

**MEMORANDUM**

TO: County Council

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

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

Expedited Bill 53-10, Forest Conservation – Conforming Amendments, sponsored by the Council President at the request of the Planning Board, was introduced on October 26, 2010. A Transportation, Infrastructure, Energy & Environment Committee worksession is tentatively scheduled for November 22. Action is tentatively scheduled for November 30.

In 2009, the State forest conservation law was amended to tighten certain exemptions. Bill 53-10 would conform County law to state law by amending County law to:

- reduce the threshold acreage of forest cut, cleared, or graded above which certain activities cannot be exempted from the Forest Conservation Law;
- clarify how money in the Forest Conservation Fund can be used; and
- identify certain vegetation that must be retained unless the Planning Board or Planning Director authorizes a variance.

In addition, current County law requires the Planning Board to approve certain forest conservation variances. The Planning Director approves the forest conservation plans to which those variances are attached. Sending those variances to the Planning Board creates unnecessary delays for property owners and clogs the Board's agenda. Bill 53-10 would amend County law to authorize the Planning Director to approve these variances.

The bill that the Planning Board transmitted to the Council would make numerous other changes to remove inconsistencies, provide clarity, and make implementing the law more efficient. To ensure that the Council can address the issues quickly, only the portions of the bill that would conform existing law to state law and authorize the Planning Director to approve a variance was introduced.

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

This packet contains:	<u>Circle #</u>
Corrected Expedited Bill 53-10	1
Legislative Request Report	9
Planning Board transmittal memorandum and staff report	10

**CORRECTED COPY**

Expedited Bill No. 53-10  
Concerning: Forest Conservation –  
Conforming Amendments  
Revised: 10/25/2010 Draft No. 2  
Introduced: October 26, 2010  
Expires: April 26, 2010  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Council President at the request of the Planning Board

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**AN EXPEDITED ACT to:**

- (1) reduce the threshold acreage of forest cut, cleared, or graded above which certain activities cannot be exempted from the Forest Conservation Law;
- (2) clarify how money in the Forest Conservation Fund can be used;
- (3) identify certain vegetation that must be retained unless the Planning Board or Planning Director authorizes a variance;
- (4) revise certain variance requirements; and
- (5) generally amend the County forest conservation law.

By amending

Montgomery County Code  
Chapter 22A, Forest Conservation  
Sections 22A-5, 22A-8, 22A-9, 22A-12, 22A-21, and 22A-27

<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 (A) more than a total of [40,000] 20,000 square feet of forest,
- 29 (B) any forest in a stream buffer,
- 30 (C) any forest on property located in a special protection area
- 31 which must submit a water quality plan,
- 32 (D) any specimen or champion tree, or
- 33 (E) any tree or forest that is subject to the requirements of a
- 34 previously approved forest conservation plan or tree save
- 35 plan;

\* \* \*

37 (p) the construction of a public utility or highway in a utility right-of-way  
38 not exempt under subsection (o), or a highway right-of-way not  
39 exempt under subsection (e), if:

- 40 (1) the right-of-way existed before July 1, 1992;
- 41 (2) forest clearing will not exceed a total of [40,000] 20,000 square
- 42 feet and
- 43 (3) the construction will not result in the cutting, clearing, or
- 44 grading of:
  - 45 (A) any forest in a stream buffer,
  - 46 (B) any forest on property located in a special protection area
  - 47 which must submit a water quality plan,
  - 48 (C) any specimen or champion tree, or
  - 49 (D) any tree or forest that is subject to a previously approved
  - 50 forest conservation or tree save plan;

\* \* \*

52 (s) (1) an activity occurring on a tract of land less than 1.5 acres with  
53 no existing forest, or existing specimen or champion tree, and

54 the afforestation requirements would not exceed 10,000 square  
55 feet; or

56 (2) an activity occurring on a tract less than 1 acre that will not  
57 result in the clearing of more than a total of [30,000] 20,000  
58 square feet of existing forest, or any existing specimen or  
59 champion tree, and reforestation requirements would not exceed  
60 10,000 square feet. Forest in any priority area on-site must be  
61 preserved; and

62 \* \* \*

63 **22A-8. Utility lines.**

64 \* \* \*

65 (b) Calculation Rules; Exemption.

66 (1) To determine the applicability of this Chapter under Section  
67 22A-4 to proposed activities within a public right-of-way or  
68 public utility easement, the calculation of land area must be  
69 based on the limits of disturbance as shown on the sediment  
70 control permit.

71 (2) A public right-of-way, public utility easement, or privately  
72 owned utility right- of-way is considered to be exempt under  
73 Section 22A-5(o) if the proposed activity and any future stages  
74 of the work on the utility line will not result in the cumulative  
75 cutting, clearing, or grading of more than [40,000] 20,000  
76 square feet of forest or the cutting, clearing, or grading of any  
77 specimen or champion tree, or trees or forest that are subject to  
78 a previously approved forest conservation or tree save plan.  
79 Any later stages of the work must be identified at the time of  
80 the initial sediment control permit application.

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\* \* \*

**22A-9. County Highway Projects.**

\* \* \*

(b) If the forest to be cut or cleared for a County highway project equals or exceed [40,000] 20,000 square feet, the constructing agency must reforest a suitable area at the rate of one acre of reforestation for each acre of forest cleared.

\* \* \*

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

(b) *Retention*

\* \* \*

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

(A) Any tree, shrub, or plant that is rare, threatened, or endangered under:

(i) the Federal Endangered Species Act of 1973 in 16 U.S.C. §§1531 – 1544 and in 50 CFR 17;

(ii) the Maryland Nongame and Endangered Species Conservation Act, Title 10, Subtitle 2A of the Natural Resources Article of the Maryland Code;

or

(iii) COMAR 08.03.08;

(B) Any tree that is:

(i) part of a historic site,

- 108 (ii) associated with a historic site, or
- 109 (iii) designated by the State or County as a national,
- 110 State, or County champion tree; or

111 (C) Any tree with a diameter, measured at 4.5 feet above the  
 112 ground, of:

- 113 (i) 30 inches or more; or
- 114 (ii) 75% or more of the diameter, measured at 4.5 feet  
 115 above ground, of the current State champion tree  
 116 of that species.

117 \* \* \*

118 (e) *Standards for reforestation and afforestation.*

119 \* \* \*

120 (2) *Off-site afforestation and reforestation.* In addition to the use  
 121 of other sites proposed by an applicant and approved by the  
 122 County, off-site afforestation or reforestation may also include:

123 (A) Forest mitigation banks designated in advance by the  
 124 County.

125 (B) Protection of existing off-site forest. Acquisition of an  
 126 off-site protective easement for existing forested areas  
 127 not currently protected in perpetuity is an acceptable  
 128 mitigation technique instead of off-site afforestation or  
 129 reforestation planting, but the forest cover protected must  
 130 be 2 times the afforestation and reforestation  
 131 requirements.

132 \* \* \*

133 **22A-21. Variance.**

134 (a) *Written request.* An applicant may request in writing a variance from  
135 this Chapter or any regulation adopted under it if the applicant shows  
136 that enforcement would result in unwarranted hardship. A request for  
137 a variance suspends the time requirements in Section 22A-11 until the  
138 Planning Board or Planning Director acts on the request.

139 \* \* \*

140 (e) *Approval procedures; Conditions.* The Planning Board or the  
141 Planning Director for a Forest Conservation Plan associated with a  
142 sediment control plan must find that the applicant has met all  
143 requirements of this Section before granting a variance. The Board or  
144 Director may impose appropriate conditions to promote the objectives  
145 of this Chapter and protect the public interest.

146 \* \* \*

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

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

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

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

164 \* \* \*

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

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

## LEGISLATIVE REQUEST REPORT

### Expedited Bill 53-10 Forest Conservation – Conforming Amendments

**DESCRIPTION:** Expedited Bill 53-10 would reduce the threshold acreage of forest cut, cleared, or graded above which certain activities cannot be exempted from the Forest Conservation Law, clarify how money in the Forest Conservation Fund can be used, revise certain variance requirements, and generally amend the County forest conservation law.

**PROBLEM:** In 2009, the State forest conservation law was amended to tighten certain exemptions to the forest conservation law. County law needs to be amended to conform to state law. Additionally, current County law requires the Planning Board, rather than the Planning Director, to approve certain forest conservation variances. The Planning Director approves the forest conservation plans which those variances are attached to. Sending those variances to the Planning Board creates unnecessary delays for property owners and clogs the Board's agenda.

**GOALS AND OBJECTIVES:** To conform County law to state law and authorize the Planning Director to approve certain forest conservation variances.

**COORDINATION:** County Council

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney (240) 777-7905  
Amanda Mihill, Legislative Analyst (240) 777-7815

**APPLICATION WITHIN MUNICIPALITIES:** To be determined.

**PENALTIES:** See County Code §22A-16.

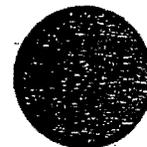
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**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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March 23, 2010

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RECEIVED  
MONTGOMERY COUNTY  
CORRIBLE

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

Re: Planning Board Recommendation for revisions to the Forest Conservation Law  
and adopting State-mandated changes to local programs

Dear Ms. Floreen and Councilmembers:

On December 3, 2009, the Planning Board recommended transmitting revisions to the Forest Conservation Law (Chapter 22A), to the Council for introduction and review. The changes will make the law consistent with Senate Bill 666, which became effective on October 1, 2009. The bill reduces the amount of forest a person can remove and still be exempt from submitting a forest conservation plan. It also requires persons removing or cutting certain vegetation obtain a variance.

The Planning Board is also taking this opportunity to make changes that will remove inconsistencies, provide clarity, and make implementing the law more efficient. Unlike a previous Planning Board amendment, these proposed changes:

- do not increase the number of properties subject to the law
- do not increase retention or planting requirements
- do not extend the period for which planted trees must be maintained.

10

The Honorable Nancy Floreen

March 23, 2010

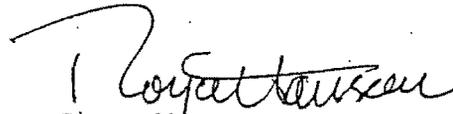
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The Planning Board amendment does incorporate the widespread agreement on clearly defining the submission requirements that was raised during the review of the previous bill.

Please introduce this proposed legislation on an expedited review basis to ensure consistency with the Senate's bill. The proposed legislation will provide costs savings by reducing submission requirements for those subject to the law but now not required to submit a forest conservation plan.. This proposed legislation will also reduce the amount of time and money spent by the Planning Department on review. The submission of these changes was delayed for approval of Bill 34-09 so as not to confuse the Planning Board's enforcement legislation with these changes.

The Planning Board and Planning staff are available to assist the Council in their review of the proposed legislation.

Sincerely,



Royce Hanson

Chairman

RH:MP:ss

cc: Planning Board  
Rollin Stanley  
Mark Pfefferle

Attachments



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

MCPB  
Item #  
December 3, 2009

**MEMORANDUM**

TO: Montgomery County Planning Board

FROM: Mark Pfefferle  
Acting-Chief, Environmental Planning  
Forest Conservation Program Manager

DATE: November 24, 2009

SUBJECT: Forest Conservation Law Amendment

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**INTRODUCTION**

The purpose of this memorandum is to introduce the amendments to the Montgomery County Forest Conservation law and provide an overview of the proposed changes.

**BACKGROUND**

In September 2007 the Planning Board forwarded a forest conservation amendment to the County Council. Bill 37-07 was discussed over numerous work sessions but died in the Transportation and Environment Committee before it could be forwarded to the full Council. That Bill proposed changes to the forest retention and planting requirements and increased the maintenance and management period for planted forests. The amendment introduced today does not propose changing the forest retention and planting requirements or the length of the maintenance and management period. Today's amendment incorporates elements of Bill 37-07 that received widespread support from groups that include the regulated community, environmental community, the County's Forest Advisory Committee, and Council staff.

On October 1, 2009 Maryland Senate Bill 666 became effective statewide. This Bill requires revisions all local government forest conservation programs for consistency with the state bill. The proposed amendment is to make the Montgomery County Forest Conservation Law consistent with Bill 666.

The proposed amendments introduced today are to provide consistency, clarity, and efficiency to the Montgomery County Forest Conservation law. Below are the major changes and the purposes of the changes.

**Consistency**

The proposed changes will make the Montgomery County Forest Conservation law consistent with Maryland Senate Bill 666. The table below highlights the key points of Bill 666 and where the amendments need to occur in the Forest Conservation law.

<b>Senate Bill 666</b>	<b>Proposed Bill</b>
DNR must develop a policy on “no net loss.”	No change required to County law.
Reduce applicability threshold on single lots.	Amend §22A-5. See line 256.
Reduce applicability threshold for child lots.	No change required to County law – not in 22A.
Remove waiver for area covered by paved surface.	No change required to County law – not in 22A.
Add “in perpetuity” to the offsite protective easement option.	Amend §22A-12. See line 1136.
Add language requiring the removal of certain trees and shrubs first obtain a variance.	Amend §22A-12. See line 1028-1052.
Change applicability for placing land in the forest conservation and management program.	No change required to County law – not in 22A
Change in-lieu fee.	No change required to County law – set by resolution.
Clarify how in-lieu fees can be spent	Amend 22A-27. See lines 1429-1432.

**Clarity**

During the numerous discussions on Bill 34-07, all interested parties agreed that using a 3 level approach for properties and activities subject to the forest conservation law was appropriate for it clarified the applicability and submission requirements. Today’s proposal re-introduces the 3 levels. The first level would require the applicant to submit a “Declaration of Intent”. The second level would require a tree inventory, tree protection plan, and a “Declaration of Intent”. The third level requires the submission of a Natural Resources Inventory/Forest Stand Delineation and a forest conservation plan.

The proposed amendment to the Forest Conservation law also clarifies ambiguous

language found throughout the existing law. The table below highlights the changes between the existing forest conservation law and the proposed amendment.

Proposed Bill	Sections Impacted
Add missing definitions: afforestation threshold, applicant, certified arborist, environmental buffer, medium density residential area, natural resources inventory, qualified professional, stream buffer, tree expert, and tree protection plan.	Amend §22A-3. See lines 32-43, lines 56-59, lines 90-97, lines 119-120, lines 125-131, and lines 143-145.
Clarify the applicability section.	Amend §22A-4. See lines 178-192.
Identifies the types of submissions needed for each review level.	Amend §22A-4. See lines 193-282.
Reduces the amount of forest removed for highway projects from 40,000 square feet to 20,000 square feet.	Amend §22A-9. See line 571.
Identifies specific submission requirements.	Amend §22A-10. See lines 639-746.
Identifies planting preferences.	Amend §22A-12. See lines 983-996.
Clarifies that in-lieu fee money must be paid prior to any land disturbing activities.	Amend §22A-12. See lines 1230-1232.
Requires that maintenance and management agreements include the control of non-native and invasive plants.	Amend §22A-12. See line 1252.
Allows for the financial securities to be collected for tree save plans.	Amend §22A-12. See lines 1267-1268.
Clarifies what the financial security amount should equal and what the estimate needs to include.	Amend §22A-12. See lines 1275-1283.
Adds an appeal section for tree inventories and tree protection plans approved by the Planning Director.	Amend §22A-20. See lines 1370-1392.
Permits Planning Director approval of certain variances.	Amend §22A-12. See lines 1396-1419.

**Efficiency**

The proposed amendment provides efficiency to the regulated community and the Planning Department. Clearly identifying the submission requirements will save time and money for applicants to prepare and submit applications. Also, under the existing

forest conservation law all variances must be approved by the Planning Board. Some plans do not require Planning Board approval, but the step that requires Planning Board approval of all variances creates unnecessary delays when the forest conservation plan is approved by the Planning Director. Therefore, this amendment would allow the Planning Director to approve certain variances.

**Changes to Bill 34-09**

The proposed forest conservation law amendment does not address changes proposed by Bill 34-09 except where changes are necessary. This includes modifications to the variance section and to the section on plan appeals. The Planning Board forwarded the changes to all Commission enforcement actions, to the County Council, prior to the Maryland Department of Natural Resources providing guidance on how Senate Bill 666 should be implemented. Therefore, when Bill 34-09 was submitted it did not include the clarifications needed to the variance provision. The following changes are proposed to Bill 34-09.

Proposed Bill	Sections Impacted
Adds an appeal section for tree inventories and tree protection plans approved by the Planning Director.	Amend §22A-20. See lines 1370-1392.
Permits Planning Director approval of certain variances.	Amend §22A-12. See lines 1396-1419.

**RECOMMENDATION**

We recommend that the Planning Board vote to adopt the amendments to the Forest Conservation law for transmittal to the County Council for further action.