



**DEPARTMENT OF PLANNING AND ZONING**

**VALDIS LAZDINS, DIRECTOR**

**TECHNICAL STAFF REPORT**

**Planning Board Meeting of December 1, 2016**

**Petitioners:** The Howard Research and Development Corporation (HRD)

**Subject:** Request for Alternative Compliance for CEPPA #15 – Environmental Restoration

**Request:** HRD requests the Downtown Columbia Plan CEPPA chart to be amended and to replace the alternative timing schedule to complete environmental restoration required by CEPPA #15, approved by Planning Board with FDP-DC-Crescent-1 in March 2015. Instead, HRD wishes to recognize the issuance of posted bonds and securities to Howard County and the Maryland Department of the Environment as completing the required CEPPA.

**Recommendation:** The Department of Planning and Zoning (DPZ) does not recommend approving this alternative compliance for CEPPA #15 through bonds, as requested by HRD. Instead, DPZ recommends approving the following alternative compliance for CEPPA #15:

3. Environmental Restoration within Restoration Areas 3-7 and SS-S5 (offsite) shall be completed prior to the issuance of the first use and occupancy permit for a building in Crescent Neighborhood Development Area 3.
4. HRD shall provide quarterly monitoring reports beginning April 1, 2017, through the completion of environmental restoration, keeping DPZ apprised of its status and to identify any potential delays to complete the work.

**I. General Information:**

- A. **Definition of CEPPA:** A list of twenty-seven “Community Enhancements, Programs and Public Amenities” required to be provided by the developer with the adoption of the Downtown Columbia Plan.
- B. **Background of CEPPA #15:** This CEPPA states: “GGP (sic HHC/HRD) will complete, at GGP’s expense, environmental restoration projects, including stormwater management retrofit, stream corridor restoration, wetland enhancement, reforestation and forest restoration, on its property and on property included within GGP’s construction plans for the Merriweather-Symphony Woods and Crescent areas, as identified in the Land Framework of the Sustainability Program as referenced in Section 3.1 of this Plan.” The original milestone to complete CEPPA #15 is prior to the issuance of the building permit for the 1.3 millionth square foot of development for Downtown Revitalization.

With the approval of FDP-DC-Crescent-1, the Planning Board also approved a request for alternative compliance of CEPPA #15, since most of the restoration areas are located adjacent to, and would be impacted by, the initial construction of the road network and infrastructure within the development

areas in the Crescent Neighborhood. The revised timing sought to coincide with construction in these development areas to avoid impacts to recently restored and stabilized areas. The following table outlines the current CEPPA compliance timing for CEPPA #15 (please see Attachment A for a map of restoration areas):

Area	Status	Trigger*
1	Complete	See footnote **
2	Complete	See footnote **
3	Concept Design under agency review	Prior to issuance of the first use and occupancy certificate for a building in Area 3**
4		Prior to issuance of the first use and occupancy certificate for a building in Area 3**
5	Concept Design under agency review	Prior to issuance of the first use and occupancy certificate for building in Area 1 and 2**
6	Concept Design under agency review	Prior to issuance of the first use and occupancy certificate for building in Area 1 and 2**
7		Prior to issuance of the first use and occupancy certificate for a building in Area 3**
SS-S5	Area just identified. Will require design and agency review	Prior to issuance of the first use and occupancy certificate for a building in Area 3**

\* See Neighborhood Implementation Plan for the locations of Areas 1, 2, and 3

\*\* With the possible exception of multi-year invasive species removal

**C. Status of Existing Restoration Improvements:** To date only CEPPA #1 and #2 have been completed. Invasive species removal has begun in other environmental restoration areas and baseline monitoring has commenced. Environmental restoration plans for Restoration Areas 3, 5, and 6 and a portion of Restoration Area 7 were approved with the F-15-106 Road Construction Drawings, signed August 3, 2016. These drawings approved stream restoration, wetland enhancements, and reforestation. Road construction adjacent to those restoration areas is currently underway. To date, plans for Restoration Area 4, the remainder of Restoration Area 7, and the offsite restoration mitigation site SS-S5 have not been filed with DPZ.

**D. Status of Downtown Revitalization for evaluating CEPPA requirements –** Downtown Revitalization is just shy of the 1,300,000<sup>th</sup> square foot development milestone, which triggers CEPPA #15.

<b>CEPPA Tracking*</b>			
	<b>Parcel/Project</b>	<b>Block</b>	<b>Square Footage</b>
<b>Project Approved - Issued Building Permits</b>			
SDP-13-007	Parcel D/Metropolitan	W-1	454,328
SDP-13-016	Mall	M-1	33,289
SDP-14-024	Parcel C-2/Warfield	W-2	247,903
	Parcel C-1/Warfield	W-5	188,765
SDP-15-068	Parcel A-1/Crescent/Bldg A	C-1.1	217,223
	Parcel A-2/Crescent/Bldg B	C.1.1	129,585
<b>SUBTOTAL</b>			<b>1,271,093 SF</b>
<b>Project Approved - Pending Building Permits</b>			
None			0 SF
<b>SUBTOTAL</b>			<b>0 SF</b>
<b>Projects Approved - No Pending Permits</b>			
None			0
<b>SUBTOTAL</b>			<b>0 SF</b>
<b>New Projects</b>			
None			0 SF
<b>SUBTOTAL</b>			<b>0 SF</b>
<b>CUMULATIVE TOTAL –</b>			<b>1,271,093 SF</b>
* Only tracks projects not exempt from CEPPA requirements			

## II. Description of the Proposed Alternative Compliance

The petitioner is proposing alternative compliance to CEPPA #15 based on complications and delays in completing the environmental restoration under the previously approved timeline. The petitioner asserts these delays are beyond their reasonable control. **Please see Attachment B for the complete request and justification.** Based on this justification, the petitioner requests that the Planning Board authorize and acknowledge the posting of a security to the County as part of the Developer's Agreement, which covers the cost of the approved restoration work should the Petitioner default on their responsibility to complete the work, as fulfillment of the required CEPPA. A surety is also posted with the Maryland Department of the Environment. DPZ proposes instead that all restoration be completed prior to the use and occupancy for the first building in Area 3. The petitioner has been briefed on this alternative and their environmental engineers believe DPZ's proposed timing should be adequate to complete restoration.

## III. Planning Board Review and Approval Criteria: In accordance with Section 125.0.A.9.h.(3) of the Howard County Zoning Regulations and Chapter 4 of the Downtown Columbia Plan, the Planning Board is to evaluate requests for alternative compliance and timing of CEPPAs required by the Downtown Columbia Plan as follows:

*If a specific CEPPA identified in the Downtown CEPPA Implementation Chart cannot be provided because: (I) the consent of the owner of the land which the CEPPA is to be located or from whom access is required cannot reasonably be obtained; (II) all necessary permits or approvals cannot reasonably be obtained from applicable governmental authorities; or (III) factors exist that are beyond the reasonable control of the petitioner, then the Planning Board shall (I) require the petitioner to post security with the County in an amount sufficient to cover the cost of the original CEPPA; or (II) approve an alternate CEPPA comparable to the original and appropriate timing for such alternate CEPPA or alternative timing for the original CEPPA. In approving an alternate comparable CEPPA or timing, the Planning Board must conclude the alternate comparable CEPPA or timing: (I) does not result in piecemeal development inconsistent with the plan; (II) advances the public interest; and (III) conforms with the goals of the Downtown Plan.*

**Applicability:** Based on the above, the Planning Board can consider alternative compliance for a CEPPA if:

- *(I) the consent of the owner of the land which the CEPPA is to be located or from whom access is required cannot reasonably be obtained;*
- *(II) all necessary permits or approvals cannot reasonably be obtained from applicable governmental authorities; OR*
- *(III) factors exist that are beyond the reasonable control of the petitioner.*

The petitioner outlined four statements they believe fit within parameter (III) above. The pace of development at the corner of Broken Land Parkway and Little Patuxent Parkway has presented challenges to concurrently complete restoration work. Construction traffic currently uses existing gravel drives that will ultimately be removed as part of the proposed restoration activity; making it impossible for some of the restoration work to commence. There are also concerns that work zones would be congested making it unsafe. Road construction has also been delayed due to an extensive review process by the County and the complexity of easements and agreements that had to be resolved with the Columbia Association. The F-15-106 Road Construction Drawings, which include environmental restoration plans for several of the restoration areas, received signature approval in August 3, 2016. DPZ concurs that factors exist that were beyond the reasonable control of the petitioner and which complicated their ability to complete the restoration work in the previously prescribed timeframe.

**Criteria to Evaluate Criteria:** Based on the above, the Planning Board shall conclude the alternative CEPPA compliance on *(I) does not result in piecemeal development inconsistent with the plan; (II) advances the public interest; and (III) conforms with the goals of the Downtown Plan.*

**Criteria 1:** *The alternative compliance does not result in piecemeal development inconsistent with the plan.*

The alternative timing addresses practical delays in completing proposed environmental restoration. The proximity of Restoration Areas 5 and 6 to construction and construction staging

areas in Development Area 1 complicates the timing of environmental restoration. Construction traffic is utilizing an existing gravel drive that will be removed with environmental restoration, which complicates the ability for restoration efforts to commence. Timing for Merriweather Drive road improvements receiving approval from the County also caused unforeseen delays.

Approval of this alternative compliance avoids piecemeal development and piecemeal restoration by allowing progress on Crescent Block C1.1 to continue. It provides office development desired by the County, while appropriately timing environmental restoration efforts to minimize damage to restored areas. To ensure that environmental restoration is completed in a timely manner DPZ recommends revising the milestone to complete the restoration to the first use and occupancy permit for Area 3. In addition, the petitioner must provide quarterly monitoring reports to keep DPZ apprised of restoration progress and to identify potential delays as early as possible. The petitioner was informed of DPZ's recommendation and does not object. The environmental engineering firm responsible for restoration believes that work should be completed prior to the first use and occupancy permit for a building in Area 3.

**Criteria 2: The alternative compliance advances the public interest.**

Proceeding with environmental restoration as proposed has weighed the risk of unnecessary disturbance of environmental features to accommodate additional staging for environmental restoration work. It has also considered potential safety issues between restoration workers and development workers. Furthermore, delaying the delivery of a building to office tenants would unnecessarily delay the goal of increasing office development per the Downtown Columbia plan.

**Criteria 3: The alternative compliance complies with the Downtown Plan.**

Restoration efforts envisioned in the Downtown Plan will be completed and plans for the majority of restoration have been approved and bonded. The alternative DPZ proposed ensures that restoration continues in a timely manner, as close as possible to the original timing in the Downtown Columbia Plan. It also recognizes the need for flexibility and acknowledges the practical difficulties of completing restoration work and timing it appropriately with surrounding development so that the restored areas are not inadvertently damaged.

**Recommendation:** The Department of Planning and Zoning (DPZ) does not recommend approving this CEPPA alternative compliance through a bond, as originally requested by HRD. Instead, DPZ recommends approving the following alternative compliance for CEPPA #15:

5. Environmental Restoration within Restoration Areas 3-7 and SS-S5 (offsite) shall be completed prior to the issuance of the first use and occupancy permit for a building in Crescent Neighborhood Development Area 3.
6. HRD shall provide quarterly monitoring reports beginning April 1, 2017, through the completion of environmental restoration, keeping DPZ apprised of its status and to identify any potential delays to complete the work.

*This file is available for public review by appointment at the Department of Planning and Zoning's public service counter, Monday through Thursday, 8:00 a.m. to 5:00 p.m. and Friday from 8:00 a.m. to 3:00 p.m.*

  
Valdis Lazdins, Director  
Department of Planning and Zoning

11/17/16  
Date

# ATTACHMENT A

## CEPPA #15 - Environmental Restoration Locations

### ON-SITE/WITHIN CRESCENT NEIGHBORHOOD



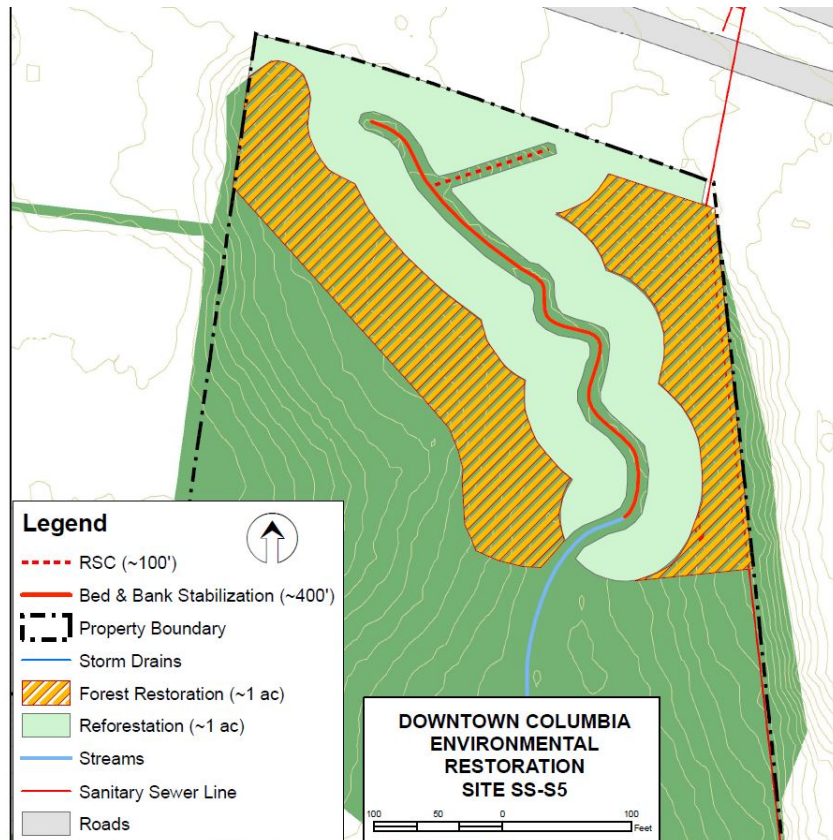
RESTORATION SITE	REFORESTATION		FOREST RESTORATION		WETLAND ENHANCEMENT		WETLAND CREATION		RESTORATION TOTAL	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Site #1	0.5	0.5	7.4	7.4	-	-	-	-	8.0	8.0
Site #2	3.9	3.9	5.6	5.6	0.8	0.8	-	-	10.3	10.3
Site #3	0.8	-	2.9	3.6	1.9	2.0	0.3	0.3	5.9	5.9
Site #4	1.0	1.2	1.0	1.0	-	-	-	-	2.1	2.3
Site #5	1.3	1.5	0.5	0.4	1.0	1.0	1.0	1.0	3.9	3.9
Site #6	0.4	1.1	1.4	0.6	0.3	0.3	0.0	0.0	2.1	2.1
Site #7	1.0	2.0	1.0	-	-	-	0.0	0.0	2.1	2.1
<b>Sub-total</b>	<b>8.9</b>	<b>10.3</b>	<b>19.9</b>	<b>18.7</b>	<b>4.0</b>	<b>4.0</b>	<b>1.4</b>	<b>1.4</b>	<b>34.2</b>	<b>34.5</b>
<b>DIFFERENCE (Current - 2015)</b>		<b>1.4</b>		<b>(1.2)</b>		<b>0.1</b>		<b>-</b>		<b>0.3</b>
SS-S5	-	-	-	2.4	-	-	-	-	-	-

ATTACHMENT A (CONTINUED)  
OFFSITE  
Environmental Restoration Area SS-S5

Location



Site Work



## **ATTACHMENT B**

**Proposed Alternative CEPPA Compliance Request for CEPPA #15**

October 18, 2016

Bill Santos, Chair  
And Members of the Howard County Planning Board  
3430 Courthouse Drive  
Ellicott City, Maryland 21043

Re: Downtown Columbia – Request for Alternative Compliance for  
CEPPA 15, Environmental Restoration

Dear Mr. Santos and Members of the Planning Board:

On behalf of Petitioner, The Howard Research And Development Corporation (“HRD”), the purpose of this letter is to request alternative timing for the completion of environmental restoration activities under CEPPA 15 of the *Downtown Columbia Plan* (“Plan”). This request is filed pursuant to Section 125.0.A.9.h.(4) of the Howard County Zoning Regulations (“Zoning Regulations”).

Background.

The *Downtown Columbia Plan* and Zoning Regulations require Petitioner to provide certain Community Enhancements, Programs and Public Amenities (“CEPPAs”) in accordance with timing specified in the *Plan*. In certain instances, Section 125.0.A.9.h.(4) of the Zoning Regulations authorizes the Planning Board to approve alternative timing that (i) will not be detrimental to the overall vision for Downtown Columbia expressed in the *Downtown Columbia Plan*; (ii) will not create an adverse community or economic impact; and (iii) will establish a reasonable schedule for completion. Under other circumstances, if a CEPPA cannot be provided because of factors that are beyond the reasonable control of Petitioner, Section 125.0.A.9.h.(4) requires the Planning Board to require the Petitioner to post adequate security with the County in alternative satisfaction of the CEPPA.

CEPPA 15 (as set forth in the *Plan*) requires environmental restoration activities to be completed prior to issuance of a building permit for 1.3 Million square feet of development. In connection with FDP-DC-Crescent-1 and FDP-DC-Crescent-1A, the Planning Board approved alternative timing to allow restoration activities to be coordinated with adjacent land and road development (“Alternative Timing”). Specifically, the Alternative Timing requires restoration activities to be completed prior to issuance of a Use and Occupancy Certificate for a building within adjacent development areas (*see* attached Phasing Schedule).

Of particular concern in this regard is ongoing and continuous construction activity in the Crescent Neighborhood and the anticipated December 2016 occupancy of the One Merriweather project. We also note that with building permits issued for approximately 1.2 Million square feet of development, inclusive of the One Merriweather and Two Merriweather office projects, the original trigger for CEPPA 15 has not been reached.



Status of Restoration Activities.

Restoration activities are being coordinated and undertaken by Biohabitats, the environmental consulting firm that prepared the *Downtown Columbia Plan* environmental studies. Biohabitats has been involved in all aspects of environmental restoration Downtown.

In Restoration Areas 1 and 2, all work has been completed. In other areas, restoration began in 2015 with invasive species removal and management. Activities included cutting and root treating of woody invasive species, foliar treatment of herbaceous invasive species and suppressing additional growth by applying wood chip mulch on treated sites. One year of treatment will have been completed in October 2016. In addition, Biohabitats will have completed one year of baseline monitoring in October that will be used to compare changes from pre to post-restoration. This initial work must be undertaken before the additional restoration activity can occur.

Justification for Request.

First and foremost, with respect to the office market in particular, Petitioner could not have projected that a second major office building (Two Merriweather) would be under construction prior to even initial occupancy of the first new office building. While the momentum this creates for Downtown Revitalization is exceptional, the expanded construction zone for the two office buildings, construction staging and associated new road construction preclude completing restoration activities at this time.

Second, the timing required by the principle office tenants for delivery of the space is also beyond the reasonable control of Petitioner. The accelerated timing has resulted in an increased level of construction activity that simply precludes contemporaneous environmental restoration. Undertaking restoration at this time would be contrary to the intent behind the Alternative Timing and would almost certainly result in additional disturbance that could otherwise be avoided, as well as potential safety conflicts among the different trades working in the same general areas.

Third, construction access is provided along an existing unpaved drive located within an area of future environmental restoration. Relocating and constructing a new access drive to allow restoration to occur would have resulted in additional and unnecessary disturbance to other portions of the site. Consequently, using the drive in its existing location was vastly preferable from an environmental perspective. As a consequence, environmental restoration in this area cannot take place until the access drive is no longer needed. Again, this is beyond the reasonable control of Petitioner.

Fourth, the road plans for the infrastructure development were very complex and required approval from a third party. Easements and land swap agreements had to be negotiated and formalized with the Columbia Association for the public road right of way crossing its property. The lengthy review and approval process (15 months) delayed the road work, and consequently the restoration work.

Lastly, we note that pursuant to an existing Developer's Agreement with the County, Petitioner has already posted bonds with the County in an amount sufficient to cover the cost of all remaining environmental restoration work, thus assuring the completion of restoration activities. Petitioner has also posted security with the Maryland Department of the Environment.

Modified Request.

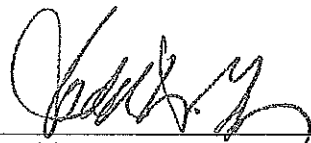
Under the circumstances, and based on factors that are beyond the reasonable control of Petitioner, we respectfully request the Planning Board authorize and acknowledge the posting of security with the County as alternative compliance assuring completion of CEPPA 15.

Petitioner also hereby commits to diligently pursue and complete the remaining environmental restoration work in an efficient and safe manner relative to ongoing construction activities. Barring unforeseen circumstances, Petitioner intends to complete the environmental restoration in 2018, except for ongoing invasive species control.

Thank you for your consideration.

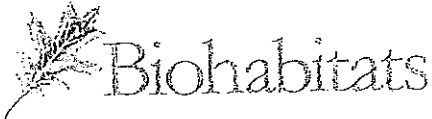
Very truly yours,

SHULMAN, ROGERS, GANDAL,  
PORDY & ECKER, P.A.

By:   
Todd D. Brown

Enclosure  
27327481\_1

cc: Greg Fitchitt  
Ruth Hoang  
Robert Jenkins  
Chris Streb  
Jill Farrar  
Valdis Lazdins  
Arianne Monroe, Esq.



The Stables Building  
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 Baltimore, MD 21211  
 410.554.0156  
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Date: March 15, 2016 (Revised July 29, 2016)  
 To: Valdis Lazdins, Director, Howard County Department of Planning and Zoning  
 From: Jennifer Zielinski Missett, PE  
 Re: **Downtown Columbia – The Crescent Environmental Restoration Status**

This memorandum provides an update on environmental restoration status and phasing in the Crescent in Downtown Columbia since 2015. The *Downtown Columbia Environmental Restoration Phasing 2015 & 2016 Comparison* (Attachment A) provides a visual comparison of the 2015 submission to the current (2016) restoration plans.

Modifications since 2015 include shifts in the type of restoration proposed in sites 3, 5, 6 and 7; an increase in restoration proposed in site 4; and the addition of restoration proposed for Symphony Stream Site 5 (SS-S5). A summary of status and any changes in restoration for each site is provided in Table 1. Table 2 summarizes the total restoration area for Sites 1 through 7, plus SS-S5, based on 2016 information.

**Table 1. Restoration Site Status and Phasing Schedule**

Area	Changes from 2015	Status	Trigger*
1	None.	Complete.	
2	None.	Complete.	
3	Reduction in reforestation (-0.8 acres) and increase in forest restoration (+0.8 acres) due to refinements during the design process.	Under final review by County agencies.	Prior to issuance of use and occupancy certificate for building in Area 3
4	Increase in reforestation (+0.2 acres) due to modifications to the development area 3 boundary.	Planning/design TBD.	Prior to issuance of use and occupancy certificate for building in Area 3
5	Increase in reforestation (+0.2 acres) and reduction in forest restoration (-0.1 acres) due to refinements during the design process.	Under final review by County agencies.	Prior to issuance of use and occupancy certificate for building in Area 1 and 2
6	Increase in reforestation (+0.8 acres) and reduction in forest restoration (-0.8 acres) due to refinements during the design process.	Under final review by County agencies.	Prior to issuance of use and occupancy certificate for building in Area 1 and 2
7	Increase in reforestation (+1.0 acres) and reduction in forest restoration (-1.0 acres) due to modifications to development limits of disturbance.	Planning/design TBD.	Prior to issuance of use and occupancy certificate for building in Area 3
SS-S5	Stream restoration and forest restoration added.	Submitted for federal and state agencies review in March 2016. SDP to be submitted to Howard County in fall 2016.	Prior to issuance of use and occupancy certificate for building in Area 3

\*See Neighborhood Implementation Plan for the location of development areas 1, 2 and 3.

March 15, 2016 (Revised July 29, 2016)

RE: Downtown Columbia – The Crescent Environmental Restoration Status

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**Table 2. Total Downtown Columbia 2016 Restoration Areas**

<b>Sites 1 through 7</b>	<b>Total Area (acres)</b>	<b>Total Length (feet)</b>
Reforestation	10.3	
Forest Restoration	18.7	
Wetland Enhancement	4.0	
Wetland Creation	1.4	
Stream Restoration		3,590

<b>SS-S5</b>	<b>Total Area (acres)</b>	<b>Total Length (feet)</b>
Forest Restoration	2.4	
Stream Restoration		480