



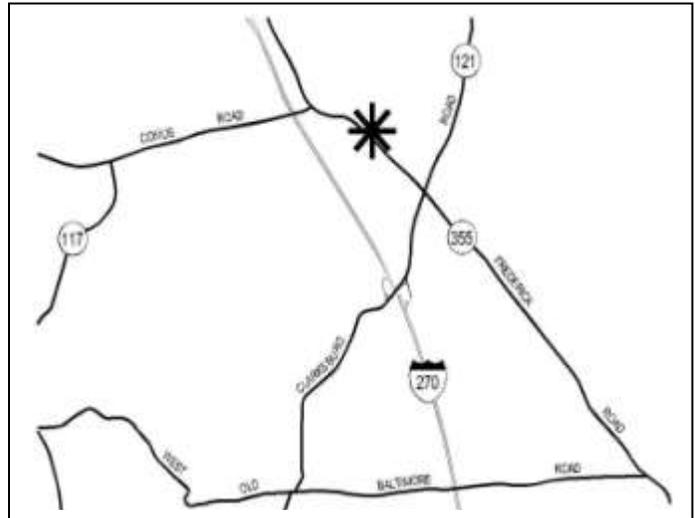
Little Bennett Day Use Facility, Forest Conservation Plan, PP2012002

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description

A: **Forest Conservation Plan PP2012002: Little Bennett Regional Park Day Use Area**; Located on the east side of Frederick Road (MD 355) approximately one-half mile north of Comus Road, Agricultural and Rural Open Space Master Plan area.

Staff Recommendation: Approval with Conditions



summary

- There are two items for Planning Board review for the Little Bennett Day Use facility: the Park Facility Plan and the Preliminary Forest Conservation Plan (FCP). This memorandum covers Staff’s review and recommendations on the Forest Conservation Plan.
- Forest Conservation Variance for two trees that are 30 inches or greater, and to impact, but not remove, four others, has been provided.
- Proposed retention of forest does not generate a planting requirement.

RECOMMENDATION

Approval of Forest Conservation Plan PP 2012002 Little Bennett Regional Park Day Use Area with the following condition:

1. Provide a Final Forest Conservation Plan for review and approval prior to any land disturbance.

DISCUSSION

The Little Bennett Day Use facility site is a 137.62 acre site comprised of three parcels, P555, P208 and P225, and is located at 23701 Frederick Road (MD 355) just north of the intersection of Frederick Road (MD 355) and Comus Road. All three parcels are zoned RDT. The site contains 77.41 acres of forest, 51.67 acres of stream valley buffer (SVB), 5.42 acres of wetlands, and the topography slopes from the east and west to the middle of the site.

The proposed plan is to construct a new day use park facility in the Park which highlights the natural features of the site including forest, rolling topography, and meadows.

The Board's actions on the Preliminary Forest Conservation Plan (PFCP) are regulatory and binding. The Planning Board must act on the PFCP before it finalizes its recommendations on the Park Plan.



Figure 1: Aerial Photograph of Site

Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD # 420110090) was approved by Staff on August 23, 2010. The site is located in the Little Bennett Creek watershed (Use III waters). There are six streams, 5.42 acres of wetlands, and 51.67 acres of environmental buffers on the site. The Montgomery County Department of Environmental Protection's "Countywide Stream Protection Strategy" (February 1998) documents the subwatershed condition as *excellent*.

While the park has been designed to emphasize the natural features of the site, and the overall amount of forest clearing is very low, the proposed project does have some impacts on the stream valley buffer (SVB). The proposed facility has a system of interconnecting pathways which utilizes several different types of paths, mowed grass trail, permeable pavement, and boardwalk. The plan proposes approximately 3,500 square feet (350 linear feet by 10 feet wide) of permeable pavement style pathway within unforested SVB and approximately 7,750 square feet (1,550 linear feet by 5 feet wide) within forested SVB. Impervious surfaces and permanent structures are not generally allowed in the SVB, however; the applicant has minimized the impacts by altering path alignments to minimize impacts to forested areas and has agreed to field locate the final boardwalk locations to avoid trees.

In addition to the pathways, the proposed plan shows a playground facility partially within the unforested SVB. The playground, as proposed, will add approximately 23,000 square feet of impact to unforested SVB. The playground was previously shown entirely within the SVB and had impacts on forest. In response to Staff comments, the applicant relocated the playground structure and eliminated all impacts to forest within the SVB in this location.

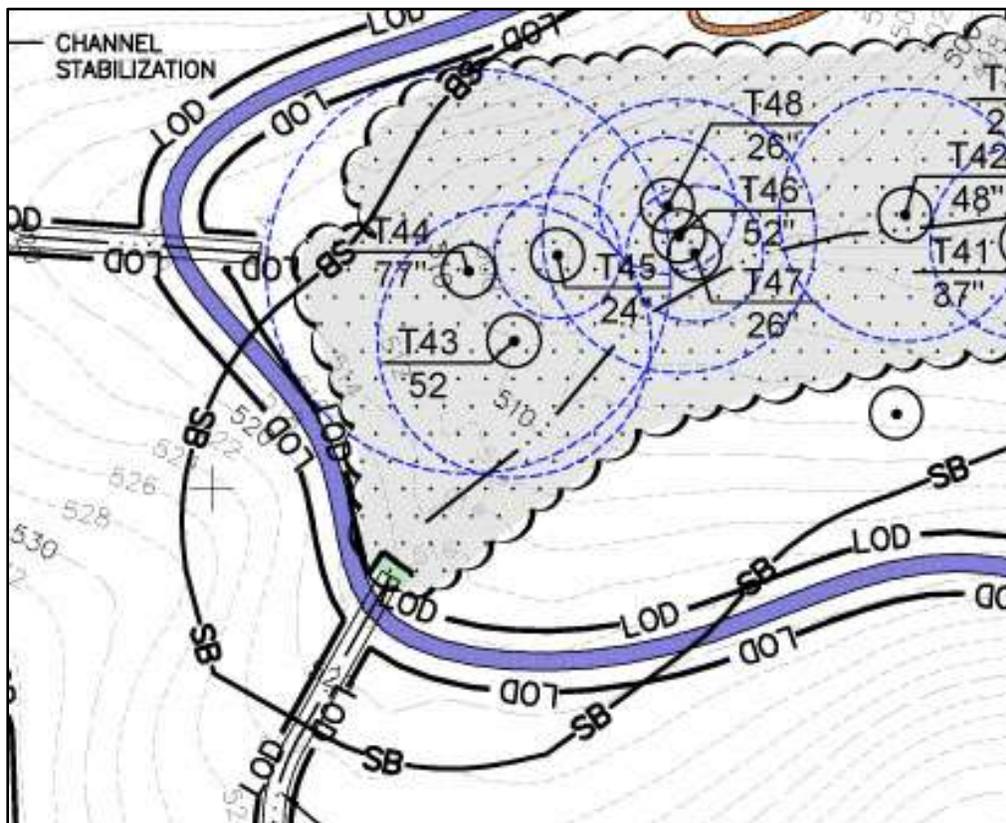


Figure 2: Permeable Pavement Impact

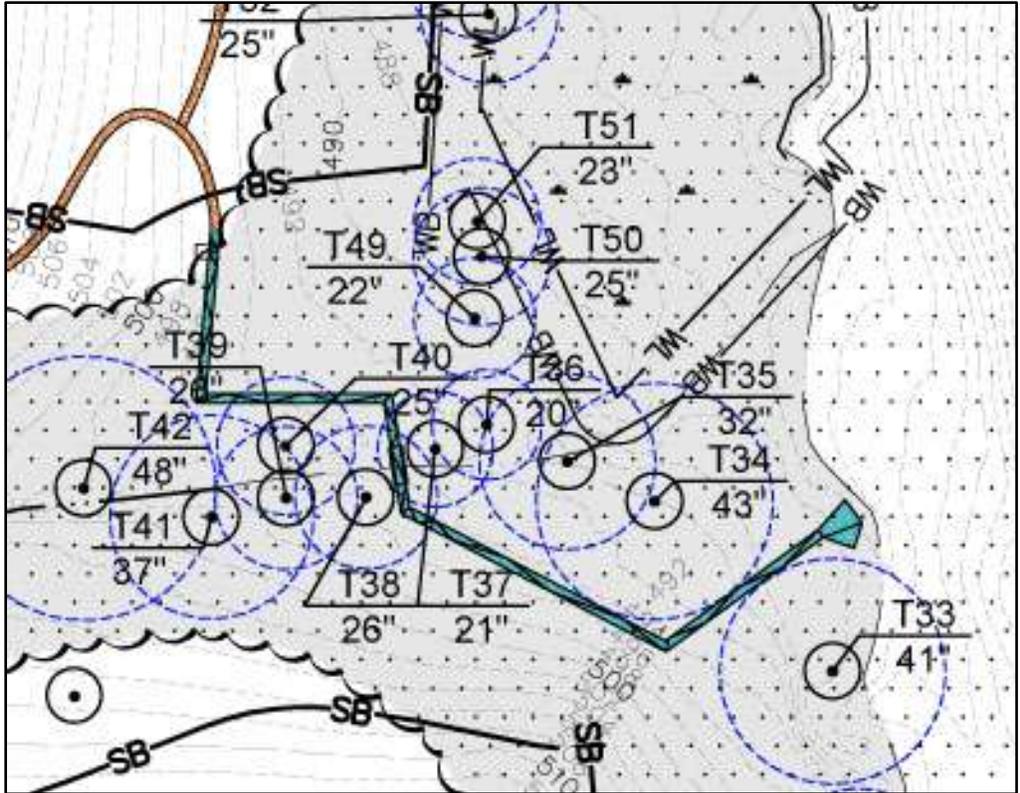


Figure 3: Example of Boardwalk Impacts

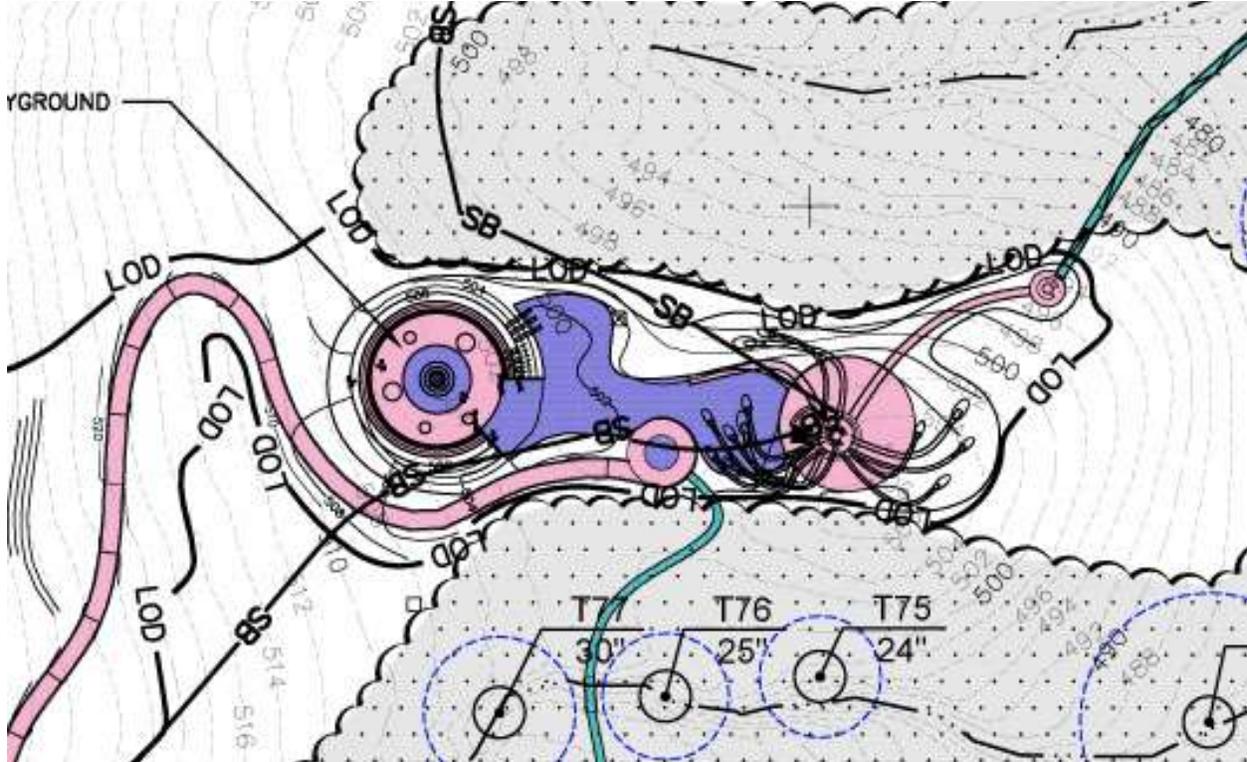


Figure 4: Proposed Playground Structure

Despite some minor SVB impacts the project was developed to be consistent with the goals for the overall Little Bennett Park system and the natural environmental state of the area and will help emphasize the natural environment to park visitors.

Forest Conservation

This project is subject to the Montgomery County Forest Conservation law (Chapter 22A of the County code) under section 22A-4(d) “a government entity subject to mandatory referral on a tract of land 40,000 square feet or larger...” The site is 137.62 acres in size and contains 77.41 acres of forest.

The preliminary forest conservation plan shows 0.71 acres of forest clearing and 76.70 acres forest retention and does not generate planting requirement. Areas of forest retention on parkland are not placed into conservation easement but are protected as per the approved plan and assumed prtected by ownership, the parkland being owned by the Maryland-National Capital Park and Planning Commission.

The submitted preliminary forest conservation plan meets all applicable requirements of the Chapter 22A of the County code (Forest Conservation Law) through minimization of forest loss and protection of existing forest.

Forest Conservation Variance

Section 22A-12(b)(3) of the County Forest Conservation Law identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or any disturbance within the tree’s critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that measure 30 inches or greater, DBH; trees that are part of a historic site or designated with a historic structure; trees that are designated as a national, State, or County champion tree; trees that are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The applicant submitted a variance request on August 12, 2011 for the impacts to trees with the proposed layout of the project (Attachment A). The applicant currently proposes to remove two trees that are 30 inches and greater, DBH, and to impact, but not remove, four others.

Tree #	Species	DBH (inches)	Tree Condition	Action
T-115	<i>Acer rubrum</i>	37	Average	Removal (attempts will still be made to save the tree during final design)
T-127	<i>Morus alba</i>	37	Average Poor	Removal

TABLE 2 Significant Trees (≥ 30 inches dbh) with impact in the critical root zone										
Tree #	Species	DBH (inches)	Tree Condition	% of CRZ impacted	Arborist Recommendations					
					TP	RP1	RP2	SP	RAM	DRW
T-109	<i>Quercus prinus</i>	33	Average	41 %	X			X	X	X
T-110	<i>Quercus prinus</i>	31	Average	5 %	X				X	
T-118	<i>Quercus rubra</i>	32	Good	37 %	X		X	X	X	
T-126	<i>Acer rubrum</i>	33	Average Poor	12%	X	X				

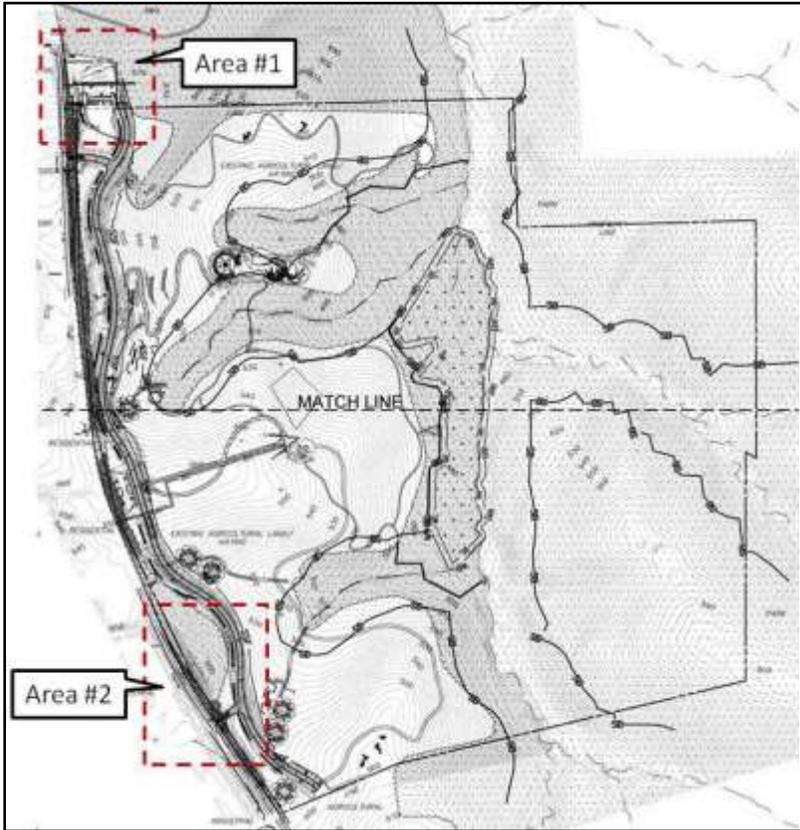


Figure 5: Areas Requiring a Variance

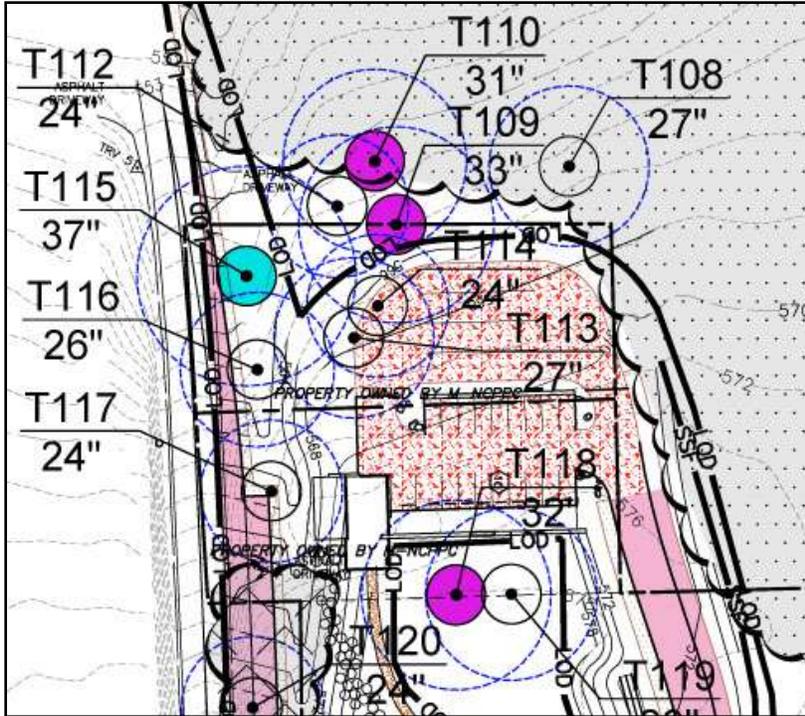


Figure 6: Area 1 close-up view

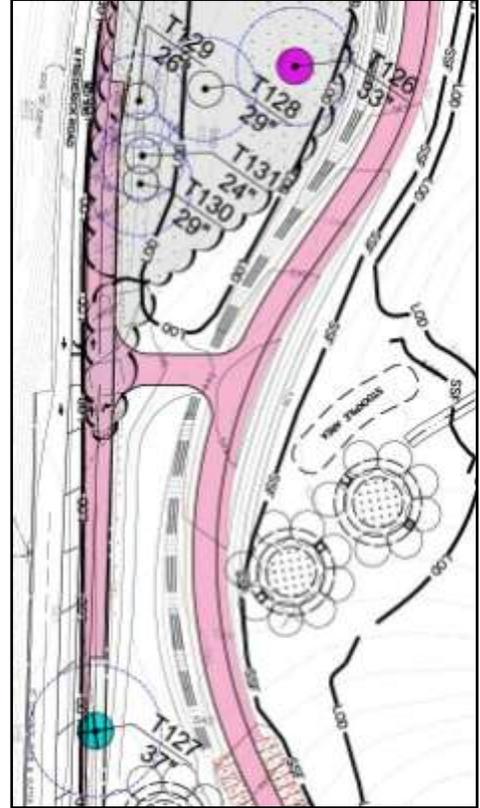
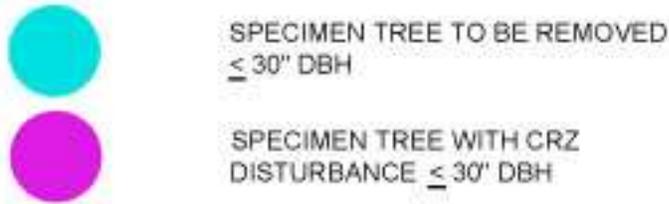


Figure 7: Area 2 close-up view

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

Unwarranted Hardship Basis

Were the applicant to be denied the requested variance to remove and impact the critical root zone of the above listed trees, it would cause an unwarranted hardship and deprive M-NCPPC and the community they have been tasked to serve of implementing the park facility as directed by the 2007 Master Plan. Moreover, it would deprive the landowner of rights commonly enjoyed by others in similar areas by not providing a park system to the residents of Montgomery County and the Clarksburg area that is *“enjoyable, accessible, safe and... promotes a strong sense of community through shared spaces and experiences and is treasured by the people it serves”* and that *protect and interpret our valuable natural and cultural resources; balance the demand for recreation with the need for conservation; offer a variety of enjoyable recreational activities that encourage healthy lifestyles; and provide clean, safe, and accessible places for leisure-time activities.”* (Montgomery County Parks Department Vision and

Mission). Staff agrees that the applicant has a sufficient unwarranted hardship to consider a Variance request.

County Arborist's Recommendation

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on August 25, 2010. On September 8, 2011 the County Arborist issued her recommendations on the variance request (Attachment B). The County Arborist's recommendation for the variance request was favorable, but made a recommendation of mitigation for the impacts.

Variance Findings

The Planning Board must make findings that the applicant has met all requirements of Section 22A-21 of the County Code before granting the variance. Staff has made the following determination on the required findings:

1. Will confer on the applicant a special privilege that would be denied to other applicants;

The use of this site for a park is part of the approved 2007 Little Bennett Regional Park Master plan and will be operated as part of the vision and mission of M-NCPPC Parks. As such, this is not a special privilege to be conferred on the applicant.

2. Is based on conditions or circumstances which are the result of the actions by the applicant.

The applicant is developing this site as a park which is part of the approved 2007 Little Bennett Regional Park Master plan for this area, the impact and removals of trees subject to the variance request are result of complying with roadway and stormwater management requirements necessary for the parks creation.

3. Is based on a condition relating to land or building use, either permitted or non-conforming on a neighboring property.

The requested variance is a result of the required buildable envelope as well as the proposed site design and layout on the subject property, and is not a result of land or building use on a neighboring property.

4. Will violate State water quality standards or cause measurable degradation in water quality.

The specimen trees that are to be removed or directly disturbed are not located near any perennial, intermittent, or ephemeral streams, nor is it part of any environmental buffer, and the surrounding green space that is to remain will continue to provide water quality and quantity benefits comparable to existing conditions. Furthermore, the project is treating (through ESD measures) additional water beyond that which currently flows off MD-355. For

the above reasons, the removal or disturbance of the CRZ's of the specimen trees would not violate the aforementioned standards, nor would it result in a measurable degradation in water quality.

MITIGATION

Staff does not recommend that compensation be required beyond the reforestation requirement of the Preliminary Forest Conservation Plan for the proposed impacts to, or removal of, the six trees. The six trees in question are all impacted by other agency requirements for roadway design and stormwater management. The impacts and removal shown on the plan are the minimal necessary to achieve the park facility envisioned in the 2007 Little Bennett Regional Park Master Plan and the M-NCPPC Parks Vision and Mission statement. This is a low impact, high public yield project which preserves 61 acres of forest above the break-even point. Staff believes the impacts are due to necessary infrastructure and are unavoidable.

CONCLUSION

Staff finds the application complies with Chapter 22A and recommends the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited above.

Attachments:

- A. Variance Request
- B. Arborist Recommendations

August 19, 2011

Mr. M. Pfefferle
Environmental Planning Division
Maryland National Capital Park and Planning Commission (MNCPPC)
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Little Bennett Regional Park
AMT File No. 108157.008

Dear Mr. Pfefferle:

On behalf of the Montgomery County Parks Development Division in pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance for seven (7) trees having a diameter at breast height (dbh) of greater than 30 inches at 4.5 feet from the ground. This request is being made in concert with the facility and preliminary forest conservation plans for Little Bennett Day Use Area facility.

The trees listed in **table 1** have been evaluated by arborists who work for AMT¹. The two (2) trees are being impacted by the accel and deaccel road lanes and associated swale that are required by MD-SHA to access the project site off MD-355. The preliminary design for the lanes was completed in accordance to MD-SHA standards; however, the agency was only willing to provide preliminary acceptance of the design until final plans can be completed. During the final design, attempts will be made to collaborate with the MD-SHA to mitigate the impacts of T-115. Nevertheless, in the current design the variance is necessary because the proposed construction will cause significant damage to the Critical Root Zones (CRZ's) of the specimen trees. Remedial arboriculture practices would not be practicable or sufficient to prevent the trees from experiencing intolerable levels of stress that would lead to their removal and immediate decline and ultimate death. In their current location, the trees would constitute a serious hazard to the health, safety and general welfare of the park visitors and users who are utilizing the newly developed entrances to the Day Use Area.

TABLE 1 Significant Trees (≥30 inches dbh) Slated for Removal				
Tree #	Species	DBH (inches)	Tree Condition	Action
T-115	<i>Acer rubrum</i>	37	Average	Removal (attempts will still be made to save the tree during final design)
T-127	<i>Morus alba</i>	37	Average Poor	Removal

The trees listed in **table 2 & 3** have been evaluated by arborists who work for AMT². Table 2 lists the impacts to the CRZ's of four (4) trees with the associated practices that are proposed to protect and mitigate the disturbance. The three (3) trees shown in table 3 have site impacts that come close to the CRZ's of significant trees and the appropriate arboriculture and construction practice to minimize impacts.

¹ [Redacted]
² [Redacted]

TABLE 2 Significant Trees (≥30 inches dbh) with impact in the critical root zone										
Tree #	Species	DBH (inches)	Tree Condition	% of CRZ impacted	Arborist Recommendations					
					TP	RP1	RP2	SP	RAM	DRW
T-109	<i>Quercus prinus</i>	33	Average	41 %	X			X	X	X
T-110	<i>Quercus prinus</i>	31	Average	5 %	X				X	
T-118	<i>Quercus rubra</i>	32	Good	37 %	X		X	X	X	
T-126	<i>Acer rubrum</i>	33	Average Poor	12%	X	X				

TABLE 3 Significant Trees (≥30 inches dbh) with work in close proximity of the CRZ										
Tree #	Species	DBH (inches)	Tree Condition	% of CRZ impacted	Recommendations					
					TP	AGP	AR			
T33	<i>Liriodendron tulipifera</i>	41	Average Poor	None	X		X			
T34	<i>Acer saccharinum</i>	43	Average Good	None	X		X			
T44	<i>Acer saccharinum</i>	77	Average Poor	None	X	X				

Arborist Recommendation Definitions

- (TP) **Tree Protection** will be installed in accordance with M-NCPPC Planning and Park standards
- (RP1) **Root Pruning** will be performed inside the tree protection fence. The work will be completed by a vibratory plow with a serrated cutting edge or a root cutter with a 36” wheel to a depth of 24”. Chain driven trenchers are not acceptable.
- (RP2) Arborist to complete **Root Pruning** using an SSAT root reduction which includes uncovering roots using a supersonic airtool and vacuum excavation. The arborist will prune larger stiff roots and bend smaller roots parallel to the same plane as the root prune. The smaller roots will be pinned down with burlap or natural fiber mat and covered with a compost and moisture gel.
- (SP) Arborist to complete **Sanitation Prune** to remove all dead or dying limbs greater than one inch to improve the health and appearance of the tree. The crown will be thinned where necessary to reduce the canopy density by a maximum of twenty-five percent to compensate for root loss and construction stress
- (RAM) Arborist to install **Root Aeration Matting** prior to filling. Inoculate the area of fill with beneficial fungal tea, humate, kelp, fish hydrolisate fertilizer. Install new well drained topsoil intermixed with existing topsoil. Do not use heavy equipment for installation. Install pervious pavement with geotextile soil separator over # 57 and compact until no movement but do not crush. Install pervious pavement per civil recommendations.
- (AGP) Locate **At Grade Pavement** and other construction above grade the existing grade to minimize impacts to the area in close proximity to the CRZ. Install pervious pavement with geotextile soil separator over # 57 and compact until no movement but do not crush. Install pervious pavement per civil recommendations.
- (AR) Designate temporary access and work area; **Arborist to review** pre-construction layout of piers to determine need for SSAT Investigation
- (DRW) **Deep Root Watering** to occur on a weekly basis during drought periods



Figure 1View of Meadow

Section 22A-21(b) *Application requirements* states that the applicant must:

- Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
- Provide any other information appropriate to support the request.

Pursuant to “(1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship and (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas” the attached “Exhibit Key”, “Exhibit 1”, “Exhibit 2”, “Exhibit 3”, and “Exhibit 4”, show the impacted areas of the project site and its surroundings. (See the Approved NRI and Preliminary FCP for more information about the site).

The proposed Day Use Area is the first phase of implementation of the approved 2007 Little Bennett Regional Park Master Plan that emphasizes protection of the natural and cultural heritage of the park. The 65-acre site consists primarily of rolling hills and open meadow and is framed by hedgerows and stream valleys

that provide valuable habitats for wildlife. The landform, ecology and culture offer a distinctive setting for the park. The facility plan for the Day Use Area intends to address the cultural landscapes and highlight the interesting dichotomy between man and nature that is evident on the existing site as the character transitions from west to east between rural homestead, road, meadow and forest. The road, the rural history of the area, and its unique environmental setting provide the Day Use Area with a key story-telling opportunity about site identity and character.

The open meadow has been identified by the Department's Natural Resource experts as one of very few continuous meadow landscape left in the County, and a high quality example with very few invasive species. The rolling topography reflects the nostalgic piedmont landscape. Ground nesting birds were observed on the site, which are rarely seen anymore including wild turkey and meadowlarks. As the County continues to develop, our parkland becomes ever more important for preserving our natural heritage and biological diversity. Meadow dependent birds have suffered a precipitous population decline as greater than 90% of their habitat has disappeared due to development and natural succession. Meadow habitats are easy targets for development, lacking the legal protections of wetlands and forests.

The current concept in the facility plan attempts to preserve a large portion of the meadow, while achieving the full program of requirements from the master plan. The undulating topography dramatically descends 60 to 80 feet from the western periphery along ridgeline of MD Route 355 east to the Soper's Branch. Steep slopes and environmental sensitive areas pose challenges for the project. The Facility Plan respects this west-east transition and intentionally locates major programmatic elements in a logical way that is sensitive to the land and its inhabitants. The main access road, parking and large group picnic areas are located on the western edge of the site to preserve the existing meadow. Trails and other programmatic elements are designed to be located within the meadow offers physical connections to various ecosystems of the park for environmental education and nature-based recreation.



Figure 2: View of Meadow

In order to accomplish these goals, some impacts to specimen trees along the western hedgerow along MD Route 355 and near the existing park house area were found to be necessary. In addition, MD-SHA requires safe access to the site through the addition of the accel and deaccel lanes. Without these lanes it would not be possible for visitors to access the site.

The concept for the site was developed for the following reasons:

- **Preservation of Meadow and Vista:** The area is away from the main meadow corridor, and has the least impact to the continuity of meadow habitat. The disruption of the vista from all angles of the site will be also minimized.
- **Minimized Site Disturbance:** This area has already disturbed with human occupancy and farm activities since 1931. The open ground is the flattest of the entire site and is flexible for adaptive reuse. Grading and stormwater management and can be minimized to accommodate the program needs.
- **Trail Head Connection:** This area is closest to required connection to the multi-purpose trail in the northern forest edge as recommended by the 2007 Little Bennett Regional Park Master Plan. The ground is able to accommodate the area needs for visitor parking/horse-trailer parking and anchor circulation for the Day Use Area.
- **Utilization of Existing Features:** The existing farm house though is not eligible for historic preservation upon evaluation by the M-NCPPC Cultural Resource Division. The existing foundation and walls of the structure can be reused as visitor reception facilities. The existing canopy of T118 can provide the needed shade for picnic activities. The rest of the habitat significant area on site is unable to offer shade or open ground for group picnic activities without artificial development.

Were the applicant to be denied the requested variance to remove and impact the critical root zone of the above listed trees, it would cause an **unwarranted hardship** and **deprive M-NCPPC and the community they have been tasked to serve** of implementing the park as directed by the 2007 Master plan. Moreover, it would **deprive the landowner of rights commonly enjoyed by others in similar areas** by not providing a park system to the people of Montgomery County and the people in the Clarksburg area that is *“enjoyable, accessible, safe and.... promotes a strong sense of community through shared spaces and experiences and is treasured by the people it serves”* and that *protect and interpret our valuable natural and cultural resources; balance the demand for recreation with the need for conservation; offer a variety of enjoyable recreational activities that encourage healthy lifestyles; and provide clean, safe, and accessible places for leisure-time activities.”* (Montgomery County Parks Department Vision and Mission).

Pursuant to *“(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance”* the specimen trees that are to be removed or directly disturbed are not located near any perennial, intermittent or ephemeral streams, nor is it part of any environmental buffer, and the surrounding green space that is to remain will continue to provide water quality and quantity benefits comparable to existing conditions. For the trees with CRZ’s in close proximity to disturbance as stated in table 3, minimally invasive construction techniques are proposed to ensure the safety of the trees and water quality standards. Furthermore, the project is treating (through ESD measures) additional water beyond that which currently flows off MD-355. For the above reasons, the removal or disturbance of the CRZ’s of the specimen trees would **not violate the aforementioned standards, nor would it result in a measurable degradation in water quality.**

Pursuant to “(4) Provide any other information appropriate to support the request” the applicant and its experts believe that, The applicant and its experts believe that the impact to these trees is offset by the following environmental benefits provided by our proposed plan:

- **Preservation of Meadow, Stream Buffer and Interior Forest of the Park:** The plan preserves large expanses of undeveloped meadow providing recreational and interpretation opportunities for the visitors. People will have the chance to experience the meadow and appreciate the non-disrupted views of big sky and distant forest. Ground nesting birds, animals and insects will still have a home to sustain their habitat.
- **Reforestation:** Although the project has no reforestation requirements, the plan proposes replanting and succession planting along the main drive. Invasive species will be managed in these areas to replace and become part of the hedgerow and gradually contribute to reforestation of the site.
- **Site Sustainability:** The overall sustainability of the project is significantly improved compared to the original master plan concept and includes less than half of the road, stormwater treatment, and site disturbance originally proposed (See figure 3).



Figure 3: Disturbance Comparison of Previous Master Plan and the Proposed Facility Plan

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which states that a variance must not be granted if granting the request:

- Will confer on the applicant a special privilege that would be denied to other applicants;
- Is based on conditions or circumstances which are the result of the actions by the applicant;
- Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
- Will violate State water quality standards or cause measurable degradation in water quality

Pursuant to “(1) *Will confer on the applicant a special privilege that would be denied to other applicants*”, the use of this site for a park is part of the approved 2007 Master plan and will be operated as part of the vision and mission of M-NCPPC. As such, this is not a **special privilege** to be conferred on the applicant.

Pursuant to “(2) *Is based on conditions or circumstances which are the result of the actions by the applicant* and “(3) *Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property*”, the applicant has taken no **actions leading to the conditions or circumstances** that are the subject of this variance request. Furthermore, the **surrounding land uses** (residences and parkland) do not have any **inherent characteristics that have created** this particular need for a variance.

Finally, pursuant to “(3) *Will violate State water quality standards or cause measurable degradation in water quality*”, the applicant cites the reasoning previously provided in response to requirement 22A-21(b)(3), and restates its belief that granting this variance request **will not violate State water quality standards or cause measurable degradation in water quality**.

For the above reasons, the applicant respectfully requests that the Planning Board APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to remove or impact the CRZ's of the stated specimen trees in order to allow construction of this project.

Sincerely,

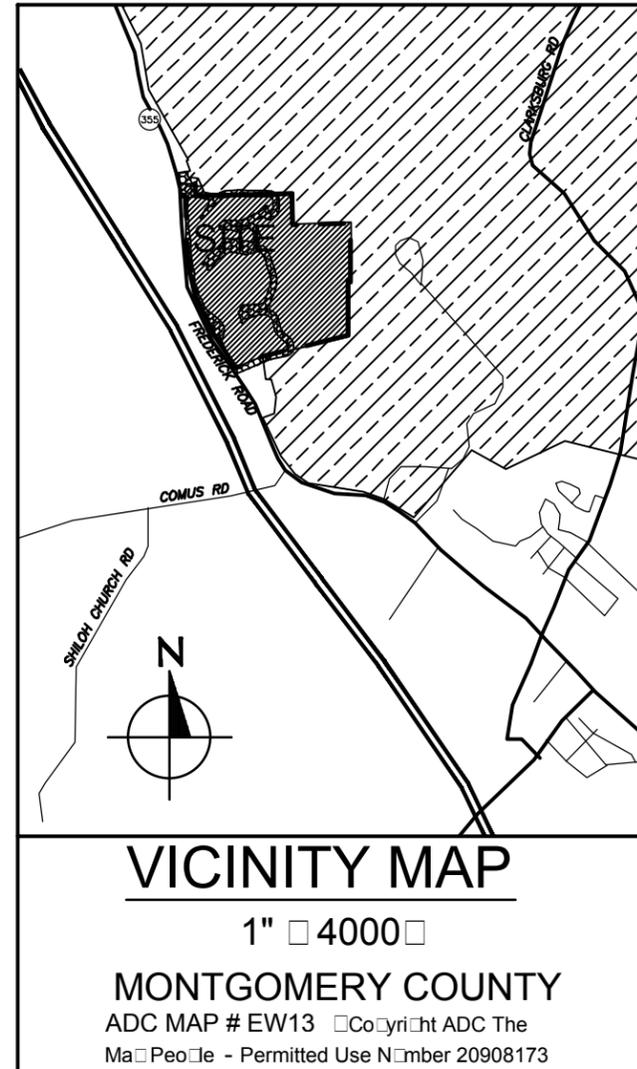
A MORTON THOMAS AND ASSOCIATES, INC.

Gregory J. Osband, MLA, RLA, ISA, GRP
Associate

SEE VARIANCE EXHIBIT #1 FOR
T109, T110, T115, □ T118

SEE VARIANCE EXHIBIT #4 FOR
T144

SEE VARIANCE EXHIBIT #2 FOR
T126, □ T127



LEGEND

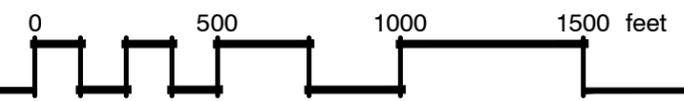
- LOD ——— LIMITS OF DISTURBANCE
- PROPERTY LINE

SEE VARIANCE EXHIBIT #3 FOR
T133, □ T134

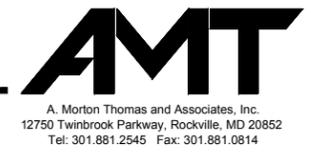


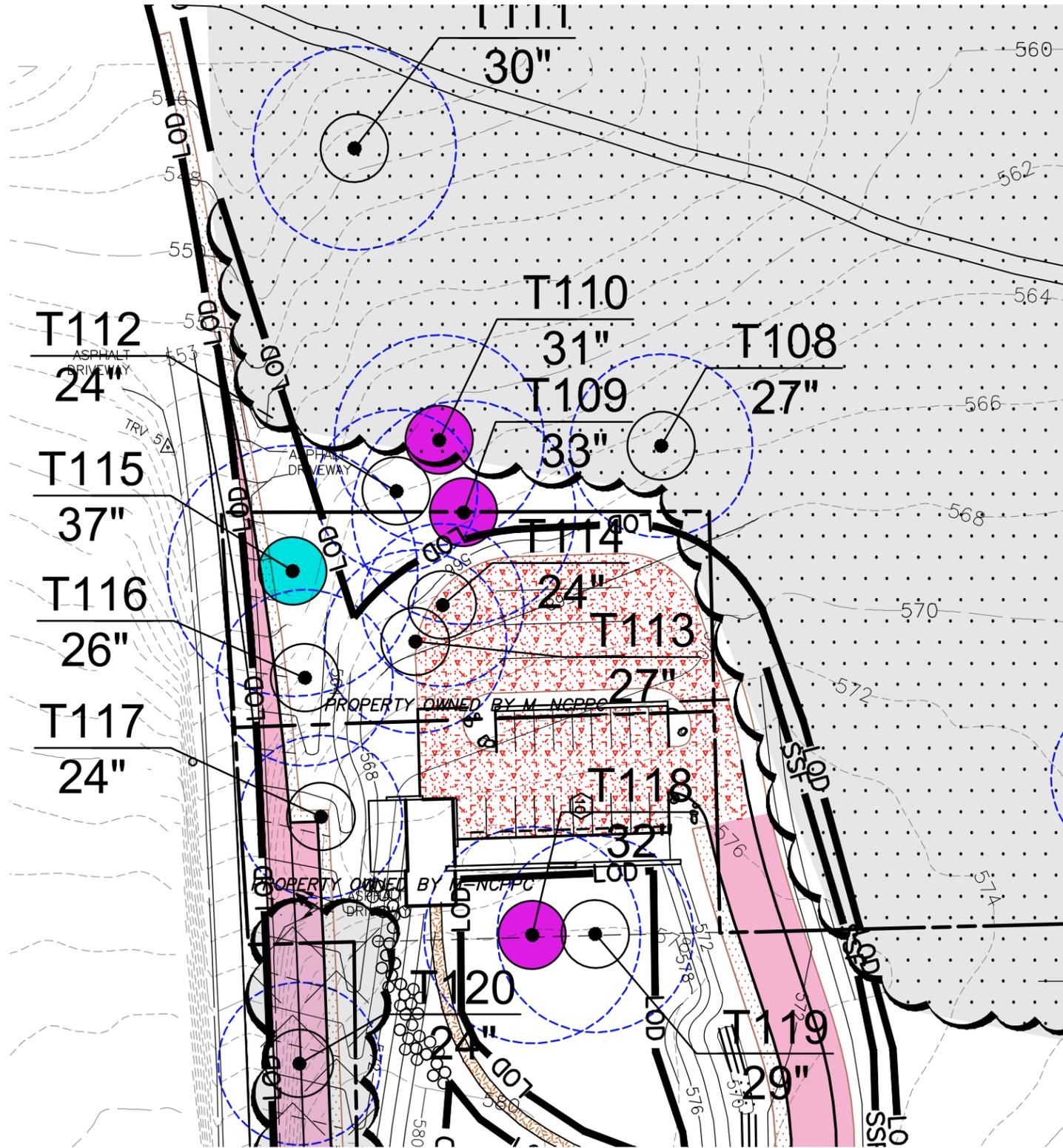
**EXHIBIT KEY
TREE REMOVAL VARIANCE REQUEST**

LITTLE BENNETT DAY USE AREA - Clarksburg, Maryland
AUGUST 2011



SCALE: 1" = 500'



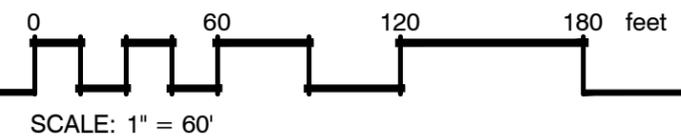


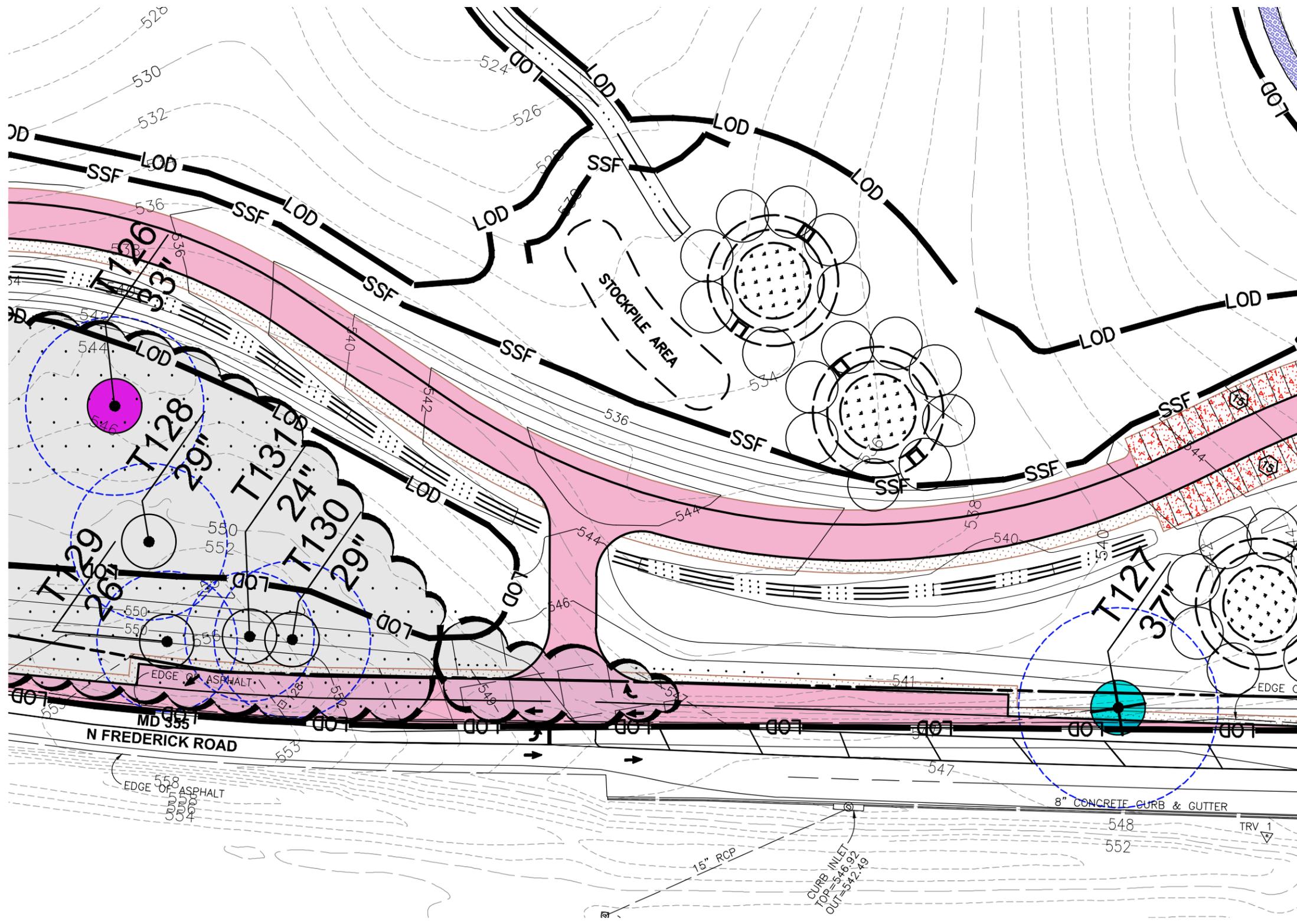
LEGEND

- LOD
- PROPERTY LINE
- SIGNIFICANT OR SPECIMEN TREE
- SPECIMEN TREE TO BE REMOVED $\geq 30"$ DBH
- SPECIMEN TREE WITH CRZ DISTURBANCE $\geq 30"$ DBH
- PROPOSED PAVED SURFACE
- PROPOSED GRAVEL SURFACE
- PROPOSED PERMEABLE PAVEMENT
- PROPOSED MOWED PATH \square NO EARTH TO BE DISTURBED \square
- CRITICAL ROOT ZONE
- CANOPY EDGE

KEY #1
TREE IMPACTS/REMOVAL VARIANCE REQUEST

LITTLE BENNETT DAY USE AREA- Clarksburg, Maryland
 AUGUST 2011





- LEGEND**
- LOD — LIMITS OF DISTURBANCE
 - PROPERTY LINE
 - SIGNIFICANT OR SPECIMEN TREE
 - SPECIMEN TREE TO BE REMOVED
 - SPECIMEN TREE WITH CRZ DISTURBANCE
 - PROPOSED PAVED SURFACE
 - PROPOSED GRAVEL SURFACE
 - PROPOSED PERMEABLE PAVEMENT
 - CRITICAL ROOT ZONE
 - CANOPY EDGE

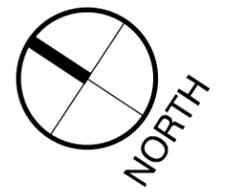
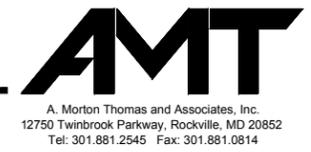
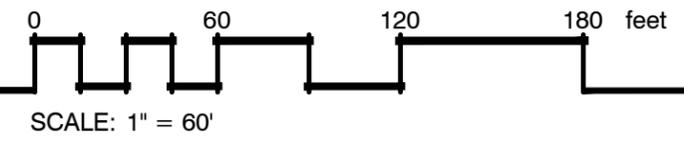
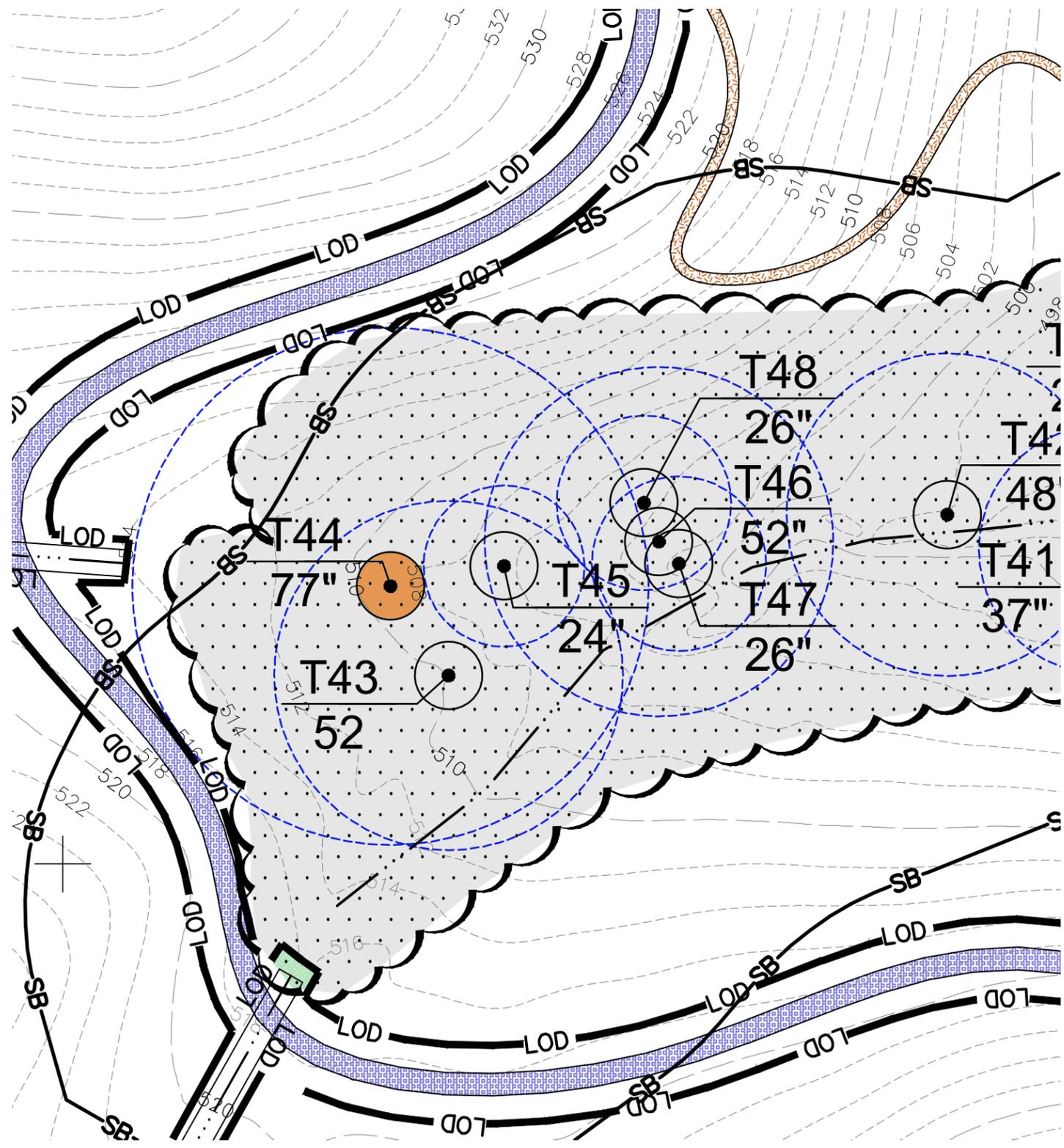


EXHIBIT #2
TREE IMPACTS/REMOVAL VARIANCE REQUEST

LITTLE BENNETT DAY USE AREA - Clarksburg, Maryland
 AUGUST 2011



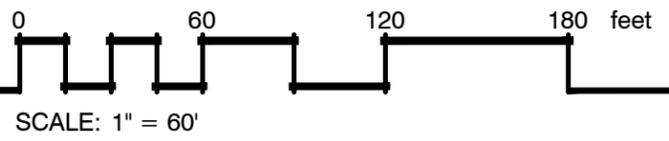


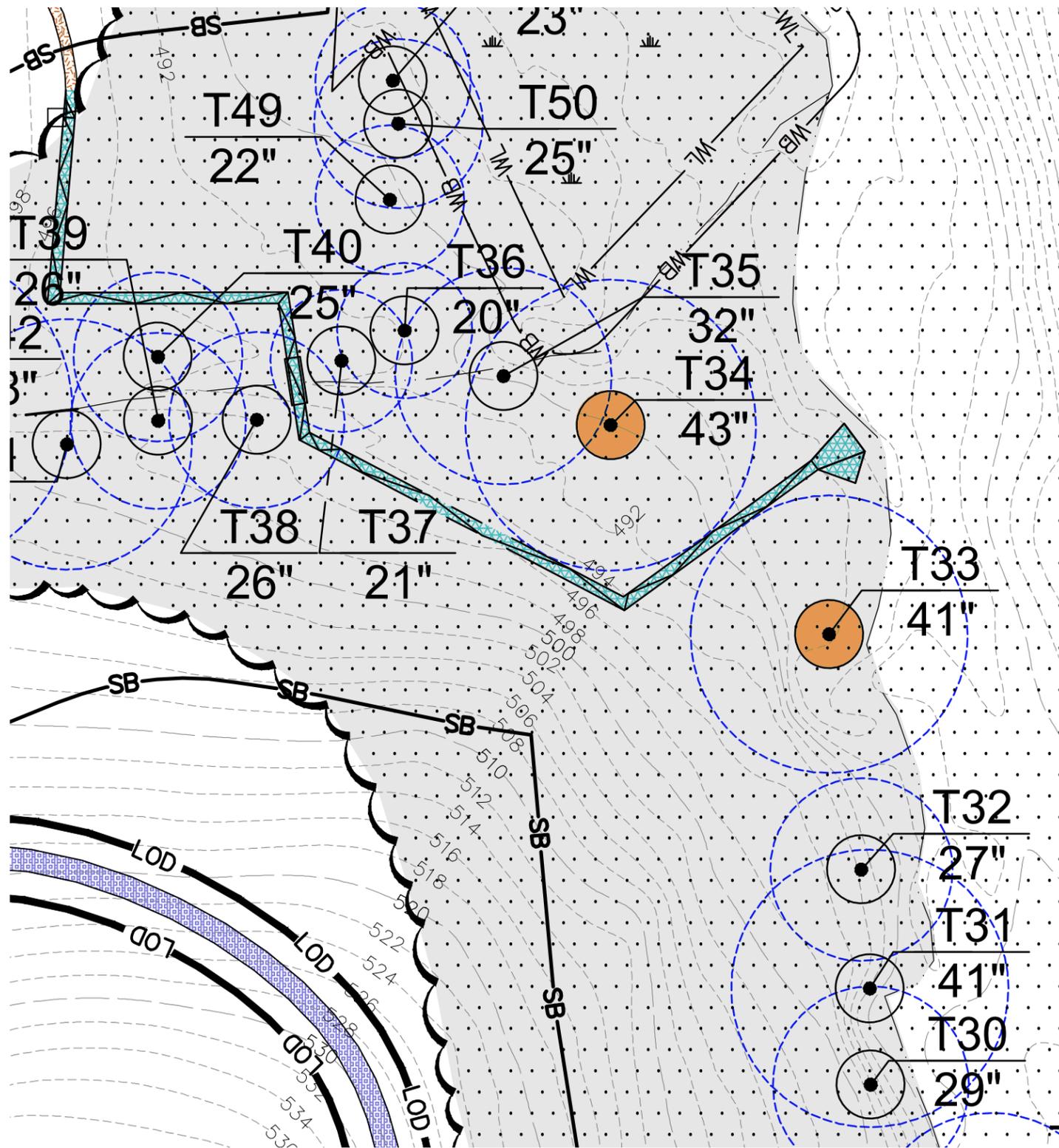
LEGEND

- LOD — LIMITS OF DISTURBANCE
- PROPERTY LINE
- SIGNIFICANT OR SPECIMEN TREE
- SPECIMEN TREE WITH DISTURBANCE IN CLOSE PROXIMITY TO CRZ
- PROPOSED PERMEABLE PAVEMENT
- CRITICAL ROOT ZONE
- CANOPY EDGE

**EXHIBIT #4
TREE IMPACTS/REMOVAL VARIANCE REQUEST**

LITTLE BENNETT DAY USE AREA - Clarksburg, Maryland
AUGUST 2011





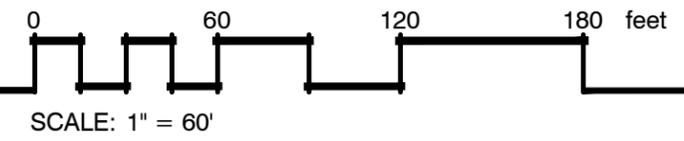
LEGEND

- LOD — LIMITS OF DISTURBANCE
- PROPERTY LINE
- SIGNIFICANT OR SPECIMEN TREE
- SPECIMEN TREE WITH DISTURBANCE IN CLOSE PROXIMITY TO CRZ
- PROPOSED PERMEABLE PAVEMENT
- PROPOSED BOARDWALK OR DECK TO BE INSTALLED BY HAND ON HELICAL PIERS
- CRITICAL ROOT ZONE
- CANOPY EDGE



**EXHIBIT #3
TREE IMPACTS/REMOVAL VARIANCE REQUEST**

LITTLE BENNETT DAY USE AREA - Clarksburg, Maryland
AUGUST 2011





DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

September 8, 2011

Françoise Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Little Bennett Day Use Facility, PP 2012002, NRI/FSD application accepted on
7/20/2010

Dear Ms. Carrier:

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the application for the above referenced request is required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and was submitted after this date, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

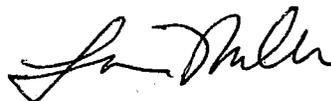
Applying the above conditions to the plan submitted by the applicant results in the following findings:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.
2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and the MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicant and, therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend that this applicant qualify for a variance conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief