

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

<p>Montgomery Planning Board Regulation on</p> <p><b>FOREST CONSERVATION – TREES</b></p> <p>Issued by: Montgomery County Planning Board  Regulation No.  COMCOR No. 22A.00.01</p> <p>Authority: Montgomery County Code, Chapter 22A-26  Council Review: Method (2) under Code Section 2A-15</p> <p>Effective Date: XXXXXX  Comment Deadline: XXXXXXX</p> <p>Summary: These regulations contain administrative requirements related to the review and processing of Natural Resource Inventories, Forest Stand Delineations, Exemptions from Submitting a Forest Conservation Plan, and Forest Conservation Plans that are acted upon by the Planning Board or the Planning Director under Chapter 22A.</p> <p>Staff Contact: Mark Pfefferle, Chief  Development Applications and Regulatory Coordination Division  Mark.pfefferle@montgomeryplanning.org</p> <p>Address: 8787 Georgia Avenue  Silver Spring, MD 20910</p> <p>Background: These regulations clarify and further develop administrative procedures to implement the submittal of applications under Chapter 22A of the County Code. This regulation amends the Forest Conservation Regulations that were adopted by the Planning Board in 2001, and approved by the County Council under Method 2 procedures.</p>
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<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
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## CHAPTER 22A. FOREST CONSERVATION – TREES REGULATIONS

### 22A.00.01.01 Purpose

- ~~(a) Purpose.~~ The proposed regulation amends Montgomery County Planning Board Regulation No. ~~18-01Am1-97~~, Forest Conservation – Tree Regulations to update and clarify existing provisions and to make the regulation conform to changes that occurred to Chapters 22A, 50, and 59 of the County eCode 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)(a) Address.~~ Countywide Planning Division Environmental Planning, The Maryland National Capital Park and Planning Commission, 8787 Georgia Avenue, Silver Spring, Maryland 20910.
- ~~(d)(b) Staff Contact.~~ Cathy Conlon, (301) 495-4540. These regulations are intended to identify the steps that an applicant must take to comply with Chapter 22A of the County eCode

### 22A.00.01.02 Authority

In accordance with Chapter 22A, sometimes referred to in these regulations as the “Forest Conservation Law,” the following Planning Board Regulations shall pertain to all development applications, mandatory referrals, conditional uses, sediment control permits, or park development applications, approvals, special exception applications, or sediment control permit applications.

### 22A.00.01.03 ~~Transition Provision~~ Definitions

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

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

~~D. Terms Defined.~~

~~5)1) “Afforestation” means the creation, on a tract that is not presently in forest cover, of a biological community dominated by trees and other woody plant (including plant communities, the understory, and forest floor), which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 trees per acre, with at least 50 of those trees having the potential of growing~~

**STAFF DRAFT JUNE 20, 2018**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

to a 2 inch or greater diameter at 4.5 feet above the ground within 7 years. In some instances, afforestation includes creation of tree cover by landscaping areas under an approved landscaping plan.

- 6)2) “Afforestation threshold” means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law.
- 7)3) “Applicant” means the person who is applying for a subdivision, or sketch plan, site plan approval, a grading or sediment control permit, project plan, special exception/conditional use, mandatory referral, or Park development plan. ~~or project plan approval if the applicant is a State or local agency; or who has received approval of a forest stand delineation or forest conservation plan.~~
- 4) “Break-even point” means an exact level of forest retention that precludes the need for reforestation.
- 5) “Category I Conservation Easement” means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.
- 8)6) “Category II Conservation Easement” means a restriction on the land that permanently protects large trees, landscape areas, and any tree planted outside of forest that receives forest conservation plan credit.
- 9)7) “Champion tree” means the largest tree of its species within the United States, the State, county or municipality, as appropriate.
- 10)8) “Conservation easement” means a restriction on the land and the natural features on this land. This easement must be shown on the record plat, if applicable, and its terms and conditions are recorded in the county’s land records. If no plat is required, the easement is recorded in the County’s land records only.
- 11)9) “Conservation threshold” means a specific percentage of a tract which is used in determining reforestation requirements per Sections 22A-12(a), and (f) of the Forest Conservation Law.
- 12)10) “Critical habitat area” means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area:
- (a) is likely to contribute to the long-term survival of the species;
  - (b) is likely to be occupied by the species for the foreseeable future; and
  - (c) constitutes habitat of the species which is considered critical under the Annotated Code of Maryland Natural Resources Article, § 4-2A-06 or 10-2A-06, Maryland code.
- 13)11) “Critical habitat for endangered species” means a habitat occupied by an endangered species as determined or listed under the Annotated Code of Maryland Natural Resources Article Natural Resources Article, § 4-2A-04 or 10-2A-04, Annotated Code of Maryland.
- 14)12) “Critical root zone” means the zone in which the roots of a tree are located, as defined in the latest version of the Trees Technical Manual. It is also the area around a tree which should be

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

~~undisturbed~~ ~~protected~~ unless other supplemental protection measures are provided to protect the long-term viability of the tree.

~~15)~~13) “Development application” means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for ~~plan approval of a regulated activity~~ or sediment control permit.

~~16)~~14) “Declaration of intent” means a signed and notarized statement by a landowner that the cutting of trees on the landowner’s property.

- (a) is for purposes exempted under Chapter 22A of the Montgomery County Code; and
- (b) will not circumvent the requirements of the Chapter.

~~17)~~15) “Development program” means a sequence of construction events and timing for submittal of the major forest conservation program elements.

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

17) “Environmental buffer” means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to latest version of *Environmental Management of Development in Montgomery County, Maryland* (MNCPPC), or an appropriate master plan; and floodplains.

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

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

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

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

~~—~~22) “Floodplain, One Hundred-Year” means the area along or adjacent to stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or 100-year flood, based on ultimate development of the watershed under existing zoning.

~~24)~~23) “Forest clearing” means the cutting or destruction of any trees or understory which are part of an existing forest even if the resulting community continues to meet the definition of forest, except if it is done as part of an approved management plan or timber harvest permit. Forest loss will be based on a measure of the aerial extent of forest cover which includes the outer perimeter of individual trees.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- ~~25)~~24) “Forest conservation plan” means a plan which outlines the strategies and specific plan proposed for retaining, protecting, and reforesting or afforesting areas on a site.
- ~~26)~~25) “Forest conservation worksheet” means a step-by-step form for determining compliance with the requirements of the forest conservation law.
- ~~27)~~26) “Forest management plan” means a plan establishing conservation and management practices for a landowner after assessment of the resource values of forested properties. This plan is approved by ~~the county, or by the MD Department of Natural Resources forester assigned to the county after coordination with the county, and by the Planning Director if located within a~~ conservation easement.
- ~~27)~~ “Forest mitigation bank agreement” means an agreement entered into by an individual owning a forest mitigation bank and the Planning Board, or Planning Department, which commits the banker to certain procedures and requirements when creating and operating a forest bank.
- ~~28)~~ “Forest mitigation bank credits” means the credits available for sale at a forest mitigation bank, where 1 acre of mitigation bank credit equals 2 acres of existing forest or 1 acre of planted forest.
- ~~29)~~ “Forest mitigation bank plan” means a plan for the approval of a forest mitigation bank submitted to the Planning Department Director by an individual proposing to establish a forest mitigation bank as part of -a forest conservation plan or separately.
- ~~29)~~30) “Forest retention” means the forest shown on a forest conservation plan that will be saved, counted as forest retained on the worksheet, and included in a category I conservation easement.
- ~~30)~~31) “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.
- ~~31)~~32) “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 1<sup>st</sup> and ending on October 31<sup>st</sup>.
- ~~32)~~33) “Intermittent stream” means a stream defined as intermittent in the latest version of *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).
- ~~33)~~34) “Landscaping ~~credit plan~~” means areas shown on a forest conservation -plan, that are not forest, but will be receive credit toward a site’s reforestation or afforestation requirements. The forest conservation plan requires the use of native or indigenous plants and must show the -drawn to scale and made part of the approved forest conversation plan, showing dimensions and details for tree planting and large landscapinlandscaping areas. Any planting for landscaping credit to meet the forest conservation plan requirements must use native or indigenous plants.g. ~~and ed areas that will be applied as credit toward a site’s reforestation or afforestation requirements. U~~the use of native or indigenous plant is required, when appropriate.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- ~~34)~~35) “Limits of disturbance” means a clearly designated area within which land disturbance ~~is slated to~~ may occur.
- ~~35)~~36) “Maintenance and management agreement” means the short-term management agreement associated with afforestation or reforestation plans, and may include the control of non-native and invasive plants.
- ~~36)~~37) “Native” means a plant or animal species whose geographic range during precolonial time included the Piedmont of Maryland. Information ~~on~~ of native plants can be found in *Woody Plant of Maryland* (Brown and Brown, 1972) and *Herbaceous Plants of Maryland* (Brown and Brown, 1984), as well as other literature sources.
- ~~37)~~38) “Natural regeneration” means establishment of trees and other vegetation which have become established after forest trees have been harvested or the land has remained inactive 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.
- ~~38)~~39) “Natural resources inventory” means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in the latest version of *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Tree Technical Manual* (MNCPPC).
- ~~39)~~40) “Offsite” means outside the limits of the areas encompassed by a tract.
- ~~40)~~41) “Onsite” means within the limits of an area encompassed by a tract.
- ~~41)~~42) “Perennial stream” means a stream defined as perennial in the latest version of *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC). ~~“Planning Director” means the Director the Montgomery County Planning Department, or the Director’s designee.~~
- ~~43)~~ “Planting plan” means a plan showing how areas to be reforested or afforested will be planted.
- ~~42)~~44) “Priority planting area” means areas in which planting must occur unless those areas are not present.
- ~~43)~~45) “Priority retention -area” means forest areas, identified in Section 22A-12(b) of the Forest Conservation Law that are ranked as the highest priority for retention, as part of a forest conservation plan.
- ~~44)~~46) “Qualified professional” mean a Maryland licensed forester, Maryland licensed landscape architect, or other qualified professional approved by the State.
- ~~45)~~47) “Regulated activity” means any of the following activities:
- (a) Subdivision;
  - (b) GradingSite plan;
  - (c) Project plan;
  - (d) Sketch plan;

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

~~(b)~~(e) Special exception/conditional use on a tract of land greater than 40,000 square feet;

(f) Clearing of more than 5,000 square feet of forest~~Forest clearing;~~

~~(e)~~(g) Park Development project on a tract of land greater than 40,000 square feet;

~~(d)~~(h) An activity that requires a sediment control permit on a tract of land greater than 40,000 square feet; or

~~(e)~~(i) Mandatory referral on a tract of land greater than 40,000 square feet~~Project plan of federal, state, or local agency.~~

~~46)~~48) “Retention area” means forested areas, tree stands and the critical root zone of individual trees that will be retained on a site.

~~47)~~49) “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.

~~48)~~50) “Specimen tree” means a tree that is particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.

~~49)~~51) “Stream buffer” means a strip of ~~land natural vegetation~~ contiguous with and parallel to the bank of a perennial or intermittent stream, the width of which must be determined according to the latest version of *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).

~~50)~~52) “Subdivision” means the definition of subdivision in Section 50-1 of the Montgomery County Code.

~~51)~~53) “Tract” means:

~~(a)~~ The property, or adjacent properties, subject to a development application or a sediment control permit, the boundaries of which are described by deed or record plat;

~~(b)~~(a) The entire property subject to a planned unit development if a development application or a sediment control permit if it is developed as a single project included in a planned unit development; or

~~(c)~~(b) The length and width of the right-of-way or the limits of disturbance, whichever is greater, for a linear project.

~~52)~~54) “Tree save area” means an area designating trees, or stands of trees outside existing forest cover which are to be retained.

~~53)~~55) “Tree save plan” means a plan approved by the Planning Board, or Planning Director, under Chapter 22A or Chapter 50 of County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.

## 22A.00.01.05 Application

STAFF DRAFT JUNE 20, 2018

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- A. Except as provided in Sections 22A-5, 22A-6, 22A-7, 22A-8, 22A-9 and the Variance provisions in Section 22A-21 of the Forest Conservation Law, these regulations apply to the following plans for a regulated activity:
- (1) a development plan approved or amended under Division 59-D-1 of ~~Chapter 59 of the County Code that was in effect prior to October 30, 2014;~~
  - (2) a project plan approved or amended under Division 59-D-1 of ~~Chapter 59 of the County Code that was in effect prior to October 30, 2014;~~
  - (3) a preliminary plan of subdivision, administrative subdivision, minor subdivision approved by the Planning Board, or Planning Director, under Chapter 50 of the County Code;
  - (4) a site plan approved or amended under Division 59-D-3 of the County Code that was in effect prior to October 30, 2014;
  - (5) a site plan approved or amendment under Section 59.7.3.4 of the County code ~~Division 59-D-3 site plan;~~
  - ~~(4)~~(6) a sketch plan approved under Section 59.7.3.3 of the County code;
  - ~~(5)~~(7) a sediment control permit required under Chapter 19 of the County Code;
  - (8) a special exception approved under Article 59-G of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
  - ~~(6)~~(9) a conditional use approved under Section 59.7.3.1 of the County Code;
  - ~~(7)~~(10) a mandatory referral; and
  - ~~(8)~~(11) a park development plan.
- B. The general procedure for meeting the requirements of Chapter 22A for these plans is:
- (1) Preparation by a qualified professional, of a natural resources inventory which may includes a forest stand delineation, as described in Section 22A.00.01.06 and in the latest versions of *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County* (MNCPPC) and the *Trees Technical Manual* (MNCPPC). To be reviewed and approved by the Planning Director.
  - (2) ~~i~~Identification by a qualified professional, of forest and tree retention areas per subsection 22A-12(b) of the Forest Conservation Law, Sections 22A.00.01.06 and 22A.00.01.07, and the criteria for areas to be cleared in the *Trees Technical Manual*.
  - (3) Preparation by a qualified professional, of forest conservation plan to be approved by Planning Board or Planning Director. As applicable, which includes:
    - (a) lot lines, building, and proposed infrastructure, located to maximize retention areas;
    - ~~(a)~~(b) areas of existing forest, areas of forest to be removed, and areas of forest to be retained;

**STAFF DRAFT JUNE 20, 2018**



<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(b)(c) \_\_\_\_\_ afforestation and reforestation areas and planting plan, as required;  
(c)(d) \_\_\_\_\_ appropriate protection and maintenance measures; and  
(d)(e) \_\_\_\_\_ a timetable for construction and planting.

### 22A.00.01.06 Natural Resource Inventory and Forest Sand Delineation (NRI/FSD)

#### Requirements

A. ~~A.~~ A Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information:

a complete analysis of existing natural resources and man-made features on a property, or natural resources inventory which is verified by field survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining properties ~~lots~~, whichever is less:

- (1) a property boundaries;
- (2) topography at a minimum scale of 1" = 200' with contour intervals not more than 5 feet (larger scale may be required by the Planning Director on a case-by-case basis, if necessary to determine the accuracy of the plan);
- (3) slopes 25% and greater, and slopes between 15% and 25% that are associated with erodible soils;
- (4) perennial and intermittent streams and stream buffers per the latest version on the *Environmental Guidelines: ~~g~~Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)*;
- (4)(5) ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the *Environmental Guidelines: ~~g~~Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)* or appropriate master plan;
- (5)(6) one-hundred year floodplains and associated 25' building restriction lines;
- (6)(7) wetlands and their buffers per the latest version of the *Environmental Guidelines: ~~g~~Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)*;
- (7)(8) 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, ~~and shallow soils~~;
- (8)(9) rare, threatened or endangered plants or animals observed in the field;
- (9)(10) critical habitat areas observed or documented by the Maryland Department of Natural Resources;

**STAFF DRAFT JUNE 20, 2018**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (11) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;
- (12) champion trees and trees that have a diameter at 4.5 feet above the ground (DBH) that is 75% or more of the diameter of the current state champion for that species;
- (13) Trees that are specimens for their species;
- ~~(10)~~(14) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees;
- ~~(11)~~(15) cultural features and historic sites;
- ~~(12)~~(16) a site vicinity map at 1" = 2000' which shows the location of the site within a square mile and indicates major roads; and
- (17) a table containing acreage of wetland, 100-year floodplains, and stream buffers, and environmental buffers.
- ~~(13)~~(18) A completed NRI/FSD application form, fee schedule worksheet, and review fee.

B. A Forest Stand Delineation (FSD) application must be considered complete if it contains a detailed summary of existing forest and trees on a tract, or forest stand delineation which is verified by field survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining properties lots, whichever is less:

- (1) forest stands and field verified boundaries;
- (2) a description of each stand including:
  - (a) ~~(a)~~ acreage;
  - (b) ~~(b)~~ dominant and codominant tree species;
  - (c) ~~(c)~~ size class by species;
  - ~~(a)~~ (d) percent canopy closure;
  - (e) number of canopy layers (vertical structure);
  - (f) percent of forest floor covered by herbaceous plants (native species), downed woody material, and alien or invasive species;
  - ~~(f)~~(g) \_\_\_\_\_ and a stand condition narrative for each stand including, priority for retention, information on condition classes, structure, function, retention potential, transplant and regenerative potential, and comments on evidence of past management; and specimen trees by size and species;
- (3) champion trees and trees that have a diameter at 4.5 feet above the ground (DBH) that is 75% or more of the diameter of the current state champion for that species;
- (4) a table that identifies individual trees in good health that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees;

**STAFF DRAFT JUNE 20, 2018**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (5) field survey reference points demarked on a plan drawing and in the field; ~~and~~  
(6) a table containing acreage of total acreage of forest, forest in priority retention areas, forest not in priority retention areas, forest within existing wetlands, forest within 100-year floodplains, and forest within stream buffers;
- (7) a summary map, which in addition to the information in subsections (1) and (2), shows the priority of forest stands for retention as described in Section 22A.00.01.07; ~~and-~~  
~~(6)~~(8) A completed NRI/FSD application form, fee schedule worksheet and review fee.

C. A simplified forest stand delineation may be used per subsection 22A-10(b)(2) of the Forest Conservation Law. The simplified plan must also include:

- ~~(1)~~ a natural resources inventory as described in subsection A(1);  
~~(2)~~(1) \_\_\_\_\_ forest stands as determined by dominant species types and priority for retention;  
~~(3)~~(2) \_\_\_\_\_ stand condition narrative as described in subsection BA(2)(b)(vii);  
~~(4)~~ a proposed limit of disturbance line; and  
proposed areas of long-term protection.

D. When necessary the items described in A and B, or A and C, above must be combined into one plan drawing and is called a Natural Resources Inventory/Forest Stand Delineation

~~D-E.~~ The A-Natural Resources Inventory and Fforest Sstand Ddelineation must be prepared by a licensed forester, licensed landscape architect, or qualified professional as specified in COMAR 08.19.06.01A; and must exhibit a stamp or certification of the preparer. The Natural Resources Inventory/Forest Stand Delineation must be used to determine areas of forest to be saved or planted.

### **22A.00.01.07 Priorities for ~~Forest Stand~~ Retention**

A. The following areas trees, shrubs, plants, and specific areas are considered the highest priority for retention areas for ~~and~~ protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of subsection 22A-12(b)(1) of the Forest Conservation Law, have been met and the development proposal cannot reasonably be altered:

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

**STAFF DRAFT JUNE 20, 2018**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (2) a contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;
- ~~(2)~~(3) \_\_\_\_\_ trees, shrubs, or plants identified on the list of rare, threatened, or endangered species;
- ~~(3)~~(4) \_\_\_\_\_ a forest area which has been designated as priority for retention in master plans or functional plans, or in the absence of such plans, a forest which exhibits all of the following characteristics as further described in the most recent version of the Trees Technical Manual:
- (a) high structural and species diversity;
  - (b) few alien or invasive species present;
  - (c) very good overall stand health; and
  - (d) high potential to provide a significant amount of habitat for forest interior dwelling plant, animal, and bird species; and
- (5) an individual tree, and its critical root zone, with one or more of the following characteristics:
- (a) a tree that is part of a historic site or associated with a historic structure;
  - (b) a tree designated as a national, state, or ~~County~~ local champion tree;
  - (c) a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state or County champion tree;
  - ~~(c)~~(d) \_\_\_\_\_ trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater; and
  - ~~(d)~~(e) \_\_\_\_\_ a tree which is a specimen of a species.
- B. The following areas are not subject to the retention provision in subsection 22A-12(b)(1) of the Forest Conservation Law, but should be given consideration for preservation where feasible:
- (1) a forested area which provides corridor 300 feet or more of primarily native vegetation between two larger forested tracts;
  - (2) a forested stream buffer up to 300 feet on either side of a stream channel;
  - (3) trees which act as a buffer between incompatible land uses and between dwelling and roads;
  - (4) a forest stand, or portions of a stand, with food forest structural diversity; and
  - (5) an individual tree with a diameter, measure at 4.5 feet above the ground, of 24" or greater which will significantly enhance the site through preservation.

#### 22A.00.01.08 General Forest Conservation Plan Provisions

STAFF DRAFT JUNE 20, 2018

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- A. In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The forest conservation law specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants should strive to maximize forest retention whenever practical reach the break-even point on forested sites so that no replanting is required.
- B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant must demonstrate, to the satisfaction of the Planning Board or Planning Director, as applicable:
- (1) How techniques for retention have been exhausted;
  - (2) Why the ~~priority forests~~ and in priority retention areas specified in Section 22A.00.01.07 are not being retained;
  - (3) If ~~priority forests in~~ and priority retention areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with subsection 22A-12e(1)(A) of the Forest Conservation Law;
  - (4) Where on site in priority planting areas the afforestation or reforestation will occur in compliance with subsection 22A-12(e)(3) of the Forest Conservation Law; and
  - (5) How the standards for afforestation and reforestation requirements in subsection 22A-12(e)(4) of the Forest Conservation Law will be met.
- C. ~~Nontidal~~ Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is subjected to the reforestation requirements of both the nontidal wetlands regulations and this subtitle, subject to the following:
- (1) Forested nontidal wetlands which are retained, must be counted toward the forest conservation requirements of this subtitle;
  - (2) Forested wetlands which are permitted to be cleared must be replaced as required under the provisions of Environment Article, Title 9, Annotated Code of Maryland;
  - (3) Clearing within forested wetlands must be shown on the forest conservation plan, ~~but the area must be subtracted on an acre for acre basis from the total amount of forest to be cut or cleared, and the reforestation requirements of this subtitle must be calculated using the reduced acreage;~~ and
  - (4) Nontidal wWetlands must are be considered to be priority retention areas for forest retention and replacement.
- D. Retention Areas.
- (1) Forest retention areas must be at least 10,000 square feet in size and 50 feet wide, or be a part of a larger forest areas which extends off-site and is protected.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (2) Individual trees described as highest priority for retention in subsection 22A.00.01.07A(4) ~~may~~ must receive retention credit equal to the area of their critical root zone protected when at least two thirds of the entire critical root-zone is permanently protected by an easement.
- (3) Individual trees which are not the highest priority for retention and tree stands less than 10,000 square feet and 50 feet wide may be credited toward afforestation and reforestation requirements as part of landscaping credit.
- (4) Retention area boundaries must be determined by a measure of the aerial extent of remaining forest cover which includes the outer perimeter of the canopy of individual trees, or the critical root zones that are protected, whichever is greater.

#### E. Afforestation and Reforestation

- (1) Afforestation and reforestation areas must be at least 10,000 square feet in size and 50 feet wide, or be adjacent to an existing forest area (either on-site or off-site) which is protected.
- (2) The following must be considered as high-priority planting areas for forest conservation plans with ~~for~~ required afforestation and reforestation:
  - ~~(a)~~ environmental buffers; establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
  - ~~(a)~~(b) establish or enhance forest in buffers adjacent to ephemeral streams, when such streams are required to have buffers as recommended in an applicable Master Plan or in the latest version of the *Environmental Guidelines: Guidelines for Environmental Management for Development in Montgomery County, Maryland (MNCPPC)*.
  - ~~(b)~~(c) establish or enhance forested areas on 100-year floodplains, when appropriate;
  - ~~(c)~~(d) establish or increase existing forested corridors to connect existing forest within or adjacent to the site. Where practical forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
  - ~~(d)~~(e) establish or enhance forest buffers adjacent to critical habitats where appropriate;
  - ~~(e)~~(f) establish planting to stabilize natural slopes of 25% or greater and 15% or greater with erodible soils including slopes of ravines or other natural depressions;
  - ~~(f)~~(g) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility right-of-way's; ~~and~~
  - ~~(g)~~(h) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; ~~and~~
  - ~~(h)~~(i) non-forested wetlands are priority planting areas; however, these areas may be left in their existing condition when appropriate.

**STAFF DRAFT JUNE 20, 2018**

<b>MONTGOMERY COUNTY</b>	
<b>PLANNING BOARD REGULATION</b>	
MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (3) Planting plans for afforestation and reforestation must include the following:
- a minimum of 5 native tree species (unless the site is to be actively managed under an approved forest management plan) and 2 species of native understory shrubs;
  - appropriate site preparation, protection and/or maintenance measures as described in the latest version of the Trees Technical Manual; and
  - a stocking rate for trees and shrubs and survival requirements, as shown in the following chart:

<b>Size</b>	<b>Number Required (per acre) (1)</b>	<b>Approximate Spacing (feet on center) (2)</b>	<b>Survival Requirements (at the end of the 2<sup>nd</sup> growing season) (3)</b>
<b>TREES</b>			
Whips; 3'-4' height, Container grown (minimum 2 gal.)	350	10' to 12'	75% or 260 per acre
¾" to 1" caliper; B&B or container grown (minimum 5 gal.)	200	12' to 15'	75% or 150 per acre(4)
1 ½" to 2" caliper; B&B or container grown (minimum 15 gal.)	100	15' to 20'	100% or 100 per acre(5)
<b>SHRUBS</b>			
18" to 24" height; container grown	33	(6)	

**Notes:**

- In certain circumstances, any combination of the above mentioned stocking options; or variation of these options in combination with container grown seedlings and/or natural regeneration may be appropriate strategies to fulfill the requirements of an approved Forest Conservation Plan. Instances where the use of combination planting may be appropriate are described in the Trees Technical Manual. Use of alternative stocking will be evaluated, along with necessary protection and maintenance measures, on a case-by-case basis by the Planning Board.
- Spacing does not imply that trees or shrubs must be planted in a grid pattern although it may be necessary for mowing to control invasive vegetation or otherwise reduce competition for the planted tree.
- If the tree survival at the end of the two-year maintenance period falls below the survival requirements, reinforcement planting up to that amount will be required. If tree survival falls below 50% of the total trees planted, extension of the maintenance period up to another two years will be required in addition to reinforcement planting. Natural

**STAFF DRAFT JUNE 20, 2018**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

regeneration may be counted toward survival ~~requirements~~ requirements, in addition to the required planting, on a case-by-case basis as determined by the Planning Director.

- (4) Surviving tree must be at least 1" caliper to receive full credit toward survival requirements. Reinforcement planting must be 1" trees.
- (5) Surviving tree must be at least 2" caliper to receive full credit toward survival requirements. Reinforcement planting must be 2" trees
- (6) Shrubs should be evenly distributed over the planting area and among the trees. On a case-by-case basis, shrubs may be substituted with native trees particularly when there is evidence of deer predation or high incidence of non-native and invasive plants and materials.

#### F. Tree Save Plans.

- (1) Development applications on tracts which include specimen or champion trees may be required to submit a tree save plan.
- (2) Preserving specimen or champion trees, and stands of trees which are valuable for compatibility reasons, must be included in these plans. If the loss of these trees is shown to be unavoidable, replacement must be required.
- (3) The replacement ratio must be determined in the following manner:
  - (a) specimen/champion trees must be replaced by landscaping plan which may be required to include planting or transplanting of large trees;
  - (b) significant tree stands must be replaced so as to replace the function of the stand; for instance, trees which provided screening must be replaced in sufficient kind and number to perform the same function.
- (4) The tree save plans must identify methods to preserve and protect on-site or off-site trees along the limits of disturbance regardless of tree size.

#### G. Credit Toward Afforestation and Reforestation for Landscaping and Tree Save

- (1) The Planning Board or Planning Director, as applicable, must find that all opportunities for establishing forest have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area is applied.
- (2) Newly planted landscape trees, within landscape areas must be 2-3" - minimum caliper stock to be counted toward requirements.
- (3) Newly planted trees outside of forest, or designated landscape areas, must be 3" minimum caliper stock to be counted toward requirements.
- ~~(2)~~(4) Street trees planted within a public right-of-way or along a private streets/roads will not receive any credit toward the requirements.
- ~~(3)~~(5) Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as applicable, find that tree cover is appropriate. Instances where it may be appropriate to satisfy afforestation requirements using tree cover include:
  - (i) developments in urban areas;
  - (ii) redevelopments;
  - (iii) high-density residential developments;

**STAFF DRAFT JUNE 20, 2018**



<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (iv) commercial and industrial developments;
- (v) high density mixed-use developments; and
- (vi) some institutional areas.

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

- (a) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide ~~may~~ must receive full credit for their area;
- (b) landscaping areas and retained tree stands which are less than 2,500 square feet in size or 35 feet wide ~~may~~ must receive one quarter credit for their area;
- (c) individual landscape trees ~~may~~ must receive one quarter credit for the projected area of their canopy at 20 years;
- (d) individual non-priority trees which are retained ~~may~~ must receive one quarter credit for the protected area of their critical root zone when at least two third of the entire critical root zone is protected; and
- (e) the total credit from these areas must not exceed twenty percent of the overall reforestation requirement for a site.

(5)(7) Landscaping, retention of tree stand, and retention of individual trees may be credited toward a sites' afforestation requirements as follows:

- (a) sites with tree cover requirements per subsection (3):
  - (i) landscaping areas or retained tree stands of any size ~~may~~ must receive full credit for their area;
  - (ii) individual landscape trees which are retained ~~may~~ must receive full credit for the protected area of canopy at 20-years; and
  - (iii) individual trees, or tree stands, which are retained ~~may~~ must receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is permanently protected by an easement;
- (b) sites with forest cover requirements:
  - (i) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide ~~may~~ must receive full credit for their area;
  - (ii) landscaping areas or retained tree stands which are at least 2,500 square feet in size or less than 35 feet wide ~~may~~ must receive one quarter credit for their area;
  - (iii) individual non-priority landscape trees ~~may~~ must receive one quarter credit for the projected area of their canopy at 20-years;
  - (iv) individual trees which are retained ~~may~~ must receive one quarter credit for the protected area of their critical root zone when at least two third of the entire critical root zone is protected; and

**STAFF DRAFT JUNE 20, 2018**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (v) the total credit from these areas must not exceed twenty percent of the overall afforestation requirement for a site.

### 22A.00.01.09 Forest Conservation Plan Requirements

#### A. Preliminary Forest Conservation Plans.

- (1) Development applications that need more than one ~~approval~~ approval ~~must~~ may submit a preliminary forest conservation plan in conjunction with the first approval. The plan may be based on conceptual analysis if the basic parameters are met and any assumptions are realistic.
- (2) A preliminary forest conservation plan must contain the following:
- (a) the shape and dimension of lots, showing locations of any existing structures and improvements, including paved areas;
  - (b) locations and dimension of all existing and proposed rights-of-way, setback, easements, stockpile areas, and stormwater management facilities (road and utility rights-of-way which will not be improved as parts of the development application must be identified);
  - (c) location of building restriction lines and areas to be conserved including environmental floodplains, wetlands and stream buffers;
  - (d) conceptual locations of proposed structures and improvements, drainage systems, and sediment control measures;
  - (e) preliminary limits of disturbance of the natural terrain, and location of forest and tree retention areas, including acreage, with appropriate justification and proposed long-term protection methods (a conceptual grading plan and/or a more detailed tree survey may be required to determine the feasibility of proposed retention areas);
  - (f) proposed locations of afforestation and reforestation areas, including acreage, if required;
  - (g) a table containing the following information:
    - (i) acreage of tract;
    - (ii) acreage of the tract remaining part of an agricultural use;
    - (iii) acreage of road and utility rights-of-way which will not be improved as part of the development application;
    - (iv) acreage of total existing forest;
    - (v) acreage of forest in priority retention areas;
    - ~~(iv)~~(vi) acreage of forest not in priority retention areas;
    - (vii) acreage of total forest retention in priority retention areas;
    - ~~(v)~~(viii) acreage of total forest retention not in priority retention areas

**STAFF DRAFT JUNE 20, 2018**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (ix) acreage of total forest cleared in priority retention areas;  
~~(vi)(x)~~ acreage of forest cleared not in priority retention areas;  
~~(vii)(xi)~~ land use category and conservation and afforestation thresholds from subsection 22A-12(a) of the Forest Conservation Law;  
~~(viii)(xii)~~ acreage of forest retained, cleared, and planted within wetlands;  
~~(ix)(xiii)~~ acreage of forest retained, cleared, and planted within 100-year floodplains;  
~~(x)(xiv)~~ acreage of forest retained, cleared, and planted within stream buffers;  
~~(xi)(xv)~~ total acreage of forest retained, cleared, and planted within priority planting areas; and  
~~(xii)(xvi)~~ linear feet average width of stream buffer provided; and  
(h) a forest conservation worksheet showing calculation of forest conservation requirements.

#### B. Final Forest Conservation Plans

- (1) A final forest conservation plan must be based on final site grading, if known, and must be submitted in conjunction with the final approval needed as part of a development application. However, if the development project requires the approval of one development application, the final forest conservation plan must be submitted with that development application and in conjunction with the preliminary forest conservation plan.
- (2) In addition to the items listed in subsection A(2)(a-c), (f), (g) and (h) ~~updating by final grading~~, a final forest conservation plan must include:
- (a) conceptual or final grading plans which include building locations and footprint, retaining walls, road and parking layout, sidewalks and pathways, and location of recreation facilities;
  - (b) a limits of disturbance line which reflects the limits of all clearing and grading on the tract, and the proposed location of sediment and erosion control devices and staging areas;
  - (c) a survey of trees 24 inches and greater diameter at 4.5 feet above the ground and 50' on either side of the limits of disturbance, and delineation of their critical root zones (survey of other trees may be required when necessary to determine the feasibility of proposed retention areas);
  - (d) retention areas including forest, tree stands and other individual trees to be saved including acreage;
  - (e) an afforestation and/or reforestation planting plan, if required, which contains:
    - (i) location and acreage of areas to be planted;
    - (ii) an analysis of the suitability of the site for planting and a description of necessary methods;

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 8787 Georgia Avenue – Silver Spring, Maryland 20910	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (iii) a list of target tree and shrub species, chosen based on analysis of site conditions which can be used for site planting;
- (iv) a plant materials table including size of plants to be installed and quantities;
- (v) planting and inspection schedule which is tied to the construction sequence for the project;
- (vi) a maintenance plan which includes provision for necessary watering, control of competing vegetation, protection from disease, pest, and mechanical injury, and reinforcement planting if plant survival falls below the requirements of subsection 22A.00.01.08E(3)(c);
- (vii) ~~calculation for financial security which is to be provided in an amount equal to the estimated cost of the required planting and maintenance, or equal to the fee in lieu for the area to be planted; and~~
- (viii) a maintenance and management monitoring agreement; and
- ~~(f)(a) off-site planting, if required, which includes the items listed in subsection (e) plus a map of the proposed planting site showing location, soils, and environmental features which are priority planting areas as stated in subsection 22A.00.01.08E(2);~~
- ~~(g)(f) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;~~
- ~~(h)(g) a protection plan which shows:~~
  - ~~(i) location of temporary and permanent protection devices, as appropriate, which must be installed if clearing, grading, or construction occurs within 50 feet of a retention area boundary;~~
  - ~~(ii) stockpile areas and borrow pits;~~
  - ~~(iii) specifications and details for the protection device;~~
  - ~~(iv) a narrative of stress reduction or other measures which are needed for specific trees; and~~
  - ~~(v) a field inspection schedule pursuant to Section 22A.00.01.10;~~
  - ~~(v) location of permanent protection devices; and~~
  - ~~(vi) an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when the critical root zone is impacted; and~~
  - ~~(vii) An arborist report may be required, on a case-by-case basis, for trees less than 24" dbh, when the critical zone is impacted. calculation of the fee in lieu of reforestation or afforestation, if appropriate.~~
- ~~(h) identification of how the off-site planting requirements will be met either by making a fee in lieu payment, by acquiring credits in an approved forest mitigation bank, or by planting offsite;~~
- ~~(i) If off-site planting is going to occur, the forest conservation plan must off-site planting, if required, which includes the items listed in subsection (e) plus a map of~~

**STAFF DRAFT JUNE 20, 2018**















