

MEMORANDUM

November 9, 2017

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Action:** Bill 26-17, Forest Conservation – Amendments

Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): enact Bill 26-17 as amended (see additional amendment on page 2-3).

Bill 26-17, Forest Conservation - Amendments, sponsored by Lead Sponsor Council President at the request of the Planning Board, was introduced on July 25, 2017. A public hearing was held on September 19 (see written testimony on ©33-45), and a Transportation, Infrastructure, Energy and Environment Committee worksession was held on October 5.

Bill 26-17 would:

- require certain administrative and minor subdivisions to comply with the Forest Conservation Law;
- subject certain conditional uses to the Forest Conservation Law;
- require park development plans to comply with the Forest Conservation Law;
- exempt certain modifications to existing residential development property under certain circumstances;
- require certain projects requiring sketch plan approval to submit a forest stand delineation;
- modify the process for submitting a forest stand delineation;
- alter the maintenance period for forest conservation plans for certain areas;
- remove the requirement that tree variances be referred to the County Arborist for recommendation; and
- generally amend laws related to forest conservation.

Issues/Committee Recommendation¹

1. *Should projects already in the queue be grandfathered?* Bill 26-17 would require an applicant to submit to the Planning Director a forest stand delineation to be reviewed concurrently with a submitted sketch plan. Scott Wallace, on behalf of Global LifeSci Development Corporation (Percontee), the developer of the “Viva White Oak” project, submitted written comments seeking an amendment to grandfather existing projects. Mr. Wallace noted that Percontee filed a Sketch Plan application on August 1, but does not yet have Sketch Plan approval. Mr. Wallace recommended language be added to Bill 26-17 specifically applying the provisions of the bill to sketch plan applications filed after the effective date of the bill (©46-48).

Council staff comments: Council staff generally supports grandfathering existing projects, but recommends the deadline for grandfathering be the date of enactment of Bill 26-17, not the effective date of the law. Council staff understands from Planning staff that they do not object to grandfathering projects that have already submitted sketch plan applications. **The Committee recommended (3-0)** grandfathering projects that have submitted a Sketch Plan application as of the date of enactment of Bill 26-17 (see ©12, lines 288-289).

2. *Should the law require the County Arborist to provide a recommendation for tree variances?* Code Sections 22A-21(c) and 22A-30(c)(4) requires the Planning Board to send a copy of any variance request to the County Arborist for a written recommendation, which must be provided within 30 days or the recommendation will be presumed favorable. Bill 26-17 would remove the requirement that tree variances be referred to the County Arborist. The Planning Board testimony on ©34-35 explains the rationale for this. Essentially, the County Arborist wants to receive the tree variance requests fairly late in the development process, which Planning staff argue is challenging to incorporate during the 120 day regulatory close for site plans and preliminary plans. Lisa Feldt, on behalf of the Executive, generally supported the bill, but urged the Council to retain the role of the County Arborist.

The Committee recommended (3-0) retain the language in Bill 26-17 which removes the County Arborist from the process, but requested the Department of Environmental Protection and Park and Planning meet to further discuss this issue. After the Committee meeting, staff from each agency met and agreed on a solution. DEP will become involved in the development process much earlier – as part of the Development Review Committee. As part of this Committee, DEP will be provided an opportunity to comment on tree variances on the same schedule as other County and state agencies (including Transportation, Permitting Services, Fire and Rescue, WSSC, etc.). To facilitate this change in procedure, the following amendments are necessary (for ease of reading, the language that would be codified is highlighted in the below amendments):

On ©16, lines 380-388

- (c) *Referral to other agencies* [[for non 22A-12(b)(3) variance requests]]. Before [[considering a variance,]] the Planning Board considers a variance not related to 22A-12(b)(3), the Planning Director must send a copy of each request to the County Arborist[, Planning Director,] and any other appropriate agency for a written

¹ Council staff notes that technical, non-substantive edits are needed to Bill 26-17. These edits are incorporated into the Committee version of Bill 26-17.

recommendation ~~[[before [[acting]] the Board, or Planning Director, as appropriate, acts on the request. If a recommendation on the variance is not submitted to the Planning Board, or Planning Director, as appropriate, within 30 days after the referral, the recommendation must be presumed to be favorable.]]~~

On ©16, lines 392-393

(c) (4) ~~[[except for requests under 22A-12(b)(3).]]~~ review variance requests and reports under Article II;

This packet contains:

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F:\LAW\BILLS\1726 PB Forest Conservation Amendments\Action Memo.Docx

Bill No. 26-17
Concerning: Forest Conservation -
Amendments
Revised: 10/26/2017 Draft No. 3
Introduced: July 25, 2017
Expires: January 25, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the Planning Board

AN ACT to:

- (1) require certain administrative and minor subdivisions to comply with the Forest Conservation Law;
- (2) subject certain conditional uses to the Forest Conservation Law;
- (3) require park development plans to comply with the Forest Conservation Law;
- (4) exempt certain modifications to existing residential development property under certain circumstances;
- (5) require certain projects requiring sketch plan approval to submit a forest stand delineation;
- (6) modify the process for submitting a forest stand delineation;
- (7) alter the maintenance period for forest conservation plans for certain areas;
- (8) remove the requirement that tree variances be referred to the County Arborist for recommendation; and
- (9) generally amend laws related to forest conservation.

By amending

Montgomery County Code, Forest Conservation
Chapter 22A,
Sections 22A-3, 22A-4, 22A-5, 22A-9, 22A-11, 22A-12, 22A-21, 22A-30, and 22A-31

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 22A-3, 22A-4, 22A-5, 22A-9, 22A-11, 22A-12, 22A-21,**
2 **22A-30, and 22A-31 are amended as follows:**

3 **22A-3. Definitions.**

4 In this Chapter, the following terms have the meanings indicated:

5 Administrative subdivision means a plan for a proposed subdivision or
6 resubdivision prepared and submitted for approval by the Planning Director
7 under Division 50.6 of Chapter 50 before preparation of a subdivision plat.

8 * * *

9 Conditional use means a use approved under [[Chapter]] Section 59-7.3.1 of
10 Chapter 59.

11 * * *

12 Development plan means a plan or an amendment to a development plan
13 approved under Section 7.7.1.B of Chapter 59 or a floating zone plan approved
14 under Section 7.2.1 of Chapter 59 or referred to in [[Division]] Section 7.7.1.B
15 of Chapter 59.

16 * * *

17 Lot means for the purpose of this Chapter a tract of land, the boundaries of which
18 have been established as a result of deed or previous subdivision or a larger
19 parcel, and which will not be the subject of further subdivision, as defined under
20 [Section 50-1] Chapter 50, without an approved forest stand delineation and
21 forest conservation plan

22 * * *

23 Minor subdivision means a plan for a proposed subdivision or resubdivision
24 prepared and submitted for approval by the Planning Director under [[Chapter]]
25 Division 50.7 of Chapter 59.

26 * * *

27 Municipal corporation means a municipality without planning and zoning

28 authority or which has assigned its responsibilities under [[§]] Section
29 5-1603(a) of the Natural Resources Article of the Maryland Code [Subtitle 16
30 of the Natural Resources Article of the Maryland Code] to the County.

31 * * *

32 [*Nontidal wetland* means an area regulated as a nontidal wetland under Title
33 8, Subtitle 12, of the Natural Resources Article of the Maryland Code.]

34 * * *

35 Park development plan means an application submitted by the Montgomery
36 County Parks Department for the construction and development of a specific
37 park.

38 * * *

39 Planned unit development means a development comprised of a combination
40 of land uses or varying intensities of the same land use, having at least 20%
41 of the land permanently dedicated to green area, and under an integrated plan
42 that provides flexibility in land use design approved by the Planning Board
43 under Section 7.2.1 of Chapter 59 or referred to in [[Division]] Section 7.7.1.B
44 of Chapter 59.

45 * * *

46 *Preliminary plan of subdivision* means a plan for a proposed subdivision or
47 resubdivision prepared and submitted for approval by the Planning Board
48 under [[Chapter]] Division 50.4 of Chapter 50 before preparation of a
49 subdivision plan.

50 * * *

51 *Project plan* means a plan or an amendment to a project plan [[approved
52 under]] referred to in Section 7.7.1B of Chapter 59 or a sketch plan approved
53 under Section 7.3.3 of Chapter 59.

54 * * *

55

56 *Public utility* means any:

- 57 (1) [the] transmission [lines and the] line or electric generating
- 58 [stations licensed under Article 78, Section 54A and 54B or 54-I
- 59 of the Maryland Code; and] station; or
- 60 (2) water, sewer, electric, gas, telephone, and cable service [facilities
- 61 and lines] line.

62 * * *

63 *Site plan* means a plan or an amendment to a site plan approved under Section
64 7.3.4 of Chapter 59 or referred to in Division 7.7.1.B of Chapter 59.

65 * * *

66 *Sketch plan* means a plan or amendment to a sketch plan approved under
67 Chapter 59.7.3.3.

68 * * *

69 *Special exception* means a use approved as a conditional use under Section 7.3.1
70 or Section 7.7.1.B of Chapter 59 or referred to in Division 7.7.1.B of Chapter
71 59.

72 * * *

73 *Subdivision* has the same meaning as stated in Chapter 50.

74 * * *

75 *Watershed* means [all lands lying with an area described as a watershed in the
76 Countywide Stream Protection Strategy] any area delineated as a watershed
77 in the Montgomery County Municipal Separate Storm Sewer System (MS4)
78 Permit Implementation Program, or any smaller area within the watershed that
79 is delineated by the State of Maryland as a 12-Digit watershed.

80
81 *Wetland* means an area that is inundated or saturated by surface water or
82 groundwater at a frequency and duration sufficient to support, and under normal

83 circumstances does support, a prevalence of vegetation typically adapted for life
84 in saturated soil conditions, commonly known as hydrophytic vegetation.

85 **22A-4. Applicability**

86 Except as otherwise expressly provided in this Chapter, this Chapter applies to:

87 (a) a person required by law to obtain an approval or amendment to a
88 development plan, diagrammatic plan, project plan, floating zone plan,
89 sketch plan, preliminary plan of subdivision, administrative subdivision,
90 minor subdivision, or site plan;

91 (b) a person required by law to obtain approval of a special exception or a
92 conditional use, [approval] or a sediment control permit on a tract of
93 land 40,000 square feet or larger, and who is not otherwise required to
94 obtain an approval under subsection (a);

95 * * *

96 (d) a government entity subject to a mandatory referral or a park
97 development plan on a tract of land 40,000 square feet or larger which is
98 not exempt under subsection 22A-5(f);

99 * * *

100 **22A-5. Exemptions.**

101 The requirements of Article II do not apply to:

102 * * *

103 (b) an agricultural activity that is exempt from both platting requirements
104 under Section [50-9] 50-3 and requirements to obtain a sediment control
105 permit under Section [19-2(c)(2)] 19-2(b)(2). Agricultural support
106 buildings and related activities are exempt only if built using best
107 management practices;

108 * * *

109 (i) noncoal surface mining regulated under [Title 7 of the Natural

110 Resources Article of the Maryland Code] Subtitle 8 of Title 15 of the
 111 Environment Article of the Maryland Code.

112 * * *

113 (n) any minor subdivision under [Section 50-35A(a)(2)-(3) involving
 114 conversion of an existing recorded outlot created because of inadequate
 115 or unavailable sewerage or water service to a lot or joining two or more
 116 existing residential lots into one lot,] Division 50.7 of Chapter 50 if:

117 (1) the only development located on the resulting lot is a single family
 118 dwelling unit or an accessory structure (such as a pool, tennis
 119 court, or shed); and

120 (2) the development does not result in the cutting, clearing, or grading
 121 of:

122 (A) more than a total of 20,000 square feet of forest,

123 (B) any forest in a stream buffer,

124 (C) any forest on a property located in a special protection area
 125 which must submit a water quality plan,

126 (D) any specimen or champion tree, or

127 (E) any tree or forest that is subject to the requirements of a
 128 previously approved forest conservation plan or tree save
 129 plan; or

130 (3) there is no proposed land disturbance and a declaration of intent is
 131 filed with the Planning Director stating that the lot will not be the
 132 subject of additional regulated activities under this Chapter within
 133 5 years of the approval of the minor subdivision.

134 (o) The cutting or clearing of public utility rights-of-way or land for electric
 135 generating stations licensed under [Section 54A and 54B or Section 54I
 136 of Article 78] Sections 7-205 and 7-207 or 7-208 of the Public Utility

137 Companies Article of the Maryland Code, if:

138 (1) any required certificates of public convenience and necessity
 139 have been issued in accordance with Section [5-1604(f)]
 140 5-1603(f) of the Natural Resources Article of the Maryland
 141 Code; and

142 (2) the cutting or clearing of the forest is conducted so as to minimize
 143 the loss of forest.

144 * * *

145 (q) a special exception, or conditional use, application if:

146 * * *

147 (2) the application modifies an existing special exception use which
 148 was approved before July 1, 1991, and the revision will not result
 149 in the clearing of more than a total of ~~[[5000]]~~ 5,000 additional
 150 square feet of forest or any specimen or champion tree; or

151 (3) the total disturbance area for the proposed special exception use,
 152 or conditional use, will not exceed 10,000 square feet, and
 153 clearing will not exceed a total of ~~[[5000]]~~ 5,000 square feet of
 154 forest or include any specimen or champion tree;

155 * * *

156 (t) a modification to an existing:

157 (1) non-residential developed property if:

158 [(1)] (A) no more than 5,000 square feet of forest is ever cleared
 159 at one time or cumulatively after an exemption is issued;

160 [(2)] (B) the modification does not result in the cutting, clearing,
 161 or grading of any forest in a stream buffer or located on
 162 property in a special protection area which must submit a
 163 water quality plan;

164 [(3)] (C) the modification does not require approval of a
165 preliminary [plan of] or administrative subdivision plan;
166 and

167 [(4)] (D) the modification does not increase the developed area
168 by more than 50% and the existing development is
169 maintained; or

170 (2) residential developed property if:

171 (A) forest is not impacted or cleared;

172 (B) the modification is not located in a stream buffer or located
173 on property in a special protection area which must submit
174 a water quality plan;

175 (C) the modification does not require approval of a
176 preliminary or administrative subdivision plan;

177 (D) the modification does not increase the developed area by
178 more than 50%; and

179 (E) the existing structure is not modified[.];

180 * * *

181 **22A-9. County Highway Projects.**

182 * * *

183 (a) *General.*

184 * * *

185 (2) The construction should minimize forest [cutting or clearing]
186 removal, land disturbance, and loss of specimen or champion
187 trees to the extent possible while balancing other design,
188 construction, and environmental standards. The constructing
189 agency must make a reasonable effort to minimize land
190 disturbance to avoid the cutting or clearing of trees and other

191 woody plants.

192 * * *

193 **22A-11. Application, review, and approval procedures**

194 (a) *General.*

195 (1) *Coordinated with project review.* The forest stand delineation
 196 and forest conservation plan must be submitted and reviewed in
 197 conjunction with the review process for a development plan,
 198 floating zone plan, project plan, sketch plan, [preliminary plan
 199 of] subdivision plan, site plan, special exception, conditional use,
 200 mandatory referral, park development plan, or sediment control
 201 permit under this Section. The Planning Director must coordinate
 202 review of the forest conservation plan with the Director of
 203 Environmental Protection, the Director of Permitting Services,
 204 the Washington Suburban Sanitary Commission, other relevant
 205 regulatory agencies, and entities that will provide public utilities
 206 to the tract, to promote consistency between the objectives of this
 207 Chapter and other development requirements. To the extent
 208 practicable, entities providing public utilities should design
 209 facilities that will serve a tract in a manner that avoids identified
 210 conservation areas and minimizes tree loss.

211 * * *

212 (b) *Project requiring development plan, floating zone plan, project plan,*
 213 *sketch plan, preliminary plan of subdivision, or site plan approval.*

214 (1) *Forest stand delineation.* The applicant must submit to the
 215 Planning Director a forest stand delineation with the application
 216 for a development plan, floating zone plan, project plan, sketch
 217 plan, preliminary plan of subdivision, or site plan, whichever

218 comes first. Within 30 days of receipt, the Planning Director
219 must notify the applicant whether the forest stand delineation is
220 complete and correct. If the Planning Director fails to notify the
221 applicant within 30 days, the delineation will be treated as
222 complete and correct. The Planning Director may require further
223 information or provide for one extension of this deadline for an
224 additional 15 days for extenuating circumstances. The applicant
225 must submit revised drawings to address comments within 90
226 days from the date the Planning Director sends comments to the
227 applicant. If the applicant fails to submit revised drawings, the
228 application is deemed withdrawn. The Planning Director may
229 provide for one extension of this deadline for extenuating
230 circumstances.

231 (2) *Forest Conservation Plan.*

232 (A) *Application.* After being notified that the forest stand
233 delineation is complete and correct, the applicant must
234 submit a forest conservation plan to the Planning Director.
235 If the development proposal will require more than one of
236 the approvals subject to this subsection, the applicant must
237 submit a preliminary forest conservation plan to the
238 Planning Director in conjunction with the first approval
239 and a final forest conservation plan in conjunction with the
240 last approval. If only one approval subject to this
241 subsection is required, an applicant must submit a
242 preliminary forest conservation and a final forest
243 conservation plan at the time of the development
244 application [and a final forest conservation plan before a

245 sediment control permit is issued for the tract, but no later
 246 than a record plat is submitted].

247 * * *

248 (c) *Project requiring special exception or conditional use approval.*

249 (1) *Forest stand delineation.* If a special exception or conditional use
 250 proposal is subject to the requirements of this Chapter, the
 251 applicant must submit a forest stand delineation to the Planning
 252 Director before the Board of Appeals may consider the
 253 application for the special exception. The deadlines for
 254 reviewing a forest stand delineation are the same as in paragraph
 255 (b)(1) of this Section.

256 (2) *Forest conservation plan.* Upon notification that the forest stand
 257 delineation is complete and correct, the applicant must submit a
 258 preliminary forest conservation plan to the Planning Director. The
 259 Board of Appeals must consider the preliminary forest
 260 conservation plan when approving the special exception or
 261 conditional use application and must not approve a special
 262 exception or conditional use application that [is in conflict]
 263 conflicts with the preliminary forest conservation plan. A final
 264 forest conservation plan must be submitted before obtaining a
 265 sediment control permit, or at the time of preliminary plan of
 266 subdivision or site plan application, if required. The deadlines for
 267 reviewing a final forest conservation plan are the same as in
 268 paragraph (d)(2) of this Section

269 * * *

270 (e) *Project requiring mandatory referral or [[Park Development Plan]] park*
 271 *development plan.*

272 (1) *Forest stand delineation.* A person seeking mandatory referral or
 273 a park development plan for a project that is subject to the
 274 requirements of this Chapter must first submit a forest stand
 275 delineation to the Planning Director for review. The deadlines for
 276 reviewing a forest stand delineation are the same as in paragraph
 277 (b)(1) of this Section.

278 (2) *Forest conservation plan.* Upon notification that the forest stand
 279 delineation is complete and correct, the applicant must submit to
 280 the Planning Director a preliminary forest conservation plan. The
 281 Planning Board must consider the preliminary forest conservation
 282 plan when reviewing the mandatory referral application or the park
 283 development plan. The deadlines for reviewing the final forest
 284 conservation plan are the same as in paragraph (d)(2) of this
 285 Section.

286 * * *

287 (f) *Project requiring sketch plan approval.*

288 (1) *Forest stand delineation.* [[The]] For any sketch plan application
 289 filed on or after [date of enactment], the applicant must submit
 290 to the Planning Director, for approval, a forest stand delineation
 291 reviewed concurrently with the sketch plan application. The
 292 deadlines for reviewing a forest stand delineation are the same as
 293 in paragraph (b)(1) of this Section. The forest stand delineation
 294 must be approved prior to Planning Board approval of the sketch
 295 plan.

296 (2) *Forest conservation plan.* Upon notification that the forest stand
 297 delineation is complete and correct, the applicant must submit a
 298 preliminary forest conservation plan to the Planning Director with

299 the first development application after approval of the sketch plan.
300 The deadlines for reviewing a preliminary and final forest
301 conservation plan are the same as in paragraph (b)(2)(B) and
302 (b)(2)(C) of this Section.

303 * * *

304 (g) Project requiring administrative subdivision approval.

305 (1) Forest stand delineation. The applicant must submit to the
306 Planning Director a forest stand delineation before the
307 administrative subdivision application. The deadlines for
308 reviewing a forest stand delineation are the same as in
309 paragraph (b)(1) of this Section.

310 (2) Forest conservation plan. Upon notification that the forest
311 stand delineation is complete and correct, the applicant must
312 submit a preliminary forest conservation plan to the
313 Planning Director. The Planning Director must consider the
314 preliminary forest conservation plan when approving the
315 administrative subdivision application and must not
316 approve an administrative subdivision application that
317 conflicts with the preliminary forest conservation plan. A
318 final forest conservation plan must be submitted and
319 approved before obtaining a sediment control permit, or
320 record plat, whichever comes first. The deadlines for
321 reviewing a final forest conservation plan are the same as in
322 paragraph (d)(2) of this Section. If the Director defers the
323 approval of an administrative subdivision to the Planning
324 Board, the Planning Board must review and act on the
325 preliminary forest conservation plan with the administrative

326 subdivision plan. The deadlines for reviewing a final forest
327 conservation are the same as in paragraph (b)(2)(C) of this
328 Section.

329 **22A-12. Retention, afforestation, and reforestation requirements.**

330 * * *

331 (e) *Standards for reforestation and afforestation.*

332 * * *

333 (3) *Priority areas and plantings.* Afforestation and reforestation
334 should be directed to stream buffer areas, connections between
335 and additions to forested areas, critical habitat areas,
336 topographically unstable areas, and land use and road buffers.
337 The use of native plant materials is preferred. [Unless the
338 Planning Board or Planning Director order otherwise, the
339 required use of natural regeneration under this Chapter
340 supercedes any prohibition under Chapter 58.]

341 * * *

342 (f) *Special provisions for minimum retention, reforestation and*
343 *afforestation.*

344 * * *

345 (2) *Retention, reforestation and afforestation.* Forest retention
346 should be maximized where possible on each site listed in this
347 subsection. At a minimum, on-site forest retention, and in some
348 cases reforestation and afforestation, must be required as
349 follows:

350 (A) In an agricultural and resource area, on-site forest
351 retention must equal 25% of the net tract area.

352 (B) In a planned development or a site development using a

353 cluster or other optional method of development in a one-
 354 family residential zone, on-site forest retention must equal
 355 the applicable conservation threshold in subsection (a).
 356 This requirement also applies to any site seeking a waiver
 357 or variance from base zone standards under [Section
 358 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or
 359 59-C-7.131,] Sections 59.4.4.5.D, 59.4.4.6.D, 59-4.4.7.C,
 360 59-4.4.8.C, 59-4.4.8.C, 59-4.4.9.C, 59-4.4.10.C, 59-8.3.2,
 361 59-4.9.16.B, and 59-5.2 if as a condition of the waiver or
 362 variance the Planning Board or County Council must find
 363 that the resulting development is environmentally more
 364 desirable.

365 * * *

366 (h) *Agreements*

367 (1) *Maintenance agreement.* A forest conservation plan must include
 368 a [[two-year]] 2-year binding agreement for maintenance of
 369 conservation areas, including the watering (as practical), feeding
 370 and replanting of areas to be afforested or reforested outside of
 371 Special Protection Areas, and [[five-years]] 5 years for plantings
 372 inside of Special Protection Areas. The [2-year period] binding
 373 agreement for maintenance starts upon satisfactory [final]
 374 inspection of the [conservation measures] plantings required under
 375 the forest conservation plan. A staged project may have more than
 376 one agreement.

377 * * *

378 **22A-21. Variance.**

379 * * *

380 (c) *Referral to other agencies for non 22A-12(b)(3) variance requests.*
 381 Before [[considering a variance,]] the Planning Board considers a
 382 variance not related to 22A-12(b)(3), the Planning Director must send a
 383 copy of each request to the County Arborist[, Planning Director,] and any
 384 other appropriate agency for a written recommendation before [[acting]]
 385 the Board, or Planning Director, as appropriate, acts on the request. If a
 386 recommendation on the variance is not submitted to the Planning Board,
 387 or Planning Director, as appropriate, within 30 days after the referral, the
 388 recommendation must be presumed to be favorable.

389 * * *

390 **22A-30. County Arborist**

391 * * *

392 (c) (4) except for requests under 22A-12(b)(3), review variance requests
 393 and reports under Article II;

394 * * *

395 **22A-31. Forest Conservation Advisory Committee**

396 * * *

397 (c) The Executive must designate a staff member from each of the following
 398 departments to serve as an ex office member:

399 * * *

400 (2) The Executive must designate a staff member from each of the
 401 following departments to serve as an ex officio member:

402 (A) [Economic Development] Agricultural Services;

403 * * *

404

LEGISLATIVE REQUEST REPORT

Bill 26-17

Forest Conservation - Amendments

DESCRIPTION: Bill 26-17 would require certain administrative and minor subdivisions to comply with the Forest Conservation Law, subject certain conditional uses to the Forest Conservation Law, require park development plans to comply with the Forest Conservation Law, exempt certain modifications to existing residential development property under certain circumstances, require certain projects requiring sketch plan approval to submit a forest stand delineation, modify the process for submitting a forest stand delineation, alter the maintenance period for forest conservation plans for certain areas, and remove the requirement that tree variances be referred to the County Arborist for recommendation.

PROBLEM: Current changes to county and state law have made some provisions of the Forest Conservation Law out of date and in need of updating, changing, and clarifying.

GOALS AND OBJECTIVES: To update the code to reflect changes to state law and to streamline the review process, codify practices, and clarify portions of the Forest Conservation law.

COORDINATION: Park and Planning

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Amanda Mihill, Legislative Attorney, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Penalties for violations of Chapter 22A are in Section 22A-16

Bill



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

2017 MAY 26 PM 1:30

OFFICE OF THE CHAIR

May 25, 2017

RECEIVED
MONTGOMERY COUNTY
PLANNING COMMISSION

BD
CC
JBF
LL
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The Honorable Roger Berliner
President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Berliner:

On May 4, 2017, the Montgomery County Planning Board recommended 4-0 to transmit an Expedited Bill to the County Council for changes to Chapter 22A of the County code (Forest Conservation Law - FCL). The Forest Conservation Law needs to be updated to reflect recent changes to the County's zoning ordinance and the subdivision of land article of the Montgomery County code, as well as changes to State code. Other proposed changes will streamline the review process, codify practices, and clarify portions of the Forest Conservation Law. Some of the proposed changes to the Chapter 22A of the County code include:

1. Clarifying that Administrative and Minor Subdivisions are subject to the FCL.
2. Creating a process in which the Planning Director can approve Forest Conservation Plans associated with Administrative Subdivisions.
3. Clarifying that Conditional Uses (formerly Special Exceptions) are subject to the FCL.
4. Requiring Natural Resources Inventory/Forest Stand Delineations be submitted prior to the submission of a Sketch Plan and approved concurrently with the Sketch Plan.
5. Creating a 90-day time limit for applicants to resubmit revisions to Natural Resource Inventories/Forest Stand Delineations or the plan is automatically withdrawn, unless an extension is requested under extenuating circumstances.
6. Clarifying that the maintenance period for all forest conservation plantings in Special Protection Areas is 5 years. The maintenance period outside of Special Protection Areas remains at 2 years.
7. Remove the requirement that all tree variances be referred to the County Arborist for a recommendation. Any non-tree related variance will still be referred to the County Arborist for a recommendation.
8. Change the modification to an "existing developed property" exemption that allows for certain residential uses to qualify for an exemption from submitting a forest conservation plan.

At the Planning Board discussion, staff brought up an issue that the Board felt needed to be addressed. Just prior to the hearing, staff received a request from a property owner that both staff and the Board felt would be a hardship if an exemption from submitting a forest conservation plan was not

The Honorable Roger Berliner
May 25, 2017
Page 2

granted. Staff requested permission from the Planning Board to revise the "modification to existing development property" exemption from submitting a forest conservation plan so that certain residential properties could qualify for an exemption from submitting a forest conservation plan. The example presented to the Planning Board involved a residential townhouse community built in the 1970s that is having drainage issues and all methods to alleviate the drainage issues required a sediment control permit. In this case, the need to obtain a sediment control permit triggers the forest conservation law. Currently, there are no exemptions from submitting a forest conservation plan for such situations. Staff requested permission to develop a solution after the Planning Board hearing and the Board granted staff permission to develop a solution. That language is now incorporated into the proposed amendment.

Enclosed is a complete copy of the proposed amendment that the Planning Board would like to be introduced as an expedited bill and a copy of the staff report dated April 25, 2017. Members of the Planning Board and staff of The Maryland-National Capital Park & Planning Commission are available to assist the Council in its review of the proposed legislation.

Sincerely,



Casey Anderson
Chair

cc: Jeff Zyontz
Mark Pfefferle

Enclosures

Forest Conservation Law Amendments – Modifications, Corrections, and Clarifications

MP Mark Pfefferle, Chief, Mark.Pfefferle@montgomeryplanning.org, 301 495-4730

Completed: 4-25-17

SUMMARY

Changes to the zoning ordinance and the subdivision of land article of the Montgomery County code, as well as changes to State code, requires Chapter 22A of the County code (Forest Conservation Law) to be updated to reflect these changes. As well, staff is taking this opportunity to request changes that will streamline the review process, codify practices, and clarify portions of the Forest Conservation Law (FCL). Some of the proposed changes to the forest conservation law include:

1. Clarifying that Administrative and Minor Subdivisions are subject to the FCL.
2. Creating a process in which the Planning Director can approve Forest Conservation Plans associated with Administrative Subdivisions.
3. Clarifying that Conditional Uses (formerly Special Exceptions) are subject to the FCL.
4. Requiring Natural Resources Inventory/Forest Stand Delineations be submitted and approved prior to the submission of a Sketch Plan.
5. Creating a 90 day time limit for applicants to resubmit revisions to Natural Resource Inventories/Forest Stand Delineations or the plan is automatically withdrawn.
6. Clarifying that the maintenance period for all forest conservation plantings in Special Protection Areas is 5 years. The maintenance period outside of Special Protection Areas remains at 2 years.
7. Remove the requirement that all tree variances be referred to the County Arborist for a recommendation. Any non-tree related variance will still be referred to the County Arborist for a recommendation.

Staff requests the Planning Board to approve transmittal of the proposed changes to Chapter 22A of the County code to the Montgomery County Council President for introductions as an expedited bill.

PROPOSED CHANGES

Below is a more detailed discussion of the proposed changes to the FCL by Section:

Section 22A-3. Definitions

- Lines 5 through 7 Inclusion of the new definition "Administrative Subdivision" to reflect a new subdivision type created from the revisions to Chapter 50 (Subdivision of Land Article) of the County code.
- Lines 9 Inclusion of the new definition "Conditional Use" to reflect change in the zoning ordinance when Special Exceptions were replaced with Conditional Uses.
- Lines 11 and 12 Additional language to the existing definition to reflect a change in the zoning ordinance as "Development Plan" is no longer used in the zoning ordinance, however, there are still properties that are subject to Development Plan.
- Lines 14 through 17 Deletion of "-1" from the definition of "Lot" to reflect a change that occurred to Chapter 50 of the County code.
- Lines 19 through 21 Change to the definition "Mandatory Referral" to include the correct citation to the Annotated Code of Maryland Code.
- Lines 23 and 24 Inclusion of the new definition "Minor Subdivision" to include a subdivision type that is currently missing from the FCL.
- Lines 27 through 29 Change to the definition "Municipal Corporation" to include the correct citation to the Annotated Code of Maryland.
- Lines 32 and 33 Deletion of the definition "Nontidal wetland". A new "Wetland" definition is proposed later in FCL amendment.
- Lines 36 and 37 Inclusion of the definition "Park Development Plan" to include a development application type that is missing from the FCL, but used in the Forest Conservation Regulation.
- Lines 42 through 45 Additional language to the existing definition to reflect a change in the zoning ordinance as "Plan Unit Development" is no longer used in the zoning ordinance, however, there are still properties that are subject to this plan type.

- Lines 48 through 50 Addition of “.4” to the definition “Preliminary Plan of Subdivision” to reflect the correct reference as a result of changes to Chapter 50 of the County code.
- Lines 53 and 54 Additional language to the existing definition to reflect a change in the zoning ordinance as “Project Plan” is no longer used in the zoning ordinance, however, there are still properties that are subject to this plan type.
- Lines 58 through 61 Change to the definition “Public Utility” to include the exact language used by the State in the Forest Conservation Model Ordinance.
- Lines 64 through 66 Additional language to the “Site Plan” definition to reflect the changes that occurred with changes to zoning code.
- Line 68 Inclusion of the new definition “Sketch Plan” that was not previously included in the FCL.
- Lines 70 and 71 Additional language to the existing definition to reflect a change in the zoning ordinance as “Special Exception” is no longer used in the zoning ordinance, however, there are still properties that are subject to this plan type.
- Line 73 Inclusion of the new definition “Subdivision” that was not previously included in the FCL but now encompasses “Preliminary Plan of Subdivisions”, “Administrative Subdivisions”, and “Minor Subdivisions”.
- Lines 74 through 78 Revision to the existing definition “Watershed” to reflect current practice and requirements that watersheds be tied to the Municipal Separate Storm Sewer System Permit and no longer the Countywide Stream Protection Strategy.
- Lines 80 through 83 Inclusion of the new definition “Wetland” to replace the “non-tidal wetland” definition that was previously included in the FCL. The new definition is identical to the one used in the *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County*, which was published in January 2000.

Section 22A-4. Applicability

- Lines 89 through 91 Addition of "Sketch Plan", "Administrative Subdivision", and "Minor Subdivision" to the list of plan application types that are subject to the FCL.
- Lines 93 and 94 Addition of "Conditional Use" as a plan application type this is subject to the FCL.
- Lines 97 and 98 Addition of "Park Development Plan" as a development application type subject to the FCL. The Forest Conservation Regulation already identifies park development plans as requiring a forest conservation finding but by putting it into the law the approving authority is clarified.

Section 22A-5. Exemptions

- Lines 103 through 106 Clarifies the reference for an agricultural exemption from submitting a Forest Conservation Plan (FCP). Changes to Chapter 50 of the code required the reference change from Chapter 50-9 to 50-3 and the reference to Chapter 19 was incorrect and is now being corrected.
- Lines 109 through 126 Changes to three separate exemptions from submitting a FCP with correct reference to the Annotated code of Maryland.
- Lines 129 through 137 Inclusion of "Conditional Use" in the exemption from submitting a FCP that is specific to "Special Exceptions".
- Line 145 Inclusion of the word "forest" to clarify that the cutting, cutting, or grading is limited forest and does not include grading of unforested lands.
- Lines 147 and 148 Inclusion of the phrase "or amendment to a preliminary plan" to clarify that the modification to an existing property is also applicable to Preliminary Plan amendments.

Section 22A-9. County Highway Projects

- Lines 157 and 158 Replacement of the words "cutting or clearing" with "removal, land disturbance" to clarify in order to minimize impacts to trees that it is not just minimization of forest removal or cutting but also the disturbance of land which causes forest removal, particularly when land disturbance is next tree trunk.

Line 160 Inclusion of the phrase "land disturbance to avoid" to reaffirm that disturbance of land is the primary cursor for cutting or clearing of forests. In some instances, by minimizing land disturbance through the use of retaining walls or different stormwater management practices the area of forest to removed can be reduced.

Section 22A-11. Application, review and approval procedures

Lines 169 and 170 The inclusion of "Sketch Plan", "Conditional Use", and "Park Development Plan" clarifies that these plan types are subject to Article II of the FCL. In this section "preliminary plan of subdivision" is replaced with "subdivision plan". Using the phrase "subdivision plans" captures all three plan types and "subdivision plans" are now defined in section 22A-3 of the proposed revisions to the FCL.

Lines 183 through 186 Staff must review all Natural Resource Inventories/Forest Stand Delineations (NRI/FSDs) within 30 calendar days, otherwise the plan is automatically deemed approved. Applicants do not have a timeframe to respond to staff's comments. The amendment proposes to create a 90 day regulatory clock for applicants to respond to staff comments otherwise the application is automatically withdrawn. In the last "plan status" update there were 30 NRI/FSDs in various stages of review. Four of those plans were under review by staff and comments were sent to the applicants for the remaining 24 plans. Twelve of 24 plans have been outstanding for more than 365 days with an average of 784 days. Eight of the 24 plans have been stopped for more than 90 days with an average of 197 days. Finally six of the plans have been stopped for less than 90 days. The existing FCL does not have a process to withdraw applications due to inactivity. In order to be consistent with the subdivision of land article in the Montgomery Code and the Zoning Ordinance staff believes a deadline is necessary to withdraw applications that have prolonged inactivity.

Lines 196 through 199 In the current FCL the applicant submits a Preliminary FCP with the first development application such as a Preliminary Plan and a final with the Site Plan. If the development application only requires one approval, such as a Preliminary Plan the applicant would submit the Preliminary Forest Conservation with the Preliminary Plan and obtain approval of the Final FCP before approval of the Record Plat or issuance of a Sediment Control Permit. In order to streamline the review process

staff would like applicants to submit both a Preliminary FCP and a Final FCP with any development applicant that only requires approval of one development application. This ensures a single reviewer for both FCPs and allows for both plans to be certified at the same time. This requirement would require information be submitted sooner. For the most part the difference is that applicants will need to identify the trees to be planted, if planting is required, and specific tree protection measures to protect on and off-site trees by the time the first development plan is approved. In some plan types, such as those associated with a sediment control application, the applicant is already submitting a single FCP that satisfies the needs of both the preliminary FCP and a final FCP.

Lines 201 through 217 Inclusion of the phrase “, or Conditional Use” in this section to clearly identify that a Conditional Use application has the same requirements and approval process as “Special Exception” plans.

Lines 219 through 228 Inclusion of the phrase “, or Park Development Plan” in this section to identify that a Park Development Plan has the same requirements and approval process as a Mandatory Referral.

Lines 232 through 241 This is a new subsection which will require properties subject to a Sketch Plan to obtain approval of a NRI/FSD prior to submitting the Sketch Plan. Staff feels this is a necessary and important requirement particularly since the sketch plan deals with density. The NRI/FSD documents and identifies the environmental constraints on a property and those areas, such as stream buffers, flood plains and wetlands which must be avoided. Approval of the NRI/FSD is necessary for it means that both the applicant and the Planning Department agree to the location of the onsite environmentally sensitive features. This new section does not require an applicant to obtain approval of Preliminary FCP at time of Sketch Plan. That will remain as a supporting document to the Preliminary Plan of Subdivision.

Lines 244 through 261 This new subsection identifies the procedure for any development application that is subject to an Administrative Subdivision. Under the current FCL Administrative Subdivisions are not identified and therefore the FCPs associated with this plan type are being approved by the Planning Board. This new section allows the Planning Director to approval FCPs associated with an Administrative subdivision, however,

if the Planning Director chooses not to review the administrative subdivision the new subsection identifies that the Planning Board must review and act on the FCP.

Section 22A-12. Retention, afforestation, and reforestation requirements

Lines 270 through 272 Staff recommends deletion any referral to natural regeneration of forest. Natural regeneration has not worked well in Montgomery County because the naturally regenerated native trees are either being out competed by non-native and invasive species or are being browsed by deer. In addition, staff has not permitted an applicant to meet their forest conservation planting requirements through natural regeneration for more than 15 years because it has not worked.

Lines 288 through 290 Revisions to the zoning ordinance changed references to certain sections in the FCL that need updating. The purpose of the addition language is to reflect the current zoning ordinance for those parts that still exist in the zoning ordinance.

Lines 299 and 302 Clarifies in the law that a maintenance and management for all planted forest in Special Protection Areas is 5 years. The FCL currently identifies a 2-year maintenance period and does distinguish for plantings within a Special Protection Area and those outside of the special protection area. The 5 year maintenance period is consistent with maintenance and management found on page 37 of the *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County*, which was published in January 2000. In addition, the standard forest conservation maintenance and management agreement template requires that the applicant maintain the forest planting for 5 years. This change is to codify current practices and the Environmental Guidelines.

Section 22A-21. Variance

Lines 305 through 311 This section requires all variances to be forwarded to other agencies, including the County Arborist for review and recommendation. In 2009, the State's enabling legislation changed which required a variance to certain trees before they could be impacted by a development application. The County Arborist is part of the Department of Environmental Protection and the state enabling legislation does not identify a County Arborist position. So the referral

of variances to the County Arborist is unique to Montgomery County. Since 2009 the number of referrals to the County Arborist has gone from, on average 0 per year to approximately 30 per year. The County's Streamlining Task Force members identified the exclusion of the County Arborist to review tree variances as a positive effort. Unfortunately, the County never produced a final report with recommendations to streamline the development review process. The language proposed by this amendment would remove the need for any variance associated with trees to be forwarded to the County Arborist. However, it does retain the need for other non-tree variances to be forwarded to the County Arborist for a recommendation. Staff has contacted the Montgomery County Department of Environmental Protection and agrees with removal of need to refer "tree variances" to the County Arborist.

Section 22A-30. County Arborist

Line 315 The proposed changes on this section eliminates, as a duty of the County Arborist, the need to review "tree variances".

Section 22A-31. Forest Conservation Advisory Committee

Line 322 The proposed amendment modifies the composition of one member of the Forest Conservation Advisory Committee from "Economic Development" to "Agricultural Services". This change was precipitated by the discontinuation of Economic Development Department. The participant on the Committee has, for the most part, been a representative of Agricultural Services, just now that section is an Executive Office versus being part of the Economic Development Department.

CONCLUSION

Staff recommends the Planning Board approval transmittal of the proposed changes to Chapter 22A of the County code to the President of the Montgomery County Council for introduction as an expedited bill. Staff requests the bill be expedited for it will streamline the development review process and allow for the Planning Director to approval FCPs associated with Administrative Subdivisions.



ROCKVILLE, MARYLAND

MEMORANDUM

August 17, 2017

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget *JN for JAH*
FOR Alexandre A. Espinosa, Director, Department of Finance *AAE*

SUBJECT: FEIS for BILL 26-17, Forest Conservation – Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Jennifer Nordin, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

Fiscal Impact Statement
BILL 26-17, Forest Conservation – Amendments

1. Bill Summary

Bill 26-17 amends Chapter 22A – Forest Conservation Law to require certain administrative and minor subdivisions, conditional uses, and park development plans to comply with Forest Conservation laws; exempts certain modifications to existing residential development properties under certain circumstances; requires certain projects requiring sketch plan approval to submit a forest stand delineation; modifies the process for submitting a forest stand delineation; alters the maintenance period for forest conservation plans for certain areas; and removes the requirement that tree variances be referred to the County Arborist for recommendation.

These amendments update the Forest Conservation Law following changes in the County and State code and clarify provisions of the Forest Conservation Law.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No change to revenues or expenditures.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

No change to revenues or expenditures.

4. An actuarial analysis through the entire amortization period for each bill/regulation that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill/regulation authorizes future spending.

Not applicable.

6. An estimate of the staff time needed to implement the bill/regulation.

No staff time is needed.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.
Not applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.
Not applicable.

11. If a Bill is likely to have no fiscal impact, why that is the case.

These amendments update the Forest Conservation Law following changes in the County and State code and clarify provisions of the Forest Conservation Law.

12. Other fiscal impacts or comments.
Not applicable.

13. The following contributed to and concurred with this analysis,

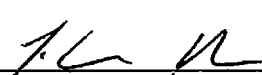
John Kroll, MNCPPC

Rick Brush, DPS

Stan Edwards, DEP

Greg Ossont, DGS

Jennifer Nordin, OMB

 ^{for JAH}

Jennifer A. Hughes, Director
Office of Management and Budget

8/17/17
Date

Economic Impact Statement
Bill 26-17, Forest Conservation – Amendments

Background:

Bill 26-17 would update the County Code to reflect changes to state law and to streamline the review process, codify practices, and clarify portions of the Forest Conservation Law. Specifically, Bill 26-17 would:

- require certain administrative and minor subdivisions to comply with the Forest Conservation Law;
- subject certain conditional uses to the Forest Conservation Law;
- require park development plans to comply with the Forest Conservation Law;
- exempt certain modifications to existing residential development property under certain circumstances;
- require certain projects requiring sketch plan approval to submit a forest stand delineation;
- modify the process for submitting a forest stand delineation;
- alter the maintenance period for forest conservation plans for certain areas;
- remove the requirement that tree variances be referred to the County Arborist for recommendation; and
- generally amend laws related to forest conservation.

1. The sources of information, assumptions, and methodologies used.

The source of information is the Montgomery County Planning Department (Planning), the Maryland-National Capital Park and Planning Commission. The Department of Finance (Finance) made no assumptions or developed methodologies in the preparation of the economic impact statement. According to Planning, "the changes to the forest conservation law do not increase the size of the regulated community nor make the requirements more difficult. The purpose of the amendment is to codify references that have already occurred to the zoning ordinance and the subdivision of the land article of the County code."

2. A description of any variable that could affect the economic impact estimates.

Not applicable.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Bill 26-17 would have no economic impact on employment, spending, savings, investment, incomes, and property values in the County.

Economic Impact Statement
Bill 26-17, Forest Conservation – Amendments

4. If a Bill is likely to have no economic impact, why is that the case?

Bill 26-17 would have no economic impact because it does not have an impact on employment, spending, savings, investment, incomes or property values. As stated in paragraph 1, "the purpose of the amendment is to codify references that have already occurred to the zoning ordinance and the subdivision of the land article of the County code."

5. The following contributed to or concurred with this analysis: David Platt, Finance.

Karen L. Hawkins, Acting Director
Alexandre A. Espinosa, Director
Department of Finance

8/8/17

Date

11

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT
ON BILL 26-17, FOREST CONSERVATION - AMENDMENTS**

Good afternoon. My name is Lisa Feldt. I am the Director of the Department of Environmental Protection. Thank you for the opportunity to testify on behalf of County Executive Leggett regarding Bill 26-17, which would amend the County's Forest Conservation Law.

Bill 26-17 has been offered as another step in the streamlining continuum, which the County Executive firmly supports. The Cross-Agency Streamlining Initiative successfully produced many positive changes to the processing of development approvals and permits. There is much to be proud of in the work that has been done by all agencies, and our businesses have realized the benefits of improved processing times. In furtherance of these efforts, Bill 26-17 would fix timelines for processing of applications and clarify development activities that are subject to the Forest Conservation Law.

Bill 26-17 would also remove the requirement that certain forest conservation variance requests be referred to the County Arborist in the Department of Environmental Protection for a recommendation prior to issuance of the variance. This change deserves further discussion as the review by the County Arborist is an important independent environmental review that adds value to the protection of trees in the County. The County Arborist provides both consistency and independence in review.

The role of the County Arborist is important to the process because the County Arborist is not part of the agency, team, or decision maker responsible for the processing and balancing decisions inherent in the review and approval of development applications. Therefore, the County Arborist currently provides an important independent review providing a centralized approach, which leads to better consistency in the process and outcomes.

Under the current organization at the Planning Department, environmental reviews, including those with variances, of development applications are handled by area reviewers within the development review process. This could result in decentralized and inconsistent outcomes.

In conclusion, while the County Executive generally supports the streamlining objectives of Bill 26-17, the role of the County Arborist in the forest conservation variance process should be maintained. We would be happy to engage in further discussion of the process for these reviews going forward.

I would be happy to address any questions the Council may have.

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Comments to the Montgomery County Council on Bill 26-17

Good afternoon. I am Mark Pfefferle and am presenting comments on Bill 26-17 on behalf of the Montgomery County Planning Board. The amendments proposed by the Planning Board include:

1. Clarifying that Administrative and Minor Subdivisions are subject to the Forest Conservation Law (FCL).
2. Creating a process in which the Planning Director can approve Forest Conservation Plans associated with Administrative Subdivisions since Administrative subdivisions did not exist prior to February of this year.
3. Clarifying that Conditional Uses (formerly Special Exceptions) are subject to the FCL and approval of forest conservation plans associated with Conditional Uses is the same as the one used for Special Exceptions.
4. Requiring Natural Resources Inventory/Forest Stand Delineations be submitted and approved currently with a Sketch Plan. Since the sketch plan sets the maximum density of a development application it is important to know what environmental restrictions may be on the property prior to the Planning Board approving the sketch plan.
5. Creating a 90-day time limit for applicants to resubmit revisions to Natural Resource Inventories/Forest Stand Delineations or the plan is automatically withdrawn, unless an extension is requested under extenuating circumstances. Planning staff has had a 30-day regulatory clock to review submitted documents since the inception of the FCL in 1992, however, applicants had no deadline in which they needed to submit revised documents in response to staff comments. Sometimes the responses are years after the comments were delivered to the applicant.
6. Change the "modification to existing developed property" exemption from submitting a forest conservation plan to allow for certain existing residential uses to qualify for the exemption. For example, some existing developments have wanted to improve, or in some cases implement, stormwater management controls. Under the existing law these types of projects would not be eligible for an exemption, but the proposed language would allow for existing residential properties that met certain criteria to qualify for an exemption from submitting a forest conservation plan.
7. Remove the requirement that all tree variances be referred to the County Arborist for a recommendation. This was a recommendation of the County's Streamlining Development Initiative that began in 2012. The FCL requires the County Arborist, who is with the Department of Environmental Protection, to review tree variances. The Arborists only wants to receive tree variances after the final layout and preliminary

limits of disturbance is set, and Planning Staff has reviewed and commented the variance request. Under the FCL the County Arborist has 30 days to provide a recommendation to the Planning Board. If no response is received within 30 days the recommendation is assumed to be favorable. However, the 120-day regulatory clock for site plans and preliminary plans and the timing in which DEP wants to receive tree variances does not fit into the regulatory clocks. The applicant must upload their final version of the application within 65 days of the Planning Board hearing and all reviewing agencies must provide recommendations within 45 days of the Planning Board hearing. This schedule does not allow for the Arborist to recommend changes to the submitted variance because they are getting involved too late in the review process.

If his change is approved, the Planning Department will create an internal process to review tree variance separate from the review done by the forest conservation plan reviewer. All non-tree related variances will still be referred to the County Arborist for a recommendation.

That concludes our testimony and we look forward to working with the Council members and Council staff on getting this amendment approved.

**Robert Nelson's Testimony to the Montgomery County Council
in Support of Bill 26-17, "Forest Conservation - Amendments"**

B

September 19, 2017

My name is Robert Nelson and I am from the Upcounty, Montgomery County's fastest growing area. I'm here to support the amendments to the Forest Conservation Law and want to share why park development plans should also comply with this law.

Just a couple blocks from my home across from the historic Goshen Post Office and next to a marker for the historic Goshen Mills is one of the ICC environmental mitigation projects, SC-A. According to the Maryland Department of Transportation,

"The objectives of the SC-A project are to create forested wetlands and uplands to restore the adjacent stream channels. The established wetland objectives are to provide flood storage, habitat for amphibians and other wildlife, surface water filtration and recreational opportunities. ... The project proposes the creation of 19.80 acres of forested wetlands, the enhancement of 1.46 acres of existing wetlands and the creation of 8.99 acres of riparian floodplain forest and 8.94 acres of upland forest communities. The wetland creation and upland forest areas will be seeded and planted with native species, suited to the site's specific hydrologic characteristics."

Until construction began in June 2011, the Greater Goshen Civic Association (GGCA) was completely unaware of this construction project. The objectives sounded noble, but actually having an ICC contractor take over Goshen Branch Stream Valley Park was very unsettling. We saw over 100 mature trees of a foot and more in diameter destroyed, birds and other wildlife were displaced and heavy earth-moving equipment invaded the park. Dump trucks hauled away two to three feet of the topsoil to bring the level down to that needed for wetland construction. A few trees were saved, but some of those remaining had damage to their root systems. Where nearly a mile of bank restoration work was completed, the meandering bubbling brook has been converted into a wider engineered stream. We have not seen tree replacements of the size and stature that line the ICC route.

GGCA was not involved in the planning for the project, was not notified of a public hearing in March 2010 nor the M-NCPPC decision meeting in June 2010. No signage was posted on the construction site to describe the project as is frequently the case on state projects. Five members of the GGCA Executive Board toured the site with state contractors in October 2011. The contract called for "recreational opportunities", but we were unable to identify amenities that would be added to the park within the scope of the \$2.6M state contract. For example, walking paths could be easily added since the soil had already been disrupted and stone laid

for a construction access road. An existing construction trailer site off Huntmaster Road could have been finished off as a parking lot for park visitors. There could have been a kiosk constructed that would provide a learning experience about wetlands for the public to experience. We understand that approximately one-third of the wetlands lost in the 18-mile construction of the ICC was recreated in Goshen. Certainly the people of Goshen would feel somewhat better about this massive intrusion to their park if what is created ultimately becomes beneficial to all concerned.

This past summer another contractor funded by the state, Ashton Manor Environmental, performed major work in the park blazing a trail to plant over 8000 small trees and bushes. They are also eliminating invasive species and doing a nice job. Again, there is no plan to let Goshen residents have a community-maintained trail and none of the plantings is of the size and stature that line the ICC route. So as you can see from photos taken earlier this month, Goshen Branch Stream Valley Park is still a work in progress.

So when is it appropriate to cut down over 100 mature trees? As we see in Goshen Branch Stream Valley Park, one has to look at the ultimate benefits. For many years residents of Goshen have been requesting relief from increasing commuter traffic along our historic two-lane roads. Goshen residents have seen their park sacrificed to create 25 acres of wetlands. But some of you on the County Council continue to obstruct the much needed completion of the Mid-County Highway on the Master Plan Route because it impacts less than one acre of wetlands. Some trees do have to be removed, but a commitment to reforestation such as was done in Goshen Branch Stream Valley Park will make the M-83 a very valuable community asset. Please don't pass a resolution with the rationale that the Paris Climate Agreement will be violated when M-83 is constructed. Ongoing roadway congestion and developers' construction of an outlet mall, shopping centers and residential units certainly have much more environmental impact than completing the 5.6-mile gap in the Mid-County Highway.

A bus on the completed Mid-County Highway will convey commuters from Clarksburg to Shady Grove Metro Station in less than half the travel time of the Corridor Cities Transitway (CCT). The construction of M-83 costs less than half as much as the CCT and can be funded by a small toll on the southern connection to the ICC (ref. *"The Case for Completing and Funding M83 Mid-County Highway"* by Gerald Cichy).

Let's support practical solutions to Upcounty problems. Let's stick with the plan and give the Upcounty its fair share. Let's resolve to build the Mid-County Highway now on the Master Plan Route.

37
Robert Nelson, Goshen

Sunday, July 24, 2011

Construction on wetlands begins at Goshen Park

Residents taken aback by project's scope

Ven Bondeson, Staff Writer

Tractors and construction workers will make noise in the usually tranquil Goshen Branch Stream Valley Park for the next year, but an environmentalist says the stream and wetlands will be much better off as a result.

The \$2.6 million State Highway Administration project is designed to restore about 4,800 linear feet of Goshen Branch, a tributary of Great Seneca Creek, and create about 20 acres of forested wetlands, 9 acres of riparian floodplain forest in the area near the stream, and 9 acres of upland forest habitat.

Construction in the park, north of Brink Road and east of Huntmaster Road in Goshen, will continue until June.

The project is one of 63 that will mitigate the environmental effects of building the Intercounty Connector, a highway linking Interstate 270 to Interstate 95.

A total of \$370 million will be spent to restore 37,500 linear feet of stream, create about 56 acres of wetlands and mitigate about 330 acres of forest, along with other projects, according to an ICC document.

Some Goshen residents were surprised when they saw the construction begin in their park last month.

They missed the county's March 2010 public meeting about the project before the planning board approved it in June 2010.

Chuck Weinkam, an environmental scientist serving as environmental stewardship and mitigation manager for the ICC project, said he was not sure if all civic groups were invited, but they normally are, along with nearby neighbors.

Robert Nelson, a member of the Greater Goshen Civic Association, along with Joanne Atay, a member of the Goshen Historical Preservation Society, thought the land would remain

unchanged because, in December, the county provided a matching grant to place a commemorative plaque at the southern edge of the park.

It explains the history of Goshen Mill, built in 1737 just north of Brink Road and used as a political meeting place until it burned down in 1890.

Placing a plaque on a site does not mean the land will be preserved, said Scott Whipple, supervisor of the Historic Preservation Unit of Montgomery County Planning.

The Goshen parkland is not designated a historical site, Whipple said.

A 2009 cultural resource study did not identify any significant archeological sites or historic properties on the site, Weinkam said.

Nelson is concerned that the project is destroying the naturally existing habitat in the park, and he questions the extent of the work.

About six trees were chopped down to make a construction entrance, Weinkam said. Logs piled at the site were brought from other places to help stabilize the stream.

The project is crucial for the health of the stream, and the State Highway Administration conducted numerous environmental studies before it was approved, Weinkam said.

Without the project, the tributary could not serve as a sediment collector, so areas downstream, such as in Montgomery Village, would see more sediment buildup, he explained.

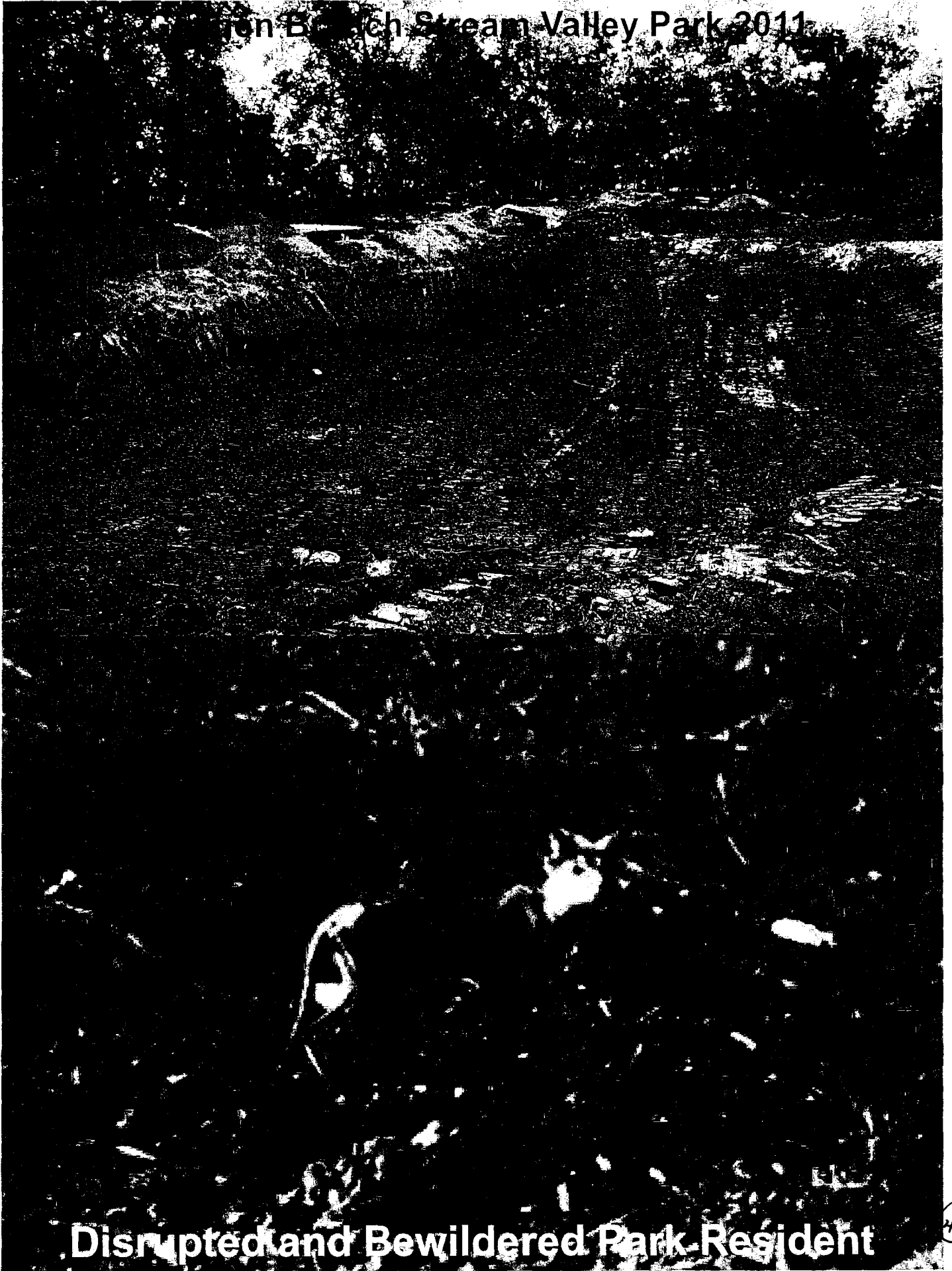
jbondeson@gazette.net

Goshen Branch Stream Valley Park 2011



Over 100 Mature Trees Were Destroyed

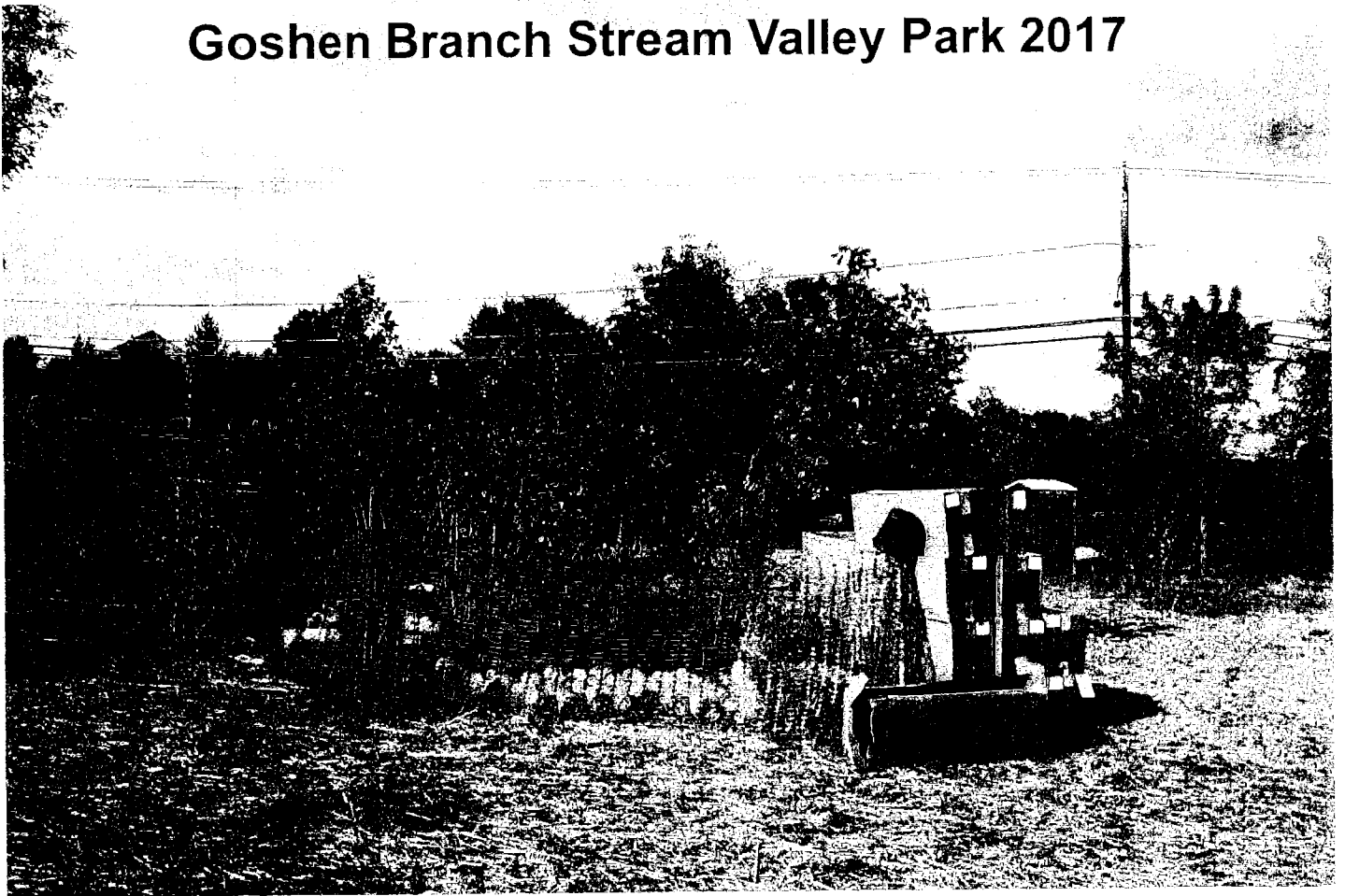
Iron Branch Stream Valley Park 2011



Disrupted and Bewildered Park Resident

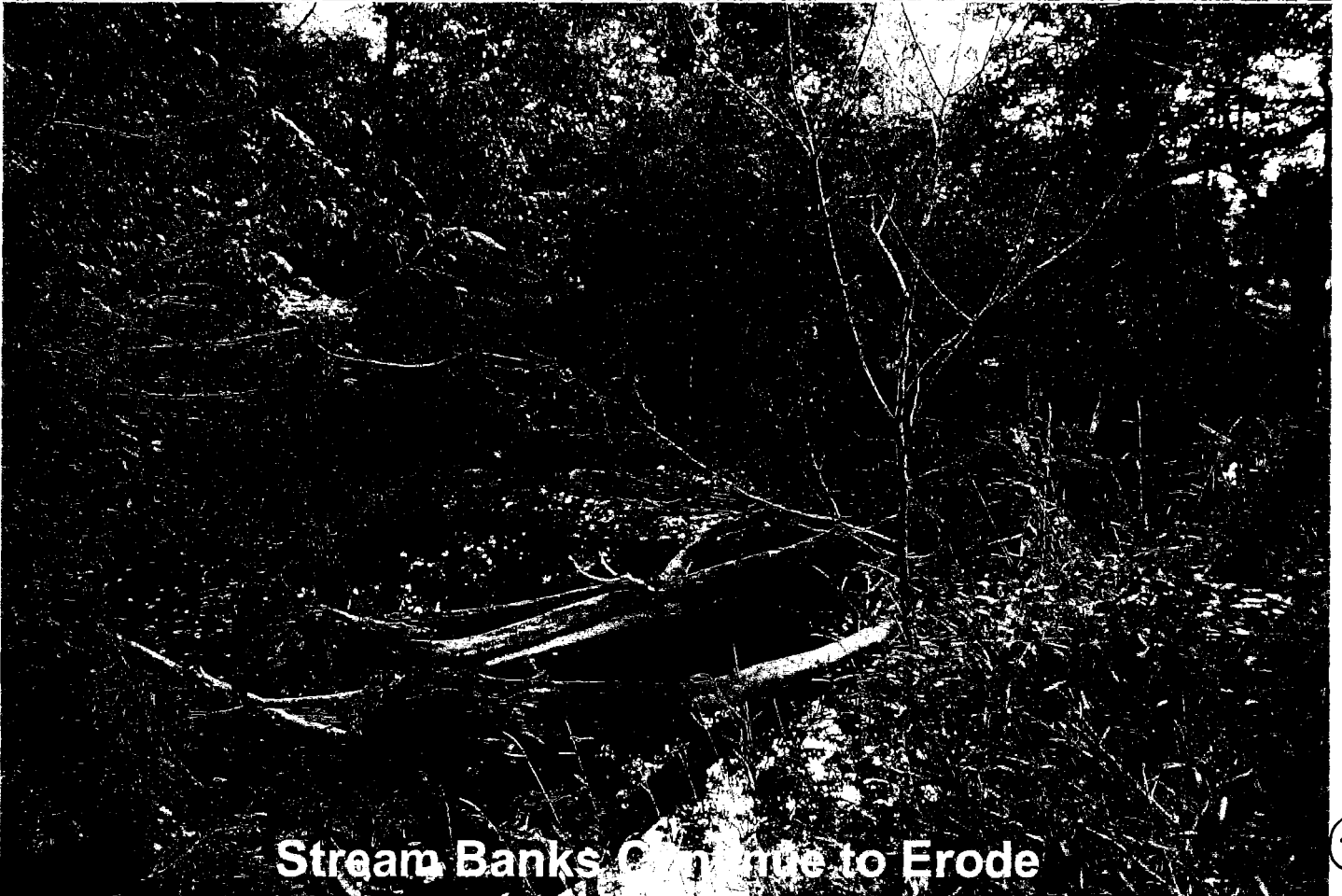
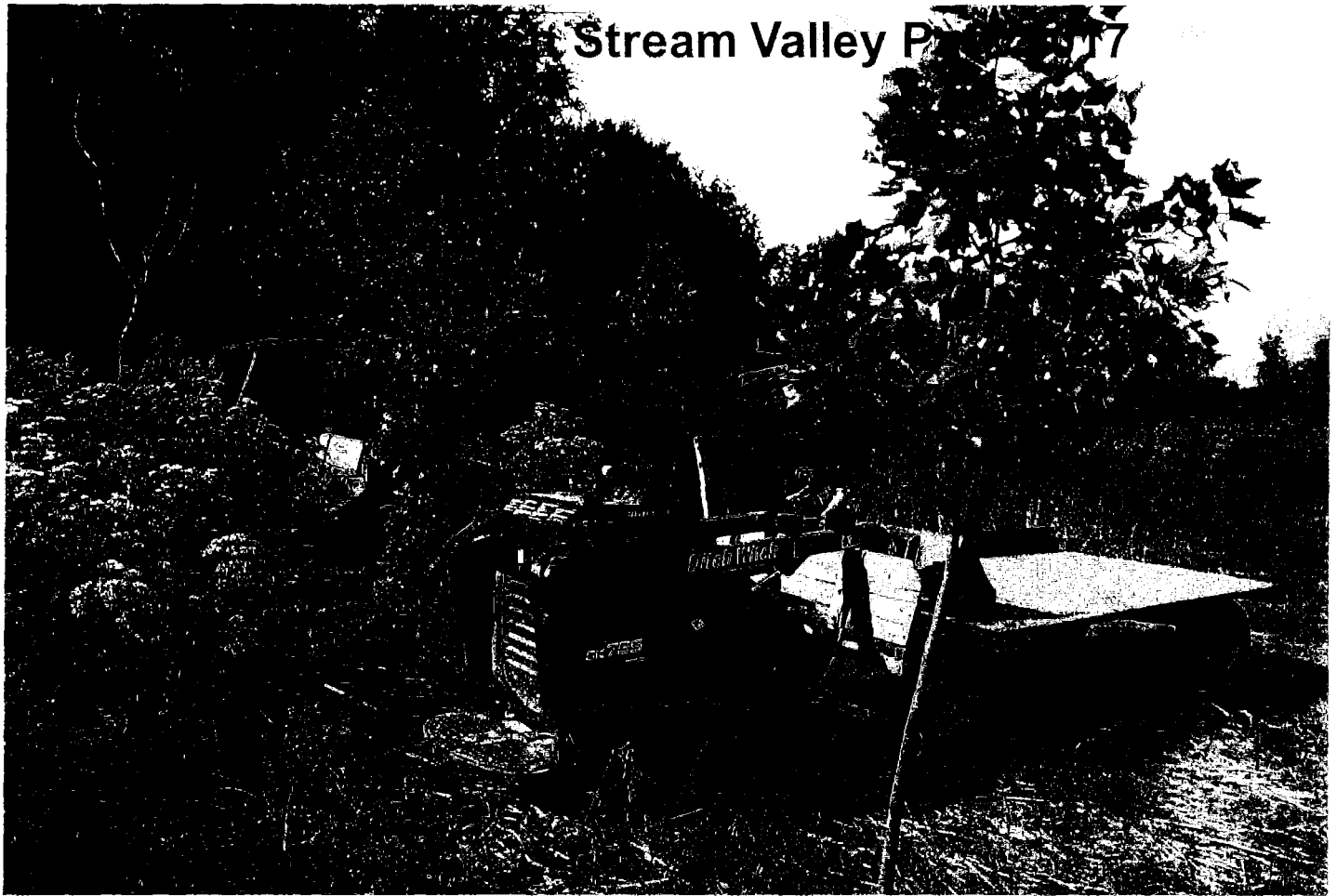
41

Goshen Branch Stream Valley Park 2017



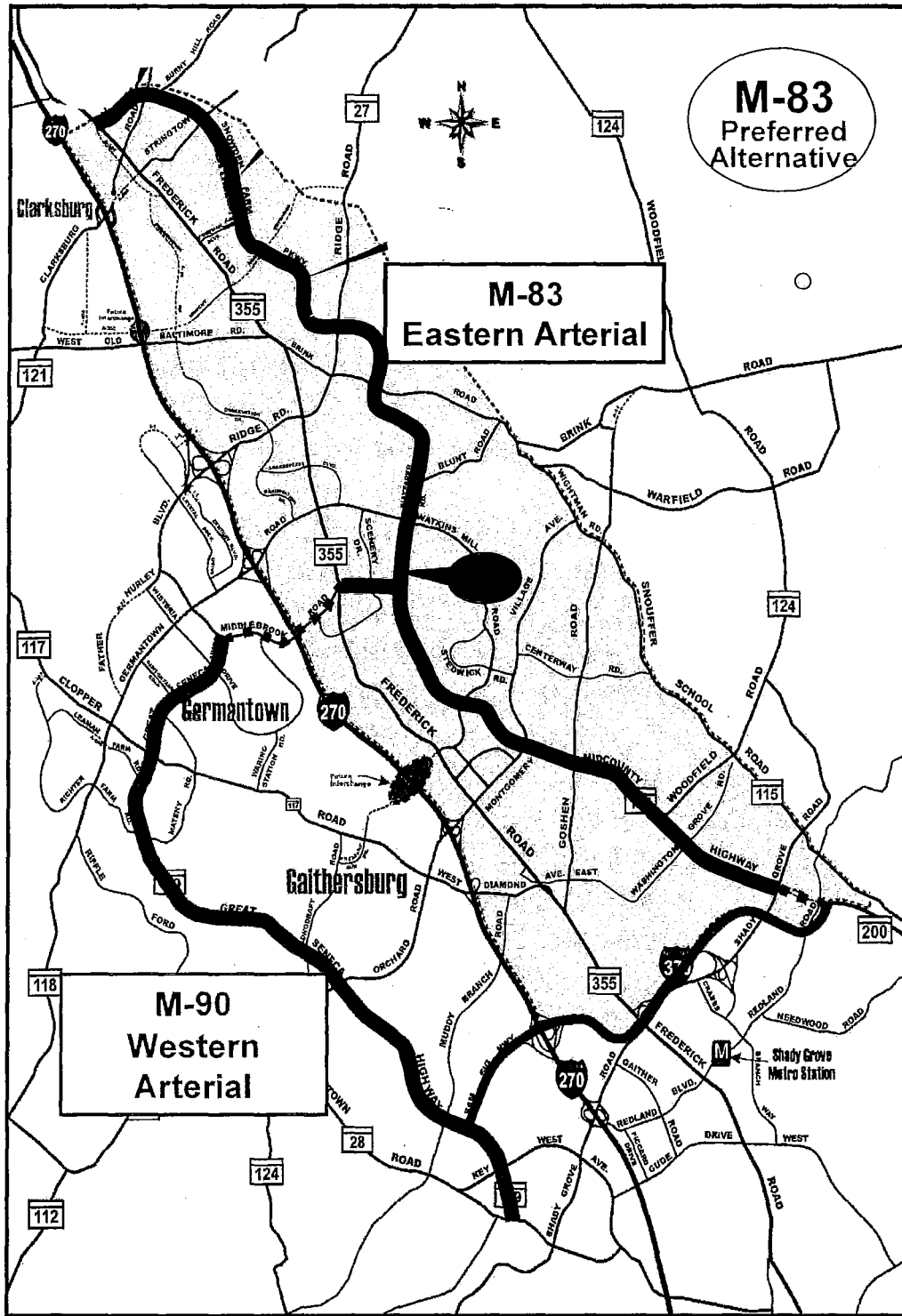
Trail Could Remain for Resident Access

Stream Valley Project 17



Stream Banks Continue to Erode

Upcounty Primary Road System



Completed Sections of M83 – Snowden Farm Parkway and Midcounty Highway
 Preferred Alternative to complete Eastern Arterial – Alternative 9A, Master Plan Route
 Western Arterial – Great Seneca Highway

Connections; East to West, and both highways to the ICC. Solid-completed, Dashed-planned

The Mid-County Highway (M-83) is a Master-Planned 4-lane north/south parkway that has been the basis for planned density in Upcounty areas east of I-270, especially in Clarksburg. The roadway will provide a viable north/south travel alternative to I-270 and MD 355 on the east side of I-270, similar to Great Seneca Highway on the west side of I-270. If the County does not build this critical infrastructure it will be detrimental to the quality of life for Upcounty residents.

Here are some facts to remember:

- ✓ Montgomery County Planning Board, the City of Gaithersburg, and the Upcounty Citizens Advisory Board support Alternate 9A.
- ✓ Mid-County Highway master plan alignment has been on area master plans for nearly 50 years.
- ✓ The roadway was reconfirmed in the 1994 Clarksburg master plan.
- ✓ M-83 is the basis for density planned, approved and constructed in Upcounty including Damascus, Clarksburg, Germantown, Montgomery Village, Shady Grove, and other areas east of I 270.
- ✓ Corridor Cities Transitway (CCT) to Clarksburg and BRT along MD 355 to Clarksburg are needed in addition to M-83 to enhance Upcounty mobility options, not as a REPLACEMENT of M-83.
- ✓ The Montgomery County Department of Transportation (MCDOT) Midcounty Corridor Study (MCS) Draft Environmental Effects Report (DEER) clearly documents that M-83 Alternative 9 provides the highest transportation effectiveness among all alternatives considered.
- ✓ Through bridging, alignment shifts, and retaining walls, all with substantial added costs, alignment Alternative 9A minimizes impact to wetlands, streams, forest, floodplains, and parklands.
- ✓ The DEER also proposes substantial mitigation to forest and parkland losses to fully offset any impact from Alternative 9A.
- ✓ M-83 Alternative 9A will protect long-established and historic communities such as Prathertown and Goshen along Brink Road, Wightman Road, and Warfield Road.
- ✓ Upcounty residents, especially in Clarksburg, have made decisions about their purchases of residence based on area master plans, which includes M-83.

Mihill, Amanda

From: Wallace, Scott C. - SCW <SWallace@linowes-law.com>
Sent: Thursday, September 28, 2017 4:42 PM
To: Gibson, Cindy
Cc: Mihill, Amanda; Genn, Jonathan
Subject: Viva White Oak -Bill 26-17-Forest Conservation Law Amendments (the "Bill")
Attachments: 20170928162032850.pdf

Cindy – I wanted to follow up on our conversation regarding the applicability of the referenced Bill, which proposes comprehensive changes to the County's Forest Conservation Law ("FCL"), to development approval applications that are pending review and action by the Planning Board. As we discussed, Linowes and Blocher represents Global LifeSci Development Corporation (Percontee), the developer of the Viva White Oak project. Percontee filed a Sketch Plan Application for Viva White Oak on August 1, 2017. The Application was reviewed by the Development Review Committee on September 29, 2017 and is tentatively scheduled for a Planning Board hearing on November 30, 2017. Neither the current FCL nor the Zoning Ordinance require submission of a Natural Resources Inventory/Forest Stand Delineation ("NRI/FSD") at the time of Sketch Plan. Accordingly, the Application included an Existing Conditions/Natural Features Plan as required under the Sketch Plan application submittal requirements set forth in Section 59.7.3.3.B.3.C of the Zoning Ordinance. (An NRI/FSD has been filed for the subsequent Preliminary Plan application for the project as required under the FCL (both current and as amended by the Bill) and is currently under review by the Planning Board staff.)

The Bill proposes an amendment to the FCL at lines 279-286 (attached) that would require an NRI/FSD for a Sketch Plan application. The Bill was not introduced as emergency legislation, and therefore if enacted by the County Council it would be effective approximately 90 days after the Council's action under County law. We believe that it is the intent to apply the changes to the FCL made by the Bill to Sketch Plan applications filed after the effective date of the Bill if enacted. This would be in keeping with the Council's general practice not to apply changes to laws and procedural requirements to pending applications, particularly if not enacted as emergency legislation, as a matter of fairness to applicants who proceeded in good faith under the laws in effect at the time of application.

However, there is no explicit statement as to applicability in the Bill. Although we hope to have Sketch Plan approval from the Planning Board before the effective date of the Bill if enacted, in order to avoid any confusion over whether the requirement to provide an NRI/FSD at Sketch Plan applies to the Viva White Oak Application, and possibly delay the review of the Application, we would like the Transportation and Environment Committee to consider the following modification to the Bill, shown in underline, at lines 279-282:

- (f) Project requiring sketch plan approval
 - (1) Forest Stand Delineation
- For any sketch plan application filed on or after [the effective date of the Bill], the applicant must submit to the Planning Director, for approval, a forest stand delineation reviewed concurrently with the sketch plan.

I believe this language is in accordance with the intent of the Bill and will provide clarity as to the applicability of the proposed changes to the FCL with regard to the requirements for Sketch Plan applications, which will benefit and be fair to applicants and agency staff.

I have raised this point to Amanda Mihill, and she did not believe the Bill was intended to apply to pending Sketch Plan applications. I have copied Amanda on this email in case she has any questions on review.

Thank you for your consideration of this matter. Upon review of this request with Councilman Berliner, I would appreciate if you can let us know if he supports our request and will raise it when the Bill is reviewed by the Committee, scheduled for October 5th. In the meantime, if you have any questions, please do not hesitate to contact me.

Scott C. Wallace
Partner

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267 delineation to the Planning Director for review. The deadlines for
 268 reviewing a forest stand delineation are the same as in paragraph
 269 (b)(1) of this Section.

270 (2) *Forest conservation plan.* Upon notification that the forest stand
 271 delineation is complete and correct, the applicant must submit to
 272 the Planning Director a preliminary forest conservation plan. The
 273 Planning Board must consider the preliminary forest conservation
 274 plan when reviewing the mandatory referral application or the park
 275 development plan. The deadlines for reviewing the final forest
 276 conservation plan are the same as in paragraph (d)(2) of this
 277 Section.

278 * * *

279 (f) *Project requiring sketch plan approval.*

280 (1) *Forest stand delineation.* The applicant must submit to the
 281 Planning Director, for approval, a forest stand delineation
 282 reviewed concurrently with the sketch plan application. The
 283 deadlines for reviewing a forest stand delineation are the same as
 284 in paragraph (b)(1) of this Section. The forest stand delineation
 285 must be approved prior to Planning Board approval of the sketch
 286 plan.

287 (2) *Forest conservation plan.* Upon notification that the forest stand
 288 delineation is complete and correct, the applicant must submit a
 289 preliminary forest conservation plan to the Planning Director with
 290 the first development application after approval of the sketch plan.
 291 The deadlines for reviewing a preliminary and final forest
 292 conservation plan are the same as in paragraph (b)(2)(B) and
 293 (b)(2)(C) of this Section.

September 21, 2017

Re: Montgomery County Chapter of the Maryland Building Industry Association Letter in Support of Bill 26-17, Forest Conservation-Amendments

Dear Chair Berliner and members of the T&E Committee:

On behalf of the Montgomery County Chapter of MBIA, I'd like to submit testimony in favor of Bill 26-17 as drafted. This legislation represents the diligence of the Planning Department and Board to craft reasonable and fair amendments to the existing Forest Conservation law. The bill transmitted from the Board reflects their willingness to work with stakeholders, including the MBIA, to develop the best laws possible for Montgomery County.

MBIA members support removing the requirement that all tree variances be referred to the County Arborist for recommendation. The requirement to have an arborist review tree variances is unique to Montgomery County and duplicative of the review performed by planning staff. Further, the Planning Department is not required to enforce the arborist's recommendation. Requiring input from the arborist serves only to delay projects as it places another 30-day review period on a plan. As a result, there are often delays in scheduling a project for a hearing before the Planning Board.

MBIA also strongly supports the provision which allows one extension of the 90 day deadline to resubmit revisions to the Forest Stand Delineation. MBIA understands the need to withdraw inactive Forest Stand Delineations. However, there are circumstances when plan revisions or responses to comments require a bit more time. In instances that require site visits from the State Department of the Environment or the U.S. Army Corps of Engineers, agency schedules, weather and other unforeseen complications can render it impossible to respond within 90 days. As such, we believe the extension for extenuating circumstances is critical.

The Montgomery County Chapter of MBIA requests you recommend Bill 26-17 as drafted.

If you have any question about these comments, or would like to discuss our position further, please feel free to contact me at (301) 776-6207 or ebradley@marylandbuilders.org.

Thank you for your consideration.

Best,

Erin Bradley
Vice President of Government Affairs