



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item No. 5
Date: 5/21/2020

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

Kristin Taddei, Planner Coordinator, DARC, Kristin.Taddei@montgomeryplanning.org, 301-495-4597

Mark Pfefferle, Chief, DARC, Mark.Pfefferle@montgomeryplanning.org, 301-495-4730

Completed: 5/6/20

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 June 25, 2020.

SUMMARY

In 2001, the Planning Board adopted the “Forest Conservation – Trees Regulations” that was forwarded to, and approved by, the Montgomery County Council under Method (2) procedures. The regulation contains Planning Department practices related to the review and processing of Natural Resources Inventories, Forest Stand Delineations, 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 Montgomery County Code (the Forest Conservation Law).

Since 2001 numerous changes to the Forest Conservation Law 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 Chapter 22A of the County Code. However, the Forest Conservation - Trees Regulations has not changed since 2001. The proposed changes will amend the existing regulation to address the changes that have already been incorporated into the Forest Conservation Law.

This staff report outlines two sets of proposed changes. The first set of proposed changes was approved by the Planning Board in 2018, but major changes to the State’s enabling legislation,

the Forest Conservation Act, were proposed shortly thereafter. Therefore, the Planning Department waited to transmit these proposed changes to the Montgomery County Council so that any changes to the State's enabling legislation could be incorporated. The major changes to the enabling legislation were never approved by the Maryland legislative assemblies. The changes, approved by the Planning Board, are marked with "2018" below. New changes, which incorporate the proposed and required changes to the County's Forest Conservation Law, which were recently approved by the Planning Board and transmitted to the Montgomery County Council, are marked with "2020" below.

The ultimate goal is to have the regulatory changes catch up to the law changes that are already forwarded to the County Council but not yet introduced. This way the necessary changes to both the law and regulation are consolidated so there will be combined public hearings, work sessions, and final decisions for the both.

PROPOSED CHANGES

Below is a detailed discussion of the proposed changes:

Section 22A.00.01.01 Purpose

2018: Clarifies the purpose of the amendment and moves the name of the contact person from the regulations to the cover sheet.

2020: Further revises this section to refer to the regulation as approved rather than proposed.

Section 22A.00.01.02. Authority

2018: 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

2018: 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 19 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.

2020: Revises the title of the *Guidelines for the Environmental Management of Development in Montgomery County, Maryland* for accuracy.

Clarifies that forest retention areas are included in a “long-term protective agreement,” rather than a category I conservation easement. The term “long-term protective agreement” encompasses all types of protective agreements and is more accurate.

Revises the definition of “maintenance and management agreement” to mean the short-term management agreement associated with a Forest Conservation Plan, rather than “afforestation or reforestation plans,” and adds that a Forest Conservation Plan may include control of non-native and invasive plants. The term “Forest Conservation Plan” is broader and includes afforestation or reforestation plans, and the control of non-native and invasive plants is incorporated to align this regulation with recently proposed changes to the Forest Conservation Law.

Introduces definitions for major and minor amendments to a Forest Conservation Plan, as these terms are referenced in Section 22A.00.01.13.

Section 22A.00.01.04.

2018/2020: For some unknown reason this section does not exist in the current regulation.

Section 22A.00.01.05. Application

2018: Changes to this section clarify the development activities, or plan types, that are subject to the forest conservation law and identify the general provisions necessary to satisfy the legal requirements of the Forest Conservation Law.

2020: Clarifies that lot lines, buildings, and proposed infrastructure shown on Forest Conservation Plans must be located to avoid environmentally sensitive areas, such as environmental buffers and protected habitats, in addition to maximizing retention areas (which is already noted in the regulation).

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

2018: Changes to this section clearly identify the *Guidelines for the Environmental Management of Development in Montgomery County, Maryland* as the document

necessary to adequately prepare a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD). The existing version of the regulation does not include a proper reference to this document.

Other changes are to reflect practices such as identifying the trees and health of trees to ensure compliance with the tree variance section of the Forest Conservation Law.

2020: Clarifies that the existing (rather than post-development) 100-year floodplain must be shown on a NRI/FSD, and specifies the erodible soils that must be shown on a NRI/FSD.

Section 22A.00.01.07. Priorities for Retention

2018: 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

2018: 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.

2020: New changes incorporate recently proposed amendments to the Forest Conservation Law, including updating the length of the maintenance period; and specifying that development applications on tracts which impact significant, specimen or champion trees, including those on adjoining properties, are required to submit a tree save plan.

An additional change clarifies that trees receiving credit towards forest conservation requirements must not also be credited towards landscaping requirements.

Section 22A.00.01.09 Forest Conservation Plan Requirements

2018: 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.

2020: Clarifies that mitigation trees must be shown on preliminary Forest Conservation Plans if required.

Requires final Forest Conservation Plans to include the distance from the tree face (trunk) to the limits of disturbance (LOD) for trees with a diameter of 24 inches and greater at 4.5 feet above the ground, so staff are able to verify the exact location of and potential impacts to these trees.

Updates the potential requirements of a maintenance plan associated with a final Forest Conservation Plan to include removal of protective measures such as deer caging. If left too long, protective measures can be lethal to trees, so this addition allows staff to require this preventative measure as needed.

Adds a new section, "Noticing Requirements for Forest Conservation Plans," to align the regulations with the recently proposed amendments to the Forest Conservation Law to require applicants who must acquire approval of a Forest Conservation Plan to follow noticing requirements in Chapter 50/59.00.01.04.

Section 22A.00.01.10 Inspections

2018: 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.

2020: Incorporates the new inspection two years after reforestation and afforestation was accepted by the forest conservation inspector. This inspection was recently proposed as an amendment to the Forest Conservation Law to accommodate the proposed 5-year maintenance and management period and to allow inspection staff to determine survival and assess necessary maintenance activities for the remaining duration of the maintenance and management period.

New language also clarifies the semi-annual reporting requirements associated with a maintenance and management period. These reporting requirements are already a

requirement of the maintenance and management agreement but by including them in the regulation, the requirements receive more legal standing.

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

2018: 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.

2020: Incorporates the new expiration of confirmed exemptions from submitting a Forest Conservation Plan, which was recently proposed as an amendment to the Forest Conservation Law.

Section 22A.00.01.12. Declaration of Intent

2018: The Declaration of Intent is a requirement for a few exemptions from submitting a Forest Conservation Plan. Changes to this section clarify that if a Declaration of Intent is submitted, 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.

2020: Adds the 22A-5(n) minor subdivision and 22A-5(x) demolition exemptions to the list of exemptions from submitting a forest conservation plan for which a Declaration of Intent is required, and clarifies that the starting date of the Declaration of Intent is defined within the Declaration of Intent itself. New language also specifies the enforcement actions the Planning Director or Planning Board may take if the terms of a Declaration of Intent are violated.

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

2018: Clarifies the title and 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.

2020: Removes the section on providing notice of each major plan amendment, as this requirement is now covered with the proposed changes in Section 22A.00.01.09.C.

Section 22A.00.01.14 Forest Conservation Maintenance and Management Agreements

2018: Changes propose 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.

2020: Incorporates three recently proposed changes to the Forest Conservation Law. First, language that lengthens the binding maintenance agreement to 5 years unless reduced pursuant to Section 22A-12(g)(h)(1) of the Forest Conservation Law has been added. New language also clarifies that the length of the binding maintenance agreement must be 5 years for Forest Conservation Plans in Special Protection Areas, and cannot be reduced. Second, control of non-native and invasive vegetation has been added as a possible maintenance agreement requirement that must be met. Finally, mitigation trees have been added to the list of planting and maintenance items for which financial security is required.

Separately, all references to ownership interest in a “site” have been changed to “property” for accuracy.

Section 22A.00.01.15 Long-Term Protective Agreements

2018: 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. Chapter 22A. Forest Conservation Trees Regulations_Proposed Changes 2018_2020_Attachment A (clean copy)
- B. Chapter 22A. Forest Conservation Trees Regulations_Proposed Changes 2018_2020_Attachment B (mark-up of 2001 regulation)