



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Item # 5
January 10, 2008

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mary Dolan, Acting Chief
Countywide Planning

FROM: Mark Pfefferle, Forest Conservation
Program Manager
Countywide Planning

DATE: January 4, 2008

SUBJECT: Discussion of Bill 37-07 on Forest Conservation - Amendments



RECOMMENDATIONS

Support the Planning Board's version of the bill with the following additions for issues not raised in that version of the bill.

- Support the addition of an effective date as proposed.
- Support typographical changes to the bill not identified in this memorandum but included in supplemental information to be provided to the Board.

BACKGROUND

On September 20, 2007, the Board approved amendments to Chapter 22A of the County Code (Forest Conservation Law) and recommended these amendments be forwarded to the County Council. The amendments were transmitted to the County Council on September 28, 2007. The County Council introduced the Boards' amendments to the law on December 11, 2007 as Bill 37-07. At that time Councilmember Elrich proposed additional amendments to the law. The Councilmember's amendments begin on circle page 68 of the attached bill (Exhibit 1). The purpose of this roundtable is to discuss in greater detail the amendments proposed by Councilmember Elrich. The public hearing on Bill 37-07 is scheduled to occur on January 22, 2008.

SUMMARY

Staff is concerned with the amendments proposed by the Councilmember for a number of reasons including:

1. Changes to Definition of Land Use Categories. The Councilmember proposes to redefine the “high density residential” and “medium density residential” land use categories and create a new “low density residential” land use category. This will move many projects to land use categories which have greater break even points. The break even point is the amount of forest which may be cleared and no planting requirements accrue. In affect some developments may experience an increase of 15 percent of the net tract area in forest which must be retained to avoid planting requirements for properties with existing forests. Staff does not support a change in the definition of land use categories.
2. Increase in Forest Planting/Save Requirements. The combination of increasing the afforestation and reforestation thresholds, changing the definition of each land use category, and increasing the penalty for forest removed above the conservation threshold from $\frac{1}{4}$:1 to $\frac{1}{2}$:1 will greatly increase the forest protection and forest planting requirements. This combination will result in increased requests for conservation easements on lots less than 40,000 square feet. Staff has shown at previous Planning Board Roundtable Discussions what the impact would be in terms of forest planting, lost housing units, increased enforcement problems and financial costs for increased planting. This information is presented once again in Exhibit 2. The Planning Board proposed a 5 percent net tract area increase for both the afforestation and reforestation thresholds. The Planning Board did not propose to change land use category definitions or the $\frac{1}{4}$ to $\frac{1}{2}$ “penalty”. Staff does not support a change in the “penalty”.
3. Institutional Land Use Category. Removal of the institutional land use category will require all religious institutions, schools, parks, and government building projects to comply with the underlying zoning for determining the amount of forest that can be cleared prior to planting being required. The County Council, on July 31, 2007, amended the forest conservation law so that religious institutions would be included in the institutional land use category. Councilmember Elrich’s amendments eliminate the category. If adopted, religious institutions, libraries, fire stations, and parks will have to comply with the requirements of the underlying zone. Staff does not support the removal of the institutional land use category.
4. County Schools. Along with removing the institutional land use category, the Councilmember proposes a new section for County School Projects. Under the proposal, schools would only be required to prepare a forest conservation plan if more than 10,000 square feet of forest is removed and the replacement would be 1:1. Staff does not believe this meets the intent of the Maryland Forest Conservation Act. Under the Maryland Forest Conservation Act, public schools are an “institutional land use” and therefore have reforestation and afforestation requirements based on a percentage of the net tract area. The Councilmember’s amendment in Bill 37-07 is less strict than what is currently required in Chapter 22A of the Code and the Maryland Forest Conservation Act, for there is no afforestation requirements and removal of forest below a certain percentage is “penalized” at a rate less than 2:1 for which all plans must comply with. If passed, schools would have a lesser requirement than other institutional projects and private developers. Staff does not a separate section for County Schools.

5. Minimum Lot Size. Reducing the minimum lot size from 40,000 square feet to 10,000 square feet will increase the number of plans reviewed and approved by Environmental Planning. Based on data provided by Montgomery County Department of Permitting Services (DPS), the average number of sediment control permits issued from 2001 to 2005 by DPS for properties between 10,000 and 40,000 square feet was 166. The forest conservation law does not currently apply to these lots. The Planning Board has not recommended reducing the minimum lot size for properties that are subject to the forest conservation law. We do not know how many special exceptions were received by the Montgomery County Board of Appeals for properties between 10,000 and 40,000 square feet that did not require a sediment control permit. Staff does not support a reduction in the minimum lot size. Staff believes lots less than 40,000 square feet are more appropriate for a tree ordinance rather than the forest conservation law.
6. Forest Clearing. The Councilmember's amendment reduces the maximum amount of forest which could be cleared before a recorded single lot is subject to a forest conservation plan from 40,000 square feet to 5,000 square feet. Based on analysis by Environmental Planning, an average of 30 properties per year would have no longer qualify for an exemption from submitting a forest conservation plan (level 2 or 3 review) and would have been required to submit a forest conservation plan (level 1 review). This is based on data from 2005 to 2007. We do not know what percentage of the 166 additional sediment control permits received by DPS that are less than 40,000 square feet and more than 10,000 square feet would remove more than 5,000 square feet and therefore the total number of new forest conservation plans required cannot be determined. Staff does not support a reduction in the maximum amount of forest that can be removed before a person requires a level 1 review. Staff believes small amounts of forest removed are more appropriate for a tree ordinance.
7. Preparation of Level 2 Reviews. The amendment recommends tree inventories and tree protection plans be prepared by certified arborists, Maryland Tree Experts, and Qualified Professionals. The Planning Board recommends that tree inventories and tree protection plans (level 2 reviews) be prepared by certified arborists and Maryland Tree Experts. Arborists have qualifications, certification and continuing education requirements. Maryland Tree Experts are required to pass a state administered examination concerning tree biology and physiology; nutrition; pruning; diagnosing problems; construction management; and tree identification. Under Maryland law a Qualified Professional is a licensed landscape architect, licensed forester, or a person has taken a state administered course on the preparation of Natural Resource Inventories/Forest Stand Delineations and Forest Conservation Plans. These professions do not require training as part of their licenses on how to diagnose the health of a tree, recommend actions to preserve a tree, or manage construction to minimize damage to a tree and a root system. Staff does not support the inclusion of Qualified Professionals for the purpose of preparing tree inventories and tree protection plans.
8. Non-native and Invasive Management. The amendment proposes a new section related to non-native and invasive management control. That is, for each acre of planting the applicant can offset the requirement by controlling non-native and invasive materials with supplemental planting for 2 acres of land. The Maryland Forest Conservation Law does not have such a provision and it is unknown at this time if the State Department of Natural Resources would accept such provisions in lieu of creating new forests. The State is

currently assessing non-native and invasive management control and the possibility of crediting such controls to meet planting requirements but it is still months or years away from providing such guidance. While staff recognizes the serious problem of controlling non-native and invasive materials, it is not clear that this kind of a trade off is appropriate and would be equivalent to planting new forest areas. We suggest further study of this issue.

9. Forest Mitigation Banks with Existing Forest. The amendment proposes to increase the amount of forest that must be protected in an offsite mitigation bank if existing forest is used to meet the planting requirements. Currently, for every 1 acre of credit needed 2 acres of existing forested is required. The proposal is to increase this rate to 4 acres of existing forest. The proposal does not change the 1:1 requirement for planted forests in mitigation banks. Under the current law and Boards' proposal, a 20 acre existing forest mitigation bank has 10 acres of credit for sale. The Councilmember's proposal would change this to 5 acres of credit for sale. Staff does not support this change because forest mitigation banks will be quickly exhausted, potentially slowing development when banks are unavailable.
10. Forest Mitigation Bank Approval. The proposal places a requirement that forest mitigation banks must be approved within 45 days or they are deemed approved. This timeline is not within the control of any one agency. Forest mitigation banks are not required to submit a Natural Resource Inventory/Forest Stand Delineation and therefore not all baseline information is known with the initial submission, requiring additional field work. Proposed forest mitigation banks may have conflicting easements which prohibit the forest that is already paid to be protected by State funds to be used for forest mitigation banks. Forest mitigation banks that are created outside the development process require conservation easements be established and recorded in the Land Records. Only upon the signature of the grantee, the M-NCPPC Executive Director, can an easement be recorded. Anywhere along the process the bank can be delayed. The bank may meet the technical definitions of planning staff but may not satisfy the contractual requirements established by others within M-NCPPC. Forest mitigation banks created as part of development plan will take more than 45 days from the date of submission of a preliminary plan to the issuance of a Planning Board opinion and approval of a record plat. Staff does not support a timeline for bank approvals.

The Councilmember's amendment would also prohibit the Montgomery County Public Schools and Montgomery County Department of Public Works and Transportation from creating forest mitigation banks for their own use on land owned by Montgomery County. It would also prevent the Parks Department from creating a forest mitigation bank on park property for their exclusive use. For these reasons, staff does not support this change.

11. Notification. The Councilmember's amendment requires adjoining and confronting property owners to be notified 10 days in advance of any clearing or grading occurring on a property subject to a forest conservation plan. There are inherent difficulties in enforcing whether or not timely notice was provided. Staff is concerned that the only permit that needs to be noticed is not the primary plan (building permit) or secondary plan (sediment control permit), but the tertiary forest conservation plan. There are no mandates or proposals requiring applicants to notify adjoining and confronting property owners that a building permit, or sediment and erosion control plan, was submitted for review by DPS and that construction of a new residence or expansion of an existing building is imminent. Staff

recommends posting of properties for the above-noted permits be considered as an alternative to posting for forest conservation.

12. Building Permits. The Councilmember proposes to amend Section 8-25 of the County Code by prohibiting the Department of Permitting Services (DPS) from issuing a building permit for any structure that was in violation of Chapter 22A for five years. The Councilmember introduced a similar bill in June 2007, Bill 14-07. Bill 14-07 would have permanently prevented DPS from issuing a building permit. Staff still has a number of concerns with this amendment to Section 8-25 of the County Code, including:
 - a. Denial of a building permit only applies when a violation to Chapter 22A occurs but does not have the same consequences as other unauthorized activities on a property (i.e., unauthorized and uncontrolled clearing or grading, or construction without a building permit). For example, a person could disturb 5,000 square feet of land, forested or unforested, or begin construction on a new residence without a permit and still be allowed to move forward after the proper approvals are achieved.
 - b. The five-year prohibition applies to the property and not the individual. If a person clears forest onto an adjoining property, or neglects to notify an adjoining property owner, the proposed language would prohibit the property owner from obtaining a building permit even though the violation was not their fault. This is of concern to the Parks Department, where encroachments into parks frequently occurs. In this instance, the Parks Department is not in violation of Chapter 22A, but they would be prohibited from obtaining a building permit for five years because someone else encroached onto Park property.
 - c. There is no relationship to the type or extent of the violation. Based on the proposed language, a violation of placing play equipment in a forest conservation easement (without cutting trees) or unauthorized clearing of forest have the same consequence. What if an equipment operator inadvertently exceeds unforested limits of disturbance for an approved subdivision plan, or on a single recorded lot? Would the developer be prohibited from obtaining a building permit for the subdivision for five years? Would the homeowner be prohibited from expanding, reconstructing, or building a new home on a recorded lot?
13. Private Enforcement of the Forest Conservation Law. The proposed amendment adds a fourth separate and distinct enforcement action. This enforcement action is in addition to the M-NCPPC's ability to: issue citations; issue Administrative Orders; and apply Civil Administrative Penalties. This fourth method ignores the current method of enforcement by allowing it to take place concurrently with M-NCPPC's enforcement and allows a private action to be filed in Court before our investigation is complete. The Councilmember initially introduced this amendment as part of Bill 14-07 in June 2007. Staff's concerns remain the same, which include:
 - a. There is no provision explaining whether the Court's decision trumps the Planning Board's or vice versa. In addition, M-NCPPC will no longer be the sole enforcer of the Forest Conservation Law. Every adjacent and confronting property owner has the same enforcement authority as the Planning Department, although through the Courts.
 - b. The definition of "aggrieved party" is very broad and, if used at all, should be limited to parties materially damaged by the clearing.

- c. The proposed amendment allows an "aggrieved person" to challenge the factual basis of any order or decision by the Director. This provision would potentially discourage "aggrieved persons" from working with staff and would encourage them to bypass staff and take their alleged "materially false, misleading, inaccurate, or incomplete information" to Court.
 - d. With respect to relief sought by the aggrieved person, the proposed Bill allows for the award of "damages to any person entitled to them by law", however it is unclear if the aggrieved person could seek damages against M-NCPPC if the person is successful in Court.
14. Effective Date. The Planning Board was silent on an effective date for the forest conservation amendments. The Councilmember is proposing an effective date of June 30, 2008 so that any Development Plan filed by June 30, 2008 would not be subject to the amendments. This will result some complexities. Development plans that are heard before the Board on the same day after July 1, 2008 may have different sets of rules based on the date submitted. Also, if a project adds additional net land to the net tract area after the submission of a development plan would the entire development plan be subject to the old laws, or just that portion that was filed prior to June 30, 2008.
15. Staffing. When the Planning Board forwarded its recommended changes it assumed no additional staff would be necessary. If all the Councilmember's amendments are approved there would need to be a substantial increase in the number of staff needed to review and enforce plans. Staff believes if the forest conservation law applies to lots 10,000 and greater and the amount of forest removed before a forest conservation plan is required is reduced to 5,000 square feet there will need to be more than a doubling of current review staff and 3 times as many inspectors. Currently, the forest conservation program is staffed by 2 supervisors, 1 planning technician, 4 inspectors, and 7 plan reviewers, 1 data/GIS specialist.

It would be necessary to have additional staff to review all Natural Resource Inventories/Forest Stand Delineations, Forest Conservation Plans, Tree Inventories, and Tree Protection Plans. In fiscal year 2007 the Planning Board or the Planning Director approved 67 forest conservation plans, and reviewed and/or approved 327 NRI/FSDs and exemptions from submitting a forest conservation plan. It is important to note that the timeframe from the submission of an NRI/FSD to the approval of a final forest conservation plan can take many years. By reducing the threshold in the amount of forest cleared to 5,000 square feet 30 more forest conservation plans would need to be reviewed and approved for lots greater than 40,000 square feet. In addition, another 166 addition properties between 10,000 square feet and 40,000 square feet that would need be reviewed and approved per year. This does not include any special exceptions between 10,000 and 40,000 square feet which do not trigger a sediment control permit. Adding the 30 additional forest conservation plans, 166 additional properties, and an unknown number of special exceptions more than 200 additional plans per year would need reviews. The complicate it further, there is a regulatory requirement that NRI/FSDs must be reviewed within 30 days and forest conservation plans within 45 days of the date of submission. The time to review plans cannot be lengthened or slowed because all plans submitted are time sensitive or they

are automatically approved. Based on this analysis at least 5 new staff would be necessary to review and approve the additional plans.

In addition to the reviews it would be necessary to expand the inspection staff because of the increased number of plans approved, increased number of easements to enforce, and potential violations. The Department of Permitting Services has 14 inspectors and 1 supervisor for sediment and stormwater management inspection and enforcement. With the increased number of plans there must be a corresponding increase in inspection staff. Plans with forest planting requirements typically do not have to begin planting until after final stabilization of the site has occurred and periodic inspections of the planted areas must continue for at least 5 years. Staffing levels for forest conservation inspections should be comparable to the contingent DPS has for sediment and stormwater management. This means 9 additional inspectors would be required to implement the forest conservation amendments as recommended by Councilmember Elrich.

If private citizens decide to file private actions in Court, and if M-NCPPC wants to defend its ability to interpret and apply the Forest Conservation Law we would want to intervene in most, if not all, cases. This could be a significant workload to both the Legal Department and Environmental Planning staff which are not captured in the staffing assumptions above.

Exhibit 1

Agenda Item 4
December 11, 2007
Introduction

MEMORANDUM

TO: County Council

FROM: *AM* Amanda Mihill, Legislative Analyst
MF Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 37-07, Forest Conservation – Amendments

Bill 37-07, Forest Conservation – Amendments, sponsored by the Council President at the request of the Planning Board, is scheduled to be introduced on December 11, 2007. A public hearing is tentatively scheduled for January 22 at 7:30 p.m.

Bill 37-07 would revise the forest conservation law in numerous ways. Councilmember Elrich expects to offer a further set of amendments (see ©68-98).

This packet contains

Bill 37-07

Memo from Planning Board Chair

Amendments by Councilmember Elrich

Circle

1

66

68

Bill No. 37-07
Concerning: Forest Conservation –
Amendments
Revised: 10/19/07 Draft No. 2
Introduced: 12/11/07
Expires: June 11, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Planning Board

AN ACT to:

- (1) remove certain exemptions from the Forest Conservation Law;
- (2) require certain people to submit to certain level of reviews when applying to the Planning Board for certain plans;
- (3) establish criteria and requirements for certain levels of review;
- (4) revise certain retention, afforestation, and reforestation requirements;
- (5) modify the management periods for planted forests;
- (6) revise certain financial security requirements;
- (7) revise certain inspection requirements;
- (8) revise certain appeal procedures;
- (9) revise certain variance requirements;
- (10) modify the maintenance period for forest mitigation banks and conservation areas;
- (11) repeal certain provisions relating to the Forest Conservation Advisory Committee;
- (12) repeal certain provisions relating to the County Arborist; and
- (13) generally amend the County forest conservation law.

By amending

Montgomery County Code
Chapter 22A, Forest Conservation
Sections 22A-2 through 22A-13, 22A-15 through 22A-17, 22A-19 through 22A-21,
22A-26, 22A-27, 22A-30, 22A-31

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 22A-2 through 22A-13, 22A-15 through 22A-17, 22A-19**
 2 **through 22A-21, 22A-26, 22A-27, 22A-30, 22A-31 are amended as follows:**

3 **22A-2. Findings and purpose.**

4 (a) *Findings.* The County Council finds that trees and forest cover
 5 constitute an important natural resource. [Trees filter] Forest filters
 6 groundwater, reduce surface runoff, help alleviate flooding, and
 7 supply necessary habitat for wildlife. [They] Trees cleanse the air,
 8 offset the heat island effects of urban development, and reduce energy
 9 needs. They improve the quality of life in a community by providing
 10 for recreation, compatibility between different land uses, and aesthetic
 11 appeal. The Council finds that [tree] forest loss as a result of
 12 development and other land disturbing activities is a serious problem
 13 in the County.

14 (b) *Purpose.* The [purpose] purposes of this Chapter [is] are to:

- 15 (1) save, maintain, and plant trees and forested areas for the benefit
 16 of County residents and future generations;
- 17 (2) establish procedures, standards, and requirements to minimize
 18 [tree] forest loss as a result of development and to protect trees
 19 and forests during and after construction or other land
 20 disturbing activities;
- 21 (3) maximize forest retention;
- 22 (4) establish procedures, standards, and requirements for
 23 afforestation and reforestation of land subject to an application
 24 for development approval or a sediment control permit;
- 25 [(4)] (5) establish a fund for future [tree] forest conservation projects,
 26 including afforestation and reforestation; and

[(5)] (6) provide a focused and coordinated approach for County forest conservation activities.

22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

* * *

Afforestation threshold means a specific percentage of a tract which is used to determine the afforestation requirements.

* * *

Applicant means a person who submits a natural resource inventory/forest stand delineation, forest conservation plan, tree inventory, or tree protection plan to the Planning Director.

Certified arborist means a person with the technical competence to provide for or supervise the management and protection of trees and other woody plants in residential, commercial, and public landscapes. For purposes of this Chapter, a person can gain technical competence through experience and related training provided by a professional organization or a program of professional education.

Champion tree means the largest tree of its species in the County, [as designated by the] as identified in the County Forest Conservancy District [Board] Board's Champion Tree Register [or its designee].

* * *

Declaration of intent means a signed and notarized statement by a landowner that the cutting of trees on the landowner's property:

- (1) is [for purposes exempted under this Chapter; and] to comply with Sections 22A-10(b)-(c);
- (2) no activity requiring a Forest Conservation Plan will occur on site within 7 years after the proposed activity is completed; and

(3) will not circumvent the requirements of this Chapter.

* * *

Environmental Buffer means a wetland, wetland buffer, 100-year floodplain, and a perennial or intermittent stream and stream buffer. An environmental buffer may also include a hydraulically connected steep slope and erodible soils.

[*Equestrian Facility*: Any building, structure, or land area that is primarily used for the care, breeding, boarding, rental, riding, sport eventing, or training of horses or ponies, the teaching of equestrian skills, or competitive equestrian events.]

* * *

Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide. However, a minor [portions] portion of a forest stand which otherwise [meet this definition] qualifies may be less than 50 feet wide if [they exhibit] it exhibits the same character and composition as the overall stand. Forest includes:

- (1) [areas] any area that [have] has at least 100 live trees per acre with at least [50 percent] 50% of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; [and]
- (2) any forest [areas] area that [have] has been cut but not cleared[.]; and
- (3) any area where at least one layer is not present because of site conditions, pest predation, human impacts, or non-native species.

Forest does not include an orchard.

* * *

80 *Forest stand delineation* means the [evaluation] collection and presentation
 81 of data on the existing vegetation in relation to the natural resources on a site
 82 proposed for development or land disturbing [activities] activity.

83 * * *

84 *Lot* means [for the purpose of this Chapter] a [tract] single unit of land [, the
 85 boundaries of which have been established as a result of a] created by deed
 86 or [previous] subdivision [of a larger parcel, and which will not be the
 87 subject of further subdivision, as defined under Section 50-1, without an
 88 approved forest stand delineation and forest conservation plan].

89 * * *

90 *Medium-density residential area* means an area zoned for a density greater
 91 than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per
 92 40,000 square feet, including existing and planned development and
 93 associated infrastructure, such as roads, utilities, and water and sewer
 94 service.

95 * * *

96 *Natural Resource Inventory* means a collection of existing, natural, and
 97 environmental information for a property and the surrounding area.

98 *Net tract area* means the total area of a tract, including both forested and
 99 unforested areas, to the nearest 1/10 acre, reduced by road or utility rights-
 100 of-way which are unrelated to and will not be improved as part of the
 101 development application. However, in any agriculture [and] or resource
 102 [areas] area, net tract area is the portion of the total tract for which land use
 103 will be changed or will no longer be used for primarily agricultural
 104 activities. For a linear project, net tract area is the area of a right-of-way
 105 width or the limits of disturbance as shown on the development application,
 106 whichever is greater.

* * *

Person means:

- (1) the federal government, the state, any county, [municipal corporation] municipality, or other political subdivision of the state, or any of their units[,];
- (2) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind[,]; or
- (3) any partnership, firm, common ownership community or other homeowners' association, public or private corporation, or any of their affiliates or subsidiaries[, or].
- [(4) any other entity.]

* * *

Qualified Professional means a person who meets all applicable requirements under Code of Maryland Regulations 08.19.06.01.

* * *

Retention means the deliberate holding and protecting of existing forest and trees [and other plants] on the site.

* * *

Stream buffer means a strip of land contiguous with and parallel to the bank of a perennial or intermittent stream.

Street tree means a tree either in the public right-of-way or immediately adjacent to a private street or roadway.

* * *

Tree Expert means person who meets all applicable requirements of Title 5, Subtitle 4 of the Natural Resources Article of the Maryland Code.

* * *

Tract means [the property subject to a development application or a sediment control permit, as] one or more adjacent or confronting lots that are described by deed or record plat.

* * *

Tree [save plan] inventory means [a plan prepared in conjunction with a development application indicating where trees are to be retained or planted, including the establishment of conservation areas] a collection of information that documents the health and structural condition of individual trees and assesses their suitability for preservation relative to probable impacts from development or construction.

Tree Protection Plan means a plan indicating where trees must be retained or planted, including specifications for tree preservation before, during, and after construction.

* * *

22A-4. [Applicability.] Persons Subject to the Forest Conservation Law.

[Except as otherwise expressly provided in this Chapter, this Chapter applies to:]

[(a) a person required by law to obtain development plan approval, diagrammatic plan approval, project plan approval, preliminary plan of subdivision approval, or site plan approval;]

[(b) a person required by law to obtain special exception approval or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a);]

[(c) a person who performs any cutting or clearing, or any other land disturbing activity that would directly threaten the viability of, any champion tree, wherever located;]

160 [(d) a government entity subject to mandatory referral on a tract of land
 161 40,000 square feet or larger which is not exempt under subsection
 162 22A-5(f);]

163 [(e) highway construction not exempt under subsections 22A-5(e) or (p);
 164 and]

165 [(f) a public utility not exempt under subsections 22A-5(g), (o)(1) and (2),
 166 or (p).]

167 [Any person who expects to cut, clear, or grade more than 5000 square feet
 168 of forest or any champion tree, and who believes that the cutting, clearing, or
 169 grading is exempt under Section 22A-5, 22A-6, 22A-7, or 22A-8, must notify the
 170 Planning Director in writing before performing any cutting, clearing, or grading
 171 and seek confirmation from the Director that the cutting, clearing, or grading is in
 172 fact exempt from Article II. Failing to notify the Director as required by this
 173 Section, or performing any cutting, clearing, or grading before the Director
 174 confirms that an exemption applies, is a violation of this Chapter.]

175 [The Planning Director must notify the Department of Permitting Services if
 176 this Chapter would apply to any cutting, clearing, or grading of which the
 177 Department would otherwise not be notified.]

178 (1) (a) General. Any person who meets the criteria of this
 179 Section is subject to this Chapter and must submit to either a
 180 Level 1, Level 2, or Level 3 Review.

181 (b) Level 1 Review. A person must submit to a Level 1 Review if:

182 (1) the person is required by law to obtain approval for a
 183 development plan, diagrammatic plan, project plan, preliminary
 184 plan of subdivision, or site plan;

185 (2) the person is required by law to obtain a sediment control
 186 permit or approval of a special exception on a tract of land

which is 40,000 square feet or larger, and is not otherwise required to obtain an approval under subsection (b)(1);

(3) the person proposes to perform any cutting or clearing, or any other land disturbing activity that would threaten the viability of any champion tree, wherever located;

(4) the person is subject to mandatory referral or a park facility plan on a tract of land which is 40,000 square feet or larger and is not excluded under subsection (c) or (d);

(5) the person proposes highway construction not excluded under subsection (c) or (d); or

(6) a public or private utility proposes a cumulative limit of disturbance of 40,000 square feet or more for all stages of work in a public right-of-way or utility easement.

(c) Level 2 Review. A person must submit to a Level 2 Review if the person proposes:

(1) to build, on a single lot which is 40,000 square feet or larger, a house, an addition to a house, or an accessory structure (such as a pool, tennis court, or shed), if the activity does not result in cutting, clearing, or grading:

(A) more than 40,000 square feet of forest;

(B) any forest in an environmental buffer;

(C) any forest on property located in a special protection area which must submit a water quality plan;

(D) any specimen or champion tree; or

(E) any tree or forest that is subject to a previously approved forest conservation plan or tree save plan;

(2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a lot line adjustment, conversion of an existing recorded outlot, or joining 2 or more existing residential lots into one lot, if:

(A) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); and

(B) development does not result in cutting, clearing, or grading:

(i) more than 40,000 square feet of forest;

(ii) any forest in an environmental buffer;

(iii) any forest on property located in a special protection area which must submit a water quality plan;

(iv) any specimen or champion tree; or

(v) any tree or forest that is subject to the requirements of a previously approved forest conservation plan or tree save plan;

(3) a modification to existing non-residential developed property if less than 5,000 square feet of forest will be cleared; or

(4) a State or County highway construction activity that is subject to either Section 5-103 of the Natural Resources Article of the Maryland Code or Level 1 Review.

(d) Level 3 Review. A person must submit to a Level 3 Review if the person:

(1) proposes an agricultural activity that is exempt from:

(A) platting requirements under Section 50-9; and

(B) a requirement to obtain a sediment control permit under Section 19-2(c)(2).

An agricultural support building and related activity is excluded only if it is built and conducted using best management practices as defined by the Natural Resources Conservation Service;

(2) proposes a tree nursery;

(3) applies for a special exception for an existing structure and the proposed use will not result in clearing existing forest or trees;

(4) proposes a commercial logging and timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code that has received;

(A) approval from the County Arborist or the Arborist's designee that the logging or timber harvesting plan is not inconsistent with County forest management objectives and is otherwise appropriate; and

(B) a sediment control permit from the Department of Permitting Services and posted the required financial security under Chapter 19. A person who qualifies under this subsection must provide a copy of each sediment control permit issued for commercial logging and timber harvesting operations to the Planning Director.

(5) proposes a government project reviewed for forest conservation purposes by the State Department of Natural Resources under state law;

- (6) conducts routine maintenance of public utility easements and rights-of-way, and routine maintenance of stormwater management facilities that are not subject to an existing conservation easement, except for clearing access roads;
- (7) conducts utility or other work required in an emergency;
- (8) conducts noncoal surface mining regulated under Title 7 of the Natural Resources Article of the Maryland Code; or
- (9) cuts or clears a public utility right-of-way or land for an electric generating station licensed under state law if a certificate of public convenience and necessity was issued under Section 5-1603(f) of the Natural Resources Article of the Maryland Code.

22A-5. [Exemptions] Reserved.

[The requirements of Article II do not apply to:]

[(a) an activity conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:

- (1) does not require a special exception;
- (2) does not result in the cutting, clearing, or grading of:
 - (A) more than a total of 40,000 square feet of forest;
 - (B) any forest in a stream buffer,
 - (C) any forest on property located in a special protection area which must submit a water quality plan,
 - (D) any specimen or champion tree, or
 - (E) any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and

- 292 (3) is subject to a declaration of intent filed with the Planning
293 Director stating that the lot will not be the subject of additional
294 regulated activities under this Chapter within 5 years of the
295 cutting, clearing, or grading of forest;]
- 296 [(b) an agricultural activity that is exempt from both platting requirements
297 under Section 50-9 and requirements to obtain a sediment control
298 permit under Section 19-2(c)(2). Agricultural support buildings and
299 related activities are exempt only if built using best management
300 practices;]
- 301 [(c) a tree nursery;]
- 302 [(d) (1) a commercial logging and timber harvesting operation,
303 including any harvesting conducted under the forest
304 conservation and management program under Section 8-211 of
305 the Tax-Property Article of the Maryland Code that:
- 306 (A) is completed before July 1, 1991, or is completed on or
307 after July 1, 1991, and the property on which the cutting
308 or clearing is conducted is not the subject of an
309 application for development within 5 years after the
310 sediment control permit has been issued;
- 311 (B) has received approval from the County Arborist or
312 designee that the logging or timber harvesting plan is not
313 inconsistent with County forest management objectives
314 and is otherwise appropriate; and
- 315 (C) has received a sediment control permit from the
316 Department of Permitting Services and posted the
317 required financial security under Chapter 19.

- 318 (2) The Department of Permitting Services must send the Planning
 319 Director a copy of all sediment control permits issued for
 320 commercial logging and timber harvesting operations.
- 321 (3) The requirements of this subsection apply to commercial
 322 logging and timber harvesting operations on agricultural land;]
- 323 [(e) a State or County highway construction activity that is subject to
 324 Section 5-103 of the Natural Resources Article of the Maryland Code,
 325 or Section 22A-9;]
- 326 [(f) a governmental project reviewed for forest conservation purposes by
 327 the State Department of Natural Resources under the Code of
 328 Maryland Regulations;]
- 329 [(g) except for the clearing of access roads, routine maintenance of public
 330 utility easements and rights-of-way;]
- 331 [(h) utility or other work that is of an emergency nature;]
- 332 [(i) noncoal surface mining regulated under Title 7 of the Natural
 333 Resources Article of the Maryland Code;]
- 334 [(j) a sediment control permit approved before July 1, 1991, or if amended
 335 after that date at the initiation of the permittee, that does not result in
 336 the cutting of more than 5,000 additional square feet of forest;]
- 337 [(k) any lot covered by a preliminary plan of subdivision or site plan that
 338 did not receive a sediment control permit before July 1, 1991, and for
 339 which the preliminary plan of subdivision or site plan:
- 340 (1) was approved before July 1, 1984, and has less than 40,000
 341 square feet of forest cover; or
- 342 (2) was approved or extended between July 1, 1984 and July 1,
 343 1991, and

(3) the construction will not result in the cutting, clearing, or grading of:

(A) any forest in a stream buffer, or

(B) any forest on property located in a special protection area which must submit a water quality plan.

A preliminary plan of subdivision or site plan approved before July 1, 1991, that is revised after that date at the initiative of the applicant and which results in the cutting of more than 5,000 additional square feet of forest is not exempt. Development or redevelopment of a property which requires resubdivision is not exempt. This subsection does not apply to a planned unit development subject to subsection (1);]

[(l) any planned unit development for which a development plan was approved by the District Council or for which a project plan was approved by the Planning Board before January 1, 1992, and which has received site plan approval before July 1, 1992 for the tract. However, even if site plan approval has not been obtained before July 1, 1992, for the tract, the planned unit development is exempt if it is 75% or more complete on January 1, 1992, as measured by the total acreage subject to the planned unit development that has received site plan approval. A development plan or project plan amendment approved after January 1, 1992, is not exempt if it results in the cutting of more than 5,000 additional square feet of forest;]

[(m) a real estate transfer to provide a security, leasehold, or other legal or equitable interest in a portion of a lot or parcel, if;

(1) the transfer does not involve a change in land use, or new development or redevelopment, with associated land disturbing activities; and

- 371 (2) both the grantor and grantee file a declaration of intent;]
- 372 [(n) any minor subdivision under Section 50-35A(a)(2)-(3) involving
- 373 conversion of an existing recorded outlot created because of
- 374 inadequate or unavailable sewerage or water service to a lot or joining
- 375 two or more existing residential lots into one lot, if:
- 376 (1) the only development located on the resulting lot is a single
- 377 family dwelling unit or an accessory structure (such as a pool,
- 378 tennis court, or shed); and
- 379 (2) development does not result in the cutting, clearing, or grading
- 380 of:
- 381 (A) more than a total of 40,000 square feet of forest,
- 382 (B) any forest in a stream buffer,
- 383 (C) any forest on property located in a special protection area
- 384 which must submit a water quality plan,
- 385 (D) any specimen or champion tree, or
- 386 (E) any tree or forest that is subject to the requirements of a
- 387 previously approved forest conservation plan or tree save
- 388 plan;]
- 389 [(o) The cutting or clearing of public utility rights-of-way or land for
- 390 electric generating stations licensed under Section 54A and 54B or
- 391 Section 54I of Article 78 of the Maryland Code, if:
- 392 (1) any required certificates of public convenience and necessity
- 393 have been issued in accordance with Section 5-1604(f) of the
- 394 Natural Resources Article of the Maryland Code; and
- 395 (2) the cutting or clearing of the forest is conducted so as to
- 396 minimize the loss of forest.]

397 [(p) the construction of a public utility or highway in a utility right-of-way
 398 not exempt under subsection (o), or a highway right-of-way not
 399 exempt under subsection (e), if:

- 400 (1) the right-of-way existed before July 1, 1992;
- 401 (2) forest clearing will not exceed a total of 40,000 square feet and
- 402 (3) the construction will not result in the cutting, clearing, or
 403 grading of:
 - 404 (A) any forest in a stream buffer,
 - 405 (B) any forest on property located in a special protection area
 406 which must submit a water quality plan,
 - 407 (C) any specimen or champion tree, or
 - 408 (D) any tree or forest that is subject to a previously approved
 409 forest conservation or tree save plan;]

410 [(q) a special exception application if:

- 411 (1) the application is for an existing structure and the proposed use
 412 will not result in clearing of existing forest or trees;
- 413 (2) the application modifies an existing special exception use
 414 which was approved before July 1, 1991, and the revision will
 415 not result in the clearing of more than a total of 5000 additional
 416 square feet of forest or any specimen or champion tree; or
- 417 (3) the total disturbance area for the proposed special exception use
 418 will not exceed 10,000 square feet, and clearing will not exceed
 419 a total of 5000 square feet of forest or include any specimen or
 420 champion tree;]

421 [(r) an equestrian facility located in an agricultural zone that is exempt
 422 from platting requirements under Section 50-9, whether or not a
 423 sediment control permit is obtained under Section 19-2. Article II

does not apply to any equestrian support building or related activity only if the building is built using best management practices. However, Section 22A-6(b) applies if any specimen or champion tree would be cleared. This exemption does not permit any forest or tree that was preserved under a previously-approved forest conservation plan or tree save plan to be cut, cleared, or graded unless the previously-approved plan is amended to allow that activity. This exemption does not apply if:

- (1) any forest was cleared during an agricultural activity, as defined in subsection (b), during the 5 years before any exemption under this subsection is claimed;
- (2) any forest or tree located in a stream valley buffer would be cleared;
- (3) on-site forest retention does not equal at least 25% of the tract area or all forest existing when the exemption is claimed, whichever is less; or
- (4) on-site forest retention does not equal at least 50% of any net tract area when more than 50% of that tract is existing forest.

A conservation easement is not required for any equestrian facility, whether or not the exemption in this subsection applies. However, another type of long-term protection may be required under Section 22A-12(h)(2) if the facility includes any forest retention area. The Planning Director must monitor any facility that is exempt under this subsection to confirm that the applicant and any successor in interest continue to comply with all conditions of the exemption;]

- [(s) (1) an activity occurring on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and

the afforestation requirements would not exceed 10,000 square feet; or

- (2) an activity occurring on a tract less than 1 acre that will not result in the clearing of more than a total of 30,000 square feet of existing forest, or any existing specimen or champion tree, and reforestation requirements would not exceed 10,000 square feet. Forest in any priority area on-site must be preserved; and]

[(t) a modification to existing developed property if:

- (1) no more than 5000 square feet of forest will be cleared;
- (2) the modification does not affect any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan; and
- (3) the modification does not require approval of a new subdivision plan.]

22A-6. [Exemptions-Special provisions] Reserved.

[(a) Special transition provision. An activity or development that is exempted under Section 22A-5, but which requires site plan approval, is subject to the local law applicable to tree conservation in effect before July 1, 1992. However, a violation of the requirements of any tree save plan or similar condition of approval may be enforced using any remedy provided under this Chapter.]

[(b) Tree save plan provision. An activity or development that would be exempt under Section 22A-5, except that the proposed activity involves clearing of a specimen or champion tree, requires the approval of a tree save plan, which may require tree preservation or mitigation for loss of individual trees. The plan requirements must be based on the size and character of the trees to be cleared. If trees to be

cleared are part of an existing scenic buffer between public parkland and a proposed development, trees which are smaller than specimen size may be included in the plan.]

22A-7. [Activities or development not exempt under Section 22A-5 -- Special transition provision] Reserved.

[(a) An activity or development not exempted under Section 22A-5 and which received preliminary plan of subdivision approval, site plan approval, project plan approval, or development plan approval, including any amendments, between July 1, 1991 and July 1, 1992 is exempt from the requirements of Article II at the time of a subsequent sediment control permit application if:

- (1) final plat approval has been obtained by July 1, 1992; or
- (2) a substantively complete application for final plat approval under Section 50-36 has been filed by July 1, 1992. If all other requirements are met, the Planning Board must consider an application to be substantively complete if the Board determines that:

(A) any required approval or permit that has not been obtained from another governmental agency is not available solely because of the inaction by the other governmental agency; and

(B) the applicant has used best efforts to obtain the permit or approval.]

[(b) If final plat approval will not be required under subsection (a) of this Section because the development is on a recorded lot or for other reasons, the development will be subject to the requirements of this

Chapter at the time of any subsequent application for a sediment control permit.]

[(c) If the Planning Board finds that a development approval between July 1, 1991 and July 1, 1992 was consistent with the retention, afforestation, or reforestation standards of this Chapter but is not exempt under this Section, the Board may waive additional submission requirements at the time of any later sediment control permit application. However, the Board must not waive the provisions of Section 22A-12(g) and (h) requiring certain agreements and financial security.]

[(d) An amendment to a sediment control permit approved between July 1, 1991 and July 1, 1992 is subject to the requirements of Article II if the activity is not otherwise exempt and it will result in the cutting of an additional 5,000 square feet of forest.]

22A-8. [Utility lines] Reserved.

[(a) General.

(1) Except as provided in paragraph (2) of this subsection, this Section applies to a proposed land disturbing activity requiring a sediment control permit for the construction, reconstruction, or replacement of public utility lines (except water and sewer lines) within a public right-of-way, public utility easement, or a public utility right-of-way owned by the utility.

(2) This Section does not apply if a public utility easement will be located on the property of a development subject to Article II of this Chapter. Satisfaction of the regulatory requirements of that Article applicable to activities on the easement is the responsibility of the owner of the property.]

531 [(b) Calculation Rules; Exemption.

532 (1) To determine the applicability of this Chapter under Section
533 22A-4 to proposed activities within a public right-of-way or
534 public utility easement, the calculation of land area must be
535 based on the limits of disturbance as shown on the sediment
536 control permit.

537 (2) A public right-of-way, public utility easement, or privately
538 owned utility right- of-way is considered to be exempt under
539 Section 22A-5(o) if the proposed activity and any future stages
540 of the work on the utility line will not result in the cumulative
541 cutting, clearing, or grading of more than 40,000 square feet of
542 forest or the cutting, clearing, or grading of any specimen or
543 champion tree, or trees or forest that are subject to a previously
544 approved forest conservation or tree save plan. Any later stages
545 of the work must be identified at the time of the initial sediment
546 control permit application.

547 (3) If the exemption does not apply, afforestation or reforestation
548 requirements must be calculated using the net tract area
549 applicable to the entire proposed utility line without regard to
550 project segments subject to a specific sediment control permit.
551 The property boundaries of the privately owned utility right-of-
552 way, public utility easement, or public right-of-way (to the
553 extent of the utility work) must be used in calculating the area
554 of the tract. The net tract area should reflect any reduction in
555 land area that will continue to be used for agricultural
556 activities.]

[Any requirement for mitigation for loss of any specimen or champion tree must be based on the size and character of the tree.]

22A-9. County Highway Projects.

(a) General.

(1) This [section] Section applies to construction of a highway by the County as part of an approved Capital Improvements Program project.

* * *

(c) Reforestation for County highway projects must meet the standards in subsections [22A-12(e), (g) and (h)] 22A-12(c), (f), and (g).

* * *

Article [II] 2. Natural Resource Inventory/Forest Stand Delineations, [and] Forest Conservation Plans, Tree Inventories, and Tree Protection Plans.

22A-10. [General] Approvals required.

(a) [Approval] Level 1 approval required. A person who is subject to [this Article] Level 1 review must submit to the Planning Director a [forest stand delineation and forest conservation plan] Natural Resource Inventory/Forest Stand Delineation and Forest Conservation Plan [for regulatory approval].

[(b) Forest Stand Delineation]

(1) Natural Resource Inventory/Forest Stand Delineation.

(A) A [forest stand delineation] Natural Resource Inventory/Forest Stand Delineation must be [used during the preliminary review process to find the most suitable and practical areas for tree and forest conservation] signed by a qualified professional. A [forest stand

delineation] Natural Resource Inventory/Forest Stand Delineation must contain:

- (i) topographic, hydrographic, soils, and geologic information [, and];
- (ii) qualitative and quantitative information on trees and forest cover[,]; and
- (iii) other information or requirements specified [in the regulations] by regulation or in the technical manual.

[(2) A simplified forest stand delineation may replace the forest stand delineation required by paragraph (1) if:

- (A) there is no forest on the site;
- (B) no forest on the site would be cut, cleared, or graded for the proposed use, and all forest on the site would be subject to a long-term protective agreement; or
- (C) the on-site forest is located on a portion of the tract which is exempt from this Article, such as areas remaining in agricultural use as part of a subdivision.]

[(3)] (B) The Planning Director may waive any requirement for information that is unnecessary for a specific site.

[(4)] (C) An approved [forest stand delineation] Natural Resource Inventory/Forest Stand Delineation is not valid after 2 years unless[:] a qualified professional recertifies the natural resource inventory/forest stand delineation, or

[(A)] a [forest conservation plan] Forest Conservation Plan [has been] is accepted as complete[: or].

[(B) the delineation has been recertified by the preparer.]

[(c)] (2) *Forest [conservation plan] Conservation Plan*.

[(1)] (A) [A forest conservation plan is intended to govern conservation, maintenance, and any afforestation or reforestation requirements which apply to the site.] A [forest conservation plan] Forest Conservation Plan must be signed by a qualified professional and must contain information on the extent and characteristics of:

- (i) the trees and forested area to be retained or planted[.];
- (ii) proposed locations for on-site and off-site reforestation[.];
- (iii) scheduling[.];
- (iv) protective measures[.];
- (v) a binding maintenance agreement effective for at least [2] 5 years[.];
- (vi) a binding agreement to protect forest conservation areas, and other information or requirements specified [in the] by [regulations] regulation or technical manual.

[(2)] (B) A [forest conservation plan may] Forest Conservation Plan must include protective measures designed to conserve [significant and mature trees on adjacent property] trees on the subject tract, or on adjacent properties, from adverse impacts that may be caused by

the development or land disturbing activities proposed
for the tract.

[(3)] (C) A [forest conservation plan] Forest Conservation Plan
may be reviewed in 2 stages with the submission of a
preliminary and a final [forest conservation plan] Forest
Conservation Plan as specified under Section 22A-11.

[(d) *Qualifications of preparer.* The forest stand delineation and forest
conservation plan must be prepared by a licensed forester, licensed
landscape architect or other qualified professional approved by the
Planning Director. In determining if a person is qualified, the person
must meet all applicable requirements under the Code of Maryland
Regulations, 08.19.06.01.]

(b) Level 2 approval required. A person who is subject to Level 2 must
submit to the Planning Director a Tree Inventory, Tree Protection
Plan, and a Declaration of Intent.

(1) Tree Inventory.

(A) A Tree Inventory must be signed by a certified arborist or
a tree expert, and must:

- (i) assess, identify, and characterize the tree species;
- (ii) estimate the height, age, and canopy of each tree;
- (iii) document the diameter of each tree; and
- (iv) provide any other information or requirement
specified by regulation or in the technical manual.

(B) The Planning Director may waive any requirement for
information that is unnecessary for a specific site.

(C) An approved Tree Inventory is not valid after 2 years unless a certified arborist or a tree expert recertifies the Tree Inventory or a Tree Protection Plan is approved.

(2) Tree Protection Plan

(A) A Tree Protection Plan must be signed by a certified arborist and used to protect trees during construction. A Tree Protection Plan must identify:

- (i) each tree to be retained and removed;
- (ii) the proposed limit of disturbance; existing and proposed utility connections;
- (iii) detailed drawings and measures to protect trees; and
- (iv) any other information or requirement specified by regulation or in the trees technical manual.

(B) A Tree Protection Plan must include measures to protect trees on adjacent property from adverse impacts caused by the proposed development or land disturbing activity.

(3) Declaration of Intent.

(A) A Declaration of Intent must verify that the proposed activity does not require a Level 1 Review.

(B) Regulated activity must not occur on the area covered by the Declaration of Intent within 7 years after cutting, clearing, or grading any forest or tree resource is complete.

(C) The Planning Board may require a person who does not file or comply with a Declaration of Intent to:

- (i) submit to a Level 1 review; and

- (ii) pay a penalty fee established by fee schedules approved by Council resolution per square foot of forest cut or cleared, not less than the minimum set by state law.

(c) Level 3 approval required.

- (1) A person who is subject to Level 3 must submit to the Planning Director a Declaration of Intent.

(2) Declaration of Intent.

- (A) A Declaration of Intent must verify that the proposed activity does not require a Level 1 or Level 2 Review.

- (B) Regulated activity must not occur on the area covered by the Declaration of Intent within 7 years after cutting, clearing, or grading forest resources is complete.

- (C) The Planning Board may require a person who does not file or comply with a Declaration of Intent to:

- (i) submit to a Level 1 review; and

- (ii) pay a penalty fee established by fee schedules approved by Council resolution per square foot of forest cut or cleared, not less than the minimum set by state law;

22A-11. [Application, review, and approval] Review Procedures.

(a) [General] Level 1 Review.

- (1) Natural Resource Inventory/Forest Stand Delineation. A person subject to a Level 1 review must submit to the Planning Director a Natural Resource Inventory/Forest Stand Delineation. Within 30 days after receiving the Natural Resource Inventory/Forest Stand Delineation, the Director must

714 notify the person whether the Natural Resource
715 Inventory/Forest Stand Delineation is complete. An incomplete
716 application must be denied. If the Director does not act on the
717 submission within 30 days, the delineation must be treated as
718 approved. The Director may extend the deadline for an
719 additional 15 days in extenuating circumstances.

720 (2) Preliminary Forest Conservation Plan. After a person is
721 notified that the Natural Resource Inventory/Forest Stand
722 Delineation is approved, a person must submit a preliminary
723 forest conservation plan to the Planning Board or Planning
724 Director. The preliminary Forest Conservation Plan must be
725 reviewed with any application of which it is a necessary
726 component.

727 (3) Final Forest Conservation Plan.

728 (A) After the preliminary Forest Conservation Plan is
729 approved, a person must submit a final Forest
730 Conservation Plan concurrently with a site plan, record
731 plat, or sediment control plan, as applicable. The Plan
732 must be reviewed with the applicable site plan, record
733 plat, or sediment control plan.

734 (B) Within 45 days after receiving the final Forest
735 Conservation Plan, the Planning Director must notify the
736 applicant whether the Plan is complete and approved. If
737 the applicant is not notified within 45 days, the Plan must
738 be treated as approved. The Director may extend the
739 deadline for an additional 15 days in extenuating
740 circumstances.

(4) Coordination and Special Provisions.

[(1)] (A) Coordinated with project review. [The forest stand delineation and forest conservation plan must be submitted and reviewed in conjunction with the review process for a development plan, project plan, preliminary plan of subdivision, site plan, special exception, mandatory referral, or sediment control permit in accordance with this Section.] The Planning Director must coordinate review of the forest conservation plan with the Director of Environmental Protection, the Director of Permitting Services, the Washington Suburban Sanitary Commission, any other relevant regulatory [agencies] agency, and [entities that will provide] any public [utilities to] utility that will serve the tract, to promote consistency between the objectives of this Chapter and other development requirements. To the extent practicable, [entities providing] public utilities should design facilities that will serve a tract in a manner that avoids identified conservation areas and minimizes tree loss.

(B) Special exceptions. If a special exception application is subject to this Chapter, the applicant must submit a Level 1, Level 2, or Level 3 review to the Planning Director before the Board of Appeals may consider the application for the special exception. The Board of Appeals must review the preliminary forest conservation plan along with the special exception application and must not

approve a special exception that conflicts with the preliminary forest conservation plan. A final forest conservation plan must be submitted before an applicant obtains a sediment control permit, or when a preliminary plan of subdivision or site plan application is filed, if required.

(C) Sediment control permit. If an application for a sediment control permit is subject to this Chapter, the applicable permit issuing authority must direct the applicant to the Planning Director for a determination. If the Planning Director finds that the sediment control permit is subject to this Chapter, the applicant must submit to the applicable level of review. The sediment control permit issuing authority must not approve a sediment control permit that conflicts with an approved forest conservation plan.

[(2)] (D) Modification to an approved plan. The Planning Director may approve modifications to an approved forest conservation plan that are consistent with this Chapter if:

[(A)] (i) field inspections or other evaluation reveals minor inadequacies of the plan and the modification of the plan in order to remedy such inadequacies will not negatively affect the final approved plan; or

[(B)] (ii) each modification is minor and does not impact any forest in a priority area (such as substituting an

on-site conservation area for an equal or greater on-site area of similar character, or substituting a marginal on-site conservation area for equal or greater amount of off-site priority area); or

[(C)] (iii) action is otherwise required in an emergency situation.

Any other modification must be approved by [the agency that] either the Planning Board or the Planning Director, whichever approved the [forest conservation plan] Forest Conservation Plan.

[(b) Project requiring development plan, project plan, preliminary plan of subdivision, or site plan approval.

(1) Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation with the application for a development plan, project plan, preliminary plan of subdivision, or site plan, whichever comes first. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances.

(2) Forest conservation plan.

(A) Application. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning

822 Director. If the development proposal will require more
823 than one of the approvals subject to this subsection, the
824 applicant must submit a preliminary forest conservation
825 plan to the Planning Director in conjunction with the first
826 approval and a final forest conservation plan in
827 conjunction with the last approval. If only one approval
828 subject to this subsection is required, an applicant, with
829 the approval of the Planning Board, may submit a
830 preliminary forest conservation plan at the time of the
831 development approval and a final forest conservation
832 plan before issuance of a sediment control permit for the
833 tract.

834 (B) Review. Within 45 days from receipt of a final forest
835 conservation plan, including a plan that is not reviewed
836 in 2 stages, the Planning Director must notify the
837 applicant whether the forest conservation plan is
838 complete and approved for submission to the Planning
839 Board as part of the development application. If the
840 applicant is not notified within 45 days, the plan will be
841 treated as complete and approved for submission. The
842 Planning Director may require further information or
843 provide for one extension of this deadline for an
844 additional 15 days for extenuating circumstances. In
845 addition, at the request of the applicant, the Director may
846 extend this deadline for extenuating circumstances.

847 (C) Condition of approval. The forest conservation plan will
848 be reviewed by the Planning Board concurrently with the

development plan, project plan, preliminary plan of subdivision or site plan, as appropriate. The forest conservation plan, as may be amended by the Board, must be made a condition of any approval of the development application. For a development plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-D-1.4.]

[(c) Project requiring special exception approval.

- (1) Forest stand delineation. If a special exception proposal is subject to the requirements of this Chapter, the applicant must submit a forest stand delineation to the Planning Director before the Board of Appeals may consider the application for the special exception. The deadlines for reviewing a forest stand delineation are the same as in paragraph (b)(1) of this Section.
- (2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a preliminary forest conservation plan to the Planning Director. The Board of Appeals must consider the preliminary forest conservation plan when approving the special exception application and must not approve a special exception application that is in conflict with the preliminary forest conservation plan. A final forest conservation plan must be submitted before obtaining a sediment control permit, or at the time of preliminary plan of subdivision or site plan application, if required. The deadlines for reviewing a final forest

conservation plan are the same as in paragraph (d)(2) of this Section.]

[(d) Project requiring a sediment control permit only.

(1) Forest Stand Delineation. If an application for a sediment control permit may be subject to the requirements of this Chapter, the applicable sediment control permit issuing authority must direct the applicant to the Planning Director for a determination. If the Planning Director finds the sediment control permit application to be subject to this Chapter, the applicant must submit a forest stand delineation to the Planning Director for review. The deadlines for reviewing a forest stand delineation are the same as in paragraph (b)(1) of this Section.

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a forest conservation plan. Within 45 days from receipt of the forest conservation plan, the Planning Director must notify the applicant if the forest conservation plan is complete and approved. If the applicant is not notified within 45 days, the plan will be treated as complete and approved. The Director may require further information or provide for an extension of this deadline for an additional 15 days for extenuating circumstances. In addition, at the request of the applicant, the Director may extend this deadline for extenuating circumstances.

(3) Issuance of sediment control permit. A sediment control permit must not be issued to a person who must comply with this Article until:

902 (A) a final forest conservation plan, if required, is approved;
 903 and

904 (B) any financial security instrument required under this
 905 Chapter is provided.]

906 [(e) Project requiring mandatory referral.

907 (1) Forest stand delineation. A person seeking mandatory referral
 908 for a project that is subject to the requirements of this Chapter
 909 must first submit a forest stand delineation to the Planning
 910 Director for review. The deadlines for reviewing a forest stand
 911 delineation are the same as in paragraph (b)(1) of this Section.

912 (2) Forest conservation plan. Upon notification that the forest stand
 913 delineation is complete and correct, the applicant must submit
 914 to the Planning Director a preliminary forest conservation plan.
 915 The Planning Board must consider the preliminary forest
 916 conservation plan when reviewing the mandatory referral
 917 application. The deadlines for reviewing the final forest
 918 conservation plan are the same as in paragraph (d)(2) of this
 919 Section.

920 (3) Issuance of a sediment control permit. Issuance of a sediment
 921 control permit is subject to the conditions specified in
 922 paragraph (d)(3) of this Section.]

923 (b) Level 2 Review. A person subject to a Level 2 review must submit to
 924 the Planning Director the Tree Inventory with a Declaration of Intent.
 925 Within 30 days after receiving the Tree Inventory and Declaration of
 926 Intent, the Planning Director must notify the person whether the Tree
 927 Inventory is complete. An incomplete application must be denied. If
 928 the Planning Director fails to act on the submission within 30 days,

the Tree Inventory will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances.

- (c) Level 3 Review. A person subject to a Level 3 review must submit to the Planning Director a Declaration of Intent. Within 30 days After receiving the Declaration of Intent, the Planning Director must notify the person whether the Declaration of Intent is complete. An incomplete application must be denied. If the Planning Director fails to act on the submission within 30 days, the Declaration of Intent will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances.

22A-12. Retention, afforestation, and reforestation requirements for Level 1 Review.

- (a) [Table.] General. The Forest Conservation Plan must, to the maximum extent feasible, retain certain vegetation and specific areas in an undisturbed condition, unless the Planning Board or the Planning Director finds retention is not feasible without undesirable alterations to the proposal. The Forest Conservation Plan must mitigate for the loss of forest and trees in the following order of preference:

- (1) on site reforestation or afforestation;
- (2) offsite forest planting within the same watershed;
- (3) on site non-native and invasive management control with supplemental planting;
- (4) forest mitigation banks;
- (5) in-lieu fee; and
- (6) on site landscaping with an approved plan.

(b) How to Calculate the Requirements.(1) Table.

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area for Level 1 Reviews</i>		
<i>Land Use [Category] Type^[1]</i>	<i>[Forest] Conservation Threshold</i>	<i>[Required] Afforestation Threshold</i>
Agricultural and Resource Areas	50%	20%
Medium Density Residential Areas	[25%] <u>30%</u>	[20%] <u>25%</u>
Institutional Development Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
High Density Residential Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
Mixed-use Development Areas	[15-20% ²] <u>20-25%¹</u>	[15%] <u>20%</u>
Planned unit Development Areas	[15-20% ²] <u>20-25%¹</u>	[15%] <u>20%</u>
Commercial and Industrial Areas	[15] <u>20%</u>	[15%] <u>20%</u>

The residential and institutional portions of the tract must meet the [20%] 25% requirement. All other uses must meet the 20% requirements. [If a planned unit development was initially approved before January 1, 1992, and is between 25% and 75% complete on July 1, 1992, (as measured by the total acreage subject to the planned unit development that has received site plan approval), the forest conservation threshold is calculated at 15 per cent. If the planned unit development is less than 25% complete, the forest conservation threshold is calculated using the adjustment shown in the chart.]

[(b) Retention.

- (1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan

- 970 must retain certain vegetation and specific areas in an
 971 undisturbed condition unless the Planning Director finds that:
- 972 (A) the development would make maximum use of any
 973 available planning and zoning options that would result
 974 in the greatest possible forest retention;
 - 975 (B) reasonable efforts have been made to protect the specific
 976 areas and vegetation listed in the plan; and
 - 977 (C) the development proposal cannot be reasonably altered.
- 978 (2) In general, areas protected under this subsection include:
- 979 (A) floodplains, stream buffers, steep slopes, and critical
 980 habitats;
 - 981 (B) contiguous forests;
 - 982 (C) rare, threatened, and endangered species;
 - 983 (D) trees connected to an historic site;
 - 984 (E) champion trees and other exceptionally large trees; and
 - 985 (F) areas designated as priority save areas in a master plan or
 986 functional plan.]
- 987 [(c)] (2) *Reforestation*. The forest conservation plan must provide for
 988 reforestation as follows:
- 989 [(1)] (A) For all existing forest cover measured to the nearest
 990 1/10 acre cleared on the net tract area below the
 991 applicable forest conservation threshold, the area of
 992 forest removed must be reforested at a ratio of 2 acres
 993 planted for every one acre removed.
 - 994 [(2)] (B) For all existing forest cover measured to the nearest
 995 1/10 acre cleared on the net tract area above the
 996 applicable forest conservation threshold, the area of

forest removed must be reforested at a ratio of $\frac{1}{4}$ acre planted for every one acre removed.

[(3)] (C) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

[(4)] (D) A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

[(d)] (3) *Afforestation.*

[(1)] (A) A site with less than 20 percent of the net tract area in forest cover must be afforested in accordance with the required afforestation percentages shown on the table in subsection [(a)] (b)(1) of this Section.

[(2)] (B) Afforestation [should] must be accomplished by the planting, maintenance, and establishment of forest cover[. However, if the applicant] unless a person demonstrates to the satisfaction of the Planning Board or Planning Director, as the case may be[, that afforestation using forest cover is inappropriate]. Afforestation may be satisfied by tree cover for a site because of its location in an urban setting, redevelopment context, high-density

residential, commercial, industrial, planned unit development, or institutional area (as defined in Section 22A-3), or similar reason, afforestation requirements may be satisfied by tree cover.

[(e)] (c) Standards for reforestation and afforestation.

(1) Priorities for reforestation and afforestation.

(A) [Preferred sequence.] Except as provided [in] by regulation or in the technical manual or otherwise in [paragraph] (1) of this subsection, the preferred sequence for afforestation and reforestation is [, in general: enhancement of existing forest through on-site selective clearing, supplemental planting, or both; on-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible; landscaping with an approved plan; and off-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible] identified in subsection (a).

(B) [Governmental] Government considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:

(i) to achieve the objectives of a master or sector plan or other County land use policies or to take

1050 advantage of opportunities to consolidate forest
1051 conservation efforts;

1052 (ii) for public [site] sites acquired or required to be
1053 dedicated before July 1, 1991, to ensure that the
1054 site can be used for its intended purpose without
1055 major design changes; or

1056 (iii) for educational, recreational, and public safety
1057 facilities, to ensure that public safety is not
1058 compromised.

1059 [(C) *Public Utility Considerations.* The sequence provided in
1060 subparagraph (A) of this paragraph for public utility
1061 projects may be modified to reflect applicable electrical
1062 or other safety codes, or right-of-way constraints.]

1063 (2) *Off-site afforestation and reforestation.* In addition to the use
1064 of other sites proposed by an applicant and approved by the
1065 County, off-site afforestation or reforestation may also include:

1066 (A) Forest mitigation banks designated in advance by the
1067 County.

1068 (B) Protection of existing off-site forest. Acquisition of an
1069 off-site protective easement for existing forested areas
1070 not currently protected is an acceptable mitigation
1071 technique instead of off-site afforestation or reforestation
1072 planting, but the forest cover protected must be 2 times
1073 the afforestation and reforestation requirements.

1074 (C) For sites located in existing population centers, [use of]
1075 street trees [which meet landscape or streetscape goals
1076 identified in an applicable master plan] may be used if

the applicant demonstrates to the satisfaction of the Planning Board or Planning Director that on-site afforestation is inappropriate.

[(3) *Priority areas and plantings.* Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred. Unless the Planning Board or Planning Director order otherwise, the required use of natural regeneration under this Chapter supercedes any prohibition under Chapter 58.]

[(4) *Location requirements.* Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located.]

[(5) *Deadline for plant installation.* The afforestation and reforestation requirements under this subsection must be accomplished within one year or 2 growing seasons after a development project is complete.]

[(6)] (d) *Planned Unit Developments; Other Staged Development.* Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan or project plan instead of

the net tract area. Similarly, the Planning Board may allow any afforestation or reforestation requirement applicable to a staged development subject to a single preliminary plan of subdivision but with separate site plan reviews for each stage to be calculated and satisfied using the total area covered by the preliminary plan of subdivision.

[(f)] (e) *Special provisions for minimum retention, reforestation and afforestation.*

(1) *General.* Any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a zoning requirement for environmental reasons, must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.

(2) *Retention, reforestation and afforestation.* Forest retention should be maximized where possible on each site listed in this subsection. At a minimum, on-site forest retention, and in some cases reforestation and afforestation, must be required as follows:

(A) In an agricultural and resource area, on-site forest retention must equal 25% of the net tract area.

(B) In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a). This requirement also applies to any site seeking a

waiver or variance from base zone standards under Section 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or 59-C-7.131, if as a condition of the waiver or variance the Planning Board or County Council must find that the resulting development is environmentally more desirable.

(C) On a site covered by this subsection, if existing forest is less than the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided. If existing forest is less than the applicable afforestation threshold in subsection [(a)] (b), the afforestation threshold is the minimum on-site forest requirement.

(D) If a site covered by this subsection is unforested, on-site afforestation must equal the applicable afforestation threshold.

[(3)] (E) If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping and street trees.

[(4)] (F) Retention, reforestation, and afforestation must adhere to the priorities and sequence established in subsections [(b) and (e)] (a) and (c).

[(g)] (f) *In lieu fee.*

(1) *General.* If a person satisfactorily demonstrates that the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person must contribute money to the forest conservation fund at a rate specified by the County Council by law or resolution, but not less than the rate required under Section 5-1610 of the Natural Resources Article of the Maryland Code. The requirement to contribute money must be met before any clearing or grading occurs within [90 days after development project completion] the tract.

(2) *Specific development situations.* Except as specified in subsection [(f)] (e), the Planning Board or Planning Director may allow an applicant to pay into the County Forest Conservation Fund instead of providing afforestation[, or reforestation[, or landscaping] in the following situations:

(A) *Afforestation using tree cover.* If an applicant has shown that on-site afforestation using forest cover is not appropriate under subsection [(d)(2)] (b)(3)(B), the applicant may pay the fee instead of using tree cover to meet any afforestation requirement.

(B) *Afforestation or reforestation using [landscaping] tree cover.* An applicant may pay the fee instead of using credit for [landscaping] tree cover.

* * *

[(h)] (g) Agreements and Long-Term Protection.

(1) Maintenance agreement. A forest conservation plan must include a [two] 5-year binding agreement for maintenance of conservation areas, including the watering (as practical),

feeding, [and] replanting of areas to be afforested or reforested,
and non-native and invasive management. The [2-year] 5-year
 period starts upon satisfactory final inspection of the
 conservation measures required under the [forest conservation
 plan] Forest Conservation Plan. A staged project may have
 more than one agreement.

[(i)] (h) *Financial Security.*

(1) *Security required.* Except as provided in paragraph (8) of this
 subsection, an approved financial security instrument must be
 required to ensure:

- (A) compliance with all requirements of an approved forest
 conservation plan including afforestation, reforestation,
 and maintenance; [or]
- (B) full payment of funds to be paid instead of afforestation
 or reforestation, if required under subsection [(g).] (f); or
- (C) compliance with all requirements of a Tree Protection
Plan.

(3) *When required.* The financial security instrument must be
 provided prior to any land disturbing activity [, as defined in
 Chapter 19, occurring on a section of the tract subject to the
 forest conservation plan].

(4) *Amount required.*

- (A) If the financial security is required under [subparagraph]
subsection (1)(A) [of this subsection], the security
 instrument must be in an amount equal to:

- 1211 (i) the in lieu fee rate; or
 1212 (ii) the estimated cost of afforestation, reforestation,
 1213 and maintenance [applicable to the section of the
 1214 tract subject to the land disturbing activity] of
 1215 planted areas as well as non-native and invasive
 1216 management.

1217 The instrument must include a provision for adjusting the
 1218 amount based on actual costs. The Planning Director
 1219 must notify the obligee of any proposed adjustment and
 1220 provide the opportunity for an informal conference.

- 1221 (B) If the financial security is required under [subparagraph]
 1222 subsection (1)(B) [of this subsection], the security
 1223 instrument must be in an amount equal to the in lieu
 1224 payment.

- 1225 * * *
 1226 (6) Events of forfeiture. The financial security instrument may be
 1227 subject to forfeiture on:

- 1228 (A) failure of the obligee to perform the work under the
 1229 [forest conservation plan] Forest Conservation Plan in
 1230 accordance with the required schedule; or

- 1231 (B) failure of the obligee to pay a required in lieu fee in a
 1232 timely manner.

1233 * * *

1234 **22A-13. Forest mitigation banks.**

- 1235 (a) A person may create a forest mitigation bank from which applicants
 1236 may buy credits by afforesting or reforesting an area of land under a
 1237 forest mitigation bank plan approved by the Planning Director.

(b) A person can create a forest mitigation bank by permanently protecting:

(1) existing forest;

(2) planting and protecting new forests in unplanted environmental buffers or in areas contiguous to existing and protected forests;

or

(3) a combination of the two.

[(b)] (c) The area of land where the bank is planted must be at least 1 acre.

[(c)] (d) A forest mitigation bank must use native plants for afforestation and reforestation[, unless inappropriate].

[(d)] (e) A person proposing to create a forest mitigation bank must submit a plan to the Planning Director, [which must include] that includes:

(1) a [2-year] 5-year maintenance agreement which meets the standards in subsection [22A-12(h)(1)] 22A-12(g)(1);

(2) all information required by subsection [22A-10(c)] 22A-10(b)(2) for a [forest conservation plan] Forest Conservation Plan; and

(3) the draft easement, covenants, or deed restrictions for the area to be sold to the developer when credits are withdrawn from the bank.

[(e)] (f) Forest mitigation banks must be established in accordance with the priority areas described in subsection [22A-12(e)(3)] 22A-12(b)(2), or in areas identified in a master plan or functional plan.

[(f)] (g) Credits must not be debited from a forest mitigation bank until all trees have been planted and accepted by the Planning Director, and either financial security which meets the standards in subsection [22A-12(i)] 22A-12(h) has been provided or the Planning Director has

found that a sufficient number of trees have successfully survived for
[2] 5 years after planting.

[(g)] (h) To debit credits from an approved forest mitigation bank, the
easement, covenants, or deed restrictions which assure that the newly
reforested or afforested area of land remains a forest in perpetuity
must be conveyed to the Planning Board or its assignee and the
applicant must show that credits are available and the applicant has
the right to debit them. The credits must buy an amount of land equal
to the applicant's off-site reforestation or afforestation requirements
under its approved forest conservation plan.

22A-15. Inspections and notification.

(a) *Permission to gain access.* [Authorized representatives of the
Planning Department] Representatives authorized by the Planning
Director may enter properties subject to this Chapter for the purpose
of inspection, review and enforcement.

(b) *Forest Conservation Plan to be on site; field markings.* A copy of the
approved forest conservation plan must be available on the site for
inspection by [authorized] representatives authorized by the Planning
Director. Field markings must exist on site during installation of all
protective devices, construction, or other land disturbing activities.

(c) *Required inspections.*

(1) The Planning Department [should] must conduct [at least 3]
field inspections of a site subject to confirm the information
submitted on a Natural resource Inventory/Forest Stand
Delineation.

(2) The Planning Department must conduct field inspections of a
site [tract] subject to an approved [forest conservation plan]

1292 Forest Conservation Plan]. The inspections should take place]
1293 as follows:

1294 [(1) The first inspection should take place before any land
1295 disturbing activities (including clearing, grading, or stripping)
1296 occurs on the tract to determine if protective measures have
1297 been properly installed and conservation areas clearly marked;

1298 (2) The second inspection should take place following completion
1299 of all land disturbing activities and afforestation or reforestation
1300 to determine the level of compliance with the forest
1301 conservation plan; and

1302 (3) The third inspection should take place at the end of the
1303 maintenance agreement 2-year time period.]

1304 (A) after the limits of disturbance have been staked and
1305 flagged, but before any clearing or grading begins;

1306 (B) after necessary stress reduction measures have been
1307 completed and the protection measures have been
1308 installed, but before any clearing or grading begins;

1309 (C) after completion of all construction activities to
1310 determine the level of compliance with the provisions of
1311 the forest conservation plan;

1312 (D) before the start of any required reforestation and
1313 afforestation planting;

1314 (E) after required reforestation and afforestation planting has
1315 been completed to verify the planting is acceptable and
1316 begin the 5-year maintenance period; and

1317 (F) at the end of the 5-year maintenance period to determine
1318 the level of compliance with the provisions of the

1319 planting plan and, if appropriate, authorize release of the
 1320 financial security.

1321 (3) The Planning Department must conduct field inspections of a
 1322 site subject to a tree protection plan as follows:

1323 (A) after the limits of disturbance have been staked and
 1324 flagged, but before any clearing or grading begins;

1325 (B) after necessary stress reduction measures have been
 1326 completed and the protection measures have been
 1327 installed, but before any clearing or grading begins; and

1328 (C) after completion of all construction activities to
 1329 determine the level of compliance with the provisions of
 1330 the tree protection plan.

1331 (d) *Other inspections.* The Planning [Department] Director may [conduct
 1332 other] authorize additional inspections or meetings as necessary to
 1333 administer this Chapter[, including an inspection to confirm a forest
 1334 stand delineation].

1335 (e) *Required [notifications] scheduling of inspections for Forest*
 1336 *Conservation and Tree Protection Plans.* Persons must notify the
 1337 Planning Director 7 days prior to scheduling inspections under
 1338 subsection (c).

1339 [(1) At least 2 working days before starting any land disturbing
 1340 activities associated with the forest conservation plan, a person
 1341 must notify the Planning Department. The Planning Department
 1342 must coordinate its inspections, and any pre-construction
 1343 conferences, with the Department of Permitting Services to
 1344 avoid inconsistent directives in the field relating to the forest
 1345 conservation plan and sediment control activities.

1346 (2) At least 2 working days before completion of afforestation and
 1347 reforestation plantings, a person must notify the Planning
 1348 Department so that the Department may schedule the second
 1349 inspection specified under paragraph (c)(2) of this Section.]

1350 **22A-16. [Penalties] Violations, penalties, and other remedies.**

1351 * * *

1352 **22A-17. Corrective [actions] order.**

1353 * * *

1354 **22A-19. [Noncompliance with exemption conditions] Reserved.**

1355 [(a) Determination of noncompliance. A person who receives an
 1356 exemption subject to a declaration of intent or for commercial logging
 1357 and timber harvesting operations is in noncompliance if:

1358 (1) within 5 years, an application for a development or other
 1359 approval regulated by this Chapter is submitted for the tract or
 1360 lot covered by the exemption; or

1361 (2) the person otherwise violates this Chapter or the declaration of
 1362 intent.]

1363 [(b) Penalties for noncompliance. In addition to any other remedies under
 1364 this Chapter, the Planning Board may require a person in
 1365 noncompliance to:

1366 (1) meet the forest conservation threshold as would have been
 1367 required;

1368 (2) pay an administrative civil penalty under Section 22A-16(d) for
 1369 the area of forest cut or cleared under the exemption; or

1370 (3) both.

1371 **22A-20. [Notice, hearings, and appeals] Appeals.**

- 1372 [(a) General. Except as provided under subsections (c) and (d) of this
 1373 Section, the requirements for notice, public hearing, and
 1374 administrative decision-making for the associated development
 1375 approval must be followed when reviewing a forest stand delineation
 1376 or forest conservation plan.]
- 1377 [(b) Forest conservation plans and variances approved by the Planning
 1378 Board or District Council.
- 1379 (1) A person aggrieved by the decision of the Planning Board on
 1380 the approval, denial, or modification of a forest conservation
 1381 plan (including a request for a variance) may file a judicial
 1382 appeal of the final administrative action on the development
 1383 approval in accordance with Subtitle B of the Maryland Rules
 1384 of Procedure and any other law applicable to the proceeding.
- 1385 (2) A person aggrieved by the decision of the District Council on
 1386 the approval, denial, or modification of a forest conservation
 1387 plan (including a request for a variance) proposed in
 1388 conjunction with a development plan may file a judicial appeal
 1389 of the action on the development plan in accordance with
 1390 Division 59-H-8.]
- 1391 [(c) Forest stand delineations and forest conservation plans approved by
 1392 the Planning Director.
- 1393 (1) Appeal to Planning Board. Upon receipt of the Planning
 1394 Director's written decision on a forest stand delineation or forest
 1395 conservation plan, an applicant has 30 days in which to appeal
 1396 to the Planning Board.
- 1397 (2) Hearing; decision. The Planning Board must hold a hearing on
 1398 the appeal and inform the applicant in writing of its decision.

1399 The Board must consider the appeal de novo. For purposes of
 1400 judicial review, the decision of the Planning Board constitutes
 1401 final agency action.

1402 (3) Appeal. Upon receipt of the Planning Board's decision, an
 1403 applicant has 30 days in which to appeal the decision in
 1404 accordance with Subtitle B of the Maryland Rules of
 1405 Procedure.]

1406 [(d) Administrative enforcement actions.

1407 (1) Notice. A complaint, order, or other administrative notice
 1408 issued by the Planning Director under this Article must be
 1409 served on the alleged violator personally, on the violator's agent
 1410 at the activity site, or by certified mail to the violator's last
 1411 known address. The notice must identify the alleged violator,
 1412 the location of the violation, and the specific facts of the
 1413 violation, and must give the alleged violator the opportunity for
 1414 a hearing before the Planning Board within 10 working days of
 1415 receipt of the notice. If an administrative action under this
 1416 Article can only be taken by the Board, the notice must state the
 1417 date on which the action is scheduled to be considered by the
 1418 Board.

1419 (2) Hearing. If an opportunity for a hearing is requested, the matter
 1420 must be expeditiously scheduled on a Planning Board agenda
 1421 unless the alleged violator consents to a delay. The filing of a
 1422 request for a hearing does not stay an administrative order to
 1423 stop work, stabilized a site, or stop a violation.

1424 (3) Decision. The Planning Board must inform the alleged violator
 1425 in writing of its decision on an administrative enforcement

1426 action. The Board's decision constitutes final agency action for
 1427 purposes of judicial review.

1428 (4) Appeal. Upon receipt of the Planning Board's decision, an
 1429 aggrieved person has 30 days in which to appeal the Board's
 1430 action in accordance with Subtitle B of the Maryland Rules of
 1431 Procedure.]

1432 (a) Natural Resource Inventory/Forest Stand Delineations and Forest
 1433 Conservation or Tree Protection Plans approved by the Planning
 1434 Director.

1435 (1) Appeal to Planning Board. An applicant has 30 days from the
 1436 date of the Planning Director's written decision on a Natural
 1437 Resource Inventory/Forest Stand Delineation or Forest
 1438 Conservation or Tree Protection Plan to appeal to the Planning
 1439 Board.

1440 (2) Hearing; decision. The Planning Board must hold a de novo
 1441 hearing. The Board must issue a written resolution to the
 1442 applicant setting forth its decision. For purposes of judicial
 1443 review, the decision of the Planning Board constitutes final
 1444 agency action. Applicants may petition for judicial review of
 1445 the Planning Board decision in accordance with Maryland
 1446 7-200 Rules.

1447 (b) Forest Conservation or Tree Protection Plans and variances
 1448 approved by the Planning Board. A person aggrieved by the decision
 1449 of the Planning Board on the approval, denial, or modification of a
 1450 Forest Conservation or Tree Protection Plan (including a request for a
 1451 variance) may file a petition for judicial review of the administrative
 1452 agency decision on the development approval in accordance with the

Maryland Rules of Court and any other law applicable to the proceeding.

Sec. 22A-21. Variance provisions.

(a) *Written request.* [A person] An applicant may request in writing a variance from this Chapter or any regulation adopted under it if the person demonstrates that enforcement would result in unwarranted hardship to the person. A request for a variance [waives] suspends the time requirements in Section 22A-11 until the Planning Board has acted upon the request.

* * *

(c) *Referral to other agencies.* Before considering a variance, the Planning Board must refer a copy of each request to the County Arborist, Planning [Department] Director, and other appropriate officials or agencies for a written recommendation before acting on the request. Recommendations must be submitted to the Planning Board within 30 days from the receipt [by the official or agency] of the [request] referral or the recommendation [should] must be presumed to be favorable.

(d) *Minimum criteria.* A variance may only be granted if it meets the provisions of subsection (a) and (b) above. A variance must not be granted if granting the request:

- (1) will confer on the applicant a special privilege that would be denied to other applicants;
- (2) is based on conditions or circumstances which are the result of the actions by the applicant;
- (3) arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or

(4) will violate State water quality standards or cause measurable degradation in water quality.

(e) *Approval procedures; Conditions.* The Planning Board[, or the District Council on a development plan,] must [make findings] find that the applicant has met all requirements of this Section before granting a variance. Appropriate conditions may be imposed to promote the objectives of this Chapter and protect the public interest.

(f) *Notice to State Department of Natural Resources; Right to initiate or intervene in proceedings.*

(1) Notice of a pending variance request must be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.

(2) The Department of Natural Resources may initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance.

22A-26. [Regulations] General.

(a) [Adoption] Regulations. The Planning Board must adopt regulations, including necessary procedures, to administer this Chapter. In adopting the regulations, the Board must follow the adoption procedures for a Method (2) regulation under Section 2A-15 and any requirements applicable under State law. However, a proposed regulation of a procedural nature or that would implement changes in State law or regulation, may be adopted under Method (3) if it is consistent with this Chapter. The regulations must include procedures to amend a forest conservation plan and a declaration of intent.

(b) *Technical manual.* The Planning Director must prepare a technical manual that must include guidance and methodologies for:

- (1) preparing and evaluating a [forest stand delineation and natural resource inventory] Natural Resource Inventory/Forest Stand Delineation;
 - (2) preparing and evaluating a [forest conservation plan] Forest Conservation Plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;
 - (3) preparing and evaluating a Tree Inventory and Tree Protection Plan;
 - [(3)] (4) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;
 - [(4)] (5) inspection and monitoring [and enforcement] of site for compliance with [forest conservation plans] Forest Conservation and Tree Protection Plans; and
 - (6) other appropriate guidance for program requirements consistent with this Chapter and the regulations.
- [(c)] *Development agreements; Conservation easements.* The Planning Board may in the regulations require developer agreements, conservation easements, land trusts, covenants, and deed restrictions as part of an approved forest conservation plan.]
- [(d)] (c) *Administrative fee.* The Planning Board must [charge] establish a fee [to cover] schedule that at least partially covers the costs of administering this Chapter[, including review of submittals and field inspections. The fee schedule must be set by the Planning Board as part of the development application process. Different fees may be set

based on the size of the tract or other relevant factors]. Fee schedules may be reviewed as needed.

[(e) *Additional regulations.* Notwithstanding any other provision of this Chapter, the Planning Board may, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation and allow modified application submissions or procedures for development projects of a minor scale or public utility projects.]

[(f)] (d) *Reports.* The Planning Board must make all reports on the County forest conservation program to the General Assembly and State Department of Natural Resources that are required under State law or regulation. The reports [should be reviewed by the County Arborist for comment, and copies of all final reports] must be transmitted to the County Council and County Executive.

[(g)] (e) *List of Off-Site Property for Mitigation.* The Planning Director [should] may develop and maintain a list of properties [that may be] suitable for off-site mitigation required under [forest conservation plans] Forest Conservation Plans. [The Planning Director should develop the list in coordination with the County Arborist, the Department of Environmental Protection, the Department of Public Works and Transportation, the Department of Economic Development, the Soil Conservation District, and other appropriate agencies.]

[(h) *Sediment Control Permit Applications.* The Planning Director and the Director of the Department of Environmental Protection should develop administrative procedures to prevent, to the extent possible, circumvention of this Chapter by a person who obtains a sediment control permit for land disturbing activities on less than 40,000 sq. ft.

of land and who later seeks preliminary plan of subdivision approval for the same land. These procedures may include requiring an applicant for a sediment control permit to submit a declaration of intent enforceable under Section 22A-19.]

22A-27. Forest conservation fund.

There is a County forest conservation fund. Money deposited into the [fund] Fund must be used in accordance with the adopted County budget and in accordance with the following:

(a) *In lieu fees.* Money deposited in the [forest conservation fund instead of planting] Forest Conservation Fund must be spent on the reforestation and afforestation for which the money is deposited, including costs directly related to site identification, acquisition, design, and preparation, and must not revert to the [general fund] General Fund. The permanent preservation of priority forests, including identification and acquisition of a site, may be substituted for reforestation and afforestation at a rate of 2 acres of forest preservation for each acre of planting required. Funds remaining after all reforestation and afforestation requirements are satisfied may be spent on any other tree conservation activity, including street tree planting.

(b) *Penalties.* Money collected for noncompliance with a [forest conservation plan] Forest Conservation Plan or the associated [2-year] 5-year maintenance agreement must be deposited in a separate account in the [forest conservation plan] Forest Conservation Plan and must not revert to the General Fund. Money deposited in this [fund] Fund may be used to administer this Chapter or any purpose set forth in the Fund.

[Article V. County Arborist.]

[22A-30. County Arborist.] Reserved.

[(a) *Appointment.* The Director of the Department of Environmental Protection must appoint a person to serve as County Arborist. The County Arborist functions within the Department of Environmental Protection.]

[(b) *Qualifications.* The County Arborist must have relevant experience and an advanced degree in horticulture, forestry, forest ecology, plant pathology, landscape architecture, or other related field, or an equivalent combination of education and experience. The County Arborist should be licensed as a tree expert under State law.]

[(c) *Duties.* The County Arborist has the following functions related to resource management and protection of forest and trees in the County:

- (1) develop a comprehensive County conservation and management strategy, including programs designed to promote afforestation and reforestation in the County, and the survival of historic trees and any endangered tree species;
- (2) advise the County Executive and County Council on the effectiveness of County programs for controlling tree pests and diseases;
- (3) review and approve proposed commercial logging and timber harvesting operations under Article II;
- (4) review variance requests and reports under Article II;
- (5) provide liaison with citizens and businesses on forest and tree conservation issues and develop appropriate mechanisms for public input on conservation strategies; and

(6) any other duties required by law or assigned by the County Executive.]

[22A-31. Forest Conservation Advisory Committee] Reserved.

[(a) *Definition.* In this section "Committee" means the Forest Conservation Advisory Committee.]

[(b) *Established.* The County Executive must appoint, subject to confirmation by the County Council, a Forest Conservation Advisory Committee.]

[(c) *Composition and terms of members.*

(1) The Committee has 15 public members. The public members should include:

(A) Landscape architects;

(B) Arborists and urban foresters;

(C) Horticulturists and representatives from the nursery industry;

(D) Persons directly engaged in agriculture;

(E) Persons directly involved in the building industry;

(F) Members of citizen groups;

(G) Member of environmental an conservation organizations; and

(H) Representatives of public utility companies.

(2) The Executive must designate a staff member from each of the following departments to serve as an ex officio member;

(A) Economic Development;

(B) Environmental Protection; and

(C) Public Works and Transportation.

- 1639 (3) The Executive must invite a representative from each of the
 1640 following agencies to serve as an ex officio member;
 1641 (A) The County Planning Board; and
 1642 (B) The Washington Suburban Sanitary Commission.
 1643 (4) The term of each member is 3 years and expires on December
 1644 31. After an appointment to fill a vacancy before a term
 1645 expires, the successor serves the rest of the unexpired term.]

1646 [(d) *Voting, officers, meetings, and compensation.*

- 1647 (1) All members of the Committee are voting members.
 1648 (2) Each January, the Executive may designate a chair and vice-
 1649 chair from among the Committee's public members to serve a
 1650 1-year term. If the County Executive does not designate a chair
 1651 or vice-chair by February 15, the Committee members must
 1652 select a chair and vice-chair.
 1653 (3) The Committee meets at the call of the Chair. The Committee
 1654 must meet as often as necessary to perform its duties, but not
 1655 less than 9 times a year.
 1656 (4) A member must serve without compensation. However, a
 1657 member may request reimbursement for mileage and dependent
 1658 care costs at rates established by the County.]

1659 [(e) *Duties.*

- 1660 (1) Advise the Executive, Council, Planning Board, and any other
 1661 relevant agency on forestry policy issues;
 1662 (2) Propose to the Executive, Council, Planning Board, and any
 1663 other relevant agency, proactive forestry policies, laws, and
 1664 guidelines;
 1665 (3) Recommend a comprehensive approach to urban forestry;

- 1666 (4) Advise on a tree inventory;
- 1667 (5) Review and comment on policies and programs related to
- 1668 forestry;
- 1669 (6) Promote and seek funding for a sustained forestry program;
- 1670 (7) Promote and foster a strong sense of community through urban
- 1671 forestry;
- 1672 (8) Communicate with other boards, agencies, and community
- 1673 residents about forestry issues; and
- 1674 (9) Promote volunteerism and act as a general information source.]
- 1675 [(d) *Annual Report.* By October 1 each year, the Committee must submit
- 1676 to the Executive, Council, Planning Board, and any other relevant
- 1677 agency, an annual report on its functions, activities, accomplishments,
- 1678 and plans and objectives.]
- 1679 [(e) *Advocacy.* The Committee must not engage in any advocacy activity
- 1680 at the State or federal levels unless that activity is approved by the
- 1681 Office of Intergovernmental Relations.]
- 1682 [(f) *Staff.* The Chief Administrative Officer must provide appropriate
- 1683 staff to the Committee.]

1684 *Approved:*

1685

Michael Knapp, President, County Council

Date

1686 *Approved:*

1687

Isiah Leggett, County Executive

Date

B14-07



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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September 28, 2007

In File

030866



The Honorable Marilyn Praisner
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Planning Board's Recommended Amendments to the Forest Conservation Law

Dear President Praisner:

I am pleased to forward for the Council's consideration the Planning Board's recommended amendments to the Forest Conservation Law, Chapter 22A of the County Code. The Planning Board recommended forwarding the amendments to Council on September 20, 2007. The purpose of the amendments was to clarify and moderately strengthen the requirements to applicants.

The proposed changes to the law include:

Level 1, 2 and 3 Reviews. There is considerable confusion with "exemptions" in the existing law. The regulated community and the public incorrectly believe that an "exempt" property is exempt from Chapter 22A of the code, when they were only exempt from submitting a forest conservation plan. The proposed amendment removes "exemptions" and makes applicants subject to either a level 1, 2 or 3 reviews. A level 1 review includes a natural resource inventory/forest stand delineation and forest conservation plan. The level 2 review has a lesser requirement and would entail a tree inventory and a tree protection plan, but no forest conservation plan. Finally, the level 3 review would only require a declaration of intent.

Thresholds. The amendments forwarded today supports a 5 percent increase in the conservation threshold and afforestation thresholds for all land use categories except for the agricultural resource area land use category. The attached document does not support changes to the land use categories.

Maintenance and Management Agreements. The Planning Board amendment recommends an increase in the maintenance and management periods for planted forests from 2 years to 5 years throughout the county. This would make the entire County subject to the same requirements as currently required for plantings within Special Protection Areas.

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Financial Security. Since there is a recommended increase in the maintenance and management period, it is only natural to extend the financial security requirements to the same 5 year-year period. This change is included in the amendment.

Enforcement and Violations. Throughout the process, planning staff has indicated to the Planning Board, the public, and Council staff, that the enforcement and violations sections in Article III of the Forest Conservation law would be consolidated in the enforcement rules of 50-41 for all M-NCPPC enforcement responsibilities. Staff proposed no changes to this section with the understanding and with the concurrence of Councilmember Elrich that modifications/amendments to the enforcement and violations section could occur in Council in response to the rules adopted under 50-41. The proposed enforcement rules are forthcoming for discussion.

Effective date or grandfathering. The Planning Board's amendment does not include an effective date or a grandfathering provision. This is an issue that needs to be addressed by the Council in their deliberations of the amendments.

Tree Preservation Bill. Prior to planning staff's work on revisions to the forest conservation law, Council and planning staff and the environmental/community groups recognized the need for a tree preservation bill. A tree preservation bill should complement the forest conservation law and cover properties not subject to the forest conservation law or properties subject to level 2 and 3 reviews. The tree protection bill should be administered by the Department of Permitting Services. A tree preservation bill is the appropriate tool to protect smaller parcels of land. For all these reasons, the Planning Board believes that Chapter 22A should not be revised to reduce the minimum lot size below 40,000 square feet. More tree protection and compensation can be achieved by a properly structured tree preservation bill than would be achieved by the forest conservation law.

Thank you for your attention to this matter. I would be delighted to answer any questions you or any other Council member may have about the proposed amendments.

Sincerely,


Royce Hanson
Chairman

RH:MP:ss
Enclosure

AMENDMENT

To Bill 37-07

BY COUNCILMEMBER ELRICH

PURPOSE: This amendment would:

- (1) make certain changes to certain criteria and requirements for certain level of reviews as proposed in Bill 37-07;
- (2) establish a County Forest Conservation Coordinator;
- (3) establish forest conservation requirements for County school projects;
- (4) allow the Planning Director to waive certain requirements only if the County Forest Conservation Coordinator concurs with the Planning Director;
- (5) require a tree expert to be licensed to perform duties assigned to a tree expert by the Forest Conservation Law;
- (6) specify that approval of certain documents may be revoked if the approving authority relied on false or misleading statements in approving the documents;
- (7) lower the threshold level of cutting and clearing required to trigger the Forest Conservation Law;
- (8) amend certain retention, afforestation, and reforestation requirements;
- (9) amend certain ratios of forest removed to forest planted;
- (10) amend certain forest mitigation requirements and procedures;
- (11) amend certain variance requirements;
- (12) modify certain Forest Conservation Fund requirements;
- (13) establish certain grandfathering criteria;
- (14) prohibit the Director of Permitting Services from issuing a building permit if land was cleared in violation of the forest conservation law;
- (15) require certain applicants to notify certain other property owners of certain proposed actions under the forest conservation law, and specify the time period for notice to property owners and the Planning Director;
- (16) allow an aggrieved party to file a private civil action to enforce the forest conservation law;
- (17) make clarifying changes to Bill 37-07; and
- (18) generally amend the Forest Conservation Law.

Beginning on page 2, add after line 2:

8-25. Permits.

(a) *Action on application.* The Director must examine or cause to be examined each application for a building permit or an amendment to a permit within a reasonable time after the application is filed. If the application or the plans do not conform to all requirements of this Chapter, the Director must reject the application in writing and specify the reasons for rejecting it. If the proposed work conforms to all requirements of this Chapter and all other applicable laws and regulations, including Chapter 22A, the Director must issue a permit for the work as soon as practicable.

(c) [[Reserved.]] *Compliance with Forest Conservation Law.* The Director must not issue a permit for any structure that would be located on, in, or under land from which any tree or other woody plant has been cut, cleared, or graded in violation of Chapter 22A for 5 years.

Beginning on page 2, amend lines 14-16 to read:

(b) *Purpose.* The purpose of this Chapter is to:

- (1) save, maintain, and plant trees and forested areas for the benefit of County residents and future generations with the goal of no forest net loss;

Beginning on page 3, amend lines 32-33 to read:

Afforestation threshold means a specific percentage of a tract which is used to determine the afforestation requirements.

Agricultural activity means farming activities conducted as part of a recognized commercial enterprise, including: plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging ~~[[and]]~~ or timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, and the cultivation of orchard, nursery, and other products.

Beginning on page 3, add after line 43 and amend lines 44-59 to read:

Champion class tree means the largest tree of its species and all known trees of the same species within 10% of the point value of the existing Champion tree.

Champion tree means the largest tree of its species in the County, [as designated by the] as identified in the ~~[[County Forest Conservancy District [Board] Board's Champion Tree Register [or its designee]]]~~ register of champion tree's maintained by the County Forest Conservation Coordinator.

* * *

Commercial logging ~~[[or timber harvesting]]~~ *operation* means the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

Declaration of intent means a signed and notarized statement by a landowner that the cutting of trees on the landowner's property:

- (1) is for purposes [exempted under this Chapter; and] of complying with Sections 22A-6(b) and (c);
- (2) no additional forest clearing activity ~~[[requiring a Forest Conservation Plan]]~~ will occur on site within 7 years of the date of completion of the proposed activity; and
- (3) will not circumvent the requirements of this Chapter.

* * *

[[*Development project completion* means the date or event identified in the forest conservation plan agreement, but no later than the date on which the first use-and-occupancy permit is issued for the development (or activity) subject to the preliminary plan of subdivision or sediment control permit or, if a use-and-occupancy permit is not required, the date on which the final building inspection or sediment control inspection (for activities not involving building) is conducted by the Department of Permitting Services. A staged development may have more than one completion date.]]

* * *

Environmental Buffer means a strip of land generally contiguous with and parallel to any body of water, wetland, wetland buffer, 100-year floodplain, and a perennial or intermittent stream, [[and stream buffer. An environmental buffer may also include a hydraulically connected]] steep slope and erodible soils.

Beginning on page 4, amend lines 65-78 to read:

Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide regardless of political or property boundaries. However, minor portions of a forest stand which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall stand. Forest includes:

- (1) areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; [and]

- (2) forest areas that have been cut but not cleared[.]; and
 (3) areas where at least one layer may not be present due to site conditions, pest predation, human impacts, or non-native species.

Forest does not include an orchard.

* * *

Beginning on page 4, add after line 78 to read:

Forest conservation threshold means the percentage of the net tract area at which the reforestation ratio requirement changes [[from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed]].

Beginning on page 5, amend line 83 to read:

Government Entity means any federal, state, or local organization which in addition to having governmental character has sufficient discretion to distinguish it as separate from the administrative structure of any other governmental unit.

High-density residential area means an area zoned for densities greater than [[one]] 10 dwelling [[unit]] units per [[40,000 square feet]] acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

* * *

[[*Institutional development area* means land occupied by uses such as schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, fire stations, golf courses, recreation areas, parks, [and] cemeteries, and religious institutions. [In this Chapter, institutional development does not include a religious institution which is a permitted use in any zone and would not require a special exception.]]]

Beginning on page 5, add after line 83 to read:

99 Low density residential means an area zoned for a density greater than 1
100 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per acre
101 including both existing and planned development and their associated
102 infrastructure such as roads, utilities, and water and sewer.

* * *

Beginning on page 5, amend lines 90-94 to read:

104 Medium-density residential area means an area zoned for a density greater
105 than 1 dwelling unit per [[5 acres]] acre and less than or equal to [[1]] 10
106 dwelling [[unit]] units per [[40,000 square feet]] acre, including both
107 existing and planned development and their associated infrastructure, such
108 as roads, utilities, and water and sewer service.

* * *

Beginning on page 5, amend line 98 to read:

110 Net tract area means the total area of a tract, including both forested and
111 unforested areas, to the nearest 1/10 acre, reduced by any previously
112 approved Forest Conservation Plan, any forest conservation or scenic
113 easement with a government entity, and any road or utility rights-of-way
114 which are unrelated to and will not be improved as part of the development
115 application. However, in agriculture and resource areas, net tract area is the
116 portion of the total tract for which land use will be changed or will no longer
117 be used for primarily agricultural activities. For a linear project, net tract
118 area is the area of a right-of-way width or the limits of disturbance as shown
119 on the development application, whichever is greater.

Beginning on page 6, amend lines 108-117 to read:

120 *Person* means:

- 121 (1) the federal government, the state, any county, [[municipal
122 corporation]] municipality, or other political subdivision of the state,
123 or any of their units[,];
- 124 (2) an individual, receiver, trustee, guardian, executor, administrator,
125 fiduciary, or representative of any kind[,]; or
- 126 (3) any partnership, firm, common ownership community or other
127 homeowners' association, public or private corporation or any of their
128 affiliates or subsidiaries[, or].
- 129 [(4) any other entity.]

Beginning on page 6, add after line 118 to read:

130 Priority planting area means environmental buffer areas, connections
131 between and additions to forested areas, critical habitat areas,
132 topographically unstable areas, and land use and road buffers.

Beginning on page 6, add after line 124 to read:

- 133 *Sediment control permit* means a permit required to be obtained for certain
134 land disturbing activities:
- 135 (1) under Chapter 19, Article I;
- 136 (2) from the Washington Suburban Sanitary Commission for major
137 utility construction as defined under regulations of the
138 Commission; or
- 139 (3) from a [[municipal corporation]] municipality.

Beginning on page 6, add after line 124 and amend lines 125-126 to read:

140 Specimen tree means a tree as specified in the Forest Conservation
141 Regulations.

142 [[Stream buffer means a strip of land contiguous with and parallel to the
143 bank of a perennial or intermittent stream.]]

Beginning on page 6, add after line 129 to read:

144 *Timber harvesting* means a tree cutting operation affecting [[one or more
145 acres]] 10,000 square feet or more of forest or developed woodland within a
146 one year period [[that disturbs]] or disturbing 5,000 square feet or more of
147 forest floor. Timber harvesting does not include grubbing and clearing of
148 root mass.

149 * * *

150
151 [[Tree Expert]] Licensed tree expert means person who meets all applicable
152 requirements under of Title 5, Subtitle 4 of the Natural Resources Article of
153 the Maryland Code.

Beginning on page 7, add after line 146 to read:

154 Wetland means an area that is inundated or saturated by surface water or
155 groundwater at a frequency and duration sufficient to support, and that under
156 normal circumstances does support a prevalence of soils exhibiting
157 characteristics of prolonged inundation and vegetation typically adapted for
158 life in saturated soil conditions, commonly known as a hydrophytic
159 vegetation.

Beginning on page 8, amend lines 181-276 to read:

- 160 (b) Level 1 Review. A person must submit to a Level 1 Review if:
161 (1) the person is required by law to obtain approval for a
162 development plan, diagrammatic plan, project plan, preliminary
163 plan of subdivision approval, or site plan;
164 (2) the person is required by law to obtain a sediment control
165 permit or approval of a special exception on a tract of land

- 166 ~~[[40,000]]~~ 10,000 square feet or larger, and is not otherwise
 167 required to obtain an approval under subsection (b)(1);
- 168 (3) the person proposes to perform any cutting or clearing, or any
 169 other land disturbing activity that would threaten the viability of
 170 any champion class tree, wherever located;
- 171 (4) the person is subject to mandatory referral or a park facility
 172 plan on a tract of land ~~[[40,000]]~~ 10,000 square feet or larger
 173 [[which is not excluded under subsection (c) or (d)]];
- 174 ~~[[5)]~~ the person proposes highway construction not excluded under
 175 subsections (c) or (d); and]]
- 176 ~~[[6)]~~ (5) a public or private utility proposes a cumulative limit of
 177 disturbance of ~~[[40,000]]~~ 5,000 square feet or more for all
 178 stages of work in a public right-of-way or utility easement[.];
- 179 (6) a person removes any forest in an environmental buffer or any
 180 forest located on a property in a special protection area; and
- 181 (7) a person who proposes an activity that results in the cutting,
 182 clearing, or grading of any trees or forest that are subject to an
 183 approved Forest Conservation Plan or any forest conservation
 184 or scenic easement with a government entity.
- 185 (c) Level 2 Review. A person must submit to Level 2 Review if the
 186 person proposes:
- 187 (1) construction on an existing single lot of ~~[[40,000]]~~ 10,000
 188 square feet or greater in size a dwelling house, an addition to a
 189 house, or an accessory structure (such as a pool, tennis court, or
 190 shed), if the activity does not result in the cutting clearing, or
 191 grading of:

- 192 (A) more than a total of [[40,000]] 5,000 square feet of
 193 forest;
 194 ~~[[(B) any forest in an environmental buffer;]]~~
 195 ~~[[(C) any forest on property located in a special protection area~~
 196 which must submit a water quality plan;]]
 197 ~~[[(D)]]~~ (B) a person who will be disturbing any specimen or
 198 champion tree wherever located; or
 199 ~~[[(E)]]~~ (C) any trees or forest that are subject to a previously
 200 approved forest conservation plan or tree save plan.
 201 (2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a
 202 lot line adjustment, conversion of an existing recorded outlot, or
 203 joining two or more existing residential lots into one lot, if:
 204 (A) rhe only development located on the resulting lot is a
 205 single family dwelling unit or an accessory structure
 206 (such as a pool, tennis court, or shed); and
 207 (B) development does not result in the cutting, clearing, or
 208 grading of:
 209 (i) more than a total of [[40,000]] 5,000 square feet of
 210 forest;
 211 ~~[[(ii) any forest in an environmental buffer;]]~~
 212 ~~[[(iii) any forest on property located in a special~~
 213 protection area which must submit a water quality
 214 plan;]]
 215 ~~[[(iv)]]~~ (ii) any specimen or champion tree; or

- 216 ~~[(v)]~~ (iii) any tree or forest that is subject to the
 217 requirements of a previously approved forest
 218 conservation plan or tree save plan;
- 219 (3) a modification to existing non-residential developed property if
 220 less than 5,000 square feet of forest will be cleared; [[and]]
- 221 (4) a State or County highway construction activity that is subject
 222 to Section 5-103 of the Natural Resources Article of the
 223 Maryland Code, or Level 1 Review[.]; and
- 224 (5) a person who proposes an activity that results in the cutting,
 225 clearing, or grading of any trees or forest that are subject to an
 226 approved Forest Conservation Plan or any forest conservation
 227 or scenic easement with a government entity.
- 228 (d) Level 3 Review. A person must submit to Level 3 Review if the
 229 person:
- 230 (1) proposes an agricultural activity that is exempt from:
- 231 (A) platting requirements under Section 50-9; and
- 232 (B) requirements to obtain a sediment control permit under
 233 Section 19-2(c)(2).
- 234 Agricultural support buildings and related activities are
 235 excluded only if they are built using best management practices,
 236 as defined by the Natural Resources Conservation Service;
- 237 (2) proposes a tree nursery;
- 238 (3) applies for a special exception for an existing structure and the
 239 proposed use will not result in clearing of existing forest or
 240 trees;

- (4) proposes a commercial logging [[and]] or timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code that has received:
- (A) approval from the County [[Arborist or the Arborist's]] Forest Conservation Coordinator or the Coordinator's designee that the logging or timber harvesting plan is not inconsistent with County forest management objectives and is otherwise appropriate; and
- (B) a sediment control permit from the Department of Permitting Services and posted the required financial security under Chapter 19. A person who qualifies under this subsection must provide a copy of all sediment control permits issued for commercial logging [[and]] or timber harvesting operations to the Montgomery County Planning Department.
- (5) proposes a governmental project reviewed for forest conservation purposes by the State Department of Natural Resources under the Code of Maryland Regulations;
- (6) conducts routine maintenance of public utility easements and rights-of-way, and routine maintenance of stormwater management facilities that are not subject to an existing conservation easement, except for the clearing of access roads;
- (7) conducts utility or other work that is of an emergency nature;

- 266 (8) conducts noncoal surface mining regulated under Title 7 of the
 267 Natural Resources Article of the Maryland Code; [[and]]
 268 (9) cuts or clears public utility rights-of-way or land for electric
 269 generating stations licensed under Section 54A and 54B or
 270 Section 54I of Article 78 of the Maryland Code, if certificates
 271 of public convenience and necessity have been issued under
 272 Section 5-1603(f) of the Natural Resources Article of the
 273 Maryland Code[.]]
 274 (10) proposes an activity that results in the cutting, clearing or
 275 grading of any trees or forest that are subject to an approved
 276 Forest Conservation Plan or any forest conservation or scenic
 277 easement with a government entity.

Beginning on page 23, add after line 564 to read:

- 278 (b) If the forest to be cut or cleared for a County highway project equals
 279 or exceeds ~~[[40,000]]~~ 10,000 square feet, the constructing agency
 280 must reforest a suitable area at the rate of one acre of reforestation for
 281 each acre of forest cleared.

Beginning on page 23, add after line 564 to read:

282 **22A-9A. County School Projects.**

283 (a) **General.**

- 284 (1) This Section applies to construction of a school by the County
 285 as part of an approved capital Improvements Program project.
 286 (2) The construction should minimize forest cutting or clearing and
 287 loss of specimen or champion trees to the extent possible while
 288 balancing other design, construction, and environmental
 289 standards. The constructing agency must make a reasonable

290 effort to minimize the cutting or clearing of trees and other
291 woody plants.

292 (b) If the forest to be cut or cleared for a County school project equals or
293 exceeds 10,000 square feet, the constructing agency must reforest a
294 suitable area at the rate of one acre of reforestation for each acre of
295 forest cleared.

296 (c) Reforestation for County school projects must meet the standards in
297 subsections 22A- 8(a), (c), and (g).

298 (d) Any mitigation requirement for loss of specimen or champion trees
299 must be based on the size and character of the tree.

Beginning on page 24, amend lines 601-602 to read:

300 [(3)] (B) The Planning Director may waive any requirement for
301 information that is unnecessary for a specific site if the
302 County Forest Conservation Coordinator concurs.

Beginning on page 25, amend lines 630-636 to read:

303 [(2)] (B) A [forest conservation plan] Forest Conservation Plan
304 [may] must include protective measures designed to
305 conserve [significant and mature trees on adjacent
306 property] trees on the subject tract, [[or]] and on adjacent
307 properties, from adverse impacts that may be caused by
308 the development or land disturbing activities proposed
309 for the tract.

Beginning on page 26, amend lines 647-676 to read:

310 (b) Level 2 approval required. A person who is subject to Level 2 must
311 submit to the Montgomery County Planning Department a Tree
312 Inventory, Tree Protection Plan, and a Declaration of Intent.

313 (1) Tree Inventory.

314 (A) A Tree Inventory must be signed by a certified arborist,
315 qualified professional, or a licensed tree expert, and
316 must:

317 (i) assess, identify, and characterize the tree species;

318 (ii) estimate the height, age, and canopy of each tree;

319 (iii) document the diameter of all trees on a tract; and

320 (iv) provide other information or requirements
321 specified by regulation or in the technical manual.

322 (B) The Planning Director may waive any requirement for
323 information that is unnecessary for a specific site if the
324 County Forest Conservation Coordinator concurs.

325 (C) An approved Tree Inventory is not valid after 2 years
326 unless a certified arborist, qualified professional, or a
327 licensed tree expert recertifies the Tree Inventory or a
328 Tree Protection Plan is approved.

329 (2) Tree Protection Plan

330 (A) A Tree Protection Plan must be signed by a certified
331 arborist or qualified professional and used to protect trees
332 during construction. A Tree Protection Plan must
333 identify:

334 (i) trees to be retained and removed;

- 335 (ii) the proposed limit of disturbance; existing and
336 proposed utility connections;
337 (iii) detailed drawings and measures to protect trees;
338 and
339 (iv) any other information or requirements specified by
340 regulation or in the trees technical manual.

Beginning on page 27, amend lines 684-690 to read:

- 341 (C) The Planning Board may require a person who fails to
342 file or does not comply with a Declaration of Intent to:
343 (i) submit [[for]] to a Level 1 review; [[and]] or
344 (ii) pay a penalty fee per square foot of forest cut or
345 cleared [[established by fee schedules approved by
346 Council resolution per square foot of forest cut or
347 cleared, but in no case less than the minimum set
348 by state law]].

Beginning on page 28, amend lines 708-719 to read:

- 349 (a) [General] Level 1 Review.
350 (1) Natural Resource Inventory/Forest Stand Delineation. A
351 person subject to a Level 1 review must submit to the Planning
352 Director a Natural Resource Inventory/Forest Stand
353 Delineation. Within 30 days after receiving the Natural
354 Resource Inventory/Forest Stand Delineation, the Planning
355 Director must notify the person whether the Natural Resource
356 Inventory/Forest Stand Delineation is complete and approved.
357 An incomplete or inaccurate application must be denied. If the
358 Planning Director fails to act on the submission within 30 days,

359 the delineation will be treated as approved. The Planning
 360 Director may extend the deadline for an additional 15 days for
 361 extenuating circumstances. Approval may be revoked at any
 362 time during the development review process if false or
 363 misleading information was relied on the Natural Resource
 364 Inventory/Forest Stand Delineation approval.

Beginning on page 36, amend lines 923-939 to read:

365 (b) Level 2 Review.

366 (1) Tree Inventory. A person subject to a Level 2 review must
 367 submit to the Planning Director the Tree Inventory with a
 368 Declaration of Intent. Within 30 days after receiving the Tree
 369 Inventory and Declaration of Intent, the Planning Director must
 370 notify the person whether the Tree Inventory is complete and
 371 approved. An incomplete or inaccurate application must be
 372 denied. If the Planning Director fails to act on the submission
 373 within 30 days, the Tree Inventory will be treated as approved.
 374 The Planning Director may extend the deadline for an
 375 additional 15 days for extenuating circumstances. Approval
 376 may be revoked at any time during the development review
 377 process if false or misleading information was relied upon for
 378 the Tree Inventory approval.

379 (2) Tree Protection Plan. After a person is notified that the Tree
 380 Inventory is approved, a person must submit a Tree Protection
 381 Plan to the Planning Board or Planning Director. The Tree
 382 Protection Plan must be considered in conjunction with any
 383 application to which it is a necessary component. Within 45

days after the Planning Director receives the Tree Protection Plan, the Planning Director must notify the applicant whether the Tree Protection Plan is complete and approved. An incomplete or inaccurate Tree Protection Plan must be denied. If the applicant is not notified within 45 days, the Plan will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances.

- (c) Level 3 Review. A person subject to a Level 3 review must submit to the Planning Director a Declaration of Intent. Within 30 days after receiving the Declaration of Intent, the Planning Director must notify the person whether the Declaration of Intent is complete and approved. An incomplete or inaccurate application must be denied. If the Planning Director fails to act on the submission within 30 days, the Declaration of Intent will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances.

Beginning on page 37, amend lines 942-965 to read:

- (a) [Table.] General. The Forest Conservation Plan must[[, to the maximum extent feasible,]] retain certain vegetation and specific areas in an undisturbed condition, unless the Planning Board or the Planning Director finds retention is not feasible without undesirable alterations to the proposal. The Forest Conservation Plan must mitigate for the loss of forest and trees in the following order of preference:
- (1) on site reforestation or afforestation;

- (2) offsite forest planting within the same watershed;
- (3) on site non-native and invasive species management control
with supplemental planting;
- (4) on site landscaping with an approved plan;
- [[(4)] (5) forest mitigation banks; and
- [[(5)] (6) in-lieu fee[[; and]],
- [[(6) on site landscaping with an approved plan.]]

(b) How to Calculate the Requirements.

(1) Table.

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area for Level 1 Reviews</i>		
<i>Land Use [Category] Type¹</i>	<i>[Forest] Conservation Threshold</i>	<i>[Required] Afforestation Threshold</i>
Agricultural and Resource Areas	50%	20%
<u>Low Density Residential Areas</u>	<u>40%</u>	<u>20%</u>
Medium Density Residential Areas	[25%] <u>30%</u>	[20%] [[25%]] <u>20%</u>
[[Institutional Development Areas	[20%] <u>25%</u>	[15%] <u>20%</u>]]
High Density Residential Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
Mixed-use Development Areas	[15-20% ²] <u>20-25%¹</u>	[15%] <u>20%</u>
Planned unit Development Areas	[15-20% ²] <u>20-25%¹</u>	[15%] <u>20%</u>
Commercial and Industrial Areas	[15] <u>20%</u>	[15%] <u>20%</u>

<u>Highway Right-of-Ways and School Sites²</u>	<u>N/A</u>	<u>N/A</u>
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418

419 ¹ The residential and institutional portions of the tract must meet the [20%] 25%
 420 requirement. All other uses must meet the 20% requirements. [If a planned unit
 421 development was initially approved before January 1, 1992, and is between
 422 25% and 75% complete on July 1, 1992, (as measured by the total acreage
 423 subject to the planned unit development that has received site plan approval),
 424 the forest conservation threshold is calculated at 15 per cent. If the planned unit
 425 development is less than 25% complete, the forest conservation threshold is
 426 calculated using the adjustment shown in the chart.]

427 ² Highway right-of-way and school site mitigation requirements are specified in
 428 22A-9 and 22A-9A.

Beginning on page 39, amend lines 987-998 to read:

429 [(c)] (2) Reforestation. The forest conservation plan must provide for
 430 reforestation as follows:

431 [(1)] (A) For all existing forest cover measured to the nearest
 432 1/10 acre cleared on the net tract area below the
 433 applicable forest conservation threshold, the area of
 434 forest removed must be reforested at a ratio of 2 acres
 435 planted for every one acre removed.

436 [(2)] (B) For all existing forest cover measured to the nearest
 437 1/10 acre cleared on the net tract area above the
 438 applicable forest conservation threshold, the area of
 439 forest removed must be reforested at a ratio of [[1/4]] 1/2
 440 acre planted for every one acre removed.

Beginning on page 40, amend lines 1011-1027 to read:

441 [(d)] (3) *Afforestation.*

442 [(1)] (A) A site with less than 20 percent of the net tract area in

443 forest cover must be afforested in accordance with the

444 required afforestation percentages shown on the table in

445 subsection [(a)] (b)(1) of this Section.

446 [(2)] (B) Afforestation [should] must be accomplished by the

447 planting, maintenance, and establishment of forest

448 cover]. However, if the applicant] unless a person

449 demonstrates to the satisfaction of the Planning Board or

450 Planning Director, as the case may be[, that afforestation

451 using forest cover is inappropriate]. Afforestation

452 requirements may be satisfied by tree cover for a site

453 because of its location in an urban setting, redevelopment

454 context, high-density residential, commercial, industrial,

455 planned unit development, or institutional area (as

456 defined in Section 22A-3), or similar reason[[,

457 afforestation requirements may be satisfied by tree

458 cover]].

Beginning on page 42, amend lines 1063-1073 to read:

459 (2) *Off-site afforestation and reforestation.* In addition to the use

460 of other sites proposed by an applicant and approved by the

461 County, off-site afforestation or reforestation may also include:

462 (A) Forest mitigation banks designated in advance by the

463 County.

464 (B) Protection of existing off-site forest. Acquisition of an
 465 off-site protective easement for existing forested areas
 466 not currently protected is an acceptable mitigation
 467 technique instead of off-site afforestation or reforestation
 468 planting, but the forest cover protected must be ~~[[2]]~~ 4
 469 times the afforestation and reforestation requirements.

Beginning on page 45, add after line 1155 and amend line 1156 to read:

470 ~~(f)~~ Non-native and invasive species management control with
 471 supplemental planting. Ratio of 1 acre planting requirement can be
 472 satisfied by 2 acres of non-native and invasive species management
 473 control with supplemental planting.
 474 ~~[(g)]~~ ~~[[f)]~~ (g) *In lieu fee.*

Beginning on page 46, amend lines 1180-1189 to read:

475 ~~[(h)]~~ ~~[[g)]~~ (h) Agreements and Long-Term Protection.
 476 (1) Maintenance agreement. A forest conservation plan must
 477 include a ~~[two]~~ 5-year binding agreement for maintenance of
 478 conservation areas, including the watering ~~[(as practical)]~~,
 479 feeding, ~~[and]~~ replanting of areas to be afforested or reforested,
 480 and non-native and invasive management. The ~~[2-year]~~ 5-year
 481 period starts upon satisfactory final inspection of the
 482 conservation measures required under the ~~[forest conservation~~
 483 ~~plan]~~ Forest Conservation Plan. A staged project may have
 484 more than one agreement.

Beginning on page 47, amend line 1191 to read:

485 ~~[(i)]~~ ~~[[h)]~~ (i) Financial Security.

Beginning on page 48, amend lines 1226-1232 to read:

- 486 (6) Events of forfeiture. The financial security instrument may be
487 subject to forfeiture on:
- 488 (A) failure of the obligee to perform the work under the
489 [forest conservation plan] Forest Conservation or Tree
490 Protection Plan in accordance with the required schedule;
491 or
- 492 (B) failure of the obligee to pay a required in lieu fee in a
493 timely manner.

Beginning on page 49, amend lines 1238-1274 to read:

- 494 (b) A person can create a forest mitigation bank by permanently
495 protecting:
- 496 (1) existing forest;
- 497 (2) planting and protecting new forests on open land in
498 [[unplanted]] environmental buffers or in areas contiguous to
499 existing and protected forests; or
- 500 (3) a combination of the two.
- 501 [(b)] (c) The area of land where the bank is [[planted]] existing forest must
502 be at least 1 acre.
- 503 (d) The area of land where planting in an unplanted environmental buffer
504 or in areas contiguous to existing and protected forests must be at
505 least 10,000 square feet.
- 506 [(c)] [(d)] (e) A forest mitigation bank must use native plants for
507 afforestation and reforestation[, unless inappropriate].

~~[(d)]~~ ~~[[e)]~~ (f) A person proposing to create a forest mitigation bank must submit a plan to the Planning Director, [which must include] that includes:

- (1) a [2-year] 5-year maintenance agreement which meets the standards in subsection [22A-12(h)(1)] 22A-12(g)(1);
- (2) all information required by subsection [22A-10(c)] 22A-10(b)(2) for a [forest conservation plan] Forest Conservation Plan; and
- (3) the draft easement, covenants, or deed restrictions for the area to be sold to the developer when credits are withdrawn from the bank.

(g) Within 45 days after the Planning Director receives a proposed Forest Mitigation Bank Plan, the Planning Director must notify the applicant whether the Forest mitigation Bank Plan is complete and approved. An incomplete or inaccurate Forest Mitigation Bank Plan must be denied. If the applicant is not notified within 45 days, the Plan will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances.

~~[(e)]~~ ~~[[f)]~~ (h) Forest mitigation banks must be established in accordance with the priority areas described in subsection [22A-12(e)(3)] 22A-12(b)(2), or in areas identified in a master plan or functional plan.

(i) A forest mitigation bank must only be established on land in private ownership.

~~[(f)]~~ ~~[[g)]~~ (i) Credits must not be debited from a forest mitigation bank until all trees have been planted and accepted by the Planning Director, and either financial security which meets the standards in

534 subsection [22A-12(i)] 22A-12(h) has been provided or the Planning
535 Director has found that a sufficient number of trees have successfully
536 survived for [2] 5 years after planting.

537 [(g)] ~~[(h)]~~ (k) To debit credits from an approved forest mitigation bank, the
538 easement, covenants, or deed restrictions which assure that the newly
539 reforested or afforested area of land remains a forest in perpetuity
540 must be conveyed to the Planning Board or its assignee and the
541 applicant must show that credits are available and the applicant has
542 the right to debit them. The credits must buy an amount of land equal
543 to the applicant's off-site reforestation or afforestation requirements
544 under its approved forest conservation plan.

Beginning on page 52, add after line 1338 to read:

545 (f) Any person subject to Level 1, Level 2, or Level 3 approval under this
546 Chapter must notify the Planning Director and the property owner and
547 resident of any adjoining or confronting property in writing at least 10
548 days before performing any cutting, clearing, or grading. Failing to
549 notify the Planning Director, any property owner, or resident entitled
550 to this notice as required by this Section is a violation of this Chapter.

Beginning on page 53, add after line 1350 to read:

551 (a) *Class A violation.* Violation of this Chapter or any regulations adopted
552 under it is a Class A civil or criminal violation. Notwithstanding
553 Section 1-19, the maximum civil fine is \$1,000. Each day a violation
554 continues is a separate violation under this Chapter.

555 (b) *Enforcement authority.* The Maryland-National Capital Park and
556 Planning Commission has primary enforcement authority under this
557 Chapter. ~~[[Administrative]]~~ The Planning Director may initiate

administrative enforcement actions ~~[[are to be initiated by the~~
Planning Director in accordance with]] under this Article.

(c) *Civil and criminal actions.* The Commission may bring any civil or criminal action that the County may bring under Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation adopted under it. The Commission may also bring a civil action to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order. These remedies are in addition to:

(1) any remedy that the Commission or County may initiate under state or County law to enforce the terms of a regulatory approval which incorporates a forest conservation plan; and

(2) any private civil remedy available under subsection (d).

(d) Private civil action.

(1) An aggrieved person may file civil action in any court with jurisdiction to enforce this Chapter or any forest conservation plan, administrative order, or other regulatory approval under it. An aggrieved person includes any Montgomery County resident or organization.

(2) In an action filed under this subsection, the Court may temporarily or permanently enjoin any violation or imminent violation of County law, order any person to correct any violation of County law, award damages to any person entitled to them by law, remand the matter to the Planning Board of any necessary action under this Chapter, or order any other appropriate remedy.

(3) In an action filed under this subsection, an aggrieved person may challenge the factual basis of any order or decision by the Planning Director or the Planning Board if the person shows that the order or decision was:

(A) based on materially false, misleading, inaccurate, or incomplete information; or

(B) taken without proper notice to any person who was entitled to notice under this Chapter.

[[(d)] (e) Administrative civil penalty.

* * *

[[(e)] (f) Fund. Money collected under this Section must be deposited into the [[forest conservation fund]] Forest Conservation Fund.

Beginning on page 56, amend lines 1432-1439 to read:

(a) Natural Resource Inventory/Forest Stand Delineations, Tree Inventories, and Forest Conservation or Tree Protection Plans approved by the Planning Director.

(1) Appeal to Planning Board. An applicant has 30 days from the date of the Planning Director's written decision on a Natural Resource Inventory/Forest Stand Delineation, Tree Inventory, or Forest Conservation or Tree Protection Plan to appeal to the Planning Board.

Beginning on page 57, add after line 1462 and amend lines 1463-1494 to read:

(c) Application requirements for public notice. An applicant for a variance must post their request for 20 days on the Department of Permitting Services style permit board according to the Department's regulations.

607 ~~[[c)]~~ (d) Referral to other agencies. Before considering a variance, the
 608 Planning Board must refer a copy of each request to the County
 609 ~~[[Arborist]]~~ Forest Conservation Coordinator, Planning [Department]
 610 Director, and other appropriate officials or agencies for a written
 611 recommendation before acting on the request. Recommendations must
 612 be submitted to the Planning Board within 30 days from the receipt
 613 [by the official or agency] of the [request] referral or the
 614 recommendation [should] must be presumed to be favorable.

615 (e) Public Comment. Before considering a variance, the Planning Board
 616 must accept written comment from the public submitted within 30
 617 days of the posting of the variance request, as required by subsection
 618 (c).

619 ~~[[d)]~~ (f) Minimum criteria. A variance may only be granted if it meets the
 620 provisions of subsection (a) and (b) above. A variance must not be
 621 granted if granting the request:

- 622 (1) [will] Will confer on the applicant a special privilege that would
 623 be denied to other applicants;
- 624 (2) [is] Is based on conditions or circumstances which are the result
 625 of the actions by the applicant;
- 626 (3) [arises] Arises from a condition relating to land or building use,
 627 either permitted or nonconforming, on a neighboring property;
 628 or
- 629 (4) [will] Will violate State water quality standards or cause
 630 measurable degradation in water quality.

631 ~~[[e)]~~ (g) Approval procedures; Conditions. The Planning Board[, or the
 632 District Council on a development plan,] must [make findings] find

that the applicant has met all requirements of this Section before granting a variance. Appropriate conditions may be imposed to promote the objectives of this Chapter and protect the public interest.

~~[[f)]~~ (h) *Notice to State Department of Natural Resources; Right to initiate or intervene in proceedings.*

(1) Notice of a pending variance request must be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.

(2) The Department of Natural Resources may initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance.

Beginning on page 61, amend lines 1565-1586 to read:

There is a County forest conservation fund. Money deposited into the [fund] Fund must be used in accordance with the adopted County budget and in accordance with the following:

(a) *In lieu fees.* Money deposited in the [forest conservation fund] Forest Conservation Fund [instead of planting] must be spent on the reforestation and afforestation for which the money is deposited within 2 years, including costs directly related to site identification, acquisition, design, and preparation, and must not revert to the [general fund] General Fund. The permanent preservation of priority forests, including identification and acquisition of a site, may be substituted for reforestation and afforestation at a rate of ~~[[2]]~~ 4 acres of forest preservation for each acre of planting required. Funds remaining after all reforestation and afforestation requirements are satisfied ~~[[may]]~~ must be spent on any other tree conservation activity,

658 including purchase of credits from forest mitigation banks or street
 659 tree planting.

660 (b) *Penalties.* Money collected for noncompliance with a [forest
 661 conservation plan] Forest Conservation Plan, Tree Protection Plan, or
 662 the associated [2-year] 5-year maintenance agreement must be
 663 deposited in a separate account in the [forest conservation fund]
 664 Forest Conservation Fund and must not revert to the [general fund]
 665 General Fund. Money deposited in this [fund] Fund may be used to
 666 administer this Chapter or any purpose set forth in the fund.

Beginning on page 62, amend line 1588 to read:

667 [22A-30. County Arborist.] [[Reserved.]]

Beginning on page 63, add after line 1614 to read:

668 Article 5. County Forest Conservation Coordinator.

669 22A-30. County Forest Conservation Coordinator.

670 (a) Appointment. The Director of Environmental Protection must
 671 designate an employee of the Department to serve as County Forest
 672 Conservation Coordinator.

673 (b) Qualifications. The County Forest Conservation Coordinator must
 674 have relevant experience and an advanced degree in horticulture,
 675 forestry, forest ecology, plant pathology, landscape architecture, or
 676 another related field, or an equivalent combination of education and
 677 experience. The County Forest Conservation Coordinator must be
 678 licensed as a tree expert under State law.

679 (c) Duties. The County Forest Conservation Coordinator has the
 680 following functions related to resource management and protection of
 681 forest and trees in the County:

- 682 (1) Develop a comprehensive County conservation and
683 management strategy, including programs designed to promote
684 afforestation and reforestation in the County and the survival of
685 historic trees and any endangered tree species;
686 (2) Advise the Executive and Council on the effectiveness of
687 County programs to control tree pests and diseases;
688 (3) Review and approve proposed commercial logging or timber
689 harvesting operations under Article 2;
690 (4) Review variance requests and reports under Article 2;
691 (5) Identity and prioritize offsite forest planting and forest retention
692 areas for County projects under this Chapter;
693 (6) Provide liaison with citizens and businesses on forest and tree
694 conservation issues and develop appropriate mechanisms for
695 public input on conservation strategies; and
696 (7) Any other duty required by law or assigned by the Executive.

Beginning on page 65, add after line 1683 to read:

697 Sec. 2. Effective Date. This Act takes effect on July 1, 2008. Any
698 Development Plan filed on or before June 30, 2008 is not subject to any
699 amendment to Chapter 22A made by Section 1.

Exhibit 2 – Example 1

	Existing FCL	Amendments proposed by MNCPPC	Second Council Amendment
Net Tract Area	21.1	21.1	21.1
Land Use	Medium Density	Medium Density	Low Density
Afforestation Threshold	4.22	5.28	4.22
Conservation Threshold	5.28	6.33	8.44
Existing Forest	18.6	18.6	18.6
Forest to be Cleared	11.34	11.34	11.34
Forest to be Saved	7.26	7.26	7.26
Total Planting	0.85	1.91	7.44
Fee-in-lieu or planting cost at \$0.90/sq. ft.	\$33,323.40	\$74,683.62	\$291,677.76

Exhibit 2- Example 2

	Existing FCL	Amendments proposed by MNCPPC	Second Council Amendment
Net Tract Area	49.65	49.65	49.65
Land Use	Medium Density	Medium Density	Low Density
Afforestation Threshold	9.93	12.41	9.93
Conservation Threshold	12.41	14.97	19.86
Existing Forest	14.01	14.01	14.01
Forest to be Cleared	0.9	0.9	0.9
Forest to be Saved	13.11	13.11	13.11
Total Planting	0	1.8	1.8
Fee-in-lieu or planting cost at \$0.90/sq. ft.	0	\$70,567.20	\$70,567.20

Exhibit 2 - Example 3

	Existing FCL	Amendments proposed by MNCPPC	Second Council Amendment
Net Tract Area	377.47	377.47	377.47
Land Use	ARA	ARA	ARA
Afforestation Threshold	75.49	75.49	75.49
Conservation Threshold	188.74	188.74	188.74
Existing Forest	168.6	168.6	168.6
Forest to be Cleared	4.52	4.52	4.52
Forest to be Saved	164.08	164.08	164.08
Total Planting	9.04	9.04	9.04
Fee-in-lieu or planting cost at \$0.90/sq. ft.	\$354,404.16	\$354,404.16	\$354,404.16

Exhibit 2 – Example 4

	Existing FCL	Amendments proposed by MNCPPC	Second Council Amendment
Net Tract Area	12.21	12.21	12.21
Land Use	R&D	R&D	R&D
Afforestation Threshold	1.83	2.44	2.44
Conservation Threshold	1.83	2.44	2.44
Existing Forest	7.85	7.85	7.85
Forest to be Cleared	5.62	5.62	5.62
Forest to be Saved	2.23	2.23	2.23
Total Planting	1.01	1.78	3.13
Fee-in-lieu or planting cost at \$0.90/sq. ft.	\$39,596.04	\$69,626.3	\$122,630.11

Exhibit 2 – Example 5

	Existing FCL	Amendments proposed by MNCPPC	Second Council Amendment
Net Tract Area	34.42	34.42	34.42
Land Use	High Density	High Density	Medium Density
Afforestation Threshold	5.16	6.88	8.61
Conservation Threshold	6.88	8.61	10.33
Existing Forest	27.09	27.09	27.09
Forest to be Cleared	20.05	18.49	16.76
Forest to be Saved*	7.04	8.61	10.33
Total Planting	4.86	4.62	8.38
Fee-in-lieu or planting cost at \$0.90/sq. ft.	\$190,531.44	\$181,171.49	\$328,607.93

Exhibit 2 - Example 6

	Existing FCL	Amendments proposed by MNCPPC	Second Council Amendment
Net Tract Area	12.8	12.8	12.8
Land Use	High Density	High Density	Medium Density
Afforestation Threshold	1.92	2.56	3.20
Conservation Threshold	2.56	3.2	3.84
Existing Forest	9.42	9.42	9.42
Forest to be Cleared	7.22	6.22	5.58
Forest to be Saved*	2.2	3.2	3.84
Total Planting	2.44	1.56	2.79
Fee-in-lieu or planting cost at \$0.90/sq. ft.	\$95,461.74	\$60,962.22	\$109,379.16

* The amount of forest saved under this example changes because the application must meet the conservation threshold onsite. That is, this property is in a single-family zone that is using an optional method of development. When an application must meet the conservation or afforestation threshold onsite, the physical amount of space available to locate residential units is reduced. This example does not assume a change in unit types from what is proposed.

Exhibit 2 – Example 7

	Existing FCL	Amendments proposed by MNCPPC	Second Council Amendment
Net Tract Area	1.66	1.66	1.66
Land Use	Medium Density	Medium Density	Medium Density
Afforestation Threshold	0.33	0.42	0.42
Conservation Threshold	0.42	0.5	0.5
Existing Forest	1.66	1.66	1.66
Forest to be Cleared	1.30	1.30	1.30
Forest to be saved	0.36	0.36	0.36
Total Planting	0.42	0.57	0.86
Fee-in-lieu or planting cost at \$0.90/sq. ft.	\$16,465.68	\$22,209.07	\$33,597.83