



Committee: TE
Committee Review: At a future date
Staff: Jim Ogorzalek, Legislative Attorney
Purpose: To introduce agenda item – no vote expected

AGENDA ITEM #1C
June 17, 2025
Introduction

SUBJECT

Bill 18-25, Forest Conservation – Trees

Lead Sponsor: Council President at the Request of Planning Board

EXPECTED ATTENDEES

None

DESCRIPTION/ISSUE

Bill 18-25 would:

- (1) define a solar photovoltaic facility and remove afforestation requirements for such facilities;
- (2) add new categories to the priorities of forest retention;
- (3) reinstate forest mitigation banks that protect existing forest;
- (4) remove significant trees from Tree Save Plan requirements; and
- (5) generally amend the law governing Forest Conservation.

SUMMARY OF KEY DISCUSSION POINTS

N/A

This report contains:

Staff Report

Bill 18-25

Planning Department Transmittal Package

Pages 1–2

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MEMORANDUM

June 12, 2025

TO: County Council

FROM: Jim Ogorzalek, Legislative Attorney

SUBJECT: Bill 18-25, Forest Conservation – Trees

PURPOSE: Introduction – no Council votes required

Bill 18-25, Forest Conservation – Trees, is scheduled for introduction on June 17, 2025. Its Lead Sponsor is the Council President at the Request of the Planning Board. A public hearing is tentatively scheduled for July 8, 2025, at 1:30 p.m.

Bill 18-25 would:

- (1) define a solar photovoltaic facility and remove afforestation requirements for such facilities;
- (2) add new categories to the priorities of forest retention;
- (3) reinstate forest mitigation banks that protect existing forest;
- (4) remove significant trees from Tree Save Plan requirements; and
- (5) generally amend the law governing Forest Conservation.

Background

Senate Bill 526 of the 2023 Regular Session amended the Natural Resources Article of the Maryland Code, updating portions related to forest preservation and retention. As required by State law, the Montgomery County Planning Board transmitted to the County Council proposed legislation and regulations to align the County Code with the changes made to the state's forest conservation law. Along with the changes mandated by state law revisions, the Planning Board's proposed bill and regulation include other minor changes intended to clarify and update County law.

Bill Specifics

The changes proposed by the Planning Department are intended primarily to align County Code with recent changes made to enabling state statutes. In addition to technical and clarifying revisions, the changes address tree save plans, afforestation as it relates to solar photovoltaic

facilities, retention requirements, and the reinstatement of forest mitigation banks that protect existing forest.

This packet contains:

Bill 18-25

Planning Department Transmittal Package

Circle #

1

20

Bill No.: 18-25
Concerning: Forest Conservation –
Trees
Revised: 6/6/2025 Draft No.: 1
Introduced: June 17, 2025
Expires: December 7, 2026
Enacted:
Executive:
Effective:
Sunset Date:
Ch.____, Laws of Mont. Co._____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Planning Board

AN ACT to:

- (1) define a solar photovoltaic facility and remove afforestation requirements for such facilities;
- (2) add new categories to the priorities of forest retention;
- (3) reinstate forest mitigation banks that protect existing forest;
- (4) remove significant trees from Tree Save Plan requirements; and
- (5) generally amend the law governing Forest Conservation.

By amending

Montgomery County Code
Chapter 22-A, Forest Conservation – Trees
Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-11, 22A-12, 22A-13, and 22A-15

BoldfaceUnderlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or a defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

Sec. 1. Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-11, 22A-12, 22A-13, and 22A-15 are amended as follows:

22A-3 Definitions

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

* * *

[*District Council* means the County Council in its capacity, under Division II of the Land Use Article of the Maryland Code, to act on planning and zoning for the Maryland-Washington Regional District.]

District Council means the County Council in its capacity, under Division II of the Land Use Article of the Maryland Code, to act on planning and zoning for the Maryland-Washington Regional District.

Mixed-income community plan means a plan that qualifies as a Mixed-income community plan under Section 3.3.1.E of Chapter 59 and is approved under Section 7.3.7 of Chapter 59.

* * *

Person means:

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

Planned unit development means a development comprised of a combination

of land uses or varying intensities of the same land use, having at least 20[percent] of the land permanently dedicated to green area, and under an integrated plan that provides flexibility in land use design approved by the Planning Board under Section 7.2.1 of Chapter 59 or referred to in Section 7.7.1.B of Chapter 59.

* * *

Solar Photovoltaic Facility means an area containing the footprint of ground-mounted or freestanding solar energy generation equipment that is approved by the Maryland Public Service Commission.

* * *

Tree means a large, woody plant having one or several self-supporting stems or trunks measuring at least one inch caliper and numerous branches that reach a height of at least 20 feet at maturity.

* * *

22A-4 Applicability

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

- (a) a person required by law to obtain an approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, biohealth priority campus plan, mixed-income community plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan;

* * *

[Any] Notwithstanding the above, any person who expects to cut, clear, or grade more than [5000] 5,000 square feet of forest or any champion tree[, and who believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-6, or 22A-8,] must [notify the Planning Director in writing before performing any

cutting, clearing, or grading and seek confirmation from the Director that the cutting, clearing, or grading is in fact exempt from Article II] request an exemption under 22A-5 or must comply with the requirements of Article II. Any person who believes that cutting, clearing or grading is exempt under Section 22A-5, 22A-6 or 22A-8 must receive confirmation from the Planning Director that the activity is in fact exempt from Article II. [Failing to notify the Director as required by this Section, or performing] Performing any cutting, clearing, or grading before the Director confirms that an exemption applies[,] is a violation of this Chapter.

* * *

Sec. 22A-5. Exemptions.

The requirements of Article II do not apply to:

- (a) an activity conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:
 - (1) does not require a special exception;
 - (2) does not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines;
 - (3) does not result in the cutting, clearing, or grading of:
 - (A) more than a total of 20,000 square feet of forest;
 - (B) any forest in a stream buffer[,];
 - (C) any forest on property located in a special protection area which must submit a water quality plan[,];
 - (D) any specimen or champion tree[.] unless a Tree Save Plan is approved under Section 22A-6(a); or
 - (E) any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and

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

(b) an agricultural activity if:

* * *

(3) agricultural support buildings and related activities are built using best management practices[.];

* * *

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

* * *

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

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

(2) was approved or extended between July 1, 1984 and July 1, 1991[.]; and

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

(A) any forest in a stream buffer[.]; or

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

* * *

(l) any planned unit development for which a development plan was

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

* * *

(n) any minor subdivision under Division 50.7 of Chapter 50 if:

(1) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); development does not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines; and development does not result in the cutting, clearing, or grading of:

* * *

(D) any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a); or

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

(2) there is no proposed land disturbance and a declaration of intent is 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 approval of the minor subdivision[.];

- (o) [The] the cutting or clearing of public utility rights-of-way or land for electric generating stations licensed under Sections 7-205 and 7-207 or 7-208 of the Public Utility Companies Article of the Maryland Code, if:

* * *

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

- (1) the right-of-way existed before July 1, 1992;
- (2) forest clearing will not exceed a total of 20,000 square feet; and
- (3) the construction will not result in the cutting, clearing, or grading of:

(A) any forest in a stream buffer[.];

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

(C) any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a);[.] or

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

- (q) a special exception, or conditional use, application if:

* * *

- (2) the application modifies an existing special exception use which was approved before July 1, 1991, and the revision will not result in the clearing of more than a total of 5,000 additional square feet of forest or any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a); or

(3) the total disturbance area for the proposed special exception use, or conditional use, will not exceed 10,000 square feet, and clearing will not exceed a total of 5,000 square feet of forest or include any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a);

(r) an equestrian facility located in an agricultural zone that is exempt from platting requirements under Section 50-9, whether or not a sediment control permit is obtained under Section 19-2. Article II does not apply to any equestrian support building or related activity only if the building is built using best management practices. However, Section 22A-6(a) applies if any specimen or champion tree would be cleared. This exemption does not permit any forest or tree that was preserved under a previously-approved forest conservation plan or tree save plan to be cut, cleared, or graded unless the previously-approved plan is amended to allow that activity. This exemption does not apply if:

* * *

(3) on-site forest retention does not equal at least 25[%] percent of the tract area or all forest existing when the exemption is claimed, whichever is less; or

(4) on-site forest retention does not equal at least 50[%] percent of any net tract area when more than 50[%] percent of that tract is existing forest.

* * *

(s) (1) an activity occurring on a tract of land that is less than 1.5 acres and that:

* * *

(D) would not result in development within an environmental

buffer, except for the allowable uses stated in the environmental guidelines; or

(2) an activity occurring on a tract of land that is less than [1] one acre and that:

(A) is not located within the Commercial Residential (CR) zone classification; would not result in the clearing of more than a total of 20,000 square feet of existing forest, or any existing specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a);

(B) would not result in the clearing of more than a total of 20,000 square feet of existing forest, or any existing specimen or champion tree;

(C) would not result in a reforestation requirement that exceeds 10,000 square feet;

(D) would not result in development within an environmental buffer, except for the allowable uses stated in the environmental guidelines; and

(E) preserves forest in any on-site floodplains, stream buffers, steep slopes, critical habitats, and areas designated as priority save areas in a master plan or functional plan;

(t) a modification to a:

(1) non-residential developed property if:

✿ ✿ ✿

(E) the modification does not increase the developed area by more than 50[%] percent, and any existing principal building, as defined in Chapter 59, is retained; and

(F) the pending development application does not propose any

residential uses; or

(2) residential developed property if:

* * *

(D) the modification does not increase the developed area by more than 50[%] percent;

* * *

(v) a stream restoration project for which the applicant for a sediment control permit has:

* * *

(3) executed a binding maintenance agreement for planting and maintenance of mitigation trees for at least 5 years with the affected property owner or owners, or with the Maryland National-Capital Park and Planning Commission if the applicant is performing a stream restoration project on their own property. If an applicant is performing a stream restoration project on their own property, financial security is required under Section 22A-12(i)[.];

* * *

22A-6. Special provisions — Exemptions; tree save plans; and highway projects.

(a) *Tree save plan requirements.* An activity or development that [would be] is exempt under Section 22A-5 except for the clearing of a specimen or champion tree, [and] or that [would impact] impacts a [significant,] specimen[,], or champion tree, requires the approval of a tree save plan. The tree save plan must require tree preservation or planting of mitigation trees at a ratio of [1] one caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet

above the ground, based on the size and character of the trees to be cleared. If trees to be cleared are part of an existing recorded scenic buffer between public parkland and a proposed development, trees that are smaller than specimen size may be included in the tree save plan.

* * *

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

(a) General.

(1) *Application.* The submission of a development plan, floating zone plan, project plan, sketch plan, subdivision plan, site plan, biohealth priority campus plan, mixed-income community plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit under this Section must include an approved forest stand delineation or a confirmed exemption from submitting a forest conservation plan under Section 22A-5.

(2) *Coordinated with project review.* The forest conservation plan must be submitted and reviewed in conjunction with the review process for a development plan, floating zone plan, project plan, subdivision plan, site plan, biohealth priority campus plan, mixed-income community plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit under this Section. The Planning Director must coordinate review of the forest conservation plan with the Director of Environmental Protection, the Director of Permitting Services, the Washington Suburban Sanitary Commission, other relevant regulatory agencies, and entities that will provide public utilities to the tract, to promote consistency between the

objectives of this Chapter and other development requirements.
 To the extent practicable, entities providing public utilities
 should design facilities that will serve a tract in a manner that
 avoids identified conservation areas and minimizes tree loss.

* * *

(4) *Notice.* Public posting and written notice of forest conservation
 plan applications must be provided by applicants as specified in
 Section 50/59.10.01.04, as amended, of the Administrative
 Procedures for Development Review.[.]

(b) *Project requiring development plan, floating zone plan, project plan,
 preliminary plan of subdivision, biohealth priority campus plan, mixed-
income community plan, or site plan approval.*

(1) Forest stand delineation. The applicant must submit to the
 Planning Director a forest stand delineation and the forest stand
 delineation must be approved before the applicant may submit an
 application for a development plan, floating zone plan, project
 plan, preliminary plan of subdivision, biohealth priority campus
 plan, mixed-income community plan, or site plan. Within 30
 days of receipt, the Planning Director must notify the applicant
 whether the forest stand delineation is complete and correct. If
 the Planning Director fails to notify the applicant within 30 days,
 the delineation will be treated as complete and correct. The
 Planning Director may require further information or provide for
 one extension of this deadline for an additional 15 days for
 extenuating circumstances. The applicant must submit revised
 drawings to address comments within 90 days from the date the
 Planning Director sends comments to the applicant. If the

applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

(2) Forest conservation plan.

(A) *Application.* After being notified that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning Director with the related application for a development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus plan, mixed-income community plan, or site plan. If the development proposal will require more than one of the approvals subject to this subsection, the applicant must submit a preliminary forest conservation plan to the Planning Director in conjunction with the first approval and a final forest conservation plan in conjunction with the last approval. If only one approval subject to this subsection is required, an applicant must submit a preliminary forest conservation plan and a final forest conservation plan at the time of the development application. The applicant must own the property subject to the forest conservation plan or be authorized by the owner to file the application.

* * *

(C) *Approval.* The Planning Board must review and act on the forest conservation plan concurrently with the development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus

plan, mixed-income community plan, or site plan, as appropriate. Compliance with the preliminary forest conservation plan,[,] as amended by the Board, must be made a condition of any approval of the first applicable development application. Compliance with the final forest conservation plan, as amended by the Board, must be made a condition of any approval of the last development application. For a development plan or a floating zone plan, [a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-7.2.1] the Planning Board must approve the preliminary forest conservation plan. A final forest conservation plan must be approved by the Planning Board or Planning Director, as appropriate, before the Planning Board approves a record plat.

* * *

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

* * *

(b) *Retention.*

* * *

(2) In general, areas protected under this subsection include:

- (A) floodplains, stream buffers, steep slopes, and critical habitats;
- (B) contiguous forests;
- (C) forests suitable for forest interior-dwelling species;
- (D) forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of Environment;

(E) forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area;

(F) forests in urban areas as defined in Section 5-1607(c)(vi) of the Natural Resources Article of the Maryland Code;

(G) rare, threatened, and endangered species;

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

[(E)] (I) champion trees and other exceptionally large trees; and

[(F)] (J) areas designated as priority save areas in a master plan or functional plan.

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

* * *

(B) Any tree that is:

(i) 1 inch in caliper or larger and part of a historic site or located within an historic district[,];

(ii) associated with a historic structure[,]; or

(iii) designated by the State or County as a national, State, or County champion tree;

(C) Any tree with a diameter, measured at 4.5 feet above the ground, of:

(i) 30 inches or more; or

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

(D) Any forest in a floodplain or stream buffer, except if the activity occurring within the floodplain or stream buffer is permitted under the environmental guidelines.[.]

* * *

(d) *Afforestation.*

* * *

(3) Solar photovoltaic facilities may not be subject to afforestation requirements in this chapter. Solar photovoltaic facilities are subject to all other requirements in this chapter.

(e) *Standards for reforestation and afforestation.*

* * *

(3) *Priority areas and plantings.* Afforestation and reforestation should be directed to stream buffer areas, environmental buffers, connections between and additions to forested areas, critical habitat areas and adjacent forest buffers, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred.

(4) *Location requirements.*

(A) Except as permitted under subparagraphs (B) and (C) of this paragraph, required reforestation or afforestation must occur in both the county and the 8-digit watershed in which the project is located[.].

* * *

(5) *Deadline for plant installation.* The afforestation and reforestation requirements under this subsection must be accomplished within [1] one year or 2 growing seasons after a development project is complete.

* * *

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

* * *

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

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

* * *

22A-13. Forest mitigation banks.

* * *

(b) The area of land included in the bank must be at least [1] one acre.

* * *

(e) The forest mitigation bank plan must include:

* * *

(4) the number of forest mitigation bank credits available for sale as either:

(A) [if permitted by state law,] existing forest credits, where [1] one acre of forest mitigation bank credit equals 2 acres of existing forest; or

(B) planted forest credits, where [1] one acre of forest mitigation bank credit equals [1] one acre of planted forest.

* * *

(g) *Purchasing and selling forest mitigation bank credits.*

* * *

(3) Credits may only be debited from forest mitigation banks that protect all or part of an existing forest to meet up to 50 percent of the afforestation or reforestation requirement.

[(3)] (4) Forest mitigation bank credits must be acquired from a forest mitigation bank within the same 8-digit watershed, as delineated by the State of Maryland, where the development activity is located. If forest mitigation bank credits are not available within the same 8- digit watershed within the County, applicants must acquire forest mitigation bank credits from a forest mitigation bank within a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA). If forest mitigation bank credits are not available within a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA), applicants may acquire forest mitigation bank credits from any approved forest mitigation bank within the County.

[(4)] (5) The forest mitigation bank credits acquired must be equal to the applicant's off-site reforestation or afforestation requirements under the approved forest conservation plan.

* * *

22A-15. Inspections and Notifications.

* * *

(b) *Plan to be on site; field markings.* A copy of the approved forest conservation plan, tree save plan, or confirmed forest conservation exemption, as applicable, must be available on the site for inspection

460 by representatives authorized by the Planning Director. Field markings
461 must exist on site before and during installation of all protective
462 devices, construction, or other land disturbing activities.

463 * * *

May 5, 2025

The Honorable Kate Stewart

President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Kate Stewart:

On December 5th, 2024, the Montgomery County Planning Board recommended transmittal of a bill to the County Council for changes to Chapter 22A of the County code (The Montgomery County Forest Conservation Law) and posting of proposed amendments to Chapter 22A of the Code of Montgomery County Regulations (The Forest Conservation – Trees Regulations).

These proposed changes to the Chapter 22A and amendments to the corresponding regulations are needed to align the County code with recent changes to statewide forest conservation law. Senate Bill 0526 came into effect on July 1, 2024. Other minor changes recommended are intended to clarify and update sections of the Forest Conservation Law and Forest Conservation – Trees Regulations.

A summary of substantive proposed changes appears below, and are further detailed in the attached staff report:

- (1) define a solar photovoltaic facility;
- (2) remove afforestation requirements for solar photovoltaic facilities, as required by state law;
- (3) add four new categories to the priorities of forest retention, as updated by state law;
- (4) reinstate forest mitigation banks that protect existing forest, and stipulate that purchasing credits from these banks can only account for 50% of requirements in this chapter, as provided by state law; and
- (5) remove significant trees from Tree Save Plan requirements and adjust other language in section 22A-6.

Attached is a complete copy of the proposed amendment to the Forest Conservation Law that the Planning Board would like to be introduced as a bill, a copy of the proposed amendment to the Forest Conservation – Trees Regulations—which was posted in the County Register for public comment from April 1st to April 30th, 2025—and a copy of the staff report dated December 5th, 2024. Members of the Planning Board and staff of the Maryland-National Capital Park & Planning Commission area available to assist the Council in its review of the proposed legislation.

The Honorable Kate Stewart
May 5, 2025
Page Two

Please note that Maryland Department of Natural Resources has reviewed the proposed changes to the Forest Conservation – Trees Regulations and the proposed amendment to the Montgomery County Forest Conservation Law for compliance with the enabling state law, the Maryland Forest Conservation Act.

Sincerely,



Artie L. Harris

Chair

cc: Kelsey Desmond, Montgomery Planning
Christina Sorrento, Montgomery Planning

Attachments:

Staff Report Proposed Changes to Chapter 22A

Attachment A - Proposed Amendments to the Forest Conservation Law

Attachment B - Proposed Amendments to the Forest Conservation - Trees Regulations – Changes

Attachment C - Proposed Amendments to the Forest Conservation - Trees Regulations – Clean

Sections 22A-3 through 22A-5(a), 22A-6, 22A-11(a), 22A-12(b) through 22A-13(g) and 22A-15 are amended as follows:

Chapter 22A. Forest Conservation - Trees

22A-3 Definitions

* * *

Mixed-income community plan means a plan that qualifies as a Mixed-income community plan under Section 3.3.1.E of Chapter 59 and is approved under Section 7.3.7 of Chapter 59.

* * *

Solar Photovoltaic Facility means an area containing the footprint of ground-mounted or freestanding solar energy generation equipment that is approved by the Maryland Public Service Commission.

* * *

Tree means a large, woody plant having one or several self-supporting stems or trunks measuring at least 1 inch caliper and numerous branches that reach a height of at least 20 feet at maturity.

* * *

22A-4 Applicability

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

- (a) a person required by law to obtain an approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, biohealth priority campus plan, mixed-income community plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan;

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

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

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

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

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

(g) clearing or grading conducted on two or more platted contiguous lots:

(1) that collectively total 40,000 square feet or larger;

(2) that are graded at the same time; and

(3) where sediment control is required.

Notwithstanding the above, [A]ny person who expects to cut, clear, or grade more than 5,000 square feet of forest or any champion tree[, and who believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-6, or 22A-8,] must request an exemption under 22A-5 or must comply with the requirements of Article II [notify the Planning Director in writing before performing any cutting, clearing, or grading]. Any person who believes that cutting, clearing or grading is

exempt under Section 22A-5, 22A-6 or 22A-8 must receive confirmation from the Planning Director that the activity is in fact exempt from Article II. [and seek confirmation from the Director that the cutting, clearing, or grading is in fact exempt from Article II. Failing to notify the Director as required by this Section, or] [p]Performing any cutting, clearing, or grading before the Director confirms that an exemption applies[,] is a violation of this Chapter.

* * *

Sec. 22A-5. Exemptions.

The requirements of Article II do not apply to:

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

(1) does not require a special exception;

(2) does not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines

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

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

(B) any forest in a stream buffer,

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

(D) any specimen or champion tree, unless a Tree Save Plan is approved under Section 22A-6(a), or

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

[(3)] (4) 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;

* * *

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

* * *

(n) any minor subdivision under Division 50.7 of [Chapter 50](#) if:

(1) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); development does not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines; and development does not result in the cutting, clearing, or grading of:

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

(B) any forest in a stream buffer;

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

(D) any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a); or

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

* * *

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

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

(2) forest clearing will not exceed a total of 20,000 square feet and

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

(A) any forest in a stream buffer,

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

(C) any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a), or

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

* * *

(q) a special exception, or conditional use, application if:

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

(2) the application modifies an existing special exception use which was approved before July 1, 1991, and the revision will not result in the clearing of more than a total of 5,000 additional square feet of forest or any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a); or

(3) the total disturbance area for the proposed special exception use, or conditional use, will not exceed 10,000 square feet, and clearing will not exceed a total of 5,000 square feet of forest or include any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a);

* * *

(s) (2) an activity occurring on a tract of land that is less than 1 acre and that

(A) is not located within the Commercial Residential (CR) zone classification; would not result in the clearing of more than a total of 20,000 square feet of existing forest, or any existing specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a);

* * *

22A-6 Special provisions — Exemptions; tree save plans; and highway projects.

(a) *Tree save plan requirements.* An activity or development that [would be] is exempt under Section [22A-5](#) except for the clearing of a specimen or champion tree, [and] or that [would] impacts a [significant], specimen, or champion tree, requires the approval of a tree save plan. The tree save plan must require tree preservation or planting of mitigation trees at a ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet above the ground, based on the size and character of the trees to be cleared. If trees to be cleared are part of an existing recorded scenic buffer between public parkland and a proposed development, trees that are smaller than specimen size may be included in the tree save plan.

* * *

22A-11 Application, review and approval procedures

(a) General.

(1) *Application.* The submission of a development plan, floating zone plan, project plan, sketch plan, subdivision plan, site plan, biohealth priority campus plan, mixed-income community plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit under this Section must include an approved forest stand delineation or a confirmed exemption from submitting a forest conservation plan under Section 22A-5.

(2) *Coordinated with project review.* The forest conservation plan must be submitted and reviewed in conjunction with the review process for a development plan, floating zone plan, project plan, subdivision plan, site plan, biohealth priority campus plan, mixed-income community plan, special exception, conditional use,

mandatory referral, park development plan, or sediment control permit under this Section. The Planning Director must coordinate review of the forest conservation plan with the Director of Environmental Protection, the Director of Permitting Services, the Washington Suburban Sanitary Commission, other relevant regulatory agencies, and entities that will provide public utilities to the tract, to promote consistency between the objectives of this Chapter and other development requirements. To the extent practicable, entities providing public utilities should design facilities that will serve a tract in a manner that avoids identified conservation areas and minimizes tree loss.

* * *

(4) *Notice.* Public posting and written notice of forest conservation plan applications must be provided by applicants as specified in Section 50/59.10.01.04, as amended, of the Administrative Procedures for Development Review.

(b) *Project requiring development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus plan, mixed-income community plan or site plan approval.*

(1) Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation and the forest stand delineation must be approved before the applicant may submit an application for a development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus plan, mixed-income community plan or site plan. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest

stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

(2) Forest conservation plans

(A) Application. After being notified that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning Director with the related application for a development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus plan, mixed-income community plan or site plan. If the development proposal will require more than one of the approvals subject to this subsection, the applicant must submit a preliminary forest conservation plan to the Planning Director in conjunction with the first approval and a final forest conservation plan in conjunction with the last approval. If only one approval subject to this subsection is required, an applicant must submit a preliminary forest conservation plan and a final forest conservation plan at the time of the development application. The applicant must own the property subject to the

213 forest conservation plan or be authorized by the owner to file
214 the application.

215 * * *

216 (C) Approval. The Planning Board must review and act on the
217 forest conservation plan concurrently with the development
218 plan, floating zone plan, project plan, preliminary plan of
219 subdivision, biohealth priority campus plan, mixed-income
220 community plan or site plan, as appropriate. Compliance with
221 the preliminary forest conservation plan, as amended by the
222 Board, must be made a condition of any approval of the first
223 applicable development application. Compliance with the final
224 forest conservation plan, as amended by the Board, must be
225 made a condition of any approval of the last development
226 application. For a development plan or a floating zone plan, [a
227 Planning Board recommendation to the District Council on the
228 preliminary forest conservation plan must be made under
229 Section 59-7.2.1] the Planning Board must approve the
230 preliminary forest conservation plan. A final forest conservation
231 plan must be approved by the Planning Board or Planning
232 Director, as appropriate, before the Planning Board approves a
233 record plat.

234 * * *

235 **22A-12 Retention, afforestation, and reforestation requirements.**

236 * * *

237 (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 be reasonably altered.

(2) In general, areas protected under this subsection include:

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

(B) contiguous forests;

(C) forests suitable for forest interior-dwelling species;

(D) forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of Environment;

(E) forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area;

(F) forests in urban areas as defined in Section 5-1607(c)(vi) of the Natural Resources Article of the Maryland Code;

260 [(C)](G) rare, threatened, and endangered species;
261 [(D)](H) trees connected to an historic site;
262 [(E)](I) champion trees and other exceptionally large trees; and
263 [(F)](J) areas designated as priority save areas in a master plan
264 or functional plan.

265 * * *

266 (d) *Afforestation*

267 (3) Solar photovoltaic facilities may not be subject to afforestation
268 requirements in this chapter. Solar photovoltaic facilities are subject to
269 all other requirements in this chapter.

270 * * *

271 * * *

272 (e) *Standards for reforestation and afforestation.*

273 (3) Priority areas and plantings. Afforestation and reforestation should
274 be directed to stream buffer areas, environmental buffers, connections
275 between and additions to forested areas, critical habitat areas and
276 adjacent forest buffers, topographically unstable areas, and land use
277 and road buffers. The use of native plant materials is preferred.

278 * * *

279 **22A-13. Forest mitigation banks.**

280 * * *

281 (e) The forest mitigation bank plan must include:

(4) the number of forest mitigation bank credits available for sale as either:

(A) [if permitted by state law,] existing forest credits, where 1 acre of forest mitigation bank credit equals 2 acres of existing forest...

* * *

(g) Purchasing and selling forest mitigation bank credits.

* * *

(3) Credits may only be debited from forest mitigation banks that protect all or part of an existing forest to meet up to 50% of the afforestation or reforestation requirement.

~~[(3)]~~(4) Forest mitigation bank credits must be acquired from a forest mitigation bank within the same 8-digit watershed, as delineated by the State of Maryland, where the development activity is located. If forest mitigation bank credits are not available within the same 8-digit watershed within the County, applicants must acquire forest mitigation bank credits from a forest mitigation bank within a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA). If forest mitigation bank credits are not available within a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA), applicants may acquire forest mitigation bank credits from any approved forest mitigation bank within the County.

305 [(4)](5) The forest mitigation bank credits acquired must be equal to
306 the applicant’s off-site reforestation or afforestation requirements
307 under the approved forest conservation plan.

308 * * *

309 **22A-15 Inspections and Notifications.**

310 * * *

311 (a) *Plan to be on site; field markings.* A copy of the approved forest
312 conservation plan, tree save plan, or confirmed forest conservation exemption
313 as applicable must be available on the site for inspection by representatives
314 authorized by the Planning Director. Field markings must exist on site before
315 and during installation of all protective devices, construction, or other land
316 disturbing activities.

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<p>Montgomery Planning Board Regulation on</p> <p>FOREST CONSERVATION – TREES</p> <p>Issued by: Montgomery County Planning Board Regulation No. COMCOR No. 22A.00.01</p> <p>Authority: Montgomery County Code, Chapter 22A-26 Council Review: Method (2) under Code Section 2A-15</p> <p>Effective Date: Comment Deadline:</p> <p>Summary: These regulations contain administrative requirements related to the review and processing of Natural Resource Inventories, Forest Stand Delineations, Exemptions from Submitting a Forest Conservation Plan, and Forest Conservation Plans that are acted upon by the Planning Board or the Planning Director under Chapter 22A.</p> <p>Staff Contact: Kelsey Desmond, Forest Conservation Planner III Intake and Regulatory Coordination Division Kelsey.desmond@montgomeryplanning.org</p> <p>Address: 2425 Reddie Drive Wheaton, MD 20902</p> <p>Background: These regulations clarify and further develop administrative procedures to implement the submittal of applications under Chapter 22A of the County Code. This regulation amends the Forest Conservation Regulations that were adopted by the Planning Board in 2001 and amended in 2024, and approved by the County Council under Method 2 procedures.</p>

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CHAPTER 22A. FOREST CONSERVATION - TREES — REGULATIONS

COMCOR 22A.00.01 Forest Conservation

COMCOR 22A.00.01 Forest Conservation

22A.00.01.01 Purpose

These regulations identify the steps that an applicant must take to comply with Chapter 22A of the County Code. These regulations were adopted by the Planning Board and approved as regulations by the County Council under Chapter 22A.

22A.00.01.02 Authority

In accordance with Chapter 22A, sometimes referred to in these regulations as the “Forest Conservation Law,” the following Planning Board Regulations shall pertain to all development applications, mandatory referrals, conditional uses, sediment control permits, or park development applications. In addition, the *Tree Technical Manual* is 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.

22A.00.01.03 Definitions

(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 potential of growing to a 2 inch or greater diameter at 4.5 feet above the ground within 7 years. In some instances, afforestation includes creation of tree cover by landscaping areas under an approved landscaping plan.

(2) “Afforestation threshold” means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law.

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(3) “Applicant” means the person who is applying for a development plan, diagrammatic plan, subdivision, floating zone plan, sketch plan, site plan, project plan, biohealth priority campus plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, sediment control permit, special exception/conditional use, mandatory referral, or park development 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 must be shown on the record plat, if applicable, and its terms and conditions are recorded in the county’s land records. If no plat is required, the easement is recorded in the County’s land records only.

(a) “Category I Conservation Easement” means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.

(b) “Category II Conservation Easement” means a restriction on the land that permanently protects large trees, landscape areas, and any tree planted outside of forest that receives forest conservation plan credit.

(7) “Conservation threshold” means a specific percentage of a tract that is used in determining reforestation requirements per Sections 22A-12(a) and (f) of the Forest Conservation Law.

(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

(c) constitutes habitat of the species which is considered critical under the Annotated Code of Maryland Natural Resources Article.

(9) “Critical habitat for endangered species” means a habitat occupied by an endangered species as determined or listed under the Annotated Code of Maryland Natural Resources Article.

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(10) “Critical root zone” means the zone in which the roots of a tree are located, as defined in the latest version of the Trees Technical Manual. It is also the area around a tree that should be undisturbed unless protection measures are provided to protect the long-term viability of the tree.

(11) “Development application” means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for approval of a regulated activity.

(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 grading or construction activities occurring on a specific tract. This includes redevelopment projects.

(15) “Environmental buffer” means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to the latest version of the environmental guidelines, or an appropriate master plan; and floodplains.

(16) “Environmental guidelines” means the *Guidelines for the Environmental Management of Development in Montgomery County, Maryland (M-NCPPC)*, as amended.

(17) “Ephemeral channel/stream” means a channel defined as ephemeral per the latest version of the environmental guidelines.

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

(19) “Equity focus areas” means geographic areas of Montgomery County characterized by high concentrations of lower-income households, people of color, and individuals who may speak English less than very well. Boundaries are determined by Planning Department staff and are mapped on the Planning Department website.

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(20) “Field survey” means a field investigation of the environmental characteristics of a site, including existing forest.

(21) “Flood, One Hundred-Year” means a flood which has a 1 percent statistical probability of being equaled or exceeded in any given year. Unless otherwise stated, this calculation is based on the contributing watershed under existing zoning.

(22) “Floodplain, One Hundred-Year” means the 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 100-year flood, based on ultimate development of the watershed under existing zoning.

(23) “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.

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

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

(26) “Forest management plan” means a plan establishing conservation and management practices for a landowner 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, and by the Planning Director if located within a conservation easement.

(27) “Forest mitigation bank plan” means a plan that a property owner submits to document the acreage of forest mitigation bank credits and shows the credits based on the amount of existing forest permanently protected, forest planted and protected, and a planting plan.

(28) “Forest mitigation bank credits” means the credits available for sale at a forest mitigation bank, where 1 acre of mitigation bank credit equals 2 acres of existing forest or 1 acre of planted forest.

(29) “Forest retention” means the forest shown on a forest conservation plan that will be saved, counted as forest retained on the worksheet, and included in a long-term protective agreement.

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(30) “Forest stand delineation” or “FSD” means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activity. The FSD is submitted as part of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD).

(31) “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.

(32) “Intermittent stream” means a stream defined as intermittent in the latest version of the environmental guidelines.

(33) “Landscaping credit” means areas shown on a forest conservation plan, that are not forest, but will receive credit toward a site’s reforestation or afforestation requirements, so long as the plantings are not required to meet zoning or other requirements. The forest conservation plan must show the dimensions and details for tree planting and landscaping areas. Any planting for landscaping credit to meet the forest conservation plan requirements must use native plants or cultivars of native plants.

(34) “Limits of disturbance” means a clearly designated area within which land disturbance may occur.

(35) “Maintenance and management agreement” means the short-term management agreement associated with a forest conservation plan, and may include the control of non-native and invasive plants.

(36) “Major amendment to a Forest Conservation Plan” means an amendment that results in more than a total of 5,000 square feet of additional forest clearing and/or the removal or partial removal of any conservation easement.

(37) “Minor amendment to a Forest Conservation Plan” means an amendment that does not result in more than a total of 5,000 square feet of additional forest clearing or the removal or partial removal of any conservation easement.

(38) “Native” means a plant or animal species whose geographic range during precolonial time included the Piedmont Region 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.

(39) “Natural regeneration” means the natural establishment of native trees and other native vegetation.

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(40) “Natural resources inventory” or “NRI” means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in the latest version of the environmental guidelines. The NRI is submitted as part of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD).

(41) “Offsite” means outside the limits of the areas encompassed by a tract.

(42) “Onsite” means within the limits of an area encompassed by a tract.

(43) “Perennial stream” means a stream defined as perennial in the latest version of the environmental guidelines.

(44) “Planting plan” means a plan showing how areas to be reforested or afforested will be planted.

(45) “Priority planting area” means areas in which planting must occur when present.

(46) “Priority retention area” means areas, identified in Section 22A-12(b) of the Forest Conservation Law that are ranked as the highest priority for retention as part of a forest conservation plan.

(47) “Qualified professional” means a Maryland licensed forester, Maryland licensed landscape architect, or other qualified professional approved by the State.

(48) “Regulated activity” means any of the following activities:

- (a) Subdivision;
- (b) Biohealth priority campus plan;
- (c) Site plan;
- (d) Project plan;
- (e) Sketch plan;
- (f) Floating zone plan;
- (g) Development plan;
- (h) Mixed-income community plan;

[(h)] (i) Special exception/conditional use on a tract of land greater than 40,000 square feet;

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[(i)] (i) Clearing of more than 5,000 square feet of forest;

[(j)] (k) Park Development project on a tract of land greater than 40,000 square feet;

[(k)] (l) An activity that requires a sediment control permit on a tract of land, individually or cumulatively that are greater then 40,000 square feet; or

[(l)] (m) Mandatory referral on a tract of land greater than 40,000 square feet.

(49) “Retention area” means forested areas, tree stands and the critical root zone of individual trees that will be retained on a site.

(50) “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.

(51) “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 as further described in the most recent version of the Trees Technical Manual.

(52) “Stream buffer” means a strip of land 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 the environmental guidelines.

(53) “Subdivision” means the definition of subdivision in Chapter 50 of the Montgomery County Code.

(54) “Tract” means:

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

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

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

(56) “Tree save plan” means a plan approved by the Planning Board, or Planning Director, under Chapter 22A or Chapter 50 of the County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.

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(57) “Tree stand” means an area where trees are concentrated at too low a density, or that is too small in size or area to meet the definition of “forest.”

22A.00.01.05 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 or regulated activities:

(1) a development plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;

(2) a project plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;

(3) a preliminary plan of subdivision, administrative subdivision, or minor subdivision approved by the Planning Board, or Planning Director, under Chapter 50 of the County Code;

(4) a site plan approved or amended under Division 59-D-3 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;

(5) a site plan approved or amendment under Section 59.7.3.4 of Chapter 59 of the County Code;

(6) a sketch plan approved under Section 59.7.3.3 of Chapter 59 of the County Code;

(7) a sediment control permit required under Chapter 19 of the County Code;

(8) clearing or grading conducted on two or more platted contiguous lots that are part of the same project, that collectively total 40,000 square feet or larger, that are graded at the same time, and where sediment control is required under Chapter 19 of the County Code.

(9) a special exception approved under Article 59-G of Chapter 59 of the County Code that was in effect prior to October 30, 2014;

(10) a conditional use approved under Section 59.7.3.1 of Chapter 59 of the County Code;

(11) a mandatory referral; [and]

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(12) a park development plan;

(13) a biohealth priority campus plan, and;

(14) a mixed-income community plan.

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 may include a forest stand delineation, as described in Section 22A.00.01.06 and in the latest versions of the environmental guidelines and the Trees Technical Manual (MNCPPC). To be reviewed and approved by the Planning Director.

(2) Identification by a qualified professional, of forest and tree retention areas per subsection 22A-12(b) of the Forest Conservation Law, Sections 22A.00.01.06 and 22A.00.01.07, 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 applicable, which includes:

(a) lot lines, building, and proposed infrastructure, located to maximize retention areas and avoid environmentally sensitive areas such as environmental buffers and critical habitats wherever practical;

(b) areas of existing forest, areas of forest to be removed, and areas of forest to be retained;

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

(d) appropriate protection and maintenance measures; and

(e) a timetable for construction and planting.

22A.00.01.06 Natural Resource Inventory and Forest Stand Delineation (NRI/FSD) Requirements

A. A Natural Resource Inventory (NRI) application must be considered complete if it contains a complete analysis of existing natural resources and man-made features on a property which is verified by field survey and contains the following information to cover

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the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining properties, whichever is less:

- (1) property boundaries;
- (2) 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 basis, if necessary to determine the accuracy of the plan);
- (3) slopes 25% and greater, and slopes between 15% and 25% that are associated with erodible soils;
- (4) perennial and intermittent streams and stream buffers per the latest version of the environmental guidelines;
- (5) ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the environmental guidelines or appropriate master plan;
- (6) existing one-hundred year floodplains and associated 25' building restriction lines;
- (7) wetlands and their buffers per the latest version of the environmental guidelines;
- (8) soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, and erodible soils per the list in Appendix C of the environmental guidelines, and known serpentinite soils in Montgomery County;
- (9) rare, threatened or endangered plants or animals observed in the field;
- (10) critical habitat areas observed or documented by the Maryland Department of Natural Resources;
- (11) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;
- (12) 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;
- (13) specimen trees;
- (14) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees;

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(15) cultural features and historic sites;

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

(17) a table containing acreage of wetlands, 100-year floodplains, stream buffers, and environmental buffers; and

(18) a completed NRI/FSD application form, fee schedule worksheet, and review fee.

B. A Forest Stand Delineation (FSD) application must be considered complete if it contains a detailed summary of existing forest and trees on a tract, or forest stand delineation 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 properties, whichever is less:

(1) forest stands and field verified boundaries;

(2) a description of each stand including:

(a) acreage;

(b) dominant and codominant tree species;

(c) size class by species;

(d) percent canopy closure;

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

(f) percent of forest floor covered by herbaceous plants (native species), downed woody material, and alien or invasive species; and

(g) a stand condition narrative for each stand including, priority for retention, information on condition classes, structure, function, retention potential, transplant and regenerative potential, and comments on evidence of past management; and

(3) specimen trees by size and species;

(4) 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, which must also be clearly numbered with corresponding tags in the field;

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(5) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees, which must also be clearly numbered with corresponding tags in the field;

(6) field survey reference points demarked on a plan drawing and in the field;

(7) a table containing total acreage of forest, forest in priority retention areas, forest not in priority retention areas, forest within existing wetlands, forest within 100-year floodplains, and forest within stream buffers;

(8) a summary map, which in addition to the information in subsections (1) and (2), shows the priority of forest stands for retention as described in Section 22A.00.01.07; and

(9) a completed NRI/FSD application form, fee schedule worksheet and review fee.

C. A simplified forest stand delineation may be used per subsection 22A-10(b)(2) of the Forest Conservation Law. The simplified plan must also include:

(1) forest stands as determined by dominant species types and priority for retention;

(2) stand condition narrative as described in subsection (B)(2).

D. When necessary the items described in A and B, or A and C, above must be combined into one plan drawing and is called a Natural Resources Inventory/Forest Stand Delineation

E. The Natural Resources Inventory and Forest Stand Delineation must be prepared by a licensed forester, licensed landscape architect, or other qualified professional; and must exhibit a stamp or certification of the preparer. The Natural Resources Inventory/Forest Stand Delineation must be used to determine areas of forest to be saved or planted.

F. A Natural Resources Inventory and Forest Stand Delineation is valid for two years from the date it is approved. If a forest conservation plan or a plan under Section 22A-9 has not been accepted as complete during the two-year validity period, an approved Natural Resources Inventory and Forest Stand Delineation expires at the end of its validity period. An expired Natural Resources Inventory and Forest Stand Delineation may be recertified within one year after the expiration date, if the original plan preparer attests that there are no changes to the size and shape of the application tract, existing conditions, forest acreage, tree canopy, or any other detail of the originally approved Natural Resources Inventory and Forest Stand Delineation. A Natural Resources Inventory and Forest Stand Delineation may only be recertified one time. A new Natural Resources Inventory and Forest Stand

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Delineation may be required if there are changes to site conditions, applications, plan preparer, or applicant.

22A.00.01.07 Priorities for Retention

A. The following areas are considered the highest priority retention areas for protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of subsection 22A-12(b)(1) of the Forest Conservation Law, have been met and the development proposal cannot reasonably be altered:

(1) trees, shrubs, and other plants located in sensitive areas including environmental buffers, slopes over 25 percent (not man-made), erodible soils on slopes of 15% or more, 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) trees, shrubs, or plants identified on the Maryland Department of Natural Resources list of rare, threatened, and endangered species;

(4) a forest area which has been designated as priority for retention in master plans or functional plans, or in the absence of such plans, a forest which exhibits all of the following characteristics as further described in the most recent version of the Trees Technical Manual:

(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

(5) an individual tree, and its critical root zone, with one or more of the following characteristics:

(a) a tree that is 1" caliper or larger and part of a historic site or associated with a historic structure;

(b) a tree designated as a national, state, or County champion tree;

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

(d) trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater; and

(e) a tree which is a specimen of a species;

(6) a forest area located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of Environment;

(7) a forest area located in a water resource protection zone, a reservoir watershed or a wellhead protection area;

(8) forests in urban areas as defined in Section 5-1607(c)(i) of the Natural Resources Article of the Maryland Code.

B. The following areas are not subject to the retention provisions in subsection 22A-12(b)(1) of the Forest Conservation Law, but should be given consideration for preservation where feasible:

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

(2) a forested stream buffer up to 300 feet on either side of a stream channel;

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

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

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

22A.00.01.08 General Forest Conservation Plan Provisions

A. In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The Forest Conservation Law specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants must strive to maximize forest retention whenever practical.

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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 applicable:

- (1) how techniques for retention have been exhausted;
- (2) why the forests in priority retention areas specified in Section 22A.00.01.07 are not being retained;
- (3) if forests in priority retention areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with subsection 22A-12(e)(1)(A) of the Forest Conservation Law;
- (4) where on site in priority planting areas the afforestation or reforestation will occur in compliance with subsection 22A-12(e)(3) of the Forest Conservation Law; and
- (5) how the standards for afforestation and reforestation requirements in subsection 22A-12(e)(4) of the Forest Conservation Law will be met.

C. 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 subjected to the reforestation requirements of both the nontidal wetlands regulations and this subtitle, subject to the following:

- (1) forested nontidal wetlands which are retained, must 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 must be shown on the forest conservation plan; and
- (4) wetlands are priority retention areas.

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 22A.00.01.07A may receive retention credit equal to the area of their critical root zone

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protected when at least two thirds of the entire critical root zone is permanently protected by an easement.

(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 must be determined by a measure of the aerial extent of remaining forest cover which includes the outer perimeter of the canopy of individual trees, 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 highest priority planting areas for forest conservation plans with required afforestation and reforestation:

- (a) environmental buffers;
- (b) establish or enhance forest in buffers adjacent to ephemeral streams, when such streams are required to have buffers as recommended in an applicable Master Plan or in the latest version of the environmental guidelines;
- (c) establish or enhance forested areas on 100-year floodplains, when appropriate;
- (d) establish or increase existing forested corridors to connect existing forest within or adjacent to the site. Where practical forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
- (e) establish or enhance forest buffers adjacent to critical habitats where appropriate;
- (f) 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;
- (g) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-way;
- (h) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and

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(i) non-forested wetlands are priority planting areas; however, these areas may be left in their existing condition when appropriate.

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

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

(b) appropriate site preparation, protection and/or maintenance measures as described in the latest version of 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 (per acre) ¹	Approximate Spacing (feet on center) ²	Survival Requirements (starting at the end of the 3 rd or 5 th growing season) ³
TREES			
¾" to 1" caliper; B&B or container grown (minimum 7 gal.)	200	12' to 15'	75% or 150 per acre ⁴
1 ½" to 2" caliper; B&B or container grown (minimum 15 gal.)	100	15' to 20'	100% or 100 per acre ⁵
SHRUBS			
18" to 24" height; container grown (minimum 3 gal.)	33	[[6]] See <u>reference in note 6</u>	

Notes:

1 In certain circumstances, any combination of the above mentioned stocking options 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

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necessary protection and maintenance measures, on a case-by-case basis by the Planning Board.

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 tree.

3 If tree survival at the end of the 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 will be required in addition to reinforcement planting. Natural regeneration may be counted toward survival requirements, in addition to the required planting, 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 must be 1" trees. All trees to be accepted must be healthy and have the main leader intact with minimal deer browse.

5 Surviving trees must be at least 2" caliper to receive full credit toward survival requirements. Reinforcement planting must be 2" trees. All trees to be accepted must be healthy and have the main leader intact with minimal deer browse.

6 Shrubs should be evenly distributed over the planting area and among the trees.[.] On a case-by-case basis, shrubs may be substituted with native trees particularly when there is evidence of deer predation or high incidence of non-native and invasive plants and materials.

7 An alternative methodology to establish planted forest, such as planting smaller trees and shrubs at a higher density, or supplemental planting of live stakes, may be approved by the Planning Director as appropriate to encourage the establishment of an overstory or understory, build resilience against invasive species or deer, or otherwise establish forest ecosystem using the best methodology for the site. However, the density and survival requirements detailed in the table above must be met at a minimum.

F. Tree Save Plans.

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(1) Development applications on tracts which impact [significant,] specimen or champion trees, including those on adjoining properties, are required to submit a tree save plan.

(2) Preserving [significant,] 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 must be required.

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

(a) specimen and champion trees must be replaced by a planting plan at a ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet above the ground, which may be required to include planting or transplanting of large trees;

(b) [significant] tree stands in an existing recorded scenic buffer must be replaced to replace the function of the stand; for instance, trees which provide screening must be replaced in sufficient kind and number to perform the same function.

(4) The tree save plans must show on-site or off-site trees 6" DBH or greater located along the limits of disturbance if the proposed activity would impact the critical root zone of those trees, and must identify methods to preserve and protect those trees.

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

(1) The Planning Board or Planning Director, as applicable, must find that all opportunities for establishing forest have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area is applied.

(2) Trees receiving credit towards forest conservation requirements must not also be credited towards landscaping requirements, including planting and screening required by zoning or other regulatory requirements.

(3) Newly planted landscape trees, within landscape areas must be 3" minimum caliper stock to be counted toward requirements.

(4) Newly planted trees outside of forest, or designated landscape areas, must be 3" minimum caliper stock to be counted toward requirements.

(5) The area(s) where trees are planted must have adequate soil conditions, volume, and surface area to sustain plantings.

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(6) Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as applicable, 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.

(7) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements only for projects located within an equity focus area as follows:

- (a) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide may 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 may receive one quarter credit for their area;
- (c) individual landscape trees may receive one quarter credit for the projected area of their canopy at 20-years;
- (d) individual non-priority trees which are retained may 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 must not exceed twenty percent of the overall reforestation requirement for a site.

(8) 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 (3):
 - (i) landscaping areas or retained tree stands of any size may receive full credit for their area;

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(ii) individual landscape trees which are retained may receive full credit for the projected area of canopy at 20-years;

(b) sites with special provisions for meeting minimum requirements per Section 22A-12(f) of the Forest Conservation Law:

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

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

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

(iv) individual trees which are retained may 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 must not exceed twenty percent of the overall afforestation requirement for a site.

22A.00.01.09 Forest Conservation Plan Requirements

A. Preliminary Forest Conservation Plans.

(1) Development applications that need more than one approval must submit a preliminary forest conservation plan in conjunction with the first approval, unless multiple applications are submitted for simultaneous review and only a final forest conservation plan is required. The preliminary forest conservation plan may be based on conceptual analysis if the basic parameters are met and any assumptions are realistic.

(2) A preliminary forest conservation plan must contain the following:

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

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

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(c) location of building restriction lines and areas to be conserved including environmental 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, including acreage, with appropriate justification and proposed long-term protection methods (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, including acreage, and mitigation trees, 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 forest in priority retention areas;

(vii) acreage of total forest retention in priority retention areas;

(viii) acreage of total forest retention not in priority retention areas;

(ix) acreage of total forest cleared in priority retention areas;

(x) acreage of forest cleared not in priority retention areas;

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

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

(xiii) acreage of forest retained, cleared, and planted within 100-year floodplains;

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

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(xv) total acreage of forest retained, cleared, and planted within priority planting areas; and

(xvi) 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, if known, and must be submitted in conjunction with the final approval needed as part of a development application. However, if the development project requires the approval of one development application, the final forest conservation plan must be submitted with that development application.

(2) In addition to the items listed in subsection A(2)(a-c), (f), (g) and (h), a final forest conservation plan must include:

(a) conceptual or 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 limits of disturbance line which reflects the limits of all clearing and grading on the tract, and the proposed location of sediment and erosion control devices and staging areas;

(c) a survey of trees with a diameter of 24 inches and greater at 4.5 feet above the ground (or trees of other sizes if requested by Planning Department staff to determine the feasibility of proposed retention areas), within 50' on either side of the limits of disturbance, with critical root zones delineated, and with the distance from the tree face to the limits of disturbance shown on the plan or in an associated table;

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

(e) a note describing whether on site downed woody material is to be retained and incorporated into retention, afforestation, or reforestation areas to build habitat.

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

(i) a note indicating whether soil restoration techniques will be implemented;

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- (ii) location and acreage of areas to be planted;
- (iii) an analysis of the suitability of the site for planting and a description of necessary methods;
- (iv) a list of target tree and shrub species, chosen based on analysis of site conditions, which can be used for site planting;
- (v) a plant materials table including size of plants to be installed and quantities;
- (vi) planting and inspection schedule which is tied to the construction sequence for the project;
- (vii) a maintenance plan which includes provisions for necessary watering, control of competing vegetation, protection from disease, pests, and mechanical injury, removal of protective measures such as deer caging, and reinforcement planting if plant survival falls below the requirements of subsection 22A.00.01.08E(3)(c); and
- (viii) a maintenance and management agreement; and
- (g) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;
- (h) a protection plan which shows:
 - (i) location of temporary protection devices which 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 device;
 - (iv) a narrative of stress reduction or other measures which are needed for specific trees;
 - (v) a field inspection schedule pursuant to Section 22A.00.01.10;
 - (vi) location of permanent protection devices;
 - (vii) an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when 30% or more of the critical root zone is impacted; and
 - (viii) an arborist report may be required, on a case-by-case basis, for trees less than 24" dbh, when 30% or more of the critical root zone is impacted;

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(h) identification of how the off-site planting requirements will be met either through a fee in lieu payment, by acquiring mitigation credits from an approved forest mitigation bank, or by planting offsite; and

(i) if off-site planting is going to occur, the forest conservation plan must include 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 22A.00.01.08E(2).

C. Noticing Requirements for Forest Conservation Plans.

(1) Applicants that require approval of a forest conservation plan must follow the noticing requirements identified in Administrative Procedures for Development Review in COMCOR 50/59.00.01.04.

22A.00.01.10 Inspections

A. The Planning Department must conduct field inspections of a site subject to an approved forest conservation plan, tree save plan or confirmed forest conservation exemption as follows:

(1) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins (the purpose of the meeting should 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 (the purpose of the meeting should be to field verify that both measures have been done correctly and to authorize clearing and grading);

(3) after completion of all construction activities to determine the level of compliance with the approved plan;

(4) before the start of any required reforestation planting (the purpose of the meeting should be to determine whether necessary pre-planting measures have been completed and authorize any necessary adjustments to the planting specifications);

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

(6) two years after reforestation and afforestation have been completed, to determine survival and assess necessary maintenance activities for the remaining duration of the maintenance and management period; and

(7) at the end of the maintenance and management period to determine the level of compliance with the provisions of the planting plan and, if appropriate, authorize release of any financial security.

B. [.]The applicant must:

(a) request these inspections at the designated points; and

(b) submit to the Planning Department semi-annual reports and photographs showing compliance with the provisions of the forest conservation plan by October 31st and April 30th of each year for the duration of the maintenance and management period.

C. The Planning Department is authorized to conduct field inspections at any time other than those identified in Section 22A.00.01.10A.

D. For sites without any planting requirements the final inspection is for the Planning Department to authorize removal of any tree protection measure. For sites with planting requirements, the final inspection occurs at the end of the maintenance and management period.

22A.00.01.11 Exemptions

A. A request for exemption from forest conservation plan 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;

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(3) a Natural Resources Inventory, or Natural Resources Inventory/Forest Stand Delineation if forest is proposed to be removed, prepared per Section 22.00.01.06 and the guidelines in the latest version of the environmental guidelines;

(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 information is submitted, and the Planning Director affirms, that a natural resource inventory is not necessary but the information does show existing and proposed topography and forest boundaries;

(2) agricultural exemptions per subsection 22A-5(b) of the Forest Conservation Law if a diagram is submitted with the exemption request showing existing and future forest boundaries;

(3) commercial logging and timber harvesting exemptions per subsection 22A-5(d) of the Forest Conservation Law if a diagram is submitted with the exemption request showing existing and future forest boundaries, environmental buffers, harvest areas, and haul roads; and

(4) applications for other exemptions, if the site being developed does not contain any forest specimen or significant trees, existing conservation easements, or environmentally sensitive features, and a plan showing existing features and topography is submitted with the exemption request.

D. The Planning Director may require a person requesting an exemption from submitting a forest conservation plan to submit a tree save plan in conjunction with the exemption request.

E. The Planning Board, or Planning Director, 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 a declaration of intent to:

(1) submit a Forest Conservation Plan and meet the requirements in the Forest Conservation Law for a regulated activity;

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(2) pay a noncompliance fee;

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

(4) submit a request to be exempt from submitting a forest conservation plan.

F. 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 violation of this subtitle.

G. A confirmed exemption that has not started any authorized land disturbance within 5 years from the date of confirmation automatically expires without notice.

H. A confirmed exemption may not be amended. A new exemption must be submitted for review in order to make any changes.

22A.00.01.12 Declaration of Intent

A. A declaration of intent is an affirmation by an applicant that a property is subject to the following activities and limitations and therefore is eligible for an exemption from the Forest Conservation A declaration of intent is required for the following exemptions from submitting a forest conservation plan;

(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 complies with 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.

(3) An agricultural activity that complies with subsection 22A-5(b) of the Forest Conservation Law;

(4) A commercial logging and timber harvesting operation that complies with subsection 22A-5(d) of the Forest Conservation Law;

(5) A minor subdivision that complies with subsection 22A-5(n) of the Forest Conservation Law;

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(6) An activity involving the demolition of an existing structure that complies with subsection 22A-5(x) of the Forest Conservation Law.

B. The declaration of intent must provide Planning Department staff with access to the property to verify compliance with the declaration.

C. The declaration of intent is effective for 5 years after the date defined in the declaration of intent.

D. The filing 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) the exemption immediately terminates without any action by the Planning Board;
- (2) the Planning Director may require approval of a Forest Conservation Plan for the property; and
- (3) the Planning Director, or Planning Board may take other enforcement actions, including those listed under Section 22A-17(a) of Article III of the Forest Conservation Law.

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 Section 22A-5 are satisfied.

22A.00.01.13 Amendment to Forest Conservation Plan and Exemptions from Submitting a Forest Conservation Plan

A. Forest Conservation Plan Amendments.

(1) Minor amendments which do not result in more than a total of 5,000 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:

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(a) more than a total of 5,000 square feet of additional forest clearing must be approved by the Planning Board or Planning Director (depending on who approved the original plan), or

(b) removal of any conservation easement must be approved by the Planning Board.

(3) All Forest Conservation Plan amendment applications must conform to the requirements of the Forest Conservation Law and regulations in effect at the time of submission.

22A.00.01.14 Forest Conservation Maintenance and Management Agreements

A. Maintenance Agreements.

(1) A person required to conduct afforestation or reforestation under this regulation and the Forest Conservation Law must include in the forest conservation plan a binding maintenance agreement for a minimum length of 5 years unless reduced pursuant to Section 22A-12(h)(1) of the Forest Conservation Law. The binding maintenance agreement for forest conservation plans within Special Protection Areas must have a minimum length of 5 years and cannot be reduced.

(2) The maintenance agreement must be submitted and approved by the Planning Director before the start of any land disturbing activities.

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

(4) The “obligee,” or person required to conduct the afforestation or reforestation 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;
- (b) an executed conservation easement agreement;
- (c) written evidence of the landowner’s consent to the use of a selected property;
- (d) a fully executed option agreement, long-term lease agreement, or contract of sale for a selected property; or

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(e) other written evidence of a possessory or ownership interest in a selected property.

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

(6) The maintenance agreement must provide Planning Department staff with access to the property to verify compliance with the Forest Conservation Plan.

(7) If the plantings have not met the survival requirements established in section 22A.00.01.08 or required control of non-native and invasive vegetation, reinforcement plantings and/or additional non-native invasive control will be required, and the maintenance period may be extended.

B. Bonding.

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

(2) Financial security must be provided before authorization is granted to begin any clearing, grading, demolition, or land disturbing activities.

(3) The value of the financial security must equal the in-lieu fee applicable at the time of land disturbance, or be based on a cost estimate, approved by the Planning Director, for implementing the planting and maintenance of trees and shrubs (including mitigation trees) and control of non-native and invasive plants.

(4) 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.

(5) A surety bond or other alternative form of security must not be canceled by the surety, bank, or other issuing entity unless both of the following conditions are satisfied:

(a) the surety notifies the Planning Director 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 must take effect on the cancellation date indicated in the notice.

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

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financial security must be at least 50 percent, or greater, than the in-lieu fee that was in effect at the time of the first land disturbance.

(7) An applicant must request an inspection of the planted areas by Planning Department enforcement and monitoring staff immediately after planting is complete.

(8) Planning Department enforcement and monitoring staff must determine whether a partial release should occur, after planting has occurred, and how much, based on the following factors:

- (a) evidence of deer browse on existing trees and forest;
- (b) adherence to the planting plan;
- (c) condition of the planted material;
- (d) time of year when the planting has occurred and whether or not watering will occur;
- (e) size of planting stock; and
- (f) provisions of the protection and maintenance plan, including required control of non-native invasive vegetation.

(9) Planning staff must release the financial security if the applicant requests a final inspection and the Planning staff determines that survival requirements have been met at the end of the maintenance period.

22A.00.01.15 Long-Term Protective Agreements

An applicant 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 and unforested lands left in an undisturbed condition per section 22A-12(b) of the Forest Conservation Law and limit the uses of those areas which are consistent with forest conservation.

- (1) Long-term protective measures may include, but are not limited to:
 - (a) conservation easements or covenants;
 - (b) Deed restrictions; and

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(c) dedication to M-NCPPC Parks as a conservation area.

(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.

(Administrative History: Reg. No. 3-21 (Method 2); Orig. Dept.: Planning Board; Supersedes: Reg. No. 18-01AM)

APPROVED AS TO FORM AND LEGALITY

General Counsel's Office, M-NCPPC

By: 

Associate General Counsel

Date: 3/7/2025



Chair, Montgomery County Planning Board

Date: 3/7/2025

STAFF REPORT: 2024 PROPOSED AMENDMENTS TO THE FOREST CONSERVATION LAW & REGULATIONS

Description

Changes to Chapter 22A of the Montgomery County Code (the Forest Conservation Law) and Chapter 22A of the Code of Montgomery County Regulations (the Forest Conservation – Trees Regulations) are proposed to align the Montgomery County law with recent changes to the enabling state legislation. Such changes include addressing solarphotovoltaic facilities, forest retention areas and reinstating existing forest banks. Other minor changes recommended by staff are intended to clarify and update sections of the Forest Conservation Law and Forest Conservation – Trees Regulations. Staff is recommending approval of the recommended changes for transmittal and introduction to the County Council.

Completed: 11/15/2024

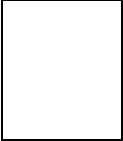
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Item No. 10
2024

Montgomery County
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Summary:

Changes to Chapter 22A of the Montgomery County Code (the Forest Conservation Law) are needed primarily to align the Forest Conservation Law with the enabling state law, which was recently amended per Senate Bill 0526 and became effective on July 1, 2024. Other minor changes recommended by staff are intended to clarify sections of the Forest Conservation Law and Forest Conservation - Trees Regulations.

Staff is recommending approval of the recommended changes to Chapter 22A for transmittal and introduction to the County Council and posting of the proposed Forest Conservation – Trees Regulations in the County Register.

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SECTION 2: SUMMARY OF PROPOSED CHANGES

The substantive changes proposed by this amendment include:

- (1) defining a solar photovoltaic facility;
- (2) removing afforestation requirements for solar photovoltaic facilities, as required by state law;
- (3) adding four new categories to the priorities of forest retention, as updated by state law; and
- (4) reinstating forest mitigation banks that protect existing forest, while stipulating that purchasing credits from these banks can only account for 50% of requirements in this chapter, as provided by state law.

The other proposed changes consist of more technical additions, deletions and clarifications to the Forest Conservation Law, as summarized below. A more detailed discussion and analysis of all proposed changes is in the next section titled **Analysis**.

SECTION 3: DETAILED DISCUSSION OF CHANGES

PROPOSED CHANGES TO THE FOREST CONSERVATION LAW

SECTION 22A-3 DEFINITIONS.

Proposal

Lines 6 through 8 add a new definition for “mixed-income community plan.”

Analysis

In response to the Montgomery County Council’s adoption of ZTA 23-02 and SRA 23-01 adding the “mixed-income community plan” to the Subdivision Regulations and Zoning Ordinance, the plan type must be added to 22A as well.

Proposal

Lines 10 through 12 add a new definition for “solar photovoltaic facility” to read as follows: an area containing the footprint of ground-mounted or freestanding solar energy generation equipment that is approved by the Maryland Public Service Commission.

Analysis

Defining this term became necessary when the enabling legislation, as amended by SB 0526, changed afforestation requirements for solar photovoltaic facilities. No definition was provided in the state law amendment, therefore it is necessary to add a definition to County Forest Conservation Law to provide certainty about what kinds of facilities will be removed from afforestation requirements. Staff defined solar photovoltaic facilities to address the development of utility-scale facilities, which exist on an average of 12 acres of land. The proposed definition applies to projects that would be reviewed by the Maryland Public Service Commission, who deliberate on such large-scale solar facilities. This definition also is intended to differentiate between what could be defined as a “solar farm,” which would be included within the definition, and rooftop mounted solar installations, which would not.

Proposal

Lines 15 adds “measuring at least 1 inch caliper” to the definition of “Tree.”

Analysis

This provides specificity for what size vegetation is classified as a tree. This would codify existing Staff practice.

SECTION 22A-4 APPLICABILITY

PROPOSAL

Lines 22, 150, 159, 160, 178, 179, 185, 203, 219, 220 adds “mixed-income community plan” to Chapter 22A-4(a), 22A-11(a)(1), 22A-11(a)(2), 22A-11(b), 22A-11(b)(1), 22A-11(b)(2)(A) and 22A-11(b)(2)(C).

Analysis

Provisions in the law that refer to plan types must be amended to include mixed-income community plans.

PROPOSAL

Lines 42-53 make clarifying edits to the Applicability section.

Analysis

This change amends inartful language that currently exists to clarify that any person must receive confirmation of a Forest Conservation Exemption or must file a Forest Conservation Plan prior to an activity that cuts, clears or grades more than 5,000 square feet of forest or any champion tree.

SECTION 22A-5 EXEMPTIONS.

Proposal

Lines 68, 69, 91, 92, 106, 107, 117, 118, 122, 123, 130, and 131 adds “unless a Tree Save Plan is approved under Section 22A-6(a)”.

Analysis

Certain Forest Conservation Exemptions include criteria that prohibit the clearing of a specimen or champion tree; however, Section 22A-6 includes provisions that allow for the clearing of these protected trees when a Tree Save Plan is approved and required mitigation is provided. This change clarifies the relationship between these two sections, as they are currently interpreted and administered by Staff, for ease of understanding by applicants.

Proposal

Lines 77 and 78 changes the order of wording for 22A-5(g).

Analysis

The exemption in 22A-5(g) regarding maintenance of public utility easements and rights-of-way is not changed but reworded for clarity.

SECTION 22A-6. TREE SAVE PLANS.

Proposal

Lines 135-137 adds “except for the clearing of a specimen or champion tree,” and changes conditional language (e.g. would be) to directive (e.g. is).

Analysis

This change clarifies that a tree save plan is required when an applicant qualifies for an exemption under Section 22A-5 and the development would result in the clearing of a specimen or champion tree. The amendment supports Staff’s current interpretation of this provision and is consistent with the clarified language in the exemption criteria in Section 22A-5, as outlined above, and the removal of significant trees as a tree save plan requirement, as described below.

Proposal

Line 137 removes significant trees from a tree save plan requirement.

Analysis

As part of the most recent amendment to County Forest Conservation Law in 2020, a tree save plan was required for development that impacted any significant tree. Prior to the amendment, a tree save plan and related mitigation were only required for impacts to specimen and champion trees. Since that amendment, Staff has observed that requiring mitigation for significant trees on tree save plans conflicts with the mitigation required for variance trees on Forest Conservation Plans because the variance provision does not require mitigation for significant trees. The change would make the requirements for tree save plans the same as mitigation requirements for variances granted on a Forest Conservation Plan.

Proposal

Line 142 adds “recorded” for existing scenic buffers.

Analysis

This section addresses trees cleared as part of an existing scenic buffer between public parkland and a proposed development; however, there could be ambiguity in what constitutes an “existing scenic buffer.” This change makes clear that an existing scenic buffer, for the purpose of this provision, are recorded in the land records.

SECTION 22A-11 APPLICATION, REVIEW AND APPROVAL PROCEDURES.

Proposal

Lines 212-214 add the requirement that the applicant for a forest conservation plan must either be the owner of the subject property or be authorized by the owner to file the application.

Analysis

This change would codify an existing intake requirement, consistent with other plan types processed by Staff.

Proposal

Lines 226-230 replaces the requirement that the Planning Board make a recommendation to the District Council for preliminary forest conservation plans associated with development plans or floating zone plans with the requirement that the Planning Board must approve the preliminary forest conservation plan.

Analysis

This change clarifies that the Planning Board is the approving authority for forest conservation plans that are reviewed concurrently with development plans or floating zone plans. This change is consistent with existing practice.

SECTION 22A-12 RETENTION, AFFORESTATION, AND REFORESTATION REQUIREMENTS

Proposal

Lines 253-259 adds the following priority retention areas for forest conservation: (1) forests suitable for forest interior-dwelling species, (2) forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of Environment, (3) forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area, and (4) forests in urban areas as defined in Section 5-1607(c)(i) of the Natural Resources Article of the Maryland Code.

Analysis

These additions to retention areas align with language from Maryland SB 0526. These priority areas expand forest protections to protect critical ecosystem services, such as habitat for endemic flora/fauna and water quality, and forest in more densely developed urban areas. Urban areas in this case are defined in the State Forest Conservation Technical manual.

Proposal

Lines 266-269 state that solar photovoltaic facilities may not be subject to afforestation requirements in this chapter but are subject to all other requirements.

Analysis

This addition to the law to preclude solar photovoltaic facilities from afforestation requirements will align the County Forest Conservation Law with State Law changes in Maryland SB 0526. Afforestation in areas near utility-scale facilities would reduce the solar photovoltaic cells efficacy. This would not allow solar photovoltaic cell facility applications to remove forest without meeting law requirements. Yet, solar photovoltaic facilities are still required to retain existing forests, reforest on-site or off-site as deemed necessary.

Proposal

Lines 274-276 add “environmental buffers,” and “adjacent forest buffers” to critical habitats as priority areas for afforestation and reforestation plantings.

Analysis

This change reflects the addition of certain priority areas for afforestation and reforestation outlined in SB0526 and ensures the chapter is consistent with state law.

SECTION 22A-13. FOREST MITIGATION BANKS

Proposal

Line 284 reflects removing the phrase “if permitted by state law,” from 22A-13(e)(4)(A).

Analysis

Section 22A-13(e)(4)(A) was added in preparation for reinstatement of existing forest banks, with language that acknowledged the enabling state legislation. The state law has now changed, so staff recommends codifying the changes in county law instead of having a broad reference to the state law.

Proposal

Lines 290-292 reinstate the use of existing forests in forest mitigation banks and state that credits for existing forest banks may only be used to cover up to 50% of the afforestation or reforestation requirement.

Analysis

Provisions of Maryland SB 0526 allowing forest mitigation banks to once again protect existing forest went into effect on July 1, 2024. Staff has been reviewing and processing forest mitigation bank applications under the state enabling law, but some changes to 22A are needed to ensure clarity for applicants using credits from these banks to meet their requirements. This change confirms the ability to establish forest mitigation banks using existing forest. The change also states that applicants can only use existing forest banks for 50% of their requirement and must use planted forest bank or fee-in-lieu for the remainder.

SECTION 22A-15 INSPECTIONS AND NOTIFICATIONS

Proposal

Lines 312-313 add either tree save plans or confirmed forest conservation exemptions to the list of plans that must be available on site for inspection.

Analysis

This change clarifies the enforceability of exemptions and tree save plans in Article III by requiring that they be available on-site for inspection by Forest Conservation Inspectors.

PROPOSED CHANGES TO THE FOREST CONSERVATION - TREES REGULATIONS

SECTION 22A.00.01.03 DEFINITIONS

Proposal

To add “mixed-income community plan” to definition (48) for “Regulated activity.”.

Analysis

In response to the Montgomery County Council’s adoption of ZTA 23-02 and SRA 23-01 adding the “mixed-income community plan” to the Subdivision Regulations and Zoning Ordinance, the plan type must be added to 22A regulations.

SECTION 22A.00.01.07 PRIORITIES FOR RETENTION

Proposal

To add subsections (6)-(8) to (A), to include the following priorities for retention: (1) forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of Environment, (2) forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area, and (3) forests in urban areas as defined in Section 5-1607(c)(i) of the Natural Resources Article of the Maryland Code.

Analysis

These additions to retention areas align with language from Maryland SB 0526. These priority areas expand forest protections to protect critical ecosystem services, in this case, water quality, and forest in more densely developed urban areas. Urban areas in this case are defined in the State Forest Conservation Technical manual.

SECTION 22A.00.01.08 GENERAL FOREST CONSERVATION PLAN PROVISIONS

Proposal

Add a clear reference to note 6 in the table of subsection (E)(3)(c).

Analysis

There is now an explicit reference to the note to clarify spacing of shrub plantings.

Proposal

Add the replanting ratio to subsection (F)(3)(a) for specimen and champion trees at 1 caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet above the ground.

Analysis

The planting ratio for mitigation trees in tree save plans is clearly outlined in Chapter 22A-6, so staff recommend this ratio is also included in the regulations.

Proposal

Remove “significant trees” from subsection (F)(3)(b) and add language to replace tree stands in existing recorded scenic buffer.

Analysis

Staff recommends removing significant trees from tree save plans consistent with the change recommended to Chapter 22A. Staff also recommends trees to be replaced in existing recorded scenic buffers to replace the function of the trees lost.

SECTION 4: CONCLUSION

Staff recommends the Planning Board approve transmittal of the proposed changes to Chapter 22A of the County Code and Chapter 22A of the Code of Montgomery County Regulations to the President of the Montgomery County Council for introduction and posting of the proposed Forest Conservation – Trees regulations in the County Register.

ATTACHMENT A: PROPOSED AMENDMENTS TO THE FOREST CONSERVATION LAW

ATTACHMENT B: PROPOSED AMENDMENTS TO THE FOREST CONSERVATION – TREES REGULATIONS

Sections 22A-3 through 22A-5(a), 22A-6, 22A-11(a), 22A-12(b) through 22A-13(g) and 22A-15 are amended as follows:

Chapter 22A. Forest Conservation - Trees

22A-3 Definitions

* * *

Mixed-income community plan means a plan that qualifies as a Mixed-income community plan under Section 3.3.1.E of Chapter 59 and is approved under Section 7.3.7 of Chapter 59.

* * *

Solar Photovoltaic Facility means an area containing the footprint of ground-mounted or freestanding solar energy generation equipment that is approved by the Maryland Public Service Commission.

* * *

Tree means a large, woody plant having one or several self-supporting stems or trunks measuring at least 1 inch caliper and numerous branches that reach a height of at least 20 feet at maturity.

* * *

22A-4 Applicability

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

- (a) a person required by law to obtain an approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, biohealth priority campus plan, mixed-income community plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan;

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

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

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

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

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

(g) clearing or grading conducted on two or more platted contiguous lots:

(1) that collectively total 40,000 square feet or larger;

(2) that are graded at the same time; and

(3) where sediment control is required.

Notwithstanding the above, [A]ny person who expects to cut, clear, or grade more than 5,000 square feet of forest or any champion tree[, and who believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-6, or 22A-8,] must request an exemption under 22A-5 or must comply with the requirements of Article II [notify the Planning Director in writing before performing any cutting, clearing, or grading]. Any person who believes that cutting, clearing or grading is

exempt under Section 22A-5, 22A-6 or 22A-8 must receive confirmation from the
Planning Director that the activity is in fact exempt from Article II. [and seek
confirmation from the Director that the cutting, clearing, or grading is in fact
exempt from Article II. Failing to notify the Director as required by this Section,
or] [p]Performing any cutting, clearing, or grading before the Director confirms
that an exemption applies[,] is a violation of this Chapter.

* * *

Sec. 22A-5. Exemptions.

The requirements of Article II do not apply to:

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

(1) does not require a special exception;

(2) does not occur within an environmental buffer, except for the
allowable uses stated in the environmental guidelines

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

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

(B) any forest in a stream buffer,

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

(D) any specimen or champion tree, unless a Tree Save Plan
is approved under Section 22A-6(a), or

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

[(3)] (4) 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;

* * *

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

* * *

(n) any minor subdivision under Division 50.7 of [Chapter 50](#) if:

(1) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); development does not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines; and development does not result in the cutting, clearing, or grading of:

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

(B) any forest in a stream buffer;

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

(D) any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a); or

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

* * *

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

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

(2) forest clearing will not exceed a total of 20,000 square feet and

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

(A) any forest in a stream buffer,

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

(C) any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a), or

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

* * *

(q) a special exception, or conditional use, application if:

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

(2) the application modifies an existing special exception use which was approved before July 1, 1991, and the revision will not result in the clearing of more than a total of 5,000 additional square feet of forest or any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a); or

(3) the total disturbance area for the proposed special exception use, or conditional use, will not exceed 10,000 square feet, and clearing will not exceed a total of 5,000 square feet of forest or include any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a);

* * *

(s) (2) an activity occurring on a tract of land that is less than 1 acre and that

(A) is not located within the Commercial Residential (CR) zone classification; would not result in the clearing of more than a total of 20,000 square feet of existing forest, or any existing specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a);

* * *

22A-6 Special provisions — Exemptions; tree save plans; and highway projects.

(a) *Tree save plan requirements.* An activity or development that [would be] is exempt under Section [22A-5](#) except for the clearing of a specimen or champion tree, [and] or that [would] impacts a [significant], specimen, or champion tree, requires the approval of a tree save plan. The tree save plan must require tree preservation or planting of mitigation trees at a ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet above the ground, based on the size and character of the trees to be cleared. If trees to be cleared are part of an existing recorded scenic buffer between public parkland and a proposed development, trees that are smaller than specimen size may be included in the tree save plan.

* * *

22A-11 Application, review and approval procedures

(a) General.

(1) *Application.* The submission of a development plan, floating zone plan, project plan, sketch plan, subdivision plan, site plan, biohealth priority campus plan, mixed-income community plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit under this Section must include an approved forest stand delineation or a confirmed exemption from submitting a forest conservation plan under Section 22A-5.

(2) *Coordinated with project review.* The forest conservation plan must be submitted and reviewed in conjunction with the review process for a development plan, floating zone plan, project plan, subdivision plan, site plan, biohealth priority campus plan, mixed-income community plan, special exception, conditional use,

mandatory referral, park development plan, or sediment control permit under this Section. The Planning Director must coordinate review of the forest conservation plan with the Director of Environmental Protection, the Director of Permitting Services, the Washington Suburban Sanitary Commission, other relevant regulatory agencies, and entities that will provide public utilities to the tract, to promote consistency between the objectives of this Chapter and other development requirements. To the extent practicable, entities providing public utilities should design facilities that will serve a tract in a manner that avoids identified conservation areas and minimizes tree loss.

* * *

(4) *Notice.* Public posting and written notice of forest conservation plan applications must be provided by applicants as specified in Section 50/59.10.01.04, as amended, of the Administrative Procedures for Development Review.

(b) *Project requiring development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus plan, mixed-income community plan or site plan approval.*

(1) Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation and the forest stand delineation must be approved before the applicant may submit an application for a development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus plan, mixed-income community plan or site plan. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest

stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

(2) Forest conservation plans

(A) Application. After being notified that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning Director with the related application for a development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus plan, mixed-income community plan or site plan. If the development proposal will require more than one of the approvals subject to this subsection, the applicant must submit a preliminary forest conservation plan to the Planning Director in conjunction with the first approval and a final forest conservation plan in conjunction with the last approval. If only one approval subject to this subsection is required, an applicant must submit a preliminary forest conservation plan and a final forest conservation plan at the time of the development application. The applicant must own the property subject to the

forest conservation plan or be authorized by the owner to file the application.

* * *

(C) Approval. The Planning Board must review and act on the forest conservation plan concurrently with the development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus plan, mixed-income community plan or site plan, as appropriate. Compliance with the preliminary forest conservation plan, as amended by the Board, must be made a condition of any approval of the first applicable development application. Compliance with the final forest conservation plan, as amended by the Board, must be made a condition of any approval of the last development application. For a development plan or a floating zone plan, [a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-7.2.1] the Planning Board must approve the preliminary forest conservation plan. A final forest conservation plan must be approved by the Planning Board or Planning Director, as appropriate, before the Planning Board approves a record plat.

* * *

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

* * *

(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 be reasonably altered.

(2) In general, areas protected under this subsection include:

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

(B) contiguous forests;

(C) forests suitable for forest interior-dwelling species;

(D) forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of Environment;

(E) forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area;

(F) forests in urban areas as defined in Section 5-1607(c)(i) of the Natural Resources Article of the Maryland Code;

260 [(C)](G) rare, threatened, and endangered species;
261 [(D)](H) trees connected to an historic site;
262 [(E)](I) champion trees and other exceptionally large trees; and
263 [(F)](J) areas designated as priority save areas in a master plan
264 or functional plan.

265 * * *

266 (d) *Afforestation*

267 (3) Solar photovoltaic facilities may not be subject to afforestation
268 requirements in this chapter. Solar photovoltaic facilities are subject to
269 all other requirements in this chapter.

270 * * *

271 * * *

272 (e) *Standards for reforestation and afforestation.*

273 (3) Priority areas and plantings. Afforestation and reforestation should
274 be directed to stream buffer areas, environmental buffers, connections
275 between and additions to forested areas, critical habitat areas and
276 adjacent forest buffers, topographically unstable areas, and land use
277 and road buffers. The use of native plant materials is preferred.

278 * * *

279 **22A-13. Forest mitigation banks.**

280 * * *

281 (e) The forest mitigation bank plan must include:

(4) the number of forest mitigation bank credits available for sale as either:

(A) [if permitted by state law,] existing forest credits, where 1 acre of forest mitigation bank credit equals 2 acres of existing forest...

* * *

(g) Purchasing and selling forest mitigation bank credits.

* * *

(3) Credits may only be debited from forest mitigation banks that protect all or part of an existing forest to meet up to 50% of the afforestation or reforestation requirement.

~~[(3)]~~(4) Forest mitigation bank credits must be acquired from a forest mitigation bank within the same 8-digit watershed, as delineated by the State of Maryland, where the development activity is located. If forest mitigation bank credits are not available within the same 8-digit watershed within the County, applicants must acquire forest mitigation bank credits from a forest mitigation bank within a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA). If forest mitigation bank credits are not available within a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA), applicants may acquire forest mitigation bank credits from any approved forest mitigation bank within the County.

305 [(4)](5) The forest mitigation bank credits acquired must be equal to
306 the applicant’s off-site reforestation or afforestation requirements
307 under the approved forest conservation plan.

308 * * *

309 **22A-15 Inspections and Notifications.**

310 * * *

311 (a) *Plan to be on site; field markings.* A copy of the approved forest
312 conservation plan, tree save plan, or confirmed forest conservation exemption
313 as applicable must be available on the site for inspection by representatives
314 authorized by the Planning Director. Field markings must exist on site before
315 and during installation of all protective devices, construction, or other land
316 disturbing activities.

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<p>Montgomery Planning Board Regulation on</p> <p>FOREST CONSERVATION – TREES</p> <p>Issued by: Montgomery County Planning Board Regulation No. COMCOR No. 22A.00.01</p> <p>Authority: Montgomery County Code, Chapter 22A-26 Council Review: Method (2) under Code Section 2A-15</p> <p>Effective Date: XXXXXX Comment Deadline: XXXXXX</p> <p>Summary: These regulations contain administrative requirements related to the review and processing of Natural Resource Inventories, Forest Stand Delineations, Exemptions from Submitting a Forest Conservation Plan, and Forest Conservation Plans that are acted upon by the Planning Board or the Planning Director under Chapter 22A.</p> <p>Staff Contact: Kelsey Desmond, Forest Conservation Planner III Intake and Regulatory Coordination Division Kelsey.desmond@montgomeryplanning.org</p> <p>Address: 2425 Reedie Drive Wheaton, MD 20902</p> <p>Background: These regulations clarify and further develop administrative procedures to implement the submittal of applications under Chapter 22A of the County Code. This regulation amends the Forest Conservation Regulations that were adopted by the Planning Board in 2001 and amended in 2024, and approved by the County Council under Method 2 procedures.</p>

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CHAPTER 22A. FOREST CONSERVATION - TREES — REGULATIONS

COMCOR 22A.00.01 Forest Conservation

COMCOR 22A.00.01 Forest Conservation

22A.00.01.01 Purpose

These regulations identify the steps that an applicant must take to comply with Chapter 22A of the County Code. These regulations were adopted by the Planning Board and approved as regulations by the County Council under Chapter 22A.

22A.00.01.02 Authority

In accordance with Chapter 22A, sometimes referred to in these regulations as the “Forest Conservation Law,” the following Planning Board Regulations shall pertain to all development applications, mandatory referrals, conditional uses, sediment control permits, or park development applications. In addition, the *Tree Technical Manual* is 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.

22A.00.01.03 Definitions

(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 potential of growing to a 2 inch or greater diameter at 4.5 feet above the ground within 7 years. In some instances, afforestation includes creation of tree cover by landscaping areas under an approved landscaping plan.

(2) “Afforestation threshold” means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law.

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(3) “Applicant” means the person who is applying for a development plan, diagrammatic plan, subdivision, floating zone plan, sketch plan, site plan, project plan, biohealth priority campus plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, sediment control permit, special exception/conditional use, mandatory referral, or park development 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 must be shown on the record plat, if applicable, and its terms and conditions are recorded in the county’s land records. If no plat is required, the easement is recorded in the County’s land records only.

(a) “Category I Conservation Easement” means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.

(b) “Category II Conservation Easement” means a restriction on the land that permanently protects large trees, landscape areas, and any tree planted outside of forest that receives forest conservation plan credit.

(7) “Conservation threshold” means a specific percentage of a tract that is used in determining reforestation requirements per Sections 22A-12(a) and (f) of the Forest Conservation Law.

(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

(c) constitutes habitat of the species which is considered critical under the Annotated Code of Maryland Natural Resources Article.

(9) “Critical habitat for endangered species” means a habitat occupied by an endangered species as determined or listed under the Annotated Code of Maryland Natural Resources Article.

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(10) “Critical root zone” means the zone in which the roots of a tree are located, as defined in the latest version of the Trees Technical Manual. It is also the area around a tree that should be undisturbed unless protection measures are provided to protect the long-term viability of the tree.

(11) “Development application” means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for approval of a regulated activity.

(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 grading or construction activities occurring on a specific tract. This includes redevelopment projects.

(15) “Environmental buffer” means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to the latest version of the environmental guidelines, or an appropriate master plan; and floodplains.

(16) “Environmental guidelines” means the *Guidelines for the Environmental Management of Development in Montgomery County, Maryland (M-NCPPC)*, as amended.

(17) “Ephemeral channel/stream” means a channel defined as ephemeral per the latest version of the environmental guidelines.

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

(19) “Equity focus areas” means geographic areas of Montgomery County characterized by high concentrations of lower-income households, people of color, and individuals who may speak English less than very well. Boundaries are determined by Planning Department staff and are mapped on the Planning Department website.

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(20) “Field survey” means a field investigation of the environmental characteristics of a site, including existing forest.

(21) “Flood, One Hundred-Year” means a flood which has a 1 percent statistical probability of being equaled or exceeded in any given year. Unless otherwise stated, this calculation is based on the contributing watershed under existing zoning.

(22) “Floodplain, One Hundred-Year” means the 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 100-year flood, based on ultimate development of the watershed under existing zoning.

(23) “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.

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

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

(26) “Forest management plan” means a plan establishing conservation and management practices for a landowner 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, and by the Planning Director if located within a conservation easement.

(27) “Forest mitigation bank plan” means a plan that a property owner submits to document the acreage of forest mitigation bank credits and shows the credits based on the amount of existing forest permanently protected, forest planted and protected, and a planting plan.

(28) “Forest mitigation bank credits” means the credits available for sale at a forest mitigation bank, where 1 acre of mitigation bank credit equals 2 acres of existing forest or 1 acre of planted forest.

(29) “Forest retention” means the forest shown on a forest conservation plan that will be saved, counted as forest retained on the worksheet, and included in a long-term protective agreement.

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(30) “Forest stand delineation” or “FSD” means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activity. The FSD is submitted as part of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD).

(31) “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.

(32) “Intermittent stream” means a stream defined as intermittent in the latest version of the environmental guidelines.

(33) “Landscaping credit” means areas shown on a forest conservation plan, that are not forest, but will receive credit toward a site’s reforestation or afforestation requirements, so long as the plantings are not required to meet zoning or other requirements. The forest conservation plan must show the dimensions and details for tree planting and landscaping areas. Any planting for landscaping credit to meet the forest conservation plan requirements must use native plants or cultivars of native plants.

(34) “Limits of disturbance” means a clearly designated area within which land disturbance may occur.

(35) “Maintenance and management agreement” means the short-term management agreement associated with a forest conservation plan, and may include the control of non-native and invasive plants.

(36) “Major amendment to a Forest Conservation Plan” means an amendment that results in more than a total of 5,000 square feet of additional forest clearing and/or the removal or partial removal of any conservation easement.

(37) “Minor amendment to a Forest Conservation Plan” means an amendment that does not result in more than a total of 5,000 square feet of additional forest clearing or the removal or partial removal of any conservation easement.

(38) “Native” means a plant or animal species whose geographic range during precolonial time included the Piedmont Region 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.

(39) “Natural regeneration” means the natural establishment of native trees and other native vegetation.

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(40) “Natural resources inventory” or “NRI” means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in the latest version of the environmental guidelines. The NRI is submitted as part of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD).

(41) “Offsite” means outside the limits of the areas encompassed by a tract.

(42) “Onsite” means within the limits of an area encompassed by a tract.

(43) “Perennial stream” means a stream defined as perennial in the latest version of the environmental guidelines.

(44) “Planting plan” means a plan showing how areas to be reforested or afforested will be planted.

(45) “Priority planting area” means areas in which planting must occur when present.

(46) “Priority retention area” means areas, identified in Section 22A-12(b) of the Forest Conservation Law that are ranked as the highest priority for retention as part of a forest conservation plan.

(47) “Qualified professional” means a Maryland licensed forester, Maryland licensed landscape architect, or other qualified professional approved by the State.

(48) “Regulated activity” means any of the following activities:

- (a) Subdivision;
- (b) Biohealth priority campus plan;
- (c) Site plan;
- (d) Project plan;
- (e) Sketch plan;
- (f) Floating zone plan;
- (g) Development plan;
- (h) Mixed-income community plan

[(h)] (i) Special exception/conditional use on a tract of land greater than 40,000 square feet;

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[(i)] (i) Clearing of more than 5,000 square feet of forest;

[(j)] (k) Park Development project on a tract of land greater than 40,000 square feet;

[(k)] (l) An activity that requires a sediment control permit on a tract of land, individually or cumulatively that are greater than 40,000 square feet; or

[(l)] (m) Mandatory referral on a tract of land greater than 40,000 square feet.

(49) “Retention area” means forested areas, tree stands and the critical root zone of individual trees that will be retained on a site.

(50) “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.

(51) “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 as further described in the most recent version of the Trees Technical Manual.

(52) “Stream buffer” means a strip of land 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 the environmental guidelines.

(53) “Subdivision” means the definition of subdivision in Chapter 50 of the Montgomery County Code.

(54) “Tract” means:

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

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

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

(56) “Tree save plan” means a plan approved by the Planning Board, or Planning Director, under Chapter 22A or Chapter 50 of the County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.

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(57) “Tree stand” means an area where trees are concentrated at too low a density, or that is too small in size or area to meet the definition of “forest.”

22A.00.01.05 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 or regulated activities:

(1) a development plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;

(2) a project plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;

(3) a preliminary plan of subdivision, administrative subdivision, or minor subdivision approved by the Planning Board, or Planning Director, under Chapter 50 of the County Code;

(4) a site plan approved or amended under Division 59-D-3 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;

(5) a site plan approved or amendment under Section 59.7.3.4 of Chapter 59 of the County Code;

(6) a sketch plan approved under Section 59.7.3.3 of Chapter 59 of the County Code;

(7) a sediment control permit required under Chapter 19 of the County Code;

(8) clearing or grading conducted on two or more platted contiguous lots that are part of the same project, that collectively total 40,000 square feet or larger, that are graded at the same time, and where sediment control is required under Chapter 19 of the County Code.

(9) a special exception approved under Article 59-G of Chapter 59 of the County Code that was in effect prior to October 30, 2014;

(10) a conditional use approved under Section 59.7.3.1 of Chapter 59 of the County Code;

(11) a mandatory referral; [and]

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(12) a park development plan;

(13) a biohealth priority campus plan, and;

(14) a mixed-income community plan.

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 may include a forest stand delineation, as described in Section 22A.00.01.06 and in the latest versions of the environmental guidelines and the Trees Technical Manual (MNCPPC). To be reviewed and approved by the Planning Director.

(2) Identification by a qualified professional, of forest and tree retention areas per subsection 22A-12(b) of the Forest Conservation Law, Sections 22A.00.01.06 and 22A.00.01.07, 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 applicable, which includes:

(a) lot lines, building, and proposed infrastructure, located to maximize retention areas and avoid environmentally sensitive areas such as environmental buffers and critical habitats wherever practical;

(b) areas of existing forest, areas of forest to be removed, and areas of forest to be retained;

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

(d) appropriate protection and maintenance measures; and

(e) a timetable for construction and planting.

22A.00.01.06 Natural Resource Inventory and Forest Stand Delineation (NRI/FSD) Requirements

A. A Natural Resource Inventory (NRI) application must be considered complete if it contains a complete analysis of existing natural resources and man-made features on a property which is verified by field survey and contains the following information to cover

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the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining properties, whichever is less:

- (1) property boundaries;
- (2) 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 basis, if necessary to determine the accuracy of the plan);
- (3) slopes 25% and greater, and slopes between 15% and 25% that are associated with erodible soils;
- (4) perennial and intermittent streams and stream buffers per the latest version of the environmental guidelines;
- (5) ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the environmental guidelines or appropriate master plan;
- (6) existing one-hundred year floodplains and associated 25' building restriction lines;
- (7) wetlands and their buffers per the latest version of the environmental guidelines;
- (8) soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, and erodible soils per the list in Appendix C of the environmental guidelines, and known serpentinite soils in Montgomery County;
- (9) rare, threatened or endangered plants or animals observed in the field;
- (10) critical habitat areas observed or documented by the Maryland Department of Natural Resources;
- (11) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;
- (12) 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;
- (13) specimen trees;
- (14) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees;

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(15) cultural features and historic sites;

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

(17) a table containing acreage of wetlands, 100-year floodplains, stream buffers, and environmental buffers; and

(18) a completed NRI/FSD application form, fee schedule worksheet, and review fee.

B. A Forest Stand Delineation (FSD) application must be considered complete if it contains a detailed summary of existing forest and trees on a tract, or forest stand delineation 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 properties, whichever is less:

(1) forest stands and field verified boundaries;

(2) a description of each stand including:

(a) acreage;

(b) dominant and codominant tree species;

(c) size class by species;

(d) percent canopy closure;

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

(f) percent of forest floor covered by herbaceous plants (native species), downed woody material, and alien or invasive species; and

(g) a stand condition narrative for each stand including, priority for retention, information on condition classes, structure, function, retention potential, transplant and regenerative potential, and comments on evidence of past management; and

(3) specimen trees by size and species;

(4) 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, which must also be clearly numbered with corresponding tags in the field;

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(5) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees, which must also be clearly numbered with corresponding tags in the field;

(6) field survey reference points demarked on a plan drawing and in the field;

(7) a table containing total acreage of forest, forest in priority retention areas, forest not in priority retention areas, forest within existing wetlands, forest within 100-year floodplains, and forest within stream buffers;

(8) a summary map, which in addition to the information in subsections (1) and (2), shows the priority of forest stands for retention as described in Section 22A.00.01.07; and

(9) a completed NRI/FSD application form, fee schedule worksheet and review fee.

C. A simplified forest stand delineation may be used per subsection 22A-10(b)(2) of the Forest Conservation Law. The simplified plan must also include:

(1) forest stands as determined by dominant species types and priority for retention;

(2) stand condition narrative as described in subsection (B)(2).

D. When necessary the items described in A and B, or A and C, above must be combined into one plan drawing and is called a Natural Resources Inventory/Forest Stand Delineation

E. The Natural Resources Inventory and Forest Stand Delineation must be prepared by a licensed forester, licensed landscape architect, or other qualified professional; and must exhibit a stamp or certification of the preparer. The Natural Resources Inventory/Forest Stand Delineation must be used to determine areas of forest to be saved or planted.

F. A Natural Resources Inventory and Forest Stand Delineation is valid for two years from the date it is approved. If a forest conservation plan or a plan under Section 22A-9 has not been accepted as complete during the two-year validity period, an approved Natural Resources Inventory and Forest Stand Delineation expires at the end of its validity period. An expired Natural Resources Inventory and Forest Stand Delineation may be recertified within one year after the expiration date, if the original plan preparer attests that there are no changes to the size and shape of the application tract, existing conditions, forest acreage, tree canopy, or any other detail of the originally approved Natural Resources Inventory and Forest Stand Delineation. A Natural Resources Inventory and Forest Stand Delineation may only be recertified one time. A new Natural Resources Inventory and Forest Stand

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Delineation may be required if there are changes to site conditions, applications, plan preparer, or applicant.

22A.00.01.07 Priorities for Retention

A. The following areas are considered the highest priority retention areas for protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of subsection 22A-12(b)(1) of the Forest Conservation Law, have been met and the development proposal cannot reasonably be altered:

(1) trees, shrubs, and other plants located in sensitive areas including environmental buffers, slopes over 25 percent (not man-made), erodible soils on slopes of 15% or more, 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) trees, shrubs, or plants identified on the Maryland Department of Natural Resources list of rare, threatened, and endangered species;

(4) a forest area which has been designated as priority for retention in master plans or functional plans, or in the absence of such plans, a forest which exhibits all of the following characteristics as further described in the most recent version of the Trees Technical Manual:

(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

(5) an individual tree, and its critical root zone, with one or more of the following characteristics:

(a) a tree that is 1" caliper or larger and part of a historic site or associated with a historic structure;

(b) a tree designated as a national, state, or County champion tree;

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

(d) trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater; and

(e) a tree which is a specimen of a species;

(6) a forest area located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of Environment;

(7) a forest area located in a water resource protection zone, a reservoir watershed or a wellhead protection area;

(8) forests in urban areas as defined in Section 5-1607(c)(i) of the Natural Resources Article of the Maryland Code.

B. The following areas are not subject to the retention provisions in subsection 22A-12(b)(1) of the Forest Conservation Law, but should be given consideration for preservation where feasible:

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

(2) a forested stream buffer up to 300 feet on either side of a stream channel;

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

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

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

22A.00.01.08 General Forest Conservation Plan Provisions

A. In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The Forest Conservation Law specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants must strive to maximize forest retention whenever practical.

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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 applicable:

- (1) how techniques for retention have been exhausted;
- (2) why the forests in priority retention areas specified in Section 22A.00.01.07 are not being retained;
- (3) if forests in priority retention areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with subsection 22A-12(e)(1)(A) of the Forest Conservation Law;
- (4) where on site in priority planting areas the afforestation or reforestation will occur in compliance with subsection 22A-12(e)(3) of the Forest Conservation Law; and
- (5) how the standards for afforestation and reforestation requirements in subsection 22A-12(e)(4) of the Forest Conservation Law will be met.

C. 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 subjected to the reforestation requirements of both the nontidal wetlands regulations and this subtitle, subject to the following:

- (1) forested nontidal wetlands which are retained, must 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 must be shown on the forest conservation plan; and
- (4) wetlands are priority retention areas.

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 22A.00.01.07A may receive retention credit equal to the area of their critical root zone

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protected when at least two thirds of the entire critical root zone is permanently protected by an easement.

(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 must be determined by a measure of the aerial extent of remaining forest cover which includes the outer perimeter of the canopy of individual trees, 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 highest priority planting areas for forest conservation plans with required afforestation and reforestation:

- (a) environmental buffers;
- (b) establish or enhance forest in buffers adjacent to ephemeral streams, when such streams are required to have buffers as recommended in an applicable Master Plan or in the latest version of the environmental guidelines;
- (c) establish or enhance forested areas on 100-year floodplains, when appropriate;
- (d) establish or increase existing forested corridors to connect existing forest within or adjacent to the site. Where practical forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
- (e) establish or enhance forest buffers adjacent to critical habitats where appropriate;
- (f) 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;
- (g) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-way;
- (h) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and

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(i) non-forested wetlands are priority planting areas; however, these areas may be left in their existing condition when appropriate.

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

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

(b) appropriate site preparation, protection and/or maintenance measures as described in the latest version of 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 (per acre) ¹	Approximate Spacing (feet on center) ²	Survival Requirements (starting at the end of the 3 rd or 5 th growing season) ³
TREES			
¾" to 1" caliper; B&B or container grown (minimum 7 gal.)	200	12' to 15'	75% or 150 per acre ⁴
1 ½" to 2" caliper; B&B or container grown (minimum 15 gal.)	100	15' to 20'	100% or 100 per acre ⁵
SHRUBS			
18" to 24" height; container grown (minimum 3 gal.)	33	[[6]] See <u>reference in note 6</u>	

Notes:

1 In certain circumstances, any combination of the above mentioned stocking options 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

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necessary protection and maintenance measures, on a case-by-case basis by the Planning Board.

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 tree.

3 If tree survival at the end of the 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 will be required in addition to reinforcement planting. Natural regeneration may be counted toward survival requirements, in addition to the required planting, 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 must be 1" trees. All trees to be accepted must be healthy and have the main leader intact with minimal deer browse.

5 Surviving trees must be at least 2" caliper to receive full credit toward survival requirements. Reinforcement planting must be 2" trees. All trees to be accepted must be healthy and have the main leader intact with minimal deer browse.

6 Shrubs should be evenly distributed over the planting area and among the trees.[.] On a case-by-case basis, shrubs may be substituted with native trees particularly when there is evidence of deer predation or high incidence of non-native and invasive plants and materials.

7 An alternative methodology to establish planted forest, such as planting smaller trees and shrubs at a higher density, or supplemental planting of live stakes, may be approved by the Planning Director as appropriate to encourage the establishment of an overstory or understory, build resilience against invasive species or deer, or otherwise establish forest ecosystem using the best methodology for the site. However, the density and survival requirements detailed in the table above must be met at a minimum.

F. Tree Save Plans.

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(1) Development applications on tracts which impact [significant,] specimen or champion trees, including those on adjoining properties, are required to submit a tree save plan.

(2) Preserving [significant,] 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 must be required.

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

(a) specimen and champion trees must be replaced by a planting plan at a ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet above the ground, which may be required to include planting or transplanting of large trees;

(b) [significant] tree stands in an existing recorded scenic buffer must be replaced to replace the function of the stand; for instance, trees which provide screening must be replaced in sufficient kind and number to perform the same function.

(4) The tree save plans must show on-site or off-site trees 6" DBH or greater located along the limits of disturbance if the proposed activity would impact the critical root zone of those trees, and must identify methods to preserve and protect those trees.

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

(1) The Planning Board or Planning Director, as applicable, must find that all opportunities for establishing forest have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area is applied.

(2) Trees receiving credit towards forest conservation requirements must not also be credited towards landscaping requirements, including planting and screening required by zoning or other regulatory requirements.

(3) Newly planted landscape trees, within landscape areas must be 3" minimum caliper stock to be counted toward requirements.

(4) Newly planted trees outside of forest, or designated landscape areas, must be 3" minimum caliper stock to be counted toward requirements.

(5) The area(s) where trees are planted must have adequate soil conditions, volume, and surface area to sustain plantings.

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(6) Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as applicable, 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.

(7) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements only for projects located within an equity focus area as follows:

- (a) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide may 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 may receive one quarter credit for their area;
- (c) individual landscape trees may receive one quarter credit for the projected area of their canopy at 20-years;
- (d) individual non-priority trees which are retained may 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 must not exceed twenty percent of the overall reforestation requirement for a site.

(8) 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 (3):
 - (i) landscaping areas or retained tree stands of any size may receive full credit for their area;

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(ii) individual landscape trees which are retained may receive full credit for the projected area of canopy at 20-years;

(b) sites with special provisions for meeting minimum requirements per Section 22A-12(f) of the Forest Conservation Law:

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

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

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

(iv) individual trees which are retained may 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 must not exceed twenty percent of the overall afforestation requirement for a site.

22A.00.01.09 Forest Conservation Plan Requirements

A. Preliminary Forest Conservation Plans.

(1) Development applications that need more than one approval must submit a preliminary forest conservation plan in conjunction with the first approval, unless multiple applications are submitted for simultaneous review and only a final forest conservation plan is required. The preliminary forest conservation plan may be based on conceptual analysis if the basic parameters are met and any assumptions are realistic.

(2) A preliminary forest conservation plan must contain the following:

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

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

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(c) location of building restriction lines and areas to be conserved including environmental 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, including acreage, with appropriate justification and proposed long-term protection methods (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, including acreage, and mitigation trees, 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 forest in priority retention areas;

(vii) acreage of total forest retention in priority retention areas;

(viii) acreage of total forest retention not in priority retention areas;

(ix) acreage of total forest cleared in priority retention areas;

(x) acreage of forest cleared not in priority retention areas;

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

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

(xiii) acreage of forest retained, cleared, and planted within 100-year floodplains;

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

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(xv) total acreage of forest retained, cleared, and planted within priority planting areas; and

(xvi) 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, if known, and must be submitted in conjunction with the final approval needed as part of a development application. However, if the development project requires the approval of one development application, the final forest conservation plan must be submitted with that development application.

(2) In addition to the items listed in subsection A(2)(a-c), (f), (g) and (h), a final forest conservation plan must include:

(a) conceptual or 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 limits of disturbance line which reflects the limits of all clearing and grading on the tract, and the proposed location of sediment and erosion control devices and staging areas;

(c) a survey of trees with a diameter of 24 inches and greater at 4.5 feet above the ground (or trees of other sizes if requested by Planning Department staff to determine the feasibility of proposed retention areas), within 50' on either side of the limits of disturbance, with critical root zones delineated, and with the distance from the tree face to the limits of disturbance shown on the plan or in an associated table;

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

(e) a note describing whether on site downed woody material is to be retained and incorporated into retention, afforestation, or reforestation areas to build habitat.

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

(i) a note indicating whether soil restoration techniques will be implemented;

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- (ii) location and acreage of areas to be planted;
- (iii) an analysis of the suitability of the site for planting and a description of necessary methods;
- (iv) a list of target tree and shrub species, chosen based on analysis of site conditions, which can be used for site planting;
- (v) a plant materials table including size of plants to be installed and quantities;
- (vi) planting and inspection schedule which is tied to the construction sequence for the project;
- (vii) a maintenance plan which includes provisions for necessary watering, control of competing vegetation, protection from disease, pests, and mechanical injury, removal of protective measures such as deer caging, and reinforcement planting if plant survival falls below the requirements of subsection 22A.00.01.08E(3)(c); and
- (viii) a maintenance and management agreement; and
- (g) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;
- (h) a protection plan which shows:
 - (i) location of temporary protection devices which 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 device;
 - (iv) a narrative of stress reduction or other measures which are needed for specific trees;
 - (v) a field inspection schedule pursuant to Section 22A.00.01.10;
 - (vi) location of permanent protection devices;
 - (vii) an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when 30% or more of the critical root zone is impacted; and
 - (viii) an arborist report may be required, on a case-by-case basis, for trees less than 24" dbh, when 30% or more of the critical root zone is impacted;

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(h) identification of how the off-site planting requirements will be met either through a fee in lieu payment, by acquiring mitigation credits from an approved forest mitigation bank, or by planting offsite; and

(i) if off-site planting is going to occur, the forest conservation plan must include 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 22A.00.01.08E(2).

C. Noticing Requirements for Forest Conservation Plans.

(1) Applicants that require approval of a forest conservation plan must follow the noticing requirements identified in Administrative Procedures for Development Review in COMCOR 50/59.00.01.04.

22A.00.01.10 Inspections

A. The Planning Department must conduct field inspections of a site subject to an approved forest conservation plan, tree save plan or confirmed forest conservation exemption as follows:

(1) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins (the purpose of the meeting should 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 (the purpose of the meeting should be to field verify that both measures have been done correctly and to authorize clearing and grading);

(3) after completion of all construction activities to determine the level of compliance with the approved plan;

(4) before the start of any required reforestation planting (the purpose of the meeting should be to determine whether necessary pre-planting measures have been completed and authorize any necessary adjustments to the planting specifications);

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

(6) two years after reforestation and afforestation have been completed, to determine survival and assess necessary maintenance activities for the remaining duration of the maintenance and management period; and

(7) at the end of the maintenance and management period to determine the level of compliance with the provisions of the planting plan and, if appropriate, authorize release of any financial security.

B. [.]The applicant must:

(a) request these inspections at the designated points; and

(b) submit to the Planning Department semi-annual reports and photographs showing compliance with the provisions of the forest conservation plan by October 31st and April 30th of each year for the duration of the maintenance and management period.

C. The Planning Department is authorized to conduct field inspections at any time other than those identified in Section 22A.00.01.10A.

D. For sites without any planting requirements the final inspection is for the Planning Department to authorize removal of any tree protection measure. For sites with planting requirements, the final inspection occurs at the end of the maintenance and management period.

22A.00.01.11 Exemptions

A. A request for exemption from forest conservation plan 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;

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(3) a Natural Resources Inventory, or Natural Resources Inventory/Forest Stand Delineation if forest is proposed to be removed, prepared per Section 22.00.01.06 and the guidelines in the latest version of the environmental guidelines;

(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 information is submitted, and the Planning Director affirms, that a natural resource inventory is not necessary but the information does show existing and proposed topography and forest boundaries;

(2) agricultural exemptions per subsection 22A-5(b) of the Forest Conservation Law if a diagram is submitted with the exemption request showing existing and future forest boundaries;

(3) commercial logging and timber harvesting exemptions per subsection 22A-5(d) of the Forest Conservation Law if a diagram is submitted with the exemption request showing existing and future forest boundaries, environmental buffers, harvest areas, and haul roads; and

(4) applications for other exemptions, if the site being developed does not contain any forest specimen or significant trees, existing conservation easements, or environmentally sensitive features, and a plan showing existing features and topography is submitted with the exemption request.

D. The Planning Director may require a person requesting an exemption from submitting a forest conservation plan to submit a tree save plan in conjunction with the exemption request.

E. The Planning Board, or Planning Director, 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 a declaration of intent to:

(1) submit a Forest Conservation Plan and meet the requirements in the Forest Conservation Law for a regulated activity;

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(2) pay a noncompliance fee;

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

(4) submit a request to be exempt from submitting a forest conservation plan.

F. 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 violation of this subtitle.

G. A confirmed exemption that has not started any authorized land disturbance within 5 years from the date of confirmation automatically expires without notice.

H. A confirmed exemption may not be amended. A new exemption must be submitted for review in order to make any changes.

22A.00.01.12 Declaration of Intent

A. A declaration of intent is an affirmation by an applicant that a property is subject to the following activities and limitations and therefore is eligible for an exemption from the Forest Conservation A declaration of intent is required for the following exemptions from submitting a forest conservation plan;

(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 complies with 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.

(3) An agricultural activity that complies with subsection 22A-5(b) of the Forest Conservation Law;

(4) A commercial logging and timber harvesting operation that complies with subsection 22A-5(d) of the Forest Conservation Law;

(5) A minor subdivision that complies with subsection 22A-5(n) of the Forest Conservation Law;

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(6) An activity involving the demolition of an existing structure that complies with subsection 22A-5(x) of the Forest Conservation Law.

B. The declaration of intent must provide Planning Department staff with access to the property to verify compliance with the declaration.

C. The declaration of intent is effective for 5 years after the date defined in the declaration of intent.

D. The filing 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) the exemption immediately terminates without any action by the Planning Board;
- (2) the Planning Director may require approval of a Forest Conservation Plan for the property; and
- (3) the Planning Director, or Planning Board may take other enforcement actions, including those listed under Section 22A-17(a) of Article III of the Forest Conservation Law.

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 Section 22A-5 are satisfied.

22A.00.01.13 Amendment to Forest Conservation Plan and Exemptions from Submitting a Forest Conservation Plan

A. Forest Conservation Plan Amendments.

(1) Minor amendments which do not result in more than a total of 5,000 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:

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(a) more than a total of 5,000 square feet of additional forest clearing must be approved by the Planning Board or Planning Director (depending on who approved the original plan), or

(b) removal of any conservation easement must be approved by the Planning Board.

(3) All Forest Conservation Plan amendment applications must conform to the requirements of the Forest Conservation Law and regulations in effect at the time of submission.

22A.00.01.14 Forest Conservation Maintenance and Management Agreements

A. Maintenance Agreements.

(1) A person required to conduct afforestation or reforestation under this regulation and the Forest Conservation Law must include in the forest conservation plan a binding maintenance agreement for a minimum length of 5 years unless reduced pursuant to Section 22A-12(h)(1) of the Forest Conservation Law. The binding maintenance agreement for forest conservation plans within Special Protection Areas must have a minimum length of 5 years and cannot be reduced.

(2) The maintenance agreement must be submitted and approved by the Planning Director before the start of any land disturbing activities.

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

(4) The “obligee,” or person required to conduct the afforestation or reforestation 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;
- (b) an executed conservation easement agreement;
- (c) written evidence of the landowner’s consent to the use of a selected property;
- (d) a fully executed option agreement, long-term lease agreement, or contract of sale for a selected property; or

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(e) other written evidence of a possessory or ownership interest in a selected property.

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

(6) The maintenance agreement must provide Planning Department staff with access to the property to verify compliance with the Forest Conservation Plan.

(7) If the plantings have not met the survival requirements established in section 22A.00.01.08 or required control of non-native and invasive vegetation, reinforcement plantings and/or additional non-native invasive control will be required, and the maintenance period may be extended.

B. Bonding.

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

(2) Financial security must be provided before authorization is granted to begin any clearing, grading, demolition, or land disturbing activities.

(3) The value of the financial security must equal the in-lieu fee applicable at the time of land disturbance, or be based on a cost estimate, approved by the Planning Director, for implementing the planting and maintenance of trees and shrubs (including mitigation trees) and control of non-native and invasive plants.

(4) 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.

(5) A surety bond or other alternative form of security must not be canceled by the surety, bank, or other issuing entity unless both of the following conditions are satisfied:

(a) the surety notifies the Planning Director 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 must take effect on the cancellation date indicated in the notice.

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

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financial security must be at least 50 percent, or greater, than the in-lieu fee that was in effect at the time of the first land disturbance.

(7) An applicant must request an inspection of the planted areas by Planning Department enforcement and monitoring staff immediately after planting is complete.

(8) Planning Department enforcement and monitoring staff must determine whether a partial release should occur, after planting has occurred, and how much, based on the following factors:

- (a) evidence of deer browse on existing trees and forest;
- (b) adherence to the planting plan;
- (c) condition of the planted material;
- (d) time of year when the planting has occurred and whether or not watering will occur;
- (e) size of planting stock; and
- (f) provisions of the protection and maintenance plan, including required control of non-native invasive vegetation.

(9) Planning staff must release the financial security if the applicant requests a final inspection and the Planning staff determines that survival requirements have been met at the end of the maintenance period.

22A.00.01.15 Long-Term Protective Agreements

An applicant 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 and unforested lands left in an undisturbed condition per section 22A-12(b) of the Forest Conservation Law and limit the uses of those areas which are consistent with forest conservation.

- (1) Long-term protective measures may include, but are not limited to:
 - (a) conservation easements or covenants;
 - (b) Deed restrictions; and

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(c) dedication to M-NCPPC Parks as a conservation area.

(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.

(Administrative History: Reg. No. 3-21 (Method 2); Orig. Dept.: Planning Board;
Supersedes: Reg. No. 18-01AM)