

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2023 Legislative Session

Legislative Day No. **7**

Bill No. 30 -2023

Introduced by: Liz Walsh

AN ACT amending the purpose of the Forest Conservation Act of Howard County; altering the definition of a forest; increasing certain reforestation calculations; amending qualification for the use of certain forest mitigation banks; and generally related to the Forest Conservation Act of Howard County.

Introduced and read first time _____, 2023. Ordered posted and hearing scheduled.

By order _____
Michelle 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 _____, 2023.

By order _____
Michelle Harrod, Administrator

This Bill was read the third time on _____, 2023 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this _____ day of _____, 2023 at ___ a.m./p.m.

By order _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2023

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 Sec. 16.1200. Short title; background; purpose.

7 Sec. 16.1201. Definitions.

8 Sec. 16.1206. Reforestation.

9 Sec. 16.1218. Forest mitigation banking.

10
11 **HOWARD COUNTY CODE**

12 **Title 16 - Planning, Zoning and Subdivisions and Land Development Regulations**

13 **Subtitle 12. - Forest Conservation**

14
15 **Sec. 16.1200. Short title; background; purpose.**

- 16
17 (a) *Short Title.* This subtitle shall be known as the Forest Conservation Act of Howard County.
18 (b) *Background.* This subtitle is pursuant to the requirements of the Maryland Forest
19 Conservation Act of 1991, which requires units of local government to adopt, by December
20 31, 1992, a local forest conservation program which meets or is more stringent than the
21 requirements of title 5, subtitle 16 of the Natural Resources Article of the Annotated Code
22 of Maryland.
23 (c) *Purpose.* The purpose of this subtitle is to protect and ~~[[maintain]]~~ INCREASE forest
24 vegetation and forest areas in Howard County by requiring certain development projects to
25 have an approved forest conservation plan as a condition of approval of the development.

26 **Sec. 16.1201. Definitions.**

27
28 Except as provided in subsection (ff) of this section, words and phrases used in this subtitle
29 have their usual meaning unless defined in the Subdivision and Land Development Regulations
30 as set forth in subtitle 1 of this title or as follows in this section:

- 31 (a) *Afforestation.* "Afforestation" means the establishment of new forest on an area
32 presently without forest cover, by planting in accordance with the practices specified in
33 the Forest Conservation Manual.
34 (b) *COMAR.* "COMAR" means the Code of Maryland regulations.
35 (c) *Critical Habitat Area.* "Critical habitat area" means a critical habitat for threatened or
36 endangered species and its surrounding protection area. A critical habitat shall:
37 (1) Be likely to contribute to the long-term survival of the species;

- 1 (2) Be likely to be occupied by the species for the foreseeable future; and
- 2 (3) Constitute habitat of the species which is deemed critical under title 4, subtitle 2A
- 3 or title 10, subtitle 2A of the Natural Resource Article of the Annotated Code of
- 4 Maryland.
- 5 (d) *Declaration of Intent*. "Declaration of intent" means a statement signed by a landowner
- 6 or developer certifying that:
- 7 (1) A proposed development is exempt from the requirement for an approved forest
- 8 conservation plan; and
- 9 (2) No activity requiring a forest conservation plan will occur on the site within five
- 10 years of the date of the completion of the exempt activity.
- 11 (e) *Department*. "Department" means the Howard County Department of Planning and
- 12 Zoning.
- 13 (f) *Development*. "Development" means the establishment of a principal use of a site; a
- 14 change in a principal use of a site; or the improvement or alteration of a site by the
- 15 construction, enlargement, or relocation of a structure; the provision of stormwater
- 16 management or roads; the grading of existing topography; the clearing or grubbing of
- 17 existing vegetation; or any other nonagricultural activity that results in a change in
- 18 existing site conditions.
- 19 (g) *Forest*. "Forest" means a biological community dominated by native trees and other
- 20 woody plants covering an area of [[10,000 square feet]] 1 SQUARE ACRE or greater that
- 21 is at least [[35]] 120 feet wide for an existing forest and at least 50 feet wide for a
- 22 replanted forest. "Forest" includes:
- 23 (1) Areas with a cover ratio of 100 trees per acre with at least 50 percent of these
- 24 trees being at least two inches in diameter at a height of four and one-half feet
- 25 above ground; or
- 26 (2) Areas meeting the criteria above that have been cut but not cleared.
- 27 "Forest" does not include orchards, tree nurseries, Christmas tree farms or other types
- 28 of forest crops.
- 29 (h) *Forest Conservation*. "Forest conservation" means the retention of existing forest or
- 30 the creation of new forest at the levels set by this subtitle.
- 31 (i) *Forest Conservation Manual*. "Forest Conservation Manual" means the technical
- 32 manual approved by the County Council containing performance standards and
- 33 guidelines for implementation of the Howard County Forest Conservation Program.
- 34 (j) *Forest Conservation Plan*. "Forest conservation plan" means a plan which shows the
- 35 impacts of a proposed development on existing forest resources. A "forest conservation
- 36 plan" includes existing forest areas to be removed or retained; the location, extent and
- 37 specifications for any reforestation or afforestation required; and legal measures to
- 38 protect forest resources after completion of development in accordance with section
- 39 16.1203 below.

- 1 (k) *Forest Conservation Program*. "Forest Conservation Program" means the
2 administration of the Howard County Forest Conservation Act and Manual by
3 appropriate County agencies and the Maryland Department of Natural Resources.
- 4 (l) *Forest Mitigation Banking*. "Forest mitigation banking" means the planting or retention
5 of trees, according to plans approved by the Department, to be used as credit for
6 planting or retention required under this subtitle.
- 7 (m) *Forest Stand Delineation*. "Forest stand delineation" means the evaluation, pursuant to
8 section 16.1204 of this subtitle, of existing forests and other vegetation on a site
9 proposed for development.
- 10 (n) *Green Infrastructure Network*. "Green Infrastructure Network" means the system of
11 hubs and corridors mapped in the Howard County Green Infrastructure Network Plan,
12 published by the Department of Planning and Zoning in December 2012, as amended.
- 13 (o) *Historic Site*. "Historic site" means a site or structure listed on the Historic Sites
14 Inventory adopted by resolution of the County Council.
- 15 (p) *Historic Structure*. "Historic structure" means a structure or cluster of structures
16 situated within the County which, together with its appurtenances and environmental
17 setting, have significant historic or architectural value and have been designated as
18 such by resolution of the County Council.
- 19 (q) *Impervious Surface*. "Impervious surface" means any permanent artificial surface,
20 including but not limited to areas covered by asphalt, concrete, pavers, permeable
21 paving, rooftops and decks.
- 22 (r) *Limit of Disturbance*. "Limit of disturbance" means the boundary of permitted changes
23 to existing site conditions due to clearing and grading, as well as other activities
24 associated with site development such as parking of vehicles and equipment, storage of
25 materials, and disposal of construction debris.
- 26 (s) *Linear Project*. "Linear project" means a project having an elongated configuration
27 with nearly parallel sides designed to transport a utility product or public service (for
28 example, gas, electricity, water, sewer, communications, trains and vehicles) not
29 otherwise addressed in an application for subdivision.
- 30 (t) *Lot*. "Lot" means a piece of land described in a final plat or deed and recorded in the
31 land records of Howard County in accordance with the laws and regulations in effect at
32 the time of recordation.
- 33 (u) *Manual*. "Manual" means the Forest Conservation Manual.
- 34 (v) *Net Tract Area*. "Net tract area" means the total area to the nearest one-tenth acre,
35 whether forested or not, of a proposed development, exclusive of any 100-year
36 floodplain, utility transmission line easements, or preservation parcel as referenced in
37 the zoning regulations. "Net tract area" is to be used in calculating any reforestation or
38 afforestation obligations that may be created by the proposed development.
- 39 (w) *Planned Business Park*. "Planned business park" means a commercial-industrial
40 subdivision developed with an integrated plan that provides common infrastructure and
41 protection of environmentally sensitive features.

- 1 (x) *Planned Unit Development*. "Planned Unit Development" means a development
2 comprised of a combination of land uses or varying intensities of the same land use in
3 accordance with an integrated plan that provides flexibility in design with at least 20
4 percent of the land permanently dedicated to open space.
- 5 (y) *Priority Funding Area*. "Priority Funding Area" means an area designated as a Priority
6 Funding Area under title 5, subtitle 7B of the State Finance and Procurement Article.
7 In Howard County the Priority Funding Area is all land within the Planned Service
8 Area for both public water and sewerage.
- 9 (z) *Reforestation*. "Reforestation" means the establishment, in accordance with the
10 Howard County Forest Conservation Manual, of new forest cover to replace forest
11 resources lost because of development activities.
- 12 (aa) *Scenic Road*. "Scenic road" means a public road or road segment that is included in the
13 scenic roads inventory adopted by the County Council in accordance with section
14 16.1403 of this title.
- 15 (bb) *Stream Restoration Project*. "Stream Restoration Project" means an activity that:
- 16 (1) Is designed to stabilize stream banks or enhance stream function or habitat located
17 within an existing stream, waterway or floodplain;
- 18 (2) Avoids and minimizes impacts to forests and provides for replanting on-site an
19 equivalent number of trees to the number removed by the project;
- 20 (3) May be performed under a municipal separate storm sewer system permit, a
21 watershed implementation plan growth offset, or another plan administered by the
22 state or Howard County to achieve or maintain water quality standards; and
- 23 (4) Is not performed to satisfy stormwater management, wetlands mitigation, or any
24 other regulatory requirement associated with proposed development activity.
- 25 (cc) *Subdivision Regulations*. "Subdivision Regulations" means title 16, subtitle 1 of the
26 Howard County Code, entitled "Subdivision and Land Development Regulations."
- 27 (dd) *Urban Canopy*. "Urban canopy" means tree canopy inside the planned service area for
28 water and sewer that does not meet the definition of forest but does provide air quality,
29 water quality, and habitat benefits.
- 30 (ee) *Watershed*. "Watershed" means the Maryland 12-digit watershed delineation as defined
31 by the Maryland Department of the Environment.
- 32 (ff) *Other Terms*. Other terms which are defined in title 5, subtitle 16 of the Natural
33 Resources Article of the Annotated Code of Maryland, COMAR 08.19.01.03,
34 "Definitions," and COMAR 08.19.03.01, Article II, "Forest and Tree Conservation
35 Definitions," are incorporated by reference and shall apply to this subtitle for any terms
36 which are not defined in this section or the manual.

37 **Sec. 16.1206. Reforestation.**

- 38
- 39 (a) *Requirement to Reforest Areas Which Have Been Cut or Cleared*. The forest conservation
40 plan shall provide for:

- 1 (1) On- or off-site reforestation to replace forest which is proposed to be cut or cleared on
 2 the net tract area after reasonable efforts to minimize such cutting or clearing; or
 3 (2) Payment-in-lieu of reforestation if reforestation cannot reasonably be accomplished.
 4 (b) *Minimum Size.* Areas to be reforested shall be at least 10,000 square feet with a minimum
 5 width of 50 feet, unless otherwise approved by the Department based on criteria in the
 6 Forest Conservation Manual.
 7 (c) *Calculating the Amount of Reforestation Required.* The amount of reforestation required
 8 depends upon the amount of forest cover existing and removed from the net tract area and
 9 the land use being developed. The reforestation requirement shall be calculated as follows:
 10 (1) *Reforestation threshold.* There is a reforestation threshold for all land use categories.
 11 The reforestation threshold establishes the percentage of the net tract area at which the
 12 reforestation requirement changes. Reforestation requirements for clearing forest
 13 below the threshold are greater than for clearing above the threshold. Thresholds for
 14 calculating reforestation requirements are as follows:

Land Use	Threshold
Residential: Rural Low Density (Residential lots average 5 acres or more)	50%
Residential Rural Medium Density (Residential lots average 1 to 4.99 acres)	25%
Residential Suburban (Less than 1 acre per dwelling unit)	20%
Institutional or Linear	20%
Retail, Industrial or Office	15%
Mixed Use Development or Planned Unit Development	20%

- 15
 16 (2) *Reforestation calculation.* For all existing forest cover cleared on the net tract area,
 17 measured to the nearest one-tenth acre, the reforestation requirement shall be
 18 calculated as follows:
 19 (i) For reforestation sites within the same watershed, one[-half] acre shall be
 20 reforested, for each acre or portion of an acre cleared above the threshold ([[½]]
 21 1:1 ratio). For reforestation sites outside the same watershed, [[1 acre]] 2 ACRES
 22 shall be reforested, for each acre or portion of an acre cleared above the threshold
 23 ([[1]] 2:1 ratio).
 24 (ii) For reforestation sites within the same watershed, two acres shall be reforested for
 25 each acre or portion of an acre cleared below the threshold (2:1 ratio). For
 26 reforestation sites outside the same watershed, three acres shall be reforested for
 27 each acre or portion of an acre cleared below the threshold (3:1 ratio).
 28 (iii) All forest acreage retained above the threshold shall be directly credited against
 29 any reforestation obligation (1:1 ratio).

30 **Sec. 16.1218. Forest mitigation banking.**
 31

- 1 (a) *Opportunity to Create a Forest Mitigation Bank.* The Howard County Department of
2 Recreation and Parks or a private property owner with the Department's approval, may
3 establish a forest mitigation bank TO SATISFY UP TO 50% OF A PROJECT'S RETENTION,
4 REFORESTATION, OR AFFORESTATION OBLIGATIONS. Mitigation bank easement rights may be
5 purchased by a developer when the Department determines that [[all or]] a portion of a
6 project's retention, reforestation or afforestation obligations can be met off-site and that the
7 mitigation bank has met all requirements.
- 8 (b) *Minimum Size.* Mitigation banks shall be at least one acre in area unless otherwise approved
9 by the Department.
- 10 (c) *Location Priorities.* Forest retention mitigation banks shall be located in accordance with
11 the highest eight retention priorities specified in section 16.1205 of this subtitle. Planted
12 forest mitigation banks shall be located in accordance with the highest six reforestation and
13 afforestation priorities specified in section 16.1208 of this subtitle.
- 14 (d) *Preferred Methods.* Planted forest mitigation banks shall be planted using nursery stock,
15 whips, or seedlings, but not natural regeneration.
- 16 (e) *Approval Procedure.* Private forest mitigation bank applicants shall submit for the
17 Department's approval the proposed location and a forest conservation plan. Upon
18 completion of the installation of all protection devices and all forest planting, as required,
19 the County shall certify compliance with the approved forest conservation plan. At the end
20 of the minimum three growing seasons, or longer if required, the County shall certify that
21 the survival rates specified in the manual have been achieved.
- 22 (f) *Forest Conservation Agreement and Financial Security.* Planted forest mitigation banks
23 shall execute a Forest Conservation Agreement and post a financial security
- 24 (g) *Deed of Forest Conservation Easement.* The applicant shall record a forest conservation
25 easement plat and a deed of forest conservation easement in accordance with procedures
26 outlined in the manual.

27

28 **Section 4. And Be It Further Enacted** by the County Council of Howard County, Maryland that this Act
29 shall become effective 61 days after its enactment.

30