

MEMORANDUM

February 23, 2023

TO: Transportation and Environment Committee

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 25-22, Forest Conservation - Trees
Forest Conservation – Trees Regulations

PURPOSE: **Worksession Addendum** – Committee to make recommendations on bill and regulations

Bill 25-22, Forest Conservation - Trees, sponsored by the Council President at the request of the Planning Board, was introduced on July 25, 2022. Two public hearings were held on the bill: one on October 4, 2022, and the other on February 7, 2023.

The purpose of this memorandum is to include additional public testimony from Conservation Montgomery which was inadvertently left out of the original staff packet.

This packet contains:

Circle #

Public Testimony from Conservation Montgomery

© 1



Public Hearing: February 7, 2023

Transportation and Environment Work Session Scheduled February 27, 2023

**Montgomery County Council President Glass
100 Maryland Avenue, 6th Floor, Rockville, MD 20850**

**BILL 25-22 – Forest Conservation – Trees
POSITION: Support**

Dear President Glass and members of the County Council:

Conservation Montgomery is an all-volunteer non-profit organization dedicated to sustaining Montgomery County's quality of life and natural resources for current and future generations through community awareness and sound decision-making. We understand there is a strong connection between the health of our natural landscape and our collective quality of life. Forests and trees are truly workhorses of the natural environment – cleaning our air, reducing urban heat islands, managing stormwater, capturing carbon, supporting biodiversity, and providing economic benefits.

As members of the Montgomery County Forest Coalition, we greatly appreciate the extensive years-long effort which has gone into proposed Bill 25-22 by Montgomery Planning staff, all the organizations which comprise the Coalition, Council staff, and members of the broader community, including during multiple stakeholder work groups where there was considerable collaboration and compromise.

It is important to note that there are three main laws which apply to tree canopy and forests in our County. The Roadside Tree Protection Law, the Tree Canopy Law, and the Forest Conservation Law. At this time, through this legislation, we are focused on ways we can improve our Forest Conservation Law – but our other tree laws desperately need strengthening too – and hopefully those can be addressed in the near future.

Since the previous public hearing on this bill in Fall 2022, the Hughes Center for Agro-Ecology completed their long-awaited study of the state of Maryland's forests titled the *Technical Study on Changes in Forest Cover and Tree Canopy in Maryland* (November 2022). The first line of the report states, "Forests represent one of Maryland's most important natural resources, critical to its economy, sustainability, health, and identity."

The report highlights the fact that Montgomery County continues to lose valuable forest and tree canopy cover – described as “essential infrastructure” - and that forest fragmentation is a serious ongoing threat to the health of our forest ecosystems. We as people need healthy forests to thrive - and more must be done to protect and expand this resource.

Conservation Montgomery therefore supports the Planning Staff and Planning Board's recommendations to improve the Forest Conservation Law (FCL). These recommendations represent a thoughtful, flexible approach and should be passed without being watered down. We also request that there be follow-up data gathering to further review and support ways to not just achieve a no-net loss of forest outcome, but ultimately a net gain of forest.

There is a famous proverb: The best time to plant a tree was 20 years ago, the second-best time is now. The same can be said for our forest and tree laws. The best time to further strengthen our forest conservation law was 20 years ago, the second-best time is now. We hope that is what you will help do today.

Sincerely,

A handwritten signature in black ink that reads "Amanda Farber". The script is cursive and fluid, with the first name "Amanda" and last name "Farber" clearly distinguishable.

Amanda Farber

Of note: We are also attaching Montgomery County Tree and Forest Law 101 for your reference which was developed by Conservation Montgomery with input from several county agencies in order to provide additional information about the scope and differences regarding the three laws which apply to trees and forests in the County (the Forest Conservation Law, the Tree Canopy Law, and the Roadside Tree Protection Law).

Montgomery County, MD Tree and Forest Laws 101

There are 3 major laws which apply to trees and forests in Montgomery County depending on various factors including location, property, jurisdiction, and size (of individual trees or total forest area or land disturbance). Incorporated areas and municipalities in the County may have their own additional laws and regulations. In addition, the Maryland Department of Natural Resources (DNR) generally regulates trees in the right-of-way on most State Highway Administration (SHA) roads in the County through the Maryland Roadside Tree Law (although aspects of the County Roadside Tree Protection Law also apply to trees in the State right-of-way in certain situations) and DNR retains forest conservation authority for any state or cross-county projects.

Montgomery County Roadside Tree Protection Law (Effective 2014)

County lead agencies – Department of Transportation, Department of Permitting Services

- Requires a permit for any trimming, cutting, removal or injury of any tree, or stump removal in the right-of-way of a public County road. A permit is not required for public utility agencies.
- Requires a tree protection plan or replacement plan for trees in the right-of way (often referred to as street trees) impacted by disturbance.
- The law requires one tree be planted back into the right-of-way at or near the location of the tree being removed and a fee be paid for the planting of two additional trees, unless this requirement is waived (i.e. - site not feasible, tree is dead or danger). This fee, tied to a bond and collected at \$250 per tree since 2014, goes into the DOT Tree Planting Fund and may only be used to plant trees in the right-of-way of a public road in the County. In planting trees, DOT must give highest priority to those urban and suburban areas of the County that have relatively low tree canopy. Planted trees must be on the recommended County tree list.
- Any planting plan requires following specifications including species, spacing, and proximity to overhead wires required for planting in the right-of-way.

Montgomery County Tree Canopy Law (Effective 2014)

County lead agencies – Department of Environmental Protection, Department of Permitting Services

- Applies to any project on public or private land that requires a sediment control permit from Montgomery County. The law does not apply to the Parks Department or various other property owners with qualifying circumstances; does not apply to projects that do not require a sediment control permit from Montgomery County such as removing individual or small groups of trees or most agricultural activities;

and does not apply if mitigation for development activity is required under the Forest Conservation Law.

- Requires property owners to plant new canopy trees during development or pay into a tree planting fund used for large shade trees (as of 2014 the rate is \$250 per required tree). The number of trees required to be planted, or the fee-in-lieu amount, is based on the amount of land disturbance.
- Planting must conform to certain regulations including spacing. The money collected in the Tree Canopy Conservation Account fund is used by DEP's Tree Montgomery program to replant shade trees as requested by property owners so long as planting criteria is met.

Montgomery County Forest Conservation Law (Effective 1992; last amended February 2021)

County lead agency – Montgomery Planning, part of Maryland-National Capital Park & Planning Commission (M-NCPPC) (also referred to as “Park and Planning” or “the Commission”)

- Based on Maryland's Forest Conservation Act; the County Forest Conservation Law (FCL) must be at least as strict as the State Forest Conservation Act; Montgomery Planning does not implement the FCL in certain municipalities including Rockville, Gaithersburg, Poolesville, and some others, and any properties or projects managed by the State of Maryland.
- Generally, the FCL applies to properties 40,000 square feet or larger (or contiguous properties under certain circumstances), when a sediment control permit is required, or when subdivision occurs. The FCL applies to some property owners, government entities, and developers who need approval for a development plan, sediment control permit, or activity that could potentially remove more than 5,000 square feet of forest or harm a champion tree.
- The FCL does not apply to projects that do not require a sediment control permit from Montgomery County such as removing individual or small groups of trees or most agricultural activities, with the exception of impacts to or removal of champion trees.
- Certain projects may qualify for exemptions from the requirements of preparing, submitting and implementing a Forest Conservation Plan.
- Anyone subject to the FCL must either submit an application for an exemption from a Forest Conservation Plan, or submit a Forest Conservation Plan which will require a calculated forest retention or forest planting requirement. This requirement is met through planting or protecting forests, both of which must be protected with a Category I forest conservation easement held by the Commission, purchasing credits from one of the county's forest mitigation banks, or contributing to the county's Forest Conservation Fund.
- To meet the requirements of the Forest Conservation Plan, the preferred sequence for afforestation and reforestation in general includes on-site afforestation or reforestation; off-site afforestation or reforestation; enhancement of existing forest through on-site selective clearing, supplemental planting, or both; acquiring credits from an off-site forest mitigation bank; paying fee in-lieu; and

landscaping with an approved plan. The option(s) an applicant may use to meet their forest conservation requirement are noted on the approved Forest Conservation Plan.

- As of July 2021, the Forest Conservation Fund fee-in-lieu rate is \$1.30 per square foot. Funds are used to plant forest or maintain that planted forest through the Reforest Montgomery Program.
- Every project that is required to submit a Forest Conservation Plan for review will have a different forest mitigation requirement, depending on the total tract area, area of existing forest cover, area of forest to be cleared, and land use category.
- If mitigation is required under the Forest Conservation Law, then no mitigation is required under the Tree Canopy Law.

LAW	Date Effective /Amended	Lead County Agency	General Application
Roadside Tree Law	2014	DOT, DPS	County ROW (street) trees.
Tree Canopy Law	2014	DEP, DPS	Sediment control permit.
Forest Conservation Law	1992 / 2021	Montgomery Planning	40,000+ sq feet land disturbance with sediment control permit; subdivision; clearing over 5,000 square feet of forest, impacts to champion trees.

Note: A sediment control permit is required for projects that disturb more than 5,000 square feet of land or tree canopy, or any new primary residential or commercial building, or projects that include 100 cubic yards or more of earth movement on or off the property. All three laws specify requirements for sediment control permits issued by Montgomery County.

Additional Resources:

Maryland Roadside Tree Law:

https://dnr.maryland.gov/forests/Documents/RST_Brochure.pdf

<https://roads.maryland.gov/mdotsha/pages/Index.aspx?PageId=221>

Montgomery County Roadside Tree Law:

[https://www.montgomerycountymd.gov/DOT-](https://www.montgomerycountymd.gov/DOT-Highway/Resources/Files/RoadsideTreeHandout.pdf)

[Highway/Resources/Files/RoadsideTreeHandout.pdf](https://www.montgomerycountymd.gov/DOT-Highway/Resources/Files/RoadsideTreeHandout.pdf)

https://www.montgomerycountymd.gov/DOT-Highway/Resources/Files/20130723_41-12A.pdf

https://www.montgomerycountymd.gov/DPS/Resources/Files/Land_Development/RoadsideTreeDesignGuidelines.pdf

<https://www.montgomerycountymd.gov/DOT-Highway/Tree/index.html>

<https://www.montgomerycountymd.gov/DPS/Process/ld/roadside-tree-plan.html>

Montgomery County Tree Canopy Law:

<https://www.montgomerycountymd.gov/green/trees/laws-and-programs.html>

<https://www.montgomerycountymd.gov/green/Resources/Files/trees/Tree-Canopy-Law-Final-2014.pdf>

Montgomery County Forest Conservation Law:

<https://montgomeryplanning.org/wp-content/uploads/2017/10/Montgomery-County-Forest-Conservation-Law-2-22-21.pdf>

<https://montgomeryplanning.org/wp-content/uploads/2017/10/Forest-Conservation-Tree-Regulations.pdf>

<https://montgomeryplanning.org/planning/environment/forest-conservation-and-trees/montgomery-county-forest-conservation-law/>

*Montgomery County, MD Tree and Forest Laws 101 fact sheet prepared by Conservation Montgomery in consultation with Montgomery County agency staff. Information reflects the laws in place as of April 2022. Additional information available at

www.conservationmontgomery.org