

June 20, 2024

M-NCPPC
2425 Reddie Drive, Floor 14
Wheaton, MD 20902

RE: Dickerson Power Plan
Preliminary Forest Conservation Plan – Request for Tree Variance
SOLTESZ Project #4025-00-02

To Whom It May Concern,

On behalf of the Applicant, Terra Energy, LLC, we are requesting a tree variance pursuant to the provisions of Section 22A-21 of the Montgomery County Code from Section 22A-12(b)(3) for removal or impacts to **four (4) specimen trees**. More specifically, Section 22A-12(b)(3) provides for the non-disturbance of “any tree with a diameter, measured at 4.5 feet above the ground, of (i) 30 inches or more; or (ii) 75% or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species.

The Applicant is proposing Public Utility Structures and Cable Communication System on the subject property located at 0 Martinsburg Road, Dickerson, Maryland (the “Property”).

I. APPLICANT’S PROPOSAL

The Applicant is proposing development in three areas as referred to in the conditional use package as Land Bay 1, Land Bay 2, and Land Bay 3. The plan maintains all existing Forest Conservation Easements (currently 0), includes the protection of all stream valley buffers via foresting (unless an existing easement is also located there), and the proposed Limits of Disturbance (LOD) falls within the LOD of the recently approved NRI/FSD 420240750.

This proposal is for the construction of public utility structures and cabling communication centers. Implementation of this development will involve the removal of forests that are not within any Forest Conservation Easement and specimen trees. None of the proposed forest removal or specimen tree removals are located within any forest conservation easement.

The project will ultimately be constructed with each developed location as described above going through a site plan including a final forest conservation plan and an updated final variance report. The Preliminary Forest Conservation Plan submitted here, in accordance with new review procedures, shows potential site development for the ultimate developed condition of the site.

II. EXPLANATION FOR THE NEED TO REMOVE THE TREES IDENTIFIED IN STATE LAW FOR PROTECTION

This project has previously been through a recently approved NRI/FSD (NRI/FSD 420240750).

The preliminary forest conservation plan (PFCP) has been updated to locate significant trees over 24 inches in diameter at breast height (DBH) in the area that is proposed for development (LOD). The specimen trees which will be impacted by the development and are the subject of this variance request are shown on the PFCP. A list of the specimen trees for which a variance is requested is incorporated below.

III. GENERAL DESCRIPTION AND JUSTIFICATION FOR TREES FOR WHICH A VARIANCE IS REQUESTED

Critical Root Zone (CRZ) impacts

There are zero (0) specimen trees impacted by development within the limits of disturbance (LOD) of the property for which the impact will not require removal. The LOD and improvements have been strategically placed to fall outside of the critical root zone for several of the specimen trees nearby.

Trees for Removal

Four (4) variance trees are proposed to be removed as indicated in the table below. The trees subject to this variance request are listed in the chart below, but all will be impacted by construction activity associated with the development, as described in Section IV. A total of 147" DBH are being removed.

Variance Tree Table Remove								
Tree #	Common Name	Scientific Name	DBH (inches)	CRZ (sq ft)	CRZ Impacted (sq ft)	% CRZ Impacted	Condition	Save/Remove
659	maple, silver	<i>Acer saccharinum</i>	34	8167	8167	100%	Good	Remove
660	pin oak	<i>Quercus palustris</i>	30	6359	6359	100%	Good	Remove
663	black cherry	<i>Prunus serotina</i>	36	9156	9156	100%	Poor	Remove
703	maple, silver	<i>Acer saccharinum</i>	47	15607	15607	100%	Poor	Remove
<i>Total DBH Removed</i>			147					
<i>Total Caliper to Replace</i>			36.75					
<i>Total 3" Caliper Trees</i>			12					

Mitigation

In accordance with the new forest laws, all specimen trees to be removed are subject to mitigation regardless of whether they are inside or outside of the forest. At a replacement rate of 1" DBH for every 4" removed, this equates to a requirement of 36.75 inches or twelve (12) 3" caliper trees to be planted for mitigation. The mitigation trees will be planted on property outside of the LOD or on an adjacent nearby property owned by the developer.

IV. SATISFACTION OF THE CRITERIA LISTED IN SECTION 22A-21(b) OF THE MONTGOMERY COUNTY CODE

Section 22A-21(b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above. This Forest Conservation Plan variance request is for impacts to four (4) on-site specimen trees, requiring removal of four (4) of the four (4) trees.

“(1) describe the special conditions peculiar to the property which caused the unwarranted hardship.”

The property includes Industrial zoned portions of land as well as agricultural zoned portions of land. The limits of disturbance encompass 177.99 acres of which all of the land is industrial zoned. Prior to development 67.40 acres of forest exist on the industrial land which covers 28.7% of the industrial net tract area. The agricultural zoned property is not being proposed for development. In order to develop the property, forest removal will be offset by existing forest within the agricultural zoned land, reforestation within the agricultural zoned land, and a nearby lot that the developer owns located off of the existing Power Plant Service Road. Proposed improvements and the Limits of Disturbance were established to protect all of the agricultural land located outside of the LOD.

There are currently no forest conservation easements within the property boundaries. It is the intention of the owner to save all existing forests within the agricultural zoned land. The LOD has been established to grant the owner maximum flexibility in the development of the industrial land while not compromising the existing and established forests and land within the agricultural zoned land.

Tree 659 – This specimen tree is impacted due to stormwater management as well as proposed parking features. Per Maryland State Legislation, impervious improvements on land need to be treated and offset by Stormwater Management Practices in order that the Maryland Watershed is not polluted by the results of the construction. This specimen tree is impacted by the installation of a stormwater management feature.

Tree 660 - This specimen tree is impacted due to stormwater management as well as proposed proposed building, and fire access. Per Maryland State Legislation, impervious improvements on land need to be treated and offset by Stormwater Management Practices in order that the Maryland Watershed is not polluted by the results of the construction. This specimen tree is impacted by the installation of a stormwater management feature. The specimen tree is also unfortunately impacted by the proposed building. The location of the building was strategically placed in order to also comply with existing easements, access, stormwater management features, and fire safety.

Tree 663 – This specimen tree is impacted due to the location of the proposed building. When selecting the proposed building location several other rules and regulations had to be considered. The proposed building needed to be satisfied by Stormwater Management Requirements, access requirements, existing easements, and fire safety. All of these requirements are to be observed and complied with due to state and local regulations.

Tree 703 – This specimen tree is impacted due to stormwater management. Per Maryland State Legislation, impervious improvements on land need to be treated and offset by Stormwater Management Practices in order that the Maryland Watershed is not polluted by the results of the construction. This specimen tree is impacted by the installation of a stormwater management feature.

“(2) Describe how enforcement of these rules will deprive the owner of rights commonly enjoyed by others in similar areas.”

To prevent any impacts to the four (4) impacted variance trees would require a relocation of the LOD for the development and would considerably reduce the area available for development of the site. To deny removal of four (4) trees would significantly deprive the owner of rights commonly enjoyed by others in similar areas. The proposed Cable Communication Systems and Public Utility structures are supported by a list of other improvements to the site include roadways, parking areas, stormwater management systems, and fire prevention features. The development of Cable Communication Systems and Public Utility Structures is supported by the industrial zoning and agricultural zoning on site.

“(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance.”

The site lies within the Potomac River Watershed. The project maintains natural drainage areas and protects and enhances water quality through environmentally sensitive design to the maximum extent possible, per Maryland Department of the Environment (MDE) regulations. Forest is conserved and protected in stream valleys, enhancing the water quality, and preventing erosion and transfer of pollutants.

“(4) Provide any other information appropriate to support the request.”

The Applicant believes the information set forth above is adequate to justify the requested variance to remove the specimen trees on the subject property. Furthermore, the Applicant’s request for a variance complies with the “minimum criteria” of Section 22A-21(d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.
2. The configuration of the existing facilities and the need for the proposed facilities drive the proposed configuration of the site elements. The location of the subject trees to be removed is not the result of actions by the Applicant, but rather is a pre-existing condition of the property whereby these trees cannot be sufficiently protected and preserved, thus necessitating impact or removal.
3. The requested variance is not related in any way to a condition on an adjacent, neighboring property.
4. Removal of the impacted trees will not violate state water quality standards or cause measurable degradation in water quality. The project is designed in such a way as to enhance the water quality by environmentally sensitive stormwater management practices proposed on-site to the maximum extent possible

For the reasons listed above, we believe it is appropriate to grant this request for a variance. Should you have any questions or require additional information, please do not hesitate to contact us.

Respectfully submitted,



Soltesz, Inc.
Nathan Collier