

Expedited Bill No. 25-22  
Concerning: Forest Conservation – Trees  
Revised: 03/21/2023 Draft No. 4  
Introduced: September 13, 2022  
Enacted: March 21, 2023  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Then-Council President Albornoz at the Request of the Planning Board

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**AN EXPEDITED ACT** to:

- (1) exclude activities in the Commercial Residential (CR) zone from qualifying for certain Forest Conservation Plan (FCP) exemptions;
- (2) exclude any development that occurs within an environmental buffer from qualifying for a FCP exemption;
- (3) change the timeline for approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD);
- (4) increase the amount of forest required to be preserved in lower density land use categories;
- (5) increase forest planting requirements in higher density land use categories;
- (6) increase reforestation ratios;
- (7) require planting of forest in all unforested stream valley buffers;
- (8) amend the requirements where forest retention required by the Forest Conservation Law is not possible;
- (9) broaden the terms of maintenance and management agreements to include required maintenance for areas of existing forest retained to meet forest mitigation requirements;
- (10) expand mitigation requirements for variance trees to include mitigation for variance trees located within a forest;
- (11) allow landscaping to meet both reforestation or afforestation requirements in equity focus areas;
- (12) update the allowable types of forest mitigation banks allowed in the County per recent amendment to the State’s Forest Conservation Act; and
- (13) generally amend Chapter 22A.

By amending

Montgomery County Code  
Chapter 22A, Forest Conservation – Trees  
Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-9, 22A-10, 22A-11, 22A-12, 22A-13,  
and 22A-21

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-9, 22A-10, 22A-11, 22A-**  
2 **12, 22A-13, and 22A-21 are amended as follows:**

3 **22A-3. Definitions.**

4                               \*       \*       \*

5           *Administrative subdivision* means a plan for a proposed subdivision [or  
6 resubdivision] prepared and submitted for approval by the Planning  
7 Director under Division 50.6 of Chapter 50 before preparation of a  
8 subdivision plat.

9                               \*       \*       \*

10          *Agricultural and resource area* means an undeveloped area zoned for a  
11 density of less than or equal to one dwelling unit per 5 acres.

12          *Biohealth priority campus plan* means a plan that qualifies as a Biohealth  
13 Priority Campus under Section 3.5.8.E of Chapter 59 and is approved  
14 under Section 7.3.6 of Chapter 59.

15                               \*       \*       \*

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

19          *Environmental buffer* means perennial, intermittent, or ephemeral  
20 streams/channels and their associated buffers; wetlands and their  
21 associated buffers; [[and,]] hydraulically connected steep slopes  
22 according to the latest version of [[Environmental Guidelines: Guidelines  
23 for the Environmental Management of Development in Montgomery  
24 County, Maryland (MNCPPC),]] the environmental guidelines or an  
25 appropriate master plan; and floodplains.

26 Environmental guidelines mean the Guidelines for Environmental  
27 Management of Development in Montgomery County, Maryland (M-  
28 NCPPC), as amended.

29 Equestrian Facility: A] means any building, structure, or land area that  
30 is primarily used for the care, breeding, boarding, rental, riding, sport  
31 eventing, or training of horses or ponies, the teaching of equestrian skills,  
32 or competitive equestrian events.

33 \* \* \*

34 Forest conservation threshold means the percentage of the net tract area  
35 at which the reforestation [requirement changes from a ratio of ¼ acre  
36 planted for every one acre removed to a ratio of 2 acres planted for every  
37 one acre removed] ratio increases as specified in Section 22A-12.

38 \* \* \*

39 Forest mitigation banking means the intentional [preservation,]  
40 restoration[,] or creation of forests undertaken expressly to provide  
41 credits for afforestation or reforestation requirements.

42 \* \* \*

43 Minor subdivision means a plan for a proposed subdivision [or  
44 resubdivision] prepared and submitted for approval by the Planning  
45 Director under Division 50.7 of Chapter 50.

46 \* \* \*

47 Park development plan means an application submitted by the  
48 Montgomery County Parks Department for the construction and  
49 development of a specific park.

50 Patuxent Primary Management Area (PMA) means [[areas]] an area of  
51 environmental importance within the Patuxent River watershed, as  
52 further defined in the [[Environmental]] environmental guidelines.

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*Preliminary plan of subdivision* means a plan for a proposed subdivision [or resubdivision] prepared and submitted for approval by the Planning Board under Division 50.4 of Chapter 50 before preparation of a subdivision plat.

*Project plan* means [a plan or] an amendment to a project plan referred to in Section 7.7.1.B of Chapter 59 [or a sketch plan approved under Section 7.3.3 of Chapter 59].

\* \* \*

*Special Protection Area (SPA)* means a geographic area designated by the County Council under Section 19-62(a).

*Specimen tree* means a tree that is a particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.

\* \* \*

**22A-4. Applicability.**

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

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

\* \* \*

**22A-5. Exemptions.**

The requirements of Article II do not apply to:

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

82 (1) does not require a special exception;

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

85 [(2)] (3) does not result in the cutting, clearing, or grading of:

86 \* \* \*

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

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

92 (2) was approved or extended between July 1, 1984 and July 1, 1991,  
93 and

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

96 (A) any forest in a stream buffer, or

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

99 A preliminary plan of subdivision or site plan approved before July  
100 1, 1991, that is revised after that date at the initiative of the  
101 applicant and which results in the cutting of more than 5,000  
102 additional square feet of forest is not exempt. Development or  
103 redevelopment of a property which requires [resubdivision]  
104 subdivision is not exempt. This subsection does not apply to a  
105 planned unit development subject to subsection (l);

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- (n) any minor subdivision under Division 50.7 of Chapter 50 if:
  - (1) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); development does not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines; and development does not result in the cutting, clearing, or grading of:

\* \* \*

- (s) (1) an activity occurring on a tract of land that is less than 1.5 acres and that [[meets all of the following criteria]]:
  - (A) is not located within the Commercial Residential (CR) zone classification;
  - (B) has [with] no existing forest, [[or]] existing specimen, or champion tree[, and];
  - (C) would not result in an [the] afforestation [requirements would not] requirement that [exceed] exceeds 10,000 square feet; and
  - (D) would not result in development within an environmental buffer, except for the allowable uses stated in the environmental guidelines; or
- (2) an activity occurring on a tract of land that is less than 1 acre and that [[meets all of the following criteria]]:
  - (A) is not located within the Commercial Residential (CR) zone classification;

- 131 (B) [that will] would not result in the clearing of more than a  
132 total of 20,000 square feet of existing forest, or any existing  
133 specimen or champion tree; [, and]
- 134 (C) would not result in a reforestation [requirements]  
135 requirement that [would not exceed] exceeds 10,000 square  
136 feet;[.]
- 137 (D) would not result in development within an environmental  
138 buffer, except for the allowable uses stated in the  
139 environmental guidelines; and
- 140 (E) [Forest]preserves forest in any [priority area] on-site  
141 floodplains, stream buffers, steep slopes, critical habitats,  
142 and areas designated as priority save areas in a master plan  
143 or functional plan [[must be preserved.]]]; and];
- 144 (t) a modification to a:
- 145 (1) non-residential developed property if:
- 146 (A) no more than 5,000 square feet of forest is ever cleared at  
147 one time or cumulatively after an exemption is issued;
- 148 (B) the modification does not result in the cutting, clearing, or  
149 grading of any forest in a stream buffer or forest located  
150 on property in a special protection area which must submit  
151 a water quality plan;
- 152 (C) the development does not occur within an environmental  
153 buffer, with the exception of the allowable uses stated in  
154 the environmental guidelines;



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

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

161                    ~~[(E)](F)~~      the pending development application does not  
162                                    propose any residential uses; or

163                    (2)   residential developed property if:

164                                    (A)   forest is not impacted or cleared;

165                                    (B)   the [modification is not located in a stream buffer]  
166    development does not occur within an environmental  
167    buffer, with the exception of the allowable uses stated in  
168    the environmental guidelines;

169    \*           \*           \*

170    **22A-6. Special provisions – Exemptions; tree save plans; and highway projects.**

171                    (a)   *Tree save plan requirements.* An activity or development that would be  
172                                    exempt under Section 22A-5, and that would impact a significant,  
173                                    specimen, or champion tree, requires the approval of a tree save plan.[,  
174                                    which may] The tree save plan must require tree preservation or  
175                                    planting of mitigation trees at a ratio of 1 caliper inch replaced for every  
176                                    4 inches of trunk diameter removed, measured at 4.5 feet above the  
177                                    ground, [for loss of individual trees. The plan requirements must be]  
178                                    based on the size and character of the trees to be cleared. If trees to be  
179                                    cleared are part of an existing scenic buffer between public parkland

180 and a proposed development, trees that [which] are smaller than  
181 specimen size may be included in the tree save plan.

182 (b) *Exemption expiration.* A confirmed exemption is valid for 5 years from  
183 the date the exemption is confirmed [that has not started any authorized  
184 land disturbance within 5 years from the date of approval of the  
185 exemption is expired], unless the confirmed exemption pertains to a  
186 subdivision with a validity period of more than 5 years, in which case [. If the subdivision has a validity period of more than 5 years,] the  
187 confirmed exemption does not expire until the end of the subdivision  
188 validity period. If site development activities have not been authorized  
189 by the forest conservation inspector to commence before the expiration  
190 date, including inspections detailed under 22A-15(c)(2)(A) and (B), the  
191 approved exemption will expire at that time.

192 \* \* \*

193  
194 **22A-9. County and Municipal Highway Projects**

195 (a) *General.*

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

199 (2) The construction should minimize forest removal, land  
200 disturbance, and loss of significant, specimen, or champion trees  
201 to the extent possible while balancing other design, construction,  
202 and environmental standards. The constructing agency must  
203 make a reasonable effort to minimize land disturbance to avoid  
204 the cutting or clearing of trees and other woody plants.

205 (b) If the forest to be cut or cleared for a County highway project equals or  
206 exceeds 20,000 square feet, the constructing agency must reforest a  
207 suitable area at the rate of one acre of protected reforestation for each  
208 acre of forest cleared.

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

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

213 \* \* \*

214 **22A-10. General**

215 \* \* \*

216 (b) *Forest stand delineation.*

217 \* \* \*

218 (4) An approved forest stand delineation is not valid after 2 years  
219 unless:

220 (A) a forest conservation plan or a plan under Section 22A-9  
221 has been accepted as complete; or

222 (B) the delineation has been recertified by the preparer, which  
223 may occur within one year after the expiration date if the  
224 requirements of Section 22A.00.01.06.F, as amended, of  
225 the Forest Conservation – Trees Regulations are met.

226 (5) An approved forest stand delineation may not be amended. A  
227 new forest stand delineation must be submitted for review in  
228 order to make any changes.

229 \* \* \*

230 **22A-11. Application, review, and approval procedures**

231 (a) [General] *General*.

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

239 [(1)](2) [[Coordinated with project review]] *Coordinated with project*  
240 *review*. The [forest stand delineation and] forest conservation  
241 plan must be submitted and reviewed in conjunction with the  
242 review process for a development plan, floating zone plan,  
243 project plan, [sketch plan,] subdivision plan, site plan, biohealth  
244 priority campus plan, special exception, conditional use,  
245 mandatory referral, park development plan, or sediment control  
246 permit under this Section. The Planning Director must coordinate  
247 review of the forest conservation plan with the Director of  
248 Environmental Protection, the Director of Permitting Services,  
249 the Washington Suburban Sanitary Commission, other relevant  
250 regulatory agencies, and entities that will provide public utilities  
251 to the tract, to promote consistency between the objectives of this  
252 Chapter and other development requirements. To the extent  
253 practicable, entities providing public utilities should design  
254 facilities that will serve a tract in a manner that avoids identified  
255 conservation areas and minimizes tree loss.

256 [(2)](3) [[Modification to an approved plan]] Modification of an  
257 approved plan. The Planning Director may approve  
258 modifications to an approved forest conservation plan that are  
259 consistent with this Chapter if:

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

262 (B) each modification is a minor amendment, as defined in  
263 Section 22A.00.01.13.A.1, as amended, of the Forest  
264 Conservation – Trees Regulations, and does not impact  
265 any forest in a priority area (such as substituting an on-site  
266 conservation area for an equal or greater on-site area of  
267 similar character, or substituting a marginal on-site  
268 conservation area for equal or greater amount of off-site  
269 priority area); or

270 (C) action is otherwise required in an emergency situation.

271 Any other modification, including major amendments, must be  
272 approved by the agency that approved the forest conservation  
273 plan.

274 [(3)](4) [[ Notice]] Notice. Public posting and written notice of forest  
275 conservation plan applications must be provided by applicants as  
276 specified in [regulation] Section 50/59.10.01.04, as amended, of  
277 the Administrative Procedures for Development Review.

278 (b) *Project requiring development plan, floating zone plan, project plan,*  
279 *[sketch plan,] preliminary plan of subdivision, biohealth priority*  
280 *campus plan, or site plan approval.*

281 (1) [[Forest stand delineation]] Forest stand delineation. The  
282 applicant must submit to the Planning Director a forest stand  
283 delineation [with the] and the forest stand delineation must be  
284 approved before the applicant [[can]] may submit an application  
285 for a development plan, floating zone plan, project plan, [sketch  
286 plan,] preliminary plan of subdivision, biohealth priority campus  
287 plan, or site plan[, whichever comes first]. Within 30 days of  
288 receipt, the Planning Director must notify the applicant whether  
289 the forest stand delineation is complete and correct. If the  
290 Planning Director fails to notify the applicant within 30 days, the  
291 delineation will be treated as complete and correct. The Planning  
292 Director may require further information or provide for one  
293 extension of this deadline for an additional 15 days for  
294 extenuating circumstances. The applicant must submit revised  
295 drawings to address comments within 90 days from the date the  
296 Planning Director sends comments to the applicant. If the  
297 applicant fails to submit revised drawings, the application is  
298 deemed withdrawn. The Planning Director may provide for one  
299 extension of this deadline for extenuating circumstances.

300 (2) [[Forest conservation plan]] Forest conservation plan.  
301 (A) [[Application]] Application. After being notified that the  
302 forest stand delineation is complete and correct, the  
303 applicant must submit a forest conservation plan to the  
304 Planning Director with the related application for a  
305 development plan, floating zone plan, project plan,  
306 preliminary plan of subdivision, biohealth priority campus

307 plan, or site plan. If the development proposal will require  
308 more than one [of the] [approvals] approval subject to this  
309 subsection, the applicant must submit a preliminary forest  
310 conservation plan to the Planning Director in conjunction  
311 with the first approval, and a final forest conservation plan  
312 in conjunction with the last approval; however, if multiple  
313 approvals subject to this subsection are submitted to the  
314 Planning Director for simultaneous review, the applicant  
315 need [[only]] submit only a final forest conservation plan  
316 that will be considered for each relevant application. If  
317 only one approval subject to this subsection is required, an  
318 applicant must submit [a preliminary forest conservation  
319 plan and] a final forest conservation plan at the time of the  
320 development application.

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

334 (C) ~~[[Approval]]~~ Approval. The Planning Board must review  
335 and act on the forest conservation plan concurrently with  
336 the development plan, floating zone plan, project plan,  
337 [sketch plan,] preliminary plan of subdivision, biohealth  
338 priority campus plan, or site plan, as appropriate.  
339 Compliance with the preliminary forest conservation plan,  
340 when required and as amended by the Board, must be  
341 made a condition of any approval of the first applicable  
342 development application. Compliance with the final forest  
343 conservation plan, as amended by the Board, must be  
344 made a condition of any approval of the last development  
345 application. For a development plan or a floating zone  
346 plan, a Planning Board recommendation to the District  
347 Council on the preliminary forest conservation plan must  
348 be made under Section 59-7.2.1. A final forest  
349 conservation plan must be approved by the Planning  
350 Board or Planning Director, as appropriate, before the  
351 Planning Board approves a record plat.

352 (c) *Project requiring special exception or conditional use approval.*

353 (1) ~~[[Forest stand delineation]]~~ Forest stand delineation. If a special  
354 exception or conditional use proposal is subject to the  
355 requirements of this Chapter, the applicant must submit a forest  
356 stand delineation to the Planning Director before the Board of  
357 Appeals may consider the application for the special exception.  
358 The deadlines for reviewing a forest stand delineation are the



359 same as in [paragraph] paragraphs (a)(1) and (b)(1) of this  
360 Section.

361 (2) [[Forest conservation plan]] Forest conservation plan. Upon  
362 notification that the forest stand delineation is complete and  
363 correct, the applicant must submit a preliminary forest  
364 conservation plan to the Planning Director. The Board of  
365 Appeals must consider the preliminary forest conservation plan  
366 when approving the special exception or conditional use  
367 application and must not approve a special exception or  
368 conditional use application that conflicts with the preliminary  
369 forest conservation plan. A final forest conservation plan must  
370 be submitted before obtaining a sediment control permit, or at  
371 the time of preliminary plan of subdivision or site plan  
372 application, if required. The deadlines for reviewing a final forest  
373 conservation plan are the same as in paragraph (d)(2) of this  
374 Section.

375 (d) *Project requiring a sediment control permit only.*

376 (1) [[Forest stand delineation]] Forest stand delineation. If an  
377 application for a sediment control permit [[may]] might be  
378 subject to the requirements of this Chapter, the applicable  
379 sediment control permit issuing authority must direct the  
380 applicant to the Planning Director for a determination. If the  
381 Planning Director finds the sediment control permit application  
382 to be subject to this Chapter, the applicant must submit a forest  
383 stand delineation to the Planning Director for review. The

384 deadlines for reviewing a forest stand delineation are the same as  
385 in [paragraph] paragraphs (a)(1) and (b)(1) of this Section.

386 (2) ~~[[Forest conservation plan]]~~ Forest conservation plan. Upon  
387 notification that the forest stand delineation is complete and  
388 correct, the applicant must submit to the Planning Director a  
389 forest conservation plan. Within 45 days from receipt of the  
390 forest conservation plan, the Planning Director must notify the  
391 applicant if the forest conservation plan is complete and  
392 approved. If the applicant is not notified within 45 days, the plan  
393 will be treated as complete and approved. The Director may  
394 require further information or provide for an extension of this  
395 deadline for an additional 15 days for extenuating circumstances.  
396 In addition, at the request of the applicant, the Director may  
397 extend this deadline further for extenuating circumstances.

398 (3) ~~[[Issuance of sediment control permit]]~~ Issuance of sediment  
399 control permit. A sediment control permit must not be issued to  
400 a person who must comply with this Article until a final forest  
401 conservation plan, if required, is approved.

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

403 (1) ~~[[Forest stand delineation]]~~ Forest stand delineation. A person  
404 seeking mandatory referral or a park development plan for a  
405 project that is subject to the requirements of this Chapter must  
406 first submit a forest stand delineation to the Planning Director for  
407 review. The deadlines for reviewing a forest stand delineation are  
408 the same as in [paragraph] paragraphs (a)(1) and (b)(1) of this  
409 Section.

410 (2) [[Forest conservation plan]] Forest conservation plan. Upon  
411 notification that the forest stand delineation is complete and  
412 correct, the applicant must submit to the Planning Director a final  
413 forest conservation plan. The Planning Board must consider the  
414 final forest conservation plan when reviewing the mandatory  
415 referral application or the park development plan.

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

419 (f) *Project requiring sketch plan approval.*

420 (1) [[Forest stand delineation]] Forest stand delineation. For any  
421 sketch plan application filed on or after November 14, 2017, the  
422 applicant must submit to the Planning Director, for approval, a  
423 forest stand delineation [reviewed concurrently with] before the  
424 sketch plan application. The deadlines for reviewing a forest  
425 stand delineation are the same as in [paragraph] paragraphs (a)(1)  
426 and (b)(1) of this Section. [The forest stand delineation must be  
427 approved prior to Planning Board approval of the sketch plan.]

428 (2) [[Forest conservation plan]] Forest conservation plan. Upon  
429 notification that the forest stand delineation is complete and  
430 correct, the applicant must submit a preliminary forest  
431 conservation plan to the Planning Director with the first  
432 development application after approval of the sketch plan. The  
433 deadlines for reviewing a preliminary and final forest  
434 conservation plan are the same as in [paragraph] paragraphs  
435 (b)(2)(B) and (b)(2)(C) of this Section.

- 436 (g) *Project requiring administrative subdivision approval.*
- 437 (1) ~~[[Forest stand delineation]]~~ Forest stand delineation. The
- 438 applicant must submit to the Planning Director a forest stand
- 439 delineation before the administrative subdivision application.
- 440 The deadlines for reviewing a forest stand delineation are the
- 441 same as in [paragraph] paragraphs (a)(1) and (b)(1) of this
- 442 Section.
- 443 (2) ~~[[Forest conservation plan]]~~ Forest conservation plan. Upon
- 444 notification that the forest stand delineation is complete and
- 445 correct, the applicant must submit a preliminary forest
- 446 conservation plan to the Planning Director. The Planning Director
- 447 must consider the preliminary forest conservation plan when
- 448 approving the administrative subdivision application and must not
- 449 approve an administrative subdivision application that conflicts
- 450 with the preliminary forest conservation plan. A final forest
- 451 conservation plan must be submitted and approved before
- 452 obtaining a sediment control permit[,] or record plat, whichever
- 453 comes first. The deadlines for reviewing a final forest conservation
- 454 plan are the same as in paragraph (d)(2) of this Section. If the
- 455 Director defers the approval of an administrative subdivision to the
- 456 Planning Board, the Planning Board must review and act on the
- 457 preliminary forest conservation plan with the administrative
- 458 subdivision plan. The deadlines for reviewing a final forest
- 459 conservation are the same as in paragraph (b)(2)(C) of this Section.

460 \* \* \*

461 **22A-12. Retention, afforestation, and reforestation requirements.**

462 (a) *Table.*

463

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area</i>		
<i>Land Use Category</i>	<i>Forest Conservation Threshold</i>	<i>Required Afforestation</i>
Agricultural and resource areas	[50]55%	20%
<u>Cluster medium-density residential areas</u>	<u>45%</u>	<u>20%</u>
Medium-density residential areas	[25] <u>35%</u>	20%
Institutional development areas	[20] <u>25%</u>	[15] <u>20%</u>
High-density residential areas	20%	15%
Mixed-use development areas	20%	15%
Planned unit development areas	20%	15%
Commercial and industrial use areas	15%	15%

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465 \* \* \*

466 (b) *Retention.*

467 \* \* \*

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

473 (A) Any tree, shrub, or plant that is rare, threatened, or  
 474 endangered under:

- 475 (i) the Federal Endangered Species Act of 1973 in 16
- 476 U.S.C. Sections 1531 — 1544 and in 50 CFR 17;
- 477 (ii) the Maryland Nongame and Endangered Species
- 478 Conservation Act, Title 10, Subtitle 2A of the
- 479 Natural Resources Article of the Maryland Code; or
- 480 (iii) COMAR 08.03.08;

481 (B) Any tree that is:

- 482 (i) 1 inch in caliper or larger and part of a historic site
- 483 or located within an historic district,
- 484 (ii) associated with a historic structure, or
- 485 (iii) designated by the State or County as a national,
- 486 State, or County champion tree; ~~[[or]]~~

487 (C) Any tree with a diameter, measured at 4.5 feet above the

488 ground, of:

- 489 (i) 30 inches or more; or
- 490 (ii) 75% or more of the diameter, measured at 4.5 feet
- 491 above ground, of the current State champion tree of
- 492 that species; or

493 (D) Any forest in a floodplain or stream buffer, except if the

494 activity occurring within the floodplain or stream buffer is

495 permitted under the environmental guidelines.

496 \* \* \*

497 (c) *Reforestation.* The forest conservation plan must provide for

498 reforestation as follows:

- 499 (1) For all existing forest cover measured to the nearest 1/10 acre
- 500 cleared on the net tract area below the applicable forest

501 conservation threshold, the area of forest removed must be  
502 reforested at a ratio of 2 acres planted for every one acre removed  
503 if reforestation is occurring within the same 8-digit watershed as  
504 the project or a priority 8-digit watershed, special protection area,  
505 or the Patuxent Primary Management Area (PMA); or 2 ½ acres  
506 planted for every one acre removed if reforestation is occurring  
507 within the County outside of the same 8-digit watershed and  
508 outside of a priority 8-digit watershed, special protection area, or  
509 the Patuxent Primary Management Area (PMA).

510 (2) For all existing forest cover measured to the nearest 1/10 acre  
511 cleared on the net tract area above the applicable forest  
512 conservation threshold, the area of forest removed must be  
513 reforested at a ratio of [1/4] ½ acre planted for every one acre  
514 removed if reforestation is occurring within the same 8-digit  
515 watershed as the project or a priority 8-digit watershed, special  
516 protection area, or the Patuxent Primary Management Area  
517 (PMA); or 1 acre planted for every one acre removed if  
518 reforestation is occurring within the County outside of the same  
519 8-digit watershed and outside of a priority 8-digit watershed,  
520 special protection area, or the Patuxent Primary Management  
521 Area (PMA).

522 \* \* \*

523 (d) *Afforestation.*

524 (1) A site with less than 20 percent of the net tract area in forest cover  
525 must be afforested in accordance with the required afforestation  
526 percentages shown on the table in subsection (a) of this Section.

527 (2) Afforestation [should] must be accomplished by the planting of  
528 forest cover[. However], unless the applicant demonstrates to the  
529 satisfaction of the Planning Board or Planning Director, as the  
530 case may be, that afforestation using forest cover is inappropriate  
531 for a site because of its location in an urban setting,  
532 redevelopment context, high-density residential, commercial,  
533 industrial, planned unit development, or institutional area (as  
534 defined in Section 22A-3), or similar reason, in which case  
535 afforestation requirements may be satisfied by tree cover.

536 \* \* \*

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

538 (1) General requirements.

539 (A) *Preferred sequence.* Except as provided in the technical  
540 manual or otherwise in paragraph (1) of this subsection,  
541 the preferred sequence for afforestation and reforestation  
542 is, in general: on-site afforestation or reforestation; off-site  
543 afforestation or reforestation; enhancement of existing  
544 forest through on-site selective clearing, supplemental  
545 planting, or both; acquiring credit(s) from an off-site forest  
546 mitigation bank; paying a fee in-lieu; and landscaping with  
547 an approved plan.

548 (B) Stream valley buffers. All unforested stream valley  
549 buffers on site must be afforested or reforested, except if  
550 the applicant demonstrates to the satisfaction of the  
551 Planning Board or Planning Director that [[afforestation or  
552 reforestation in the stream valley buffer]]:



553 (i) afforestation or reforestation in the stream valley  
554 buffer would be in conflict with allowable uses as  
555 established in the latest version of the  
556 environmental guidelines;

557 (ii) the stream valley buffer is located on park property  
558 stewarded by the Department of Parks, and the  
559 afforestation or reforestation would [[conflicts]]  
560 conflict with the mission and established  
561 stewardship practices of the Department of Parks;  
562 or

563 (iii) the stream valley buffer is not suitable to establish  
564 and retain required planting materials, [[then]] in  
565 which case a substitute environmental protective  
566 measure must be implemented.

567 All unforested stream valley buffers in a special protection  
568 area and stream valley buffers within the Patuxent Primary  
569 Management Area must be afforested as established in the  
570 latest version of the environmental guidelines.

571 [(B)](C) [[Governmental considerations]] Governmental  
572 considerations. The sequence provided in subparagraph  
573 (A) of this paragraph may be modified for a specific  
574 project if the applicant demonstrates to the satisfaction of  
575 the Planning Board or the Planning Director, as the case  
576 may be, that a different sequence is necessary:

577 (i) to achieve the objectives of a master or sector plan  
578 or other County land use policies or to take

579 advantage of opportunities to consolidate forest  
580 conservation efforts;

581 (ii) for public sites acquired or required to be dedicated  
582 before July 1, 1991, to ensure that the site can be  
583 used for its intended purpose without major design  
584 changes; or

585 (iii) for educational, recreational, and public safety  
586 facilities, to ensure that public safety is not  
587 compromised.

588 ~~[(C)]~~(D) ~~[[Public Utility Considerations]]~~ Public utility  
589 considerations. The sequence provided in subparagraph  
590 (A) of this paragraph for public utility projects may be  
591 modified to reflect applicable electrical or other safety  
592 codes, or right-of-way constraints.

593 (2) ~~[[Off-site afforestation and reforestation]]~~ Off-site afforestation  
594 and reforestation. If no opportunities for planting forest exist  
595 ~~[[per]]~~ under Section 22A-12(e)(1)(A)~~[[In addition to the use of~~  
596 ~~other sites proposed by an applicant and approved by the~~  
597 ~~County],~~ off-site afforestation or reforestation may also include:

598 (A) ~~[[Forest]]~~ forest mitigation banks designated in advance  
599 by the County~~[[.]]~~;

600 (B) ~~[[Protection of existing off-site forest. Acquisition]]~~  
601 acquisition of an off-site protective easement for existing  
602 forested areas not currently protected in perpetuity ~~[[is an~~  
603 ~~acceptable mitigation technique instead of off-site~~  
604 ~~afforestation or reforestation planting, but]]~~, if the forest

605 cover protected ~~[[must be]]~~ is 2 times the afforestation and  
606 reforestation requirements~~[[.]]; or~~

607 (C) ~~[[For]]~~ for sites located in existing population centers, use  
608 of street trees which meet landscape or streetscape goals  
609 identified in an applicable master plan.

610 (3) ~~[[Priority areas and plantings]]~~ Priority areas and plantings.  
611 Afforestation and reforestation should be directed to stream  
612 buffer areas, connections between and additions to forested  
613 areas, critical habitat areas, topographically unstable areas, and  
614 land use and road buffers. The use of native plant materials is  
615 preferred.

616 (4) ~~[[Location requirements]]~~ Location requirements.

617 (A) ~~[[Required]]~~ Except as permitted under subparagraphs (B)  
618 and (C) of this paragraph, required reforestation or  
619 afforestation must occur in both the county and the 8-digit  
620 watershed in which the project is located~~[[, except that if~~  
621 it]].

622 (B) If the required reforestation or afforestation cannot be  
623 reasonably accomplished in the same county and 8-digit  
624 watershed in which the project is located, then the  
625 reforestation or afforestation [may] must occur in a  
626 priority 8-digit watershed, special protection area, or the  
627 Patuxent Primary Management Area (PMA) in the same  
628 county in which the project is located~~[[, except that if it]].~~

629 (C) If the required reforestation or afforestation cannot be  
630 reasonably accomplished in a priority 8-digit watershed,

631 special protection area, or the Patuxent Primary  
632 Management Area (PMA) in the same county in which the  
633 project is located, then the reforestation or afforestation  
634 may occur anywhere in [either] the county [or watershed]  
635 in which the project is located.

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

641 \* \* \*

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

644 \* \* \*

645 (3) If the Planning Board or Planning Director, as appropriate, finds  
646 that forest retention required in this subsection is not possible,  
647 the applicant must provide the maximum possible on-site  
648 retention and must meet the balance of the remaining  
649 requirement through any [in] combination [with] of on-site or  
650 off-site reforestation [and] or afforestation[, not including  
651 landscaping].

652 \* \* \*

653 (g) *In lieu fee.* A person contributing money to the forest conservation fund  
654 as an in lieu fee must do so at a rate specified by law or Council  
655 resolution, but not less than the rate required under Section 5-1610, as  
656 amended, of the Natural Resources Article of the Maryland Code. Any

657 in lieu fee payment must be made before any land disturbing activity,  
658 as defined in Section 22A-3, occurs on a section of the tract subject to  
659 the forest conservation plan. A person may make an in lieu fee payment  
660 to the forest conservation fund only if the person satisfactorily  
661 demonstrates that:

662 (1) (A) the requirements for reforestation or afforestation on-site  
663 or off-site cannot reasonably be accomplished;

664 (B) appropriate credits generated by a forest mitigation bank  
665 in the same watershed within the County are not available;  
666 ~~[[and]]~~

667 ~~(C)~~ if appropriate credits generated by a forest mitigation bank  
668 in the same 8-digit watershed within the County are not  
669 available, appropriate credits generated by a forest  
670 mitigation bank in a priority 8-digit watershed, special  
671 protection area, or the Patuxent Primary Management  
672 Area (PMA) are not available; and

673 ~~[(C)](D)~~ if appropriate credits generated by a forest  
674 mitigation bank in the same 8-digit watershed, a priority  
675 8-digit watershed, special protection area, or the Patuxent  
676 Primary Management Area (PMA) within the County are  
677 not available, appropriate credits generated by a forest  
678 mitigation bank in the County are not available; or

679 \* \* \*

680 (h) *Agreements.*

681 (1) ~~[[Maintenance agreement]]~~ Maintenance agreement. A forest  
682 conservation plan must include a 5-year binding agreement for

683 maintenance of all planted forest conservation areas, including  
684 areas of afforestation, reforestation, as well as any required  
685 mitigation plantings. A forest conservation plan may require a 5-  
686 year binding agreement for maintenance of existing forest to be  
687 retained to ensure long-term health of forest stands. For park  
688 property with an approved mission and established stewardship  
689 practices including conservation and forest management plans, a  
690 maintenance agreement for existing forest is not required. A  
691 person subject to the binding agreement may request that the  
692 binding agreement be reduced to 3 years if the forest conservation  
693 inspector finds that the agreement has been fulfilled, unless the  
694 forest conservation plan is within a special protection area. If the  
695 forest conservation plan is within a special protection area, the  
696 binding maintenance agreement must be for a minimum of 5 years  
697 and may not be reduced. The binding maintenance agreement may  
698 include watering (as practical), feeding, non-native invasive plant  
699 control, and replanting of areas to be afforested or reforested. A  
700 maintenance agreement may also be required for non-native  
701 invasive plant control of forest edge or [[to]] for control of non-  
702 native invasive species in adjacent areas that may impact forest  
703 conservation. The binding agreement for maintenance starts upon  
704 satisfactory inspection of the plantings or maintenance required  
705 under the forest conservation plan. A staged project may have  
706 more than one agreement.

707 \* \* \*

708 **22A-13. Forest mitigation banks.**

709 \* \* \*

- 710 (e) The forest mitigation bank plan must include:
- 711 (1) a maintenance agreement which meets the standards in
- 712 subsection 22A-12(h)(1);
- 713 (2) all information required by subsection 22A-10(c) for a forest
- 714 conservation plan; ~~[[and]]~~
- 715 (3) draft easements, covenants, or deed restrictions for the area
- 716 included in the forest mitigation bank; and
- 717 (4) the number of forest mitigation bank credits available for sale as
- 718 ~~[either existing forest credits or] either:~~
- 719 (A) if permitted by state law, existing forest credits, where 1
- 720 acre of forest mitigation bank credit equals 2 acres of
- 721 existing forest; or
- 722 (B) planted forest credits, where 1 acre of forest mitigation bank
- 723 credit equals 1 acre of planted forest[, or 2 acres of existing
- 724 forest].

\* \* \*

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

\* \* \*

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

736 (PMA). If forest mitigation bank credits are not available within  
737 a priority 8-digit watershed, special protection area, or the  
738 Patuxent Primary Management Area (PMA), applicants may  
739 acquire forest mitigation bank credits from any approved forest  
740 mitigation bank within the County.

741 \* \* \*

742 **22A-21. Variance.**

743 \* \* \*

744 (e) If the applicant is granted a variance to remove any of the subject trees  
745 listed as priority for retention in Section 22A-12(b)(3), the applicant  
746 must replant mitigation trees at a minimum ratio of 1 caliper inch  
747 replaced for every 4 inches of trunk diameter removed, measured at 4.5  
748 feet above the ground, regardless of whether those trees are within or  
749 outside of forest area, in addition to any reforestation, afforestation, or  
750 landscape credit requirements. Mitigation for trees that are part of an  
751 historic site or associated with an historic structure is only required for  
752 the removal of trees located outside of forest.

753 (f) If the applicant is granted a variance in connection with disturbance of  
754 forest in a floodplain or stream buffer under Section 22A-12(b)(3)(D),  
755 the applicant must reforest at a minimum ratio of:

756 (1) 2:1, if the reforestation is occurring within the same 8-digit  
757 watershed as the project or a priority 8-digit watershed under  
758 Section 22A-12(c); or

759 (2) 2 1/2:1, if the reforestation is occurring within the County outside  
760 of the same 8-digit watershed and outside of a priority 8-digit  
761 watershed under Section 22A-12(c).



762 [(e)] ~~[(f)]~~ (g) [Approval procedures; Conditions] *Approval procedures;*  
763 ~~[[Conditions]]~~ *conditions*. The Planning Board must find that the  
764 applicant has met all requirements of this Section before granting a  
765 variance. However, the Planning Director may grant a variance if the  
766 Director is authorized to approve the forest conservation plan and the  
767 applicant meets all requirements of this Section. The Board or Director  
768 may impose appropriate conditions to promote the objectives of this  
769 Chapter and protect the public interest.

770 (f) ~~[(g)]~~ (h) [Notice to State Department of Natural Resources; Right  
771 to initiate or intervene in proceedings] *Notice to State Department of*  
772 *Natural Resources; ~~[[Right]]~~ right to initiate or intervene in*  
773 *proceedings.*

774 \* \* \*

775 **Sec. 2. Expedited Effective Date.** This Act is necessary for the immediate  
776 protection of the public health, safety, or interest and must take effect on the day that  
777 it becomes law.

778 **Sec. 3. Transition.** Any amendment to Chapter 22A under Section 1 of this Act  
779 does not apply to: (a) a preliminary or final forest conservation plan submitted before  
780 this Act took effect; or (b) a County highway project if, prior to the effective date of  
781 this Act, funding has been appropriated for the project, and the project has been  
782 submitted to the Planning Board under mandatory referral.

*Approved:*



\_\_\_\_\_  
Evan Glass, President County Council

3/24/2023

\_\_\_\_\_  
Date

*Approved:*

\_\_\_\_\_  
Marc Elrich, County Executive

\_\_\_\_\_  
Date

*This is a correct copy of Council action.*

\_\_\_\_\_  
Judy Rupp, Clerk of the Council

\_\_\_\_\_  
Date