

Introduced	<u>11-1-2021</u>
Public Hearing	<u>11-15-2021</u>
Council Action	<u>12-6-2021</u>
Executive Action	<u>12-13-2021</u>
Effective Date	<u>2-12-2022</u>

**County Council of Howard County, Maryland**

2021 Legislative Session

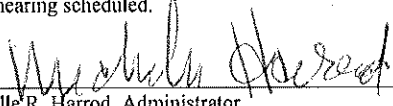
Legislative day 17

**BILL NO. 89 – 2021**

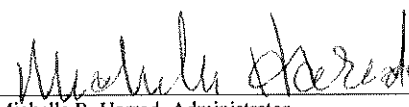
**Introduced by: David Yungmann**

**AN ACT** establishing a “lookback” provision for the disturbance of certain trees; providing for enhanced enforcement measures and penalties for violations of the Forest Conservation Act of Howard County; and generally relating to forest conservation in the County.

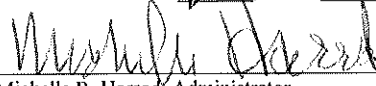
Introduced and read first time Nov 1, 2021. Ordered posted and hearing scheduled.

By order   
Michelle R. Harrod, Administrator

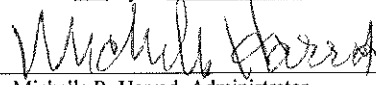
Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on Nov 15, 2021.

By order   
Michelle R. Harrod, Administrator

This Bill was read the third time on Dec 6, 2021 and Passed , Passed with amendments , Failed .

By order   
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7 day of Dec, 2021 at 4<sup>00</sup> a.m./p.m.

By order   
Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive Dec 13, 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.

1 *Section 1. Be It Enacted by the County Council of Howard County, Maryland, that the Howard County*  
2 *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 16.1213. Enforcement; penalties.*

8  
9 **HOWARD COUNTY CODE**

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

11 **Subtitle 12. Forest Conservation**

12  
13 **Sec. 16.1204. Forest conservation plan.**

14 (a) *Applicability.* Forest conservation plans, consistent with this subtitle and the manual, shall be  
15 submitted to the Department with applications for all development not exempt under section  
16 16.1202 of this subtitle.

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

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

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

25 (2) DESCRIBE THE EXTENT OF PROBABLE OR KNOWN CLEARING OF TREES ON-SITE WITHIN  
26 THE LAST FIVE YEARS;

27 (3) Be used during the review process to determine the most suitable and practical areas for  
28 forest conservation.

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

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

1 (2) Show the proposed limits of disturbance;

2 (3) Show locations for proposed retention of existing forest and/or proposed reforestation or  
3 afforestation. IF TREES HAVE BEEN CLEARED ON-SITE WITHIN THE FIVE YEARS PRIOR TO  
4 ENTERING THE DEVELOPMENT OR SUBDIVISION PROCESS, THEN THOSE TREES SHALL BE  
5 DESCRIBED IN THE PLAN AND THE PROPERTY SUBJECT TO THE PROVISIONS OF THIS TITLE AS  
6 THOUGH STILL EXISTING ON-SITE;

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

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

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

11 (iii) If priority forests and priority areas cannot be left undisturbed, where on the site in  
12 priority areas reforestation or afforestation will occur in compliance with section 16.1208 of this  
13 subtitle;

14 (iv) How site design requirements will be followed to maximize meeting forest  
15 conservation obligations on-site in compliance with section 16.1209 of this subtitle;

16 (v) How the sequence for preferred reforestation or afforestation location and methods  
17 will be followed in compliance with section 16.1208 of this subtitle; and

18 (vi) Why reforestation or afforestation requirements cannot reasonably be accomplished  
19 on- or off-site, or through a forest mitigation bank, if the applicant proposes payments of an in-  
20 lieu fee to the forest conservation fund;

21 (5) Show proposed locations and types of protective devices and measures to be used during  
22 construction to protect trees and forests designated for conservation, including protection of  
23 critical root zones;

24 (6) In the case of reforestation or afforestation, include a reforestation or afforestation plan,  
25 with a timetable, description of needed site and soil preparation, and the species, size, and spacing  
26 of plantings;

27 (7) Include a minimum three growing season forest conservation agreement as specified in  
28 the manual that details how the areas designated for retention, reforestation or afforestation will  
29 be maintained to ensure protection and satisfactory establishment, including a reinforcement  
30 planting provision if survival rates fall below required standards. Financial security shall be  
31 provided for the forest conservation agreement as provided in section 16.1210 and the manual.

1 Minor subdivisions which meet forest conservation requirements entirely by forest retention are  
2 not required to have a forest conservation agreement;

3 (8) Include a deed of forest conservation easement with a plat of the forest conservation  
4 easement area, as specified in the manual that:

5 (i) Provides protection, in perpetuity, for areas of forest retention, reforestation and  
6 afforestation; and

7 (ii) Limits uses in areas of forest conservation to those uses that are designated and  
8 consistent with forest conservation, including recreational activities and forest management  
9 practices that are used to preserve forest;

10 (9) Include other information the Department determines is necessary to implement this  
11 subtitle; and

12 (10) Be amended or a new plan prepared, as provided in the manual, if required as a result  
13 of changes in the development or in the condition of the site.

14  
15 **Section 16.1213. Enforcement; penalties.**

16 The provisions of this subtitle may be enforced with any or all of the following measures:

17 (a) *Revocation of Exemption.* The Department may revoke an exemption for properties that are  
18 in violation of the conditions of exemption set forth in section 16.1202(b) of this subtitle and may  
19 require compliance with the retention, reforestation and afforestation requirements of this subtitle.  
20 Prior to revocation, the Department shall notify the violator in writing and provide an opportunity  
21 for a response.

22 (b) *Revocation of Approved Forest Conservation Plan.* The Department may revoke an  
23 approved forest conservation plan for cause, including any of the following conditions:

24 (1) Noncompliance with this subtitle or with conditions of an approved forest conservation  
25 plan; or

26 (2) Obtaining approval of the plan through fraud, misrepresentation, a false or misleading  
27 statement, or omission of a relevant or material fact.

28 Prior to revocation, the Department shall notify the violator in writing and provide an  
29 opportunity for a response.

30 (c) *Stop-Work Order.* The County may issue a stop-work order against any violator of this

1 subtitle, the manual, an order, an approved forest conservation plan, the associated forest  
2 conservation agreement and long-term deed of forest conservation easement, or a declaration of  
3 intent.

4 (d) *Injunction.* The County may seek an injunction requiring a violator to cease the violation and  
5 take corrective action to restore or reforest an area.

6 (e) *Noncompliance penalties:* The County ~~[[may]]~~ SHALL assess a noncompliance penalty as  
7 defined in section 16.1212 of this subtitle, against a violator of this subtitle, the Manual, an order,  
8 an approved forest conservation plan, an associated forest conservation agreement, a long-term  
9 deed of forest conservation easement or a declaration of intent. DISTURBANCE OF TREES  
10 IDENTIFIED UNDER SECTION 16.1205(A) OF THIS SUBTITLE SHALL BE CALCULATED AT 500  
11 SQUARE FEET PER TREE.

12 (F) *SUSPENSION OF PLANS PROCESSING.*

13 (1) THIS SUBSECTION APPLIES TO A WILLFUL OR REPEATED VIOLATION OF THIS SUBTITLE.

14 (2) THE DEPARTMENT SHALL REVOKE ANY APPLICABLE APPROVED FOREST CONSERVATION  
15 PLANS AND SUSPEND ONGOING PROCESSING OF ANY OTHER PLANS SUBMITTED BY OR ON BEHALF  
16 OF THE VIOLATOR, OTHER THAN A REVISED FOREST CONSERVATION PLAN OR PLANS FOR THE  
17 PROPERTIES IN VIOLATION.

18 (3) WITHIN FIVE DAYS AFTER A REVOCATION OR SUSPENSION, THE DEPARTMENT SHALL  
19 PROVIDE PUBLIC NOTICE OF THE CIRCUMSTANCES OF THE REVOCATION OR SUSPENSION ON THE  
20 COUNTY WEBSITE AND DIRECTLY TO:

21 (I) THE DEPARTMENT OF INSPECTIONS, LICENSES AND PERMITS;

22 (II) THE ADMINISTRATIVE ASSISTANT TO THE ZONING BOARD;

23 (III) THE COUNTY COUNCIL; AND

24 (IV) THE COUNTY EXECUTIVE.

25 (4) (I) A REVOCATION OR SUSPENSION MAY BE LIFTED WHEN THE DEPARTMENT APPROVES  
26 AND THE VIOLATOR COMPLIES WITH A REVISED, CORRECTIVE FOREST CONSERVATION PLAN OR  
27 PLANS, INCLUDING RESTORATION AND ON-SITE REFORESTATION EXCEEDING IN SUBSTANTIAL  
28 PART OTHERWISE APPLICABLE REQUIREMENTS.

29 (II) NOTICE OF THE LIFTING OF THE REVOCATION OR SUSPENSION SHALL BE PROVIDED IN  
30 THE SAME MANNER AS NOTICE IS PROVIDED UNDER PARAGRAPH (3) OF THIS SUBSECTION.

1 (5) THE DEPARTMENT WILL MAINTAIN A RECORD OF ALL REVOCATIONS OR SUSPENSIONS UNDER  
2 THIS SUBSECTION AND ANY REMEDIES OR OUTCOMES.

3  
4  
5 (G) *REVOCATION OF ANY ON-SITE EXCEPTIONS*: FOR ANY WILLFUL OR REPEATED VIOLATION OF  
6 THIS SUBTITLE, THE DEPARTMENT SHALL DEEM VOID, WAIVED AND DENIED ANY PREVIOUSLY  
7 GRANTED OR PENDING APPLICATION FOR A WAIVER, ~~NECESSARY DISTURBANCE~~, VARIANCE,  
8 ALTERNATIVE COMPLIANCE, OFF-SITE COMPLIANCE OR ANY OTHER EXCEPTION FROM THE ON-  
9 SITE REQUIREMENTS OF THE FOREST CONSERVATION ACT FOR ANY PROPERTY IN VIOLATION.

10 ~~[[f]]~~ (H) Civil Penalties. In addition to and concurrent with all other remedies, the Department  
11 of Planning and Zoning may enforce the provisions of this subtitle or an approved forest  
12 conservation plan with civil penalties pursuant to the provisions of Title 24, "Civil penalties," of  
13 the Howard County Code. A violation shall be a class A offense. Each day a violation continues  
14 is a separate violation.

15  
16 *Section 2. Be It Further Enacted by the County Council of Howard County, Maryland, that this*  
17 *Act shall become effective 61 days after its enactment.*

Introduced 11-1-2021  
Public Hearing \_\_\_\_\_  
Council Action \_\_\_\_\_  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

### County Council of Howard County, Maryland

2021 Legislative Session

Legislative day 17

**BILL NO. 89 – 2021**

**Introduced by: David Yungman**

**AN ACT** establishing a “lookback” provision for the disturbance of certain trees; providing for enhanced enforcement measures and penalties for violations of the Forest Conservation Act of Howard County; and generally relating to forest conservation in the County.

Introduced and read first time Nov 1, 2021. Ordered posted and hearing scheduled.

By order Michelle R. 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 \_\_\_\_\_, 2021.

By order \_\_\_\_\_  
Michelle R. Harrod, Administrator

This Bill was read the third time on \_\_\_\_\_, 2021 and Passed \_\_\_\_\_, Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order \_\_\_\_\_  
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/Vetoed 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.

1 *Section 1. Be It Enacted by the County Council of Howard County, Maryland, that the Howard County*  
2 *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 16.1213. Enforcement; penalties.*

8  
9 **HOWARD COUNTY CODE**

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

11 **Subtitle 12. Forest Conservation**

12  
13 **Sec. 16.1204. Forest conservation plan.**

14 (a) *Applicability.* Forest conservation plans, consistent with this subtitle and the manual, shall be  
15 submitted to the Department with applications for all development not exempt under section  
16 16.1202 of this subtitle.

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

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

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

25 (2) DESCRIBE THE EXTENT OF KNOWN CLEARING OF TREES ON-SITE WITHIN THE LAST FIVE  
26 YEARS;

27 (3) Be used during the review process to determine the most suitable and practical areas for  
28 forest conservation.

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

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



1 (2) Show the proposed limits of disturbance;

2 (3) Show locations for proposed retention of existing forest and/or proposed reforestation or  
3 afforestation. IF TREES HAVE BEEN CLEARED ON-SITE WITHIN THE FIVE YEARS PRIOR TO  
4 ENTERING THE DEVELOPMENT OR SUBDIVISION PROCESS, THEN THOSE TREES SHALL BE  
5 DESCRIBED IN THE PLAN AND THE PROPERTY SUBJECT TO THE PROVISIONS OF THIS TITLE AS  
6 THOUGH STILL EXISTING ON-SITE;

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

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

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

11 (iii) If priority forests and priority areas cannot be left undisturbed, where on the site in  
12 priority areas reforestation or afforestation will occur in compliance with section 16.1208 of this  
13 subtitle;

14 (iv) How site design requirements will be followed to maximize meeting forest  
15 conservation obligations on-site in compliance with section 16.1209 of this subtitle;

16 (v) How the sequence for preferred reforestation or afforestation location and methods  
17 will be followed in compliance with section 16.1208 of this subtitle; and

18 (vi) Why reforestation or afforestation requirements cannot reasonably be accomplished  
19 on- or off-site, or through a forest mitigation bank, if the applicant proposes payments of an in-  
20 lieu fee to the forest conservation fund;

21 (5) Show proposed locations and types of protective devices and measures to be used during  
22 construction to protect trees and forests designated for conservation, including protection of  
23 critical root zones;

24 (6) In the case of reforestation or afforestation, include a reforestation or afforestation plan,  
25 with a timetable, description of needed site and soil preparation, and the species, size, and spacing  
26 of plantings;

27 (7) Include a minimum three growing season forest conservation agreement as specified in  
28 the manual that details how the areas designated for retention, reforestation or afforestation will  
29 be maintained to ensure protection and satisfactory establishment, including a reinforcement  
30 planting provision if survival rates fall below required standards. Financial security shall be  
31 provided for the forest conservation agreement as provided in section 16.1210 and the manual.

1 Minor subdivisions which meet forest conservation requirements entirely by forest retention are  
2 not required to have a forest conservation agreement;

3 (8) Include a deed of forest conservation easement with a plat of the forest conservation  
4 easement area, as specified in the manual that:

5 (i) Provides protection, in perpetuity, for areas of forest retention, reforestation and  
6 afforestation; and

7 (ii) Limits uses in areas of forest conservation to those uses that are designated and  
8 consistent with forest conservation, including recreational activities and forest management  
9 practices that are used to preserve forest;

10 (9) Include other information the Department determines is necessary to implement this  
11 subtitle; and

12 (10) Be amended or a new plan prepared, as provided in the manual, if required as a result  
13 of changes in the development or in the condition of the site.

14  
15 **Section 16.1213. Enforcement; penalties.**

16 The provisions of this subtitle may be enforced with any or all of the following measures:

17 (a) *Revocation of Exemption.* The Department may revoke an exemption for properties that are  
18 in violation of the conditions of exemption set forth in section 16.1202(b) of this subtitle and may  
19 require compliance with the retention, reforestation and afforestation requirements of this subtitle.  
20 Prior to revocation, the Department shall notify the violator in writing and provide an opportunity  
21 for a response.

22 (b) *Revocation of Approved Forest Conservation Plan.* The Department may revoke an  
23 approved forest conservation plan for cause, including any of the following conditions:

24 (1) Noncompliance with this subtitle or with conditions of an approved forest conservation  
25 plan; or

26 (2) Obtaining approval of the plan through fraud, misrepresentation, a false or misleading  
27 statement, or omission of a relevant or material fact.

28 Prior to revocation, the Department shall notify the violator in writing and provide an  
29 opportunity for a response.

30 (c) *Stop-Work Order.* The County may issue a stop-work order against any violator of this

1 subtitle, the manual, an order, an approved forest conservation plan, the associated forest  
2 conservation agreement and long-term deed of forest conservation easement, or a declaration of  
3 intent.

4 (d) *Injunction.* The County may seek an injunction requiring a violator to cease the violation and  
5 take corrective action to restore or reforest an area.

6 (e) *Noncompliance penalties:* The County ~~[[may]]~~ SHALL assess a noncompliance penalty as  
7 defined in section 16.1212 of this subtitle, against a violator of this subtitle, the Manual, an order,  
8 an approved forest conservation plan, an associated forest conservation agreement, a long-term  
9 deed of forest conservation easement or a declaration of intent.

10 (F) *SUSPENSION OF PLANS PROCESSING.*

11 (1) THIS SUBSECTION APPLIES TO A WILLFUL OR REPEATED VIOLATION OF THIS SUBTITLE.

12 (2) THE DEPARTMENT SHALL REVOKE ANY APPLICABLE APPROVED FOREST CONSERVATION  
13 PLANS AND SUSPEND ONGOING PROCESSING OF ANY OTHER PLANS SUBMITTED BY OR ON BEHALF  
14 OF THE VIOLATOR, OTHER THAN A REVISED FOREST CONSERVATION PLAN OR PLANS FOR THE  
15 PROPERTIES IN VIOLATION.

16 (3) WITHIN FIVE DAYS AFTER REVOCATION OR SUSPENSION, THE DEPARTMENT SHALL  
17 PROVIDE PUBLIC NOTICE OF THE CIRCUMSTANCES OF THE REVOCATION OR SUSPENSION ON THE  
18 COUNTY WEBSITE AND DIRECTLY TO:

19 (I) THE DEPARTMENT OF INSPECTIONS, LICENSES AND PERMITS;

20 (II) THE ADMINISTRATIVE ASSISTANT TO THE ZONING BOARD;

21 (III) THE COUNTY COUNCIL; AND

22 (IV) THE COUNTY EXECUTIVE.

23 (4) (I) A REVOCATION OR SUSPENSION MAY BE LIFTED WHEN THE DEPARTMENT APPROVES  
24 AND THE VIOLATOR COMPLIES WITH A REVISED, CORRECTIVE FOREST CONSERVATION PLAN OR  
25 PLANS, INCLUDING RESTORATION AND ON-SITE REFORESTATION EXCEEDING IN SUBSTANTIAL  
26 PART OTHERWISE APPLICABLE REQUIREMENTS.

27 (II) NOTICE OF THE LIFTING OF THE REVOCATION OR SUSPENSION SHALL BE PROVIDED IN  
28 THE SAME MANNER AS NOTICE IS PROVIDED UNDER PARAGRAPH (3) OF THIS SUBSECTION.

29 (5) THE DEPARTMENT WILL MAINTAIN A RECORD OF ALL REVOCATIONS OR SUSPENSIONS UNDER  
30 THIS SUBSECTION AND ANY REMEDIES OR OUTCOMES.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16

(G) *REVOCATION OF ANY ON-SITE EXCEPTIONS:* FOR ANY WILLFUL OR REPEATED VIOLATION OF THIS SUBTITLE, THE DEPARTMENT SHALL DEEM VOID, WAIVED AND DENIED ANY PREVIOUSLY GRANTED OR PENDING APPLICATION FOR A WAIVER, NECESSARY DISTURBANCE, VARIANCE, ALTERNATIVE COMPLIANCE, OFF-SITE COMPLIANCE OR ANY OTHER EXCEPTION FROM THE ON-SITE REQUIREMENTS OF THE FOREST CONSERVATION ACT FOR ANY PROPERTY IN VIOLATION.

[[f]] (H) Civil Penalties. In addition to and concurrent with all other remedies, the Department of Planning and Zoning may enforce the provisions of this subtitle or an approved forest conservation plan with civil penalties pursuant to the provisions of Title 24, "Civil penalties," of the Howard County Code. A violation shall be a class A offense. Each day a violation continues is a separate violation.

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

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on Dec 13, 2021.

Michelle Harrod  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council