



## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

**APPROVED**

Tuesday, March 21, 2023

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland at 9:13 a.m. on Tuesday, March 21, 2023.

### PRESENT

Councilmember Evan Glass, President	Councilmember Andrew Friedson, Vice President
Councilmember Gabe Alborno	Councilmember Natali Fani-González
Councilmember Marilyn Balcombe	Councilmember Sidney Katz
Councilmember Laurie-Anne Sayles	Councilmember Kristin Mink
Councilmember Dawn Luedtke	Councilmember Kate Stewart
Councilmember Will Jawando	

The President in the Chair.

### PRESENTATIONS

- A. Proclamation presented by Councilmembers Friedson, Balcombe, and Luedtke recognizing National Agriculture Day.

### GENERAL BUSINESS

- A. Announcements – Agenda and Calendar Changes

Ms. Rupp, Clerk of the Council, announced that public hearings on recommended and potential amendments to the FY24 Capital Budget and FY23-28 Capital Improvements Program (CIP) will be held on April 11, 2023, at 1:00 p.m. and 7:00 p.m. and on April 13, 2023, at 1:00 p.m. and 7:00 p.m. The Council is seeking applicants to fill two full-term vacancies on the Montgomery County Planning Board, one of which will serve full-term as the Planning Board chair. The application deadline is April 3, 2023, at 5:00 p.m. The Council is also accepting applications for membership on the County's Charter Review Commission. The deadline

for applications for the four-year appointments has been extended to 5:00 p.m. on April 3, 2023.

B. **Action** – Approval of Minutes

Approved the minutes of March 1, 2023, without objection.

(2) **DISTRICT COUNCIL SESSION**

A. [Hearing Examiner’s report and recommendation on Local Map Amendment \(LMA\) Application No. H-147 for property located at 11105 New Hampshire Avenue, Silver Spring, MD 20904, further identified as part of Lot E in the “White Oak” subdivision recorded as Plat No. 8280, requesting rezoning from CR-2.5, C-1.5, R-1.5, H-200 \(Commercial Residential\) to CRTF 2.25, C-2.25, R-1.5, H-200’ \(Commercial Residential Town Floating\)](#)

Participating in the discussion was Ms. Byrne, Hearing Examiner, Office of Zoning and Administrative Hearings (OZAH); and Legislative Attorney Ndou.

Ms. Ndou noted a correction to the rezoning request which should read CRTF 2.5 [2.25], C-2.25, R-1.5, H-200 (Commercial Residential Town Floating). She reviewed the purpose of the rezoning request and requirements for approval by the Council. Hearing Examiner Byrne presented her report and recommendations, as contained in the staff report.

Adopted **Resolution 20-86**, approving LMA H-147. Ms. Luedtke made the motion and the Resolution was adopted by a roll call vote:

YEAS: Luedtke, Mink, Sayles, Albornoz, Jawando, Katz, Stewart, Fani-González, Balcombe, Friedson, Glass.

B. Mr. Glass announced that [the Council will hold a public hearing on the Planning Board Draft Amendment to the Master Plan for the Historic Preservation for the Edward U. Taylor Elementary School and Weller’s Dry Cleaning on April 25, 2023, at 1:30 p.m.](#)

**LEGISLATIVE SESSION - Day #9**

(3) **Introduction of Bills:**

A. [Bill 17-23, Taxation - Recordation Tax Rates - Amendments](#)

Introduced draft #1 of **Bill 17-23**, sponsored by Councilmembers Mink and Jawando. A public hearing is scheduled for April 11, 2023, at 1:30 p.m.

(4) **Call of Bills for Final Reading:**

A. [Bill 25-22, Forest Conservation - Trees](#)

Ms. Sorrento, Planning Department staff, participated in the discussion.

Mr. Glass, Chair of the Transportation and Environment (TE) Committee, noted that the subject Bill was introduced last summer and received two public hearings, and reviewed the purpose of the Bill and the Committee's recommendations as contained in the staff report.

Ms. Fani-González requested Planning staff provide a report on naturally regenerating forests and how they can be included in the Forest Bank.

Received comments from Ms. Sorrento concerning reasons to expedite the bill, which would give the County priority with the Department of Natural Resources to make sure the County's law can be approved as an alternative approach rather than the proposed State law, which would be more prohibitive.

Supported Ms. Stewart's motion to make **Bill 25-22** expedited. Ms. Balcombe was opposed and expressed the view that it would cause difficulty for people with projects currently underway.

Unanimously supported Mr. Friedson's motion to amend the Bill by adding the following language after the last line of the Bill:

Sec. 3. Transition. Any amendment to Chapter 22A under Section 1 of this Act does not apply to: (a) a preliminary or final forest conservation plan approved before this Act took effect; or (b) a County highway project if, prior to the effective date of this Act, funding has been appropriated for the project, and the project has been submitted to the Planning Board under mandatory referral.

Enacted draft #3 of **Bill 25-22**, as amended and shown at the end of these minutes. Ms. Sayles made the motion and the Expedited Bill was enacted by a roll call vote:

YEAS: Luedtke, Mink, Sayles, Alborno, Jawando, Katz, Stewart, Fani-González, Balcombe, Friedson, Glass.

B. [Bill 28-22, Common Ownership Communities - Duties, Requirements and Procedures](#)

Mr. Friedson, Chair of the Planning, Housing, and Parks (PHP) Committee, reviewed the purpose of the Bill and the recommendation of the Committee, as shown in the staff report. Legislative Attorney Sokoni participated in the discussion.

Enacted draft #3 of **Bill 28-22** as shown at the end of these minutes. The PHP Committee made the motion and the Bill was enacted by a roll call vote:

YEAS: Luedtke, Mink, Sayles, Albornoz, Jawando, Katz, Stewart, Fani-González, Balcombe, Friedson, Glass.

C. [Bill 3-23, Environmental Sustainability - Montgomery County Green Bank](#)

Mr. Glass summarized the Bill and reviewed the recommendations of the TE Committee, as contained in the staff report. Legislative Attorney Sokoni and Mr. Edwards, Energy, climate, and Compliance Division, Department of Environmental Protection (DEP), participated in the discussion.

Mr. Friedson commented on amendments made by the TE Committee and noted an amendment originally suggested by former Councilmember Nancy Navarro and supported by all Councilmembers to focus a portion of Green Bank funds on equity emphasis areas.

Enacted draft #2 of **Bill 3-23**, as shown at the end of these minutes. The TE Committee made the motion and the Bill was enacted by a roll call vote:

YEAS: Luedtke, Mink, Sayles, Albornoz, Jawando, Katz, Stewart, Fani-González, Balcombe, Friedson, Glass.

D. [Expedited Bill 5-23, Personnel and Human Resources - Prospective Employees - Health Care Privacy](#)

Ms. Stewart, Chair of the Government Operations and Fiscal Policy (GO) Committee, summarized the Committee's discussion and proposed amendments to the Bill. She noted that the GO Committee's amendments also include the proposal to change the effective date to 120 days after it becomes law, removing the "Expedited" nomenclature from the Bill title.

Mr. Jawando requested a comprehensive review of all Office of Human Resources regulations to ensure that they align with current guidelines and policies.

Enacted draft #3 of **Bill 5-23**, as amended and shown at the end of these minutes.

The GO Committee made the motion and the Bill was enacted by a roll call vote:

YEAS: Luedtke, Mink, Sayles, Albornoz, Jawando, Katz, Stewart, Fani-González, Balcombe, Friedson, Glass.

E. [Bill 8-23, Boards, Committees, and Commissions - Open Meetings - Supplemental Requirements](#)

Ms. Stewart reviewed the purpose of the subject Bill and the recommendation of the GO Committee, as contained in the staff report.

Enacted draft #5 of **Bill 8-23**, as shown at the end of these minutes. The GO Committee made the motion and the Bill was enacted by a roll call vote:

YEAS: Luedtke, Mink, Sayles, Albornoz, Jawando, Katz, Stewart, Fani-González, Balcombe, Friedson, Glass.

F. [Expedited Bill 4-23, Administration - Non-Merit Positions - Special Projects Manager](#)

Mr. Madaleno, Chief Administrative Officer, participated in the discussion.

Ms. Stewart reviewed the purpose of the Expedited Bill and the recommendation of the GO Committee, as contained in the staff report. She noted the Committee's recommendation to include a sunset date so that the need for the position would be reviewed in three years.

Mr. Friedson, said that while he will support the Expedited Bill with the inclusion of the sunset date, he expressed the view that the position should have been added during the budget process and that the County Executive should have reviewed current vacancies in County government before creating a new position.

Ms. Luedtke, in expressing opposition to the Bill, said she was unconvinced that the functions of this position could not be done by existing staff and resources, noting the significant number of current vacancies and the County's current fiscal situation.

Mr. Glass stated he does not support the creation of this position and expressed the view that this work could be done by existing Technology and Enterprise Business Solutions (TEBS) staff and noted the 137 new tax-supported positions created by the County Executive.

Enacted draft #1 of **Bill 4-23**, as amended and shown at the end of these minutes. The GO Committee made the motion and the Bill was enacted by a roll call vote:

YEAS: Mink, Sayles, Albornoz, Jawando, Katz, Stewart,  
Fani-González, Balcombe, Friedson  
NAYS: Luedtke, Glass.

G. [Bill 18-22, Noise Control - Leaf Removal Equipment - Amendments](#)

Mr. Glass reviewed the history of the Bill and the recommendations of the TE Committee, as contained in the staff report, noting the significant number of people that would be impacted by the Bill.

Ms. Balcombe commented on the number of unanswered questions associated with the Bill, including specifics of the rebate program and how it would be communicated, and that details of this program would not be available until mid-2024. She stated that this is a complex bill with many unresolved issues, and it must be crafted to address the needs of all stakeholders.

Supported Ms. Balcombe's motion to table discussion of **Bill 18-22**:

YEAS: Luedtke, Sayles, Albornoz, Balcombe, Jawando, Katz,  
Fani-González  
NAYS: Stewart, Mink, Friedson, Glass.

(5) **CONSENT CALENDAR**

Ms. Luedtke requested Item C, Executive Regulation No. 24-22, Special Projects Manager Class Specification, be removed from the consent calendar and considered separately.

Approved the following consent calendar items listed below.

Ms. Luedtke made the motion, which carried without objection.

- A. **Introduced** a Resolution to approve or disapprove a Memorandum of Agreement regarding Nurse Retention, between the Montgomery County Government and the United Food and Commercial Workers, Local 1994, Municipal and County Government Employees Organization (MCGEO), dated February 27, 2023.
- B. Adopted **Resolution 20-87**, approving Montgomery County Planning Board Regulation 25-22 on Forest Conservation - Trees.
- C. Resolution to approve Executive Regulation No. 24-22, Special Projects Manager Class Specification.  
**This item was removed from the consent calendar and considered separately.**
- D. **Received and Released** the Office of Legislative Oversight Memorandum Report 2023-4, Developing Data Strategies for Future Emergencies.
- E. Adopted **Resolution 20-88**, confirming the County Executive's appointment to the Criminal Justice Coordinating Commission: Kathryn Pontzer.
- F. **Introduced** a Supplemental Appropriation to the County Government's FY23 Operating Budget, Department of Health and Human Services Childhood Lead Poisoning Prevention and Environment Case Management Grant, \$550,000 (Source of Funds: State Funds).

(5C.) **ACTION** - Resolution to approve Executive Regulation No. 24-22, Special Projects Manager Class Specification.

Adopted **Resolution 20-89**, approving the subject Executive Regulation.

Mr. Albornoz made the motion, which carried by a vote of 9 to 2. Ms. Luedtke and Mr. Glass were opposed.

The Council recessed at 11:10 a.m. and reconvened at 1:18 p.m.

## **PRESENTATION**

- A. Proclamation presented by Council President Glass and County Executive Elrich recognizing Ramadan.

(6) **PUBLIC HEARING - [Bill 11-23, Motor Vehicles and Traffic - Traffic Control Signals, Devices, and Enforcement Action Plan \(The Safe Streets Act of 2023\)](#)**

The public hearing was conducted. A Transportation and Environment (TE) Committee worksession is scheduled for March 30, 2023. Those wishing to submit additional testimony must do so before close of business March 23, 2023.

(7) **PUBLIC HEARING/ACTION - [Amendment to the FY23-28 Capital Improvements Program and Supplemental Appropriation to the FY23 Capital Budget, Montgomery County Public Schools, Relocatable Classrooms \(No.846540\), \\$7,500,000 \(Source of Funds: Current Revenue General\).](#)**

The public hearing was conducted and the record closed.

Adopted **Resolution 20-90**, approving the subject amendment to the Capital Improvements Program and supplemental appropriation.

Mr. Albornoz made the motion which carried without objection.

(8) **PUBLIC HEARING/ACTION - [Supplemental Appropriation to the FY23 Capital Budget, Montgomery County Public Schools, HVAC \(Mechanical Systems\) Replacement: MCPS \(No. 816633\), \\$25,000,000 \(Source of Funds: GO Bonds and State Aid\)](#)**

The public hearing was conducted and the record closed.

Adopted **Resolution 20-91**, approving the subject supplemental appropriation.

Mr. Jawando made the motion which carried without objection.

(9) **ACTION - [Amendments to the Comprehensive Water Supply and Sewerage Systems Plan: Water and Sewer Category Change Requests](#)**

Mr. Levchenko, Senior Legislative Analyst, provided a summary of the subject category change requests, the recommendations of the County Executive, and the findings of the Department of Environmental Protection and the Planning Board.

Mr. Glass noted the robust discussion regarding these category change requests that took place during the TE Committee's meeting on March 6, 2023.

Adopted **Resolution 20-92**, approving the subject amendments to the Comprehensive Water Supply and Sewerage Systems Plan.



Ms. Balcombe made the motion which carried without objection.

(10) **UPDATE:** [American Rescue Plan Act \(ARPA\) and FEMA Reimbursement](#)

Participating in the discussion were Mr. Howard, Council Deputy Director; Dr. Stoddard, Assistant Chief Administrative Officer; and Mr. Orlosky, Office of Management and Budget (OMB).

Mr. Howard noted the Federal Emergency Management Agency (FEMA) resources were not assumed in the FY23 Operating Budget and provided a summary of the County's FEMA reimbursement. To date the County has submitted \$64.9 million for reimbursement and has received \$54.5 million in reimbursement.

Mr. Friedson requested that the Executive Branch provide a detailed analysis of the remaining FEMA reimbursement applications that have not been fulfilled and assumptions related to the likelihood of reimbursement.

Mr. Howard discussed the County's \$204.1 million received from the American Rescue Plan Act (ARPA) funds and noted the Office of Management and Budget's (OMB) spending summary by department, as contained in the staff report. He also provided an update on the ARPA funding that was set aside by the previous Council for affordable housing and food security efforts.

In response to Mr. Glass's question as to how the County Executive intends to fund programs in FY24 that have been funded in FY23 by ARPA Funds, Dr. Stoddard shared the County Executive's position is that services to provide food resiliency must remain funded.

Mr. Albornoz requested that Council staff provide an update to Council on the federal funds that have been received by County partner organizations such as Montgomery County Public Schools, Montgomery College, and local hospitals to better understand their funding needs.

Ms. Stewart requested confirmation that federal funding provided to the Arts and Humanities Council was distributed as intended.

Mr. Friedson shared his support to fully fund the Working Families Income Supplement program, but expressed concern about reallocating unspent funds from prior appropriations for the Hospital Assistance Program and the Business Rental Assistance Program from one area to another unrelated program. Mr. Friedson also raised the subject of determining if developing a food aggregation facility, which would help to address food resiliency and security,

would qualify for ARPA funding. Ms. Balcombe shared her support for this proposal.

Mr. Jawando requested additional information on the unspent funds for the Business Rental Assistance program and the eligibility requirements and requested that this is discussed before reallocating the funds that were committed to this. He also requested a similar examination of the hotel assistance program before reallocating the funds designated for this program. Ms. Balcombe added that the eligibility requirements for the Business Rental Assistance program were narrow and advocated for more outreach to businesses.

Ms. Mink requested information on ARPA funding to support food hub operations and an update on funds available for the Rapid Rehousing program.

**WORKSESSION - Amendments to FY23-28 Capital Improvements Program (CIP):**

(11) [Economic Development](#)

Ms. Fani-González, Chair of the Economic Development (ECON) Committee, and Mr. Mia, Legislative Analyst, noted the ECON Committee's discussions regarding White Flint and White Oak redevelopment projects, as contained in the staff report.

Approved the subject CIP, as submitted by the County Executive.

(12) Digital Equity - Montgomery

This item has been rescheduled to March 28, 2023.

(13) Technology Services

This item has been rescheduled to March 28, 2023.

(14) [County Offices & Other Improvements](#)

Mr. Dise, Director, Department of General Services, and Mr. Mia participated in the discussion.

Ms. Stewart summarized the GO Committee's discussions, including a proposal to create an equipment reserve fund.

Mr. Mia noted that additional proposed Americans with Disabilities Act (ADA) compliance projects will be discussed at a future GO Committee worksession.

Approved the subject CIP, as submitted by the County Executive.

(15) [M-NCPPC Parks](#)

Ms. Dunn, Senior Legislative Analyst, participated in the discussion.

Mr. Friedson, Chair of the Planning, Housing, and Parks (PHP) Committee, summarized the Committee's discussion points, noting the rejection of the proposed budget reductions, as submitted by the County Executive.

Ms. Dunn noted that an additional budget reduction was submitted by the County Executive recently and is under review by the Planning Board and will be before the PHP Committee for consideration in the near future.

Approved the subject CIP, as recommended by the PHP Committee.

(16) [Burtonsville Community Revitalization](#)

Mr. Mia participated in the discussion.

Approved the subject CIP, as submitted by the County Executive.

(17) [Affordable Housing Acquisition and Preservation](#)

Approved the subject CIP, as submitted by the County Executive.

The meeting adjourned at 3:26 p.m.

This is a correct copy of Council action:

  
\_\_\_\_\_  
Judy Rupp  
Clerk of the Council

Expedited Bill No. 25-22  
Concerning: Forest Conservation –  
Trees  
Revised: 03/21/2023 Draft No. 4  
Introduced: September 13, 2022  
Enacted: March 21, 2023  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Then-Council President Alborno at the Request of the Planning Board

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**AN EXPEDITED ACT** to:

- (1) exclude activities in the Commercial Residential (CR) zone from qualifying for certain Forest Conservation Plan (FCP) exemptions;
- (2) exclude any development that occurs within an environmental buffer from qualifying for a FCP exemption;
- (3) change the timeline for approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD);
- (4) increase the amount of forest required to be preserved in lower density land use categories;
- (5) increase forest planting requirements in higher density land use categories;
- (6) increase reforestation ratios;
- (7) require planting of forest in all unforested stream valley buffers;
- (8) amend the requirements where forest retention required by the Forest Conservation Law is not possible;
- (9) broaden the terms of maintenance and management agreements to include required maintenance for areas of existing forest retained to meet forest mitigation requirements;
- (10) expand mitigation requirements for variance trees to include mitigation for variance trees located within a forest;
- (11) allow landscaping to meet both reforestation or afforestation requirements in equity focus areas;
- (12) update the allowable types of forest mitigation banks allowed in the County per recent amendment to the State's Forest Conservation Act; and
- (13) generally amend Chapter 22A.

By amending

Montgomery County Code  
Chapter 22A, Forest Conservation – Trees  
Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-9, 22A-10, 22A-11, 22A-12, 22A-13,  
and 22A-21

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

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



26 Environmental guidelines mean the Guidelines for Environmental  
27 Management of Development in Montgomery County, Maryland (M-  
28 NCPPC), as amended.

29 Equestrian Facility: A] means any building, structure, or land area that  
30 is primarily used for the care, breeding, boarding, rental, riding, sport  
31 eventing, or training of horses or ponies, the teaching of equestrian  
32 skills, or competitive equestrian events.

33 \* \* \*

34 Forest conservation threshold means the percentage of the net tract area  
35 at which the reforestation [requirement changes from a ratio of ¼ acre  
36 planted for every one acre removed to a ratio of 2 acres planted for  
37 every one acre removed] ratio increases as specified in Section 22A-12.

38 \* \* \*

39 Forest mitigation banking means the intentional [preservation,]  
40 restoration[,] or creation of forests undertaken expressly to provide  
41 credits for afforestation or reforestation requirements.

42 \* \* \*

43 Minor subdivision means a plan for a proposed subdivision [or  
44 resubdivision] prepared and submitted for approval by the Planning  
45 Director under Division 50.7 of Chapter 50.

46 \* \* \*

47 Park development plan means an application submitted by the  
48 Montgomery County Parks Department for the construction and  
49 development of a specific park.

50 Patuxent Primary Management Area (PMA) means [[areas]] an area of  
51 environmental importance within the Patuxent River watershed, as  
52 further defined in the [[Environmental]] environmental guidelines.

\* \* \*

*Preliminary plan of subdivision* means a plan for a proposed subdivision [or resubdivision] prepared and submitted for approval by the Planning Board under Division 50.4 of Chapter 50 before preparation of a subdivision plat.

*Project plan* means [a plan or] an amendment to a project plan referred to in Section 7.7.1.B of Chapter 59 [or a sketch plan approved under Section 7.3.3 of Chapter 59].

\* \* \*

*Special Protection Area (SPA)* means a geographic area designated by the County Council under Section 19-62(a).

*Specimen tree* means a tree that is a particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.

\* \* \*

**22A-4. Applicability.**

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

- (a) a person required by law to obtain an approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, biohealth priority campus plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan;

\* \* \*

**22A-5. Exemptions.**

The requirements of Article II do not apply to:



80 (a) an activity conducted on an existing single lot of any size that is  
81 required to construct a dwelling house or accessory structure (such as a  
82 pool, tennis court, or shed) intended for the use of the owner, if the  
83 activity:

84 (1) does not require a special exception;

85 (2) does not occur within an environmental buffer, except for the  
86 allowable uses stated in the environmental guidelines;

87 [(2)] (3) does not result in the cutting, clearing, or grading of:

88 \* \* \*

89 (k) any lot covered by a preliminary plan of subdivision or site plan that  
90 did not receive a sediment control permit before July 1, 1991, and for  
91 which the preliminary plan of subdivision or site plan:

92 (1) was approved before July 1, 1984, and has less than 40,000  
93 square feet of forest cover; or

94 (2) was approved or extended between July 1, 1984 and July 1, 1991,  
95 and

96 (3) the construction will not result in the cutting, clearing, or grading  
97 of:

98 (A) any forest in a stream buffer, or

99 (B) any forest on property located in a special protection area  
100 which must submit a water quality plan.

101 A preliminary plan of subdivision or site plan approved before  
102 July 1, 1991, that is revised after that date at the initiative of the  
103 applicant and which results in the cutting of more than 5,000  
104 additional square feet of forest is not exempt. Development or  
105 redevelopment of a property which requires [resubdivision]

106 subdivision is not exempt. This subsection does not apply to a  
107 planned unit development subject to subsection (l);

108 \* \* \*

109 (n) any minor subdivision under Division 50.7 of Chapter 50 if:

110 (1) the only development located on the resulting lot is a single  
111 family dwelling unit or an accessory structure (such as a pool,  
112 tennis court, or shed); development does not occur within an  
113 environmental buffer, except for the allowable uses stated in the  
114 environmental guidelines; and development does not result in the  
115 cutting, clearing, or grading of:

116 \* \* \*

117 (s) (1) an activity occurring on a tract of land that is less than 1.5 acres  
118 and that [[meets all of the following criteria]]:

119 (A) is not located within the Commercial Residential (CR)  
120 zone classification;

121 (B) has [with] no existing forest, [[or]] existing specimen<sub>s</sub> or  
122 champion tree[, and]<sub>s</sub>;

123 (C) would not result in an [the] afforestation [requirements  
124 would not] requirement that [exceed] exceeds 10,000  
125 square feet; and

126 (D) would not result in development within an environmental  
127 buffer, except for the allowable uses stated in the  
128 environmental guidelines; or

129 (2) an activity occurring on a tract of land that is less than 1 acre and  
130 that [[meets all of the following criteria]]:

131 (A) is not located within the Commercial Residential (CR)  
132 zone classification;

133 (B) [that will] would not result in the clearing of more than a  
134 total of 20,000 square feet of existing forest, or any  
135 existing specimen or champion tree; [, and]

136 (C) would not result in a reforestation [requirements]  
137 requirement that [would not exceed] exceeds 10,000  
138 square feet;[.]

139 (D) would not result in development within an environmental  
140 buffer, except for the allowable uses stated in the  
141 environmental guidelines; and

142 (E) [Forest]preserves forest in any [priority area] on-site  
143 floodplains, stream buffers, steep slopes, critical habitats,  
144 and areas designated as priority save areas in a master plan  
145 or functional plan [[must be preserved.]]]; and];

146 (t) a modification to a:

147 (1) non-residential developed property if:

148 (A) no more than 5,000 square feet of forest is ever cleared at  
149 one time or cumulatively after an exemption is issued;

150 (B) the modification does not result in the cutting, clearing, or  
151 grading of any forest in a stream buffer or forest located  
152 on property in a special protection area which must submit  
153 a water quality plan;

154 (C) the development does not occur within an environmental  
155 buffer, with the exception of the allowable uses stated in  
156 the environmental guidelines;



182 and a proposed development, trees that [which] are smaller than  
183 specimen size may be included in the tree save plan.

- 184 (b) *Exemption expiration.* A confirmed exemption is valid for 5 years from  
185 the date the exemption is confirmed [that has not started any authorized  
186 land disturbance within 5 years from the date of approval of the  
187 exemption is expired], unless the confirmed exemption pertains to a  
188 subdivision with a validity period of more than 5 years, in which case].  
189 If the subdivision has a validity period of more than 5 years,] the  
190 confirmed exemption does not expire until the end of the subdivision  
191 validity period. If site development activities have not been authorized  
192 by the forest conservation inspector to commence before the expiration  
193 date, including inspections detailed under 22A-15(c)(2)(A) and (B), the  
194 approved exemption will expire at that time.

195 \* \* \*

196 **22A-9. County and Municipal Highway Projects**

- 197 (a) *General.*

198 (1) This Section applies to construction of a highway or by the  
199 County or a municipality as part of an approved Capital  
200 Improvements Program project.

201 (2) The construction should minimize forest removal, land  
202 disturbance, and loss of significant, specimen, or champion trees  
203 to the extent possible while balancing other design, construction,  
204 and environmental standards. The constructing agency must  
205 make a reasonable effort to minimize land disturbance to avoid  
206 the cutting or clearing of trees and other woody plants.

207 (b) If the forest to be cut or cleared for a County highway project equals or  
208 exceeds 20,000 square feet, the constructing agency must reforest a  
209 suitable area at the rate of one acre of protected reforestation for each  
210 acre of forest cleared.

211 (c) Reforestation for County highway projects must meet the standards in  
212 subsections 22A-12(e), (g) and (h).

213 (d) Any mitigation requirement for loss of significant, specimen, or  
214 champion trees must be based on the size and character of the tree.

215 \* \* \*

216 **22A-10. General**

217 \* \* \*

218 (b) *Forest stand delineation.*

219 \* \* \*

220 (4) An approved forest stand delineation is not valid after 2 years  
221 unless:

222 (A) a forest conservation plan or a plan under Section 22A-9  
223 has been accepted as complete; or

224 (B) the delineation has been recertified by the preparer, which  
225 may occur within one year after the expiration date if the  
226 requirements of Section 22A.00.01.06.F, as amended, of  
227 the Forest Conservation – Trees Regulations are met.

228 (5) An approved forest stand delineation may not be amended. A  
229 new forest stand delineation must be submitted for review in  
230 order to make any changes.

231 \* \* \*

232 **22A-11. Application, review, and approval procedures**

233 (a) [General] *General*.

234 (1) ~~[[Application]]~~ *Application*. The submission of a development  
 235 plan, floating zone plan, project plan, sketch plan, subdivision  
 236 plan, site plan, biohealth priority campus plan, special exception,  
 237 conditional use, mandatory referral, park development plan, or  
 238 sediment control permit under this Section must include an  
 239 approved forest stand delineation or a confirmed exemption from  
 240 submitting a forest conservation plan under Section 22A-5.

241 [(1)](2) ~~[[Coordinated with project review]]~~ *Coordinated with project*  
 242 *review*. The [forest stand delineation and] forest conservation  
 243 plan must be submitted and reviewed in conjunction with the  
 244 review process for a development plan, floating zone plan,  
 245 project plan, [sketch plan,] subdivision plan, site plan, biohealth  
 246 priority campus plan, special exception, conditional use,  
 247 mandatory referral, park development plan, or sediment control  
 248 permit under this Section. The Planning Director must coordinate  
 249 review of the forest conservation plan with the Director of  
 250 Environmental Protection, the Director of Permitting Services,  
 251 the Washington Suburban Sanitary Commission, other relevant  
 252 regulatory agencies, and entities that will provide public utilities  
 253 to the tract, to promote consistency between the objectives of this  
 254 Chapter and other development requirements. To the extent  
 255 practicable, entities providing public utilities should design  
 256 facilities that will serve a tract in a manner that avoids identified  
 257 conservation areas and minimizes tree loss.

258 ~~[(2)](3)~~ ~~[[Modification to an approved plan]]~~ Modification of an  
 259 approved plan. The Planning Director may approve  
 260 modifications to an approved forest conservation plan that are  
 261 consistent with this Chapter if:

262 (A) field inspections or other evaluation reveals minor  
 263 inadequacies of the plan; or

264 (B) each modification is a minor amendment, as defined in  
 265 Section 22A.00.01.13.A.1, as amended, of the Forest  
 266 Conservation – Trees Regulations, and does not impact  
 267 any forest in a priority area (such as substituting an on-site  
 268 conservation area for an equal or greater on-site area of  
 269 similar character, or substituting a marginal on-site  
 270 conservation area for equal or greater amount of off-site  
 271 priority area); or

272 (C) action is otherwise required in an emergency situation.

273 Any other modification, including major amendments, must be  
 274 approved by the agency that approved the forest conservation  
 275 plan.

276 ~~[(3)](4)~~ ~~[[ Notice]]~~ Notice. Public posting and written notice of forest  
 277 conservation plan applications must be provided by applicants as  
 278 specified in ~~[regulation]~~ Section 50/59.10.01.04, as amended, of  
 279 the Administrative Procedures for Development Review.

280 (b) *Project requiring development plan, floating zone plan, project plan,*  
 281 *[sketch plan,] preliminary plan of subdivision, biohealth priority*  
 282 *campus plan, or site plan approval.*



283 (1) ~~[[Forest stand delineation]]~~ Forest stand delineation. The  
284 applicant must submit to the Planning Director a forest stand  
285 delineation ~~[with the]~~ and the forest stand delineation must be  
286 approved before the applicant ~~[[can]]~~ may submit an application  
287 for a development plan, floating zone plan, project plan, [sketch  
288 plan,] preliminary plan of subdivision, biohealth priority campus  
289 plan, or site plan[, whichever comes first]. Within 30 days of  
290 receipt, the Planning Director must notify the applicant whether  
291 the forest stand delineation is complete and correct. If the  
292 Planning Director fails to notify the applicant within 30 days, the  
293 delineation will be treated as complete and correct. The Planning  
294 Director may require further information or provide for one  
295 extension of this deadline for an additional 15 days for  
296 extenuating circumstances. The applicant must submit revised  
297 drawings to address comments within 90 days from the date the  
298 Planning Director sends comments to the applicant. If the  
299 applicant fails to submit revised drawings, the application is  
300 deemed withdrawn. The Planning Director may provide for one  
301 extension of this deadline for extenuating circumstances.

302 (2) ~~[[Forest conservation plan]]~~ Forest conservation plan.

303 (A) ~~[[Application]]~~ Application. After being notified that the  
304 forest stand delineation is complete and correct, the  
305 applicant must submit a forest conservation plan to the  
306 Planning Director with the related application for a  
307 development plan, floating zone plan, project plan,  
308 preliminary plan of subdivision, biohealth priority campus  
309 plan, or site plan. If the development proposal will require

310 more than one [of the] [approvals] approval subject to this  
311 subsection, the applicant must submit a preliminary forest  
312 conservation plan to the Planning Director in conjunction  
313 with the first approval, and a final forest conservation plan  
314 in conjunction with the last approval; however, if multiple  
315 approvals subject to this subsection are submitted to the  
316 Planning Director for simultaneous review, the applicant  
317 need [[only]] submit only a final forest conservation plan  
318 that will be considered for each relevant application. If  
319 only one approval subject to this subsection is required, an  
320 applicant must submit [a preliminary forest conservation  
321 plan and] a final forest conservation plan at the time of the  
322 development application.

323 (B) ~~[[Review]]~~ Review. Within 45 days from receipt of a final  
324 forest conservation plan, including a plan that is not  
325 reviewed in 2 stages, the Planning Director must notify the  
326 applicant whether the forest conservation plan is complete  
327 and approved for submission to the Planning Board as part  
328 of the development application. If the applicant is not  
329 notified within 45 days, the plan will be treated as  
330 complete and approved for submission. The Planning  
331 Director may require further information or provide for  
332 one extension of this deadline for an additional 15 days for  
333 extenuating circumstances. In addition, at the request of  
334 the applicant, the Director may extend this deadline further  
335 for extenuating circumstances.

336 (C) ~~[[Approval]]~~ Approval. The Planning Board must review  
337 and act on the forest conservation plan concurrently with  
338 the development plan, floating zone plan, project plan,  
339 [sketch plan,] preliminary plan of subdivision, biohealth  
340 priority campus plan, or site plan, as appropriate.  
341 Compliance with the preliminary forest conservation plan,  
342 when required and as amended by the Board, must be  
343 made a condition of any approval of the first applicable  
344 development application. Compliance with the final forest  
345 conservation plan, as amended by the Board, must be  
346 made a condition of any approval of the last development  
347 application. For a development plan or a floating zone  
348 plan, a Planning Board recommendation to the District  
349 Council on the preliminary forest conservation plan must  
350 be made under Section 59-7.2.1. A final forest  
351 conservation plan must be approved by the Planning  
352 Board or Planning Director, as appropriate, before the  
353 Planning Board approves a record plat.

354 (c) *Project requiring special exception or conditional use approval.*

355 (1) ~~[[Forest stand delineation]]~~ Forest stand delineation. If a special  
356 exception or conditional use proposal is subject to the  
357 requirements of this Chapter, the applicant must submit a forest  
358 stand delineation to the Planning Director before the Board of  
359 Appeals may consider the application for the special exception.  
360 The deadlines for reviewing a forest stand delineation are the  
361 same as in [paragraph] paragraphs (a)(1) and (b)(1) of this  
362 Section.

363 (2) [[Forest conservation plan]] Forest conservation plan. Upon  
364 notification that the forest stand delineation is complete and  
365 correct, the applicant must submit a preliminary forest  
366 conservation plan to the Planning Director. The Board of  
367 Appeals must consider the preliminary forest conservation plan  
368 when approving the special exception or conditional use  
369 application and must not approve a special exception or  
370 conditional use application that conflicts with the preliminary  
371 forest conservation plan. A final forest conservation plan must  
372 be submitted before obtaining a sediment control permit, or at  
373 the time of preliminary plan of subdivision or site plan  
374 application, if required. The deadlines for reviewing a final forest  
375 conservation plan are the same as in paragraph (d)(2) of this  
376 Section.

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

378 (1) [[Forest stand delineation]] Forest stand delineation. If an  
379 application for a sediment control permit [[may]] might be  
380 subject to the requirements of this Chapter, the applicable  
381 sediment control permit issuing authority must direct the  
382 applicant to the Planning Director for a determination. If the  
383 Planning Director finds the sediment control permit application  
384 to be subject to this Chapter, the applicant must submit a forest  
385 stand delineation to the Planning Director for review. The  
386 deadlines for reviewing a forest stand delineation are the same as  
387 in [paragraph] paragraphs (a)(1) and (b)(1) of this Section.

388 (2) [[Forest conservation plan]] Forest conservation plan. Upon  
 389 notification that the forest stand delineation is complete and  
 390 correct, the applicant must submit to the Planning Director a  
 391 forest conservation plan. Within 45 days from receipt of the  
 392 forest conservation plan, the Planning Director must notify the  
 393 applicant if the forest conservation plan is complete and  
 394 approved. If the applicant is not notified within 45 days, the plan  
 395 will be treated as complete and approved. The Director may  
 396 require further information or provide for an extension of this  
 397 deadline for an additional 15 days for extenuating circumstances.  
 398 In addition, at the request of the applicant, the Director may  
 399 extend this deadline further for extenuating circumstances.

400 (3) [[Issuance of sediment control permit]] Issuance of sediment  
 401 control permit. A sediment control permit must not be issued to  
 402 a person who must comply with this Article until a final forest  
 403 conservation plan, if required, is approved.

404 (e) *Project requiring mandatory referral or park development plan.*

405 (1) [[Forest stand delineation]] Forest stand delineation. A person  
 406 seeking mandatory referral or a park development plan for a  
 407 project that is subject to the requirements of this Chapter must  
 408 first submit a forest stand delineation to the Planning Director for  
 409 review. The deadlines for reviewing a forest stand delineation are  
 410 the same as in [paragraph] paragraphs (a)(1) and (b)(1) of this  
 411 Section.

412 (2) [[Forest conservation plan]] Forest conservation plan. Upon  
 413 notification that the forest stand delineation is complete and

414 correct, the applicant must submit to the Planning Director a final  
415 forest conservation plan. The Planning Board must consider the  
416 final forest conservation plan when reviewing the mandatory  
417 referral application or the park development plan.

418 (3) ~~[[Issuance of a sediment control permit]]~~ Issuance of a sediment  
419 control permit. Issuance of a sediment control permit is subject  
420 to the conditions specified in paragraph (d)(3) of this Section.

421 (f) *Project requiring sketch plan approval.*

422 (1) ~~[[Forest stand delineation]]~~ Forest stand delineation. For any  
423 sketch plan application filed on or after November 14, 2017, the  
424 applicant must submit to the Planning Director, for approval, a  
425 forest stand delineation [reviewed concurrently with] before the  
426 sketch plan application. The deadlines for reviewing a forest  
427 stand delineation are the same as in [paragraph] paragraphs (a)(1)  
428 and (b)(1) of this Section. [The forest stand delineation must be  
429 approved prior to Planning Board approval of the sketch plan.]

430 (2) ~~[[Forest conservation plan]]~~ Forest conservation plan. Upon  
431 notification that the forest stand delineation is complete and  
432 correct, the applicant must submit a preliminary forest  
433 conservation plan to the Planning Director with the first  
434 development application after approval of the sketch plan. The  
435 deadlines for reviewing a preliminary and final forest  
436 conservation plan are the same as in [paragraph] paragraphs  
437 (b)(2)(B) and (b)(2)(C) of this Section.

438 (g) *Project requiring administrative subdivision approval.*

439 (1) ~~[[Forest stand delineation]]~~ Forest stand delineation. The  
440 applicant must submit to the Planning Director a forest stand  
441 delineation before the administrative subdivision application.  
442 The deadlines for reviewing a forest stand delineation are the  
443 same as in ~~[paragraph]~~ paragraphs (a)(1) and (b)(1) of this  
444 Section.

445 (2) ~~[[Forest conservation plan]]~~ Forest conservation plan. Upon  
446 notification that the forest stand delineation is complete and  
447 correct, the applicant must submit a preliminary forest  
448 conservation plan to the Planning Director. The Planning  
449 Director must consider the preliminary forest conservation plan  
450 when approving the administrative subdivision application and  
451 must not approve an administrative subdivision application that  
452 conflicts with the preliminary forest conservation plan. A final  
453 forest conservation plan must be submitted and approved before  
454 obtaining a sediment control permit[,] or record plat, whichever  
455 comes first. The deadlines for reviewing a final forest  
456 conservation plan are the same as in paragraph (d)(2) of this  
457 Section. If the Director defers the approval of an administrative  
458 subdivision to the Planning Board, the Planning Board must  
459 review and act on the preliminary forest conservation plan with  
460 the administrative subdivision plan. The deadlines for reviewing  
461 a final forest conservation are the same as in paragraph (b)(2)(C)  
462 of this Section.

463 \* \* \*

464 **22A-12. Retention, afforestation, and reforestation requirements.**

465 (a) *Table.*

466

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area</i>		
<i>Land Use Category</i>	<i>Forest Conservation Threshold</i>	<i>Required Afforestation</i>
Agricultural and resource areas	[50]55%	20%
<u>Cluster medium-density residential areas</u>	<u>45%</u>	<u>20%</u>
Medium-density residential areas	[25] <u>35%</u>	20%
Institutional development areas	[20] <u>25%</u>	[15] <u>20%</u>
High-density residential areas	20%	15%
Mixed-use development areas	20%	15%
Planned unit development areas	20%	15%
Commercial and industrial use areas	15%	15%

467

468

\* \* \*

469

(b) *Retention.*

470

\* \* \*

471

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

472

473

474

475

476

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

477

478

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

479



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

483 (iii) COMAR 08.03.08;

484 (B) Any tree that is:

485 (i) 1 inch in caliper or larger and part of a historic site  
486 or located within an historic district,

487 (ii) associated with a historic structure, or

488 (iii) designated by the State or County as a national,  
489 State, or County champion tree; ~~[[or]]~~

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

492 (i) 30 inches or more; or

493 (ii) 75% or more of the diameter, measured at 4.5 feet  
494 above ground, of the current State champion tree of  
495 that species; or

496 (D) Any forest in a floodplain or stream buffer, except if the  
497 activity occurring within the floodplain or stream buffer is  
498 permitted under the environmental guidelines.

499 \* \* \*

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

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

506 if reforestation is occurring within the same 8-digit watershed as  
 507 the project or a priority 8-digit watershed, special protection area,  
 508 or the Patuxent Primary Management Area (PMA); or 2 ½ acres  
 509 planted for every one acre removed if reforestation is occurring  
 510 within the County outside of the same 8-digit watershed and  
 511 outside of a priority 8-digit watershed, special protection area, or  
 512 the Patuxent Primary Management Area (PMA).

- 513 (2) For all existing forest cover measured to the nearest 1/10 acre  
 514 cleared on the net tract area above the applicable forest  
 515 conservation threshold, the area of forest removed must be  
 516 reforested at a ratio of [1/4] ½ acre planted for every one acre  
 517 removed if reforestation is occurring within the same 8-digit  
 518 watershed as the project or a priority 8-digit watershed, special  
 519 protection area, or the Patuxent Primary Management Area  
 520 (PMA); or 1 acre planted for every one acre removed if  
 521 reforestation is occurring within the County outside of the same  
 522 8-digit watershed and outside of a priority 8-digit watershed,  
 523 special protection area, or the Patuxent Primary Management  
 524 Area (PMA).

525 \* \* \*

526 (d) *Afforestation.*

- 527 (1) A site with less than 20 percent of the net tract area in forest cover  
 528 must be afforested in accordance with the required afforestation  
 529 percentages shown on the table in subsection (a) of this Section.  
 530 (2) Afforestation [should] must be accomplished by the planting of  
 531 forest cover[. However], unless the applicant demonstrates to the

532 satisfaction of the Planning Board or Planning Director, as the  
533 case may be, that afforestation using forest cover is inappropriate  
534 for a site because of its location in an urban setting,  
535 redevelopment context, high-density residential, commercial,  
536 industrial, planned unit development, or institutional area (as  
537 defined in Section 22A-3), or similar reason, in which case  
538 afforestation requirements may be satisfied by tree cover.

539 \* \* \*

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

541 (1) General requirements.

542 (A) *Preferred sequence.* Except as provided in the technical  
543 manual or otherwise in paragraph (1) of this subsection,  
544 the preferred sequence for afforestation and reforestation  
545 is, in general: on-site afforestation or reforestation; off-site  
546 afforestation or reforestation; enhancement of existing  
547 forest through on-site selective clearing, supplemental  
548 planting, or both; acquiring credit(s) from an off-site forest  
549 mitigation bank; paying a fee in-lieu; and landscaping with  
550 an approved plan.

551 (B) Stream valley buffers. All unforested stream valley  
552 buffers on site must be afforested or reforested, except if  
553 the applicant demonstrates to the satisfaction of the  
554 Planning Board or Planning Director that [[afforestation or  
555 reforestation in the stream valley buffer]]:

556 (i) afforestation or reforestation in the stream valley  
557 buffer would be in conflict with allowable uses as

558 established in the latest version of the  
559 environmental guidelines;

560 (ii) the stream valley buffer is located on park property  
561 stewarded by the Department of Parks, and the  
562 afforestation or reforestation would [[conflicts]]  
563 conflict with the mission and established  
564 stewardship practices of the Department of Parks;  
565 or

566 (iii) the stream valley buffer is not suitable to establish  
567 and retain required planting materials, [[then]] in  
568 which case a substitute environmental protective  
569 measure must be implemented.

570 All unforested stream valley buffers in a special protection  
571 area and stream valley buffers within the Patuxent Primary  
572 Management Area must be afforested as established in the  
573 latest version of the environmental guidelines.

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

580 (i) to achieve the objectives of a master or sector plan  
581 or other County land use policies or to take  
582 advantage of opportunities to consolidate forest  
583 conservation efforts;

584 (ii) for public sites acquired or required to be dedicated  
585 before July 1, 1991, to ensure that the site can be  
586 used for its intended purpose without major design  
587 changes; or

588 (iii) for educational, recreational, and public safety  
589 facilities, to ensure that public safety is not  
590 compromised.

591 ~~[(C)]~~(D) ~~[[Public Utility Considerations]]~~ Public utility  
592 considerations. The sequence provided in subparagraph  
593 (A) of this paragraph for public utility projects may be  
594 modified to reflect applicable electrical or other safety  
595 codes, or right-of-way constraints.

596 (2) ~~[[Off-site afforestation and reforestation]]~~ Off-site afforestation  
597 and reforestation. If no opportunities for planting forest exist  
598 ~~[[per]]~~ under Section 22A-12(e)(1)(A)~~[[In addition to the use of~~  
599 ~~other sites proposed by an applicant and approved by the~~  
600 ~~County],~~ off-site afforestation or reforestation may also include:

601 (A) ~~[[Forest]]~~ forest mitigation banks designated in advance  
602 by the County~~[[.]]~~;

603 (B) ~~[[Protection of existing off-site forest. Acquisition]]~~  
604 acquisition of an off-site protective easement for existing  
605 forested areas not currently protected in perpetuity ~~[[is an~~  
606 ~~acceptable mitigation technique instead of off-site~~  
607 ~~afforestation or reforestation planting, but]]~~, if the forest  
608 cover protected ~~[[must be]]~~ is 2 times the afforestation and  
609 reforestation requirements~~[[.]]~~; or

610 (C) ~~[[For]]~~ for sites located in existing population centers, use  
 611 of street trees which meet landscape or streetscape goals  
 612 identified in an applicable master plan.

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

619 (4) ~~[[Location requirements]]~~ Location requirements.

620 (A) ~~[[Required]]~~ Except as permitted under subparagraphs (B)  
 621 and (C) of this paragraph, required reforestation or  
 622 afforestation must occur in both the county and the 8-digit  
 623 watershed in which the project is located[[, except that if  
 624 it]]].

625 (B) If the required reforestation or afforestation cannot be  
 626 reasonably accomplished in the same county and 8-digit  
 627 watershed in which the project is located, then the  
 628 reforestation or afforestation [may] must occur in a  
 629 priority 8-digit watershed, special protection area, or the  
 630 Patuxent Primary Management Area (PMA) in the same  
 631 county in which the project is located[[, except that if it]]].

632 (C) If the required reforestation or afforestation cannot be  
 633 reasonably accomplished in a priority 8-digit watershed,  
 634 special protection area, or the Patuxent Primary  
 635 Management Area (PMA) in the same county in which the

636 project is located, then the reforestation or afforestation  
637 may occur anywhere in [either] the county [or watershed]  
638 in which the project is located.

639 (5) ~~[[Deadline for plant installation]]~~ Deadline for plant installation.  
640 The afforestation and reforestation requirements under this  
641 subsection must be accomplished within ~~[[one]]~~ 1 year or [2]  
642 ~~[[two]]~~ 2 growing seasons after a development project is  
643 complete.

644 \* \* \*

645 (f) *Special provisions for minimum retention, reforestation and*  
646 *afforestation.*

647 \* \* \*

648 (3) If the Planning Board or Planning Director, as appropriate, finds  
649 that forest retention required in this subsection is not possible,  
650 the applicant must provide the maximum possible on-site  
651 retention and must meet the balance of the remaining  
652 requirement through any [in] combination [with] of on-site or  
653 off-site reforestation [and] or afforestation[, not including  
654 landscaping].

655 \* \* \*

656 (g) *In lieu fee.* A person contributing money to the forest conservation fund  
657 as an in lieu fee must do so at a rate specified by law or Council  
658 resolution, but not less than the rate required under Section 5-1610, as  
659 amended, of the Natural Resources Article of the Maryland Code. Any  
660 in lieu fee payment must be made before any land disturbing activity,  
661 as defined in Section 22A-3, occurs on a section of the tract subject to

662 the forest conservation plan. A person may make an in lieu fee payment  
663 to the forest conservation fund only if the person satisfactorily  
664 demonstrates that:

665 (1) (A) the requirements for reforestation or afforestation on-site  
666 or off-site cannot reasonably be accomplished;

667 (B) appropriate credits generated by a forest mitigation bank  
668 in the same watershed within the County are not available;  
669 ~~[[and]]~~

670 (C) if appropriate credits generated by a forest mitigation bank  
671 in the same 8-digit watershed within the County are not  
672 available, appropriate credits generated by a forest  
673 mitigation bank in a priority 8-digit watershed, special  
674 protection area, or the Patuxent Primary Management  
675 Area (PMA) are not available; and

676 ~~[(C)](D)~~ if appropriate credits generated by a forest  
677 mitigation bank in the same 8-digit watershed, a priority  
678 8-digit watershed, special protection area, or the Patuxent  
679 Primary Management Area (PMA) within the County are  
680 not available, appropriate credits generated by a forest  
681 mitigation bank in the County are not available; or

682 \* \* \*

683 (h) *Agreements.*

684 (1) ~~[[Maintenance agreement]]~~ Maintenance agreement. A forest  
685 conservation plan must include a 5-year binding agreement for  
686 maintenance of all planted forest conservation areas, including  
687 areas of afforestation, reforestation, as well as any required



688 mitigation plantings. A forest conservation plan may require a 5-  
689 year binding agreement for maintenance of existing forest to be  
690 retained to ensure long-term health of forest stands. For park  
691 property with an approved mission and established stewardship  
692 practices including conservation and forest management plans, a  
693 maintenance agreement for existing forest is not required. A  
694 person subject to the binding agreement may request that the  
695 binding agreement be reduced to 3 years if the forest  
696 conservation inspector finds that the agreement has been  
697 fulfilled, unless the forest conservation plan is within a special  
698 protection area. If the forest conservation plan is within a special  
699 protection area, the binding maintenance agreement must be for  
700 a minimum of 5 years and may not be reduced. The binding  
701 maintenance agreement may include watering (as practical),  
702 feeding, non-native invasive plant control, and replanting of  
703 areas to be afforested or reforested. A maintenance agreement  
704 may also be required for non-native invasive plant control of  
705 forest edge or ~~[[to]]~~ for control of non-native invasive species in  
706 adjacent areas that may impact forest conservation. The binding  
707 agreement for maintenance starts upon satisfactory inspection of  
708 the plantings or maintenance required under the forest  
709 conservation plan. A staged project may have more than one  
710 agreement.

711 \* \* \*

712 **22A-13. Forest mitigation banks.**

713 \* \* \*

714 (e) The forest mitigation bank plan must include:

- 715 (1) a maintenance agreement which meets the standards in
- 716 subsection 22A-12(h)(1);
- 717 (2) all information required by subsection 22A-10(c) for a forest
- 718 conservation plan; ~~[[and]]~~
- 719 (3) draft easements, covenants, or deed restrictions for the area
- 720 included in the forest mitigation bank; and
- 721 (4) the number of forest mitigation bank credits available for sale as
- 722 [either existing forest credits or] either:
- 723 (A) if permitted by state law, existing forest credits, where 1
- 724 acre of forest mitigation bank credit equals 2 acres of
- 725 existing forest; or
- 726 (B) planted forest credits, where 1 acre of forest mitigation
- 727 bank credit equals 1 acre of planted forest[, or 2 acres of
- 728 existing forest].

\* \* \*

(g) *Purchasing and selling forest mitigation bank credits.*

\* \* \*

- 732 (3) Forest mitigation bank credits must be acquired from a forest
- 733 mitigation bank within the same 8-digit watershed, as delineated
- 734 by the State of Maryland, ~~[[as]]~~ where the development activity
- 735 is located. If forest mitigation bank credits are not available
- 736 within the same 8-digit watershed within the County, applicants
- 737 [may] must acquire forest mitigation bank credits from a forest
- 738 mitigation bank within a priority 8-digit watershed, special
- 739 protection area, or the Patuxent Primary Management Area
- 740 (PMA). If forest mitigation bank credits are not available within

741 a priority 8-digit watershed, special protection area, or the  
742 Patuxent Primary Management Area (PMA), applicants may  
743 acquire forest mitigation bank credits from any approved forest  
744 mitigation bank within the County.

745 \* \* \*

746 **22A-21. Variance.**

747 \* \* \*

748 (e) If the applicant is granted a variance to remove any of the subject trees  
749 listed as priority for retention in Section 22A-12(b)(3), the applicant  
750 must replant mitigation trees at a minimum ratio of 1 caliper inch  
751 replaced for every 4 inches of trunk diameter removed, measured at 4.5  
752 feet above the ground, regardless of whether those trees are within or  
753 outside of forest area, in addition to any reforestation, afforestation, or  
754 landscape credit requirements. Mitigation for trees that are part of an  
755 historic site or associated with an historic structure is only required for  
756 the removal of trees located outside of forest.

757 (f) If the applicant is granted a variance in connection with disturbance of  
758 forest in a floodplain or stream buffer under Section 22A-12(b)(3)(D),  
759 the applicant must reforest at a minimum ratio of:

760 (1) 2:1, if the reforestation is occurring within the same 8-digit  
761 watershed as the project or a priority 8-digit watershed under  
762 Section 22A-12(c); or

763 (2) 2 ½:1, if the reforestation is occurring within the County outside  
764 of the same 8-digit watershed and outside of a priority 8-digit  
765 watershed under Section 22A-12(c).

766 [(e)] ~~[(f)]~~ (g) [Approval procedures; Conditions] *Approval procedures;*  
 767 ~~[[Conditions]]~~ *conditions*. The Planning Board must find that the  
 768 applicant has met all requirements of this Section before granting a  
 769 variance. However, the Planning Director may grant a variance if the  
 770 Director is authorized to approve the forest conservation plan and the  
 771 applicant meets all requirements of this Section. The Board or Director  
 772 may impose appropriate conditions to promote the objectives of this  
 773 Chapter and protect the public interest.

774 [(f)] ~~[(g)]~~ (h) [Notice to State Department of Natural Resources; Right  
 775 to initiate or intervene in proceedings] *Notice to State Department of*  
 776 *Natural Resources; ~~[[Right]]~~ right to initiate or intervene in*  
 777 *proceedings.*

778 \* \* \*

779 **Sec. 2. Expedited Effective Date.** This Act is necessary for the immediate  
 780 protection of the public health, safety, or interest and must take effect on the day that  
 781 it becomes law.

782 **Sec. 3. Transition.** Any amendment to Chapter 22A under Section 1 of this  
 783 Act does not apply to: (a) a preliminary or final forest conservation plan submitted  
 784 before this Act took effect; or (b) a County highway project if, prior to the effective  
 785 date of this Act, funding has been appropriated for the project, and the project has  
 786 been submitted to the Planning Board under mandatory referral.

*Approved:*

/s/ 3/24/2023  
Evan Glass, President, County Council Date

*Approved:*

\_\_\_\_\_  
Marc Elrich, County Executive Date

*This is a correct copy of Council action.*

\_\_\_\_\_  
Judy Rupp, Clerk of the Council Date

Bill No. 28-22  
Concerning: Common Ownership  
Communities – Duties,  
Requirements and Procedures  
Revised: 03/21/2023 Draft No. 2  
Introduced: October 18, 2022  
Enacted: March 21, 2023  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

**AN ACT** to:

- (1) require regular periodic training of members of a governing board of a common ownership community;
- (2) clarify common ownership community registration, voting and dispute resolution procedures;
- (3) outline criteria that the County’s Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community; and
- (4) generally, revise County law regarding common ownership communities.

By amending

Montgomery County Code  
Chapter 10B, Common Ownership Communities  
Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-11, 10B-12, 10B-13, 10B-17, and 10B-18.

By adding

Montgomery County Code  
Chapter 10B, Common Ownership Communities  
Section 10B-9B.

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

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

- 1           **Sec. 1. Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-**
- 2 **11, 10B-12, 10B-13, 10B-17, and 10B-18 are amended, and Section 10B-9B is**
- 3 **added, as follows:**
- 4           **10B-2. Definitions.**

\* \* \*

*Common ownership community* includes:

- (1) a residential development subject to a declaration enforced by a homeowners’ association, as those terms are used in state law;

\* \* \*

**10B-3. Commission on Common Ownership Communities.**

\* \* \*

- (d) Prior to participation in any Commission matter, each voting member must complete:

- (1) training required of common ownership community board members under Section ~~[[10-17(h)]]10B-7(c)~~; and
- (2) training in the State and local laws on matters within the jurisdiction of the Commission provided or otherwise approved by the County Attorney.

\* \* \*

- (g) The Commission must elect one voting member as [chair] Chair and another as [vice chair] Vice Chair, to serve at the pleasure of the Commission, and may elect other officers as it determines.

\* \* \*

- (i) The Commission meets at the call of the [chair] Chair as often as required to perform its duties, but at least once each month. A majority of the voting members are a quorum for the transaction of business, and a majority of the [voting members] quorum present at any meeting may take any official action.

\* \* \*

**10B-6. Duties of the Commission on Common Ownership Communities.**

The Commission must:

\* \* \*

(f) provide training on the responsibilities of a board member for members of the governing body of a common ownership community by:

(1) developing an educational curriculum for new members; [and]

(2) offering training for Board Members, either in person, on-line, or by other electronic means; and

~~(2)~~(3) approving an alternative educational curriculum for new members administered by other organizations.

(g) establish hearing panels to adjudicate cases on which the Commission accepts jurisdiction.

**10B-7. Requirements for [Registration] registration; fees, and board training.**

(a) Association registration.

(1) Each common ownership community must register with the Commission annually, and [identify its elected leadership and managing agents,] submit the information required on [a] the registration form provided by the Commission.

\* \* \*

(c) Training.

(1) Within 90 days after being elected or appointed to the governing body for the first time, a member of the governing body of a common ownership community must successfully complete the educational curriculum approved by the Commission. The governing body must:



59                   (A) certify that each member has successfully  
 60                   completed this training to the Commission;

61                   (B) retain a copy of the training certificate for  
 62                   inspection by the members of the association for the  
 63                   duration of the governing body member's service;  
 64                   and

65                   (C) report to the Commission that each member has  
 66                   successfully completed the training within 90 days  
 67                   after each member has been appointed or elected.

68                   (2) Each member of the governing body must maintain a  
 69                   training certificate. A training certificate issued under this  
 70                   Section is valid for 3 years.

71                   (3) A failure to satisfy the training requirement in this  
 72                   subsection does not:

73                   (A) remove the member from the governing body; or

74                   (B) invalidate a vote made by the member.

75                   (d) A hearing panel or a hearing examiner may consider a board  
 76                   member's failure to complete the training required under this  
 77                   Section, if relevant, in deciding a dispute under Section 10B-13.

78                   **10B-7A. Notification requirements.**

79                   The governing body of a community association must, at least annually,  
 80                   distribute information [in a form reasonably calculated to notify] to all owners  
 81                   about the availability of dispute resolution, education, and other services to  
 82                   owners and residents of common ownership communities through the  
 83                   Department and the Commission. The governing body may satisfy this  
 84                   requirement by including with any annual notice or other mailing to all

85 members of the community association [any written materials] the form  
86 developed by the Department to describe the Commission’s services.

87 **10B-8. Defined terms.**

88 In this Article and Article 3, the following terms have the following  
89 meanings:

90 \* \* \*

91 (4) *Dispute* means any disagreement between 2 or more parties that  
92 involves:

93 \* \* \*

94 (B) the failure of a governing body, when required by law or  
95 an association document, to:

- 96 (i) properly conduct an election;
- 97 (ii) give adequate notice of a meeting or other action;
- 98 (iii) properly conduct a meeting;
- 99 (iv) properly adopt a budget or rules;
- 100 (v) maintain or audit books and records;
- 101 (vi) allow inspection of books and records;
- 102 (vii) properly maintain or repair a common element if the  
103 failure results in significant personal injury or  
104 property damage; or
- 105 (viii) exercise its judgment in good faith concerning the  
106 enforcement of the association documents against  
107 any person that is subject to those documents.

108 \* \* \*

109 **10B-9A. Request for relief from stay.**

110 (a) At any time after a dispute is filed under Section 10B-9, a  
111 [community association] party to the dispute may submit a

request to lift the automatic stay required under Section 10B-9(e) to a hearing panel appointed under Section 10B-12, or if no hearing panel has been appointed, a special standing panel authorized to consider requests for relief from stays.

\* \* \*

(c) [An] A [association] party that requests relief from a stay must serve a copy of its request on any other party named in the dispute by certified mail or personal service. A certificate of service must accompany any request submitted under this Section. A party served with a copy of the request must file its opposition, if any, within 10 days after receiving service.

\* \* \*

(e) Except as provided in subsection (d), a request for relief from stay may only be granted if the assigned panel finds that:

- (1) enforcing the stay would result in undue harm to [the] a [community association] party; and
- (2) lifting the stay [will] would not result in undue harm to the rights or interests of any opposing party.

**10B-9B. Acceptance of jurisdiction of complaints.**

(a) If the Commission does not accept jurisdiction of a complaint, the Director must notify the parties in writing of the decision and the reason for the Commission’s denial of jurisdiction within 10 business days after the decision.

(b) [The Commission may accept jurisdiction of a complaint if a party fails to comply with an agreement reached during mediation.



164 Commission has accepted jurisdiction]]. The Director may  
 165 extend the mediation deadline by mutual consent of the parties.

166 (f) If a dispute is resolved by mediation, the terms of mediation  
 167 agreed to by the parties must be reduced to writing and  
 168 incorporated into a consent agreement to be signed by the parties.  
 169 The agreement must be for mediation purposes only and is not  
 170 an admission by any party that a violation of applicable law or  
 171 an association document has occurred.

172 (g) In addition to any other penalty allowed by law, failure to adhere  
 173 to any provision of a consent agreement is a class A violation.  
 174 Any failure by the Director to enforce any provision of a consent  
 175 agreement does not waive any private right of action against the  
 176 violating party.

#### 177 **10B-12. Hearing panel.**

178 (a) If a hearing is scheduled, the [chair] Chair of the Commission  
 179 must convene a 3-member panel to hear the dispute.

180 (b) The [chair] Chair must choose two members of the panel from  
 181 the voting members of the Commission. The persons selected  
 182 must represent the two different membership groups of the  
 183 Commission. The [two] Chair of the Commission [members]  
 184 must designate the third member from a list of volunteer  
 185 arbitrators trained or experienced in common ownership  
 186 community issues maintained by the Commission. The third  
 187 member must [chair] Chair the panel. If a suitable arbitrator is  
 188 not available, the [chair] Chair of the Commission must  
 189 designate the third panelist from among the voting members of

190 the Commission, and must designate the [chair] Chair of the  
 191 panel.

192 \* \* \*

193 (e) If the Commission [chair] Chair decides that a hearing should be  
 194 held by a hearing examiner instead of a hearing panel, the [chair]  
 195 Chair, with the approval of the Commission, may designate the  
 196 Office of Zoning and Administrative Hearings to conduct the  
 197 hearing.

198 [(f) If the parties to a dispute agree that the hearing should be held  
 199 and the dispute decided by a hearing examiner instead of a  
 200 hearing panel, the chair must designate the Office of Zoning and  
 201 Administrative Hearings or another hearing examiner to conduct  
 202 the hearing and issue a decision.]

203 **10B-13. Administrative hearing.**

204 \* \* \*

205 (b) [Sections 2A-1 through 2A-11] The Administrative Procedures  
 206 Act (Article I of Chapter 2A) [apply] applies to a hearing held  
 207 under this Section. However, the parties need not be given more  
 208 than 15 days' notice before the hearing is held, if the Commission  
 209 finds that an expedited hearing is necessary. At any hearing, a  
 210 party or a witness may be advised by counsel.

211 \* \* \*

212 (d) The hearing panel may award costs, including reasonable  
 213 attorney's fees, to any party if the other party:

214 (1) filed or maintained a frivolous dispute, or filed or  
 215 maintained a dispute in bad faith;

- 216 (2) refused to participate in mediation of a dispute[;],
- 217 unreasonably withdrew from mediation[[, or failed to
- 218 comply with the terms of an agreement reached in
- 219 mediation]]; or
- 220 (3) substantially delayed or hindered the dispute resolution
- 221 process without good cause.

\* \* \*

**10B-17. Voting procedures[; training].**

\* \* \*

- 225 (c) *Absentee ballots or directed proxies.* Any unsigned absentee
- 226 ballot or directed proxy, to be valid, must be:
- 227 (1) received in a signed, sealed envelope, bearing the
- 228 identification of the dwelling unit and proportional voting
- 229 percent, if any, on the outside; and
- 230 (2) opened only at a meeting at which all candidates or their
- 231 delegates have a reasonable opportunity to attend.
- 232 (d) *Proxy or power of attorney.* Any proxy or power of attorney valid
- 233 under state law may be used at any association meeting.
- 234 However, [a] any proxy [and any] or power of attorney [created]
- 235 containing votes for [the purpose of] candidates for a governing
- 236 body's election [must] may be [appointed] counted only to meet
- 237 a quorum or to vote on matters other than an election for a
- 238 governing body unless the proxy or power of attorney contains a
- 239 directed vote on the election. If a proxy or power of attorney form
- 240 must be approved before it is cast, the approving authority must
- 241 not unreasonably withhold its consent. A general power of
- 242 attorney valid under state law may be used for any purpose at an

243 association meeting that is consistent with the provisions of the  
 244 general power of attorney, including for an election of the  
 245 governing body.

246 (e) *Cumulative voting prohibited.* In an election for a governing  
 247 body, for each unit that a [members] member owns the member  
 248 must not cast more than one vote for each candidate.

249 (f) *Counting votes.* Until the time for voting closes, an association  
 250 must not open or count election ballots, absentee ballots or  
 251 directed proxies, and must keep all such documents in a sealed  
 252 container which must not be opened or counted until the election.  
 253 If an election is conducted electronically, the votes must not be  
 254 disclosed or counted by anyone until the election. The  
 255 individuals counting absentee ballots or directed proxies must  
 256 insure that the individual who has been directed to cast the proxy  
 257 vote was in fact in attendance at the meeting.

258 (g) *Terms of office.* Unless the association documents provide for  
 259 other terms of office:

260 (1) a member elected to the governing body of an association  
 261 is elected for a term of [two 2] three (3) years; and

262 (2) the individual terms of the entire governing body are  
 263 staggered, so that as close to one-third as possible are  
 264 elected each year.

265 [(h) A member of the governing body of a common ownership  
 266 community must successfully complete the educational  
 267 curriculum developed by the Commission or a similar  
 268 educational curriculum administered by another organization  
 269 that is approved by the Commission within 90 days after being



270 elected or appointed to the governing body for the first time. The  
 271 governing body must:

- 272 (1) certify that each member has successfully completed this  
 273 training to the Commission;
- 274 (2) retain a copy of the certificate of completion for inspection  
 275 by the members of the association for the duration of the  
 276 governing body member's service; and
- 277 (3) report to the Commission no later than December 31 of  
 278 each year membership data required by the Commission,  
 279 including
- 280 (A) the name and address of each member of the board;
- 281 (B) the date each member completed the required  
 282 training;
- 283 (C) the number of vacancies on the board; and
- 284 (D) the length of time each vacancy existed.
- 285 (i) A failure to satisfy the training requirement in subsection (h)  
 286 does not:
- 287 (1) remove the member from the governing body; or
- 288 (2) invalidate a vote made by the member.
- 289 (j) The Commission may exercise its authority under Section 10B-  
 290 19(a) to ensure compliance with the training required by  
 291 Subsection (h).
- 292 (k) A hearing panel or a hearing examiner may consider a board  
 293 member's failure to complete the training required by Subsection  
 294 (h), if relevant, in deciding a dispute under Section 10B-13.]

295 **10B-18. Budget.**

296 Unless the association documents provide otherwise:

\* \* \*

297  
298  
299  
300  
301  
302  
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305  
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308  
309

(b) the governing body must provide members of the association with any proposed amendment to the budget at least 30 days before the governing body votes on the amendment, if the amendment will result in an increase or decrease of more than 15 percent of the approved budget. This requirement does not apply to expenditures made to respond to an imminent threat to health or safety or of serious property damage, or to properly fund the most recent reserve study conducted for the association.

**10B-19. Enforcement.**

(a) The Department may enforce this Article by appropriate legal action.

\* \* \*

*Approved:*

/s/ 3/24/2023  
Evan Glass, President, County Council Date

*Approved:*

\_\_\_\_\_  
Marc Elrich, County Executive Date

*This is a correct copy of Council action.*

\_\_\_\_\_  
Judy Rupp, Clerk of the Council Date

[[Expedited]] Bill No. 5-23  
Concerning: Personnel and Human  
Resources – Prospective Employees  
– Health Care Privacy  
Revised: 03/16/23 Draft No. 3  
Introduced: January 31, 2023  
Enacted: March 21, 2023  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Luedtke  
Co-Sponsors: Councilmembers Albornoz and Balcombe, Council Vice-President Friedson, Councilmembers Stewart and Sayles, Council President Glass, and Councilmembers Jawando, Katz, Mink, and Fani-Gonzalez

**AN [[EXPEDITED]] ACT** to:

- (1) limit inquiries by the County regarding certain health information of prospective employees;
- (2) prohibit inquiries by the County regarding certain reproductive health information of prospective employees;
- (3) limit consideration by the County of certain health information of prospective employees;
- (4) permit certain appeals to the Merit System Protection Board; and
- (5) generally amend the laws regarding human resources and health care privacy.

By adding

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Section 33-25A

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

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

1           **Sec. 1. Section 33-25A is added as follows:**

2           **33-25A. Prospective Employees – Health Care Privacy.**

3           (a) Definitions. As used in this section:

4           Americans with Disabilities Act means the federal Americans with  
5           Disabilities Act of 1990, as amended.

6           Applicant means a person seeking County employment, including a  
7           merit system position, non-merit system position, appointed position,  
8           or contractual position.

9           Business-related health information means health care information that  
10           is necessary to evaluate whether an applicant meets a minimum  
11           qualification for a position.

12           Contractual position means an individual providing services to the  
13           County pursuant to a procurement under Chapter 11B. Contractual  
14           position does not include the employees or subcontractors of a  
15           contractor under Chapter 11B.

16           Health care means any care, treatment, or procedure by a health care  
17           provider:

18           (1) to diagnose, evaluate, rehabilitate, manage, treat, or maintain the  
19           physical or mental condition of a patient or recipient; or

20           (2) that affects the structure or any function of the human body.

21           Health care information means any individually identifiable  
22           information related to health care.

23           Minimum qualification means a mandatory qualification that:

24           (1) must be met to perform the required job functions of the  
25           position; and

26           (2) was posted publicly prior to the acceptance of any application  
27           for the position.

28 Reproductive health information means health care information related  
 29 to any aspect of reproductive health, including abortion care,  
 30 miscarriage, contraception, sterilization, pregnancy, and family  
 31 planning.

32 (b) Requesting or considering health care information - Limitations.

33 (1) Except as provided in paragraph (2), the County must not:

34 (A) request or seek health care information regarding an  
 35 applicant; or

36 (B) consider health care information as a factor in determining  
 37 whether to hire an applicant.

38 (2) Unless otherwise prohibited by law, the County [[may]] is  
 39 entitled to:

40 (A) request or seek business-related health care information;  
 41 and

42 (B) consider business-related health care information solely to  
 43 determine whether an applicant meets a minimum  
 44 qualification.

45 (c) Requesting reproductive health information - Prohibited. The County  
 46 must not request or consider an applicant's reproductive health  
 47 information.

48 (d) This Section does not prohibit:

49 (1) an applicant from voluntarily submitting, or the County from  
 50 processing, a request for a reasonable accommodation under the  
 51 Americans with Disabilities Act related to the job application  
 52 process; or

53           (2) if the applicant is a County employee, an applicant from  
54           disclosing, or the County from requesting, health care  
55           information necessary for:

56           (A) enrolling in or processing employee benefits;

57           (B) making or processing workers' compensation claims;

58           (C) making or processing leave requests in accordance with  
59           County laws and regulations; or

60           (D) complying with applicable state or federal law.

61           (e) An applicant aggrieved under this section may appeal to the Merit  
62           System Protection Board under Section 33-13.

63           **Sec. 2. [[Expedited effective]] Effective date. [[The Council declares that**  
64           **this legislation is necessary for the immediate protection of the public interest.]]**  
65           **This Act takes effect [[on the date on which]] 120 days after it becomes law.**

*Approved:*

/s/ 3/22/2023

\_\_\_\_\_  
Evan Glass, President, County Council Date

*Approved:*

\_\_\_\_\_  
Marc Elrich, County Executive Date

*This is a correct copy of Council action.*

\_\_\_\_\_  
Judy Rupp, Clerk of the Council Date



Bill No. 8-23  
Concerning: Boards, Committees, and  
Commissions – Open Meetings –  
Supplemental Requirements  
Revised: 03/20/23 Draft No. 5  
Introduced: February 14, 2023  
Enacted: March 21, 2023  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Luedtke  
Co-Sponsor: Councilmember Katz and Council President Glass

**AN ACT** to:

- (1) require boards, committees, and commissions to publish, within certain timeframes, the dates, times and locations of meetings, meeting agendas, and meeting minutes;
- (2) require boards, committees, and commissions to make meeting recordings available under certain circumstances;
- (3) ~~[[require the posting of draft meeting minutes under certain circumstances;~~
- (4) ~~]]~~ require certain reporting by the Office of the County Executive to the Council; and  
~~[[~~(5)~~]]~~ (4) generally amend the laws regarding boards, committees, and commissions and regarding open meetings.

By adding

Montgomery County Code  
Chapter 2. Administration  
Section 2-149A

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

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

1           **Sec. 1. Section 2-149A is added as follows:**

2    **2-149A. Open meetings – supplemental requirements.**

3           (a)    Open Meetings Act – additional requirements. A group must comply  
4                    with the requirements under this section, in addition to the requirements  
5                    under the state Open Meetings Act, Title 3 of the General Provisions  
6                    Article of the Maryland Code, as amended.

7           (b)    Notices of meetings.

8                   (1)    Except as provided under paragraph (3), a group must publish  
9                    the notice required under Section 3-302 of the Open Meetings  
10                   Act:

11                    (A)    within 5 business days after the group has determined the  
12                    meeting date; and

13                    (B)    at least 2 calendar days before the meeting.

14                   (2)    If a meeting will include virtual access, the group must publish  
15                    how the public may attend the meeting virtually.

16                   (3)    If the requirements of paragraph (1) cannot be met due to an  
17                    emergency, a group must:

18                    (A)    publish the notice at least 24 hours in advance of the  
19                    meeting; and

20                    (B)    indicate in the notice that the meeting is an emergency  
21                    meeting.

22           (c)    Meeting agendas.

23                   (1)    Except as provided under paragraph (2), a group must publish  
24                    the agenda of a meeting under Section 3-302.1 of the Open  
25                    Meetings Act:

26                    (A)    within 5 business days after the group has determined the  
27                    agenda; and

28 (B) at least 2 calendar days before the meeting.

29 (2) If the requirements of paragraph (1) cannot be met due to an  
 30 emergency, a group must:

31 (A) publish the agenda at least 24 hours in advance of the  
 32 meeting; and

33 (B) indicate on the agenda that the meeting is an emergency  
 34 meeting.

35 (3) If the requirements of paragraph (2) cannot be met due to an  
 36 emergency declared by the Governor of Maryland or the County  
 37 Executive, a group must:

38 (A) publish the agenda as soon as practicable in advance of the  
 39 meeting; and

40 (B) indicate on the agenda that the meeting is an emergency  
 41 meeting.

42 (d) Meeting minutes and recordings.

43 (1) Within 5 business days after it meets, a group must publish, [[:  
 44 (A)] if the group recorded the full meeting, a file of the  
 45 recording, or a link to the recording [[: or

46 (B) if the group did not record the full meeting, draft meeting  
 47 minutes]].

48 (2) Within 5 business days after approving meeting minutes, a group  
 49 must [[:

50 (A)] publish the approved minutes under Section 3-306 of the  
 51 Open Meetings Act [[: and

52 (B) if draft minutes of the meeting were published under  
 53 paragraph (1), remove the draft minutes]].

54 (e) Compliance and reporting requirements.

- 55           (1)   The County department or office assigned to staff a group must  
 56               ensure the group’s compliance with the requirements of this  
 57               section.
- 58           (2)   A group member, or member of the public, may complain to [[the  
 59               Office of Community Partnerships]] an office or department  
 60               designated by the County Executive if a group does not comply  
 61               with the requirements of this section.
- 62           (3)   The [[Office of Community Partnerships]] designated office or  
 63               department:
- 64               (A)   may consult with the group, and staff assigned to the  
 65               group, to address compliance issues under this section; and
- 66               (B)   must report in writing to the Council, on a quarterly basis,  
 67               regarding complaints received under this section and the  
 68               resolutions of those complaints.
- 69           (4)   Nothing in this Section prevents an individual from submitting a  
 70               complaint to the state Open Meetings Compliance Board under  
 71               the state Open Meetings Act, Title 3 of the General Provisions  
 72               Article of the Maryland Code, as amended.

*Approved:*

/s/ \_\_\_\_\_ 3/24/2023

\_\_\_\_\_  
Evan Glass, President, County Council Date

*Approved:*

\_\_\_\_\_  
Marc Elrich, County Executive Date

*This is a correct copy of Council action.*

\_\_\_\_\_  
Judy Rupp, Clerk of the Council Date

Bill No. 3-23  
Concerning: Environmental  
Sustainability – Montgomery County  
Green Bank  
Revised: 03/21/2023 Draft No. 2  
Introduced: January 31, 2023  
Enacted: March 21, 2023  
Executive: April 3, 2023  
Effective: July 3, 2023  
Ch. 8, Laws of Mont. Co. 2023

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: County President at the request of the County Executive

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**AN ACT** to:

- (1) make climate change mitigation and adaptation a prominent focus of the Montgomery County Green Bank's mission; and
- (2) generally revise County law regarding environmental sustainability.

By amending

Montgomery County Code  
Chapter 18A, Environmental Sustainability  
Sections 18A-44, 18A-45, and 18A-49.

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

~~The County Council for Montgomery County, Maryland approves the following Act~~

1           **Sec. 1. Sections 18A-44, 18A-45, and 18A-49 are amended as follows:**

2   **18A-44. Purpose.**

3           The County Government [should support] supports the formation of a  
 4           Montgomery County Green Bank to promote and support [the] investment in  
 5           climate change mitigation and adaptation activities and provide financing for  
 6           climate change mitigation and adaptation activities in the County. These  
 7           activities include clean energy technologies [in the County] and resiliency,  
 8           sustainability, or climate adaptive projects. The Green Bank must be able to:

- 9           (a)    serve and support [the deployment of clean energy technologies in any  
 10           sector] climate change mitigation and adaptation activities in all  
 11           sectors, including residential [single family] single-family homes and  
 12           multifamily, commercial, industrial, non-profit, municipal  
 13           governments, universities and colleges, schools, and hospitals;
- 14           (b)    offer a range of financing structures, forms and techniques, such as  
 15           senior loans, subordinate loans, credit enhancements, guarantees,  
 16           warehousing, securitization, and other techniques that can both lower  
 17           the cost of financing and increase private investment in [clean energy  
 18           technologies] climate change mitigation and adaptation activities;
- 19           (c)    leverage private investment in [energy projects] climate change  
 20           mitigation and adaptation activities through financing mechanisms that  
 21           support, enhance, or complement private investment.
- 22           (d)    consider [the inclusion of any non-energy or supporting] improvements  
 23           ancillary to the primary [energy efficiency or renewable energy]  
 24           climate change mitigation and adaptation project[, up] or related to [a  
 25           stated limit in scope] environmental health or building safety or  
 26           [amount, in each program or mechanisms it offers] durability;

- 27 (e) accept capital from the county, the state, the federal government, [from]  
 28 non-profits, [from] foundations, and any other capital source that  
 29 the Green Bank governance deems to be attractive and useful;
- 30 (f) recapitalize its funds through market means, including by selling whole  
 31 or portions of assets (loans) through private placement or other  
 32 securitization;
- 33 (g) stimulate the demand for [clean energy and the deployment of clean  
 34 energy technologies] climate change mitigation and adaptation  
 35 activities that serve end-use customers;
- 36 (h) before making a loan, loan guarantee, or other form of financing  
 37 support for [clean energy technologies] climate change mitigation and  
 38 adaptation activities, develop rules, policies, and procedures to specify  
 39 borrower eligibility and any other term or condition of financial  
 40 support;
- 41 (i) provide by resolution for the issuance of revenue bonds to finance  
 42 [clean energy technologies] climate change mitigation and adaptation  
 43 activities;
- 44 (j) provide information regarding best practices for overseeing [energy]  
 45 climate change mitigation and adaptation activity projects and other  
 46 appropriate consumer [protection information] education;
- 47 \* \* \*
- 48 (l) assess reasonable fees and charges on its financing activities to cover  
 49 its reasonable costs and expenses, as determined by the Board of  
 50 Directors appointed under Section 18A-47;
- 51 (m) make information regarding rates, terms, and conditions for all of its  
 52 financing support transactions available to the public for inspection,  
 53 including any formal annual reviews by both a private auditor and the



54 Director of Finance, and provide details to the public on the Internet  
 55 unless such disclosure includes a trade secret, confidential commercial  
 56 information, or confidential financial information;

57 \* \* \*

58 **18A-45. Definitions.**

59 In this Article, the following words have the meanings indicated:

60 *Clean energy technologies* means measures addressing energy resources and  
 61 emerging [technologies that do not involve the combustion of coal, petroleum  
 62 or petroleum products, municipal solid waste, or nuclear fission. *Clean energy*  
 63 *technologies* includes] energy technologies, including renewable energy  
 64 systems and sources, renewable energy projects, energy efficiency projects,  
 65 alternative fuels used for electricity generation, alternative fuel vehicles and  
 66 related infrastructure such as electric vehicle charging station infrastructure,  
 67 smart grid, and battery storage.

68 *Climate change mitigation and adaptation activities* means activities that  
 69 include clean energy technologies or resiliency, sustainability, or climate  
 70 adaptive projects.

71 *Energy efficiency project* means [a] an [permanent] improvement made to an  
 72 existing property that reduces consumption of energy.

73 [*Energy efficiency and/or renewable energy improvement or improvement*  
 74 means any equipment, device, or material that:

- 75 (1) meets safety and performance standards set by a nationally recognized  
 76 testing laboratory for that kind of device, if these standards are  
 77 available, and
- 78 (2) is intended to decrease energy consumption or expand use of renewable  
 79 energy sources, including:

- 80 (A) heating, ventilation, and cooling and distribution system  
81 modification or replacement, such as:
- 82 (i) replacing existing equipment with a high efficiency  
83 model;
  - 84 (ii) installing a device or retrofit to existing equipment that  
85 increase energy efficiency and conservation;
  - 86 (iii) any electrical or mechanical furnace ignition system which  
87 replaces a standing gas pilot;
  - 88 (iv) any tune-up or maintenance activity that increases the  
89 operating efficiency;
- 90 (B) a programmable thermostat;
- 91 (C) ceiling, attic, wall, roof, foundation, or floor insulation;
- 92 (D) whole house air sealing;
- 93 (E) water heater tune-up, water heater insulation, pipe insulation, or  
94 change out to an ENERGY STAR qualified water heater;
- 95 (F) storm windows or doors or ENERGY STAR-qualified window  
96 or door replacement;
- 97 (G) caulking and weather-stripping doors and windows;
- 98 (H) air distribution system improvements, including duct insulation  
99 and air sealing;
- 100 (I) any device or energy management system which controls  
101 demand of appliances or equipment and aides load management  
102 manually, remotely, and/or automatically;
- 103 (J) a measure that reduces the usage of water or increases the  
104 efficiency of water usage;
- 105 (K) an energy recovery system;

- 106 (L) electric vehicle infrastructure, such as installation of electric
- 107 vehicle charging station(s) and any necessary installation or
- 108 upgrades to electrical wiring or outlets;
- 109 (M) commercial-scale lighting upgrades or daylighting system;
- 110 (N) any measure or system that makes use of or expands a renewable
- 111 source of energy, including solar thermal and solar electric, wind
- 112 turbine, biomass, hydroelectric, geothermal electric, geothermal
- 113 heat pumps, anaerobic digestion, tidal or wave produced energy,
- 114 fuel cells using renewable fuels and geothermal direct-use; or
- 115 (O) any other installation or modification of equipment, device,
- 116 infrastructure, structure, or other material necessary to:
- 117 (i) install, operate, or maintain the improvement being
- 118 installed; or
- 119 (ii) resolve any structural, mechanical, electrical, or other
- 120 issue that directly jeopardizes the well-being or safety of
- 121 the building occupants, quality of the indoor environment,
- 122 or the durability or longevity of the structure on which the
- 123 project is being installed.]

124 *Green Bank* means the Green Bank that the County has designated to promote  
 125 and support [the] investment in climate change mitigation and adaptation  
 126 activities in the County, including clean energy technologies [and provide  
 127 financing for clean energy technologies, including renewable energy and  
 128 energy efficiency projects]; resiliency, sustainability, and climate adaptive  
 129 projects; and other related risk reduction activities.

130 \* \* \*

131 [Renewable energy source means a source of energy that naturally replenishes  
 132 over a human, not a geological, time frame and that is ultimately derived from  
 133 solar power, water power, or wind power.

134 Renewable energy source does not include petroleum, nuclear, natural gas, or  
 135 coal. A renewable energy source comes from the sun or from thermal inertia  
 136 of the earth and minimizes the output of toxic material in the conversion of  
 137 the energy and includes:

- 138 (1) non-hazardous, organic biomass material;
- 139 (2) solar electric and solar thermal energy;
- 140 (3) wind energy;
- 141 (4) geothermal energy; and
- 142 (5) methane gas captured from a landfill.]

143 Resiliency, sustainability, or climate adaptive projects mean measures  
 144 designed to support property or community resilience, reliability, and  
 145 environmental sustainability; property or community environmental health  
 146 and environmental safety; property or community water conservation and on-  
 147 site management; sustainable waste treatment; sustainable agricultural  
 148 activities; and adaption of systems to manage changes to the climate, such as  
 149 activities responding to extreme weather events.

150 \* \* \*

151 **18A-47. Board of Directors.**

152 (a) To qualify as the County’s Green Bank, a corporation’s Board of  
 153 Directors must have no more than ~~[[11]]~~15 voting members. The  
 154 corporation’s bylaws should specify that the County Executive may  
 155 appoint up to 5 board members, including the Directors of  
 156 Environmental Protection and Finance, subject to confirmation by the  
 157 County Council.

158 **18A-49. Work program; staff; support from County Government.**

159 \* \* \*

160 (c) The Board must meet with the Executive and the [[President of the]]  
161 Committee of the Council that oversees environmental sustainability,  
162 at least [semi-annually] annually.

163 \* \* \*

164 (e) Funding sources for the Green Bank may include:

165 \* \* \*

166 (2) County funds, including a portion of the fuel-energy tax revenue  
167 received by the County~~[[;]]~~, provided that any funds given to the  
168 Green Bank under Chapter 52, Sec. 52-14 must only be used to  
169 promote the investment in clean energy technologies and to  
170 provide financing for clean energy technologies, including  
171 renewable energy and energy efficiency projects and must not be  
172 used for resiliency activities;

173 (3) charitable gifts, grants, or contributions, investments, and loans  
174 from individuals, corporations, university endowments, and  
175 philanthropic foundations; and

176 (4) earnings and interest derived from its investments and financing  
177 support for climate change mitigation and adaptation activities  
178 [for clean energy technologies] backed by the Green Bank.

179 The Green Bank may also raise private funds and may accept services  
180 from any source consistent with its purpose.

*Approved:*

/s/ 3/24/2023  
Evan Glass, President, County Council Date

*Approved:*

/s/ 4/3/2023  
Marc Elrich, County Executive Date

*This is a correct copy of Council action.*

/s/ 4/3/2023  
Judy Rupp, Clerk of the Council Date

*Clerk's Note:* Line 15 has been corrected from “after {insert date 3 years from effective date}” to “three years after this Act becomes law”

**CORRECTED COPY**

Expedited Bill No. 4-23  
Concerning: Administration – Non-Merit  
Positions – Special Projects  
Manager  
Revised: 1/12/2023 Draft No. 1  
Introduced: January 31, 2023  
Expires: December 7, 2026  
Enacted: March 21, 2023  
Executive: March 22, 2023  
Effective: March 22, 2023  
Sunset Date: March 22, 2026  
Ch. 4, Laws of Mont. Co. 2023

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: Council President Glass at the Request of the County Executive

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**AN EXPEDITED ACT** to:

- (1) increase the number of Special Projects Managers in the Office of the County Executive; and
- (2) generally amend the law governing personnel in Montgomery County.

By amending

Montgomery County Code  
Chapter 2, Administration  
Section 2-26

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

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

1           **Sec. 1. Section 2-26 is amended, as follows:**

2           **2-26. Non-merit positions.**

3           The following positions in the Office of the County Executive are non-merit  
4 positions:

- 5           (a) 5 Directors of the Regional Services Centers;
- 6           (b) Director, Office of Community Partnerships;
- 7           (c) Director of Strategic Partnerships;
- 8           (d) 4 Assistant Chief Administrative Officers;
- 9           (e) 2 Special Projects [Manager] Managers; and
- 10          (f) Chief Labor Relations Officer.

11          **Sec. 2. Expedited Effective Date.** The Council declares that this legislation  
12 is necessary for the immediate protection of the public interest. This Act takes effect  
13 on the date on which it becomes law.

14          **Sec. 3. Sunset Date.** This Act must expire, and must have no further force or  
15 effect, three years after this Act becomes law.



*Approved:*

<u>/s/</u>	<u>3/22/2023</u>
Evan Glass, President, County Council	Date

*Approved:*

<u>/s/</u>	<u>3/22/2023</u>
Marc Elrich, County Executive	Date

*This is a correct copy of Council action.*

<u>/s/</u>	<u>3/22/2023</u>
Judy Rupp, Clerk of the Council	Date