



September 24, 2020

Montgomery County Council  
100 Maryland Avenue  
Rockville Maryland

**Re: Expedited Bill 36-20, Forest Conservation with amendment  
Position: Support**

Dear Montgomery County Council,

The Sierra Club Montgomery County Group supports Expedited Bill 36-20, Forest Conservation, with amendments. While the bill makes modest improvements to the existing Forest Conservation Law, and is a step in the right direction, we urge the Council to strengthen the bill to ensure No Net Loss of forests. We also urge the Council to remove the exemption for removal of priority forests for stream restoration projects where trees provide more environmental benefits, and to extend the protection of ephemeral streams beyond the Ten Mile Creek watershed.

No Net Loss of forests has also been a priority goal of the Sierra Club Maryland Chapter in efforts to strengthen the state Forest Conservation Act. It has now been achieved in Frederick, Anne Arundel and Howard Counties. Two bills recently passed in Frederick County provide models that could be adopted in Montgomery County. One of these requires no net loss by requiring the replanting of every acre of forest that is removed, compared to Montgomery County which only requires that one acre be replanted for every four acres removed. In addition, the Frederick County Zoning Ordinance Amendment (Bill #20-07) excludes sensitive areas from the density calculation used to determine of how many units can be built in a particular area. This encourages developers to redevelop sites and choose locations more in line with smart growth principles.

We also ask the Council to amend 22A-5 Exemptions (v)(1) to ensure that mature, priority forests, which provide greater environmental benefits than stream restoration projects, are not removed to install such projects for the purpose of obtaining stormwater credits.

Extending the protection of ephemeral streams beyond Ten Mile Creek would further protect drinking water and help ensure buildings are not placed in the path of stormwater flows. At the very least, these should be identified in the planning stage rather than after the developer is long gone. Ephemeral streams are those where water only flows during and immediately after rain fall because the channel is higher than the water table. As the channel deepens, a stream can become



intermittent or perennial because it would then also be groundwater fed. They may also transport a disproportionate share of pollutants and are drinking water source areas.<sup>1</sup>

Protection of ephemeral streams with a buffer area is presently limited to the Ten Mile Creek watershed because the legislation relies on a definition of ephemeral streams in the 2020 Environmental Guidance document that limits its applicability. However, bill 36-20 could easily adopt its own definition of ephemeral streams.

Bill 36-20 makes several modest improvements that we support without amendment. These include:

- The increase of binding maintenance agreements from two years to five. This will allow saplings a chance to grow past the reach of browsing deer and have a better chance of survival. Montgomery County has significant deer populations and invasive species which can decimate entire groves of saplings.
- The application of the forest conservation law to contiguous lots.
- New protections of root zones.
- Changes to the fee in lieu system and assurances that there is a focus on retention and forest banking.
- Several minor administrative improvements that will help the Department of Planning do their job of stewarding forests and this program.

Lastly, we urge the Council to consider moving the date of the T&E Committee hearing on Bill 36-20 to a later date and forming a workgroup so that more comprehensive changes can be considered for strengthening Montgomery County's Forest Conservation Law, consistent with achieving the goal of No Net Loss of Forests.

Sincerely,

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<sup>1</sup> [U.S. EPA 2009 Analysis of the Surface Drinking Water Provided By Intermittent, Ephemeral, and Headwater Streams in the U.S.](#)