

JUN 1 2012



## MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 12-54

Forest Conservation Plan No. 82005024E

Project Name : National Park Seminary-WSSC Site 5-11 Stream Channel Rehabilitation

Date of Hearing: May 17, 2012

### RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review forest conservation plan applications; and

WHEREAS, on July 13, 2011, the Washington Suburban Sanitary Commission, also known as WSSC ("Applicant") filed an application for approval of a forest conservation plan amendment on approximately 31 acres of land as shown on the approved final forest conservation plan located as being located southeast of the I-495 Beltway and the Linden Lane overpass ("Property" or "Subject Property") in the North & West Silver Spring Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan amendment No. 82005024E, National Park Seminary-WSSC Site 5-11 Stream Channel Rehabilitation ("Forest Conservation Plan amendment" or "Application")<sup>1</sup>; and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board dated May 4, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 17, 2012, the Planning Board held a public hearing on the Application ("the Hearing"), and at the Hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

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<sup>1</sup> Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

Approved as to  
Legal Sufficiency:

A handwritten signature in black ink, appearing to be "M. [unclear]".

M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on May 17, 2012, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Dreyfuss; seconded by Commissioner Anderson; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor;

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVED Forest Conservation Plan amendment No. 82005024E on the Property, subject to the following conditions:

1. Applicant to submit a revised final forest conservation plan amendment and obtain staff approval prior to the commencement of any clearing or grading activities. The revised plan shall address the following items:
  - a. Re-label the "No Vehicular Zones" to remove reference to a limit of disturbance (LOD), since no disturbance is allowed within the zone.
  - b. Include a provision for the installation of a mulch path within the "No Vehicular Zones" if necessary, to prevent disturbance to the groundcover.
  - c. Include plan notes which clarify that no tree removal is allowed with the "No Vehicular Zones".
  - d. Clarify root pruning notes and details where applicable to specify that the roots of the save trees shall not be severed by the installation of the sediment control devices.
  - e. Revise legend notes/descriptions to distinguish between WSSC easements and forest conservation easements.
  - f. Expand the planting zones and associated notes and tables to provide reforestation plantings within the disturbed portions of the WSSC easements.
  - g. Increase the tree sizes to specify 2" caliper stock.
  - h. Add the following note to appropriate plan sheets:

*In the circumstances where trees are to be removed, the stumps shall remain in place to prevent disturbance to adjacent vegetation and any potential archeological resources. However, stumps directly within areas of soil excavation may be removed if absolutely necessary.*
2. Applicant to obtain services of an ISA certified arborist, or a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the saved trees.
3. The final sediment and erosion control plan must match the limit of disturbance as shown on the Amended Final Forest Conservation Plan and be consistent with its recommendations for tree protection.

4. Applicant to execute a maintenance and management agreement for the reforestation plantings.
5. Prior to the submittal of a final forest conservation plan amendment, the Applicant must submit to the Planning Department written authorization from the property owner indicating the owner's consent to the amendment.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference; and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features.*

A. Forest Conservation

The Board finds that with the conditions of this Resolution, the Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

B. Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22-A-12(b)(3) of the County Code ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of, or CRZ impact to 226 Protected Trees as identified in Table 1 in the Staff Report. In accordance with Section 22-A-21(a) of the County Code, the Applicant has requested a Variance and alleged that it would suffer unwarranted hardship without a Variance to remove or disturb the CRZ of the Protected Trees and that failure to grant the Variance would deny the Applicant reasonable and significant use of the Subject Property for which the variance is requested.

The Board made the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The maintenance of public water resources and sewer infrastructure is the responsibility of public agencies in executing their duties to the community. Therefore, the variance request would be granted to any Applicant in a similar situation.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

Due to the nature of stream work and locations of the infrastructure, temporary impacts during construction to specimen and/or historic trees are unavoidable and anticipated. Without these unavoidable impacts it would not be possible to conduct this stream rehabilitation project and infrastructure repair. Measures have been taken to avoid impacts as much as possible and mitigation to reduce the effects of the impacts to subject trees has been included.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed restoration work and infrastructure maintenance/repair on the subject property and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. Conversely the project is designed to improve water quality by rehabilitating an exposed and degraded sanitary sewer main within the stream channel, and repairing a leaking waterline which is actively discharging (chlorinated) water in the stream. The work will prevent the potential failure of the sewer system which would otherwise result in severe water quality degradation. Additionally, the water quality will improve by the repair of the actively discharging water pipe and stabilization of the eroding stream channel. All stream channel work will be carried out using a stream flow pump-around to temporarily dry

the working area with the stream channels and prevent sediment laden discharges. All activities in the stream channel will be conducted in accordance with appropriate permits, processes, and guidelines in coordination with the Army Corps of Engineers and the Maryland Department of the Environment. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

BE IT FURTHER RESOLVED, that the Planning Board strongly urges the the Applicant to take every reasonable precaution to avoid adversely impacting any historic resources on the property, including pieces of historic transportation infrastructure, and for this purpose urges the Applicant to invite representatives of the Maryland Historic Trust and the Commission's Historic Preservation Division to attend the pre-construction meeting to provide input on any necessary precautions; and

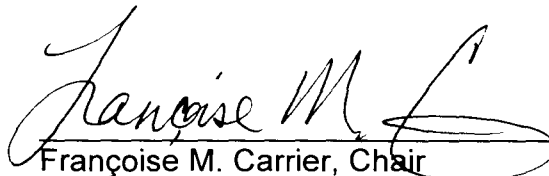
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is JUN 1 2012 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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#### CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor of the motion, and with Commissioner Presley absent, at its regular meeting held on Thursday, May 24, 2012, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board