



September 18, 2020

Written Testimony in support for Expedited Bill 36-20 – Forest Conservation Amendments for Montgomery County Council hearing on September 22, 2020¹

Denisse Guitarra

Maryland Conservation Advocate, Audubon Naturalist Society (ANS)

Dear Montgomery County Council,

For 123 years, Audubon Naturalist Society has inspired people to enjoy, learn about and protect nature. We thank the Montgomery County Council for the opportunity to provide testimony for the proposed amended regulations as part of the county's Forest Conservation Law. ANS has been following closely the development of the Forest Conservation amendments since they were first introduced in the Montgomery County Planning Department and Board earlier this year.²

ANS applauds Montgomery County for its long history as a leader in forward-thinking planning and environmental conservation. The County has long been a leader in the region and the nation in protecting and restoring the natural resources that make this county such a desirable place to live, work, and play. Specifically for Bill 36-20, we see this an important step in the right direction towards a more climate resilient county which prioritizes forest protection. Under today's climate crisis, preserving and protecting our forests should be a priority. Trees provide shade which mitigate urban heat island effects, serve as home to wildlife, and their roots prevent soil erosion. We in particular support the following provisions in Bill 36-20:

- The increase of binding maintenance agreements to five years instead of two gives saplings a chance to grow past the reach of browsing deer and have a better chance of survival. Montgomery County has significant deer populations and invasive species which can decimate entire groves of saplings.

¹ Bill 36-20- Forest Conservation – Amendments. Available: https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2675_1_10805_Bill_36-2020_Introduction_20200729.pdf

² ANS and SWPN testify on Forest Conservation Regulations at the Planning Board. June and July 2020. http://conservationblog.anshome.org/blog/moco_forest_conservation/

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- Requiring a Forest Conservation Plan for contiguous lots of forest even if individually the lots are too small themselves to qualify.
- New protections for critical root zones as all too often we see trees die because the roots around the trunk are destroyed without cutting down the tree.
- Changes to the fee in lieu system and assurances that there is a focus on retention and forest banking.
- Ensuring that agricultural FCP exemptions are granted for actual commercial agriculture, not other non-farm uses in agricultural areas.

In addition, ANS has the following recommendations, and asks the Council to take these in consideration in order to strengthen our county's current existing forest conservation law:

- **Montgomery County Forest Conservation Law should have a net zero forest loss by following a 1:1 replanting ratio.** Council should either amend Bill 36-20 or soon study and introduce a new one focusing on this critically important and forward-looking issue.
 - Other nearby jurisdictions, including Frederick County, have passed and currently have stronger forest protections than Montgomery County.
 - The recent success of Frederick County's FCL was due to a twofold win which mandates a 1:1 tree replanting rate plus requires zoning changes that protects sensitive environmental areas that protect features like steep slopes, where the forest roots are preventing landslides, and floodplains where the forests are slowing and cleaning floodwaters.^{3 4 5}
- **Ensure that priority forests are protected in stream restorations.**
 - There is one provision that could create an unattended consequence. We do not want to see mature, priority forests chopped down just so a developer can get stormwater credit for installing a stream restoration where the existing forest would provide more environmental benefits. Please amend 6 22A-5. Exemptions (v)(1) to ensure that priority forests around stream restoration projects are not exempted from forest conservation protections.
- **Change the ephemeral streams definition to extend protections beyond Ten Mile Creek.**
 - This legislation limits the definition of ephemeral streams to Ten Mile Creek because the accompanying regulations cite the 2020 Environmental Guidance document. Bill 36-20 could adopt its own definition of ephemeral stream. In fact,

³ Frederick's Forest Conservation Law changes 2020. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/324596/Protecting-Frederick-County-Environmental-Resources>

⁴ Forest Resource Ordinance Bill 20-08 will stop net forest loss. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/326561/Bill-No-20-08-Amendments-to-Chapter-1-21-of-the-Frederick-County-Code-Forest-Resource-Ordinance>

⁵ Zoning Ordinance Amendments Overview Bill #20-07. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/326560/Bill-No-20-07-Amendments-to-Chapter-1-19-of-the-Frederick-County-Code-Zoning-Ordinance>

the guidance does provide a general definition that could be copied over. Only in “Appendix E” does the guidance limit its applicability to TMC.

In addition, we ask to set up a work group to continue to explore and find ways to strengthen Montgomery County’s Forest Conservation Law in a way that is most applicable and equitable to all residents in the county before the T&E committee meeting on Bill 26-20. We also recommend moving the upcoming T&E committee meeting on Bill 36-20 from its scheduled October 7th meeting ⁶ to a future date in November to give us more time to research and reach a net zero forest loss in Montgomery County.

We thank the Montgomery County Council for taking in consideration our comments and look forward to continuing to be engaged and be part of the Forest Conservation Law changes.

Sincerely,

Denisse Guitarra
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⁶ T&E committee meeting on Bill 36-20 on October 7, 2020. Available:
https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/current_com_agm.pdf