

Introduced 10.2.2023
Public Hearing 10.16.2023
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2023 Legislative Session

Legislative Day No. 11

Bill No. 402023

Introduced by: Liz Walsh

AN ACT removing certain exemptions for stream restoration projects in the Forest Conservation Act, removing the definition of a stream restoration project, and generally relating to the Forest Conservation Act.

Expired 1-16-2024

Introduced and read first time Oct 2, 2023. Ordered posted and hearing scheduled.

By order Michelle Harrod
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 Oct 16, 2023.

By order Michelle Harrod
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.

*11-6-2023 Tabled MRH
12-4-2023 Removed - Ext to 1/16/24 - Tabled MRH
1-2-2024 Not Removed = Expired 1/16/2024*

Michelle Harrod

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. 16.1201. Definitions.

7 Sec. 16.1202. Applicability; exemptions; declaration of intent.

8
9 **HOWARD COUNTY CODE**

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

11 **Subtitle 12. Forest Conservation**

12
13 **Sec. 16.1201. Definitions.**

14
15 Except as provided in subsection ([[ff]]EE) of this section, words and phrases used in this
16 subtitle have their usual meaning unless defined in the Subdivision and Land Development
17 Regulations as set forth in subtitle 1 of this title or as follows in this section:

- 18 (a) *Afforestation*. "Afforestation" means the establishment of new forest on an area
19 presently without forest cover, by planting in accordance with the practices specified in
20 the Forest Conservation Manual.
- 21 (b) *COMAR*. "COMAR" means the Code of Maryland regulations.
- 22 (c) *Critical Habitat Area*. "Critical habitat area" means a critical habitat for threatened or
23 endangered species and its surrounding protection area. A critical habitat shall:
24 (1) Be likely to contribute to the long-term survival of the species;
25 (2) Be likely to be occupied by the species for the foreseeable future; and
26 (3) Constitute habitat of the species which is deemed critical under title 4, subtitle 2A
27 or title 10, subtitle 2A of the Natural Resource Article of the Annotated Code of
28 Maryland.
- 29 (d) *Declaration of Intent*. "Declaration of intent" means a statement signed by a landowner
30 or developer certifying that:

1 (1) A proposed development is exempt from the requirement for an approved forest
2 conservation plan; and

3 (2) No activity requiring a forest conservation plan will occur on the site within five
4 years of the date of the completion of the exempt activity.

5 (e) *Department*. "Department" means the Howard County Department of Planning and
6 Zoning.

7 (f) *Development*. "Development" means the establishment of a principal use of a site; a
8 change in a principal use of a site; or the improvement or alteration of a site by the
9 construction, enlargement, or relocation of a structure; the provision of stormwater
10 management or roads; the grading of existing topography; the clearing or grubbing of
11 existing vegetation; or any other nonagricultural activity that results in a change in
12 existing site conditions.

13 (g) *Forest*. "Forest" means a biological community dominated by native trees and other
14 woody plants covering an area of 10,000 square feet or greater that is at least 35 feet
15 wide for an existing forest and at least 50 feet wide for a replanted forest. "Forest"
16 includes:

17 (1) Areas with a cover ratio of 100 trees per acre with at least 50 percent of these
18 trees being at least two inches in diameter at a height of four and one-half feet
19 above ground; or

20 (2) Areas meeting the criteria above that have been cut but not cleared.

21 "Forest" does not include orchards, tree nurseries, Christmas tree farms or other types
22 of forest crops.

23 (h) *Forest Conservation*. "Forest conservation" means the retention of existing forest or
24 the creation of new forest at the levels set by this subtitle.

25 (i) *Forest Conservation Manual*. "Forest Conservation Manual" means the technical
26 manual approved by the County Council containing performance standards and
27 guidelines for implementation of the Howard County Forest Conservation Program.

28 (j) *Forest Conservation Plan*. "Forest conservation plan" means a plan which shows the
29 impacts of a proposed development on existing forest resources. A "forest conservation
30 plan" includes existing forest areas to be removed or retained; the location, extent and
31 specifications for any reforestation or afforestation required; and legal measures to

1 protect forest resources after completion of development in accordance with section
2 16.1203 below.

- 3 (k) *Forest Conservation Program*. "Forest Conservation Program" means the
4 administration of the Howard County Forest Conservation Act and Manual by
5 appropriate County agencies and the Maryland Department of Natural Resources.
- 6 (l) *Forest Mitigation Banking*. "Forest mitigation banking" means the planting or retention
7 of trees, according to plans approved by the Department, to be used as credit for
8 planting or retention required under this subtitle.
- 9 (m) *Forest Stand Delineation*. "Forest stand delineation" means the evaluation, pursuant to
10 section 16.1204 of this subtitle, of existing forests and other vegetation on a site
11 proposed for development.
- 12 (n) *Green Infrastructure Network*. "Green Infrastructure Network" means the system of
13 hubs and corridors mapped in the Howard County Green Infrastructure Network Plan,
14 published by the Department of Planning and Zoning in December 2012, as amended.
- 15 (o) *Historic Site*. "Historic site" means a site or structure listed on the Historic Sites
16 Inventory adopted by resolution of the County Council.
- 17 (p) *Historic Structure*. "Historic structure" means a structure or cluster of structures
18 situated within the County which, together with its appurtenances and environmental
19 setting, have significant historic or architectural value and have been designated as
20 such by resolution of the County Council.
- 21 (q) *Impervious Surface*. "Impervious surface" means any permanent artificial surface,
22 including but not limited to areas covered by asphalt, concrete, pavers, permeable
23 paving, rooftops and decks.
- 24 (r) *Limit of Disturbance*. "Limit of disturbance" means the boundary of permitted changes
25 to existing site conditions due to clearing and grading, as well as other activities
26 associated with site development such as parking of vehicles and equipment, storage of
27 materials, and disposal of construction debris.
- 28 (s) *Linear Project*. "Linear project" means a project having an elongated configuration
29 with nearly parallel sides designed to transport a utility product or public service (for
30 example, gas, electricity, water, sewer, communications, trains and vehicles) not
31 otherwise addressed in an application for subdivision.

- 1 (t) *Lot*. "Lot" means a piece of land described in a final plat or deed and recorded in the
2 land records of Howard County in accordance with the laws and regulations in effect at
3 the time of recordation.
- 4 (u) *Manual*. "Manual" means the Forest Conservation Manual.
- 5 (v) *Net Tract Area*. "Net tract area" means the total area to the nearest one-tenth acre,
6 whether forested or not, of a proposed development, exclusive of any 100-year
7 floodplain, utility transmission line easements, or preservation parcel as referenced in
8 the zoning regulations. "Net tract area" is to be used in calculating any reforestation or
9 afforestation obligations that may be created by the proposed development.
- 10 (w) *Planned Business Park*. "Planned business park" means a commercial-industrial
11 subdivision developed with an integrated plan that provides common infrastructure and
12 protection of environmentally sensitive features.
- 13 (x) *Planned Unit Development*. "Planned Unit Development" means a development
14 comprised of a combination of land uses or varying intensities of the same land use in
15 accordance with an integrated plan that provides flexibility in design with at least 20
16 percent of the land permanently dedicated to open space.
- 17 (y) *Priority Funding Area*. "Priority Funding Area" means an area designated as a Priority
18 Funding Area under title 5, subtitle 7B of the State Finance and Procurement Article.
19 In Howard County the Priority Funding Area is all land within the Planned Service
20 Area for both public water and sewerage.
- 21 (z) *Reforestation*. "Reforestation" means the establishment, in accordance with the
22 Howard County Forest Conservation Manual, of new forest cover to replace forest
23 resources lost because of development activities.
- 24 (aa) *Scenic Road*. "Scenic road" means a public road or road segment that is included in the
25 scenic roads inventory adopted by the County Council in accordance with section
26 16.1403 of this title.
- 27 [(bb) *Stream Restoration Project*. "Stream Restoration Project" means an activity that:
28 (1) Is designed to stabilize stream banks or enhance stream function or habitat located
29 within an existing stream, waterway or floodplain;
30 (2) Avoids and minimizes impacts to forests and provides for replanting on-site an
31 equivalent number of trees to the number removed by the project;

- 1 (3) May be performed under a municipal separate storm sewer system permit, a
2 watershed implementation plan growth offset, or another plan administered by the
3 state or Howard County to achieve or maintain water quality standards; and
4 (4) Is not performed to satisfy stormwater management, wetlands mitigation, or any
5 other regulatory requirement associated with proposed development activity.]]

6 ([[cc]]BB) *Subdivision Regulations*. "Subdivision Regulations" means title 16, subtitle 1 of
7 the Howard County Code, entitled "Subdivision and Land Development Regulations."

8 ([[dd]]CC) *Urban Canopy*. "Urban canopy" means tree canopy inside the planned
9 service area for water and sewer that does not meet the definition of forest but does
10 provide air quality, water quality, and habitat benefits.

11 ([[ee]]DD) *Watershed*. "Watershed" means the Maryland 12-digit watershed
12 delineation as defined by the Maryland Department of the Environment.

13 ([[ff]]EE) *Other Terms*. Other terms which are defined in title 5, subtitle 16 of the Natural
14 Resources Article of the Annotated Code of Maryland, COMAR 08.19.01.03,
15 "Definitions," and COMAR 08.19.03.01, Article II, "Forest and Tree Conservation
16 Definitions," are incorporated by reference and shall apply to this subtitle for any terms
17 which are not defined in this section or the manual.
18

19 **Sec. 16.1202. Applicability; exemptions; declaration of intent.**
20

21 (a) *Forest Conservation Plan Required for Subdivision Plan, Site Development Plan or*
22 *Grading Permit*. Unless exempted by subsection (b) of this section, any person or unit of
23 local government developing land 40,000 square feet or greater in area shall file a forest
24 conservation plan with the Department. Plan approval is required prior to development and
25 prior to approval of a:

- 26 (1) Subdivision plan;
27 (2) Site development plan;
28 (3) Grading permit; or
29 (4) County road and utility construction plans.

30 (b) *Exemptions to Requirement for Forest Conservation Plans*.

- 1 (1) Exemptions not requiring a Declaration of Intent. The following development is
2 exempt from the requirement of this subtitle:
- 3 (i) Development activity on a single lot smaller than 40,000 square feet, as long as
4 the cutting, clearing or grading does not include any area already subject to a
5 previously approved forest conservation plan;
 - 6 (ii) Any property owned by a Homeowners Association in a Planned Unit
7 Development which has preliminary development plan approval and 50 percent or
8 more of the land is recorded and substantially developed before December 31,
9 1992, if the Homeowners Association has a Forest Stewardship Plan drafted by
10 the Maryland Department of Natural Resources;
 - 11 (iii) Any property owned by the Howard County Public School System in a Planned
12 Unit Development which has preliminary development plan approval and 50
13 percent or more of the land is recorded and substantially developed before
14 December 31, 1992;
 - 15 (iv) Any agricultural activity, including agricultural support buildings and structures
16 built using accepted best management practice unless it involves the clearing of
17 40,000 square feet or greater of forest within a one-year period;
 - 18 (v) Agricultural preservation subdivision, unless it involves the clearing of 20,000
19 square feet or greater of forest;
 - 20 (vi) Resubdivisions, that do not create additional lots, deed adjoinders, property
21 consolidations, reconfigurations and correction plats as provided for in sections
22 16.102 and 16.103 of this title;
 - 23 (vii) Minor subdivisions that create one additional lot and have no further subdivision
24 potential;
 - 25 (viii) Mining or other extractive activity exempted by state law from the forest
26 conservation requirements;
 - 27 (ix) Routine maintenance of existing roads and public utility rights-of-way;
 - 28 (x) Highway construction using full or partial state funding is exempt from this
29 subtitle but subject to state reforestation requirements set forth in title 5, subtitle 1
30 of the Natural Resources Article of the Annotated Code of Maryland;

- 1 (xi) The cutting or clearing of public utility rights-of-way, or land for electric
2 generating stations licensed pursuant to title 7, subtitle 2 of the Public Utility
3 Companies Article of the Annotated Code of Maryland, if:
4 a. Required certificates of public convenience and necessity have been issued in
5 accordance with the Natural Resources Article, section 5-1603(f), Annotated
6 Code of Maryland; and
7 b. Cutting or clearing of the forest is conducted to minimize the loss of forest.

8 (xii) Howard County capital improvement projects, including those with partial state
9 funding, provided that:

- 10 a. The activity is conducted on a single lot of any size;
11 b. The activity does not result in the cutting, clearing or grading of more than
12 20,000 square feet of forest; and
13 c. The impacted forest is not subject to a previously approved forest
14 conservation plan;

15 (xiii) An activity on a previously developed area covered by an impervious surface and
16 located in the Priority Funding Area; OR

17 (xiv) Maintenance or retrofitting of a stormwater management structure that may
18 include clearing of vegetation or removal and trimming of trees, so long as the
19 maintenance or retrofitting is within the original limits of disturbance for
20 construction of the existing structure, or within any maintenance easement for
21 access to the structure[[]; or]].

22 [[(xv) Stream restoration project, as defined in this subtitle, for which the
23 applicant for a grading or sediment control permit has executed a binding
24 maintenance agreement of at least five years with the affected property owner or
25 owners.]]

26 (2) *Exemptions requiring a Declaration of Intent.* The following development is exempt
27 from the requirements of this subtitle, provided that the developer files a Declaration of
28 Intent with the Department as provided in subsection (c) below:

- 29 (i) Residential development on an existing single lot of any size if:
30 a. The total cutting, clearing or grading of forest resources is less than 20,000 square
31 feet; and

- 1 b. The forest resources affected by the development are not subject to a previously
2 approved forest conservation plan;
- 3 (ii) Commercial logging and timber harvesting operations conducted subject to the
4 forest conservation and management program under the Tax-Property Article
5 section 8-211, Annotated Code of Maryland;
- 6 (iii) Any agricultural activity, including agricultural support buildings and structures
7 built using accepted best management practice involving the clearing of 40,000
8 square feet or greater of forest within a one-year period;
- 9 (iv) Subdivision in connection with real estate transactions to provide a security,
10 leasehold, or other legal or equitable interest, including a transfer of title, of a
11 portion of a lot or parcel, if:
- 12 a. The transaction does not involve a change in land use, or new development or
13 redevelopment, with associated land-disturbing activities; and
- 14 b. Both the grantor and grantee file the declaration of intent; and
- 15 (v) Linear projects that are not exempt and that disturb less than 20,000 square feet of
16 forest, if the impacted forest is not subject to a previously approved forest
17 conservation plan.

18 (c) *Declaration of Intent.*

- 19 (1) A person seeking an exemption under subsection (b) above shall submit a declaration
20 of intent to the Department to verify that the proposed activity is exempt.
- 21 (2) No regulated activity may occur on the area covered by the Declaration of Intent within
22 five years of the completion of cutting, clearing or grading of forest resources, or in the
23 case of real estate transactions, within five years of the effective date of the declaration
24 of intent.
- 25 (3) The Department may require a person failing to file a declaration of intent or found not
26 in compliance with a declaration of intent to perform one or any combination of the
27 following:
- 28 (i) Meet the retention, reforestation and afforestation requirements established by this
29 subtitle;

- 1 (ii) Pay a penalty fee established by fee schedules approved by resolution of the
2 County Council per square foot of forest cut or cleared, but in no case less than
3 the minimum set by state law;
- 4 (iii) Be subject to other enforcement actions appropriate under title 5, subtitle 16 of the
5 Natural Resources Article of the Annotated Code of Maryland, and this subtitle;
6 or
- 7 (iv) File a declaration of intent with the Department.

8

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

11

Office of the County Auditor
Auditor's Analysis

Council Bill No. 40-2023

Introduced: October 2, 2023

Auditors: Rebecca Gold and Diane Zagorski

Fiscal Impact:

The fiscal impact of this legislation cannot be estimated, as it is not possible to predict how many future developments may be affected. According to the Chief of the Stormwater Management Division of the Department of Public Works (DPW) and the Director of the Department of Planning and Zoning (DPZ), no additional resources would be needed to implement this legislation. The DPW indicated the legislation could result in a minimal increase to the amount of forest mitigation fees-in-lieu that it pays, which would be charged to a Capital Project Fund.

Purpose:

Council Bill 40-2023 removes the stream restoration project exemption from the forest conservation requirements in Section 16.1202(b)(1) of the County Code. It also removes the definition of a Stream Restoration Project from the list of definitions in Section 16.1201 of the code.

Other Comments:

The DPW indicated it received exemptions for four stream restoration projects over the past five years.

We have requested a list of the stream restoration projects in the pipeline that may be subject to this legislation. We will provide this list to the Council upon its receipt.

According to the DPZ, the application of this change to projects already in process will be handled in accordance with Section 16.102(h) of the County Code. Projects will proceed under the regulations in effect at the time of the following plan approvals:

- Preliminary plan original signature or preliminary equivalent sketch plan original signature approval;
- Final plan approval letter for minor subdivisions and resubdivisions; or
- Site development plan original signature approval.