

**MEMORANDUM**

TO: County Council

FROM: *MA* Michael Faden, Senior Legislative Attorney,  
Amanda Mihill, Legislative Attorney *AMihill*

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

**Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): enact with 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, ©34-35). A Transportation, Infrastructure, Energy and Environment Committee worksession was held on July 21.

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 ©11-12).

**Committee recommendations**

*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. **The Committee recommended** inserting the following amendment after ©4, line 69:

(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, the **Committee recommended (3-0)** 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, the **Committee recommended (3-0)** 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 ©39-40. The **Committee recommended** incorporating these amendments.

### New Issue

Diane Cameron and Amanda John submitted testimony on behalf of the Montgomery County Stormwater Partners and Potomac Conservancy stating that they would normally oppose creating new exemptions to the Forest Conservation Law (©41-49). However, they indicate that they are neutral on this bill if: (1) the County comments in writing to working with the Stormwater partners on a Green Infrastructure Plan as part of the County’s MS-4 program; and (2) if language is

added to the bill to require a maintenance agreement requiring 5-year survival of all trees affected by the project, annual inspection of stream restoration projects for 5 years, and annual reporting of stream restoration and stormwater facility projects (©48-49).

Bill 25-14 would require a 5-year maintenance agreement with the affected property owner. Council staff notes that Section 22A-12 of Forest Conservation Law requires a 2-year maintenance agreement as part of a Forest Conservation Plan. Neither the County's Tree Canopy Law nor the Roadside Tree Law requires a maintenance agreement or a guarantee for a certain survivable period for planted trees. Council staff has asked DEP staff to be prepared to address these requests at Tuesday's Council session.

This packet contains:	<u>Circle #</u>
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F:\LAW\BILLS\1425 Forest Conservation Law\Action Memo.Doc

Expedited Bill No. 25-14  
 Concerning: Forest Conservation –  
Amendments  
 Revised: 7/23/14 Draft No. 2  
 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

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By: Council President at the request of the Planning Board

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**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

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



28 **22A-4. Applicability**

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

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

35 \* \* \*

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

37 The requirements of Article II do not apply to:

38 \* \* \*

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

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

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

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

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

52 (u) maintaining or retrofitting an existing stormwater management structure  
53 if:

- (1) the clearing of vegetation or removal and trimming of trees is for the maintenance or retrofitting of the structure and in the original limits of disturbance for construction of the existing facility, or within any maintenance easement for access to the facility; and
- (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 [[in]] before the end of the first planting season after final stabilization; and
- (3) confirmed that the tract is not included in a previously approved forest conservation plan[.]; and

(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.

**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.*

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

96 \* \* \*

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

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

114 \* \* \*

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

116 \* \* \*

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

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

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

124 \* \* \*

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

126 \* \* \*

127 (g) *In lieu fee.*

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

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

139 \* \* \*

140 (i) *Financial Security.*

141 \* \* \*

142 (4) *Amount required.*

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

159 \* \* \*

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

161 \* \* \*

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

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

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

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

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

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

191 (d) Administrative enforcement process.

192 \* \* \*

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

201 \* \* \*

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

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

## 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:

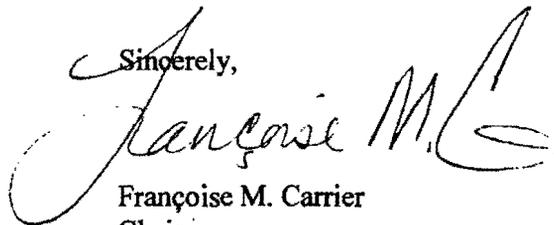
1. Adds four new definitions to Section 22A-3. The definitions are needed to clarify the various sections of the law. The definitions "developed area," "developed property" and "development application" are necessary to identify specific trigger points later in the law. The definition "stream restoration 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

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.

**(1) "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.]

**INCLUDING:**

- 2. **ACTIVITIES THAT IMPROVE FOREST HEALTH,**
- 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  
Nacem 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.**

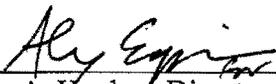
Not Applicable.

**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.**

*For*  
\_\_\_\_\_  
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,

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](http://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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- 55 (2) the tract is not included in a previously approved forest
- 56 conservation plan; and
- 57 (v) a stream restoration project for which the applicant for a sediment
- 58 control permit has:
- 59 (1) executed a binding maintenance agreement of at least 5 years
- 60 with the affected property owner or owners;
- 61 (2) agreed to replace every tree removed and plant the new trees
- 62 before the end of the first planting season after final stabilization;
- 63 and
- 64 (3) confirmed the tract is not included in a previously approved
- 65 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.

**Deleted:** in

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

- 67 \* \* \*
- 68 (b) *Project requiring development plan, project plan, preliminary plan of*
- 69 *subdivision, or site plan approval.*

- 70 \* \* \*
- 71 (2) *Forest conservation plan.*

72 (A) *Application.* [Upon notification] After being notified that

73 the forest stand delineation is complete and correct, the

74 applicant must submit a forest conservation plan to the

75 Planning Director. If the development proposal will

76 require more than one of the approvals subject to this

77 subsection, the applicant must submit a preliminary forest

78 conservation plan to the Planning Director in conjunction

79 with the first approval and a final forest conservation plan

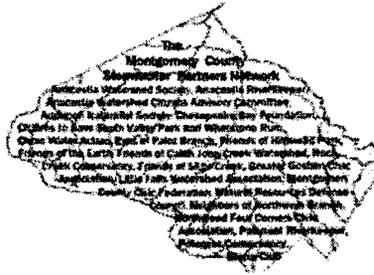
80 in conjunction with the last approval. If only one approval

81 subject to this subsection is required, an applicant[, with

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AUDUBON NATURALIST SOCIETY  
Connecting people with nature in the DC region



To: Councilmember Roger Berliner, Chair, Transportation, Infrastructure, Energy and Environment (T&E); Councilmember Nancy Floreen and Councilmember Hans Riemer

cc: Bob Hoyt, Director, Department of Environmental Protection and Steve Shofar, Chief, Watershed Management Division

From: Diane Cameron, Coordinator, Montgomery County Stormwater Partners and Audubon Naturalist Society, and Amanda John, Policy Manager, Potomac Conservancy

Re: Montgomery County Expedited Bill 25-14: Forest Conservation Law – Amendments

Date: July 18, 2014

### Summary of this Bill, our Response and Requests

The Audubon Naturalist Society and the Stormwater Partners Network appreciate this opportunity to submit testimony on proposed amendments to the Forest Conservation Law (FCL). This bill would conform Montgomery County law to State law regarding stormwater facilities maintenance and retrofitting, and stream channel restoration projects. The bill would also eliminate a current loophole for smaller forest removals from non-residential lots (section 22-A(5)(t), which we support).

Our position on this bill is that while we would normally oppose creating new exemption categories from the Forest Conservation Law, we understand the background reasons for this request. We are neutral on this bill – meaning we will refrain from opposing it - if the replanting and reforestation project maintenance accountability requirements are added to the Expedited Bill {requested below as our item (2)} and if Montgomery County, through DEP, commits in writing to working with the Stormwater Partners on a Green Infrastructure Plan as part of the County's MS-4 program moving forward. Through our conversations with DEP officials, we understand that they are not opposed to the substance of our asks and are willing to work with us, so long as there is no further delay in this legislation.

The changes we request center on the need for greater accountability for effective reforestation for the affected projects, and for Montgomery County to commit to a Green Infrastructure basis for its stormwater permit, including greater use of tree-based stormwater practices. We request that the accountability we are seeking in lieu of FCL requirements, be codified through specific

additions to the County's Forest Conservation and Stormwater laws. [Specific FCL and SW law revisions will be submitted.]

Information and commitments needed to gain Stormwater Partners' support for this legislation:

- (1) **Statistics on tree and reforestation outcomes and tree management in stormwater pond maintenance and retrofits.**
- (2) **Accountability for adequate replanting and long-term tree survivability. (details on p.5)**
- (3) **Stormwater Facilities Maintenance and Retrofitting: New Tree Protocol needed.**
- (4) **Statement of intent from DEP for its transition to making green infrastructure the default approach for stormwater retrofits under Montgomery's stormwater permit.**

Below we summarize: key items in Bill 25-14; the County's progress in recognizing the stormwater benefits of green infrastructure trees and forests; and our set of four requests.

#### Summary of Key Provisions of Bill 25-14

##### Section 22A-5(u)

This would exempt from the FCL, tree removal operations associated with existing stormwater facility maintenance and retrofitting, provided that the clearing is within the original limits of disturbance for the facility's construction, and the tract is not part of a previously-approved Forest Conservation Plan.

##### Section 22A-5(v)

This would exempt from the FCL, tree removal operations associated with stream restoration projects, provided that the projects are subject to a binding five-year maintenance agreement with affected property owners, and that the replanting is on at least a 1:1 ratio for every tree removed, and the tract is not part of a previously-approved Forest Conservation Plan.

DEP staff have told members of the Stormwater Partners that the paperwork review requirements of the Forest Conservation Law have hampered their work in maintaining and retrofitting stormwater ponds, adding significant delays to their MS-4 implementation schedules

In a nutshell, the core purpose of this bill is to enable those who perform stormwater facilities maintenance and retrofitting, and stream channel restoration projects, and who already do replantings in order to mitigate tree losses caused by these projects, to avoid the paperwork and other requirements of the Forest Conservation Law.

#### **Relationship of this bill to Montgomery's Countywide stormwater (MS-4) permits**

##### ***Conventional Pond Retrofits: the core of Montgomery's MS-4 Program Thus Far.***

Much of the impetus for this bill is from the County's efforts to comply with its Municipal Separate Storm Sewer System ("M-S4") permits. These MS-4 permits are issued to Montgomery

County under the federal Clean Water Act by the Maryland Department of the Environment. DEP administers a very large MS-4 permit program<sup>1</sup>, and the Department of Parks has its own MS-4 permit, requiring it to abate stormwater runoff from its properties. Both programs are funded through the Water Quality Protection Charge, the County's stormwater utility fee.

The core requirement in the permit administered by DEP is to control the runoff from an additional 20% of uncontrolled or poorly-controlled impervious surfaces, amounting to over 4000 impervious acres. As written by MDE, Montgomery's MS-4 permit allows any combination of: conventional stormwater facility retrofits such as pond retrofits to enlarge storage volumes; stream channel restoration; and Environmental Site Design (Green Infrastructure, or GI) retrofits.

Beginning in late 2005, the Montgomery County Stormwater Partners Network asked MDE to issue a more-stringent permit to Montgomery County, which would require aggressive retrofits of existing impervious areas through use of green infrastructure. In response, MDE and local officials said that more time was needed to demonstrate how to implement and maintain the GI practices, before they would agree to making these mandatory via the MS-4 permit, including via a mandatory minimum percentage of impervious acres to be addressed with Green Infrastructure.

So GI has remained an open-ended option in the MS-4 permits. Meanwhile, the standard practice for many years for stormwater pond maintenance and retrofits has involved tree removal. Since the majority of the County's older impervious areas are served by stormwater ponds and tanks, and this approach is less costly, DEP has so far opted to make conventional pond retrofits the core of its MS-4 retrofit program<sup>2</sup>.

***The role of trees and other green practices is growing in the County's stormwater programs.***

Green Infrastructure includes such techniques as: rain gardens; bioretention (engineered rain gardens); green (vegetated) roofs; sheet flow to conservation areas; permeable pavements; and other methods that infiltrate and otherwise reduce runoff at the source, usually using soil and plants to slow down, spread out, and soak in runoff. In contrast to the other two restoration techniques allowed by MDE in its MS-4 permits, only Green Infrastructure enables capture and reduction of stormwater runoff at the source -- and the reduction of erosional flood-flows that have been blowing out our streams and undermining roads, paths and other structures.

Based on their local experience and partnerships, and changes in stormwater policies regionally, DEP staff recognize the beneficial role that trees can play when they are located in specific parts of stormwater ponds, and also in using tree plantings and reforestation directly as stormwater management strategies.

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<sup>1</sup> Montgomery's main MS-4 was last issued by the Maryland Department of the Environment in February of 2010 and is up for renewal in February, 2015.

<sup>2</sup> DEP Watershed Management Division Chief Steven Shofar stated at a meeting with the Stormwater Partners in February, 2014 that the portion of impervious-acres served with GI retrofits would be under 10% by the end of the current permit term (Feb.2015) both on a countywide basis and for the Anacostia portion of the County.

Over the past eight years, we have appreciated the open, collaborative spirit of Montgomery County and DEP Director Hoyt and Parks Director Bradford, and their stormwater program staffs in partnering with us to share information and collaborate on expanding the use of GI. We are impressed with the commitment of leaders and staff of DEP, Parks and DPS to using Green Infrastructure, often under challenging conditions. To give two examples: the RainScapes Program that gives cash rebates to landowners who retrofit their own properties has grown significantly in recent years, and DEP's collaboration with DOT has resulted in several successful Green Streets retrofit projects countywide. Parks staff have removed imperviousness by replacing unused parking areas with native plant rain gardens and Conservation Landscapes.

We know that DEP and Parks staff, and many staff of DPS and other County agencies, share the view that Green Infrastructure practices are preferable because they carry more total water quality, environmental, social and economic benefits compared with other conventional stormwater practices. Bill 25-14, which is about the nexus of forest and tree conservation and the MS-4 permit programs, gives Montgomery County an opportunity to publicly firm up its commitment to using Green Infrastructure - including tree-based stormwater practices -- as the core component of its MS-4 retrofit compliance program.

Below we offer a few specific suggestions for the Council's leadership, in working with County agencies, in promoting tree-based and other Green Infrastructure practices, and in providing accountability for reforestation for all county projects.

**Our Position: We need accountability for effective reforestation mitigation for all stormwater and stream projects, and a clear commitment to use of Green Infrastructure as the default basis for stormwater retrofits.**

We have had the chance to review Planning Department staff information on this bill, and we were briefed by DEP staff. The Stormwater Partners have also benefited from separate annual briefings on the stormwater permit programs by Parks Department and DEP staff. We appreciate staff updating us on their work to implement Montgomery's stormwater permits, to maintain and retrofit existing stormwater infrastructure and to restore degraded stream channels.

**Accountability is needed for adequate replantings of removed trees and for long-term survivability.**

Our sense that county agencies have diligently replanted the trees they've removed for these stormwater and stream channel projects is crucial to our understanding of the basis for this bill. However, this bill is written to exempt *all* operators of stormwater maintenance and retrofitting and stream restoration projects, not just County agencies. And, we cannot predict future operators' voluntary accountability and "due diligence" practices. So we must take care that any FCL exemptions not enable forest removal without accountability for adequate replantings and their long-term maintenance. And the stormwater reduction functions of trees and forests need to be given priority in Montgomery's stormwater management and watershed restoration programs.

The introduction of this bill highlights the need to clarify policy connections on trees and forests, stormwater management, and stream health, and to step up action to implement these initiatives. Below we outline these needs.

**(1) Statistics on tree and reforestation outcomes and tree management in stormwater pond maintenance and retrofits.**

- Statistics and facts about County tree and forest practices, and other Green Infrastructure stormwater practices, are needed.
  - For instance, DEP staff note that their current practice is to replant to greater than a 1:1 ratio for their stream restoration projects. They have improved tree protection with wire ‘cages’ to reduce deer predation. We request that the Council ask DEP to provide statistics on their stormwater maintenance and stream restoration projects’ tree removal and replanting sites and numbers.
  - Information is also needed on current stormwater facility maintenance and retrofit practices for tree cutting, tree planting/ replanting, and allowances for keeping ‘volunteer’ trees (that have grown on their own).

**(2) Accountability for adequate replanting and long-term tree survivability.**

- The current language in section 5(v) about a binding 5-year maintenance agreement apparently is more about operator access to a site, than it is about ensuring long-term survival of replanted trees. Replanting outcomes must be binding, transparent and enforceable for all stream restoration projects.
- We request that the Council require DEP (and other agencies as needed) to develop restrictive and accountable language to be codified in the County’s Forest Conservation Law, for the five-year reforestation maintenance agreement, that includes requiring a legitimate contractor to inspect and maintain all stream restoration projects for five years, and to enforceably require through such a written agreement, standard levels of tree survivorship. (Which we believe is around 65%.)

**(3) Stormwater Facilities Maintenance and Retrofitting: New tree protocol needed.**

- Montgomery County is redefining the role of trees in stormwater facilities (and trees *as* stormwater facilities). The Stormwater Partners including Conservation Montgomery, the Natural Resources Defense Council, and Audubon Naturalist Society have been working with DEP to promote this policy shift. We look forward to working even more closely with DEP and other agencies as we move into demonstration and implementation. Accordingly, we ask the Council to request that DEP provide information to the Council and the public about its tree-related stormwater initiatives and programs, including DEP’s new tree protocol encouraging Homeowner’s Associations to keep and plant trees in specific ways, when they maintain existing stormwater ponds.

- (4) **We recommend that the Council ask DEP to issue a statement of intent to transition to making green infrastructure the default approach for its stormwater retrofits program under the MS-4 permit.** Montgomery's countywide MS-4 permit, issued by the Maryland Department of the Environment, is up for renewal in February, 2015. We request that Montgomery County, through its lead stormwater agency DEP, issue a statement of intent to transition to a Green Infrastructure basis for its stormwater retrofit program, including for MDE's renewal of the County's stormwater MS-4 permit in 2015. The Stormwater Partners are happy to develop cost-effective Green Infrastructure recommendations to the Council and DEP, should these prove useful to the County's transition to a Green Infrastructure-based stormwater program.

## Mihill, Amanda

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**From:** Diane Cameron [Diane.Cameron@anshome.org]  
**Sent:** Monday, July 21, 2014 6:13 PM  
**To:** Faden, Michael; Pecoraro, Karen; Mihill, Amanda; Boucher, Kathleen  
**Cc:** Edwards, Stan; Hoyt, Bob; Miller, Laura; Lisa Alexander; Carson, Craig; Stevens, Amy; Shofar, Steven; 'john@potomac.org'; Kelli Holsendolph  
**Subject:** RE: Expedited Bill 25-14 - comments of Audubon Naturalist Society, Potomac Conservancy and the Stormwater Partners

Dear All,

Below is suggested language for a statement of intent by DEP and the Administration to provide to the Council. As noted below, Expedited Bill 25-14, by connecting the concept of trees and forests with stormwater management and the MS-4 permit, creates an opportunity for larger conversations and commitments in this policy realm.

We are not requesting that this language become part of the bill itself; rather, we ask that DEP and the Administration consider sending a memo to the Council with this language (or something similar) that would become part of the Council's record of discussion and deliberation with the Administration related to the topic of this bill.

Thanks for your consideration of our offerings!

Diane Cameron & Amanda John

On behalf of the Montgomery County Stormwater Partners Network, Potomac Conservancy and Audubon Naturalist Society respectfully request that DEP use the following language as the basis for a letter or memo from the Administration to the Council. Our request is that such a letter or memo will become part of the written record of the Council's deliberations related to Expedited Bill 25-14: Forest Conservation Law (FCL)- Amendments to Article IV within Sec. 22A-26.

Although the points below pertain to a larger sphere beyond that of the FCL, the context of this bill, within the County's evolving use of green stormwater infrastructure, including trees and forests provides an opportunity to expand County policy and plans in this area.

Suggested language for DEP and the Administration to include in a letter or memo to the Council:

*The Department of Environmental Protection will develop and adhere to a Statement of Intent to:*

- *Create a revised implementation strategy for impervious surface retrofits to include the increased installation and use of green infrastructure, including tree-based practices used to capture and reduce runoff, targeted to serve the runoff from 51% or greater of the county's impervious surface retrofit requirement under the Municipal Separate Storm Sewer System (MS4) Permit issued in February, 2015.*
- *The revised implementation strategy will provide for the escalating increase in use of green infrastructure practices, Environmental Site Design, and tree-based stormwater management technologies to the maximum extent practicable for the full term of the MS4 permit. The policy of the revised strategy is to make green infrastructure/ESD practices the first priority and default basis for the retrofits program.*

- *In the selection of green infrastructure retrofit practices for the revised impervious surface retrofit implementation strategy, DEP will give priority to practices that, based on research, analysis and local experience, are cost-effective on a life-cycle-costing basis when considering long-term maintenance along with up-front costs, landowner acceptance, runoff reduction, and other water quality, environmental, and social and economic impacts and benefits.*
- *The Department of Environmental Protection will host stakeholder meetings with the Montgomery County Stormwater Partners Network and watershed, environmental and civic groups, and a public comment period in the Fall and early Winter of 2014-2015, in order to incorporate and reflect public input prior to submitting its revised impervious surface retrofit strategy as part of its MS-4 renewal application to the Maryland Department of Environment.*

Diane Cameron  
 Conservation Program Director  
 (301) 652-9188 x22

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**From:** Diane Cameron  
**Sent:** Monday, July 21, 2014 4:18 PM  
**To:** 'michael.faden@montgomerycountymd.gov'; 'Karen.pecoraro@montgomerycountymd.gov'; 'Mihill, Amanda'; 'Boucher, Kathleen'  
**Cc:** 'Edwards, Stan'; 'Hoyt, Bob'; 'Miller, Laura'; Lisa Alexander; 'Carson, Craig'; 'Stevens, Amy'; 'Shofar, Steven'; 'john@potomac.org'; Kelli Holsendolph  
**Subject:** RE: Expedited Bill 25-14 - comments of Audubon Naturalist Society, Potomac Conservancy and the Stormwater Partners

Dear All,

Below is my suggested amendment language to 25-14.

Thanks,

Diane

**Accountability for adequate replanting and long-term tree survivability.**

**22A-5. Exemptions**

- The current language in section 5(v) about a binding 5-year maintenance agreement apparently is more about operator access to a site, than it is about ensuring long-term survival of replanted trees. Replanting outcomes must be binding, transparent and enforceable for all stream restoration projects.
- (v) Executed a binding maintenance agreement of at least 5 years with the affected property owner or owners

- Such agreement shall require the replacement of every tree removed and the planting of the requisite number of new trees in the first planting season after final stabilization; and a guarantee of the 5-year survival of all trees affected by the project.
- Such agreement shall require a legitimate contractor to inspect and maintain all stream restoration projects at least once annually for five years.
- Public agencies undertaking stream restoration and stormwater facility projects involving tree removal shall annually report to the public statistics on the number of such projects undertaken in the subject year, the number of trees removed on a per-project and categorical basis, and the survival and replacement rates for trees that are replanted.

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**From:** Diane Cameron

**Sent:** Friday, July 18, 2014 2:46 PM

**To:** 'michael.faden@montgomerycountymd.gov'; 'Karen.pecoraro@montgomerycountymd.gov'; 'Mihill, Amanda'

**Cc:** Edwards, Stan; Hoyt, Bob; Boucher, Kathleen; Miller, Laura; Lisa Alexander; Carson, Craig; Stevens, Amy; 'Shofar, Steven'; 'john@potomac.org'; Kelli Holsendolph

**Subject:** Expedited Bill 25-14 - comments of Audubon Naturalist Society, Potomac Conservancy and the Stormwater Partners

Dear Michael, Karen and Amanda,

Thanks in advance for circulating our attached comments on Expedited Bill 25-14 to the members of the T&E Committee and anyone else who needs to see them. We understand that the T&E Committee will take this up this Monday.

I've shared these comments with DEP, and have had a few conversations with staff about them. DEP Watershed Management Division Chief Steve Shofar indicated that DEP can work with us on all of our substantive issues and requests, so long as this bill moves forward without further delay. Our position on this bill is that we are neutral on it, with these two provisos:

- 1) Item 2 in our comments on the Bill is a request for a revision to the bill to mandate accountability for replanting and tree mitigation components for these stormwater and stream projects, and tree/forest stand survival over a 5-year period. We will provide suggested legislative language to the T&E Committee and DEP on Monday to accomplish this; we don't anticipate that this will cause a delay in enactment of the Bill.
- 2) The Stormwater Partners asks that DEP provide a written commitment that they will work with us to craft a Green Infrastructure plan related to the MS-4, to include a significant role for tree-based practices and to actively seek and promote lower-cost GI practices, and for furthering a significant role for watershed, environmental, and civic groups as partners with DEP. This will help to clarify for everyone, DEP's intention and plan to make significant progress in the green infrastructure and tree-related elements in the next upcoming phase of the MS-4 Program. This could take the form of a letter or memo from DEP to be shared with the Council as part of the record of discussions around this Expedited Bill.

Thanks again,

Regards,

Diane