

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: April 3, 2023
Effective: April 3, 2023
Sunset Date: none
Ch. 6, Laws of Mont. Co. 2023

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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

Boldface	<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.

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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.

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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.

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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.

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214 **22A-10. General**

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216 (b) *Forest stand delineation.*

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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.*

727 * * *

- 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 ½:1, 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:

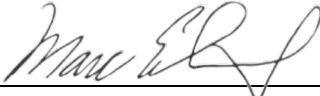


Evan Glass, President County Council

3/24/2023

Date

Approved:

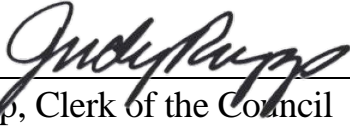


Marc Elrich, County Executive

4/3/2023

Date

This is a correct copy of Council action.



Judy Rupp, Clerk of the Council

4/3/2023

Date