



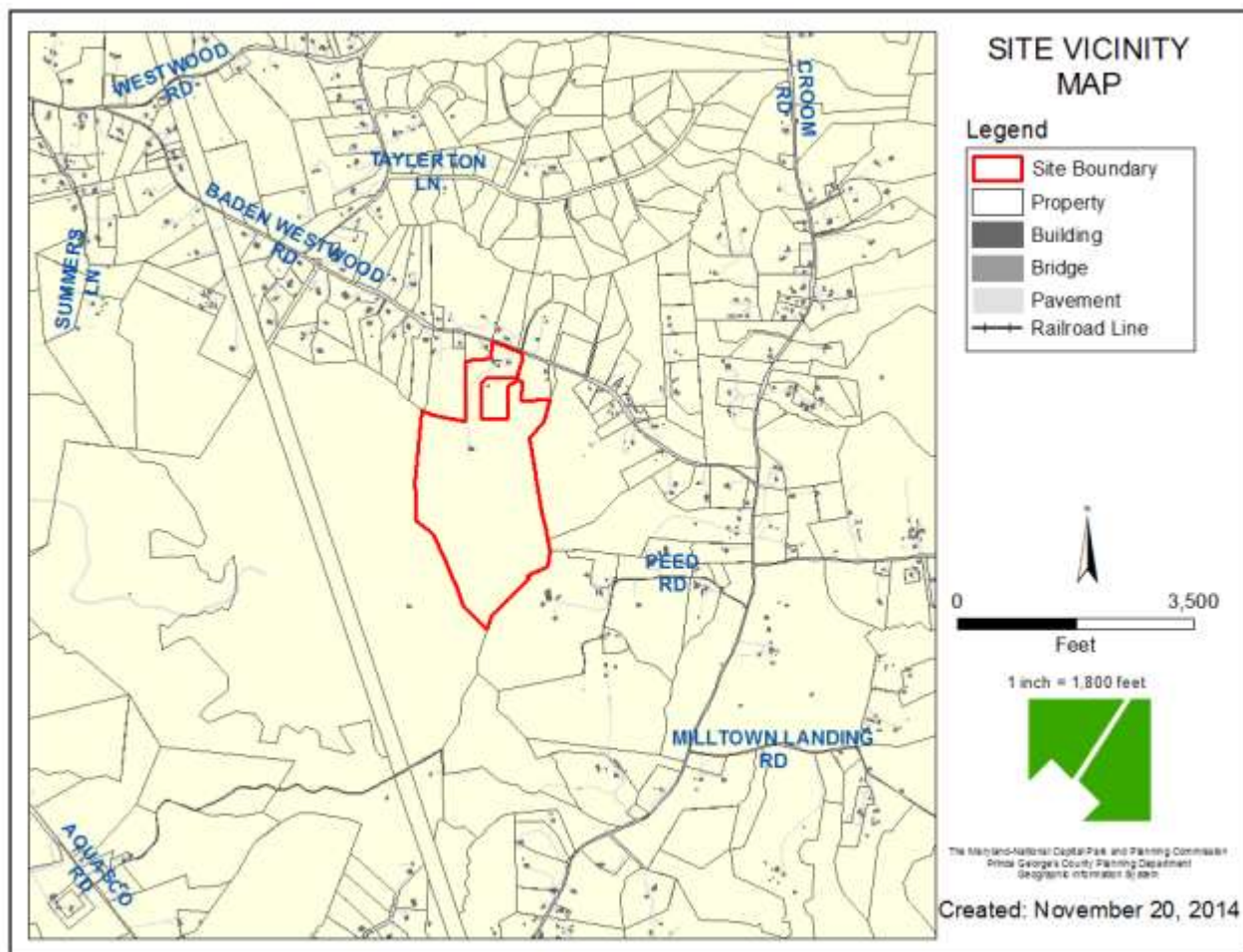
Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

Type 2 Tree Conservation Plan TCP2-034-13

Application	General Data	
Project Name: Stephen Meinhardt Woodland Conservation Bank #2 Location: South side of Baden Westwood Road, approximately 4,500 linear feet west of Croom Road (MD 382). Applicant/Address: Stephen M. Meinhardt 15001 Baden Naylor Road Brandywine, MD 20613	Planning Board Hearing Date:	12/04/14
	Staff Report Date:	11/20/14
	Date Accepted:	09/25/13
	Planning Board Action Limit:	N/A
	Most Recent Revision:	N/A
	Plan Acreage:	106.79
	Zone:	O-S
	Dwelling Units:	N/A
	Square Footage of Proposed Structure:	N/A
	Planning Area:	87A
	Council District:	09
	Municipality:	N/A
	200-Scale Base Map:	224SE14

Purpose of Application	Notice Dates	
This Type 2 tree conservation plan requires Planning Board approval because the site is subject to a Historic Agricultural Resources Preservation Program (HARPP) easement held by The Maryland-National Capital Park and Planning Commission.	Adjoining Property Owners: (CB-15-1998)	N/A
	Previous Parties of Record: (CB-13-1997)	N/A
	Sign(s) Posted on Site:	N/A
	Variance(s): Adjoining Property Owners:	N/A

Staff Recommendation		Staff Reviewer: Kim Finch Phone Number: 301-952-3506 E-mail: Kim.Finch@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		



THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT PROPERTY: Type 2 Tree Conservation Plan TCP2-034-13
 Stephen Meinhardt, Woodland Conservation Bank #2

The Environmental Planning staff has completed the review of the subject application and appropriate referrals. The following evaluation and findings lead to a recommendation of APPROVAL with one condition, as described in the Recommendation section of this report.

EVALUATION

This Type 2 tree conservation plan was reviewed and evaluated for compliance with the following criteria:

- a. The requirements of Subtitle 25, Division 2, Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (2010);
- b. The requirements of the 2010 Environmental Technical Manual: Part A. Woodland and Wildlife Habitat Conservation Technical Manual; and Part B. Guidelines for the Preparation of a Natural Resources Inventory;
- c. The requirements of Subtitle 29, Division 9, Historic Agricultural Resource Preservation Program (CB-24-2007);
- d. Regulations adopted by the Prince George's County Planning Board on January 10, 2008 for the implementation of the Historic Agricultural Resource Preservation Program (HARPP), approved by the General Counsel; and,
- e. Referral comments.

FINDINGS

Based upon the evaluation and analysis of the subject Type 2 tree conservation plan (TCP2), the Environmental Planning staff recommends the following findings:

1. **Request:** The purpose of this application is to approve a specialized TCP2 for the establishment of an off-site woodland conservation bank on a property with an existing Historic Agricultural Resources Preservation Program (HARPP) easement granted to the Prince George's County Planning Board.

The existing site is 106.79 acres located in the Open Space (O-S) Zone consisting of one parcel. Perpetual protection of 30.30 acres of existing woodlands on the site is proposed to be used as off-site woodland conservation credits for the benefit of developing sites in Prince George's County.

2. **Location:** The subject site is located on south side of Baden Westwood Road, approximately 4,500 linear feet west of Croom Road (MD 382).
3. **Site Description:** This 106.89-acre property in the O-S Zone contains streams, wetlands, 100-year floodplains, and areas of steep and severe slopes. The property contains 10.17 acres of wooded floodplain and 30.98 acres of upland woodland for the most part located in a riparian stream buffer within the designated primary management area (PMA), and covering approximately 60 percent of the site. The remainder of the site is in actively managed agriculture consisting of a crop rotation of corn, soybeans, and small grains. The soils series found to occur on this property, according to the Web Soil Survey, include the Marr-Dodon complex, Potobac-Issue Complex, Westphalia, and Dodon soils. Potobac-Issue complex soils generally have limitations with respect to impeded drainage and seasonally-high water tables. Marlboro clays are not found in the vicinity of this property. According to the Sensitive Species Protection Review Area GIS layer prepared by the Maryland Department of Natural Resources, Natural Heritage Program, no rare, threatened, or endangered species are found to occur in the vicinity. Portions of the site have been identified as potential forest interior dwelling species (FIDS) habitat. Baden Westwood Road is classified as a rural collector, and is a designated scenic and historic road that passes the frontage this property. The property is located in the Black Swamp Creek watershed of the Patuxent River basin, within the designated Patuxent Rural Legacy Area, and within a priority preservation area. According to the 2005 *Approved Countywide Green Infrastructure Plan*, approximately one-half of the site is shown as regulated areas, evaluation areas, or identified as network gaps. The site is located within the agricultural/rural area of the Growth Policy Map and Environmental Strategy Area 3 (formerly the Rural Tier) of the Regulated Environmental Protection Areas Map as designated by the *Plan Prince George's 2035 Approved General Plan*.
4. **Surrounding Uses:** The site is entirely surrounded by properties in the O-S Zone. To the south of the site is the Black Swamp Creek stream valley. To the west of the property is Bardon, Special Exception SE-4462, an inactive surface mining site. To the north of the property are small farming operations interspersed with single-family residences and Baden Westwood Road. To the east of the site is Prince George's County Historic Resource 87A-014, the Catherine Gardiner House, set within working agricultural lands, which is also subject to agricultural assessment.
5. **Previous Approvals:** The Environmental Planning Section has not reviewed any prior development applications for the subject property.

A HARPP easement for a 115.24-acre property, of which the current application is part, was conveyed to the Planning Board on October 13, 2011 by the Marvin G. Seger Living Trust for the sum of \$902,693.00, and is recorded in the County Land Records at Liber 33048, Folio 560.

Since the purchase of the property by Stephen M. Meinhardt on November 3, 2011, the interfamily transfer of two home sites to Mr. Meinhardt's children occurred on August 30, 2012. The home sites were established in accordance with the requirements of the recorded easement, and subject to the HARPP easement.

A Natural Resources Inventory (NRI-163-13) for the site was filed jointly with the TCP2 application, and is recommended for approval subject to minor technical revisions addressed later.

COMPLIANCE WITH EVALUATION CRITERIA

6. **Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (2010):** The current property is subject to the requirements of the Woodland and Wildlife Habitat Conservation Ordinance (WCO) because it is the intention of the owner to transfer woodland conservation credits from an off-site woodland conservation bank to developing properties. The WCO is located in Subtitle 25, Division 2, of the Prince George's County Code. The approval of a TCP2 is a pre-requisite for banking under Section 25-122(e)(2), which states that woodland conservation banks shall:

- (A) **Depict the method of woodland conservation on an approved TCP2 that meets all the requirements of this Division and is prepared in accordance with the Technical Manual.**

Section 25-119(a)(8) of the WCO reads as follows:

- (8) **Proposed woodland conservation areas, either on-site, or off-site as part of a woodland conservation bank, shall be free of any previous encumbrance which is not consistent with the requirements of this Division, including but not limited to easements which specifically protect woodlands for another purpose, utility easements, approved TCPs for other development, deed restrictions, and declarations of covenants for woodland conservation banking, prior to encumbering the area to fulfill on-site woodland conservation requirements or as an off-site woodland conservation bank. Property that is subject to an agricultural preservation easement shall not be precluded from having a woodland conservation easement.**

The ordinance indicates that a site is eligible to be a woodland conservation bank if it not subject to a previous encumbrance which specifically protects woodlands on the site for another purpose, but further states that property subject to an agricultural preservation easement shall not be precluded from having a woodland conservation easement.

Comment: A HARPP easement was placed over the entire site for the protection of active agricultural practice, but does not disqualify the placement of a woodland conservation easement on the subject property for the purposes of off-site banking. The HARPP easement does not specifically protect the woodlands, but only reduced the development rights on the property. Placement of a woodland conservation easement on the property to protect the woodlands is in conformance with the HARPP easement if approval from the Prince George's County Soil Conservation District Board of Supervisors and the Prince George's County Planning Board is obtained.

7. **2010 Environmental Technical Manual:**

Part A. Woodland and Wildlife Habitat Conservation Technical Manual—The submitted plan has been reviewed as TCP2-034-13 for compliance with the requirements of the Environmental Technical Manual (ETM), Woodland and Wildlife Habitat Conservation Technical Manual, found in 7.3.1 Woodland Conservation Banks.

Part B. Guidelines for the Preparation of a Natural Resources Inventory—An intermediate NRI is a submittal requirement for a TCP2 for woodland conservation banking. For the purposes of this application, the NRI has been combined with the TCP2 into a single plan set. The submitted plan has been reviewed as NRI-163-13 for compliance with the requirements of the ETM, Woodland and Wildlife Habitat Conservation Technical Manual, Part B.

Comment: The NRI and TCP2 for the subject application were submitted in a combined format which is acceptable to the Environmental Planning Section staff.

The forest stand delineation for the site provides additional information about the on-site environmental features, which recommend the site as a woodland conservation bank.

The site contains two forest stands. Stand A consists of an immature stand of mixed hardwoods and is 29.26 acres in area. This stand has a high rating with respect to forest habitat values, and the overall retention potential is considered to be excellent because of the stand's position near some of the streams and slopes located on the site. Stand B is an 11.89-acre stand of upland hardwoods. This stand has a good rating for forest habitat values, and the overall retention potential is considered to be good to excellent because of the stand's position near stream and slope areas. Several specimen trees were identified with the limits of this stand.

In a letter dated August 21, 2013, the Maryland Department of Natural Resources, Wildlife and Heritage Service, indicated that there is an area on or near this property that supports the occurrence of an invertebrate known as the Slender Stygobromus (*Stygobromus tenuis*). This fresh water species is globally rare, but has a Maryland status of uncertain. Impacts to the hydrology of the area are not proposed and the recommendation of the Wildlife and Heritage Service is that they should be avoided.

The combined NRI and TCP2 plan has been reviewed and found to be complete except for minor technical revisions. The site information table incorrectly states the gross tract area of the site. The presence of a historic resource on the adjacent property has not been labeled on the plan, and the extent of the environmental setting for the historic site is not shown on the plan and included in the legend. The TCP2 number and the NRI numbers should be added to the approval blocks in the correct format. Revised Notes 7 and 8 under "Standard Notes for an Off-site Woodland Conservation Bank" shall be added to the plan.

Recommended Condition: Prior to signature approval of the Type 2 tree conservation plan (TCP2), the plan shall be revised as follows:

- a. The site information table shall correctly state the gross tract area of the site.
- b. The adjacent historic site shall be labeled on the plan, and the extent of the environmental setting for the historic site shall be shown on the plan and graphically included in the legend.

- c. The TCP2 and the natural resources inventory numbers shall be added to the approval blocks in the correct format.
 - d. Revised Notes 7 and 8 under “Standard Notes for an Off-site Woodland Conservation Bank” shall be added to the plan, and Note 8 shall be revised to include the approval date of the TCP2 and the Planning Board resolution number.
 - e. The owner’s awareness certificate shall be signed.
 - f. The revised plan shall be signed and dated by the qualified professional who prepared it.
8. **Subtitle 29, Division 9, Historic Agricultural Resource Preservation Program (CB-24-2007):** In 2007, the Prince George’s County Council enacted Council Bill CB-24-2007 for the purpose of establishing the Prince George’s County Historic Agricultural Resource Preservation Program (HARPP), a county initiative to preserve agricultural areas and activities. A HARPP easement is voluntarily placed on agricultural property and conveyed to the Planning Board. In exchange, the landowner receives compensation for limiting future development uses of the property to agricultural and commercial uses related to agriculture.

Section 29-127(b) states the purposes of the program as follows:

- (1) **Implement the policies of the Prince George's County General Plan and the Green Infrastructure Plan relating to the Rural Tier;**
- (2) **Preserve, protect and enhance properties that provide historic agricultural character, culture and practices;**
- (3) **Encourage others to preserve, protect and enhance properties that provide historic agricultural character, culture and practices;**
- (4) **Promote interest in and the study of historic properties and properties that provide historic agricultural character, culture and practices;**
- (5) **Maintain historic rural character and way of life through the limitation of non-agricultural uses and the preservation of scenic viewsheds, vistas and related natural resources.**

Section 29-131, Eligibility Criteria, reads as follows.

- (b) **A parcel shall not be eligible to participate in the program if the development rights have been extinguished by the donation or sale of an easement to any other party, or if the property is encumbered by a tree conservation easement or any other easement which would prevent the property from being developed.**

Comment: At the time of conveyance of a HARPP easement to the Planning Board, the site was not subject to any encumbrance which extinguished development rights, nor encumbered by a tree conservation easement or other easement which would prevent the property from being developed.

The additional protection of woodlands on this site provided under woodland conservation banking is highly consistent with the purposes of the HARPP program listed above.

9. **Regulations for the implementation of the Historic Agricultural Resource Preservation Program (HARPP) adopted by the Prince George's County Planning Board on January 10, 2008:** The Planning Board adopted regulations for the implementation of HARPP prepared by the Office of the General Counsel. The standard language of a HARPP easement contains the following language:

8. Rights Retained by Grantor. Nothing in this easement shall be construed as a restraint on alienation. Further, although this Easement is in gross and will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. The Grantor retains the exclusive right to such access and use of the Property, subject to the terms hereof.
- c. The Grantor shall retain the right to do forest conservation on the Property in accordance with the woodland conservation policies of Prince George's County, Maryland and the State of Maryland (see generally Section 25-117 of the Prince George's County Code (the "County Woodland Conservation Ordinance") and Title 5, Subtitle 16, of the Natural Resources Article of the Annotated Code of Maryland; and Title 08, Subtitle 19, of the Code of Maryland Regulations (the "State Forest Conservation Act").

A HARPP easement on the property was conveyed to the Planning Board on October 13, 2011, and recorded in the County Land Records at Liber 33048, Folio 560, restricting future development of the site and limiting the use of the property to agricultural uses and commercial uses related to agriculture. The HARPP easement language also includes the following language which provides guidance on an approval process for a TCP2 with an existing HARPP easement, as follows:

3. Prohibited Acts
 - a. Grantor shall not encumber or place any liens on the Parcel that further limits the use of the Property without the prior approval of the Planning Board; provided, however, that the Planning Board shall not approve any subsequent easement or other further encumbrance of a Parcel for a woodland, forest or other public conservation program unless the owner(s) has procured the prior written approval of such encumbrance by the Prince George's County Soil Conservation District. The Planning Board may refuse to consent to the placement of woodland conservation easements on such portions of the Property that are prime agricultural land intended to be preserved to maintain the agricultural character of the Property.

This outlines specific findings and approvals that must be made by the Planning Board to place a further encumbrance over an existing HARPP easement.

A TCP2 application for off-site banking submitted includes the following standard submittal requirements: an intermediate NRI; a specialized TCP2 for woodland conservation banking; a forest stewardship plan for the long-term management of the resource as perpetual woodland, and applications and statements of justification for any Subtitle 25 variances that might be required for the site, if applicable.

The following additional materials are needed to evaluate a proposal for the placement of an additional encumbrance over the existing HARPP easement:

- a. A letter from the Prince George's County Soil Conservation District stating that they are in agreement with the proposal to establish an off-site woodland conservation bank.
- b. A copy of the approved farm plan, if applicable, which indicates the portions of the site which are designated for retained woodlands, where active agriculture will occur, and what type of agricultural activities are proposed.
- c. A full 60-year title search of the property copy, including the HARPP easement, confirming that there are no other prior encumbrances on the property.

Comment: A letter dated May 21, 2013 from David Bourdon, District Manager of the Prince George's County Soil Conservation District, was received and reads in part as follows:

“The Prince George's Soil Conservation Board of Supervisors met on May 6, 2013 to discuss your proposal. In accordance with Section 3.c. of your Historic Agricultural Preservation Program easement, the Board approved your proposal to establish a Woodland Conservation Bank. The board emphasized that their approval is conditioned on the premise that any Woodland Conservation Bank will be for existing forest only and that no cropland will be taken out of production.”

A forest stewardship plan dated September 23, 2013 prepared by JPM Forestry Services, Inc., signed by John Markovich, Licensed Forester No. 153, was submitted with the application. A copy of a conservation (farm) plan for the subject property prepared by a Maryland Department of Agriculture planner and dated June 14, 2013 indicated a planned crop rotation of corn, soybeans, and small grains. A full 60-year title search was submitted which confirmed that the only current encumbrance on the property is the HARPP easement granted to the Planning Board.

10. **Referral Comments:**

- a. **Historic Preservation Section**—In an e-mail dated November 17, 2014, the Historic Preservation Section provided the following comments:

Due to its status as an easement property within HARPP, the proposed TCP2-034-13, Stephen Meinhardt, Woodland Conservation Bank #2, is subject to review by the Historic Preservation Section of The Maryland-National Capital Park and Planning Commission. The subject property is not located within a registered historic district, but the proposed area is adjacent to a county historic resource. The Catherine Gardiner House (Resource 87A-014) is located on an adjacent parcel to the east of the proposed project. Creation of the woodland conservation bank adjacent to the Catherine Gardiner House is consistent in the conservation and preservation of this historic resource.

Archeology

There are no known archeological sites located on the subject property, and this project will not impact any county historic sites, resources, or archeological resources.

- b. **Subdivision Review Section**—The Subdivision Review Section had no comments.
- c. **Community Planning Division**—The Community Planning Division, South Section, was conferred with and determined that the proposal was consistent with the 2013 Approved Subregion 6 Master Plan and Sectional Map Amendment, the 2012 Adopted and Approved Priority Preservation Area Functional Master Plan, and the Countywide Green Infrastructure Plan.
- d. **Department of Parks and Recreation (DPR)**—DPR had no comment on the proposed woodland conservation bank.

RECOMMENDED FINDINGS AND CONDITIONS

The Environmental Planning Section recommends approval of Type 2 Tree Conservation Plan TCP2-034-13, subject to the following findings and conditions:

FINDINGS

- 1. The application complies with the requirements of the 2010 Prince George's County Woodland and Wildlife Habitat Conservation Ordinance.
- 2. The application complies with the applicable requirements of the 2010 Environmental Technical Manual: Part A. Woodland and Wildlife Habitat Conservation Technical Manual; and Part B. Guidelines for the Preparation of a Natural Resources Inventory, subject to minor technical revisions to the plan.
- 3. The application complies with the applicable requirements of Subtitle 29, Division 9, Historic Agricultural Resource Preservation Program.
- 4. The application complies with the applicable language of a HARPP easement on the property, which was conveyed to the Planning Board on October 13, 2011 and recorded in the Prince George's County Land Records at Liber33048, Folio 560. Approval has been granted by the Prince George's County Soil Conservation Board of Supervisors for establishment of an off-site woodland conservation bank on condition that no cropland will be taken out of production. The current agricultural practice on the site is small crop rotation in addition to silviculture management of the woodlands under a forest stewardship plan prepared by a licensed forester.

CONDITION OF APPROVAL

- 1. Prior to signature approval of the Type 2 tree conservation plan (TCP2), the plan shall be revised as follows:
 - a. The site information table shall correctly state the gross tract area of the site.

- b. The adjacent historic site shall be labeled on the plan, and the extent of the environmental setting for the historic site shall be shown on the plan and graphically included in the legend.
- c. The TCP2 and the natural resources inventory numbers shall be added to the approval blocks in the correct format.
- d. Revised Notes 7 and 8 under “Standard Notes for an Off-site Woodland Conservation Bank” shall be added to the plan, and Note 8 shall be revised to include the approval date of the TCP2 and the Planning Board resolution number.
- e. The owner’s awareness certificate shall be signed.
- f. The revised plan shall be signed and dated by the qualified professional who prepared it.