



September 7, 2001

Memorandum

TO: Montgomery County Planning Board

FROM: Cathy Conlon, Forest Conservation Program Administrator(x4542)
for the Montgomery County Park and Planning Department *Cathy Conlon*

SUBJECT: Public Hearing on Planning Board Regulation 1-01(COMCOR 18-01) –
Forest Conservation Regulations Amendments

Overview

The proposed regulation amends existing Planning Board Forest Conservation Regulation No. 1-97 as part of a comprehensive update to the County forest conservation program. This update was initiated in March, 2000 when the Planning Board transmitted proposed amendments to the forest conservation law to the County Council for introduction. The Planning Board's initial draft of the regulations was also transmitted. The law amendments were introduced by the Council in December, 2000 and adopted on July 24, 2001 after several T&E Committee and Council work sessions.

The Planning Board regulations were introduced in June, 2001. Since that time, they have been revised once to incorporate changes related to the County Council's final action on the law. They were re-released for public comment on August 1, 2001. Following the public hearing, a Planning Board work session will be scheduled to discuss comments received and the need for further revisions.

Summary of the Forest Conservation Law Amendments

The adopted amendment to the Forest Conservation Law (Montgomery County Code, Chapter 22A) is attached for your reference (Attachment A). The changes reflect the Board and Council's desire to increase its effectiveness, clarify provisions, and include measures that will help to make implementation more efficient. Some of the more significant amendments include:

- Existing forest and reforestation areas less than 50 feet wide for the majority of their length are not included in the definition of forest.
- County highway project are reviewed the same as State projects and reforestation for loss of forest is always 1:1.
- Failure to obtain verification of an exemption from the law is a violation.
- Single lot exemptions apply only to existing lots that contain, or are being constructed with, a dwelling house or accessory structure.
- Minor subdivision that convert certain outlots to lots, and join two or more existing residential lots are exempt.
- Several of the exemptions do not apply if development includes clearing of specimen or champion trees, forest in a stream buffer, or forest on a site within a Special Protection Area that is required to submit a Water Quality Plan.
- Any property that is exempt from forest conservation requirements may be required to do a tree save plan.
- Churches must meet the conservation and afforestation thresholds of the base zone they are in.
- Priority forest now includes forest identified as part of master or functional plans.
- Ag Resource Areas, Planned Unit Development, and any site developed under cluster or other optional method of development must meet minimum standards for retention and reforestation.
- Automatic payment of fees in lieu of planting are allowed in some instances.
- The amount of the fee charged for forest conservation review will be set by the Planning Board as part of DAP instead of by regulation.

Summary of the Proposed Regulation

The proposed regulations (Attachment B) include clarification of the requirements of the law and the necessary procedures for its administration. In addition to defining terms not covered by the law, the regulations include requirements for preparation of a Natural Resources Inventory and Forest Stand Delineation; priorities for forest stand retention; Forest Conservation Plan provisions including, afforestation and reforestation priorities, planting plan specifications, credit for landscaping and tree save, and inspection requirements. They also include requirements for verification of an exemption, and an explanation of the declaration of intent; reforestation maintenance and management requirements including bonding; and long term protection requirements for forest conservation areas.

The biggest change in the regulations is the fact that standards which were formerly covered only in the *Trees Technical Manual* have now been moved to the regulations. The law amendment makes the manual a guidance

document. Most of the language has not changed from what was in the manual. Some of the significant new provisions of the regulations include:

- Modified forest stand sampling requirements as part of preparing a Forest Stand Delineation.
- Provision for submittal of a simplified Natural Resources Inventory and Forest Stand Delineation in some instances.
- Additional forest areas included in the highest priority for retention.
- Seedling planting stock is no longer permitted as the only means of providing reforestation.
- The minimum size requirement for larger planting stock is reduced.
- Tree save plan requirements are included.
- Credit towards reforestation and afforestation for landscaping is clarified.
- The requirements for forest conservation plan inspections are clarified.
- Terms for release of forest conservation bonding are specified.
- MD Department of Natural Resources Forest Management Plans are removed as an acceptable long term protection device and made conditional, because in some cases they include timber harvesting. Planning Board must now agree to their terms before they may be used.

Summary of Comments Received on the Proposed Regulations

No written comments were received on the regulations during the two 30-day comment periods this past June and August.

As part of written comments submitted to the County Council during review of the law, the Maryland-National Capital Building Industry Association(MNCBIA) did make comments which pertain to these regulations. They commented that because release of reforestation bonds is tied to survival of planted trees, developers have to stay involved in projects for too long after completion of construction. They recommend a better statement of what the end product of planting is to be. They also recommend building in more flexibility so that different alternatives can be utilized.

CAC:cc

Chapter 22A.

FOREST CONSERVATION - TREES.

*As Amended by Bill No. 35-00,
adopted by the County Council on July 24, 2001
and effective on October 23, 2001.*

Boldface

Underling

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

ARTICLE I. GENERAL

Sec. 22A-1. Short title.

This Chapter may be referred to as the Montgomery County Forest Conservation Law.
(1992 L.M.C., ch. 4, § 1)

Sec. 22A-2. Findings and purpose.

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

(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;
- (2) establish procedures, standards, and requirements to minimize tree loss as a result of development and to protect trees and forests during and after construction or other land disturbing activities;

(3) establish procedures, standards, and requirements for afforestation and reforestation of land subject to an application for development approval or a sediment control permit;

(4) establish a fund for future tree conservation projects, including afforestation and reforestation; and

(5) provide a focused and coordinated approach for County forest conservation activities. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-3. Definitions.

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

[(a)] *Afforestation* means the establishment of forest or tree cover in accordance with this Chapter on an area from which it has always or very long been absent, or the planting of open areas which are not [presently] in forest cover.

[(b)] *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 timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, and the cultivation of orchard, nursery, and other products [as part of a recognized commercial enterprise].

[(c)] *Agricultural and resource area* means an undeveloped area zoned for a density of less than or equal to one dwelling unit per 5 acres.

[(d)] *Commercial and industrial uses* means manufacturing operations office complexes, shopping centers, and other similar uses and their associated storage areas, yards, and parking areas.

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

[(f)] *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

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

[(g)] *Development plan* means a plan or an amendment to a plan approved under Division 59-D-1 of [the Zoning Ordinance] Chapter 59.

[(h)] *Development project completion* means the date or event identified as such 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.

[(i)] *District Council* means the County Council in its capacity, under Article 28 of the

Maryland Code, to act on planning and zoning matters for the Maryland-Washington Regional District.

[(j)] *Floodplain (100-year)* means an area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood.

[(k)] *Forest* means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area [of] which is 10,000 square feet or greater and at least 50 feet wide. 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.

Forest does not include an orchard[s].

[(l)] *Forest conservation* means the retention of existing forest or the creation of new forest at the levels set by the Planning Board or Planning Director.

[(m)] *Forest conservation fund* means a special fund maintained by the County to be used for purposes specified in Section 22A-27.

[(n)] *Forest conservation plan* means a plan approved under Article II [of this Chapter].

[(o)] *Forest conservation threshold* means the percentage of the net tract area at which the reforestation 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.

[(p)] *Forest cover* means the area of a site meeting the definition of forest.

Forest mitigation banking means the intentional preservation, restoration or creation of forests undertaken expressly for the purpose of providing credits for afforestation or reforestation requirements.

[(q)] *Forest stand delineation* means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activities.

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

[(s)] *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. 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.

[(t)] *Land disturbing activities* has the same meaning as in Chapter 19.

Linear project means a project whose configuration is elongated with nearly parallel sides and used to transport a utility product or public service not otherwise to be constructed or improved as part of an application for subdivision, such as electricity, gas, water, sewer, communications, trains, pedestrians, and vehicles. A linear project may traverse fee simple properties through defined boundaries or through easement rights.

[(u)] *Lot* means for the purpose of this Chapter a [unit] tract of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined under Section [5-1601 of the Natural Resources Article of the Maryland Code] 50-1, without an approved forest stand delineation and forest conservation plan.

[(v)] *Mandatory referral* means the required review by the Planning Board of projects or activities to be undertaken by governmental agencies and private and public utilities under Section 7-112 of Article 28 of the Maryland Code.

[(w)] *Medium-density residential* means an area zoned for [densities] a density greater than one dwelling unit per 5 acres and less than or equal to one dwelling unit per 40,000 square feet, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

[(x)] *Mixed-use development* means a single, relatively high-density development project, usually commercial in nature, which includes 2 or more types of uses.

[(y)] *Municipal corporation* means a municipality without planning and zoning authority, or which has assigned its responsibilities under Subtitle 16 of the Natural Resources Article of the Maryland Code to the County.

Natural regeneration means the natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

[(z)] *Net tract area* means the total area of a tract, including both forested and unforested areas, to the nearest 1/10 acre, reduced by [the area found to be within the boundaries of the 100-year floodplain; except that] road or utility rights-of-way which will not be improved as part of the development application. However, in agriculture and resource areas, net tract area is the portion of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities [, reduced by the area found to be within the boundaries of the 100-year floodplain]. For a linear project, net tract area is the area of a right-of-way width or the limits of disturbance as shown on the development application, whichever is greater.

[(aa)] *Nontidal wetland* means an area regulated as a nontidal wetland under Title 8, Subtitle 12, of the Natural Resources Article of the Maryland Code.

[(bb)] *Obligee* means a person obligated under a financial security instrument to meet certain regulatory requirements under Article II.

[(cc)] *Person* means:

- (1) the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, [or]
- (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.

[(dd)] *Planned unit development* means a development comprised of a combination of land uses or varying intensities of the same land use, having at least 20 percent of the land permanently dedicated to open space, and in accordance with an integrated plan that provides flexibility in land use design approved by the District Council under Division 59-D-1 or by the Planning Board under Division 59-D-2 of [the Zoning Ordinance] Chapter 59.

[(ee)] *Planning Board* means the County Planning Board of the Maryland-National Capital Park and Planning Commission.

[(ff)] *Planning Director* means the director of the Montgomery County Park and Planning Department, or the Director's designee.

[(gg)] *Preliminary plan of subdivision* means a plan for a proposed subdivision or resubdivision prepared and submitted for approval by the Planning Board under Chapter 50 before preparation of a subdivision plat.

[(hh)] *Project plan* means a plan or an amendment to a plan approved under Division 59-D-2 of [the Zoning Ordinance] Chapter 59.

[(ii)] *Public utility* means:

- (1) the transmission lines and the electric generating stations licensed under Article 78, Section 54A and 54B or 54-I of the Maryland Code; and
- (2) water, sewer, electric, gas, telephone, and cable service facilities and lines.

[(jj)] *Reforestation or reforested* means the creation of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground[,] within 7 years. [Reforestation includes the landscaping of areas under an approved landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500 square feet of land area.] Reforestation for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

[(kk)] *Retention* means the deliberate holding and protecting of existing trees and other plants on the site.

[(ll)] *Sediment control permit* means a permit required to be obtained for certain land disturbing activities:

- (1) under Chapter 19, Article I;
- (2) from the Washington Suburban Sanitary Commission for major utility construction as defined under regulations of the Commission; or
- (3) from a municipal corporation.

[(mm)] *Site plan* means a plan or an amendment to a plan approved under Division 59-D-3 of [the Zoning Ordinance] Chapter 59.

[(nn)] *Special exception* means a use approved under Article 59-G of [the Zoning Ordinance] Chapter 59.

Special Protection Area (SPA) means a geographic area designated by the County

Council under Section 19-62(a).

[(oo)] *Technical Manual* means a detailed guidance document used for administration of this Chapter that is adopted by the Planning Board under Section 22A-26.

[(pp)] *Timber harvesting* means a tree cutting operation affecting one or more acres of forest or developed woodland within a one year period that disturbs 5,000 square feet or more of forest floor. Timber harvesting does not include grubbing and clearing of root mass.

[(qq)] *Tract* means the property subject to a development application or a sediment control permit, as described by deed or record plat.

[(rr)] *Tree* means a large, woody plant having one or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

[(ss)] *Tree cover* means the combined area, in square feet, of the crowns of all trees on a tract. For replanting purposes, *tree cover* is the typical crown area for the specific tree at [maturity] 20 years.

[(tt)] *Tree save plan* means a plan prepared in conjunction with a development application [approved before July 1, 1992] indicating where trees are to be retained or planted, including the establishment of conservation areas.

[(uu)] *Variance* means relief from this Chapter. [It] Variance does not mean a subdivision or zoning variance.

[(vv)] *Watershed* means all lands lying within an area described as a [subbasin in water quality regulations adopted by the State Department of Environment under COMAR 26.08.02.08.] watershed in the Countywide Stream Protection Strategy. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-4. Applicability.

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; [and]

(b) a person required by law to obtain special exception approval or a sediment control permit[, or who is subject to mandatory referral, for a proposed activity on an area] on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a); [of this Section.]

(c) a government entity subject to mandatory referral on an tract of land 40,000 square feet or larger which is not exempt under Section 22A-5(f) [[and which is not otherwise required to obtain an approval under subsection (a)]];

(d) highway construction not exempt under subsections 22A-5(e) or (p); and

(e) a public utility not exempt under subsections 22A-5(g), (o)(1) and (2), or (p).

Any person who expects to cut, clear, or grade more than 5000 square feet of forest, and who believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-6,

22A-7 or 22A-8, must notify the Planning Director in writing before performing any cutting, clearing, or grading and seek confirmation from the Director that the cutting, clearing, or grading is in fact exempt from Article II. Failing to notify the Director as required by this Section, or performing any cutting, clearing, or grading before the Director confirms that an exemption applies, is a violation of this Chapter. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-5. Exemptions.

The [following are exempt from 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) [is] does not [subject to] require a special exception [approval];

(2) does not result in the [[cumulative]] cutting, clearing, or grading of:

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

[[3] will not result in the cutting, clearing, or grading of]]

(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 [the requirements of] a previously approved forest conservation plan or tree save plan; and

[[4]] (3) is subject to a declaration of intent filed with the Planning Director stating that the lot will not be the subject of additional regulated activities under this Chapter within 5 years of the cutting, clearing, or grading of forest;

(b) an agricultural activity that is exempt from both platting requirements under Section 50-9 and requirements to obtain a sediment control permit under Section 19-2(c)(2). Agricultural support buildings and related activities are exempt only if built using best management practices;

(c) a tree nursery;

(d)(1) 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:

(A) is completed before July 1, 1991, or is completed on or after July 1, 1991, and the property on which the cutting or clearing is conducted is not the subject of an application for development within 5 years after the sediment control permit has been issued;

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

(C) has received a sediment control permit from the Department of

Permitting Services and posted the required financial security under Chapter 19.

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

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

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

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

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

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

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

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

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

(1) was approved before July 1, 1984, and has less than 40,000 square feet of forest cover; or

(2) was approved or extended between July 1, 1984 and July 1, 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 (l) [of this Section];

(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

(2) both the grantor and grantee file a declaration of intent; [and]

(n) any minor subdivision under Section 50-35A(a)(2)-(3) involving conversion of an existing recorded outlot created because of inadequate or unavailable sewerage or water service to a lot or joining two or more existing residential lots into one lot, if:

(1) [[no new development is conducted on the resulting lot; or]] 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

(2) development does not result in the [[cumulative]] 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 the requirements of a previously approved forest conservation plan or tree save plan;

[(n)](o) the cutting or clearing of public utility rights-of-way or land for electric generating stations licensed under Section 54A and 54B or Section 54I of Article 78 of the Maryland Code, if:

(1) any required certificates of public convenience and necessity have been issued in accordance with Section 5-1603(f) of the Natural Resources Article of the Maryland Code; and

(2) the cutting or clearing of the forest is conducted so as to minimize the loss of forest;

(p) the construction of a public utility or highway within a utility right-of-way not exempt under (o), or highway right-of-way not exempt under (e), if:

(1) the right-of-way existed before July 1, 1992;

(2) forest clearing will not exceed a total of 40,000 square feet; and

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

(A) any forest in a stream buffer,

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

(C) any specimen or champion tree, or

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

(q) a special exception application if:

(1) the application is for an existing structure and the proposed use will not result in clearing of existing forest or trees;

(2) the application modifies an existing special exception use which was approved before July 1, 1991, and the revision will not result in the [[cumulative]] clearing of more than a total of 5000 additional square feet of forest or any specimen or champion tree; or

(3) the total disturbance area for the proposed special exception use will not exceed 10,000 square feet and [[cumulative]] clearing will not exceed a total of 5000 square feet of forest or include any specimen or champion tree;

(r)(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

(s) A modification to existing developed property if:

(1) [[less than a total of 40,000]] 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

[[(2)] (3) the modification does not require approval of a new subdivision plan.
(1992 L.M.C., ch. 4, § 1)

Sec. 22A-6. Exemptions--Special [transition] provisions.

(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 [remedies] 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 approval of a tree save plan, which may [[include]] require tree preservation or mitigation for loss of individual trees. The plan requirements must be based [[upon]] 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 [[any]] a proposed development, trees which are smaller than specimen size may be [[evaluated for inclusion]] included in the [[tree save]] plan. (1992 L.M.C., ch. 4, § 1)

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

(a) An activity or development not exempted under Section 22A-5 and which received preliminary plan of subdivision 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 [determines] 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, [it] the Board may waive additional submission requirements at the time of any [subsequent] later sediment control permit application. However, [subject to Section 22A-12(i) for small tracts,] the Board must not waive the provisions of Section 22A-12(g) and (h) requiring certain agreements and financial security [must not be waived].

(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. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-8. Utility Lines

(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.

(b) *Calculation Rules; [Single Lot] Exemption*

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

(2) A public right-of-way, public utility easement, or privately owned utility right-of-way is considered to be [a single lot for purposes of an exemption under Section 22A-5(a)] exempt under Section 22A-5(o) if the proposed activity and any future stages of the work on the utility line will not result in the cumulative cutting, clearing, or grading of more than 40,000 square feet of forest or the cutting, clearing, or grading of any specimen or champion trees, or trees or forest that are subject to a previously approved forest conservation or tree save plan. [A declaration of intent is not required under Section 22A-5(a)(4); however, any subsequent] Any later stages of the work must be identified at the time of the initial sediment control permit application.

(3) If the [single lot] exemption [is] does not [applicable] apply, afforestation or reforestation requirements must be calculated using the net tract area applicable to the entire proposed utility line without regard to project segments subject to a specific sediment control permit. The property boundaries of the privately owned utility right-of-way, public utility easement, or public right-of-way (to the extent of the utility work) must be used in calculating the area of the tract. The net tract area should reflect any reduction in land area that will continue to be used for agricultural activities. Any requirements for mitigation for loss of any specimen or champion tree must be based on the size and character of the tree. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-9. [Reserved] County Highway Projects

(a) General.

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

(2) The construction [[must]] should minimize forest cutting or clearing and loss of specimen and champion trees to the extent possible while balancing other design, construction, and environmental standards. The constructing agency must make [[every]] a reasonable effort to minimize the cutting or clearing of trees and other woody plants.

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

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

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

ARTICLE II. FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS.

Sec. 22A-10. General.

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

(b) *Forest stand delineation.*

(1) A forest stand delineation [is to] must be used during the preliminary review process to [determine] find the most suitable and practical areas for tree and forest conservation. A forest stand delineation must contain topographic, hydrographic, soils, geologic, and qualitative and quantitative information on trees and forest cover, and other information or requirements specified in the regulations or 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 is to 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.

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

[3)] (4) [A] An approved forest stand delineation is not valid after 2 years unless:

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

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

(c) *Forest conservation plan.*

(1) A forest conservation plan is intended to govern conservation, maintenance, and any afforestation or reforestation requirements [applicable] 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, proposed locations for on-site and off-site reforestation, scheduling, protective measures, a binding [2-year] maintenance agreement effective for at least 2 years, 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. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-11. Application, review, and approval procedures.

(a) *General.*

(1) Coordinated with project review. Submittal and review of the forest stand delineation and forest conservation plan must be done 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 Permitting Services, the Washington Suburban Sanitary Commission, other relevant regulatory agencies, and entities that will provide public utilities to 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.

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

(A) field inspections or other evaluation reveals minor inadequacies of the plan;

(B) 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

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

[Review and approval of any] Any other [[modifications]] modification must be [done] approved by the [government entity] agency that approved the 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 Director. If the development proposal will require more than one of the approvals subject to this subsection, the applicant must submit a preliminary forest conservation plan to the Planning Director in conjunction with the first approval and a final forest conservation plan in conjunction with the last approval. If only one approval subject to this subsection is required, an applicant, with the approval of the Planning Board, may submit a preliminary forest conservation plan at the time of the development approval and a final forest conservation plan before issuance of a sediment control permit for the tract.

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

(C) Condition of approval. The forest conservation plan will 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 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. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-12. Retention, afforestation, and reforestation requirements.

(a) *Table*

Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area

<i>Land use category⁽¹⁾</i>	<i>Forest Conservation Threshold</i>	<i>Required Afforestation</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%[*] ⁽²⁾	15%
Planned unit development areas	15-20%[*] ⁽²⁾	15%
Commercial and industrial use areas	15%	15%

⁽¹⁾ A religious institution must comply with the requirements that apply to the base zone in which it is located.

[*]⁽²⁾ The residential and institutional portions of the tract must meet the 20% requirement. 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 percent. 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 [cover] 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 applicant can demonstrate, to the satisfaction of] the Planning Director[,] finds that:

(A) the development would make maximum use of [[flexibility for development types in the zone in which it is located]] any available planning and zoning options that would result in the greatest possible forest retention;

(B) reasonable efforts have been made to protect [them] [[forest and trees]] the specific areas and vegetation listed in the plan; and

(C) the development proposal cannot reasonably be altered.

(2) In general, [these] areas [[to be]] protected under this subsection include [certain];

(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 [and];

(E) exceptionally large trees; and

(F) areas which have been designated as priority save areas in a master plan or functional plan.

(c) *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 $1/4$ 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 toward forest conservation requirements under this Chapter.

(d) *Afforestation.*

(1) 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) of this Section.

(2) Afforestation should be accomplished by the planting of forest cover. However, if the applicant demonstrates to the satisfaction of the Planning Board or Planning Director, as the case may be, that afforestation using forest cover is inappropriate 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) *Standards for reforestation and afforestation.*

(1) (A) Preferred sequence. Except as provided 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 [[on-site]], 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 [and natural regeneration on-site or off-site].

(B) Governmental 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 advantage of opportunities to consolidate forest conservation efforts;
- (ii) for public 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 subparagraph (A) of this paragraph for public utility projects may be modified to reflect applicable electrical or other safety codes, or right-of-way constraints.

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

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

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

(C) For sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.

[(2)](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 [, when appropriate,] is preferred. Unless [otherwise provided by] the Planning Board or Planning Director order otherwise, the required use of natural regeneration under this Chapter supercedes any prohibition under Chapter 58 [, Weeds].

[(3)](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.

[(4)](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 [completion] is complete.

[(5)](6) 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) Special provisions for minimum retention, reforestation and afforestation.

(1) General. Any site developed in agricultural and resource areas, any planned unit development, any site developed under 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 developed 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 Sections 59-G-1.393(b), 59-G-1.395, 59-G-1.532, 59-G-1.621, or 59-G-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), 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) [[Waiver of retention requirement.]] If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this [[Section]] subsection is not possible [[or economically feasible]], the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.

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

[(f)] (g) *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 within 90 days after the development project completion.

(2) Specific development situations. Except as specified in subsection (f), the Planning Board or Planning Director may allow an applicant to pay into the County Forest Conservation Fund instead of providing afforestation, 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), the applicant may pay the fee instead of using tree cover to meet any afforestation requirements.

(B) Afforestation or reforestation using landscaping. An applicant may pay the fee instead of using credit for landscaping.

(C) Afforestation on sites with no priority planting areas. If a site has afforestation planting requirements and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available, the applicant may pay the fee instead of doing off-site afforestation.

(D) Reforestation on small properties with no priority planting areas. An applicant may pay the fee instead of on-site or off-site reforestation on properties less than 5

acres when the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.

(E) Sites with minor reforestation requirements. An applicant may pay the fee instead of on-site or off-site reforestation for any plan where overall reforestation requirements are less than [[0.5]] ½ acre and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.

[(g)] (h) *Agreements.*

(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. The 2-year period starts upon satisfactory final inspection of the conservation measures required under the forest conservation plan. A staged project may have more than one agreement.

(2) Long-term protective measures. A forest conservation plan must include appropriate measures for the protection of conservation areas; limitations on the use of these areas consistent with conservation and management practices; and legal instruments such as conservation easements, deed restrictions, covenants, and other agreements, as necessary.

[(h)] (i) *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 [monies] funds to be paid [in lieu] instead of afforestation or reforestation, if required under subsection [(f)] (g) [of this Section].

(2) Preferred form. The preferred financial security instruments are an irrevocable letter of credit or a cash bond. The letter of credit must expressly state that the total sum is guaranteed to be available and payable on demand directly to the Maryland-National Capital Park and Planning Commission in the event of forfeiture. A certificate of guarantee or a surety bond may also be used, including a bond payable to the Commission and County that additionally guarantees completion of public improvements associated with the proposed development. The financial security instrument must be made payable to the Commission and must be of a form and content satisfactory to the Commission and its legal counsel.

(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 (1)(A) of this subsection, the security instrument must be in an amount equal to the estimated cost of afforestation, reforestation, and maintenance applicable to the section of the tract subject to the land disturbing activity. The instrument must include a provision for adjusting the amount based on actual costs. The Planning Director must notify the obligee of any

proposed adjustment and provide the opportunity for an informal conference.

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

(5) Release. The financial security instrument must be in effect until all requirements have been fulfilled to the satisfaction of the Planning Director. The instrument may provide for the partial release or return of the instrument based on successful implementation of phases of the forest conservation plan.

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

(A) failure of the obligee to perform the work under the forest conservation plan in accordance with the required schedule; or

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

(7) Forfeiture proceedings.

(A) The Planning Director must notify the obligee, by certified mail, of the intention of the Commission to initiate forfeiture proceedings.

(B) The obligee has 30 days from the receipt of the notice of forfeiture to show cause why the financial security should not be forfeited.

(C) If the obligee fails to show cause, the financial security instrument must be forfeited.

(8) Exception. This subsection does not apply to governmental entities.

[(i) *Special provision for smaller tracts.*

(1) For tracts under 40,000 square feet, the Planning Board may approve a modified forest conservation plan without the need for an applicant to obtain a variance under this Chapter.

(2) The Planning Board may waive or modify requirements under this Chapter for financial security, a short-term maintenance agreement, and long-term protective measures.

(3) Retention, afforestation, and reforestation should be required in accordance with this Section. However, the afforestation and reforestation requirements for a tract subject to this subsection must be calculated in terms of tree cover instead of forest cover. The Planning Board may grant a waiver of afforestation or reforestation requirements upon a showing of hardship or other appropriate justification.] (1992 L.M.C., ch. 4, § 1)

Sec. 22A-13. Forest mitigation banks.

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

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

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

(d) A person proposing to create a forest mitigation bank must submit a plan to the

Planning Director, which must include:

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

(2) all information required by subsection 22A-10(c) for a 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) Forest mitigation banks must be established in priority areas described in subsection 22A-12(e)[(2)](3), or in areas identified in a master plan or functional plan.

(f) 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[[h]](i) has been provided, or the Planning Director has found that a sufficient number of trees have successfully survived for 2 years after planting.

(g) 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 applicants' off-site reforestation or afforestation requirements under its approved forest conservation plan.

[22A-13,] 22A-14. Reserved.

ARTICLE III. ENFORCEMENT, APPEALS, AND VARIANCES.

Sec. 22A-15. Inspections and notification.

(a) *Permission to gain access.* Authorized representatives of the Planning Department may enter properties subject to this Chapter for the purpose of inspection and enforcement.

(b) *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. Field markings must exist on site during installation of all protective devices, construction, or other land disturbing activities.

(c) *Required inspections.* The Planning Department should conduct at least 3 field inspections of a tract subject to an approved forest conservation plan. The inspections should take place as follows:

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

(2) The second inspection should take place following completion of all land

disturbing activities and afforestation or reforestation to determine the level of compliance with the forest conservation plan; and

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

(d) *Other inspections.* The Planning Department may conduct other inspections or meetings as necessary to administer this Chapter, including an inspection to confirm a forest stand delineation.

(e) *Required notifications.*

(1) At least 2 working days before commencement of any land disturbing activities associated with the forest conservation plan, a person must notify the Planning Department. The Planning Department must coordinate its inspection, and any pre-construction conferences, with the Department of Permitting Services to avoid inconsistent directives in the field relating to the forest conservation plan and sediment control activities.

(2) At least 2 working days before completion of afforestation and reforestation plantings, a person must notify the Planning Department so that the Department may schedule the second inspection under paragraph (c)(2) of this Section. (1992 L.M.C, ch. 4, § 1)

Sec. 22 A-16. Penalties and other remedies.

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

(b) *Enforcement authority.* The Maryland-National Capital Park and Planning Commission has primary enforcement authority under this Chapter. Administrative enforcement actions are to be initiated by the Planning Director in accordance with this Article.

(c) *Civil actions.* The Commission may bring any civil action authorized to the County under Section 1-19 to enforce this Chapter or any regulation adopted under it. A civil action may also be brought to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order. These remedies are in addition to any remedies that the Commission or County may initiate under state or local law to enforce the terms of a regulatory approval which incorporates a forest conservation plan.

(d) *Administrative civil penalty.*

(1) In addition to other remedies provided under this Article, a person who violates this Chapter, any regulations adopted under it, a forest conservation plan, or any associated agreements or restrictions is liable for an administrative civil penalty imposed by the Planning Board. This civil penalty may not exceed the rate set by the County Council, by law or resolution, but not less than the amount specified in Section 5-1608(c) of the Natural Resources Article of the Maryland Code. Each day of a violation is a separate violation.

(2) In determining the amount of the civil penalty, or the extent of an administrative

order issued by the Planning Director under Section 22A-17, the Planning Board or Planning Director must consider:

- (A) the willfulness of the violations;
- (B) the damage or injury to tree resources;
- (C) the cost of corrective action or restoration;
- (D) any adverse impact on water quality;
- (E) the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator; and
- (F) other relevant factors.

The Board or Director may treat any forest clearing in a stream buffer, wetland, or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.

(3) The reasons for imposing a civil penalty must be provided in a written opinion of the Planning Board and included in its administrative order.

(e) *Fund.* Money collected under this Section must be deposited into the forest conservation fund. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-17. Corrective [[orders]] actions.

(a) *Administrative order.* At any time, including during an enforcement action, the Planning Director may issue an administrative order requiring the violator to take [[corrective action]] one or more of the following actions within a certain time period^{[[. The corrective action may include an order to]]}:

- (1) stop the violation;
- (2) stabilize the site to comply with a reforestation plan;
- (3) stop all work at the site;
- (4) restore or reforest unlawfully cleared areas; ^{[[or]]}
- (5) submit a forest conservation plan for the property;
- (6) place forested or reforested land under long-term protection by a conservation easement, deed restriction, covenant, or other appropriate legal instrument; or
- (7) submit a written report or plan concerning the violation.

(b) *Effectiveness of order.* An order issued under this Section is effective ^{[[immediately,]]} according to its terms, when it is served. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-18. Plan suspension and revocation.

Grounds for action. After notice to the violator and opportunity for a hearing has been provided under Section 22A-20(d), the Planning Board may suspend or revoke a forest conservation plan if it determines that any of the following has occurred:

- (a) failure of a violator to post or maintain the financial security instrument required

under Subsection 22A-12;

(b) failure to comply with the requirements of an administrative action or order issued under this Chapter;

(c) misrepresentation in the application process or failure to disclose a relevant or material fact; or

(d) violation of a requirement of a forest conservation plan or associated legal instrument. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-19. Noncompliance with exemption conditions.

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

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

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

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

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

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

(3) both. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-20. Notice, hearings, and appeals.

(a) *General.* Except as provided under subsections (c) and (d) of this Section, the requirements for notice, public hearing, and administrative decision-making for the associated development approval must be followed when reviewing a forest stand delineation or forest conservation plan.

(b) *Forest conservation plans and variances approved by the Planning Board or District Council.*

(1) A person aggrieved by the decision of the Planning Board on the approval, denial, or modification of a forest conservation plan (including a request for variance) may file a judicial appeal of the final administrative action on the development approval in accordance with Subtitle B of the Maryland Rules of Procedure and any other law applicable to the proceedings.

(2) A person aggrieved by the decision of the District Council on the approval, denial, or modification of a forest conservation plan (including a request for a variance) proposed in conjunction with a development plan may file a judicial appeal of the action on the development plan in accordance with Division 59-H-8.

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

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

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

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

(d) *Administrative enforcement actions.*

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

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

(3) Decision. The Planning Board must inform the alleged violator in writing of its decision on an administrative enforcement action. The Board's decision constitutes final agency action for purposes of judicial review.

(4) Appeal. Upon receipt of the Planning Board's decision, an aggrieved person has 30 days in which to appeal the Board's action in accordance with Subtitle B of the Maryland Rules of Procedure. (1992 L.M.C., ch.4, § 1)

Sec. 22A-21. Variance provisions.

(a) *Written request.* A person 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 the time requirements in Section 22A-11.

(b) *Application requirements.* An applicant for a variance must:

(1) describe the special conditions peculiar to the property which would cause unwarranted hardship;

(2) describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;

(3) verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and

(4) provide any other information appropriate to support 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, 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 or the recommendation should be presumed to be favorable.

(d) *Minimum criteria.* 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 of 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 finding 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. (1992 L.M.C., ch. 4, § 1)

Secs. 22A-22-22A-25. Reserved.

ARTICLE IV. ADMINISTRATION.

Sec. 22A-26. Regulations.

(a) *Adoption.* The Planning Board must adopt regulations, including [a technical manual and] 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, [including the State technical manual,] may be adopted under Method (3) if it is [[not inconsistent]] consistent with this Chapter. The regulations must include procedures [for the amendment of] to amend a forest conservation plan and declaration of intent.

(b) *Technical manual.* The technical manual must include [the] guidance and methodologies [and standards] for:

- (1) preparing and evaluating a forest stand delineation and natural resources inventory;
- (2) preparing and evaluating a forest conservation plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;
- (3) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation and maintenance;
- (4) monitoring and enforcement of forest conservation plans; and
- (5) other appropriate guidance for program requirements consistent with this Chapter and the regulations.

(c) *Development agreements; Conservation easements[, etc].* The Planning Board may [include] in the regulations [requirements for] require developer agreements, conservation easements, land trusts, covenants, and deed restrictions as part of [the] an approved forest conservation plan.

(d) *Administrative fee.* The Planning Board must charge a fee to cover at least partially the costs of administering this Chapter, including review of submittals and field inspections. The fee [must be set by regulation adopted under Method (2)] 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.

(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) [*State technical manual and regulations.* Until the Planning Board adopts regulations under this Section, the Board may use any technical manual or regulations adopted by the State Department of Natural Resources under Subtitle 16 of the Natural Resources Article of the Maryland Code.]

[(g)] *Reports.* The Planning Board must make all [required] 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.

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

District, and other appropriate agencies.

[(i)](h) *Sediment Control Permit Applications.* The Planning Director and the Director of the Department of Permitting Services 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 subsection 22A-19. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-27. Forest conservation fund.

There is a county forest conservation fund. Money deposited into the 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 in lieu of planting will remain in the fund for a period of 2 years from the date that the money is received under this Chapter. That portion of the money equal to what would be required under Section 5-1610 of the Natural Resources Article of the Maryland Code may only be spent on reforestation and afforestation, including the costs directly related to site identification, acquisition, and preparation, and may not revert to the general fund. The remainder may be spent on any other tree conservation activities, including street tree planting. At the end of that time period, any portion that has not been used in accordance with this Section must be returned to the person who paid the money into the fund.] Money deposited in the forest conservation fund instead of planting must be spent on the reforestation and afforestation for which the money is deposited, including the costs directly related to site identification, acquisition, design, and preparation, and must not revert to the general fund. The permanent preservation of priority forests, including [[site]] 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 activities, including street tree planting.

(b) Penalties. Money collected for noncompliance with a forest conservation plan or the associated 2-year maintenance agreement[,] must be deposited in a separate account in the forest conservation fund. Money deposited in this fund may be used [for purposes] to [implementing] administer this Chapter.

Secs. 22A-28, 22A-29. Reserved.

ARTICLE V. COUNTY ARBORIST.

Sec. 22A-30. County Arborist.

(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. (1992 L.M.C., ch. 4, § 1)

Transition.

Any amendment to Chapter 22A, inserted by this Act, does not apply to:

(a) a preliminary or final forest conservation plan approved before this Act took effect, or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect.

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Maryland-National Capital Park and Planning Commission
Regulation on

FOREST CONSERVATION REGULATIONS

M-NCPPC MONTGOMERY COUNTY PLANNING BOARD

Issued by: Montgomery County Planning Board
Regulation No. 1-01 (COMCOR 18-01)

Authority: Chapter 22A
Supersedes: 1-97 (COMCOR 24-96)
Council review: Method (2) under Code section 22A
Register Vol. 18, No. 6

Effective Date:
Sunset Date: None

Sec. 101. Preamble

(a) Purpose. The proposed regulation amends Montgomery County Planning Board Regulation No. 1-97, Forest Conservation Regulations to update and clarify existing provisions and to add the regulatory provisions from the existing *Trees Technical Manual*, including updating and clarifying these provisions as necessary.

(b) Summary
Comment Deadline: August 31, 2001

(c) Addresses
Countywide Planning Division-Environmental Planning
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

(d) Staff Contact Cathy Conlon (301) 495-4540

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102. Authority

In accordance with Chapter 22A, entitled "Forest Conservation Law," the following Planning Board Regulations shall pertain to all development approvals, special exception applications, or sediment control permit applications that require a forest stand delineation and a forest conservation plan.

103. Transition Provision

For purposes of ~~[[Chapter]]~~ subsection 22A-7(a)(2) of the Forest Conservation Law, the term "substantially complete" means a plat that has received Planning Board approval by July 1, 1992.

104. [Forest Conservation Program Fees

A. Fees for Original Applications and Major Amendments

The review fee is as follows:

Single-family Residential: \$150 plus \$15.00 per lot.

Multi-family, Commercial, Industrial, Institutional, Religious: \$300 plus \$30 for each acre (or part thereof) over one acre.

The fees will be charged as follows:

	With NRI/FSD	With FCP
Single-family residential	\$100	\$50 plus \$15 per lot
Multi-family, Commercial, Industrial, Institutional, Religious	\$200	\$100 plus \$30 per acre

B. Government Agencies

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Government agencies are exempt from all filing fee requirements.]

Definitions

A. The terms in §B of this regulation have the meaning indicated. Terms not defined in this regulation have the meanings given to them in Chapter 22A of the Montgomery County Code.

B. Terms Defined.

(1) "Afforestation" means the creation, on a tract that is not presently in forest cover, of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor), which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 trees per acre, with at least 50 of those trees having the [[capability]] potential of growing to a [[diameter at]] 2 inch or greater diameter at 4.5 feet above the ground [[, of 2 inches or more]] within 7 years. In some instances, afforestation includes [[the]] creation of tree cover by landscaping areas under an approved landscaping plan [[, in some instances]].

(2) "Afforestation threshold" means a specific percentage of forested land on site with a low percentage of existing forest cover, based on the net tract area.

(3) "Applicant" means the person who is applying for subdivision or site plan approval, a grading or sediment control permit, or project plan approval if the applicant is a State or local agency; or who has received approval of a forest stand delineation or forest conservation plan.

(4) "Break-even point" means an exact level of forest retention that precludes the need for reforestation.

(5) "Champion tree" means the largest tree of its species within the United States, the State, county or municipality, as appropriate.

(6) "Conservation easement" means a restriction on the land and the natural features on this land. This easement is shown on the record plat and its terms and conditions are recorded in the county's land records.

(7) "Conservation threshold" means a specific percentage of forested land on sites where existing forest is being cleared, based on the net tract area.

(8) "Critical habitat area" means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area:

(a) is likely to contribute to the long-term survival of the species;

(b) is likely to be occupied by the species for the foreseeable future; and

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(c) constitutes habitat of the species which is considered critical under Natural Resources Article, §4-2A-06 or 10-2A-06, Annotated Code of Maryland.

(9) "Critical habitat for endangered species" means a habitat occupied by an endangered species as determined or listed under Natural Resources Article, §4-2A-04 or 10-2A-04, Annotated Code of Maryland.

(10) "Critical root zone" means the zone in which the majority of the roots of a tree are located. It is also the area around a tree which should be protected unless other supplemental protection measures are provided.

(11) "Development application" means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for plan approval or sediment control permit.

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

(a) is for purposes exempted under Chapter 22A of the Montgomery County Code; and

(b) will not circumvent the requirements of the Chapter.

(13) "Development program" means a sequence of construction events and timing for submittal of the major forest conservation program elements.

(14) "Development project" means the grading or construction activities occurring on a specific tract [[that is 40,000 square feet or greater]]. This includes redevelopment projects.

(15) "Extenuating circumstances" means conditions requiring extension of a set time limit to process an application, render a decision, or conduct a public hearing.

(16) "Field survey" means a field investigation of the environmental characteristics of a site, including existing forest.

(17) "Flood, One Hundred-Year" means a flood which has a 1 percent chance of being equaled or exceeded in any given year, or which occurs, on average, once every 100 years, after total ultimate development of the watershed.

(18) "Floodplain, One Hundred-Year" means the area along or adjacent to a stream or body of water, except tidal waters, that would experience inundation by stormwater runoff equivalent to a one hundred-year flood.

(19) "Forest clearing" means the cutting or destruction of any trees or understory which are part of an existing forest even if the resulting community continues to meet the definition of forest, except if it is done as part of an approved forest management plan or timber harvest permit. Forest loss will be based on a measure of the aerial extent of forest cover which includes the outer perimeter of individual trees.

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(20) "Forest conservation plan" means a plan which outlines the strategies and specific plans proposed for retaining, protecting, and reforesting or afforesting areas on a site.

(21) "Forest conservation worksheet" means a step-by-step form for determining compliance with the requirements of the forest conservation law.

(22) "Forest management plan" means a plan establishing conservation and management practices for a landowner ~~[[in]]~~ after assessment of the resource values of forested properties. This plan is approved by the county, or by the MD Department of Natural Resources forester assigned to the county after coordination with the county.

(23) "Forest mitigation bank agreement" means an agreement entered into by an individual owning a forest mitigation bank and the Planning Board, which commits the banker to certain procedures and requirements when creating and operating a forest bank.

(24) "Forest mitigation bank plan" means a plan for approval of a forest mitigation bank submitted to the Planning Director by an individual proposing to establish a forest mitigation bank.

(25) "Forest stand delineation" means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activity.

(26) "Growing season" means a period of consecutive frost-free days as stated in the current soil survey for the county. In an average year, a period commencing on April 1st and ending on October 31st.

(27) "Intermittent stream" means a stream defined as intermittent in the latest version of *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).

(28) "Landscaping plan" means a plan drawn to scale and made part of the approved forest conservation plan, showing dimensions and details for tree planting and large landscaped areas that will be applied as credit toward a site's reforestation or afforestation requirements. Use of native or indigenous plants is required, when appropriate.

(29) "Limits of disturbance" means a clearly designated area within which land disturbance is slated to occur.

(30) "Maintenance agreement" means the short-term management agreement associated with afforestation or reforestation plans.

(31) "Native" means a plant or animal species whose geographic range during precolonial times included the Piedmont of Maryland. Information of native plants can be found in *Woody Plants of Maryland* (Brown and Brown, 1972) and *Herbaceous Plants of Maryland* (Brown and Brown, 1984), as well as other literature sources.

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(32) "Natural regeneration" means establishment of trees and other vegetation with at least 400 woody, free-to-grow tree seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

(33) "Natural resources inventory" means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Trees Technical Manual* (MNCPPC).

(34) "Offsite" means outside the limits of the areas encompassed by a tract.

(35) "Onsite" means within the limits of an area encompassed by a tract [[including an area classified as a 100-year floodplain]].

(36) "Perennial stream" means a stream defined as perennial in the latest version of *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).

(37) "Planting plan" means a plan showing how areas to be reforested or afforested will be planted.

(38) "Priority areas" means forest areas that are ranked as the highest priority for retention as part of a forest conservation plan.

(39) "Qualified professional" means a licensed forester, licensed landscape architect, or other qualified professional approved by the State.

(40) "Regulated activity" means any of the following activities [[when that activity occurs on a tract of land which is 40,000 square feet or greater]]:

(a) Subdivision;

(b) Grading;

(c) Forest clearing;

(d) An activity that requires a sediment control permit; or

(e) Project plan of a federal, state, or local agency.

(41) "Retention area" means forested areas, tree stands and individual trees that will be retained on a site.

(42) "Selective clearing" means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

(43) "Specimen tree" means a tree that is a particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species.

(44) "Stream buffer" means a strip of natural vegetation contiguous with and parallel to the bank of a perennial or intermittent stream, the width of which must be determined according to the latest version of *Environmental Management of Development in*

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Montgomery County, Maryland (MNCPPC).

(45) "Subdivision" means the definition of subdivision in Section 50-1 of the Montgomery County [[Zoning Ordinance]] Code.

(46) "Tract" means:

(a) The property subject to a development application or a sediment control permit, the boundaries of which are described by deed or record plat;

(b) The entire property subject to a planned unit development if a development application or a sediment control permit is included in a planned unit development; or

(c) The length and width of the right-of-way or the limits of disturbance, whichever is greater, for a linear project.

(47) "Tree save area" means an area designating trees, or stands of trees outside existing forest cover which are to be retained.

(48) "Tree save plan" means a plan subject to review and approval of the Planning Board pursuant to Chapter 22A of the Montgomery County Code or the provisions of the 1989 Montgomery County Tree Legislation which covers individual trees or stands of trees to be saved as part of, or [[in lieu]] instead of a forest conservation plan.

105. Application

A. Except as provided in Sections 22A-5, 22A-6, 22A-7, 22A-8, 22A-9 and the Variance provisions in Section 22A-21 of the Forest Conservation Law, these regulations apply to the following plans for a regulated activity:

(1) a development plan[[s]] approved or amended under Division 59-D-1 of the Zoning Ordinance;

(2) a project plan[[s]] approved or amended under Division 59-D-1 of the Zoning Ordinance;

(3) a preliminary plan[[s]] of subdivision approved by the Planning Board under Chapter 50 of the County Code;

(4) a Division 59-D-3 site plan[[s]];

(5) a sediment control permit[[s]] required under Chapter 19 of the County

Code;

(6) a special exception[[s]] approved under Article 59-G of the Zoning Ordinance;

(7) a mandatory referral[[s]]; and

(8) a park development plan[[s]].

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B. The general procedure for meeting the requirements of Chapter 22A for these plans is:

(1) preparation by a qualified professional, of a natural resources inventory which includes a forest stand delineation, as described in Section 106 [[of these regulations]] and in the latest versions of *Environmental Management of Development in Montgomery County* (MNCPPC) and the *Trees Technical Manual*, to be reviewed and approved by the Planning Director.

(2) identification by a qualified professional, of forest and tree retention areas per [[Chapter]] subsection 22A-12(b) of the Forest Conservation Law, Sections 106 and 107, and the criteria for area to be cleared in the *Trees Technical Manual*.

(3) preparation by a qualified professional, of a forest conservation plan to be approved by the Planning Board or Planning Director, as appropriate, which includes:

(a) [[location of]] lot lines [[and sighting of]], buildings, and proposed infrastructure [[in order]], located to maximize retention areas;

(b) afforestation and reforestation areas and planting plan, as required;

(c) appropriate protection and maintenance measures; and

(d) a timetable for construction and planting.

[[C. Plans that have obtained approval of a Preliminary or Final Forest Conservation Plan, or county transportation projects that have obtained mandatory referral review by 35% design and are individually listed in the county CIP prior to the effective date of these regulations will be governed by the regulations in effect on the date of approval.]]

106. Natural Resource Inventory and Forest Stand Delineation (NRI/FSD) Requirements.

A. An application must be considered complete if it contains all the following information:

(1) a complete analysis of existing natural resources, or natural resources inventory which is verified by field survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining lots, whichever is less:

(a) property boundaries;

(b) topography at a minimum scale of 1" = 200' with contour intervals not more than 5 feet (larger scale may be required by the Planning Director on a case-by-case

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basis, if necessary to determine the accuracy of the plan);

(c) slopes 25% and greater, and slopes between 15% and 25% that are associated with erodible soils;

(d) perennial and intermittent streams and stream buffers per the latest version of the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);

(e) one-hundred year floodplains and associated 25' building restriction lines;

(f) wetlands and their buffers per the latest version of the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);

(g) soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, and erodible soils on slopes of 15% or more;

(h) rare, threatened or endangered plants or animals observed in the field;

(i) critical habitat areas observed or documented by the MD Dept. of Natural

Resources;

(j) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;

(k) cultural features and historic sites;

(l) a site vicinity map at 1"=2000' which shows the location of the site within a square mile and indicates major roads; and

(m) a table containing acreage of wetlands, 100-year floodplains, and stream buffers.

(2) a detailed summary of existing forest and trees on a tract, or forest stand delineation which is verified by field [[investigation]] survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining lots, whichever is less:

(a) forest stands and field verified boundaries;

(b) a description of each stand including:

(i) acreage;

(ii) dominant and codominant tree species;

(iii) size class by species;

(iv) percent canopy closure;

(v) number of canopy layers (vertical structure);

(vi) percent of forest floor covered by herbaceous plants (native species),

downed woody material, and alien or invasive species; and

(vii) a stand condition narrative for each stand including, information on condition classes, structure, function, retention potential, transplant and regenerative

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potential, and comments on evidence of past management; and

[[c]](c) specimen trees by size and species;

[[v]](d) champion trees and trees that have a diameter at 4.5 feet above the ground (DBH) that is 75% or more of the diameter of the current state champion for that species;

[[vi]](e) individual trees in good health that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species;

[[vii]](vii) percent canopy closure;

(viii) number of canopy layers (vertical structure);

(ix) percent of forest floor covered by herbaceous plants (native species),

downed woody material, and alien or invasive species; and]]

[[c]](f) field survey reference points; and

[[d]](d) stand condition narrative including information on condition classes, structure, function, retention potential, transplant and regenerative potential; and comments on evidence of past management.]]

[[c]](g) a table containing acreage of forest within existing wetlands, 100-year floodplains, and stream buffers;

(3) a summary map, which in addition to the information in subsections (1) and (2) [[above]], shows the priority of forest stands for retention as described in Section 107 [[of these regulations]].

(4) A completed NRI/FSD application form, fee schedule worksheet and review fee.

B. A simplified forest stand delineation may be used per [[Chapter]] subsection 22A-10(b)(2) of the [[Montgomery County Code]] Forest Conservation Law. The simplified plan must include:

(1) a natural resources inventory as described in subsection A(1);

(2) forest stands as determined by dominant species types and priority for

retention;

(3) stand condition narrative as described in subsection A(2)(b)(vii);

(4) a proposed limit of disturbance line; and

(5) proposed areas of long-term protection.

C. A natural resources inventory and forest stand delineation must be prepared by a licensed forester, licensed landscape architect, or qualified professional as specified in COMAR 08.19.06.01A; and must exhibit a stamp or certification of the preparer.

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107. Priorities for Forest Stand Retention

A. The following trees, shrubs, plants, and specific areas are considered the highest priority for retention and protection and must be left in an undisturbed condition unless the [[applicant demonstrates to the satisfaction of]] Planning Director or Planning Board find that reasonable efforts, as specified in subsection 22A-12(b) of the Forest Conservation Law, have been made to protect them and the plan cannot reasonably be altered:

(1) trees, shrubs, and other plants located in sensitive areas including intermittent and perennial streams and their buffers, slopes over 25 percent (not man-made), nontidal wetlands and their buffers, erodible soils on slopes of 15% or more, 100-year floodplains, and critical habitats;

(2) a contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;

(3) a forest area[[s]] which has been designated as priority for retention in [[adopted]] master plans or functional plans, or in the absence of such plans, a forest which exhibits all of the following characteristics:

(a) high structural and species diversity;

(b) few alien or invasive species present;

(c) very good overall stand health; and

(d) high potential to provide a significant amount of habitat for forest interior dwelling plant, animal and bird species; and

(4) an individual tree[[s]], and the majority of [[their]] its critical root zone, with one or more of the following characteristics:

(a) a tree[[s]] that [[are]] is part of a historic site or associated with a historic structure;

(b) a tree[[s]] designated as a national, state, or local champion tree;

(c) a tree[[s]] having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state champion tree; and

(d) a tree[[s]] which [[are]] is a specimen of a species.

B. The following areas should also be given high priority for preservation where feasible:

(1) a forested area[[s]] which provides a corridor 300 feet wide or more of primarily native vegetation between two larger forested tracts;

(2) a forested stream buffer[[s]] up to 300 feet on either side of a stream

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channel;

(3) trees which act as a buffer between incompatible land uses and between dwellings and roads;

(4) a forest stand[[s]], or portions of a stand[[s]], with good forest structural diversity; and

(5) an individual tree[[s]] with a diameter, measured at 4.5 feet above the ground, of 24" or greater [[on a site]] which will significantly enhance the site through preservation.

108. General Forest Conservation Plan Provisions

A. In developing a forest conservation plan, the applicant must give priority to techniques for retaining existing forest on the site. The forest conservation law specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants should strive to reach the break-even point on forested sites so that no replanting is required.

B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant must demonstrate, to the satisfaction of the Planning Board or Planning Director, as appropriate:

(1) how techniques for retention have been exhausted;

(2) why the priority forests and priority areas specified in Section 107 are not being retained;

(3) if priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with [[Chapter]] subsection 22A-12(e)(1)(A) of the Forest Conservation Law;

(4) where on the site in priority areas the afforestation or reforestation will occur in compliance with [[Chapter]] subsection 22A-12(e)(3) of the Forest Conservation Law; and

(5) how the standards for afforestation and reforestation requirements in [[Chapter]] subsection 22A-12(e)(4) of the Forest Conservation Law will be met.

C. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is subject to the reforestation requirements of both the nontidal wetlands regulations and this subtitle, subject to the following:

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(1) forested nontidal wetlands which are retained, will be counted toward the forest conservation requirements of this subtitle;

(2) forested wetlands which are permitted to be cleared must be replaced as required under the provisions of Environment Article, Title 9, Annotated Code of Maryland;

(3) clearing within forested wetlands [[shall]] must be shown on the forest conservation plan, but the area shall be subtracted on an acre for acre basis from the total amount of forest to be cut or cleared, and the reforestation requirements of this subtitle will be calculated using the reduced acreage; and

(4) nontidal wetlands shall be considered to be priority areas for forest retention and replacement.

D. Retention Areas.

(1) Forest retention areas must be at least 10,000 square feet in size and 50 feet wide, or be a part of a larger forest area which extends off-site and is protected.

(2) Individual trees described as highest priority for retention in subsection 107A(4) will receive retention credit equal to the area of their critical root zone protected when at least two thirds of the entire critical root zone is protected.

(3) Individual trees which are not the highest priority for retention and tree stands less than 10,000 square feet and 50 feet wide may be credited toward afforestation and reforestation requirements as part of landscaping credit.

(4) Retention area boundaries will be determined by a measure of the aerial extent of remaining forest cover which includes the outer perimeter of the canopy of individual trees, [[and, if applicable]] or the critical root zones that are protected, whichever is greater.

E. Afforestation and Reforestation.

(1) Afforestation and reforestation areas must be at least 10,000 square feet in size and 50 feet wide, or be adjacent to an existing forest area (either on-site or off-site) which is protected.

(2) The following must be considered as high priority [[locations]] for required afforestation and reforestation:

(a) establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;

(b) establish or enhance forested areas on 100-year floodplains, when appropriate;

(c) establish or increase existing forested corridors to connect existing forest

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within or adjacent to the site. Where practical forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;

(d) establish or enhance forest buffers adjacent to critical habitats where appropriate;

(e) establish planting to stabilize natural slopes of 25% or greater and 15% or greater with erodible soils including slopes of ravines or other natural depressions;

(f) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility right-of-ways; and

(g) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.

(3) Planting plans for afforestation and reforestation [[shall]] must include the following:

(a) a minimum of 5 native tree species (unless the site is to be actively managed under an [[state]] approved forest management plan) and 2 species of native understory shrubs;

(b) appropriate site preparation, protection and/or maintenance measures as described in the *Trees Technical Manual*; and

(c) a stocking rate for trees and shrubs and survival requirements, as shown in the following chart:

<u>Size</u>	<u>Number Required⁽¹⁾ (Per Acre)</u>	<u>Approximate Spacing⁽²⁾ (Feet on Center)</u>	<u>Survival Requirement⁽³⁾ (At the End of the Second Growing Season)</u>
TREES			
<u>Whips, 3-4' Height, Container Grown (Minimum 2 Gallon)</u>	<u>350</u>	<u>10 to 12</u>	<u>75% or 260/acre</u>
<u>¾-1" Caliper, B&B or Container Grown (Minimum 5 Gallon)</u>	<u>200</u>	<u>12 to 15</u>	<u>75% or 150/acre⁽⁴⁾</u>
<u>1.5-2" Caliper, B&B or Container Grown (Minimum 15 Gallon)</u>	<u>100</u>	<u>15 to 20</u>	<u>100% or 100/acre⁽⁵⁾</u>
SHRUBS			
<u>Container Grown, 18-24" Height</u>	<u>33</u>	<u>⁽⁶⁾</u>	<u>75% or 25/acre</u>

Notes:

(1) In certain circumstances, any combination of the above mentioned stocking options; or variations of these options in combination with container grown seedlings and/or natural regeneration may be appropriate strategies to fulfill the requirements of an approved Forest Conservation Plan. Instances where the use of combination planting may be appropriate are described in the *Trees Technical Manual*. Use of alternative stocking will be evaluated, along with necessary protection and maintenance measures, on a case-by-case

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basis by the Planning Director.

(2) Spacing does not imply that trees or shrubs must be planted in a grid pattern although it may be necessary for mowing to control invasive vegetation or otherwise reduce competition for the planted trees.

(3) If tree survival at the end of the two-year maintenance period falls below the survival requirements, reinforcement planting up to that amount will be required. If tree survival falls below 50% of the total trees planted, extension of the maintenance period up to another two years will be required in addition to reinforcement planting. Natural regeneration may be counted toward survival requirements on a case-by-case basis as determined by the Planning Director.

(4) Surviving trees must be at least 1" caliper to receive full credit toward survival requirements. Reinforcement planting [[shall]] must be 1" trees.

(5) Surviving trees must be at least 2" caliper to receive full credit toward survival requirements. Reinforcement planting [[shall]] must be 2" trees.

(6) Shrubs should be evenly distributed over the planting area and among the trees.

F. Tree Save Plans

(1) [[Tracts that are exempt from reforestation and afforestation requirements of the Forest Conservation Law, and linear projects which may have specimen or champion tree impacts may be required to submit a tree save plan.

(2) For these plans, an emphasis should be placed on preserving specimen or champion trees and stands of trees which are valuable for compatibility reasons. If the loss of these trees is shown to be unavoidable, replacement will be required.]]

Development applications on tracts which include specimen or champion trees may be required to submit a tree save plan.

(2) Preserving specimen or champion trees, and stands of trees which are valuable for compatibility reasons, must be included in these plans. If the loss of these trees is shown to be unavoidable, replacement will be required.

(3) The replacement ratio will be determined in the following manner:

(a) specimen/champion trees will be replaced by a landscaping plan which may be required to include planting or transplanting of large trees;

(b) significant tree stands will be replaced so as to replace the function of the stand[[.]], for instance, trees which provide screening [[shall]] must be replaced in sufficient kind and number to perform the same function.

G. Credit Toward Afforestation and Reforestation for Landscaping and Tree Save

(1) [[Applicants must demonstrate to the satisfaction of]] The Planning Board or Planning Director, as appropriate, must find that all opportunities for establishing forest



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have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area[[s will be]] is applied.

(2) Newly planted landscape trees must be 2-3" caliper stock to be counted toward requirements.

(3) Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as appropriate, find that tree cover is appropriate. Instances where it may be appropriate to satisfy afforestation requirements using tree cover include:

- (i) developments in urban areas;
- (ii) redevelopments;
- (iii) high-density residential developments;
- (iv) commercial and industrial developments;
- (v) high density mixed-use developments; and
- (vi) some institutional areas.

(4) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements as follows:

- (a) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide will receive full credit for their area;
- (b) landscaping areas and retained tree stands which are less than 2,500 square feet in size or 35 feet wide will receive one quarter credit for their area;
- (c) individual landscape trees will receive one quarter credit for the projected area of their canopy at 20-years;
- (d) individual non-priority trees which are retained will receive one quarter credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is protected; and
- (e) the total credit from these areas may not exceed twenty percent of the overall reforestation requirement for a site.

[[4]] (5) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' afforestation requirements as follows:

- (a) sites with tree cover requirements per subsection [[c]] (3):
 - (i) landscaping areas or retained tree stands of any size will receive full credit for their area;
 - (ii) individual landscape trees will receive full credit for the projected area of canopy at 20-years; and
 - (iii) individual trees which are retained will receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is protected;

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(b) sites with forest cover requirements:

(i) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide will receive full credit for their area;

(ii) landscaping areas and retained tree stands which are less than 2,500 square feet in size or less than 35 feet wide will receive one quarter credit for their area;

(iii) individual non-priority landscape trees will receive one quarter credit for the projected area of their canopy at 20-years;

(iv) individual trees which are retained will receive one quarter credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is protected; and

(v) the total credit from these areas may not exceed twenty percent of the overall afforestation requirement for a site.

[(c) Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as appropriate, find that tree cover is appropriate. Instances where it may be appropriate to satisfy afforestation requirements using tree cover include:

(i) developments in urban areas;

(ii) redevelopments;

(iii) high-density residential developments;

(iv) commercial and industrial developments;

(v) high density mixed-use developments; and

(vi) some institutional areas.]]

109. Forest Conservation Plan Requirements

A. Preliminary Forest Conservation Plans.

(1) Development applications that need more than one approval may submit a preliminary forest conservation plan in conjunction with the first approval. It may be based on conceptual analysis provided that the basic parameters are met and any assumptions are realistic.

(2) A preliminary forest conservation plan ~~[[shall]]~~ must contain the following:

(a) the shape and dimensions of lots, showing ~~[[any existing]]~~ locations of any existing structures and improvements, including paved areas;

(b) locations and dimensions of all existing and proposed rights-of-way, setbacks, easements, stockpile areas, and stormwater management facilities (road and utility rights-of-way which will not be improved as part of the development application must be identified);

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(c) location of building restriction lines and areas to be conserved including floodplains, wetlands and stream buffers;

(d) conceptual locations of proposed structures and improvements, drainage systems, and sediment control measures;

(e) preliminary limits of disturbance of the natural terrain, and location of forest and tree retention areas, [[and]] including acreage, with appropriate justification and proposed long-term protection methods[. Note:] (a conceptual grading plan and/or a more detailed tree survey may be required to determine the feasibility of proposed retention areas);

(f) proposed locations of afforestation and reforestation areas, [[and]] including acreage, if required;

(g) a table containing the following information:

(i) acreage of tract;

(ii) acreage of the tract remaining part of an agricultural use;

(iii) acreage of road and utility rights-of-way which will not be improved

as part of the development application;

(iv) acreage of total existing forest;

(v) acreage of total forest retention;

(vi) acreage of total forest cleared;

(vii) land use category and conservation and afforestation thresholds from subsection 22A-12(a) of the Forest Conservation Law;

(viii) acreage of forest retained, cleared, and planted within wetlands;

(ix) acreage of forest retained, cleared, and planted within 100-year

floodplains;

(x) acreage of forest retained, cleared, and planted within stream buffers;

(xi) total acreage of forest retained, cleared, and planted within priority

areas; and

(xii) linear feet and average width of stream buffer provided; and

(h) a forest conservation worksheet showing calculation of forest conservation requirements.

B. Final Forest Conservation Plans.

(1) A final forest conservation plan must be based on final site grading and must be submitted in conjunction with the final approval needed as part of a development application.

(2) In addition to the items listed in subsection A(2)(a-c),(f),(g) and (h)

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updated by final grading, a final forest conservation plan must include:

(a) final grading plans which include building locations and footprints, retaining walls, road and parking layout, sidewalks and pathways, and location of recreation facilities;

(b) a limit of disturbance line which reflects the limits of all clearing and grading on the tract, and the location of sediment and erosion control devices;

(c) a survey of trees 24 inches and greater DBH for 50' on either side of the limit of disturbance, and delineation of their critical root zones[[. Note:]] (survey of other trees may be required when necessary to determine the feasibility of proposed retention areas);

(d) retention areas including forest, tree stands and other individual trees to be saved, [[and]] including acreage[[, as appropriate]];

(e) an afforestation and/or reforestation planting plan, if required, which contains:

(i) location and acreage of areas to be planted;

(ii) an analysis of the suitability of the site for planting and a description of necessary methods;

(iii) a list of target tree and shrub species, chosen based on analysis of site conditions, which can be used for site planting;

(iv) a plant materials table including size of plants to be installed and quantities;

(v) planting and inspection schedule which is tied to the construction sequence for the project;

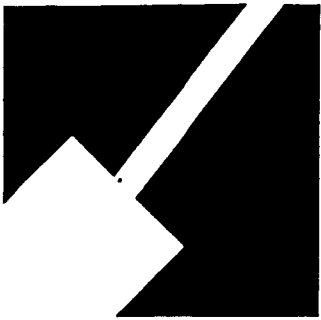
(vi) a maintenance plan which includes provisions for necessary watering, control of competing vegetation, protection from disease, pests, and mechanical injury, and reinforcement planting if plant survival falls below the requirements of subsection 108E(3)(c);

(vii) calculation for financial security which is to be provided in an amount equal to the estimated cost of the required planting and maintenance, or equal to the fee in lieu for the area to be planted; and

(viii) a maintenance and monitoring agreement; and

(f) [[if]] off-site planting [[is]], if required, [[the plan proposed]] which includes the items listed in subsection (e) plus a map of the proposed planting site showing location, soils, and environmental features which are priority planting areas as stated in subsection 108E(2).

(g) permanent protection area boundaries and long-term protection



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agreement, where appropriate, and building restriction lines;

(h) a protection plan which shows:

(i) location of temporary and permanent protection devices, as appropriate, which [[shall]] must be installed if clearing, grading, or construction occurs within 50 feet of a retention area boundary;

(ii) stockpile areas and borrow pits;

(iii) specifications and details for the protection devices;

(iv) a narrative of stress reduction or other measures which are needed

for specific trees; and

(v) a field inspection schedule pursuant to Section 110; and

(i) calculation of the fee in lieu of reforestation or afforestation, if

appropriate.

110. Inspections

A. The Planning Department [[shall]] must conduct field inspections of a site subject to an approved forest conservation plan as follows:

(1) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins[[. T]] (the purpose of the meeting will be to field verify the limits of clearing specified on the approved plan, authorize necessary adjustments, and to authorize necessary stress reduction measures and installation of protection devices);

(2) after necessary stress reduction measures have been completed and the protection measures have been installed, but before any clearing or grading begins[[. T]] (the purpose of the meeting will be to field verify that both measures have been done correctly and to authorize clearing and grading);

(3) following completion of all construction activities to determine the level of compliance with the provisions of the forest conservation plan;

(4) prior to the start of any required reforestation and afforestation planting[[. T]] (the purpose of the meeting will be to determine whether necessary pre-planting measures have been completed and authorize any necessary adjustments to the planting specifications);

(5) after required reforestation and afforestation planting has been completed to verify that the planting is acceptable and begin the 2-year maintenance period; and

(6) at the end of the 2-year maintenance agreement to determine the level of compliance with the provisions of the planting plan and, if appropriate, authorize release of the financial security.

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[105.]111. Declaration of Intent

A. [General] A declaration of intent verifies that property subject to the following activities are exempt from the Forest Conservation Law:

(1) An activity conducted on an existing single lot that is required to construct a dwelling house or accessory structure intended for the use of the owner, [[provided]] if the activity does not result in the cumulative cutting, clearing or grading of more than 40,000 square feet of forest, and complies with the other requirements of [[Chapter]] subsection 22A-5(a) of the Forest Conservation Law;

(2) A real estate transfer subject to [[Chapter]] subsection 22A-5(m) of the Forest Conservation Law.

B. [Filing Process] [Two] An original copy of a declaration of intent, signed by the applicant named on the development or sediment control application, must be filed with the Planning Director. The declaration must provide Park and Planning Department staff with access to the property to verify compliance with the declaration.

C. The declaration of intent is effective for 5 years.

D. The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:

- (1) does not conflict with the purpose of any existing declaration of intent; and
- (2) complies with the applicable requirements for an exempted activity.

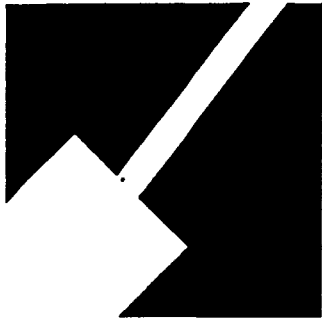
E. If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent:

- (1) there will be an immediate loss of exemption; and
- (2) there may be a noncompliance action taken by the Planning Board under this subtitle.

F. An applicant may apply for a regulated activity on the area of the property not covered under the declaration of intent if the requirements of this subtitle are satisfied.

G. The Planning Board may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:

- (1) meet the requirements in this subtitle for a regulated activity;



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- (2) pay a noncompliance fee;
- (3) be subject to other enforcement actions appropriate under Article III of
[[Montgomery County Code, Chapter 22A]] the Forest Conservation Law; and[[/or]]
- (4) file a declaration of intent with the Planning Board.

H. In its determination of appropriate enforcement action, the Planning Board may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this subtitle.

I. Agricultural Activities or Commercial Logging and Timber Harvesting. A declaration of intent may be required as part of a sediment and erosion control plan which ensures that the activity meets the exemption conditions [[of an exemption as stated]] in [[Chapter]] subsection 22A-5(b) and (d) of the Forest Conservation Law.

112. Exemptions

A. A request[[s]] for exemption from forest conservation requirements per Sections 22A-5, 22A-6, and 22A-7 of the Forest Conservation Law [[shall]] must be made in writing to the Planning Director.

B. The following information [[shall]] must be provided as part of an exemption request:

- (1) [[a cover letter detailing the type of exemption requested and how it]] an application form;
- (2) a written request detailing how the exemption applies to the proposed plan;
[[2]](3) a Natural Resources Inventory prepared per Section 106A(1) and the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
- [[3]](4) a signed original copy of the declaration of intent, if applicable; and
[[4]](5) other appropriate information which supports the exemption request including a copy of the proposed plan for development, if applicable.

C. A waiver from the requirement to provide a Natural Resources Inventory with an exemption request may be granted [[in the following instances]] for:

- (1) single lot exemptions per subsection 22A-5(a) of the Forest Conservation Law if a site plan which shows existing and proposed topography and forest boundaries is

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submitted with the exemption request; and

(2) applications for other exemptions, [[provided]] if the site being developed does not contain any forest or natural features, and a plan showing existing features and topography is submitted with the exemption request.

[106.]113. Amendment to Forest Conservation Plan and Declaration of Intent

A. Forest Conservation Plan

(1) Minor amendments which do not result in more than a total of [[the clearing of more than an additional]] 5000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis. These minor amendments may include field modifications and [[exchanging]] substituting one area of forest, for retention of another of equal or greater size and value.

(2) Major amendments which entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or Planning Director (depending on who approved the original plan).

B. Declaration of Intent

(1) A request to amend a declaration of intent must be submitted to and approved by the Planning Director.

114. Forest Conservation Maintenance and Management Agreements

A. Maintenance Agreements.

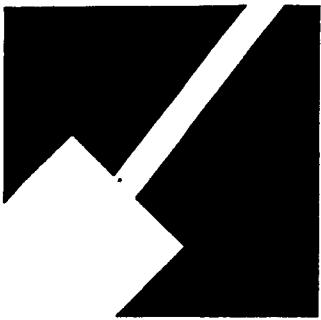
(1) [[Application.]] A person required to conduct afforestation or reforestation under this regulation and the Forest Conservation Law [[shall]] must include in the forest conservation plan a binding maintenance agreement for a minimum length of 2 years.

(2) The agreement [[shall]] must be submitted and approved by the Planning Director [[prior to]] before the [[commencement]] start of the 2-year maintenance period.

(3) The maintenance agreement [[shall]] must detail how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment of forest.

(4) The person required to conduct the afforestation or reforestation, after this referred to as the "obligee", [[shall]] must present evidence of a legal right to implement the proposed maintenance agreement on a selected site by providing:

(a) an executed deed conveying title to a selected site to the obligee;



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- (b) an executed conservation easement agreement;
- (c) written evidence of the landowner's consent to the use of a selected site;
- (d) a fully executed option agreement, long-term lease agreement, or contract of sale for a selected site; or
- (e) other written evidence of a possessory or ownership interest in a selected site.

(5) The Planning Board [[shall]] must be a signatory to the maintenance agreement, or [[shall]] must be designated a third-party beneficiary of the agreement.

(6) The Planning Board will not release [[a bond]] required financial security or end monitoring without receipt of a legally binding deed, long-term lease, or conservation easement agreement on those lands where afforestation or reforestation will occur.

(7) The maintenance agreement must provide Park and Planning Department staff with access to the property to verify compliance with the afforestation or reforestation [[site]] planting plan.

B. Bonding.

(1) Financial security must be provided per [[the requirements of]] subsection 22A-12(i) of the Forest Conservation Law.

(2) The full amount must be provided before authorization [[will be]] is granted to begin clearing and grading activities [[to begin]].

(3) The value of the financial security may be reduced after it is submitted if the obligee proves to the satisfaction of the Planning Director that the costs to complete the mitigation project have been reduced.

(4) The Planning Director will determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation by [[taking into account]] considering the following:

- (a) [[number of acres]] the size of the afforestation or reforestation area;
- (b) the method of afforestation or reforestation [[that was]] used;
- (c) plant survival and overall plant health within the planting areas;
- (d) the cost of planting or replacement materials;
- (e) the [[cost of]] project's maintenance [[of the project]] costs; and
- (f) other relevant factors.

(5) The financial security must be in force until all measures for reforestation, afforestation, and maintenance requirements have been [[fulfilled]] met to the satisfaction of the Planning Director, or until the in lieu fees have been paid.

(6) A surety bond or other alternative form of security may not be canceled by

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the surety, bank, or other issuing entity unless both of the following conditions are satisfied:

(a) the surety notifies the Planning Board and the applicant of its intent to cancel the bond, in writing, by registered mail, not less than 90 days before cancellation; and

(b) at least 45 days before the cancellation date indicated in the notice, the applicant files a commitment from a surety, bank, or other issuing entity to provide a substitute security which will be effective on the cancellation date indicated in the notice.

(7) Release of part or all of the financial security may be authorized by the Planning Department enforcement and monitoring staff after planting has been done.

(8) ~~[[To determine if release should occur,]] An applicant must request an inspection of the planted areas by Planning Department enforcement and monitoring staff ~~[[should be requested by the applicant]] immediately after planting is complete.~~~~

(9) Planning Department enforcement and monitoring staff ~~[[shall]] must determine whether release should occur, and how much, based on the following factors:~~

(a) adherence to the planting plan;

(b) condition of the planted material;

(c) size of planting stock; and

(d) provisions of the protection and maintenance plan.

(10) Full release of the financial security will occur at the end of the two-year maintenance period once an inspection has been requested by the applicant and it is determined that survival requirements have been met.

115. Long-Term Protective Agreements

A. An applicant ~~[[shall]] must have in effect at all times, approved long-term protective measures as provided in subsection 22A-12(h)(2) of the Forest Conservation Law, to retain as forest, all land forested, afforested, or reforested under this subtitle and limit the uses of forest to those which are consistent with forest conservation ~~[[.]]~~~~

(1) Long-term protective measures may include, but are not limited to:

~~[[~~(1) A Forest Management Plan approved by the state Department of Natural Resources;

(2) A Forest Conservation and Management Agreement, as provided in Tax-Property Article, §8-211, Annotated Code of Maryland, and COMAR 08.07.03; and

(3) Other legally binding protective agreements which protect land which is forested, afforested, or reforested under this subtitle and which limit the uses of forest to those which are consistent with forest conservation. Other protective agreements include:]]

(a) Covenants running with the land;



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- (b) Deed restrictions;
- (c) Conservation easements; and
- (d) Land trusts.

(2) A forest management plan may be included as part of a long-term protective agreement if the Planning Director finds it is consistent with County forest conservation objectives.

B. An applicant may include in a forest conservation plan another long-term protective measure if the Planning Board or Planning Director finds that the measure will provide for the long-term protection of the areas retained, afforested, or reforested under this subtitle.

[107.]116. Technical Manual for Trees

The *Technical Manual for Trees* is [incorporated in full as part of these Regulations] a guidance document, adopted by the Planning Board, which provides further clarification of the requirements of Chapter 22A of the Montgomery County Code and these regulations.

[108. Special Exceptions

A. General

Special exception applications for existing structures are exempt from the forest conservation law if the proposed use will not result in clearing of existing forest or trees.

B. Amendment

Modifications to an existing special exception use which was approved prior to July 1, 1991, will be exempt from the requirements of the Forest Conservation Law provided that the revision will not result in the cumulative clearing of more than 5000 additional square feet of forest.]



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