

CONSERVATION AND OPEN SPACE EASEMENT AGREEMENT

Category I

DEFINITIONS

Grantor: Lenora Abrams et al, fee simple owner of real property subject to a:

(i) Plan approval conditioned on compliance with a FCP; or

(ii) Plan approval conditioned on compliance with a conservation easement agreement (issued pursuant to Chapter 50 or 59, Montgomery County Code).

Grantee: Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission ("Commission").

Planning Board: Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

Planning Director: Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, Montgomery County, or the Director's designee.

Plan: Sediment control permit approved pursuant to Montgomery County Code Chapter 19; preliminary plan approved under Montgomery County Code Chapter 50; site plan, development plan, planned unit development or special exception application approved under Montgomery County Code Chapter 59; mandatory referral reviewed pursuant to Article 28 of Maryland State Code Annotated; approved major utility construction (as defined by Washington Suburban Sanitary Commission's regulations).

Forest Conservation Plan ("FCP"): Forest Conservation Plan approved by the Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code.

Exhibit A:

(i) FCP approved as a condition of receiving any of the plan approvals noted above; or

(ii) Approved and signed Plan referencing this Easement Agreement.

WITNESSETH

This Agreement reflects a grant of easement by Grantor to the Grantee.

WHEREAS, the Planning Board or other approving authority approved Grantor's Plan conditioned upon a requirement that development occur in strict accordance with the cluster development option in

RECORDING FEE	2,200
TOTAL	2,200
RECORDED	12/20/05
FILED	12/20/05
CLERK	12/20/05

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the Rural Cluster zone and a FCP approved by the Planning Board after full review of the FCP pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); Chapter 50 (Subdivision Regulations); and/or Chapter 59 (Zoning Ordinance); and/or the Planning Board approved Grantor's Plan conditioned upon Grantor subjecting the property to be developed to a conservation and open space easement pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivisions Regulations), and/or Chapter 59 (Zoning Ordinance); and

WHEREAS, the location of this easement ("Easement") is as shown on Exhibit A (incorporated by reference into the terms of this agreement); and

WHEREAS, the purpose of this Easement is to protect existing and future forest cover; individual trees; streams and adjacent buffer areas, wetlands and other sensitive natural features; and to maintain existing natural conditions to protect plan habitats, water quality and wildlife; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the area of the Easement which efforts are consistent with the terms and conditions of the approved plan and applicable law; and

WHEREAS, the purpose of rural cluster development is to provide greater flexibility in achieving a compatible mixture of agricultural and residential uses and to protect scenic and environmentally sensitive areas without jeopardizing farming or their agricultural uses on this property or other adjacent or nearby properties; and

WHEREAS, the Parties intend for the conditions and covenants contained in this Easement Agreement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Parties intend that a servitude be placed upon the Property to create a conservation benefit in favor of the Planning Board.

NOW, THEREFORE, the Grantor has executed this agreement for no monetary consideration but for the purpose of ensuring compliance with development standards imposed in accordance with Montgomery County law as a condition of development approval. The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an Easement on the Property of the size and location described in Exhibit A, and further described on the applicable record plat(s), of the nature and character described herein. This Easement constitutes a covenant real running with the title of the land, and is granted to preserve, protect and maintain the general topography and natural character of the land. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the parties.

2. No living trees or shrubs (of any size or type) shall be cut down, removed or destroyed without prior written consent from the Planning Board. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the Planning Board, unless such notice is not practical in an emergency situation or is undertaken pursuant to a forest management plan approved by the Planning Director or Maryland's Department of Natural Resources ("DNR").

3. No plant materials (including, but not limited to brush, saplings, undergrowth, or non-woody vegetation) shall be mowed or cut down, dug up, removed or destroyed unless removed pursuant to the terms and conditions of an approved forest management plan. Noxious weeds (limited to weed defined as "noxious" under Maryland State or Montgomery County laws or regulations and "exotic or invasive plants" in the Montgomery County Tree Technical Manual) may be removed as required by law or according to an approved management plan, but the method of removal must be consistent with the limitations contained within this Agreement. Vegetation removal shall be limited to noxious, exotic or invasive weeds only, and protective measures must be taken to protect nearby trees and shrubs.

4. Nothing in this Agreement precludes activities necessary to implement or maintain afforestation or reforestation efforts pursued pursuant to an approved forest conservation plan or maintenance agreement implemented under Chapters 19 and 22A of the Montgomery County Code.

5. No dumping of unsightly or offensive material, including trash, ashes, sawdust or grass clippings shall occur. Natural biodegradable materials may be allowed in a properly located, designed, managed and maintained compost pile, provided the activity does not damage adjacent trees. Upon prior written approval of the Planning Director, suitable heavy fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is covered by arable soil or humus and properly stabilized.

6. Fences consistent with the purposes of the Easement may be erected within the Easement Area only after written approval from the Planning Director. Unpaved paths or trails consistent with the purposes of the Easement Area may be created within the Easement Area if shown on the FCP or with prior written approval from the Planning Director.

7. The following activities may not occur at any time within the portions of the Easement Area which are forested, including the afforestation area, or are within a designated stream buffer:

- a. Construction, excavation or grading (except for afforestation and reforestation efforts conducted in compliance with an approved forest conservation plan).
- b. Erection of any building or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls.
- c. Construction of any roadway or private drive.
- d. Activities which in any way could alter or interfere with the natural ground cover or drainage (including alteration of stream channels, stream currents or stream flow).
- e. Industrial or commercial activities.
- f. Timber cutting, unless conducted pursuant to a forest management plan approved by DNR.
- g. Mowing, agricultural activities, or cultivation, except that Grantor may replace dead trees or undergrowth provided that new plantings are characteristic of trees or undergrowth native to Maryland.
- h. Location of any component of a septic system or wells.
- i. Excavation, dredging, or removal of loam, gravel, soil, rock, sand and other materials.
- j. Diking, dredging, filling or removal of wetlands.
- k. Pasturing of livestock (including horses) and storage of manure or any other suit.
- l. Alteration of stream

8. Nothing in this Agreement precludes activities which are normally allowed within reserved open space in the Rural Cluster zone, per section 59-C-9.52 of the Montgomery County Code, in Easement Areas which are not forested, planted for future forest or within a stream buffer. These activities may include mowing and agricultural activities.

9. Nothing in this Agreement shall prevent construction or maintenance of stormwater structures and/or facilities or other utilities, including (but not limited to) water and sewer lines, on, over, or under the Easement Area, if said structures, facilities or utilities are (i) required to implement the Plan, (ii) shown on the approved FCP, and or approved FCP, and (iii)

approved by the appropriate governing bodies or agencies in accordance with applicable laws and regulations.

10. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the land within the Easement.

11. Upon prior notice given by the Planning Board, Grantor authorizes Planning Board representatives to enter the Property and Easement at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors or assigns have complied with the restrictions, conditions, and easements established herein. This Easement does not convey to the general public the right to enter the Property or Easement for any purpose. The Easement does not restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by applicable community or homeowner association covenants and by-laws.

12. Grantor further agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any interest in the Property is conveyed.

13. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this Agreement.

14. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this Agreement, the Planning Board shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time.) The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to the condition which existed prior to the violation, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

15. All written notices required by this agreement shall be sent to the Planning Director, M-NCPPC, 8787 Georgia Avenue, Silver Spring, Maryland 20910.

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