Sections 22A-3 through 22A-6, 22A-9 through 22A-13, 22A-15, 22A-17, 22A-21, 22A-27, and 22A-30 are amended as follows:

Sec. 22A-3. Definitions

***

*Forest edge* means the transition zone from an area of forest to fields, meadows, yards, or other open spaces, including forest that was previously interior forest, but has become forest edge due to clearing.

***

*Land disturbing activities* has the same meaning as in Chapter 19 or cutting, clearing, or grading of more than 5,000 square feet of forest, as defined by this section.

***

*Restoration plan* means a plan prepared in response to a violation of this Chapter.

***

*Watershed* means any area delineated as a watershed in the Montgomery County Municipal Separate Storm Sewer System (MS4) Permit Implementation Program (delineated by the State of Maryland as a 8-digit watershed), and [or] any smaller area within the watershed that is delineated by the State of Maryland as a 12-Digit watershed.

***

Sec. 22A-4. Applicability

***

(g) Clearing or grading conducted on two or more platted contiguous lots that collectively total 40,000 square feet or larger that are graded at the same time and where sediment control is required.
Sec. 22A-5. Exemptions.

The requirements of Article II do not apply to:

(b) an agricultural activity if:

(1) [that is ]the activity is exempt from the [both plating requirements under Section 50-3 and ]requirements to obtain a sediment control permit under Section 19-2(b)(2),

(2) the activity is subject to a declaration of intent filed with the Planning Director stating that the agricultural areas will remain in commercial agriculture, and

(3) Agricultural support buildings and related activities are built using best management practices;

(d) (1) a commercial logging and timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code that:

(A) is completed before July 1, 1991, or is completed on or after July 1, 1991, and the property on which the cutting or clearing is conducted is not the subject of an application for development within 5 years after the sediment control permit has been issued;

(B) has received approval from the County Arborist or designee that the logging or timber harvesting plan is not inconsistent with County forest management objectives and is otherwise appropriate;
(C) has received a sediment control permit from the Department of Permitting Services and posted the required financial security under Chapter 19[.]; and

(D) complies with the special provisions under 22A-6(c)

***

(e) a State, or County, or local government highway construction activity that is subject to Section 5-103 of the Natural Resources Article of the Maryland Code, or Section 22A-9. All requirements of an exemption for a County or local government highway construction activity are detailed in Section 22A-6(d) and Section 22A-9;

***

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

(1) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed) [;] and [(2)] development does not result in the cutting, clearing, or grading of:

(A) more than a total of 20,000 square feet of forest,

(B) any forest in a stream buffer,

(C) any forest on property located in a special protection area which must submit a water quality plan,

(D) any specimen or champion tree, or

(E) any tree or forest that is subject to the requirements of a previously approved forest conservation plan or tree save plan; or

[(3)] (2) there is no proposed land disturbance and a declaration of intent is filed with the Planning Director stating that the lot will not be the subject of additional regulated activities under this Chapter within 5 years of the approval of the minor subdivision.
(r) an equestrian facility located in an agricultural zone that is exempt from platting requirements under Section 50-9. Article II does not apply to any equestrian support building or related activity only if the building is built using best management practices. However, Section 22A-6[(b)](a) applies if any specimen or champion tree would be cleared.

(t) a modification to a: [an existing non-residential developed property if:]

(1) non-residential developed property if:
   (A) no more than 5,000 square feet of forest is ever cleared at one time or cumulatively after an exemption is issued;
   (B) the modification does not result in the cutting, clearing, or grading of any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan;
   (C) the modification does not require approval of a preliminary plan, or administrative subdivision plan, or conditional use/special exception; and
   (D) the modification does not increase the developed area by more than 50% and the existing principal building(s), as defined in Chapter 59, [development is] are maintained; or

(2) residential developed property if:
   (A) forest is not impacted or cleared;
   (B) the modification is not located in a stream buffer or located on property in a special protection area which must submit a water quality plan;
(C) the modification does not require approval of a preliminary plan, or
administrative subdivision plan, or conditional use/special exception; and
(D) the modification does not increase the developed area by more than 50%; and
(E) the existing structure is not modified;

***

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

(1) executed a binding maintenance agreement for planting and maintenance of
mitigation trees for at least 5 years with the affected property owner or owners, or with
the Maryland National-Capital Park and Planning Commission if the applicant is
performing a stream restoration project on their own property. If an applicant is
performing a stream restoration project on their own property, financial security, per
paragraph (i) of Section 22A-12, is required.

***

Sec. 22A-6. [Exemptions-]Special provisions[.-] Exemptions and tree save plans

(a) Special transition provision. An activity or development that is exempted under Section
22A-5, but which requires site plan approval, is subject to the local law applicable to tree
conservation in effect before July 1, 1992. However, a violation of the requirements of any tree
save plan or similar condition of approval may be enforced using any remedy provided under
this Chapter.]

(b) Tree save plan provision. (a) An activity or development that would be exempt under
Section 22A-5 and will impact a significant, specimen, or champion tree, [except that the
proposed activity involves clearing of a specimen or champion tree, ] requires the approval of a
tree save plan, which may require tree preservation or mitigation for loss of individual trees. The
plan requirements must be based on the size and character of the trees to be cleared. If trees to be cleared are part of an existing scenic buffer between public parkland and a proposed development, trees which are smaller than specimen size may be included in the plan. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

(b) Exemption expiration. A confirmed exemption that has not started any authorized land disturbance within 5 years from the date of confirmation is expired.

(c) Timber harvests. Any commercial logging or timber harvesting exempt from submitting a forest conservation plan must include provisions for the establishment of a new age class with sufficient replanting to meet the definition of forest with 100 stems per acre within two years after the overstory trees are removed.

(d) A violation of the requirements of any tree save plan or similar condition of approval may be enforced using any remedy provided under this Chapter.

(e) The provisions of Article III apply to County or local government highway projects exempt from Article II under 22A-5(e).

***


(a) General

(1) This section applies to construction of a highway by the County or local government as part of an approved Capital Improvements Program project.

***

Sec. 22A-10. General.

(c) Forest conservation plan.
(1) A forest conservation plan is intended to govern conservation, maintenance, and any afforestation or reforestation requirements which apply to the site. A forest conservation plan must contain information on the extent and characteristics of the trees and forested area to be retained or planted, proposed locations for on-site and off-site reforestation, scheduling, protective measures, a binding maintenance agreement effective for at least [2] 5 years, a binding agreement to protect forest conservation areas, and other information or requirements specified in the regulations or technical manual.

Sec. 22A-11. Application, review, and approval procedures.

(a) General.

(3) Notice. Notice of forest conservation plan applications must be provided as specified in the regulations.

(e) Project requiring mandatory referral or park development plan.

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a [preliminary] final forest conservation plan. The Planning Board must consider the [preliminary] final forest conservation plan when reviewing the mandatory referral application or the park development plan. [The deadlines for reviewing the final forest conservation plan are the same as in paragraph (d)(2) of this Section.]
**Sec. 22A-12. Retention, afforestation, and reforestation requirements.**

(a) *Table.*

<table>
<thead>
<tr>
<th>Land Use Category</th>
<th>Forest Conservation Threshold</th>
<th>Required Afforestation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural and resource areas</td>
<td>50%</td>
<td>20%</td>
</tr>
<tr>
<td>Medium-density residential areas</td>
<td>25%</td>
<td>20%</td>
</tr>
<tr>
<td>Institutional development areas</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td>High-density residential areas</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td>Mixed-use development areas</td>
<td>[15-]20%[^1]</td>
<td>15%</td>
</tr>
<tr>
<td>Planned unit development areas</td>
<td>[15-]20%[^1]</td>
<td>15%</td>
</tr>
<tr>
<td>Commercial and industrial use areas</td>
<td>15%</td>
<td>15%</td>
</tr>
</tbody>
</table>

[^1]: The residential and institutional portions of the tract must meet the 20% requirement. If a planned unit development was initially approved before January 1, 1992, and is between 25% and 75% complete on July 1, 1992, (as measured by the total acreage subject to the planned unit development that has received site plan approval), the forest conservation threshold is calculated at 15 per cent. If the planned unit development is less than 25% complete, the forest conservation threshold is calculated using the adjustment shown in the chart.]

(e) *Standards for reforestation and afforestation.*

(1)(A) Preferred sequence. Except as provided in the technical manual or otherwise in paragraph (1) of this subsection, the preferred sequence for afforestation and reforestation...
is, in general: on-site afforestation or reforestation[, including techniques which encourage natural regeneration where feasible; landscaping with an approved plan; and]; off-site afforestation or reforestation[, including techniques which encourage natural regeneration where feasible]; enhancement of existing forest through on-site selective clearing, supplemental planting, or both; acquiring credit(s) from an off-site forest mitigation bank; paying a fee in-lieu; and landscaping with an approved plan.

***

(g) In lieu fee.

(1) General. [If a person satisfactorily demonstrates that the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the]

A person [must contribute] contributing money to the forest conservation fund must do so at a rate specified by law or Council resolution, but not less than the rate required under Section 5-1610 of the Natural Resources Article of the Maryland Code. Any in lieu fee payment must be made before any land disturbing activity, as defined in [Chapter 19] Section 22A-3, occurs on a section of the tract subject to the forest conservation plan. A contribution to the forest conservation fund may be made if a person satisfactorily demonstrates that:

(A) the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, and appropriate credits generated by a forest mitigation bank in the same watershed within the county are not available, or if appropriate credits generated by a forest mitigation bank in the same watershed within the county are not available, that appropriate credits generated by a forest mitigation bank in the same county are not available, or
(B) the off site reforestation requirements are less than 0.5 acre and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.

[(2) Specific development situations. Except as specified in subsection (f), the Planning Board or Planning Director may allow an applicant to pay into the County Forest Conservation Fund instead of providing afforestation, reforestation, or landscaping in the following situations:

(A) Afforestation using tree cover. If an applicant has shown that on-site afforestation using forest cover is not appropriate under subsection (d)(2), the applicant may pay the fee instead of using tree cover to meet any afforestation requirement.

(B) Afforestation or reforestation using landscaping. An applicant may pay the fee instead of using credit for landscaping.

(C) Afforestation on sites with no priority planting areas. If a site has afforestation planting requirements and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate onsite planting area is available, the applicant may pay the fee instead of doing offsite afforestation.

(D) Reforestation on small properties with no priority planting areas. An applicant may pay the fee instead of on-site or off-site reforestation on properties less than 5 acres when the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.
(E) Sites with minor reforestation requirements. An applicant may pay the fee instead of on-site or off-site reforestation for any plan where overall reforestation requirements are less than \( \frac{1}{2} \) acre and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.

(h) Agreements.

(1) Maintenance agreement. A forest conservation plan must include a 5-year binding agreement for maintenance of conservation areas that may be reduced to 3 years upon request by the obligee if the forest conservation inspector finds that the binding maintenance agreement has been fulfilled. The binding maintenance agreement may include [including the] watering (as practical), feeding, non-native invasive control, and replanting of areas to be afforested or reforested [outside of Special Protection Areas, and 5 years for plantings inside Special Protection Areas]. A maintenance agreement may also be required for non-native invasive control of forest edge. The binding agreement for maintenance starts upon satisfactory inspection of the plantings required under the forest conservation plan. A staged project may have more than one agreement.

(i) Financial Security.

(1) Security required. Except as provided in paragraph (8) of this subsection, an approved financial security instrument must be required to ensure:
(A) compliance with all requirements of an approved forest conservation
plan including afforestation, reforestation, mitigation trees, and
maintenance; or

***

(2) Preferred form. The preferred financial security instruments are an irrevocable
letter of credit or a cash bond for a minimum of 5 years that may be reduced to 3
years upon request by the obligee if the forest conservation inspector finds that
the binding maintenance agreement has been fulfilled. The letter of credit must
expressly state that the total sum is guaranteed to be available and payable on
demand directly to the Maryland-National Capital Park and Planning Commission
in the event of forfeiture. A certificate of guarantee or a surety bond may also be
used, including a bond payable to the Commission and County that additionally
guarantees completion of public improvements associated with the proposed
development. The financial security instrument must be made payable to the
Commission and must be of a form and content satisfactory to the Commission
and its legal counsel.

(3) When required. The financial security instrument must be provided prior to
any land disturbing activity, as defined in [Chapter 19] Section 22A-3, occurring
on a section of the tract subject to the forest conservation plan.

***

Sec. 22A-13. Forest mitigation banks.

(a) Creating a forest mitigation bank
[(a)] A person may create a forest mitigation bank from which applicants may buy credits [by afforesting or reforesting an area of land under a forest mitigation bank plan approved by the Planning Director].

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

[(c)] (2) A forest mitigation bank must be comprised of [use] native plants [for afforestation and reforestation, unless inappropriate].

[(d)] (3) A person proposing to create a forest mitigation bank must submit a forest mitigation bank plan to the Planning Director[,] for review and approval, [which must include:]

(4) The forest mitigation bank plan must include:

[(1)] (A) a [2-year] maintenance agreement which meets the standards in subsection 22A-12(h)(1);

[(2)] (B) all information required by subsection 22A-10(c) for a forest conservation plan;

[(3)] (C) [the ]draft easements, covenants, or deed restrictions for the area [to be sold to the developer when credits are withdrawn from the] included in the forest mitigation bank; and

(D) the number of forest mitigation bank credits available for sale as either existing forest credits or planted forest credits where one acre of forest mitigation bank credit equals 1 acre of planted forest, or 2 acres of existing forest.

[(e)] (5) Forest mitigation banks must be established in priority areas described in subsection 22A-12(e)(3), or in areas identified in a master plan or functional plan.
[(f) Credits must not be debited from a forest mitigation bank until all trees have been planted and accepted by the Planning Director, and either financial security which meets the standards in subsection 22A-12(i) has been provided or the Planning Director has found that a sufficient number of trees have successfully survived for 2 years after planting.]

[(g) To debit credits from an approved forest mitigation bank, the easement, covenants, or deed restrictions which assure that the newly reforested or afforested area of land remains a forest in perpetuity must be conveyed to the Planning Board or its assignee and the applicant must show that credits are available and the applicant has the right to debit them. The credits must buy an amount of land equal to the applicant’s off-site reforestation or afforestation requirements under its approved forest conservation plan.]

(b) Purchasing and selling forest mitigation bank credits

(1) Prior to selling forest mitigation bank credits, the forest mitigation bank plan must:

(A) be approved by the Planning Director, and

(B) easements, covenants, or deed restrictions which assure the area of land within the mitigation bank remains a forest in perpetuity must be conveyed to the Planning Board or its assignee and the applicant must show that credits are available and the applicant has the right to debit them.

(2) Credits must not be debited from a portion of a forest mitigation bank where forest planting is required until all trees have been planted and accepted by the Planning Director, and either financial security which meets the standards in subsection 22A-12(i) has been provided or the Planning Director has found that a sufficient number of trees have successfully survived for 2 years after planting.
(3) Forest mitigation bank credits must be acquired from a forest mitigation bank within the same 8-digit watershed, as delineated by the State of Maryland, as where the development activity is located. If forest mitigation bank credits are not available within the same 8-Digit watershed within the County, applicants can then acquire forest mitigation bank credits from any approved forest mitigation bank within the County.

(4) The forest mitigation bank credits acquired must be equal to the applicant’s off-site reforestation or afforestation requirements under the approved forest conservation plan. (2001 L.M.C., ch. 19, § 1.)

Sec. 22A-15. Inspections and notification

(c) Required inspections.

(1) The Planning Department must conduct [6] the 7 field inspections [of a site as] specified in this subsection at each site.

(2) The Planning Director must inspect each site that is subject to an approved forest conservation plan,

(A) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins;

(B) after necessary stress reduction measures have been completed and the protection measures have been installed, but before any clearing or grading begins;

(C) after all construction activities are completed, to determine the level of compliance with the [forest conservation] approved plan;
(D) before any required reforestation and afforestation planting is started;

(E) after required reforestation and afforestation have been completed, to verify

the planting is acceptable and begin the maintenance and management period;

[and]

(F) 2 years after reforestation and afforestation have been completed, to determine

survival and assess necessary maintenance activities for the remaining duration of

the maintenance and management period; and

[(F)] (G) at the end of the maintenance and management period, to determine the

level of compliance with the planting plan and, if appropriate, authorize release of

financial security.

(3) The Planning Director must conduct inspections (A) through (C) of this section for a

confirmed exemption from submitting a forest conservation plan

(4) The Planning Director must conduct inspections (A) through (G) of this section for a

plan approved in accordance with section 22A-9:

***

Sec. 22A-17. Corrective actions

(a) Administrative order. At any time, including during an enforcement action, the Planning

Director may issue an administrative order requiring the violator to take one or more of the

following actions within a certain time period specified by the Planning Director:

(1) stop the violation;

(2) stabilize the site to comply with a reforestation plan;

(3) stop all work at the site;

(4) restore or reforest unlawfully cleared areas;
(5) submit a **restoration plan** or **forest conservation** plan for the property;

(6) place forested or reforested land under long-term protection by a conservation easement, deed restriction, covenant, or other appropriate legal instrument; or

(7) submit a written report or plan concerning the violation.

Sec. 22A-21. Variance

(b) **Application requirements.** An applicant for a variance must:

(1) describe the special conditions peculiar to the property or other circumstances which would cause the unwarranted hardship;

(c) **Referral to other agencies for non 22A-12(b)(3) variance requests.** Before the Planning Board considers a variance, not related to 22A-12(b)(3), the Planning Director must send a copy of each request to the County Arborist and any other appropriate agency for a written recommendation[.] before the Board acts on the request. If a recommendation on the variance is not submitted to the Planning Board, or Planning Director, as appropriate, within 30 days after the referral, the recommendation must be presumed to be favorable.

Sec. 22A-27. Forest Conservation Fund.

(b) **Penalties.** Money collected for noncompliance with a forest conservation plan or the associated [2]5-year maintenance agreement must be deposited in a separate account in the forest
conservation fund. Money deposited in this fund may be used to administer this Chapter. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1; 2010 L.M.C., ch. 55, § 1.)

Sec. 22A-30. County Arborist

(c) Duties. The County Arborist has the following functions related to resource management and protection of forest and trees in the County:

(4) review variance requests and reports under Article II but not including those under 22A-12(b)(3):