

Bill No. 26-17  
Concerning: Forest Conservation –  
Amendments  
Revised: 10/26/2017 Draft No. 4  
Introduced: July 25, 2017  
Enacted: November 14, 2017  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**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; and
- (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

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

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

84 **22A-4. Applicability**

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

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

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

94 \* \* \*

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

98 \* \* \*

99 **22A-5. Exemptions.**

100 The requirements of Article II do not apply to:

101 \* \* \*

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

107 \* \* \*

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

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

\* \* \*

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

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

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

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

(B) any forest in a stream buffer,

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

(D) any specimen or champion tree, or

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

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

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

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Companies Article of the Maryland Code, if:

- (1) any required certificates of public convenience and necessity have been issued in accordance with Section [5-1604(f)] 5-1603(f) of the Natural Resources Article of the Maryland Code; and
- (2) the cutting or clearing of the forest is conducted so as to minimize the loss of forest.

\* \* \*

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

\* \* \*

- (2) the application modifies an existing special exception use which was approved before July 1, 1991, and the revision will not result in the clearing of more than a total of ~~[[5000]]~~ 5,000 additional square feet of forest or any specimen or champion tree; or
- (3) the total disturbance area for the proposed special exception use, or conditional use, will not exceed 10,000 square feet, and clearing will not exceed a total of ~~[[5000]]~~ 5,000 square feet of forest or include any specimen or champion tree;

\* \* \*

(t) a modification to an existing:

- (1) non-residential developed property if:
  - [(1)] (A) no more than 5,000 square feet of forest is ever cleared at one time or cumulatively after an exemption is issued;
  - [(2)] (B) the modification does not result in the cutting, clearing, or grading of any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan;

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

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

169 (2) residential developed property if:

170 (A) forest is not impacted or cleared;

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

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

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

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

179 \* \* \*

180 **22A-9. County Highway Projects.**

181 \* \* \*

182 (a) *General.*

183 \* \* \*

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



190 woody plants.

191 \* \* \*

192 **22A-11. Application, review, and approval procedures**

193 (a) *General.*

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

210 \* \* \*

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

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

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

230 (2) *Forest Conservation Plan.*

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

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

246 \* \* \*

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

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

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

268 \* \* \*

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

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

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

285 \* \* \*

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

287 (1) *Forest stand delineation.* ~~[[The]]~~ For any sketch plan application  
 288 filed on or after November 14, 2017, the applicant must submit  
 289 to the Planning Director, for approval, a forest stand delineation  
 290 reviewed concurrently with the sketch plan application. The  
 291 deadlines for reviewing a forest stand delineation are the same as  
 292 in paragraph (b)(1) of this Section. The forest stand delineation  
 293 must be approved prior to Planning Board approval of the sketch  
 294 plan.

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

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

302 \* \* \*

303 (g) Project requiring administrative subdivision approval.

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

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

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

328 **22A-12. Retention, afforestation, and reforestation requirements.**

329 \* \* \*

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

331 \* \* \*

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

340 \* \* \*

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

343 \* \* \*

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

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

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

352 cluster or other optional method of development in a one-  
 353 family residential zone, on-site forest retention must equal  
 354 the applicable conservation threshold in subsection (a).  
 355 This requirement also applies to any site seeking a waiver  
 356 or variance from base zone standards under [Section  
 357 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or  
 358 59-C-7.131,] Sections 59.4.4.5.D, 59.4.4.6.D, 59.4.4.7.C,  
 359 59.4.4.8.C, 59.4.4.8.C, 59.4.4.9.C, 59.4.4.10.C, 59-8.3.2,  
 360 59-4.9.16.B, and 59-5.2 if as a condition of the waiver or  
 361 variance the Planning Board or County Council must find  
 362 that the resulting development is environmentally more  
 363 desirable.

364 \* \* \*

365 (h) *Agreements*

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

376 \* \* \*

377 **22A-21. Variance.**

378 \* \* \*

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

388 \* \* \*

389 **22A-30. County Arborist**

390 \* \* \*

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

393 \* \* \*

394 **22A-31. Forest Conservation Advisory Committee**

395 \* \* \*

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

398 \* \* \*

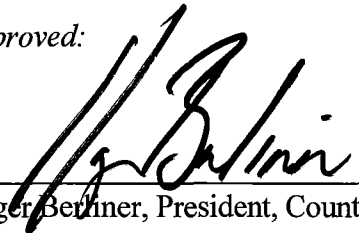
399 (2) The Executive must designate a staff member from each of the  
 400 following departments to serve as an ex officio member:

401 (A) [Economic Development] Agricultural Services;

402 \* \* \*



Approved:

  
\_\_\_\_\_  
Roger Berliner, President, County Council

  
\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Isiah Leggett, County Executive

\_\_\_\_\_  
Date

*This is a correct copy of Council action.*

\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

\_\_\_\_\_  
Date