

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

3 **Sec. 22A-3. Definitions**

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

8 \*\*\*

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

11 \*\*\*

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

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

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19 **Sec. 22A-4. Applicability**

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

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**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 platting 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;

45 (C) has received a sediment control permit from the Department of Permitting Services  
46 and posted the required financial security under Chapter 19[.]; and

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

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

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

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

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

59 (B) any forest in a stream buffer,

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

62 (D) any specimen or champion tree, or

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

65 [(3)] (2) there is no proposed land disturbance and a declaration of intent is filed with the  
66 Planning Director stating that the lot will not be the subject of additional regulated  
67 activities under this Chapter within 5 years of the approval of the minor subdivision.

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69 (r) an equestrian facility located in an agricultural zone that is exempt from platting requirements  
70 under Section 50-9. Article II does not apply to any equestrian support building or related  
71 activity only if the building is built using best management practices. However, Section 22A-  
72 6[(b)](a) applies if any specimen or champion tree would be cleared.

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

75 (1) non-residential developed property if:

76 (A) no more than 5,000 square feet of forest is ever cleared at one time or  
77 cumulatively after an exemption is issued;

78 (B) the modification does not result in the cutting, clearing, or grading of any  
79 forest in a stream buffer or located on property in a special protection area which  
80 must submit a water quality plan;

81 (C) the modification does not require approval of a preliminary plan, [or]  
82 administrative subdivision plan, or conditional use/special exception; and

83 (D) the modification does not increase the developed area by more than 50% and  
84 the existing principal building(s), as defined in Chapter 59, [development is] are  
85 maintained; or

86 (2) residential developed property if:

87 (A) forest is not impacted or cleared;

88 (B) the modification is not located in a stream buffer or located on property in a  
89 special protection area which must submit a water quality plan;

- 90 (C) the modification does not require approval of a preliminary plan, [or]  
91 administrative subdivision plan, or conditional use/special exception; and  
92 (D) the modification does not increase the developed area by more than 50%; and  
93 (E) the existing structure is not modified;

94 \*\*\*

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

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

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

104 [(a) Special transition provision. An activity or development that is exempted under Section  
105 22A-5, but which requires site plan approval, is subject to the local law applicable to tree  
106 conservation in effect before July 1, 1992. However, a violation of the requirements of any tree  
107 save plan or similar condition of approval may be enforced using any remedy provided under  
108 this Chapter.]

109 [(b) Tree save plan provision.] (a) An activity or development that would be exempt under  
110 Section 22A-5 and will impact a significant, specimen, or champion tree, [except that the  
111 proposed activity involves clearing of a specimen or champion tree, ] requires the approval of a  
112 tree save plan, which may require tree preservation or mitigation for loss of individual trees. The

113 plan requirements must be based on the size and character of the trees to be cleared. If trees to be  
114 cleared are part of an existing scenic buffer between public parkland and a proposed  
115 development, trees which are smaller than specimen size may be included in the plan. (1992  
116 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

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

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

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

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

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128 **Sec. 22A-9. County and Local Government Highway Projects.**

129 (a) General

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

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133 **Sec. 22A-10. General.**

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135 (c) *Forest conservation plan.*

136 (1) A forest conservation plan is intended to govern conservation, maintenance, and any  
137 afforestation or reforestation requirements which apply to the site. A forest conservation  
138 plan must contain information on the extent and characteristics of the trees and forested  
139 area to be retained or planted, proposed locations for on-site and off-site reforestation,  
140 scheduling, protective measures, a binding maintenance agreement effective for at least  
141 [2] 5 years, a binding agreement to protect forest conservation areas, and other  
142 information or requirements specified in the regulations or technical manual.

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

145 (a) General.

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

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

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152 (2) Forest conservation plan. Upon notification that the forest stand delineation is  
153 complete and correct, the applicant must submit to the Planning Director a [preliminary]  
154 final forest conservation plan. The Planning Board must consider the [preliminary] final  
155 forest conservation plan when reviewing the mandatory referral application or the park  
156 development plan. [The deadlines for reviewing the final forest conservation plan are the  
157 same as in paragraph (d)(2) of this Section.]

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

160 (a) *Table.*

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area</i>		
<i>Land Use Category</i>	<i>Forest Conservation Threshold</i>	<i>Required Afforestation</i>
Agricultural and resource areas	50%	20%
Medium-density residential areas	25%	20%
Institutional development areas	20%	15%
High-density residential areas	20%	15%
Mixed-use development areas	[15-]20% <sup>[* 1]</sup>	15%
Planned unit development areas	[15-]20% <sup>[* 1]</sup>	15%
Commercial and industrial use areas	15%	15%

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

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168 (e) *Standards for reforestation and afforestation.*

169 (1)(A) Preferred sequence. Except as provided in the technical manual or otherwise in  
 170 paragraph (1) of this subsection, the preferred sequence for afforestation and reforestation



171 is, in general: on-site afforestation or reforestation[, including techniques which  
172 encourage natural regeneration where feasible; landscaping with an approved plan; and];  
173 off-site afforestation or reforestation[, including techniques which encourage natural  
174 regeneration where feasible]; enhancement of existing forest through on-site selective  
175 clearing, supplemental planting, or both; acquiring credit(s) from an off-site forest  
176 mitigation bank; paying a fee in-lieu; and landscaping with an approved plan.

177 \*\*\*

178 (g) *In lieu fee.*

179 (1) General. [If a person satisfactorily demonstrates that the requirements for  
180 reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the]  
181 A person [must contribute] contributing money to the forest conservation fund must do so  
182 at a rate specified by law or Council resolution, but not less than the rate required under  
183 Section 5-1610 of the Natural Resources Article of the Maryland Code. Any in lieu fee  
184 payment must be made before any land disturbing activity, as defined in [Chapter 19]  
185 Section 22A-3, occurs on a section of the tract subject to the forest conservation plan. A  
186 contribution to the forest conservation fund may be made if a person satisfactorily  
187 demonstrates that:

188 (A) the requirements for reforestation or afforestation on-site or off-site cannot be  
189 reasonably accomplished, and appropriate credits generated by a forest mitigation  
190 bank in the same watershed within the county are not available, or if appropriate  
191 credits generated by a forest mitigation bank in the same watershed within the  
192 county are not available, that appropriate credits generated by a forest mitigation  
193 bank in the same county are not available, or

194                   (B) the off site reforestation requirements are less than 0.5 acre and the Planning  
195                   Board or Planning Director, as appropriate, finds that no on-site priority planting  
196                   area is present and no other appropriate on-site planting area is available.

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

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

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

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

212                   (D) Reforestation on small properties with no priority planting areas. An applicant  
213                   may pay the fee instead of on-site or off-site reforestation on properties less than 5  
214                   acres when the Planning Board or Planning Director, as appropriate, finds that no  
215                   on-site priority planting area is present and no other appropriate on-site planting  
216                   area is available.

217 (E) Sites with minor reforestation requirements. An applicant may pay the fee  
218 instead of on-site or off-site reforestation for any plan where overall reforestation  
219 requirements are less than ½ acre and the Planning Board or Planning Director, as  
220 appropriate, finds that no on-site priority planting area is present and no other  
221 appropriate on-site planting area is available.]

222 \*\*\*

223 *(h) Agreements.*

224 (1) Maintenance agreement. A forest conservation plan must include a [2]5-year binding  
225 agreement for maintenance of conservation areas that may be reduced to 3 years upon  
226 request by the obligee if the forest conservation inspector finds that the binding  
227 maintenance agreement has been fulfilled. The binding maintenance agreement may  
228 include [, including the] watering (as practical), feeding, non-native invasive control, and  
229 replanting of areas to be afforested or reforested [outside of Special Protection Areas, and  
230 5 years for plantings inside Special Protection Areas]. A maintenance agreement may  
231 also be required for non-native invasive control of forest edge. The binding agreement for  
232 maintenance starts upon satisfactory inspection of the plantings required under the forest  
233 conservation plan. A staged project may have more than one agreement.

234 \*\*\*

235 *(i) Financial Security.*

236 (1) Security required. Except as provided in paragraph (8) of this subsection, an  
237 approved financial security instrument must be required to ensure:

238 (A) compliance with all requirements of an approved forest conservation  
239 plan including afforestation, reforestation, mitigation trees, and  
240 maintenance; or

241 \*\*\*

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

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

257 \*\*\*

258 **Sec. 22A-13. Forest mitigation banks.**

259 (a) Creating a forest mitigation bank

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

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

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

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

269 (4) The forest mitigation bank plan must include:

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

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

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

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

280 [(e)] (5) Forest mitigation banks must be established in priority areas described in  
281 subsection 22A-12(e)(3), or in areas identified in a master plan or functional plan.

282 [(f) Credits must not be debited from a forest mitigation bank until all trees have been  
283 planted and accepted by the Planning Director, and either financial security which meets  
284 the standards in subsection 22A-12(i) has been provided or the Planning Director has  
285 found that a sufficient number of trees have successfully survived for 2 years after  
286 planting.]

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

293 (b) Purchasing and selling forest mitigation bank credits

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

295 (A) be approved by the Planning Director, and

296 (B) easements, covenants, or deed restrictions which assure the area of land

297 within the mitigation bank remains a forest in perpetuity must be conveyed to the

298 Planning Board or its assignee and the applicant must show that credits are

299 available and the applicant has the right to debit them.

300 (2) Credits must not be debited from a portion of a forest mitigation bank where forest

301 planting is required until all trees have been planted and accepted by the Planning

302 Director, and either financial security which meets the standards in subsection 22A-12(i)

303 has been provided or the Planning Director has found that a sufficient number of trees

304 have successfully survived for 2 years after planting.

305 (3) Forest mitigation bank credits must be acquired from a forest mitigation bank within  
306 the same 8-digit watershed, as delineated by the State of Maryland, as where the  
307 development activity is located. If forest mitigation bank credits are not available within  
308 the same 8-Digit watershed within the County, applicants can then acquire forest  
309 mitigation bank credits from any approved forest mitigation bank within the County.  
310 (4) The forest mitigation bank credits acquired must be equal to the applicant's off-site  
311 reforestation or afforestation requirements under the approved forest conservation  
312 plan. (2001 L.M.C., ch. 19, § 1.)

313 \*\*\*

314 **Sec. 22A-15. Inspections and notification**

315 \*\*\*

316 *(c) Required inspections.*

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

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

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

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

326 (C) after all construction activities are completed, to determine the level of  
327 compliance with the [forest conservation] approved plan;

328 (D) before any required reforestation and afforestation planting is started;  
329 (E) after required reforestation and afforestation have been completed, to verify  
330 the planting is acceptable and begin the maintenance and management period;  
331 [and]  
332 (F) 2 years after reforestation and afforestation have been completed, to determine  
333 survival and assess necessary maintenance activities for the remaining duration of  
334 the maintenance and management period; and  
335 [(F)] (G) at the end of the maintenance and management period, to determine the  
336 level of compliance with the planting plan and, if appropriate, authorize release of  
337 financial security.

338 (3) The Planning Director must conduct inspections (A) through (C) of this section for a  
339 confirmed exemption from submitting a forest conservation plan

340 (4) The Planning Director must conduct inspections (A) through (G) of this section for a  
341 plan approved in accordance with section 22A-9:

342 \*\*\*

343 **Sec. 22A-17. Corrective actions**

344 (a) Administrative order. At any time, including during an enforcement action, the Planning  
345 Director may issue an administrative order requiring the violator to take one or more of the  
346 following actions within a certain time period specified by the Planning Director:

- 347 (1) stop the violation;  
348 (2) stabilize the site to comply with a reforestation plan;  
349 (3) stop all work at the site;  
350 (4) restore or reforest unlawfully cleared areas;



- 351 (5) submit a restoration plan or forest conservation plan for the property;
- 352 (6) place forested or reforested land under long-term protection by a conservation
- 353 easement, deed restriction, covenant, or other appropriate legal instrument; or
- 354 (7) submit a written report or plan concerning the violation.

355 \*\*\*

356 **Sec. 22A-21. Variance**

357 \*\*\*

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

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

361 \*\*\*

362 (c) *Referral to other agencies for non 22A-12(b)(3) variance requests.* Before the Planning

363 Board considers a variance, not related to 22A-12(b)(3), the Planning Director must send a copy

364 of each request to the County Arborist and any other appropriate agency for a written

365 recommendation[.] before the Board acts on the request. If a recommendation on the variance is

366 not submitted to the Planning Board, or Planning Director, as appropriate, within 30 days after

367 the referral, the recommendation must be presumed to be favorable.

368 \*\*\*

369 **Sec. 22A-27. Forest Conservation Fund.**

370 \*\*\*

371 (b) Penalties. Money collected for noncompliance with a forest conservation plan or the

372 associated [2]5-year maintenance agreement must be deposited in a separate account in the forest

373 conservation fund. Money deposited in this fund may be used to administer this Chapter. (1992  
374 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1; 2010 L.M.C., ch. 55, § 1.)

375 \*\*\*

376 **Sec. 22A-30. County Arborist**

377 \*\*\*

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

380 \*\*\*

381 (4) review variance requests and reports under Article II but not including those under  
382 22A-12(b)(3);