



*Gregory J. Swain, County Attorney*

## MEMORANDUM

**To:** Council Members, Anne Arundel County Council

**From:** Kinley R. Bray, Senior Assistant County Attorney /s/

**Via:** Lori L. Blair Klasmeier, Deputy County Attorney /s/  
Gregory J. Swain, County Attorney /s/

**Date:** September 3, 2019; **revised October 4, 2019<sup>1</sup>**

**Subject:** Bill No. 68-19, Forest Conservation Bill

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### Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 68-19, which updates the County's Forest Conservation Program.

#### Purpose.

The purposes of the bill are to establish the applicability of the Forest Conservation Program; to establish standards for granting modifications to forest conservation requirements; to revise the exceptions to the forest conservation requirements for certain projects; to establish "special priority retention areas" to conform the County's Forest Conservation Program to State law; to revise the requirements for forest stand delineations and forest conservation plans to conform to State law requirements; to revise the forest conservation thresholds; and to revise the forest conservation fee-in-lieu payments.

#### Background.

The State Forest Conservation Law directs local governments to develop a local forest conservation program consistent with the intent, requirements, and standards of the Maryland

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<sup>1</sup> The revision clarifies that the new modification section, 17-2-108(f), meets a requirement of State law for a variance, but the exact language used is not mandated by State law.

Code, Natural Resources Article § 5-1601 *et. seq.* The County’s Forest Conservation Program is found in Article 17, Title 6, of the Anne Arundel County Code.

First and foremost, this bill updates the conservation thresholds established under the County’s current Forest Conservation Program, as well as replaces the fee-in-lieu of replanting previously adopted by the County in § 17-11-101. Additionally, all activity on a lot (regardless of use) or a linear project that does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of forest on contiguous lots under common ownership and that does not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan would be exempt from forest conservation.

Other revisions are made in response to changes in the COMAR and Natural Resources Article, and would ensure consistency with the language regarding simplified forest stand delineations and the requirements of State law in approving modifications from forest conservation requirements in certain areas, referred to in the Bill as “special priority retention areas”. These areas are defined as including trees, shrubs, or plants determined to be rare, threatened or endangered under federal or State law; champion trees or trees of a size equal to or greater than 75% of the diameter of the current champion tree of that species in the state; and trees that are part of a historic site or are associated with a historic structure. Finally, this bill revises the applicability provisions of the Forest Conservation Program, and establishes standards for granting modifications from the requirements of the Program.

## **SECTION 1.**

Section one renumbers §§ 17-2-108(f) and 17-6-303(c) and (d) of the Anne Arundel County Code (2005, as amended) to be §§ 17-2-108(g) and 17-6-303(d) and (e), respectively.

## **SECTION 2**

**§ 17-2-101 Scope; applicability.** This Bill amends §§ 17-2-101(b)(12) through (14) to grandfather applications for sketch plan approval, final plan approval, preliminary plan approval, or approval of a building or grading permit associated with a site development plan that are approved prior to the effective date of this Bill, and any future revisions to said applications provided that the proposed or actual limit of disturbance is unchanged, and states that such applications shall be governed by the provisions of the Code as they existed prior to the effective date of this Bill.

**§ 17-2-108 Modifications.** A new section (f) is added to § 17-2-108 to establish new standards of review and approval of requests for modification to forest conservation requirements within “special priority retention areas” to conform generally to the requirements of the Natural Resources Article, § 5-1611, which requires a “variance” (as that term is defined in the State Forest Conservation Law) if the requirements of forest conservation are to be modified in the areas. The variance criteria set out in this section meets the State law requirements for a variance but the exact language used is not mandatory.

**§ 17-6-301 Scope.** This section adds preliminary plans and site development plans to the types of applications to which forest conservation requirements apply. Currently, subdivision plans or applications for a grading or sediment control permit by any person, including a unit of State government and the County, on areas of 40,000 square feet or greater, require compliance with the Forest Conservation Program.

The proposed amendments to subsection (b) would create two new exceptions to the Forest Conservation Program. First, all activity on a lot (regardless of use) or a linear project that does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of forest on contiguous lots under common ownership and that does not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan would be exempt from forest conservation. Second, previously developed areas (gray or brownfields) covered by impervious surface and located in Priority Funding Areas at the time of the application for subdivision or grading/sediment control permit would also be exempt.

**§ 17-6-302 Forest stand delineation.** This section is amended to conform to State regulations, including § 5-1604(b) of the Natural Resources Article and COMAR 08.19.04.

**§ 17-6-303 Forest conservation plan.** This section expands the definition of “priority retention area” by adding buffers, County-designated Greenways, and Forest Interior Dwelling Species (“FIDS”) Habitat to the definition of “priority retention area” and clarifies that any modification to forest conservation requirements in priority retention areas shall be reviewed and approved only in accordance with the Planning and Zoning Officer’s authority to grant modifications in § 17-2-108 of the Code.

Additionally, the Bill creates a new category of retention area, entitled “special priority retention areas” that encompass protected areas outlined in § 5-1611 of the Natural Resources Article. The State law is explicit that any modification to the forest conservation requirements for these areas must meet the more stringent standards outlined in the Bill at proposed § 17-2-108(f), which is called a “variance” in the State Forest Conservation Act. These “special priority retention areas” include areas subject to the Federal Endangered Species Act and the Maryland Nongame and Endangered Species Conservation Act; trees that are Champion Trees, part of a historic site, or associated with a historic structure; and trees that have a diameter measuring 75% or more of the current State Champion Tree of that species.

Finally, new subsection (e) clarifies that any modifications to the forest conservation requirements for priority retention areas or to the forest retention requirements must meet the conditions for granting a modification in § 17-2-108. Moreover, afforestation in accordance with § 17-6-305 of the Code will be required in the event a modification is granted.

**§ 17-6-306 Reforestation.** The Bill modifies § 17-6-306(a) to define “site” as “any lot or parcel of land, or combination of lots or parcels of land, that are contiguous and being developed as part of a common subdivision or project, but not including any area comprising a 100-year floodplain”. It also amends the forest conservation thresholds, establishing new thresholds based on the acreage of the site and the land use type, as follows:

A. For Agricultural and Resource Areas, the conservation threshold is modified from 50% of the site to:

Less than 2 acres:	50% of the site
Greater than or equal to 2 acres but less than 25 acres:	58% of the site
Greater than or equal to 25 acres but less than 50 acres:	67% of the site
50 acres or more:	75% of the site

Additionally, Agricultural and Resource Areas are defined for these purposes to mean “undeveloped areas zoned for densities of less than or equal to one dwelling unit per five acres.”

B. For medium density residential areas (defined as “areas zoned for densities greater than one dwelling unit per five acres and less than or equal to one dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service”), the conservation threshold is modified from 25% of the site to:

Less than 2 acres:	25% of the site
Greater than or equal to 2 acres but less than 25 acres:	40% of the site
Greater than or equal to 25 acres but less than 50 acres:	55% of the site
50 acres or more:	70% of the site

C. For institutional development uses, which are defined for these purposes as “schools, colleges, universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, and cemeteries,” the threshold remains unchanged at 20% of the site.

D. For high density residential areas, which were previously undefined but are defined in the Bill for these purposes as “areas zoned for densities greater than one dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service,” the threshold is amended from 20% of the site to:

Less than 2 acres:	20% of the site
Greater than or equal to 2 acres but less than 25 acres:	35% of the site
Greater than or equal to 25 acres but less than 50 acres:	50% of the site
50 acres or more:	65% of the site

E. The conservation threshold for Mixed Unit and Planned Unit developments is changed from 15% of the site to:

Less than 2 acres:	15% of the site
Greater than or equal to 2 acres but less than 25 acres:	30% of the site
Greater than or equal to 25 acres but less than 50 acres:	45% of the site
50 acres or more:	60% of the site

Additionally, “mixed use development” is defined herein as “single, relatively high density development projects, usually commercial in nature, which include one or more types of uses,”

and “planned unit development” is defined as “developments comprising a combination of land uses or varying intensities of the same land use in accordance with an integrated plan that provides flexibility in land use design approved by the local jurisdiction with at least 20% of the land permanently dedicated to open space.”

F. The conservation threshold for commercial or industrial districts, defined for these purposes as “manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yards, and parking areas,” is amended from 15% of the site to:

Less than 2 acres:	15% of the site
Greater than or equal to 2 acres but less than 25 acres:	30% of the site
Greater than or equal to 25 acres but less than 50 acres:	45% of the site
50 acres or more:	60% of the site

**§ 17-11-101 Fees and security.** This section of the Bill would significantly increase the fees required for clearing violations, abandonment of forest conservation easements, and fees-in-lieu of planting to meet reforestation requirements, as follows:

<b>Category</b>	<b>Fee or Security</b>
Clearing in violation of forest conservation law	[[[\$0.80]] \$3.00 per square foot
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Fee for abandonment of forest conservation easement	[[[\$0.75]] \$3.00 per square foot of conservation easement abandoned
Fee-in-lieu of planting for land outside the critical area and inside a priority funding area	[[[\$0.40]] \$2.50 per square foot or the amount provided in COMAR Title 08, Subtitle 19, Chapter 4, whichever is greater
Fee-in-lieu of planting for land outside the critical area and outside a priority funding area	[[[\$0.50]] \$3.00 per square foot or 20% more than the fee-in-lieu for land inside a priority funding area, whichever is greater
Fee-in-lieu of planting for land inside the critical area	[[[\$1.50]] \$3.00 per square foot of mitigation required
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Fee-in-lieu of planting in the critical area buffer	[[[\$1.50]] \$3.00 per square foot

**SECTION 3**

Section 3 provides that the effective date of the Bill will be substituted when available.

**SECTION 4**

Section 4 of the Bill states that the Bill will become effective 45 days after the date on which it becomes law.

Please feel free to contact me if you have any questions.

cc: Steuart Pittman, County Executive  
Jennifer Purcell, Chief of Staff  
Benjamin J. Birge, Chief Administrative Officer  
Peter Baron, Legislative Liaison  
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