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TO WHOM IT MAY CONCERN:

Former State Senator Gerald W. Winegrad and Tom Deming, former Chief Counsel for the Maryland Department of Natural Resources, have asked me to examine and comment on a Preliminary Forest Conservation Plan (PFCP) and its Work Sheet used to compute reforestation requirements. This was filed on January 22, 2018 for the development of The Village at Providence Point in Annapolis.

I was employed at the Maryland Department of Natural Resources from 1987-2015 and worked with Senator Winegrad and Tom Deming on the original state Forest Conservation Act. After its enactment, I was in charge of developing the implementing regulations and Technical Manual. Under the FCA. I served in the Forest Division, as Chief of Forestry Resource Planning, was Deputy Director of the MD Forest, Wildlife, and Heritage Service, and finally, Director of the Chesapeake and Coastal Service unit where I oversaw Bay restoration efforts for the Department.

While working in the Forestry Division in 1990 and 1991, I was the DNR's point person on legislative efforts pertaining to the development and enactment of the Forest Conservation Act. I was assigned to the Governor's Office and staffed the Joint Legislative Task Force that assisted in developing the parameters of the legislation that became the Forest Conservation Act.

After the FCA's enactment in 1991, I oversaw the Department's development of the regulations, both Forest Conservation Technical Manuals, and was in charge of the review and approval of local forest conservation programs and ordinances. Under the law, Forest Stand Delineations (FSD) and Forest Conservation Plans (FCP) must be prepared by a licensed forester, licensed landscape architect, or other qualified professional. I developed the forest conservation course for individuals who were not licensed foresters or licensed landscape architects to become "Qualified Professionals" capable of conducting forest delineations or writing conservation plans. I taught this DNR approved course at Johns Hopkins University for seven years.

I also staffed the Maryland Sustainable Forestry Council and served as the regional forester in charge of Harford, Cecil, Baltimore, Carroll, Howard and Montgomery. I currently work for the U.S. Fish and Wildlife Service as a Forest Ecologist, coordinating biological programs on National Wildlife Refuges in their Regional Headquarters in Hadley, Massachusetts.

As part of my duties at DNR, I oversaw the development of the charts and Work Sheets used in the Technical Manual and in teaching the course for those seeking approval as Qualified Professionals. I have reviewed many PFCPs and FCPs and the Work Sheets including the use of Break Even Points and replanting requirements.

I have examined the materials, including the PFCP in question, the Work Sheet and the use of the Break Even Point calculation in the January 22, 2018 filing for The Village of Providence Point. I was impressed that Senator Winegrad and Tom Deming would remember my work from the 1990s and rely on my expertise in the administration of the FCA and its regulations and Technical Manual.

I can state unequivocally, that I completely agree with Tom Deming's memo of February 5, 2019 concluding that the requirement for use of the Break Even Point is now rendered non-existent with the elimination of the credit provided for under Natural Resources Article, Sec. 5-1606(d)(2): "Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested." Since the enactment of O-27-18 by the City Council, termed the No Net Loss ordinance, and its application to the January 22 PFCP, all forest acreage cleared must be replanted or a fee-in-lieu of paid for such replanting.

The FCA included the credit to create incentives to retain additional forest above the applicable threshold. The Break Even Point as shown in the Manual as step "H." indicated how this credit was implemented to provide a bright line at the point where a developer could eliminate any or some replanting requirements under the FCA statute, regulations and Technical Manual (incorporated by reference) by retaining a significant amount of additional forest. This was based on the allowance of a 20% credit for forest retained above the threshold.

With the enactment of the No Net Loss law, the credits on which Line H, the Break Even Point is based, have been eliminated and with it the use of such a calculation. The City Code Section at 21.71.090 A. 3.ii. was eliminated that provided: "Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under 3.1 of this subsection. The calculation of the credit shall be according to the criteria provided in the Forest Conservation Technical Manual." Therefore, use of a break even calculation using the Technical Manual is eliminated, also.

I hope this is helpful in resolving this issue. I am available to further explain this determination if needed to do so.

Existing forest land is the best land cover for water quality and efforts to protect forest should be given high priority for Bay restoration.

Sincerely,

Jeff Horan