



November 8, 2001

Memorandum

TO: Montgomery County Planning Board

FROM: Cathy Conlon, Forest Conservation Program Administrator(x4542)
for the Montgomery County Park and Planning Department *CC*

SUBJECT: Public Hearing on Planning Board Regulation 1-01(COMCOR 18-01) –
Forest Conservation Regulations Amendments

Overview

The proposed regulation amends existing Planning Board Forest Conservation Regulation No. 1-97 as part of a comprehensive update to the County forest conservation program. This update was initiated in March, 2000 when the Planning Board transmitted proposed amendments to the forest conservation law to the County Council for introduction. The Planning Board's initial draft of the regulations was also transmitted. The law amendments were adopted by the Council on July 24, 2001, and became effective November 5, 2001.

The Planning Board regulations were introduced in June, 2001 and a public hearing was held on September 13, 2001. This second hearing is being conducted to provide another opportunity for comment because questions were raised during the first hearing about whether appropriate notice had been given. No changes to the regulations have been made since the first public hearing. Following this hearing, a Planning Board work session will be scheduled to discuss comments received and the need for further revisions.

Summary of the Forest Conservation Law Amendments

The adopted amendments to the Forest Conservation Law (Montgomery County Code, Chapter 22A) reflect the Board and Council's desire to increase its effectiveness, clarify provisions, and include measures that will help to make implementation more efficient. Some of the more significant amendments include:

- Existing forest and reforestation areas less than 50 feet wide for the majority of their length are not included in the definition of forest.
- County highway projects are reviewed the same as State projects and reforestation for loss of forest is always 1:1.
- Failure to obtain verification of an exemption from the law is a violation.
- Single lot exemptions apply only to existing lots that contain, or are being constructed with, a dwelling house or accessory structure.
- Minor subdivisions that convert certain outlots to lots, and join two or more existing residential lots are exempt.
- Several of the exemptions do not apply if development includes clearing of specimen or champion trees, forest in a stream buffer, or forest on a site within a Special Protection Area that is required to submit a Water Quality Plan.
- Any property that is exempt from forest conservation requirements may be required to do a tree save plan.
- Churches must meet the conservation and afforestation thresholds of the base zone they are in.
- Priority forest now includes forest identified as part of master or functional plans.
- Ag Resource Areas, Planned Unit Development, and any site developed under cluster or other optional method of development must meet minimum standards for retention and reforestation.
- Automatic payment of fees in lieu of planting are allowed in some instances.
- The amount of the fee charged for forest conservation review will be set by the Planning Board as part of DAP instead of by regulation.

Summary of the Proposed Regulation

The proposed regulations include clarification of the requirements of the law and the necessary procedures for its administration. In addition to defining terms not covered by the law, the regulations include requirements for preparation of a Natural Resources Inventory and Forest Stand Delineation; priorities for forest stand retention; Forest Conservation Plan provisions including, afforestation and reforestation priorities, planting plan specifications, credit for landscaping and tree save, and inspection requirements. They also include requirements for verification of an exemption, and an explanation of the declaration of intent; reforestation maintenance and management requirements including bonding; and long term protection requirements for forest conservation areas.

The biggest change in the regulations is the fact that standards which were formerly covered only in the *Trees Technical Manual* have now been moved to the regulations. The law amendment makes the manual a guidance

document. Most of the language has not changed from what was in the manual. Some of the significant new provisions of the regulations include:

- Modified forest stand sampling requirements as part of preparing a Forest Stand Delineation.
- Provision for submittal of a simplified Natural Resources Inventory and Forest Stand Delineation in some instances.
- Additional forest areas included in the highest priority for retention.
- Seedling planting stock is no longer permitted as the only means of providing reforestation.
- The minimum size requirement for larger planting stock is reduced.
- Tree save plan requirements are included.
- Credit towards reforestation and afforestation for landscaping is clarified.
- The requirements for forest conservation plan inspections are clarified.
- Terms for release of forest conservation bonding are specified.
- MD Department of Natural Resources Forest Management Plans are removed as an acceptable long term protection device and made conditional, because in some cases they include timber harvesting. Planning Board must now agree to their terms before they may be used.

Summary of Comments Received on the Proposed Regulations

Written comments received on the proposed regulations up to this point are attached to this memo. The substantive ones were received from the Maryland-National Capital Building Industry Association(MNCBIA) and Ms. Susanne Lee of the Glen Hills Citizen's Association.

MNCBIA expressed concerns that new housing will be reduced in Smart Growth areas, that release of reforestation bonds is too open ended, and that requirements for 50-foot wide "forest" areas will become a standard for any compatibility buffers. They are also concerned that the definition of "forest" and priority forest areas as now described are too broad and will significantly reduce the buildable area on sites with trees. Finally, they expressed disappointment that specific changes have not been proposed to road standards, set-back regulations and other zoning standards to provide for additional tree save while allowing for more housing.

Ms. Lee indicates a concern about consistency between the language of the definitions and standards in the proposed regulations versus the language contained in County and State laws. She also suggests including, or referencing certain provisions from the County Code in the regulations would provide further clarification. She also proposes that requirements for protection of critical root zones as part of tree save be strengthened, and that the proposed provisions for Declarations of Intent and Exemptions be clarified. Finally, Ms. Lee expresses concern that abutting property owners and

community associations do not receive notice or an opportunity to comment on forest conservation exemption requests.

Staff will incorporate all of these comments and our responses into our discussion of the proposed regulations with the Board during the work session. All of the comments received at the first public hearing, and any additional comments received at this hearing will also be incorporated.

CAC:cc



DEPARTMENT OF PUBLIC WORKS
AND TRANSPORTATION

Douglas M. Duncan
County Executive

Albert J. Genetti, Jr., P.E.
Director

September 7, 2001

Ms. Cathy Conlon
Countywide Planning Division-Environmental Planning
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Forest Conservation Regulations

Dear Ms. ~~Conlon~~ *Cathy*:

Personnel from the Department of Public Works and Transportation (DPWT) have reviewed the proposed amendments to the Forest Conservation Regulations. DPWT has no comments regarding the proposed amendments.

Based on the amendments to the law, Chapter 22A Forest Conservation – Trees, DPWT understands that for a typical County roadway project, calculations for the reforestation requirements have been simplified. According to the amendments, a County roadway project will be required to reforest on a 1:1 basis.

Thank you for providing DPWT with the opportunity to comment on the proposed amendments.

Sincerely,

Edgar
Edgar A. Gonzalez, Deputy Director
for Transportation Policy

EAG/DS/ja

cc: Daniel Sheridan, Design Section
Robert W. Stout, Design Section

Office of the Director



MARYLAND-NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION
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November 1, 2001

Ms. Cathy Conlon
M-NCPPC
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Forest Conservation Regulations

Dear Ms. Conlon:

We appreciate the opportunity to submit additional comments related to the Forest Conservation Regulations. As you know, the building industry has supported many of the changes that have been made as part of the process. In addition, you know from our efforts on the County Executive's Forest Conservation Task Force that the building industry also supports efforts to save trees and forests throughout Montgomery County. We also believe that the enhancement and protection of forests should be a responsibility of all the citizens of Montgomery County and not just new homebuyers.

Our concerns with the proposed changes are still based upon the fact that they will reduce the number of new housing units in Montgomery County, especially those in the Smart Growth areas. The changes increase the amount of land that must be saved in cluster zones, MPDU and Planned Development areas of the County. Because there are fewer of these properties available, the reduction that will occur on these properties will significantly reduce new housing that could occur in Smart Growth areas.

We believe a change should be made to the regulation that allows for more flexibility in the Priority Funding Areas of the County. On those properties that do not have environmental features that need to be protected, the on-site afforestation threshold should be reduced to the size of the area of the features to be protected. In addition, the provision, in high density and urban areas of the County, requiring afforestation to be related to tree cover should not be a waiver that must be voted on by the Planning Board. This will place an added burden on the applicant to support the use of tree cover and places the Planning Board in the uncomfortable position of having to approve the waiver.

Building Homes, Jobs and Opportunities

Representing the Building and Development Industry in Calvert, Charles, Montgomery,
Prince George's and St. Mary's Counties and Washington, D.C.
Affiliated with the Maryland State Builders Association and the National Association of Home Builders

The Forest Conservation law and regulations were not intended to be a method of density control. We again ask you to consider language that will limit the amount of density loss caused by the proposed changes. This is in direct contrast to Smart Growth principles that state there may have to be sacrifices in certain areas of a County to obtain the overall benefits of Smart Growth.

We also continue to be concerned that the release of the bonds for a reforestation area is still open ended. We believe that the applicant should have an option to replant to a level at least 10% above the required survival rate with one inch caliper or larger material and be immediately released from their bond, or the applicant can have their maintenance bond extended beyond the two year maintenance period to give the area more time to grow. The applicant would be required to take reasonable measures to address the reasons for the survival going below the required rate in the first two years.

We have previously indicated that we are concerned that the 50-foot requirement for a "Forest" will become the required buffer on all properties with any trees. We feel language should be inserted indicating that the 50-foot "Forest" requirement does not indicate that properties with trees should be required to have a 50-foot setback.

The regulations also significantly increase the stream valley buffers for those streams that are currently wooded. When we mentioned this before, you indicated that the 600' stream valley buffers were a secondary priority but if existing, they would become a priority. We believe this type of buffer is very extensive in the County and is not intended as much for forest protection as wildlife enhancement. We believe language should be added to the regulation that requires the County to study these areas as part of the Master Plan process and to report whether the buffer is required for the wildlife enhancement or forest protection and why a standard buffer would not be sufficient to protect the wildlife. If these areas are significant enough to be considered a priority it seems reasonable that they can be identified as part of the Master Plan process.

The criteria for the definition of a "Forest" are too broad and general and will encompass all areas that contain trees, even if they are not of high quality. We have seen in recent master plans that there are areas included for forest retention with no inventories or studies of the forested areas. We believe that the County should give detailed information for each of the forest retention areas in the Master Plan so that we all know the priority of the resources that are to be protected. The combination of the reduced amount of buildable areas in the County and the advancements of GIS technology should make this a task one that can be accomplished by the County.

Forest Conservation Regulations

November 1, 2001

Page 3 of 3

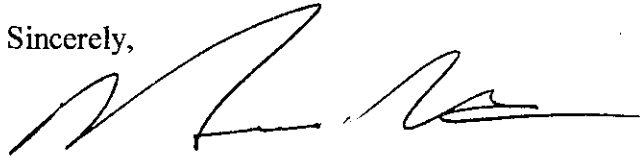
When the law and regulations were forwarded to the County Council for review, the Planning Board recommended that the County take a broader view of the tools needed to save trees and forests in Montgomery County. Unfortunately, neither the County Council nor the Planning Board staff acted upon this. We continue to support changes to the road standards, set-back regulations and other zoning changes that will allow for the saving of trees that we all desire, while supplying the housing a growing economy requires.

The proposed changes to the regulations will reduce both market rate and affordable housing units while the County continues to experience tremendous population pressures. Without any corresponding changes to zoning and development standards to promote Smart Growth in other areas, these pressures will increase in the coming years and will put the County at an economic disadvantage to other jurisdictions. As residents and employees in the County the building industry understands that the quality of life that Montgomery County affords attracts businesses and residents. However, if these new businesses and residents cannot find a place to build offices or buy homes, they will not be able to move to the County.

We thank you for your time to consider our comments and we look forward to working with Park and Planning to implement the changes that are necessary to balance the needs of the environment with the housing and economic needs of the County.

MARYLAND-NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION

Sincerely,



Martin J. Mitchell,
MNCBIA Environmental Chairman

cc: Harriett Tregoning, Secretary - Office of Smart Growth
M-NCBIA, Board of Directors
Susan Matklick, EVP, M-NCBIA
Environmental Committee, M-NCBIA

October 28, 2001

Cathy Conlon
Countywide Planning Division-Environmental
Planning
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Md 20910

Re: Proposed Forest Conservation Regulations

Dear Ms. Conlon:

We support and applaud your efforts and those of the Planning Board to strengthen the requirements for forest conservation in Montgomery County. Set forth below and on the attached mark-up are our comments regarding the Forest Conservation regulations proposed for the administration of the Montgomery County Forest Conservation Law ("Law"). Our primary concerns are that the regulations reflect the County Council's actions to strengthen the Law's requirements and that they provide the procedures necessary to ensure that adequate monitoring and enforcement occurs. An essential tool in ensuring on-the-ground compliance is the provision of notice to the affected neighborhoods, not just of the initial subdivision and special exception requests, but also requests for exemptions and proposed changes in approved plans

1. Section 102. Authority. Because the statute requires affirmative action by those requesting exemptions, these regulations pertain to all development approvals, special exception applications, and sediment control permit applications, not just those that require a forest stand delineation and a forest conservation plan.

2. Definitions. As indicated on the mark-up, some critical definitions have not been included, some are inconsistent with the definitions in the County Law, and others are inconsistent with the Maryland State Forest Conservation statute. Of particular concern are definitions that may result in requirements that are less stringent than the State statute, since the County is required to enact a program that meets or is more stringent than the state statute

3. Section 107.A Priorities for Forest Stand Retention. This section does not accurately reflect the statutory standards set forth in Section 22A-12(b)(1) of the County Law. The Council amended this provision to strengthen it by adding an additional requirement at (a) – maximum use of available planning and zoning options - in addition to the previous requirements that now appear in relettered (b) – reasonable efforts to protect and (c) – proposal cannot reasonably be altered. As currently drafted, this provision does not reflect the additional requirement and could be interpreted to mean that (a) determines what is reasonable under (b) and (c) when they are

separate and distinct additional requirements.

Section 107 should also be amended to include the provisions of Section 50-32(d) of the Montgomery County Code or, at a minimum, cross reference that provision because it governs the application of the Forest Conservation Law to subdivisions and indicates the restrictions the Council enacted for ensuring the requirements of forest conservation are met. Section 50-32(d) provides as follows:

Restrictions - general.

- (1) In addition to any requirement imposed under Chapter 22A, the proposed resubdivision may be restricted under this Section by:
 - (a) deletion of or arrangement of proposed lots, roads, utilities and other facilities;

* * *

- (2) The deletion of proposed lots under subsection (c) should occur only if the board finds that other measures authorized by law are inadequate to provide reasonably appropriate short or long-term natural resource protection or to satisfy the requirements of Chapter 22A

Section 107.A.(4) should be amended further so the protections apply to the whole tree, including all of the of the critical root zone. As currently drafted, it is inconsistent with the relevant County (Sec. 22A -12(b)(2(D)&(E)) and State (Sec. 5-1607(c) Natural Resources, Ann. Code of Md.) statutes which protect champion and historic trees. These statutes protect the whole tree, not just the “majority” (51%) of the critical root zone (CRZ).

4. Critical Root Zone (CRZ). The CRZ provisions should be strengthened to “get real” with regard to what happens to trees when the critical root zone is disturbed or destroyed. The definition of CRZ already is less than the root zone and the tree is clearly being compromised any time approval is given to destroy a portion of the “critical” root zone. Permitting impact on anything less than a “majority” (49%) of the CRZ clearly does not provide adequate protection when 30% is the typical threshold and a threshold of 25% is recommended by the M-NCPPC staff. Full credit toward afforestation and reforestation should never be given unless the entire CRZ is, in fact, protected. See e.g. Sec. 108.G(5) – full credit when only two-thirds (not even 75%) is protected.

5. Sections 111 Declaration of Waiver and 112 Exemptions. As currently drafted these sections are very unclear. The Declaration of Waiver provisions should come after the exemption is approved. The Declaration does not, as the section currently states verify that “the property” is “exempt.” That should be done through a document issued by the Planning Director or the Commission, not the applicant. The specifics of the exemption requirements are important. In addition to coming before the Declaration provisions, they should all be set forth in the Section 112, not partially in the Declaration section as currently drafted.

The regulations should require that abutting property owners and community associations receive notice of applications for exemptions, just as they are required to be given notice of

applications for subdivisions and special exceptions. Citizens are permitted to comment on those applications, including any forest conservation requirements. They should likewise be given the opportunity to comment on exemptions since the grant of an exemption may have a substantial impact on neighboring properties. Affected parties should also be notified and permitted to comment on major amendments proposed pursuant to Section 113, just as they are notified when the original plan is adopted.

During the discussion of the Forest Conservation Amendments, one issue of great concern to the Council was the illegal destruction of forests before anyone had an opportunity to object. It is those neighbors who live near wooded sites and along the stream valleys that are most likely to notice when prohibited activities may be beginning. Building adequate notice into the regulations will help ensure that neighbors are aware of what is permitted under the Forest Conservation Law and regulations and what is not.

Thank you for your consideration of our comments.

Sincerely,



Susanne M. Lee
Chair, Land Use Committee
Glen Hills Citizens Association
12900 Circle Drive
Rockville, Md. 20850
(301) 738-7987

cc: Planning Board
Phil Andrews

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 1 of 27

Montgomery County Planning Board of the
Maryland-National Capital Park and Planning Commission
Regulation on

FOREST CONSERVATION REGULATIONS

M-NCPPC MONTGOMERY COUNTY PLANNING BOARD

Issued by: Montgomery County Planning Board
Regulation No. 1-01 (COMCOR 18-01)

Authority: Chapter 22A

Supersedes: 1-97 (COMCOR 24-96)

Council review: Method (2) under Code section 22A
Register Vol. 18, No. 6

Effective Date:

Sunset Date: None

Sec. 101. Preamble

(a) Purpose. The proposed regulation amends Montgomery County Planning Board Regulation No. 1-97, Forest Conservation Regulations to update and clarify existing provisions and to add the regulatory provisions from the existing *Trees Technical Manual*, including updating and clarifying these provisions as necessary.

(b) Summary

Comment Deadline: October 31, 2001

(c) Addresses

Countywide Planning Division-Environmental Planning
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

(d) Staff Contact Cathy Conlon (301) 495-4540



REGULATION		No.: 1-01 Also cited as COMCOR 18-01
Montgomery County Planning Board of the Maryland-National Capital Park & Planning Commission		Effective Date:
TITLE	Forest Conservation	Page 2 of 27

102. Authority

X In accordance with Chapter 22A, entitled "Forest Conservation Law," the following Planning Board Regulations shall pertain to all development approvals, special exception applications, or sediment control permit applications, ~~that require a forest stand delineation and a forest conservation plan.~~

103. Transition Provision

For purposes of ~~[[Chapter]]~~ subsection 22A-7(a)(2) of the Forest Conservation Law, the term "substantially complete" means a plat that has received Planning Board approval by July 1, 1992.

104. [Forest Conservation Program Fees

A. Fees for Original Applications and Major Amendments

The review fee is as follows:

Single-family Residential: \$150 plus \$15.00 per lot.

Multi-family, Commercial, Industrial, Institutional, Religious: \$300 plus \$30 for each acre (or part thereof) over one acre.

The fees will be charged as follows:

	With NRI/FSD	With FCP
Single-family residential	\$100	\$50 plus \$15 per lot
Multi-family, Commercial, Industrial, Institutional, Religious	\$200	\$100 plus \$30 per acre

B. Government Agencies

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 3 of 27

Government agencies are exempt from all filing fee requirements.]

Definitions

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

B. Terms Defined.

(1) "Afforestation" means the creation, on a tract that is not presently in forest cover, of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor), which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 trees per acre, with at least 50 of those trees having the [[capability]] potential of growing to a [[diameter at]] 2 inch or greater diameter at 4.5 feet above the ground [[, of 2 inches or more]] within 7 years. In some instances, afforestation includes [[the]] creation of tree cover by landscaping areas under an approved landscaping plan [[, in some instances]].

(2) "Afforestation threshold" means a specific percentage of forested land on site with a low percentage of existing forest cover, based on the net tract area.

(3) "Applicant" means the person who is applying for subdivision or site plan approval, a grading or sediment control permit, or project plan approval if the applicant is a State or local agency, or who has received approval of a forest stand delineation or forest conservation plan.

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

(5) "Champion tree" means the largest tree of its species within the United States, the State, county or municipality, as appropriate.

(6) "Conservation easement" means a restriction on the land and the natural features on this land. This easement is shown on the record plat and its terms and conditions are recorded in the county's land records.

(7) "Conservation threshold" means a specific percentage of forested land on sites where existing forest is being cleared, based on the net tract area.

(8) "Critical habitat area" means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area:

(a) is likely to contribute to the long-term survival of the species;

(b) is likely to be occupied by the species for the foreseeable future; and

*Very
Unclear*

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 4 of 27

(c) constitutes habitat of the species which is considered critical under Natural Resources Article, §4-2A-06 or 10-2A-06, Annotated Code of Maryland.

(9) "Critical habitat for endangered species" means a habitat occupied by an endangered species as determined or listed under Natural Resources Article, §4-2A-04 or 10-2A-04, Annotated Code of Maryland.

(10) "Critical root zone" means the zone in which the majority of the roots of a tree are located. ~~It is also the area around a tree which should be protected unless other supplemental protection measures are provided.~~ ?? - why in this definition?

(11) "Development application" means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for plan approval or sediment control permit.

(12) "Declaration of intent" means a signed and notarized statement by a landowner that the cutting of trees on the landowner's property:

(a) is for purposes exempted under Chapter 22A of the Montgomery County Code; and

(b) will not circumvent the requirements of the Chapter.

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

(14) "Development project" means the grading or construction activities occurring on a specific tract [[that is 40,000 square feet or greater]]. This includes redevelopment projects.

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

(16) "Field survey" means a field investigation of the environmental characteristics of a site, including existing forest.

Inconsistent with state definition
(17) "Flood, One Hundred-Year" means a flood which has a 1 percent chance of being equaled or exceeded in any given year, or which occurs, on average, once every 100 years, after total ultimate development of the watershed.

(18) "Floodplain, One Hundred-Year" means the area along or adjacent to a stream or body of water, except tidal waters, that would experience inundation by stormwater runoff equivalent to a one hundred-year flood.

Inconsistent with County law & state statute
(19) "Forest clearing" means the cutting or destruction of any trees or understory which are part of an existing forest even if the resulting community continues to meet the definition of forest, except if it is done as part of an approved forest management plan or timber harvest permit. Forest loss will be based on a measure of the aerial extent of forest cover which includes the outer perimeter of individual trees.

Why no definition of "forest"

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 5 of 27

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

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

(22) "Forest management plan" means a plan establishing conservation and management practices for a landowner ~~[[in]]~~ after assessment of the resource values of forested properties. This plan is approved by the county, or by the MD Department of Natural Resources forester assigned to the county after coordination with the county.

(23) "Forest mitigation bank agreement" means an agreement entered into by an individual owning a forest mitigation bank and the Planning Board, which commits the banker to certain procedures and requirements when creating and operating a forest bank.

(24) "Forest mitigation bank plan" means a plan for approval of a forest mitigation bank submitted to the Planning Director by an individual proposing to establish a forest mitigation bank.

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

(26) "Growing season" means a period of consecutive frost-free days as stated in the current soil survey for the county. In an average year, a period commencing on April 1st and ending on October 31st.

(27) "Intermittent stream" means a stream defined as intermittent in the latest version of *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).

(28) "Landscaping plan" means a plan drawn to scale and made part of the approved forest conservation plan, showing dimensions and details for tree planting and large landscaped areas that will be applied as credit toward a site's reforestation or afforestation requirements. Use of native or indigenous plants is required, when appropriate.

(29) "Limits of disturbance" means a clearly designated area within which land disturbance is slated to occur.

(30) "Maintenance agreement" means the short-term management agreement associated with afforestation or reforestation plans.

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

Must
be
consistent
with
State
Statute

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 6 of 27

(32) "Natural regeneration" means establishment of trees and other vegetation with at least 400 woody, free-to-grow tree seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

(33) "Natural resources inventory" means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Trees Technical Manual* (MNCPPC).

(34) "Offsite" means outside the limits of the areas encompassed by a tract.

(35) "Onsite" means within the limits of an area encompassed by a tract
[[including an area classified as a 100-year floodplain]].

(36) "Perennial stream" means a stream defined as perennial in the latest version of *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).

(37) "Planting plan" means a plan showing how areas to be reforested or afforested will be planted.

(38) "Priority areas" means forest areas that are ranked as the highest priority for retention as part of a forest conservation plan.

(39) "Qualified professional" means a licensed forester, licensed landscape architect, or other qualified professional approved by the State.

(40) "Regulated activity" means any of the following activities [[when that activity occurs on a tract of land which is 40,000 square feet or greater]]:

(a) Subdivision;

(b) Grading;

(c) Forest clearing;

(d) An activity that requires a sediment control permit; or

(e) Project plan of a federal, state, or local agency.

(41) "Retention area" means forested areas, tree stands and individual trees that will be retained on a site.

(42) "Selective clearing" means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

(43) "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.

(44) "Stream buffer" means a strip of natural vegetation contiguous with and parallel to the bank of a perennial or intermittent stream, the width of which must be determined according to the latest version of *Environmental Management of Development in*

Must
be
consistent
with
State
Statute

Must be
consistent with
State Statute

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 9 of 27

basis, if necessary to determine the accuracy of the plan);

(c) slopes 25% and greater, and slopes between 15% and 25% that are associated with erodible soils;

(d) perennial and intermittent streams and stream buffers per the latest version of the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);

(e) one-hundred year floodplains and associated 25' building restriction lines;

(f) wetlands and their buffers per the latest version of the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);

(g) soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, and erodible soils on slopes of 15% or more;

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

(i) critical habitat areas observed or documented by the MD Dept. of Natural

Resources;

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

(k) cultural features and historic sites;

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

(m) a table containing acreage of wetlands, 100-year floodplains, and stream buffers.

(2) a detailed summary of existing forest and trees on a tract, or forest stand delineation which is verified by field [[investigation]] survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining lots, whichever is less:

(a) forest stands and field verified boundaries;

(b) a description of each stand including:

(i) acreage;

(ii) dominant and codominant tree species;

(iii) size class by species;

(iv) percent canopy closure;

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

(vi) percent of forest floor covered by herbaceous plants (native species),

downed woody material, and alien or invasive species; and

(vii) a stand condition narrative for each stand including, information on condition classes, structure, function, retention potential, transplant and regenerative

Must be consistent with state statutes or defined as to make as or more stringent

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 11 of 27

107. Priorities for Forest Stand Retention

A. The following trees, shrubs, plants, and specific areas are considered the highest priority for retention and protection and must be left in an undisturbed condition unless the [[applicant demonstrates to the satisfaction of]] Planning Director or Planning Board find that reasonable efforts, as specified in subsection 22A-12(b) of the Forest Conservation Law, have been made to protect them and the plan cannot reasonably be altered:

Inconsistent with County law

(1) trees, shrubs, and other plants located in sensitive areas including intermittent and perennial streams and their buffers, slopes over 25 percent (not man-made), nontidal wetlands and their buffers, erodible soils on slopes of 15% or more, 100-year floodplains, and critical habitats;

(2) a contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;

(3) a forest area[[s]] which has been designated as priority for retention in [[adopted]] master plans or functional plans, or in the absence of such plans, a forest which exhibits all of the following characteristics:

(a) high structural and species diversity;

(b) few alien or invasive species present;

(c) very good overall s. and health; and

(d) high potential to provide a significant amount of habitat for forest interior dwelling plant, animal and bird species; and

Inconsistent with County + State law.

(4) an individual tree[[s]], and the majority of [[their]] its critical root zone, with one or more of the following characteristics:

(a) a tree[[s]] that [[are]] is part of a historic site or associated with a historic structure;

(b) a tree[[s]] designated as a national, state, or local champion tree;

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

(d) a tree[[s]] which [[are]] is a specimen of a species.

B. The following areas should also be given high priority for preservation where feasible:

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

(2) a forested stream buffer[[s]] up to 300 feet on either side of a stream



REGULATION		No.: 1-01 Also cited as COMCOR 18-01
Montgomery County Planning Board of the Maryland-National Capital Park & Planning Commission		Effective Date:
TITLE	Forest Conservation	Page 16 of 27

have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area[[s will be]] is applied.

(2) Newly planted landscape trees must be 2-3" caliper stock to be counted toward requirements.

(3) Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as appropriate, find that tree cover is appropriate. Instances where it may be appropriate to satisfy afforestation requirements using tree cover include:

- (i) developments in urban areas;
- (ii) redevelopments;
- (iii) high-density residential developments;
- (iv) commercial and industrial developments;
- (v) high density mixed-use developments; and
- (vi) some institutional areas.

(4) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements as follows:

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

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

(c) individual landscape trees will receive one quarter credit for the projected area of their canopy at 20-years;

(d) individual non-priority trees which are retained will receive one quarter credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is protected; and

(e) the total credit from these areas may not exceed twenty percent of the overall reforestation requirement for a site.

[[4]] (5) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' afforestation requirements as follows:

(a) sites with tree cover requirements per subsection [[(c)] (3):

(i) landscaping areas or retained tree stands of any size will receive full credit for their area;

(ii) individual landscape trees will receive full credit for the projected area of canopy at 20-years; and

(iii) individual trees which are retained will receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is protected;

CRZ



REGULATION		No.: 1-01 Also cited as COMCOR 18-01
Montgomery County Planning Board of the Maryland-National Capital Park & Planning Commission		Effective Date:
TITLE	Forest Conservation	Page 21 of

[105.]111. Declaration of Intent

Applicant does not "verify" that property is exempt

A. [General] A declaration of intent verifies that property subject to the following activities are exempt from the Forest Conservation Law:

(1) An activity conducted on an existing single lot that is required to construct a dwelling house or accessory structure intended for the use of the owner, [[provided]] if the activity does not result in the cumulative cutting, clearing or grading of more than 40,000 square feet of forest, and complies with the other requirements of [[Chapter]] subsection 22A-5(a) of the Forest Conservation Law;

move to 112

(2) A real estate transfer subject to [[Chapter]] subsection 22A-5(m) of the Forest Conservation Law.

B. [Filing Process] [Two] An original copy of a declaration of intent, signed by the applicant named on the development or sediment control application, must be filed with the Planning Director. The declaration must provide Park and Planning Department staff with access to the property to verify compliance with the declaration.

requirements in part

C. The declaration of intent is effective for 5 years.

D. The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:

- (1) does not conflict with the purpose of any existing declaration of intent; and
- (2) complies with the applicable requirements for an exempted activity.

E. If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent:

- (1) there will be an immediate loss of exemption; and
- (2) there may be a noncompliance action taken by the Planning Board under this subtitle.

F. An applicant may apply for a regulated activity on the area of the property not covered under the declaration of intent if the requirements of this subtitle are satisfied.

G. The Planning Board may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:

- (1) meet the requirements in this subtitle for a regulated activity;

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 22 of 27

- (2) pay a noncompliance fee;
- (3) be subject to other enforcement actions appropriate under Article III of [[Montgomery County Code, Chapter 22A]] the Forest Conservation Law; and [[/or]]
- (4) file a declaration of intent with the Planning Board.

H. In its determination of appropriate enforcement action, the Planning Board may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this subtitle.

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

112. Exemptions

— Should include the requirements

A. A request[[s]] for exemption from forest conservation requirements per Sections 22A-5, 22A-6, and 22A-7 of the Forest Conservation Law [[shall]] must be made in writing to the Planning Director.

B. The following information [[shall]] must be provided as part of an exemption request:

- (1) [[a cover letter detailing the type of exemption requested and how it]] an application form;
- (2) a written request detailing how the exemption applies to the proposed plan;
- ~~[[2]]~~ (3) a Natural Resources Inventory prepared per Section 106A(1) and the guidelines in *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
- ~~[[3]]~~ (4) a signed original copy of the declaration of intent, if applicable; and
- ~~[[4]]~~ (5) other appropriate information which supports the exemption request including a copy of the proposed plan for development, if applicable.

C. A waiver from the requirement to provide a Natural Resources Inventory with an exemption request may be granted [[in the following instances]] for:

- (1) single lot exemptions per subsection 22A-5(a) of the Forest Conservation Law if a site plan which shows existing and proposed topography and forest boundaries is

REGULATION

Montgomery County Planning Board of the
Maryland-National Capital Park & Planning Commission

No.: 1-01
Also cited as
COMCOR 18-01

Effective
Date:

TITLE Forest Conservation

Page 23 of 27

submitted with the exemption request; and

(2) applications for other exemptions, [[provided]] if the site being developed does not contain any forest or natural features, and a plan showing existing features and topography is submitted with the exemption request.

[106.]113. Amendment to Forest Conservation Plan and Declaration of Intent

A. Forest Conservation Plan

(1) Minor amendments which do not result in more than a total of [[the clearing of more than an additional]] 5000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis. These minor amendments may include field modifications and [[exchanging]] substituting one area of forest, for retention of another of equal or greater size and value.

(2) Major amendments which entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or Planning Director (depending on who approved the original plan).

B. Declaration of Intent

(1) A request to amend a declaration of intent must be submitted to and approved by the Planning Director.

114. Forest Conservation Maintenance and Management Agreements

A. Maintenance Agreements.

(1) [[Application.]] A person required to conduct afforestation or reforestation under this regulation and the Forest Conservation Law [[shall]] must include in the forest conservation plan a binding maintenance agreement for a minimum length of 2 years.

(2) The agreement [[shall]] must be submitted and approved by the Planning Director [[prior to]] before the [[commencement]] start of the 2-year maintenance period.

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

(4) The person required to conduct the afforestation or reforestation, after this referred to as the "obligee", [[shall]] must present evidence of a legal right to implement the proposed maintenance agreement on a selected site by providing:

(a) an executed deed conveying title to a selected site to the obligee;

Affected
Neighbors
should be
notified
to provide
comment

