



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Brian Shepter, Acting Director

FAX 410-313-3467

April 24, 2023

Mr. Brian Cleary

Howard County Department of Public Works

Storm Water Management Division

9801 Broken Land Parkway

Columbia, MD 21046

**RE: WP-23-070 South Meadow Pond Retrofit & Stream
Restoration, Capital Project D-1159**

Dear Mr. Cleary:

This letter is to inform you that your request for alternative compliance to the Howard County Subdivision and Land Development Regulations for the subject project was reviewed.

The Division of Land Development recommends **NO ACTION** for alternative compliance of **Section 16.115(c)(2)** of the Subdivision and Land Development Regulations. The Regulations allow DPZ, upon the advice of the Department of Inspections, Licenses and Permits, the Department of Public Works, the Department of Recreation and Parks, the Soil Conservation District, or the Maryland Department of the Environment, to permit clearing, excavating, filling, altering drainage, or impervious paving to occur on land located in a floodplain. Any proposed construction of a structure located within a floodplain shall be subject to the requirements of the Howard County Building Code. This request is being sought by the Department of Public Works and DPZ has received advice from the Department of Recreation and Parks and Soil Conservation District, as well as OCS, MDOT, and OOT in support of the request. A separate approval through the alternative compliance process is not necessary.

On April 20, 2023 and pursuant to Section 16.116(d), the Director of the Department of Planning and Zoning and Administrator of the Office of Community Sustainability (the Director of the Department of Public Works recused) considered and **approved** your request for alternative compliance with respect to **Sections 16.116(a)(1) and 16.116(a)(2)** of the Subdivision and Land Development Regulations to decommission the existing failed SWM pond, retrofit existing sediment basin to provide water quality treatment for TMDL credit, restore inflow streams to prevent erosion, decommission non-compliant embankment and install low hazard embankment, and provide maintenance access for park personnel that minimizes impacts to park visitors for maintenance activities. As part of the project, 700 linear feet of stream through the decommissioned SWM pond and an additional 200 linear feet of a tributary will be restored and stabilized. An existing sediment basin between the SWM pond and Centennial Lake will be retrofitted to provide qualitative and quantitative treatment and promote stable outfall conditions between the proposed retrofit and Centennial Lake. Please see the attached Final Decision Action Report for more information.

On April 20, 2023 and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Recreation and Parks and Administrator of the Office of Community Sustainability considered and **approved** your request for a variance with respect to **Sections 16.1201(v) and 16.1205(a)(3)** of the Subdivision and Land Development Regulations to remove 19 living and 2 dead of the 34 specimen trees and mitigate at 2:1 with planting of 38 native trees with a DBH of 3" in addition to the plantings associated with stabilizing and restoring the disturbed areas. Please see the attached Final Decision Action Report for more information.

On April 17, 2023, and pursuant to Section 16.104, the Director of the Department of Planning and Zoning, considered and **approved** your request for alternative compliance with respect to **Section 16.155(a)(1)(ii)** of the Subdivision and Land Development Regulations to permit the alternative compliance plan exhibit to serve as a substitute site development plan.

The Department of Planning and Zoning hereby determines that you have demonstrated to its satisfaction that strict enforcement of **Section 16.155(a)(1)(ii)** would result in an unreasonable hardship or practical difficulty. This determination is made with consideration of your alternative compliance application and the (1) you were required to address, pursuant to Section 16.104(a)(1):

1. Unreasonable hardship or practical difficulties may result from strict compliance with the regulations.

The proposed project is primarily a maintenance project to decommission an existing SWM pond that is not up to code, repair the stream channels to prevent further erosion, and install a low hazard embankment on the existing sediment basin. Due to the severity of the erosion, the project needs to be completed expeditiously. The project is also subject to review by federal, state and local agencies to ensure all applicable regulations are met and that the project complies with the County's design manual. Strict compliance with the regulations would require the applicant to submit a formal Site Development Plan for the proposed project. This would result in an unreasonable hardship since the alternative compliance plan exhibit contains all necessary information for permitting and construction. Approval of the alternative compliance promotes efficiency of the plan review process as the alternative compliance drawings include all relevant information needed for this project's goals to decommission a non-complying SWM pond.


Approval of Alternative Compliance to Section 16.155(a)(1)(ii) is subject to the following conditions:

1. The alternative compliance plan exhibit shall serve as the substitute for a site development plan for development. No disturbance is permitted beyond the 4.0 acre limit of disturbance as shown on the signed alternative compliance exhibit titled Forest Conservation Plan and Alternative Compliance WP-23-070 Plan Exhibit unless it can be sufficiently demonstrated by the applicant to be justified.
2. The applicant shall comply with all grading permit requirements from the Department of Inspections, Licenses & Permits and Howard Soil Conservation District.

Indicate this alternative compliance petition file number, request, section of the regulations, action, conditions of approval, and date on all related plats, and site development plans, and building permits. This alternative compliance approval will remain valid for one year from the date of this letter or as long as a subdivision or site development plan is being actively processed in accordance with the processing provisions of the Regulations.

If you have any questions, please contact Donna Despres at (410) 313-3429 or email at ddepres@howardcountymd.gov.

Sincerely,

DocuSigned by:


Anthony Cataldo, AICP, Chief
Division of Land Development

AC/DD

cc: Research / DLD - Julia Sauer / Real Estate Services
Anne Gilbert- DNR anne.gilbert@maryland.gov
Staughanenvironmental.com (Lauren Wirth, LWirth@staughanenvironmental.com)



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Brian Shepter, Acting Director

FAX 410-313-3467

ALTERNATIVE COMPLIANCE FINAL DECISION ACTION REPORT

DEPARTMENT OF PLANNING AND ZONING
DEPARTMENT OF PUBLIC WORKS
DEPARTMENT OF RECREATION AND PARKS
OFFICE OF COMMUNITY SUSTAINABILITY

RE: **WP-23-070, South Meadow Court Pond Retrofit & Stream Restoration Project, Capital Project D-1159**
Request for an alternative compliance to Sections 16.116(a)(1) and 16.116(a)(2), 16.1201(v) and 16.1205(a)(3) of the Subdivision and Land Development Regulations.

Applicant: **Mr. Brian Cleary**
Howard County Department of Public Works
Storm Water Management Division
9801 Broken Land Parkway
Columbia, MD 21046

Pursuant to Section 16.116(d), the Director of the Department of Planning Zoning and the Administrator of the Office of Community Sustainability considered and **approved** the applicants request for an alternative compliance with respect to **Sections 16.116(a)(1) and 16.116(a)(2)** of the Subdivision and Land Development Regulations. The purpose is to decommission the existing failed SWM pond, retrofit existing sediment basin to provide water quality treatment for TMDL credit, restore inflow streams to prevent erosion, decommission non-compliant embankment and install low hazard embankment, and provide maintenance access for park personnel that minimizes impacts to park visitors for maintenance activities. As part of the project, 700 linear feet of stream through the decommissioned SWM pond and an additional 200 linear feet of a tributary will be restored and stabilized. An existing sediment basin between the SWM pond and Centennial Lake will be retrofitted to provide qualitative and quantitative treatment and promote stable outfall conditions between the proposed retrofit and Centennial Lake. The Directors deliberated the application in a meeting on April 20, 2023.

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in unreasonable hardship or practical difficulty. This determination is made with consideration of the alternative compliance application and the seven (7) items the applicant was required to address, pursuant to Section 16.104(a)(1) and Section 16.116(d):

1. Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas;

Strict conformance would result in further erosion and the existing pond does not meet current codes. The existing sediment basin would continue to have long-term safety concerns if the existing embankment is not replaced to prevent overtopping. Additionally, strict conformance would impede HCDPW's ability to decrease sediment and nutrient loading downstream. The County typically allows disturbance in wetland, streams and their buffers for maintenance and restoration projects that improve the conditions on-site and downstream.

2. Uniqueness of the property or topographical conditions would result in practical difficulty; other than economic, or unreasonable hardship from strict adherence to the regulations;

The proposed work is within the wetlands, stream basin, and associated buffers. The stream is also located within a forested and confined stream valley. The very nature of the work creates impacts in the protected environmental features. Decommissioning the existing pond, stabilizing the streams, and replacing the embankment on the sediment basin will improve safety and reduce sedimentation. Denial of the alternative compliance application would be an unreasonable hardship as the safety project cannot be completed without the impacts.

3. The Variance will not confer to the applicant a special privilege that would be denied to other applicants and;

Approval of the request will provide stable stream banks, decommission an existing SWM pond that does not meet current code, and eliminate safety concerns associated with the existing basin. Providing these public safety improvements and benefits would not be considered a special privilege.

4. The modification is not detrimental to the public health; safety or welfare, or injurious to other properties.

The modification is not detrimental to the public health, safety or welfare. Approval of the request will improve public safety by providing stable stream banks, decommission an existing SWM pond that does not meet current code, and eliminate safety concerns associated with the existing basin.

5. Disturbance is returned to its natural condition to the greatest extent possible:

Impacts to approximately 250 linear feet of perennial stream and 400 linear feet of an ephemeral channel associated with stream restoration are anticipated. Anticipated impacts to wetlands and wetland buffers are 0.06 acres and 0.28 acres respectively. Forest impacts associated with the project are 3.57 acres (2.34 acres within the net tract area). The site will be seeded with native seed mixes and planted with a variety of native trees and shrubs as shown on the plan exhibits. The native seed, trees, and shrubs proposed will help return the area to a natural condition, and improve the ecological quality of the area compared to the current conditions.

6. Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat;

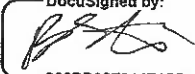
In addition to the site restoration described in item 5, 38 native trees with a DBH of 3" were proposed to provide mitigation for the removal of 19 living specimen trees. The regulations require each native tree to be removed be mitigated at a rate of 2:1, therefore 42 trees will be required. These trees will provide stable habitat for wildlife and enhance the restoration plantings.

7. Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements. In these cases, the least damaging designs shall be required, such as bridges, bottomless culverts or retaining walls, as well as environmental remediation, including the planting of the areas where grading or removal of vegetative cover or trees has taken place, utilizing best practices for ecological restoration and water quality enhancement projects.

A joint permit application has been submitted to MDE for review and approval for impacts to the jurisdictional resources and a WQC application is in process and will be submitted to MDE. The limit of disturbance has been minimized to the fullest extent possible, while still allowing for the necessary stream and SWM pond rehabilitation work. All disturbed areas will be restored with native seed mixes, trees, and shrubs.

Directors Action: Approval of alternative compliance of Section 16.116(a)(1) and (a)(2) is subject to the following conditions:

1. All disturbed areas within the stream, stream buffer and 100-year floodplain shall be stabilized and seeded or planted with native vegetation after construction is complete, in accordance with the alternative compliance plan exhibit.
2. The applicant shall obtain all required authorizations and permits from the Maryland Department of the Environment and the U.S. Army Corps of Engineers for disturbances within the stream and floodplain. Provide approval letters from MDE and/or USACE with the grading permit application.

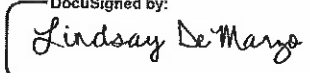
DocuSigned by:


889DB02F944F4CD...

Brian Shepter, Acting Director
Department of Planning and Zoning

(Recused)

Yosef Kebede, Director
Department of Public Works

DocuSigned by:


954C4963F005481...

Lindsay DeMarzo, Acting Administrator
Office of Community Sustainability

Pursuant to Section 16.1216, the Director of the Department of Planning Zoning, Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability considered and **approved** the applicants request for a variance with respect to **Sections 16.1201(v) and 16.1205(a)(3)** of the Forest Conservation Regulations. The purpose is to remove 19 living and 2 dead of the 34 specimen trees and mitigate at 2:1 native trees with a DBH of 3" in addition to the plantings associated with stabilizing and restoring the disturbed areas. The Directors deliberated the application in a meeting on April 20, 2023.

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in an unwarranted hardship. This determination is made with consideration of the alternative compliance application and the six (6) items the applicant was required to address, pursuant to Section 16.1216:

1. **Describe the special conditions peculiar to the property which would cause the unwarranted hardship;**
The total acreage of the impacted parcel is 105.76 acres. The proposed limit of disturbance is 4 acres. The remaining area after netting out the floodplain is 2.9 acres. Including the entire parcel within the Net Tract Area calculation when only a small portion of the overall site is impacted by work creates an unwarranted hardship in additional survey, drafting and review work to include portions outside the project scope. The applicant proposes to pay a fee-in-lieu to satisfy the forest conservation obligation.

35 specimen trees were identified in the study area (the LOD and 100' outside the LOD). Stabilization of the streams, decommissioning the pond, and modifying the embankment of the sediment pond necessitates the removal of 19 living specimen trees and 2 dead specimen trees. Tree protection measure, such as reducing the LOD, root protection matting, and tree protection fencing have been utilized to reduce impacts to all trees. The nature of the work modifies the grade within the CRZ of each of these trees making the project infeasible should the trees remain. The plan proposes 38 native trees with 3" DBH to be planted to mitigate removal of 19 living specimen trees. The regulations require mitigation of 2:1 for all native trees to be removed, therefore the project will be required to plant 42 native trees with 3" DBH.

2. Describe how enforcement of the regulations would deprive the landowner of rights commonly enjoyed by others in similar areas;

Permitting the LOD to be used as the Net Track Area allows the forest conservation regulations to be applied to the portions of property that are physically impacted by this work. Similar projects to repair existing conditions have used the LOD as the net tract area when impacts are temporary, necessary and the work returns the project area to an improved natural condition. Using the net tract area as the limit of disturbance is commonly afforded to property owners that propose disturbance that is minimal within the context of the overall site acreage.

The proposed improvements will have significant impacts to the CRZ of the impacted specimen trees and the project goals cannot be attained without their removal.

3. Verify that the granting of a variance will not adversely affect water quality;

There is no evidence that the granting of a variance will adversely affect water quality. The development is subject to the current Environmental Site Design criteria, which include small filtering processes to address water quality. Stormwater management and soil erosion and sediment control measures will be implemented under the grading permit.

4. Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants;

HCDPW has an obligation to maintain County infrastructure and performance of this function is not considered a special privilege. Approval of the request will not grant the applicant a special privilege since the capital project is designed to decommission an existing SWM pond that is not up to code, repair the stream channels to prevent further erosion, and install a low hazard embankment on the existing sediment basin in order to further protect the overall health, safety and welfare of the public. The variance request is not from the forest Conservation requirements in whole, only to the basis of calculating the required conservation to the area of disturbance where the work is being performed. Therefore, no special privileges will be conferred, as the proposed plan will meet all county regulations.

5. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;

The variance request is related to a SWM pond that does not meet current code. The upstream pond was not a Capital Project and was built as part of the Willows development. The construction plans have as-built certifications from 1989. It was designed as an infiltration pond and certified as meeting technical requirements by HCSCD at the time of construction. The State changed the pond code in 2000. The non-compliance for MD 378 is also due to maintenance issues within the pond and its location makes it difficult to maintain the previously constructed facility type. The request is not based on conditions or circumstances which are the

result of actions by the applicant, rather a change in the pond code necessitates an upgrade to current standards.

- 6. **Verify that the condition did not arise from a condition relating to land or building use, either permitted or nonconforming on a neighboring property; and**

There is no evidence that the conditions arose from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

Directors Action: Approval of alternative compliance of Sections 16.1201(v) and 16.1205(a)(3) is subject to the following conditions:

1. Once the proposed project is complete, the Limit of Disturbance shall be stabilized, seeded and planted in accordance with the alternative compliance plan exhibit.
2. Nineteen living and 2 dead Specimen Trees, (SP-5 thru 9, SP-11 thru 14, SP-17, SP-20 thru 25, SP-27, SP-31 thru 34) are to be removed and shall be mitigated with the plating of 41 native trees with a DBH of 3" to be shown on the plan exhibit.
3. A fee-in-lieu payment of \$196,020.00 shall be paid to satisfy the 3.6 AC afforestation obligation. The payment shall be made through the transfer of funds to SAP Account 2060000000-3000-3000000000-PWPZ000000000000-432521. A copy of the transfer receipt shall be submitted to DPZ- Division of Land Development once completed. Please note, the applicant shall be responsible for any modifications to the FIL rate should it increase at the time of payment.
4. The applicant shall obtain all required authorizations and permits from the Department of Inspections, Licenses and Permits, Maryland Department of the Environment and U.S. Army Corps of Engineers for disturbances within the floodplain, wetlands, streams and their buffers. Reference the applicable MDE or USACOE permits or tracking numbers on the alternative compliance plan exhibit and any County permits.

DocuSigned by:



989DB92F64AF4CD

Brian Shepter, Acting Director
Department of Planning and Zoning

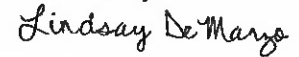
DocuSigned by:



4A49AA764DE8400...

Nicola Morgal, Acting Director
Department of Recreation and Parks

DocuSigned by:



954C4983F005281...

Lindsay DeMarzo, Acting Administrator
Office of Community Sustainability

cc: Research
OCS,
DRP,
DPW,



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

February 13, 2023

Mr. Avinash Dewani
Howard County Department of Public Works
Stormwater Management Division
9801 Broken Land Parkway
Columbia, 21046

RE: WP-23-070 South Meadow Pond Retrofit
Capital Project D-1159
Deferred for Revised Plan Exhibit and Justification

Dear Mr. Dewani:

This letter is to inform you that your request for alternative compliance to the Howard County Subdivision and Land Development Regulations for the subject property was reviewed and no action can be taken until the enclosed comments have been addressed, and the following additional information is provided.

Copies of the exhibit/plan and the supplemental information and a response letter to the comments for each agency should be submitted to this Division for distribution in the following manner:

Agency: DLD	#Copies: 1
-------------	------------

The requested information and revised plans must be submitted within **45 days** of the date of this letter (**on or before March 30, 2023***), or this Division will recommend that the Planning Director or Director Committee deny this alternative compliance petition.

Once the requested information has been received and reviewed, this office will coordinate agency comments and will prepare a recommendation for the Planning Director's action. If you have any questions regarding a specific comment, please contact the review agency prior to preparing the revised plans and information. Compliance with all items indicated above is required before the revised plans and information will be accepted.

In accordance with adopted Council Bill 51-2016, effective 10/05/16, if the deadline date is a Saturday, Sunday or holiday or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.

Please refer to the Department of Planning and Zoning website for current business processes during this time.

Submissions can be mailed to Howard County Planning and Zoning, 3430 Court House Drive, Ellicott City, MD 21043 or dropped in the bin labeled 'DLD' at the Department of Planning and Zoning Public Service Counter located on the first floor of the George Howard Building. Submission materials can also be emailed to planning@howardcountymd.gov for processing.

Please bring include this letter with you as it will serve as the checklist for the submission.

If you have any questions, please contact Donna Despres at (410) 313-3429 or email at ddepres@howardcountymd.gov.

Sincerely,

DocuSigned by:


Anthony Cataldo, AICP, Chief
Division of Land Development

AC/DD

Attachments (2): DLD Comments, HCSCD comments

cc: Research
DLD - Julia Sauer
Real Estate Services
Straughan Environmental



Howard County Maryland
Department of Planning and Zoning
 3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:

File No.

Date Filed

ALTERNATIVE COMPLIANCE APPLICATION

Site Description:

Subdivision Name/Property Identification:

Location of property:

Existing Use:

Proposed Use:

Tax Map:

Grid:

Parcel No:

Election District:

Zoning District:

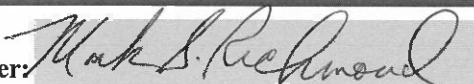
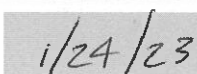
Total site area:

Please list all previously submitted or currently active plans on file with the County (subdivision plans, Board of Appeals petitions, alternative compliance petitions, etc.). If no previous plans have been submitted, please provide a brief history of the site and related information to the request:



In the area below, the petitioner shall enumerate the specific numerical section(s) from the Subdivision and Land Development Regulations for which an alternative compliance is being requested and provide a brief summary of the request. Please use the additional page if needed.

Section Reference No.	Brief Summary of Request

Section Reference No.	Brief Summary of Request
<p>Sec. 16.155(a)(1)(ii) Waiver of site development plan</p>	<p>The proposed project is primarily a maintenance project to decommission an existing SWM pond that is not up to code, repair the stream channels to prevent further erosion, and install a low hazard embankment on the existing sediment basin. Due to the safety concerns, the noncompliant SWM pond, and the potential for property severity of the erosion, the project needs to be completed expeditiously. Without the waiver of the site development plan requirement, the timeline for completion of the project would be significantly delayed. Additionally, this project will be subject to a thorough review by federal, state, and local agencies to ensure all applicable regulations are met and that the project complies with the County's design manual.</p>
<p>Sec. 16.1201(v) Definition of net tract area for computations and reforestation requirements</p>	<p>Per the Forest Conservation regulations (Subtitle 12), the entirety of all parcels impacted by the proposed work are to be used to define the Net Tract Area (NTA) for forest conservation computations. We request that the Limits of Disturbance (LOD) be used as the NTA instead of the full parcel boundaries for calculation of the forest conservation requirements.</p> <p>The full acreage of the impacted parcels is 105.76 acres; however, the County will not have permission to use entirety of the properties outside of the project boundary. The proposed Limits of Disturbance on those parcels is 4.0 acres. The purpose of the Alternative Compliance Request is that the LOD of 4.0 acres be allowed as the initial project total tract area.</p>
<p>Sec. 16.1205(a)(3) Removal of specimen trees</p>	<p>35 specimen trees were identified within the study area. Stabilization of the streams, decommissioning the pond, and modifying the embankment of the sediment pond necessitates the removal of 19 specimen trees (see attached photographs). Tree save and protection measures, such as reduction in the Limits of Disturbance, root protection matting, and tree protection fencing have been utilized to reduce impacts to trees. Two 3" caliper trees will be planted to mitigate the removal of each specimen tree.</p>

Signature of Property Owner:  Date: 

Signature of Petitioner Preparer:  Date: 

Name of Property Owner:  Name of Petition Preparer: 

Address:  Address: 

City, State, Zip:  City, State, Zip: 

E-Mail:  E-Mail: 

Phone No.:  Phone No.: 

Contact Person:  Contact Person: 

Owner's Authorization Attached

Section Reference No.	Brief Summary of Request