

Action

November 24, 2010

MEMORANDUM

TO: County Council

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

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

Transportation, Infrastructure, Energy & Environment Committee recommendation (2-0):
enact Bill 53-10 with a technical amendment.

Expedited Bill 53-10, Forest Conservation – Conforming Amendments, sponsored by the Council President at the request of the Planning Board, was introduced on October 26, 2010. A Transportation, Infrastructure, Energy and Environment Committee worksession was held on November 22 and a public hearing was held on November 23.

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; and
- identify certain vegetation that must be retained unless the Planning Board or Planning Director authorizes a variance; and revise certain variance requirements.

The bill draft that the Planning Board originally 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 were introduced.

The attached bill is a corrected version of the introduced bill. The bill introduced on October 26 did not incorporate changes already made to §22A-21 in Expedited Bill 34-09, Forest Conservation – Enforcement, which the Council enacted, and the Executive signed, earlier this year (©6-7, lines 133-146).

Issues/Committee Discussion

1. ***Should the forest conservation law conform to state law?*** In 2009, the State forest conservation law was amended to tighten certain exemptions. 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 from 40,000 acres to 20,000 acres for existing single lots (©2, line 11), certain minor subdivisions (©3, lines 28), and certain small lots (©4, lines 57);
- identify certain vegetation that must be retained unless the Planning Board or Planning Director authorizes a variance (©5-6, lines 92-117); and
- specify that money deposited in the Forest Conservation Fund can be used to maintain existing forests and achieve urban canopy goals (©7, lines 155-156).

Committee recommendation (2-0, Councilmember Leventhal absent): conform county law to state law.

2. ***Should the threshold acreage requirements in the forest conservation law be consistent?*** Although state law requires only that 3 changes be made to the acreage threshold as described above, for consistency through the forest conservation law, Bill 53-10 would reduce the acreage of forest cut, cleared, or graded above which certain activities cannot be exempted from the Forest Conservation Law from 40,000 acres to 20,000 acres for construction in a utility right-of-way (©3, line 41), public right-of-way, public utility easement, or privately owned utility right-of-way (©4, line 75), and County highway projects (©5, line 85). **Committee recommendation** (2-0, Councilmember Leventhal absent): make these threshold acreage requirements consistent.

3. ***Should the Planning Director have the authority to approve certain forest conservation variances?*** Current County law requires the Planning Board to approve forest conservation variances. However, there is a subset of forest conservation plans – those that are associated with a sediment control plan – that the Planning Director approves. 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 (©7, lines 140-145). **Committee recommendation** (2-0, Councilmember Leventhal absent): allow the Planning Director to approve these variances.

At the public hearing, there was confusion about whether the Planning Director could approve variances even if the Planning Board approves the forest conservation plan. To clarify the intent, **Council staff recommends** the following amendment to replace ©7, lines 140-145:

- (e) *Approval procedures; Conditions.* The Planning Board [[or the Planning Director for a Forest Conservation Plan associated with a sediment control plan]] must find that the applicant has met all requirements of this Section before granting a variance. However, the Planning Director may grant a variance if the Director is authorized to approve the forest conservation plan and the applicant meets all requirements of this Section. The Board or Director may impose appropriate

conditions to promote the objectives of this Chapter and protect the public interest.

4. *Should Bill 53-10 be amended to further enhance or clarify forest and tree protection?*

Several speakers urged that the current forest conservation law should be revised to provide greater protection for forests and trees (see ©28-33). Additionally, the Montgomery Soil Conservation District urged the Council to make certain changes to the forest conservation law that impact agricultural practices (see ©34). Council staff understands that the Executive will transmit a comprehensive set of revisions to the forest conservation law in the next few months. Although we understand the concerns raised, Council staff recommends that these concerns be addressed during the comprehensive revision, not this limited bill.

Committee recommendation

The Committee (2-0, Councilmember Leventhal absent) recommended approval of Bill 53-10 with one technical amendment. To conform with state law, Bill 53-10 would require any tree that is part of a historic site, associated with a historic site, or designated by the State or County as a national, State, or County champion tree to be left in an undisturbed condition unless the Planning Board or Planning Director approve a variance (©5-6, lines 106-110). To mirror the state law language, the Committee recommended changing line 108 to read “associated with a historic structure”.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 53-10
Concerning: Forest Conservation –
Conforming Amendments
Revised: 11/24/2010 Draft No. 3
Introduced: October 26, 2010
Expires: April 26, 2010
Enacted: _____
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) 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;

36 * * *

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;

51 * * *

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. The Board or
 144 Director may impose appropriate conditions to promote the objectives
 145 of this Chapter and protect the public interest.

146 * * *

147 **22A-27. Forest [conservation fund] Conservation Fund.**

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

151 (a) *In lieu fees.* Money deposited in the [forest conservation fund instead
 152 of planting] Forest Conservation Fund must be spent on the
 153 reforestation and afforestation for which the money is deposited,
 154 including costs directly related to site identification, acquisition,
 155 design, [and] preparation, or maintenance of existing forests, and
 156 achieving urban canopy goals, and must not revert to the [general
 157 fund] General Fund. The permanent preservation of priority forests,
 158 including identification and acquisition of a site, may be substituted
 159 for reforestation and afforestation at a rate of 2 acres of forest
 160 preservation for each acre of planting required. Funds remaining after

161 all reforestation and afforestation requirements are satisfied may be
162 spent on any other tree conservation activity, including street tree
163 planting.

164 * * *

165 **Sec. 2. Expedited Effective Date**

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

169 *Approved:*

170 _____
Nancy Floreen, County Council Date

171 *Approved:*

172 _____
Isiah Leggett, County Executive Date

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

174 _____
Linda M. Lauer, Clerk of the Council 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.

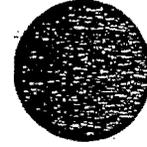
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MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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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.

10

The Honorable Nancy Floreen

March 23, 2010

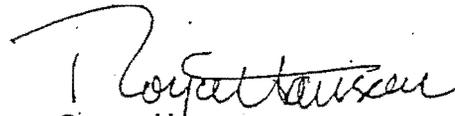
Page 2

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.

CHAPTER 298

(Senate Bill 666)

AN ACT concerning

Natural Resources - No Net Loss of Forest Policy - Forest Conservation Act

FOR the purpose of ~~reducing the threshold acreage of land in a proposed subdivision plan above which the Forest Conservation Act applies; reducing the threshold acreage of forest cut, cleared, or graded above which certain activities no longer qualify as exemptions to the Forest Conservation Act; repealing certain exemptions from the requirements of the Forest Conservation Act for cutting or clearing trees in a public utility right of way; limiting a certain exemption from the requirements of the Forest Conservation Act for intrafamily transfers; repealing the authority of a local jurisdiction to waive the requirements of the Forest Conservation Act for certain previously developed and paved areas; requiring the Public Service Commission to ensure compliance with certain requirements when reviewing an application for a certificate of public convenience and necessity;~~ authorizing the acquisition of an off-site protective easement for temporarily protected forested areas as a mitigation technique to meet afforestation or reforestation requirements; altering the standard that a person is required to meet to determine whether certain vegetation and areas of land may be disturbed; authorizing the owner of certain preserved forestland to place the forestland into the Forest Conservation and Management Program or under an approved forest management plan; altering the fee-in-lieu contribution to State or local forest conservation funds that is required under certain circumstances; altering the authorized uses of State and local forest conservation funds; ~~requiring the Department of Natural Resources to develop and implement a no net loss of forest policy by a certain date, to adopt certain regulations and propose certain legislation to achieve this goal, and to achieve this goal without reducing the acreage of a certain land use in the State; requiring the Department of Natural Resources to submit a report to the General Assembly annually after a certain date on its progress in developing and implementing a no net loss of forest policy in the State~~ requiring the Department of Natural Resources to cooperate with certain groups to develop a certain definition and policy; requiring the Department to submit a certain report on or before a certain date; ~~declaring the intent of the General Assembly;~~ making certain stylistic changes; making a technical correction; and generally relating to the Forest Conservation Act and the development and implementation of a no net loss of forest policy.

BY adding to
 Article - Natural Resources
 Section 5-104

Annotated Code of Maryland
(2005 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,

Article – Natural Resources

Section 5-1602, ~~5-1603(e)(3)~~ ~~5-1603(c)(3)~~, ~~(f)~~ and ~~(g)~~, ~~5-1604(a)~~, 5-1607(b)(2),
(c), and (f), and 5-1610

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

~~BY repealing~~

~~Article – Natural Resources~~

~~Section 5-1603(f)~~

~~Annotated Code of Maryland~~

~~(2005 Replacement Volume and 2008 Supplement)~~

BY repealing and reenacting, without amendments,

Article – Natural Resources

Section ~~5-1603(f) and (g)~~, ~~5-1604(a)~~, 5-1607(e), and 5-1611

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Natural Resources

5-104.

~~(A) THE DEPARTMENT SHALL:~~

~~(1) DEVELOP AND IMPLEMENT A NO NET LOSS OF FOREST POLICY BY DECEMBER 31, 2012;~~

~~(2) ADOPT ANY REGULATIONS AND PROPOSE ANY LEGISLATION NECESSARY TO ACHIEVE THIS GOAL; AND~~

~~(3) ACHIEVE THIS GOAL WITHOUT REDUCING THE ACREAGE OF PRIME PRODUCTIVE AGRICULTURAL LAND IN THE STATE.~~

~~(B) ON OR BEFORE DECEMBER 1, 2011 AND EACH YEAR THEREAFTER, THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE PROGRESS OF THE DEPARTMENT IN DEVELOPING AND IMPLEMENTING A POLICY OF NO NET LOSS OF FOREST IN THE STATE.~~

(A) THE DEPARTMENT SHALL COOPERATE WITH FORESTRY-RELATED STAKEHOLDER GROUPS TO:

(1) DETERMINE THE MEANING OF NO NET LOSS OF FORESTS FOREST FOR THE PURPOSES OF ANY STATE POLICY; AND

(2) DEVELOP PROPOSALS FOR THE CREATION OF A POLICY OF NO NET LOSS OF FOREST IN THE STATE.

(B) ON OR BEFORE DECEMBER 1, 2011, THE DEPARTMENT, IN CONSULTATION WITH THE FORESTRY-RELATED STAKEHOLDER GROUPS, SHALL REPORT TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE AND THE HOUSE ENVIRONMENTAL MATTERS COMMITTEE, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON PROPOSALS FOR THE DEVELOPMENT OF STATUTORY, BUDGETARY, AND REGULATORY POLICIES TO ACHIEVE NO NET LOSS OF FORESTS FOREST IN THE STATE.

5-1602.

(a) Except as provided in subsection (b) of this section, this subtitle shall apply to any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government on areas ~~40,000~~ ~~20,000~~ square feet or greater.

(b) The provisions of this subtitle do not apply to:

(1) Any construction activity that is subject to § 5-103 of this title;

(2) Any cutting or clearing of forest in areas governed by the Chesapeake Bay Critical Area Protection Law (Title 8, Subtitle 18 of this article);

(3) Commercial logging and timber harvesting operations, including any harvesting conducted under the forest conservation and management program under § 8-211 of the Tax - Property Article:

(i) That were completed before July 1, 1991; or

(ii) That were completed on or after July 1, 1991 on property that is not the subject of an application for a grading permit for development within 5 years after the logging or harvesting operation. However, after this 5-year period, the property shall be subject to this subtitle;

(4) Any agricultural activity that does not result in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices;

(5) ~~¶~~The cutting or clearing of public utility rights-of-way or land for electric generating stations licensed pursuant to § 7-204, § 7-205, § 7-207, or § 7-208 of the Public Utility Companies Article, provided that:

(i) Any required certificates of public convenience and necessity have been issued in accordance with § 5-1603(f) of this subtitle; and

(ii) The cutting or clearing of the forest is conducted so as to minimize the loss of forest;

(6) Any routine maintenance of public utility rights-of-way;

(7)~~¶~~ Any activity conducted on a single lot of any size or a linear project provided that:

(i) The activity does not result in the cutting, clearing, or grading of more than ~~[40,000]~~ **20,000** square feet of forest; and

(ii) The activity on the lot or linear project will not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan prepared under this subtitle;

~~¶(8)~~ ~~(6)~~ Any strip or deep mining of coal regulated under Title 15, Subtitle 5 or 6 of the Environment Article and any noncoal surface mining regulated under Title 15, Subtitle 8 of the Environment Article;

~~¶(9)~~ ~~(7)~~ Any activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child [or grandchild] of the owner, if the activity does not result in the cutting, clearing, or grading of more than ~~[40,000]~~ **20,000** square feet of forest;

~~¶(10)~~ ~~(8)~~ A county that has and maintains 200,000 acres or more of its land area in forest cover; and

~~¶(11)~~ ~~(9)~~ The cutting or clearing of trees to comply with the requirements of 14 C.F.R. § 77.25 relating to objects affecting navigable airspace, provided that the Federal Aviation Administration has determined that the trees are a hazard to aviation.

(c) For an application for subdivision or sediment and erosion control or grading for a site with more than 50% of the net tract area governed by Title 8,

Subtitle 18 of this article, the Department or local authority may allow an applicant to extend critical area forest protection measures [in lieu] **INSTEAD** of meeting the requirements of this subtitle.

5-1603.

(c) (3) (i) A local authority shall review and amend, as appropriate, all current local ordinances, policies and procedures that are inconsistent with the intent and requirements of this subtitle such as parking, road width, setback, curb and gutter, grading, and sidewalk requirements.

(ii) A local forest conservation program, when approved by the Department, may[:

1. Allow] **ALLOW** clustering and other innovative land use techniques that protect and establish forests where open space is preserved, sensitive areas are protected, and development is physically concentrated[; and

2. Waive the requirements of this subtitle for an area that was previously developed and is covered by paved surface at the time of application for subdivision plan, grading, or sediment control permit approval].

~~[(f)~~ After December 31, 1992, the Public Service Commission shall give due consideration to the need to minimize the loss of forest and the provisions for afforestation and reforestation set forth in this subtitle together with all applicable electrical safety codes, when reviewing applications for a certificate of public convenience and necessity issued pursuant to § 7-204, § 7-205, § 7-207, or § 7-208 of the Public Utility Companies Article.]

~~[(g)]~~ ~~(F)~~ A local authority or the Department in its administration of a State forest conservation program in jurisdictions which do not have an approved local program in effect may establish reasonable and appropriate procedures for the recovery of all costs incurred in the development, implementation, administration, and enforcement of the local forest conservation program or the State forest conservation program for jurisdictions without an approved forest conservation program.

5-1604.

(a) Except as provided in subsection (b)(2) and (3) of this section, after December 31, 1992, or after the date on which a local program has been adopted under § 5-1603 of this subtitle, whichever occurs first, a person making application for subdivision or grading or sediment control permits on areas ~~greater than 40,000~~ **20,000** square feet ~~OR GREATER~~ shall submit a forest stand delineation for the entire site prepared by a licensed forester, licensed landscape architect, or other qualified professionals that may be approved by the State or a local authority in the manner required by the approved program.

5-1607.

(b) Standards for meeting afforestation or reforestation requirements shall be established by the State or local program using one or more of the following methods:

(2) The use of street trees in a municipal corporation with a tree management plan, in an existing population center designated in a county master plan that has been adopted to conform with the Economic Growth, Resource Protection, and Planning Act of 1992, or in any other designated area approved by the Department as part of a local program, under criteria established by the local program, subject to the approval of the Department, using:

(i) Street trees as a permissible step in the priority sequence for afforestation or reforestation and, based on a mature canopy coverage, may grant full credit as a mitigation technique; and

(ii) Acquisition as a mitigation technique of an off-site protective easement for existing forested areas not currently protected IN PERPETUITY, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest cover protected.

(c) ~~(1) TREES, SHRUBS, AND PLANTS LOCATED IN SENSITIVE AREAS INCLUDING 100-YEAR FLOODPLAINS, INTERMITTENT AND PERENNIAL STREAMS AND THEIR BUFFERS, COASTAL BAYS AND THEIR BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS SHALL BE:~~

~~(i) CONSIDERED THE FOLLOWING TREES, SHRUBS, PLANTS, AND SPECIFIC AREAS SHALL BE CONSIDERED PRIORITY FOR RETENTION AND PROTECTION;~~

~~(ii) LEFT, AND THEY SHALL BE LEFT IN AN UNDISTURBED CONDITION UNLESS THE APPLICANT HAS DEMONSTRATED, TO THE SATISFACTION OF THE STATE OR LOCAL AUTHORITY, THAT REASONABLE EFFORTS HAVE BEEN MADE TO PROTECT THEM AND THE PLAN CANNOT REASONABLY BE ALTERED:~~

~~(1) TREES, SHRUBS, AND PLANTS LOCATED IN SENSITIVE AREAS INCLUDING 100-YEAR FLOODPLAINS, INTERMITTENT AND PERENNIAL STREAMS AND THEIR BUFFERS, COASTAL BAYS AND THEIR BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS; AND~~

(II) CONTIGUOUS FOREST THAT CONNECTS THE LARGEST UNDEVELOPED OR MOST VEGETATED TRACTS OF LAND WITHIN AND ADJACENT TO THE SITE.

(2) The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the State or local authority, that [reasonable efforts have been made to protect them and the plan cannot reasonably be altered] **THE APPLICANT QUALIFIES FOR A VARIANCE UNDER § 5-1611 OF THIS SUBTITLE:**

~~(1) Trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes, and critical habitats;~~

~~(2) (I) Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;~~

~~(3) (II) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the Department;~~

~~(4) (III) (II) Trees that are part of a historic site or associated with a historic structure or designated by the Department or local authority as a national, State, or local Champion Tree; and~~

~~(5) (IV) (III) Trees having a diameter measured at 4.5 feet above the ground of:~~

~~(i) 1. 30 inches; or~~

~~(ii) 2. 75% of the diameter, measured at 4.5 feet above the ground, of the current State Champion Tree of that species as designated by the Department.~~

(e) (1) As part of the development of a forest conservation program, the State or local government shall develop provisions for:

(i) Preservation of areas described in subsections (c) and (d)(1) and (3) of this section;

(ii) Retention as forest of all land forested, afforested, or reforested under this subtitle; and

(iii) Limitation of uses of forest to those that are not inconsistent with forest conservation, such as recreational activities and forest management under subsection (f) of this section.

(2) The provisions required in paragraph (1) of this subsection may include protective agreements for areas of forest conservation, including conservation easements, deed restrictions, and covenants.

(f) [Except for land that is preserved under subsection (e) of this section, an] AN owner may place land that is forested, afforested, or reforested under this subtitle in the forest conservation and management program under § 8-211 et seq. of the Tax – Property Article or in a forest management plan prepared by a licensed forester and approved by the local authority or the State. Reforestation shall be required when the final regeneration harvest is complete or if determined to be necessary due to the lack of adequate natural regeneration.

5-1610.

(a) In this section, “Fund” means the Forest Conservation Fund.

(b) There is a Forest Conservation Fund in the Department.

(c) Except as provided in subsection (h) of this section, if any person subject to this subtitle demonstrates to the satisfaction of the appropriate State or local authority that the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person shall contribute money [at a rate of 10 cents per square foot of the area of required planting] to the Fund:

(1) UNTIL SEPTEMBER 30, 2014, AT A RATE OF 30 CENTS PER SQUARE FOOT OF THE AREA OF REQUIRED PLANTING; AND

(2) AFTER SEPTEMBER 30, 2014, AT A RATE ADJUSTED FOR INFLATION AS DETERMINED BY THE DEPARTMENT ANNUALLY BY REGULATION.

(d) Money collected by the State or a local authority under § 5-1608(c) or § 5-1612 of this subtitle for noncompliance with this subtitle or regulations adopted under this subtitle or for noncompliance with a forest conservation plan or the associated 2-year management agreement shall be deposited in the Fund.

(e) (1) The Department shall accomplish the reforestation or afforestation for which the money is deposited within 2 years or 3 growing seasons, as appropriate, after receipt of the money.

(2) Money deposited in the Fund under subsection (c) of this section shall remain in the Fund for a period of 2 years or 3 growing seasons, and at the end of

that time period, any portion that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

(f) (1) (i) Money deposited in the Fund under subsection (c) of this section may only be spent on reforestation and afforestation, including site identification, acquisition, and preparation, **MAINTENANCE OF EXISTING FORESTS, AND ACHIEVING URBAN CANOPY GOALS**, and may not revert to the General Fund of the State.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation or afforestation requirement under this subsection shall occur in the county and watershed in which the project is located.

(ii) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the State in which the project is located.

(iii) If the reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then the reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the Department. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

(g) Money deposited in the Fund under subsection (d) of this section may be used by the Department for the purpose of implementing this subtitle.

(h) (1) In lieu of a State Forest Conservation Fund, any local authority with an approved forest conservation program may establish a forest conservation fund, to be administered by the local authority, to allow a payment by any person who has demonstrated to the satisfaction of the local authority that the requirements for reforestation and afforestation on-site and off-site cannot be reasonably accomplished.

(2) The rate shall be [10 cents per square foot of the area required to be replanted] **THE SAME AS THE RATE ESTABLISHED FOR THE STATE FOREST CONSERVATION FUND UNDER SUBSECTION (C) OF THIS SECTION.**

(i) Money deposited in the local forest conservation fund under subsection (h) of this section shall remain in the fund for a period of 2 years or 3 growing seasons. At the end of that time period, any portion that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

(j) (1) Money deposited in the local forest conservation fund under subsection (h) of this section may only be spent on reforestation and afforestation, including the costs directly related to site identification, acquisition, prepurchase, and preparation, **MAINTENANCE OF EXISTING FORESTS, AND ACHIEVING URBAN CANOPY GOALS**, and may not revert to any other local general fund.

(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation or afforestation requirement under this subsection shall occur in the county and watershed in which the project is located.

(ii) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the State in which the project is located.

(iii) If the reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then the reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the local forest conservation program. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

(k) Money collected by the local authority under § 5-1608(c) of this subtitle for noncompliance with this subtitle or regulations or ordinances adopted under this subtitle for noncompliance with a forest conservation plan or the associated 2-year management agreement shall be deposited in the local fund. The rate shall be 30 cents per square foot of the area found to be in noncompliance with the required forest conservation.

(l) Money deposited in a local forest conservation fund under subsection (k) of this section may be used by the local authority for purposes related to implementing this subtitle.

5-1611.

(a) In the preparation of the State or local forest conservation programs, the State and local authorities shall provide for the granting of variances to the

requirements of this subtitle, where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an applicant.

(b) Variance procedures adopted under this section shall:

(1) Be designed in a manner consistent with the spirit and intent of this subtitle; and

(2) Assure that the granting of a variance will not adversely affect water quality.

~~SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Public Service Commission allow a public utility company to recover the actual costs incurred in complying with the Forest Conservation Act.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.~~

Approved by the Governor, May 7, 2009.

Mihill, Amanda

From: Raquel Montenegro [rmontenegro@mncbia.org]
Sent: Monday, November 22, 2010 1:42 PM
To: Floreen's Office, Councilmember; Leventhal's Office, Councilmember; Berliner's Office, Councilmember
Cc: Mihill, Amanda; Faden, Michael
Subject: comments on Bill 53-10 for the Nov 22 T&E worksession

To the T&E Committee:

below please find comments that have been drafted by members of the MNCBIA (Maryland National Capital Building Industry Association) on Exp Bill 53-10. While the comments are in draft form (and were to have been presented at tomorrow's public hearing), we would welcome the opportunity to present them to the Committee at its worksession this afternoon.

In 2009, the State Forest Conservation law ...

- was amended to tighten certain exemptions when the General Assembly passed SB 666. (specifically, reduction from 40K sf to 20K sf for single-lot exemptions and expansion of the opportunities to utilize forest conservation fee-in-lieu funds).
- specific recommendations made by the Governor's 2009 *No Net Loss of Forest Task Force*; there was unanimous agreement that these changes were reasonable and could increase forest conservation throughout the state.

Exp Bill 53-10

- incorporates the forest clearing threshold reduction from 40K sf to 20K sf **beyond the single-lot exemptions** and
- expands the opportunities to utilize forest conservation fee-in-lieu funds.
- amends the variance process, which as is pointed out, is not a state-required mandate.

However, it appears that the forest clearing threshold reduction amendment might have been mis-interpreted.

- SB666 requires that only the "single-lot exemption" criteria for forest clearing be reduced from 40K sf to 20K sf. Bill 53-10 proposes to change this clearing threshold in other places throughout the law **not required** by SB666 (lines 28, 41, 57, 75, and 85). The changes incorporated under Exp Bill 53-10 expands the drop in threshold from single-lot exemption to public utilities, ROW and County highway projects

RE: Variance ... the *No Net Loss Taskforce* never proposed or even discussed the variance amendment.

- Montgomery County already has a relatively stringent variance process, which makes the application of this standard extremely costly and time-consuming, both for applicants and the County, with little-to-no environmental benefit.
- it is unclear which variances associated with different types of Forest Plans will be able to be approved by the Planning Director vs. the Planning Board, and which will come before the Planning Board vs. the Planning Director (lines 94-95).
- line 95 creates lack of clarity. How is 'appropriate' defined? Who determines it? When is the applicant notified?
- line 136 '... unwarranted hardship' has generated different interpretations as to what constitutes an *unwarranted hardship*, generating different approaches conflict between DEP and P&P.
- Lines 156 '... maintenance of existing forests, and achieving urban canopy goals' – what are those goals?

Thank you for your attention to these comments and welcome the opportunity to discuss them.

Raquel D. Montenegro
Raquel D. Montenegro
Associate Director, Legislative Affairs
Maryland National Capital Building Industry Association

11/22/2010

Conservation Montgomery, Inc.

Working together to enhance our quality of life

TESTIMONY

Regarding Montgomery County Council Bill 53-10 to Amend the Forest Conservation Law

Delivered by
Arlene Bruhn
Board of Directors, Conservation Montgomery
November 23, 2010

My name is Arlene Bruhn, and I live in Bethesda. Thank you for the opportunity to testify on behalf of Conservation Montgomery.

My initial plan was to discuss variances. However, yesterday, I learned that the passages to which I objected have been withdrawn and that Draft No. 1 of Bill 53-10 is no longer under consideration. The bill you have before you should be Draft #2 and has no passages that automatically grant variances. Is that correct, Madam President? Going forward -- I caution you never to assume, more accurately never to make a legal presumption, that a request for forest or tree variance is completely accurate. Mistakes are often made regarding species, age, health, diameter -- the list is long. Tree removal typically has a negative economic impact on neighbors. To continue to allow tree take-down to eliminate construction delays ignores the needs of the community and, worse, opens the door to the hen house and invites the fox in to feast.

I am here today to emphasize that Bill 53-10 should in no way be assumed as all that is needed to revise our Forest Conservation Law (FCL). The FCL is long overdue for revisions that address our current development patterns in the county. Overall county forest and tree cover now stands at less than 29% according to 2008 aerial photographs. In our urban areas, forest cover is 12% below what is considered a sustainable level.

What is needed are tree protections and prevention of further destruction of forest and tree canopy. Our county needs to make a fundamental shift in urban environmental planning to focus on mature tree preservation. Instead of demolishing healthy mature trees and forests to replace them with saplings, we need to find innovative ways to avoid forest fragmentation. The time to start is today, better yet, 20 years ago.

I have heard people in this room say, "But we have lots of trees." Or, "I thought you supported 'smart growth.'" They miss the point. Ignoring the environmental services delivered by large trees and forests is not smart. And crowding concrete and asphalt into our urban core without the benefit of green space to complement the development is not smart, nor does it keep our communities livable.

By neglecting to enact urban tree legislation and allowing more destruction of trees along our county streets -- I add with no budget for street tree maintenance or replanting -- we have been wasting our environmental capital. It is time to stop exploiting local natural resources with a cavalier disregard for water quality and the Chesapeake Bay. Our county deserves a stronger forestry law and an urban forestry program with a countywide urban tree canopy goal. Bill 53-10 only brings us to minimum compliance with State law. Our county deserve better than the minimum standard.

**EXPEDITED BILL 53-10, FOREST CONSERVATION – CONFORMING
AMENDMENTS**

**GLEN ECHO HEIGHTS CITIZENS ASSOCIATION
TESTIMONY TO MONTGOMERY COUNTY COUNCIL AT HEARING TUESDAY,
NOVEMBER 23, 1:30 PM**

My name is Harry Pfohl and I'm testifying as the president of Glen Echo Heights Citizens Association.

GLEN ECHO HEIGHTS

Our association represents a very old community of 484 homes situated within the Potomac River Valley in lower Montgomery County. We have a very serious problem retaining our once substantial and now greatly diminished arboreal cover. We are in discussion with other communities along the Palisades and have found that our problem is common to all of us and our sentiments are broadly shared; we are all profoundly distressed at the huge amount of loss that we are experiencing. But, we are all currently without recourse and the law as proposed does nothing for us.

We have still have a few significant tracts of urban forest where the continuous canopy totals perhaps as much as two or three acres. This continuous forest consists of adjoining separately owned lots which typically range in size from 9,000 ft.² to 15,000 ft.² Although the size of the continuous forest exceeds 20,000 sf as proposed in the amended law, our individual lots are not subject to any preservation constraints whatsoever and hence the continuous forest is completely vulnerable to destruction.

THE PROBLEM

PLEASE SEE THE ATTACHED PHOTOS – 26,000 SQUARE FEET, ONE OWNER, TWO SEPARATE LOTS, AND PART OF SEVEN CONTIGUOUS LOTS OF ONCE CONTINUOUS FOREST. WHAT YOU SEE ON THESE PHOTOS IS THE NORM, NOT THE EXCEPTION FOR OUR NEIGHBORHOOD.

COST & BENEFIT CONSIDERATIONS

Considering profit and loss the forest conservation law in place at present:

- Enables the building business to operate profitably in our community without environmental/ecological constraints pertaining to tree cover and underbrush, and
- Enables the construction of very large homes, which provides for more revenue for the County

But at what cost? Loss of trees and canopy results in public and private costs:

Lost economic benefit – trees and canopy:

- Decrease heating and cooling costs for homes in the neighborhood
- Reduce need for bigger, more extensive man-made stormwater management systems
- Increase property values

Lost environmental benefit – trees and canopy provide:

- Onsite stormwater capture and filtration (cleaning)
- Recharges aquifers
- Cleans polluted (non-attainment) air
- Prevents erosion with soil and hillside retention and reduces sediment flow to the Bay
- Helps in controlling TMDL being discharged to Potomac/Chesapeake
- Provides carbon capture and helps mitigate global, and local, climate change
- Provides extensive wildlife habitat, including for migratory birds

Lost Community benefit – trees and canopy provide:

- Rich aesthetics and wonderful, defining character
- Privacy and play space
- Creates/maintains more comfortable microclimates, especially in summer w shade and breezes
- Supports outdoor orientation of community, health and well-being

It is ironic that the County DEP is building rain gardens at County expense on privately owned residential lots in our hilly terrain at \$6-\$7000 per rain garden in order to capture storm water runoff that would normally be captured by urban forest and undergrowth that has been destroyed. The purpose is to bring storm water quality into compliance with mandated EPA standards.

Wouldn't it make more sense to minimize ecological and environmental destruction resulting from new construction and limit the amount of public money spent later to compensate for environmentally unsound construction practices?

WE NEED HELP – A PROPOSED SOLUTION

We need a law that protects continuous forest composed of contiguous lots under separate ownership as is the case in our communities, i.e., please draft the language to protect continuous canopy regardless of the number of lots under that canopy.

And, please require the County bureaucracy to enforce vigorously existing and new provisions that are intended to protect trees.

Thank you for this opportunity to provide input to the Council

Harold Pfohl, President
Glen Echo Heights Citizens Association



November 23, 2010

5104 Elm St., Bethesda MD 20814

(301)652-6359

email - theelms518@earthlink.net

Civic Federation Testimony to County Council on Expedited Bill 53-10, Forest Conservation law

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of the Planning and Land Use Committee. At their November 17, meeting the MCCF Executive Committee voted unanimous support of the following position on Expedited Bill 53-10, Forest Conservation law conforming amendments.

We are disappointed that this is not the set of comprehensive amendments to the county forest conservation law before you today which the Planning Board and Department staff, the Council T&E Committee, and the Forest Conservation Advisory Committee have been working on for quite some time. That having been said, we do support the goal of this bill to bring county law into alignment with the standards in state law. But we do have concerns with the section related to variance approval.

We are concerned with the proposal in the bill to allow the Planning Director to approve variances to forest conservation plans. We oppose the granting of this authority, as we believe that since the Planning Board approves the plans they should also be the body to approve variances. If, however, the Council should decide to grant the Director this authority, as you granted authority for Director approval of limited site plan amendments 3 years ago (ZTA 07-05), the MCCF believes the Council should direct that the same process be applied to forest conservation variances as that for limited site plan amendments.

We urge that following the approval of a forest conservation plan variance by the Director, the approval be listed on the agenda for the next Planning Board session, under "Other Consent Items" on the Consent Agenda. This listing should include the property location, in a form readily understood by the public, and a description of the variance that was granted. The benefits are twofold. The public will be informed of all approved variances. And the Board will retain a degree of authority with their yes-or-no vote on the Consent Agenda, as well as being alerted to the number and location of approved variances in order to consider the possible cumulative impact.

Finally, we ask the staff to investigate why the text of existing law for "22A-21 (e). *Approval procedures; conditions.*" printed in the bill (lines 124 through 130) does not match the language in the online County Code posted on the American Legal Publishing website. Thank you.

Montgomery County Council Hearing on Expedited Bill 53-10
November 23, 2010

My name is Marcia Rucker, and I am here today as an individual. I thank you for this opportunity to tell you about my neighborhood's struggle to keep our trees and to ask the Council's help.

In the nearly 50 years since my family moved in, our neighborhood has lost probably half its trees—street trees and trees on individual lots. A lot of my neighbors chose to live here because of the trees, and they are passionate about the trees.

...And the neighbors prove that by what they do. They sign up to clear the right-of-way of invasive vines that threaten street trees. On streets where a house is about to be torn down and rebuilt, they organize to plead with the builder not to clear-cut. They ask D.O.T. to do a mass replacement of trees removed from the right-of-way, and when they're told the County needs signed authorizations from individual homeowners to do that, they knock on every door in the community, and they get the authorizations. They draft a set of "Best Practices" they want builders to use, and they approve systematically reaching out to the builder community with incentives to adopt those practices.

But tree loss can't be stemmed by just one neighborhood—or two or ten, since others are doing many of the same things we are. The decline in County tree cover can't be reversed unless the Council acts. Fortunately, the State has just given us a perfect opportunity to protect the forest we still have and build back forest lost, both up-County and down-County. That opportunity is the need to amend the Forest Conservation Law now to conform to State law.

I want to urge that the Council incorporate the following into the FCL during the amendment process:

- ramped-up, realistic reforestation and afforestation requirements, including lengthening the maintenance and management period for new planting to get to full replacement of trees cut during construction
- a County "no-net-loss" policy (endorsed by the Council in 2003 but never implemented)
- a County urban tree canopy goal, which 36 Maryland jurisdictions already have, as does Fairfax
- extension of tree protection to residential lots of whatever size, something that trees in the Town of Chevy Chase, Chevy Chase Village, Garrett Park, and Somerset, among others, have enjoyed for years

For my neighborhood, this last provision is the most clearly crucial. In truth, I believe that the County as a whole will lose irretrievably the economic and environmental edge our forest resources give if the Council fails to roll tree protection law for small properties into the FCL. Innovative solutions have been proposed: In the real world, forests and stream barriers exist independently of property lines; law can and should be written to recognize this reality and protect viable forest, regardless of how individual pieces of it may be owned. This extension has been debated for too long. I urge the Council to act on it now.

I wish the Councilmembers well in the job of preserving and rebuilding our forest, and I am grateful for their serious work toward that end.



Montgomery Soil Conservation District
18410 Muncaster Road - Derwood, MD 20855 - Phone (301) 690-2855
www.montgomeryscd.org

November 23, 2010

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

Re: Written Testimony for the Public Hearing regarding
Expedited Bill 53-10 Forest Conservation - Conforming Amendments

Dear Council President Floreen and Councilmembers:

The Montgomery Soil Conservation District (MSCD) Board of Supervisors has participated in the public process for proposed amendments to the County's Forest Conservation Law (FCL) for 3 years. Throughout this period, we have urged the Council to provide meaningful changes to the County's FCL that would insure that our agricultural community enjoys the same exemptions granted to farmers throughout the state by the State FCL. Now the Council is once again considering amendments intended to conform the County FCL with state law, and we again respectfully request that agricultural exemptions be included in this effort.

One of the stated purposes of Expedited Bill 53-10 is to "conform existing (County) law to State law". While MSCD does not wish to take a position on any specific provisions of Expedited Bill 53-10, we do feel that this legislation offers an opportunity to conform other aspects of the County law with State law. One of the biggest deviations from State law is Montgomery County's requirement that forest harvest operations be subjected to an additional level of review by the County Forest Conservation Coordinator. This anomaly of County law has impacted members of the agricultural community, and forced others to reconsider their forest management objectives.

Another issue of concern for MSCD is whether agricultural practices enjoy the same exemptions under the County FCL as they do under State law. At one point, the County proposed requiring agricultural operators to submit a Declaration of Intent for agricultural practices, including conservation work. This is not only inconsistent with the intent of the agricultural exemption provisions of the State law, but it is excessively burdensome to our farmers. Putting unnecessary regulation and restrictions on our farmers reduces their competitiveness and ability to effectively manage resources.

The Forest Conservation Law is intended to address forest removal during the development process, not create an obstacle to agricultural operations and forest management goals. The MSCD Board of Supervisors would like to work with Council staff and MNCPPC to insure that our agricultural community is afforded the same opportunities granted to other counties through the State FCL. We look forward to your response.

Sincerely,

George Lechliden, Chairman
Montgomery Soil Conservation District

Cc: Councilmembers

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