



**Forest Conservation Law Amendments – Modifications, Corrections, and Clarifications**

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**SUMMARY**

Changes to the zoning ordinance and the subdivision of land article of the Montgomery County code, as well as changes to State code, requires Chapter 22A of the County code (Forest Conservation Law) to be updated to reflect these changes. As well, staff is taking this opportunity to request changes that will streamline the review process, codify practices, and clarify portions of the Forest Conservation Law (FCL). Some of the proposed changes to the forest conservation law include:

1. Clarifying that Administrative and Minor Subdivisions are subject to the FCL.
2. Creating a process in which the Planning Director can approve Forest Conservation Plans associated with Administrative Subdivisions.
3. Clarifying that Conditional Uses (formerly Special Exceptions) are subject to the FCL.
4. Requiring Natural Resources Inventory/Forest Stand Delineations be submitted and approved prior to the submission of a Sketch Plan.
5. Creating a 90 day time limit for applicants to resubmit revisions to Natural Resource Inventories/Forest Stand Delineations or the plan is automatically withdrawn.
6. Clarifying that the maintenance period for all forest conservation plantings in Special Protection Areas is 5 years. The maintenance period outside of Special Protection Areas remains at 2 years.
7. Remove the requirement that all tree variances be referred to the County Arborist for a recommendation. Any non-tree related variance will still be referred to the County Arborist for a recommendation.

Staff requests the Planning Board to approve transmittal of the proposed changes to Chapter 22A of the County code to the Montgomery County Council President for introductions as an expedited bill.

## PROPOSED CHANGES

Below is a more detailed discussion of the proposed changes to the FCL by Section:

### Section 22A-3. Definitions

- Lines 5 through 7      Inclusion of the new definition “Administrative Subdivision” to reflect a new subdivision type created from the revisions to Chapter 50 (Subdivision of Land Article) of the County code.
- Lines 9                      Inclusion of the new definition “Conditional Use” to reflect change in the zoning ordinance when Special Exceptions were replaced with Conditional Uses.
- Lines 11 and 12          Additional language to the existing definition to reflect a change in the zoning ordinance as “Development Plan” is no longer used in the zoning ordinance, however, there are still properties that are subject to Development Plan.
- Lines 14 through 17      Deletion of “-1” from the definition of “Lot” to reflect a change that occurred to Chapter 50 of the County code.
- Lines 19 through 21      Change to the definition “Mandatory Referral” to include the correct citation to the Annotated Code of Maryland Code.
- Lines 23 and 24          Inclusion of the new definition “Minor Subdivision” to include a subdivision type that is currently missing from the FCL.
- Lines 27 through 29      Change to the definition “Municipal Corporation” to include the correct citation to the Annotated Code of Maryland.
- Lines 32 and 33          Deletion of the definition “Nontidal wetland”. A new “Wetland” definition is proposed later in FCL amendment.
- Lines 36 and 37          Inclusion of the definition “Park Development Plan” to include a development application type that is missing from the FCL, but used in the Forest Conservation Regulation.
- Lines 42 through 45      Additional language to the existing definition to reflect a change in the zoning ordinance as “Plan Unit Development” is no longer used in the zoning ordinance, however, there are still properties that are subject to this plan type.

- Lines 48 through 50 Addition of “.4” to the definition “Preliminary Plan of Subdivision” to reflect the correct reference as a result of changes to Chapter 50 of the County code.
- Lines 53 and 54 Additional language to the existing definition to reflect a change in the zoning ordinance as “Project Plan” is no longer used in the zoning ordinance, however, there are still properties that are subject to this plan type.
- Lines 58 through 61 Change to the definition “Public Utility” to include the exact language used by the State in the Forest Conservation Model Ordinance.
- Lines 64 through 66 Additional language to the “Site Plan” definition to reflect the changes that occurred with changes to zoning code.
- Line 68 Inclusion of the new definition “Sketch Plan” that was not previously included in the FCL.
- Lines 70 and 71 Additional language to the existing definition to reflect a change in the zoning ordinance as “Special Exception” is no longer used in the zoning ordinance, however, there are still properties that are subject to this plan type.
- Line 73 Inclusion of the new definition “Subdivision” that was not previously included in the FCL but now encompasses “Preliminary Plan of Subdivisions”, “Administrative Subdivisions”, and “Minor Subdivisions”.
- Lines 74 through 78 Revision to the existing definition “Watershed” to reflect current practice and requirements that watersheds be tied to the Municipal Separate Storm Sewer System Permit and no longer the Countywide Stream Protection Strategy.
- Lines 80 through 83 Inclusion of the new definition “Wetland” to replace the “non-tidal wetland” definition that was previously included in the FCL. The new definition is identical to the one used in the *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County*, which was published in January 2000.

#### **Section 22A-4. Applicability**

- Lines 89 through 91     Addition of “Sketch Plan”, “Administrative Subdivision”, and “Minor Subdivision” to the list of plan application types that are subject to the FCL.
- Lines 93 and 94         Addition of “Conditional Use” as a plan application type this is subject to the FCL.
- Lines 97 and 98         Addition of “Park Development Plan” as a development application type subject to the FCL. The Forest Conservation Regulation already identifies park development plans as requiring a forest conservation finding but by putting it into the law the approving authority is clarified.

#### **Section 22A-5. Exemptions**

- Lines 103 through 106 Clarifies the reference for an agricultural exemption from submitting a Forest Conservation Plan (FCP). Changes to Chapter 50 of the code required the reference change from Chapter 50-9 to 50-3 and the reference to Chapter 19 was incorrect and is now being corrected.
- Lines 109 through 126 Changes to three separate exemptions from submitting a FCP with correct reference to the Annotated code of Maryland.
- Lines 129 through 137 Inclusion of “Conditional Use” in the exemption from submitting a FCP that is specific to “Special Exceptions”.
- Line 145                    Inclusion of the word “forest” to clarify that the cutting, cutting, or grading is limited forest and does not include grading of unforested lands.
- Lines 147 and 148        Inclusion of the phrase “or amendment to a preliminary plan” to clarify that the modification to an existing property is also applicable to Preliminary Plan amendments.

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

- Lines 157 and 158        Replacement of the words “cutting or clearing” with “removal, land disturbance” to clarify in order to minimize impacts to trees that it is not just minimization of forest removal or cutting but also the disturbance of land which causes forest removal, particularly when land disturbance is next tree trunk.

Line 160 Inclusion of the phrase “land disturbance to avoid” to reaffirm that disturbance of land is the primary cursor for cutting or clearing of forests. In some instances, by minimizing land disturbance through the use of retaining walls or different stormwater management practices the area of forest to removed can be reduced.

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

Lines 169 and 170 The inclusion of “Sketch Plan”, “Conditional Use”, and “Park Development Plan” clarifies that these plan types are subject to Article II of the FCL. In this section “preliminary plan of subdivision” is replaced with “subdivision plan”. Using the phrase “subdivision plans” captures all three plan types and “subdivision plans” are now defined in section 22A-3 of the proposed revisions to the FCL.

Lines 183 through 186 Staff must review all Natural Resource Inventories/Forest Stand Delineations (NRI/FSDs) within 30 calendar days, otherwise the plan is automatically deemed approved. Applicants do not have a timeframe to respond to staff’s comments. The amendment proposes to create a 90 day regulatory clock for applicants to respond to staff comments otherwise the application is automatically withdrawn. In the last “plan status” update there were 30 NRI/FSDs in various stages of review. Four of those plans were under review by staff and comments were sent to the applicants for the remaining 24 plans. Twelve of 24 plans have been outstanding for more than 365 days with an average of 784 days. Eight of the 24 plans have been stopped for more than 90 days with an average of 197 days. Finally six of the plans have been stopped for less than 90 days. The existing FCL does not have a process to withdraw applications due to inactivity. In order to be consistent with the subdivision of land article in the Montgomery Code and the Zoning Ordinance staff believes a deadline is necessary to withdraw applications that have prolonged inactivity.

Lines 196 through 199 In the current FCL the applicant submits a Preliminary FCP with the first development application such as a Preliminary Plan and a final with the Site Plan. If the development application only requires one approval, such as a Preliminary Plan the applicant would submit the Preliminary Forest Conservation with the Preliminary Plan and obtain approval of the Final FCP before approval of the Record Plat or issuance of a Sediment Control Permit. In order to streamline the review process

staff would like applicants to submit both a Preliminary FCP and a Final FCP with any development applicant that only requires approval of one development application. This ensures a single reviewer for both FCPs and allows for both plans to be certified at the same time. This requirement would require information be submitted sooner. For the most part the difference is that applicants will need to identify the trees to be planted, if planting is required, and specific tree protection measures to protect on and off-site trees by the time the first development plan is approved. In some plan types, such as those associated with a sediment control application, the applicant is already submitting a single FCP that satisfies the needs of both the preliminary FCP and a final FCP.

Lines 201 through 217 Inclusion of the phrase “, or Conditional Use” in this section to clearly identify that a Conditional Use application has the same requirements and approval process as “Special Exception” plans.

Lines 219 through 228 Inclusion of the phrase “, or Park Development Plan” in this section to identify that a Park Development Plan has the same requirements and approval process as a Mandatory Referral.

Lines 232 through 241 This is a new subsection which will require properties subject to a Sketch Plan to obtain approval of a NRI/FSD prior to submitting the Sketch Plan. Staff feels this is a necessary and important requirement particularly since the sketch plan deals with density. The NRI/FSD documents and identifies the environmental constraints on a property and those areas, such as stream buffers, flood plains and wetlands which must be avoided. Approval of the NRI/FSD is necessary for it means that both the applicant and the Planning Department agree to the location of the onsite environmentally sensitive features. This new section does not require an applicant to obtain approval of Preliminary FCP at time of Sketch Plan. That will remain as a supporting document to the Preliminary Plan of Subdivision.

Lines 244 through 261 This new subsection identifies the procedure for any development application that is subject to an Administrative Subdivision. Under the current FCL Administrative Subdivisions are not identified and therefore the FCPs associated with this plan type are being approved by the Planning Board. This new section allows the Planning Director to approval FCPs associated with an Administrative subdivision, however,

if the Planning Director chooses not to review the administrative subdivision the new subsection identifies that the Planning Board must review and act on the FCP.

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

Lines 270 through 272 Staff recommends deletion any referral to natural regeneration of forest. Natural regeneration has not worked well in Montgomery County because the naturally regenerated native trees are either being out competed by non-native and invasive species or are being browsed by deer. In addition, staff has not permitted an applicant to meet their forest conservation planting requirements through natural regeneration for more than 15 years because it has not worked.

Lines 288 through 290 Revisions to the zoning ordinance changed references to certain sections in the FCL that need updating. The purpose of the addition language is to reflect the current zoning ordinance for those parts that still exist in the zoning ordinance.

Lines 299 and 302 Clarifies in the law that a maintenance and management for all planted forest in Special Protection Areas is 5 years. The FCL currently identifies a 2-year maintenance period and does distinguish for plantings within a Special Protection Area and those outside of the special protection area. The 5 year maintenance period is consistent with maintenance and management found on page 37 of the *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County*, which was published in January 2000. In addition, the standard forest conservation maintenance and management agreement template requires that the applicant maintain the forest planting for 5 years. This change is to codify current practices and the Environmental Guidelines.

**Section 22A-21. Variance**

Lines 305 through 311 This section requires all variances to be forwarded to other agencies, including the County Arborist for review and recommendation. In 2009, the State's enabling legislation changed which required a variance to certain trees before they could be impacted by a development application. The County Arborist is part of the Department of Environmental Protection and the state enabling legislation does not identify a County Arborist position. So the referral

of variances to the County Arborist is unique to Montgomery County. Since 2009 the number of referrals to the County Arborist has gone from, on average 0 per year to approximately 30 per year. The County's Streamlining Task Force members identified the exclusion of the County Arborist to review tree variances as a positive effort. Unfortunately, the County never produced a final report with recommendations to streamline the development review process. The language proposed by this amendment would remove the need for any variance associated with trees to be forwarded to the County Arborist. However, it does retain the need for other non-tree variances to be forwarded to the County Arborist for a recommendation. Staff has contacted the Montgomery County Department of Environmental Protection and agrees with removal of need to refer "tree variances" to the County Arborist.

**Section 22A-30. County Arborist**

Line 315                    The proposed changes on this section eliminates, as a duty of the County Arborist, the need to review "tree variances".

**Section 22A-31. Forest Conservation Advisory Committee**

Line 322                    The proposed amendment modifies the composition of one member of the Forest Conservation Advisory Committee from "Economic Development" to "Agricultural Services". This change was precipitated by the discontinuation of Economic Development Department. The participant on the Committee has, for the most part, been a representative of Agricultural Services, just now that section is an Executive Office versus being part of the Economic Development Department.

**CONCLUSION**

Staff recommends the Planning Board approval transmittal of the proposed changes to Chapter 22A of the County code to the President of the Montgomery County Council for introduction as an expedited bill. Staff requests the bill be expedited for it will streamline the development review process and allow for the Planning Director to approval FCPs associated with Administrative Subdivisions.