



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
June 28, 2007

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Gwen Wright, Acting Director
Planning Department

Mary Dolan, Acting Chief
Countywide Planning

Jorge A. Valladares, P.E., Chief
Environmental Planning, Countywide Planning

Stephen D. Federline, Supervisor
Environmental Planning, Countywide Planning

FROM: Mark Pfefferle, Forest Conservation Program Manager
Environmental Planning, Countywide Planning

DATE: June 15, 2007

REVIEW TYPE: Applicant's Appeal of Denial for Forest Conservation Plan SC2007003

PROJECT NAME: Lot 10, Potomac Hunt

LOCATION: 12000 River Road, Potomac, MD

MASTER PLAN: Potomac

APPLICANT: Aris Mardirossian
APPELLANT'S ATTORNEY: Barbara Sears, Linowes and Blocher
APPELLANTS' ENGINEER: Huron Consulting

FILING DATE: April 6, 2007

HEARING DATE: June 28, 2007



STAFF RECOMMENDATION

Remand the applicant's revised plan to staff for review under Section 22A-11(d) of the County Code.

INTRODUCTION

This matter comes before the Board as an appeal under Section 22A-20(c)(1) of the County Code, which provides for appeals to the Board where staff has denied a proposed forest conservation plan. In this case, the applicant has appealed the March 29, 2007 denial of a forest conservation plan submitted by applicant for 12000 River Road. The forest conservation plan is necessary for the applicant to obtain a sediment control permit to construct a house on his platted lot at 12000 River Road. Under Section 22A-11(d) of the County Code the applicant's forest conservation plan must be reviewed by the Planning Director or her designee. That review occurred in this case, and Environmental Planning Staff, acting as the Planning Director's designee, denied the applicant's proposed forest conservation plan. But since appealing the staff level denial, the applicant has submitted to the Board, for consideration on appeal, a substantially modified plan. Because these modifications were not previously reviewed by staff under Section 22A-11(d), the Board should decline to hear the applicant's appeal, and remand the revised plan for staff level review.

Even if the applicant's modified plan were to be considered ripe for appeal, due to the substantial modifications to the previously reviewed plan, Staff has not had an opportunity to conduct a thorough review and commentary for Planning Board review and public comment. Review of the plan is made even more difficult in this case due to inaccuracies in the applicant's most recent submission.

BACKGROUND

Site Description

The subject site pictured below and in Attachment A (Vicinity Map), is a recorded lot near the intersection of River Road and Spur Wheel Lane in Potomac. The property is also known as Potomac Hunt Lot 10, or 12000 River Road. Lot 10 was created with preliminary plan of subdivision 119860490 and includes a long 25-foot wide panhandle to River Road frontage. Preliminary plan 119860490 created 3 lots on 8.35 acres of land, the subject lot being the last to be developed. Lot 10 is the furthest lot from River Road, but the closest to the Chesapeake and Ohio Canal National Historic Park. The Planning Board opinion, for this subdivision, was mailed on April 8, 1987.



The subject site abuts residential lots in all directions except for the Chesapeake and Ohio (C&O) Canal National Historic Park, which is to the southwest of lot 10. Groundwater and stormwater runoff from the property drains directly to the C&O Canal. (Staff Exhibit A- Vicinity Map)

Project Description

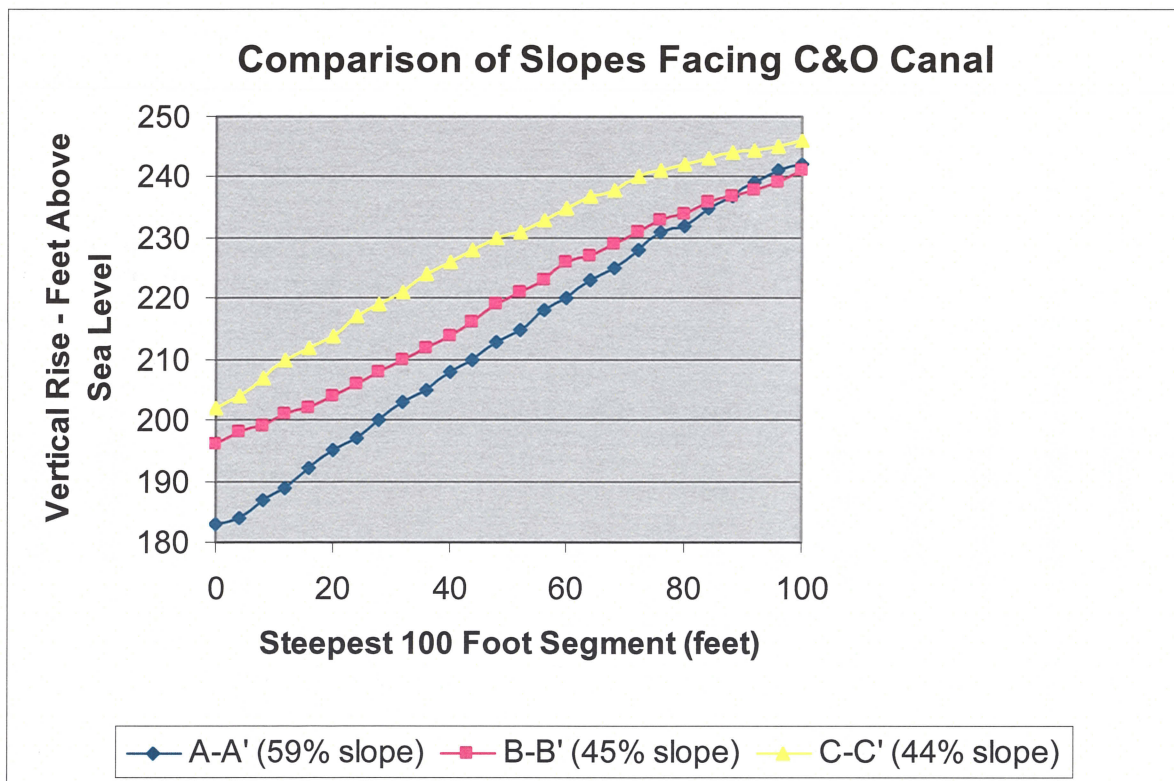
The applicant proposes to remove 1.31-acres of existing forest for the construction a single-family dwelling on the recorded lot at 12000 River Road. The applicant proposes a separate driveway parallel to the driveway for 11940 River Road. This driveway would extend from River Road right-of-way to a turnaround at the front of the proposed house. (Staff Exhibit B – March 16, 2007 Forest Conservation Plan)

Natural Resource Inventory/Forest Stand Delineation

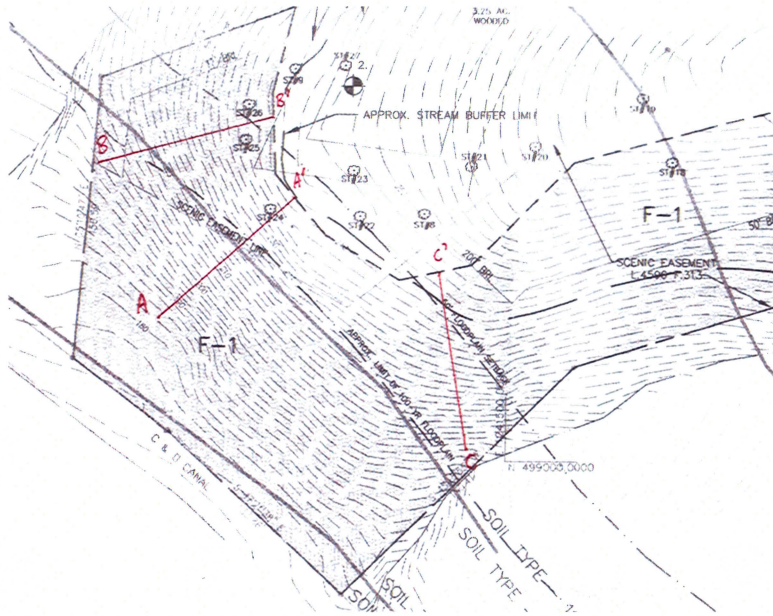
The applicant submitted a Natural Resource Inventory/Forest Stand Delineation for the property on August 11, 2006. Environmental Planning staff approved the NRI/FSD on October 16, 2006. The subject site is entirely wooded and backs to the C&O Canal. There are steep slopes, exposed rocks within the steep slopes, erodible soils, and the Potomac River floodplain from the stream/environmental buffer on the subject site. The buffer is measured from the bank of the

C&O Canal, not the Potomac River, and the buffer extends to the top of the steep slopes (slopes 25% and greater). The property slopes from a high point of 286 feet above sea level, (at a point nearest to lot 9) to a low point of 176 feet above sea level, which is along the common property line shared with the United States Government near the C&O Canal.

The *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County* identify steep slopes as all slopes 25 percent and greater. The guidelines identify the “percent slope as the vertical rise in feet over the steepest 100 foot segment multiplied by 100 percent”. The approved NRI/FSD shows the toe of the slope of the steepest 100-foot segment, which faces the C&O Canal, at 183 feet above sea level. The highest elevation within the 100-foot segment is 242 feet above sea level. This corresponds to a 59 percent slope and is depicted in cross section A-A’ in the exhibit below. All slopes greater than 25 percent and hydraulically connected to the C&O Canal are within the stream/environmental buffer. The exhibit below calculates the slope for two other locations along the steep slope facing the C&O Canal National Park and compares the three actual onsite slopes, with the slope benchmarks from the Environmental Guidelines of 25 percent, or 15 percent with erodible soils.



Location of Segment Tangents for Graph Above



Three versions of the NRI/FSD were submitted before final approval by Environmental Planning staff. Staff rejected the original submission and provided the applicant with 15 comments that needed to be addressed on the plan. The comments noted: that only nine of the 32 trees with diameters (dbh) of 24 inches and greater were identified on the submitted plan; no stream/environmental buffer were shown; and the submission omitted four items identified necessary for a complete submission according to Section 106 of the Forest Conservation regulation. The second NRI/FSD submission still had only nine trees 24 inches and greater identified on the drawing and did not address five of the previous 15 comments. In addition, the second submission eliminated the tree canopy cover, which is a required element on NRI/FSD. Environmental Planning staff rejected the 2nd submission because of the deficiencies. The applicant submitted a 3rd NRI/FSD, which addressed all M-NCPPC comments, with Environmental Planning staff approving the NRI/FSD as complete and correct on October 16, 2006.

Chronology of Natural Resource Inventory/Forest Stand Delineation Submission and Responses	
Date	Summary of Submission or Response
August 11, 2006	Applicant's initial submission
September 8, 2006	M-NCPPC provides 15 comments on the initial submission. Initial submission identified only 9 of the 32 trees 24 inches and greater dbh on the property. Submission did not identify a stream buffer on the property and omitted 5 required elements for a complete submission.
September 15, 2006	Applicant's 2 nd submission

Chronology of Natural Resource Inventory/Forest Stand Delineation Submission and Responses	
Date	Summary of Submission or Response
September 25, 2006	M-NCPPC provides 9 comments on second submission. Applicant did not address 5 of the original 15 comments and still identified only 9 of the 32 trees 24 inches and greater.
September 27, 2006	Applicant's response to 2 nd set of M-NCPPC comments
October 16, 2006	M-NCPPC approves NRI/FSD for 12000 River Road and indicates that a forest conservation plan can now be submitted.

Forest Conservation Plan

The applicant submitted five versions of the proposed forest conservation plan for River Road. In response to each, Environmental Planning staff sent written comments to the applicant or his representatives explaining why the plan could not be approved. Below is a summary of the submissions and the determination made by Environmental Planning staff. Although the applicant filed the plan on appeal on March 16, 2007, in order to place the review of that plan in context we will discuss briefly the prior forest conservation plans that were submitted for the property. This context is important in part because the applicant's representatives have claimed at various times that their development of the 12000 River Road lot has been delayed, and the implication of these statements has been that the delay was the fault of this agency. Staff strongly disagrees with this contention. Each time a new plan was submitted for 12000 River Road, Environmental Planning staff reviewed it promptly and provided written comments to the applicant or his representatives about why the plan could not be approved as proposed. The reason why the applicant filed so many iterations of the plan is that the applicant (1) failed to address comments provided by Environmental Planning staff; (2) submitted incomplete or inaccurate information; and (3) changed the proposal from one plan to the next.

1. October 19, 2006 Plan. The applicant submitted a forest conservation plan for staff review under Section 22A-11(d) of the County Code on October 19, 2006. Environmental Planning Staff sent the Applicant comments explaining why this plan could not be approved. Staff specifically explained that the plan could not be approved "because of the proposed encroachment into the stream buffer and the removal of forest within the stream buffer and steep slopes on the subject site." Section 22A-12(b)(1) of the County Code states

"the primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that: (A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention; (B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and (C) the development proposal cannot be reasonably altered."

Section 22A-12(b)(2) of the County Code states that the protected areas include ... floodplains, stream buffers, steep slopes, and critical habitats.”

In addition, Environmental Planning staff provided 10 other comments including one comment identifying the standard pre-construction notes that should be on the final forest conservation plan. This initial submission does not show a fence on the drawing nor does it include a request to remove “nut” trees from the forest saved area, elements of the applicant’s proposal that would change with later versions of the plan.

2. December 7, 2006 Plan. The Applicant submitted a second forest conservation plan on December 7, 2006. Environmental Planning rejected this submission on January 9, 2007. The submission did not provide all the information previously requested and required additional information such as a more detailed tree survey for trees on the adjoining property and specific measures on how impacted trees will be protected. Staff also noted that it was necessary under Section 22A-12(h) of the County Code that a forest conservation plan to include appropriate measures for the protection of the conservation areas; limitations on the use of those areas consistent with conservation and management practices; and legal instruments such as conservation easements, deed restrictions, covenants, and other agreements, as necessary. The applicant was not proposing any long-term protection measures other than an expansion of the National Park Service Scenic Easement, which Staff considers inadequate. The December 7 submission shows a symbol around the exterior boundary of the future conservation easement and identifies this as a “wrought iron” fence in the legend, a feature not reflected on the October 19 plan. Further, it did not include a request to remove “nut” trees from the conservation easement. The proposed fence came up at a December 8, 2006 meeting attended by Environmental Planning staff and the applicant.¹
3. January 31, 2007 Plan. The applicant submitted a third forest conservation plan on January 31, 2007. Environmental Planning staff sent the applicant comments explaining why this plan could not be approved on February 26, 2007. This plan has a fence shown and labeled on the forest conservation plan and includes a request to remove nut trees from the future conservation easement. The January 31 submission requested approval for the construction of the fence and “nut” tree removal as an accommodation under the Americans with Disabilities Act for the applicant’s children’s nut allergies. This submission identifies numerous beech, hickory, and walnut trees on the subject site but identifies none within the contiguous forest on the adjoining residential properties. The applicant requested to remove existing nut trees from the forest save area, and also to have the perpetual ability to remove each year any nut trees that may have taken root within the forest save area.

The January 31 plan also showed three new driveways for the first time, one to serve each of the three lots within the subdivision. Staff raised concerns over the new

¹ Environmental Planning staff objected to the removal of “nut” trees and the fence in this meeting.

driveways because of the impact constructing the driveway would have on trees on the adjoining property, and also noted that the driveways did not appear to comply with the Preliminary Plan. The submission also removed four standard pre-construction notes that were previously shown on the December 7, 2006 submission. In the responses to the applicant, Environmental Planning staff indicated that they were opposed to the erection of the fence within the conservation easement or the removal of the nut trees. Staff also objected to the proposed use of a National Park Service Scenic Easement to protect forest. In lieu of the Category I Conservation Easement that the Board routinely requires to be applied to forest save areas, the applicant proposed to “protect” the forest save area through expansion of an existing scenic easement that covers a portion of the property to include the entirety of the forest save area. The scenic easement would have run to the benefit of the National Park Service, the existing scenic easement holder, rather than M-NCPPC. The protection of a forest save area through the use of an easement that does not run to the benefit of the Commission, and which Commission could not enforce, would not comply with Section 22A-12(h)(2), which requires that a forest conservation plan include “appropriate measures for the protection of conservation areas.” Staff did not consider a scenic easement that the Commission could not enforce an appropriate mechanism, because using such an agreement would abdicate, at least partially, the Commission’s responsibility to enforce the Forest Conservation Law on this property.

4. February 28, 2007 Forest Conservation Plan. The applicant submitted a fourth forest conservation plan on February 28, 2007. The February 28 plan responded to only three of the nine M-NCPPC comments that staff had provided to the applicant in rejecting the January 31 plan. In addition, the fourth submission deleted the limits of disturbance from the plan. The limits of disturbance define the boundary beyond which the property may not be “disturbed,” and the delineation of these limits is a critical element of any forest conservation plan. Staff informed the applicant’s representatives that the February 28 plan omitted the limits of disturbance, which resulted in the applicant submitting a revised plan on March 16, which superseded the February 28 plan. In the February 28 submission, the applicant’s engineer indicated that the applicant’s counsel would respond to six of the nine M-NCPPC comments from February 26, 2007. The six comments left to the applicant’s attorney for response included: 1) the construction of a separate driveway for 12000 River Road, which staff had reported to the applicant might be a violation of preliminary plan 119860490 (strictly speaking this issue did not relate to whether the proposed forest conservation plan should be approved, but staff brought it to the Applicant’s attention); 2) the construction of an ornamental fence around the perimeter of the property; 3) recordation of a conservation easement for all retained forest and all forest in the stream/environmental buffers; 4) labeling all retained forest as a Category I Conservation area; 5) a request to resubmit the plan to the National Park Service for their review and approval; 6) and the removal of the “nut” trees. The applicant’s attorney continued to assert the Americans with Disability Act as the rationale or justification for erecting a fence and removing “nut” trees, continued to insist on using the Park Service’s Scenic Easement in lieu of an M-NCPPC Conservation Easement.

5. March 16, 2007 Forest Conservation Plan. The applicant submitted a fifth forest conservation plan on March 16, 2007. The only difference between this plan and the February 28 plan was that it showed the limits of disturbance. On March 30, 2007, Staff sent the applicant a letter explaining the reasons that plan could not be approved. In this letter, staff indicates that the “plan fails to comply with Section 22A-12(h)(2) of the County Code and Section 115 of the Forest Conservation Regulation. The Forest Conservation Law and Regulations require the conservation area to be subject to a long-term protective measure that limits the area’s use consistent with conservation. The proposed tree removal is inconsistent with this requirement.” The letter further notes that removal of trees on extremely steep slopes will destabilize the slope, causing erosion and negatively impacting water quality, and that the installation of the proposed fence will injure trees during installation and likely require the removal of trees/understory that grow too close or through the fence. The proposed fence would also significantly limit wildlife passage, would be highly visible from the canal towpath and limit the visual enjoyment of the forest in its natural state. In addition to the reasons stated in the March 30 letter, the plan could not be approved because the plan failed to identify all trees (including the largest beech tree, a 34-inch diameter at breast height) on extremely steep slopes, as a tree to be removed. Further, the applicant was proposing to “protect” the forest with a National Park Service Scenic Easement with an easement that is less strict than both Category I and Category II conservation easements. Since the denial of the plan on March 30, staff has learned that that there were other inaccuracies with the March 16 plan including inaccurate information about the number and species of “nut” trees to which the applicant’s children are allergic, and underestimation of the size of the “nut” trees to be removed.

Chronology of Forest Conservation Plan Submissions and Responses	
Date	Summary of Submission or Response
October 19, 2006	Applicant submits first forest conservation plan
November 20, 2006	M-NCPPC staff rejects the first submission because of encroachment into the stream/environmental buffer. The initial submission has no indication that a fence was proposed within the conservation easement or the applicant wished to remove “nut” trees within the retained forest.
December 7, 2006	Applicant submits second forest conservation plan.
January 9, 2007	M-NCPPC staff finds the December 7, 2006 submission incomplete and recommends 13 additions/revisions to the 2 nd submission. The second submission has symbol around the perimeter of the property but no indication on the drawing or in the legend what this represents. There was no indication of the applicant’s desire to remove nut trees.
January 31, 2007	Applicant submits third forest conservation plan.
February 26, 2007	M-NCPPC staff raised concerns over the new driveways because of the impact constructing the driveway would have on trees on the adjoining property. The submission also removed 4 standard pre-construction notes that were previously shown on the December 7, 2006 submission.

Chronology of Forest Conservation Plan Submissions and Responses	
Date	Summary of Submission or Response
	Environmental Planning staff indicated that they did not support the erection of the fence within the conservation easement or the removal of the “nut” trees.
February 28, 2007	Revised and corrected comments indicating that Environmental Planning did not support the removal of “nut” trees within the proposed conservation easement.
February 28, 2007	Applicant submits fourth forest conservation plan.
March 14, 2007	Revised plan does not show limits of disturbance.
March 16, 2007	Applicant submits fifth forest conservation plan.
March 30, 2007	M-NCPPC notifies the applicant’s engineer and the FC plan preparer that the plan submitted on March 16, 2007 is denied.
April 6, 2007	Applicant’s attorney submits appeal and requests a Planning Board hearing of the March 30, 2007 denial.
May 29, 2007	Applicant submits new plan in “support” of their appeal

On April 6, 2007, the applicant notified the Montgomery County Planning Board Chairman that he wished to appeal the staff-level denial of his March 16 forest conservation plan under Section 22A-20(c)(1). On May 29, 2007, the applicant submitted documents in support his “appeal” of the staff-level denial. But the applicant’s May 29 submission goes far beyond making the case for the applicant’s appeal being granted. Environmental Planning has not had an opportunity to thoroughly review the two binders of information submitted on May 29, but based on a cursory review of the forest conservation plan it contains it is clear that the May 29 submission differs substantially from the plan denied on March 30.² Some of the differences that staff has identified include:

1. The applicant’s March 16 plan shows a fence five feet from the property line and within the proposed forest conservation easement. The May 29 plan shows the fence 40 feet from the common property line shared with the United States Government and still five feet from the adjoining residential properties.
2. The applicant has reduced the number of “nut” trees to be removed within the future conservation easement and indicating the children are not allergic to beech tree nuts.
3. The plan shows a trenched stormwater management outfall down the steepest part of the embankment facing the C&O Canal. Previous submissions neither indicated a discharge location nor that the outfall would be trenched.
4. The limit of disturbance has expanded along River Road to incorporate a 135-foot wide driveway apron that connects the three driveways for lots created by preliminary plan 119860490.

² The applicant submitted numerous documents, exhibits and materials in two binders to the Planning Board and Acting Director but only one of the two binders to Environmental Planning staff.

5. Tab 3 of the May 29 submission proposes a modified Category I Conservation Easement but the drawing behind Table 2 labels the tree save areas as an expansion of the existing Scenic Easement on the property, which runs to the benefit of the National Park Service.

In addition to these changes, there are significant inaccuracies in the plan that makes it difficult for staff (and the Board) to review it. The sizes listed for the trees proposed to be removed within the proposed forest conservation easement are inconsistent on different plans included in the May 29 submission. Specifically, the “Known Allergic Tree Exhibit,” which is included behind Tab 2 in May 29 submission, lists significantly smaller sizes than the “Nut Tree Exhibit,” which is included behind Tab 13 in the May 29 submission. Further, for one of the trees, field measurements conducted by Environmental Planning Staff indicated an even larger size for at least one of the trees than is included in either of these exhibits. The tree listed in the applicant’s submission as T108 is listed as 24 inches in the “Known Allergic Tree Exhibit” and 27 inches in the “Nut Tree Exhibit.” But field measurements taken by staff indicate that tree number T108 is in fact 33 inches in diameter, a significant discrepancy, which brings the tree into the “specimen” category

Because Section 22A-11(d) of the County Code provides for forest conservation plan review by the Planning Director, an appeal to the Montgomery County Planning Board is ripe only after the staff level review. The applicant’s May 29 submission is a new plan and the Planning Board should not review applicant’s plan as an “appeal” under Section 22A-20(c)(1) of the County Code until the new plan has been submitted to the Planning Director for review and approval under Section 22A-11(d).

NPS Scenic Easement

Since November 12, 1974 there has been a scenic easement on the property at 12000 River Road. This easement is recorded at Liber 4596 Folio 313. The easement prohibits structures greater than 40 feet in height, no buildings or structures on slopes greater than 20 percent, no change in the character of the topography or disturbance of natural features except for building footings, septic areas, and prohibits the removal of any timber 6 inches dbh except for diseased, dead, injured or hazardous trees. The Secretary of the Interior or his designee may authorize exceptions to these controls in writing. If the Secretary of the Interior, or designee does not respond in writing to an applicant’s proposal within 30 days, the exception is deemed granted.

DISCUSSION

Legal Basis for the Review

Construction of a residence at 12000 River Road requires the applicant to submit and M-NCPPC to approve a forest conservation plan prior to the Montgomery County Department of Permitting Services (MCPDS) issuance of a sediment control permit (22A-11(d)(3) of the County Code). Under Section 22A-4(b) of the County Code, “a person required by law to obtain ... a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain” a preliminary plan of subdivision, development plan, etc. is subject to the forest

conservation law. Section 22A-5(a) of the Forest Conservation Law allows exemptions from submitting a forest conservation plan if the activity is for the construction of a dwelling house, or accessory structures, on an existing single lot, if less than 40,000 square feet of forest is removed. The applicant proposes to remove 1.31-acres (57,064 square feet) of forest on an existing recorded lot and therefore, the applicant is required to submit and have approved a forest conservation plan for 12000 River Road.

The Planning Director reviews, approves, or denies forest conservation plans for sediment control permits (Section 22A-11(d) of the County Code). Section 22A-3 of the County Code defines the Planning Director as the Director of the Montgomery County Park and Planning Department, or the Director's designee.

On March 30, 2007, M-NCPPC Environmental Planning staff, as the Planning Director's designee, denied forest conservation plan SC2007003 for 12000 River Road (Staff Exhibit C). Section 22A-20 identifies the process for appealing a Planning Director's decision. Subsection (c) provides that appeals of the Planning Director's decision are with the Planning Board. On April 6, 2007, the applicant's attorney submitted a letter appealing the March 30, 2007 denial of the March 16, 2007 forest conservation plan submission (Staff Exhibit D). The case currently scheduled for hearing before the Board is an appeal of the March 30, 2007 denial of the forest conservation plan.

Forest Conservation Plan

Because of the timing of the applicant's most recent submission, Environmental Planning Staff has not had an opportunity to thoroughly review that plan. The changes from the March 16 plan, which is supposed to be the subject of applicant's appeal and which Environmental Planning staff has had a thorough chance to review, to the plan included in the applicant's May 29 submission are significant, and require thorough review. Staff considers a thorough review in this case to be particularly important in light of the inaccuracies of the plan submissions for this property. But if Environmental Planning staff had to take a position on the May 29 plan based on the limited review it has had an opportunity to, it could not support the plan's approval for a number of reasons. The conservation easement is primarily composed of slopes ranging from 44 to 59 percent. These are extremely steep slopes. Any slope in excess of a 25 percent grade is considered to be environmentally sensitive under 50-32(c) of the County Code. Any removal of the trees and weakening of the root system will facilitate erosion and possibly destabilize of the slope. The steeper the slope the more prone the slope is to erosion when vegetation is removed. The proposed removal of trees will destabilize the steep slopes. The construction of the fence will likely harm other trees and also contribute to slope destabilization. The trenching of the stormwater outfall and rip rap will lead to the removal of an unspecified number of trees and cause associated slope destabilization and erosion. Finally, Staff could not support approval of the plan due to the inaccuracies in the plan, including discrepancies in the size of trees proposed for removal within the conservation easement.

American's with Disability Act

The applicant's claims that his children suffer from nut allergies and that these allergies qualify for an accommodation under the Americans with Disabilities Act. The applicants seeks (1) to remove hickory and walnut trees from within the forest save area; (2) permission to install a fence within the forest save area; and (3) permission to remove any nut trees that may take root on the property in the future. The intent of the proposed accommodation appears to be to create a "nut- and nut tree-free" zone on virtually all of the applicant's property. A May 29 letter from the applicant's counsel states: "Applicant believes that the removal and prevention of regeneration and new growth of nut-bearing trees and construction of a fence on the property at the approximate location proposed and in accordance with the specifications proposed to prevent the Mardirossian children from traveling into areas where nut-bearing trees are present will have minimum environmental impact and are reasonable, medically necessary and legally required in order to ensure the health and safety of the Applicant's children..."

Staff does not believe that the applicant has justified the need for an ADA accommodation for several reasons. In reviewing whether the Applicant has established that his children have disability, Staff has considered whether the Applicant had presented specific evidence of the children's allergies, the history and severity of the children's allergic reactions, and the degree to which the triggers of the children's allergies can be avoided.

Applicant's submissions to the Board imply that the children are allergic to hickory trees, hickory nuts, walnut trees, or walnuts. But they have not expressly stated that the children have tested positive for these allergies, or that the children have had allergic reactions from contact with any of these specific species of trees or nuts. The applicant had previously maintained that beech trees also had to be removed from the property, the implication being that the applicant's children were allergic to beech trees and nuts. That claim also was not supported by any specific evidence that the children were allergic to beech trees or nuts, and turns out to have been incorrect. Letters from doctors included in the applicant's submissions state that the children have had severe reactions to nuts, and could even die from ingesting a nut, but most of the information provided does not contain specifics about the number of allergic reactions the children have experienced, what has caused the reactions, or how severe the reactions have been. For example, a letter from a doctor included in the applicant's May 29 submission states that one of the children developed swelling on his face once after touching a nut tree and touching his face. Similarly, a letter from the children's school states that one of the applicant's children had an allergic reaction from being in the same room as children who had been playing with "a nut derivative tree." In both of these submissions, it is unclear what type of tree caused the reaction and how severe the reaction was. Thus, it is unclear that the types of reactions the children have been described as having rise impair a major life activity.

An accommodation also appears to be unnecessary because the triggers of the allergic reactions can reasonably be avoided. For example, the materials submitted suggest that there are nut trees on or around the children's school, but that apparently does not stop the children from attending. At their property, the children can avoid exposure to nut trees and nuts by avoiding the forest save area where the trees are required to be preserved, or by entering that area with adult

supervision until the children can exercise appropriate care to avoid nuts and nut trees. The children's allergies can be reasonably accommodated by the construction of a fence at the limits of disturbance that would prevent the children from entering the forest save area. There will be no limitation on the removal of trees on the bulk of the property, which lies within the limits of disturbance. That portion of the property will provide a substantial play area for the applicant's children. Approximately $\frac{3}{4}$ of an acre of land is available for play from the back of the proposed house location to the limits of disturbance that parallel the C&O Canal. Other area is available in front of the house. The area that will be subject to forest conservation is extremely steep, with grades between 44 and 59 percent, and not well suited for ordinary play.

The proposed accommodation is also not reasonable because it will not be very effective. The Applicant has described the children as having allergic reactions to nuts, nut trees, and nut tree pollen. Even if all nut trees are removed from the property and a fence is built, the stumps and exposed root systems of the trees will remain. Further, nuts will inevitably be brought onto the property by squirrels and rodents from nut trees located on surrounding properties. Pollen and leaves from nut trees surrounding the property will be blown onto the property.

Finally, the accommodation proposed by the Applicant is unreasonable because it is not subject to any time limitation. As the children grow older, their allergies may diminish. But even if they don't, the children will be able to take greater care to avoid exposure to nuts and nut trees. And eventually the family or the children are likely to move away from 12000 River Road. The accommodation would no longer be needed at that point.

The proposed accommodation should not be permitted in any event because it would fundamentally alter the nature of the Forest Conservation Law and regulations. The Forest Conservation Law is generally intended to "save, maintain, and plant trees and forested areas for the benefit of County residents and future generations" (22A-2(b) County Code), and that forests "improve the quality of life in a community by providing for recreation, compatibility between different land uses, and aesthetic appeal (22A-2(a) County Code). Construction of a black ornamental fence along the C&O Canal National Historic Park will potentially diminish aesthetic appeal of a contiguous forest that parallels the canal. Removal of trees and vegetation along extremely steep slopes will destabilize the slope. The erosion will undercut additional trees and strip the slopes of the soil that remains making it more and more difficult to maintain a naturally regenerating forest. The Trees Technical Manual indicates that a functional priority of the forest conservation is to establish or increase existing forested corridors to connect existing forests within or adjacent to the site. Where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement. Construction of a fence will compromise the wildlife corridor that runs parallel to the C&O Canal.

RECOMMENDATION

Remand the applicant's revised plan to staff for review under Section 22A-11(d) of the County Code.

STAFF EXHIBITS

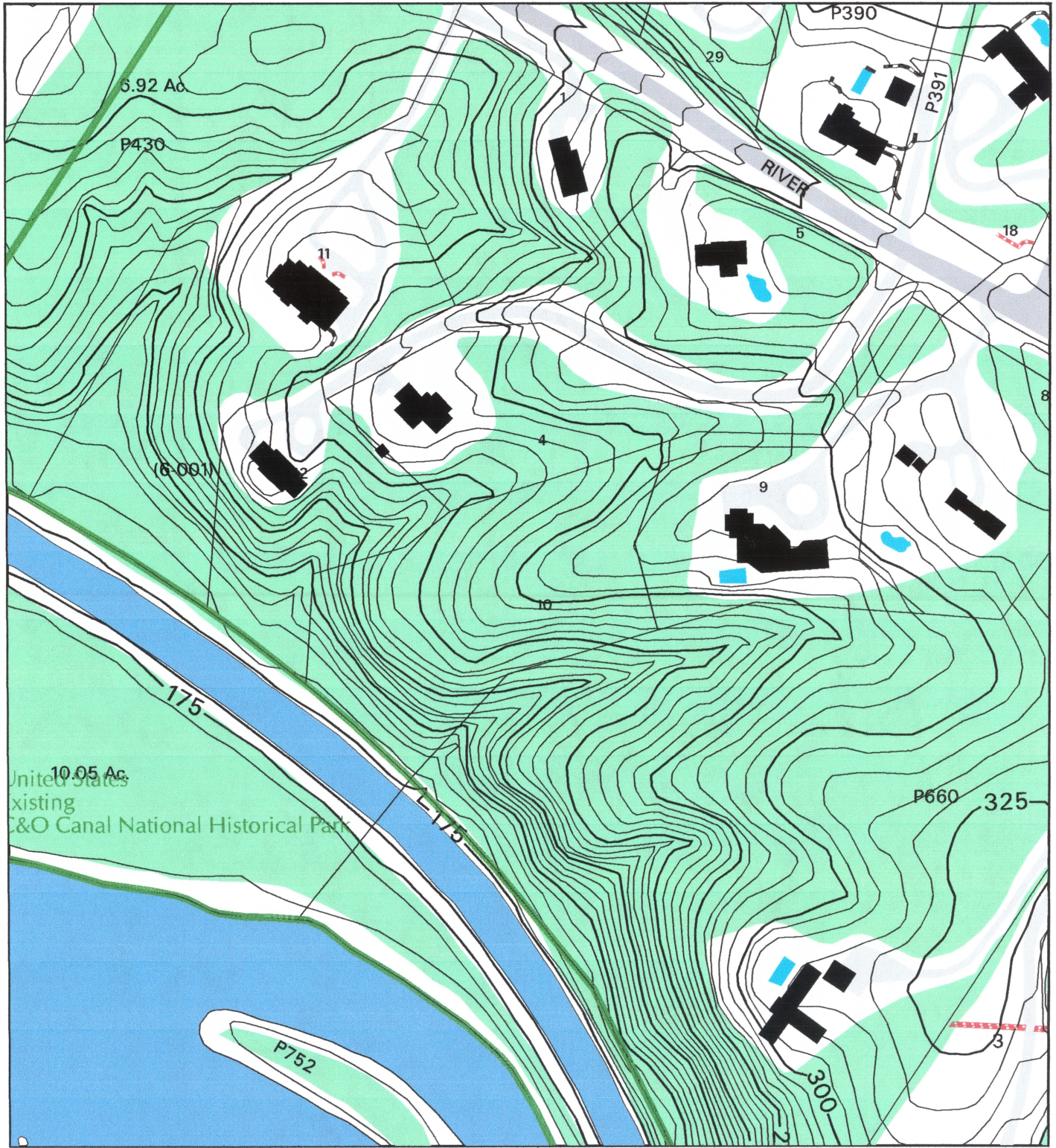
Exhibit A. Vicinity Map

Exhibit B. March 16, 2007 Forest Conservation Plan

Exhibit C. M-NCPPC March 30, 2007 letter denying forest conservation plan SC2007003

Exhibit D. Applicant's appeal of the March 30, 2007 denial

Exhibit E. Citizen Correspondence



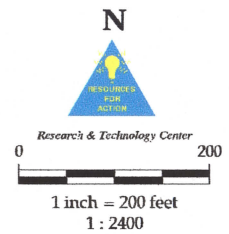
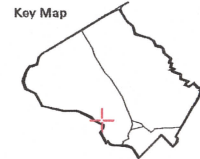
Map compiled on June 18, 2007 at 12:35 PM | Site located on base sheet no - 214NW12

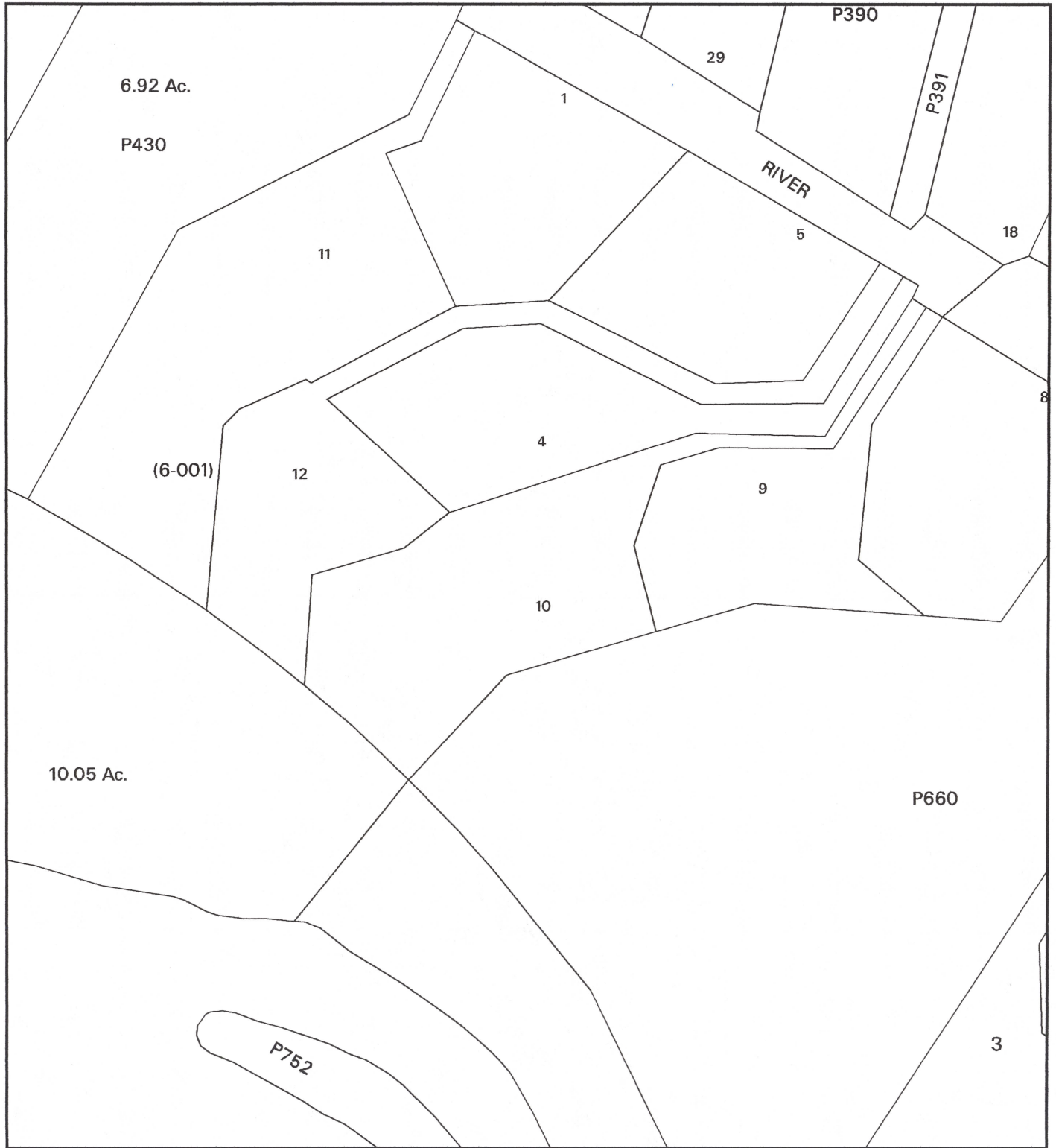
NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998





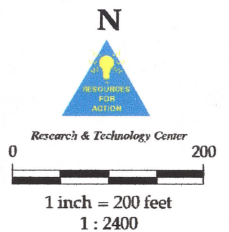
Map compiled on June 18, 2007 at 12:32 PM | Site located on base sheet no - 214NW12

NOTICE

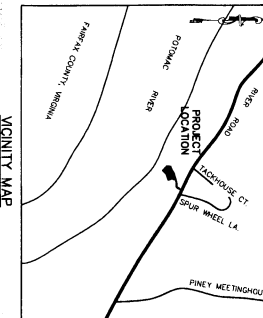
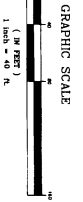
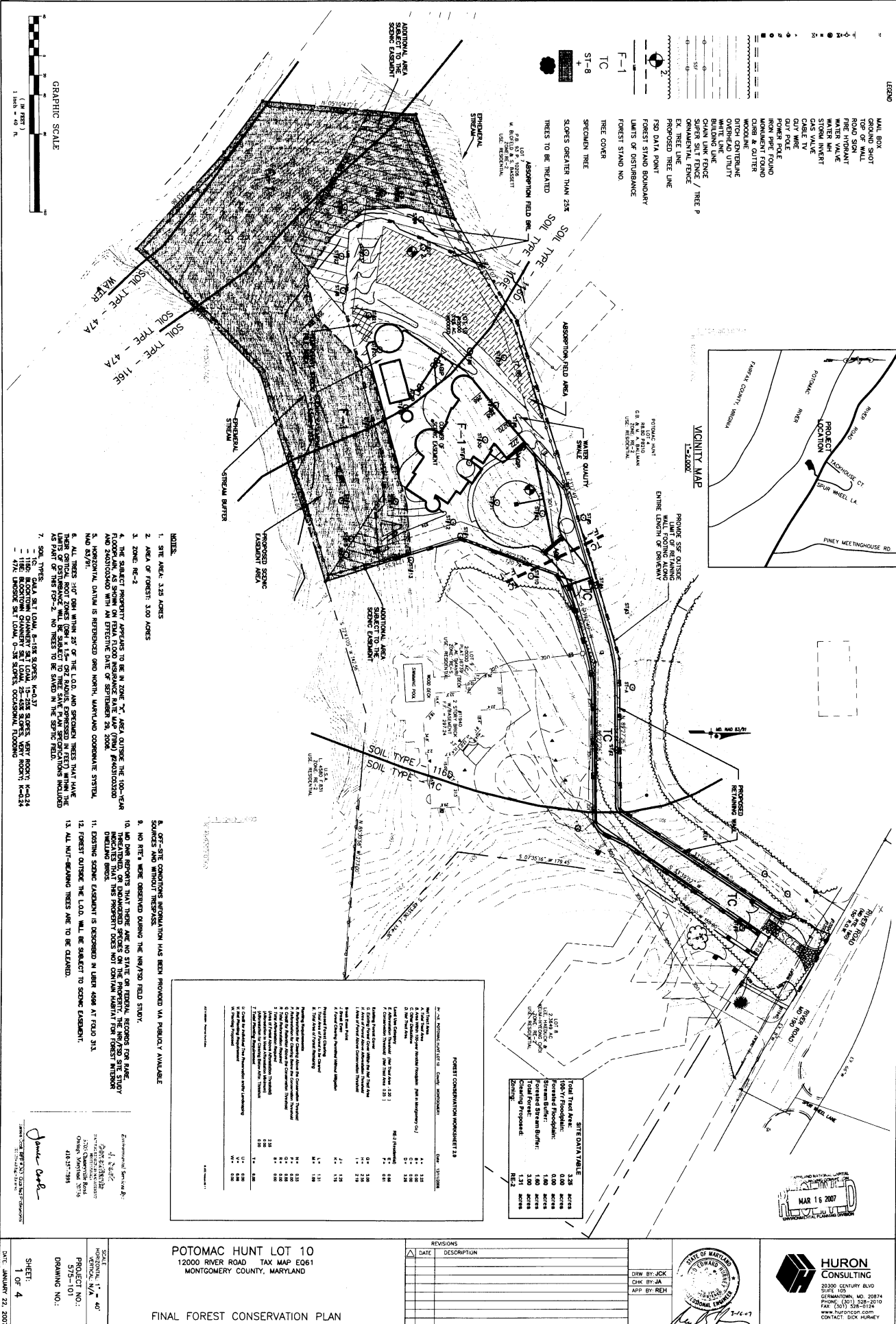
The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland -National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998



STAFF EXHIBIT B



- NOTES:**
1. SITE AREA: 3.25 ACRES
 2. AREA OF FOREST: 3.00 ACRES
 3. ZONE: RC-2
 4. THE SUBJECT PROPERTY APPEARS TO BE IN ZONE "C" AREA OUTSIDE THE 100-YEAR FLOODPLAIN, AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP (FIRM) FIRM02040D AND ZONING ORDINANCE WITH AN EFFECTIVE DATE OF SEPTEMBER 24, 2008.
 5. HORIZONTAL DATUM IS REFERENCED GRID NORTH, MARYLAND COORDINATE SYSTEM.
 6. ALL TREES NOT OVER 25' TO THE L.O.D. AND SPECIES TREES THAT HAVE BEEN IDENTIFIED SHALL BE MAINTAINED TO THE MAXIMUM EXTENT POSSIBLE. THE LIMITS OF DISTURBANCE WILL BE SUBJECT TO THE SAME PLANNING REGULATIONS INCLUDED AS PART OF THE RC-2. NO TREES TO BE SAVED IN THE SCOPIC FIELD.
 7. SOIL TYPES: SLOA S&T LOW, S-1ISE SLOPES, K-C-37
 8. 116B: BROOMFIELD CLAYMINY S&T LOW, 15-23% SLOPES, VERY ROCKY, K-C-24
 9. 47A: IMPROVE S&T LOW, 0-3% SLOPES, COARSE SAND, FLOODING
 10. OFF-SITE CONDITIONS INFORMATION HAS BEEN PROVIDED VIA PUBLICLY AVAILABLE SOURCE AND AVAILABLE THROUGH:
 11. NO DRG REPORTS THAT THERE ARE NO STATE OR FEDERAL RECORDS FOR RARE OR ENDANGERED SPECIES.
 12. EXISTING SCOPIC ESSENTIAL IS DESCRIBED IN LIBER 4696 AT FOLD 313.
 13. FOREST OUTSIDE THE L.O.D. WILL BE SUBJECT TO SCOPIC ESSENTIAL.
 14. ALL NAT-REMAINING TREES ARE TO BE CLEARED.

Total Tract Area	3.25 acres
100-Yr Floodplain	0.00 acres
Proposed Footprint	0.00 acres
Stream Buffer	1.00 acres
Total Forest	3.00 acres
Clearing Proposed	1.31 acres
Remaining	1.69 acres

DATE	STATION	DATE	STATION	DATE	STATION
11/15/07	1	11/15/07	2	11/15/07	3
11/15/07	4	11/15/07	5	11/15/07	6
11/15/07	7	11/15/07	8	11/15/07	9
11/15/07	10	11/15/07	11	11/15/07	12
11/15/07	13	11/15/07	14	11/15/07	15
11/15/07	16	11/15/07	17	11/15/07	18
11/15/07	19	11/15/07	20	11/15/07	21
11/15/07	22	11/15/07	23	11/15/07	24
11/15/07	25	11/15/07	26	11/15/07	27
11/15/07	28	11/15/07	29	11/15/07	30
11/15/07	31	11/15/07	32	11/15/07	33
11/15/07	34	11/15/07	35	11/15/07	36
11/15/07	37	11/15/07	38	11/15/07	39
11/15/07	40	11/15/07	41	11/15/07	42
11/15/07	43	11/15/07	44	11/15/07	45
11/15/07	46	11/15/07	47	11/15/07	48
11/15/07	49	11/15/07	50	11/15/07	51
11/15/07	52	11/15/07	53	11/15/07	54
11/15/07	55	11/15/07	56	11/15/07	57
11/15/07	58	11/15/07	59	11/15/07	60



POTOMAC HUNT LOT 10
12000 RIVER ROAD TAX MAP EQ61
MONTGOMERY COUNTY, MARYLAND

FINAL FOREST CONSERVATION PLAN

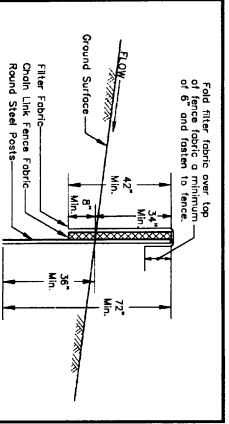
SHEET: 1 OF 4
DATE: JANUARY 22, 2009

REVISIONS

DATE	DESCRIPTION

DRW BY: JCK
CHK BY: JA
APP BY: REH

HURON CONSULTING
20300 CENTURY BLVD
SUITE 105
GERMANTOWN, MD 20874
PHONE: (301) 228-2210
FAX: (301) 598-0124
WWW.HURONCONS.COM
CONTACT: DICK HURNEY



- NOTES:**
1. Steel Posts must be Schedule 40 or 35-40 2.5" diameter, galvanized pipe. Post spacing must not exceed 10 feet.
 2. Chain link fence fabric must be a 2" x 2" #9 gauge x 42" KC with with fence wire.
 3. Fiber fabric must be attached to top and secured to posts with fence wire.
 4. Fabric must be stretched out and secured to chain link fence. A minimum of 6" folded together and belted.
 5. Belter must be performed as needed and all bulging removed when they reach an 18" depth above existing ground or when "bulge" develops in the fill back.
 6. All other details and specifications shall be in accordance with the following:

MONTGOMERY COUNTY DEPARTMENT OF PLANNING SERVICES WATER RESOURCES	MODIFIED SUPER BATTERY SCALE NONE	DATE: 6/03 SCALE: NONE
--	---	---------------------------

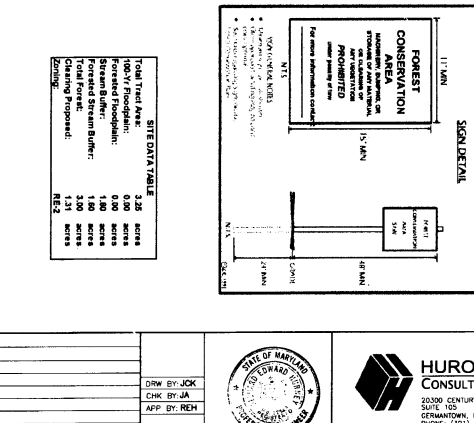
TREE PROTECTION DEVICE

- NOTES:**
1. All existing tree construction within shall be retained until the limits of the existing tree crown. The contractor shall contact the Maryland Department of Agriculture, Forestry, and Fishery Commission, Forestry Staff prior to any removal of trees within the existing tree crown. The contractor shall be responsible for the protection and care of the existing trees. The contractor shall be responsible for the protection and care of the existing trees. The contractor shall be responsible for the protection and care of the existing trees.
 2. No clearing or grading shall begin before tree stress reduction measures have been implemented. Appropriate measures may include, but are not limited to:
 - i. Crown reduction or pruning
 - ii. Fertilization
 - iii. Root aeration
 - iv. Root pruning
 - v. Root collar excavation
 3. A state of Maryland licensed tree care specialist (TCS) shall be retained for all tree care services. The TCS shall be responsible for the development of the tree care plan and shall be responsible for the implementation of the tree care plan. The TCS shall be responsible for the implementation of the tree care plan.
 4. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan.
 5. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan.

- NOTES:**
1. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan.
 2. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan.
 3. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan.
 4. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan.
 5. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan. The contractor shall be responsible for the implementation of the tree care plan.

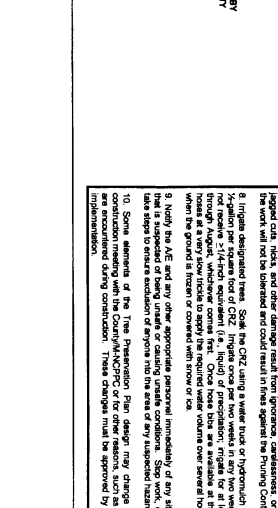
- FERTILIZATION SPECIFICATIONS**
- Apply fertilizer at the rate of 100 lbs/acre. Fertilizer shall be applied to the soil surface and worked into the soil. Fertilizer shall be applied to the soil surface and worked into the soil. Fertilizer shall be applied to the soil surface and worked into the soil.
- TOPE AND BATTLE**
- Remove all dead trees and limbs. Remove all dead trees and limbs. Remove all dead trees and limbs. Remove all dead trees and limbs. Remove all dead trees and limbs.
- VEGETATION EQUIPMENT**
- Vegetation removal and brush clearing shall be performed by hand. Vegetation removal and brush clearing shall be performed by hand. Vegetation removal and brush clearing shall be performed by hand.
- WATER MAINS**
- Water mains shall be installed in accordance with the applicable code. Water mains shall be installed in accordance with the applicable code. Water mains shall be installed in accordance with the applicable code.

- TREE CARE PLAN NOTES**
1. Trees marked for removal will be cut as close as possible by chainsaw and the stump pulled up. The contractor shall be responsible for the removal of the stump. The contractor shall be responsible for the removal of the stump. The contractor shall be responsible for the removal of the stump.
 2. Stump grinding shall be performed to a depth of 12 inches below the ground surface. Stump grinding shall be performed to a depth of 12 inches below the ground surface. Stump grinding shall be performed to a depth of 12 inches below the ground surface.
 3. Immediately following final grading, apply root growth hormone to the root pruning trenches as a drench. Mix the hormone with clean water and apply at a rate compatible with ANSI standards.
 4. Slope all areas (SSP) will serve as the Tree Protection Device and may be installed in the root pruning trench to avoid a redundant trench. See the Modified Slope "S" Profile detail on this plan. Slope "S" shall be at least every 20 feet along the top of the SSP.
 5. Fertilize all areas with critical root zones impacted by 40% or more of the crown of trees to be removed. Fertilize all areas with critical root zones impacted by 40% or more of the crown of trees to be removed. Fertilize all areas with critical root zones impacted by 40% or more of the crown of trees to be removed.



- TREE ROOT PRUNING GENERAL NOTES**
1. Crown removal shall be completed within 30 days of the start of construction. Crown removal shall be completed within 30 days of the start of construction. Crown removal shall be completed within 30 days of the start of construction.
 2. Root pruning shall be performed to a depth of 12 inches below the ground surface. Root pruning shall be performed to a depth of 12 inches below the ground surface. Root pruning shall be performed to a depth of 12 inches below the ground surface.
 3. Root pruning shall be performed to a depth of 12 inches below the ground surface. Root pruning shall be performed to a depth of 12 inches below the ground surface. Root pruning shall be performed to a depth of 12 inches below the ground surface.

ID	DATE	SYMBOL	CONSTRUCTION
1	03/11/03	SURVEY	EXIST
2	03/11/03	PROPOSED	NEW
3	03/11/03	PROPOSED	NEW
4	03/11/03	PROPOSED	NEW
5	03/11/03	PROPOSED	NEW
6	03/11/03	PROPOSED	NEW
7	03/11/03	PROPOSED	NEW
8	03/11/03	PROPOSED	NEW
9	03/11/03	PROPOSED	NEW
10	03/11/03	PROPOSED	NEW
11	03/11/03	PROPOSED	NEW
12	03/11/03	PROPOSED	NEW
13	03/11/03	PROPOSED	NEW
14	03/11/03	PROPOSED	NEW
15	03/11/03	PROPOSED	NEW
16	03/11/03	PROPOSED	NEW
17	03/11/03	PROPOSED	NEW
18	03/11/03	PROPOSED	NEW
19	03/11/03	PROPOSED	NEW
20	03/11/03	PROPOSED	NEW
21	03/11/03	PROPOSED	NEW
22	03/11/03	PROPOSED	NEW
23	03/11/03	PROPOSED	NEW
24	03/11/03	PROPOSED	NEW
25	03/11/03	PROPOSED	NEW
26	03/11/03	PROPOSED	NEW
27	03/11/03	PROPOSED	NEW
28	03/11/03	PROPOSED	NEW
29	03/11/03	PROPOSED	NEW
30	03/11/03	PROPOSED	NEW
31	03/11/03	PROPOSED	NEW
32	03/11/03	PROPOSED	NEW
33	03/11/03	PROPOSED	NEW
34	03/11/03	PROPOSED	NEW

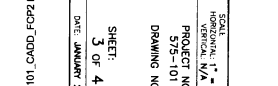


- TREE ROOT PRUNING GENERAL NOTES**
1. Crown removal shall be completed within 30 days of the start of construction. Crown removal shall be completed within 30 days of the start of construction. Crown removal shall be completed within 30 days of the start of construction.
 2. Root pruning shall be performed to a depth of 12 inches below the ground surface. Root pruning shall be performed to a depth of 12 inches below the ground surface. Root pruning shall be performed to a depth of 12 inches below the ground surface.
 3. Root pruning shall be performed to a depth of 12 inches below the ground surface. Root pruning shall be performed to a depth of 12 inches below the ground surface. Root pruning shall be performed to a depth of 12 inches below the ground surface.

ID	DATE	SYMBOL	CONSTRUCTION
1	03/11/03	SURVEY	EXIST
2	03/11/03	PROPOSED	NEW
3	03/11/03	PROPOSED	NEW
4	03/11/03	PROPOSED	NEW
5	03/11/03	PROPOSED	NEW
6	03/11/03	PROPOSED	NEW
7	03/11/03	PROPOSED	NEW
8	03/11/03	PROPOSED	NEW
9	03/11/03	PROPOSED	NEW
10	03/11/03	PROPOSED	NEW
11	03/11/03	PROPOSED	NEW
12	03/11/03	PROPOSED	NEW
13	03/11/03	PROPOSED	NEW
14	03/11/03	PROPOSED	NEW
15	03/11/03	PROPOSED	NEW
16	03/11/03	PROPOSED	NEW
17	03/11/03	PROPOSED	NEW
18	03/11/03	PROPOSED	NEW
19	03/11/03	PROPOSED	NEW
20	03/11/03	PROPOSED	NEW
21	03/11/03	PROPOSED	NEW
22	03/11/03	PROPOSED	NEW
23	03/11/03	PROPOSED	NEW
24	03/11/03	PROPOSED	NEW
25	03/11/03	PROPOSED	NEW
26	03/11/03	PROPOSED	NEW
27	03/11/03	PROPOSED	NEW
28	03/11/03	PROPOSED	NEW
29	03/11/03	PROPOSED	NEW
30	03/11/03	PROPOSED	NEW
31	03/11/03	PROPOSED	NEW
32	03/11/03	PROPOSED	NEW
33	03/11/03	PROPOSED	NEW
34	03/11/03	PROPOSED	NEW

SITE DATA TABLE

Total Area	3.25 acres
Proposed Footprint	0.80 acres
Stream Buffer	1.00 acres
Proposed Stream Buffer	1.80 acres
Remaining Area	1.31 acres
Clearing Required	RE:2



REVISIONS	
DATE	DESCRIPTION

STATE OF MARYLAND

DEPARTMENT OF PLANNING SERVICES

APPROVED FOR THE DIRECTOR OF PLANNING SERVICES

DATE: JANUARY 22, 2007

PROJECT NO: 573-101

DRAWING NO: 1

DATE: JANUARY 22, 2007

HURON CONSULTING

22000 CENTURY BLVD
SUITE 105
FARMERS MARKET
FARMERS MARKET, MD 20784
PHONE: (301) 539-2010
FAX: (301) 539-2011
www.huronconsult.com
CONTACT: BOB HURLEY

POTOMAC HUNT LOT 10

12000 RIVER ROAD TAX MAP 081

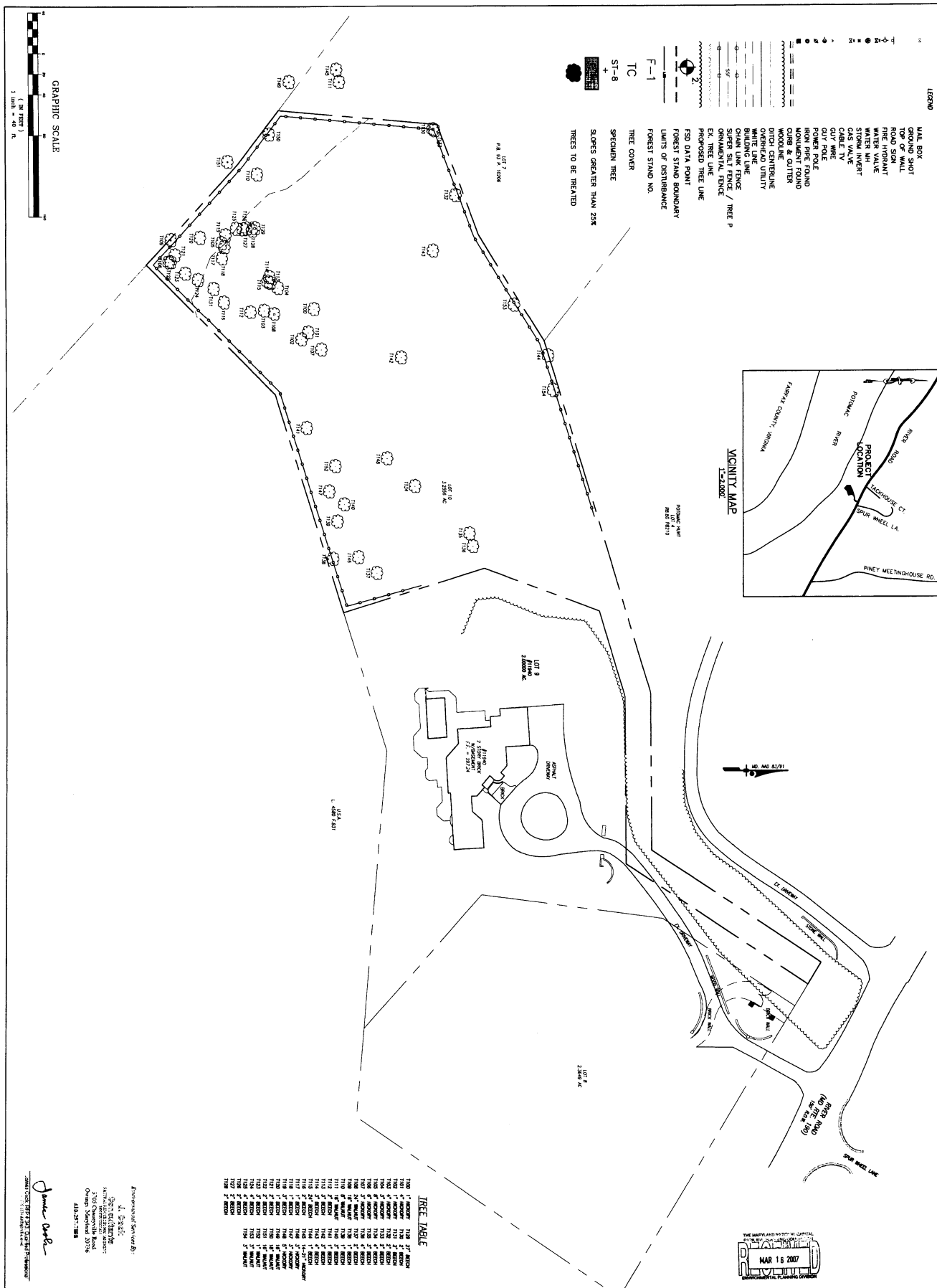
MONTGOMERY COUNTY, MARYLAND

FINAL FOREST CONSERVATION PLAN DETAILS

100% SCALE

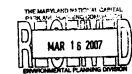
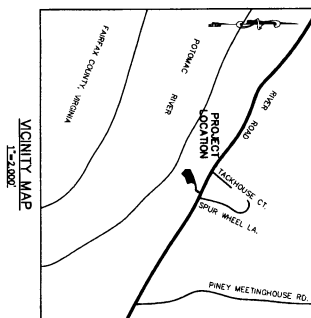
HORIZONTAL: 1" = 40'

VERTICAL: 1" = 40'



LEGEND

- MALL BOX
- GROUND SHOT
- TOP OF WALL
- FINE HYDRANT
- WATER VALVE
- WATER METER
- GAS VALVE
- CABLE TV
- GUY WIRE
- POWER POLE
- IRON PIPE FOUND
- MONUMENT FOUND
- WOODPILE
- DITCH
- DITCH CENTRELINE
- OVERHEAD UTILITY
- BUILDING CORNER
- CHAIN LINK FENCE
- SUPER SLIP FENCE
- SMOKESTACK
- PROPOSED TREE LINE
- FSD DATA POINT
- FOREST STANDING BOUNDARY
- LIMITS OF DISTURBANCE
- FOREST STAND NO.
- TREE COVER
- SPECIMEN TREE
- SLOPES GREATER THAN 25%
- TREES TO BE TREATED



TREE TABLE

NO.	DATE	DESCRIPTION
T100	12/27/2006	12' x 12' x 12' REDWOOD
T101	12/27/2006	12' x 12' x 12' REDWOOD
T102	12/27/2006	12' x 12' x 12' REDWOOD
T103	12/27/2006	12' x 12' x 12' REDWOOD
T104	12/27/2006	12' x 12' x 12' REDWOOD
T105	12/27/2006	12' x 12' x 12' REDWOOD
T106	12/27/2006	12' x 12' x 12' REDWOOD
T107	12/27/2006	12' x 12' x 12' REDWOOD
T108	12/27/2006	12' x 12' x 12' REDWOOD
T109	12/27/2006	12' x 12' x 12' REDWOOD

Environmental Services, Inc.
 J. A. Schick
 12100 Old Columbia Road
 Suite 100
 Chevy Chase, MD 20815
 Phone: (301) 951-1010
 Fax: (301) 951-1011
 www.environmentalservices.com

<p>DATE: JANUARY 22, 2009</p> <p>SHEET: 4 OF 4</p>	<p>POTOMAC HUNT LOT 10 12000 RIVER ROAD TAX MAP E061 MONTGOMERY COUNTY, MARYLAND</p> <p>FINAL FOREST CONSERVATION PLAN KNOWN ALLERGIC TREE EXHIBIT</p>	<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	DATE	DESCRIPTION											<p>DRW BY: JCK CHK BY: JAK APP BY: REH</p>
DATE	DESCRIPTION														

HURON CONSULTING
 20300 CENTURY BLVD
 SUITE 105
 CENTERTOWN, MD 20874
 PHONE: (301) 528-2010
 FAX: (301) 528-0124
 www.huronconsult.com
 CONTACT: DICK HURNEY

Staff Exhibit C



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 30, 2007

Mr. Dick Hurney
Huron Consultants
20300 Century Blvd.
Suite 105
Germantown, MD 20874

Mr. James Cook
J. Cook Consultants
3705 Chaneyville Road
Owings, MD 20736

Re: 12000 River Road, or Lot 10 Potomac Hunt
Final Forest Conservation Plan SC2007003

Dear Mr. Hurney and Mr. Cook:

I am writing on behalf of the Planning Department of the Maryland-National Capital Park and Planning Commission ("M-NCPPC") to notify you that the proposed forest conservation plan for 12000 River Road, submitted by you on behalf of Aris Mardirossian and received by M-NCPPC Environmental Planning on March 16, 2007, does not meet the requirements of Montgomery County's forest conservation law, and therefore cannot be approved.¹

The proposed forest conservation plan requests approval to clear approximately sixty trees,² and the ability to remove any nut trees that may take root in the future, in the area of the lot that forms a forested stream buffer that would ordinarily be subject to forest conservation requirements and that is otherwise proposed for conservation under the proposed plan ("Forest Conservation Area"). The proposed plan also seeks approval to construct an approximately six-foot tall cast iron fence five feet off of the property line and largely within the Forest Conservation Area.

The proposed plan fails to comply with Section 22A-12(h)(2) of the Montgomery County Code and Section 115 of the Forest Conservation Regulations. The Forest Conservation Law and Regulations require the Forest Conservation Area to be subject to a long-term protective measure that limits the area's use consistent with conservation. The proposed tree-cutting and

¹ We have previously sent you comments explaining the reasons why your October 19, 2006, December 7, 2006, January 31, 2007, and February 28, 2007 plans could not be approved.

² While it is not material to our rejection of the proposed plan, we note that at least one beech nut tree located on the 12000 River Road lot was omitted from the list of the trees proposed to be removed. We are not sure why this tree, which is one of the largest, if not the largest nut tree on the property, with a diameter of approximately 34" at breast height, was omitted, but assume that you would have wanted to remove it also. We would also object to the removal of this tree.

(C-1)

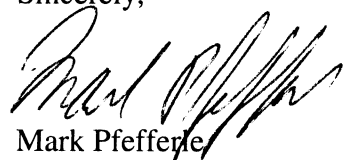
future tree removal are inconsistent with this requirement. Moreover, Section 22A-12(b) of the Montgomery County Code expressly calls for forest conservation plans to protect trees located in stream buffers and on steep slopes. The Forest Protection Area has both. Because many of the trees, including the largest of the trees, that the plan proposes to be removed are located on extremely steep slopes, their removal will destabilize the slope, causing erosion and negatively impacting water quality. Measures that might be taken to stabilize the steep slope, such as planting grass, would inhibit natural regeneration of the protected forest.

The installation of the proposed fence is also unacceptable under the forest conservation law, because it will injure trees during installation, and likely require the removal of trees that grow too close to or through the fence. The proposed fence would also significantly limit wildlife passage in a corridor that parallels the Chesapeake and Ohio Canal National Park. Finally, both the proposed tree removal and fence, which you have proposed to locate just off the rear property line in very close proximity to the C&O Canal, would be highly visible from the canal towpath, and would limit the visual enjoyment of the forest in its natural state.

Along with the proposed forest conservation plan, we have considered your assertions that M-NCPPC is required to grant the proposed tree removals and fence construction under the Americans with Disabilities Act as an accommodation of your childrens' nut allergies. We have reviewed the January 31, 2007 letter from Barbara Sears to me, the February 26 and March 8, 2007 memoranda from Barbara Sears and Joseph Lapan to David Lieb, and the March 1, 2007 e-mail from Joseph Lapan to David Lieb, along with the attachments to these documents, concerning your ADA claims. Based upon the information presented in these documents, we respectfully disagree that the proposed tree removal and fence are required under the ADA.

If you have any further questions please contact me at 301.495.4730.

Sincerely,



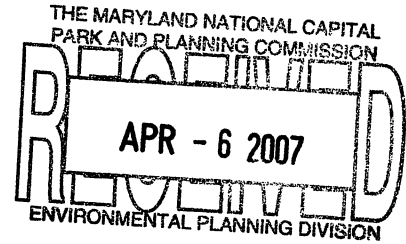
Mark Pfeffert
Planner Coordinator

- CC: File SC2007003
- Faroll Hamer, M-NCPPC
- Gwen Wright, M-NCPPC
- Aris Mardirossian
- John Kidwiler
- Barbara Sears
- Gus Bauman

C-2

Staff Exhibit D

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW



April 6, 2007

Barbara A. Sears
301.961.5157
bsears@linowes-law.com

BY HAND DELIVERY

Dr. Royce Hanson, Chairman
and Members of the Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: 12000 River Road, Lot 10 Potomac Hunt (the "Property")
Final Forest Conservation Plan SC2007003 (the "Forest Conservation Plan")

Dear Dr. Hanson and Members of the Planning Board:

On behalf of 12000 River Road, LLC, Aris, Marianne, Matthew, and Karis Mardirossian, owners of the Property and applicant for Forest Conservation Plan approval (the "Applicant"), we are writing pursuant to Section 22A-20(c)(1) of the Montgomery County Code to appeal the Planning Director's March 30, 2007 written decision to deny approval of the Forest Conservation Plan. A copy of the Director's letter is attached as Exhibit "A". As required by Section 22A-20(c)(2) of the County Code, we request that the Planning Board schedule a hearing on this appeal.

Because of the extensive delay in the review and action by the Director on the Forest Conservation Plan since its submission, on October 19, 2006, the Applicant has been unable to proceed with the construction of his home and actions relating to construction. As a result, the Applicant has incurred and continues to incur substantial damages. In order to mitigate these damages, the Applicant respectfully requests a hearing before the Planning Board on the appeal pursuant to Section 22A-20(c)(2) be scheduled as soon as practicable. Thank you for your attention to this matter.

Very truly yours,

LINOWES AND BLOCHER LLP


Barbara A. Sears

Dr. Royce Hanson and Members of the
Montgomery County Planning Board
April 6, 2007
Page 2

cc: Ms. Gwen Wright
✓ Mr. Mark Pfefferle
David Lieb, Esq.
Mr. Aris Mardirossian
Gus Bauman, Esq.
Mr. Dick Hurney
Mr. James Cook
Joseph Lapan, Esq.

L&B 766557v1/10920.0001

Staff Exhibit E

Page 1 of 1
RECEIVED
1362
OCT 11 2006

MCP-Chairman

From: Ginny Barnes [ginnybarnes@juno.com]
Sent: October 09, 2006 9:31 AM
To: MCP-Chairman
Cc: Kevin_Brandt@nps.gov; Joan.Kleinman@mail.house.gov; William_Spinrad@nps.gov;
ginnybarnes@juno.com
Subject: Mardirossian Property - 12000 River Road

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

To: MNCPPC Chairman Royce Hanson
Re: potential for illegal cutting @ 12000 River Rd.

Dear Mr. Hanson,

This is an unusual letter and I do not write it lightly. I have been given information on very good authority that the owner/agent of the above referenced property is prepared to illegally cut forest in order to obtain a view of the Potomac River similar to that achieved by neighbor Daniel Snyder in 2004. In that case, the cutting was done before anyone could stop it. I have notified nearby neighbors to be alert to any unusual activity or noises over the weekend but most have jobs and cannot keep vigilance during the work week. They remember all too well what happened when Snyder cut 55,000 sq. ft. of steep slopes and though illegal under the Montgomery County FCL, efforts to stop it were too late. Today, those bare, eroding slopes are grim testament to what is possible with enough determination and money. I am aware that the property owner is also seeking to remove forest legally through an application process with the NPS and MNCPPC.

I serve on the C&O Canal Stewardship Task Force created in the wake of the Snyder outrage and we made significant contributions to the increased penalties enacted by the County Council in December of 2005. These include criminal penalties which have yet to be utilized as a result of any violations issued since the new penalties were enacted. The purpose of these increased penalties was to create a deterrent significant enough to prevent violations rather than punish them after the fact.

It does not seem fair that any community be compelled to wait in fear of another such assault on the forested viewscape of the C&O Canal NHP. Surely, the MNCPPC has the ability to put the property owner on notice that it is aware of a potential attempt to cut illegally. Can the Commission also request of the police that they put the property under a directed patrol and checked daily? I realize this is an unusual request but the consequences of ignoring the information I've been given compels me in good conscience to seek your assistance.

Sincerely,

Ginny Barnes
10311 Glen Road
Potomac, Md. 20854
(301) 762-6423 -phone / (301) 762-9287 - fax

10/11/2006

①

Coleman, Joyce

From: Morgan, Rob [Robert.Morgan@ps.net]
Sent: Monday, March 05, 2007 11:21 PM
To: MCP-Chairman
Cc: Janice Erich
Subject: FW: Private fence on C&O easement



OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Royce Hanson, Chair
Montgomery County Planning Board

Dear Mr. Hanson,

My wife and I are very frequent visitors to the C&O Canal park and have gotten to know long stretches of it over many years. We are upset that some adjacent landowners seem to regard the public's enjoyment of the park as secondary to their whims. Please do not permit an iron fence to be built on property to which the canal park has an easement.

We would appreciate hearing from you about the Board's decision in this case.

Thank you.

Rob Morgan
Janice Erich
8010 Riverside Drive
Cabin John, MD 20818-1627
301.227.8010 (H)

From: Lord, Rebecca [mailto:Rebecca.Lord@montgomerycountymd.gov]
Sent: Monday, March 05, 2007 3:17 PM
To: Morgan, Rob
Subject: RE: Private fence C@O easement

I made several calls to determine the status of the proposed fence. The proposal to construct a house and the surrounding fence is currently under review by Montgomery County Park and Planning. I spoke with a staff member there and conveyed the concerns of many of our constituents about the proposal and the opposition to any plan that would harm the scenic vista.

You might want to contact Royce Hanson, Chair of the Montgomery County Planning Board, to express your opposition in more detail. His e-mail is mcp-chairman@mncppc.org. His FAX number is 301 495-1320.

The mailing address is:
Planning Board
MNCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Please let us know if we can assist you in additional way.

Rebecca Lord
Policy Analyst

3/6/2007

②

Office of Councilmember Roger Berliner
100 Maryland Avenue
Rockville, Maryland 20850
240 777-7828
240 777-7989 (fax)

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

From: Morgan, Rob [mailto:Robert.Morgan@ps.net]
Sent: Friday, March 02, 2007 5:40 PM
To: Lord, Rebecca
Subject: RE: Private fence C@O easement

Rebecca, thank you.

Who are the appropriate County agencies? I appreciate your conveying my concerns, and I would also like to do so directly myself.

Rob Morgan

From: Lord, Rebecca [mailto:Rebecca.Lord@montgomerycountymd.gov]
Sent: Friday, March 02, 2007 5:28 PM
To: Morgan, Rob
Subject: Private fence C@O easement

We received your recent e-mail regarding the request by a property owner to construct a fence near the C&O Canal National Park. The County is considering the request at this time. I will convey your concerns to the appropriate County agencies.

Best,

Rebecca Lord
Policy Analyst
Office of Councilmember Roger Berliner
100 Maryland Avenue
Rockville, Maryland 20850
240 777-7828
240 777-7989 (fax)

Coleman, Joyce

From: MCP-CR
Sent: Tuesday, March 06, 2007 12:34 PM
To: MCP-Chairman
Subject: FW: Comment on Request at 12000 River Road

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

From: Steve Smith [mailto:ssmith@mailaps.org]
Sent: Tuesday, March 06, 2007 10:00 AM
To: MCP-CR
Subject: Comment on Request at 12000 River Road

R E C E I V E D
MAR 06 2007

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Request for construction at 12000 River Road

I am writing about the request of a property owner at 12000 River Road to build a large, iron fence around their property. This fence would be 6-8 feet high and lie within the scenic easement of the C&O Canal National Park.

I frequently use the C&O canal park and am opposed to the construction of this fence. This would seriously degrade the scenic qualities of the canal park (and, undoubtedly require cutting trees, and other construction disturbances). This fence would be adjacent to Dan Snyder's property where past administrative problems by the county have already damaged the area.

Please do not allow further degradation of this valuable park. We have some tremendous recreational resources in Montgomery County. The canal park is one of numerous places where, just a few minutes away, county residents can find themselves in an area that seems far removed from the city and urban life. Please work to protect this area.

Sincerely,

Steven J Smith
6617 Westmoreland Ave
Takoma Park, MD 20912

MCP-CTRACK

From: Carol Van Dam [cvdfalk@verizon.net]
Sent: Thursday, March 08, 2007 1:09 PM
To: MCP-Chairman
Subject: 12000 River Road

RECEIVED
0258
MAR 08 2007

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dear Chairman Hanson,

I am writing with regard to a proposal for yet another barricade-type fence for a property owner on River Road adjacent to the C&O Canal.

The property is located at 12000 River Road, just a few doors North of Dan Snyder's property.

It would be another scenic disaster if this owner were allowed to erect a 6-8 foot wrought iron fence around the entire perimeter of his property facing the C&O Canal. It would violate the C&O Canal scenic easements, severely disrupt the view along the towpath, and encourage other wealthy landowners with estates along the Potomac River to do the same.

We are not a barricade community. We do not want to become one.

The Canal towpath is a recreational, easy-to-reach getaway for many Montgomery County residents. I personally use the towpath to ride my bike in peace during three out of the four seasons, and walk my dogs in the winter at least once or twice a week along the Canal. Over the last 20 years, I have witnessed the degradation of this jewel of the County, especially by developers and individual homeowners given permits by local jurisdictions to build extended decks, patios, and home additions looming out over the Canal. I was under the impression that the view from the towpath was not to be disturbed under federal law. This is clearly not the case, especially after the Dan Snyder tree cutting fiasco in 2004. The West Montgomery County Citizens Association successfully petitioned the Planning Board in 2003 to deny Mr. Snyder's application to build a barricade-type fence along his entire property line adjacent to the Canal, arguing that if the existing protection was good enough for the Queen Noor, it was more than adequate to serve the needs of Mr. Snyder.

The same argument applies to the homeowner at 12000 River Road. We do not fall for his arguments about the need for such a fence because his children have asthma. If their conditions were such a concern, the homeowner should not have even considered purchasing a heavily wooded property along the C&O Canal in the first place. He can not expect the entire County and all of its residents to bow to his wishes to erect a barricade around his estate for such a flimsy excuse.

I understand there is a stop work order in place but that due to an oversight by the National Park Service (again) and lack of coordination from local governmental bodies, the permits might still be approved. Please do not jeopardize the scenic integrity of the Canal by allowing this to happen.

Sincerely,

Carol Van Dam Falk
13100 Esworthy Road
North Potomac, Md. 20878

Director, WMCCA

3/8/2007

5

Coleman, Joyce

From: Leventhal's Office, Councilmember [Councilmember.Leventhal@montgomerycountymd.gov]
Sent: Tuesday, March 13, 2007 7:31 AM
To: Steve Smith
Cc: Joyner, Carla; Vitale, Patricia; Gillis, Chris; Harris, Walton; Coleman, Joyce
Subject: RE: Fence at 12000 River Road

Dear Mr. Smith:

Thank you for your message. I am not certain whether your concern over a proposed fence within the scenic easement of the C&O Canal National Park would come before the Department of Permitting Services or the Maryland-National Capital Park & Planning Commission, so I am cc'ing contacts at both agencies on this reply. I will share with you whatever responses I receive.

I appreciate your bringing this matter to my attention.

Best regards,
George Leventhal
Montgomery County Councilmember

RECEIVED
0299
MAR 13 2007

From: Steve Smith [mailto:ssmith@mailaps.org]
Sent: Fri 3/2/2007 8:49 AM
To: Leventhal's Office, Councilmember
Subject: Fence at 12000 River Road

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dear George,

I am writing about the request of a property owner at 12000 River Road to build a large, iron fence around their property. This fence would be 6-8 feet high and lie within the scenic easement of the C&O Canal National Park.

I frequently use the C&O canal park and am opposed to the construction of this fence. This would seriously degrade the scenic qualities of the canal park (and, undoubtedly require cutting trees, and other construction disturbances). This fence would be adjacent to Dan Snyder's property where past administrative problems by the county have already damaged the area.

Please do not allow further degradation of this valuable park. We have some tremendous recreational resources in Montgomery County. The canal park is one of numerous places where, just a few minutes away, county residents can find themselves in an area that seems far removed from the city and urban life. Please work to protect this area.

Sincerely,

Steven J Smith
6617 Westmoreland Ave
Takoma Park, MD 20912

Coleman, Joyce

From: Coleman, Joyce
Sent: Tuesday, March 13, 2007 2:09 PM
To: 'Leventhal's Office, Councilmember'; Steve Smith
Cc: Joyner, Carla; Vitale, Patricia; Gillis, Chris; Harris, Walton
Subject: RE: Fence at 12000 River Road

Dear Councilmember Leventhal,

This is an item that will be decided by the Planning Director. The staff person who will package this item and make a recommendation to the Planning Director based on the merits of the case is Mark Pfefferle of our Countywide Planning Division. He can be reached at 301-495-4730 for more specific information.

If the request is denied by the Planning Director, the case may be appealed in which case it may go before the Planning Board.

I have forwarded Mr. Smith's email to Mr. Pfefferle to include in the record of the case.

Joyce Coleman
Special Assistant to the Planning Board
Montgomery County Planning Board
M-NCPPC
301-495-4631

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

From: Leventhal's Office, Councilmember
[mailto:Councilmember.Leventhal@montgomerycountymd.gov]
Sent: Tuesday, March 13, 2007 7:31 AM
To: Steve Smith
Cc: Joyner, Carla; Vitale, Patricia; Gillis, Chris; Harris, Walton;
Coleman, Joyce
Subject: RE: Fence at 12000 River Road

Dear Mr. Smith:

Thank you for your message. I am not certain whether your concern over a proposed fence within the scenic easement of the C&O Canal National Park would come before the Department of Permitting Services or the Maryland-National Capital Park & Planning Commission, so I am cc'ing contacts at both agencies on this reply. I will share with you whatever responses I receive.

I appreciate your bringing this matter to my attention.

Best regards,
George Leventhal
Montgomery County Councilmember

From: Steve Smith [mailto:ssmith@mailaps.org]
Sent: Fri 3/2/2007 8:49 AM
To: Leventhal's Office, Councilmember
Subject: Fence at 12000 River Road

Dear George,

I am writing about the request of a property owner at 12000 River

⑦

Road to build a large, iron fence around their property. This fence would be 6-8 feet high and lie within the scenic easement of the C&O Canal National Park.

I frequently use the C&O canal park and am opposed to the construction of this fence. This would seriously degrade the scenic qualities of the canal park (and, undoubtedly require cutting trees, and other construction disturbances). This fence would be adjacent to Dan Snyder's property where past administrative problems by the county have already damaged the area.

Please do not allow further degradation of this valuable park. We have some tremendous recreational resources in Montgomery County. The canal park is one of numerous places where, just a few minutes away, county residents can find themselves in an area that seems far removed from the city and urban life. Please work to protect this area.

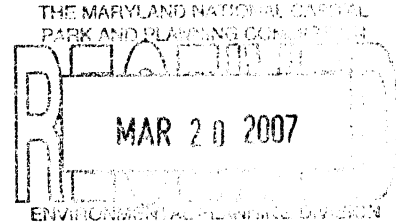
Sincerely,

Steven J Smith
6617 Westmoreland Ave
Takoma Park, MD 20912



March 18, 2007

Ms. Farroll Hamer
Acting Director
Montgomery County Planning Department
8787 Georgia Ave.
Silver Spring, MD 20910



Re: 12000 River Road
FCP-2 # SC2007003 (Potomac Hunt Lot 10)

Dear Acting Director Hamer:

The Potomac Conservancy has reviewed the forest conservation plan for the property located at 12000 River Road, and it causes us much concern. The Applicant has requested he be exempted from the normal rules prohibiting structures and tree cuttings in the forest conservation area. We do not believe this should be allowed, and therefore submit the following comments:

The Montgomery County Forest Conservation Law (FCL) is an expression of the will of Montgomery County citizens to protect their forests, including those located on private lands, and the law should be applied consistently and equally to all landowners. As Environmental Planning has noted, the FCL prohibits both Applicant's proposed fence and proposed tree removal within the forest conservation area. The Applicant was or should have been aware of this restriction when he purchased the property. There is no rational reason why the Applicant should be exempted from the forest conservation rules. Therefore, the Potomac Conservancy requests that Applicant's request for special treatment be denied.

The proposed fence and tree removal are contrary to the central purpose of the FCL, which is to preserve forest conservation areas in an undisturbed condition. Exemptions from requirements that carry out this fundamental purpose, such as the ones requested by the Applicant, are unreasonable and should not be granted.

- The proposed disturbances within the forest conservation area are contrary to the central purpose and the specific requirements of the FCL.
 - Section 22A-12(b) of the FCL states that trees which are located on slopes greater than 25%, are connected to an historic site, or are part of contiguous forest—as are all the trees proposed for removal by the Applicant—are “considered the highest priority for retention and protection and MUST be left in an UNDISTURBED condition” (emphasis added).
 - The Findings and Purpose section of the FLC states that “tree loss as a result of development and other land disturbing activities is a serious problem in the County,” and that the purpose of the FCL is to “save, maintain, and plant trees and forested areas for the benefit of County residents and future generations.” (FCL §22A-2)
 - The Applicant's proposed fence and tree removal directly conflicts with the aforementioned FCL mandates. These actions would result in tree loss and land disturbance on steep slopes, in contiguous forest, and directly adjacent to the C&O Canal National Historical Park.



- The proposed fence and tree removal would do substantial damage to the ecological integrity of the forest conservation area.
 - All of the trees proposed for removal within the forest conservation area are high-value, native hardwoods.
 - Removal of so many native trees would provide more room for aggressive and already dominant invasive species to grow in place of the removed native species.
 - The proposed fence would impact vegetation root systems, alter forest growth patterns, and prevent animals from traversing the property.
 - This is not only inconsistent with the general purpose of the FCL, but also with the FCL mandate to include “limitations on the use of [forest conservation] areas consistent with conservation and management practices.” FCL §22A-12(h)(2).
- Even were they otherwise reasonable requests, the proposed fence and tree removal are unlikely to achieve their stated objective.
 - The stated objective of the fence and the tree removal is to prevent the Applicant’s children from accessing nuts, to which they are allergic.
 - It is doubtful that most of the smaller trees identified for removal are actually capable of bearing nuts. Trees less than 5” dbh and which are suppressed by larger trees are generally considered unlikely to produce nuts. Forty-two of the fifty-five trees identified for removal on the tree plan are less than 5” dbh.
 - A fence is unlikely to prevent nuts from surrounding areas from entering the property. Nut bearing trees on adjacent properties may still drop their seeds over the fence, and nuts from neighboring properties may roll through the fence on their own, or be carried onto the property by wildlife, especially squirrels.

Permitting an extension of the NPS scenic easement in lieu of the normal County-held Category I Easement has never been done in the history of the FCL, and would result in insufficient protection of the forest.

- The County has never permitted anything less than a Category I Easement to satisfy the requirements of the FCL, and there is no reason that this case should be an exception.
- The Applicant is proposing that the remaining forest on this property be protected using the exact same legal instrument that expressly forbids both the proposed fence and tree removal, and yet admittedly in this case, has no power to stop them.
- The protections of the 1974 NPS scenic easement are extremely weak in comparison to the standards set for in the FCL. It only protects trees larger than 6” dbh, allows a house, swimming pool, and associated structures inside the easement, etc.
- Exceptions to even these limited restrictions are easily obtained, as the Applicant himself has demonstrated in this same case, and the National Park Service’s record of enforcing the easements is poor.

Thank you for your consideration of the Potomac Conservancy’s comments. If you have any questions, or would like to discuss them in person, please do not hesitate to contact us.

Sincerely,

Anne Merwin

Director of Policy

MCP-Chairman

From: Ronald Howard [ronhoward3@verizon.net]
Sent: June 01, 2007 9:57 AM
To: MCP-Chairman
Subject: 12000 River Road,FCP-2 # SC2007003 (Potomac Hunt Lot 10)

RECEIVED
0638
JUN 01 2007

Ronald E. Howard
13901 Vista Drive
Rockville, MD 20853
Telephone 301-603-0336
E-mail ronhoward3@verizon.net

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

June 1, 2007

Dr. Royce Hanson
Chairman
Montgomery County Planning Department
8787 Georgia Ave.
Silver Spring, MD 20910

Re: 12000 River Road
FCP-2 # SC2007003 (Potomac Hunt Lot 10)

Dear Chairman Hanson:

I am writing regarding the 12000 River Road landowner's request to cut down 55 trees and install a fence along the C&O Canal. . Both the tree cutting and the fence would be within the forest conservation area, and within the C&O Canal National Historical Park Service scenic easement. The tree cutting and fence are both prohibited by the Forest Conservation Law, but the property owner has requested an exemption from the law. His justification is that his children have nut allergies, and need to be prevented from exposure to nuts. The applicant was, or should have been, aware of this law when he purchased the property, and there is no rational reason for an exemption from the law. Granting the applicant's request would be a tremendous blow to the County's ability to enforce the Forest Conservation Law, the purpose of which is to prevent such destruction of precious native forest, and thereby causing erosion and water pollution, and would have negative impacts on everyone who uses the C&O Canal towpath.

I am one of those thousands of people who appreciate and enjoy the canal towpath, both for bicycling and hiking. I'm dedicated to the preservation and protection of the C&O Canal National Historical Park. I currently serve on the Board of Directors for the C&O Canal Association, and volunteer as a level walker on the towpath. In addition, I served on the C&O Canal Stewardship Task Force convened by Congressman Chris Van Hollen,

Granting this applicant's request for special treatment would simply open the door for hundreds of other exemptions based on "special needs." Our laws must be applied equally to everyone, otherwise they have little meaning. I urge the Planning Board to stand up for our community, our environment, and help to enforce the Forest Conservation Law, by denying this application.

Sincerely,

Ronald E. Howard

06/01/2007



8601 Georgia Avenue • Suite 612 • Silver Spring, MD 20910 • 301.608.1188 • Fax: 301.608.1144

www.potomac.org

Cc: Carla Joyner, DPS
Mark Pfefferle, M-NCPPC
Marilyn J. Praisner, County Council
Mike Knapp, County Council
George L. Leventhal, County Council
Phil Andrews, County Council
Marc Elrich, County Council
Valerie Ervin, County Council
Roger Berliner, County Council
Duchy Trachtenberg, County Council
Nancy Floreen, County Council



Dear Chairmen Hanson,

I understand that the resident at 12000 River Road has asked for an exception so that he might cut down a number of trees and build a fence because his children have developed a nut allergy. I also understand that he is living in a scenic easement area and a forest conservation area. This would be a bad place to raise children who have an allergy to nuts whether he cuts down some of the trees or not. If indeed this is a serious concern of the owner, he should move. Please do not grant this exception. Should you grant this exception you may find a number of allergies developing among the privileged people living in this area.

Thank you,

J Mathwin
John and Judy Mathwin
13515 Crispin Way
Rockville MD 20853
301-871-7658

RECEIVED
0697
JUN 13 2007

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

(12)

MCP-Chairman

From: MARY ANN CHANDLER [machandler@audubonnaturalist.org]
Sent: June 12, 2007 2:42 PM
To: MCP-Chairman
Subject: Request to Cut Down Trees and Build a Fence

RECEIVED
0701
JUN 14 2007

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

You are considering a request from a property owner on River Road who is seeking permission to cut down 55 native hardwood trees and to build a large, wrought-iron fence along his property boundary with the C&O Canal. His reason, to cut trees and build a fence within the forest conservation area and the National Park Service scenic easement area, is to protect his children from their nut allergies.

I urge you to deny his request to cut down these trees and build a fence.

While children do pick up stuff off the ground and put it in their mouths, the likelihood that they will pick up a nut should be considered minimal compared to the cost to the environment in terms of mature trees that take CO2 from the air and add to the beauty of the C&O.

I strongly suspect that this person's primary motives for wanting the trees down is his/her view of the river and keeping hikers and walkers along the canal off his/her property. I think you should consider very hard that this person who can afford smart lawyers is gaming the system.

Please don't allow another Dan Synder-like attack on this precious site.

Mary Ann Chandler
9902 Hillridge Dr
Kensington MD 20895

06/14/2007

(13)