

# ***CONCERNED CITIZENS FOR PROPER LAND USE***

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April 16, 2016

Ms. Maria Broadbent, Director  
City of Annapolis Department of Neighborhood and Environmental Programs  
City Hall  
160 Duke of Gloucester  
Annapolis, MD 21401

Re: Crystal Spring/Mas Que Farm Revised Forest Stand Delineation Filed on April 5, 2016

Dear Director Broadbent,

We submit these comments on behalf of Concerned Citizens for Proper Land Use on the filing of the revised new Forest Stand Delineation (FSD) by the developers of Crystal Spring (Crystal Spring Development, LLC) on April 5, 2016 which revises the FSD filed on February 19, 2016. .

With the new issues raised by the submittal of April 5, 2016, we strongly object to DNEP accepting as complete and correct this revised FSD for the development of Crystal Spring. If such action were taken on this FSD, DNEP would be acting contrary to the terms of the 2005 Annexation Resolution (R-12-05) which was adopted by the City Council on November 28, 2005. The terms of the Annexation Agreement are binding and may not be arbitrarily breached or condoned without approval of the City Council. DNEP also would be acting contrary to previous FSD and FCP submittals by the developers as well as assertions by the developer as to the acreage of the FSD lands to be preserved and as to stormwater management being contained on the 111 acre Crystal Spring site.

The following substantiates these concerns and supports the rejection of the FSD:

## **I. THE NEW FSD DECREASES THE ACREAGE SUBJECT TO THE CONSERVATION EASMENT.**

Under Annexation Condition 19 of the 2005 Annexation Resolution (Resolution No. R-12-05) annexing the Katherine Properties, known together as Mas Que Farm and Crystal Spring, into the City of Annapolis, a conservation easement is required to be placed on the land known at Mas Que Farm once any development is approved for Crystal Spring. The developer's web site states that Ms. Richardson-Pearson's ownership is 79.13 acres abutting Crystal Spring. The FSD that DNEP accepted as complete and correct on March 27, 2013 notes this acreage as 76.04 acres and the Annexation Agreement at Condition 19 notes the acreage to be placed in a conservation easement as "approximately 75 acres."

Annexation Condition 19 does not mention the common name for the 75 acres of land referred to by the owner but this land is called Mas Que Farm and it is so denoted on signs at the site as well as in the road running through it, Mas Que Farm Road. The land is also known in common parlance as Mas Que Farm. The developers refer to it as such in their recent FSD filings as they also have in the past including under the FCP's. Condition 19 refers to the 75 acres as being "in the general vicinity of the equestrian center" and "shall be in the area adjacent to Spa Road, identified as Preservation Land as delineated on applicant's exhibit 1..." The equestrian center is known as Mas Que Farm.

The developers filed the new expanded FSD on February 19, 2016 for an additional 76.10 acres to be included. This additional acreage when added to the original FSD of 111.04 acres came to 187.14 acres

for the Katharine Properties. The developers have consistently noted that the total acreage of these properties was 190 acres in FCP filings and publicly, including before the Planning Commission and on their web site. This 190 acres has also been cited publicly on their web site, before the Planning Commission, and in FCP filings when touting how much land would be preserved of the 190 acres when combining Crystal Spring with Mas Que Farm

On April 5, the developers arbitrarily eliminated 11.58 acres from the Mas Que Farm site and also eliminated the ability to place 75 acres of the referenced site under a conservation easement as required. The developers stated they were in error in including these 11.58 acres even though Ms. Richardson owned all the acreage at the time of the Annexation.

Now, the additional acreage is only 64.52 acres at Mas Que Farm. The developers contend they forgot that the other 11.58 acres they had included in the February 19 FSD filing are being or are going to be developed with homes. The developers contend DNEP should approve this FSD anyway even if allowing for the acreage to be developed, the 75 acres required to be put under a conservation easement has been reduced to only 64.52 acres. Again, Annexation Condition 19 requires the 75 acres of easement land to be “in the general vicinity of the equestrian center” and “shall be in the area adjacent to Spa Road, identified as Preservation Land as delineated on applicant’s exhibit 1...” This Preservation Land does not include any of the 111 acre contract purchase area of Crystal Spring. And, Annexation Condition 19 requires that the Director of P & Z review and approve the exact location of this conservation easement and we are unaware of such approval.

DNEP may not legally permit this acreage centered on the equestrian center commonly known as Mas Que Farm to be part of a subdivision plan for development, including use for stormwater management from Crystal Spring. This would be an abrogation of the terms of Annexation Condition 19.

An examination of exhibit 1 (attached) referred to in Annexation Condition 19 denotes the Preservation Land where the 75 acre easement is to be placed. Exhibit 1 clearly details where those 75 acres are. In speaking with Frank Biba this past Tuesday, Gerald notes that it appeared clear that DNEP had worked out a deal with the developers to accept the new FSD despite this major roadblock by doing two things:

- 1) Allowing the developer to intrude into the intended Preservation Land by using it to flow stormwater from the 111 Crystal Spring site onto the 64.52 acres in the new FSD which would allow for the development of the land intended to be left undeveloped under the conservation easement; and
- 2) Allowing the developer to transfer from the contract purchase land at Crystal Spring acreage that was in the Critical Area at the far southern portion of that property and which was not to be developed and was to be preserved already under their FCP filings and public commitments.

DNEP would be acting illegally in allowing this to occur and should not accept as complete and correct this revised FSD for the development of Crystal Spring and the adjoining Mas Que Farm in direct violation of the terms of Annexation Agreement’s Condition 19. DNEP is without authority to approve a FSD knowing the purpose is to allow some of the “approximately 75 acres” to be developed.

In DNEP’s Letter of February 15, 2015 sending back the last FCP of December 31, 2014, at page 14 of Planning and Zoning’s comments note this: “The collection of stormwater in two developed drainage areas, planning Area 2 and 2A, into a single (off the 111 acre contract purchase area) outfall point with a combined QIO of 134 CFS, is not sensitive SWM design. **This outfall point, off the 111 acre contract purchase area, falls within the 75 acre proposed conservation easement. Stormwater management from new, adjacent development is considered development. New development is not permitted**”

**within proposed conservation easement. All stormwater should be managed on-site.**” Find these comments at <http://www.annapolis.gov/docs/default-source/dnep-documents-pdfs/city-response-to-crystal-spring-fcp-revisions-of-december-31-2014.pdf?sfvrsn=4>.

To accept this new FSD and consequently this development scheme requires formal action by the City Council in approving an amendment to the Annexation Resolution annexing the Mas Que Farm equestrian center land and Crystal Spring into the City of Annapolis (Resolution No. R-12-05).

The owner of both of the properties (Crystal Spring and Mas Que Farm), Janet Richardson-Pearson, has written a public letter to the Mayor and Aldermen that “By my voluntary act as part of annexing the property into the City of Annapolis, **over 70 acres will be put in a Preservation Trust to keep it undeveloped** in perpetuity...” See Ms. Richardson-Pearson’s attached Open Letter to the Mayor et al. of March 4, 2013. She also had her letter published in the *Capital*. By including Mas Que Farm in the subdivision planned development through a new FSD for the acknowledged purpose of allowing stormwater management from Crystal Spring would violate the Annexation Agreement and the owner’s avowed intent to put all of Mas Que Farm (approximately 75 acres) into a Preservation Trust to keep it undeveloped in perpetuity through a conservation easement.

In addition, the developers have repeatedly publicly pledged in their statements, web site, and in formal filings with DNEP, including FCPs, to place another conservation easement on at least 50 acres at Crystal Spring—all undeveloped land remaining outside the site’s development footprint. This easement would be in perpetuity and would prevent any further development on the site of Crystal Spring. The conservation easement would include all remaining forest, the wetlands, and their buffers on the 111 acre Crystal Spring site AND the acreage in the Critical Area. See Ms. Richardson-Pearson’s Open Letter to the Mayor et al. “...and about half of the total 110 acres in the master plan are being preserved by the developers as forest, wetlands, farmland or open space. An unbelievable **70% of the land will not be touched.**” The reference is to the 190 acres annexed so that 70% of 190 acres = 133 acres “not to be touched”.

The developers have consistently reiterated these commitments. For example, Marshall Breines and Jim Eagan wrote in a *Capital* Guest Column on August 22, 2014 that “A total of 127 acres out of 190 will now be preserved in forest conservation, open space and critical areas **where no future development will be permitted.**” They repeated this position again in a *Capital* Guest Column on January 12, 2015 that “130-plus acres will be put in open space or forest conservation easements out of the 190 acres of property constituting the proposed development tract and the property to be retained by its owners.”

In filing another sketch plan with the City on April 28, 2015, Marshall Breines noted in his submittal letter to the City that “We also would like to point out that when we consider the entire Katherine Property Annexation Parcel, we are preserving more than 125 acres of forested and/or meadow areas. This represents a significant preservation effort which should be acknowledged as a positive contribution to the open space resources in the City of Annapolis.” See <http://www.annapolis.gov/docs/default-source/dnep-documents-pdfs/04-29-2015-letter-to-city-of-annapolis-4-28-15.pdf?sfvrsn=2>

If DNEP accepts the expanded FSD to allow Mas Que Farm to be added to the Crystal Spring planned development site as proposed, this would abrogate the Annexation Agreement requirements, the owner’s commitments to preserve undeveloped the 75 acres at Mas Que Farm, and the developer’s commitments to permanently keep the not only the 75 acres of Mas Que Farm undeveloped but another 58 acres at Crystal Spring.

In DNEP's Letter of February 15, 2015 sending back the FCP of December 31, 2014, at page 17 of Planning and Zoning's comments note this: "The future conservation easement is not part of the Crystal Plan as there is no delineation noted on the project site plan. **The fixed location of the conservation easement, even if it's a general location, appears to conflict with the proposed project site plan. The applicant should delineate the 75 acres conservation easement as part of the Prelim. FCP. Unless a portion of the "contract to purchase 111 acres" is included in the conservation easement, the portion of land remaining in the petitioner's ownership, outside the contract to purchase area, is only 64.5566 acres, approximately 10.5 acres short of the 75 acre requirement.**"

The developers need to clearly delineate with metes and bounds the land to be included in the conservation easement and to do it under the FSD to add certainty to this process.

It is clear the developers are filing this new FSD to expand into the demarcated Preservation Land of exhibit 1 to allow the developer to construct stormwater management facilities on this land that is required to be preserved. They have chosen to eliminate land from the FSD previously included so that this land can be developed. All of this substantially lessens the area remaining to achieve the 75 acres to be placed under a conservation easement. This cannot legally stand.

## ***II. DNEP ACCEPTED AS COMPLETE AND CORRECT THE FSD FOR THE DEVELOPMENT OF CRYSTAL SPRING ON MARCH 27, 2013.***

We fail to see why the City should accept as complete and correct this April 5 revised FSD for the development of Crystal Spring. The developers couched this new filing as an update of the previous FSD but nothing has changed regarding the boundaries of the properties or terms and condition under the 2005 Annexation Resolution (R-12-05) which was adopted by the City Council on November 28, 2005. Nor have there been any new submittals to DNEP or P & Z to develop any part of the property for which a new FSD was submitted, known as Mas Que Farm, although it appears that the only reason for this new FSD filing is to expand into the Preservation Land reserved for the 75 acre easement so as to establish stormwater facilities for the development of Crystal Spring.

As noted above, this development of the area where the equestrian center is located known as Mas Que Farm would violate the terms of the Annexation Resolution and require action by the City Council to amend the Annexation Agreement. The process of gaining acceptance by DNEP of the FSD for the development of the 111 acres at Crystal Spring began with a filing by the developers in August 2012. DNEP required many further FSD refinements and filings until accepting the current FSD as complete and correct (with necessary changes) on March 27, 2013.

All subsequent FCP filings with the City and all public comments, work sessions with the Planning Commission, meetings by the developers and opponents with you at DNEP and with other City agencies and officials, and presentations to the City Council and some of its Committees, were based on the current FSD for 111 acres. Now, three years after DNEP accepted the FSD as complete and correct, the developers have decided a new FSD is necessary, at first adding 76.10 acres to the planned development site and now reducing that to 64.52 acres to allow for even more development of the 11.48 acres taken out of the FSD.

All of this is occurring after the developers, their attorneys and their engineers, including DNR certified forest stand delineators, studied and planned their development project and submitted their FSD and three subsequent FCP's based on the current FSD on the 111 acre Crystal Spring site.

Throughout the process of the developer's filing three FCP's, the developers and DNEP have treated the total tract area under consideration as the 111 acres of Crystal Spring for which the FSD was approved. For example, DNEP noted that the "Total tract area is 111 acres." See DNEP comments of the FCP of June 28, 2013 at page 2 See <http://www.annapolis.gov/docs/default-source/dnep-documents-pdfs/06-28-2013-review-of-preliminary-fcp.pdf?sfvrsn=10>.

Again, DNEP noted that the "Total tract area is 111 acres." See page 1 of DNEP comments of August 8, 2014 to the developer on their FCP. DNEP noted at page 8 of those same comments: "According to the applicant, the property to be developed is 111 acres." See <http://www.annapolis.gov/docs/default-source/dnep-documents-pdfs/city-response-to-crystal-spring-fcp-revisions-of-june-25-2014.pdf?sfvrsn=10>

If the City were to accept this new FSD, we would request that the entire FCP and planned development process begin anew for this significantly enlarged planned development site. This should include beginning from the start the process for filing a new FCP for the entire site including the filing of wetland delineations, NRI's, etc., with full public input into the process. This must be done because we would be dealing with a much enlarged parcel of land and all previous filings were based on acreage of 111, not the 175.56 acres proposed in the new FSD.

The developers contend that Maryland Code Article NR §5-1604 of the Forest Conservation Act requires this new FSD "for the entire site". Then why did they not file such a FSD in 2012 or subsequent to submitting three detailed FCP's which we and other members of the public reviewed as did DNEP, P & Z, and other City agencies?

DNEP should not accept this new FSD and, if it does, the entire development process should begin anew as the previously filed FCP's were based on only the 111 acres at Crystal Spring and the 82 acres of forest on that site.

### ***III. PROCESSING SHOULD BE SUSPENDED.***

On December 21, 2015 we wrote you and Frank Biba at DNEP asking that any further processing of the Crystal Spring FCP or of any other filings on this development should be suspended for various reasons including the failure to adopt an appropriate conservation easement on Mas Que Farm. DNEP should respect P & Z's admonition to the developer above and assure that before any further processing of the FCP or any FSD, details of the conservation easement, including the precise boundaries and terms for conservation, are agreed upon in a legally binding agreement.

On June 25, 2014, the developers did proffer a draft conservation easement as Exhibit B as part of their FCP filing of that date. This draft easement does not define the area of the easement and allows any form of agricultural activity at Mas Que Farm on a commercial or non-commercial basis. It also allows the construction of any structures or dwellings..."as needed in carrying out activities permitted by the conservation easement." This seemingly broad language would allow the destruction of all remaining forest at Mas Que Farm.

Gerald Winegrad served on the Board of the Maryland Environmental Trust for 16 years. MET is the state land trust and the Board examines and makes recommendations on conservation easements around the state. Gerald had a former MET staffer, an easement expert, look at the developer's proffered easement and it was agreed that it was woefully inadequate as it would allow much development of the site. This development could include clearing of forest on the site to build large barns, buildings to store and sell farmed crops or farm-related items, buildings to house many more horse stalls, new roads for farm use, parking lots for visitors to any new or existing commercial farm buildings and for users of other structures, and much more. At a minimum, it was agreed the easement should include a provision

preserving existing forest and prohibiting the clearing of any forest except for safety reasons and a provision that any such clearing must be approved by the easement holder.

Before any further processing of the FSD or FCP occurs, DNEP should require that both of the perpetual conservation easements for Mas Que Farm and for Crystal Spring be clearly drafted and agreed upon including detailed metes and bounds. The easements should include provisions prohibiting any further development and clearing of forest on these sites and disallowing expansion of the Crystal Spring development into Mas Que Farm—whether for stormwater management facilities or otherwise. This is all the more critical with the new filing of April 5 which would reduce the size of the additional acreage available for the easement at Mas Que Farm.

It should be noted that the developers have consistently stated that the stormwater leaving the Crystal Spring site after development would be as clean or cleaner as before development occurred and the development would not increase rate or volume, a pledge that has been confirmed over time including in discussions with Planning and Zoning officials. The developer's current web site states that: "100% stormwater retained/treated on site including gray water recycling."

See [www.crystalspringannapolis.com/userfiles/file/economic-benefits-forest-conservation.pdf](http://www.crystalspringannapolis.com/userfiles/file/economic-benefits-forest-conservation.pdf)

The site referred to is of course the 111 acre site of Crystal Spring. DNEP by accepting the newly filed FSD should not facilitate an abrogation of this pledge and of the Annexation Resolution by allowing Mas Que Farm to be added to the subdivision plan.

Any plans by the developers to clear any trees on Mas Que farm should not be condoned by DNEP given the terms of the Annexation Resolution and the pledges by Ms. Richardson-Pearson and the developers.

Rather than reiterate our request that you suspend all processing of the development plans for Crystal Spring, including the FCP, we are attaching a Memo sent to Mayor Pantelides which is similar to the one sent to you back on December 21, 2015.

#### **IV. THE CITY HAS NOT ADOPTED ANY PROCEDURES FOR PUBLIC COMMENT ON FSD FILINGS.**

The City has adopted by reference the State Department of Natural Resources Forest Conservation Act, Maryland Natural Resources Article §5-1601 et seq. However, in failing to enact its own forest conservation ordinance, many gaps in applying the law exist which we have detailed in past filings. In the matter before us, the City has no procedures for public comment on a FSD. There was no notice of a public comment period and we still are at a loss as to what the time period is within which we have to comment.

In order to make our comments meaningful to the process of determining the adequacy of the FSD and the FCP based upon it, we must assume that any decisions on the FSD are not formulated until after a public comment period has ended. Publically commenting would have no meaningful influence on the decision-making process if staff positions and agency decisions are already made or substantially made before we file public comment. Since we have no way of knowing when the comment period begins or ends, and since it appears from Gerald's conversation with Frank all decisions regarding the acceptance of the FSD have already been made, it would appear our commenting may be a waste of time. This is a sad fate for transparency and public input especially for those willing to pour over the filings and write detailed comments.

We would note that neither our previous comments on this FSD which were filed with you on March 11 nor the comments Frank advised Gerald were filed on behalf of the Annapolis Environmental Commission were posted on line while the developers submittals were.

Finally, we must point out that we attempted to appeal the City's initial approval of an FSD for the 111.04 acre Crystal Spring development site, referred to in the new FSD by the developers as the "contract purchase area". Our legal and technical issues with that FSD were never adjudicated, and the Circuit Court ruled that our opportunity to raise those issues would have to await the review and approval process of a final Forest Conservation Plan. We are completing our review with respect to the issues raised herein of both of the new FSD's, including the FSD filed on April 5 reducing from 187.14 acres to 175.56 acres. Our review also covers those issues previously raised and possibly other issues, and of course we reserve the right to raise and adjudicate such issues at the appropriate time. The comments above address the legality and appropriateness of expanding the forest conservation planning area to the 175.56 acres.

We also have previously communicated our questions, concerns, and objections to you concerning the three previously filed Forest Conservation Plans for the 111.04 acre development site. These issues have been raised by phone, emails, in meetings with you, and in formal comments to you in our letters of June 21, 2013, July 31, 2014, and January 30, 2015. Most of these questions, concerns, and objections still remain and have not been resolved.

We appreciate your consideration of these comments and those in the attached Memo to the Mayor while pondering the newly filed FSD and hope you will deny this significant expansion of the previously accepted FSD.

Respectfully Submitted,

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