



## MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item No. 7  
Date: 6/28/2018

### Staff Draft of Amended Administrative Regulations for Chapter 22A- Staff Presentation

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**Completed: 6/20/18**

#### RECOMMENDATION

The attached document contains the staff draft of proposed amendments to the administrative regulations for Chapter 22A of the County Code (Forest Conservation Law). Staff recommends approval by the Planning Board to release these regulations as the Public Hearing Draft and to tentatively schedule a public hearing on the draft for no earlier than September 13, 2018.

#### SUMMARY

In 2001, the Planning Board adopted the “Forest Regulations – Trees Regulations” that was forwarded to, and approved by, the County Council under Method 2 procedures. The regulation contains Planning Department practices related to the review and processing of Natural Resources Inventory, Forest Stand Delineation, Exemptions from Submitting a Forest Conservation Plan, and Forest Conservation plans either acted upon by the Planning Board or the Planning Director under Chapter 22A of the County Code. Since 2001 numerous changes to Chapter 22A of the County Code have occurred to keep current with changes to the zoning code, subdivision of land code, the State’s enabling legislation the Forest Conservation Act, and to clarify certain sections of the law. However, the forest regulations have not changed since 2001. The proposed changes will amend the existing regulation to address the changes that have already occurred to the forest conservation law.

#### PROPOSED CHANGES

Below is a detailed discussion of the proposed changes:

##### **Section 22A.00.01.01 Purpose**

Clarifies the purpose of the amendment and moves the name of the contact person from the regulations to the cover sheet.

#### **Section 22A.00.01.02. Authority**

Identifies that the regulation is a result of Chapter 22A of the County Code and lists the activities that are subject to the law and regulation.

#### **Section 22A.00.01.03. Definitions**

The existing regulation identifies this section as “Transition Provision” but this amendment proposes to rename this section “Definitions”. It was appropriate to have discussion on transition in the 2001 regulation for the forest conservation law was approved for less than 10 years at that time but 17 years have lapsed since the last amendment to the regulation. The forest conservation law has now been in effect from more than 25 years. Therefore, having a transition period is no longer necessary. The second part of the existing regulation was “definitions” so it was appropriate to remove the discussion on transitions and label this section “definitions”.

In addition, a few new definitions are included, such as: category I conservation easement, category II conservation easement, environmental buffer, ephemeral channel/stream, forest mitigation bank credits, and forest retention.

Changes have also been made to other definitions to either further clarify the definition because of changes to the subdivision of land ordinance (Chapter 50), the zoning ordinance (Chapter 59), or the Maryland Annotate code. Other changes are occurring to further clarify specific definitions and in some cases to reflect Planning Department practices.

#### **Section 22A.00.01.04.**

For some unknown reason this section does not exist in the current regulation.

#### **Section 22A.00.01.05. Application**

Changes to this section clarify the development activities, or plan types, that are subject to the forest conservation law and identifies the general provisions necessary to satisfy the legal requirements of the forest conservation law.

#### **Section 22A.00.01.06. Natural Resources Inventory and Forest Stand Delineation Requirements**

Changes to this section are to clearly identify the “Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland” as the

document necessary to adequately prepare a natural resource inventory. The existing version of the regulation did not include a proper reference to this document.

Other changes are to reflect practices such as identifying the trees and health of the tree to ensure compliance with the tree variance section of the forest conservation law.

#### **Section 22A.00.01.07. Priorities for Retention**

This section is proposed to be renamed from “Priorities for Forest Stand Retention” to “Priorities for Retention”. The purpose of this section is to make the regulation consistent with section 22A-12(b)(1) of the forest conservation law which identifies specific areas for retention, whether forested or not.

#### **Section 22A.00.01.08. General Forest Plan Provisions**

This section identifies the general requirements of a forest conservation plan. It identifies that an applicant should strive to save the maximum amount of forest as practical. It identifies priority planting areas for any development project that has forest planting requirements. It specifies the number of trees and size of trees that must be planted. Staff is recommending the removal of natural regeneration from the planting list for natural regeneration as the primary means to meet the planting requirements is unsuccessful in Montgomery County. However, the proposed regulation does indicate that applicants could receive credit for naturally regenerated trees that occur in planting areas, that are in addition to the required planting requirements, to satisfy the survivability requirements. Another change to this section is changing the reference that indicates properties with a landscape plan “must” receive credit for those areas and change it to “may”. Not only does this provide more flexibility to the property owner but also allows for credit to be given when the credit is in sustainable areas.

#### **Section 22A.00.01.09 Forest Conservation Plan Requirements**

Changes to section are mainly for clarification issues except for the information that must be shown on the final forest conservation plan. The existing regulation requires the plan to depict a limit of disturbance based on final grading plans. The forest conservation law requires a final forest conservation plan to be approved prior to record plat. For some developments it is premature to have a final grading plan at time of record plat so therefore staff is recommending the final forest conservation plan show either conceptual or final grading.

#### **Section 22A.00.01.10 Inspections**

The only change to this section is to indicate that the Planning Director can conduct inspections at any time and that the developer must contact the Planning Department before removing any tree protection measure.

#### **Section 22A.00.01.11 Exemptions from Submitting a Forest Conservation Plan**

The major clarification in this section is once an exemption is confirmed, the activity is not exempt from the forest conservation law but an exempt from submitting a forest conservation plan. The proposed change also modifies the submission requirements for agricultural and timber harvesting exemptions from submitting a forest conservation plan to what is currently being utilized.

#### **Section 22A.00.01.12. Declaration of Intent**

The Declaration of Intent is a requirement for a few exemptions from submitting a forest conservation plan. This section is to clarify that if a Declaration of Intent is submitted that the project is not exempt from the forest conservation law, but exempt from submitting a forest conservation plan. There could still be necessary inspections such as when a tree save plan is required.

#### **Section 22A.00.01.13 Amendment to Forest Conservation Plan and Exemptions from Submitting a Forest Conservation Plan.**

The only clarification in this section, other than the title, is that removal of any forest conservation easement is a major amendment and it must be reviewed by the Planning Board. This is consistent with the Planning Board's practice.

#### **Section 22A.00.01.14 Forest Conservation Maintenance and Management Agreements**

Changes to this section include codifying the requirement that the maintenance period for forest planting for most of the County is a minimum of two years and five years in areas covered by a Special Protection Area Water Quality plan. The amendment also proposes that the maintenance and management agreement must be submitted and approved by the Planning Department prior to any land disturbance activities occurring. If there are no planting requirements on a subject property there continues to be no need to submit and obtain approval of a maintenance and management agreement. This section also clarifies how the financial security must be calculated and released for projects with planting plans.

#### **Section 22A.00.01.15 Long-Term Protective Agreements**

The only proposed changes to this section is to codify the staff practice that the appropriate means for the long-term protection of priority retention area and priority planting area is

through conservation easements, deed restrictions, or dedication to the Parks Department as a conservation area.

**ATTACHMENTS:**

- A. Proposed changes to Chapter 22A Forest Conservation – Trees Regulation (clean copy)
- B. Proposed changes to Chapter 22A Forest Conservation – Trees Regulation (mark up of 2001 Regulation)