

Introduced 7-6-2021
Public Hearing 7-21-2021
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 12

Bill No. 56 -2021

Introduced by Liz Walsh

AN ACT adding new definitions to the Forest Conservation ordinance; establishing a “look-back” provision for the disturbance of certain trees; reducing the diameter threshold to 24 inches for forest retention; and generally relating to forest conservation in the County.

Introduced and read first time July 6, 2021. Ordered posted and hearing scheduled.
By order Michelle Harrod
Michelle R. Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on July 21, 2021.
By order Michelle Harrod
Michelle R. Harrod, Administrator

This Bill was read the third time on Sept 8, 2021 and Passed , Passed with amendments , Failed .
By order Michelle Harrod
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this _____ day of _____, 2021 at ___ a.m./p.m.
By order _____
Michelle R. Harrod, Administrator

Approved by the County Executive _____, 2021

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

Tabled July 28, 2021

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the
2 Howard County Code is amended as follows:

3 *By amending:*

4 *Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations*

5 *Subtitle 12. Forest Conservation.*

6 *Section 16.1204. Forest conservation plan.*

7 *Section 16.1205. Forest retention priorities.*

8 *By adding and renumbering:*

9 *Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations*

10 *Subtitle 12. Forest Conservation.*

11 *Section 16.1201. Definitions.*

12 *Item (n) Green Cultural Trail;*

13 *Item (bb) Specimen Tree; and*

14 *Item (dd) Targeted Ecological Area*

15

16 **Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.**

17 Subtitle 12. Forest Conservation.

18 **Section 16.1201. Definitions.**

19 Except as provided in subsection (ff) of this section, words and phrases used in this subtitle
20 have their usual meaning unless defined in the Subdivision and Land Development Regulations
21 as set forth in subtitle 1 of this title or as follows in this section:

22 (N) *GREEN CULTURAL TRAIL* MEANS A NETWORK OF INTERCONNECTED TRAILS EXTENDING
23 FROM THE PATAPSCO RIVER UP TO THE HEADWATERS OF SEVERAL CONVERGING
24 TRIBUTARIES AS DESCRIBED IN THE ELLICOTT CITY WATERSHED MASTER PLAN, DECEMBER
25 2020, AS AMENDED.

26 (BB) *SPECIMEN TREE* MEANS A TREE REQUIRED TO BE LEFT IN AN UNDISTURBED CONDITION
27 PURSUANT TO SECTION 16.1205(A).

28 (DD) *TARGETED ECOLOGICAL AREAS* MEANS LANDS AND WATERSHEDS OF HIGH ECOLOGICAL
29 VALUE THAT HAVE BEEN IDENTIFIED AS CONSERVATION PRIORITIES AND MAPPED BY THE
30 MARYLAND DEPARTMENT OF NATURAL RESOURCES, AS UPDATED.

1 **Sec. 16.1204. Forest conservation plan.**

2 (a) *Applicability.* Forest conservation plans, consistent with this subtitle and the manual, shall
3 be submitted to the Department with applications for all development not exempt under
4 section 16.1202 of this subtitle.

5 (b) *Professionally Prepared.* The forest conservation plan shall be prepared by a licensed
6 forester, licensed landscape architect, or certified arborist.

7 (c) *Forest Stand Delineation.* The forest conservation plan shall include a forest stand
8 delineation for the property to be subdivided, developed, or graded. An approved forest
9 stand delineation is valid for five years. The forest stand delineation shall:

10 (1) Describe the extent and quality of existing forests and other vegetation and its
11 relationship to environmentally sensitive areas on-site and to forest resources on
12 adjacent properties.

13 (2) DESCRIBE THE EXTENT OF KNOWN OR PROBABLE CLEARING, CUTTING OR
14 DISTURBING OF TREES OR VEGETATION ON-SITE WITHIN THE LAST FIVE YEARS.

15 ~~[[(2)]]~~ (3) Be used during the review process to determine the most suitable and practical
16 areas for forest conservation.

17 (d) *Forest Conservation Plan.* A forest conservation plan shall:

18 (1) State the net tract area, area of forest conservation required, and the area of forest
19 conservation proposed on-site and/or off-site;

20 (2) Show the proposed limits of disturbance;

21 (3) Show locations for proposed retention of existing forest and/or proposed
22 reforestation or afforestation. IF A PROPERTY OWNER CLEARS, CUTS OR DISTURBS
23 TREES OR VEGETATION ON-SITE WITHIN THE FIVE YEARS PRIOR TO ENTERING THE
24 DEVELOPMENT OR SUBDIVISION PROCESS, THEN THOSE TREES AND VEGETATION
25 SHALL BE DESCRIBED IN THE PLAN AND THE PROPERTY SUBJECT TO THESE
26 REGULATIONS AS THOUGH STILL EXISTING ON-SITE;

27 (4) Justify the following, if existing forest cannot be retained:

28 (i) How techniques for forest retention have been exhausted;

29 (ii) Why the priority forests specified in section 16.1205 of this subtitle cannot be left
30 in an undisturbed condition;

- 1 (iii) If priority forests and priority areas cannot be left undisturbed, where on the site
2 in priority areas reforestation or afforestation will occur in compliance with
3 section 16.1208 of this subtitle;
- 4 (iv) How site design requirements will be followed to maximize meeting forest
5 conservation obligations on-site in compliance with section 16.1209 of this
6 subtitle;
- 7 (v) How the sequence for preferred reforestation or afforestation location and
8 methods will be followed in compliance with section 16.1208 of this subtitle; and
- 9 (vi) Why reforestation or afforestation requirements cannot reasonably be
10 accomplished on- or off-site, or through a forest mitigation bank, if the applicant
11 proposes payments of an in-lieu fee to the forest conservation fund;
- 12 (5) Show proposed locations and types of protective devices and measures to be used
13 during construction to protect trees and forests designated for conservation, including
14 protection of critical root zones;
- 15 (6) In the case of reforestation or afforestation, include a reforestation or afforestation
16 plan, with a timetable, description of needed site and soil preparation, and the species,
17 size, and spacing of plantings;
- 18 (7) Include a minimum three growing season forest conservation agreement as specified in
19 the manual that details how the areas designated for retention, reforestation or
20 afforestation will be maintained to ensure protection and satisfactory establishment,
21 including a reinforcement planting provision if survival rates fall below required
22 standards. Financial security shall be provided for the forest conservation agreement as
23 provided in section 16.1210 and the manual. Minor subdivisions which meet forest
24 conservation requirements entirely by forest retention are not required to have a forest
25 conservation agreement;
- 26 (8) Include a deed of forest conservation easement with a plat of the forest conservation
27 easement area, as specified in the manual that:
- 28 (i) Provides protection, in perpetuity, for areas of forest retention, reforestation and
29 afforestation; and

- 1 (ii) Limits uses in areas of forest conservation to those uses that are designated and
2 consistent with forest conservation, including recreational activities and forest
3 management practices that are used to preserve forest;
- 4 (9) Include other information the Department determines is necessary to implement this
5 subtitle; and
- 6 (10) Be amended or a new plan prepared, as provided in the manual, if required as a result
7 of changes in the development or in the condition of the site.
- 8

9 **Section 16.1205. Forest retention priorities.**

10 (a) *On-site forest retention required.*

11 Subdivision, site development, and grading shall leave the following vegetation and specific
12 areas in an undisturbed condition:

- 13 (1) Trees and other vegetation identified on the lists of rare, threatened and endangered
14 species of the U.S. fish and wildlife service or the Maryland Department of Natural
15 Resources;
- 16 (2) Trees that are part of a historic site, [[or]] associated with a historic structure OR ARE
17 THEMSELVES HISTORIC STRUCTURES;
- 18 (3) [[State champion trees, trees 75% of the diameter of state champion trees, and trees 30"
19 in diameter or larger.]] TREES WITH A DIAMETER OF 75% OR MORE OF THE DIAMETER OF
20 THE CURRENT STATE OR COUNTY CHAMPION TREE OF THAT SPECIES, WHICHEVER IS
21 SMALLER, MEASURED AT 4.5 FEET ABOVE THE GROUND; AND
- 22 (4) TREES THAT ARE 24 INCHES IN DIAMETER OR LARGER, MEASURED AT 4.5 FEET ABOVE
23 THE GROUND.

24 (B) *PRESUMPTION.*

25 IN THE ABSENCE OF AN APPROVED FOREST CONSERVATION PLAN AS REQUIRED BY SECTION
26 16.1204 OF THIS SUBTITLE, EACH TREE DISTURBED IS PRESUMED TO BE A SPECIMEN TREE.

27 ([[b]] C) *On-Site Forest Retention Priorities.*

28 The following vegetation and specific areas are considered priority and are listed in order of
29 preference for on-site retention and protection in the County. Subdivision, site development,

1 and grading shall leave the following vegetation and specific areas in an undisturbed
2 condition unless demonstrated, to the satisfaction of the Department, that reasonable efforts
3 have been made to protect them and the plan cannot be reasonably altered or that forest
4 planting in an alternate location would have greater environmental benefit:

5 (1) Howard County Green Infrastructure Network, THE GREEN CULTURAL TRAIL AND
6 TARGETED ECOLOGICAL AREAS[.];

7 (2) 100-year floodplain as defined in the Subdivision Regulations[.];

8 (3) TREES WITHIN CEMETERIES OR HISTORIC DISTRICTS THAT ARE 12
9 INCHES IN DIAMETER OR LARGER, MEASURED AT 4.5 FEET ABOVE THE GROUND;

10 ([[3]] 4) Stream buffers as defined in the Subdivision Regulations;

11 ([[4]] 5) Forested wetlands and wetland buffers as defined in the Subdivision Regulations;

12 ([[5]] 6) Critical habitat areas and forest corridors with a minimum width of 300 feet,
13 where practical, for wildlife movement;

14 ([[6]] 7) Steep slopes as defined in the Subdivision Regulations and slopes of 15 percent or
15 greater with a soil erodibility factor greater than 0.35;

16 ([[7]] 8) Forest contiguous with the priority areas listed above;

17 ([[8]] 9) Forest contiguous with off-site forest, if the off-site forest is also protected by a
18 Forest Conservation Easement; and

19 ([[9]] 10) Property line and right-of-way buffers, particularly adjacent to scenic roads.

20 ([[c]] D) *Off-Site Retention.*

21 (1) The County or a developer may provide for off-site forest retention at a ratio of two
22 acres of forest retention for every one acre of forest conservation obligation. The off-
23 site forest must not be currently protected in perpetuity by easement or other long-term
24 protection measures.

25 (2) The vegetation and specific area priorities for locating off-site forest retention under
26 this subsection are the same as provided under subsection (b) of this section.

27

1 **Section 2. Be it further enacted** by the County Council of Howard County, Maryland, that items
2 (n) through (ff) of the Section 16.1201 of the County Code are hereby renumbered to be items (n)
3 through (ii), respectively.

4

5 **Section 2. And Be It Further Enacted** by the County Council of Howard County,
6 Maryland that this Act shall become effective 61 days after its enactment.