



September 24, 2024

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

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THRU: Josh Hamlin 
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FROM: Alex Hirtle 
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Policy Analysis and Fiscal Impact Statement
CB-077-2024 Woodland and Wildlife Conservation Ordinance

CB-077-2024 (presented by: Chair Ivey, at the request of the Planning Board)

Assigned to Transportation, Infrastructure, Energy, and Environment (TIEE) Committee

AN ACT CONCERNING WOODLAND AND WILDLIFE HABITAT CONSERVATION ORDINANCE for the purpose of revising the validity and grandfathering and notification requirements in the existing subtitle.

Fiscal Summary

Direct Impact:

Expenditures: Nominal additional expenditures.

Revenues: No foreseen revenue impacts.

Indirect Impact:

Likely unfavorable.

Legislative Summary:

CB-077-2024¹ was presented by the Council Chair at the request of the Planning Board on September 10, 2024, and referred to the Transportation, Infrastructure, Energy, and Environment (TIEE) Committee.

The Bill repeals sections of CB-020-2024 and reenacts with amendments for grandfathering, notification requirements, and validity provisions of the recently adopted update to the Woodland and Wildlife Habitat Conservation Ordinance.

Specifically:

- Sec. 25-119 [*and henceforth*] (c) (4) redefines what constitutes a minor revision, with reduction of total woodland conservation on site from no greater than 5% or 5,000 square feet, or relocate total woodland conservation by 10% or 10,000 square feet.
- (5) (B) expands the list of required notifications and requires at least 20 days' notice before a Tree Conservation Plan (TCP) is approved.
- (6) (B) designates that Tree Conservation Plans 2 (TCP2) applications approved after July 1, 2024 are valid for 5 years from the date of approval unless a grading permit is issued.
- (g) (1) develops a clause for grandfathering based on the revised term of "implementation" or "implemented", stating that the requirements include the issuance of a grading permit for the site *or any portion of the site*; a pre-construction meeting complete with the Agency; and installation of tree protection devices.
- (g) (3) Implemented projects approved on or before June 30th, 2024, either fully or in a portion, are grandfathered to regulations at the time of acceptance.
- (g) (4) distinguishes grandfathered TCPs for major and minor revisions.
- (g) (6) validates Standard & Numbered Letters of Exemptions issued prior to July 1, 2024. Expired Exemptions will comply with the new regulations.
- (h) (1) TCPs approved before September 1, 2010, and not implemented as confirmed by the County permit authority expires July 1, 2024. New TCPs are under the new regulations.
- (h) (2) TCPs approved on or after September 1, 2010 and before July 1, 2024 are grandfathered to the regulations at the time of approval. These plans expire July 1, 2029 if not implemented on the property or portion thereof, as confirmed by the County permitting authority.

Current Law/Background:

In May 2024, the County Council enacted and the County Executive signed three separate Bills, CB-020-2024, CB-021-2024, and CB-022-2024, which were initiated by the State of Maryland's mandates for a revised Forest Conservation Act (HB 723 and SB 526, 2023). The County legislation amended sections of the County Code (Subtitles 24 and 25) to meet the State requirements. However, there were concerns by the building industry specific to the

¹ [CB-77-2024](#)

grandfathering provisions (or lack thereof) that would affect projects that had already been initiated, but were only partially built-out. Also, the legislation was not fully clear on several terms and definitions; there were concerns on the notification to nearby property owners, parties of record, nearby registered civic associations and municipalities.

Representatives of the Maryland Business Industry Association (MBIA) met with Planning staff, and developed text to amend some of the grandfathering concerns; additionally, Planning staff provided additional amendments to revise some terms, notification concerns, and validations for exceptions. The Bill's draft was then submitted to the Council Chair for presentation and referred to Committee.

Resource Personnel:

- *M-NCPPC Staff:* Megan Reiser (Drafter), Katina Shoulars, Tom Burke, Marian Honeczy, Kim Finch, and Marc Juba.

Discussion/Policy Analysis:

CB-077-2024 incorporates several important amendments to CB-020-2024, the Woodland and Wildlife Habitat Conservation Ordinance, which was passed earlier in this year to meet the new State mandates for the 2023 Forest Conservation Act. A notable proposed amendment is the change in requirements for public notice and comments, which proposes expansion of notification to all parties of record; registered civic associations identified within the area of development; property owners adjacent, across the street, on the same block, and within 500 feet of the land subject to the application. Every municipality within one mile of said land must also be notified. Written comments for all TCP's will be allowed, as well as written and verbal comments for clearing of 50% or more of existing woodland on a site being of 4 acres or larger. Written notice must be mailed to the parties listed in Subsection 27-3407(b)(1) of the Zoning Ordinance for Detailed Site Plans at least 20 days before the TCP is approved.² Expanded public notice and comments could facilitate increased public review of development, and provide more public input to the Planning Board and Council when these cases go before either of these two bodies.

Another proposed amendment will grandfather applications for a TCP2 approved on or after July 1, 2024 will be valid for 5 years from the date of approval unless a grading permit has been issued. This extends the life of these applications granted after the new ordinance has gone into effect, allowing future development to take place under the old rules of the Woodland/Wildlife Habitat Conservation Ordinance from 2010.

Finally, this Bill provides for grandfathered TCP's that are revised as a minor revision (as defined under this proposal) to comply with the regulations in place at the time of acceptance of the

² <https://online.encodeplus.com/regs/princegeorgescounty-md/doc-viewer.aspx#secid-580>

previously approved TCP. This essentially allows for a development that had a tree conservation plan approved prior to the enactment of CB-020-2024 and had that plan implemented on any portion of the property as confirmed by the County permitting authority, will be able to continue to develop that property under the old ordinance as long as the revision as proposed by this legislation are considered “minor”. Planning staff were unable to provide an exact amount of grandfathered projects this provision would cover, but responded in that “several hundred” projects would qualify.³ Given this baseline, a potentially significant acreage of additional tree canopy could be felled utilizing this proposed provision. This provision is neither consistent with Plan 2035 Prince George’s County, nor the County’s Climate Action Plan, which contrasts what was articulated in the Planning Department’s memorandum sent to the County Council TIEE Committee as part of this legislative package.⁴

Mandates to consider:

- The State of Maryland established minimum requirements for land development by passing the Forest Conservation Act (FCA) of 2023. Requirements will be enforced through the Department of Natural Resources (DNR) with local plans established by jurisdictions. These plans must meet or be more stringent than the standards of the FCA and DNR is required to perform compliance reviews at least once every two years. Non-compliance allows the State to assume review and approval responsibilities of local forest conservation plans.⁵
- The Federal Government mandates the 2010 standards of the Clean Water Act (CWA) be met, including addressing impervious surfaces and stormwater run-off. One of the simplest ways to meet these requirements is to minimize our tree loss and reduce our impervious surfaces. Certain provisions in CB-077-2024 reduce the effectiveness of CB-020-2024 and provides for grandfathering that most likely will cause more tree loss in our County.

The County’s fiscal responsibility:

- One of the County’s greatest fiscal challenges lies in a growing structural deficit through the stormwater management enterprise fund. The County reported that this fund has a projected deficit of ~\$126M for FY2024, growing to a projected ~\$149M in FY2025.⁶

³ Correspondence with Planning Department July 2024.

⁴ Reference memorandum sent by the Commission to the Transportation, Infrastructure, Energy & Environment Committee, dated September 17th, 2024. Specifically, Plan 2035 Prince George’s County states stream buffer protection as a priority, as well as sustaining forest tree canopy at 52% of the County’s land area (Pg. 169 of the Plan); the County’s Climate Action Plan Priority Recommendation M-11 directs the County to enact and enforce a “no net loss” tree conservation regulations and policies to “maintain and expand street tree canopy and for forest as a land cover.” Step 1 of this recommendation directs the County to “Revise County Codes to *strengthen* tree protection.” (Pg. 185 of the Climate Action Plan). The noted provision allows grandfathering (via minor revisions) to utilize the 2010 Woodland & Wildlife Habitat Conservation Ordinance, which does not contain the more stringent stream buffer regulations or tree canopy requirements for the County.

⁵ https://mgaleg.maryland.gov/2023RS/fnotes/bil_0003/hb0723.pdf Pages 8 and 9

⁶ County FY2025 Budget Report to the TIEE Committee, page 13.

Even when stormwater run-off is mitigated through stormwater management ponds and other forms of infrastructure, these facilities require upkeep and maintenance, creating continual costs to home ownership associations, the County, and ultimately is footed by taxpayer dollars. The County should closely consider legislation that walks back environmental protections and will ultimately cost the County and its residents continual expenses in the future.

CB-077-2024 Amendment considerations:

Ultimately, it is up to the Committee members, if they see fit, to propose amendments to this legislation. With that said, here are some possible amendments to this legislation that may produce a Bill that is more sensitive to mandates placed on the County, as well as its financial obligations.

- Modify or remove the grandfathering provision of Sec. 25-119 (g) (1) to alter the term “implementation/implemented” in requiring a certain percentage of the site to already have a grading permit issued/pre-construction meeting/installation of tree protection devices.
- Place a time limit on any grandfathered property to allow the latest/most stringent tree conservation regulation to come into effect at some point in the future.
- Mitigate any grandfathered parcel by requiring a fee-in-lieu, off-site plantings, or other means to reconcile the difference between regulation requirements.

Fiscal Impact:

- *Direct Impact*

Enactment of CB-077-2024 will have a nominal fiscal impact on the County due to additional notifications with agencies in permitting governmental projects related to county activities or construction. There may also be additional re-permitting of projects that have expired, per the Bill’s provisions, but this may also be mitigated by the grandfathering provisions that would reduce the number of future permits.

- *Indirect Impact*

Enactment of CB-077-2024 could potentially have a adverse indirect impact on the County by the reduction of trees, tree canopy, pervious surface, and stream buffer protections. All of these have an impact on quality-of-life indicators for county residents, including heat island impacts, water quality, landscape aesthetics, and air quality. Additionally, as mentioned, with the County’s severe stormwater management enterprise fund structural deficits, the potential for this proposed legislation to impact the long-term financial health needs to be taken into consideration.

- *Appropriated in the Current Fiscal Year Budget*

No.

Effective Date of Proposed Legislation:

The proposed Bill shall be effective forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please reach out to me via phone or email.