to the windrows for general maintenance~~
- Continuing maintenance of the gravel road into the property. Such maintenance shall include, but not be limited to, monthly inspections to identify and fill any potholes and the addition of gravel or asphalt tabs to the entire road surface, as appropriate and as permitted by the Department of Permitting Services in accordance with the Statement of Operation.
- The Petitioner must implement dust suppression measures relating to the gravel road and windrows as described in the Statement of Operations.
- A Certified Compost Operator must regularly inspect the windrows. Regular inspection of employees of the windrows to monitor internal temperatures. Windrows to be turned when internal temperature nears 142 degrees Fahrenheit, per standard practice.
- ~~Spacing of windrows of the mulch/compost operation to permit emergency vehicle access between each row~~
- No smoking permitted on the site of the special exception
- Windrow size is limited to ten (10) feet high, twenty (20) feet wide and three hundred (300) feet long. The surge pile is limited to twenty (20) feet high, twenty (20) feet wide and one hundred fifty (150) feet long.

*Staff Recommendation: Support the current plan, but the requirement for spacing the windrows to allow ease of access by emergency vehicles should be included.*

## **K. Material Processing**

Original Plan - The Planning Board recommended the following limitations:

- The wood "chipping" or mulch/compost "mixing" machines not be used on Sunday or before 9:00 AM on any other day.
- Use of this machine limited to weekdays after 9:00 AM
- The staff recommended that the "stump grinding" machine be used on the site no more than 3 days per year in conjunction with any of the proposed

uses. The Planning Board relaxed this recommendation to allow “stump grinding” operations up to 25 times per year.

Current Plan – Use of the processor for grinding and/or shredding raw materials is limited to no more than three days per month (thus up to 36 times per year). But its use is limited to weekdays between 8:30AM and 4:30PM, and a log is to be maintained to identify the days and hours of operation for the processor.

*Staff Recommendation: The current plan provides more certainty for the surrounding community. Support the current plan restrictions with minor modifications for clarify when the processing can be expected.*

## Recommended Modifications to Conditions for Approval for Current Plan

### A. Extent of Allowed Operations

No modifications to language in current plan recommended.

### B. Trip Limits

17. No more than eight (8) vehicles per day may make deliveries and/or pickups from the property, excluding deliveries and/or pickups via the 12 (twelve) vehicles used for the Landscape Contractor operation (that are anticipated to make no more than one round trip per day).

Petitioner shall keep a log of all vehicles (except employees' personal vehicles) entering or leaving the property, that will contain the time of day the vehicles enters and departs the site, the truck type and size, the type of load, the truck number (for Petitioner's vehicles), as well as the special exception to which the trip is assigned and the entity responsible for the vehicle (e.g. Petitioner, third party contractor, etc.), and the times and dates of each delivery and/or pickup, excluding Landscape Contractor pickups and deliveries. In addition to company vehicles, the log will record all vehicles delivering or picking up materials from the site as well as all vehicles used by independent contractors performing maintenance or process functions on the site as defined in Condition 4.

### C. Tractor-Trailer Access Limit

19. Only one tractor-trailer per month may visit the site in connection with this special exception. This visit may not be on the same day as a tractor-trailer visit to the site in connection with either of the other special exceptions.

### D. Equipment

26. Equipment to be used and/or stored on the site will include the following, or similar machinery:

(1) a specialized windrow turner or windrow turner attachment for a tractor (tractor used on the farm) to be stored in the mulch manufacture area.

(2) a processor run by a typical tractor/combine diesel engine (such as a "Bandit" recycler) to break down raw materials into smaller sizes (this item will be transported to the site and may be left in the mulch manufacture area on a temporary as needed basis consistent with the limits requirements for use of the item in of Condition 18 above (no more than 3 weekday days per month);



(3) up to two tractors (also used on the farm) to manage and move materials that will generally be stored in the equipment storage buildings behind the office structure ;

(4) up to two front-end or track loaders (2.5 – 5 cubic yard bucket) to manage and move materials (as also used as part of the nursery and farm operation that will generally be stored in the mulch manufacture area;

(5) an additional two (2) loaders may be brought to the site on an as needed basis to expedite organic debris material processing by independent contractors as discussed in Condition 18 haulers when material or equipment is taken to the site, provided the loaders are not stored on the site; and

(6) a trammel screen, soil shredder and/or soil screen to sift larger pieces (i.e., partially decomposed material) from the final product to be stored in the proximity of the pole barn in the mulch manufacture area.

#### **E. Buffers**

No modification to current plan language proposed.

#### **F. Environmental Issues**

14. ~~If required by Chapter 22A of the Montgomery County Code, A Final Forest Conservation Plan must be submitted to and approved by the M-NCPPC, CWP, Environmental Division prior to issuance of a Sediment and Erosion Control permit or any building permit. (if required by the Department of Permitting Services).~~ This Plan shall indicate placement of Category One conservation easement on all areas required for forest retention by the Forest Conservation Law. The Plan must also show afforestation of the stream valley buffer in the area of the existing compost piles.

16. Stormwater Management and Sediment and Erosion Control Plans must be consistent with the Final Forest Conservation Plan must be approved by the Department of Permitting Services prior to issuance of Sedimentation and Erosion Control permits. The Sediment and Erosion Control Plan must include, but not be limited to, fifty (50) foot wide grass swales, berms and sediment basins. All sedimentation and control measures must be located entirely outside the stream valley buffer.

~~The petitioner must obtain approval of the required Sediment and Erosion Control Permit by Montgomery County Department of Permitting Services based on the plan prepared by the Natural Resource Conservation Service~~

A Final Soil Conservation Plan approved by the Natural Resource Conservation Service and consistent with the Sediment and Erosion Control Plan, Stormwater Management Plan, and the Final Forest Conservation Plans must be submitted to the M-NCPPC, CWP, Environmental Division prior to issuance of Sediment and Erosion Control permits.

**G. Other Environmental Elements**

No modifications to current plan language proposed.

**H. Hours Of Operation**

15. Hours of operation for the operation of general equipment for this use are limited to 8:30AM to 4:30PM (or daylight hours, whichever is less) Monday through Friday. However, deliveries may occur between 7:00 AM and 7:00 PM, Monday through Friday. Saturday operations shall be limited to pickups and deliveries in conjunction with the Landscape Contractor operation, provided that up to two employees will be permitted to monitor the windrows and perform any necessary operations to maintain safe conditions at the site on Saturday and Sunday.

**I. Employees**

25. A duly qualified Certified Compost Operator (as defined by COMAR 15:18.04.03) must supervise the private contractors who run the processor or make deliveries to the Site, and as well as supervise the inspection and maintenance of the windrows. ~~The A~~ Certified Compost Operator shall be on duty or on call twenty-four (24) hours a day. The Petitioner shall submit to the Board of Appeals the names of all persons holding this certification.

28. Employees associated with this use are limited to one full-time employee to manage the operation who must be a qualified certified compost operator as described in Condition 25, with assistance from up to two (2) additional employees (who are primarily employees of the landscape contracting operation). This excludes ~~excluding~~ the three individual members of the Petitioner LLC.

However, an independent contractor hired to perform a raw materials processing operation associated with this special exception on an occasional basis for the use as defined in Condition 4 and limited in Condition 18, may bring up to three (3) additional employees to assist in this work. ~~up to three (3) additional employees, employed by an outside party, are permitted to assist an independent contractor associated with this special exception.~~

And the use is authorized to occasionally employ outside contractors to perform specialized tasks which cannot be performed by the employees dedicated to any of the special exceptions as defined and limited in Condition 4.

**J. Fire Prevention Plan**

21. The operation must implement the fire prevention plan below:

- a. No smoking permitted on the site of the special exception
- b. No burning of wood waste is permitted on the site of this special exception.
- c. A "dry" fire hydrant must be installed along the gravel path leading into the property along the existing ponds to connect the two ponds to allow Fire and Rescue Services to draw water from the ponds for fire suppression purposes. Water from the ponds may not be used for any other purpose.
- d. The Petitioner shall maintain the existing gravel road. Such maintenance shall include, but not be limited to, monthly inspections to identify and fill any potholes and the addition of gravel or asphalt tabs to the entire road surface, as appropriate and as permitted by the Department of Permitting Services in accordance with the Statement of Operation.
- e. The Petitioner must implement dust suppression measures relating to the gravel road and windrows as described in the Statement of Operations.
- f. A Certified Compost Operator must regularly inspect the windrows. Windrows must be turned when internal temperatures reach 140 degrees Fahrenheit.
- g. Windrow size is limited to ten (10) feet high, twenty (20) feet wide and three hundred (300) feet long. The surge pile is limited to twenty (20) feet high, twenty (20) feet wide and one hundred fifty (150) feet long.
- h. Windrows must be spaced to permit emergency vehicle access between each row.

**K. Material Processing Operations**

18. The Petitioner is limited to use of a processor for grinding and/or shredding raw materials to no more than three (3) days per month, that will usually be sequential. Use of this machine (as described in condition 26) is limited to weekdays between 8:30AM and 4:30PM. A log...shall be maintained to identify the days and hours of operation of the processor.

## **SITE PLAN EVALUATION**

*Staff Recommendation: As noted in the above discussions, the current submitted site plan is inconsistent with the current plan in a number of areas. To clarify what is now recommended for these Petitions, the Site Plan should be revised. Revise the Comprehensive Special Exceptions Site Plan in the following ways:*

1. Include the location of the interior driveway that connects the commercial traffic driveway to the wholesale horticultural nursery loading area.
2. Indicate that the northernmost storage structure will not be used for any of the Special Exception uses unless it is relocated to meet the setback standards of the Rural Density Transfer Zone.
3. Remove the areas indicated as future phases for the Mulch Manufacture use.
4. Indicate the location of the wellhead on the property.
5. Change notation from "Landscape Contractor Operation" to Landscape Contractor Equipment Storage Area"
6. Indicate the storage capacity of the water tank.
7. Revise the mulch manufacture area to show that the compost pile is clearly removed from the stream valley buffer line.
8. Expand the parking area to meet the access drive to the Wholesale Nursery loading area. Parking must accommodate at least 30 vehicles. Expand the parking area screening up to meet the revised length of the parking area.