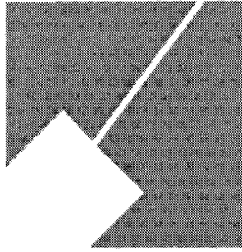


M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.org

Item # 9 + 10  
MCPB 5-11-06

**MEMORANDUM**

**Date:** April 26, 2006  
**TO:** Montgomery County Planning Board  
**VIA:** Jeff Zyontz, Chief, Countywide Planning  
**FROM:** Josh Penn, Planner, Environmental Planning *JP*  
Steve Federline, Supervisor, Environmental Planning *SF*  
**REVIEW TYPE:** Forest Conservation Plan Review  
**APPLYING FOR:** Amendment to a Final Forest Conservation Plan (FCP) – Proposal to add  
Offsite Gravity Sewer Line  
**PLAN NAME:** Towns of Dogwood  
**PLAN NUMBER:** 820050160  
**REVIEW BASIS:** Forest Conservation Regulations, Section 113.A.(2), Regulation No. 1-  
01AM (COMCOR) 18-01AM  
**ZONE:** RT-8  
**LOCATION:** Located on the east side of Dogwood Lane north of Briggs Chaney Road  
in Silver Spring.  
**APPLICANT:** Rupert O'Brien Homes  
**ENGINEER:** Macris, Hendricks, and Glascock  
**HEARING DATE:** May 11, 2006

**STAFF RECOMMENDATION:** Staff recommends approval of the amendment to the Final Forest Conservation Plan 820050160 "Towns of Dogwood" dated April 20, 2006, subject to the following conditions, all of which must be satisfied prior to MNCPPC release of the initial building permit:

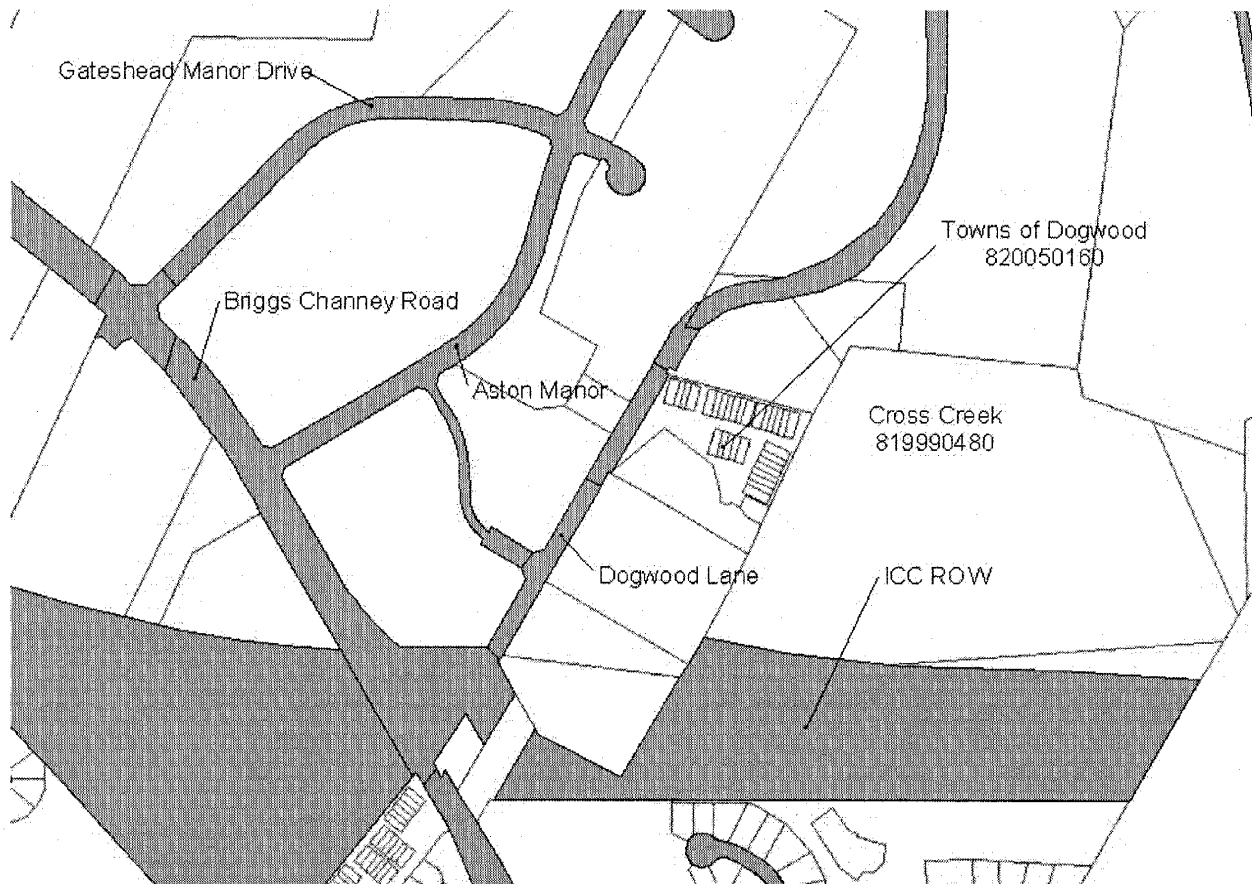
1. The applicant shall provide reforestation totaling approximately 1.19 acres as follows:
  - a) 0.65 acres planting within the offsite sewer easement to replace in kind the forest lost on the Cross Creek Club property, and
  - b) 0.54 acres of offsite reforestation to satisfy the standard forest conservation requirements for the additional forest clearing. This compensation may occur at an approved Forest Conservation Mitigation Bank if an offsite planting area is not determined to be available in the watershed.

2. Applicant shall submit a reforestation planting plan and offsite location for staff review and approval, or protection of existing forest, with appropriate notes, easements and bonding, or the applicant may submit a certificate of compliance to use an approved forest conservation mitigation bank.
3. Applicant shall enter into an agreement with M-NCPPC to maintain and manage the planted areas for a minimum of two years, or until the M-NCPPC Forest Conservation Inspector approves full release of the performance bond.

## SITE DESCRIPTION

The site is located on the east side of Dogwood Lane north of Briggs Chaney Road in Silver Spring. The Planning Board approved Site Plan 820050160 "Towns of Dogwood", with conditions, on May 20, 2005. A minor amendment to the site plan was approved by the Planning Director on March 9, 2006, principally to reflect the applicant's decision to leave in place (rather than relocate) an existing CIP sized water line. This site plan covers 5.0 acres and includes 28 lots. The changes to the approved forest conservation plan are substantially offsite, for a sanitary sewer outfall across the adjoining property owned by SHA.

Vicinity Map



## **PROPOSED FOREST CONSERVATION PLAN CHANGES**

This is an application to amend Final FCP 820050160 "Towns of Dogwood" to allow offsite construction of a gravity sanitary sewer line, and to require appropriate additional compensation for clearing within an existing category one forest conservation easement on the adjoining Cross Creek property. The applicant making the request is the Rupert O'Brien Group, LLC, who purchased the property after approval of the site plan. The applicant proposes to remove an additional 63,341 square feet (or 1.45 acre) of forest, of which 0.65 acres are in an existing Forest Conservation Easement on the adjoining Cross Creek property (approved site plan/final forest conservation plan #8-99048). The applicant proposes to meet the forest conservation ordinance requirements for the forest loss by providing offsite reforestation planting in the amount of 1.19 acres. The amount of additional forest planting was determined in the following manner: 1) the amount needed to meet the standard forest conservation requirements in accord with the revised Forest Conservation worksheet (0.54 acres), and 2) an additional amount as mitigation (0.65 acres) to replace the area cleared within the existing forest conservation easement on the Cross Creek property.

## **BACKGROUND**

The Montgomery County Planning Board approved site plan 820050160 "Towns of Dogwood", on May 20, 2005. Environmental Planning staff approved the final Forest Conservation Plan (FFCP) in May 2005. Conditions of that approval created category I forest conservation easements covering 1.47 of existing high priority forest within the environmental buffer.

In addition to the major changes associated with the sewer outfall, Montgomery County DPS made some additional changes to the final Storm Water Management plan for the property in November 2005. These changes required an additional 4,100 square feet of forest clearing within the Towns of Dogwood site for changes to the SWM outfalls and stream restoration work. The applicant then submitted a revised FFCP to be reviewed by staff. Upon review of the revised FFCP and after the Planning Board' site plan review, staff learned that WSSC rejected the proposal for a pressure sewer system, (shown on all plans which appeared before the Planning Board). This decision then requires a lengthy gravity sewer system extension of ~ 1600 linear feet off-site across the Cross Creek property. The State Highway Administration (SHA) currently owns the Cross Creek property.

The off-site sewer alignment will directly affect forested wetlands, environmental buffers, and contiguous high priority forest currently protected by an existing Category I Forest Conservation easement. The additional amount of forest disturbance is 1.36 acres of forest off-site, of which 0.65 acres is within an existing forest conservation easement.

## **PLANNING BOARD REVIEW AUTHORITY**

The Forest Conservation Regulations requires Planning Board action of certain types of modifications to an approved FCP. Section 113.A.(2) of the Forest Conservation Regulation states:

*Major amendments, which entail more than a total of 5000 square feet of additional forest clearing, must be approved by the Planning Board or Planning Director (depending on who approved the original plan). Notice of each major plan amendment must be given to adjacent property owners as part of the Planning Board or Planning Directory approval processes.*

This amendment proposes the removal of a 63,341 square feet (1.45-acres) of forest both in and adjacent to a category I conservation easement, and therefore constitutes a major amendment requiring Planning Board approval.

## **REVIEW ISSUES**

### Applicant's Position

WSSC is requiring the applicant to use a gravity sewer system to service the property, and DPS is requiring changes to the Stormwater Management (SWM) plan. The proposed amendment to Final FCP 820050160 "Towns of Dogwood" is to comply with requirements from the Washington Suburban Sanitary Commission (WSSC) and Montgomery County Department of Permitting Services (DPS).

### Community Issues

All adjoining and confronting property were notified of the proposed amendment during the fourth week of January 2006. No comments have been received.

### WSSC Position

In a letter dated January 19<sup>th</sup>, 2006 (attached) WSSC states "*To be clear, only gravity service was authorized by WSSC to serve the property. WSSC is not supportive of a grinder pump pressure system to this particular development*".

### Staff Analysis/Position

Staff supports the request to amend the final forest conservation plan 82005016 "Towns of Dogwood" as shown on the plan dated April 20, 2006. After many efforts to minimize impacts. Staff concurs with the applicant's position that additional forest clearing, environmental buffer encroachment, and wetland encroachment is unavoidable and necessary to meet requirements from the WSSC and DPS.

The WSSC requirement for the use of a gravity sewer system, rather than the pressure sewer shown on the approved site plan signature set dated May 20, 2005, will increase the forest

clearing for the project by 59,241 square feet (1.36 acres). This includes clearing of 1.26 acres of forested Environmental Buffers and 0.01 acres of forested wetlands.

While WSSC had referenced their policy regarding the priority for gravity sewer at the DRC meeting on Towns of Dogwood, it was not formally confirmed as the authorized alternative until after the Planning Board hearing. Environmental Planning Staff has informed WSSC's DRC representatives that firm decisions on matters of significant consequence (such as this case) must be made in writing prior to the final action by the Planning Board, so that subsequent revisions can be avoided, and the full implications of development are clearly know at the time of Planning Board consideration.

In this immediate case, a secondary factor not related to the instant application but pertinent to preventing subsequent environmental/forest impacts, was also considered by staff. The applicant's engineer has stated that the gravity sewer extension will also be necessary to serve the adjoining undeveloped piece of land to the southwest known as the Kushner Property, and is designed to service both properties. Staff understands from the applicant's engineers that pressure sewer cannot technically serve the adjoining property, although there is neither WSSC concurrence nor active development application to confirm this.

DPS requirements to adjust two SWM outfalls and a stream restoration component increase priority forest clearing on-site by 4,100 Square feet (0.094 acres). The loss of part of this forest is offset by the improvement, which will result in sustainable stabilization to an existing actively eroding stream channel. However, the length of the proposed SWM outfall pipe is still under review by Maryland Department of the Environment (MDE) and may be further reduced based upon their final permit review.

This final forest conservation plan amendment will increase the amount of total forest clearing from 1.83 acres to 3.18 acres, almost double the originally approved plan. Additionally, the amount of forest cleared in environmental buffers has increased from 0.54 acres to 1.92 acres, more three times the amount on the originally approved plan.

## **STAFF FINDING**

Staff finds that the forest removal and the disturbance to off-site wetlands has been minimized and is necessary to comply with WSSC's requirement of a gravity service for the site and, to a lesser extent, DPS' changes to the SWM plan.

**ATTACHMENTS**

Attachment A – Towns of Dogwood Final Forest Conservation Plan

Attachment B – Attorney General Letter, access for sewer line on Cross Creek Club property  
Owned by the State Highway Administration (SHA)

Attachment C – WSSC Letter, Stating the need for Gravity Sewer

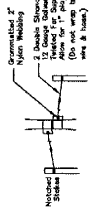
Attachment D – MHG Letter, justification and minimization of sewer alignment.

Attachment A:





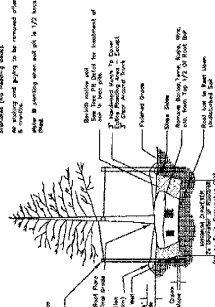




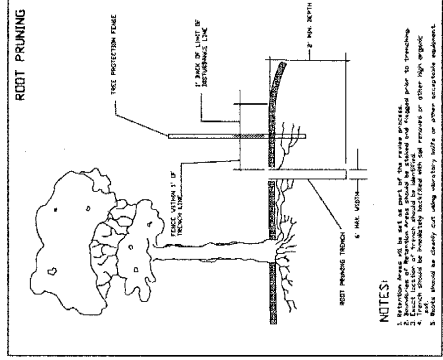
SIGNALING DETAIL

SEQUENCE OF CONSTRUCTION

1. Schedule a pre-construction meeting with the Developer's architect, engineer, contractor, and the Forest Conservation Department. Obtain all necessary permits and approvals. Call at least 48 hours prior to any land disturbance. Call at least 72 hours prior to any tree removal. Call at least 14 days prior to any tree planting.
2. Obtain all necessary permits and approvals from the Forest Conservation Department.
3. Establish a construction site and install a tree protection fence.
4. Clear, grub, and begin excavating and grading.
5. Begin building construction.
6. Begin water & sewer and other utility construction.
7. Begin storm drain construction.
8. Begin earth & slope work.
9. Begin site & slope work.
10. As various areas are completed, place tapered and notched in ground stakes in construction areas to mark trees to be removed. Place stakes in construction areas to mark trees to be removed. Place stakes in construction areas to mark trees to be removed.
11. Upon completion of all construction, conduct a final site inspection with the Forest Conservation Department. Obtain all necessary permits and approvals.
12. Remove all construction materials and equipment from the site. Restore the site to its original condition.

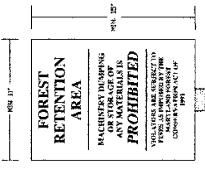


Planting Detail  
As To Be



NOTES

1. Root pruning shall be performed in accordance with the following specifications:
2. Root pruning shall be performed in a systematic manner, starting with the smallest roots and working up to the largest roots.
3. Root pruning shall be performed in a way that does not damage the tree's cambium.
4. Root pruning shall be performed in a way that does not damage the tree's vascular system.
5. Root pruning shall be performed in a way that does not damage the tree's root collar.



FOREST RETENTION SIGN

NOTES

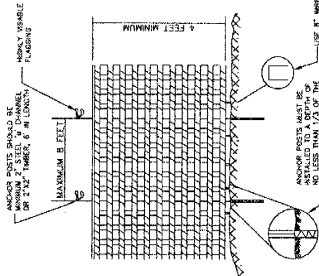
1. Sign shall be placed in a prominent location at the entrance to the retention area.
2. Sign shall be maintained in good condition at all times.
3. Sign shall be replaced if damaged or missing.

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
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FOREST RETENTION SIGN

NOTES

1. Sign shall be placed in a prominent location at the entrance to the retention area.
2. Sign shall be maintained in good condition at all times.
3. Sign shall be replaced if damaged or missing.



TREE PROTECTION FENCE

NOTES

1. Fence posts shall be set in concrete.
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6. Fence posts shall be set in concrete.

FOREST CONSERVATION PLANTING NOTES

1. All trees to be planted shall be of a species native to the area.
2. All trees to be planted shall be of a size suitable for the site.
3. All trees to be planted shall be of a quality suitable for the site.
4. All trees to be planted shall be of a quantity suitable for the site.
5. All trees to be planted shall be of a variety suitable for the site.
6. All trees to be planted shall be of a color suitable for the site.
7. All trees to be planted shall be of a shape suitable for the site.
8. All trees to be planted shall be of a texture suitable for the site.
9. All trees to be planted shall be of a sound suitable for the site.
10. All trees to be planted shall be of a vigor suitable for the site.
11. All trees to be planted shall be of a life span suitable for the site.
12. All trees to be planted shall be of a maintenance suitable for the site.
13. All trees to be planted shall be of a cost suitable for the site.
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28. All trees to be planted shall be of a desirability suitable for the site.
29. All trees to be planted shall be of a feasibility suitable for the site.
30. All trees to be planted shall be of a practicality suitable for the site.

FOREST CONSERVATION PLANTING SCHEDULE

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FINAL FOREST CONSERVATION PLAN

TOWNS OF DOGWOOD  
PARCELS 25 & 79  
5TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

THE MHP FOR 2011 & 2012  
MHC  
MONTGOMERY COUNTY  
10000 Greenleaf Drive, Suite 100  
Bethesda, MD 20814-1000  
www.mhpc.com

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Attachment B:

J. JOSEPH CURRAN, JR.  
*Attorney General*

DONNA HILL STATON  
MAUREEN M. DOVE  
*Deputy Attorneys General*

DENISE FERGUSON  
*Assistant Attorney General*  
*Counsel to the Department of Transportation*

OFFICE OF



**THE ATTORNEY GENERAL**  
**Maryland Department of Transportation**  
State Highway Administration  
707 North Calvert Street  
Baltimore, MD 21202  
(410) 545-0040  
Fax (410) 209-5007

March 6, 2006

EDWARD S. HARRIS  
*Assistant Attorney General*  
*Counsel to the State Highway Administration*

JANET BUSH HANDY  
LINDA D. STROZYK  
*Assistant Attorneys General*  
*Deputy Counsel*

JASON D. COUCH  
CAROLYN M. FRANK  
LAURIE R. HANIG  
MICHAEL P. KENNEY  
SCOT D. MORRELL  
BRYAN L. PERRY  
LIBBY C. RAPPAPORT  
KEVIN REYNOLDS  
*Assistant Attorneys General*

Mr. Sean Ruppert  
Ruppert O'Brien Group, LLC  
Towns of Dogwood, LLC  
4388 Lottsford Vista Road  
Lanham, MD 20706

Mr. Victor Kazanjian  
Kaz Brothers, LC  
2139 Blue Knob Terrace  
Silver Spring, MD 20906

Dear Mr. Ruppert & Mr. Kazanjian,

As discussed on February 15, 2006, State Highway Administration agrees to allow Towns of Dogwoods, LLC to construct a sewer line on the SHA owned property adjacent to your town home communities. SHA will allow this work to be performed on the state owned land by way of permit. This sewer will provide service for both the Towns of Dogwood and the Kushner property. This sewer line will also be sized sufficiently to service that property owned by SHA adjacent to these two properties. In the event that this adjacent SHA property is to be hooked to the line that you shall construct, the property owner shall not be required to reimburse you for any of the costs involved in the construction of this sewer line.

The parties recognize that SHA's property is subject to a pre-existing easement and that you shall be responsible for all mitigation that may be required as a result of the construction of the sewer line.

At this time, your engineers are completing the work needed to identify the legal descriptions of the location of the sewer line construction and the area for a public access easement through the Kushner property sufficient for the construction of public road access to SHA's adjacent property.

Upon receipt of these legal descriptions, SHA will be able to complete the paper work needed for the permit to you and to WSSC for the construction of the sewer line.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Bush Handy".  
Janet Bush Handy

Attachment C:



# WASHINGTON SUBURBAN SANITARY COMMISSION

14501 Sweitzer Lane • Laurel, Maryland 20707-5902

COMMISSIONERS  
Marc P. Lieber, Chairman  
Prem P. Agarwal, Vice Chairman  
Sandra A. Allen  
Stanley J. Botts  
Dr. Juanita D. Miller  
Joyce Starks

GENERAL MANAGER  
Andrew D. Brunhart

DEPUTY GENERAL MANAGER  
Carla Reid Joyner

January 19, 2006

Mr. Robert R. Harris  
Holland and Knight  
3 Bethesda Metro Center, Suite 800  
Bethesda, MD 20814

Re: WSSC Project DA4170Z05  
Towns of Dogwood – Sewer Extension

Dear Mr. Harris:

Thank you for your January 10, 2006 letter updating the progress of Ruppert O'Brien Homes in obtaining a right of way for the authorized gravity extension to serve the Towns of Dogwood. To be clear, only gravity service was authorized by WSSC to serve the property. WSSC is not supportive of a grinder pump pressure system to this particular development.

We have worked with the Maryland-National Capital Park & Planning Commission (M-NCP&PC) on a number of occasions regarding gravity sewer service through various sensitive areas. I believe the matter is resolved for the Towns of Dogwood and that gravity sewer service is acceptable to M-NCP&PC in this case. I understand that WSSC has committed to being flexible in meeting our usual requirements in regard to the required right of way from the State. We will continue to support your efforts for the authorized gravity sewer service with both M-NCP&PC and the State.

Sincerely,

Joseph Zorica  
Chief  
Engineering & Construction Team

cc: Mr. Sean Ruppert ✓  
Mr. Jim Glascock  
Mr. Mike Watkins

RECEIVED JAN 25 2006



Attachment D:

Macris, Hendricks and Glascock, P.A.  
Engineers • Planners • Surveyors • Landscape Architects

9220 Wightman Road, Suite 120  
Montgomery Village, Maryland  
20886-1279

Phone 301.670.0840  
Fax 301.948.0693

[www.mhgpa.com](http://www.mhgpa.com)



March 6, 2006

Mr. Steve Federline  
Environmental Planning Section  
M-NCP&PC  
8787 Georgia Avenue  
Silver Spring, MD 20909

Re: Towns of Dogwood – Outfall Sewer  
MHG Project No. 03-246

Dear Mr. Federline:

As you requested, this letter has been prepared to support the alignment of the proposed gravity outfall sewer that will serve the referenced development. The sewer has been designed along the north side of the stream that flows across the Maryland State Highway Administration property for a distance of approximately 1,600 feet. The design accommodates the needs of the Towns of Dogwood located on the north side of the stream, as well as the development of the Kushner property located on the north side which will be submitted for review in the near future by another design firm.

Outfall sewer mains are generally designed in the lowest areas near streams in order to provide sewer service to developable areas on both sides of the stream. The sewer is designed and placed close to the stream so that the depth of the sewer can be minimized while also providing the possibility of a gravity main crossing under the stream. Providing this gravity stream crossing eliminates the need for another gravity sewer main on the opposite side of the stream. This second outfall would clearly be additional clearing that would not be necessary. Designs that locate outfall sewer mains outside of the stream valley buffers as suggested by your staff, not only creates the construction of deeper sewer but opens the possibility of the need for another sewer outfall on the opposite side of the stream to provide service as the other side develops.

During the design of the sewer to serve our project, this office reviewed the development potential of the sewer shed. In this case we found that most of the area has been developed. Further, the area immediately to the south of the stream is the proposed alignment of the Inter-County Connector. Our office identified one project that has development potential and, therefore, the need for sewer service in the future. That property is the Kushner property located immediately to the south of the Towns of Dogwood. We have coordinated with their design

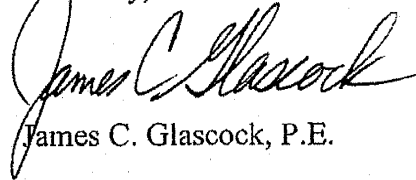


Mr. Steve Federline  
M-NCP&PC  
Re: Towns of Dogwood  
March 6, 2006  
Page 2 of 2

engineer and located Manhole #8 at the location and elevation that they determined would be needed to serve their project. This is the only area along the outfall where the proposed sewer is located within a non-tidal wetland area. As you can see from the attached plan, the sewer has generally been located a significant distance from the stream with depths kept relatively shallow. It has also been designed to provide two other locations (Manholes #1 and #4) for stream crossings should the need arise.

If you need further explanation regarding the design we would be willing to meet with you to further discuss this matter.

Sincerely,



James C. Glascock, P.E.

cc: Sean Ruppert