MCPB
Item #
6/28/07

MEMORANDUM

DATE: June 15, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief RBK
Development Review Division

Catherine Conlon, Supervisor
Development Review

FROM: Richard A. Weaver, Coordinator (301) 495-4544 RAW
Development Review Division

REVIEW TYPE: Preliminary Plan Review
APPLYING FOR: Subdivision of Eight Lots and One Outlot

PROJECT NAME: Hilltop Farm
CASE #: 120050740 (formerly 1-05074)
REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RDT
LOCATION: Located on the south side of West Old Baltimore Road, the west side of Slidell Road, the north side of Barnesville Road and the east side of Peach Tree Road
MASTER PLAN: Agricultural and Rural Open Space (AROS)

APPLICANT: Hilltop Farm, Ltd.
ENGINEER: Macris, Hendricks and Glascock

FILING DATE: February 23, 2005
HEARING DATE: June 28, 2007

STAFF RECOMMENDATION: Approval, subject to the following conditions:

1) Approval under this preliminary plan is limited to eight lots for eight one-family residential dwelling units.
2) Record Plat to reflect a note as follows, "Lot 8 as shown on the preliminary plan is created under Sec. 2B-11(c)(1) of the Montgomery County Code and is for the use of the grantor."
3) The record plat to include a note as follows: "The use of Lot 8 is restricted to one dwelling unit and agricultural use, including the right to construct houses for tenants fully engaged in the operation of the farm."
4) Record plat to include a note as follows: "Lots 1 through 7 as shown on the approved preliminary plan are created pursuant to the Preservation Easement Agreement between the Applicant and Montgomery County, Maryland for the sole purpose of constructing dwellings for the personal use of the Applicant or children of the Applicant Partnership's individual partners.
5) Prior to issuance of building permits, the Applicant shall enter into a Covenant, to be recorded in the Land Records for Montgomery County, Maryland, that restricts the ownership of Lots 1-7 to the Applicant or children of the Applicant Partnership's individual partners. The restriction shall apply for a period of Five (5) Years commencing on the date a building permit is issued to construct a dwelling unit on each such lot.
6) The deed, conveying ownership of each lot (1-7), shall be only in the name of the child/owner as required by the Preservation Easement Agreement. A copy of the deed shall accompany the building permit application for each lot.
7) Prior to recordation of the plat(s), the Applicant must obtain a release from the Montgomery County Department of Economic Development. Said release shall include a copy of the final plat drawing.
8) Compliance with the conditions of approval of the preliminary forest conservation plan, including development and implementation of an invasive management control plan for all areas within the proposed forest conservation easement prior to using any forest bank credits. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
9) Septic line to serve Lot 7 shall be directionally bored under stream invert at the location shown on the approved preliminary plan. A pre-construction meeting with MNCPPC enforcement staff is required prior to commencement of this activity.
10) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated March 30, 2005.
11) The Applicant must comply with the conditions of MCDPWT letter dated May 8, 2006, unless otherwise amended.
12) The applicant must dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the AROS Master Plan, unless otherwise designated on the preliminary plan.
13) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation areas.

14) The Applicant must comply with the conditions of MCDPS (Health Dept.) septic approval dated May 11, 2005.
15) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
16) Record plat to reflect a note stating that a TDR was available and has been reserved for each of the lots being created by the preliminary plan
17) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
18) Other necessary easements shall be shown on the record plat.

I. SITE DESCRIPTION: (Attachment A – Vicinity Map)

The subject property is comprised of two parcels totaling 232.7 acres of land in the RDT zone. The property is located in the center of the area defined by the intersections of West Old Baltimore Road, an Exceptional Rustic Road and Slidell Road, Barnesville Road and Peach Tree Road all Rustic Roads. A house and a number of agricultural outbuildings currently occupy the site. The property is rolling in nature and is currently almost exclusively in agricultural uses, including crops and livestock. Those areas that are unsuitable for agriculture are mostly forested. A tributary to Little Seneca Creek, the Bucklodge Branch, a Use I stream, traverses the site flowing generally from north to south into Little Seneca Lake.

II. PROJECT DESCRIPTION: (Attachment B – Preliminary Plan)

The application proposes to create eight (8) lots from the entirety of the two parcels. Seven of the lots are grouped for the most part in the northern portion of the site on approximately 25 acres. The remaining 207 acres, with the existing house and agricultural buildings, will also become a lot that will continue in operation as a horse farm or could be converted to a farm with crop production. The clustered lots range in size from 2.0 acres to 5.9 acres and have been minimized in size to maximize the agricultural opportunities on the farm lot. Approvals for standard subsurface septic systems have been secured for all 8 lots, including the existing house on Lot 8. On Lot 7, the drainage line from the septic tank to the septic drain field will need to cross a stream and be located on the large agricultural lot. As such, staff has evaluated this crossing and has made specific recommendations for how this can be done in the most environmentally sensitive manner. (See Environmental Discussion)

The subject property is encumbered by a County Agricultural Easement Program (AEP) easement, which the owners of the property, Hilltop Partnership, entered into in 1994. The AEP easement established for this property included the ability to create lots for the owner of the property, and the owner's children, with approval from the Agricultural Preservation Advisory Board. While these lots are being created under the AEP for the owner and their children, they are not the child (kiddie) lots that staff and the Planning Board have typically reviewed to date. These lots are established under the AEP and not pursuant to Section 59-C-9.74 (b) of the Zoning Ordinance. Under the AEP there is no residency requirement (length of residency) for the lots at this time, however, the Applicant has proffered a residency period of 5 years (see Condition #5).

By letter dated January 30, 2006, the Montgomery County Agricultural Preservation Advisory Board (APAB) has approved the location and size of the lots as shown on the preliminary plan, finding that they conform to the established AEP and that the location of the lots "will have a minimal impact on the agricultural operation." Although Section 2B-11 of the Code requires lots be at the minimum for the RDT zone (1 acre), the section also allows the lots to be increased in size at the direction of the Planning Board and MCDPS to meet other zoning and health regulations such as well and septic. The applicant has demonstrated to planning staff and staff of the MCDPS, Well and Septic Section that lots greater than one acre are necessary to meet well and septic requirements. Section 2B-11 also suggests that the APAB must re-review the plan .if the proposed lots are significantly different than that originally approved The APAB also notes that the crossing of the stream with the aforementioned septic line is allowed by the agricultural easement. Agricultural operations can continue on top of approved septic reserve areas.

III. PREVIOUS BOARD HEARING

The Planning Board at a regularly scheduled public hearing on June 8, 2006 reviewed this plan. After considering the testimony of the staff, applicant, and citizens, the Board determined that additional information was needed to make a decision, and the item was deferred. The plan before the Planning Board today is the same plan that was reviewed at the June 8, 2006 hearing; however, supporting documentation, as requested by the Board, has been added to the staff report.

IV. ANALYSIS AND FINDINGS

A. Conformance with the Agricultural and Open Space Master Plan

The Agricultural and Rural Open Space (AROS) Master Plan establishes agriculture as the preferred use for land in the Rural Density Transfer (RDT) zone. The preliminary plan lot configurations should promote the continued use of the property for agricultural purposes. For this plan, a 207-acre farm operation will be maintained on proposed Lot 8. The seven smaller lots all meet the minimum size allowed by the zone and have been reduced to the minimum size that can be accommodated to include the house, septic systems and well. The portion of the site allotted for the seven lots is in an area that, while capable of being farmed, is well removed from the operating farm on Lot 8 and further buffered from the ongoing agricultural activity on Lot 8 by an existing hedgerow. The approval of the Plan and finalization of the terms of the Easement assures that the 208 acre farm lot remains available for agriculture in perpetuity. Staff finds the proposed preliminary plan conforms to the recommendations for preservation of agricultural uses as specified in the Agricultural and Rural Open Space Master Plan.

B. Countywide Park Trail Plan

The Park Planning and Resource Analysis section requested an equestrian easement on the property in a north to south direction. Lot 8, the large agricultural lot that will continue to operate as a commercial equestrian facility, would contain this easement. The individual leasing

the land, and future owner of the lot, has opposed the easement across the lot, citing issues with liability. The applicant has demonstrated that on the adjacent Henley Hall Subdivision, immediately abutting the subject property to the east, there is an existing platted equestrian easement that can be used by those on the subject property to move north and south. Therefore, an easement on the subject property has not been recommended.

C. Functional Master Plan for Rustic Roads

The Functional Master Plan for Rustic Roads (1996) identifies the four previously described boundary roads as Rustic, with West Old Baltimore defined as Exceptional Rustic. The Rustic Roads Plan contains specific language that includes the following statement, "The rustic roads designation is not intended to affect the use of adjoining land except in the design of access to subdivisions." As per the MCDPWT approval letter dated May 8, 2006, access to the individual lots will be fully addressed by MCDPS, County Rustic Roads Program at the time of record plat. Driveway locations as shown on the plan may need to be adjusted and the site distance evaluations will be completed as part of that review.

This plan anticipates that there will be three (3) access points to West Old Baltimore Road and one access on Slidell Road. One issue considered was that if a driveway is shared by two or more homes, Fire and Rescue requires a twenty (20) foot wide fire access drive, which involves more clearing along the road frontage. For a single home access, Fire and Rescue has no standards and the driveway is likely to be 10 to 12 feet wide, which involves less clearing. Staff was faced with balancing the two, somewhat conflicting, requirements and believes that one twenty foot access point and two standard driveway access points onto West Old Baltimore is the least intrusive to the natural hedgerow and rustic character of the roadway. For the single, twenty (20) foot wide driveway access point on West Old Baltimore Road, grass pavers or grasscrete can be used to soften the visual impact to the road right-of-way. Given the limited amount of frontage on Slidell Road, a single, twenty foot wide access point is better than three smaller access points. These proposed designs will meet the Rustic Roads Master Plan recommendations.

D. Conformance to the Chapter 59, the Zoning Ordinance and Chapter 50, the Subdivision Regulations

The application complies with Chapter 59, the Montgomery County Zoning Ordinance. The base density in the RDT zone is one unit for every twenty-five acres. This 232-acre property is otherwise eligible for consideration for 9 residential lots. The proposal requests 8 lots, therefore, this request is in conformance with the density calculations of the Zoning Ordinance, Section 59-C-4.1. The lot sizes proposed by this application also comply with the minimum lot size established in the RDT zone, which is 1.0 acre. The APAB and County Attorney's Office have determined that there are an adequate number of TDR's available to accommodate the 8 lots. It should be noted that all lots are served by standard septic systems; no sand mound systems are approved. The Applicant has proffered to enter into a Covenant, to be recorded in the Land Records for Montgomery County, Maryland, that restricts the ownership of Lots 1-7 to the Applicant or children of the Partnership's individual partners. The restriction shall apply for

a period of Five (5) Years commencing on the date a building permit is issued to construct a dwelling unit on each such lot.

Te lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of who have recommended approval of the plan.

E. Forest Conservation

The application complies with Chapter 22A of the Montgomery County Code, the Forest Conservation Law. Section 22A-5(b) of the Code allows exemptions from the forest conservation requirements for properties that commit to continue commercial agriculture. Therefore, all but 25 acres of the 232-acre site are exempt, pursuant to this provision. On the remaining 25 acres of property there is no existing forest or environmental buffers. The applicant will meet the required minimum afforestation planting threshold by preserving 10.4 acres of existing forest on the "exempt' portion of the property.

The applicant's preliminary forest conservation plan shows 58.18 acres of land on proposed Lot 8 to be included in a Category I forest conservation easement. This area includes existing forest within and outside of the approved environmental buffers, plus unforested portions of environmental buffers. It is the applicant's intent to create a forest conservation bank within this easement area. The area included in the forest conservation bank includes 53.35 acres of existing forest and 4.83 acres of unforested areas. Environmental Planning noted the presence of invasive plants in some of the forest stands identified on the NRI/FSD. Therefore, a condition of approval has been included requiring the applicant to develop and begin implementing an invasive species management control plan on all areas included in the proposed forest conservation easement area before any forest conservation bank credits can be used.

F. Environmental Buffers

The application complies with the Planning Board adopted *Environmental Guidelines* and Section 50-32 of the Montgomery County Subdivision Regulations pertaining to preservation of environmentally sensitive areas. The NRI/FSD for this property was approved on February 15, 2005. The site includes 44.2 acres of environmental buffer, 30 acres of floodplain and 12 acres of wetlands. These environmentally sensitive areas are associated with the Bucklodge Branch, which traverses the site. The preliminary plan of subdivision depicts only one encroachment into the buffers, that being the septic line for Lot 7. This encroachment is necessary to connect the septic tank to the approved septic drain field and reserve area on Lot 8. Environmental Planning supports the encroachment based on the fact that the applicant has demonstrated that it is unavoidable. The applicant contracted with an individual who conducts septic testing and has a demonstrated proficiency with Montgomery County soils. Three additional percolation test pits revealed rock from 6-14 feet deep, 3-10 feet deep and 1-10 feet deep on Lot 7. In addition to the unsuitable soil depths, the slopes were too steep to consider using sand mounds. Based on the test pits and slopes, it was determined that no feasible septic reserve area could be established on Lot 7 and the closest available area for satisfactory percolation was on Lot 8.

To accomplish the crossing of the stream with the septic line, MCDPS – Well and Septic has approved pumping the effluent. To minimize impacts to the stream, staff has conditioned that this septic line be bored under the stream channel. This technique will preserve the stream and its banks. The vegetation in the stream buffer in the location of this crossing is mostly non-native, invasive shrub species. The septic line will impact no forest within the buffer.

G. Transportation

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review. Since the abutting roads are rustic, and due to the low-density nature of the area, no sidewalks are required of the applicant. The applicant will be required to dedicate the proper Master Plan right-of-ways prior to the record plat. Proposed access will be safe and adequate with the proposed improvements.

V. ISSUES RAISED AT THE PREVIOUS HEARING

Board members specifically requested more information on the following issues:

- The function of the Agricultural Preservation Advisory Board in creating easements and child lots;
- The ability of a Partnership to have children for which to create child lots: and
- Are the lots as small as could reasonably be accepted for zoning and health reasons?

In response staff has the following analysis:

A. Montgomery County Agricultural Easement Program

Montgomery County's Agricultural Easement Program has its origin in Chapter 2B of the Montgomery County Code entitled "Agricultural Land Preservation" and in the Agricultural Article of the Annotated Code of Maryland, Title 2, Subtitle 5. The governing body for County Agricultural Easements is the Agricultural Preservation Advisory Board ("APAB"), pursuant to Section 2B-2.

The APAB's duties and responsibilities include the following:

"(1) To advise the county governing body with respect to the establishment of state and county agricultural districts and the approval of purchases of easements by the foundation within the county;
(2) To assist the county governing body in reviewing the status of state and county agricultural districts and land under easement;

(3) To advise the foundation concerning county priorities for agricultural preservation;

(4) To promote preservation of agriculture within the county by offering information and assistance to farmers with respect to establishment of state and county agricultural districts and purchase of easements; and

(5) In addition to those duties prescribed by state law, the board should:

a. Delineate areas of productive agricultural land in the county.

b. Recommend to the county executive procedures for mediation or arbitration of disputes as to values of easements being considered for purchase by the county.

c. Review and make recommendations to the governing body on regulations proposed for state and county agricultural districts, and perform other duties as may be assigned by the county council or county executive.

d. Prepare and/or review recommendations to the governing body with regard to county policies and programs for agricultural preservation.

e. Cooperate with the planning board, the cooperative extension service and the soil conservation district in carrying out its responsibilities."

For land to be encumbered with a Montgomery County Agricultural Easement, it must be "Eligible Land" as defined in Chapter 2, Section 2B-7 of the County Code. The County Code authorizes the County to purchase an easement without establishing an agricultural district if land is in the RDT, Rural, or Rural Cluster Zone; the county is not permitted to purchase an easement under Chapter 2B if further development of such land is already precluded by another easement.

The Hilltop Farms property is zoned RDT and development is not precluded by any other easement. The Hilltop Farms property, containing 232.7 acres, could be developed in accordance with the RDT zoning with 9 residential lots. Pursuant to the Preservation Easement, only 8 lots are permitted.

In accordance with the authority vested in Montgomery County by Chapter 2B of the Montgomery County Code, Montgomery County acquired an Agricultural Preservation Easement by Deed dated March 4, 1994, recorded among the land records of Montgomery County. That Deed constitutes the only restriction on the development of the Subject Property that is in addition to the generally applicable County Code requirements.

B. Partnership Status

In a letter dated, April 30, 2007 from the County Attorney's Office (Attachment C) the Associate County Attorney acknowledges the full participation of the Office in the preparation of the Easement for the Hilltop Farm Partnership. Prior to entering into the contractual relationship with the Partnership, the County considered the family members comprising the Partnership. The County Attorney's Office understood that the Partnership consisted of a father (Charles Faller, III), mother (Jean Faller) and their children, and was willing to enter into the contract.

The APAB approved of the concept of one lot for the owner and 7 child lots in 1998. In the ensuing years, a number of issues had to be resolved and in 2006 the plan before the Planning Board today was approved by the APAB and was found to comply with the requirements of the Easement. Specific notations that are to be included on the plat have been reviewed by the APAB and found to comply with the requirements of the April 20, 2006 email to staff. A copy of the Easement is provided as Attachment D.

C. Lot Size

The lot size permitted by the Zoning Ordinance in the RDT zone is a minimum of 40,000 square feet. The lot size permitted by the Recorded Easement for the Hilltop Farm is "one acre, or the minimum lot size required by the zoning and health regulations, whichever is greater."

Section 2B-11 of the County Code provides, in part as follows:

> (c) A person who owns land that the council has included in a county district must not use or subdivide the land for residential, commercial, or industrial uses. However, a grantor may use no more than:
>
> (1) One (1) acre, or the minimum lot size required *by the zoning and health regulations*, whichever is greater, to build a house for use by the grantor;
> (2) One (1) acre, or the minimum lot size required, whichever is greater, to a maximum density of not more than one (1) house per twenty-five (25) acres for each house built, to be occupied by an adult child of the grantor, to a maximum of ten (10) children.

The language in subsection (c) 2 above excludes the "*by the zoning and health regulations*" language, which is specifically included in section c (1). There was an assertion at the first hearing that the only conclusion that can be reached from the apparent omission of this language is that the grantor's lot is permitted to be greater than one acre, for health and zoning regulations, however, lots for the adult child of the Grantor are not permitted to exceed one acre. The County Attorney's letter maintains that the overarching goal of the County's Easement Program is to maximize the agricultural potential on a property, and this is best achieved by "clustering" lots. The letter recognizes the omission of the language in section (c) 2 and asserts that, "Irrespective of this difference, the APAB has consistently limited its determination of the minimum lot size required to zoning and health considerations."

Attachment Eillustrates the rationale behind the lots sizes proposed by the Plan. The illustration shows that there are specific areas on the Property that were able to pass the percolation standards; it also shows that some areas did not pass percolation standards or were not tested due to the known presence of soil limitations. Those areas that could not, or would not, pass the County's standards are shown in brown cross-hatching on the illustration. To assist with understanding the full limitations of the site, staff and the applicant consulted with the MCDPS, Well and Septic staff to discuss the layout of the wells and septic systems with respect to the location of the homesites.

MCDPS staff does not believe there are any significant opportunities to further minimize the development's impact to the agricultural capabilities on this portion of the Property. The ability to relocate septic systems, as shown on the plan, is very limited due to soils constraints. Since wells and homesites must be located upslope of the septic systems, movement of homes to provide additional agricultural opportunities on this small portion of the greater farm is practically nil. Although the size of Lot 7 at 5.9 acres may seem excessive, the slopes on the north and west sides of Lot 7 are not conducive to mechanized machinery and the soil types are not prime agricultural soils, especially on slopes that in some places exceed 18%. This portion of proposed Lot 7 would be best suited to remain in grass cover and perhaps be used as pasture by future property owners of that lot.

The requested lot sizes, therefore, are necessary to satisfy the regulatory constraints associated with the percolation testing results, the statutory and regulation-mandated setbacks between septic system areas and well systems, and to address slopes that exist on the Subject Property. In consideration of all the factors that must be reviewed and considered when testing for percolation systems, including depth to groundwater, slopes, 100 foot well arcs, topographic relationship of septic field to proposed wells and homesites, as well as the general capability of the soils to pass testing, there are no significant opportunities to reduce impacts to the agricultural productivity of this farm by this development.

VI. COMMUNITY OUTREACH (Attachment F

This application was received before any requirements to hold pre-submission meetings with interested property owners. However, staff has responded to inquires about the project by telephone and in a meeting with interested parties. The meeting involved Dr. Peter Eeg and Mr. Alan Noble who are concerned with the proposed number and location of the lots, the need for septic access crossing the stream and the function of the AEP. The meeting included a discussion of the overall approval process, the timing of the hearings, and the history of this plan especially with the APAB. The discussion also included staff's justification for approval of lots in the RDT zone and the specifics of the analysis for the proposed lots, as discussed above.

Both Dr. Eeg and Mr. Noble, and other citizens, testified at the first hearing and raised a number of issues including environmental impact, density, use of "child lots", enforcement of "child lots", length of occupancy of homes on "child lots" and whether a Partnership can have children for which to create "child lots". As previously discussed in this report, it is staff's opinion that all of the issues have been adequately addressed.

VII. CONCLUSION:

Staff finds that Preliminary Plan #1-05075, Hilltop Farm conforms to the Agricultural and Rural Open Space Master Plan and meets all necessary requirements of the Subdivision Regulations and Zoning Ordinance, as summarized in attached Table 1. Staff further finds that the size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision, and the size meets the Chapter 2B-11 requirements.. The density calculations are

found to conform to the base density requirements of the RDT zone pursuant to Section 59-C-5.3. The applicant has demonstrated the availability of sufficient Transferable Development Rights (TDR's) remaining on the property to support the requested lots, and the APAB has approved creation of the lots for children under the terms of the existing AEP easement. As such, Staff recommends approval of the preliminary plan, subject to compliance with the above conditions.

ATTACHMENTS:

Attachment A – Vicinity Map
Attachment B – Preliminary Plan
Attachment C – County Attorney Letter
Attachment D – Easement Agreement
Attachment E - Septic display
Attachment F- Correspondence

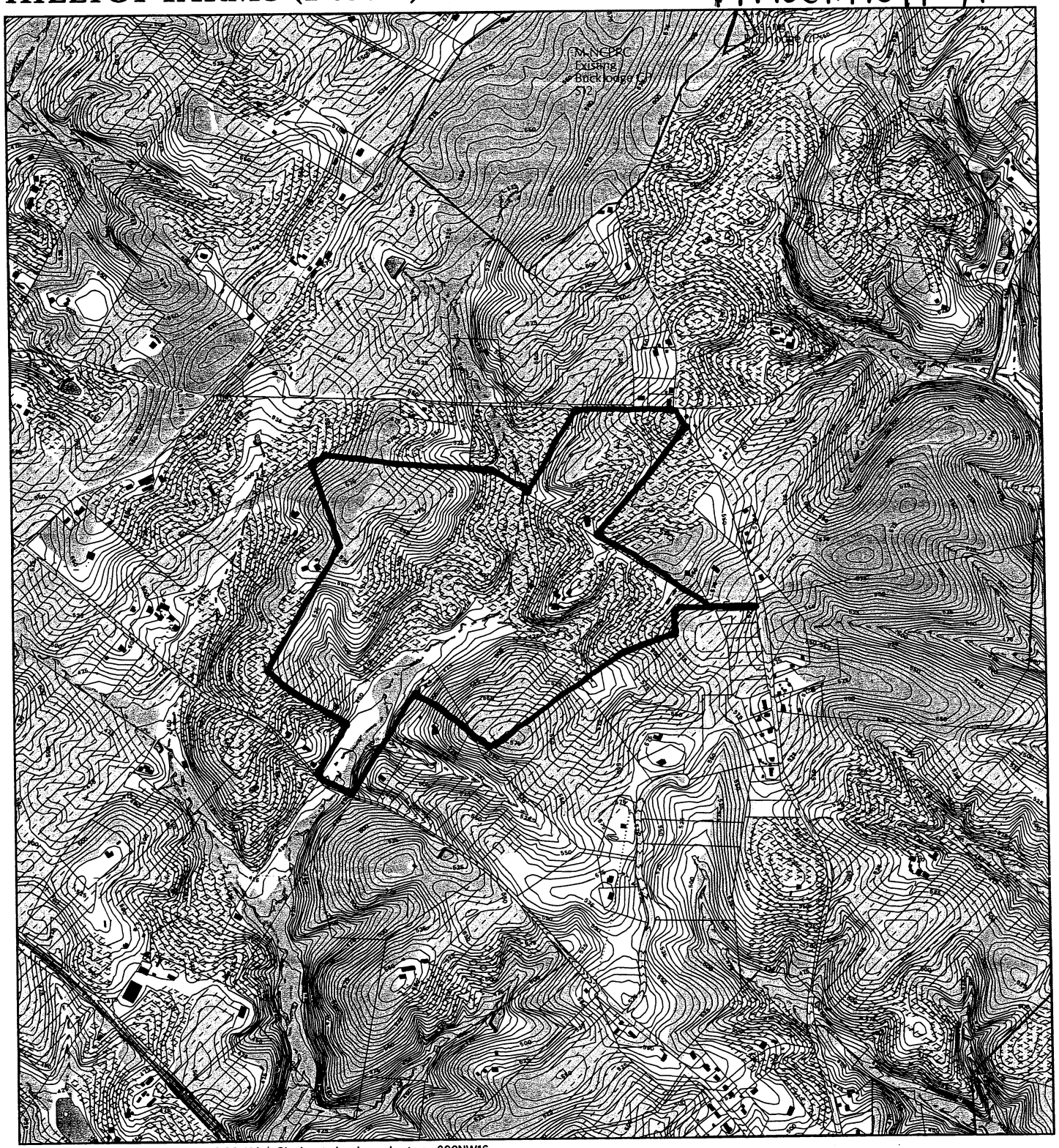
Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Hilltop Farm				
Plan Number: 12005074				
Zoning: RDT				
# of Lots: 8				
# of Outlots:				
Dev. Type: Single Family Residential				
PLAN DATA	**Zoning Ordinance Development Standard**	**Proposed for Approval the Preliminary Plan**	**Verified**	**Date**
Minimum Lot Area	40,000 s.f. (0.918 acres)	2.0 acres. is minimum proposed		6/15/07
Lot Width	150 ft.	160 ft. is minimum proposed		6/15/07
Lot Frontage	25 ft.	25 ft. is minimum proposed		6/15/07
Setbacks				
Front	50 ft. Min.	Must meet minimum[1]		6/15/07
Side	20 ft. Min./ 20 ft. 40 total	Must meet minimum[1]		6/15/07
Rear	35 ft. Min.	Must meet minimum[1]		6/15/07
Height	50 ft. Max.	May not exceed maximum[1]		6/15/07
Max Resid'l d.u.'s per Zoning	9	8		6/15/07
MPDUs	N/A			
TDRs	N/A			
Site Plan Req'd?	No			
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes		6/15/07
Road dedication and frontage improvements		Yes	Agency letter	5/8/06
Environmental Guidelines		Yes	Staff memo	5/16/06
Forest Conservation		Yes	Staff memo	5/16/06
Master Plan Compliance		Yes		6/15/07
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management		Yes	Agency letter	3/30/05
Water and Sewer (WSSC)		N/a		
10-yr Water and Sewer Plan Compliance		Yes		6/15/07
Well and Septic		Yes	Agency letter	5/11/06
Local Area Traffic Review		N/a		
Fire and Rescue		Yes	Agency letter	2/6/06
Other (i.e., schools)				

[1] As determined by MCDPS at the time of building permit.

HILLTOP FARMS (1-05074)

Attachment "A"



Map compiled on March 15, 2005 at 10:20 AM | Site located on base sheet no - 230NW16

Key Map

N

RESOURCES FOR ACTION

Research & Technology Center

0 1500

1 inch = 1500 feet
1 : 18000

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

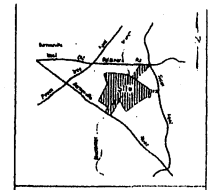
Attachment D

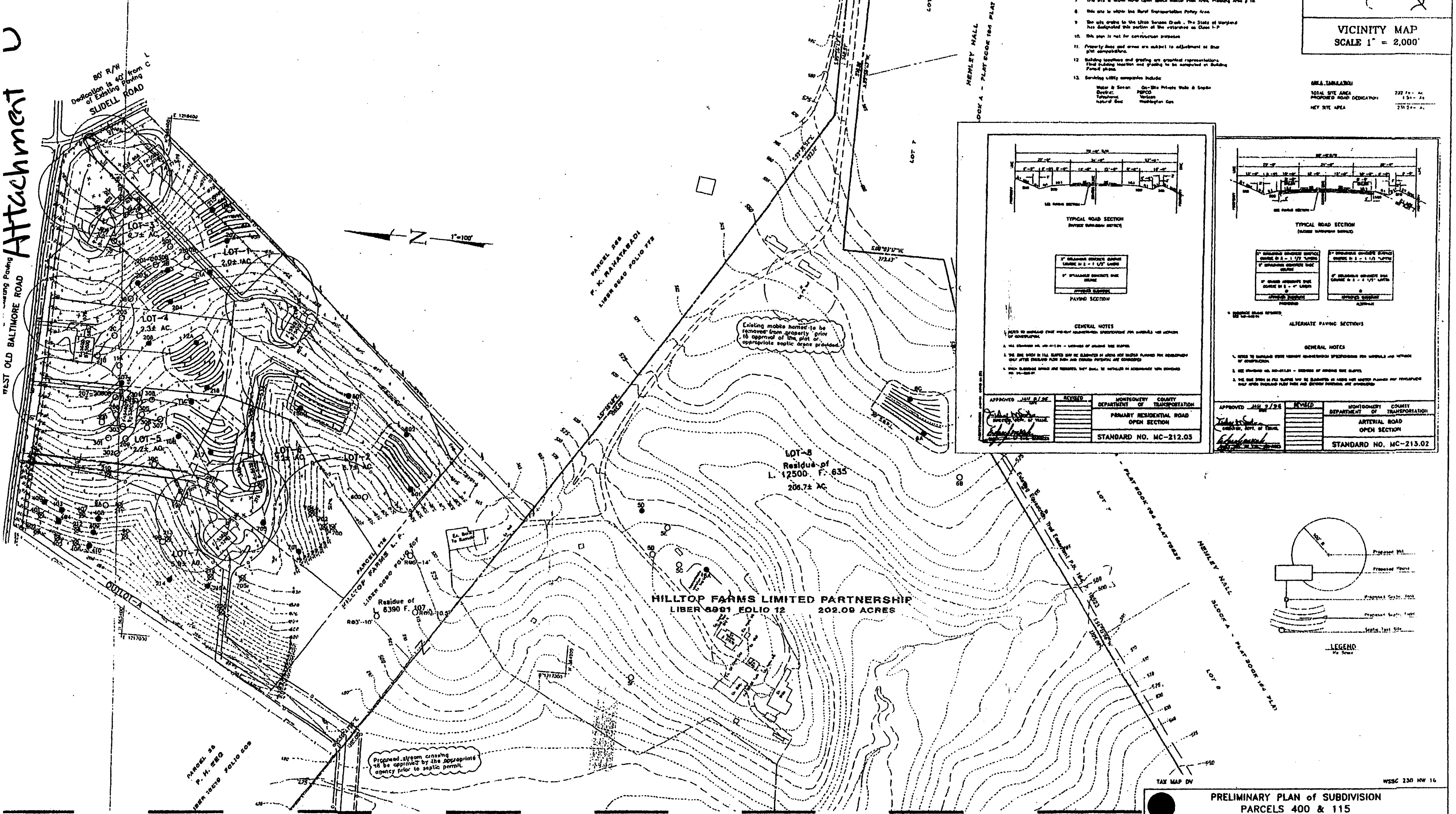
SEPTIC DESIGN CHART

SITE	TIME (MIN.)	DEPTH	SITE	TIME (MIN.)	DEPTH	SITE	TIME (MIN.)	DEPTH	AVG. TIME (MIN.)	DEPTH OF STONE	INITIAL TRENCH	TOTAL TRENCH	NUMBER OF BEDROOMS
16	24	5 & 15	202	13	4 & 12½	–	–	–	19	4	239	1000	5
02	16	4½ & 14	601	16	3 & 15	–	–	–	16	4	277	1109	6
03	27	5 & 12½	13A	15	4 & 12½	204	18	4 & 12½	20	4	277	1109	6
2A	16	3½ & 12	216	25	5½ & 16	–	–	–	22	4	297	1188	5
1C	23	3½ & 14½	108	12	2½ & 14	217	24	2½ & 14½	20	4	277	1109	6
01	14	3 & 13	500	24	4 & 13½	–	–	–	19	4	277	1109	6
[illegible]	11	2½ & 15	40	18	2½ & 15	–	–	–	15	4	217	1000	6
[illegible]	15	4 & 15	8A	19	4 & 15	–	–	–	17	4	277	1109	6

INVERT TABLE

LOT	TOP OF TANK	INVERT IN	INVERT OUT	INVERT @ TRENCH	LOWEST FIXTURE	BASEMENT FLOOR
1	576.5	575.5	575.3	561.0	578.0	578.0
2	542.5	541.5	541.3	533.5	551.0	541.0
3	570.8	569.0	568.8	565.0	572.5	572.6
4	549.6	548.5	548.3	542.5	560.0	550.0
5	540.5	539.5	539.3	535.5	548.0	538.0
6	537.0	536.0	535.8	533.0	542.0	532.0
7	530.5	529.5	528.3	489.0	538.0	528.0
8	—	—	EXISTING HOUSE		—	—





Match Line Sheet 2

SURVEYOR'S CERTIFICATE

I hereby certify that the boundary shown hereon is correct based on existing deeds and plats recorded among the Land Records of Montgomery County, Maryland, subject to change upon completion of a final survey. Topography from sources noted hereon.

5/9/06
Date

Macris, Hendricks, & Glascock, P.A.
By: Barry E. Hoyle
Professional Land Surveyor
Maryland Reg. No. 21135

GRAPHIC SCALE

(IN FEET)
1 inch = 100 ft

PERCOLATION CERTIFICATE

I hereby certify that the septic test sites as shown on this plan have been field surveyed

5/9/06
Date

Barry E. Hoyle
Professional Land Surveyor
MD Reg. No. 21135

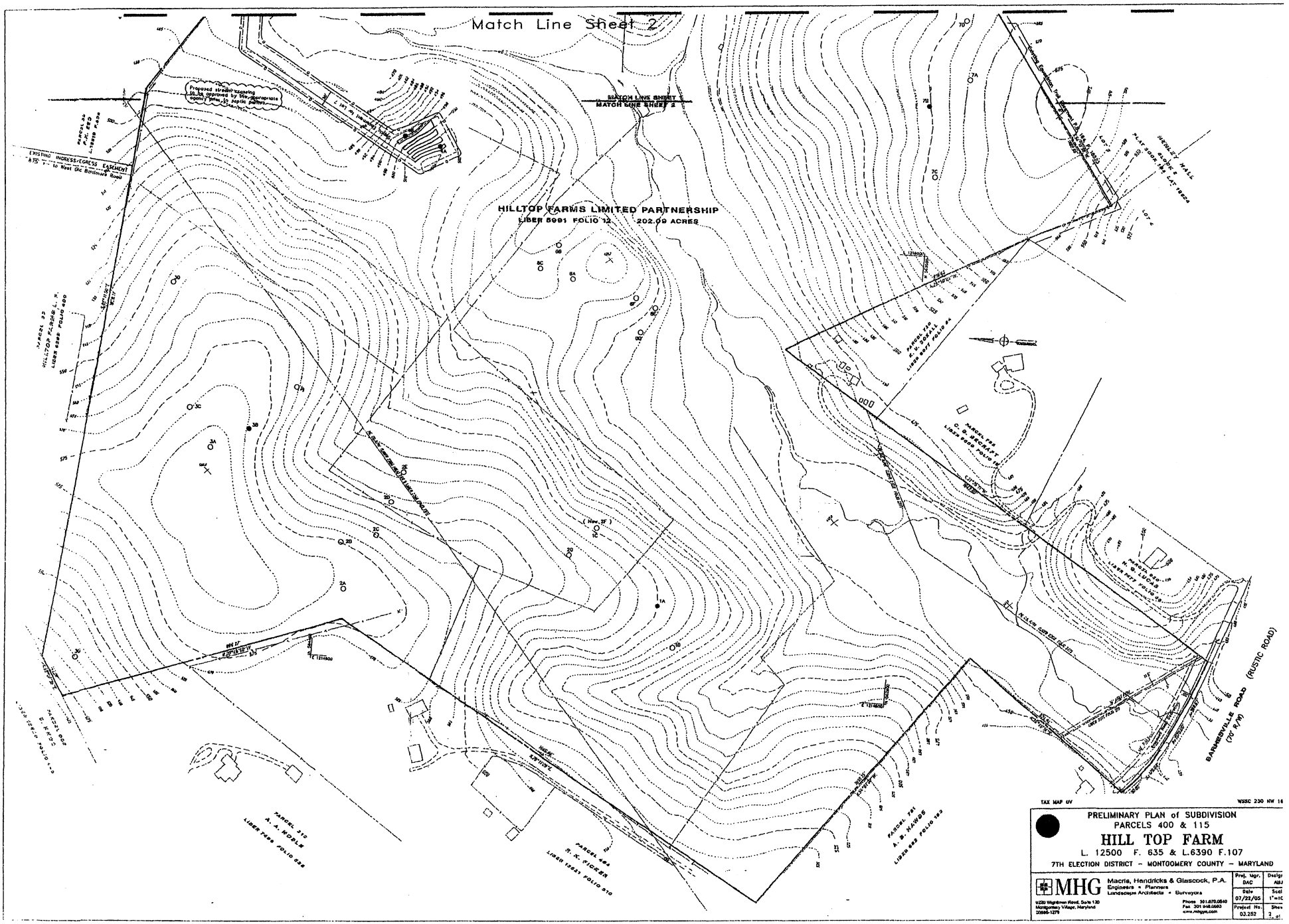
PREPARED FOR
HILLTOP FARMS LTD. PART.
ATTN. CHUCK FALLER
5307 RANDOLPH ROAD, SUITE 2
ROCKVILLE, MD 20852
PH(301) 231-6000
FAX(301) 231-6356

NO.	DATE	DESCRIPTION	BY
6	03/09/06	Added Ex. Wells & Septic	Doc
5	04/05/06	Added Equestrian Trail	Doc
4	03/14/06	Revised R/W Widths	Doc
3	01/18/06	Added Fire Turnarounds	Doc
2	08/15/05	Added notes for existing mobile homes & stream crossing	Doc
1	08/05/05	Revised Layout Per Mtg. of 8/4/05	Doc

PRELIMINARY PLAN of SUBDIVISION
PARCELS 400 & 115
HILLTOP FARM
L.12500 F.635 & L.6390 F.107
7TH ELECTION DISTRICT – MONTGOMERY COUNTY – MARYLAND

MHG
Macris, Hendricks & Glascock, P.A.
Engineers • Planners
Landscape Architects • Surveyors
9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279
Phone 301.670.0840
Fax 301.948.0693
www.mhgpa.com

Proj. Mgr	Designer
DAC	AGJ
Date 07/22/05	Scale 1"=100'
Project No. 03.252	Sheet 1 of 2



PRELIMINARY PLAN of SUBDIVISION
PARCELS 400 & 115

HILL TOP FARM

L. 12500 F. 635 & L.6390 F.107

7TH ELECTION DISTRICT – MONTGOMERY COUNTY – MARYLAND

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Proj. Mgr. DAC	Design ABJ
Date 07/22/05	Scale 1"=10
Project No. 03.252	Sheet 2 of

Attachment "C"

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
Acting County Attorney

April 30, 2007

BY FACSIMILE AND FIRST CLASS MAIL

Tariq A. El-Baba, Esq.
Associate General Counsel
The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue, Suite 205
Silver Spring, Maryland 20910

RE: Hilltop Farms

Dear Tariq:

This Office represents the Agricultural Services Division of the County's Department of Economic Development (Staff) and the Agricultural Preservation Board (APAB). My clients have requested that I provide you with a letter outlining some of the history of the Hilltop Farms Limited Partnership's (Partnership) Agricultural Preservation Easement and the policy considerations behind purchasing an easement from a family partnership.

On April 7, 1994, a Deed of Agricultural Preservation Easement was recorded among the land records of Montgomery County, Maryland in Liber 12500, folio 642 (Easement) against 247.54 acres owed by the Partnership (Easement Property). Under the terms of the Easement, the Partnership also sold 38 development rights (TDRs) to the County and retained eight TDRS - one for a dwelling already located on the Easement Property and seven for potential lots reserved under the terms of the Easement. A copy of the recorded Easement is enclosed for your reference.

By purchasing this Easement and recording it among the land records, the County achieved at least the following:

1) (other than the reserved rights for 8 lots) restricting the use of 247.54 acres to agricultural operations (Paragraphs 2,3,4,6, and 8);
2) acquiring 38 development rights (TDRS) (these TDRs could have been sold by the Partnership to a third party and used to increase the density of development in receiving areas throughout the County) (Paragraph 7);
3) prohibiting the sale of the 8 TDRs remaining with the Easement Property and limiting their use for the one existing dwelling and the subdivision of the seven potential lots reserved under the Easement (Paragraph 7);

4) purchasing 38 TDRs and restricting the use of the 8 TDRs remaining with the Easement Property ensures that the Easement Property will be not be used for commercial, industrial or any non-agricultural use – while the Easement has the potential of being terminated after 25 years (Paragraph 11), the restrictions contained in the Transfer of Development Rights Easement that conveyed the 38 TDRs to the County are perpetual (see Paragraph 1 of the Transfer of Development Rights (TDR) Easement recorded among the land records of Montgomery County, Maryland on April 7, 1994 in Liber 12500, folio 658 – a copy is enclosed for your reference);
5) requiring the Partnership to obtain APAB approval for the ownership and location of the 7 reserved lots before lots can be subdivided and dwelling units constructed on them (Paragraph 2);
6) limiting the right to subdivide a lot and construct a dwelling to the Partnership (and the partners comprising the Partnership) because the right to subdivide a lot can not be transferred (Paragraph 2(a)); and
7) requiring the Partnership to obtain and comply with soil, water and forestry conservation plans (Paragraph 5).

When purchasing the Easement, the County was well aware that it was contracting with a partnership. That contractual relationship was approved by the Staff, the APAB and this Office. There is no law prohibiting the County from contracting with a partnership to purchase an agricultural easement. See Chapter 2B of the Montgomery County Code (and its attendant regulations found in the Code of Montgomery County Regulations §02B.00.01.01, *et seq.*) and Title 2, Subtitle 5 (§2-501, *et seq.*) of the Agriculture Article of the Annotated Code of Maryland (and its attendant regulations found in Code of Maryland Regulations §15.01.01, *et seq.*). The State Code provisions govern easements purchased by the Maryland Agricultural Land Preservation Foundation (MALPF) but, strictly speaking, they do not apply to the County's agricultural easement program. However, the County's easement program is closely patterned after the MALPF Program.[1]

When determining whether to purchase an easement on the Partnership's property, the County's decision was governed by the following considerations:

1) ensuring the continued agricultural use of a large parcel (almost 250 acres) of property located in the County's agricultural reserve;
2) recognizing that large farms, for tax purposes, are often held by business entities, like partnerships;
3) reviewing the partners behind the partnership to determine their relationship to each other and their relationship to the Easement Property; and
4) supporting the ability of family members to live on family farms.

[1] The County must also obtain regular certification from the State that its agricultural easement program meets State requirements. This certification is crucial to the County's ability to fund its easement program. Without the certification, the County would not be able to collect 75% of the State's portion of the Agricultural Transfer Tax collected on transfers of agricultural land in the County. The retention of this tax is one of the primary funding sources for the County's easement program. The certification process includes the County providing specific information about the easements purchased with the State funding.

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vickie.gaul@montgomerycountymd.gov

Prior to entering into its contractual relationship with the Partnership, the County looked closely at those persons comprising the partnership and determined that the Partnership was comprised of a father (Charles Faller, III), mother (L. Jean Faller) and their children. Because the partnership was comprised of family members, the County was willing to enter into a contractual relationship with the Partnership and permit it to reserve in the Easement future lots for partners/family members.[2]

When Charles E. Faller, III requested seven "child lots" in December 1998, the APAB carefully considered the request and eventually approved it in February of 1999.[3] For various reasons, that request has a long and rather rocky history with the APAB, including the APAB, in 2000, requiring the Partnership to resubmit its subdivision plan to the DRC because the proposed plan was not in conformance with the requirements of the Easement, and the APAB, in 2005, rescinding its approval of the lots because the APAB was concerned the lots might be subdivided and sold to persons not partners/family members.

That history has only served to make the APAB more cautious in making a decision in 2006 about whether or not to approve the requested lots. The APAB involved this Office in several meetings to discuss steps that could be taken to ensure that the lots would be used by the "children" and would be titled in the name of each of the children. After the Partnership met the APAB's demands for information and documentation, the County agreed to honor its contractual obligations under the terms of the Easement and approve the lots now under consideration by the Commission.

With respect to the size of the lots requested by the Partnership, the Staff and the APAB have consistently interpreted the provisions of Chapter 2B-11(c)(1) and (2) as permitting a grantor of an agricultural easement the ability to request a one acre lot for the grantor or child; however, if one acre is insufficient in order to meet legal requirements for well, septic or subdivision, a grantor has been approved for the lot size necessary to meet those requirements.

It is true that subsections (1) and (2) are dissimilar in that subsection (2) addressing child lots does not contain the provision "or the minimum lot sized required by the zoning and health regulations." Instead, the child lot provision appears to provide more latitude to the APAB in terms of determining lot size, as the APAB's review about what constitutes the "the minimum lot

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[2] I have been advised by a MALPF representative of the State's Department of Agriculture, and the Assistant Attorney General assigned to that agency, that the State regularly provides agricultural easements to business entities, including corporations, and permits those business entities to reserve lots for "owners" and "children." Like the County, their goal is to ensure the continued agricultural use of the property. When permitting a business entity to reserve lots, the State determines whether the entity is comprised of family members or a group of unrelated individuals. If the entity is comprised of family members (such as a father, mother and children), the State permits the reservation of future lots. If the business entity is comprised of a group of unrelated individuals, the State permits the reservation of a single lot.

[3] The term "child lots" is somewhat of a misnomer here. The lots will be deeded to the children of Charles Faller, III and L. Jean Faller, all of whom are partners under the Hilltop Farm Partnership Agreement. Hence, it is probably more appropriate to consider the requested lots "owner" lots in that each prospective lot will be owned by, and titled in the name of, a partner.

size required" is not limited to zoning and health considerations. Irrespective of this difference, the APAB has consistently limited its determination of the minimum lot size required to zoning and health considerations.[4]

In the case of the Hilltop Farms' request for lots, the APAB has determined that the number of lots and their proposed configuration on the Easement Property meet both the Easement restrictions (no more than 8 lots) and the overarching policy goal of the County's Easement Program – maximizing the agricultural potential on the property. Clustering the proposed lots, as opposed to spreading them out over the Easement Property so that there is 1 lot situated on every 25 acres, maximizes the agricultural potential of the Hilltop Farm property.

Please note that neither the APAB nor the Staff has an opinion with respect to whether the sizes of the lots proposed by the Partnership are the minimum lot sizes required to obtain well and septic approvals. Instead, that burden belongs to the Partnership in conjunction with the Department of Permitting Services (and its determination concerning well and septic) and the Park and Planning Commission (and its determination concerning subdivision requirements). The APAB, in its approval of the proposed lots, has specifically notified the Partnership that if the lot sizes are changed from the sizes approved by the APAB, the Partnership is required to resubmit the revised lot sizes (and, if applicable, revised lot locations) for APAB approval.

Thank you for the opportunity to present the County's position on these important agricultural issues.

Sincerely,

Vickie L. Gaul
Associate County Attorney

---

[4] Section 2B-11(c) of the Montgomery County Code provides:

(c) A person who owns land that the council has included in a county district must not use or subdivide the land for residential, commercial, or industrial uses. However, a grantor may use no more than:

(1) One (1) acre, or the minimum lot size required by the zoning and health regulations, whichever is greater, to build a house for use by the grantor;

(2) One (1) acre, or the minimum lot size required, whichever is greater, to a maximum density of not more than one (1) house per twenty-five (25) acres for each house built, to be occupied by an adult child of the grantor, to a maximum of ten (10) children . . . .

These provisions have remained unchanged since Bill No. 56-87 was passed by the County Council and signed by the County Executive in February of 1988. A copy of Bill No. 56-87 is enclosed for your reference. It is interesting to note that prior to its passage, the Bill was amended to add "whichever is greater" to both subsections (c)(1) and (c)(2).

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vickie.gaul@montgomerycountymd.gov

Enclosures:

Deed of Agricultural Easement
Transfer of Development Rights Easement
Bill 56-87

cc: Jeremy Criss
John Zawitoski
Agricultural Preservation Board

101 Monroe Street, Rockville, Maryland 20850-2540 • 240-777-6716 TTY 240-777-2545 • Fax 240-777-6705
vickie.gaul@montgomerycountymd.gov

PRESERVATION EASEMENT

Attachment "D"

This Deed of Agricultural Preservation Easement [1] is sold, granted, and conveyed on this 4TH day of MARCH, 1994 by **Hilltop Farms Limited Partnership** (Grantors) to Montgomery County, Maryland, c/o Office of Economic Development, 101 Monroe Street, Rockville, Maryland 20850 (Grantee) for the purpose of forever preserving the agricultural production capability of the subject property, pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

WITNESSETH:

By authority of Montgomery County Code 1984, as amended, Chapter 2B and Executive Regulations No. 66-91, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use.

FILED
BETTIE A. SKELTON
CLERK'S OFFICE
MONTGOMERY COUNTY

94 APR -7 A11:33.8

The Grantors are the sole owners in fee simple of the farm property (Property) described in Exhibit A, attached to and made part of this Easement, which consists of 247.54446 acres of land which 245.27456 acres are being conveyed hereunder, together with buildings and other improvements, and 46 Transferable Development Rights (TDR's) associated with the Property.

The Property is eligible land located in the Rural Density Transfer, Rural, or Rural Cluster Zone, or is an approved State or County agricultural preservation district.

The Grantors desire to sell an agricultural preservation easement to the Grantee to restrict the Property to agricultural use.

All holders of liens or other encumbrances upon the Property have agreed to release or subordinate their interests in the Property to this Deed of Agricultural Preservation Easement, and to refrain forever from any action that would be inconsistent with its preservation purposes.

MISC I

Now, therefore, for the reasons given, and in consideration of the sum of [redacted] paid by Grantee to Grantors, the sufficiency and receipt of which Grantors hereby acknowledge, and of their mutual covenants contained herein, the Grantors voluntarily sell, grant and convey to the Grantee, and the Grantee voluntarily accepts, a perpetual Agricultural Preservation Easement on the Property, pursuant to Montgomery County Code 1984, as amended, Chapter 2B, consisting of those rights described in this Easement, exclusively for the purpose to preserving and forever maintaining the agricultural production capacity of the Property.

1. Prohibited Acts -- Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants enumerated below. They also authorize the Grantee to enforce these covenants in any manner permitted by law or equity. However, unless otherwise specified below, nothing in this Easement shall require the Grantors to take any action to restore the condition of the Property after any Act of God or other event over which they had no control. Grantors understand that nothing in this Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

[1] For purposes of this transaction an Agricultural Preservation Easement is deemed to include certain Transferable Development Rights (TDR's) associated with the Property which the Grantor, simultaneous herewith, shall convey to Grantee."

264

2. Subdivision of Property -- The Grantors relinquish the right to subdivide the Property for industrial, commercial, or residential use or purpose except as provided below.

a. The Grantor reserves as a personal covenant only and one not intended to run with the land, the right to subdivide and convey one acre, or the minimum lot size required by the zoning and health regulations, whichever is greater upon written application to the Grantee, to himself or to each of his children for the sole purpose of constructing a dwelling for his or that child's personal use.

b. The Grantor shall pay the Grantee, for the release of the easement on the lot used for constructing a dwelling for Grantor's or his child's use, the price per acre that the Grantee paid the Grantor for the grant of easement.

c. The Grantor may not create lots at a density greater than one per twenty-five (25) acres of the Property, nor may the total number of lots exceed **eight** (8).

d. The Grantor retains the right to construct, subject to approval of the Grantee, houses for tenants fully engaged in the operation of the farm provided such construction does not exceed one tenant house per one hundred (100) acres. The land on which the tenant house is constructed may not be subdivided or conveyed to any persons and the tenant house may not be conveyed separately from the original parcel.

e. The Grantor shall notify the Grantee if the land is subdivided for agricultural use to permit the Grantee to determine whether such subdivision violates any of the covenants, conditions, limitations, or restrictions contained herein.

3. Construction of Buildings and Other Structures -- The construction or reconstruction of any building or other structure, except those existing on the date of this Easement or previously approved by the Grantee, is permitted only in accordance with this paragraph.

a. Fences - Fences for, or related to, agricultural production, may be built anywhere on the Property without limitation.

b. Agricultural Buildings -- Buildings and other structures to be used solely for, or related to, agricultural production, including the sale of farm products raised primarily on the Property, but excepting any dwelling, may be built anywhere on the Property, without the permission of the Grantee.

4. Dumping Material -- The Grantor will not dump ashes, sawdust, bark, trash, rubbish or any other material on the Property, however, the Grantor reserves the right to dump any material which is generated on the farm during regular agricultural operations.

5. Soil, Water and Forestry Conservation Plans

a. The Grantor shall within five (5) years of the settlement date cause the above described land to be managed in accordance with an approved agricultural soil and water conservation plan so as to promote the agricultural capability of the land; and shall within five (5) years of the settlement date manage any woodland in accordance with an approved Forest Resource Management Plan; provided, however, the Grantor reserves the right to selectively cut or clear cut from time to time trees in accordance with an approved Forest Resource Management Plan to insure that the agricultural character of the land will not be altered by diminishing its productive capability. (See addendum No. 1)

b. The Grantor shall implement all soil conservation and water quality practices that are required within a soil conservation plan, within five years of the easement settlement date. The plan shall be implemented according to the schedule of implementation contained within the plan which exists at the time of easement settlement. The plan must be updated at least every ten (10) years. Revisions to the schedule of implementation may be made as approved by the Board of Supervisors of the local soil conservation district, however, the plan shall be fully implemented within five years of the easement settlement date. Exceptions may be considered by the Grantee on a case by case basis.

c. All references to Plan approvals, means approval by the applicable government agencies.

6. Mining -- The mining or extraction of soil, sand, gravel, rock, fossil fuels or any other mineral substance, using any method that disturbs the surface of the land, are prohibited without the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time, unless they determine that the proposed mining or extraction will diminish or impair the agricultural production capability of the Property. However, nothing in this Easement shall be interpreted to prevent Grantors or any third party holding subsurface mineral rights to remove such minerals, including coal, oil and gas, by methods that do not disturb the surface of the land, and to construct facilities necessary for the removal of such mineral; provided however, any third party holding subsurface mineral rights shall take no action or otherwise cause the agricultural production capability of the Property to be diminished.

7. Transferable Development Rights (TDR's) -- Simultaneous with this transaction, by Deed of Transfer of Development Rights (TDR's) of even date herewith by and between the Grantor and Grantee recorded immediately subsequent hereto in the Land Records of Montgomery County, Maryland, the Grantors convey to the Grantee 38 TDR's associated with the subject Property. The Grantor shall forgo the right to convey to any third party, any TDR's associated with the subject Property which it has retained.

8. Rights Retained by Grantors -- As owners of the Property, the Grantors retain the right to perform any act not specifically prohibited or limited by this Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose.

Further, the Grantor retains the right to use the above described land for any farm use, and to carry on all normal farming practices, including the operation at any time of any machinery used in farm production or the primary processing of any agricultural products; the right to conduct upon the said land any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the said Property above described.

9. Responsibilities of Grantors Not Affected -- Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any existing obligation of the Grantors as owners of the Property. The Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. The Grantors shall continue to be solely responsible for the upkeep and maintenance of the Property, or assume any liability for personal injury or property damage occurring on the Property. The Grantors hold the Grantee harmless from and shall defend the Grantee against any claim, loss, damage costs including reasonable attorney's fees, injury, death, property damage or other matter relating to or arising from or occurring on or about the Property.

10. Enforcement -- The Grantee shall have the right and responsibility to prevent and correct violations of the terms of this Deed. With reasonable advance notice to the Grantors, the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what they believe is a violation, they may at their discretion take appropriate legal action. Except when an imminent violation could irreversibly diminish or impair the agricultural production capability of the Property, the Grantee shall give the Grantors written notice of the violation and thirty (30) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation exists or has occurred, the Grantee may get an injunction to stop it or to require the Grantors to restore the Property to its condition prior to the violation, and the Grantors shall reimburse the Grantee for all enforcement

expenses, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar them from doing so at a later time.

11. Termination of Easement -- If, at least twenty-five (25) years after the date of this Easement, the Grantee determines that conditions on or surrounding the Property have changed so much that it is no longer suitable for the Property to be used for agricultural production, as provided by Montgomery County Code 1984, as amended, Chapter 2B-13, (Bill No. 56-87 enacted February 16, 1988) the Grantee may, upon payment by the Grantors to Grantee of a sum equal to the difference between the fair market value of the property without an easement and the value with the easement at that time, terminate the easement created by this Deed. If this Easement is terminated through the exercise of eminent domain by governmental authority, the Grantee shall be entitled to compensation therefore in an amount equal to the present value of this Easement at the time of condemnation.

12. Interpretation -- This Deed shall be interpreted under the laws of the State of Maryland and Montgomery County, Maryland resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its preservation purpose. If the Grantor has any doubt concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said land, he may submit a written request to the Grantee for consideration and approval of such use.

13. Perpetual Duration - The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantors or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.

14. Gender -- Any masculine term used in this Easement shall include the female gender.

15. Remedies -- Grantee may enforce this easement using any remedies available at law or in equity, including but not limited to specific enforcement and injunctive relief.

16. Severability -- If any portion of this Easement is declared unlawful or invalid, the remainder of the Easement shall remain in full force and effect.

To Have and To Hold, this Deed of Agricultural Preservation Easement unto the Grantee, their successors and assigns, forever.

In Witness Whereof, the Grantors and Grantee intending to legally bind themselves, have set their hands and seals on the date first written above.

Witness:

Hilltop Farms Limited Partnership, Grantor

By: Charles S. Faller, Jr., General Partner

By: L. Jean Faller, General Partner

By: Bruce J. Teck, General Partner

Neal Potter, County Executive
Montgomery County, Maryland

(ACKNOWLEDGEMENTS ATTACHED)

THE UNDERSIGNED, a member of the Bar of the Court of Appeals of Maryland, hereby certifies that the foregoing instrument was prepared by or under the supervision of the undersigned.

Carol S. Rubin

COUNTY OF ~~MONTGOMERY~~ COLLIER
STATE OF ~~MARYLAND~~, SS:
FLORIDA

Personally appeared before me **Charles S. Faller, Jr., General Partner** on this 4th day of March, 1994, and acknowledge that all material statements of fact in the foregoing Deed of an Agricultural Preservation Easement are true to the best of his knowledge and belief, and that the execution of said Deed is his free act with Authority of the County pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

Sue W. Bernier
Notary Public
My commission expires:

OFFICIAL NOTARY SEAL
SUE W. BERNIER
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC082100
MY COMMISSION EXP. MAR. 27, 1995

COUNTY OF ~~MONTGOMERY~~ COLLIER
STATE OF ~~MARYLAND~~, SS:
FLORIDA

Personally appeared before me **L. Jean Faller, General Partner** on this 4th day of March, 1994, and acknowledged that all material statements of fact in the foregoing Deed of an Agricultural Preservation Easement are true to the best of her knowledge and belief, and that the execution of said Deed is her free act with Authority of the County pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

Sue W. Bernier
Notary Public
My commission expires:

OFFICIAL NOTARY SEAL
SUE W. BERNIER
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC082100
MY COMMISSION EXP. MAR. 27, 1995

COUNTY OF MONTGOMERY
STATE OF MARYLAND, SS:

Personally appeared before me **Bruce J. Teck, General Partner** on this 7th day of March, 1994, and acknowledged that all material statements of fact in the foregoing Deed of an Agricultural Preservation Easement are true to the best of her knowledge and belief, and that the execution of said Deed is her free act with Authority of the County pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

Mary J. Norwood
Notary Public
My commission expires:

MARY J. NORWOOD
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires September 17, 1995

COUNTY OF MONTGOMERY
STATE OF MARYLAND SS:

Personally appeared before me **Neal Potter** on this 6th day of April, 1994, and acknowledged that he is the County Executive of Montgomery County, Maryland and that the execution of this Deed of an Agricultural Preservation Easement is his free act as County Executive.

Cecilia Glennon
Notary Public
My commission expires: March 5, 1997

Exhibit A Attached

Exhibit A
Legal Description of Property
Subject to Agricultural Preservation Easement
Conveyed by
Hilltop Farms Limited Partnership
To Montgomery County
c/o Office of Economic Development,
Grantee

All that certain tract or parcel of land situate, lying and being in Election District 11, Montgomery County, Maryland and being more particularly described in the land records of Montgomery County; and more particularly described on the attached Schedule A.

	Property Tax Account No.	Liber/ Folio No.	Acreage	Number of TDR's
1.	914018	5991/12	35.66	7
2.	2270293	6390/107	30.62145 -2.2699 acres R-200	5
3.	914096	6269/400	14.83464	2
		5991/12	164.48837	32
	914085 (Right of Way)	5991/12	1.94	0
			245.27456	46

Number of TDR's to be conveyed to Montgomery County (Grantee) 38

TDR Serial No.s from 18-4490 to 18-4527

Number of TDR's to be retained by Grantor 8

Total TDR's 46

ADDENDUM NO. 1

The purchase price for said Agricultural Preservation Easement shall be $ 3,666.41/ acre for 245.27456 acres totaling $895,610.68. One acre is conveyed to the County at no cost because of the existence of a dwelling. The purchase price per acre shall be allocated as $3,591.41 per acre towards the Easement Value and $ 75.00 per acre for implementing the Soil Conservation/Forest Resource Management Plan. The terms of payment will consist of installments which are as follows:

1.	Payment or Distribution on settlement date totaling	$ 877,290.09
2.	Payment to Landowners/Sellers for Soil Conservation District Certification that the Soil Conservation and Water Quality Plan has been implemented for the tillable farmland, including, if applicable, the certification that a Forest Resource Management Plan has been implemented for the woodland. In the event that certification is received prior to settlement, the payment shall be made on the settlement date. In the event that certification is made after settlement, payment shall be made upon receipt by seller of said certification. ANY PAYMENT PROVIDED FOR IN THIS PARAGRAPH 4 IS CONTINGENT UPON RECEIPT OF SAID CERTIFICATION WITHIN 24 MONTHS OF SETTLEMENT DATE.	$ 18,320.59
	Total Purchase Price	$ 895,610.68

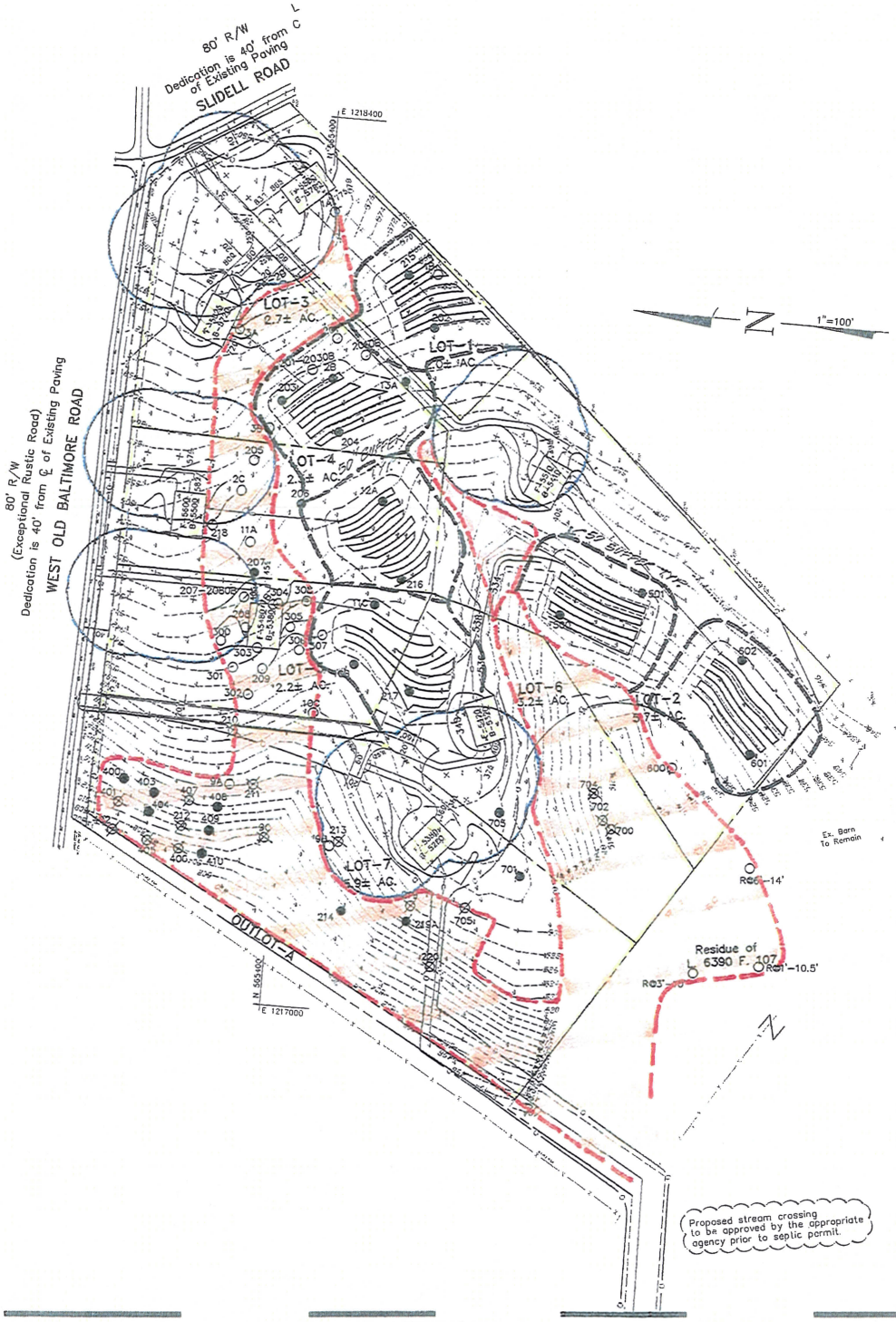
Attachment "E

SEPTIC DESIGN CHART

LOT / BLK	SITE	TIME (MIN.)	DEPTH	SITE	TIME (MIN.)	DEPTH	SITE	TIME (MIN.)	DEPTH	AVG. TIME (MIN.)	DEPTH OF STONE	INITIAL TRENCH	TOTAL TRENCH	NUMBER OF BEDROOMS
1	215	24	5 & 15	202	13	4 & 12½	–	–	–	19	4	239	1000	5
2	602	16	4½ & 14	601	16	3 & 15	–	–	–	16	4	277	1109	6
3	203	27	5 & 12½	13A	15	4 & 12½	204	16	4 & 12½	20	4	277	1109	6
4	12A	18	3½ & 12	216	25	5½ & 15	–	–	–	22	4	297	1188	5
5	11C	23	3½ & 14½	10B	12	2½ & 14	217	24	2½ & 14½	20	4	277	1109	6
6	501	14	3 & 13	500	24	4 & 13½	–	–	–	19	4	277	1109	6
7	4A	11	2½ & 15	4B	18	2½ & 15	–	–	–	15	4	217	1000	6
8	6C	15	4 & 15	6A	19	4 & 15	–	–	–	17	4	277	1109	6

INVERT TABLE

LOT	TOP OF TANK	INVERT IN	INVERT OUT	INVERT @ TRENCH	LOWEST FIXTURE	BASEMENT FLOOR
1	576.5	575.5	575.3	561.0	578.0	578.0
2	542.5	541.5	541.3	533.5	551.0	541.0
3	570.0	569.0	568.8	555.0	572.5	572.5
4	549.5	548.5	548.3	542.5	560.0	550.0
5	540.5	539.5	539.3	535.5	548.0	538.0
6	537.0	536.0	535.8	533.0	542.0	532.0
7	530.5	529.5	529.3	499.0	538.0	528.0
8	——	——	EXISTING HOUSE	——	——	——



Match Line Sheet 2

GRAPHIC SCALE

100 0 50 100 200 400

(IN FEET)
1 inch = 100 ft.

SURVEYOR'S CERTIFICATE

I hereby certify that the boundary shown hereon is correct based on existing deeds and plats recorded among the Land Records of Montgomery County, Maryland, subject to change upon completion of a final survey. Topography from sources noted hereon.

Date

Morris, Hendricks, & Glascock, P.A.
By: Barry E. Hoyle
Professional Land Surveyor
Maryland Reg. No. 21135

PERCOLATION CER

I hereby certify that t
as shown on this plan have

Date

Pro

Attachment "F"

LAW OFFICES

BUDOW AND NOBLE, P.C.

SUITE 500 WEST, AIR RIGHTS CENTER
7315 WISCONSIN AVENUE
BETHESDA, MARYLAND 20814-3206

(301) 654-0896
FAX (301) 907-9591
EMAIL: info@budownoble.com

HOWARD COUNTY OFFICE
Executive Center II
3290 North Ridge Road, Suite 210
ELLICOTT CITY, MARYLAND 21043
(410) 461-3322

PRACTICING IN MARYLAND
AND THE DISTRICT OF COLUMBIA

ALLAN A. NOBLE
MICHAEL J. BUDOW
RICHARD E. SCHIMEL
WALTER E. GILLCRIST, JR
ANNE KELLEY HOWARD
J. CHARLES SZCZESNY
LAURA BASEM JACOBS
*MELISSA D. MCNAIR
*HOWARD R. MEINSTER
ANDREW T. REZENDES
*JOSEPH R. MENNING

*MARYLAND ONLY

January 4, 2007

VIA FACSIMILE (301) 762-0363
Stephen J. Orens, Esquire
Miles & Stockbridge, P.C.
11 N. Washington Street
Suite 700
Rockville, Maryland 20850

Re: Hilltop Farms Preliminary Plan of Subdivision
Subdivision file No.: 120050740 (formally 1-05074)

Dear Steve:

Thank you for sending me copies of the Hilltop Farm Preliminary Plan of Subdivision. Unless I have missed something, my review of the plan indicates that there has been no change over and above the plan that was considered by the Planning Board in June of 2006. If there are any changes or amendments, I should appreciate it if you would point them out to me. Otherwise, I am going to assume that this is the same plan. If it is the same plan, I am at a loss to understand what new things the Planning Board is going to consider and why your clients want to put this on the Planning Board agenda. Your advice on this would be greatly appreciated.

Very truly yours,

Allan A. Noble

AAN/cle
cc: Royce Hanson, Chairman - Maryland NCPPC
Richard Weaver, Coordinator Development Review Division - Maryland NCPPC
Peter Eeg (via email)

J:\AAN\Hilltop Farms\OrensFaxLtr(1-3-07).wpd

ALLAN A. NOBLE
MICHAEL J. BUDOW
RICHARD E. SCHIMEL
WALTER E. GILLCRIST, JR
ANNE KELLEY HOWARD
J. CHARLES SZCZESNY
LAURA BASEM JACOBS
*MELISSA D. MCNAIR
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(410) 461-3322

PRACTICING IN MARYLAND
AND THE DISTRICT OF COLUMBIA

December 20, 2006

Mr. Royce Hanson
Chairman, The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Preliminary Plan: Hilltop Farms Subdivision
Subdivision file No.: 120050740 (formally 1-05074)

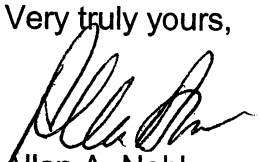
Dear Chairman Hanson:

The upper county community and in particular, residents of Boyds, are very concerned about the manner in which the proposed preliminary plan for the Hilltop Farms Subdivision is being handled by The Maryland-National Capital Park and Planning Commission. The matter was considered by the Planning Board on Thursday, June 8, 2006, at which time the plan or application was deferred. It was my understanding that the applicant was going to try to revise its plan and application. Moreover, then Chairman Berlage, requested that the County Attorney's Office supply a legal opinion on certain matters.

Since that time, neither I nor the community have heard anything from either the applicant or the staff, despite a number of requests for information that residents of the community have made of the staff. We have now heard "rumors" that this matter has been scheduled for hearing on January 18, 2007. Accordingly, the community should appreciate a courtesy of advice from the Board as to whether the application has been resubmitted, revised, whether any additional work has been done by the staff or whether the Commission has received the legal opinion as requested. The community obviously needs time to review anything that has been submitted. Given the holidays and the short time frame involved, we should appreciate your advice as soon as possible.

I am sending a copy of this correspondence to Stephen J. Orens, counsel for Hilltop Farms Limited Partnership. I am also enclosing a copy of my letter to Mr. Orens.

Very truly yours,



Allan A. Noble

AAN/cle
Enclosure
cc: Stephen J. Orens, Attorney for Hilltop Farms Limited Partnership
Richard Weaver, Coordinator Development Review Division - Maryland NCPPC
Peter Eeg
J:\AAN\Hilltop Farms\HansonLtr(12-20-06).wpd

ALLAN A. NOBLE
MICHAEL J. BUDOW
RICHARD E. SCHIMEL
WALTER F. GILLCRIST, JR
ANNE KELLEY HOWARD
J. CHARLES SZCZESNY
LAURA BASEM JACOBS
MELISSA D. MCNAIR
*HOWARD R. MEINSTER
LEA C. MEYER
ANDREW T. REZENDES

*MARYLAND ONLY

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3290 North Ridge Road, Suite 210
ELLICOTT CITY, MARYLAND 21043
(410) 461-3322

PRACTICING IN MARYLAND
AND THE DISTRICT OF COLUMBIA

May 23, 2006

Mr. Derick Berlage
Chairman of Maryland NCPPC Dept. of Park and Planning
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Preliminary Plan of Subdivision 12050740
Hilltop Farms Limited Partnership

Dear Mr. Berlage:

My wife Kathy and I are landowners in Boyds, Maryland. Our property abuts the property owned by Hilltop Farms Limited Partnership. I recently had an opportunity to meet with Richard Weaver of Development Review and inspect the file. What I saw is of great concern to me and to my neighbors. There is a substantial amount of opposition to this development plan. I would appreciate it if the Commission and the Development Review staff were to keep me fully advised as to each and every step in this application process. Moreover, I specifically request that any hearing in this matter be scheduled in the evening with ample advance notice to all concerned, including all landowners in the Boyds area.

Let me repeat that this whole process is of great concern to us and we are strongly opposed to the development of this property. I should appreciate an acknowledgment of receipt of this letter and specific confirmation that we will be kept informed of all steps in this process.

Very truly yours,

Allan A. Noble

AAN/cle
cc: Cathy Conlon, Supervisor, Development review
Richard Weaver
Peter Eeg
J:\AAN\Hilltop Farms\BerlageLtr(5-18-06).wpd

MCP-Chairman 120050740

From: laserveteeg@netzero.net
Sent: June 14, 2006 9:07 AM
To: Weaver, Richard; MCP-Chairman
Cc: anoble@budownoble.com; f.a.r.m@erols.com; HoffmannRT@ballardspahr.com

Chairman Berlage and Rich Weaver,
Hilltop Farm application Comments

Thank you for your comments on the exceptional rustic road impact in the staff report. This really needs to be better developed by the applicant before they repeat their attempt at a hearing.

I also need to have you correct what I am sure is a mis-speak by the applicants' attorney. He indicated that DPS determines the size the the plot needed for well and septic. DPS regs indicate that the applicant does the testing, determines the size house they want, and then asks DPS to determine if their results are correct. This needs to be corrected for the applicant, so they do not make this understandable mistake again.

Please let me know the general guidelines that take place when an applicant withdraws their application for deferral.

Best Regards
Peter H. Eeg DVM
Acting President PRCA

Mr. Derick Berlage
Chairman, The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Plan: Hilltop Farms Subdivision
Subdivision file No.: 120050740 (formally 1-05074)

Dear Mr. Berlage:

PETITION

We, the undersigned, are landowners in the Boyds area of Montgomery County. We strongly oppose the establishment of this subdivision and urge the Planning Board to deny approval. We base this opposition on many factors, including but not limited to, the following:

1. The Subdivision is in violation of the March 4, 1994 preservation easement with Montgomery County.
2. The Subdivision is in violation of Maryland and Montgomery County law.
3. The Subdivision violates the intent and spirit of the Maryland and Montgomery County Agricultural Preservation Acts and its programs.
4. The Subdivision is poorly and improperly planned as to lot size, lot configuration, septic and well, and driveway and road access.

Diana E. Conway 6-6-06
Name Date
10600 River Rd. Potomac MD 20854
Address

David Shneyer 6/6/06 Rockville MD
Name Date
1715 Wilmart Rd Rockville MD 20852
Address

Melanie Hoffmann 6/6/06
Name Date
23801 Peach Tree Rd. Clarksburg MD 20871
Address

OAKLEY JOHNSON 6/6/06
Name Date
14625 SENECA RD, DARNESTOWN
Address

Tom Hoffmann 6/07/06
Name Date
23807 Peach Tree Rd, Clarksburg MD 20871
Address

Robert Elderidge 6/8/06
Name Date
21200 Little Sierra Ct
Address

Barbara Elderidge 6/8/06
Name Date
21200 Little Sierra Ct

Elizabeth Farquhar 6/8/06
15000 W Old Baltimore
Address

Gordon Fields 6/8/06
Name Date
15220 Oanley Rd
Address

Karen Fields 6/8/06
Name Date
15220 Oanley Rd
Address

Ann Mease 6/8/06
Name Date
22211 Shiloh Church Rd
Address

David Ortman 6/8/06
Name Date
15000 W Old Baltimore
Address

Elizabeth Ortman 6/8/06
Name Date
15000 W Old Baltimore
Address

Daniel Ovington 6/8/06
Name Date
12400 W Old Baltimore
Address

Lori-Ellen Ovington 6/8/06
Name Date
12400 W Old Baltimore
Address

Suzanne Shoemaker 6/7/08
Name Date
20201 Bucklodge Rd
Address

Jan Lewandrowski 6/7/08
Name Date
20201 Bucklodge Rd
Address

Tom Ware 6/7/08
Name Date
19310 Bucklodge Rd 6/7/08
Address

Regina Walls 6/7/08
Name Date
20015 Bucklodge
Address

Del Semmes 6-8-08
Name Date
15801 W. Old Baltimore Rd Boyds 20841
Address

Ceara Shipley
Name Date
15801 W. Old Baltimore Rd Boyds 20841
Address

Name Date
Address

Name Date
Address

21 names

Mr. Derick Berlage
Chairman, The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Plan: Hilltop Farms Subdivision
Subdivision file No.: 120050740 (formally 1-05074)

Dear Mr. Berlage:

PETITION

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3. The Subdivision violates the intent and spirit of the Maryland and Montgomery County Agricultural Preservation Acts and its programs.

4. The Subdivision is poorly and improperly planned as to lot size, lot configuration, septic and well, and driveway and road access.

JODI HART
Name Date
18513 Mckernon Way
Poolesville, MD 20837
Address

Merritt Elms 06-06-06
Name Date
20501 Top Notch Dr.
Boyds, MD. 20841
Address

MARK KABES 6-6-06
Name Date
19801 BUCKRIDGE BOYDS, MD
Address 20841

Dawn Cohen 6-6-06
Name Date
1900 Lyttonsville Rd
Silver Spring MD 20910
Address

[signature] 6-6-06
Name Date
BOX 385
BARNESVILLE, MD 20838
Address

David E. Bonet June 6, 2006
Name Date
23720 Old Hundred Road Dickerson MD 20842
Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

Address

PETER WINSLOW 6/6/06

Name Date

22111 DICKERSON RD, DICKERSON, MD

Address

THOMAS LEEDY 6/6/06

Name Date

15720 CONUS ROAD, CLARKSBURG, MD

Address

MIKE RUBIN 6 June 2006

Name Date

19701 Bucklodge RD Boyds MD 20841

Address

Abby Joe Farmer

Name Date

19701 Bucklodge Rd. Boyds, MD, 20841

Address

STEVE Snyder 6/6/06

Name Date

5706 Charlotte Rd Bethesda 20817

Address

Dolores Milman 6/6/06

Name Date

18801 River Rd. Poolesville. MD 20837

Address

Name Date

22302 Shiloh Church Rd Boyds

Address

Gary Milman 6/7/06

Name Date

18801 River Rd. Poolesville MD 20837

Address

Andrew Daniel 6-6-6

20617 Topridge Dr. Boyds
Address

Diane J. Daniel 6-6-6
Name Date

20617 Topridge Dr. Boyds
Address

Ben Daughtry 6-6-6
Name Date

17511 Milestone Dr. Boyds
Address

Vera Daughtry 6-6-06
Name Date

17511 Milestone Dr, Boyds 20841
Address

Oliver DeMesquita
Name Date 6-6-6

21000 Clarksburg Rd
Address

Douglas Drake 6-6-06
Name Date 6-6-6

20800 Slidell Rd Boyds
Address

Sylvia Drake 6-6-6
Name Date

20800 Slidell Rd, Boyds
Address

Mark Dresser 6-7-06
Name Date

15901 Barnesville, Rd, Boyds 20841
Address

Ethel Matthews 6-7-06
Name Date

19015 Festival Dr Boyds
Address

Maven Ethel 6-7-6
Name Date

19015 Festival Dr. Boyds 20841
Address

Ralph Ecker
Name Date

21701 Ten Mile Creek, Boyds
Address

Kate Gouvens 6-8-6
Name Date

22600 Shiloh Church Rd Boyds
Address

Church Covenants 6-8-06
Name Date

22600 Shiloh Church Rd Boyds
Address

Dr. Leslie Foster 6-8-06
Name Date

20515 Buehlodge Rd, Boyds 20841
Address

Melissa Foster (BSA President)
Name Date

20515 Buehlodge Rd Boyds
Address

Johnny A. Heaney 6-8-06
Name Date

14611 W. Old Baltimore Rd
Address Boyds

37 names

Mr. Derick Berlage
Chairman, The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Plan: Hilltop Farms Subdivision
Subdivision file No.: 120050740 (formally 1-05074)

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PETITION

We, the undersigned, are landowners in the Boyds area of Montgomery County. We strongly oppose the establishment of this subdivision and urge the Planning Board to deny approval. We base this opposition on many factors, including but not limited to, the following: INAPPROPRIATE CNICD LOTS

1. The Subdivision is in violation of the March 4, 1994 preservation easement with Montgomery County.

2. The Subdivision is in violation of Maryland and Montgomery County law.

3. The Subdivision violates the intent and spirit of the Maryland and Montgomery County Agricultural Preservation Acts and its programs.

4. The Subdivision is poorly and improperly planned as to lot size, lot configuration, septic and well, and driveway and road access.

Dale G. Zimmerman June 05, 2006
Name Date

16251 West old Baltimore Rd
Address

Kim Warren 05 June 06
Name Date

16257 W Old Baltimore Rd
Address

[illegible] 6/5/2006
Name Date

16201 W. MD BALTIMORE RD
Address

Dawn Willis 6/5/06
Name Date

16201 W Old Baltimore Rd
Address

Herbert L. Carlin 6/5/06
Name Date

16015 W. OLD BALT RD BOYDS, MD
Address

Emily Carlin 6/5/06
Name Date

16015 W. OLD BALT RD, BOYDS, MD
Address

Name Date

Address

Thelma Heath June 5 2006
Name Date

22101 Slidell Rd Boyds MD
Address

SUSAN SOLO 6/5/06
Name Date

21718 SLIDELL RD
Address

TED SOCO 6/5/06
Name Date

21718 SLIDELL ROAD
Address

Joan King 6/05/06
Name Date

21712 Slidell Road
Address

Louise King 6/05/06
Name Date

21712 Slidell Rd
Address

Robert Stephenson 6/05/06
Name Date

21712 Slidell Road
Address

Donna Phoebus
Name Date
21810 Slidell Rd
Address

Scott Phoebus
Name Date
21810 Slidell R
Address

DAVID KHOO 6/5/06
Name Date

16620 W. OLD BALTIMORE Rd
Address

CAROL KHOO 6/5/06
Name Date

16600 W. OLD BALTIMORE Rd
Address

Cindy Egg 6-5-06
Name Date

16400 W Old Baltimore
Address

Peter H. Egg DVM
Name Date

16400 W. OLD BALTIMORE Rd.
Address BOYDS

Eric Chacon
Name Date BARNESVILLE

17401 Coroy Roads
Address

PAT Townsend
Name Date
17700 Barnesville rd
Address Barnesville md 20838

Kathryn M Noble 6/6/06
Name Date

16919 Barnesville Rd Boyds
Address

Joan Yolken June 6, 2006
Name Date
15400 Edwards Ferry Road
Poolesville MD 20837
Address

Patricia Huckabone
Name Date 6/6/06
Box 344
17601 White Store Road Barnesville 20838
Address

Howard Thomas Yolken
Name Date
15400 EDWARDS FERRY RD
Poolesville, MD 20837
Address

SHARON BAKER 6/6/06
Name Date

18605 Barnesville Rd
Address Barnesville MD 20838

Della A. Nobie
Allan A. Nobie 6-7-06
Name Date

16919 Barnesville Rd., Boyds Md. 20841
Address

Anne Alcorn 6-6-06
Name Date
15311 Barnesville Rd Boyds
Address 20841

Dick ALCORN 6-6-06
Name Date 6-6-06
15311 Barnesville Rd
Boyds MD 20841
Address

Dennis Allnutt
15711 Barnesville Rd Boyds 20841
Name Date 6-6-6

NANCY ALLNUTT
15711 BARNESVILLE RD BOYDS 20841
Address

Frank Abed
14715 W. Old Baltimore Rd 20841
Name Date 6-6-06

Mary Bartel
15909 Barnesville Rd, Boyds 20841
Address

Mildred Bleedorn
15828 BARNESVILLE RD, Boyds 20841
Name Date 6-6-06

Patti Dodson
15825 Barnesville Rd, 20841
Address

Mary Bowman
17300 White Ground Rd, Boyds 20841
Name Date 6-7-06

Glenn Bradley
Address

23520 Shiloh Church Rd Boyds
Name Date 6-7-06

Phyllis Bradley
Address 23520 Shiloh Church Rd. Boyds 20841

37 Names

Mr. Derick Berlage
Chairman, The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Plan: Hilltop Farms Subdivision
Subdivision file No.: 120050740 (formally 1-05074)

Dear Mr. Berlage:

PETITION

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2. The Subdivision is in violation of Maryland and Montgomery County law.
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4. The Subdivision is poorly and improperly planned as to lot size, lot configuration, septic and well, and driveway and road access.

Name 6-8-06 Date

1610-C Overlea, Freelund Md 21703
Address

Name Date

Address

Name Date

Address

Name Date

Address

Name Date

17200 Dunston Rd Boyds MD 20841
Address

Name Date

Address

Name Date

Address

Name Date

5 more

VIA FACSIMILE 301-495-1306

Mr. Richard Weaver
Development Review Division
Maryland NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Preliminary Plan of Subdivision 12050740
Hilltop Farms Limited Partnership

Dear Mr. Weaver:
I would like to again thank you for your time last month in discussing this Subdivision plan with myself and Mr. Noble. I understand the dilemma that you and your staff have, as you relayed to me during our meeting, over the legal, development, and preservation issues. As you know I have been asked by the residents of the area where the Subdivision is requesting placement to continue acting as President of the Peachtree Ridge Citizens' Association and represent their concerns related to this matter.
After extensive conversations with community members, experts, CEDS, and attorneys (see Mr. Nobles separate statement and supporting information) I have ten items that I will be bringing to the Commissioners attention at the hearing scheduled for June 8Th, 2:30PM at Park and Planning. A full length statement will be provided at this time for the record. Attached in brief are the 10 items that the community has issue with on the Hill Top Farm Sub division.

The community strongly agrees that Subdivision plan (12050740) must be denied based one or more of the ten points raised below.

Baring this outcome, Subdivision plan (12050740) must be deferred until such time as the County Council mandated Agricultural Task Force has completed its recommendations as to guidelines for child Lots and development in the agricultural reserve and transmitted them to the County Council for action.

Baring this outcome, Subdivision plan (12050740) should be remanded to the Montgomery County Agricultural Advisory Board for new review because of substantial new information presented during this hearing and outlined in your Staff report.

The following are outline points to be presented at the Park and Planning hearing for Subdivision plan 12050740 on June 8Th, 2006 at 2:30 PM

1. Subdivision is poorly and improperly planned as to lot size (one acre max not conformed to by developer or attempted), lot configuration (large house foot print, 5-6 bedroom), Septic fields granted between failed fields, wells too close to septic, improper positioning of driveways for exceptional rural rustic road, drive ways too close to intersection. (see expert testimony Dr. Reed)

2. Subdivision is in violation of the March 4, 1994 preservation easement with Montgomery County (see supporting documents provided by Mr. Noble)

3. The Subdivision is in violation of Maryland and Montgomery County law with respect to child lot designation. Lots are being designated to trusts and not individual children. Partnership controls lots not individual children. Partnership does not farm or live on the land currently under consideration.

4. The Subdivision violates the intent and spirit of the Maryland and Montgomery County Agricultural Preservation Acts and its programs. There is evidence, specifically a letter from Mr. Faller to you (Mike Rubin) that the lots will be available for sale in the near future.

5. Septic system of one lot is to traverse a class III Maryland water way, Bucklodge branch of Little Seneca, when alternate perk sites are available. (See expert testimony report presented at hearing by Dr. Reed)

6. Records from Montgomery County Ag Advisory Board indicates that a contract exists for sale farm to Roach Family. How can the farm be under contract to sell and still be allowed to produce a Subdivision on that farm?

7. Neither Mr. Faller, or any member of the Partnership resides on the farm. The farm is already occupied by the Contract purchaser.

8. Conversations with Daughter of Mr. Faller Senior indicate that she does not intend to live in any house built on the property. Daughter also indicated that 5 of the 8 individuals will not live on the property.

9. Charles Faller Sr. is being designated a lot, but he is the parent not a child.

10. Location of Subdivision is placed to maximize lot resale value. Lot sizes are 2.5 to 5 acres. Each lot is designated for a 5-6 bedroom house.
This position will produce destruction of scenic vista associated with the exceptional rural and rustic road (west old Baltimore) and rustic road (slidell).

I and my neighbors chose to live along West Old Baltimore Road because of its unique rural character;

- A significant part of this character are the extensive portions of West Old Baltimore Road with roadside trees and fences;
- The trees are critical to screening from view the increasing number of suburban type homes along our rural roads;
- Presently, my portion of West Old Baltimore Road is relatively free of these out-of-character homes;

- West Old Baltimore Road was designated an *exceptional rustic road* in the *Rustic Roads Functional Master Plan* and in Exhibit A of §49-79 of the Montgomery County Code;
- Regulation §49-78(d) requires preservation of significant features along rustic roads;
- The following significant West Old Baltimore Road feature identified in the Master Plan will be degraded by the Hilltop Farm project: "The way the road fits the terrain, the narrow pavement, and the close proximity of fences and trees to the road."
- Much of the West Old Baltimore Road perimeter of the site is lined with roadside trees and fences;
- To create adequate sight-distance at the three proposed access drives onto West Old Baltimore Road it will be necessary to remove the roadside trees and fences for up to a hundred feet to the east and west of the three drives.
- In other words, up to 600 feet of roadside trees and fences could be lost along the 1,000 feet of the site which abuts West Old Baltimore Road;
- Additionally, the road bank is two- to six-feet high at the point where the three drives would intersect West Old Baltimore Road;
- A substantial amount of cutting will be necessary to get the drives to the same grade as West Old Baltimore Road;
- Combined, the removal of roadside trees and fences for sight-distance and the extensive cuts will greatly reduce the trees and fences along West Old Baltimore Road;
- With the loss of roadside trees and Hilltop Farm, there will be three new out-of-scale, out-of-character, suburban-type houses visible from one of the most scenic and rustic sections of West Old Baltimore Road;
- Two of the homes will be built within a hundred of this exceptional rustic road;
- Clearly, the plan before you fails to comply with the spirit, intent, and specific provisions of the *Rustic Roads Functional Master Plan* and the Montgomery County Code; therefore
- I urge you to deny approval for this plan.

Following is background on the points presented above.

EXCEPTIONAL RUSTIC ROAD

As stated above, West Old Baltimore Road was designated an exceptional rustic road in the *Approved and Adopted Rustic Roads Functional Master Plan* and in Exhibit A of §49-79 of the Montgomery County Code.

Regulation §49-78(d), of the Montgomery County Code, states:
(d) Significant features. When the County Council classifies a road as a rustic road or an exceptional rustic road, the Council must identify the significant features of each such road that must be preserved when the road is maintained or improved.

Regulation §49-79(a), of the Montgomery County Code, states:
(a) County roads. Rustic roads and exceptional rustic roads must be maintained and improved in a manner that preserves the road's significant features identified by the County Council under subsection 49-78(d), but this requirement does not preclude improvements for the purposes of safety or movement of farm equipment. The County Executive must establish guidelines by Executive Regulation under method (2) for maintenance and improvement of rustic roads and exceptional rustic roads.
Page 222, of the *Rustic Roads Functional Master Plan* lists the following Significant Features:

- The alignment of the road has historic significance as one of the oldest roads in the County, dating to the early 1700s.

- The way the road fits the terrain, the narrow pavement, and the close proximity of fences and trees to the road

- The unpaved portion of this road is one of the few such areas remaining in Montgomery County and, as such, is a highly unusual feature.

- The ford at Ten Mile Creek may soon be unique among roads in Montgomery County.

Only the first two significant features are relevant to the portion of West Old Baltimore Road affected by the Hilltop Farm project. While project plans do not show any changes to the alignment of West Old Baltimore Road, the project will significantly impact the terrain, pavement width, and the close proximity of trees and fences.
The westernmost driveway, serving Lots 6 and 7, will require a six-foot cut in the south embankment of West Old Baltimore Road. This cut and side slopes will substantially alter the terrain along this portion of the road.

The Lot 4 and 5 driveways will require, respectively, a two- and three-foot cut and cause terrain alterations. A paved apron is proposed for all three driveways which will increase pavement width.

Finally, to achieve adequate sight-distance, the fence and trees east and west of all three West Old Baltimore Road driveways must be removed for a considerable distance.

The Peachtree and Boyds communities would like to thank you for your consideration in this matter.

Peter H. Eeg DVM
Acting President Peach Tree Ridge Citizens' Assoc.

LAW OFFICES
BUDOW AND NOBLE, P.C.
SUITE 500 WEST, AIR RIGHTS CENTER
7315 WISCONSIN AVENUE
BETHESDA, MARYLAND 20814-3206

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FAX (301) 907-9591
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LAURA BASEM JACOBS
*MELISSA D. MCNAIR
*HOWARD R. MEINSTER
LEA C. MEYER
ANDREW T. REZENDES

*MARYLAND ONLY

HOWARD COUNTY OFFICE
Executive Center II
3290 North Ridge Road, Suite 210
ELLICOTT CITY, MARYLAND 21043
(410) 461-3322

PRACTICING IN MARYLAND
AND THE DISTRICT OF COLUMBIA

June 6, 2006

Mr. Derick Berlage
Chairman, The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Plan: Hilltop Farms Subdivision
Subdivision file No.: 120050740 (formally 1-05074)

Dear Mr. Berlage:

My wife Kathy and I have been residents and landowners in the Boyds area of Upper Montgomery County since 1975. We currently live at 16919 Barnesville Road. Our property abuts the property owned by Hilltop Farms Limited Partnership. We have been active in Community Affairs for over thirty years. I am the past President of the Boyds Civic Association and current President of the Boyds Federal Credit Union. I was President of the Civic Association during the Boyds Master Planning Process and led the successful fight against Rockville Crushed Stone to establish a quarry in Boyds.

We have received a Notice of Public Hearing that the proposed preliminary plan for the Hilltop Farms Subdivision is to be considered by the Planning Board on Thursday, June 8, 2006 at 2:30 in the afternoon. I previously requested that this matter be scheduled for the evening to allow residents of Boyds who are in opposition to this Subdivision to testify. Apparently, this request has been denied.

My wife and I, including many neighbors, strongly oppose this Subdivision. The history of the attempts by the owner, Hilltop Farms Limited Partnership (hereinafter Hilltop Partnership), to develop this property over the years is a long and complicated one. For multiple reasons, we strongly urge the Planning Board to deny approval. I will address certain specific issues below.

Preliminary

Preliminarily, I would note that the Development Review file, which I understand is the official file, does not appear to be complete. The application, as I understand it, has

been revised on a number of occasions. Mr. Weaver of Development Review initially advised us that he was working off of the preliminary plan dated December 20, 2004. However, there was a revision to that plan dated July 22, 2005. Inspection of the Agricultural Preservation Advisory Board (APAB) file indicates that there are revisions as late as January 18, 2006.[1] I have written to Macris, Hendricks & Glascock, P.A., the engineers for Hilltop, asking for the latest proposal, but have not received a reply. Given the complicated nature of this application, I submit that it is impossible and unfair for the residents to respond to this proposal if they do not understand what final plan is being considered. Everyone needs to have the same program to intelligently review this matter. It does not appear, based upon my inspection, that that is the case.

History

The Agricultural Preservation Advisory Board (APAB) file, documents some of the history of this project. The APAB has struggled with this issue since the late 1990's. Although it is now given approval, the history demonstrates that the Hilltop Partnership has always viewed this as strictly a development project. There is nothing "agricultural" or "child" about it.

We recognize that the request for child lots in this case is under the Agricultural Preservation Act and not under Section 59-C-9.74(b) of the Montgomery County Zoning Ordinance. However, the factors dealing with whether child or tot lots should be created are equally applicable. The Board is well aware of the abuse of the child or tot lot exceptions. This case is another classic example of these abuses.

The APAB Board rescinded its original approval of the child lot request by letter dated February 24, 2005. (Exhibit A) Attached was their letter of July 14, 2004, (Exhibit B) with various exhibits, including a time line (Exhibit B - 1) and other attachments. Of critical significance was the letter dated December 16, 2002 from Charles S. Faller, III, President of Faller Construction Company, Inc. to Michael D. Rubin concerning the development of this property. (Exhibit B - 2) Mr. Faller was responding to Mr. Rubin's inquiry about the sale or development of the farm. In that letter, Mr. Faller states "I am continuing the Subdivision and should be in a position to sell the lots this summer". This letter underscores the fact that this has always been a business venture whose sole objective was to develop this property and maximize profits. Neither Charles S. Faller, III nor Charles S. Faller, Jr. have ever lived on or personally farmed the property. Their sole objective from the start has been to develop the property. This objective continues through the present day as evidenced by the letter from Mr. Faller to Mr. Rubin.

The APAB file demonstrates and documents a total resistence by the Partnership to any commitment towards true child lots. There is a complete refusal by the Partnership to

---

[1] See John Zawitoski's letter of January 30, 2006 to Charles Faller which is part of the Planning Board and/or APAB file.

agree to anything that would commit them to a true child lot. For example and without limitation, there are no affidavits under oath in either the Planning Board file or the APAB file establishing any of the following:

1. The status of the alleged children;

2. The current residences of the alleged children;

3. That these alleged children intend to build a primary residence and live there.

It is our understanding that the Partnership and the "children" have refused to sign any such affidavits. There is nothing in the record that establishes any kind of safeguards that these children will live there. In reality, it is submitted that this exercise is nothing more than a pretext for the purpose of flipping these lots for profit - as confirmed in Mr. Faller's letter to Mr. Rubin of December 16, 2002.

There is no legal basis for the Hilltop Partnership to establish child lots

For any of the two following reasons, there is no legal basis for the Partnership to establish child lots.

A. Children Issue

The owners, Hilltop Farms Limited Partnership (a Maryland Limited Partnership), granted a Deed of Agricultural Preservation Easement to Montgomery County, Maryland by deed dated March 4, 1994 and recorded on April 7, 1994 in Book 12500 page 642. (Exhibit C) This placed the entire property of 247.54446 acres in agricultural preservation for which Hilltop Farms Limited Partnership received $895,610.68. The Limited Partnership as grantor relinquished its right to subdivide the property, but reserved the right to develop 8 lots for the grantor's (or land owner's) children for the sole purpose of constructing a dwelling for the child's personal use. The density was limited to no greater than 1 per 25 acres of property.

Schedule A to this deed of agricultural preservation easement reflects that Hilltop Farms Limited Partnership purchased this property in three (3) parcels. Parcel one was purchased on April 30, 1984 and recorded on May 8, 1984. Parcel two was purchased on December 15, 1983 and recorded on December 23, 1983. Parcel three was purchased on December 21, 1983 and recorded on January 6, 1984.

As the Development Review Division file indicates, Hilltop's Certificate of Limited Partnership was filed with the State Department of Assessments and Taxation on December 28, 1982. (Exhibit D) The purpose of this Partnership was to engage in the business of acquiring, earning and disposing of interests in real estate and to operate, manage and develop real estate for the production of profit. (Section II)

Under Section 9A - 201, Corporations and Associations Art. Md Code, a Partnership (like a corporation) is a separate, distinct entity from its partners. Moreover, under Section 9A- 203, partnership property is the property of the partnership and not of the partners individually.

The applicant in this case is not Charles S. Faller, but Hilltop Farms Limited Partnership, a separate entity. Hilltop seeks to establish a subdivision based on the authority of the Deed of Agricultural Preservation Easement recorded on April 7, 1994. (Exhibit C) The grantor is Hilltop Farms Limited Partnership. This document seeks to reserve to the grantor the right to create a subdivision for lots to "himself or to each of his children for the sole purpose of constructing a dwelling for his or that child's personal use".

A Limited Partnership does not and cannot have children and therefore, any attempt to create this subdivision for the use of Mr. Faller or his children is a nullity and illegal.

This is more than a mere technical argument. It goes to the heart of the purpose of child lots. The creation of a child lot is a right that is personal to the owner farmer who has farmed and worked the property. It is not assignable. By placing title in the Partnership, the Partnership can then sell and distribute as many interests in the Partnership as it desires and therefore attempt to circumvent the law. The Hilltop Partnership is a case in point. Hilltop has already assigned or redistributed the Partnership interests as evidenced by the assignment of general partnership interests. (Exhibit E) What is to stop them from doing it again?

B. Child lot sizes

We assume in defiance of the laws of nature that the Limited Partnership entity has children and can create child lots, then the Board must address the issue as to whether the size of the child lots proposed are valid. They are not. This is not a simple legal analysis – but one that is ultimately correct. I have enlisted the help of Poolesville attorney William Roberts to assist me in this part of the analysis.

Under the terms of the agreement, (Exhibit C) the county purchased an agricultural easement on the property, and paid the property owner the sum of $895,610.68. That purchase was made in accordance with Chapter 2B of the Montgomery County Code, "Agricultural Land Preservation". Chapter 2B of the Code was enacted as a result of legislation at the state level set forth in Subtitle 5, Title 2, of the *Agriculture Article of the Annotated Code of Maryland.*

In looking at the statutory scheme, I assume, that the purchase of the "Preservation Easement" in this particular case included not only funds from Montgomery County, but funds from the State of Maryland as well.

The Easement granted to Montgomery County an agricultural easement by the then

and now property owner, Hilltop Farms Limited Partnership. That document further reserved unto the grantor, and the grantor only, "the right to subdivide and convey one acre, or the minimum lot size required by the Zoning and Health Regulations, whichever is greater upon written application to the grantee, to himself or to each of his children for the sole purpose of constructing a dwelling for his or that child's personal use." (Folio 645). The document further stated "the grantor may not create lots at a density greater than one per twenty-five (25) acres of the property, nor may the total number of lots exceed **eight** (8)." (Folio 645, emphasis in original).

By Chapter 83 of the Laws of the State of Maryland (1977), the legislature mandated: "In each county containing productive agricultural land, the county governing body shall appoint an agricultural preservation advisory board." That mandate is codified in Section 2-504.1 of the *Agriculture Article of the Annotated Code of Maryland*. Applications for easements are reviewed by the local APAB and at least partial funding for the purchase of those easements comes directly from the state via the MALPF.

Subtitle 5 of Title 2 of the Agriculture Article of the Annotated Code sets forth the statutory scheme to be employed both by the MALPF and the local APABs.

As I read Section 2-513 as it existed at the time this Easement was established, there is a one acre limitation. Even if we assume that the current Section 2-513 is applicable, such a subdivision is still impermissible.

As set forth at the State level, the local APAB could not release these requested lots. Under existing Section 2-513, as a general rule any such "reserved" "child" lots, are absolutely restricted to one acre in size. Section 2-513(b)(2). In addition, that same subsection restricts the maximum number of reserved lots to three (3).

The only exception is set forth in Subsection (b)(6)(i), which allows a maximum lot size of two acres only if "regulations adopted by the Department of the Environment (meaning Maryland Department of the Environment) require a minimum lot size for a dwelling house of not less than two acres"; or, in the alternative, "regulations adopted by the jurisdiction in which the land is situated require that a lot for a dwelling house be larger than one acre." The first extraordinary exception I do not believe is applicable here. The second extraordinary exception as enumerated certainly is not applicable here, since the minimum lot size in the RDT Zone is 40,000 square feet.

Section 2B-11 of the Montgomery County Code provides, inter alia:

> (c) a person who owns land that the Council has included in a county district must not use or subdivide the land for residential, commercial or industrial uses. However, a grantor may use no more than:
>
> (1) One (1) acre, or the minimum lot size required by the Zoning and

Health Regulations, whichever is greater, to build a house for use by the grantor;

(2) One (1) acre, or the minimum lot size required, whichever is greater, to a maximum density of not more than one house per twenty-five acres for each house built, to be occupied by an adult child of the grantor, to a maximum of ten (10) children; and

(3) The acreage needed to construct housing for tenants fully engaged in the operations of the farm, not to exceed one (1) tenant house per one hundred (100) acres. The owner or the owner's child must not further subdivide the parcel on which the house is built. The land on which a tenant house is constructed must not be subdivided or conveyed to any person. The tenant house must not be conveyed separately from the original parcel.

If an owner's lot and child lots were not intended to be treated differently, then there would have been no reason whatsoever to split the same into two separate paragraphs.

In connection with the Subparagraph (1), a house to be used by the property owner], the restriction is one acre, or the minimum lot size "required by the zoning and health regulations, whichever is greater". With regard to (2), child lots, there is no exception provided to go above one acre for "health regulations", only for "minimum lot size". The 'minimum lot size' in the RDT zone is 40,000 square feet, less than an acre. Consequently, Paragraph (2) provides an absolute maximum of a one acre lot for a child lot, regardless of the area that may be necessary for health regulations. What that means is if you can't fit it in one acre, then you don't get it.

Montgomery County regulations mimic that set forth in Chapter 2B of the Code. COMCOR 02B.00.01(b)(4)(B) provides as follows:

(B) Residential Use

The grantor of an agricultural district retains certain rights to construct dwellings needed on the farm. The grantor must apply in writing to the Agricultural Preservation Advisory Board for approval to use:

1. One acre, or the minimum lot size required by the Zoning and Health Regulations, whichever is greater, to build a house for use by the grantor.
2. Up to 10 1-acre lots, or the maximum lot size required, to build houses to be occupied by adult children of the grantor at a maximum density of not

more than one (1) house per 25 acres; ...

The problem, of course, is that the "deed of agricultural preservation easement" recorded in 1994 **unlawfully**, I submit, combines the two separate standards for a lot to be used by the grantor and lots to be used by the grantor's purported children. At Folio 645, the preservation easement provides that the grantor may subdivide the property, inter alia, as follows:

> (2.a.) The grantor reserves as a personal covenant only and not one intended to run with the land, the right to subdivide and convey one acre, or the minimum lot size required by Zoning and Health Regulations, whichever is greater, upon written application to the grantee, to himself or to each of his children for the sole purpose of constructing a dwelling for his or that child's personal use.

After careful consideration of the above-referenced enabling legislation and the regulations adopted by Montgomery County, I submit that the preservation easement which on its face appeared to allow the grantor to provide for children's lots in excess of one acre, based upon Health Regulations, was in error and, for that matter, an ultra vires act.

There is nothing in the record to indicate that the seven lots, in addition to the lot to be created for the existing residence, could not be created on one acre or less. The burden is on the applicant to prove otherwise and it has not done so.

And, for that matter, based upon my review of the applicable law, including the County Code and County Regulations, there is no exception contained therein for "child lots", to exceed the lot size required by the zone (in this case 40,000 square feet) or one acre (43,560 square feet), whichever is greater.

Even if one were to assume, that the "child lots", could exceed one acre in size, based upon practical considerations regarding septic areas, we note with some degree of scepticism that all of the lots proposed are to have either five or six bedrooms! This underscores the intention of this Partnership to develop McMansions, not child lots.

As I have indicated, this has not been an easy analysis, but one that I submit is correct. Under either one of these legal arguments, this Subdivision must fail.

It is my understanding that other members of the Community will be addressing other environmental issues and therefore, this letter is not to be construed as limiting our arguments to the issues raised in this letter.

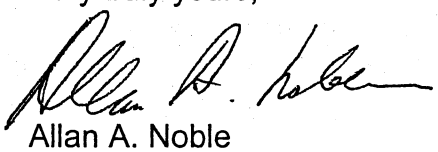
This is an illegal Subdivision whose sole purpose is to generate profit for its owners. It has nothing to do with child lots. For these and for other reasons that will be advanced,

it is respectfully requested that this subdivision be disapproved. I would be more than happy to supply any further information or analysis that the Board requests.

I am sending a copy of this entire submission to counsel for the Applicant.

I am also sending a copy of this letter to John P. Zawitoski of the Agricultural Preservation Advisory Board requesting that he convene an emergency meeting of the Advisory Board to reconsider its recent approval of this child lot application. I am confident that after the Board consults with counsel, it will agree with our position.

Very truly yours,



Allan A. Noble

AAN/cle
Enclosures
cc: Jody Kline, Attorney for Hilltop Farms Limited Partnership
Richard Weaver, Coordinator Development Review Division - Maryland NCPPC
John P. Zawitoski, Director of Planning and Promotions - Agricultural Preservation Advisory Board

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DEPARTMENT OF ECONOMIC DEVELOPMENT

Douglas M. Duncan
County Executive

David W. Edgerley
Director

February 24, 2005

BY FIRST CLASS MAIL AND
BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED
Receipt No. 7003 3110 0001 6080 4909

Mr. Charles Faller
Hilltop Farms Ltd Partnership
5307 Randolph Road
Rockville, Maryland 20852

Re: Reserved Lots Hilltop Farm Property
AEP File 2-92

Dear Mr. Faller:

Please be advised that the Agricultural Preservation Advisory Board (APAB) met on January 11th 2005 to discuss the Partnership's pending children's lots request made pursuant to the rights retained by the Partnership in its Agricultural Preservation Easement, recorded among the land records of Montgomery County in Liber 12500 at folio 642.

The APAB is very troubled that the Partnership has not responded to the APAB's July 14, 2004 correspondence which raises specific concerns and questions concerning the proposed children's lots. A copy of the July 14, 2004 letter is provided as Attachment A.

As you know, the APAB is required by law to ensure that the lots being created are for the exclusive use of the Partnership's owners and children. Unfortunately, the Partnership has not provided sufficient information which enables the APAB to act upon the Partnership's request, nor has it addressed the APAB's concerns relating to the Partnerships intended use of the proposed lots. A timeline outlining both the history of the Partnership's children's lots request, and the APAB's concerns about the request, are outlined in Attachment B.

As you are well aware, the ABAB also has grave concerns regarding the Partnership's contractual obligations to sell most of the farm property (14.83 acres to Mr. Peter Eeg and 200+ acres to Rebecca Roach.) The APAB asked, for but did not receive, a copy of both contracts of sale. We requested this information in order that we might understand the relationship and nature of your contractual obligation to sell the main farm holdings to the Roach family and to Peter Eeg. This issue is important to the APAB because, under the Partnership's Preservation Easement, the APAB must officially approve any agricultural subdivision before settlement of

the farm properties/parcels can occur. This approval also has a direct bearing on the approval of any proposed owner's/children's lots under the Easement.

Given these concerns and outstanding issues, the APAB has no choice but to rescind its original children's lots approval of February 17, 1999. A copy of this notice will be forwarded to the County Attorney's Office as well as to the County's Development Review Committee. We would be happy to entertain the Partnership's children's lots request after the Partnership has obtained the APAB's approval of the Partnership's proposed agricultural subdivisions, the portions of the farm that are under contract have gone to settlement and the Partnership resubmits its children's lots request to us.

If you have any questions regarding this official APAB action, please call John Zawitoski at 301-590-2831.

Sincerely,

Michael Sutherland, Chairman
Agricultural Preservation Advisory Board.

cc: Attachments

ATTACHMENT A.

AGRICULTURAL PRESERVATION ADVISORY BOARD

July 14, 2004

Mr. Charles Faller
Hilltop Farms Ltd Partnership
5307 Randolph Road
Rockville, Maryland 20852

Re: Reserved Lots Hilltop Farm Property
AEP File 2-92

Dear Mr. Faller:

Please be advised that we have received your correspondence dated June 3, 2004 (Attachment A.) that attempts to outline Hilltop Farms Partnership's responses to questions concerning certain owners and children's lots pending approval before the Agricultural Preservation Advisory Board. These questions are outlined in the attached APAB correspondence labeled as Attachment B.

As you know, the APAB is required by law to ensure that the lots being created will be for the exclusive use of the Partnership's owners and children. Unfortunately, your June 3, 2004 correspondence does not provide us sufficient information to act upon your request. In addition, we have been provided some additional information regarding these proposed lots that is very disconcerting and requires your immediate explanation.

With regard to information we have previously requested, your June 3, 2004 letter does not provide enough detail to enable us to discern who among the Partnership are members and who are children, as well as identifying the size and future ownership of each lot. This has a direct bearing on how and whether lots can be approved as there are separate procedures for approving owner's lots versus procedures for approving children's lots.

In addition, we need to understand the relationship and nature of your contractual obligation to sell the main farm holdings to the Roach family. As you are aware, this contractual obligation represents a subdivision of the farm unit and requires the approval of the Agricultural Preservation Advisory Board. It is our understanding the Roaches are residing on the farm property and have begun to make significant improvements to the farm property. Given this fact, we must have a better understanding of your contractual obligation to sell the farm, as well as when the Roaches are to take legal title to the property. This has a direct bearing on the approval of any proposed owner's/children's lots under the easement. To this end, please provide the APAB a copy of the Contract of Sale with the Roaches so that we can do our due diligence in the review of your lot request.

Department of Economic Development • Agricultural Services Division
18410 Muncaster Road • Derwood, Maryland 20855 • 301/590-2823, FAX 301/590-2839

In your June 3, 2004 letter, you indicated that the Partnership was not willing to agree to the APAB's "good faith" request for additional lot release language that would prohibit the transfer of each lot for a period of at least 5 years from the date of occupancy of any newly constructed single family dwelling, unless a shorter period is approved by the APAB/County; or, unless a shorter period is necessary because of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure. Quite frankly, we were very perplexed by the Partnership's position, because the release language doesn't preclude the ability to transfer the lots before 5 years. Rather, it gives the APAB review and approval authority to ensure compliance with the children's lot provisions of the easement.

We do not feel the explanation cited in your June 3, 2004 letter sufficiently details how our suggested additional release language would be unrealistic, imprudent or overly restrictive to the Partnership. In fact, the additional language has safeguards within it to give the ABAP discretionary approval for specific hardship cases within the 5 year period.

You have given both your verbal and now written testimony before the APAB that it has always been your intention to grant these lots to both owners of the Partnership and their children; however, as cited above, we have been provided some additional information regarding these proposed lots that is very disconcerting and requires your immediate explanation. Please refer to a letter dated December 16, 2002 and contained in the attached packet of documentation as Attachment C.

This letter is from you (Charles S. Faller, III) to Mr. Michael Rubin, President of Capitol Investment Associates concerning Mr. Rubin's interest in purchasing the Hilltop Farms. The letter states the purchase price for Hilltop Farms while at the same time indicating your intention to continue "the subdivision (of the property)" and stating that you "should be in a position to sell the lots this summer (2003)." Obviously this information contradicts your assertions about the nature and ultimate ownership of these lots. This information only serves to strengthen the APAB's concerns and reservations about approving the Partnership's request for these lots. The APAB respectfully requests your immediate attention to this issue and requires a prompt explanation. We can not proceed with processing the Partnership's request for lots without satisfactory responses to all of the information requested in this letter.

Thank you for your consideration and we look forward to receiving your prompt response and explanation to the issues outlined above.

Sincerely,

Michael Sutherland, Chairman
Agricultural Preservation Advisory Board

cc: County Attorney's Office
Jeremy V. Criss, DED

ATTACHMENT A

Hilltop Farms, LP

5307 Randolph Road
Rockville, MD 20852
(301) 231-6000
(301) 231-6356 (FAX)

June 3, 2004

Mr. Michael Sutherland, Chairman
Montgomery County Agricultural Preservation
Advisory Board
18410 Muncaster Road
Derwood, Maryland 20855

Re: Hilltop Farm Property
(AEP File 2-92)

Dear Mr. Sutherland,

Thank you for your letter of May 17, 2004. I also agree that the meeting was valuable in creating a joint understanding of the plans of Hilltop Farm Partnership to create lots for use by the owners and children of the owners of the Partnership.

Attached to this letter is a schedule of the persons eligible to take title to the lots to be created on the Farm property. When we proceed to plat the property with 7 lots, these are the names of the persons that will appear on affidavits that we understand will be required by Maryland-National Capital Park & Planning Commission. At this time, partly because the lot configuration has not yet been determined, we are not sure which lot will be assigned to which person. We would like to defer as long as possible in making this allocation to give the family members the maximum flexibility in determining their lot selection, residence siting, etc.

The members of the Partnership and their children have considered your "good faith" request and have determined that we cannot agree to this unusual requirement. We feel that entering into a commitment not to sell property for five years after a house is constructed is unrealistic, imprudent and overly restrictive. I can assure you that each of the persons listed on the attached schedule wants to build a house on their lot and wants to retain title to the property as long as they are alive and are in good enough health to enjoy the pleasures of residing in upper Montgomery County. But those circumstances could change and your "good faith" request could result in some unfortunate financial distress.

We believe that the request of the Partnership is consistent with paragraph 2.a. of the Deed of Agricultural Preservation Easement and ask that the APAB approve our family's request to create 7 lots for the owners and their children. We will continue to cooperate with the APAB to ensure that the principles of the Agreement and the County's agricultural preservation program are maintained and furthered by our request.

Thank you for your consideration of these comments.

Very truly yours,

Hilltop Farms Limited Partnership

Charles S. Faller, III

CC: Jeremy Criss, DED

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Persons eligible for lots

1. Charles S. Faller Jr. & L Jean Faller
2. Charles S. Faller, III
3. Linda J. Riley
4. Samuel J. Faller
5. Karen D. Barber
6. Robert O. Faller
7. Robin E. Durst

DEPARTMENT OF ECONOMIC DEVELOPMENT

Douglas M. Duncan
County Executive

AGRICULTURAL PRESERVATION ADVISORY BOARD

David W. Edgerley
Director

May 17, 2004

Mr. Charles Faller
Hilltop Farms Ltd Partnership
5307 Randolph Road
Rockville, Maryland 20852

Re: Reserved Lots Hilltop Farm Property
AEP File 2-92

Dear Mr. Faller:

Thank you very much for attending the Agricultural Preservation Advisory Board's (APAB) meeting on May 11, 2004. It was very helpful having you attend the meeting and providing information to the APAB regarding the Hilltop Farms Partnership's intentions for requested lot rights under its Agricultural Preservation Easement with Montgomery County.

As you know, the APAB is required by law to ensure that the lots being created will be for the exclusive use of the Partnership's owners and children. At the May 11th meeting, the APAB learned for the first time that the lot rights being requested by the Partnership are for the owners of the partnership, as well as the children of each owner. While this does not constitute a violation of the Easement, it does represent a change from the APAB's approval of February 17, 1999 which limited to the number of lots to 7 children's lots.

The APAB's policies and procedures provide for the review of reserved lot rights on a case by case basis. Given the new information that you provided and in light of troubling events enumerated by the APAB during the meeting, it is likely that the APAB will require that the Partnership obtain additional approvals for the lots intended for the use by the Partnership's owners.

To assist the APAB in making this determination, we request that you provide additional documentation, detailing who, among the Partnerships' children and owners, the intended lots are for. Also, as discussed at the meeting, the APAB would like the Partnership to consider, as an added assurance of its commitment to the Easement requirements, and as a matter of good faith, to agree to additional release language that would prohibit the transfer of each lot for a period of at least 5 years from the date of occupancy of any newly constructed single family dwelling, unless a short period is approved by the APAB/County; or unless a shorter period is necessary because of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure. Please discuss this issue with the Partnership and let us know what direction it is willing to take.

Thank you once again for attending the May 11, 2004 meeting. The APAB looks forward to receiving the requested additional information in the near future.

Sincerely,

Michael Sutherland, Chairman
Agricultural Preservation Advisory Board

cc: County Attorney's Office
Jeremy V. Criss, DED
APAB File

ATTACHMENT D

Timeline of Events
Hilltop Farms Limited Partnership
AEP File 2-92
Children's lot Request

Date	Event
12-21-1998	Hilltop Farms Limited Partnership's (referred to as "landowner or "Partnership") request to create 7 children's lots in accordance with the Deed of Agricultural Preservation Easement dated March 4, 1994, with attached tax map depicting general location of the lots.
2/17/1999	APAB approves the requested child lots based on proposed locations as outlined on the 12/21/1998 tax map attachment. APAB puts the landowner on notice that it reserves the right to further evaluate the approval if the size or location of lots are significantly changed.
3/27/2000	Development Review Committee meets to discuss landowner's Child Lot Subdivision request (preliminary plan 7-00033). John Zawitoski, Farmland Preservation Program Administrator attends the March 27, 2000 meeting. The plan submitted for DRC review proposed to subdivide the entire property into eight 25- acre estates. Mr. Zawitoski informed the engineer, Mr. John R. Witmer, L.S. (Witmer Associates. L.L.C.), that the landowner's proposal was in conflict with the Easement and that the plan must be resubmitted to conform to the Easement and to obtain approval for the plan from the APAB. The item was pulled from the DRC schedule.
11/24/2003	Michael Rubin contacts DED requesting information about the Easement. Michael Rubin informs DED that he is interested in purchasing the Hilltop Farms Property. Mr. Rubin inquired as to whether the reserved rights contained within the Easement conveyed to a new landowner. DED informs Mr. Rubin that those rights are a personal covenant retained in the Easement for the benefit of the Grantor only and that they do not convey with the sale of the property. Mr. Rubin informs DED that Mr. Faller had informed Mr. Rubin both verbally and in writing of his intent to place the landowner's child lots up for sale. Mr. Rubin also indicated Mr. Faller suggested Mr. Rubin could do the same if he purchased the farm. Mr. Rubin faxed a copy of a letter from Mr. Charles Faller, Hilltop Farms Limited Partnership, to Mr. Rubin dated December 16, 2002, indicating the Partnership's intention to sell the child lots. DED contacts Malcolm Shanneman of the DRC and informs him of the December 16, 2003 letter. Mr. Shanneman informs DED that no further action had been taken by Hilltop

Farms since March 27, 2000, and requests a faxed copy of the letter so that it can be placed in Hilltop Farms' file.

03/05/2004 — DED, through the Montgomery Soil Conservation District ("MSCD"), becomes aware that there is a contract purchaser for the farm. DED attends a meeting attended by MSCD staff and the contract purchaser, Rebecca Roach. Through this meeting, staff learns that the Partnership intends to sell 14.83 acres to Peter Eeg, an adjacent landowner, and 200 acres to the Roach family, while retaining about 30.62 acres for residential use.

03/10/2004 — The APAB sends a letter to the Partnership concerning the proposed property sale. The APAB informs the Partnership that it failed to notify the APAB/County in accordance with Section 2(e) of the Partnership's Easement, where it stipulates the Partnership, as the Grantor under the Easement, must notify the County if the farm is going to be subdivided for agricultural use. This failure to notify the APAB is a violation of the Easement. These events raise concerns among the APAB members over the status of the previously approved child lots. The APAB notifies the Partnership of its intention to exercise its right to further review the Partnership's child lot request and requested Mr. Faller's appearance at an APAB meeting discuss this matter.

April 2004 — An undated letter was received by the APAB, in response to the APAB's March 10, 2004 letter, from the Partnership. This letter outlines the Partnership's position with respect to the Easement violation. In its response, the Partnership confirms its intention to sell 14.83 acres to Mr. Peter Eeg and 200 plus acres to Ms. Rebecca Roach, while retaining the remainder of the farm to pursue child lot rights. The Partnership's response letter provided no reasonable explanation about why eight (8), twenty-five (25) acre lots where presented before the DRC on March 27, 2000.

May 11, 2004 — Charles Faller appears at the May APAB meeting to discuss the sale of the farm, agricultural subdivisions, and the Partnership's intent to move forward with the child lots.

May 17, 2004 — The APAB responds to Charles Faller and the Partnership by letter dated May 17, 2004 in which the APAB outlines specific concerns raised during the APAB's meeting with Mr. Faller on May 11, 2004. The APAB informed the Partnership that they learned for the first time that the child lots being requested are for Partnership members as well as for children. While use of these lots by Partnership members does not constitute a violation of the

Easement, it necessitates a change in the original APAB approval of February 17, 1999 and requires additional approvals by the APAB . The APAB requested a detailed analysis of each lot. The APAB wanted to know the status of each intended lot owner as to whether they were partners or children. The APAB was very concerned about the ultimate destination of these lots and asked the Partnership to consider an additional layer of protection as added assurance for Partnership's intention to comply with the Easement requirements and as a sign of good faith.

In essence, the APAB asked the Partnership to consider an agreement to additional release language that would prohibit the transfer of each lot for a period of at least 5 years from the date of occupancy of any newly constructed single family dwelling, unless a short period is approved by the APAB/County; or unless a shorter period is necessary because of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure. The APAB requested Mr. Faller discuss this issue with the Partnership and let the APAB know what direction it was willing to take.

6/03/2004

Mr. Charles Faller responds in writing to the APAB regarding their May 17, 2004 correspondence. Mr. Faller provided a listing of family members for which the lots are being requested. Unfortunately, this listing makes no attempt to distinguish the relationship of the family members as partners or children, nor does the listing detail the lots which will be allocated to each person. Furthermore, the Partnership rejects the "good faith" additional lot release language which would have given the APAB added assurance of easement compliance with lots reserved exclusively for children.

7/14/2004

The APAB responds to the June 3, 2004 letter from Hilltop Farms. The APAB informs Mr. Faller that the information he has provided does not give enough detail to discern who among the Partnership are members and who are children, as well as identifying the size and future ownership of each lot. The APAB explained that this information has a direct bearing on how and whether lots can be approved as there are separate procedures for approving owner's lots versus procedures for approving children's lots.

This letter details the necessity of understanding the relationship and nature of the Partnerships contractual obligation to sell the main farm holdings to the Roach family. This contractual obligation represents a subdivision of the farm unit and requires

the approval of the Agricultural Preservation Advisory Board. (The Roaches are residing on the farm property and have begun to make significant improvements to it.

The APAB questioned the Partnership's rejection of the "good faith" on the basis of it being unrealistic, imprudent or overly restrictive to the Partnership, given the fact that the release language would allow the transfer the of lots before 5 years if approved by the APAB for hardship cases (death, divorce, necessity to relocate etc)

The APAB questioned the Partnership directly about the December 16, 2002 letter (provided in the letter as Attachment C) from the Partnership to Mr. Michael Rubin which details the Partnership's intent to "continuing the subdivision (of the farm) and...be in a position to sell the lots this summer"

The APAB informed the Partnership that this letter seemed to contradict its assertion about the nature and ultimate ownership of these lots and it only served to strengthen the APAB's reservations about approving the Partnership's request for these lots. The APAB respectfully requested immediate attention to this issue and required a prompt explanation.

January 11, 2005 — Monthly APAB meeting. Chairman Michael Sutherland asked staff if Charles Faller, or Hilltop Farms, ever responded to the APAB's request for information and explanation of the issues outlined in the July 17, 2004 letter to Hilltop Farms. Staff informed the APAB that no response had been received to date. Given this lack of response, the APAB directed Staff to draft a letter to Hilltop Farms which officially rescinds the February 17, 1999 approval based upon the historical and current events surrounding the Hilltop Farms Limited Partnership property.

February 24, 2005 — APAB officially rescinds children's lot approval for Hilltop Farms Limited Partnership. Copies sent to APAB, DRC and County Attorney's Office

ATTACHMENT C

Faller Construction Co., Inc.

5307 Randolph Road
Rockville, MD 20852
(301) 231-6000
(301) 231-6356 (FAX)

December 16, 2002

Michael D. Rubin
President
Capitol Investment Associates Corp.
5454 Wisconsin Avenue, Suite 1265
Chevy Chase, MD 20815

Re: Hilltop Farms

Dear Michael,

It was a pleasure meeting you at the farm. Enclosed you will find a boundary survey of the larger portion of the farm along with a tax map showing the parcels that make up the farm. I have also included a copy of the leases for the trailers.

The price for the property is $2,000,000 net to us. Any additional charges need to be added to the price (i.e. Transfer taxes, recording costs, etc.). Please let me know of your interest at your convenience. I am continuing the subdivision and should be in a position to sell the lots this summer.

Sincerely,

Charles S. Faller, III
President

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DEED OF AGRICULTURAL PRESERVATION EASEMENT

LIBER 12500.642

This Deed of Agricultural Preservation Easement [1] is sold, granted, and conveyed on this 4TH day of MARCH, 1994 by **Hilltop Farms Limited Partnership** (Grantors) to Montgomery County, Maryland, c/o Office of Economic Development, 101 Monroe Street, Rockville, Maryland 20850 (Grantee) for the purpose of forever preserving the agricultural production capability of the subject property, pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

WITNESSETH:

By authority of Montgomery County Code 1984, as amended, Chapter 2B and Executive Regulations No. 66-91, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use.

FILED
BETTIE A. SKELTON
CLERK'S OFFICE

94 APR -7 A 11:33.8

The Grantors are the sole owners in fee simple of the farm property (Property) described in Exhibit A, attached to and made part of this Easement, which consists of **247.54446** acres of land which **245.27456** acres are being conveyed hereunder, together with buildings and other improvements, and **46** Transferable Development Rights (TDR's) associated with the Property.

The Property is eligible land located in the Rural Density Transfer, Rural, or Rural Cluster Zone, or is an approved State or County agricultural preservation district.

The Grantors desire to sell an agricultural preservation easement to the Grantee to restrict the Property to agricultural use.

All holders of liens or other encumbrances upon the Property have agreed to release or subordinate their interests in the Property to this Deed of Agricultural Preservation Easement, and to refrain forever from any action that would be inconsistent with its preservation purposes.

MISC I .00

Now, therefore, for the reasons given, and in consideration of the sum of **Eight hundred ninety five six hundred ten dollars and sixty eight cents ($895,610.68)** paid by Grantee to Grantors, the sufficiency and receipt of which Grantors hereby acknowledge, and of their mutual covenants contained herein, the Grantors voluntarily sell, grant and convey to the Grantee, and the Grantee voluntarily accepts, a perpetual Agricultural Preservation Easement on the Property, pursuant to Montgomery County Code 1984, as amended, Chapter 2B, consisting of those rights described in this Easement, exclusively for the purpose to preserving and forever maintaining the agricultural production capacity of the Property.

1. Prohibited Acts -- Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants enumerated below. They also authorize the Grantee to enforce these covenants in any manner permitted by law or equity. However, unless otherwise specified below, nothing in this Easement shall require the Grantors to take any action to restore the condition of the Property after any Act of God or other event over which they had no control. Grantors understand that nothing in this Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

[1] For purposes of this transaction an Agricultural Preservation Easement is deemed to include certain Transferable Development Rights (TDR's) associated with the Property which the Grantor, simultaneous herewith, shall convey to Grantee."

2. Subdivision of Property -- The Grantors relinquish the right to subdivide the Property for industrial, commercial, or residential use or purpose except as provided below.

   a. The Grantor reserves as a personal covenant only and one not intended to run with the land, the right to subdivide and convey one acre, or the minimum lot size required by the zoning and health regulations, whichever is greater upon written application to the Grantee, to himself or to each of his children for the sole purpose of constructing a dwelling for his or that child's personal use.

   b. The Grantor shall pay the Grantee, for the release of the easement on the lot used for constructing a dwelling for Grantor's or his child's use, the price per acre that the Grantee paid the Grantor for the grant of easement.

   c. The Grantor may not create lots at a density greater than one per twenty-five (25) acres of the Property, nor may the total number of lots exceed eight (8).

   d. The Grantor retains the right to construct, subject to approval of the Grantee, houses for tenants fully engaged in the operation of the farm provided such construction does not exceed one tenant house per one hundred (100) acres. The land on which the tenant house is constructed may not be subdivided or conveyed to any persons and the tenant house may not be conveyed separately from the original parcel.

   e. The Grantor shall notify the Grantee if the land is subdivided for agricultural use to permit the Grantee to determine whether such subdivision violates any of the covenants, conditions, limitations, or restrictions contained herein.

3. Construction of Buildings and Other Structures -- The construction or reconstruction of any building or other structure, except those existing on the date of this Easement or previously approved by the Grantee, is permitted only in accordance with this paragraph.

   a. Fences - Fences for, or related to, agricultural production, may be built anywhere on the Property without limitation.

   b. Agricultural Buildings -- Buildings and other structures to be used solely for, or related to, agricultural production, including the sale of farm products raised primarily on the Property, but excepting any dwelling, may be built anywhere on the Property, without the permission of the Grantee.

4. Dumping Material -- The Grantor will not dump ashes, sawdust, bark, trash, rubbish or any other material on the Property, however, the Grantor reserves the right to dump any material which is generated on the farm during regular agricultural operations.

5. Soil, Water and Forestry Conservation Plans

   a. The Grantor shall within five (5) years of the settlement date cause the above described land to be managed in accordance with an approved agricultural soil and water conservation plan so as to promote the agricultural capability of the land; and shall within five (5) years of the settlement date manage any woodland in accordance with an approved Forest Resource Management Plan; provided, however, the Grantor reserves the right to selectively cut or clear cut from time to time trees in accordance with an approved Forest Resource Management Plan to insure that the agricultural character of the land will not be altered by diminishing its productive capability. (See addendum No. 1)

   b. The Grantor shall implement all soil conservation and water quality practices that are required within a soil conservation plan, within five years of the easement settlement date. The plan shall be implemented according to the schedule of implementation contained within the plan which exists at the time of easement settlement. The plan must be updated at least every ten (10) years. Revisions to the schedule of implementation may be made as approved by the Board of Supervisors of the local soil conservation district, however, the plan shall be fully implemented within five years of the easement settlement date. Exceptions may be considered by the Grantee on a case by case basis.

   c. All references to Plan approvals, means approval by the applicable government agencies.

6. Mining -- The mining or extraction of soil, sand, gravel, rock, fossil fuels or any other mineral substance, using any method that disturbs the surface of the land, are prohibited without the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time, unless they determine that the proposed mining or extraction will diminish or impair the agricultural production capability of the Property. However, nothing in this Easement shall be interpreted to prevent Grantors or any third party holding subsurface mineral rights to remove such minerals, including coal, oil and gas, by methods that do not disturb the surface of the land, and to construct facilities necessary for the removal of such mineral; provided however, any third party holding subsurface mineral rights shall take no action or otherwise cause the agricultural production capability of the Property to be diminished.

7. Transferable Development Rights (TDR's) -- Simultaneous with this transaction, by Deed of Transfer of Development Rights (TDR's) of even date herewith by and between the Grantor and Grantee recorded immediately subsequent hereto in the Land Records of Montgomery County, Maryland, the Grantors convey to the Grantee 38 TDR's associated with the subject Property. The Grantor shall forgo the right to convey to any third party, any TDR's associated with the subject Property which it has retained.

8. Rights Retained by Grantors -- As owners of the Property, the Grantors retain the right to perform any act not specifically prohibited or limited by this Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose.

   Further, the Grantor retains the right to use the above described land for any farm use, and to carry on all normal farming practices, including the operation at any time of any machinery used in farm production or the primary processing of any agricultural products; the right to conduct upon the said land any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the said Property above described.

9. Responsibilities of Grantors Not Affected -- Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any existing obligation of the Grantors as owners of the Property. The Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. The Grantors shall continue to be solely responsible for the upkeep and maintenance of the Property, or assume any liability for personal injury or property damage occurring on the Property. The Grantors hold the Grantee harmless from and shall defend the Grantee against any claim, loss, damage costs including reasonable attorney's fees, injury, death, property damage or other matter relating to or arising from or occurring on or about the Property.

10. Enforcement -- The Grantee shall have the right and responsibility to prevent and correct violations of the terms of this Deed. With reasonable advance notice to the Grantors, the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what they believe is a violation, they may at their discretion take appropriate legal action. Except when an imminent violation could irreversibly diminish or impair the agricultural production capability of the Property, the Grantee shall give the Grantors written notice of the violation and thirty (30) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation exists or has occurred, the Grantee may get an injunction to stop it or to require the Grantors to restore the Property to its condition prior to the violation, and the Grantors shall reimburse the Grantee for all enforcement

expenses, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar them from doing so at a later time.

11. Termination of Easement -- If, at least twenty-five (25) years after the date of this Easement, the Grantee determines that conditions on or surrounding the Property have changed so much that it is no longer suitable for the Property to be used for agricultural production, as provided by Montgomery County Code 1984, as amended, Chapter 2B-13, (Bill No. 56-87 enacted February 16, 1988) the Grantee may, upon payment by the Grantors to Grantee of a sum equal to the difference between the fair market value of the property without an easement and the value with the easement at that time, terminate the easement created by this Deed. If this Easement is terminated through the exercise of eminent domain by governmental authority, the Grantee shall be entitled to compensation therefore in an amount equal to the present value of this Easement at the time of condemnation.

12. Interpretation -- This Deed shall be interpreted under the laws of the State of Maryland and Montgomery County, Maryland resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its preservation purpose. If the Grantor has any doubt concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said land, he may submit a written request to the Grantee for consideration and approval of such use.

13. Perpetual Duration - The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantors or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.

14. Gender -- Any masculine term used in this Easement shall include the female gender.

15. Remedies -- Grantee may enforce this easement using any remedies available at law or in equity, including but not limited to specific enforcement and injunctive relief.

16. Severability -- If any portion of this Easement is declared unlawful or invalid, the remainder of the Easement shall remain in full force and effect.

To Have and To Hold, this Deed of Agricultural Preservation Easement unto the Grantee, their successors and assigns, forever.

In Witness Whereof, the Grantors and Grantee intending to legally bind themselves, have set their hands and seals on the date first written above.

Witness:

Hilltop Farms Limited Partnership, Grantor

By: Charles S. Faller, Jr., General Partner

By: L. Jean Faller, General Partner

By: Bruce J. Teck, General Partner

Neal Potter, County Executive
Montgomery County, Maryland

(ACKNOWLEDGEMENTS ATTACHED)

THE UNDERSIGNED, a member of the Bar of the Court of Appeals of Maryland, hereby certifies that the foregoing instrument was prepared by or under the supervision of the undersigned.

Carol S. Rubin

ACKNOWLEDGEMENTS

COUNTY OF ~~MONTGOMERY~~ COLLIER
STATE OF ~~MARYLAND~~, SS:
FLORIDA

Personally appeared before me **Charles S. Faller, Jr., General Partner** on this 4th day of March, 1994, and acknowledge that all material statements of fact in the foregoing Deed of an Agricultural Preservation Easement are true to the best of his knowledge and belief, and that the execution of said Deed is his free act with Authority of the County pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

Sue W. Berner
Notary Public
My commission expires:

OFFICIAL NOTARY SEAL
SUE W. BERNER
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC088100
MY COMMISSION EXP. MAR. 27, 1998

COUNTY OF ~~MONTGOMERY~~ COLLIER
STATE OF ~~MARYLAND~~, SS:
FLORIDA

Personally appeared before me **L. Jean Faller, General Partner** on this 4th day of March, 1994, and acknowledged that all material statements of fact in the foregoing Deed of an Agricultural Preservation Easement are true to the best of her knowledge and belief, and that the execution of said Deed is her free act with Authority of the County pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

Sue W. Berner
Notary Public
My commission expires:

OFFICIAL NOTARY SEAL
SUE W. BERNER
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC088100
MY COMMISSION EXP. MAR. 27, 1998

COUNTY OF MONTGOMERY
STATE OF MARYLAND, SS:

Personally appeared before me **Bruce J. Teck, General Partner** on this 7th day of March, 1994, and acknowledged that all material statements of fact in the foregoing Deed of an Agricultural Preservation Easement are true to the best of her knowledge and belief, and that the execution of said Deed is her free act with Authority of the County pursuant to Montgomery County Code 1984, as amended, Chapter 2B.

Mary J. Norwood
Notary Public
My commission expires:

MARY J. NORWOOD
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires September 17, 1995

COUNTY OF MONTGOMERY
STATE OF MARYLAND SS:

Personally appeared before me **Neal Potter** on this 6th day of April, 1994, and acknowledged that he is the County Executive of Montgomery County, Maryland and that the execution of this Deed of an Agricultural Preservation Easement is his free act as County Executive.

Cecilia Blanken
Notary Public
My commission expires: March 1, 1997

Exhibit A Attached

Exhibit A
Legal Description of Property
Subject to Agricultural Preservation Easement
Conveyed by
Hilltop Farms Limited Partnership
To Montgomery County
c/o Office of Economic Development,
Grantee

All that certain tract or parcel of land situate, lying and being in Election District 11, Montgomery County, Maryland and being more particularly described in the land records of Montgomery County; and more particularly described on the attached Schedule A.

	Property Tax Account No.	Liber/ Folio No.	Acreage	Number of TDR's
1.	914018	5991/12	35.66	7
2.	2270293	6390/107	30.62145 -2.2699 acres R-200	5
3.	914096	6269/400	14.83464	2
		5991/12	164.48837	32
	914085 (Right of Way)	5991/12	1.94	0
			245.27456	46

Number of TDR's to be conveyed to Montgomery County (Grantee) 38

TDR Serial No.s from 18-4490 to 18-4527

Number of TDR's to be retained by Grantor 8

Total TDR's 46

ADDENDUM NO. 1

The purchase price for said Agricultural Preservation Easement shall be $ 3,666.41/ acre for 245.27456 acres totaling $895,610.68. One acre is conveyed to the County at no cost because of the existence of a dwelling. The purchase price per acre shall be allocated as $3,591.41 per acre towards the Easement Value and $ 75.00 per acre for implementing the Soil Conservation/Forest Resource Management Plan. The terms of payment will consist of installments which are as follows:

1.	Payment or Distribution on settlement date totaling	$ 877,290.09
2.	Payment to Landowners/Sellers for Soil Conservation District Certification that the Soil Conservation and Water Quality Plan has been implemented for the tillable farmland, including, if applicable, the certification that a Forest Resource Management Plan has been implemented for the woodland. In the event that certification is received prior to settlement, the payment shall be made on the settlement date. In the event that certification is made after settlement, payment shall be made upon receipt by seller of said certification. ANY PAYMENT PROVIDED FOR IN THIS PARAGRAPH 4 IS CONTINGENT UPON RECEIPT OF SAID CERTIFICATION WITHIN 24 MONTHS OF SETTLEMENT DATE.	$ 18,320.59
	Total Purchase Price	$ 895,610.68

Schedule "A

Parcel I

The property conveyed by and described in a deed from E. Virginia Nicholson, to Hilltop Farms Limited Partnership dated April 30, 1984, recorded May 8, 1984 among the Land Records of Montgomery County, Maryland, in Liber 6390 at Folio 107, located in Lower Seneca Basin Planning Area 18, with street address of 21800 Slidell Road, Boyds, MD 20841, saving and excepting therefrom 2.2699 acres currently zoned R-200 as more particularly described in the attached Legal Description.

Parcel II

The property conveyed by and described in a deed from David N. Martin and Naomi E. Martin, to Hilltop Farms Limited Partnership dated December 15, 1983, recorded December 23, 1983 among the Land Records of Montgomery County, Maryland, in Liber 6269 at Folio 400, located in Lower Seneca Basin Planning Area 18, with street address of 21800 Slidell Road, Boyds, MD 20841, as more particularly described in the attached Legal Description.

Parcel III

The property conveyed by and described in a deed from Boyds Limited Partnership, to Hilltop Farms Limited Partnership dated December 31, 1983, recorded January 6, 1984 among the Land Records of Montgomery County, Maryland in Liber 5991 at Folio 012, located in Lower Seneca Basin Planning Area 18, with street address of 21800 Slidell Road, Boyds, MD 20841, as more particularly described in the attached corrected Legal Description.

LEGAL DESCRIPTION

ATTACHED TO AND MADE PART OF REPORT OF TITLE FOR MONTGOMERY COUNTY, MARYLAND

PARCEL I

Part of the land of Vernon Leroy Nicholson, Barnesville Election District, Montgomery County, Maryland.

Beginning for the same at a pipe found at the beginning of a conveyance made December 7, 1982 by Vernon Leroy Nicholson and E. Virginia Nicholson to Vernon Leroy Nicholson and recorded in Liber 5998 at folio 646 among the Land Records of Montgomery County, Maryland, thence running with the first, second and third lines of said conveyance

1. N. 53° 34′ 49" W. 463.77 feet to a pipe found, thence
2. N. 80° 47′ 21" W. 1764.91 feet to a pipe found, thence
3. N. 61° 15′ 03" E. 952.62 feet to a pipe found at the end of the last line of a conveyance made April 27, 1983 by Vernon Leroy Nicholson to Hazel A. Ward and recorded in Liber 6064 at folio 788 among the said land records, thence with the last and second lines reversed of said conveyance and crossing to include a part of the first mentioned conveyance
4. S. 05° 11′ 18" W. 95.35 feet to a pipe found, thence
5. S. 76° 36′ 36" E. 261.48 feet to the end of the second line of a conveyance made April 27, 1983 by Hazel A. Ward to Vernon Leroy Nicholson and recorded in Liber 6064 at folio 790 among said land records, thence with the last line of the last mentioned conveyance and crossing to include a part thereof, still
6. S. 76° 36′ 36" E. 340.87 feet to a pipe found at the end of 125.64 feet on the fifth line of the first mentioned conveyance, thence with the remainder of said fifth line and part of the sixth line
7. N. 03° 42′ 03" E. 245.61 feet to a pipe found on the northerly side of Old Baltimore Road passing over a pipe on the southerly side of said road 24.00 feet from the end thereof, thence with said road
8. S. 83° 53′ 19" E. 194.65 feet, thence leaving said road and sixth line and passing over a pipe set at the end of 15.25 feet and again crossing said first mentioned conveyance
9. S. 09° 47′ 43" W. 672.64 feet to a pipe set, thence running parallel to and 30.00 feet from part of a second and the first lines of the first mentioned conveyance
10. S. 80° 47′ 21" E. 249.72 feet to a pipe set, thence
11. S. 53° 34′ 49" E. 469.32 feet to a pipe set on the last line of said conveyance, thence with part of said last line
12. S. 33° 09′ 16" W. 30.05 feet to the place of beginning, containing 14.83464 acres of land more or less.

PARCEL II

Being all of the land located in Montgomery County, Maryland, described and conveyed by a certain Deed dated December 7, 1982 and recorded among the Land Records of Montgomery County, Maryland in Liber 5998 at folio 650, being more particularly described as follows:

Beginning for the same at a pipe found at the end of 62.00 feet on the second line of a conveyance made April 23, 1907 by J. Alby Henderson to Annie A. Heffner and recorded in Liber 192 at folio 488 among the Land Records of Montgomery County, Maryland, thence running with part of said second line

1. North 53° 34′ 49" West, 841.94 feet to a pipe set, thence leaving said second line and crossing to include a part of said conveyance
2. North 33° 09′ 16" East, 1064.29 feet to a point on the southerly side of Old Baltimore Road and passing over a pipe 3.00 feet from the end thereof, thence with said road and with part of the seventh, eighth and part of the ninth line of said conveyance and road
3. South 83° 53" 19" East 115.68 feet, thence
4. South 84° 52′ 59" East 926.48 feet to the intersection of Slidell Road, thence with said road
5. South 29° 16′ 33" East 233.48 feet to a pipe set on the easterly side of said Slidell Road, thence leaving said road and again crossing said conveyance and with the fifth line reversed of a conveyance made May 27, 1976 by Vernon Leroy Nicholson, et ux, to William Gray, et ux, and recorded in Liber 4793 at folio 302 among said Land Records
6. South 44° 03′ 54" West 1519.51 feet to the place of beginning, containing 30.62145 acres of land more or less, according to a description prepared by R. Humphrey Cissel, R. L. S. dated October 15, 1982.

SAVING AND EXCEPTING THEREFROM ALL OF THE FOLLOWING LAND WHICH IS CURRENTLY ZONED R-200 AND SPECIFICALLY EXCLUDED FROM THIS EASEMENT:

Being part of the property conveyed by E. Virginia Nicholson to Hilltop Farms Limited Partnership by deed dated April 30, 1984 and recorded among the Land Records of Montgomery County, Maryland in Liber 6390 at folio 107, and being more particularly described as follows:

Beginning for the same at a point on the southerly right of way line of West Old Baltimore Road, said point also lying on the fourth or South 84° 52′ 59" East, 926.48 foot deed line of said conveyance, 546.48 feet from the beginning thereof and running thence with and along part of said fourth deed line and said road

1. South 84° 52′ 59" East, 380.00 feet to the beginning of the fifth or South 29° 16′ 33" East, 233.48 foot deed line of said conveyance, also being at the intersection of Slidell Road; thence with said fifth line and said Slidell Road
2. South 29° 16′ 33" East, 233.48 feet to an iron pipe found

at the beginning of the sixth or South 44° 03′ 54" West, 1519.51 foot deed line of said conveyance; thence leaving said road and with and along part of said sixth deed line

3. South 44° 03′ 54" West, 295.00 feet to a point; thence leaving said sixth deed line and crossing the aforesaid property the following two (2) courses and distances

4. North 11° 55′ 53" West, 151.99 feet to a point; thence

5. North 40° 24′ 23" West, 395.05 feet to the point of beginning; containing 2.2699 acres of land.

Leaving a net area for Parcel II of 28.35155 acres.

PARCEL III

Being all of the land conveyed by Boyds Limited Partnership to Hilltop Farms Limited Partnership by deed dated December 31, 1982 and recorded among the Land Records of Montgomery County, Maryland, in Liber 5991 at folio 12 and being more particularly described as follows:

Beginning at a point in the centerline of Barnesville Road, as evidenced by existing paving, on the extension of the southeasterly line of Albert B. & Alice M. Hawse (Liber 582, folio 163); thence departing Barnesville Road and running with said extension and continuing with the southeasterly and northeasterly lines of Hawse

1. North 35° 49′ 14" East, (passing through an iron pipe found at 20.26 feet), 631.94 feet to an iron pipe found, thence

2. North 54° 01′ 02" West, 1010.15 feet to an iron pipe found on the southeasterly line of Don R. & Mary A. Marton (Liber 4789, folio 663); thence running with the said southeasterly line of Marton

3. North 29° 11′ 09" East, 1566.86 feet to an iron pipe found; thence running with the northeasterly line of the said Marton and continuing with the northeasterly line of R. James & Sue S. Macgregor

4. North 20° 48′ 50" West, 898.27 feet to an iron pipe found on the southeasterly line of Peyton G. & Anna M. Nevitt (Liber 3371, folio 455); thence running with the said southeasterly line of Nevitt

5. North 58° 07′ 35" East, 141.08 feet to an iron pipe set marking the westernmost corner of Vernon L. & E. Virginia Nicholson (Liber 4701, folio 431); thence departing Nevitt and running with the southerly lines of the said Nicholson

6. South 85° 11′ 50" East, 1820.11 feet to an iron pipe found and

7. South 56° 41′ 56" East, 1305.08 feet to an iron pipe found marking the westernmost corner of William & Sandra A. Gray (Liber 4793, Folio 302 & Liber 5863, folio 221); thence running with the southerly lines of the said Gray the following courses:

8. South 57° 55′ 48" East, 1085.09 feet to an iron pipe found:

9. South 59° 38′ 52" East, 293.78 feet to an iron pipe found and

10. South 89° 56′ 43" East, 548.91 feet to a point on the westerly line of Slidell Road (30 feet wide), said point being North 89° 56′ 43" West, 1.33 feet from an iron pipe found; thence running with the said westerly line of Slidell Road

11. South 09° 14′ 33" East, 60.80 feet to an iron pipe set marking the northeasterly corner of Staley Brothers, Inc. (Liber 4604, Folio 549); thence departing Slidell Road and running with the northerly lines of the said Staley Brothers, Inc. the following courses:

12. North 89° 56′ 43" West, 918.98 feet to an iron pipe set;

13. South 00° 03′ 17" West, 273.43 feet to an iron pipe set;

14. South 71° 48′ 17" West (passing through a fence corner post at 7.74 feet), 518.75 feet to an iron pipe set;

15. South 54° 15′ 56" West, 1869.86 feet to a fence corner post and

16. North 27° 12′ 07" West, 291.42 feet to the center of a 42 inch Oak marking the common easternmost corner of Kenneth P. Reichard & Carol Lee Reichard (Liber 5857, Folio 859) and Willie Boxall, et al (Will Liber W.E.S. 105, folio 775); thence running with the northerly line of the said Boxall, et al

17. North 29° 50′ 24" West, 818.66 feet to a stone found; thence running with the westerly line of the said Boxall and continuing with the westerly lines of the aforesaid Kenneth P. Reichard and Carol Lee Reichard and Kenneth P. Reichard (Liber 5857, folio 861)

18. South 31° 25′ 11" West (passing through a fence corner post found at 1622.36 feet) 1642.80 feet to a point in the aforesaid centerline of Barnesville Road; thence running with the centerline of Barnesville Road the following courses:

19. North 71° 14′ 07" West, 46.97 feet;

20. with a curve to the right, whose radius is 1570.00 feet and whose chord is North 66° 28′ 47" West, 260.32 feet, an arc distance of 260.62 feet and

21. with a curve to the right, whose radius is 620.00 feet and whose chord is North 53° 27′ 06" West, 178.41 feet, and arc distance of 179.03 feet to the point of beginning, containing 202.08837 acres of land, including 0.22310 acres within Barnesville Road (40 feet wide).

FOR RECORDING PURPOSES ONLY:

Grantor's Address: 21800 Slidell Road
Boyds, Maryland 20841

Grantee's Address: Montgomery County, Maryland
Office of Economic Development
101 Monroe Street, Suite 1500
Rockville, Maryland 20850
(301) 217-2345

Title Insurer:

Parcel Identifier: 11-1-914108
11-1-2270293
11-1-914096
11-1-914085

MARYLAND
State Department of Assessments and Taxation

THE CERTIFICATE OF LIMITED PARTNERSHIP

OF

HILLTOP FARMS LIMITED PARTNERSHIP

HAS BEEN RECEIVED AND APPROVED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION THIS 28th DAY OF December 1982 at 2:18 P.M. AND WILL BE RECORDED.

BY Betty J. Cassidy
Betty J. Cassidy

301 West Preston Street, Baltimore, Maryland 21201 / Phone: 383-3720

CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP
OF
HILLTOP FARMS LIMITED PARTNERSHIP

THIS CERTIFICATE AND AGREEMENT is made and entered into as of the 22ND day of December, 1982, by and among the undersigned parties.

W I T N E S S E T H:

WHEREAS, the parties hereto have and do hereby form a limited partnership, known as Hilltop Farms Limited Partnership, for the purposes of acquiring, owning and disposing of interests (whether fee simple, leasehold, or other) in real property of all kinds, without limitation as to location, managing, operating, developing, and otherwise dealing with properties and investments for the production of profit, and all activities incidental thereto.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties, being all of the partners of Hilltop Farms Limited Partnership, agree, and do hereby certify, that:

I. Name. The undersigned parties have and do hereby form a limited partnership (hereinafter referred to as the "Partnership"), under the name of "Hilltop Farms Limited Partnership" pursuant to the laws of the State of Maryland.

II. Purpose. The business of the Partnership shall consist of: acquiring, owning and disposing of interests (whether fee simple, leasehold, or other) in real property of all kinds, without limitation as to location, managing, operating, developing, managing, operating, developing, and otherwise dealing with the aforesaid properties and investments for the production of profit, and all activities incidental thereto.

III. Principal Office - Resident Agent. The principal office and place of business of the Partnership shall be located at the business office of one of the general partners, Charles S. Faller, Jr., c/o Faller Management Company, 5307 Randolph Road, Apartment #2, Rockville, Maryland 20850. Charles S. Faller, Jr. shall be the registered agent at such address.

IV. Partners. The general partners of the Partnership are Charles S. Faller, Jr. and L. Jean Faller. The limited partners of the Partnership are those persons listed on Exhibit A. The general and limited partners shall own, respectively, the percentage of partnership interest shown opposite such general and/or

12/20/82

limited partner's name on Exhibit A. The name and address of each partner is shown on Exhibit A. The partners have each contributed to the Partnership the amount of cash or property (at its agreed value) set forth opposite their name on Exhibit A.

V. Authority of Partners; Management of Business. The limited partners shall not exercise any rights in connection with the management or operation of the Partnership's business, including without limitation, the acquisition, ownership, divestment, and distribution policy of the Partnership.

Management of the business of the Partnership shall be in every respect the full and complete responsibility of the general partners alone. All decisions made for and on behalf of the Partnership by a majority in interests of the general partners shall be binding upon the Partnership.

Without limiting the generality of the foregoing, the general partners, in their (or his or her) capacity as general partner(s), shall have the right, power and authority (without regard to the term of the Partnership), acting for and on behalf of the Partnership, to lease, sell, mortgage, convey, refinance, grant easements on or dedicate the property (or any part thereof) of the Partnership, to borrow money and execute promissory notes, to secure the same by mortgage (which term "mortgage" is hereby defined for all purposes of this Certificate and Agreement to include deeds of trust, financing statements, chattel mortgages, pledges, conditional sales contracts, and similar security agreements) upon such partnership property, to renew or extend any and all such loans, or notes, to convey such partnership property in fee simple by deed, mortgage or otherwise, and to create straw corporations to act as straw parties and nominees acting solely for and on behalf of the Partnership. In no event shall any party dealing with such general partner(s) with respect to any property of the Partnership, or to whom any such property (or any part thereof) shall be conveyed, contracted to be sold, leased, mortgaged, or refinanced by such general partner(s), be obligated to see to the application of any purchase money, rent or money borrowed or advanced thereof, or be obligated to inquire into the necessity or expediency of any act or action of such general partner(s), or be obligated or privileged to inquire into any of the terms of this Certificate and Agreement. Every contract, agreement, deed, mortgage, lease, promissory note or other instrument or document executed by such general partners with respect to any property of the Partnership shall be conclusive evidence in favor of any and every person relying thereon or claiming thereunder that (i) at the time or times of the execution and/or delivery thereof, the Partnership was in full force and effect, (ii) such instrument or document was duly executed and is binding upon the Partnership and all of the partners thereof, and (iii) such general partner(s) was (were) duly authorized and empowered to execute

of 1954, or the corresponding provisions of any future federal internal revenue law, or any similar tax law of any state or jurisdiction, the determination of each partner's distributive share of all partnership items of income, gain, loss, deduction, credit or allowance for any period or year shall be made in proportion to their respective percentages of partnership interest as indicated in Exhibit A. Notwithstanding the foregoing, in the event one or more than one of the general and/or limited partners guarantee any loans of the Partnership, then the amount of the loan secured by such guaranty shall be deemed a contribution to capital (and the discharge of such guaranty a capital distribution to the guarantor) and all taxable loss or deductions incurred by the Partnership by reason of its activities with respect to such loan shall be allocated to such partner or partners in proportion to their percentages of partnership interest.

C. Additional Fund Requirements. In the event that at or from time to time funds (in excess of capital contributions, acquisition loans and construction and/or permanent mortgage or other financing proceeds) are required by the Partnership for or in respect of its business or any of its obligations, expenses, costs or expenditures (including, without limitation of the generality of the foregoing, excess development and construction costs, assumption costs, and operating deficits), the general partners may, if they so elect, endeavor, for and on behalf of the Partnershp, to borrow such funds, with interest payable at then-prevailing rates, from commercial banks, savings and loan associations, or other lending institutions or persons. In the event that all of such required additional funds are not obtained by the Partnership as hereinabove set forth, the general partners (or any one of them) may, but shall not be required to, lend such required funds to the Partnership for such period of time as the general partners may determine, and with interest payable at then-prevailing rates, not to exceed two percent (2%) over the prime rate in effect at Riggs National Bank, Washington, D.C., at the time of such loan, such interest rate to be adjusted as there are changes in the foregoing prime rate.

D. General. The provisions of this Article are not intended to be for the benefit of any creditor or other person (other than a partner in his capacity as a partner) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Partnership or any of the partners; and no such creditor or other person shall obtain any right under any such foregoing provision or shall by reason of any such foregoing provision make any claim in respect of any debt, liability or obligation (or otherwise) against the Partnership or any of the partners. In addition, no limited partner shall be required to contribute to the capital of the Partnership or to its creditors any money or other property in excess of his capital contribution shown on Exhibit A.

IX. Transfer of Partnership Interests; Death of Partner.

A. Transfer of General Partnership Interests. No general partner shall have the right to voluntarily or involuntarily assign, transfer, pledge, hypothecate or otherwise encumber, directly or indirectly, his general partnership interest or any part thereof.

B. Transfer of Limited Partnership Interests. No limited partner, nor the estate of a deceased partner, shall have the right to voluntarily or involuntarily assign, transfer, pledge, hypothecate or otherwise encumber, directly or indirectly, his limited partnership interest or any part thereof, except upon the prior written consent of a majority in interest, and not necessarily number, of the general partners. Notwithstanding the foregoing, a limited partner (and the estate of a deceased limited partner, subject to the provisions of paragraph C, below) may transfer all or any portion of his limited partnership interest to his issue or trusts for the benefit of himself, or his issue, or to a general or limited partner without the prior written consent of the general partners. Upon the transfer of a limited partnership interest in accordance with the provisions of this Article IX, the assignee shall not become a substituted limited partner of the Partnership unless (i) the assigning limited partner so provides in the instrument of assignment, (ii) the assignee agrees in writing to be bound by the provisions of this Certificate and Agreement, (iii) a majority in interest, and not necessarily number, of the general partners so consent in writing, and (iv) the assignee pays a fee equal to the reasonable costs and expenses of preparation, execution and recordation of an amendment to this Certificate and Agreement. In such event, the general partners (or if there is only one general partner, the general partner) shall prepare (or cause to be prepared) an amendment to this Certificate and Agreement to be signed and sworn to by them, by each of the limited partners, by the assigning limited partner, and by the assignee. The Partnership, each partner and any other person having business with the Partnership need deal only with partners so named or so admitted; they shall not be required to deal with any other person by reason of an assignment by a partner or by reason of the death of a partner, except as otherwise provided in this Certificate and Agreement. In the absence of the substitution (as provided herein) of a limited partner for an assigning or deceased limited partner, any payment to a partner or to his executors or administrators shall acquit the Partnership of all liability to any other persons who may be interested in such payment by reason of an assignment by, or the death of, such partner.

C. Option Upon Death of a Partner. Notwithstanding any other provision of this Certificate and Agreement, upon the death of a general or limited partner, the Partnership shall have the option, for a period of ninety (90) days commencing as of the date

of death of the deceased partner, to make the purchase of all or any part of the partnership interests owned by the deceased partner and/or his or her spouse. Such option shall be exercised by giving written notice to the legal representatives of the deceased partner and such deceased partner's spouse. If such notice has not been given by the expiration of the aforesaid ninety (90) day period, the estate of and spouse of the deceased partner, as the case may be, shall be entitled to retain their partnership interest (a deceased general partner's interest to be converted into a limited partnership interest pursuant to Article XII) subject to the limitations set forth in paragraph B. The purchase price of the partnership interest shall be the fair market value of such partnership interest. For the purposes of this paragraph C, the fair market value of a partnership interest shall be determined by mutual agreement of the legal representative of and/or spouse of the deceased partner desiring to make a disposition and the Partnership, or if no such agreement is reached within thirty (30) days following the giving of notice by the Partnership of its intent to purchase, by an appraiser qualified by experience to appraise property of the type owned by the Partnership. Such appraiser shall be selected and paid jointly by the Partnership and the deceased partner or his spouse, as the case may be. A cash payment toward the purchase price shall be made at closing in an amount equal to the amount of Federal and state estate and inheritance taxes payable on the partnership interests so purchased (that is, the total estate and inheritance taxes payable by reason of such death, multiplied by a fraction, the numerator of which shall be the taxable value of the partnership interest so purchased and the denominator of which shall be the total taxable value of the deceased's estate). The balance of the purchase price shall be evidenced by a promissory note payable in four equal annual installments of principal, with each annual installment of principal to be accompanied by a payment of on the unpaid principal balance at the rate of ten percent (10%) per annum. The foregoing promissory note shall be secured by a security interest in the partnership interest so purchased. Closing on any such purchase shall be held one hundred twenty (120) days following the date of death of the deceased partner.

D. Divorce. If any of the original partners set forth on Exhibit A ("Original Partner") becomes divorced from his or her spouse ("Former Spouse"), and if the Former Spouse owns an interest in the Partnership, the Original Partner shall have an absolute right and option to purchase the Former Spouse's partnership interest at any time within one year of the date the divorce decree becomes final at a cost of the greater of Five Thousand Dollars ($5,000.00) or the capital account of the Former Spouse. The option shall be exercised by written notice within the one-year period and shall be settled by payment in cash of the purchase price within thirty days of the dated notice.

E. Amendments of Certificate and Agreement. Each limited partner hereby appoints any one or more of the general partners as his true and lawful attorney-in-fact of such limited partner, in such limited partner's name and behalf, to prepare an amendment to this Certificate and Agreement and to sign, certify under oath and acknowledge any and every such amendment to this Certificate and Agreement and to execute whatever further instruments may be requisite (such power of attorney being irrevocable so long as any one of the general partners is a general partner of this Partnership), where such amendment or instrument is necessary to reflect:

(i) a change in the name of the Partnership or in the amount or character of the contribution of any limited partner;

(ii) the admission of an additional or substituted limited partner pursuant to the provisions of Section IX or Section X hereof or by unanimous written consent of all partners;

(iii) the admission of an additional general partner pursuant to Article X hereof or by unanimous written consent of all partners;

(iv) a change in the character of the business of the Partnership by unanimous written consent of all partners;

(v) the correction or clarification of any incorrect statement in this Certificate and Agreement (or any amendment hereof);

(vi) a change, by unanimous written consent of all partners, in the time stated in this Certificate and Agreement (or amendment hereof) for the end of the term of the Partnership or for the return of the capital account of any partner;

(vii) the conversion of a former general partner's partnership interest into a limited partnership interest in accordance with Section XII; or

(viii) the adjustment of the percentage of the partnership interests of the partners pursuant to the provisions of Section X; or

(ix) any other change or modification of this Certificate and Agreement (or any amendment hereof) made in order to accurately represent the agreement among the partners.

X. Admission of Additional Limited or General Partners; Subsequent Capital Contributions.

A. Admission of Additional Limited Partners and Subsequent Capital Contributions by Existing Partners. No right is reserved to admit additional limited partners to the Partnership except in the following situations:

(i) by unanimous agreement of all partners; or

(ii) in the event of the assignment by a limited partner of all or any part of his limited partnership interest pursuant to the terms of this Certificate and Agreement, each such assignee may become a substituted limited partner under the conditions set forth in Article IX hereof; or

(iii) upon the direction of a majority in interest of the general partners, at which time the percentages of partnership interest of the partners shown on Exhibit A shall be adjusted to reflect the relative fair market values, as of the date of admission of such new limited partner (the "New Partner"), of (A) the property contributed to the Partnership by the New Partner and (B) the property owned by the Partnership. [The foregoing provisions for the adjustment of percentages of partnership interest shall also apply to the direction of a majority in interest of the general partners to accept additional capital contributions from existing partners]. A determination of the relative fair market values of property contributed to the Partnership and the Partnership's property shall be made by a majority in interest of the general partners whose determination shall be final if made in good faith.

B. Admission of Additional General Partners. Upon written notice to all partners, a majority in interest of the general partners may appoint, in writing, any one of the then existing limited partners to be a general partner. In the event Bruce Teck is at any time the sole general partner, he shall have the foregoing right prior to December 31, 1995. If such appointee agrees in writing to accept such appointment, an amendment to this Certificate and Agreement shall be executed and filed as provided in Section IXE(iii), and such appointee shall thereupon be deemed to be a general partner for all purposes of this Certificate and Agreement. Upon the effective date of such amendment to this Certificate and Agreement, Exhibit A shall be amended to convert one percentage point of such appointee's limited partnership interest into a general partnership interest.

XI. Parties. No limited partner shall have priority over any other limited partner with respect to contributions, capital accounts, distribution of profits, or distribution upon dissolution.

XII. Dissolution; Retirement.

A. Except as set forth in the following sentence of this Article XII, no partner shall have the right to continue the Partnership and its business on the death, retirement, adjudication of bankruptcy, incompetency or insanity of one of the general partners (such general partner who dies, retires, is adjudged bankrupt, incompetent or insane is hereinafter referred to as "former general partner") except insofar as may be necessary to the liquidation and winding up of the affairs of the Partnership. In the event the remaining general partner(s) so elect (i) the Partnership shall not be dissolved, (ii) the partnership business shall be continued, (iii) the general partnership interest owned by the former general partner who retires, is adjudged insane, incompetent or bankrupt, or dies, shall be deemed to be a limited partnership interest, and such former general partner (or his committee, trustee in bankruptcy, executors or administrators, successors or assigns, or other legal representatives) shall be deemed to be a limited partner, and (iv) this Certificate and Agreement shall be amended to reflect the foregoing.

Any general partner shall have the right to retire upon ninety (90) days' prior written notice to the other partners. Such retirement shall not affect the liability of such general partner for matters or items accrued as of the effective date of his retirement.

B. In the event that on December 31, 1995 Bruce Teck is the sole general partner and no additional general partner has been appointed pursuant to Section XB, then Bruce Teck shall give written notice to the limited partners, the Partnership shall be dissolved, and, after making proper provisions for its liabilities, its properties shall be liquidated and/or distributed in-kind to the partners pursuant to Section VIII A.

Notwithstanding the foregoing provisions of this Section XIIB, the Partnership shall not be dissolved, and the Partner ship's business shall be continued, if all of the following occur:

(i) Within sixth (60) days after receipt of the foregoing notice, fifty percent (50%) or more in interest of the limited partners agree in writing to continue the Partnership business and appoint from among themselves a substitute general partner who agrees in writing to serve as general partner of the Partnership.

(ii) The Partnership, as so reconstituted, purchases for cash all of the Partnership interests owned by Bruce Teck and the partners who do not desire to continue the Partnership business at the then fair market value as determined by mutual agreement of the Partnership and such partners (or, in the absence of agreement, as determined by an appraiser selected by (i) Bruck

Teck and such other limited partners, and (ii) the Partnership (as so reconstituted) and paid for by the Partnership).

(iii) The general partner(s) of the Partnership as so reconstituted execute and file for record an amendment to this Certificate and Agreement to the foregoing effect.

XIII. Right to Return of Property. No limited partner shall have any right to demand and receive property, in lieu of cash, in return of his capital account. His demand for the return of his capital account if otherwise proper under the terms of Article VII hereof, shall be for cash only.

XIV. Miscellaneous. No partner shall be liable to any other partner or to the Partnership by reason of his actions in connection with the Partnership, except in the case of actual fraud, gross negligence or dishonest conduct. All references herein to actions taken by or decisions made by "the general partners" shall mean and refer to such actions or decisions as may be taken or decided upon by a majority in percentage interest, but not necessarily in number, of the general partners. In the event of deadlock or dispute between the general and/or limited partners on matters regarding the business or affairs of the Partnership, or this Partnership Agreement, the partners agree that it shall be a condition precedent to the taking of any further action (whether legal, equitable, or other) of the partners with respect to such matter that the partners use their good faith efforts to resolve such dispute or deadlock by consulting with all of the partners as well as with the professionals (lawyers or accountants) regularly advising the Partnership on the matter which is the subject of such dispute or deadlock. Any partner may engage in and/or possess any interest in other business and real estate ventures of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage and development of real property, and neither the Partnership nor any partner hereof shall have any rights in or to any such independent venture or the income or profits derived therefrom.

XV. Financial Matters. The general partners shall keep just and true books of account for the Partnership. All partners shall have access to such books of account at all reasonable times.

IN WITNESS WHEREOF, the parties hereunto have affixed their signatures and seals as of the day and year first above written.

WITNESS:

GENERAL PARTNERS:

Charles S. Faller, Jr.

[signatures continued on following page]

[signatures continued from preceding page]

WITNESS:

WITNESS:

WITNESS:

L. Jean Faller
L. Jean Faller

Bruce J. Teck
Bruce J. Teck

LIMITED PARTNERS:

Linda Faller Winstead
Linda Faller Winstead

Charles S. Faller, III
Charles S. Faller, III

Samuel Joseph Faller
Samuel Joseph Faller

Robin Elizabeth Faller
Robin Elizabeth Faller

Karen Dawn Faller
Karen Dawn Faller

Robert Owen Faller
Robert Owen Faller

Bruce J. Teck
Bruce J. Teck

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice W. Anderson, the undersigned officer, personally appeared Charles S. Faller, Jr., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice W. Anderson
Notary Public

[Notarial Seal]

My commission expires: 7/1/86.

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice W. Anderson the undersigned officer, personally appeared L. Jean Faller, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice W. Anderson
Notary Public

[Notarial Seal]

My commission expires: 7/1/86

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice W. Underwood, the undersigned officer, personally appeared Robert Owen Faller, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice W. Underwood
Notary Public

[Notarial Seal]

My commission expires: 7/1/86

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice W. Underwood, the undersigned officer, personally appeared Linda Faller Winstead, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice W. Underwood
Notary Public

[Notarial Seal]

My commission expires: 7/1/86

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice V. Underwood, the undersigned officer, personally appeared Samuel Joseph Faller, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice V. Underwood
Notary Public

[Notarial Seal]

My commission expires: 7/1/86

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice V. Underwood, the undersigned officer, personally appeared Robin Elizabeth Faller, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice V. Underwood
Notary Public

[Notarial Seal]

My commission expires: 7/1/86

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice W. Underwood, the undersigned officer, personally appeared Charles S. Faller, III, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice W. Underwood
Notary Public

[Notarial Seal]

My commission expires: 7/1/86

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice W. Underwood, the undersigned officer, personally appeared Karen Dawn Faller, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice W. Underwood
Notary Public

[Notarial Seal]

My commission expires: 7/1/86

State of Maryland)
) ss
County of Montgomery)

On this the 22nd day of December, 1982, before me, Alice W. Underwood the undersigned officer, personally appeared Bruce J. Teck, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Alice W. Underwood
Notary Public

[Notarial Seal]

My commission expires: 7/1/86

State of)
) ss
County of)

CERTIFIC. E AND AGREEMENT OF LIMITE PARTNERSHIP
OF
HILLTOP FARMS LIMITED PARTNERSHIP

GENERAL PARTNERS	Capital Contribution	Percentage of Partnership Interest
Charles S. Faller, Jr. 10821 Alloway Drive Potomac Falls Potomac, MD 20854	$ 30.00	3.0%
L. Jean Faller 10821 Alloway Drive Potomac Falls Potomac, MD 20854	$ 20.00	2.0%
Bruce J. Teck 10537 MacArthur Blvd. Potomac, MD 20854	$ 5.00	0.5%
LIMITED PARTNERS		
Linda Faller Winstead 14225 Grand Pre Road Apartment 202 Silver Spring, MD 20906	$ 150.00	15.0%
Charles S. Faller, III 14225 Grand Pre Road Apartment 103 Silver Spring, MD 20906	$ 150.00	15.0%
Samuel Joseph Faller 14210 Grand Pre Road Apartment A-1 Silver Spring, MD 20906	$ 150.00	15.0%
Robin Elizabeth Faller 10821 Alloway Drive Potomac Falls Potomac, MD 20854	$ 150.00	15.0%
Robert Owen Faller 10821 Alloway Drive Potomac Falls Potomac, MD 20854	$ 150.00	15.0%
Karen Dawn Faller 10821 Alloway Drive Potomac Falls Potomac, MD 20854	$ 150.00	15.0%
Bruce J. Teck 10537 MacArthur Blvd. Potomac, MD 20854	$ 45.00	4.5%
TOTAL	$1,000.00	100%

Execution Copy

ASSIGNMENT OF GENERAL PARTNERSHIP INTERESTS

This Assignment is entered into effective as of the close of business on January 1, 2001 (the "Effective Date"), by and between Bruce J. Teck ("Assignor") and Charles S. Faller, III ("Assignee").

RECITALS:

WHEREAS, Assignor holds .50 percent general partnership interests (collectively, the "General Partnership Interests") in New Faller Associates Limited Partnership and Hilltop Farm Limited Partnership, both of which are Maryland limited partnerships (collectively, the "Partnerships");

WHEREAS, Assignor has held the General Partnership Interests primarily as an accommodation to the other partners of the Partnerships to prevent a premature dissolution of the Partnerships;

WHEREAS, Assignor and the other partners have determined that it is no longer necessary for Assignor to act as the accommodator for purposes of preventing a dissolution;

WHEREAS, Assignor desires to relinquish the General Partnership Interests by means of an assignment of such Interests to Assignee, who is also a general partner in the Partnerships; and

WHEREAS, Assignee is willing to accept the assignment of the General Partnership Interests;

NOW, THEREFORE, in consideration of the mutual promises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

TERMS AND CONDITIONS OF ASSIGNMENT

1. Effective for all purposes and in all respects as of the Effective Date, Assignor does hereby sell, assign, and transfer to Assignee the General Partnership Interests.

2. Assignee hereby accepts the General Partnership Interests assigned and transferred to him pursuant to Section 1 above.

3. By making the within assignment, Assignor intends that Assignee shall become a substituted partner in the Partnerships to the extent of the General Partnership Interests transferred to him hereunder.

4. The parties agree to execute and deliver any and all other assignments, documents, certificates and other instruments as may, at any time, be reasonably necessary or appropriate to evidence or consummate the transfers of the General Partnership Interests effected by this Assignment.

IN TESTIMONY WHEREOF, the parties hereto have executed this Assignment as of the day first above written.

ASSIGNOR:

Bruce J. Teck

ASSIGNEE:

Charles S. Faller, III

CONSENT OF MANAGING GENERAL PARTNER

The undersigned managing general partner of the Partnerships hereby consents to the transfers of the General Partnership Interests effected by this Assignment.

Charles S. Faller, Jr.

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Execution Copy

ASSIGNMENT OF GENERAL PARTNERSHIP INTERESTS

This Assignment is entered into effective as of the close of business on January 1, 2001 (the "Effective Date"), by and between Bruce J. Teck ("Assignor") and Charles S. Faller, III ("Assignee").

RECITALS:

WHEREAS, Assignor holds .50 percent general partnership interests (collectively, the "General Partnership Interests") in New Faller Associates Limited Partnership and Hilltop Farm Limited Partnership, both of which are Maryland limited partnerships (collectively, the "Partnerships");

WHEREAS, Assignor has held the General Partnership Interests primarily as an accommodation to the other partners of the Partnerships to prevent a premature dissolution of the Partnerships;

WHEREAS, Assignor and the other partners have determined that it is no longer necessary for Assignor to act as the accommodator for purposes of preventing a dissolution;

WHEREAS, Assignor desires to relinquish the General Partnership Interests by means of an assignment of such Interests to Assignee, who is also a general partner in the Partnerships; and

WHEREAS, Assignee is willing to accept the assignment of the General Partnership Interests;

NOW, THEREFORE, in consideration of the mutual promises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

TERMS AND CONDITIONS OF ASSIGNMENT

1. Effective for all purposes and in all respects as of the Effective Date, Assignor does hereby sell, assign, and transfer to Assignee the General Partnership Interests.

2. Assignee hereby accepts the General Partnership Interests assigned and transferred to him pursuant to Section 1 above.

3. By making the within assignment, Assignor intends that Assignee shall become a substituted partner in the Partnerships to the extent of the General Partnership Interests transferred to him hereunder.

4. The parties agree to execute and deliver any and all other assignments, documents, certificates and other instruments as may, at any time, be reasonably necessary or appropriate to evidence or consummate the transfers of the General Partnership Interests effected by this Assignment.

IN TESTIMONY WHEREOF, the parties hereto have executed this Assignment as of the day first above written.

ASSIGNOR:

_____

Bruce J. Teck

ASSIGNEE:

_____

Charles S. Faller, III

CONSENT OF MANAGING GENERAL PARTNER

The undersigned managing general partner of the Partnerships hereby consents to the transfers of the General Partnership Interests effected by this Assignment.

Charles S. Faller, Jr.

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Execution Copy

ASSIGNMENT OF LIMITED PARTNERSHIP INTERESTS

This Assignment is entered into effective as of the close of business on January 1, 2001 (the "Effective Date"), by and between Bruce J. Teck ("Assignor") and Charles S. Faller, III ("Assignee").

RECITALS:

WHEREAS, Assignor holds 4.50 percent limited partnership interests (the "Limited Partnership Interests") in Hilltop Farm Limited Partnership, a Maryland limited partnerships (the "Partnership");

WHEREAS, Assignor has held the Limited Partnership Interests primarily as an accommodation to the other partners of the Partnerships to prevent a premature dissolution of the Partnerships;

WHEREAS, Assignor and the other partners have determined that it is no longer necessary for Assignor to act as the accommodator for purposes of preventing a dissolution;

WHEREAS, Assignor desires to relinquish the Limited Partnership Interests by means of an assignment of such Interests to Assignee, who is also a limited partner in the Partnership; and

WHEREAS, Assignee is willing to accept the assignment of the Limited Partnership Interest;

NOW, THEREFORE, in consideration of the mutual promises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

TERMS AND CONDITIONS OF ASSIGNMENT

1. Effective for all purposes and in all respects as of the Effective Date, Assignor does hereby sell, assign, and transfer to Assignee the Limited Partnership Interest.

2. Assignee hereby accepts the Limited Partnership Interest assigned and transferred to him pursuant to Section 1 above.

3. By making the within assignment, Assignor intends that Assignee shall become a substituted partner in the Partnership to the extent of the Limited Partnership Interest transferred to him hereunder.

4. The parties agree to execute and deliver any and all other assignments, documents, certificates and other instruments as may, at any time, be reasonably necessary or

appropriate to evidence or consummate the transfers of the Limited Partnership Interest effected by this Assignment.

IN TESTIMONY WHEREOF, the parties hereto have executed this Assignment as of the day first above written.

ASSIGNOR:

Bruce J. Teck

ASSIGNEE:

Charles S. Faller, III

CONSENT OF MANAGING GENERAL PARTNER

The undersigned managing general partner of the Partnership hereby consents to the transfers of the Limited Partnership Interest effected by this Assignment.

Charles S. Faller, Jr.

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