

Expedited Bill No. 25-14
Concerning: Forest Conservation --
Amendments
Revised: 7/23/14 Draft No. 2
Introduced: May 6, 2014
Enacted: July 29, 2014
Executive: _____
Effective: _____
Sunset Date: None
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) exempt certain stream restoration projects from certain requirements of the forest conservation law;
- (2) exempt certain maintenance or retrofitting of stormwater management structures from certain requirements of the forest conservation law; and
- (3) generally amend the forest conservation law.

By amending

Montgomery County Code
Chapter 22A, Forest Conservation -- Trees
Sections 22A-3, 22A-4, 22A-5, 22A-11, 22A-12, 22A-20

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:

28 **22A-4. Applicability**

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

31 (a) a person required by law to obtain an ~~[[initial]]~~ approval or amendment
32 to a development plan [approval], diagrammatic plan [approval], project
33 plan [approval], preliminary plan of subdivision [approval], or site plan
34 [approval];

35 * * *

36 **22A-5. Exemptions.**

37 The requirements of Article II do not apply to:

38 * * *

- 39 (t) a modification to an existing non-residential developed property if:
 - 40 (1) no more than [5000] 5,000 square feet of forest [will be cleared]
41 is ever cleared ~~[[in]]~~ at one ~~[[event]]~~ time or cumulatively ~~[[over~~
42 multiple events from the first exemption]] after an exemption is
43 issued;
 - 44 (2) the modification does not [affect] result in the cutting, clearing, or
45 grading of any forest in a stream buffer or located on property in
46 a special protection area which must submit a water quality plan;
47 [and]
 - 48 (3) the modification does not require approval of a [new] preliminary
49 plan of subdivision [plan.]; and
 - 50 (4) the modification does not increase the developed area by more
51 than 50%, and the existing development is retained;
- 52 (u) maintaining or retrofitting an existing stormwater management structure
53 if:

54 (1) the clearing of vegetation or removal and trimming of trees is for
55 the maintenance or retrofitting of the structure and in the original
56 limits of disturbance for construction of the existing facility, or
57 within any maintenance easement for access to the facility; and

58 (2) the tract is not included in a previously approved forest
59 conservation plan; [[and]]

60 (v) a stream restoration project for which the applicant for a sediment
61 control permit has:

62 (1) executed a binding maintenance agreement of at least 5 years
63 with the affected property owner or owners;

64 (2) agreed to replace every tree removed and plant the new trees
65 [[in]] before the end of the first planting season after final
66 stabilization; and

67 (3) confirmed that the tract is not included in a previously approved
68 forest conservation plan[.]; and

69 (w) cutting or clearing any tree by an existing airport operating with all
70 applicable permits to comply with applicable provisions of any federal
71 law or regulation governing the obstruction of navigable airspace if the
72 Federal Aviation Administration has determined that the tree creates a
73 hazard to aviation.

74 **22A-11. Application, review, and approval procedures.**

75 * * *

76 (b) *Project requiring development plan, project plan, preliminary plan of*
77 *subdivision, or site plan approval.*

78 * * *

79 (2) *Forest conservation plan.*

80 (A) *Application.* [Upon notification] After being notified that
 81 the forest stand delineation is complete and correct, the
 82 applicant must submit a forest conservation plan to the
 83 Planning Director. If the development proposal will
 84 require more than one of the approvals subject to this
 85 subsection, the applicant must submit a preliminary forest
 86 conservation plan to the Planning Director in conjunction
 87 with the first approval and a final forest conservation plan
 88 in conjunction with the last approval. If only one approval
 89 subject to this subsection is required, an applicant[, with
 90 the approval of the Planning Board, may] must submit a
 91 preliminary forest conservation plan at the time of the
 92 development [approval] application and a final forest
 93 conservation plan before [issuance of] a sediment control
 94 permit is issued for the tract, but no later than a record plat
 95 is submitted.

96 * * *

97 (C) [*Condition of approval*] *Approval.* The Planning Board
 98 must review and act on the forest conservation plan [will
 99 be reviewed by the Planning Board] concurrently with the
 100 development plan, project plan, preliminary plan of
 101 subdivision or site plan, as appropriate. [The] Compliance
 102 with the preliminary forest conservation plan, as [may be]
 103 amended by the Board, must be made a condition of any
 104 approval of the first applicable development application.
 105 Compliance with the final forest conservation plan, as
 106 amended by the Board, must be made a condition of any

107 approval of the last development application. For a
108 development plan, a Planning Board recommendation to
109 the District Council on the preliminary forest conservation
110 plan must be made under Section 59-D-1.4. A final forest
111 conservation plan must be approved by the Planning Board
112 or Planning Director, as appropriate, before the Planning
113 Board approves a record plat.

114 * * *

115 (d) *Project requiring a sediment control permit only.*

116 * * *

117 (3) *Issuance of sediment control permit.* A sediment control permit
118 must not be issued to a person who must comply with this Article
119 until[:

120 (A)] a final forest conservation plan, if required, is approved[;
121 and

122 (B) any financial security instrument required under this
123 Chapter is provided].

124 * * *

125 **22A-12. Retention, afforestation, and reforestation requirements.**

126 * * *

127 (g) *In lieu fee.*

128 (1) *General.* If a person satisfactorily demonstrates that the
129 requirements for reforestation or afforestation on-site or off-site
130 cannot be reasonably accomplished, the person must contribute
131 money to the forest conservation fund at a rate specified [by the
132 County Council] by law or Council resolution, but not less than
133 the rate required under Section 5-1610 of the Natural Resources

134 Article of the Maryland Code. [The requirement to contribute
 135 money must be met within 90 days after development project
 136 completion.] Any in lieu fee payment must be made before any
 137 land disturbing activity, as defined in Chapter 19, occurs on a
 138 section of the tract subject to the forest conservation plan.

139 * * *

140 (i) *Financial Security.*

141 * * *

142 (4) *Amount required.*

143 (A) If [the] financial security is required under subparagraph
 144 (1)(A) [of this subsection], the security instrument must be
 145 in an amount equal to the estimated cost of afforestation,
 146 reforestation, and maintenance applicable to the section of
 147 the tract subject to the land disturbing activity. If the
 148 applicant sells an individual lot before providing the
 149 required financial security, the Planning Director may
 150 allow the new lot owner to provide a financial security that
 151 applies to the requirements specific to the development of
 152 that lot. The instrument must include a provision for
 153 adjusting the amount based on actual costs. The financial
 154 security instrument must be submitted to the Planning
 155 Director before any land disturbing activity occurs on the
 156 tract. The Planning Director must notify the obligee of any
 157 proposed adjustment and provide the opportunity for an
 158 informal conference.

159 * * *

160 **22A-20. Hearings and appeals.**

161 * * *

162 (b) *Forest conservation plans and variances approved by the Planning*
 163 *Board.* A person aggrieved by the decision of the Planning Board on
 164 the approval, denial, or modification of a forest conservation plan
 165 (including a request for a variance) may [[appeal the final administrative
 166 action on the development approval under the Maryland Rules of
 167 Procedure and any other law applicable to the proceeding]] seek judicial
 168 review of the decision in the Circuit Court under the applicable
 169 Maryland Rules of Procedure governing judicial review of
 170 administrative agency decisions. A party aggrieved by the decision of
 171 the Circuit Court may appeal that decision to the Court of Special
 172 Appeals.

173 (c) *Forest stand delineations, exemptions from Article II, and forest*
 174 *conservation plans [approved] reviewed by the Planning Director.*

175 (1) *Appeal to Planning Board.* After the Planning Director issues a
 176 written decision on a natural resource inventory/forest stand
 177 delineation, exemption from Article II, or forest conservation
 178 plan, an applicant may appeal the decision to the Planning Board
 179 within 30 days.

180 (2) *Hearing; decision.* The Planning Board must hold a de novo
 181 hearing on the appeal. The Board must adopt a written resolution
 182 explaining its decision. For purposes of judicial review, the
 183 decision of the Planning Board is the final agency action.

184 (3) *Appeal.* After receiving the Planning Board's decision, an
 185 applicant may [[appeal the decision within 30 days under the
 186 Maryland Rules of Procedure]] seek judicial review of the

187 decision in the Circuit Court under the applicable Maryland Rules
188 of Procedure governing judicial review of administrative agency
189 decisions. A party aggrieved by the decision of the Circuit Court
190 may appeal that decision to the Court of Special Appeals.

191 (d) Administrative enforcement process.

192 * * *

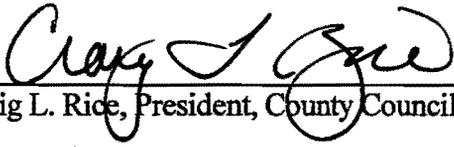
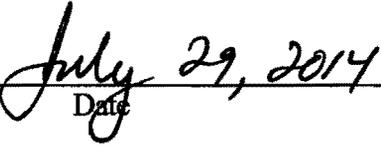
193 (4) *Appeal.* After receiving the Planning Board's decision, an
194 aggrieved person may [[appeal the Board's action within 30 days
195 under the Maryland Rules of Procedure]] seek judicial review of
196 the decision in the Circuit Court under the applicable Maryland
197 Rules of Procedure governing judicial review of administrative
198 agency decisions. A party aggrieved by the decision of the
199 Circuit Court may appeal that decision to the Court of Special
200 Appeals.

201 * * *

202 **Sec. 2. Expedited Effective Date.**

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

206 *Approved:*

207  

Craig L. Rice, President, County Council Date

208 *Approved:*

209

Isiah Leggett, County Executive Date

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

211

Linda M. Lauer, Clerk of the Council Date