

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*
 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*
 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*
 Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7 day of Dec, 2021 at 4⁰⁰ a.m./p.m.
 By order *Michelle R. Harrod*
 Michelle R. Harrod, Administrator

Approved Vetoed by the County Executive Dec. 13, 2021
Calvin Ball
 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.*

Amendment 1 to Council Bill No. 89-2021

BY: Liz Walsh
David Yungmann

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 1

(This Amendment changes the required contents of a forest stand delineation.)

- 1 On page 1, in line 25, after "EXTENT OF" insert "PROBABLE OR".
- 2
- 3 On page 4, in line 9, after "intent." insert "DISTURBANCE OF TREES IDENTIFIED UNDER SECTION
- 4 16.1205(A) OF THIS SUBTITLE SHALL BE CALCULATED AT 500 SQUARE FEET PER TREE."
- 5
- 6 On page 5, in line 5, strike "NECESSARY DISTURBANCE."

I certify this is a true copy of

Am 1 to CB 89-2021

passed on Dec 6, 2021

Michelle Howard
Council Administrator

Amendment 1 to Amendment 1 to Council Bill No. 89-2021

BY: David Yungmann

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 1

(This Amendment clarifies the penalty for disturbance of certain trees and clarifies that necessary disturbance is not applicable to the Forest Conservation Act.)

1 After line 2 insert:

2

3 "On page 4, in line 9, after "intent." insert "DISTURBANCE OF TREES IDENTIFIED UNDER
4 SECTION 16.1205(A) OF THIS SUBTITLE SHALL BE CALCULATED AT 500 SQUARE FEET PER TREE."

5

6 On page 5, in line 5, strike "NECESSARY DISTURBANCE,".

7

I certify this is a true copy of

Am 1 to Am 1
passed on 12-6-2021

Michelle Okeed
Council Administrator

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

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.

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7 *Section 16.1213. Enforcement; penalties.*

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9 **HOWARD COUNTY CODE**

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12
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15 submitted to the Department with applications for all development not exempt under section
16 16.1202 of this subtitle.

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18 forester, licensed landscape architect, or certified arborist.

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26 YEARS;

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

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

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

13
14 *Section 2. Be It Further Enacted by the County Council of Howard County, Maryland, that this*
15 *Act shall become effective 61 days after its enactment.*
16

Amendment 1 to Council Bill No. 89-2021

**BY: Liz Walsh
David Yungmann**

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 1

(This Amendment changes the required contents of a forest stand delineation.)

1 On page 1, in line 25, after "EXTENT OF" insert "PROBABLE OR".

2



Amendment 1 to Amendment 1 to Council Bill No. 89-2021

BY: David Yungmann

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 1

(This Amendment clarifies the penalty for disturbance of certain trees and clarifies that necessary disturbance is not applicable to the Forest Conservation Act.)

1 After line 2 insert:

2

3 “On page 4, in line 9, after “intent.” insert “DISTURBANCE OF TREES IDENTIFIED UNDER
4 SECTION 16.1205(A) OF THIS SUBTITLE SHALL BE CALCULATED AT 500 SQUARE FEET PER TREE.”

5

6 On page 5, in line 5, strike “NECESSARY DISTURBANCE.”

7

Amendment 1 to Council Bill No. 89-2021

**BY: Liz Walsh
David Yungmann**

Legislative Day No. 19

Date: December 6, 2021

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(This Amendment changes the required contents of a forest stand delineation.)

1 On page 1, in line 25, after "EXTENT OF" insert "PROBABLE OR".

2

Office of the County Auditor
Auditor's Analysis

Council Bill No. 89-2021

Introduced: November 1, 2021

Auditor: Michael A. Martin

Fiscal Impact:

This legislation changes Department of Recreation and Parks (DRP) policy so the department "shall" collect fines associated with noncompliance with the Forest Conservation Act of Howard County. The County Code currently states that DRP "may" collect such penalties. According to the Director of DRP, out of a combined total of 22 recorded residential violations in Fiscal Years 2019 and 2020, only one in each year resulted in fines. Future penalty assessments cannot be estimated, as the number of annual Forest Conservation Act violations cannot be predicted.

Attachment A shows a breakdown of noncompliance incidents and associated fines for FY 2019 and FY 2020.

Purpose:

This legislation creates a lookback provision for the disturbance of certain trees, requires fines for each instance of noncompliance, and allows for the suspension and revocation of plans for any willful or repeated violation of the forest conservation requirements. It also requires the Department of Planning and Zoning to maintain a record of all revocations, suspensions, and outcomes.

Other Comments:

The provisions of this legislation are similar to those proposed in Council Bill 78-2021 and CB79-2021, which were introduced in October 2021.

According to the Director of DRP, the department manages a record of noncompliance, which is broken into two categories: construction (developers) and post-construction (residential). Typically, there have not been fines levied on construction forest conservation projects unless the developer were to default on the project. If a developer defaults on a project, bonded funds from the developer are used to bring the site back to compliance with the Forest Conservation Act. These funds are part of the default process in which DRP provides an estimated cost to complete the remaining developer obligations on a project. If a developer defaults, these funds are deposited into Capital Project N3972 – "Defaulted Forest Conservation and Landscaping" and used by DRP to fulfill the developer's obligations.

Attachment A

DRP Noncompliance Records	FY 2019	FY 2020
Total Developer Inspections	138	131
Developer Inspection Failures	80	84
Developer Violations w/ Fines	-	-
Residential Violations*	7	15
Residential Violations w/ Fines	1	1
Annual Revenues from Fines	\$1,900	\$4,406

***Residential violations that did not result in a fine under the current County Code would now incur a fine in addition to the requirement to comply with the relevant subtitle of the County Code.**

CB89-2021

Sayers, Margery

From: Isaac Ambruso <iambruso@marylandbuilders.org>
Sent: Monday, December 6, 2021 9:20 AM
To: CouncilMail
Subject: MBIA CB-89 Letter of Opposition
Attachments: MBIA Opposition Letter to CB89 - Lookback Provision.docx

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Please accept the attached letter as the MBIA opposition to CB 89-21.

Isaac Ambruso
Director of Legislative and Regulatory Affairs
Cell: (202) 815-4445
iambruso@marylandbuilders.org
Maryland Building Industry Association
11825 W. Market Place
Fulton, MD 20759

December 6, 2021

Re: OPPOSITION TO CB 89 – Establishing a Lookback Provision

Dear Counsel Chair Walsh and Members of the Howard County Council:

The Howard County Chapter of the Maryland Building Industry Association (MBIA) writes in opposition to Council Bill 89, which would create a lookback provisions for Forest Conservation Plans. The Forest Conservation Act of Howard County was repealed and reenacted in December 2019 with an effective date of February 5, 2020. A revised Forest Conservation Manual was approved by Resolution in February 2021. Since these Acts and Manuals were only recently passed, it is an unreasonable burden on builders and developers to now consider additional changes to the Forest Conservation Act. Both the County and the industry has only begun to implement these new rules and there isn't a track record that indicates that changes are necessary at this time.

This legislation would create a largely unenforceable requirement that a forest consultant evaluate a planned subdivision for tree cutting and clearing that occurred in the 5 years prior to a submission of a Forest Conservation Plan. Retroactively applying this standard would endanger multiple projects and landowners that have complied with current standards and place projects in jeopardy when considerable funds and manpower have already been attributed. Additionally, the practicality of determining which trees over the past 5 years that have been cleared would be difficult, if not impossible to determine and constitute a considerable investment in time and funds, and which will ultimately lead to forest stand delineation plans that can easily be challenged as inaccurate.

The impracticalities of implementing this legislation are clear. Additionally, we submit that it is legally inappropriate to retroactively punish people for legal behavior because it no longer conforms to the perspective of current legislators. For this reason, MBIA proposes that this bill be amended so that any lookback provision dates only from the time of the bill passage. This would at least avoid unfair and retroactive punishment for legal behaviors that were undertaken before the passage of the new law.

For these reasons, MBIA respectfully requests the Council vote against Council Bill 89-2021. Thank you for your attention to this vital issue and your continued support of the local home building industry. If you have any questions about these comments and would like to discuss MBIA's position further, please do not hesitate to contact me at iambruso@marylandbuilders.org or (202) 815-4445.

Best regards,

Isaac Ambruso, Director of Legislative and Regulatory Affairs

Cc: Counsel Chair Elizabeth Walsh
Vice-Chair Opel Jones
Councilmember Deb Jung
County Executive Calvin Ball
Councilman David Yungmann

Sayers, Margery

From: Sarah Rayne <Sarah@hcar.org>
Sent: Tuesday, November 23, 2021 4:52 PM
To: CouncilMail
Subject: Revised Comment Letter on CB 89
Attachments: HCAR Comments on CB 89-2021.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Good Afternoon,

Please accept the attached revised letter from the Howard County Association of Realtors regarding CB 89-2021. We needed to adjust our sales data to reflect the correct number of age-restricted homes sold in the county this year.

Thank you for your consideration.

Thanks,

Sarah Rayne, RCE, AHWD, ePro®, C2EX
Director of Operations
Howard County Association of REALTORS®
HCAR Cares
8600 Snowden River Parkway, STE. 104
Columbia, MD 21045
Office: (410) 715-1401
Cell: (410) 980-0443
Email: Sarah@hcar.org
Website: www.hcar.org



**HOWARD COUNTY COUNCIL
AFFIDAVIT OF AUTHORIZATION
TO TESTIFY ON BEHALF OF AN ORGANIZATION**

I, Alan Schneider, have been duly authorized by
(name of individual)

Howard County Citizens Association to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB 89 to express the organization's
(bill or resolution number)

support for / opposition to request to amend this legislation.
(Please circle one.)

Printed Name: Alan Schneider

Signature: 

Date: 11/15/2021

Organization: Howard County Citizens Association

Organization Address: POB 89, Ellicott City, Md 21041

Number of Members: 500

Name of Chair/President: Stu Kohn

This form can be submitted electronically via email to councilmail@howardcountymd.gov no later than 5pm the day of the Public Hearing or delivered in person the night of the Public Hearing before testifying.

IN FAVOR OF CB 89 WITH AMENDMENTS, I am Alan Schneider testifying for Howard County Citizen's Association, HCCA. Council Member Yungmann's Look Back Bill, CB-89, follows up on Council Chair Walsh's proposals.

Changing 'may' to 'shall' for penalties is a key component. The auditor's report shows the need for penalties. During fiscal year 2020, eighty four (84) of one hundred thirty one (131) developer inspections FAILED. Of the 84 FAILURES, 40 yielded no fines. Penalties for noncompliance encourages forest conservation. Also, revenues from fines could help fund environmental incentives.

HOWEVER, CB-89 falls short. Amendments to CB-89 are necessary to achieve the goal. Our Goal is to improve and maintain the quality of our water, soil, and air, and to enrich our lives in Howard County. These are fundamental to Howard County's General Plan 2030.

RECOGNIZE the need for tree conservation compliance and enforcement. Trees provide benefits and add value to developments. Preserving trees increases aesthetic and functional values as well as adding monetary value. Preservation enhances a community. Also, it benefits developers reputations and profits. More information is on the attachment to this testimony.

COMPLIANCE CAN BE FURTHER ENABLED, if licensed professionals are immune from trespassing. Currently only DPZ inspectors may visit properties. Licensed professionals endanger their credentials if looking at property without owner's authorization. DPZ inspection staff is limited.

ENFORCEMENT CAN BE ENHANCED BY AN AMENDMENT THAT WOULD PERMIT STANDING BY ANY NON PROFIT ENVIRONMENTAL GROUP, such as Riverkeepers, to bring an action against violations. Adopt federal standing rules for environmental compliance.

HELP DEVELOPERS: REQUIRE DPZ TO FOLLOW A GUIDE TO PRESERVING TREES IN DEVELOPMENT PROJECTS, a PennState Extension Guide is attached.

Passage of CB 89 would be a good step, and a **great** step in the right direction with amendments. HCCA urges its passage with amendments. The preservation of mature trees is our greatest and least costly tool to fight climate change and to enhance life in Howard County.



A Guide to Preserving Trees in Development Projects

This publication explains tree health and environmental considerations and details how to preserve trees.

ARTICLES | UPDATED: SEPTEMBER 12, 2017



Why Preserve Trees?

By their very nature, trees and green space provide benefits and add value to developments. The ability of trees to improve and maintain the quality of water, soil, and air and to remove pollutants from the air is well known. Trees also provide shade and help lower temperatures during hot weather. Trees enrich people's

lives and beautify landscapes. Preserving trees has positive effects on the image and attractiveness of developments and enhances developers' reputations and profits.

Preserving trees in developments increases a project's attractiveness, monetary value, and marketability by providing aesthetic and functional values. Lots where trees are preserved can be sold more quickly and at higher prices.

Research has shown that mature trees increase the worth of a property up to 12 percent. Developers who understand these values realize that it is in their best interest to encourage the preservation of trees and green spaces.

Developers can take advantage of different opportunities when considering the preservation of trees. Individual historic, landmark, and ornamental trees are all good choices for preservation, as are native trees in groves and woodlots. Opportunities differ from one development to another, but many of the recommendations for preserving trees remain the same.

Various people, such as arborists, engineers, architects, planners, and municipal officials, may become involved in preserving trees. Properly preserving trees in development takes time, good design, communication, and money. However, the results are worth the effort. This publication provides helpful information to those who want to preserve trees, but know little about tree preservation techniques. Tree preservation starts with a basic understanding of the health of trees and the soils that support trees.

Tree Preservation Takes Place Over Time

Preconstruction

- Tree inventory
- Planning, design, negotiations
- Removals
- Staking of construction footprints under trees—required limb pruning
- Insect control or other care
- Fencing preserved trees

Construction

- Communication and education
- Protection zones
- Required root pruning
- Maintenance of fencing
- Monitoring tree health
- Tree care

After Construction

- Communication and education
- Protecting
- Tree care

Tree Health

Preserving trees is not very complicated if you understand how they function and what they need to grow. Trees are living organisms that respond to what is done to them and to the environment that they occupy. To stay healthy and vigorous, trees need air, water, and soil nutrients. They need a pollution-free and compaction-free soil that allows