

Committee members should bring their February 19, 2008 Committee packet for reference.

M E M O R A N D U M

TO: Transportation and Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Analyst *AMihill*

SUBJECT: **Worksession #2:**
Bill 37-07, Forest Conservation – Amendments
Resolution to set penalties and fees under the Forest Conservation Law

This is the Transportation and Environment Committee's second worksession on Bill 37-07, Forest Conservation – Amendments, sponsored by the Council President at the request of the Planning Board, and a resolution to set certain penalties and fees under the Forest Conservation Law, sponsored by Councilmember Elrich, which were both introduced on December 11, 2007. Today's worksession will provide added background information, including a discussion of the implementation of the Planning Board Forest Conservation Task Force recommendations, and review several broad issues raised by Bill 37-07 and Councilmember Elrich's amendments. After the February 19 worksession, Committee members asked several follow-up questions. The Planning staff's responses are attached at ©190-206.

Presentation by the Department of Environmental Protection (DEP)

DEP requested that they be given additional time to revise their presentation to reflect information discussed at the February 19 worksession. DEP's revised presentation and matrix is on ©290-306. Executive staff indicate that they will have comments and recommendations on Bill 37-07 and Councilmember Elrich's amendments at a later worksession.

Planning Board Forest Conservation Task Force

In 2006, the Planning Board convened a Forest Conservation Task Force to discuss implementation of the Forest Conservation Law and regulations. This effort culminated in a report containing the following 18 recommendations to improve administration of the current law (©206-222):

1. The Planning Department's Environmental Planning Division will develop clearer checklists to be used by plan reviewers and these checklists can be included with the submissions.

2. Submission process for Natural Resource Inventories and Forest Stand Delineations.
3. Planning staff will conduct site visits for all forest conservation exemptions.
4. Implement a triage practice for applications received versus review based on date received.
5. Delegate authority to issue stop work orders to the forest conservation inspectors.
6. Create a central hotline phone number and e-mail address to report violations.
7. Develop a violation tracking system.
8. Upload forest conservation standards, notes, and details online.
9. Modify and expedite the process to sign approved plans.
10. Increase staff with contractual employees and permanent employees.
11. Complete revisions to the Trees Technical Manual.
12. Preparation of staff procedural manuals for the review and approval of Natural Resource Inventories/Forest Stand Delineations, Tree Save Plans, and Forest Conservation Plans.
13. Preparation of procedural manuals for determining violations, documenting violation, assessing penalties and corrective actions
14. Develop a program to use fee-in-lieu funds.
15. Develop and implement an education and outreach program to identify the reasons why trees and forests should be protected and what activities can occur in conservation easements.
16. Digitize and make publicly accessible online approved plans and easements.
17. Allow forest mitigation planting on public lands.
18. Greater intergovernmental cooperation.

Committee Chair Floreen asked Chairman Hanson to be prepared to provide information on the Task Force and the extent to which the Board and staff have implemented the Task Force recommendations. A status matrix on the implementation of the Task Force recommendations is on ©223-226. Committee Chair Floreen also asked some businesses and civic stakeholders who sat on the Planning Board Task Force to be prepared to discuss the Task Force recommendations as well as Bill 37-07 and the amendments proposed by Councilmember Elrich.

Issues for Committee Discussion

Council staff has identified the following initial issues for today's worksession. After the Committee has discussed these fundamental issues, Council staff will review more detail-oriented issues and present staff recommendations at a later worksession.

1. *What is the goal of the forest conservation law?* County Code §22A-2 lists the findings and purpose of the forest conservation law. In the findings, the Council found that:

Trees and forest cover constitute an important natural resource. Trees filter groundwater, reduce surface runoff, help alleviate flooding, and supply necessary habitat for wildlife. They cleanse the air, offset the heat island effects of urban development, and reduce energy needs. They improve the quality of life in a community by providing for recreation, compatibility between different land uses, and aesthetic appeal. The Council finds that tree loss as a result of development and other land disturbing activities is a serious problem in the County.

The stated purposes of the law are to:

- save, maintain, and plant trees and forested areas for the benefit of County residents and future generations;
- establish procedures, standards, and requirements to minimize tree loss as a result of development and to protect trees and forests during and after construction or other land disturbing activities;
- establish procedures, standards, and requirements for afforestation and reforestation of land subject to an application for development approval or a sediment control permit;
- establish a fund for future tree conservation projects, including afforestation and reforestation; and
- provide a focused and coordinated approach for County forest conservation activities.

Under Bill 37-07, an additional goal, to “maximize forest retention” would be added (©2, line 21). Councilmember Elrich would amend the first goal to add the goal of no net forest loss (©69, lines 16-19). The Planning Board does not oppose Councilmember Elrich’s amendment. The Sierra Club and others supported maximizing forest retention and ensuring there is no net loss of forest in the County (©266-268). Vincent Berg has proposed additional modifications to the findings and purpose (©257).

As Committee members noted at the last worksession, these goals may not give County residents and businesses sufficient specificity as to what the County is trying to accomplish in the forest conservation program. It is unclear whether the goal should be to protect as many trees as possible, to assure that there is no net loss of forest, or something else. Committee Chair Floreen asked Chairman Hanson to be prepared to discuss this issue at this worksession.

2. Should the forest conservation law specify different levels of review for different projects?

Current Law

As summarized at the last worksession, the forest conservation law applies to the following activities. If an activity does not meet one of the following criteria, it is not subject to the law:

1. development plan approval, diagrammatic plan approval, project plan approval, preliminary subdivision plan approval, or site plan approval;
2. special exception approval or a sediment control permit on a tract of land 40,000 square feet or larger;
3. any cutting or clearing, or any other land disturbing activity that would directly threaten the viability of, any champion tree, wherever located;
4. a government entity subject to mandatory referral under the Regional District Act on a tract of land 40,000 square feet or larger which is not exempt because the State Department of Natural Resources reviews the project;
5. highway construction not exempt under State law; and
6. non-routine public utility land clearing not exempt under State law.

The current forest conservation law “exempts” certain activities from filing a forest conservation plan. These activities, listed in current §22A-5, are often misconstrued as exemptions from the entire forest conservation law. To clarify this common misconception, the Planning Board would delete “exemptions” from the forest conservation law and require an activity subject to the forest conservation law to submit to one of 3 levels of review. The Planning Board intends that any activity that meets the criteria for more than one level of review would undergo the **least stringent** level of review.¹

Bill 37-07

Level 1 review. A Level 1 review, the most stringent review, would be required for any of the following:

- a development plan, diagrammatic plan, project plan, preliminary plan of subdivision, or site plan on any size tract of land;
- a sediment control permit or approval of a special exception on a tract of land which is 40,000 square feet or larger;
- any cutting or clearing, or any other land disturbing activity, that would threaten the viability of any champion tree, wherever located;
- mandatory referral or a park facility plan on a tract of land which is 40,000 square feet or larger;
- certain highway construction; or
- a public or private utility which would disturb 40,000 square feet or more for all stages of work in a public right-of-way or utility easement.

Level 2 review. A Level 2 review would be required for any of the following:

- building, on a single lot which is 40,000 square feet or larger, a house, an addition to a house, or an accessory structure (such as a pool, tennis court, or shed), if the activity would not result in cutting, clearing, or grading:
 - more than 40,000 square feet of forest;
 - any forest in an environmental buffer;
 - any forest in a special protection area which requires a water quality plan;
 - any specimen or champion tree; or
 - any tree or forest covered by a previously approved forest conservation plan or tree save plan;
- a minor subdivision involving a lot line adjustment, conversion of an existing recorded outlot, or joining 2 or more existing residential lots into one lot, if:
 - 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
 - development would not result in cutting, clearing, or grading:
 - more than 40,000 square feet of forest;

¹ A technical amendment to Bill 37-07 will be necessary to conform the bill to the Planning Board’s intent. Council staff will draft this amendment if the Committee supports this concept. At the February 19 worksession, Councilmember Floreen asked Council staff to assure that the Bill’s applicability section is clear on who the law covers. Council staff will draft appropriate amendments to clarify the Committee’s intent.

- any forest in an environmental buffer;
- any forest in a special protection area which requires a water quality plan;
- any specimen or champion tree; or
- any tree or forest covered by a previously approved forest conservation plan or tree save plan;
- modification to existing non-residential developed property if less than 5,000 square feet of forest will be cleared; or
- a State or County highway construction activity covered by either Section 5-103 of the Natural Resources Article of the Maryland Code or Level 1 Review.

Level 3 review. A Level 3 review, the least stringent review, would be required for any of the following:

- agricultural activity that is exempt from:
 - platting requirements; and
 - a requirement to obtain a sediment control permit;
(An agricultural support building and related activity is excluded only if it is built and conducted using best management practices, as defined by the Natural Resources Conservation Service.)
- a tree nursery;
- a special exception for an existing structure, when the proposed use would not result in clearing existing forest or trees;
- certain commercial logging and timber harvesting operations, including any harvesting conducted under the forest conservation and management program authorized by state law;
- a government project reviewed for forest conservation purposes by the State Department of Natural Resources under state law;
- routine maintenance of public utility easements and rights-of-way, or routine maintenance of stormwater management facilities that are not subject to an existing conservation easement, except clearing access roads;
- utility or other work required in an emergency;
- noncoal surface mining regulated under state law; or
- cutting or clearing a public utility right-of-way or land for certain electric generating stations.

Councilmember Elrich amendments

Councilmember Elrich would make the following changes to Bill 17-07's tiered review system:

Level 1 review. In addition to the other requirements in Bill 37-07, the Elrich amendments would require a Level 1 review if:

- a utility disturbs more than 5,000 square feet (©76, lines 176-178) (current law and Bill 37-07 allow a 40,000 square foot threshold);

- forest in an environmental buffer or located on property in a special protection area would be removed (©76, lines 179-180) (Bill 37-07 would require a Level 2 review); and
- cutting, clearing, or grading any trees or forest covered by an approved forest conservation plan or forest conservation or scenic easement (©76, lines 181-184) Bill 37-07 would require a Level 2 review under certain circumstances, including if activity results in cutting, clearing, or grading a tree or forest subject to the requirements of a forest conservation or tree save plan.

Level 2 review. The Elrich amendments would make the following changes to Bill 37-07's requirements:

- reduce the threshold for construction on a single lot or a minor subdivision to 5,000 square feet for a Level 2 review (©77, lines 192-193) (current law and Bill 37-07 allow a 40,000 square foot threshold); and
- require a Level 2 review of any cutting, clearing, or grading of any tree or forest that covered by an approved forest conservation plan or forest conservation or scenic easement (©78, lines 224-227). Bill 37-07 would require a Level 2 review under certain circumstances, including if activity results in cutting, clearing, or grading a tree or forest subject to the requirements of a forest conservation or tree save plan.

Level 3 review. The Elrich amendments would require a Level 3 review if of any cutting, clearing, or grading of any trees or forest subject to an approved forest conservation plan or forest conservation or scenic easement (©80, lines 274-277). Bill 37-07 would require a Level 2 review under certain circumstances, including if activity results in cutting, clearing, or grading a tree or forest subject to the requirements of a forest conservation or tree save plan.

The Planning Board opposes these amendments. (See ©227-254 for the Planning Board's detailed review of Councilmember Elrich's amendments.)

Committee Discussion

As a threshold issue, the Committee should decide whether to retain the current structure of the forest conservation law or clarify the current law. The Maryland National Capital Building Industry Association (BIA) supported the Planning Board's tiered approach (©269), but the Agricultural Preservation Advisory Board did not (©284).² The activities that would require a Level 1 review are generally those activities that under the current law that require a forest conservation plan. The activities that currently do not need to submit a forest conservation plan would now face either a Level 2 or Level 3 review. Given the extent of confusion around the current law, particularly regarding "exempted" activities, **Council staff recommends** using the tiered approach to clarify the current law.

In addition to the issues raised by Councilmember Elrich's amendments, 2 additional applicability questions will require the Committee's attention:

² Their specific concerns about the applicability of Bill 37-07 to agricultural activity are discussed on page 7.

Commercial Logging and Timber Harvesting Operations. The Maryland Department of Natural Resources, the Montgomery County Forest Conservancy District Board, and others urged that commercial logging and timber harvesting operations be treated the same as agricultural operations (©275-280)³. Current law exempts commercial logging and timber harvesting operations from submitting a forest conservation plan or forest stand delineation if the operation:

- is completed before July 1, 1991, or after July 1, 1991 and the property is not the subject of an application for development within 5 years after a sediment control permit has been issued;
- received approval from the County Arborist that the logging or timber harvesting plan is not inconsistent with County forest management objectives; and
- received a sediment control permit and posted the required financial security.

Current law also requires the Department of Permitting Services to send the Planning Director a copy of all sediment control permits issued for these operations. These requirements currently apply to commercial logging and timber harvesting operations on agricultural land.

Under Bill 37-07, these operations would retain the last 2 requirements, and the requirement that these operations give a copy of each issued sediment control permit to the Planning Director (©11, lines 248-262). According to Planning staff, these requirements were originally added to the forest conservation law to assure the protection of natural resources in the County. Planning staff noted the following examples of why additional oversight is necessary:

- sites with approved state timber harvest permits were cleared to within 25 feet of streams (because not all streams were identified, some sites were cleared right to the stream);
- vehicles ran through environmentally sensitive areas without controls;
- sites with approved state timber harvest permits were not cleaned of all downed woody materials;
- forest never naturally regenerated and became heavily infested with non-native and invasive materials because of poor timber harvesting practices and clear cutting;
- the County did not always receive assurance that the state was not approving a timber harvest permit on land protected by a conservation easement without permission of the grantee.

Agriculture. Several agricultural organizations expressed concerns about how Bill 37-07 would apply to agricultural activities (©281-289). Under current law, an agricultural activity that is subject to the forest conservation law is exempt from the requirements to submit a forest stand delineation or a forest conservation plan if the “agricultural activity . . . is exempt from both platting requirements . . . and requirements to obtain a sediment control permit”. Currently, if agricultural land will change from an agricultural to a non-agricultural use, the agricultural land is not exempt from filing a forest conservation plan. Additionally, agricultural support buildings and related activities are exempt from submitting a forest stand delineation or forest conservation plan if they are built using best management practices. Planning staff indicated that

³ As discussed in greater detail later, agricultural activity that is exempt from platting requirements and not required to obtain a sediment control permit would be required to submit a Declaration of Intent under Bull 37-07.

they now require agricultural activity that is exempt from platting and sediment control permit requirements to submit a declaration of intent to assure that the agricultural activity qualifies for the exemption from submitting a forest conservation plan. Bill 37-07 would require a Level 3 review (a Declaration of Intent) for an agricultural activity that is exempt from platting and sediment control permit requirements, as staff currently requires.⁴

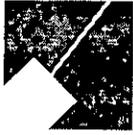
At the public hearing, Planning Board Chairman Hanson noted that it was not the Board's intent to change the requirements for agricultural activity. Only activities that meet the criteria identified in §22A-4 of Bill 37-07 would be subject to the forest conservation law. **If the only requirement for a Level 3 review is submission of a Declaration of Intent, then Council staff interprets Bill 37-07 to be substantially similar, if not identical, to what is now required for agricultural activity.** Under Bill 37-07 and current law, if agricultural land is changed from an agricultural to a non-agricultural use, the agricultural land would be subject to a higher level of review. If the Committee concludes that further clarification is needed, Council staff will work with interested parties and draft amendments for a later worksession.

⁴ Under Code §19-2(a) a sediment control permit is not required for accepted agricultural land management practices used in the cultivation of land in order to further crop and livestock production, such as plowing and construction of agricultural structures on land that:

- has been farmed by, or with the permission of, the same owner during the proceeding 5 years; or
- in the event of a transfer of ownership or other appropriate circumstance, is the subject of a declaration of intent to farm under Title 13 of the Tax-Property Article of the Maryland Code or a comparable declaration filed with the Department by the owner. This exemption does not include wholesale or retail nursery operations or logging and timber removal operations;

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MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

TO: Amanda Mihill
FROM: Mark Pfefferle
DATE: March 13, 2008
RE: Questions from Councilmembers on Bill 37-07

The Planning Department has received a number of different communications about information that would be helpful for the upcoming T&E Committee Meeting on Bill 37-07.

First, we received a letter from Councilmember Floreen that requested information on the Forest Conservation Task Force that the Department convened in 2006. Attached, please find the final report of this Task Force and a matrix that provides detailed information on the actions taken to date to implement each of the Task Force recommendations.

One of the major factors in being able to implement the Task Force recommendations is having sufficient staff to do the work. In the past year, we have created the position of Forest Conservation Program Manager at a supervisory level and I am currently serving in that position. In addition, the County Council did approve a FY08 budget that included additional reviewers and inspectors for this program. We have successfully filled all of these new positions (although we are still interviewing to fill one old inspector position that was recently vacated) and have been training new staff and reorganizing the reviewers into geographic teams. Information about the geographic teams is attached.

Secondly, we received your email of February 27, 2008 that posed a series of questions. We have worked to respond to each question. Each question is reiterated below and the response is immediately below the question.

1. Has Park & Planning ever considered creating a separate Forest Conservation Law/Plan process for individual homeowners vs. multi-unit/family projects?

Neither M-NCPPC nor the Council has proposed creating a separate forest conservation law for individual homeowners vs. multi-unit projects. The law used in Montgomery County follows the requirements established by the State of Maryland and the "Model Forest Conservation Ordinance" prepared by the State Department of Natural Resource and affects all properties greater than 40,000 square feet in size.

However, we certainly recognize that there is difference between individual homeowner projects and multi-unit projects and they are treated differently. Individual homeowner projects on previously recorded lots frequently are exempt from filing a forest conservation plan – although they may need to do a tree save plan. Since these types of properties do not require a new preliminary plan of subdivision, there is frequently no need for a forest conservation plan – and

when one is required under the law, it can be approved without a Planning Board hearing. In this instance plans are approved by the Planning Director or designee. New multi-unit projects require a new preliminary plan of subdivision, which requires the Planning Board to formally approve the forest conservation plan as part of the subdivision process.

In terms of being exempt from filing a forest conservation plan, this provision is in section 22A-5(a) of the code and is specific to individual residential lots. If an applicant can meet the requirements identified in this section, the project can be exempt from submitting a forest conservation plan. Prior to 2001, homeowners had to meet all the requirements to qualify for the exemption from submitting a forest conservation plan. The 2001 forest conservation law amendments created a new provision 22A-6(b). This section provides that if the only reason an activity or development cannot qualify for an exemption from submitting a forest conservation plan is because the proposed activity involves the removal of a specimen tree, the activity could qualify for exemption from submitting a forest conservation plan but be subject to a tree save plan. The 2001 amendment created a separate process that is utilized by many individual homeowners.

2. What are the impact and delays currently imposed on a property owner or developer who violates provisions of the Forest Conservation Law and/or the Plan process?

The impact and delay depend on the nature of the violation. If there is a violation of the forest conservation law, there is most likely also a sediment control violation which the property owner must address with another agency. If a person begins land disturbing activities without submitting or receiving approval of the forest conservation plan or exemption from submitting a forest conservation plan, the property owner may be required to submit a plan to bring the site into compliance. The review periods are established in the forest conservation law. The forest conservation law provides M-NCPPC 30 days to review a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD). After the approval of the NRI/FSD, which provides the baseline conditions, the property owner must submit and receive approval of a forest conservation plan. The forest conservation law provides M-NCPPC 45 days to review a forest conservation plan if it is not associated with a subdivision plan. If the property is part of a future subdivision, approval of the forest conservation plan is requires findings from all contributing agencies that the development plan is in accordance with other county requirements and the Planning Board approves the subdivision.

If the violation is not process or procedural in nature but is non compliance with an approved plan or the terms of a conservation easement, the delay will depend on compliance with a corrective action order or other penalties established under Article III of Chapter 22A. The Planning Board does have the ability to suspend or revoke a forest conservation plan under Chapter 22A-18.

3. Can Park & Planning provide an update on their development of an Environmental Checklist?

The checklist referred to is for the submission of natural resource inventories/forest stand delineations. The checklist is complete and is being tested by staff. Before it can be distributed,

the submission checklist on the NRI/FSD application must be modified. Once that change is made, the checklist will be added to the M-NCPPC forest conservation website. All of these actions are anticipated to be completed in the very near future.

4. How much total forest in the County has been protected to date? Please provide a breakdown as to the different methods for protection, e.g. the Forest Conservation Law, County Park and State Parks/Forest acquisition, etc. What is the timeline for the Green Infrastructure Plan and what definitions are planners using to identify additional acres of forest to be protected?

This is not a simple question to answer and a complete answer would require many additional hours of staff work. Staff has been working for over two years to create a GIS layer for conservation easements created through the Forest Conservation Law. We have dedicated one staff person almost full-time to this effort and have used multiple interns to assist in the project. We are nearing completion of this project and, when it is done, we will be able to provide more definitive numbers in a more efficient timeframe.

However, we have tried to answer the Councilmembers' question to the best of our current ability.

First, we have information on public ownership of forests in Montgomery County (please note that not all parkland is forested and so a simple calculation of parkland does not provide useful information.) This information is from the GIS forest layer. We do not have an easily available breakdown on how these forested lands were acquired.

<i>MNCPPC:</i>	<i>24,893 acres</i>
<i>State of Maryland:</i>	<i>8,760 acres</i>
<i>Federal Government</i>	<i>3,233 acres</i>
<i>WSSC:</i>	<i>1,373 acres</i>
<i>City of Gaithersburg:</i>	<i>412 acres</i>
<i>City of Rockville:</i>	<i>401 acres</i>
<i>Revenue Authority:</i>	<i>202 acres</i>
<i>Washington Grove:</i>	<i>53 acres</i>
<i>Town of Poolesville:</i>	<i>22 acres</i>
<i>Town of Somerset:</i>	<i>12 acres</i>
<i>Takoma Park:</i>	<i>3 acres</i>
<i>Garrett Park:</i>	<i>3 acres</i>

Secondly, we know that since FY99, the Planning Department has approved forest conservation plans that resulted in the retention of 4,518 acres of forest and the planting of 1,084 acres of new forests.

Finally, in terms of the Green Infrastructure Plan, the approved work program schedule has the plan submitted to the Council in September 2009. The staff recently briefed the Planning Board on this project and a copy of the staff report for that briefing is attached.

Please note that the Green Infrastructure Plan will not identify forest for protection, but rather, it will identify a conceptual Countywide network of natural areas to provide a target to shoot

for, broad Green Infrastructure goals for the County, and measures of success. Once the Green Infrastructure Plan is approved it will move into the implementation phase. Then forest gap closure, corridor widening, and protection priorities will be evaluated and needed implementation measures can be created, applied, and periodically evaluated.

5. What are the criteria used to grant waivers or exemptions? How would these work in a real world situation?

Exemptions from submitting a forest conservation plan are not waivers per se. The law lays out clear criteria for granting an exemption from submitting a forest conservation plan. Individual applications are reviewed to confirm that the proposed activity meets all the requirements for an exemption.

For example, with a single lot exemption the activity must be "conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:

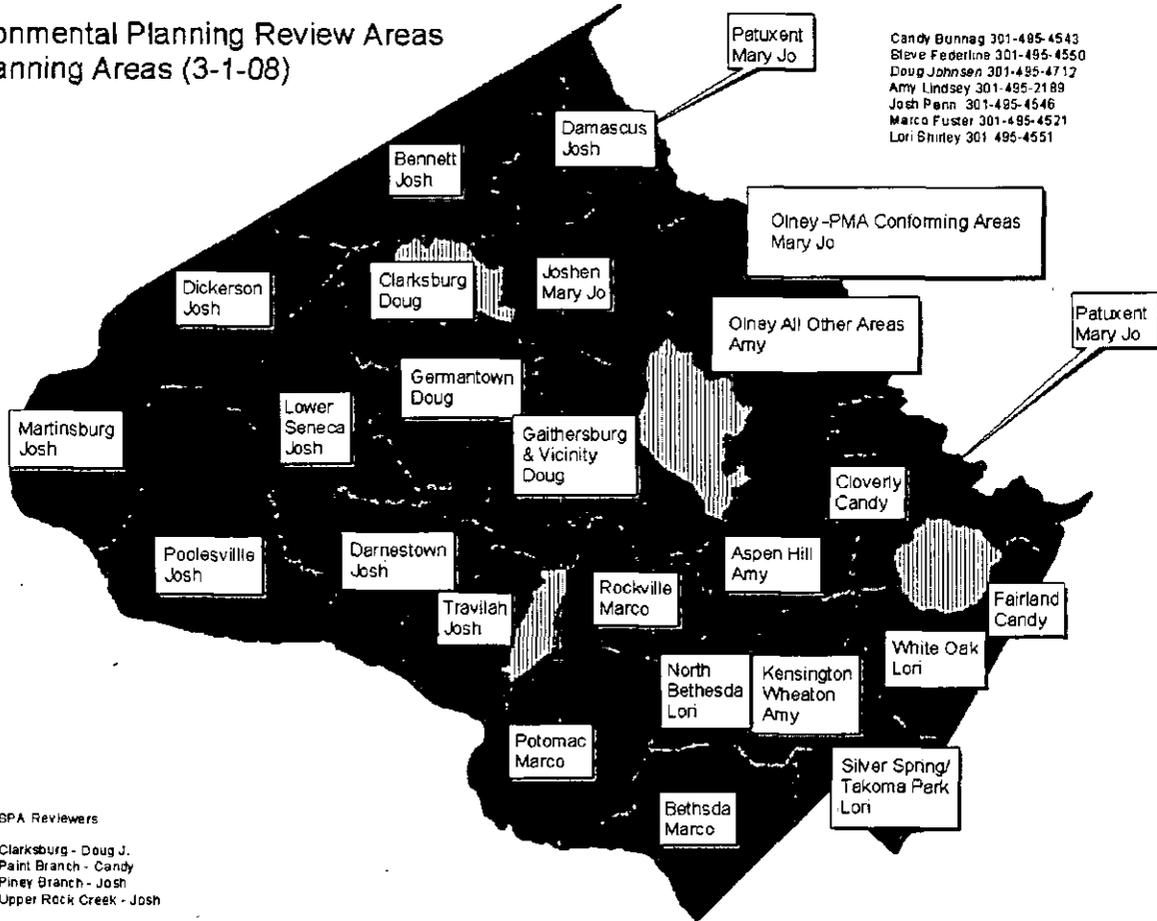
- 1. does not require a special exception;*
- 2. does not result in the cutting, clearing, or grading of:*
 - a. more than a total of 40,000 square feet of forest;*
 - b. any forest in a stream buffer,*
 - c. any forest on property located in a special protection area which must submit a water quality plan,*
 - d. any specimen or champion tree, or*
 - i. any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and*
 - ii. is subject to a declaration of intent 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 cutting, clearing, or grading of forest."*

All of the requirements must be satisfied for this exemption. However as previously mentioned, the law was revised to state that a specimen tree could be removed and the property could still be exempt if the owner submits a tree save plan.

6. Under Marc's [Councilmember Elrich] amendments, if a complaint is successfully processed, your building permit could be denied for up to 5 years. Are there other jurisdictions with similar penalties (don't need an exhaustive search just if Royce happens to know)?

We are not aware of any jurisdictions that deny the issuance of building permits after a forest conservation violation is successfully processed. The State DNR Forest Conservation Program Manager confirmed that no local governments in Maryland restrict the issuance of building permits after a violation is rectified. This is proposal that the Planning Board is concerned about and does not support.

Environmental Planning Review Areas
By Planning Areas (3-1-08)





MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 9
3/13/2008

MEMORANDUM

DATE: March 7, 2008

TO: Montgomery County Planning Board

VIA: Gwen Wright, Chief *[Signature]*
 Countywide Planning Division
 Jorge A. Valladares, P.E., Chief *[Signature]*
 Environmental Planning
 Mary Dolan, Master Planner/Supervisor *[Signature]*
 Environmental Planning

FROM: Michael Zamore, Senior Planner, (301) 495-2106 *[Signature]*
 Environmental Planning, Countywide Planning Division

SUBJECT: Briefing: Update on the Progress and Purpose of the Green Infrastructure Functional Master Plan

RECOMMENDATION: Information and Discussion

Description/Scope of the Plan

This plan will identify and evaluate sensitive and important environmental features throughout Montgomery County and ways to connect them into a comprehensive system. The Plan will develop strategies and recommendations to make this vision a reality and will map interconnected natural areas of countywide significance. The Plan will also rank the relative importance of natural resources to help direct conservation, mitigation, restoration, and enhancement decisions. Priorities will be established to assist development review, master planning, park acquisition, and budgeting.

Benefits to the County:

- Establish environmental policy choices for the Planning Board and implement the environmental objectives and strategies of the 1993 General Plan Refinement
- Support the development pattern outlined in the General Plan and by Smart Growth initiatives
- Implement recommendations of the latest approved Land Preservation, Parks, and Recreation (LPPR) Plan

- Streamline the preparation of the Park, Recreation, and Open Space (PROS) Strategic Plan, and complement the Legacy Open Space (LOS) program
- Provide a broader understanding of the county's natural areas and how to achieve a functional green space network
- Streamline the review and mitigation process for public and private development projects to improve its environmental effectiveness

Relationship to Other Plans and Programs

The Green Infrastructure Functional Master Plan will provide an umbrella for area and sector master plans, as well as State and County environmental plans and programs. The plan helps achieve regional Air Quality Plan objectives and complements regional efforts to combat poor air quality. The Plan will complement the Water Resources Functional Master Plan by prioritizing natural area enhancement opportunities. This will help address specific water quality improvement needs identified in the Water Resources Plan. Increasing the function, quality and quantity of green infrastructure, reduces pollutant loading and enhances water quality. By helping to lower nutrient loads it will also help meet Chesapeake Bay commitments which in turn, improves our eligibility for State open space funds.

The State maintains and periodically updates the *Guidelines* for State and Local Land Preservation, Parks, and Recreation (LPPR) Planning. A key goal of the LPPR relates directly to the importance of comprehensive planning for green infrastructure. By including the development of a Countywide Green Infrastructure Plan in its recently approved LPPR Plan, M-NCPPC continues to be eligible for State funding for important natural resource conservation work. Finally, the Plan will complement the Legacy Open Space Program by identifying areas that should be priorities for acquisition, and its policies and recommendations will also guide revisions and amendments to local master plans and set important environmental policy choices for the Planning Board.

Progress to Date

Public Outreach

We have used interagency, public and private participation in the green infrastructure planning process. Three strong working groups composed of Environmental Planning, Park Planning and Stewardship, Research and Technology staff, and other experts, have provided invaluable input. Six Stakeholder Focus Groups were convened to cover a wide cross section of the community: Agriculture and Forestry, Building Industry and Chambers of Commerce, Environmental, Interagency and Public Land Managers, Municipalities and Large Civic Organizations, and Natural Areas Recreational Users. Some of the key ideas that we heard at the focus group meetings are:

- Green infrastructure criteria should be science-based
- Close gaps between greenways
- Developers want settled expectations
- Consider adjoining jurisdictions
- Consider significant isolated forest stands
- Create or enhance green infrastructure connections between watersheds

- Basic green infrastructure mapping criteria should be different in highly developed areas
- More green infrastructure will help enhance groundwater recharge
- Headwaters areas are critical for protection
- Look at opportunities to increase the size of natural areas

The ideas from all six focus groups are summarized in Attachment 1. We have also used video and print media to bring out the message.

Data Collection and Analysis

We identified relevant (GIS) data layers of the county's natural resources, analyzed their level of detail and accuracy, and merged appropriate information into one sensitive features layer. These layers included forests, hydric and erodible soils, stream quality, quality, wetlands, parks, and floodplains. Our scientific research and literature review have identified minimum green infrastructure criteria that we will use in developing the mapping scenarios.

We have prepared first cut mapping applying the green infrastructure mapping criteria to create various scenarios. We will show examples of mapping scenarios at the briefing. These scenarios will be further refined before the public forum where community and stakeholder comments will help us determine the optimal criteria. The scenarios are based on different assumptions about the corridor width, length of gaps between green areas and size of isolated forest areas:

	Minimum Width	Maximum Gap	Minimum Size
Alternative 1	200 feet	600 feet	50 acres
Alternative 2 Outside Urban Ring	200 feet	600 feet	50 acres
Inside Urban Ring	0 feet	600 feet	1 acre interior forest
Alternative 3 Outside Urban Ring	200 feet	600 feet	50 acres
Inside Urban Ring	100 feet	600 feet	25 acres with 23 acres interior forest

Next Steps

We will continue to use interagency, public and private participation to develop the Plan. We will also continue to get valuable input from our Stakeholder Focus Groups so that the planning process remains transparent and consumer-driven. New strategies will be developed to target schools and young people to enhance environmental education. We anticipate developing and presenting the draft Green Infrastructure recommendations for discussion with the focus groups by the end of 2008. We anticipate taking the draft Plan to the Planning Board for authorization to print and distribute for comment by June 2009. We will continue to brief the Planning Board at critical stages in the plan process.

Specific Tasks/Products for FY09

- Prepare draft green infrastructure recommendations (Summer/Fall 2008)
- Conduct public outreach for draft recommendations (Winter-Spring 2009)
- Prepare staff draft master plan (Summer 2009)

- Attachment 1 - Summary of Focus Group Comments
- Attachment 2 - Detailed Schedule of Milestones
- Attachment 3 - Master Plan Schedule Chart
- Attachment 4 - Proposed Program Element FY09

ATTACHMENT 1

Key Input From Focus Groups for GI Mapping Scenario Development

Environmental Focus Group

- 600 yard corridor width – considered optimal in some studies, but not a minimum
- Consider narrower corridors if 600 yards is not possible
- Criteria should be variable based on location in the County
 - Down-county/up-county
 - Developed/undeveloped
- Criteria should be science-based, do a literature review, minimum functionality is important in setting minimum size criteria
- Green Infrastructure is important in both rural and urban areas—however, the issues, needs, and strategies are different.
- Look at ways to consider utility ROWs in the Plan. Some are already maintained through selective herbicides as meadows or scrub/shrub, and have habitat value. Some could be converted to this type of management.
- Meet with Pepco to discuss their utility corridors
- Need to close gaps between greenways – e.g. Potomac to Patuxent--via Seneca Creek

ICC – currently seems to have insufficient passages for animals – we should not miss this opportunity

- If a natural area cannot be connected with others it can still be a significant green infrastructure resource
 - Significant isolated natural areas should be considered
 - Case by case review, prioritize
 - Future connectivity may be possible in some cases

MAGIC is trying to develop statewide and national corridors. Look at tie-ins with their efforts.

Urban development should have green space amenities.

Building Industry and Chambers of Commerce Focus Group

Developers want settled expectations—things need to be clear and predictable

Maps should show growth areas, roads, and priority funding areas

Opportunity to identify “shades of green”: some areas might be more appropriate for smaller buffer or more dense development; some areas might be more appropriate for more green preservation

Green space needs to be a part of urban areas as well

Interagency and Public Land Managers Focus Group

Connections to the Potomac and Patuxent important

Identify *Rural Legacy* properties

Should make connections to Sugarloaf Mountain

Monocacy River is important

Look at GI connections with D.C.

Green Infrastructure is not just a County issue – good to include adjacent jurisdictions

Developed areas are a problem – especially how to handle redevelopment and infill situations

1. Do you have any suggestions for what general principles should be considered in setting minimum green corridor widths and node sizes, and maximum gaps?

Prince George’s County M-NCPPC:

- a. In areas where development is desired – 50ft. minimum corridor width. In areas rural in nature – 200ft. minimum corridor width

DNR:

Look at continuity, connectivity and unique/sensitive habitats & RTE’s. Minimum criteria should be science-based.

2. Do you have any suggestions for what types of areas should be included in the green infrastructure network?

Prince George’s County M-NCPPC:

- Areas that protect/restore/enhance water quality
- Areas that protect/restore/enhance habitat

- Also consider water quantity/quality – stream corridor restoration

DNR:

All state-identified Green Infrastructure elements and connections

Agriculture and Forestry Focus Group

Water quality is an important issue

Need recharge to groundwater - Wells do not provide enough water

Municipalities and Large Civic Organizations Focus Group

Connectivity of natural areas is key

Connectivity between existing natural resources and urban/suburban areas is important

- People value forests, streams, and meadows – people like to get close to nature and appreciate paths that provide connectivity to it.
 - In terms of green infrastructure, urban and rural areas are both important.
 - Headwaters seem to make the most difference--once streams get down-county it may be too late to do much to improve water quality. It seems best to give priority to protecting headwater areas.
 - Having places to watch birds, butterflies and other animals is important
- The GI Plan should consider the overall context with adjoining jurisdictions.
 - The Plan should consider Legacy Open Space (LOS), and the Agricultural Reserve.

Priorities on making connections, even in urban areas connections could be developed.

Natural Areas Recreational Users Focus Group

- Connectivity is essential to all natural area recreational activities
- Connectivity of natural areas is important for the health of people and the land.
- It is important to be able to get to natural areas even from the most congested areas.
- Even small connections can be important
- Watershed protection is a key element.
- Think strategically. Natural hub size may be increased in certain areas.

Once Seneca is connected, it will connect an enormous network

Natural area fragmentation is a problem– need contiguous natural areas to protect headwaters – be strategic in doing this.

There needs to be as much forest around trails as possible.

Maintaining and enlarging park and other natural areas to increase “internal forest” and to increase connectivity.

1. Do you have any suggestions for what general principles should be considered in setting minimum green corridor widths and node sizes, and maximum gaps? (In other words, what should the size criteria be based on?)

- Minimum size should offer a real visible/audible buffer from roads and development. Obviously, this would change from summer to winter.
- Gaps should be no larger than what leaves an obvious “island-hopping” connectivity.

1. Do you have any suggestions for what types of areas should be included in the green infrastructure network? (e.g. What types of areas are of Countywide Significance?)

- Headwaters areas: meadows, basins and narrow ravines all the way to the divides if at all possible; if not, at least include a forest buffer.
- Wetlands, including seasonal ponds and seasonal wet meadows
- Unique plant communities or geological areas (shale barrens, or serpentine areas, etc.)
- Any large undeveloped or reclaimed area. The county will be built out within the next few years. Any land that can be saved is absolutely essential for quality of life recreation, to say nothing of eco-sustainability.

3. Should any areas that cannot be connected to a larger network be included? If so, what kind?

- Non-tidal wetlands of all types
- Pockets of mature forest
- Any area offering an “island-hop” to other pockets or between connected corridors.

ATTACHMENT 2

DRAFT
Green Infrastructure Functional Master Plan
 Plan Preparation Timeline and Milestones, 11/26/07

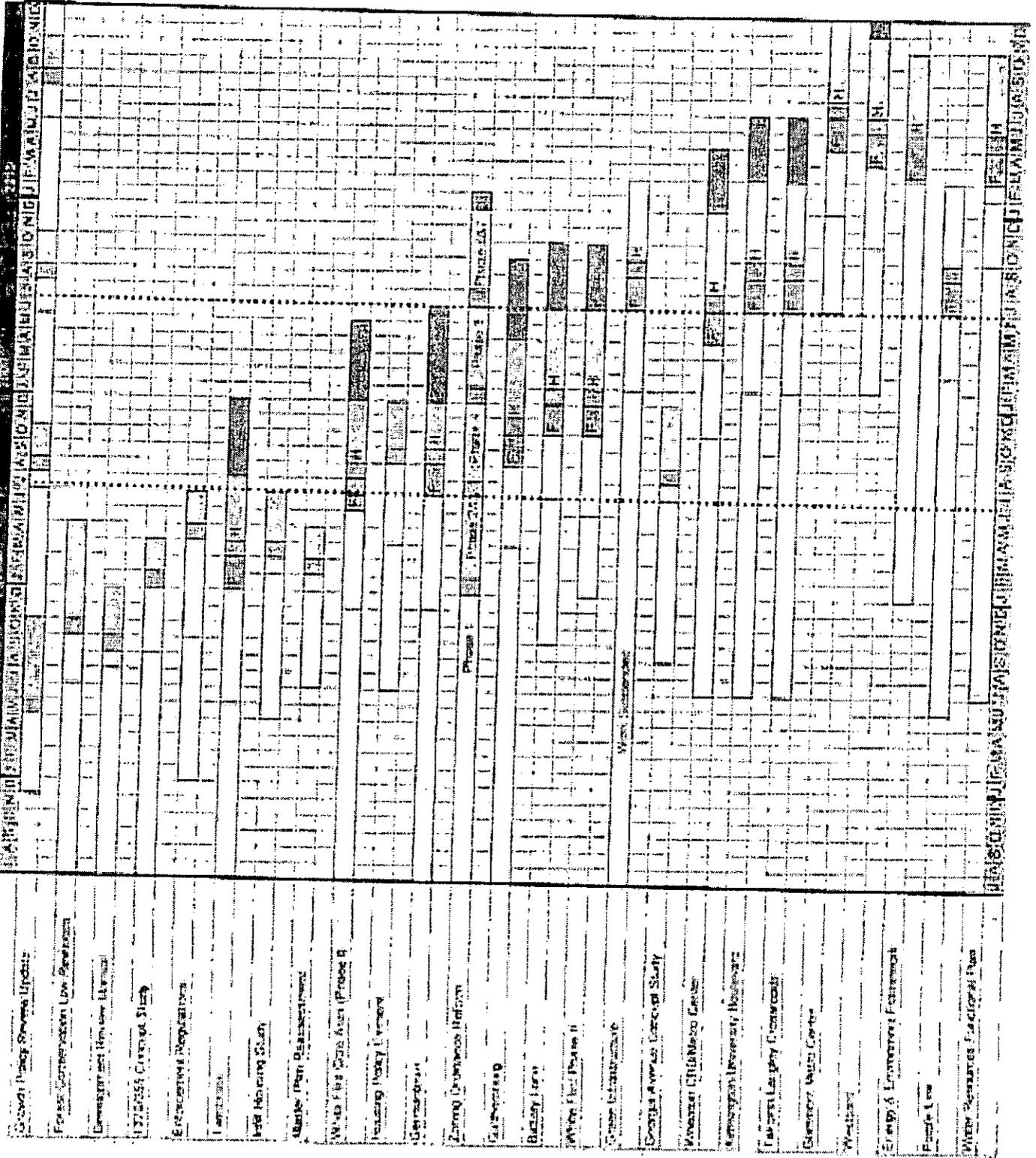
Preliminary Target Date	Milestone/Event
Dec 2007	Initial Mapping Analysis <ul style="list-style-type: none"> - Prepare Technical Work Plan - Identify any necessary fieldwork - Detail Tasks and Responsibilities
Jan 2008	Reassess Forest Layer Issues <ul style="list-style-type: none"> - Time and resources to correct - Begin correction of layer Begin Preliminary Mapping analysis <ul style="list-style-type: none"> - Prepare for Interactive GIS sessions
Feb - Mar 2008	First Cut Mapping of GI with different criteria based on General Plan refinement of 1993 GIS Mapping Interactive Sessions <ul style="list-style-type: none"> - Select GI mapping approach for scenario development Resume Public Outreach Meetings <ul style="list-style-type: none"> - Determine public outreach strategy for remaining time of plan development - Prepare Public Outreach Work Plan <ul style="list-style-type: none"> - Detail Tasks and Responsibilities
Mar 2008	Prepare Regulated Area GIS Layer Prepare base Natural Resources map
Mar - April 2008	Finish Corrections to Forest Layer Formulate GI Plan Alternative Mapping Scenarios Preparation of Plan GI Alternative Mapping Scenarios Preparation for GI Plan Public Meeting to present scenarios and gather input
May 2008	GI Plan Mapping Scenarios Public Meeting
June 2008	Brief Planning Board on results of the Plan Public Information Meeting
June-Nov 2008	Develop draft GI Plan
Dec 2008	Second Public Meeting to present Preliminary Draft Plan
June 2009	Present Draft Plan to Planning Board/Authorization to print and distribute for comment

ATTACHMENT 3

Schedule: Master Plans and Major Projects

- Staff
- Planning Board
- County Executive
- Council
- Council Review
- SVA
- F = Final Draft
- H = Hearing
- Ordinance FY09

11/27/08



ATTACHMENT 4

GREEN INFRASTRUCTURE FUNCTIONAL MASTER PLAN

DESCRIPTION/SCOPE

This plan will identify and evaluate sensitive and important environmental features throughout Montgomery County and ways to connect them into a comprehensive system. The Plan will develop strategies and recommendations to make this vision a reality and will map interconnected natural areas of countywide significance. The Plan will also rank the relative importance of natural resources to help direct conservation, mitigation, restoration, and enhancement decisions. Priorities will be established to assist development review, master planning, park acquisition, and budgeting.

Lead Division: Countywide Planning

BENEFITS TO THE COUNTY

- Establish environmental policy choices for the Planning Board and implement the environmental objectives and strategies of the 1993 General Plan Refinement
- Support the development pattern outlined in the General Plan and by Smart Growth initiatives
- Implement recommendations of the latest approved Land Preservation, Parks, and Recreation (LPPR) Plan
- Streamline the preparation of the Park, Recreation, and Open Space (PROS) Strategic Plan and complement the Legacy Open Space (LOS) program
- Provide a broader understanding of the county's natural areas and how to achieve a functional green space network
- Streamline the review and mitigation process for public and private development projects to improve its environmental effectiveness

PERFORMANCE OUTPUTS AND BASELINE INDICATORS

% of milestones completed within target timeframes

Number of outreach sessions conducted on Functional Plan

Budgeted Resources:	FY08		FY09	
	WY	\$	WY	\$
Personnel	1.00	\$149,089	1.00	\$169,800
Professional Services				
Publications				
Other Operating Expenses		\$20,667		\$21,800
Chargebacks				
Total		\$169,756		\$191,600
Revenue Source: Administration Fund				



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

To: Faroll Hamer, Acting Director

From: Mark Pfefferle, Planner Coordinator
Environmental Planning Division, County-wide Planning

Date: January 31, 2007

Re: Final Report
M-NCPPC Forest Conservation Task Force

Along with members of the M-NCPPC Forest Conservation Task Force, I am please to submit this final report outlining our recommendations on ways to improve the implementation and administration of the Forest Conservation Law. This is a collaborative effort of all 9 members of the task force you appointed in January 2006. Representatives of environmental and civic groups, the development community, and M-NCPPC staff have met over the past eight months to discuss the implementation and administration of the Forest Conservation Law. The task force is composed of 4 representatives of environmental and civic groups, 4 members of the development community, 1 representative from M-NCPPC Environmental Planning. Many other staff members participated at every meeting.

The task force received briefings on the Forest Conservation Law and Regulation, natural resource inventories and forest stand delineations, forest conservation plan review and implementation, and violations. The task force received presentations on the real and perceived shortcomings of the Department's implementation of the law from Environmental Planning staff, a forest conservation qualified professional, and a private citizen.

Comments and suggestions for improvement were solicited from all members after the presentations were made. Non task force participants, who had attended and observed the task force meetings, also provided suggestions. It was particularly beneficial and enlightening to have a representative of the Maryland Department of Natural Resources in attendance at all meetings, for this person provided insight and explanation on problems and solutions from other local governments.

As previously stated, the purpose of the task force was to assess Environmental Planning's implementation of the Forest Conservation Law and Regulations and to suggest ways to improve performance and responsiveness. Even though beyond the explicit scope of the Task Force some members voiced support for changes to the existing Forest Conservation Law and also for the creation of a separate tree preservation law. Since these two areas were beyond the purview of the task force, this report does not take a position or make recommendations on these topics. However, these issues need to be discussed at greater length in other forums.

At our final meeting on January 10th, several task force members noted that throughout this process, members of the group most often agreed and succeeded in finding common ground to use as a basis for many of our recommendations. The end goal was the same for all members: improvements in the operational aspects of the existing Forest Conservation Law that would make the law more readily understood by stakeholders and less complicated to implement or enforce. Members concluded their work agreeing that the tone of our meetings was always collegial and professional, even when there were points on which various members disagreed. This was a rare and interesting opportunity for members of the business, environmental and civic community to work together toward a common goal.

**M-NCPPC Forest Conservation Task Force
June 2006 – January 2007**

Members

Anne Ambler
Chair of the Montgomery County
Group of the Sierra Club
Silver Spring, MD

Ginny Barnes
Environmental Chair
West Montgomery Civic Association
Potomac, MD

John Clarke
Elm Street Development
McLean, VA

Claire Iseli
Legislative Senior Aide to
Councilmember Marilyn Praisner
Rockville, MD

Steve Kaufman
Linowes and Blocher, LLC
Bethesda, MD

Caren Madsen
Friends of Sligo Creek
Silver Spring, MD

Mark Pfefferle *
Environmental Planning
M-NCPPC
Silver Spring, MD

Dusty Rood
Rodgers Consulting
Germantown, MD

Rick Sullivan
Alliance Homes
Bethesda, MD

* Chair, M-NCPPC Forest Conservation Task Force

Executive Summary

This report summarizes the recommendations of the Forest Conservation Task Force to improve the efficiency and administration of the forest conservation program. The Task Force's primary function was to serve in an advisory position to Acting Planning Director Faroll Hamer in improving the forest conservation program. Throughout the meetings the members worked cooperatively and reached consensus on the recommendations and the themes discussed in the final report. Highlights of the Task Force's recommendations are presented below:

- Develop more detailed checklists for NRI/FSD submissions and make those checklists widely available. Also create an instruction sheet for submitting NRI/FSDs that clearly explains what is expected in a complete application.
- Continue the current method of NRI/FSD plans submissions but when an application is incomplete it will be rejected and returned to the applicant. Applicants, with rejected submissions, will then be required to make an appointment to submit their applications.
- Conduct site visits for all NRI/FSDs and requests for forest conservation plan exemptions.
- Environmental Planning will conduct a weekly triage of new submissions to determine the order of review.
- Planning Director will officially designate to the Forest Conservation Inspectors the authority to issue stop work orders.
- Develop an effective education campaign to educate the public on forest conservation and forest conservation easements.
- Create an electronic tracking system for all violations that clearly indicates the type of violation and notifies the inspectors on milestones particular to that violation.
- Develop standard notes, details, and information to be incorporated onto all forest conservation plans and upload the information on the M-NCPPC homepage, or on a new website dedicated to forest conservation issues in Montgomery County.
- Authorize additional people the ability to sign final forest conservation plans.
- Increase staffing for the program by strongly supporting the 2 additional plan reviewers and 2 additional forest conservation inspectors that are currently recommended in the FY08 Departmental budget.
- Update the Trees Technical Manual.
- Prepare procedural manuals documenting how staff should review and approve NRI/FSDs, Tree Save Plans, and Forest Conservation Plans.
- Prepare procedural manuals for determining and documenting if forest conservation violation occurred, and for assessing penalties for these violations, including establishing guidelines for corrective actions.
- Identify public and private lands for reforestation.
- Digitize all forest conservation plans and make them available online.
- Educate project managers in County agencies on plan submission requirements.

FINAL REPORT

Report of the M-NCPPC Forest Conservation Task Force

This report summarizes the recommendations of the Forest Conservation Task Force to improve the efficiency and administration of the Forest Conservation program. The Task Force met from late June 2006 to January 2007. The Task Force consisted of 9 members, four from the development community, four representing the interests of environmental and civic groups, and one person from M-NCPPC Environmental Planning (EP). Other M-NCPPC staff members were in attendance and contributed to the discussions. Task Force members were briefed with presentations on the forest conservation law and regulations, natural resource inventories and forest stand delineations, forest conservation exemptions and tree save plans, procedures preparing and reviewing forest conservation plans, implementation of the forest conservation plans, and violations. There were also presentations on the shortcomings to implementing the law and regulations by Environmental Planning staff, a forest conservation plan preparer, and a private citizen. All the presentations and briefings were used to further the task force's understanding of staff interpretation and implementation of the law and to identify shortcomings to foster discussion and suggestions for improvement.

Throughout the process the task force worked cordially and achieved consensus on all recommendations that follow. Agendas and briefings materials were prepared for each meeting. Task force members received the briefing materials prior to the next meeting. Meeting summaries were prepared and sent to each task force member for review and discussion.

The pages that follow are arranged into sections beginning with "current practice", followed by "problem", and "proposed solution".

The purpose of the Task Force was to examine how M-NCPPC implements the forest conservation program and to make recommendations to improve the program. The intent of the Task Force was not to suggest changes to the law or regulation, unless it was to clarify the law.

1. Environmental Planning Will Develop Clearer Checklists To Be Used By Plan Reviewers And These Checklists Can Be Included With The Submissions

Current Practice. Section 106 of the Forest Conservation Regulation identifies what information must be included on a NRI/FSD for it to be considered complete. However, the checklist contained on the NRI/FSD application is not consistent with the regulation. In addition, applicants rarely complete the checklist on the application and staff does not review this portion of the application as part of the completeness check.

Problem. Applications are sometimes submitted with missing, incomplete, or erroneous information. All of which lead to delays reviewing and approving NRI/FSDs. In addition, the submission requirements are unclear for forest conservation exemptions. There is no guidance in the Forest Conservation Regulation whether a NRI/FSD, a simplified NRI, or an existing conditions plan should be submitted to support an exemption.

Proposed Solution. Environmental Planning will develop more detailed checklists for NRI/FSD submissions and make those checklists widely available. Environmental Planning will also create an instruction sheet for submitting NRI/FSDs and forest conservation exemptions that clearly explain what is expected for an application to be complete.

2. Submissions of NRI/FSDs

Current Practice. Natural Resource Inventories/Forest Stand Delineations (NRI/FSDs) and exemptions from submitting forest conservation plans are currently submitted directly to Environmental Planning by placing the documents into an inbox. The documents are date stamped received and then forwarded to an Environmental Planning Technician for an initial completeness review. This includes reviewing the application to determine that it is properly signed and filled out, determine if the appropriate fee is included with the application, and processing the application fee. No technical reviews are conducted at this time. Once the application is complete, the Environmental Planning Technician creates a HANSEN entry for each submission, assigns an NRI/FSD number to the plan, outlines the property areas covered by the application in GIS, and then forwards NRI/FSDs to Ms. Bunnag and exemptions from forest conservation plans submissions to Mr. Penn for review. Ms. Bunnag assigns the NRI/FSDs to the appropriate technical reviewer. The forest conservation law requires Environmental Planning to provide comments or review NRI/FSDs and forest conservation exemption requests within 30 days of the date of receipt.

There is an existing policy between Environmental Planning and the County Department of Public Works and Transportation (DPWT) requiring DPWT to submit all applications on an appointment only basis. DPWT must contact Environmental Planning to arrange a meeting before an NRI/FSD or exemption request can be submitted.

Problem. NRI/FSD and forest conservation exemption requests are sometimes submitted without the proper fee; applications are incomplete or not signed; no signatures on the plans; or the application and drawings are submitted missing information. When information is missing,

or the application is incomplete, the Environmental Planning Technician contacts the applicant to get the appropriate information before entering the information into HANSEN, assigning plan numbers, and forwarding the plan for technical review. Sometimes, weeks or months pass before the applicant provides the appropriate information, yet the applicant believes the 30-day review period begins on the date the plan was submitted to Environmental Planning, even though the application is incomplete.

Proposed Solution. By consensus, the task force agreed to continue the current method of plan submissions. The task force also agreed, by consensus, that incomplete applications would be immediately rejected and returned to the applicant. Applicants, with rejected submissions, will then be required to make an appointment to submit their applications. Once an application is received, the Technician will do a completeness check to determine if the application continues through the review process or is returned to the applicant. Environmental Planning will make efforts to meet with rejected applicants within 10 business days from the date the applicant requests the meeting. The Technician will notify all applicants, via email, when their application is complete and the beginning of the 30-day review period. This policy will be effective for all applicants not including the Department of Public Works and Transportation. DPWT will continue submitting applications in the method previously agreed to by DPWT and Environmental Planning.

Environmental Planning also will modify the application so that it will include entry for "Date Received", "Date Rejected", "Date Resubmitted", and "Date Approved".

3. Staff Will Conduct Site Visits All Forest Conservation Exemptions

Current Practice. Current staffing levels and the number of exemption requests makes it impossible for Environmental Planning staff to conduct field visits for all forest conservation exemption requests within the 30-day regulatory deadline. As a result, staff reviews exemptions with electronic data sources such as aerial photographs and GIS databases. This method does not allow the existing features including the diameter, health, or tree species to be verified.

Problem. Applicants have submitted exemptions with incorrect information and statements related to the absence or presence of forest and/or specimen trees and the location of specimen trees on or near the site. It is only during the on site pre-construction meeting the Forest Conservation Inspectors determines misidentified or incorrectly located trees. This makes it difficult for the Forest Conservation Inspectors to adequately protect those trees, especially after the Department of Permitting Services has issued erosion and sediment control and building permits.

Proposed Solution. The task force agrees that all NRI/FSDs and requests for an exemption from submitting forest conservation plan be field verified by staff.

4. Implement a "Triage" Practice for Applications Received Versus Review Based On Date Received

Current Practice. It is Environmental Planning's policy to review NRI/FSDs and requests for

exemptions in the order they are received, regardless of the complexity of the plans. This policy was implemented to create fairness and equality to all applicants and to avoid all perceptions of favoritism. All NRI/FSDs reviews are field verified.

Problem. There is a perception that these reviews are taking too long for the initial review, or subsequent reviews of plans. However, exemption requests that are perceived as simple and straightforward by applicants sometimes lack the necessary information to support the exemption request, and/or the applicant applies for an exemption that is not appropriate to their property. Many exemptions require tree save plans, which are not typically submitted with an exemption request. This leads to approval delays particularly for plans only associated with sediment control plans.

Proposed Solution. Environmental Planning to conduct weekly triages of initial submissions to determine the order of review. Staff guidelines will be developed to identify which types of submissions are simple and straightforward enough to go through an expedited review and which will require more detailed analysis. Any plans that require additional information will be flagged immediately after the weekly triage and the applicants will be contacted to provide the information. This recommendation should be reviewed after six months. If this process creates too many problems, such as the plan not showing specimen trees or environmental buffers, staff will return to the old policy where the plans are reviewed in the order received.

5. Delegate Authority to Issue Stop Work Orders

Current Practice. Currently the Forest Conservation Inspectors are unable to issue stop work orders when they have determined a potential violation to the forest conservation law has occurred. Stop work orders are signed by the Director of the Planning Department. A Senior Manager and Chief must justify the stop work order to the Director prior to the issuance of the order. If the Director agrees a stop work order is necessary, one is prepared and the Forest Conservation Inspector delivers the stop work order.

Problem. When the Forest Conservation Inspectors respond to a complaint and it is determined that a potential violation has occurred, the Forest Conservation Inspectors are unable to instantly stop the violator from continuing the activity. They can issue a citation but the violator can continue with the activities until the stop work order is issued. Days may pass before a stop work order is issued.

Proposed Solution. Section 22A-17 of the Montgomery County codes states that the Planning Director may issue a corrective action as a part of a violation to the forest conservation law. Under Section 22A-3 of the Montgomery County code, the "Planning Director means the director of the Montgomery County Park and Planning Department, or the Director's designee". The Planning Director should officially designate authority to the Forest Conservation Inspectors to issue stop work orders and to lift these orders after the violations have been corrected. This will allow the inspectors to immediately require the cessation of activities that violate the forest conservation law. This system is currently in place for inspections at the County of Department of Permitting Services (DPS) and was previously used by M-NCPPC.

6. Create A Central Hotline Phone Number And Email Address To Report Violations

Current Practice. Individuals that identify forest conservation violations either contact Environmental Planning or Development Review to report possible violations to the forest conservation law and conservation easements. The M-NCPPC homepage has a "concerns or complaints" section to report violations and identifies both a phone number and email address for complaints. Few forest conservation complaints are received by this method. If Environmental Planning receives a complaint it is immediately forwarded to the appropriate Forest Conservation Inspector for investigation and action. If a complaint is received by the hotline telephone number or via email, Development Review staff will log it into a complaint database and assign it to the appropriate inspector for investigation and action.

Problem. Individuals are unsure whom to contact when they perceive a violation to the forest conservation law or easement has occurred. If a person does not have access to the Internet they would not know the number to contact for violations, or may not even know that M-NCPPC is the appropriate lead agency to contact for violations to the forest conservation law. Very few forest conservation complaints are received via the hotline number or email address.

Proposed Solution. M-NCPPC should better educate and communicate to the public whom to contact when a potential violation has occurred to the forest conservation law or a forest conservation easement. This should involve the M-NCPPC Community Outreach Division and will involve creating a more informative page on the website about the Forest Conservation Law. Additionally, there should be advertisements in the local newspapers educating the public on conservation easements, better directives on the County and M-NCPPC websites, mailings and tax bill inserts, information on who to contact with a complaint, as well as presentations at major civic groups. Staff will continue discussions with the Department of Parks to determine if M-NCPPC Police Officers could be used to inform people of potential violations to conservation easements during evenings and weekends.

7. Develop A Violation Tracking System

Current Practice. There currently is no system to track forest conservation violations that is easily accessible to all M-NCPPC staff and to the public. There is a system to track complaints, corrective action implementation, and timely payment of financial penalties, but not violations.

Problem. The lack of a tracking system prevents the Forest Conservation Inspectors from knowing if the violators have completed required actions within the timeline established by the citation or by the civil administrative order. There are also lengthy time delays within the M-NCPPC legal department to review civil administrative orders for legal sufficiency prior to the issuance of that order. The delay in issuing the civil administrative order also creates a perception that M-NCPPC is not taking appropriate actions to resolve the problem.

Proposed Solution. M-NCPPC Forest Conservation Inspectors will work with the M-NCPPC Research and Technology Division to create an electronic tracking system for all violations. The system would clearly indicate the type of violation and send messages to the M-NCPPC Forest Conservation Inspector, when the accused must undertake specific actions to avoid additional

financial penalties and when they perform other activities to comply with the civil administrative order.

8. Upload Forest Conservation Standards, Notes, And Details Online

Current Situation. Staff provides updates to standard notes and details to forest conservation plan preparers as they are developed. The 1994 Trees Technical Manual includes tree protection details but not standard notes. The purpose for the revision of the Manual was, among other things, to update the tree protection details and provide standard notes.

Problem. The result is plan submissions with disparate notes and specifications that require plan revisions. This leads to additional reviews and time by both the plan preparer and Environmental Planning in approving final forest conservation plans. Environmental Planning staff was updating the Trees Technical Manual, but because of staffing shortages and workload increases completion of the Trees Technical Manual was delayed.

Proposed Solution. Staff will develop standard notes, details, and information to be incorporated onto all forest conservation plans and upload the information on the M-NCPPC homepage, or on a new website dedicated to forest conservation issues in Montgomery County. Since the details and standard notes are an appendix to the Trees Technical Manual the completion of this task can occur and be used prior to the completion and Planning Board approval of the revised Trees Technical Manual.

9. Modify/Expedite Process To Sign Approved Plans

Current Situation. Only a senior manager, or supervisor, can approve the technical review aspects of a final forest conservation plan. The Planning Board approves a preliminary forest conservation plan that establishes the amount of forest to be cleared, saved, and the location of conservation easements, but staff approves a final forest conservation plan that includes the planting specifications, tree species, tree protection measures, etc. Applicants cannot begin clearing prior to the approval of the final forest conservation plan.

Applicants submit a final forest conservation plan directly to Environmental Planning reviewers. When the reviewer determines the plan is ready for approval, the reviewer prepares an approval letter for the supervisor's signature. The supervisor signs the approval letter and the letter is sent to the plan preparer. The plan preparer puts a copy of the letter on the final forest conservation plan and resubmits it to Environmental Planning for the Supervisors signature. Once the supervisor signs the plan, original hardcopy files are kept and the mylar returned to the plan preparer.

Problem. The current process results in delays by generating an approval letter and requiring the approval letter to be included on the final forest conservation plan. With only 2 supervisors in Environmental Planning, if a supervisor is not available for signing the plan, there is an additional delay in getting the approved plan to the applicant.

Proposed Solution. Some members of the task force see the merits of having the approval letter

on the final forest conservation plan. Others see the merits of having standard conditions put on the plan by the plan preparer. There are merits to both approaches. Standard approval conditions, such as "no clearing or grading prior to submission and approval of financial security, etc.", could be added to the standard notes section and included on the forest conservation plan by the plan preparer. Whenever there is a non standard condition, i.e., one that is not on the standard list of conditions, the approval letter must be attached to all reproduced copies of the final forest conservation plan. Regardless, staff will still need to prepare a letter approving the final forest conservation plan. Additional people need signature authority to approve final forest conservation plans to reduce the signature delays. When the forest conservation master planner is hired, that person should also have the ability to sign approved plans. In the absence of the new Master Planner, the Planner Coordinators with forest conservation experience should also have the ability to approve final forest conservation plans for plans where they are not the technical reviewer.

10. Increase Staff With Contractual Employees (Short Term) And Permanent Employees (Long Term)

Current Situation. There are four technical reviewers, one intake technician, and one supervisor reviewing NRI/FSDs, exemptions from submitting a forest conservation plan, preliminary and final forest conservation plans, tree save plans, and amendments to approved forest conservation plans associated with preliminary plans of subdivision, site plans, and sediment control plans. There are two technical reviewers and one supervisor reviewing preliminary and final forest conservation plans associated with special exceptions, mandatory referrals, and rezoning cases. There are three forest conservation inspectors, each of which is responsible for the implementation of forest conservation plans, enforcement of the forest conservation law, and enforcement of preliminary plans of subdivisions and site plans.

In fiscal year 2006, Environmental Planning received 404 NRI/FSDs and requests for an exemption from forest conservation. Of this total 163 (approximately 40%) were NRI/FSDs that required site visits and have or will eventually result in forest conservation plans. The remaining 241 submissions (approximately 60%) were for exemption requests with approximately 2/3 of the exempted plans requiring tree save plan submissions and approvals.

There are approximately 1500 forest conservation easements in the County. As the number of approved plans and permanent protections such as conservation easements increase over time, so do the number of complaints and requests to encroach into the easement areas.

Problem. All NRI/FSD, exemption requests, and forest conservation plans have regulatory timelines in which the plans must be reviewed. If the applicant does not receive comments within that timeframe, the plan is *de facto* approved. Environmental Planning is responding to submissions within 1 or 2 days of the regulatory deadlines on numerous plans. Some plans have been *de facto* approved because staff was unable to respond within the regulatory timeframe. Because of the staff shortages and workload demands, Environmental Planning does not conduct site visits for applicants requesting an exemption from submitting a forest conservation plan. Since there is insufficient staff to backfill for reviewers out with sickness or vacations, plan reviews fall behind and regulatory deadlines are exceeded.

The forest conservation inspectors do not have the manpower to proactively enforce conservation easements, follow-up on civil administrative orders, attend pre-construction meetings jointly with the DPS sediment control inspector, and conduct post-construction meetings. Assessing compliance and enforcement of conservation easements has occurred on a complaint basis.

Proposed Solution. Hiring contractual employees to review NRI/FSDs and to assess compliance with conservation easements can alleviate some of the staffing problems. However, contractual employees cannot provide the long-term commitment to follow a forest conservation plan from the beginning to end, which includes the preliminary FCP, final FCP, plats, bonding, and bond release. Contractual forest conservation inspectors can alleviate some of the proactive work needed by the inspectors to ensure compliance with the terms of the easement, but the number of perpetual easements and acreage covered by easements grows each year. The Task Force supports the hiring of 2 permanent employees for plan reviews and 2 additional forest conservation inspectors to proactively enforce the conservation easements and perform pre-construction meetings, planting meetings and final inspections in a timely fashion.

11. Complete Revisions To The Trees Technical Manual

Current Situation. The current Trees Technical Manual used by M-NCPPC was completed in 1994. The manual was never updated as a result of major revisions to the forest conservation law in 2001 nor amended to reflect ever-advancing state-of-the-art practices for forest/tree protection and planting. Environmental Planning staff has on numerous occasions attempted to update the manual, but increases in regulatory workloads, inter-departmental transfers, and retirements, have prevented an update to the manual for public distribution and comments. There are still major sections of the Manual to be written and updates to appendices needed to reflect current practices. With current workloads and staffing shortages it is unknown when the draft will be available to public comment and Planning Board discussion.

Problem. The current Trees Technical Manual is out of date, does not include advances in tree protection, forest planting specifications, does not address non-native invasive management control and deer browse, and excludes any changes reflective of the 2001 amendments. Environmental Planning is unable to provide staff to complete the manual and also maintain the same regulatory workload without exceeding the regulatory deadlines. In addition, there are discussions on revising the Forest Conservation law and implementing a tree ordinance. Implementation of a new tree ordinance, in itself, is not sufficient reason to delay completion of the trees technical manual. However, legal changes, such as those proposed by the C&O Task Force, could create substantive revisions to a new Trees Technical Manual.

Proposed Solution. Environmental Planning currently has an opening for a Forest Conservation Master Planner. One of the responsibilities of this person should be to restart the update of the tree technical manual particularly as it relates to standard details and notes, and leave the applicability sections until it is determined whether or not the County Council will proceed with changes to the Forest Conservation law in the next year.

12. Preparation Of Staff Procedural Manuals For The Review And Approval Of NRI/FSDs, Tree Save Plans, And Forest Conservation Plans

Current Situation. There are no procedural manuals for staff use in reviewing and approving NRI/FSDs, tree save plans, or forest conservation plans. The information is passed from one employee to another through the review of plans and peer reviews. Environmental Planning staff has started compiling "Staff Practices" but these practices are neither finalized nor publicized.

Problem. New staff slowly learns how to review and approve NRI/FSDs, tree save plans, and forest conservation plans, prepare comment sheets for applicants, process bonds and maintenance and management agreements.

Proposed Solution. Concurrently with the update of the Trees Technical Manual, Environmental Planning Staff shall prepare procedural manuals documenting how staff should review and approve NRI/FSDs, Tree Save Plans, and Forest Conservation Plans. Depending upon the schedule for any revisions to the Forest Conservation Law, staff may be able to prepare a procedural manual for the review and approval of NRI/FSDs prior to approval of the Trees Technical Manual.

13. Preparation Of Procedural Manuals For Determining Violations, Documenting Violations, Assessing Penalties And Corrective Actions

Current Situation. There is no procedural manual for Forest Conservation Inspectors to determine and document if a forest conservation violation occurred, or in assessing penalties and establishing corrective actions. Most of these determinations are made in the field (such as the financial penalty associated with a civil citation). Corrective actions are often determined when the inspector consults with the appropriate environmental planning reviewer.

Problem. There is a perception that inspectors are inconsistent when assessing penalties including civil administrative actions and financial amounts associated with citations, and that they may be operating solely and without guidance, or without integral legal support.

Proposed Solution. Forest Conservation Inspectors, in concurrence with legal staff, prepare a procedural manual for determining and documenting if forest conservation violation occurred, in assessing penalties, and establishing guidelines for corrective actions. This activity can only occur with additional Forest Conservation Inspectors to reduce the existing workload and with an Attorney assigned to forest conservation issues.

14. Develop A Program To Use Fee-In-Lieu Funds

Current Situation. There is no program in place to use fee-in-lieu funds collected from forest conservation plan applicants.

Problem. M-NCPPC has been collecting in-lieu-fees since 2003. No money has been allocated or spent to meet the obligations passed onto M-NCPPC from the developers. The longer the money sits the more expensive it becomes to plant forests to meet the acreage obligations. With

a shortage in forest conservation banks, the number of applicants requesting use of the fee-in-lieu option is increasing, but there is no program in place to use the funds collected.

Proposed Solution. Staff needs to identify sites for reforestation. Some properties acquired with Legacy Open Space funds are identified for reforestation and should be planted with the concurrence of the Director of Parks. However, the amount of potential land available for planting on Legacy Open Space properties does not meet the current obligations passed onto M-NCPPC. In order to use the funds, M-NCPPC needs to develop a Request for Proposals (RFP) and receive bids by interested parties in conducting the planting work. Only after a contract is issued can money be allocated for planting by non M-NCPPC employees. Once the Forest Conservation Master Planner is hired, that person should identify planting areas both on private and public lands, develop and issue a RFP for plantings, and function as the contract project manager. The Master Planner will also need to approach the Department of Parks on using in-lieu fees to plant parkland identified for reforestation.

15. Develop And Implement An Education And Outreach Program to Identify the Reasons why Trees and Forest Should be Protected and what Activities May Occur in Conservation Easements.

Current Situation. M-NCPPC has neither developed nor implemented an aggressive outreach program for the public on informing what can and cannot occur in conservation easements, or on the private and societal benefits of trees and forests. M-NCPPC has prepared fact sheets and they are currently available on the website and in Environmental Planning on what activities are permissible in conservation easements. Education for developers and plan preparers is primarily through the Trees Technical Manual. However, as previously discussed the Trees Technical Manual needs to be updated.

Problem. Few people are aware that conservation easements exist on their property and they are unsure what can occur in the easement. There is also confusion even when a homeowner is aware that conservation easements exist, and who to contact if they have an easement. It is also unclear to individuals what activities require (i.e., make applicable) compliance with the forest conservation law, and how to achieve compliance.

Proposed Solution. Environmental Planning and the M-NCPPC Community Outreach Division to develop an effective and continuous strategy to educate the public on the activities that can occur in conservation easements, the benefits of forests and trees and how to plant new trees. The education can include new brochures and publications, inserts into tax bills, changes to real estate contracts, clearer information on a website dedicated for forest conservation, and continuous education for plan preparers and other Montgomery County agencies. The M-NCPPC homepage to provide links to websites, such as the Montgomery County Department of Environmental Protection for information on the value of trees. The educational materials should also explain the range for penalties for violations.

16. Digitize And Make Publicly Accessible Online Approved Plans And Easements

Current Situation. Currently, interested parties must come to Environmental Planning to review

or purchase a copy of an approved NRI/FSD or forest conservation plan. Conservation easements are available online at the state's plat website. M-NCPPC is in process of digitizing all approved final forest conservation plans, NRI/FSDs, and conservation easements. The conservation easements will be uploaded onto the M-NCPPC GIS layers and available through the M-NCPPC website.

Problem. Information is not readily available for the public for all approved forest conservation plans. The public is not aware that conservation easements can be viewed on the state's plat website (www.plats.net).

Proposed Solution. Continue the current efforts to digitize all plans and inform the public of the State's plat website so that plats can be reviewed online.

17. Allow Forest Mitigation Planting on Public Lands

Current Situation. Currently there is a shortage of readily available planting sites and approved forest conservation banks in Montgomery County. There is primarily one banker in the County who operates one bank at a time.

Problem. Readily available options to meet offsite-planting requirements are insufficient to meet demands. When there are delays in approving banks, or the owner withdraws their banking proposal, developers are left without banking options. Expanded mitigation opportunities, on public and private lands, must be developed to meet the continuing need.

Proposed Solution. The Task Force suggested that forest conservation mitigation sites be identified and created on the public lands for use by private developers. The Department of Parks has a long-standing policy that does not support private developers using parkland to meet their forest planting requirements. Environmental Planning staff will convene a meeting with appropriate Parks Department staff to determine if and under what circumstances they may allow developer contributions to be used on parkland. Since forest conservation banks cannot be created on parkland, because the land is already protected, the only opportunity would be for mitigation planting and fee-in-lieu plantings of areas identified by the Parks Department. However, efforts still need to concentrate on minimizing forest loss and fragmentation. Foremost among the consideration would be consistency with Park use and stewardship objectives in the public interest.

Environmental Planning staff has contacted numerous property owners and have a few proposed banks in the review process. However, broader outreach to targeted landowners and Homeowner Associations should be conducted, but requires a dedicated effort to do so.

18. Greater Inter-Governmental Cooperation

Current Situation. Environmental Planning frequently receives incomplete NRI/FSDs and forest conservation plans for development by government agencies. Environmental Planning treats all public and private applicants equally in terms of details and in plan reviews. Environmental Planning has in the past provided special considerations for schools for public safety issues (i.e.,

allowing limited clearing understory clearing) and not requiring conservation easements on protected and planted forests. Recently, Environmental Planning started requiring the schools to record conservation easements on protected and planted areas and DPWT to make submissions on an appointment only basis.

Problem. The incomplete and inaccurate submissions by government agencies create unnecessary delays and additional reviews.

Proposed Solution. Environmental Planning had previously proposed meeting with governmental agencies to educate the project managers on what must be shown on a NRI/FSD, when a tree save plan is required, and when a forest conservation plan must be submitted. Environmental Planning will schedule meetings with the appropriate government agency project managers to educate them on the submission requirements and how to fulfill the obligations for the forest conservation plans in the most effective and efficient manner.

Other Participants/Attendees/Observer

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MNCPPC Task Force Recommendation	Action	Implemented	Under Development	Pending action by others	Not Started
<p><u>Recommendation:</u> Develop more detailed checklists for NRI/FSD submissions and make those checklists widely available.</p>	<p>A new NRI/FSD submission checklist has been developed and being tested by staff for utility. It will be distributed to the public shortly and available on an updated forest conservation website. Checklist on the application still needs to be revised</p>		✓		
<p><u>Recommendation:</u> Create an instruction sheet for submitting NRI/FSDs that clearly explains what is expected in a complete application.</p>	<p>Instruction sheet will be introduced at the same time as the new checklist</p>		✓		
<p><u>Recommendation:</u> Continue the current method of NRI/FSD plans submissions but when an application is incomplete it will be rejected and returned to the applicant.</p>	<p>No new action is necessary for complete applications; however companies and professionals knowledgeable of the submission requirements but consistently submitting incomplete applications are now required to submit future applications by appointment only. Currently 4 firms have this status.</p>	✓			
<p><u>Recommendation:</u> Conduct site visits for all NRI/FSDs.</p>	<p>Continuation of existing practice. All NRI/FSDs are visited.</p>	✓			
<p><u>Recommendation:</u> Conduct site visit for all forest conservation plan exemptions.</p>	<p>All exemptions from submitting a forest conservation plan are not yet reviewed with a site visit. This is due to the fact that we have just recently completed the hiring process for new reviewers and have reorganized the review staff into geographic teams. This should allow for adequate staff to handle all cases and conduct site visits. In the interim, we have done periodic spots checks of exemptions requests.</p>		✓		
<p><u>Recommendation:</u> Environmental Planning will conduct a weekly triage of new submissions to determine the order of review.</p>	<p>Triage of plan reviews is occurring and all review staff (including new hires) is being trained in how to conduct triage.</p>	✓			
<p><u>Recommendation:</u> Planning Director will officially designate to the Forest</p>	<p>Pending development and approval of new Enforcement Regulations that are being developed by M-NCPPC Legal Staff.</p>			✓	

MNCPPC Task Force Recommendation	Action	Implemented	Under Development	Pending action by others	Not Started
Conservation Inspectors the authority to issue stop work orders.					
<u>Recommendation:</u> Develop an effective education campaign to educate the public on forest conservation and forest conservation easements.	Staff is working with the M-NCPPC Community Outreach Division to better educate the public. Last spring a 10 minute segment was produced for Montgomery Plans and repeated daily on Cable Montgomery for 6 weeks. M-NCPPC staff worked with the League of Women Voters to organize and implement a major education forum on the Forest Conservation Law in January. Other outreach programs are forthcoming, including a revamped website.		✓		
<u>Recommendation:</u> Create an electronic tracking system for all violations that clearly indicates the type of violation and notifies the inspectors on milestones particular to that violation.	A great deal of information has been gathered on the history of how violations have been handled. Based on this information, staff is working with M-NCPPC Information and Technology Department to develop a system that will allow violation cases to be more effectively tracked by inspectors.		✓		
<u>Recommendation:</u> Develop standard notes, details, and information to be incorporated onto all forest conservation plans and upload the information on the M-NCPPC homepage, or on a new website dedicated to forest conservation issues in Montgomery County.	Staff does have standard notes and details developed. We are now working with M-NCPPC Community Outreach staff to provide more information on the website including copies of approved plans, standard notes and details, native trees, and conservation easement documents.		✓		
<u>Recommendation:</u> Authorize additional people the ability to sign final forest conservation plans.	The Planning Director determines who is designated to sign final forest conservation plan. Policy is for final plans to be signed by a supervisor. New Forest Conservation Program Manager position has been created and filled at a supervisory level so that this person can sign all plans.	✓			
<u>Recommendation:</u> Increase staffing for the program by	In the past year M-NCPPC has hired a new Forest Conservation Program Manager, 4 new reviewers, filled 2		✓		

MNCPPC Task Force Recommendation	Action	Implemented	Under Development	Pending action by others	Not Started
<p>strongly supporting the 2 additional plan reviewers and 2 additional forest conservation inspectors that are currently recommended in the FY08 Departmental budget.</p>	<p>vacant forest conservation inspectors, and hired one new inspector. The lead inspector position is open and advertised. In addition, we have worked to train the new staff and have reorganized the review team into geographic areas for greater effectiveness.</p>				
<p><u>Recommendation:</u> Update the Trees Technical Manual.</p>	<p>This work cannot proceed until the forest conservation law and forest conservation regulations are amended. Additionally, the Forest Conservation Program Manager, who is responsible for this activity, is working on revising the forest conservation law, developing staff review manual and procedures, public education and outreach, violations, and training new staff.</p>				<p>✓</p>
<p><u>Recommendation:</u> Prepare procedural manuals documenting how staff should review and approve NRI/FSDs, Tree Save Plans, Forest Conservation Plans, and Enforcement.</p>	<p>Procedural manual is currently being developed for enforcement activities. Procedures are developed for the review and notification for forest conservation plans.</p>		<p>✓</p>		
<p><u>Recommendation:</u> Prepare procedural manuals for determining and documenting if forest conservation violation occurred, and for assessing penalties for these violations, including establishing guidelines for corrective actions.</p>	<p>Currently under development</p>		<p>✓</p>		
<p><u>Recommendation:</u> Identify public and private lands for reforestation.</p>	<p>Staff has identified and planting is occurring on a public site in the Patuxent watershed. Other planting locations have been identified for future plantings. Staff has connected MCPS with private property owners for banking possibilities. Identification of other public lands and</p>		<p>✓</p>		

MNCPPC Task Force Recommendation	Action	Implemented	Under Development	Pending action by others	Not Started
	private lands are an essential component of the Green Infrastructure Plan.				
<u>Recommendation:</u> Digitize all forest conservation plans and make them available online.	Process is ongoing. New plans are electronically captured. Older plans are being systematically captured and available for public viewing online. Consultant assistance is being utilized.		✓		
<u>Recommendation:</u> Educate project managers in County agencies on plan submission requirements.	Staff has met with MCPS and the Parks Department project managers. Staff previously requested a meeting with DPWT which still remains to be scheduled.		✓		



MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Item # 5
Supplemental Information
January 10, 2008

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mary Dolan, Acting Chief
 Countywide Planning

FROM: Mark Pfefferle, Forest Conservation
 Program Manager
 Countywide Planning *MP*

DATE: January 7, 2008

SUBJECT: Discussion of Bill 37-07 on Forest Conservation – Amendments
 Supplemental Information



BACKGROUND

On January 4, 2008, staff provided the Board with a summary highlighting the changes to the Forest Conservation Law, Bill 37-07, introduced by Councilmember Elrich. This memo provides greater detail on a line-by-line analysis of the changes. This supplemental memorandum was identified in the January 4, 2008 staff report. In addition, the Parks Department has provided a separate memorandum identifying their concerns with the amendments proposed by the Councilmember. The Parks Department memorandum is attached.

Issues

1. The Board transmitted its recommended changes to the County Council on September 28, 2007. The first 68 pages of Bill 37-07 reflects the Boards' recommended changes, however, Council-staff made changes that does not accurately reflect the forwarded changes. For example, in Section 22A-4, the Board's recommended changes identify the requirements for the Level 1, 2 and 3 reviews. Council staff inadvertently deleted this section. It was not intentional. Staff will continue to review the first 68 pages of Bill 37-07 to determine if there were other inadvertent changes to the Board's recommendations as part of the formal comments to be sent to the County Council.

2. Starting on page circle 69, line 1, the Councilmember proposes to amend Section 8-25 of the County Code by prohibiting the Department of Permitting Services (DPS) from issuing a building permit for any structure on a property that was in violation of Chapter 22A for five years. The Councilmember introduced a similar bill in June 2007, Bill 14-07. Bill 14-07 would have permanently prevented DPS from issuing a building permit. Staff still has a number of concerns with this amendment to Section 8-25 of the County Code, including:
 - a. Section 8-25 only applies to the clearing of forest, when there are other unauthorized activities on a property that can occur but not have the same consequences. For example, a person could disturb 5,000 square feet of land, forested or unforested, and still be allowed to receive a building permit.
 - b. The five-year prohibition applies to the property and not the individual. If a person clears land onto an adjoining property, the proposed language would prohibit the property owner from obtaining a building permit even though someone trespassed onto the property. This is of concern to the Parks Department, where encroachments to M-NCPPC occurs. In this instance, the Parks Department is not in violation of Chapter 22A, but they would be prohibited from obtaining a building permit for five years because someone else encroached onto Park property.
 - c. There is no relationship to the type or extent of the violation. Based on the proposed language, a violation of placing play equipment in a forest conservation easement or unauthorized clearing of forest have the same consequence. What if an equipment operator inadvertently exceeds an unforested limits of disturbance for an approved subdivision plan, or on a single recorded lot? Would the developer be prohibited from obtaining a building permit for the subdivision for five years? Would the homeowner be prohibited from expanding, reconstructing, or building a new home on a recorded lot? Based on the proposed language, yes they all would be prohibited from receiving future building permits.
3. Circle 69, line 16. Staff has no concern with adding “with a goal of no forest net loss” other than rephrasing it as “with a goal of no net loss of forest”.
4. Circle 69, line 20. The Councilmember’s amendment for the definition “Afforestation threshold” is exactly the same as the Board’s. No comment from staff.
5. Circle 70, line 26. The Councilmember’s amendment changes an “and” to an “or” in the definition of “Agricultural activity”. The language used in the Board’s proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article.
6. Circle 70, line 29. New definition for “Champion Class Tree” which “means the largest tree of its species and all know trees of the same species within 10% of the point value of the existing Champion tree.” Staff opposes this change for individual trees should be in a Tree Ordinance.
7. Circle 70, line 32. The Councilmember’s amendment revises the definition of “Champion Tree” and refers to the “Board’s Champion Tree Register as maintained by the Forest Conservation Program Coordinator”. The Forest Conservation Program Coordinator is the former County Arborist identified in Chapter 22A. It is unclear which Board is referred to in

this definition (Planning Board vs. Forest Conservancy District Board). The definition infers that the Forest Conservation Program Coordinator maintains the register, which contradicts a State requirement the Forest Conservancy District identifies champion trees and maintains the register. Staff opposes the Councilmember's recommended change.

8. Circle 70, line 37. The Councilmember's amendment deletes "or timber harvesting" from the "commercial logging" in the definition section. The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article. Staff recommends maintaining the definition in Chapter 22A of the County code. "Commercial logging" and "timber harvesting" are frequently viewed as synonymous terms.
9. Circle 70, line 44. The Councilmember's amendment adds "additional forest clearing" and deletes "requiring a Forest Conservation Plan" from the definition. Staff agrees with this proposed change.
10. Circle 71, line 49. The Councilmember's amendment deletes the definition "Development Project Completion". Staff recommends the term not be deleted from the forest conservation law. This term is necessary for it is a key as to when planting, when required, must occur; otherwise the project is in violation.
11. Circle 71, line 59. The Councilmember's amendment proposes to modify the definition of "Environmental buffer" by adding "strip of land generally contiguous with and parallel to any body of water" and delete "stream buffer" and "hydraulically connected". Environmental Planning staff objects to the inclusion of this phrase and the deletion of "stream buffer" and "hydraulically connected" from the definition. The term "environmental buffer" is to be all inclusive by incorporating stream buffers, wetlands and wetland buffers, and floodplains into one term. The *Environmental Guidelines for Development in Montgomery County* are very specific on the width of stream buffers but does not mention "environmental buffers". Hydraulically connected is also important for proposed definition appears to include "steep slopes" and "erodible soils" regardless of location in the environmental buffer.
12. Circle 71, line 67. The Councilmember's amendment proposes to include "regardless of political or property boundaries" into the definition of forest. Staff does not oppose the inclusion of this phrase since staff recognizes a forest without consideration to property lines.
13. Circle 72, line 80. The Councilmember's amendment proposes to modify the "Forest conservation threshold" definition by deleting the reference to the penalty when forest above the forest conservation threshold is removed and then how it changes when forest is removed below the conservation threshold. The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article. Staff recommends maintaining the current definition in Chapter 22A of the County code.
14. Circle 72, Line 83. The Councilmember is proposing to add a new definition for "Government Entity". Staff does not believe this is necessary since the Board's definition of

“Person” includes all levels of government. In addition, it appears that the term “Government Entity” is only used in the definition of “net tract area”.

15. Circle 72, Line 87. The Councilmember is proposing to modify the definition of “High-density residential” for the purposes of calculating forest conservation requirements from an area zoned for densities greater than 1 dwelling unit per 40,000 square feet to 10 dwelling units per acre. Staff opposes the Councilmember’s recommended change.
16. Circle 72, Line 92. The Councilmember is proposing to eliminate the definition “Institutional development”. Elimination of this definition will make all “Institutional developments” comply with the requirements of the underlying zone. On July 31, 2007, the County Council voted to expand the definition of “Institutional development” with Bill 15-07. This bill incorporated religious institutions into the “Institutional development” land use category. Churches were previously required to comply with the requirements of the underlying zone. If adopted, religious institutions, libraries, fire stations, and parks will have to comply with the requirements of the underlying zone. Staff does not support the removal of the institutional land use category.
17. Circle 73, Line 99. The Councilmember is proposing a new definition for “Low density residential”. Staff opposes the Councilmember’s recommended change.
18. Circle 73, Line 104. The Councilmember is proposing to modify the definition of “Medium density residential” for the purposes of calculating forest conservation requirements from an area zoned for a density greater than one dwelling unit per 5 acres and less than or equal to one dwelling unit per 40,000 square feet to one dwelling unit per acre to less than or equal to 10 dwelling units per acre. Staff opposes the Councilmember’s recommended change.
19. Circle 73, Line 111. The Councilmember is proposing to modify the definition of net tract area by reducing the net tract area for a property subject a forest conservation plan by deleting “any previously approved Forest Conservation Plan, any forest conservation or scenic easement with a government entity”. Reducing the tract area for a property that is covered by a scenic easement may be problematic if the scenic easement includes the protection of forests. The scenic easement is usually less restrictive than a category I conservation easement. A typical scenic easement usually places restrictions on trees 6 inches and greater and some scenic easements allow for the construction of residences and septic areas. Staff believes that a typical category I conservation easement will safeguard the long-term protection of a forest better than a scenic easement. Staff does not believe a net tract area of a property should be reduced by acreage in a previously approved Forest Conservation Plan. In some instances, it is necessary to amend an approved plan for redevelopment, or expansion of the existing plan. Staff opposes the Councilmember’s recommended change.
20. Circle 74, line 122. The Councilmember is proposing to change “municipal corporation” to “municipality”. Staff does not oppose this change.
21. Circle 74, line 129. The Councilmember is proposing to remove “any other entity” in the “person” definition. Staff objects to this change. The phrase “any other entity” will catch all

entities not listed is items (1), (2), and (3) of the person definition. For example a non-governmental entity (NGO) may not fall into items (1), (2), or (3) but would be captured by (4). Staff opposes the Councilmember's recommended change.

22. Circle 74, line 130. The Councilmember is proposing a new definition "Priority planting area". This means environmental buffer areas, connections between existing forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. Staff does not oppose the Councilmember's recommended change.
23. Circle 74, line 139. The Councilmember proposes to change "Municipal Corporation" to "municipality". No comment from staff.
24. Circle 74, line 140. The Councilmember is proposing a new definition "Specimen tree". This means a tree as specified in the Forest Conservation Regulations. No comment from staff.
25. Circle 75, line 142. The Councilmember is proposing to delete the definition "Stream buffer". Staff objects to this deletion as outlined in number 10 above.
26. Circle 75, line 145. Amendment changes the minimum size of timber harvesting from one or more acres to 10,000 square feet or more. The reduction in threshold is inconsistent with the Maryland Forest Conservation Act. The change would make it so that timber harvesting operations between 10,000 square feet and one acre, which may not be subject to state timber removal permits still subject to a DPS sediment control permit. Under this change potentially more timber harvesting operations would now need to submit a forest conservation plan. Staff opposes the Councilmember's recommended change.
27. Circle 75, line 151. Add the word "Licensed" to the "Tree Expert". Staff does not object to this change.
28. Circle 75, line 154. New definition for "Wetland". It has always been staff's intent to define "stream buffers", "wetlands", and "wetland buffers" in a revised Forest Conservation Regulation. Staff still believes a wetland definition should appear in the regulation and not the law.
29. Circle 76, line 166. Changes the minimum lot size from "40,000" square feet to "10,000" square feet. Staff opposes the Councilmember's recommended change.
30. Circle 76, line 170. Requires any person that would cut, clear or any land disturbing activity that would threaten the viability of a champion class tree to be subject to a level 1 review. This entire provision is more appropriate for a Tree Ordinance and not the Forest Conservation Law.
31. Circle 76, line 172. Reduces the tract area of mandatory referral that is subject to the forest conservation law from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.

32. Circle 76, line 174. Removes the section that requires highway construction not excluded under subsections (c) or (d). Removing this section will potentially allow for the private construction of roadways in existing public rights of way from subject to a forest conservation plan. Staff opposes the Councilmember's recommended change.
33. Circle 76, line 177. Reduces the tract area for public and private utilities to a cumulative impact area from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
34. Circle 76, line 179. Requires any person, regardless of property size, to be subject to a Level 1 review if any forest in an environmental buffer or any forest in a special protection area in a special protection area is removed. This could include lots that are not subject to sediment control permit because they are disturbing less than 5,000 square feet of land. The Board's position is that should only apply to single lots greater than 40,000 square feet and not all properties regardless of size. Staff opposes the Councilmember's recommended change.
35. Circle 76, line 181; Circle 78, line 224; and Circle 80, line 274. A new provision that requires any person that proposes to cut, clear, or grading of any trees or forest subject to an approved Forest Conservation Plan to be subject to Level 1, Level 2 and Level 3 reviews in addition to the already approved forest conservation plan. Potentially the property would be subject to two forest conservation plans. This would provision would also apply to a conservation easement or scenic easement with a government entity. Easements with other agencies may allow for the removal of trees of certain diameter but under this provision, they would now be required to submit for a level 1 review even though the easement that the person is subject to permits the removal of trees. Staff opposes the Councilmember's recommended change.
36. Circle 76, line 187. Reduces the minimum existing single-lot size for a level 2 review from 40,000 square feet to 10,000. According to annual estimates from DPS approximately 166 more properties will be subject to the forest conservation law. Staff opposes the Councilmember's recommended change.
37. Circle 77, line 192. Reduces the maximum amount of forest which can be removed for level 2 reviews from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
38. Circle 77, line 194. Removes reference to removal of any forest in an environmental buffer or located in a special protection area which must submit a water quality plan. See comment 33 above.
39. Circle 77, line 197. Prohibits a single lot greater than 10,000 square feet from a level 2 review if any specimen tree or champion tree is disturbed wherever located. This will require any person who cuts critical root zones for a tree in a public right-of-way or in an adjoining property be subject to a level 1 review. Staff opposes the Councilmember's recommended change.

40. Circle 77, line 209. Changes the maximum amount of forest which can be removed for a minor subdivision level 2 review from 40,000 square feet to 5,000 square feet. Staff opposes the Councilmember's recommended change.
41. Circle 77, line 211. Removes reference to removal of any forest in an environmental buffer or located in a special protection area which must submit a water quality plan. See comment 33 above.
42. Circle 79, line 241. Changes an "and" to an "or" between "commercial logging" and "timber harvesting". Change is acceptable to staff.
43. Circle 79, line 247. Changes the County "Arborist" to the County "Forest Conservation Coordinator". No comment.
44. Circle 79, line 255. Changes an "and" to an "or" between "commercial logging" and "timber harvesting". Change is acceptable to staff.
45. Circle 80, line 279. Reduces the minimum amount of forest which County Highway Project can remove before being subject to a forest conservation plan from 40,000 square feet to 10,000 square feet. Staff does not oppose this change.
46. Circle 80, line 282. The Councilmember proposes a new section for County School Projects. Under the proposal, schools would only be required to prepare a forest conservation plan if more than 10,000 square feet of forest is removed and the replacement would be 1:1. Staff does not believe this meets the intent of the Maryland Forest Conservation Act. Under the Maryland Forest Conservation Act, public schools are an "institutional land use" and therefore have reforestation and afforestation requirements based on a percentage of the net tract area. The Councilmember's amendment in Bill 37-07 is less strict than what is currently required in Chapter 22A of the Code and the Maryland Forest Conservation Act, for there is no afforestation requirements and removal of forest below a certain percentage is "penalized" at a rate less than 2:1 for which all plans must comply with. Staff opposes the Councilmember's recommended change.
47. Circle 81, line 300. This proposal would only permit the Planning Director to waive the necessary requirements for a Natural Resource Inventory/Forest Stand Delineation only after the County's Forest Conservation Coordinator concurs. Staff does not believe this is necessary for staff does not allow persons to submit less than is required for a property, or area to be developed. When staff does not require all the information for an entire property it is for a forest stand that will not be impacted by the development. Staff opposes the Councilmember's recommended change.
48. Circle 81, line 306. Changes an "or" to an "and", which would now require tree protective measures within forest conservation plans to protect trees on the subject site and on adjoining properties. Staff does not oppose this requirement.

49. Circle 82, line 315. The proposal allows for tree inventories to be signed by a certified arborist, licensed tree expert and a qualified professional. Staff does not oppose this provision provided it does not extend to preparation of tree protection plans.
50. Circle 82, line 324. This addition is similar to comment 46 above which would only allow the Planning Director to waive components necessary requirements for a Natural Resource Inventory/Forest Stand Delineation only after the County's Forest Conservation Coordinator concurs. Staff does not believe this is necessary for the reasons stated in 46 above.
51. Circle 82, line 326. The proposal allows for tree inventories to be recertified by an arborist, licensed tree expert and a qualified professional. Staff is okay with this provision provided it does not extend to preparation of tree protection plans.
52. Circle 82, line 327. Adds "licensed" before "Tree Expert". Staff does not oppose this change.
53. Circle 82, line 331. This proposal allows for tree protection plans to be prepared by Qualified Professionals. Qualified Professionals include landscape architects, foresters, and people that have take a MD DNR course. None of these professionals are trained to neither assess a trees health nor develop adequate programs to protect those trees. Staff opposes the Councilmember's changes to this section.
54. Circle 83, line 343. The Councilmember's proposal changes an "and" to an "or". This change makes the requirement less onerous than the Board's proposal. Under the Boards' proposal is a person is in violation of Declaration of Intent, the person must submit for a Level 1 Review and pay a penalty. The Councilmember's proposal makes noncompliance with a Declaration of Intent either a Level 1 Review or and penalty. Staff opposes the Councilmember's recommended change.
55. Circle 83, line 344. The Councilmember proposes to change the penalty amount from one "established by fee schedules approved by Council resolution... but no less than the minimum set by state law" to a penalty fee "per square foot or forest cut or cleared". Council resolutions are established on a square foot basis and therefore there is no reason to change the language. The Board's proposed language is clearer for it clearly sets what the penalty limits. Staff opposes the Councilmember's recommended change.
56. Circle 83, line 357. The Councilmember proposes to make all NRI/FSD that are incomplete or inaccurate are denied. The Board's proposal was just for incomplete applications to be denied. The Councilmember appears to add "or inaccurate" from the Development Review Manual. Page 10 of this manual states "The Planning Director must reject a final application after it has been accepted if the Planning Director finds that it contains materially inaccurate or incomplete information." The context in the Development Manual is different than a NRI/FSD. In the development manual a final application is rejected and returned to the applicant but based on the Councilmember's proposal an inaccurate application must be denied. The NRI/FSD must include information for the subject property and a pre-determined distance around the circumference of the property. If an adjoining property is unwilling to allow an applicant's representative to enter their property to determine tree sizes

the sizes may be estimated. Since the estimates may continue inaccurate information, based on the information submitted it must be denied. Two other problems arise. First, an error such as mislabeling a tree size, or incorrectly identifying a tree could result in an application from being denied even though the location of all necessary trees are correctly shown. Staff opposes the Councilmember's recommended change.

57. Circle 84, line 361. The Councilmember includes a provision that allows for NRI/FSDs approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section only if the revoking of an approved NRI/FSD is done by the Planning Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness. This section may be problematic when a person/organization that does not favor a development uses this section to delay Board action on a plan. Interestingly, this section is only applicable to plans in the development review process and does not include all plans reviewed for forest conservation.
58. Circle 84, line 366. The Councilmember's proposal includes the words "Tree Inventory" at the beginning of the section. Staff does not oppose the inclusion of the phrase.
59. Circle 84, lines 375. The Councilmember includes a provision that allows for tree inventories approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section if the revoking of an approved tree inventory is done by the Planning Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness.
60. Circle 84, lines 379 to 391. This section was inadvertently omitted from the Board's recommendations to the Council. Staff does not oppose the inclusion of this section, but staff does oppose the line that states "an incomplete or inaccurate application must be denied" on line 396. See comment 55 above.
61. Circle 84, line 401. The Councilmember proposes to remove "to the maximum extent feasible" from this section. By removing this phrase, forest in environmentally sensitive areas could be removed because there is no longer the requirement that "to the maximum extent feasible, retain certain vegetation and specific areas in an undisturbed condition". Staff opposes the Councilmember's recommended change.
62. Circle 86, line 412. In this section the Councilmember ranks the order of preference for which forest must be mitigated so that "on site landscaping with an approved plan" has a higher ranking than "forest mitigation banks" and "in-lieu fees". Development projects that require landscape plans are either a requirement of the type of plan (site plan) or a specific requirement of the Planning Board on a preliminary plan. Staff opposes the Councilmember's recommended change for it will continue the practice in which an applicant can count landscaping credit twice. Once to meet the landscape requirement of a site plan and secondly to meet the forest conservation requirements.

63. Circle 86, line 417 table. The Councilmember proposal includes a new land use type called "Low Density Residential" which will have a 40% conservation threshold and a 20% afforestation threshold and a "Highway Right-of-Ways and School Sites" land type. The Councilmember also proposes to remove "Institutional Development Areas" from the table and make all institutional development comply with the underlying zone. Staff opposes the Councilmember's recommended change.
64. Circle 87, line 427. As previously mentioned in comment 62 above, staff opposes the separation of county schools from other "institutional uses".
65. Circle 87, line 439. The Councilmember proposes to increase the "penalty" for forested cleared above the conservation threshold from "1/4" acre to "1/2" acre. This will change the breakeven point, the point at which a person is required to replant and potentially result in more forest planting than currently exists on a tract. Staff opposes the Councilmember's recommended change.
66. Circle 88, lines 452 and 457. The Councilmember's proposal removes a duplication that was in the Boards' recommended changes to the Council. Staff is not opposed to this change.
67. Circle 89, line 468. The Councilmember proposes to increase the amount of forest that must be protected in an offsite mitigation bank if existing forest is used to meet the planting requirements. Currently, for every 1 acre of credit needed 2 acres of existing forested is required. The proposal is to increase this rate to 4 acres of existing forest. The proposal does not change the 1:1 requirement for planted forests in mitigation banks. Under the current law and Boards' proposal, a 20 acre existing forest mitigation bank has 10 acres of credit for sale. The Councilmember's proposal would change this to 5 acres of credit for sale. Staff does not support this change because forest mitigation banks will be quickly exhausted, potentially slowing development when banks are unavailable.
68. Circle 89, line 470. The amendment proposes a new section related to non-native and invasive management control. That is, for each acre of planting the applicant can offset the requirement by controlling non-native and invasive materials with supplemental planting for 2 acres of land. The Maryland Forest Conservation Law does not have such a provisions and it is unknown at this time if the State Department of Natural Resources would accept such provisions in lieu of creating new forests. The State is currently assessing non-native and invasive management control and the possibility of crediting such controls to meet planting requirements but it is still months or years away from providing such guidance. While staff recognizes the serious problem of controlling non-native and invasive materials, it is not clear that this kind of a trade off is appropriate and would be equivalent to planting new forest areas. We suggest further study of this issue.
69. Circle 89, line 478. The Councilmember proposes to delete "as practical" from the long-term protection section. This change means that watering of newly planted trees must occur. In some instances it is not practical to water particularly when a stream crossing is necessary; therefore, Staff opposes the Councilmember's recommended change.

70. Circle 90, line 489. The Councilmember proposes to add "or Tree Protection Plan" under the forfeiture section. Staff does not oppose this change.
71. Circle 90, line 497. The Councilmember proposes to replace "unplanted" with "on open land" in the banking section. Staff does not oppose this change.
72. Circle 90, lines 501 to 505. The Councilmember proposes to reduce the size of a planted forest conservation bank from 1 acre to 10,000 square feet. This is the minimum forest size. Staff opposes the Councilmember's recommended change for it may lead to many small and distinct forest conservation easements on individual lots.
73. Circle 91, lines 519 to 525. The proposal places a requirement that forest mitigation banks must be approved within 45 days or they are deemed approved. This timeline is not within the control of any one agency. Forest mitigation banks are not required to submit a Natural Resource Inventory/Forest Stand Delineation and therefore not all baseline information is known with the initial submission, requiring additional field work. Proposed forest mitigation banks may have conflicting easements which prohibit the forest that is already paid to be protected by State funds to be used for forest mitigation banks. Forest mitigation banks that are created outside the development process require conservation easements be established and recorded in the Land Records. Only upon the signature of the grantee, the M-NCPPC Executive Director, can an easement be recorded. Anywhere along the process the bank can be delayed. The bank may meet the technical definitions of planning staff but may not satisfy the contractual requirements established by others within M-NCPPC. Forest mitigation banks created as part of development plan will take more than 45 days from the date of submission of a preliminary plan to the issuance of a Planning Board opinion and approval of a record plat. Staff does not support a timeline for bank approvals.
74. Circle 91, lines 529. The Councilmember's amendment would also prohibit the Montgomery County Public Schools and Montgomery County Department of Public Works and Transportation from creating forest mitigation banks for their own use on land owned by Montgomery County. It would also prevent the Parks Department from creating a forest mitigation bank on park property for their exclusive use. For these reasons, staff does not support this change.
75. Circle 92, lines 545 to 550. The Councilmember's amendment requires adjoining and confronting property owners to be notified 10 days in advance of any clearing or grading occurring on a property subject to a forest conservation plan. There are inherent difficulties in enforcing whether or not timely notice was provided. Staff is concerned that the only permit that needs to be noticed is not the primary plan (building permit) or secondary plan (sediment control permit), but the tertiary forest conservation plan. There are no mandates or proposals requiring applicants to notify adjoining and confronting property owners that a building permit, or sediment and erosion control plan, was submitted for review by DPS and that construction of a new residence or expansion of an existing building is imminent. Staff recommends posting of properties for the above-noted permits be considered as an alternative to posting for forest conservation

76. Circle 92, line 557. The Councilmember proposes that "Planning Director may initiate administrative" enforcement actions, while in the Boards recommended changes "enforcement action are to be initiated by the Planning Director". The sentence appears to limit Planning Director's enforcement ability to administrative enforcement actions only. Staff does not support the Councilmember's proposed changes.
77. Circle 93, lines 568 to 590. The proposed amendment adds a fourth separate and distinct enforcement action. This enforcement action is in addition to the M-NCPPC's ability to: issue citations; issue Administrative Orders; and apply Civil Administrative Penalties. This fourth method ignores the current method of enforcement by allowing it to take place concurrently with M-NCPPC's enforcement and allows a private action to be filed in Court before our investigation is complete. The Councilmember initially introduced this amendment as part of Bill 14-07 in June 2007. Staff's concerns remain the same, which include:
- a. There is no provision explaining whether the Court's decision trumps the Planning Board's or vice versa. In addition, M-NCPPC will no longer be the sole enforcer of the Forest Conservation Law. Every adjacent and confronting property owner has the same enforcement authority as the Planning Department, although through the Courts.
 - b. The definition of "aggrieved party" is very broad and, if used at all, should be limited to parties materially damaged by the clearing.
 - c. The proposed amendment allows an "aggrieved person" to challenge the factual basis of any order or decision by the Director. This provision would potentially discourage "aggrieved persons" from working with staff and would encourage them to bypass staff and take their alleged "materially false, misleading, inaccurate, or incomplete information" to Court.
 - d. With respect to relief sought by the aggrieved person, the proposed Bill allows for the award of "damages to any person entitled to them by law", however it is unclear if the aggrieved person could seek damages against M-NCPPC if the person is successful in Court.
78. Circle 94, line 594. The Councilmember's proposal capitalizes "forest conservation fund". Staff does not oppose this change.
79. Circle 94, line 600. The Councilmember includes tree inventories as a type of plan that can be appealed to the Planning Board. Staff does not oppose this change.
80. Circle 94, line 603. The Councilmember proposes a new section that requires public notification when an applicant applies for a variance from the Forest Conservation Law. The new provision would require an applicant to post the property for 20 days according to the Departments regulations. It is unclear which "Department" is referred to this section. There is no similar requirement for waivers from the stormwater management requirements but the Board of Appeals has a posting requirement. M-NCPPC has never received a

variance request, this additional requirement seems unnecessary. Staff does not oppose the change.

81. Circle 95, line 609. This line changes the "County Arborist" to the "County Forest Conservation Coordinator". Staff does not oppose this change.
82. Circle 95, line 615. The Councilmember proposes a new section that requires the Planning Board to accept public comment prior to hearing a variance request. Staff does not believe this is necessary since a variance request must be referred to other agencies and the Maryland Department of Natural Resources before processing the request. Since no variance requests were ever submitted to M-NCPPC the requirement to review public comments seems unnecessary.
83. Circle 96, line 650. The Councilmember proposes that all in-lieu fees must be spent on afforestation or reforestation after 2 years and if any money remains it must be used for street trees and forest mitigation banks. Staff opposes the Councilmember's recommended changes. While it is worthwhile goal to use all monies within a two year time frame, sometimes it is impractical. Prolonged periods of drought are not good planting times. It would be unwise to plant trees knowing that the survivability is poor because of the soil moisture conditions. Fee-in-lieu funds are also being leveraged as the local government's share for tree planting grants. Without these funds potential grants may be lost and less forest planted.
84. Circle 97, line 661. This change indicates that money collected for noncompliance with Tree Protection Plans in addition to Forest Conservation Plans must be deposited in the Forest Conservation Fund. The change adds tree protections plans to this section. Staff does not oppose this change.
85. Circle 97, lines 667 to 696. The Planning Board recommended deleting the County Arborist section from the Forest Conservation. No other location in the law is an individual and responsibilities identified. The position was initially located in the Forest Conservation Law because it was a new position and this would enable easier funding of the position. The position is currently funded and staffed and therefore the initial goal was accomplished. Staff opposes the Councilmember's recommended changes; however staff would not object the position being defined in the definitions section of the law in the similar amount of details such as the Planning Director.
86. Circle 98, lines 697 to 699. The Planning Board was silent on an effective date for the forest conservation amendments. The Councilmember is proposing an effective date of June 30, 2008 so that any Development Plan filed by June 30, 2008 would not be subject to the amendments. This will result some complexities. Development plans that are heard before the Board on the same day after July 1, 2008 may have different sets of rules based on the date submitted. Also, if a project adds additional net land to the net tract area after the submission of a development plan would the entire development plan be subject to the old laws, or just that portion that was filed prior to June 30, 2008.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Mark Pfefferle, Forest Conservation
Program Manager
Countywide Planning

DATE: January 17, 2008

SUBJECT: Discussion of Bill 37-07 on Forest Conservation – Amendments
Supplemental Information

BACKGROUND

On December 11, 2007, the Montgomery County Council introduced the Planning Board's amendments to the Forest Conservation Law, Bill 37-07. At the same time Councilmember Elrich introduced 86 additional amendments to the Forest Conservation Law. Staff previously submitted a memo to the Board indicating, line-by-line, the proposed amendments by the Councilmember. This memo further categorizes the amendments into categories. Some of the amendments fit into numerous categories.

AMENDMENTS TO IMPROVE OR CLARIFY LANGUAGE THAT STAFF DOES NOT OBJECT

1. Line 16. Staff has no concern with adding "with a goal of no forest net loss" other than rephrasing it as "with a goal of no net loss of forest".
2. Line 20. The Councilmember's amendment for the definition "Afforestation threshold" is exactly the same as the Board's.
3. Line 44. The Councilmember's amendment adds "additional forest clearing" and deletes "requiring a Forest Conservation Plan" from the definition.
4. Line 67. The Councilmember's amendment proposes to include "regardless of political or property boundaries" into the definition of forest. Staff does not oppose the inclusion of this phrase since staff recognizes a forest without consideration to property lines.
5. Line 122. The Councilmember is proposing to change "municipal corporation" to "municipality".

6. Line 129. The Councilmember is proposing to remove "any other entity" in the "person" definition. Staff objects to this change. The phrase "any other entity" will catch all entities not listed in items (1), (2), and (3) of the person definition. For example a non-governmental entity (NGO) may not fall into items (1), (2), or (3) but would be captured by (4).
7. Line 130. The Councilmember is proposing a new definition "Priority planting area". This means environmental buffer areas, connections between existing forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers.
8. Line 139. The Councilmember proposes to change "Municipal Corporation" to "municipality".
9. Line 151. Add the word "Licensed" to the "Tree Expert".
10. Line 241. Changes an "and" to an "or" between "commercial logging" and "timber harvesting".
11. Line 247. Changes the County "Arborist" to the County "Forest Conservation Coordinator".
12. Line 255. Changes an "and" to an "or" between "commercial logging" and "timber harvesting".
13. Line 279. Reduces the minimum amount of forest which County Highway Project can remove before being subject to a forest conservation plan from 40,000 square feet to 10,000 square feet.
14. Line 306. Changes an "or" to an "and", which would now require tree protective measures within forest conservation plans to protect trees on the subject site and on adjoining properties.
15. Line 315. The proposal allows for tree inventories to be signed by a certified arborist, licensed tree expert and a qualified professional. Staff does not oppose this provision provided it does not extend to preparation of tree protection plans.
16. Line 326. The proposal allows for tree inventories to be recertified by an arborist, licensed tree expert and a qualified professional. Staff does not oppose this provision provided it does not extend to preparation of tree protection plans.
17. Line 327. Adds "licensed" before "Tree Expert".
18. Line 366. The Councilmember's proposal includes the words "Tree Inventory" at the beginning of the section.
19. Lines 452 and 457. The Councilmember's proposal removes a duplication that was in the Boards' recommended changes to the Council.

20. Line 489. The Councilmember proposes to add "or Tree Protection Plan" under the forfeiture section.
21. Line 497. The Councilmember proposes to replace "unplanted" with "on open land" in the banking section.
22. Line 594. The Councilmember's proposal capitalizes "forest conservation fund".
23. Line 600. The Councilmember includes tree inventories as a type of plan that can be appealed to the Planning Board.
24. Line 603. The Councilmember proposes a new section that requires public notification when an applicant applies for a variance from the Forest Conservation Law. The new provision would require an applicant to post the property for 20 days according to the Departments regulations. It is unclear which "Department" is referred to this section. There is no similar requirement for waivers from the stormwater management requirements but the Board of Appeals has a posting requirement. M-NCPPC has never received a variance request, this additional requirement seems unnecessary. Staff does not oppose the change, however, it does seem unwarranted.
25. Line 609. This Line changes the "County Arborist" to the "County Forest Conservation Coordinator".
26. Line 661. This change indicates that money collected for noncompliance with Tree Protection Plans in addition to Forest Conservation Plans must be deposited in the Forest Conservation Fund. The change adds tree protections plans to this section.
27. Lines 697 to 699. The Planning Board was silent on an effective date for the forest conservation amendments. The Councilmember is proposing an effective date of June 30, 2008 so that any Development Plan filed by June 30, 2008 would not be subject to the amendments. This will result some complexities. Development plans that are heard before the Board on the same day after July 1, 2008 may have different sets of rules based on the date submitted. Also, if a project adds additional net land to the net tract area after the submission of a development plan would the entire development plan be subject to the old laws, or just that portion that was filed prior to June 30, 2008.

AMENDMENTS THAT WEAKEN THE FOREST CONSERVATION LAW

28. Line 111. The Councilmember is proposing to modify the definition of net tract area by reducing the net tract area for a property subject a forest conservation plan by deleting "any previously approved Forest Conservation Plan, any forest conservation or scenic easement with a government entity". Reducing the tract area for a property that is covered by a scenic easement may be problematic if the scenic easement includes the protection of forests. The scenic easement is usually less restrictive than a category I conservation easement. A typical scenic easement usually places restrictions on trees 6 inches and greater and some scenic easements allow for the construction of residences and septic areas. Staff believes that a typical category I conservation easement will safeguard the long-term protection of a forest

better than a scenic easement. Staff does not believe a net tract area of a property should be reduced by acreage in a previously approved Forest Conservation Plan. In some instances, it is necessary to amend an approved plan for redevelopment, or expansion of the existing plan. Staff opposes the Councilmember's recommended change.

29. Line 174. Removes the section that requires highway construction not excluded under subsections (c) or (d). Removing this section will potentially allow for the private construction of roadways in existing public rights-of-way from being subject to a forest conservation plan. Staff opposes the Councilmember's recommended change.
30. Line 282. The Councilmember proposes a new section for County School Projects. Under the proposal, schools would only be required to prepare a forest conservation plan if more than 10,000 square feet of forest is removed and the replacement would be 1:1. Staff does not believe this meets the intent of the Maryland Forest Conservation Act. Under the Maryland Forest Conservation Act, public schools are an "institutional land use" and therefore have reforestation and afforestation requirements based on a percentage of the net tract area. The Councilmember's amendment in Bill 37-07 is less strict than what is currently required in Chapter 22A of the Code and the Maryland Forest Conservation Act, for there is no afforestation requirements and removal of forest below a certain percentage is "penalized" at a rate less than 2:1 for which all plans must comply with. Staff opposes the Councilmember's recommended change.
31. Line 331. This proposal allows for tree protection plans to be prepared by Qualified Professionals. Qualified Professionals include landscape architects, foresters, and people that have take a MD DNR course. None of these professionals are trained to neither assess a trees health nor develop adequate programs to protect those trees. Staff opposes the Councilmember's changes to this section.
32. Line 343. The Councilmember's proposal changes an "and" to an "or". This change makes the requirement less onerous than the Board's proposal. Under the Boards' proposal is a person is in violation of Declaration of Intent, the person must submit for a Level 1 Review and pay a penalty. The Councilmember's proposal makes noncompliance with a Declaration of Intent either a Level 1 Review or and penalty. Staff opposes the Councilmember's recommended change.
33. Line 401. The Councilmember proposes to remove "to the maximum extent feasible" from this section. By removing this phrase, forest in environmentally sensitive areas could be removed because there is no longer the requirement that "to the maximum extent feasible, retain certain vegetation and specific areas in an undisturbed condition". Staff opposes the Councilmember's recommended change.
34. Line 412. In this section the Councilmember ranks the order of preference for which forest must be mitigated so that "on site landscaping with an approved plan" has a higher ranking than "forest mitigation banks" and "in-lieu fees". Development projects that require landscape plans are either a requirement of the type of plan (site plan) or a specific requirement of the Planning Board on a preliminary plan. Staff opposes the Councilmember's recommended change for it will continue the practice in which an

applicant can count landscaping credit twice. Once to meet the landscape requirement of a site plan and secondly to meet the forest conservation requirements.

35. Line 427. As previously mentioned, staff opposes the separation of county schools from other "institutional uses".
36. Line 557. The Councilmember proposes that "Planning Director may initiate administrative" enforcement actions, while in the Boards recommended changes "enforcement action are to be initiated by the Planning Director". The sentence appears to limit the Planning Director's enforcement ability to administrative enforcement actions only. Staff does not support the Councilmember's proposed changes.
37. Lines 568 to 590. The proposed amendment adds a fourth separate and distinct enforcement action. This enforcement action is in addition to the M-NCPPC's ability to: issue citations; issue Administrative Orders; and apply Civil Administrative Penalties. This fourth method ignores the current method of enforcement by allowing it to take place concurrently with M-NCPPC's enforcement and allows a private action to be filed in Court before our investigation is complete. The Councilmember initially introduced this amendment as part of Bill 14-07 in June 2007. Staff's concerns remain the same, which include:
 - a. There is no provision explaining whether the Court's decision trumps the Planning Board's or vice versa. In addition, M-NCPPC will no longer be the sole enforcer of the Forest Conservation Law. Every adjacent and confronting property owner has the same enforcement authority as the Planning Department, although through the Courts.
 - b. The definition of "aggrieved party" is very broad and, if used at all, should be limited to parties materially damaged by the clearing.
 - c. The proposed amendment allows an "aggrieved person" to challenge the factual basis of any order or decision by the Director. This provision would potentially discourage "aggrieved persons" from working with staff and would encourage them to bypass staff and take their alleged "materially false, misleading, inaccurate, or incomplete information" to Court.
 - d. With respect to relief sought by the aggrieved person, the proposed Bill allows for the award of "damages to any person entitled to them by law", however it is unclear if the aggrieved person could seek damages against M-NCPPC if the person is successful in Court.

AMENDMENTS THAT ARE EXCESSIVE OR UNREASONABLE

38. Line 1, the Councilmember proposes to amend Section 8-25 of the County Code by prohibiting the Department of Permitting Services (DPS) from issuing a building permit for any structure on a property that was in violation of Chapter 22A for five years. The Councilmember introduced a similar bill in June 2007, Bill 14-07. Bill 14-07 would have

permanently prevented DPS from issuing a building permit. Staff still has a number of concerns with this amendment to Section 8-25 of the County Code, including:

- a. Section 8-25 only applies to the clearing of forest, when there are other unauthorized activities on a property that can occur but not have the same consequences. For example, a person could disturb 5,000 square feet of land, forested or unforested, and still be allowed to receive a building permit.
- b. The five-year prohibition applies to the property and not the individual. If a person clears land onto an adjoining property, the proposed language would prohibit the property owner from obtaining a building permit even though someone trespassed onto the property. This is of concern to the Parks Department, where encroachments to M-NCPPC occurs. In this instance, the Parks Department is not in violation of Chapter 22A, but they would be prohibited from obtaining a building permit for five years because someone else encroached onto Park property.
- c. There is no relationship to the type or extent of the violation. Based on the proposed language, a violation of placing play equipment in a forest conservation easement or unauthorized clearing of forest have the same consequence. What if an equipment operator inadvertently exceeds an unforested limit of disturbance for an approved subdivision plan, or on a single recorded lot? Would the developer be prohibited from obtaining a building permit for the subdivision for five years? Would the homeowner be prohibited from expanding, reconstructing, or building a new home on a recorded lot? Based on the proposed language, yes they all would be prohibited from receiving future building permits.

39. Line 49. The Councilmember's amendment deletes the definition "Development Project Completion". Staff recommends the term not be deleted from the forest conservation law. This term is necessary for it is a key as to when planting, when required, must occur; otherwise the project is in violation.

40. Line 59. The Councilmember's amendment proposes to modify the definition of "Environmental buffer" by adding "strip of land generally contiguous with and parallel to any body of water" and delete "stream buffer" and "hydraulically connected". Environmental Planning staff objects to the inclusion of this phrase and the deletion of "stream buffer" and "hydraulically connected" from the definition. The term "environmental buffer" is to be all inclusive by incorporating stream buffers, wetlands and wetland buffers, and floodplains into one term. The *Environmental Guidelines for Development in Montgomery County* are very specific on the width of stream buffers but does not mention "environmental buffers". Hydraulically connected is also important for proposed definition appears to include "steep slopes" and "erodible soils" regardless of location in the environmental buffer.

41. Line 87. The Councilmember is proposing to modify the definition of "High-density residential" for the purposes of calculating forest conservation requirements from an area zoned for densities greater than 1 dwelling unit per 40,000 square feet to 10 dwelling units per acre. Staff opposes the Councilmember's recommended change.

42. Line 92. The Councilmember is proposing to eliminate the definition "Institutional development". Elimination of this definition will make all "Institutional developments"

comply with the requirements of the underlying zone. On July 31, 2007, the County Council voted to expand the definition of "Institutional development" with Bill 15-07. This bill incorporated religious institutions into the "Institutional development" land use category. Churches were previously required to comply with the requirements of the underlying zone. If adopted, religious institutions, libraries, fire stations, and parks will have to comply with the requirements of the underlying zone. Staff does not support the removal of the institutional land use category.

43. Line 140. The Councilmember is proposing a new definition "Specimen tree". This means a tree as specified in the Forest Conservation Regulations. No comment from staff.
44. Line 142. The Councilmember is proposing to delete the definition "Stream buffer". Staff objects to this deletion as outlined in number 10 above.
45. Line 154. New definition for "Wetland". It has always been staff's intent to define "stream buffers", "wetlands", and "wetland buffers" in a revised Forest Conservation Regulation. Staff still believes a wetland definition should appear in the regulation and not the law.
46. Line 166. Changes the minimum lot size from "40,000" square feet to "10,000" square feet. Staff opposes the Councilmember's recommended change.
47. Line 172. Reduces the tract area of mandatory referral that is subject to the forest conservation law from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
48. Line 177. Reduces the tract area for public and private utilities to a cumulative impact area from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
49. Line 179. Requires any person, regardless of property size, to be subject to a Level 1 review if any forest in an environmental buffer or any forest in a special protection area in a special protection area is removed. This could include lots that are not subject to sediment control permit because they are disturbing less than 5,000 square feet of land. The Board's position is that should only apply to single lots greater than 40,000 square feet and not all properties regardless of size. Staff opposes the Councilmember's recommended change.
50. Line 181; Line 224; and Line 274. A new provision that requires any person that proposes to cut, clear, or grading of any trees or forest subject to an approved Forest Conservation Plan to be subject to Level 1, Level 2 and Level 3 reviews in addition to the already approved forest conservation plan. Potentially the property would be subject to two forest conservation plans. This would provision would also apply to a conservation easement or scenic easement with a government entity. Easements with other agencies may allow for the removal of trees of certain diameter but under this provision, they would now be required to submit for a level 1 review even though the easement that the person is subject to permits the removal of trees. Staff opposes the Councilmember's recommended change.

51. Line 187. Reduces the minimum existing single-lot size for a level 2 review from 40,000 square feet to 10,000. According to annual estimates from DPS approximately 166 more properties will be subject to the forest conservation law. Staff opposes the Councilmember's recommended change.
52. Line 192. Reduces the maximum amount of forest which can be removed for level 2 reviews from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
53. Line 194. Removes reference to removal of any forest in an environmental buffer or located in a special protection area which must submit a water quality plan. See comment 33 above.
54. Line 197. Prohibits a single lot greater than 10,000 square feet from a level 2 review if any specimen tree or champion tree is disturbed wherever located. This will require any person who cuts critical root zones for a tree in a public right-of-way or in an adjoining property be subject to a level 1 review. Staff opposes the Councilmember's recommended change.
55. Line 209. Changes the maximum amount of forest which can be removed for a minor subdivision level 2 review from 40,000 square feet to 5,000 square feet. Staff opposes the Councilmember's recommended change.
56. Line 211. Removes reference to removal of any forest in an environmental buffer or located in a special protection area which must submit a water quality plan. See comment 33 above.
57. Line 300. This proposal would only permit the Planning Director to waive the necessary requirements for a Natural Resource Inventory/Forest Stand Delineation only after the County's Forest Conservation Coordinator concurs. Staff does not believe this is necessary for staff does not allow persons to submit less than is required for a property, or area to be developed. When staff does not require all the information for an entire property it is for a forest stand that will not be impacted by the development. Staff opposes the Councilmember's recommended change.
58. Line 306. Changes an "or" to an "and", which would now require tree protective measures within forest conservation plans to protect trees on the subject site and on adjoining properties. Staff does not oppose this requirement.
59. Line 344. The Councilmember proposes to change the penalty amount from one "established by fee schedules approved by Council resolution... but no less than the minimum set by state law" to a penalty fee "per square foot or forest cut or cleared". Council resolutions are established on a square foot basis and therefore there is no reason to change the language. The Board's proposed language is clearer for it clearly sets what the penalty limits. Staff opposes the Councilmember's recommended change.
60. Line 439. The Councilmember proposes to increase the "penalty" for forested cleared above the conservation threshold from "1/4" acre to "1/2" acre. This will change the breakeven point, the point at which a person is required to replant and potentially result in more forest

planting than currently exists on a tract. Staff opposes the Councilmember's recommended change.

61. Line 468. The Councilmember proposes to increase the amount of forest that must be protected in an offsite mitigation bank if existing forest is used to meet the planting requirements. Currently, for every 1 acre of credit needed 2 acres of existing forested is required. The proposal is to increase this rate to 4 acres of existing forest. The proposal does not change the 1:1 requirement for planted forests in mitigation banks. Under the current law and Boards' proposal, a 20 acre existing forest mitigation bank has 10 acres of credit for sale. The Councilmember's proposal would change this to 5 acres of credit for sale. Staff does not support this change because forest mitigation banks will be quickly exhausted, potentially slowing development when banks are unavailable.
62. Line 529. The Councilmember's amendment would also prohibit the Montgomery County Public Schools and Montgomery County Department of Public Works and Transportation from creating forest mitigation banks for their own use on land owned by Montgomery County. It would also prevent the Parks Department from creating a forest mitigation bank on park property for their exclusive use. For these reasons, staff does not support this change.

AMENDMENTS THAT ARE MORE APPROPRIATE FOR A TREE ORDINANCE

63. Line 29. New definition for "Champion Class Tree" which "means the largest tree of its species and all know trees of the same species within 10% of the point value of the existing Champion tree." Staff opposes this change for individual trees should be in a Tree Ordinance.
64. Line 170. Requires any person that would cut, clear or any land disturbing activity that would threaten the viability of a champion class tree to be subject to a level 1 review. This entire provision is more appropriate for a Tree Ordinance and not the Forest Conservation Law.
65. Line 306. Changes an "or" to an "and", which would now require tree protective measures within forest conservation plans to protect trees on the subject site and on adjoining properties. Staff does not oppose this requirement.

AMENDMENTS THAT ARE IMPRACTICAL AND COSTLY OR RESULT IN OUTCOMES CONTRARY TO THE INTENT OF THE LAW

66. Line 49. The Councilmember's amendment deletes the definition "Development Project Completion". Staff recommends the term not be deleted from the forest conservation law. This term is necessary for it is a key as to when planting, when required, must occur; otherwise the project is in violation.
67. Line 357. The Councilmember proposes to make all NRI/FSD that are incomplete or inaccurate are denied. The Board's proposal was just for incomplete applications to be

denied. The Councilmember appears to add "or inaccurate" from the Development Review Manual. Page 10 of this manual states "The Planning Director must reject a final application after it has been accepted if the Planning Director finds that it contains materially inaccurate or incomplete information." The context in the Development Manual is different than a NRI/FSD. In the development manual a final application is rejected and returned to the applicant but based on the Councilmember's proposal an inaccurate application must be denied. The NRI/FSD must include information for the subject property and a pre-determined distance around the circumference of the property. If an adjoining property is unwilling to allow an applicant's representative to enter their property to determine tree sizes the sizes may be estimated. Since the estimates may continue inaccurate information, based on the information submitted it must be denied. Two other problems arise. First, an error such as mislabeling a tree size, or incorrectly identifying a tree could result in an application from being denied even though the location of all necessary trees are correctly shown. Staff opposes the Councilmember's recommended change.

68. Line 361. The Councilmember includes a provision that allows for NRI/FSDs approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section only if the revoking of an approved NRI/FSD is done by the Planning Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness. This section may be problematic when a person/organization that does not favor a development uses this section to delay Board action on a plan. Interestingly, this section is only applicable to plans in the development review process and does not include all plans reviewed for forest conservation.
69. Line 478. The Councilmember proposes to delete "as practical" from the long-term protection section. This change means that watering of newly planted trees must occur. In some instances it is not practical to water particularly when a stream crossing is necessary; therefore, Staff opposes the Councilmember's recommended change.
70. Lines 519 to 525. The proposal places a requirement that forest mitigation banks must be approved within 45 days or they are deemed approved. This timeline is not within the control of any one agency. Forest mitigation banks are not required to submit a Natural Resource Inventory/Forest Stand Delineation and therefore not all baseline information is known with the initial submission, requiring additional field work. Proposed forest mitigation banks may have conflicting easements which prohibit the forest that is already paid to be protected by State funds to be used for forest mitigation banks. Forest mitigation banks that are created outside the development process require conservation easements be established and recorded in the Land Records. Only upon the signature of the grantee, the M-NCPPC Executive Director, can an easement be recorded. Anywhere along the process the bank can be delayed. The bank may meet the technical definitions of planning staff but may not satisfy the contractual requirements established by others within M-NCPPC. Forest mitigation banks created as part of development plan will take more than 45 days from the date of submission of a preliminary plan to the issuance of a Planning Board opinion and approval of a record plat. Staff does not support a timeline for bank approvals.

71. Lines 545 to 550. The Councilmember's amendment requires adjoining and confronting property owners to be notified 10 days in advance of any clearing or grading occurring on a property subject to a forest conservation plan. There are inherent difficulties in enforcing whether or not timely notice was provided. Staff is concerned that the only permit that needs to be noticed is not the primary plan (building permit) or secondary plan (sediment control permit), but the tertiary forest conservation plan. There are no mandates or proposals requiring applicants to notify adjoining and confronting property owners that a building permit, or sediment and erosion control plan, was submitted for review by DPS and that construction of a new residence or expansion of an existing building is imminent. Staff recommends posting of properties for the above-noted permits be considered as an alternative to posting for forest conservation
72. Line 650. The Councilmember proposes that all in-lieu fees must be spent on afforestation or reforestation after 2 years and if any money remains it must be used for street trees and forest mitigation banks. Staff opposes the Councilmember's recommended changes. While it is worthwhile goal to use all monies within a two year time frame, sometimes it is impractical. Prolonged periods of drought are not good planting times. It would be unwise to plant trees knowing that the survivability is poor because of the soil moisture conditions. Fee-in-lieu funds are also being leveraged as the local government's share for tree planting grants. Without these funds potential grants may be lost and less forest planted.

AMENDMENTS CONTRARY TO STATE LAW

73. Line 32. The Councilmember's amendment revises the definition of "Champion Tree" and refers to the "Board's Champion Tree Register as maintained by the Forest Conservation Program Coordinator". The Forest Conservation Program Coordinator is the former County Arborist identified in Chapter 22A. It is unclear which Board is referred to in this definition (Planning Board vs. Forest Conservancy District Board). The definition infers that the Forest Conservation Program Coordinator maintains the register, which contradicts a State requirement the Forest Conservancy District identifies champion trees and maintains the register. Staff opposes the Councilmember's recommended change.
74. Line 80. The Councilmember's amendment proposes to modify the "Forest conservation threshold" definition by deleting the reference to the penalty when forest above the forest conservation threshold is removed and then how it changes when forest is removed below the conservation threshold. The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article. Staff recommends maintaining the current definition in Chapter 22A of the County code.
75. Line 99. The Councilmember is proposing a new definition for "Low density residential". Staff opposes the Councilmember's recommended change.
76. Line 104. The Councilmember is proposing to modify the definition of "Medium density residential" for the purposes of calculating forest conservation requirements from an area zoned for a density greater than one dwelling unit per 5 acres and less than or equal to one

dwelling unit per 40,000 square feet to one dwelling unit per acre to less than or equal to 10 dwelling units per acre. Staff opposes the Councilmember's recommended change.

77. Line 145. Amendment changes the minimum size of timber harvesting from one or more acres to 10,000 square feet or more. The reduction in threshold is inconsistent with the Maryland Forest Conservation Act. The change would make it so that timber harvesting operations between 10,000 square feet and one acre, which may not be subject to state timber removal permits still subject to a DPS sediment control permit. Under this change potentially more timber harvesting operations would now need to submit a forest conservation plan. Staff opposes the Councilmember's recommended change.

78. Line 417 table. The Councilmember proposal includes a new land use type called "Low Density Residential" which will have a 40% conservation threshold and a 20% afforestation threshold and a "Highway Right-of-Ways and School Sites" land type. The Councilmember also proposes to remove "Institutional Development Areas" from the table and make all institutional development comply with the underlying zone. Staff opposes the Councilmember's recommended change.

79. Lines 568 to 590. The proposed amendment adds a fourth separate and distinct enforcement action. This enforcement action is in addition to the M-NCPPC's ability to: issue citations; issue Administrative Orders; and apply Civil Administrative Penalties. This fourth method ignores the current method of enforcement by allowing it to take place concurrently with M-NCPPC's enforcement and allows a private action to be filed in Court before our investigation is complete. The Councilmember initially introduced this amendment as part of Bill 14-07 in June 2007. Staff's concerns remain the same, which include:

- a. There is no provision explaining whether the Court's decision trumps the Planning Board's or vice versa. In addition, M-NCPPC will no longer be the sole enforcer of the Forest Conservation Law. Every adjacent and confronting property owner has the same enforcement authority as the Planning Department, although through the Courts.
- b. The definition of "aggrieved party" is very broad and, if used at all, should be limited to parties materially damaged by the clearing.
- c. The proposed amendment allows an "aggrieved person" to challenge the factual basis of any order or decision by the Director. This provision would potentially discourage "aggrieved persons" from working with staff and would encourage them to bypass staff and take their alleged "materially false, misleading, inaccurate, or incomplete information" to Court.
- d. With respect to relief sought by the aggrieved person, the proposed Bill allows for the award of "damages to any person entitled to them by law", however it is unclear if the aggrieved person could seek damages against M-NCPPC if the person is successful in Court.

AMENDMENTS THAT CHANGE AN IMPORTANT MEANING

80. Line 26. The Councilmember's amendment changes an "and" to an "or" in the definition of "Agricultural activity". The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article.
81. Line 37. The Councilmember's amendment deletes "or timber harvesting" from the "commercial logging" in the definition section. The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article. Staff recommends maintaining the definition in Chapter 22A of the County code. "Commercial logging" and "timber harvesting" are frequently viewed as synonymous terms.

AMENDMENTS THAT ARE PROBABLY LEGAL, BUT AWKWARD OR BURDENSOME TO ADMINISTER AND ENFORCE

82. Line 282. The Councilmember proposes a new section for County School Projects. Under the proposal, schools would only be required to prepare a forest conservation plan if more than 10,000 square feet of forest is removed and the replacement would be 1:1. Staff does not believe this meets the intent of the Maryland Forest Conservation Act. Under the Maryland Forest Conservation Act, public schools are an "institutional land use" and therefore have reforestation and afforestation requirements based on a percentage of the net tract area. The Councilmember's amendment in Bill 37-07 is less strict than what is currently required in Chapter 22A of the Code and the Maryland Forest Conservation Act, for there is no afforestation requirements and removal of forest below a certain percentage is "penalized" at a rate less than 2:1 for which all plans must comply with. Staff opposes the Councilmember's recommended change.
83. Line 324. This addition is similar to comment 46 above which would only allow the Planning Director to waive components necessary requirements for a Natural Resource Inventory/Forest Stand Delineation only after the County's Forest Conservation Coordinator concurs. Staff does not believe this is necessary for the reasons stated in 46 above.
84. Line 357. The Councilmember proposes to make all NRI/FSD that are incomplete or inaccurate are denied. The Board's proposal was just for incomplete applications to be denied. The Councilmember appears to add "or inaccurate" from the Development Review Manual. Page 10 of this manual states "The Planning Director must reject a final application after it has been accepted if the Planning Director finds that it contains materially inaccurate or incomplete information." The context in the Development Manual is different than a NRI/FSD. In the development manual a final application is rejected and returned to the applicant but based on the Councilmember's proposal an inaccurate application must be denied. The NRI/FSD must include information for the subject property and a pre-determined distance around the circumference of the property. If an adjoining property is unwilling to allow an applicant's representative to enter their property to determine tree sizes the sizes may be estimated. Since the estimates may continue inaccurate information, based on the information submitted it must be denied. Two other problems arise. First, an error

such as mislabeling a tree size, or incorrectly identifying a tree could result in an application from being denied even though the location of all necessary trees are correctly shown. Staff opposes the Councilmember's recommended change.

85. Line 615. The Councilmember proposes a new section that requires the Planning Board to accept public comment prior to hearing a variance request. Staff does not believe this is necessary since a variance request must be referred to other agencies and the Maryland Department of Natural Resources before processing the request. Since no variance requests were ever submitted to M-NCPPC the requirement to review public comments seems unnecessary.

OTHER AMENDMENTS

86. Line 83. The Councilmember is proposing to add a new definition for "Government Entity". Staff does not believe this is necessary since the Board's definition of "Person" includes all levels of government. In addition, it appears that the term "Government Entity" is only used in the definition of "net tract area".
87. Line 154. New definition for "Wetland". It has always been staff's intent to define "stream buffers", "wetlands", and "wetland buffers" in a revised Forest Conservation Regulation. Staff still believes a wetland definition should appear in the regulation and not the law.
88. Line 326. The proposal allows for tree inventories to be recertified by an arborist, licensed tree expert and a qualified professional. Staff is okay with this provision provided it does not extend to preparation of tree protection plans.
89. Line 357. The Councilmember proposes to make all NRI/FSD that are incomplete or inaccurate are denied. The Board's proposal was just for incomplete applications to be denied. The Councilmember appears to add "or inaccurate" from the Development Review Manual. Page 10 of this manual states "The Planning Director must reject a final application after it has been accepted if the Planning Director finds that it contains materially inaccurate or incomplete information." The context in the Development Manual is different than a NRI/FSD. In the development manual a final application is rejected and returned to the applicant but based on the Councilmember's proposal an inaccurate application must be denied. The NRI/FSD must include information for the subject property and a pre-determined distance around the circumference of the property. If an adjoining property is unwilling to allow an applicant's representative to enter their property to determine tree sizes the sizes may be estimated. Since the estimates may continue inaccurate information, based on the information submitted it must be denied. Two other problems arise. First, an error such as mislabeling a tree size, or incorrectly identifying a tree could result in an application from being denied even though the location of all necessary trees are correctly shown. Staff opposes the Councilmember's recommended change.
90. Line 361. The Councilmember includes a provision that allows for NRI/FSDs approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section only if the revoking of an approved NRI/FSD is done by the Planning

Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness. This section may be problematic when a person/organization that does not favor a development uses this section to delay Board action on a plan. Interestingly, this section is only applicable to plans in the development review process and does not include all plans reviewed for forest conservation.

91. Line 375. The Councilmember includes a provision that allows for tree inventories approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section if the revoking of an approved tree inventory is done by the Planning Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness.
92. Line 379 to 391. This section was inadvertently omitted from the Board's recommendations to the Council. Staff does not oppose the inclusion of this section, but staff does oppose the Line that states "an incomplete or inaccurate application must be denied" on Line 396. See comment 55 above.
93. Line 470. The amendment proposes a new section related to non-native and invasive management control. That is, for each acre of planting the applicant can offset the requirement by controlling non-native and invasive materials with supplemental planting for 2 acres of land. The Maryland Forest Conservation Law does not have such a provisions and it is unknown at this time if the State Department of Natural Resources would accept such provisions in lieu of creating new forests. The State is currently assessing non-native and invasive management control and the possibility of crediting such controls to meet planting requirements but it is still months or years away from providing such guidance. While staff recognizes the serious problem of controlling non-native and invasive materials, it is not clear that this kind of a trade off is appropriate and would be equivalent to planting new forest areas. We suggest further study of this issue.
94. Lines 501 to 505. The Councilmember proposes to reduce the size of a planted forest conservation bank from 1 acre to 10,000 square feet. This is the minimum forest size. Staff opposes the Councilmember's recommended change for it may lead to many small and distinct forest conservation easements on individual lots.
95. Lines 667 to 696. The Planning Board recommended deleting the County Arborist section from the Forest Conservation. No other location in the law is an individual and responsibilities identified. The position was initially located in the Forest Conservation Law because it was a new position and this would enable easier funding of the position. The position is currently funded and staffed and therefore the initial goal was accomplished. Staff opposes the Councilmember's recommended changes; however staff would not object the position being defined in the definitions section of the law in the similar amount of details such as the Planning Director.

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February 13, 2008

The Honorable Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Email and Fax-240-777-7989

Re: Written Testimony, For the Record – Proposed Changes to the Forest Conservation Law
Bill 37-07, Public Hearing – January 22, 2008

Dear President Knapp:

I am submitting my detailed comments and review for the public record concerning the Public Hearing held January 22, 2008 regarding the proposed changes to the Forest Conservation Law. I have taken a great deal of time based on my 34 years of experience as a regulator and as a consultant, to prepare these comments and recommendations. I personally have established permanent Forest Conservation Easements on over 520 acres here in Montgomery County over the last 15 years, while assisting rural landowners to improve and preserve their farms.

For your information, most of these comments were submitted to the Planning Board when they were accepting comments for their Public Hearing June 21, 2007. The Planning Board final version of the proposed changes to this important law incorporated few if any of the valuable comments submitted by public agencies, citizens, and private and public organizations.

I appreciate the opportunity to prepare these detailed recommendations concerning the Board's proposed changes to the Forest Conservation Law. I hope you can support many of these proposed changes.

Sincerely,

Vincent H. Berg

Vincent H. Berg, P.E.

Introduction

February 13, 2008

The Chesapeake Bay Executive Council executed Directive 06-01, on September 22, 2006 and their Response to Directive 06-01 that was executed December 5, 2007, concerning "Protecting the Forests of the Chesapeake Bay". The need to be proactive in providing stewardship of public and private forestlands is required to sustain the many benefits of the Bay's forestlands and the protection that forestlands provide to the Bay and its many tributaries. The Chesapeake 2000 Agreement commits to the permanent protection of existing forest along streams and rivers of the Bay. The Directive 06-01, further states that business partners and others shall be partnered to support the retention, expansion and stewardship of forestlands. Private forestland is subject to conversion to other land uses. The Bay Watershed permanently loses 100 acres (1980's) to 400 acres (2000) of forest, every day. In Montgomery County our forest loss in the 1980's and 1990's has been about ½ acre per day or over 150 acres per year on average.

Montgomery County has the lowest per capita forest acres in the State of Maryland (0.1 acres per person, "The State of the Chesapeake Forests", 2006) based on 2000 data. It is estimated that 44 percent of Montgomery County has been utilized for urban growth. If all trends continue, forest fragmentation and forest loss will lead to a large patchwork of small forest fragments resulting in wide spread establishment of invasive plant species and degraded forest habitat. Montgomery County's Forest Conservation Program needs to also protect existing forestlands and include a program to economically encourage private forest landowners to not sell for development while allowing forest landowners to continue scientific based sustainable management of their forests for timber use and other forest products.

There is a need to find a balance between forest conservation in urban areas and the need to concentrate growth in urban corridors and reduce developments from sprawling throughout the County. Higher densities in urban areas are preferable to development of large lot residential (0.5 acre to 5 acre) projects. The intense utilization of urban lands for development will help preserve large contiguous blocks of existing forestlands and agricultural lands.

The following are my specific recommendations and proposed changes to the Montgomery County Forest Conservation Law:

Suggested Changes to Forest Conservation Program

by: Vincent H. Berg, P.E.

February 13, 2008

Using the January 22, 2008 Public Hearing Package

Change Section 22A-2 Findings and Purpose

The goal of the Forest Conservation Law is the preservation, conservation, protection and restoration of forest in Montgomery County. This law was not created to be used as a "Tree Protection Law" nor are individual trees to be given protection under the State Forest Conservation Law. The County's Forest Conservation Law should only be used for the preservation, conservation, protection and restoration of forest in Montgomery County.

Add new Section 22A-2(b)(7), Findings and purpose

To develop a program of scientific based sustainable forest management for the public and private forests of the County.

Add Section 22A-3, Definitions, Changes and Modifications

The definition of **Agricultural Activity** needs to be added and will include 'land clearing' for agricultural purposes (crop fields, pasture, paddocks, agricultural buildings, etc.), plowing, construction of agricultural buildings (including tenant homes) and all other agricultural activities.

Change, Section 22A-3, Definitions, Changes and Modifications

Forest should be defined as an area at least 35 feet wide, as in State Law.

Add, Section 22A-3, Definitions, Changes and Modifications

Forest Mitigation Banking shall only be allowed to occur on private lands, public lands shall not be used for forest mitigation bank sites.

Add to Section 22A-3, Definitions, Changes and Modifications

Net Tract Area shall be defined to not include Forest Bank Areas.

Add to Section 22A-3, Definitions, Changes and Modifications

Net Tract Area for agriculture and resource areas net tract area shall only be that portion of agricultural land being changed to residential use (i.e. 25 acre lot development with a 2-acre home development area shall be considered 2-acres net tract area for calculation purposes). The net tract area shall be no greater than the "limits of disturbance" as shown on the development or sediment control plan.

Add to Section 22A-3, Definitions, Changes and Modifications

Qualified Professional, and any Maryland State licensed forester or arborist. Also review the **Tree Expert** definition this may not be the level of professionalism needed.

Add, Section 22A-3, Definitions, Changes and Modifications

Technical Manual shall mean the Maryland State Forestry Manual unless the Planning Board adopts by regulation its own Technical Manual.

Add, Section 22A-3, Definitions, Changes and Modifications

Timber Harvesting shall mean the cutting of trees on one acre or greater and/ or the excavation or grading of 10,000 square feet of forest area.

Add, Section 22A-3, Definitions, Changes and Modifications

Tract shall exclude Forest Bank Areas and existing Public Roads and Right of Ways.

Add, Section 22A-3, Definitions, Changes and Modifications

Tree Survey a definition needs to be developed.

Add to Section 22A-4(1)(a), Persons Subject to the Forest Conservation Law

General. All agricultural activities including forest harvesting activities are exempt from submitting a Level 1, 2 or 3 Review.

Change Section 22A-4(1)(b)(5),

the person proposes County highway constructionLine 195.

Change Section 22A-4(1)(c)(4),

a ~~State~~ or County highway construction..... Line 232.

Change Section 22A-4(c)(4), Subject to Section 5-103

Those projects that are subject to Section 5-103 of MD Code shall provide the Planning Board with evidence of the project's conformance to Section 5-103 or shall conform to Chapter 22A. After Line 234.

Delete Section 22A-4(c)(4)(d), Level 3 Review,

all references to agricultural activity, including lines 241 to 244 and (2) line 245, (4) line 248 to 256.

Change Section 22A-4(c)(2) and 22A-4(d), Non Applicable Situations

These sections shall be titled "Non-Applicable Situations" which will define those activities not subject to this Chapter, review by the agency or subject to an agency fee. Lines 213 to 234 and Lines 235 to 276.

Add new, Section 22A-5, Small Land Disturbing Activities

Applications for residential development that utilize the “Small Land Disturbing Sediment Control Form” shall be exempt from this Chapter’s requirements. Line 277.

Change Section 22A-10(c)(2)(B), Approvals Required

The limit of time for the Declaration of Intent should remain 5 years. I do not believe any examples can be provided to justify increasing this requirement to 7 years. Line 698.

Add to Section 22A-11(a)(1), Review Procedures, Level 1 Review, NRI/FSD

The Director may extend the deadline for an additional 15 days in extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. Line 719

Add to Section 22A-11(a)(2), Preliminary Forest Conservation Plan

Within 45 days after receiving the preliminary Forest Conservation Plan, the Planning Director must notify the applicant whether the Plan is complete and approved. If the applicant is not notified within 45 days, the Plan must be treated as approved. The Director may extend the deadline for an additional 15 days in extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. After Line 726.

Change to Section 22A-11(a)(4)(B), Special exceptions

The Board of Appeals has final authority over Special Exception cases. The proposed language does not allow the Board of Appeals to change or modify the preliminary forest conservation plan. I propose that Lines 765 to 769 be changed. The Board of Appeals must review the preliminary forest conservation plan along with the special exception and may only modify the preliminary forest conservation plan if the special exception will be improved in the opinion of the Board of Appeals.

Change to Section 22A-11(a)(4)(D)(iii), Modification to An Approved Plan

Even very small modifications to approved plans require reapproval by the Planning Director (staff). I propose that Inspectors be allowed a small amount of authority. I propose that Lines 801 to 804 be changed. Any modification up to 1,000 square feet can be approved by the field inspector who shall document the change and provide a copy to the original approval authority. No single project can have more than 3 changes approved by the field inspector. Any other modifications must be approved by either the Planning Board or the Planning Director, whichever approved the Forest Conservation Plan.

Add to Section 22A-11(b), Level 2 Review

The Director may extend the deadline for an additional 15 days for extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. Lines 929 to 931.

Add to Section 22A-11 (c), Level 3 Review

The Director may extend the deadline for an additional 15 days for extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. Lines 938 to 939.

Add to Section 22A-12(a)(3), Retention, afforestation, and reforestation requirements for Level 1 Review, General

(3) on site non-native and invasive management control with supplemental planting shall be subject to a credit of 1 acre for every 4 acres of control and planting. Lines 951 to 952.

Add to Section 22A-12(a)(5), Retention, afforestation, and reforestation requirements for Level 1 Review, General

(5) in-lieu fee; the Agency accepting the in-lieu fee shall purchase or plant equivalent acres of forest mitigation within 3 years or those funds collected are subject to transfer to the MCDPW and T for use to plant roadside trees; and Line 954.

Add to Section 22A-12(b)(1), Table

The following is to be added at the end of Line 959. The Conservation Threshold and the Afforestation Threshold for Agricultural and Resource Areas shall only include that area being developed for residential use or the limit of disturbance whichever is greater. The large Conservation Threshold forces productive agricultural fields to be planted with trees and prevents large agricultural lots from being used for productive agriculture or equine operations.

Add new Section 22A-12(b)(3)(C), Afforestation, Agricultural Lands

In the past, staff has directed agricultural fields to be planted with trees. The location of residential units on agricultural lands should be prioritized so as to locate homes on non-tillable land or on forest land. It shall be a priority of the Planning Board that agricultural fields and tillable acres shall be the preferred land use and remain available for farming activity. After Line 1027.

Add to Section 22A-12(c)(1)(A), Priorities for reforestation and afforestation
Afforestation and reforestation is to be satisfied by any of the methods listed in Section 22A-12(a) (1) to (6). Lines 1040 to 1041.

Retain Section 22A-12 (c)(2)(B), Off-site afforestation and reforestation

There have been some proposals to increase the ratio of retained forest to a 4:1 ratio (4 acres of existing forest retained for each 1-acre of mitigation required). If this ratio were increased the private payments to farmers would need to be cut in half. Also the limited available off-site forest mitigation would be used up twice as fast as the current rate of use. Finally the State Forest Conservation Law directs the 2:1 ratio be used. For all of these reasons the ratio of 2:1 should be retained. Line 1072.

Change Section 22A-12(e)(1), Special provisions for minimum retention, reforestation and afforestation, General

In the fifth line the word must should be changed to shall. Line 1116.

Change Section 22A-12(e)(2), Special provisions for minimum retention, reforestation and afforestation

In the fourth line the word must should be changed to shall. Line 1122.

Add to Section 22A-12(e)(2)(A), Retention, reforestation and afforestation

The Conservation Threshold and the Afforestation Threshold for Agricultural and Resource Areas shall only include that area being developed for residential use or the limit of disturbance whichever is greater. After Line 1125.

Change Section 22A-12(e)(2)(C), Retention, reforestation and afforestation

Requiring that all existing forest be required to be retained on-site may not be in the best interest of the project or the proposed development density. The following wording should be changed for Lines 1137 to 1140, On a site covered by this subsection, if existing forest is less than the minimum required retention, then the majority of existing forest must be retained and on-site and off-site afforestation up to the minimum standard must be provided.

Change Section 22A-12(e)(2)(D), Retention, reforestation and afforestation

Requiring that all afforestation be required on-site may not be in the best interest of the project or the proposed development density. The following wording should be changed for Lines 1144 to 1146, If a site covered by this subsection is unforested, on-site and off-site afforestation must equal the applicable afforestation threshold, with a majority of afforestation being on-site.

Add new Section 22A-12(e)(2)(G), Retention, reforestation, and afforestation

Projects utilizing TDRs or including MPDU housing units or Work Force Housing units shall be exempt from the requirement of having on-site forest retention, reforestation and afforestation. After Line 1155.

Add to Section 22A-12(f)(1), In Lieu fee

After Line 1165, The applicant may bond or post a cash bond if the on-site or off-site reforestation or afforestation can not be provided prior to permit issuance. The applicable in-lieu fee, bond or cash bond must be provided to the Planning Board prior to issuance of appropriate permits. The on-site or off-site reforestation or afforestation must be provided within 120 days of completing the project or a request in writing to extend this time may be granted. Once the on-site or off-site reforestation or afforestation has been provided the bond or cash bond shall be returned within 30 days. If the on-site or off-site reforestation or afforestation is not provided then the fee in-lieu must be paid to the Planning Board.

Add new Section 22A-12(f)(3), In Lieu fee, After Line 1178.

The applicant shall have the right to utilize any method of on-site or off-site reforestation or afforestation requirement or mitigation as provided by this Chapter and shall not be required to pay a fee in-lieu to the Planning Board, unless it is the applicant's desire to pay the in-lieu fee to the Planning Board.

Add new Section 22A-12(f)(4), In Lieu fee, After Line 1178.

The Agency accepting the in-lieu fee shall purchase or plant equivalent acres of forest mitigation within 5 years or the funds collected are subject to transfer to the MCDPW and T for use to plant roadside trees. It is preferred by the Planning Board that off-site forest mitigation be purchased for the development or project rather than the payment of the in-lieu fee to the Planning Board. The applicant shall have the option of purchasing off-site mitigation credits or paying the in-lieu fee.

Change Section 22A-12(g)(1), Agreements and Long Term Protection

The current process of requiring two years of maintenance has not been demonstrated to be a problem. No known bonds have been used by the Planning Director to correct forest planting problems. There is no justification to extend this time to 5 years. Under current procedures the maintenance period is extended and the bond extended if there is a problem with the planting. Line 1182 should be changed to, include a two-year binding agreement for maintenance of Line 1185 and 1186 should be changed to, The 2-year period starts upon satisfactory final inspection of the

Change Section 22A-13, Forest mitigation banks

There is an inherent "Conflict of Interest" by having Planning Board staff reviewing and approving private forest mitigation bank sites. If forest mitigation bank sites are not approved by the Planning Director, this forces applicants to have to pay the in-lieu fee to the Planning Board. An independent agency (MCDEP) or consultant that does not have a "Conflict of Interest" in the review process must conduct the review and approval of forest mitigation bank sites. It is in the Planning Board's interest to not approve forest mitigation banks. This problem needs to be resolved. Change the review and approval procedure to have MCDEP or an independent consultant do the review and approval. Line 1237.

Add to Section 22A-13(e)(3), Forest mitigation banks

Within 45 days after receiving a Master Forest Conservation Bank Conservation Easement Agreement, the Planning Director must notify the applicant whether the Master Forest Conservation Bank Conservation Easement Agreement is complete and approvable. If the applicant is not notified within 45 days, the Master Forest Conservation Bank Conservation Easement Agreement must be treated as approvable. The Director may extend the deadline for an additional 15 days in extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. After Line 1257.

Delays up six months have occurred in the past, resulting in many problems for applicants and for Planning Board staff.

Add to Section 22A-13(e)(3), Forest mitigation banks

Master Forest Conservation Bank Conservation Easement Agreement for forest mitigation bank sites will not require Executive Director's signature, only the Montgomery County Planning Director's signature. The requirement to have the Executive Director's signature adds a minimum of three months to the process. After Line 1257.

Add new Section 22A-13(e)(4), Forest mitigation banks

Within 45 days after receiving a Proposal or a Forest Conservation Plan for forest mitigation bank project, the Planning Director must notify the applicant whether the Proposal or Plan is complete and approved. If the applicant is not notified within 45 days, the Proposal or the Plan must be treated as approved. The Director may extend the deadline for an additional 15 days in extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. After Line 1257. Delays of six months and more have occurred in the past, due to no time limits for staff review.

Change Section 22A-13(g), Forest mitigation banks

Credits may be debited from the forest mitigation bank once the financial security has been provided to the Planning Director. Delete Lines 1261 to 1266. Forest mitigation bank credits should be allowed to used once the forest mitigation bank has established financial security. It is not fair to hold forest mitigation banks to a different standard than development sites.

Add new Section 22A-13(i), Forest mitigation banks

Lands to be dedicated to the Parks Department or County through the development process shall not be allowed to be used for forest mitigation bank purposes. Existing public lands are never allowed to be used as a forest mitigation bank. After Line 1274.

Add new Section 22A-13(j), Forest mitigation banks

Planning Board staff respects the private property rights and the right of landowners to control who enters their property. Agricultural lands to be used for forest mitigation banks shall not be entered without approval of the landowner or the owner's representative. The landowner or his representative shall have the right to accompany the Planning Board staff during their inspection of agricultural lands. After Line 1274. This issue has been a problem in the past and has created resentment by private agricultural landowners towards the Park and Planning Commission.

Change Section 22A-15(e), Required scheduling of inspections for Forest Conservation and Tree Protection Plan

Requiring notification 7 days prior to an inspection is excessive and not productive. MCDPS requires 24 hours notice prior to inspections. I believe that a 2 day notice is adequate and beneficial to all concerned. Lines 1336 to 1338 should be changed to, Persons must notify the Planning Director 2 days prior to scheduling inspections under subsection (c).

New Section 22A-15(f), Field Inspection Adjustments

Field inspectors shall be allowed to make adjustments/changes to the approved plan for areas of 1,000 square feet or less. Several changes can occur on a single approved plan, but no more than 5,000 square feet of changes are allowed for plans greater than 2 acres and no more than 2,000 square feet of changes are allowed for plans less than 2 acres. This provides the field inspector with a small amount of flexibility. After Line 1338.

New Section 22A-15(g), Conservation Easement Inspections

Every forest conservation easement area shall be field inspected and a report prepared at least once every five years to determine the condition of the forest within the conservation easement area and to determine if any encroachments exist or if there are any violations of the conservation easement. Currently Planning Board staff has no information on forest conservation easement areas. It is important to begin a regular inspection program of the conservation easements located throughout the County. After Line 1338.

Retain Section 22A-19, Noncompliance with exemption conditions

Lines 1354 to 1362 should be retained to discourage violations of the logging exemption.

Retain Section 22A-31, Forest Conservation Advisory Committee

Lines 1615 to 1683 should be retain. The Forest Conservation Advisory Committee is an important committee to advise the Planning Board, Council and Executive on matters related to the Forest Conservation Law.

Add new Section 22A-32(a), Forest Stewardship of Public Lands

The Planning Board shall develop a series of Forest Stewardship Plans prepared by a Professional Forester so as to create a scientifically based sustainable forest system in Montgomery County. The forest stewardship plans shall be developed on all forestlands held in public ownership including parkland and County land in Montgomery County. The forest stewardship plans shall be developed to create sustainable forests that supports balanced wildlife habitat, protects all native and endangered species, protects water quality, creates passive recreational areas for hiking and hunting and fishing and bird watching and wise utilization of renewable resources and other goals as needed. The implementation of the Forest Stewardship Plans shall be the responsibility of the Planning Board and Montgomery County.
After Line 1683.

Add new Section 22A-32(b), Forest Stewardship of Private Lands

The management and stewardship of private forest created and retained within private forest conservation easement areas created as a result of the development processes shall be the responsibility of the private landowners subject to review by the Planning Board. Preparation of Forest Stewardship Plan by a Professional Forester for each forest conservation area shall be required to be prepared by the private landowners subject to review by the Planning Board. Timber harvesting, disease control, damaging insect control, noxious weed control, vermin control and invasive species control shall be part of the Forest Stewardship Plan and the implementation shall be the responsibility of the private landowners subject to review by the Planning Board. After Line 1683.

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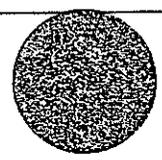
BILL 37-07

MF
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AM

Brogden, Karen

From: Knapp's Office, Councilmember
Sent: Wednesday, January 23, 2008 11:57 AM
To: Montgomery County Council
Subject: FW: Testimony on Forest Conservation Law Amendments and Resolution to Set Fees

032894



-----Original Message-----

From: anneambler@comcast.net [mailto:anneambler@comcast.net]
Sent: Wednesday, January 23, 2008 11:46 AM
To: Knapp's Office, Councilmember; Praisner's Office, Councilmember; Andrews' Office, Councilmember; Berliner's Office, Councilmember; Elrich's Office, Councilmember; Ervin's Office, Councilmember
Subject: Testimony on Forest Conservation Law Amendments and Resolution to Set Fees

Good morning, Council President Knapp and Council Members:

Pasted below is my testimony for the hearing last night, which I had abbreviated for oral delivery. As the hearing demonstrated, this is a very complex document dealing with a very important subject, and must be carefully examined in order to prevent unintended consequences. It may be necessary to make some adjustments to ensure that farming is not disadvantaged, while at the same time ensuring proper incentives to buffer farmland streams and observe other best management practices relating to tree cover that, in the end, enhance the quality of farmland.

Sincerely,
Anne Ambler



Montgomery County Group

**Testimony on Bill 37-07, Forest Conservation
and on a Resolution to Set Certain Penalties and Fees
Montgomery County Council
January 22, 2008**

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Good evening. I am Anne Ambler, speaking on behalf of the more than 6,000 members of the Sierra Club in Montgomery County.

Maryland's gross greenhouse gas emissions rose 30% from 1990 to 2005, exceeding the national rate—says the Maryland Commission on Climate Change's recently released Climate Action Plan. It projects a rise to 53% above 1990 levels by 2020—while Maryland, highly vulnerable to sea level rise, has pledged to drastically cut emissions. Forest loss exacerbates the problem.

As we Marylanders begin to understand the catastrophic effects for the Bay, our health, and global climate disruption of losing so many of our fragile planet's forests, we must redirect toward *forest*

preservation and expansion incentives typically favoring development.

We commend the Planning Board for rendering our Forest Conservation Law at last more comprehensible and applaud their raising the conservation thresholds, adding 3 years to maintenance requirements, and extending the Declaration of Intent period by 2 years. However, we agree with Councilmember Elrich that the county's dramatic and continuing forest loss requires that we aim no lower than **no net loss** of forest. For this reason, the Sierra Club generally supports Councilmember Elrich's amendments.

The document is very long and hard to follow, with so much material bracketed for deletion and addition by both the Planning Board and Councilmember Elrich. I will comment on just a few elements and expect to follow and contribute to the deliberations.

1. Resolution setting amount of fee in lieu
2. Scope of coverage
3. Residential categories
4. Institutional privilege
5. Notice to neighbors and private right of action
6. Disappearance of citizen advisory committee and county arborist

1. We support the Elrich resolution to raise the fee in lieu of reforestation from 90 cents to \$2/sq.ft. Deer browse, invasive plants, and more frequent drought make establishment of new forest ever more difficult. A \$2 fee shifts the incentive back to preservation, a far more effective strategy. DEP's Forest Preservation Strategy Update credits the county's trees with about 430 million dollars' worth of storm water runoff mitigation annually, and 34 million dollars' worth of air pollution removal. At that rate, trees provide at least \$6 per sq. ft. of benefit over a 50-year lifetime, a value that will only rise. \$2 is not excessive. The fee for *afforestation* of land not currently forested could be set differently, perhaps based on the cost of planting and establishing new forest.

2. We support expanding the scope of coverage to properties smaller than 40,000 sq. ft. (see circle 76), but after much testing of scenarios, we believe that trees on a 10,000 sq.ft. property are better addressed through a tree ordinance that could require, for instance, 2 trees planted for every 1 removed. We would accept 20,000 sq. ft. for minimum coverage. The issue is single lots. The county's experience with single lots has shown that coverage at 40,000 sq. ft. and exemption from review of clearing up to 40,000 sq. ft. have not served the public interest. Therefore, while hedging on the 10,000 sq. feet, we heartily concur with the Elrich reduction from 40,000 to *5,000 sq. ft. of disturbance*-- in line with! sedimentation law—as the cut-off for forest clearing with only Level 2 review.

3. We support adding a Low Density Residential Category and redefining the others to reflect Montgomery County reality (circles 72,73,86). The existing "high density residential category," covering everything from half acre lots to apartment buildings, is laughable. As to consistency with state law, perhaps Maryland, pushed by the Climate Action Plan to "increase the scope and strength" of its admittedly ineffective Forest Conservation Law, will adopt our categories.

4. If we look at the issue from the perspective of what we wish to achieve, preservation of forests, it is clear that institutions should enjoy no special privilege to destroy them (circle 86). Many of the institutions that have raised concerns are in fact houses of worship, which of all institutions, have a mandate to care for creation. When the institutions are governmental, they should be leading by example. Questions of equity are resolved when all institutions abide by the rules applicable to everyone else.

5. Consistent with our previous testimony, we support notification of neighbors and a private right of action to permit aggrieved persons some possibility of relief in the event that administrative decisions have been based on false information. Frivolous lawsuits are extremely unlikely because of the significant expense in both money and time of going to court (circles 93,94).

6. We are concerned that the Forest Conservation Advisory Committee, so recently put into the law, has been deleted in the Planning Board's version (circle 63). County Executive Leggett has made nominations for this committee and our understanding is that confirmation has been delayed because he is seeking more representation from the farming community. Similarly, the County Arborist position has been deleted (circle 62). We support the Elrich amendment to create instead a County Forest Conservation Coordinator from the Department of Environmental Protection (circle 97). These two entities can be of great assistance to the county in managing forest conservation.

Our forests are increasingly critical as our population grows and we hit the limits of our local, national, and world environmental support system; they warrant strong protection. Governments have often condemned land to build such things as highways for the "public benefit." It is now time to treat forest protection as a *requirement* for the public benefit. In future, as the crisis deepens, condemning land for forest protection may even be necessary.

Finally, I must stress the importance of following this legislation with a tree ordinance that will cover smaller properties. We often see that after a developer has saved all the trees required by law, the subsequent homeowner cuts them down--unnoticed except by the distressed neighbors. The cumulative impact is devastating. We see the effects in our severely degraded streams, our dying Bay, and the quality of our air and of our lives. The time for strong legislative action is now.

Thank you for the opportunity to comment.



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January 22, 2008

Mike Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 37-07 Forest Conservation Law Amendments

Dear President Knapp and Councilmembers:

The Maryland-National Capital Building Industry Association (MNCBIA) is hereby submitting comments on Bill 37-07, Forest Conservation Law Amendments. This testimony presents background information and clarifies the MNCBIA's position on the various aspects of this proposal.

As background, in June of 2006 the MNCPPC convened a Forest Conservation Taskforce, comprised of civic/environmental interests, builder interests and technical/legal interests. During the course of six (6) months this diverse group developed a consensus of recommendations to improve shortcomings in the Forest Conservation program. Throughout the course of this Taskforce's efforts, a key issue that was identified by residents and the regulated community alike was how the current law is unclear. Largely in response to this Taskforce's efforts, the MNCPPC began the process of amending the Forest Law. It was MNCBIA's understanding that the amendments that MNCPPC proposed would deal only with matters that clarify the law and make it easier for residents and the regulated community to understand.

However, the MNCPPC changes included amendments to the Law that go beyond 'clarification', including adjustments to the forest thresholds and the extension of maintenance/bonding periods, which would put additional constraints on housing and other infrastructure needs and costs. In response, the MNCBIA asked several questions to determine the basis of these additional amendments. The Planning Board staff responded that these amendments were in response to a recommendation by the C&O Canal Taskforce. Upon review, the MNCBIA learned that the C&O Canal Taskforce was formed in response to illegal forest clearing along the C&O Canal; the Taskforce was directed to "review measures necessary to protect and enhance the forested buffer along the Canal and the Potomac River." However, the recommendations proposed by the Canal Taskforce and incorporated within the MNCPPC recommended changes in Bill 37-07 1) would not have prevented the illegal clearing, 2) apply countywide, 3) appear to be without scientific or technical merit, 4) disrupt the delicate balance inherent to planning and zoning, and 5) create significant administrative staffing requirements.

The amendments proposed by Councilmember Elrich further exacerbate the issues presented above and have potential unintended adverse consequences to the environment and to housing.

The MNCBIA supports MNCPPC's recommendation to create a three-level applicability process; this change makes the Forest Law significantly easier for the residents and the regulated public to understand. The MNCBIA also supports Councilmember Elrich's

BUILDING HOMES, CREATING NEIGHBORHOODS

proposal to include 'Qualified Professionals', in addition to Certified Arborists and/or Tree Experts, to prepare Level Two tree inventories. Qualified Professionals receive tree care training as part of the certification process by the State. Additionally, Certified Arborists and/or Tree Experts are required to undertake or supervise the tree care operations.

The MNCBIA is opposed to the other significant amendments and the remainder of this testimony is arranged by the following amendment topics: 1) forest threshold increases, 2) adjustments to the land use categories, 3) extension of the maintenance and bonding period, 4) permit denials, 5) changes to definitions, 6) reducing the applicability standard from 40,000 sf lots to 10,000 sf lots, 7) adjustments to the maximum forest clearing to qualify for a level 2 or level 3 review, 8) creation of a Forest Conservation Coordinator, 9) denial of 'inaccurate' applications, 10) provision to revoke approvals, 11) removal of 'to the extent feasible', 12) removal of tree cover/landscaping to satisfy forest requirements, 13) doubling reforestation rates, 14) requiring banks in private ownership only, 15) public notice requirements, 16) private civil action, 17) ratio of existing forest for banking credit, 18) increasing the fee in lieu rate, and 19) transition period / effective date.

1. Forest Threshold Adjustments (p. 86, line 417)

This amendment proposes to increase the thresholds by 5 percent of the net tract area. The thresholds are the percentages of a property required to be retained as existing forest or planted as new forest. It is important to note that the potential impact of the proposed increase is as much as a **60% forest cover increase** over the current standard.

The current forest thresholds were thoughtfully established and vary by land use category in order to balance environmental protection with other planning and zoning objectives. As such, large lot and resource conservation zoning have a higher forest threshold than commercial and mixed-use development, in order to balance smart growth with environmental protection. Increasing the thresholds by any amount causes other planning and zoning objectives to fall short, particularly housing densities.

It can be reasonably expected that as the County continues to focus on redevelopment and infill development, the current afforestation rate will significantly increase county forest cover. This is due to the developed and unforested nature of those properties and assemblage of properties where the County expects future growth to occur -- as existing development gets redeveloped, it is currently required to add to the County's forest coverage.

2. Adjustments to the Land Use Categories (p. 72, line 87; p. 73, line 99, 104)

The proposal includes changing the land use categories: "high density" residential would include housing densities greater than 10 du/ac, "medium density" would mean densities in the range of 1 du/ac – 10 du/ac and, the new "low density" residential category would include densities less than 1 du/ac. These new definitions, coupled with the threshold increases create a significant imbalance of environmental, zoning and planning objectives. Similar to the forest thresholds, the land use categories were thoughtfully established to remain consistent with planning and zoning objectives.

These categories are not consistent with the zoning ordinance and would have the most profound impact on RDT-cluster, RC-cluster, and RS zones. Since these zones primarily utilize well and septic systems, a de facto down-zoning will occur to properties that contain upland forests in these zones.

3. Extension of the Maintenance and Bonding Period (p. 89, line 476)

This amendment proposes to extend the maintenance and bonding period from 2 years to 5 years for planted forest. However, the MNCPPC already has the authority to hold bonds and extend the maintenance period indefinitely until forest plantings are acceptable. This amendment is unnecessary and penalizes efforts to achieve successful forest plantings within the 2-year timeframe.

When installed, and maintained properly the success of a planted forest can be determined within two growing seasons.

The three factors impeding the creation of a successful forest in 2 years are:

- field-based decisions that detract from the project's success,
- ineffective regional management of invasive species and wildlife, and
- ineffective maintenance practices during the 2 years.

To ensure the success of forest plantings the County Council and MNCPPC would better focus on resolving these issues, rather than extending the timeframe carte blanche.

4. Permit Denials (p. 69, line 11)

This amendment proposes to require that a building permit cannot be issued for a property that has a violation of the Forest Law for a period of 5 years. This is of particular concern to the MNCBIA. This amendment could be used as a way of stopping the issuance of a building permit by undertaking an unlawful forest-related operation. Further, it is extremely unclear if this would apply to every unit that is part of a large project (when a minor violation has been properly cured, such as a silt fence or tree protection fence violation).

The Forest Law already has a process for penalizing illegal forest clearing. A system that educates residents and contractors of forest conservation requirements would be a more effective approach in the reduction of 'violations'.

5. Changes to Definitions (p. 69, line 20 – p. 75)

These series of amendments propose to alter the definitions of terms used throughout the Forest Law. While the MNCBIA has not had the opportunity to explore the full implications of all of these changes, we are concerned that many of these proposed changes have serious administrative and practical impacts. For instance, the proposed changes to the *Environmental Buffer* are inconsistent with the Environmental Guidelines for Development and would cause any steep slope, without regards to its proximity of a stream or it's size or whether it's artificial, to be protected.

The proposed changes to the definition of forest create significant confusion over what is and is not a forest - one could argue that a forest could include 2 trees that have been actively mowed or pastured under for many years. It is also unclear why priority planting areas are defined in the regulations when they are also identified elsewhere in the law.

6. Reducing the Applicability Standard from 40,000 sf lots to 10,000 sf lots (p. 76, line 166)

This amendment proposes to broaden the applicability of this law to 10,000 sf lots. Currently, the Law only applies to lots 40,000 sf and greater. In addition to creating an overwhelming administrative burden (MNCPPC predicts needing to almost double the number of forest conservation staff reviewers) this proposal is technically and scientifically unsound. The current 40,000 sf applicability threshold is based largely upon the minimum size of a forest as being 10,000 sf. Currently, an unforested 40,000 sf lot would create a 10,000 sf forest – 10,000 is the minimum size for a forest to be viable and self-sustaining. Lowering the applicability threshold below 40,000 sf will create small fragments of trees, smaller than 10,000 sf, and create a substantial administrative burden to the County.

Further, expanding this law to cover 10,000 sf lots and greater would primarily regulate existing residences intending to add additions, detached garages, sheds, and other relatively minor property improvements. The costs for these small-lot-owners to comply with the proposed Forest Law could be up to \$40,000.

In addition, the MNCBIA believes that this amendment is intended to tree cover in mature neighborhoods. Tree cover, however, is not considered forest.

7. Adjustments to the Maximum Forest Clearing to Qualify for a Level 2 or Level 3 Review (p. 76 – 77; throughout)

This amendment proposes to change the cut-off point at which a single-lot property owner is subject to a Level 1, 2 or 3 review from clearing 40,000 sf of forest down to 5,000 sf of forest. The levels have varying requirements with the requirements of the Level 1 being the most stringent.

This requirement will require many small lot property owners to undertake the stringent requirements of a Level 1 review, thus adding to MNCPPC's staffing challenges and increasing the costs for residents of small properties.

While the MNCBIA supports MNCPPC's Level 1, 2, and 3 proposed process, the changes proposed by Councilmember Elrich would circumvent the lack of clarification that this seeks to resolve and further frustrate this Law. The MNCBIA recommends utilizing MNCPPC's recommendation for the Level 1, Level 2 and Level 3 reviews.

8. Creation of a Forest Conservation Coordinator (p. 97, 670)

This amendment proposes to create a Forest Conservation Coordinator that would be an employee of the Department of Environmental Protection (DEP). This amendment would give the Coordinator equal standing as the County's Planning Director to approve or deny variance requests. The MNCPPC already has a Forest Conservation Manager who is responsible for many of the efforts proposed for a Coordinator and as such, the efforts would be duplicative and confusing to residents and the regulated community.

9. Denial of 'inaccurate' Applications (p. 83, line 357; p. 84, line 371)

This amendment proposes to require that any application deemed 'inaccurate' must be denied. The MNCBIA strongly objects to this language as every application would be denied from the outset given the vagueness of many of the issues and methodologies that a Natural Resource Inventory/Forest Stand Delineation and Tree Inventory include. For instance, when measuring the diameter at breast height (dbh) of a tree, there are at least three types of tools (tree caliper, Biltmore stick, dbh tape, etc), each of which has various degrees of accuracy. In addition, when determining where the tree is located on a property, there are several degrees of accuracy depending upon how the tree is surveyed (ocular 'eyeball' estimate, GPS, conventional survey, etc). Finally, there have been instances when MNCPPC and an applicant disagree on interpretations of guidelines, regulations or laws and they must work together to resolve the matter. This language eliminates the cooperation required to process and resolve plans and makes it nearly impossible to initiate a project.

10. Provision to Revoke Approvals (p. 84, line 361 and 375)

This amendment proposes to revoke approvals of NRI/FSDs and Tree Inventory Plans if, during the development review process, false or misleading information was relied upon. The same concerns arise as in the previous section. As the development process progresses, more accurate and detailed information arises that might conflict with earlier information. Examples include the use of more accurate technology to locate trees that may adjust its precise location or further geological studies to mark soil boundaries and conditions.

11. Removal of 'to the extent feasible' (p. 85, line 401)

This amendment proposes to remove the term 'to the extent feasible' as it relates to efforts to 'retain certain vegetation and specific areas in an undisturbed condition.' This is particularly troubling as 'certain vegetation' and 'specific areas' are undefined and this creates an impossible burden of proof for a property owner.

12. Removal of tree cover/landscaping to satisfy forest requirements (p. 86, line 413, p.88, line 446)

This amendment proposes to remove "tree cover" and "landscaping" as a method of achieving the afforestation requirements for a project. The utilization of street trees and landscape areas to achieve afforestation requirements is essential in urban infill and redevelopment situations, when no other priority planting areas exist. Removal of this provision would adversely constrain redevelopment and urban infill opportunities.

13. Doubling Reforestation Rates (p. 87, line 439)

This amendment proposes to double the reforestation rate for forest clearing above the conservation threshold. Currently, for every acre removed, a quarter acre of forest is required to be planted. The amendment proposes to raise this to a half acre. Similar to the establishment of the minimum lot area and the thresholds, the current ¼:1 rate was established to ensure that the planting could be accommodated in a reasonable manner. In many instances, the increased reforestation requirements will not be able to be accommodated on a property without a reduction in density and/or a compromise to other County objectives.

14. Requiring forest banks in private ownership only (p. 91, line 529)

This amendment proposes to require that forest mitigation banks may only be installed on privately held property. The MNCPPC Forest Conservation Taskforce discussed this matter and the group identified the opportunity that existed for a public/private partnership to manage and protect the County's vast parkland. The MNCBIA believes that the door should not be shut on this opportunity by this proposed amendment.

15. Public Notice Requirements (p. 92, line 545)

This amendment proposes to require that applicants notify the Planning Director and residents and owners of adjoining and confronting properties prior to performing any cutting, clearing and grading. This requirement is of concern for several reasons. The forest conservation permit is just one of several permits that an applicant must obtain to undertake an improvement to their property. It is ancillary to the building permit and grading permit; the extensive notification requirement could easily be overlooked, particularly by an inexperienced contractor or homeowner, resulting in a substantial number of new violations. Further, for a subdivision approval, which adjacent properties would be required to be noticed? Would it be the previous-adjacent properties or the properties created internal to the subdivision?

16. Private Civil Action (p. 93, line 570)

This amendment proposes to give standing to any Montgomery County resident or organization, whether or not they are materially damaged by any clearing. In addition it sets Park & Planning and the complaining party at odds. This is an unnecessary requirement as MNCPPC has the most appropriate technical and legal knowledge to enforce this law and remediate violations and the current system prevents abuse.

17. Ratio of existing forest for banking credit (p. 89, line 468)

This amendment proposes to increase the forest-banking requirement from protection of 2 acres of existing off-site forest for 1 acre of forest planting requirement to 4 acres of existing off-site forest for 1 acre of planting requirement. This amendment is too large of an increase, as it would cause the existing forest banks to dwindle more rapidly, which would have an adverse effect primarily to urban infill and redevelopment, which primarily rely upon forest banking.

18. Increasing the fee in lieu rate

This amendment proposes to increase the fee-in-lieu from \$0.90/sf to \$2/sf. The fee-in-lieu option is most commonly exercised for small, typically urban infill and redevelopment properties that do not contain environmentally sensitive areas or appropriate forest planting areas. This change will significantly and adversely impact the type of smart growth land uses that this County is encouraging.

This amendment adds significant costs to individual homeowners wishing to improve their property. This amendment by itself increases the costs to homeowners of small lots (less than 40,000 sf) by as much as \$11,000.

An additional concern raised by this increase is the lack of clarity as to how the collected fees will be used. The MNCBIA understands that to date the fee-in-lieu account contains has a balance of approximately \$250,000 –300,000, and that there have been no expenditures. .

19. Transition period / effective date (p. 98, line 697)

Considering the substantial timeframes that projects require for approval, including the pre-application meeting requirements, the MNCBIA suggests a transition period that grandfathers projects that have already initiated the development review process (i.e. pre-application meeting with residents/community or MNCPPC).

The MNCBIA appreciates the opportunity to provide these comments. As you can tell by the length and breadth of this testimony, Bill 37-07 is of serious concern to our many members and their employees; we believe that these amendments should be of great concern to County residents, particularly those owning properties from 10,000 sf to 40,000 sf. We look forward to working with members of the Council and Staff in future work sessions relating to these legislative matters.

Sincerely,

MARYLAND NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION



Dusty Rood
Chairman, Environmental Committee

Cc: Frank Bossong, Vice President, Montgomery County, MNCBIA
Rick Sullivan, President, MNCBIA

1111 Nineteenth Street, NW

Suite 780

Washington, D.C. 20036

Phone 202-463-2460

Fax 202-463-2461

lwiseman@forestfoundation.org

www.forestfoundation.org

info@forestfoundation.org



American Forest Foundation

FILE
CC
AM

Laurence D. Wiseman, President & CEO

January 22, 2008

032893



The Honorable Mike Knapp
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear President Knapp,

As a long-time forest conservationist and life-long resident of Montgomery County, permit me to register my concerns about certain aspects of the Forest Conservation Law, Bill 37-07 and amendments thereto.

One of the most prevalent myths among policymakers is that by preventing the harvest of trees, they can somehow "save" forests. Our experience in Maryland demonstrates the exact opposite.

The largest part of Maryland's and virtually all of Montgomery County forests are owned by private individuals and families. Some depend on periodic sales of timber to earn enough cash to pay taxes on their land, and reinvest in the future health of their forests. Without the cash from cutting trees, many won't be able to sustain their commitment to conservation. Some will succumb to development pressures; their forests will truly disappear, replaced by concrete and asphalt.

That's the worst possible outcome, but easily foreseeable if the County over-reaches in its forest conservation initiative. Certainly, all forest harvests should follow rigorous plans, under the direction of well-trained loggers and/or professional foresters. To add extra, unnecessary layers of review and approval - or outright bans - to state laws already in place would only drive more owners off the land and exacerbate the very problems you're attempting to solve.

Sincerely,

Laurence D. Wiseman
10621 Democracy Lane
Potomac, Maryland 20854

cc: Steve Koehn, Maryland State Forester
Letters to the Editor, Potomac Gazette

2008 JAN 24 AM 8:55

RECEIVED
MONTGOMERY COUNTY
COUNCIL

BILL 37-0



Maryland/Delaware Society of American Foresters

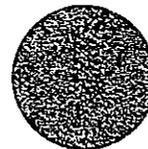
Policy Committee
24015 Westernport Road, SW
Westernport, MD 21526

Phone: (301) 359-3311 ext 3796
E-mail phm4@newpagecorp.com

MF
CC
AM

March 5, 2008

033797



Council President, Mike Knapp
Montgomery City Council
100 Maryland Avenue
Rockville, MD 20910

RE: Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07

I am writing on behalf of the Maryland/Delaware Society of American Foresters (MD/DE SAF) to express our concerns with Bill 37-07 and the proposed Amendments to Bill 37-07 which affects Montgomery County's Forest Conservation Law.

- 1) Forest landowners in Montgomery County must be able to retain their right to practice sustainable forestry on their property. Sustainable forestry, defined as "the practice of meeting the forest resource needs and values of the present without compromising the similar capability of future generations," may include forest harvesting in order to maintain the health and productivity of the forest into the future. This is the means to ensure that currently forested lands remain forested for the benefit of future generations of Maryland citizens. The MD/DE SAF advocates that forest harvesting is accomplished according to a timber harvest plan, forest stewardship plan or a forest management plan prepared by a Maryland Licensed Professional Forester and per an approved sediment control plan. A sustainable forest harvest should not be confused with loss of forest land such as to development. These forests, harvested under a management plan, are renewable, and will provide valuable wildlife habitat and landscape diversity while maturing.
- 2) Commercial logging and timber harvesting operations should be treated no differently than agricultural activities as stated in Section 22A-4(d) Level 3 Review in both Bill 37-07 and the Amendment to Bill 37-07. Forest harvesting is considered by the Maryland Department of Agriculture as an agricultural activity and the timber harvest plans should not be required to undergo another level of scrutiny - the only proposed activity under Level 3 that requires this additional requirement. A Declaration of Intent should be sufficient.
- 3) We are concerned about the language in Section 22A-4(d)(4)(A) which requires that all forest harvests require the approval of the County Arborist. The County Arborist is a highly trained individual, but, an arborist is not a Maryland Licensed Professional Forester and is not qualified to rule on forest harvest decisions. A Maryland Licensed Professional Forester is fully qualified to prepare a timber harvest plan and understand the requirements of the Forest Conservation Act - his work should be acceptable to the County without further review by the County Arborist.

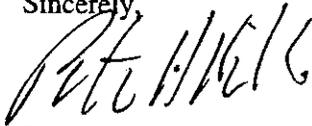


Mike Knapp
March 5, 2008
Page 2.

The Maryland/Delaware Society of American Foresters is made up of 160 Professional Foresters and Forest Technicians from across Maryland and Delaware. While we may work for a variety of employers, our jobs involve managing the forest resources of Maryland to provide the goods and services for the citizens of Maryland while conserving these resources for future citizens.

We are available to assist you if you would like to further discuss this issue and our concerns. Thank you for the opportunity to comment on your proposed Forest Conservation Act revisions.

Sincerely,



Peter H. Miller
Maryland/Delaware Society of American Foresters Policy Chair

cc: Mark Pfefferle



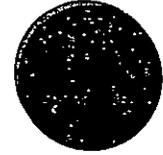
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Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
John R. Griffin, Secretary
Eric Schwaab, Deputy Secretary

January 15, 2008

032711



2008 JAN 17 AM 9:53
MONTGOMERY COUNTY
GOVERNMENT

Council President Mike Knapp
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

RE: Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07

Dear Council President Knapp:

The Maryland Department of Natural Resources Forest Service (the Maryland Forest Service), by this letter, is submitting comments on Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07 which effects Montgomery County's Forest Conservation Law.

The Maryland Department of Natural Resources Forest Service (the Maryland Forest Service) has the responsibility to restore, manage, and protect Maryland's trees, forest, and forested ecosystems in order to sustain Maryland's natural resources. Because of these responsibilities, the Maryland Forest Service via the Department of Natural Resources was charged, in 1991, with the authority to administer the State Forest Conservation Act (Natural Resources Article Title 5 Subtitle 16, Annotated Code of Maryland). One component of administering the Act is to review and approval the proposed amendments to local governments' forest conservation ordinances.

The Maryland Forest Service has the following concerns about Bill 37-07 and the Amendments to Bill 37-07:

1) Forest landowners in Montgomery County must have the right to practice sustainable forestry on their property. Sustainable forestry is the management of forest lands according to sound forestry practices, which may include harvesting timber, in order to maintain the health and production of the forest into the future. This is the means to ensure that currently forested lands remain forested for future generations of Maryland citizens. In order to ensure that the health and sustainability of the forest will be taken into account during management, the Maryland Forest Service advocates that timber harvesting is accomplished according to a timber harvest plan, forest stewardship plan or a forest management plan prepared by a Licensed Professional Forest and per an approved sediment control plan.

Commercial logging and timber harvesting operations should be treated no differently than agricultural activities as stated in Section 22A-4(d) Level 3 Review in both Bill 37-07 and the Amendment to Bill 37-07. Timber harvesting is considered by the Maryland Department of Agriculture as an agricultural activity and the timber harvest plans should not be required to undergo another level of scrutiny – the only proposed activity under Level 3 that requires this additional requirement. A Declaration of Intent should be sufficient.

pg. 2

Jan 15, 2008 Letter to Council President Knapp

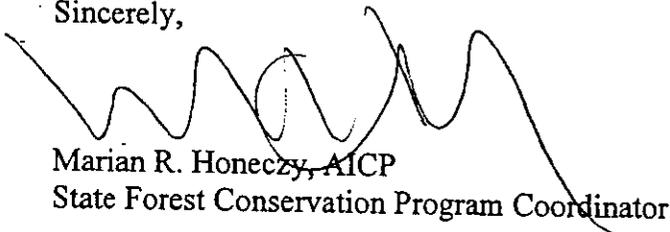
Re: Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07

2) Section 22A-4(c)(4) and Section 22A-4(d)(5) require state agencies to comply with the Montgomery County Forest Conservation Law. State government is preempted from complying with local government laws and this language is not necessary and confusing to the general public. The State has enacted the Maryland Reforestation Law of 1988 (Natural Resources Article 5-103, Annotated Code of Maryland) and the Maryland Forest Conservation Act of 1991 (Natural Resource Article 5-1601—1613, Annotated Code of Maryland) to accomplish forest protection and mitigation by state agencies during highway construction.

To restate our main concern, the Maryland Forest Service advocates that the management of the forest lands, including timber harvesting, be done according to sound forestry practices. Active management is necessary in order to maintain the health and production of the forests in the state. By doing this, currently forested lands will remain forested lands for future generations.

If you wish to meet to discuss this further or if you have any questions I can be reached at (410) 260-8511 or via email at mhoneczy@dnr.state.md.us

Sincerely,



Marian R. Honeczy, AICP
State Forest Conservation Program Coordinator

cc: Steve Koehn, Director/State Forester
Wayne Merkel, MD Forest Service Regional Forester

Council President Mike Knapp
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

RE: Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07

Dear Council President Knapp:

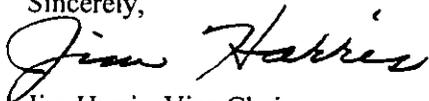
The Montgomery County Forest Conservancy District Board (Forestry Board), by this letter, is submitting comments on Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07 which affects Montgomery County's Forest Conservation Law.

The Forestry Board is keenly interested in the restoration, management, and protection of Maryland's trees, forests, and forested ecosystems in order to sustain Maryland's natural resources. In that spirit, the Forestry Board asks the Montgomery County Council to consider the following recommendations regarding Bill 37-07 and the Amendments to Bill 37-07:

- 1) Forest landowners in Montgomery County should have the right to practice sustainable forestry on their property. Practicing sustainable forestry includes managing their forest and harvesting timber according to sound forestry practices. Timber harvesting should be performed in accordance with a Forest Stewardship Plan or a Forest Management Plan prepared by a Licensed Professional Forester and in compliance with a sediment and erosion control plan approved by the local Soil Conservation District.
- 2) Commercial logging and timber harvesting operations should be treated no differently than agricultural activities as stated in Section 22A-4(d) Level 3 Review in both Bill 37-07 and the Amendment to Bill 37-07. Timber harvesting is considered, by the Maryland Department of Agriculture, an agricultural activity and timber harvest plans should not be required to undergo another level of scrutiny—the only proposed activity under Level 3 that requires this additional requirement.
- 3) Section 22A-4(c)(4) and Section 22A-4(d)(5) require state agencies to comply with the Montgomery County Forest Conservation Law. State government is preempted from complying with local government laws and this language is not necessary and is confusing to the general public. The State has enacted the Maryland Reforestation Law of 1988 (Natural Resources Article 5-103, Annotated Code of Maryland) and the Maryland Forest Conservation Act of 1991 (Natural Resource Article 5-1601—1613, Annotated Code of Maryland) to accomplish forest protection and mitigation by state agencies during highway construction.

The Forestry Board appreciates the opportunity to submit these comments and is available to discuss this further.

Sincerely,



Jim Harris, Vice Chair
Montgomery County Forest Conservancy District Board
Cc: Steve Koehn, Director/State Forester



3

AGRICULTURAL ADVISORY COMMITTEE

January 22, 2008

The Honorable Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Agricultural Advisory Committee Testimony – Bill 37-07 – Amendments to the
Forest Conservation Law Public Hearing – January 22, 2008

Dear Council President Knapp:

On behalf of the Montgomery County Agricultural Advisory Committee, we thank the County Council for this opportunity to comment on Bill 37-07 which proposes Amendments to the Forest Conservation Law. There are a number of questions and concerns we have regarding the amendments and how they will be specifically applied to agricultural operations. Due to our questions regarding the interpretation and implementation, the AAC cannot support the amendments at this time as we need additional time to understand them.

We recognize the importance of forest conservation and we encourage landowners to participate with programs that provide cost share assistance for planting trees as part of their agricultural operation. At Butler's Orchard, we are proud of the way we manage both our cropland and woodland acres in providing a variety of agricultural and horticultural products to our customers.

In accordance with Chapter 59 of the County Code, the legal definition of agriculture in Montgomery County includes the products of forestry, horticulture and Silviculture and all agricultural uses including those mentioned above are permitted at all times in the Rural Density Transfer Zone which we know as our Agricultural Reserve. We need to understand if this Bill 37-07 creates a new legal requirement that will permit all agricultural uses as long as you have a declaration of intent approved by the Planning Board. The County Government has a good record of supporting the farmers in their pursuit of farming as a way to earn a living and way of life. The AAC encourages the Council to review these amendments carefully and make sure they are clearly written in a manner that will support agriculture and not work against agriculture.

As stewards of the land, farmers need the ability to farm and this inherently involves the disturbance of more than 5,000 square feet of soil to plant and produce agronomic crops which is legally defined as agriculture in Montgomery County. We question the requirement for the

declaration intent and we need to better understand how and when it will be required. Some of the proposed amendments and conditions are difficult to understand and they are not clear to us. We do not understand why agricultural operations are not specifically listed as exempt from the requirements of forest conservation and we need to understand the basis for this change in policy.

The County's agricultural industry is strong and diverse; however, weather and dry conditions like we witnessed last year demonstrate how fragile the farm economy can be. We must be careful that requirements for forest conservation do not take precedent over agricultural production. Farmers need to be given incentives and new opportunities to decide what crops and/or trees to plant on their farms without pressure from government telling them what to do, where and what to plant, and finally that you cannot harvest any of the trees after the planting is completed.

Thank you for this opportunity to present the recommendations of the Agricultural Advisory Committee on the proposed amendments to the Forest Conservation Law. We will participate in the up-coming Transportation and Environment work sessions to obtain answers to our questions.

Sincerely,

Wade Butler, JVC

Wade Butler, Chairman
Agricultural Advisory Committee

cc: County Council Members
Pradeep Ganguly, Ph.D, Director, DED
Jeremy V. Criss, DED Agricultural Services Manager



AGRICULTURAL PRESERVATION ADVISORY BOARD

January 22, 2008

Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Written Testimony – Council Bill – 37-07 – Amendments to the
Forest Conservation Law Public Hearing – January 22, 2008

Dear Council President ^{Mike} Knapp:

Please accept this letter as formal written testimony of the Montgomery County Agricultural Preservation Advisory Board (APAB) regarding Council Bill 37-07 Amendments to the Forest Conservation Law. The APAB will offer general comments about the amendments including our specific concerns regarding the proposed changes.

General Comments:

As a general comment, there is perhaps no other Board or Commission within Montgomery County that is keenly aware of the inherent conflict that exists between the preservation of agricultural land and the conservation of forest resources. In 1980, the County through the Functional Master Plan for the Preservation of Agriculture and Rural Open Space prioritized a commitment to the protection of viable agricultural land. This commitment provided the means for stabilizing the loss of valuable cropland and open space to help maintain the fabric of rural communities among a rapidly developing County. We must be sensitive to changes in land use policies including environmental laws and regulations and we must insure amendments do not have a profound impact to this valuable resource and agricultural industry.

The County's agricultural industry provides in excess of \$250 million dollars in economic contribution to the County's economy. We must ensure requirements for forest conservation do not take active agricultural land out of production, particularly where the County has made tremendous investments to protect agricultural production through agricultural preservation easements. Forest conservation must be considered in the context of existing forest resources and implemented on agricultural land at the discretion of the landowner.

Specific Comments:

It is for the reasons stated above that we recommend against any amendment which will negatively impact production capability on active farmland in our agricultural areas.

The APAB recommends that totally removing all exemptions from the law in favor of varying levels of review is a major mistake. Agricultural lands protected by over 68,752 acres of easements should be afforded relief from forest conservation requirements so that we do not require the planting trees on the same productive agricultural lands where public investments have been made to protect cropland for food and fiber production in preference of meeting forest conservation program requirements.

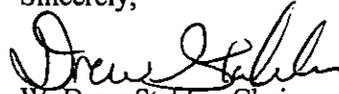
The APAB recommends that Section 22A-3 definition of Net Tract Area needs to be modified so that the definition of Agricultural Activity shall include "land clearing" for agricultural purposes (crop fields, pasture, paddocks, agricultural buildings, etc.). Forest shall be defined as an area at least 35 feet wide, as in State Law. Net Tract Area shall be defined to not include Forest Bank Areas. The Net Tract Area for agriculture and resource areas shall only be that portion of agricultural land being changed to a residential use (i.e. 25 acre lot development with a 2-acre home development area shall be considered 2-acres net tract area for calculation purposes). This shall be no greater than the "limits of disturbance" as shown on the development plan. We believe the Agricultural Preservation Advisory Board, and not the Planning Board or their designee, is the most appropriate organization for determining the portions of land which are no longer suitable for agricultural production by proposed improvements or disturbances.

The APAB is very concerned over the deletion of the exemption for agricultural activities as outlined in Section 22A-5 (b) which states "*an agricultural activity that is exempt from both platting requirements under Section 50-9 and requirements to obtain a sediment control permit under Section 19-2(c)(2). Agricultural support building and related activities are exempt only if built using best management practices.*" This section has been replaced with the need to comply with a Level 3 review requiring a declaration of intent by the landowner approved by the MNCPPC. While we hope MNCPPC's intent of the proposed amendment for level 3 activity was not to include all types of agricultural land disturbance activities, the reality is that a strict interpretation of this section would not preclude MNCPPC from exercising authority over all agricultural disturbance activities including normal cultivation. This section needs to be clarified so that it is clear where normal and customary agricultural land disturbance activities do not require a declaration of intent and a level 3 activity review or any other level activity review for that matter.

Finally, the APAB believes in the interest of maximizing the protection of agricultural land, a modification to Section 22A-12. This section should be modified to state "The placement of residential units on Agricultural areas is preferred to be located on non-tillable land or on forest land." It shall be a priority that fields and tillable acres shall remain a priority and be available for farming activity. The Conservation Threshold and the Afforestation Threshold for Agricultural and Resource Areas shall only include that area to be developed or the limit of disturbance, whichever is greater. The Conservation Threshold shall be changed to 25% and the Afforestation Threshold shall remain 20%. Another related modification should be made to Section 22A-12(e)1(A). This section should be modified to state "The use of offsite forest mitigation banks where other techniques are not practical."

Thank you for considering the comments and recommendations offered by the APAB regarding the Board's proposed amendments to the Forest Conservation Law. It is our hope and desire that the County Council can support our proposed changes so that Forest Conservation Law administered by the Planning Board will not negatively impact vital agricultural operations needed to support our critical mass of agricultural land

Sincerely,



W. Drew Stabler, Chairman

Agricultural Preservation Advisory Board

cc: County Council Members
Pradeep Ganguly, Ph.D, Director, DED
Jeremy V. Criss, DED Agricultural Services Manager

MONTGOMERY COUNTY FARM BUREAU

24110 Laytonsville Road
Gaithersburg, Maryland 20882

Telephone: 301-353-8867 – Fax: 301-253-1525

January 22, 2008

Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Bill 37-07 – Amendments to the Forest
Conservation Law

Dear Council President Knapp:

On behalf of the Montgomery County Farm Bureau, which is represented by over 3,000 families in the county, I want to thank the County Council for allowing me this opportunity to comment on Bill 37-07 regarding proposed Amendments to the Forest Conservation Law.

The Farm Bureau cannot support these amendments as proposed because they do not provide sufficient safeguards for agricultural operations. We too have a number of questions and concerns regarding the amendments and it would be helpful for us to see some specific examples of what constitutes level 1, 2, and 3 review activity for forest conservation so we can better understand how they will impact agricultural operations.

Montgomery County is a strong supporter of agriculture as demonstrated by the continued efforts to engage the agricultural community and by providing resources for programs and services that assist the farmers and the rural community. We come here tonight not to complain, but to ask that you be sensitive to the plight of agriculture and make sure the forest conservation law does not place an undue burden on farmers. I purchased my farm in 1946 and I've been farming ever since. I have witnessed the actions and tactics of the Maryland National Capital Park and Planning Commission over the years and I can tell you that if farmers are required to obtain a declaration of intent from this organization in order to farm, this environment will not be a good one for anybody, including you.

Did you know the State of Maryland is a leader in this country for developing the agricultural preferred tax assessment system, whereby property taxes on farms are assessed at a lower agricultural rate as compared to the highest and best use tax rate? Our property tax system has been in place since 1960 and I was one of the contributors that helped to develop the process and procedures including the Declaration of Intent to Farm as required by the Department of Assessments and Taxation in all of the Counties through out the State. The forest conservation amendment proposes the use of another declaration of intent that may confuse everyone and it may be helpful if we simply identify an alternative approach and not use this same term for the purposes of forest conservation.

Representatives from the agricultural community are willing to help you with this Forest Conservation Law to insure that you have a better understanding of the challenges and expenses of farming in Montgomery County.

Thank you again for providing this opportunity to present the recommendations of the Montgomery County Farm Bureau on the proposed amendments to the Forest Conservation Law.

Sincerely,



George Lechlida, President
Montgomery County Farm Bureau



Montgomery Soil Conservation District

18410 Muncaster Road - Derwood, MD 20855 - Phone (301) 590-2855 - Fax (301) 590-2849

January 22, 2008

The Honorable Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

RE: Written Testimony for the Public Hearing regarding Bill 37-07
Amendments to the Forest Conservation Law

Dear Council President Knapp:

The Montgomery Soil Conservation District (MSCD) Board of Supervisors would like to provide comments on Bill 37-07 – Amendments to the Forest Conservation Law, which could potentially have far reaching consequences for agricultural landowners in the County. The MSCD has a number of concerns regarding the removal of agricultural exemptions being proposed in these new amendments. Although we have done our best to evaluate the myriad of changes in this proposed legislation, we are still not clear on the intentions of these amendments or the impacts they will have on our conservation efforts. MSCD is unable to support these amendments, and we hope that the Council will provide ample opportunity to consider additional changes to the legislation based on input from the agricultural community.

Our interpretation of the proposed amendments indicates that the Planning Board intends to remove the exemptions previously granted for agricultural practices. In Section 22A-4-Persons Subject to the Forest Conservation Law it states that "A person must submit to a Level 3 review if the person: (1) proposes an agricultural activity that is exempt from: (A) platting requirements under Section 50-9; and (B) a requirement to obtain a sediment control permit under Section 19-2(c)(2)..." This new language basically reverses the agricultural exemption under previous guidelines. Furthermore, the "Exemptions" Section under 22A-5 has been completely eliminated, including the ag exemption section.

Does this now mean that agricultural and conservation activities will require a Level 3 review? The Council must take a critical look at this policy and consider if they want to require landowners to submit to this type of review anytime they want to complete an agricultural or conservation practice on their property! The proposed legislation goes on to describe a Level 3 review, which provides that the Planning Director has up to 45 days to notify the applicant whether the Declaration of Intent was complete and whether it is granted! So a farmer must now wait up to 45 days to complete ag operations that were previously exempt? Based on most farmers' experiences with MNCPPC this doesn't sound like a productive situation!

Since 1945, the MSCD has helped residents of Montgomery County to make wise use of their soil, water and other natural resources. We certainly appreciate the value of forest conservation and management as an important tool to protect water quality, provide valuable wildlife habitat, and generate welcome income for landowners. In fact, we frequently work with landowners to plant trees and conserve natural resources as part of our Soil Conservation and Water Quality Planning process. We also recognize that forest management, also known as silviculture, is considered the agriculture of trees. As such, MSCD believes a landowners' decision to practice forest management on their property should be their right. There is already a system in place regarding permits required for forest harvesting, and any additional oversight is unnecessary.

An issue of great concern to MSCD is the requirement that forest harvest operations be subjected to an additional level of review by the County Forest Conservation Coordinator. The Forest Conservation Coordinator may not even be a Licensed Forester, and yet they are to be responsible for overseeing forest harvesting proposals?! Managing a forest through proper silvicultural practices is a form of agriculture. If a landowner submits a Declaration of Intent, which certifies that they do not intend to develop the site, then the Forest Conservation Law (FCL) should not apply. The State Forest Conservation Law exempts forest harvest operations from review with the submittal of a Declaration of Intent. Why is MNCPPC attempting to extend the FCL beyond development review? Is it the County's intent that MNCPPC have jurisdiction over agricultural practices?

The Forest Conservation Law is supposed to insure that trees and forests are considered as part of the development process. It should not be expanded to include agricultural practices, silvicultural activities, or conservation initiatives. These proposed changes represent another case of MNCPPC attempting to spread their reach far beyond the acceptable limits of their purview.

The MSCD appreciates the opportunity to provide testimony on this proposed legislation. We also know that the County Council cares about the agricultural community, and we hope you will take a careful look at the potential impacts of Bill 37-07 as it is currently proposed. Thank you for considering our comments as you attempt to improve this legislation.

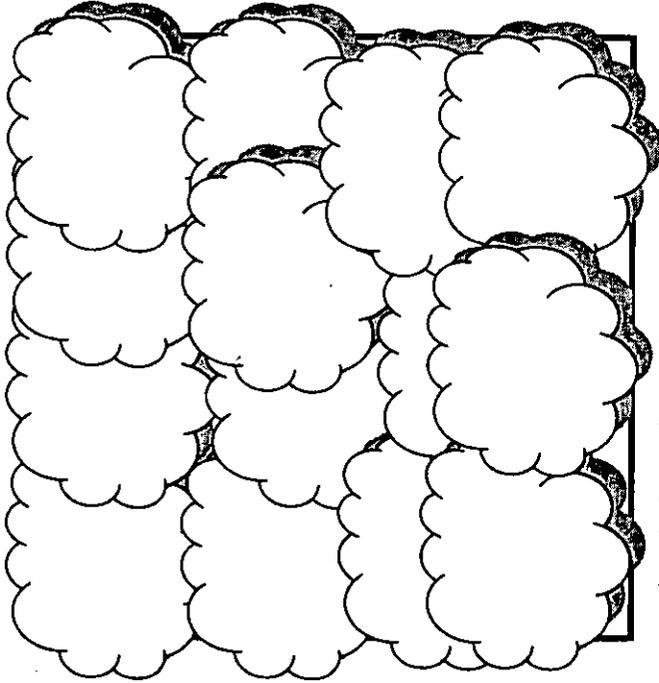
Sincerely,



Pam Saul, Board Supervisor
Montgomery Soil Conservation District

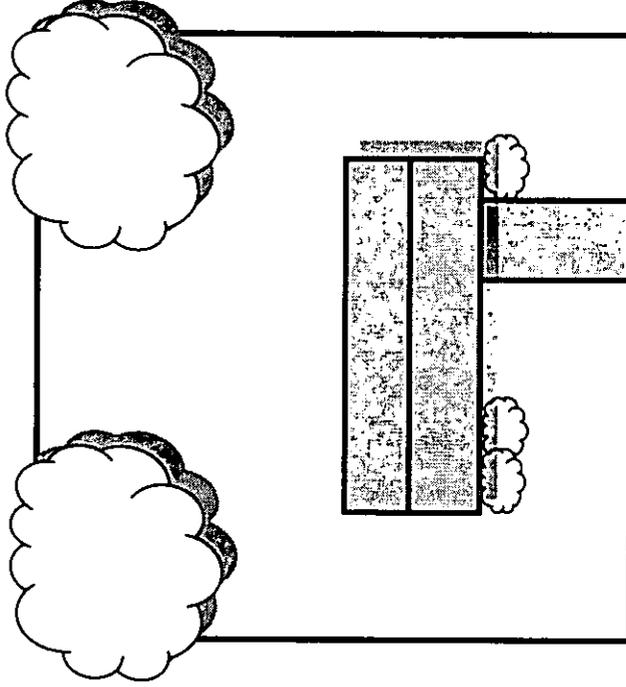
Cc: County Council Members
Isiah Leggett, County Executive
Pradeep Ganguly, Director DED

Before



- Lot is less than 40,000 sq. ft.
- Forest is less than 40,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is less than 40,000 sq. ft.
- Forest Loss is less than 40,000 sq. ft.
- Sediment Control Permit is required

Current Forest Conservation Law

- FCL does not apply – lot less than 40,000 sq. ft.

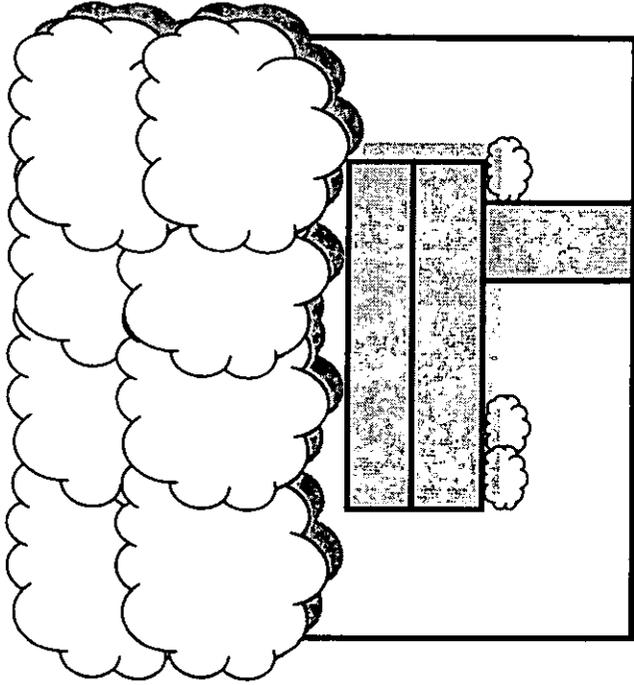
Bill 37-07

- FCL does not apply – lot less than 40,000 sq. ft.

Elrich Amendments

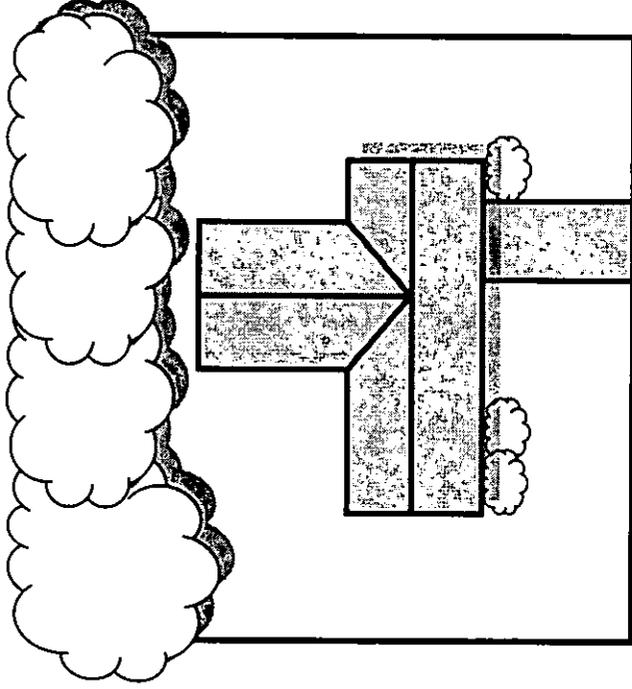
- FCL does not apply – lot less than 40,000 sq. ft.

Before



- Lot is less than 40,000 sq. ft.
- Forest Area = 10,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is less than 40,000 sq. ft.
- Forest Loss = 6,000 sq. ft.
- Sediment Control Permit is required

Current Forest Conservation Law

- FCCL does not apply – lot less than 40,000 sq. ft.

Bill 37-07

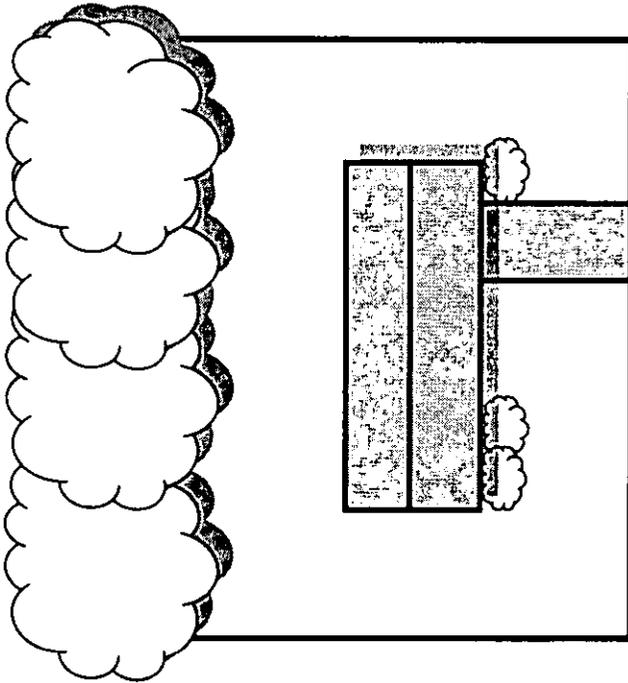
- FCCL does not apply – lot less than 40,000 sq. ft.

Eirich Amendments

- FCCL does not apply – lot less than 40,000 sq. ft.

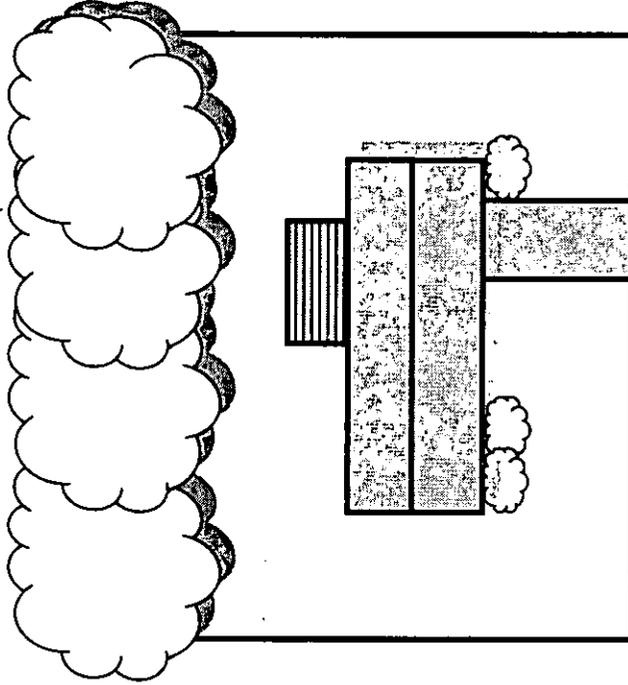
March 12, 2008

Before



- Lot is greater than 40,000 sq. ft.

After

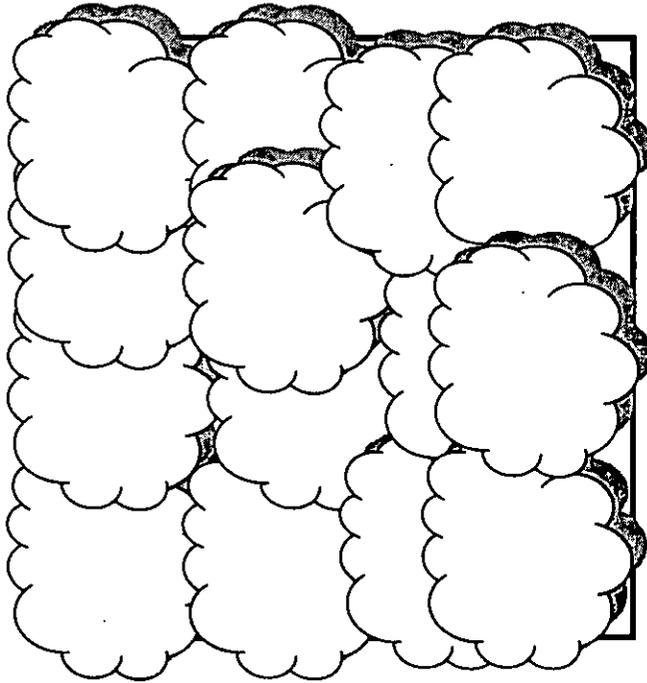


- Lot is greater than 40,000 sq. ft.
- **No Forest Loss**
- **Sediment Control Permit is not required**

Current Forest Conservation Law

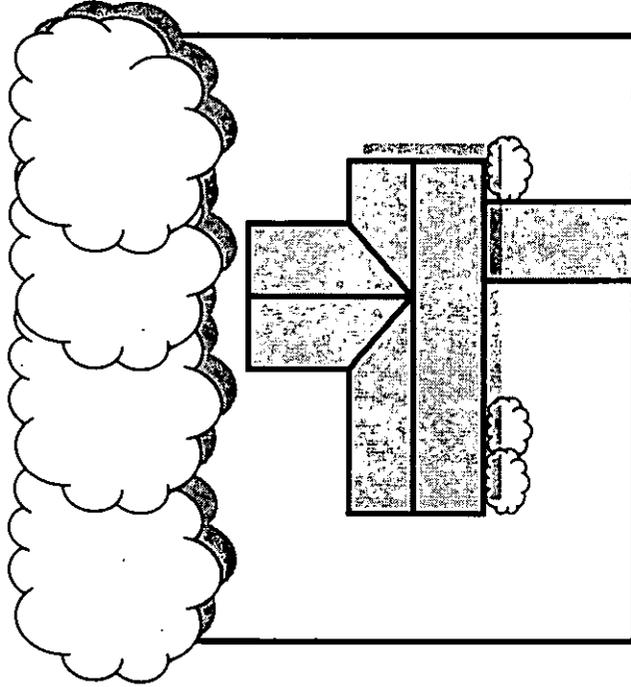
- FCL does not apply – lot greater than 40,000 sq. ft. BUT no Sediment Control Permit required
- Bill 37-07
- FCL does not apply – lot greater than 40,000 sq. ft. BUT no Sediment Control Permit required
- Eirich Amendments
- FCL does not apply – lot greater than 40,000 sq. ft. BUT no Sediment Control Permit required

Before



- Lot is greater than 40,000 sq. ft.
- Forest is greater than 40,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is greater than 40,000 sq. ft.
- Forest Loss is greater than 40,000 sq. ft.
- Sediment Control Permit is required

Current Forest Conservation Law

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Forest Conservation Plan required – more than 40,000 sq. ft. of forest lost

Bill 37-07

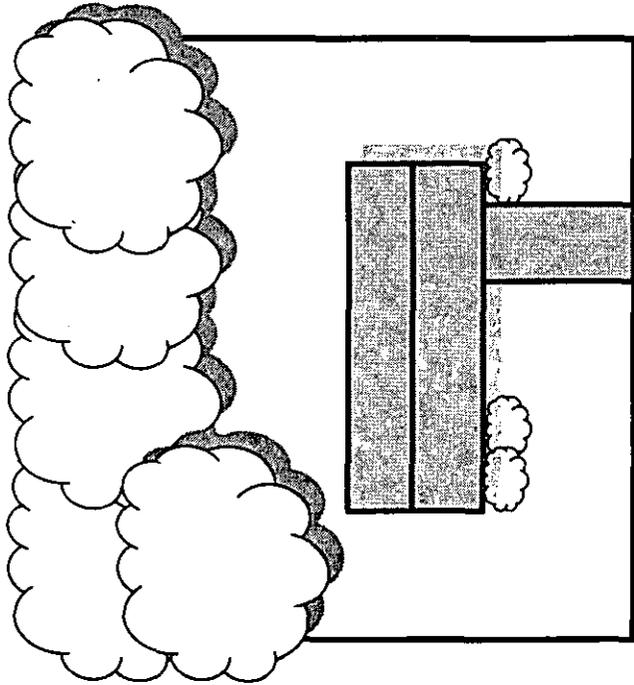
- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 1 Review required – more than 40,000 sq. ft. of forest lost

Elrich Amendments

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 1 Review required – more than 5,000 sq. ft. of forest lost

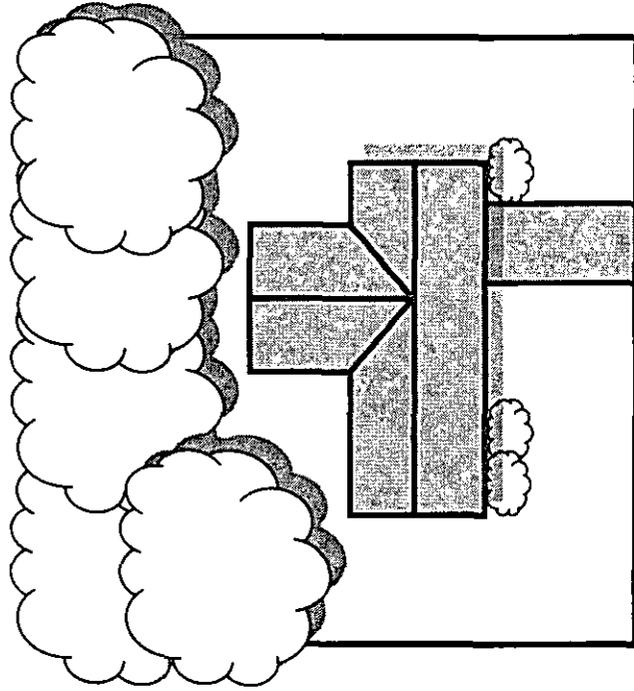
March 12, 2008

Before



- Lot is greater than 40,000 sq. ft.
- Forest area = 12,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is greater than 40,000 sq. ft.
- Forest Loss is **less** than 5,000 sq. ft.
- Sediment Control Permit is **required**

Current Forest Conservation Law

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Letter of Exemption from Forest Conservation Plan required – less than 40,000 sq. ft. of forest lost

Bill 37-07

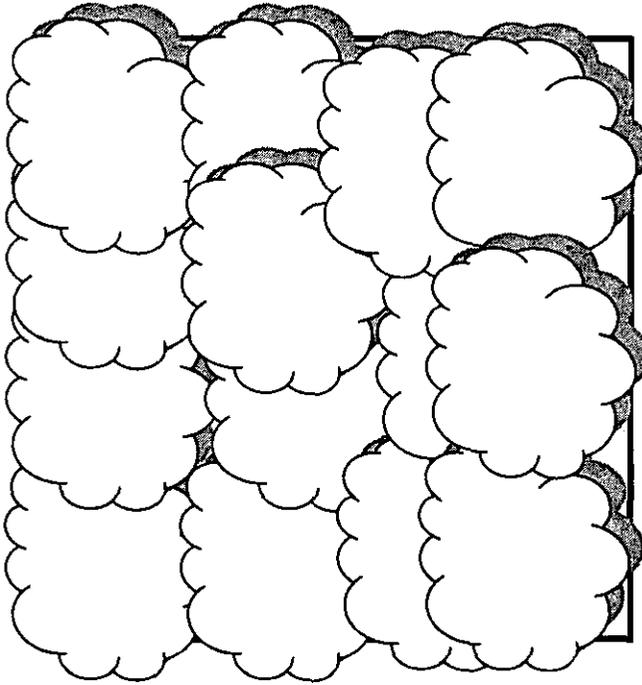
- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 2 Review required – less than 40,000 sq. ft. of forest lost

Elrich Amendments

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 2 Review required – less than 5,000 sq. ft. of forest lost

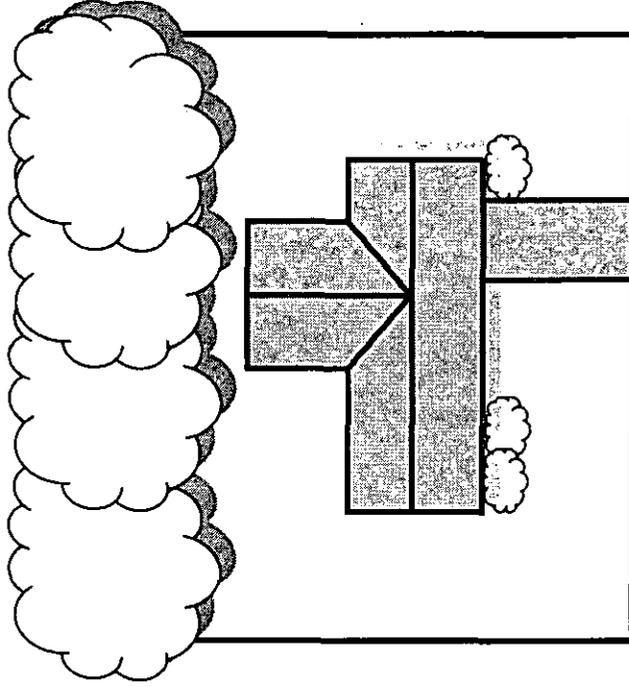
March 12, 2008

Before



- Lot is greater than 40,000 sq. ft.
- Forest is greater than 40,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is greater than 40,000 sq. ft.
- Forest Loss = 30,000 sq. ft.
- Sediment Control Permit is required

Current Forest Conservation Law

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Letter of Exemption from Forest Conservation Plan required – less than 40,000 sq. ft. of forest lost

Bill 37-07

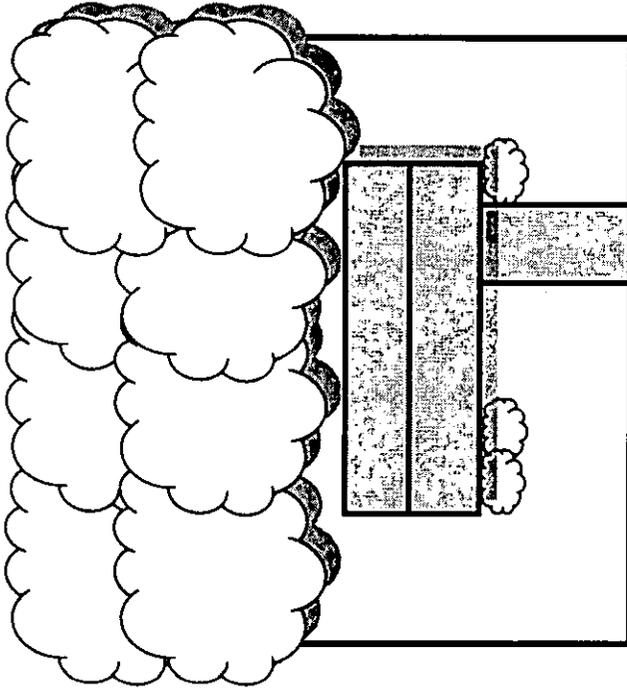
- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 2 Review required – less than 40,000 sq. ft. of forest lost

Eirich Amendments

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 1 Review required – more than 5,000 sq. ft. of forest lost

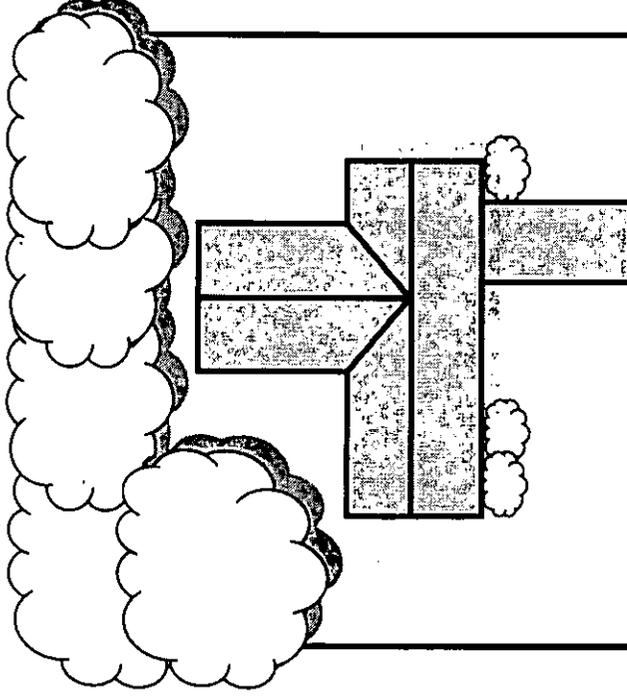
March 12, 2008

Before



- Lot is **greater** than 40,000 sq. ft.
- Forest Area = 20,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is **greater** than 40,000 sq. ft.
- Forest Loss = 8,000 sq. ft.
- Sediment Control Permit is **required**

Current Forest Conservation Law

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Letter of Exemption from Forest Conservation Plan required – less than 40,000 sq. ft. of forest lost

Bill 37-07

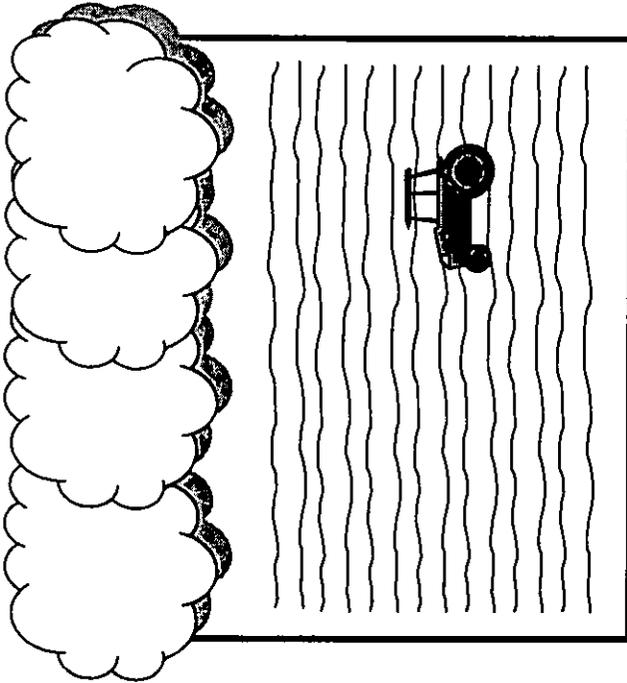
- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 2 Review required – less than 40,000 sq. ft. of forest lost

Eirich Amendments

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 1 Review required – more than 5,000 sq. ft. of forest lost

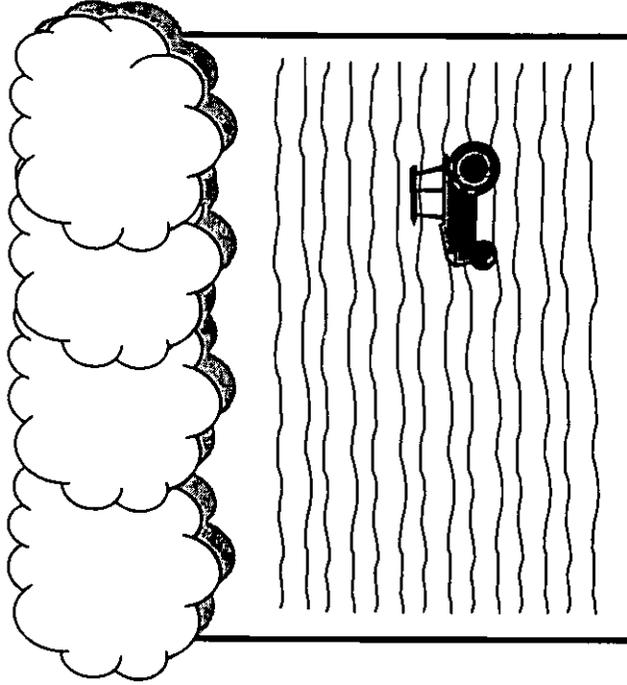
March 12, 2008

Before



- Lot is **greater** than 40,000 sq. ft..
- **Exempt** from platting under Section 50-9
- Sediment Control Permit is **not required**

After

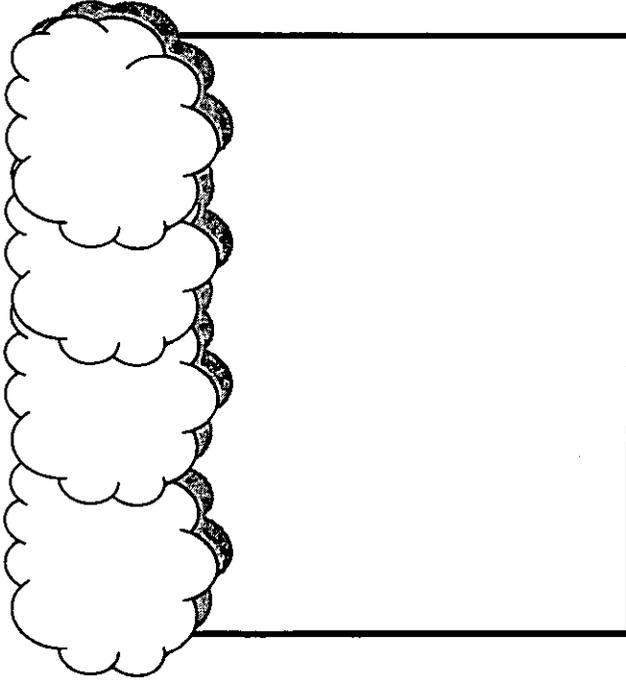


- Lot is **greater** than 40,000 sq. ft.
- **Exempt** from platting under Section 50-9
- Sediment Control Permit is **not required**
- **No** forest loss (no change in activity)

Current Forest Conservation Law

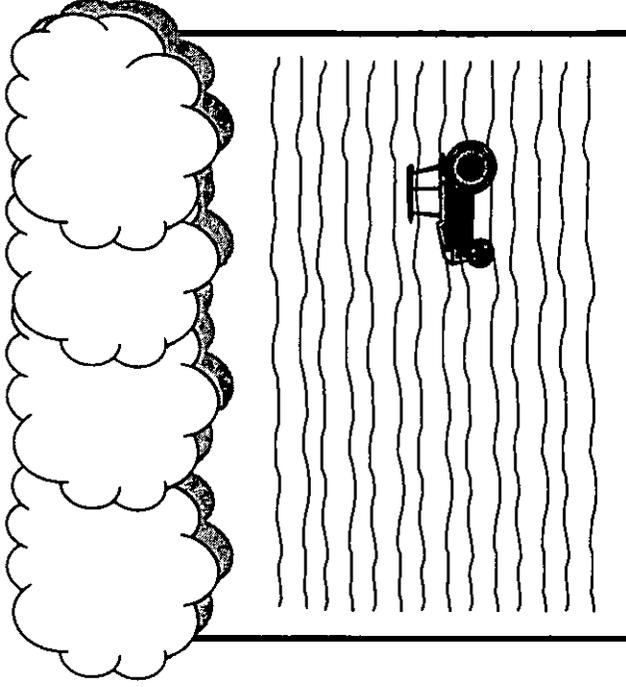
- FCL does not apply – agricultural activities exempt Bill 37-07
- FCL does not apply – agricultural activities exempt Elrich Amendments
- FCL does not apply – agricultural activities exempt

Before



- Lot is **greater** than 40,000 sq. ft..
- **Exempt** from platting under Section 50-9

After

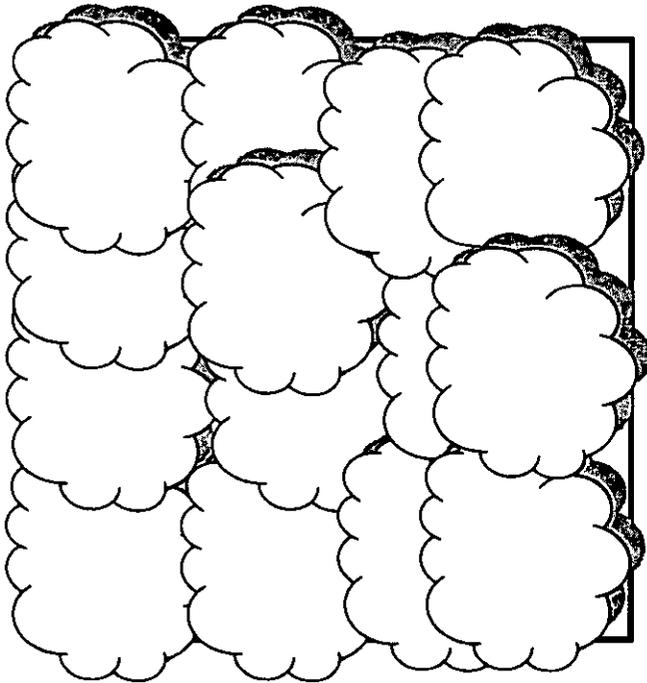


- Lot is **greater** than 40,000 sq. ft.
- **Exempt** from platting under Section 50-9
- Sediment Control Permit is **not required**
- **No** forest loss (change from abandoned field to active farm land)

Current Forest Conservation Law

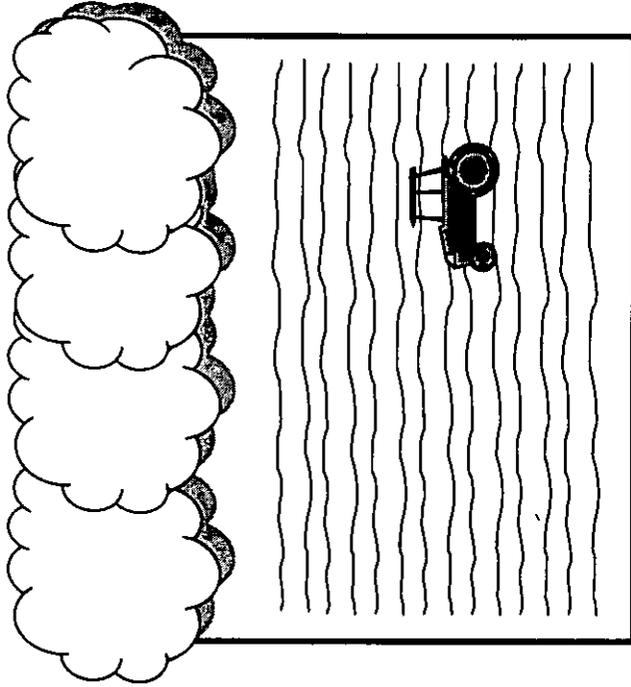
- FCL does not apply – agricultural activities exempt Bill 37-07
- FCL does not apply – agricultural activities exempt Elrich Amendments
- FCL does not apply – agricultural activities exempt

Before



- Lot is **greater** than 40,000 sq. ft.
- **Exempt** from platting under Section 50-9

After



- Lot is **greater** than 40,000 sq. ft.
- **Exempt** from platting under Section 50-9
- **Sediment Control Permit is not required**
- Forest loss **greater** than 40,000 sq. ft.

Current Forest Conservation Law

- FCL does not apply – agricultural activities exempt
- Bill 37-07
- FCL does not apply – agricultural activities exempt
- Eirich Amendments
- FCL does not apply – agricultural activities exempt

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
1	Definition of Forest	A forest must be 10,000 sq. ft. in size and 50 feet in width and does not consider property boundaries. [22A-3]	Same as written in current FCL. [Circle 4 Line 65]	Requires consideration of forest area "regardless of political or property boundaries." [Circle 71 Lines 64 and 67]	
2	Definition of Forest	Specifies a specific number of trees, and a percentage of trees of a particular size, per acre, but does not specify any size or age arrangement of trees. [22A-3]	Same as current FCL. [Circle 4 Line 72]	Same as current FCL. [Circle 71 Line 71]	
3	Trigger for application of FCL	Tract of land must be 40,000 sq. ft. or greater for FCL to apply (except when activity would result in disturbance to champion tree. [22A-4(b), 22A-5(a)(2)(A), 22A-5(n)(2)(A), 22A-5(p)(2)]	Same as current FCL. [Circle 9 Lines 187, 194, 198, 202, 206, 221]	Same as current FCL (but adds application of FCL when disturbance occurs in environmental buffer or special protection area). [Circle 76 Line 179]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
4	Trigger for review by Park & Planning and review requirements under FCL	Activity requires Sediment Control Permit (disturbance equal to or greater than 5,000 sq. ft.). [22A-4]	<p>Level 1 Review – Same as current FCL. [Circle 8 Lines 181-199]</p> <p>Level 2 Review – Activity does not result in the cutting or clearing of more than 40,000 sq. ft. of forest. [Circle 9 Lines 200-234]</p> <p>Level 3 – Forestry activities. [Also see #5 below.]</p>	<p>Level 1 Review – Adds to Bill 37-07 by including cutting of forest in environmental buffers, special protection, etc. [Circle 75 Lines 160-184]</p> <p>Level 2 Review – Activity does not result in the cutting or clearing of more than 5,000 sq. ft. of forest. [Circle 76 Lines 185-227]</p> <p>Level 3 – Forestry activities. [Also see #5 below.]</p>	
5	Trigger for review by Park & Planning of agricultural activities	Agricultural and commercial logging and timber harvesting activities are exempt. [22A-5(b-d)]	Commercial logging and timber harvesting activities would be subject to Level 3 Review. [Circle 10 Line 235-256]	Same as Bill 37-07. [Circle 76 Line 228-257]	
6	Land Use Types	Land Use Types are used to set forest conservation thresholds and afforestation requirements for different land uses and housing density. [22A-12 (a) Table]	Same as current FCL. [Circle 38 Line 957]	Adds two categories: Low Density Residential Area and Highway Rights-of-Way and School Sites. Removes one category: Institutional Development Area. [Circle 86 Line 417]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
7	Reforestation Thresholds	For forest removed above the applicable threshold, mitigation at a certain rate is required. For additional removal of forest below the threshold, more extensive mitigation is required. [22A-12(a) Table]	Increases reforestation thresholds by 5% except in Agricultural and Resource Areas. [Circle 38 Line 957]	Same as Bill 37-07. [Circle 86 Line 417]	
8	Reforestation Ratios	When forest is cleared above the threshold, the requirement is 1/4 acre established for every 1 acre removed. When forest is cleared below the threshold, the requirement is 2 acres established for every 1 acre removed. When mitigation occurs off-site in existing forest, the requirement is 2 acres for every 1 acre of reforestation needed. [22A-4 Definition of Forest Conservation Threshold, 22A-12(c)(1-2), and 22A-12(e)(2)(B)]	Same as current FCL. [Circles 39-40 Lines 989-998 and Circle 42 Line 1072]	When forest is cleared above the threshold, the requirement is 1/2 acre established for every 1 acre removed. When forest is cleared below the threshold, the requirement is the same as Bill 37-07 (2 acres established for every 1 acre removed). When mitigation occurs off-site in existing forest, the requirement is 4 acres for every 1 acre of reforestation needed. [Circle 72 Line 79, Circle 87 Lines 431-440, Circle 89 Line 468]	
9	Afforestation Requirements	A site with less than 20% of the net tract area in forest cover must be afforested in accordance with the afforestation percentages. [Section 22A-12(a) Table]	Establishes afforestation requirement of 20% for all Land Use Types except Medium Density Residential Areas, which is 25%, and adds a definition for Afforestation Threshold. [Circle 3 Line 32 and Circle 38 Line 957]	Establishes afforestation requirement of 20% for all Land Use Types, and adds a definition for Afforestation Threshold. [Circle 69 Line 20 and Circle 86 Line 417]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
10	Fee-in-lieu Rate	The fee-in-lieu rate is set at \$0.90 per sq. ft. This is the estimated cost of purchasing plant material, installing plant material, mulching and watering, controlling invasive plant species, reducing damage from white-tailed deer browsing, surveying for survival, and replacing dead plants.	Same as current FCL.	By a separate resolution, increases the fee-in-lieu to \$2.00 per sq. ft. and adds a mechanism to increase the fee by the percentage amount of the annual average change in the Consumer Price Index. [Circle 99]	
11	Preferred Sequence for Mitigation	Consistent with State FCA giving highest priority to enhancement of existing forest through on-site selective clearing, supplemental planting or both, then on-site reforestation or afforestation. [22A-12(e)(1)(A)]	Changes preference sequence to on-site reforestation or afforestation, then off-site reforestation or afforestation, followed by non-native and invasive management control with supplemental planting. [Circle 41 Line 1030]	Same as Bill 37-07.	
12	Maintenance Period Following Planting	Following planting, 2 years of maintenance is required to ensure forest establishment, or sufficient numbers of thriving trees. [22A-12(h)]	Increases all maintenance periods to 5 years. [Circle 46 Line 1182]	Same as Bill 37-07. [Circle 89 Line 477]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
13	County Arborist – Section 22A-30	County Arborist is not included in the definitions, it is mandated to perform several functions in the FCL, and qualifications and duties are outlined in Section 22A-30. [22A-30, 22A-5(d)1)(B), 22A-21(c), 22A-26(f and g)] [Also see #14 and 15 below.]	Retains some mandates to the County Arborist [Circle 11 Line 253, Circle 30 Line 750, Circle 57 Line 1463] and removes others [Circle 60 Lines 1543 and 1549], as well as Section 22A-30 [Circle 62 Line 1588]. [Also see #14 and 15 below.]	Retains most mandates of the County Arborist [Circle 79 Line 246, Circle 95 Line 609]. Adds additional mandates [Circle 70 Line 35, Circle 81 Line 300, Circle 82 Line 322]. Recommends changing title to Forest Conservation Coordinator throughout FCL and includes an additional duty relative to identifying potential mitigation sites in Section 22A-30 [Circle 97 Line 691]. [Also see #14 and 15 below.]	
14	County Arborist	The Planning Director may waive requirements for information in forest conservation and tree save plans that are unnecessary. The County Arborist must review requests for variances to this chapter. [22A-10(b)(3), 22A-21(c)]	Same as current FCL. [Circle 24 Line 601, Circle 26 Line 658, Circle 57 Line 1463]	Requires concurrence with the County Arborist before a waiver for unnecessary information can be granted. Retains review requirement for other variances. [Circle 81 Line 300, Circle 82 Line 322, Circle 95 Line 607]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
15	County Arborist	Logging and timber harvest plans are reviewed by the County Arborist to ensure that the plans are not inconsistent with County forest management objectives. [22A-5(d)(1)(B)]	Same as current FCL. [Circle 11 Line 253]	Same as current FCL. [Circle 79 Line 246]	
16	Forest Conservation Advisory Board	Section 22A-31 legislates a board to advise the County Executive and County Council on forest and urban forest issues, policies, management, etc. [22A-31]	Deletes Section 22A-31. [Circle 63 Line 1615]	Same as Bill 37-07.	
17	Champion Trees	The definition of "champion tree" means the largest tree of its species in the County, as designated by the County Forest Conservancy District Board or its designee. [22A-3]	Changes definition by defining "Champion Tree" as the largest tree of its species in the County as identified in the County Forest Conservancy District Board's Champion Tree Register.	Cites the list developed by the Forestry Board but requires that the County Arborist maintain the list. [Circle 70 Line 32]	
18	Champion Trees	The definition of "champion tree" includes non-native invasive tree species. [Expedited Bill 45-06 Line 5]	Same as current FCL. [Circle 3 Line 44]	Same as current FCL. [Circle 70 Line 32]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
19	Champion Trees	The definition of "champion tree" only protects the largest known individual of each species. [Expedited Bill 45-06 Line 5]	Same as current FCL. [Circle 3 Line 44]	Creates and defines a new term "Champion Tree Class" as the largest known tree of each species and all others within 10% of the point value. [Circle 70 Line 29]	
20	Priority areas	References "priority forests" and "priority planting areas," placing higher intrinsic value on them. [22A-11(a)(2)(B), 22A-12(b)(2), 22A-12(e)(3), 22A-12(g)(2)(C-E), 22A-13(e), 22A-27(a)]	Removes several but not all references to priority areas. [Circle 31 Line 794, Circle 39 Line 978, Circle 43 Line 1080, Circle 49 Line 1258, Circle 61 Line 1573]	Same as Bill 37-07.	
21	Legal Standing to Residents	No provisions in current FCL.	Same as current FCL.	Gives Montgomery County residents or organizations legal standing to appeal decisions based on materially false, misleading, inaccurate, or incomplete information. [Circle 93, Line 570]	
22	Advanced Notice	No provisions in current FCL.	Same as current FCL.	Requires advanced notice in writing at least 10 days prior to any forest cutting, clearing, or grading activity to the Planning Director and residents of adjoining properties. [Circle 92, Line 545]	

FOREST CONSERVATION LAW DECISION TREE

For private development; Does not cover ag/govt/utility projects

Start here:

Does the law apply to you?
Answer "Yes" if one of the following situations applies:

- (1) Submitting a development or site plan (e.g. for a subdivision)
- (2) Lot size $\geq 40,000$ sq. ft. AND you need a sediment control permit (5,000 sq ft of land disturbance)
- (3) Your construction threatens a Champion Tree; Elrich amendments include specimen trees

YES, the law does apply to me

Do you qualify for a Level 1 Review?
Answer "Yes" if the application is for:

- A development or site plan clearing either:
 - 1) more than 5,000 sq. ft. of forest (Elrich amendments)
 - or
 - 2) more than 40,000 sq. ft. of forest (~1 acre) (Bill 37-07)
- any forest in a stream buffer
- any champion tree, Elrich amendments include specimen trees
- any forest in a Special Protection District

Yes, I qualify for a Level 1 Review

Level 1 Review under Elrich Amendments and Bill 37-07 Requirements
 (Full FCL review and mitigation required):

- **Submit a Natural Resource Inventory / Forest Stand Delineation**, showing the environmental (soil, wetlands, etc.) conditions on the property and location of all trees
- **Submit a Forest Conservation Plan** showing what trees will/won't be cut
- **Perform mitigation as required in the law.** This may include:
 - On site tree preservation
 - On-site replanting
 - Off-site replanting
 - Fee-in-lieu

Purpose of requirements:

- Slow the rate of forest loss in the county
- Incentivize on-site preservation of forest
- Provide for off-site mitigation

No, I qualify for a Level 2 Review

Requirements:

- **Submit a declaration of intent** that you qualify for the exemption and will not clear more forest for 5-7 years
- **Submit a Tree Inventory and Protection Plan** showing what trees you will/won't cut and how you will protect retained trees
- **NO replanting/mitigation required**

Purpose of requirements:

- Prove that you qualify for this level of review
- Ensure no forest beyond allowed amount will be cut or lost due to construction

NO, the law does not apply to me

Requirements: NONE

"Decision Tree" graphic courtesy of the Paconac Conservancy, with permission for Elrich office to edit. 3/13/08

Relative Sizes for Comparison of Forest Area

NFL Football field (not including end zones): 48,000 square feet

NHL hockey rink: 16,000 square feet

Olympic swimming pool: 13,500 square feet

NBA basketball court: 4,700 square feet

Relative Size information courtesy of the Potomac Conservancy