






September 22, 2006

MEMORANDUM**TO:** Montgomery County Planning Board**VIA:** Faroll Hamer, Acting Director,
Department of Park and PlanningRose Krasnow, Chief
Development Review DivisionMichael Ma, Supervisor
Development Review DivisionGwen Wright, Acting Chief 
Countywide Planning DivisionJorge A. Valladares, P.E. Chief 
Environmental Planning, Countywide Planning DivisionStephen Federline, Supervisor 
Environmental Planning, Countywide Planning Division**FROM:**  Candy Bunnag, Planner Coordinator, Environmental Planning
Countywide Planning Division (301) 495-4543**SUBJECT:** Continuation of hearing on civil citation #DRD0000003, administrative
civil penalty #05-02 and administrative order in accordance with Chapter
22A of the Montgomery County Code (Forest Conservation Law) for:
Mr. Anthony Mereos, 17900 Trundle Road, Dickerson, MD. 20842
(Parcel P120)

STAFF RECOMMENDATIONS

Staff recommends the following:

1. Do not accept the settlement offer proffered by the Respondent. (The settlement offer consists of dedication of the subject property, with no site

restoration or reforestation by the Respondent and forgiveness of penalties by all enforcement agencies.)

2. Impose an administrative civil penalty on the Respondent. The administrative civil penalty should be \$1.00 per square foot of forest cleared (83,000 square feet or 1.9 acres) minus the cost for reforestation of the cleared area only. Costs for the site restoration work, such as removing fill material to recreate wetland conditions, and costs for preparation of plans should not be deducted from the administrative civil penalty. Cost estimates for reforestation, prepared by a landscape contractor, must be submitted to staff by January 5, 2007 for review and approval. The administrative civil penalty (\$83,000 minus the estimate) must be paid by the applicant no later than February 1, 2007.
3. Amend the deadlines and items to be covered for plans to be submitted as defined in the administrative order for corrective action, dated March 2, 2006 as follows:
 - a. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) must be submitted by November 15, 2006. The NRI/FSD must show the extent of forest, wetlands, streams, seeps, associated buffers, and other environmental features that existed before and after the clearing activities on and off the subject site where clearing occurred.
 - b. A Forest Conservation Plan for the subject property and cleared areas off the site must be submitted by December 15, 2006. The Forest Conservation Plan must include reforestation of the cleared areas and must be consistent with any corrective actions and permits required by the U.S. Army Corps of Engineers (COE), Maryland Department of the Environment (MDE), and Montgomery County Department of Permitting Services.
 - c. Cost estimates for reforestation, prepared by a landscape contractor, must be submitted to staff by January 5, 2007 for review and approval.
 - d. Planting per the approved plan for the cleared areas on and off the subject site must be implemented by March 30, 2007.
 - e. The environmental buffers on the property shall be placed in a Category I conservation easement. The easement must be recorded in the land records by December 15, 2006.

INTRODUCTION

This hearing is a continuation of two Planning Board hearings that were held on June 15, 2006 and July 27, 2006. This staff memorandum is an update to the staff memoranda of June 2 and July 13, 2006. The two memoranda are included in this staff packet as Attachment 10.

The current memorandum includes highlights of the two Planning Board hearings and staff's recommendations on the civil administrative penalty, amendments to the

administrative order for corrective action, and the Respondent's proffered settlement offer.

PREVIOUS PLANNING BOARD HEARINGS

June 15, 2006 Hearing

- The Respondent wanted the hearing to be deferred until a trial at District Court could be conducted. The Planning Board denied the request. The Board determined that the Forest Conservation Law provides several type of enforcement actions for a violation that may be pursued independently of each other. The Board did not find any grounds to defer the hearing for the civil administrative penalty.
- Staff recommended a \$1.00 per square foot civil penalty rate, which was the highest rate allowed in the Forest Conservation Law at the time that the forest clearing activity was identified. Staff's recommendation was based on the following assertions: the Respondent was responsible for the forest clearing; he had entered into a contract to purchase or owned the subject property at the time of the clearing; he was aware of the County Forest Conservation Law; and he had prior knowledge that he needed to contact M-NCPPC and other regulatory agencies before any clearing could occur on the site. Further, the clearing of about 1.9 acres of forested wetlands is large and egregious and can significantly impact the water quality and habitat conditions of this environmentally-sensitive area.
- The Respondent's position is that he did not clear the forest. He stated that he was only trying to "clean up" trees and debris that had already been cut and cleared by someone else and that he was directed to stabilize and "clean up" the property by inspectors from the Montgomery County Department of Permitting Services (DPS) and Maryland Department of the Environment (MDE). He stated that he did not know who cleared the forest and that between the time that he entered into a contract to purchase the property and the time that he met with the DPS inspector, he rarely visited the property.
- Six individuals testified.
- Planning Board members raised various questions. These questions and Planning staff's responses are provided in the July 13th staff report.
- The Planning Board Chairman determined that the public record would remain open until the close of business June 28, 2006.

July 27, 2006 Hearing

- Staff presented and analyzed additional written information that was submitted into the public record by close of business June 28, 2006 to respond to the Planning Board's questions regarding the alleged violation.
- The Respondent also presented information to indicate that he was not responsible for the forest clearing or other activities on the subject site.
- The Planning Board found the Respondent guilty of violating the Forest Conservation Law. The Board did not find that the forest clearing activities were willful. The Board indicated that there was no evidence that clearly shows that the Respondent fully understood the potential effects and penalties for violating the Forest Conservation Law prior to clearing the forest, particularly since he is not a developer.
- The Planning Board indicated that the staff's recommended administrative civil penalty of \$1.00 per square foot of forest clearing, or \$83,000, plus the costs of restoring the site, was too large. The Board would consider the settlement offer set forth by the Respondent only after staff's full evaluation and recommendations on the offer. Environmental Planning staff indicated that it had not seen the settlement offer and could not comment on it at the hearing.

STAFF ANALYSIS

Respondent's Settlement Proposal

The Respondent's settlement proposal is stated in an email dated June 27, 2006 from Mr. Whittaker, the Respondent's attorney, to Marshall Lammers, M-NCPPC legal staff (Attachment 1). The proposal is to donate the subject property to the state of Maryland or Montgomery County in return for all government agencies dismissing their actions against Mr. Mereos related to violations of Federal, Maryland, and County laws.

Staff did not find Mr. Whittaker's email to be a formal settlement proposal and requested a formal written settlement offer (Attachment 2). Mr. Whittaker responded that the June 27th email is the settlement offer (Attachment 3), and that the subject property could be donated to the U.S., the state of Maryland or Montgomery County, if all government agencies dismissed their actions against Mr. Mereos.

The Respondent does not propose to restore the site as part of the settlement offer, but wants all the enforcement agencies to dismiss all enforcement actions against him. Staff recommends against accepting the settlement offer for the following reasons:

- Staff believes the Respondent must be held responsible for restoring the site and adjacent land. He has been found by the Planning Board to be guilty for the forest clearing activities on and adjacent to the subject site. He is also the violator identified in the Maryland Department of the Environment Site Complaint (No. SC-O-06-0233) of January 31, 2006, and the U.S. Army Corps of Engineers'

letter of January 27, 2006, and the Cease and Desist/Restoration Order of January 31, 2006 (Attachments 4, 5, and 6).

If M-NCPPC becomes the new land owner, it would ultimately be responsible for restoring the site. Staff has held discussions with several agencies' enforcement personnel to determine the implications of M-NCPPC ownership of the subject site. Both the Maryland Department of the Environment (MDE) and the U.S. Army Corps of Engineers (COE) indicate that if the property is not restored by the violator, the land owner is ultimately responsible for restoring the land to meet MDE and COE requirements. The goal for these two agencies is the restoration of the site. If M-NCPPC becomes the property owner, and the enforcement agencies cannot enforce the restoration requirements on the Respondent, for whatever reasons, then M-NCPPC would be required to restore the site following the normal permit processes (i.e., not through enforcement actions).

The Montgomery County Department of Permitting Services (DPS) inspector has indicated that the site, as of August 2006, is stabilized and is currently in conformance with the County Sediment Control Law. However, if work is required by other agencies to regrade or haul out material as part of the restoration of the site, the work must be approved by DPS before such grading activities can start.

Parks staff, in its evaluation of the possible ownership of this site (Attachment 7), indicate that the site should be fully restored to the satisfaction of all regulatory agencies, and any outstanding regulatory actions against the Respondent should be resolved before M-NCPPC considers taking ownership of the site.

- Restoration costs could be significant. Estimates for the cost for restoration of forest can vary greatly. Some low estimates for forest planting that staff has obtained are in the range of \$11,000 to \$13,000 per acre. The fee-in-lieu rate under the Forest Conservation Law is \$39,204 per acre. Estimates for wetland restoration costs are very approximate and range from \$114,000 to \$133,000, which may include the costs of replanting. Staff believes that M-NCPPC would be in violation of its public trust if it agreed to incur the significant costs of restoring land that it did not clear, grade, and fill. The precedent alone could create staggering future liabilities to M-NCPPC for no added benefit, and preclude funding of other worthy projects done in the public benefit. The Respondent should bear the full responsibilities and costs of restoring the site to a forested wetland, as required by MDE, COE, and M-NCPPC.

Staff's Re-evaluation of Its Recommended Administrative Civil Penalty

Staff originally recommended that the administrative civil penalty should be set at \$1.00 per square foot of forest cleared, or \$83,000 (area of forest cleared measured to be approximately 83,000 square feet or 1.9 acres). Staff also recommended that the costs for

restoration should not be deducted from the civil penalty. The Planning Board had found that staff's recommendation for the penalty plus the costs for restoration were too high. It found that the Respondent did not likely know the specific requirements of the Forest Conservation Law since he is an individual property owner and not a developer.

Staff recommends that the administrative civil penalty be kept at \$1.00 per square foot of forest cleared (\$83,000) for the following reasons: the Respondent was responsible for the forest clearing, as determined by the Planning Board at the July 27th public hearing; the clearing of approximately 1.9 acres of forested wetlands is large and egregious and can significantly impact the water quality and habitat conditions of this environmentally-sensitive area.

However, because the Planning Board had found that the Respondent was not reasonably expected to know the specific requirements of the Forest Conservation Law prior to conducting the illegal forest-clearing activities, staff recommends that the costs for returning the 1.9 acres of cleared area into forest should be deducted from the administrative civil penalty of \$83,000.

Staff recommends that only the costs for reforestation should be deducted from the administrative civil penalty. Staff does not recommend that the costs for work to restore the site back into a wetland (i.e., removing fill dirt that was dumped on the property, regrading the site to its original elevations, etc.) be deducted from the administrative civil penalty since that part of the restoration work is required as corrective action covered by separate laws under State and Federal jurisdiction for wetlands protection. From a practical perspective, to do otherwise would lessen the penalties for egregious activities that violate multiple environmental laws. Such a precedent is foreboding.

The costs for the preparation of a Natural Resource Inventory/Forest Stand Delineation and Forest Conservation Plan, as required in the Administrative Order dated March 2, 2006, should also not be deducted from the Civil Administrative Penalty. Such plans are normally required under the Forest Conservation Law and would have been prepared and submitted for M-NCPPC review and approval prior to the start of forest clearing activities of this size, had the Respondent followed due process.

To summarize, staff recommends an administrative civil penalty of \$83,000 with a deduction for the costs of reforestation only. If \$75,000 for planting and maintenance costs are used (using a rate close to the fee-in-lieu rate of \$39,204), then staff's recommendation would result in the Respondent paying \$8000 for the administrative civil penalty and \$75,000 for reforestation. If reforestation costs are lower, then the administrative civil penalty would be higher (for example, if reforestation costs \$24,700, or \$13,000 per acre, then the penalty would be \$58,300).

Administrative Order for Corrective Action

Consistent with Section 22A-17(a) of the Forest Conservation Law, the Planning Director issued an administrative order for corrective action, including the preparation and

submission of a NRI/FSD and Forest Conservation Plan, on March 2, 2006 (Attachment 8). This section of the law is found in Attachment 9.

At the time that the administrative order was issued, staff had estimated the clearing area to be on the subject property at 17900 Trundle Road. It was also anticipated that the case would be decided earlier in 2006, and the corrective actions included dates for completion of specific actions which have not been met because of the continuation of the case. Therefore, staff recommends that the dates for these specific actions should be modified to reflect the current schedule of this case. The administrative order for corrective action should also be revised to reflect the fact that staff and the Planning Board have determined that forest clearing activities extended off of the subject site.

Other Information

Parks staff has requested a real estate appraiser's evaluation of the value of the subject property both as open space in a park and as developable land. This information was not available for staff to include in this memorandum, but it will be available for the Planning Board at the public hearing.

ATTACHMENT 1

Responent's settlement proposal

Bunnag, Candy

From: Lammers, Marshall
Sent: Wednesday, September 13, 2006 8:54 AM
To: Bunnag, Candy
Subject: FW: Settlement offer - 17900 Trundle Road, Mereos

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

From: Shawn C. Whittaker, Esq. [mailto:shawn@whittaker-law.com]
Sent: Wednesday, June 28, 2006 9:20 AM
To: Lammers, Marshall
Subject: Re: Settlement offer - 17900 Trundle Road, Mereos

Anyone who wants it
Shawn C. Whittaker, Esquire
The Law Office of Shawn C. Whittaker
9055 Comprint Court, Suite 340
Gaithersburg, Maryland 20877-1310
301-208-9114 voice
301-208-0362 fax
shawn@whittaker-law.com

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

From: "Lammers, Marshall" <Marshall.Lammers@mncppc-mc.org>
Date: Wed, 28 Jun 2006 09:10:33
To: "Shawn C. Whittaker" <shawn@whittaker-law.com>
Subject: RE: Settlement offer - 17900 Trundle Road, Mereos

Shawn,

I'll will consult with our parks and planning staff on whether we (as in our Commission) can acquire the property at this time so that we can fully consider your offer. Our agency can only settle the matter of Forest Conservation Law issues though. We can't bind the Department of Permitting Services or any of the other County and State Agencies. Please keep me updated as to what government/agency Mr. Mereos is proposing to convey title.

[Lammers, Marshall]

From: Shawn C. Whittaker [mailto:shawn@whittaker-law.com]
Sent: Tuesday, June 27, 2006 1:31 PM
To: Lammers, Marshall
Cc: 'Mr anthony mereos'; MJHutt@lercheearly.com
Subject: Settlement offer - 17900 Trundle Road, Mereos

FOR SETTLEMENT PURPOSES ONLY

Marshall,

My client, Anthony Mereos, will donate the property to the State of Maryland (or the County) in return for the various governmental agencies dismissing their actions against Mr. Mereos. Mereos has spent significant sums on trying to work with M-NCPCC and defending the actions against him. He wanted the property to build a home and was told by the County he could build. Now, everyone has told him he can't build. So to him the property is costing him significant amounts of money and stress and he would just like to get rid of the property. Thank you for your prompt attention to this matter.

Shawn C. Whittaker, Esquire
The Law Office of Shawn C. Whittaker
9055 Comprint Court, Suite 340
Gaithersburg, Maryland 20877-1310
301-208-9114 voice
301-208-0362 fax
shawn@whittaker-law.com: <mailto:shawn@whittaker-law.com>
www.whittaker-law.com: <http://www.whittaker-law.com>

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Version: 7.1.394 / Virus Database: 268.9.5/376 - Release Date: 6/26/2006

ATTACHMENT 2

M-NCPPC staff's request for a formal written settlement offer

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

August 24, 2006

Mr. Shawn C. Whittaker
Suite 340
9055 Comprint Court
Gaithersburg, Maryland 20877-1310Re: Planning Board hearing for
Anthony Mereos, 17900 Trundle
Road, Dickerson, Md. 20842

Dear Mr. Whittaker:

This letter is to notify you that the above referenced Planning Board hearing has been moved to October 5, 2006. Please visit our website www.mc-mncppc.org for current information.

The Board has stated that it is willing to consider a written settlement proposal after it has been evaluated by Staff. Staff is willing to evaluate any formal written settlement offer that you submit; however, Staff must submit its evaluation in a report by September 11, 2006 in order to present that evaluation to the Board during the scheduled October 5th hearing. As of the date of this mailing Staff has received no formal written settlement offer for the subject property from your office.

If you should have any questions please contact Mr. Marshall Lammers at 301-495-4646. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Doug Johnsen', written over a horizontal line.

Doug Johnsen, RLA
Planner Coordinator
Development Review DivisionCc: Candy Bunnag
Marshall Lammers

ATTACHMENT 3

Response from Mr. Shawn Whittaker, Respondent's attorney

THE LAW OFFICE OF
SHAWN C. WHITTAKER, P.C.

SUITE 203
902 WIND RIVER LANE
GAITHERSBURG, MARYLAND 20878
PHONE (240) 477-1677
FAX (240) 477-1679



SHAWN C. WHITTAKER
ADMITTED IN MD, VA, DC
shawn@whittaker-law.com

JARRETT L. LEVITSKY
ADMITTED IN MD
jarrett@whittaker-law.com

September 1, 2006

Doug Johnsen
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Anthony Mereos, 17900 Trundle Road, Dickerson, MD 20842

VIA FIRST CLASS MAIL

Dear Mr. Johnson:

This letter is written in respond to your August 24, 2006 letter requesting that Anthony Mereos provide a "formal written settlement offer." On June 27, 2006, I did communicate in writing a settlement offer to Marshall Lamars, Esq. Nonetheless, Mr. Mereos, will donate the property to the State of Maryland, the County, or the United States, in return for the various governmental agencies dismissing the actions against Mr. Mereos. Mr. Mereos has spent significant sums of money attempting to settle this matter with M-NCPPC and in defending the plethora of actions against him. Mr. Mereos purchased the property after obtaining a letter from the County stating that he could build a single-family home on the property. Now, it is clear that Mr. Mereos cannot build on the property. Thus, the property is not only worthless to Mr. Mereos, but is costing him significant time and money in defending himself. Thus, Mr. Mereos is willing to do what is necessary to resolve this matter.

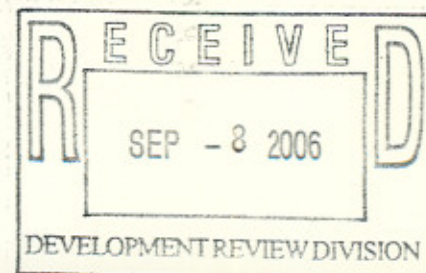
We look forward to the County's response to our settlement offer. In the interim, do not hesitate to contact me with any further questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn C. Whittaker".

Shawn C. Whittaker

CC: Anthony Mereos
Tracy A. McLeaf



ATTACHMENT 4

Maryland Department of the Environment Site Complaint No. SC-O-06-0233

MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard ● Baltimore Maryland 21230 -1708
(410) 537-3000 ● 1-800-633-6101 ● <http://www.mde.state.md.us>

SITE COMPLAINT

SITE COMPLAINT NUMBER: SC-O-06-0233

Date Issued: 01/31/06

NAME OF VIOLATOR: Anthony Mereos

ADDRESS: P.O. Box 206

CITY: Poolesville MD 20837-0206

TELEPHONE: 301-518-4735

FACILITY NAME : Anthony Mereos property, 17900 Trundle Road, Dickerson MD 20842

PERMIT:

VIOLATION TYPE: Non-tidal Wetlands; Article – Environment, Section 5-906.
Waters & Waterway; Article – Environment, Section 5-503

SPECIFICALLY: Cleared and grubbed trees were pushed and piled into a stream channel, stream channel depth has been altered (excavated). A regulated nontidal wetland in excess of an acre in area was cleared, grubbed, and graded without having permit approval. Imported dirt has been brought onto site and spread in the regulated non-tidal wetland area. All site work/disturbance in the 100-year floodplain, non-tidal wetlands, and non-tidal wetlands buffer areas was conducted without required authorization.

YOU ARE HEREBY ADVISED THAT THE FOLLOWING CORRECTIVE ACTIONS ARE NEEDED. COMPLIANCE WITH THE CORRECTIVE ACTIONS CONTAINED HEREIN DOES NOT PRECLUDE THE DEPARTMENT FROM IMPOSING FURTHER REQUIREMENTS. IN ADDITION, THE DEPARTMENT RESERVES THE RIGHT TO IMPOSE SANCTIONS OR PENALTIES FOR THE UNDERLYING VIOLATION(S).

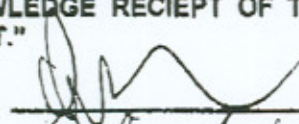
Have regulated nontidal wetlands, nontidal wetland buffers, and 100-year floodplain delineated throughout the site in order to implement a site restoration plan. Generate site restoration plan by a qualified consultant and submit it for review to the Maryland Department of the Environment Nontidal Wetlands and Waterway Division within 60 days. Restoration plan should address bringing disturbed site back to original grade/elevations – to include stream channel, replanting site with representative plant species that were removed during clearing/grading operation in conjunction with Maryland National Capital Parks and Planning Commission's requirements, and the removal of trees piled up in the stream channel from site clearing and grubbing operation. Also, remove imported dirt from site. No further work is to be conducted in the regulated area until all violations have been resolved and all appropriate permits have been obtained.

THE ABOVE DESCRIBED VIOLATION(S) MAY RESULT IN THE DEPARTMENT SEEKING LEGAL SANCTIONS AGAINST YOU, INCLUDING THE IMPOSITION OF CIVIL AND/OR CRIMINAL PENALTIES. CONTINUATION OF THE VIOLATION(S) OR FAILURE TO TAKE THE CORRECTIVE ACTIONS DESCRIBED ABOVE MAY RESULT IN ADDITIONAL SANCTIONS OR PENALTIES FOR THE UNDERLYING VIOLATION(S).

PLEASE BE ADVISED THAT YOU ARE ENTITLED TO A HEARING BEFORE THE ADMINISTRATION AS A RESULT OF THIS ORDER. IF YOU WISH TO SCHEDULE A HEARING ON THIS MATTER, THE ADMINISTRATION MUST BE SO NOTIFIED IN WRITING WITHIN TEN (10) DAYS.

"I HEREBY ACKNOWLEDGE RECEIPT OF THIS SITE COMPLAINT BY MY SIGNATURE, WHICH IS NOT AN ADMISSION OF GUILT."

PERSON ISSUED TO:



TITLE:

Owner

ISSUED BY:



PHONE:

301-665-2893

Inspector Name

AUTHORIZED BY: Kendi P. Philbrick
Secretary
Department of the Environment

ATTACHMENT 5

U.S. Army Corps of Engineers' letter, January 27, 2006



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1716
BALTIMORE, MD 21203-1716

JAN 27 2006

Operations Division

Mr. Anthony Mereos
Post Office Box 206
Poolesville, Maryland 20837

Dear Mr. Mereos:

This is in reference to CENAB-OP-RMS(MEREOS, ANTHONY)06-00909-19. A recent field investigation disclosed that you have cleared approximately 1.8 acres of forested, nontidal wetlands adjacent to an unnamed tributary to Broad Run, waters of the United States, channelized approximately 300 linear feet of the unnamed tributary to Broad Run and deposited woody debris in an additional 200 linear feet of the same tributary. The work is located on your property at 17900 Trundle Road, Dickerson, Montgomery County, Maryland.

Records in this office indicate that neither a Department of the Army permit nor a letter of permission authorizing this work was issued by this office. The placement of fill material in waters of the United States or in adjacent wetlands without prior approval of plans by the Department constitutes a violation of Section 404 of the Clean Water Act.

No further work is to be performed at this or any other location in a navigable waterway or in wetlands without compliance with the law. Violations of Section 10 are subject to prosecution by the Attorney General of the United States.

If you have any questions concerning this matter, you may call Ms. Tracy McCleaf of this office at (410) 962-6029.

Sincerely,

Sandra A. Zelen
Enforcement Program Manager

cc: Rich Wolters, MDE Hagerstown Office
USEPA, Attn: Jeff Lapp
USFWS
DNR

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ATTACHMENT 6

**U.S. Army Corps of Engineers Cease and Desist/Restoration Order,
January 31, 2006**



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

⊕ Mr Merceus has no knowledge of where fill material came from or who discharged and stabilized

REPLY TO ATTENTION OF

Operations Division

Subject: CEASE AND DESIST / RESTORATION ORDER ⊕

Issued To: Anthony Merceus Phone: () _____

Address: PO Box 246
Padesville, MD 20837

On 1/31/06 an investigation was conducted and confirms that a violation of law has occurred.

You have discharged approximately 7200 cu ft of fill material in wetlands adjacent to an unnamed tributary to Broad Run. Prior to fill discharge, approximately 1.8 acres of wetlands had been cleared and the tributary impacted as detailed in correspondence dated 27 Jan 2006 (enclosed).

at your property, located at 17900 Truitts Road, near Padesville in Montgomery Township, Montgomery County, MD.

Any work performed, including the placement of fill material in waters of the United States or in adjacent wetlands without prior approval by the Department of the Army, constitutes a violation of ____: Section 10 of the River and Harbor Act, Section 404 of the Clean Water Act, ____: or both.

You are hereby ordered to stop any further work at this or any other location in navigable waters or Waters of the United States, including wetlands, without compliance with the law.

Violations of Section 10 and/or Section 404 are subject to prosecution by the Attorney General of the United States.

Enforcement Officer Tracy McCleaf Phone # 410-962-6029

Date 1/31/06 Time _____

Resolution / Restoration Required submit restoration plan in accordance with Montgomery County Park and Planning and ADCS requirements.

This plan should be submitted within 60 days of the date of this notice.

Received by [Signature] Date _____ Time _____

I have read and agree to perform the restoration as outlined above (and/or on attachment A).

Date: _____

I have read the restoration outlined above (and/or on attachment A), but do not agree to perform the work.

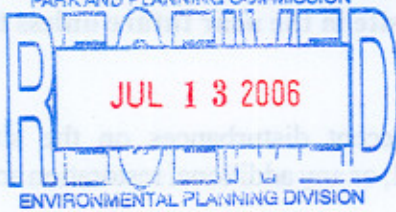
Date: _____

⊕ This letter is a follow-up action for Cease and Desist order dated 1/27/06.
(Copy Tracking # 200600909)

ATTACHMENT 7

M-NCPPC Parks Department staff memorandum regarding potential acquisition of
subject property

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



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

July 11, 2006

MEMORANDUM

TO: Marshall Lammers, Associate Legal Counsel

FROM: Brenda Sandberg, Legacy Open Space Program Manager *BCC*

SUBJECT: Potential acquisition of 17900 Trundle Road

The Legacy Open Space program was asked to evaluate a property located at 17900 Trundle Road (Tax Map BT32, Parcel P120) for potential addition to the park system. The parcel consists of 77,972 square feet in the Broad Run watershed, the entirety of which appears to be wetland. A headwater tributary of Broad Run runs through the property. The property has recently been subjected to clearing and some fill activities. Legacy Open Space and Park Acquisition staff visited the site to evaluate its potential as parkland.

The Broad Run stream system is identified in the *Legacy Open Space Functional Master Plan* (2001) as a Natural Area of Countywide Significance. The headwaters of this stream lie entirely on Triassic sedimentary bedrock derived soils and the stream has good water quality and a diversity of aquatic life. After adoption of the Functional Master Plan, Legacy Open Space staff started to evaluate the watershed to identify the most important areas for preservation, including potential areas for conservation easements and a stream valley park. In 2002, a 106-acre parcel was donated to the Commission in the lower reaches of the watershed as the first piece of the Broad Run Stream Valley Park.

The staff evaluation of the Broad Run watershed has identified the wooded wetland complex of which this parcel is a part as one of the most sensitive and important resources in the watershed. The parcel lies along a stream that drains a large upland depression wetland of countywide biologic and hydrologic significance. This property is within an area that likely would be identified for the Broad Run Stream Valley Park as further planning progresses.

However, even though the site is potentially within the acquisition boundary for the future alignment of the Broad Run Stream Valley Park, several factors weigh against acquisition of this parcel at this time, whether the site is purchased or donated to the park system. **First**, the parcel is very small (under 2 acres), is not likely to develop due to the extent of wetlands, and acquisition of such a small isolated piece before the planning has been completed for the entire park system may not be practical. **Second and more importantly**, the recent clearing and filling activities on the property may create legal obligations for restoration under several regulatory categories (for example, wetlands violations under the auspices of the Army Corps of Engineers, sediment and erosion control violations under Montgomery County regulations, etc.).

Ultimately, I do not recommend acquisition of the site in the near future unless the following two conditions are met beforehand:

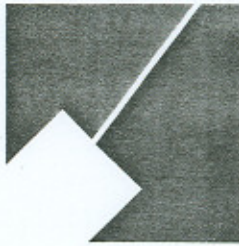
- 1) The site is fully restored to address the recent disturbances on the site, including reforestation, wetlands restoration, fill removal, or any additional restoration actions that any regulatory agency may require.
- 2) Any regulatory activity resulting from the recent clearing activity is fully resolved with the regulatory agencies so the Commission would not be liable for any fines or restoration activities.

Please contact me if you need any additional information about our evaluation of this site or the study of the Broad Run watershed.

cc: Candy Bunnag, Environmental Planning ✓
Bill Gries, Park Acquisition
Dom Quattrocchi, Legacy Open Space

ATTACHMENT 8

Administrative order for corrective action, March 2, 2006



NOTICE OF ADMINISTRATIVE ORDER
IN ACCORDANCE WITH CHAPTER 22A OF
THE MONTGOMERY COUNTY CODE

March 2, 2006

Mr. Anthony A. Mereos
P.O. Box 206
Poolesville, Maryland 20837

Re: 17900 Trundle Road
Dickerson, MD 20842

Dear Mr. Mereos:

As you are aware, on September 1, 2005, an inspector for the Maryland-National Capital Park and Planning Commission (M-NCPPC) identified a recent clearing of forest of about 83,145 square feet (1.9 acres) on the property located at 17900 Trundle Road, Dickerson, Maryland 20842 of which you are the owner. Our records indicate that the forest clearing was not part of an approved forest conservation plan ("FCP") or forest conservation exemption as required by Montgomery County Code ("Code"), Chapter 22A ("Forest Conservation Law" or "FCL").

On October 4, 2005, an M-NCPPC Inspector issued you a civil citation for One Thousand Dollars (\$1000), in accordance with § 22A-16(a) of the Forest Conservation Law.

On October 7, 2005, M-NCPPC staff met with you. During this meeting the clearing violation was outlined to you along with the possible actions M-NCPPC may pursue. You stated that you did not clear the forest, but that you were only cutting up the trees that were cleared from the previous owner. You also indicated in this meeting that you had cut seven or eight trees, but not the entire forested lot.

Based on the M-NCPPC inspector's observations of site conditions and his discussions with the Dept. of Permitting Services (DPS) Sediment Control inspector as

well as an adjacent property owner, the M-NCPPC inspector has concluded that the forest clearing was done after you took ownership of the property in June 2005. Additionally, a DPS plan reviewer recalls having conversations with you on June 27 and 28, 2005 in which it was stated that your property was completely wooded.

During the October 7, 2005 meeting we explained that this unauthorized clearing activity is a violation and we discussed with you possible corrective actions. At this time you elected to challenge the civil citation issued to you on October 4, 2005. We informed you that you must contact M-NCPPC Legal Staff and file in writing an official challenge to the civil citation.

You submitted a letter dated October 13, 2005 indicating that you wanted to contest the civil citation and you wished to stand trial.

Montgomery County Code, Chapter 19, requires that a property owner obtain a sediment and erosion control permit from Montgomery County Department of Permitting Services ("DPS") prior to commencing any disturbance of more than 5,000 square feet of land in the County. Before DPS may issue a sediment and erosion control permit, the property owner must comply with the requirements of Montgomery County's Forest Conservation Law. Mont. Co. Code, §§ 19-3A, 22A-4(b), 22A-11(d)(3). The Forest Conservation Law provides, that, unless exempt, a property owner must receive review and approval of both a natural resource inventory/forest stand delineation plan and a forest conservation plan, prior to undertaking the land disturbing activity (Mont. Co. Code, §§ 22A-4, 22A-10, 22A-11(d)). According to inspections by Commission staff, you cleared a total of 83,145 square feet (1.9 acres) of forest without an approved forest conservation plan or forest conservation exemption. These violations of the Montgomery County Forest Conservation Law may be sanctioned accordingly.

The civil fine issued by the Commission on October 4, 2005 in accordance with § 22A-16(a) of the Code, fines you One Thousand Dollars (\$1000.00) for the clearing of 83,145 square feet (1.9 acres) of forest. In addition, by this letter, and in accordance with §§ 22A-16(d) and 22A-17 of the Code, the Commission is instituting the following additional enforcement actions:

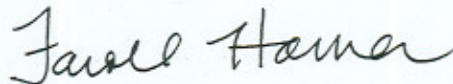
- (A) As the Planning Director, and in accordance with §22A-17, I am issuing an administrative order requiring corrective action be undertaken by you as detailed in Attachment One to this letter; and
- (B) On May 4, 2006, the Montgomery County Planning Board will hold a public hearing to consider the amount of the administrative civil penalty to be imposed on you pursuant to §22A-16(d). Additionally, the Board will also consider the matter of the civil citation issued on October 4, 2005. In determining the amount of the civil penalty at the hearing, pursuant to §22A-16(d)(2), the Board will consider the willfulness of the violation; the damage or injury to tree resources; the cost of corrective action or restoration; any adverse impact on water quality; the extent to which the

current violation is a part of a recurrent pattern of the same or similar type of violation committed by the violator; and other relevant factors. As detailed in that Section, the penalty imposed by the Planning Board must be not less than \$0.30¹ and up to \$1.00² per square foot of forest cleared.

As required by §22A-20, the hearing before the Planning Board regarding the imposition of an administrative civil penalty is scheduled for May 4, 2006 in the Planning Board's Hearing Room at 8787 Georgia Avenue, Silver Spring, Maryland 20910. Staff is recommending the imposition of \$1.00 (One Dollar) per square foot of disturbance for a total of \$83,145 (Eighty Three Thousand One Hundred and Forty-Five Dollars). At this hearing, you will have an opportunity to be heard by the Board before it makes its final decision on the amount of the penalty and the status of the civil citation. Additionally, at the May 4, 2006 hearing, you may elect to have a hearing before the Board on the administrative order for corrective action, as required by §22A-20(d).

You may request to meet with staff to discuss the administrative order and staff's recommended civil penalty prior to the May 4, 2006 Planning Board hearing. If you would like to meet with staff or has any questions, please contact Ms. Candy Bunnag at (301) 495-4543 or Mr. Doug Johnsen at 301-495-4571.

Sincerely,



Faroll Hamer
Acting Director of Park and Planning

Attachment One – Corrective Action

cc: Michele Rosenfeld, M-NCPPC – Legal
✓ Candy Bunnag, M-NCPPC
Doug Johnsen, M-NCPPC
Mark Etheridge, DPS
Mike Reahl, DPS
Rick Watson, DPS
Rich Wolters, MDE

CL:CB:cb

¹ This amount is identified in §5-1608(c) of the Natural Resources Article of the Maryland Code.

² This amount is the maximum amount established by the Montgomery County Council by 1992 L.M.C., ch. 4 § 2.

ATTACHMENT ONE
CORRECTIVE ACTION FOR ANTHONY A. MEREOS
17900 TRUNDLE ROAD; DICKERSON, MARYLAND

1. Mr. Anthony A. Mereos shall prepare, submit and obtain approval for a natural resource inventory/forest stand delineation plan (NRI/FSD) as defined in Section 22A-10 (b) of the Forest Conservation Law and the *Trees Approved Technical Manual*. The NRI/FSD must show all streams, wetlands, seeps, associated environmental buffers and the extent of the forest on the property before any clearing activities. The NRI/FSD must be submitted to M-NCPPC staff for its review and approval by June 9, 2006.
2. Mr. Mereos shall prepare and submit a Forest Conservation Plan (FCP) for the property at 17900 Trundle Road, Dickerson, MD following M-NCPPC approval of the NRI/FSD. At a minimum the FCP must include a reforestation plan to cover any portion of the environmental buffers that have been cleared. The FCP must be submitted to M-NCPPC staff for its review and approval by August 11, 2006. The FCP shall include details and specifications for land preparation, planting, and minimum two-year maintenance of the planted area. At a minimum, the planting schedule shall include three species of native one-inch caliper trees and three species of native container-grown, 18-inch tall shrubs at the rate of 200 trees/acre and 33 shrubs/acre. The planting plan shall also include measures for deer protection and non-native, invasive species control. The FCP must be consistent with any corrective actions required by the U.S. Army Corps of Engineers (COE), Maryland Dept. of the Environment (MDE) and Mont. Co. Dept. of Permitting Services (DPS)
3. The planting plan for the property at 17900 Trundle Road must be implemented and accepted by M-NCPPC between September 15, 2006 and November 15, 2006 pending approval of the FCP.
4. At a minimum the environmental buffers on the property at 17900 Trundle Road shall be placed in a Category I conservation easement. The easement must be recorded in the land records by August 1, 2006.

ATTACHMENT 9

Section 22A-17(a) of the Montgomery County Forest Conservation Law

Sec. 22A-17. Corrective actions.

(a) *Administrative order.* At any time, including during an enforcement action, the Planning Director may issue an administrative order requiring the violator to take one or more of the following actions within a certain time period:

- (1) stop the violation;
- (2) stabilize the site to comply with a reforestation plan;
- (3) stop all work at the site;

- (4) restore or reforest unlawfully cleared areas;
- (5) submit a forest conservation plan for the property;
- (6) place forested or reforested land under long-term protection by a conservation easement, deed restriction, covenant, or other appropriate legal instrument; or
- (7) submit a written report or plan concerning the violation.

ATTACHMENT 10

**M-NCPPC staff memoranda for the June 15 and July 27, 2006 Planning Board
hearings, June 2 and July 13, 2006**