May 31, 2024

Mr. Avinash
Howard County Department of Public Works
Storm Water Management Division
9801 Broken Land Parkway
Columbia, MD 21046

RE: WP-24-081, South Meadow Court Pond Retrofit Capital Project D-1159

Dear Mr. Avinash:

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 May 30, 2024 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 complete a pond retrofit and stream restoration project (Capital Project No. D-1159) to decommission the existing failed SWM pond, retrofit existing sediment basin to provide water quality treatment for TMDL credit, retore 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 400 linear feet of ephemeral tributary will be rehabilitated 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 May 30, 2024 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 3 specimen trees and mitigating the removal of 3 specimen trees 2:1 with planting

6 native shade trees with a DBH of 3", and to use the LOD as the net tract area to calculate the forest conservation obligation. Please see the attached Final Decision Action Report for more information.

On May 24, 2024 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, safety concerns and potential for property loss due to erosion, the project needs to be completed expeditiously. The project is also subject to review by federal, state, and local agencies to ensue 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

Approval of this 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 3.2-acre limit of disturbance as shown on the signed alternative compliance exhibit titled Forest Conservation Plan and Alternative Compliance WP-24-081 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.
- 3. Prior to submitting mylars of the plan exhibit for signature approval, the plans will be updated to complete place holder notes. See GN 9 mark up in review comments folder.

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 ddespres@howardcountymd.gov.

pond.

Sincerely,

1EB75478A22B49A...

DocuSigned by:

Anthony Cataldo, AICP, Chief Division of Land Development

AC/DD

cc: Research

DLD - Julia Sauer Real Estate Services

DNR – <u>fca.dnr@maryland.gov</u> (if waiver to forest conservation sections)

Lauren Wirth, LWirth@straughanenvironmental.com

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-24-081, South Meadow Court Pond Retrofit, 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. Avinash

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 complete a pond retrofit and stream restoration project (Capital Project No. D-1159) to decommission the existing failed SWM pond, retrofit existing sediment basin to provide water quality treatment for TMDL credit, retore 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 400 linear feet of ephemeral tributary will be rehabilitated 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 May 30, 2024.

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, decommissioning an existing SWM pond that does not meet current code, and eliminating safety concerns associated with the existing basin.
- 5. Disturbance is returned to its natural condition to the greatest extent possible:

 Impacts to approximately 400 linear feet of an ephemeral channel associated with stream restoration are anticipated. Anticipated impacts to wetlands and wetland buffers are 0.04 acres and 0.1 acres respectively. Forest impacts associated with the project are 2.2 acres (2.1 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 pan 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, 6 native trees with a DBH of 3" will be provided as mitigation for the removal of 3 specimen trees and impacts greater than 30% for 6 specimen trees. 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.

<u>Directors Action:</u> Approval of alternative compliance of **Sections 16.116(a)(1) and 16.116(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.

Lynda Eisenberg, AICP, Director Department of Planning and Zoning

(Recused)

Yosef Kebede, Director Department of Public Works

Docusigned by:
Timothy Lattimer

Timothy Lattimer, 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 3 specimen trees and mitigating the removal of 3 specimen trees 2:1 with planting 6 native shade trees with a DBH of 3", and to use the LOD as the net tract area to calculate the forest conservation obligation.

The Directors deliberated the application in a meeting on May 30, 2024.

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 3.2 acres. The remaining area after netting out the floodplain is 2.4 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.

25 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 3 specimen trees and an additional 6 specimen trees will have impacts greater than 30%. 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 6 native trees with 3" DBH to be planted to mitigate removal of 3 specimen trees and 12 native trees with 3" DBH for the mitigation of 6 specimen trees with significant impacts to the CRZ.

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. Three Specimen Trees to be removed, SP-17, SP-23, and SP-33, shall be mitigated with the plating of 6 native trees with a DBH of 3" as shown on the plan exhibit.
- 3. The six Specimen Trees to remain with significant impacts to the CRZ shall be mitigated with the planting of 12 native trees with a DBH of 3" as shown on the plan exhibit.
- 4. Prior to commencement of the Capital Project, the Department of Public Works shall identify and utilize a forest mitigation bank and complete the forest mitigation bank redline revision. If a forest mitigation bank is not available, the Department of Public Works may pay a fee-in-lieu payment of \$168,795.00 shall be paid to satisfy the 3.1 AC afforestation obligation. The payment shall be made through the transfer of funds to SAP Account 2060000000-3000-3000000000-PWPZ000000000000-432521. A feein-lieu request form and 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.
- 5. 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.

lynda Eisenberg Lynda Eisenberg, AICP, Director Department of Planning and Zoning

Mcholas Mooneyhan Nicholas Mooneyhan, Director

Department of Recreation and Parks

DocuSigned by:

DocuSigned by:

Timothy Lattimer, Administrator Office of Community Sustainability

Research CC: **OCS**

DRP

April 17, 2024

Mr. Avinash

Howard County Department of Public Works Storm Water Management Division 9801 Broken Land Parkway Columbia, MD 21046

> WP-24-081, South Meadow Court Pond Retrofit RE: Capital Project D-1159 Deferred For Revised Plans

Dear Mr. Avinash:

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.

Two copies of the exhibit/plan and the supplemental information and a response letter to the comments should be submitted to this Division for distribution.

The requested information and revised plans must be submitted within 45 days of the date of this letter (on or before June 1, 2024*), 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.

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 must be received on or before the due date. Submission materials can also be emailed to planning@howardcountymd.gov for processing. Please include this letter with your submission as it will serve as the checklist for staff.

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

Sincerely,

Anthony Cataldo, AICP, Chief

Division of Land Development

DocuSianed by:

AC/DD

Attachments(1): DLD comments

cc:

Research DLD - Julia Sauer **Real Estate Services**



(410) 313-2350

DPZ Office Use only:
File No.
Date Filed

ALTERNATIVE COMPLIANCE APPLICATION

Site Description: South Meadow Court Pond Retrofit (Capital Project No. D-1159)

Subdivision Name/Property Identification: South Meadow Court stream restoration

Location of property: east of South Meadow Court, NW of Centennial Lake

Existing Use: Parks and open space

Proposed Use: Parks and open space

Tax Map: 30

Grid: 0002

Election District: 02

Zoning District: R-20

Total site area: 3.2 ac.

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:

Parcel No: 404

Howard County Department of Public Works Stormwater Management Division is proposing a pond retrofit and stream restoration project (Capital Project No. D-1159). The project goals are 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. ESC/SWM Plans are going through a final review with the Howard County Soil Conservation District. See attached ACA Letter for additional details and summary of requests.

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
Sec. 16.115(c)(2) - Grading and vegetative disturbance to floodplain	Disturbance to the HEC-RAS modeled 100-year floodplain will be stabilized with erosion control matting, stabilization seeding, and landscape plantings, in addition to seeding with a native seed mix.
Sec. 16.116(a)(1) and (a)(2) Grading and vegetative disturbance within stream and wetland buffers	Impacts to approximately 400 linear feet of a ephemeral channel associated with stream rehabilitation are anticipated. Anticipated impacts to wetlands and wetland buffers are 0.04 acres and 0.1 acres respectively. Forest impacts associated with the project are 2.2 acres (2.1 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 indicated on the attached Landscape Plans. Mitigation (2 -3" caliper trees per specimen tree removed) will be provided for the removal of 3 specimen trees. 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.

Section Reference No.	Brief Summary of Request
Sec. 16.155(a)(1)(ii) Waiver of site development plan	The proposed project is primarily a maintenance project to decommission an existing SWM pond that is not up to code, repair a stream channel 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.
Sec. 16.1201(v) Definition of net tract area for computations and reforestation requirements	Per the Forest Conservation regulations (Subfitie 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. 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 3.2 acres. The purpose of the Alternative Compliance Request is that the LOD of 3.2 acres be allowed as the initial project total tract area.
Sec. 16.1205(a)(3) Removal of specimen trees	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 3 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.

Signature of Property Owner: Am Dwa	Date: 03/05/2024
Signature of Petitioner Preparer:	Date:
Name of Property Owner: Howard Count Address: 9801 BROKENLAND PKWY	Name of Petition Preparer: HCDPW Address: 9801 Broken Land Parkway
City, State, Zip: (OLUMBIA, MD	City, State, Zip: Columbia, MD 21046
E-Mail:	E-Mail: adewani@howardcountymd.gov
Phone No.:	Phone No.: 410-313-6417
Contact Person:	Contact Person: Avinash Dewani
Owner's Authorization Attached	

Section Reference No.	Brief Summary of Request