



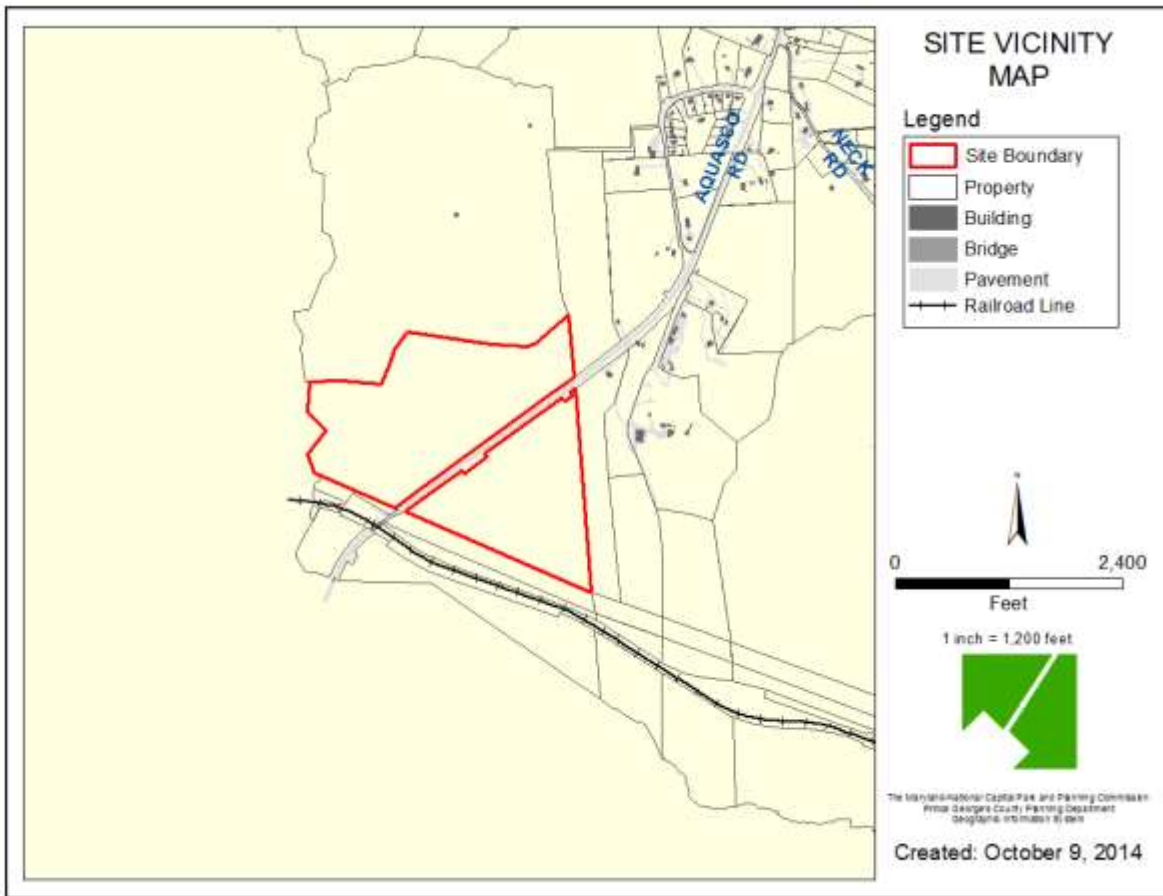
Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

Type 2 Tree Conservation Plan TCP2-035-01-01

Application	General Data	
Project Name: Dove's Perch Woodland Conservation Bank Location: The east and west sides of Aquasco Road (MD 381) approximately 0.2 miles north of the Charles County line. Applicant/Address: Arbutus LLC 1516 Circle Drive Annapolis, MD 21409	Planning Board Hearing Date:	10/23/14
	Staff Report Date:	10/15/14
	Planning Board Action Limit:	N/A
	Plan Acreage:	117.86
	Zone:	O-S
	Dwelling Units:	N/A
	Square Footage of Proposed Structure:	N/A
	Planning Area:	87B
	Council District:	09
	Municipality:	N/A
	200-Scale Base Map:	230SE14

Purpose of Application	Notice Dates	
Approval of a Type 2 Tree Conservation Plan (TCP2) for off-site Woodland Conservation Banking on a property subject to a Historic Agriculture Resource Preservation Program (HARPP) Easement.	Adjoining Property Owners: (CB-1-1998)	N/A
	Previous Parties of Record: (CB-13-1977)	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 Dove's Perch Woodland Conservation Bank
Type 2 Tree Conservation Plan, TCP2-035-01-01

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 Recommendations Section of this report.

EVALUATION CRITERIA

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 Environmental Technical Manual (2010), Part A. Woodland and Wildlife Habitat Conservation Technical Manual;
- 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" or "HARPP," prepared by the office of the General Counsel;
- e. Referral comments.

BACKGROUND

1. **Request:** The purpose of the subject application is to approve a specialized Type 2 tree conservation plan (TCP2) for establishing a woodland conservation bank on a property with an existing Historic Agricultural Resource Preservation Program Easement (HARPP) granted to the Prince George's County Planning Board.

The existing site is a 117.86-acre site located in the O-S Zone consisting of two undeveloped residential lots. Perpetual protection of 83.94 acres of existing and regenerated woodlands on the site is proposed to be used as off-site woodland conservation credits for the benefit of development sites in Prince George's County.

2. **Location:** The subject site is located on the east and west sides of Aquasco Road (MD 381) approximately 0.2 miles north of the Charles County line.

3. **Site Description:** The subject property is a 117.86 acre property in the O-S Zone which contains streams, wetlands, 100-year floodplains, areas of severe slopes, and areas of steep slopes with highly erodible soils. The property is for the most part wooded except for open water areas and small clearings. The site was logged under a Forest Stewardship Plan approved as a Type II Tree Conservation Plan (TCP2-035-01) in 2001.

The soils series found to occur on this property according to the Web Soil Survey include Beltsville, Croom, Grosstown, Marr-Dodon, Potobac-Issue, and Westphalia and Dodon. Some of these soils have limitations with respect to impeded drainage, seasonally high water tables, and erodibility on steep slopes. 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, but the site includes potential Forest Interior Dwelling Species (FIDS) habitat. Aquasco Road is classified as a collector, and is a designated historic road that passes through this property. Aquasco Road is a “spine” of the Star-Spangled Banner National Historic Trail and Scenic Byway. The property is located in the Swanson Creek watershed of the Patuxent River basin, within the designated Patuxent Rural Legacy Area, and the Priority Preservation Area. According to the 2005 *Approved Countywide Green Infrastructure Plan*, almost the entire site is included in Regulated Areas and Evaluation Areas, with the remainder 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 *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 Consolidated Railroad Line leading to the Chalk Point Power Station and a major Potomac Electric Power Company (PEPCO) transmission line. To the west of the property is Swanson Creek. To the north of the property is an off-site woodland conservation bank consisting of 174 acres of existing woodland in perpetual protection. To the east of the site on the north side of Aquasco Road is an undeveloped parcel subject to agricultural assessment, which is mostly wooded. On the south side of Aquasco Road, to the east is a single-family detached residence set within working agricultural lands which is also subject to agricultural assessment.

5. **Previous Approvals:** A Forest Stewardship Plan (TCP2-035-01) was approved by the Environmental Planning Section for the subject property on February 22, 2001 for forest harvesting.

The Environmental Planning Section previously reviewed the subject property as Pre-preliminary Plan P-02021; Preliminary Plan of Subdivision 4-04082 and TCPI-040-04, which was withdrawn; and Preliminary Plan 4-04195 and TCPI-040-04, which were withdrawn.

A Natural Resources Inventory (NRI-145-05) for the site was approved on January 5, 2006; Preliminary Plan 4-05141 and TCPI-040-04 were approved by the Planning Board on May 18, 2006 subject to conditions of approval contained in PGCPB Resolution No. 06-118 for the subdivision of 118.30 acres in the O-S Zone into twenty single-family residential lots. The subdivision was subsequently platted as Record Plat PM 240-40 through 47 recorded among the Land Records of Prince George’s County on November 6, 2007.

A Vacation Petition V-13002 was filed for the property on May 9, 2014, to vacate Lots 1 through 20 and the right-of-way dedicated for Dove’s Perch Way. The vacation of the subdivision was

necessary to facilitate the purchase of a historic agricultural resource preservation program easement (HARPP) for the permanent protection of the property. A minor final plat was processed to incorporate the vacated area in accordance with Section 24-112(c) of the Subdivision Regulations, leaving two new lots, Lots 21 and 22, which retain one development right for each lot.

A HARPP Easement on the property was conveyed to the Planning Board on December 12, 2013, and recorded in the Prince George's County land records at L.35549 F. 322

COMPLIANCE WITH EVALUATION CRITERIA

6. **Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO):** The property is subject to the requirements of the Woodland and Wildlife Habitat Conservation Ordinance (WCO) because it is larger than 40,000 square feet and contains more than 10,000 square feet of woodland, and because it has a previously approved tree conservation plan (TCP2-035-01) for forest harvesting.

On November 21, 1989, the Prince George's County Council enacted the Prince George's County Woodland Conservation and Tree Preservation Ordinance (WCO). On April 30, 1991, the State Forest Conservation Act (FCA) was signed into law, creating statewide requirements for the conservation of woodlands for public and private development on sites larger than 40,000 square feet based on development intensity. The current version of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) is located in Subtitle 25, Division 2 of the County Code.

The woodland conservation requirements for a developing property can be met in a variety of ways: on-site, off-site, or by payment of a fee-in-lieu. If a developing property is unable to satisfy its requirements on-site, which is the preferred method, the requirement can be satisfied by the transfer of woodland conservation credits from an off-site location which has been placed in long-term protection. The off-site location is referred to as a "bank."

The approval of a TCP2 is a pre-requisite for banking under Section 25-122(e)(2) of the WCO which states that woodland conservation banks shall:

"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."

A Type 2 tree conservation plan for woodland conservation banking, TCP2-035-01-01, has been reviewed for this site. The gross tract area of the site is 117.86 acres with 30.07 acres in 100-year floodplain, resulting in a net lot area of 87.79. There are a total of 104.70 acres of existing on-site woodlands: 85.46 acres of upland woodlands on the net tract and 19.24 acres of floodplain woodlands which is categorized in three stands. Stand A consisting of 54.66 acres of woodlands is immature mixed hardwoods. Stand B consisting of 14.56 acres is mixed bottomland hardwood. Stand C is 13.16 acres of mixed immature upland woodlands. No development activity is proposed on the subject property, so there are no on-site requirements, and any woodland conservation credits can be transferred to development projects with unmet woodland conservation requirements. The TCP2 proposes to provide 83.52 acres of off-site woodland conservation in preservation and 0.42 acres of off-site woodland conservation in afforestation for a total of 83.94 acres.

Approval of Type 2 tree conservation plans for this purpose is generally handled at a staff level by the Environmental Planning Section as designee of the Planning Director. Recordation of a Declaration of Covenants for an Off-site Woodland Conservation Bank on the property, reviewed by the County Office of Law, must occur before off-site woodland conservation credits can be transferred to a developing property. Off-site woodland conservation easements are conveyed to the County for implementation and enforcement.

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

- (a)(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.**

Comment: The above section of the WCO indicates that the 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, and further states that property subject to an agricultural preservation easement, shall not be precluded from having a woodland conservation easement.

The agricultural practice of silviculture (the science and practice of caring for forests while maintaining human objectives in mind, source: U.S. Forest Service) on the subject property was approved with the conveyance of the HARPP easement over the entire site, and does not disqualify the placement of a woodland conservation easement on the subject property for the purposes of off-site banking because the easement was not placed specifically to protect the woodlands, but only reduced development rights on the property.

7. **Part A. Woodland and Wildlife Habitat Conservation Technical Manual; Environmental Technical Manual (2010):** Type 2 Tree Conservation Plan TCP2-035-01-01, has been reviewed for compliance with the requirements of the Environmental Technical Manual (ETM) (2010), Woodland and Wildlife Habitat Conservation (WCO) Technical Manual; found in 7.3.1 Woodland Conservation Banks.

Comment: A Natural Resource Inventory NRI-145-01-01, has been submitted and approved by staff as designee of the Planning Director for the subject property which meets the requirements of ETM Part B. "Guidelines for the Preparation of Natural Resources Inventories" including the submittal of an Intermediate NRI.

The TCP2 has been reviewed and found to be complete except for minor technical revisions. The TCP2 is being prepared under the WCO, so the term "TCP2" shall be used consistently on the plan. The owner's awareness block shall be signed by the owner or owner's representative prior to signature approval of the TCP2 plan. Note 8 under "Standard Notes for an Off-site Woodland Conservation Bank" shall also be revised to include the date and PGCPB Resolution number of approval prior to signature approval.

Recommended Condition: Prior to signature approval of the TCP2 plan, the following shall be addressed:

- a. The term “TCP2” will be used consistently on the plan approval block and notes.
- b. Note 8 shall be revised to include the approval date of the TCP2 and the Planning Board resolution number.
- c. The owner’s awareness certificate shall be signed.

8. **Subtitle 29. Division 9. Historic Agricultural Resource Preservation Program (CB-24-2007):**

In 2007, the County Council initiated a series of legislative initiatives designed to protect the Rural Tier identified in the 2002 *Prince George’s County Approved General Plan*, including the enactment of County Council Bill CB-24-2007 (Exhibit “A”) for the purpose of establishing the Prince George’s County Historic Agricultural Resources Preservation Program (HARPP), initiative administered by the Prince George’s County Department of Parks and Recreation, and designed to preserve agricultural areas and activities. A historic agricultural resource preservation easement is placed on the property, and conveyed to the Prince George’s County Planning Board. In exchange, the landowner receives a grant from the county in compensation for limiting future development uses of the property to agricultural and commercial uses related to agriculture.

In Section 29-127(b), the purposes of the program are listed 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.**

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” or “HARPP,” adopted by the Prince George’s County Planning Board on January 10, 2008:** On January 10, 2008, the Planning Board adopted regulations for the implementation of the HARPP program prepared by the Office of the General Counsel along with HARPP Easement in a form approved by the Prince George’s General Council.

The standard language of a Historic Agricultural Resource Preservation Program 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 December 12, 2013, and recorded in the Prince George’s County land records at L.35549 F. 322, for the purpose of extinguishing 18 development rights. One development right was retained on each of the two lots which comprise the current site.

The HARPP easement language prepared by the Office of the General Counsel also includes the following language which provides guidance on an approval process for TCP2 on a property 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 submittal requirements:

- a. A simplified NRI for the banking site;
- b. A specialized TCP2 for woodland conservation banking;
- c. A Forest Stewardship Plan for the long-term management of the resource as perpetual woodland; and

- d. Applications and Statements of Justification for any Subtitle 25. Variances that might be applicable and required for the site, if applicable.

The following additional materials must be submitted to evaluate the proposal to place an additional encumbrance over the existing HARPP easement:

- a. A Letter from Prince George's County Soil Conservation District stating they are in agreement with the proposal to establish an off-site woodland conservation bank.
- b. A copy of the approved Farm Plan, if indicated, which indicates the portions of the site which are designated for retained woodlands, and where active agriculture will occur.
- c. A full 60-year title search of the property, including the HARPP easement, showing any prior encumbrances on the property which would make the property unsuitable as a woodland conservation bank.

Comment: A letter dated April 23, 2014 from Steven E. Darcey, District Manager of the Prince George's Soils Conservation District which reads in part as follows:

"I am writing to inform you that your request of March 7, 2014 to establish a Woodland Conservation Bank on the forested portion of . . . property located at 23617 Aquasco Road, Aquasco, Maryland 20608, shown on Tax Map 182 Grid C4, with a tax account number of 08-55444647 and 08-5544658, now being called Lots 21 and 22, has been approved.

"The Prince George's Soil Conservation Board of Supervisors met on April 7, 2014 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 May 14, 2014 prepared by JPM Forestry Services, Inc. signed by John Markovich, Licensed Forester No. 153 was submitted with the application in lieu of a farm plan, because the proposed agricultural activity is silviculture.

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 Prince George's County Planning Board.

10. **Referral Comments**

- a. **Historic Preservation Section**—In an e-mail dated September 4, 2014, the Historic Preservation Section provided the following comments:

The subject property is not located within a Registered Historic District and there are no Prince George's County Historic Sites, Historic Resources or documented properties in the vicinity of the proposed woodland conservation bank. This project will not impact any Prince George's County Historic Sites, Historic Resources, or Archeological resources.

- b. **Subdivision Review Section**—In an e-mail dated September 2, 2014, the Subdivision Review Section Supervisor confirmed the subdivision and vacation history for the subject property, and indicated they had no further comments.
- c. **Community Planning Division**—Community Planning Division staff was consulted, and determined that the proposal was consistent with the Subregion 5 Master Plan (2013); the Priority Preservation Area Functional Master Plan; the purposes of the designated Lower Patuxent Rural Legacy Area; and the Lower Patuxent Scenic Byway Corridor Management Plan (CMP).
- 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 TCP2-035-01-01, Doves Perch Woodland Conservation Bank subject to the following findings and conditions:

FINDINGS

- 1. The application complies with the requirements of the current 2010 Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance (WCO).
- 2. The application complies with the applicable requirements of the Woodland and Wildlife Habitat Conservation Technical Manual; Environmental Technical Manual (2010), 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 (CB-24-2007).
- 4. The application complies with the applicable language of a HARPP Easement on the property which was conveyed to the Planning Board on December 12, 2013, and recorded in the Prince George’s County land records at L.35549 F. 322. 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 silviculture and will remain so.

CONDITION OF APPROVAL

- 1. Prior to signature approval of the TCP2 plan, the following shall be addressed:
 - a. The term “TCP2” will be used consistently on the plan approval block and notes.
 - b. Note 8 shall be revised to include the approval date of the TCP2 and the Planning Board resolution number.
 - c. The owner’s awareness certificate shall be signed.