









## Worksession to Discuss the Draft Subdivision Regulations

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-  Christina Sorrento, Associate General Counsel [christina.sorrento@montgomeryplanning.org](mailto:christina.sorrento@montgomeryplanning.org), 301-495-4646
-  Stephen Smith, Senior Planner, DARC [stephen.smith@montgomeryplanning.org](mailto:stephen.smith@montgomeryplanning.org), 301-495-4522

Completed: 6/11/15

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### Description

This report provides an overview of the information to be presented at the worksession on the Draft Rewritten Subdivision Regulations, Montgomery County Code Chapter 50. This worksession is designed to give the Board and general public an overview of major changes and provide an opportunity for discussion.

### Summary

A comprehensive revision of Chapter 50, the Subdivision Regulations has been contemplated since the start of the Planning Department's efforts to revise the zoning ordinance. We knew at that time changes would be needed based on how the zoning ordinance changed. We also recognized that, even in the absence of a zoning ordinance revision, it was time to review and update provisions of the subdivision ordinance that hadn't been comprehensively looked at for more than 50 years.

The general objectives in rewriting the Subdivision Regulations were:

- Modernize and clarify existing language
- Improve organization and ease of reference
- Codify current interpretations
- Ensure consistency with new provisions of the zoning ordinance
- Improve the efficiency of review

To meet these objectives, the organization and layout of the revised regulations has significantly changed and the language of most provisions has been updated. For the most part, the updated language clarifies the existing requirements but, some changes have been made. The discussion below contains a combined summary of the changes that were presented as a part of the Planning Board's public hearing, and the new changes that have been made since the hearing in response to comments received. Copies of the comments that were received in writing are included in Attachment A.

## Discussion of Changes

### **Article I. In General**

This Article contains general provisions and requirements.

#### **Division 50.1. Purpose**

- Combined previous purpose list (Sec. 50-2) into a consolidated purpose statement that retains the important elements.

#### **Division 50.2. Defined Terms**

- Added new section of rules for interpretation of the Chapter.
- Modified the list of defined terms (Sec. 50-1) by clarifying existing language, removing terms that duplicate the zoning ordinance definitions or that are not specifically used in the Chapter, and adding new terms as needed.

#### **Division 50.3. General Requirements**

- Retained previous requirements for applicability (Sec. 50-3), approving authority (Sec. 50-4), and impacts to other ordinances (Sec. 50-5) with only minor language updates.
- Placed emphasis on the fact that subdivisions of land must be recorded by plat prior to land transfer (Sec. 50-8) and issuance of building permits (Sec. 50-20) by moving existing provisions to a new section.
- Modified the language of the existing exceptions to platting requirements (Sec. 50-9) provisions for clarification. The section is now broken into subsections covering the types of land transfers that can be done without a record plat, and uses that can receive building permits without being located on a record lot.
- Moved existing provisions for submission of subdivision plans (Sec. 50-23) to a new section under this Division and modified the existing language for clarification.
- Building permit language moved to Ch. 8 (50-20 and 50-32).

#### Significant changes made in this Division include:

- Prohibiting the issuance of a building permit for a dwelling unit on unplatted parcels of agricultural land that are less than 25 acres in size.  
*The current exception applies to "land that is and will remain part of a farm, as defined in this chapter, but that is used concurrently for a related use that requires a building permit." A farm is defined as "a tract of land, with or without associated buildings, that is devoted to agriculture", as it is defined in the chapter. In the agricultural zone (AR), a problem is created by the existing language because it can be interpreted to permit construction of a dwelling on a tract of land less than 25 acres in size which violates the density requirement of the zone.*
  - Permitting construction of one detached dwelling unit on a part of a previously platted lot that has not change in size or shape since June 1, 1958, as anticipated by the new zoning ordinance.
  - Permitting the reconstruction of any existing detached dwelling under the new zoning ordinance.
- Additional changes made in response to comments from the public hearing:
- Added rule clarifying "In Writing" to include electronic communication.

- Added, removed, and added clarifying language to defined terms.
- Added exemption to platting for advanced dedication or donation of master planned rights-of-way.

## **Article II. Subdivision Plans**

Article II now contains provisions for the different types of subdivision plans, instead of the record plat provisions. This change was made because it reflects the actual order of the process. The types of plans covered in the article are preliminary plans, pre-preliminary submissions, simplified subdivision plans, and minor subdivisions. Simplified subdivision plans are a new plan type.

### **Division 50.4. Preliminary Plan**

- More clearly separated the plan drawing requirements from the requirements for supporting information (Sec. 50-34)
- Modified and updated the provisions for review and approval of preliminary plans, including provisions for plan validity (Sec. 50-35), to clarify and provide better organization.
- Modified the general standard for review of lot dimensions to include consideration of the applicable requirements of Chapter 59 in addition to the recommendations of the applicable master plan.
- Retained the requirement that all lots abut a road, but the road can now be either public or private.
- Continue to permit a maximum of two lots without public or private road frontage on a shared driveway, but added the requirement that the two lots include any existing lots to codify our current interpretation of the existing section.
- Language of the current requirements for providing public sites and open space areas (Secs. 50-30 and 50-31) has been modified for clarity, but not significantly changed except that the language covering objection to required dedication was deleted because it's not needed; the applicant can make their case as part of review, and after decision, can file an appeal.
- Eliminated road design standards that are out of date such as: planning secondary streets to discourage use by nonlocal traffic; local bypasses around shopping centers; parallel streets with lots backing to major thoroughfares; and short culs-de-sac having terminal lots backing to major thoroughfares.
- Added provision that a subdivision with only one non-through road providing access must be limited to a maximum of 75 lots.
- Added minimum standard intersection spacing requirements for all road types, but retained the provision that the Planning Board may specify different spacing than the standard.
- The septic tier language was moved into the Water supply and sewage disposal facilities sections (50-24, 50-27)
- The requirement that public utilities be placed underground (50-40) was modified to apply to all subdivisions rather than basing it on the number of buildings, but language was added that allows the Planning Board to grant an exemption if it finds that underground placement is infeasible.
- Modified requirements for environmental review (Sec. 50-32) to clarify that a Forest Conservation Plan approval is required as part of approval of a preliminary plan.

- Modified the provisions for residential cluster subdivision (50-39) to eliminate language that is out of date and no longer necessary.

Significant changes made in this Division include:

- Added application processing and hearing schedule that conform with the new zoning ordinance requirements for site plan; including the requirement that a hearing date be established within 120 days of the acceptance of the application, with provisions for requesting extensions.
- Added new requirements for the timing of agency plan review so that the 120 day hearing schedule can be met.
- Added new provisions to explicitly state which public agency approvals are needed before the Planning Board may take action on a preliminary plan, and moved the review for conformance with the State's Sustainable Growth and Agricultural Preservation Act of 2012 (Sec. 50-35(e)) to the new technical review section.
- Added a list of specific findings that the Planning Board must make in order to approve a preliminary plan. The findings generally codify the findings made currently in Board resolutions, with additional language added to include a finding about the adequacy of roads.
- Removed sediment control provisions that are now covered by Chapter 19 (Sec. 50-35(j)). These included requirements that a preliminary plan approval be conditioned upon execution of an erosion and sediment control plan approved by the Board after consideration of recommendations from the Montgomery Soil Conservation District, that the permit for clearing and grading issued by the Department of Permitting Services (DPS) be in conformance with this plan, and that the Board could revoke a preliminary plan approval if a developer proceeded to clear and grade a site without a DPS permit.
- Review standards that form the basis for Planning Board findings (Secs. 50-24, 50-25, 50-26, 50-27, 50-28, 50-29, 50-30, 50-31, 50-32, parts of 50-35, 50-39, and 50-40) are now consolidated in a new Technical Review section.

*Issue: The draft retains the existing provision that the Planning Board may find "that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate." The County Council discussed, but rejected a similar provision for the master plan finding that is now required for site plans by the new zoning ordinance. Thus, the Planning Board will not be able to find that a master plan recommendation is no longer appropriate for projects that require both preliminary and site plan approval. Nonetheless, staff recommends retaining the provision in the subdivision regulations for the projects that only need preliminary plan review. In staff's opinion, the provision is needed because the development standards that apply to a preliminary plan that doesn't go to site plan will not be as flexible as those for a site plan.*

- Removed requirements for a separate resubdivision analysis from the Chapter. *After discussion prior to the public hearing, the Planning Board concluded that the general requirements for lot dimensions in Section 50.4.3.C.1.a provide a sufficient basis to judge the suitability of any subdivision, including a resubdivision, and opted to remove requirements for a separate resubdivision analysis from the Chapter.*
- Added new provisions for creating private roads to address what has become a common desire for their use. The provisions include:
  - Private roads created by subdivision must be platted in right of way parcels that are separate from adjoining lots to maintain the Board's ability to ensure adequate space for road related uses within subdivisions.
  - Private road right of way parcels, like a dedicated public right of way, must be platted to the full width of the right of way recommended for the applicable road classification in

Chapter 49; however, the Planning Board may approve a narrower than standard right of way for either type of road under certain circumstances.

*The existing provisions for road right of way apply exclusively to public roads and require that all roads be dedicated to the width specified by the applicable master plan or to the width specified by Chapter 49 for roads that are not included in the master plan. The only discretion currently granted to the Planning Board is for tertiary roads where the Board has the authority to determine when they may be used, and when they can be narrowed for environmental or compatibility reasons. In staff's opinion, the Board needs the flexibility to consider in all instances, whether a narrower right of way is desirable and will not be detrimental to the function of the road. The basic criteria for the Board's determination of right of way adequacy has not changed (Sec. 50-30(c)).*

- Private roads must be built to the applicable structural standard, grade, and typical section based on the functional classification of the road in Chapter 49.

*This is a change from the existing requirement that private roads only be built to meet the structural standards of a tertiary road. This standard may have been adequate in the past when the use of private roads was limited to RE-2C and RNC residential subdivisions and townhouse developments, but now all types of roads are being created as private roads. As such, the roads need to be built to all applicable standards to ensure that they function as needed. The existing requirement that a registered engineer certify to the Department of Permitting Services (DPS) that the private road has been designed, and will be built to adequate standards has been retained, but this will need further discussion. DPS has stated that they don't have the authority to review private roads in any way, and that they do not currently ask for any certifications for private roads. If we are going to continue to allow private roads, we need to ensure that they are adequate, so this is a major issue that needs to be resolved. However, the requirement needs to be included regardless of who is ultimately tasked with the review.*

- The Adequate Public Facilities Ordinance (50-20(c), 50-24(g), 50-35(k)) was clarified to state that ancillary uses associated with religious institutions, such as schools, day care facilities, and clinics, that generate peak hour trips are not exempted from adequate public facilities requirements.
- The extension criteria for mixed use project in the Adequate Public Facilities Ordinance (50-20(c), 50-24(g), 50-35(k)) was modified to be based on the number of vehicle trips generated.  
Additional changes made in response to comments from the public hearing:
- Created a separate section for preliminary plan amendments (new Section 50.4.2.F), that distinguishes between major and minor amendments and clarifies the approval procedures.
- Changed the provisions for plan validity and APF validity periods to reflect the most recent two-year validity extension approved by the County Council.
- Modified the provisions for extending the validity of a preliminary plan in new Section 50.4.2.H to permit the Planning Director to approve a request to amend a validity phasing schedule that does not extend the overall validity period of a preliminary plan.
- Clarified that the Planning Board may reinstate an expired preliminary plan and establish a new validity period when the applicant demonstrates a practical difficulty or undue hardship.
- Updated language in new Section 50.4.3.A to clarify that in making a determination of substantial conformance to a Master or Sector Plan, the Planning Board may only find that events have occurred to render the relevant plan recommendation no longer appropriate if a site plan is not required.

*As previously discussed, the County Council discussed, but rejected a similar provision for the master plan finding that is now required for site plans by the new zoning ordinance. Thus, the Planning Board will not be able to find that a master plan recommendation is no longer appropriate for projects that require both preliminary and site plan approval. The Board agreed with staff's recommendation to retaining the provision in the subdivision regulations for the projects that only need preliminary plan review because the development standards that apply to a preliminary plan that doesn't go to site plan will not be as flexible as those for a site plan.*

- Added back language under new Section 50.4.3.A that permits a Board finding of substantial conformance with a Master or Sector Plan if density limits of the plan are exceeded to provide MPDUs or workforce housing units; this only applies to a preliminary plan that also requires approval of a site plan under Chapter 59.
- Clarified that if a Master Plan site for public open space is not dedicated, in addition to existing reservation provisions, it may also be donated, purchased, or obtained through condemnation (new Section 50.4.3.D.1). Also added an option for the Board to permit the applicant to provide an offsite location for a necessary public use if the applicant's preferred onsite location is deemed unsuitable by the Board (new Section 50.4.3.D.4.b).
- Modified the new Section 50.4.3.E requirements for providing new roads to permit private roads to be created on a record plat as either, a separate right-of-way parcel, or in a right-of-way easement through a platted lot (new Section 50.4.3.E.4).
- Modified the new Section 50.4.3.J.7 provisions for obtaining an extension of a validity period for a Planning Board determination of adequate public facilities to permit a phasing schedule that was created for a large project to be amended by the Planning Director as long as the overall validity period is not extended. Also added a provision to permit the Board to extend APF for one lot in a subdivision covered by a previous APF determination if the applicant provides sufficient evidence for the Planning Board to determine the amount of previously approved development attributed to the lot.

#### **Division 50.5. Pre-Preliminary Submission**

- Retains the basic concepts of the Pre-Preliminary Plan (50-33 and 50-33A), but is reorganized and revised to clarify both filing and approval procedures
- Modified language under approval procedures to clearly distinguish between advice only and binding decisions for the Planning Board
- Retains 90 day requirement to file a Preliminary Plan to retain approval of a binding decision

#### **Division 50.6. Simplified Subdivision Plan**

Entirely new section, created to allow for administrative approvals of simple, straight-forward subdivisions:

- Proposed language establishes applicability, filing requirements, and approval procedures
- Two minor subdivisions, previously included in 50-35A, were moved here with the idea that pre-preliminary plans, by themselves, should not establish entitlements
- Would apply to existing places of worship and institutional uses (50-35A), creation of certain residential lots located in the Agricultural Reserve Zone (50-35A), and creation of certain residential lots located in the Residential and Rural Residential zones
- Plan would go to DRC for agency and/or community comment

- Director could approve or disapprove the plan in writing, or if applicable, could schedule the plan for Planning Board hearing
- Plan would follow procedures established for the Preliminary Plan if scheduled with the Planning Board
- Additional changes made in response to comments from the Public Hearing:
- Added new Section 50.6.1.D to permit applicants to file an Administrative Subdivision Plan to create a lot in a non-residential zone by combining existing, adjoining lots, or a lot and a part of a previously platted lot.
- Clarified the requirements for application processing in new Section 50.6.2.B.

## **Division 50.7. Minor Subdivisions**

### Applicability

#### Procedure for Platting

- Although the language and organization of this section (50-35A) was revised significantly, it retains many of the previous concepts
- Reorganized into two main sections, applicability and procedures for platting
- 8 proposed minor subdivisions:
  - Minor lot line adjustment;
  - Conversion of an outlot into a lot
  - Consolidation
  - Subdivision to reflect ownership
  - Plat of correction
  - Pre-1958 Parcels
  - Combining a lot and adjoining property
  - Creation of a Lot from a Part of a Lot
- Procedures for platting remains unchanged

#### Significant changes made in this Division include:

- Moved the minor subdivisions for creating private institutional lots and creating lots in the agricultural zone to the Simplified Subdivision Plan process.
- Deleted the minor subdivision that permitted platting of a parcel containing an existing dwelling under the zoning standards in effect when the dwelling was constructed because the new zoning ordinance no longer includes the provision to allow it. The provision was removed in favor of the more general permissions to reconstruct existing dwellings in Section 7.7.1.
- Limit consolidation to one-family detached residential lots to avoid loss of potential road improvements for non-residential lots that are going to redevelop and do an APF with site plan.
- Additional changes made in response to comments from the Public Hearing:
- Consolidated two minor subdivision processes under one to provide the ability to merge (consolidate): 2 or more lots, lots and an outlot, lots and an abandoned right-of-way; and a lot or a part of a lot with an existing house with a piece of land created by deed that could not otherwise be platted by itself (remnant piece).

## **Article III. Plats**

All of the provisions for plats have now been consolidated into this Article.

### **Division 50.8. Plats-Generally**

- Significant reorganization and revisions to the platting Article, primarily to update the language and accurately and more clearly reflect the current practice and procedures for filing, reviewing, and recording of plats.
- Eliminated previous Secs. 50-10, 50-13, 50-18, 50-19 – antiquated language
- Eliminated previous Sec. 50-7, but combined the requirements for the county clerk to accept plats to another section in a new Article covering plats
- Eliminated previous Sec. 50-11 requiring the area of dedications to public use to be shown in square feet, this requirement was added under new filing and specifications section for plats
- Eliminated Secs. 50-16 and 50-17 regarding copies of plats previously filed and the effect of doing so on instruments previously recorded (deeds, mortgages, etc.), incorporated into new minor subdivision – plat of correction to replace an old plat
- Sec. 50-9 Exceptions to Platting Requirements were separated and moved to two new locations
- Record Plat Required
- Exceptions to the Requirements of the Chapter
- Sections 50-7 Recording-generally, and 50-8 Same-Filing and approval of plats, were combined and simplified into new general purpose statement under plats
- Sections 50-36 Record plats – Specifications and supporting data, and 50-37 Record plats – Procedure for approval and recording, were reorganized and revised significantly into a new section, which more clearly separated the plan drawing requirements from the requirements for supporting information
- Approval procedure provisions of Section 50-37 reorganized significantly and revised antiquated language.
- Recording procedure covered by Sections 50-12, 50-14, and 50-37 was significantly reorganized and revised antiquated language.
- Revised and simplified language for abandonment of land dedicated for public use Sec. 50-15.

Significant changes made in this Division include:

- Added application processing and hearing schedule that conform with the new zoning ordinance requirements for site plan; including the requirement that a hearing date be established within 120 days of the acceptance of the application, with provisions for requesting extensions.

Additional changes made in response to comments from the Public Hearing:

- Separated out the abandonment process for land dedicated to the County and land dedicated to the Commission and other public agencies to ensure that each is covered by the process appropriate for that agency.

#### **Article IV. Administration**

This Article now contains all administrative functions of the Chapter.

#### **Division 50.9. Waivers from this Chapter**

- Changed the authority of the Board to modernize the language and remove the antiquated sections regarding large scale development and moderate price development variations (previous §§50-38(a)2 and 3) because they are no longer used and likely were enacted for specific projects that have long since been developed.
- Retained the application process.



- The Planning Board's ability to condition a waiver remains.
- The procedure was modified to change the timing for comments from Development Review Committee agencies from 30 days to 20 days. This change is necessary to fit within the overall 120 day approval timing.

Significant changes made in this Division include:

- Modified the findings to make them tangible and more easily applied to a specific project. The modification specifies that the unique circumstances and practical difficulties are with the plan (not that they exist and prevent full compliance with the chapter, which is harder to argue) and that application of specific requirements of the chapter are not needed as long as the intent of the requirements are achieved.

**Division 50.10. Administrative Procedures**

- Maintained the Board's ability to adopt regulations to administer the chapter.
- Retained the ability to establish adequate public facility guidelines through a subdivision staging policy.
- Retained the ability to establish a Development Review Committee composed of agencies to facilitate plan review and updated the name.
- Retained the ability to establish fees to cover administrative costs of the Chapter.
- Retained the enforcement provisions of the Chapter.
- Removed redundancies on how to amend the Chapter by citing to the applicable County and State laws that govern the process.

Significant changes made in this Division include:

- Expanded the Board's ability to require bonding and surety for all improvements, including private streets. Retained the ability to have a public improvement agreement but removed the detailed procedural process to simplify the provision and allow policy to set the procedure.

**Additional Written Comments**

Staff is not proposing changes in response to all comments received, but these will be discussed as part of the worksession.

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION**MCP-CTRACK**

**From:** Timothy Dugan <TDugan@shulmanrogers.com>  
**Sent:** Monday, April 20, 2015 10:24 AM  
**To:** MCP-Chair  
**Cc:** Conlon, Catherine; scrum; William Kominers (wkominers@lercheearly.com); sarobins@lercheearly.com; Robert Kaufman (rkaufman@marylandbuilders.org); Erica H. Hilburger; Ronald N. Crockett; Benjamin J. Kim; Nancy Regelin; Larry Gordon; Michael A. Goodwin; David Freishtat  
**Subject:** April 30, 2015 Agenda, Tentative Agenda Item 11, Subdivision Regulations Rewrite  
**Attachments:** COMMENTS ABOUT SUBDIVISION REWRITE CHANGES\_5688264\_2.PDF

By Email

Mr. Casey Anderson, Chair  
 Montgomery County Planning Board  
 The Maryland-National Capital Park and Planning Commission  
 8787 Georgia Avenue  
 Silver Spring, Maryland 20910

Re: Subdivision Regulations Rewrite  
 April 30, 2015 Agenda, Tentative Agenda Item 11  
 Planning Board Public Hearing,

Dear Mr. Anderson and Planning Board Members:

I am sending my personal thoughts concerning the proposed subdivision rewrite. My review was not exhaustive. I wish that I had more time to delve into the details, and I would welcome the opportunity to participate in any rewrite committee similar to the one conducted for the zoning rewrite. I provide my comments, suggestions and questions in the attached schedule. I hope they are helpful. Please call with your comments, questions and instructions. Thank you.

Very truly yours,

Timothy Dugan

Enclosure

cc: Ms. Catherine Conlon, Supervisor, DARC. Division

**TIMOTHY DUGAN**  
 ATTORNEY AT LAW

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**SHULMAN  
ROGERS**

GANDAL  
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ECKER

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**SHULMAN  
ROGERS**

**GANDAL  
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**TIMOTHY DUGAN ATTORNEY**  
T 301.230.5228 F. tdugan@shulmanrogers.com

April 20, 2015

By Email

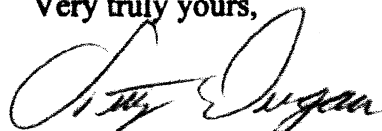
Mr. Casey Anderson, Chair  
Montgomery County Planning Board  
The Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Subdivision Regulations Rewrite  
April 30, 2015 Agenda, Tentative Agenda Item 11  
Planning Board Public Hearing,

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Very truly yours,



Timothy Dugan

Enclosure

cc: Ms. Catherine Conlon, Supervisor, DARC. Division

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SUBDIVISION REWRITE CHANGES  
COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN

Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	COMMENTS
1)	<p>A. <i>Adequate Public Facilities Ordinance (APFO)</i>: Section 50.5.3.F of this Chapter which specifies that the Planning Board must find that public facilities will be adequate to support and serve a proposed subdivision before approval.</p>	<p>APFO = the definition is cross referenced here to 50.5.3. See Section 50.5.3. Technical Review, <i>F. Adequate Public Facilities Ordinance (APFO)</i> Administrative civil penalty = New. It should be grouped with other related terms, but I think it is redundant.</p>
2)	<p><i>Building restriction line</i>: A line designating an area in which development or building is restricted by the Planning Board for environmental protection.</p>	<p>Building restriction line = There are other reasons, besides environmental protection, why a building restriction line is imposed. Building restriction lines are imposed by statute as well as by the Planning Board. The definition should read: <i>Building restriction line</i>: A line designating an area in which development or building is restricted.</p>
3)	<p>Definitions</p>	<p>The terms "Administrative Civil Penalty" "Citation" "Civil Fine" seem to overlap. I do not know the difference between "Administrative Civil Penalty" and "Civil Fine," unless the Chapter is referring to one imposed by the County District Court or Circuit Court vs. the Planning Board. Further, they are all "administrative" based. Perhaps they should be grouped together.</p>

SUBDIVISION REWRITE CHANGES  
COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN

SHULMAN  
ROGERS

GANDAL  
PORDY  
ECKER

Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN 12-23-14 DRAFT	COMMENTS
		<p>I recommend the following:</p> <p><i>Administrative Civil Penalty:</i> A monetary penalty imposed by the Planning Board after considering the factors in this Section for violating a Planning Board Action.</p> <p><i>Administrative Citation:</i> A document noting a violation of a Planning Board action, seeking to impose a civil fine or corrective action.</p> <p><i>[Delete "Civil Fine" because it is redundant].</i></p>
4)		<p><i>Subdivision Record Plat:</i> A plat of subdivision that has been recorded in the land records under the requirements of this Chapter.</p> <p>Note: "Subdivision Record Plat" indicates that it has been recorded in the land records, whereas "plat" indicates that it is the name before it has been recorded. Is that the intent?</p>
5)	<p>G. <i>General Plan:</i> A comprehensive framework for guiding the physical development and managing limited resources in Montgomery County, Maryland. It is a policy document whose concepts are general in nature. As</p>	<p>The reference to the "General Plan" is inadequate where it is used in other provisions. The definition of "General Plan" should be expanded to include the various applicable countywide, master and sector plans and not simply a reference to the actual General Plan. I am not sure that it is the most "visionary document" either.</p>

SUBDIVISION REWRITE CHANGES  
COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN

Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	COMMENTS
	12-23-14 DRAFT	
6)	<p>I. the County's longest-range and most visionary document, it provides a broad image of how the County will evolve in the future and establishes a frame of reference for decisions to make that vision become reality.</p> <p><i>Improvements:</i> Required infrastructure needed to support the development including, but not limited to, the following: roads, alleys, grading, road pavement, curbs and gutters, sidewalks, pedestrian ways or paths, water mains, sanitary sewer lines, water supply and sewage disposal, storm drain facilities, curb returns, sidewalk and driveway entrances in right-of-way, guard rails, retaining walls, sodding, planting, monuments, street lights, and storm water management.</p> <p><i>Improvement, public:</i> Any improvements located within a dedicated right of way or public improvement easement.</p>	<p>Why not modify the definition to refer to private and public improvements so that it is more easily distinguished from "Improvements, Public." How about:</p> <p><i>Improvements:</i> Required <i>private or public</i> infrastructure needed to support the development including, but not limited to, the following: roads, alleys, grading, road pavement, curbs and gutters, sidewalks, pedestrian ways or paths, water mains, sanitary sewer lines, water supply and sewage disposal, storm drain facilities, curb returns, sidewalk and driveway entrances in right-of-way, guard rails, retaining walls, sodding, planting, monuments, street lights, and storm water management.</p>
7)	<p><i>Lot:</i> An individual lot or parcel that is</p>	<p><i>Lot.</i> Here the term "Subdivision Record Plat" is used. The</p>

Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	COMMENTS
12-23-14 DRAFT	<p>described by a Subdivision Record Plat recorded in the land records for which a building permit can be issued.</p> <p><i>Lot, Ownership:</i> An area of land shown on a Subdivision Record Plat created only for the convenience of the owner under Section 50.8.1.A.4 of this Chapter that reflects a deed, mortgage, or lease line but does not subdivide the underlying lot.</p>	<p>term "Subdivision Record Plat" as defined is a plat that has already been recorded. "Plat" is the term supposedly for a plan that is yet to be recorded. Accordingly, the Lot definition should be as follows:</p> <p><i>Lot:</i> An individual lot or parcel that is described by a Subdivision Record Plat [deletion] for which a building permit [is permitted to] be issued.</p> <p>Lot, Ownership. I do not see why "created only for the convenience of the owner" must be included. There are innumerable reasons why an Ownership Lot might be established.</p> <p>There is other surplus language that could be problematic. Why not simply define it as follows:</p> <p><i>Lot, Ownership:</i> An area of land [deleted language] shown on a Subdivision Record Plat under Section 50.8.1.A.4 of this Chapter[deleted language].</p>
8)	<p><i>Master Plan: Comprehensive amendments to the General Plan that provide detailed and specific land use and zoning recommendations for specific areas of the County.</i></p>	<p>Master Plan. Other terms besides "General Plan" and "Master Plan" ought to be included in the definitions. The terms "master plan, sector plan, or urban renewal plan" are used in some provisions. The term "countywide master plan" is not used in the text but it is a term used in many contexts. The terms need some further work.</p>
9)	<p><i>Mid-block pedestrian right of way: A dedicated or publicly owned right-of-way</i></p>	<p>Mid Block pedestrian right of way. The concept is one that we expect to see more often especially in the urban settings.</p>



SUBDIVISION REWRITE CHANGES  
COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN

Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN 12-23-14 DRAFT	COMMENTS
	<p><i>within a block intended primarily for pedestrians, which may include utilities where necessary, and from which motor vehicles are excluded.</i></p>	<p>Would it be prudent to expand the concept as follows: Mid-block pedestrian passageway: A dedicated or otherwise publicly accessible pedestrian and/or bikeway through way within a block intended primarily for pedestrians, which may include utilities where necessary, and from which motor vehicles are typically excluded.</p>
10)	<p><i>Notice of Hearing:</i> An administrative notice issued by the Director that notifies an alleged violator where and when an enforcement hearing will be held by the Planning Board or the Planning Board's designee to address an alleged violation.</p> <p><i>Notice of Violation:</i> A notice issued by an enforcement agent that notifies a recipient of a violation and specifies the remedial action that the recipient must take to avoid further enforcement action.</p>	<p>Notice of Hearing. The definition could be improved by cross referencing the provisions themselves. See the "Enforcement of Chapter" provisions.</p>
11)	<p><i>One-hundred-year floodplain:</i> The area along a stream, drainage course, lake, or pond, which would experience inundation by stormwater runoff equivalent to that</p>	<p>Notice of Violation. Same comment as above. One Hundred Year Floodplain. I am not certain why the subdivision regulations would be the reference point for such a definition and not other State or County statutes. I would delete it.</p>

	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	COMMENTS
Row	12-23-14 DRAFT	
	which would occur on the average of once in every one hundred years after total ultimate development of the watershed.	
12)	<i>Outlot:</i> A piece of land shown on a record plat but which is not to be occupied by a building or otherwise considered as a buildable lot. A building permit must not be issued on any land so designated until the outlot is converted to a lot in accordance with the procedures contained in this Chapter.	Outlot. I think the definition includes too much statutory language and does not take advantage of other defined terms. How about the following:  <i>Outlot:</i> An area shown on a Subdivision Record Plat for which a building permit must not be issued
13)	<i>Owner:</i> A person or corporation holding a legal title in the land, but not including a contract purchaser.	Owner. A corporation is a "person." A trust is not a corporation. A partnership is not a corporation. A legal title might be held by a mortgagee, a lienor, a lessee. Are we now referring to a mortgagee as an owner? How about the following:  <i>Owner:</i> A Person [Note: See the definition of "Person"] holding fee simple title in the land.
14)	<i>Parcel, unplatted:</i> A contiguous area of land described only by metes and bounds in a deed recorded in the land records and not included on a record plat.	Please see the discussion about "Definition of Subdivision Record Plat . . ."
15)	<i>Person:</i> An individual, partnership, corporation, organization, other entity, or	Person. I think that "person" should just be a basic definition and not include some context with respect to a relationship to

SUBDIVISION REWRITE CHANGES  
COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN

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COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	
Row	COMMENTS
	<p>12-23-14 DRAFT</p> <p>combination thereof that owns property or otherwise has an interest or responsibility for property that is the subject of a Planning Board action.</p>
16)	<p><i>Plan:</i> "See Preliminary Plan."</p> <p>the Planning Board. How about the following: <i>Person:</i> An individual, partnership, corporation, organization, other entity, or combination thereof.</p> <p>Plan. Thus, it means the same as "Preliminary Plan"? Is that correct? Plans are prepared for other purposes than a Preliminary Plan unless the concept and definition for "Preliminary Plan " is more "inclusive" in that it includes utility plans, stormwater management plans, forest conservation plans, etc.? Perhaps the definition of "Preliminary Plan," see below, should be expanded to cross reference the statutory requirements concerning the assembly of a Preliminary Plan Application and the various plans that are included.</p>
17)	<p><i>Planning Board action:</i> A final decision on a Preliminary Plan, site plan, project plan, sketch plan, water quality plan or other plan, including all associated terms, conditions, requirements and other obligations or limits, made by the Planning Board under state law and Chapters 50 and 59, including any regulations issued under state or County law. A Planning Board action does not</p> <p>Planning Board action. Question why the decision does not include a "Chapter 22A " decision.</p>

SUBDIVISION REWRITE CHANGES  
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	include a decision made by the Planning Board under Chapter 22A.	
18)	<p><i>Plat:</i> A drawing depicting some or all of an approved subdivision, prepared and submitted under this Chapter, and intended to be recorded in the land records after it has been approved by the Planning Board. A plat may consist of more than one sheet which must be numbered sequentially. See also "Subdivision Record Plat".</p>	<p>Plat. See the discussion about Plat and Subdivision Record Plat.</p>
19)	<p><i>Right of way:</i> Land intended for the passage of people, vehicles, or utilities, as shown on a record plat as separate and distinct from the abutting lots or parcels. Any right of way involving maintenance by a public agency must be dedicated to public use by the maker of the plat on which the right of way is established.</p>	<p>Right of Way. I suggest using the defined terms. I think a right of way should be used for public right of way and "easement" should be used for privately held land even if the public is granted access. How about:</p> <p><i>Right of way:</i> Land [occupied or intended to be occupied] for the passage of people, vehicles, or utilities, as shown on a Subdivision Record Plat as an area separate and distinct from any abutting Lots, Parcels or Outparcels, and dedicated or reserved for ownership by the government.</p> <p>[Delete the rest.]</p>
20)	<p><i>Road, centerline of:</i> A line established as a</p>	<p>Road, centerline of. "Centerline of Road " is the term that</p>

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	<p>centerline of a road by any state, county, or other official agency or governing body with jurisdiction and shown on an officially adopted plan or recorded plat. In the absence of an official centerline, the centerline must be established by the Planning Board.</p>	<p>replaces " Street, centerline of." However, "road, centerline of" and Centerline of Road is not used in the new statute. Only the word "centerline" is used in the statute. The word "road" is used instead of "street." This definition does not use the defined terms.</p> <p>How about the following: <i>Road, centerline of:</i> A line established as a centerline of a road by any state, county, or other official agency or governing body with jurisdiction and shown on an officially adopted plan or Subdivision Record Plat. In the absence of an official centerline, the centerline must be established by the Planning Board.</p>
21)	<p><i>Stop Work Order:</i> An administrative order issued by an enforcement agent that requires a person to discontinue any further development, construction, or other land disturbance activity authorized by a Planning Board action until a violation has been corrected.</p>	<p><i>Stop Work Order.</i> It may be prudent to cross reference to the enforcement provisions.</p>

	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	COMMENTS
22)	<p><i>Tract:</i> A contiguous piece of land, including all proposed and existing rights of way, lots, parcels, and other land dedicated by the owner or a predecessor in title.</p> <p>A tract does not include land conveyed to a government for more than nominal consideration.</p>	<p>Tract. "Tract" is intended to replace "Gross Tract" and/or "Gross Tract Area."</p> <p>I recommend capitalizing the defined terms.</p> <p>There are instances where land has been repurchased from the government and rededicated to the government so that the density may be incorporated to the contiguous land area, and thus, would become part of the "Tract." May we preserve such concept so that the opportunity remains?</p>
23)	<p><i>Turnaround:</i> The termination of a public road in the approximate shape of a "T", built to allow vehicles to reverse direction using a 3-point turn.</p>	<p>Turnaround. Are all Turnarounds in the shape of a "T?" Does it have to be a "public road." I recommend loosening the language. How about the following:</p> <p><i>Turnaround:</i> The termination of a public road that is designed in compliance with applicable rules and regulations.</p>
24)	<p><i>Water quality plan:</i> A plan, including supporting documents, required as part of a water quality review under Chapter 19 for certain projects located in a special protection area, intended to measure and control the effect that development will have on water resources or other environmental features located in a special protection area.</p>	<p>Water Quality Plan. I think it includes language that would be best left in the more particular statutory provision. How about the following:</p> <p><i>Water quality plan:</i> A plan, including supporting documents, required as part of a water quality review under Chapter 19 for certain projects located in a Special Protection Area.</p>
25)	<p>Section 50.3.1. Applicability of the Chapter</p>	<p>Applicability of Chapter. I recommend not including the</p>

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Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	COMMENTS
	<p>12-23-14 DRAFT</p> <p>This Chapter applies to any subdivision of land within Montgomery County located within the Maryland-Washington Regional District</p> <p>except for a good faith division of exclusively agricultural land that is not made for development purposes.</p>	<p>provision "except for the good faith division of exclusively agricultural land . . ." The subdivision exceptions provisions will address that issue. It is odd to have such language here.</p>
26)	<p>Division 50.9. Plats-Generally</p> <p>All subdivision of land must be recorded by plat in the County Land Records. The Clerk of the Circuit Court for the County must receive and record the plat once the requirements of the succeeding Sections of this Chapter have been met.</p>	<p>Plats Generally. Use the capitalized/defined terms, like "Plat"</p>
27)	<p>Section 50.3.2. Record Plat Required</p> <p>A. Any subdivision of land must be included on a plat approved by the Planning Board and recorded before sale of any part of the subdivided land.</p>	<p>Record Plat Required.</p> <p>Why not use the capitalized/defined terms?</p> <p>What does "sale" mean?</p>
28)	<p>Section 50.9.4. Abandonment of Land</p>	<p>Use the term "Subdivision Record Plat"</p>

SUBDIVISION REWRITE CHANGES  
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Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN COMMENTS	COMMENTS
12-23-14 DRAFT	<p>Dedicated for Public Use</p> <p>A. When a record plat contains land dedicated for public use, the dedication must be in perpetuity and must not be altered or taken for private use. However, the person who originally filed the plat, any successor in interest, or the County may petition to abandon any land dedicated under this Section.</p>	
29)	<p>Section 50.3.2. Record Plat Required</p> <p>F. Adequate Public Facilities Ordinance (APFO)</p> <p>iv the Planning Board must not require any additional public improvements or other conditions beyond those required for the original Preliminary Plan;</p>	<p>F. Adequate Public Facilities Ordinance (APFO)</p> <p>Should such language be expanded to explicitly include that the County government i.e. MCDOT similarly may not require any additional improvements or conditions beyond those required for the original Preliminary Plan?</p>
30)	<p>Section 50.5.3. Technical Review</p> <p>E. Public Improvements</p>	



Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	COMMENTS
	<p>1. Roads</p> <p>f. Road grade approval. No final grading, sidewalk or pavement construction, or installation of utilities must be permitted in the bed of any proposed public or private road in any preliminary plan or simplified preliminary plan until the grade has been approved under this Chapter.</p>	<p>Is the grade approved under Chapter 50 or the "road code"? Is the reference correct?</p>
31)	<p>Section 50.5.3. Technical Review</p> <p>B. <i>Block Design</i></p> <p>1. Residential blocks. The Planning Board must approve the length, width and shape of any residential block as follows.</p> <p>a. Length. The maximum length of a block is 1600 feet.</p>	<p>Length. Is there a reason why the Planning Board has no power to approve more than a maximum of a 1,600feet long block?</p>
32)	<p>Section 50.5.2. Approval Procedure</p> <p>C. <i>Planning Board Action</i></p> <p>3. Where a site plan is required, the approval of the Preliminary Plan must specify that no clearing or grading can occur before approval of the site plan unless</p>	<p>Why not rewrite the following provision:</p> <p>"3. Where a site plan is required, the approval of the Preliminary Plan must specify that no clearing or grading can occur before approval of the site plan unless otherwise specified."</p>

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Row	COMMENTS, SUGGESTIONS AND QUESTIONS FROM TIM DUGAN	COMMENTS
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	otherwise specified	<p>How about:</p> <p>3. Where a site plan is required, no clearing or grading can occur before approval of the site plan unless otherwise specified by the Planning Board.</p>
33)	<p>Division 50.7. Simplified Preliminary Plan - NEW SECTION</p> <p>Section 50.7.1. Applicability</p>	<p>I believe that the preliminary plan exemptions should better cross reference this section.</p>
34)	<p>Section 50.9.2. Approval Procedure</p> <p>A. <i>Referral of the Plat Application.</i> After accepting a plat application, the Director must begin review and send a copy to each agency that has review authority for roads, utilities, or other public services that will serve the proposed subdivision, for the agency's recommendation concerning the plat.</p>	<p>Why must the Director send a copy to each agency, etc.? If the record plat application is eFiled/ePlans?</p>

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ATTACHMENT A2

RECEIVED

JUN 08 2015

OFFICE OF THE CHAIRMAN  
THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

0459

**MCP-Chair**

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**From:** Rachel Toker <toker.rachel@gmail.com>  
**Sent:** Monday, June 08, 2015 12:01 PM  
**To:** MCP-SubDivisionRegs; MCP-Chair; Conlon, Catherine  
**Cc:** Rachel Toker  
**Subject:** Subdivision Regulation Rewrite -- Comments  
**Attachments:** UER Comment.Subdivision Rewrite.6.8.15.pdf

Dear Planning Board,

Attached please find comments on the proposed draft revisions to Montgomery County's subdivision regulations. The attached is submitted by Urban Ecosystem Restorations, Inc., a Maryland, nonprofit urban land trust that focuses on restoring ecosystem services to the greater Washington, D.C. metro area and protecting them over time.

Thank you in advance for your thoughtful consideration of the attached comment package.

I would be happy to discuss with you further either the attached comments or alternate ways that the concepts in the attached may be incorporated into the final regulatory revision.

Best regards,  
Rachel Toker  
Urban Ecosystem Restorations, Inc.  
[www.urbanecosystemrestorations.org](http://www.urbanecosystemrestorations.org)

June 8, 2015

Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910  
Attn: Casey Anderson, Chair

Dear Planning Board:

On behalf of Urban Ecosystem Restorations, Inc., a Maryland 501(c)(3) nonprofit corporation, I hereby submit the attached comments to the "public hearing draft" revisions to Chapter 50 of the Montgomery County Code (dated March 19, 2015) in order to address the following issue of concern.

**Context:** Montgomery County continues to lose acres of forested land each year to infill development, and many of the remaining areas of forest are fragmented and span across the boundaries of numerous property owners. That is, while small forests (or "forest patches")<sup>1</sup> continue to exist in the County, they have been, and continue to be, subdivided into smaller and smaller developable lots. This pattern has made it very difficult to protect and preserve these small forests, both as a matter of regulation and as a voluntary community response by local landowners. As a regulatory matter, existing legal protections for forests have become increasingly irrelevant for the protection of these forest patches due to the fact that the development of the ever-smaller sized lots on which they sit do not trigger forest protections. As a voluntary matter, individual forest patches owned by increasing numbers of landowners are increasingly at risk of destruction, since they can be devastated by the actions of a single owner or developer, regardless of whether the remaining landowners are willing to work together to save a particular forest patch. Damage to forest patches can similarly occur as lots are reconfigured or recombined for the purpose of real estate development.

**Objective:** This County's remaining forest patches serve precious environmental and other community needs, and are profoundly deserving of protection. One of the best ways to establish protections for these areas is to include special provisions that acknowledge their importance and protect them from future harm *during the subdivision process itself*.

The attached, submitted comments are intended to allow for one of the primary goals of the regulation rewrite – streamlining and shortening the subdivision process in many cases – while also allowing for additional deliberation and enhanced protections in those instances where forest patches are present and could otherwise be negatively impacted.

Best regards,



Rachel Toker  
President, Urban Ecosystem Restorations

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<sup>1</sup> In this context, the term "forest patches" refers to an area of at least 5,000 square feet of contiguous tree canopy that is also characterized by one or more of the following additional forest stratifications: understory trees, shrubs, herbaceous plants, leaf litter and/or organic top soil layers.

3-19-15 PUBLIC HEARING DRAFT

MONTGOMERY COUNTY CODE

Chapter 50. SUBDIVISION OF LAND.

*Urban Ecosystem Restorations*

*Comment*

*6/8/2015*

*(11 pgs) 1*

**Article I. In General.**

**Division 50.1. Purpose**

Section 50.1.1. Purpose of Chapter 50

**Division 50.2. Defined Terms**

Section 50.2.1. Rules of Interpretation

Section 50.2.2. Definitions

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2

**Division 50.3. General Requirements**

Section 50.3.1. Applicability of the Chapter

Section 50.3.2. Record Plat Required

Section 50.3.3. Exceptions to the Requirements of this Chapter

Section 50.3.4. Approving Authority

Section 50.3.5. Effect of Chapter on Other Ordinances

Section 50.3.6. Submission Procedures for Subdivision Plans

A. Subdivision of Land

B. Subdivision of Part of a Tract

C. Area within Pending Zoning Map Amendments

D. Area within Pending Master Plan

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**Article II. Subdivision Plans.**

**Division 50.4. Preliminary Plan**

Section 50.4.1. Filing and specifications

A. Application and Fee

B. The Drawing

C. Supporting Information

D. Application Processing

E. Hearing Date

Section 50.4.2. Approval procedure

A. Referral of Plan

B. Review and Recommendation

C. Planning Board Action

D. Required Findings

E. Plan Certification

F. Plan Validity

G. Extension of Plan Validity Period

H. Effect of Failure to Timely Validate Plan or Secure an Extension

I. Revocation of approval

Section 50.4.3. Technical Review

A. Relation to Master Plan

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Proposed Inserts:

**Insert A:**

"Forest Patch" shall mean an area of 5,000 square feet (or greater) of contiguous tree canopy, with *one or more* of the following additional forest stratifications present: understory trees, shrubs, herbaceous plants, leaf litter and/or organic top soil layers.

**Insert B:**

...or unless a departure from the relevant master plan, sector plan, or urban renewal plan is necessary or useful to protect any portion of a Forest Patch, in which case such departure shall be preferred by the Board.

**Insert C:**

All pedestrian paths near or in Forest Patches or similarly forested areas shall be designed to minimize adverse impact on said Forest Patch or forested area.

**Insert D:**

Every subdivision application with land subject to restriction for environmental protection, and particularly those affecting trees, forests and Forest Patches, shall include a plan detailing the post-development protection and maintenance responsibilities and use of those areas.

**Insert E:**

Provided that the plan amendment does not propose damage to, or destruction of, all or part of a Forest Patch, the Planning Board...

**Insert F:**

... Delineation, which shall include the identification of all Forest Patches that sit either entirely or partially on the lot(s) to be subdivided (regardless of the size of the lot(s) to be subdivided).

## 3-19-15 PUBLIC HEARING DRAFT

**Enforcement Agent:** The Director, or the Director's designee responsible for determining compliance with a Planning Board action.

**Engineer:** A professional engineer registered in Maryland.

**Environmentally Sensitive Area:** In this Chapter, environmentally sensitive areas are limited to critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream valley buffers as defined in the *Guidelines for Environmental Management of Development in Montgomery County* <sup>either (i)</sup> or <sup>(ii) Forest Patches</sup>

F.

**Floodplain:** (a) A relatively flat or low land area adjoining a river, stream, pond, stormwater management structure, or watercourse subject to partial or complete inundation; or (b) An area subject to unusual and rapid accumulation or runoff of surface water as a result of an upstream dam failure.

**Floodplain, one-hundred-year:** The area along a stream, drainage course, lake, or pond, which would experience inundation by stormwater runoff equivalent to that which would occur on the average of once in every one hundred years after ultimate development of the watershed.

\* **INSERT Definition of Forest Patches - see Insert A**

**General Plan:** A comprehensive framework for guiding the physical development and managing limited resources in Montgomery County, Maryland. It is a policy document whose concepts are general in nature. As the County's longest-range and most visionary document, it provides a broad image of how the County will evolve in the future and establishes a frame of reference for decisions to make that vision become reality.

H.

I.

**Improvements:** Required infrastructure needed to support the development including, but not limited to, the following: roads, alleys, grading, road pavement, curbs and gutters, sidewalks, pedestrian ways or paths, bicycle infrastructure, water mains, sanitary sewer lines, water supply and sewage disposal, storm drain facilities, curb returns, sidewalk and driveway entrances in right-of-way, guard rails, retaining walls, sodding, planting, monuments, street lights, and storm water management.

**Improvement, public:** Any improvements located on land dedicated to the public or within a dedicated right of way or public improvement easement.

J.

K.

L.

**Licensed land surveyor:** A "land surveyor" who is licensed in the State of Maryland to "practice land surveying" as such terms are defined in Maryland Business Occupations and Professions

3-19-15 PUBLIC HEARING DRAFT

Code Ann. Section 15-101 (1995 Repl. Vol.), as amended.

*Limit of disturbance line:* A line designating an area in which land disturbance as defined in Chapter 19 is prohibited.

*Lot:* A discreet area of land that is described by a plat recorded in the land records for which a building permit can be issued.

*Lot, Flag:* A lot with a narrow strip providing frontage to a street where the bulk of the property contains no frontage.

*Lot, Ownership:* An area of land shown on a Subdivision Record Plat created only for the convenience of the owner under Section 50.7.1.D of this Chapter that reflects a deed, mortgage, or lease line but does not subdivide the underlying lot.

M.

*Maryland Coordinate System:* The Maryland Coordinate System as defined in the Annotated Code of Maryland, Real Prop. §§ 14-401 through 14-407.

*Maryland-Washington Regional District in Montgomery County:* as defined by the Land Use Article of the Annotated Code of Maryland, which does not include the jurisdictional boundaries of Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove.

*Master Plan:* Comprehensive amendments to the General Plan that provide detailed and specific land use and zoning recommendations for specific areas of the County.

*Mid-block pedestrian right of way:* A dedicated or publicly owned right-of-way within a block intended primarily for pedestrians, which may include utilities where necessary, and from which motor vehicles are excluded.

*Minor Subdivision:* Creation of lots through the division, resubdivision or assemblage of a lot, tract or parcel of land, including minor adjustments to existing lot lines, that does not require the approval of a Preliminary Plan of subdivision.

N. *The term "Minor Subdivision" shall not include any proposed subdivision that affects a Forest Patch, unless such Forest Patch is already designated*  
*Notice of Hearing:* An administrative notice issued by the Director that notifies an alleged violator where and when an enforcement hearing will be held by the Planning Board or the Planning Board's designee to address an alleged violation. *(through a previous public process) a Special Protection Area*  
*Notice of Violation:* A notice issued by an enforcement agent that notifies a recipient of a violation and specifies the remedial action that the recipient must take to avoid further enforcement action.  
*that will be protected after the proposed subdivision is completed*



## 3-19-15 PUBLIC HEARING DRAFT

- g. Sites for public uses and open spaces;
- h. Location, type, and width of all existing and proposed rights-of-way and easements including roads, slopes, paths, utilities, on and off site storm drainage, and other improvements;
- i. The proposed use of all lots must be indicated on the Preliminary Plan. The Preliminary Plan must show the scaled dimensions and approximate area of each use;
- j. When the property is included in more than one zone, the lines showing the limits of each zone must be indicated; and
- k. The plan must also show all existing topography, structures, and paving within 100 feet on adjoining properties.

### C. *Supporting Information*

1. An approved Natural Resources Inventory/Forest Stand Delineation <sup>(5)</sup>
2. A receipt from the County and other applicable agencies showing payment of any applicable fees required in connection with the County's review process.
3. Concept road grade and profile. A conceptual road grade and profile plan must be prepared according to the design criteria of Chapter 49 and indicate the percentage of tangent grades, the length of crest and sag vertical curves and elevations, and in addition, elevations of all intersecting roads. Direction of water flow must also be indicated. Where the topography makes the determination of the adequacy of the road grades difficult, the registered surveyor or registered engineer may be required to submit additional supporting information.
4. Storm drainage capacity and impact analysis. The concept road grade plan must be supported by a preliminary storm drain study prepared under the County's specifications.
5. Sight distance evaluation for all proposed road intersections prepared under the criteria of the applicable State or County transportation agency.
6. Wells and septic systems. For lots located in areas where individual wells and septic systems would be installed the Preliminary Plan must also show the following:
  - a. The proposed location of water wells for each lot and existing wells on the property and within 100 feet of the property;
  - b. A circular area with a radius of 100 feet around each well to denote clear space in which no final sewage system is to be located;

ADD  
INSERT F



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- a. A preliminary plan for a property located in a receiving area which proposes to increase the density of the property by using transferred development rights must indicate:
    - i. the number of lots permitted for the tract by zoning without the use of TDR or the MPDU density increase;
    - ii. the number of development rights to be conveyed to the receiving property;
    - iii. the number of moderately priced dwelling units to be provided as required by Chapter 25A;
    - iv. the total density, in dwelling units, of the proposed subdivision; and
    - v. the density ~~recommended~~<sup>permitted</sup> by the adopted master plan.
  - b. A preliminary plan that uses transferred development rights in the Rural Residential and Residential zones must include at least two-thirds of the number of development rights permitted to be transferred to the property under the appropriate master plan. However, the two-thirds requirement may be reduced if the Planning Board finds the reduction is more appropriate for environmental or compatibility reasons.
9. Draft Traffic Mitigation Agreement. A preliminary plan application for property located in a Transportation Management District (TMD), designated under Chapter 42A, Article II, must contain a draft Traffic Mitigation Agreement (TMAg) that meets the requirements of that Article.

### D. *Application Processing*

1. The applicant must submit an initial application to the Director. The Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale. The assessment of completeness does not address the merits of the application.
2. The applicant must submit any required revisions to the Director. The Director must review the revised application for completeness within 10 days after receipt.
3. After the Director verifies that the application is complete, the Director will accept the application and establish a hearing date under Section 50.4.1.E.
4. Public notice is required under the Manual of Development Review Procedures.



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### C. *Planning Board Action*

1. Every Preliminary Plan and plan amendment must be presented to the Planning Board for its review and action. The Planning Board must take one of the following actions or defer action to obtain more information:
  - a. Approve, if the plan conforms to the purposes and other requirements of this Chapter;
  - b. Approve, with any conditions or modifications necessary to bring the proposed development into compliance with all applicable requirements; or
  - c. Deny, if the plan is contrary to the purposes and other requirements of this Chapter.
2. ~~The~~ <sup>ADD INSERT E</sup> Planning Board may approve a limited Preliminary Plan amendment on its consent agenda if the Planning Director publishes a report and recommendation on the amendment a minimum of 10 days before the Planning Board meeting.
3. Where a site plan is required, the approval of the Preliminary Plan must specify that no clearing or grading can occur before approval of the site plan unless otherwise specified.
4. The Planning Board action must be by resolution containing findings supporting its decision. Following approval of a Preliminary Plan by the Planning Board, no agency may require a substantial change in the plan unless allowed by the Planning Board's conditions of approval.

### D. *Required Findings.* To approve a Preliminary Plan, the Planning Board must find that:

1. The Preliminary Plan substantially conforms to the master plan;
2. Public facilities will be adequate to support and service the area of the subdivision;
3. The layout of the subdivision, including size, width, shape, orientation, and density of lots, and location and design of roads are appropriate for the subdivision given its location and the type of development or use contemplated, considering the recommendations included in the master plan and the applicable requirements of Chapter 59;
4. All Forest Conservation Law, Chapter 22A requirements are satisfied;
5. All stormwater management, water quality and floodplain requirements of Chapter 19 are satisfied; and
6. Any other applicable Planning Board finding required under this Chapter that is specific to the property and necessary for approval of the subdivision.

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- 2. To revoke a Preliminary Plan approval, the Planning Board must find that completing a portion of the plan has been rendered impractical by reason of an amendment to the general plan, or by a conflict with a proposed public improvement or other conditions or circumstances that make the plan contrary to public health, safety or welfare.
- 3. The Planning Board must give a subdivider notice and an opportunity to be heard before taking any action to revoke approval of a Preliminary Plan by sending the owner and subdivider a notice by certified mail at least 10 days before the date of the proposed action and giving the time and place of the hearing. The notice must state the reasons for the proposed revocation.

**Section 50.4.3. Technical Review**

In making the findings under Section 50.4.2.D. the Planning Board must review the following technical aspects of the application.

A. *Relation to Master Plan*

- 1. In determining whether to approve a Preliminary Plan, the Planning Board must consider the applicable master plan, sector plan, or urban renewal plan. A Preliminary Plan must substantially conform to the applicable master plan, sector plan, or urban renewal plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate.

ADD INSERT B

B. *Block Design*

- 1. Residential blocks. The Planning Board must approve the length, width and shape of any residential block as follows.
  - a. Length. The maximum length of a block is 1600 feet.
  - b. Width. Blocks must be designed with sufficient width to provide 2 tiers of lots. Exceptions to block width design may be approved by the Planning Board for blocks adjacent to heavy traffic ways, railroads, streams, drainage courses, or for land uses where it is appropriate to establish blocks with 1 tier of lots.
  - c. Pedestrian paths. The Planning Board may require paths for pedestrian access to schools, playgrounds, parks, and other public areas and through long blocks.
  - d. Multi-Unit or Apartment Blocks and Access Roads. The design and arrangement of access roads or drives within a subdivision for apartment dwellings, together with the required parking facilities and pedestrian walks, must be reviewed and approved by the Planning Board. Determination of whether interior access roads will be dedicated to public use or may be private roads will be made by the Planning Board, considering the recommendations of applicable agencies.

ADD INSERT C



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- iv. **Preservation.** During the reservation period, a person must not erect a building or structure on the reserved land. A person must not remove or destroy trees, topsoil, or cover; grade; build a storm drainage structure that discharges water on the reserved land, except according to a storm drainage plan approved by the Department of Permitting Services or the Department of Transportation; or put reserved land to any use, except after written approval of the Planning Board. Nothing in this Section prohibits the owner from removing weeds or trash from reserved land or from selling the reserved land after approval of the Planning Board.
- v. **Posting.** The Planning Board must post properties in reservation with an appropriate sign, warning against violation of the preservation provisions and the penalties for a violation.
- b. **Expiration of plan.** The expiration or revocation of approval of a preliminary plan must not affect a reservation if, before the expiration date, a reservation plat has been recorded in the Land Records.

### E. Roads

#### 1. Plan requirements.

- a. **Master plan roads.** Preliminary plans and plats must include roads shown on any adopted master plan of highways, in satisfaction of the Road Design and Construction Code. Where applicable, an approved plan and plat must include recommendations of the State Highway Administration for construction and access to state roads.
- b. **General Layout.** Roads must, to the extent practicable, be laid out to encourage preservation of open spaces, tree cover, recreation areas, scenic vistas and outstanding natural topography, while providing convenient access to property and circulation through the subdivision.
- c. **Continuation of roads.** The subdivision must provide for continuation of any existing roads (constructed or recorded) that satisfy the Road Design and Construction Code, unless otherwise determined by the Planning Board.
- d. **Future subdivisions.** A tract in a preliminary plan application must be divided to not preclude future road openings and further logical subdivision of adjacent land.\*
- e. **Alleys.** The Planning Board may require alleys where they are necessary to provide access.

\* Except where  
necessary to  
preserve  
Forest  
Patches

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1. **Forest Conservation.** If a forest conservation plan is required under Chapter 22A, the Planning Board must not approve a Preliminary Plan or any extension until all requirements of that law for plan approval are satisfied. Compliance with a required forest conservation plan, including any plan reviewed on a preliminary or final basis, must be made a condition of any approved Preliminary Plan.
2. **Restriction of subdivision for environmental protection**
  - a. **Affected land.**
    - i. **Floodplains.** The Planning Board must restrict subdivision or development of any property that is located in the "one-hundred-year floodplain" of any stream or drainage course.
    - ii. **Unsafe Land.** The Planning Board must restrict the subdivision or development of any land it finds to be unsafe for development because of potential for flooding or stream erosion, soils with structural limitations, unstabilized slope or fill, steep slopes, or similar environmental or topographical conditions.
    - iii. **Trees, Forests, and Environmentally Sensitive Areas.** The Planning Board ~~may~~ restrict the subdivision or development of land to protect environmentally sensitive areas, achieve the objectives of Chapter 22A relating to conservation of tree and forest resources, and protect any rare, threatened or endangered plants or animals.  
*ADD b. RESTRICTIONS*
  - i. **General.** In addition to any requirement imposed under Chapter 22A, the proposed Preliminary Plan or Administrative Subdivision Plan may be restricted under this Section by:
    - (a) deletion or rearrangement of proposed lots, roads, utilities, and other facilities;
    - (b) the establishment of building restriction and land disturbance limit lines, and other protective measures or conditions; or
    - (c) requirement of conservation easements, deed restrictions, or covenants over portions of lots or unplatted parcels to be recorded.

If the Planning Board finds that other measures authorized by law are inadequate to provide short or long-term natural resource protection, the Planning Board may delete proposed lots.

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### B. *Action on an Administrative Subdivision Plan.*

1. After receiving the recommendations of the Development Review Committee and other reviewing agencies, the Director must approve or disapprove the Administrative Subdivision Plan in writing. If correspondence is received, the Director must decide whether any comment is substantive enough to require that the plan be acted on by the Planning Board. When applicable the Director must schedule Planning Board action on its next available agenda. If approved, the plan will remain valid under 50.4.2.F, by which time a plat must be recorded.
2. The Planning Director must take action on an Administrative subdivision plan or schedule a public hearing within 90 days after the date an application is accepted. The Director may postpone the public hearing once, by up to 30 days, without Planning Board approval. The Director or applicant may request an extension beyond the original 30 days with Planning Board approval. Any extension of the public hearing must be noticed by mail and on the hearing agenda with the new public hearing date indicated.

### C. *Appeal of an Administrative Subdivision Plan.*

1. Appeal to the Planning Board. After the Planning Director issues a written decision on an Administrative Subdivision Plan, an applicant or party with standing may appeal the decision to the Planning Board within 30 days.
2. Hearing. The Planning Board must hold a de novo hearing on the appeal. The Board must adopt a written resolution explaining its decision. For purposes of judicial review, the decision of the Planning Board is the final agency action.

### Division 50.7. Minor Subdivision

#### Section 50.7.1. Applicability

The submission of a Preliminary Plan or Administrative Subdivision Plan under Sections 50.4.1 and 50.4.2, and Sections 50.6.1 and 50.6.2, respectively, is not required for:

- Add statement: This Division 50.7 will not apply to any land on which a Forest Patch or part of a Forest Patch exists.*
- A. *Minor Lot Line Adjustment.* The sale or exchange of part of a lot between owners of adjoining lots for the purpose of small adjustments in boundaries, if:
    1. The total area of the adjustment does not exceed 5 percent of the combined area of the lots affected by the adjustment;
    2. No additional lots are created;
    3. The adjusted lot line is approximately parallel with the original lot line or, if it is proposed to intersect with the original line, it does not significantly change the shape of the lots involved;