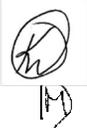




Forest Conservation Bank Policies



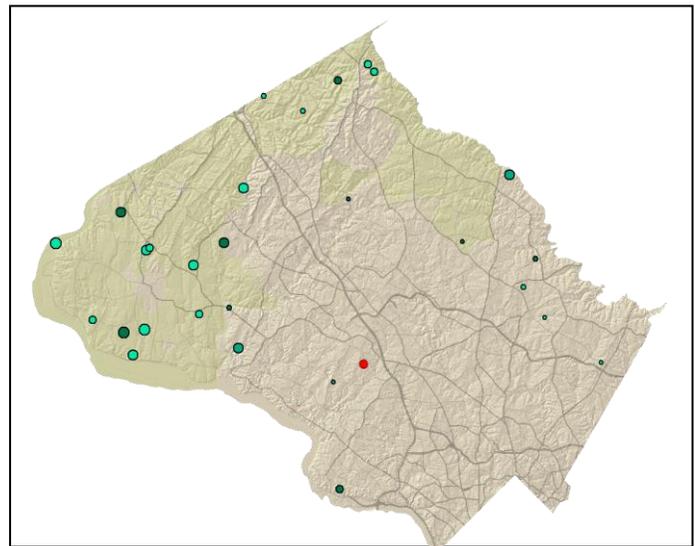
Katherine E. Nelson, Planner Coordinator, Katherine.Nelson@montgomeryplanning.org 301-495-4622

Mary Dolan, Chief, Functional Planning, Mary.Dolan@montgomeryplanning.org 301-495-4552

Completed: 05/15/14

Description

Forest banks have been part of the forest conservation program since its inception. Chapter 22A-13 identifies the information needs to create forest banks, where banks can be created, and how credits are expended (see attachment 2). Forest banks are necessary since many development projects are unable to meet their planting requirements on the development site. Banks provide the opportunity to meet requirements in an off-site location within the County. The Planning Department administers this program by approving bank locations and approving transactions between developers and bank owners. Over 30 forest banks totaling over 800 acres have been created as part of this program.



Forest Bank Program

Staff has undertaken a review of certain forest conservation bank policies. Policies have evolved over time and we believe we need to look at them comprehensively and revise them if that seems necessary.

Of particular concern are the following issues:

- Banks Overlapping Agriculture Easements
- Change in Bank Ownership
- Banks Location and Quality Criteria
- Bank Condition During Active Phase
- Banks Created by a Forest Conservation Plan

Banks may be created by planting a new forest or by protecting an area where forest already exists. A Category I Easement (see attachment 1) is required in both cases. Forest bank credits are formalized through the bank approval process where 1 acre of planted forest equals 1 acre of bank credit and 2 acres of existing forest equals 1 acre of bank credit. One bank credit equals 1 acre of forest planting. Developers who buy from a bank must buy credits equal to the forest planting acreage. For example, if a developer has a 1.25 acre offsite planting requirement they would need to acquire 1.25 acres of bank credits to satisfy the requirements. Developers needing to purchase forest bank credits negotiate the transactions costs directly with the bank owner or their agent. The Planning Department does not regulate the actual cost of transactions, only the amount of credit. Bank owners may pursue their own pricing structure.

The County code sets the framework for the Bank program; however policies that guide the forest bank program have evolved over time. (See attachment 3) Several existing policies as well as new policies have recently been debated among staff and the development community. **We ask the Board to adopt staff's recommendation on five of these policies as described below.**

Policies

1. Banks Overlapping Agriculture Easements

Category I conservation easement have not overlapped public utility easements. Recently the lead agencies for water/sewer and storm drain/stormwater management easements have prohibited the overlap of conservation easements with their easement. However many of the County's Forest Banks have been permitted to over-lap various agriculture easements:

Transferable Development Rights (TDR)
MD Agricultural Land Preservation Foundation (MALPF)
Rural Legacy Program (RLP)
Montgomery County Agriculture Easement Program (AEP)

Discussion with the agriculture community resulted in two policy memos indicating that no conflict exists between the Category I easement and Agriculture easements. In addition this practice strengthens County efforts to support the Agriculture Reserve (see Attachments 4 and 5).

Policy question: When forest banks overlap Agriculture easements do they adequately mitigate the loss of forest on development projects?

Recommendation:

1. Continue to allow forest banks to overlap Agriculture easements.

2. Change in Bank Property Ownership

Forest Banks may be created as part of a subdivision process. In these cases the Developer plants forest beyond forest conservation law requirements. This could be because other regulations (Special Protection Area for example) require that all stream buffers to be planted with forest. It could also be

voluntary planting in order to create a forest bank. This excess forest planting may be approved as a forest bank by the Planning Board when the preliminary plan or site plan is approved.

Due to the nature of subdivisions, the developer does not usually retain ultimate ownership of any of the property associated with the subdivision. Open space is typically given to a Homeowners Association or dedicated to the Commission as Parkland. In some cases, the land is conveyed outright to another entity.

Developers have at times asserted that after the property changes hands, they should still have the right to sell mitigation credits on forest that they planted or protected on property that they previously owned.

Policy Question: Does the forest bank right stay with the land owner or does the bank belong to the person or entity that created and planted the bank?

Recommendations:

1. The rights to the bank belong to the property owner. The entity that created the Bank may only continue to sell credits if the conveyance of the property clearly indicates that the right to the Bank remains with the entity that created it. This must include the ability of the creating entity to access the property to perform maintenance, if necessary. The Planning Department must be given a copy of any such conveyance transaction.
2. In the event that land is proposed to be dedicated to the Commission as Parkland, recommendation 1 applies.
3. If the Department of Parks agrees that Bank transactions may continue after dedication of Parkland, a definite sunset date after which bank transactions will no longer be allowed must be part of the Parkland dedication deed. The Planning Department must be given a copy of any such Parkland dedication deed

3. Location and Quality Criteria

The Planning Department's policy has been to accept forest planting in any location, preferring priority areas as stated in Section 22A-12(e)(3) of the County code. The few *newly planted* banks have largely been in these sensitive priority areas.

We also approve forest banks of existing mature forest. It has been the practice of the Department not to accept Banks with existing forest that is located exclusively within these stated priority areas. Generally these areas are forested because they are too wet or steep to be useable by agriculture. These same areas would be protected through the development process if a subdivision or special exception were proposed. Since there is no real threat to this forest it is not deemed beneficial to the County to hold an easement in this area and allow its preservation to mitigate for forest loss in another location.

For this reason the Department accepts forest banks with *existing* forest only if they include a significant upland forest component along with the sensitive areas. Full credit is given both to sensitive areas and the upland areas of the bank.

The Department also requires that the forest within the proposed bank be in reasonably good condition. For instance, a forest that is overgrown with invasives would not be accepted as a bank.

Law References

Section 22A-13(b) of the Law states that an area of land where the bank is planted must be at least 1 acre.

Section 22A-13(e) of the Law states that Forest banks must be established in priority areas described in subsection 22A-12(e)(3), or in areas identified in a master plan or functional plan.

22A-12 (e)(3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred. Unless the Planning Board or Planning Director orders otherwise, the required use of natural regeneration under this Chapter supersedes any prohibition under Chapter 58.

Policy question: Does the quality criteria create forest banks that adequately mitigate the loss of forest on development projects?

Recommendations:

1. Confirm existing quality criteria currently used to create forest banks.
2. Explore Forest Conservation Law changes that would be necessary to more accurately assign mitigation credits to banks based on the forest value.

4. Bank Condition During Active Phase

Forest Banks that plant new forest must guarantee two years of survival before bank transactions may take place, or the trees are planted and bonded. Under Chapter 22A of the County Code an applicant with a forest planting obligation resulting from forest conservation plan approved within the development process, is only required to maintain trees for two years, or once the survival rate equals rates established by regulation. Once this threshold has been met the developer is no longer under any obligation with regard to maintaining the newly planted trees.

Bank Owners been argued that these standards should also apply to forest banks; that even if plantings have partially failed, the bank has the right to sell all of their credits.

Policy question: Do the same survivability standards apply to forest banks?

Recommendations:

1. Credits may be sold from a newly planted bank after two years of successful management.
2. If the bank plantings are bonded, credits may be sold as soon as planting has been successfully completed.
3. The Planning Department may withhold approval of bank transaction if the condition of the Bank deteriorates to the point that it is no longer considered a forest.

5. Banks Created Within the Development Process

It has been the practice of the Planning Department to allow forest banks to be created as part of the development process. This has normally taken place in one of two ways:

- Forest in excess of forest conservation plan requirements is planted and/or protected.
- Existing forest on a farm remainder in excess of forest conservation plan requirements is protected.

A more controversial method that is currently being debated is whether or not to allow forest protected that is above the “break-even” point as shown on the forest conservation is eligible for banking. The break-even point is calculated on the forest conservation worksheet as that point where enough forest is preserved that the worksheet shows no mitigation requirements. This is not a minimum standard for forest preservation since the law sets mitigation penalties, not minimum standards. However, the law also states in section 22A-12(b):

(b) Retention.

(1) 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.

Under this section of the law staff has endeavored to minimize forest loss the extent possible according to the property zone expectation and development design. No additional incentives, such as banking have been used to preserve forest.

Policy question: May existing forest banks be created as part of a forest conservation plan within the development process?

Recommendations:

1. Forest planted in excess of forest conservation plan requirements may be banked.
2. Existing forest may be banked under the following conditions:
 - a. Forest area is in excess of Environmental Guidelines protection requirements
 - b. Forest is categorized as High Priority on the NRI/FSD or has the potential to become High Priority.
 - c. Forest has not been protected as part of a master plan or functional plan
 - d. Forest area is in excess of the forest conservation worksheet break-even point

Conclusion

Staff recommends that the Planning Board adopt these policies to be used in the Forest Bank Program.

Attachments:

- 1 Category I Conservation Agreement
- 2 Forest Bank Law
- 3 Forest Bank Guidance
- 4 Rural Legacy Interpretation
- 5 MALPH Interpretation

KN:am

CONSERVATION DEED OF EASEMENT ("Easement")
Category I

DEFINITIONS

Grantor: Fee simple owner of real property subject to Plan approval conditioned on recordation of a Category I conservation easement agreement.

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

Property: Lot ____, Block ____, Subdivision: _____, Recorded among the Land Records of Montgomery County, Maryland in Plat Book Number ____ as Plat No. _____.

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, or the Director's designee.

Plan: Forest Conservation Plan No. _____ or Restoration Plan No. _____, approved by the Planning Board or Planning Director pursuant to Chapter 22A of the Montgomery County Code.

Exhibit A: Approved Forest Conservation Plan No. _____ or Restoration Plan No. _____.

Exhibit B: Description and sketch of the Easement over and across the Property.

WITNESSETH

The Easement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor (or Grantor's agent) has obtained approval of a Plan in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or Planning Director approved Grantor's Plan conditioned upon Grantor subjecting the Property or a portion of the Property to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); and

Grantor Initials _____

WHEREAS, the location of this Easement is as shown and described on Exhibit B attached hereto and incorporated by reference into the terms of this Easement; 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 plant habitats, water quality and wildlife; and

WHEREAS, the purpose includes preservation of the natural beauty of the portion of the Property subject to the Easement (“Easement area”) and prevention of any alteration, construction, or destruction that will tend to mar or detract from such natural beauty; and

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

WHEREAS, the Grantor and Grantee (collectively referred to as the “Parties”) intend for the conditions and covenants contained in this Easement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Grantor intends 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 Easement for no monetary consideration but for the purpose of ensuring compliance with a Plan approved in accordance with Montgomery County law and placement of appropriate measures for the long-term protection of conservation areas in accordance with Montgomery County Code, Section 22A-12(h)(2). 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 B attached hereto and incorporated by reference into the terms of this Easement, 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. The Grantor does hereby waive any challenge to the validity of this Easement whether or not shown on a plat. 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 Grantor.

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 Director. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the Planning Director, unless such notice is not practical in an emergency situation or removal

Grantor Initials _____

of trees is undertaken pursuant to a forest management plan approved by the Planning Director.

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 those weeds defined as "noxious" under Maryland State or Montgomery County laws or regulations and "exotic or invasive plants" in the Montgomery County *Trees Technical Manual*) may be removed as required by law, but the method of removal must be consistent with the limitations contained within this Easement. Vegetation removal shall be limited to noxious weeds and exotic and invasive plants only, and protective measures must be taken to protect nearby trees and shrubs.

4. No mowing, agricultural activities, or cultivation shall occur. Grantor may replace dead trees or undergrowth provided that new plantings are characteristic of trees or undergrowth native to Maryland.

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

6. The following activities may not occur at any time within the Easement area:

- 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 an approved forest management plan approved by the Planning Director and the Department of Natural Resources for the State of Maryland.
- g. Location of any component of a septic system or wells.

Grantor Initials _____

- h. Excavation, dredging, or removal of loam, gravel, soil, rock, sand, and other materials.
- i. Diking, dredging, filling, or removal of wetlands.
- j. Pasturing of livestock (including horses) and storage of manure or any other effluent.
- k. Stream alteration.

7. Nothing in this Easement 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) shown on the approved Plan and (ii) approved by the appropriate governing bodies or agencies in accordance with applicable laws and regulations.

8. No dumping of unsightly or offensive material, including trash, ashes, sawdust, or grass clippings shall occur within the Easement area. 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.

9. Fences consistent with the purposes of the Easement may be erected within the Easement area if shown on the Plan or only after written approval from the Planning Director.

10. Unpaved paths or trails consistent with the purposes of the Easement may be created only after written approval from the Planning Director. Other paths or trails may be allowed only if shown on the Plan.

11. 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 area.

12. Grantor authorizes Planning Board representatives to enter the Property and Easement area 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 area for any purpose. This 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.

Grantor Initials _____

13. The Grantor does hereby waive any challenge to the validity of this Easement in the event it is not shown on a plat, and Grantor 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 possessory or equitable interest in the Property is conveyed.

14. 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 Easement.

15. Upon finding a violation of any of the restrictions, conditions, covenants, and easements established by this Easement, the Planning Director and 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 its original natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

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

TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

[SIGNATURE PAGE FOLLOWS]

Grantor Initials _____

Approved for legal sufficiency
Office of the General Counsel, MNCPPC

Grantor Initials _____

IN WITNESS WHEREOF, Grantor has caused to be executed this Easement to be signed by itself or its duly authorized officer as of this ____ day of _____, 20__.

WITNESS:

GRANTOR:

Type: Name
Organization (if applicable)
Address
Contact phone number

STATE OF MARYLAND

COUNTY OF _____ to wit:

I HEREBY CERTIFY that on this _____ day of _____, 20__, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

[NOTARIAL SEAL]

ATTORNEY CERTIFICATION

I certify that this instrument was prepared under the supervision of the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.

Sec. 22A-13. Forest mitigation banks

- (a) A person may create a forest mitigation bank from which applicants may buy credits by afforesting or reforesting an area of land under a forest mitigation bank plan approved by the Planning Director.
- (b) The area of land where the bank is planted must be at least 1 acre.
- (c) A forest mitigation bank must use native plants for afforestation and reforestation, unless inappropriate.
- (d) A person proposing to create a forest mitigation bank must submit a plan to the Planning Director, which must include:
 - (1) a 2-year maintenance agreement which meets the standards in subsection 22A-12(h)(1);
 - (2) all information required by subsection 22A-10(c) for a forest conservation plan; and
 - (3) the draft easement, covenants, or deed restrictions for the area to be sold to the developer when credits are withdrawn from the bank.
- (e) Forest mitigation banks must be established in priority areas described in subsection 22A-12(e)(3), or in areas identified in a master plan or functional plan.
- (f) Credits must not be debited from a forest mitigation bank until all trees have been planted and accepted by the Planning Director, and either financial security which meets the standards in subsection 22A-12(i) has been provided or the Planning Director has found that a sufficient number of trees have successfully survived for 2 years after planting.
- (g) To debit credits from an approved forest mitigation bank, the easement, covenants, or deed restrictions which assure that the newly reforested or afforested area of land remains a forest in perpetuity must be conveyed to the Planning Board or its assignee and the applicant must show that credits are available and the applicant has the right to debit them. The credits must buy an amount of land equal to the applicant's off-site reforestation or afforestation requirements under its approved forest conservation plan. (2001 L.M.C., ch. 19, § 1.)

General Guidance for Forest Conservation Banks

1. A bank area of either **existing** forest or planted forest must be one acre in size or larger.
2. An **existing** forest bank may not be created in location that is primarily environmentally sensitive areas such as floodplains, wetlands, steep slopes and other areas that are not conducive to agriculture and have no development potential. The forest must have a significant upland component.
3. **Planted** banks *may* occur primarily within sensitive areas.
4. Remnants of subdivisions may not be used to create a bank unless it results in the planting of unforested stream buffers that are in excess of the subdivision planting requirements.
5. Forest that are planted using funds or other incentives from other state, federal or local programs such as CREP and Stream Releaf may not become part of a forest bank.
6. Forest Conservation Banks may overlap with Rural Legacy Easements or other Agriculture easements that provide some measure of protection to forest.
7. An **existing** forest bank must be in reasonable condition to be approved. For instance, a forest that is overgrown with invasives would not be approved.
8. A **planted** forest must have an approved planting plan.
9. Credits may not be sold from a **planted** bank until there have been two years of successful management. However if the bank is bonded, credits may be sold as soon as planting is completed and inspected.
10. Timber cutting is all if conducted pursuant to an approved forest management plan approved by the Planning Director and the Department of Natural Resources for the State of Maryland.



DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett
County Executive

Steven A. Silverman
Director

March 17, 2011

Katherine Nelson
MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Forest Conservation on Properties Encumbered by Agricultural Easements

Dear Ms. Nelson:

As a follow up to our meeting on February 11, 2011, I wanted to first thank you for a very productive meeting. I know how important Forest Conservation is to Montgomery County planning goals and want to create an environment whereby we can utilize the most appropriate lands to accomplish these goals.

During our meeting we discussed the relationship of Forest Conservation to lands encumbered by Agricultural and Conservation Easements. More specifically to ascertain whether or not overlay Forest Conservation Easements could be applied to lands encumbered by State and County agricultural easements. In general, these easements restrict the land to agricultural uses. Residential subdivision, Commercial and Industrial uses, other than agriculture are prohibited.

The easements also call for the management of agricultural resources including forest resources. Under our easements, three plans are required by the landowners, Soil Conservation and Water Quality Plan, Nutrient Management and Forest Stewardship Plan if there are significant forest resources on the lands encumbered by the agricultural easement. Forestry is included within the definition of agriculture and these easements provide landowners the ability to manage their forest lands as a crop. These easements are not intended nor has it ever been interpreted to prohibit forest harvest operations on lands encumbered by the easements or the clearing of forest land for agricultural production purposes. If a landowner chose to manage the forestlands through harvesting or clear cutting it is considered a permitted use under the easement.

The only restrictions placed upon these forested lands involve vegetative buffers established by the easement to protect riparian resources. These vegetative buffers are identified within the Soil Conservation and Water Quality Plan. While the widths of these buffers are

determined by soil type and slope, in general a minimum width size for a vegetative buffer is 50 feet on both sides of stream, identified on a USGS map as a blue line stream. In addition, if a harvest is planned on an agricultural easement property, the landowner is required to notify the Easement's Grantee. Landowners are required to develop a forest harvest plan prepared by Registered Forester and obtain any County or State approvals and permits.

If a landowner wants to voluntarily restrict the use of their forested land further, the agricultural easement does not prohibit them from doing so provided they obtain approval of the easement's Grantee. While the easements are intended to facilitate the continuance of agricultural production capability as a high priority, it is also recognized that some lands are not suitable for agricultural crop and pasture production. Therefore having alternative options for landowners can result in more a positive outcome.

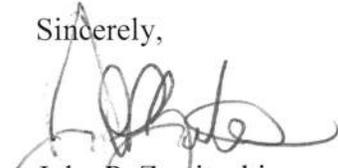
We know that all lands for agricultural production are not created equally, as there are environmentally sensitive lands that are not well suited for agricultural production. Programs have been developed to encourage landowners to take these lands out of production. An example of this is the Conservation Reserve Enhancement Program (CREP). Landowners are compensated under 10 and 15 year contracts for taking sensitive farmland out of production and establish vegetative and forested areas. CREP is considered a permissible use under agricultural and conservation easements, even though the State and County have purchased easements to ensure lands are protected for agricultural production. This may seem counter intuitive, however we recognize that there are circumstances whereby agricultural crop and pasture production may not be the best use for these lands. The CREP was developed to compensate landowners for loss production in favor of holding these lands in conserving use.

As you know the benefits of forested lands are widely acknowledged and while the clearing of forestlands for expanding agricultural production are permissible under the easements, we also know there are times and conditions whereby providing landowners alternatives to clearing cutting forest lands or harvesting would result in a more positive outcome. This is the role the overlay forest conservation easement can play to further protect these lands.

Any landowner who proposes to further protect lands through an overlay easement must first seek the approval of the Easement's Grantee. The Grantee must review the area under consideration for the overlay and assess any negative impact to existing agricultural lands and to ascertain the benefits an overlay easement may provide. The Grantee must ensure the overlay will not take valuable agricultural lands out of production, consider the benefits of protecting existing forested land and ensure the proposed overlay easement provides for Silvicultural management, use and production of forest lands. The Grantee will also weigh the environmental benefits of further protecting forest lands over maintaining forest in the context of agricultural production.

I believe by working together, we can assess applicability of forest conservation overlays atop agricultural easements were they would be the most appropriate as well as identifying priority areas important to MNCPPC as we negotiate new easements. I believe we have a common goal and by working collectively we can help each other manage these important agricultural and environmental resources.

Sincerely,



John P. Zawitoski
Agricultural Preservation
Program Administrator

cc: Agricultural Preservation Advisory Board
Vince Berg

Attachment 5

WILLIAM DONALD SCHAEFER, *Governor*
 ROBERT L. WALKER, *Secretary*
 LEWIS R. RILEY, *Deputy Secretary*



The Wayne A. Cawley, Jr. Building
 50 HARRY S. TRUMAN PARKWAY
 ANNAPOLIS, MARYLAND 21401
 Baltimore/Annapolis (410) 841-5700
 Washington (202) 261-8106
 Facsimile (410) 841-5914

STATE OF MARYLAND
 DEPARTMENT OF AGRICULTURE
 MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

March 26, 1993

Bill Powel
 Carroll County Office Building
 225 N. Center Street
 Westminster, MD 21157

Dear Bill:

This is to confirm our recent telephone conversation regarding new forest plantations on farms subject to an agricultural land preservation easement with the Maryland Agricultural Land Preservation Foundation.

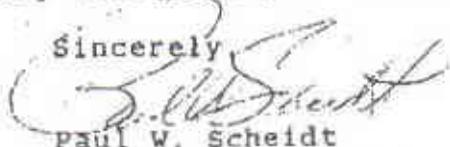
The Foundation recognizes that managed woodland properties may produce a very important commodity and may compliment other agricultural operations. As you know, the Foundation has approved the establishment of agricultural land preservation districts that are entirely wooded which meet certain soil requirements.

More recently the Foundation encourages forest management plans on properties that have 50% of more of the land area contained in the district dedicated to woodland.

If Carroll County's Forest Conservation plan involves a reforestation project on easement property and it will be managed in accordance with sound forestry practices which allows the landowner to selectively cut or clear cut from time to time, but not alter the agricultural character of the land or diminish its productive capability, it would not be a violation of the deed of easement with the Maryland Agricultural Land Preservation Foundation.

I hope this sufficiently addresses your concerns.

Sincerely,


 Paul W. Scheidt
 Executive Director

PWS:pa
 cc: Dan Shortall
 Craig Nielsen

SERVING MARYLAND FOR 20 YEARS