



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 3
3/14/02

March 8, 2002

Memorandum

TO: Montgomery County Planning Board

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

SUBJECT: Planning Board Regulation 1-01(COMCOR 18-01) - Forest
Conservation Amendments

The proposed regulations are being brought back to the Board for continued discussion and action. Two public hearings and a work session to discuss issues raised have been held by the Board. Following Board action on the regulations, they will be forwarded to the County Council for their review and approval.

The staff memo prepared for the work session contained a summary of the regulations and a discussion of issues related to them raised as part of public comment. This memo contains additional clarification of the issues and discussion of other issues raised as part of the work session. Per the Board's request, this information is presented in the attached table (Attachment "A") to facilitate discussion and action. The previous work session memo is also attached for reference (Attachment "B").

FOREST CONSERVATION REGULATIONS – ISSUES AND RECOMMENDATIONS TABLE

ATTACHMENT "A"

PROPOSED REGULATION	ISSUE RAISED	PROPOSED CHANGE IN RESPONSE TO COMMENT	RELATED FOREST CONSERVATION LAW OR OTHER LANGUAGE	STAFF COMMENTS
<p>Sec. 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.</p>	<p>Given changes to the statute which now require affirmative action by those requesting exemptions, the law does not just apply to activities "that require a forest stand delineation and a forest conservation plan".</p>	<p>Sec. 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.</p>	<p>Sec. 22A-4. 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 Sections *** must seek confirmation from the Planning Director that the cutting, clearing or grading is in fact exempt from Article II.</p>	<p>No comments.</p>
<p>Sec. 104. Definitions (2) "Afforestation threshold" means a specific percentage of forested land on a site with a low percentage of existing forest cover, based on the net tract area.</p>	<p>Definition is unclear.</p>	<p>Sec. 104. Definitions (2) "Afforestation threshold" means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law a specific percentage of forested land on a site with a low percentage of existing forest cover, based on the net tract area.</p>	<p>Sec. 22A-12(a) Table: Forest Conservation Threshold and Required Afforestation as a Percentage of the Net Tract Area. Sec. 22A-12(d)(1) A site with less than 20 percent of the net tract area in forest cover must be afforested in accordance with *** subsection (a). Sec. 22A-12(f)(2)(D) If a site covered by this section is unafforested, on-site afforestation must equal the applicable afforestation threshold.</p>	<p>The definition does not need to repeat language already stated more clearly in the law.</p>

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<p>Sec. 104. Definitions (3) "Conservation threshold" means a specific percentage of forested land on sites where existing forest is being cleared, based on the nest tract area.</p>	<p>None</p>	<p>Sec. 104. Definitions (3) "Conservation threshold" means a specific percentage of a tract which is used in determining reforestation requirements per Sections 22A-12(c), and (f) of the Forest Conservation Law of forested land on sites where existing forest is being cleared, based on the nest tract area.</p>	<p>Sec. 22A-12(a) Table: Forest Conservation Threshold and Required Reforestation as a Percentage of Net Tract Area Sec. 22A-12(c) Reforestation. The forest conservation plan must provide reforestation as follows: *** for all existing forest *** cleared *** below the applicable forest conservation threshold, the area of forest must be reforested at a ratio of *** Sec. 22A-12(f) Special provisions for minimum retention, reforestation and afforestation ***</p>	<p>Although a specific issue was not raised concerning the conservation threshold definition, staff believes it is similarly confusing to the afforestation threshold definition and would change it for the same reasons.</p>
<p>Sec. 104.(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.</p>	<p>The definition of "critical root zone" includes unnecessary language describing it as "the area around a tree which should be protected unless other supplemental protection measures are provided". Remove "the majority of" from the definition</p>	<p>Sec. 104.(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.</p>	<p>No directly related sections in state or county law, but the State Technical Manual and other County's regulations and manuals contain similar provisions.</p>	<p>The language regarding protection is necessary as part of the overall requirements for tree save in these regulations. It is a generally accepted arboricultural tenant that the simplest way to provide protection for a tree is to preserve its entire critical root zone. However, it is also accepted that other enhancement and protection methods can be used to offset root disturbance if that is not possible. The language of the definition identifies the requirement for these additional measures in the regulations.</p>

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<p>Sec. 108 D(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.</p>	<p>The retention credit given as part of the provisions of Section 108 should never be "full" credit unless the entire critical root zone is protected. Disturbance of 1/3 of the critical root zone for specimen or champion trees seems too high to allow.</p>	<p>No change.</p>	<p>No directly related sections, but other County regulations contain similar provisions. County FCI: 22A-12(b) Retention. (1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition *** (2) In general, areas protected under this subsection include: *** (D) trees connected to an historic site; (E) exceptionally large trees; reasonably be altered.</p>	<p>There is a limit to which the critical root zone can be impacted while still saving a tree, even with additional protection measures. The existing regulations set that limit at one third of the critical root zone. Based upon application of the standards up to this point, staff believe this standard is adequate provided the additional enhancement techniques covered in the critical root zone definition are used. Highly constrained sites require a balance of objectives and staff believes the standards for tree save don't have to restrict all impacts given the various proven tree protection techniques available. The language in the retention provisions of the law provides the means to protect as much of the critical root zone as possible, not just the 2/3.</p>
<p>Sec. 107 A(4) an individual tree, and the majority of its critical root zone, with one or more of the following characteristics: (a) *** part of a historic site *** (b) *** national, state or local champion tree; (c) *** diameter *** 75 percent or more of the designated champion tree; and (d) a tree which is a specimen of a species.</p>	<p>Reference to the "majority" of the critical root zone for a priority tree in Section 107 could be misinterpreted as permitting inadequate protection of the tree.</p>	<p>A.(4) an individual tree and the majority of its critical root zone with one or more of the following characteristics:</p>	<p>County FCI: 22A-12(b) Retention. (1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition *** (2) In general, areas protected under this subsection include: *** (D) trees connected to an historic site; (E) exceptionally large trees;</p>	<p>No comments.</p>

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<p>104.(17) "Flood, One Hundred-Year" means a flood which has a 1 percent chance of being equalled or exceeded in any given year, or which occurs, on average, once every 100 years, after total ultimate development of the watershed.</p> <p>104.(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.</p>	<p>Definition of "flood, one hundred-year" and "floodplain, one hundred-year" should be consistent with state and county law.</p>	<p>104.(17) "Flood, One Hundred-Year" means a flood which has a 1 percent chance of being equalled or exceeded in any given year, or which occurs, on average, once every 100 years, after total ultimate development of the watershed. Unless otherwise stated, this calculation is based on the contributing watershed being completely under existing zoning.</p> <p>104.(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 is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood, based on ultimate development of the watershed under existing zoning.</p>	<p>State FCL: One hundred year floodplain. — (1) 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. (2) A 100-year flood is a flood which has a 1% chance of being equalled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded.</p> <p>Environmental Guidelines: 100-Year Flood — a flood that has a one-percent statistical probability of being equalled or exceeded in a given year (or that would occur on the average of once in every one hundred years). Unless otherwise stated, this calculation is based on the contributing watershed being completely under existing zoning.</p> <p>100-Year Floodplain — the area along a river, stream, pond, SWM structure, or watercourse that would be inundated by a 100-year flood, based on ultimate development of the watershed under existing zoning.</p> <p>County FCL: 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.</p>	<p>Slightly different wording of the various definitions, but the meanings are basically the same. The County's definitions are more stringent than the State's because they are based on ultimate development of the watershed under existing zoning. The definition of "floodplain" contained in the county FCL should be broadened in the regulations to contain the more stringent language. The regulation definition of "flood" should be consistent with the Environmental Guidelines definition.</p>

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<p>Sec. 108.E.(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 (either on-site or off-site) which is protected. (2) The following must be considered as high priority for required afforestation and reforestation: *** (1) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility right-of-ways;</p>	<p>Concern that 50 foot width in the definition of forest will become the standard width needed when perimeter tree save is proposed as a means of providing compatibility with adjacent properties.</p>	<p>No change.</p>	<p>County FCL: <i>Forest</i> means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide. However, 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. <i>Forest</i> 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.</p>	<p>The regulations give high priority to creating or retaining forest as a buffer between two incompatible land uses. However, they don't prohibit other methods of buffering. The stringent standards for retention of highest priority forests in the law do not apply to these buffers. Staff recommends further discussion of standards for compatibility, including clarification that the type and width of compatibility buffer may be determined case by case, be included in the revisions to the <i>Trees Technical Manual</i>.</p>
<p>Definition contained in law.</p>	<p>Concern that the forest definition is too broad because it doesn't include a measure of forest quality and therefore, areas of low quality forest are included.</p>	<p>No change.</p>	<p>County FCL: <i>Forest</i> means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide. However, 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. <i>Forest</i> 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.</p>	<p>Having low quality forest in a priority area such as a stream buffer is always better than having no forest at all. Forest quality is given consideration when determining priority for retention if a forest extends outside the priority area.</p>

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<p>Sec. 104.(27) "Intermittent stream" means a stream defined as intermittent in the latest version of <i>Environmental Management of Development in Montgomery County, Maryland</i> (MNCPPC).</p>	<p>Definition of "intermittent stream" not consistent with the definition contained in the State FCL, and may not be as stringent.</p>	<p>No change.</p>	<p>State FCL: *** a stream in which surface water is absent during a portion of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey (USGS) as confirmed by field verification. County Environmental Guidelines: *** surface waters, contained within a defined channel or bed, that flow at least once per year. An intermittent stream, for purposes of these guidelines, includes one or more of the following characteristics: (1) defined or distinct channel; (2) hydric soils or wetlands within or adjacent to channel; (3) hydraulically sorted sediments; (4) removal of vegetative litter; or (5) loosely rooted vegetation by the action of moving water.</p>	<p>This definition is more stringent than the state's definition since any defined channels which meet the criteria can be determined to be an intermittent stream, not just those that are shown on a large-scale USGS quadrangle map.</p>
<p>Sec. 104.(36) "Perennial stream" means a stream defined as perennial in the latest version of <i>Environmental Management of Development in Montgomery County, Maryland</i> (MNCPPC).</p>	<p>Definition of "perennial stream" not consistent with the definitions contained in the State FCL, and may not be as stringent.</p>	<p>No change.</p>	<p>State FCL: *** a stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the USGS, as confirmed by field verification. County Environmental Guidelines: *** a stream that has base flow all year.</p>	<p>Guideline definition is less stringent than the state's definition since it does not stipulate that continuous flow has to be based upon an average rainfall year. Per the county's guidelines, in a drought year some perennial streams could be classified as intermittent. However, since the guidelines require <i>intermittent and perennial streams to have the same buffers, our definition is not effectively less stringent.</i></p>

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<p>Sec. 104(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 <i>Environmental Management of Development in Montgomery County, Maryland</i> (MNCPPC).</p>	<p>Definition of "stream buffer" not consistent with the definitions contained in the State FCL, and may not be as stringent.</p>	<p>No change</p>	<p>State FCL: *** all lands lying within 50 feet, measured from the top of each normal bank of any perennial or intermittent stream." County Environmental Guidelines: *** an undisturbed strip of natural vegetation contiguous with and parallel to the bank of a perennial or intermittent stream that may be designed to: protect hydraulically adjacent slope areas, maintain or improve the water temperature regimen/water quality of the stream(s), protect natural wetlands, provide groundwater storage/recharge for a stream, complement regulations pertaining to the 100-year ultimate floodplain, provide wildlife habitat, open space, or both, complement on-site erosion/sediment control measures by serving as a back-up natural filter/trap.</p>	<p>Staff has given further thought to this definition and, contrary to our previous recommendation, we recommend keeping the definition as proposed. Previously, we suggested removing language referring to "a strip of natural vegetation" because the state uses "all lands". Upon further consideration, we would like to remain consistent with the definition of our guidelines, and we believe reference to the buffer area having to be "natural vegetation" is not less stringent than the state definition.</p>

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<p>Sec. 107. 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 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 be reasonably altered: ...</p> <p>B. The following should also be given high priority for preservation where feasible: (1) a forested area which provides a corridor 300 feet wide or more of primarily native vegetation between two larger forest tracts; ...</p>	<p>Concern that the 300 foot stream valley buffers on either side of a stream will become a standard requirement for all forested stream valleys, because 600 forest corridors are included in the proposed regulation as a secondary priority for retention.</p>	<p>No change</p>	<p>County FCL: 22A-12(b) Retention. (1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that: (A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention; (B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and (C) the development proposal cannot reasonably be altered. (2) In general, areas protected under this subsection include: (A) floodplains, stream buffers, steep slopes, and critical habitats; (B) contiguous forests; (C) rare, threatened, and endangered species; (D) trees connected to an historic site; (E) exceptionally large trees; and (F) areas which have been designated as priority save in a master plan or functional plan.</p>	<p>The strict statutory forest retention requirements of Section 22A-12(b) of the law clearly apply to the highest priority forest as described in this regulation. They will not be used mandate protection of high priority forest. Where protection of high priority forests is possible without affecting density, and on properties which need to meet the minimum retention requirements of Section 22A-12(f) of the law and have already taken credit for all available highest priority area, high priority areas could be required to be saved.</p>

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<p>Sec. 107A. 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 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:</p>	<p>The language of Section 107. A. does not accurately reflect the standards of Section 22A-12(b)(1) of the law.</p>	<p>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 Planning Director or Planning Board find that the provisions of reasonable efforts, as specified in subsection 22A-12(b)(1) of the Forest Conservation Law, have been met made to protect them and the development proposal plan cannot reasonably be altered:</p>	<p>County FCL: 22A-12(b) Retention. (1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that: (A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention; (B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and (C) the development proposal cannot reasonably be altered.</p>	<p>Proposed change clarifies the regulation.</p>

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<p>Sec. 107A. 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 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:</p>	<p>Section should include, or reinforce by cross-reference, the provisions of Section 50-32(d) of the Montgomery County Code which provide the Board with the authority to delete lots as part of satisfying the requirements of the forest conservation law. Conversely, issue was also raised that language be added that will limit the amount of density loss caused by the recent Section 22A-12(b) changes to the law.</p>	<p>No change.</p>	<p>County FCI: 22A-12(b) Retention. (1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that: (A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention; (B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and (C) the development proposal cannot reasonably be altered.</p>	<p>Both of these points of view were discussed during Planning Board and County Council review of the proposed changes to the forest conservation law. The Board and Council approved the language of subsection 22A-12(b)(1) in response. Not having reference to Section 50-32(d) in the law or regulations does not affect the Board's ability to apply it. Staff continues to believe that the flexibility for different housing types in the zones which are affected by minimum retention requirements will prevent significant reduction in the number of new housing units in the County, especially in "Smart Growth" areas. The results of applying the new standards will be closely tracked. The results of this monitoring should indicate whether the requirements are too restrictive.</p>

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<p>Sec. 108.G.(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.</p>	<p>Developing properties that are subject to minimum afforestation standards in Section 22A-12(f) of the forest conservation law should be able to use tree cover instead of forest cover as stipulated in the law and regulations for certain other properties.</p>	<p>Needs further discussion</p>	<p>County FCL: 22A-12(f)(2)(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 unafforested, on-site afforestation must equal the applicable afforestation threshold. 22A-12(f)(3) If the Planning Board or Planning Director, as appropriate, find that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.</p>	<p>Developments covered by the minimum afforestation requirements in Section 22A-12(f) include, high density mixed uses and high density residential using optional methods. Staff believes "forest" can be provided as part of these uses without affecting density if maximum use is made of the flexibility in unit types available as part of their development standards. Given the requirement for use of maximum flexibility, staff is not opposed to leaving open the option for Sec. 108.G.(3) to apply in some circumstances. Staff would like to direction from the Board on this issue. Interpretation is also needed from the Legal staff that such a provision is permitted given the existing language of the law.</p>
<p>Sec. 110. A. The Planning Department must conduct field inspections of a site subject to an approved forest conservation plan as follows: ...</p>	<p>After further consideration of this section, and based upon our experience with plan implementation, staff recommends adding a provision to clarify the applicants' responsibilities as part of inspections.</p>	<p>Sec. 110. B. These inspections must be requested by the applicant at the designated points.</p>	<p>County FCL: Sec. 22A-15(c) Required inspections. The Planning Department should conduct at least 3 field inspections of a tract subject to an approved forest conservation plan.</p>	<p>No further comments.</p>

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<p>Sec. 111. Declaration of Intent Sec. 112. Exemptions (see Attachment A-1 to this table for complete language)</p>	<p>Sections 111 and 112 are unclear as currently drafted. Also Section 111 states that "a declaration of intent verifies that property is exempt", which is incorrect.</p>	<p>See Attachment A-1 to this table for complete proposed language.</p>	<p>County FCI: Sec. 22A-5. Exemptions. The requirements of Article II do not apply to: (a) an activity conducted on an existing single lot *** if the activity: *** (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. Sec. 22A-5(m) a real estate transfer *** if: *** (2) both the grantor and grantee file a declaration of intent; Sec. 22A-26. Regulations. (a) Adoption. The Planning Board must adopt regulations, including *** procedures to amend a forest conservation plan and declaration of intent.</p>	<p>Staff agrees that clarification is needed. We recommend the order of the sections be reversed and that certain language of the sections be revised. Staff also recommends that subsections G through I under Declaration of Intent be moved to the Exemptions section (see Attachment A-1).</p>

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<p>No requirements for notice included in the regulations.</p>	<p>Regulations should require notice and an opportunity to comment for adjacent properties and community associations when an exemption request is made.</p>	<p>No change.</p>	<p>No requirements for notice in state or county legislation.</p>	<p>Notice and opportunity for comment are always provided if an exemption is reviewed in conjunction with plans that require Planning Board or Board of Appeals review. There are, however, exemptions granted at the Director/staff level for sediment control permits that do not go to the Board. The amount of time needed for exemption review of sediment control permits has already increased because of more stringent requirements added to the forest conservation law. Provisions for additional notice and opportunity for comment would further increase the review time, and would increase the costs to applicants since they would have to provide the notice. Some of these cases would likely generate the need for Planning Board review that doesn't now occur.</p>

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<p>Sec. 113. A(1) Minor amendments which do not result in more than a total of 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 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 upon who approved the original plan).</p>	<p>The Board raised a concern that notice should be given to adjacent property owners when approved forest conservation plans are revised.</p>	<p>Sec. 113(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 upon who approved the original plan). Notice of major plan amendments and opportunity for comment must be given to adjacent property owners as part of the Planning Board or Planning Director approval processes.</p>	<p>Sec. 22A-11(2) Modification to an approved plan. The Planning Director may approve modifications to an approved forest conservation plan that are consistent with this Chapter if: (A) 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 (C) action is otherwise required in an emergency situation. Any other modification must be approved by the agency that approved the forest conservation plan.</p>	<p>Several forest conservation plans per year are approved at the Director/staff level for sediment control permits that do not go to the Board. In practice, staff usually requires notice of these changes be given to adjacent property owners. The new language formalizes this practice.</p>

PROPOSED REGULATION	ISSUE RAISED	PROPOSED CHANGE IN RESPONSE TO COMMENT	RELATED FOREST CONSERVATION LAW OR OTHER LANGUAGE	STAFF COMMENTS
<p>Sec. 114.B.(1) Financial security must be provided per subsection 22A-12(i) of the Forest Conservation Law. *** (5) The financial security must be in force until all measures for reforestation, afforestation, and maintenance requirements have been met to the satisfaction of the Planning Director. *** (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. *** (9) Planning Department enforcement and monitoring staff 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 *** it is determined that survival requirements have been met.</p>	<p>Basing release of bonds upon survival makes the process too open-ended. Options for overplanting at the end of the two year maintenance period if survival falls below specified levels rather than extension of maintenance and bonding periods should be provided.</p>	<p>No change.</p>	<p>County FCL: Sec. 22A-12(i)(5) 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.</p>	<p>Staff believes that as now proposed, the regulations would allow for an option such as the overplanting suggested by MNCBA to be considered as grounds for bond release (subsections 114.B. (7), & (9)). Staff is not opposed to setting target levels for such options, but we believe it should be as part of the <i>Trees Technical Manual</i>.</p>

Existing Language Sections 111 and 112

111. Declaration of Intent

A. 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, 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 subsection 22A-5(a) of the Forest Conservation Law;

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

B. 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 of this subtitle for a regulated activity;

(2) pay a noncompliance fee;

(3) be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; and

(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 in subsection 22A-5(b) and (d) of the Forest Conservation Law.

112. Exemptions

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

- B. The following information must be provided as part of an exemption request:
- (1) an application form;
 - (2) a written request detailing how the exemption applies to the proposed plan;
 - (3) a Natural Resources Inventory prepared per Section 106A(1) and the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
 - (4) a signed original copy of the declaration of intent, if applicable; and
 - (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 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 submitted with the exemption request; and
 - (2) applications for other exemptions, 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.

Proposed Changes to Sections 111 and 112

111. Exemptions

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

- B. The following information must be provided as part of an exemption request:
- (1) an application form;
 - (2) a written request detailing how the exemption applies to the proposed plan;
 - (3) a Natural Resources Inventory prepared per Section 106A(1) and the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
 - (4) an signed original copy of a declaration of intent, if applicable required, signed by the applicant named on the development or sediment control application; and
 - (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 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 submitted with the exemption request; and
 - (2) applications for other exemptions, 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.

- D. The Planning Board may require a person failing to file an exemption request per section 22A-4 of the Forest Conservation Law or found in noncompliance with an exemption or declaration of intent to:
- (1) meet the requirements in this subtitle for a regulated activity;
 - (2) pay a noncompliance fee;
 - (3) be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; and
 - (4) file an exemption with the Planning Board.

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

112. Declaration of Intent

A. A declaration of intent is an affirmation by an applicant verifies that property is subject to the following activities and limitations and therefore meet the exemption provisions of 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, 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 subsection 22A-5(a) of the Forest Conservation Law;

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

C. 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 of this subtitle for a regulated activity;~~

~~_____ (2) pay a noncompliance fee;~~

~~_____ (3) be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; and~~

~~_____ (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.~~

G. 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 in subsection 22A-5(b) and (d) of the Forest Conservation Law.

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760MCPB
Item # 8
1/17/02

January 11, 2002

Memorandum

TO: Montgomery County Planning Board

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

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

Overview

The proposed Planning Board regulation amends existing Forest Conservation Regulation No. 1-97(COMCOR 24-96) as part of a comprehensive update to the County forest conservation program. The proposed regulation (see Attachment #1) was introduced in June, 2001 and public hearings were held on September 13, 2001 and November 15, 2001 following public comment periods. The written comments and public hearing testimony received are included in Attachment #2.

This memo includes a brief summary of each section of the proposed regulations and then discusses issues related to the section raised as part of public comment or noted by staff. Staff responses and recommendations are also included.

Following completion of this work session, and if the Board does not feel additional work sessions are needed, staff will make changes to the regulations as the Board directs and bring them back to the Board for final review and action. Following the Board's action, the regulations will be forwarded to the County Council for their review and approval.

Discussion of the Proposed RegulationsSec. 101. Preamble

The preamble states the purpose of the proposed amendments which is to update and clarify the existing regulations and add the regulatory provisions from the existing *Trees Technical Manual*. No issues raised.

102. Authority

The section refers to Chapter 22A, Forest Conservation Law as the authority for the regulations and specifies that they will apply to regulated activities that require a forest stand delineation and forest conservation plan.

Issue: An issue was raised by Ms. Susanne Lee, representing the Glen Hills Citizen Association. She notes that given changes to the statute which now require affirmative action by those requesting exemptions, the law does not just apply to activities “that require a forest stand delineation and a forest conservation plan”.

Staff response/recommendation: Staff agree and recommend revision to the section as follows:

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]]**.

Please Note: The staff recommended changes included in this memo show the language of the latest version of the proposed regulations from the Montgomery County Register with suggested changes highlighted as double-underlined for additional language and **[[double-brackets]]** for deleted language.

103. Transition Provision

The section defines the term “substantially complete” as it is used for plans subject to the transition provision contained in subsection 22A-7(a)(2) of the forest conservation law. No issues raised.

104. Definitions

The section defines key terms used in the regulations and law.

Ms. Lee raised several issues regarding this section. She points out certain definitions which are unclear, or may be inconsistent with the County and/or State forest conservation laws. She also believes some of the definitions may be less stringent than the State’s definitions for the same term.

Issue: Ms. Lee notes that the definition of “afforestation threshold” is very unclear.

Staff response/recommendation: Staff agree with this comment. We also think the definition of “conservation threshold” is similarly confusing and recommend the following changes:

(2) “Afforestation threshold” means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law [[a specific percentage of forested land on a site with a low percentage of existing forest cover, based on the net tract area]].

(3) “Conservation threshold” means a specific percentage of a tract which is used in determining reforestation requirements per Sections 22A-12(c), and (f) of the Forest Conservation Law [[of forested land on sites where existing forest is being cleared, based on the net tract area]].

Issue: Ms. Lee raises several issues concerning how the critical root zone of a tree which is defined in this section, and used in Sections 107 and 108. First, Ms. Lee believes the definition of “critical root zone” includes unnecessary language describing it as “the area around a tree which should be protected unless other supplemental protection measures are provided”. She also believes the retention credit given as part of the provisions of Section 108 should never be “full” credit unless the entire critical root zone is protected. Finally, she notes that reference to the “majority” of the critical root zone for a priority tree in Section 107 could be misinterpreted as permitting inadequate protection of the tree.

Staff response/recommendation: Staff’s response to these issues is interrelated. Staff believes including the language regarding protection is necessary as part of the overall requirements for tree save in these regulations. It is a generally accepted arboricultural tenant that the simplest way to provide protection for a tree is to preserve its entire critical root zone. However, it is also accepted that other enhancement and protection methods can be used to offset root disturbance if that is not possible. The language of the definition identifies the requirement for these additional measures in the regulations.

There is a limit to which the critical root zone can be impacted while still saving a tree, even with additional protection measures. The existing regulations set that limit at one third of the critical root zone. Based upon application of the standards up to this point, staff believe this standard is adequate provided the additional enhancement techniques are used. When they are, Section 108 of the regulation stipulates that credit for the area of the protected critical root zone can be applied toward retention, reforestation and afforestation requirements. The credit is full credit, or 1:1 for the area of the critical root zone that is saved, when the individual trees are specimens or champions, and partial credit when other than specimen trees are saved.

The regulations establish the minimum acceptable tree save requirements by the language contained in both the definition and the retention language of Section 108. They are: protection of the entire critical root zone, or protection of at least two-thirds of the critical root zone with other appropriate protection and enhancement measures. Highly constrained sites require a balance of objectives and staff believes the standards for tree save don't have to restrict all impacts given the various proven tree protection techniques available. Therefore, staff doesn't recommend changes to either of these sections.

Staff agrees with Ms. Lee's point concerning reference to the "majority" of the critical root zone of priority trees in Section 107. It could be misinterpreted to mean anything above 50%. Staff recommends deleting the word "majority" from Section 107 as follows:

A.(4) an individual tree and ~~[[the majority of]]~~ its critical root zone with one or more of the following characteristics:

Issue: Ms. Lee states that the definition of "flood, one hundred-year" is inconsistent with the definition of the State Forest Conservation Law, and that "floodplain, one hundred-year" is inconsistent with the county law.

Staff response/recommendations: The definition of "floodplain" mistakenly does not contain the language of the same definition in the county law. Since repeating a law definition in regulation is not necessary, staff recommends deleting it from the proposed regulation rather than amending it.

State law defines "flood, one hundred-year" the same as the proposed regulation definition except it does not stipulate that the "flood" is based on ultimate development of the watershed. The regulation definition takes into consideration the increases in runoff that would occur if currently undeveloped properties were developed to their maximum potential under existing zoning. Therefore, it is more stringent than the definition in state law. Staff recommends no change in the definition of "flood".

Several issues were raised concerning the recently amended definition of "forest" in the Forest Conservation Law which reads:

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

Issue: Ms. Lee questions why the definition of “forest” is not in the regulation.

Staff response/recommendations: Since the definition of forest is contained in the forest conservation law, it does not need to be repeated in the regulations.

Issue: The Maryland-National Capital Building Industry Association(MNCBIA) is concerned that 50 feet will become the standard width needed when perimeter tree save is proposed as a means of providing compatibility with adjacent properties because it is used in the definition. MNCBIA is also concerned that the definition is too broad because it doesn't include a measure of forest quality and therefore, areas of low quality forest are included.

Staff response/recommendations: Staff agrees with MNCBIA that 50 feet should not be used as the standard setback for achieving compatibility between properties. It is the minimum width needed if saving forest were the proposed method of providing that compatibility, but there are other options. These could include, enhancing the screening provided by a narrower strip of trees by adding evergreen trees or shrubs, or incorporating a perimeter fence into landscape planting or tree save. Staff believes a discussion of standards for compatibility, including clarification that the type and width of compatibility buffer may be determined case by case, should be included in the revisions to the *Trees Technical Manual* to address the MNCBIA concern.

Staff believes the definition of forest should not include consideration of the quality of a forest stand. Having low quality forest in a priority area such as a stream buffer is always better than having no forest at all. Forest quality is given consideration when determining priority for retention if a forest extends outside the priority area.

Issue: Ms. Lee notes that the definitions of “intermittent stream”, “perennial stream”, and “stream buffer” are not consistent with the definitions contained in the State Forest Conservation Law, and may not be as stringent.

Staff response/recommendations: State law defines an intermittent stream as “a stream in which surface water is absent during a portion of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey(USGS) as confirmed by field verification”. The state definition for perennial stream is “a stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the USGS, as confirmed by field verification”. Staff uses the Board's adopted environmental guidelines to define intermittent and perennial streams, so the proposed regulation defers to the guideline definitions. In the guidelines, an intermittent stream is defined as “surface waters, contained within a defined channel or bed, that flow at least once per year. An intermittent stream, for purposes of these guidelines,

includes one or more of the following characteristics: (1) defined or distinct channel; (2) hydric soils or wetlands within or adjacent to channel; (3) hydraulically sorted sediments; (4) removal of vegetative litter; or (5) loosely rooted vegetation by the action of moving water.” This definition is more stringent than the state’s definition since any defined channels which meet the criteria can be determined to be an intermittent stream, not just those that are shown on a large-scale USGS quadrangle map. The guidelines define a perennial stream as “a stream that has base flow all year” which is less stringent than the state’s definition since it does not stipulate that continuous flow has to be based upon an average rainfall year. Per the county’s guidelines, in a drought year some perennial streams could be classified as intermittent. However, since the guidelines require intermittent and perennial streams to have the same buffers, this doesn’t make our definition less stringent.

The forest conservation law and regulations work with the existing County development approval process and the supporting environmental guidelines. Therefore, staff believes it is acceptable to defer to the environmental guidelines for these definitions. Staff recommends no change to the definitions in the proposed regulation. The definition of perennial stream probably should be changed in the next revision of the guidelines to add that stream flow is based on an average rainfall year.

State law defines a stream buffer as “all lands lying within 50 feet, measured from the top of each normal bank of any perennial or intermittent stream”. Although staff does not believe the proposed regulation definition is less stringent than the state’s, the reference to “natural vegetation” does seem to add unnecessary language which could be misinterpreted. Staff recommends changing the definition as follows:

(44) “Stream buffer” means all lands **[[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 Montgomery County, Maryland* (MNCPPC).

105. Application

The section states that the regulations apply to development plans, project plans, preliminary plans, site plans, sediment control permits, special exceptions, mandatory referrals, and park development plans. It also summarizes the general provisions of the law: preparation of a natural resources inventory and forest stand delineation, identification of retention areas, and preparation of a forest conservation plan. No issues raised.

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

This section states that a complete NRI/FSD must contain certain detailed information on natural features and forest stands. It also describes the components of simplified NRI/FSD, and the qualifications needed for an individual who is preparing either plan. No issues raised.

107. Priorities for Forest Stand Retention

This section describes forest and trees that are the highest priority for retention and therefore must be left in an undisturbed condition as part of a forest conservation plan unless a finding is made per the statutory standards of Section 22A-12(b)(1) of the forest conservation law that it is not possible. It also describes forest and trees that are high priority and should be targeted for retention when feasible.

Issue: MNCBIA raises a concern that 300 foot stream valley buffers on either side of a stream will become a standard requirement for all forested stream valleys, because 600 forest corridors are included in this section as a secondary priority for retention.

Staff response/recommendation: The strict statutory forest retention requirements of Section 22A-12(b)(1) of the law clearly apply to the highest priority forest as described in this regulation. They will not be used mandate protection of high priority forest. Where protection of high priority forests is possible without affecting density, and on properties which need to meet the minimum retention requirements of Section 22A-12(f) of the law and have already taken credit for all available highest priority area, high priority areas could be required to be saved. Staff does not believe language requiring the locations of wider forest buffers to be identified as part of master plans is necessary given this application of the law and regulations.

Issue: Ms. Lee states that the language of Section 107. A. does not accurately reflect the standards of Section 22A-12(b)(1) of the law.

Staff response/recommendation: Staff recommends the following revisions to this section for clarification:

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 Planning Director or Planning Board find that the provisions of [[reasonable efforts, as specified in]] subsection 22A-12(b)(1) of the Forest Conservation Law, have been met

[[made to protect them]] and the development proposal [[plan]] cannot reasonably be altered:

Issue: Ms. Lee believes this section of the regulations should include, or reinforce by cross-reference, the provisions of Section 50-32(d) of the Montgomery County Code which provide the Board with the authority to delete lots as part of satisfying the requirements of the forest conservation law. Conversely, MNCBIA has requested that language be added that will limit the amount of density loss caused by the proposed changes to the law.

Staff response/recommendation: Both of these points of view were discussed during Planning Board and County Council review of the proposed changes to the forest conservation law. The Board and Council approved the language of subsection 22A-12(b)(1) in response. In staff's opinion, any reference to Section 50-32(d) would have more appropriately been added to the law. However, not having it there does not affect the Board's ability to apply it.

With regard to MNCBIA's concern that minimum retention requirements will significantly reduce the number of new housing units in the County, especially in "Smart Growth" areas, staff continues to believe that the flexibility for different housing types in the zones which are affected will prevent that. Staff intends to closely track the results of applying the new standards, as will the building industry. The results of this monitoring should indicate whether the requirements are too restrictive. Staff agrees that review of other development standards to identify ways they could be changed to allow more tree save is desirable when staff resources can be identified to do it.

Section 108. General Forest Conservation Plan Provisions

This section contains the provisions which apply to development of a forest conservation plan. These include the general provisions that forest retention is the first priority for meeting forest conservation requirements and that all techniques for retention must be exhausted before reforestation may be used. The section also contains the size requirements for retention areas and how the boundaries will be determined. It also includes: the requirements for size of an afforestation and reforestation area; the priority locations and objectives for planting; and the standards requirements of a planting plan including, species selection, stocking options, and survival requirements. The section also covers the requirements for a tree save plan and the criteria for applying credit for landscaping and tree save areas toward reforestation and afforestation requirements.

Issue: MNCBIA believes developing properties that are subject to minimum afforestation standards in Section 22A-12(f) of the forest conservation law

should be able to use tree cover instead of forest cover as stipulated in this section.

Staff response/recommendation: The provisions for allowing tree cover to meet afforestation requirements in this section apply to: developments in urban areas, redevelopments; high-density residential developments; commercial and industrial developments; high-density mixed use developments; and some institutional areas. A finding must be made that tree cover is appropriate. In most cases where the provision has been applied up to this point, this finding has been made for any of these types of development if the sites have used, or didn't contain, any priority afforestation areas.

Developments covered by the minimum afforestation requirements in Section 22A-12(f) include, high density mixed uses and high density residential using optional methods. Staff believes forest can be provided as part of these uses without affecting density if maximum use is made of the flexibility in unit types available as part of their development standards. MNCBIA would like this to be guaranteed in the regulations by allowing the existing afforestation with tree cover provisions to apply. Staff is not opposed to allowing this provision as long as it is very narrowly applied. Staff would like to direction from the Board on this issue. If it is determined that provisions should be added, staff would like to work with Legal staff to draft them.

109. Forest Conservation Plan Requirements

This section contains the detailed requirements for preliminary and final forest conservation plans including a list of the components of the plans. It requires that if multiple levels of approval are needed for a plan, a preliminary forest conservation plan be done as part of the approval. However, it allows these first level plans to be based upon conceptual information as long as they are realistic. No issues raised.

110. Inspections

This section identifies six inspections that, at a minimum, are required as part of implementation of a forest conservation plan.

Staff recommendation: After further consideration of this section, and based upon our experience with plan implementation, staff recommends adding the following provision to clarify the applicants' responsibilities as part of inspections:

B. These inspections must be requested by the applicant at the designated points.

111. Declaration of Intent

This section describes the declaration of intent which is required to be submitted as part of requests for certain exemptions from forest conservation requirements. The discussion of issues is combined with the discussion of the exemptions section below.

112. Exemptions

This section contains the requirements for applying for an exemption from forest conservation and a list of the information that must be included in the request.

Issue: Ms. Lee believes both Sections 111 and 112 are unclear as currently drafted. She also points out that it currently states that a declaration of intent verifies that property is exempt, which is incorrect.

Staff response/recommendation: Staff reviewed the two sections in light of Ms. Lee's comments, and we agree that clarification is needed. We recommend that the order of the sections be reversed as Ms. Lee suggests. Staff also recommends changing the language of subsection A under Declaration of Intent as shown below. Finally, staff recommends that subsections G through I under Declaration of Intent be moved to the Exemptions section. The two new sections would read as follows:

111. Exemptions

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

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

- (1) an application form;
- (2) a written request detailing how the exemption applies to the proposed plan;
- (3) a Natural Resources Inventory prepared per Section 106A(1) and the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
- (4) an original copy of a declaration of intent, if required, signed by the applicant named on the development or sediment control application; and
- (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 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 submitted with the exemption request; and

(2) applications for other exemptions, 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.

D. The Planning Board may require a person failing to file an exemption request **[[declaration of intent]]** or found in noncompliance with an exemption or declaration of intent to:

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

(2) pay a noncompliance fee;

(3) be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; and

(4) file an exemption **[[declaration of intent]]** with the Planning Board.

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

112. Declaration of Intent

A. A declaration of intent is an affirmation by an applicant **[[verifies]]** that property is subject to the following activities and limitations and therefore meet the exemption provisions of **[[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, 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 subsection 22A-5(a) of the Forest Conservation Law;

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

B. 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. 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 in subsection 22A-5(b) and (d) of the Forest Conservation Law.

Issue: The Glen Hills and Bradley Boulevard Citizen Associations both want the regulations to require notice and an opportunity to comment for adjacent properties and community associations when an exemption request is made.

Staff response/recommendation: Because the forest conservation requirements are triggered by the county review process for the applications with which they apply, there are actually both forest conservation plans and exemption requests which are not noticed prior to approval. Notice and opportunity for comment are always provided if a forest conservation plan is reviewed in conjunction with plans that require Planning Board or Board of Appeals review. There are, however, several forest conservation plans approved per year at the Director/staff level for sediment control permits that do not go to the Board. Notice and opportunity to comment are not required for these

plans. A majority of the exemption requests we receive are also triggered by the sediment control permit review process and are not noticed.

Staff applies the provisions of the law in the same manner whether the approval goes to the Board or not. If there are greater tree impacts for activities associated with a sediment control permit, it occurs because there are fewer changes that can be required to reduce tree loss on existing lots because the development standards applied during approval of a subdivision cannot be applied. The County Council explored this issue as part of their review of the proposed amendments to the forest conservation law. As a result, they added provisions which restrict clearing of forest within stream buffers and in Special Protection Areas, and clearing of specimen and champion trees as part of an exemption request.

The amount of time needed for forest conservation or exemption review of sediment control permits has already increased because of the more stringent requirements added to the forest conservation law. Provisions for additional notice and opportunity for comment would further increase the review time, and would increase the costs to applicants since they would have to provide the notice. Some of these cases would likely generate the need for Planning Board review that doesn't now occur.

Requirements for notice to adjacent property owners or citizen associations could be written into the staff level review process for forest conservation plans and exemptions, but staff does not believe it would result in any significant changes to the approvals which are granted. In addition, notice provisions alone would not completely address the concern of citizens because the law doesn't apply to properties that are less than 40,000 square feet in size. In the older, down-county neighborhoods where many trees are being cleared as part of redevelopment activity, the properties are less than 40,000 square feet and aren't required to be reviewed.

113. Amendment to Forest Conservation Plan and Declaration of Intent

This section stipulates that minor amendments (<5000 square feet of additional forest clearing) to a forest conservation plan may be approved at the Director/staff level. It also requires Planning Director approval of amendments to a declaration of intent.

Issue: Ms. Lee believes amendment requests should also be noticed to adjacent property owners and Citizen Associations.

Staff response/recommendation: Staff does not believe notice provisions are needed. To our knowledge, there has not been a problem with application of the standard up to this point.

114. Forest Conservation Maintenance and Management Agreements

This section describes the maintenance requirements for any forest conservation plans that include afforestation or reforestation planting. The length of the maintenance period is a minimum of two years and bonding is required to ensure that the necessary survival requirements of section 108 are met. Bonding must be submitted before authorization is granted to clear or grade a development site. The amount of the bond is based upon the estimated cost of the planting, but the regulations include standards for determining whether lesser amounts are appropriate. The bonding requirements also stipulate that partial release of bonds may be approved and include the factors upon which the decision to release must be based.

Issue: MNCBIA is concerned that basing release of bonds upon survival makes the process too open-ended. They would like to have options for overplanting at the end of the two year maintenance period if survival falls below specified levels rather than extension of maintenance and bonding periods.

Staff response/recommendations: Staff believes MNCBIA's concern stems largely from implementation of the existing reforestation standards. Maintenance and bonding periods have been open-ended largely because planting of seedling tree stock was permitted. The survival rates of seedlings has been very poor. Often projects have had to be completely started over, including their maintenance and bonding periods. Staff has tried to address this by eliminating the use of seedlings as the only size planting stock in a planting area. Based upon our monitoring of sites up to this point, this alone will improve overall survival of planting and reduce the need for extending maintenance periods.

Staff also believes that as now proposed, the regulations would allow for an option such as the overplanting suggested by MNCBIA to be considered as grounds for bond release (subsections 114.B.(4), (7), & (9)). Staff is not opposed to setting target levels for such options, but we believe it should be as part of the *Trees Technical Manual*.

115. Long-Term Protective Agreements

This section requires forest retention and planting areas approved as part of forest conservation plans to be protected by covenants, deed restrictions, easements, or some similar long-term mechanism. No issues raised.

116. Technical Manual for Trees

This section states that the *Trees Technical Manual* is now a guidance document rather than part of the regulation. No issues raised.

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 1 of 27

Montgomery County Planning Board of the
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: October 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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

Forest Conservation

Page 2 of 27

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



REGULATION		No.: 1-01 Also cited as COMCOR 18-01
Montgomery County Planning Board of the Maryland-National Capital Park & Planning Commission		Effective Date:
TITLE	Forest Conservation	Page 3 of 27

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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 4 of 27

(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.

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 5 of 27

(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.

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 6 of 27

(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*

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 7 of 27

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]].

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 8 of 27

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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 9 of 27

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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 10 of 27

potential, and comments on evidence of past management; and

[[v]](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) 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.

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 11 of 27

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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 12 of 27

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:

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 13 of 27

(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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: I-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 14 of 27

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:

Size	Number Required ⁽¹⁾ (Per Acre)	Approximate Spacing ⁽²⁾ (Feet on Center)	Survival Requirement ⁽³⁾ (At the End of the Second Growing Season)
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



REGULATION		No.: 1-01 Also cited as COMCOR 18-01
Montgomery County Planning Board of the Maryland-National Capital Park & Planning Commission		Effective Date:
TITLE	Forest Conservation	Page 15 of 27

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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 16 of 27

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;

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 17 of 27

(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);

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 18 of 27

(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)

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 19 of 27

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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 20 of 27

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.

REGULATION

No.: 1-01
Also cited as
COMCOR 18-01

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

Effective
Date:

TITLE Forest Conservation

Page 21 of 27

[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;

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 22 of 27

- (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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 23 of 27

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;

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 24 of 27

(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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 25 of 27

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;

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 26 of 27

- (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.

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.]

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 27 of 27

Chairman
Montgomery County Planning Board

Approved as to Form and
Legality
General Counsel's Office
M-NCPPC

Associate General Counsel



October 28, 2001

Cathy Conlon
Countywide Planning Division-Environmental
Planning
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Md 20910

Re: Proposed Forest Conservation Regulations

Dear Ms. Conlon:

We support and applaud your efforts and those of the Planning Board to strengthen the requirements for forest conservation in Montgomery County. Set forth below and on the attached mark-up are our comments regarding the Forest Conservation regulations proposed for the administration of the Montgomery County Forest Conservation Law ("Law"). Our primary concerns are that the regulations reflect the County Council's actions to strengthen the Law's requirements and that they provide the procedures necessary to ensure that adequate monitoring and enforcement occurs. An essential tool in ensuring on-the-ground compliance is the provision of notice to the affected neighborhoods, not just of the initial subdivision and special exception requests, but also requests for exemptions and proposed changes in approved plans

1. Section 102. Authority. Because the statute requires affirmative action by those requesting exemptions, these regulations pertain to all development approvals, special exception applications, and sediment control permit applications, not just those that require a forest stand delineation and a forest conservation plan.

2. Definitions. As indicated on the mark-up, some critical definitions have not been included, some are inconsistent with the definitions in the County Law, and others are inconsistent with the Maryland State Forest Conservation statute. Of particular concern are definitions that may result in requirements that are less stringent than the State statute, since the County is required to enact a program that meets or is more stringent than the state statute

3. Section 107.A Priorities for Forest Stand Retention. This section does not accurately reflect the statutory standards set forth in Section 22A-12(b)(1) of the County Law. The Council amended this provision to strengthen it by adding an additional requirement at (a) – maximum use of available planning and zoning options - in addition to the previous requirements that now appear in relettered (b) – reasonable efforts to protect and (c) – proposal cannot reasonably be altered. As currently drafted, this provision does not reflect the additional requirement and could be interpreted to mean that (a) determines what is reasonable under (b) and (c) when they are

separate and distinct additional requirements.

Section 107 should also be amended to include the provisions of Section 50-32(d) of the Montgomery County Code or, at a minimum, cross reference that provision because it governs the application of the Forest Conservation Law to subdivisions and indicates the restrictions the Council enacted for ensuring the requirements of forest conservation are met. Section 50-32(d) provides as follows:

Restrictions - general.

- (1) In addition to any requirement imposed under Chapter 22A, the proposed resubdivision may be restricted under this Section by:
 - (a) deletion of or arrangement of proposed lots, roads, utilities and other facilities;

* * *

- (2) The deletion of proposed lots under subsection (c) should occur only if the board finds that other measures authorized by law are inadequate to provide reasonably appropriate short or long-term natural resource protection or to satisfy the requirements of Chapter 22A

Section 107.A.(4) should be amended further so the protections apply to the whole tree, including all of the of the critical root zone. As currently drafted, it is inconsistent with the relevant County (Sec. 22A -12(b)(2(D)&(E)) and State (Sec. 5-1607(c) Natural Resources, Ann. Code of Md.) statutes which protect champion and historic trees. These statutes protect the whole tree, not just the "majority" (51%) of the critical root zone (CRZ).

4. Critical Root Zone (CRZ). The CRZ provisions should be strengthened to "get real" with regard to what happens to trees when the critical root zone is disturbed or destroyed. The definition of CRZ already is less than the root zone and the tree is clearly being compromised any time approval is given to destroy a portion of the "critical" root zone. Permitting impact on anything less than a "majority" (49%) of the CRZ clearly does not provide adequate protection when 30% is the typical threshold and a threshold of 25% is recommended by the M-NCPPC staff. Full credit toward afforestation and reforestation should never be given unless the entire CRZ is, in fact, protected. See e.g. Sec. 108.G(5) – full credit when only two-thirds (not even 75%) is protected.

5. Sections 111 Declaration of Waiver and 112 Exemptions. As currently drafted these sections are very unclear. The Declaration of Waiver provisions should come after the exemption is approved. The Declaration does not, as the section currently states verify that "the property" is "exempt." That should be done through a document issued by the Planning Director or the Commission, not the applicant. The specifics of the exemption requirements are important. In addition to coming before the Declaration provisions, they should all be set forth in the Section 112, not partially in the Declaration section as currently drafted.

The regulations should require that abutting property owners and community associations receive notice of applications for exemptions, just as they are required to be given notice of

applications for subdivisions and special exceptions. Citizens are permitted to comment on those applications, including any forest conservation requirements. They should likewise be given the opportunity to comment on exemptions since the grant of an exemption may have a substantial impact on neighboring properties. Affected parties should also be notified and permitted to comment on major amendments proposed pursuant to Section 113, just as they are notified when the original plan is adopted.

During the discussion of the Forest Conservation Amendments, one issue of great concern to the Council was the illegal destruction of forests before anyone had an opportunity to object. It is those neighbors who live near wooded sites and along the stream valleys that are most likely to notice when prohibited activities may be beginning. Building adequate notice into the regulations will help ensure that neighbors are aware of what is permitted under the Forest Conservation Law and regulations and what is not.

Thank you for your consideration of our comments.

Sincerely,



Susanne M. Lee
Chair, Land Use Committee
Glen Hills Citizens Association
12900 Circle Drive
Rockville, Md. 20850
(301) 738-7987

cc: Planning Board
Phil Andrews

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 1 of 27

Montgomery County Planning Board of the
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: October 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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 2 of 27

102. Authority

X 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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 3 of 27

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

Very
Unclear

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 4 of 27

(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.~~ ?? - why in this definition?

(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.

why no definition of "forest"

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 5 of 27

(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.

Most
be
consistent
with
State
Statute

(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.

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 6 of 27

(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]].

Must be consistent with State Statute
(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*

Must be consistent with State Statute

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 9 of 27

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

Must be consistent with state statutes or defined as to make as or more stringent

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 11 of 27

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:

Inconsistent with County law

(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

Inconsistent with County + State law.

(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

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 16 of 27

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;

CRZ



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JOLENE ZANBARD
MD-MC, Inc.

November 1, 2001

Ms. Cathy Conlon
M-NCPPC
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Forest Conservation Regulations

Dear Ms. Conlon:

We appreciate the opportunity to submit additional comments related to the Forest Conservation Regulations. As you know, the building industry has supported many of the changes that have been made as part of the process. In addition, you know from our efforts on the County Executive's Forest Conservation Task Force that the building industry also supports efforts to save trees and forests throughout Montgomery County. We also believe that the enhancement and protection of forests should be a responsibility of all the citizens of Montgomery County and not just new homebuyers.

Our concerns with the proposed changes are still based upon the fact that they will reduce the number of new housing units in Montgomery County, especially those in the Smart Growth areas. The changes increase the amount of land that must be saved in cluster zones, MPDU and Planned Development areas of the County. Because there are fewer of these properties available, the reduction that will occur on these properties will significantly reduce new housing that could occur in Smart Growth areas.

We believe a change should be made to the regulation that allows for more flexibility in the Priority Funding Areas of the County. On those properties that do not have environmental features that need to be protected, the on-site afforestation threshold should be reduced to the size of the area of the features to be protected. In addition, the provision, in high density and urban areas of the County, requiring afforestation to be related to tree cover should not be a waiver that must be voted on by the Planning Board. This will place an added burden on the applicant to support the use of tree cover and places the Planning Board in the uncomfortable position of having to approve the waiver.

Building Homes, Jobs and Opportunities

Representing the Building and Development Industry in Calvert, Charles, Montgomery,
Prince Georges and St. Mary's Counties and Washington, D.C.
Affiliated with the Maryland State Builders Association and the National Association of Home Builders

Forest Conservation Regulations

November 1, 2001

Page 2 of 3

The Forest Conservation law and regulations were not intended to be a method of density control. We again ask you to consider language that will limit the amount of density loss caused by the proposed changes. This is in direct contrast to Smart Growth principles that state there may have to be sacrifices in certain areas of a County to obtain the overall benefits of Smart Growth.

We also continue to be concerned that the release of the bonds for a reforestation area is still open ended. We believe that the applicant should have an option to replant to a level at least 10% above the required survival rate with one inch caliper or larger material and be immediately released from their bond, or the applicant can have their maintenance bond extended beyond the two year maintenance period to give the area more time to grow. The applicant would be required to take reasonable measures to address the reasons for the survival going below the required rate in the first two years.

We have previously indicated that we are concerned that the 50-foot requirement for a "Forest" will become the required buffer on all properties with any trees. We feel language should be inserted indicating that the 50-foot "Forest" requirement does not indicate that properties with trees should be required to have a 50-foot setback.

The regulations also significantly increase the stream valley buffers for those streams that are currently wooded. When we mentioned this before, you indicated that the 600' stream valley buffers were a secondary priority but if existing, they would become a priority. We believe this type of buffer is very extensive in the County and is not intended as much for forest protection as wildlife enhancement. We believe language should be added to the regulation that requires the County to study these areas as part of the Master Plan process and to report whether the buffer is required for the wildlife enhancement or forest protection and why a standard buffer would not be sufficient to protect the wildlife. If these areas are significant enough to be considered a priority it seems reasonable that they can be identified as part of the Master Plan process.

The criteria for the definition of a "Forest" are too broad and general and will encompass all areas that contain trees, even if they are not of high quality. We have seen in recent master plans that there are areas included for forest retention with no inventories or studies of the forested areas. We believe that the County should give detailed information for each of the forest retention areas in the Master Plan so that we all know the priority of the resources that are to be protected. The combination of the reduced amount of buildable areas in the County and the advancements of GIS technology should make this a task one that can be accomplished by the County.

Forest Conservation Regulations

November 1, 2001

Page 3 of 3

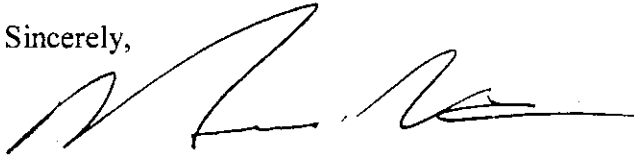
When the law and regulations were forwarded to the County Council for review, the Planning Board recommended that the County take a broader view of the tools needed to save trees and forests in Montgomery County. Unfortunately, neither the County Council nor the Planning Board staff acted upon this. We continue to support changes to the road standards, set-back regulations and other zoning changes that will allow for the saving of trees that we all desire, while supplying the housing a growing economy requires.

The proposed changes to the regulations will reduce both market rate and affordable housing units while the County continues to experience tremendous population pressures. Without any corresponding changes to zoning and development standards to promote Smart Growth in other areas, these pressures will increase in the coming years and will put the County at an economic disadvantage to other jurisdictions. As residents and employees in the County the building industry understands that the quality of life that Montgomery County affords attracts businesses and residents. However, if these new businesses and residents cannot find a place to build offices or buy homes, they will not be able to move to the County.

We thank you for your time to consider our comments and we look forward to working with Park and Planning to implement the changes that are necessary to balance the needs of the environment with the housing and economic needs of the County.

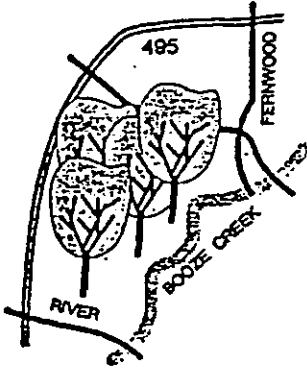
MARYLAND-NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION

Sincerely,



Martin J. Mitchell,
MNCBIA Environmental Chairman

cc: Harriett Tregoning, Secretary - Office of Smart Growth
M-NCBIA, Board of Directors
Susan Matklick, EVP, M-NCBIA
Environmental Committee, M-NCBIA



Bradley Boulevard Citizens Association

7101 Longwood Drive, Bethesda, MD 20817

November 30, 2001

Mr. Arthur Holmes, Jr.
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Chairman Holmes:

We understand the Planning Board will meet soon to consider adopting regulations under the amended Forest Conservation Law. We hope that as part of these regulations, the Board can reverse the habit some persons have of chopping first and hearing questions later.

Accordingly we suggest that before acting on a tree-removal application, you require the applicant to (a) post a sign in front of the subject property, and (b) mail notice to the immediate neighbors and their citizens' association, so as to allow a reasonable period of time for public comment.

Our own Association is particularly concerned, because we are fortunate to harbor many trees, and know what a positive contribution they make to the quality of our environment. We hope you will advise us of any public hearing you may hold on proposed new regulations. We would be happy to attend.

Respectfully,

Jack Sando
Jack Sando
President

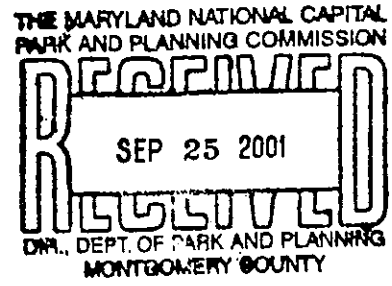
Phone: 301/986-0818
Fax : 301/907-0965

cc: Ms. Cathy Conlon

MONTGOMERY COUNTY PLANNING BOARD

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PUBLIC HEARING ON THE FOREST :
CONSERVATION REGULATIONS :
AMENDMENTS :
----- X



A meeting in the above-entitled matter was held on
September 13, 2001, commencing at 7:35 p.m., in the MRO
Auditorium at 8787 Georgia Avenue, Silver Spring, Maryland
20910, before:

BOARD VICE-CHAIR

Wendy Collins Perdue

BOARD MEMBERS

Meredith K. Wellington
Allison Bryant

CCFV

Deposition Services, Inc.

6245 Executive Boulevard
Rockville, MD 20852
(301) 881-3344



2300 M Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 785-1239

1 MS. CONLON: We'll do that.

2 MR. BRYANT: Okay.

3 MS. PERDUE: We have a public hearing schedule but
4 at the moment we have no speakers signed up. Is there
5 anyone in the audience who's here to speak about the forest
6 conservation regulations amendments?

7 (Discussion off the record.)

8 MS. PERDUE: We don't have any public speakers.

9 All right, then we'll go on to the next item.

10 (Whereupon, a brief recess was taken.)

11 MS. PERDUE: I understand that we have two
12 speakers who actually got here just a couple minutes late
13 and wanted to speak about a prior item, the forest
14 conservation regulations. Although this would not be our
15 customary practice, I think it would be appropriate to hear
16 them.

17 (Discussion off the record.)

18 MS. PERDUE: Excellent, I see that Kathy's here.
19 As I indicated, we have two speakers who wanted to speak on
20 our prior item, so let me call them. Catherine Tunis -- I'm
21 not sure I'm reading it -- reading the handwriting.

22 MS. TUNIS: Hi, I'm Catherine Tunis, and I
23 apologize for being late. I think with all of the tragedies
24 downtown, traffic's been a little bit unusual.

25 There are just a couple of things -- and I

1 apologize for things happening in my life and elsewhere this
2 week, I have not had a chance to talk to staff about these
3 things yet, so I have only two issues that I wanted to bring
4 up in a general sense. One is that this declaration of
5 intent, which allows for an exemption under the forest
6 conservation law, I think there's about an order of
7 magnitude more allowed under that exemption than I think
8 ought to be. I think a clearing of a house should be about
9 4,000 square feet maximum, rather than 40,000 square feet.
10 And it makes me worry, how many 40,000 square feet of forest
11 do we have within Montgomery County?

12 And the second topic that I'd like to touch on
13 briefly is the issue of exotic invasives. If we're -- I
14 think we want to be very careful about how we deal with that
15 under this law. I've noticed that they tend to consider
16 lands that have been invaded with exotics as less valuable,
17 and on a general scientific sense I can understand that very
18 much. However, because we have so little undeveloped land,
19 and I think it's important to preserve whatever we have, if
20 we sort of benignly neglect or whatever, allow those
21 invasives to creep in, that then sort of effectively is
22 clearing that land for development, and I think we want to
23 be very careful to have a combined concerted policy that
24 protects land from exotic invasives as well as
25 overdevelopment or excessive impervious surfaces.

1 So, I think those are the two items that I talked
2 to, and I hope I get a chance to talk to a staffperson in
3 the future.

4 Thank you.

5 MS. PERDUE: Thank you. Next speaker is Suzanne
6 Lee.

7 MS. LEE: And I apologize. I thought the item was
8 No. 12 and I went to the restrooms.

9 MR. BRYANT: Gets you every time.

10 MS. LEE: I appreciate it very much, and I have
11 just a summary of the major points I wanted to make, so do
12 you want me to give it to you directly?

13 The first one regarding notification with regard
14 to the proposed regulations, there was a mistake previously
15 made where the proposed regulations were put out for public
16 comment, even before the statute was passed. We raised that
17 issue before. They withdrew the regulations, and they still
18 don't have it right.

19 These were never noted by -- noticed in the
20 Montgomery Register, and I think it's a real concern and
21 it's reflected in what's actually happened in the
22 regulations. They were enacted by the Council on July 24th.
23 We never got notice that the new ones were available for the
24 public and when the hearing would be.

25 That's one concern, but it's reflected in the --

1 what I consider to be a very rushed job in getting the
2 regulations out. And I've just noted a couple that I could
3 find when I started to get a chance to look at it real
4 quickly.

5 One is Section 107(a) which influenced the heart
6 of the statute; the forest retention provisions. The
7 Council labored intensively over this language; went back
8 and forth a couple different times in full Council and they
9 still -- this regulation does not accurately reflect what's
10 in the statute. The section on exemptions, for example --
11 excuse me, the next one, which is number four on my list is
12 Section 105, the applicability section. It fails to include
13 highway construction. It doesn't seem consistent with the
14 statute. It doesn't appear that the regulations address in
15 any way a major concern of the Council, which is special
16 provisions for minimum retention of forestation -- in such
17 areas as ag. reserves, PD's -- developments and that's a
18 very significant portion of the statute which -- amended.

19 And there are other things that I just picked up
20 with a casual look, which -- for example, the definition of
21 critical root zone. Why is it being defined differently
22 than the current manual? What does the second sentence
23 mean? Why is it being put in the definition?

24 And then there's an additional issue which is
25 addressed in number three, which is we would really like to

1 have exemptions noted to the public because we get, as a
2 matter of course, notification of subdivision requests as
3 filed, and that Council was very concerned that people
4 assume they have exemptions and then just go off and clear
5 the site before anybody knows about it. So, they
6 specifically typed that up and put in a new exemption
7 provision. We, in the neighborhood, would like to know when
8 that exemption is filed, just as we need to know when a
9 subdivision is filed. So that's a major concern I think can
10 be addressed specifically in -- but I am concerned and I
11 would request that the Planning Board note this in the
12 Montgomery Register, and give everyone the full 30 days to
13 provide comments, and then have another hearing.

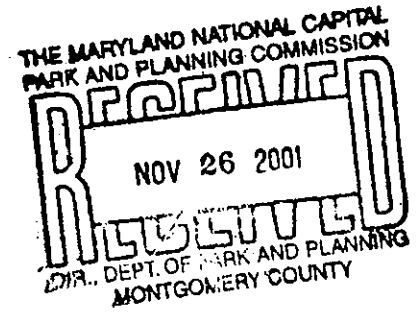
14 And that's my recommendation, because I think just
15 -- I mean, I didn't realize it was happening until I heard
16 about the -- when the worksession was proposed for the
17 Potomac Subregion Master Plan, I looked on the website and
18 found that forest conservation plan amendments were actually
19 going to be up and I couldn't believe it was so quickly.
20 And then I realized it had never been noticed in the
21 Montgomery Register. And I think that these are technical
22 and they're very difficult regulations. The statute was
23 pored over by the Council and I really think we should have
24 an opportunity to have a full 30 days to comment on it.

25 Thank you.

(66)

1 THE MARYLAND NATIONAL CAPITAL PARK & PLANNING COMMISSION
2 MONTGOMERY COUNTY, MARYLAND
3

4 -----X
5 :
6 FOREST CONSERVATION REGULATIONS :
7 AMENDMENTS :
8 -----X



9
10 A hearing in the above-entitled matter was held on
11 Thursday, November 15, 2001, commencing at 2:48 p.m., in the
12 Montgomery Regional Office Auditorium at the Montgomery
13 County Department of Park & Planning at 8787 Georgia Avenue,
14 Silver Spring, Maryland, before:

15 WILLIAM H. HUSSMANN
16 Board Chairman


17 ARTHUR HOLMES, JR.
18 Vice Chairman

19 JOHN M. ROBINSON
20 MEREDITH K. WELLINGTON
21 ALLISON BRYANT
22 WENDY COLLINS PERDUE
23 Board Members
24
25

 COPY

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P R O C E E D I N G S

1
2 MR. HOLMES: Okay. Next item, number seven,
3 Forest Conservation Regulation Amendments. This is
4 continuation of the public hearing. Please go ahead.

5 MS. CONLON: Good afternoon. I'm Cathy Conlon
6 from the County Wide Planning Environmental Section. This
7 is a continuation of the Public Hearing on the Board
8 proposed forest conservation regulations which began back
9 on September 18th. We're providing this additional
10 opportunity for verbal comments because there were
11 questions raised about the noticing of the regulations back
12 in September. We re-noticed the regulations in the October
13 Montgomery County Register and continued the written
14 comment period until the first part of November. And
15 included in your staff memo today were the comments we
16 received one, from the Maryland National Building Industry
17 Association and also from the Brook Hill Citizens
18 Association.

19 And we'll combine those with the comments we
20 received today and bring them back to you at a worksession.
21 Currently the worksesssion is scheduled for December 20th.
22 And when that date becomes firm we'll notice that date as
23 well.

24 MR. HOLMES: Okay. We have one speaker, Suzanne
25 Hill.

1 MS. LEE: Good afternoon. My name is Susan Lee
2 and I represent the Glen Hills Citizens Association and I
3 am also on the Board of the West Montgomery --

4 MR. HOLMES: I apologize. This says Suzanne
5 Hill.

6 MS. LEE: No problem at all. As you note in your
7 packet, we've submitted written comments. And I'd just
8 like to highlight a couple of the issues that we think
9 really should be addressed and some minor changes that need
10 to be made to the regulations.

11 As you know the primary objective that the
12 Council was focusing on when they looked at the change in
13 the statute was to strengthen it. And our primary
14 objective has been to make sure that the regulations
15 accurately reflect especially those provisions that
16 strengthen the Forest Conservation Amendments.

17 Our first particular interest is Section 107-A
18 which is Priorities for Forest Stand Retention. It should
19 be at a minimum consistent with what the statute says.
20 Right now it talks about reasonable efforts and it's very
21 clear. I don't want to go into the details. You really
22 need to sort of see the side by side versions to see where
23 the mistake is. But I think it should just track the
24 language that's in the statute and then it would be
25 accurate.

1 We also think that that would be a good spot to
2 insert the County Council provision, the Montgomery County
3 Code provision that provides that lots can be deleted if
4 it's necessary in order to meet the requirements of the
5 Forest Conservation Statute. And I don't think that the
6 Planning Board to my knowledge has ever deleted a lot. But
7 it would be very good if it were clear in the regulations
8 that that is a possibility.

9 MR. HOLMES: We have.

10 MS. LEE: Have you?

11 MR. HOLMES: Yes.

12 MS. LEE: That's good. It just hasn't happened
13 to the ones that I've been involved in. And obviously it's
14 important if we have a lot that's almost entirely flood
15 plain that there is, or some other type of environmental
16 aspect that just can't be worked around, then that might be
17 appropriate.

18 Another provision that we think should be looked
19 at is the one that deals with champion trees, historical
20 trees. Both the state statute and the County statute say
21 that the tree should be preserved. Yet the regulations now
22 talk about not just the critical root zone, but the
23 majority of the critical root zone. We think the whole
24 tree, when you have a tree that's a national champion tree
25 I really think that the entire tree, including all said

1 parts of the critical root zone should be included.

2 The exceptions, we've asked that you add to the
3 regulations a requirement that applicants note to budding
4 property owners and local citizens associations just as
5 they do with subdivision review when they've asked for an
6 exception because that's the only way the citizens will
7 know what's going to happen on that site and can be on top
8 of it before they start to clear the trees. So we'll be
9 under notice and can react to that.

10 There are no provisions in these regulations for
11 the new provisions that the Council put in the statute for
12 special protections for the ags, reserves, cluster,
13 development, MPUDs and I think it would be good, we think
14 it would be good if they would be put in the regulations so
15 people are aware of those requirements.

16 And then the last comment is that the building
17 industry has raised questions regarding the definition of
18 forest. And we've raised questions in the past both before
19 the Planning Board and before the Council of the difficulty
20 of that definition and using it for a variety of purposes.
21 But we certainly don't think that they should be, and I
22 don't think that they could change the definition of it
23 now. It's statutorily based and we'll just all have to
24 work around how it's applied.

25 That's all I have. Thank you.

