SUBJECT
Expedited Bill 36-20, Forest Conservation - Amendments
Lead Sponsor: Council President at the request of the Planning Board

EXPECTED ATTENDEES
None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION
• To introduce Bill – no vote expected

DESCRIPTION/ISSUE
Expedited Bill 36-20 would:
• apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
• modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law;
• exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
• exempt local government highway construction activities from forest stand delineation and forest conservation requirements;
• clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
• require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
• provide that an exemption granted expires after 5 years if development has not begun;
• increase the length of the binding maintenance agreement required in forest conservation plans;
• alter the variance process; and
• generally amend the Forest Conservation Law.

The Planning Board also transmitted proposed regulations to implement Bill 36-20. A Committee worksession on these regulations will be held at the same time as Bill 36-20.

SUMMARY OF KEY DISCUSSION POINTS
• None
This report contains:

- Staff Report
- Expedited Bill 36-20
- Legislative Request Report
- Bill transmittal memorandum
- Proposed regulations
- Clean copy
- Showing changes
- Regulation transmittal memorandum

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MEMORANDUM

July 24, 2020

TO: County Council

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: Expedited Bill 36-20, Forest Conservation - Amendments

PURPOSE: Introduction – no Council vote required

Expedited Bill 36-20, Forest Conservation - Amendments, sponsored by Lead Sponsor Council President at the request of the Planning Board, is scheduled to be introduced on July 29. A public hearing is tentatively scheduled for September 22 at 1:30 p.m.

Expedited Bill 36-20 would:

(1) apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
(2) modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law;
(3) exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
(4) exempt local government highway construction activities from forest stand delineation and forest conservation requirements;
(5) clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
(6) require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
(7) provide that an exemption granted expires after 5 years if development has not begun;
(8) increase the length of the binding maintenance agreement required in forest conservation plans;
(9) alter the variance process; and
(10) generally amend the Forest Conservation Law.

1#ForestConservation
The Planning Board also transmitted proposed regulations to implement Bill 36-20. A Committee worksession on these regulations will be held at the same time as Bill 36-20.

This packet contains:

<table>
<thead>
<tr>
<th>Description</th>
<th>Circle #</th>
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<tbody>
<tr>
<td>Expedited Bill 36-20</td>
<td>1</td>
</tr>
<tr>
<td>Legislative Request Report</td>
<td>22</td>
</tr>
<tr>
<td>Bill transmittal memorandum</td>
<td>24</td>
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<tr>
<td>Proposed regulations</td>
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<td>Clean copy</td>
<td>26</td>
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<td>Showing changes</td>
<td>51</td>
</tr>
<tr>
<td>Regulation transmittal memorandum</td>
<td>80</td>
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</tbody>
</table>

F:\LAW\BILLS\2036 Forest Conservation\Intro Memo.Docx
AN EXPEDITED ACT to:

(1) apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
(2) modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law;
(3) exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
(4) exempt local government highway construction activities from forest stand delineation and forest conservation requirements;
(5) clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
(6) require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
(7) provide that an exemption granted expires after 5 years if development has not begun;
(8) increase the length of the binding maintenance agreement required in forest conservation plans;
(9) alter the variance process; and
(10) generally amend the Forest Conservation Law.

By amending
Montgomery County Code
Chapter 22A, Forest Conservation – Trees
The County Council for Montgomery County, Maryland approves the following Act:


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

* * *

Forest edge means the transition zone from an area of forest to fields, meadows, yards, or other open spaces. Forest edge includes forest that was previously interior forest, but has become forest edge due to clearing.

* * *

Land disturbing activities:

(1) has the same meaning as in Chapter 19; and
(2) means cutting, clearing, or grading of more than 5,000 square feet of forest, as defined by this Section.

* * *

Restoration plan means a plan prepared in response to a violation of this Chapter.

* * *

Watershed means any area delineated as a watershed in the Montgomery County Municipal Separate Storm Sewer System (MS4) Permit Implementation Program (delineated by the State of Maryland as a 8-digit watershed), and [or] any smaller area within the watershed that is delineated by the State of Maryland as a 12-Digit watershed.

* * *

22A-4. Applicability

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

* * *
(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 that collectively total 40,000 square feet or larger that are graded at the same time and where sediment control is required.

* * *

22A-5. Exemptions.

The requirements of Article II do not apply to:

* * *

(b) an agricultural activity if:

(1) the activity is exempt from the requirements to obtain a sediment control permit under Section 19-2(b)(2);

(2) the activity is subject to a declaration of intent filed with the Planning Director stating that the agricultural areas will remain in commercial agriculture; and

(3) Agricultural support buildings and related activities are built using best management practices;

* * *

(d) (1) a commercial logging and timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code that:

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

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

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

(D) complies with the provisions in 22A-6(c).

* * *

(e) a State, County, or municipal highway construction activity that is subject to Section 5-103 of the Natural Resources Article of the Maryland Code, or Section 22A-9. All requirements of an exemption for a County or municipal highway construction activity are detailed in Section 22A-6(d) and Section 22A-9;

* * *

(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)[;] and

[(2)] 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, or

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

[(3)] (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.

   *   *   *

(r) an equestrian facility located in an agricultural zone that is exempt from platting requirements under Section 50-9. Article II does not apply to any equestrian support building or related activity only if the building is built using best management practices. However, Section [22A-6(b)] 22A-6(a) applies if any specimen or champion tree would be cleared.

   *   *   *

(t) a modification to [an existing] a:

   (1) non-residential developed property if:

       (A) no more than 5,000 square feet of forest is ever cleared at one time or cumulatively after an exemption is issued;

       (B) the modification does not result in the cutting, clearing, or grading of any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan;
(C) the modification does not require approval of a preliminary plan, [or] administrative subdivision plan, or conditional use/special exception;

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

and

(E) the pending development application does not propose any residential uses; or

(2) residential developed property if:

(A) forest is not impacted or cleared;

(B) the modification is not located in a stream buffer;

(C) the modification does not require approval of a preliminary plan, [or] administrative subdivision plan, or conditional use/special exception;

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

(E) the existing structure is not modified; and

(F) the pending development application does not propose any new buildings or parking facilities.

* * * *

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

[(2)] (1) agreed to replace every tree removed and plant the new trees before the end of the first planting season after final stabilization; and
[(3)] (2) confirmed that the tract is not included in a previously approved forest conservation plan; and

(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 as required under Section 22A-12(i).

* * *

22A-6. [Exemptions-] Special provisions – Exemptions; tree save plans; and highway projects.

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

[(b) Tree save plan provision.]

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

(b) **Exemption expiration.** A confirmed exemption that has not started any
authorized land disturbance within 5 years from the date of approval is expired.

(c) **Timber harvests.** Any commercial logging or timber harvesting exempt
from submitting a forest conservation plan must include provisions for
the establishment of a new age class with sufficient replanting to meet
the definition of forest with 100 stems per acre within 2 years after the
overstory trees are removed.

(d) **Tree save plan violations.** A violation of any requirement of a tree save
plan or similar condition of approval may be enforced using any remedy
provided under this Chapter.

(e) **Highway projects.** The provisions of Article III apply to County and
municipal highway projects exempt from Article II under 22A-5(e).

* * * *


(a) **General**

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

* * * *


* * * *

(c) **Forest conservation plan.**
A forest conservation plan is intended to govern conservation, maintenance, and any afforestation or reforestation requirements which apply to the site. A forest conservation plan must contain information on the extent and characteristics of the trees and forested area to be retained or planted, proposed locations for on-site and off-site reforestation, scheduling, protective measures, a binding maintenance agreement effective for at least 5 years, a binding agreement to protect forest conservation areas, and other information or requirements specified in the regulations or technical manual.

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

(a) General.

(3) Notice. Notice of forest conservation plan applications must be provided as specified in regulation.

(e) Project requiring mandatory referral or park development plan.

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a final forest conservation plan. The Planning Board must consider the final forest conservation plan when reviewing the mandatory referral application or the park development plan. [The deadlines for reviewing the final forest conservation plan are the same as in paragraph (d)(2) of this Section.]
### 22A-12. Retention, afforestation, and reforestation requirements.

(a) *Table.*

<table>
<thead>
<tr>
<th>Land Use Category</th>
<th>Forest Conservation Threshold</th>
<th>Required Afforestation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural and resource areas</td>
<td>50%</td>
<td>20%</td>
</tr>
<tr>
<td>Medium-density residential areas</td>
<td>25%</td>
<td>20%</td>
</tr>
<tr>
<td>Institutional development areas</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td>High-density residential areas</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td>Mixed-use development areas</td>
<td>[15-]20% [1]</td>
<td>15%</td>
</tr>
<tr>
<td>Planned unit development areas</td>
<td>[15-]20% [1]</td>
<td>15%</td>
</tr>
<tr>
<td>Commercial and industrial use areas</td>
<td>15%</td>
<td>15%</td>
</tr>
</tbody>
</table>

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

*   *   *

(e) Standards for reforestation and afforestation.

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

*   *   *

(g) In lieu fee. [(1) General. If a person satisfactorily demonstrates that the
requirements for reforestation or afforestation on-site or off-site cannot
be reasonably accomplished, the] A person [must contribute]
contributing money to the forest conservation fund must do so at a rate
specified by law or Council resolution, but not less than the rate
required under Section 5-1610 of the Natural Resources Article of the
Maryland Code. Any in lieu fee payment must be made before any land
disturbing activity, as defined in [Chapter 19] Section 22A-3, occurs on
a section of the tract subject to the forest conservation plan. A person
may make a contribution to the forest conservation fund if the person
satisfactorily demonstrates that:
(1) the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, and appropriate credits generated by a forest mitigation bank in the same watershed within the County are not available, or if appropriate credits generated by a forest mitigation bank in the same watershed within the county are not available, that appropriate credits generated by a forest mitigation bank in the same county are not available; or

(2) the off site reforestation requirements are less than 0.5 acre and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.

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

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

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

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

(D) Reforestation on small properties with no priority planting areas. An applicant may pay the fee instead of on-site or off-site reforestation on properties less than 5 acres when the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.

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

(h) Agreements.

(1) Maintenance agreement. A forest conservation plan must include a [2] 5-year binding agreement for maintenance of conservation areas. A person subject to the binding agreement may request that the binding agreement be reduced to 3 years if the forest conservation inspector finds that the agreement has been fulfilled. The binding maintenance agreement may include [ ], including the ] watering (as practical), feeding, non-native invasive control, and replanting of areas to be afforested or reforested [ outside of Special Protection Areas, and 5 years
for plantings inside Special Protection Areas. A maintenance agreement may also be required for non-native invasive control of forest edge. The binding agreement for maintenance starts upon satisfactory inspection of the plantings required under the forest conservation plan. A staged project may have more than one agreement.

* * *

(i) Financial Security.

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

(A) compliance with all requirements of an approved forest conservation plan including afforestation, reforestation, mitigation trees, and maintenance; or

* * *

(2) Preferred form. The preferred financial security instruments are an irrevocable letter of credit or a cash bond for a minimum of 5 years that may be reduced to 3 years upon request by the person subject to the binding maintenance agreement if the forest conservation inspector finds that the binding maintenance agreement has been fulfilled. The letter of credit must expressly state that the total sum is guaranteed to be available and payable on demand directly to the Maryland-National Capital Park and Planning Commission in the event of forfeiture. A certificate of guarantee or a surety bond may also be used, including a bond payable to the Commission and County that additionally guarantees completion of public improvements associated with
the proposed development. The financial security instrument must be made payable to the Commission and must be of a form and content satisfactory to the Commission and its legal counsel.

(3) *When required.* The financial security instrument must be provided prior to any land disturbing activity, as defined in [Chapter 19] Section 22A-3, occurring on a section of the tract subject to the forest conservation plan.

* * *


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

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

[(c)] (2) A forest mitigation bank must [use] have native plants [for afforestation and reforestation, unless inappropriate].

[(d)] (3) A person proposing to create a forest mitigation bank must submit a forest mitigation bank plan to the Planning Director[,] for review and approval. [which must include:]

(4) The forest mitigation bank plan must include:

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

[(2)] (B) all information required by subsection 22A-10(c) for a forest conservation plan;

[(3)] (C) [the] draft easements, covenants, or deed restrictions for the area [to be sold to the developer]
when credits are withdrawn from the included in the forest mitigation bank; and

(D) the number of forest mitigation bank credits available for sale as either existing forest credits or planted forest credits where one acre of forest mitigation bank credit equals 1 acre of planted forest, or 2 acres of existing forest.

(e) Forest mitigation banks must be established in priority areas described in subsection 22A-12(e)(3), or in areas identified in a master plan or functional plan.

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

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

(b) Purchasing and selling forest mitigation bank credits

(1) Before selling forest mitigation bank credits:
(A) the forest mitigation bank plan must be approved by the Planning Director; and
(B) easements, covenants, or deed restrictions which assure the area of land within the mitigation bank remains a forest in perpetuity must be conveyed to the Planning Board or its assignee and the applicant must show that credits are available and the applicant has the right to debit them.

(2) Credits must not be debited from a portion of a forest mitigation bank where forest planting is required until:
(A) all trees have been planted and accepted by the Planning Director; and
(B) either financial security which meets the standards in subsection 22A-12(i) has been provided or the Planning Director has found that a sufficient number of trees have successfully survived for 2 years after planting.

(3) 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, as where the development activity is located. If forest mitigation bank credits are not available within the same 8-Digit watershed within the County, applicants can then acquire forest mitigation bank credits from any approved forest mitigation bank within the County.

(4) 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 notification
(c) Required inspections.

(1) The Planning Department must conduct 7 field inspections of a site as specified in this subsection at each site.

(2) The Planning Director must inspect each site that is subject to an approved forest conservation plan,

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

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

(C) after all construction activities are completed, to determine the level of compliance with the approved plan;

(D) before any required reforestation and afforestation planting is started;

(E) after required reforestation and afforestation have been completed, to verify the planting is acceptable and begin the maintenance and management period; and

(F) 2 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

(G) at the end of the maintenance and management period, to determine the level of compliance with the planting plan and, if appropriate, authorize release of financial security.
(3) The Planning Director must conduct inspections (A) through (C) of this Section for a confirmed exemption from submitting a forest conservation plan.

(4) The Planning Director must conduct inspections (A) through (G) of this Section for a plan approved under Section 22A-9:

22A-17. Corrective actions

(a) Administrative order. At any time, including during an enforcement action, the Planning Director may issue an administrative order requiring the violator to take one or more of the following actions within a certain time period specified by the Planning Director:

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

22A-21. Variance

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

1. describe the special conditions peculiar to the property or other circumstances which would cause the unwarranted hardship;
(c) **Referral to other agencies for non 22A-12(b)(3) variance requests.**

Before the Planning Board considers a variance, not related to 22A-12(b)(3), the Planning Director must send a copy of each request to the County Arborist and any other appropriate agency for a written recommendation before the Board acts on the request. If a recommendation on the variance is not submitted to the Planning Board, or Planning Director, as appropriate, within 30 days after the referral, the recommendation must be presumed to be favorable.

* * *

22A-27. **Forest Conservation Fund.**

* * *

(b) **Penalties.** Money collected for noncompliance with a forest conservation plan or the associated 5-year maintenance agreement must be deposited in a separate account in the forest conservation fund. Money deposited in this fund may be used to administer this Chapter.

* * *

22A-30. **County Arborist**

* * *

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

* * *

(4) review variance requests and reports under Article II but not including those under 22A-12(b)(3);
LEGISLATIVE REQUEST REPORT

Expedited Bill 36-20
Forest Conservation – Amendments

DESCRIPTION:

- Expedited Bill 36-20 would:
  - apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
  - modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law;
  - exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
  - exempt local government highway construction activities from forest stand delineation and forest conservation requirements;
  - clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
  - require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
  - provide that an exemption granted expires after 5 years if development has not begun;
  - increase the length of the binding maintenance agreement required in forest conservation plans;
  - alter the variance process; and
  - generally amend the Forest Conservation Law

PROBLEM:

GOALS AND OBJECTIVES:

COORDINATION:

FISCAL IMPACT: Department of Finance.

ECONOMIC IMPACT: OLO

EVALUATION: To be researched.
EXPERIENCE ELSEWHERE:

SOURCE OF INFORMATION: Adam Ortiz, Director, Department of Environmental Protection, 240-777-7781

APPLICATION WITHIN MUNICIPALITIES: None

PENALTIES: Class B
The Honorable Sidney Katz
President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Katz:

On February 20, 2020 the Montgomery County Planning Board recommended 3-0 to transmit a bill to the County Council for changes to Chapter 22A of the County code (Forest Conservations Law). Changes are needed to the Forest Conservation Law to align the Forest Conservation Law with the enabling state law, which was recently amended per Senate Bill 234. Senate Bill 234 became effective statewide on October 1, 2019, and Montgomery County is obligated to incorporate these changes. As detailed in the enclosed staff report, other proposed changes are needed to clarify and update sections of the Forest Conservation Law. A summary of the proposed changes appears below:

1. Modify the preferred sequence for afforestation and reforestation, forest mitigation banks, and in-lieu fee sections to align these sections with the recent amendments to the enabling state law and current staff practice.
2. Close a loophole that currently allows developments that include several platted contiguous lots, each less than 40,000 square feet, to not meet the applicability requirements of the Forest Conservation Law.
3. Amend the criteria for agricultural activities to be exempt from the requirements of Article II to ensure that the property would remain in agricultural use.
4. Exempt local government highway construction activities from the requirements of Article II, in addition to the currently exempt state or County highway construction activities.
5. Clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the requirements of Article II under the (t) modifications exemption.
6. Amend the tree save plan provisions to require the approval of a tree save plan for any activity or development that would be exempt from the requirements of Article II under Section 22A-5 that will impact a significant, specimen, or champion tree.
7. Introduce an expiration date of 5 years on exemptions from submitting a forest conservation plan if construction of the development has not occurred.
8. Increase the length of the binding maintenance agreement required as part of a forest conservation plan from “at least 2 years” to “at least 5 years” with the ability for the obligee to request that the binding maintenance agreement be reduced to 3 years if proper maintenance of the planting areas occurred.
9. Create a new noticing requirement where forest conservation plan applications, not associated with subdivision or site plan, follow a similar process as for those regulatory plans (see enclosed staff practice that would notify staff of this change if it were to take effect).
10. Align the variance application requirement where an applicant must describe the special conditions which would cause unwarranted hardship with the enabling state law.
11. Remove the referral of variances under 22A-12(b)(3) to the County arborist.
12. Add a new condition that would presume variance recommendations from other agencies to be favorable if a recommendation is not submitted to the Planning Board or Planning Director within 30 days after the referral.

Enclosed is a complete copy of the proposed amendment that the Planning Board would like to be introduced as a bill and a copy of the staff report dated February 7, 2020. Members of the Planning Board and its staff are available to assist the Council in its review of the proposed legislation.

Sincerely,

Casey Anderson
Chair

Enclosures: Staff Report – Proposed Changes to the Forest Conservation Law
Proposed Changes to the Forest Conservation Law
Department Memo – Staff Practice – Notice of Proposed Forest Conservation Plans

cc: Pamela Dunn
Kristin Taddei
Montgomery Planning Board Regulation on

FOREST CONSERVATION – TREES

Issued by: Montgomery County Planning Board
Regulation No.
COMCOR No. 22A.00.01

Authority: Montgomery County Code, Chapter 22A-26
Council Review: Method (2) under Code Section 2A-15

Effective Date: XXXXXX
Comment Deadline: XXXXXXX

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.

Staff Contact: Kristin Taddei, Planner Coordinator
Development Applications and Regulatory Coordination Division
Kristin.Taddei@montgomeryplanning.org

Address: 8787 Georgia Avenue
Silver Spring, MD  20910

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 approved by the County Council under Method 2 procedures.
CHAPTER 22A. FOREST CONSERVATION – TREES
REGULATIONS

22A.00.01.01 Purpose

(a) 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.

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 plant (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.

3) “Applicant” means the person who is applying for a subdivision, sketch plan, site plan, sediment control permit, project plan, 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) “Category I Conservation Easement” means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.
6) “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) “Champion tree” means the largest tree of its species within the United States, the State, county or municipality, as appropriate.

8) “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.

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

10) “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.

11) “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.

12) “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 which should be undisturbed unless protection measures are provided to protect the long-term viability of the tree.

13) “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.

14) “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.

15) “Development program” means a sequence of construction events and timing for submittal of the major forest conservation program elements.

16) “Development project” means grading or construction activities occurring on a specific tract. This includes redevelopment projects.

17) “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 Environmental Guidelines: Guidelines for the Environmental Management of Development in Montgomery County, Maryland (MNCPPC), or an appropriate master plan; and floodplains.
18) “Ephemeral channel/stream” means a channel defined as ephemeral per the latest version of the Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC).

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

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. “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 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.

23) “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.

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

25) “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 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.

26) “Forest mitigation bank plan” means a plan that 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.

27) “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.

28) “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.

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

30) “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 *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).

33) “Landscaping credit” means areas shown on a forest conservation plan, that are not forest, but will be receive credit toward a site’s reforestation or afforestation 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 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 of any conservation easement.

38) “Native” means a plant or animal species whose geographic range during precolonial time included the Piedmont of Maryland. Information on native plants can be found in *Woody Plant 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.

40) “Natural resources inventory” 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 *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Tree Technical Manual* (MNCPPC).

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 *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).

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 unless those areas are not 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” mean 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) Site plan;
   (c) Project plan;
   (d) Sketch plan;
   (e) Special exception/conditional use on a tract of land greater than 40,000 square feet;
   (f) Clearing of more than 5,000 square feet of forest;
   (g) Park Development project on a tract of land greater than 40,000 square feet;
   (h) 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
   (i) 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 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 Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC).

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 County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.

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
12. a park development 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 Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC) 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 areas to be cleared in the Trees Technical Manual.
3. Preparation by a qualified professional, of forest conservation plan to be approved by 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 Sand 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 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 Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC);
5. ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC) 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 Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC);
8. soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, erodible soils per the list in Appendix C of the Guidelines for Environmental Management in Montgomery County, Maryland (MNCPPC), and known serpentinite soils in Montgomery County;
(9) rare, threatened or endangered plants or animals observed in the field; critical habitat areas observed or documented by the Maryland Department of Natural Resources;
(10) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;
(11) 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;
(12) Specimen Trees;
(13) 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;
(14) cultural features and historic sites;
(15) a site vicinity map at 1” =2000’ which shows the location of the site within a square mile and indicates major roads; and
(16) a table containing acreage of wetland, 100-year floodplains, stream buffers, and environmental buffers.
(17) 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;
   (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 specimen trees by size and species;
(3) 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;
(4) 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;
field survey reference points demarcated on a plan drawing and in the field;
(6) 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;
(7) 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
(8) 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 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.

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 part of a historic site or associated with a historic structure;
(b) a tree designated as a national, state, or County champion tree;
(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;
(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.

B. The following areas are not subject to the retention provision 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 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 dwelling and roads;
(4) a forest stand, or portions of a stand, with food forest structural diversity; and
(5) an individual tree with a diameter, measure at 4.5 feet above the ground, of 24” 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 should strive to maximize forest retention whenever practical.

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-12e(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 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 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 *Guidelines for Environmental Management for Development in Montgomery County, Maryland* (MNCPPC).

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 right-of-way’s;

h) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and

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:

<table>
<thead>
<tr>
<th>Size</th>
<th>Number Required</th>
<th>Approximate Survival</th>
</tr>
</thead>
</table>

(38)
<table>
<thead>
<tr>
<th></th>
<th>(per acre) (1)</th>
<th>Spacing (feet on center) (2)</th>
<th>Requirements (at the end of the 2\textsuperscript{nd} growing season) (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TREES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>¾” to 1” caliper; B&amp;B or container grown (minimum 5 gal.)</td>
<td>200</td>
<td>12’ to 15’</td>
<td>75% or 150 per acre(4)</td>
</tr>
<tr>
<td>1 ½” to 2” caliper; B&amp;B or container grown (minimum 15 gal.)</td>
<td>100</td>
<td>15’ to 20’</td>
<td>100% or 100 per acre(5)</td>
</tr>
<tr>
<td>SHRUBS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18” to 24” height; container grown</td>
<td>33</td>
<td>(6)</td>
<td></td>
</tr>
</tbody>
</table>

**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 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 the 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 tree 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 tree 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.

**F. Tree Save Plans.**

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 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:
Specimen and champion trees must be replaced by a planting plan which may be required to include planting or transplanting of large trees;

(b) Significant tree stands must be replaced to replace the function of the stand; for instance, trees which provided 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.

(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) Street trees planted within a public right-of-way or along private streets/roads will not receive any credit toward the requirements.

(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 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 stand, and retention of individual trees may be credited toward a site’s 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;
   (ii) individual landscape trees which are retained may receive full credit for the protected area of canopy at 20-years; and
   (iii) individual trees, or tree stands, which are retained may receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is permanently protected by an easement;

(b) sites with forest cover requirements:
   (i) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide may receive full credit for their area;
   (ii) landscaping areas or retained tree stands which are at least 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. The 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 dimension of lots, showing locations of any existing structures and improvements, including paved areas;
(b) locations and dimension of all existing and proposed rights-of-way, setback, easements, stockpile areas, and stormwater management facilities (road and utility rights-of-way which will not be improved as parts of the development application must be identified);

(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 forest in priority retention areas;
   (vi) acreage of forest not 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;
   (xv) total acreage of forest retained, cleared, and planted within priority planting areas; and
   (xvi) linear feet 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 and in conjunction with the preliminary forest conservation plan.

(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 footprint, 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) an afforestation and/or reforestation planting plan, if required, which contains:
   (i) location and acreage of areas to be planted;
   (ii) an analysis of the suitability of the site for planting and a description of necessary methods;
   (iii) a list of target tree and shrub species, chosen based on analysis of site conditions which can be used for site planting;
   (iv) a plant materials table including size of plants to be installed and quantities;
   (v) planting and inspection schedule which is tied to the construction sequence for the project;
   (vi) a maintenance plan which includes provision for necessary watering, control of competing vegetation, protection from disease, pest, 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); and
   (vii) a maintenance and management agreement; and

(f) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;
(g) 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; 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
   (vii) 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.

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

(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 Chapter 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 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 specification);
(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 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.
   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.00.01.10.A.

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 from Submitting a Forest Conservation Plan

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 in writing to the Planning Director.

B. The following information must be provided as part of an exemption request:
   (1) An application form;
   (2) A written request detailing how the exemption applies to the proposed plan;
   (3) A Natural Resources Inventory, 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 Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC);
   (4) an original copy of a declaration of intent, if required, signed by the applicant named on the development or sediment control application; and
   (5) other appropriate information which supports the exemption request including a copy of the proposed plan for development, if applicable.
C. A waiver from the requirement to provide a Natural Resources Inventory with an exemption request may be granted for:
   (1) single lot exemptions per subsection 22A-5(a) of the Forest Conservation Law if 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;
   (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.

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 Law.
Plan. 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. An agricultural activity that complies with subsection 22A-5(b) of the Forest Conservation Law;
3. A commercial logging and timber harvesting operation that complies with subsection 22A-5(d) of the Forest Conservation Law;
4. A real estate transfer subject to subsection 22A-5(m) of the Forest Conservation Law.
5. A minor subdivision that complies with subsection 22A-5(n) of the Forest Conservation Law;
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 in effect 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 entails:
      (a) more than a total of 5,000 square feet of additional forest clearing must be approved by 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.

B. Exemptions from Submitting a Forest Conservation Plan
   (1) A request to amend an exemption from submitting a forest conservation plan must be submitted to and approved by the Planning Director.

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(g)(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 property by providing:
      (a) an executed deed conveying title to a selected property 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 contact of sale for a selected property; or
      (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.
The maintenance agreement must provide Planning Department staff with access to the property to verify compliance with the Forest Conservation Law.

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.
   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.

3. 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.

4. 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.

5. 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 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.

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

7. 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.

(8) 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 all 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
   (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.

The Trees 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.
Montgomery Planning Board Regulation on

FOREST CONSERVATION – TREES

Issued by: Montgomery County Planning Board
Regulation No.
COMCOR No. 22A.00.01

Authority: Montgomery County Code, Chapter 22A-26
Council Review: Method (2) under Code Section 2A-15

Effective Date: XXXXXX
Comment Deadline: XXXXXXX

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.

Staff Contact: Kristin Taddei, Planner Coordinator
Development Applications and Regulatory Coordination Division
Kristin.Taddei@montgomeryplanning.org

Address: 8787 Georgia Avenue
Silver Spring, MD 20910

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 approved by the County Council under Method 2 procedures.
CHAPTER 22A. FOREST CONSERVATION – TREES REGULATIONS

22A.00.01.01 Purpose

(a) Purpose. These proposed 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. Montgomery County Planning Board Regulation NoO. 18-01Am1-97, Forest Conservation – Tree Regulations to update and clarify existing provisions and to make the regulation conform to changes that occurred to Chapters 22A, 50, and 59 of the County Code and to add the regulatory provisions from the existing Trees Technical Manual, including updating and clarifying these provisions as necessary.


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

(d) Staff Contact. Cathy Conlon, (301) 495-4540. These regulations are intended to identify the steps that an applicant must take to comply with Chapter 22A of the County Code.

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 approvals, special exception applications, or sediment control permit applications.

22A.00.01.03 Transition Provision Definitions

For purposes of subsection 22A-7(a)(2) of the Forest Conservation Law, the term “substantially complete” means a plat that has received Planning Board approval on or after July 1, 1992.

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

B. Terms Defined.
1) “Afforestation” means the creation, on a tract that is not presently in forest cover, of a biological community dominated by trees and other woody plant (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.

3) “Applicant” means the person who is applying for a subdivision, sketch plan, site plan approval, a grading or sediment control permit, project plan, special exception/conditional use, mandatory referral, or Park development plan or project plan approval if the applicant is a State or local agency, or who has received approval of a forest stand delineation or forest conservation plan.

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

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

6) “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) “Champion tree” means the largest tree of its species within the United States, the State, county or municipality, as appropriate.

8) “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.

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

10) “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, § 4-2A-06 or 10-2A-06, Maryland code.

11) “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, § 4-2A-04 or 10-2A-04, Annotated Code of Maryland.
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 which should be undisturbed protected unless other supplemental 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 plan approval of a regulated activity or sediment control permit.

12) “Declaration of intent” means a signed and notarized statement by a landowner that the cutting of trees on the landowner’s property:
   (a) is for purposes exempted under Chapter 22A of the Montgomery County Code; and
   (b) will not circumvent the requirements of the Chapter.

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

14) “Development project” means 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 Environmental Guidelines: Guidelines for the Environmental Management of Development in Montgomery County, Maryland (MNCPPC), or an appropriate master plan; and floodplains.

16) “Ephemeral channel/stream” means a channel defined as ephemeral per the latest version of the Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC).

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

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

19) “Flood, One Hundred-Year” means a flood which has a 1 percent statistical probability of being equaled or exceeded in any given year, or which occurs, on average, once every 100 years. Unless otherwise stated, this calculation is based on the contributing watershed under existing zoning.

20) “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.

21) “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 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 agreement” means a plan that 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 agreement entered into by an individual owning a forest mitigation bank and the Planning Board, which commits the banker to certain procedures and requirements when creating and operating a forest bank.

27) “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.

28) “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 category I conservation easement long-term protective agreement.

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

30) “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.

31) “Intermittent stream” means a stream defined as intermittent in the latest version of the Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC).

32) “Landscaping credit plan” means an area shown on a forest conservation plan, that are not forest, but will be receive credit toward a site’s reforestation or afforestation requirements. The forest conservation plan requires the use of native or indigenous plants and must show the drawn to scale and made part of the approved forest conversation plan, showing dimensions and details for tree planting and large landscaping areas. Any planting for landscaping credit to meet the
forest conservation plan requirements must use native or indigenous plants or cultivars of native plants. Areas that will be applied as credit toward a site’s reforestation or afforestation requirements. The use of native or indigenous plant is required, when appropriate.

“Limits of disturbance” means a clearly designated area within which land disturbance is slated to occur.

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

“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 of any conservation easement.

“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 of any conservation easement.

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

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

“Natural resources inventory” 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 Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC) and the Tree Technical Manual (MNCPPC).

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

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

“Perennial stream” means a stream defined as perennial in the latest version of Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC). “Planning Director” means the Director of the Montgomery County Planning Department, or the Director’s designee.

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

“Priority planting area” means areas in which planting must occur unless those areas are not present.

“Priority retention area” means forest 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.
“Qualified professional” means a Maryland licensed forester, Maryland licensed landscape architect, or other qualified professional approved by the State.

“Regulated activity” means any of the following activities:
(a) Subdivision;
(b) Grading/Site plan;
(c) Project plan;
(d) Sketch plan;
(e) Special exception/conditional use on a tract of land greater than 40,000 square feet;
(f) Clearing of more than 5,000 square feet of forest
(g) Park Development project on a tract of land greater than 40,000 square feet;
(h) 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
(i) Mandatory referral on a tract of land greater than 40,000 square feet.

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

“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.

“Specimen tree” means a tree that is 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.

“Stream buffer” means a strip of land, natural vegetation contiguous with and parallel to the bank of a perennial or intermittent stream, the width of which must be determined according to the latest version of Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC).

“Subdivision” means the definition of subdivision in Section 50-1 of the Montgomery County Code.

“Tract” means:
(a) The property, or adjacent properties, subject to a development application or a sediment control permit, the boundaries of which are described by deed or record plat;
(b) The entire property subject to a planned unit development if a development application or a sediment control permit if it is developed as a single project included in a planned unit development; or
(c) The length and width of the right-of-way or the limits of disturbance, whichever is greater, for a linear project.

“Tree save area” means an area designating trees, or stands of trees outside existing forest cover which are to be retained.
“Tree save plan” means a plan approved by the Planning Board, or Planning Director, under Chapter 22A or Chapter 50 of County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.

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:

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 Division 59-D-3 site plan;
4. a sketch plan approved under Section 59.7.3.3 of Chapter 59 of the County code;
6. a sediment control permit required under Chapter 19 of the County Code;
5. 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.
8. a special exception approved under Article 59-G of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
6. a conditional use approved under Section 59.7.3.1 of Chapter 59 of the County Code;
7. a mandatory referral; and
8. a park development 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 Environmental Guidelines: Guidelines for Environmental Management
of Development in Montgomery County, Maryland (MNCPPC) 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 areas to be cleared in the Trees Technical Manual.

(3) Preparation by a qualified professional, of forest conservation plan to be approved by 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 protected 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 Sand Delineation (NRI/FSD) Requirements

A. A Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information:
   a complete analysis of existing natural resources and man-made features on a property, or natural resources inventory which is verified by field survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining properties lots, 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 for Environmental Management of Development in Montgomery County, Maryland (MNCPPC);
   (5) ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the Environmental Guidelines for...
Environmental Management of Development in Montgomery County, Maryland (MNCPPC) or appropriate master plan;

(5)(6) Existing one-hundred year floodplains and associated 25’ building restriction lines;

(6)(7) wetlands and their buffers per the latest version of the Environmental Guidelines:

Guidelines for Environmental Management in Montgomery County, Maryland (MNCPPC);

(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: Guidelines for Environmental Management in Montgomery County, Maryland (MNCPPC), and known serpentinite soils in Montgomery County;

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

on slopes of 15% or more, and shallow soils;

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

(7)(9) critical habitat areas observed or documented by the Maryland Department of Natural Resources;

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

(11) 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;

(12) Trees that are specimens for their species Specimen Trees;

(8)(13) 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;

(9)(14) cultural features and historic sites;

(10)(15) a site vicinity map at 1” =2000’ which shows the location of the site within a square mile and indicates major roads; and

(16) a table containing acreage of wetland, 100-year floodplains, stream buffers, and environmental buffers.

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, downed woody material, and alien or invasive species;
(g) and 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 specimen trees by size and species;

3 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;
4 a table that identifies individual trees in good health that have a diameter at 4.5 feet above the ground (DBH) of 24” or greater by size and species and the health of those trees;
5 field survey reference points demarked on a plan drawing and in the field; and a table containing acreage of 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;
6 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
7 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 a natural resources inventory as described in subsection A(1);
2 forest stands as determined by dominant species types and priority for retention;
3 stand condition narrative as described in subsection B(2)(b)(vii);
4 a proposed limit of disturbance line; and proposed areas of long-term protection.

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.

D.E. The Natural Resources Inventory and Forest Stand Delineation must be prepared by a licensed forester, licensed landscape architect, or qualified professional as specified in COMAR.
The Natural Resources Inventory/Forest Stand Delineation must be used to determine areas of forest to be saved or planted.

22A.00.01.07 Priorities for Forest Stand Retention

A. The following areas are considered the highest priority for retention and protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of 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, intermittent and perennial stream and their buffers, slopes over 25 percent (not man-made), nontidal wetland and their buffers, erodible soils on slopes of 15% or more, 100-year floodplains, and critical habitats;
2. A contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;
3. Trees, shrubs, or plants identified on the Maryland Department of Natural Resources list of rare, threatened, or 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 part of a historic site or associated with a historic structure;
   b. A tree designated as a national, state, or County champion tree;
   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;
   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.
B. The following areas are not subject to the retention provision 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 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 dwelling and roads;
   (4) a forest stand, or portions of a stand, with food forest structural diversity; and
   (5) an individual tree with a diameter, measure at 4.5 feet above the ground, of 24” 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 should strive to reach the break-even point on forested sites so that no replanting is required.

B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant must demonstrate, to the satisfaction of the Planning Board or Planning Director, as applicable:
   (1) How techniques for retention have been exhausted;
   (2) Why the priority forests and in priority retention areas specified in Section 22A.00.01.07 are not being retained;
   (3) If priority forests in and priority retention areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with subsection 22A-12e(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. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is 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, but the area must be subtracted on an acre for acre basis from the total amount of forest to be cut or cleared, and the reforestation requirements of this subtitle must be calculated using the reduced acreage; and

Nontidal wetlands must be considered to be priority retention areas for forest retention and replacement.

D. Retention Areas.

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

(2) Individual trees described as highest priority for retention in subsection 22A.00.01.07A(4) may must receive retention credit equal to the area of their critical root zone protected when at least two thirds of the entire critical root zone is 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; establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;

(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: Guidelines for Environmental Management for Development in Montgomery County, Maryland (MNCPPC).

(c) Establish or enhance forested areas on 100-year floodplains, when appropriate;
(e)(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;

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

(e)(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;

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

(h) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and

(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:

<table>
<thead>
<tr>
<th>Size</th>
<th>Number Required (per acre)</th>
<th>Approximate Spacing (feet on center)</th>
<th>Survival Requirements (at the end of the 2nd growing season)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TREES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whips; 3’-4’ height, Container-grown (minimum 2 gal.)</td>
<td>350</td>
<td>10’ to 12’</td>
<td>75% or 260 per acre</td>
</tr>
<tr>
<td>¾” to 1” caliper; B&amp;B or container grown (minimum 5 gal.)</td>
<td>200</td>
<td>12’ to 15’</td>
<td>75% or 150 per acre</td>
</tr>
<tr>
<td>1 ½” to 2” caliper; B&amp;B or container grown (minimum 15 gal.)</td>
<td>100</td>
<td>15’ to 20’</td>
<td>100% or 100 per acre</td>
</tr>
</tbody>
</table>
SHRUBS

| 18” to 24” height; container grown | 33 | (6) |

Notes:

1. In certain circumstances, any combination of the above mentioned stocking options or variation of these options in combination with container grown seedlings and/or natural regeneration may be appropriate strategies to fulfill the requirements of an approved Forest Conservation Plan. Instances where the use of combination planting may be appropriate are described in the Trees Technical Manual. Use of alternative stocking will be evaluated, along with necessary protection and maintenance measures, on a case-by-case 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 the tree survival at the end of the two-year maintenance period falls below the survival requirements, reinforcement planting up to that amount will be required. If tree survival falls below 50% of the total trees planted, extension of the maintenance period up to another two years will be required in addition to reinforcement planting. Natural regeneration may be counted toward survival requirements, in addition to the required planting, on a case-by-case basis as determined by the Planning Director.

4. Surviving tree 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 tree 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.

F. Tree Save Plans.

1. Development applications on tracts which include significant, specimen or champion trees, or impact significant, specimen or champion trees, including those on adjoining properties, are may be required to submit a tree save plan.

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

3. The replacement ratio must be determined in the following manner:
   - Specimen and/or champion trees must be replaced by landscaping plan which may be required to include planting or transplanting of large trees;
   - Significant Significant tree stands must be replaced so as to replace the function of the stand; for instance, trees which provided 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 on-site or off-site trees along the limits of disturbance regardless of tree size 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.

(3) Newly planted landscape trees, within landscape areas, must be 2-3” 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) Street trees planted within a public right-of-way or along a private streets/roads will not receive any credit toward the requirements.

(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 (with native plants), retention of tree stands, and retention of individual trees may be credited toward a sites’ reforestation requirements as follows:
   (a) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide 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 must receive one quarter credit for the protected area of their critical root zone when at least two third 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 stand, 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 must receive full credit for their area;
(ii) individual landscape trees which are retained must receive full credit for the protected area of canopy at 20-years; and

(iii) individual trees, or tree stands, which are retained must receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is permanently protected by an easement;

(b) sites with forest cover requirements:

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

(ii) landscaping areas or retained tree stands which are at least 2,500 square feet in size or less than 35 feet wide must 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 third 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. The 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 dimension of lots, showing locations of any existing structures and improvements, including paved areas;

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

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

(d) conceptual locations of proposed structures and improvements, drainage systems, and sediment control measures;
(e) preliminary limits of disturbance of the natural terrain, and location of forest and tree retention areas, 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 forest in priority retention areas;
   (vi) acreage of forest not in priority retention areas;
   (vii) acreage of total forest in priority retention areas;
   (viii) acreage of total forest 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;
   (xv) total acreage of forest retained, cleared, and planted within priority planting areas; and
   (xvi) linear feet 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 and in conjunction with the preliminary forest conservation plan.

(2) In addition to the items listed in subsection A(2)(a-c), (f), (g) and (h), updating by final grading, a final forest conservation plan must include:
(a) conceptual or final grading plans which include building locations and footprint, 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 diameter 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), and 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, and delineation of their critical root zones (survey of other trees may be required when necessary to determine the feasibility of proposed retention areas);

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

(e) an afforestation and/or reforestation planting plan, if required, which contains:
   (i) location and acreage of areas to be planted;
   (ii) an analysis of the suitability of the site for planting and a description of necessary methods;
   (iii) a list of target tree and shrub species, chosen based on analysis of site conditions which can be used for site planting;
   (iv) a plant materials table including size of plants to be installed and quantities;
   (v) planting and inspection schedule which is tied to the construction sequence for the project;
   (vi) a maintenance plan which includes provision for necessary watering, control of competing vegetation, protection from disease, pest, 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);
   (vii) calculation for financial security which is to be provided in an amount equal to the estimated cost of the required planting and maintenance, or equal to the fee in lieu for the area to be planted; and
   (viii) a maintenance and management monitoring agreement; and

(f) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;

(g) a protection plan which shows:
(i) the location of temporary and permanent protection devices, as appropriate, 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; and
(v) a field inspection schedule pursuant to Section 22A.00.01.10;
(vi) 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
(vii) 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.

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

(i) if off-site planting is going to occur, the forest conservation plan must off-site planting, if required, which includes the items listed in subsection (e) plus a map of the proposed planting site showing location, soils, and environmental features which are priority planting areas as stated in subsection 22A.00.01.08E(2).

C. Noticing Requirements for Forest Conservation Plans.
Applicants that require must acquire approval of a forest conservation plan must a site plan or subdivision plan that must also obtain approval of a forest conservation plan must follow the noticing requirements identified in Chapter 50/259.00.01.04 for site plans or subdivision plans in Chapter 50/59.00.01.04.

(1) Applicants that must acquire approval of a conditional use/special exception, mandatory referral, or sediment control plan that must also obtain approval of a forest conservation plan must follow the noticing requirements for forest conservation plans in Chapter 50/59.00.01.04.

Applicants that must acquire approval of a major amendment to a forest conservation plan must follow the noticing requirements for forest conservation plans in Chapter 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 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 provisions of the forest conservation 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 specification);

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

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 2-year maintenance and management period agreement to determine the level of compliance with provisions of the planting plan and, if appropriate, authorize release of any financial security.

B. The applicant must:

a. Requested these inspections by the applicant at the designated points.

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.00.01.10.A.

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 from Submitting a Forest Conservation Plan
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 in writing to the Planning Director.

B. The following information must be provided as part of an exemption request:
   (1) An application form;
   (2) A written request detailing how the exemption applies to the proposed plan;
   (3) A Natural Resources Inventory, or Natural Resources Inventory/Forest Stand Delineation if forest is proposed to be removed, prepared per Section 22.00.01.06a(1) and the guidelines in the latest version of Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC);
   (4) an original copy of a declaration of intent, if required, signed by the applicant named on the development or sediment control application; and
   (5) other appropriate information which supports the exemption request including a copy of the proposed plan for development, if applicable.

C. A waiver from the requirement to provide a Natural Resources Inventory with an exemption request may be granted for:
   (1) single lot exemptions per subsection 22A-5(a) of the Forest Conservation Law if information is a site submitted, and the Planning Director affirms, that a natural resource inventory is not necessary but the information does show plan which shows existing and proposed topography and forest boundaries is submitted with the exemption request; and
   (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 natural 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.

D-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 this subtitle the Forest Conservation Law** for a regulated activity;
(2) Pay a noncompliance fee;
(3) Be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; and/or
(4) **Submit a request to be exempt from submitting a forest conservation plan with the Planning Director Board.**

**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 knowing violation of this subtitle.

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

### 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 Plan Law. 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 the requirements of activity does not result in the cumulative cutting, clearing or grading of more than 20,000 square feet of forest, and complies with the other requirements of subsection 22A-5(a) of the Forest Conservation Law;
2. An agricultural activity that complies with subsection 22A-5(b) of the Forest Conservation Law;
3. A commercial logging and timber harvesting operation that complies with subsection 22A-5(d) of the Forest Conservation Law;
4. A real estate transfer subject to subsection 22A-5(m) of the Forest Conservation Law;
5. A minor subdivision that complies with subsection 22A-5(n) of the Forest Conservation Law;
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 Park and Planning Department staff with access to the property to verify compliance with the declaration.

**C.** The declaration of intent is effective for 5 years after the date the Planning Director confirms the exemption from submitting a forest conservation plan approves the exemption, 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; and
   (2) the Planning Director may require approval of a Forest Conservation Plan for the property; and
   (2) the Planning Director, or Planning Board may take other enforcement actions, including those listed under Section 22A-17(a) of Article II 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 this Section 22A-5 subtitle are satisfied.

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

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

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:
      (a) more than a total of 5,000 square feet of additional forest clearing must be approved by 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.
   (1) Notice of each major plan amendment and opportunity for comment must be given to adjacent property owners as part of the Planning Board or Planning Director approval process.
B. Declaration of Intent. Exemptions from Submitting and Forest Conservation Plan

(1) A request to amend an exemption from submitting a forest conservation plan declaration of intent must be submitted to and approved by the Planning Director.

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 2-5 years outside of Special Protection Areas and 5 years within a Special Protection Area, unless reduced pursuant to Section 22A-12(g)(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 property by providing:
   (a) an executed deed conveying title to a selected site property to the obligee;
   (b) an executed conservation easement agreement;
   (c) written evidence of the landowner’s consent to the use of a selected site property;
   (d) a fully executed option agreement, long-term lease agreement, or contract of sale for a selected site property; or
   (e) other written evidence of a possessory or ownership interest in a selected site property.

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

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

(7) The maintenance agreement must provide Park and Planning Department staff with access to the property to verify compliance with the Forest Conservation Pafforestation or reforestation planting plan.

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

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, and 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 within the planting areas. The costs to complete the mitigation project must be reduced after it is submitted if the obligee proves to the satisfaction of the Planning Director that the costs to complete the mitigation project have been reduced.

(4) The Planning Director must determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation by considering the following:

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

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

(6) A surety bond or other alternative form of security 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 Board 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.

(7) Release of part or all of the financial security may be authorized by the Planning Department enforcement and monitoring staff after planting has been done. Any remaining financial security must never be less than be at least 50 percent, or greater, than the in-lieu fee that was in effect at the time of the first land disturbance.
An applicant must request an inspection of the planted areas by Planning Department enforcement and monitoring staff immediately after planting is complete.

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.

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 after the two or five years 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 all unforested lands left in an undisturbed condition per section 22A-12(b) of the Forest Conservation Law under this subtitle and limit the uses of forest to 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 running with the land;
(b) Deed restrictions; and
(c) Land trusts.

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

A applicant may include in a forest conservation plan another long-term protective measure if the Planning Board or Planning Director finds that the measure will provide for the long-term protection of the areas retained, afforested, or reforested under this subtitle.
The *Trees Technical Manual for Trees* 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.
July 20, 2020

The Honorable Sidney Katz  
President, Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850  

Dear Mr. Katz:  

On July 16, 2020 the Montgomery County Planning Board recommended 4-0, with Commissioner Partap Verma absent, to transmit to the County Council changes to the Forest Conservation - Trees Regulation (Chapter 22A of the County code). Since 2001 numerous changes to the Forest Conservation Law have occurred to keep current with changes to the zoning code; subdivision of land code; the State's enabling legislation, the Forest Conservation Act; and to clarify certain sections of Chapter 22A of the County Code. However, the Forest Conservation - Trees Regulation has not changed since 2001. Changes are needed to the Forest Conservation - Trees Regulation to incorporate current Montgomery Planning staff practice and to address the changes that have already been incorporated into the Forest Conservation Law.  

Attached is a complete copy of the proposed changes to the Forest Conservation & Trees Regulation that the Planning Board would like to be introduced jointly with the proposed changes to the Forest Conservation Law (Chapter 22A of the County code), which was transmitted to the County Council on February 21, 2020, along with a copy of the staff report dated May 21, 2020. Members of the Planning Board and staff of the Maryland-National Capital Park & Planning Commission are available to assist the Council in its review of the proposed changes to the Forest Conservation - Trees Regulation.  

Sincerely,  

Casey Anderson  
Chair  

cc: Pam Dunn  
Amanda Mihill  
Karen Pecoraro  
Kristin Taddei  

Attachments:  
A. Proposed 2018-2020 Changes to Forest Conservation Trees Regulation_Attachment A (Clean Copy)  
B. Proposed 2018-2020 Changes to Forest Conservation Trees Regulation_Attachment B (Track Changes)  
C. 5.21.2020 Staff Report_Forest Conservation Trees Regulation Proposed 2018-2020 Changes