



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

MCPB
Item #
December 3, 2009

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Mark Pfefferle *MP*
Acting-Chief, Environmental Planning
Forest Conservation Program Manager

DATE: November 24, 2009

SUBJECT: Forest Conservation Law Amendment

INTRODUCTION

The purpose of this memorandum is to introduce the amendments to the Montgomery County Forest Conservation law and provide an overview of the proposed changes.

BACKGROUND

In September 2007 the Planning Board forwarded a forest conservation amendment to the County Council. Bill 37-07 was discussed over numerous work sessions but died in the Transportation and Environment Committee before it could be forwarded to the full Council. That Bill proposed changes to the forest retention and planting requirements and increased the maintenance and management period for planted forests. The amendment introduced today does not propose changing the forest retention and planting requirements or the length of the maintenance and management period. Today's amendment incorporates elements of Bill 37-07 that received widespread support from groups that include the regulated community, environmental community, the County's Forest Advisory Committee, and Council staff.

On October 1, 2009 Maryland Senate Bill 666 became effective statewide. This Bill requires revisions all local government forest conservation programs for consistency with the state bill. The proposed amendment is to make the Montgomery County Forest Conservation Law consistent with Bill 666.

The proposed amendments introduced today are to provide consistency, clarity, and efficiency to the Montgomery County Forest Conservation law. Below are the major changes and the purposes of the changes.

Consistency

The proposed changes will make the Montgomery County Forest Conservation law consistent with Maryland Senate Bill 666. The table below highlights the key points of Bill 666 and where the amendments need to occur in the Forest Conservation law.

Senate Bill 666	Proposed Bill
DNR must develop a policy on “no net loss.”	No change required to County law.
Reduce applicability threshold on single lots.	Amend §22A-5. See line 256.
Reduce applicability threshold for child lots.	No change required to County law – not in 22A.
Remove waiver for area covered by paved surface.	No change required to County law – not in 22A.
Add “in perpetuity” to the offsite protective easement option.	Amend §22A-12. See line 1136.
Add language requiring the removal of certain trees and shrubs first obtain a variance.	Amend §22A-12. See line 1028-1052.
Change applicability for placing land in the forest conservation and management program.	No change required to County law – not in 22A
Change in-lieu fee.	No change required to County law – set by resolution.
Clarify how in-lieu fees can be spent	Amend 22A-27. See lines 1429-1432.

Clarity

During the numerous discussions on Bill 34-07, all interested parties agreed that using a 3 level approach for properties and activities subject to the forest conservation law was appropriate for it clarified the applicability and submission requirements. Today’s proposal re-introduces the 3 levels. The first level would require the applicant to submit a “Declaration of Intent”. The second level would require a tree inventory, tree protection plan, and a “Declaration of Intent”. The third level requires the submission of a Natural Resources Inventory/Forest Stand Delineation and a forest conservation plan.

The proposed amendment to the Forest Conservation law also clarifies ambiguous

language found throughout the existing law. The table below highlights the changes between the existing forest conservation law and the proposed amendment.

Proposed Bill	Sections Impacted
Add missing definitions: afforestation threshold, applicant, certified arborist, environmental buffer, medium density residential area, natural resources inventory, qualified professional, stream buffer, tree expert, and tree protection plan.	Amend §22A-3. See lines 32-43, lines 56-59, lines 90-97, lines 119-120, lines 125-131, and lines 143-145.
Clarify the applicability section.	Amend §22A-4. See lines 178-192.
Identifies the types of submissions needed for each review level.	Amend §22A-4. See lines 193-282.
Reduces the amount of forest removed for highway projects from 40,000 square feet to 20,000 square feet.	Amend §22A-9. See line 571.
Identifies specific submission requirements.	Amend §22A-10. See lines 639-746.
Identifies planting preferences.	Amend §22A-12. See lines 983-996.
Clarifies that in-lieu fee money must be paid prior to any land disturbing activities.	Amend §22A-12. See lines 1230-1232.
Requires that maintenance and management agreements include the control of non-native and invasive plants.	Amend §22A-12. See line 1252.
Allows for the financial securities to be collected for tree save plans.	Amend §22A-12. See lines 1267-1268.
Clarifies what the financial security amount should equal and what the estimate needs to include.	Amend §22A-12. See lines 1275-1283.
Adds an appeal section for tree inventories and tree protection plans approved by the Planning Director.	Amend §22A-20. See lines 1370-1392.
Permits Planning Director approval of certain variances.	Amend §22A-12. See lines 1396-1419.

Efficiency

The proposed amendment provides efficiency to the regulated community and the Planning Department. Clearly identifying the submission requirements will save time and money for applicants to prepare and submit applications. Also, under the existing

forest conservation law all variances must be approved by the Planning Board. Some plans do not require Planning Board approval, but the step that requires Planning Board approval of all variances creates unnecessary delays when the forest conservation plan is approved by the Planning Director. Therefore, this amendment would allow the Planning Director to approve certain variances.

Changes to Bill 34-09

The proposed forest conservation law amendment does not address changes proposed by Bill 34-09 except where changes are necessary. This includes modifications to the variance section and to the section on plan appeals. The Planning Board forwarded the changes to all Commission enforcement actions, to the County Council, prior to the Maryland Department of Natural Resources providing guidance on how Senate Bill 666 should be implemented. Therefore, when Bill 34-09 was submitted it did not include the clarifications needed to the variance provision. The following changes are proposed to Bill 34-09.

Proposed Bill	Sections Impacted
Adds an appeal section for tree inventories and tree protection plans approved by the Planning Director.	Amend §22A-20. See lines 1370-1392.
Permits Planning Director approval of certain variances.	Amend §22A-12. See lines 1396-1419.

RECOMMENDATION

We recommend that the Planning Board vote to adopt the amendments to the Forest Conservation law for transmittal to the County Council for further action.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Planning Board

AN ACT to:

- (1) Comply with Maryland Senate Bill 666 which became effective statewide on October 1, 2009;
- (2) remove certain exemptions from the Forest Conservation Law;
- (3) require certain people to submit to certain level of reviews when applying to the Planning Board for certain plans;
- (4) establish criteria and requirements for certain levels of review;
- (5) revise certain financial security requirements;
- (6) revise certain variance requirements; and
- (7) generally amend the County forest conservation law.

By amending

Montgomery County Code

Chapter 22A, Forest Conservation

Sections 22A-2 through 22A-13, 22A-20, 22A-21, 22A-27

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-19, 22A-20, 22A-27 are**
2 **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] 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 5 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.

* * *

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

136 * * *

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

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

146 * * *

147 **22A-4. [Applicability.] Persons Subject to the Forest Conservation Law.**

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

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

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

157 [(c) a person who performs any cutting or clearing, or any other land
158 disturbing activity that would directly threaten the viability of, any
159 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 (a) Applicability. This Chapter applies only to a person that:

179 (1) is required by law to obtain approval for a development plan,
180 diagrammatic plan, project plan, preliminary plan of
181 subdivision approval, or site plan approval;

182 (2) is required by law to obtain a sediment control permit or a
183 special exception on a tract of land 40,000 square feet or larger;

184 (3) performs any cutting or clearing, or any other land disturbing
185 activity that would directly threaten the viability of, any
186 champion tree, wherever located;

- 187 (4) is subject to a mandatory referral, or a park facility plan, on a
188 tract of land 40,000 square feet or larger;
189 (5) performs highway construction; or
190 (6) is a public or private utility that proposes a cumulative limit of
191 disturbance of 40,000 square feet or more for all stages of work
192 in a public right-of-way or utility easement.

193 (b) Types of Review. Each person to whom this Chapter applies is subject
194 to either a Level 1, Level 2, or Level 3 Review. If a person meets the criteria for
195 either a Level 1 or 2 Review, that person is not subject to a Level 3 Review. If a
196 person does not meet the criteria for either a Level 1 or 2 Review, that person is
197 subject to a Level 3 Review.

198 (c) Documents Required.

199 (1) A Level 1 Review requires the person to submit a Declaration of
200 Intent.

201 (2) A Level 2 Review requires the person to submit a Tree
202 Inventory, Tree Protection Plan, and Declaration of Intent.

203 (3) A Level 3 Review requires the person to submit a Natural
204 Resources Inventory/Forest Stand Delineation and a Forest Conservation Plan.

205 (d) Level 1 Review. A person must submit to a Level 1 Review if the
206 person proposes:

207 (1) an agricultural activity that:

208 (A) need not record a subdivision plan under Section 50-
209 09(a); and

210 (B) does not need a sediment control permit under Section
211 19-2(c)(2).

212 An agricultural support building and related activity does not
213 require a Level 1 Review if the person shows that the building

will be built and the activity will be 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) a government project reviewed for forest conservation purposes by the State Department of Natural Resources under state law;

(6) routine maintenance of public utility easements and rights-of-way, and routine maintenance of stormwater management

240 facilities that are not subject to an existing conservation
241 easement, except for clearing access roads;

242 (7) utility or other work required in an emergency;

243 (8) noncoal surface mining regulated under Title 7 of the Natural
244 Resources Article of the Maryland Code; or

245 (9) cutting or clearing a public utility right-of-way or land for an
246 electric generating station licensed under state law if a
247 certificate of public convenience and necessity was issued
248 under Section 5-1603(f) of the Natural Resources Article of the
249 Maryland Code.

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

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

256 (A) more than 20,000 square feet of forest;

257 (B) any forest in an environmental buffer;

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

260 (D) any specimen or champion tree; or

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

263 (2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a
264 lot line adjustment, conversion of an existing recorded outlot, or
265 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 20,000 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 State or County highway construction activity that is subject to either Section 5-103 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,

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

319 inconsistent with County forest management objectives
320 and is otherwise appropriate; and

321 (C) has received a sediment control permit from the
322 Department of Permitting Services and posted the
323 required financial security under Chapter 19.

324 (2) The Department of Permitting Services must send the Planning
325 Director a copy of all sediment control permits issued for
326 commercial logging and timber harvesting operations.

327 (3) The requirements of this subsection apply to commercial
328 logging and timber harvesting operations on agricultural land;]

329 [(e) a State or County highway construction activity that is subject to
330 Section 5-103 of the Natural Resources Article of the Maryland Code,
331 or Section 22A-9;]

332 [(f) a governmental project reviewed for forest conservation purposes by
333 the State Department of Natural Resources under the Code of
334 Maryland Regulations;]

335 [(g) except for the clearing of access roads, routine maintenance of public
336 utility easements and rights-of-way;]

337 [(h) utility or other work that is of an emergency nature;]

338 [(i) noncoal surface mining regulated under Title 7 of the Natural
339 Resources Article of the Maryland Code;]

340 [(j) a sediment control permit approved before July 1, 1991, or if amended
341 after that date at the initiation of the permittee, that does not result in
342 the cutting of more than 5,000 additional square feet of forest;]

343 [(k) any lot covered by a preliminary plan of subdivision or site plan that
344 did not receive a sediment control permit before July 1, 1991, and for
345 which the preliminary plan of subdivision or site plan:

- 346 (1) was approved before July 1, 1984, and has less than 40,000
347 square feet of forest cover; or
- 348 (2) was approved or extended between July 1, 1984 and July 1,
349 1991, and
- 350 (3) the construction will not result in the cutting, clearing, or
351 grading of:
- 352 (A) any forest in a stream buffer, or
- 353 (B) any forest on property located in a special protection area
354 which must submit a water quality plan.

355 A preliminary plan of subdivision or site plan approved before July 1,
356 1991, that is revised after that date at the initiative of the applicant and
357 which results in the cutting of more than 5,000 additional square feet
358 of forest is not exempt. Development or redevelopment of a property
359 which requires resubdivision is not exempt. This subsection does not
360 apply to a planned unit development subject to subsection (1);]

- 361 [(l) any planned unit development for which a development plan was
362 approved by the District Council or for which a project plan was
363 approved by the Planning Board before January 1, 1992, and which
364 has received site plan approval before July 1, 1992 for the tract.
365 However, even if site plan approval has not been obtained before July
366 1, 1992, for the tract, the planned unit development is exempt if it is
367 75% or more complete on January 1, 1992, as measured by the total
368 acreage subject to the planned unit development that has received site
369 plan approval. A development plan or project plan amendment
370 approved after January 1, 1992, is not exempt if it results in the
371 cutting of more than 5,000 additional square feet of forest;]

- 372 [(m) a real estate transfer to provide a security, leasehold, or other legal or
373 equitable interest in a portion of a lot or parcel, if;
- 374 (1) the transfer does not involve a change in land use, or new
375 development or redevelopment, with associated land disturbing
376 activities; and
- 377 (2) both the grantor and grantee file a declaration of intent;]
- 378 [(n) any minor subdivision under Section 50-35A(a)(2)-(3) involving
379 conversion of an existing recorded outlot created because of
380 inadequate or unavailable sewerage or water service to a lot or joining
381 two or more existing residential lots into one lot, if:
- 382 (1) the only development located on the resulting lot is a single
383 family dwelling unit or an accessory structure (such as a pool,
384 tennis court, or shed); and
- 385 (2) development does not result in the cutting, clearing, or grading
386 of:
- 387 (A) more than a total of 40,000 square feet of forest,
388 (B) any forest in a stream buffer,
389 (C) any forest on property located in a special protection area
390 which must submit a water quality plan,
391 (D) any specimen or champion tree, or
392 (E) any tree or forest that is subject to the requirements of a
393 previously approved forest conservation plan or tree save
394 plan;]
- 395 [(o) The cutting or clearing of public utility rights-of-way or land for
396 electric generating stations licensed under Section 54A and 54B or
397 Section 54I of Article 78 of the Maryland Code, if:

- 398 (1) any required certificates of public convenience and necessity
399 have been issued in accordance with Section 5-1604(f) of the
400 Natural Resources Article of the Maryland Code; and
- 401 (2) the cutting or clearing of the forest is conducted so as to
402 minimize the loss of forest.]
- 403 [(p) the construction of a public utility or highway in a utility right-of-way
404 not exempt under subsection (o), or a highway right-of-way not
405 exempt under subsection (e), if:
- 406 (1) the right-of-way existed before July 1, 1992;
407 (2) forest clearing will not exceed a total of 40,000 square feet and
408 (3) the construction will not result in the cutting, clearing, or
409 grading of:
- 410 (A) any forest in a stream buffer,
411 (B) any forest on property located in a special protection area
412 which must submit a water quality plan,
413 (C) any specimen or champion tree, or
414 (D) any tree or forest that is subject to a previously approved
415 forest conservation or tree save plan;]
- 416 [(q) a special exception application if:
- 417 (1) the application is for an existing structure and the proposed use
418 will not result in clearing of existing forest or trees;
419 (2) the application modifies an existing special exception use
420 which was approved before July 1, 1991, and the revision will
421 not result in the clearing of more than a total of 5000 additional
422 square feet of forest or any specimen or champion tree; or
423 (3) the total disturbance area for the proposed special exception use
424 will not exceed 10,000 square feet, and clearing will not exceed

a total of 5000 square feet of forest or include any specimen or
champion tree;]

[(r) an equestrian facility located in an agricultural zone that is exempt
from platting requirements under Section 50-9, whether or not a
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

452 Planning Director must monitor any facility that is exempt under this
453 subsection to confirm that the applicant and any successor in interest
454 continue to comply with all conditions of the exemption;]

455 [(s) (1) an activity occurring on a tract of land less than 1.5 acres with
456 no existing forest, or existing specimen or champion tree, and
457 the afforestation requirements would not exceed 10,000 square
458 feet; or

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

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

465 (1) no more than 5000 square feet of forest will be cleared;

466 (2) the modification does not affect any forest in a stream buffer or
467 located on property in a special protection area which must
468 submit a water quality plan; and

469 (3) the modification does not require approval of a new subdivision
470 plan.]

471 **22A-6. [Exemptions-Special provisions] Reserved.**

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

478 [(b) Tree save plan provision. An activity or development that would be
479 exempt under Section 22A-5, except that the proposed activity
480 involves clearing of a specimen or champion tree, requires the
481 approval of a tree save plan, which may require tree preservation or
482 mitigation for loss of individual trees. The plan requirements must be
483 based on the size and character of the trees to be cleared. If trees to be
484 cleared are part of an existing scenic buffer between public parkland
485 and a proposed development, trees which are smaller than specimen
486 size may be included in the plan.]

487 **22A-7. [Activities or development not exempt under Section 22A-5 --**
488 **Special transition provision] Reserved.**

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

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

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

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

507 [(b) If final plat approval will not be required under subsection (a) of this
508 Section because the development is on a recorded lot or for other
509 reasons, the development will be subject to the requirements of this
510 Chapter at the time of any subsequent application for a sediment
511 control permit.]

512 [(c) If the Planning Board finds that a development approval between July
513 1, 1991 and July 1, 1992 was consistent with the retention,
514 afforestation, or reforestation standards of this Chapter but is not
515 exempt under this Section, the Board may waive additional
516 submission requirements at the time of any later sediment control
517 permit application. However, the Board must not waive the provisions
518 of Section 22A-12(g) and (h) requiring certain agreements and
519 financial security.]

520 [(d) An amendment to a sediment control permit approved between July 1,
521 1991 and July 1, 1992 is subject to the requirements of Article II if the
522 activity is not otherwise exempt and it will result in the cutting of an
523 additional 5,000 square feet of forest.]

524 **22A-8. [Utility lines] Reserved.**

525 [(a) General.

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

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

537 [(b) Calculation Rules; Exemption.

538 (1) To determine the applicability of this Chapter under Section
539 22A-4 to proposed activities within a public right-of-way or
540 public utility easement, the calculation of land area must be
541 based on the limits of disturbance as shown on the sediment
542 control permit.

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

553 (3) If the exemption does not apply, afforestation or reforestation
554 requirements must be calculated using the net tract area
555 applicable to the entire proposed utility line without regard to
556 project segments subject to a specific sediment control permit.
557 The property boundaries of the privately owned utility right-of-
558 way, public utility easement, or public right-of-way (to the

559 extent of the utility work) must be used in calculating the area
560 of the tract. The net tract area should reflect any reduction in
561 land area that will continue to be used for agricultural
562 activities.]

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

565 **22A-9. County Highway Projects.**

566 (a) General.

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

570 (b) If the forest to be cut or cleared for a County highway project equals
571 or exceed 20,000 [40,000] square feet, the constructing agency must
572 reforest a suitable area at the rate of one acre of reforestation for each
573 acre of forest cleared.

574
575 (c) Reforestation for County highway projects must meet the standards in
576 subsections [22A-12(e), (g) and (h)] 22A-12(f), (h), and (i).

577 * * *

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

580 **22A-10. [General] Approvals required.**

581 [(a) *Approval required.* A person who is subject to this Article must
582 submit a forest stand delineation and forest conservation plan for regulatory
583 approval.]

584 [(b) Forest Stand Delineation

585 (1) A forest stand delineation must be used during the preliminary
586 review process to find the most suitable and practical areas for
587 tree and forest conservation. A forest stand delineation must
588 contain topographic, hydrographic, soils, and geologic,
589 qualitative and quantitative information on trees and forest
590 cover; and other information or requirements specified in the
591 regulations or technical manual.]

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

594 (A) there is no forest on the site;

595 (B) no forest on the site would be cut, cleared, or graded for
596 the proposed use, and all forest on the site would be
597 subject to a long-term protective agreement; or

598 (C) the on-site forest is located on a portion of the tract which
599 is exempt from this Article, such as areas remaining in
600 agricultural use as part of a subdivision.]

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

603 [(4) An approved forest stand delineation is not valid after 2
604 years unless:

605 (A) a forest conservation plan has been accepted as
606 complete; or

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

609 [(c) *Forest conservation plan.*

610 A forest conservation plan is intended to govern conservation,
611 maintenance, and any afforestation or reforestation

requirements which apply to the site. A forest conservation plan must contain information on the extent and characteristics of 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 years,

(vi) a binding agreement to protect forest conservation areas, and other information or requirements specified in the regulations or technical manual.]

[(2) A forest conservation plan may include protective measures designed to conserve significant and mature trees on adjacent property from adverse impacts that may be caused by the development or land disturbing activities proposed for the tract.]

[(3) A forest conservation plan may be reviewed in 2 stages with the submission of a preliminary and a final 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.]

(a) Level 1 approval required.

(1) A person who is subject to Level 1 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 2 or Level 3 Review.

(B) Regulated activity must not occur on the area covered by the Declaration of Intent within 5 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 3 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;

(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 qualified professional, 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 qualified professional, certified arborist or a tree expert recertifies the Tree Inventory or a Tree Protection Plan.

(2) Tree Protection Plan

(A) A Tree Protection Plan must be signed by a certified arborist or a tree expert 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 5 years after cutting,

692 clearing, or grading any forest or tree resource is
693 complete.

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

696 (i) submit to a Level 3 review; and

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

701 (c) Level 3 approval required. A person who is subject to Level 3 review
702 must submit to the Planning Director a Natural Resource
703 Inventory/Forest Stand Delineation and Forest Conservation Plan.

704
705 (1) Natural Resource Inventory/Forest Stand Delineation.

706 (A) A Natural Resource Inventory/Forest Stand Delineation
707 must be signed by a qualified professional. A Natural
708 Resource Inventory/Forest Stand Delineation must
709 contain:

710 (i) topographic, hydrographic, soils, and geologic
711 information;

712 (ii) qualitative and quantitative information on trees
713 and forest cover; and

714 (iii) other information or requirements specified by
715 regulation or in the technical manual.

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

718 (C) An approved Natural Resource Inventory/Forest Stand
719 Delineation is not valid after 2 years unless a qualified
720 professional recertifies the natural resource
721 inventory/forest stand delineation, or a Forest
722 Conservation Plan is accepted as complete.

723 (2) Forest Conservation Plan.

724 (A) A Forest Conservation Plan must be signed by a qualified
725 professional and must contain information on the extent
726 and characteristics of:

727 (i) the trees and forested area to be retained or
728 planted;

729 (ii) proposed locations for on-site and off-site
730 reforestation;

731 (iii) scheduling;

732 (iv) protective measures;

733 (v) a binding maintenance agreement effective for at
734 least 2 years;

735 (vi) a binding agreement to protect forest conservation
736 areas, and other information or requirements
737 specified by regulation or technical manual.

738 (B) A forest conservation plan may Forest Conservation Plan
739 must include protective measures designed to conserve
740 [significant and mature trees on adjacent property] trees
741 on the subject tract, or on adjacent properties, from
742 adverse impacts that may be caused by the development
743 or land disturbing activities proposed for the tract.

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

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

(a) [General] Level 1 Review. A person subject to a Level 1 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.

(b) Level 2 Review. A person subject to a Level 2 review must submit to the Planning Director the Tree Inventory with a Declaration of Intent. Within 30 days after receiving the Tree Inventory and Declaration of Intent, the Planning Director must notify the person whether the Tree Inventory is complete. An incomplete application must be denied. If 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.

(1) Natural Resource Inventory/Forest Stand Delineation. A person subject to a Level 3 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
notify the person whether the Natural Resource
Inventory/Forest Stand Delineation is complete. An incomplete
application must be denied. If the Director does not act on the
submission within 30 days, the delineation must be treated as
approved. The Director may extend the deadline for an
additional 15 days in extenuating circumstances.

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

(3) Final Forest Conservation Plan.

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

(B) Within 45 days after receiving the final Forest
Conservation Plan, the Planning Director must notify the
applicant whether the Plan is complete and approved. If
the applicant is not notified within 45 days, the Plan must
be treated as approved. The Director may extend the

797 deadline for an additional 15 days in extenuating
798 circumstances.

799 (4) Coordination and Special Provisions.

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

819 (B) *Special exceptions.* If a special exception application is
820 subject to this Chapter, the applicant must submit a Level
821 1, Level 2, or Level 3 review to the Planning Director
822 before the Board of Appeals may consider the application
823 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

851 [(B)] (ii) each modification is minor and does not impact
852 any forest in a priority area (such as substituting an
853 on-site conservation area for an equal or greater
854 on-site area of similar character, or substituting a
855 marginal on-site conservation area for equal or
856 greater amount of off-site priority area); or

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

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

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

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

876 (2) Forest conservation plan.

877 (A) Application. Upon notification that the forest stand
878 delineation is complete and correct, the applicant must
879 submit a forest conservation plan to the Planning
880 Director. If the development proposal will require more
881 than one of the approvals subject to this subsection, the
882 applicant must submit a preliminary forest conservation
883 plan to the Planning Director in conjunction with the first
884 approval and a final forest conservation plan in
885 conjunction with the last approval. If only one approval
886 subject to this subsection is required, an applicant, with
887 the approval of the Planning Board, may submit a
888 preliminary forest conservation plan at the time of the
889 development approval and a final forest conservation
890 plan before issuance of a sediment control permit for the
891 tract.

892 (B) Review. Within 45 days from receipt of a final forest
893 conservation plan, including a plan that is not reviewed
894 in 2 stages, the Planning Director must notify the
895 applicant whether the forest conservation plan is
896 complete and approved for submission to the Planning
897 Board as part of the development application. If the
898 applicant is not notified within 45 days, the plan will be
899 treated as complete and approved for submission. The
900 Planning Director may require further information or
901 provide for one extension of this deadline for an
902 additional 15 days for extenuating circumstances. In

903 addition, at the request of the applicant, the Director may
904 extend this deadline for extenuating circumstances.

905 (C) Condition of approval. The forest conservation plan will
906 be reviewed by the Planning Board concurrently with the
907 development plan, project plan, preliminary plan of
908 subdivision or site plan, as appropriate. The forest
909 conservation plan, as may be amended by the Board,
910 must be made a condition of any approval of the
911 development application. For a development plan, a
912 Planning Board recommendation to the District Council
913 on the preliminary forest conservation plan must be made
914 under Section 59-D-1.4.]

915 [(c) Project requiring special exception approval.

916 (1) Forest stand delineation. If a special exception proposal is
917 subject to the requirements of this Chapter, the applicant must
918 submit a forest stand delineation to the Planning Director before
919 the Board of Appeals may consider the application for the
920 special exception. The deadlines for reviewing a forest stand
921 delineation are the same as in paragraph (b)(1) of this Section.

922 (2) Forest conservation plan. Upon notification that the forest stand
923 delineation is complete and correct, the applicant must submit a
924 preliminary forest conservation plan to the Planning Director.
925 The Board of Appeals must consider the preliminary forest
926 conservation plan when approving the special exception
927 application and must not approve a special exception
928 application that is in conflict with the preliminary forest
929 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:

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

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

[(e) Project requiring mandatory referral.

(1) Forest stand delineation. A person seeking mandatory referral for a project that is subject to the requirements of this Chapter must first 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 preliminary forest conservation plan. The Planning Board must consider the preliminary forest conservation plan when reviewing the mandatory referral application. The deadlines for reviewing the final forest conservation plan are the same as in paragraph (d)(2) of this Section.

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

22A-12. Retention, afforestation, and reforestation requirements for Level 3 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 <u>for Level 3 Reviews</u></i>		
<i>Land Use [Category] <u>Type</u>^[1]</i>	<i>[Forest] Conservation Threshold</i>	<i>[Required] Afforestation Threshold</i>
Agricultural and Resource Areas	50%	20%
Medium Density Residential Areas	25%	20%
Institutional Development Areas	20%	15%
High Density Residential Areas	20%	15%
Mixed-use Development Areas	15-20% ¹	15%
Planned unit Development Areas	15-20% ¹	15%

Commercial and Industrial Areas	15	15%
---------------------------------	----	-----

The residential and institutional portions of the tract must meet the 20% requirement. All other uses must meet the 15% 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.]

(c) *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 must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that:

(A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;

(B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and

(C) the development proposal cannot be reasonably altered.

(2) [In general,] [a] Areas protected under this subsection include:

(A) floodplains, stream buffers, steep slopes, and critical habitats;

(B) contiguous forests;

[(C) rare, threatened, and endangered species;]

[(D) trees connected to an historic site;]

1025 [(E) champion trees and other exceptionally large trees; and]
1026 [(F) areas designated as priority save areas in a master plan or
1027 functional plan.]

1028 (3) The following trees, shrubs, plants, and specific areas are
1029 considered priority for retention and protection and shall be left
1030 in an undisturbed condition unless the applicant has
1031 demonstrated, to the satisfaction of the Planning Director, that
1032 the applicant qualifies for an variance in accordance with
1033 Section 22A-21 of this article:

1034 (A) Trees, shrubs, or plants determined to rare, threatened, or
1035 endangered under:

1036 (i) The Federal Endangered Species Act of 1973 in 16
1037 U.S.C. §§1531 – 1544 and in 50 CFR 17,

1038 (ii) The Maryland Nongame and Endangered Species
1039 Conservation Act, Natural Resources Article §§10-2A-
1040 01-10-2A-09, Annotated Code of Maryland, and

1041 (iii) COMAR 08.03.08;

1042 (B) Trees that:

1043 (i) Are part of an historic site,

1044 (ii) Are associated with an historic site, or

1045 (iii) Have been designated by the State or County as a
1046 national, State or county champion tree; and

1047 (C) Any tree having a diameter measured at 4.5 feet above
1048 the ground of:

1049 (i) 30 inches or more, or

(ii) 75 percent or more of the diameter, measured at 4.5 feet above ground, or the current State champion tree of that species.

[(c)] (d) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

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

(2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

(3) 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) 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.

1077 [(d)] (e) *Afforestation.*

1078 (1) A site with less than 20 percent of the net tract area in forest
1079 cover must be afforested in accordance with the required
1080 afforestation percentages shown on the table in
1081 subsection [(a)] (b)(1) of this Section.

1082 (2) Afforestation [should] must be accomplished by the
1083 planting, maintenance, and establishment of forest
1084 cover[. However, if the applicant] unless a person
1085 demonstrates to the satisfaction of the Planning Board or
1086 Planning Director, as the case may be[, that afforestation
1087 using forest cover is inappropriate]. Afforestation may
1088 be satisfied by tree cover for a site because of its location
1089 in an urban setting, redevelopment context, high-density
1090 residential, commercial, industrial, planned unit
1091 development, or institutional area (as defined in Section
1092 22A-3), or similar reason, afforestation requirements may
1093 be satisfied by tree cover.

1094 [(e)] (f) *Standards for reforestation and afforestation.*

1095 (1) Priorities for reforestation and afforestation.

1096 (A) [Preferred sequence.] Except as provided [in] by
1097 regulation or in the technical manual or otherwise in
1098 [paragraph] (1) of this subsection, the preferred sequence
1099 for afforestation and reforestation is [, in general:
1100 enhancement of existing forest through on-site selective
1101 clearing, supplemental planting, or both; on-site
1102 afforestation or reforestation, including techniques which
1103 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 subsection (a) 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 advantage of opportunities to consolidate forest conservation efforts;
- (ii) for public [site] sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or
- (iii) for educational, recreational, and public safety facilities, to ensure that public safety is not compromised.

(C) *Public Utility Considerations*. The sequence provided in subsection (a) may be modified to reflect applicable electrical or other safety codes, or right-of-way constraints.

- 1129 (2) *Off-site afforestation and reforestation.* In addition to the use
1130 of other sites proposed by an applicant and approved by the
1131 County, off-site afforestation or reforestation may also include:
1132 (A) Forest mitigation banks designated in advance by the
1133 County.
1134 (B) Protection of existing off-site forest. Acquisition of an
1135 off-site protective easement for existing forested areas
1136 not currently protected in perpetuity is an acceptable
1137 mitigation technique instead of off-site afforestation or
1138 reforestation planting, but the forest cover protected must
1139 be 2 times the afforestation and reforestation
1140 requirements.
1141 (C) For sites located in existing population centers, [use of]
1142 street trees [which meet landscape or streetscape goals
1143 identified in an applicable master plan] may be used if
1144 the applicant demonstrates to the satisfaction of the
1145 Planning Board or Planning Director that on-site
1146 afforestation is inappropriate.
1147 (3) *Priority areas and plantings.* Afforestation and reforestation
1148 should be directed to stream buffer areas, connections between
1149 and additions to forested areas, critical habitat areas,
1150 topographically unstable areas, and land use and road buffers.
1151 The use of native plant materials is preferred. Unless the
1152 Planning Board or Planning Director order otherwise, the
1153 required use of natural regeneration under this Chapter
1154 supercedes any prohibition under Chapter 58.

- 1155 (4) *Location requirements.* Required reforestation or afforestation
1156 must occur in both the county and watershed in which the
1157 project is located, except that if it cannot be reasonably
1158 accomplished in the same county and watershed in which the
1159 project is located, then the reforestation or afforestation may
1160 occur anywhere in either the county or watershed in which the
1161 project is located.
- 1162 (5) *Deadline for plant installation.* The afforestation and
1163 reforestation requirements under this subsection must be
1164 accomplished within one year or 2 growing seasons after a
1165 development project is complete.
- 1166 (6) *Planned Unit Developments; Other Staged Development.*
1167 Notwithstanding any other provision of this Section, the Planning
1168 Board may allow any afforestation or reforestation requirement for a
1169 planned unit development to be calculated and satisfied within the
1170 total area covered by the development plan or project plan instead of
1171 the net tract area. Similarly, the Planning Board may allow any
1172 afforestation or reforestation requirement applicable to a staged
1173 development subject to a single preliminary plan of subdivision but
1174 with separate site plan reviews for each stage to be calculated and
1175 satisfied using the total area covered by the preliminary plan of
1176 subdivision.
- 1177 [(f)] (g) *Special provisions for minimum retention, reforestation and*
1178 *afforestation.*
- 1179 (1) *General.* Any site developed in an agricultural and resource
1180 area, any planned unit development, any site developed under a
1181 cluster or other optional method of development in a one-family

1182 residential zone, and any waiver from a zoning requirement for
1183 environmental reasons, must include a minimum amount of
1184 forest on-site as part of meeting its total forest conservation
1185 requirement.

1186 (2) *Retention, reforestation and afforestation.* Forest retention
1187 should be maximized where possible on each site listed in this
1188 subsection. At a minimum, on-site forest retention, and in some
1189 cases reforestation and afforestation, must be required as
1190 follows:

1191 (A) In an agricultural and resource area, on-site forest
1192 retention must equal 25% of the net tract area.

1193 (B) In a planned development or a site development using a
1194 cluster or other optional method of development in a one-
1195 family residential zone, on-site forest retention must
1196 equal the applicable conservation threshold in subsection
1197 (a). This requirement also applies to any site seeking a
1198 waiver or variance from base zone standards under
1199 Section 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-
1200 1.621, or 59-C-7.131, if as a condition of the waiver or
1201 variance the Planning Board or County Council must find
1202 that the resulting development is environmentally more
1203 desirable.

1204 (C) On a site covered by this subsection, if existing forest is
1205 less than the minimum required retention, all existing
1206 forest must be retained and on-site afforestation up to the
1207 minimum standard must be provided. If existing forest is
1208 less than the applicable afforestation threshold in

1209 subsection [(a)] (b), the afforestation threshold is the
1210 minimum on-site forest requirement.

1211 (D) If a site covered by this subsection is unforested, on-site
1212 afforestation must equal the applicable afforestation
1213 threshold.

1214 (3) If the Planning Board or Planning Director, as
1215 appropriate, finds that forest retention required in this
1216 subsection is not possible, the applicant must provide the
1217 maximum possible on-site retention in combination with
1218 on-site reforestation and afforestation, not including
1219 landscaping and street trees.

1220 (4) Retention, reforestation, and afforestation must adhere to
1221 the priorities and sequence established in subsections [(b)
1222 and (e)] (a) and (c).

1223 [(g)] (h) *In lieu fee*.

1224 (1) *General*. If a person satisfactorily demonstrates that the
1225 requirements for reforestation or afforestation on-site or off-site
1226 cannot be reasonably accomplished, the person must contribute
1227 money to the forest conservation fund at a rate specified by the
1228 County Council by law or resolution, but not less than the rate
1229 required under Section 5-1610 of the Natural Resources Article
1230 of the Maryland Code. The requirement to contribute money
1231 must be met before any clearing or grading occurs within [90
1232 days after development project completion] the tract.

1233 (2) *Specific development situations*. Except as specified in
1234 subsection [(f)] (g), the Planning Board or Planning Director
1235 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)] (e)(2), 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)] (i) Agreements and Long-Term Protection.

(1) Maintenance agreement. A forest conservation plan must include a two-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 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)] (j) Financial Security.

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

- 1262 (A) compliance with all requirements of an approved forest
1263 conservation plan including afforestation, reforestation,
1264 and maintenance; [or]
1265 (B) full payment of funds to be paid instead of afforestation
1266 or reforestation, if required under subsection [(g).] (h); or
1267 (C) compliance with all requirements of a Tree Protection
1268 Plan.

1269 * * *

1270 (3) *When required.* The financial security instrument must be
1271 provided prior to any land disturbing activity [, as defined in
1272 Chapter 19, occurring on a section of the tract subject to the
1273 forest conservation plan].

1274 (4) *Amount required.*

1275 (A) If the financial security is required under [subparagraph]
1276 subsection (1)(A) [of this subsection], the security
1277 instrument must be in an amount equal to:

- 1278 (i) the in lieu fee rate; or
1279 (ii) the estimated cost of afforestation, reforestation,
1280 and maintenance [applicable to the section of the
1281 tract subject to the land disturbing activity] of
1282 planted areas as well as non-native and invasive
1283 management.

1284 The instrument must include a provision for adjusting the
1285 amount based on actual costs. The Planning Director
1286 must notify the obligee of any proposed adjustment and
1287 provide the opportunity for an informal conference.

1288 (B) If the financial security is required under [subparagraph]
1289 subsection (1)(B) [of this subsection], the security
1290 instrument must be in an amount equal to the in lieu
1291 payment.

1292 * * *

1293 (6) Events of forfeiture. The financial security instrument may be
1294 subject to forfeiture on:

1295 (A) failure of the obligee to perform the work under the
1296 [forest conservation plan] Forest Conservation Plan in
1297 accordance with the required schedule; or

1298 (B) failure of the obligee to pay a required in lieu fee in a
1299 timely manner.

1300 * * *

1301 **22A-13. Forest mitigation banks.**

1302 (a) A person may create a forest mitigation bank from which applicants
1303 may buy credits by afforesting or reforesting an area of land under a
1304 forest mitigation bank plan approved by the Planning Director.

1305 (b) A person can create a forest mitigation bank by permanently
1306 protecting:

1307 (1) existing forest;

1308 (2) planting and protecting new forests in unplanted environmental
1309 buffers or in areas contiguous to existing and protected forests;
1310 or

1311 (3) a combination of the two.

1312 [(b)] (c) The area of land where the bank is planted must be at least 1 acre.

1313 [(c)] (d) A forest mitigation bank must use native plants for afforestation and
1314 reforestation[, unless inappropriate].

1315 [(d)] (e) A person proposing to create a forest mitigation bank must submit a
1316 plan to the Planning Director, [which must include] that includes:

- 1317 (1) a 2-year maintenance agreement which meets the standards in
1318 subsection [22A-12(h)(1)] 22A-12(i)(1);
- 1319 (2) all information required by subsection [22A-10(c)]
1320 22A-10(c)(2) for a [forest conservation plan] Forest
1321 Conservation Plan; and
- 1322 (3) the draft easement, covenants, or deed restrictions for the area
1323 to be sold to the developer when credits are withdrawn from the
1324 bank.

1325 [(e)] (f) Forest mitigation banks must be established in accordance with the
1326 priority areas described in subsection [22A-12(e)(3)] 22A-12(f)(3), or
1327 in areas identified in a master plan or functional plan.

1328 [(f)] (g) Credits must not be debited from a forest mitigation bank until all
1329 trees have been planted and accepted by the Planning Director, and
1330 either financial security which meets the standards in subsection
1331 [22A-12(i)] 22A-12(h) has been provided or the Planning Director has
1332 found that a sufficient number of trees have successfully survived for
1333 2 years after planting.

1334 [(g)] (h) To debit credits from an approved forest mitigation bank, the
1335 easement, covenants, or deed restrictions which assure that the newly
1336 reforested or afforested area of land remains a forest in perpetuity
1337 must be conveyed to the Planning Board or its assignee and the
1338 applicant must show that credits are available and the applicant has
1339 the right to debit them. The credits must buy an amount of land equal
1340 to the applicant's off-site reforestation or afforestation requirements
1341 under its approved forest conservation plan.

- 1342 22A-15. **Inspections and notification.**
 1343 * * *
- 1344 22A-16. **Penalties and other remedies.**
 1345 * * *
- 1346 22A-17. **Corrective actions.**
 1347 * * *
- 1348 22A-18. **Plan suspension and revocation.**
 1349 * * *
- 1350 22A-19. **Noncompliance with exemption conditions**
 1351 * * *
- 1352 22A-20. **[Notice, hearings,] Hearings and appeals**
 1353 * * *

1355 [(c) Forest stand delineations and forest conservation plans approved by
 1356 the Planning Director.

1357 (1) Appeal to Planning Board. Upon receipt of the Planning
 1358 Director's written decision on a forest stand delineation or forest
 1359 conservation plan, an applicant has 30 days in which to appeal
 1360 to the Planning Board.

1361 (2) Hearing; decision. The Planning Board must hold a hearing on
 1362 the appeal and inform the applicant in writing of its decision.
 1363 The Board must consider the appeal de novo. For purposes of
 1364 judicial review, the decision of the Planning Board constitutes
 1365 final agency action.

1366 (3) Appeal. Upon receipt of the Planning Board's decision, an
 1367 applicant has 30 days in which to appeal the decision in
 1368 accordance with Subtitle B of the Maryland Rules of
 1369 Procedure.]

(c) Natural Resource Inventory/Forest Stand Delineations 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 or Forest Conservation or Tree Protection Plan to appeal to the Planning Board.

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

(d) Forest Conservation or Tree Protection Plans and variances approved by the Planning Board. A person aggrieved by the decision of the Planning Board on the approval, denial, or modification of a Forest Conservation or Tree Protection Plan (including a request for a variance) may file a petition for judicial review of the administrative agency decision on the development approval in accordance with the Maryland Rules of Court and any other law applicable to the proceeding.

[(d)] (e) Administrative enforcement actions.

* * *

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, or Planning Director, 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 any other appropriate [officials or agencies] agency for a written recommendation before acting on the request. [Recommendations must be] If a recommendation on the variance is not submitted to the Planning Board within 30 days [from the receipt by the official or agency of the request or] after the referral, the recommendation [should] must be presumed to be favorable.

* * *

(e) *Approval procedures; Conditions.* The Planning Board [, or the District Council on a development plan,] or the Planning Director for a forest conservation plan associated with a sediment control 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.

22A-26. Regulations.

* * *

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, maintenance of existing forests, and achieving urban canopy goals, 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.

* * *

22A-30. County Arborist.

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22A-31. Forest Conservation Advisory Committee

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Sec. 2. Expedited Effective Date

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

Approved:

Phil Andrews, President, County Council	Date
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Approved:

Isiah Leggett, County Executive	Date
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This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council	Date
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