

Expedited Bill No. 53-10
Concerning: Forest Conservation -
Conforming Amendments
Revised: 11/30/2010 Draft No. 4
Introduced: October 26, 2010
Enacted: November 30, 2010
Executive: December 10, 2010
Effective: December 10, 2010
Sunset Date: None
Ch. 55, Laws of Mont. Co. 2010

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Planning Board

AN EXPEDITED ACT to:

- (1) reduce the threshold acreage of forest cut, cleared, or graded above which certain activities cannot be exempted from the Forest Conservation Law;
- (2) clarify how money in the Forest Conservation Fund can be used;
- (3) identify certain vegetation that must be retained unless the Planning Board or Planning Director authorizes a variance;
- (4) revise certain variance requirements; and
- (5) generally amend the County forest conservation law.

By amending

Montgomery County Code
Chapter 22A, Forest Conservation
Sections 22A-5, 22A-8, 22A-9, 22A-12, 22A-21, and 22A-27

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

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

1 **Sec. 1. Sections 22A-5, 22A-8, 22A-9, 22A-12, 22A-21, and 22A-27 are**
2 **amended as follows:**

3 **22A-5. Exemptions.**

4 The requirements of Article II do not apply to:

5 (a) an activity conducted on an existing single lot of any size that is
6 required to construct a dwelling house or accessory structure (such as
7 a pool, tennis court, or shed) intended for the use of the owner, if the
8 activity:

- 9 (1) does not require a special exception;
- 10 (2) does not result in the cutting, clearing, or grading of:
 - 11 (A) more than a total of [40,000] 20,000 square feet of forest;
 - 12 (B) any forest in a stream buffer,
 - 13 (C) any forest on property located in a special protection area
14 which must submit a water quality plan,
 - 15 (D) any specimen or champion tree, or
 - 16 (E) any trees or forest that are subject to a previously
17 approved forest conservation plan or tree save plan; and

18 * * *

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

- 23 (1) the only development located on the resulting lot is a single
24 family dwelling unit or an accessory structure (such as a pool,
25 tennis court, or shed); and
- 26 (2) development does not result in the cutting, clearing, or grading
27 of:

- 28 (A) more than a total of [40,000] 20,000 square feet of forest,
- 29 (B) any forest in a stream buffer,
- 30 (C) any forest on property located in a special protection area
- 31 which must submit a water quality plan,
- 32 (D) any specimen or champion tree, or
- 33 (E) any tree or forest that is subject to the requirements of a
- 34 previously approved forest conservation plan or tree save
- 35 plan;

* * *

37 (p) the construction of a public utility or highway in a utility right-of-way
38 not exempt under subsection (o), or a highway right-of-way not
39 exempt under subsection (e), if:

- 40 (1) the right-of-way existed before July 1, 1992;
- 41 (2) forest clearing will not exceed a total of [40,000] 20,000 square
- 42 feet and
- 43 (3) the construction will not result in the cutting, clearing, or
- 44 grading of:
 - 45 (A) any forest in a stream buffer,
 - 46 (B) any forest on property located in a special protection area
 - 47 which must submit a water quality plan,
 - 48 (C) any specimen or champion tree, or
 - 49 (D) any tree or forest that is subject to a previously approved
 - 50 forest conservation or tree save plan;

* * *

52 (s) (1) an activity occurring on a tract of land less than 1.5 acres with
53 no existing forest, or existing specimen or champion tree, and

54 the afforestation requirements would not exceed 10,000 square
 55 feet; or
 56 (2) an activity occurring on a tract less than 1 acre that will not
 57 result in the clearing of more than a total of [30,000] 20,000
 58 square feet of existing forest, or any existing specimen or
 59 champion tree, and reforestation requirements would not exceed
 60 10,000 square feet. Forest in any priority area on-site must be
 61 preserved; and

62 * * *

63 **22A-8. Utility lines.**

64 * * *

65 (b) Calculation Rules; Exemption.

66 (1) To determine the applicability of this Chapter under Section
 67 22A-4 to proposed activities within a public right-of-way or
 68 public utility easement, the calculation of land area must be
 69 based on the limits of disturbance as shown on the sediment
 70 control permit.

71 (2) A public right-of-way, public utility easement, or privately
 72 owned utility right- of-way is considered to be exempt under
 73 Section 22A-5(o) if the proposed activity and any future stages
 74 of the work on the utility line will not result in the cumulative
 75 cutting, clearing, or grading of more than [40,000] 20,000
 76 square feet of forest or the cutting, clearing, or grading of any
 77 specimen or champion tree, or trees or forest that are subject to
 78 a previously approved forest conservation or tree save plan.
 79 Any later stages of the work must be identified at the time of
 80 the initial sediment control permit application.

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22A-9. County Highway Projects.

(b) If the forest to be cut or cleared for a County highway project equals or exceed [40,000] 20,000 square feet, the constructing agency must reforest a suitable area at the rate of one acre of reforestation for each acre of forest cleared.

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

(b) *Retention*

* * *

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

(A) Any tree, shrub, or plant that is rare, threatened, or endangered under:

- (i) the Federal Endangered Species Act of 1973 in 16 U.S.C. §§1531 – 1544 and in 50 CFR 17;
- (ii) the Maryland Nongame and Endangered Species Conservation Act, Title 10, Subtitle 2A of the Natural Resources Article of the Maryland Code;
or
- (iii) COMAR 08.03.08;

(B) Any tree that is:

- (i) part of a historic site,

- 108 (ii) associated with a historic [[site]] structure, or
- 109 (iii) designated by the State or County as a national,
- 110 State, or County champion tree; or

111 (C) Any tree with a diameter, measured at 4.5 feet above the
 112 ground, of:

- 113 (i) 30 inches or more; or
- 114 (ii) 75% or more of the diameter, measured at 4.5 feet
 115 above ground, of the current State champion tree
 116 of that species.

117 * * *

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

119 * * *

120 (2) *Off-site afforestation and reforestation.* In addition to the use
 121 of other sites proposed by an applicant and approved by the
 122 County, off-site afforestation or reforestation may also include:

123 (A) Forest mitigation banks designated in advance by the
 124 County.

125 (B) Protection of existing off-site forest. Acquisition of an
 126 off-site protective easement for existing forested areas
 127 not currently protected in perpetuity is an acceptable
 128 mitigation technique instead of off-site afforestation or
 129 reforestation planting, but the forest cover protected must
 130 be 2 times the afforestation and reforestation
 131 requirements.

132 * * *

133 **22A-21. Variance.**

134 (a) *Written request.* An applicant may request in writing a variance from
135 this Chapter or any regulation adopted under it if the applicant shows
136 that enforcement would result in unwarranted hardship. A request for
137 a variance suspends the time requirements in Section 22A-11 until the
138 Planning Board or Planning Director acts on the request.

139 * * *

140 (e) *Approval procedures; Conditions.* The Planning Board [[or the
141 Planning Director for a Forest Conservation Plan associated with a
142 sediment control plan]] must find that the applicant has met all
143 requirements of this Section before granting a variance. However, the
144 Planning Director may grant a variance if the Director is authorized to
145 approve the forest conservation plan and the applicant meets all
146 requirements of this Section. The Board or Director may impose
147 appropriate conditions to promote the objectives of this Chapter and
148 protect the public interest.

149 * * *

150 **22A-27. Forest [conservation fund] Conservation Fund.**

151 There is a County [forest conservation fund] Forest Conservation Fund.
152 Money deposited into the [fund] Fund must be used in accordance with the adopted
153 County budget and [in accordance with the following] this Section:

154 (a) *In lieu fees.* Money deposited in the [forest conservation fund instead
155 of planting] Forest Conservation Fund must be spent on the
156 reforestation and afforestation for which the money is deposited,
157 including costs directly related to site identification, acquisition,
158 design, [and] preparation, or maintenance of existing forests, and
159 achieving urban canopy goals, and must not revert to the [general
160 fund] General Fund. The permanent preservation of priority forests,

161 including identification and acquisition of a site, may be substituted
162 for reforestation and afforestation at a rate of 2 acres of forest
163 preservation for each acre of planting required. Funds remaining after
164 all reforestation and afforestation requirements are satisfied may be
165 spent on any other tree conservation activity, including street tree
166 planting.

167 * * *

168 **Sec. 2. Expedited Effective Date**

169 The Council declares that this legislation is necessary for the immediate
170 protection of the public interest. This Act takes effect on the date when it becomes
171 law.

172 *Approved:*

173 *Nancy Floreen* 12/11/10
Nancy Floreen, President, County Council Date

174 *Approved:*

175 *Isiah Leggett* 12/10/10
Isiah Leggett, County Executive Date

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

177 *Linda M. Lauer* 12/10/10
Linda M. Lauer, Clerk of the Council Date