

**COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND**

2017 Legislative Session

Legislative Day No. 09

**Resolution No. 69-2017**

Introduced by: The President of the Council at the request of the County Executive

A RESOLUTION TO APPROVE A DECLARATION OF RESTRICTIVE COVENANTS ON COUNTY-OWNED PROPERTY KNOWN AS 11351 SAN DOMINGO ROAD, SHARPTOWN, MARYLAND, AND TO AUTHORIZE THE COUNTY EXECUTIVE TO EXECUTE THE DECLARATION OF RESTRICTIVE COVENANTS.

WHEREAS, the County is the fee simply owner of approximately eight acres of land described in a deed dated May 27, 2011, and recorded among the Land Records of Wicomico County, Maryland in Liber 3319, Folio 157, known as 11351 San Domingo Road, Sharptown, Maryland; and

WHEREAS, the Maryland Department of Environment (MDE) and the County entered into a Settlement Agreement and Consent Order, dated December 2015, concerning the control of sediment and pollution discharges to waters of the State and the disposal of refuse at the Newland Park Landfill; and

WHEREAS, to achieve compliance with the environmental laws and for the protection the public's health and the environment, the County and MDE have agreed to enter into a Declaration of Restrictive Covenants on the San Domingo property.

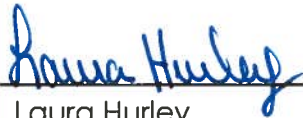
NOW, THEREFORE, BE IT RESOLVED, by the County Council of Wicomico County, Maryland as follows:

1. The County Executive is authorized to execute a Declaration of Restrictive Covenants for county-owned property located at 11351 San Domingo Road, Sharptown, Maryland.
2. The Declaration of Restrictive Covenants shall be in substantially the form attached hereto as Exhibit "A" and made a part hereof, and in such form the Declaration of Restrictive Covenants is hereby approved as to form and content.

Done at Salisbury, Maryland, this 18<sup>th</sup> day of April, 2017.

ATTEST:

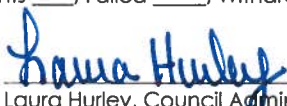
COUNTY COUNCIL OF  
WICOMICO COUNTY, MARYLAND

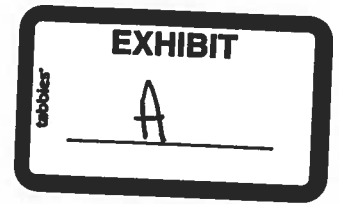
  
 \_\_\_\_\_  
 Laura Hurley,  
 Council Administrator

  
 \_\_\_\_\_  
 John T. Cannon,  
 Council President

CERTIFICATION

This Resolution was Adopted , Adopted with Amendments , Failed , Withdrawn  by the County Council on April 18, 2017

Certified by   
 \_\_\_\_\_  
 Laura Hurley, Council Administrator



## DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by Wicomico County, Maryland ("Declarant") 125 N. Division St., P.O. Box 870, Salisbury, Maryland 21803.

### RECITALS

WHEREAS, Declarant is the fee simple owner of certain real property located in Wicomico County, Maryland consisting of approximately 8 acres more particularly described in a Deed dated May, 27, 2011, and recorded among the land records of Wicomico County, Maryland at Liber 3319, Folio 157 ("Property"). A scaled plat identifying the Property is attached hereto and incorporated herein as Exhibit A;

WHEREAS, as compensatory mitigation under Settlement Agreement and Consent Order No. CO-16-2360 ("Consent Order") entered into by Declarant and the Maryland Department of the Environment ("MDE"), and in recognition of the continuing benefit to the Property, and for the protection of waters of the State and scenic, resource, environmental, and general property values, Declarant has agreed to execute and record this Declaration placing certain restrictive covenants on the Property so that it shall remain substantially in its natural condition forever;

NOW THEREFORE, Declarant hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding in perpetuity and forever on all heirs, successors, assigns, lessees, or other occupiers and users.

1. Covenants and Restrictions. Neither the Declarant, nor any subsequent owner or owners of the Property, shall undertake or cause to be undertaken within the Property any of the following:

- a. Removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;
- b. Changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Disturbance of the water level or water table by drainage, impoundment, or other means;

d. Dumping, discharging of material, or filling with material, including the driving of piles and placing of obstructions;

e. Grading or removal of material that would alter existing topography;

f. Destruction or removal of plant life that would alter the character of a nontidal wetland, or introduction or exotic species;

g. Agricultural or forestry activities, such as aquaculture, plowing, tillage, cropping, seeding, cultivating, and grazing and raising of livestock, sod production, harvesting for production of food and fiber products. Forestry activities mean planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest resources or to improve their quality or productivity;

h. Use of off-road vehicles and motor vehicles;

i. Destruction or alteration of the Property EXCEPT:

(i) Alteration necessary to restore the Property and associated improvements proposed by Declarant, or his successors, and/or assigns, as provided by the Consent Order;

(ii) Alteration necessary to ensure the success of the improvements to the Property, including monitoring, reconstruction, maintenance, or repair of the Property, as provided by the Consent Order;

(iii) Removal of vegetation when approved by MDE and conducted for removal of noxious or invasive plants.

2. **Duration and Amendment.** The covenants and restrictions listed herein are created pursuant to the Annotated Code of Maryland, Real Property Article § 2-118 and shall run with and bind the Property, and be binding on the Declarant, his personal representatives, heirs, successors and assigns, unless and until terminated or modified by MDE, or other Federal, State, or County agencies which have the legal authority to enforce these covenants and restrictions by regulations, permit, or agreement. The failure of MDE or other such agencies to enforce the provisions of this Declaration shall not be deemed a waiver of any rights created hereunder. After recording, this Declaration may only be amended by a recorded document signed by MDE and Declarant. Amendment shall be allowed at the discretion of MDE, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. There shall be no obligation to allow an amendment. MDE shall be provided with a 60-day advance

written notice of any legal action concerning this Declaration or of any action to extinguish, void, or modify this Declaration in whole or in part. This Declaration is intended to survive foreclosure, bankruptcy, condemnation, or judgments affecting the Property.

3. **Notice to Government.** Any permit application, or request for certification or modification, which may affect the Property, made to any governmental entity with authority over wetlands or other waters of the United States and/or waters of the State, shall expressly reference and include a copy of this Declaration.

4. **Reserved Rights.** It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property, and for the consideration and values set forth above, and Declarant reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these restrictive covenants.

5. **Compliance Inspections.** MDE and its authorized agents shall have the right to enter and go upon the lands of Declarant to inspect the Property and take actions necessary to verify compliance with these restrictive covenants.

6. **Enforcement.** The Declarant grants to MDE a discretionary right to enforce covenants in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties.

7. **Property Transfers.** Declarant shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property and/or Conservation Area:

NOTICE: This property Subject to Declaration of Restrictive Covenants Recorded among the land records of Wicomico County at Liber \_\_\_\_\_, Folio \_\_\_\_\_.

8. **Marking of Property.** The perimeter of the Property shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

9. **Recording.** The Declarant agrees to record this Declaration among the land records of Wicomico County and provide MDE with proof of recordation within thirty (30) days of recordation.

10. **Severability Provision.** Should any severable part of this Declaration be held contrary to law, the remainder shall continue in full force and effect.

11. **Inaccurate or Fraudulent Information.** Should an easement, right or lease on or to the Property not shown on the survey or listed in this Declaration and prior in time and recording to this Declaration, or unrecorded, be exercised in such a manner that it conflicts with or voids the prohibited uses of the Property set out in this Declaration, then the owners of the Property shall be responsible for providing alternative compensatory mitigation in such amounts and of such service and function as MDE or any enforcer of this Declaration shall determine in accordance with the Clean Water Act and/or the Maryland Nontidal Wetlands Act.

12. **Eminent Domain.** If the Property is taken in whole or in part through eminent domain, the consequential value of the Property is the cost of replacement of the conservation functions, services and values with other property in the same watershed.

IN WITNESS WHEREOF, the Declarant has set his hand and seal the day and year first above written.

\_\_\_\_\_  
Bob Culver, County Executive  
Wicomico County, Maryland

(SEAL)

STATE OF MARYLAND, County of Wicomico, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me the subscriber, a Notary Public of the State aforesaid, personally appeared Bob Culver to me, or satisfactorily proven to be, the County Executive of Declarant under the foregoing Declaration and acknowledged that he executed the same for the purposes therein contained and in my presence signed and sealed the same.

WITNESS my hand and Notarial Seal.

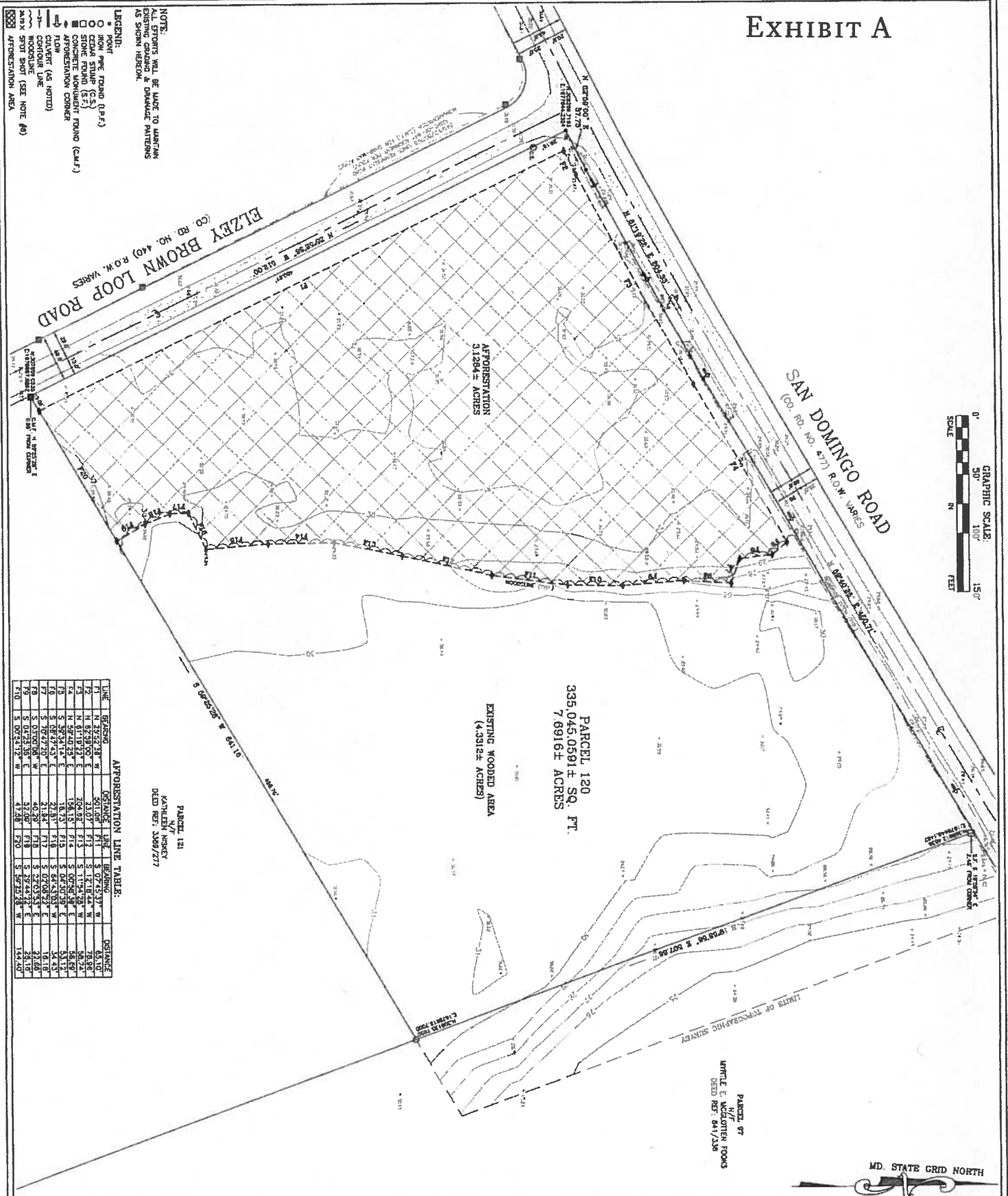
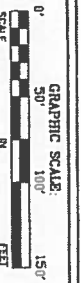
---

Notary Public

My Commission

Expires: \_\_\_\_\_

# EXHIBIT A



APPROFESTATION LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
1	N 25° 52' 33" E	511.09	1	S 72° 18' 24" W	24.32
2	N 81° 10' 22" E	204.87	2	S 11° 54' 28" W	24.32
3	N 81° 10' 22" E	164.19	3	S 00° 50' 33" E	16.18
4	N 59° 40' 23" E	18.73	4	S 09° 50' 38" E	16.18
5	S 59° 54' 18" E	21.81	5	S 07° 50' 38" E	16.18
6	S 59° 54' 18" E	21.81	6	S 07° 50' 38" E	16.18
7	S 59° 54' 18" E	21.81	7	S 07° 50' 38" E	16.18
8	S 59° 54' 18" E	21.81	8	S 07° 50' 38" E	16.18
9	S 59° 54' 18" E	21.81	9	S 07° 50' 38" E	16.18
10	S 59° 54' 18" E	21.81	10	S 07° 50' 38" E	16.18
11	S 59° 54' 18" E	21.81	11	S 07° 50' 38" E	16.18
12	S 59° 54' 18" E	21.81	12	S 07° 50' 38" E	16.18
13	S 59° 54' 18" E	21.81	13	S 07° 50' 38" E	16.18
14	S 59° 54' 18" E	21.81	14	S 07° 50' 38" E	16.18
15	S 59° 54' 18" E	21.81	15	S 07° 50' 38" E	16.18
16	S 59° 54' 18" E	21.81	16	S 07° 50' 38" E	16.18
17	S 59° 54' 18" E	21.81	17	S 07° 50' 38" E	16.18
18	S 59° 54' 18" E	21.81	18	S 07° 50' 38" E	16.18
19	S 59° 54' 18" E	21.81	19	S 07° 50' 38" E	16.18
20	S 59° 54' 18" E	21.81	20	S 07° 50' 38" E	16.18

PARCEL 121  
 M/T/LEWIS HENRY  
 DEED REF. 389/277

PARCEL 87  
 M/T/LEWIS HENRY  
 DEED REF. 841/348

MD. STATE GRID NORTH

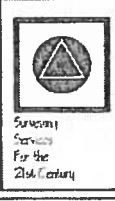
## AFFORESTATION PLAN

TEEN-ADULT CENTER FOREST  
 PROTECTION PROJECT  
 WICOMICO COUNTY, MD.  
 11351 SAN DOMINGO ROAD  
 WESTSIDE ELECTION DISTRICT



SUBJECT	DATE
DATE	08/15
DRAWN BY	08/04/15
CHECKED BY	08/10/15
DATE	
JOB NUMBER	13-4828
SCALE	4 OF 4

REVISIONS	
Date	Issued for:



**F. Douglas Jones  
 Surveying Associates**  
 939 Mount Hermon Road  
 P.O. Box 2658  
 Salisbury, Maryland 21802  
 Phone: 410-543-2615  
 Fax: 410-543-8859