

Item 6 - Correspondence

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Subject: Audubon Naturalist Society (ANS) written testimony on Forest Conservation Law (Item #6) for Planning Board hearing on 4/28/22
Date: Wednesday, April 27, 2022 11:23:00 AM
Attachments: [4-28-22-ANS FCL Testimony - Item 6.pdf](#)
[MoCo FCL 1 Pager Top Recommendations from MoCo Forest Coalition.pdf](#)
[April 2022 Forest Law Reform Montgomery County Forest Coalition Amendments.pdf](#)
[MoCo FCA bill comparison.pdf](#)

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Dear Montgomery Planning Board,

Audubon Naturalist Society (ANS) submits the following written testimony for 4/28/22 Planning Board hearing on Item #6 "Introduction of proposed 'no net loss of forest' amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations." This email contains the following attachments as part of my testimony:

- ANS's written testimony on Item #6.
- Montgomery County Forest Coalition's one pager listing six main FCL recommendations.
- Montgomery County Forest Coalition's Draft Legislative proposal.
- FCL Comparison Chart.

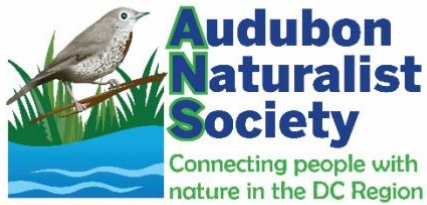
ANS, as part of the Montgomery County Forest Coalition, is recommending and asking the Planning Board to pass and approve the strongest possible protections for our forests by taking into consideration the following six main recommendations as presented in my testimony and in the attached documents. If you have any further questions on any of these materials, please do not hesitate to contact me.

Sincerely,
Denisse Guitarra

CC:
Montgomery County Council

Denisse Guitarra
She/Ella
MD Conservation Advocate
Audubon Naturalist Society
240-630-4703





April 27, 2022

Written Testimony for 4/28/22 Planning Board hearing on “Introduction of proposed ‘no net loss of forest’ amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations” (Item #6).¹

Submitted by

Denisse Guitarra, Maryland Conservation Advocate, Audubon Naturalist Society (ANS)

Dear Montgomery County Planning Board,

For 125 years, Audubon Naturalist Society has inspired people to enjoy, learn about and protect nature. We thank the Planning Board for the opportunity to provide testimony on Item #6 at the April 28th Planning Board Meeting which addresses modifications to Montgomery County’s Forest Conservation Law (FCL).

Forests are critical natural infrastructure that has multiple co-benefits. Forests purify our air, water, reduce urban heat, serve as habitats for wildlife, reduce stormwater run-off, reduce stress levels, connect communities, and do so much more. My testimony will cover two main areas which are as follow:

- I. Montgomery County Forest Coalition’s FCL Recommendations.**
- II. Analyzing Planning Staff’s FCL Recommendations and Comparing to the MoCo Forest Coalition’s.**

I. Montgomery County Forest Coalition’s FCL Recommendations

In 2020, ANS and our local and state environmental partners formed the Montgomery County Forest Coalition.² Our coalition has two main goals which are for the county to reach “no net loss” and a “net gain” of forests by prioritizing the protection of forest ecosystems. The MoCo Forest Coalition is made up of 12 member organizations.

While I am not testifying today on behalf of the Coalition itself, I am pleased to report that there is broad support for our recommendations: 66 individuals and 13 organizations have signed on in support of our Coalition's recommendations, and we and our supporters have collectively sent 312 letters to Council and the Planning Board urging your support for a much stronger FCL.

The Coalition has been meeting with County Councilmembers and staff, Planning Staff, and Department of Environmental Protection staff to learn more and discuss introducing draft legislation to update the FCL. We have also been active participants in the Planning Department’s

¹April 28, 2022. Planning Board Hearing on Introduction of proposed ‘no net loss of forest’ amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations. Item #6. Available at: <https://montgomeryplanningboard.org/agenda-item/april-21-2022-copy/>

² Montgomery County Forest Coalition Blog. January 2022. Available at: <https://conservationblog.anshome.org/blog/moco-forest-coalition/>

“No Net loss of Forests initiative,”³ which was developed in response to Montgomery County Forest Coalition’s persistent advocacy on the urgent need to protect our forests.

ANS, as part of the Montgomery County Forest Coalition, is recommending and asking the Planning Board to pass and approve the strongest possible protections for our forests by taking into consideration the following six main recommendations.⁴ (A more detailed version of each of the six requests can be found in the attached Montgomery County Forest Coalition’s full draft legislative proposal).

1. **Protect existing Forest Ecosystems.** All remaining pre-existing Forests in Montgomery County are to be designated & treated as priority forest in FCL. Our first priority must be to protect existing forest ecosystems.
 - All remaining forest cover is considered priority and may only be removed upon appropriate findings by the Planning Director or Planning Board.
 - Certain types of forests may only be removed with a variance granted by the Planning Board or Planning Director. Types of forests and trees that would receive a stronger level of protection and require a variance to be removed include: forested Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species; Historic Site trees; Champion Trees and other exceptionally large trees; areas designated as “Priority Save Areas” in Master Plan or any Functional Plan.
 - Forest removal subject to a variance must be replaced with forest ecosystem at a 2:1 ratio.
2. **Tighten requirements around forest conservation easements so that they may not be so easily extinguished or relocated.**
 - For all existing forest cover subject to an existing forest conservation easement, the area of forest removed must be reforested at a ratio of 5 acres of forest ecosystem, within the same sub-watershed, for every 1 acre removed.
 - This deterrent allows forest banks time to become mature forest ecosystems, and also keeps forest banks in the sub-watershed where they were originally intended to be planted.
3. **Strengthen replanting ratios to ensure no-net-loss.**
 - Re-planting requirements should be strengthened from 1:4 to 2:1 acres of forest ecosystem with a ½:1 retention credit; or
 - Re-planting requirements should be strengthened from 1:4 to 1:1, with no retention credit.
 - Require that at least 75% of the re-planting requirement be satisfied by the newly re-planted forest ecosystem.
4. **Strengthen Re-planting requirements to require the planting of *Forest Ecosystem*, not just trees.** When what’s being removed is forest ecosystem, what’s being replaced should

³ No Net Loss of Forest initiative. Montgomery Planning Department. Available at: <https://montgomeryplanning.org/planning/environment/forest-conservation-and-trees/no-net-loss-of-forest-initiative/>

⁴ Montgomery County Forest Coalition’s Top Recommendations for updates to Montgomery County’s Forest Conservation Law (FCL) one pager. November 18, 2021. Available at: https://cleanstreams.anshome.org/wp-content/uploads/2022/01/MoCo-FCL_1-Pager_Top-Recommendations-from-MoCo-Forest-Coalition_11.18.2021.pdf

be forest ecosystem as well. Reforestation or afforestation of forest ecosystem includes consideration of, payment for, and maintenance to establish the following in the replanting: healthy soil; drainage; healthy fungi in the soil; healthy micro-biotic communities in the soil; biomass; groundcover; shrub layer; tree understory layer; tree canopy layer; diversity of different types of trees and plants.

5. **Strengthen Watershed Considerations:** For meeting afforestation and reforestation requirements, areas obtained outside the County or outside the sub-watershed where forest was removed for development, the requirement should be that existing forest retained through forest mitigation bank shall be at a 4:1 ratio or replanting of forest ecosystem shall be done at a 2:1 ratio.
6. **Forest stand delineation must be evaluated & submitted to Planning *prior to* submitting any application plan for development of a site.**

The Montgomery County's Forest Coalition's additional recommendations would strengthen protections for our forests in our now ever-changing environment. More forests coverage would help to reduce stormwater runoff from heavy and frequent storms already being experienced by all throughout our region.⁵ Tree roots can help hold on to the soil, and trees can infiltrate more rain on site down into the soil instead of causing more runoff that pollutes our streams and rivers and eventually our Chesapeake Bay. Furthermore, trees are a major part of helping us adapt to climate change by reducing urban heat island effects.⁶ On a healing side, our trees create natural spaces for all of us to reduce our stress levels and enjoy the natural beauty that surrounds us, something that can be appreciated by all people especially during this pandemic.⁷

II. Analyzing Planning Staff's FCL Recommendations and Comparing to the MoCo Forest Coalition's

Below are some recommended improvements suggestions and highlights comparing both Montgomery County Forest Coalition's and the Planning Staff's FCL proposals.

Improvements needed to Planning staff's FCL recommendations.⁸

- **Overall, although Planning staff's FCL recommendations make some improvements to the existing county's FCL, most of their recommendations are not ambitious enough to truly get the county to "no net loss" and a "net gain" of forests.** If the county is truly committed to taking action on climate change, we simply need to do more for our forest ecosystems. Sustainable growth is possible, by focusing growth on the main transit

⁵ Samenow J. and Streit D. 2020. Torrential rain triggers widespread flooding in D.C. area, inundating roads, stranding motorists. Washington Post. Available at: <https://www.washingtonpost.com/weather/2020/09/10/dc-area-forecast-tropical-downpours-today-could-produce-areas-flooding/>

⁶ Eliza Cava. 2019. Climate change makes the pavement problem worse...trees are the best medicine! ANS Conservation Blog. Available at: <http://conservationblog.anshome.org/blog/climate-change-makes-the-pavement-problem-worse-trees-are-the-best-medicine/>

⁷ ANS Naturalist Quarterly Autumn 2020. Available at: <https://anshome.org/wp-content/uploads/2020/09/NQ-Autumn-2020.pdf>

⁸ Introduction of proposed 'no net loss of forest' amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations. 4/28/22 Planning Board Public Hearing. Available at: <https://montgomeryplanningboard.org/agenda-item/april-28-2022/#:~:text=Introduction%20of%20proposed%20%E2%80%98no%20net%20loss%20of%20forest%E2%80%99%20amendments%20to%20the%20Montgomery%20County%20Forest%20Conservation%20Law%20and%20Forest%20Conservation%20%26%20Trees%20Regulations.>

corridors (as is a primary goal of Thrive 2050), but let’s then protect the last remaining forest in the county and replant as many trees and create as many mini-urban forests, as possible at the same time. All county residents need and should have access to the best environmental quality in their neighborhood, and that means green, clean, climate resilient neighborhoods with ample housing options for all people.⁹ With careful land use planning we can have both, we don’t need to keep the very urgent and pressing issues of climate change and housing separate from one another.

- **Forest ecosystems are not prioritized in Planning staff’s FCL proposal.** This is a major difference from the MOCO Forest Coalition’s proposal, which focuses on supporting and protecting whole forest ecosystems. Planning Staffs’ recommendation doesn’t specify this and only suggests protecting “forest ecosystems as an alternative.” The MOCO Forest Coalition’s proposal would establish all remaining forests as priority forest. Numerous studies show the importance of protecting whole forest ecosystems for their multiple ecological benefits both now and into the future.^{10,11,12} Planning Staff and Board should not underestimate the power forests have to mitigate the worst impacts of climate change and need to act now by implementing the strongest FCL measure possible.
- **The MOCO Forest Coalition’s replanting ratios are higher than those in the Planning staff’s FCL proposal.** The MoCo Forest coalition compared the two proposals, ours and the Planning Staff’s proposal and we found the following differences in terms of replanting ratios and preserving priority forest areas. See ratio comparison in the chart below (and longer FLC comparison chart attached). Even in the case where Planning staff is proposing a higher replanting ratio of 2.5:1 for replanting outside watershed, there is no mechanism in place to enforce that a developer would plant outside the watershed.

	MOCO Forest Conservation Coalition	Planning Staff Recommendations
Increasing planting requirements.	Forest removed above the conservation threshold must be replaced at a 2:1 ratio. Forest removed below the conservation threshold, no change to current 2:1 replacement ratio. Reduces the on-site retention credit to ½:1.	Forest removed above the conservation threshold must be replaced at a ½:1 ratio. Increases conservation thresholds in certain districts. Increases afforestation thresholds for all institutional uses and certain other uses on sites less than 5 acres. No change to the on-site retention credit.
Keeping plantings local.	Forest replaced outside the local watershed must be increased to a 4:1 ratio.	Forest replaced outside the local watershed must be planted at a 1:1 ratio above the conservation threshold and at a 2 ½:1 ratio below the conservation threshold. * *No mechanism to guarantee higher replanting outside watershed

⁹ ANS’s Thrive 2050 comments. Available at: <https://conservationblog.anshome.org/tag/thrive-2050/>
¹⁰ IUCN. 2019. Restoring Forest ecosystems provides multiple benefits to society. Available at: <https://www.iucn.org/news/europe/201905/restoring-forest-ecosystems-provides-multiple-benefits-society>
¹¹Earth Eclipse. 2022. Why are Forests Important? Available at: <https://earthclipse.com/environment/importance-of-forests.html>
¹² USDA. Forest Ecosystem Services. Available at: <https://www.fs.usda.gov/ccrc/topics/ecosystem-services>

Strengthening protections for priority forests.	<p>Requires findings by the Planning Director to remove any forest cover.</p> <p>Requires a variance to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area.</p> <p>No change to protection for trees with historic value, RTE status, or champion/very large trees.</p>	<p>Defines several existing priority forest types as “environmental buffer” and removes exemptions for small projects impacting these areas.</p> <p>Clarifies the mitigation standard for cutting trees where a variance is required for removal.</p>
Preserving the best existing forests.	<p>Preserved existing off-site forest is credited at ½: 1 in priority forest areas.</p> <p>Preserved existing off-site forest is credited at 1/3: 1 in non-priority areas.</p>	<p>Preserving the best existing forests.</p>

Highlights to Planning Staff’s FCL recommendations.¹³

- **Reforestation and afforestation requirements are centered and prioritized in equity focused areas.** This is an excellent recommendation and one which lines up with the county’s climate action plan. The additional recommendation here would be to incorporate more community based on the ground, decision making processes as to help community members be part of the decisions of how and where they can see more trees and forests in their communities too.
- **Increasing maintenance requirements.** This is a plus as young trees can be impacted by multiple barriers in their first 5 years of life which can impact their longer livelihood. Increasing provisions around tree maintenance will help expand their lifetime. The additional recommendation in this provision would be to ensure that the county promotes the establishment and protection of forest in the long run. The Montgomery County Forest Coalition during Planning Staff’s “No net Loss” meetings, proposed the idea of planning small urban forests using the Miyawaki method which is a method of increasing and incentivizing urban forest growth with a rich biodiversity that supports ecosystems.¹⁴ The Miyawaki urban forest method should be explored and incorporated in more ways as part of Planning Staff’s FCL recommendations.

¹³ Introduction of proposed ‘no net loss of forest’ amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations. 4/28/22 Planning Board Public Hearing. Available at: <https://montgomeryplanningboard.org/agenda-item/april-28-2022/#:~:text=Introduction%20of%20proposed%20%E2%80%98no%20net%20loss%20of%20forest%E2%80%99%20amendments%20to%20the%20Montgomery%20County%20Forest%20Conservation%20Law%20and%20Forest%20Conservation%20%26%20Trees%20Regulations.>

¹⁴ Miyawaki method. Urban forests. Available at: <https://urban-forests.com/miyawaki-method/>

On behalf of ANS and our 28,000 members and supporters, we recommend that the Planning Board supports and takes into consideration Montgomery County's Forest Coalitions stronger forests ecosystem recommendations. We urge the Planning Board to consider Montgomery County Forest Coalition's recommendations and pass the strongest possible amendments to the existing forest conservation law to protect our forests, our communities, and build a climate resilient future.

Sincerely,
Denisse Guitarra
MD Conservation Advocate
Audubon Naturalist Society

Montgomery County Forest Coalition

11.18.21

Top Recommendations for updates to MoCo Forest Conservation Law (FCL)

1. **Protect existing Forest Ecosystems.** All remaining pre-existing Forests in MoCo are to be designated & treated as priority forest in FCL. First priority is to protect existing forest ecosystems.
 - All remaining forest cover is considered priority and may only be removed upon appropriate findings by the Planning Director or Planning Board.
 - Certain types of forests may only be removed with a variance granted by the Planning Board or Planning Director. Types of forests and trees that would receive a stronger level of protection and require a variance to be removed include forested: Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species; Historic Site trees; Champion Trees and other exceptionally large trees; areas designated as “Priority Save Areas” in Master Plan or any Functional Plan.
 - Forest removal subject to a variance must be replaced with forest ecosystem at a 2:1 ratio.
2. **Tighten requirements around forest conservation easements so that they may not be so easily extinguished or relocated.**
 - For all existing forest cover subject to an existing forest conservation easement, the area of forest removed must be reforested at a ratio of 5 acres of *forest ecosystem* for every 1 acre removed.
 - This deterrent allows forest banks time to become mature forest ecosystems, and also keeps forest banks in the sub-watershed where they were originally intended to be planted.
3. **Strengthen replanting ratios to ensure no-net-loss.**
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 2 acres *forest ecosystem* planted for every 1 acre removed; or
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 1 acre *forest ecosystem* planted for every 1 acre removed, with no retention credit.
 - Require that at least 75% of the re-planting requirement be satisfied by the newly re-planted forest ecosystem.
4. **Strengthen Re-planting requirements to require the planting of *Forest Ecosystem*, not just trees.** When what’s being removed is *forest ecosystem*, what’s being replaced should be *forest ecosystem* as well. Reforestation or afforestation of *forest ecosystem* includes consideration of, payment for, and maintenance to establish the following in the re-planting: healthy soil; drainage; healthy fungi in the soil; healthy micro-biotic communities in the soil; biomass; groundcover; shrub layer; tree understory layer; tree canopy layer; diversity of different types of trees and plants.
5. **Strengthen Watershed Considerations:** For meeting afforestation and reforestation requirements, areas obtained *outside* the County or *outside* the sub-watershed where forest was removed for development, the requirement shall be that existing forest retained through forest mitigation bank shall be at a 4:1 ratio, or replanting of forest ecosystem shall be done at a 2:1 ratio .
6. **Forest stand delineation must be evaluated & submitted to Planning *prior to* submitting any application plan for development of a site.**

FOREST ECOSYSTEM ESTABLISHMENT

Description: The need for forest ecosystem management is already acknowledged in the Montgomery County Code. This language will add a requirement to include in the technical manual how forest ecosystem establishment should occur. The technical manual could include requirements for drainage, establishing healthy soil including mycorrhizal fungal networks, importing topsoil, planting a diversity of tree species that will grow to different heights and planting understory shrubs in later years of required maintenance, and other techniques that a developer can take to accelerate and support establishing a forest ecosystem.

CAPS indicates matter added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Reforestation or reforested means the creation of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground within 7 years. Reforestation for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria. {unchanged, included for reference}

AFFORESTATION OR AFFORESTED MEANS THE ESTABLISHMENT OF A BIOLOGICAL COMMUNITY THAT MEETS THE DEFINITION OF REFORESTED ON AN AREA FROM WHICH IT HAS ALWAYS OR VERY LONG BEEN ABSENT. AFFORESTATION FOR A LINEAR PROJECT WHICH INVOLVES OVERHEAD TRANSMISSION LINES MAY CONSIST OF A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR DIAMETER CRITERIA.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(b) *Technical manual.* The technical manual must include guidance and methodologies for:

- (1) preparing and evaluating a forest stand delineation and natural resource inventory;
- (2) preparing and evaluating a forest conservation plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;

MONTGOMERY COUNTY FOREST COALITION PROPOSED AMENDMENTS

(3) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;

(4) CREATING THE BIOLOGICAL COMMUNITY REQUIRED FOR REFORESTATION OR AFFORESTATION AS DEFINED IN SECTION 22A-3 OF THIS CHAPTER, INCLUDING STANDARDS FOR ESTABLISHING GROUND COVER, SHRUB, TREE AND CANOPY LAYERS AS WELL AS HEALTHY SOIL STRUCTURE, DRAINAGE, BIOMASS, AND MICROBIOTIC AND FUNGAL COMMUNITIES.

[(4)] (5) monitoring and enforcement of forest conservation plans; and

[(5)] (6) other appropriate guidance for program requirements consistent with this Chapter and the regulations.

FOREST PROTECTION PLANNING

Description: This language requires the forest stand delineation, which describes the forest stand's composition and most valuable elements, prior to the application of the development plan. This will allow staff to identify what areas of forest should be preserved before a developer embarks on the rest of the development's planning. This timing should create efficiencies for the developer and other stakeholders.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

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

1. Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation [with] **PRIOR TO** the application for a development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, whichever comes first. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(e) Additional regulations. Notwithstanding any other provision of this Chapter, the Planning Board [may] **SHALL**, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation **FOR PROJECTS REQUIRING DEVELOPMENT PLAN, FLOATING ZONE PLAN, PROJECT PLAN, SKETCH PLAN, PRELIMINARY PLAN OF SUBDIVISION, OR SITE PLAN APPROVAL** and **MAY** allow modified application submissions or procedures for development projects of a scale or public utility projects.

STRENGTHENING FOREST PRIORITY

Description: This language requires that all forest cover needs to be retained by a forest conservation plan while maintaining that certain types of forests may only be removed with a variance.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.
Sec. 22A-12. Retention, afforestation, and reforestation requirements.

(b) *Retention.*

1. The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain [certain vegetation and specific areas] **FOREST COVER** in an undisturbed condition unless the Planning Director finds that:

(A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;

(B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and

(C) the development proposal cannot be reasonably altered.

[(2)] In general, areas protected under this subsection include:

(A) floodplains, stream buffers, steep slopes, and critical habitats;

(B) contiguous forests;

(C) rare, threatened, and endangered species;

(D) trees connected to an historic site;

(E) champion trees and other exceptionally large trees; and

(F) areas designated as priority save areas in a master plan or functional plan.]

[(3)] (2) 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. FLOODPLAINS, EPHEMERAL STREAMS, STREAM BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS;

B. CONTIGUOUS FORESTS;

C. RARE, THREATENED, AND ENDANGERED SPECIES;

D. TREES CONNECTED TO AN HISTORIC SITE;

- E. CHAMPION TREES AND OTHER EXCEPTIONALLY LARGE TREES;**
- F. AREAS DESIGNATED AS PRIORITY SAVE AREAS IN A MASTER PLAN OR FUNCTIONAL PLAN;**

[(A)] **(G)** 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. Sections 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)] **(H)** Any tree that is:
(i) part of a historic site,
(ii) associated with a historic structure, or
(iii) designated by the State or County as a national, State, or County champion tree; or

[(C)] **(I)** Any tree with a diameter, measured at 4.5 feet above the ground, of:
(i) 30 inches or more; or
(ii) 75% or more of the diameter, measured at 4.5 feet above ground, of the current State champion tree of that species.

INCREASED REPLANTING REQUIREMENTS

Description: This language increases the replanting requirements by setting the requirement at 2 acres planted for every 1 acre removed whether above or below the threshold, and by altering the retention credit a developer receives based on the number of trees preserved onsite.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Forest conservation threshold means the percentage of the net tract area at which [the reforestation requirement changes from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed] **FOREST RETAINED IS NO LONGER CREDITED AGAINST THE TOTAL NUMBER OF ACRES REQUIRED TO BE REFORESTED.**

...

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

1. For all existing forest cover measured to the nearest 1/10 acre cleared [on the net tract area below the applicable forest conservation threshold], the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.
2. [For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.]
3. Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested **AT A RATIO OF ½ ACRE CREDITED FOR EACH ACRE RETAINED.**
4. A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

TARGETED AND BALANCED MITIGATION

Description: If the State re-opens the ability of local jurisdictions to create forest mitigation banks from existing forests, this language assures that in Montgomery County, at least 3/4 of the developer's responsibility will be fulfilled through a newly planted bank. It would require that if a bank is located outside of a priority area, a 3:1 ratio must be used, rather than a 2:1 ratio. It also states that if a bank is outside a watershed and only leveraging existing forest, a 4:1 ratio must be used. It also removes the ability for a developer to use retention credit from neighboring properties as part of the bank.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(e) *Standards for reforestation and afforestation.*

(B) Governmental considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:

- (i) to achieve the objectives of a master or sector plan or other County land use policies or to take advantage of opportunities to consolidate forest conservation efforts;
- (ii) for public sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or
- (iii) for educational, recreational, and public safety facilities, to ensure that public safety is not compromised.

(C) Public Utility Considerations. The sequence provided in subparagraph (A) of this paragraph for public utility projects may be modified to reflect applicable electrical or other safety codes, or right-of-way constraints.

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

- (A) Forest mitigation banks designated in advance by the County.
- (B) Protection of existing off-site forest. Acquisition of an off-site protective easement for existing forested areas not currently protected in perpetuity is an acceptable mitigation technique instead of off-site afforestation or reforestation planting **FOR UP TO 25% OF THE TOTAL AFFORESTATION AND REFORESTATION REQUIREMENTS**, but the forest cover protected must be:

(i) 2 times the afforestation and reforestation requirements **IF LOCATED IN A PRIORITY AREA LISTED IN PARAGRAPH (3) OF THIS SUBSECTION; AND**

(ii) 3 TIMES THE AFFORESTATION AND REFORESTATION REQUIREMENTS IN ALL OTHER LOCATIONS.

(C) For sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.

(3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred.

(4) Location requirements. Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located. **NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (2)(B), AREAS OBTAINED OUTSIDE THE COUNTY OR WATERSHED TO MEET AFFORESTATION AND REFORESTATION REQUIREMENTS SHALL BE RETAINED AT A 4:1 RATIO OR PLANTED AT A 2:1 RATIO.**

(5) Deadline for plant installation. The afforestation and reforestation requirements under this subsection must be accomplished within one year or 2 growing seasons after a development project is complete.

(6) Planned Unit Developments; Other Staged Development. [Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan, floating zone plan, sketch plan, or project plan instead of the net tract area. Similarly, the] **THE** Planning Board may allow any afforestation or reforestation requirement applicable to a staged development subject to a single preliminary plan of subdivision but with separate site plan reviews for each stage to be calculated and satisfied using the total **NET TRACT** area covered by the preliminary plan of subdivision.

PROTECTING PROTECTED FOREST

Description: This language tightens requirements around forest banks so that they may not be so easily extinguished or relocated.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

(1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.

(2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

(3) FOR ALL EXISTING FOREST COVER SUBJECT TO AN EXISTING FOREST CONSERVATION EASEMENT, THE AREA OF FOREST REMOVED MUST BE REFORESTED AT A RATIO OF 5 ACRES PLANTED FOR EVERY ONE ACRE REMOVED. THIS REQUIREMENT MAY NOT BE SATISFIED OR REDUCED BY:

(A) PROTECTION OF EXISTING OFF-SITE FOREST; OR

(B) THE CREDIT FOR ONSITE FOREST RETENTION IN PARAGRAPH (4) OF THIS SUBSECTION.

[(3)] (4) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

[(4)] (5) A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

MONTGOMERY COUNTY FOREST CONSERVATION LAW

PROPOSAL COMPARISON

Update	Existing law	Forest Coalition Amendments	Planning Department Bill
<i>Establishing forest ecosystems.</i>	Creation of a “biological community” is required when replanting, but the statute does not provide standards beyond tree size and density.	Technical manual adopts standards for creating the biological community currently required when afforesting or reforesting.	Permits establishment of a forest ecosystem as an optional alternative planting protocol.
<i>Starting with forest conservation planning.</i>	The Forest Stand Delineation is submitted concurrently with development plans.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review. Prohibits amending a Forest Stand Delineation.
<i>Strengthening protections for priority forests.</i>	Requires findings by the Planning Director to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. Requires a variance to remove trees with historic value, RTE status, or champion/very large trees.	Requires findings by the Planning Director to remove any forest cover. Requires a variance to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. No change to protection for trees with historic value, RTE status, or champion/very large trees.	Defines several existing priority forest types as “environmental buffer” and removes exemptions for small projects impacting these areas. Clarifies the mitigation standard for cutting trees where a variance is required for removal.
<i>Increasing planting requirements.</i>	Forest removed above the conservation threshold must be replaced at a ¼ : 1 ratio. Forest removed below the conservation threshold must be replaced at a 2:1 ratio.	Forest removed above the conservation threshold must be replaced at a 2:1 ratio. No change to the 2:1 replacement ratio below the conservation threshold.	Forest removed above the conservation threshold must be replaced at a ½ : 1 ratio. Increases conservation thresholds in certain districts.

<i>Increasing planting requirements (cont'd).</i>	Credit for on-site retention is offered at a 1:1 ratio.	Reduces the on-site retention credit to $\frac{1}{2}$: 1.	Increases afforestation thresholds for institutional uses and certain other uses on sites less than 5 acres. No change to the on-site retention credit.
<i>Ensuring new plantings.</i>	Planting is favored over preservation of existing off-site forest, but is not required.	At least 75% of planting requirements must be satisfied by planting.	Preservation of existing offsite forest only permitted when no opportunities for planting are available. Mandates reforestation of stream valley buffers.
<i>Keeping plantings local.</i>	Statute requires planting within the local watershed, if reasonable. Planting requirements are the same inside and outside of the local watershed.	Forest replaced outside the local watershed must be planted at a 4:1 ratio.	Directs planting in a county priority watershed if planting within the local watershed is not available. Forest replaced outside the local watershed must be planted at a 1:1 ratio above the conservation threshold and at a $2\frac{1}{2}$: 1 ratio below the conservation threshold.
<i>Preserving the best existing forests.</i>	Forest mitigation banks may only be created in priority areas or other locations identified in a master or functional plan. All preserved existing off-site forest is credited at $\frac{1}{2}$: 1.	Preserved existing off-site forest is credited at $\frac{1}{2}$: 1 in priority forest areas. Preserved existing off-site forest is credited at $\frac{1}{3}$: 1 in non-priority areas.	No change from current law.
<i>Protecting forest conservation easements.</i>	Not addressed in statute. Forest conservation cleared from an eased area is subject to the same planting and preservation requirements as other forest.	Forests cleared from an eased area must be replaced at a 5:1 ratio. This mitigation cannot be satisfied by preserving existing forest.	No change from current law.

From: [Erik Fisher](#)
To: [MCP-Chair](#); [Anderson, Casey](#); [Verma, Partap](#); [Patterson, Tina](#); [Rubin, Carol](#); [Cichy, Gerald](#)
Subject: Testimony for 4/28/22 Agenda Item #6 - Forest Conservation Law updates
Date: Wednesday, April 27, 2022 11:36:49 AM
Attachments: [220428 Montgomery PB FCL \(Agenda #6\) - CBF.pdf](#)
[April 2022 Forest Law Reform Montgomery County Forest Coalition Amendments.pdf](#)
[Montgomery FCL comparison chart.pdf](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Anderson and members of the Board:

Please find attached written testimony from the Chesapeake Bay Foundation regarding proposed changes to Montgomery County's Forest Conservation Law and associated regulations. Our testimony includes two attachments, including text of proposed amendments from the Montgomery County Forest Coalition and a comparison chart to assist in your review.

Thank you for your time and consideration of our comments on this matter.

Sincerely,

Erik Fisher, AICP
Maryland Assistant Director
Maryland Land Use Planner

Chesapeake Bay Foundation
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Saving a National Treasure

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April 28, 2022

Mr. Casey Anderson, Chair
Montgomery County Planning Board
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

RE: 'No net loss of forest' amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations (Agenda Item #6)

Dear Chair Anderson and members of the Board:

The Chesapeake Bay Foundation appreciates this opportunity to comment on proposed changes to Montgomery County's Forest Conservation Law. Protecting tree cover is critical to a healthy economy and ecology in Montgomery County. Forests filter pollutants, control flooding, prevent erosion, and cool streams. Mature, contiguous forests also provide essential human health and natural habitat benefits that cannot be replicated in developed areas. As such, we appreciate the County's interest in updating its forest protections and recognize the hard work of your staff that is evident throughout the bill and accompanying regulations. We support many of the procedural improvements proposed in pursuit of a clear review process along with reduced exemptions, enhanced requirements for afforestation of smaller sites, and planting of stream valleys.

We also concur with the Montgomery County Forest Coalition that the proposed ordinance must be further amended to achieve 'no net loss' of forest cover. Specifically, amendments are needed to:

- Minimize the loss of forests considered priority for protection;
- Clarify the standards for establishing forest ecosystems;
- Increase replanting ratios to offset deductions elsewhere in the formula;
- Ensure that most replanting requirements are satisfied by actual plantings and within the local watershed; and
- Better protect areas already set aside for forest conservation.

These amendments will stop the ongoing net reduction of forest in Montgomery County and more equitably protect clean water, climate, and communities in a manner consistent with adopted and pending County plans.

Statutory changes to ensure no-net-loss of forest are firmly rooted in county plans. Montgomery County's draft Comprehensive Plan, entitled *Thrive Montgomery 2050*,

highlights forest protection as a key indicator and driver of progress toward environmental and social goals. *Thrive* identified forest conservation regulations as providing a “strong framework for the protection of natural resources,”¹ but noted that existing regulations will not be enough to address climate change and calls further action “critical” to develop “more creative strategies to build resilience and improve sustainability.”² Indeed, a key measure of whether *Thrive* succeeds or fails will be the “acres of farmland, natural habitats, forests and environmentally sensitive areas protected.”³

These forested acres are presently in decline. High-resolution land cover data and draft modeling from the Chesapeake Bay Program projects Montgomery County could total more than 5,000 acres of forest loss between 2013 and 2025.⁴ This would represent the fifth largest clearing in the state and the largest loss outside of southern Maryland. These reductions could also further entrench disparities in tree cover that raise equity concerns. On average, Montgomery County neighborhoods of color and those with low-income residents have fewer trees and forests – up to a 14-point disparity in canopy coverage.⁵

The County’s *Water Resources Functional Plan* identifies “the loss and degradation of forest, wetland, and other natural areas”⁶ as a primary threat to clean water. In response, the Plan places a priority on “enhancing stewardship of natural areas including resource protection, conservation, enhancement, and restoration...”⁷ This goal is expressed in two recommendations to strengthen forest protections:

4.1 Increase forest, wetland, meadow, stream buffer, and urban tree canopy area countywide, especially in watersheds with regulatory limits, water quality impairments, or Tier II designations.

4.3 Revise the Forest Conservation Laws and Regulations and Trees Technical Manual as needed to increase the speed and success of reforestation efforts.⁸

The Maryland State Data Center forecasts that 170,000 new residents could move into the County by 2045.⁹ Montgomery County must implement its master planning recommendations to strengthen forest conservation laws and prevent further loss in the face of such development

¹ *Thrive Montgomery 2050*, p. 14

² *Ibid.*, p. 136

³ *Ibid.*, p. 39

⁴ Chesapeake Bay Program. 2025 Land Use Forecast Scenarios. Accessed April 27, 2022 at https://www.chesapeakebay.net/channel_files/25596/counties_v6_p6_2025wtrshd.csv

⁵ American Forests. *Tree Equity Score: Montgomery County*. Accessed April 26, 2022 at <https://treeequityscore.org/reports/place/montgomery-county-md/#11.41/38.8938/-77.0146>

⁶ *Water Resources Functional Plan*, p. 12

⁷ *Ibid.*, p. 31

⁸ *Ibid.*, pp. 50-51

⁹ Maryland Department of Planning. *Projections to 2045: Populations and Households (12/20)*. Accessed April 27, 2022 at https://planning.maryland.gov/MSDC/Pages/S3_Projection.aspx

pressure. As part of the comprehensive planning process, these recommendations were subject to intensive analysis, public discussion, and legislative oversight. Furthermore, state law requires consistency between local plans and local ordinances.¹⁰

REQUESTED AMENDMENTS

As drafted, the proposed ordinance would make important positive changes to the procedural and substantive requirements that developers must abide by when building on forested land. CBF believes that additional provisions are necessary to achieve the stated goal of 'no-net-loss' of forest. Over the past few years, we have worked extensively with neighboring counties and other environmental organizations to strengthen forest conservation regulations in accordance with local goals. Many of the changes proposed by the Planning Department most closely align with updates adopted in Howard and Anne Arundel counties. While positive, neither of these counties aspired to or are expected to achieve no-net-loss. Howard County's increased replating ratios are primarily intended to prevent further transfer of forest cover out of their development envelope. Anne Arundel County, which like this proposal relies heavily on enhanced conservation thresholds, is expected to reduce forest loss by about 50%.

The Planning Department's added focus on reducing exemptions, increasing afforestation on smaller development sites and planting stream valleys will help and should be carried forward. However, CBF believes that provisions protecting priority forest, stronger replanting ratios, and clear replanting requirements that re-establish forest ecosystems are equally necessary to ensure a healthy and lasting forest footprint in Montgomery County. **As such, we urge the Planning Board to recommend the following amendments along with the draft ordinance to the County Council.** If so amended, this update to the Forest Conservation Law can be a key step to implement County plans and fulfill a critical opportunity to afford protection to the County's remaining forested lands.

Substantial amendments are described below. The full text of amendments recommended by CBF and the Montgomery County Forest Coalition is attached, and illustrated in the enclosed chart.

- ☐ **Update the Technical Manual to ensure re-establishment of forest ecosystems.**
Forest clearing eliminates or degrades understory and soil health in addition to removing trees. Current replanting practices do not directly replace these critical forest features, despite current law requiring establishment of a forested 'biological community.'
- ☐ **Require a variance for clearing environmentally sensitive priority forests.**
Forest cover dramatically enhances the protection of wetlands, floodplains, steep slopes, certain wildlife habitats, and other sensitive environmental features. Direct impacts to these features generally require a variance, and removal of tree cover associated with these features should be no exception.

¹⁰ See MD Code, Land Use, § 1-303

Anne Arundel County requires a formal zoning modification to clear these areas.

- **Increase the base reforestation ratio to 2 acres planted for every 1 acre removed.**
As drafted, a developer must only replant ½ acre of forest for each acre cleared. Compounding this imbalance, replanting credit is granted on a straight 1:1 basis for each acre retained above the conservation threshold. On many development sites, this formula results in substantial net loss – and in some cases, zero replanting required despite clearing many acres of forest. The higher ratios of 1:1 and 2.5:1 currently proposed in the draft ordinance only apply when replanting outside a local or priority watershed. There is no guarantee that they would be applied widely enough to offset reductions elsewhere in the formula.

Carroll and Frederick counties have demonstrated no-net-loss of forest with a 1:1 ratio in place, with the retention credit removed. If the retention credit is retained, a higher ratio is likely needed.

- **Require that at least 75% of replanting obligations be satisfied by actual replanting.**
Current law permits the preservation of existing off-site forest to satisfy replanting obligations. While conservation of existing forest stands can be valuable, heavy reliance on this practice leads to substantial net loss of forest because cleared acres are not offset by new stands.

The draft ordinance includes a narrative obligation to plant before preserving. We believe a quantitative baseline is appropriate to maintain clarity and establish a reasonable floor.

- **Increase the replanting ratio to 4:1 when outside the local watershed.**
Replanting on or near the development site can protect steep slopes, streams, and wetlands from stormwater impacts and in some cases can re-connect priority forest areas. New plantings also help redress consequences of urbanization and low tree canopy such as flooding, heat islands, and poor air quality. When planting outside the local watershed, these environmental and community benefits are greatly reduced. Increased mitigation is necessary to help offset the loss of these benefits when trees are planted somewhere else.

Charles County has established ratios as high as 4:1 for replanting outside of local watersheds and development districts.

- **Increase the replanting ratio to 5:1 when cutting existing forest conservation easements.**
Forest conservation easements protect woodlands established or maintained to offset past clearing. In cases where this eased forest was newly planted, it takes decades to offset the ecosystem services that were lost to the original development project. Preserved mature woodlands were accepted in-lieu of replanting, so cutting these areas represents a second loss. In both cases, a high replanting ratio is critical to ensure clearing an easement is a last resort, and account for the resultant further delay in restoring the natural functions of forest.

Once again, CBF appreciates the hard work of the Planning Board, and especially that of your staff, in preparing and reviewing these updates to the County's Forest Conservation Law. We are encouraged by the improvements already reflected in the draft, and we urge you to recommend these further amendments to the County Council.

We would welcome the opportunity to discuss this matter in more detail with you at a work session. Please do not hesitate to contact us directly with any questions or to set up a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Fisher".

Erik Fisher, AICP
Maryland Assistant Director
Maryland Land Use Planner

443.482.2096
efisher@cbf.org

Enclosures:

1. Montgomery County Forest Coalition Proposed Amendments
2. Comparison Chart

FOREST ECOSYSTEM ESTABLISHMENT

Description: The need for forest ecosystem management is already acknowledged in the Montgomery County Code. This language will add a requirement to include in the technical manual how forest ecosystem establishment should occur. The technical manual could include requirements for drainage, establishing healthy soil including mycorrhizal fungal networks, importing topsoil, planting a diversity of tree species that will grow to different heights and planting understory shrubs in later years of required maintenance, and other techniques that a developer can take to accelerate and support establishing a forest ecosystem.

CAPS indicates matter added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Reforestation or reforested means the creation of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground within 7 years. Reforestation for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria. {unchanged, included for reference}

AFFORESTATION OR AFFORESTED MEANS THE ESTABLISHMENT OF A BIOLOGICAL COMMUNITY THAT MEETS THE DEFINITION OF REFORESTED ON AN AREA FROM WHICH IT HAS ALWAYS OR VERY LONG BEEN ABSENT. AFFORESTATION FOR A LINEAR PROJECT WHICH INVOLVES OVERHEAD TRANSMISSION LINES MAY CONSIST OF A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR DIAMETER CRITERIA.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(b) *Technical manual.* The technical manual must include guidance and methodologies for:

- (1) preparing and evaluating a forest stand delineation and natural resource inventory;
- (2) preparing and evaluating a forest conservation plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;

MONTGOMERY COUNTY FOREST COALITION PROPOSED AMENDMENTS

(3) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;

(4) CREATING THE BIOLOGICAL COMMUNITY REQUIRED FOR REFORESTATION OR AFFORESTATION AS DEFINED IN SECTION 22A-3 OF THIS CHAPTER, INCLUDING STANDARDS FOR ESTABLISHING GROUND COVER, SHRUB, TREE AND CANOPY LAYERS AS WELL AS HEALTHY SOIL STRUCTURE, DRAINAGE, BIOMASS, AND MICROBIOTIC AND FUNGAL COMMUNITIES.

[(4)] (5) monitoring and enforcement of forest conservation plans; and

[(5)] (6) other appropriate guidance for program requirements consistent with this Chapter and the regulations.

FOREST PROTECTION PLANNING

Description: This language requires the forest stand delineation, which describes the forest stand's composition and most valuable elements, prior to the application of the development plan. This will allow staff to identify what areas of forest should be preserved before a developer embarks on the rest of the development's planning. This timing should create efficiencies for the developer and other stakeholders.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

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

1. Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation [with] **PRIOR TO** the application for a development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, whichever comes first. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(e) Additional regulations. Notwithstanding any other provision of this Chapter, the Planning Board [may] **SHALL**, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation **FOR PROJECTS REQUIRING DEVELOPMENT PLAN, FLOATING ZONE PLAN, PROJECT PLAN, SKETCH PLAN, PRELIMINARY PLAN OF SUBDIVISION, OR SITE PLAN APPROVAL** and **MAY** allow modified application submissions or procedures for development projects of a scale or public utility projects.

STRENGTHENING FOREST PRIORITY

Description: This language requires that all forest cover needs to be retained by a forest conservation plan while maintaining that certain types of forests may only be removed with a variance.

CAPS indicates language added to existing law; **[brackets]** indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.
Sec. 22A-12. Retention, afforestation, and reforestation requirements.

(b) *Retention.*

1. The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain **[certain vegetation and specific areas] FOREST COVER** in an undisturbed condition unless the Planning Director finds that:

(A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;

(B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and

(C) the development proposal cannot be reasonably altered.

[(2)] In general, areas protected under this subsection include:

(A) floodplains, stream buffers, steep slopes, and critical habitats;

(B) contiguous forests;

(C) rare, threatened, and endangered species;

(D) trees connected to an historic site;

(E) champion trees and other exceptionally large trees; and

(F) areas designated as priority save areas in a master plan or functional plan.]

[(3)] (2) 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. FLOODPLAINS, EPHEMERAL STREAMS, STREAM BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS;

B. CONTIGUOUS FORESTS;

C. RARE, THREATENED, AND ENDANGERED SPECIES;

D. TREES CONNECTED TO AN HISTORIC SITE;

- E. CHAMPION TREES AND OTHER EXCEPTIONALLY LARGE TREES;**
- F. AREAS DESIGNATED AS PRIORITY SAVE AREAS IN A MASTER PLAN OR FUNCTIONAL PLAN;**

[(A)] (G) 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. Sections 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)] (H) Any tree that is:

- (i) part of a historic site,
- (ii) associated with a historic structure, or
- (iii) designated by the State or County as a national, State, or County champion tree; or

[(C)] (I) Any tree with a diameter, measured at 4.5 feet above the ground, of:

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

INCREASED REPLANTING REQUIREMENTS

Description: This language increases the replanting requirements by setting the requirement at 2 acres planted for every 1 acre removed whether above or below the threshold, and by altering the retention credit a developer receives based on the number of trees preserved onsite.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Forest conservation threshold means the percentage of the net tract area at which [the reforestation requirement changes from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed] **FOREST RETAINED IS NO LONGER CREDITED AGAINST THE TOTAL NUMBER OF ACRES REQUIRED TO BE REFORESTED.**

...

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

1. For all existing forest cover measured to the nearest 1/10 acre cleared [on the net tract area below the applicable forest conservation threshold], the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.
2. [For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.]
3. Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested **AT A RATIO OF ½ ACRE CREDITED FOR EACH ACRE RETAINED.**
4. A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

TARGETED AND BALANCED MITIGATION

Description: If the State re-opens the ability of local jurisdictions to create forest mitigation banks from existing forests, this language assures that in Montgomery County, at least 3/4 of the developer's responsibility will be fulfilled through a newly planted bank. It would require that if a bank is located outside of a priority area, a 3:1 ratio must be used, rather than a 2:1 ratio. It also states that if a bank is outside a watershed and only leveraging existing forest, a 4:1 ratio must be used. It also removes the ability for a developer to use retention credit from neighboring properties as part of the bank.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(e) *Standards for reforestation and afforestation.*

(B) Governmental considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:

- (i) to achieve the objectives of a master or sector plan or other County land use policies or to take advantage of opportunities to consolidate forest conservation efforts;
- (ii) for public sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or
- (iii) for educational, recreational, and public safety facilities, to ensure that public safety is not compromised.

(C) Public Utility Considerations. The sequence provided in subparagraph (A) of this paragraph for public utility projects may be modified to reflect applicable electrical or other safety codes, or right-of-way constraints.

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

- (A) Forest mitigation banks designated in advance by the County.
- (B) Protection of existing off-site forest. Acquisition of an off-site protective easement for existing forested areas not currently protected in perpetuity is an acceptable mitigation technique instead of off-site afforestation or reforestation planting **FOR UP TO 25% OF THE TOTAL AFFORESTATION AND REFORESTATION REQUIREMENTS**, but the forest cover protected must be:

(i) 2 times the afforestation and reforestation requirements **IF LOCATED IN A PRIORITY AREA LISTED IN PARAGRAPH (3) OF THIS SUBSECTION; AND**

(ii) 3 TIMES THE AFFORESTATION AND REFORESTATION REQUIREMENTS IN ALL OTHER LOCATIONS.

(C) For sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.

(3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred.

(4) Location requirements. Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located. **NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (2)(B), AREAS OBTAINED OUTSIDE THE COUNTY OR WATERSHED TO MEET AFFORESTATION AND REFORESTATION REQUIREMENTS SHALL BE RETAINED AT A 4:1 RATIO OR PLANTED AT A 2:1 RATIO.**

(5) Deadline for plant installation. The afforestation and reforestation requirements under this subsection must be accomplished within one year or 2 growing seasons after a development project is complete.

(6) Planned Unit Developments; Other Staged Development. [Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan, floating zone plan, sketch plan, or project plan instead of the net tract area. Similarly, the] **THE** Planning Board may allow any afforestation or reforestation requirement applicable to a staged development subject to a single preliminary plan of subdivision but with separate site plan reviews for each stage to be calculated and satisfied using the total **NET TRACT** area covered by the preliminary plan of subdivision.

PROTECTING PROTECTED FOREST

Description: This language tightens requirements around forest banks so that they may not be so easily extinguished or relocated.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

(1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.

(2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

(3) FOR ALL EXISTING FOREST COVER SUBJECT TO AN EXISTING FOREST CONSERVATION EASEMENT, THE AREA OF FOREST REMOVED MUST BE REFORESTED AT A RATIO OF 5 ACRES PLANTED FOR EVERY ONE ACRE REMOVED. THIS REQUIREMENT MAY NOT BE SATISFIED OR REDUCED BY:

(A) PROTECTION OF EXISTING OFF-SITE FOREST; OR

(B) THE CREDIT FOR ONSITE FOREST RETENTION IN PARAGRAPH (4) OF THIS SUBSECTION.

[(3)] (4) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

[(4)] (5) A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

MONTGOMERY COUNTY FOREST CONSERVATION LAW

PROPOSAL COMPARISON

Update	Existing law	Forest Coalition Amendments	Planning Department Bill
<i>Establishing forest ecosystems.</i>	Creation of a “biological community” is required when replanting, but the statute does not provide standards beyond tree size and density.	Technical manual adopts standards for creating the biological community currently required when afforesting or reforesting.	Permits establishment of a forest ecosystem as an optional alternative planting protocol.
<i>Starting with forest conservation planning.</i>	The Forest Stand Delineation is submitted concurrently with development plans.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review. Prohibits amending a Forest Stand Delineation.
<i>Strengthening protections for priority forests.</i>	Requires findings by the Planning Director to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. Requires a variance to remove trees with historic value, RTE status, or champion/very large trees.	Requires findings by the Planning Director to remove any forest cover. Requires a variance to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. No change to protection for trees with historic value, RTE status, or champion/very large trees.	Defines several existing priority forest types as “environmental buffer” and removes exemptions for small projects impacting these areas. Clarifies the mitigation standard for cutting trees where a variance is required for removal.
<i>Increasing planting requirements.</i>	Forest removed above the conservation threshold must be replaced at a ¼ : 1 ratio. Forest removed below the conservation threshold must be replaced at a 2:1 ratio.	Forest removed above the conservation threshold must be replaced at a 2:1 ratio. No change to the 2:1 replacement ratio below the conservation threshold.	Forest removed above the conservation threshold must be replaced at a ½ : 1 ratio. Increases conservation thresholds in certain districts.

<i>Increasing planting requirements (cont'd).</i>	Credit for on-site retention is offered at a 1:1 ratio.	Reduces the on-site retention credit to $\frac{1}{2}$: 1.	Increases afforestation thresholds for institutional uses and certain other uses on sites less than 5 acres. No change to the on-site retention credit.
<i>Ensuring new plantings.</i>	Planting is favored over preservation of existing off-site forest, but is not required.	At least 75% of planting requirements must be satisfied by planting.	Preservation of existing offsite forest only permitted when no opportunities for planting are available. Mandates reforestation of stream valley buffers.
<i>Keeping plantings local.</i>	Statute requires planting within the local watershed, if reasonable. Planting requirements are the same inside and outside of the local watershed.	Forest replaced outside the local watershed must be planted at a 4:1 ratio.	Directs planting in a county priority watershed if planting within the local watershed is not available. Forest replaced outside the local watershed must be planted at a 1:1 ratio above the conservation threshold and at a $2\frac{1}{2}$: 1 ratio below the conservation threshold.
<i>Preserving the best existing forests.</i>	Forest mitigation banks may only be created in priority areas or other locations identified in a master or functional plan. All preserved existing off-site forest is credited at $\frac{1}{2}$: 1.	Preserved existing off-site forest is credited at $\frac{1}{2}$: 1 in priority forest areas. Preserved existing off-site forest is credited at $\frac{1}{3}$: 1 in non-priority areas.	No change from current law.
<i>Protecting forest conservation easements.</i>	Not addressed in statute. Forest conservation cleared from an eased area is subject to the same planting and preservation requirements as other forest.	Forests cleared from an eased area must be replaced at a 5:1 ratio. This mitigation cannot be satisfied by preserving existing forest.	No change from current law.

From: [David Mosher](#)
To: [MCP-Chair](#)
Subject: Forest Conservation Law Amendments
Date: Wednesday, April 27, 2022 11:38:34 AM
Attachments: [MOCO PB testimony 4-28-2022.txt](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair, attached is my written testimony to the hearing on the Amendments to the Forest Conservation Law

Sincerely

David Mosher
15 Mirrasou Lane
Gaithersburg MD 20878

Hearing Date: April 28, 2022

To: Chair, Montgomery County Planning Board

Re: Item #6 "No Net Loss of Forest" Amendments" to the Forest Conservation Law

From: David Mosher

15 Mirrasou Lane

Gaithersburg, MD 20878

Dear Planning Board Chair,

I strongly support the proposed Amendments to the Forest Conservation Law. I believe the Amendments will strengthen our County's forestland retention efforts and move the County in the right direction towards meeting several goals of the Montgomery County Climate Action Plan and Thrive 2050, which generally include forest retention and restoration, increasing tree canopy, establishing strategies to protect plant diversity while complementing land use policies such as redevelopment, and improving the survivability of planted forests and trees.

I would like to address the following points regarding the proposed Amendments:

1. Proposed increases to reforestation ratios are critical.

While it is critical to increase the present ratios of reforestation as detailed in the "No Net Loss of Forest Amendments", one must recognize that it takes 10 years or more for a reforested area to begin to provide the same benefits as a mature forested area permanently protected since the more mature forest protected our environment and health better than the reforested area can. Thus, the increased ratios of reforestation are critical to providing the same ecological services provided by the removed forestland.

2. Forest lost to achieving MS4 credits for "Stream Restoration" projects should not be exempted from the Forest Conservation Law.

It is also critical to ensure that all types of activities that result in lost County forest cover are addressed in the Forest Conservation Law. In particular, forest land lost as a result of construction activities during so-called "Stream Restoration" projects to achieve MS4 stormwater reduction credits should not be exempted from the Forest Conservation Law. The forest lost during these construction projects is often mature riparian forest removed along County streams during construction along streams. These types of projects should be specifically addressed by the Forest Conservation Law and language should be added to the proposed Amendments to address these projects specifically.

3. Section "22A.00.01.07 Priorities for Retention" is Critical

Large intact forests provide somewhat different benefits than smaller forested areas in urban and suburban areas that are impacted by development. Keeping large forest areas intact provides larger benefits for air quality, water quality, flood reduction, carbon dioxide removal which reduces climate change, and Forest Interior Dwelling Species (FIDS) and other wildlife habitat while smaller forested areas in areas undergoing development are particularly valuable acting as stream and nontidal wetland buffers, reducing stormwater runoff, reducing temperatures of streams and urban areas, promoting physical and mental health, and providing habitat for wildlife requiring less forest size.

In summary, I strongly support the proposed Amendments to the Forest Conservation Law, with particular support for increased reforestation ratios and Priorities for Retention.

In addition, I urge the Planning Board to specifically include MS4 stormwater reduction Stream Restoration projects in the Amendments to the FCL ensuring these projects are not allowed exemptions, since they have a negative impact on our County forest retention efforts.

Thank you for the opportunity to provide this testimony.

Sincerely,

David Mosher

15 Mirrasou Lane

Gaithersburg, MD 20878

From: [Noemi Bolanos](#)
To: [Cichy, Gerald](#); [MCP-Chair](#); [Rubin, Carol](#); [Anderson, Casey](#); [Verma, Partap](#); [Patterson, Tina](#)
Cc: County.Council@montgomerycountymd.gov
Subject: Noemi Bolanos written testimony on Forest Conservation Law (Item #6) for Planning Board hearing on 4/28/22
Date: Wednesday, April 27, 2022 11:40:11 AM
Attachments: [MoCo FCA bill comparison.pdf](#)
[April 2022 Forest Law Reform Montgomery County Forest Coalition Amendments.pdf](#)
[MoCo FCL 1 Pager Top Recommendations from MoCo Forest Coalition.pdf](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Planning Board Members,

My name is Noemi Bolanos and I am a resident in Montgomery County, and live in the Germantown/Clarksburg area. I am submitting the following written testimony for 4/28/22 Planning Board hearing on Item #6 “Introduction of proposed ‘no net loss of forest’ amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations.” This email contains the following attachments as part of my testimony:

- Montgomery County Forest Coalition’s one pager listing six main FCL recommendations.
- Montgomery County Forest Coalition’s Draft Legislative proposal.
- FCL Comparison Chart.

I urge you to recommend the strongest possible protections of our forests through updating the Forest Conservation Law based on recommendations from the Montgomery County Forest Coalition.

As a resident in Germantown for almost 10 years and an MCPS student in Clarksburg for 5 years, I have watched acres of familiar forests disappear right in front of my eyes. I have watched as our forests are replaced by rapid urbanization of the Germantown / Clarksburg area— and our newest colonizers: single family houses and townhouses. I have watched the degradation of soil and wildlife communities through the loss of our forest communities to development. And I have watched the very first communities that provided me, a Latina immigrant, with a sense of belonging, kinship, and acceptance since the young age of 6 years old, be torn apart. In 2011, when I immigrated here to the United States with my family, I didn’t know how to speak English. It was difficult to find a community of people that understood me. But one place where I always felt heard was the forest. MoCo’s forest ecosystems provided me with a sense of familiarity— I saw my home country of Costa Rica in these forests, I saw my family in these forests. Therefore, when I see acres of forest disappear, acres of forests that once accompanied my childhood, it feels as if members of my community are being taken away from me. This has occurred on route 355 at the intersection of Frederick Road and West Old Baltimore Road, and most notably, it has occurred along Clarksburg Road with the construction of the Clarksburg Premium Outlets, the new Cabin Branch development,

and Cabin Branch Elementary School.

These construction projects are just a few examples of the many development projects that have converted our forests into concrete and have contributed to making the Seneca Creek watershed a deforestation hotspot. The Clarksburg subwatershed has more than twice the forest loss of any other subwatershed in the County, even while these Clarksburg forests protect some of the cleanest streams in MoCo– including the Ten Mile Creek watershed, which is used as a reference stream to monitor water quality of other streams in MoCo. As forests filter pollutants and prevent sediment erosion, not only does the removal of forests in the Germantown/Clarksburg area put the Seneca Creek watershed at risk, but also the Little Seneca Reservoir. This reservoir provides back-up drinking water for Montgomery County and the DC Metropolitan area, and rapid upcounty forest loss (especially in Clarksburg and Germantown) is threatening the quality of the water we drink.

It is imperative that forest ecosystems are protected, not only to preserve our watersheds and the water we drink, but also to preserve my future and the future of all Youth. By 2050, I will only be 45 years old. My generation is already living with the impacts of climate change, and we will have to continue living with them– as long as the Earth remains habitable. I am seeing forests and trees disappear before my eyes. And without both “net gain” of forests and “no net loss” of forests, I see my future disappear along with them. If Montgomery County wants to ensure that a healthy and habitable community is still possible by 2050, then we must protect forests. Protecting forests is a proven, affordable, reliable, and common-sense solution to protect public health, defend the safety of the water we drink, protect clean air, combat climate change, and provide open space our communities can turn to for physical and mental well-being. Protecting forests is protecting my community and my future.

To protect MoCo for all individuals and families, we need the ***strongest possible*** protections for our forests. Please put community care into practice by improving protections for our forests – both for communities now and for future generations.

I ask the Planning Board to recommend Forest Conservation Law legislation to the County Council that:

1.
Protects existing forest ecosystems. This should be the #1 priority.
2.
Requires Forest stand delineation to be evaluated & submitted to Planning *prior* to submitting any application plan for development of a site.
3.
Strengthens replanting ratios to require 2:1 replanting in all scenarios. For every 1 acre of forest ecosystem cut, 2 acres of forest ecosystem to be replanted.
4.
Strengthens replanting requirements to *require* the planting of forest ecosystems, not just trees. When forest ecosystem is what’s being removed, community members need assurances that the whole forest ecosystem is also what will be replanted, so that public health is prioritized over private profits

5. Strengthens watershed considerations so that forest ecosystem replanting improves the water quality of our communities in specific watersheds, and to incentivize replanting within Montgomery County, not outside of our county.
6. As a prevention, tightens requirements around forest conservation easements so they cannot be easily extinguished or relocated.

In closing, I ask you again to strengthen the bill to update the Forest Conservation Law (FCL) based on recommendations from the MoCo Forest Coalition. Forests are essential to ensuring that a world of tomorrow is possible— in Montgomery County and the world at large. Montgomery County communities need the *strongest* possible forest protection laws *now*. Protecting the future and health of the youth cannot wait.

Sincerely,

Noemi Bolanos

21017 Bedelia Way Germantown, MD 20876

MONTGOMERY COUNTY FOREST CONSERVATION LAW

PROPOSAL COMPARISON

Update	Existing law	Forest Coalition Amendments	Planning Department Bill
<i>Establishing forest ecosystems.</i>	Creation of a “biological community” is required when replanting, but the statute does not provide standards beyond tree size and density.	Technical manual adopts standards for creating the biological community currently required when afforesting or reforesting.	Permits establishment of a forest ecosystem as an optional alternative planting protocol.
<i>Starting with forest conservation planning.</i>	The Forest Stand Delineation is submitted concurrently with development plans.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review. Prohibits amending a Forest Stand Delineation.
<i>Strengthening protections for priority forests.</i>	Requires findings by the Planning Director to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. Requires a variance to remove trees with historic value, RTE status, or champion/very large trees.	Requires findings by the Planning Director to remove any forest cover. Requires a variance to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. No change to protection for trees with historic value, RTE status, or champion/very large trees.	Defines several existing priority forest types as “environmental buffer” and removes exemptions for small projects impacting these areas. Clarifies the mitigation standard for cutting trees where a variance is required for removal.
<i>Increasing planting requirements.</i>	Forest removed above the conservation threshold must be replaced at a ¼ : 1 ratio. Forest removed below the conservation threshold must be replaced at a 2:1 ratio.	Forest removed above the conservation threshold must be replaced at a 2:1 ratio. No change to the 2:1 replacement ratio below the conservation threshold.	Forest removed above the conservation threshold must be replaced at a ½ : 1 ratio. Increases conservation thresholds in certain districts.

<i>Increasing planting requirements (cont'd).</i>	Credit for on-site retention is offered at a 1:1 ratio.	Reduces the on-site retention credit to $\frac{1}{2}$: 1.	Increases afforestation thresholds for institutional uses and certain other uses on sites less than 5 acres. No change to the on-site retention credit.
<i>Ensuring new plantings.</i>	Planting is favored over preservation of existing off-site forest, but is not required.	At least 75% of planting requirements must be satisfied by planting.	Preservation of existing offsite forest only permitted when no opportunities for planting are available. Mandates reforestation of stream valley buffers.
<i>Keeping plantings local.</i>	Statute requires planting within the local watershed, if reasonable. Planting requirements are the same inside and outside of the local watershed.	Forest replaced outside the local watershed must be planted at a 4:1 ratio.	Directs planting in a county priority watershed if planting within the local watershed is not available. Forest replaced outside the local watershed must be planted at a 1:1 ratio above the conservation threshold and at a $2\frac{1}{2}$: 1 ratio below the conservation threshold.
<i>Preserving the best existing forests.</i>	Forest mitigation banks may only be created in priority areas or other locations identified in a master or functional plan. All preserved existing off-site forest is credited at $\frac{1}{2}$: 1.	Preserved existing off-site forest is credited at $\frac{1}{2}$: 1 in priority forest areas. Preserved existing off-site forest is credited at $\frac{1}{3}$: 1 in non-priority areas.	No change from current law.
<i>Protecting forest conservation easements.</i>	Not addressed in statute. Forest conservation cleared from an eased area is subject to the same planting and preservation requirements as other forest.	Forests cleared from an eased area must be replaced at a 5:1 ratio. This mitigation cannot be satisfied by preserving existing forest.	No change from current law.

FOREST ECOSYSTEM ESTABLISHMENT

Description: The need for forest ecosystem management is already acknowledged in the Montgomery County Code. This language will add a requirement to include in the technical manual how forest ecosystem establishment should occur. The technical manual could include requirements for drainage, establishing healthy soil including mycorrhizal fungal networks, importing topsoil, planting a diversity of tree species that will grow to different heights and planting understory shrubs in later years of required maintenance, and other techniques that a developer can take to accelerate and support establishing a forest ecosystem.

CAPS indicates matter added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Reforestation or reforested means the creation of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground within 7 years. Reforestation for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria. {unchanged, included for reference}

AFFORESTATION OR AFFORESTED MEANS THE ESTABLISHMENT OF A BIOLOGICAL COMMUNITY THAT MEETS THE DEFINITION OF REFORESTED ON AN AREA FROM WHICH IT HAS ALWAYS OR VERY LONG BEEN ABSENT. AFFORESTATION FOR A LINEAR PROJECT WHICH INVOLVES OVERHEAD TRANSMISSION LINES MAY CONSIST OF A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR DIAMETER CRITERIA.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(b) *Technical manual.* The technical manual must include guidance and methodologies for:

- (1) preparing and evaluating a forest stand delineation and natural resource inventory;
- (2) preparing and evaluating a forest conservation plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;

MONTGOMERY COUNTY FOREST COALITION PROPOSED AMENDMENTS

(3) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;

(4) CREATING THE BIOLOGICAL COMMUNITY REQUIRED FOR REFORESTATION OR AFFORESTATION AS DEFINED IN SECTION 22A-3 OF THIS CHAPTER, INCLUDING STANDARDS FOR ESTABLISHING GROUND COVER, SHRUB, TREE AND CANOPY LAYERS AS WELL AS HEALTHY SOIL STRUCTURE, DRAINAGE, BIOMASS, AND MICROBIOTIC AND FUNGAL COMMUNITIES.

[(4)] (5) monitoring and enforcement of forest conservation plans; and

[(5)] (6) other appropriate guidance for program requirements consistent with this Chapter and the regulations.

FOREST PROTECTION PLANNING

Description: This language requires the forest stand delineation, which describes the forest stand's composition and most valuable elements, prior to the application of the development plan. This will allow staff to identify what areas of forest should be preserved before a developer embarks on the rest of the development's planning. This timing should create efficiencies for the developer and other stakeholders.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

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

1. Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation [with] **PRIOR TO** the application for a development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, whichever comes first. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(e) Additional regulations. Notwithstanding any other provision of this Chapter, the Planning Board [may] **SHALL**, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation **FOR PROJECTS REQUIRING DEVELOPMENT PLAN, FLOATING ZONE PLAN, PROJECT PLAN, SKETCH PLAN, PRELIMINARY PLAN OF SUBDIVISION, OR SITE PLAN APPROVAL** and **MAY** allow modified application submissions or procedures for development projects of a scale or public utility projects.

STRENGTHENING FOREST PRIORITY

Description: This language requires that all forest cover needs to be retained by a forest conservation plan while maintaining that certain types of forests may only be removed with a variance.

CAPS indicates language added to existing law; **[brackets]** indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.
Sec. 22A-12. Retention, afforestation, and reforestation requirements.

(b) *Retention.*

1. The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain **[certain vegetation and specific areas] FOREST COVER** in an undisturbed condition unless the Planning Director finds that:

(A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;

(B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and

(C) the development proposal cannot be reasonably altered.

[(2)] In general, areas protected under this subsection include:

(A) floodplains, stream buffers, steep slopes, and critical habitats;

(B) contiguous forests;

(C) rare, threatened, and endangered species;

(D) trees connected to an historic site;

(E) champion trees and other exceptionally large trees; and

(F) areas designated as priority save areas in a master plan or functional plan.]

[(3)] (2) 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. FLOODPLAINS, EPHEMERAL STREAMS, STREAM BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS;

B. CONTIGUOUS FORESTS;

C. RARE, THREATENED, AND ENDANGERED SPECIES;

D. TREES CONNECTED TO AN HISTORIC SITE;

- E. CHAMPION TREES AND OTHER EXCEPTIONALLY LARGE TREES;**
- F. AREAS DESIGNATED AS PRIORITY SAVE AREAS IN A MASTER PLAN OR FUNCTIONAL PLAN;**

[(A)] (G) 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. Sections 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)] (H) Any tree that is:

- (i) part of a historic site,
- (ii) associated with a historic structure, or
- (iii) designated by the State or County as a national, State, or County champion tree; or

[(C)] (I) Any tree with a diameter, measured at 4.5 feet above the ground, of:

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

INCREASED REPLANTING REQUIREMENTS

Description: This language increases the replanting requirements by setting the requirement at 2 acres planted for every 1 acre removed whether above or below the threshold, and by altering the retention credit a developer receives based on the number of trees preserved onsite.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Forest conservation threshold means the percentage of the net tract area at which [the reforestation requirement changes from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed] **FOREST RETAINED IS NO LONGER CREDITED AGAINST THE TOTAL NUMBER OF ACRES REQUIRED TO BE REFORESTED.**

...

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

1. For all existing forest cover measured to the nearest 1/10 acre cleared [on the net tract area below the applicable forest conservation threshold], the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.
2. [For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.]
3. Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested **AT A RATIO OF ½ ACRE CREDITED FOR EACH ACRE RETAINED.**
4. A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

TARGETED AND BALANCED MITIGATION

Description: If the State re-opens the ability of local jurisdictions to create forest mitigation banks from existing forests, this language assures that in Montgomery County, at least 3/4 of the developer's responsibility will be fulfilled through a newly planted bank. It would require that if a bank is located outside of a priority area, a 3:1 ratio must be used, rather than a 2:1 ratio. It also states that if a bank is outside a watershed and only leveraging existing forest, a 4:1 ratio must be used. It also removes the ability for a developer to use retention credit from neighboring properties as part of the bank.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(e) *Standards for reforestation and afforestation.*

(B) Governmental considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:

- (i) to achieve the objectives of a master or sector plan or other County land use policies or to take advantage of opportunities to consolidate forest conservation efforts;
- (ii) for public sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or
- (iii) for educational, recreational, and public safety facilities, to ensure that public safety is not compromised.

(C) Public Utility Considerations. The sequence provided in subparagraph (A) of this paragraph for public utility projects may be modified to reflect applicable electrical or other safety codes, or right-of-way constraints.

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

- (A) Forest mitigation banks designated in advance by the County.
- (B) Protection of existing off-site forest. Acquisition of an off-site protective easement for existing forested areas not currently protected in perpetuity is an acceptable mitigation technique instead of off-site afforestation or reforestation planting **FOR UP TO 25% OF THE TOTAL AFFORESTATION AND REFORESTATION REQUIREMENTS**, but the forest cover protected must be:

(i) 2 times the afforestation and reforestation requirements **IF LOCATED IN A PRIORITY AREA LISTED IN PARAGRAPH (3) OF THIS SUBSECTION; AND**

(ii) 3 TIMES THE AFFORESTATION AND REFORESTATION REQUIREMENTS IN ALL OTHER LOCATIONS.

(C) For sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.

(3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred.

(4) Location requirements. Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located. **NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (2)(B), AREAS OBTAINED OUTSIDE THE COUNTY OR WATERSHED TO MEET AFFORESTATION AND REFORESTATION REQUIREMENTS SHALL BE RETAINED AT A 4:1 RATIO OR PLANTED AT A 2:1 RATIO.**

(5) Deadline for plant installation. The afforestation and reforestation requirements under this subsection must be accomplished within one year or 2 growing seasons after a development project is complete.

(6) Planned Unit Developments; Other Staged Development. [Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan, floating zone plan, sketch plan, or project plan instead of the net tract area. Similarly, the] **THE** Planning Board may allow any afforestation or reforestation requirement applicable to a staged development subject to a single preliminary plan of subdivision but with separate site plan reviews for each stage to be calculated and satisfied using the total **NET TRACT** area covered by the preliminary plan of subdivision.

PROTECTING PROTECTED FOREST

Description: This language tightens requirements around forest banks so that they may not be so easily extinguished or relocated.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

(1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.

(2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

(3) FOR ALL EXISTING FOREST COVER SUBJECT TO AN EXISTING FOREST CONSERVATION EASEMENT, THE AREA OF FOREST REMOVED MUST BE REFORESTED AT A RATIO OF 5 ACRES PLANTED FOR EVERY ONE ACRE REMOVED. THIS REQUIREMENT MAY NOT BE SATISFIED OR REDUCED BY:

(A) PROTECTION OF EXISTING OFF-SITE FOREST; OR

(B) THE CREDIT FOR ONSITE FOREST RETENTION IN PARAGRAPH (4) OF THIS SUBSECTION.

[(3)] (4) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

[(4)] (5) A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

Montgomery County Forest Coalition

11.18.21

Top Recommendations for updates to MoCo Forest Conservation Law (FCL)

1. **Protect existing Forest Ecosystems.** All remaining pre-existing Forests in MoCo are to be designated & treated as priority forest in FCL. First priority is to protect existing forest ecosystems.
 - All remaining forest cover is considered priority and may only be removed upon appropriate findings by the Planning Director or Planning Board.
 - Certain types of forests may only be removed with a variance granted by the Planning Board or Planning Director. Types of forests and trees that would receive a stronger level of protection and require a variance to be removed include forested: Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species; Historic Site trees; Champion Trees and other exceptionally large trees; areas designated as “Priority Save Areas” in Master Plan or any Functional Plan.
 - Forest removal subject to a variance must be replaced with forest ecosystem at a 2:1 ratio.
2. **Tighten requirements around forest conservation easements so that they may not be so easily extinguished or relocated.**
 - For all existing forest cover subject to an existing forest conservation easement, the area of forest removed must be reforested at a ratio of 5 acres of *forest ecosystem* for every 1 acre removed.
 - This deterrent allows forest banks time to become mature forest ecosystems, and also keeps forest banks in the sub-watershed where they were originally intended to be planted.
3. **Strengthen replanting ratios to ensure no-net-loss.**
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 2 acres *forest ecosystem* planted for every 1 acre removed; or
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 1 acre *forest ecosystem* planted for every 1 acre removed, with no retention credit.
 - Require that at least 75% of the re-planting requirement be satisfied by the newly re-planted forest ecosystem.
4. **Strengthen Re-planting requirements to require the planting of *Forest Ecosystem*, not just trees.** When what’s being removed is *forest ecosystem*, what’s being replaced should be *forest ecosystem* as well. Reforestation or afforestation of *forest ecosystem* includes consideration of, payment for, and maintenance to establish the following in the re-planting: healthy soil; drainage; healthy fungi in the soil; healthy micro-biotic communities in the soil; biomass; groundcover; shrub layer; tree understory layer; tree canopy layer; diversity of different types of trees and plants.
5. **Strengthen Watershed Considerations:** For meeting afforestation and reforestation requirements, areas obtained *outside* the County or *outside* the sub-watershed where forest was removed for development, the requirement shall be that existing forest retained through forest mitigation bank shall be at a 4:1 ratio, or replanting of forest ecosystem shall be done at a 2:1 ratio .
6. **Forest stand delineation must be evaluated & submitted to Planning *prior to* submitting any application plan for development of a site.**

From: [Sylvia Tognetti](#)
To: [MCP-Chair](#); [Anderson, Casey](#); [Verma, Partap](#); [Patterson, Tina](#); [Rubin, Carol](#); [Cichy, Gerald](#)
Cc: [Friends of Ten Mile Creek](#)
Subject: Testimony: Forest Conservation Law, Agenda Item #6
Date: Wednesday, April 27, 2022 11:48:25 AM
Attachments: [FoTMC testimony to Planning Board on FCL 4-28-2022.pdf](#)
[MoCo FCL 1 Pager Top Recommendations from MoCo Forest Coalition 11.18.2021.pdf](#)
[April 2022 Forest Law Reform Montgomery County Forest Coalition Amendments.pdf](#)
[MoCo FCA bill comparison\[96\].pdf](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Anderson and Members of the Planning Board,

Attached please find written testimony of Friends of Ten Mile Creek & Little Seneca Reservoir to be presented tomorrow regarding the Forest Conservation Law, Agenda Item #6. As attachments, I have also included draft bill language prepared by the Montgomery County Forest Coalition, a comparison of the Coalition's draft bill language with the amendments proposed by Planning staff, and a one page list of principles of the Montgomery County Forest Coalition.

Thank you for the opportunity to present our views on this critical matter.

Sylvia S Tognetti
President, Friends of Ten Mile Creek & Little Seneca Reservoir

Forest Conservation Law, Agenda Item #6 for the Planning Board's 4/28/2022 public hearing

Montgomery County Planning Board
April 28 2020

Testimony of Sylvia S Tognetti,
President, Friends of Ten Mile Creek & Little Seneca Reservoir

Good Afternoon Chairman Anderson and Members of the Planning Board and thank you for the opportunity to testify on behalf of Friends of Ten Mile Creek & Little Seneca Reservoir in support of a stronger Forest Conservation Law (FCL). Friends of Ten Mile Creek is a member of the Montgomery County Forest Coalition and contributed to the Coalition recommendations.

The Coalition initiated an effort to strengthen the County's Forest Conservation Law in Summer 2020 by asking the County Council to add a "No Net Loss of Forests" provision to a related bill. Needing more time to consider the Coalitions recommendations, the Council indicated they would address these in 2021. In the meantime, the Coalition continued to meet with members of the Council, their staff, and Planning Department staff and provided specific recommendations. In response to our advocacy, the Planning Department also developed a "No Net Loss of Forests" initiative in November 2021, which led to the proposed amendments you have before you today.

The FCL amendments proposed by Planning Department staff represent a significant improvement over the current law but fall short of the recommendations of the Montgomery County Forest Coalition and it is not clear that 'no net loss of forests' would be fully achieved. We specifically ask the Planning Board to recommend legislation to the County Council that:

- 1. Protects existing forest ecosystems as the top priority.**
- 2. Requires Forest stand delineation to be submitted to Planning and evaluated prior to submitting any application plan for development of a site.**
- 3. Strengthens replanting ratios to 2:1 in all scenarios and reduces the credit for onsite retention of existing forests.**
- 4. Strengthens replanting requirements to require the planting (or regeneration) of forest ecosystems, not just trees.**
- 5. Strengthens watershed considerations**
- 6. Tighten requirements around forest conservation easements as a prevention so they cannot be easily extinguished or relocated.**

More details, reasons for these recommendations, and differences from the proposed amendments are as follows, and also appear in the attached summary table and draft legislation which the Coalition provided to the Council last Fall:

1. Protect existing forest ecosystems as the top priority.

Forests should not be removed without approval of the Planning Director, based on strong justification. An even higher level of protection should be given to certain types of forest, which could only be removed if a Variance is granted and would need to be replaced at a ratio of 2:1. These types would include Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species habitat; Historic Site trees; Champion Trees and other exceptionally large trees; and areas designated as "Priority Save Areas" in Master Plan or any Functional Plan.

The proposed amendments maintain provisions in the existing law which only require approval of the Planning Director for removal of specific high priority forest types and only requires a variance for trees with historic value, RTE status, champion or very large trees.

We support the provision in the proposed amendments which would remove the exemption for small projects that impact forests defined as buffers.

2. Require forest stand delineation to be submitted to Planning and evaluated prior to submitting any application plan for development of a site.

We support this requirement in the proposed amendments because it would enable projects to be designed to accommodate and maintain existing forests.

3. Strengthen replanting ratios to 2:1 in all scenarios and reduce the credit for onsite retention of existing forests.

The proposed amendments would increase the replanting requirement above the conservation threshold from a ratio of $\frac{1}{4}$:1 to $\frac{1}{2}$:1. However, it maintains 2:1 below the threshold and increases the conservation threshold in certain districts. Therefore, it appears that 'No Net Loss' may not be achieved in all projects, particularly on larger tracts. Since we don't know the mix of projects going forward, it is important to achieve no net loss in all projects.

Current law also gives 1:1 credit for on-site retention of existing forest, which also does not achieve 'No Net Loss'. The Coalition recommendation is to reduce the onsite retention credit and credit for preservation of offsite forests in priority areas to $\frac{1}{2}$: 1 and $\frac{1}{3}$: 1 in non-priority forests, and to require that at least 75% of planting requirements be met by planting. The proposed amendments would allow preservation of offsite forest when there are no opportunities for planting.

Friends of Ten Mile Creek also recommends that, to ensure no-net-loss of forests after development when replanting is necessary, state and local entities should calculate tree replacement replanting at a 2:1 ratio based upon the DBH lost. For example, the loss of one 24" DBH tree would be replaced with sixteen 3" DBH trees or twelve 4" DBH.

Friends of Ten Mile Creek supports the recommended amendment to require replanting of riparian areas but would prefer use of assisted natural regeneration practices described above.

4. Strengthen replanting requirements to require the planting of forest ecosystems, not just trees.

Although difficult if not impossible to fully replace a forest ecosystem, when this is what is being removed, community members need assurances that the whole forest ecosystem is also what will be replanted to the fullest extent possible by establishing standards and best practices for replanting in the technical manual. The proposed amendments only offer this as an optional alternative to the planting protocol.

In addition to the Coalition recommendations, Friends of Ten Mile Creek also recommends that the technical manual offer the option of using a form of assisted natural regeneration practices where practicable, with maintenance practices for 5 years to remove invasive species and protect small trees from deer, as would also need to be done if/when forests are replanted.

5. Strengthen watershed considerations

If sites for planting are not available within the same watershed, the proposed amendments would require planting in a priority watershed elsewhere in the county at a 1:1 ratio above the conservation threshold, and at a 2 ½:1 ratio below the conservation threshold. Given the importance of forests for water quality in specific watersheds, the Coalition recommends a 4:1 ratio for forests replanted outside the watershed in which they are removed.

6. Tighten requirements around forest conservation easements as a prevention so they cannot be easily extinguished or relocated.

In order to protect existing forest conservation easements, the Coalition recommends a requirement that replacement of any forests cleared in an existing easement be replaced at a ratio of 5:1 and that this requirement could not be satisfied through preservation of existing forest. This matter is not addressed in existing law or in the proposed amendments.

Forests provide a foundation for climate resilience, as they are the first line of defense against both extreme temperatures and rainfall events associated with climate change. In addition to reducing the urban heat island effect and mitigating floods, forests are also the first line of defense for protecting the quality of the water we drink because they reduce runoff of sediment and other pollutants, which increase the cost of water treatment. Therefore they are also the first line of defense for critical lifeline water infrastructure systems and should be classified as critical natural infrastructure - and the lifeline of our lifeline critical infrastructure, which merits even higher priority and a greater level of protection than infrastructure that is merely critical. Lastly, they provide many other well-known co-benefits of green spaces for air quality, wildlife, physical

and mental health and quality of life. And, of course, they sequester and remove carbon from the atmosphere which contributes to impacts of climate change.

Overall, the County lost 1,383 acres of forests from 2008 to 2016, the fifth highest rate of loss in the state.¹ Global Forest Watch estimates a 1.5% decrease from 2000 to 2020, amounting to 2352 acres, adding 322 kt of greenhouse gas emissions to the atmosphere.²

Some of the highest rates of deforestation are found in up-County watersheds from which drainage enters the Potomac River nearby and upstream from our drinking water intake, carrying stormwater runoff and sediment from land erosion and scoured stream beds, thereby increasing the cost of water treatment for everyone.³ While forests in the Ten Mile Creek watershed are designated for protection

under the 2014 Ten Mile Creek Amended Master Plan, neighboring watersheds, which also drain to the Little Seneca Reservoir - our drought backup drinking water supply, are hotspots of deforestation in the County. As shown in the map/Figure 1, the single highest rate of

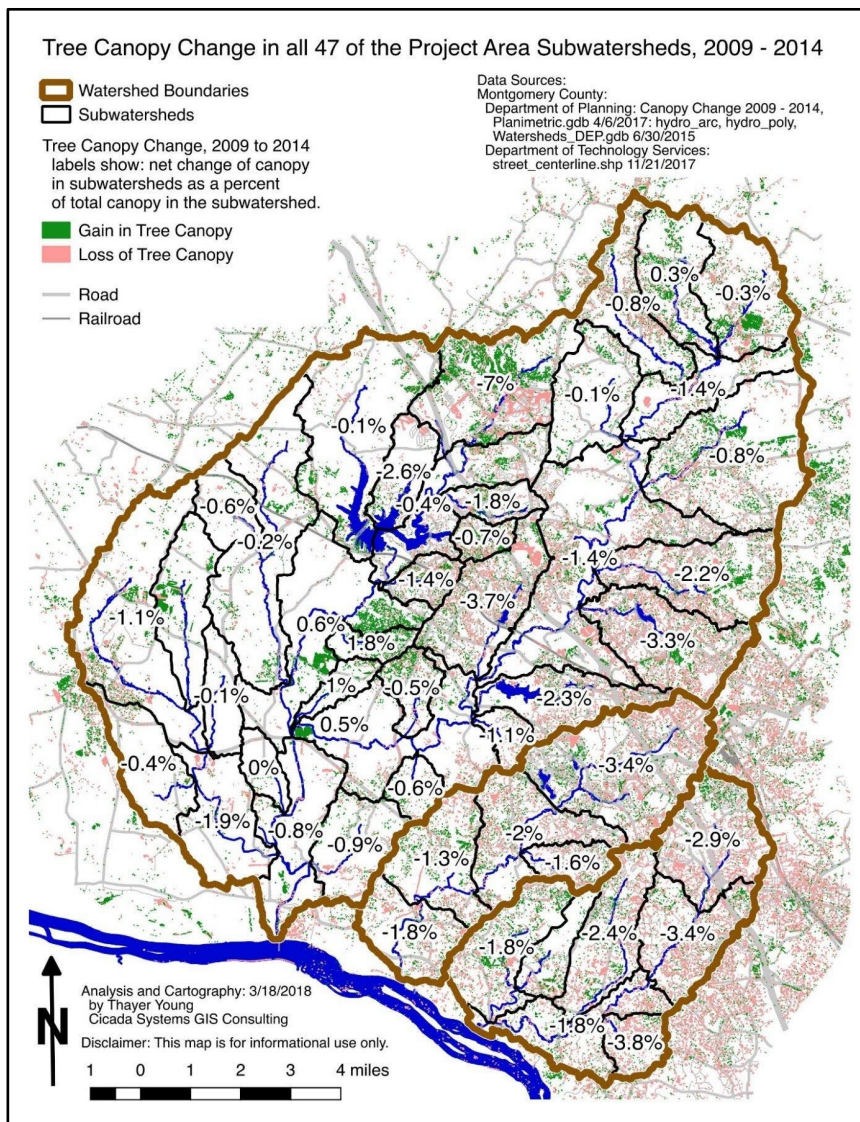


Figure 1: Deforestation rates by sub-watershed in three Upper Montgomery County watersheds, 2009-2014. Source: Cameron et al 2018.

¹ Chesapeake Bay Foundation fact sheet based on data from MD Department of Natural Resources: <https://www.cbf.org/document-library/cbf-guides-fact-sheets/md-fca-fact-sheet.pdf>

² Global Forest Watch data for Montgomery County Maryland, accessed 4-25-2022 <https://gfw.global/3LJb40G>

³ Cameron, Diane, Sylvia S. Tognetti, and Thayer Young. "Protecting the Source and Maintaining Water Affordability." Prepared by The Ecologix Group for the Maryland Sierra Club, 2018.

deforestation was in the Clarksburg sub-watershed - near 7% from 2009 to 2014, which is twice as high as all but one other subwatershed in the up-county.

The impacts of forest loss become most visible during heavy rainstorms when tributary streams load more sediment and nutrient pollution into this emergency backup Reservoir - as can be seen in the image below (Figure 2), which was posted by Montgomery Parks immediately following the July 2019 rain bomb. A 2015 study found the rate of sediment accumulation in Little Seneca is almost twice as high as in comparable drinking water reservoirs in Maryland (those found in 3rd and 5th order watersheds) - even after deducting the estimated amount that could be attributed to construction, which is when sediment loads are expected to be higher.⁴

Forest protection is one of the most reliable, viable, and cost-effective methods of combating climate change, and also contributes to healthy lands, waters, and communities. Therefore, we need the strongest possible protections for our forests, and it is imperative that the Planning Board take forest benefits into account in development decisions. In closing, we ask you again to strengthen the bill to update the Forest Conservation Law (FCL), consistent with the recommendations of the MoCo Forest Coalition.



*Figure 2:
Sediment-laden
floodwaters
entering Little
Seneca Reservoir
following July 8
2019 rain bomb.
Source:
Montgomery
Parks*

⁴ Smith, S.M.C., and P.R. Wilcock. 2015. "Upland Sediment Supply and Its Relation to Watershed Sediment Delivery in the Contemporary Mid-Atlantic Piedmont (U.S.A.)." *Geomorphology* 232 (March): 33–46. <https://doi.org/10.1016/j.geomorph.2014.12.036>.

Montgomery County Forest Coalition

11.18.21

Top Recommendations for updates to MoCo Forest Conservation Law (FCL)

1. **Protect existing Forest Ecosystems.** All remaining pre-existing Forests in MoCo are to be designated & treated as priority forest in FCL. First priority is to protect existing forest ecosystems.
 - All remaining forest cover is considered priority and may only be removed upon appropriate findings by the Planning Director or Planning Board.
 - Certain types of forests may only be removed with a variance granted by the Planning Board or Planning Director. Types of forests and trees that would receive a stronger level of protection and require a variance to be removed include forested: Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species; Historic Site trees; Champion Trees and other exceptionally large trees; areas designated as “Priority Save Areas” in Master Plan or any Functional Plan.
 - Forest removal subject to a variance must be replaced with forest ecosystem at a 2:1 ratio.
2. **Tighten requirements around forest conservation easements so that they may not be so easily extinguished or relocated.**
 - For all existing forest cover subject to an existing forest conservation easement, the area of forest removed must be reforested at a ratio of 5 acres of *forest ecosystem* for every 1 acre removed.
 - This deterrent allows forest banks time to become mature forest ecosystems, and also keeps forest banks in the sub-watershed where they were originally intended to be planted.
3. **Strengthen replanting ratios to ensure no-net-loss.**
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 2 acres *forest ecosystem* planted for every 1 acre removed; or
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 1 acre *forest ecosystem* planted for every 1 acre removed, with no retention credit.
 - Require that at least 75% of the re-planting requirement be satisfied by the newly re-planted forest ecosystem.
4. **Strengthen Re-planting requirements to require the planting of *Forest Ecosystem*, not just trees.** When what’s being removed is *forest ecosystem*, what’s being replaced should be *forest ecosystem* as well. Reforestation or afforestation of *forest ecosystem* includes consideration of, payment for, and maintenance to establish the following in the re-planting: healthy soil; drainage; healthy fungi in the soil; healthy micro-biotic communities in the soil; biomass; groundcover; shrub layer; tree understory layer; tree canopy layer; diversity of different types of trees and plants.
5. **Strengthen Watershed Considerations:** For meeting afforestation and reforestation requirements, areas obtained *outside* the County or *outside* the sub-watershed where forest was removed for development, the requirement shall be that existing forest retained through forest mitigation bank shall be at a 4:1 ratio, or replanting of forest ecosystem shall be done at a 2:1 ratio .
6. **Forest stand delineation must be evaluated & submitted to Planning *prior to* submitting any application plan for development of a site.**

FOREST ECOSYSTEM ESTABLISHMENT

Description: The need for forest ecosystem management is already acknowledged in the Montgomery County Code. This language will add a requirement to include in the technical manual how forest ecosystem establishment should occur. The technical manual could include requirements for drainage, establishing healthy soil including mycorrhizal fungal networks, importing topsoil, planting a diversity of tree species that will grow to different heights and planting understory shrubs in later years of required maintenance, and other techniques that a developer can take to accelerate and support establishing a forest ecosystem.

CAPS indicates matter added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Reforestation or reforested means the creation of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground within 7 years. Reforestation for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria. {unchanged, included for reference}

AFFORESTATION OR AFFORESTED MEANS THE ESTABLISHMENT OF A BIOLOGICAL COMMUNITY THAT MEETS THE DEFINITION OF REFORESTED ON AN AREA FROM WHICH IT HAS ALWAYS OR VERY LONG BEEN ABSENT. AFFORESTATION FOR A LINEAR PROJECT WHICH INVOLVES OVERHEAD TRANSMISSION LINES MAY CONSIST OF A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR DIAMETER CRITERIA.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(b) *Technical manual.* The technical manual must include guidance and methodologies for:

- (1) preparing and evaluating a forest stand delineation and natural resource inventory;
- (2) preparing and evaluating a forest conservation plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;

MONTGOMERY COUNTY FOREST COALITION PROPOSED AMENDMENTS

(3) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;

(4) CREATING THE BIOLOGICAL COMMUNITY REQUIRED FOR REFORESTATION OR AFFORESTATION AS DEFINED IN SECTION 22A-3 OF THIS CHAPTER, INCLUDING STANDARDS FOR ESTABLISHING GROUND COVER, SHRUB, TREE AND CANOPY LAYERS AS WELL AS HEALTHY SOIL STRUCTURE, DRAINAGE, BIOMASS, AND MICROBIOTIC AND FUNGAL COMMUNITIES.

[(4)] (5) monitoring and enforcement of forest conservation plans; and

[(5)] (6) other appropriate guidance for program requirements consistent with this Chapter and the regulations.

FOREST PROTECTION PLANNING

Description: This language requires the forest stand delineation, which describes the forest stand's composition and most valuable elements, prior to the application of the development plan. This will allow staff to identify what areas of forest should be preserved before a developer embarks on the rest of the development's planning. This timing should create efficiencies for the developer and other stakeholders.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

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

1. Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation [with] **PRIOR TO** the application for a development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, whichever comes first. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(e) Additional regulations. Notwithstanding any other provision of this Chapter, the Planning Board [may] **SHALL**, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation **FOR PROJECTS REQUIRING DEVELOPMENT PLAN, FLOATING ZONE PLAN, PROJECT PLAN, SKETCH PLAN, PRELIMINARY PLAN OF SUBDIVISION, OR SITE PLAN APPROVAL** and **MAY** allow modified application submissions or procedures for development projects of a scale or public utility projects.

STRENGTHENING FOREST PRIORITY

Description: This language requires that all forest cover needs to be retained by a forest conservation plan while maintaining that certain types of forests may only be removed with a variance.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.
Sec. 22A-12. Retention, afforestation, and reforestation requirements.

(b) *Retention.*

1. The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain [certain vegetation and specific areas] **FOREST COVER** in an undisturbed condition unless the Planning Director finds that:

(A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;

(B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and

(C) the development proposal cannot be reasonably altered.

[(2)] In general, areas protected under this subsection include:

(A) floodplains, stream buffers, steep slopes, and critical habitats;

(B) contiguous forests;

(C) rare, threatened, and endangered species;

(D) trees connected to an historic site;

(E) champion trees and other exceptionally large trees; and

(F) areas designated as priority save areas in a master plan or functional plan.]

[(3)] (2) 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. FLOODPLAINS, EPHEMERAL STREAMS, STREAM BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS;

B. CONTIGUOUS FORESTS;

C. RARE, THREATENED, AND ENDANGERED SPECIES;

D. TREES CONNECTED TO AN HISTORIC SITE;

- E. CHAMPION TREES AND OTHER EXCEPTIONALLY LARGE TREES;**
- F. AREAS DESIGNATED AS PRIORITY SAVE AREAS IN A MASTER PLAN OR FUNCTIONAL PLAN;**

[(A)] **(G)** 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. Sections 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)] **(H)** Any tree that is:
(i) part of a historic site,
(ii) associated with a historic structure, or
(iii) designated by the State or County as a national, State, or County champion tree; or

[(C)] **(I)** Any tree with a diameter, measured at 4.5 feet above the ground, of:
(i) 30 inches or more; or
(ii) 75% or more of the diameter, measured at 4.5 feet above ground, of the current State champion tree of that species.

INCREASED REPLANTING REQUIREMENTS

Description: This language increases the replanting requirements by setting the requirement at 2 acres planted for every 1 acre removed whether above or below the threshold, and by altering the retention credit a developer receives based on the number of trees preserved onsite.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Forest conservation threshold means the percentage of the net tract area at which [the reforestation requirement changes from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed] **FOREST RETAINED IS NO LONGER CREDITED AGAINST THE TOTAL NUMBER OF ACRES REQUIRED TO BE REFORESTED.**

...

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

1. For all existing forest cover measured to the nearest 1/10 acre cleared [on the net tract area below the applicable forest conservation threshold], the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.
2. [For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.]
3. Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested **AT A RATIO OF ½ ACRE CREDITED FOR EACH ACRE RETAINED.**
4. A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

TARGETED AND BALANCED MITIGATION

Description: If the State re-opens the ability of local jurisdictions to create forest mitigation banks from existing forests, this language assures that in Montgomery County, at least 3/4 of the developer's responsibility will be fulfilled through a newly planted bank. It would require that if a bank is located outside of a priority area, a 3:1 ratio must be used, rather than a 2:1 ratio. It also states that if a bank is outside a watershed and only leveraging existing forest, a 4:1 ratio must be used. It also removes the ability for a developer to use retention credit from neighboring properties as part of the bank.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(e) *Standards for reforestation and afforestation.*

(B) Governmental considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:

- (i) to achieve the objectives of a master or sector plan or other County land use policies or to take advantage of opportunities to consolidate forest conservation efforts;
- (ii) for public sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or
- (iii) for educational, recreational, and public safety facilities, to ensure that public safety is not compromised.

(C) Public Utility Considerations. The sequence provided in subparagraph (A) of this paragraph for public utility projects may be modified to reflect applicable electrical or other safety codes, or right-of-way constraints.

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

- (A) Forest mitigation banks designated in advance by the County.
- (B) Protection of existing off-site forest. Acquisition of an off-site protective easement for existing forested areas not currently protected in perpetuity is an acceptable mitigation technique instead of off-site afforestation or reforestation planting **FOR UP TO 25% OF THE TOTAL AFFORESTATION AND REFORESTATION REQUIREMENTS**, but the forest cover protected must be:

(i) 2 times the afforestation and reforestation requirements **IF LOCATED IN A PRIORITY AREA LISTED IN PARAGRAPH (3) OF THIS SUBSECTION; AND**

(ii) 3 TIMES THE AFFORESTATION AND REFORESTATION REQUIREMENTS IN ALL OTHER LOCATIONS.

(C) For sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.

(3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred.

(4) Location requirements. Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located. **NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (2)(B), AREAS OBTAINED OUTSIDE THE COUNTY OR WATERSHED TO MEET AFFORESTATION AND REFORESTATION REQUIREMENTS SHALL BE RETAINED AT A 4:1 RATIO OR PLANTED AT A 2:1 RATIO.**

(5) Deadline for plant installation. The afforestation and reforestation requirements under this subsection must be accomplished within one year or 2 growing seasons after a development project is complete.

(6) Planned Unit Developments; Other Staged Development. [Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan, floating zone plan, sketch plan, or project plan instead of the net tract area. Similarly, the] **THE** Planning Board may allow any afforestation or reforestation requirement applicable to a staged development subject to a single preliminary plan of subdivision but with separate site plan reviews for each stage to be calculated and satisfied using the total **NET TRACT** area covered by the preliminary plan of subdivision.

PROTECTING PROTECTED FOREST

Description: This language tightens requirements around forest banks so that they may not be so easily extinguished or relocated.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

(1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.

(2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

(3) FOR ALL EXISTING FOREST COVER SUBJECT TO AN EXISTING FOREST CONSERVATION EASEMENT, THE AREA OF FOREST REMOVED MUST BE REFORESTED AT A RATIO OF 5 ACRES PLANTED FOR EVERY ONE ACRE REMOVED. THIS REQUIREMENT MAY NOT BE SATISFIED OR REDUCED BY:

(A) PROTECTION OF EXISTING OFF-SITE FOREST; OR

(B) THE CREDIT FOR ONSITE FOREST RETENTION IN PARAGRAPH (4) OF THIS SUBSECTION.

[(3)] (4) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

[(4)] (5) A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

MONTGOMERY COUNTY FOREST CONSERVATION LAW

PROPOSAL COMPARISON

Update	Existing law	Forest Coalition Amendments	Planning Department Bill
<i>Establishing forest ecosystems.</i>	Creation of a “biological community” is required when replanting, but the statute does not provide standards beyond tree size and density.	Technical manual adopts standards for creating the biological community currently required when afforesting or reforesting.	Permits establishment of a forest ecosystem as an optional alternative planting protocol.
<i>Starting with forest conservation planning.</i>	The Forest Stand Delineation is submitted concurrently with development plans.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review. Prohibits amending a Forest Stand Delineation.
<i>Strengthening protections for priority forests.</i>	Requires findings by the Planning Director to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. Requires a variance to remove trees with historic value, RTE status, or champion/very large trees.	Requires findings by the Planning Director to remove any forest cover. Requires a variance to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. No change to protection for trees with historic value, RTE status, or champion/very large trees.	Defines several existing priority forest types as “environmental buffer” and removes exemptions for small projects impacting these areas. Clarifies the mitigation standard for cutting trees where a variance is required for removal.
<i>Increasing planting requirements.</i>	Forest removed above the conservation threshold must be replaced at a ¼ : 1 ratio. Forest removed below the conservation threshold must be replaced at a 2:1 ratio.	Forest removed above the conservation threshold must be replaced at a 2:1 ratio. No change to the 2:1 replacement ratio below the conservation threshold.	Forest removed above the conservation threshold must be replaced at a ½ : 1 ratio. Increases conservation thresholds in certain districts.

<i>Increasing planting requirements (cont'd).</i>	Credit for on-site retention is offered at a 1:1 ratio.	Reduces the on-site retention credit to ½ : 1.	Increases afforestation thresholds for institutional uses and certain other uses on sites less than 5 acres. No change to the on-site retention credit.
<i>Ensuring new plantings.</i>	Planting is favored over preservation of existing off-site forest, but is not required.	At least 75% of planting requirements must be satisfied by planting.	Preservation of existing offsite forest only permitted when no opportunities for planting are available. Mandates reforestation of stream valley buffers.
<i>Keeping plantings local.</i>	Statute requires planting within the local watershed, if reasonable. Planting requirements are the same inside and outside of the local watershed.	Forest replaced outside the local watershed must be planted at a 4:1 ratio.	Directs planting in a county priority watershed if planting within the local watershed is not available. Forest replaced outside the local watershed must be planted at a 1:1 ratio above the conservation threshold and at a 2 ½ : 1 ratio below the conservation threshold.
<i>Preserving the best existing forests.</i>	Forest mitigation banks may only be created in priority areas or other locations identified in a master or functional plan. All preserved existing off-site forest is credited at ½ : 1.	Preserved existing off-site forest is credited at ½ : 1 in priority forest areas. Preserved existing off-site forest is credited at ¹ / ₃ : 1 in non-priority areas.	No change from current law.
<i>Protecting forest conservation easements.</i>	Not addressed in statute. Forest conservation cleared from an eased area is subject to the same planting and preservation requirements as other forest.	Forests cleared from an eased area must be replaced at a 5:1 ratio. This mitigation cannot be satisfied by preserving existing forest.	No change from current law.

From: [Avorce](#)
To: [MCP-Chair](#); [Anderson, Casey](#); [Verma, Partap](#); [Patterson, Tina](#); [Rubin, Carol](#); [Cichy, Gerald](#)
Subject: April 28 meeting No Net Loss Forest Conservation Act Agenda Item
Date: Wednesday, April 27, 2022 11:56:52 AM
Attachments: [PB April 27 2022 FCL.docx](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Please find attached my submission for the April 28 hearing, with reference to the agenda item addressing the "No Net Loss of Forest"..

Thank you.

Anne Vorce
Silver Spring 20910

April 27, 2022

Dear Planning Board Members,

My name is Anne Vorce. I am a resident of Silver Spring.

I am an economist who has come to recognize the critical importance of (and sensible fiscal case for) strengthening our forests and tree canopy overall. I have spent more and more time protecting the Sligo Creek watershed (including Downtown Silver Spring) as a member of our local watershed group, the Friends of Sligo Creek.

I urge you to recommend the strongest possible protections of our forests through updating the Forest Conservation Law based on recommendations from the Montgomery County Forest Coalition, found [here](#).

The importance of “no net loss of forest” cannot be overstated.

Forests and tree canopies are not poetic luxuries that can be an afterthought or mitigated away. The climate change issues we face are so daunting that we need to use every major tool in our toolbox to address them – including the considerable benefits that green infrastructure bring.

Moreover, given the environmental challenges we face, we will most certainly have to revisit this issue in the near future. We will find that it is not enough just to hold the line. We must in fact increase on net our forests – and tree canopy – everywhere, including high density areas with almost no green infrastructure.

Why should we protect our forests ? Among the most important reasons:

- To tackle climate change through capturing and filtering the worst of pollutants posing a danger to human life;
- To help manage increasing heat islands by offsetting the growing rise in temperatures;
- To sustain the quality of our drinking water. (The science is well-founded.);
- To protect clean air;
- To manage torrential rainfalls (which are getting worse) pouring down our roadways and hillsides and ravaging our waterways;
- To provide open space that our communities can turn to for physical and mental well-being. We had plenty of evidence of how crucial this is during the pandemic.

We need the ***strongest possible*** protections for our forests.

I ask the Planning Board to recommend legislation to the County Council that:

1. Protects existing forest ecosystems. This should be the #1 priority.
2. Requires Forest stand delineation to be evaluated & submitted to Planning *prior* to submitting any application plan for development of a site.
3. Strengthens replanting ratios to 2:1 in all scenarios.

4. Strengthens replanting requirements to *require* the planting of forest ecosystem, not just trees. Removal of forest ecosystems without replanting will do considerable harm and will likely undermine the flourishing of any more simplistic plantings.
5. Strengthens watershed considerations so that forest ecosystem replanting improves the water quality of our communities in specific watersheds, and to incentivize replanting within Montgomery County, not outside of our county.
6. Tighten requirements around forest conservation easements as a prevention so they cannot be easily extinguished or relocated.

In closing, I ask you again to strengthen the bill to update the Forest Conservation Law (FCL) based on recommendations from the MoCo Forest Coalition. Forests are critical for public health, clean water, and climate solutions. Montgomery County communities need the *strongest* possible forest protection laws *now*. Protecting people cannot wait any longer.

Sincerely,

Anne Vorce

Silver Spring 20910

From: [Amanda Farber](#)
To: [MCP-Chair](#); [Patterson, Tina](#); [Rubin, Carol](#); [Cichy, Gerald](#); [Verma, Partap](#)
Subject: Conservation Montgomery Testimony - Planning Board Agenda Item #6 on 4/28/22 - No Net Loss of Forest
Date: Wednesday, April 27, 2022 11:59:08 AM
Attachments: [Montgomery County Planning Board - CM No Net Loss of Forest.pdf](#)
[MoCo FCL 1 Pager Top Recommendations from MoCo Forest Coalition.pdf](#)
[MoCo FCA bill comparison.pdf](#)
[Montgomery County - Tree and Forest Law 101 - CM.docx](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Montgomery County Planning Board:

Conservation Montgomery submits the following written testimony for the April 28, 2022, Planning Board hearing on Item #6 "Introduction of proposed 'no net loss of forest' amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations."

Please see the following attachments:

- Written testimony by Conservation Montgomery supporting the recommendations of the Montgomery County Forest Coalition as well as support for certain changes recommended by Planning Staff
- Summary of Montgomery County Forest Coalition's six main FCL recommendations
- FCL Comparison Chart
- Montgomery County Forest and Tree Law 101

Conservation Montgomery urges the Planning Board transmit recommendations to the Council that reflect the strongest possible protections for our forests.

Thank you for consideration of this testimony,

Amanda Farber
Conservation Montgomery

Montgomery County Planning Board – April 28, 2022

Conservation Montgomery Testimony – Introduction of proposed “No Net Loss of Forest” amendments to the Montgomery County Forest Conservation Law



Planning Board Chair Casey Anderson and Members of the Planning Board,

There is a famous proverb: The best time to plant a tree was 20 years ago, the second-best time is now. The same can be said for our forest and tree laws. The best time to further strengthen our forest conservation law was 20 years ago, the second-best time is now.

Conservation Montgomery has had the privilege of working with the Montgomery County Forest Coalition to develop recommendations to further amend and strengthen our county's Forest Conservation Law. We have also participated in the Planning Department's "No Net Loss of Forest" workgroups and very much appreciate the efforts of Planning Staff to tackle this complex and critical matter. We fully support the recommendations of the Montgomery Forest Coalition (see attachments) and believe amendments to the current law should include the following:

- 1. Protect existing forest ecosystems as a top priority.**
- 2. Require forest stand delineation to be submitted to Planning and evaluated prior to submitting any application plan for development of a site.**
- 3. Strengthen replanting ratios.**
- 4. Require the planting of forest ecosystems, not just trees.**
- 5. Strengthen watershed considerations.**
- 6. Tighten requirements around forest conservation easements so they cannot be easily extinguished or relocated.**

In addition to the recommendations summarized above and included in the attached documents, we support the Planning Staff recommendation to exclude Commercial/Residential (CR) projects from the (s)(1) and (s)(2) exemptions. Projects that currently qualify for these exemptions should be required to contribute to forest mitigation. Even if the required mitigation is relatively small - each and every contribution to forest

quantity and quality adds up. For this same reason, we also support the Planning Staff recommendation to expand mitigation requirements for variance trees located within a forest.

Lastly, Conservation Montgomery recognizes that while strengthening the Forest Conservation Law is an extremely important step towards improving the county's forest cover and health, there is more work to be done for our tree canopy in general. Our organization was closely involved with the development of the Tree Canopy Law and Roadside Tree Protection Law. In the years since the adoption of those laws in 2014, it has become clear that they also need strengthening. (See attached Montgomery County Forest and Tree Law 101 document). We are hopeful future initiatives will result in updates and improvements to those two laws as well.

Protecting and expanding forests is a win for environmental resilience and public health. The time for Montgomery County to improve the law is now. Again, we urge you to transmit recommendations to the Council which reflect the strongest possible protections for our forests.

Thank you for your consideration,
Conservation Montgomery Advocacy Board



Photo: A newly planted forest bank in Montgomery County in the foreground; established forest in the background (Amanda Farber)

Montgomery County Forest Coalition

11.18.21

Top Recommendations for updates to MoCo Forest Conservation Law (FCL)

1. **Protect existing Forest Ecosystems.** All remaining pre-existing Forests in MoCo are to be designated & treated as priority forest in FCL. First priority is to protect existing forest ecosystems.
 - All remaining forest cover is considered priority and may only be removed upon appropriate findings by the Planning Director or Planning Board.
 - Certain types of forests may only be removed with a variance granted by the Planning Board or Planning Director. Types of forests and trees that would receive a stronger level of protection and require a variance to be removed include forested: Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species; Historic Site trees; Champion Trees and other exceptionally large trees; areas designated as “Priority Save Areas” in Master Plan or any Functional Plan.
 - Forest removal subject to a variance must be replaced with forest ecosystem at a 2:1 ratio.
2. **Tighten requirements around forest conservation easements so that they may not be so easily extinguished or relocated.**
 - For all existing forest cover subject to an existing forest conservation easement, the area of forest removed must be reforested at a ratio of 5 acres of *forest ecosystem* for every 1 acre removed.
 - This deterrent allows forest banks time to become mature forest ecosystems, and also keeps forest banks in the sub-watershed where they were originally intended to be planted.
3. **Strengthen replanting ratios to ensure no-net-loss.**
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 2 acres *forest ecosystem* planted for every 1 acre removed; or
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 1 acre *forest ecosystem* planted for every 1 acre removed, with no retention credit.
 - Require that at least 75% of the re-planting requirement be satisfied by the newly re-planted forest ecosystem.
4. **Strengthen Re-planting requirements to require the planting of *Forest Ecosystem*, not just trees.** When what’s being removed is *forest ecosystem*, what’s being replaced should be *forest ecosystem* as well. Reforestation or afforestation of *forest ecosystem* includes consideration of, payment for, and maintenance to establish the following in the re-planting: healthy soil; drainage; healthy fungi in the soil; healthy micro-biotic communities in the soil; biomass; groundcover; shrub layer; tree understory layer; tree canopy layer; diversity of different types of trees and plants.
5. **Strengthen Watershed Considerations:** For meeting afforestation and reforestation requirements, areas obtained *outside* the County or *outside* the sub-watershed where forest was removed for development, the requirement shall be that existing forest retained through forest mitigation bank shall be at a 4:1 ratio, or replanting of forest ecosystem shall be done at a 2:1 ratio .
6. **Forest stand delineation must be evaluated & submitted to Planning *prior to* submitting any application plan for development of a site.**

MONTGOMERY COUNTY FOREST CONSERVATION LAW

PROPOSAL COMPARISON

Update	Existing law	Forest Coalition Amendments	Planning Department Bill
<i>Establishing forest ecosystems.</i>	Creation of a “biological community” is required when replanting, but the statute does not provide standards beyond tree size and density.	Technical manual adopts standards for creating the biological community currently required when afforesting or reforesting.	Permits establishment of a forest ecosystem as an optional alternative planting protocol.
<i>Starting with forest conservation planning.</i>	The Forest Stand Delineation is submitted concurrently with development plans.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review. Prohibits amending a Forest Stand Delineation.
<i>Strengthening protections for priority forests.</i>	Requires findings by the Planning Director to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. Requires a variance to remove trees with historic value, RTE status, or champion/very large trees.	Requires findings by the Planning Director to remove any forest cover. Requires a variance to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. No change to protection for trees with historic value, RTE status, or champion/very large trees.	Defines several existing priority forest types as “environmental buffer” and removes exemptions for small projects impacting these areas. Clarifies the mitigation standard for cutting trees where a variance is required for removal.
<i>Increasing planting requirements.</i>	Forest removed above the conservation threshold must be replaced at a ¼ : 1 ratio. Forest removed below the conservation threshold must be replaced at a 2:1 ratio.	Forest removed above the conservation threshold must be replaced at a 2:1 ratio. No change to the 2:1 replacement ratio below the conservation threshold.	Forest removed above the conservation threshold must be replaced at a ½ : 1 ratio. Increases conservation thresholds in certain districts.

<i>Increasing planting requirements (cont'd).</i>	Credit for on-site retention is offered at a 1:1 ratio.	Reduces the on-site retention credit to ½ : 1.	Increases afforestation thresholds for institutional uses and certain other uses on sites less than 5 acres. No change to the on-site retention credit.
<i>Ensuring new plantings.</i>	Planting is favored over preservation of existing off-site forest, but is not required.	At least 75% of planting requirements must be satisfied by planting.	Preservation of existing offsite forest only permitted when no opportunities for planting are available. Mandates reforestation of stream valley buffers.
<i>Keeping plantings local.</i>	Statute requires planting within the local watershed, if reasonable. Planting requirements are the same inside and outside of the local watershed.	Forest replaced outside the local watershed must be planted at a 4:1 ratio.	Directs planting in a county priority watershed if planting within the local watershed is not available. Forest replaced outside the local watershed must be planted at a 1:1 ratio above the conservation threshold and at a 2 ½ : 1 ratio below the conservation threshold.
<i>Preserving the best existing forests.</i>	Forest mitigation banks may only be created in priority areas or other locations identified in a master or functional plan. All preserved existing off-site forest is credited at ½ : 1.	Preserved existing off-site forest is credited at ½ : 1 in priority forest areas. Preserved existing off-site forest is credited at ¹ / ₃ : 1 in non-priority areas.	No change from current law.
<i>Protecting forest conservation easements.</i>	Not addressed in statute. Forest conservation cleared from an eased area is subject to the same planting and preservation requirements as other forest.	Forests cleared from an eased area must be replaced at a 5:1 ratio. This mitigation cannot be satisfied by preserving existing forest.	No change from current law.

Montgomery County, MD Tree and Forest Laws 101

There are 3 major laws which apply to trees and forests in Montgomery County depending on various factors including location, property, jurisdiction, and size (of individual trees or total forest area or land disturbance). Incorporated areas and municipalities in the County may have their own additional laws and regulations. In addition, the Maryland Department of Natural Resources (DNR) generally regulates trees in the right-of-way on most State Highway Administration (SHA) roads in the County through the Maryland Roadside Tree Law (although aspects of the County Roadside Tree Protection Law also apply to trees in the State right-of-way in certain situations) and DNR retains forest conservation authority for any state or cross-county projects.

Montgomery County Roadside Tree Protection Law (Effective 2014)

County lead agencies – Department of Transportation, Department of Permitting Services

- Requires a permit for any trimming, cutting, removal or injury of any tree, or stump removal in the right-of-way of a public County road. A permit is not required for public utility agencies.
- Requires a tree protection plan or replacement plan for trees in the right-of way (often referred to as street trees) impacted by disturbance.
- The law requires one tree be planted back into the right-of-way at or near the location of the tree being removed and a fee be paid for the planting of two additional trees, unless this requirement is waived (i.e. - site not feasible, tree is dead or danger). This fee, tied to a bond and collected at \$250 per tree since 2014, goes into the DOT Tree Planting Fund and may only be used to plant trees in the right-of-way of a public road in the County. In planting trees, DOT must give highest priority to those urban and suburban areas of the County that have relatively low tree canopy. Planted trees must be on the recommended County tree list.
- Any planting plan requires following specifications including species, spacing, and proximity to overhead wires required for planting in the right-of-way.

Montgomery County Tree Canopy Law (Effective 2014)

County lead agencies – Department of Environmental Protection, Department of Permitting Services

- Applies to any project on public or private land that requires a sediment control permit from Montgomery County. The law does not apply to the Parks Department or various other property owners with qualifying circumstances; does not apply to projects that do not require a sediment control permit from Montgomery County such as removing individual or small groups of trees or most agricultural activities;

and does not apply if mitigation for development activity is required under the Forest Conservation Law.

- Requires property owners to plant new canopy trees during development or pay into a tree planting fund used for large shade trees (as of 2014 the rate is \$250 per required tree). The number of trees required to be planted, or the fee-in-lieu amount, is based on the amount of land disturbance.
- Planting must conform to certain regulations including spacing. The money collected in the Tree Canopy Conservation Account fund is used by DEP's Tree Montgomery program to replant shade trees as requested by property owners so long as planting criteria is met.

Montgomery County Forest Conservation Law (Effective 1992; last amended February 2021)

County lead agency – Montgomery Planning, part of Maryland-National Capital Park & Planning Commission (M-NCPPC) (also referred to as “Park and Planning” or “the Commission”)

- Based on Maryland's Forest Conservation Act; the County Forest Conservation Law (FCL) must be at least as strict as the State Forest Conservation Act; Montgomery Planning does not implement the FCL in certain municipalities including Rockville, Gaithersburg, Poolesville, and some others, and any properties or projects managed by the State of Maryland.
- Generally, the FCL applies to properties 40,000 square feet or larger (or contiguous properties under certain circumstances), when a sediment control permit is required, or when subdivision occurs. The FCL applies to some property owners, government entities, and developers who need approval for a development plan, sediment control permit, or activity that could potentially remove more than 5,000 square feet of forest or harm a champion tree.
- The FCL does not apply to projects that do not require a sediment control permit from Montgomery County such as removing individual or small groups of trees or most agricultural activities, with the exception of impacts to or removal of champion trees.
- Certain projects may qualify for exemptions from the requirements of preparing, submitting and implementing a Forest Conservation Plan.
- Anyone subject to the FCL must either submit an application for an exemption from a Forest Conservation Plan, or submit a Forest Conservation Plan which will require a calculated forest retention or forest planting requirement. This requirement is met through planting or protecting forests, both of which must be protected with a Category I forest conservation easement held by the Commission, purchasing credits from one of the county's forest mitigation banks, or contributing to the county's Forest Conservation Fund.
- To meet the requirements of the Forest Conservation Plan, the preferred sequence for afforestation and reforestation in general includes on-site afforestation or reforestation; off-site afforestation or reforestation; enhancement of existing forest through on-site selective clearing, supplemental planting, or both; acquiring credits from an off-site forest mitigation bank; paying fee in-lieu; and

landscaping with an approved plan. The option(s) an applicant may use to meet their forest conservation requirement are noted on the approved Forest Conservation Plan.

- As of July 2021, the Forest Conservation Fund fee-in-lieu rate is \$1.30 per square foot. Funds are used to plant forest or maintain that planted forest through the Reforest Montgomery Program.
- Every project that is required to submit a Forest Conservation Plan for review will have a different forest mitigation requirement, depending on the total tract area, area of existing forest cover, area of forest to be cleared, and land use category.
- If mitigation is required under the Forest Conservation Law, then no mitigation is required under the Tree Canopy Law.

LAW	Date Effective /Amended	Lead County Agency	General Application
Roadside Tree Law	2014	DOT, DPS	County ROW (street) trees.
Tree Canopy Law	2014	DEP, DPS	Sediment control permit.
Forest Conservation Law	1992 / 2021	Montgomery Planning	40,000+ sq feet land disturbance with sediment control permit; subdivision; clearing over 5,000 square feet of forest, impacts to champion trees.

Note: A sediment control permit is required for projects that disturb more than 5,000 square feet of land or tree canopy, or any new primary residential or commercial building, or projects that include 100 cubic yards or more of earth movement on or off the property. All three laws specify requirements for sediment control permits issued by Montgomery County.

Additional Resources:

Maryland Roadside Tree Law:

https://dnr.maryland.gov/forests/Documents/RST_Brochure.pdf

<https://roads.maryland.gov/mdotsha/pages/Index.aspx?PageId=221>

Montgomery County Roadside Tree Law:

[https://www.montgomerycountymd.gov/DOT-](https://www.montgomerycountymd.gov/DOT-Highway/Resources/Files/RoadsideTreeHandout.pdf)

[Highway/Resources/Files/RoadsideTreeHandout.pdf](https://www.montgomerycountymd.gov/DOT-Highway/Resources/Files/RoadsideTreeHandout.pdf)

https://www.montgomerycountymd.gov/DOT-Highway/Resources/Files/20130723_41-12A.pdf

https://www.montgomerycountymd.gov/DPS/Resources/Files/Land_Development/RoadsideTreeDesignGuidelines.pdf

<https://www.montgomerycountymd.gov/DOT-Highway/Tree/index.html>

<https://www.montgomerycountymd.gov/DPS/Process/ld/roadside-tree-plan.html>

Montgomery County Tree Canopy Law:

<https://www.montgomerycountymd.gov/green/trees/laws-and-programs.html>

<https://www.montgomerycountymd.gov/green/Resources/Files/trees/Tree-Canopy-Law-Final-2014.pdf>

Montgomery County Forest Conservation Law:

<https://montgomeryplanning.org/wp-content/uploads/2017/10/Montgomery-County-Forest-Conservation-Law-2-22-21.pdf>

<https://montgomeryplanning.org/wp-content/uploads/2017/10/Forest-Conservation-Tree-Regulations.pdf>

<https://montgomeryplanning.org/planning/environment/forest-conservation-and-trees/montgomery-county-forest-conservation-law/>

*Montgomery County, MD Tree and Forest Laws 101 fact sheet prepared by Conservation Montgomery in consultation with Montgomery County agency staff. Information reflects the laws in place as of April 2022. Additional information available at

www.conservationmontgomery.org

From: [Caroline Taylor](#)
To: [MCP-Chair](#); [Anderson, Casey](#); [Verma, Partap](#); [Patterson, Tina](#); [Rubin, Carol](#); [Cichy, Gerald](#)
Cc: County.Council@montgomerycountymd.gov
Subject: Planning Board 4.28 agenda item #6 - Further work prior to submitting to Council proposed forest conservation law amendments
Date: Wednesday, April 27, 2022 12:00:30 PM
Attachments: [April 2022 Forest Law Reform Montgomery County Forest Coalition Amendments.pdf](#)
[MERTT+report+8_10_10final.pdf](#)
[MoCo FCL 1 Pager Top Recommendations from MoCo Forest Coalition.pdf](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear MCP-Chair and Board Members,

Please add MCA to the growing list of organizations and residents who support collaboration in advancing the strongest possible amendments to the County's forest conservation law. We are grateful for this conversation and look forward to the opportunity to work together with staff to craft a solid set of recommended amendments. We respectfully ask that the board direct further effort to the good work staff has conducted thus far to include complementary recommendations crafted over the last 2 years by the multi-stakeholder Montgomery County Forest Coalition. The resulting amendments would represent our best and needed update that would elevate Montgomery County as a model jurisdiction in forest conservation and climate change mitigation.

I am submitting the following for inclusion for the record. The Forest Coalition proposed amendments are attached and the introduction reads:

Description: The need for forest ecosystem management is already acknowledged in the Montgomery County Code. This language will add a requirement to include in the technical manual how forest ecosystem establishment should occur. The technical manual could include requirements for drainage, establishing healthy soil including mycorrhizal fungal networks, importing topsoil, planting a diversity of tree species that will grow to different heights and planting understory shrubs in later years of required maintenance, and other techniques that a developer can take to accelerate and support establishing a forest ecosystem.

A summary of the top recommendations of the Montgomery County Forest Coalition recommendations for the update to the County's forest conservation law are attached for your convenience.

Further background:

<https://www.montgomerycountymd.gov/green/Resources/Files/climate/workgroup-recommendations/Examining%20the%20Role%20of%20>

Reads in part:

Montgomery County's net GHG emissions could be lower if additional forests and trees were added to its land base, or if losses of these resources were reduced further.

In general, it is important to consider that these estimates represent a relatively short period of time compared with the long-term consequences of policy decisions and land management actions. For example, a forest converted to settlement represents a permanent loss of removal capacity. Over the long term, maintaining forests will sustain a higher rate of carbon removal, depending on age-related growth rates and occurrence of disturbances.

<https://www.cbf.org/issues/forest-loss/index.html>

Reads in part:

From capturing and filtering out pollution before it enters our waterways to alleviating flooding by stabilizing the soil, trees provide countless health, economic, and environmental benefits. Despite their value, they continue to disappear at an alarming rate, and efforts to restore them are lagging. At a time when states, counties, and municipalities are struggling to meet water quality goals, planting trees remains one of the most successful and cost-effective solutions to reducing polluted runoff and cleaning local waterways.

<https://www.wri.org/insights/forests-ipcc-special-report-land-use-7-things-know>

Reads in part:

Indeed, according to the report, improved forest management is one of only nine response options (out of 40 total) with medium to large benefits for all five challenges covered by the report: mitigation, adaptation, desertification, land degradation and food security. And reduced deforestation and degradation is one of only five response options that offer large mitigation potential without risking trade-offs to solving the other challenges. The report also notes that preserving and restoring forests and peatlands and other options that do not require land use change provide almost exclusively positive impacts on sustainable development, such as reducing poverty and hunger and enhancing health, clean water and sanitation.

Respectfully submitted,

C

Attachments (3)

Caroline Taylor, Executive Director
Montgomery Countryside Alliance
P.O. Box 24, Poolesville, Maryland 20837
301-461-9831
<http://mocoalliance.org/>

"Whether we and our politicians know it or not, Nature is party to all our deals and designs, and she has more votes, a larger memory, and a sterner sense of justice than we do." ~ Wendell Berry



FOREST ECOSYSTEM ESTABLISHMENT

Description: The need for forest ecosystem management is already acknowledged in the Montgomery County Code. This language will add a requirement to include in the technical manual how forest ecosystem establishment should occur. The technical manual could include requirements for drainage, establishing healthy soil including mycorrhizal fungal networks, importing topsoil, planting a diversity of tree species that will grow to different heights and planting understory shrubs in later years of required maintenance, and other techniques that a developer can take to accelerate and support establishing a forest ecosystem.

CAPS indicates matter added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Reforestation or reforested means the creation of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground within 7 years. Reforestation for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria. {unchanged, included for reference}

AFFORESTATION OR AFFORESTED MEANS THE ESTABLISHMENT OF A BIOLOGICAL COMMUNITY THAT MEETS THE DEFINITION OF REFORESTED ON AN AREA FROM WHICH IT HAS ALWAYS OR VERY LONG BEEN ABSENT. AFFORESTATION FOR A LINEAR PROJECT WHICH INVOLVES OVERHEAD TRANSMISSION LINES MAY CONSIST OF A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR DIAMETER CRITERIA.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(b) *Technical manual.* The technical manual must include guidance and methodologies for:

- (1) preparing and evaluating a forest stand delineation and natural resource inventory;
- (2) preparing and evaluating a forest conservation plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;

MONTGOMERY COUNTY FOREST COALITION PROPOSED AMENDMENTS

(3) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;

(4) CREATING THE BIOLOGICAL COMMUNITY REQUIRED FOR REFORESTATION OR AFFORESTATION AS DEFINED IN SECTION 22A-3 OF THIS CHAPTER, INCLUDING STANDARDS FOR ESTABLISHING GROUND COVER, SHRUB, TREE AND CANOPY LAYERS AS WELL AS HEALTHY SOIL STRUCTURE, DRAINAGE, BIOMASS, AND MICROBIOTIC AND FUNGAL COMMUNITIES.

[(4)] (5) monitoring and enforcement of forest conservation plans; and

[(5)] (6) other appropriate guidance for program requirements consistent with this Chapter and the regulations.

FOREST PROTECTION PLANNING

Description: This language requires the forest stand delineation, which describes the forest stand's composition and most valuable elements, prior to the application of the development plan. This will allow staff to identify what areas of forest should be preserved before a developer embarks on the rest of the development's planning. This timing should create efficiencies for the developer and other stakeholders.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

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

1. Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation [with] **PRIOR TO** the application for a development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, whichever comes first. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

...

Article IV. Administration.

Sec. 22A-26. Regulations.

(e) Additional regulations. Notwithstanding any other provision of this Chapter, the Planning Board [may] **SHALL**, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation **FOR PROJECTS REQUIRING DEVELOPMENT PLAN, FLOATING ZONE PLAN, PROJECT PLAN, SKETCH PLAN, PRELIMINARY PLAN OF SUBDIVISION, OR SITE PLAN APPROVAL** and **MAY** allow modified application submissions or procedures for development projects of a scale or public utility projects.

STRENGTHENING FOREST PRIORITY

Description: This language requires that all forest cover needs to be retained by a forest conservation plan while maintaining that certain types of forests may only be removed with a variance.

CAPS indicates language added to existing law; **[brackets]** indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.
Sec. 22A-12. Retention, afforestation, and reforestation requirements.

(b) *Retention.*

1. The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain **[certain vegetation and specific areas] FOREST COVER** in an undisturbed condition unless the Planning Director finds that:

(A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;

(B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and

(C) the development proposal cannot be reasonably altered.

[(2)] In general, areas protected under this subsection include:

(A) floodplains, stream buffers, steep slopes, and critical habitats;

(B) contiguous forests;

(C) rare, threatened, and endangered species;

(D) trees connected to an historic site;

(E) champion trees and other exceptionally large trees; and

(F) areas designated as priority save areas in a master plan or functional plan.]

[(3)] (2) 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. FLOODPLAINS, EPHEMERAL STREAMS, STREAM BUFFERS, STEEP SLOPES, AND CRITICAL HABITATS;

B. CONTIGUOUS FORESTS;

C. RARE, THREATENED, AND ENDANGERED SPECIES;

D. TREES CONNECTED TO AN HISTORIC SITE;

- E. CHAMPION TREES AND OTHER EXCEPTIONALLY LARGE TREES;**
- F. AREAS DESIGNATED AS PRIORITY SAVE AREAS IN A MASTER PLAN OR FUNCTIONAL PLAN;**

[(A)] (G) 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. Sections 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)] (H) Any tree that is:

- (i) part of a historic site,
- (ii) associated with a historic structure, or
- (iii) designated by the State or County as a national, State, or County champion tree; or

[(C)] (I) Any tree with a diameter, measured at 4.5 feet above the ground, of:

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

INCREASED REPLANTING REQUIREMENTS

Description: This language increases the replanting requirements by setting the requirement at 2 acres planted for every 1 acre removed whether above or below the threshold, and by altering the retention credit a developer receives based on the number of trees preserved onsite.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article I. General.

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

...

Forest conservation threshold means the percentage of the net tract area at which [the reforestation requirement changes from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed] **FOREST RETAINED IS NO LONGER CREDITED AGAINST THE TOTAL NUMBER OF ACRES REQUIRED TO BE REFORESTED.**

...

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

1. For all existing forest cover measured to the nearest 1/10 acre cleared [on the net tract area below the applicable forest conservation threshold], the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.
2. [For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.]
3. Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested **AT A RATIO OF ½ ACRE CREDITED FOR EACH ACRE RETAINED.**
4. A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

TARGETED AND BALANCED MITIGATION

Description: If the State re-opens the ability of local jurisdictions to create forest mitigation banks from existing forests, this language assures that in Montgomery County, at least 3/4 of the developer's responsibility will be fulfilled through a newly planted bank. It would require that if a bank is located outside of a priority area, a 3:1 ratio must be used, rather than a 2:1 ratio. It also states that if a bank is outside a watershed and only leveraging existing forest, a 4:1 ratio must be used. It also removes the ability for a developer to use retention credit from neighboring properties as part of the bank.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(e) *Standards for reforestation and afforestation.*

(B) Governmental considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:

- (i) to achieve the objectives of a master or sector plan or other County land use policies or to take advantage of opportunities to consolidate forest conservation efforts;
- (ii) for public sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or
- (iii) for educational, recreational, and public safety facilities, to ensure that public safety is not compromised.

(C) Public Utility Considerations. The sequence provided in subparagraph (A) of this paragraph for public utility projects may be modified to reflect applicable electrical or other safety codes, or right-of-way constraints.

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

- (A) Forest mitigation banks designated in advance by the County.
- (B) Protection of existing off-site forest. Acquisition of an off-site protective easement for existing forested areas not currently protected in perpetuity is an acceptable mitigation technique instead of off-site afforestation or reforestation planting **FOR UP TO 25% OF THE TOTAL AFFORESTATION AND REFORESTATION REQUIREMENTS**, but the forest cover protected must be:

(i) 2 times the afforestation and reforestation requirements **IF LOCATED IN A PRIORITY AREA LISTED IN PARAGRAPH (3) OF THIS SUBSECTION; AND**

(ii) 3 TIMES THE AFFORESTATION AND REFORESTATION REQUIREMENTS IN ALL OTHER LOCATIONS.

(C) For sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.

(3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred.

(4) Location requirements. Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located. **NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (2)(B), AREAS OBTAINED OUTSIDE THE COUNTY OR WATERSHED TO MEET AFFORESTATION AND REFORESTATION REQUIREMENTS SHALL BE RETAINED AT A 4:1 RATIO OR PLANTED AT A 2:1 RATIO.**

(5) Deadline for plant installation. The afforestation and reforestation requirements under this subsection must be accomplished within one year or 2 growing seasons after a development project is complete.

(6) Planned Unit Developments; Other Staged Development. [Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan, floating zone plan, sketch plan, or project plan instead of the net tract area. Similarly, the] **THE** Planning Board may allow any afforestation or reforestation requirement applicable to a staged development subject to a single preliminary plan of subdivision but with separate site plan reviews for each stage to be calculated and satisfied using the total **NET TRACT** area covered by the preliminary plan of subdivision.

PROTECTING PROTECTED FOREST

Description: This language tightens requirements around forest banks so that they may not be so easily extinguished or relocated.

CAPS indicates language added to existing law; [brackets] indicate matter deleted from existing law.

Article II. Forest Stand Delineations and Forest Conservation Plans.

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

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

(1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.

(2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

(3) FOR ALL EXISTING FOREST COVER SUBJECT TO AN EXISTING FOREST CONSERVATION EASEMENT, THE AREA OF FOREST REMOVED MUST BE REFORESTED AT A RATIO OF 5 ACRES PLANTED FOR EVERY ONE ACRE REMOVED. THIS REQUIREMENT MAY NOT BE SATISFIED OR REDUCED BY:

(A) PROTECTION OF EXISTING OFF-SITE FOREST; OR

(B) THE CREDIT FOR ONSITE FOREST RETENTION IN PARAGRAPH (4) OF THIS SUBSECTION.

[(3)] (4) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

[(4)] (5) A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

MONTGOMERY COUNTY FOREST CONSERVATION LAW

PROPOSAL COMPARISON

Update	Existing law	Forest Coalition Amendments	Planning Department Bill
<i>Establishing forest ecosystems.</i>	Creation of a “biological community” is required when replanting, but the statute does not provide standards beyond tree size and density.	Technical manual adopts standards for creating the biological community currently required when afforesting or reforesting.	Permits establishment of a forest ecosystem as an optional alternative planting protocol.
<i>Starting with forest conservation planning.</i>	The Forest Stand Delineation is submitted concurrently with development plans.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review.	Requires submittal of a Forest Stand Delineation prior to submittal of development plans for review. Prohibits amending a Forest Stand Delineation.
<i>Strengthening protections for priority forests.</i>	Requires findings by the Planning Director to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. Requires a variance to remove trees with historic value, RTE status, or champion/very large trees.	Requires findings by the Planning Director to remove any forest cover. Requires a variance to remove contiguous forests or forests in a floodplain, ephemeral stream or stream buffer, steep slope, critical habitat, or priority save area. No change to protection for trees with historic value, RTE status, or champion/very large trees.	Defines several existing priority forest types as “environmental buffer” and removes exemptions for small projects impacting these areas. Clarifies the mitigation standard for cutting trees where a variance is required for removal.
<i>Increasing planting requirements.</i>	Forest removed above the conservation threshold must be replaced at a ¼ : 1 ratio. Forest removed below the conservation threshold must be replaced at a 2:1 ratio.	Forest removed above the conservation threshold must be replaced at a 2:1 ratio. No change to the 2:1 replacement ratio below the conservation threshold.	Forest removed above the conservation threshold must be replaced at a ½ : 1 ratio. Increases conservation thresholds in certain districts.

<i>Increasing planting requirements (cont'd).</i>	Credit for on-site retention is offered at a 1:1 ratio.	Reduces the on-site retention credit to ½ : 1.	Increases afforestation thresholds for institutional uses and certain other uses on sites less than 5 acres. No change to the on-site retention credit.
<i>Ensuring new plantings.</i>	Planting is favored over preservation of existing off-site forest, but is not required.	At least 75% of planting requirements must be satisfied by planting.	Preservation of existing offsite forest only permitted when no opportunities for planting are available. Mandates reforestation of stream valley buffers.
<i>Keeping plantings local.</i>	Statute requires planting within the local watershed, if reasonable. Planting requirements are the same inside and outside of the local watershed.	Forest replaced outside the local watershed must be planted at a 4:1 ratio.	Directs planting in a county priority watershed if planting within the local watershed is not available. Forest replaced outside the local watershed must be planted at a 1:1 ratio above the conservation threshold and at a 2 ½ : 1 ratio below the conservation threshold.
<i>Preserving the best existing forests.</i>	Forest mitigation banks may only be created in priority areas or other locations identified in a master or functional plan. All preserved existing off-site forest is credited at ½ : 1.	Preserved existing off-site forest is credited at ½ : 1 in priority forest areas. Preserved existing off-site forest is credited at ¹ / ₃ : 1 in non-priority areas.	No change from current law.
<i>Protecting forest conservation easements.</i>	Not addressed in statute. Forest conservation cleared from an eased area is subject to the same planting and preservation requirements as other forest.	Forests cleared from an eased area must be replaced at a 5:1 ratio. This mitigation cannot be satisfied by preserving existing forest.	No change from current law.

Montgomery County Forest Coalition

11.18.21

Top Recommendations for updates to MoCo Forest Conservation Law (FCL)

1. **Protect existing Forest Ecosystems.** All remaining pre-existing Forests in MoCo are to be designated & treated as priority forest in FCL. First priority is to protect existing forest ecosystems.
 - All remaining forest cover is considered priority and may only be removed upon appropriate findings by the Planning Director or Planning Board.
 - Certain types of forests may only be removed with a variance granted by the Planning Board or Planning Director. Types of forests and trees that would receive a stronger level of protection and require a variance to be removed include forested: Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species; Historic Site trees; Champion Trees and other exceptionally large trees; areas designated as “Priority Save Areas” in Master Plan or any Functional Plan.
 - Forest removal subject to a variance must be replaced with forest ecosystem at a 2:1 ratio.
2. **Tighten requirements around forest conservation easements so that they may not be so easily extinguished or relocated.**
 - For all existing forest cover subject to an existing forest conservation easement, the area of forest removed must be reforested at a ratio of 5 acres of *forest ecosystem* for every 1 acre removed.
 - This deterrent allows forest banks time to become mature forest ecosystems, and also keeps forest banks in the sub-watershed where they were originally intended to be planted.
3. **Strengthen replanting ratios to ensure no-net-loss.**
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 2 acres *forest ecosystem* planted for every 1 acre removed; or
 - Re-planting requirement strengthened from ¼ acre planted for every 1 acre removed to 1 acre *forest ecosystem* planted for every 1 acre removed, with no retention credit.
 - Require that at least 75% of the re-planting requirement be satisfied by the newly re-planted forest ecosystem.
4. **Strengthen Re-planting requirements to require the planting of *Forest Ecosystem*, not just trees.** When what’s being removed is *forest ecosystem*, what’s being replaced should be *forest ecosystem* as well. Reforestation or afforestation of *forest ecosystem* includes consideration of, payment for, and maintenance to establish the following in the re-planting: healthy soil; drainage; healthy fungi in the soil; healthy micro-biotic communities in the soil; biomass; groundcover; shrub layer; tree understory layer; tree canopy layer; diversity of different types of trees and plants.
5. **Strengthen Watershed Considerations:** For meeting afforestation and reforestation requirements, areas obtained *outside* the County or *outside* the sub-watershed where forest was removed for development, the requirement shall be that existing forest retained through forest mitigation bank shall be at a 4:1 ratio, or replanting of forest ecosystem shall be done at a 2:1 ratio .
6. **Forest stand delineation must be evaluated & submitted to Planning *prior to* submitting any application plan for development of a site.**