

**MEMORANDUM**

July 21, 2017

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *AM*

SUBJECT: **Introduction:** Bill 26-17, Forest Conservation - Amendments

Bill 26-17, Forest Conservation - Amendments, sponsored by Lead Sponsor Council President at the request of the Planning Board, is scheduled to be introduced on July 25, 2017. A public hearing is tentatively scheduled for September 19 at 1:30 p.m.

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.

This packet contains:

	<u>Circle #</u>
Bill 26-17	1
Legislative Request Report	17
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Bill No. 26-17  
Concerning: Forest Conservation –  
Amendments  
Revised: 7/6/2017 Draft No. 2  
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

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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;
- (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 59-7.3.1.

10                                  \*       \*       \*

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

15                                  \*       \*       \*

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

21                                  \*       \*       \*

22           Minor subdivision means a plan for a proposed subdivision or resubdivision  
23 prepared and submitted for approval by the Planning Director under Chapter  
24 50.7.

25                                  \*       \*       \*

26           Municipal corporation means a municipality without planning and zoning  
27 authority or which has assigned its responsibilities under §5-1603(a) of the

28 Maryland Code [Subtitle 16 of the Natural Resources Article of the Maryland  
29 Code] to the County.

30 \* \* \*

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

33 \* \* \*

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

37 \* \* \*

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

44 \* \* \*

45 *Preliminary Plan of Subdivision* means a plan for a proposed subdivision or  
46 resubdivision prepared and submitted for approval by the Planning Board  
47 under Chapter 50.4 before preparation of a subdivision plan.

48 \* \* \*

49 *Project plan* means a plan or an amendment to a project plan [approved under  
50 Division 59-D-2] referred to in Division 7.7.1.B of Chapter 59.

51 \* \* \*

52  
53 *Public utility* means any:

- 54 (1) [the] transmission [lines and the] line or electric generating  
55 [stations licensed under Article 78, Section 54A and 54B or 54-I

56 of the Maryland Code; and] station; or  
57 (2) water, sewer, electric, gas, telephone, and cable service [facilities  
58 and lines] line.

59 \* \* \*

60 *Site plan* means a plan or an amendment to a site plan approved under Section  
61 7.3.4 of Chapter 59 or referred to in Division 7.7.1.B of Chapter 59.

62 \* \* \*

63 *Sketch plan* means a plan or amendment to a sketch plan approved under  
64 Chapter 59.7.3.3.

65 \* \* \*

66 *Special exception* means a use approved as a conditional use under Section 7.3.1  
67 or Section 7.7.1.B of Chapter 59 or referred to in Division 7.7.1.B of Chapter  
68 59.

69 \* \* \*

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

71 \* \* \*

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

77  
78 *Wetland* means an area that is inundated or saturated by surface water or  
79 groundwater at a frequency and duration sufficient to support, and under normal  
80 circumstances does support, a prevalence of vegetation typically adapted for life  
81 in saturated soil conditions, commonly known as hydrophytic vegetation.

82 **22A-4. Applicability**

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

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

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

92 \* \* \*

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

96 \* \* \*

97 **22A-5. Exemptions.**

98 The requirements of Article II do not apply to:

99 \* \* \*

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

105 \* \* \*

106 (i) noncoal surface mining regulated under [Title 7 of the Natural  
 107 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 Companies Article of the Maryland Code, if:

- 135 (1) any required certificates of public convenience and necessity  
136 have been issued in accordance with Section [5-1604(f)]  
137 5-1603(f) of the Natural Resources Article of the Maryland  
138 Code; and  
139 (2) the cutting or clearing of the forest is conducted so as to minimize  
140 the loss of forest.

141 \* \* \*

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

143 \* \* \*

- 144 (3) the total disturbance area for the proposed special exception use,  
145 or conditional use, will not exceed 10,000 square feet, and  
146 clearing will not exceed a total of 5000 square feet of forest or  
147 include any specimen or champion tree;

148 \* \* \*

149 (t) a modification to an existing:

150 (1) non-residential developed property if:

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

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

157 [(3)] (C) the modification does not require approval of a  
158 preliminary [plan of] or administrative subdivision plan;  
159 and



160 [(4)] (D) the modification does not increase the developed area  
161 by more than 50% and the existing development is  
162 maintained[.]; or

163 (2) residential developed property if:

164 (A) forest is not impacted or cleared;

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

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

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

172 (E) the existing structure is not modified.

173 \* \* \*

174 **22A-9. County Highway Projects.**

175 \* \* \*

176 (a) *General.*

177 \* \* \*

178 (2) The construction should minimize forest [cutting or clearing]  
179 removal, land disturbance, and loss of specimen or champion  
180 trees to the extent possible while balancing other design,  
181 construction, and environmental standards. The constructing  
182 agency must make a reasonable effort to minimize land  
183 disturbance to avoid the cutting or clearing of trees and other  
184 woody plants.

185 \* \* \*

186 **22A-11. Application, review, and approval procedures**

187 (a) *General.*

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

204 \* \* \*

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

207 (1) *Forest stand delineation.* The applicant must submit to the  
 208 Planning Director a forest stand delineation with the application  
 209 for a development plan, floating zone plan, project plan, sketch  
 210 plan, preliminary plan of subdivision, or site plan, whichever  
 211 comes first. Within 30 days of receipt, the Planning Director  
 212 must notify the applicant whether the forest stand delineation is

213 complete and correct. If the Planning Director fails to notify the  
214 applicant within 30 days, the delineation will be treated as  
215 complete and correct. The Planning Director may require further  
216 information or provide for one extension of this deadline for an  
217 additional 15 days for extenuating circumstances. The applicant  
218 must submit revised drawings to address comments within 90  
219 days from the date the Planning Director sends comments to the  
220 applicant. If the applicant fails to submit revised drawings, the  
221 application is deemed withdrawn. The Planning Director may  
222 provide for one extension of this deadline for extenuating  
223 circumstances.

224 (2) *Forest Conservation Plan.*

225 (A) *Application.* After being notified that the forest stand  
226 delineation is complete and correct, the applicant must  
227 submit a forest conservation plan to the Planning Director.  
228 If the development proposal will require more than one of  
229 the approvals subject to this subsection, the applicant must  
230 submit a preliminary forest conservation plan to the  
231 Planning Director in conjunction with the first approval  
232 and a final forest conservation plan in conjunction with the  
233 last approval. If only one approval subject to this  
234 subsection is required, an applicant must submit a  
235 preliminary forest conservation and a final forest  
236 conservation plan at the time of the development  
237 application [and a final forest conservation plan before a  
238 sediment control permit is issued for the tract, but no later  
239 than a record plat is submitted].

\* \* \*

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

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

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

\* \* \*

(e) *Project requiring mandatory referral or Park Development Plan.*

(1) *Forest stand delineation.* A person seeking mandatory referral or a park development plan for a project that is subject to the requirements of this Chapter must first submit a forest stand

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.

\* \* \*

294  
295 (g) Project requiring administrative subdivision approval.

296 (1) Forest stand delineation. The applicant must submit to the  
297 Planning Director a forest stand delineation before the  
298 administrative subdivision application. The deadlines for  
299 reviewing a forest stand delineation are the same as in  
300 paragraph (b)(1) of this Section.

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

320 **22A-12. Retention, afforestation, and reforestation requirements.**

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(e) *Standards for reforestation and afforestation.*

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

\* \* \*

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

\* \* \*

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

- (A) In an agricultural and resource area, on-site forest retention must equal 25% of the net tract area.
- (B) In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a). This requirement also applies to any site seeking a waiver

348 or variance from base zone standards under [Section  
 349 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or  
 350 59-C-7.131,] Sections 59.4.4.5.D, 59.4.4.6D, 59-4.4.7.C,  
 351 59-4.4.8.C, 59-4.4.8.C, 59-4.4.9.C, 59-4.4.10.C, 59-8.3.2,  
 352 59-4.9.16.B, and 59-5.2 if as a condition of the waiver or  
 353 variance the Planning Board or County Council must find  
 354 that the resulting development is environmentally more  
 355 desirable.

356 \* \* \*

357 (h) *Agreements*

358 (1) *Maintenance agreement.* A forest conservation plan must include  
 359 a two-year binding agreement for maintenance of conservation  
 360 areas, including the watering (as practical), feeding and replanting  
 361 of areas to be afforested or reforested outside of Special Protection  
 362 Areas, and five-years for plantings inside of Special Protection  
 363 Areas. The [2-year] binding agreement for maintenance starts  
 364 upon satisfactory [final] inspection of the plantings [measures]  
 365 required under the forest conservation plan. A staged project may  
 366 have more than one agreement.

367 \* \* \*

368 **22A-21. Variance.**

369 \* \* \*

370 (c) *Referral to other agencies for non 22A-12(b)(3) variance requests.*  
 371 Before the Planning Board considers a variance not related to  
 372 22A-12(b)(3), the Planning [Board] Director must send a copy of each  
 373 request to the County Arborist[, Planning Director,] and any other  
 374 appropriate agency for a written recommendation before the Board, or



375 Planning Director, as appropriate, acts on the request. If a  
376 recommendation on the variance is not submitted to the Planning Board,  
377 or Planning Director, as appropriate, within 30 days after the referral, the  
378 recommendation must be presumed to be favorable.

379 \* \* \*

380 **22A-30. County Arborist**

381 \* \* \*

382 (c) (4) except for requests under 22A-12(b)(3), review and variance  
383 requests under Article II.

384 \* \* \*

385 **22A-31. Forest Conservation Advisory Committee**

386 \* \* \*

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

389 (A) [Economic Development] Agricultural Services

390 \* \* \*

391 *Approved:*

392

---

Roger Berliner, President, County Council Date

393 *Approved:*

394

---

Isiah Leggett, County Executive Date

395 *This is a correct copy of Council action.*

396

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Linda M. Lauer, Clerk of the Council Date

## 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

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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](mailto:Mark.Pfefferle@montgomeryplanning.org), 301 495-4730

Completed: 4-25-17

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**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.