

Bill No. 26-17
Concerning: Forest Conservation –
Amendments
Revised: 10/26/2017 Draft No. 4
Introduced: July 25, 2017
Enacted: November 14, 2017
Executive: November 27, 2017
Effective: February 26, 2018
Sunset Date: None
Ch. 34, Laws of Mont. Co. 2017

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; 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

Boldface

Heading or defined term.

Underlining

Added to existing law by original bill.

~~[Single boldface brackets]~~

Deleted from existing law by original bill.

Double underlining

Added by amendment.

~~[[Double boldface brackets]]~~

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:

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

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

111 * * *

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

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

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

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

122 (B) any forest in a stream buffer,

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

125 (D) any specimen or champion tree, or

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

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

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

136 Companies Article of the Maryland Code, if:

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

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

143 * * *

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

145 * * *

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

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

154 * * *

155 (t) a modification to an existing:

156 (1) non-residential developed property if:

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

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

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

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

(2) residential developed property if:

(A) forest is not impacted or cleared;

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

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

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

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

* * *

22A-9. County Highway Projects.

* * *

(a) *General.*

* * *

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

* * *

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]].

* * *

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:

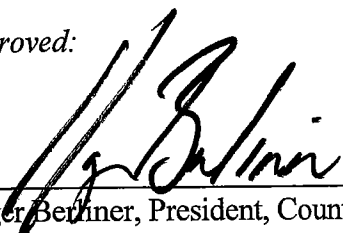
398 * * *

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 Berhner, President, County Council

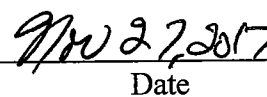


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Approved:

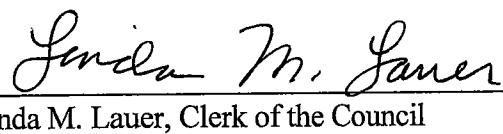


Isiah Leggett, County Executive

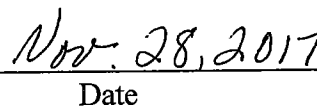


Date

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



Date