

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Worksession:** Expedited Bill 25-14, Forest Conservation – Amendments

Expedited Bill 25-14, Forest Conservation - Amendments, sponsored by the Council President at the request of the Planning Board, was introduced on May 6, 2014. A public hearing was held on June 10 at which representatives of the County Executive and the Park and Planning Commission supported the Bill (see testimony, ©32-33).

Bill 25-14 would amend the Forest Conservation Law (FCL) for consistency with State law by exempting stream restoration projects and maintenance or retrofitting of stormwater management structures from certain requirements of the law. Bill 25-14 would also make other improvements to the law which are explained in the Planning Board memo (see ©9-10).

Issues for Committee Discussion

1) Should removing trees hazardous to aviation be exempt from the FCL? Revenue Authority Executive Director Keith Miller urged the Council to exempt removing trees that are a hazard to aviation from the forest conservation requirements. He noted that this exception is presently in the State FCL and the County tree canopy law. Department of Environmental Protection (DEP) staff agreed that FAA projects should be exempt from the FCL but thought this amendment might not be needed. Council staff **recommends** inserting the following amendment after ©4, line 63:

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

This language is essentially identical to language in the tree canopy law and is consistent with state law.

2) **County Attorney amendments** In addition to minor technical amendments, the County Attorney suggested 2 substantive amendments to Bill 25-14:

a) *Definition for “developed area”*. As introduced, “developed area” would be defined (©2, lines 5-7) as:

Developed area means the portion of a property which has been altered from its natural state by the construction of a building, recreational facility, road or alley, rail line, athletic field, stormwater management facility, parking lot, or utility.

The County Attorney’s Office notes that this definition is quite narrow and might not cover some improvements, such as a bike path. To avoid undue restrictiveness, Council staff **recommends** deleting ~~[[or]]~~ and inserting at the end of the sentence: or similar improvement.

b) *Small lot exemption* This Bill would amend the FCL exemption for development of less than 5,000 square feet as follows:

- (t) a modification to an existing non-residential developed property if:
 - (1) no more than ~~[5000]~~ 5,000 square feet of forest ~~[will be cleared]~~ is ever cleared in one event or cumulatively over multiple events from the first exemption;

The County Attorney believes that this language is awkward and unclear. The Planning Board transmittal noted that its intent is to clarify that to qualify for this exemption, no more than 5,000 square feet of forest can be removed cumulatively. Therefore, Council staff **recommends** the following redraft to better achieve the intent:

- (t) a modification to an existing non-residential developed property if:
 - (1) no more than ~~[5000]~~ 5,000 square feet of forest ~~[will be cleared]~~ is ever cleared ~~[[in]]~~ at one ~~[[event]]~~ time or cumulatively ~~[[over multiple events from the first exemption]]~~ after an exemption is issued;

3) **DEP amendments** DEP staff proposed 3 minor amendments, shown as comments m3-m5 in the markup on ©37-38. Council staff does not object to them.

This packet contains:	Circle #
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Expedited Bill No. 25-14
Concerning: Forest Conservation –
Amendments
Revised: 7/11/14 Draft No. 1a
Introduced: May 6, 2014
Expires: November 6, 2015
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) 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 Except as otherwise expressly provided in this Chapter, this Chapter applies
 29 to:

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

34 * * *

35 **22A-5. Exemptions.**

36 The requirements of Article II do not apply to:

37 * * *

38 (t) a modification to an existing non-residential developed property if:

39 (1) no more than [5000] 5,000 square feet of forest [will be cleared]
 40 is ever cleared in one event or cumulatively over multiple events
 41 from the first exemption;

42 (2) the modification does not [affect] result in the cutting, clearing, or
 43 grading of any forest in a stream buffer or located on property in
 44 a special protection area which must submit a water quality plan;
 45 [and]

46 (3) the modification does not require approval of a [new] preliminary
 47 plan of subdivision [plan.]; and

48 (4) the modification does not increase the developed area by more
 49 than 50%, and the existing development is retained;

50 (u) maintaining or retrofitting an existing stormwater management structure
 51 if:

52 (1) the clearing of vegetation or removal and trimming of trees is for
 53 the maintenance or retrofitting of the structure and in the original
 54 limits of disturbance for construction of the existing facility; and

82 preliminary forest conservation plan at the time of the
 83 development [approval] application and a final forest
 84 conservation plan before [issuance of] a sediment control
 85 permit is issued for the tract, but no later than a record plat
 86 is submitted.

87 * * *

88 (C) [*Condition of approval*] Approval. The Planning Board
 89 must review and act on the forest conservation plan [will
 90 be reviewed by the Planning Board] concurrently with the
 91 development plan, project plan, preliminary plan of
 92 subdivision or site plan, as appropriate. [The] Compliance
 93 with the preliminary forest conservation plan, as [may be]
 94 amended by the Board, must be made a condition of any
 95 approval of the first applicable development application.
 96 Compliance with the final forest conservation plan, as
 97 amended by the Board, must be made a condition of any
 98 approval of the last development application. For a
 99 development plan, a Planning Board recommendation to
 100 the District Council on the preliminary forest conservation
 101 plan must be made under Section 59-D-1.4. A final forest
 102 conservation plan must be approved by the Planning Board
 103 or Planning Director, as appropriate, before the Planning
 104 Board approves a record plat.

105 * * *

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

107 * * *

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

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

113 (B) any financial security instrument required under this
114 Chapter is provided].

115 * * *

116 **22A-12. Retention, afforestation, and reforestation requirements.**

117 * * *

118 (g) *In lieu fee.*

119 (1) *General.* If a person satisfactorily demonstrates that the
120 requirements for reforestation or afforestation on-site or off-site
121 cannot be reasonably accomplished, the person must contribute
122 money to the forest conservation fund at a rate specified [by the
123 County Council] by law or Council resolution, but not less than
124 the rate required under Section 5-1610 of the Natural Resources
125 Article of the Maryland Code. [The requirement to contribute
126 money must be met within 90 days after development project
127 completion.] Any in lieu fee payment must be made before any
128 land disturbing activity, as defined in Chapter 19, occurs on a
129 section of the tract subject to the forest conservation plan.

130 * * *

131 (i) *Financial Security.*

132 * * *

133 (4) *Amount required.*

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

150 * * *

151 **22A-20. Hearings and appeals.**

152 * * *

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

155 * * *

156 **Sec. 2. Expedited Effective Date.**

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

LEGISLATIVE REQUEST REPORT

Expedited Bill 25-14

Forest Conservation - Amendments

DESCRIPTION: Expedited Bill 25-14 would amend Chapter 22A for consistency with State law by exempting the following from certain requirements of the Forest Conservation Law: stream restoration projects and maintenance or retrofitting of stormwater management structures.

PROBLEM: Current County law is out of date and does not reflect State law changes made in 2013.

GOALS AND OBJECTIVES: To make County law consistent with State law.

COORDINATION: Maryland-National Capital Park and Planning Commission

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 Attorney, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: A violation of Chapter 22A is a Class A violation.



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

MF
 CC
 SBF
 LL

OFFICE OF THE CHAIR

February 21, 2014

The Honorable Craig Rice
 President, Montgomery County Council
 Stella B. Werner Council Office Building
 100 Maryland Avenue
 Rockville, Maryland 20850

RECEIVED
 MONTGOMERY COUNTY
 COUNCIL

2014 FEB 24 PM 1:50

Craig
 Dear Mr. Rice:

On February 20, 2014, the Montgomery County Planning Board recommended 5-0 to transmit an Expedited Bill to the County Council to make the County's Forest Conservation Law consistent with House Bill 706, which became effective Statewide on October 1, 2013, and to make other clarifying changes to the law. The proposed revision:

1. Adds four new definitions to Section 22A-3. The definitions are needed to clarify the various sections of the law. The definitions "developed area," "developed property" and "development application" are necessary to identify specific trigger points later in the law. The definition "stream restoration project" is from House Bill 706.
2. Clarifies Section 22A-4 by indicating that the forest conservation law applies to any person who is required to obtain approval of a new development application, or an amendment to a development application.
3. Changes Section 22A-5 to codify a staff practice and add two exemptions from submitting a forest conservation plan. The proposed change to 22A-5(t) clarifies that to qualify for an exemption, no more than 5000 square feet of forest can be removed cumulatively, the modification cannot substantially increase the developed area, and the existing use must be retained. Proposed exemptions 22A-5 (u) and (v) are in response to House Bill 706.
4. Will prevent unsuspecting lot purchasers from needing to obtain final forest conservation plan approval when small landowners who subdivide tracts of land have not procured approval of a final forest conservation plan prior to selling recording lots. In these cases the first new lot buyer currently has the additional responsibility to submit and finalize the final forest conservation plan before they can obtain a sediment control permit. The proposed changes to Section 22A-11(b)(2)(A) will require all final forest conservation plans be approved prior to Planning Board approval of the record plat. Thus, the party subdividing the land will have responsibility to gain approval for the final forest conservation plan before selling any lots.
5. Identifies that the Planning Board must approve a preliminary forest conservation plan with the first applicable development application, and a final forest conservation plan with the last applicable development application. Previously the law did not have a timing mechanism as

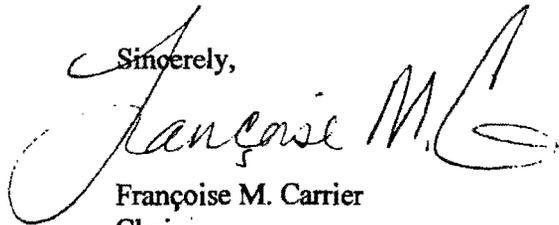
The Honorable Craig Rice
February 21, 2014
Page Two

to when the forest conservation plans were to be approved by the Planning Board. These proposed changes are in Section 22A-11(b)(2)(C).

6. Removes the requirement that forest conservation financial surety be posted prior to the issuance of a sediment control permit. The Montgomery County Department of Permitting Services currently issues sediment control permits without ensuring the financial security is posted, and it is staff practice is to require financial surety prior to any land disturbance occurring on the subject site, not prior to a sediment control permit. The proposed change to Section 22A-11(d)(3) will codify the practice.
7. Clarifies that when a developer makes a payment in lieu of planting forest on site, the in-lieu fee payment is required prior to any land disturbing activity occurring on a section of the tract subject to a forest conservation plan. The current law allows applicants to make the in-lieu fee payment within 90 days after project development completion. In practice, however, applicants are providing the payment prior to land disturbance. Therefore the proposed changes to Section 22A-12(g)(1) codify the development community's practice of paying before land disturbance.
8. Allows individual lot owners to post a financial surety equivalent to their portion of the planting requirements associated with the forest conservation plan, instead of being responsible for the financial surety for the entire subdivision. The proposed changes to Section 22A-12(h)(4)(A) allow for property owners to pay a pro rata share of the overall financial surety.
9. Clarifies Section 22A-20 to identify that not just plans approved by the Planning Director but all plans reviewed by Planning Director can be appealed to the Planning Board. This will allow plans denied by the Planning Director to be appealed to the Planning Board.

Members of the Planning Board and Staff of the Maryland-National Capital Park & Planning Commission area available to assist the Council in its review of the proposed legislation. Enclosed is a copy of the staff report dated January 29, 2014 and language changes agreed to by the Planning Board during its discussion of the amendments on February 20, 2014.

Sincerely,



Françoise M. Carrier
Chair

cc: Mike Faden

Enclosures

Chapter 384

(House Bill 706)

AN ACT concerning

Natural Resources – Forest Preservation Act of 2013

FOR the purpose of requiring the Department of Natural Resources to provide a statewide forest resource inventory to local jurisdictions at certain intervals; declaring certain policies of the State with respect to forests; altering the defined term “construction activity” as it applies to reforestation requirements to include associated mitigation requirements; expanding the purpose and authorized uses of the Reforestation Fund to include financing tree planting on private land and financing the prevention of and response to forest health emergencies; extending the time frame within which the Department must accomplish certain reforestation requirements and for which certain funds are required to remain in the Reforestation Fund; repealing the requirements that the Department determine the meaning of “no net loss of forest”, develop related policies, and submit a certain report describing certain findings; defining the term “no net loss of forest”; altering the defined term “timber stand improvement” to include certain activities that improve forest health; altering the range of acres of land that a person is required to own or lease to be eligible for certification for a certain income tax subtraction or modification; altering certain prohibitions against setting certain fires; altering a certain minimum penalty for violating a certain prohibition against setting certain fires; exempting certain stream restoration projects and certain maintenance or retrofitting of a stormwater management structure from the requirements of the Forest Conservation Act; authorizing a local jurisdiction to waive the requirements of the Forest Conservation Act for certain previously developed areas; authorizing the Department to take certain action against a local jurisdiction for failure to comply with the Forest Conservation Act; requiring the Department of Planning, in consultation with the Department and the Sustainable Forestry Council, to provide certain technical assistance to local jurisdictions by a certain date; clarifying the intent of this Act with respect to the authority of the Department of Agriculture to establish forest policy; declaring a certain intent of the General Assembly; requiring the Department to convene a certain stakeholder group after a certain time to perform a certain review and make certain recommendations; making certain stylistic changes; defining certain terms; and generally relating to forest conservation and sustainability.

BY renumbering

Article – Natural Resources

Section 5–101(i), (j), (k), (l), and (m), respectively

to be Section 5-101(j), (k), (l), (m), and (n), respectively
Annotated Code of Maryland
(2012 Replacement Volume)

BY renumbering

Article – Natural Resources
Section 5-1601(ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively
to be Section 5-1601(gg), (hh), (ii), (jj), (kk), (mm), (nn), (oo), and (pp),
respectively
Annotated Code of Maryland
(2012 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Land Use
Section 1-101(o)
Annotated Code of Maryland
(2012 Volume)

BY repealing and reenacting, with amendments,

Article – Land Use
Section 1-408 and 3-104
Annotated Code of Maryland
(2012 Volume)

BY repealing and reenacting, without amendments,

Article – Natural Resources
Section 5-101(e), 5-103(a)(1) and (3), 5-1601(a), and 5-1602(a)
Annotated Code of Maryland
(2012 Replacement Volume)

BY adding to

Article – Natural Resources
Section 5-101(i), 5-103(j), 5-1601(ff) and (ll), and 5-1602(b)(12) and (13)
Annotated Code of Maryland
(2012 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Natural Resources
Section 5-102, 5-103(a)(2) and (e), 5-219, 5-704, 5-1602(b)(10) and (11), and
5-1603(c)(3)(ii) and (e)
Annotated Code of Maryland
(2012 Replacement Volume)

BY repealing

Article – Natural Resources
Section 5-104

Annotated Code of Maryland
(2012 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 10–208(a)
Annotated Code of Maryland
(2010 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–208(i)
Annotated Code of Maryland
(2010 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 5–101(i), (j), (k), (l), and (m), respectively, of Article – Natural Resources of the Annotated Code of Maryland be renumbered to be Section(s) 5–101(j), (k), (l), (m), and (n), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 5–1601(ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively, of Article – Natural Resources of the Annotated Code of Maryland be renumbered to be Section(s) 5–1601(gg), (hh), (ii), (jj), (kk), (mm), (nn), (oo), and (pp), respectively.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Land Use

1–101.

(o) “Sensitive area” includes:

- (1) a stream or wetland, and its buffers;
- (2) a 100–year flood plain;
- (3) a habitat of a threatened or endangered species;
- (4) a steep slope;
- (5) agricultural or forest land intended for resource protection or conservation; and

(6) any other area in need of special protection, as determined in a plan.

1-408.

(a) A sensitive areas element shall include the goals, objectives, principles, policies, and standards designed to protect sensitive areas from the adverse effects of development.

(b) BEGINNING OCTOBER 1, 2013, THE DEPARTMENT OF NATURAL RESOURCES SHALL PROVIDE A STATEWIDE FOREST RESOURCE INVENTORY TO LOCAL JURISDICTIONS AT LEAST EVERY 5 YEARS, TO BE AVAILABLE FOR THE ~~6-YEAR~~ LOCAL COMPREHENSIVE PLAN REVIEW BY LOCAL JURISDICTIONS REQUIRED UNDER §§ 1-416(A) AND 3-301(A) OF THIS ARTICLE.

(C) Before the plan is adopted, the Department of the Environment and the Department of Natural Resources shall review the sensitive areas element to determine whether the proposed plan is consistent with the programs and goals of the departments.

3-104.

(a) A sensitive areas element shall include the goals, objectives, principles, policies, and standards designed to protect sensitive areas from the adverse effects of development.

(b) BEGINNING OCTOBER 1, 2013, THE DEPARTMENT OF NATURAL RESOURCES SHALL PROVIDE A STATEWIDE FOREST RESOURCE INVENTORY TO LOCAL JURISDICTIONS AT LEAST EVERY 5 YEARS, TO BE AVAILABLE FOR THE ~~6-YEAR~~ LOCAL COMPREHENSIVE PLAN REVIEW BY LOCAL JURISDICTIONS REQUIRED UNDER §§ 1-416(A) AND 3-301(A) OF THIS ARTICLE.

(C) Before the plan is adopted, the Department of the Environment and the Department of Natural Resources shall review the sensitive areas element to determine whether the proposed plan is consistent with the programs and goals of the departments.

Article - Natural Resources

5-101.

(e) (1) "Forest land" means a biological community dominated by trees and other woody plants that are capable of producing timber or other wood products with a stocking of at least 100 trees per acre with at least 50% of those trees having a 2-inch or greater diameter at 4.5 feet above the ground.

(2) "Forest land" includes forested areas that have been cut but not converted to other land uses.

(I) "NO NET LOSS OF FOREST" MEANS 40% OF ALL LAND IN MARYLAND IS COVERED BY TREE CANOPY.

5-102.

(a) The General Assembly finds that:

(1) Forests, streams, valleys, wetlands, parks, and scenic, historic, and recreation areas of the State are basic assets and their proper use, development, and preservation are necessary to protect and promote the health, safety, economy, and general welfare of the people of the State;

(2) Enhancing the extent and condition of tree and forest cover in the Chesapeake Bay watershed is critical to the success in restoring the Chesapeake Bay because forests are the most beneficial use of protecting water quality due to their ability to capture, filter, and retain water, as well as absorb pollution from the air;

(3) Forests and trees are key indicators of climate change and can mitigate greenhouse gas emissions by carbon sequestration;

(4) Forests provide habitat for hundreds of wildlife species, including habitat needed for rare, threatened, and endangered species;

(5) Forests are susceptible to environmental degradation caused by natural threats;

(6) Forests, like other open space areas, are under intense development-related pressures for residential, commercial, and industrial conversion due to the demands of a growing population;

(7) Trees and forests in urban areas provide multiple benefits, including:

(i) Mitigation of urban stormwater runoff into the Chesapeake Bay;

(ii) Sequestration of carbon;

(iii) Avoidance of energy-related emissions;

(iv) Mitigation of air pollutants, such as ozone and particulate matter;

(v) Reduction of the urban heat island effect; and

(vi) Contributions to community livability;

(8) Forest land owners, including local government officials responsible for overseeing the management of publicly owned forest lands, could benefit from research-based education outreach programs in order to help facilitate an understanding of sustainable forestry management that is consistent with forest stewardship principles;

(9) Forests are a renewable resource that help the State meet its renewable energy goals that are consistent with the State's:

(i) Green power goal for State facilities;

(ii) Renewable Energy Portfolio Standard;

(iii) Healthy Air Act; and

(iv) Maryland Clean Energy Incentive Act of 2006; and

(10) This title sets forth Maryland's vision for sustaining Maryland's coveted forest lands into the 21st century that is consistent with the Chesapeake 2000 Agreement and the 2007 Forestry Conservation Initiative.

(b) It is the policy of the State to encourage the retention and sustainable management of [the State's privately owned] forest lands by:

(1) ACHIEVING NO NET LOSS OF FOREST ~~BY 2020~~;

[(1)] **(2)** Affording due consideration to the protection and retention of forests in the State through existing land conservation programs where they have the highest value in terms of promoting the State's compliance with its clean water goals under the Chesapeake 2000 Agreement and the 2007 Forest Conservation Initiative;

[(2)] **(3)** Enhancing the retention of privately owned forest lands through research-based educational outreach efforts to landowners by the State's forest conservancy district boards;

[(3)] **(4)** Developing financial incentives to encourage landowners to retain and manage their forests sustainably and in a manner that is consistent with a forest stewardship plan;

[(4)] (5) Promoting renewable energy policies and markets with increased emphasis on the use of in-State produced woody biomass;

(6) ENSURING DUAL CERTIFICATION OF THE STATE'S FORESTS BY THE FOREST STEWARDSHIP COUNCIL AND THE SUSTAINABLE FORESTRY INITIATIVE;

[(5)] (7) Recognizing the importance of:

(i) A viable forest products industry to the economies of rural Maryland;

(ii) Continued development of fiber products; and

(iii) Maryland's green infrastructure; and

[(6)] (8) Developing and enhancing programs with a sustainable forestry component, including a forest mitigation banking system, a carbon credit or carbon sequestration program, a clean water credit trading system, an environmental services credit trading program, and a renewable energy credit trading system.

5-103.

(a) (1) In this section the following words have the meanings indicated.

(2) "Construction activity" means [construction of a highway by a constructing agency] **WORK BY A CONSTRUCTING AGENCY RELATED TO:**

(I) CONSTRUCTION OF OR IMPROVEMENTS TO A HIGHWAY;

OR

(II) OFF-SITE ENVIRONMENTAL MITIGATION RELATED TO HIGHWAY CONSTRUCTION.

(3) "Constructing agency" means:

(i) A unit of State or local government; or

(ii) Any other person who uses State funding and performs any construction activity with the State funding.

(e) (1) In this subsection, "Fund" means the Reforestation Fund.

(2) There is a Reforestation Fund in the Department.

(3) The purpose of the Fund is to [finance]:

(I) FINANCE the planting of trees on:

[i] 1. [State or other publicly owned lands] LAND located in the county and watershed in which construction projects giving rise to Fund contributions are located; and

[ii] 2. Private property on which trees were destroyed by a treatment to destroy plant pests that was applied by the Department of Agriculture; AND

(II) FINANCE THE PREVENTION OF AND RESPONSE TO FOREST HEALTH EMERGENCIES.

(4) The Department shall administer the Fund.

(5) (i) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(ii) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(6) The Fund consists of any money received from contributions by a constructing agency under subsection (d) of this section.

(7) (i) Subject to subparagraph (ii) of this paragraph, the Fund may be used only to:

1. Plant trees on [State or other publicly owned lands] LAND located in the county and watershed in which construction projects giving rise to Fund contributions are located;

2. If reforestation cannot be reasonably accomplished in the county and watershed in which the construction activity is located:

A. Plant trees on State or other publicly owned lands located in the county or in the watershed in the State in which the construction activity is located; or

B. Purchase credits in, establish, or maintain a forest mitigation bank in the county or watershed in which the construction activity is located in accordance with Department regulations; [or]

3. Replace trees, except nursery stock that has not been replanted, that were destroyed by the application of a treatment applied to destroy plant pests under a quarantine imposed by the Secretary of Agriculture, whether or not the quarantine is in effect in the county or watershed where the construction activity occurred; OR

4. FINANCE THE PREVENTION OF AND RESPONSE TO FOREST HEALTH EMERGENCIES BY:

A. MAINTAINING THE HEALTH AND VITALITY OF FOREST LAND AND URBAN TREE CANOPY; AND

B. PREVENTING OR CONTROLLING SIGNIFICANT FOREST LAND AND URBAN TREE CANOPY DEGRADATION CAUSED BY ACTS OF NATURE.

(ii) 1. Except as provided in subsubparagraph 2 of this subparagraph, moneys in the Fund may be used for administrative costs calculated in accordance with § 1-103(b)(2) of this article.

2. The Fund may not be used to finance administrative activities associated with a mitigation bank.

3. Any credits created by the Fund may not be sold to compensate for additional forest impacts.

(iii) 1. The Department shall accomplish the reforestation for which money is deposited in the Fund within [1 year or two] **2 YEARS OR THREE** growing seasons after project completion, as appropriate.

2. Money deposited in the Fund under subsection (d) of this section shall remain in the Fund for a period of [1 year or two] **2 YEARS OR THREE** growing seasons, and at the end of that time period, any portion that is not used to meet the reforestation requirements shall be returned to the constructing agency.

(8) (i) The Treasurer shall invest the money of the Fund in the same manner as other State money may be invested.

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

(9) Expenditures from the Fund may be made only in accordance with the State budget.

[(10) The Department may adopt regulations to implement this subsection.]

(J) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

[5-104.

(a) The Department shall cooperate with forestry-related stakeholder groups to:

(1) Determine the meaning of no net loss of 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 forest in the State.]

5-219.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Reforestation" means the stocking or restocking of an area with forest tree species.

(ii) "Reforestation" includes:

1. Site preparation by mechanical operation, application of herbicides, or prescribed burning;

2. Tree planting;

3. Release of seedlings from competing vegetation;

4. Animal damage control of seedlings; and

5. Other activities that the Secretary requires.

(iii) "Reforestation" does not include the growing of Christmas or ornamental trees.

(3) (i) "Timber stand improvement" means any [precommercial] cultural operation made to improve the composition, constitution, condition, [and] OR increment of a timber stand **THAT DOES NOT RESULT IN IMMEDIATELY SALABLE FOREST PRODUCTS.**

(ii) "Timber stand improvement" includes [tree]:

1. **TREE** removal, girdling, poisoning, and pruning activities; **AND** [that:

1. Are not done only to help regeneration; and

2. Do not result in immediately salable forest products.]

2. ACTIVITIES THAT IMPROVE FOREST HEALTH, INCLUDING:

A. EFFORTS TO CONTROL INVASIVE SPECIES;

B. CREATION OR MAINTENANCE OF FORESTED RIPARIAN BUFFERS;

C. INSTALLATION OF WATER QUALITY PROTECTION DEVICES;

D. REDUCTION, REMOVAL, OR OTHER MANAGEMENT OF THE RESIDUAL MATERIALS GENERATED DURING TIMBER HARVEST;

E. RESTORATION OF FOREST HABITAT AFFECTED BY LOGGING ACCESS ROADS AND TRAILS; AND

F. OTHER HABITAT IMPROVEMENT OR BEST MANAGEMENT PRACTICES AS DETERMINED BY THE DEPARTMENT.

(b) A person who owns or leases [10 to 500] **3 TO 1,000** acres of land may apply for reforestation or timber stand improvement certification under this section if the land is:

(1) Capable of growing more than 20 cubic feet of wood per acre per year; and

(2) Available for the application of scientific forest management practices for the primary purpose of growing and harvesting forest tree species.

(c) The Department shall issue an initial certification of reforestation or timber stand improvement to an applicant who owns or leases [10 to 500] **3 TO 1,000** acres of land that is used as commercial forest land or that is being restored and is capable of growing a commercial forest, if there is:

(1) A successful planting of the required minimum number of seedlings with acceptable species; or

(2) Timber stand improvement activities in accordance with a forest management plan developed by a licensed forester.

(d) (1) Within 2 years after the date of initial certification, the Department shall issue a final certification of reforestation or timber stand improvement to an applicant who received an initial certification if:

(i) Seedlings are living without other vegetation growing around or over the seedling; or

(ii) Successful timber stand improvements have been made in accordance with regulations of the Secretary.

(2) If the reforestation or timber stand improvement activities do not meet the requirements for final certification when the application is made, the applicant may replant or conduct additional timber stand improvement activities.

(e) If an application for final certification is not filed within 2 years after the date of initial certification, the applicant shall submit a plan to continue the reforestation or timber stand improvement project to the Department.

(f) The Department shall decertify land if:

(1) Reforestation or timber stand improvement activity on the land is discontinued before issuance of a final certificate;

(2) A final certificate application or a plan of continuation is not filed within 2 years after the date on which the initial certificate is issued; or

(3) The land does not continue to be used as commercial forest land for 15 years after final certification is issued.

(g) The Secretary shall:

(1) Adopt regulations to carry out this section;

(2) Provide to a certified person notice of initial and final certification that the person may file with the Comptroller as evidence of the eligibility of the

person for the income tax subtraction modification for reforestation and timberland expense allowed under §§ 10-208 and 10-308 of the Tax – General Article; and

(3) Send a copy of a decertification notice to the Comptroller for purposes of the income tax addition modification for reforestation and timberland expense required under §§ 10-205 and 10-306 of the Tax – General Article.

5-704.

(a) Any individual or corporation that willfully, maliciously, or with intent, sets on fire, or causes to be set on fire, any woods, brush, grass, grain, or stubble[, on land not his own,] is guilty of a misdemeanor and upon conviction is subject to a fine not less than ~~[\$25]~~ **\$250** nor exceeding \$2,000, or imprisonment for not less than 30 days nor exceeding five years, or both with costs imposed in the discretion of the court.

(b) An individual or corporation may not carelessly or negligently set on fire, or cause to be set on fire any woods, brush, grass, grain, or stubble [resulting in damage to the property of another]. Setting a fire contrary to the provisions of this subsection[, or allowing it to escape to the injury of adjoining lands,] is prima facie proof of carelessness or neglect within the meaning of this subsection. The landowner from whose land the fire originated also is liable in a civil action for damages for injury resulting from the fire, and for the cost of fighting and extinguishing the fire, unless [he] **THE LANDOWNER** can prove to the satisfaction of the court before which the case is tried that the injury complained of was suffered without any negligence on the part of the owner or [his] **THE OWNER'S** agents.

(c) Any person who discovers a forest or brush fire not under the control of some person shall extinguish it or report it to the local fire warden.

(d) The provisions of this section do not contravene other provisions of law relating to the liability for fires of railroad companies.

5-1601.

(a) In this subtitle the following words have the meanings indicated.

(FF) "PRIORITY FUNDING AREA" MEANS AN AREA DESIGNATED AS A PRIORITY FUNDING AREA UNDER § 5-7B-02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(LL) "STREAM RESTORATION PROJECT" MEANS AN ACTIVITY THAT:

(1) IS DESIGNED TO STABILIZE STREAM BANKS OR ENHANCE STREAM FUNCTION OR HABITAT LOCATED WITHIN AN EXISTING STREAM, WATERWAY, OR FLOODPLAIN;

(2) AVOIDS AND MINIMIZES IMPACTS TO FORESTS AND PROVIDES FOR REPLANTING ON-SITE AN EQUIVALENT NUMBER OF TREES TO THE NUMBER REMOVED BY THE PROJECT;

(3) MAY BE PERFORMED UNDER A MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT, A WATERSHED IMPLEMENTATION PLAN GROWTH OFFSET, OR ANOTHER PLAN ADMINISTERED BY THE STATE OR LOCAL GOVERNMENT TO ACHIEVE OR MAINTAIN WATER QUALITY STANDARDS; AND

(4) IS NOT PERFORMED TO SATISFY STORMWATER MANAGEMENT, WETLANDS MITIGATION, OR ANY OTHER REGULATORY REQUIREMENT ASSOCIATED WITH PROPOSED DEVELOPMENT ACTIVITY.

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 square feet or greater.

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

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

(11) 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;

(12) ANY STREAM RESTORATION PROJECT FOR WHICH THE APPLICANT FOR A GRADING OR SEDIMENT CONTROL PERMIT HAS EXECUTED A BINDING MAINTENANCE AGREEMENT OF AT LEAST 5 YEARS WITH THE AFFECTED PROPERTY OWNER; AND

(13) MAINTENANCE OR RETROFITTING OF A STORMWATER MANAGEMENT STRUCTURE THAT MAY INCLUDE CLEARING OF VEGETATION OR REMOVAL AND TRIMMING OF TREES, SO LONG AS THE MAINTENANCE OR RETROFITTING IS WITHIN THE ORIGINAL LIMITS OF DISTURBANCE FOR CONSTRUCTION OF THE EXISTING STRUCTURE, OR WITHIN ANY MAINTENANCE EASEMENT FOR ACCESS TO THE STRUCTURE.

5-1603.

(c) (3) (ii) A local forest conservation program, when approved by the Department, may [allow]:

1. **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 PREVIOUSLY DEVELOPED AREAS COVERED BY IMPERVIOUS SURFACE AND LOCATED IN PRIORITY FUNDING AREAS AT THE TIME OF THE APPLICATION FOR SUBDIVISION PLAN, GRADING, OR SEDIMENT CONTROL PERMIT APPROVAL.**

(e) (1) (i) The Department shall conduct a review of each local authority's program at least once every 2 years from the date of initial departmental approval.

(ii) In its biennial review, the Department shall evaluate the level of compliance with the performance standards and required forest conservation.

(2) (I) If a local authority's program is found to be deficient by the Department, then the Department shall give notice and allow the local authority 90 days for compliance[, after which].

(II) **IF, AFTER 90 DAYS, A LOCAL AUTHORITY HAS FAILED TO COMPLY WITH THE TERMS OF A NOTICE GIVEN BY THE DEPARTMENT, the Department may DO ONE OR MORE OF THE FOLLOWING:**

1. [assume] **ASSUME** review and approval of all forest conservation plans within the jurisdiction of the local authority until the deficiencies are corrected;

2. **REQUIRE ON A FINDING BY AN AUDITOR MADE IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY GENERAL THAT A LOCAL AUTHORITY HAS MISAPPROPRIATED LOCAL FOREST CONSERVATION FUNDS, THE DEPARTMENT MAY REQUIRE THE LOCAL AUTHORITY TO SUBMIT PAYMENT TO THE STATE CONSERVATION FUND FOR THE AMOUNT OF ANY MISAPPROPRIATED LOCAL CONSERVATION FUNDS; AND**

3. **REQUEST THAT THE ATTORNEY GENERAL INVESTIGATE PAYMENTS AND EXPENDITURES OF FUNDS COLLECTED BY THE LOCAL AUTHORITY UNDER THIS SUBTITLE.**

Article - Tax - General

10-208.

(a) In addition to the modification under § 10-207 of this subtitle, the amounts under this section are subtracted from the federal adjusted gross income of a resident to determine Maryland adjusted gross income.

(i) (1) The subtraction under subsection (a) of this section includes twice the amount of expenses for reforestation or timber stand improvement activity on [10 to 100] **3 TO 1,000** acres of commercial forest land, exclusive of federal funds.

(2) Of the amount under paragraph (1) of this subsection:

(i) 50% may be claimed in the taxable year in which the Department of Natural Resources issues an initial certificate of reforestation or timber stand improvement; and

(ii) 50% may be claimed in the taxable year in which the Department of Natural Resources issues a final certificate of reforestation or timber stand improvement.

SECTION 4. BE IT FURTHER ENACTED, That by January 1, 2015, the Department of Planning, in consultation with the Department of Natural ~~Resources and Resources~~, the Sustainable Forestry Council, and other interested parties, shall provide local jurisdictions with guidelines, recommendations, and technical assistance on policies and standards to protect forest land and urban tree canopy from ~~the~~ adverse effects ~~of development~~.

SECTION 5. AND BE IT FURTHER ENACTED, That nothing in this Act is intended to supplement or limit the authority of the Department of Agriculture to establish policies relating to forest land under any program regulated at the Department of Agriculture.

SECTION 6. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that:

(1) the policy of achieving no net loss of forest shall be implemented in a manner that does not incentivize the conversion of prime agricultural land with Natural Resources Conservation Service type I, II, or III soil classification to forestland, except for conservation best management practices meeting Natural Resources Conservation Service standards and specifications; but

(2) this Act may not be construed to prohibit an owner of agricultural land from voluntarily agreeing to place conservation best management practices on the property owner's agricultural land.

SECTION 7. AND BE IT FURTHER ENACTED, That, following the release of the first statewide forest resource inventory after January 1, 2017, the Department of Natural Resources shall convene a stakeholder group comprised of representatives from local government, agriculture, forestry, development, conservation, and other interested parties to review the inventory and make recommendations in accordance with the policy goals established under § 5-102(b) of the Natural Resources Article, as enacted by Section 1 of this Act.

SECTION ~~6~~ 8. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, May 2, 2013.



ROCKVILLE, MARYLAND

MEMORANDUM

May 30, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Bill 25-14E, Forest Conservation - Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
David Platt, Department of Finance
Robert Hagedoorn, Department of Finance
Stan Edwards, Department of Environmental Protection
Alex Espinosa, Office of Management and Budget
Matt Schaeffer, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 25-14E, Forest Conservation – Amendments

1. Legislative Summary.

Council Bill 25-14E would exempt certain stream restoration and stormwater management facility retrofit projects from the requirements of the Forest Conservation Law. This change will bring County Law into alignment with updated State Law on Forest Conservation.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Revenues are not expected to change as a result of the bill.

The Department of Environmental Protection (DEP) must, under current law, perform a survey of trees and develop and submit a forest conservation plan in areas where stormwater management projects are subject to the Forest Conservation Law.

DEP estimates that up to 23 stormwater management projects annually are subject to the current Forest Conservation Law at a total average cost of \$18,000 per project or a total annual cost of approximately \$414,000. The proposed bill would exempt these projects from the requirements of the Forest Conservation Law, and these costs would no longer be incurred as part of the stormwater management projects in the Capital Improvements Program (CIP).

The Maryland-National Capital Park and Planning Commission (M-NCPPC) reports that a staff time savings of 50 hours will be saved in the area of staff forest conservation plan reviews as a result of Bill 25-14E at a total cost of approximately \$2,800.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The bill would reduce DEP stormwater management CIP project costs \$414,000 annually, or \$2,484,000 over the next 6 years.

M-NCPPC's staff time savings would be \$2,800 annually, or \$16,800 over the next 6 years.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not Applicable.

6. An estimate of the staff time needed to implement the bill.

No additional staff time is needed to implement this Bill.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

No additional staff responsibilities will result from the implementation of this Bill.

8. An estimate of costs when an additional appropriation is needed.

No additional appropriation is needed to implement this Bill.

9. A description of any variable that could affect revenue and cost estimates.

Not Applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not Applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

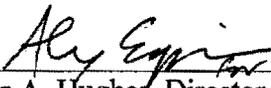
Not Applicable.

12. Other fiscal impacts or comments.

Not Applicable.

13. The following contributed to and concurred with this analysis:

Stan Edwards, Department of Environmental Protection
Alex Espinosa, Office of Management and Budget
Matt Schaeffer, Office of Management and Budget
Anjali Sood, Maryland-National Capital Park and Planning Commission



Jennifer A. Hughes, Director
Office of Management and Budget

5/30/2014
Date

Economic Impact Statement
Bill 25-14E, Forest Conservation - Amendments

Background:

This legislation would amend Chapter 22A for consistency with State law by exempting the following from certain requirements of the Forest Conservation Law:

- stream restoration projects, and
- maintenance or retrofitting of stormwater management structures.

1. The sources of information, assumptions, and methodologies used.

The Department of Environmental Protection (DEP) provided information. According to DEP, Bill 25-14 (Bill) would exempt several different types of activities from the requirements of the County's Forest Conservation Law (FCL). The purpose of this Bill is to conform to State law.

2. A description of any variable that could affect the economic impact estimates.

The variable that could affect the economic impact estimate is the business costs to comply with the change to the FCL. While this Bill may reduce certain costs to the private sector, the amount of such reduction would be minimal.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

While the Bill may reduce business costs, that reduction, if any, would be minimal. Therefore, this Bill would have no measurable impact on employment, spending, saving, investment, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph #3

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Stan Edwards, Department of Environmental Protection.

Fun

Joseph F. Beach, Director
Department of Finance

5/21/2014
Date

**Testimony on Behalf of County Executive Isiah Leggett
Regarding Expedited Bill 25-14, Forest Conservation - Amendments**

**Stan Edwards, Chief
Division of Environmental Policy & Compliance
Department of Environmental Protection**

June 10, 2014

Good afternoon. My name is Stan Edwards. I am the Chief of the Division of Environmental Policy and Compliance in the Department of Environmental Protection. I am testifying on behalf of County Executive Leggett in support of Expedited Bill 25-14, Forest Conservation - Amendments.

In 2013, the Maryland General Assembly passed House Bill 706, the Forest Preservation Act of 2013. This bill amended the Forest Conservation Act in several ways, including providing exemptions for certain stream restoration and stormwater management activities intended to restore and protect environmental resources, including forests and trees. Expedited Bill 25-14 would make the County's Forest Conservation Law consistent with the State Forest Conservation Act.

Entities like the Department of Environmental Protection (DEP), Montgomery Parks, and others engage in stream restoration and the retrofit of stormwater management facilities in order to correct or prevent damage done by uncontrolled stormwater. House Bill 706 recognized that these activities serve to further the State's goals of protecting and enhancing forest resources by limiting erosion of forest land and through the planting of new trees as part of the restoration activity, activities which help return the land to its original condition to the greatest extent possible. DEP estimates the bill could reduce the cost of our projects by over \$400,000 annually, freeing up resources that could be used for additional environmental restoration activities. Additional savings would be realized by Montgomery Parks and other entities engaged in watershed protection and restoration projects.

We urge you to support Expedited Bill 25-14 and would be happy to address any questions the Council may have about the bill.

Good afternoon. I am Mark Pfefferle with the Montgomery County Planning Department. I am here to provide testimony on behalf of the Montgomery County Planning Board.

On October 1, 2013 Maryland House Bill 706 Bill became effective statewide. This Bill provides municipalities a means to be exempt from submitting a forest conservation plan for stream restoration projects and stormwater management retrofits. The proposed changes to the Montgomery County Forest Conservation Law are to make our law consistent with Bill 706 and to make other clarifying changes.

1. First the proposed changes add two new exemptions from submitting a forest conservation plan. Proposed exemptions 22A-5 (u) and (v) are in response to House Bill 706.
2. The second propose change clarifies that the law applies to any person who is required to obtain approval of a new development application, or an amendment to a development application.
3. The proposed changes the modifications to existing development exemption by clarifying that no more than 5000 square feet of forest can be removed cumulatively, that the modification does not substantially increase the developed area, and the existing use is retained.
4. The proposed changes will require all final forest conservation plans be approved prior to Planning Board approval of the record plat. This will prevent unsuspecting individual lot purchasers from needing to obtain final forest conservation plan approval when the person that subdivided the land failed to obtain approval of a final forest conservation plan prior to selling recorded lots. In these cases the first new lot buyer has the additional responsibility to submit and finalize the final forest conservation plan before they can obtain a sediment control permit. The Planning Board wants to eliminate this additional burden on individual lot purchasers.
5. The proposed changes also allows individual property owners to post a financial surety equivalent to their portion of the planting requirements associated with the forest conservation plan instead of being responsible for the financial surety for the entire subdivision.
6. Finally, Section 22A-20 limits appeals of plans reviewed by Planning Director to only those that are approved. The proposed change will allow applicants of plans denied by the Planning Director to be appealed to the Planning Board.

Thank you for the opportunity to provide comments.

BILL 25-14



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MONTGOMERY COUNTY REVENUE AUTHORITY

June 16, 2014

RECEIVED
MONTGOMERY COUNTY
COUNCIL

Councilmember Craig Rice
President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 25-14 Forest Conservation - Amendments

Dear Councilmember Rice,

Bill 25-14 concerns exemptions to forest conservation for stormwater management and stream restoration projects. The Bill was also advertised as a general amendment to forest conservation law. The Montgomery County Revenue Authority (MCRA) requests an amendment to Bill 25-14 to provide an exemption from forest conservation requirements for removing trees that are a hazard to aviation. This requested exemption would parallel the exemption in Maryland law and the County tree canopy law.

The MCRA owns and operates the Montgomery County Airpark (Airpark). We work closely with the Federal Aviation Administration (FAA) and receive federal funding to maintain the Airpark. As a requirement to receiving this funding, the MCRA is subject to grant assurances. Section 20 of the grant assurances requires MCRA to mitigate aviation hazards.

The FAA determined that the trees on the west side of the runway are a hazard to aviation (letter attached). In the absence of this determination by the FAA, MCRA would not remove these trees. Under the Maryland forest conservation law, if the FAA determines that trees are a hazard to aviation, the removal of those trees does not trigger forest conservation requirements. The Maryland Department of Natural Resources determined that any MCRA action to remove the trees identified as a hazard by the FAA would be exempt from the State Forest Conservation Program (letter attached).

It is illogical for the Montgomery County forest conservation law to require compliance with its forest conservation law when the tree removal is the minimum required by the FAA. The Council agreed last year that removing trees determined to be a hazard by FAA did not require compliance with the tree canopy requirements (Bill 35-12). The requested amendment would be consistent with that approved legislation.

Thank you for your consideration in this matter.

Sincerely,

Keith Miller/gj
Keith Miller
Chief Executive Officer

cc: Amanda Mihill
Jeffrey Zyontz

Attachments



FAA
Airports Division
Eastern Region

Washington Airports District Office
23723 Air Freight Lane, Suite 210
Dulles, Virginia 20166
(703) 661-1354

April 7, 2010

Scanned



Mr. Keith Miller, Executive Director
Montgomery County Revenue Authority
101 Monroe Street, Suite 410
Rockville, Maryland 20850

Reference: Montgomery County Airpark
Part 77 Obstructions

Dear Mr. Miller:

As part of the ongoing effort to bring the airport in compliance with FAA design standards, the MCRA prepared certain exhibits which depict obstructions to the FAR Part 77 surface. Your consultant has summarized those obstructions on a drawing entitled Tree Obstructions dated April 2010.

FAA Object clearing criteria were developed to provide for safe and efficient operations at an airport and require that certain areas on or near the airport be clear of objects or restricted to objects with a certain function, composition or height. One of the FAA standards which must be clear under those requirements include the FAR Part 77 surfaces. The FAA determined that penetrations to those surfaces are considered hazards to air navigation. Given that the penetrations are on property owned by the airport sponsor, the FAA has concluded that those hazards must be removed.

If you have any questions please do not hesitate to contact our office.

Sincerely,

Thomas A. Priscilla
Signed By
Thomas A. Priscilla, Jr.
Baltimore Metro Engineer

cc: Mr. Solanki, MAA
Ms. Eschenfelder, Delta (Richmond) ✓



Martin O'Malley, Governor
John R. Griffin, Secretary

March 5, 2007

Mr. Keith Miller, Executive Director
Montgomery County Revenue Authority
101 Monroe Street, Suite 410
Rockville, MD 20850

RE: Tree removal at Montgomery County Airpark
FCA C07-10

Dear Mr. Miller:

I received your letter dated February 27, 2007, requesting an exemption from the requirements of the Maryland Forest Conservation Program for the proposed tree removal at Montgomery County Airpark in Gaithersburg, Maryland. Because this tree removal is required by the Federal Aviation Administration under 14 C.F.R. §77.25 (Part 77) for safety reasons:

This project is not subject to the requirements of the State Forest Conservation Program.

If you have any questions, please contact me at 410-836-4568.

Sincerely,

A handwritten signature in black ink that reads "Tod Ericson".

Tod Ericson
Urban & Community Forester

RECEIVED
MAR 08 2007

Maryland Forest Service
2 South Bond Street
Bel Air, MD 21014
410-836-4568
www.dnr.maryland.gov
TTY users call via Maryland Relay

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

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

Comment [SE2]: Comment from the County Attorney: The word "initial" should be deleted. The word adds no meaning.

34 * * *

35 **22A-5. Exemptions.**

36 * * *

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

Comment [m3]: Comment from the County Attorney: The Bill proposes to amend the exemption for development of less than 5,000 square feet if the forest "is ever cleared in one event or cumulatively over multiple events from the first exemption . . ." The quoted phrase is awkward and unclear. I gather the intent is to prevent the exemption from being invoked more than once for the same lot or tract. The provision should be rewritten to clarify that intent.

Based on our understanding of the law, DEP believes the intent is to not allow more than 5K sq ft to be cleared on a parcel, whether at one time or cumulatively, after an exemption is granted. Once this exemption is granted, it would remain in effect until the applicant clears 5,000 sq ft of forest over one or multiple events. Once this occurs, this exemption would no longer apply, and the applicant would have to comply with Article II of the law unless another exemption was applicable.

- 49 (u) maintaining or retrofitting an existing stormwater management structure
- 50 if:
- 51 (1) the clearing of vegetation or removal and trimming of trees is for
- 52 the maintenance or retrofitting of the structure and in the original
- 53 limits of disturbance for construction of the existing facility; or
- 54 within any maintenance easement for access to the facility; and

Comment [m4]: DEP proposes this additional language, which is consistent with the State FCA and adds clarification.

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

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

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

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

(3) confirmed the tract is not included in a previously approved forest conservation plan.

Comment [m5]: The State FSA is silent on when this planting should occur. As drafted, this language could be interpreted to limit planting to only during the first growing season after final stabilization. This revision broadens the planting window while maintaining the same completion date. It's very likely that entities engaged in a long-term stream restoration project will want to plant some areas where construction is complete before final stabilization of the entire project.

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

* * *

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

* * *

(2) *Forest conservation plan.*

(A) *Application.* [Upon notification] After being notified that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning Director. If the development proposal will require more than one of the approvals subject to this subsection, the applicant must submit a preliminary forest conservation plan to the Planning Director in conjunction with the first approval and a final forest conservation plan in conjunction with the last approval. If only one approval subject to this subsection is required, an applicant[, with

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