

Bill No.: 18-25
Concerning: Forest Conservation –
Trees
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Ch. 19, Laws of Mont. Co. 2025

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Planning Board

AN ACT to:

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

By amending

Montgomery County Code

Chapter 22-A, Forest Conservation – Trees

Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-11, 22A-12, 22A-13, and 22A-15

Boldface	<i>Heading or a 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:

28 homeowners' association, public or private corporation or any of
29 their affiliates or subsidiaries[,] or

30 (4) any other entity.

31 *Planned unit development means* a development comprised of a combination
32 of land uses or varying intensities of the same land use, having at least 20[%]
33 percent of the land permanently dedicated to green area, and under an
34 integrated plan that provides flexibility in land use design approved by the
35 Planning Board under Section 7.2.1 of Chapter 59 or referred to in Section
36 7.7.1.B of Chapter 59.

37 * * *

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

41 * * *

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

45 * * *

46 **22A-4 Applicability**

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

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

54 * * *

55 [Any] Notwithstanding the above, any person who expects to cut, clear, or
 56 grade more than [5000] 5,000 square feet of forest or any champion tree[, and who
 57 believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-
 58 6, or 22A-8,] must [notify the Planning Director in writing before performing any
 59 cutting, clearing, or grading and seek confirmation from the Director that the cutting,
 60 clearing, or grading is in fact exempt from Article II] request an exemption under
 61 Section 22A-5 or must comply with the requirements of Article II. Any person who
 62 believes that cutting, clearing, or grading is exempt under Section 22A-5, 22A-6, or
 63 22A-8 must receive confirmation from the Planning Director that the activity is in
 64 fact exempt from Article II. [Failing to notify the Director as required by this
 65 Section, or performing] Performing any cutting, clearing, or grading before the
 66 Director confirms that an exemption applies[,] is a violation of this Chapter.

67 * * *

68 **Sec. 22A-5. Exemptions.**

69 The requirements of Article II do not apply to:

- 70 (a) an activity conducted on an existing single lot of any size that is
- 71 required to construct a dwelling house or accessory structure (such as a
- 72 pool, tennis court, or shed) intended for the use of the owner, if the
- 73 activity:
 - 74 (1) does not require a special exception;
 - 75 (2) does not occur within an environmental buffer, except for the
 - 76 allowable uses stated in the environmental guidelines;
 - 77 (3) does not result in the cutting, clearing, or grading of:
 - 78 (A) more than a total of 20,000 square feet of forest;
 - 79 (B) any forest in a stream buffer[,];
 - 80 (C) any forest on property located in a special protection area
 - 81 which must submit a water quality plan[,];

82 (D) any specimen or champion tree[,] unless a [[Tree Save
83 Plan]] tree save plan is approved under Section 22A-6(a);

84 or

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

87 [(3)] (4) is subject to a declaration of intent filed with the Planning
88 Director stating that the lot will not be the subject of additional
89 regulated activities under this Chapter within 5 years of the
90 cutting, clearing, or grading of forest;

91 (b) an agricultural activity if:

92 * * *

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

95 * * *

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

99 * * *

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

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

105 (2) was approved or extended between July 1, 1984 and July 1,
106 1991[.]; and

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

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

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

112 * * *

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

124 * * *

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

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

132 * * *

133 (D) any specimen or champion tree unless a [[Tree Save Plan]]
134 tree save plan is approved under Section 22A-6(a); or

135 (E) any tree or forest that is subject to the requirements of a

136 previously approved forest conservation plan or tree save
137 plan;

138 (2) there is no proposed land disturbance and a declaration of intent
139 is filed with the Planning Director stating that the lot will not be
140 the subject of additional regulated activities under this Chapter
141 within 5 years of the approval of the minor subdivision[.];

142 (o) [The] the cutting or clearing of public utility rights-of-way or land for
143 electric generating stations licensed under Sections 7-205 and 7-207 or
144 7-208 of the Public Utility Companies Article of the Maryland Code,
145 if:

146 * * *

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

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

154 (A) any forest in a stream buffer[.];
155 (B) any forest on property located in a special protection area
156 which must submit a water quality plan[.];

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

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

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

162 * * *

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

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

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

183 * * *

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

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

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

* * *

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

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

(A) is not located within the Commercial Residential (CR) zone classification; unless a [[Tree Save Plan]] tree save plan is approved under Section 22A-6(a);

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

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

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

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

(t) a modification to a:

(1) non-residential developed property if:

* * *

(E) the modification does not increase the developed area by

217 more than 50[%] percent, and any existing principal
218 building, as defined in Chapter 59, is retained; and

219 (F) the pending development application does not propose any
220 residential uses; or

221 (2) residential developed property if:

222 * * *

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

225 * * *

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

228 * * *

229 (3) executed a binding maintenance agreement for planting and
230 maintenance of mitigation trees for at least 5 years with the
231 affected property owner or owners, or with the Maryland
232 National-Capital Park and Planning Commission if the applicant
233 is performing a stream restoration project on their own property.
234 If an applicant is performing a stream restoration project on their
235 own property, financial security is required under Section 22A-
236 12(i)[.];

237 * * *

238 **22A-6. Special provisions — Exemptions; tree save plans; and highway**
239 **projects.**

240 (a) *Tree save plan requirements.* An activity or development that [would
241 be] is exempt under Section 22A-5 except for the clearing of a
242 specimen or champion tree, [and] or that [would impact] impacts a
243 [significant,] specimen[,] or champion tree, requires the approval of a

244 tree save plan. The tree save plan must require tree preservation or
 245 planting of mitigation trees at a ratio of [1] one caliper inch replaced
 246 for every 4 inches of trunk diameter removed, measured at 4.5 feet
 247 above the ground, based on the size and character of the trees to be
 248 cleared. If trees to be cleared are part of an existing recorded scenic
 249 buffer between public parkland and a proposed development, trees that
 250 are smaller than specimen size may be included in the tree save plan.

251 * * *

252 **22A-11. Application, review, and approval procedures.**

253 (a) *General.*

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

262 (2) *Coordinated with project review.* The forest conservation plan
 263 must be submitted and reviewed in conjunction with the review
 264 process for a development plan, floating zone plan, project plan,
 265 subdivision plan, site plan, [[biohealth priority campus plan,
 266 mixed-income community plan,]] expedited approval plan,
 267 special exception, conditional use, mandatory referral, park
 268 development plan, or sediment control permit under this Section.
 269 The Planning Director must coordinate review of the forest
 270 conservation plan with the Director of Environmental Protection,

271 the Director of Permitting Services, the Washington Suburban
 272 Sanitary Commission, other relevant regulatory agencies, and
 273 entities that will provide public utilities to the tract, to promote
 274 consistency between the objectives of this Chapter and other
 275 development requirements. To the extent practicable, entities
 276 providing public utilities should design facilities that will serve
 277 a tract in a manner that avoids identified conservation areas and
 278 minimizes tree loss.

279 * * *

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

284 (b) *Project requiring development plan, floating zone plan, project plan,*
 285 *preliminary plan of subdivision, [[biohealth priority campus plan,*
 286 *mixed-income community plan,]] expedited approval plan, or site plan*
 287 *approval.*

288 (1) Forest stand delineation. The applicant must submit to the
 289 Planning Director a forest stand delineation and the forest stand
 290 delineation must be approved before the applicant may submit an
 291 application for a development plan, floating zone plan, project
 292 plan, preliminary plan of subdivision, [[biohealth priority
 293 campus plan, mixed-income community plan,]] expedited
 294 approval plan, or site plan. Within 30 days of receipt, the
 295 Planning Director must notify the applicant whether the forest
 296 stand delineation is complete and correct. If the Planning
 297 Director fails to notify the applicant within 30 days, the

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

307 (2) Forest conservation plan.

308 (A) *Application.* After being notified that the forest stand
 309 delineation is complete and correct, the applicant must
 310 submit a forest conservation plan to the Planning Director
 311 with the related application for a development plan,
 312 floating zone plan, project plan, preliminary plan of
 313 subdivision, [[biohealth priority campus plan, mixed-
 314 income community plan,] expedited approval plan, or site
 315 plan. If the development proposal will require more than
 316 one of the approvals subject to this subsection, the
 317 applicant must submit a preliminary forest conservation
 318 plan to the Planning Director in conjunction with the first
 319 approval and a final forest conservation plan in
 320 conjunction with the last approval. If only one approval
 321 subject to this subsection is required, an applicant must
 322 submit a preliminary forest conservation plan and a final
 323 forest conservation plan at the time of the development
 324 application. The applicant must own the property subject

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

327 * * *

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

348 * * *

349 **22A-12 Retention, afforestation, and reforestation requirements.**

350 * * *

351 (b) *Retention.*

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- (2) In general, areas protected under this subsection include:
 - (A) floodplains, stream buffers, steep slopes, and critical habitats;
 - (B) contiguous forests;
 - (C) forests suitable for forest interior-dwelling species;
 - (D) forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of Environment;
 - (E) forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area;
 - (F) forests in urban areas as defined in Section 5-1607(c)(vi) of the Natural Resources Article of the Maryland Code;
 - (G) rare, threatened, and endangered species;
 - [(D)] (H) trees connected to [[an]] a historic site;
 - [(E)] (I) champion trees and other exceptionally large trees; and
 - [(F)] (J) areas designated as priority save areas in a master plan or functional plan.
- (3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

* * *

- (B) Any tree that is:
 - (i) [[1]] one inch in caliper or larger and part of a historic site or located within [[an]] a historic district[,];

- 379 (ii) associated with a historic structure[,]; or
- 380 (iii) designated by the State or County as a national,
- 381 State, or County champion tree;
- 382 (C) Any tree with a diameter, measured at 4.5 feet above the
- 383 ground, of:
- 384 (i) 30 inches or more; or
- 385 (ii) 75[%] percent or more of the diameter, measured at
- 386 4.5 feet above ground, of the current State champion
- 387 tree of that species; or
- 388 (D) Any forest in a floodplain or stream buffer, except if the
- 389 activity occurring within the floodplain or stream buffer is
- 390 permitted under the environmental guidelines.[.]

* * *

(d) *Afforestation.*

* * *

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

(e) *Standards for reforestation and afforestation.*

* * *

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

(4) *Location requirements.*

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

410 * * *

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

415 * * *

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

418 * * *

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

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

426 * * *

427 **22A-13. Forest mitigation banks.**

428 * * *

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

430 * * *

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

432 * * *

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

435 (A) [if permitted by state law,] existing forest credits, where
436 [1] one acre of forest mitigation bank credit equals 2 acres
437 of existing forest; or

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

441 * * *

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

443 * * *

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

447 [(3)] (4) Forest mitigation bank credits must be acquired from a
448 forest mitigation bank within the same 8-digit watershed, as
449 delineated by the State of Maryland, where the development
450 activity is located. If forest mitigation bank credits are not
451 available within the same 8-digit watershed within the County,
452 applicants must acquire forest mitigation bank credits from a
453 forest mitigation bank within a priority 8-digit watershed, special
454 protection area, or the Patuxent Primary Management Area
455 (PMA). If forest mitigation bank credits are not available within
456 a priority 8-digit watershed, special protection area, or the
457 Patuxent Primary Management Area (PMA), applicants may
458 acquire forest mitigation bank credits from any approved forest
459 mitigation bank within the County.

460 [(4)] (5) The forest mitigation bank credits acquired must be equal
461 to the applicant's off-site reforestation or afforestation
462 requirements under the approved forest conservation plan.

463 * * *

464 **22A-15. Inspections and Notifications.**

465 * * *

466 (b) *Plan to be on site; field markings.* A copy of the approved forest
467 conservation plan, tree save plan, or confirmed forest conservation
468 exemption, as applicable, must be available on the site for inspection
469 by representatives authorized by the Planning Director. Field markings
470 must exist on site before and during installation of all protective
471 devices, construction, or other land disturbing activities.

472 * * *

