

MEMORANDUM

October 22, 2010

TO: County Council

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

SUBJECT: **Introduction:** Expedited Bill 53-10, Forest Conservation -- Conforming Amendments

Expedited Bill 53-10, Forest Conservation -- Conforming Amendments, sponsored by the Council President at the request of the Planning Board, is scheduled to be introduced on October 26, 2010. A public hearing is tentatively scheduled for November 23 at 1:30 p.m.

In 2009, State law was amended to tighten certain exemptions in the state forest conservation law. Bill 53-10 would conform County law to state law by amending County law to reduce the threshold acreage of forest cut, cleared, or graded above which certain activities cannot be exempted from the Forest Conservation Law, and clarify how money in the Forest Conservation Fund can be used.

In addition, current County law requires the Planning Board to approve certain forest conservation variances. The Planning Director approves the forest conservation plans which those variances are attached to. Sending those variances to the Planning Board creates unnecessary delays for property owners and clogs the Board's agenda. Bill 53-10 would amend County law to authorize the Planning Director to approve these variances.

The bill that the Planning Board transmitted to the Council would make numerous other changes to remove inconsistencies, provide clarity, and make implementing the law more efficient. To ensure that the Council can address the issues quickly, only the portions of the bill that would conform existing law to state law and authorize the Planning Director to approve a variance will be introduced on October 26.

This packet contains:

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Expedited Bill 53-10	1
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Expedited Bill No. 53-10
Concerning: Forest Conservation –
Conforming Amendments
Revised: 10/21/2010 Draft No. 1
Introduced: October 26, 2010
Expires: April 26, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

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) revise certain variance requirements; and
- (4) 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.

* * *

(e) *Standards for reforestation and afforestation.*

* * *

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

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

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

* * *

22A-21. Variance provisions.

(a) *Written request.* [A person] An applicant may request in writing a variance from this Chapter or any regulation adopted under it if the

109 person demonstrates that enforcement would result in unwarranted
110 hardship to the person. A request for a variance [waives] suspends the
111 time requirements in Section 22A-11 until the Planning Board, or
112 Planning Director, has acted on the request.

113 * * *

114 (c) *Referral to other agencies.* Before considering a variance, the
115 Planning Board must refer a copy of each request to the County
116 Arborist, Planning [Department] Director, and any other appropriate
117 [officials or agencies] agency for a written recommendation before
118 acting on the request. [Recommendations must be] If a
119 recommendation on the variance is not submitted to the Planning
120 Board within 30 days [from the receipt by the official or agency of the
121 request or] after the referral, the recommendation [should] must be
122 presumed to be favorable.

123 * * *

124 (e) *Approval procedures; Conditions.* The Planning Board [, or the
125 District Council on a development plan,] or the Planning Director for
126 a Forest Conservation Plan associated with a sediment control plan
127 must [make findings] find that the applicant has met all requirements
128 of this Section before granting a variance. Appropriate conditions
129 may be imposed to promote the objectives of this Chapter and protect
130 the public interest.

131 * * *

132 **22A-27. Forest [conservation fund] Conservation Fund.**

133 There is a County [forest conservation fund] Forest Conservation Fund.
134 Money deposited into the [fund] Fund must be used in accordance with the adopted
135 County budget and in accordance with the following:

136 (a) *In lieu fees.* Money deposited in the [forest conservation fund instead
 137 of planting] Forest Conservation Fund must be spent on the
 138 reforestation and afforestation for which the money is deposited,
 139 including costs directly related to site identification, acquisition,
 140 design, [and] preparation, maintenance of existing forests, and
 141 achieving urban canopy goals, and must not revert to the [general
 142 fund] General Fund. The permanent preservation of priority forests,
 143 including identification and acquisition of a site, may be substituted
 144 for reforestation and afforestation at a rate of 2 acres of forest
 145 preservation for each acre of planting required. Funds remaining after
 146 all reforestation and afforestation requirements are satisfied may be
 147 spent on any other tree conservation activity, including street tree
 148 planting.

149 * * *

150 **Sec. 2. Expedited Effective Date**

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

154 *Approved:*

155 _____
 Nancy Floreen, County Council Date

156 *Approved:*

157 _____
 Isiah Leggett, County Executive Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 53-10 Forest Conservation – Conforming Amendments

DESCRIPTION:	Expedited Bill 53-10 would reduce the threshold acreage of forest cut, cleared, or graded above which certain activities cannot be exempted from the Forest Conservation Law, clarify how money in the Forest Conservation Fund can be used, revise certain variance requirements, and generally amend the County forest conservation law.
PROBLEM:	In 2009, the State forest conservation law was amended to tighten certain exemptions to the forest conservation law. County law needs to be amended to conform to state law. Additionally, current County law requires the Planning Board, rather than the Planning Director, to approve certain forest conservation variances. The Planning Director approves the forest conservation plans which those variances are attached to. Sending those variances to the Planning Board creates unnecessary delays for property owners and clogs the Board's agenda.
GOALS AND OBJECTIVES:	To conform County law to state law and authorize the Planning Director to approve certain forest conservation variances.
COORDINATION:	County Council
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney (240) 777-7905 Amanda Mihill, Legislative Analyst (240) 777-7815
APPLICATION WITHIN MUNICIPALITIES:	To be determined.
PENALTIES:	See County Code §22A-16.

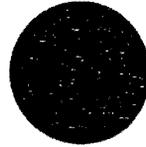
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MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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March 23, 2010

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RECEIVED
MONTGOMERY COUNTY
COUNCIL

The Honorable Nancy Floreen
President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Re: Planning Board Recommendation for revisions to the Forest Conservation Law and adopting State-mandated changes to local programs

Dear Ms. Floreen and Councilmembers:

On December 3, 2009, the Planning Board recommended transmitting revisions to the Forest Conservation Law (Chapter 22A), to the Council for introduction and review. The changes will make the law consistent with Senate Bill 666, which became effective on October 1, 2009. The bill reduces the amount of forest a person can remove and still be exempt from submitting a forest conservation plan. It also requires persons removing or cutting certain vegetation obtain a variance.

The Planning Board is also taking this opportunity to make changes that will remove inconsistencies, provide clarity, and make implementing the law more efficient. Unlike a previous Planning Board amendment, these proposed changes:

- do not increase the number of properties subject to the law
- do not increase retention or planting requirements
- do not extend the period for which planted trees must be maintained.

9

The Honorable Nancy Floreen

March 23, 2010

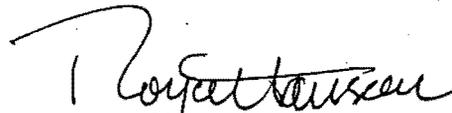
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The Planning Board amendment does incorporate the widespread agreement on clearly defining the submission requirements that was raised during the review of the previous bill.

Please introduce this proposed legislation on an expedited review basis to ensure consistency with the Senate's bill. The proposed legislation will provide costs savings by reducing submission requirements for those subject to the law but now not required to submit a forest conservation plan.. This proposed legislation will also reduce the amount of time and money spent by the Planning Department on review. The submission of these changes was delayed for approval of Bill 34-09 so as not to confuse the Planning Board's enforcement legislation with these changes.

The Planning Board and Planning staff are available to assist the Council in their review of the proposed legislation.

Sincerely,



Royce Hanson
Chairman

RH:MP:ss

cc: Planning Board
Rollin Stanley
Mark Pfefferle

Attachments



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

MCPB
Item #
December 3, 2009

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Mark Pfefferle
Acting-Chief, Environmental Planning
Forest Conservation Program Manager

DATE: November 24, 2009

SUBJECT: Forest Conservation Law Amendment

INTRODUCTION

The purpose of this memorandum is to introduce the amendments to the Montgomery County Forest Conservation law and provide an overview of the proposed changes.

BACKGROUND

In September 2007 the Planning Board forwarded a forest conservation amendment to the County Council. Bill 37-07 was discussed over numerous work sessions but died in the Transportation and Environment Committee before it could be forwarded to the full Council. That Bill proposed changes to the forest retention and planting requirements and increased the maintenance and management period for planted forests. The amendment introduced today does not propose changing the forest retention and planting requirements or the length of the maintenance and management period. Today's amendment incorporates elements of Bill 37-07 that received widespread support from groups that include the regulated community, environmental community, the County's Forest Advisory Committee, and Council staff.

On October 1, 2009 Maryland Senate Bill 666 became effective statewide. This Bill requires revisions all local government forest conservation programs for consistency with the state bill. The proposed amendment is to make the Montgomery County Forest Conservation Law consistent with Bill 666.

The proposed amendments introduced today are to provide consistency, clarity, and efficiency to the Montgomery County Forest Conservation law. Below are the major changes and the purposes of the changes.

Consistency

The proposed changes will make the Montgomery County Forest Conservation law consistent with Maryland Senate Bill 666. The table below highlights the key points of Bill 666 and where the amendments need to occur in the Forest Conservation law.

Senate Bill 666	Proposed Bill
DNR must develop a policy on “no net loss.”	No change required to County law.
Reduce applicability threshold on single lots.	Amend §22A-5. See line 256.
Reduce applicability threshold for child lots.	No change required to County law – not in 22A.
Remove waiver for area covered by paved surface.	No change required to County law – not in 22A.
Add “in perpetuity” to the offsite protective easement option.	Amend §22A-12. See line 1136.
Add language requiring the removal of certain trees and shrubs first obtain a variance.	Amend §22A-12. See line 1028-1052.
Change applicability for placing land in the forest conservation and management program.	No change required to County law – not in 22A
Change in-lieu fee.	No change required to County law – set by resolution.
Clarify how in-lieu fees can be spent	Amend 22A-27. See lines 1429-1432.

Clarity

During the numerous discussions on Bill 34-07, all interested parties agreed that using a 3 level approach for properties and activities subject to the forest conservation law was appropriate for it clarified the applicability and submission requirements. Today’s proposal re-introduces the 3 levels. The first level would require the applicant to submit a “Declaration of Intent”. The second level would require a tree inventory, tree protection plan, and a “Declaration of Intent”. The third level requires the submission of a Natural Resources Inventory/Forest Stand Delineation and a forest conservation plan.

The proposed amendment to the Forest Conservation law also clarifies ambiguous

language found throughout the existing law. The table below highlights the changes between the existing forest conservation law and the proposed amendment.

Proposed Bill	Sections Impacted
Add missing definitions: afforestation threshold, applicant, certified arborist, environmental buffer, medium density residential area, natural resources inventory, qualified professional, stream buffer, tree expert, and tree protection plan.	Amend §22A-3. See lines 32-43, lines 56-59, lines 90-97, lines 119-120, lines 125-131, and lines 143-145.
Clarify the applicability section.	Amend §22A-4. See lines 178-192.
Identifies the types of submissions needed for each review level.	Amend §22A-4. See lines 193-282.
Reduces the amount of forest removed for highway projects from 40,000 square feet to 20,000 square feet.	Amend §22A-9. See line 571.
Identifies specific submission requirements.	Amend §22A-10. See lines 639-746.
Identifies planting preferences.	Amend §22A-12. See lines 983-996.
Clarifies that in-lieu fee money must be paid prior to any land disturbing activities.	Amend §22A-12. See lines 1230-1232.
Requires that maintenance and management agreements include the control of non-native and invasive plants.	Amend §22A-12. See line 1252.
Allows for the financial securities to be collected for tree save plans.	Amend §22A-12. See lines 1267-1268.
Clarifies what the financial security amount should equal and what the estimate needs to include.	Amend §22A-12. See lines 1275-1283.
Adds an appeal section for tree inventories and tree protection plans approved by the Planning Director.	Amend §22A-20. See lines 1370-1392.
Permits Planning Director approval of certain variances.	Amend §22A-12. See lines 1396-1419.

Efficiency

The proposed amendment provides efficiency to the regulated community and the Planning Department. Clearly identifying the submission requirements will save time and money for applicants to prepare and submit applications. Also, under the existing

forest conservation law all variances must be approved by the Planning Board. Some plans do not require Planning Board approval, but the step that requires Planning Board approval of all variances creates unnecessary delays when the forest conservation plan is approved by the Planning Director. Therefore, this amendment would allow the Planning Director to approve certain variances.

Changes to Bill 34-09

The proposed forest conservation law amendment does not address changes proposed by Bill 34-09 except where changes are necessary. This includes modifications to the variance section and to the section on plan appeals. The Planning Board forwarded the changes to all Commission enforcement actions, to the County Council, prior to the Maryland Department of Natural Resources providing guidance on how Senate Bill 666 should be implemented. Therefore, when Bill 34-09 was submitted it did not include the clarifications needed to the variance provision. The following changes are proposed to Bill 34-09.

Proposed Bill	Sections Impacted
Adds an appeal section for tree inventories and tree protection plans approved by the Planning Director.	Amend §22A-20. See lines 1370-1392.
Permits Planning Director approval of certain variances.	Amend §22A-12. See lines 1396-1419.

RECOMMENDATION

We recommend that the Planning Board vote to adopt the amendments to the Forest Conservation law for transmittal to the County Council for further action.